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Tuesday
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1700 through 1799

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends 7 CFR Parts 1700–1799, Appendix A—REA Bulletins, by revising section II of Attachment A to REA Bulletin 20–14, Supplemental Financing for Loans Considered Under section 4 of the Rural Electrification Act. This bulletin is used in determining the REA/supplemental loan percentages for concurrent loans. As a result of the recent amendment to the RE Act on August 13, 1981, and in accordance with existing REA policy, most of the 140 borrowers which had been eligible to receive 100 percent of their financing needs from REA at a 2 percent interest rate would be required to obtain up to 30 percent of their financing needs from non-REA sources. The remaining portion of their financing needs would be provided by an REA insured loan at a 5 percent interest rate. This action amends the REA/supplemental lending ratios for those former statutory 2 percent borrowers (those with two or fewer consumers per mile or an average adjusted plant revenue ratio of over 9.0 as of December 31, 1980) to allow them to obtain 90 percent of their financing needs from an REA insured loan at a 5 percent interest rate and the remaining 10 percent from non-REA sources. It applies to loan requests received by REA after July 24, 1981. All other REA borrowers will be unaffected by this change. This revision is an interim measure. On January 22, 1982, REA initiated rulemaking procedures for a complete review and possible revision of REA Bulletin 20–14.

EFFECTIVE DATE: April 20, 1982.

FOR FURTHER INFORMATION CONTACT: Milton E. Wright, Chief, Borrowers Management Branch—Electric Loans and Management Division, Room 3338, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 382–1936.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). 7 CFR Parts 1700–1799, Appendix A—REA Bulletins, is hereby amended to provide for the revision of section II of Attachment A to REA Bulletin 20–14, Supplemental Financing for Loans Considered Under section 4 of the Rural Electrification Act. The text of section II of Attachment A is as follows:

Attachment A, Supplemental Loan Criteria for Electric Distribution Borrowers

II. Loan Proportions for Concurrent Loans

A. The loan proportions for concurrent loans to borrowers, who are eligible for supplemental financing as set forth above, with an average consumer density (DENSITY) of two or fewer per mile or an average adjusted plant revenue ratio (APRR) of over 9.0 as of December 31, 1980, will be 90 percent from REA and 10 percent from supplemental sources.

B. The loan proportions for concurrent loans to all other borrowers, who are eligible for supplemental financing as set forth above, will be based on the borrower's plant revenue ratio (PRR) as follows:

PRR	REA percentage	Supplemental lender percentage
9.01 and above	90	10
8.01 to 9.0	80	20
8.00 and below	70	30

This final action has been issued in conformance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers; individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major." This action is not subject to the Regulatory Flexibility Act or to OMB Circular A–95 review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

The primary objective of this rule is to ease for certain borrowers the transition from 100 percent REA financing to partial supplemental financing and the resulting increase in interest costs. As a result of this rule these borrowers will be required to establish and use non-REA supplemental lending sources. This action is also consistent with previous REA policy. When other borrowers were first required to use non-REA lending sources REA used a transition period to ease the impact on the borrowers of going to partial supplemental financing.

Among the various options which REA considered was allowing former statutory 2 percent borrowers to obtain 100 percent of their financing needs from REA at a 5-percent interest rate. This option would not encourage the use of non-REA financing, and it would increase the demand for REA insured loan funds. REA also considered taking no action. This option would create a hardship for some borrowers in terms of both the impact of increased interest costs and the need to establish new financing arrangements with non-REA lenders.

A notice of Proposed Rulemaking was published in the **Federal Register** on January 26, 1982, Volume 47, Number 15, page 3554. We received five comments directly responding to the publication of the proposed **Federal Register** notice. Three of the respondents favored adoption of the action i.e. allowing former statutory 2 percent borrowers to receive 90/10 REA/non-REA financing. The other two respondents did not favor adoption of section II of Attachment A because they said that its adoption and the resulting increase in interest costs to low density, REA-financed systems would ultimately make it impossible for these systems to provide service to their consumers at acceptable, competitive rates.

None of the respondents mentioned that Congress had amended the RE Act on August 13, 1981, and removed the requirement that REA provide 2 percent insured loans for 100 percent of the financing needs of borrowers with two or fewer consumers per mile or an average APRR of over 9.0. Without the adoption of section II of Attachment A, most of the former statutory 2 percent

borrowers would have been required to establish new financing arrangements and to receive up to 30 percent of their financing from non-REA sources.

List of Subjects

Administrative practice and procedure, Electric utilities, Loan programs—energy.

Dated: April 20, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-12077 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Part 1980

Form FmHA 449-35; Lender's Agreement

CFR Correction

In Title 7, Parts 1900–2799, revised as of January 1, 1981, the text of 7 CFR Part 1980, Subpart A, Appendix B, paragraph XII, E, appearing at page 935, was inadvertently removed. The text should read as published at 41 FR 47462, Oct. 22, 1976, and set forth below:

Appendix B—Form FmHA; Lender's Agreement

* * * * *

XII. *Liquidation.*

* * * * *

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

* * * * *

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of In Transit Special Nuclear Material of Moderate Strategic Significance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its physical protection regulations for special nuclear material of moderate strategic significance to improve licensee safeguards capabilities for early detection of the possible theft of this material while it is in transit. These improvements include (1) maintaining the material under lock or under the control of a responsible individual, (2) confirming the status of shipments while en route, and (3) employment of either dedicated use transports or signature acknowledgement of custody of shipments. The intent of these amendments is to assure close monitoring of shipments of special nuclear material of moderate strategic significance in order to achieve early detection of loss or theft of the material so that repeated thefts can be prevented.

EFFECTIVE DATE: June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. C. K. Nulsen, Material Transfer SG Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427–4181.

SUPPLEMENTARY INFORMATION: The Commission has been concerned that possible multiple thefts of special nuclear material (SNM) of moderate strategic significance could result in the accumulation by an adversary of more strategically significant quantities of special nuclear material. To help prevent this, current physical protection requirements for SNM of moderate strategic significance were designed to help provide early detection of an initial theft of this material. Early detection would allow the Commission to take further actions to assure that additional thefts could be prevented before the lost or stolen material was accounted for. On June 15, 1981, the Commission published proposed amendments in the **Federal Register** (46 FR 31267) to require additional physical protection for intransit SNM of moderate strategic significance. These amendments were to improve the licensee's capabilities for early detection of possible thefts of the material by requiring (1) the material be maintained under lock or under the control of a responsible individual, (2) periodic communications between the licensee and the transport vehicle, and (3) employment of exclusive use vehicles or signature acknowledgement of all custody transfers. A sixty-day comment period expired on August 15, 1981. Comments were received from eight respondents.

The proposed amendments have been modified in response to the comments received, and will be published in final form, as modified, to become effective 30 days after publication of this notice. Changes were made in response to the public comments to better reflect services which can be provided by common carrier(s), and also to provide clarification where necessary. A summary of the public comments and, where appropriate, a description of the changes that resulted from them follows:

(1) *Need for these amendments.* All but one of the commenters questioned the need for additional physical protection requirements for the affected shipments. They suggested that current requirements allowing the NRC to order delays in these shipments to keep formula quantities of SSNM from being in transit at the same time would be unnecessarily redundant with additional physical protection requirements for individual shipments.

The final amendments complement existing regulations which allow the NRC to order shipment delays for safeguards purposes. They provide for closer licensee control over shipments and better traceability so that the chances of having to delay a shipment will be decreased. With regard to the comment concerning those shipments of low enriched uranium covered by these amendments, it was decided to exclude low enriched uranium of moderate strategic significance from the requirements (1) to maintain the material under lock or under the control of a responsible individual and (2) to use an exclusive use vehicle or signature acknowledgement of all custody transfers. Low enriched uranium shipments, however, will be required to meet the remaining physical protection regulations for material of moderate strategic significance. The exclusion of low enriched uranium from the additional requirements of this amendment was made after considering the primary intent of the additional requirements to provide early detection in time to prevent the theft of a formula quantity of strategic special nuclear material, which consists of only high enriched uranium and plutonium.

(2) *Locking requirements.* The proposed amendments would have required the material to be transported in a locked cargo compartment, and during road shipments, to be kept under lock while in transit or in temporary storage en route. Many commenters noted that these locking requirements would be impossible to comply with in the case of less-than-truckload (LTL) shipments and most air shipments, the modes primarily used in past shipments. The loading and unloading of other cargo, it was stated, precludes maintaining the material continuously under lock. Also, most aircraft do not have lockable cargo compartments. It was also stated that storage of the material in a locked area was not always feasible for import and export shipments.

It was anticipated by commenters that some carriers might refuse to carry the material if the proposed amendments

became effective, and that less-than-truckload shipments would be effectively eliminated. Commenters also questioned whether the purpose of the proposed locking requirements was to prevent rather than detect theft.

The final amendments permit an alternative to the lock requirements. This alternative provides for maintaining the material under the control of a responsible individual where the use of locks is not practicable. Under this alternative, the shipment should be kept under continuous observation or be checked periodically by a responsible individual to assure its continued integrity. Periodic checking of the shipment could be facilitated by inspecting the seals required on NRC-approved shipping containers, or by use of an appropriate seal placed on the cargo compartment or temporary storage areas containing the shipment. The responsible individual also should assure the correct routing of the shipment, and should assure that the licensee or its designee is notified immediately if the material is determined to be missing. The responsible individual in each case will be required to be an individual who has acknowledged by signature acceptance of custody of the material.

For air shipments these requirements could be satisfied by requesting the signature security service provided by air carriers. This service provides routing control, surveillance and periodic checking of shipments. For road shipments, common carriers of less-than-truckload quantities should be able to provide service consistent with these requirements under special arrangements, and at a cost less than what would be charged for an exclusive use vehicle. A revised regulatory guide will be published to reflect these changes, which will describe in further detail the appropriate means for complying with the requirements for maintaining control of the shipments.

(3) *Exclusive use vehicles.* Some commenters questioned the use of the term "exclusive use vehicle." It was claimed that prohibiting other cargo from being transported in the same vehicle with a shipment of SNM of moderate strategic significance would not necessarily affect the security of the shipment and thus is unjustified. The term "exclusive use vehicle" was used in the proposed amendments in reference to a type of service routinely offered in the motor freight industry. In order to avoid confusion, the term "exclusive use vehicle" does not appear in the final amendments. More descriptive language focusing only on the security aspects of these shipments has been substituted.

One commenter also suggested that the requirement for exclusive use vehicles goes beyond the stated objective of the proposed rule. Although use of an exclusive use vehicle itself would not prevent the theft of this material, it would not appear to be inconsistent with assuring early detection of a possible theft. Also, it should be noted that the final amendments permit the use of alternative means for satisfying this objective.

(4) *Communications.* Some commenters considered the proposed requirement for periodic communications between the shipper, receiver, or their designee, and the transport vehicle to be unnecessary since they supplement existing requirements for tracing lost or unaccounted for shipments and notifying authorities. It also was suggested that communications more often than every several hours would slow shipments, greatly increase operating costs, and effectively eliminate less-than-truckload shipments. Conversely, however, one commenter endorsed the proposed periodic communications requirement and suggested exclusive use vehicles be used, equipped with satellite-based navigation receivers and transmitters.

Some commenters questioned specifically whether communications would be required during periods when the shipment was in temporary storage, and whether the requirement was intended to apply to all modes or only to road shipments. With regard to the periodic communications requirement, the objective of early detection could be achieved by periodic reports from the carrier on the shipment's status relative to a predetermined itinerary. Several airfreight and motor freight carriers who have previously handled shipments of special nuclear material are known to provide the appropriate tracing services at no additional cost. Computerized data bases maintained by some of the motor freight carriers are generally updated every 10 to 14 hours, and more frequently in the case of air shipments.

Concerning the use of a satellite communications system, as suggested by one commenter, this could conceivably satisfy the proposed communications requirements but it would not be appropriate for the Commission to require a particular system design or type of hardware in preference to other acceptable alternatives.

(5) *Cost effectiveness.* Some commenters stated that the proposed amendments would result in cost increases that would have a significant impact on the operations of nonpower reactor facilities which must financially justify their existence even though they might be subsidiaries of much larger companies or institutions. Generally, these statements appear to have been based on the premise that the proposed amendments would force licensees to utilize exclusive use vehicles for road portions of shipment in preference to less-than-truckload shipments.

As stated earlier, the additional physical protection measures included in the proposed amendments were not intended to force licensees to utilize exclusive use vehicles for road shipments. Based upon information developed in staff inquiries, the modifications to the proposed amendments will make it possible for licensees to satisfy the additional physical protection requirements for shipments of SNM of moderate strategic significance while continuing to employ common carriers provided they can make special arrangements for the required services. This should be possible to arrange at a cost significantly less than if an exclusive use vehicle were required. Thus the Commission has determined that the additional physical protection measures are cost effective in balancing the additional protection provided against the additional cost.

Paperwork Reduction Act Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96-511. The SF-83, "Request for Clearance," Supporting Statement, and other related documentation submitted to OMB have been placed in the Public Document Room at 1717 H St., NW., Washington, D.C. 20555 for inspection and copying for a fee. The application requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0002 (expires May 31, 1983).

Regulatory Flexibility Statement

In accordance wih the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule would amend 10 CFR Part 73 to require certain improvements in the capabilities of physical protection

systems provided by licensees to protect against the theft or loss of special nuclear material of moderate strategic significance while this material is in transit. These improvements would increase the cost of shipment of this material in absolute terms, but the total costs of transportation would generally remain less than one percent of the value of the material shipped. In addition, the number of shipments expected to be made annually is quite low, estimated to be about thirty shipments per year based upon past experience in the nuclear industry. The licensees who could be affected by these amendents number approximately 37 possessing special nuclear material of moderate strategic significance, 27 of which operate nonpower reactors. In addition to these 37 licensees, there are about six licensees possessing formula quantities of strategic special nuclear material who may occasionally choose to ship their material in less than formula quantities. All the licensees potentially affected are either large private or state universities, large corporations, each employing in excess of 500 persons having annual sales or revenues in excess of $1 million, or state or Federal agencies. Less than ten of the affected licensees are small colleges or businesses that fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 21.

List of Subjects in 10 CFR Part 73

Hazardous materials—transportation, Nuclear materials, Nuclear plants and reactors, Penalty, Reporting requirements, and Security measures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73, are published as a document subject to codification.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 147, 161b, 161i, 161o, Pub. L. 85–703, 68 Stat. 930, 948–950, as amended, Pub. L. 85–507, 72 Stat. 327, Pub. L. 88–489, Stat. 602, Pub. L. 93–377, 88 Stat. 475, Pub. L. 96–295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2167); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, 1243, as amended, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), 73.37(g) and § 73.55 are issued under Sec. 161b, 68 Stat. 948, as amended, 42 U.S.C. 2201(b); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under Sec. 161i, 68 Stat. 949, as amended, 42 U.S.C. 2201(i); and §§ 73.20(c)(f), 73.24(b)(i), 73.26(b)(3), (h)(6), (i)(6) and (k)(4); 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71 and 73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o). Paragraph 73.37(f) also is issued under Section 301 Pub. L. 96–295, 94 Stat. 280.

2. Section 73.67 is amended as follows:

a. Paragraph (c)(1) is revised.

b. Paragraph (e)(1)(iii) is removed and paragraphs (e)(1)(iv) and (v) are redesignated as (e)(1)(iii) and (iv).

c. The introductory text of paragraph (e)(3) and paragraphs (e)(3)(i) and (e)(3)(vi) are revised.

d. Paragraph (e)(3)(vii) is added.

e. Paragraph (e)(4) is redesignated as paragraph (e)(5) and revised.

f. Paragraphs (e)(5) and (e)(6) are redesignated as (e)(6) and (e)(7).

g. A new paragraph (e)(4) is added.

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) * * *

(1) Submit a security plan or an amended security plan describing how the licensee will comply with all the requirements of § 73.67 (d), (e), (f) and (g), as appropriate, including schedules of implementation

* * * * *

(e) * * *

(i) * * *

(iii) Check the integrity of the container and locks or seals prior to shipment, and

(iv) Arrange for the in-transit physical protection of the materials in accordance with the requirements of § 73.67(e)(3) of this part unless the receiver is a licensee and has agreed in writing to arrange for the in-transit physical protection.

* * * * *

(3) Each licensee who arranges for the in-transit physical protection of special nuclear material of moderate strategic significance, or who takes delivery of this material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall:

(i) Arrange for telephone or radio communications between the transport and the licensee or its designee: (A) To periodically confirm the status of the shipment (B) for notification of any delays in the scheduled shipment, and (C) to request appropriate local law enforcement agency response in the event of an emergency.

* * * * *

(vi) Initiate immediately a trace investigation of any shipment that is determined to be lost or unaccounted for after a reasonable time beyond the estimated arrival time.

(vii) Notify immediately the Director of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of this part of the action being taken to trace the shipment.

(4) Each licensee who arranges the physical protection of strategic special nuclear material in quantities of moderate strategic significance while in transit or who takes delivery of this material free on board (f.o.b.), the point at which it is delivered to a carrier for transport shall, in addition to the requirements of (e)(1), (e)(2), and (e)(3) above:

(i) Make all shipments of the material either (A) in dedicated transports with no intermediate stops to load or unload other cargo and with no carrier or vehicle transfers or temporary storage in-transit, or (B) under arrangements whereby the custody of the shipment and all custody transfers are acknowledged by signature, and

(ii) Maintain the material under lock or under the control of an individual who has acknowledged acceptance of custody of the material by signature.

(5) Each licensee who exports special nuclear material of moderate strategic significance shall comply with the requirements specified in § 73.67(c), (e)(1), (e)(3) and (e)(4).

(6) Each licensee who imports special nuclear material of moderate strategic significance shall,

(i) Comply with the requirements specified in § 73.67 (c), (e)(2), (e)(3), (e)4).

(ii) Notify the exporter who delivered the material to a carrier for transport of the arrival of such material.

(7) If, after receiving advance notice pursuant to § 73.72 from a licensee planning to import, export, transport, deliver to a carrier for transport in a single shipment, or take delivery at the point where it is delivered to a carrier, special nuclear material of moderate strategic significance containing in any part strategic special nuclear material, it appears to the Commission that two or more shipments of special nuclear material of moderate strategic significance, constituting in the aggregate an amount equal to or greater than a formula quantity of strategic special nuclear material, may be en route at the same time, the Commission may order one or more of the shippers to

delay shipment according to the following provisions:

* * * * *

Dated at Washington, D.C. this 29th day of April, 1982

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12067 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 550

[No. 82-309]

Delegation of Authority Regarding Trust Powers Applications

April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has delegated to its Principal Supervisory Agents the authority to approve certain applications for trust powers. These amendments are intended to streamline the processing of applications that do not present significant legal or policy considerations.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Gregory B. Smith (202-377-6451), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: These amendments to the Board's regulations governing trust operations of federal savings and loan associations (12 CFR Part 550) delegate to the Board's Principal Supervisory Agents authority to approve applications by federal associations or their service corporations for trust powers.

Section 5(n) of the Home Owners' Loan Act, 12 U.S.C. 1464(n) ("Act"), authorizes the Board to grant by special permit to an association applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which state banks, trust companies, or other corporations which compete with associations are permitted to act. Under that section, the Board may not issue a trust powers permit to any association that does not meet the capital and surplus requirement that state law imposes on state-chartered banks, trust companies, and corporations exercising such powers. State law capital and surplus requirements serve as a threshold criterion, however; the Act further provides that, in considering those applications, "the Board may take into consideration the amount of capital and surplus of the applying association, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other factors and circumstances that seem to it proper." 12 U.S.C. 1464(n)(9), implemented at 12 CFR 550.2(b). In delegating authority to approve trust powers applications, the Board has prescribed minimum criteria relevant to those factors. If the applicant fails to meet any of those criteria or the Principal Supervisory Agency recommends that the application be denied, the application will be referred to the Board for consideration.

The Board has also amended 12 CFR 550.2 to clarify the scope and effect of approvals by the Board or its Principal Supervisory Agents of trust powers applications by specifying that the trust powers authorized are limited to those stated in the approval and the offices from which services based on those powers may be offered are limited to those listed in the application. The applicant would, therefore, have to reapply before exercising any additional trust power or offering fiduciary services at additional offices.

In addition, the Board has amended 12 CFR 550.3 to delegate to the Principal Supervisory Agents the Board's authority to issue to the federal association resulting from a merger or consolidation a certificate transferring to it the trust powers previously granted the disappearing association by the Board or a Principal Supervisory Agent.

Because the amendments pertain to internal Board procedures and will facilitate the processing of applications for fiduciary powers, and because it is in the public interest to provide prompt action on such applications, the Board believes it is appropriate to implement the amendments without delay. Therefore, the Board has determined that observance of the notice and public procedure provisions of 12 CFR 508.11 and 5 U.S.C. 553(b) is unnecessary and that publication of these amendments for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d), prior to the effective date of the amendments, is likewise unnecessary.

List of Subjects in 12 CFR Part 550

Savings and loan associations, Fiduciary powers, Trusts and trustees, Applications.

Accordingly, the Board hereby amends Part 550, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 550—TRUST POWERS OF FEDERAL ASSOCIATIONS

1. Amend § 550.2 by adding new paragraphs (c) and (d), to read as follows:

§ 550.2 Applications.

* * * * *

(c) Board approval of applications filed under this section may be given by the Principal Supervisory Agent, provided that all of the following conditions are met:

(1) The application does not raise any significant issues of law or policy on which the Board has not taken a formal position;

(2) The financial condition of the association meets the financial standards prescribed for state-chartered corporate fiduciaries by the laws of each state in which the association has offices from which it will offer the fiduciary services (the Principal Supervisory Agent may consider the net worth of a mutual association as equivalent to capital stock and surplus when state law prescribes minimum capital stock and surplus requirements) and the Principal Supervisory Agent has determined that the financial condition of the association is sufficient to support the proposed trust operations;

(3) The association has submitted a legal opinion from independent counsel certifying that the proposed trust powers are authorized for state-chartered corporate fiduciaries by the laws of each state in which the association has offices from which it will offer fiduciary services;

(4) The association's net worth meets the Board's minimum requirements for that association under § 563.13 of this Chapter;

(5) Based on the most recent examination of the association and any other available information, the Principal Supervisory Agent determines that any deficiencies with respect to the association's management are minor;

(6) Based on the most recent examination of the association and any other available information, the Principal Supervisory Agent determines that the overall performance of the association is satisfactory;

(7) The proposed trust officer(s) who would be in charge of the trust operations must (a) have been responsible for trust operations or fiduciary matters comparable to those

proposed, for a period of at least two years during the previous five years; or (b) have had two years of such experience prior to the last five years and successfully completed, during the previous year, an intensive course on trust operations comparable to those proposed;

(8) The Principal Supervisory Agent determines, based on the information available, that the proposed trust officer(s) is trustworthy and competent (the person's experience, education and other relevant factors may be considered) to be in charge of the proposed trust operations;

(9) The proposed trust department or service corporation has legal counsel available to provide advice with respect to fiduciary matters;

(10) The Principal Supervisory Agent has determined that there is sufficient need for the proposed trust activities in the communities to be served; and

(11) The approval of the appropriate Federal or state authorities has been obtained if the proposed fiduciary services are to be exercised through a state or Federally chartered service corporation.

(d) Approval by the Board or its Principal Supervisory Agent of an application under this section authorizes the applicant to exercise only those trust powers specified in the approval. Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.

2. Amend § 550.3 by revising the last sentence thereof, to read as follows:

§ 550.3 Consolidation or merger of two or more Federal associations.

* * * However, when the name or charter number of the resulting association differs from that of the association to which the right to exercise trust powers was originally granted, the Board or the Principal Supervisory Agent will issue a certificate to that association showing its right to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

(Sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 Fed. Reg. 4981, 3 CFR 1071 (1943–48 Compilation))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12071 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 410

Federal Coal Mine Health and Safety Act of 1969, Title IV, as Amended (The Black Lung Benefits Act); Payment of Benefits—Withholding Part B Benefits Where Part C Payments Are Made for the Same Period

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation confirms the interim rule authorizing the Social Security Administration to withhold payment of Part B Black Lung benefits where Part C Black Lung benefits administered by the Dept. of Labor are paid for the same period. We are doing this by expanding the definition of "overpayment" in 20 CFR 410.560(a) to include these duplicate payments under Part C. This regulation provides a quick and efficient means of avoiding unjustified duplicate payments.

EFFECTIVE DATE: This regulation became effective when the interim rule was published on September 16, 1981 (46 FR 45942).

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION: On September 16, 1981, the interim rule on avoidance of duplicate payment of Part B and Part C Black Lung benefits for the same period was published in the **Federal Register** (46 FR 45942) with a 60-day comment period. Four comments were received and are discussed under the heading Discussion of Comments.

Background Information

Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, known as the Black Lung Benefits Act, provides for the payment of monthly cash benefits to coal miners who are totally disabled due to pneumoconiosis and to certain survivors of the miner if the miner was entitled to Black Lung benefits, was totally disabled by pneumoconiosis at the time of death, or died from pneumoconiosis. The law provides for two programs—Part B and Part C, which insofar as claimants are concerned, have an identical objective. The difference is that Part B is administered by the Social Security Administration; Part C by the Department of Labor. Part B consists of miners' claims filed on or before June 30, 1973 and survivors' claims filed on or before December 31, 1973 or, if later, within 6 months of a miner's or widow's death. All claims filed after these dates and more than 6 months after a miner's or widow's death are considered Part C claims and are within the jurisdiction of the Department of Labor (DOL).

Under Part B, benefits may be awarded for the same period for which Part C benefits are payable. However, the Act explicitly provides (30 U.S.C. 932(g)) that the amount equal to Part C benefits must be reduced by the amount of any other governmental compensation which is payable because of pneumoconiosis.

Because of the lengthy appeals and litigation process, there are many claims for Part B benefits that are now or will be payable to persons for the same months that they have been receiving Part C benefits. Since the amount of Part C benefits must be reduced by the amount of other governmental benefits payable because of pneumoconiosis, the payment of Part B benefits will create Part C overpayments.

Section 413(b) of the Black Lung Benefits Act provides for Black Lung overpayments to be recovered as provided by section 204 of the Social Security Act, "as if [Black Lung] benefits * * * were * * * [Social Security] benefits." Section 204(a) provides authority to recover Social Security overpayments under regulations issued by the Secretary.

If Part B payments were Social Security, i.e., title II benefits, then other Social Security beneifts, i.e., those paid under the same title for the same period, could be recouped from the Part B benefits. Hence, the amount of Part C benefits paid for the same period may be withheld from Part B benefits. (It seems highly unlikely that Congress intended to provide duplicate benefit payments for the same period of time in the same program.

Duplicate payments are specifically banned under title II of the Social Security Act where, for instance, a disabled individual cannot receive both disability benefits and old-age benefits for the same period.) However, until promulgation of the interim regulation on September 16, 1981, § 410.560(a) of the Black Lung regulations (20 CFR 410.560(a)) which defines the term "overpayment" did not include duplicate Part C payments. Thus, we were barred from recovering the amount of a Part C payment from any payment for the same period payable under Part B of title IV of the Act, though the amount of Part C benefits can be offset by the amount of

Part B benefits. (Therefore, DOL sought recovery of the duplicate payments from the recipients, who generally were unable to pay back the large overpaid amounts.)

To correct this inconsistency, we revised 20 CFR 410.560(a), so that duplicate payments of Part B and Part C benefits for the same period could be avoided by withholding or reducing the Part B benefits. This revision, issued now in final form, adds much needed uniformity to the Black Lung benefits program and avoids excessive overpayments which might otherwise never be recovered.

Discussion of Comments

We received four comments on the interim regulation published on September 16, 1981, (46 FR 45942). One comment was entirely favorable towards the interim regulation and requires no response. That commenter stated that he strongly agreed "with the Social Security Administration's endeavor to cease the inappropriate payment of duplicative benefits and the recovery of such payments as set forth in the interim rule * * *"

Two commenters stated that the regulation as written was too vague to be beneficial to Responsible Mine Operators (RMO) or the Black Lung Disability Trust Fund. In so doing the commenters gave three requirements for consideration by Social Security. The three recommendations are as follows: (1) Require a continual cross-reference check between Part B and C payments; (2) require SSA to inform the Department of Labor (DOL) when Part B benefits are to be paid to a Part C beneficiary already in pay status; and (3) require SSA to refund any money recovered under this regulation to DOL or the RMO.

We have requested that the Master Payment File received by SSA from DOL be utilized so that all Part C beneficiaries will be identified. Once the approval is finalized, the DOL tape can be matched against any SSA payment program. In addition, DOL has informed SSA that in January 1982 this same file will include all RMO payments. Regarding the second recommendation, SSA's current policy requires a telephone contact on all Part B cases where there is no mention of a possible Part C benefit being paid. If the claimant is receiving Part C benefits, DOL then supplies SSA with a summary worksheet to reflect the entire payment history for that particular case. In addition, DOL takes the information provided by SSA (e.g., the date of the court or appeals council decision) and effectively suspends the Part C payment 60 days following the month of the court or appeals council decision. This 60-day time allowance permits SSA to prepare its payment process in time so that there will be no break in payments to the claimant.

The third recommendation regarding refunding the withheld benefits will not be addressed in this regulation. We do not believe that this regulation, which is being promulgated solely to prescribe substantive and procedural rights of claimants, should contain a provision relating to fiscal accountability between the agencies administering title IV of the Federal Coal Mine Health and Safety Act.

The last comment was from an attorney who was concerned that the reduction of Part B past-due benefits by the amount of duplicate Part C benefits before determining the amount to be withheld in anticipation of an attorney fee would affect the amount of the attorney's fee.

The amount of the fee awarded an attorney is not based upon the amount of retroactive benefits payable to the claimant; it is determined independently, based upon criteria for evaluating the attorney's services as set out in 20 CFR 410.686c. The amount of retroactive benefits payable to the claimant is pertinent only in determining how much of the authorized fee may be paid directly by SSA to the attorney. In this regard, section 206(a) of the Social Security Act provides for the withholding for the direct payment of attorney's fees of up to 25 percent of the past-due benefits. Past-due benefits are defined in 20 CFR 410.686a(c) and 20 CFR 410.686b(c) as the amount of benefits actually payable. Since the only amount payable is the amount of Part B benefits less the duplicate payment made under Part C, no more than 25 percent of this reduced amount may be withheld.

Regulatory Procedures

Executive Order 12291—This regulation has been reviewed under E.O. 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—There are no recordkeeping or reporting requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because it affects only the benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.806—Special Benefits for Disabled Coal Miners)

List of Subjects in 20 CFR Part 410

Administrative practice and procedure; Black lung benefits, Death benefits, Disabled, Miners.

Dated: March 2, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: April 16, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969- —)

Part 410 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising paragraph (a) of § 410.560 to read as follows:

§ 410.560 Overpayments.

(a) *General.* As used in this subpart the term "overpayment" includes a payment where no amount is payable under Part B of title IV of the Act; a payment in excess of the amount due under Part B or Part C of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act (see §§ 410.520 and 410.530); a payment to a resident of a State whose residents are not eligible for payment (see § 410.550); a payment of past due benefits to an individual where such payment had not been reduced by the amount of attorney's fees payable directly to an attorney (see § 410.686d); and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

* * * * *

(Sec. 204 of the Social Security Act, as amended, and Sec. 413 of the Federal Coal Mine Health and Safety Act of 1969, as amended; 49 Stat. 624, as amended and 83 Stat. 793; 42 U.S.C. 404 and 30 U.S.C. 923)

[FR Doc. 82-12018 Filed 5-3-82; 8:45 am]
BILLING CODE 4195-11-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for International Nutrition, Inc., providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworm, nodular worm, and whipworm infections and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6864 L St., Omaha, NE 68117, is sponsor of supplemental NADA 109–688 providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworm, nodular worm, and whipworm infections. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. The supplement was filed by Elanco Products Co. for the sponsor International Nutrition, Inc.

Approval of this supplement is based on safety and effectiveness data contained in Elanco's approved NADA's 10–918 and 11–948. Elanco has authorized use of the data in NADA's 10–918 and 11–948 to support approval of this application. Satisfactory chemistry, manufacturing, and control information was also submitted. The firm currently holds approval for use of a 2.4-gram-per-pound hygromycin B premix for making complete swine feed. This approval does not change the approved use of the drug. Consequently, approval of the supplement poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 109–688 does not require reevaluation of the safety and effectiveness data in NADA's 10–918 and 11–948. Supplemental NADA 109–688 is approved, and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.274 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83, Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug sponsor code "043733" to paragraph (a)(4) and to the "sponsor" column in paragraph (e)(1)(i).

Effective date. May 4, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 23, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-11786 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co. providing for the use of monensin liquid feed supplements in the production of finished cattle feeds. The supplemental application provides for revised specifications, general use mixing directions, and caution statements for monensin liquid feed supplements. The amended regulation also establishes a procedure for the approval of supplemental NADA's providing for (1) positionally stable monensin liquid feed supplements which do not need to bear mixing directions, and (2) positionally unstable monensin liquid feed supplements which bear mixing directions that differ from the general standard established by the regulation.

DATES: Effective May 4, 1982. Supplemental applications shall be submitted on or before June 3, 1982. The agency will withdraw applications not appropriately supplemented on or before June 3, 1982.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46206, filed a supplemental NADA to NADA 95–735. The supplemental NADA is based on data collected by the American Feed Manufacturers Association (AFMA). AFMA submitted the data to a master file and authorized Elanco to reference that file to support Elanco's supplemental NADA. The submitted and referenced data demonstrate that many monensin liquid feed supplements are positionally unstable, i.e., they segregate if not mixed. This may result in concentration of monensin in feed to levels that are lethal to cattle. Therefore, Elanco's supplemental NADA (1) establishes general use mixing directions for monensin liquid feed supplements; (2) revises the existing caution statements on the labeling of monensin liquid feed supplements to stress the importance of following these mixing directions; and (3) identifies the hazard associated with species other than cattle gaining access to monensin-containing cattle feed.

Based on submitted and referenced information, the agency has also determined that it is unnecessary and inappropriate to specify in the revised regulations the range of ingredients or the minimum quantity of molasses permissible in monensin liquid feed supplements because the current specifications do not ensure stable products and could, in fact, serve as a deterrent to the development of stable products. Furthermore, data submitted by Elanco also support revision of the current specification (4.3 to 6.0)

regarding the pH of monensin liquid supplements to 4.3 to 7.1. The supplemental application to NADA 95–735 which calls for these changes in the currently published regulation is approved and the regulation is being revised accordingly.

On or before June 3, 1982, all current holders of approved medicated feed applications providing for the use of monensin in liquid feed supplements shall submit a supplemental application to their approved medicated feed application(s) (MFA) to provide for labeling revised to conform to the new revised regulation resulting from the approval. MFA holders who no longer wish to manufacture monensin liquid feeds should request withdrawal of their application(s) and waive the opportunity for a hearing. The agency will proceed to withdraw any medicated feed application not appropriately supplemented on or before June 3, 1982. Labeling bearing the mixing directions and caution statements required by this revised regulation and otherwise consistent with labeling provided for by Elanco's supplemental NADA may be placed into effect in advance of approval of the supplemental medicated feed application because the changes increase the safety of monensin liquid feed supplements. Any other changes in labeling, including those discussed below, will not be permitted in advance of approval of an original or supplemental medicated feed application.

No monensin liquid feed supplement currently being marketed has been approved as positionally stable. It is possible, however, to manufacture supplements which can be shown to be stable and to require no mixing. Any liquid feed supplement that a manufacturer contends is positionally stable must be the subject of an approved NADA, or supplemental NADA, which establishes positional stability. The kind of data needed to support a showing of positional stability may not be submitted to applications under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act). Those feed manufacturers who do not wish to file an NADA but who wish to legally market positionally stable monensin liquid feed supplements that are not required to bear labeling with mixing directions or who wish to market positionally unstable monensin liquid feed supplements with mixing directions different from the standard established by the revised regulation may: (1) Establish a master file containing data to support the stability of their product(s) (or suitability of their mixing directions); (2) authorize the agency to reference and rely upon the data in the master file to support an approval of a supplemental NADA; and (3) request Elanco to file a supplemental application to provide for the use of its monensin premix in the manufacture of the liquid feed supplement(s) specified in the appropriate master file. If the data demonstrate the stability of the liquid feed supplement(s) (or suitability of mixing directions) described in the master file, the agency will approve the supplemental NADA. Approval of the supplemental NADA need not be published in the **Federal Register**, because the approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, an MFA under section 512(m) of the act, for the liquid feed supplement(s) supported by data in the master file. The type of data required to support such an approval is addressed in the appendix of an October 5, 1981 letter to all holders of approved medicated feed applications for monensin liquid feed supplements. A copy of that appendix may be secured from the contact person identified in this publication.

The approval of this supplemental application to NADA 95–735 is subject to the Bureau's supplemental application approval policy (42 FR 64367; December 23, 1977). This approval poses no increased human risk from exposure of the new animal drug monensin because the number of food-producing animals receiving medication will not significantly increase. The drug will not be administered at higher dosage levels, for longer duration, or for different indications than are already in effect. Accordingly, under the Bureau's supplemental approval policy, these approvals do not constitute a reevaluation of the human safety and effectiveness data supporting the parent application.

Because this approval does not involve the submission of safety and effectiveness data per se, the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), do not apply. The manufacturing and control data submitted by AFMA and Elanco do, however, relate to safety. Therefore summaries of these data are available upon request from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 by revising paragraph (f)(3)(i)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * * *

(f) * * *

(3) * * *

(i) * * *

(*b*) *Limitations.* (*1*) Feed only to cattle being fed in confinement for slaughter. Feed continuously in complete feed at a rate of 50 to 360 milligrams of monensin per head per day; as monensin sodium. Complete feeds may be manufactured from monensin liquid feed supplements. The liquid supplements have a pH of 4.3 to 7.1 and their labels must bear appropriate mixing directions. Mixing directions for liquid supplements stored in recirculating tank systems are: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily, as directed in this paragraph, even when supplement is not used. Mixing directions for liquid supplements stored in mechanical, air, or other agitation-type tank systems are: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily, as directed in this paragraph, even when supplement is not used. The liquid supplement must bear directions to mix thoroughly with grain and/or roughage prior to feeding and must bear caution statements as follows: Inadequate mixing, (recirculation or agitation), of liquid supplements has resulted in

increased monensin concentration which has been fatal to cattle. Feeding an undiluted liquid supplement could result in monensin concentrations that could be fatal to cattle. Do not allow horses or other equines access to feeds containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle feed is safe for use in cattle only. Consumption by unapproved species may result in toxic reactions.

(*2*) An approved positionally stable monensin liquid feed supplement will not be subject to the requirements for mixing directions and cautionary labeling prescribed in paragraph (f)(3)(i)(*b*)(*1*) of this section. A manufacturer may secure approval of a positionally stable liquid supplement by (*i*) either filing an NADA for the product or by establishing a master file containing data to support the stability of its product; (ii) authorizing the agency to reference and rely upon the data in the master file to support approval of a supplemental NADA to establish positional stability; and (*iii*) requesting No. 000986 in § 510.600(c) of this chapter to file a supplemental NADA to provide for the use of its monensin premix in the manufacture of the liquid feed supplement specified in the appropriate master file. If the data demonstrate the stability of the liquid feed supplement described in the master file, the agency will approve the supplemental NADA. Approval of the supplement need not be published in the **Federal Register** because approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for the liquid feed supplement. A manufacturer who seeks to market a positionally unstable monensin liquid feed supplement with mixing directions different from the standard established in paragraph (f)(3)(i)(*b*)(*1*) of this section may also follow this procedure.

* * * * *

Effective date. May 4, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 26, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-11891 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Nutra-Blend Corp. providing for use of a tylosin and sulfamethazine premix to make complete swine feeds.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Nutra-Blend Corp., Neosho, MO 64850, is sponsor of NADA 129-161 for Tylan 5 Sulfa Premix, a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The NADA provides for safe and effective use of the premix for subsequent manufacture of complete swine feed to be used for (1) maintaining weight gain and feed efficiency in the presence of atrophic rhinitis, (2) lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, (3) prevention of swine dysentery (vibrionic), and (4) control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco Product Co.'s approved NADA's 12-491 and 41-275. Elanco has authorized FDA to refer to these applications to support approval of the application. Because this approval does not change the approved use of the drug, it poses no increased human risk from exposure to drug residues, and does not affect the conditions of safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplement and does not require reevaluation of the safety and effectiveness data contained in NADA's 12-491 and 41-275. NADA 129-161 is approved, and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine*, paragraph (b)(9), by adding in numerical sequence sponsor number "050568."

Effective date. May 4, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 22, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-11889 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 805, 860, 861, and 865

[Docket No. R-82-976]

Gross Rent—Public Housing Program

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is implementing recent statutory changes affecting the amount of the Gross Rent payable by families under the Public Housing Program. This interim rule changes the income-percentage formula for determining the Gross Rent payable by a family under the Public Housing Program. The Gross Rent is the amount payable by an assisted family towards the Contract Rent payable to the PHA plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

DATES: Effective Date: Upon expiration of first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Further notice of the effectiveness of this interim rule will be published in the **Federal Register.**

Comments Due Date: June 18, 1982.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental Occupancy Branch, (202) 426-0744; Department of Housing and Urban Development, Washington, D.C. 20410. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

1981 Legislation

The Housing and Community Development Amendments of 1981 (1981 Amendments), contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amend several provisions of the United States Housing Act of 1937, as amended (1937 Act). This interim rule implements the change in the income-percentage formula for determining the Gross Rent payable by a family under the Public Housing Program. The Gross Rent is the amount payable by an assisted family towards the Contract Rent payable to the PHA plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

Other changes made by the 1981 Amendments affecting income limits, definition of income, and reexamination of family income and composition will be implemented separately in regulations now being developed by the Department.

The principal effect of the 1981 Amendments on computing the Gross Rent is to establish a formula for computing Gross Rent applicable for the first time to the Public Housing Program as well as to Section 8. PHA discretion to set rents (subject to statutory maximum limits) was eliminated. A separate companion regulation will make the necessary changes to the formula for the Section 8 program.

The 1981 Amendments enacted similar rent calculation provisions governing other subsidized programs (rent supplement and Section 236 rental assistance payments). These changes will also be implemented through separate rulemaking proceedings.

Gross Rent Formula

Section 322 of the Amendments, being implemented in 24 CFR 860.404, establishes a formula for computing the rent which families participating in public housing and Section 8 will pay. For all families, rent is the greatest of:

(1) 10 percent of gross income,

(2) 30 percent of adjusted income, or

(3) if the family receives welfare assistance, a portion of which is designated for housing and is adjusted in accordance with actual housing costs, that portion designated for housing.

New families admitted to the programs will pay these rents immediately upon admission.

Item 3 above covers families who receive public assistance in "as paid" States, which are those which designate a portion of the welfare payment as a shelter and utility component and then reduce the maximum allowable component down to actual rent paid (if lower). Some "as paid" States make a further reduction in the welfare payment by applying a percentage factor to the rent paid. In this case, the shelter and utility component, reduced once by this percentage factor, will be the amount utilized in item (3) of the formula for computing the Gross Rent—nonwithstanding that the public assistance agency may apply its percentage a second time to the Gross Rent to further reduce the welfare payment. The provision of the interim rule prescribing a single application of the percentage reduction factor is consistent with prior practice in the public housing program. The Department believes that this limitation is a reasonable exercise of administrative discretion and is not inconsistent with section 3(a)(3) of the 1937 Act.

Section 322 of the Amendments authorizes the Secretary to provide for delayed applicability or staged implementation of the rent computation requirements for tenants already occupying assisted housing if the Secretary determines that immediate application of the procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants. The Secretary has determined to exercise this flexibility so that rent increases for tenants already in the program can be phased in gradually. Section 322 also restricts rent increases pursuant to the statutory changes to a maximum of 10 percent during any 12-month period and further provides that such provisions shall not result in reduction of a tenant's rent below the amount paid on the day before the effective date of the Amendments.

The phase-in of the new system for tenants already in occupancy would begin no later than at the first lease expiration or annual reexamination occurring after the effective date of this interim rule. For the remainder of Federal Fiscal Year 1982, the rent will be computed using 26 percent of adjusted income, in Fiscal Year 1983, using 27 percent of adjusted income, etc., until in Fiscal Year 1986, the full 30 percent will be used. In no case will a family's Gross Rent increase by more than 10 percent during any 12-month period due to these changes or other changes in Federal law regarding the counting of other governmental benefits as income, nor will there be a decrease in rent due to these changes.

Related Amendments

This rule revokes or amends several regulations, as described below.

(a) Part 805, Indian Housing. Section 805.302(b)(2)(iii) is being amended to correct a cross reference to Part 860, Subpart D, Rents. Section 805.416(a)(1)(ii) is being amended to permit an Indian PHA to base the required monthly payment on a range of 15 to 30 percent of income (instead of 15 to 25 percent). Section 805.423(a)(2) is being amended to permit a homebuyer to be eligible for Indian PHA homeownership financing when, among other things, the homebuyer's income has reached a level at which 30 percent (instead of 25 percent) of income is equal to debt service plus certain other monthly costs. These increases to 30 percent are not required by the statute but are being established to promote uniformity among the various rent policies for the assisted housing programs.

(b) Part 860, Subpart A, Income Limits. Section 860.6 is being amended to provide that a PHA may not commence

an eviction or refuse to renew a lease, based upon the income of a tenant family, unless it has identified a unit renting for an amount not exceeding the family's Gross Rent computed under Part 860, Subpart D. This replaces the current rule based on 25 percent of income, as defined by the PHA for the purpose of determining rents, since PHAs no longer have authority to set rents. Accordingly, use of the statutory formula is the appropriate test of when a family may be required to obtain housing in the private market.

(c) Part 860, Subpart D, Rents. In addition to the new rent formula in § 860.404, which is described above, several other changes are being made to Subpart D. The title is changed to "Rents." The provisions in the former §§ 860.404 and 860.405 governing minimum and maximum rents are being revoked since rents payable by families are prescribed by the statute, thereby making these provisions obsolete. The minimum aggregate rent to income ratio required for payment of operating subsidies (§ 860.407), required under section 9 of the 1937 Act, is being revoked since the statute prescribes family rents which are expected always to result in an aggregate rent of at least 20 percent of income. Section 860.408 is being revoked since § 860.404, as revised, covers phasing in the new requirements and the previous phase in requirements are now obsolete. Finally, § 860.409, establishing the effective date of section 3(1) of the 1937 Act, is being revoked. Section 860.409 is no longer necessary since it should have been implemented in all cases by now and because it has been superseded in the 1981 legislation.

(d) Part 861, PHA-Owned Projects—Rents. This Part is being revoked since family rents are prescribed by statute and, therefore, rent schedules are no longer necessary and notice to tenants of proposed changes in schedules is inappropriate.

(e) Part 865, PHA-Owned Projects—Maintenance and Operation. Sections 865.473(a) and 865.480(d) are revised to delete the reference to Part 861, which is being revoked.

Publication as Interim Rule

The subject matter of this rulemaking action relates to grants, benefits, or contracts and is, therefore, exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, HUD submits most rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption.

Because the new formula revisions established by this rule flow directly from legislative changes without additional exercise of discretion and because of the public interest in implementation of the legislation, which became effective on October 1, 1981, the Secretary has determined that good cause exists for publication of this rule as an interim rule, to become effective as soon as possible and prior to the receipt of public comment. However, public comments on the interim rule will be received for a 45-day period following publication.

While the Secretary has determined, for the reasons stated above, that good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided in the Administrative Procedure Act (5 U.S.C. 553(d)), Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(e)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Notice of the effectiveness of this interim rule will be published in the **Federal Register**.

Other Findings

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291 because its economic impact, while it may exceed $100 million annually when considered together with related amendments for the Section 8 Program, results entirely from the legislative enactment and not from an additional exercise of administrative discretion.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations, published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

(The Catalog of Federal Domestic Assistance number is 14.146, Low Income Housing Assistance Program (Public Housing))

List of Subjects in 24 CFR Part 805

Grant programs: housing and community development, Grant programs: Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

Part 860

Public housing.

Part 861

Public housing.

Part 865

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

Accordingly, 24 CFR Chapter VIII is amended as follows:

PART 805—INDIAN HOUSING

1. In § 805.302, paragraph (b)(2)(iii) is revised to read as follows:

§ 805.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(iii) For Rental and Turnkey III Projects, to achieve compliance with the applicable provisions of 24 CFR Part 860, Subpart D, Rents, including, but not limited to, § 860.406 which requires that at least 20 percent of the dwelling units in any project placed under ACC in any fiscal year beginning after September 30, 1975, shall be occupied by very low income families, and

* * * * *

2. In § 805.416, paragraph (a)(1)(ii) is revised to read as follows:

§ 805.416 Required monthly payments.

(a) * * *

(1) * * *

(ii) Subject to the requirement for payment of at least the Administration Charge, each Homebuyer shall pay an amount of Required Monthly Payment computed by (i) multiplying Family Income by a specified percentage, and (ii) subtracting from that amount the Utility Deduction (as specified in the approved schedule). The specified percentage shall be no less than 15 percent and no more than 30 percent, as determined by the IHA.

* * * * *

3. In § 805.423, the introductory text of paragraph (a)(2) is revised to read as follows:

§ 805.423 IHA homeownership financing.

(a) * * *

(2) The Homebuyer's income has reached the level, and is likely to continue at such level, at which 30 percent of monthly Family Income is at least equal to the sum of the monthly debt service amount shown on the Homebuyer's Purchase Price Schedule and the IHA's estimates, approved by HUD, of the following monthly payments and allowances:

* * * * *

PART 860—INCOME LIMITS WITH RESPECT TO, ADMISSION TO, AND OCCUPANCY OF, LOW INCOME HOUSING OWNED BY PUBLIC HOUSING AGENCIES OR LEASED BY PUBLIC HOUSING AGENCIES FROM PRIVATE OWNERS

4. The title of Part 860 and table of contents for Subpart D of Part 860 are revised to read as follows:

PART 860—INCOME LIMITS FOR, ADMISSION TO, AND OCCUPANCY OF, LOW-INCOME PUBLIC HOUSING

Subpart D—Rents

Sec.
860.401 Purpose.
860.402 Applicability.
860.403 Definitions.
860.404 Computation of Gross Rent.
860.405 [Reserved]
860.406 Required Percentage of Very Low Income Families.
* * * * *

5. Section 860.6 is revised to read as follows:

§ 860.6 Restriction on eviction of families based upon income.

After (insert effective date of interim rule), no PHA shall commence eviction proceedings, or refuse to renew a lease, based upon the income of the tenant family unless (a) it has identified, for possible rental by the family, a decent, safe and sanitary unit of suitable size available at a rent not exceeding the family's Gross Rent as determined under Part 860, Subpart D, or (b) it is required to do so by local law.

6. The title of Part 860, Subpart D is revised to read as follows:

Subpart D—Rents

7. Section 860.401 is revised to read as follows:

§ 860.401 Purpose.

The purpose of this subpart is to establish definitions, policies and procedures related to the determination of rent for applicants and tenants and to establish the required percentage of very low income families in certain projects.

§ 860.405 and §§ 860.407 through 860.409 [Removed]

8. Sections 860.405, 860.407, 860.408, and 860.409 are removed, and § 860.404 is revised to read as follows:

§ 860.404 Computation of gross rent.

(a) *Gross Rent for Families Admitted on or after (insert effective date of interim rule).* Gross Rent shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Family Income

(2) 10 percent of Total Family Income

(3) If the family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Gross Rent for Families Admitted before (insert effective date of interim rule).* At the earlier of the first lease expiration or annual reexamination occurring on or after (insert effective date of interim rule), Gross Rent shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent the percentage applied to Family Income shall be as follows:

Effective Date of Reexamination and Percentage

(Insert Effective Date)–September 30, 1982—26%

October 1, 1982–September 30, 1983—27%

October 1, 1983–September 30, 1984—28%

October 1, 1984–September 30, 1985—29%

October 1, 1985 and after—30%

The Gross Rent charged is subject to the following conditions:

(1) Gross Rent shall not be increased by more than 10 percent during any 12-month period as a result of (i) applying paragraph (b) of this section, or (ii) any other provision of law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, Gross Rent may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed solely to increases in income not caused by redefinitions referred to in (b)(1)(ii) of this section.

(2) Gross Rent shall not be decreased below the amount payable by the family as of (insert the day before the effective date of this interim rule), unless due to decreases in Total Family Income or Family Income.

9. Section 860.406 is revised to read as follows:

§ 860.406 Required percentage of very low income families.

At least 20 percent of the dwelling units in any project placed under annual contributions contract in any fiscal year beginning after September 26, 1975, shall be occupied by very low-income families as defined in this subpart.

PART 861—PHA-OWNED PROJECTS—RENTS [Removed]

10. Part 861 is removed.

PART 865—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

11. In § 865.473, paragraph (a) is revised to read as follows:

§ 865.473 Establishment of allowances by PHAs.

(a) *Basic Requirement.* PHAs shall establish (1) allowances for PHA-Furnished Utilities for all Checkmetered Utilities and (2) allowances for Tenant-Purchased Utilities for all Utilities purchased directly by tenants from the Utilities suppliers. These allowances shall be submitted for approval by the HUD field office.

* * * * *

12. In § 865.480, paragraph (d) is revised to read as follows:

§ 865.480 Review and revision of allowances.

* * * * *

(d) *Effective Date of Revised Allowances.* In order to allow a reasonable time for PHA determination and processing of a revision in Allowances, a revised Allowance shall take effect with the next billing period.

(Secs. 3 and 6, U.S. Housing Act of 1937, 42 U.S.C. 1437a and d; Section 322, Omnibus Reconciliation Act of 1981, Pub. L. 97-35; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12122 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. R-82-945]

Section 8 Housing; Fair Market Rents for New Construction and Substantial Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This Rule revises the note to Schedule A and revises the section 8 Fair Market Rents for New Construction and Substantial Rehabilitation applicable to 23 selected market areas, in compliance with the requirements of section 8(c)(1) of the U.S. Housing Act of 1937. Section 8 Fair Market Rents are published annually in the **Federal Register.** HUD published the last annual revision of the Fair Market Rents applicable to new construction and substantial rehabilitation on November 25, 1981. This Rule became effective on December 28, 1981, retroactive to October 1, 1981, pursuant to a waiver that was granted by Congress on the deferred effective date requirement of section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)). The Fair Market Rent schedules also will become effective in accordance with the requirements of this latter Act.

These revised rent schedules reflect comments received from HUD field offices and from the public as well as the Department's efforts to contain the costs of housing developed under the Section 8 New Construction and Substantial Rehabilitation Program.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, retroactive to October 1, 1981. Further notice of the effectiveness of this final rule will be published in the **Federal Register.**

ADDRESS: Rules Docket Clerk, Room 5218, Office of the General Counsel, Department of Housing and Urban Development, 451-7th Street, SW., Washington, D.C. 20410, (202) 755-7003. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451-7th Street, SW., Washington, D.C. 20410, (202) 755-5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD published an interim rule on November 25, 1981 at 46 FR 57838 that amended Title 24 of the Code of Federal Regulations by incorporating in Part 888, Subpart A, a revised Schedule A, "Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program) for all Market Areas." The interim rule stated that the Fair Market Rent schedules would become effective December 28, 1981 or upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver under section 7(o)(4) of the Department of HUD Act and that the schedules would become effective in any event retroactive to October 1, 1981. Subsequent to publication of the rule, the requested section 7(o)(4) waiver was granted by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the Housing Committee on Banking, Finance and Urban Affairs, and the rule became effective on December 28, 1981 retroactive to October 1, 1981.

The interim rule requested public comments to be submitted on or before December 28, 1981. It stated that if evaluation of comments submitted during this 30-day period indicated a need to change the Fair Market Rent schedules, the rule would be revised. HUD received 28 comments by the deadline. Five additional comments were received after the deadline. After consideration of all these comments received from HUD field offices and from the public as a result of this publication, HUD has decided to modify the Schedule A rents concerning 23 selected market areas. These market areas are as follows: *State of West Virginia:* Beckley, Bluefield, Fairmont, Parkersburg, and Point Pleasant; *Washington, D.C.:* Washington, D.C.; *State of Maryland:* Baltimore and Hagerstown; *State of Georgia:* Columbus, Savannah, and Valdosta; *State of Illinois:* Chicago; *State of Minnesota:* St. Cloud; *State of Arkansas:* Little Rock, Fayetteville, Fort Smith, Jonesboro, and Texarkana; *State of New Mexico:* Clovis; *State of Montana:* Butte, Great Falls; *State of South Dakota:* Aberdeen and Sioux Falls.

The note to the schedule has been revised in several significant respects. Units in group homes now qualify for one bedroom FMRs only if the size of the bedroom plus the proportionate part of the common space is at least 450 square feet. This change makes the note consistent with other requirements establishing maximum dwelling unit sizes to promote modest design.

Except as provided in the next paragraph, the FMRs for manufactured homes are 95 percent of those for detached units of the appropriate bedroom size. (The Interim Rule previously established FMRs for manufactured homes as the greater of the 95 percent amount or 110 percent of FMRs for walkup units). HUD has modified the definition of FMRs for newly-constructed manufactured homes in Schedule A to eliminate the 110 percent of FMR for walkup units in order to simplify and clarify these FMRs. The FMRs for manufactured homes include the use of the manufactured home spaces. Accordingly, the space rentals associated with manufactured home FMRs are not calculated separately. The rent formula for manufactured homes supersedes the published FMRs for this housing category applicable to the Baltimore and Hagerstown, Maryland market areas.

The FMRs for manufactured homes where the field office has approved rents and reserved contract and budget authority based on the schedule published in the **Federal Register** on November 25, 1981 (46 FR 57838), or accepted for processing an application or proposal for which the rents were based on the November 25 schedule, shall be those established under paragraph 5 of the November 25 schedule until the rents established under paragraph 5(a) of this schedule exceed those established under paragraph 5 of the November 25 schedule. This category of FMRs is being established to assure that no applicant eligible for the interim

schedule published on November 25 will be adversely affected by the final rule establishing FMRs for manufactured homes as 95 percent of the rents for detached units.

The FRMs for manufactured home spaces in newly-constructed or substantially rehabilitated parks were modified from the previous Interim Rule, and they are the rents for manufactured home spaces published for the Existing Housing Program under Schedule D, multiplied by 1.25. These FMRs reflect the added cost of development of manufactured home spaces in newly-constructed or substantially rehabilitated parks.

Fair Market Rents are based primarily on the level of rentals paid for recently completed or newly-constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. However, they also reflect the Department's efforts to contain costs of housing developed under the section 8 New Construction and Substantial Rehabilitation Program. They are estimates of the rentals that prospective tenants who are not receiving federal rental subsidies would be willing to pay for recently completed or newly-constructed dwelling units of modest design.

The contract rent plus any utility allowance for the unit must not exceed by more than 20 percent the Fair Market Rent in effect at the time of processing. The published Fair Market Rents reflect trended rents in order to allow for the period of construction or rehabilitation as stated in the publication.

This Final Rule includes Fair Market Rents for 0, 1, 2, 3, and 4 or more bedroom units in five structural categories (detached, semi-detached/row, walkup, elevator 2–4 story, and elevator 5+ story). Construction or rehabilitation of elevator projects for families with children is legally prohibited unless there is no practical alternative. Fair Market Rents for family units in elevator structures in these schedules have been determined necessary for the affected market areas. However, the determination that there is "no practical alternative" must be made on a project-by-project basis.

Proposals involving combinations of structural types and unit sizes for which Fair Market Rents have not yet been published may not be approved until the applicable Fair Market Rents are published and become effective.

For all projects where the Fair Market Rents are revised after the date of any processing stage, the revised Fair Market Rents shall apply to all subsequent processing in reviewing contract rents and utility allowances.

Since the amendments contained in this Final Rule are to apply to the Fiscal Year 1982 program, it is necessary that the Rule become effective as soon as possible, so that applications can be submitted and acted upon prior to the end of the Fiscal Year. For that reason, the Department has determined that there is good cause for not requiring a 30-day delay in the effective date after publication of this Final Rule (as provided in the Administrative Procedure Act (5 U.S.C. 553(d)). However, section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Under section 7(o)(5) of the Department of HUD Act, Congressional inaction of any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved. The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was listed as item (C)23(H-35-81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

(Catalog of Federal Domestic Assistance program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).)

List of Subjects in 24 CFR Part 888

Rent subsidies.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Accordingly, the Schedule A to 24 CFR Part 888 effective December 28, 1981, retroactive to October 1, 1981, is amended by revising the note applicable to all of such Schedule A and by revising the rents for certain market areas, as set forth below.

(Sec. 8(c)(1) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(c)(1); and section 7(d) and (o) Department of HUD Act, 42 U.S.C. 3535(d) and (o).)

Dated: April 22, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These Fair Market Rents have been trended ahead to October 1, 1983, to update the current Fair Market Rent Schedules which these revised schedules replace.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05; (2) congregate housing dwelling units are the same as for noncongregate units; (3) single room occupancy dwelling units are 75 percent of those for zero bedroom units of the same walkup or elevator structural type; (4) living units in a group home (each composed of a bedroom plus the proportionate part of common living space which is ordinarily included in a living unit) are those for zero bedroom or one bedroom units of walkup structural type (or, if the group home contains an elevator, of the elevator 2-4 story structural type). In group homes one bedroom Fair Market Rents may be applied only when the bedroom space plus the proportionate part of the common spaces is at least 450 square feet; (5)(a) manufactured homes shall be 95 percent of those for detached units of the appropriate bedroom size or (b) manufactured homes where the field office has approved rents and reserved contract and budget authority based on the schedule published in the Federal Register on November 25, 1981 (46 FR 57838), or accepted for processing an application or proposal for which the rents were based on the November 25 schedule, shall be those established under paragraph 5 of the November 25 schedule until the rents established under paragraph 5(a) of this schedule exceed those established under paragraph 5 of the November 25 schedule; (6) manufactured home spaces in newly constructed or substantially rehabilitated manufactured home parks shall be the Fair Market Rents for spaces published for the Existing Housing Program under Schedule D, multiplied by 1.25.

All rents computed in accordance with this note shall be rounded down to the nearest whole dollar.

Schedule A.—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

Region 3

BALTIMORE, MD., AREA OFFICE

Structure Type	Market: Baltimore, number of bedrooms [1]					Market: Hagerstown, Number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+
Detached			617	696	817			553	667	784
Semi-detached/row		429	500	594	765		412	473	570	720
Walkup	349	429	494	587	668	335	412	467	563	641
Elevator 2-4 sty	361	470	537			347	451	508		
Elevator 5+ sty	400	493	629			384	474	584		

[1] Effective date October 1, 1981; Trended date October 1, 1983.

WASHINGTON, DC AREA OFFICE

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Detached			699	762	863
Semi-detached/row		491	583	635	719

WASHINGTON, DC AREA OFFICE—Continued

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Walkup	342	454	539	623	690
Elevator 2-4 sty	377	505	597	680	

WASHINGTON, DC AREA OFFICE—Continued

Structure type	Market: Washington, D.C., number of bedrooms [1]				
	0	1	2	3	4+
Elevator 5+ sty	360	515	626	761	

[1] Effective date October 1, 1981; trended date October 1, 1983.

CHARLESTON, WV SERVICE OFFICE

Structure type	Market: Beckley, number of bedrooms [1]					Market: Bluefield, number of bedrooms [1]					Market: Fairmont, number of bedrooms [1]					Market: Parkersburg, number of bedrooms [1]					Market: Pt. Pleasant, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached			440	483	539			440	483	539			455	505	565			392	452	497			391	450	492
Semi-detached/row		325	414	452	509		325	414	452	509		380	429	483	541		339	368	427	470		313	396	424	467
Walkup	285	325	368	411	451	285	325	368	411	451	291	353	413	455	513	286	339	380	405	446	285	302	359	400	444
Elevator 2-4 sty	346	411	480			346	411	480			386	424	473			337	405	491			335	400	447		
Elevator 5+ sty	352	416	486			352	416	486			380	430	478			344	411	487			340	407	454		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 4

ATLANTA, GA AREA OFFICE

Structure type	Market: Columbus, number of bedrooms [1]					Market: Savannah, number of bedrooms [1]					Market: Valdosta, number of bedrooms [1]				
	0	1	2	3	4±	0	1	2	3	4	0	1	2	3	4±
Detached			385	471	508			439	522	580			370	422	483
Semi-detached/row		310	359	447	477		340	425	497	536		292	346	416	474
DWalkup	267	299	348	436	488	287	328	400	456	522	256	277	340	396	452
Elevator 2-4 sty	290	322	371			321	355	428			282	305	368		
Elevator 5+ sty	373	409	485			382	424	521			334	361	445		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 5

CHICAGO, IL AREA OFFICE

Structure type	Market: Chicago, Number of Bedrooms [1]				
	0	1	2	3	4+
Detached			820	884	957
Semi-detached/row		603	678	734	822
Walkup	409	481	566	675	706
Elevator 2-4 sty	437	513	604	728	726
Elevator 5+ sty	473	561	711	729	771

[1] Effective date October 1, 1981; trended date October 1, 1983.

MINNEAPOLIS-ST. PAUL, MN AREA OFFICE

Structure type	Market: St. Cloud, number of bedrooms [1]				
	0	1	2	3	4+
Detached			536	602	633
Semi-detached/row		427	483	560	621
Walkup	286	322	366	456	492
Elevator 2-4 sty	331	364	423		
Elevator 5+ sty	397	457	573		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 6

DALLAS, TX. AREA OFFICE

Structure type	Market: Clovis, number of bedrooms [1]				
	0	1	2	3	4+
Detached			366	475	526
Semi-detached/row		291	353	414	493
Walkup	231	263	317	378	432
Elevator 2-4 sty	250	280	365		
Elevator 5+ sty	291	360	466		

[1] Effective date October 1, 1981; trended date October 1, 1983.

LITTLE ROCK, AR AREA OFFICE

Structure type	Market: Fayetteville, number of bedrooms [1]					Market: Fort Smith, number of bedrooms [1]					Market: Jonesboro, number of bedrooms [1]					Market: Little Rock, number of bedrooms [1]					Market: Texarkana, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached			439	536	606			416	496	576			419	503	586			473	562	622			496	532	600
Semi-detached/row	305	362	422	518	561	280	330	405	482	540	286	336	406	487	546	328	384	456	532	593	299	351	418	512	572
Walkup	286	353	412	505	547	259	308	374	464	496	264	313	377	460	501	306	362	411	506	551	276	330	401	486	529
Elevator 2-4 sty	323	386	452			286	341	415			292	349	418			335	398	454			307	393	442		
Elevator 5+ sty	390	447	525			395	450	534			387	434	522			388	452	529			353	449	517		

[1] Effective date October 1, 1981; trended date October 1, 1983.

Region 8

DENVER, CO REGIONAL: AREA OFFICE

Structure type	Market: Great Falls, MT, number of bedrooms [1]					Market: Sioux Falls, SD, number of bedrooms [1]					Market: Butte, MT, number of bedrooms [1]					Market: Aberdeen, SD, number of bedrooms [1]				
	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+	0	1	2	3	4+
Detached			425	493	529			481	493	540			431	506	546			450	486	531
Semi-Detached row		338	420	483	521		386	450	488	506		360	421	499	537		360	430	468	506
Walkup	274	329	411	474	512	308	367	406	450	488	288	351	412	489	528	296	354	405	450	486
Elevator 2–4 sty	294	343	430			324	376	420			306	371	434			308	357	417		
Elevator 5+ sty	307	355	443			332	383	424			319	384	448			320	380	424		

[1] Effective date October 1, 1981; trended date October 1, 1983.

[FR Doc. 82-12060 Filed 5-3-82; 8:45 am]
BILLING CODE 4210-27-M

24 CFR Part 889

[Docket No. R-82-975]

Gross Family Contribution; Section 8 Housing Assistance Payments Program

AGENCY: Office of Assistance Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is implementing recent statutory changes affecting the amount of the Gross Family Contribution under the Section 8 Housing Assistance Payments Program. This interim rule changes the income-percentage formula for determining the Gross Family Contribution under the Section 8 Program. Several of the Section 8 program regulations use the term Total Family Contribution, which has the same meaning as Gross Family Contribution. The Gross (or Total) Family Contribution is the amount payable by an assisted family towards the Section 8 Contract Rent payable to the owner plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

DATES:

Effective date: Upon expiration of first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Further notice of the effectiveness of this iterim rule will be published in the **Federal Register.**

Comments Due Date: June 18, 1982.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental Occupancy Branch, (202) 426–0744; James Tahash, Program Planning Division, Office of Multifamily Housing Management, (202) 426–8730; or Monica Sussman, Office of State Agency and Bond Financed Programs, (202) 426–0730; Department of Housing and Urban Development, Washington, D.C. 20410. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

1981 Legislation

The Housing and Community Development Amendments of 1981 (1981 Amendments), contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), amend several provisions of the United States Housing Act of 1937, as amended (1937 Act). This interim rule implements the change in the income-percentage formula for determining the Gross Family Contribution under the Section 8 Program. Several of the Section 8 program regulations use the term Total Family Contribution, which has the same meaning as Gross Family Contribution. The Gross (or Total) Family Contribution is the amount payable by an assisted family towards the Section 8 Contract Rent payable to the owner plus, where some or all utilities are not included in the Contract Rent, the amount of any utility allowance.

Other changes made by the 1981 Amendments affecting income limits, definition of income, and reexamination of family income and composition will be implemented separately in regulations now being developed by the Department.

The principal effects of the 1981 Amendments on computing the family contribution are to (1) change the formula for computing the Gross Family Contribution and (2) make the revised family contribution requirements applicable to the Public Housing Program as well as to Section 8. A separate companion regulation will make the necessary changes for the Public Housing Program.

The 1981 Amendments enacted similar rent calculation provisions governing other subsidized programs (rent supplement and Section 236 rental assistance payments). These changes will also be implemented through separate rulemaking proceedings.

Gross Family Contribution Formula

Section 322 of the Amendments establishes a formula for computing the rent which families participating in public housing and Section 8 will pay. For all families, rent is the greatest of:

(1) 10 percent of gross income,

(2) 30 percent of adjusted income, or

(3) if the family receives welfare assistance, a portion of which is designated for housing and is adjusted in accordance with actual housing costs, that portion designated for housing.

New families admitted to the programs will pay these rents immediately upon admission. The previous Section 8 statutory rent formulas were deleted; these varied depending on such factors as whether a family was a large very low-income family, a very large lower-income family, or a family with exceptional medical expenses.

The rent for Section 8 families who are recipients of public assistance in "as paid" States is now covered by the same statutory language which previously applied to public housing (see item (3) above). "As paid" States are those which designate a portion of the welfare payment as a shelter and utility component and then reduce the maximum allowable component down to the actual rent paid (if lower). Some "as paid" States make a further reduction in the welfare payment by applying a percentage factor to the rent paid. In this case, the shelter and utility component, reduced once by this percentage factor, will be the amount utilized in item (3) of

the formula for computing the Gross Family Contribution—notwithstanding that the public assistance agency may apply its percentage a second time to the Gross Family Contribution to further reduce the welfare payment. The provision of the interim rule prescribing a single application of the percentage reduction factor conforms the Section 8 program to prior practice in the public housing program. The Department believes that this limitation is a reasonable exercise of administrative discretion and is not inconsistent with Section 3(a)(3) of the 1937 Act.

Section 322 of the Amendments authorizes the Secretary to provide for delayed applicability or staged implementation of the rent computation requirements for tenants already occupying assisted housing if the Secretary determines that immediate application of the procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants. The Secretary has determined to exercise this flexibility so that rent increases for tenants already in the program can be phased in gradually. Section 322 also restricts rent increases pursuant to the statutory changes to a maximum of 10 percent during any 12-month period and further provides that such provisions shall not result in reduction of a tenant's rent below the amount paid on the day before the effective date of the Amendments.

The phase-in of the new system for tenants already in occupancy would begin no later than at the first lease expiration or annual reexamination (whichever occurs first) occurring after the effective date of this interim rule. For the remainder of Federal Fiscal Year 1982, the rent will be computed using 28 percent of adjusted income, in Fiscal Year 1983, using 27 percent of adjusted income, etc., until in Fiscal Year 1986, the full 30 percent will be used. In no case will a family's contribution increase by more than 10 percent during any 12-month period due to these changes or other changes in Federal law regarding the counting of other governmental benefits as income, nor will there be a decrease in rent due to these changes.

Publication as Interim Rule

The subject matter of this rulemaking action relates to grants, benefits, or contracts and is, threrefore, exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act. As a matter of policy, HUD submits most rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption.

Because the new formula revisions established by this rule flow directly from legislative changes without additional exercise of discretion and because of the public interest in implementation of the legislation, which became effective on October 1, 1981, the Secretary has determined that good cause exists for publication of this rule as an interim rule, to become effective as soon as possible and prior to the receipt of public comment. However, public comments on the interim rule will be received for a 45-day period following publication.

While the Secretary has determined, for the reasons stated above, that good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided in the Administrative Procedure Act (5 U.S.C. 553(d)), Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(e)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Notice of the effectiveness of this interim rule will be published in the **Federal Register**.

Other Findings

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291 because its economic impact, while it may exceed $100 million annually when considered together with related amendments for the Public Housing Program, results entirely from the legislative enactment and not from an additional exercise of administrative discretion.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations, published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

The Catalog of Federal Domestic Assistance number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 889

Rent subsidies.

PART 889—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—DETERMINATION OF INCOME FOR ELIGIBILITY AND GROSS FAMILY CONTRIBUTION

Accordingly, 24 CFR 889.105 is revised to read as follows:

§ 889.105 Computation of Gross Family Contribution.

(a) *Gross Family Contribution for Families Admitted on or after (insert effective date of interim rule).* Gross family contribution shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Income after Allowances,

(2) 10 percent of Monthly Income,

(3) If the Family receives welfare assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the portion of such payments which is so designated. If the Family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Gross Family Contribution for Families Admitted before (insert effective date of interim rule).* At the

earlier of the first lease expiration or annual reexamination occurring on or after [insert effective date], Gross Family Contribution shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent the percentage applied to Monthly Income after Allowances shall be as follows:

Effective date of reexamination	Percentage
(Insert Effective Date)—September 30, 1982	26
October 1, 1982—September 30, 1983	27
October 1, 1983—September 30, 1984	28
October 1, 1984—September 30, 1985	29
October 1, 1985 and after	30

The Gross Family Contribution charged is subject to the following conditions:

(1) Gross Family Contribution shall not be increased by more than 10 percent during any 12-month period as a result of (i) applying paragraph (b) of this section, or (ii) any other provision of Federal law becoming effective on or after October 1, 1981, redefining which governmental benefits are required to or may be considered as income. However, Gross Family Contribution may be increased by more than 10 percent during any 12-month period to the extent that the portion of such increase above 10 percent is attributed solely to increases in income not caused by redefinitions referred to in (b)(1)(ii) of this section.

(2) Gross Family Contribution shall not be decreased below the amount payable by the family as of [the day before the effective date of this interim rule], unless due to decreases in Monthly Income or Monthly Income after Allowances.

(Secs. 3 and 8, U.S. Housing Act of 1937, 42 U.S.C. 1437a and f; Section 322, Omnibus Reconciliation Act of 1981, Pub. L. 97–35; Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12108 Filed 5-3-82; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2601

Bylaws of the Pension Benefit Guaranty Corp.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document provides notice to the public of an amendment to the bylaws of the Pension Benefit Guaranty Corporation altering procedures of PBGC's Board of Directors with regard to approval of regulations, voting procedures, and amendment or adoption of PBGC bylaws.

EFFECTIVE DATE: This amendment to the bylaws became effective on March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–3010.

SUPPLEMENTARY INFORMATION: The PBGC's Board of Directors has amended its bylaws (29 CFR Part 2601) to change the procedures relating to (1) the approval of proposed and final substantive regulations, (2) voting by the Board of Directors, and (3) amendment or adoption of bylaws.

Section 2601.3(b)(1) of the bylaws provided that the power to approve all proposed and final substantive regulations prior to publication in the **Federal Register** (with the exception of interest rate changes which was delegated to the Executive Director) was expressly reserved to the Board of Directors and shall not be delegated. This provision has been changed to provide that the power to approve final substantive regulations is reserved to the Board of Directors, but the authority to approve proposed substantive regulations is delegable by a Director within his Department to a level not below that of Assistant Secretary.

The Board of Directors has also adopted an alternative voting procedure. A new § 2601.8, entitled "Alternate voting procedure", provides that a Director shall be deemed to have participated in a meeting of the Board of Directors if he was represented by a designated individual at the meeting and if he ratifies in writing the actions taken by the designee within a reasonable period of time after the meeting. Section 2601.8(b) provides that the designated individual may not be at a level lower than Assistant Secretary within the Director's Department. Section 2601.8(c) provides that a Director's approval of the minutes of a meeting of Board of Directors shall constitute ratification of the actions of his designee at such meeting.

The section entitled "Amendments", formerly numbered § 2601.8, is redesignated § 2601.9. It has been changed to allow amendments to the bylaws or new bylaws to be adopted by approval of written resolutions effecting the change rather than at a meeting of the Board of Directors. That section previously provided that bylaws may be amended or adopted at a meeting of the Board of Directors.

Because the bylaws involve agency organization and procedure, notice and opportunity for public comment on this amendment is not required. The effective date of these bylaw changes is their date of adoption.

List of Subjects in 29 CFR Part 2601

Administrative practice and procedure, Organization and functions (Government agencies).

In consideration of the foregoing, Part 2601 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2601—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

1. The authority citation for Part 2601 is amended to read as follows:

Authority: Sec. 4002(f), Pub. L. 93–406, 88 Stat. 1004 (1974), (29 U.S.C. 1302).

2. 29 CFR 2601.3 is amended by revising paragraph (b)(1) and adding a new paragraph (c) to read as follows:

§ 2601.3 Board of Directors.

* * * * *

(b) * * *

(1) Approval of all final substantive regulations prior to publication in the **Federal Register**, except for amendments to the regulation on Valuation of Plan Benefits establishing new interest rates and factors, which may be approved by the Executive Director.

* * * * *

(c) Proposed substantive regulations shall be approved by the Board of Directors prior to publication in the **Federal Register**. Directors may delegate their authority for such approval to an official within his Department at a level not below that of Assistant Secretary. Such delegation shall be in writing and shall be effective until withdrawn or until a date specified therein.

3. Section 2601.8 of 29 CFR Part 2601 is redesignated as § 2601.9 and is revised to read as follows:

§ 2601.9 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

4. Section 2601.8 is added to 29 CFR Part 2601 to read as follows.

§ 2601.8 Alternate voting procedure.

(a) A Director shall be deemed to have participated in a meeting of the Board of Directors for all purposes if,

(1) That Director was represented at that meeting by an individual who was designated to act on his behalf, and

(2) That Director ratified in writing the actions taken by his designee at that meeting within a reasonable period of time after such meeting.

(b) For purposes of this section, a Director, including an individual serving as Acting Secretary, shall designate a representative at a level not below that of Assistant Secretary within his Department. Such designation shall be in writing and shall be effective until withdrawn or until a date specified therein.

(c) For purposes of this section, a Director's approval of the minutes of a meeting of the Board of Directors shall constitute ratification of the actions of his designee at such meeting.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

Issued pursuant to the direction of the Board of Directors authorizing the Executive Director to cause these amendments to the bylaws to be published in the **Federal Register**.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12286 Filed 5-3-82; 8:45 am]

BILLING CODE 7708-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Allowance in Lieu of Government-Furnished Headstone or Marker

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration has increased the monetary allowance payable in lieu of a Government-furnished headstone or marker from $59 to $63. The need for this action resulted from the fact that the actual cost of a Government-furnished headstone or marker increased from $59 to $63. The effect of this action is to permit payment of up to $63 in lieu of a Government-furnished headstone or marker.

DATE: This change is effective October 1, 1981.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr., 202-389-3005.

SUPPLEMENTARY INFORMATION: On pages 6290 and 6291 of the **Federal Register** of February 11, 1982, the Veterans Administration published a proposed amendment to 38 CFR 3.1612. Interested persons were given until March 15, 1982, to submit comments, suggestions, or objections to the proposed amendment of § 3.1612.

We received no comments, suggestions, or objections to the proposed amendment of § 3.1612. The amendment is adopted as proposed.

The Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this regulation affects individual claimants only. Pursuant to 5 U.S.C. 605(b), this regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Veterans Administration has determined in accordance with Executive Order 12291 that this regulation is nonmajor because it simply implements statutory requirements and would have little or no economic impact, in itself.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: April 15, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

In § 3.1612, paragraph (e)(2)(ii) is revised as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(e) *Payment and amount of the allowance.* * * *

(2) The amount of the allowance payable is the lesser of the following:

* * * * *

(ii) The average actual cost, as determined by the Veterans Administration, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1980 (October 1, 1979 through September 30, 1980) is $59 and $63 for fiscal year 1981 (October 1, 1980 through September 30, 1981).

* * * * *

[FR Doc. 82-12274 Filed 5-3-82; 8:45 am]

BILLING CODE 6320-01-M

POSTAL RATE COMMISSION

39 CFR Part 3000

[Docket No. RM82-1; Order No. 430]

Outside Employment and Disclosure of Financial Interests; Standards of Conduct

April 27, 1982.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Postal Rate Commission is amending its rules governing outside employment and disclosure of financial interests. The outside employment rule changes allow employees who are covered by the Fair Labor Standards Act to (with certain limitations) engage in outside employment. Subject to the same limitations imposed on covered employees, employees exempt from the provisions of the Fair Labor Standards Act may engage in outside employment if the outside employment does not involve professional practice or activity. In addition, the Commission is amending its financial disclosure rules to bring these rules into conformity with the Commission's new pay system.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; Telephone (202) 254-3824.

SUPPLEMENTARY INFORMATION: The Postal Rate Commission, pursuant to Executive Order 11570 (35 FR 1813, November 28, 1970), and 5 U.S.C. 553, (Pub. L. 89-554, September 6, 1966, 80 Stat. 383) amends certain provisions of its Standards of Conduct which deal with outside employment and financial disclosure.

Outside employment amendments. Currently, 39 CFR 3000.735-307 provides that Commission employees with an annual rate of salary of $20,000 or more may not engage in any outside employment or professional practice, either on a paid or unpaid basis, other than teaching, lecturing or writing, or *pro bono publico* activities when rendered for a recognized organization, except in the certain circumstances. Furthermore, this section provides that, as a matter of general policy, outside or

private professional work or practice, other than for teaching, lecturing or writing, or *pro bono publico* representation or services, is discouraged and will be approved only in unusual circumstances.

In effect, these provisions preclude Commission employees earning $20,000 or more per year from engaging in outside employment or professional practice, other than teaching, writing, lecturing or *pro bono* representation, with no consideration of the adverse effect, if any, which such activities might have on either the mission of the Commission or the duties or responsibilities of the individual employee.

At the time the Commission selected $20,000 per year salary as the dividing point for distinguishing between those who would be generally allowed to engage in outside employment from those who would generally be prohibited from outside employment, $20,000 per year salary was roughly equivalent to the salary demarcation between professional or supervisory positions, and nonprofessional or nonsupervisory positions. Because of inflation this $20,000 salary level no longer reflects this distinction. The Commission believes it appropriate to restore the original intent of the Standards of Conduct vis-a-vis outside employment by linking the determination of whether one is generally able to engage in outside employment to the type of position fulfilled by the employee. Thus, Section 307(a) is being amended to limit the prohibition against outside employment to those employees exempt from the provisions of the Fair Labor Standards Act. As employees exempt from the Fair Labor Standards Act occupy professional and supervisory positions, this amendment conforms the Commission's Standards of Conduct with the Commission's original intent when it adopted the Standards of Conduct.

The Commission has also reexamined the outside employment provisions applicable to professional and supervisory employees. The primary reasons for the general prohibition against outside employment for employees occupying these positions are the Commission's concerns that such outside employment (1) may impair the employee's job performance, (2) may result in criticism of, or embarrassment to the Commission, or (3) may result in potential conflicts of interests. The Commission has concluded that the only type of outside employment which is prone to the above abuses is professional outside employment. Hence, the Commission has determined to limit the prohibition against outside employment for professional and supervisory personnel to professional outside employment.

As an adjunct to this relaxation of the Commission's Standards of Conduct vis-a-vis outside employment, the Commission believes it appropriate to emphasize the Commission's interest in preventing outside employment which may interfere with the performance of one's job or otherwise results in the use of one's position or the Commission's equipment and facilities in furtherance of outside employment or activity. To accomplish this objective (1) a new subsection (b) is being added to Section 307, and (2) subsection 307(c)(2) is being slightly modified.

The new subsection 307(b) indicates that outside employment "shall not be conducted on Commission time or with the use of Commission equipment and facilities or with the assistance of other Commission personnel." To insure that the breadth of the clause relating to assistance of other Commission personnel is not construed beyond situations where an employee directs or assigns another employee to assist with, or otherwise uses his official position to obtain assistance in an outside employment endeavor, subsection (b) also includes a statement that the prohibition against assistance of other Commission personnel does not apply to two or more employees independently engaging in a common outside employment or activity. Finally, subsection 307(c)(2) is being modified slightly to clarify the Commission's interest in prohibiting outside employment which interferes in the performance of Commission duties and responsibilities.

Financial disclosure amendments. Insofar as financial disclosure is concerned the Commission's existing rules are intended to be compatible with the Ethics in Government Act of 1978. Consistent with the Ethics in Government Act employees whose positions are classified at GS–16 or above are required to submit financial disclosure statements which are available to the public pursuant to section 402(i)(2) of the Commission's Standards of Conduct. Employees at GS 13–15 are required to submit identical financial disclosure statements but such statements are held in confidence.

Recently the Commission amended its pay policies effectively abolishing GS pay levels. Under the new pay systems, Executive Service Levels B and C are comparable to GS Levels 16 or above and EAS–25, 28, and Executive Service Level A are comparable to GS Levels 13–15.

In order to conform the Standards of Conduct to the new pay system, Executive Service Level B or above is being substituted for "GS–16 or above" in section 402. Also, EAS–25 through Executive Level A is replacing "GS–13 through GS–15." Certain other conforming changes are also incorporated as necessary.

Since the amendments herein involve matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply.

List of Subjects in 39 CFR Part 3000

Conflict of interests.

PART 3000—STANDARDS OF CONDUCT

Accordingly, pursuant to 39 U.S.C. 3603, it is ordered that, effective June 1, 1982, 39 CFR Part 3000, Subparts C and D are hereby amended as follows:

1. In § 3000.735–307, paragraph (a) is revised, paragraphs (b) through (i) are redesignated as paragraphs (c) through (j), a new paragraph (b) is added and newly redesignated paragraph (d)(2) is revised to read as follows:

§ 3000.735–307 Outside employment and other activity.

(a) No employee who is exempt from the provisions of the Fair Labor Standards Act shall engage in any outside professional practice or professional activity, either on a paid or unpaid basis, other than:

(1) Teaching, lecturing or writing as provided in paragraph (e) of this section;

(2) Outside professional practice with or for a recognized organization which furnishes professional or services on a *pro bono publico* basis.

(b) An activity not prohibited by this rule, or an activity permitted by paragraph (a)(1) or (a)(2) of this section, shall not be conducted on Commission time or with the use of Commission equipment and facilities or with the assistance of other Commission personnel. The prohibition against assistance of other Commission personnel does not apply to two or more employees independently engaging in a common outside employment or activity.

* * * * *

(d) * * *

(2) Outside employment which tends to impair the employee's mental or physical capacity for, or which otherwise interferes with, performance of his or her Commission duties and

responsibilities in an acceptable manner.

§ 3000.735–309 [Amended]

2. In § 3000.735–309, paragraph (a), change "§ 3000.735–307(d)" to "§ 3000.735–307(e)".

§ 3000.735–401 [Amended]

3. In § 3000.735–401, change "§ 3000.375–307(f)" to "§ 3000.735–307(g)".

4. In § 3000.735–402, paragraphs (a)(3), (b)(2) and (3), (h), (i)(1) and the introductory text of paragraph (i)(2) are revised to read as follows:

§ 3000.735–402 Reporting employment and financial interests—regular employees

(a) * * *

(3) In the event of termination of employment, the terminated employee shall file a financial disclosure statement if the terminated employee was at Executive Service Level B or above, and has not in the interim accepted another position which requires a financial disclosure statement satisfying the disclosure requirements of section 202 of Pub. L. 95–521 (92 Stat. 1837). The financial disclosure statement for the terminated employee must be filed no later than the 30th day after termination, covering the preceding calendar year if the annual May 15 report has not been filed, and the portion of the present calendar year up to the date of termination.

* * * * *

(b)(2) An employee whose basic rate of pay is equivalent to or greater than EAS–25 adjusted pursuant to 39 U.S.C. 3604.

(3) A special employee whose basic rate of pay is equivalent to or greater than EAS–25 as adjusted under 39 U.S.C. 3604 who is reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year.

* * * * *

(h) An employee who believes that his position has been improperly included as one requiring the submission of a statement is entitled to obtain a review of his complaint under the Commission's grievance procedure.

(i)(1) The designated agency official shall hold each financial disclosure statement of each employee who is paid basic compensation at a rate equivalent to or greater than EAS–25 through Executive Level A in confidence. The designated agency official is responsible for maintaining the financial disclosure statements in confidence and shall not allow access to, or allow information to be disclosed from a statement except to carry out the purpose of this subpart. The designated agency official may not disclose information from a statement outside the Commission except as the Chairman of the Commission may determine for good cause shown.

(2) The Commission shall make each financial disclosure statement of each employee, including Commissioners, paid basic compensation at a rate equivalent to or greater than Executive Service Level B available to the public in accordance with the provisions of paragraphs (i)(2)(i) and (i)(2)(ii) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individuals' designated agency official.

* * * * *

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 82–12090 Filed 5–3–82; 8:45 am]

BILLING CODE 7715–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2115–4]

Approval and Promulgation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error in the codification of its final Rulemaking Action for the Detroit Edison Company, Boulevard Heating Plant in Wayne County, Michigan, published January 27, 1982 (47 FR 3765). This action merely corrects that error, and in no way affects EPA's final approval rulemaking action.

EFFECTIVE DATE: This correction notice becomes effective June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Regulatory Analysis Section, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On May 1, 1981, the State of Michigan submitted Consent Order 07–1981 for the Detroit Edison Company, Boulevard Heating Plant as a revision to the Michigan State Implementation Plan (SIP). On October 26, 1981, EPA proposed to approve Consent Order 07–1981 (46 FR 52140) and on January 27, 1982, EPA approved Consent Order 07–1981 (47 FR 3765) for the Boulevard Heating Plant.

However, the January 27, 1982 (47 FR 3765) final rulemaking codification was in error. The codification incorrectly included the Boulevard Heating Plant in the tables found in § 52.1175(e). The table does not apply to this SIP revision and is therefore eliminated from the codification which is revised as follows:

The amendment to Subpart X of 40 CFR Part 52, Docket A–5–FRL–2024–7, which begins on page 3765 of the **Federal Register** for January 27, 1982, is corrected to read as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraph (c)(48) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

* * * * *

(48) On May 1, 1981, the State of Michigan, through the Department of Natural Resources, submitted Consent Order 07–1981 for the Detroit Edison Company, Boulevard Heating Plant located in the City of Detroit, Wayne County. Under Michigan Rule 336.1331(1)(a), the plant was restricted to a particulate emission limit of 0.45 pounds of particulate per 1000 pounds flue gas or an equivalent of 410 tons per year. The Consent Order, pursuant to Michigan Rule 333.1331(1)(d), establishes a new limitation for the Boulevard Plant of 0.65 pounds per 1000 pounds of flue gas with a daily limit of 0.9 tons per day and 10 tons per year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified on January 27, 1981 (46 FR 8709) that the attached rule will not have a significant economic impact on a substantial number of small entities.

(Sec. 110 of the Clean Air Act)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 23, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82–11823 Filed 5–3–82; 8:45 am]

BILLING CODE 6560–38–M

40 CFR Part 52

[Docket No. AH036VA; A-3-FRL-2084-3]

Approval and Promulgation of Implementation Plans Approval of Revision of the Commonwealth of Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The EPA announces the Administrator's approval of an amendment to the Commonwealth of Virginia's State Implementation Plan (SIP). On August 18, 1981, Virginia submitted a revision to the Virginia SIP, consisting of the relocation and modification of the new source review provisions for major stationary sources locating in nonattainment areas. This revision was necessary to meet recent EPA requirements for review of new sources.

EFFECTIVE DATE: June 3, 1982.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs and Energy Branch, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Atten: Patricia Sheridan;

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Atten: Mr. John M. Daniel, Jr.;

Public Information Reference Unit, EPA Library, Room 2922, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C. 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20480.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Peters at the Region III address stated above or call 215/597-9139.

SUPPLEMENTARY INFORMATION: On August 18, 1981 the Commonwealth of Virginia submitted a revision to the Virginia State Implementation Plan (SIP). This revision consists of the relocation and modification of the new source review provisions for major stationary sources locating in nonattainment areas. The provisions are being relocated from Part II, (General Provisions) to Part VIII (Permits-Major Stationary Sources and Major Modification, Prevention of Significant Deterioration Areas or Nonattainment Areas). Amendments, as necessary to facilitate the above relocation, are also included for the following:

(1) Part I (Definitions).

(2) Part IV, Rule EX-4 (Emission Standards for Particulate Emissions from Manufacturing Operations).

(3) Part V (Special Provisions).

(4) Appendix L (Prevention of Significant Deterioration Areas).

The revision is intended to meet the newly promulgated requirements of 40 CFR 51.18(j).

The proposed rulemaking notice (46 FR 63082, December 30, 1981) gives a detailed description of the changes being finalized in today's notice. The notice also invited the public to comment on the revision. No public comments were received.

EPA Evaluation: The changes to Parts I, II, IV, V, and VIII have been reviewed by EPA and are acceptable.

The definitions that are added or modified in Section 1.02 relate to the general provisions of the regulations and are approved. The relocation of several of the definitions from this section to Section 8.02 is acceptable as they relate specifically to that section of the regulations.

The changes to Part II (General Provisions), and Part IV, Rule EX-4 (Emission Standards for Particulate Emissions from Manufacturing Operations) are a result of the relocation of the permitting provisions for major stationary sources and major modifications locating in nonattainment areas. As there are now similar provisions in Section 8.02, these changes are being approved.

Until the present action, EPA had considered Part V as having been submitted for informational purposes only. The Commonwealth has asked EPA to include Part V in the SIP because of recent additions to this Part. Part V was first submitted August 14, 1975. Amendments to Part V were submitted October 20, 1976, September 20, 1978, September 6, 1979, September 21, 1979 and August 18, 1981.

EPA is now approving the following sections of Part V, as submitted on the dates specified in parenthesis.

(1) 5.01 (8/14/75), Applicability.

(2) 5.02, Compliance, (a) (9/20/78), (b)-(d) (10/20/76), and (e) (9/20/78).

(3) 5.03 (10/20/76), Performance Testing.

(4) 5.04, Monitoring, (a) (9/20/78), (b)-(d) (10/20/76), (e) (9/20/78), and (f) (10/20/76).

(5) 5.05 (10/20/76), Notification, Records and Reporting.

(6) 5.10 (9/20/78), Applicability and Designation of Affected Facility.

(7) 5.12 (9/21/79), Standard for Visible Emissions.

(8) 5.13 (8/14/75), Standard for Fugitive Dust/Emissions.

(9) 5.14 (9/20/78), Monitoring.

(10) 5.15 (9/20/78), Test Methods and Procedures.

(11) 5.16 (9/20/78), Waivers.

(12) 5.17 (8/14/75), Traffic Hazard.

(13) 5.40 (9/6/79), Applicability and Designation of Affected Facility.

(14) 5.42 (8/18/81), Standard for Stationary Sources.

(15) 5.43 (8/18/81), Standard for Major Stationary Sources (Nonattainment Areas).

(16) 5.44 (8/18/81), Standard for Major Stationary Sources (Prevention of Significant Deterioration Areas).

(17) 5.45 (9/6/79), Compliance with other Standards.

EPA will not act on any of the following sections of Part V for the reasons specified below for each.

(1) Rule NS-2. (Standards of Performance for Odorous Emissions). EPA does not regulate odorous emissions.

(2) Rule NS-3. (Environmental Protection Agency Standards of Performance for New Stationary Sources). EPA delegated the authority for the Standards of Performance for New Stationary Sources (NSPS) to the Commonwealth of Virginia on December 30, 1975 and was announced in the **Federal Register** on February 26, 1976 (41 FR 8346).

(3) Section 5.02(f) (Stack Heights). This section differs from Section 123 of the Clean Air Act in that the Act relates to the *setting* of an emission limit while the Commonwealth's regulations deal with *compliance* with the emission limit. Any stack height, not just that in excess of good engineering practices, can have no effect on compliance with an emission standard. The Commonwealth has agreed to revise this section and therefore, EPA will take no further action until the revised SIP is submitted.

Part VIII, Section 8.02 is a new section and has been found to meet the newly promulgated requirements of 40 CFR 51.18(j). Therefore, EPA is approving this section.

Appendix L specifies which areas are subject to the Prevention of Significant Deterioration (PSD) regulations for each criteria pollutant. Appendix L is approved.

Conclusion

The Administrator's decision to approve the proposed revisions was based on a determination that the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for

Preparation, Adoption and submittal of State Implementation Plans.

As a result of EPA's decision to approve this revision to the Virginia Implementation Plan, 40 CFR 52.2420 (Identification of Plan) is being revised as shown below. Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not judged to be major since it merely approves actions taken by the State and does not establish any new requirements.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days of today). This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

(42 U.S.C. 7401–7642)

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the Federal Register on July 1, 1981.

Dated: April 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. Section 52.2420 is amended by adding paragraphs (c) (64) thru (69) as follows:

§ 52.2420 Identification plan.

* * * * *

(c) * * *

(64) Amendments to Part V, §§ 5.01, 5.13, and 5.17 as submitted on August 14, 1975 by the Secretary of Commerce and Resources.

(65) Amendments to Part V, §§ 5.02 (b)–(d), 5.03, 5.04 (b)–(d) and (f), and 5.05 as submitted on October 20, 1976 by the Secretary of Commerce and Resources.

(66) Amendments to Part V, §§ 5.02 (a) and (e), 5.04 (a) and (e), 5.10, 5.14, 5.15, and 5.16 as submitted September 20, 1978 by the Secretary of Commerce and Resources.

(67) Amendments to Part V, §§ 5.40 and 5.45 as submitted on September 6, 1979 by the Secretary of Commerce and Resources.

(68) Amendment to Part V, § 5.12 as submitted on September 21, 1979 by the Secretary of Commerce and Resources.

(69) Amendments to Part I, § 1.02, Part II, §§ 2.31, 2.33 (a)–(e), (g), (k), and (m), Part IV, Rule Ex–4, § 4.41(b)(4), Part V, Rule NS–4, §§ 5.42, 5.43, and 5.44, Part VIII, § 8.02 and Appendix L as submitted August 18, 1981 by the Secretary of Commerce and Resources.

[FR Doc. 82-12046 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL-2098-7]

Approval and Promulgation of Revisions to the Arkansas State Implementation Plan Regarding Intergovernmental Consultation, Interstate Pollution Abatement, and Composition of the Arkansas Commission on Pollution Control and Ecology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve various minor revisions to the Arkansas State Implementation Plan (SIP) that were submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) on January 9, 1980, in fulfillment of the Federal Clean Air Act Amendments of 1977. The Environmental Protection Agency (EPA) conditionally approved plan revisions on January 29, 1980, that were submitted to meet the requirements of Part D (Plan Requirements for Nonattainment Areas) of the Act. The revisions being acted on today are specific new non Part D requirements and relate to intergovernmental consultation, interstate pollution abatement and composition of the Arkansas Commission on Pollution Control and Ecology to insure protection of the public interest in air quality planning and implementation. In reviewing the State's submittal, EPA assessed the ability of the revisions to meet the new requirements of the 1977 amendments.

EFFECTIVE DATE: This action will be effective on July 6, 1982, unless notice is received by 30 days from date of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submittals and incorporation by reference materials are available for review during normal business hours at the following locations:

Environmental Protection Agency, Air Branch, Region 6, 1201 Elm Street, Dallas, Texas 75270

Environmental Protection Agency, Public Information Reference Unit (PM–213), EPA Library, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NE, Room 8401, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Programs Section, Air Branch, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270. Phone: (214) 767–2742.

SUPPLEMENTARY INFORMATION: On January 9, 1980, the Arkansas Department of Pollution Control and Ecology (ADPCE) submitted minor revisions to the Arkansas SIP in fulfillment of the Federal Clean Air Act Amendments of 1977. These revisions relate to new non Part D requirements for intergovernmental consultation, interstate pollution abatement, and composition of the Arkansas Commission on Pollution Control and Ecology. EPA has reviewed the State's submittals and developed an Evaluation Report [1] which describes the new 1977 requirements and evaluates the State's efforts to satisfy those requirements. This evaluation report is available for review during normal business hours at the addresses listed above.

The Arkansas Department of Pollution Control and Ecology (ADPCE) has revised the Arkansas State Implementation Plan to include the following non Part D requirements:

- *Intergovernmental Consultation.* Section 121 of the Clean Air Act requires intergovernmental consultation and coordination among State and local officials in the achievement of national air quality planning and management. As the lead agency responsible for statewide air pollution control and abatement, the ADPCE has developed and implemented a formal State process for consultation and planning with relevant local governmental organizations having responsibility for any SIP revision process. The ADPCE has entered into a formal agreement of understanding with a designated metropolitan planning organization and the Arkansas State Highway and

[1] Evaluation Report for Revisions to the Arkansas State Implementation Plan as Required by the 1977 Clean Air Act Amendments, March 1982.

Transportation Department for transportation related air quality planning in a certain area of the State.

• *Interstate Pollution Abatement.* Section 126(a)(1) requires each major proposed *new* or modified source to provide written notice to all States in which the air pollution level will be adversely affected by such source. Section 126(a)(2) requires the State to identify all major *existing* stationary sources which may adversely affect the air pollution level in neighboring States, and to provide the identity of these sources to all affected States. The Arkansas agency has agreed to conduct the *new* source notification required by section 126(a)(1) in a letter of commitment dated March 31, 1982, from the Director of the ADPCE to EPA. Arkansas determined that there are no major *existing* sources in the State which adversely affect the air pollution level in neighboring States. In a letter dated November 30, 1977, from the Director of the ADPCE to EPA and neighboring States, the ADPCE did identify all sources having the potential to emit more than 100 tons/year uncontrolled.

• *State Boards.* Section 128(a)(1) requires that any board or body which approves permits or enforcement orders must contain a majority of members who represent the public interest, and do not derive any significant portion of their income from persons or businesses subject to the board or body's permits or enforcement orders. Section 128(a)(2) requires that the members of such board or body adequately disclose any potential conflicts of interest. Section 82-1903 of the Arkansas Water and Air Pollution Control Act requires that the members of the Arkansas Commission on Pollution Control and Ecology (ACPCE) be composed of members designated by and from other State agencies, as well as members from the public. Sections 3 and 4 of the Arkansas Code of Ethics Law prohibit any State official from: securing special privileges by use or reason of his office, accepting employment or engaging in any activity which would reasonably require or induce him to disclose confidential information, or using confidential information for personal gain or benefit. Sections 5 and 6 of the Code of Ethics require the members of the ACPCE and the Director of the ADPCE to file an annual financial disclosure statement. By incorporation of these requirements into the Arkansas SIP, it is the State's intent and desire that the interests of the public be adequately protected.

The revisions included in this approval notice are considered minor in nature and noncontroversial. EPA is approving them without prior proposal. This action will be effective 60 days from the date of the **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this notice. This action may not be challenged later in the proceedings to enforce its requirements. (Sec. 307(b)(2).)

Under 5 U.S.C. Section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the **Federal Register** on July 1, 1981. This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart E—Arkansas

1. Section 52.170 is amended by adding paragraph (c)(18) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(18) Revisions to the plan for intergovernmental consultation, interstate pollution abatement, and composition of the Arkansas Commission on Pollution Control and Ecology were submitted to EPA by the Arkansas Department of Pollution Control and Ecology on January 9, 1980.

[FR Doc. 82-12075 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-6-FRL-2102-7]

State of New Mexico: Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document redesignates New Mexico's Bernalillo County from nonattainment to attainment with respect to ozone. This action is necessary because EPA has promulgated a revised standard for ozone.

EFFECTIVE DATE: This action will be effective on July 6, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESS: Written comments should be addressed to Estela Wackerbarth of the EPA Region 6 Air Branch (address below). Environmental Protection Agency, 1201 Elm Street—28th Floor, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Estela Wackerbarth, Chief, Implementation Plan Section, Air and Waste Management Division, Environmental Protection Agency, Region 6, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 at 43 FR 9016, the Administrator promulgated attainment status designations for the State of New Mexico for ozone and other pollutants. The designations were effective immediately and public comment was solicited. On September 11, 1978 at 43 FR 40412 in response to comments received, the Administrator revised and amended certain of the original designations. Bernalillo County was designated as a nonattainment area for ozone in the March 3, 1978, rulemaking. This designation remained unchanged in the September 11, 1978, rulemaking. On February 8, 1979, EPA promulgated a revised ozone standard from 0.08 parts per million (ppm) to 0.12 ppm. Based upon this revised standard EPA is amending the list in accordance with the

provisions of section 107(d)(5) of the Clean Air Act. EPA is redesignating Bernalillo County from nonattainment to attainment for ozone.

Redesignation of Bernalillo County

In Air Quality Control Region (ACQR) 152, the Bernalillo County area is designated as nonattainment for the primary ozone standard (43 FR 9016, March 3, 1978). The Bernalillo County area redesignation from nonattainment to attainment is based upon EPA's revision of the ozone standard from 0.08 ppm to 0.12 ppm and EPA's review [1] of supporting data collected during the years 1979, 1980 and 1981 which indicate that the average annual exceedances is less than one, thus meeting EPA's criteria for attainment. Therefore, EPA is redesignating the Bernalillo County area from nonattainment to attainment.

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1982. This action may not be challenged later in proceedings to enforce its requirements. [See sec. 307(b)(2).]

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This notice of final rulemaking is issued under the authority of section 107(d) of the Clean Air Act, as amended. (42 U.S.C. 7407(d))

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

[1] EPA Evaluation Report, Bernalillo County-Ozone redesignation dated March 1982. This report is available for public inspection at the Region VI Office of EPA in Dallas, Texas.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.332—New Mexico, the attainment status designation table for ozone (O_3) is amended by revising the designation for portion of Bernalillo County from "does not meet primary standards" to "cannot be classified or better than national standards." The amended portion of the New Mexico—O_3 Table for § 81.332 reads as set forth below.

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 152		[1]
* * * * *		

[FR Doc. 82-12046 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-1-FRL-2090-1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Redesignations: Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the redesignation of the municipality of Lincoln, Maine from attainment to nonattainment with respect to the total suspended particulates (TSP) ambient air quality standards. This action, which is being taken at the request of the State of Maine and under the provisions of the Clean Air Act, is based on monitoring data showing exceedances of the secondary standard for air quality.

DATE: This action will be effective on June 3, 1982, unless notice is received on or before 30 days after publication, that someone intends to submit adverse or critical comments.

ADDRESSES: Copies of the state submittal are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; U.S. Environmental Protection Agency Public Information Reference Unit, Room 2922, 401 M Street S.W., Washington, DC 20460; and the Maine Department of Environmental Protection, Bureau of Air Quality Control, State House Station 17, Augusta, Maine 04333.

Written comments should be addressed to Harley F. Laing, Chief, Air Branch, U.S. Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: John Courcier, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-4448.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act requires all areas of the nation to be designated as attaining the National Ambient Air Quality Standards (NAAQS); as not attaining the NAAQS; or as being unclassifiable with respect to their attainment status for each pollutant for which there is a NAAQS. Attainment/nonattainment designations are recommended by the state and approved or revised as necessary by EPA. The purpose of making these designations is to determine which areas within the state require additional air pollution control measures to ensure attainment of the appropriate NAAQS.

Original designations for the state of Maine were published in the March 3, 1982 **Federal Register** (43 FR 8962) and were codified in the Code of Federal Regulations at 40 CFR 81.320. At that time Lincoln, as a part of AQCR 109, was designated attainment for TSP.

The state's request for redesignation for Lincoln from attainment to nonattainment for TSP is based on monitoring data showing seventy-six exceedances of the 24 hour secondary standard.

Of these seventy-six exceedances, there were ten exceedances of the 24 hour primary standard. These exceedances reflect data which was collected through July 1981. The DEP has requested redesignation to nonattainment for the area within the corporate boundaries of Lincoln. A full description of the proposed TSP nonattainment area is contained in the state submittal of September 22, 1981 which is available for public inspection at the addresses given in this notice.

Since this action affects only the designated air quality status of a limited geographical area, this rulemaking is considered noncontroversial. Based on

past experience with similar actions in Region I, no adverse or critical comments are expected. Therefore, this action is being published as a final rulemaking. EPA believes that publishing a notice of proposed rulemaking is unnecessary.

However, if notice is received within 30 days of the date of publication of this **Federal Register** notice that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from the date of publication of this **Federal Register** notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AIR QUALITY CONTROL REGIONS

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.320 the attainment status designation table for TSP is revised to read as follows:

§ 81.320 Maine.

MAINE-TSP

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 109—Bangor & Brewer	×			
Lincoln	×			
Old Town			×	
Baileyville		×		
Rest of Region				×

[FR Doc. 82-12044 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

[Docket No. FEMA-FIA]

National Flood Insurance Program Coverage, Sales and Loss Prevention Provisions

AGENCY: Federal Insurance Administration (FIA), FEMA.

ACTION: Final rule.

SUMMARY: This rule revises the National Flood Insurance Program (NFIP) regulations dealing with flood insurance coverage and the Standard Flood Insurance Policy (SFIP) terms and provisions. The purpose of the amendment is to revise the Program regulations to reflect improvements in the Flood Insurance Manual used by private sector property insurance agents and brokers in producing flood insurance business, coverage changes in the contract of flood insurance, and advances in flood hazard mitigation engendered by the President's Executive Order 11988 and FEMA's implementing regulations, at 44 CFR Part 9. In the case of the SFIP, Dwelling Form, the amendment will also result in a more readable flood insurance contract, consistent with private sector personal insurance lines practices. Where appropriate, the SFIP General Property Form has been amended, consistent with the changes in the Dwelling Form.

DATE: This rule will be effective June 1, 1982, so as to be effective at the same time as the new NFIP Insurance Manual and Rate Revision. It is imperative that these matters be placed into effect on the same day.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472, Telephone Number (202) 287-0740.

SUPPLEMENTARY INFORMATION: On December 30, 1981, FEMA published for comment in the **Federal Register** (Vol. 46, Page 63085) a proposed rule containing revisions to the SFIP which were intended to support the major FEMA goals of, in the near term, attaining greater administrative effectiveness in the operation of the NFIP and, for the longer term, an enhanced level of fiscal self-sufficiency in terms of reductions in the cost of the Program. Thus, both risk management and cost containment are being achieved through the addition of coverage restrictions aimed at reducing flood losses and loss payments. At the same time, these changes will assist materially in the realization of the Agency's hazard mitigation goals. Concurrent with these changes, FEMA has taken the opportunity to rewrite the Dwelling Form flood insurance contract in a more readable format, eschewing excessive legalese, where possible, in favor of colloquial language more readily understandable to the lay person.

As proposed, the rule would have amended the insurance contract and related rules as follows:

1. In the Insuring Agreement and Definitions section of the SFIP, at Part 61, Appendix A; the policy would respond only to direct physical loss by flood to the insured property.

2. In providing contents coverage for personal property, the $500 limitation of coverage for works of art, gems, precious metals, jewelry and the like would be reduced to $250. Such items are easily transported away from flood waters.

3. Buildings located seaward of mean high tide, or in, on or partially over water would not be covered.

4. Personal property pollutants would not be covered unless stored at safe elevations.

5. Mobile homes in special flood hazard areas would not be covered unless anchored to resist flotation or lateral movement.

6. In coastal high hazard areas, obstructions below the building's lowest floor, including solid walls, "breakaway" walls, personal property and equipment would not be covered.

7. The deductible would be raised to $500.00 for both building and contents losses and a $3,000.00 deductible would be made available as to property in V-Zones, at a commensurate reduction in premium.

8. Definitive provisions regarding policy renewal, cancellation and voidance of the contract of insurance would be added to the policy.

9. Machinery or equipment servicing the insured building below the lowest floor used for rating purposes or not contained within the foundation walls of the insured building would not be covered.

10. A mobile home (and its contents) located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence prior to April 1, 1982, would not be covered.

11. Replacement cost coverage would be made available only as to a single family dwelling, which is the principal residence of the insured and which is not a mobile home.

In the proposed rule, FEMA also indicated it was considering alternative approaches to the provisions on cancellation or voidance in situations when less than the full premium is paid at the time of the application or renewal. The alternatives included adjustment of the amount of insurance provided or adjustment of the premium as a condition of continued coverage. Comments on these or other possible alternatives were invited. A substantial number of comments were received during the comment period and, in view of the importance of this first major revision to the Standard Flood Insurance Policy , the docket was kept open and comments were reviewed through the period in which this final rule has been drafted so as to enable FIA to benefit from comments to the latest possible date. The Federal Insurance Administration also utilized this period of time to discuss aspects of the proposed rule with representatives of various organizations interested in the rulemaking. Thus, discussions were had with members of the public, representatives of the mobile home, banking, manufactured housing and insurance industries and with community officials and representatives.

The comments received (fourteen) are, variously, supportive, divided on some issues and, in criticism, constructive. In all, the comments are informative and provide rationale for many of the results reached in this final rule.

While some organizations expressed concern about the proposed anchoring or "tie-down" requirements for mobile homes as a condition for flood insurance coverage and unavailability in coastal high hazard areas of flood insurance in the case of mobile homes not located in existing mobile home parks or subdivisions, others urged that the anchoring requirements were helpful and, even, that new flood insurance should not be made available in any special flood hazard area, including coastal high hazard areas. The final rule provides, it is hoped, a reasonable solution: The tie-down requirements need only be in conformity with the local community's flood plain management measures and apply to mobile homes located in special flood hazard areas on and after October 1, 1982. Also under the final rule, flood insurance coverage for mobile homes may only be made available, in coastal high hazard areas, for the insuring of mobile homes located in mobile home parks which are in existence on June 1, 1982. The necessity for this latter rule is dictated by FEMA's flood plain management regulations, at 44 CFR 60.3(e)(7) which "Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1–30 on the community's FIRM." In recognition of the special properties of certain manufactured homes and in order that these may be discerned from "mobile homes" for purposes of the rulemaking, the Standard Flood Insurance Policy has been amended by an appropriate definition (See, "Double-wide Mobile Home", at Article II of the policy).

Regarding the provision of replacement cost coverage, which is to be made available only as to a single family residential dwelling (not a mobile home) utilized as the policyholder's principal residence, concern was expressed regarding the denial of this coverage as to mobile homes and secondary homes. The marked propensity of mobile homes to depreciate rapidly makes economically impractical the insuring of these units on other than an actual cash value basis. This is consistent with private sector practices, as is the provision of replacement cost coverage to homeowner risks and not to other, including commercial, risks. Thus, the final rule provides actual cash value coverage for the secondary or vacation home. These buildings are, typically, in coastal or riverine areas, are susceptible to severe and repeated flooding, are not occupied much of the time and are, when occupied, often used in a commercial manner as rental vacation property. The financial exposure does not warrant extension of the more liberal replacement cost coverage in these cases. This determination in spirit, it is believed, follows the direction of the NFIP's Senate and House Committee Conferees, who cautioned FIA, in speaking to NFIP's legislative authority to make low interest loans to restore flood damage buildings, "to give priority to property which is the principal residence of the owner" (see the Report on Pub L. 97–35, the Omnibus Budget Reconciliation Act of 1981).

With respect to the provision of "actual cash value" as the basis for claims adjustment, the concern was expressed that the definition, as proposed, could result in depreciation being unfairly factored into the adjustment process twice. The point is well made and the definition has been clarified to remove the possibility of "double depreciation" being applied in the valuation of insured property.

Some lending institutions and a national banking association provided relevant comments, which were addressed in the final rule. Chief among the concerns of the banking community was the proposed rule which called for the voidance of the coverage, from the inception of the policy, as to both the policyholder and the mortgagee in cases where insufficient premium is received and the error in rating the policy is apparent on the face of the flood insurance application, renewal or other form. This result is thought to be unfair in cases where the rating error was unintentional, or inadvertent, or resulted from a simple miscalculation. The lenders agreed, however, that voidance would be appropriate in cases of willful misconduct. FEMA is persuaded that this is the correct view and has adjusted the final rule accordingly. Thus, the final rule provides, in cases where insufficient premium is received, that:

1. The policy is void ab initio where the rating error was fraudulently or willfully made;

2. a rating error innocently made and whether apparent or not on the face of the form will:

a. if discovered by the NFIP prior to a loss, result only in such limits of coverage as may be purchased with the insufficient premium, unless the insured increases the limits by endorsement and submits the correct premium payment prior to loss;

b. if discovered by the NFIP at the time of the loss, result only in such limits of coverage as may be purchased with the insufficient premium, unless the insured requests reformation of the contract up to the limits of coverage originally requested and tenders the correct premium payment to the NFIP.

Of related concern to the banking community is the perception that lending institutions would not receive notice of policy lapse in cases where the policy was not renewed for a new term by timely submission to the NFIP of a renewal form with the correct premium. The concern apparently arises out of the legal maxim that an insurer is under no obligation to send a notice of policy renewal unless required by statute, or contract obligation, or a long established custom and course of dealing with the insured, upon which the insured relies to his or her detriment. In this matter, lenders' apprehensions are groundless inasmuch as, under the terms of the Standard Flood Insurance Policy, FEMA has obligated itself contractually to provide the mortgagee named in the policy with a continuation of flood

insurance coverage, for the mortgagee's benefit, for 30 days after written notice to the mortgagee of the policy's termination without renewal. This notice is intended to give the mortgagee the opportunity to continue the coverage in force. If, for some reason, no notice is sent to the mortgagee, coverage will continue to be in effect as to the mortgagee. Similarly, mortgagees will receive notifications of policies placed in effect with reduced coverage because of insufficient premium having been received by the NFIP in respect to the limits of coverage requested.

A lending institution also expressed concern that the revised mortgagee clause might provide lenders with less protection than is afforded under the present policy language in that insureds would be given the opportunity to apply claims settlement proceeds to removal of damaged property, or repair of damaged property without retiring loan indebtedness. However, this result would not be possible so long as the mortgagee is named on the policy, in which case the mortgagee would be included on the claims draft as a payee and any rights enuring to the mortgagee by reason of the mortgage instrument could then be enforced by the mortgagee. The final rule also retains the present mortgagee clause.

The provisions of the proposed rule which would preclude coverage for buildings located seaward of mean high tide or in, or partially over, water also drew criticism in that there was not provided a "grandfather clause for these provisions whether by date of construction or by previous insurance coverage under the Program." Those objecting to this portion of the proposed rule felt that it failed to recognize the adverse economic impact the rule would have "in already, developed seaport cities and riverfront communities." The point is not without merit and the final rule has been amended to preclude new flood insurance only as to buildings newly constructed or substantially improved after October 1, 1982, which are located entirely in or on water or seaward of mean high tide. After October 1, 1982, insurance requests for new buildings constructed partially over water must be submitted to the NFIP for an underwriting decision and rating, in view of their serious potential for sustaining flood damage.

Lastly, a similar objection was made in the case of the proposed exclusion of coverage of "machinery or equipment not contained within the foundation walls of the described building or below the lowest floor used for rating the building." Here, too, the final rule has been amended to provide an October 1, 1982, effective date for this coverage limitation, which will apply to existing machinery or equipment located outside of coastal high hazard areas.

In the body of Part 61, appropriate changes to the rules have been made to conform them to the revisions of the Standard Flood Insurance Policy.

FEMA has determined based upon an Environmental Assessment that this rule does not have significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981.

List of Subjects in 44 CFR Part 61

Flood insurance.

PART 61—INSURANCE COVERAGE AND RATES

Accordingly, Subchapter B of Chapter I of Title 44 is amended at Part 61 as follows:

1. Section 61.5(d) is revised to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural (i.e., insured building) losses, $500.00; and (2) for contents (i.e., insured personal property) losses, $500.00. (At the policyholder's option, when purchasing a flood insurance policy covering property located in a coastal high hazard area the amount of the deductible for each loss occurrence may be $3,000.00. The loss deductible shall apply separately to each building loss and contents (personal property) loss including, as to each, debris removal); and (3) for the reasonable expenses incurred in connection with the temporary removal of an insured mobile home or insured contents (personal property) from the described premises and away from the peril of flood, $50.00.

* * * * *

2. Section 61.5(f) is revised to read as follows:

* * * * *

(f) the following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records; and contents used in connection with any incidental commercial occupancy or use of the building;

(2) On and after October 1, 1982, newly constructed and substantially improved buildings located seaward of mean high tide, or entirely in, on or over water;

(3) Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boathouses or other similar structures or buildings into which boats are floated or personal property in the open;

(4) Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment servicing the building including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building;

(5) Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property;

(6) Units which are primarily containers, rather than buildings (such as gas and liquid tanks);

(7) Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

(8) On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-

the-top ties to ground anchors or that otherwise meet the community's flood plain management requirements;

(9) A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

(10) On and after June 1, 1982, with respect to any building located outside of a coastal high hazard area, solid, non-load bearing walls; open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for the policy;

(iv) In the case of a building rated with Emergency Program or pre-firm rates, were placed in the areas described in paragraph (f)(10) (i) or (ii) or (iii), of this section, on or after June 1, 1982.

The terms, "machinery or equipment," for purposes of this paragraph (f)(10) of this section, include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

* * * * *

3. Section 61.5(g) is revised to read as follows:

* * * * *

(g) The following property and contents for non-residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records;

(2) Except for the insurability of "animals, birds and fish", at paragraph (f)(5) of this section, all of the kinds of uninsurable property and contents referenced at paragraphs (f) (2) through (5) and at paragraph (f) (7) through (9), of this section;

(3) Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction);

4. Section 61.5(h) is revised to read as follows:

* * * * *

(h) The following rules provide for voidance, reduction or reformation of coverage issued under a Standard Flood Insurance Policy by the insurer:

(1) Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

(i) The property listed on the application is not eligible for coverage, in which case the policy is void from its inception date;

(ii) The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss, in which case the policy is void from its inception date;

(iii) During the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy.

(iv) The insured or the insured's agent has (A) sworn falsely, or (B) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of the policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewed policy and the wrongful act occurred in connection with an application for renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy).

(v) The premium received by the insurer for the issuance of the policy, in the case of an application for a new policy or a policy renewal, is less than $50.00, in which case the policy is void from its inception date.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; provided, the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional coverage limits requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

(A) In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

(B) In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverages to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by the insured, any such excess of apportioned premium will be applied to obtain an

additional amount of the other kind of coverage, until the amount of insurance requested for the other coverage is obtained;

(C) Provided, however, under this paragraph (h)(2)(i) of this section as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured's indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of paragraph (h)(2)(i), of this section, unless:

(A) The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy), or

(B) Provided paragraph (h)(2)(ii)(A), of this section, does not apply, the insured remits and the insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due or within sixty (60) days of the loss if no notice of premium is received by the insured, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by the insurer within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

5. Appendix A(1) of Part 61, referenced at § 61.13 Standard Flood Insurance Policy is revised to read as follows:

Appendix A(1)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof]

Dwelling Form—INSURING AGREEMENT

Agreement of Insurance Between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we", "our", and "us") and the Insured (hereinafter known as "you" and "your"). Based upon your having paid the correct amount of premium, our reliance on the accuracy of the information and statements you have furnished in the application for this policy about the property to be insured and subject to all the terms of this policy, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and regulations issued by us (Title 44, Code of Federal Regulations), we insure you and your legal representatives against all "Direct Physical Loss By Flood" to the insured property as defined in the "Definitions Section" of this Agreement to the extent of the actual cash value of the property at the time of loss but not exceeding (1) the cost of replacing the insured building at the time of loss with material of like kind and quality and (2) the actual cash value of any insured personal property at the time of loss.

Now therefore, in consideration of the foregoing and the mutual promises exchanged herein, we and you agree, further, as follows:

Article I—Persons Insured

We insure only:

A. The named insured and legal representatives;

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Article II—Definitions

"Actual Cash Value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a mobile home on foundation, subject to Article V(H), and a walled and roofed building in the course of construction, alteration or repair. This policy does not cover more than one building.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal High Hazard Area" means an area subject to high velocity waters, including hurricane wave wash and tsunami.

"Declaration Page" is a computer generated summary of information furnished by you in the application for insurance. The declarations page is a part of this flood insurance policy.

"Doublewide Mobile Home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building and which has axles and wheels used solely for transportation to the lot or construction site where it is to be assembled as a nonmovable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Dwelling" means a building designed for use as a residence for no more than four families.

"Direct Physical Loss by Flood" means any loss in the nature of actual loss of or physical damage evidenced by physical changes to the insured property (building or personal property contents) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for forty-five days, at another place above ground level, or outside of the special flood hazard area to which any of the property shall necessarily be removed by you in order to protect and preserve it from flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you including the value of your own labor at prevailing Federal minimum wage rates in moving your insured property away from the peril of flood and storing your property at the temporary location shall be reimbursed to you. The term "Direct Physical Loss by Flood" shall not include compensation for

loss of access, loss of use, loss of profits, or loss resulting from interruption of business, profession or manufacture, or reimbursement for your additional living expenses, incurred by reason of your having to live in rented quarters while the insured building is being repaired or replaced, or allowance for any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair, or other economic loss, (this enumeration is not exclusive).

"Expense Constant": The expense constant is a flat charge per policy term, paid by the Insured to defray the Federal Government's policy-writing and other expenses.

"Expiration Date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2, above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A–1 above.

"Policy" means the entire written contract between you and us; it includes this printed form, the application, and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and Roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Article III—Losses Not Covered

We only provide coverage for direct physical loss by flood which means we do not cover:

A. Losses from other casualties, including:

1. Loss caused by theft, loss of profits, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, gradual erosion, or any other earth movement except such mudslides (i.e., -mudflows) or erosion as is covered under the peril of flood.

2. Loss caused by rain, snow, sleet, hail, water spray, freezing, thawing, the pressure or weight of ice or water, sewer backup and seepage of water unless your property has been, at the same time, damaged by a flood.

3. Water or moisture damage resulting primarily from any condition substantially confined to the insured building or from any condition which is within your control (including but not limited to design, structural or mechancial defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

B. Losses of the following nature:

1. Loss caused by your failure to use means reasonably accessable to you to save the property from loss resulting from a flood and to preserve the property after a flood; however, the reasonable expenses incurred by you in saving and preserving the property at the premises after a flood—including the value of your own labor at prevailing Federal minimum wage rates—may, at our sole option be a covered loss.

2. A loss which is already in progress as of 12:01 A.M. of the first day of the policy term, or as to any increase in the limits of coverage which is requested by you, a loss which is already in progress when you request the additional coverage.

3. A loss from a flood which is confined to the premises on which your insured property is located unless the flood is displaced over two acres of the premises.

4. A loss caused by your modification to the insured property or the described premises on which the insured property is located, which materially increases the risk of flooding.

5. Loss caused internationally by you or any member of your household.

Article IV—Property Covered

We will pay for physical damage caused by flood to the building at the property address you have furnished, as well as the contents of the building, if you have purchased contents coverage, and provided you have paid the correct premium for the insurance, as follows:

A. We cover your dwelling, which includes:

1. A residential building, designed for principal use as a dwelling place for no more than four families;

2. Additions and extensions attached to and in contact with the dwelling;

3. Building equipment, fixtures and outdoor equipment used in connection with the dwelling while stored inside the dwelling or another fully enclosed building at the property address;

4. Materials and supplies to be used in constructing, altering or repairing the dwelling or another building insured by us at the property address while stored inside a fully enclosed building (i) at the property address or (ii) on an adjacent property at the time of loss, or (iii) in case of another building at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the building during flooding (the flotation out of the building shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supples under this policy).

5. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the dwelling, including additions to the dwelling; to the extent you exercise this option, you reduce the amount of insurance available to cover loss relating to A(1) (2) (3) and (4), above, to the dwelling and this option may not be chosen so as to extend coverage to buildings: (i) occupied, rented or leased in whole or in part for dwelling purposes (or held for such use), or (ii) used in whole or in part for personal or commercial manufacturing or farming purposes (or held for such uses), or (iii) which are boathouses.

B. We cover your Personal Property as contents incidental to the occupancy of the building as a dwelling under the policy, subject to "C" below, and that belonging to members of your family in your household and, at your option within the limits of contents coverage purchased for personal property loss, guests' and servants' personal property and the personal property of others for which you may be responsible—all while stored within a building at the property address. Personal property in the open and not stored in an insured building shall not be covered against loss by flood under this policy. However, personal property located in buildings having in place two or more rigid walls and a fully secured roof are covered if the contents are secured to prevent flotation out of the building during flooding; the flotation out of the building during flooding of any such contents shall be deemed by you and us to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation. At you option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover personal property, this policy will also cover:

1. loss to improvements, alterations, and additions made by you, as a Tenant, to an insured building at the property address;

2. If you are an individual condominium unit owner, loss to the interior walls, floors, and ceilings of your unit that are not otherwise covered under a condominium association policy.

C. Limitation: As a limitation on "B", above, we shall not reimburse you for loss in any one flood as to the following personal property to the extent the total loss of such property exceeds $250.00: paintings, etchings, pictures, tapestries, art, glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum and furs or any article containing fur which represents its principal value.

D. Debris Removal: Within the limits of your coverage, we cover any expense you incur, including the value of your own labor at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a flood.

E. Demolition Coverage: Within the limits of your coverage, you may apply all or part of the proceeds of any flood insurance claim you make under this policy toward the expenses you incur in removing damaged portions of the insured building from the property location following a flood loss.

Article V—Property not Covered

We do not cover and will not pay for damage to or loss of any of the following:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records and contents used in connection with any incidental commercial occupancy or use of the building.

B. On and after October 1, 1982, newly constructed or substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, outdoor swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boat houses or other similar structures or buildings into which boats are floated or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces, outside the foundation walls of the building.

E. Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. On and after June 1, 1982, with respect to any newly constructed or substantially improved building located outside of a coastal high hazard area, solid, non-load bearing walls, open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for the policy; or

(iv) In the case of a building rated with Emergency Program or Pre-FIRM rates, were placed in the areas described in (i), (ii), or (iii) above, on or after June 1, 1982.

The terms, "machinery or equipment," for purposes of this subsection "10", include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors or that otherwise meet the community's flood plain management requirements.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones VI–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

Article VI—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the policy.

B. The loss deductible shall apply separately to each building loss and personal property (contents) loss including, as to each, appurtenant structures, debris removal, and any expenses incurred under Article II or III in connection with the removal of insured property.

C. The amount of the deductible for each loss occurrence is determined as follows: we shall be liable only when such loss exceeds $500 or, at your option, should you so choose when purchasing a policy covering property located in a coastal high hazard area, $3,000.00.

D. In the case of reasonable expenses incurred in the temporary removal of an insured mobile home or insured personal property from the insured premises and away from the peril of flood, the amount of the deductible shall be $50.00.

Article VII—Replacement Cost Provisions

Subject to Article VI and the limits of building coverage you have purchased, these provisions shall apply only to a Single Family Dwelling which is the principal residence of the insured and which is covered under this policy. Outdoor antennas and aerials, carpeting, awnings, appliances and other outdoor equipment, all whether attached to the insured building or not, are excluded from the replacement cost coverage. For purposes of this Article VII, a single family dwelling qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your building for either (1) 80% of the calendar year immediately preceding the loss or (2) 80% of the period of your ownership of the insured building, if less than one calendar year immediately preceded the loss. For purposes of this Article, the replacement cost provisions do not apply to a condominium unit within a vertical building having one or more condominium units in it not contiguous to the ground. Under this Article:

A. If at the time of loss the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, our liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part thereof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, we shall not be liable for any loss under paragraph A or subparagraph B–2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any mobile home or personal property (contents) covered under this policy,

nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your dwelling sustains a total loss or if we should pay you the entire building loss proceeds under these replacement cost provisions, there is no requirement that you rebuild the building at the insured property address.

Article VIII—General Conditions and Provisions

A. Pair and Set Clause: If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. Concealment, Fraud: We will not cover you under this policy if you have sworn falsely, or willfully concealed or misrepresented any material fact or done any fraudulent acts concerning this insurance (See "F", below).

C. Other Insurance: You may have other flood insurance covering the dwelling and personal property and, if you have such other insurance in effect at the time of a loss, we will not pay a greater portion of any loss than the proportion that our building and personal property (contents) insurance bears to the total flood insurance covering the dwelling and personal property.

D. Amendments, Waivers, Assignment: This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of (1) a contents only policy and (2) a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title without the consent of the Administrator.

E. Cancellation of Policy By You:

1. You can cancel this policy at any time but a refund of premium money will only be made to you when:

a. You cancel because you have transferred ownership of the insured property to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you which apply to the unused portion of the policy's term, pro-rata but with retention of the expense constant.

b. You cancel because we have determined that your property is not, in fact, in a special flood hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to P.L. 93–234, § 102; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations, but with retention of the expense constant.

F. Voidance, Reduction or Reformation of the Coverage By Us:

1. Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy, in which case the policy is void from its inception date;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, you shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. In the event you or your agent have (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

e. The premium you submit is less than $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

2. Reduction of coverage limits or reformation. In the event that the premium payment received by us is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by you or your agent on the application, renewal, endorsement, or other form (whether evident or not) resulting in insufficient premium being received by us for the purchase of the amounts of coverage requested, then:

(i) if the insufficient premium or other rating error is discovered by us prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, for the amount of premium received; provided, you may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by us prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by you. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

a. in the event that only one kind of coverage (building coverage or contents coverage) has been requested, you shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

b. in the event that both building coverage and contents coverage have been requested, we shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and you shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverage to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by you, any such excess of apportioned premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

c. provided, however, under this subsection (2.) (i) as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) if the insufficient premium or other rating error is discovered by us at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

a. you or your agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy.

Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy);

b. provided (ii) a., above does not apply, you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within thirty (30) days from the date we give you written notice of additional premium due or within sixty

(60) days of the loss if no notice of premium due is received by you, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to you in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by us within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to you. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

G. Policy Renewal: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declaration Page" which is attached to the policy. We are under no obligation to send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part. We are under no obligation to assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy which we send to you. "Policy changes" includes the addition by you of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any successive policy term is received by us at the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to Article VIII (F.), above. The renewal premium payment shall be deemed to be received by the NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days following the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date. In all other cases, whether the renewal premium payment is received by the NFIP after the expiration date of this policy or not, this policy shall be deemed terminated as of the expiration date of the last policy term for which the premium payment was timely received by the NFIP and, in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

H. Alterations and Repairs: You may, at any time, make alterations, additions and repairs to the insured property and complete structures in the course of construction. Consistent with your obligation to protect insured property damaged by a flood from further damage, as set forth in "I", below, you may also—following a loss by flood—make reasonable repairs of a temporary or permanent nature to protect the damaged, insured property from further damage and, to the extent you keep an accurate record of such repair expenditures, the cost of any such repairs—including the value of your own labor at prevailing Federal minimum wage rates—shall be included in determining the amount of loss covered by this policy.

I. Requirements in Case of Loss: Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. Protect the property from further damage;

3. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

4. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information.

a. The date and time of the loss,

b. A brief explanation of how the loss happened,

c. Your interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property,

d. The actual cash value of each damaged item of insured property after depreciation is deducted from the cost of replacement of the property (unless the policy's "REPLACEMENT COST PROVISIONS" apply, in which case the replacement cost without allowance for depreciation should be furnished) and the amount of damages sustained,

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property,

f. Details as to any other contracts of insurance covering the property, whether valid or not,

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued,

h. Details as to who occupied any insured building at the time of loss and for what purpose, and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(i) The limits of coverage stated in the policy.

(ii) The cost to repair or replace the damaged property (whatever costs less).

5. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it. In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount; the adjuster is not authorized to approve or disapprove claims or to tell you whether your claim will be approved by us.

J. Our Options After a Loss: Options we may, in our sole discretion, exercise after a loss include the following:

1. *Evidence of Loss*—If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amounts of loss claims, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath*—We may require you to show us or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; to, at such reasonable times and places as we may designate, permit us to examine and make extracts and copies of all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*—We may take all or any part of the damaged property at the agreed or appraised value and, also, to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under "I", above.

4. *Adjustment Options*—We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

K. When Loss Payable—Within 60 days after you file your proof of loss, we will either approve the claim, reject the proof of loss, deny the claim, or request appraisal. If we approve the claim, we will pay you within 60 days after the award of the appraisers and umpire is filed. If we reject your proof of loss because of the amount claimed, but do not deny the entire claim, you may file another proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

L. Abandonment. You may not abandon damaged or undamaged insured property to us.

M. Appraisal. If at any time after a loss, we are unable to agree with you as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire;

and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

N. Loss Clause. If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration shall be adjusted as one flood loss.

O. Mortgagee Clause (Applicable to building items only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declaration form attached to this policy).

Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property descibed in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, as its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

P. Mortgagee obligations—If the insured fails to render proof of loss, the named mortgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

Q. Conditions for filing a lawsuit—You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within twelve (12) months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court for district in which the insured property was located at the time of the loss.

R. Subrogation—Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may requfre you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Article IX—Liberalization Clause

While this policy is in force, should we have adopted any forms, endorsements, rules or regulations by which this policy could be broadened or extended for your benefit by endorsement or substitution of policy form, then, such matters shall be considered to be incorporated in this policy without additional premium charge and shall inure to your benefit as though such endorsement of substitution of policy form had been made.

Article X—What Law Governs

This policy is governed by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. s4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

6. Appendix A(2) of Part 61 referenced at § 61.13 of the Standard Flood Insurance Policy is revised, in the following particulars:

a. A new provision is added just before the provison title "definition of 'flood'", as follows:

Persons Insured

The following are insured under this policy:

A. The named insured and legal representatives:

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

b. The provision titled "definition of 'flood'" is deleted and a new provision titled "Definitions" is added in its place and stead, as follows:

Definitions

Definitions—As used in this Policy:

"Actual cash value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a walled and roofed building in the course of construction, alteration or repair and a mobile home on foundation, subject to Paragraph "H" of the provision titled "Property Not Covered". This policy does not cover more than one building.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal high hazard area" means an area subject to high velocity waters including hurricane wave wash and tsunamis.

"Declarations page" is a computer generated summary of information furnished by the Insured in the application for insurance. The declarations page is a part of this flood insurance policy.

"Double-wide mobile home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building an which has axles and wheels used solely for transportation to the lot or construction site where it is to be assembled as a non-movable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Direct physical loss by flood" means any loss in the nature of actual loss of or physical damage, evidence by physical changes, to the insured property (building or personal property contents) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for

forty-five days, at another place above ground level or outside of the special flood hazard area to which any of the property shall necessarily be removed in order to protect and preserve it from a flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss). The term "Direct Physical Loss By Flood" shall not include compensation for loss of use, loss of access, loss of profits or loss resulting from interruption of business, profession or manufacture, allowance for any increased cost of repair or reconstruction as a result of any ordinance or repair regulating reconstruction or repair, or other economic loss. (This enumeration is not exclusive).

"Expense constant" is a flat charge per policy term, paid by the Insured, to defray the Federal Government's policywriting and other expense.

"Expiration date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A–1 above.

"Policy" means the entire written contract between the Insured and the Insurer, including this printed form, the application and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy.

"Walled and roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

* * * * *

c. New paragraphs "G", "H", "I" and "J" are added to the "Perils excluded" provisions as follows:

Perils Excluded

The Insurer shall not be liable for loss:

* * * * *

G. Caused intentionally by the Insured.

H. Which is already in progress as of 12:01 a.m. of the first day of the policy term.

I. From a flood which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the insured premises.

J. Caused by any modification by the Insured to the insured property or the described premises on which the insured property is located which materially increases the risk of flooding.

* * * * *

d. Under the provision titled "PROPERTY COVERED", at paragraph B(2.) (a) and (b), the $500.00 limitation is reduced to $250.00 in both instances.

* * * * *

e. The provisions titled "PROPERTY NOT COVERED" are revised to read as follows:

Property Not Covered

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records.

B. On and after October 1, 1982, newly constructed and substantially improved buildings located seaward of mean high tide, or entirely in, on, or over water.

C. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open stuctures located on or over water, including boathouses or other similar structures or buildings into which boats are floated; or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building.

E. Aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. On and after June 1, 1982, with respect to any building located outside of a coastal high hazard area, solid, non-load bearing walls, open, wood constructed lattice "breakaway" walls, insect screening or other "breakaway" walls, any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

(i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or

(ii) Are in the open (except for machinery and equipment servicing the building); or

(iii) Are contained below the lowest floor used for rating the building in order to calculate the premium amount to be paid for this policy; or

(iv) In the case of a building rated with Emergency Program or pre-firm rates, were placed in the areas described in (i) or (ii) or (iii), above, on or after June 1, 1982; or

The terms, "machinery or equipment", for purposes of this paragraph "E", include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. On and after October 1, 1982, a mobile home located within a FEMA designated Special Flood Hazard Area that is not affixed to a permanent site (anchored) to resist flotation, collapse, or lateral movement by providing over-the-top frame ties to ground anchors or that otherwise meet the community's flood plain mangement requirements.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction).

J. A mobile home and its contents located within a FEMA designated coastal high hazard area (Zones V1–V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

* * * * *

f. The provisions titled "deductibles" are revised to read as follows:

Deductibles

A. With respect to loss to the building, appurtenant structures, and debris removal covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

B. With respect to loss to contents or debris removal covered hereunder or to expenses, incurred under paragraph "F" of "Perils Excluded", the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

C. The amount of the deductible in "A" and "B", above is $3,000.00 in the event the Insured has elected, when purchasing this policy, to have such a deductible. The election by the Insured is conditioned upon the insured property being located in a coastal high hazard area.

D. In the case of reasonable expenses incurred in the removal of an insured mobile home or personal property from the insured premises away from the peril of flood, the amount of the deductible shall be $50.00.

* * * * *

Under the provisions titled "General conditions and provisions", paragraph "E" titled "Cancellation of policy or reduction in amount of insurance" is revised to read as follows:

General Conditions and Provisions

* * * * * *

E. Voidance, Reduction or Reformation of the Coverage:

1. Voidance: This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which the insured may receive compensation under the policy, in which case the policy is void from its inception;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured's property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. The insured or the insured's agent has (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy;

e. The premium submitted is less than $50.00 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; provided, the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured; the application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

A. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

B. In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and a coverage's proportion of the premium paid is more than sufficient to obtain the amount of insurance requested for that coverage, any excess of that proportion of the total premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), above, unless:

A. The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy, or

B. Provided (ii)A., above, does not apply, the insured remits and the insurer receives the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due or within sixty (60) days of the loss if no notice of premium due is received by the insured, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amount(s) of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by the insurer within thirty (30) days from the date of notice of premium due or within sixty (60) days of the loss, whichever is sooner, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

* * * * * *

(h) General Condition "J" titled "Statutory Provisions", is deleted from and a new general condition "J", titled "Policy Renewal" is added to the section titled "General conditions and provisions" as follows:

General Conditions and Provisions

* * * * * *

J. Policy Renewal: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declarations Page" which is attached to the policy. The Insurer is under no obligation to send any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured, Mortgagee or Agent of the Insured shall not be deemed to be a waiver of this provision on the Insurer's part. The Insurer is under no obligation to assure that policy changes reflected in endorsements submitted by the Insured or Agent during the policy term and accepted by the Insurer are included in any renewal notice or new policy which is sent. "Policy changes" includes the addition of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the premium payment for any such successive policy term is received by the National Flood Insurance Program (NFIP), prior to the expiration date of this policy, subject to "General Condition "E" ", above. The renewal premium payment shall be deemed to be received by the NFIP if the renewal payment is mailed to the NFIP prior to the expiration date and is received by the NFIP prior to or within five (5) days following the expiration date or if the renewal payment is mailed by certified mail to the NFIP prior to the expiration date.

In all cases, whether the renewal premium payment is received by the NFIP after the expiration date of this policy or not, this policy shall be deemed terminated as of the expiration date of the last policy term for which the premium was timely received by the NFIP and the Insurer shall not be obliged to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such

cancellation, termination, policy lapse or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), Executive Order 12127, dated March 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 9, Delegation of Authority to Federal Insurance Administrator)

Issued at: Washington, D.C., April 25, 1982.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 82-12124 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1493; Amdt. No. 14]

Escanaba and Lake Superior Railroad Co. Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 14 to Service Order No. 1493.

SUMMARY: Amendment No. 14 extends the expiration date of Service Order No. 1493, which authorizes Escanaba and Lake Superior Railroad Company (ELS) to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (MILW). This extension permits ELS to continue its operation while finalizing its purchase agreement with the Milwaukee.

DATES: Effective: 11:59 p.m., April 30, 1982, and continuing in effect until 11:59 p.m., June 30, 1982, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

SUPPLEMENTARY INFORMATION:

Decided: April 28, 1982.

Upon further consideration of Service Order No. 1493 (46 FR 10742, 14898, 19822, 25311, 34593, 39148, 44190, 49127, 54562, 58491; 47 FR 624, 4690 and 13530), and good cause appearing therefor:

It is ordered, § 1033.1493 *Escanaba and Lake Superior Railroad Company authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Service Order No. 1493 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended to permit an additional (60) sixty days for the Escanaba and Lake Superior Railroad Company's operations, and to permit the finalization of its purchase agreement with the Milwaukee. This order shall expire at 11:59 p.m., June 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1982.

This action is taken under the authority of 49 U.S.C. 10304–10305 and section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12073 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1249

[No. 38568]

Revisions to Annual Motor Carrier Reporting Requirements; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** issue of March 5, 1982, at 47 FR 9468, the Commission eliminated a number of supporting schedules contained in the Form M (Annual Report for Motor Carriers of Property), as prescribed under 49 CFR Part 1249, that it no longer used on a regular basis. By inadvertent error, Schedule 551, Equipment and Other Long-Term Obligations, was not included in the Appendix.

The purpose of this document is to add Schedule 551 to the list of schedules that were eliminated from the Form M under number (1) of the Appendix, between Schedules 540 and 610C. (Note: This correction was served in a notice to the parties on April 2, 1982.)

FOR FURTHER INFORMATION CONTACT: Wayne D. Howard, (202) 275–7448.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Clapp and Sterrett.

Agatha L. Mergenovich,

Secretary.

On page 9469 of the **Federal Register** of March 5, 1982, add the following in the middle column between the entries for Schedules 540 and 610 C:

Schedule 551—Equipment and Other Long-Term Obligations

[FR Doc. 82-12014 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1495-A]

Burlington Northern Railroad Co. and Fort Worth and Denver Railway Co. Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1495–A.

SUMMARY: This order vacates Seventh Revised Service Order No. 1495, which authority is now contained in Thirty-fifth Revised Service Order No. 1473.

EFFECTIVE DATE: 12:01 a.m., May 1, 1982.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840 or 275–1559.

Decision

In the matter of Burlington Northern Railroad Company and Fort Worth and Denver Railway Company authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).

Decided: April 28, 1982.

PART 1033—CAR SERVICE

Upon further consideration of Seventh Revised Service Order No. 1495 (47 FR 7259), and good cause appearing therefor:

List of Subjects in 49 CFR Part 1033

Railroads.

It is ordered,

§ 1033.1495 Service Order No. 1495–A.

(a) *Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).*

(b) Seventh Revised Service Order No. 1495 is vacated effective 12:01 a.m., May 1, 1982.

(49 U.S.C. 10304–10305.)

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12084 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects geographic coordinates used in delimiting the western boundary of "Closed Area I" for haddock spawning, set forth in the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan), and published in the **Federal Register** as an emergency interim rule on March 30, 1982 (47 FR 13357). This error also appeared in proposed rules published on March 11, 1982 (47 FR 10605). NOAA corrects the emergency interim rule to describe accurately the area which is closed for haddock spawning by the New England Fishery Management Council. The subsequent final rule will also specify the corrected coordinates.

FOR FURTHER INFORMATION CONTACT: Frank Grice, Fisheries Management Division, State Fish Pier, Gloucester, Massachusetts, 617–281–3600.

List of Subjects in 50 CFR Part 651

Fish, Fisheries

Dated: April 29, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Accordingly, NOAA corrects 50 CFR 651.21(a)(1)(i) (A) through (E), published on March 30, 1982, on page 13360, column 3, of the emergency interim rule. The following coordinates for "Closed Area 1":

(A) 41°50′ N. latitude, 69°45′ W. longitude;

(B) 40°55′ N. latitude, 68°55′ W. longitude;

(C) 41°35′ N. latitude, 68°30′ W. longitude;

(D) 41°50′ N. latitude, 68°45′ W. longitude;

(E) 41°50′ N. latitude, 69°45′ W. longitude;

are corrected to read as follows:

§ 651.21 Closed areas.

(a) * * *

(1) * * *

(i) * * *

(A) 41°50′ N. latitude, 69°40′ W. longitude;

(B) 40°53′ N. latitude, 68°58′ W. longitude;

(C) 41°35′ N. latitude, 68°30′ W. longitude;

(D) 41°50′ N. latitude, 68°45′ W. longitude;

(E) 41°50′ N. latitude, 69°40′ W. longitude;

* * * * *

(16 U.S.C. 1801 *et seq.*)

[FR Doc. 82-12128 Filed 5-3-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Certification of Industrial Radiographers

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking, the Commission is presenting an alternative to the present system of permitting a radiography licensee to train and designate individuals as radiographers. The suggested alternative would require that each individual who uses byproduct material in industrial radiography be certified by a third party approved by the NRC. This action is intended to ensure that all radiographers possess adequate training and experience to operate radiographic equipment safely. This action is taken in response to a petition for rulemaking and continuing Commission concern over the problem of radiography overexposures.

DATES: Comment period expires September 3, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Submit comments in writing or present comments orally at public meetings to be conducted in NRC Regions-II, III, IV, V, and in Washington, D.C. in May or June 1982. The exact location, date, and time for each public meeting will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Jones, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–443– 5970.

SUPPLEMENTARY INFORMATION:

Industrial radiography involves the use of relatively large (multicurie) gamma-emitting sealed sources in non-destructive testing of metallic material for defects. Most radiographic operations require use of the sources in open air outside a shielded container. Therefore, a high radiation field is allowed to exist in the areas surrounding the source. NRC licensees must train radiographers to employ sound radiation safety practices to assure that neither the radiographer nor members of the general public are exposed to excessive radiation during the conduct of industrial radiography. The most critical element in the conduct of industrial radiography is for the radiographer to return the source to its shielded container after each radiographic exposure and to verify that the source is in its shielded position.

During the years of 1971 through 1980, radiography licensees, although they constitute approximately 3 percent of NRC material licensees, have been involved in over 60 percent of those reported over-exposures to the whole body that were greater than 5 rems and over 80 percent of whole body exposures greater than 25 rems. The NRC Agreement States have had a similar experience.

Investigations of radiography overexposure incidents have indicated that the majority of the overexposures are the result of a failure by the radiographer to follow established operating procedures. The most common procedure violated is the failure to perform a physical radiation survey after each exposure to verify that the source has been returned to its safe storage position.

Investigations of overexposure incidents by NRC and Agreement State inspectors have also indicated that inadequate training of radiographers may be a significant contributing cause in many of the overexposure incidents. The NRC does not at the present time have an effective means of determining the competency of individual radiographers. The NRC's Office of Inspection and Enforcement, as part of its inspection of radiography licensees, determines the training and knowledge of only a small percentage of the total number of radiographers. Therefore, the training and knowledge of the majority of the individuals conducting radiography in areas under NRC jurisdiction is not known. The lack of an effective means of verifying the training of radiographers by the NRC increases the chance of having inadequately trained individuals using potentially lethal sources of radiation in the public domain.

Under present NRC regulations, individual radiography licensees are permitted under the authority of their licenses to train and designate individuals as qualified to act as radiographers. In such cases, the prospective radiography licensee submits a description of the training program for qualifying individuals to act as radiographers as a part of the overall application for a radiography license. The training program is reviewed for its adequacy by the NRC staff and, if it is found to be acceptable, the licensee is granted authority to train and designate individuals as radiographers. The inherent problem with the present system is the difficulty of verifying the effectiveness of the training programs. The NRC inspectors' primary means of determining the adequacy of a licensee's training program is by inspecting training records. While training records may serve as evidence that training was given, they do not provide an adequate basis for concluding that the training was effective or that individual radiographers are knowledgeable in NRC regulations and the licensee's operating and emergency procedure.

The Nondestructive Testing Management Association (NDTMA) requested, in a 1977 petition for rulemaking, that the NRC amend its regulations to provide for registration, licensing and control of individual radiographers. This advance notice of proposed rulemaking is being published to resolve the NDTMA petition and to further NRC efforts to improve radiation safety in the radiography industry. In August 1978, the NDTMA petition was published for comment in the **Federal Register** (43 FR 34563). Eleven comments were received concerning the petition. The majority of the comments received concerning the petition stated that the present system for designating individuals as radiographers is adequate

and that an NRC licensing program would be costly and would not reduce the number of overexposures in the radiography industry.

In the petition for rulemaking the NDTMA stated that in its opinion the Commission was overlooking a major contributing cause of incidents in the radiography industry. The reference was to cases where the radiographer acts negligently on his own despite being provided proper training, testing, and safety equipment. The NDTMA indicated that a program for licensing and control of individual radiographers would reduce the rate of occurrence of this kind of incident by making individual radiographers more responsible for their actions. The NDTMA added that, "it is not the intent, nor would this proposal in any way reduce the responsibility of the licensee."

The NDTMA petition did not include any information to support its opinion that a national licensing program would motivate individual radiographers to work more safely. Interested persons are specifically invited to comment concerning the motivational aspects of a certification program.

The issue of radiographer licensing has been considered for implementation at various times by the AEC/NRC since 1964. In its past considerations, the staff has not conclusively determined whether an NRC program for licensing of radiographers is desirable. The NRC now believes that due to budgetary constraints and the lack of personnel and equipment, an NEC program for licensing of radiographers is not feasible. However, the NRC does believe that the present system of permitting individual radiography licensees to train and designate individuals as qualified to act as radiographers has deficiencies. An alternative to the present system is discussed below.

Third-Party Certification

The present system for training radiographers permits wide disparity in the competence of individual radiographers depending primarily upon the quality of the particular licensee's training program. The NRC believes the present system would be improved if the final determination of competence to act as a radiographer was made by an independent body. In view of the limited staff resources, the NRC believes the development of a regulatory program that incorporates a third-party certification requirement for individual radiographers is the most feasible means of increasing NRC's assurance of the competency of radiographers. The NRC would encourage and support initiatives on the part of the radiography industry in establishing a third-party certification program for testing radiographers.

Implementation of a third-party certification program would require the development of a certification standard that is satisfactory to the NRC, the radiography industry, and other interested persons. The NRC would also be required to amend 10 CFR Part 34 of its regulations to specify that only individuals who have been tested and certified as meeting the provisions of the standard may act as radiographers under the authority of NRC licensees.

The NRC would especially appreciate receiving comments from organizations that would be interested in participating in a third-party certification program for industrial radiographers. Participants in the program could be either organizations that promote the nondestructive testing industry or organizations that are independent from the industry. The NRC would make a determination as to whether to recognize a particular organization's program for certification. Following acceptance of an organization's certification program as meeting NRC standards, the NRC regulations would be amended to require certification by that organization.

Radiography-Licensee Designation (Status Quo)

An alternative to the third-party certification program would be to continue with the present system of permitting radiography licensees to train and designate their own radiographers.

Invitation To Comment

Comments concerning the desirability of establishing a third-party certification program for certifying radiographers are invited. Comments are specifically solicited concerning the alternatives described in this notice. Suggestions of other alternatives, and estimates of costs for implementation of the programs, are encouraged.

In light of previous discussion, the NRC is particularly interested in receiving comments concerning the following:

1. Is the training provided to radiographers under the present system adequate?

2. Would a third-party certification program reduce the number of overexposures in the radiography industry?

3. Would a third-party certification program motivate radiographers to work more safely?

4. What elements in the present system or in the suggested alternative are particularly desirable or undesirable? Why?

5. If a third-party certification program is adopted, what items should be included in the standard for determining the competence of individuals to act as radiographers?

6. If a third-party certification program is adopted, should it apply to individuals presently working as radiographers or only to new radiographers?

7. If a third-party certification program is adopted, should certificates be issued to individuals for life or should there be periodic renewals of the certification?

8. Would a third-party certification program affect the ability of a licensee to respond to variable manpower needs?

9. Since a third-party certification program would likely to be based on cost recovery by a fee system, would the cost to the licensees of such a program be warranted?

10. Which alternatives of the two discussed (present system, third-party certification) is preferable? Why? Are there other better alternatives? If so, please explain.

11. With respect to the two alternatives, what kind of enforcement action could and should be taken against radiographers who do not operate equipment safely or follow established procedures? What rights should radiographers have with respect to such enforcement actions?

12. Would a small licensee, because of its size bear a disproportionate adverse economic impact under a third-party system?

13. For those organizations that are interested in participating in a third-party certification program, what would be the estimated cost in implementing such a program?

List of Subjects in 10 CFR Part 34

Packaging and containers, Penalty, Radiation protection, Radiography, Reporting requirements, Scientific equipment, Security measures.

(Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201))

Dated at Washington, DC this 27th day of April 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12050 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance Rules

AGENCY: Energy Department.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 19, 1982, the Department of Energy (DOE) published a proposed rule (47 FR 12038) which would comprehensively revise Subparts A and B of the DOE Assistance Regulations, 10 CFR Part 600, and which would make several technical and conforming amendments to Subpart C of 10 CFR Part 600. The deadline for public comments on the proposed rule was April 19, 1982. The Arizona Public Service Company submitted a timely written request for a 30-day extension of the comment period. In response to this request, DOE is extending the deadline for public comments to May 19, 1982.

DATE: Written comments on the proposed rule published at 47 FR 12038 (March 19, 1982) must be received by May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ellen Feinsilber, Financial Assistance Policy Branch (MA-931.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6191.

Issued in Washington, D.C., April 28, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance, Management Directorate.

[FR Doc. 82-12078 Filed 5-3-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 82-308]

Branching in Connection with Supervisory and Non-Supervisory Mergers and Acquisitions

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to amend its policy statement regarding branching by federally chartered savings and loan associations. The amendments are intended to clarify the Board's position on certain matters relating to branching outside the state of an association's home office.

DATES: Comments must be received by: June 3, 1982.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Donna K. Ralston, (202 377-6417), Attorney, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1981, the Board amended its policy statement on branching (12 CFR 556.5; 46 FR 19221, March 30, 1981) to clarify the limited exception to the Board's general policy permitting federal associations to establish branch offices only in the state in which an association's home office is located. The amendments provided that the Board may approve a merger, consolidation, or purchase of assets ("acquisition") resulting in the establishment of a branch office in a state other than the state in which an association's home office is located if (1) the proposed acquisition would be effected pursuant to a plan to prevent the failure of an institution whose accounts are insured by the FSLIC ("insured institution"), (2) the Board determines that the insurance liability or risk to the FSLIC would be reduced as a result of the proposed acquisition, and (3) the Board determines that the insurance liability or risk to the FSLIC resulting from the proposed acquisition transaction would be substantially less than the liability or risk that would result from otherwise equally desirable acquisition alternatives, if any, that would not result in interstate branch operations. In cases where more than one out-of-state association applies for Board approval of an acquisition, the Board will give preference to a particular application on the basis that the applicant is already operating in the same Standard Metropolitan Statistical Area or locality as the other institution or one or more of the other institutions engaged in the proposed acquisition.

On September 3, 1981, the Board again amended its policy statement on branching (46 FR 45120, September 10, 1981) to clarity that an association that has established a branch office in a state other than the state in which its home office is located pursuant to an action to prevent the failure of an insured institution may establish additional branch offices in that state with Board approval.

The Board now proposes to amend its policy statement on branching to clarify the following points relating to branching outside the state of an association's home office:

(1) As long as the establishment of a branch office outside the state of an association's home office will be achieved as part of an acquisition in which the FSLIC will take an action to prevent the failure of one of the institutions involved in the acquisition, it is irrelevant which institution is the survivor or acquirer.

The proposed amendments emphasize the Board's belief that by allowing branch offices to be established in connection with "reverse mergers," the FSLIC is given the flexibility necessary to structure an acquisition in a manner that will result in the greatest reduction of the insurance liability or risk to the FSLIC.

(2) Before determining that a proposal involving branching outside the state of an association's home office should be approved as part of an action by the FSLIC to prevent the failure of an institution, the Board will consider otherwise equally desirable alternatives not involving branching by a federal association outside the state of its home office. The Board's present policy statement specifically refers to an acquisition involving branching by a federal association within the state of its home office as such a possible alternative. Under the proposed amendments, it is clear that such alternatives would also include an acquisition by a state-chartered institution, even if it is not chartered under the laws of, or does not have an office in, a state in which the target institution is located, as long as the laws governing the chartering and operation of both of the institutions involved permit the acquisition.

The proposed amendments also would clarify that the Board will consider any branching alternative that could be approved under the exception to the general rule that is set forth in proposed § 556.5(a)(3)(iii) (described in paragraph (3) below).

The Board believes that in clarifying all of the acquisition alternatives to be considered by the Board before approving the establishment of branch offices by a federal association outside the state of its home office, the proposed amendments emphasize the Board's preference for intrastate branching of federal associations.

(3) The Board may approve the establishment of a branch office in a state other than the state in which an association's home office is located,

provided that the branch office will be established as a result of the consolidation of some or all of the savings and loan subsidiaries of a multi-state, multiple savings and loan holding company. The proposed amendments also would specifically indicate the Board's authority to approve the establishment of additional branch offices by the association resulting from such a consolidation in any state in which the subsidiaries had existing branch office operations prior to the consolidation.

The Board believes that the proposed amendments may be necessary to clarify the present policy statement that multi-state multiple savings and loan holding companies are able to consolidate their savings and loan subsidiaries. It should be noted that only the three multi-state multiple savings and loan holding companies that were "grandfathered" from the prohibition of the Savings and Loan Holding Company Act (12 U.S.C. 1730a *et seq.*) against the formation of multi-state multiple savings and loan holding companies would be affected by the amendments. Consolidation of the interstate savings and loan subsidiaries of a multiple savings and loan holding company would constitute, in effect, an organizational restructuring. Therefore, due to the limited application of the proposed amendments and the fact that the corporate operations of the resulting institution would not differ substantially from the operations of the subsidiaries as separate entities, the Board's policy regarding interstate branching in most non-supervisory contexts and its preference for intrastate branching of federal associations would not be affected.

(4) A federal association that has established branch offices in states outside the state of its home office pursuant to an action to prevent the failure of an institution insured by the FSLIC, may establish additional branch office operations in those states, under current § 556.5(a)(3)(iii). The proposed amendment clarifies the scope of this branching policy. For purposes of branching, such a federal association will be considered as having its home office in each of the states in which it has established branch offices. However, for purposes of branching in connection with another acquisition involving an action by the FSLIC to prevent the failure of an insured institution, such a federal association will be considered as having only one home office, and may permissibly branch outside the state of its home office only if the criteria under § 556.5(a)(3)(ii)(*a*) are met.

In addition to soliciting public comments regarding the proposed amendments, the Board takes this opportunity to solicit public comments regarding any matter relating to branching by federal associations that is currently addressed in its policy statement on branching.

Because there is a present need to clarify Board policy regarding branching in connection with supervisory and non-supervisory mergers and acquisitions and to facilitate the operations of the FSLIC in this area, the Board has limited the comment period to 30 days.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements have been incorporated above in the supplementary information regarding the proposed rule.

2. *Small entities to which the proposed rule will apply.* The proposed rule would apply only to insured institutions.

3. *Impact of the proposed rule on small institutions.* The proposed rule would apply equally to all insured institutions regadless of size.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* There are no alternative methods for relieving the branching restrictions currently imposed on insured institutions.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 556 in Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 556—STATEMENTS OF POLICY

Amend paragraph (a)(3) of § 556.5 by revising paragraph (a)(3)(ii), revising paragraph (a)(3)(iii) and redesignating it as paragraph (a)(3)(iv), and adding new paragraph (a)(3)(iii) to read as follows:

§ 556.5 Establishment of branch offices.

(a) * * *

(3) * * *

(ii)(*a*) Notwithstanding paragraph (a)(3)(i) of this section, the Board may approve the establishment of a branch office in a state other than the state in which the home office is located, provided that:

(*1*) the establishment of the branch office will be achieved as part of a transaction in which the assets of one institution are acquired by another institution, by merger or otherwise, pursuant to an action by the Federal Savings and Loan Insurance Corporation ("Corporation") to prevent the failure of one of the institutions,

(*2*) the Board determines that the insurance liability or risk to the Corporation will be reduced as a result of maintaining the branch office, and

(*3*) if any otherwise equally desirable acquisition alternative has been submitted that could be approved either in accordance with paragraph (a)(3)(i) or (a)(3)(iii) of this section, or where the potential acquirer is a state-chartered insured institution, in accordance with the laws governing the chartering and operation of the institutions that will be parties to the acquisition, the Board determines that the insurance liability or risk to the Corporation resulting from the proposed interstate acquisition transaction will be substantially less than the liability or risk that would result from such other acquisition alternative.

(*b*) In reviewing acquisition alternatives submitted for consideration in accordance with this paragraph (a)(3)(ii), the Board will give preference to a particular alternative on the basis that a home office or an operating branch office of an institution that will be a party to the proposed acquisition is located in the same Standard Metropolitan Statistical Area or locality as a home office or an operating branch office of the other institution or one or more of the other institutions that will be parties to the acquisition.

(iii) Notwithstanding paragraph (a)(3)(i) of this section, the Board may approve the establishment of a branch office in a state or states other than the state in which the home office is located, provided that the establishment of the branch office will be achieved by the consolidation of some or all of the savings and loan subsidiaries of a multistate multiple savings and loan holding company. The Board may approve the establishment of a branch office by the resulting institution in any state or states in which the subsidiaries had existing branch office operations prior to their consolidation.

(iv) Notwithstanding paragraph (a)(3)(i) of this section, in a transaction not involving an action by the FSLIC to prevent the failure of an institution, the Board may approve the establishment of a branch office in any state in which the

applicant has established a branch office pursuant to the conditions set forth in paragraph (a)(3)(ii) of this secton.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, 1729; Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12072 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Agenda

AGENCY: Small Business Administration.

ACTION: Publication of the Semiannual Agenda of Regulations under review or development by the Small Business Administration.

SUMMARY: This is SBA's sixth semiannual agenda of regulations. Although not a regulatory Agency, SBA has attempted to draft agendas that met both the criteria and the spirit of the regulatory review process. This agenda is published pursuant to Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Public Law 96–354 effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

For further information on agenda items, the public is encouraged to contact the individual Agency official listed for the particular item.

For information concerning overall SBA Regulatory Review and Development Program and general semiannual agenda questions, contact Martin D. Teckler, Assistant General Counsel for Legislation, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202/653–6662.

SUPPLEMENTARY INFORMATION: The SBA agendas will contain many regulations which are limited in public impact, but they are included to increase public knowledge of all SBA regulatory activities and allow for increased public participation in the review and development process. Public comments on SBA's previous agendas have been general, and all were positive. None were directed at specific contents, nor were any changes suggested or recommended.

I. Regulations Under Review and Development

The agenda format is nor slightly modified. Part I, Regulations Under Review and Development, includes proposed and final regulations which SBA has issued since publication of the last agenda. Part II, Existing Regulations Selected for Review, informs the public of the regulation review which is currently underway within the Agency. The format for the agenda is:

Part I: Regulations Under Review and Development

A. A summary of the nature of all rules which have been published proposed or final since October 1981, stating the objectives and the legal basis. When a listed rule is a major rule within the meaning of E.O. 12291 or will have significant impact on a substantial number of small businesses, it will be so designated.

B. The approximate schedule for completing action on each rule listed.

C. The name and phone number of an Agency official knowledgeable on each listed rule.

Part II: Existing Regulations Selected for Review

A. A list of existing regulations to be reviewed or promulgated under the terms of E.O. 12291 and the Regulatory Flexibility Act.

B. A summary of the nature of any such rules, a summary of the legal basis for such rules and an approximate timetable for completing action on such rules.

C. The name and phone number of an Agency official knowledgeable on each such rule.

Publication of this agenda does not impose any binding obligation on SBA with regard to any specific item in the agenda. Additional regulatory action not listed on the agenda is not precluded.

Dated: April 28, 1982.

James C. Sanders,

Administrator.

I. Regulations Under Review and Development

Date published and Federal Register cite	Nature of publication	Subject of publication	Approximate date of completion	Knowledgeable official	Legal basis
12/3/81, 46 FR 58701	Notice of proposed rulemaking	Export Revolving Line of Credit Loans, 13 CFR Part 122.	6/1/82	Edwin T. Holloway, 653–6832	15 U.S.C. 636(a).
11/23/81, 46 FR 57266	Final rulemaking	Fixed Program Participation Rules for Section 8(a) Program, 13 CFR Part 124.	11/23/81	Charlie L. Dean, 653–6699	15 U.S.C. 637(a).
12/18/81, 46 FR 61642	do	Disaster Loans, Permitted Use, 13 CFR Part 123	12/18/81	Bernard Kulik, 653–6879	15 U.S.C. 636(a).
1/4/82, 47 FR 9	do	Small Business Lending Companies, 13 CFR Part 120.	1/4/82	Robert C. Hull, 653–7894	15 U.S.C. 636(a).
1/11/82, 47 FR 1109	do	Advance Payments, 13 CFR Part 120	1/11/82	Charlie L. Dean, 653–6699	15 U.S.C. 637(a).
1/15/82, 47 FR 2305	do	SBA Organization, 13 CFR Part 101	1/15/82	Ronald Allen, 653–8538	15 U.S.C. 634(b)(6).
3/3/82, 47 FR 8980	do	Loan Eligibility, 13 CFR Part 120	3/3/82	Edwin T. Holloway, 653–6832	15 U.S.C. 636(a).
3/23/82, 47 FR 12332	do	Standards of Conduct for SBA Employees, 13 CFR Part 105.	3/23/82	Donald W. Farrell, 653–6850	15 U.S.C. 634(b)(6).

II. Existing Regulations Selected for Review

Regulation	Basis for rule	Nature of rule	Timetable for Completion of Proposed rule	Agency official
13 CFR Parts 121, et seq.	15 U.S.C. 632 and 634(b)(6)	Size Standards, complete revision	Summer 1982	Harvey Bronstein, (202) 653–6373.
13 CFR Parts 122, et seq.	15 U.S.C. 636(a) and 634(b)(6)	Business Loan Policy, Miscellaneous revisions based on anticipated changes in authorizing legislation.	Fall 1982	Edwin T. Holloway, (202) 653–6832.
13 CFR Parts 123, et seq.	15 U.S.C. 636(b) and 634(b)(6)	Disaster loans, Miscellaneous revisions based on anticipated changes in authorizing legislation.	Summer 1982	Edwin T. Holloway, (202) 653–6832.
13 CFR Part 120.4 et seq.	15 U.S.C. 636(a) and 634(b)(6)	Eligible loan participants	Fall 1982	Edwin T. Holloway, (202) 653–6832.
13 CFR Part 106 et seq.	15 U.S.C. 501, 502, 503, and 15 U.S.C. 634(b)(6).	State and local development companies, Miscellaneous revisions.	Summer 1982	Edwin T. Holloway, (202) 653–6832.
13 CFR Part 107 et seq.	15 U.S.C. 687(c), (d), and (g)	Complete revision of rules governing small business investment companies.	do	Robert Lineberry, (202) 653–6848.

II. Existing Regulations Selected for Review—Continued

Regulation	Basis for rule	Nature of rule	Timetable for Completion of Proposed rule	Agency official
13 CFR Part 124 et seq.	15 U.S.C. 637(a) and 634(b)(6)	Minority Small Business and Capital Ownership Development.	Fall 1982	r. Robert Wright, (202) 653-6467.

[FR Doc. 82-12043 Filed 5-3-82; 8:45 am]
BILLING CODE 6825-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 271

[Docket No. RM82-26-000]

Impact of the NGPA on Current and Projected Natural Gas Markets

Issued: April 28, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is issuing a Notice of Inquiry to investigate allegations that serious economic distortions may be evolving in the nation's natural gas markets. The Notice of Inquiry is intended to gather information concerning the existence of such distortions, to examine the Commission's administrative authority to reduce any such distortions and to explore the advantages and disadvantages of taking any action. A staff analysis of certain issues relating to eliminating vintaging, either in whole or in part, and establishing a single national rate for gas qualifying for sections 104, 106 and 109 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Suppl. II 1978) is provided in Appendix A. Appendix B is a list of questions on the possible existence of economic distortions, possible administrative action to reduce such distortions and potential impact of such administrative action. The notice invites all interested persons to participate in the inquiry.

DATES: Written comments must be received on or before August 26, 1982.

ADDRESS: Comments must be filed with Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Acting Deputy Assistant General Counsel, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8033.

I. Introduction

There has been considerable debate over the past year concerning the operation and impact of the Natural Gas Policy Act of 1978 (NGPA) [1] on natural gas production, distribution and pricing. These issues have been raised in various proceedings before the Commission. In addition, numerous persons and groups have brought to the Commission's attention allegations that economic distortions are evolving in today's natural gas markets, which may become more serious in 1985 when approximately sixty percent of natural gas wellhead prices will be decontrolled through operation of the NGPA. These persons and groups have urged the Commission to investigate the possible existence of distortions and to examine the extent of its current statutory authority to resolve such problems.

Congress has delegated to the Commission certain authorities under the NGPA and the Natural Gas Act (NGA).[2] In view of these statutory responsibilities, the Commission believes it is required to examine closely the allegations being made.

The Commission, therefore, is issuing this Notice of Inquiry to gather information concerning the existence of problems caused by or resulting from the Commission's administration of the NGPA and NGA. It further wishes to examine the extent of administrative authority available to resolve any such problems and to explore the advantages and disadvantages of taking any action. The Commission invites the participation of all interested person in this inquiry and will consider carefully all information and comments received. Based on the record developed, the Commission will determine whether to initiate a Notice of Proposed Rulemaking and/or to make recommendations to Congress.

II. Background

The following discussion includes a brief summary of natural gas price regulation at the wellhead under the NGA.

It was against the background of the NGA that Congress enacted the NGPA in an effort to correct perceived distortions in the interstate and intrastate gas markets that had caused shortages of supply to consumers. Also included, as background is a discussion of the changes in wellhead price regulation resulting from passage of the NGPA and the role the NGPA was intended to play in smoothing the transition to partial price deregulation in 1985 and 1987.

A. Experience under the Natural Gas Act

Prior to 1954, the wellhead sales price of natural gas was not regulated. In 1954 the Supreme Court held in *Phillips Petroleum Co.* v. *Wisconsin,*[3] that an independent producer of natural gas selling for resale in interstate commerce is a "natural gas company" within the meaning of the Natural Gas Act and that such sales of natural gas are subject to rate regulation by the Federal Power Commission.[4] Thus, wellhead sales of natural gas entering interstate commerce became subject to federal price controls for the first time. However, gas that did not enter interstate commerce, but was produced, sold, delivered and consumed in a single state ("intrastate gas"), generally continued to be sold at unregulated prices.

For a number of years following *Phillips,* price controls on interstate gas did not affect the ability of interstate pipeline purchasers to obtain adequate gas supplies at relatively low prices. Consumers experienced low prices during the period from 1954 to about 1970. When inflation is taken into account, the real cost of residential natural gas service declined substantially in this period, in part due to economies of scale and reduced unit costs as relatively minor construction substantially increased the capacity of

[1] 15 U.S.C. 3301–3432.
[2] 15 U.S.C. 717 *et seq.*

[3] 347 U.S. 672 (1954).
[4] Section 402(a) of the Department of Energy Organization Act, 42 U.S.C. 7172(a), transferred the relevant functions of the Federal Power Commission to the Federal Energy Regulatory Commission.

existing pipeline systems.[5] At the same time, prices offered by intrastate purchasers were generally at the same level or slightly lower than the prices allowed by the Federal Power Commission for jurisdictional sales.[6] Curtailment of firm service was rare and generally resulted from capacity limitations.

Over time, however, decreasing supplies and increasing demand combined to reveal market distortions resulting from the maintenance of price controls within the interstate natural gas market. The cost-based pricing approach which the Commission used to regulate the price of interstate supplies failed to elicit development and committment of new supplies sufficient to offset consumption of existing reserves. Funds potentially available for exploratory efforts frequently were directed to ventures which potentially offered more profitable returns than gas exploration. To investors and producers of interstate gas, low prices meant that full development of replacement supplies of interstate gas was not warranted.[7] The total number of wells for oil and gas dropped almost every year from 1956 to 1971, with the low point occuring in 1971 at 51 percent of the 1956 figure.[8] New gas well completions (indicating the development and extension of existing reserves) fell nearly every year from 1962 to 1971.[9]

However, throughout the 1954–1970 period, demand for natural gas increased sharply, in part because of the decline in real natural gas prices. To consumers, low prices stimulated demand and encouraged consumption. Total natural gas consumption increased from approximately 8.05 Tcf in 1954 to over 20 Tcf in 1969.[10] The combination of expanding demand and declining reserve additions resulted in a decrease in total reserves beginning in 1968. The Nation was consuming gas faster than it was replacing it.[11] From 1966 through 1979, total proved reserves decreased constantly, from 292 Tcf in 1967 to 195 Tcf in 1979.[12]

In the intrastate market, the increased demand for gas, coupled with the decrease in drilling for new supplies, caused prices to increase beginning around 1969. As a result, a price differential developed between the unregulated prices bid by intrastate purchasers and the ceiling prices maintained by the Commission on interstate sales.[13] Because interstate pipeline purchasers were legally precluded from paying price levels competitive with the prices paid by unregulated intrastate purchasers, interstate pipeline purchasers soon began to experience difficulties in contracting for new reserves. The percentage of newly discovered reserves dedicated to the interstate market began to drop by 1970. From 1970 to 1974, one estimate indicates that only about five percent of new natural gas discoveries were committed to the interstate market.[14] By the winter of 1970–71, curtailment of firm service had begun on some interstate pipelines[15] and soon spread to most major companies.

Despite the Commission's administrative efforts to alleviate the problem by creating price incentives and making intrastate gas available to the interstate market, [16] the shortages worsened through 1977. Eventually, it was widely recognized by Congress that inadequate price incentives for independent producers, underpricing of gas to consumers as compared to the price of alternative fuels, and the interstate-intrastate dual market were underlying causes of the nation's natural gas difficulties.[17]

B. Experience under the NGPA

Recognizing that price disparities between the interstate and intrastate markets were distorting the allocation of available gas supplies and that regulated prices for interstate gas were discouraging exploration and development of new supplies, both Congress and the President sought a legislative remedy. The NGPA represented a compromise, reached only after extended negotiations among the Administration, the House of Representatives and the Senate. One purpose of the NGPA was to eliminate interregional price and supply distortions by ending the distinction between the interstate and intrastate markets. Another was to bring the national natural gas market into better balance by reducing the demand for natural gas and increasing supply.[18]

In order to reduce demand and increase supply,[9] the NGPA set ceiling prices for new supplies of gas which generally were higher than the ceiling prices in effect under the NGA. The NGPA divided new supplies into several categories, defined by spud dates, production levels and other well characteristics. The ceiling price established for each category reflected the production incentives that Congress wished to provide for each category. Congress also provided that the new ceiling prices will escalate according to the general level of inflation.

In addition, the prices of most gas developed after enactment of the NGPA will be decontrolled on January 1, 1985. It has been estimated that the gas deregulated in 1985 will represent between 50 and 60 percent of total gas supplies.[20] Additional supplies will be deregulated in 1987. However, approximately 40 percent of total gas supplies, mostly gas committed to the interstate market prior to enactment of

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[5] The average city-gate rate fell from 36¢ per MMBtu in 1962 to just under 33¢ by 1968 and did not rise above the 1962 level until 1970. AGA. *Gas Facts*, 1980 Data, Table 98.

[6] H. R. Rep. No. 95–496, 95th Cong., 1st Sess., Part IV at 90, *reprinted in* 1978 U.S. Code Cong. & Ad. News, at 8534.

[7] *See* H.R. Rept. No. 95–496, Part IV, *supra*, at 97 (1977), *reprinted in* 1978 U.S. Code Cong. & Ad. News 8541.

[8] Energy Information Administration, 1980 Annual Report to Congress [hereinafter cited as *EIA Annual Report*] Table 17.

[9] *Id.* This reduction in new gas well completions is representative of the fact that gas producers, unlike conventional public utilities, were under no legal obligation to serve the public or to discover and dedicate additional reserves. Thus, if incentives were inadequate, it was legally permissible for the producer to direct his capital and efforts to other activities.

[10] *Id.*, at Table 40. *See also, Minerals Yearbook, supra* (1954–1969 data).

[11] *Id.*, at Table 19.

[12] *Id.*, Also, *compare* AGA *Gas Facts*, (1980 data) Table 2 *with* EIA's publication of estimated proved gas reserves in *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves*, illustrating the comparability of some EIA data and AGA data. The only year in which total proved reserves increased was in 1970 when Prudhoe Bay reserves were added. These reserves are yet to be delivered.

[13] H.R. Rep. No. 95–496, *supra*, at 90.

[14] H.R. Rep. No. 95–496, *supra*, at 95.

[15] Several major intrastate pipelines were also affected by the shortages. However, the intrastate markets were able to adapt more rapidly to the shortages, as unregulated prices increased to stabilize supply and demand.

[16] The Commission sought to provide increased incentives by raising the price for gas in Opinion Nos. 699–H and 770–A and the special relief and optional procedure programs. 18 CFR 2.56a(g), 2.56b(h), 2.75 and 2.76. Administrative attempts to provide access to intrastate markets were made in the emergency sales and direct sales programs. See 18 CFR 2.60 and 2.79. In addition to these administrative efforts, Congress adopted the Emergency Natural Gas Act of 1977, Pub. L. 95–2, 91 Stat. 4 (February 2, 1977), which allowed large volumes of intrastate gas to be sold in interstate for approximately six months at prices in excess of the otherwise applicable ceilings.

[17] *See* H.R. Rep. No. 95–496, *supra*, at 90, 110.

[18] *See* H.R. 8444, the natural gas bill based directly on the President's 1977 proposals and passed by the House on August 5, 1977. H.R. 8444, 401(b)(1), 95th Cong. 1st Sess, 123 Cong. Rec. 26,448 (1977).

[19] For a discussion of the purposes of the NGPA, see *Mid-Louisiana Gas Co.* v. *FERC*, 664 F.2d 530, 535 (5th Cir. 1981) *pet. for cert. pending* No. 81–1889; *Oklahoma* v. *FERC*, 661 F.2d 832, 834 (10th Cir. 1981) *pet. for cert. pending* Nos. 81–1478 and 81–1232; *Process Gas Consumers Group* v. *U.S. Dept. of Agriculture*, 661 F.2d 1322, 1357–8 (D.C. Cir. 1981), vacated in part and rehearing *en banc* granted on other grounds by order of November 13, 1981.

[20] *See EIA Analysis, supra*, at pp. 48–51 (Tables 11 and 12); Department of Energy, "A Study of Alternatives to the Natural Gas Policy Act of 1978" (November 1981) [hereinafter cited as the *DOE Study*] at 3.

the NGPA, will remain under price controls until exhausted.

In order to accomplish the second major purpose of eliminating the distinction between the interstate and the intrastate markets, the NGPA established identical ceiling prices for the two markets for each category of new supplies. However, the NGPA preserved to some extent price differences in the interstate and intrastate markets, in that the ceiling prices for most older supplies of natural gas were based on the prices prevailing before the NGPA was enacted. It also preserved the distinction between the two markets in its provisions for partial deregulation, since most gas supplies that were committed to the interstate market prior to enactment of the NGPA will not be deregulated in 1985. On the other hand a significant portion of the gas supplies committed to the intrastate market before enactment will be deregulated.[21] These statutory differences suggest that the average price of price-controlled gas may continue to be lower in the interstate market than in the intrastate market and that, after 1985, price-controlled gas will also constitute a relatively larger part of the total supply in the interstate market than in the intrastate market.[22]

Congress in passing the NGPA also sought to assure a smooth transition as gas supplies become deregulated. To achieve that result, it adopted three mechanisms. First, deregulation was phased-in over a period of nine years. A few categories, constituting a very small portion of the nation's supplies, were deregulated within a year of enactment of the NGPA. In 1985, approximately 60 percent of the supplies will be deregulated, and in 1987 some additional gas will be deregulated. Second, the NGPA provides that the incentive price for new gas supplies will escalate so that by 1985, the price of those supplies would be equivalent to the price of crude oil based on the assumptions made by Congress at the time of enactment. Finally, the provisions of Title II of the NGPA (incremental pricing) were intended to restrain pipelines from bidding up prices for new decontrolled supplies and to cushion the impact of higher gas prices on residential and small commercial consumers.

III. Discussion

Concern has been expressed by many persons that two purposes of the NGPA, to smooth the transition to partial deregulation in 1985 and to eliminate market disparities, may not be fulfilled. The Commission has become aware of numerous allegations that market distortions are occuring today which may become more serious in the next three years as the Nation moves towards price deregulation of an estimated one-half to two-thirds of its natural gas supplies. In addition, the Commission has been requested in a number of petitions for rulemaking to investigate these allegations and to consider its options under both the NGPA and NGA to alleviate problems found to exist.

The Commission, therefore, is issuing this Notice of Inquiry in order to initiate an investigation into all aspects of these allegations and potential solutions. In an attempt to focus this inquiry and public comments on such issues the notice discusses the allegations and relevant requests for Commission action.

A. Allegations of Current Problems

The concerns expressed in regard to market distortions occurring now focus on the wellhead prices being paid for certain categories of high cost natural gas which were deregulated under section 107 of the NGPA in 1979. This is primarily gas produced from depths below 15,000 feet, and it is estimated that production from these wells currently accounts for less than 5 percent of the Nation's total supplies.[23]

As data in the Commission's own files demonstrate, some of this gas is being purchased at prices in excess of $7.00 per MMBtu and even as high as $10.00 per MMBtu.[24] These prices are sustantially above the current regulated price for new gas qualifying under section 102 of the NGPA, which is $3.093 per MMBtu for April, 1982. It is also above the price of competing fuels, such as the Btu-equivalent No. 6 fuel oil (both high and low sulfur), which is one indication of the market clearing price.[25]

As the People of the State of California and the Public Utilities Commission of the State of California (California) state in their Petition for Rulemaking,[26] the Commission's regulations under the NGA permit interstate pipelines to "roll-in" the price of deregulated gas with the prices of all other supplies. Pipelines usually purchase gas from a variety of sources at a wide range of prices. When the pipeline resells the gas, the price paid by the customer to the pipeline reflects, with rare exception, an average of the prices paid by the pipeline to the producers. In both the interstate and intrastate markets, there are both high and low-priced supplies. The high prices paid by a particular pipeline are "rolled-in," or averaged, with the low prices. These averages are "weighted" in the sense that the volume of gas affects the average. If the volumes of high-priced gas are relatively large, the pipeline's average price is relatively high. Conversely, if the volumes of low-priced gas are relatively large, the pipeline's average price is relatively low. The volumes of low-priced gas within this mix of supplies constitute what has been termed the "gas cushion."[27]

Both California and the Laclede Gas Company (Laclede),[28] a gas distribution company in Missouri, allege that the combination of NGPA price deregulation of a small amount of total supplies and the Commission's historic regulation of pipeline rates under the NGA, which allows averaging, unduly subsidizes the production of deregulated gas to the detriment of the ultimate users. Since the price of this deregulated gas is allowed to be "rolled-in" with the price of less expensive supplies, there is little incentive for the purchasing pipeline to attempt to keep the price low through negotiation, according to California and Laclede. Moreover, the overall average

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[21] Natural gas in two categories constituting a significant portion of the nation's supplies will be deregulated in 1985 or 1987 only if the gas was not dedicated to interstate commerce on the day before the date of enactment of the NGPA—natural gas from new on-shore production wells, and natural gas selling for more than $1.00 on December 31, 1984.

[22] However, the Commission recognizes that the price of gas in the market place reflects not only the price paid at the wellhead, but also the costs of transporting and distributing the gas. Moreover, many interstate pipelines have substantial investments in treatment, transportation and storage facilities, including LNG storage facilities. To some extent, differences in these costs and facilities among pipelines may be reflected in their wellhead prices.

[23] *EIA Analysis, supra*, Tables 11 and 12.

[24] *See, e.g.*, Semiannual Purchased Gas Adjustment filed November 30, 1981 by Tennessee Gas Pipeline Company, Docket No. TA82-1-9-000 (PGA 82-1, IPR 82-1, DCA 82-1, R&D 82-1 and GRI 82-1) representing five contract prices for deregulated gas in excess of $9.20 per MMBtu; Semiannual Purchased Gas Adjustment filed January 29, 1982 by Transcontinental Gas Pipe Line Corp., Docket No. TA82-1-29-000 (PGA 82-1, IPR 82-1, DCA 82-1) representing contract prices at $8.18, $9.34, and $10.76 per Mcf; Semiannual Purchased Gas Adjustment filed January 15, 1982 by Trunkline Gas Company, Docket No. TA82-1-30-000-1 (PGA82-1, IPR82-1, TT82-1, AP82-1) representing a contract price at $6.47 per MMBtu.

[25] EIA, *Weekly Petroleum Status Report*, (April 16, 1982), at 23.

[26] Petition of the People of the State of California and the Public Utilities Commission of the State of California, Docket No. RM81-30 (filed April 29, 1981).

[27] More precisely, the gas cushion could be defined as the difference between the amount paid by a pipeline for price-regulated gas and the amount the pipeline would pay for the same volume gas in a completely deregulated market.

[28] Petition of Laclede Gas Company, Docket No. RM82-1 (filed October 2, 1981).

price charged by the pipeline to its distributor and industrial customers is raised. The result, they fear, is that the average pipeline price paid by consumers may rise to or above that of alternate fuels. This could cause industrial users, including electric utilities, to switch from natural gas to other fuels, thereby raising total costs to those customers still buying gas, such as residential and small commercial users.

The high prices currently being paid for deregulated gas may have another effect. The State of Louisiana (Louisiana) [28] and others have argued that in some of the intrastate markets, most of the new gas supplies available for purchase are either gas whose price is already deregulated or gas qualifying for an incentive ceiling price under section 107(c)(5) of the NGPA because of its extraordinary production costs or risks. For example, it has been stated that 70 percent of the new supplies available for purchase in South Louisiana is gas which qualifies under one of the categories in section 107 of the NGPA.[29]

Louisiana alleges that many intrastate pipelines are unable to compete for this high priced gas being produced in their own states because they do not have gas cushions large enough to allow them to roll-in the high prices. Louisiana, as well as the *EIA Analysis* and the *DOE Study*, suggest that some interstate pipelines have a significantly larger portion of lower priced gas and, therefore, a larger cushion than most intrastate pipelines.[30] The result is that intrastate pipelines controlling smaller quantities of low priced gas apparently are unable to bid competitively for deregulated gas supplies, and their total supplies appear to be declining.[31] Both Louisiana and others have argued that these conditions may lead to shortages in a few states in the near future. For example, some data indicate that as much as 10 percent of the entire gas market in Louisiana may have been supplied by interstate pipelines on an interruptible basis through off-system sales during much of 1981.[32]

There is also some evidence that such bidding disparities exist among interstate pipelines,[33] which would suggest that some interstate pipelines are not able to compete for new gas supplies. Some, however, dispute this conclusion. The American Gas Association (AGA) suggests that interstate pipelines with smaller cushions of low priced gas are purchasing more volumes of high priced deregulated gas supplies than those pipelines with a larger share of the cushion.[34]

B. Potential Impacts in 1985 and Beyond

Congress expected that the NGPA pricing mechanisms would result in a smooth transition to partial decontrol in 1985. For example, it appears that Congress intended that the prices under the NGPA for certain new supplies would escalate at a rate which would make them equivalent to the price of oil by 1985. However, because of rapid unforeseen increases in world oil prices since passage of the NGPA, many now speculate that the NGPA growth rate will fail by a wide margin to reach a price equivalent to the adjusted price of oil, which is considered by some to be the market clearing price of natural gas. The *EIA Analysis*, the *DOE Study*, as well as recent studies by the AGA and Energy Action Educational Foundation, all project that there will be a sharp increase in average wellhead prices when partial decontrol occurs in 1985.[35] The AGA, for example, estimates that the average price of decontrolled gas will "fly-up" far in excess of market clearing levels, thereby pulling the average price of all gas above market clearing levels. The *DOE Study*, on the other hand, projects a sharp increase in average prices, but only up to market clearing levels. Nevertheless, in all these projections there is a very sharp increase in average wellhead prices occurring immediately after partial decontrol in 1985.[36]

At the same time, the Commission notes that there has been a substantial recent decline in world oil prices which may persist into the future. It is possible, therefore, that the pricing assumptions built into the NGPA in 1978 may turn out to be valid and that no sharp price increase will occur in 1985. For instance, at $28.00 a barrel for crude oil, which some assert is the current spot market price, the market clearing price for gas can be said to be $3.38 per MMBtu.[37] The April, 1982 price for new gas under section 102 of the NGPA is $3.093. Thus the price of new gas is currently only 27 cents per MMBtu less than the price which would be expected to apply if deregulation occurred today. However, it is difficult to predict whether the crude oil price will remain at current levels; political or economic events between now and 1985 could produce another round of sharp increases. Moreover, given previous world oil prices (some in excess of $38.00 per bbl) coupled with gas contract escalators discussed below, questions about the "fly-up" remain.

The potential for a sharp price increase in 1985 may be affected not only by the then existing price of oil, but also by the existence of indefinite price escalation clauses and take-or-pay requirements in gas purchase contracts. Many contracts contain indefinite price escalation clauses of various kinds. Some require that in 1985, the contract price will rise to the price equivalent of 110 percent of No. 2 fuel oil (home heating oil). Other require a price rise to the average deregulated price paid for other gas in the same county or region. When these pricing terms are combined with high take-or-pay contract requirements (which mean that a pipeline does not have the flexibility to avoid paying for high priced gas even through it may not currently need the gas for its customers or may have other, cheaper supplies available), there is great concern by some that the price increase in 1985 will go even beyond the market clearing price creating a temporary "spike" in gas prices. Since prices would be above equilibrium levels, the price most likely would decline eventually as distributors and pipelines attempt to market surplus supplies.

If in fact these projections of a substanial price spike are accurate, there may be serious consequences in

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[28] Written and oral statement of David Robinson, Transcript of Public Hearing held April 8, 1982, Docket No. RM82-8, pp. 381-392.

[29] *Id.*

[30] *EIA Analysis, supra*, at 48. See also *DOE Study, supra*, at 11. It is somewhat difficult to draw firm conclusions regarding the interstate pipelines' bidding advantage before January 1, 1985 from the data in these studies. The Commission invites data and analysis on this issue.

[31] *EIA Analysis, supra*, at pp. 37, 40.

[32] *Implementation of Title I of the Natural Gas Policy Act of 1978: Hearings Before the Senate Committee on Energy and Natural Resources*, 97th Cong., 1st Sess. (November 6, 1981) Statement of Donald R. Wills, at 426; Supplemental Comments of Donald R. Wills, Appendix C, at 716. *Also see* Written and Oral Statements of the State of Louisiana, Transcript of Public Hearing held April 8, 1982, Docket No. RM82-8, p. 381-392 stating the difficulty intrastate pipelines are experiencing in obtaining deregulated supplies and section 102 gas.

[33] *See EIA Analysis, supra*, Table 19 at 66.

[34] AGA, *Statistical Analysis of Bidding Trends for Decontrolled Natural Gas Under the NGPA*, March 19, 1982.

[35] AGA, *Consumer Impact of Indefinite Price Escalator Clauses Under Alternative Decontrol Plans*, (November 1981). Energy Action, *The Decontrol of Natural Gas Prices, A Price Americans Can't Afford*, (February 1981).

[36] This increase in wellhead prices would not necessarily result in an equivalent increase in residential prices.

[37] This assumes that the market clearing price is 70 percent of the crude oil price. This is a second measurement that has been used by some to evaluate the price at which gas would be marketable at the wellhead in a decontrolled environment.

1985, although some of these consequence may be to some degree an unavoidable part of any transition to partial decontrol. For example, a Petition for Rulemaking by a number of industrial gas users referred to as the Process Gas Consumers Group, the American Iron and Steel Institute, Associated Tariff Equity, The Brick People, *et al.* and the Georgia Industrial Group (Process Gas)[38] states that these price increases would be severely disruptive to both consumers and interstate and intrastate gas markets, and would substantially affect some of this country's most significant industries. Gas consumers may have little or no time to respond to suden price increases. Abrupt increases could seriously disrupt business plans and operations and cause significant hardhip not only to residential gas consumers, but also to those who rely on employment and products from industries dependent on the natural gas industry. Furthermore, if indefinite price escalator to take-or-pay contract provisions cause average burner tip prices to rise above the market clearing price, Process Gas alleges that some industrial customers may switch to alternate fuels. this load loss could result in higher prices for the remaining customers, who would have to carry a larger share of fixed costs.

Moreover, the burden of any sudden increases may be unevenly distributed, which, as process Gas alleges, may create problems in the form of regional price and supply disparties. Under this market distortion theory, pipelines with large price cushions would be able to average the high cost of deregulated gas into their gas cushions, moderating the price increase for their customers. Pipelines with little or no gas caushion, on the other hand, would be at a competaitive disadvantage in bidding for deregulataed supplies. Their customers would potentially experience substantially larger price increases, which might in turn result in loss of load for those pipelines and a shift of supply to pipelines better endowed with relatively low-priced gas that will remain regulated after 1985. For example, Process Gas states that "the uneven distribution of the cushion of price-controlled gas will tend to create widespread inequities, as some pipelines will have surpluses and possibly growing markets while other face shortages and load losses."[39]

This uneven distribution of cushion gas could impact not only interstate, but also intrastate markets. The *EIA Analysis* projects that interstate pipelines will have over twice as much low-priced gas under price controls after 1985 as will intrastate purchasers.[40] With deregulation of additional gas in July 1987, it is projected that interstate pipelines as a group will have a three-to-one advantage over intrastate pipelines in their volumes of low-price gas.[41]

Although the Commission is not satisfied with the information at this point, the claims described above and currently available information suggest the possibility that bidding disparities between pipelines may result in widely varying natural gas prices between regions and in a misallocation of the nation's supply of natural gas. This misallocation could occur in either of two ways. Pipelines with little or no cushion could find it so difficult to compete for new supplies that they would be forced to curtail some customers. Alternatively, they might be able to match supply to demand, but only because their high average gas costs cause them to lose significant amounts of load. Under either alternative, relatively high-valued uses on these pipelines would go without gas while lower-valued uses on pipeline systems better endowed with regulated low-cost gas were served. This result could raise questions of regional fairness, but, as Laclede states, it would also represent an inefficient use of our limited supply of natural gas.[42]

The potential detrimental economic impact of both the price increase and any bidding disparities could affect other regions not directly experiencing curtailments. Industries requiring process and feedstock gas and located in major gas producing states are generally served by intrastate pipelines. Much of this industry supplies basic manufacturing components to other industries located throughout the nation. For example, 70 percent of the petrochemical capacity in the country is located in Louisiana and Texas. The petrochemical industry manufactures basic products, such as anhydrous ammonia and methanol, which in turn are used to make a broad range of products such as fertilizer, formaldehyde and various plastics. Continued availability of these products is important to the operation of many other areas of the economy, such as farming in the Midwest and the automotive industry in Ohio and Michigan. Disruption in one such segment of the economy could have serious "ripple" effects in many other states and might impair the economic recovery of the nation. Of course, any substantial alteration of the Commission's policies or regulations would also have the potential for economic impact which must be carefully studied prior to taking any such action.

IV. Potential Commission Responses

Based on the available data and concerns that have been expressed, the Commission cannot ignore that operation of the NGPA and the Commission's regulation under the NGA may contribute to the distortions in the production, pricing and distribution of gas, collectively called the "market ordering problem." Because of its statutory responsibilities, the Commission believes it is required to investigate these allegations and to determine what, if any, actions under its NGPA or NGA authorities should be taken.

The Commission acknowledges that numerous persons and groups have requested that the Commission take specific actions. The Process Gas petition recommends that a rulemaking proceeding be opened to address the market distortions it outlines.[43] Specifically they request the Commission to consider taking administrative action, among other things, to (1) modify existing ceiling prices for old, flowing gas qualifying under sections 104, 106, and 109 of the NGPA, (2) develop economic incentives, such as an "incentive rate of return," to assure pipelines will attempt to minimize gas purchase costs, (3) limit the applicability of indefinite escalator and take-or-pay contract requirements, and (4) require the filing of all gas purchase contracts.

Laclede also requests the Commission to revise its pipeline regulations to eliminate rolling-in the costs of sales to low priority users and to adopt what is essentially an incremental pricing rate design policy, allocating the cost of high priced gas to the marginal users of that gas.[44] In addition, they recommend other administrative actions, such as eliminating minimum bill requirements from interstate pipeline tariffs and take-or-pay and indefinite price escalator clauses from producer contracts.

California has requested the Commission to study generally whether the purchase of deregulated gas at

[38] Petition of Process Gas Consumer Group, *et al.*, Docket No. RM82-17 (filed March 1, 1982).
[39] Process Gas Petition, *supra*, at 6.
[40] *EIA Analysis*, *supra*, at 48.
[41] *Id.*
[42] Laclede Petition, *supra*, at 8-9.
[43] Process Gas Petition, *supra*
[44] Laclede Petition, *supra*, at pp. 13-15.

current prices is in the public interest and whether the Commission should revise its interstate pipeline regulations to subject deregulated gas now and after 1985 to market forces.[45]

The National Association of Regulatory Utilities Commissioners (NARUC), a nonprofit organization of governmental bodies engaged in the regulation of utilities, filed two petitions to institute rulemaking proceedings.[46] NARUC, as well as the Associated Gas Distributors [47] request the Commission to promulgate regulations requiring interstate pipelines to file copies of their purchase contracts and ancillary agreements with the Commission. NARUC further requests the Commission to examine the effect of take-or-pay provisions and to promulgate regulations prohibiting automatic passthrough of gas purchase costs above a certain level.

In some cases, the Commission has received responses to the above petitions, some of which support the petitions and raise ancillary issues.[48] The Commission has also received other petitions to institute rulemaking proceedings on issues relating to the market ordering problem and pricing of gas supplies.[49]

In addition, as an informal inquiry into the potential impact of and response to market ordering problems, the Chairman of the Commission requested the staff to study the Commission's legal authority as well as issues arising from the possible elimination of the various levels of ceiling prices applying to old, flowing gas developed prior to enactment of the NGPA (commonly referred to as "vintaging") and increasing the maximum lawful price for all flowing gas under sections 104, 106 and 109 of the NGPA to new just and reasonable rates.

In an effort to coordinate the inquiry into these various proposals, the Commission is issuing this Notice of Inquiry to investigate what actions, if any, it can and should take to help reduce any potential market disorder found as a result of this proceeding. There are a number of options discussed below which the Commission wishes to explore, and the Commission seeks active participation in this proceeding by interested persons. Comments are sought not only as to the existence of market ordering problems, but also as to whether the Commission should take any action in this area and, if so, what alternatives within the Commission's authority may best resolve the identified problems.

A. The Elimination of Vintaging and Establishment of New Just and Reasonable Rates

The first option the Commission wishes comments on is the recommendation that the Commission revise the prices of old, flowing gas supplies. Process Gas has recommended that the Commission consider revising the prices of old, flowing gas. Further, the Commission Staff has analyzed several issues relating to raising the maximum lawful price of old gas as well as eliminating in whole or in part the present vintaging of old gas.[50]

Pursuant to sections 104(b)(2), 106(c), and 109(b)(2) of the NGPA, the Commission is authorized to establish higher just and reasonable rates for gas qualifying under sections 104, 106 and 109. Section 104 applies to gas which was committed or dedicated to interstate commerce on November 8, 1978 (the day before the enactment of the NGPA) and for which a just and reasonable rate was in effect on such date. Section 106 applies to interstate and intrastate rollover contracts. Rollover contracts, generally, are those contracts which follow the expiration of a contract at the end of a fixed term that was in existence on the date of enactment of the NGPA. Whether a rollover contract is an interstate or intrastate rollover contract depends on whether the gas was committed or dedicated to interstate commerce on November 8, 1978. Section 109 generally covers gas which is not covered under any other category under the NGPA.

Both staff and Process Gas state that it is possible by using this authority to reduce potential bidding disparity among interstate pipelines and between interstate and intrastate pipelines and to provide for a smoother transition to partial decontrol in 1985. The staff analysis attached in Appendix A, as well as the Process Gas petition, suggest that currently available evidence indicates the existence of emerging market distortions that could result in widely varying prices for consumers and possible shortages of supply depending in part upon the system characteristics of different pipelines and the region of the country which they serve. By establishing higher just and reasonable rates for gas qualifying under sections 104, 106 and 109, the Commission might be able to gradually reduce the price cushion that may permit certain pipelines to outbid other pipelines for new supplies, and narrow the price gap between natural gas and alternative fuels. In addition, the Commission may have the authority to eliminate vintaging in whole or in part under section 104 and to identify and establish a single maximum lawful price applicable to sections 104, 106 and 109 [51] in order to mitigate potential market ordering problems.

If the Commission were to formally propose the establishment of new just and reasonable rates for flowing gas, with or without eliminating vintaging, the Commission would consider the methodologies developed in the Commission's area and national rate cases under the NGA, at least as a point of comparison. However, because these methodologies [52] were designed in part to provide investors with cost-based incentives necessary to undertake new gas exploration and development, one can question whether the Commission should properly rely on these methodologies to establish new just and reasonable rates for old, flowing gas. Nevertheless, it is recognized that the highest currently allowed rate for old gas was set by the Commission using test period data obtained for the period 1975–76. Accordingly, the Commission desires to obtain current data applicable to previously used methodologies for comparison purposes.

The Commission, therefore, requests comments on the extent of its legal authority to establish new just and

[45] California Petition, *supra*, at pp. 5, 7.

[46] Petition of National Association of Regulatory Utility Commissioners, Docket Nos. RM82–20 (filed March 9, 1982) and RM82–21 (filed March 12, 1982).

[47] Associated Gas Distributors, Docket No. RM81–35 (filed June 1, 1981).

[48] *See, e.g.*, Response of Michigan Wisconsin Pipe Line Company, Docket No. RM81–30 (filed Sept. 14, 1981). Response of Minnesota Public Utilities Commission, Docket No. RM82–1 (filed December 11, 1981). Notice of Intervention filed by the Public Utilities Commission of Ohio, Docket No. RM82–1 (filed November 12, 1981).

[49] *See* Northeast Coalition for Energy Equity, Docket No. RM82–19 (filed March 4, 1982). Process Gas Consumers Group, *et al.*, Docket No. RM81–34 (filed June 11, 1981).

[50] Staff's analysis is contained in Appendix A to this Notice. Briefly stated, that analysis reviews the Commission's legal authority and policy considerations for eliminating vintaging and establishing new just and reasonable rates for gas subject to sections 104, 106 and 109. It also discusses several methodologies for implementing these options, including a formula for phasing in a target price, should the Commission decide to propose such administrative action. The Commission requests comments on all aspects of that analysis.

[51] Any Commission action to establish new just and reasonable rates under section 109 will not apply to natural gas subject to section 109(a)(4), which is gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976. The unique statutory framework and economic considerations pertaining to that project make is inappropriate to include that gas within the scope of this inquiry.

[52] See Appendix A for a detailed description of these methodologies.

reasonable rates including the possibility of eliminating vintaging, and the advantages and disadvantages of exericing its discretion. In particular, the Commission draws commentors' attention to the staff analysis in Appendix A and to the questions in Appendix B which describe the comments and data the Commission desires to receive. The staff analysis suggests a range of options for setting new rates for flowing gas, including the possibility of utilizing a hybrid commodity value/cost approach as a new methodology in light of the differences in the regulatory scheme brought about by the NGPA. The Commission hopes that the comments elicited will fully develop the advantages and disadvantages as well as the legal pros and cons of adopting such an approach.

B. Restrictions on Contract Terms

As discussed above, there are allegations that various requirments in producer gas sales contracts may cause or contribute to market disorder now and in 1985. The ones most frequently mentioned are price escalation clauses and take-or-pay requirements. The Commission believes it should consider as part of this inquiry potential administrative responses to these issues.

1. *Price escalation clauses.* The Commission's own files demonstrate that many contracts contain definite or indefinite price escalator clauses which will require the price of natural gas currently under NGPA ceiling prices to be raised once that gas is decontrolled in 1985 or 1987. For example, some clauses are tied to the retail price of fuel oils, either No. 6 or No. 2 fuel oil. Others contain "most favored nation" clauses providing that the price of newly deregulated gas may be no longer than the highest price paid under other contracts in the area.

There is uncertainty as to the effect these price escalator clauses will have on the price of decontrolled gas and the average price of gas after 1985. For example, the AGA believes a projected price "spike" in 1985 above market clearing prices will result from the prevalence of various indefinite price escalator clauses. The *DOE Study*, on the other hand, assumes that no such contract problem will occur. Furthermore, the Commission's own files do not now contain sufficient data to allow the Commission to determine the extent of the clauses and to project their probable effect.

There have been numerous recommendations that the Commission consider taking some administrative action under either the NGPA or NGA to limit the effect of price escalator clauses after partial decontrol in 1985. For example, Process Gas suggests that the Commission could combine an increase in prices for flowing gas to new just and reasonable rates with a condition requiring producers to renegotiate contracts for deregulated gas which contain the escalator clause provisions at issue. Process Gas further believes that the Commission could adopt a rule stating that price escalator clauses which drive individual contract prices above market clearing levels would be considered an abuse under section 601 of the NGPA. Alternatively, they state that the buyer's failure to include a "market-out" clause in a gas sales contract, which would allow a pipeline to insist on renegotiation to prevent derergulated prices from resulting in loss of resale gas markets, could also be considered an abuse under section 601.[53]

Laclede, on the other hand, believes that the Commission has ample authority under sections 5 and 16 of the NGA to prohibit the effectiveness of certain price escalation clauses in gas sales contracts with interstate pipelines. Section 5 states that "[w]henever the Commission * * * shall find that any * * * contract affecting [filed rates] * * * is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable * * * contract to be therefore observed and enforced * * * " Section 16 is the Commission's general rulemaking authority.

2. *Take-or-pay contract requirements.* Take-or-pay requirements of various kinds are also prevalent in producer contracts. There are allegations that high take-or-pay requirements could cause or exacerbate market ordering problems after decontrol by shielding the price of deregulated gas from market constraints. The effects, as alleged, may be to eliminate or reduce the ability of pipelines to restrain decontrolled prices to a level no higher than market-clearing levels and to force pipelines and their customers to pay for supplies even though the high prices of such supplies have caused market losses.

Both Process Gas and Laclede state that the Commission currently has authority under the NGA to restrict the operation of take-or-pay provisions. For example, Process Gas suggests that the Commission may preclude recovery by an interstate pipeline of take-or-pay expenditures unless the gas purchase contract provides some limitation. Process Gas also suggests that the Commission has latitude under section 601 of the NGPA to define excessive take-or-pay obligations as "abusive".

If the allegations of the existence of market ordering problems are accurate, the Commission may wish to consider whether it has any authority under either the NGA or NGPA to mitigate the impact of such contract requirements. At the same time, however, the Commission will need to know as nearly as possible the economic impact and effect that the exercise of any such authority would have on natural gas supplies and production. Hence, the Commission requests comments on the suggestions discussed above. Comments on other potential options are also requested.

C. Revisions to Pipeline Regulation

There are some who believe that the Commission should ascertain whether existing Commission rate policies under the NGA harmonize, to the extent possible, with the operation of the NGPA and, in the alternative, to determine whether changes in the exercise of our section 4 NGA authority would afford a smoother transition to the statutory partial decontrol under the NGPA, either with or without increasing the price of flowing gas. Because the Commission must continue to exercise its NGA ratemaking authority even after wellhead deregulation, it may be appropriate for the Commission to reexamine its ratemaking policies with a view towards possible changes that will more nearly address market reality.

The Commission is responsible for review of rates filed by pipelines under section 4 of the NGA to assure that such rates are "just and reasonable", do not "grant any undue preference or advantage" and do not "subject any person to any undue prejudice or disadvantage." Similarly, the Commission may establish new rates under section 5 of the NGA if it finds the existing rates are "unjust, unreasonable, unduly discriminatory or preferential".

It has been suggested that marginal pricing as opposed to rolled-in pricing for decontrolled gas may bring market pressure to bear on the wellhead purchase price of decontrolled gas. For example, both California and Laclede recommend that the Commission use its authority under section 4 of the NGA to revise the Purchased Gas Adjustment (PGA) regulations [54] and thereby

[53] The Commission notes, however, that Process Gas' suggested reliance on section 601 of the NGPA as a means of dealing with the contract issues is inconsistent with the Commission's current position as outlined in its Statement of Policy on fraud, abuse and similar grounds. Statement of Policy, Docket No. PL82-1-000 (issued February 4, 1982) 47 FR 6253 (February 11, 1982).

[54] 18 CFR 154.38.

prohibit the use of rolled-in pricing for gas above a certain price. These PGA regulations were promulgated pursuant to the Commission's section 4 NGA authority.[55] California argues that the current and projected market situation, indirectly supported by rolled-in pricing, circumvents the intent of Congress that certain deregulated gas supplies be subjected to market forces.[56] They urge the Commission to inquire how to subject deregulated supplies to market pressures and whether rolled-in pricing of deregulated gas is appropriate under the NGPA.

Laclede is also of the view that traditional cost allocation policies have contributed to unusually high prices for deregulated supplies.[57] According to Laclede, high priority residential, commercial and industrial process users are subsidizing boiler fuel users who are demanding more gas under rolled-in pricing than they would demand if required to bear the full incremental deregulated price of that gas. This concern arises, at least in part, from the previously discussed price phenomenon that decontrolled gas is currently commanding prices which exceed a market clearing level. Many observers believe the ability of producers to command these "above-market" prices is aided by the existing Commission policy that allows pipelines to roll-in this high price gas with gas which is price-controlled at below market levels. Stated differently, the argument may be that the cushion of price-controlled gas may subsidize producers' obtaining above market prices for decontrolled gas. To the extent the gas cushion is the cause of any such result, it will not be completely eliminated until all cushion gas is exhausted. It may be that the changes in Commission policy could ease the situation.

Laclede argues that rolled-in pricing maintains and expands what it refers to as low priority boiler fuel markets and provides a profit incentive for pipelines to expand their low priority users by acquiring high-priced deregulated supplies. Laclede suggests that marginal cost pricing principles for all uses of gas by all consumers would be unmanageable, but that there is no reason why such principles could not be applied in a limited fashion to large boiler fuel users.

The Commission invites comments on the need for and advisability of these aspects of California's and Laclede's petitions. Comments are also invited on the extent to which these suggestions would smooth transition through partial to complete wellhead deregulation.

Process Gas recommended that the Commission consider adopting an "incentive rate of return" mechanism that would allow the pipeline's return on equity to be adjusted upward or downward depending on whether its deregulated gas purchases were below or above the market clearing price.[58] Although this recommendation has some interesting possibilities for dealing with potential market ordering problems, the Commission believes that, because of the broad scope of that suggestion as it would be applied to the variety of different fact situations presented in individual pipeline rate cases, it would not be appropriate to consider it in this proceeding. However, to the extent such a position is offered by parties to individual rate proceedings, the incentive rate of return will be considered in the context of those cases where full development of all the relevant facts relating to return can be reviewed.

V. Potential Impact.

The Notice of Inquiry does not propose solutions, but initiates an investigation into the possible existence of a market ordering problem and possible courses of corrective action, should such problem exist. If a market ordering problem does exist, the Commission either could attempt to mitigate market disortion by proposing administrative remedies or recommend to Congress that it enact an appropriate legislative solution, or a combination of both.

Should the Commission decide to initiate some form of administrative action to correct these distortions, that action would probably have various effects on different aspects of the nation. Many questions about the potential impact of an administrative remedy need to be answered before deciding whether to propose such action.

Administrative actions could have a significant impact on the economy. If the allegations about a substantial price "spike" in 1985 are correct, the sudden increase would have an obliviously disruptive effect on consumers individually and on the economy generally. It can be argued that raising prices of flowing gas gradually before 1985 would mitigate that disruption. It would also provide certainty which would assist industrial gas consumers in estimating their energy costs, thereby mitigating the disruptive economic effects of a sudden price increase in 1985. However, it has been argued that increasing the price of flowing gas will have a significant impact on the rate of inflation in general and consumer gas in particular. It has also been argued that such administrative action may have an adverse impact on employment, as businesses attempt to reduce costs to maintain their profit margin. It has also been argued that any inflationary impact could affect both public and private expenditures (including some benefits under social and retirement programs) which are related to the consumer price index or other price indices.

Administrative action affecting gas prices could plausibly affect the ability of America's exports to compete with other products internationally. Prices of exported products that require the use of gas at some stage could increase to the point where they are no longer competitively priced on the international market. On the other hand, if the alleged disordering of the markets is a reality, this same effect could presently be occurring, for example, in petrochemical plants, most of which are located in markets served by intrastate pipelines. Similarly, prices for some domestic products relative to imported products could be adversely affected. Comments and data are invited in connection with these issues.

If the gas cushion is unevenly distributed among pipelines, then raising flowing gas prices or taking other administrative action could mitigate this discrepancy and move towards reducing the bidding disadvantage which some pipelines allegedly will experience. Alternatively, maintaining the existing gas cushion but prohibiting pipelines from rolling-in deregulated prices with their gas cushion (assuming the Commission has such authority) may accomplish the same resutl. In either case, competitive bidding could reduce the price of deregulated supplies. However the potential impact of either administrative action on consumers and on regional discrepancies in supply and price may be quite different.

If deregulated supplies are subjected to competitive bidding either by raising the price of flowing gas or prohibiting the averaging of deregulated prices into gas cushions, lower prices for such gas could affect the incentives to develop those supplies, both in the short and long-term. Prices could decrease to a level where the risks and corresponding returns no longer justify exploratory efforts. Eventually, long-term supplies of gas could be affected as producers invest in other projects with higher returns. It is unclear to what level the

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[55] *See* Order No. 452, 47 FPC 1049 (1972); Order No. 452–A, 47 FPC 1510 (1972).

[56] California Petition, *supra*, p. 4.

[57] Laclede Petition, *supra*, p. 3, 8–16.

[58] Process Gas Petition, *supra*, p. 13.

price would have to decrease before producers would begin to consider abandoning those efforts. Comments are invited on all aspects of the potential impact of administrative action on production levels in the short-term, mid-term, and long-term.

Administrative action affecting take-or-pay provisions and most-favored-nation clauses or requiring market-out clauses could affect producres' and pipelines' marketing practices. If the effect varied throughout the industry, it is conceivable that new market distortions could emerge. Comments are invited on the extent to which such action would achieve bidding parity without resulting in new distortions.

The Commission believes that it has an obligation to consider the potential impact on all aspects of the nation prior to proposing any administrative action to reduce the market ordering problem. Commentors are invited to submit data and to discuss all aspects of the potential effects of such administrative action. Such data and discussion may include the issues discussed above and, among other things, any other impacts on regional distortions, allocation of supplies, oil imports, fuel switching, entitlement programs and economic recoverys.

VI. Request for Public Comment

A. Written Comments

The Commission recognizes that the issues discussed in this notice may have a significant impact on the gas industry, its consumers, small entities and other segments of the economy. The Commission urges all interested persons to submit written comments, data, views, or arguments on issues raised in this notice. Commenters are invited to address any particular issue or all aspects of the notice and the staff analysis as they find appropriate. In addition, Appendix B contains a list of more specific questions on these issues on which the commenters may focus in responding. To the extent that several groups or individuals may have similar interestss, they are encouraged to file joint comments.

B. Procedures for Filing Written Comments

In view of the breadth and complexity of the issues raised by this notice, the Commission will provide ample time and opportunity for comments from interested members of the public. Accordingly, all initial comments received by the Commission prior to 4:30 p.m. e.d.t. on August 26, 1982, will be considered. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM82-26-000. An original and 14 copies should be filed.

All comments will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during regular business hours. In addition, copies of all timely filed comments will be available for purchase at the Commission's Division of Public Information by September 15, 1982.

C. Public Hearings

The Commission is considering providing the opportunity for an oral presentation of views at one or more public hearings. The data and location of any public hearings will be noticed in the **Federal Register**.

(Natural Gas Act, as amended, 15 U.S.C. 717, Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301)

List of Subjects

18 CFR Part 154

Natural gas.

18 CFR Part 271

Natural gas; High-cost gas, Tight formations.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A.—Staff Analysis

The Notice of Inquiry states that the Commission invites comments on the possible revision to prices for certain categories of gas. Should the Commission consider eliminating vintaging, either in whole or in part, and establishing a single national rate for gas qualifying for sections 104, 106 and 109, staff believes there are certain issues the Commission should consider. The following is staff's analysis of those issues.

A. Elimination of Vintaging and Establishment of New Just and Reasonable Rates

Pursuant to sections 104(b)(2), 106(c) and 109(b)(2) of the NGPA, the Commission is authorized to establish higher just and reasonble rates for gas qualifying for sections 104, 106 and 109. Those sections have identical language, which states,

The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) Higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) Just and reasonable within the meaning of the Natural Gas Act.

It is possible that under this authority the Commission could reduce possible bidding disparity among interstate pipelines and between interstate and intrastate pipelines and provide for a smoother transition to partial decontrol in 1985. By establishing higher just and reasonable rates for gas qualifying for sections 104, 106 and 109, the price cushion that may permit certain pipelines to outbid other pipelines for new supplies could gradually be reduced, and the price gap projected by some between natural gas and alternative fuels could be narrowed. Specifically, there may be authority to eliminate "vintaging" in whole or in part and to identify and establish a single maximum lawful price applicable to sections 104, 106 and 109 [1] in order to satisfy the Commission's objectives.

"Vintaging" refers to the practice historically followed by the Commission of establishing higher ceiling prices for more recently developed wells. Under that practice, gas from older wells was generally kept at lower ceiling prices. Section 104 applies to gas which was committed or dedicated to interstate commerce on November 8, 1978 (the day before the date of enactment of the NGPA) and for which a just and reasonable rate was in effect on such date. Section 106 applies to interstate and intrastate rollover contracts. Rollover contracts, generally, are those contracts which follow the expiration, at the end of a fixed term, of a contract that was in existence on the date of enactment of the NGPA. Whether a rollover contract is an interstate or intrastate rollover contract depends on whether the gas was committed or dedicated to interstate commerce on Novembr 8, 1978. Section 109 generally covers gas which is not covered under any other category under the NGPA.

1. *Elimination of vintaging.* Given the Commission's statutory authority under

[1] Should the Commission establish new just and reasonable rates under section 109, it may wish to consider excluding from its rule natural gas subject to section 109(a)(4), which is gas produced from the Prudhoe Bay Unit of Alaska and transported through the system approved under the Alaska Natural Gas Transportation Act of 1976. The unique statutory framework and economic considerations pertaining to that project may justify excluding such gas from consideration.

sections 104(b)(2), 106(c) and 109(b)(2) to set higher just and reasonable rates for gas qualifying for those sections, the Commission probably has the legal authority to eliminate vintaging, if such elimination is found to be just and reasonable, by setting a single just and reasonable rate for all gas currently vintaged. The Commission alternatively embraced and backed away from vintaging throughout the 1960's and 1970's. The elimination of vintaging has, therefore, been considered by the Commission and reviewed by the courts on several occasions.

The use of vintaging appears to have been primarily the result of a Commission policy decision to avoid raising consumer rates by limiting the so-called "windfalls" to producers of low-cost gas properties. Just what constitutes a windfall is somewhat unclear. Generally, windfalls have been equated with some level of "excessive profits."[2] In Opinion No. 770, in which the Commission abandoned its previously announced policy to eliminate vintaging, the Commission expressed concern that it should "preclude the exaction of excessive and unjustifiable economic rent from flowing gas."[3] However, the desire to limit windfalls has always had to be weighed against the counter-balancing goal of insuring adequate future gas supplies.

For example, in 1972, the Commission recognized that vintaging may be inappropriate.

> We believe vintaging is an anachronism which we should now eliminate. Vintaging operates to discourage development of the full productive capacity of acreage committed to the interstate market, for even though much developmental drilling is undertaken at current costs, gas production obtained thereby is priced at the *lower* of two rates, when it is the *higher* of the two that is Commission-designed to provide the incentive for development of additional gas supplies.[4]

When the Commission established the first national gas rates in Opinion No. 699–H, it again decided that there was no rational basis for imposing vintaging in the long term.[5] On judicial review of Opinion No. 699–H, the Court recognized that the Commission was not bound by its previous vintaging policies, but that the Commission should "be permitted latitude to evaluate old experiments and modify or abandon them when [its] best judgment require[s] such course of action."[6]

The Commission abandoned its goals of eliminating vintaging in Opinion Nos. 770 and 770–A in a period of rapidly rising costs for equity reasons.[7] In affirming the Commission's authority to reinstate vintaging, the Court recognized that it "was within the policy latitude of the Commission, in its balance of interests," to minimize the harmful economic dislocation due to increased rates.[8] This same policy latitude which permitted the former Commission to institute and eliminate vintaging may permit the Commission to again address the issue.

There are strong policy reasons which suggest that the Commission should consider eliminating vintaging, if it is determined that there are market ordering problems caused or exacerbated by uneven gas cushions and the potential for a substantial price increase in 1985. First, the primary policy rationale that historically has supported vintaging may have been undermined. If the projections of market clearing prices in 1985 are correct, consumers will not benefit from the continuation of vintaging after 1985. Competitors for deregulated gas may bid the price of newly deregulated gas up so high that the weighted average price of all gas may reach or go above the market-clearing level.[9] In that case, the weighted average price of natural gas at the wellhead, when added to the cost of transmission and distribution, could be approximately equal to the price of alternative fuels, and consumers would receive no benefits from the continuation of controls on vintage gas in 1985. For the same reason, the elimination of vintaging would have little or no direct effect on the price of gas sold to consumers because of this averaging process. Therefore, after partial deregulation in 1985, the principal difference between eliminating vintaging and not eliminating vintaging would not be the average price paid by consumers, but the distribution of wealth among producers[10] and the ability of interstate and intrastate pipelines to compete with and among one another for new supplies.

Second, the elimination of vintaging may be appropriate because, combined with partial decontrol, it may be a major factor exacerbating the market ordering problem. Some interstate pipelines may have acquired, in varying degrees, a bidding advantage in competing for deregulated supplies. Those pipelines with the largest volumes of low-priced vintaged gas may compete most successfully for deregulated gas.[11] Thus, a combination of vintaging and the availability of newly deregulated supplies in 1985 may skew the distribution of gas supplies in favor of those pipelines with large price cushions.

Finally, vintaging may discriminate unreasonably against customers of pipelines that have a much smaller price cushion. If pipelines with low weighted average costs are in a better position to obtain new supplies, their customers are more certain of delivery of their supplies and lower prices. This advantage is the result of a pipeline's historical, fortuitous opportunities to contract for large volumes of low-priced vintaged gas and bears no rational relationship to its customers' demands or priority uses.

If the Commission were to eliminate vintaging and establish a new just and reasonable rate, that rate could be collected only if there is adequate contractual authority. This is consistent with section 101(b)(9) of the NGPA which, briefly stated, provides that the maximum lawful price does not supersede the price established under any contract, so long as the contract price does not exceed the applicable maximum lawful price. Thus, those prices would operate only as ceiling prices and could be charged and collected only if permitted by the applicable agreement.

2. *New just and reasonable rates.* It may also be appropriate to consider the establishment of new just and reasonable rates for gas qualifying for sections 104, 106 and 109. Congress did not provide extensive guidance regarding the scope of the Commission's authority to establish just and reasonable rates under sections 104(b)(2), 106(c) and 109(b)(2). Clearly, however, the rates prescribed under those sections must be just and

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[2] *See American Public Gas Association* v. *FPC*, 567 F.2d 1016, 1033 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 907 (1978).

[3] Opinion No. 770, 56 FPC 509, 521 (footnote omitted).

[4] 48 FPC 1298, 1308 (1972) (emphasis in original).

[5] 52 FPC 1604, 1637–8 (1974).

[6] *Shell Oil Co.* v. *FPC*, 520 F.2d 1061, 1077–8 (5th Cir. 1975) *cert. denied*, 426 U.S. 941 (1976).

[7] Opinion No. 770–A, 56 FPC 2698, 2705 (1976), *aff'd American Public Gas Association* v. *FPC*, *supra*.

[8] *American Public Gas Association* v. *FPC*, *supra*, at 1034.

[9] *DOE Study*, *supra*, at 8. *See also* H.R. Rep. No. 95–496, Part IV, *supra*, at 119.

[10] Under complete regulation, producers receive approximately the same price for the most part; under partial deregulation in 1985, producers of gas still subject to regulation receive less than producers of deregulated gas.

[11] *See* Statement of Policy, Docket No. PL82–1–000, (issued February 4, 1982) *mimeo.* at p. 19–20, 47 FR 6253 (February 11, 1982). But see AGA, *Statistical Analysis of Bidding Trends for Decontrolled Natural Gas Under the NGPA*, March 19, 1982.

reasonable "within the meaning of the Natural Gas Act."

Under the Natural Gas Act, the Commission used a variety of approaches to prescribe just and reasonable rates for producer sales. Although the Commission began by pricing gas from each producer on a traditional cost-of-service basis, that approach proved unworkable because of the large number of producers involved. The Commission then initiated proceedings to establish area rates applicable to entire producing regions. In *Permian I*[12] the first of the area rate cases, the Commission established the basic methodology employed in all subsequent area and national rate cases. The basic methodology developed in *Permian I* was adjusted and altered as the Commission gained experience with it and attempted to resolve a growing supply problem for the interstate market.

Permian I and each of the subsequent methodologies adopted by the Commission was challenged and tested in the courts. Although the Commission's attempts to respond to supply problems were not affirmed at every turn, the methodologies adopted for Permian Basin, the first national rate case in Opinion No. 699–H,[13] and the subsequent national rate case in Opinion Nos. 770 and 770–A[14] were affirmed.[15] The *Permian I* methodology was based on cost-based price principles, but was also designed to provide investors with the incentives necessary to undertake new gas exploration and development projects and, thereby, increase the discovery of gas reserves.

Basically, the *Permian I* methodology attempted to estimate the average unit cost per Mcf of the gas produced from successful gas wells during a selected test period. This unit cost was derived by dividing the cost per foot of drilling and equipping the average successful gas well by its estimated productivity. Estimated productivity was derived by dividing the additions to non-associated gas reserves by related gas well footage.[16] The costs incurred in unsuccesful wells were treated as expenses, and were not included in the investment rate base. The methodology also provided for a rate of return based on average investment recovered over the depletion life of the average gas well.

On June 21, 1974, the Commission issued Opinion No. 699, its first nationwide rate order. The method employed in that opinion was essentially the same as the one used in *Permian I* except that it further emphasized consideration of the need to include non-cost factors to provide production incentives. In Opinion No. 699–H issued December 4, 1974, substantive changes were made to the *Permian I* method. The changes permitted expenditures for unsuccessful ventures to be included in the investment rate base, adopted discontinued cash flow (DCF) analysis to improve the accuracy of the rate of return calculation, and considered the effects of the federal income tax in computing the costs. Specifically, the DCF analysis recognized that the value of an investment extends over time and that the present value of the cash flow from that investment must yield a rate of return comparable to other investments with similar risk. By examining the cash flow of the investment over the life of the project, the DCF analysis was able to account for cost of capital for invested funds, including dry hole expenditures, and variations in cash flow. By viewing the project in its entirety, the DCF analysis permitted the Commission to set a rate of return that compensated investors for their risks and encouraged future drilling efforts.

Opinion No. 770, issued July 27, 1976, and Opinion No. 770–A, issued November 5, 1976, established gas prices based on the cost methods employed in Opinion No. 699–H except for a significant modification caused by admendments to the Internal Revenue Code. The Tax Reduction Act of 1975, 89 Stat. 26, Pub. L. 94–12, for the most part, repealed the depletion allowance for natural gas production. The Commission found it necessary to factor into the Opinion No. 699–H cost model both tax savings and tax liabilities. It also considered the cost-based price in relation to other economic factors, such as market values, inflation, supply and demand, and the costs of alternative fuels. Specifically, it examined the commodity value of gas in the energy market and the possible effects of raising gas to that price.[17]

In Opinion No. 770–A, the last national rate opinion, the Commission again included non-cost factors to support increased exploration and development of new reserves. The Commission examined, among other things, the relationship of its cost-based rate to intrastate gas prices, the commodity value of substitute fuels, and the cost to consumers of using alternate fuels if natural gas supplies were not increased. It also examined the allocation of gas supplies between the interstate and intrastate market and recognized the need to raise prices to mitigate an uneven distribution of gas supplies between the two markets.[18]

To arrive at a just and reasonable rate, as the courts have interpreted that term under the Natural Gas Act, it would be necessary to balance the interests of the investors and the consumer, and serve the public interest. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *City of Detroit* v. *FPC*, 238 F. 2d 810 (D.C. Cir. 1955), *cert. denied* 352 U.S. 829. In *FPC* v. *Hope Natural Gas Co.* 320 U.S. 591, 602 (1944) the Supreme Court recognized that it is the end result, and not the formula used to obtain that result, that is examined in determining whether the rate is just and reasonable. The Court stated:

> [T]he Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of "pragmatic adjustments." * * * Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. (citations omitted).

The staff is mindful that producer rate orders issued by the Commission and substained by the courts have been justified primarily by cost-based calculations. On two occasions when the Commission attempted to rely entirely on market forces to define the just and reasonable rates, the Commission was reversed. In one case, the Supreme Court held that the Commission's indirect regulation of small producers was invalid, not because the scheme was outside the Commission's statutory authority, but because the order was too ambiguous to satisfy the standard of clarity that an administrative order must exhibit. *FPC* v. *Texaco*, 417 U.S. 380 (1974). Nevertheless, the Court recognized that

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[12] Opinion No. 468, 34 FPC 159 (1965).

[13] 52 FPC 1604 (1974).

[14] Opinion No. 770, 56 FPC 509 (1976). Opinion No. 770–A 56 FPC 2866 (1976).

[15] *See, Respectively, Permian Basin Area Rate Cases*, 390 U.S. 747 (1968(*Shell Oil Co.* v. *FPC*, 520 F. 2d 1061 (5th Cir. 1975), *cert. denied* 426 U.S. 941 (1976); and *The Second National Natural Gas Rate Cases*, 567 F. 2d 1016 (D.C. Cir. 1977), *cert den.* 435 U.S. 907 (1978).

[16] *See* Opinion Nos. 770 and 770–A, *supra*, for more detailed descriptions of the derivation of each cost element.

[17] Opinion No. 770, 56 FPC 509, 582–3.

[18] Opinion No. 770–A, 56 FPC 2866, 2768.

the Commission lacks authority to rely exclusively on market forces to set just and reasonable rates. *Id.*, at 400.[19] In the other case, the D.C. Circuit reached a similar conclusion in response to the Commission's efforts to rely on "field" or "commodity" prices to determine just and reasonable rates for pipeline production. *Detroit, supra.* The Court recognized that while a rate determined by commodity value is not necessarily prohibited by the just and reasonable standard, the Commission must demonstrate that such a rate is no higher than that reasonably necessary to satisfy the purposes advanced for the rate. *Id.*, at 817. The Court also indicated that, although a conventional rate base methodology is not the only methodology authorized by the statute, it must be used, at least, as a "basis of comparison," or "point of departure." *Id.*, at 818–9.

Subsequent decisions reviewing rates set for independent producers under the Natural Gas Act have recognized the importance of considering non-cost factors. As stated by the Supreme Court in *Permian Basin, supra,* at 815, affirming the FPC's first experiment in setting area-wide rates,

> The Commission's responsibilities oblige it to give continuing attention to values that may be reflected only imperfectly by producers' costs; *a regulatory method that excluded as immaterial all but current or projected costs could not properly serve the consumer interests placed under the Commission's protection.* (emphasis added).

In combination with these perspectives on methodologies for rate regulation, some courts have recognized the changing perspectives of producer regulation itself. For example, in *Permian Basin, supra* at pp. 756–7, the Supreme Court viewed producers of natural gas as something other than traditional public utilities when it stated,

> Producers of natural gas cannot usefully be classed as public utilities. They enjoy no franchises or guaranteed area of service. They are intensely competitive vendors of a wasting commodity they have acquired only by costly and often unrewarded search. Their unit costs may rise or decline with the vagaries of fortune. The value to the public of the services they perform is measured by the quantity and character of the natural gas they produce, and not by the resources they have expended in its search; the Commission and the consumer alike are concerned principally with "what [the producer] gets out of the ground, not * * * what he puts into it * * *" *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 649 (separate opinion).

More recently, it has been recognized that Congress, by enacting the NGPA, apparently no longer views producers as monopolists who should be subjected to traditional public utility regulation. In *Pennzoil Co.* v. *FERC*, 645 F. 2d 360, 378–9, (5th Cir. 1981) the court stated,

> * * * Congress apparently decided that gas producers do not have "natural" monopoly power; that is, the industry does not possess the inherent technical characteristics that prevent its efficient and economical operation unless operated as a monopoly. Therefore, the theory that a regulatory agency is necessary to represent consumers when they bargain on rates with a natural monopolist like a utility no longer applies to gas production. (footnote and cite omitted.)

These cases indicate that gas producers may no longer be considered to comprise a traditional class of public utilities and that effective rate regulation of that industry may bear little or no resemblance to traditional cost-based rates. In view of the scheme of partial deregulation that Congress chose to enact in the NGPA, such traditional cost-based regulation may in fact be conterproductive. In order to accomplish the goals of the NGPA, it may be necessary for the Commission to abandon such traditional methodologies and rely on other standards for setting rates. In view of Congress' changing perspective of producer regulation, Congress may have intended that this standard be modified in accordance with its views.

Based on these perspectives, the Commission now may have the authority to set rates based on commodity value alone, authority that the Commission probably did not have prior to the enactment of the NGPA. Such authority may permit the Commission to raise the price of gas subject to sections 104, 106 and 109 to a just and reasonable rate that reflects the commodity value of gas. If there is such authority, Mr. Justice Jackson's observation in his concurring opinion in *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581, 612 (1954) was prescient when he stated, "[f]arsighted gas regulation will concern itself with the present and future, rather than with the past, as the rate-base formula does."

Commenters are invited to comment on this analysis and on all aspects of the Commission's authority to set just and reasonable rates, especially the extent to which cost-based methodologies may be abandoned in setting just and reasonable rates. In addition, the staff seeks to determine the rates that the *Permian I* and subsequent methodologies would yield if they were adjusted to reflect current cost and production data. Comments and information which will aid the staff in reaching this determination are specifically invited. Such information includes, for example, costs of production facilities, lease acquisition, dry holes, exploration and drilling, and current productivity. Should the Commission consider establishing a new just and reasonable rate for section 104, 106 and 109 gas, it would be appropriate to apply one of the methodologies to current costs and productivity. The use of such a methodology would establish a just and reasonable rate and could serve as a point of comparison even if it were decided to adopt an entirely new rationale, such as commodity value.

B. Implementation of Methodologies

The previously approved methodologies of *Permian I,* Opinion No. 699–H, and Opinion Nos 770 and 770–A can be used as a tool to estimate a just and reasonable rate based on current cost data. These methodologies, together with any other methodology developed (including, for example, the economic model considered in Opinion No. 770–A), hopefully would provide a range or zone which could be used as a basis for selecting an appropriate rate or rates for gas otherwise priced under sections 104, 106 and 109. Determination of an appropriate price and methodology would depend on the final assessment of the nature and extent of the market ordering problems, as well as an assessment of the Commission's legal authority.

There are numerous options which are available to the Commission to implement the above-discussed considerations. Some of the options that are available are summarized below.

First, it is possible that the desired goals may be achieved by raising the ceiling price for all pre-1973 vintage gas subject to Opinion No. 749 to the cost-based rate determined for 1973–1974 vintage gas.[20] Although this option is available to address the potential market ordering problems, this approach could be justified even without those objectives. The rates determined in Opinion No. 749 were based on average costs for all pre-1973 wells. Since the issuance of Opinion No. 749, however, many of the older, low-cost wells have been depleted so that the average costs

[19] It is arguable that this holding may no longer apply to producer regulation. By enacting the NGPA and its scheme of partial deregulation, Congress arguably abandoned the view that field pricing of natural gas is subject to monopolistic forces an relied on other motives in maintaining controls on other categories of gas. These changed circumstances may support the view that the Commission can rely on market forces to achieve a smooth transition to decontrol. *See* appendix, *infra.*

[20] Opinion No. 699–H established the cost-based rate for 1973–1974 vintage gas. Opinion No. 770–A revised that rate upward.

for pre-1973 wells are now weighted by higher cost wells, *i.e.*, pre-1973 wells that principally have higher operating costs and higher average unit costs. This fact alone could justify a price adjustment for pre-1973 wells.

Second, the rates set in Opinion No. 770–A for post-1974 gas could be revised. At the time Opinion No. 770–A was promulgated, estimates were used for several variables (*e.g.*, productivity, well costs, etc.) which had an important impact on the computation of price. Actual data are not available and could be used to revise the applicable just and reasonable rate for post-1973 gas. This approach closely follows past Commission procedures whereby prior rates for earlier biennia were raised because of the availability of actual cost data.[21] However, because this approach would only affect a limited quantity of vintaged gas, it is possible it would not accomplish the desired goals. Alternatively, the actual 1975–1976 cost and production data could be used in conjunction with the Opinion No. 770–A methodology to compute a ceiling price not only for Post-1974 gas, but also all other section 104 gas and section 106 and 109 gas. It is possible that this option would significantly mitigate any market ordering problems.

Third, the maximum lawful price for all gas subject to section 104 and 106 could be raised to the highest price now available for section 104, the post-1974 vintage price. That price, which is also equal to the section 109 price, is closer to the commodity value of natural gas and would better recognize the replacement cost of gas supplies. Alternatively, the price of such gas could be raised to its commodity value. The commodity value in 1985 has been estimated to be approximately 70 percent of the Btu-equivalent price of crude oil.[22]

Fourth, it is possible that raising the price of section 104, 106 and 109 gas to the section 103 price would accomplish the goals of this proposal. Alternatively, current cost data could be used in the previously approved methodologies (*Permian I*, Opinion No. 699–H and Opinion No. 770–A) to compute rates necessary to mitigate market ordering problems.

Regardless of the methodology and price that may be selected, it may be desirable to phase it in gradually. There are a number of ways this could be done. The phase-in period, for example, could extend from the effective date of the final rule to 1985 or some other date beyond 1985. One such methodology could use the following pricing formula:

$$R_{m+1}=R_m+(TP-R_m)/(k-m)$$

where R_m is the just and reasonable rate for any month; TP is the target price which is the just and reasonable rate that the Commission determines will achieve its goals; k is the number of months between the effective date of the final rule and 1985; and m is an integer running from O through k–1.[23]

A hypothetical example may illustrate the operation of this pricing formula. Assume that the ceiling price for a vintage of old interstate gas is $0.50 per MMBtu. Also assume that the just and reasonable rate that would accomplish the Commission's goals is determined to be $2.50 per MMBtu and the phase-in period is 24 months. The ceiling price for January, 1983 would be computed as follows:

$$R_1=\$0.50+\frac{\$2.50-.50}{24}$$

$$R_1=\$0.50+\frac{\$2.00}{24}$$

$$R_1=\$0.583$$

The ceiling price for February, 1983 then becomes:

$$R_2=R_1+\frac{\$2.50-R_1}{24-1}$$

$$R_2=\$0.583+\frac{\$2.50-0.583}{23}$$

$$R_2=\$0.666$$

If it were decided to phase in a price set at the commodity value of gas using the pricing formula, the target price would be set at that value. Under previous market conditions, the commodity value has been estimated to be 70 percent of the price of crude oil measured by the average domestic refiner acquisition cost of crude oil.[24] Under changing market conditions, this relationship may change.

In order to smooth out variations in the price of crude oil, a "rolling" six-month average could be used. For example, if the commodity value were 70 percent of the price of crude oil as measured by refiner acquisition costs (defined as "C"), the commodity value price could be revised each month, using only the most recent six-month period. Under the proposed formula, the target price would be set equal to 0.7C, and the difference between the target price and the just and reasonable rate for gas for the preceding month would be phased in over k-m months. Therefore, the just and reasonable rate R_{m+1} for month m+1 would be:

$$R_{m+1}=R_m+(0.7C-R_m)/(k-m)$$

where R_m is the just and reasonable rate for the preceding month. Decreases or increases in crude oil prices would be reflected by a decrease or increase in the rolling six-month average (C). At the end of the phase-in period, the just and reasonable rate for qualifying gas would be equal to 70 percent of the average refiner acquisition cost of crude oil.

Comments and data are invited on all these options and any others considered relevant.

Appendix B—Questions and Issues

The Commission recognizes that, consistent with its legal authority, any action it may take must be based upon the Commission's assessment of any market ordering problems, the impact of the Commission's action(s) on consumers, industry, and the nation, and, whether the actions suggested would resolve or alleviate the alleged market ordering problem. Accordingly, the Commission urges members of the public to participate in this proceeding by submitting comments, views and suggestions on the matters set forth in this notice. In particular, the Commission specifically seeks responses to the following questions and issues.

1. The Commission is interested in assessing the degree to which the market ordering problems discussed in the Notice currently exist or are expected to develop in 1985 and beyond. All commenters are invited to submit information and views regarding the existence of market ordering problems. Information is specifically requested, among other things, on the extent to which (a) regional price and supply disparities exist and (b) some pipelines have a bidding advantage compared to other pipelines for new supplies. Interstate and intrastate pipelines are invited to submit data on their volumes of old low-price gas and their weighted average cost of gas.

2. If market ordering problems do exist, what type of administrative action to mitigate the problems should the Commission consider?

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[21] *See* Opinion No. 770 in which the Commission revised the 1973–1974 biennium rates.

[22] *See DOE Study, supra*, at 8.

[23] For example, if a final rule were issued and effective on January 1, 1983, k could equal 24 months (the number of months between January 1, 1983 and January 1, 1985), and m would run from 0 to 23.

[24] *See DOE Study, supra*, at 8.

(a) Because pipelines presently are permitted to average high-price and low-price supplies, pipelines with large gas cushions may have a bidding advantage. To what extent would market ordering problems be mitigated if this averaging process were prohibited? Are there any policy reasons for retaining this averaging process? If the averaging process were eliminated, should it be eliminated only for deregulated supplies? It the averaging process were to be eliminated how could this be accomplished?

(b) Certain institutionalized practices such as take-or-pay provisions, indefinite price escalators, most favored nation clauses, minimum bill requirements and long-term contracts may be aggravating market ordering problems. Does the Commission have the authority to suspend, either temporarily or permanently, in whole or in part, the operation of such contract provisions? Does the Commission have the authority to impose so-called "market-out clauses?"

What is the Commission's legal authority under section 501(a) or other law to take any such action? Should the Commission take any such action?

(c) If it is true that a bidding advantage is conferred on some interstate pipelines by virtue of the large gas cushion they possess, would reducing the size of the cushion held by some interstate pipelines more towards bidding parity among interstate pipelines and between interstate and intrastate pipelines? Is it possible that reducing the size of the cushion could reverse the alleged bidding disparity in favor of intrastate pipelines?

(d) To what extent would market ordering problems be reduced if vintaging were eliminated and a single national rate established for gas qualifying for sections 104, 106 and 109 of the NGPA? Approximately what rate would accomplish this result?

(e) Does the Commission have the legal authority to eliminate vintaging and establish a single national rate for section 104, 106 and 109 gas? To what extent is the Commission legally limited to rates based solely on a cost-based methodology?

Can the Commission lawfully set ceiling prices for gas subject to sections 104, 106 and 109 at its replacement value or commodity value? Can such rates legally be set higher than the rates established by other sections of the NGPA, such as sections 102, 103 and 106?

(f) If the Commission were to establish a new just and reasonable rate for flowing gas, should it require that the sales contract contain a clause specifically allowing payment of the new rate, along the lines of the contract provision recently upheld in *Pennzoil Co.* v. *FERC*, No. 80–2174 (5th Cir. March 22, 1982).

(g) To what extent would any of the Commission's potential regulatory responses activate the kinds of contract provisions in question 2(b) above? What would be the effect of such activation?

3. Section 315(c) of the NGPA authorizes the Commission to require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, all ancillary agreements and any existing contract applicable to such gas. Should the Commission require the filing of such contracts not presently on file with the Commission?

4. The commission believes it should consider the potential impact that any administrative action reducing the potential market ordering problems would have on the Nation. Comments are invited on all aspects of potential impact of such administrative action including the following questions.

(a) What effect would the various administrative actions discussed in this Notice have on consumer gas prices? To what extent would such action alleviate present and future regional disparities in price and availability of supplies?

(b) What impact would the various administrative actions have on gas supplies, both short-term and long-term? If administrative action were to establish bidding parity among pipelines, what effect would this have on the price of gas already deregulated by section 107 of the NGPA? If competitive bidding reduced the price for those supplies, would the incentive to explore for and develop those supplies be adversely affected?

(c) What is the potential impact of the various administrative actions on both public and private expenditures (including some benefits under social and retirement programs) which are related to the consumer price index or other price indices?

(d) To what extent would an increase in gas prices affect the ability of American products to compete with foreign products both abroad and domestically?

5. Many of the problems now apparent in the NGPA arise from the inability of the NGPA to respond to unexpected changes in the price of oil. The duration of the current softening of oil markets and the attendant destabilizing effect on oil prices in not known. Oil prices may rise or fall over the next year. How could the Commission formulate any administrative responses to be responsive to unstable oil markets?

6. If the Commission is to consider adequately the option of eliminating vintaging and establishing a new just and reasonable rate, the following issues need to be addressed:

(a) The Commission is interested in determining the price that prior methodologies used to compute just and reasonable rates would yield if current cost data were used. Producers are invited to submit current cost data for use in those models.

(b) It is possible that a new ceiling price computed for sections 104, 106 and 109 gas could be higher than the ceiling prices for some other sections of Title I of the NGPA. If this is the case, what is the legal effect of section 101(b)(5) of the NGPA? That section provides that the maximum lawful price is the highest applicable price if the gas qualifies for more than one category. If the Commission implemented new just and reasonable rates for sections 104, 106 and 109 gas, should it impose a "cap" on such rates at some lower level?

(c) If the Commission adopted a single just and reasonable rate applicable to sections 104 and 106(a), should the rate be applied to gas subject to section 106(b)? What effect will this have on (1) eliminating the price cushion, and (2) alleviating the price increase in 1985?

(d) It is appropriate to use the *Permian I*, Opinion No. 699–H or Opinion No. 770–A methodology for computing new ceiling prices? In view of the enactment of the NGPA, should these methodologies be used to compute ceiling prices for wells spudded on or after February 19, 1977? Commenters are invited to submit specific data for use in the DCF methodology, including current information as to each of the relevant cost items.

(e) Should the Commission use a pricing formula to phase in any new ceiling prices that it adopts? If so, would the pricing formula outlined in this notice be an appropriate formula for phasing in a target price? What target price would accomplish the goals of ordering the national gas market? Should the phase-in period extend beyond 1985?

In order to assist commenters in focusing on these issues, the Commission staff in the near future will make available a technical report setting forth presently available information concerning costs, reserves, the distribution of the cushion of price-controlled gas and similar matters. In addition, copies (in IBM EBCDIC punched-card format) of the DCF models utilized in Opinions Nos. 770 and 770–A

will be made available for purchase by the public in the Division of Public Information.

[FR Doc. 82-12042 Filed 5-3-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Grand Portage National Monument Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed regulation is necessary to designate the location on the Grand Portage National Monument where snowmobiles may be used for recreational purposes. It is the objective of this proposed regulation to provide for the preservation and enjoyment of the Monument in a way consistent with both the snowbile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

DATES: Written comments, suggestions, or objections, or objections will be accepted until June 3, 1982.

ADDRESS: Comments should be directed to: Superintendent Grand Portage National Monument, Box 66, Grand Marais, Minnesota 5604.

FOR FURTHER INFORMATION CONTACT: Anthony L. Andersen, Superintendent, Grand Portage National Monument, Telephone: (218) 387–2788.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued on February 9, 1972, 37 FR 2877, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural, and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated 36 CFR 2.34 on April 1, 1974, which closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR 2.34, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park's natural, cultural, scenic, and aesthetic values; safety considerations; park management objectives; and not disturb the wildlife or damage other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the "Code of Federal Regulations."

This proposed regulation is necessary to comply with Servicewide policy. Its promulgation also responds to public interest in recreational opportunities in designated portions of the Grand Portage National Monument where snowmobiles may be used. The Grand Portage Trail which bisects the Grand Portage Indian Reservation land has a number of roads and trails crossing it to other areas of the reservation. At the present time these roads and trails (including the proposed snowmobile route) are being used during the summer season by several types of motorized vehicles to traverse the area included within the Grand Portage National Monument. This usage is permitted in accord with section 7 of the Act of September 2, 1958, 72 Stat. 1753 authorizing the establishment of Grand Portage National Monument. Section 7 provides that "Recognized members of the Minnesota Chippewa Tribe shall not be denied the privilege of traversing the area included within the Grand Portage National Monument for the purpose of logging their land, fishing or boating, or as a means of access to their homes, businesses, or other areas of use and they shall have the right to traverse such area in pursuit of their traditional rights to hunt and trap outside the monument: *Provided*, that in order to preserve and interpret the historic features and attractions within the monument, *the Secretary may prescribe reasonable regulations under which the monument may be traversed.*" (emphasis added) Therefore, these proposed regulations will not effect present practices of snowmobile use on reservation lands.

Public Participation

The policy of the National Park Service is, wherever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of this regulation: Anthony Andersen, and Bernard Gestel, Grand Portage National Monument.

Compliance With Other Laws

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service has prepared an Environmental Assessment. Copies of this Assessment are available for public review and comment in the Office of the Park Superintendent.

This rulemaking contains no provisions that would entail the collection of information in such manner as would be subject to the Paperwork Reduction Act, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 19, 1981). It has further determined that this rule will not have a "significant economic effect on a substantial number of small entities," that will require the preparation of a regulatory analysis within the meaning of the Regulatory Flexibility Act, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535 as amended, 16 U.S.C. 3; section 7 of the Act of September 2, 1958, 72 Stat. 1753.

List of Subject in 36 CFR Part 7

National Parks.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

In consideration of the foregoing, it is proposed to amend Title 36 Code of Federal Regulations by the addition of a new section § 7.59 as follows:

* * * * *

§ 7.59 Grand Portage National Monument.

Snowmobiles. After consideration of existing special situations i.e., depth of snow, and depending on local weather

conditions, the superintendent may permit the use of snowmobiles on the following designated routes within the National Monument:

(a) The trail from County Road 73 (near the Grand Portage Trading Post) which moves across the Grand Portage Trail to County Road 17 near the Catholic Church.

(b) The powerline right-of-way road from County Road 73 which moves across Grand Portage Trail to the access road of the M. Gagnon and D. Porter residences.

(c) The logging road which moves across the Grand Portage Trail in NE¼, SE¼, Section 32, T64N, R6E.

(d) Abandoned Highway 61 which moves across the Grand Portage Trail.

(e) Logging road which moves across the Grand Portage Trail in SE¼, NW¼, Section 25 T64N, R5E.

Dated: April 6, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12070 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-9-FRL 2118-3]

California Division of Oil and Gas; Underground Injection Control; Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearings.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received a complete application from the California Division of Oil and Gas requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) public hearings will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the States complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearings will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application from the California Division of Oil and Gas to regulate all Class II oil and natural gas related injection wells in California.

DATES: Two Public Hearings will be held. A single session will be held on June 1, 1982, 7:30 p.m. Two sessions will be held on June 3, 1982, one beginning at 10:00 a.m. and a second at 7:30 p.m. Comments must be received by May 19, 1982.

ADDRESSES: Comments should be mailed to Nathan Lau, Water Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105. Copies of the application and pertinent material are available from to 8:30 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region IX Library, 6th Floor, 215 Fremont Street, San Francisco, California 94105, (415) 974-8076

California Division of Oil and Gas, 1416 9th Street, Room 1310, Sacramento, California 90804, (916) 445-9686

and at the Division's district offices located at:

5199 E. Pacific Coast Hwy., Suite 309-N, Long Beach, California 90804, (213) 590-5311

146 S. Ojai Street, P.O. Box 67, Santa Paula, California 93060, (805) 525-2105

301 W. Church Street, P.O. Box 227, Santa Maria, California 93454, (805) 925-2686

4800 Stockdale Hwy., Suite 417, Bakersfield, California 93309, (805) 322-4031

466 N. Fifth Street, P.O. Box 616, Coalinga, California 93210, (209) 935-2941

117 W. Main Street, Suite 11, Woodland, California 95695, (916) 662-4663

The June 1st hearing will be held at the Bakersfield City Council Chamber, City Hall, 1501 Truxtun Avenue, Bakersfield, California. The June 3rd public hearing will be held at the Environmental Protection Agency, Nevada Room, 6th Floor, 215 Fremont Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Nathan Lau, Water Management Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974-8274.

SUPPLEMENTARY INFORMATION: The application from the California Division of Oil and Gas is for the regulation of all oil and natual gas related injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority and a memorandum of agreement between the California Division of Oil and Gas and the Region IX office of the Environmental Protection Agency.

Dated: April 29, 1982.

Frederick A. Eidaness, Jr.,

Assistant Administrator for Water.

[FR Doc. 82-12229 Filed 5-3-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6303]

Proposed Special Flood Hazard Areas for Laramie County, Wyoming; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazard areas are available for review at the Office of the County Engineer, 706 West 19th Street, Cheyenne, Wyoming.

Send comments to: Mr. Dean Fogg, Chairman, Board of Commissioners, Laramie County, P.O. Box 608, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for Laramie County, Wyoming in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added

Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

The special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be constrtued to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, identified as Zone A, on Panels 655 and 660, are being added along a tributary to Crow Creek. In addition, the corporate limits are being adjusted to reflect annexations by the City of Cheyenne, and has generally resulted in a deletion of flooding within the County.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-12070 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA–6295]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Lehi, Utah County, Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flodd-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the Building Official, 5th West and 3rd North, Lehi, Utah.

Send comments to: Honorable A. E. Allison, Mayor, City of Lehi, 51 North Center Street, Lehi, Utah 84043.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Lehi, Utah in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insufrance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Locatiin	Elevation (feet) national geodetic vertical datum	Zone designation
Dry Branch	At the westernmost corporate limits	4,663	A5.
	At the easternmost corporate limits	4,696	A5.
Dry Creek	Approximately 100 feet upstream of Frontage Road.	4,594	A5.
	At the northernmost corporate limits	4,595	A5.

The remaining annexed areas have been identified as Zones B and C. The floodway delineation has been added along the aforementioned reaches of Dry Branch and Dry Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11975 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6294]

National Flood Insurance Program; Proposed Base Flood Elevations, Zone Designations and Special Flood Hazard Areas for the Town of Rangely, Rio Blanco County, Colorado

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations, zone designations and special flood hazard areas as described below.

The proposed base flood elevations, zone designations and special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations, zone designations and special flood hazard areas are available for review at the Office of the Town Clerk, Municipal Building, 209 East Main Street, Rangely, Colorado.

Send comments to: Honorable Peggy Rector, Mayor, Town of Rangely, Municipal Building, 209 East Main Street, Rangely, Colorado 81648.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0218.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations, zone designations and special flood Hazard areas for the Town of Rangely, Colorado in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 383 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations, zone designations and special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations, zone designations and special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations in recently annexed areas are as follows:

Source of flooding	Location	Elevation (feet) national geodetic vertical datum	Zone designation
Dragon Wash	At a point located approximately 150 feet upstream of the limit of detailed study.	5,233	A1.
	At a point located approximately 700 feet downstream of Stanolind Avenue.	5,240	A1.
	At Stanolind Avenue	5,247	A1.
	At a point located approximately 150 feet downstream of Sunset Avenue.	5,250	A1.
	At Grand Avenue	5,252	A1.

Also along Dragon Wash, between the confluence with the White River and the limit of detailed study, the proposed special flood hazard area, identified as Zone A, is being added. Along the White River, in the northwesternmost portion of the Town, the proposed special flood hazard area, identified as Zone A, is being added. All the remaining annexed areas have been identified as Zone C. The proposed floodway delineation is being added along the White river, in the northeasternmost portion of the Town.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11979 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6343]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Cincinnati, Hamilton County, Ohio, previously published at 45 FR 3383 on January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of proposed Determinations of base (100-year) flood elevations for selected locations in the City of Cincinnati, Hamilton County, Ohio, previously published at 45 FR 3383 on January 25, 1982, in accordance with

section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The elevation for the location "within the community" on "Little Miami River" was changed from 502 to 501 in order to reflect the backwater from the Ohio River present on the Little Miami River. In the location "at confluence of East Fork Mill Creek" on "Mill Creek," east replaced west to avoid confusion with a location on the "West Fork". The source of flooding named "West Fork Mill Creek" was changed to "West Fork" to reflect the correct topographic name of the stream. On the "West Fork," the location "at confluence with Mill Creek" added the description "(near Geringer Street)" in order to clarify possible confusion with the confluence of West Fork Mill Creek, which is a different stream. The new location for "Congress Run," "about 700 feet upstream of Ridgeway Avenue" and the new elevation 542, were corrected so that it would be within the corporate limits.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The listing appears correctly as follows:

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(C) Cincinnati Hamilton County	Little Miami River	Within community	*501
		Mill Creek	Just upstream of confluence with Ohio River	*497
			At confluence of East Fork Mill Creek	*539
		West Fork	At confluence with Mill Creek (near Geringer Street)	*485
		Clough Creek	At confluence with Little Miami River	*501
		Duck Creek	At confluence with Little Miami River	*501
		Congress Run	At confluence with Mill Creek	*528
			About 700 feet upstream of Ridgeway Avenue	*542

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11971 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA–6246]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 5023 on February 3, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Rumson, Monmouth County, New Jersey.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Rumson, Monmouth County, New Jersey, previously published at 47 FR 5023 on February 3, 1982, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The following location descriptions have been amended to read as follows: The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of Flooding	Location	Elevation in feet, National geodetic vertical datum
Shrewsbury River....	Rumson Road extended to approximately 1,100 feet east of Two Rivers Avenue extended.	*10
	Approximately 1,100 feet east of Two Rivers Avenue extended to approximately 750 feet west of Two Rivers Avenue extended.	*11
	Approximately 750 feet west of Two Rivers Avenue extended to approximately 1,125 feet west of Clubway extended.	*12

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968, as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 14, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11972 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6246]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 5022 on February 3, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Little Silver, Monmouth County, New Jersey.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Little Silver, Monmouth County, New Jersey, previously published at 47 FR 5022 on February 3, 1982, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

The following location descriptions have been amended to read as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Parker Creek	Shoreline from western corporate limits to approximately 100 feet south of Breezy Point extended.	*9
	Shoreline from approximately 100 feet south of Breezy Point extended to confluence with Shrewsbury River.	*10
Little Silver Creek ...	Shoreline from confluence with Shrewsbury River to approximately 175 feet east of Borden Place extended.	*12
	Shoreline from approximately 175 feet east of Borden Place extended to approximately 240 feet northwest of Borden Place extended.	*10
	Shoreline from approximately 240 feet northwest of Borden Place extended to upstream side of Willow Drive.	*9
Town Neck Creek....	Shoreline from confluence with Shrewsbury River to approximately 220 feet south of Battle Row extended.	*11
	Shoreline from approximately 220 feet south of Battle Row extended to the end of Town Neck Creek.	*9
Little Silver Tributary 1.	Shoreline from confluence with Little Silver Creek to downstream side of Prospect Avenue.	*9

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 14, 1982.

Lee M. Thomas,

Associate Director State and Local Programs and Support.

[FR Doc. 82-11973 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6296]

National Flood Insurance Program; Proposed Zone Designations, Base Flood Elevations, Corporate Limits and Floodway for the City of Tonawanda, New York

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations, base flood elevations, corporate limits and floodway described below.

The proposed zone designations, base flood elevations, corporate limits and floodway will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed zone designations, base flood elevations, corporate limits and floodway are

available for review at the Mayor's Office.

Send comments to: Honorable G. Delwin Hervey, Mayor, City of Tonawanda, City Hall, 200 Niagara Street, Tonawanda, New York 14150.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone designations, base flood elevations, corporate limits and floodway (100 year flood) for the City of Tonawanda, New York in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The proposed zone designations, base flood elevations, corporate limits and floodway together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. The proposed zone designations, base flood elevations, corporate limits and floodway will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations, base flood elevations, corporate limits and floodway for selected locations are:

Source of flooding	Location	Elevation (NGVD)	Zone designation
Erie Canal	Approximately 50 feet west of the eastern corporate limit	572	A2
Erie Canal	Approximately 50 feet east of Young Street Arterial	572	A3
Erie Canal	Approximately 750 feet west of Stark Street	571	A2

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11976 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA–6261]

National Flood Insurance Program; Proposed Zone Designations and Base Flood Elevations for the City of Redlands, San Bernardino County, Calif.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation and base flood elevations as described below.

The proposed zone designations and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for zone designations and base review at the Office of the City Clerk, City Hall, 30 Cajon Street, Redlands, California.

Send comments to: Honorable Charles G. DeMirjyn, Mayor, City of Redlands, P.O. Box 280, Redlands, California 92373.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone designations and base flood elevations for the City of Redlands, California in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 86 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
The Zanja	At Wabash Street	1,616	A3.
Santa Ana River	At the westernmost corporate limits	1,081	A12.

Also along The Zanja, between the westernmost corporate limits and a point approximately 700 feet downstream of Tennessee Street, the proposed zone deisgnation has been identified as Zone A. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11987 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6300]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Rifle, Garfield County, Colo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation and base flood elevations as described below.

The proposed zone designations and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed based flood elevations and zone designations are available for review at the Office of the City Manager, City Hall, 337 East Avenue, Rifle, Colorado.

Send comments to: Honorable George Mitchell, Mayor, City of Rifle, P.O. Box 1908, Rifle, Colorado 81650.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Divisions Federal Emergency Management Agency; Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Rifle, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculated the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Colorado River	At the easternmost corporate limits	5,309	A6.
	Just upstream of Taugherbaugh Blvd.	5,303	A6.
	At a point located approximately 1,450 feet downstream of Taugherbaugh Blvd.	5,296	A6.
	At a point located approximately 3,200 feet downstream of Taugherbaugh Blvd.	5,292	A8.
	At the westernmost corporate limits	5,276	A6.
Rifle Creek	Just downstream of 10th St. extended	5,360	A10
	Just upstream of 10th St. extended	5,362	A10.
	At a point located approximately 200 feet upstream of 12th St.	5,371	A10.
	At 20th St. extended	5,397	A10.
	At the easternmost corporate limits	5,403	A10.

In addition along Government Creek, south of 24th Street extended, the special flood hazard areas, identified as Zone A, are being added. All the remaining annexed areas have been identified as Zones B and C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11980 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6301]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations For The City of Wheat Ridge, Jefferson County, Colo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations and zone designations are available for review at the Community Development Department, City Hall, 7500 West 29th Avenue, Wheat Ridge, Colorado.

Send comments to: Honorable Frank Stites, Mayor, City of Wheat Ridge, P.O. Box 638, Wheat Ridge, Colorado 80033.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Wheat Ridge, Colorado in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entites. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation (feet) national geodetic vertical datum	Zone designation
Clear Creek	At the northwestern most corporate limits	5,280	A10.
	At Pierce Street extended	5,290	A10.
	Just upstream of Wadsworth Boulevard	5,312	A10.
	Just downstream of Garrison Street extended	5,345	A10.
	Just downstream of Hoyt Court extended	5,350	A8.
	Just upstream of Kipling Street	5,362	A8.
	Just upstream of Tabor Street	5,404	A8.
	Just downstream of Youndfield Street	5,427	A8.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of techical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Accociate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11981 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6293]

National Flood Insurance Program; Proposed Zone Designation Determinations for the Village of Atwood, Platt and Douglas Counties, Ill.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 110 West Central, Atwood, Illinois.

Send comments to: Mr. Horace W. Romine, Village President, Village of Atwood, 110 West Central, Atwood, Illinois 61913.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed zone designations for the Village of Atwood, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood

Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, flood plains.

The proposed zone designations are as follows:

Zone A and Zone C along Lake Fork in the area south of a line following West Birch Avenue, South Main Street, and U.S. Route 30.

Zone C at all other locations in the community than those above.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)
Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11977 Filed 5-3-82; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6302]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Iola, Allen County, Kansas

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 2 West Jackson Avenue, Iola, Kansas.

Send comments to: Honorable John L. Carder, Mayor, City of Iola, 2 West Jackson Avenue, Iola, Kansas 66749.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Iola, Kansas in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed based flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance; Flood plains.

The proposed base flood elevations and zone designations in the recently annexed areas are as follows:

Source of flooding	Location	Elevation (NGVD) (feet)	Zone Designation
Rock Creek	At easternmost corporate limits	952	A5.
Coon Creek	At a point approximately 200 feet downstream of the Atchison Topeka and Santa Fe Railroad	958	A4.
	At a point approximately 700 feet downstream of the Atchison Topeka and Santa Fe Railroad	958	A4.

All the remaining annexed areas have been identified as Zones B and C. The proposed floodway delineation has been added along Coon Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of

technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11982 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6280]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Crystal City, Jefferson County, Mo.

AGENCY: Federal Emergeny Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zones designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 450 Bailey Road, Crystal City Missouri.

Send comments to: Honorable Boston N. Richards, Jr., Mayor, City of Crystal City, 450 Bailey Road, Crystal City, Missouri 63019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Crystal City, Missouri, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with flood plain management measures required by § 60.3 of the program regulations, are the minimum that are requried. It should not be construed to mean the community must change any existing ordiances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new building and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum (feet)	Zone designation
Plattin Creek	Approximately 1,000 feet upstream of the St. Louis San Francisco Railroad.	411	A18.
	At the southeasternmost corporate limits	411	A18.
"A" Creek	Approximately 1,000 feet downstream of the confluence of "B" Creek.	411	A18.
	At the western corporate limits	411	A18.
"B" Creek	Approximately 300 feet downstream of the St. Louis San Francisco Railroad.	411	A4.

All the remaining annexed areas have been identified as Zone C. The proposed floodway has been added along the above tabulated portions of Plattin Creek and "A" Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, heregy certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11988 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6284]

National Flood Insurance Program; Proposed Extraterritorial Jurisdiction Limits and Special Flood Hazard Areas for the City of Lumberton, N.C.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas described below.

The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas will be the basis for the flood plain management measures that the community is required to either adopt of show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas are available for review at the Mayor's Office.

Send comments to: Honorable F. K. Biggs, Mayor, City of Lumberton, City Hall, 501 East 5th Street, Lumberton, North Carolina 28358.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, State and Local Programs and Support, Federal Emergency Management Agency, Room 514, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas (100-year flood) for the City of Lumberton, North Carolina in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The extraterritorial jurisdiction limits and Special Flood Hazard Areas together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed extraterritorial jurisdiction limits and Special Flood Hazard Areas for selected locations are:

Source of flooding	Location	Zone designation	Elevation (national geodetic vertical datum)
Fivemile Branch	The confluence with the Lumber River to approximately 9,800 feet north of the confluence.	A10	124
Lumber River	Approximately 6,600 feet north of the corporate limits between Cottonwood Street and Powell Branch and approximately 5,150 feet west of Cottonwood Street.	A10	124–127
Lumber River	South of the corporate limits between Route 2280 and 2204 and at various points along Jacob Swamp and Little Jacob Swamp to the extraterritorial limits.	AH	115
Lumber River	Approximately 4,000 feet south of the corporate limits between Routes 2280 and 2202.	A10	116–118
Lumber River	At a point approximately 4,000 feet south of the corporate limits between Routes 2280 and 2202 to the extraterritorial limits.	A4	106–115

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11966 Filed 5-3-82; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6282]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Spokane, Spokane County, Wash.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, West 808 Spokane Falls Boulevard, Spokane, Washington.

Send comments to: Honorable James Chase, Mayor, City of Spokane, P.O. Box 29, Spokane, Washington 99201–3333.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0218.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Spokane, Washington in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact

stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in recently annexed areas are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Hangman Creek	Approximately 850 feet upstream of the confluence with Marshall Creek.	1,800	A8.
	Approximately 2,400 feet upstream of the confluence with Marshall Creek.	1,806	A8.
	Approximately 7,500 feet upstream of the confluence with Marshall Creek.	1,824	A8.
	Approximately 6,550 feet downstream from the southernmost corporate limits.	1,836	A8.
	At the southernmost corporate limits	1,844	A8.
Marshall Creek	The area located southwest of U.S. Route 195 and southeast of Cheney-Spokane Road.	1,797	A8.
Spokane River	At the westernmost corporate limits	1,864	A8.
	Approximately 1,300 feet upstream of the westernmost corporate limits.	1,866	A8.

The remaining annexed areas have been identified as Zone C. The floodway delineation has also been added in the recently annexed areas of Hangman Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11969 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6285]

National Flood Insurance Program; Proposed Zone Designation Determinations for Manitowoc County, Unincorporated Area, Wis.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations as described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone designations are available for review at 1010 South Eighth Street, Manitowoc, Wisconsin.

Send comments to: James M. Hendricks, Chairman, Manitowoc County Board of Supervisors, 1010 South Eighth Street, Manitowoc, Wisconsin 54220.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed zone designations for the Manitowoc County, Wisconsin, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 88 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations are as follows:

Source of flooding	Location	Zone designation
West Twin River	Portions of area bounded on the north by Manitour Drive and County Highway S, on the south and east by the West Twin River, and on the west by East Shore Road and County Highway VV.	A8, B, C.
Manitowoc River	Portions of Tract Number 2 of Lot Number 4 of Manitowoc Mill Villa Subdivision in the Town of Manitowoc Rapids, Manitowoc County, Wisconsin, Section 26, T19N–R23E (Town of Manitowoc Rapids).	C.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood areas on the basis of updated information and imposes no new requirements or

regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support)

[FR Doc. 82-11979 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6297]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevations Determinations for the City of Norton, Independent City, Va.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at City Hall, 618 Virginia Avenue, N.W., Norton, Virginia.

Send comments to: G. M. Newman, City Manager, City of Norton, P.O. Box 618, Norton, Virginia 24273.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Norton, Virginia, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Benges Branch	Between Laural Avenue and confluence with unnamed tributary Benges Branch.		A, C.
	Two reservoirs upstream of confluence with unnamed tributary Benges Branch.		C.
Guest River	Portions of area bounded by two lines parallel to and approximately 100 feet northwest and 200 feet southeast of Kentucky Avenue, respectively in the vicinity of the confluence of Clear Creek and the Guest River, and by two lines perpendicular to Kentucky Avenue located approximately 300 feet on either side of the Kentucky Avenue bridge over the Guest River immediately downstream of the confluence of Clear Creek and the Guest River.	2,073	A7.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11984 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6298]

National Flood Insurance Program; Proposed Zone Designation and Base Flood Elevation Determinations for the Town of Mitchell Heights, Logan County, W. Va.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 305 Central Avenue, Logan, West Virginia.

Send comments to: Honorable Melvin Triolo, Mayor, Town of Mitchell Heights, 305 Central Avenue, Logan, West Virginia 25601.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the Town of Mitchell Heights, West Virginia, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 86 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Guyandotte River	Downstream Corporate Limits	852	A17, B.
	Upstream Corporate Limits	853	A17, B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11885 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 67

[Docket No. FEMA-6304]

National Flood Insurance Program; Proposed Special Flood Hazard Area Determinations for the City of Rock Springs, Sweetwater County, Wyo.; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed special flood hazard areas are available for review at the Public Works Department, City Hall, 212 "D" Street, Rock Springs, Wyoming.

Send comments to: Honorable C. Keith West, Mayor, City of Rock Springs, P.O. Box 666, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for the City of Rock Springs, Wyoming, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, identified as Zone A, have been added along Killpecker Creek and Bitter Creek, due to recent annexations. The special flood hazard area has been added along Killpecker Creek between the limit of detailed study and the northeastern corporate limits. The special flood hazard area has been added along Bitter Creek at the western most corporate limits. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11983 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6283]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City Of Buffalo, Johnson County, Wyo.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 46 North Main Street, Buffalo, Wyoming.

Send comments to: Honorable Emil O. Hecht, Mayor, City of Buffalo, P.O. Box 1009, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Buffalo, Wyoming in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Indurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968. Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base floor elevations and zone designations for recently annexed areas are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Clear Creek	At a point approximately 200 feet upstream of Route 252.	4583	A3.
	At a point approximately 350 feet upstream of Route 252.	4586	A3.

In the northeastern most portion of the City, the proposed special flood hazard area, identified as Zone A, has been added. All the remaining annexed areas have been identified as Zone C. The proposed floodway delineation has been added along the aforementioned reach of Clear Creek.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued April 13, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11980 Filed 5-3-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6292]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of San Pablo, Contra Costa County, Calif.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, One Alvarado Square, San Pablo, California.

Send comments to: Honorable Kathryn Carmignani, Mayor, City of San Pablo, City Hall, One Alvarado Square, San Pablo, California 94806.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0216.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of San Pablo, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in the recently annexed area, are as follows:

Source of flooding	Location	Elevation, national geodetic vertical datum (feet)	Zone designation
Rheem Creek	At Giant Road	23	A4.
	At a point located approximately 400 feet upstream of Giant Road.	24	A4.
	At a point located approximately 250 feet downstream of 11th Street.	25	A4.

In addition, the area located southeast of Church Lane and northeast of Willow Road has been revised from Zone B to Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support.)

Issued: April 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11978 Filed 5-3-82; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 22, 81, 87, 90, and 95

[General Docket No. 82-181; RM-3248, FCC 82-145]

Amendment of the Commission's Rules To Provide Additional Spectrum Between 72 and 76 MHz for the Control of Model Aircraft, Boats, Cars, and Other Similar Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks information from the public regarding the proposed allocation on a secondary basis of additional spectrum in the 72–76 MHz band for the radio control of model aircraft, boats, cars and other similar devices. This proceeding is in response to a petition filed by the Academy of Model Aeronautics. This proposed action would provide spectrum relief to the operators of radio control models without impacting the existing primary users of this spectrum.

DATES: Comments must be submitted on or before May 13, 1982, and reply comments on or before May 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Donald Draper Campbell, Office of Science and Technology, 202–653–8177.

SUPPLEMENTARY INFORMATION:

List of Subjects Affected In

47 CFR Part 2

Frequency Allocation, Radio, Communications Equipment, Radio Control, Personal Radio.

47 CFR Part 21

Communications Common Carriers, Microwave Radio.

47 CFR Part 22

Communications Common Carriers, Mobile Radio.

47 CFR Part 81

Marine Safety.

47 CFR Part 87

Air Transportation.

47 CFR Part 90

Business and Industry.

47 CFR Part 95

Radio.

Notice of Proposed Rulemaking

Adopted: April 1, 1982.
Released: April 13, 1982.

In the matter of Amendment of Parts 2, 21, 22, 81, 87, 90 and 95 of the Commission's Rules to provide additional spectrum between 72 and 76 MHz for the radio control of model aircraft, boats, cars and other similar devices.

By the Commission:

Introduction

1. On 17 November 1978, the Commission received a petition (RM-3248) from the Academy of Model Aeronautics, Inc. (Academy) requesting that the Commission amend Parts 2 and 95 of the Commission's Rules to provide additional spectrum for the radio control of model airplanes, boats and cars. The Academy stated that additional spectrum is needed in order to cope with the anticipated expansion in model activities during the next ten years, and to compensate for diminished use of the existing thirteen frequencies in the 26.99 to 27.26 MHz and 72.0 to 76.0 MHz bands to due to interference caused by other operations in those bands.

2. The Academy states in its petition that because of spectrum congestion and high power operation on the forty Citizen Band Radio Service frequencies between 26.96 and 27.41 MHz (the 26–27 MHz band), the six interleaved channels in that band which are allocated to the Radio Control Radio Service are nearly useless for radio control operators.

3. Currently, the Academy notes, the only other Spectrum available to the Radio Control Radio Service is on seven channels in the 72–76 MHz band; however, this use is secondary to operational fixed stations in the Industrial, Land Transporation and Public Safety Services as well as to low power land mobile stations in the Manufacturers Radio Service. According to the Academy, there are a number of cities (e.g. Houston, TX; Tampa, FL; etc.) in which only a few of the seven 72–76 MHz radio control channels are available due to interference from fixed and land mobile operations of industrial users; and the use of this spectrum by the land mobile services is growing.

4. In addition to the need to find replacement frequencies for the 26–27 MHz and the 72–76 MHz channels, the Academy states that there is a need for some 20 to 25 additional channels to support the growth of the Radio Control Radio Service over the next ten years.

5. As to where the additional radio control channels requested might be found, the Academy suggests secondary use of the ten 72–76 MHz channels currently allocated to low power (1 watt or less) land mobile operations in the Special Industrial, Manufacturers and Railroad Radio Services along with the eleven 'guard band' channels separating the Government and non-Government allocations between 30 and 42 MHz. The Academy also asks if spectrum might be found in the 222–224 MHz, the 450–460 MHz and the 900 MHz bands.

6. A series of meetings were held during the fall of 1979 [1] between members of the Commission's Staff, the Petitioner and representatives of several manufacturers of radio control equipment to discuss spectrum requirements. The manufacturers felt that because of the wide separation between the eleven 'guard band' channels between 30 and 42 MHz, these channels would not be well suited for the radio control of models. The Commission's staff pointed out that the 222–224 MHz band was allocated in part to the Amateur Radio Service and that any attempt to re-allocate that spectrum would encounter much resistance from the amateur community. The staff also pointed out that heavy usage was being made of the 450 to 460 MHz band. Thus, those channels might not be readily available. With respect to spectrum at 900 MHz, the Academy indicated that a long term solution might be the use of spectrum at 900 MHz; however, considerable testing would be required before a formal request could be made. [2]

7. As a result of this series of meetings, the Petitioner indicated that the near term (10 to 20 years) spectrum requirements could best be served by the allocation of additional spectrum in the 72–76 MHz band. To this end, the Petitioner established a Joint Academy-Industry Committee to study the viability of expanded radio control operations on the interlaced, 'odd', 20 KHz channels in the 72–76 Mhz band (i.e. 72.01, 72.03, 72.05 MHz, etc.) and to establish the technical parameters of a workable 72–76 MHz assignment plan. On 11 September 1980, the Academy submitted to the Commission the findings and recommendations of the Joint Committee in *Report on 72–76 MHz Radio Control Systems*, dated September 1980, which was later modified by a letter dated 15 July 1981.

8. The Academy Report proposes implementation of additional 72–76 MHz frequencies as follows:

(a) Model aircraft only: fifty 8 kHz channels, starting at 72.010 MHz and proceeding every 20 kHz through 72.990 MHz.

(b) Terrestrial models only: twenty-three 8 kHz channels, starting at 75.410 MHz and proceeding every 20 kHz through 75.850 MHz.

(c) Phase out existing seven 72–76 MHz frequencies within five years.

(d) Permit any type of emission to be used.

9. The current rules restrict the type of emission employed by radio control stations to amplitude modulation. The Academy feels that operations in the 72–76 MHz band should not be restricted to using only amplitude modulation. They point out that frequency (or phase) modulation is used in other countries and may prove beneficial if permitted in this country.

Discussion

10. The Commission's licensing records indicate that there has been considerable growth in the Radio Control Radio Service over the last fifteen years; particularly in the last five years, as can be seen in TABLE 1 attached hereto. This growth trend tends to support the Academy's contention that there is a need for additional spectrum to support the anticipated expansion of model activities over the next ten years.

11. At present, the Radio Control Radio Service licensees have access to thirteen 8 kHz channels, six in the 26–27 MHz band [3] and seven in the 72–76 MHz band [4], for the control of models. Of the thirteen channels, only four [5] are restricted solely to the control of model aircraft. The Academy claims that because of the sheer number of licensees and high power operations on the forty Citizens Band Radio Service channels at 27 MHz, the six interleaved radio control channels are nearly useless for radio control operation, particularly for the control of model aircraft in suburban and urban areas.

12. The Academy also claims that, in many areas, the signal level of fixed stations operating in the 72–76 MHz band precludes the use of some of the 72–76 MHz radio control channels. Because of the growth of the land mobile radio service with which these 72–76 MHz fixed operations are associated, the Academy feels that the number of radio control channels precluded from use because of interference from facilities supporting land mobile operations will drastically increase unless some relief is forthcoming. The Academy suggests that one form of relief would be to expand the radio controllers' access to the 72–76 MHz band.

13. In the United States, the band segments 72.0–73.0 MHz and 75.4–76.0

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[1] October 28, November 17, and December 12, 1979.

[2] To this end, the Academy applied for an experimental license (Part 5) on August 18, 1980, file number 8272-ER-PL-80, to operate on four 900 MHz frequencies. An experimental license, KK2XPZ, was issued on January 28, 1981.

[3] 26.995, 27.045, 27.095, 27.145, 27.195 and 27.255 MHz. This latter frequency is shared with other services.

[4] 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 and 75.64 MHZ.

[5] 72.08, 72.24, 72.40 and 75.64 MHz.

MHz (the 72–76 MHz band) are currently allocated on a primary basis to the non-Government Fixed Service. [6] In this band, a 20 kHz channelling plan, which begins at 72.02 MHz and proceeds to 72.98 MHz and then from 75.60 through 75.98 MHz, has been established. The following 'FCC radio services' are permitted access to this sepctrum: Alaska-Public Fixed Service, Aviation Service, Domestic Public Fixed Radio Service, Domestic Public Land Mobile Radio Service, Industrial Radio Services, Land Transportation Radio Services, Maritime Service and Public Safety Radio Services. Non-Government footnote 49 (NG49) permits low power (1 watt or less) non-Government mobile service use of a limited number of the same 72–76 MHz channels by several of the Industrial and Land Transportation Sub-Radio Services.[7] Additionally, non-Government footnote 56 (NG56) permits, on a secondary basis, the low power (1 watt or less) mobile service use of seven channels for the control of models by licensees in the Radio Control Radio Service.[8] All operations in this band are subject to the condition that no interference is caused to the reception of signals of television channels 4 and 5.

14. The 72–76 MHz frequencies are predominantly used by licensees in the private (Part 90) and common carrier (Parts 21 and 22) radio services for control of remote transmitters operating in the 30–50 MHz, 152–162 MHz or 450–470 MHz bands; both are services with high growth rates. Developments are likely to increase demand for 72–76 MHz transmitter control links for the land mobile service. Telephone-company-supplied wireline control circuits, which 72–76 MHz systems can replace, have both increased in cost and declined in availability. The metallic copper pairs traditionally used for transmitter control circuits are not available in a number of areas, as carrier, digital and fiber optical technolgy has come into use. Even where wireline control circuits are available, prices have increased to the point where the cost of a 72–76 MHz radio system is matched in a relatively short time by savings of leased telephone line charges. The trend in the common carrier paging service is, moreover, to multiple site, simulcast operations. Control of simulcast transmitters, which requires precise matching of the amplitude and phase of audio signals applied to the individual transmitters, is difficult, at best, to achieve using wire line control circuits due to day-to-day variations in frequency or phase response of the circuit. However, control of simulcast transmitters is easily achieved with radio circuits.

15. The reallocation of twenty 35–43 MHz channels for common carrier paging, Report and Order (FCC 81–296, adopted 30 June 1981) in CC Docket 80–189, and the proposed allocation of up to one hundred twenty 900 MHz paging channels for both common carrier and private systems, General Docket 80–183: Notice of Proposed Rule Making (FCC 80–231, adopted 24 April 1980) and Supplemental Notice of Proposed Rule Making (FCC 80–510, adopted 21 October 1980), can be expected to place an even greater demand upon frequency resources in the 72–76 MHz band for transmitter control purposes. Thus, additional Channels will be precluded from use by possibilities for interference from these transmitter control operations.

16. In justifying its request for additional spectrum for the control of models, the Academy states that experience has shown that when more than fifteen models are operated simultaneously in any given location, operator confusion becomes a major problem; therefore, for safety purposes, the number of models in operation at any given location is practically limited to fifteen or less. Additionally, the Academy states that it is desirable to have an additional five channels for testing of the models. Thus, at any given modelling area, the total number of desired interference free channels would be twenty.

17. In areas where fixed stations are operating on the "even" channels (i.e. 72.02, 72.04 . . . . 72.96, 72.98 MHz and 75.42, 75.44 . . . . 75.96, 75.98 MHz), mobile use of the adjacent channels (i.e. 72.01, 72.03 . . . . 72.97, 72.99 MHz and 75.41, 75.43 . . . . 75.97, 75.99 MHz) would also be precluded because of the potential of interference being caused to the model's receiver by the fixed station. The size of the area involved is dependent primarily upon the fixed station transmitter power and the amount of natural radio shielding betwen the fixed transmitter and the model's receiver. Thus, to provide the requested twenty interference free channels at any given location, the modeler would need access to a block of significantly more than twenty channels.

18. The Academy feels that if modelers are permitted access to fifty channels for the control of airborne models between 72.0 and 73.0 MHz and twenty-three channels between 75.40 and 75.86 MHz for the control of terrestrial models, they will be able to obtain twenty interference free channels at all locations.

19. The Academy proposal would make available an additional seventy-three new channels for the control of models, however, not all of them would be useable at any given location. Some would be excluded due to interference caused by continued use over the next several years of the existing seven 72–76 MHz radio control channels; while others would be excluded due to interference caused by fixed stations and television broadcast stations operating on TV channels 4 and 5. Additionally, intermodulation (IM) products caused by the use of an intermediate frequency (IF) of 455 kHz may preclude the use of spectrum between 72.00–72.52 and 75.86–76.00 MHz until such time as equipment manufacturers can develop receiving systems which employ a different IF frequency.[9]

20. The potential of harmful interference being caused by mobile radio model control transmitters to fixed land mobile control stations is slight. First, there is a 10 kHz separation between the model transmitter frequency and the control station receiver frequency. Second, the model control station has a transmitter output power of about 0.5 watts and utilizes a single "vertical" radiator of

[6] See § 2.106 of the Commission's rules.

[7] "NG49 The following frequencies may be authorized for low-power (1 watt input) mobile operations in the radio services shown subject to the condition that no interference is caused to the reception of television stations operating on channels 4 and 5:

[MHz]

Manufacturers Radio Service				
72.02	72.10	72.18	72.26	72.34
72.04	72.12	72.20	72.28	72.36
72.06	72.14	72.22	72.30	72.38
72.08	72.16	72.24	72.32	72.40
Special Industrial Radio Service, Manufacturers Radio Service, Railroad Radio Service				
72.44	72.52	72.60	75.48	75.56
72.48	72.56	75.44	75.52	75.60"

[8] "NG56 The frequencies 72.08, 72.10, 72.24, 72.32, 72.40, 72.96, and 75.64 MHz may be authorized for low power (1-watt input) mobile operations in the Personal Radio Services for radio control of models subject to the condition that interference will not be caused to remote control of industrial equipment operating on the same or adjacent frequencies and to the reception of television stations operating on Channels 4 or 5. TV interference shall be considered to occur whenever reception of regularly used television signals is impaired or destroyed, regardless of the strength of the television signals or the distance to the television station."

[9] No doubt it is for this reason the Academy has not requested access to the band segment 75.86–76.00 MHz.

approximately a quarter wavelength with the ground plane consisting of the transmitter box. The fixed land mobile control station commonly operates with an output power of 50 to 100 watts and employs directional antennas at both the receiving and transmitting stations. The fixed stations thus operate at a power level in excess of 20 dB above that used for the control models. This combined with directional characteristics of fixed station antennas, should reduce the possibility of interference problems occurring.

21. There is also slight potential of harmful interference being caused by mobile radio, model control transmitters to television reception on channels 4 (66–72 MHz) or 5 (76–82) MHz). In general, the television station transmitter output power is in excess of 1 kilowatt. Therefore, the ratio between the model transmitter signal and the television transmitter signal is over 30 dB. To date there have been no recorded cases of interference to television reception caused by radio control of models in the seven channels currently used at 72–76 MHz.

Proposal

22. The Academy's request for additional mobile service spectrum and use of frequency (or phase) modulation as well as amplitude modulation for the control of models does have merit. Therefore, the Commission proposes to amend its Rules and make available the band segments 72.0–73.0 and 75.4–76.0 MHz, and permit both amplitude and frequency (or phase) modulation for the control of models in accordance with the proposed rule changes outlined in the Appendix.

23. In addition to footnote NG49 in § 2.106, we are now also incuding the mobile service allocation in column 8 for the bands 72–73 and 75.4–76.0 MHz to reflect the actual use of these frequency bands. This parallels the fixed service allocation which is both covered by footnotes NG1 and NG3, and included in the Table. Footnote NG49 is also being amended to specifically reflect its current primary status in the 72–73 and 75.4–76.0 MHz band. This action is simply editorial in nature.

Regulatory Flexibility Act of 1980 Initial Analysis

24. *Reason for action:* This proceeding is in response to a petition for rule making requesting additional spectrum for the radio control of models.

25. *The objectives:* The Commission desires comments on this proposal to provide expanded access to the 72–76 MHz band for the radio control of models.

26. *Legal basis:* The action proposed is in furtherance of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, which permits the Commission to make such rules and regulations, not inconsistent with law, as may be necessary in the execution of its functions, with the additional view of the public welfare.

27. *Descriptions, potential impact and number of small entities affected:* Implementation of the proposed rules would provide spectrum relief to these licensees and we perceive no adverse impact on other licensees. It is mainly individuals who are engaged in the radio control of models and at present there are over 200,000 valid licenses in force. It could possibly increase radio control equipment sales as well as sales of the models using this radio equipment.

28. *Recording, record-keeping and other compliance requirements:* No additional requirements would be imposed if proposed rule changes are adopted.

29. *Federal rules which overlap, duplicate or conflict with these proposed rules:* None.

30. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* None.

31. In accordance with the requirements of The Regulatory Flexibility Act of 1980, Pub. L. 96–354, 19 September 1980, Section 603(a), the Secretary is directed to transmit a copy of the initial analysis to the Chief Counsel for Advocacy of the Small Business Administration.

32. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r). Pursuant to procedures set out in § 1.415 of the Commission's Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before: May 13, 1982 and reply comments on or before: May 28, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such informatin or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

33. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven (11) copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters located at 1919 M Street, NW., Washington, DC.

34. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

35. For further information concerning procedures to follow with respect to this rule making proceeding contact Donald Draper Campbell, FCC, Office of Science and Technology, Spectrum Planning Branch, Washington, DC 20554, telephone (202) 653–8177.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.

TABLE 1.—NUMBER OF RADIO CONTROL RADIO SERVICE LICENSES IN FORCE (YEAR END FIGURES)

Year	No. of licenses
1966	30,200
1967	28,695
1968	31,721
1969	32,600
1970	37,596
1971	39,094
1972	39,514
1973	37,736
1974	56,774
1975	[1]53,325
1976	86,916
1977	[2]150,801
1978	191,577
1979	214,314
1980	226,364
1981	218,067

NOTES: [1] In March 1975, the license fee was reduced from $20.00 to $4.00.
[2] In January 1977, the license fee was eliminated.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations, between 72 to 73 and 75.4 to 76.0 MHz, columns 7 through 11 would be revised to read as follows:

FEDERAL COMMUNICATIONS COMMISSION

Band (MHz) (7)	Service (8)		Class of Station (9)	Frequency (MHz) (10)	Nature of Services of stations (11)
72-73	FIXED	(NG1)	Land mobile	72.02-72.98 (NG32)	Operational fixed.
		(NG3)	Fixed		Radio control.
	MOBILE	(NG49)	Operational fixed		
		(NG56)			
75.4-76	FIXED	(NG1)	Land mobile	75.42-75.98 (NG32)	Operational fixed.
		(NG3)	Fixed		Radio control.
	MOBILE	(NG49)	Operational fixed		
		(NG56)			

* * * * *

2. In § 2.106, the text of non-Government footnote 49 (NG49) would be revised to read as follows:

NG49 The following frequencies may be authorized on a primary basis for low-power (1 watt input) mobile operations in the radio services shown subject to the condition that no interference is caused to the reception of television stations operating on channels 4 and 5:

Manufacturers Radio Service

MHz

72.02	72.14	72.28
72.02	72.16	72.30
72.04	72.18	72.32
72.06	72.20	72.34
72.06	72.22	72.36
72.10	72.24	72.38
72.12	72.26	72.40

Special Industrial Radio Service, Manufacturers Radio Service, Railroad Radio Service

MHz

72.44	72.80	75.56
72.48	75.44	75.80
72.52	75.48	
72.56	75.52	

* * * * *

3. In Section 2.106, the text of non-Government footnote 56 (NG56) would be revised to read as follows:

NG56 In the bands 72.0–73.0 and 75.4–76.0 MHz, the mobile radio remote control of models is on a secondary basis to all other fixed and mobile operations. Such operations are subject to the condition that interference will not be caused to remote control of industrial equipment operating in the 72–76 MHz band and to the reception of television signal on channels 4 (66–72 MHz) or 5 (76–82 MHz). Television interference shall be considered to occur whenever reception of regularly used television signals is impaired or destroyed, regardless of the strength of the television signal or the distance to the television station.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

B. Part 21 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 21.103 would be amended by adding paragraph (g) to read as follows:

§ 21.103

§ 21.103 Standards and limitations governing authorization and use of frequencies in the 72–76 MHz band.

* * * * *

(g) Mobile radio remote control of models may be found operating on frequencies 10 kHz removed from those frequencies authorized for fixed operation in the 72–76 MHz band. Such use by model radio remote control of models is secondary to operations of fixed stations as provided for by this section.

* * * * *

PART 22—PUBLIC MOBILE RADIO SERVICES

C. Part 22 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 22.103 would be amended by adding paragraph (g) to read as follows:

§ 22.103 Standards and limitations govering authorization and use of frequencies in the 72–76 MHz band.

* * * * *

(g) Mobile radio remote control of models may be found operating on frequencies 10 kHz remove from those frequencies authorized for fixed operation in the 72–76 MHz band. Such use by model radio remote control of models is secondary to operations of fixed stations as provided for by this section.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

D. Part 81 of Chapter I of Title 47 of Code of Federal Regulations would be amended, as follows:

1. Section 81.603 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 81.603 Operational fixed frequencies in the band 72–76 MHz.

(a) The following frequencies in the 72–76 MHz band may be assigned to

operational fixed stations. These frequencies are available on a share basis with the Land Mobile and Aviation Radio Service:

MHz	
72.02	72.80
72.04	72.82
72.06	72.84
72.08 [1]	72.86
72.10	72.88
72.12	72.90
72.14	72.92
72.16 [1]	72.94
72.18	72.96 [1]
72.20	72.98
72.22	75.42
72.24 [1]	75.46
72.26	75.50
72.28	75.54
72.30	75.58
72.32 [1]	75.62
72.34	75.64 [1]
72.36	75.66
72.38	75.68
72.40 [1]	75.70
72.42	75.72
72.46	75.74
72.50	75.76
72.54	75.78
72.58	75.80
72.62	75.82
72.64	75.84
72.66	75.86
72.68	75.88
72.70	75.90
72.72	75.92
72.74	75.94
72.76	75.96
72.78	75.98

(b) * * *

(c) Radio remote control of models is permitted on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Radio remote control operations are secondary to operation of fixed and mobile stations as provided for in this section.

PART 87—AVIATION SERVICES

E. Part 87 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 87.463 would be amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 87.463 Frequencies available to fixed stations.

* * * * *

(a) The frequencies listed in this paragraph may be assigned under the conditions set forth in subparagraph (1) through (6) of this paragraph. These frequencies are available on a shared basis with the Land Mobile and Stations on Land in the Maritime Services. (Stations authorized to operate in the band 73–74.6 MHz as of December 1, 1981, may continue to operate in this band and are not required to afford protection to the radio astronomy service.)

MHz	
72.02	72.80
72.04	72.82
72.06	72.84
72.08 [1]	72.86
72.10	72.88
72.12	72.90
72.14	72.92
72.16 [1]	72.94
72.18	72.96 [1]
72.20	72.98
72.22	75.42
72.24 [1]	75.46
72.26	75.50
72.26	75.54
72.30	75.58
72.32 [1]	75.62
72.34	75.64 [1]
72.36	75.66
72.38	75.66
72.40 [1]	75.70
72.42	75.72
72.46	75.74
72.50	75.76
72.54	75.78
72.58	75.80
72.62	75.82
72.64	75.84
72.66	75.86
72.68	75.88
72.70	75.90
72.72	75.92
72.74	75.94
72.76	75.96
72.78	75.98

(b) Mobile radio remote control of models may be found operating on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Such use by the mobile radio remote control of models is secondary to operation of fixed and mobile stations as provided for in this section.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

F. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 90.257 would be amended by revising paragraph (a)(1) and adding paragraph (c) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

(a) * * *

(1) The following frequencies in the band 72–76 MHz may be used for fixed operations:

MHz	
72.02	72.30
72.04	[1] 72.32
72.06	72.34
[1] 72.08	72.36
72.10	72.38
72.12	[1] 72.40
72.14	72.42
[1] 72.16	72.46
72.18	72.50
72.20	72.54
72.22	72.58
[1] 72.24	72.62
72.26	72.64
72.28	72.66
72.68	75.58
72.70	75.62
72.72	[1] 75.64
72.74	75.66
72.76	75.68
72.78	75.70
72.80	75.72
72.82	75.74
72.84	75.76
72.86	75.78
72.88	75.80
72.90	75.82
72.92	75.84
72.94	75.86
[1] 72.96	75.88
72.98	75.90
75.42	75.92
75.46	75.94
75.50	75.96
75.54	75.98

[1] These frequencies are shared, on a Secondary basis, by the Radio Control Radio Service until (5 years after the effective date of the rule change).

* * * * *

(c) Radio remote control of models is permitted on frequencies 10 kHz removed from these frequencies authorized for fixed and mobile operations in the 72–76 MHz band. Remote control operations is secondary to operation of fixed and mobile stations as provided for in this section.

PART 95—PERSONAL RADIO SERVICES

G. Part 95 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 95.216 (R/C Rule 16) would be amended by revising paragraphs (a) and (d), and adding paragraph (e) to read as follows:

§ 95.216 (R/C Rule 16) On what channels may I operate?

(a) Your R/C station may transmit only on the following channels (frequencies):

Frequency (MHz)	To operate
26.995	Any kind of device (any object or apparatus except an R/C transmitter).
27.045	
27.095	
27.145	
27.195	
27.255	
26.995	A model aircraft device (any small imitation of an aircraft).
27.045	
27.095	
27.145	
27.195	
27.255	
72.01	
72.03	
72.05	
72.07	
72.09	[see paragraph (e)].
72.11	
72.13	
72.15	
72.17	[see paragraph (e)].

72.17	
72.19	
72.21	
72.23	
72.24	[see paragraph (e)].
72.25	
72.27	
72.29	
72.31	
72.32	[see paragraph (e)].
72.33	
72.35	
72.37	
72.39	
72.40	[see paragraph (e)].
72.41	
72.43	
72.45	
72.47	
72.49	
72.51	
72.53	
72.55	
72.57	
72.59	
72.61	
72.63	
72.65	
72.67	
72.69	
72.71	
72.73	
72.75	
72.77	
72.79	
72.81	
72.83	
72.85	
72.87	
72.89	
72.91	
72.93	
72.95	
72.96	[see paragraph (e)].
72.97	
72.98	
75.64	[see paragraph (e)].
26.995	A model surface craft device (any small imitation of a boat, car or vehicle (except aircraft) for carrying people or objects).
27.045	
27.095	
27.145	
27.195	
27.255	
72.16	[see paragraph (e)].
72.32	[see paragraph (e)].
72.98	[see paragraph (e)].
75.41	
75.43	
75.45	
75.47	
75.49	
75.51	
75.53	
75.55	
75.57	
75.59	
75.61	
75.63	
75.64	[see paragraph (e)].
75.65	
75.67	
75.69	
75.71	
75.73	
75.75	
75.77	
75.79	
75.81	
75.83	
75.85	
75.87	
75.89	
75.91	
75.93	
75.95	
75.97	
75.99	

* * * * *

(d) Your R/C station must stop transmitting if it interferes with:

(1) Authorized radio operations in the 72–76 MHz band; *OR*

(2) Television reception on TV channels 4 or 5.

(e) Your R/C station must not transmit on the following frequencies after [5 years after the effective date of the rule change]: 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 or 75.64 MHz

* * * * *

3. Section 95.219 (R/C Rule 19) would be amended by revising the section to read as follows:

§ 95.219 (R/C Rule 19) How much power may my R/C station use?

Your R/C station transmitter power output must not exceed the following values:

Channel	Transmitter power (carrier power)
27.255 MHz	25 watts.
26.995–27.195 MHz	4 watts.
72–76 MHz	0.75 watts.

4. Section 95.220 (R/C Rule 20) would be amended by revising paragraph (c) to read as follows:

§ 95.220 (R/C Rule 20) What communications may my R/C station transmit?

* * * * *

(c) Your R/C station may only transmit non-voice:

(1) Amplitude modulated emissions (A9);

(2) Unmodulated on-off emissions (A9); *AND*

(3) Frequency (or phase) modulated emissions (F9) on the 72–76 MHz channels only.

* * * * *

H. Subpart E. Part 95 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. Section 95.611 would be amended by revising paragraph (c) to read as follows:

§ 95.611 Availability of frequencies.

* * * * *

(c) R/C stations.

(1) The following frequencies are authorized for R/C stations (see Subpart C, Part 95, for specific usages):

(i) MHz: 26.995, 27.045, 27.095, 27.145, 27.195, 27.255, 72.01, 72.03, 72.05, 72.07, 72.09, 72.11, 72.13, 72.15, 72.17, 72.19, 72.21, 72.23, 72.25, 72.27, 72.29, 72.31, 72.33, 72.35, 72.37, 72.39, 72.41, 72.43, 72.45, 72.47, 72.49, 72.51, 72.53, 72.55, 72.57, 72.59, 72.61, 72.63, 72.65, 72.67, 72.69, 72.71, 72.73, 72.75, 72.77, 72.79, 72.81, 72.83, 72.85, 72.87, 72.89, 72.91, 72.93, 72.95, 72.97, 72.99, 75.41, 75.43, 75.45, 75.47, 75.49, 75.51, 75.53, 75.55, 75.57, 75.59, 75.61, 75.63, 75.65, 75.67, 75.69, 75.71, 75.73, 75.75, 75.77, 75.79, 75.81, 75.83, 75.85, 75.87, 75.89, 75.91, 75.93, 75.95, 75.97, 75.99.

(ii) MHz: 72.08, 72.16, 72.24, 72.32, 72.40, 72.96 and 75.64. All operations on these frequencies must cease on or before [5 years after the effective date of the rule change].

* * * * *

2. Section 95.617 would be amended by revising paragraph (b) to read as follows:

§ 95.617 Emission limitations.

(a) * * *

(b) The authorized emission bandwidth of any transmitter:

(1) Employing amplitude modulation shall be 8 kHz for double sideband and 4 kHz for single sideband;

(2) Employing frequency or phase modulation:

(i) At a station in the Radio Control Radio Service shall be 8 kHz (72-76 MHz);

(ii) At a station in the General Mobile Radio Service shall be 20 kHz.

* * * * *

[FR Doc. 82-12085 Filed 5-3-82; 8:45 am]
BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 8 and 32

Acquisition of Utility Services and Progress Payments Based on Costs

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of availability and request for comment on draft Federal Acquisition Regulations.

SUMMARY: The Office of Federal Procurement Policy is making available

for public and Government agency review and comment a segment of the draft Federal Acquisition Regulation (FAR) on the acquisition of utility services and progress payments based on costs. Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

DATE: Comments must be received on or before July 1, 1982.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503. Federal agency requests must be directed to the FAR Agency Contact Point (see **Federal Register**, Vol. 46, No. 50, March 16, 1981, p. 16818 for list).

FOR FURTHER INFORMATION CONTACT: William Maraist, (202) 395–3300.

SUPPLEMENTARY INFORMATION: The fundamental purposes of the FAR are to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

List of Subjects in 48 CFR Parts 8 and 32

Government procurement.

The following part of the draft Federal Acquisition Regulation is available upon request for public and Government agency review and comment.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.3—Acquisition of Utility Services

This part prescribes policies and procedures for the acquisition of utility services. It covers GSA area-wide contracts and GSA delegation of authority to agencies for acquisition of utility services. It also covers required reviews and reporting, capital credits, and consolidated purchase, joint use, and cross-service.

PART 32—CONTRACT FINANCING

Subpart 32.5—Progress Payments Based on Costs

This subpart prescribes policies, procedures, formats, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. It does not apply to payments under cost-reimbursement contracts other than reimbursement of the contractor's progress payments to subcontractors and suppliers or to progress payments based on a percentage or stage of completion.

Dated: April 29, 1982.

LeRoy J. Haugh,

Associate Administrator for Procurement System Implementation.

[FR Doc. 82-12088 Filed 5-3-82; 8:45 am]

BILLING CODE 3110-01-M

Notices

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1981 Corn and Sorghum Crops; Determinations Regarding the Proclamation of National Program Acreages and Allocation Factors

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of National Program Acreages and Program Allocation Factors for 1981 Crops of Corn and Sorghum.

SUMMARY: This notice is to announce the revised national program acreages and the determination of the program allocation factors for the 1981 crops of corn and sorghum. The national program acreages were originally published on November 21, 1980 (45 FR 77095). The national program acreages which were announced for corn and sorghum were 90.1 and 15.4 million acres, respectively. The revised national program acreages are 80.5 and 14.3 million acres, for corn and sorghum, respectively. Based upon these revised national program acreages, the program allocation factor is 97.0 percent for corn and 99.0 percent for sorghum. These actions are taken in accordance with applicable provisions of the Agriculatural Act of 1949, as amended, which (1) authorize the Secretary of Agriculture to revise the national program acreages if it is determined to be necessary based upon the latest information and (2) requires the Secretary of Agriculture to determine a program allocation factor for the 1981 crop of corn and sorghum.

EFFECTIVE DATE: May 3, 1982.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, 3746 South Building, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4417. This Notice of Determination serves as an economic impact analysis.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "designated nonmajor." It has been determined that these provisions will not result in: (1) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies or geographic regions; or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based industries to compete with foreign-based enterprises in domestic or foreign markets. In addition, it has been determined that while the provisions will not have an annual impact on the economy of $100 million or more, they could affect budget outlays substantially.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since ASCS is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the federal assistance program that this notice applies to are: Title—Feed Grain Production Stabilization: Number 10.055, as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on ares and community development. Therefore, a review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of this action.

The purpose of this notice is (1) to revise the national program acreages for the 1981-crop corn and sorghum first proclaimed on November 21, 1980, and (2) to determine the national program allocation factors for such commodities. Section 105A(d)(1) and (2) of the Agricultural Act of 1949, as amended, authorize the Secretary to make such determinations. In accordance with these provisions, the Secretary may revise the national program acreages first proclaimed for any crop year for the purpose of determing the allocation factor if the Secretary determines it necessary based upon the latest information. In addition, the Secretary is required to proclaim such revised national program acreage as soon as it is determined.

The national program acreages for corn and sorghum are revised to reflect the most recent 1981/82 marketing year utilization estimates. Based on these estimates the revised 1981 National Program Acreage for corn will be 80.5 million acres and for sorghum 14.3 million acres.

Based upon these revised national program acreages, it has also been determined that the program allocation factors for the 1981 crops of corn and sorghum will be 97.0 percent and 99.0 percent, respectively.

Since the revised national program acreage and the determination of the program allocation factor impact upon the calculations of the deficiency payment which may be made for the 1981 crop of sorghum, it is essential that this notice be made effective as soon as possible. Accordingly, it has been determined that it is impracticable and contrary to the public interest to comply with any further public rulemaking requirements. Thus, this notice of determination shall become effective May 3, 1982.

Accordingly, the final national program acreages and allocation factors for the 1981 crops of corn and sorghum are determined to be the following:

Final Determinations

1. Revised National Program Acreages

It is hereby proclaimed that the final revised national program acreages for the 1981 crops of corn and sorghum shall be 80.5 and 14.3 million acres, respectively. The revised national program acreages are based on the following data:

	Corn	Sorghum
(a) Estimated domestic use, 1981–82 (million bushels)	5,005	411
(b) Plus estimated silage use, 1981–82 (million bushels)	838	80
(c) Plus estimated exports, 1981–82 (million bushels)	2,125	300
(d) Minus estimated imports, 1981–82 (million bushels)	−1	0
(e) Plus or minus adjustment for carryover to desired level [1] (million bushels)	+436	+76
(f) Divided by national weighted average farm program yield (bushels/acre)	102.1	59.5
(g) Equals: 1982 national program acreage (million acres)	80.5	14.3

[1] An appropriate carryover level of U.S. feed grain stocks has been determined to be equal to 6.7 percent of world consumption of coarse grains. Such consumption during the 1980–81 marketing year is estimated to be 737.6 million metric tons (MMT) (737.6×0.067=49.4 MMT (maximum level of U.S. feed grain carryover stocks)). The corn compo-

nent of the feed grain total has been determined to be 1,460 million bushels (37.1 MMT×39.368). 1981–82 carryin corn stocks were 1,034 million bushels resulting in a 426 million bushels stock adjustment. The sorghum component of the feed grain total has been determined to be 185 million bushels (4.7 MMT). 1981–82 carryin sorghum stocks were 109 million bushels resulting in a 76 million bushel stock adjustment.

2. Program Allocation Factors

It is hereby proclaimed that the 1981 crop program allocation factors shall be 97.0 percent for corn and 99.0 percent for sorghum, based on the following data:

	Corn	Sorghum
(a) National Program Acreage (million acres)	80.5	14.3
(b) Divided by harvested acreage (million acres)[1] 1	83.2	14.5
(c) Equals 1981 program allocation factor (percentage)[2] 1	97.6	99.0

[1]Based on corn and sorghum harvested acreage as reported in "Crop Production", dated January 15, 1982.
[2]The program allocation factor shall not be less than 80 percent or more than 100 percent.

Signed at Washington, D.C., on April 28, 1982.

John R. Block,

Secretary.

[FR Doc. 82-12041 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

Cooperative Gypsy Moth Suppression and Regulatory Program—1982; Decision Notice

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a record of decision for a gypsy moth treatment area in Salem, Oregon.

SUMMARY: This gives notices that a decision has been made to cooperate with the State of Oregon on the gypsy moth suppression program. Oregon has decided to use carbaryl for the Salem, Oregon, treatment area. Based on an evaluation of the Programmatic Environmental Impact Statement (PEIS) and a site-specific environmental analysis for the proposed Salem, Oregon, treatment area, the Animal and Plant Health Inspection Service (APHIS) has determined that this treatment method poses no significant adverse impact on the environment of the area.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, Room 630, Hyattsville, MD 20782, (301) 436–8745.

SUPPLEMENTARY INFORMATION: A notice of the availability of a site-specific environmental analysis document proposed for the Salem, Oregon, treatment area for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program was published in the **Federal Register** on April 14, 1982 (47 FR 16057).

On April 14, 1982, the Oregon Department of Agriculture decided to conduct a treatment program using carbaryl.

Based on the Department's review of the PEIS and the site-specific analysis, and in accordance with the National Environmental Policy Act and the Department's PEIS, the Department has decided to cooperate with the State of Oregon in the conduct of this program.

The decision conforms with the APHIS mission as outlined in the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–165, 167), the Federal Plant Pest Act of 1957, as amended (7 U.S.C. 150aa–150jj), and the Organic Act of September 21, 1944, as amended (7 U.S.C. 147a). These authorities authorizes APHIS cooperative State suppression and regulatory programs to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

Carbaryl, in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), is registered by the Environmental Protection Agency (EPA) for use against gypsy moth. It will be applied according to the label directions and APHIS operating procedures. Appropriate public involvement, notification and utilization of insecticide treatment measures will further reduce human exposure during periods of application.

Implementation may take place immediately after the date of this decision. This decision is not subject to administrative review pursuant to 36 CFR 211.19.

Done at Washington, D.C., this 28th day of April 1982.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-12003 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-34-M

Supplement to the Final Programmatic Environmental Impact Statement; USDA Cooperative 1981 Gypsy Moth Suppression and Regulatory Program; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a supplement to the final Programmatic Environmental Impact Statement (PEIS) for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program; correction.

SUMMARY: This document corrects a notice of a supplement to the final PEIS for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program which was published in the **Federal Register** on April 14, 1982 (47 FR 16057). The action is necessary in order to more accurately describe the document available for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program for the proposed Salem, Oregon, treatment area.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Pest Program Development Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, Room 630, Hyattsville, MD 20782, (301) 436–8745.

The following corrections are made in FR Doc. 82–10214 appearing on page 16057 in the issue of April 14, 1982:

1. At the top of column one, the Subject HEADING, "Supplement to the Final Programmatic Environmental Impact Statement; USDA Cooperative 1981 Gypsy Moth Suppression and Regulatory Program" is corrected to read "Availability of a Site-Specific Environmental Analysis for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program."

2. In column one, the **ACTION**, "Notice of a supplement to the final Programmatic Environmental Impact Statement (PEIS) for the USDA Cooperative Gypsy Moth Suppression and Regulatory Program (USDA FS FEIS 81–01)" is corrected to read "Notice of the availability of a site-specific environmental analysis for the proposed Salem, Oregon, treatment area."

3. In column one, the **SUMMARY**, "This gives notice of a document which supplements the final PEIS for the USDA Cooperative Gypsy Moth Regulatory Program to include a site-specific environmental analysis for the Salem, Oregon, proposed treatment area" is corrected to read "This gives notice of the availability of a site-specific environmental analysis for the proposed Salem, Oregon, treatment area."

4. In column one, the **ADDRESS**, "Requests for a copy of this supplement * * *" is corrected to read "Requests for a copy of this document * * *."

5. In column two, **SUPPLEMENTARY INFORMATION**, the third paragraph, third sentence, "The final PEIS * * *" is corrected to read "The final Programmatic Environmental Impact Statement (PEIS) * * *."

6. In column two, **SUPPLEMENTARY INFORMATION**, the third paragraph, fifth sentence, "The PEIS discussed the national Gypsy Moth Suppression and Regulatory Program and noted that it would be supplemented with annual

site-specific environmental documents." is corrected to read "The PEIS discussed the national Gypsy Moth Suppression and Regulatory Program and noted that annual site-specific environmental documents would be prepared for the proposed treatment areas."

Done at Washington, D.C., this 28th day of April 1982.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-12039 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-34-M

Foreign Agricultural Service

User Fees for Distribution of Attache Commodity Reports to the Private Sector

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public that copies of attache commodity reports, previously obtained free of charge from the Foreign Agricultural Service, will now be available to the public for a reasonable user fee to cover the costs of duplication, handling and mailing.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: H. Lee Schatz, Reports Officer, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6526, South Agriculture Building, Washington, D.C. 20250; Telephone: (202) 382-8924.

SUPPLEMENTARY INFORMATION: Copies of attache commodity reports, previously made available free of charge to the general public by the Foreign Agricultural Service, will now be subject to a reasonable user fee to cover the cost of duplication, handling and mailing. The following indicates the twelve month fee to cover the receipt of all reports by specified commodity series:

Report codes		Picked up	Mailed
02	Cocoa	$10.00	$20.00
03	Coffee	40.00	80.00
04	Cotton	52.50	105.00
05	Dairy, livestock, poultry	87.50	175.00
06	Oilseeds and products	80.00	160.00
07	Fibers	7.50	15.00
08	Citrus and products	12.50	25.00
09	Fresh deciduous fruit	42.50	85.00
10	Dried fruit	5.00	10.00
11	Grain and feed	150.00	300.00
12	Hops	2.75	5.50
14	Tree nuts	16.00	32.00
16	Canned deciduous fruits	4.00	8.00
17	Fresh and concentrated pineapple	4.50	9.00
18	Pepper	2.00	4.00
19	Sugar and molasses	59.00	118.00
20	Tea	3.00	6.00
21	Tobacco	71.00	142.00
22	Canned tomato products	4.50	9.00
23	Potato, onion, garlic	9.00	18.00
24	Agricultural Situation	218.00	436.00
25	Honey	3.50	7.00
31	Olives	.50	1.00
32	Strawberries	.50	1.00
33	Canned mushrooms	1.00	2.00
34	Ginseng	.50	1.00
35	Mint oil	1.00	2.00
36	Concentrated fruit and vegetable pack	1.50	3.00
37	Avocados	2.00	4.00

For special requests, the current fee is $.05 per page if picked up in the Reports Office, and $.10 per page if the copies are mailed.

Anyone interested in obtaining copies of attache reports should send their written request to: Director of Information, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5074, Washington, D.C. 20250.

(Sec. 1121 of the Agricultural and Food Act of 1981, Pub. L. 97-98)

Richard A. Smith,

Administrator.

April 27, 1982.

[FR Doc. 82-11677 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Breitenbush II Geothermal Area; Willamette National Forest and Mt. Hood National Forest Linn and Marion Counties, Oreg.; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for geothermal leasing in the Breitenbush Geothermal Area on the Detroit Ranger District.

In April 1978, the decision was made on Geothermal Development in the Breitenbush Area, Willamette and Mt. Hood National Forests. That decision provided for geothermal leasing on 27,058 acres but omitted 17,225 acres from the initial leasing proposal.

The 17,225 acres previously omitted, plus 35,771 additional adjacent areas are now being analyzed. The environmental analysis concerns a proposal to lease for exploration and development of geothermal energy.

A range of alternatives for geothermal leasing will be considered. One of these will be no leasing. Other alternatives will consider leasing with different levels or types of restrictions.

Early in the environmental analysis, Federal, State and local agencies, lease applicants and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which includes: (a) identification of those issues to be addressed; (b) identification of issues to be analyzed in depth; and, (c) elimination of insignificant issues, or those which have been covered in a previous environmental review.

Jeff M. Sirmon, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

The analysis is expected to take about 7 months. The draft environmental impact statement should be available for public review by July 1982. The final environmental impact statement is scheduled to be completed in November 1982.

Questions about the proposed action and environmental impact statement should be directed to Conny Frisch, Energy Coordinator, Willamette National Forest, Eugene, Oregon, telephone number—503-687-6480.

Written comments and suggestions concerning the analysis should be sent to Michael A. Kerrick, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon by May 15, 1982.

Dated: April 23, 1982.

James F. Torrence,

Acting Regional Forester.

[FR Doc. 82-12101 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

French Broad Electric Membership Corp., Marshall, N.C.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 STAT. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22, (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America in the approximate amount of $7,000,000 to French Broad Electric Membership Corporation, Marshall, North Carolina. These loan funds will be used to finance the construction of a hydroelectric generation facility with a nameplate rating of 3 MW. The proposed generating plant will be constructed at Marshall, North Carolina.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project from Mr. Charles R. Tolley, Manager, French Broad Electric

Membership Corporation, P.O. Box 9, Marshall, North Carolina 28753.

In order to be considered, proposals must be submitted by June 3, 1982, to Mr. Tolley. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as French Broad Electric Membership Corporation and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with REA.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 28th day of April 1982.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 82–12040 Filed 5–3–82; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to discuss reports of the herring oversight committee; the ad hoc committee on joint ventures, governing international fishery agreements and observers; the Scientific and Statistical Committee; the State Fish and Wildlife Directors, as well as discuss the hearing on the Fishery Conservation and Management Act amendments and discuss other business.

DATES: The public meetings will convene on Monday, May 24, 1982, at approximately 10 a.m., and will adjourn on Tuesday, May 25, 1982, at approximately 5 p.m. The meetings may be lengthened or shortened or agenda items rearranged depending upon progress on the agenda. The meetings will take place at the Newport Treadway Inn, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT:

New England Fishery Management Council, Suntaug Office Park, Five Broadway—Route One, Saugus, Massachusetts 01906; Telephone: (617) 231–0422.

Dated: April 29, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82–12083 Filed 5–3–82; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cordis Corporation having a place of business in Miami, Florida 33152 an exclusive right in the United States to manufacture, use and sell products embodied in the invention, Optical Sensor of Plasma Constituents, U.S. Patent Application No. 930,659 (dated August 2, 1978) and Patent Application No. 6–144,043 (dated April 28, 1980). The availability of this invention for licensing was announced in the **Federal Register** (45 FR 70958, October 27, 1980). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be loyalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: April 27, 1982.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

[FR Doc. 82–12100 Filed 5–3–82; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, May 18, 1982 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. April 28, 1982.

Charles H. Atherton,

Secretary.

[FR Doc. 82–12099 Filed 5–3–82; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar, and Cocoa Exchange, Inc.; Proposed Amdts. Relating to the No. 12 Sugar Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Coffee, Sugar, and Cocoa Exchange, Inc. ("CSCE" or "Exchange") has submitted a proposal to amend the differentials for departures from the par standards for moisture, ash content, grain size and color in its Number 12 sugar contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before June 3, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

Reference should be made to the Coffee, Sugar, and Cocoa Exchange, Inc., Rule 12.16.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., (202) 254–6990.

SUPPLEMENTARY INFORMATION: The Coffee, Sugar, and Cocoa Exchange, Inc., is proposing to amend Rule 12.16 of its Number 12 sugar futures contract. Rule 1216 establishes premiums and discounts for departures from the par standards for moisture, ash content, grain size and color. The Exchange's proposed amendments would increase the discounts and/or premiums applied to these quality factors. The Exchange has determined that the differentials should be readjusted to reflect changed circumstances in the spot market. The new differentials would be applied to all outstanding contracts, as well as newly listed contracts, ten business days after Commission approval.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. IV 1980), the Commission has determined that the proposed amendments to the Number 12 sugar contract are of major economic significance. Accordingly, the CSCE's proposed amendments to Rule 12.16 are printed below, using bracketing to indicate deletions and underlining to indicate additions:

Specification

Moisture: Factor of Safety
For each .01 in excess of .30 deduct [0.06] *0.09* percent of basis price.
Ash: Ash Content (Percent of raw sugar)
For each .01 percent of ash content in excess of derived maximum standard ash content deduct [.01] *0.015* percent of basis price; for each .01 percent of ash content below derived minimum standard ash content, add [.005] *0.00625* percent of basis price.
Grain Size: Percent through 28 mesh Tyler (30 mesh U.S.) sieve
For each 1 percent above 52 percent deduct [0.04] 0.06 percent of basis price. For each 1 percent below 22 percent add [0.02] *0.025* percent of basis price.
Color: I.C.U.M.S.A. color units 2 (1958)
For each 1 unit above 210 up to and including 245 deduct [0.01] 0.015 percent of basis price. For each 1 unit above 245 up to and including 280, deduct [0.02] *0.03* percent of basis price. For each 1 unit above 280 up to and including 315, deduct [0.03] *0.045* percent of basis price. For each 1 unit above 315, deduct [0.04] *0.06* percent of basis price.
For each 1 unit below 125 down to and including 105, add [0.005] *0.0625* percent of basis price. For each 1 unit below 105, add [0.0075] *0.009* percent of basis price.

Other materials submitted by the CSCE in support of the proposed rule change may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by June 3, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on April 28, 1982.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-12106 Filed 5-3-82; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: Education Department.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a policy meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of its opportunity to attend and to participate.

DATE: May 21, 1982, 9:00 a.m. to 5:00 p.m. local time. One hour, 2:00 p.m. to 3:00 p.m. will be devoted to oral input from the public. During the hour, speakers will be scheduled to make formal oral presentations in the order in which requests have been received. Written material may be submitted at any time for consideration by the Advisory Committee. It must be relevant to the matters under consideration.

ADDRESS: Room 3000, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Director, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW. (Room 3030, ROB–3), U.S. Department of Education, Washington, D.C. 20202.

The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by Section 1205 of the Higher Education Act, as amended by Pub. L. 96–375 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary regarding policy affecting recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs.

The Advisory Committee will review the following matters:

1. Proposed revisions in the criteria for recognition of accrediting agencies and the criteria for the recognition of State agencies for approval of public postsecondary vocational education.

2. What constitutes satisfactory compliance with the criterion which asks agencies to demonstrate that they have a program for the assessment of the validity and reliability of their accreditation standards.

3. Ways in which the Department's recognition and eligibility processes can be strengthened. The role of the triad (accrediting bodies, State agencies, and Federal agencies) in eligibility determination, and termination.

Request for oral presentations should be submitted in writing to Richard J. Rowe (address as above). Requests should include the names of persons, the organization or organizations they represent, and the purpose for which the presentation is requested. Requests must be received on or before May 14, 1982. There is no limit on submission of written material.

A record will be made of the proceedings of the meeting, and will be available for public inspection at the office of the Eligibility and Agency Evaluation Staff.

Signed at Washington, D.C. on April 29, 1982.

Thomas P. Melady,

Assistant Secretary for Postsecondary Education, Department of Education.

[FR Doc. 82-12082 Filed 5-3-82; 8:45 am]
BILLING CODE 4000-01-M

National Advisory Council on Vocational Education; Meeting Changes

AGENCY: National Advisory Council on Vocational Education.

ACTION: Amendment of notice.

SUMMARY: This document is intended to notify the public of changes in the Notice of Meeting of the National Advisory Council on Vocational Education published April 29, 1982 on Page 18407.

The times, location, and agenda remain the same except that the Acting Executive Committee will meet in partially closed session on May 5, 1982 from 1:00 p.m. to 5:00 p.m. at the National Advisory Council on Vocational Education, 425 13th Street, NW, Suite 412, Washington, D.C. The Acting Executive Committee will meet in partially closed session on May 5 to discuss staffing needs, to review applications for Council positions, and review internal personnel procedures.

The Council also will meet in partially closed session at the Capitol Holiday Inn, 500 C Street SW, Washington, D.C. on May 6 from approximately 11:00 a.m. to 1:30 p.m. to discuss staffing needs, including evaluation of current Council staff and internal Council personnel procedures.

These meetings will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (2) and (6) contained in the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b(c) (2) and (6). These discussions will touch upon matters that would disclose information of a personal nature, which disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Summaries of the activities of the closed sessions and related matters which would be informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Signed at Washington, D.C., on April 30, 1982.

Raymond C. Parrott,

Executive Director.

[FR Doc. 82–12251 Filed 5–3–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is updating the representative average unit costs of four residential energy sources used in the energy conservation program for consumer products. The four sources are electricity, natural gas, No. 2 heating oil and propane. This program was established by the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3266).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective June 3, 1982, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Thomas S. Gutman, U.S. Department of Energy, Office of Conservation and Renewable Energy, Buildings Energy Research and Development, Building Equipment Division, Test and Evaluation Branch, Room GH 068, Mail Station CE–113.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9127.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating costs and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the types of products listed in Section 322(a)(1)–(13) of the Act. Those test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be calculated from measurements of energy use in a representative average use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs. In this notice, DOE is updating representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

On July 15, 1977, DOE's predecessor, the Federal Energy Administration, first published representative average unit costs of residential energy for use in the test procedures (42 FR 36549). The first update of the representative average unit costs of energy was published by DOE on June 27, 1979 (44 FR 37534), and the second update was published on December 1, 1980 (45 FR 79575). Effective on June 4, 1982, the cost figures published on December 1, 1980, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the representative average unit costs of energy found in this notice. These costs were generated from the EIA Short-Term Energy Price Projection System, which forecasts prices of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. Development of the representative average unit costs found in this notice is discussed in the November 1981 issue of EIA's quarterly publication of historical and forecasted energy consumption and prices, "Short-Term Energy Outlook," DOE/EIA 0202/8.1. Copies of this report are available at the National Energy Information Center, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

The representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(2) of the Act and will become effective June 3, 1982. They will remain in effect until further notice.

Issued in Washington, D.C., April 16, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR 4 RESIDENTIAL ENERGY SOURCES (1982)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu's[1]
Electricity	6.75¢/kWh[2,3]	$ 0.0675/kWh	$19.78
Natural gas	54.9¢/therm[4] or $5.57/MCF[5,6]	0.0000545/Btu	5.48
No. 2 heating oil	$1.23/gallon[7]	0.0000090/Btu	8.90
Propane	79.4¢/gallon[8]	0.0000073/Btu	8.73

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,413 Btu's.
[4] 1 therm=100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 136,760 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

[FR Doc. 82-12082 Filed 5-3-82; 8:45am]

BILLING CODE 6450-01

Economic Regulatory Administration

[Docket No. ERA-FC-79-012; FC Case Nos. 55119-9044-01, 02, 03-12]

General Motors Corp.; Proposed Modification of Order Granting Permanent Fuels Mixture Exemptions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and proposed modification of order granting permanent fuels mixture exemptions to General Motors Corporation Boilers 1, 2 and 3 installed at the Oklahoma City, Oklahoma Assembly Division Plant.

On September 18, 1980, the Economic Regulatory Administration (ERA) issued an Order granting permanent fuels mixture exemptions to General Motors Corporation (GM) to permit the use of natural gas in a mixture with coal in Boilers 1, 2 and 3 at its Assembly Division Plant in Oklahoma City, Oklahoma. The Order, published in the **Federal Register** on September 24, 1980, at 45 FR 63330, exempts these three units from the prohibitions of section 202 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibits the use of natural gas or petroleum as a primary energy source by a new major fuel-burning installation (MFBI).

ERA granted the permanent fuels mixture exemptions to GM subject to the terms and conditions required by the final rules which were in effect at that time (45 FR 38278) (June 6, 1980). By letter dated December 8, 1981, GM requested, pursuant to 10 CFR 501.101–501.103, that ERA modify the exemption Order so as to delete the fourth term and condition of the Order (45 FR 6331–32). That term and condition requires GM to file an annual report with ERA regarding its energy usage in the exempt units, as follows:

In accordance with the reporting requirement in 10 CFR 503.38(g), GM will submit an annual report to the Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461, each year, within one month following each anniversary of the effective date of the exemption granted herein, including the following:

• A certified statement of the percentage of natural gas used in each exempted unit (boilers 1, 2 and 3) by identifying the actual quantities of coal (in tons) and natural gas (in MCF) used during the reporting year, as well as the higher heating value (in Btu's per lb., per MCF) of those fuels.

* * * * *

The certification of fuel use must be executed by a duly authorized representative of GM.

GM states that this reporting requirement is unduly burdensome and could lead to the release of proprietary business data. Further, GM states that ERA's revised final rules (46 FR 59872, December 7, 1981) no longer require that the recipient of a permanent fuels mixture exemption under 10 CFR 503.38(d) submit an annual fuel use report.

Based upon its review of GM's December 8, 1981 request and the record in this matter, ERA has determined to commence a proceeding to modify the above-described exemption Order. Further, ERA agrees that the revision of its final rules so as to delete the annual fuel use reporting requirement from 10 CFR 503.38(d) constitutes "significantly changed circumstances" with respect to the applicability of these exemptions to GM, as provided for in 10 CFR 501.102(b).

This Notice and Proposed Modification will serve as notice under 10 CFR 501.101(d) of ERA's proposed action with respect to the Order to the person upon whom the Order was served in the original proceedings. A person who was a party to the original proceedings culminating in the Order may file a written response to this Notice within 30 days of its publication in the **Federal Register** (June 3, 1982). If ERA receives no response, the proposed modification will become effective, without further action on the part of ERA, 30 days after the date of the publication in the **Federal Register**.

ADDRESS: All comments should be addressed to Public Hearing Management, Docket No. ERA-FC-79-012, Department of Energy, Room 7146, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Issued in Washington, D.C. April 26, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12091 Filed 5-3-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders, Week of March 22 Through March 26, 1982

During the week of March 22 through March 26, 1982, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Avenue N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1982.

Monsanto Company, BEE–1618

Monsanto Company filed an Aplication for Exception from the provisions of 10 CFR 211.67. The exception request, if granted, would result in the issuance of additional entitlements to the firm with respect to the crude oil inventory which the firm states it established for a new refinery located at Lake Charles, Louisiana. On March 25, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Frank Rofinot, HEE–0010

Frank Rofinot filed an Application for Exception from the requirement to file Form EIA–9A, No. 2 Distillate Price Monitoring Report. The exception request, if granted, would permit Rofinot to be relieved of the obligation to file Form EIA–9A. On March 23, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

[FR Doc. 82–12029 Filed 5–3–82; 8:45 am]
BILLING CODE 6450–01–M

Cases Filed; Week of March 19, Through March 26, 1982

During the week of March 19, through March 26, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205 any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

April 26, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Mar. 19 through Mar. 26, 1982]

Date	Name and location of applicant	Case No.	Type of Submission
Mar. 19, 1982	Office of Special Counsel (Arco) Washington, D.C.	HRZ–0034	Interlocutory Order. If granted: Atlantic Richfield Company would be compelled to produce further discovery pursuant to the June 10, 1981 Decision and Order (Case No. BRD–1234) issued to the firm by the Office of Hearings and Appeals.
Mar. 19, 1982	T & S Refining Company, Washington, D.C.	HRD–0039	Motion for Discovery. If granted: Discovery would be granted to T & S Refining Company in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO–0009) issued to the firm.
Mar. 22, 1982	Hamilton Brothers Petroleum Corporation, Houston, Texas	HRH–0008	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Hamilton Brothers Petroleum Corporation in response to the October 2, 1982, Proposed Remedial Order (Case No. HRO–0008) issued to the firm.
Mar. 22, 1982	Hamilton Brothers Petroleum Corporation, Houston, Texas	HRD–0040	Motion for Discovery. If granted: Discovery would be granted to Hamilton Brothers Petroleum Corporation in connection with the statement of Objections submitted in response to the October 2, 1981, Proposed Remedial Order (Case No. HRO–0008) issued to the firm by the Office of Enforcement.
Mar. 26, 1982	Department of Interior; Reston, Virginia	HEE–0019	Price Exception. If granted: The Department of Interior would be permitted to recertify the crude oil produced from the OSC 797 lease in the Gulf of Mexico to market prices for sales to CPI Refining, Inc.
Mar. 26, 1982	Sierra Club Legal Defense Fund, Inc., Denver, Colorado	HFA–0048	Appeal of an Information Request Denial. If granted: The Information Request Denial issued by the Office of Freedom of Information and Privacy Acts would be rescinded and the Sierra Club Legal Defense Fund, Inc. would receive access to environmental analyses performed by the DOE.
Mar. 26, 1982	Texaco, Inc., White Plains, New York	HRH–0012 HRD–0041	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Texaco, Inc. in response to the Proposed Remedial Order (Case No. HRO–0012) issued to the firm.

Notices of Objection Received

[Week of Mar. 19 to Mar. 26, 1982]

Date	Name and location of applicant	Case No.
Mar. 19, 1982	West Coast Oil Company, Los Angeles, CA	BEE–1567.

[FR Doc. 82–12030 Filed 5–3–82; 8:45 am]
BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 82-221, 82-222, 82-223, 82-224, and 82-225; File Nos. 21577-CD-P-4-81, 21900-CD-P-4-81, 22209-CD-2-81, 22217-CD-P-2-81, 22215-CD-P-81]

Cullman Mobile Phone, Inc., et al.; Hearing Designation Order

In the matter of applications of Cullman Mobile Phone, Inc. (CC Docket No. 82-221, File No. 21577-CD-P-4-81) for authority to construct additional facilities to operate Station KWU213 on frequencies 454.100 MHz and 454.225 MHz and control and repeater facilities on frequencies 72.32 and 75.54 MHz in the Domestic Public Land Mobile Radio Service at Centerville, Alabama, American Mobilephone of Alabama, Inc. (CC Docket No. 82-222, File No. 21900-CD-P-4-81) for authority to construct additional facilities to operate Station KIJ352 on frequencies 454.100, 454.225, 454.300 and 454.325 MHz in the Domestic Public Land Mobile Radio Service at Birmingham, Alabama, Telpage Limited, Inc. (CC Docket No. 82-223, File No. 22209-CD-P-2-81) for authority to construct additional facilities to operate Station KIE366 on frequencies 454.100 and 454.225 MHz in the Domestic Public Land Mobile Radio Service at Birmingham, Alabama and (CC Docket No. 82-224, File No. 22217-CD-P-2-81) for authority to construct additional facilities to operate Station KIE366 on frequencies 454.300 and 454.325 MHz in the Domestic Public Land Mobile Radio Service at Pell City, Alabama, and Gordon C. Ogletree d.b.a. Sylacauga Paging Service (CC Docket No. 82-225, File No. 22215-CD-P-81) for authority to construct a new two-way station to operate on frequency 454.300 MHz in the Domestic Public Land Mobile Radio Service at Sylacauga, Alabama.

Adopted: April 22, 1982.

Released: April 27, 1982.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority are the captioned applications of Cullman Mobile Phone, Inc. (Cullman), American Mobilephone of Alabama, Inc. (American), Telpage Limited, Inc. (Telpage), and Gordon C. Ogletree d.b.a. Sylacauga Paging Service (Sylacauga). Cullman's application for frequencies 454,100 and 454.255 MHz is electrically mutually exclusive with the applications of American and Telpage for these frequencies. American's request for frequency 454.300 MHz is electrically mutually exclusive with the request of Telpage and Sylacauga for this frequency. Lastly, American's and Telpage's proposals to operate on frequency 454.325 MHz are electrically mutually exclusive. Therefore, a comparative hearing will be held to determine which applicant or applicants would better serve the public interest. Except to the extent indicated below, we find that Cullman, American, Telpage and Sylacauga are legally, technically, and otherwise qualified to construct and operate the proposed facilities.

2. After reviewing the need showings of Cullman and Telpage, we are unable to find that need has been demonstrated for the two base station frequencies proposed in each of the applications.

3. *Cullman Need Showing.* Cullman has submitted, in accordance with Section 22.516 of the Rules, data showing actual traffic loading on its existing frequency and stated that it holds 24 orders for additional subscribers. Our review of this data indicates that Cullman has demonstrated a clear need for only one of the two additional frequencies requested.[1] Therefore, we will designate an issue of whether Cullman has demonstrated a need for more than one additional frequency.

4. *Telpage Need Showing.* In both of its applications, Telpage has submitted traffic loading studies and prospective subscriber surveys. Based on our analysis of the traffic loading data and the surveys, we have determined that Telpage has clearly justified only one frequency at each of the proposed locations. The prospective subscriber survey cannot be used to justify more than one additional frequency under the interim need standards adopted in the *Further Notice of Proposed Rulemaking in CC Docket 20870,* 84 FCC 2d 857 (1981). As the Commission indicated in that *NPRM,* an applicant requesting more than an additional frequency is required to demonstrate need based on held orders and not prospective subscriber projections. Since Telpage, in both of its applications, has not demonstrated a need for more than one additional frequency, we will designate an issue of whether Telpage's request for two frequencies in each application should be granted.

5. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Cullman Mobile Phone, Inc., File No. 21577-CD-P-4-81, American Mobilephone of Alabama, Inc., File No. 21900-CD-P-4-81, Telpage Limited, Inc., File Nos. 22209-CD-P-2-81 and 22217-CD-P-2-81, and Gordon C. Ogletree d.b.a. Sylacauga Paging Service, File No. 22215-CD-P-81, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine whether Cullman has demonstrated adequate public need for more than one frequency;

(b) To determine whether Telpage, in each of its applications, has demonstrated adequate public need for more than one frequency;

(c) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(d) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free areas within the 39 dBu contours,[2] based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

6. It is further ordered, that the burden of going forward with the introduction of evidence and the burden of proof of Issue 5(a) is placed on Cullman and that the burden of going forward with the introduction of evidence and the burden of proof on Issue 5(b) is placed on Telpage.

7. It is further ordered, that, with respect to Issues 5(c) and 5(d), the burden of proof and the burden of proceeding with the introduction of evidence are placed on each of the applicants, as to how issues affect them,

[1] Cullman's application was filed prior to the effective date of the interim need standards adopted in CC Docket 20870. Using our prior standard, we have determined that the additional 24 subscribers can be accommodated by the addition of one channel.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 39 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F (50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

and that the ultimate burden of proof with respect to Issue 5(e) is similarly placed on each of the applicants.

8. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

9. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

10. It is further ordered, that the applicants shall file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

11. The Secretary shall cause a copy of this Order to be published in the Federal Register.

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-12097 Filed 5-3-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 82-228, 82-229, and 82-230; File Nos. BPH-810226AB, BPH-810313AB, and BPH-810313AC]

Murphy Broadcasting, Inc., et al.; Hearing Designation Orders

In the matter of applications of Murphy Broadcasting, Inc., Needles, California, Req: 97.9 MHz, Channel 250, 50 kW (H&V), minus 281 feet (BC Docket No. 82-228, File No. BPH-810226AB); Colorado River Radio, Inc., Needles, California, Req: 97.9 MHz, Channel 250, 2.8 kW (H&V), 1,573 feet (BC Docket No. 82-229, File No. BPH-810313AB); and Veach and Associates, Needles, California, Req: 97.9 MHz, Channel 250, 14.08 kW (H&V), minus 252 feet (BC Docket No. 82-230, File No. BPH-810313AC).

Adopted: April 22, 1982.

Released: April 27, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration (i) the above-captioned mutually exclusive applications filed by Murphy Broadcasting, Inc.; Colorado River Radio, Inc.; and Veach and Associates; and (ii) petitions to deny filed by Veach and Associates.[1]

2. *Veach and Associates.* Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause the main studio may be located outside that community. Veach and Associates proposes to locate its main studio 1.5 miles NW of Needles on Interstate 40 and has failed to submit the required showing of good cause. Under these circumstances, we believe that adequate justification has not been provided for the proposed studio location. Accordingly, an issue will be specified.

3. Colorado River Radio, Inc. proposes to locate the transmitter for its Needles, California station across the Colorado River in a Class C zone 0.8 miles northeast of Oatman, Arizona. As Colorado River correctly observes, the proposed relocation would as a Class C FM station, result in substandard mileage separation to one station, whereas based on the Class B to Class C spacing requirements, its proposed facility would not be short-spaced to any station. In order to obviate this situation, we have, as a matter of policy waived §§ 73.206(b)(1) and 73.207(b) of our Rules and permitted an FM station similarly situated to locate its antenna-transmitter site in a Class C zone conditioned on maintaining Class B facilities. *Doubleday Broadcasting Co., Inc.*; 46 RR 2d 1577 (1980). This would avoid the substandard mileage separation. Colorado River has stated that it will accept a grant of its application with a condition that it maintain equivalent Class B facilities. Accordingly, Colorado River's request for waiver of §§ 73.206(b) and 73.207(b) is granted and a condition on the grant of its application, if it wins the hearing, will state that it will operate as a Class B station.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas, and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issues, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the proposal of Veach and Associates, whether good cause exists for locating the main studio outside the city of license, within the meaning of Section 73.1125 of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that, in the event that the application of Colorado River Radio, Inc. is granted, it will be conditioned upon Colorado River maintaining the station as a class B facility.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-12098 Filed 5-3-82; 8:45 am]

BILLING CODE 6712-01-M

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[1] Both petitions to deny are essentially petitions to specify issues. Murphy Broadcasting, Inc.'s application was tendered for filing on February 20 1981. Colorado River Radio, Inc. and Veach and Associates tendered their applications on March 13, 1981. Accordingly, the predesignation issue pleading procedures of former Sections 1.522 and 1.584 of the Rules are not applicable. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these petitions have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to § 1.229.

FEDERAL HOME LOAN BANK BOARD

[No. AC-169]

Provident Federal Savings & Loan Association Lincoln, Nebraska; Final Action Approval of Conversion Applications

April 29, 1982.

Notice is hereby given that on April 15, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 82-286 approved the application of Provident Federal Savings and Loan Association, Lincoln, Nebraska ("Association"), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, No. 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66603.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-12096 Filed 5-3-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shippipng Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 24, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-2598-2.

Filing party: Mr. Charles M. Rowland, Port Director, Canaveral Port Authority, P.O. Box 267, Cape Canaveral, Florida 32920.

Summary: Agreement No. T-2598-2, between the Canaveral Port Authority (CPA) and Eller & Company, Inc. (Eller) modifies the basic agreement between the parties under which CPA grants Eller the exclusive right to perform handling, loading or unloading of cargo (exclusive of stevedoring services) on unleased Port property. The purpose of the modification is to remove certain facilities and land areas owned by CPA from the basic agreement.

Agreement No. T-3065-3.

Filing party: Mr. Einar C. Petersen, Senior Deputy, City of Long Beach, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3065-3 between the City of Long Beach (City) and Great Lakes Carbon Corporation (GLCC) modifies the basic agreement between the parties which provides for the lease to GLCC of certain premises at Long Beach, California, to be used to conduct a proprietary dry bulk petroleum derivative stockpiling and storage operation thereon. The purpose of the modification is to adjust the rental as provided in the lease to provide that GLCC shall pay to the City $6,732 per month for the leased premises.

Agreement No. T-4042.

Filing party: Mr. J. H. Fox, Director Marine Services, Port of Seattle, P.O. Box 1209, Seattle, Washington, 98111.

Summary: Agreement No. T-4042 is a Prefential Assignment Agreement between the Port of Seattle (Port) and Seattle Stevefore Company (SSC), and provides for the lease by the Port to SSC of 31.622 acres of black-topped land within the Terminal 18/20 complex. The premises are to be used by SSC for container and/or breakbulk operation, storage and other necessary functions for a marine yard. The term of the Agreement is for one year and shall be automatically renewed for 4 one-year periods, unless terminated by either party. As compensation SSC shall pay to the Port an annual sum of $1,018,680. If SSC receives in excess of the annual sum in any year, in wharfage and dockage charges assessed on the cargo handled at the premises, the Port shall receive in addition 50 percent of said excess charges.

Agreement No. 6190-35.

Filing party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Summary: Agreement No. 6190-35 of the United States Atlantic & Gulf/Venezuela Conference would amend Article 10(f) of the basic agreement to change the telephone polling procedures.

By Order of the Federal Maritime Commission.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12123 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1641]

Basa Cargo Services, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Basa Cargo Services, Inc., P.O. Box 520827, Miami, FL 33152 was cancelled effective April 24, 1982.

By letter dated April 5, 1982, Basa Cargo Services, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1641 would be automatically revoked unless a valid surety bond was filed with the Commission.

Basa Cargo Services, Inc., has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1641 be and is hereby revoked effective April 24, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1641 issued to Basa Cargo Services, Inc. be

returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Basa Cargo Services, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification & Licensing.

[FR Doc. 82-12025 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 996-R]

Gen-Trans International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Gen-Trans International, Inc., 3521 Coral Kay West, Virginia Beach, VA 23452 was cancelled effective April 16, 1982.

By letter dated March 30, 1982, Gen-Trans International, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 996-R would be automatically revoked unless a valid surety bond was filed with the Commission.

Gen-Trans International, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 996-R be and is hereby revoked effective April 16, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 996-R issued to Gen-Trans International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Gen-Trans International, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification & Licensing.

[FR Doc. 82-12022 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Holland America Cruises, N.V. and Holland Amerika Lijn, N.V. c/o Holland America Cruises, Two Pennsylvania Plaza, New York, New York 10001.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12020 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Prince of Fundy Cruises Limited and Transworld Steamship Company Panama) Inc. c/o Prince of Fundy Cruises Limited, P.O. Box 4216 Station A, Portland, Maine 04101.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12026 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

United States Great Lakes/South and East Africa Rate Agreement; Notice of Cancellation

Filing Party: John D. Straton, Jr., Director, Rates and Conferences, Moore McCormack Lines, Inc., 2 Broadway, New York, New York 10004.

Agreement No. 9509.

Summary: On April 27, 1982, the Commission received notice to cancel Agreement No. 9509, the United States Great Lakes/South and East Africa Rate Agreement. The agreement will be cancelled effective April 27, 1982, the date the notice of cancellation was received by the Commission.

By Order of the Federal Maritime Commission.

Dated: April 28, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12021 Filed 5-3-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain public advisory committees or panels of the Bureau of Medical Devices. Nominations will be accepted for current vacancies and for those that will or may occur during the next 12 months. FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragment to nominations for appropriately qualified female, minority, and physically handicapped candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATE: Nominations should be received by June 18, 1982 for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives must be submitted in writing to Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. All nominations and curricula vitae (which includes nominee's office address and telephone number) for industry representatives must be submitted in writing to Kay A. Levin, Bureau of Medical Devices (HFK-50), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

For Consumer Interests: Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

For Industry Interests: Mary Jo Lyons, Bureau of Medical Devices (HFK–401), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the following committee, panel and sections of panels:

Committee, panel and section	Approximate date representative needed	
	Consumer	Industry
1. Device Good Manufacturing Practice Advisory Committee.	NV	May 31, 1982.
2. Circulatory Systems Devices Panel.	June 30, 1982	June 30, 1982.
3. Clinical Chemistry and Hematology Devices Panel:		
a. Clinical Chemistry Device Section.	Feb. 28, 1983	NV.
b. Hematology and Pathology Device Section.	Immediately	NV.
c. Clinical Toxicology Device Section.	Feb. 28, 1983	NV.
4. General Medical Devices Panel: a. General Hospital and Personal Use Device Section.	Dec. 31, 1982	NV.
5. Immunology and Microbiology Devices Panel:		
a. Immunology Device Section.	Immediately	NV.
b. Microbiology Device Section.	Feb. 28, 1983	NV.
6. Obstetrics-Gynecology and Radiologic Devices Panel:		
a. Obstetrics-Gynecology Device Section.	NV	Jan. 31, 1983.
b. Radiology Device Section.	Jan. 31, 1983	NV.
7. Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel: a. Dental Device Section.	Oct. 31, 1982	NV.

NV = No vacancy.

Device Good Manufacturing Practice Advisory Committee

In accordance with section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) (the act), the function of the Device Good Manufacturing Practice Advisory Committee is to review regulations proposed for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations to the Commissioner of Food and Drugs regarding the feasibility and reasonableness of those proposed regulations. The committee also advises the Commissioner with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing regulations.

Medical Devices Panels

The functions of the medical devices panels and sections listed above are to (1) review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Consumer and Industry Representation

Section 513 of the act (21 U.S.C. 360c) provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry. Each of the sections identified in this notice will have a representative of consumer interests and a representative of industry interests. Section 520(f) of the act (21 U.S.C. 360j(f)) provides that the Device Good Manufacturing Practice Advisory Committee will have two voting members to represent the device manufacturing industry and two voting members to represent the general public.

Nomination Procedure

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee, panel, or section to represent consumer interests as identified in this notice. Any organization in the medical device manufacturing industry ("industry interests") wishing to participate in the selection of an appropriate member of a particular committee, panel, or section may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives will not participate in the selection process. It is, therefore, recommended that all nominations be made by an organization or firm. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and, in the case of consumer representative, appears to have no conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee, panel, or section or in any advisory committee, panel, or section. The term of office is approximately 3 years.

Selection Procedure

Selection of members representing consumer interests is conducted through procedures developed under 21 CFR 14.84(b) and available upon request from the contact person for consumer interests listed above. The procedures include use of a consortium of consumer organizations which recommends two candidates to the agency for the agency's selection.

Regarding nominations for members representing the interests of the device manufacturing industry, a letter will be sent to each organization that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each organization to consult with the others in selecting a single member representing industry interests for that particular committee within 60 days after receipt of the letter.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: April 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-11879 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees or panels of the Bureau of Medical Devices. Nominations will be accepted for current vacancies and those that will or may occur during the next 12 months. FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 4 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESS: All nominations and curricular vitae must be sent to: Kay A. Levin, Bureau of Medical Devices (HFK–50), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mary Jo Lyons, Bureau of Medical Devices (HFK–401), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members as follows:

1. Circulatory Systems Devices Panel: 2 vacancies immediately; 1 vacancy 6/30/82.

2. Clinical Chemistry and Hematology Devices Panel:

a. Clinical Chemistry Device Section: 1 vacancy immediately; 4 vacancies 2/28/83.

b. Clinical Toxicology Device Section: 3 vacancies immediately; 2 vacancies 2/28/83.

3. General Medical Devices Panel:

a. General Hospital and Personal Use Device Section: 2 vacancies immediately; 1 vacancy 12/31/82.

b. Gastroenterology and Urology Device Section: 3 vacancies 12/31/82.

4. Immunology and Microbiology Devices Panel:

a. Immunology Device Section: 1 vacancy immediately.

b. Microbiology Device Section: 2 vacancies 2/28/83.

5. Obstetrics-Gynecology and Radiologic Devices Panel:

a. Obstetrics-Gynecology Device Section: 2 vacancies immediately.

b. Radiology Device Section: 3 vacancies immediately.

6. Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel:

a. Ophthalmic Device Section: 1 vacancy 10/31/82.

b. Dental Device Section: 1 vacancy immediately; 1 vacancy 10/31/82.

7. Respiratory and Nervous Systems Devices Panel:

a. Anesthesiology Device Section: 2 vacancies immediately; 2 vacancies 11/30/82.

b. Neurological Device Section: 1 vacancy immediately; 1 vacancy 11/30/82.

8. Surgical and Rehabilitation Devices Panel: a. General and Plastic Surgery Device Section: 2 vacancies 8/31/82.

Device Good Manufacturing Practice Advisory Committee

In accordance with section 520(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)) (the act), the function of the Device Good Manufacturing Practice Advisory Committee is to review regulations proposed for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations to the Commissioner of Food and Drugs regarding the feasibility and reasonableness of those proposed regulations. The committee also advises the Commissioner with regard to any petition submitted by a manufacturer for exemption or variance from good manufacturing practice regulations.

Medical Devices Panels

The functions of the medical devices panels and sections are to (1) review and evaluate available data concerning the safety and effectiveness of medical devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Qualifications

Persons nominated for membership on these medical devices panels or sections shall have adequately diversified experience appropriate to the work of the committee, panel, or section in one or more fields such as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee, panel, or section. The term of office is approximately 3 years.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees, panels, or sections. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. To permit evaluation of possible sources of conflict of interest, FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: April 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–11880 Filed 5–3–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N–0365]

Drug Products Containing Pentylenetetrazol; Final Order on Objections and Requests for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and declares all drug products containing pentylenetetrazol either as a single ingredient or in combination with other ingredients to be "new drugs" which are not exempt from the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act ("the act") by virtue of the "grandfather" provisions of the act. All such drugs require approved new drug applications to be lawfully marketed in interstate commerce. The drugs are offered for a variety of conditions associated with senility and for vertigo.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Paul D. Leber, M.D., Division of Neuropharmacological Drug Products (HFD–120), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

SUPPLEMENTARY INFORMATION: In a notice (DESI 10508) published in the **Federal Register** of August 26, 1969 (34 FR 13673), the Food and Drug Administration (FDA) announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group (NAS/NRC) with respect to the following drugs:

1. Geroniazol Injection (NDA 11–742, held by Philips Roxane Laboratories, Inc., 330 Oak Street, Columbus, Ohio 43216) ("Philips Roxane")—containing 100 milligrams (mg) of pentylenetetrazol and 50 mg of nicotinic acid, as sodium nicotinate, per milliliter (ml); offered for use in the treatment of senile confusion, depression, psychosis, fatigue, and debilitation.

2. Nicozol with Reserpine Tablets (NDA 10–508, held by Nysco Laboratories, Inc., 34–24 Vernon Blvd., Long Island City New York) 11106, ("Nysco")—containing 100 mg of pentylenetetrazol, 50 mg of nicotinic acid, and 0.25 mg of reserpine per tablet; offered for use in senile psychoses and psychoneuroses when anxiety and nervous tension are present; and relief of dizzy spells, mental confusion, mild behavioral disorders, irritability, and functional memory defects in elderly patients.

The notice stated that FDA concurred with the NAS/NRC reports, which had evaluated pentylenetetrazol-containing drugs as lacking substantial evidence of effectiveness for their labeled indications, and announced the Commissioner's intention to initiate proceedings to withdraw approval of the new drug applications. Before initiating such action, however, the Commissioner invited holders of the new drug applications for these drugs, and any interested person who might be adversely affected by the removal of the drugs from the market, to submit pertinent data bearing on the proposal.

On December 18, 1969, in response to the DESI notice, Philips Roxane submitted data in support of the effectiveness of Geroniazol; Nysco did not file any data in support of its product. The submission and other information were evaluated by the agency and found not to provide substantial evidence of effectiveness of the drugs for their labeled indications. Accordingly, in the **Federal Register** of May 20, 1970 (35 FR 7749), the Commissioner issued a notice of opportunity for hearing in which he proposed to issue an order under section 505(e) of the act (21 U.S.C. 355(e)) withdrawing approval of three new drug applications (NDA 11–347, held by Hart Laboratories, Station Square One, Paoli, Pennsylvania 19301 ("Hart"), for Nicozol with Reserpine Tablets was added to the notice of opportunity for hearing) on the ground that the drugs lacked substantial evidence of effectiveness for their labeled indications.

Before initiating such action, the Commissioner invited holders of the new drug applications and any other interested person who would be adversely affected by an order withdrawing approval of the new drug applications to submit a written notice electing whether or not to avail themselves of the opportunity for a hearing. The notice reiterated that withdrawal of approval of the new drug applications would result in the removal of marketing approval not only for the products subject to the applications, but also for any drugs containing pentylenetetrazol. Applicants or other persons requesting a hearing were instructed to state the reasons why approval of the applications should not be withdrawn and to provide a well-organized and full factual analysis of the clinical and other investigational data they were prepared to prove in support of their opposition to the proposed withdrawals.

In response to the May 20, 1970 notice, Philips Roxane requested a hearing for Geroniazol Injection but did not support its request with clinical data or legal arguments. Neither Nysco nor Hart requested a hearing. Accordingly, in notices published in the **Federal Register** of September 12, 1970 (35 FR 14412), the Commissioner withdrew approval of the three new drug applications.

On December 1, 1970, 20 firms marketing identical, similar, or related drug products containing pentylenetetrazol filed a complaint for declaratory and injunctive relief contending that their products either were not "new drugs" within the meaning of section 201(p)(1) of the act (21 U.S.C. 321(p)(1)) or that they were exempted from the "new drug" requirements by virtue of the statute's "grandfather" clauses. The district court declined to rule on the issues and remanded the case to FDA as the "more able arbiter" of the questions. *O'Neal, Jones & Feldman, Inc.* v. *Richardson*, No. 70–1001, slip op. at 8 (D.S.C., February 10, 1971).

The district court decision was reversed by the court of appeals, which held that the Commissioner lacked jurisdiction to determine administratively the "new drug" status of a product. *Bentex Pharmaceuticals, Inc.* v. *Richardson*, 463 F. 2d 363, 370 (4th Cir. 1972). The Supreme Court, *sub nom. Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973), reversed and concluded that the district court's referral of the "new drug" and "grandfather" issues to FDA was appropriate, that the Commissioner has jurisdiction to determine administratively the "new drug" status of a product or a class of products, and that following the issuance of such an order, persons marketing such products would not be entitled to *de novo* hearings in the courts. *Id.* at 653.

Following the Supreme Court's ruling, a notice of opportunity for hearing was published in the **Federal Register** of January 30, 1976 (41 FR 4625). The notice stated that review of all the available data relative to the products that were the subject of the *Bentex* litigation failed to reveal any adequate and well-controlled clinical investigations demonstrating that any drug product containing pentylenetetrazol, either alone or in combination with other ingredients, will have the effect it is represented to have under the conditions of use recommended in its labeling. The FDA Associate Commissioner for Compliance concluded that all drug products containing pentylenetetrazol lacked substantial evidence of effectivenes for their labeled uses and were, *a fortiori*, "new drugs" within the meaning of 21 U.S.C. 321(p). Therefore, the agency proposed to issue an order declaring the "new drug" status of all drug products containing pentylenetetrazol, and for all drug products containing a drug related or similar to pentylenetetrazol. Each of the plaintiffs in the *Bentex* litigation and all manufacturers and distributors of such drugs were invited to request a

hearing and to support the request with data, information, and analyses showing why an order should not be issued declaring all such drug products "new drugs." The notice also invited interested persons to submit data supporting the use of pentylenetetrazol as a diagnostic agent for those epileptics whose diagnosis is refractory to other procedures.

A number of manufacturers and distributors responded to the January 30, 1976 notice. The respondents and their submissions are summarized briefly as follows.

A. *The National Ethical Pharmaceutical Association* ("NEPA"), 1200 17th St. NW., Suite 700, Washington, D.C. 20036, requested a hearing on behalf of 88 of its member companies. However, the request was not supported by any data or legal arguments. The companies included within this request were as follows:

Alba Pharmacal Corp., P.O. Box 628, Penuelas, PR 00724.
Alpha Pharmacal Co., 1451 Page Industrial Blvd., St. Louis, MO 63132.
Alwin Sales Assoc., Inc., Box 354, Mahopac, NY 10541.
Ambix Laboratories, Inc., 1615 51st St., North Bergen, NJ 07047.
Barr Laboratories, Inc., Box 7, Northvale, NJ 07647.
Barry-Martin Pharmaceuticals, Inc., 5792 SW. Eighth St., Miami, FL 33144.
Barth Spencer Corp., 270 West Merrick Rd., Valley Stream, NY 11582.
Bay Laboratories, Inc., 7321 North Ridgeway, Skokie, IL 60076.
Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407.
Blaine Co., 2700 Dixie Hwy., South, Ft. Mitchell, KY 41017.
Bonco Laboratories, Inc., 9209–11 Highway 42, Prospect, KY 40059.
Carnrick Laboratories, 65 Horse Hill Rd., Cedar Knolls, NJ 07927.
Central Pharmacal Co., 116–128 East Third St., Seymour, IN 47274.
Chromalloy Pharmaceuticals, Inc., 10100 Santa Monica Blvd., Los Angeles, CA 90067.
Comatic Laboratories, Inc., Box 42300, Houston, TX 77042.
Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.
Danbury Pharmacal, Inc., 131 West St., Danbury, CT 06810.
Deacon Pharmaceutical Co., Foust St., Ashboro, NC 27203.
Dee Cee Laboratories, Inc., Box 166, Madison, TN 37115.
J. W. S. Delavau Co., Inc., 2140 Germantown Ave., Philadelphia, PA 19122.
Delco Chemical Co., Inc., Box 64, Mt. Vernon, NY 70550.
Desmond Laboratories, Inc., Linda Lane, Oak Ridge, NJ 07438.
Drummer Laboratories, Box 30, Sellersville, PA 18960.
Dunhall Pharmaceuticals, Inc., Box 100, Gravette, AR 72736.
Edwards Pharmacal Co., 1474 S. Trezevant, Memphis, TN 38114.
Evron Pharmaceutical Co., Inc., 7475 North Rogers Ave., Chicago, IL 60626.
Generics Corp. of America, 333 Sylvan Ave., Englewood Cliffs, NJ 07632.
The Gobese Co., Box 777, Bay City, MI 48706.
Gulfcoast Drug Supply, Inc., 1337 NW. 155th Drive, Miami, FL 33169.
Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
Halsom, Medical Supply, Inc., 500 East First St., Dayton, OH 45402.
Heun/Norwood Division, E. W. Heun Co., 2303 Schuetz Rd., St. Louis, MO 63141.
Dow B. Hickam, Inc., Box 35413, Houston, TX 77035.
Hyrex/Key Pharmaceuticals, Box 16385, Memphis, TN 38116.
Interstate Drug Exchange, Engineers Hill, Plainview, NY 11803.
Jamieson-McKames Pharmaceuticals, 3227 Morganford Rd., St. Louis, MO 63116.
Keene Pharmaceuticals, Box 7, Keene, TX 76059.
Kessel Laboratories, Inc., 923 SE. 9th Ct., Hialeah, FL 33010.
Lanco Container Corp., 70 Washington St., Brooklyn, NY 11021.
Landry Pharmaceuticals, Inc., 4500 Montrose Blvd., Houston, TX 77006.
Lanpar Co., Box 35227, Dallas, TX 75235.
Laser, Inc., 2000 North Main St., Crown Point, IN 46307.
Len-Tag Co., 5101 East Davison Ave., Detroit, MI 48212.
Mallard, Inc., 3021 Wabash Ave., Detroit, MI 48216.
Marnel Pharmaceuticals, Inc., 208 Luke Dr., Lafayette, LA 70501.
M. M. Mast & Co., 4152 Ruple Rd., Cleveland, OH 44121.
Mayrand, Inc., Box 20246, Greensboro, NC 27420.
Howard B. Nelson, Vienna Bank Building, Room 201A, 374 Maple Ave. E., Vienna, VA 22180.
Medica International Ltd., 6 North Michigan Ave. (505), Chicago, IL 60602.
Medical Products Panamericana, Inc., Box 771, Coral Gables, FL 33134.
Mericon Industries, Inc., 420 SW. Washington, Peoria, IL 61602.
Misemer Pharmaceuticals, Inc., Box 3177 Glenstone Station, Springfield, MO 65804.
Napp Chemicals, Inc., Box 205, Lodi, NJ 07644.
National Pharmacal Manufacturing Co., 4128 Hayward, Baltimore, MD 21215.
Natoli Engineering Co., Inc., 10512 Baur Blvd., St. Louis, MO 63132.
Nature's Bounty, Inc., 105 Orville Dr., Bohemia, NY 11716.
North American Pharmacal Co., 6851 Chase Road, Dearborn, MI 48126.
O'Neal, Jones & Feldman, Inc., 1304 Ashby Rd., St. Louis, MO 63132.
Our Brand Pharmaceuticals, 1431 South Atlantic, Cocoa Beach, FL 32931.
Palmedico, Inc., Drawer 3397, Columbia, SC 29203.
Pan American Laboratories, Inc., Box 8068, New Orleans, LA 70182.
Pharmacaps, Inc., Box 547, Elizabeth, NJ 07207.
Pharmaceutical Associates, Inc., Box 6605, Greenville, SC 29604.
Pharmecon, Inc., 23550 Haggarty, Farmington, MI 48024.
Pharmics, Inc., 1878 S. Redwood Rd., Salt Lake City, UT 84104.
Private Formulae, Inc., 4470 Goodfellow Blvd., St. Louis, MO 63120.
Progressive Drugs of America, Box 11066, Chattanooga, TN 37401.
Pruvo Pharmacal Co., 2018 West Bender Rd., Milwaukee, WI 53209.
Rachelle Laboratories, Inc., Box 2029, Long Beach, CA 90801.
Coke Reeves, 2800 Southwest Freeway, Houston, TX 77006.
Reid-Provident Laboratories, Inc., 640 10th St. NW., Atlanta, GA 30318.
Richie Pharmacal Co., Inc., Box 414, Glasgow, KY 42141.
Saron Pharmacal Corp., Box 13547, St. Petersburg, FL 33733.
Scrip, Inc., 101 South St., Peoria, IL 61602.
Shara Laboratories, Inc., 248 East Town Line Rd., Wautoma, WI 54982.
Sheraton Laboratories, Inc., 374 Reed St., Santa Clara, CA 95050.
Sherry Pharmaceutical Co., 1550 Fifth Ave., Bay Shore, NY 11706.
Standard Pharmacal Corp., 1300 Abbott Drive, Elgin, IL 60120.
Standex Laboratories, Inc., 585 West Second Ave., Columbus, OH 43215.
Star Pharmaceutical, Inc., Box 600431, North Miami Beach, FL 33160.
Tablicaps, Inc., Box 5555, Franklinville, NJ 08322.
Time Pak, Box 4805, Detroit, MI 48239.
Trimen Laboratories, Inc., 80 26th St., Pittsburgh, PA 15222.
UAD Laboratories, Inc., Box 744, Minden, LA 71055.
Udell Associates, 8050 North Lawndale, Skokie, IL 60076.
Vangard Laboratories, Inc., Box 271, Glasgow, KY 42141.
Vitarine Co., Inc., 227 15 Conduit Ave., Springfield Gardens, NY 11413.
Winston Pharmaceuticals, Inc., Box 5275, Winston-Salem, NC 27103.

B. *The Hyrex-Key Respondents* ("Hyrex respondents") requested a hearing on behalf of 20 companies (some of which had joined in NEPA's request for a hearing) that manufacture or distribute pentylenetetrazol-containing drugs. With the exceptions noted below, this request was premised entirely upon an assortment of legal arguments (e.g., that the pentylenetetrazol-containing drugs were not "new drugs" within the meaning of 21 U.S.C. 321(p), that such drugs were exempted from the "new drug" requirements of the act by virtue of the 1938 and 1962 grandfather provisions, that they were entitled to discovery of various documents in FDA files, that this administrative proceeding was procedurally defective, and that a full evidentiary hearing was necessary to resolve genuine and material issues of fact). Three of the Hyrex respondents (Dunhall Pharmaceuticals, Inc., Misemer Pharmaceuticals, Inc., and UAD

Laboratories, Inc.) contended that their products were generally recognized as safe and effective in the management of vertigo. In support of this contention, the three firms submitted four published studies in which a product with a different formulation was administered to the patients. Not one of the Hyrex respondents contended that its product was generally recognized as effective for any of the claims associated with senility. The following companies are included within the Hyrex respondents:

Blaine Co., Inc.
Central Pharmacal Co.
Chromalloy Pharmaceuticals, Inc.
Daniels Pharmaceuticals, Inc., 2527 25th Ave, North, St. Petersburg, FL 33702.
Dunhall Pharmaceuticals, Inc.
Edwards Pharmacal Co.
Halsom Medical Supply, Inc.
Heun/Norwood Division, E. W. Heun Co.
Hyrex-Key Pharmaceuticals, Inc.
Mallard, Inc.
Mayrand, Inc.
Medical Products Panamericana, Inc.
Misemer Pharmaceuticals, Inc.
O'Neal, Jones & Feldman, Inc.
Pan American Laboratories, Inc.
Pharmaceutical Associates, Inc.
Saron Pharmacal Corp.
Scrip, Inc.
Thera-Medic, Inc., 5237 5th Ave. South, Birmingham, AL 35212.
UAD Laboratories, Inc.
Winston Pharmaceuticals, Inc.

C. *The B. F. Ascher and Co., Inc.*, Kansas City, MO ("Ascher"), requested a hearing for its product Nioric, a tablet containing pentylentetrazol as a single entity. In support of its request, Ascher submitted an animal pharmacodynamic study, a report of a survey of 253 practicing physicians who used Nioric in their practice, and the affidavit of its Director of Research and Product Development stating, among other things, his opinion that Nioric is generally recognized as safe for its intended uses. Ascher did not submit any evidence to show that Nioric's claims were substantiated by adequate and well-controlled clinical investigations or that Nioric was generally recognized as effective for its labeled uses. Rather, Ascher argued that Nioric need not prove that it is generally recognized as effective because it is exempted under the grandfather provisions of the act. Ascher also adopted each of the legal arguments advanced by the Hyrex respondents.

D. *The Knoll Pharmaceutical Co.*, Orange, NJ ("Knoll"), submitted numerous clinical studies, published and unpublished, in support of its products, Metrazol, Vita-Metrazol, and Nico-Metrazol. Knoll acknowledged that none of its submissions constituted well-controlled clinical investigations within the meaning of the regulations, 21 CFR 314.111(a)(5) or 21 CFR 300.50, but contended nevertheless that a hearing was necessary to determine whether its products are generally recognized as effective. Knoll also contended that its products are protected by the grandfather clauses of the act and adopted each of the legal arguments raised by the Hyrex respondents.

E. *The Rucker Pharmacal Co., Inc.*, Shreveport, LA, ("Rucker"), submitted five clinical investigations and a number of affidavits of physicians to support the effectiveness of Ru-Vert in the management of vertigo. No clinical data were submitted to support the effectiveness of Su-Ton and Su-Zol, two other pentylenetetrazol products marketed by Rucker. The firm also contended that its products are not "new drugs" and that the products are exempt from the new drug provisions of the act by virtue of the grandfather provisions. Rucker also raised many of the same legal arguments offered by the Hyrex respondents.

F. *The FDA Neurologic Drugs Advisory Committee* submitted two articles in response to the request for data to support the use of pentylenetetrazol as a diagnostic agent but later withdrew them. This indication for pentylenetetrazol will not be discussed further.

The Commissioner has considered all of the material submitted by those requesting a hearing and has concluded that there is no genuine issue of material fact requiring a hearing and that the legal objections offered are insubstantial. A full discussion follows.

I. The Drugs

The drugs for which a hearing was requested fall into three categories: single-entity products containing only pentylenetetrazol; products containing pentylenetetrazol with one or more vitamins or minerals; and products which contain pentylenetetrazol, a vitamin or mineral, and an antihistamine such as dimenhydrinate or pheniramine maleate. The specific drugs are listed below.

A. National Ethical Pharmaceutical Association

These respondents did not identify any specific products in support of their hearing request.

B. The Hyrex Respondents

1. *Tinaplex Elixir.* Each 5 ml contains 200 mg pentylenetetrazol, 100 mg nicotinic acid, 5 mg thiamine HCl, 2 mg pyridoxine HCl, and 25 mg vitamin B_{12}. (Blaine Company).

2. *Cenalene Tablets and Elixir.* Each 5 ml of elixir and each tablet contains 100 mg pentylenetetrazol, 1.67 mg thiamine hydrochloride (elixir) or thiamine mononitrate (tablet), 7.5 mg niacinamide, and 2.5 micrograms cyanocobalamin (vitamin B_{12}). (The Central Pharmacal Co.).

3. *Cenalene-M Tablets and Elixir.* Each 5 ml of elixir and each tablet contains 100 mg pentylenetetrazol. (The Central Pharmacal Co.).

4. *Pentylenetetrazol Tablets, Capsules, and Elixir.* Each tablet, capsule, and 5 ml of elixir would contain 100 mg pentylenetetrazol. (These products had not been marketed as of the date of the hearing request. Chromalloy Pharmaceuticals, Inc.).

5. *Pentylenetetrazol and Niacin Tablets, Capsules, and Elixir.* Each tablet, capsule, and 5 ml of elixir would contain 100 mg pentylenetetrazol and 50 mg niacin. (These products had not been marketed as of the date of the hearing request. Chromalloy Pharmaceuticals, Inc.).

6. *Vital Tablets and Elixir.* Each tablet and each 15 ml of elixir contains 10 mg pentylenetetrazol, 150 mg 1-lysine monohydrochloride, 1 mg thiamine HCl (B_1), 1.2 mg riboflavin (B_2), 10 mg niacinamide, and 10 micrograms cyanocobalamin (B_{12}). (Distributed by Daniels Pharmaceuticals, Inc.; manufactured by Pharmaceutical Associates, Inc.).

7. *Vasostim Capsules (formerly Vasonicol).* Each capsule contains 100 mg pentylenetetrazol and 100 mg niacin. (Dunhall Pharmaceuticals, Inc.).

8. *D-Vaso Capsules (formerly Vasostim and Vasonicol).* Each capsule contains 50 mg pentylenetetrazol, 50 mg niacin, and 25 mg dimenhydrinate. (Dunhall Pharmaceuticals, Inc.).

9. *Senilezol Tablets (Long Acting and Plain) and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg nicotinic acid. (Edwards Pharmacal Co.).

10. *Halizol Tablets.* Each tablet contains 100 mg penylenetetrazol and 50 mg niacin (Halsom Medical Supply, Inc.).

11. *Pentylenetetrazol with Nicotinic Acid (Elixir). a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, and varying amounts of alcohol ranging from 5–15%. (Heun/Norwood Division).

12. *Nicozol Capsules and Elixir.* Each capsule contains 100 mg pentylenetetrazol and 50 mg niacin. Each 5 ml of elixir contains 200 mg pentylenetetrazol and 100 mg niacin (as

the sodium salt). (Hyrex-Key Pharmaceuticals, Inc.).

13. *Nialex Tablets.* Each tablet contains 50 mg pentylenetetrazol, 50 mg niacin, and 30 mg ascorbic acid (Mallard, Inc.).

14. *Penalate Capsules and Elixir.* Each capsule and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg niacin. (Mayrand, Inc.).

15. *Aminobrain PT Elixir.* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg niacin, 100 mg l-lysine HCl, 1 mg thiamine HCl (B_1), and 1.2 mg riboflavin (B_2). (Distributed by Medical Products Panamericana, Inc.; manufactured by Pharmaceutical Associates, Inc.).

16. *Mivert Capsules.* Each capsule contains 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, 50 mg niacin, and 5 mg benzocaine. (Misemer Pharmaceuticals, Inc.).

17. *Senilex Tablets.* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (O'Neal, Jones & Feldman, Inc.).

18. *Trela Tablets (improved formula).* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (O'Neal, Jones & Feldman, Inc.).

19. *Panzol Forte (elixir).* Each 45 ml contains 30 mg pentylenetetrazol, 50 mg nicotinic acid, 5 mg riboflavin sodium phosphate, 10 mg thiamine HCl, 100 mg choline (as tricholine citrate), 50 mg inositol, 22 mg iron (as ferrric pyrophosphate), 3 micrograms vitamin B_{12} (cobalamin concentrate), 1 mg manganese (as sulfate), 2 mg magnesium (as sulfate), and 1 mg zinc (as sulfate). (Pan American Laboratories, Inc.).

20. *T-Lex Tablets and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg niacin. (Distributed by Thera-Medic, Inc.; manufactured by Pharmaceutical Associates, Inc.).

21. *Nialene Capsules and Elixir.* Each capsule and each 5 ml of elixir contains 200 mg pentylenetetrazol and 100 mg nicotinic acid. (Distributed by Winston Pharmaceuticals, Inc.; manufactured by Pharmaceutical Associates, Inc.).

22. *Alert Elixir.* Each 5 ml of elixir contains 100 mg pentylenetetrazol, 50 mg niacin, 100 mg l-lysine HCl, 1 mg thiamine HCl (B_1), and 1.2 mg riboflavin (B_2). (Distributed by Thera Pharmaceutical Co.; manufactured by Pharmaceutical Associates, Inc.).

23. *Tylene (elixir) Pentinic Elixir, Penta-nic Elixir, Vazole Elixir, Benizol (elixir), Lemotonic (elixir).* Each 5 ml contains 100 mg pentylenetetrazol and 50 mg niacin. (Formerly manufactured by Pharmaceutical Associates, Inc.).

24. *Tega-Zol Elixir and Capsules.* Each 5 ml of elixir and each capsule contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, and 1.5 mg d-amphetamine. (Formerly manufactured by Pharmaceutical Associates, Inc.).

25. *Kenile Elixir.* Each 5 ml contains 200 mg pentylenetetrazol and 100 mg nicotinic acid. (Formerly manufactured by Pharmaceutical Associates, Inc.).

26. *Benizol Plus (elixir).* Each 5 ml contains 100 mg pentylenetetrazol, 50 mg nicotinic acid, 1.67 mg methyltestosterone, 0.0033 mg ethinyl estradiol, 1 mg thiamine, 1.2 mg riboflavin, 0.8 mg pyridoxine, 2 micrograms cyanocobalamin, 30 mg ascorbic acid, 1 mg panthenol, and 20 mg choline bitartrate. (Formerly manufactured by Pharmaceutical Associates, Inc.).

27. *Salutol-Plus Elixir.* Each 45 ml contains 300 mg pentylenetetrazol, 200 mg niacinamide, 500 mg liver fraction No. 1, 20 mg ferric ammonium citrate, 30 micrograms cyanocobalamin, 5 mg pyridoxine, 10 mg riboflavin, and 30 mg thiamine HCl. (Formerly manufactured by Pharmaceutical Associates, Inc.).

28. *Genizol Tablets and Elixir.* Each tablet contains 100 mg pentylenetetrazol and 50 mg niacin. (Saron Pharmacal Corp.).

29. *Vertab Capsules.* Each capsule contains 25 mg pentylenetetrazol, 50 mg nicotinic acid, and 25 mg dimenhydrinate. (UAD Laboratories, Inc.).

C. B. F. Ascher and Co.

Nioric Tablets and Elixir (formerly Nioric Modified). Each tablet or each 5 ml of elixir contains 100 mg pentylenetetrazol.

D. Knoll Pharmaceutical Co.

1. *Metrazol Tablets and Liquid.* Eacah tablet or each 5 mL of elixir contains 100 mg pentylenetetrazol.

2. *Vita-Metrazol Tablets and Elixir.* Each table contains 100 mg pentylenetetrazol, 10 mg niacinamide, 1 mg each of thiamine mononitrate, pyridoxine HCl, and riboflavin, and 25 mg ascorbic acid. Each 5 ml of elixir contains 100 mg pentylenetetrazol, 10 mg niacinamide, 1 mg each of thiamine HCl and pyridoxine HCl, and 1.4 mg of riboflavin-5'-phosphate sodium.

3. *Nico-Metrazol Tablets and Elixir.* Each tablet and each 5 ml of elixir contains 100 mg pentylenetetrazol and 50 mg nicotinic acid.

E. Ricker Pharmacal Co.

1. *Ru-Vert Tablets and Liquid.* Each tablet and each 15 ml of elixir contains 25 mg pentylenetetrazol, 5 mg nicotinic acid, and 12.5 mg pheniramine maleate.

2. *Su-Zol Liquid.* Each 5 ml of elixir contains 50 mg pentylenetetrazol.

3. *Su-Tan Liquid Tonic.* Each 45 ml of elixir contains 30 mg pentylenetetrazol, 50 mg niacin, 10 mg vitamin B_1, 5 mg vitamin B_6, 1 mg vitamin B_{12}, 100 mg choline, 50 mg inqsitol, 1 mg manganese, 2 mg magnesium, 1 mg zinc, 200 mg ferric pyrophosphate, and 3 micrograms vitamin B_{12}.

II. Recommended Uses and Dosage

Virtually all of the products are offered for one or more conditions which may be associated with aging or senility; several are also offered for vertigo. Viewed collectively, the labeling offers the products as a panacea for conditions, both mental and physical, which may accompany old age.

The labeling generally provides for administration of the drugs 1 to 3 times a day.

III. Data Submitted To Support General Recognition of Effectiveness

Absent an exemption, the only way these manufacturers may escape the prophylactic provisions of the act which require approved new drug applications before marketing is by demonstrating that their products are not "new drugs", i.e., that the products are "generally recognized, among experts qualified by scientific training and experience * * * as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof." 21 U.S.C. 321(p)(1). In turn, a manufacturer may clear the hurdle of "general recognition" only by coming forward with "substantial evidence" of effectiveness of a product sufficient for approval of a new drug application. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 629 and 632 (1973). The act defines "substantial evidence" as "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed * * * in the labeling * * * thereof." 21 U.S.C. 355(d). The prerequisites for an adequate and well-controlled clinical investigation have been particularized in regulations promulgated by FDA. See 21 CFR 314.111(a)(5)(ii). Unless the effectiveness of a product is supported by studies which meet each of the criteria spelled out in these regulations, the product lacks "substantial evidence" of effectiveness under 21 U.S.C. 355(d) and,

a fortiori, is a "new drug" within the meaning of 21 U.S.C. 321(p). Moreover, identification of a single deficiency in light of the pertinent regulations conclusively disqualifies a study and precludes its use as "substantial evidence." *Cooper Laboratories, Inc.* v. *Commissioner FDA*, 501 F. 2d 772, 781 (D.C. Cir. 1974).

A. The National Ethical Pharmaceutical Association

These companies did not submit any data to support the general recognition of effectiveness of pentylenetetrazol-containing products.

B. The Hyrex Respondents

Three companies (Dunhall Pharmaceuticals, Inc.; Misemer Pharmaceuticals, Inc.; and UAD Laboratories, Inc.) submitted data to support the contention that their products were generally recognized as effective in the management of vertigo. The data consisted of four published reports of studies conducted on a fourth product, Ru-Vert, manufactured by Rucker. These companies also cross-referenced the underlying protocols, raw data, and factual analyses of the studies contained in the Rucker submission in support of Ru-Vert. The specific product formulations and labeling are as follows:

D-Vaso Capsules (50 mg pentylenetetrazol, 50 mg niacin, and 25 mg dimenhydrinate) are "indicated in the symptomatic management of idiopathic vertigo, as well as that associated with Meniere's Syndrome, Arterial Hypertension, Labyrinthitis, Fenestration Procedures, Radiation Sickness and Tonic Effect. D-Vaso has also been of value in patients with clinical symptoms of senility and functional cerebral impairment as well as symptomatic nausea."

Mivert Capsules (25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, 50 mg niacin, and 5 mg benzocaine) are offered as a "Vasodilator, cerebral stimulant, antihistaminic, for use in vertigo, Meniere's syndrome and certain conditions of apprehension and mental confusion."

Vertab Capsules (25 mg pentylenetetrazol, 50 mg nicotinic acid, and 25 mg dimenhydrinate) are indicated "in the symptomatic management of idiopathic vertigo as well as that associated with Meniere's Syndrome, Arterial Hypertension, Labyrinthitis, Fenestration Procedures, Radiation Sickness. Vertab has also been 'of value' in patients with clinical symptoms of senility and functional cerebral impairment as well as symptomatic nausea."

The four clinical studies are evaluated below:

a. "Benign Paroxysmal Positional Vertigo: A Clinical Study," Herndon, J. W., O. Haug, M. J. Horowitz and T. E. Lynes, *Annals of Otology, Rhinology and Laryngology*, 84: 218–223, 1975. Rucker, the sponsor of the study, submitted a separate report which analyzed the study in light of the regulations, 21 CFR 314.111(a)(5)(ii), as well as a separate statistical analysis. This was a double-blind, crossover study in which 23 patients with disorders of the peripheral labyrinthine system were evaluated on the basis of a neurological survey, an audiogram, and an electronystagmograph (ENG). Nystagmus (involuntary movement of the eye) and vertigo were artificially induced (by suddenly turning the patient's head 90° to one side). Scores were developed for each test by rating the severity of symptoms with plus signs; more severe symptoms were indicated by a greater number of signs. Scores were then developed for each patient by summing that patient's scores for all tests. Following the initial examination, patients were randomly given a 1-week supply of Ru-Vert or an identical appearing placebo capsule and told to take two capsules three times a day. Six of the 17 patients received Ru-Vert during the first week; 11 of the 17 patients received placebo during the first week. At the end of one week, the patients were reevaluated and crossed over to the other medication for one week at which time they were evaluated for a third time. Finally, all patients were evaluated a fourth time after 1 week of no treatment. To facilitate statistical analysis, the summed scores for each patient for each week were also ranked (i.e., the lowest score was given a rank of 1, the highest score a rank of 4).

The authors concluded as follows: (1) The data for the 11 patients who received placebo during the first week failed to show a statistically significant improvement but when these same patients received Ru-Vert during the second week, the scores were significantly lower; (2) for all 17 patients Ru-Vert score were significantly lower than placebo scores; and (3) the difference in rank sum scores for patients treated with Ru-Vert in week 1 was not statistically lower than the rank sum scores for placebo-treated patients during the same period.

The study is not adequate and well controlled for a number of reasons. First, because only a placebo control was used, no evidence is provided to support the claim that each of the three ingredients in this combination product contributes to the claimed effects. 21 CFR 300.50. To demonstrate properly that each of the ingredients contributes to the combination, it is necessary to compare Ru-Vert, not only with a placebo, but also with each of the individual ingredients in the combination and with the three permutations of ingredients which result from combining two of the three ingredients in Ru-Vert (i.e., pentylenetetrazol and pheniramine maleate; pentylenetetrazol and nicotinic acid; and pheniramine maleate and nicotinic acid).

Nor is the study capable of showing that Ru-Vert as a whole is superior to a placebo. The study protocol did not provide adequate assurance that the subjects initially selected for investigation were suitable for the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*). To the contrary, it plainly appears that patient selection occurred *after* the study was completed. For example, the authors state that their "original purpose in this study was to evaluate Ru-Vert in the treatment of patients with disorders of the peripheral labyrinthine system." However, when the study was completed, the authors, without explanation, decided to report the results only for those 21 patients who had benign, paroxysmal, positional vertigo. The diagnostic criteria of the condition to be studied should have been determined *before* the subjects were entered in the study, not after. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). In fact, examination of the patient report forms shows that results from three of the patients were excluded by the authors (patient nos. 6, 10, and 11) even though their diagnoses ("peripheral vestibular dysfunction with positional vertigo," "Hallpike positional vertigo") were no different from those patients whose results were reported.

The study is also not controlled because comparability with respect to pertinent variables was not assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Again, the patient report forms shown that some patients had consumed alcohol the night before one or more of the examinations (e.g., patient nos. 13 and 14), while other patients had not. Several patients received medication for at least two weeks pre-study, but not thereafter (e.g., patient nos. 7 and 20); other patients were concurrently using additional medication (including, in one instance, an anti-vertigo agent) at various times during the study (e.g., patient nos. 6, 9, 13, 17, and 20). Under these circumstances, there is no way to determine whether observed effects

were due to Ru-Vert or to the presence of the other drug substances.

The authors acknowledged that the six patients who received Ru-Vert during the first week of the study failed to show a statistically significant improvement in ENG scores. Moreover, a comparison of the Ru-Vert group and the placebo group in change in ENG scores from pre-treatment to the first week shows that there was no statistically significant difference between the two groups (Mann-Whitney U Test, Siegal, S., *Non-Parametric Statistics*, McGraw Hill, 1956, pp. 116–126; N=17, U=31, p>0.05).

The findings for patients generated during the second week of treatment are unusable for the following reasons. The authors' statistical analysis of data for the 11 patients who received placebo during the first week is inappropriate because the authors failed to consider the effect of order of drug administration on observed effects. The order in which drugs are administered to patients in a crossover study is always a pertinent variable for which comparability must be assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Without such an assurance it is impossible to compare the results of treatment with a control in such a fashion as to permit meaningful quantitative evaluation. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). This is particularly so where, as here, there is an extremely small number of patients and the authors have acknowledged that vertigo "is commonly self-limiting and resolves in a period of a few weeks or months." Thus, there is no way to determine whether patient improvement was a function of elapsed time or whether it was attributable to the effect of the drug.

There is an additional factor in this study which underscores why it is necessary for an analysis to rule out sequence of drug administration as a confounding variable. As the authors recognize, "patients lean to protect themselves from vertiginous attacks by movement restriction." In other words, as the patients become more accustomed to the sudden movements used by the physician to induce the vertiginous attacks, they learn to anticipate it, thereby decreasing the severity of the symptoms induced. Accordingly, the decreased ENG scores may be attributable to patient adaptation over time to the turning procedure used to induce the vertigo, rather than to the effect of the drug. Finally, analysis of the first and second week scores for all 17 patients confirms that although there were no residual effects (within subject difference, $Z=\pm 0.857$, $p>0.05$) for the subjects of each sequence, there were significant period effects (within subject crossover difference). Koch, G. C., "The Use of Non Parametric Methods in the Statistical Analysis of the Two Period Change-Over Design," *Biometrics*, June 1972, pp. 577–584; $Z=\pm 3.026$, $p<0.01$). In short, drug effects can only be measured for the first week, and data observed during the second week must be ignored. As noted above, however, the authors reported that the first week's data failed to show a statistically significant effect for Ru-Vert over placebo.

The separate analysis submitted by Rucker did not address most of the foregoing specific deficiencies. Rucker's analysis did discuss comparability between test and control groups, but in a wholly inadequate manner. For example, in the analysis it is claimed that comparability with respect to concurrent drug usage was assured simply because the study report states that "one patient" was dropped from the investigation for taking additional medication. This statement ignores entirely the report forms which reveal that numerous other patients were also taking additional medications.

b. "The Effect of Ru-Vert and Its Components on Post-Rotatory Motor Performance," Lynes, T. E., and L. E. Boos, *Current Therapeutic Research*, 16:937–943, 1974. Rucker provided a separate analysis of the study attempting to demonstrate compliance with the regulations for adequate and well-controlled studies. This was a double-blind, placebo-controlled study designed to compare the effects of Ru-Vert with each of its individual components and with each possible pair of components on the post-rotatory phenomena. The authors selected 240 *normal* young (average age 21 years) volunteers and divided them into three sets of 80 subjects each (40 males and 40 females) as follows: Set I consisted of five groups of 16 subjects (8 males and 8 females). The subjects in each group received placebo, Ru-Vert, or one of the three components of Ru-Vert. Set II was divided into five similar groups. The subjects in these groups received either placebo, Ru-Vert, or one of the pairs of ingredients in the Ru-Vert combination. Because set III was a replicate of set II, the data were combined and analyzed together.

On the day of the experiment, subjects were asked to report having fasted for at least 6 hours before their scheduled arrival time. Upon arrival each subject was given a pre-test which included an evaluation of coordination (body, head, and arm position, and leg movements) during a tandem walk of a straight line, a standard Romberg test (i.e., the Romberg sign is said to have appeared if the patient's body sways or the patient falls when standing with feet close together and eyes closed), and a tandem Romberg test. Immediately after pre-test, each subject was given two tablets of an assigned regimen. One hour after drug administration, vertigo was artificially induced by placing the subject on a platform which was rapidly rotated for 1 minute and then brought to a rapid stop. Thereafter, the subject was evaluated for duration and intensity of vertigo.

On the duration of vertiginous symptoms, the authors reported that there were no significant differences for any of the groups in the three sets, i.e., Ru-Vert was not shown to be superior to placebo, to any Ru-Vert's individual ingredients, or to any of ingredients. (In fact, in set I the duration of vertiginous symptoms was shortest in the placebo-treated group; even in sets II and III, Ru-Vert decreased the average duration of vertiginous symptoms over placebo by only 2.2 seconds.)

On the severity of vertigo (in the patients in set I), the authors reported that Ru-Vert produced a significant reduction in the intensity of vertigo induced by deceleration, that none of the individual ingredients produced such a change, and that pheniramine meleate produced a significant increase in the intensity of vertigo. Insofar as the severity of vertigo (in the patients in sets II and III), is concerned, the authors reported that the group treated with Ru-Vert and the group treated with the combination of pentylenetetrazol and pheniramine maleate showed a statistically significant decrease in symptom intensity over placebo. The authors based their conclusion that nicotinic acid contributed to the claimed effects on the fact that the group receiving pentylenetetrazol and pheniramine maleate exhibited the Romberg sign with "a significantly greater frequency than can be accounted for by chance."

This investigation is patently incapable of providing substantial evidence of Ru-Vert's effectiveness in the management of vertigo because it provides no assurance that the patients selected were suitable for the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The authors examined only normal volunteers; no patient with vertigo was entered in the study. Under these circumstances, there can be no assurance that Ru-Vert will have the same effect on patients with the pathological conditions which cause

vertigo as the authors claim Ru-Vert had in these normal patients whose dizziness was artificially induced by deceleration. *Id.* The regulations plainly require that the study protocol set forth the "diagnostic criteria of the condition to be treated or diagnosed." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). If normal subjects are studied, no such diagnostic criteria can be provided. Similarly, the regulations also require that there be comparability between test and control groups for such pertinent variables as "severity, or duration of disease." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Again, if normal subjects are used, the regulation becomes meaningless. In short, unless a drug is tested on patients who have the precise condition for which the drug is offered, the clinical pharmacologist and the physician will have no rational scientific basis for determining precisely which conditions may be effectively treated with the regimen. The failure to study the drug in diseased patients renders the study conclusively uncontrolled.

The study is also uncontrolled because it failed to provide assurance of group comparability with respect to a pertinent variable—concomitant drug usage. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). In its separate analysis of the study, Rucker acknowledged that concomitant drug usage was "restricted to caffeine, nicotine, minimal amounts of alcohol and oral contraceptive drugs." Any of these drugs, which act upon the central nervous system, may have influenced the results of treatment. Because these drugs manifestly were not uniformly prohibited and no analysis was provided to assure that test and control groups were comparable on the use of such drugs, the study is uncontrolled.

There is a third deficiency in this study. The report states that the "confounding element of 'response decline' * * *" (discussed in the previous study) was removed by using independent groups for evaluation of each agent and each combination." Examination of the patient report forms shows that this was not the case. In fact, at least 27 subjects were used more than once. The results generated by the "repeaters" were clearly not independent and any analysis based upon their results is unreliable. 21 CFR 314.111(a)(5)(i), (a)(5)(ii)(*a*)(*2*), and (a)(5)(ii)(*a*)(*4*).

Finally, the results of the study do not support any claim that Ru-Vert is effective in the management of vertigo. As shown above, the decrease in duration of vertigo caused by Ru-Vert was not significantly better than with any single component, pair of components, or placebo. In fact, Ru-Vert decreased the duration of vertigo over placebo by only 2.2 seconds.

Within this fleeting timespan, even if Ru-Vert had been shown to produce a decrease in intensity of vertigo, any such decrease would be clinically trivial.

Moreover, the results as reported by the authors do not show that each ingredient in Ru-Vert contributes to the effects claimed as required by 21 CFR 300.50. The authors reported that the combination of pentylenetetrazol and pheniramine maleate performed comparably with Ru-Vert in reducing the intensity of vertigo. (In fact, this combination of ingredients performed better than Ru-Vert, although not significantly so.) The evidence plainly fails to show the contribution of nicotinic acid, the third ingredient in Ru-Vert.

The authors argue that nicotinic acid does contribute to Ru-Vert, however, because the group treated with pentylenetetrazol and pheniramine maleate exhibited the Romberg sign with a "greater frequency than can be accounted for *by chance*" (emphasis added). To demonstrate that nicotinic acid in Ru-Vert contributes to the combination (in this case by decreasing the frequency of the Romberg sign), however, it is necessary to compare each of the combinations of ingredients in Ru-Vert with Ru-Vert. The same comparisons made by the authors when they measured the effect of Ru-Vert and its components on the duration and intensity of vertigo should have been made for the decrease in the frequency of the Romberg sign. Instead, the authors focused on each treatment group separately and compared the frequency of occurrence of the Romberg sign in that group with chance rather than with the frequency of occurrence in the other treatment groups. FDA analysis show that there was no statistically significant difference between the treatment groups with respect to the appearance of the Romberg sign. ($X^2=5.10$; $DF=3$; $p=0.16$.)

Once again, Rucker's separate analysis of the study did not address the above cited deficiencies.

c. "A Double-Blind, Placebo Controlled Study of Ru-Vert In Patients With Vertigo," Pou, J. W., and H. J. Quinn, *Current Therapeutic Research*, 9:558–562, 1967. Rucker submitted a separate analysis of the study. The purpose of this double-blind, placebo-controlled study was to evaluate the clinical effects of Ru-Vert in the symptomatic treatment of vertigo. Fifty patients with vertigo were divided into two groups and given either placebo or identical appearing Ru-Vert Tablets. The 27 patients in the Ru-Vert-treated group received medication for an average period of 66 days (range 7 to 208 days), while the 23 patients in the placebo-treated group received medication for an average period of 59 days (range 12 to 218 days). Evaluation of therapeutic response was based upon the results of nystagmus, pointing, Romberg and straight line tests, as well as the subjective response of the patient. The overall response was rated with a descriptive scale using the criteria "excellent" (symptom free), "good" (marked improvement, but not complete relief of all symptoms), "fair" (slight improvement), and "poor" (no improvement). The authors reported that a clinically good response (excellent or good) was observed in 77 percent of the Ru-Vert patients, whereas only 17 percent of the placebo-treated patients showed a similar response.

This study is not well controlled in several respects. The authors have not provided the diagnostic criteria of the vertigo of these patients. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The authors' tabular summary of the *causes* of the patients' vertigo does not comply with the regulations; the etiology of a disease may not be equated with the diagnostic criteria which characterize its nature. In fact, even the etiology of the patient's disease in many cases is not described, but is lumped in the category, "other (allergy, otosclerosis, etc.)."

The authors have also failed to assure that subjects were *assigned* to test and control groups in a manner to minimize bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*). No information is provided regarding the method of patient assignment. Rather, the authors report only that the patients were "separated into two groups". Random assignment of subjects to test and control groups is the *sine qua non* of any controlled study. Known variables which may affect the outcome of the study, such as age, sex, and duration and severity of the disease, can and must always be assured by comparison of their distribution between test and control groups. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). The purpose of randomly assigning subjects to test and control groups is to assure equal distribution of recurring, *unknown* variables which may influence treatment outcome. The authors give no indication that assignment of patients to test and control groups was randomized. See, e.g., the study conducted by Herndon, et al., reviewed above.

The authors have failed to assure that test and control groups were

comparable with respect to such pertinent variables as the severity or duration of the disease or the use of drugs other than the test drug. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Only the age and sex of the patients are accounted for. These omissions, too, are critical. Indeed other studies included in Rucker's submission acknowledge that vertigo may spontaneously remit, recur, or persist for years and that numerous therapeutic agents may have an effect on vertiginous symptoms.

The authors have also failed to compare the results of treatment with a control in a fashion which permits quantitative evaluation. 21 CFR 314.111(a)(5)(ii)(*a*)(*1*). Although the study report states that therapeutic response was evaluated on the basis of objective criteria and the subjective response of the patient, it offers no explanation of what weight is accorded to the subjective response of the patient. The patient report forms show that in numerous instances no objective tests were conducted while in others the numerical rating system for a particular test was wholly ignored by the investigators. In fact, in many instances, there was only one examination of a patient, making impossible any judgment on improvement.

This lack of objectivity in the evaluation of patient responses reveals yet another deficiency in the design of the study: failure to blind the analysts of the data. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). While it may be permissible to break the code before evaluating the results of a study when the data are wholly quantitative and permit no room for bias to creep into interpretations, this practice is impermissible when data are almost entirely subjective, as was the case in this study. Inasmuch as data were evaluated after the code was broken, there was no method used to preclude bias (conscious or unconscious) from entering into the authors' conclusions. The problem is compounded by the authors' failure to record the evaluation of the patient's response on the report form. Under these circumstances, the study constitutes little more than an undocumented series of subjective impressions. 21 CFR 314.111(a)(5)(ii) (*c*).

Finally, because only a placebo control was used, the study offers no evidence that each of the components in Ru-Vert contributes to the claimed effects. 21 CFR 300.50.

In its separate analysis, Rucker attempts to overcome the authors' failure to randomly assign the patients by arguing that "subjects were assigned to the active treatment group or the placebo treatment group such that neither patients nor the physicians knew which preparation was used."

Rucker's argument shows that it misunderstands the different purposes of randomization and blinding and the manner in which each is accomplished. As noted above, the purpose of randomization is to assure equal distribution of unknown variables between test and control groups. The purpose of blinding is to prevent bias (conscious and unconscious) in the reporting of results by the physician and the patient. Randomization, of necessity, is essentially completed before the study even begins when it is determined that patients will be assigned or medications will be distributed pursuant to a predetermined numerical order which follows a table of random numbers. Blinding, on the other hand, is not truly accomplished until the study has been completed and it has been determined that neither the investigators nor the patients were able to distinguish between the various regimens. In short, patient assignment may be randomized whether or not the study participants are blinded, and blinding will not effect randomized assignments.

Raucker's analysis did not address the other defects discussed above.

d. "A Clinical Study of Ru-Vert in the Management of Vertigo," Pou, J. W., and H. J. Quinn, *Current Therapeutic Research*, 8:494–497, 1966. Rucker submitted a separate analysis of the study. Twenty-eight patients were administered Ru-Vert in varying dosages for periods ranging from 3 to 378 days. Nystagmus, pointing, Romberg, and straight line tests were conducted pre- and post-therapy. In addition, the authors made a global evaluation of the symptomatic response using the following criteria: "Excellent" (sympton free), "good" (marked improvement, all symptoms), "fair" (some improvement, some symptoms) and "poor" (no improvement). The authors reported that "some degree of symptomatic relief" was obtained in 83 percent of the patients treated (excellent, good, or fair).

This study lacks virtually every feature of a well-controlled study. The diagnostic criteria used to select the patients are not provided. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)(*j*). The methods of observation and recording of results, including the assessment of subjective responses and steps taken to minimize bias on the part of subject or the observer, are not explained. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). There was no blinding. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). There was no control. *Id.* The findings were not statistically analyzed. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). The authors appear to have recognized the patent inadequacy of this study inasmuch as they have characterized their findings as "preliminary in nature" which require confirmation "by double-blind, placebo-controlled clinical trials."

Finally, the study provides no evidence that each of the ingredients in Ru-Vert contributes to the claimed effect. 21 CFR 300.50.

In its separate analysis, Rucker claims that the study used a historical control. This argument is unsupported by the study itself. While the authors state that "a number" of patients had experienced a clinically inadequate response in previous therapy with other agents, they do not state what that number of patients is or precisely what those agents were. More important, because some types of vertigo are transient and may spontaneously improve, a "historical" control is meaningless in the absence of careful documentation of the nature and history of vertigo experienced by these patients. Without a precise description of the disease and of its history in each patient, there can be no historical control.

* * * * *

There is an additional reason why each of the four foregoing studies does not constitute an adequate and well-controlled clinical investigation insofar as the products of the Hyrex respondents are concerned: the composition of the test drug, Ru-Vert, is different from the formulations of the products of the Hyrex respondents. 21 CFR 314.111(a)(5)(ii)(*b*). Ru-Vert contains 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, and 5 mg nicotinic acid. In contrast, D-Vaso, contains 50 mg pentylenetetrazol, 50 mg nicotinic acid (niacin), and 25 mg dimenhydrinate. Mivert contains 5 mg benzocaine, an ingredient not present in Ru-Vert, while Vertab contains 25 mg dimenhydrinate rather than the 12.5 mg pheniramine maleate present in Ru-Vert. Accordingly, even if these studies were adequate and well controlled, they could not be used to support the effectiveness of these three products.

The Hyrex respondents did not submit any evidence to show that their products were generally recognized as effective for the other indications for which they offered.

C. B. F. Asher & Co., Inc.

This firm also did not contend that its product, Nioric, was generally recognized as effective for its labeled indications, nor did it submit evidence to support such a contention.

D. Knoll Pharmaceutical Co.

1. *Metrazol Tablets and Liquidum (elixir).* Metrazol (containing 100 mg pentylenetetrazol per tablet or per 5 ml elixir) is offered for a host of conditions including "to enhance mental, physical activity of elderly patients," for "disturbed memory function," as "a mood conditioning drug," for "treatment of senile and arteriosclerotic psychoses," and for "cerebral arteriosclerosis."

Knoll submitted 64 serially numbered reprints of published articles and two unpublished studies (Bazo and Ban) in support of its claim that the Metrazol products are generally recognized as effective. With commendable and refreshing candor, Knoll conceded that these submissions to "not comport with the standards for controlled clinical investigations in the regulations * * *." In fact, Knoll further acknowledged that the patients in these trials performed "very poorly" when objectively evaluated (with intelligence tests, performance tests, and psychiatric rating scales) and that it was "difficult, if not impossible, to show any superiority of Metrazol * * * over placebo."

In view of these acknowledgements and in the interest of brevity, the articles will not be reviewed individually, but rather will be categorized by their deficiences. The articles are identified with Knoll's numbers rather than by their complete citations. The articles were reviewed as follows:

a. *Studies which failed to show that Metrazol was effective* (i.e., Metrazol did not "beat" the placebo or the author concluded that efficacy had not been shown) (21 CFR 314.111(a)(5)(i): 1, 19 (psychological testing showed no significant change), 21, 25, 26, 28 through 36, 73 through 75, Bazo, and Ban.

b. *Studies which failed to provide diagnostic criteria of the condition treated* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(i)*): 6, 8 through 12, 17, 19, 24, 28, 35, 38, and 72.

c. *Studies which failed to assign subjects to test and control groups in such a way as to minimize bias* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(ii)*): 1, 5, 6, 15, 24 through 27, 35, 37 through 39, and 77 through 79.

d. *Studies which failed to assure comparability between test and control groups with respect to one or more pertinent variables* (21 CFR 314.111(a)(5)(ii)(*a*)*(2)(iii)*): 1, 2, 5, 6, 9 (sequence of drug administration, concurrent use of other drugs), 24–28, 29 (concurrent use of other drugs and length of time on medication prior to observation), 35 through 39, 74, 75, and 77 through 79.

e. *Studies which failed to explain methods of observation and recording of results, including variables measured, quantitation and assessment of subjects' response* (21 CFR 314.111(a)(5)(ii)(*a*)*(3)*): 12, 13, 15, 17, 20, 27, 72, 75, and 76.

f. *Studies which failed to provide a quantitative comparison of results of treatment with control group* (21 CFR 314.111(a)(5)(ii)(*a*)*(4)*: 1 through 5, 7, 8, 10 through 13, 14 (placebo control used, but data not quantified for this group), 16 through 23, 29, 72, and 76 through 79.

g. *Studies which were unblinded or only partially blinded* (21 CFR 314.111(a)(5)(ii)(*a*)*(4)*): 2 through 18, 20 through 24, 25 (partially), 27, 29, 72, and 76 through 79.

h. *Studies which failed to provide either a summary of the method of analysis or a statistical analysis, or both* (21 CFR 314.111(a)(5)(ii)(*a*)*(5)*): 2 through 5, 9, 14 through 16, 18, and 73.

2. *Vita-Metrazol Tablets and Elixir.* Vita-Metrazol (containing 100 mg pentylenetetrazol, 10 mg niacinamide, 1.0 mg thiamine HCl, 1.0 mg pyridoxine HCl, 1.4 mg riboflavin, 2.0 mg d-panthenol, and 2.5 mg ascorbic acid per tablet or per 5 ml elixir) is offered for the same uses as Metrazol. Knoll requested that the evidence in support of Metrazol also be considered applicable to Vita-Metrazol on the grounds that the pentylenetetrazol content of the products is the same and the vitamins and minerals in Vita-Metrazol were added "as a convenience for the physician and the patient." Inasmuch as there are no adequate and well-controlled clinical investigations in the data submitted by Knoll to support the claims made for Metrazol, it is clear that Vita-Metrazol also lacks such evidence. Of course, Vita-Metrazol also lacks evidence to satisfy the criteria of FDA's combination policy set forth in 21 CFR 300.50.

3. *Nico-Metrazol Tablets and Elixir.* Nico-Metrazol (containing 100 mg pentylenetetrazol and 50 mg niacin per tablet or per 5ml elixir) is offered "to enhance mental and physical activity of elderly patients," to improve "appetite, sleep habits, mental alertness, mood, * * * ward amenability * * * orientation * * * and incontinence."

A number of articles were submitted to support the effectiveness of these products. Knoll also recognizes that none of these articles constitutes adequate and well-controlled clinical investigations within the meaning of 21 CFR 314.111(a)(5)(ii)(*a*)*(5)* and 21 CFR 300.50, but contends nevertheless that two of the studies (Ananth et al.; and La Brecque and Goldberg) which attempted to demonstrate the contribution of each of the ingredients in this combination are "well controlled" in some, even though not all, respects. Inasmuch as a hearing may be warranted only when a sponsor submits investigations which meet all of the regulatory criteria, it is unnecessary to review these studies in detail. The articles are reviewed briefly as follows:

a. "Senilex in the Treatment of Geriatric Patients," Ananth, J. V., M. Deutsch, and T. A. Ban, *Current Therapeutic Research*, 13:316–21, 1971. This study compared a combination product (Senilex) containing nicotinic acid (50 mg) and pentylenetetrazol (200 mg) with each of its constituent ingredients in three groups of 10 patients. Patients were randomly assigned to the three groups. Investigators and patients were blind as to the regimen. However, because neither pentylenetetrazol nor nicotinic acid is an established, effective treatment for the conditions studied by these authors and because no placebo control group was used, it is impossible to assess quantitatively the contribution of either ingredient alone or the combination. 21 CFR 314.111(a)(5)(ii)(*a*)*(4)*. Moreover, the product that was used in the study, Senilex, does not contain the same proportions of nicotinic acid and pentylenetetrazol as does Nico-Metrazol. Therefore, the findings are not pertinent to this product. 21 CFR 314.111(a)(5)(ii)(*b*). Finally, the authors concluded that "no significant change was observed in any of the three treatment groups at the end of the 12-week period."

b. "A Double-Blind Study of Pentylenetetrazol Combined with Niacin in Senile Patients," La Brecque, D. C., and R. I. Goldberg, *Current Therapeutic Research*, 9:611–617, 1967. This study compared a combination product of unspecified composition with a placebo. Because no patients received either nicotinic acid or pentylenetetrazol as a single entity, the study can not show that each of these ingredients contributes to the product's effect as required by 21 CFR 300.50. Moreover, the authors failed to assure comparability between test and control groups on such pertinent variables as age, sex, duration, or severity of disease. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The remaining studies did not even attempt to demonstrate that each of the components in Nico-Metrazol contributed to the claimed effects as required by 21 CFR 300.50. In addition, they each contained numerous other defects.

The study conducted by Curran and Phelps did not use Nico-Metrazol, but rather Geroniazol (nicotinic acid 150 mg and pentylenetetrazol 300 mg), a product with a different formulation from Nico-Metrazol. Accordingly, the results of this study can not be used to support the effectiveness of Noco-Metrazol. 21 CFR 314.111(a)(5)(ii)(*b*). The study was completely uncontrolled (i.e., all patients receiving the test drug) and unblinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*).

The Danto study compared Nico-Metrazol with Vesprin, a product with a different formulation from Nico-Metrazol. 21 CFR 314.111(a)(5)(ii)(*b*). As the investigator recognized, the effectiveness of neither agent has been established. The study was not blinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Finally, the author concluded that, overall, 90 percent of the patients showed no change on the medications.

The eight studies conducted by Deitric, Erwin, Kris and Gerst, Miller, Phipps and Hogle, Thompson and Proctor (2), and Seidel et al. did not use a control group and were completely unblinded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). As such, they constitute little more than anecdotal reports of the experience of the investigators.

The Levy article attempted to compare a number of agents including nicotinic acid, pentylenetetrazol, and a combination similar to Nico-Metrazol (containing nicotinic acid, pentylenetetrazol, and pepsin elixr) with each other and with placebo. Each of the ingredients was administered to each of the patients apparently at the same time. The author stated that some patients were concurrently received other medication, but did not identify these patients. Nor did he identify the phase of the study during which any patient was receiving concomitant medication. Therefore, comparability in concurrent drug usage was not assured. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*). Although it was reported that the combination (nicotinic acid, pentylenetetrazol, and pepsin) produced a "marked improvement" in the behavior of the patients and a "better performance" on psychological tests, these conclusions were neither quantified nor subjected to statistical analysis to determine whether the results were significant or whether the sequence of administration of the drugs affected the outcome. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*) and (*5*). Finally, the author did not report whether nicotinic acid or pentylenetetrazol contributed significantly to the combination. 21 CFR 300.50.

A separate 2½-page report by Dr. Levy was not a study at all, but a testimonial speech stating the author's belief that pentylenetetrazol and nicotinic acid are efficacious.

Knoll also submitted a number of "selected references from (the foregoing) clinical papers detailing the difficulties of psychometric testing in geriatric patients using rating scales and other testing instruments" that were available before 1972. It is clear that this information in no way provides substantial evidence to support the effectiveness of Metrazol. 21 CFR 314.111(a)(5)(ii). This is particularly so in view of Knoll's recognition that such scales are now available and in view of its promise to undertake studies using such instruments. In any event, the difficulty of establishing the effectiveness of a drug does not excuse a manufacturer from the obligation to prove the claims for its products.

E. The Rucker Pharmacal Co., Inc.

Ru-Vert (containing 25 mg pentylenetetrazol, 12.5 mg pheniramine maleate, and 50 mg nicotinic acid) is offered for use "in the symptomatic management of idiopathic vertigo as well as that associated with Meniere's syndrome, arterial hypertension, labyrinthitis, fenestration procedures, and radiation sickness, * * * functional cerebral impairment" as well as "certain conditions of apprehension and mental confusion."

Rucker submitted five studies to support its contention that Ru-Vert is generally recognized as effective in the management of vertigo. Four of these were reviewed above in section III.B. The fifth is reviewed below.

"The Effect of Ru-Vert on the Slow Phase of Nystagmus in Normal Subjects During Rotation," Boos, L. E., A. S. Littell, and J. J. McCutchen, unpublished, undated. Rucker submitted a separate analysis of the study. This was a single-blind, placebo-controlled, crossover study with two objectives: (1) To determine whether a newly developed rotary chair would allow reliable electronystagmograms (ENG's) during rotation, and (2) to determine whether Ru-Vert had an effect on nystagmus produced by such rotation. The subjects were 15 normal college students who were nonsmokers. On the day before the trial, a series of nystagmus tests were conducted while the subjects were being rotated in a chair and when rotation had stopped. After these tests were completed, the subjects were instructed to take eight tablets (Ru-Vert or placebo) on a dosage schedule which would ensure the rotations conducted on the following day (i.e., the day of the trial) would occur at specific time intervals after the last two tablets had been taken. On the trial day subjects were rotated four times. Following a 5-day washout period, regimens were crossed over and the procedure was repeated. Use of alcohol was forbidden for 48 hours before and throughout the test period.

The authors reported that the angular velocity of the slow component of the eye movement was reduced significantly by Ru-Vert.

This study is not adequate and well controlled for a number of reasons. Because only normal persons were studied, there can be no assurance that the subjects selected were suitable for the purposes of the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). See Lynes and Boos study, *supra* at section III.B.b.

The authors have failed to assure comparability between test and control groups for a pertinent variable—the order in which the patients received the drug. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). While it is not normally necessary to assure patient comparability where, as here, each patient served as his own control, it is necessary to assure that sequence of drug administration did not influence the treatment outcome. No analysis to check for this variable was reported by the authors.

The authors have also failed to assure comparability between test and control groups with respect to use of drugs other than the test drug. *Id.* The report states that the subjects did "not use any drugs on a regular basis." This statement raises more questions than it answers and does not approach compliance with the regulations. What must be shown is that immediately preceding and throughout the test period no patient took any medication which may have confounded the results. No such assurance was given.

Finally, because only a placebo control was used, the study offers no evidence to support the claim that each of the ingredients in Ru-Vert contributes to the claimed effects within the meaning of 21 CFR 300.50.

Rucker submitted a protocol for a study which it stated was "in progress". However, no results from the study have been proferred although more than 4 years have elapsed since it was allegedly initiated. A protocol obviously does not provide a basis upon which experts could conclude that this product is generally recognized as effective. Nor does a protocol create a genuine issue of fact requiring a hearing.

Rucker also submitted three letters and 12 affidavits of physicians who state that the four published studies reviewed above comply with the regulations for adequate and well-

controlled clinical investigations. These physicians further state, on the basis of these studies and upon their personal experience with Ru-Vert, their conclusion that Ru-Vert is generally recognized as effective in the management of vertigo. The affiants do not address the specific criteria of the regulations. They do not state that the studies comply with each of the criteria set forth in the regulations. Nor do they state that they have reviewed the patient report forms upon which the reports are based. Rather, they state, in the most conclusory fashion, that the studies constitute "substantial evidence" which leads them to believe that Ru-Vert is effective in the management of vertigo.

It is clear that these affidavits and letters do not themselves constitute "substantial evidence" of a drug's effectiveness. Such evidence is statutorily defined and may consist only of adequate and well-controlled investigations. 21 U.S.C. 355(d). Nor are these generalized endorsements sufficient to create a genuine issue of fact requiring an evidentiary hearing. A hearing may be obtained only when studies have been submitted which meet the regulatory criteria. Whether a study meets each of the criteria set forth in the regulations can be determined only by a searching analysis of the study in light of each element of the regulations. To require an evidentiary hearing upon the mere submission of conclusory affidavits would defeat the utility of the regulations. One need only compare the conclusory affidavits with the foregoing point-by-point analyses of the studies to confirm this fact.

Rucker did not submit any evidence to show that Ru-Vert was generally recognized as effective for its other indications. Nor did Rucker submit any evidence to show that its other products, Su-Ton and Su-Zol, were generally recognized as effective.

IV. Summary

Five respondents comprising more than 90 companies requested a hearing for some 35 pentylenetetrazol-containing products offered for the widest variety of symptoms and conditions. However, only two of the parties requesting a hearing (the Hyrex respondents and Rucker) submitted evidence—five studies—which they claimed constituted adequate and well-controlled clinical investigations which comply with the regulations. 21 CFR 314.111(a)(5)(ii) and 300.50. These five studies were offered to support the claim that four products (D-Vaso, Mivert, Vertab, and Ru-Vert) are generally recognized as effective in the management of vertigo. No respondent submitted any evidence which it contended met the regulatory criteria for adequate and well-controlled clinical investigations to support the numerous other claims made for these products.

The four studies identified by the Hyrex respondents used a test drug with a formulation different from the formulation used in the products of the Hyrex respondents. Furthermore, each of the four studies has one or more additional defects which render it conclusively inadequate and not controlled in light of the regulations.

Rucker relied on the same four studies and one additional study to support its contention that Ru-Vert is generally recognized as effective in the management of vertigo. The fifth study also fails to meet the regulatory criteria for adequate and well-controlled investigations.

Of the five studies, only one (Lynes and Boos) attempted to show that each ingredient in the combination contributed to the claimed effects of the drug as required by 21 CFR 300.50. This study failed to test the drug in subjects who had vertigo.

In conclusion, it is clear that not one of the pentylenetetrazol-containing products is supported by substantial evidence. Accordingly, none is generally recognized as effective for its labeled uses, and all are therefore "new drugs."

V. Legal Arguments

General Background

In their hearing requests the respondents raised an array of legal arguments. These are discussed below.

The principal contention of each of the respondents is that its product(s) is(are) protected by one or both of the "grandfather clause" exemptions contained in the 1938 act or the 1962 amendments thereto. Accordingly, before discussing the individual claims of each manufacturer, the grandfather provisions and the relevant legal precedents will be reviewed.

The 1938 Grandfather Clause. The Food and Drugs Act of 1906, 34 Stat. 768, prohibited the sale of adulterated and misbranded drugs, but did not require the premaketing approval of drugs sold in interestate commerce. In 1938 however, following the Elixir of Sulfanilamide tragedy, Congress amended the 1906 act, to require administrative preclearance for all new drugs. 52 Stat. 1040. A "new drug" was defined as a drug which was not generally recognized by qualified experts as *safe* for its intended uses. 21 U.S.C. 321(p)(1) (emphasis added). The 1938 act also contained a grandfather clause which exempted certain drugs from having to meet the newly imposed safety requirements. The 1938 grandfather clause provides that a drug will be exempted:

> * * * if at any time prior to the enactment of this Act (June 25, 1938) it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use * * *.
> 21 U.S.C. 321(p)(1).

To qualify for grandfather status under this provision, the manufacturer must prove that (1) the identical drug (2) bearing labeling containing the identical representations concerning its conditions of use (3) was introduced into interstate commerce in the United States (or was manufactured in a Federal territory or the District of Columbia) after June 30, 1906, and before June 25, 1938.

The 1962 Grandfather Clause. The 1962 act, 76 Stat. 781 et seq., amended the definition of "new drug" to include drugs not generally recognized among experts as safe *and effective* for their intended uses. 21 U.S.C. 321 (p)(1) (emphasis added). The 1962 act also contained a grandfather clause which provides:

> (4) In the case of any drug which, on (October 9, 1962) the day immediately preceeding the enactment date, (A) was commercially used or sold in the United States, (B) was not a new drug as defined by section 201(p) of the basic Act as then in force, and (C) was not covered by an effective application under section 505 of that Act, the amendments to section 201(p) made by this Act shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug on that day.
> Section 107(c)(4) of the Drug Amendments of 1962 (note following 21 U.S.C.A. 321).

To qualify for this exemption, the manufacturer must show that on October 9, 1962, (1) the identical product (2) bearing identical labeling (3) was commercially sold in the United States, (4) was generally recognized by qualified experts as safe for its intended uses, and (5) was not covered by an effective new drug application filed under 21 U.S.C. 355.

With respect to the labeling and formulation requirements, the courts have uniformly held that only those drugs whose labeling and composition have "remained unchanged" since October 9, 1962, are entitled to the exemption. If *any* change in representations for conditions of use in the labeling or *any* change in composition has occurred since October

9, 1962, the product is no longer entitled to the exemption. *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 633 (1973); *Rutherford* v. *United States*, 616 F.2d 455, 457 (10th Cir.), *cert. denied*, 101 S.Ct. 336 (1980); *SmithKline Corp.* v. *FDA*, 587 F.2d 1107, 1115 n.16 (D.C. Cir. 1978); *United States* v. *1,048,000 Capsules * * * Afrodex*, 347 F. Supp. 768, 770 (S.D. Tex. 1972), *aff'd.* 494 F.2d 1158 (5th Cir. 1974); *Tyler Pharmacal Distributors, Inc.* v. *H.E.W.*, 408 F.2d 95, 99 (7th Cir. 1960); *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718–719 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966). See also 21 CFR 310.3(h).

As several respondents concede (Rucker and Ascher), the 1962 and 1938 grandfather clauses must be interpreted in the same fashion. While the language of the two exempting clauses is slightly different, the difference is without legal significance. Enactment of the 1938 statute demonstrates an unmistakable congressional intent to ensure that the public receives only drugs which are safe. Enactment of the 1962 amendments demonstrates an equally strong congressional intention to ensure that the public receives therapeutically efficacious drugs. Balanced, meaningful implementation of the act requires equally narrow interpretations of their respective exempting provisions. As one circuit court has stated,

> While the exempting language of the basic Act and the Amendment is verbally different, they are undoubtedly intended to mean the same thing. *United States* v. *Allan Drug Corp., supra*, 357 F.2d at 718.

In addition to unchanged composition and labeling, a manufacturer must also show that at no time between 1938 and 1962 was its product "covered" by an effective new drug application (NDA). Stated affirmatively, the provision exempts only those "drugs that, as a generic class, were never subject to new drug regulation." *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra*, 412 U.S. at 634 n.26. If at any time prior to 1962, an NDA was effective for a particular drug "then all drugs of similar composition, known as 'me-too' drugs, whether or not * * * expressly covered by an effective NDA" are "covered" by that NDA for purposes of the grandfather provision. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra*, 412 U.S. at 647; *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 667.

Two final caveats. First, it is the manufacturer's burden to "prove" every essential fact necessary for invocation of the exemption. *Javierre* v. *Altagracia*, 217 U.S. 502, 507–08 (1910); *United States* v. *An Article of Drug * * * Bentex Ulcerine*, 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973); *United States* v. *1,048,000 Capsules, More or Less, supra*, 347 F. Supp. at 770.

In this regard, the notice of opportunity for hearing initiating this proceeding explicitly stated that any manufacturer claiming grandfather status must support its "contention with the data and in the format as described in 21 CFR 314.200 (d) and (e)." 41 FR. 4625, 4626. That regulation, in turn, provides that failure to submit "evidence of past and present quantitative formulas, labeling and evidence of marketing on which reliance is made for such contention * * * shall constitute a waiver of any such contention." 21 CFR 314.200(e)(2).

Second, because application of either grandfather clause will result in the marketing of drugs whose effectiveness has not been proven, "we must construe it strictly against one who invokes it." *United States*, v. *Allan Drug Corp., supra*, 357 F.2d at 718; *Rutherford* v. *United States, supra*, 616 F.2d at 457; *Durovic* v. *Richardson*, 479 F.2d 242, 250 n.8 (7th Cir.) *cert. denied*, 414 U.S. 944 (1973); *United States* v. *An Article of Drug * * * Bentex Ulcerine, supra*, 469 F.2d at 878.

The respondents' individual arguments are as follows:

A. The National Ethical Pharmaceutical Association

These respondents did not raise any legal arguments.

B. The Hyrex Respondents

The Hyrex respondents contend that they need not show that their products are generally recognized as effective because they are exempted by the 1962 and the 1938 grandfather clauses. As shown below, these products fail to meet virtually every requirement necessary to obtain the exemption.

Each of the products listed below fails to meet the first requirement of the 1962 grandfather clause because it was not being commercially used on or before October 9, 1962. The submission of the Hyrex respondents either fails to show that the following products were marketed on or before October 9, 1962 (21 CFR 314.200(e)), or affirmatively shows that they were marketed on the following dates after October 9, 1962. (The numbers correspond to those used in section I.B. above for the same products.):

1. *Tinaple Elixir* (earliest labeling dated 1970).

3. *Cenalene-M Tablets and Elixir* (earliest labeling dated April 1966).

4. *Pentylenetetrazol Tablets, Capsules, and Elixir* (only proposed labeling submitted; not yet marketed).

5. *Pentylenetetrazol and Niacin Tablets, Capsules, and Elixir* (draft labeling only; not yet marketed).

6. *Vital Tablets and Elixir* (statement by respondents that Elixir was first marketed in 1963; Tablets first marketed in 1975).

7. *Vasostim Capsules* (documentation submitted by respondent shows first marketed in present formulation sometime after 1964).

8. *D-Vaso Capsules* (statement that product first marketed in 1970 in present formulation).

9. *Senilezol Tablets (Long acting)* (no documentation to establish marketing before October 9, 1962).

11. *Pentylenetetrazol with Nicotinic Acid (elixir) a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine* (only documentation provided was a master formula dated November 1963).

14. *Penalate Capsules and Elixir* (statement by respondent that products were first marketed in 1964).

15. *Aminobrain-PT Elixir* (earliest labeling dated December 1969).

16. *Mivert Capsules* (labeling undated; no other data submitted).

19. *Panzol Forte* (labeling undated).

20. *T-Lex Elixir* (labeling undated; no other data submitted).

22. *Alert Elixir* (earliest labeling dated December 1975).

23. *Tylene Elixir and Pentinic Elixir* (earliest labeling dated June 1974 and January 1969 respectively).

23. *Vazole Elixir* (earliest labeling dated December 1974).

23. *Lemotonic Elixir* (earliest labeling dated November 1971).

23–24. *Tego-zol Elixir and Capsules; Penta-Nic Elixir 24* (earliest labeling dated September 1967).

25. *Kenile Elixir* (earliest labeling dated November 1965).

26. *Benizol Plus (elixir)* (earliest labeling dated September 1967).

27. *Salutol-Plus Elixir* (earliest labeling dated June 1972).

29. *Vertab Capsules* (earliest labeling dated July 1975).

The products listed below fail to meet the labeling requirements of the 1962 grandfather exemption because the submission of the Hyrex respondents shows affirmatively that the labeling has changed since October 9, 1962, or the submission lacks the documentation necessary to demonstrate that the labeling has "remained unchanged" since October 9, 1962. 21 CFR 314.200(e)(2).

2. *Cenalene Elixir and Tablets.* The labeling was revised in 1964 to include precautions against use in patients with

low convulsive threshold or heart disease and warnings with respect to possible occurrences of bradycardia, splanchnic vasodilation, conduction disturbances, falling in blood pressure, and toxic symptoms produced by central nervous system stimulants. In 1977, the dosage schedule was modified to allow reduced dosage after 1 month's therapy. "Physicians' Desk Reference," Medical Economics Co., Oradell, NJ ("PDR"), p. 703, 1977.

6. *Vital Tablets and Elixir.* The respondents stated that the elixir product was first marketed in 1963; however, the earliest labeling submitted is dated 1970. Similarly, the respondent stated that the tablet product was first marketed in November 1975; however, labeling submitted by another company for this product shows that it was distributed as early as December 1974. The 1974 labeling indicates that it is a revised descendent of still earlier labeling, yet no other labeling was submitted. Accordingly, the contention that the labeling for these products has remained unchanged has not been properly documented.

7. *Vasostim Capsules (formerly Vasonicol).* After 1963, labeling claims for lowering cholesterol were deleted, the dosage schedule was changed (from one tablet every 12 hours to one to two tablets one-half hour before meals and at bedtime), and claims for use in auditory and visual defects were added.

9. *Senilezol Tablets (Long Acting and Plain) and Elixir.* Before 1962, the labeling for these products made no claims; only the ingredients and dosage were indicated. After 1962, the product was offered for a number of explicit uses such as circulatory and respiratory stimulant and a cerebral vasodilator in circulatory deficits. In addition, qualifications about the products' usefulness were also added, e.g., that they have no definite cardiac effect and no constrictor action on blood vessels, and that "the only scientifically proven therapeutic use for nicotinic acid is in the treatment and prevention of pellegra." In 1967, a warning was added to the labeling of the Elixir product, "KEEP OUT OF THE REACH OF CHILDREN."

11. *Pentylenetetrazol with Nicotinic Acid (elixir), a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* The respondent submitted several examples of labeling which it claimed were in use "in 1962," but did not state whether the labeling was in use before or after October 9, 1962, or whether the labeling has changed since October 9, 1962. The respondent also failed to submit any other copies of labeling to show that there have been no changes.

12. *Nicozol Capsules and Elixir.* In 1962, these products were offered for use in "cerebral arteriosclerosis" to help "arrest mental and emotional decline typical of the aging process," and to benefit "aging patients with memory failure, mental confusion, depression and associated symptoms of senescence." By 1974, however, the labeling had deleted each of these specific claims and the products were offered as central nervous system circulatory stimulants to combat fatigue and counteract the depression produced by drug overdose. The 1974 labeling also added precautions against use in patients with low convulsive thresholds, cardiovascular and pulmonary disease, spinal injuries, and osteoporosis.

13. *Nialex Tablets.* In 1961, this product was offered for, among other things, respiratory and circulatory stimulation, surgical emergencies, acute barbiturate poisoning, acute alcoholism, and a "revitalizing" effect on the general behavior of elderly people. Claims were also made that one of the ingredients in the product, nicotinic acid, was essential for the normal functioning of all cells and that hespiridin complex, another ingredient, would improve capillary strength. In 1969, the product was offered only as a "mild" stimulant and the other claims were deleted.

14. *Penalate Capsules and Elixir.* No labeling for the capsule form was identified as being in use before October 9, 1962. In addition, the respondent did not even allege, let alone document, that its labeling had not changed since October 9, 1962; only "current" labeling was submitted. The current labeling for the elixir added the precaution, "Use only cautiously in patients with low convulsive threshold or with focal brain lesion."

15. *Aminobrain PT Elixir.* The only labeling submitted was dated December 1969. The respondent did not argue or document that the labeling has remained unchanged since that date or since October 9, 1962.

16. *Mivert Capsules.* Only undated labeling was submitted. Respondent did not argue, let alone document, that labeling has remained unchanged since Ocober 9, 1962.

17. *Senilex Tablets.* Before October 9, 1962, the product was offered for use in "senile" mental deterioration, for "mild" memory defects, to overcome anoxia, to promote well-being, and to combat depression. In 1973, the product was offered for, among other things, mental confusion, functional memory defects, irritability, antisocial attitudes, and dizzy spells. No mention was made of "senile" mental confusion. Still later labeling, dated February 1975, recommends the product solely "to enhance mental and physical activity of elderly patients." In addition, the 1975 labeling recommends a dosage of "two tablets three *or four* times daily * * *" (emphasis added) while the pre-1962 labeling recommends "2 tablets 3 times daily." Finally, the 1975 labeling added a number of contraindications and adverse reactions which were not present in the 1962 labeling.

18. *Trela Tablets.* In October 1962, the product was offered "in gerontotherapy to minimize the problems of senescence and in psychotherapy to improve mental functioning and behavior patterns when mental and sensory faculties have begun to fade." This labeling also recommended a dosage of "one or two tablets * * * with or after meals three times daily." Recent labeling, dated February 1975, however, offers this product solely "to enhance mental and physical activity of elderly patients" under a dosage of "two tablets three *or four* times daily" (emphasis added). Also, the 1975 labeling has added a number of contraindications and adverse reactions which were not present in the earlier labeling.

19. *Penzol Forte (elixir).* The respondent did not identify any labeling that was in use before October 9, 1962. Nor did the respondent allege or document that the labeling had remained unchanged since October 9, 1962.

20–27. *T–Lex Elixir and Tablets, Nialene Elixir and Tablets, Alert Elixir, Tylene (elixir), Tegazol Elixir, Pentinic Elixir, Vazole Elixir, Salutil–Plus Elixir, Benizol Plus (elixir), Kanile Elixir, and Lemotonic (elixir).* The respondent did not identify any lableing which was in use on October 9, 1962. Only one example of undated labeling was identified for each of the products and no claim was made that this labeling was the initial labeling for each product or that the labeling has remained unchanged since the date of the labeling which was submitted.

23. *Benizol (elixir).* Comparison of November 1970 labeling with labeling claimed to be in use before October 9, 1962, shows a number of changes. The later labeling has added claims of well-being, irritability, and depression, as well as contraindications against use in patients with permanent cerebral damage and focal abnormalities. In addition, the list of side effects was expanded to include pruritus and gastrointestinal irritation.

28. *Gevizol Tablets and Elixir.* Labeling in use on October 9, 1962,

offers the product for a host of indications, including depression, emotional instability, anxiety, arteriosclerotic psychosis, prevention of behavior changes, increasing the transmission of nerve impulses, and in alleviating vertigo. The recommended dosage in this labeling was "one tablet or teaspoonful three times a day or as directed by the physician." In 1973, the product was offered for use "in the aged and debilitated with symptoms of mental confusion, apathy, irritability, forgetfulness and antisocial attitudes." The 1973 labeling changed the dosage to "* * * 2 tablets three times daily" (tablets) and "1 to 2 teaspoonfuls 3 times daily" (elixir). A number of new contraindications and side effects were also added to the newer labeling.

29. *Vertab (tablets).* The respondent did not identify any labeling which was in use on October 9, 1962. Only one example of labeling dated 1975 was identified for the product and no claim was made that this labeling was the initial labeling for the product or that the labeling has remained unchanged since the date of the labeling which was submitted.

The products listed below are not entitled to grandfather exemption because their formulations have changed since October 9, 1962. The submission of the Hyrex respondents either shows affirmatively that there have been formulation changes since October 9, 1962, or the submission lacks the proper documentation necessary to show that there have been no such changes since October 9, 1962. 21 CFR 314.200(e)(2).

1. *Tinaplex Elixir.* The respondent did not submit any documentation of the complete formulation. Only labeling was submitted. In fact, the respondent did not even claim that the formulation had remained unchanged since October 9, 1962.

2. *Cenalene Tablets and Elixir.* In 1965, the tablet base was changed by adding a sugar coating. In 1973, FD&C Violet No. 1 was deleted. The elixir formula was revised in June 1972 to delete FD&C Red No. 2 dye and in November 1973 to delete FD&C Violet No. 1 dye.

3. *Cenalene M Tablets and Elixir.* The respondent did not submit any documentation of the complete formulations. Only labeling for one product was submitted. Nor was a claim made that the formulation had remained unchanged since October 9, 1962.

6. *Vital Tablets and Elixir.* The respondent did not submit any documentation of the complete formulations. Only labeling was submitted. Moreover, no claim was made that the formulations had remained unchanged since October 9, 1962.

7. *Vasostim (formerly Vasonicol).* In 1962, this product contained 300 mg pentylenetetrazol and 150 mg niacin in a time-release capsule. In 1965, the formulation was changed to 100 mg of each ingredient.

8. *D-Vaso Capsules (formerly Vasonicol and Vasostim).* In 1970, the amount of each of the primary active ingredients (in Vasostim) was reduced to 50 mg and 25 mg dimenhydrinate was added.

9. *Senilezol Tablets and Elixir.* Only one formula for each product was submitted.

10. *Halizol Tablets.* No formulation data were submitted to support the contention that there have not been any changes in formulation since October 9, 1962.

11. *Pentylenetetrazol with Nicotinic Acid (elixir) a.k.a. Lixalert, Pentylenetetrazol with Nicotinic Acid, Vastim, Napt Elixir, Penalate Elixir, and Amid Nisine.* The sponsor submitted only one formulation for the products dated November 1963. Moreover, no claim was made that this formulation was the same that was used before October 9, 1962, or that the formulation has remained unchanged since that date.

12. *Nicozol Capsules and Elixir.* The respondent failed to submit any data on formulation.

13. *Nialex Tablets.* In 1969, one of the active ingredients, hespiridin complex, was deleted from the formulation. The respondent also stated that other lubricants and inert ingredients were changed since the product was first marketed in 1957.

14. *Penalate Capsules and Elixir.* The respondent stated that in 1967 the tablet dosage form was changed to capsules and that this change was significant. Further, no formulation records were submitted for either dosage form.

15. *Aminobrain-PT Elixir.* No formulation data were submitted.

16. *Mivert Capsules.* No formulation records were submitted.

17. *Senilex Tablets.* The only formulation data submitted was a handwritten batch record, apparently dated March 1955. No later formulation data were submitted and no statement was made that the formulation has remained unchanged since October 9, 1962.

18. *Trela Tablets.* In 1966, lactose was substituted for talc. In 1970, two of the active ingredients, sodium glutamate and niacin, were deleted. In October 1970, the pentylenetetrazol was replaced by niacin. Finally, in 1974, pentylenetetrazol was added to the product.

19. *Panzol Forte (elixir).* No formulation data were submitted.

20–27. *T-Lex Tablets and Elixir, Nialene Capsules and Elixir, Alert Elixir, Tylene (elixir), Tegazol Elixir, Pentinic Elixir, Benizol (elixir), Vazole Elixir, Salutol-Plus Elixir, Benizol Plus (elixir), Kenile Elixir, and Lemotonic (elixir).* No formulation data were submitted for these products.

28. *Gevizol Tablets and Elixir.* No formulation records were submitted for either product. In addition, the respondent stated that the flavoring of the elixir was changed but did not specify when the change occurred.

29. *Vertab Capsules.* No formulation records were submitted.

The Hyrex respondents next contend that they have met the requirements of the second clause of the 1962 grandfather provision because on October 9, 1962, their pentylenetetrazol-containing products were "within a generic class of drugs" which was generally recognized as safe. The Hyrex respondents have misconstrued the law. In order for a manufacturer to meet this element of the grandfather clause, it must be shown that the particular product for which the exemption is sought was generally recognized by qualified experts as safe. *Premo Pharmaceutical Laboratories, Inc.* v. *United States,* 629 F.2d 795, 799 (2d Cir. 1980). It is not sufficient to show that the generic class was generally recognized as safe.

Several examples should suffice to illustrate the fallacy of the Hyrex respondents' argument. Thus, merely because a tablet dosage form of a drug may be generally recognized as safe, it does not follow that the injectable form of the same drug will be generally recognized as safe. Similarly, two products within the same generic class may have different amounts of active ingredients. The product with the lesser amount of drug may be generally recognized as safe while the one with the higher amount may not be. Conversely, if the product is offered for a life-threatening condition, the higher dosage may be generally recognized as safe although the product with the lesser amount may not be so recognized.

The Hyrex respondents have not contended that any particular product which they market was generally recognized as safe on October 9, 1962. It is clear therefore that all of the products fail to satisfy this requirement of the grandfather clause.

The Hyrex respondents next argue that their pentylenetetrazol products

were not "covered" by the NDA's (for Nicozol with Reserpine Tablets and Geroniazol Injection) identified in the May 20, 1970 notice of opportunity for hearing (35 FR 7749). It is now settled beyond dispute that withdrawal of any NDA approval covers all identical, similar, and related products, i.e., "me-too" drugs. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 625; *USV Pharmaceutical Corp.* v. *Weinberger, supra; Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 653. The Hyrex respondents do not argue that their products are not identical, similar, or related to the NDA'd products identified in the notice of opportunity for hearing.

The Hyrex respondents do contend, however, that the regulations upon which FDA relies to extend the applicability of such DESI notices to "me-too" products (21 CFR 310.6 and 314.200(e)(3)) are legally invalid. For example, they argue that neither the notices of opportunity for hearing nor the subsequent notices withdrawing approval of the NDA's (35 FR 14412) apprised them of the Commissioner's rationale for considering their pentylenetetrazol-containing products to be "covered" by the NDA's for Geroniazol and Nicozol with Reserpine.

This argument overlooks the fact that the rationale for determining whether a product is "covered" by an NDA is set forth at 21 CFR 310.6, *Applicability of Drug Efficacy Study Implementation notices and notices of opportunity for hearing to identical, related and similar drug products.* The application of that rationale to the Hyrex respondents' products is self-evident.

Like the NDA'd products identified in the **Federal Register** notices (i.e., Geroniazol and Nicozol with Reserpine), each of the products of the Hyrex respondents contains pentylenetetrazol as its principal active ingredient. Like the NDA'd products, each of the products of the Hyrex respondents is an analeptic agent (i.e., central nervous system stimulant). Finally, like the NDA'd products identified in the **Federal Register**, virtually all of the products of the Hyrex respondents are labeled for use in elderly patients for treatment of conditions associated with senility. *See* 21 CFR 310.6, which defines a "me-too" drug as one which is "related in chemical structure or known pharmacological properties" including "a combination drug product containing an identical, related or similar drug * * *." 21 CFR 310.6(b).

Indeed, when the Hyrex respondents brought their case to the Supreme Court to challenge the FDA's jurisdiction to declare that their products were "new drugs," the Court found "that all of the parties to this suit market "me-too" drugs." *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 648. Under these circumstances, these manufacturers had clear notice of the Commissioner's rationale for concluding that their products are "me-too's" covered by the NDA's for Geroniazol and Nicozol with Reserpine.

Indeed, the regulation affords the manufacturer an opportunity to request an opinion from FDA whether a particular notice of opportunity for hearing applies to its product. 21 CFR 310.6(b). That the Hyrex respondents never availed themselves of that opportunity undercuts their argument completely. In short, any lack of actual notice is self-inflicted.

The Hyrex respondents next argue that the generic approach of 21 CFR 310.6 and 314.200(e)(3) is "inconsistent with" and "unique and foreign to" the particular product approach of sections 201(p) and 505 of the act and its grandfather provisions. This same argument has been squarely rejected by the Supreme Court.

> It is true that an NDA covers a particular product or products that it names and that section 505 when applied to an NDA is personal to the manufacturer who files it. Section 505, in other words, addresses itself to drugs as individual products. But we agree with the Government that "any drug" when used in section 107(c)(4) is used in the generic sense, which means that the "me-too's," whether products of the same or of different manufacturers "covered" by an "effective" NDA are not exempt from the efficacy requirements of section 201(p). If that were not true, then, as the Court of Appeals said, the "me-too's" of one manufacturer covered by an NDA of another manufacturer would be exempt from regulation, while the "me-too's" of the manufacturer holding the NDA could be regulated. That seems to be a reading of section 107(c)(4) that is discriminatory and needlessly so.
>
> *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664.

Indeed, in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* the Supreme Court expressly approved FDA's procedures under which a withdrawal of any NDA approval covers all "me-too" drugs. 412 U.S. at 625.

The Hyrex respondents offer several hypothetical illustrations in support of their argument that the generic approach is inconsistent with the act. They first argue that a literal reading of 21 CFR 310.6 would render superfluous the grandfather provisions' requirement that labeling remain the same; they reason that if a product were "covered" by an NDA, its compliance with the grandfather provisions' labeling criteria would be irrelevant. It is true that failure to meet any one of the criteria of the grandfather provisions renders compliance with the remaining criteria moot. It does not follow, however, that the labeling requirement in the grandfather provisions is surplusage; a product might *not* be "covered" by an NDA, in which case compliance with the labeling requirement would be critical.

The Hyrex respondents next argue that a literal interpretation of 21 CFR 310.6 hypothetically would fail to protect over-the-counter (OTC) products, including aspirin, if an NDA were subsequently filed for a prescription product which included one or more of the ingredients in the OTC product. This argument ignores the fact that the regulation specifically exempts identical, similar, or related OTC drugs. 21 CFR 310.6(f).

The Hyrex respondents next contend that the foregoing "inconsistencies" can be avoided by narrowly construing 21 CFR 310.6 so that only products which are chemically and pharmacologically similar to the NDA'd product in the respects which made the NDA'd product a "new drug" would be "covered" by that NDA for purposes of the 1962 grandfather clause. As a corollary, the Hyrex respondents allege that they are not privy to FDA's reasons for requiring NDA's for Geroniazol and Nicozol with Reserpine and that they should be entitled to review FDA files to discover those reasons before further responding to the notice of opportunity for hearing.

This contention, too, is without merit. First, as noted above, the Hyrex respondents have not pointed to any "inconsistencies" in 21 CFR 310.6. Moreover, neither the Congress, when it enacted the 1962 grandfather provision, nor the Supreme Court, when it construed that provision suggested that the exempting clause should be so construed as to require a probing of the mental processes of the numerous FDA employees who have helped implement the act since 1938. In fact, the Supreme Court specifically eschewed any interpretation of the grandfather clause that would result in subjecting drugs with NDA's to the new efficacy requirements while allowing the "me-too" drugs without NDA's to escape those requirements.

> That resolution * * * would largely leave pre-1962 drugs of unproved effectiveness untouched by the 1962 amendments and perpetuate a competitive contest in the marketing of ineffective pre-1962 drugs.
>
> *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 665.

In short, FDA's reasons for requiring that a particular product have an NDA are

legally irrelevant in determining the scope of the grandfather clause.

The Hyrex respondents also contend that without a hearing there will be "no evidentiary basis" upon which to base a finding that their products were "covered" by the products identified in the September 12, 1970 notice. As noted above, there is an ample evidentiary basis in the record upon which to base such a finding. It is undisputed that the NDA'd products and the products of the Hyrex respondents contain pentylenetetrazol as their principal active ingredient, that the Hyrex respondents' products and the NDA'd products are promoted for their analeptic properties, and that the specific labeling indications for both sets of products are virtually the same. Inasmuch as "no amount of examination and cross-examination can change" these facts, no hearing is necessary. *Upjohn Co.* v. *Finch*, 422 F.2d 944, 955 (6th Cir. 1970).

The Hyrex respondents also contend that a hearing is required because the Commissioner has not made a *prima facie* showing that experts would conclude that their products are "covered" by the NDA'd products identified in the **Federal Register** notices. This argument is without merit. The regulations, 21 CFR 310.6 and 314.200(e)(2), constitute the agency's *prima facie* showing with respect to this conclusion, *cf. Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*, 501 F.2d at 780 n. 22. Where, as here, the Hyrex respondents have not presented any evidence or even argued that experts would not so conclude, there can be no genuine dispute with respect to this issue.

The Hyrex respondents next argue that the protection of the 1962 grandfather clause extends to products of manufacturers who did not themselves market an exempt drug on October 9, 1962, but who presently market a product "intended solely for use under conditions prescribed * * * in labeling for such drug on that day." To read the provision otherwise, they contend, would be needlessly discriminatory. The Commissioner disagrees.

The Supreme Court has held that the exemption "applies only to a *product* that, on the day before the 1962 amendments became effective, (A) was used or sold commercially in the United States, * * *" *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663 (emphasis added). In short, the protection of the grandfather clause extends, if at all, only to those particular products that were on the market on the relevant date. A product marketed by another manufacturer after that date—even if virtually identical to the grandfathered product—would not be entitled to the exemption. Nor is such an interpretation "needlessly" discriminatory; it is the only way to discourage a proliferation of ineffective pre-1962 drugs.

To demonstrate that some of their products marketed for the first time after October 9, 1962, may contain the same labeling as products marketed before that date, the Hyrex respondents have asked the Commissioner to supplement the record with all labeling for pentylenetetrazol-containing products in the FDA's files which was in use on October 9, 1962. The Hyrex respondents do not identify the products that they believe may have identical labeling. Nor do they explain why their files do not contain the labeling which they purportedly emulated for their own products.

The request is denied because it is based on an incorrect legal premise. Inasmuch as only products which were on the market on October 9, 1962, are entitled to the exemption, any similarity between today's products and grandfathered products is irrelevant. Moreover, the regulations specificially state:

> It is the responsibility of every person who manufactures or distributes a drug product in reliance upon a "grandfather" provision(s) of the act to maintain in his files, organized as required by this paragraph, the data and information necessary fully to document and support such status.
>
> 21 CFR 314.200(e)(5).

Failure of a manufacturer to fulfill this obligation constitutes a waiver of any claim to grandfather status. 21 CFR 314.200(e)(2).

The Hyrex respondents contend that their products are grandfathered under the 1938 act because their labeling contains the "same representations" as Metrazol, a pentylenetetrazol-containing product which was marketed before June 25, 1938. The Hyrex respondents do not contend that any of their products were marketed before June 25, 1938. As a matter of law, therefore, they are not entitled to grandfather status under the 1938 act. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663.

Moreover, as a factual matter, the Hyrex respondents only have cited one product, Cenalene M, which they believe contains the same labeling as the Metrazol product. Comparison of the Cenalene M labeling with the Metrazol labeling shows that the two are not the same. On April 11, 1937, Metrazol was offered

> * * * In circulatory collapse and shock as a restorative; in respiratory depression and deep anesthesia; to antidote morphine and barbiturate poisoning; in asphyxia neonatorum, to stimulate both circulation and respiration.

The Cenalene M labeling, however, offers the product

> * * * In older patients with mental confusion, apathy and memory defects as an analeptic agent.

There are other differences in the labeling. For example, the Cenalene M labeling contains a number of precautions and warnings which were not present on the earlier Metrazol labeling. Even the dosage for the two products is different. In short, even if the argument were legally valid, it lacks factual support.

Moreover, the Hyrex respondents did not submit any formulation records for Cenalene M products to show that they are formulated in precisely the same manner as Metrazol. 21 CFR 314.200(e)(2). Indeed, even if the formulas were the same, it does not follow that two products produced with identical ingredients will be therapeutically identical. Different methods of compounding used by two manufacturers may result in products with dissimilar physical characteristics that, consequently, may perform differently when administered to a patient.

In short, it is clear that none of the products of the Hyrex respondents are grandfathered under the 1962 provisions.

Three of the Hyrex respondents (Dunhall Pharmaceuticals, Inc., Misemer Pharmaceuticals, Inc., and UAD Laboratories, Inc.) contend that their products are generally recognized as effective in the management of vertigo. These manufacturers relied upon the studies submitted by Rucker which were reviewed above. Inasmuch as these studies do not constitute adequate and well-controlled clinical investigations and only such investigations warrant a hearing, it is clear that they have not justified a request for a hearing on this ground. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra*, 412 U.S. at 621; *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra*.

The Hyrex respondents argue that section 505 of the act and the summary judgment regulation, 21 CFR 314.200, invoked by the FDA are inapplicable to this proceeding because those provisions govern only proceedings in which the FDA seeks to refuse or withdraw approval of an NDA and none of the respondents in this proceeding have or seek and NDA. This argument is without merit and was explicitly

rejected by the Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 627.

Moreover, as the January 30, 1976 notice of opportunity for hearing (41 FR 4625) makes clear, this is merely the final stage of FDA's efforts to remove all pentylenetetrazol-containing drugs from the marketplace. On May 20, 1970, the agency issued a notice of opportunity for a hearing, "Pentylenetetrazol-Containing Drugs," to NDA holders and all other interested persons. (35 FR 7749). That notice warned that withdrawal of approval of the listed NDA's "will cause any drug for human use containing the same active substances to be a new drug for which an approved new drug application is not in effect." The Hyrex respondents voluntarily elected not to participate in that proceeding and decided instead to seek a judicial determination that their products were not new drugs and were exempt from the proceeding. While the Hyrex respondents were seeking judicial vindication of their claim, the agency continued to go forward with that proceeding. As noted above, the Supreme Court ultimately held that FDA did have the power to decide whether the pentylenetetrazol-containing products were new drugs and that there was no "jurisdictional line under the Act" to be drawn between FDA action pursuant to sections 505(d) and (e) and an FDA determination that a product was a new drug. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 652. This is precisely the line which the Hyrex respondents seek to draw here. The Hyrex respondents have already made the argument that section 505 and the procedural regulations are inapplicable here; this is the same proceeding from which the Hyrex respondents sought, unsuccessfully, to excuse themselves 10 years ago. The Supreme Court rejected the Hyrex respondent's argument and that issue, at least, is settled.

The Hyrex respondents also argue that without notice and comment the procedural regulations governing action on specific new drug applications, 21 CFR 314.200, may not be made applicable to this "new type" of proceeding in which none of the respondents have or seek an NDA. The argument is factually incorrect. In the **Federal Register** of February 10, 1972 (37 FR 2969), a notice was published proposing to delineate the applicability of DESI notices and notices of opportunity for hearing to identical, similar, and related drug products. Comments were evaluated and the final order was published in the **Federal Register** of October 31, 1972 (37 FR 23185). Moreover, as noted above, this proceeding is not "different" from that initiated by the May 20, 1970 notice of opportunity for hearing.

The Hyrex respondents also argue that even if the hearing regulations, 21 CFR 314.200 (d) and (e), were applicable to this proceeding, they cannot be required to defend against summary judgment until the Commissioner has presented a *prima facie* case in support of the proposed order. The Hyrex respondents concede that the Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* held that the burden is always on the "applicant" to demonstrate entitlement to a hearing by coming forward with substantial evidence. However, the Hyrex respondents contend that *Hynson* is inapplicable in this proceeding because they are not applicants, but "respondents."

The Commissioner concludes that any distinction between a respondent and an applicant in this context is without significance. The law plainly requires that an applicant for a license to market a drug has the burden of coming forward with evidence of effectiveness of its products. As a matter of public policy, those who seek to *avoid* the premarketing approval requirements of the act may not be placed in a more advantageous position than their competitors who comply with the law and file NDA's containing such evidence. Yet adoption of the Hyrex respondents' argument would have precisely this effect. In fact, inasmuch as the Hyrex respondents can point only to their unsuccessful lawsuit in the *Bentex* case as the sole reason that the procedural regulations should not be applied to them, their argument is particularly unpersuasive.

The Hyrex respondents further argue that the notice of opportunity for hearing issued in this proceeding is no different from the one which was ruled invalid by the Court in *USV Pharmaceutical Corp.* v. *Secretary of Health, Educ. & Welfare,* 466 F. 2d 455 (D.C. Cir. 1972). The Commissioner disagrees.

In that case, the notice of opportunity for hearing was issued on July 10, 1968, 2 years *before* the Commissioner promulgated the regulations which define substantial evidence of effectiveness. The Commissioner advised the manufacturer that it had only 30 days to submit evidence which complied with the new regulations. The manufacturer's request for a stay to obtain the evidence was denied by the Commissioner and the denial was followed on the next day by a **Federal Register** notice withdrawing approval of petitioner's NDA's.

The Court found this procedure fundamentally unsound. 466 F. 2d at 460. The Court held that the Commissioner had an obligation to present a *prima facie* case *before* calling upon the petitioner to respond to the notice of opportunity for hearing and that the Commissioner's refusal to provide additional time to meet the new regulatory requirements for substantial evidence was arbitrary and capricious. *Id.* at 461–62.

Here, unlike the situation in *USV Pharmaceutical Corp.*, the regulations defining substantial evidence were published 6 years before the publication of the notice of opportunity for hearing. Further, the notice of opportunity for hearing advised interested parties that to date no adequate and well-controlled investigations had been submitted to support the effectiveness of pentylenetetrazol-containing drugs. (41 FR 4625). It is now settled that this procedure is perfectly permissible. As the Supreme Court stated:

> The standard of "well-controlled investigations" particularized by the regulations is a protective measure designed to ferret out those drugs for which there is no affirmative, reliable evidence of effectiveness. *The drug manufacturers have full and precise notice of the evidence they must present* to sustain their NDA's, and under these circumstances we find FDA hearing regulations unexceptionable on any statutory or constitutional ground.

Weinberger v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 622; *see also SmithKline Corp.*, v. *FDA, supra,* 587 F. 2d at 1116.

The Hyrex respondents also contend that the notice of opportunity for hearing is inadequate under *USV Pharmaceutical Corp.* because it failed to state "facts and reasons" for the Commissioner's proposed action. As one circuit court has noted:

> While *Hynson* did not mention *USV,* it plainly held that the FDA's regulations defining adequate and well-controlled investigation, * * * themselves constitute sufficient "facts and reasons" to require that an applicant seeking a hearing produce its own evidence of efficacy.

Cooper Laboratories, Inc. v. *Commissioner, FDA, supra,* 501 F. 2d at 780, n.22; see also *Hess & Clark, Division of Rhodia, Inc. v. FDA,* 495 F. 2d 975, 985 (D.C. Cir. 1974) (particularized regulations provide required showing by FDA as predicate for summary adjudication).

In a similar vein, the Hyrex respondents complain that the reegulations approved by the Court in

Hynson do not provide them with notice of the criteria for applying either the 1962 or the 1938 grandfather clause. It is true that the Court in *Hynson* did not endorse FDA's regulation (21 CFR 314.200(e)) describing the evidence necessary to sustain a contention that a product is grandfathered. This grandfather regulation was not before the Court. The act clearly sets forth the criteria for obtaining grandfather status. 21 U.S.C. 321(p); section 107(c)(4) of Pub. L. 87–781 (note following 21 U.S.C.A. 321). Moreover, the criteria for the grandfather exemptions have been further particularized by the courts. Under these circumstances, the Hyrex respondents may not contend that they lacked "full and precise notice" of the evidence they must present to sustain their contention. Indeed, the Hydrex respondents have submitted a volume of evidence attempting to satisfy the very criteria of which they claim ignorance. Finally, as shown below, their failure to meet those criteria is not due to any lack of notice, but rather to the fact that the evidence does not support their claims.

The Hyrex respondents next argue that the district court in *O'Neal, Jones & Feldman, Inc.* v. *Richardson, supra,* held that they are entitled to a hearing on the new drug status of pentylenetetrazol-containing drugs and that FDA is bound by this holding under the doctrine of *res judicata.* This argument ignores a host of critical facts.

First, the district court did not hold that the plaintiffs were entitled to a formal evidentiary hearing; that issue was never before the court. The question which the court was asked to decide was whether FDA had jurisdiction to determine the "new drug" status of a product. The court ruled that the agency had primary jurisdiction to decide whether a product was a new drug and that the agency rather than the court was the "more able arbiter" of this issue. *Id.* at 7–8. While the term "hearing" was used in the court's opinion, the court clearly was focusing upon providing the plaintiff "an opportunity to be heard on the merits of their contention" rather than the nature of that opportunity. *Cf. United States* v. *Florida East Coast Ry. Co.,* 410 U.S. 242 (1973).

The Hyrex respondents' reliance upon the district court's reference to an opportunity to make a record does not advance their argument. The Hyrex respondents have been given ample opportunity to "make a record" in this proceeding. The record which they made shows affirmatively that their products are not entitled to grandfather status.

Second, as the Hyrex respondents concede, this portion of the district court's order was reversed by the court of appeals. The Supreme Court's reversal of the court of appeals did not reinstate this aspect of the district court's opinion. To the contrary, the Supreme Court stated that it was confronted only with the "narrow question * * * whether the FDA may decide whether a drug is a 'new drug' on referral from a district court." *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 651.

Third, and finally, as the Hyrex respondents further concede, when the matter was remanded to the district court, the government argued that it could resolve the new drug status of plaintiffs' drugs without holding a hearing. The district court's order following this argument did not mandate a hearing. Rather, the court directed plaintiffs "to pursue the remedies provided under the Federal Food, Drug, and Cosmetic Act *through the procedures established by that agency.*" Order, October 30, 1974 (emphasis added).

The Hyrex Requests

The Hyrex respondents filed a discovery motion to supplement the notice of opportunity for hearing with various documents. These requests are each denied because, as the Hyrex respondents acknowledge, there are no discovery procedures available in this proceeding. Moreover, even if discovery were available, the information sought would not be relevant or material. A brief discussion of each request follows.

1. The request for the "NDA file" for each product containing pentylenetetrazol alone or in combination with any other substance including those specifically identified in the May 20, 1970 notice of opportunity for hearing (35 FR 7749) will not uncover information relevant to the issue whether the Hyrex respondents' products are "covered" by these NDA's. Each of the NDA's named in the notice of opportunity for hearing was for a product containing pentylenetetrazol. The Hyrex respondents do not dispute this. Nor do they dispute that the NDA's products listed in that notice are in the same generic class as their products. Under the law, therefore, the products of the Hyrex respondents are "covered" by these NDA's. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664; *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 647–48. Whatever other information these NDA's may contain will not alter this fact.

2–3. The requests for all labels and labeling for pentylenetetrazol-containing drugs which were in use (a) at any time before June 25, 1938, and (b) on October 9, 1962, are also not directed at relevant or material information. The Hyrex respondents and other parties to this proceeding have submitted volumes of labeling for pentylenetetrazol-containing drugs. Without exception, these submissions establish that none of the labeling of the products marketed by the Hyrex respondents have "remained unchanged" since October 9, 1962, or since June 25, 1938. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. Moreover, the regulations place the burden squarely upon one who seeks to invoke the protection of the grandfather clause "to maintain in his files * * * the data and information necessary to document and support such status." 21 CFR 314.200(e)(5). *Cf. Javierre* v. *Altagracia, supra,* 217 U.S. at 507–08.

4. The request for all FDA opinions that any pentylenetetrazol-containing product is not a "new drug" is pointless. Such opinions have been expressly revoked by regulation. 21 CFR 314.100. They have also been denied any legal status by the courts. See, e.g., *SmithKline Corp.* v. *FDA, supra,* 587 F.2d at 1112 and 1115, n.15; *Bentex Pharmaceuticals* v. *Richardson, supra,* 463 F.2d at 368, n.17, *rev'd on other grounds sub nom Weinberger* v. *Bentex Pharmaceuticals, Inc., supra.*

5. The request for all minutes, transcripts, memoranda, and other documents of any advisory committee meeting relating to pentylenetetrazol is equally pointless. In fact, the Hyres respondents have not explained why they desire these materials. The only issue to which such materials conceivably could be relevant is the general recognition of the safety and effectiveness of particular pentylenetetrazol-containing products. However, the Hyrex respondents have not claimed that any particular products which they market are generally recognized as either safe or effective.

6. The request for all data and information relied upon by FDA's Office of Compliance in reaching the conclusion that the NDA's drugs identified in the September 12, 1970 **Federal Register** order were similar to Hyrex respondents' products which contain pentylenetetrazol can lead nowhere. The Supreme Court has held that a drug is "covered" by an NDA for purposes of the grandfather clause if it is within the same generic class as the product which is the subject of the NDA. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 664. Indeed, as noted above, the Supreme Court specifically found that the very products containing pentylenetetrazol marketed by the Hyrex respondents

were within the same generic class as the NDA's products identified in the September 12, 1970 Federal Register notice. *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 648. Again, no amount of information in FDA's files can alter these facts.

7. The request for all data and information considered by the Commissioner in reaching the conclusion that he is unaware of any adequate and well-controlled clinical investigations demonstrating the effectiveness of pentylenetetrazol-containing drugs is also misdirected. The Hyrex respondents do not even contend that their products are generally recognized as effective. Nor do they contend that evidence of their products' effectiveness exists. In view of the total inability of the numerous manufacturers who market pentylenetetrazol-containing drugs—despite the lapse of 10 years—to come forward with such evidence, "it would constitute the most arid formalism" to permit discovery of "what has since become obvious, namely," that there is no substantial evidence of effectiveness for pentylenetetrazol-containing drugs. *Cf. Holland-Rantos Co., Inc.* v. *United States Dep't of Health, Educ. & Welfare,* 587 F.2d 1173, 1176 (D.C. Cir. 1978).

8. The request for all establishment inspection reports and equivalent material relating to any establishment known to have manufactured or distributed a drug containing pentylenetetrazol will not lead to any relevant information. Here again, the Hyrex respondents have not stated how these materials could be relevant. It is clear that they are not. The only other issue to which such materials could possibly be relevant is whether pentylenetetrazol-containing products are grandfathered under either the 1938 act or the 1962 amendments thereto. The Hyrex respondents have not contended that they were unable to obtain data to show that their products were marketed on the relevant dates. To the contrary, their submissions demonstrate readily that, for the most part, their products were *not* marketed on the relevant dates. In any event, as noted above, the regulations require the one who contends that his product is grandfathered to *himself* maintain the records necessary to establish such status. 21 CFR 314.200(e)(5). The manufacturers may not attempt to shift this burden by filing burdensome discovery requests upon the agency.

All of the foregoing requests for discovery are denied on the additional grounds that it would be impractical, unnecessary, and contrary to the public interest for the agency to expend its limited resources in an attempt to establish that these products may be sold to the consumer despite the respondents' failure to demonstrate effectiveness. Most, if not all, of the records which the Hyrex respondents seek (if they have not been destroyed), are located at the Federal Records Center in St. Louis, MO. It would be an extremely difficult and time-consuming task to identify each of the myriad products and firms which may fall within the broad requests of these respondents. Moreover, in view of the abundance of evidence which establishes that these drugs are not grandfathered, the task would be futile as well.

The Hyrex respondents' argument that the Commissioner should comply with their discovery request because similar data would be filed to support a notice of proposed rulemaking is rejected. In a rulemaking proceeding under section 701(a) of the act (21 U.S.C. 371(a)), the burden of going forward as well as the ultimate burden of sustaining the action rests upon the Commissioner. Here, the regulations governing adequate and well-controlled investigations and the statutory requirements for grandfather protection constitute the Commissioner's *prima facie* case. It is the respondents' burden to establish that they are entitled to a hearing. Moreover, at a hearing, it would be the respondents' burden to establish that their products are grandfathered and are not "new drugs". In short, this proceeding is in no way analagous to a rulemaking proceeding and discovery is neither contemplated nor required under either the statute or the applicable regulations.

Finally, the Hyrex respondents argue that they should be provided the documents through a discovery mechanism because they are entitled to the information in any event under the Freedom of Information Act. The Commissioner does not agree that merely because a party may be entitled to material under the Freedom of Information Act, that the same material ipso facto becomes discoverable under an administrative proceeding in which no discovery is contemplated. Where Congress has established a specific route by which persons may readily obtain information, there is no reason to make that information available by another route. In short, the Hyrex respondents will not be prejudiced in any way by following the well-traveled road paved by Congress.

To this end, the Commissioner, by letter dated May 5, 1980, advised counsel for the Hyrex respondents (and the other parties who made similar motions) that their requests for discovery should be resubmitted under the Freedom of Information Act, 5 U.S.C. 552 ("the FOIA"), in the event they remained interested in the information. The Hyrex respondents did not renew their request under the FOIA.

The Hyrex respondents also moved to enforce separation of functions in this proceeding. This request has been granted. Pursuant to 21 CFR 314.200(f) and 10.55, no person in the Bureau of Drugs or the General Counsel's office who participated in proposing this order has participated with or advised the Commissioner's office with respect to his review and decision.

The contention that the Associate Commissioner for Compliance (now the Associate Commissioner for Regulatory Affairs) "overstepped" his bounds by proposing summary judgment in the notice of opportunity for hearing is frivolous. There is nothing improper in initiating these proceedings with the issuance of a notice of opportunity for hearing. The notice of opportunity for hearing reflects no prejudgment of the outcome. To the contrary, it merely offers interested persons an opportunity to come forward with evidence to justify a hearing. If they are unable to do so, denial of a hearing is appropriate. The propriety of the summary judgment procedure has long since been settled. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 620.

Finally, the Hyrex respondents argue that an Administrative Law Judge rather than the Commissioner should decide the matter. This argument was made and rejected at the time when the agency's regulations concerning new drug hearings were revised in 1974. See 39 FR 9750, 9754 (Mar. 13, 1974). As FDA pointed out then, the *Hynson* decision supports FDA's practice of having the Commissioner decide such matters. Adequate measures have been taken to assure that the Commissioner's decision in an independent one. The law requires nothing more.

C. B. F. Ascher & Co., Inc.

Ascher makes no claim that its product, Nioric, is generally recognized as effective for its labeled uses or even that it is actually effective for such uses. Rather, Ascher argues that Nioric is exempt from the "new drug" provisions of the act under the 1938 and 1962 grandfather provisions. Ascher further contends that whether Nioric satisfies the requirements of each provision raises factual questions necessitating an

evidentiary hearing. A discussion of Ascher's contentions follows.

Ascher acknowledges that Nioric was first marketed on July 31, 1970, but contends nevertheless that Nioric is entitled to grandfather status under the 1938 act because its product is related to Metrazol (another pentylenetetrazol-containing product) which was on the market on June 25, 1938. For the reasons stated above, the Commissioner rejects this contention. A product may only be grandfathered if it was marketed on the relevant date. 21 U.S.C. 321(p); *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. Whether or not Metrazol may be entitled to grandfather status under the 1938 act is irrelevant to Nioric's claim to similar status.

Ascher's contention that the Supreme Court has approved this generic approach to the grandfather clause is erroneous. The Supreme Court held that the FDA properly may apply the *withdrawal* of an NDA to all "me-too" drugs, to avoid administrative "delay where in the interests of public health there should be prompt action." *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 625 (emphasis added). It is quite another matter to treat "me-too" copies of a drug as the same for purposes of *permitting* them to be marketed without having to prove that they are safe and effective. *Pharmadyne Laboratories, Inc.* v. *Kennedy,* 466 F. Supp. 100, 104 at n.7 (D. N.J.), *aff'd* 596 F.2d 568 (3rd Cir. 1979). In short, having conceded that Nioric was not marketed until 1970, Ascher may not claim the benefit of the 1938 exemption.

In fact, even if Ascher's "piggy-back" approach were legally permissible and Nioric could satisfy the "marketed in 1938" requirement by riding on the coattails of Metrazol, it would still fail to satisfy the other requirements of the 1938 exemption because Metrazol itself can not satisfy those requirements. See section D, below.

Indeed, Ascher concedes that Nioric and its adopted ancestor, Metrazol, both have undergone several labeling changes. Ascher argues however, that the 1938 grandfather clause does not require that a product's labeling remain unchanged. According to Ascher, the labeling provisions of the 1938 grandfather clause are satisfied so long as labeling representations made before 1938 are the same "in substance and import" as labeling representations made after 1938.

The Commissioner disagrees. The 1938 grandfather clause contains no qualifications that would permit the labeling of a pre-1938 product to be the same "in substance and import" as a post-1938 product. It explicitly provides that the labeling representations must be "*the same.*" 21 U.S.C. 321(p)(1) (emphasis added). Moreover, the Supreme Court has held that a product satisfies this criterion only "so long as [its] labeling remained unchanged." *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663.

In any event, Nioric does not even satisfy Ascher's permissive interpretation because its labeling is substantially different from Metrazol's pre-1938 labeling. For example, Nioric is now indicated solely "to enhance mental and physical activity of elderly patients." Before 1938, Metrazol was not offered to enhance mental activity, nor was it recommended for the elderly patient. Furthermore, before 1938, Metrazol was offered for a host of purposes including as an "antidote to morphine and barbiturate poisoning" and "for circulatory stimulation in the emergencies of pneumonia and other overwhelming infections and for those arising during the treatment of congestive heart failure." Nioric's labeling mentions none of these uses.

Ascher ignores these differences and focuses solely upon the one feature which the two products have in common, i.e., that Metrazol (before 1938) and Nioric (today) both claim to act as a central nervous system stimulant Ascher's argument proves too much. If Ascher's argument were correct, and product could acquire grandfather status simply by adopting a single claim made for a product before 1938. This, of course, would virtually nullify the safety and effectiveness provisions of the act.

Ascher next contends that the following factual issues regarding Nioric's entitlement to grandfather status under the 1938 act requires a hearing:

1. Was there a single-entity pentylenetetrazol-containing drug on the market before June 25, 1938?

2. If so, was that product intended for use in the cure, mitigation, or prevention of disease in man or other animals?

3. Were representations made before 1938 and were the same representations made for the drug before the 1938 act and at the time of the passage of the 1938 act and afterwards?

4. Is Nioric related to any single-entity pentylenetetrazol-containing drug marketed before the 1938 act?

5. Does Nioric contain representations made for a single-entity pentylenetetrazol-containing drug before 1938?

The Commissioner does not find that any of these issues warrants a hearing. The Commissioner agrees with Ascher that the answer to items numbers 1, 2, and 4 is "yes". Accordingly, there is no dispute over these facts. The resolution of item number 3 does not require an evidentiary hearing inasmuch as Ascher has conceded that the labeling for Metrazol and Nioric have not "remained unchanged." Accordingly, whether there are similarities between Nioric's labeling and Metrazol is legally irrelevant. Similarly, item number 5 is also irrelevant because it is based upon the incorrect legal premise that Nioric may become grandfathered by riding the coattails of Metrazol.

Ascher next contends that Nioric is grandfathered under the 1962 amendments to the act. The Commissioner disagrees. As shown below, Nioric fails to satify several of the criteria necessary for the exemption.

For example, inasmuch as Ascher has conceded that Nioric was not first marketed until 1970, it is clear that "on the day immediately preceding the enactment date" Nioric was not "commercially used or sold in the United States" section 107(c)(4)(A), of the Drug Amendments of 1962 (note following 21 U.S.C.A. 321).

Nioric also fails to satisfy the requirements that its composition "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. Nioric obviously cannot satisfy this test because it was not marketed on October 9, 1962. Moreover, Nioric may not rely upon Metrazol's formula to satisfy this requirement because it is legally impermissible to do so and because, as shown below, Metrazol's formulation has changed since October 9, 1962.

Nioric also fails to meet the requirement that its present labeling today has "remained unchanged" from the labeling used before October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. Nioric cannot meet the requirement because it was not marketed on October 9, 1962. Moreover, Nioric may not rely upon Metrazol's pre-1962 labeling because Nioric's present labeling is not the same as Metrazol's pre-1962 labeling. For example, in 1962 Metrazol was offered "for the elderly *presenting early and more advanced signs of senility* * * *." "Physicians' Desk Reference," p. 626, 1962 (emphasis added). Nioric is not recommended for use in such a patient population. Moreover, Nioric's present labeling has deleted numerous claims which appeared on Metrazol's 1962 labeling, including improvement of sleeping and eating habits, tidiness and sociability, and the acceleration of recovery from convalescence. *Id.*

In fact, Nioric's labeling has undergone several changes since 1970. When first introduced in 1970, Nioric's dosage schedule was "initially, 2 tablets three or four times daily. For maintenance, after optimum results have been achieved, 1 tablet three or four times daily." In 1975, however, Nioric's dosage schedule was "1 or 2 tablets three times daily."

In short, Nioric fails to meet the labeling requirements of the 1962 grandfather provision under Ascher's test and under the correct test.

Ascher recognizes that Nioric may not be grandfathered if it is "related" to any drug "covered" by an NDA that was effective before October 9, 1962. Ascher argues, however, that Nioric is not related to Geroniazol Injection—one of the pentylenetetrazol-containing drugs named in the **Federal Register** notices of August 28, 1970 and May 20, 1970. Specifically, Ascher contends that Nioric is not related to Geroniazol because the latter product (1) was an injectable, (2) contained an additional pharmacologically active ingredient (nicotinic acid), and (3) was offered for some additional uses for which Nioric was not offered. Ascher submitted an affidavit of its Director of Research in support of this contention.

Neither the arguments not the affidavit are sufficient to create a genuine and material issue of fact requiring a hearing because Nioric is related to Geroniazol Injection as a matter of law. Under the regulations, an identical, related, or similar product includes other dosage forms. 21 CFR 310.6(b). Accordingly, it is irrelevant that Geroniazol is marketed as an injectable and Nioric as a tablet. In this regard, it is noteworthy that Ascher's affiant provides no explanation why the injectable product containing the same principal active ingredient renders Geroaniazol not related to Nioric.

It is also irrelevant that Geroniazol contains an additional ingredient not found in Nioric. The regulations provides that "a combination drug product *containing* an identical, related or similar drug is also subject to the conclusions in the notice." *Id.* Geroniazol and Nioric each contain pentylenetetrazol as the principal active ingredient. Moreover, inasmuch as Geroniazol and Metrazol (which Ascher argues is identical to Nioric) were offered for essentially the same purpose (i.e., to alleviate the various symptoms of deterioration associated with senility), it is clear that Nioric is related to Geroniazol in "chemical structure and known pharmacological properties." 21 CFR 310.6(b). Ascher's affiant does not state otherwise. Accordingly, even if there were genuine factual disputes on the other issues, there is no dispute over the fact that Nioric and Geroniazol are related in this respect. Under these circumstances there can be no *genuine* issue whether Nioric is "related" to and therefore "covered" by the NDA for Geroniazol Injection.

Ascher argues that until it has examined the materials in the Geroniazol NDA it is unable, solely upon the information in the **Federal Register**, to fully address the issue whether Nioric is related to Geroniazol. To buttress this argument, Ascher requested that FDA supplement the record with a copy of all NDA's for products containing pentylenetetrazol and all correspondence and memoranda which discuss the new drug status of any drug containing pentylenetetrazol. Ascher, unlike Hyrex, also filed a request for these and other documents under the FOIA.

For the reasons stated above in response to an identical discovery request made by the Hyrex respondents, Ascher's discovery request is denied.

Additionally, even if there were a factual issue about whether Nioric is "covered" by the Geroniazol NDA, there is still no necessity for discovery or for a hearing. The above cited **Federal Register** notices identified another pentylenetetrazol-containing product for which an NDA was effective on October 9, 1962—Nicozol with Reserpine Tablets (NDA 10-508 held by Nysco Laboratories). Ascher does not dispute that Nioric is related to this product. Therefore, whether Nioric is related to Geroniazol is mooted by Ascher's failure to dispute the fact that Nioric is related to Nicozol with Reserpine Tablets.

Ascher next argues that there is a genuine issue of fact about whether Nioric is related to a drug which was on October 9, 1962, generally recognized as safe. In support of this contention, Ascher submitted an affidavit, two pharmacodynamic studies (one animal and one human), and 4,000 patient evaluation forms completed by 253 practicing physicians; Ascher also cross-referenced the articles submitted by the Knoll Pharmaceutical Co. in support of its Metrazol products.

Nioric obviously could not have been generally recognized as safe on October 9, 1962, because it was not marketed until 1970. Whether Nioric is related to a drug which was generally recognized as safe on October 9, 1962 is, as explained above, legally irrelevant. In any event, assuming this fact were legally relevant and assuming further that there was a genuine issue of fact about the reputation for safety of another product before 1962, this factual dispute is not material because, as shown above, Ascher failed to satisfy the other requirements necessary to qualify for exemption under the 1962 grandfather clause.

Ascher also joined in each of the legal arguments made by the Hyrex respondents. For the reasons stated above, the Commissioner finds those arguments to be insubstantial.

To summarize, because Nioric was first marketed in 1970, it fails to meet the commercial-use requirements of either the 1938 of the 1962 grandfather clause. In addition, even if Nioric were permitted to ride the coattails of Metrazol, which was marketed before 1938, Nioric can not satisfy the labeling and compositional requirements of either exempting clause because Metrazol itself can not satisfy those requirements. Finally, there is no genuine dispute over the fact that Nioric was "covered" by NDA's for pentylenetetrazol-containing drugs which were effective on October 9, 1962.

D. The Knoll Pharmaceutical Co.

The Knoll Pharmaceutical Co. recognizes that there are no adequate and well-controlled clinical investigations to substantiate the claims for its Metrazol products. Knoll claims, however, that its products are exempted from the effectiveness provisions of the act by one or both of the grandfather clauses.

a. *The 1938 Grandfather Clause.*

i. *Metrazol.* Although Knoll has shown that Metrazol Tablets were subject to the Food and Drugs Act of 1906, it has failed to satisfy the other conditions necessary for exemption. For example, Knoll acknowledges that since 1938, the excipients used in Metrazol have changed several times. In 1930, Metrazol contained talcum powder, corn starch, talcum, and zinc stearate. In 1964, each of these ingredients (except talcum) was deleted and replaced by dextrose hydrous, potato starch, and magnesium stearate. Moreover, in 1967–1968 dextrose hydrous was deleted and replaced by lactose anhydrous, while the potato starch and talcum were replaced by guar gum. Other similar changes were made in 1970 and 1971. It is clear, therefore, that the composition of Metrazol Tablets has not "remained unchanged" since 1938. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663.

Metrazol Tablets also fail to meet the labeling requirements of the 1938 grandfather exemption. On April 11, 1937, Metrazol was labeled as follows:

A Promptly Acting Circulatory And Respiratory Stimulant

Indications: In circulatory collapse and shock as a restorative; in respiratory depression and deep anesthesia; to antidote morphine and barbiturate poisoning; in asphyxia neonatorum, to stimulate both circulation and respiration. For circulatory stimulation in the emergencies of pneumonia and other overwhelming infections, and for those arising during the treatment of congestive heart failure.

Matrazol acts on the central nervous system stimulating the vasomotor and respiratory centers. Metrazol is absorbed quickly and is promptly followed by an intense circulatory and respiratory stimulation. In depressed states of the circulation and respiration, Metrazol tends to raise the blood pressure toward normal, to improve the pulse and increase the depth of respiration.

Today, however, Metrazol is indicated for another purpose, "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference*, p. 968 (1981). Moreover, since 1938, any number of claims have been deleted from Metrazol's labeling (e.g., that the product is effective in circulatory collapse, in congestive heart failure, and as an antidote to barbiturate poisoning). Such deletions are themselves sufficient to defeat Metrazol's claim of grandfather status. *United States* v. *Allan Drug Corp., supra*, 357 F.2d at 718–719.

Knoll attempts to ignore these changes by arguing that at all times since 1937 Metrazol's "principal labeling claim" has been that the drug is a central nervous system, circulatory, respiratory, and cerebral stimulant or "other words to the same effect." This argument begs the issue. Even if Knoll were able to establish that the claims made about Metrazol's *method of action* had remained unchanged, it is clear that the specific *indications* (i.e., the clinical effects) claimed for Metrazol are wholly different today than in 1938. To hold that a mere continuity of pharmacological claims would be sufficient to overcome changes in the clinical claims for a product would create a loophole in the statutory scheme and defeat the purpose of the 1962 amendments. If Knoll's argument were adopted, manufacturers of pre-1938 drugs could market their products with virtual impunity for any indication they desired so long as they did not change the pharmacological claims.

Knoll may also be contending that Metrazol Liquidum, an elixir, is grandfathered under the 1938 act, although this is unclear because Knoll argues that "Metrazol" is grandfathered, but does not identify any specific dosage form. Metrazol Liquidum may not be grandfathered under the 1938 act for the following reasons.

First, the elixir form of Metrazol was first marketed in 1952. Accordingly, it could not have been subject to the Food and Drugs Act of 1906. Although Knoll did submit data indicating that a liquid product (a 10% aqueous solution identified as "oral solution") was marketed before 1938, Metrazol Liquidum is a "wine flavored elixir [which] contains 15% alcohol." *Physicians' Desk Reference*, p. 951 (1980).

Second, the composition of Metrazol Liquidum has not "remained unchanged" since 1938. Between 1952 and 1967 thiamine was added to Metrazol Liquidum and then, in 1967, thiamine was deleted from the formulation; in 1970, methylparaben was added to the formula.

Third, inasmuch as the labeling for the Tablets and the Liquidum is the same, it is clear that the Liquidum is no more entitled to grandfather status under the 1938 clause than is the tablet dosage form.

ii. *Vita-Metrazol.* Equally without merit is the contention that Vita-Metrazol Tablets and Elixir are exempted under the 1938 grandfather provision. Knoll acknowledges that the Vita-Metrazol products were not marketed until 1957. Accordingly, they clearly were not subject to the Food and Drugs Act of 1906. 21 U.S.C. 321(p). Knoll's attempt to shrug off this requirement on the grounds that the "only difference" between the Vita-Metrazol products and Metrazol is the eight vitamins added "as a * * * convenience for the physician and the patient * * * requiring a dietary supplement" is unavailing for a number of reasons. First, as explained above, *any* change in the composition of the product is sufficient to result in forfeiture of grandfather status; the grandfather clauses make no distinction between vitamins and other ingredients. Knoll's contention that the vitamins are offered as food supplements is legally irrelevant. Second, even assuming that Metrazol and Vita-Metrazol were identical in their formulations, Vita-Metrazol would not satisfy the labeling requirements of the 1938 clause for the same reasons that its adopted parent, Metrazol, does not.

b. *The 1962 Grandfather Clause.*

i. *Metrazol, Vita-Metrazol, and Nico-Metrazol.* Knoll's contention that Metrazol, Vita-Metrazol, and two other products, Nico-Metrazol Tablets and Elixir, are exempted under the 1962 grandfather clause is also without merit for the following reasons.

First, each of these products was "covered" by an effective NDA within the meaning of section 107(c)(4) of the 1962 amendments. As the notices published in the **Federal Register** of August 26, 1969 (34 FR 13673), May 20, 1970 (35 FR 7749), and September 12, 1970 (35 FR 14412), make clear, on October 9, 1962, there were a number of effective new drug applications for products which contained pentylenetetrazol as their principal active ingredient. In fact, one of these products, Nicozol with Reserpine Tablets, like Knoll's Vita-Metrazol, also contained nicotinic acid. Moreover, each of the products identified in the **Federal Register** notices, like Knoll's products, was recommended for use in conditions associated with senility. Under these circumstances, there can be no doubt that the NDA's products listed in the foregoing **Federal Register** notices were identical, similar, or related to Knoll's products within the meaning of 21 CFR 310.6 and were therefore within the same generic class of drugs as Knoll's products for purposes of the 1962 grandfather clause. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 664; *Weinberger* v. *Bentex Pharmaceuticals, supra*, 412 U.S. at 648.

Second, as shown above, the Metrazol products and the Vita-Metrazol products have undergone changes in formulation since October 9, 1962.

Knoll's submission shows that the Nico-Metrazol products have undergone similar changes in formulation. With respect to the Nico-Metrazol Tablets, the lactose, talcum, and potato starch excipients were deleted in 1970 and replaced by another ingredient. Furthermore, in 1976, isopropyl alcohol was added to Nico-Metrazol Tablets. With respect to Nico-Metrazol Elixir, caramel color was deleted sometime after 1959 and, in 1976, FD&C Red No. 2 was replaced by FD&C Red No. 40. In short, each of the formulations of each of the Knoll products has undergone one or more changes in formulation which preclude grandfather status under the 1962 amendments.

Third, the labeling for Metrazol and Vita-Metrazol have changed since October 9, 1962. Before October 9, 1962, Metrazol Tablets and Elixer and Vita-Metrazol were offered

for the elderly presenting early and *more advanced signs of senility* to increase alertness, regularize sleeping and eating habits, improve tidiness and sociability. Also in fatigue states and to accelerate the recovery time of the convalescent.

Physicians' Desk Reference, pp. 626–627 (1962) (emphasis added). Today,

Metrazol is offered solely "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference*, p. 968 (1981). In short, these products are now offered for use in a patient population that is different from the one for which they were offered before 1962. Finally, as noted above, the present labeling for Metrazol and Vita-Metrazol has deleted a number of claims which were made before 1962. "A change in the labeling * * * to reduce the use of the drug" is sufficient to deprive a product "of the immunity of the Grandfather Clause * * * *United States* v. *Allan Drug Corp., supra*, 357 F. 2d at 718–719.

The labeling for Nico-Metrazol Elixir and Tablets has also changed since 1962. Before 1962, Nico-Metrazol was indicated for "the countless patients who 'can't seem to get started' because of general debility or fatigue" and "for the lethargic middle-aged patient." Other pre-1962 labeling shows that Nico-Metrazol was offered in "senile deterioration of all degrees accompanied by lethargy, withdrawal, resultant confusion and disorientation, and behavioral disorders" and to restore the image of the patient before deterioration occurred. Today, Nico-Metrazol has dropped all of these claims and, despite the addition of nicotinic acid, is offered for precisely the same purposes as Metrazol and Vita-Metrazol, "to enhance mental and physical activity of elderly patients." *Physicians' Desk Reference*, p. 969 (1981).

In addition, the present labeling for Nico-Metrazol has added a rather lengthy list of precautions and warnings which were not present in the pre-1962 labeling (e.g.,precautions against use in patients with focal brain lesions, peptic ulcer, diabetes, gall bladder, or liver disease and warnings against concurrent use with other drugs such as hypotensive agents and phenothiazine derivatives). In short, it is clear that the labeling for Nico-Metrazol has not "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra*, 412 U.S. at 663.

Knoll argues that Congress had a "severely limited" purpose in mind when it amended the definition of "new drug." According to Knoll, Congress intended that products being marketed on October 9, 1962, would be required to demonstrate efficacy only if "new" claims were made for them and not because of any change in the formulation or labeling. Knoll's argument is untenable.

Congress did not have a "severely limited" purpose in mind when it enacted the 1962 drug amendments. To the contrary, its purpose was nothing less than to revamp the basic regulatory scheme for new drugs. Nor did Congress intend that the impact of this legislation be narrowly confined to a few products. Rather, the transitional provisions and the grandfather provision were "* * * designed in general to make the new 1962 requirements applicable to drugs then on the market after a two-year grace period." *USV Pharmaceutical Corp.* v. *Weinberger*, legislative history of the amendments, the Supreme Court found:

> * * * that prescription drugs on the market were to be subjected to the efficacy requirements. If the 1962 amendments are to be comprehensively meaningful, we decline to read section 107(c)(4) so as to provide a loophole so that manufacturers can go on marketing drugs previously subject to new drug regulation without demonstrating by the new statutory standards that they are effective as claimed.

Id. at 666.

Knoll next argues that an unduly narrow interpretation of the grandfather provision would be against the public interest because manufacturers would retain labeling claims found to be unsupported by evidence rather than risk losing the protection of the grandfather clause. The Commissioner disagrees. A manufacturer's refusal to delete a labeling claim which it cannot substantiate or its refusal to add a necessary precaution or warning would result in FDA's initiation of regulatory sanctions. Therefore, it is clearly in the manufacturer's best interest to revise labeling to conform to the requirements of the law.

Moreover, whatever force this public policy argument may have had in 1962 has long since been dissipated by the passage of time and the fact that virtually all labeling has undergone numerous changes since 1962. In any event, a manufacturer whose only interest is to continue marketing a product lacking evidence of effectiveness is in no position to champion the public interest.

Knoll's contention that the widespread use of pentylenetetrazol for over four decades constitutes evidence of eficacy which warrants a hearing has been repeatedly and firmly rejected by the courts. *Hynson, Westcott & Dunning, Inc.* v. *Weinberger, supra*, 412 U.S. at 620–21; *Upjohn Co.* v. *Finch, supra*, 422 F.2d at 954; *Pharmaceutical Manufacturers Ass'n* v. *Richardson*, 318 F. Supp. 301, 310 (D. Del. 1970); *Cooper Laboratories, Inc.* v. *Commissioner of FDA, supra*, 501 F.2d at 785 (only well-controlled investigations warrant a hearing).

Knoll adopted the discovery motion of the Hyrex respondents and followed its motion with an FOIA request for virtually the same information. Knoll's discovery motion is denied for the same reasons that the Hyrex respondents' motion has been denied.

Finally, Knoll argues that it should be granted a hearing because it is in the process of preparing protocols for controlled clinical trials which "may" demonstrate the effectiveness of its products. Despite the fact that this assurance was made more than 4 years ago, Knoll has not submitted any protocols or studies to FDA. In any event, it is clear that a promise to conduct studies is not a sufficient basis upon which to grant a hearing. On the other hand, Knoll need not be precluded from demonstrating the effectiveness of its products. It is free to apply for an investigational exemption under 21 U.S.C. 355(i).

E. The Rucker Pharmocal Co.

Rucket raised a number of legal objections, most of which were also made by the Hyrex respondents and answered above. The remaining arguments are discussed below.

Rucker argues that FDA's hearing regulations, 21 CFR 314.200 et seq., violate due process because they do not provide for discovery of evidence in the possession of FDA or others to support its contentions that its products are grandfathered and are not "covered" by the pre–1962 NDA's. For several reasons, this argument is without merit. First, Rucker's generalized claim that the denial of discovery prevents it from proving that its products are grandfathered is directly refuted by its specific arguments that each Rucket product meets each of the criteria of the act's grandfather provisions.

Second, even if discovery were available to obtain documents in FDA's files, this would not enable Rucker to obtain documents in the possession of "others."

Third, the information which Rucker seeks was not generated by FDA. Rather, it is proprietary information created by Rucket in the course of its business operations. It has always been the rule that one who seeks the benefit of a statutory exemption bears the burden of pleading and proving its entitlement thereto. *Javierre* v. *Altagracia, supra*, 217 U.S. at 507–08. Rucket may not shift this burden by failing to maintain the necessary records and then claim that such records may exist in FDA's files. 21 CFR 314.200(e).

Fourth, as discussed more fully below, the finding that Rucker's products are

not grandfathered does not rest solely upon its failure to present particular types of evidence, but rather on the fact that the evidence which it did submit demonstrates that its products are *not* entitled to grandfather status.

Finally, Rucker's argument that it needs to discover the reasons why FDA required NDA's for several products containing pentylenetetrazol to determine whether its products are "covered" by those NDA's is without merit. As noted above, the question "why" FDA decided to require NDA's for the pentylenetetrazol products named in the notice of opportunity for hearing is not relevant to the question "whether" those NDA's "cover" Rucker's products. Once it has been determined that an NDA for a particular product was effective on October 9, 1962, then all products within the same generic class are "covered" by that NDA for purposes of the grandfather clause. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 658 and 664 (all drugs containing bioflavanoid compounds alone or in combination with other drugs held to be "me-too's" covered by withdrawal of NDA's for bioflavanoid products); *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* 412 U.S. at 653. Inasmuch as Rucker does not deny that each of its products is within the same generic class as the products identified in the notice of opportunity for hearing, discovery on this issue would serve no useful purpose.

Rucker next argues that the agency may not grant itself summary judgment because FDA is the proponent of the proposed order and, under 5 U.S.C. 556(d), the proponent bears the ultimate burden of proof. The Commissioner disagrees. The provisions of 5 U.S.C. 556(d) are applicable only when a hearing is "required by sections 553 or 554" of the Administrative Procedure Act. 5 U.S.C. 556(a). This order manifestly is not a hearing, but rather a proceeding to determine whether a hearing has been justified. In any case, the fact that a party has the burden of proof in a proceeding does not foreclose the possibility of summary judgment in favor of that party.

Furthermore, it has long been settled that FDA's regulations which predicate a party's right to a hearing upon the submission by that party of adequate and well-controlled studies are valid. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra.* 412 U.S. at 620–22. Rucker's failure to come forward with such evidence justifying a hearing renders moot any questions on the ultimate burden or proof.

Rucker next argues that 21 CFR 314.200(e) (1) and (2), which require the submission of data in a particular format, is unreasonable because some of it "may not be readily accessible to a petitioner without assistance from FDA or by judicial process." The Commissioner disagrees. There is nothing unreasonable about requiring a party to support its grandfather and not-new-drug contentions with relevant evidence presented in an organized, logical fashion. In fact, such requirements facilitate review.

Rucker next argues that FDA's policy on combination drugs constitutes a disguised attempt to require a showing of relative efficacy in contravention of the legislative intent that such a showing is unnecessary. This argument distorts FDA's policy covering combination drugs and is without merit. 21 CFR 300.50, in pertinent part, provides:

> Two or more drugs may be combined in a single dosage form when each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug.

The purpose of this regulation is to assure that each active ingredient is present in a particular drug solely because it provides a therapeutic benefit to the consumer and not because a manufacturer seeks to obtain a marketing advantage by differentiating its product from that of its competitors. In contrast, the legislative history discussing the comparative effectiveness issue shows that Congress eschewed comparisons only between *different products.* In short, FDA's combination policy has nothing to do with the issue of comparative effectiveness.

Rucker next argues that the January 30, 1976 notice of opportunity for hearing (41 FR 4625) is not applicable to its product, Ru-Vert, because that notice arose out of the Supreme Court's decision in *Weinberger* v. *Bentex Pharmaceuticals, Inc., supra,* and Rucker was not involved in that litigation. Rucker's argument is without merit. It was stated in the **Federal Register** that in addition to the named persons who participated in the *Bentex* litigation "this notice applies to all persons who manufacture or distribute a drug product containing pentylenetetrazol * * *" (41 FR 4625).

Rucker also argues that Ru-Vert is not identical, similar, or related to any of the products involved in the *Bentex* litigation. This argument is also without merit. There is simply no room for genuine argument that Ru-Vert is not related, similar, or identical to the pentylenetetrazol-containing products involved in the *Bentex* litigation. Like the products in the *Bentex* case, Ru-Vert contains pentylenetetrazol as one of its principal active ingredients. Accordingly, it is clearly chemically related to these products. 21 CFR 310.6. Moreover, inasmuch as Ru-Vert's labeling contained the same indications ("vasodilator, cerebral stimulant * * * for use in * * * certain conditions of apprehension and mental confusion"), contraindications ("epilepsy, severe hypotension and hemorrhage") and warnings (convulsions and flushing) as the products involved in the *Bentex* case, it is clear that Ru-Vert is also pharmacologically related to those products. 21 CFR 310.6. In short, Rucker's argument that Ru-Vert is not related or similar to the pentylenetetrazol-containing drugs identified in that notice is without merit.

Rucker also argues that a hearing is necessary to determine whether two other products which it manufactures, Su-Ton and Su-Zol, are grandfathered under the 1938 act. Rucker does not claim that Su-Ton and Su-Zol were marketed before June 25, 1938, but rather that products "essentially" identical to Su-Ton and Su-Zol were subject to the 1906 Act. This argument is legally untenable. As shown above, grandfather status is determined on a product-by-product basis, not on a wholesale basis. Inasmuch as Rucker concedes that Su-Ton and Su-Zol were not marketed before June 25, 1938, these products are not entitled to the exemption afforded by the 1938 act.

Rucker next claims that each of its products is exempted from the efficacy requirements by the 1962 grandfather clause. With respect to Ru-Vert, Rucker claims that is has met each of the elements of the grandfather clause. As shown below, Rucker has not met each of the criteria of the grandfather provision.

Rucker has not properly established that Ru-Vert's present formulation is identical to that used on October 9, 1962. Although Rucker concedes that this product was manufactured to its specifications, it claims to be unable to produce any batch records for the formulation in use on October 9, 1962, as required by the regulations. Rucker's attempt to overcome this omission with invoices and a letter from the original manufacturer is inadequate because these documents do not identify the inactive ingredients in Ru-Vert. 21 CFR 314.200(e)(2)(I); 21 CFR 310.3(h).

Accordingly, Rucker has failed to comply with its responsibility to maintain in its files "the data and information necessary fully to document and support" grandfather status. 21 CFR 314.200(e)(5).

Nor is this all. Ru-Vert is clearly "covered" by the NDA's for Geroniazol and Nicozol with Reserpine because it is indisputable that Ru-Vert is within the same generic class as the products whose NDA's were withdrawn in the Federal Register notices of September 12, 1970 (35 FR 14412). Rucker's argument that Ru-Vert was not "covered" by NDA's because the subject products either used a different route of administration (injectable) or contained an additional ingredient (reserpine) not present in Ru-Vert is without merit. Indeed, in its efforts to show that Ru-Vert was generally recognized as safe on October 9, 1962, Rucker equated Ru-Vert with the "pentylenetetrazol-containing products" identified in the notice of opportunity for hearing, thereby conceding that Ru-Vert is within the same generic class as those products.

Ru-Vert also fails to satisfy the labeling requirements of the 1962 grandfather clause. Rucker recognizes that a product can qualify for grandfather status only if "the dosage, contraindications, side effects and hazards have remained identical" since October 9, 1962, and contends that Ru-Vert's labeling satisfies this test. However, examination of Ru-Vert's labeling shows otherwise.

On October 9, 1962, Ru-Vert was offered solely "for use in vertigo, Meniere's syndrome and certain conditions of apprehension and mental confusion." In 1975 these claims were expended to include, "symptomatic management of peripheral vestibular disorders such as idiopathic vertigo * * * lybyrinthitis and fenestration procedures," "acute and chronic vertigo," "arterial hypertension," "radiation sickness," and "clinical symptoms of senility and functional cerebral inpairment."

Furthermore, in 1962 Ru-Vert's labeling recommended a dosage of "1 or 2 tablets 3 times daily *before meals*" (emphasis added). In 1975, the requirement that Ru-Vert be taken before meals was deleted.

The 1975 labeling was changed in other respects. For example, the labeling added a contraindication (against use "in patients with a known history of sensitivity" to any of the ingredients in Ru-Vert), a precaution (about the potential sedative effect of pheniramine maleate), and deleted warnings (about muscle tremors, respiratory paralysis, and dermatitis). Under these circumstances, it is clear that Ru-Vert's labeling has not "remained unchanged" since October 9, 1962. *USV Pharmaceutical Corp.* v. *Weinberger, supra,* 412 U.S. at 663. On this ground alone, Ru-Vert fails to satisfy the criteria of the grandfather clause.

Rucker also claims that Su-Ton and Su-Zol are grandfathered under the 1962 amendments. However, as is the case with Ru-Vert, Rucker has not shown that these products meet each of the elements of the grandfather clause.

Rucker concedes the Su-Zol was first commercially sold or used in July 1962. No data were provided on the extent or nature of the sales between July and October 9, 1962. It is clear, however, that a product may not become *generally* recognized as safe among qualified experts within four months after it is initially introduced into the marketplace. *Cf. United States* v. *An Article of Drug "Bentex Ulcerine," supra,* 469 F.2d at 878–79.

Both products also fail to satisfy the other elements of the grandfather clause. Thus, despite the fact that both Su-Zol and Su-Ton were manufactured according to Rucker's specifications, no batch formula was submitted showing the precise formulation for these products that was in use on October 9, 1962. The letter from the manufacturer and the invoice are inadequate for this purpose inasmuch as they do not reveal the inactive ingredients of the products. 21 CFR 314.200(e)(2)(I); 21 CFR 310.3(h). Indeed, the letter from the manufacturer does not even indicate that Su-Zol contains alcohol as one of the ingredients. In addition, Raucker conceded that Su-Ton's formulation has not "remainded unchanged" since October 9, 1962, because cobalt sulfate was deleted from the formula in 1976.

Moreover, because Su-Ton and Su-Zol both contain pentylenetetrazol, they are clearly "covered" by the NDA's for Geroniazol and Nicozol with Reserpine for the same reasons that Ru-Vert is covered by those NDA's.

Nor does either of these products meet the labeling requirements of the grandfather clause. With respect to Su-Zol, Rucker has not submitted any labeling in use for the product on October 9, 1962. Rucker's statement that to the best of its knowledge the labeling has been unchanged is not adequate to support its claim. 21 CFR 314.200(e)(2). Indeed, Rucker does not even allege that it sought such labeling from the original manufacturer of Su-Zol, but has merely alleged that it was unable to find any labeling in its files.

With respect to Su-Ton, there were numerous changes in the labeling. For example, labeling in use in 1958 and 1960 offers the product simply as a "geriatric supplement and cerebral stimulant." No other claims were made for the product. The 1969 labeling, however, offers Su-Ton as a "cerebral stimulant and nutritional supplement for use in elderly persons to increase alertness, relieve depression and forgetfulness." The newer labeling also has added a contraindication (against use in epilepsy) as well as information on side effects and hazards ("flushing," "muscle tremor, convulsions, respiratory paralysis"). Finally, the 1969 labeling recommends that Su-Ton be taken "with meals," whereas the pre-1962 labeling has no such restriction.

In short, it is clear that none of the Rucker products discussed herein are entitled to grandfather status.

Rucker next contends that Ru-Vert is not a new drug because experts have concluded that it is generally recognized as effective. In support of this argument, Rucker points to nine identically worded, conclusory affidavits and three letters stating that Rucker's studies constitute "substantial evidence" of Ru-Vert's effectiveness. As shown above, each of the studies submitted by Rucker patently fails to meet one or more of the regulatory criteria for adequate and well-controlled clinical investigations. No number of affidavits can overcome these deficiencies or "change the scientific studies and the data reported into something they are not." *Cooper Laboratories, Inc.* v. *FDA, supra,* 501 F. 2d at 785 (quoting *Upjohn* v. *Finch, supra*).

Nor is the Commissioner obliged to hold a hearing upon the mere submission of conclusory affidavits. Unless the affidavits are premised on properly conducted studies, the opinions which they contain are unavailing. It is not difficult for manufacturers to produce affidavits from persons proclaiming their belief that one or more studies are adequate and well controlled. In these circumstances, the agency is required to pierce the opinions expressed in the affidavits and determine whether they raise genuine issues of material fact, i.e., whether the opinions are based upon studies which meet "the statutory standards as particularized by the regulation." *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 620. In short, hearings are granted on the basis of adequate and well-controlled investigations, not affidavits. In this case, no such studies have been submitted.

For example, each of the affiants opines that the study conducted by

Lynes and Boos on healthy young males (see section III, *supra*) constitutes "substantial evidence" of the effectiveness of Ru-Vert in the treatment of vertigo. However, analysis of this study in light of the regulations defining adequate and well-controlled investigations, 21 CFR 314.111(a)(5)(i), shows clearly that the study is patently deficient. Thus, the regulations require that the protocol and the report of the study must include "a method of selection of the subjects that provides adequate assurance that they are suitable for the purposes of the study, diagnostic criteria of the condition to be treated or diagnosed * * *." 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). The use of healthy subjects in the study rather than subjects with vertigo is irreconcilable with these regulations.

Two circuit court opinions have addressed the requirement that subjects used in a clinical trial have the condition for which the drug is offered. In *SmithKline Corp.* v. *FDA, supra,* 587 F. 2d at 1121, the court agreed with the agency that the results of a study conducted on anxious obese patients could not be generalized to obese patients for whom the drug is offered because the test did not show whether the drug would have its purported effect on non-anxious obese patients. In *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra,* 501 F. 2d at 778, the court stated its understanding that the statute itself contemplates studies involving diseased patients: "The 1962 amendments clearly demand that efficacy be shown by controlled tests—that is, by studies where some *diseased persons* receive the drug in question while other *diseased persons,* otherwise comparable, receive nothing, or a 'placego,' or some substance of known effect" (emphasis added).

The lack of critical analysis in the affidavits and letters submitted by Rucker is demonstrated by the fact that not one of the individuals detected a single deficiency in any of the studies submitted by Rucker despite the fact that each study contained numerous deficiencies. (See section III, *supra*).

Indeed Rucker itself appears to have recognized that deficiencies might be identified in its submissions. Thus, Rucker urges that "in the event that the Agency determines that these studies, or any of them, are in any respect not adequate or well controlled, Rucker hereby petitions for a waiver of whatever criteria with respect to which the study or studies are thought to be deficient. The specific criteria for which waiver is sought cannot now be cited * * *."

Rucker's request can not be granted for a number of reasons:

First, if a manufacturer could avoid compliance with the regulations for adequate and well-controlled studies simply by requesting a categorical, post-hoc waiver of any regulation which it failed to meet, there would, in effect, be no regulations.

Second, the waiver regulations require that:

> * * * a petition for a waiver shall set forth clearly and concisely the specific provision or provisions in the criteria from which waiver is sought, why the criteria are not reasonably applicable to the particular clinical investigation, what alternative procedures, if any, are to be, or have been employed, what results have been obtained, and the basis on which it can be, or has been, concluded that the clinical investigation will or has yielded substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested * * *.

Proviso, following 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). Rucker has not complied with these requirements, but has merely asked to be excused if it erred. "This constitutes a request to waive not merely the Administration's regulations but also the fundamental requirement of the 1962 legislation. Granting such a waiver is beyond the power of either the FDA or the courts." *Cooper Laboratories, Inc.* v. *Commissioner, FDA, supra,* 501 F.2d at 778.

Rucker also requested that the Commissioner hold his decision on its hearing request in abeyance because it is curently undertaking additional studies to demonstrate Ru-Vert's effectiveness. In this connection, Rucker submitted a protocol for one of the studies which it claimed was "in progress." Rucker's request is denied.

Although more than five years have elapsed since Rucker allegedly initiated its study, it has yet to submit any results. Under these circumstances, further delay is unwarranted. It is uncertain when, if ever, these studies will be completed and the data submitted. On the other hand, if Rucker is genuinely serious about subjecting Ru-Vert to adequate and well-controlled investigations, it may do so under an investigational exemption. 21 U.S.C. 355(i).

Rucker's final argument is that it be allowed to "modify" the claims that Ru-Vert is effective for "certain conditions of apprehension and mental confusion" in the event those claims are interpreted as offering Ru-Vert for indications other than vetigo. Inasmuch as it is clear that these claims are in no way related to vertigo, Rucker's concern is well founded. Indeed, Rucker itself has acknowledged that Ru-Vert is only "primarily indicated for the treatment of vertigo." Because Rucker's studies do not even attempt to measure Ru-Vert's effect on these other conditions, this is an additional grounds for concluding that Ru-Vert is a new drug which is not generally recognized by qualified experts as effective for its labeled uses. 21 U.S.C. 321(p)(1). Here again, however, Rucker is free to apply for an investigational exemption to conduct proper studies.

VI. Findings

On the basis of the foregoing review of all the evidence submitted and legal arguments offered, the Commissioner finds that all drug products containing pentylenetetraxol, either as a single ingredient or in combination with other ingredients, (1) lack substantial evidence of effectiveness in support of the claims made for them and are, *a fortiori,* "new drugs" within the meaning of 21 U.S.C. 321(p), (2) lack substantial evidence to show that each component of the combination contributes to the effects claimed, and (3) are not exempt from the premarket approval requirements for "new drugs" by either of the grandfather provisions of the act. 21 U.S.C. 321(p); 21 U.S.C. 355(d); section 107(c)(4) of the Drug Amendments of 1962; 21 CFR 314.111(a)(5), 300.50, 314.200(e).

The respondents have failed to offer any data or legal reason which demonstrates the extistence of a genuine and material issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 201, 505, 701), 52 Stat. 1041 as amendced, 1052–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 355, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), the foregoing hearing requests are denied, all drugs containing pentylenetetrazol either as a single ingredient or in combination with other ingredients are declared to be "new drugs," not grandfathered, which require new drug applications filed and approved pursuant to 21 U.S.C. 355. Distribution of these drug products in interstate commerce without an approved new drug application is illegal and subject to immediate regulatory action. This order is effective May 14, 1982.

Dated: April 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-11744 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

Correction

In FR Doc. 82-11241, appearing at page 17862, in the issue for Monday, April 26, 1982, please make the following corrections:

(1) On page 17862, in the first column, in the "Dates" paragraph, in the fifth line, "April 9, 1982" should have been "April 19, 1982".

(2) On page 17862, in the middle column, in the first line, the date "June 9, 1982" should have been "June 18, 1982".

BILLING CODE 1505-01-M

National Institutes of Health

Frederick Cancer Research Facility Advisory Committee; Establishment

The Acting Director, National Institutes of Health, announces the establishment on April 16, 1982, of the Frederick Cancer Research Facility Advisory Committee by the Director, National Cancer Institute, under the authority of section 404(b)(3) of the Public Health Service Act (42 U.S.C. 285(b)(3)). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

This committee shall advise the Director, National Cancer Institute, concerning the merit and relevance to the Institute of research conducted by the contractor at the Facility. The advice bears solely on the content and the direction of science as performed by the contractor in the research area. Contractor research shall be reviewed and evaluated in its entirety twice within the span of a contract period.

A second critical responsibility of this Committee shall be to review contractor science in the context of potential redundancy with National Cancer Institute intramural research.

Authority for this committee shall terminate on April 16, 1984, unless renewed by appropriate action as authorized by law.

Dated: April 28, 1982.

Thomas E. Malone,

Acting Director, National Institutes of Health.

[FR Doc. 82-12034 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service National Toxicology Program; Di(2-ethylhexyl)phthalate; Correction

The National Toxicology Program's notice of the availability of *Carcinogenesis Bioassay of Di(2-ethylhexyl)phthalate* (T.R. 215) on page 14959 of the April 7, 1982 **Federal Register** (47 FR 14959) contained an error. The notice incorrectly stated that DEHP is "found in plastic milk containers." Although DEHP is found in milk, to our knowledge it is not found in plastic milk containers. The error is regretted.

Dated: April 26, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-12035 Filed 5-3-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI-95]

Planned Residential Commercial Development For Portage, Mich.; Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: Planned Residential/ Commercial Development for Portage, Michigan. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register** a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C. April 23, 1982.

Francis G. Haas,

Deputy Director, Office of Environment and Energy Programs.

Appendix—EIS on Planned Residential/ Commercial Development, City of Portage, Michigan

The Department of Housing and Urban Development (HUD) Grand Rapids Service Office intends to prepare an EIS for Planned Residential/ Commercial Development in the City of Portage, Michigan. The Department hereby solicits comments and information for consideration in this EIS.

Description: The Moors Investment group has submitted a proposal to develop approximately 320 acres north of Centre Street, east of US 131 in Sections 17 and 18 of the City of Portage, Michigan. The proposal as submitted includes 1615 single and multifamily dwelling units on 290 acres and retail, commercial office facilities on 30 acres. The proposed development calls for five phases over a ten year period. HUD's involvement is limited to mortgage insurance under Title X of the Housing and Community Development Act.

Need: An EIS is being prepared because the overall project exceeds the threshold level for EIS's established by HUD (800 for Kalamazoo County). Environmental considerations which have been identified include but are not limited to: (1) Adverse noise, (2) wetlands, (3) endangered species, (4) ground water recharge, (5) storm drainage, and (6) archeological sites.

Alternatives: The HUD alternatives perceived at this time are: (1) Approve the proposal as submitted, (2) approve the proposal with modifications, or (3) disapprove the proposal.

Scoping: Response to this Notice will assist in identifying data sources and significant environmental issues which the EIS should address.

Comments: Comments should be sent on or before May 25, 1982, to John W. Kirkwood, Supervisor, Grand Rapids Service Office, Department of Housing and Urban Development, 2922 Fuller

Avenue, N.E., Grand Rapids, Michigan 49505, telephone number (616) 456–2216.

[FR Doc. 82-12093 Filed 5-3-82; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: San Antonio Zoo, San Antonio, TX—PRT 2-9066

The applicant requests a permit to import four female giant armadillos (*Priodontes giganteus*) from Santa Cruz, Bolivia for enhancement of propagation. The zoo currently only has four breeding males.

Applicant: Little Rock Zoo, Little Rock, AR—PRT 2-9055

The applicant requests a permit to import one male captive-bred maned wolf (*Chrysocyon brachyurus*) from Halle East Germany Zoo for enhancement of propagation.

Applicant: Caldwell Schools, Inc., Tyler, TX—PRT 2-8066

The applicant requests a permit to purchase in interstate commerce one female captive-bred margay (*Felis weidii*) from the Audubon Park Zoo, New Orleans, LA for enhancement of propagation.

Applicant: Institute for Wildlife Studies, Arcata, CA—PRT 2-8894

The applicant requests an amendment to PRT 2–8894 to relocate bald eagle (*Haliaeetus leucocephalus*) nestlings taken from Washington and California to Santa Catalina Island, California. The original application requested Santa Cruz Island, California.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications on or before June 3, 1982, by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: April 28, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-12078 Filed 5-3-82; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

[INT DEIS 82-9]

Draft Brothers Grazing Management Environmental Impact Statement; Public Hearings and DEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Public meetings on Brothers Grazing Management DEIS.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft Environmental Impact Statement for the Brothers EIS area. The proposal involves implementing a livestock grazing program on public lands within the Brothers EIS area of the Prineville District in central Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon
Bureau of Land Management, Prineville District Office, 185 East Fourth St., Prineville, Oregon
Library, University of Oregon, Eugene, Oregon
Central Oregon Community College, College Way, Bend, Oregon
Library, Portland State University, 727 SW Harrison, Portland, Oregon
Harney County Library, 80 West D, Burns, Oregon
Crook County Library, 200 East 2nd, Prineville, Oregon
Deschutes County Library, 507 N.W. Wall, Bend, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of copies are available upon request to the BLM Oregon State Office or the Prineville District Office.

Informal public information meetings will be held on May 25, 1982 at 7:00 p.m. in Prineville, Oregon at the Catholic Parish Hall located at 150 East 1st Street and on May 26, 1982 at 7:00 p.m. in Bend, Oregon at the Bend Riverhouse located at 3075 North Highway 97.

Written comments on the draft environmental impact statement will be accepted by the Prineville BLM District Manager until June 30, 1982.

Written comments on the draft EIS may be sent to: Prineville District Manager, Bureau of Land Management, P.O. Box 550, Prineville, Oregon 97754.

Comments should be postmarked on or before June 30, 1982 to be considered in preparation of the Final Brothers EIS.

FOR FURTHER INFORMATION CONTACT:
Brian Cunninghame, Team Leader, Prineville BLM District Office, Telephone: (503) 447–7003.

Dated: April 2, 1982.

Philip C. Hamilton,

Chief, Division of Planning and Environmental Coordination

[FR Doc. 82-12082 Filed 5-3-82; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 3410, 3783, and 2323, Blocks 352, 353, and 360, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT:
Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 27, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12102 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mobil Exploration and Producing Southeast, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Mobil Exploration and Producing Southeast Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 078, Block 51, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 27, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12103 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10:30 a.m. (p.s.t.) on Saturday, May 22, 1982, at West Marin School, Point Reyes Station.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin and San Francisco counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Secretary
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margo Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Jacobs
Ms. Gimmy Park Li
Mr. Duane "Doc" Mattison
Mr. John Mitchell
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

Agenda items for this meeting will include a report by the Point Reyes Committee on the status of the proposed Bear Valley Visitor Center, a report by the Finance Committee on DELTA KING proposal, and a report by the Superintendents of Golden Gate National Recreation Area and Point Reyes National Seashore on the storm damages incurred on January 5 and the rehabilitation plans for the parks. The Superintendents' reports will be followed by a tour of Point Reyes to inspect the storm damage.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact John H. Davis, General Superintendent of the Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123; telephone (415) 556-2920.

Minutes of the meeting will be available for public inspection by June 22, 1982 in the Office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: April 23, 1982.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 82-12000 Filed 5-3-82; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 19, 1982.

Sarah G. Oldham,

Acting Keeper of the National Register.

ARKANSAS

Ashley County

Crossett, *Wiggins Cabin,* City Park

Crittenden County

West Memphis, *Dabbs Store,* 1320 S. Avalon

Sharp County

Evening Shade Multiple Resource Area. This area includes: Evening Shade, *Cochran Store,* Main St.; *Coger House,* Main St.; *Davidson, Sam House,* Commack St.; Edwards, W. A., House Main St.; *Herrn House,* Main St.; *McCaleb, John, House,* Main St.; *Metcalfe House,* Gin Dr.; *Plum Spring Springhouse and Site,* Main St.; *Sharp Mill and Thompson Mill Site,* AR 58; *Shaver, Charles W., House,* Court St.; *Shaver, John W., House,* Main St.; *Stokes House,* Cammack St.; and *Wilkerson House,* Sidney Rd.

Washington County

Fayetteville, *Hemingway House and Barn,* 3310 Old Missouri Rd.

GEORGIA

Chatham County

Savannah, *Savannah Victorian District,* bounded by Gwinnett, Anderson and 31st Sts. (boundary increase)

Tybee Island, *Fort Screven Historic District,* Tilton, Butler, Van Horn, Railroad Alger Aves. and Pulaski Rd.

Coweta County

Newman, *Northwest Newnan Residential Historic District,* Roughly bounded by Jefferson, Cavender, Duncan Brown and RR tracks.

Dougherty County

Albany, *Albany Railroad Depot Historic District*, Roosevelt Ave.

Elbert County

Elberton, *Elberton Commercial Historic District*, Church, Elbert, Oliver, and McIntosh Sts. and Public Sq.

IDAHO

Ada County

Boise, *Murphy, Daniel F., House*, 1608 N. 9th St.

Owyhee County

Wickahoney Post Office and Stage Station.

LOUISIANA

Evangeline Parish

Ville Platte, *Dardeau Building*, 224 W. Main St.

Jefferson Davis Parish

Jennings, *Jennings Post Office*, 118 W. Placquemine St.

OHIO

Montgomery County

Dayton, *Hanitch-Huffman House*, 139 W. Monument Ave. (proposed move).

OREGON

Benton County

Corvallis, *Hotel Benton*, 408 SW Monroe Ave.

[FR Doc. 82-12094 Filed 5-3-82; 8:45 am]
BILLING CODE 4310-70-M

Temporary Ellis Island Preservation Council; Meeting

Notice is hereby given that the closed meeting of the Temporary Ellis Island Preservation Council previously announced for May 7, 1982, has been rescheduled to convene on May 20, 1982, at the Department of the Interior, 18th and C Streets, NW., Washington, D.C. All information regarding this meeting remains the same as published on April 15, 1982 (47 FR 16224).

Dated: April 20, 1982.

Robert A. Ritsch,

Associate Director, Recreation Resources, National Park Service.

[FR Doc. 82-12095 Filed 5-3-82; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare an Environmental Impact Statement on the Approval To Fund Annual State and Indian Abandoned Mine Land (AML) Grants

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare an environmental impact statement (EIS) on the approval of annual State and Indian AML grants at the level of funding cited in section 402(g)(2) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. 1201 et seq. (herein referred to as SMCRA or the Act), for the support of State and Indian AML programs and implementation of appropriate reclamation projects and technological approaches to reclaim abandoned mine lands. This analysis is necessary in order to evaluate the impacts associated with approving annual grant requests at the mandated level of funding so that the objectives of the Act can be attained.

DATES: The Draft EIS should be available for public comment during the months of November and December 1982. The Final EIS should be available in February 1983.

ADDRESSES: Written comments on the Draft EIS must be mailed or hand-delivered to: OSM Headquarters, U.S. Department of the Interior, South Building, Room 132, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gwendolyn C. Lockley, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. (telephone: 202-343-5981).

SUPPLEMENTARY INFORMATION: Final rules which established the AML Reclamation Program and procedures for administering Title IV of the SMCRA were published in the Federal Register on October 25, 1978. OSM has prepared a programmatic EIS on the Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation under Title IV of the SMCRA of 1977 (OSM-EIS-2) which evaluated policies for two program elements under Title IV of the Act: the Federal Reclamation Program (section 402(g)(3) of SMCRA), and the State and Indian Reclamation Program (section 405 of SMCRA). This programmatic EIS evaluated specific policies for allocation of the Federal share of the Abandoned Mine Land Fund under the Federal program, and guidelines for the performance of reclamation activities under both the Federal and the State and Indian reclamation programs.

The proposed EIS will analyze the impacts associated with the approval of applications to fund individual annual State and Indian grant requests to reclaim abandoned mine lands. Impacts will be considered at two levels of funding, i.e. 50 percent of the amount anticipated to be collected from fees levied on coal production by States and Indian Tribes and a higher level. The EIS will also present generic analyses of the proposed types of reclamation projects and possible technological approaches, assess project impacts at individual State and Indian tribal levels, and assess cumulative impacts at the National level.

Major alternatives to be considered by OSM include the following:

1. Do not approve annual grants to States and Indian Tribes. This no action alternative is required by § 1502.14(d) of the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969.

2. Approve annual grants to States and Indian tribes at the level of funding cited in section 402(g)(2) of the SMCRA for the support of State and Indian programs and implementation of appropriate reclamation projects and technological approaches for the reclamation of abandoned mine lands.

3. Approve annual grants to States and Indian tribes at a higher level of funding than that cited in section 402(g)(2) of the SMCRA for the support of State and Indian programs and implementation of appropriate reclamation projects and technological approaches for the reclamation of abandoned mine lands.

Additional alternatives may be identified during preparation of the draft EIS or after the public comments have been evaluated.

Workshops addressing OSM's NEPA compliance responsibilities were conducted during the fall of 1981 for the OSM AML staff and personnel from the States and Indian tribes participating in the AML State and Indian Grants Program. Comments and recommendations generated during discussions of the proposed EIS aided in establishing the scope of the EIS and served as part of the scoping process. A draft preparation plan was developed by OSM and submitted to the workshop participants for review in late January 1982.

Scoping meetings have not been planned. The public and all interested Federal, State, and local agencies and Indian tribes are invited to submit written comments on the draft EIS as indicated under "Dates" and "Addresses".

The impact analysis process will comply with the CEQ regulations for implementing NEPA and the requirements of the Interior Departmental Manual on the

preparation of EIS's, and with other applicable Federal laws.

Availability of Documents: The final preparation plan for the proposed EIS on approval of Federal Grants for the AML State and Indian Reclamation program, and the final EIS entitled "Implementation of Program Policies for Federal, State, and Indian Abandoned Mine Land Reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977" (OSM–EIS–2) are available for inspection at the OSM office listed under Addresses.

Dated: April 28, 1982.

Approved:

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–12036 Filed 5–3–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Permanent Authority Decisions Volume No. 252]

Motor Carriers; Permanent Authority Restriction Removals, Decision-Notice

Decided: April 23, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 340 (Sub-63)X, filed April 5, 1982. Applicant: QUERNER TRUCK LINES, INC., 1131–33 Austin St., San Antonio, TX 78208. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Ft. Worth, TX 76102. Lead, Subs 28, 48, and 52 (1) remove exception of commodities of unusual value, those requiring special equipment, and livestock from general commodities authority, lead (2) broaden plastic bags and sheeting and cellulose film to "plastic and related products", Sub 52, (3) allow service at all intermediate points, lead, regular route portion (4) remove plantsite limitation and/or broaden St. Louis, MO to St. Louis, MO, St. Louis County, MO, St. Clair and Madison Counties, IL; Cleveland, OH to Cuyahoga and Lake Counties; Mendota, IL to LaSalle County; Chicago, IL to Cook, Lake, DuPage and Will Counties, IL and Lake and Porter Counties, IN; Austin, Dallas, Ft. Worth, San Antonio and Waco, TX to Travis, Dallas, Tarrant, Bexar, McLennan and Harris Counties, Melrose Park, IL to Cook County; Amarillo, TX to Potter County; and Laredo, TX to Webb County and (5) to radial authority.

MC 3252 (Sub-121)X, filed April 16, 1982. Applicant: MERRILL TRANSPORT CO., 1037 Forest Ave., P.O. Box 739, Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Subs 116X, 117X, 62, and 114 certificates, (1) broaden (a) ore, in dump vehicles to "ores and minerals" in Sub 116X (para. 6), (b) junk batteries to "scrap metals" in Sub 116X (para. 15), (c) used engines to "machinery, and waste and scrap metals" in Sub 117X (para. 51), and (d) woodpulp to "pulp, paper and related products" in Sub 117X (para. 52); (2) change Searsport to Waldo County, ME, and Thamaston to Knox County, ME in Sub-62; (3) change one-way to radial authority in Subs 116X (paras. 6, 15, 18 and 25), 117X (paras. 9, 51 and 52), 62 and 114.

MC 8573 (Sub-2)X, filed April 19, 1982. Applicant: FERRARO TRUCKING CO., INC., 170 27th Street, Brooklyn, NY 11232. Representative: Kenneth M. Piken, 95–25 Queens Boulevard, Rego Park, NY 11374. Sub-1 permit: Broaden (1) commodity description from corrugated paper products to "pulp, paper and related products"; and (2) territorial description to between points in the U.S., under a continuing contract(s) with a named shipper.

MC 59517 (Sub-3)X, filed March 30, 1982. Applicant: HARRY E. SHEA SONS, INC., 701 U.S. Route 130, Riverton, NJ 08077. Representative: Lester R. Gutman, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. Lead broaden (1) agricultural commodities to "farm products," lumber to "lumber and wood products," lime to "ores and minerals," fertilizer to "chemicals and related products," and farm implements to "machinery, metal products, and rubber and plastic products"; (2) Riverton, NJ and points within 25 miles of Riverton to Camden, Gloucester, Burlington Counties, NJ and Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA; Philadelphia, PA to Philadelphia, Delaware, Chester, Montgomery and Bucks Counties, PA, New Castle County, DE, and Mercer, Monmouth, Burlington, Gloucester, Camden, Salem, Ocean, Somerset, and Hunterdon Counties, NJ; Easton, PA to Northampton and Bucks Counties, PA and Warren and Hunterdon Counties, NJ; Bethlehem, PA to Northampton, Bucks, and Lehigh Counties, PA, points on Long Island, NY to Nassau and Suffolk Counties, NY; Camden, NJ to Camden, Burlington, and Gloucester Counties, NJ nd Philadelphia, Montgomery, and Bucks Counties, PA; from Norristown, PA to Philadelphia, Delaware, Montgomery, Chester, and Bucks Counties, Chester Valley, PA to Chester County; Harrisburg, PA to Dauphin, Cumberland, Perry, and York Counties, PA, and Palmyra, NJ to Burlington and Camden Counties, NJ and Philadelphia and Bucks Counties, PA; and (3) to radial authority.

MC 60157 (Sub-34)X, filed April 7, 1982. Applicant: C. A. WHITE TRUCKING COMPANY, 5327 N. Central Expressway, Suite 316, Dallas, TX 75205. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Lead and Subs 5, 6, 7, 8, 10, 11, 12, 14, 17, 20, 21G, 22, 23, 24, 25, 26F, 27, 28F, 30F, and 32F certificates, and E–1 through E–13 letter notices: (A) broaden (1) lead and Subs 7, 8, 10, 11, 21G, 24, 25, and E nos. 1 (part 1), 2, 3, 4, 5, 6, 7, 8, 10, 11, and 13,

machinery, equipment, materials, and supplies used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with the construction, operations, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, and pipe used in, incidental to, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products including the stringing and picking up of main pipelines to "mercer commodities"; (2) Subs 6, 11, 21G, 25, and E–1 (part 2), 2, and 9 from earth drilling commodities, as described, to "machinery, metal products and earth drilling commodities"; (3) Subs 7, 8, and 10, and E–12, machinery, equipment, materials and supplies used in pipelines other than gas, water or sewage to "machinery and metal products"; (4) Sub-Nos. 7, and 10 and E–12 (part 1) machinery and equipment, materials and supplies used in the production, etc. of sulphur, to "machinery and metal products" (5) Subs 7, 8, 10, and E–13, machinery, equipment, materials, and supplies used in the drilling of water wells, to "machinery and metal products"; (6) Subs 5, 12, and 27, pipe, pipe fittings, pipe connections and pipe couplings, except for use in mercer commodities operations to "metal products"; (7) Sub 17, plastic pipe to "rubber and plastic products"; (8) Subs 14, 20, 22, 23, 28F, and 32F, iron and steel articles, iron and steel scrap; iron and steel articles, iron and steel articles, aluminum articles, iron and steel tanks, aluminum tanks and parts, attachments and accessories, to "metal products"; (9) from iron and steel articles and pipe, and materials, equipment and supplies used in the production, manufacture or distribution thereof to "metal products and pipe"; (10) Sub 30, petroleum products and paints to "petroleum or coal products and chemicals and related products"; (B) remove the (1) "originating at or destined to" restriction, Subs 12, 14, 22, and 23; (2) "prior or subsequent movement by water" restriction, Sub 30; (3) "mercer commodities" restriction, Subs 5, 12, and 14; (4) "pipeline rights of way" restriction, Subs 7, 8, and 10; and (5) "TX" restriction, Sub 17; and (6) commodities in bulk exception, Sub 28; (C) broaden to (1) county-wide authority: (a) Subs 12 and 27, facilities Gainesville (Cooke County, TX); (b) Sub 17, Houston (Harris County, TX); (c) Sub 20, facilities Midlothian (Ellis County, TX); (d) Sub 21G, Houston, Lone Star and Lufkin (Harris, Morris and Angelina Counties, TX); (e) Sub 22, facilities Beaumont (Orange County, TX); (f) Sub 30, facilities Beaumont and Houston (Orange and Harris Counties, TX); (g) Sub 28, facilities Conroe (Montgomery County, TX); and (h) Subs 5 and 14, Lone Star (Morris County, TX); and (2) radial authority, Subs 5, 12, 17, 20, 21G, 22, 23, 27, 28, 30, and 32.

MC 79434 (Sub-5)X, filed April 16, 1982. Applicant: BENNETT TRUCK LINE, INC., 200 E. Walnut, Paragould, AR 72450. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. Sub 1X: Broaden the off route point of Knobel, AR, to Clay Country, AR.

MC 85811 (Sub-14)X, filed April 2, 1982. Applicant: AMSCO TRANSPORTATION, INC., 10560 Mykawa Road, P.O. Box 33280, Houston, TX 77033. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 23101. Subs 4, 6, 8, 11F, 12F, and 13F certificates: Broaden (1) Subs 8, 11, 12, and 13 to "metal products," from iron and steel articles; Sub 4 to "lumber and wood products, pulp, paper and related products, rubber and plastic products, clay, concrete, glass or stone products, machinery, transportation equipment, Mercer commodities, and those commodities which because of their size or weight require the use of special handling or equipment," from back-fillers, bank doors, batch bins, beams, boilers, bridge equipment, construction equipment, ditching equipment, erection equipment, finishing equipment, irrigation and drainage equipment, industrial equipment, paving equipment, refinery equipment, roadbuilding equipment, sawmill equipment, bulldozers, castings, caterpillars, channels, circuit breakers, columns, compressors, cranes, derricks, drag lines, dynamoes, electric motors, engines, furnaces, generators, girders, graders, machinery, hoists, industrial hammers, lathes, mixers, ovens, pile driving rigs, pilings, planes, plates, poles, posts, presses, pumps, punches, road maintainers, rollers, rotaries, safes, scrapers, sheet, shovels, tanks, threshing machines, trenching machines, tractors, transformers, trusses, turbines, vaults, pipe, and oilfield equipment; and Sub 6 to "rubber and plastic products," from plastic pipe; (2) to countywide authority: Sub 6 Houston, TX (plantsite at Houston), and Tulsa County, OK (plantsite at Broken Arrow); Sub 8, Liberty County, TX (facilities in Liberty County); and Sub 11, Bossier and Caddo Parishes, LA (Bossier City); (3) to radial authority; and (4) remove restrictions (a) restricting service to "size or weight commodities and self-propelled articles, transported on trailers" in Sub 4; and (b) the "originating at and destined to" restriction at named points in Sub 8.

MC 95965 (Sub-3)X, filed April 1, 1982. Applicant: NICHOLAS J. ASCENZO, INC., 1544 Boone Ave., Bronx, NY 10460. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048–0640. Lead Subs 2, 9 and 10 permits; Broaden, (1) iron and steel, iron and steel articles and steel beams, to "metal products"; lead, 2, 9, and 10; piling to "clay, concrete, glass or stone products and lumber and wood products", lead, 2, and 9; (2) remove in bulk restriction, as a exception in connection with contractors, equipment, materials and supplies in Sub 10; and (3) to between points in the United States (except AK and HI), under contract(s) with named shippers, all permits.

MC 102971 (Sub-5)X, filed April 9, 1982. Applicant: LYTLE'S TRANSFER & STORAGE, INC., 2309 Union Avenue, Altoona, PA 16602. Representative: William J. Lavelle, Esq., 2310 Grant Bldg. Pittsburgh, PA 15219. Sub-1. Broaden: household goods to "household goods, furniture and fixtures"; points within 20 miles of Altoona to Bedford, Blair, Cambria, Centre, Clearfield and Huntingdon Counties, PA; points within 50 miles of Altoona to above counties and Armstrong, Indiana, Jefferson, Westmoreland, Somerset, Fulton, Juniata, Mifflin, Elk, Cameron, Clinton, Perry, Cumberland and Franklin Counties, PA; and to radial authority.

MC 105375 (Sub-92)X, filed April 5, 1982. Applicant: DAHLEN TRANSPORT, INC., 1680 Fourth Ave., Newport, MN 55055. Representative: Joseph A. Eschenbacher, Jr., P.O. Box 289, Newport, MN 55055. Subs 2, 8, 11, 14, 15, 17, 18, 19, 20, 21, 23, 24, 27, 30, 31, 32, 33, 34, 35, 36, 39, 42, 52, 53, 56, 57, 65, 69, 70F, 71, 74, 75, 76F, 81F, 82F, and 85F certificates: (1) broaden (a) petroleum and petroleum products, (Subs 2, 8, 69, and 76F); liquefied petroleum gas, (Subs 15, 30, and 69); gasoline and fuel oils, (Sub 33); jet fuel, acetone, methyl ethyl ketone, isopropyl alcohol, methanol, toluol, xylol, isopropyl ether and petroleum solvents, road oils and asphalt, liquefied petroleum products, gasoline, fuel oil, and liquefied petroleum gas, (Sub 69), to "petroleum, natural gas and their products"; (b) anhydrous ammonia, fertilizers, fertilizer compounds, ammonium nitrate and

nitrogen solutions, (Subs 11 and 69); liquid chemicals, (Sub 14); nitrogen fertilizer solutions, (Subs 17 and 69); fertilizer and fertilizer compounds, acids and chemicals, (Sub 18); anhydrous ammonia (Subs 19, 21, 23, 39, 42, 69, and 82F); acids, chemicals, fertilizer and fertilizer ingredients (Subs 20 and 24); chemicals and fertilizers, (Sub 27); fertilizers, insecticides, fungicides and herbicides, and materials and ingredients thereof (Sub 31); chemicals and fertilizer and fertilizer materials derived from petroleum products, (Sub 35); liquid carpet shampoo, (Sub 53); adhesives, (Subs 57 and 69); liquid fertilizer, (Subs 65, 69, 75, and 82F); sulfuric acid, phosphatic solutions, calcium sulfate, anhydrous ammonia and ammonium nitrate, alum, nitric acid, acid base detergent, (Sub 69); fertilizer and fertilizer materials, (Sub 74), to "chemicals and related products"; (c) dry plastics, (Sub 32) to "rubber and plastic products"; (d) liquid animal food and liquid animal food supplements, (Subs 34, 36, 52, 56 and 69); flour preparations (except feed and feed ingredients), (Sub 69); flour, (Subs 69 and 71); edible sugar, (Sub 69); sugar (Sub 85F); vegetable oil, (Sub 81F), to "food and related products"; (e) cotton piece goods, and materials and supplies used in the manufacture and distribution of abrasive cloth and paper; and abrasive cloth and paper, (Sub 69), to "pulp, paper and related products"; (f) general commodities (with exceptions), (Sub 69), to "general commodities (except classes A and B explosives, household goods, and commodities in bulk)"; (g) inedible tallow (Sub 69), to "animal fats and oils"; (2) remove restrictions (a) in bulk, or in bulk, in tank vehicles, or in bulk in tank or hopper type vehicles, wherever they appear; (b) ex-rail restriction in Sub 69; (c) originating at and/or destined to restrictions in Subs 31, 32, 34, 35, 36, 39, 42 and 65; (d) eliminate facilities limitations in Subs 14, 15, 19, 20, 21, 23, 24, 27, 30, 31, 32, 33, 34, 35, 36, 39, 42, 53, 65, 69, 70F, 74, and 76F; (3) change one-way to radial in all Subs; and (4) replace cities with counties, Clear Lake, IA (Cerro Gordo County), Subs 2 and 15; Fort Madison, IA (Lee County), Sub 11; Clinton, IA (Clinton County), Subs 14 and 32; Clarion, IA (Wright County), Sub 17; Fremont, NE (Dodge County), Sub 18; Fort Dodge, IA (Webster County) Sub 19; East Dubuque, IL (Jo Daviess County), Sub 20; Albany, IL (Whiteside County), Subs 21 and 74; Garner, IA (Hancock County), Subs 23 and 39; Niota, IL, (Hancock County), Sub 24; Whiting, IA, (Monona County) Subs 30 and 39; Blair, NE, (Washington County), Subs 31 and 52; Dubuque, IA, (Dubuque County), Sub 34; Lincoln, NE, (Lancaster County), Sub 35; LaPlatte and Omaha, NE, (Douglas County), Sub 36; Greenwood, NE (Cass County), and Early, IA, (Sac County), Sub 39; Spencer, IA, (Clay County), and Marshalltown, IA, (Marshall County), Sub 42; Cordova, IL, (Rock Island County), and Prairie du Chien, WI, (Crawford County), Sub 53; Clarence, IA, (Cedar County), Sub 56; Knoxville, IA, (Marion County), and Brookings, SD, (Brookings County), Sub 57; Fulton, IL (Whiteside County), Sub 65; St. Paul and Minneapolis, and points within 10 miles of each, MN, (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties), Subs 69 and 70; Savage, MN, (Scott County), Sub 69; Alexandria, MN, (Douglas County), Subs 69 and 75; Duluth, MN, (St. Louis County), Rochester, MN, (Olmstead County), Grand Forks, ND, (Grand Forks County), Newport, MN, (Washington County), Minneapolis, Savage, and Pine Bend, MN, (Hennepin, Scott and Dakota Counties), Charles City, IA, (Floyd County), Diamond Bluff, WI, (Pierce County), Rosemount, MN, (Dakota County), Oostburg, WI, (Sheboygan County), West Union, IA, (Fayette County), Winona, MN, (Winona County), Sanborn, IA, (O'Brien County), Sub 69; St. Paul, MN, (Ramsey County), Subs 69 and 76F; Janesville, WI, (Rock County), Blue Earth, MN, (Faribault County), Belmond, IA, (Wright County), Green Bay, WI, (Brown County), Pine Bend, MN, (Dakota County), Minneapolis and Hastings, MN, (Hennepin and Dakota Counties), New Brighton, MN, (Ramsey County), Minneapolis, MN, (Hennepin County), St. Louis, MO, (St. Louis, MO and Jefferson County), Hillsboro and Wahpeton, ND, (Richland and Trail Counties), Cottage Grove, MN, (Washington County), and Junction City, WI, (Portage County), Sub 69; Hastings, Rush City and Mankato, MN, (Dakota, Chisago and Blue Earth Counties), Sub 71; Mankato, MN, (Blue Earth County), Sub 81F; Wahpeton, ND, (Richland County), and Chaska Crookston, Moorhead and Renville, MN, (Carver, Polk, Clay and Renville Counties), Sub 85F.

MC 110746 (Sub-5)X, filed April 12, 1982. Applicant: PARKS MOVING & STORAGE, INC., 740 Commonwealth Drive, Warrendale, PA 15086. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. Lead and Sub-No. 2F: Broaden (1) household good to include "furniture and fixtures" in both authorities; (2) Pittsburgh, PA, and points in PA and WV within 40 miles of Pittsburgh to Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington, and Westmoreland Counties, PA, and Brooke, Hancock, Marshall, and Ohio Counties, WV in the lead.

MC 120737 (Sub-101)X, filed April 6, 1982. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602. Sub Nos. E–1, E–2 and E–3: (1) Broaden in Sub E–1 from livestock feeder tanks, fuel tanks, stalls, grain boxes and electric fence posts to "machinery and metal products"; and Sub E–3, from tractors (except highway tractors for hauling freight trailers and except tractors, the transportation of which, because of size and weight, requires the use of special equipment, regardless by whom loaded) to "machinery"; (2) broaden points within 50 miles of Pottstown, IL to Warren, McDonough, Fulton, Mason, Logan, Tazewell, McLean, Livingston, Woodford, Marshall, Putnam, Bureau, Knox, Henry, Stark, Menard, DeWitt, Peoria and LaSalle Counties, IL" in Subs E–1 and E–2; (3) broaden Peoria, IL to Peoria, Woodford and Tazewell Counties, IL in Sub E–1; Ashtabula, OH to Ashtabula County, OH in E–2; Eau Claire, WI to Chippewa and Eau Claire Counties, WI in Sub E–3; and West Chicago, IL to DuPage County, IL in Sub E–3, (4) change one-way to radial authority; (5) remove "size and weight" restriction in Sub E–3; and (6) remove plant-site restriction "traffic originating at" Sub E–3.

MC 124004 (Sub-71)X, filed December 7, 1981, previously noticed in the Federal Register of December 23, 1981, republished as follows: Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: Richard W. Dahn (same as applicant). Sub-Nos. 60 and 63: rephrase the facilities restrictions to read "between the facilities used by the named corporations," at points in the United States (except Alaska and Hawaii) on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

MC 128604 (Sub-2)X, filed April 6, 1982, Applicant: LARRY G. WHITMOYER, P.O. Box 175, R.D. #2, Millville, PA 17846. Representative: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108. Lead permit, broaden (1) to "ores and minerals, clay, concrete, glass or stone products, and metal products and other foundry materials," from industrial sand, limestone and fire clay, in dump vehicles, and foundry materials; and (2) to "between points in the U.S.,"

under continuing contract(s) with the named shippers.

MC 133984 (Sub-5)X, filed April 12, 1982. Applicant: POPPERT TRUCKING, INC., 401 Covina Lane, City of Industry, CA 91744. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. Sub-2 permit: Broaden to between points in the United States (except AK and HI), under continuing contract(s) with named shippers.

MC 134940 (Sub-11)X, filed April 9, 1982. Applicant: VERNON KUFAHL d.b.a. KUFAHL TRUCKING, 4704 North 32nd Avenue, Wausau, Wisconsin 54401. Representative: Wayne W. Wilson, 150 E. Gilman Street, Madison, Wisconsin 53703. Subs-2 and 5 permits, (1) broaden (a) building and housing units, complete, knocked down, or in sections and component parts thereof to "building and housing units and component parts thereof," and (b) wood products to "lumber and wood products" in Sub 2; (2) remove commodities in bulk exception in Sub-5; (3) expand to between points in the U.S. (except AK and HI) under a continuing contract(s) with named shipper, in both Subs.

MC 138977 (Sub-5)X, filed April 7, 1982. Applicant: EDWARD SKINNER, JR., d.b.a. SKINNER TRUCKING, P.O. Box 709, Twin Falls, ID 83301. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701. Sub-Nos. 1 and 3 permits: Broaden (1) to "beekeepers' supplies and equipment, materials and supplies used in the conduct of such business, food and related products, materials, equipment and supplies used in apiaries and by honey processing, storage and distribution plants, clay, concrete, stone or glass products, metal and metal products, plastic and plastic products and containers" from Beekeepers' supplies equipment, and honey and beeswax in mixed loads with such supplies and equipment, materials, equipment, and supplies used in apiaries and by honey processing, storage, and distribution plants, and honey and beeswax in mixed loads with such materials, equipment, and supplies, glass bottles, glass jars, glass bowls, metal bottles and jar caps, plastic containers, and metal cans in Sub 1; and in Sub-No. 3 to "pipe, pipe fittings, irrigation systems and materials, equipment and supplies used in the manufacture and distribution thereof," from irrigation pipe, and fittings and accessories for irrigation pipes; (2) to between points in the U.S. (except AK and HI) under continuing contracts with named shippers in both permits.

MC 139457 (Sub-33)X, filed April 13, 1982. Applicant: G. L. SKIDMORE d.b.a. JELLY SKIDMORE TRUCKING CO., P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768. Sub 23F permit. Broaden: Part (1), canned and preserved foodstuffs and canned and packaged animal food and part (2), materials and supplies used in the manufacture of the commodities above, to "food and related products"; and territorial description to "between points in the U.S." under continuing contract(s) with named shippers.

MC 142429 (Sub-7)X, filed April 15, 1982. Applicant: HORACE G. STROUD d.b.a. STROUD TRUCK SERVICE, 11030 Weaver Street, South El Monte, CA 91733. Representative: John C. Russell, 1545 Wilshire Blvd., Los Angeles, CA 90017. Sub 3 (M1F) permit, broaden (1) to "food and related products," from meats, meat products and byproducts, and articles distributed by meat packinghouses; (2) to "between points in the U.S.," under continuing contract(s) with the named shippers; and (3) remove commodity and vehicle restrictions, as follows: "except hides and commodities in bulk, in vehicles equipped with mechanical refrigeration."

MC 145203 (Sub-14)X, filed April 9, 1982. Applicant: REITZEL TRUCKING CO., INC., 7481 Fremont Pike, Perrysburg, OH 43551. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215. Lead and Sub 13: (1) Broaden glassware, machine-made and uncut, except ampules, bottles, carboys, demijohns, and jars to "clay, concrete, glass or stone products", Sub 13; (2) eliminate the restriction against the transportation of foodstuffs, lead; (3) remove the facilities limitation and broaden Perrysburg Township, Wood County, OH to Wood County, OH, lead; (4) remove the originating at and/or destined to restriction, lead; and (5) change one-way to radial authority, Sub 13.

MC 146712 (Sub-3)X, filed April 5, 1982. Applicant: STEEL CARGO, INC., R.R. 1, Box 81, Sharpsville, IN 46068. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Lead and Sub-No. 1F permit: Broaden (1) to between points in the U.S. (except AK and HI) under continuing contract(s) with named shippers in both permits; (2) steel tubing, tubing, chain link, wire, and ornamental fence, and parts thereof, to "metal products" in the lead; and fencing materials, iron, steel, zinc, lead and articles (except in bulk), springs, and construction materials, supplies and equipment (except in bulk) and materials, equipment and supplies (except in bulk), used in the manufacture and distribution thereof, to "construction materials" in Sub-No. 1.

MC 147019 (Sub-7)X, filed April 12, 1982. Applicant: WENGERT TRANSPORTATION, INC., d.b.a. CITY DELIVERY, 651–58th Avenue Court, SW., Cedar Rapids, IA 52404. Representative James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312. Lead certificate and Subs 6, 8, 9, 10, 13 and 17 (acquired in No. MC–FC–79486); (1) Broaden motion picture films, film accessories, advertising material used in connection with the exhibition of such films, newpapers, magazines and periodical publications to "motion picture films, film accessories and printed matter" in lead and Subs 8 and 9; (2) change (a) Kellogg, Montezuma, Williamsburg and Cedar Rapids, IA to Jasper, Poweshiek, Iowa and Linn Counties, IA, in lead (off-route points on regular routes), (b) Omaha, to Douglas County, NE and Fulton, to Whiteside County, IL, and Des Moines, to Polk County, IA, in lead (irregular route), (c) Des Moines Municipal Airport at Des Moines, IA to Polk County, IA, in Subs 10 and 13, (d) Eppley Airfield at Omaha, NE to Douglas County, NE, in Sub 13; (3) remove (a) size and weight restrictions, in Subs 6, 9 and 17, (b) ex-air restriction, in Subs 10 and 13, (c) livestock exception, in Sub 10.

MC 147404 (Sub-6)X, filed April 14, 1982. Applicant: DONALD J. GETTELFINGER, d.b.a. GETTELFINGER FARMS, R.R. 2, Box 241, Palmyra, IN 47164. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Sub 2F and Sub 4F. Broaden: To "food and related products (except commodities in bulk)" from meats, meat products, meat by products, dairy products, articles distributed by meat packinghouses, and commodities used by meat packers in the conduct of their business, except hides and commodities in bulk (Sub 2F), and foodstuffs except in bulk (Sub 4F); Jefferson, Oldham, and Bullitt Counties, KY and Floyd, Clark and Harrison Counties, IN for Louisville, KY (facilities) (Sub 2F); and Saginaw, Lapeer, St. Clair and Macomb Counties, MI for Bridgeport, Imlay City and Memphis, MI (facilities); Washington County, MS for Greenville, MS (facilities); Sussex County, DE for Millsboro, DE (facilities); and Los Angeles County, CA for City of Industry, CA (facilities) (Sub 4F); and remove restriction in Sub 2F to Tansportation of traffic originating at/destined to named points.

MC 150724 (Sub-10)X, filed April 12, 1982. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Road, P.O. Box 4145, Youngstown, OH 44515. Representative: Andrew F. Burkholder, 275 E. State St., Columbus, OH 43215. Permits MC–143218 (M1)F and Sub-Nos. 2 (M1)F, 3F, and 5F, broaden (1) hardware, and strip steel, in the lead, and steel doors and steel frames, threaded rods and studs, and parts for threaded rods and studs, in Sub 3 to "metal products"; books, magazines, periodicals, and advertising matter (except commodities in bulk) to "printed matter and advertising material" in Sub 2; electric transformers and transformer parts, and materials, equipment and supplies used in the production, distribution or sale of electric transformers (except commodities in bulk) to "machinery, and materials, equipment and supplies used in the manufacture and distribution of machinery" in Sub 5; (2) to between points in the U.S. (except AK and HI) under continuing contract(s) with named shippers in all authorities.

MC 151182 (Sub-2)X, filed March 16, 1982. Applicant: K.C.G.M. TRANSPORT, P.O. Box 9636, Long Beach, CA 90810. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702. Sub 1F certificate, remove (1) the restriction prohibiting transportation of "household goods as defined by the Commission," from general commodities in intermodal containers; and (2) the restriction limiting shipments to those "having an immediately prior or subsequent movement by water."

MC 151522 (Sub-4)X, filed April 8, 1982. Applicant: DIRECT MOTOR EXPRESS, INC., 2098 Kellogg Ave., Memphis, TN 38114. Representative: Henry E. Seaton, Suite 1024, 425 13th Street, NW., Washington, DC 20004. Sub 1 certificate, broaden to countywide authority, as follows: Shelby, Fayette and Tipton Counties, TN, DeSoto, Tunica and Marshall Counties, MS, and Crittenden, St. Francis and Lee Counties, AR (Memphis, TN).

[FR Doc. 82–12000 Filed 5–3–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers' Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by special rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–74

Decided: April 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161510, filed April 15, 1982. Applicant: EVARET G. WALKER, 7011 S.E. Wilshire, Milwaukie, OR 97222. Representative: Evaret G. Walker, P.O. Box 87, 7349 Old Pac. Hwy. So., Kalama, WA 98625; (206) 673–3878. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161511, filed April 15, 1982. Applicant: CONTINENTAL BORDERS EXPRESS, INC., 1231 Mandalay Street, Ontario, CA 91764. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180; (703) 442–8330. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret material, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161521, filed April 15, 1982. Applicant: MERLYN E. AND JACQUALINE L. MAAS, d.b.a. MERJAC ENTERPRISES, N. 4024 Madison St., Spokane, WA 99205. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2–85

Decided: April 20, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161052, filed March 16, 1982. Applicant: KEIHIN AMERICA CORPORATION, 5300 West 83rd Street, Los Angeles, CA 90045. Representative: David A. Livdahl, 555 South Flower Street, Suite 4310, Los Angeles, CA 90045. *As a broker of general*

commodities (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5-83

Decided: April 23, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161468, filed April 12, 1982. Applicant: WILLIAM C. HEWISH, JR. & DENNIS P. WARDS d.b.a. H & W ASSOCIATES, INC., 2307 Briston Pk., Croydon, PA 19020. Representative: William C. Hewish, Jr. (same address as applicant), 215-785-5545. As a broker of *general commodities* (except used household goods), between points in the U.S. (except AK and HI).

MC 161489, filed April 13, 1982. Applicant: CLIPPER EXPRESS COMPANY, 3401 West Pershing Rd., Chicago, IL 60632. Representative: Charles A. Webb, 1828 L St., NW., Suite 1111, Washington, DC 20036, (202) 822-8200. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP5-85

Decided: April 27, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161558, filed April 19, 1982. Applicant: SPURT MESSENGER SERVICE, INC., 831 3rd Ave., New York, NY 10022. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666 (201) 836-1144. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12809 Filed 5-3-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by special rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80100.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquires to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-76

76

Decided: April 23, 1982.

By the Commission Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2861 (Sub-19), filed April 19, 1982. Applicant: INDIAN TRAILS, INCORPORTED, 109 E. Comstock St., Owosso, MI 48867. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101; (703) 893-3050. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, between points in the U.S. (except HI), under continuing contract(s) with Scheffler's Four Seasons Tours, Inc., of Saginaw, MI.

MC 74681 (Sub-17), filed April 7, 1982. Applicant: STEVENS VAN LINES, INC., 121 South Niagara St., Saginaw, MI 48602. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036; (202) 785-0024. Transporting *household goods*, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY, and DC.

MC 111941 (Sub-44), filed April 19, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204-3491; (317) 638-1301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with L. B. Foster Company, of Doraville, GA.

MC 144630 (Sub-66), filed April 16, 1982. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846-6655. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with J. A. Tucker Company, of Westville, NJ.

MC 140910 (Sub-6), filed April 15, 1982. Applicant: MOTOR CARGO TRANSPORT CORP., 21 D'Shibe Terrace, Vineland, NJ 08360. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666; (201) 836-1144. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the NJ and PA, on the one hand, and, on

the other, points in the U.S. (except AK and HI).

MC 147770 (Sub-6), filed April 19, 1982. Applicant: WEST AMERICAN TRANSPORT, INC., 1260 West North Temple, Salt Lake City, UT 84116. Representative: Mark K. Boyle, Suite 400, 10 West Broadway Building, Salt Lake City, UT 84101; (801) 363–3550. Transporting *rubber and plastic products, metal products, and machinery and parts,* between points in the U.S. (except AK and HI), under continuing contract(s) with Baker Mining and Equipment Company, of Salt Lake City, UT.

MC 148440 (Sub-5), filed April 16, 1982. Applicant: LEIBY S. HALL, d.b.a. TCF INDUSTRIES, 525 North Franklin St., Decatur, IL 62523. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701; (217) 544–5468. Transporting *materials, equipment, and supplies* used in the manufacture of earthmoving, construction and material handling machines and engines, between points in the U.S. (except AK and HI), under continuing contract(s) with Caterpiller Tractor Co., of Peoria, IL.

MC 148620 (Sub-9), filed April 6, 1982. Applicant: K.G.L. CONTRACTING SERVICES, INC., P.O. Box 8202, Pembroke Pines, FL 33024. Representative: Robert W. Gerson, 1400 Candler Building, 127 Peachtree Street, NE., Atlanta, GA 30043; (404) 658–8045. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with United Freight, Inc., of Morrow, GA.

MC 149351 (Sub-5), filed April 19, 1982. Applicant: HEYMAN TRUCKING, INC., Box 97, 212 Mulberry St., Stephens City, VA 22655. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740; (301) 739–4860. Transporting *vending machines,* between points in Jefferson and Berkeley Counties, WV, and Washington County, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150301 (Sub-19), filed April 6, 1982. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503; (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with United Freight, Inc., of Morrow, GA.

MC 150561 (Sub-2), filed April 16, 1982. Applicant: LAW-TON TRUCKING CORP., 7 Cedar Crest Drive, Dix Hills, NY 11746. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846–6655. Transporting *such commodities* as are dealt in by drug stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Selective Promotions, Ltd., of Farmingdale, NY.

MC 154541 (Republication), filed May 4, 1981, previously noticed in the **Federal Register** issue of May 21, 1981. Applicant: SEA ISLAND STAGES OF BEAUFORT/HILTON HEAD, P.O. Box 4031, Beaufort, SC 29902. Representative: D. R. Wismer, 605 Broad River Drive, Beaufort, SC 29902; (803) 524–0393. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between Hilton Head, SC, on the one hand, and, on the other, points in FL, GA, LA, MD, NC, TN, and VA. Condition: Issuance of a certificate in this proceeding shall cancel certificate issued October 22, 1981.

Note.—The purpose of this republication is to clarify the territory description.

MC 159390, filed April 16, 1982. Applicant: WINTHER TRANSPORT, INC., 3380 Edward Ave., Santa Clara, CA 95050. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neehah, WI 54956; (414) 722–2848. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Liberty Vinyl Corporation, of Santa Clara, CA.

MC 161450, filed April 15, 1982. Applicant: ROBERTSON FACTORIES, INC., 33 Chandler Ave., Taunton, MA 02780. Representative: Charles E. Southwell, (same address as applicant) (617) 823–5141. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cameo Curtain Company of New Bedford, MA, Mt. Hope Finishing Company, of Butner, NC, and Polylok Corporation, of New York, NY.

MC 161520, filed April 15, 1982. Applicant: PRO CARTAGE, INC., 8 Greek Lane, Edison, NJ 08817. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666; (201) 836–1144. Transporting *plastic materials,* between points in NY, NJ, CT, RI, MA, PA, NC, SC, IL, OH, IN, FL, MD and GA.

MC 161530, filed April 15, 1982. Applicant: RAIDER TRUCKING, INC., 3621 West Dailey, Phoenix, AZ 85023. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 80514; (602) 264–4891. Transporting *such commodities* as are dealt in or used by tire stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Goodyear Tire & Rubber Company, of Akron, OH.

MC 161570, filed April 19, 1982. Applicant: LARSON BROTHERS INCORPORATED, 350 Hartford Avenue, Wethersfield, CT 06109. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114; (203) 525–2661. Transporting *steel products,* between East Hartford, CT, on the one hand, and, on the other, points in CT, MA, ME, NH, RI, and VT, under continuing contract(s) with Republic Steel Corporation, of Massillon, OH.

Volume No. OP2–83

Decided: April 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 150103 (Sub-18), filed April 12, 1982. Applicant: SCHWEIGER INDUSTRIES, INC., 116 West Washington St., Jefferson, WI 53549. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703; 608–256–7444. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of polyester, cotton, and fiberglass products, between points in Cook County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150683 (Sub-3), filed April 14, 1982. Applicant: GEORGE FANCSAL, 148 Grandview Ave., Conneaut, OH 44030. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114; 216–566–5639. Transporting *chemicals and related products and clay, concrete, glass and stone products,* between points in Ashtabula County, OH, and points in TX.

MC 150803 (Sub-2), filed April 6, 1982. Applicant: T. W. KOEGER TRUCKING, 1200 S. Main, Williamsville, MO 63967. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; 301–840–8565. Transporting *charcoal,* between points in Butler and Carter Counties, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151173 (Sub-13), filed April 16, 1982. Applicant: HAR-BET, INC., 7209 Tara Blvd., P.O. Box 855, Jonesboro, GA 30255. Representative: O. L. Godfrey, Jr. (same address as applicant), 404–478–4115. Transporting *general commodities* (except classes A and B explosives,

household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Warren/Sherer Division of Kysor Industrial Corporation, of Conyers, GA.

MC 151253 (Sub-2), filed April 5, 1982. Applicant: TRI-STATE TRANSPORT, INC., 322 Grange Road, P.O. Box 4054, Port Wentworth, GA 31407. Representative: James P. Cates (same address as applicant), (912) 964-9002. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the ports and port cities of Charleston, SC, Jacksonville, FL and Savannah, GA, on the one hand, and, on the other, points in AL, FL, GA, KY, MS, NC, SC, TN, and VA.

MC 153723 (Sub-9), filed March 23, 1982. Applicant: A & M ENTERPRISES, INC., P.O. Box 884, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702; (501) 521-8121. Transporting *attic stairways, pocket door frames, attic fans and metal stampings, food and related products, aluminum ventilators, roof louvers, turbines, and shutters,* between points in Pulaski County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159502, filed April 12, 1982. Applicant: BRAY TRUCKING, INC., P.O. Box 562, Big Piney, WY 83113. Representative: Frank Bray (same address as applicant), 307-276-3346. Transporting *machinery, equipment, materials, and supplies,* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, and the dismantling, moving and setting-up of rigs, between points in WY, CO, ID, MT, NE, NV, NM, ND, SD, KS, OK, TX, and UT, under continuing contract(s) with (a) Hageman Anchor & Testing Ser. For Woods Pet. Corp., (b) Mobil Oil Corp., (c) Woods Petr. Corp., all of Big Piney, WY, (d) Helmrick & Payne, Inc., of Oklahoma City, OK, and (e) J. B. Roden Drilling Co., of Mills, WY.

MC 161342, filed April 2, 1982. Applicant: SPECIALIZED TRANSPORT INTERNATIONAL, INC., 5 Augusta Drive, Seguin, TX 78155. Representative: Robert J. Brooks, 1828 L St., NW., Suite 1111, Washington, DC 20036; (202) 466-3882. Transporting *Machinery* and *such commodities* as are used in the manufacture and distribution of machinery, between points in the U.S., under a continuing contract(s) with Montgomery Elevator Company, of McKinney, TX.

MC 161363, filed April 5, 1982. Applicant: SOUTH CENTRAL TRUCKING, 135 Post Rd., Anchorage, AK 99501. Representative: L. L. Fairbanks (same address as applicant), 907-279-0414. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AK.

MC 161372, filed April 16, 1982. Applicant: EXHIBIT BILDERS, INC., TRUCKING DIVISION, 9109 Premier Row, Dallas, TX 75247. Representative: E. Larry Wells, P.O. Box 45536, Dallas, TX 75245; 214-358-3341. Transporting *trade show exhibits,* between points in the U.S. (except AK and HI).

Volume No. OP2-84

Decided: April 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 141093, (Sub-2), filed April 1, 1982. Applicant: BERKSHIRE BULK SERVICE, INC., The Port of Albany, Albany. Representative: Neil D. Breslin, 11 N. Pearl St., Albany, NY 12207; (518) 434-1136. Transporting *flour, semolina, and wheat midds,* between points in Albany County, NY, on the one hand, and, on the other, points in MA, NH, NJ, PA, RI, VT, CT, ME and NY.

MC 141443, (Sub-70), filed April 1, 1982. Applicant: JOHN LONG TRUCKING, INC., 1030 East Denton, Sapulpa, OK 74066. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Ctr., 5101 North Classen Blvd., Oklahoma City, OK 73118; (405) 848-7946. Transporting *food and related products,* between points in Custer County, OK, on the one hand, and, on the other, points in AZ, CA, CO, NM and TX.

MC 152972, (Sub-1), filed April 1, 1982. Applicant: BARRY R. HAYNES, 4140 E. Williamson Rd., Marion, NY 14505. Representative: Barry R. Haynes (same address as applicant) (315) 926-5100. Transporting *rubber and plastic products* between points in the U.S. under continuing contract(s) with Commodore Plastics Inc., of Holcomb, NY.

MC 159902, filed April 1, 1982. Applicant: FRANK BACA, 122 Los Ranchos Road, NW., Alburquerque, NM 87107. Representative: Frank Baca (same address as applicant) (505) 898-1277. Transporting *ores and minerals,* between points in the U.S. (except AK and HI), under continuing contract(s) with St. Cloud Mining Co., and San Pedro Mining Corp., of Alburquerque, NM.

MC 161213, filed March 25, 1982. Applicant: MID COLUMBIA MOTOR FREIGHT, INC., 2640 W. Cascade, Hood River, OR 97031. Representative: Philip G. Skofstad, 529 S. E. Grand Ave., Portland, OR 97214; (503) 239-4157. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Multnomah, Hood River and Wasco Counties, OR, and Klickitat, Skamania and Yakima Counties, WA.

Volume No. OP2-86

Decided: April 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 146213, (Sub-18), filed April 5, 1982. Applicant: WISCONSIN FARM LINES, LTD., P.O. Box 76, Wisconsin Dells, WI 53965. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424; (612) 927-8855. Transporting *such commodities* as are dealth in or used by hardware and farm supply stores and surplus merchandise liquidators, between points in WY, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI).

MC 151142 (Sub-8), filed April 5, 1982. Applicant: H & H TRANSPORTATION, INC., 1425 E. Main Street, Newark, OH 40035. Representative: H. Neil Garson, 3251 Old Lee Highway, Fairfax, VA 22030, (703) 691-0900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Avon Products, Inc., of New York, NY.

Volume No. OP4-151

Decided: April 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 134027 (Sub-1), filed March 29, 1982. Applicant: BELKNAP & STORAGE OF SAN ANTONIO, INC., 7902 Webbles Dr., San Antonio, TX 78218. Representative: David Earl Tinker, 1000 Connecticut Ave., NW., Suite 1112, Washington, DC 20036; (202) 887-5868. Transporting *household goods, furniture, and fixtures,* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 143776 (Sub-49), filed April 20, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., SE., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant) (800) 253-0527.

Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Spartan Stores, Incorporated, of Grand Rapids, MI.

MC 144617 (Sub-2), filed April 20, 1982. Applicant: AUSTIN TRUCKING COMPANY, INC., 14 W. Morgan St., Austin, IN 47102. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240; (317) 846–6655. Transporting *food and related products*, between points in the U.S. (except AF and HI), under continuing contract(s) with Hunt-Wesson Foods, Inc., of Fullerton, CA.

MC 146957 (Sub-3), filed April 20, 1982. Applicant: DACIANO A. SANTOS, d.b.a. CONNECTICUT AIRPORT SERVICE, 17 Fairfield Ave., Danbury, CT 06810. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *passengers and their baggage*, in charter operations, between Bethel, Bridgewater, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Weston, Danbury, Naugatuck, Waterbury, and Bridgeport, CT, La Guardia and John F. Kennedy Airport, NY, and Newark International Airport, NJ, on the one hand, and on the other, points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Countries, MN, to the International boundary line between the U.S. and Canada.

MC 146787 (Sub-3), filed April 20, 1982. Applicant: HOME DELIVERY CORPORATION, 422 N. 27th St., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 W. Wisconsin Ave., Milwaukee, WI 53203, (414) 276–2260. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of toilet preparations, between Glenview and Morton Grove, IL, on the one hand, and, on the other, points in Brown and Outagamie Countries, WI, under continuing contract(s) with Avon Products, Inc., of Morton Grove, IL. CONDITION: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issurance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 2410.

MC 149397 (Sub-4), filed April 21, 1982. Applicant: HELEN REAGAN, d.b.a. SOUTHEAST TRUCKING COMPANY, 8418 Tallmadge Rd., Ravenna, OH 44266. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210; (703) 525–4050. Transporting *building materials*, between points in OH, on the one hand, and, on the other, points in IL and IN.

MC 157547, filed April 19, 1982. Applicant: BELMONT ENTERPRISES, INC., 10203 Prospect Rd., Forestville, NY 14062. Representative: Jack A. Belmont (same address as applicant); (716) 965–2553. Transporting *grease and oil lubricants*, between points in the U.S., under continuing contract(s) with Battenfeld American, Inc., of Buffalo, NY.

MC 158967 (Sub-1), filed April 20, 1982. Applicant: SDR CONTRACTING, INC., 1795 Lexington Ave. So., Mendota Heights, MN 55118. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440; (612) 542–1121. Transporting *pulp, paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with American Thermcell Insulation, of Anoka, MN.

MC 160797, filed April 19, 1982. Applicant: J. KUHOLSKI & SON, 3726 Cumberland Rd., Erie, PA 16510. Representative: John C. Kuholski (same address as applicant); (814) 899–4678. Transporting *doors and related hardware*, between Erie, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Fenestra, Div. of the Marmon Group Inc., of Erie, PA.

MC 161577, filed April 20, 1982. Applicant: WESTERN STATES TRANSPORT SERVICE, 580 North Main, Centerville, UT 84014. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110; (801) 531–1777. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in UT, ID, CO, WY, and NV.

Volume No. OP5–94

Decided: April 27, 1982.

By the Commission, Reivew Board No. 3, members Krock, Joyce, and Dowell.

W–1348, filed April 14, 1982. Applicant: PORT EVERGLADES TOWING, INC., 1900 S.E. 17th St. Causway, P.O. Box 13038, Port Everglades Station, Fort Lauderdale, FL 33316. Representative: Milton B. Whitfield, 2101 L St., N.W., Washington, DC 20037; 202–828–2252. Using towing vessels to move *space vehicles, component parts, hardware and test equipment*, towed on Government owned or supplied barges, for or on behalf of the United States Government, between those points in the U.S. (except AK and HI), located on navigable waterways, oceans, gulfs, and rivers, under continuing contract(s) with NASA.

Note.—This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 41098 (Sub-76), filed April 14, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006; (202) 833–8884. Transporting *household goods* between points in the U.S., under continuing contract(s) with General Mills, Inc., of Minneapolis, MN, and its subsidiary, Red Lobster Restaurants of Atlanta, GA.

MC 123279 (Sub-14), filed April 16, 1982. Applicant: CHARTER EXPRESS, INC., 8416 Tallmadge Rd., Ravenna, OH 44266. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210; 703–525–4050. Transporting *building materials*, between Chicago, IL, Elizabeth, NJ, Pasadena, TX, Los Angeles and Sacramento, CA, and points in Summit and Portage Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134636 (Sub-5), filed April 20, 1982. Applicant: MID–WEST TRUCK LINES, LTD., 1216 Fife St., Winnipeg, Manitoba, Canada. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102; (612) 227–7731. Transporting *food and related products* (except commodities in bulk), between ports of entry on the international boundary line between the United States and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140416 (Sub-3), filed April 20, 1982. Applicant: E. L. M. ENTERPRISES, INC., 1006 Carroll St., East Chicago, IL 46312. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601; 312–332–5106. Transporting *commodities in bulk*, between points in Elkhart County, IN, on the one hand, and, on the

other, points in CO, CT, DE, FL, GA, ME, MD, MA, MT, NH, NM, NJ, NY, NC, RI, SC, VT, and WY.

MC 141318 (Sub-20), filed April 20, 1982. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., P.O. Box LTD., Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402; 612–333–1341. Transporting *building materials,* between points in Sawyer County, WI, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 141878 (Sub-16), filed April 19, 1982. Applicant: DIRECT COURIER, INC., 6310 C Gravel Ave., Fleet Industrial Pk., Alexandria, VA 22310. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; 301–840–8565. Transporting *farm products,* between points in the U.S. (except AK and HI).

MC 145059 (Sub-11), filed April 19, 1982. Applicant: SPINELLI BROS. TRUCKING, INC., 55 South Wade Blvd., Nillville, NJ 08332. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904; 201–572–5551. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 149489 (Sub-3), filed April 13, 1982. Applicant: WITTE BROS., INC., Route 3, Faribault, MN 55021. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402; (612) 333–1341. Transporting (1) *trailers* between Milwaukee, WI, and points in Union County, SD, on the one hand, and, on the other, Minneapolis, MN, (2) *machinery* between Chicago, IL, on the one hand, and, on the other, points in Dodge County, MN, and (3) *metal and metal products,* (a) between Chicago, IL, Detroit, MI, Kansas City, MO, and points in Madison, Lake, and Whiteside Counties, IL, St. Clair County, MI, Nodaway County, MO, Muscatine County, IA, Erie County, PA, Richland County, OH, and Marshall and Starck Counties, IN, on the one hand, and, on the other, points in MN, and (b) between points in Erie County, PA, on the one hand, and, on the other, Des Moines, IA.

MC 150088 (Sub-10), filed April 12, 1982. Applicant: STERLING TRANSPORT DIVISION, INC., 2005 S. Great Southwest Pkwy., Grand Prairie, TX 75051. Representative: Robert K. Frisch, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240; (214) 934–0963. Transporting *malt beverages* between San Antonio and Fort Worth, TX, on the one hand, and, on the other, Ft. Smith and Little Rock, AR, and points in Jefferson, Grant, Cleveland, Lincoln, Arkansas, Garland, and Union Counties, AR.

MC 153739 (Sub-2), filed April 16, 1982. Applicant: NATIONWIDE TRANSPORT & WAREHOUSE, INC., P.O. Box 4444, Industrial Station, Hillside, NJ 07205. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904; (201) 572–5551. Transporting *tires and tubes,* between points in the U.S. (except AK and HI), under continuing contract(s) with Dunlop Tire and Rubber Company, of Dayton, NJ.

MC 154469 (Sub-2), filed April 16, 1982. Applicant: WARREN L. ADAMS d.b.a. WARREN TRANSPORTATION, 2667 English St., Maplewood, MN 55109. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402; 612–333–1341. Transporting *malt beverages,* between points in Shelby County, TN, on the one hand, and, on the other, points in Pierce, Dunn, Polk, and Burnett Counties, WI, Wright, Anoka, Hennepin, Ramsey Sherburne, Benton, and Stearns Counties, MN

MC 156469 (Sub-1), filed April 19, 1982. Applicant: J & N TRUCKING, Route 1, Box 12x1, Diboll, TX 79541. Representative: Robert J. Birnbaum, 3636 Executive Center Drive, Suite 151, Austin, TX 78731; (512) 346–4800. Transporting *adhesives* between points in the U.S. (except AK and HI), under continuing contract(s) with Borden Chemical Division, Borden Chemical, Inc., of Columbus, OH.

MC 156739 (Sub-1), filed April 15, 1982. Applicant: RICHARD L. SIMPSON d.b.a. RICHARD SIMPSON TRUCKING, 1224 So. Roosevelt, Harrisburg, IL 62946. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701; 217–544–5468. Transporting *petroleum products,* between points in IL, IN, KY and MO.

MC 157688, filed April 20, 1982. Applicant: TRANS COASTAL TRANSPORTATION, INC., 5434 South Parkside Ave., Chicago, IL 60638. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603; (312) 782–8880. Transporting *food and related products,* between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161518, filed April 15, 1982. Applicant: SAMTOURS, INC., 114 Meadow View Drive, Newtown, PA 18940. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107; (215) 564–3880. To operate as a *broker* at Philadelphia, PA, and Trenton, NJ, arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 161519, filed April 15, 1982. Applicant: CAROLINA TRANSPORT OF KERNERSVILLE, INC., P.O. Box 321, Kernersville, NC 27284. Representative: Gary Lee Wemlinger (same address as applicant), 919–788–6167. Transporting *furniture and fixtures,* between points in the U.S. (except AK and HI), under continuing contract(s) with Ladd Furniture Co., Inc., of High Point, NC.

MC 161548, filed April 16, 1982. Applicant: CASE'S HOT SHOT SERVICE, Route 2, Box 15A, Brookhaven, MS 39601. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205; (601) 948–8820. Transporting *metal products,* between points in Lincoln County, MS, on the one hand, and, on the other, points in AL, LA and TX.

MC 161549, filed April 16, 1982. Applicant: TOM BLACKETT, d.b.a. BLACKETT ENTERPRISE, 5928 Corona, Huntington Park, CA 90201. Representative: Tom Blackett (same address as applicant), (213) 582–4538. Transporting *automobile, truck and trailer parts and accessories,* between points in Los Angeles County, CA, on the one hand, and, on the other, points in TX, OR, AZ, NM, NV, and WA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–12068 Filed 5–3–82; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-125)]

Union Pacific Railroad Co. and Missouri-Kansas-Texas Railroad Co., Exemption for Contract Tariff ICC–UP–C–0029

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:
Donald J. Shaw, Jr.; or
Jane F. Mackall (202) 275–7656.

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Company and Missouri-Kansas-Texas Railroad Company filed a petition on April 20, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49

U.S.C. 10713(e). They request that we permit contract ICC–UP–C–0029 to become effective on one day's notice. The contract tariff was filed to become effective May 20, 1982. The tariff provides for the transportation of automobiles from Los Angeles to a destination in Texas.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

Petitioners have entered into a transportation service contract with an importer of automobiles, which will expire July 2, 1982. The automobiles are en route from Japan and scheduled to arrive in Los Angeles May 2, 1982. Petitioners state that delay in the shipment to final destination will create great difficulties and unnecessary expense for the shipper and its distributors and dealers. We find this to be the type of circumstance which warrants a provisional exemption.

Petitioners' contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

By the Commission, Division 1, Sterrett, Taylor, and Andre. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Dated: April 27, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12081 Filed 5–3–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

National Institute of Justice

Robbery-Murder and Robbery With Serious Victim Injury; Study; Grant Solicitation

The National Institute of Justice announces a competitive research grant to conduct a study of robbery-murder and robbery with serious victim injury in order to better understand the use of severe violence by some offenders and to develop more effective, precisely-focussed strategies of robbery prevention and control. The research will examine the nature and contexts of these crimes, including their incidence, patterns, and trends; the dynamics and consequences of their offender/victim confrontations; and the differences between these severely violent robberies and those which do not result in victim death or serious injury. The grant will be awarded for up to 24 months, at a maximum funding level of $300,000.

The solicitation requests submission of full proposals and requires that submitting organizations have experience in and resource capabilities for designing and conducting research on social issues. Additional qualifications include knowledge of the substantive areas of robbery and violent crime. Finally, familiarity with criminal justice case records and expertise in utilization of criminal justice and victimization survey data would also be desirable.

In order to be considered for funding, all proposals must be postmarked no later than June 11, 1982.

Copies of the solicitation may be obtained by sending a mailing label to: A Study of Robbery-Murder and Robbery with Serious Victim Injury, National Criminal Justice Reference Service, Box 9000, Rockville, Maryland 20850.

Dated: April 21, 1982.

Approved:

James L. Underwood,

Acting Director, National Institute of Justice.

John J. Wilson,

Acting General Counsel, Office of General Counsel.

[FR Doc. 82–12104 Filed 5–3–82; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Montana

This notice announces the beginning of a new Extended Benefit Period in the State of Montana, effective on April 11, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implementd by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on March 27, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 11, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on April 26, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-12079 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; West Virginia

This notice announces the beginning of a new Extended Benefit Period in the State of West Virginia, effective on April 18, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending April 3, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 18, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on April 26, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-12080 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual of threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CRF 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 14, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 14, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 20th day of April 1982.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Compressed Gas Cylinders (workers)	West Milwaukee, Wis	Apr. 5, 1982	Mar. 26, 1982	TA-W-13,411	Tanks—High pressure—seamless.
Consolidated Aluminum Corp. (USWA)	Hannibal, Ohio	Apr. 7, 1982	Mar. 24, 1982	TA-W-13,412	Coil—Aluminum, sheet plate.
Hanna Mining Co. and Hanna Nickel Smelting Co. (USWA).	Riddle, Oregon	Apr. 9, 1982	Apr. 8, 1982	TA-W-13,413	Nickel—Mine and smelter.
Manhattan Fashions, Inc. (company)	Union City, N.J	Apr. 12, 1982	Apr. 6, 1982	TA-W-13,414	Coats—Ladies, fall.
Norah Fashions (ILGWU)	Dunmore, Pa	Apr. 7, 1982	Mar. 31, 1982	TA-W-13,415	Dresses—Ladies.
Ormet Corp. (USWA)	Hannibal, Ohio	Apr. 5, 1982	Apr. 2, 1982	TA-W-13,416	Aluminum reduction, billets, sows, pigs, slab—Primary.
Reactor Labs (OCAW)	Paterson, N.J	Mar. 26, 1982	Mar. 15, 1982	TA-W-13,417	Chemical dye bases.
United States Steel Mining Co., Inc., Gary #9 Mine (UMWA).	McDowell Co., W. Va	Apr. 19, 1982	Apr. 15, 1982	TA-W-13,418	Coal—Mining.
United States Steel Mining Co., Inc., Gary #10 Mine (UMWA).	do	Apr. 19, 1982	do	TA-W-13,419	Do.
United States Steel Mining Co., Inc., Gary #2 Mine (UMWA).	do	do	do	TA-W-13,420	Do.
United States Steel Mining Co., Inc., Gary #3 Mine, Alpheus Cleaning Plant, District Maintenance Shop & Contour Mine (UMWA).	do	do	do	TA-W-13,421	Coal—Mining, cleaning.
United States Steel Mining Co., Inc., Gary #4 Mine (UMWA).	do	do	do	TA-W-13,422	Coal—Mining.
Do	do	do	do	TA-W-13,423	Do.

[FR Doc. 82-12061 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

AMI Medical Electronics, Inc., Ronkonoma, N.Y.; Affirmative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 82-10042 appearing on page 15927 in **Federal Register** of April 13, 1982, the above captioned case was erroneously designated as a negative determination. This determination should be corrected to read as follows:

TA-W-12,750; AMI Medical Electronic, Inc., Ronkonoma, New York

A certification was issued in response to a petition received on June 9, 1980 covering all workers separated on or after December 1, 1980.

Signed at Washington, D.C. this 20th day of April 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-12060 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 19, 1982–April 23, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a signficant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,458; Dante Fashions, Inc., Hoboken, NJ
TA-W-12,501; Rutgers Cloak Manufacturing Co., Inc., East Brunswick, NJ
TA-W-12,642; Rockport Log & Shake Co., Copalis Crossing, WA
TA-W-12,346; Crescent Knitting Mills, Inc., Philadelphia, PA
TA-W-13,192; Phelps Dodge Corp., Tyrone, NM
TA-W-12,537; Day Mines, Inc., Victoria, NV
TA-W-12,606; Hurn Shingle Co., Concrete, WA
TA-W-12,545; General Electric Co., General Purpose Motor Dept., Linton, IN
TA-W-12,324; Jeri Morton, New York, NY
TA-W-12,742; Jeri Morton, Beacon, NY
TA-W-12,066; Modine Manufacturing Co., Pemberville, Ohio, Plant No. 1
TA-W-12,377; American Biltrite, Inc., Boston Industrial Products Div., Cambridge, MA
TA-W-12,624; International Shoe Co., St. Clair, MO
TA-W-12,768; Standard Forgings Corp., East Chicago, IN
TA-W-12,079; Townsend Fastening Systems, Fallston, PA
TA-W-12,080; Townsend Fastening Systems, Ellwood City, PA
TA-W-12,182; Quad Knit, Inc., Philadelphia, PA
TA-W-12,139; A. E. Nettleton Shoe Co., Syracuse, NY
TA-W-12,178; F. A. Neider Co., Augusta, KY
TA-W-11,143; Town & Country Shoes, Inc., Sedalia, MO
TA-W-12,208; Town & Country Shoes, Inc., Clayton, MO
TA-W-12,209; Town & Country Shoes, Inc., Cape Girardeau, MO
TA-W-12,210; Town & Country Shoes, Inc., Houston, TX
TA-W-12,211; Town & Country Shoes, Inc., Columbia, MO
TA-W-12,212; Town & Country Shoes, Inc., St. Louis, MO

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,502; Thom McAn Shoe, Auburn, MA
TA-W-12,341; Herd Seeder Co., Inc., Logansport, IN
TA-W-11,725; Rockwell International, Rockville-Draper Div., Spartansburg, SC
TA-W-12,016; Supercraft Coats, Inc., Garfield, NJ
TA-W-12,486; Quality Art Corp., Lodi, NJ
TA-W-11,151; Sheller-Globe Corp., Superior Div., Lima, OH
TA-W-12,131; Gilda Fashions, Inc., New York, NY
TA-W-12,384; Torsion Balance Co., Clifton, NJ
TA-W-12,447; Cousin's Fashions, West New York, NJ
TA-W-11,281; Star Debs, Inc., New York, NY

In the following case the investigation revealed that criterion (3) had not been met for the reason specified.

TA-W-11,511; Jack Winter, Inc., Eveleth, MN
Aggregate U.S. imports of women's blouses did not increase as required for certification.
TA-W-12,169; Hyde Park Chemical Corp., Plainview, NY
The workers do not produce an article within the meaning of the Trade Act of 1974.

Affirmative Determinations

TA-W-12,384; Sheldon Machine, Co., Inc., Chicago, IL
A certification was issued in response to a petition received on February 20, 1981 covering all workers separated on or after February 9, 1980.
TA-W-12,365; Sheldon Machine, Co., Inc., Skokie, IL
A certification was issued in response to a petition received on February 20, 1981 covering all workers separated on or after February 9, 1980.
TA-W-12,020; The Adams Co., Home Products Div., Dubuque, IA
A certification was issued in response to a petition received on December 30, 1980 covering all workers separated on or after December 26, 1979.
TA-W-12,491; Crawfton Coat Co., North Bergen, NJ
A certification was issued in response to a petition received on March 9, 1981 covering all workers separated on or after February 27, 1980.
TA-W-11,640; A Soloff & Son Co., Fall River, MA
A certification was issued in response to a petition received on November 3, 1980 covering all workers separated on or after October 30, 1979 and before February 1, 1981.
TA-W-11,807; Jersey Fashions, Inc., Jersey City, NJ
A certification was issued in response to a petition received on November 20, 1980 covering all workers separated on or after January 11, 1981.
TA-W-11,817; Lou Levy & Sons Fashions, New York, NY
A certification was issued in response to a petition received on November 20, 1980 covering all workers engaged in employment related to the production of duplicates for ladies coats who became totally or partially separated on or after February 11, 1982.
TA-W-11,101; Bell & Howell Co., Consumer Products Div., Chicago, IL
A certification was issued in response to a petition received on September 18, 1980 covering all workers producing 8 millimeter movie projectors separated on or after August 5, 1979 and before July 1, 1981.

I hereby certify that the aforementioned determinations were issued during the period April 19, 1982–April 23, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 27, 1982.

Harold A. Bratt,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-12089 Filed 5-3-82; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-34-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 500 North DuQuoin Street, Benton, Illinois 62812 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Mine No. 27 (I.D. No. 11-02544) located in Franklin County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concern the requirement that low and medium voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breacker to open when either the ground or pilot check wire is broken.

2. A modification of the standard is requested for an underground shop in which the petitioner wishes to distribute power through the use of a standard panel box as would be used in a surface application. The shop is contructed with steel frame work, concrete block walls and a combination steel and concrete slab overhead. The ends are enclosed and equipped with steel doors. All of the electrical equipment is be installed and connected to the main panel box through the use of rigid conduit. All of the electrical equipment is grounded to the panel box with ground wires in the conduit of adequate size for the equipment power rating. The panel box is a General Electric, Type NHB, Style 2A, 225 Amp., 480 Volt, three phase. The panel is fed from a mine duty power center equipped with an MSHA-approved ground monitor, ground fault, undervoltage release, and thermal and magnetic overload protection. All aspects of the electrical installation conform to 1981 National Electrical Code requirements.

3. Petitioner states that the procedure outlined above will provide the same degree of safety for the miners affected as that afforded by the standard and for this reason request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must must be filed with the Office on Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1982. Copies of the petition are available for inspection at that address.

Dated: April 26, 1982.

Patricia W. Silvey,
Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-12091 Filed 5-3-82; 8:45 am]
BILLING CODE 4510-43

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-72; Exemption Application No. D-2800]

Exemption From the Prohibitions for Certain Transactions Involving Allied International-American Eagle Trading Corporation Employees Profit Sharing Plan Located in Rye, New York

AGENCY: Office of Pension and Welfare Benefit Programs; Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the loan of $200,000 by the Allied International-American Eagle Trading Corporation Employees Profit Sharing Plan (the Plan) to the Allied International-American Eagle Trading Corporation (the Employer) for a ten-year period.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and

Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 5, 1982, notice was published in the **Federal Register** (47 FR 9615) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notice to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan soley in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of th Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $200,000 by the Plan to the Employer for a ten-year period provided the terms of the loan are not less favorable to the Plan than those obtainable in an arm's-length tranaction with an unrelated party.

The availabiltity of this exemption is subject ot the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of April, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12086 Filed 5-3-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-73; Exemption Application No. D-3098]

Exemption From the Prohibitions for Certain Transactions Involving Impact Sales, Inc. Employees Retirment Plan Located in Newport Beach, California

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits a loan of $420,000 by the Impact Sales, Inc. Employees Retirement Plan (the Plan) to the 40th Street Investors Company (Investors), a party in interest with respect to the Plan; and the guarantee of repayment by Impact Sales, Inc. (the Employer).

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 12, 1982, notice was published in the **Federal Register** (47 FR 10927) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in an application filed by legal counsel for the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held

relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among othe things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption if supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transation.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $420,000 by the Plan to Investors provided that the terms and conditions of the transaction are at least as favorable to the Plan as those it could obtain from an unrelated party; and the guarantee of repayment by the Employer.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of April 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12087 Filed 5-3-82; 8:45 am]
BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

Copyright Office

Policy Decision Announcing Fee for Special Handling of Applications for Copyright Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

EFFECTIVE DATE: June 1, 1982.

1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office in payment of registration and other services rendered to the public under the Act. Subsection 11 of section 708(a) gives the Register of Copyrights the authority to fix a fee for any special services requiring a substantial amount of time or expense based on the cost of providing the special service.

Special handling is a procedure established within the Copyright Office to reduce the length of time required to process an application for registration of a claim to copyright. Special handling is granted at the discretion of the Register of Copyrights in a limited number of cases as a service to copyright registrants who have compelling reasons for the expedited issuance of a certificate of registration. In the past the Copyright Office absorbed the additional costs of special handling but cannot continue to do so in the face of the rising number of such requests and the fiscal restraints under which it must operate.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Special handling procedures may be applicable to cases pending in the Copyright Office, provided the previously mentioned criteria are met.

Special handling of requests for issuance of a certificate of registration impacts upon every step of the registration process. Under normal procedures applications for registration pass through the various processing steps in groups which are administratively efficient. A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims.

2. Policy Decision

Under the authority of section 708(a)(11) the Register of Copyrights has determined that the requestor of special handling service should pay, in addition to the normal applicable registration fee, the cost of additional staff time involved in the special handling of cases, computed at overtime rates plus a reasonable administrative fee.

The fee for special handling of a registration of a claim to copyright has

been fixed by the Register of Copyrights at $120.00, based upon the cost of providing this service. To this must be added the basic registration fee of $10.00. The fee is chargeable for each application for registration for which special handling service is requested and granted. If the request for special handling is granted the $120.00 fee is not refundable. The fee may be charged to a deposit account established in the Copyright Office. If the deposit account contains insufficient funds to cover the total special handling fee, or if the remitter does not maintain a deposit account, the total special handling fee may be paid either in person at the Public Information Office or it may be remitted by mail. Such payment must be in cash or in the form of a certified check, cashier's check, or money order made payable to the Register of Copyrights.

3. Filing Requests For Special Handling

Requests for special handling may be made in person on the form available in the Public Information Office of the Copyright Office, Rm. LM-401, James Madison Memorial Building, Library of Congress. The Office will also consider requests by mail providing the Special Handling Request form is used or a cover letter is submitted containing answers to the following questions that are required to be answered in the special handling form: "Why is there an urgent need for special handling?; If it is because of litigation is the litigation actual or prospective?; Are you or your client the plaintiff or defendant?; What are the names of the parties and the name of the court where the action is pending or expected?" It is also necessary to certify that the answers to these questions are correct to the best of your knowledge. A mailed request for special handling should be sent to:

Library of Congress, Department DS, Washington, D.C. 20540, Attention: Acquisitions and Processing Division Office.

The outside of the envelope and the letter inside should clearly indicate that it is a request for special handling.

The request for special handling of a registration must be accompanied by a completed application, the required deposit copies, phonorecords, or identifying material, and the $130.00 fee ($120.00 special handling fee and $10.00 registration fee). A minimum of five working days must be allowed for processing a claim under special handling procedures.

Dated: April 21, 1982.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82-12007 Filed 5-3-82; 8:45 am]
BILLING CODE 1410-03-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on May 17 and 18, 1982, at the Argonne National Laboratory, Building 208, Room C-234, Argonne, IL. The Subcommittee will continue discussion of a report on Liquid Metal Fast Breeder Reactor (LMFBR) safety philosophy. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Monday and Tuesday, May 17 and 18, 1982—8:30 a.m. until the conclusion of business each day

The Subcommittee and its consultants will discuss possible design considerations, issues, or criteria for future commercial advanced reactors.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 27, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-12218 Filed 5-3-82; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Midland Plant Units 1 and 2; Meeting

The ACRS Subcommittee on Midland Plant Units 1 and 2 will hold a meeting on May 20 and 21, 1982, at the HOLIDAY INN, 1500 W. Wackerly Road, Midland, MI. The Subcommittee will review the application by Consumers Power Company for a license to operate Midland Plant Units 1 and 2. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 20, 1982—8:30 a.m. until 12:30 p.m. and 6:00 p.m. until 9:00 p.m.
Friday, May 21, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with

any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Consumers Power Company, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. David Fischer (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 27, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–12120 Filed 5–3–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety Related Equipment will hold a meeting on May 19 and 20, 1982, at the AMFAC Hotel, Valle Grande Room, 2910 Yale Blvd., Albuquerque, NM. The Subcommittee will discuss three major program areas conducted by Sandia Laboratory and continue its review of equipment qualification requirements. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Emloyee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, May 19, 1982—8:30 a.m. until 12 NOON

Thursday, May 20, 1982—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employeee, Dr. Richard Savio or Staff Engineer, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., d.s.t.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 29, 1982.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 82–12119 Filed 5–3–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–317]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–53 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 located in Calvert County, Maryland.

The amendment would revise the Safety Limits and Limiting Conditions for Operation, contained in the Appendix A Technical Specifications, for Calvert Cliffs Unit No. 1 in accordance with the licensee's application dated February 17, 1982. These changes are primarily the result of new safety analysis methods applied to the analysis for Cycle 6 operation of Calvert Cliffs Unit 1. The analysis presented provides for an increased operating period between refuelings.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1982, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: (petitioner's name and telephone number), (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to James A. Biddison, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this day of , 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 82-12110 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 OM & OL—50-330 OM & OL]

Consumers Power Co. (Midland Plant, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for these construction permit modification and operating license proceedings. As reconstituted, the Appeal Board for these proceedings will consist of the following members:

Christine N. Kohl, Chairman
Dr. John H. Buck
Thomas S. Moore

Dated: April 27, 1982.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-12115 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 71 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised Technical Specifications for operation of Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment deletes the isolation time requirement for six motor-operated containment isolation valves that are manually actuated.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 3, 1982, (2) Amendment No. 71 to License No. NPF-1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Multnomah County Library, Social Science and Science Department, 801 SW 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of April 1982.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-12111 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142 OL]

Regents of the University of California (UCLA Research Reactor); Proposed Renewal of Facility License; Prehearing Conference

April 28, 1982.

Please take notice that a prehearing conference in the above captioned matter will take place at 9:30 a.m., June

29 and 30, 1982, in the Customs Courtroom, on the eighth floor of the Federal Building, 300 N. Los Angeles Street, Los Angeles, California. The purpose of the conference is to resolve any remaining discovery disputes, set a schedule for the completion of discovery which has been deferred, set a schedule for the filing of motions for summary disposition and responses, and set a tentative date for the beginning of the evidentiary hearings.

Oral limited appearance statements will not be accepted at this conference; rather they will be scheduled during the forthcoming evidentiary hearings. Written limited appearance statements may be submitted at any time.

The Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 82-12117 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp. (R. E. Ginna Plant); Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R. E. Ginna Plant (facility) located in Wayne County, New York. This amendment is effective as of its date of issuance.

The amendment authorizes technical specification changes that allow the containment fire detection instruments to be made inoperable during the containment integrated leak rate test.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment notarized April 23, 1982, (2) Amendment No. 49 to License No. DPR-18, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

A single copy of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of April 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-12112 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability, Withdrawal

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.68.3, "Preoperational Testing of Instrument and Control Air Systems," describes a method acceptable to the NRC staff for complying with the Commission's regulations with respect to preoperational testing (1) to verify that instrument and control air systems and the loads they supply will operate properly at normal pressure and (2) to ensure the operability of functions important to safety at abnormal pressure conditions. The guide is a revision of and replaces Regulatory Guide 1.80, "Preoperational Testing of Instrument Air Systems," which was issued in June 1974 and is now being withdrawn. The withdrawal of Regulatory Guide 1.80 is in no way intended to alter any prior or existing licensing commitments based on its use.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publication Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 20th day of April 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-12110 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

State of Nebraska; Reassertion of Certain Regulatory Authority

In 1966, the State of Nebraska entered into an agreement with the U.S. Atomic Energy Commission pursuant to which the State assumed the authority to regulate byproduct, source, and special nuclear material of less than critical mass.

By letter dated February 18, 1982 Governor Charles Thone, State of Nebraska, requested that the NRC reassert authority to regulate source materials as they relate to *in situ* or solution uranium mining and uranium milling. He stated that at this time the State of Nebraska does not have the necessary legislation nor regulations to protect the public health and safety from these activities and that the State may receive a license application in the near future. The Governor also stated that the State does wish to review its options and, if in the best interest of Nebraska and its citizens, may at a later date submit an amended Agreement whereby the State could reassume regulatory control. There are no State-licensed uranium mining and milling activities in Nebraska at present.

In order to effect this transfer, section 274j of the Atomic Energy Act requires a

finding by the Commission that it is necessary for the Commission to terminate that part of Nebraska's agreement relinquishing NRC authority over these uranium mining and million activities (source material) and to reassert NRC licensing and regulation authority over these activities in Nebraska in order to protect the public health and safety.

Pursuant to the provisions of Section 274j of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission found on April 20, 1982, that it is necessary to terminate that part of Nebraska's agreement relinquishing NRC authority over source materials involved in uranium milling and *in situ* or solution uranium mining activities and to reassert NRC licensing and regulatory authority over such activities in order to protect the public health and safety.[1] This reassertion of authority is effective May 4, 1982.

Persons seeking licenses for uranium recovery activities within Nebraska involving source material and byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954, as amended, should file such applications with the U.S. Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 26th day of April 1982.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 82-12114 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric & Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR-32 and Amendment No. 78 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively, (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications related to the auxiliary feedwater systems. One change adds the requirement that at least one of the three auxiliary pumps be operable when the temperature and pressure of the opposite unit are greater than 350°F and 450 psig, respectively. The other change adds an action statement which requires at least three auxiliary pumps be restored to operable status within 72 hours or be in hot shutdown within the next 12 hours. Other changes include a requirement for a source of water for the one auxiliary feedwater pump of the opposite unit, flow tests for all of the auxiliary feedwater pumps, and valve exercise tests for the pump discharge valves.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated December 28, 1979 and February 26, 1980, (2) Amendment Nos. 77 and 78 to License Nos. DPR-32 and DPR-37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 27th day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12113 Filed 5-3-82; 8:45 am]

BILLING CODE 7590-01-M

[1] The Commission presently has the authority to regulate byproduct material associated with uranium recovery activities (i.e., mill tailings) in Nebraska since the State of Nebraska has not acted to exercise authority over this material. (Pub. L. 96-106, 93 Stat. 798 (1978).)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18570; File No. SR-MCC-82-5]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Clearing Corp.; Proposed Price Revision Schedule

Pursuant to section 19(b)(1) of the Securites Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1982 the Midwest Clearing Corporation filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Price Revision Schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The proposed pricing modifications, effective for services rendered beginning April 1, 1982, reflect cost savings experienced through automation in 1981 in conjunction with growth in activity. This has enabled MCC to retain almost all existing 1981 fees despite the impact of inflation on its overall operations and those of its participants. MCC, however, has increased fees for monthly fixed services and several labor intensive functions to more accurately reflect the expense associated with providing the particular service.

In addition, a new discount in the form of a credit will be instituted on trade settlement with MCC. Participants'

settling trades will receive a certain credit per trade on a graduated basis based upon the individual Participant's volume of settling trades in the system. Such graduated credits reflect economies of scale which are realized in the settlement process. The credit will be applied against the Participant's total monthly billing for all MCC services. This can result in an overall reduction in fees for any participant wishing to take advantage of such economies of scale and utilize the settlement services of MCC.

The proposed fee schedule is consistent with Section 17A of the Act in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate settlement of securities transactions. In addition, the price changes provide for equitable allocation of reasonable dues, fees and other charges among MCC's participants.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The proposed change in fees will have an impact on competition but such impact will not impose any burden on competition, but, rather, will relieve a burden on or otherwise promote competition between clearing agencies and between brokers. The proposed fee schedule will enable MCC to become more competitive with other major clearing/depository organizations in providing comprehensive and cost effective trade recording, settlement, custodial/safekeeping and related services to its Participants. In addition, the proposed fee schedule may enable a Participant to reduce its overall clearing costs by taking advantage of certain economies of scale, thus promoting competition with other brokers.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statments with respect to the proposed rule change that are filed with the Commssion, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before May 25, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 20, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

MCC PRICE REVISIONS

	Former	New
Service Charges		
Participant account maintenance fee (month)	$125.00	$135.00
Trade Recording		
Pre-Compared (side)	0.52	0.52
Requiring Comparison (OTC) (side)	0.62	0.62
Settling Trade Volume Credit (Non-Specialist)		
1–2,000/side/month (side)		0.00
2,001–3,000/side/month (side)		0.12
3,001–3,500/side/month (side)		0.22
3,501–3,750/side/month (side)		0.32
Over 3,750/side/month (side)		0.42
Specialist Trade Recording and Settlement Fees (Including Accounting Service		
1–1,000	0.00	0.99
1,001–2,000	0.89	0.89
2,001–3,000	0.79	0.67
3,001–3,500	0.79	0.57
3,500–3,750	0.79	0.47
3,751–4,000	0.79	0.37
4,001–8,000	0.70	0.30
Over 8,000	0.60	0.20
Member-To-Member Stock Loan		
Delivery (loan or return of loan)	2.50	2.50
Receipt	2.50	2.50

MCC PRICE REVISIONS—Continued

	Former	New
Mandatory (item)	25.00	25.00
Request (item)	10.00	10.00
Voluntary (item)	5.00	0.00
Buy-ins		
Charge to firms bought-in (item)	0.00	5.00
Charge to firms submitting buy-ins (item)	0.00	2.00
Charge to firms submitting buy-ins *not* executing (item)	0.00	50.00

[FR Doc. 82–12065 Filed 5–3–82; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Time-of-Day Ratemaking Standards and Assignment of Allocation of Benefits of Hydro Power in Residential Rate Design; Extension of Time for Written Comments and Changed Meeting

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of extension of time for written comments and change in location, date, and time of oral comment session.

SUMMARY: Notice of opportunity for further comment on the Time-of-Day Ratemaking Standard and on the assignment of the allocation of the benefits of hydro power in residential rate design was published in the **Federal Register** April 15, 1982 (47 FR 16241). In that notice it was announced that written comments would be received until May 5 and that an opportunity to present oral comments to the TVA Board would be provided following the conclusion of the formal agenda at the scheduled meeting of the TVA Board of Directors on May 5, 1982.

The purpose of this notice is to announce an extension of time for submitting written comments and a change in the location, date, and time at which the Board will receive oral comments. Written comments should now be received by 5 p.m. (e.d.t.). on May 10, 1982. Oral comments will be received by the TVA Board at the Ellington Agricultural Center Auditorium on Marchant Road in Nashville, Tennessee, on May 10, 1982 beginning at 9 a.m. (CDT).

Other details about this opportunity for further comment are not changed and are set out in the April 15, 1982, **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Dawn S. Ford, Tennessee Valley Authority, 400 West Summit Hill Drive,

EPB6, Knoxville, Tennessee 37902, (615) 632–4402.

W. F. Willis,

General Manager.

[FR Doc. 82–12018 Filed 5–3–82; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 82–84]

Recordation of Trade Name; Son-Export, S.A. de C.V.

On December 17, 1981, there was published in the **Federal Register** (46 FR 61532) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Son-Export, S.A. de C.V." The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Son-Export, S.A. de C.V." is hereby recorded as the trade name of Son-Export S.A. de C.V., a company governed by the laws of The Republic of Mexico, located at Plutarco Elias Calles y Rosales #124, Desp. 3003, Hermosillo, Sonora, Mexico. The trade name is applied to fresh frozen shellfish (shrimp).

Dated: April 27, 1982.

A. Piazza,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 82–12062 Filed 5–3–82; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

[Department Circular Public Debt Series No. 12–82]

Treasury Notes of May 15, 1992; Series B–1992

April 29, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,000,000,000 of United States securities, designated Treasury Notes of May 15, 1992, Series B–1992 (CUSIP No. 912827 NE 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated May 17, 1982, and will bear interest from that date, payable on a semiannual basis on November 15, 1982, and each subsequent 6 months on May 15 and November 15, until the principal becomes payable. They will mature May 15, 1992, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 5, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 4, 1982, and received no later than Monday, May 17, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will

be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successfully higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, May 17, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 13, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriated identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In evey case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrended to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12140 Filed 4-30-82; 12:52 pm]

BILLING CODE 4810-40-M

[Department Circular Public Debt Series No. 11-82]

Treasury Notes of May 15, 1985; Series M-1985

April 29, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $5,250,000,000 of United States securities, designated Treasury Notes of May 15, 1985, Series M-1985 (CUSIP No. 912827 ND 0). The securities will be sold at auction, with bidding on the basis of yield. Payment

will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular plus accrued interest from the last preceding interest payment date on the outstanding securities.

2. Description of Securities

2.1. The securities will be dated May 17, 1982, and will bear interest from that date, payable on a semiannual basis on November 15, 1982, and each subsequent 6 months on May 15 and November 15, until the principal becomes payable. They will mature May 15, 1985, and will not be subject to call for redemption prior to maturity. In the event an interet payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, May 4, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 3, 1982, and received no later than May 17, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders,s must also shows the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of

applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for alloted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, May 17, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 13, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12147 Filed 4-30-82; 12:52 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C., on May 13, 1982, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public to the seating capacity of the room from 8:30 a.m. until 12 noon to discuss research and other agency activities relative to the herbicide issue. A closed session will be held from 1:00 p.m. to 5:00 p.m. to permit the Committee to review the portions of the proposed design of the epidemiological study of exposure to herbicides in Vietnam which are not available to the public. Premature disclosure of this information would be likely to significantly frustrate implementation of a proposed agency action, namely conduct of the epidemiological study mandated by Pub. L. 96-151, amended by Pub. L. 97-72. Thus, the closing is in accordance with the provisions set forth in section 552b, subsection (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of Pub. L. 92-463.

Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the open proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director for Environmental Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420 (Telephone: (202) 389–5411).

Due to administrative delays this notice will not appear 15 days prior to the meeting date.

Dated: April 27, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82–12049 Filed 5–3–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 86
Tuesday, May 4, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, May 11, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Gross Collection of Exchange set Margins Portfolio Stock Indexes—Stock Market, Transport, Gas and Electric

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–653–82 Filed 4–30–82; 4:00 pm]

BILLING CODE 6351–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, May 6, 1982.

LOCATION: Third Floor Hearing Room, 1111 18th Street, N.W., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *FY 83 Priorities*
The Commission will consider priorities for fiscal year 1983.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–648–82 Filed 4–30–82; 1:27 pm]

BILLING CODE 6355–01–M

3

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, May 10, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204

Dated: April 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S–650–82 Filed 4–30–82; 2:39 pm]

BILLING CODE 6210–01–M

4

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors; continuation of the meeting of April 20, 1982.

TIME AND DATE: 9 a.m. (closed portion); 10:30 a.m. (open portion); Wednesday, May 12, 1982.

PLACE: Offices of the Corporation, seventh floor board room; 1129 20th Street N.W., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10:30 a.m. will be closed to the public. The open portion of the meeting will start at 10:30 a.m.

MATTERS TO BE CONSIDERED: No change from the agenda previously announced.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation (202) 653–2959. Public observers planning to attend the open portion of this meeting should check for any changes with the Corporate Secretary.

DATE PREVIOUSLY ANNOUNCED: Friday, April 9, 1982; 47 FR 15477.

Friday, April 30, 1982.

Elizabeth A. Burton,

Corporate Secretary.

[S–652–82 Filed 4–30–82; 3:52 pm]

BILLING CODE 3210–01–M

5

POSTAL SERVICE

(Board of Governors)

Notice of Meetings

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings on Monday, May 10, at 2:00 P.M. in closed session, and Tuesday, May 11, 1982 at 8:00 A.M., in Conference Room 208, second floor of the Atlanta Management Sectional Center, 3900 Crown Road, Atlanta, Georgia. Except as indicated below, the Tuesday meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Assistant Secretary of the Board, W. Allen Sanders, at (202) 245–4635.

On April 6, 1982, the Board of Governors of the USPS voted to close to public observation portions of meetings of the Board to be held on May 10 and 11, and all of a meeting of the Audit Committee of the Board to be held on May 10, which are expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins, McKean, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Assistant Secretary of the Board Sanders; Counsel to the Governors Califano; Senior Assistant Postmaster General Finch; and Assistant Postmaster General Cummings.

The Board meeting on May 10 will consist of a discussion of Postal Service strategic planning. A part of the Board meeting scheduled for May 11, and the entirety of the Audit Committee meeting scheduled for May 10, are to consist of a discussion of a process for the selection of an independent certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e), the selection of such a firm being one of the matters that is reserved for decision by

the Board of Governors under section 3.4 of the Bylaws of the Board (39 CFR 3.4).

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Recommendation on Officer Compensation.
4. Report of the Regional Postmaster General.
   (Mr. Cooper, Regional Postmaster General, will report on postal conditions in the Southern Region.)
5. Quarterly Report on Financial Performance.
   (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary of financial performance.)
6. Quarterly Report on Service Performance.
   (Mr. Benson, Deputy Postmaster General, will present the quarterly summary on service performance.)
7. Implementation of Board of Governors Resolution 81–9.
   (The Board will resume its consideration of the implementation of this Resolution during the remainder of fiscal year 1982, discussion of this agenda item not having been completed at the Board's meeting of April 6.)
8. Procurement of Services to Study USPS EEO Practices in light of the *Chisholm* Decision.
   (In keeping with its decision at its January 7, 1982, meeting to engage knowledgeable persons from outside the Postal Service to determine whether practices like those involved in *Chisholm* are operative elsewhere and whether techniques can be developed for resolving EEO problems without recourse to litigation for a study of these matters.)
9. Selection of independent certified public accounting firm.
   (As stated in the foregoing Notice, the Board will discuss in closed session the process for selection of an independent certified public accounting firm.)

W. Allen Sanders,

Assistant Secretary.

[S-640-82 Filed 4-30-82; 2:14 pm]

BILLING CODE 7710-12-M

5

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ACTION: Notice of closed meeting.

SUMMARY: Interested members of the public are advised that a closed meeting of the Board of Directors of the United States Synthetic Fuels Corporation, the closing of which was approved by a resolution of the Board adopted in open session on April 26, 1982, will be held on the date and at the place specified below by telephone conference call. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings.

CLOSED MEETING: Consideration of matters relating to the Tosco loan guarantee.

DATE AND TIME: May 10, 1982.

PLACE: 1900 L Street, N.W., Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, Please contact Mr. Owen J. Malone, Office of General Counsels, (202) 653–4230.

April 30, 1982.

United States Synthetic Fuels Corporation.

Edward E. Noble,

April 30, 1982.

Chairman of the Board.

[S-651-82 Filed 4-30-82; 3:34 pm]

BILLING CODE 6000-00

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federal register

Tuesday
May 4, 1982

Part II

Department of Education

Student Assistance General Provisions and Pell Grant Program

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Education Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Subparts B and G of the Student Assistance General Provisions Regulations. These regulations are being amended to incorporate a postsecondary education community self-regulation initiative in the area of standards of satisfactory progress at institutions participating in student financial assistance programs authorized by title IV of the Higher Education Act and to implement the recommendations of an Office of Management and Budget report on adjudicatory hearings.

The Secretary also proposes to amend Subpart H of the regulations for the Pell Grant Program to implement the recommendations of the Department of Health, Education and Welfare Audit Agency concerning institutional accountability under the Pell Grant Alternate Disbursement System.

DATE: Comments must be received on or before June 3, 1982.

ADDRESS: Comments should be addressed to Mr. Brian Kerrigan, Office of Student Financial Assistance, U.S. Department of Education, Room 4318, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Brian Kerringan or Andrea Foley, (202) 472–4300.

SUPPLEMENTARY INFORMATION:

I. Student Assistance General Provisions

The Secretary is proposing amendments in two areas of the Student Assistance General Provisions: (1) Section 668.16(e), Standards of satisfactory progress, and (2) Subpart G, Fine, limitation, suspension and termination proceedings. The following is a discussion of the proposed amendments.

A. Standards of Satisfactory Progress (Subpart B, Section 668.16(e))

Section 484 of the Higher Education Act (HEA), as amended requires that a student be maintaining satisfactory progress in the course of study he or she is pursing according to the standards and practices of the institution in which he or she is enrolled in order to receive financial aid under the student financial assistance programs authorized by title IV of the HEA. These programs include the Pell Grant, National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, Auxiliary Loans to Assist Students (PLUS), and State Student Incentive Grant programs. Therefore, the establishment, publication and application of reasonable standards for measuring students' progress is currently a regulatory requirement for all institutions participating in these programs (34 CFR 668.16(e)). Although institutions are required to set reasonable satisfactory progress standards, the Secretary views the specific standards themselves, under current legislation, to be a matter of institutional discretion.

In recent years, two studies conducted by the General Accounting Office (GAO) on the management of Federal student financial aid programs pointed out some general problems in the area of institutional satisfactory progress standards. And, in a recently published GAO study which deals specifically with satisfactory progress standards at a cross-section of postsecondary institutions, the lack of reasonable standards and adequate enforcement is cited as a serious abuse of Federal aid programs. In addition to cases in which institutions failed to enforce their published standards, this study cites the use of standards by institutions which do not adequately measure students' "progress" toward their educational objective. As an example, students at one of the institutions in the GAO study remain eligible for Federal aid according to the satisfactory progress policies of the institution even though they are never required to attain the institution's 2.00 grade point average graduation requirement. As another example, because of an institution's policies allowing the excessive withdrawals, a student earned a total of only 14 credit hours during six full-time semesters for which she received $11,645 in title IV aid. The recent study, *Quality in the Basic (Pell) Grant Delivery System*, also noted as a source of inaccurate grant payments, the lack of enforcement by institutions of their 1980–81 satisfactory progress standards.

In addition, the Education Amendments of 1980 removed the provision limiting the number of academic years of eligibility for aid from the Pell Grant and Supplemental Educational Opportunity Grant Programs. As a result of the statutory change and the above reports, the Secretary believes that there exists a need for guidance in this area without encroaching on the institution's statutory prerogative to establish and use specific satisfactory progress standards, since the establishment and enforcement of reasonable satisfactory progress standards are playing increasingly critical roles in the equitable distribution of limited program funds.

The need to ensure the use of reasonable standards of satisfactory progress was the subject of debate during enactment of the Education Amendments of 1980. At that time, a proposal was considered to require all student aid recipients to successfully complete at least three-quarters of the workload undertaken during an academic period in order to retain their eligibility. When Congress retained institutional discretion in the Education Amendments of 1980 rather than setting a legislative minimum standard of satisfactory progress or granting the Secretary authority to set specific standards, the Secretary and the postsecondary education community took the opportunity to work together toward effective self-regulation in this area. The outcome is the provisions proposed in § 668.16(e), which are based on a set of guidelines specifically developed and approved by the American Council on Education, the American Association of Collegiate Registrars and Admission Officers, and the National Association of Student Financial Aid Administrators, to assist in the achievement of self-regulation. The Secretary believes that this postsecondary education community-based initiative preserves essential institutional discretion in setting specific standards of satisfactory progress while establishing parameters to help ensure the integrity of the student financial aid programs.

As in current § 668.16(e), an institution is required to establish, publish, and apply reasonable standards of satisfactory progress. However the proposed amendment also equates reasonable standards with the adherence to policies of good practice in this area as accepted by the postsecondary education community and the Secretary. Adherence to these practices is demonstrated by conformance with the standards of satisfactory progress set by the institution's nationally recognized accrediting agency and incorporation of certain basis elements developed by the community. If no agency standards exist, or if an institution is not accredited, the proposed amendment requires the institution to incorporate into its standards of satisfactory progress, the basic elements developed by the postsecondary education

community. The Secretary agrees that these elements represent the basis of a reasonable and comprehensive satisfactory progress policy.

The proposed amendment does not require accrediting agencies to develop standards, but simply recognizes that some agencies have already set and enforce such standards. In addition, the proposed elements outlined below would form the basis of all institutions' standards.

Two of the proposed elements are ones which are already considered by the Secretary to be basic components of all institutions' reasonable satisfactory progress standards. (See page 3–8 of the *Federal Student Financial Aid Handbook 1981–82.)* These elements are grades, work projects completed, or comparable factors which are measurable against a norm, and a time frame in which an educational objective (i.e., degree or certificate) is to be successfully completed.

Another proposed element requires consistent application of an institution's standards to all students within categories of students and programs established by the institution. This permits institutions to be responsive to the diversity of their students by relating their satisfactory progress standards to any categories of students and programs established by that institution. For example, an institution with varying enrollment categories (e.g., full-time, half-time, night students), may define a different time frame in which students in each category are to successfully complete their objective. Or, if an institution identifies other categories of students or programs for purposes of satisfactory progress standards, its standards may specifically relate to those groups (e.g., a lower grade point average requirement for first year nursing students).

Another requires institutions to incorporate into their standards, policies which define the effect of course incompletes, withdrawals, repetitions and non-credit remedial courses on satisfactory progress. Enforcement of a reasonable policy in this area prevents distortion in measuring a student's real progress toward his or her objective. The last proposed element requires that an institution incorporate into its standards, specific procedures for appeal of a determination not to be making satisfactory progress and for reinstatement of aid upon correction of satisfactory progress deficiencies. Inclusion of such procedures clearly indicates to students their rights concerning an appeal of an adverse determination and their responsibilities in relation to reinstatement of aid.

The Secretary is also proposing that in order to be considered reasonable, an institution's standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress must be the same as or stricter than the institution's standards for determining progress toward and successful completion of the educational objective. This proposal is intended to prevent the type of abuse cited in the GAO study where by use of a "double standard" a student may remain eligible for title IV aid according to the institution's satisfactory progress standards even though he or she is never required to attain the institution's minimum requirement for graduation.

B. Fine, Limitation, Suspension and Termination Proceedings (Subpart G)

At the end of the 1980 fiscal year (September 30, 1981), the Office of Student Financial Assistance had imposed 11 fines against institutions, and had initiated 24 emergency actions, 86 limitations, and 117 termination procedures against institutions of postsecondary education. A mass termination proceeding was initiated against 166 postsecondary institutions which failed to execute a Program Participation Agreement for the title IV student assistance programs. An additional mass termination proceeding was initiated against 193 postsecondary institutions which failed to submit required student aid program audits on a timely basis.

In the course of these proceedings, several serious deficiencies became evident. Concurrently, the U.S. Office of Management and Budget (OMB) released a "Study on Equity, Fairness and Competition." As required by the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224), the OMB Committee on Administrative Review, Appeal and Finality surveyed the various appeal and review procedures being used by Government agencies and departments.

The OMB *Report* and our experience emphasizes three major values regarding the review and appeals process: Fairness, Efficiency, and Participant Satisfaction. These proposed regulations incorporate these three values to the extent appropriate with the Secretary's responsibility for maintaining program integrity. The following is a discussion of the major provisions of the proposed regulations.

Informal Compliance Procedures. This section, currently § 668.73, is proposed to be deleted as a "formal" process embodied in regulations. Although the OMB *Report* stresses that there should be "preliminary investigation and informal negotiation" on compliance issues, these informal negotiations precede a more structured review or appeal. Therefore the OMB Report recommends that the informal negotiation process not be codified in regulations.

The Office of Student Financial Assistance always conducts informal negotiations with institutions on compliance issues. These informal negotiations are initiated at the conclusion of a program review at the institution and continue first at the regional office level and then, if necessary, at Department headquarters level, until the disputed compliance issues are resolved. Generally, this informal negotiation process is a minimum of six months in length but instances of informal negotiations proceeding for 12 or 18 months is not unusual.

The vast majority of compliance disputes between the Department and institutions are settled in this manner. The Department will continue to conduct this process without this section of the regulations.

Standards of Conduct. The Secretary is proposing to incorporate into the regulations the standards of conduct required of institutions participating in the student financial assistance programs. These standards reflect the view of the Secretary and various Administrative Law Judges presiding over termination proceedings. The Secretary and the Administrative Law Judges view institutions as acting in a fiduciary capacity in their administration of student assistance programs and therefore the institutions must meet the highest standards of care and diligence in their administration of the programs and in their accounting to the Government of program funds they received.

Pre-hearing Conference. A pre-hearing conference is occasionally a part of the current fine, limitation, suspension and termination proceedings if required by the Administrative Law Judge assigned to the proceeding. This new section complies with the recommendation of the OMB *Report* that strongly encourages the use of pre-hearing conferences. A pre-hearing conference offers another opportunity to informally settle or limit the compliance dispute.

Under the proposed regulations, a conference must be convened if requested by the designated ED official, the institution or the Administrative Law Judge. The type of the conference is flexible and may be held by conference telephone call, formal or informal

meeting of the parties, or through the submission of written material.

The current regulation provides no procedural requirements since the Department of Education had limited experience in participating in a conducting hearing on the record. The Secretary now believes that the Department has the request experience to establish such procedures. These procedures are spelled out in § 668.77.

The three values of fairness, efficiency and participant satisfaction underlie these proposed regulations on hearings. In order to provide fairness and efficiency for both the institution and the Department, several legal clarifications are established concerning formal rules of evidence, the burden or proof, the exchange of information, and the relevancy of evidence.

Authority and Responsibility of the Administrative Law Judge. This new proposed section offers a framework within which the Administrative Law Judge acts. The Administrative Law Judge regulates the course of the proceedings, the conduct of the parties during the proceeding, and takes whatever measures are appropriate to expedite the proceeding. However, the regulation specifies that the Administrative Law Judge has no authority to issue subpoenas.

Reinstatement After Termination. Currently nothing prevents a school owner convicted of a crime related to abuses of title IV programs from having his or her school reinstated. Similarly nothing prevents the reinstatement of a school or institution which still employs the financial aid or fiscal officers convicted of a crime related to abuse of title IV program. Therefore, in § 668.84, it is proposed to amend the reinstatement provision to preclude a school or institution from being reinstated if it continues to employ criminal or incompetent administrators in financial aid or fiscal positions or is owned by persons convicted of a title IV related criminal offense.

II. Pell Grant Program

The following is a discussion of the proposed amendments to Subpart H of the regulations for the Pell Grant Program concerning institutional accountability under the Alternate Disbursement System.

Eligible institutions of higher education may participate in the Pell Grant Program under either the Regular Disbursement system or the Alternate Disbursement System. (ADS). Institutions which, for one reason or another, elect to participate through the ADS enter into a program participation agreement with the Secretary of Education under which they agree to certify the accuracy of records regarding the institution's academic calendar, the student's attendance, enrollment status, and cost of attendance and the eligibility of the course of study in which the student is enrolled.

In order for the student to be paid a Pell Grant, the ADS institution and the student must sign and certify ED Form 304 or 304–1 and return the completed form to the Department of Education. The amount of the student's Pell Grant award is calculated and the student receives Pell Grant funds directly from the U.S. Treasury.

During the 1979–80 award year, Pell Grant funds totalling $26 million were disbursed through the ADS to approximately 26,000 students attending over 900 postsecondary institutions. For the 1980–81 award year about $30 million were disbursed to approximately 32,000 students at 950 postsecondary institutions. It is anticipated that, during the 1981–82 award year, approximately 36,000 students attending about 1,000 postsecondary institutions will receive an estimated $34 million through the ADS.

The proposed regulations incorporate the recommendations of the Department of HEW Audit Agency Report on the ADS. The Audit Agency's review of the ADS was directed primarily towards (1) identifying significant ADS weaknesses which could lead to fraudulent and abusive situations, and (2) evaluating the adequacy of ED's administration of the Pell Grant Program under ADS.

The Audit Agency Report found that a significant number of improper Pell Grant payments were made to students because of inaccurate information reported to ED by both institutions and students. Also cited in the Report were the lack of institutional—

(1) Accountability for inaccurate information,
(2) Liability for overpayments, and
(3) Recordkeeping.

Finally the Report indicated that ED had neither established adequate monitoring procedures of ADS activity nor addressed the issue of ADS institutional liability for repayment of Pell Grant funds.

In revising the regulations for the ADS, a number of objectives have been established. The first objective is to make the regulations more easily understandable. The existing regulations (Subpart H) have been reorganized for logical coherence and clarification. Secondly, the recommendations of the HEW Audit Agency have been incorporated. The third objective has been to respond to problems in program operation which program experience has indicated are not sufficiently addressed in current regulations.

On the basis of the HEW Audit Agency Report, amendments have been made to certification procedures to prevent program abuse both by institutions and student recipients. These procedures have been developed in an effort to achieve a balance between good program control and an administration of the program which would not be burdensome to the ADS institution.

It should be noted that these regulations are not the only ones which are applicable to the Pell Grant Program ADS institution. The Student Assistance General Provisions (34 CFR Part 668) which were published as final regulations on December 31, 1980, apply to all institutions which participate in any of the Federal student assistance programs including the Pell Grant Program's ADS institutions. The Student Assistance General Provisions regulations contain general definitions, student consumer information services requirements, standards of administrative capability and fiscal responsibility, misrepresentation criteria and fine, limitation, suspension and termination procedures.

A description of the major changes to the regulations for ADS institutions is given below, organized by section.

Section 690.92 Institutional Participation Agreement

This section was revised to parallel § 690.72 of the regulations governing the RDS agreement. It should be noted that Section 487(a) of the HEA as amended by the Education Amendments of 1980 requires any institution which participates in a title IV student assistance program to enter into an agreement with the Secretary of Education.

Section 690.96 Verification of Information on the SAR

As a means of strengthening the effort to control error and abuse in the Pell Grant Program by students at ADS institutions, § 690.96 "Verification of Information on the SAR" has been added. The SAR (Student Aid Report) is the new name for the current SER (Student Eligibility Report). The procedures in this section pertain to verifying the information on the SAR before the institution certifies ED Form 304 or 304–1. Since eligibility for Pell Grant assistance is based on need which is determined solely on the basis of information supplied by the applicant (and the parents of dependent

applicants), it is imperative that the pertinent data be accurate. Therefore, the Secretary is extending the verification of information requirement (with which Regular Disbursement System institutions already comply) to the ADS institutions.

Currently the Department of Education performs the verification process for students attending ADS institutions. However, the delays involved with centrally verifying the ADS validation cases cause, in some instances, undue hardship for the students involved. While the ADS institution will incur some additional responsibilities due to this section, the impact, in terms of time lost to the student will be minimal. Further, the closer scrutiny that an institutional aid officer can give at the local level should produce a more accurate eligibility index in most cases.

Verification of an applicant's data (called validation) is almost universally considered to be a very necessary aspect of need-based student aid. In this respect all institutions, including those participating in Pell Grants under ADS, are currently required, under 34 CFR 668.16(f), to develop an adequate system to verify the consistency of information they receive from different sources with respect to a student's application for financial aid under title IV programs. Section 690.96, therefore clarifies the ADS institution's responsibilities specifically under the Pell Grant Program.

Section 690.97 Withdrawals and Refunds

This section has been amended to conform with § 668.21, Distribution of Refunds, of the Student Assistance General Provisions which governs withdrawals and refunds for all title IV aid programs. This section is not a new requirement.

Section 690.98 Recovery of Overpayments

As a result of the recommendations of the HEW Audit Agency Report, this section has been added to parallel the liability responsibilities of students and institutions for overpayments that are currently in Subpart G of the Pell Grant regulations which govern Regular Disbursement System institutions. This section delineates institutional responsibilities and reporting procedures regarding overpayments made to students on the basis of inaccurate information.

Section 690.99 Recalculation of a Grant Award

Embodying current ADS program operations, this section has been added to these regulations. Section 690.99 parallels § 690.81(a) governing the Regular Disbursement System. The section stipulates that the Secretary will recalculate a student's Pell Grant if there is a change in the student's expected family contribution. An ADS institution does not incur any additional responsibilities under this section because the recalculation is performed by the Secretary.

Section 690.101 Submission of Reports

Paralleling § 690.84, this section has been added to delineate the authority of the Secretary to require ADS institutions to submit reports on Pell Grant activity as may be necessary.

Invitation To Comment—Change in Enrollment Status. The Secretary is aware that the enrollment status of Pell Grant recipients in schools using academic terms often changes during a term. For example, a full-time student carrying 12 hours of credit who withdraws from or otherwise does not complete a three-credit course during an academic period would be a three-quarter-time student at the end of that period. The Secretary believes that this system may lead to an abuse of the program. This will occur if a large number of students who are paid on the basis of their enrollment status at the beginning of a term do not complete the courses for which they were paid. In fact, the recent GAO study dealing with institutional standards of satisfactory progress cites as an abuse, the payment of Federal aid to students for uncompleted courses regardless of whether the students were meeting institutional standards of satisfactory progress. The Secretary is soliciting comment from the financial aid community on the extent of abuse in this area.

In light of this potential abuse, the Secretary is also soliciting comments on three possibilities for restructuring the Pell Grant payment method at institutions using academic terms and suggestions for implementing these methods: (1) The first method would require that institutions award and disburse grants retroactively. That is, the grant would be paid only after the end of an academic term based on the student's enrollment status at the end of the term. This would effectively eliminate any problem arising from a student's changing status during the payment period. (2) A second method would require the institution to adjust grant payments in the subsequent payment period to compensate for courses from the previous payment period which were not successfully completed and for which credit was not awarded. Courses which students failed, withdrew from, or otherwise did not successfully complete would be subtracted in determining enrollment status and payment in the subsequent term. (3) A third method is for the institution to adjust payments in the subsequent payment period as described in the second method, but only to adjust for courses not completed. As in the above suggestion, adjustments would be made for courses from which a student withdrew or did not complete, but not for failed courses.

Any other suggestions for changes to the payment method at institutions using academic terms and the implementation of such changes are invited.

It should be noted that any changes would pertain only to the Pell Grant Program and would not impact the determination of enrollment status for any of the other title IV programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations establish guidelines for institutional standards of satisfactory progress and revise the fine, limitation, suspension and termination procedures for institutions participating in title IV student financial aid programs.

These regulations also revise certain institutional requirements concerning the administration of payments under the Pell Grant Regular and Alternate Disbursement Systems. About 785 postsecondary institutions participate in the Pell Grant Program. Many of these institutions are small entities, but approximately 50% of the institutions have fewer than 10 Pell Grant recipients. Therefore, the revised requirements will not have a significant economic impact on the small entities affected.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Loan programs—education, Grant programs—education, Student aid.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Information From Institutions of Higher Education. The Secretary

requests comments on whether these proposed regulations would require institutions of higher education to transmit information that is already being gathered by or is available from any other agency or authority of the United States.

Burden Reduction. To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations, especially with regard to paperwork and compliance requirements.

Address for Comments. Written comments and recommendations may be sent to the address given at the beginning of this preamble. The Secretary will consider in the development of the final regulations all comments received on or before June 3, 1982.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 4318, 7th and D Streets, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

Executive Order 12291. These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalogue of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; Auxiliary Loan Program (PLUS), 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: April 27, 1982.

T. H. Bell,

Secretary of Education.

The Secretary proposed to amend Parts 668 and 690 of Title 34 of the Code of Federal Regulations as set forth below:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. In § 668.16, the introductory text is republished and paragraph (e) is revised to read as follows:

§ 668.16 Standards of administration capability.

To participate in a title IV student financial aid program, an institution must be able to adequately administer those programs. The Secretary considers an institution to have that capability if it establishes and maintains required student and financial records and if it—

* * * * *

(e)(1) Establishes, publishes, and applies reasonable standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress in his or her course of study;

(2) The Secretary considers an institution's standards to be reasonable if the standards—

(i) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the insitution, if the institution is accredited by such an agency, and if the agency has such standards;

(ii) Include the elements provided in paragraph (e)(3) of this section; and

(iii) Are the same or stricter than the institution's standards for students who are not receiving aid under a title IV program;

(3) The elements referred to in paragraph (e)(2) of this section include—

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A time frame in which the educational objective, i.e., degree or certificate, is to be successfully completed;

(iii) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduates, graduate students, and programs established by the institution;

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress; and

(v) Specific procedures for appeal of a determination by not making satisfactory progress and for reinstatement of aid upon correction of deficiencies;

* * * * *

2. Section 668.73 is revised to read as follows:

§ 668.73 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the title IV student financial assistance programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standards of care and diligence in administering the programs and in accounting to the Government for the funds received under those programs.

(20 U.S.C. 1070 *et seq.*)

3. In § 668.74, the introductory text of paragraph (a) and (a) (1) and (2) are revised to read as follows:

§ 668.74 Emergency action.

(a) The Secretary, through a designated ED official, may take emergency action to withhold funds from an institution or its students and to withdraw the authority of an institution to obligate funds under any or all title IV student assistance programs covered under the subpart if the designated ED official—

(1) Receives information which the official determines is reliable, that the institution is violating applicable laws, regulations, speciál arrangements, agreements or limitations; and

(2) Determines that immediate action is necesary to halt a loss of Federal funds.

(3) * * *

* * * * *

§ 668.75 [Amended]

4. Section 668.75 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§ 668.76 [Amended]

5. Section 668.76 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§ 668.77 [Amended]

6. Section 668.77 is amended by revising "presiding officer" to read "administrative law judge" each place it appears, by removing paragraph (b)(5), and by redesignating paragraph (b)(6) as paragraph (b)(5).

§§ 668.78–668.85 Redesignated as §§ 668.81–668.88

7. Sections 668.78 through 668.85 are redesignated as §§ 668.81 through 668.88, respectively.

8. New §§ 668.78, 668.79, and 668.80 are added to read as follows:

§ 668.78 Pre-hearing conference.

(a)(1) A pre-hearing conference shall be convened by the administrative law judge at the request of—

(i) The designated ED official;

(ii) The institution; or

(iii) The administrative law judge.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) Instead of a formal meeting, if as agreed to by the administrative law judge, the designated ED official and the institution, a pre-hearing conference may be held by—

(1) A conference telephone call,

(2) An informal meeting, or

(3) The submission of written material by the institution without oral presentation.

(20 U.S.C. 1094)

§ 668.79 Hearing on the record.

(a) A hearing on the record is an orderly presentation of agruments and evidence conducted by an administrative law judge.

(b) The hearing process may be limited as agreed upon by the administrative law judge, the designated ED official and the institution. These limitations include, but are not limited to, the following—

(1) A restriction on the number of submissions,

(2) A hearing by telephone conference call,

(3) A review limited to the written record, or

(4) A certification by the parties to facts and issues not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) *Burden of proof.* The institution shall have the burden of proving that the causes of the action set forth in the notice of intent to fine, limit, suspend or terminate are in error or, if accurate, do not justify a decision to fine, suspend, limit or terminate.

(3) *No discovery.* There is no discovery as conducted under the Federal Rules of Civil Procedures, but the parties are encouraged to exchange relevant documents or information.

(4) *Evidence.* The administrative law judge accepts only evidence that is relevant and material to the proceeding. Parties may object to evidence that they consider to be irrelevant, immaterial, or unduly repetitious.

(d) A transcribed record shall be made of the proceedings and shall be made available to an institution upon request and upon payment of any appropriate fee as prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(20 U.S.C. 1094)

§ 668.80 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceedings and the conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpeonas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel from ED and the institution respectively, who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences,

(2) Setting time limits for hearings and submission of written documents, and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) If the administrative law judge ends a hearing under paragraph (c)(3) of this section, he or she shall deliver to the designated ED official and the institution, a written decision generally within 30 days after the termination of a hearing.

(20 U.S.C. 1094)

§§ 668.81—668.86, 668.88 [Amended]

9. Redesignated §§ 668.81 through 668.86 and 668.88 are amended by revising "presiding officer" to read "administrative law judge" each place it appears.

10. Redesignated § 668.87 is revised to read as follows:

§ 668.87 Reinstatement after termination.

(a) An institution whose participation has been terminated my file a request for reinstatement as a participating eligible institution. However, this request may not be made before the expiration ot the 18th month after the effective date of the termination.

(b)(1) The reinstatement request must be in writing and must show that the institution has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to designated recipients of funds that the institution improperly received, withheld, disbursed, or caused to be disbursed.

(2) The institution must meet all the qualifications for participation in title IV student assistance programs as provided in subpart B of this part.

(3) If an institution was terminated as both a participating institution and a lender under the Guaranteed Student Loan or PLUS programs, the institution may not be reinstated as a lender until it is reinstated as a participating institution. However, the institution may request reinstatement as both an eligible institution and a lender at the same time.

(c) The Secretary will not grant reinstatement to an institution if it—

(1) Is owned, in whole or in part, by a person(s) who has been convicted of a crime related to the abuse of title IV programs; or

(2) Continues to employ an individual who was shown to be an incompetent administrator during the termination proceedings or who was convicted of a crime related to the abuse of title IV programs.

(d) The Secretary, within 60 days of receiving the reinstatement request, shall—

(1) Grant the request,

(2) Deny the request, or

(3) Grant the request subject to limitations.

(20 U.S.C. 1094)

PART 690—PELL GRANT PROGRAM

11. The table of contents for Subpart H and Subpart H of Part 690 are revised to read as follows:

Subpart H—Administration of Grant Payment—Alternate Disbursement System

Sec.
690.91 Scope.
690.92 Institutional participation agreement—Alternate Disbursement System (ADS).
690.93 Disbursement system changes.
690.94 Termination of agreement—Alternate Disbursement System.
690.95 Application procedures—general.
690.96 Verification.
690.97 Withdrawals and refunds.
690.98 Recovery of overpayments.
690.99 Recalculation of a grant award.
690.100 Maintenance and retention of records.
690.101 Submission of reports.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

§ 690.91 Scope.

(a) This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Secretary calculates and pays the Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.92 Institutional participation agreement—Alternate Disbursement System (ADS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the Secretary will calculate and pay Pell Grant awards to students enrolled at that institution based upon the information provided to the Secretary by the institution and the student.

(b) The agreement will be on a standard form provided by the Secretary and will contain the necessary terms to carry out this subpart.

(20 U.S.C. 1070a)

§ 690.93 Disbursement system changes.

(a) *Change to Regular Disbursement System (RDS).* (1) The Secretary may allow an ADS institution to change its method of participation in the Pell Grant Program to the Regular Disbursement System.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 1 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(b) *Change to Alternate Disbursement System (ADS).* (1) The Secretary may allow an RDS institution to change its method of participation in the Pell Grant Program to the Alternate Disbursement System.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 1 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports through the February 15 Progress Report for that award year by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(20 U.S.C. 1070a)

§ 690.94 Termination of agreement—Alternate Disbursement System.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution according to the procedures established by Subpart G of the Student Assistance General Provisions (34 CFR 668).

(b) *Termination by the institution.* The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of the award year in which the institution provides the written notice. The institution must carry out the agreement for the reaminder of the award year.

(c) *Termination because of change in ownership that results in a change of control.* (1) The agreement terminates when an institution undergoes a change of ownership that results in a change of control.

(2) The Secretary may enter into an agreement with the new owner after the institution complies with the requirements of § 668.18 of the Student Assistance General Provisions regulations (34 CFR 668.18).

(d) *Limitation of agreement.* (1) The Secretary and the institution may jointly agree to limit the agreement.

(2) The Secretary may limit the agreement in accordance with Subpart G of the Student Assistance General Provisions Regulations, 34 CFR 668.71–668.88.

(20 U.S.C. 1070a)

§ 690.95 Application procedures—general.

An eligible student attending an ADS institution applies for a Pell Grant as follows:

(a)(1) The student submits an SAR (Student Aid Report) to the institution.

(2) The student is subject to the deadline date for submitting the SAR to the institution set forth in § 690.61(b) and the limitation set forth in § 690.61(d).

(b)(1) Upon receipt of an SAR, the institution gives the student ED Form 304 which the student uses to request a Pell Grant payment from the Secretary.

(2) On ED Form 304, the student provides his or her name, social security number and address and signs the statement of educational purpose. (This statement is the same statement set forth in § 690.79).

(3) On ED Form 304, the institution provides information regarding a student's eligibility to receive a Pell Grant, as well as the student's enrollment status, cost of attendance and dates of attendance.

(4) With regard to the student's eligibility for a Pell Grant, the institution shall determine whether the student—

(i) Presents a valid SAR to the institution required by § 690.61;

(ii) Meets the eligibility requirements set forth in § 690.4;

(iii) Is maintaining satisfactory academic progress in his or her course of study;

(iv) Is not in default on any National Defense/Direct Student Loan made by the institution or any Guaranteed Student Loan received for attendance at that institution; and

(v) Does not owe a refund on a Pell Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution.

(5) If an institution determines that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses itself BEFORE the end of the payment period, the institution may certify ED Form 304 for the entire payment period.

(6) If an institution determines that, as of the date the institution is expected to complete ED Form 304 at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses itself AFTER the end of the payment period, the institution may not certify ED Form 304 for that payment period. The Secretary will not make adjustments in subsequent Pell Grant payments to compensate for the loss of Pell Grant aid for that payment period.

(c) If the institution determines that the student has valid SAR and is eligible for a Pell Grant, it certifies the accuracy of the information it provides and returns the SAR and the certified ED Form 304 to the student.

(d) The student submits both the verified SAR and the certified ED Form 304 to the Secretary before the deadline date established in § 690.61.

(e) Upon receipt of the SAR and ED Form 304 properly certified by the institution, the Secretary will calculate a student's award in accordance with Subpart F of this part.

(f)(1) In each payment period, the Secretary will pay a student at such times and in such installments as the Secretary determines will best meet the student's needs.

(2) The Secretary will make only one payment to a student if a portion of an academic year occurring within one award period is less than three months.

(3) The Secretary may pay funds due a student for any completed period of enrollment in one lump sum. The student's enrollment will be determined according to work already completed.

(g)(1) The Secretary also sends the student an ED Form 304–1. This form is used to request other payments from the Secretary during the award year.

(2) The institution must provide the information requested and must certify that the information included on the form is accurate.

(3) The student submits the certified ED Form 304–1 to the Secretary for an additional grant payment before the deadline date established in §690.61.

(20 U.S.C. 1070a)

§ 690.96 Verification.

(a) An institution shall require that a student verify the information included on his or her SAR if—

(1) Directed to by the Secretary;

(2) The institution has documentation which indicates that the information on the SAR used to calculate the student's award is inaccurate; or

(3) If the institution has a reasonable basis for believing information on the SAR used to calculate the student's award is inaccurate.

(b) The Secretary shall publish procedures to be used to verify information on SARs.

(c)(1) If the institution requests that the student verify the information on his or her SAR for the reasons stated in paragraph (A)(1) or (2) of this section, it may not certify the student's ED Form 304 until it is satisfied that the information on the SAR is correct.

(2) If the institution requests that the student verify the information on his or her SAR for the reason stated in paragraph (a)(3) of this section, it shall—

(i) Certify ED Form 304; and

(ii) Notify the Secretary.

(d)(1) If, as a result of the verification process, the SAR needs to be corrected, the student must correct the SAR by—

(i) Putting accurate information on the SAR,

(ii) Getting the appropriate signatures on the SAR, and

(iii) Resubmitting the SAR to the Secretary

(2) The student must resubmit the new SAR he or she receives to the institution.

(3) The institution shall certify ED Form 304 if it is satisfied that the information on the resubmitted SAR is accurate.

(e)(1) If a student submits an SAR with a student aid index to the institution before the deadline date established in § 690.61 but is required to reapply for another SAR based on the requirements of this section, that student may submit the verified SAR to the institution after the appropriate deadline specified in §690.61, but within an established time period set by the Secretary. However, the Secretary will pay such a student only up to the amount of the payment based on the originally submitted SAR.

(2) If the student does not provide the requested documentation, and if necessary a reprocessed, verified SAR, within the established time period—

(i) The student will forfeit the Pell Grant for the award year: and

(ii) Any grant payments received must be returned to the Secretary.

(f) Under certain conditions as determined by the Secretary, including, but not limited to suspected fraud and/or abuse, no further Pell Grant applications will be processed for the student unless he or she verifies the information alleged to be discrepant or the Secretary decides there is no further need for verification.

(20 U.S.C. 1070a)

§690.97 Withdrawals and refunds.

(a)(1) The institution shall notify the Secretary of the date a student officially or unofficially withdraws or is expelled for a payment period for which the student was paid.

(2) If the institution also participates in any other title IV program, the institution must comply with §668.21 of the Student Assistance General Provisions and provide the Secretary with the information required by § 668.21(a)(3).

(3) For purposes of this section, the date of a student's unofficial withdrawal shall be determined under § 668.21(c)(4).

(b) If the date provided by the institution in paragraph (a) is before the mid-point of the payment period for which the student has been paid, the student will refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a)

§ 690.98 Recovery of overpayments.

(a) The student is liable for any overpayment made to him or her.

(b)(1) The institution is liable for any overpayment made to a student by the Secretary on the basis of inaccurate information provided by the institution.

(2) The institution shall repay to the Secretary the amount of the overpayment for which it is liable even if the overpayment cannot be collected from the student.

(c) If an overpayment is made for which the institution is not liable, the institution shall help the Secretary to recover the overpayment by providing the Secretary with the student's name, social security number, most recent address, and other relevant information.

(20 U.S.C. 1070a)

§ 690.99 Recalculation of a grant award.

(a)(1) If the student's expected family contribution changes, the Secretary will recalculate his or her Pell grant award.

(2) Except as provided in § 690.96(f)(2)(ii), the Secretary will adjust the award and pay the student the amount he or she is entitled to for the award period if the expected family contribution is recalculated because of—

(i) A clerical or arithmetic error under § 690.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under Sections 690.49 and 690.57.

(3) If a student's expected fmaily contribution is recalculated because of a correction of the information requested under § 690.96, the student's grant for the award period will be adjusted by the Secretary. Where possible, the adjustment will be made within the same award period.

(4) If the recalculation takes place in a subsequent award period, the student will be—

(i) Eligible to receive payment unless prohibited under the provisions of § 690.96(f), and

(ii) Required to return any overpayment at the time of recalculation.

(20 U.S.C. 1070a)

§ 690.100 Maintenance and retention of records.

(a) Each institution must establish and maintain the following records—

(1) The "Student Aid Report" for each student;

(2) A copy of ED Form 304 and Form 304–1 for each student;

(3) The name and social security number for each student;

(4) The student's cost of attendance;

(5) How the student's full or part-time enrollment status was determined;

(6) The student's enrollment period;

(7) Information collected in compliance with § 690.96; and

(8) Information necessary to determine whether the student was eligible to receive a grant.

(b)(1) Records shall be—

(i) Systematically organized;

(ii) Maintained for five years after the award period in which the student ceased enrollment; and

(iii) Readily available for review by the Secretary or the designated ED official at the geographical location where the students will receive their degrees or certificates of program or course completion.

(2) An institution may substitute micro-film copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

§ 690.101 Submission of reports.

The institution must submit the their reports and information the Secretary requires in connection with the participation of an institution in the Alternate Disbursement System and must comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

[FR Doc. 82-11998 Filed 5-3-82; 8:45 am]
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Tuesday
May 4, 1982

Part III

Department of the Interior

Bureau of Land Management

Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention To Hold Mining Claims, Mill or Tunnel Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The amendments made by this proposed rulemaking will clarify questions that have arisen in connection with the procedures established by the regulations on Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites, since they became effective in January 1977. The amendments are also designed to make the regulations clearer and easier to understand.

DATE: Comments by June 3, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
George Schmidt, (202) 343–8537,
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Since the regulations on the Recordation of Mining Claims and Filing of Proof of Annual Assessment Work of Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites became effective on January 27, 1977, questions about certain aspects of those regulations have arisen. In addition to the amendment already made, the public's and the Bureau of Land Management's experience with the regulations, as amended, has indicated further changes that will make the regulations easier to understand and comply with. This proposed rulemaking incorporates these changes.

In addition, the proposed rulemaking incorporates changes recommended in comments submitted in response to the February 1981 request of the Secretary of the Interior for the public to identify those regulations that were burdensome or counter-productive.

In order to shorten the existing regulations, the effect of failure to record mining claims and sites, located prior to October 21, 1976, with the Bureau of Land Management within the statutory three years, would be put in one paragraph in § 3833.1. As a result, appropriate changes woud be made in certain sections, and §§ 3822.1–2(b) and 3833.2–1(a) would be deleted in their entirety. The remaining paragraphs in each of those sections would be renumbered.

One of the changes that would be made by the proposed rulemaking is the addition of some new terms to the definition section to clarify some apparent misunderstandings that have arisen during the period the regulations have been in effect, including a new definition of what constitutes timely filing. Another change would include in the regulations instructions supplied Bureau field offices on the information required at the time of filing of a mining claim. Yet another change is the removal of the filing fee as an item required at the time of submission of a mining claim.

A change has been made to the section dealing with the filing of affidavits of assessment work, § 3833.2–1. The requirement for filing of instruments set forth in section 314 of the Federal Land Policy and Management Act is susceptible to more than one construction. The Interior Broad of Land Appeals in its examination of the requirement has construed it as requiring the filing of the affidavit during the calendar year covered by the work. In order to carry out the policy of the Department of the Interior to preserve claims, we have amended the section on filing of affidavits of assessments to clarify the question of overlapping calendar periods and promote diligent performance of the assessment work required by law. Another change covering this same area would limit a notice of intention to hold a mining claim to the year in which it is filed.

An additional change made by the proposed rulemaking will resolve questions that have arisen with regard to the filing of a notice of intention to hold a mining claim. A new § 3833.2–3(a) modifies the basis for the view of this question taken by the Interior Board of Land Appeals in a couple of recent decisions. A notice of intent may be filed at the election of the claimant. That is, the claimant may file a notice even if assessment work has been performed and may file a notice whenever, for whatever reason (not limited to situations where assessment work is excused under the mining law), the annual assessment work is not performed by the mining claimant.

A new § 3833.2–2(b) would be added by the proposed rulemaking for the purpose of ensuring that a mining claim will not be deemed abandoned and void because of a defect in an affidavit of assessment work. This change is effected to make it clear that the filing of an affidavit of assessment will be accepted as evidence of continued intention to hold a mining claim, even if the exact document contemplated by the mining law is not submitted.

Since the issuance of the recording regulations, there have been instances where a mining claimant has applied for a patent to a mining claim and, through ignorance or inadvertence, has neglected to make a timely annual filing of the affidavit of annual assessment work as the law requires.

This failure has resulted in the claim being declared abandoned by operation of law, and void. This action seems unusually harsh given the fact that the purpose of section 314 of the Federal Land Policy and Management Act was to make known to the United States which mining claims were still active and their location. Since claims in a patent application are of record and the application is being diligently pursued, it would appear that the purpose of the Act has been complied with. In compliance with this concept, § 3833.2–4 would be amended to delete references to the issuance of a final certificate, and provide that filing of an application for patent complies with the requirements of section 314 of the Act. This change in the regulations would not relieve the mining claimant of the necessity of *performing* the annual assessment work required under the mining law, or of recording it in compliance with State law. Should the application for patent of a mining claim be withdrawn, timely annual filings of affidavits of assessment work or notices of intention to hold will thereafter be required with the Bureau of Land Management as well as in the local recording office.

A new § 3833.4(b) has been added to clarify the effect of a claimant's failure to file the information called for by regulation. (Section 3833.4(a) details the effect of failure to file the instruments or documents themselves.) Consistent with instructions issued to the Bureau of Land Management, failure to file such information, including sufficient recordation fees, shall be treated as a curable defect. The authorized officer shall call for the information or fees by decision allowing a reasonable time, usually not less than 30 days, in which to cure the filing. Failure to cure the filing shall be grounds for rejecting the filing by an appealable decision. Upon final affirmance of such a rejection the claim or site will be deemed abandoned and void. See Topaz Beryllium v. United

States, 649 F. 2d 775 (1981) (No. 79–2255) (10th Cir. 1981) slip opinion at 6–7. The appeals procedures of Part 4 of Title 43 CFR shall apply to such appeals.

The other changes are of a minor nature and have been made to clarify the intent of the regulations.

These regulations are intended to apply retroactively where to do so would be to the benefit of the claimant, would not injure the interest of the United States or interfere with third party rights.

The principal author of this proposed rulemaking is George R. Schmidt, Division of Mineral and Geothermal Resources, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The information collection requirements contained in 43 CFR Part 3833 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

It is hereby determined that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 US.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354).

Subject Listings for 43 CFR Part 3830

Mines, Public lands—mineral resources.

Under the authority of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) and section 2319 of the Revised Statutes (30 U.S.C. 22), it is proposed to amend Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 3833.0-2 [Amended]

1. Section 3833.0–2 is amended by revising the second sentence to read as follows:

"* * * Other objectives are to remove the cloud on the title to those lands because they are subject to mining claims that may have been abandoned and to provide information as to the location and status of active mining claims."

§ 3833.0-3 [Amended]

2. Section 3833.0–3(e) is amended by removing the period at the end and by adding the words "which provide for setting reasonable fees."

§ 3833.0-5 [Amended]

3. Section 3833.0–5 is amended by:

a. Amending paragraph (b) by removing the figure "34" where it appears and replacing it with the figure "43";

b. Amending paragraph (g) by adding at the end thereof the sentence "Notwithstanding the requirements of § 1821.2–1(d) of this title, filings made under this subpart in Alaska may be filed in either office in that State.";

c. Revising paragraph (i) by revising the first sentence as follows:

* * * * *

(i) "Copy of the official record" means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed in the local jurisdiction where the claim or site is located, or other evidence acceptable to the proper BLM office, of such instrument.; and

* * * * *

d. Adding new paragraphs (j), (k), (l) and (m) as follows:

* * * * *

(j) "Affidavit of assessment work" means a sworn statement that labor or improvements, valued at not less than $100, have been made upon or for the benefit of the mining claim during the previous assessment year.

(k) "Notice of intention to hold a mining claim" means a letter, or other notice, in the form required in § 3833.2–3 of this title which has been or will be recorded in the county or local office of recordation indicating that the owner continues to have an interest in the claim.

(l) "Notice of intention to hold a mill or tunnel site" means a letter, or other notice, in the form required in § 3833.2–3 of this title indicating that the owner continues to hold an interest in the site.

(m) "Filed or file" means being received and date stamped by the proper BLM office. 'Timely filed' means being filed within the time period prescribed by law, or a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law and received within 20 calendar days after period prescribed by law. (See § 1821.2–2(e) of this title where the last day falls on a date the office is closed.)

4. Section 3833.1 is revised to read:

§ 3833.1 Recordation of mining claims.

Mining claims and sites which had been located prior to October 21, 1976, the effective date of the Act, but which had not been recorded in the proper BLM office on or before October 22, 1979, as required by the Act, are by law conclusively deemed abandoned and void. There is no statutory provision for accepting a notice or certificate of location for such an abandoned and void claim or site.

§ 3833.1-2. [Amended]

5. Section 3833.1–2 is amended by:

a. Amending paragraph (a) by removing from the first sentence the words "on or before" and replacing them with the words "after", by removing the words "shall file (file shall mean being received and date stamped by the proper BLM office)" and replacing them with words "shall file within 90 days after the date of location of that claim or site", and by removing from the second sentence the notation "(c)" and replacing it with "(b)";

b. Removing paragraph (b) in its entirety;

c. Renumbering paragraph "(c)" as paragraph "(b)";

d. Amending renumbered paragraph (b)(6) by inserting after the phrase "or a narrative or" the word "a";

e. Amending renumbered paragraph (b)(7) by adding at the end of the sentence "A placer claim described by legal subdivisions, section, township, range, meridian and State, conforms with the requirements of subparagraphs (5) and (6) of this paragraph."; and

f. Removing paragraph (d) in its entirety.

§ 3833.1-3 [Redesignated 3833.1–4].

6. Section 3833.1–3 is renumbered § 3833.1–4 and is revised as follows:

§ 3833.1-4 When recordation not required.

(a) Mining claims and mill sites located on or before October 21, 1976, which are described in mineral patent applications filed prior to October 22, 1979, shall be deemed in compliance with the recordation requirements of section 314(b) of the Act. Claims and sites described in such applications which are on file as of the date of the Act shall be deemed recorded as of October 21, 1976. The dates of recordation for claims and sites filed between October 21, 1976, and October 22, 1979, shall be the dates of filing of such applications.

(b) If the owner of an unpatented mining claim or mill site located after October 21, 1976, applies for a mineral survey within 90 days after the date of

location, no other recordation shall be necessary if such application contains the information required under § 3833.1–2(c) of this title.

7. A new § 3833.1–3 is added as follows:

§ 3833.1–3 Recordation fee.

Each claim or site filed shall be accompanied by a one time non-refundable recordation fee of $5.

§ 3833.2–1 [Amended]

8. Section 3833.2–1 is amended as follows:

a. Remove paragraph (a) in its entirety.

b. Renumber paragraph (b) as paragraph "(a)";

c. Paragraph (a)(1) is amended by removing the phrase "shall file" where they appear and replacing it with the phrase "established after September 28, 1976, shall have filed or caused to have been filed";

d. Renumber paragraph (c) as paragraph "(b)";

e. Paragraph (b) is amended by inserting immediately after the figure "(b)" the figure "(1)", by adding immediately after the phrase "National Park System" the phrase "established on or before September 28, 1976, shall have filed or caused to have been filed", and by adding a new paragraph (b)(2) to read:

* * * * *

(b) * * *

(2) An affidavit of assessment work performed which is filed under these regulations at any time during the assessment year in which the work was performed shall be deemed to have been filed on or before the December 30; following the end of such assessment year.; and

* * * * *

f. Renumber pargraph (d) as paragraph "(c)";

g. Paragraph (c) is amended by adding immediately after the phrase "National Park System" the phrase "established on or before September 28, 1976," and immediately after the phrase "United States Forest Service" the phrase "shall have filed or caused to have been filed".

§ 3833.2–2 [Amended]

9. Section 3833.2–2(b) is amended by removing immediately after the phrase "(30 U.S.C. 28–1)" the word "and" and replacing it with the phrase "which was or will be".

10. Section 3833.2–3 is revised as follows:

§ 3833.2–3 Form—notice of intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims may be filed at the election of the owner, regardless of whether the assessment has been suspended, deferred or not yet accurued or has in fact been performed. However, the claimant shall file with the Bureau of Land Management the same documents which have been or will be recorded with the county or local office of recordation. A notice of intention to hold a mining claim shall be effective only for the year in which it is filed.

(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

(1) An exact legible reproduction or duplicate, except microfilm, of a letter, or other notice, signed by the owner of the claim or his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim(s) is held by the owner(s) for the valuable mineral contained therein; and

(iv) The reason why the annual assessment work has not been performed or why and affidavit of assessment work or a detailed report of geological, geochemical or geophysical survey under § 3833.2–2 of this title has not been filed; or

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date requried for filing of a notice of intention to hold a mining claim under § 3833.2–1 of this title; or

(3) A reference to a petition for deferment of the annual assessment work requried by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(c) An affidavit of assessment work which is on its face defective shall be accepted and treated as a notice of intention to hold the mining claim.

(d) A notice of intention to hold a mill or tunnel site or group of mill or tunnel sites shall be in the form of a letter or other notice signed by the owner(s) of such sites or their agents setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certification of location;

(2) Any change in the mailing address, if known, of the owner(s) of the site(s);

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independant mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of a vein or lode.

11. Section 3833.2–4 is revised as follows:

§ 3833.2–4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which the authorized officer determines complies with Part 3860 of this title has been filed. The filing of an application shall be deemed full compliance with the requirements of section 314(a) of the Act and the owner(s) of that claim or site shal be exempt from the filing requirements of § 3833.2–1 of this title. Until final certificate is issued, however, the owner(s) shall continue to be responsible for the performance of assessment work required by 30 U.S.C. 28 and local recorrdation of affidavits of assessment work in compliance with State law.

12. Section 3833.4 is amended by renumbering paragraph (b) as paragraph (c) and revising it to read as set forth below and by adding a new paragraph (b) as follows:

§ 3833.4 Failure to file.

* * * * *

(b) The failure to file the information required in §§ 3833.1–2(b), 3833.1–3, 3833.2–2(a) and (b) or 3833.2–3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such informtion shall be filed within the time allowed by decision of the authorized officer calling for the information. Failure to file such

information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment of the mining claim, mill or tunnel site and such mining claim, mill or tunnel site shall be void.

(c) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

§ 3833.5 [Amended]

13. Section 3833.5(d) is revised as follows:

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 of this title, filed a notice of transfer of interest pursuant to § 3822.3 of this title or owners whose names show on annual filings shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to ensure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with Part 4.450 of this title. Owners who have not recorded a claim or site may not be personally served but shall be bound by any contest proceeding even though they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, only after they have been recorded pursuant to § 3833.1–2 of this title.

David C. Russell,

Acting Assistant Secretary of the Interior.

February 26, 1982.

[FR Doc. 82–12048 Filed 5–3–82; 8:45 am]

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Tuesday
May 4, 1982

Part IV

Department of Energy

Regulatory Agenda

DEPARTMENT OF ENERGY

10 CFR Ch. II, III, and X

Regulatory Agenda

AGENCY: Energy Department.

ACTION: April 1982 Regulatory Agenda.

SUMMARY: The Department of Energy (DOE) is publishing an agenda of proposed regulations that are either presently outstanding or that DOE expects to issue in the next six months. As required under Executive Order 12291 (46 FR 1393, February 19, 1981), the Agenda includes each major rule being considered. In addition, the Agenda includes each rule that DOE expects to propose or promulgate which is "likely to have a significant economic impact on a substantial number of small entities," as required by the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 602). Many of these rules relate to programs that are inconsistent with the Administration's policies and DOE is promulgating such rules only because they are required by statute to be promulgated. The Agenda also includes a list of existing rules that have been under review for possible modification under Executive Order 12291.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda in general, contact: Jeffrey D. Stoermer (Office of General Counsel), Department of Energy, Room 6A-113, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6754.

Specific

For further information about any particular item on the Agenda, contact the individual listed under that item.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, "Federal Regulation" (46 FR 13193, February 19, 1981), requires each Federal agency to publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review. At a minimum, the agenda must include: (1) A summary of the nature of each major rule [1] being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking; (2) the name and telephone number of a knowledgeable agency official for each item on the agenda; and (3) a list of existing regulations to be reviewed under the terms of Executive Order 12291, and a brief discussion of each such regulation.

Executive Order 12291 also provides that the regulatory agenda may be incorporated with the "regulatory flexibility agenda" required under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 602). The regulatory flexibility agenda must contain: (1) A brief description of the subject area of and a summary of the nature of any rule which the agency expects to propose or promulgate which is "likely to have a significant economic impact on a substantial number of small entities"; (2) the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and (3) the name and telephone number of an agency official knowledgeable concerning each such rule.

Appended to this Notice is DOE's April 1982 Regulatory Agenda, reflecting the status of rules listed as of April 1, 1982. Incorporated in this Agenda is the regulatory flexibility agenda required under 5 U.S.C. 602.

Many of these rules are required by statute to be promulgated. Were it not for these legal requirements, DOE would not promulgate these rules because the Administration has indicated that these programs are inconsistent with the Administration's policies. Rules of this type are hereinafter denoted with the symbol (†). DOE will, of course, in promulgating these rules comply with the requirements of Executive Order 12291 and the Regulatory Flexibility Act.

The rules listed in the Agenda are divided into four categories. The first three categories list those proposed rules DOE expects to issue in the next six months as well as currently pending proposed rules that have already been issued. These three categories are:

(1) Major rules likely to have a significant economic impact on a substantial number of small entities;[2]

(2) Non-major rules likely to have significant economic impact on a substantial number of small entities;[2] and

(3) Major rules *not* likely to have a significant economic impact on a substantial number of small entities.

Proposed rules that are *not* major rules and *not* likely to have a significant economic impact on a substantial number of small entities are not included. The fourth category lists those currently effective rules, not already listed in one of the first three categories, that DOE has been reviewing for possible modification as directed by the Presidential Task Force on Regulatory Relief under section 3(i) of Executive Order 12291.

On April 12, 1982, a draft of this Agenda was transmitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment, if any, to fulfill the requirement of 5 U.S.C. 602(b). In addition to publication of this Agenda in the **Federal Register**, DOE has endeavored to give notice of this Agenda to small entities by forwarding copies to a number of trade associations that represent small entities. Small entities are invited to submit comments on any item in the Agenda. Comments should be submitted to: William Funk, Assistant General Counsel for Regulatory Oversight, Department of Energy, Room 6A-141, Forrestal Building, 1000 Independence Avenue, S.W., Washington D.C. 20585. (202) 252-6736.

DOE's next Regulatory Agenda will be published in October 1982.

Issued in Washington, D.C. this April 29, 1982.

R. Tenney Johnson,

General Counsel.

DOE's April 1982 Regulatory Agenda is as follows:

I. Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Conservation and Renewable Energy

1. Energy Efficiency Standards for Five Types of Consumer Products †.
2. Commercial and Apartment Conservation Service Program †.
3. Federal Standby Residential Conservation Service Plan †.

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[1] Executive Order 12291 defines "major rule" as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

[2] The rules listed in categories (1) and (2)—those rules likely to have a significant economic impact on a substantial number of small entities—include some rules for which a notice of proposed rulemaking (NOPR) was issued prior to January 1, 1981. Although these rules are listed in the Agenda, under section 4 of the Regulatory Flexibility Act the regulatory flexibility analyses specified in 5 U.S.C. 603-604 are *not* required, and such analyses will not be completed in regard to these rules. These rules, where an NOPR was issued prior to January 1, 1981, are hereinafter denoted with an asterisk (*).

II. Non-Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Environmental Protection, Safety, and Emergency Preparedness

1. Standby Procedures for Emergency Purchases and Allocation of Natural Gas During a Declared Emergency*.

III. Major Rules Not Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

Economic Regulatory Administration

1. Review and Establishment of Natural Gas Curtailment Priorities for Interstate Pipelines*.

IV. Other Rules Undergoing Review Under Executive Order 12291

Conservation and Renewable Energy

1. Residential Conservation Service Program Regulations.

I. Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

CONSERVATION AND RENEWABLE ENERGY

1. Energy Efficiency Standards for Five Types of Consumer Products †

Section 325 of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94–163), as amended by section 422 of the National Energy Conservation Policy Act (Pub. L. 95–619 required DOE to prescribe rules by December 13, 1981, regarding minimum energy efficiency standards for five consumer product types: humidifiers/dehumidifiers, clothes washers, television sets, dishwashers, and heat pumps, if possible. In the alternative, DOE may, under section 325(b)(2) of EPCA, as amended, determine by rule that the establishment of a standard is not technologically feasible or economically justified, or that such a standard would not result in significant conservation, and thereby prescribe no standard.

DOE's budget request for fiscal year 1983 requested no funds for this program.

Schedule: In advance notice of proposed rulemaking for four products was published in the **Federal Register** on December 13, 1979 (44 FR 72276). An advance notice of proposed rulemaking for heat pumps (the fifth product) was published in the **Federal Register** on January 23, 1980 (45 FR 5802). DOE intends to issue two notices of proposed rulemaking—one for the four products and the other for heat pumps—as soon as practicable.

Contact: Michael J. McCabe (202) 252–9127.

2. Commercial and Apartment Conservation Service Program †

Title VII of the National Energy Conservation Policy Act ("NECPA," Pub. L. 95–619), as amended by Subtitle D of Title V of the Energy Security Act ("ESA," Pub. L. 96–294) required the DOE to issue a proposed rule by October 28, 1980, to establish a utility audit program for multifamily dwellings (those with more than four units) with a central heating or cooling system and for small commercial buildings. The program would require large gas and electric utilities to provide energy audits and certain other services to their customers upon request. Heating oil suppliers could volunteer to provide energy audits.

No funds were requested for this program by DOE for the 1982 or 1983 fiscal years.

Schedule: A notice of proposed rulemaking (NOPR) was published in the **Federal Register** on January 16, 1981 (46 FR 4482). A portion of this NOPR was withdrawn November 12, 1981 (46 FR 55836). DOE intends to issue a revised NOPR in August 1982 to modify and repropose the remaining portions of the January 16, 1981 NOPR.

Contact: Mark Friedrichs (202) 252–1650.

3. Federal Standby Residential Conservation Service Plan †

Section 219 of the National Energy Conservation Policy Act ("NECPA," Pub. L. 95–619) requires DOE to promulgate a Residential Conservation Service (RCS) Plan to be implemented by covered regulated utilities upon order of DOE in any State that does not have an approved State RCS Plan, or in which the State plan has been found to be inadequately implemented. This rule would provide such a standby plan.

DOE's budget for the 1982 and 1983 fiscal years requested no funds for the RCS program.

Schedule: A notice of proposed rulemaking (NOPR) was published in the **Federal Register** on January 9, 1981 (46 FR 2522). This NOPR was withdrawn November 12, 1981 (46 FR 55836). DOE intends to issue a new NOPR in August 1982.

Contact: Mark Friedrichs (202) 252–1650.

II. Non-Major Rules Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

ENVIRONMENTAL PROTECTION, SAFETY, AND EMERGENCY PREPAREDNESS

1. Standby Procedures for Emergency Purchases and Allocation of Natural Gas During a Declared Emergency*

DOE has proposed a rule providing standby procedures for the authorization of emergency natural gas purchases and for emergency natural gas allocations under sections 302 and 303, respectively, of the Natural Gas Policy Act of 1978 ("NGPA," Pub. L. 95–621), and standby procedures for emergency prohibitions on the burning of natural gas by electric powerplants and major fuel-burning installations under section 807 of the Public Utility Regulatory Policies Act of 1978 ("PURPA," Pub. L. 95–617). The rule would be activated by a declaration by the President of a natural gas supply emergency under section 301 of the NGPA. The adoption of standby procedures is intended to enable the Government to take action as soon as possible to reduce the impact of the emergency and to promote a greater degree of coordination between DOE and the natural gas industry.

It has not yet been determined whether this rule is likely to have a significant economic impact on a substantial number of small entities. In any case, a regulatory flexibility analysis is not required since the notice of proposed rulemaking was issued before January 1, 1981.

Schedule: A notice of proposed rulemaking was published in the **Federal Register** on December 8, 1980 (45 FR 81012). It has not yet been determined whether to issue the final rule.

Contact: Romullo Diaz (202) 252–4000 or Samuel M. Bradley (202) 252–2443.

III. Major Rules Not Likely To Have a Significant Economic Impact on a Substantial Number of Small Entities

ECONOMIC REGULATORY ADMINISTRATION

1. Review and Establishment of Natural Gas Curtailment Priorities for Interstate Pipelines*

The proposed rule establishes natural gas curtailment priorities applicable to deliveries by interstate pipelines during periods when not enough gas is available to supply all customers. The proposed rule implements the rulemaking requirements of Title IV of the Natural Gas Policy Act of 1978 by

establishing curtailment priorities for high priority uses and for esential agricultural and essential industrial feedstock and process uses. Statutory authority for this rule is found in sections 301(b) and 402(a)(1)(E) of the Department of Energy Organization Act (Pub. L. 95–91) and sections 401, 402 and 403 of the Natural Gas Policy Act of 1978 (Pub. L. 95–621).

A final determination has not yet been made as to whether this rule is "likely to have a significant economic impact on a substantial number of small entities" under the Regulatory Flexibility Act (Pub. L. 96–354). In any case, a regulatory flexibility analysis is not required in regard to this rule since the notice of proposed rulemaking was issued prior to January 1, 1981.

Schedule: A notice of proposed rulemaking was issued on June 24, 1980 (45 FR 45098, July 2, 1980). the Federal Energy Regulatory Administration (FERC) is currently reviewing the proposed rule pursuant to section 404 of the DOE Organization Act. Issuance of a final rule is planned for six weeks after FERC concurrence is received.

Contact: Paula Daigneault (202) 633–9290.

IV. Other Rules Undergoing Review Under Executive Order 12291

CONSERVATION AND RENEWABLE ENERGY

1. Residential Conservation Service Program Regulations

The National Energy Conservation Policy Act (Pub. L. 95–619) required DOE to adopt regulations to implement the Residential Conservation Service (RCS) Program, 10 CFR Part 456. These regulations require large utilities to offer to perform "energy audits" of homes or apartments (which are four or less dwelling units) of their customers, pointing out ways to conserve energy. Because the Administration believes that there are sufficient incentives in the free market to encourage persons to save fuel absent this program and that, therefore, the burdens associated with this program are unnecessary, the Administration requested no funds for this program in the 1982 or 1983 fiscal years.

On March 25, 1981, the Presidential Task Force on Regulatory Relief directed DOE to review these regulations, stating that "the requirements for these inspections are complex and expensive." Pursuant to that direction, DOE has reviewed the RCS program for possible modification in an effort to reduce regulatory burdens. This review indicated that some of, but probably not most of, the burdens imposed on States, utilities, and industry participants by the RCS Program could be mitigated by revisions to the regulations. Accordingly, DOE published on November 12, 1981, a notice of proposed rulemaking (NOPR) to modify the RCS Program regulations to reduce the burdens of the Program to the extent permitted under the statute.

On October 8, 1980, DOE published a notice of proposed rulemaking (45 FR 66960) to amend the RCS regulations in conformance with section 549(b) of the Energy Security Act (ESA) (Pub. L. 96–294). These proposed amendments concern utility supply, installation and financing of energy measures, utility cost and accounting requirements, and warranties required of manufacturers, suppliers and installers participating in the RCS Program. This NOPR has been withdrawn and the proposed amendments have been incorporated in the November 12 NOPR. Subtitle B of Title V of ESA also requires DOE to extend coverage of the RCS program to include residential buildings of more than four dwelling units that are neither centrally heated or cooled. (The existing program is limited to residential buildings with up to four units.) On January 16, 1981, DOE published a NOPR (46 FR 4482) to incorporate this provision in the RCS rule. The portion of the NOPR that would accomplish this has been withdrawn and the proposed amendments have been incorporated in the November 12 NOPR. Finally, DOE proposed the withdrawal of the NOPR (January 27, 1981, 46 FR 8996), concerning urea-formaldehyde foam insulation standards, in the November 12, 1981 proposal.

Schedule: A notice of proposed rulemaking was published in the **Federal Register** on November 12, 1981 (46 FR 55836). A final rule is planned to be issued by June 1982.

Contact: Mark Friedrichs (202) 252–1650.

[FR Doc. 82–12121 Filed 5–3–82; 8:45 am]
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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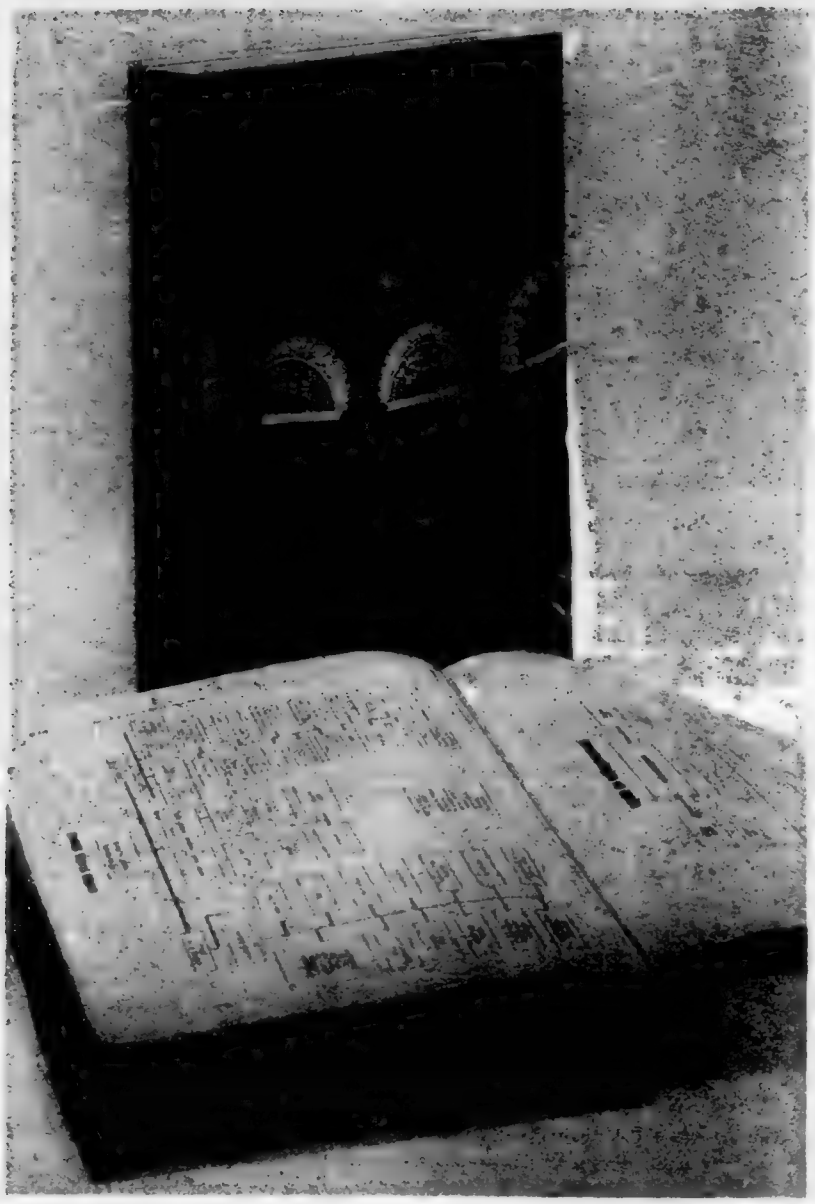

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The President

Proclamation 4938 of May 3, 1982

Application of Certain United States Laws to the Northern Mariana Islands

By the President of the United States of America

A Proclamation

The Northern Mariana Islands, as part of the Trust Territory of the Pacific Islands, are administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations (61 Stat. 3301). The United States has undertaken to promote the political development of the Trust Territory toward self-government or independence, to protect the rights and fundamental freedoms of its peoples, and to guarantee freedom of speech and of the press.

The United States and the Northern Mariana Islands have entered into a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94–241; 90 Stat. 263; 48 U.S.C. 1681 note) pursuant to which many provisions of the laws of the United States have become applicable to the Northern Mariana Islands as of January 9, 1978 (Proclamation No. 4534, Section 2). Section 1004(a) of the Covenant provides that if the President finds a provision of the Constitution or laws of the United States to be inconsistent with the Trusteeship Agreement, the application of that provision to the Northern Mariana Islands may be suspended.

The Communications Act of 1934, as amended, is applicable to the Northern Mariana Islands. Certain provisions of that Act limit the issuance of licenses, other authorizations, and privileges to citizens of the United States. Other provisions of the Act prohibit the issuance of certain licenses to foreign governments, aliens, corporations organized under the laws of a foreign government, and corporations of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned by aliens, or to corporations which are directly or indirectly controlled by corporations under alien control.

The vast majority of the citizens of the Northern Mariana Islands will not become citizens of the United States until the termination of the Trusteeship Agreement. Consequently, the Government of the Northern Mariana Islands, its citizens, and corporations organized or existing under laws of the Northern Mariana Islands, as well as domestic corporations which have officers, directors, or stockholders in excess of 20 percent, who are citizens of the Northern Mariana Islands, or which are otherwise under the control of Northern Mariana Islands interests cannot receive certain licenses, authorizations, and other privileges under the Act. This result would be inconsistent with the obligation assumed by the United States in the Trusteeship Agreement to protect the rights and fundamental freedoms of the people of the Trust Territory and to guarantee freedom of speech and of the press.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including Section 1004(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, do hereby find, declare and proclaim as follows:

1. Any provision of the Constitution or laws of the United States which prohibits the issuance of a license or authority or the grant of a privilege under the Communications Act of 1934, as amended, to foreign governments, aliens, corporations organized or existing under the laws of the Northern Mariana Islands or to domestic corporations which have alien officers, directors, or stockholders, or which are otherwise directly or indirectly controlled by foreign interest would be inconsistent with the Trusteeship Agreement if applied to the Government of the Northern Mariana Islands, or to corporations organized or existing under the laws of the Northern Mariana Islands, and would be inconsistent with the Trusteeship Agreement to the extent that citizens of the Northern Mariana Islands would be considered as aliens or the Government of the Northern Mariana Islands a foreign government for the purposes of the administration of that Act.

2. The application of any such provision, including Sections 303 and 310 of the Communications Act of 1934, as amended (47 U.S.C. 303 and 310), to such Government, corporations, and persons is therefore suspended to the extent of such inconsistency until the termination of the Trusteeship Agreement pursuant to Section 1002 of the Covenant.

3. As used in this Proclamation: (a) "citizen of the Northern Mariana Islands" means an individual citizen of the Trust Territory of the Pacific Islands who is exclusively domiciled within the meaning of Section 1005(e) of the Covenant in the Northern Mariana Islands, and a partnership, unincorporated company, or association whose members and officers are all citizens of the Northern Mariana Islands.

(b) "corporation organized or existing under the laws of the Northern Mariana Islands" means a corporation organized under the Laws of the Government of the Northern Mariana Islands, including a predecessor government, which is doing business exclusively in the Northern Mariana Islands or in the United States.

(c) "Government of the Northern Mariana Islands" includes a political subdivision of the Government of the Northern Mariana Islands;

(d) "domestic corporation" means a corporation organized under the laws of the United States, a State, the District of Columbia, a Territory, or the Commonwealth of Puerto Rico.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

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Rules and Regulations

Federal Register
Vol. 47, No. 87
Wednesday, May 5, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Revision of the United States Standards for Beans

AGENCY: Federal Grain Inspection Service,[1] USDA.
ACTION: Final rule.

SUMMARY: In compliance with the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed and is making changes to the U.S. Standards for Beans. In the interest of clarity, to promote a better understanding of the standards, and to facilitate the marketing of dry beans, FGIS is changing the format of the grade tables in the U.S. Standards for Beans and is eliminating the special and premium grades in all classes of beans except the class Pea beans.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., Regulations and Directives Management, USDA, FGIS, 1400 Independence Avenue SW., Washington, D.C. 20250, Telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: The U.S. Standards for Beans were established under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) (Act)). This action has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. Since the changes are revisions in format to clarify the standards and delete certain special and premium grades, the action has been determined to be nonmajor. Kenneth A. Gilles, FGIS Administrator, has determined that the action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this action applies only to FGIS and those limited number of States which have entered into cooperative agreements with FGIS to perform inspection services under the Act. Further, the changes will not have a significant economic impact on the industry because the revision involves format changes of a non-substantive nature and deletion of certain special and premium grades which more closely reflect current trading practices. Although changes are being made at this time, FGIS will continue to study and evaluate the standards to meet the future needs of the industry.

On October 28, 1980, a proposed rule to revise the format of the grade tables in the U.S. Standards for Beans (7 CFR 68.101 *et seq.*) was published in the **Federal Register** (45 FR 71486). A majority of the comments objected to the proposed revisions on the basis that the tables included the "Choice handpicked" and "Handpicked" special grades for beans. Based on these comments the proposed rule was withdrawn. The tables were further revised and a new proposed rule to revise the format of the grade tables in the U.S. Standards for Beans (7 CFR 68.101 *et seq.*) was published in the **Federal Register** on October 5, 1981 at 46 FR 49066. Several tables which appeared in this proposed rule were incorrect due to error in publication. The October 5, 1981 proposed rule was corrected by an October 20, 1981 **Federal Register** publication at 46 FR 51415. Two comments were received from interested parties on the proposed changes. Both comments supported the proposed changes to the U.S. Standards for Beans with one commenter indicating that the special grades "Choice handpicked", "Handpicked", and "Extra No. 1" are not used in his State because beans are now mechanically milled.

In summary the U.S. Standards for Beans are being revised to reflect the following:

Section 68.133, Grades and grade requirements for the class Pea beans, be revised by changing the format of the table and incorporating information previously shown in footnotes. The heading for § 68.133 is changed to read *Grades, grade requirements, special grades and special grade requirements for the class Pea beans.*

Section 68.134, Grades and grade requirements for the classes Blackeye, Cranberry, Yelloweye, Pinto, Marrow, Great Northern, Small White, Flat Small White, White Kidney, Light Red Kidney, Dark Red Kidney, Small Red, Pink, Black Turtle Soup, Mung, and Miscellaneous beans, be revised to apply only to the class Blackeye beans and by changing the format of the table and incorporating information previously shown in footnotes into the body of the table. Further, the grades and grade requirements for the remaining classes of beans which appear in the current § 68.134 are revised and redesignated as §§ 68.135 through 68.138 as listed below, by changing the format of the tables, and incorporating information previously shown in the footnotes into the body of the tables:

Section 68.135, Grades and Grade Requirements for the Classes Yelloweye Beans and Cranberry Beans, § 68.136, *Grades and Grade Requirements for the Class Pinto Beans,* § 68.137, *Grades and Grade Requirements for the Classes Marrow, Great Northern, Small White, Flat Small White, White Kidney, Light Red Kidney, Dark Red Kidney, Small Red, Pink, Black Turtle Soup, and Miscellaneous Beans,* and § 68.138, *Grades and Grade Requirements for the Class Mung Beans.*

Current § 68.135, *Grades and Grade Requirements for the class Large Lima beans,* and § 68.136, *Grades and Grade Requirements for the class Baby Lima beans, and for the classes of Miscellaneous Lima beans,* be redesignated as §§ 68.139 and 68.140 respectively and revised by deleting the premium grades of "Extra No. 1", changing the format of the tables, and incorporating information previously shown in the footnotes into the body of the tables.

Current § 68.137, *Grade Designations,* be redesignated as § 68.141 and that the designation for the grade "U.S. Substandard" be amended by deleting the requirement that the percentages of splits, damaged beans, contrasting classes and foreign material be shown

[1] Authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof, has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

as part of the grade designation. This factor information is shown elsewhere on the certificate if an offical determination is made during the course of inspection.

Current § 68.138, *Special grades, special grade requirements, and special grade designation for all classes of beans,* be redesignated as § 68.142, *Special Grade Designations,* and be revised by deleting the grade "Handpicked" from all applicable classes of beans and the grade "Choice handpicked" from all classes except Pea beans. The current premium grades "Choice handpicked" and "Prime handpicked" for the class Pea beans are designated as special grades in the revision.

In addition to the above, § 68.1119, *Good Natural Color,* is removed because it is only applicable to the premium grade "Extra No. 1" which is eliminated. The § 68.119 is reserved for future use. Further, § 68.103, *Grades,* is amended to delete the term "premium" as that term is no longer necessary in view of the revisions to the regulations.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Export.

This final rule is indentical to the October 5, 1981 proposed rule (46 FR 49066) as corrected on October 20, 1981 (46 FR 51415), except for several non-substantive changes made for grammatical and usage purposes. In §§ 68.141 and 68.142, the references to the internal divisions of the first sentence which appeared as "a, b, c, and d" in the proposal are changed to "1, 2, 3, and 4" in this final rule.

Accordingly, the United States Standards for Beans are amended so that footnote 1 to Subpart B is revised, § 68.119 is removed and reserved, § 68.103 and §§ 68.133 through 68.138 are revised and §§ 68.139 through 68.142 are added to read as follows:

Subpart B—U.S. Standards for Beans [1]

* * * * *

§ 68.103 Grades.

Grades shall be the numerical grades, substandard grades, sample grades, and special grades provided for in § 68.133–§ 68.142.

* * * * *

§ 68.119 [Reserved]

* * * * *

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

Grades, Grade Requirements, Grade Designations, Special Grades and Special Grade Requirements

§ 68.133 Grades, grade requirements, special grades and special grade requirements for the Class Pea Beans.

Special grade and grade	General appearance	Percent maximum limits of—						
		Moisture [1]	Total defects (total damaged, total foreign material, contrasting classes, splits)	Badly damaged	Foreign material		Contrasting classes [2]	Classes that blend [3]
					Total (includes stones)	Stones		
U.S. Choice Handpicked	(*)	18.0	1.5	0.3	0.01	0.01	0.01	2.0
U.S. Prime Handpicked	(*)	18.0	3.0	0.3	0.01	0.01	0.01	2.0
U.S. No. 1	(*)	18.0	2.0	2.0	0.4	0.2	0.5	4.0
U.S. No. 2	(*)	18.0	3.0	3.0	0.8	0.4	1.0	4.0
U.S. Substandard	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)
U.S. Sample grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture and graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are classed Mixed beans.
[4] Shall not grade off color.
[5] The special grade off color may be applied after the removal of total defects.
[6] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[7] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality

§ 68.134 Grades and grade requirements for the Class Blackeye Beans.

Grade	General appearance	Percent maximum limits of—							
		Moisture [1]	Total Defects (total damaged, total foreign material, contrasting classes, splits)	Total damaged	Clean cut weevil bored [2]	Foreign material		Contrasting classes [3]	Classes that blend [4]
						Total (includes stones)	Stones		
U.S. No. 1	(*)	18.0	4.0	2.0	0.5	0.5	0.2	0.5	5.0
U.S. No. 2	(*)	18.0	8.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3	(*)	18.0	8.0	8.0	0.5	1.5	0.8	2.0	15.0

Grade	General appearance	Percent maximum limits of—								
		Moisture [1]	Total Defects (total damaged, total foreign material, contrasting classes, splits)	Total damaged	Clean cut weevil bored [2]	Foreign material		Contrasting classes [3]	Classes that blend [4]
						Total (includes stones)	Stones		
U.S. Substandard	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)
U.S. Sample grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
[3] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[4] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[5] The special grade off color may be applied after removal of total defects.
[6] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[7] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered or weevily; which have any commercially objectionable odor; which contain insect webbing, or filth, animal filth, or any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.

§ 68.135 Grades and grade requirements for the Classes Yelloweye Beans and Cranberry Beans.

Grade	General appearance	Percent maximum limits of—							
		Moisture [1]	Total defects (total damage, total foreign material, contrasting classes, splits)	Total damage	Foreign material		Contrasting classes [2]	Classes that blend [3]	In addition to classes that blend, white beans similar in size and shape in the class yelloweye beans
					Total (includes stones)	Stones			
U.S. No. 1	(*)	18.0	4.0	2.0	0.5	0.2	0.5	5.0	5.0
U.S. No. 2	(*)	18.0	8.0	4.0	1.0	0.4	1.0	10.0	5.0
U.S. No. 3	(*)	18.0	8.0	6.0	1.5	0.6	2.0	15.0	
U.S. Substandard	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)
U.S. Sample grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[4] The special grade off color may be applied after removal of total defects.
[5] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3, or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[6] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance broken glass or metal fragments; or which are otherwise of distinctly low quality.

§ 68.136 Grades and grade requirements for the Class Pinto Beans.

Grade	General appearance	Percent maximum limits of—						
		Moisture [1]	Total defects (total damaged, total foreign material contrasting classes, splits)	Total damaged	Foreign material		Contrasting classes [2]	Classes that blend [3]
					Total (includes stones)	Stones		
U.S. No. 1	(*)	18.0	9.0	3.0	0.5	0.2	0.5	5.0
U.S. No. 2	(*)	18.0	6.0	5.0	1.0	0.4	1.0	10.0
U.S. No. 3	(*)	18.0	7.0	7.0	1.5	0.6	2.0	15.0
U.S. Substandard	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)
U.S. Sample grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[4] The special grade off color may be applied after removal of total defects.
[5] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 and U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[6] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.

§ 68.137 Grades and grade requirements for the Classes Marrow, Great Northern, Small White, Flat Small White, White Kidney, Light Red Kidney, Dark Red Kidney, Small Red, Pink, Black Turtle Soup, and Miscellaneous Beans.

Grade	General appearance	Percent Maximum limits of—						
		Moisture[1]	Total defects (total damaged, total foreign material, contrasting classes, splits)	Total damaged	Foreign material		Contrasting classes[2]	Classes that blend[3]
					Total (includes stones)	Stones		
U.S. No. 1	(4)	18.0	2.0	2.0	0.5	0.2	0.5	5.0
U.S. No. 2	(4)	18.0	4.0	4.0	1.0	0.4	1.0	10.0
U.S. No. 3	(4)	18.0	6.0	5.0	1.5	0.6	2.0	15.0
U.S. Substandard	(4)	18.0	(5)	(5)	(5)	(5)	(5)	(5)
U.S. Sample grade	(4)	18.0	(6)	(6)	(6)	(6)	(6)	(6)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[4] The special grade off-color may be applied after removal of total defects.
[5] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[6] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.

§ 68.138 Grades and grade requirements for the Class Mung Beans.

Grade	General appearance	Percent maximum limits of—								
		Moisture[1]	Total defects (total damaged, total foreign material, contrasting classes, splits)	Total damaged	Clean-cut weevil bored[2]	Foreign material		Contrasting classes[3]	Classes that blend[4]	
						Total (includes stones)	Stones			
U.S. No. 1	(5)	18.0	2.0	2.0	0.1	0.5	0.2	0.5	5.0	
U.S. No. 2	(5)	18.0	4.0	4.0	0.2	1.0	0.4	1.0	10.0	
U.S. No. 3	(5)	18.0	6.0	5.0	0.5	1.5	0.6	2.0	15.0	
U.S. Substandard	(6)	18.0	(6)	(6)	(6)	(6)	(6)	(6)	(6)	
U.S. Sample grade	(7)	18.0	(7)	(7)	(7)	(7)	(7)	(7)	(7)	

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
[3] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[4] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[5] The special grade off color may be applied after removal of total defects.
[6] U.S. Substandard shall be beans which do not meet the grade requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[7] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments or are otherwise of distinctly low quality.

§ 68.139 Grades and grade requirements for the Class Large Lima Beans.

Grade	General appearance	Percent maximum limits of—											
		Moisture[1]	Total blistered wrinkled and defects (blistered, wrinkled, total damage, total foreign material, contrasting classes, splits)	Damaged beans		Foreign material		Contrasting classes[2]	Splits	Brokens	Classes that blend[3]	Beans through a sieve	
				Total	Badly damaged	Total (includes stones)	Stones					25/64 inch	23/64 inch
U.S. No. 1	(4)	16.0	8.0	2.0	0.5	0.5	0.2	0.5	3.0	5.0	5.0	25	5
U.S. No. 2	(4)	16.0	8.0	3.0	1.0	1.0	0.3	1.0	5.0	5.0	10.0	40	5
U.S. Substandard	(5)	16.0	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)

Grade	General appearance	Percent maximum limits of—												
		Moisture [1]	Total blistered wrinkled and defects (blistered, wrinkled, total damage, total foreign material, contrasting classes, splits)	Damaged beans		Foreign material		Contrasting classes [2]	Splits	Brokens	Classes that blend [3]	Beans through a sieve	
				Total	Badly damaged	Total (includes stones)	Stones					11/64 inch	5/16 inch
U.S. Sample Grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[4] The special grade off color may be applied after removal of total defects.
[5] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[6] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.

§ 68.140 Grades and Grade Requirements for the Classes Baby Lima and Miscellaneous Lima Beans.

Grade	General appearance	Percent maximum limits of—								
		Moisture [1]	Total defects (total damage, total foreign material, contrasting classes)	Badly damaged	Foreign material		Contrasting classes [2]	Blistered wrinkled and/or broken	Splits	Classes that blend [3]
					Total (includes stones)	Stones [4]				
U.S. No. 1	(*)	18.0	2.0	1.0	0.5	0.2	0.5	3.0	3.0	5.0
U.S. No. 2	(*)	18.0	3.0	1.5	1.0	0.3	1.0	5.0	5.0	10.0
U.S. No. 3	(*)	18.0	5.0	2.0	1.5	0.6	2.0	8.0	8.0	15.0
U.S. Substandard	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
U.S. Sample grade	(*)	18.0	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
[4] The special grade off color may be applied after removal of total defects.
[5] U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 and U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
[6] U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.

§ 68.141 Grade designations.

The grade designation for all classes of beans shall include in the following order: (a) The letters "U.S."; (b) the name or number of the grade or the name of any applicable special grade designation as appears in § 68.142 (a) and (b); (c) the class, and in the case of Mixed beans, the name and percentage of each class in the mixture; and (d) the special grade designations, if applicable, as appears in § 68.142 (c) and (d). In addition, the designation for the grade "U.S. Substandard" shall include the percentage of sound beans. Mixed beans shall be graded according to the grade requirements of the class of beans which predominates in the mixture. The factors of contrasting classes, classes that blend and sieve size requirements in the class Large Lima beans shall be disregarded in Mixed beans.

§ 68.142 Special grade designations.

(a) *Choice handpicked.* The special grade designation "Choice handpicked" shall be applicable only to the class Pea beans. The "Choice handpicked" designation shall include in the following order: (1) The letters "U.S."; (2) the words "Choice handpicked"; and (3) "Pea beans".

(b) *Prime handpicked.* The special grade designation "Prime handpicked" is applicable only to the class Pea beans. The "Prime handpicked" designation shall include in the following order: (1) The letters "U.S."; (2) the words "Prime handpicked"; and (3) "Pea beans".

(c) *High moisture.* The special grade designation "High moisture" is applicable to all classes of beans containing over 18.0 percent moisture. The words "high moisture" and the percentage of moisture shall follow the class name.

(d) *Off-color.* The special grade designation "Off-color" shall be applicable to all classes of beans that upon the removal of total defects, are distinctly off-color due to age or any other natural cause but are not materially weathered. The words "off-color" shall follow the name of the class. The special grades "Choice Handpicked", "Prime Handpicked", and the grade "U.S. No. 1", in the class Pea beans shall not be applied if the beans are determined to be off-color.

(Secs. 203, 205, 60 Stat. 1087, 1090 as amended; (7 U.S.C. 1622, 1624))

Dated: April 13, 1982.

Kenneth A. Gilles,

Administrator.

[FR Doc. 82-11884 Filed 5-3-82; 8:45 am]

BILLING CODE 3410-EH-M

Agricultural Marketing Service

7 CFR Part 1006, 1007, 1011, and 1012

[Milk Order Nos. 7, 6, 11, and 12; Docket Nos. AO-366-A19, et al.]

Milk in the Georgia and Certain Other Marketing Areas; Order Amending Orders

7 CFR Part	Marketing Area	AO Nos.
1007	Georgia	AO-366-A19
1006	Upper Florida	AO-356-A19
1011	Tennessee Valley	AO-251-A24
1012	Tampa Bay	AO-347-A22

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts on an emergency basis amendments to the Georgia, Upper Florida, Tennessee Valley, amd Tampa Bay orders. The order changes will provide handlers with limited transportation credits from the marketwide pool for certain Class II and Class III milk transferred or diverted to unusually distant outlets for surplus disposal. The changes, which will apply only through June 30, 1982, were considered at a public hearing held on March 16–17, 1982, in East Point, Georgia. The order changes were requested by cooperative associations that represent dairy farmers who supply milk to the markets.

The changes are necessary to reflect current marketing conditions and to insure that all producers in the affected markets share more equitably in the cost of disposing of unusually large supplies of surplus milk that are expected this spring. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and the opportunity to file exceptions thereto were omitted. Cooperative associations in each market representing more than two-thirds of the producers have approved the issuance of the amended orders.

EFFECTIVE DATE: May 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447–4829).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 4, 1982; published March 10, 1982 (47 FR 10230).

Emergency Final Decision: Issued April 19, 1982; published April 23, 1982 (47 FR 17530).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending each of the aforesaid orders effective upon publication in the **Federal Register.** Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued April 19, 1982 (47 FR 17530). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending each of the aforesaid orders effective upon publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012

Milk marketing orders, milk, dairy products.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.60, paragraph (g) is added to read as follows:

§ 1007.60 Handler's value of milk for computing uniform price

* * * * *

(g) With respect to milk marketed on and after the effective date hereof

through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II or Class III milk pursuant to § 1007.42(b)(3) or § 1007.42(d)(2) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 350 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Atlanta, Georgia; the city hall in Augusta, Georgia; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.60, paragraph (h) is added to read as follows:

§ 1006.60 Handler's value of milk for computing uniform price

* * * * *

(h) With respect to milk marketed on and after the effective date hereof through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II milk pursuant to § 1006.42(b) or § 1006.42(c)(3) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 550 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Jacksonville, Florida; the city hall in Tallahassee, Florida; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.60, paragraph (g) is added to read as follows:

§ 1011.60 Handler's value of milk for computing uniform price

* * * * *

(g) With respect to milk marketed on and after the effective date hereof through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II or Class III milk pursuant to § 1011.42(b)(3) or § 1011.42(d)(2) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 350 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Bristol, Tennessee; the city hall in Knoxville, Tennessee; the city hall in Chattanooga, Tennessee; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.60, paragraph (h) is added to read as follows:

§ 1012.60 Handler's value of milk for computing uniform price

* * * * *

(h) With respect to milk marketed on and after the effective date hereof through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II milk pursuant to § 1012.42(b) or § 1012.42(c)(3) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 700 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Tampa, Florida; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: May 5, 1982.

Signed at Washington, D.C., on April 30, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-12221 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274

Seizure and Forfeiture of Vehicles, Vessels, and Aircraft; Immigration and Nationality Act Amendments of 1981

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Service is amending its regulations dealing with the seizure and forfeiture of conveyances used in the unlawful transportation of aliens in violation of the Immigration and Nationality Act. The recent amendments to the Immigration and Nationality Act by Public Law 97–116 strengthen the Service's authority to seize and forfeit conveyances as a deterrent to the smuggling of aliens into the United States. This interim rule implements the related section of the Act as amended by Public Law 97–116, as well as reorganizes and rewrites the remaining regulations for improved readability.

EFFECTIVE DATES: May 5, 1982. Comments must be received on or before: June 7, 1982.

ADDRESS: Please submit written comments in duplicate to the Commissioner of Immigration and Naturalization, Room 7100, 425 Eye Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washigton, DC 20536, Telephone: (202) 633–3048.

For Specific Information: Paul D. McClure, Criminal Investigator, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536, Telephone: (202) 633–2471.

SUPPLEMENTARY INFORMATION: Section 12 of Pub. L. 97–116, effective December 29, 1981 (95 Stat. 1617) amended section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) to

bring the Immigration and Naturalization Service (INS) forfeiture law and procedures into conformity with those of other enforcement agencies by removing the "innocent owner" seizure exemption previously contained in the Act. All conveyances are now subject to seizure provided the INS can show probable cause that the conveyance seized was used to illegally transport aliens in violation of section 274(a) of the Act. Pub. L. 97–116 provides two exceptions to the forfeiture of seized conveyances: (1) Common carriers, unless the owner or person in charge was a consenting party or privy to the illegal act; and (2) conveyances unlawfully in the possession of a person other than the owner. The Report of the Judiciary Committee (H. Rep. No. 264, 97th Cong., 1st Sess. 27 (1981)) provides a broader exception from forfeiture for an "innocent owner" than in apparent in the plain language of the statute as amended by Pub. L. 97–116. The Report states that the Immigration and Naturalization Service shall provide owners of conveyances with an opportunity to show "that they were not involved in or knowledgeable about its illegal use." This rule incorporates the broad "innocent owner" exception to forfeiture intended by the Committee. Although not stated specifically in the amendment to section 274(b) of the Act, the Committee on the Judiciary also expressed the view that INS should promulgate regulations which will: (1) Require its officers to make a good faith inquiry to ascertain ownership of seized conveyances; (2) insure timely and effective notice to the owners and others with a financial interest in the conveyances; and (3) afford owners the opportunity (prior to the institution of forfeiture proceedings) to show that they were not involved in criminal activity. Section 274.5 of this rule meets these requirements.

The amendment to the Act also relieves INS of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided INS had probable cause for the original seizure. The former requirement in the Act that INS satisfy valid lien or third party interests in the conveyance "without expense to the interest holder" was also removed. The Act now allows the lien holder's interest to be satisfied only after INS' costs associated with the seizure have been deducted and also provides that the Attorney General may retain, sell, or require the General Services Administration to dispose of, any forfeited conveyances.

In addition to implementing the changes made by Pub. L. 97–116, this interim rule reorganizes certain sections of 8 CFR Part 274, and includes pertinent provisions of the Customs law applicable to the Service. These include: Termination of property interests from date of seizure, if the conveyance is later forfeited; requirement that the burden of proof is on the claimant that the property interest in the conveyance existed prior to seizure; change from retail to wholesale value in appraisals; a separate section setting our provisions for filing petitions (for mitigation, remission, or restoration); separate sections on remission and mitigation; requirement that lien holders granted remission or mitigation not return conveyances to culpable owners; provision for INS comment before judicial forfeitures are compromised; and, provision for payment to informants.

The following section-by-section analysis describes the new or amended sections of the regulations:

Section-by-Section Analysis

8 CFR 274.1(a) adds a definition of "common carrier" based on 49 U.S.C. 1(3).

8 CFR 274.1(e) adds a definition of "lien," upon the existence of which a lien holder will be determined.

8 CFR 274.1(f) redefines "owner" (former 8 CFR 274.1(e)) as a person or persons with exclusive rights to possession.

8 CFR 274.1(h) defines "property interest" upon which claims and petitions are based.

8 CFR 274.1(l) adds "or his delegate" to the definition of "regional commissioner."

8 CFR 274.1(m) redefines "seizure" (former 8 CFR 274.1(k)) by removing the 72-hour temporary holding exception to seizure. Under Pub. L. 97–116, INS is now authorized to seize all conveyances based on probable cause.

8 CFR 274.4(a) removes the exceptions to seizure which were provided by the prior law.

8 CFR 274.4(b) provides for termination of property interests from date of seizure if the conveyance is later forfeited.

8 CFR 274.4(c) authorizes the regional commissioner to execute documents of title on forfeited conveyances.

8 CFR 274.5(a) provides that after seizure the Service must attempt to determine ownership of the conveyance in order to determine whether it is subject to forefeiture.

8 CFR 274.5(b) provides that the following conveyances are not subject to forfeiture: (1) Common carriers, unless the owner or person in charge was a consenting party or privy to the illegal act; (2) a conveyance illegally in the possession of another; and (3) a conveyance used in an act to which the owner was not privy, or did not consent.

8 CFR 274.5(c) provides an owner with the opportunity to show that a conveyance is not subject to forfeiture rather than *seizure*.

8 CFR 274.5(d) provides that an owner who establishes that the conveyance is not subject to forfeiture is responsible for all costs incurred by INS, and for their own costs associated with the seizure.

8 CFR 274.6 provides that the burden of proof is on the claimant that a property interest existed prior to seizure.

8 CFR 274.7 revises the appraisal provisions (former 8 CFR 274.6), so that wholesale values, rather than retail price, may be used, based on the presumption that the wholesale value is the value of the conveyance.

8 CFR 274.8, regarding notice to owners and lienholders (former 8 CFR 274.7), is amended by changing the reference to 8 CFR 274.9 due to renumbering.

8 CFR 274.9(a), regarding advertisements (former 8 CFR 274.8(a)), changes reference to 8 CFR 274.8, due to renumbering.

8 CFR 274.9(b)(3) refers the advertisement reader to the provisons of 8 CFR Part 274 rather than republishing those provisions in the advertisement.

8 CFR 274.10, relating to judicial forfeiture upon filing of a claim and bond (former 8 CFR 274.9), is rewritten to remove INS review of the claim for accuracy (a question for the court). This section also provides that the bond will be maintained in the custody of the regional commissioner until resolution of the judicial forfeiture proceedings.

8 CFR 274.11, regarding summary forfeiture (former 8 CFR 274.10), removes the notification requirement to the Commissioner of forfeiture action taken by the regional commissioner.

8 CFR 274.12, relating to judicial forfeiture of conveyances appraised at over $10,000 (former 8 CFR 274.11), is amended to include reference to §§ 274.9 and 274.10.

8 CFR 274.13 sets out the procedure to be used for filing petitions relating to seizure and forfeiture. These are: remission, mitigation, and restoration.

8 CFR 274.13(a) provides that each petition must be executed and sworn to by the petitioner.

8 CFR 274.13(b) sets out the required elements of the petition.

8 CFR 274.13(c) requires filing a separate petition for each request for relief.

8 CFR 274.13(d) provides that a petition may be denied by the regional commissioner if the petition is contrary to the interests of justice.

8 CFR 274.14 sets out the requirements for filing a petition for remission. Formerly, requirements for petitions for remission and mitigation were set out in one section (former 8 CFR 274.12).

8 CFR 274.14(a) provides that a lienholder may file a petition for remission using the procedures under § 274.13 of 8 CFR.

8 CFR 274.14(b) provides that an owner is ineligible for remission under this section and must proceed under § 274.5 of 8 CFR. The conveyance of an innocent owner is not subject to forfeiture

8 CFR 274.14(c) sets out the eligibility requirements for remission.

8 CFR 274.14(d)(1) requires payment of costs, or of the amount by which appraised value exceeds petitioner's interest before remission is granted.

8 CFR 274.14(d)(2) requires that the petitioner execute an instrument holding the government harmless for all future claims before remission is granted.

8 CFR 274.14(d)(3) requires the petitioner to agree not to return the conveyance to any culpable owner before remission is granted.

8 CFR 274.14(d)(4) provides that the regional commissioner may set additional requirements before remission as appropriate.

8 CFR 274.14(e) provides that where rival claimants exist, primary claimants and registered owner petitions are to be adjudicated first.

8 CFR 274.14(f) provides that filing a petition for remission does not extend the period for filing claim and bond.

8 CFR 274.15 provides for petitions for mitigation (formerly included in 8 CFR 274.12).

8 CFR 274.15(a) provides that a grant of mitigation is discretionary, must be filed as provided by § 274.13, and will take the form of a money penalty in addition to costs under remission. Mitigation may be granted only if it promotes justice and does not diminish the deterrent effects of section 274(b) of the Act.

8 CFR 274.15(b) conditions a grant of mitigation upon: (1) Execution by the petitioner of an instrument holding the government harmless for future claims; (2) an agreement not to return the vehicle to a culpable owner; and (3) other terms as the regional commissioner finds appropriate.

8 CFR 274.16 sets out the requirements for a petition of restoration of proceeds after sale, or for value of a conveyance placed into official use.

8 CFR 274.16(a) provides that a petition for restoration must be supported by proof that the petitioner did not know of the seizure prior to declaration of forfeiture.

8 CFR 274.16(b) provides that a petition for restoration may be granted only as provided by §§ 274.5, 274.14, and 274.15 of this part as applicable.

8 CFR 274.17 sets out the time limits for filing petitions.

8 CFR 274.17(a) provides that once a conveyance has been forfeited and sold, or placed in official use, a petition for remission or mitigation may not be accepted.

8 CFR 274.17(b) provides that a petition for restoration must be made within 90 days of sale or placement into official use of the conveyance.

8 CFR 274.18 sets out straw purchase transactions (formerly part of 8 CFR 274.13 relating to provisions applicable to particular situations). A lienholder is ineligible for remission, mitigation, or restoration if the lienholder knew, or had reason to believe, the purchaser was a straw purchaser.

8 CFR 274.19(a) provides that petitions on seizures where judicial proceedings have been instituted are to be forwarded to the appropriate U.S. Attorney.

8 CFR 274.19(b) provides for an investigation of each petition forwarded to the U.S. Attorney.

8 CFR 274.19(c) provides that the Assistant Attorney General, Criminal Division, Department of Justice, shall adjudicate petitions on seizures in which judicial proceedings have been instituted.

8 CFR 274.20 provides that judicial forfeiture proceedings may be compromised only with concurrence of the Criminal Division and an opportunity for comment by the regional commissioner.

8 CFR 274.21 incorporates the provisions of 19 U.S.C. 1619 regarding compensation to informants as provided for by section 12 of Pub. L. 97–116, 95 Stat. 1617.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the changes are mandated by law and delay is contrary to the public interest.

In accordance with 5 U.S.C. 605(d), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of E.O. 12291.

List of Subjects in 8 CFR Part 274

Administrative practice and procedure, Aircraft, Conveyances, Immigration, Law enforcement, Mitigation, Motor carriers, Motor vehicles, Penalties, Seizures and forfeitures, Vessels.

Accordingly, Title 8, Chapter I, of the Code of Federal Regulations is amended as follows:

1. 8 CFR Part 274 is revised to read as follows:

PART 274—SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT

Sec.

274.1 Definitions.
274.2 Officers who will make seizures.
274.3 Custody and other duties of the regional commissioner.
274.4 Conveyances subject to seizure; termination of interest.
274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.
274.6 Proof of property interest.
274.7 Appraisal.
274.8 Notice to registered owner and lienholder of seizure.
274.9 Advertisement.
274.10 Judicial forfeiture upon claim and bond.
274.11 Summary forfeiture.
274.12 Judicial forfeiture.
274.13 Procedures for filing petitions.
274.14 Petition for remission.
274.15 Petition for mitigation.
274.16 Petition for restoration of proceeds.
274.17 Time for filing petitions.
274.18 Straw purchase transactions.
274.19 Handling of petitions; judicial forfeiture.
274.20 Compromise of claim.
274.21 Awards of compensation to informants.

Authority: Secs. 103, 274(b) of the Immigration and Nationality Act as amended by Sec. 12, Pub. L. 97–116, 95 Stat. 1617 (8 U.S.C. 1103, 1324(b).

§ 274.1 Definitions.

As used in this part, the following terms mean:

(a) The term "common carrier," as defined in 49 U.S.C. 1(3), means an express carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

(b) The term "consenting party or privy to the illegal act" means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person would reasonably be expected to know of the illegal activity.

(c) The term "conveyance" means a vessel, vehicle, or aircraft as used in

section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. However, an immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle subject to seizure.

(d) The term "custodian" means the regional commissioner who, under section 274.3 of this part has been designated to receive and maintain in storage all conveyances seized under the Act.

(e) The term "lien" means an interest created by a conditional sales contract, mortgage, title retention contract, lease, or debt reduced to a judicial judgment against the vehicle.

(f) The term "owner" means a person or persons who have the right to possess and use the conveyance to the exclusion of others.

(g) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(h) The term "property interest" means any assertion of ownership, lien, or other legal entitlement to permanent possession of the vehicle.

(i) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of the conviction, all of which occurred more than ten years prior to the date the petitioner acquired interest in the seized property, is not considered a record: *Provided, however,* that two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further,* that the regional commissioner may consider as constituting a record, an arrest or series of arrests in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(j) The term "related crime" means any crime related to the illegal bringing in, harboring, transportation, entry, reentry, or importation of aliens.

(k) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(l) The term "regional commissioner" means the regional commissioner of the Immigration and Naturalization Service or his delegate.

(m) The term "seizure" means the act of taking the conveyance into the custody of the Service for the express purpose of forfeiting it in accordance with the provisions of section 274(b) of the Act.

§ 274.2 Officers who will make seizures.

For the purpose of carrying out the provisions of section 274(b) of the Act, any immigration officer may be authorized and designated by the Commissioner of the Immigration and Naturalization Service to seize a conveyance which may be subject to seizure.

§ 274.3 Custody and other duties of the regional commissioner.

Any officer seizing a conveyance under the Act shall store the conveyance in a location designated by the custodian, which location shall be generally in the judicial district of the seizure. Regional commissioners are designated as custodians to receive and maintain in storage all conveyances seized under the Act. The regional commissioners are also authorized to dispose of any conveyances pursuant to the Act and any other applicable statutes or regulations relative to disposal, and to perform other duties (not inconsistent with the provisions of the Act) regarding the seized conveyances and the proceeds of sales thereof as are imposed on district directors of the U.S. Customs Service with respect to seizures under the Customs law, including the maintenance of appropriate records concerning the seizure and disposition of vehicles.

§ 274.4 Conveyances subject to seizure; termination of interest.

(a) Any conveyance which an officer has probable cause to believe has been used in the commission or furtherance of a violation of section 274(a) of the Act is subject to seizure.

(b) Any property interest is automatically terminated as of the date of the seizure if the vehicle is later forfeited. Any provision of state law which recognizes a continued property interest or right to reinstatement of property in a conveyance has no effect after the seizure.

(c) The regional commissioner has authority to execute a document of title which will be recognized in deciding any challenge to ownership of a conveyance forfeited under this part.

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance seized under section 274(b) of the Act and this Part, to determine whether the conveyance is subject to forfeiture.

(b) The following conveyances are not subject to forfeiture: (1) A conveyance used by any person as a common carrier, unless it appears that the owner or other person in charge was a consenting party or privy to the illegal act; (2) a conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state; and (3) a conveyance established by the owner to have been used in an act to which the owner was not privy, or did not consent.

(c) The owner of the seized conveyance will be informed of the right to request a personal interview with an immigration officer and to present evidence to establish that the vehicle is not subject to forefeiture. If the officer determines not to forfeit the vehicle, the vehicle may be returned to the owner upon payment of costs as provided for in paragraph (d) of this section.

(d) If at any time after seizure the regional commissioner decides not to forfeit the conveyance, the owner shall be notified by letter, return receipt requested, that the vehicle will be made available at the place of storage. The owner is responsible for all expenses of seizure and custody, which must be paid prior to release of the conveyance. If the conveyance involved is the subject of judicial forfeiture proceedings instituted under section 274(b) of the Act and § 274.12 of this Part, the regional commissioner shall notify the U.S. Attorney that the conveyance is required to be returned to the owner under section 274(b) of the Act, and that judicial forfeiture proceedings must be terminated. The notice to the owner must also state that if the conveyance remains unclaimed for 60 days following the receipt of the notice provided in this paragraph, the conveyance shall be considered to be voluntarily abandoned to the government, and the regional commissioner shall dispose of it under section 274(b) of the Act and this Part.

§ 274.6 Proof of property interest.

The burden of proof is on the claimant that the property interest existed prior to seizure. A presumption that an interest does not exist will be made where the claimant fails to present documentation showing compliance with required state formalities.

§ 274.7 Appraisal.

The custodian shall appraise the conveyance to determine the domestic value at the time and place of seizure. The custodian shall use appraisal publications showing wholesale values common to the area. If there is no market for the conveyance at the place of seizure, the domestic value will be considered the wholesale value in the

principal market nearest the place of seizure. The wholesale value will be the presumed value of the conveyance.

§ 274.8 Notice to registered owner and lienholder of seizure.

Whenever a seizure takes place, notice must be given to the registered owner and any known lienholder notifying them of the seizure of the conveyance and the contemplated forfeiture. The notice must be accompanied by copies of the applicable regulations, section 274 of the Act, and the proposed advertisement if an advertisement is required under § 274.9 of this part. The owner shall be informed of the provisions of § 274.5(b) of this part.

§ 274.9 Advertisement.

(a) If the appraised value does not exceed $10,000, the custodian shall cause a notice of the seizure and of the intention to forfeit and sell or otherwise dispose of the conveyance to be published once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the seizure occurred. A copy of this notice must be sent to the registered owner of the conveyance and to any known lienholder, in accordance with § 274.8 of this part.

(b) The notice must: (1) Describe the conveyance seized and show the motor and serial numbers, if known; (2) state the time, cause, and place of seizure; and (3) state that the conveyance is subject to forfeiture except as provided by Part 274 of this chapter.

§ 274.10 Judicial forfeiture upon claim and bond.

(a) Any person claiming ownership of a seized conveyance may obtain judicial review by filing a claim within 20 days of the date of first publication of the notice of seizure, alleging that the conveyance was improperly seized, and posting bond to cover all the costs and expenses of the proceedings if forfeiture is denied. The bond in the sum of $250 must be in cash, certified check, or on Form I–637 (Bond of Claimant of Seized Conveyance for Costs of Court), if the surety is approved by the regional commissioner. The bond must be made payable to the Immigration and Naturalization Service and will be maintained in the custody of the regional commissioner. The regional commissioner may waive the bond requirement in the manner provided by *Waiver of fees* in § 103.7(c)(1) of this chapter.

(b) The regional commissioner shall transmit the claim, notice that a satisfactory surety has been accepted, and provide a description of the facts and circumstances of the seizure to the United States Attorney for the judicial district in which the seizure was made, for forfeiture proceedings on the vehicle in the manner prescribed by law.

(c) The filing of a claim and the posting of bond does not entitle the claimant to possession of the vehicle but does stop the summary forfeiture proceedings. Upon conclusion of the action, the regional commissioner shall disburse the money to pay costs up to $250, and shall return any additional sum to the obligor.

§ 274.11 Summary forfeiture.

If the appraised value does not exceed $10,000, and a claim and bond are not filed within 20 days of the first publication of the advertisement specified under § 274.9 of this part, the regional commissioner, as custodian, may declare the conveyance forfeited. The regional commissioner shall prepare the declaration of forfeiture and proceed as provided for in § 274.3 of this part.

§ 274.12 Judicial forfeiture.

If the appraised value is greater than $10,000, or a claim and bond have been received for a conveyance appraised at $10,000 or less, as provided by § 274.10 of this part, the custodian shall transmit a description of the conveyance and a complete statement of the facts and circumstances surrounding the seizure to the U.S. Attorney for the judicial district in which the seizure was made for forfeiture proceedings in the manner provided by law. The U.S. Attorney shall also be furnished with the newspaper advertisement if an advertisement was required by § 274.9 of this part.

§ 274.13 Procedures for filing petitions.

(a) Any person having an appropriate property interest in any conveyance which has been seized may file a petition. The petition shall be filed with the regional commissioner if the conveyance is subject to summary forfeiture under § 274.11 of this part, and filed with the Attorney General if the conveyance is subject to judicial forfeiture under § 274.10 or § 274.12 of this part. The petition must be executed and sworn to by the person alleging an interest in the conveyance.

(b) The petition must include the following: (1) A complete description of the conveyance, including motor and serial numbers, if known, and the date and place of seizure; (2) the petitioner's interest in the conveyance which must be established as provided in § 274.6 of this part; and, (3) the facts and circumstances relied upon by the petitioner to justify remission, mitigation, or restoration.

(c) A separate petition must be filed to support each request for relief from forfeiture as provided for in §§ 274.14, 274.15, or 274.16 of this part.

(d) Although a petitioner has satisfactorily established compliance with the administrative conditions applicable to the particular situation, the regional commissioner may deny relief if there are unusual circumstances present which provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be contrary to the interests of justice.

§ 274.14 Petition for remission.

(a) A petition for remission may be filed by any person holding a lien against a seized conveyance. The petition must be filed as provided for in § 274.13 of this part.

(b) The owner of the conveyance is ineligible for the relief under this section and must proceed under § 274.5 of this part for relief.

(c) The regional commissioner shall not remit a forfeiture unless the petitioner establishes:

(1) A valid, good faith interest in the seized conveyance;

(2) That at no time did the petitioner have any knowledge or reason to believe that the conveyance in which an interest is claimed was being or would be used in violation of the law;

(3) That at no time did the petitioner have any knowledge or reason to believe that the owner of the conveyance had any record or reputation for violating laws of the United States or of any state for related crime; and

(4) That the petitioner had taken all reasonable steps to prevent the illegal use of the conveyance.

(d) Grant of a petition for remission is conditioned upon:

(1) Payment of all costs of seizure incurred by the United States or payment of the amount by which the appraised value at time of seizure exceeds the petitioner's net interest in the conveyance, whichever is greater;

(2) Execution of an instrument by the petitioner holding the government, its agents, and employees harmless from all claims which may result from the grant of remission;

(3) Execution of an agreement that the vehicle shall not be returned to any culpable owner; and

(4) Any other terms or conditions as the regional commissioner determines to be appropriate.

(e) Where rival claimants exist, remission will not be granted to any

petitioner who has a subordinate lien to another petitioner nor until any claim of the registered owner has been finally adjudicated.

(f) Filing of a petition does not extend the time for filing a claim and bond.

§ 274.15 Petition for mitigation.

(a) In addition to discretionary authority to grant relief by way of complete remission of forfeiture, the regional commissioner may mitigate forfeitures of seized conveyances. A petition for mitigation may be filed only as provided for in § 274.13 of this part. To be eligible for relief under this section, the petitioner must establish that return of the vehicle promotes the interests of justice and does not diminish the deterrent effect of section 274(b) of the Act. Mitigation will take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Grant of a petition for mitigation is conditioned upon:

(1) Execution of an instrument by the petitioner holding the government, its agents, and employees harmless from all claims which may result from the grant of mitigation;

(2) Execution of an agreement that the vehicle shall not be returned to any culpable owner; and

(3) Any other terms or conditions as the regional commissioner determines to be appropriate.

§ 274.16 Petition for restoration of proceeds.

(a) A petition for restoration of proceeds of sale, or for value of a conveyance placed in official use must be supported by proof that the petitioner did not know of the seizure prior to the declaration of forfeiture.

(b) Any petition for restoration of proceeds must be filed and may be granted only as provided for in §§ 274.5, 274.14, and 274.15 of this part, as applicable.

§ 274.17 Time for filing petitions.

(a) Once a seized conveyance has been forfeited and placed in official use, or sold, a petition for remission or mitigation of forfeiture can no longer be accepted.

(b) A petition for restoration of proceeds of sale, or for the value of property placed in official use, must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

§ 274.18 Straw purchase transactions.

Any person who purchases in their own name a conveyance for another who has a record or reputation for related crimes is a straw purchaser. If a lienholder knows or has reason to believe that the purchaser of record is a straw purchaser, a petition filed by the lienholder shall be denied unless the petitioner-lienholder complies with the requirements of § 274.14(c) of this part as to both the purchaser of record and the real purchaser. This rule also applies where money is borrowed on the security of property held in the name of the straw purchaser for the real purchaser.

§ 274.19 Handling of petitions; judicial forfeiture.

(a) If the petition involves a case which has been referred to the U.S. Attorney for institution of judicial forfeiture, the regional commissioner shall transmit the petition to the U.S. Attorney for the judicial district in which the seizure occurred. The regional commissioner shall notify the petitioner of this action.

(b) The regional commissioner shall initiate a Service investigation into the merits of every petition transmitted to the U.S. Attorney, and shall, if requested, promptly submit a report to the U.S. Attorney.

(c) Upon receipt of a petition and a copy of the investigation, the United States Attorney shall forward a copy of the petition, the report, and a recommendation as to the grant or denial of the petition to the Assistant Attorney General, Criminal Division, Department of Justice for adjudication.

§ 274.20 Compromise of claim.

Once a judicial forfeiture proceeding is commenced, it may be compromised by the United States Attorney only with the concurrence of the Assistant Attorney General, Criminal Division, Department of Justice. In considering a compromise, the United States Attorney shall submit a report addressing the probabilities of successfully prosecuting the forefeiture action and the terms of the possible compromise offer. A copy of this report will also be forwarded to the regional commissioner for Service comment before final action is taken.

§ 274.21 Awards of compensation to informants.

The regional commissioners may, as provided for in 19 U.S.C. 1619, make awards of compensation to informants who have provided information leading to seizures and eventual forfeitures of conveyances. An award is not to exceed 25 percent of the net recovery to the United States nor exceed $50,000 in any case.

Dated: April 21, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-12236 Filed 5-4-82; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0402; Reg. H]

Membership of State Banking Institutions in the Federal Reserve System; Technical Amendment

AGENCY: Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: Section 208.9(d) of Regulation H (12 CFR 208.9(d)) is amended to conform a citation in the footnote with regulatory changes adopted by the Board.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Beverly A. Belcamino, Attorney (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In 1979, the Board revised its regulations dealing with the foreign operations of member banks (Regulation M, 12 CFR Part 213) and foreign investment by bank holding companies (§ 225.4(f) of Regulation Y, 12 CFR 225.4(f)). These regulations have been combined in a comprehensive regulation entitled "International Banking Operations" and designated as Regulation K (12 CFR Part 211).

Section 208.9(d) continues to cite Regulation M in reference to a definition that presently appears in § 211.2(f) of Regulation K (12 CFR 211.2(f)). Consequently, the Board has amended § 208.9(d) to conform with this regulatory change. Because this amendment is technical in nature, the Board for good cause finds that the notice, public procedure, and deferral of effective date provisions of 5 U.S.C. 553 (b) and (d) with regard to this action are unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Part 208

Banks, banking, Reporting requirements, Securities.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Pursuant to its authority under section 9 of the Federal Reserve Act (12 U.S.C. 321–338), the Board amends Regulation H by revising § 208.9(d) to read as follows:

§ 208.9 Establishment or maintenance of branches.

(d) Foreign branches. With prior Board approval, a member state bank having capital and surplus of $1,000,000 or more may establish branches in "foreign countries", as defined in § 211.2(f) of Regulation K (12 CFR 211.2(f)). If a member state bank has established a branch in such a country, it may, unless otherwise advised by the Board, establish other branches therein after 30 days' notice to the Board with respect to each such branch.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors, April 28, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-12288 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5323/R102; PH FRL 2113-8]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation permitting the combined residues of the insecticide chlorpyrifos and its metabolite in corn oil. This regulation to establish the maximum permissible level for the combined residues of the insecticide in corn oil was requested by Dow Chemical Co.

EFFECTIVE DATE: Effective on May 5, 1982.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 16, 1981 (46 FR 61326) which announced that Dow Chemical Co., PO Box 1706, Midland, MI 48640, had submitted a food additive petition (FAP 1H5323) to the EPA. The petition proposed that 21 CFR 193.85 be amended by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in corn oil at 3.0 parts per million (ppm).

No comments were received in response to this notice of filing.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included: A 2-year rat feeding/oncogenicity study and a dog feeding study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw) per day based on RBC cholinesterase activity; a mouse oncogenicity study which was negative at 15 ppm (highest dose); and a mouse teratology study which was negative at 25 mg/kg. Studies on delayed neurotoxicity and reproduction showed negative potential. Based on the 2-year chronic rat feeding study with a NOEL of 0.1 mg/kg of bw/day, and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.01 mg/kg of bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from these tolerances and previously established tolerances for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 0.01 ppm to 3.0 ppm does not exceed the ADI.

The metabolism of chlorpyrifos is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of chlorpyrifos, nor are there any other relevant considerations involved in establishing this tolerance.

A related document [FAP 1H5323/R103] establishing a regulation permitting residues of chlorpyrifos in or on corn soapstock appears elsewhere in this issue of the **Federal Register.**

Desirable data which are considered lacking from the petition include a 2-generation rat reproduction study and a teratology study in a second species. In a letter dated February 11, 1982, the petitioner indicated that these studies would be submitted to the Agency by June 1983. The petitioner also agreed to voluntarily delete the use on corn from the label should the studies be found to exceed the risk criteria for unreasonable adverse effects.

The insecticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before June 4, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: May 5, 1982.

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: April 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 193.85(d) is revised by reformatting the material into alphabetical tabular format and

alphabetically inserting corn oil to read as follows:

§ 193.85 Chlorpyrifos.

* * * * *

(d) Tolerances are established for the combined residues of the insecticide chlorpyrifos [*0,0*-diethyl *0*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following commodities:

Commodities	Parts per million
Corn oil	3.0
Peanut oil	1.5

[FR Doc. 82-11825 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-50-M

21 CFR Part 561

[FAP 1H5323/R103; PH FRL 2114-3]

Tolerances for Pesticides in Animal Feeds Administered by Environmental Protection Agency; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit the combined residues of the insecticide chlorpyrifos and its metabolite in or on corn soapstock. This regulation to establish the maximum permissible level for the combined residues of the insecticide in or on the commodity was requested by Dow Chemical Co.

EFFECTIVE DATE: Effective on May 5, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 16, 1981 (46 FR 61326) which announced that Dow Chemical Co., PO Box 1706, Midland, MI 48640, had submitted a feed additive petition (FAP 1H5323) to the EPA. The petition proposed that 21 CFR 561.98 be amended by establishing a regulation permitting the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on corn soapstock at 1.0 part per million (ppm).

No comments were received in response to this notice of filing.

The scientific data and other relevant material in support of this regulation are contained and discussed in a related document [FAP 1H5323/R102] which appears elsewhere in this issue of the **Federal Register**.

The insecticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before June 4, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: May 5, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: April 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 561.98(a) is amended by adding and alphabetically inserting the commodity corn soapstock to read as follows:

§ 561.98 Chlorpyrifos.

(a) * * *

Feed	Parts per million
Corn soapstock	1.0

* * * * *

[FR Doc. 82-11826 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

[DoD Directive 1215.8]

Senior Reserve Officers Training Corps Programs

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This Part is being reissued to update ROTC policy and to establish guidance for conducting and administering the ROTC. Relevant changes add (1) an active duty commitment and reimbursement requirements for ROTC scholarship students who fail voluntarily to complete the ROTC program; (2) a means for assessing unit viability as required by Congressional guidance; and (3) a language requirement for ROTC students.

EFFECTIVE DATE: This part was approved and signed by the Deputy Secretary of Defense February 8, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Tucker, Director of Training and Education (OSD/MRA&L(TE)), (202) 695-1760. Office of the Deputy Assistant Secretary of Defense (MP&FM), the Pentagon, Room 3C-960, Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION: In FR Doc. 68-10646, appearing in the **Federal Register** on September 5, 1968 (33 FR

12548), the Office of the Secretary of Defense (OSD) published this Part, and in FR Doc. 71-11574, appearing in the Federal Register on August 11, 1971 (36 FR 14736) the OSD revised this Part. OSD is again reissuing Part 92, updating it, and incorporating the changes mentioned in the SUMMARY, above.

List of Subjects in 32 CFR Part 92

Armed Forces reserves, Colleges and universities.

Accordingly, Chapter I, 32 CFR Part 92 is revised to read as follows:

Part 92—SENIOR RESERVE OFFICERS TRAINING CORPS PROGRAM

Sec.
92.1 Reissuance and purpose.
92.2 Applicability.
92.3 Definitions.
92.4 Policy.
92.5 Procedures.
92.6 Responsibilities.
92.7 Procedures regarding oaths and security requirements, medical examinations, deferment, commissioning and assignment of graduates.

Authority: 5 U.S.C. 301, 10 U.S.C. 511, 672(d); 2102(b) (1), (2), and (3), and 2109; 11 U.S.C.

§ 92.1 Reissuance and purpose.

This Part is reissued, outlines the policy of the Senior Reserve Officers Training Corps (ROTC) program, assigns responsibilities, and establishes guidance for conducting and administering the ROTC.

§ 92.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 92.3 Definitions.

(a) *Field Training.* (1) Summer camp training prescribed by section 2109, U.S.C. Title 10.

(2) Additional training, authorized by the Secretary of the Military Department concerned, as practical field training designed for the further instruction and leadership development of members of the program.

(b) *Education.* Any course or program of instruction in an institution of postsecondary education.

(c) *ROTC Scholarship.* The payment in whole or in part by the Secretary of the Military Department concerned for any course or program of education provided by any public or private educational institution. This includes payment for tuition, fees, books, and supplies essential for a course of postsecondary study, and authorized pay and allowances for room, board, uniforms, travel, and military training.

(d) *ROTC Scholarship, Educational Costs.* The portion of the scholarship that pays for an ROTC member's tuition, fees, books, and supplies essential for a course of postsecondary study and other educational expenses paid by the ROTC scholarship. It excludes the portion of the scholarship that provides for pay and allowances for room, board, uniforms, travel and military training.

§ 92.4 Policy.

(a) The purpose of the Senior ROTC is to provide a permanent and stable program of military education at designated college-level institutions to prepare selected students for service as Regular or Reserve commissioned officers in the Army, Navy, Air Force, or Marine Corps.

(b) Senior ROTC educational programs qualify students for commissioning and establish a sound basis for their future professional growth and effective performance in the Military Service of their choice. The primary objectives of the Senior ROTC program are to provide ROTC students with:

(1) An understanding of the fundamental concepts and principles of military, naval science, or aerospace studies.

(2) A basic understanding of associated professional knowledge.

(3) A strong sense of personal integrity, honor, and individual responsibility.

(4) An appreciation of the requirements for national security.

§ 92.5 Procedures.

(a) *Establishment and Continuation of ROTC Units at Educational Institutions.* (1) To receive consideration for establishment of an ROTC unit, an educational institution must:

(i) Apply in writing to Military Departments.

(ii) Be fully accredited by the appropriate regional accrediting association, recognized by the Council on Postsecondary Accreditation and the Department of Education.

(iii) Agree to provide adequate physical facilities as specified by the respective Military Department.

(iv) Certify that it does not discriminate with respect to admission or subsequent treatment of students on the basis of race, religion, color, national origin, or sex, unless the institution is a single sex institution in its overall admissions policy.

(2) ROTC units may not be established or maintained at an educational institution unless:

(i) The senior commissioned officer of the Military Department concerned is given the academic rank of professor (10 U.S.C. 2102(b)(1))

(ii) The institution fulfills the terms of its agreement with the Secretary of the Military Department concerned (10 U.S.C. 2101(b)(2))

(iii) The institution adopts as a part of its curriculum a 4-year course of military instruction or a 2-year course of advanced training of military instruction, or both, which the Secretary of the Military Department concerned prescribes and conducts (10 U.S.C. 2102(b)(3)). Student enrollment shall be elective or compulsory as provided by state law or the authorities of the institution.

(3) Two or more Military Departments may operate ROTC units on the same campus. Decisions to collocate additional units shall be based on the school's ability to accommodate the additional unit without affecting the ability of the original unit to remain productive. Before final selection of an educational institution to receive a new ROTC unit, a Military Service shall:

(i) Furnish lists of proposed new units to the other Military Services.

(ii) Consult with any Military Service that already has a unit at the school under consideration or is actively considering the school for establishment of a new unit.

(iii) Negotiate with such Military Service when problems may arise from collocation of two or more ROTC units on the same campus.

(iv) Refer matters of conflict to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics (ASD(MRA&L))) if the difficulties cannot be resolved among the Military Services.

(4) Before releasing information on the location of proposed ROTC units, the Military Department shall provide this information to the Office of the ASD(MRA&L) and the other Military Services.

(b) *Disestablishment of ROTC Units.* Officer production from each ROTC unit shall be adequate to justify the investment of DoD resources.

(1) Officer production indices from an ROTC unit shall be based on viability standards that take into account the following factors.

(i) The quality of the officer produced.

(ii) The cost of maintaining the unit.

(iii) The kinds of officers produced.

(iv) The number of officers produced by the unit.

(2) The methodology used to compute the four factors in the formula shall be left to the discretion of the Military

Department Secretaries. The ASD(MRA&L) in coordination with the Assistant Secretary of Defense (Comptroller) shall approve the methodology used and any proposed changes.

(3) The Secretary of the Military Department concerned may set the minimum enrollment standards at the Military Science 3-level and above.

(4) Each year the Military Departments shall advise ROTC institutions whose units fall below the prescribed minimum viability standards that the units have been placed in an evaluation status for a period of up to 4 years. During this period, the Military Services shall work closely with the institutions to seek measures that will make the ROTC units fully viable.

(5) Units shall be released from evaluation status as soon as they meet or exceed the minimum viability index.

(6) At the end of the evaluation period, the Military Departments shall initiate disestablishment procedures. Units shall be phased out with sufficient time to permit enrolled ROTC students to complete the program or offer the students a practical alternative for obtaining commissions.

(7) OASD(MRA&L) shall be advised when ROTC units are placed in an evaluation status and of the final disposition of each case.

(8) The decision to disestablish an ROTC unit is the prerogative of the Secretary of the Military Department concerned.

(c) *Operation of ROTC Units*—(1) *Academic Credit for ROTC Courses Taught by Military Instructors.* Credit for ROTC courses shall be reviewed by host institutions on the same basis as other institutional courses. If credit is questioned, the institution shall recommend adjustments that would make the courses credit-worthy. Regardless of the amount of credit, ROTC course grades must appear on student transcripts. Denial of degree credit for ROTC courses would not necessarily mean withdrawal of the unit, but the Military Departments shall stress preference for degree credit ROTC courses when writing contracts with institutions.

(2) *Student Eligibility for ROTC Based on Undergraduate Major Courses of Study.* Undergraduate students may not be denied the opportunity to enroll in ROTC solely because of their major course of study.

(3) *Active Duty Commitment and Reimbursement Requirements for Scholarship Students.—(i) The Secretary of the Military Department concerned shall require, as a condition of providing an ROTC scholarship to any person, that he or she enter into a written contract in which the recipient agrees:*

(A) To complete the educational requirements specified in the agreement and to serve on active duty for the period specified in the agreement;

(B) That if that person fails to complete the education requirements specified in the agreement, that person will serve on active duty for a period specified in the agreement;

(C) That if he or she voluntarily or because of misconduct fails to complete the period of active duty specified in the agreement, he or she shall reimburse the United States in an amount that bears the same ratio to the total cost of education provided that person as the unserved portion of active duty bears to the total period of active duty the person agreed to serve; and

(D) To such other terms and conditions as the Secretary of the Military Department concerned may prescribe to protect the interests of the United States.

(ii) The Secretary concerned shall determine the period of active duty to be served by any ROTC scholarship recipient.

(iii) The Military Department Secretary concerned shall (A) prescribe the conditions for repayment of an individual's outstanding loan obligation such that the interest rate, if applicable, the monthly repayment, term, and method of payment reasonably replicate the repayment schedule of the Guaranteed Student Loan (GSL) sponsored by the Department of Education, and (B) establish procedures for proper accounting and timely collection of loan repayment funds due to the Treasury on behalf of the Military Service concerned.

(iv) The obligation to reimburse the United States is, for all purposes, a debt owing the United States. A discharge in bankruptcy under Title 11 U.S.C. may not release a person from an obligation to reimburse the United States under the terms of an agreement defined in this Directive if the final decree of the discharge in bankruptcy was issued within a period of 5 years after the last day of a period which such person had agreed to serve on active duty. This applies to a discharge in bankruptcy in any proceeding that began after September 30, 1978.

(4) *Procedures When Advanced Course Students Drop ROTC.* When advanced course students drop ROTC in breach of their contractual agreements, the senior officer commanding the ROTC unit shall appoint a board of officers or an investigating officer to determine the reasons of such action. At least one university official (an administrator or faculty member appointed by the institution) shall be permitted to observe the hearing or investigation.

(i) The student concerned has the right to appear personally before the board or the officer conducting the hearing. Disenrollees shall normally be ordered to active enlisted service. Each case shall be considered on its own merits.

(ii) This does not preclude the Military Department from considering medical disqualification, humanitarian reasons, needs of the Military Service, or other mitigating circumstances in waiving active enlisted service for the disenrolled ROTC cadet. Such considerations shall be carefully documented in the board's or investigating officer's report and by the Military Service. The final decision concerning active enlisted service shall be made by the Military Department concerned.

(5) *Ordering Disenrolled ROTC Students to Active Duty Enlisted Service.* The Military Departments shall delay ordering students who have breached their contracts to active duty until they complete their undergraduate degree requirement or disenroll from the institution, whichever occurs first. Graduate students may not be ordered to active duty until they would normally complete the academic year in which they are enrolled or disenrolled from the institution, whichever occurs first. Scholarship students who complete their junior and senior years, but who refuse to accept their commissions, will be required to serve for 4 years. Scholarship students who were active duty enlisted personnel when selected for ROTC scholarship and were discharged early for the purpose of accepting the scholarship shall normally be ordered to active duty at the end of the school term in which they were disenrolled. Their service commitment shall be determined as follows:

(i) If they were members of the basic course when disenrollment occurred, their service commitment shall be equivalent to the time not served on their original enlistment contract when they were discharged or separated to accept an ROTC scholarship. Those individuals with less than 1 year remaining shall be discharged upon approval of the disenrollment by the Military Department concerned.

(ii) If they were members of the advanced course when disenrollment occurred, their service commitment shall be the same as other contract violators cited above.

(6) *Appropriate Titles for Military Officers Assigned to ROTC.* In

accordance with 10 U.S.C. 2102(b)(1) the senior officer of each ROTC unit must receive the academic rank of professor, including appropriate prerogatives and perquisites associated with the position of a professor (excluding tenure) as head of a department or program at the institution. As an alternative to the title of professor, the most complimentary title for the ROTC unit commander is the military title of the officer. Other titles, such as Visiting Professor, are acceptable provided the prerogatives and prerequisites of professional rank (excluding tenure) accompany the position, and the title is not demeaning or indicative of some lesser status. Other ROTC officers shall be evaluated by the host institution for appropriate academic rank, using procedures comparable to those used for their civilian faculty colleagues.

(7) *Titles of ROTC Unit on Campus.* The term "Program" instead of "Department" is acceptable as a descriptive term for the ROTC educational activity, provided no extracurricular connotation is involved. In this sense, "Program" would be applied to ROTC in the same manner as other academic programs within the institution.

(8) *Unit Discretion on Uniforms and Amount of Drill.* The Military Department shall prescribe the specific standards of performance cadets and midshipmen shall achieve in drill. The specific amount of drill to obtain this standard shall be prescribed by the Professors of Military Science, Naval Science, and Aerospace Studies. Uniforms shall be worn for drill and as otherwise prescribed by the commanding officer of the unit.

(9) *Institutional Standing Committees on ROTC.* The Military Department shall cooperate with institutional standing committees on ROTC to develop mutually a program of instruction consistent with the goals of both parties. When the university poses changes that are inconsistent with the law or military policies, the Military Departments shall reject the proposals.

(10) *Course Substitution.* The Military Departments may use institutionally taught courses or courses taught jointly by both civilian and military faculties, when these courses satisfy the objective contained in the ROTC curriculum and exist or can be developed by the university. Guest lecturers may provide specific hours of instruction in areas where they are academically qualified, provided the institution approves of this practice. This provision may not be used to reduce the required minimum military contact hours as specified by the Military Departments.

(11) *Language Training Requirement for ROTC Scholarship Students.* (i) The Secretary of the Military Department concerned shall require, as a condition of providing an ROTC scholarship to any person, that he or she must agree to complete at least one quarter or semester of college instruction in a major Indo-European or Asian language prior to commissioning.

(ii) The Military Departments shall provide guidance that allows exceptions to this requirement only if the student's academic advisor or other institutional official provides a written statement to the campus ROTC Commanding Officer that (A) the institution does not offer such instruction; or (B) the language requirement will result in a significant course work overload in the student's schedule.

(d) *Acceptance by ROTC Staff Members of Payments or Other Benefits Offered by Educational Institutions.* An ROTC staff member may accept only the following payments or other benefits from an institution.

(1) Reasonable compensation or other benefits for services that are rendered the institution other than during the duty hours of the military staff members of the ROTC unit (such as coach for an athletic team, parking lot attendant, assistant military property custodian, commandant of cadets, assistant commandant of cadets), provided the services are not part of the member's regularly assigned military duties, do not interfere with the full and effective performance of his or her official military duties, do not bring discredit upon the government, and do not interfere with the customary or regular employment of local civilians in their art, trade, or profession. Duty hours for individual staff members of an ROTC unit may not vary from the duty hours of the unit simply to permit them to qualify for compensation for services rendered to an institution during the duty hours of the ROTC unit.

(2) Housing, if a reasonable rental is paid therefore. If housing is accepted by a member from an institution at other than a reasonable rental, as for example, without charge, the housing shall be considered as furnished on behalf of the United States and the member may not be entitled to a basic allowance for quarters.

(3) Reimbursement by the institution for expenses incurred by the member for services that the member performed at the request of the institution and, although clearly beyond the scope of the member's regularly assigned military duties, that he or she might have been expected to perform by virtue of the member's position, such as hosting a social function for visiting dignitaries or conducting an off-campus workshop for faculty or students. Itemized bills for these expenses must be presented to the institution. When practicable, arrangements shall be made for the institution to be billed for these expenses so they may be paid directly by the institution. Under no circumstances may a commuted or fixed allowance be accepted from the institution for the purpose of meeting these expenses.

(4) Enrollment in courses by the member or any member of his or her immediate family; tickets to school or school-sponsored activities; parking privileges; books and other supplies and materials from the institution's book store; and library privileges, either without charge or at a reduced rate if offered on the same basis to civilian members of the staff or faculty of the institution.

(e) *Procedures Regarding Oaths and Security Requirements, Physical Examination, Deferment, Commissioning and Assignment of Graduates.* See § 92.7.

(f) *ROTC Scholarship Program.* The minimum age for award of ROTC scholarship is 17. At least 50 percent of each Military Department's ROTC scholarship recipients must qualify for in-state tuition rates at their respective institutions and shall receive tuition benefits at that rate. The limitation is applied on a departmental basis.

(g) *Conduct of Field Training.* Training under § 92.3(a) is prescribed by 10 U.S.C. 2109 and requires successful completion by members of the program as a prerequisite to commissioning. Additional practical field training under § 92.3(a) may be authorized by the Secretary of the Military Department concerned when determined that such training serves the best interest of the Military Service. The Secretary of the Military Department concerned may authorize such expenditures as considered necessary to ensure successful participation in practical field training programs.

§ 92.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall:

(1) Establish overall DoD policy and provide guidance for the conduct and administration of the ROTC program.

(2) Resolve matters of conflict that may arise among the Military Services operating ROTC units. (§ 92.5(a)(3)(iv)).

(3) Approve, in coordination with the Assistant Secretary of Defense (Comptroller), the methodology used to

disestablish ROTC units proposed by the Military Department Secretaries (§ 92.5(c)).

(b) The *Secretaries of the Military Departments* shall:

(1) Establish and operate ROTC units upon requests from accredited educational institutions meeting the requirements outlined in § 92.5(b).

(2) Advise the ASD(MRA&L) and other Military Services on the location of proposed ROTC units before releasing such information § 92.5(b)(4).

(3) Initiate disestablishment procedures of ROTC units in accordance with § 92.5(c).

(4) Enter into a written contract as a condition of providing an ROTC scholarship to persons who agree to conditions stipulated in paragraphs § 92.5(c)(3) and (11), and are otherwise qualified.

(5) Determine the period of active duty to be served by an ROTC scholarship recipient (§ 92.5(c)(3)(ii)).

(6) Authorize additional practical field training under when determined that such training serves the best interest of the Military Service, and authorize resultant expenditures (§ 92.5(g)).

§ 92.7 Procedures regarding oaths and security requirements, medical examination, deferment, commissioning and assignment of graduates.

(a) *Oaths and security requirements.*– (1) *Basic Course Enrollment.* (i) With the exception of foreign students enrolled under 10 U.S.C. 2103(b) each applicant for formal enrollment in the basic course, Senior ROTC, shall execute the following oath or affirmation:

> I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion.

(ii) Students who are required or permitted by educational institutions to undergo military training and who are not accepted for formal enrollment may receive basic course instruction with the approval of the Military Department concerned.

(2) *Financial Assistance Programs and Advanced Course Enrollment.* Each applicant for appointment or enrollment in any of the financial assistance programs of the Military Services and each applicant for appointment or enrollment in the advanced course, Senior ROTC, must satisfy the loyalty and security requirements for enlistment in the Reserve Components of the appropriate Military Service.

(b) *Medical examination.* (1) To reduce to an absolute minimum the loss, at graduation, of persons found medically disqualified for appointment as commissioned officers, thorough and complete medical examinations shall be conducted before enrollment in the scholarship program or at the time of or immediately before enrollment in the advanced courses of Army, Navy, and Air Force ROTC programs.

(2) Such examinations shall, in all respects, be equal to the examination conducted to determine medical qualifications for appointment as a commissioned officer.

(3) Medically disqualified persons may participate in a nonenrolled status with the approval of the Military Department concerned.

(c) *Cross-enrollment.* In order to increase the number of quality students in their host institution's ROTC programs, ROTC units may enroll qualified students from nearby nonhost institutions. Cross-enrollment is permitted when a host and nonhost institution are directly linked by a cross-town or consortium agreement. A cross-town agreement is a written agreement among a host institution, a nonhost institution, and Army, Navy, or Air Force ROTC permitting students from the nonhost institution to enroll in the appropriate ROTC program. A consortium agreement is an agreement made by two or more institutions for their mutual benefit to permit cross-enrollment of their students. As a department of the host institution, the ROTC unit shares as a beneficiary of the consortium agreement.

(d) *Commissioning of graduates.* Upon the successful completion of the required course of instruction, a graduate of a program referred to herein shall, if otherwise qualified, be appointed a regular or reserve officer in the appropriate Military Service.

(e) *Assignment of graduates.* (1) Graduates shall be called to active duty or active duty for training as soon as possible within a 12-month period following their appointment as commissioned officers.

(2) Graduates who have fulfilled their active military training and service obligation, or who have enlisted reserve status and have performed 6 months of active duty for training under 10 U.S.C. 511 or 672(d) following their appointment as commissioned officers and in accordance with Military Service requirements, may either be ordered to active duty or active duty for training under conditions contained in agreements with the Military Departments, or be given appropriate Ready Reserve assignments, preferably in the Selected Reserve, when unit location and skill requirements are compatible with the residence of the assignee and with his or her military skill.

(3) A graduate may be delayed from being ordered to active duty or active duty for training under regulations issued by the Secretary of the Military Department concerned if he or she (i) is the recipient of a fellowship or scholarship; (ii) has been accepted by a recognized institution of higher education for graduate studies; (iii) would suffer undue personal hardship; or (iv) is otherwise precluded from reporting as ordered for cogent and acceptable reasons. If delayed, the graduate shall remain subject to the assignment criteria prescribed in § 92.7(e) (1) and (2), above, and shall be assigned to active duty or active duty for training, as appropriate, at such time as the cause of his or her delay ceases to exist.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1982.

[FR Doc. 82-12228 Filed 5-4-82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-1913-4]

Approval and Promulgation of Implementation Plans; Maricopa County Urban Planning Area Nonattainment Area Plan; State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The Environmental Protection Agency is conditionally approving changes to the Arizona State Implementation Plan for the Maricopa County Planning Area. These changes were submitted to EPA for approval by the Director of the Arizona Department of Health Services under the provisions of Part D of the Clean Air Act. These revisions consist of control strategies and regulations for carbon monoxide (CO), ozone, (O_3), and total suspended particulate (TSP). This revision provides emission limits necessary to insure attainment of the National Ambient Air Quality Standards for Maricopa County Urban Planning Area.

DATE: This action is effective May 5, 1982.

ADDRESS: A copy of the NAP mentioned above is located at: The Office of the

Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: David Howecamp, Acting Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. Attn: Douglas Grano (415) 974–8224.

SUPPLEMENTARY INFORMATION:

Background

On January 4, January 18, February 23, July 3, and November 8, 1979, the Director of the Arizona Department of Health Services, the Governor's official designee, submitted revisions to the Arizona State Implementation Plan (SIP) consisting of control strategies and regulations for the Maricopa County Urban Planning Area. These revisions, which comprise the NAP, are intended to provide for the attainment of the National Ambient Air Quality Standards (NAAQS) for CO, O_3, and TSP.

On June 11 and October 30, 1979, EPA published notices of proposed rulemaking for the CO and O_3 portions of the NAP. On January 10 and May 28, 1980, EPA published notices of proposed rulemaking for the Arizona State Rules and Regulations and the TSP portion of the NAP, respectively. Those notices provided a description of the NAP and regulations, summarized the applicable Clean Air Act requirements into 14 criteria, compared the NAP to those criteria, and proposed to approve, conditionally approve, and disapprove portions of the NAP. In addition, on July 23, 1980, EPA published a notice of proposed rulemaking, addressing among other things, the Arizona State New Source Review (NSR) rules submitted on April 1, 1980.

On October 22, 1980, EPA published a notice of proposed rulemaking for the NAP since revisions were submitted on June 23 and July 17, 1980. The October 22, 1980 notice supersedes the June 11 and October 30, 1979 notices and supplements the January 10, May 28, and July 23, 1980 notices. Therefore, the January 10, May 28, July 23, and October 22, 1980 notices should be used as a reference in reviewing today's action.

Supplemental Revisions

On April 1, 1980, the State submitted as SIP revisions amendments to its Rules and Regulations for Air Pollution Control. On July 23, 1980, EPA proposed action on those rules related to New Source Review (NSR). However, in that proposal EPA inadvertently did not propose action on Rule R9–3–101 .A. No. 111, the definition of "significance levels." This definition is important to the administration of many provisions in Arizona's NSR rules, and its inclusion in today's final rulemaking is necessary to preserve the meaning and intent of these provisions. Since the public has had adequate opportunity to comment on Arizona's NSR rules which use the term, EPA finds that for good cause additional notice and comment on this definition is unnecessary.

On July 17, 1980, the State submitted an SIP revision which included the renumbering of several definitions. EPA also finds that for good cause additional notice and comment on the following renumbered definitions is unnecessary since they are not substantive changes:

R9–3–101—Definitions; A., Nos. 73, 74, 75, 83, 86, 87, 88, 90, 91, 94, 98, 99, 100, 113, 119, 120, and 124.

It should be noted that the State submitted an SIP revision requesting an extension to the CO attainment date for the Maricopa County Urban Planning Area on October 30, 1980. That revision is not addressed in today's final rulemaking notice, however, EPA proposed approval of the extension request in a recently published **Federal Register** notice.

Public Comments

During the public comment period, EPA received comments from the Maricopa County Health Department, Maricopa Association of Governments, Arizona Public Service Company, and Arizona Department of Health Services (ADHS). Comments received are specifically identified and responded to in EPA's Public Comment Technical Support Document (contained in Document File NAP–AZ–1 at the EPA Library in Washington, D.C. and the Region 9 Office).

EPA Actions

Introduction

The criteria used in EPA's review are detailed in the General Preamble and four supplements referenced in the notice of proposed rulemaking.

While EPA's evaluation of the NAP for ozone includes use of "Control Technique Guidelines" ("CTG's") documents as a "presumptive norm," the states may adjust the recommended controls or develop requirements which are not based on the CTG's, provided that they submit information supporting their decisions.

It should be noted that action may be taken on a portion of the NAP for a specific pollutant. Therefore, a portion of the NAP may be adequate for one pollutant but inadequate for others. It is EPA's policy to take final action on all portions of the NAP for each pollutant. As a result, this notice contains a series of actions for each pollutant and for each portion of the NAP rather than a single action. One of the following three actions may be taken for each portion of the NAP:

1. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective of the NAP; or

2. Approval where the portion of the NAP under consideration meets all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's understanding that the State will proceed expeditiously to correct the noted deficiency by certain dates.

For further information, see the supplements to EPA's General Preamble.

EPA's final actions on the Maricopa County Urban Planning Area NAP are described below and are based on the proposed rulemaking notices, the supplemental revisions submitted by the State and the public comments received by EPA.

Approved Portions of the NAP

EPA is taking final action under Section 172 of the Clean Air Act to approve Rules 33 and 34 since they provide emission limits necessary to insure attainment of the NAAQS.

As proposed in the May 28 and October 22, 1980 notices, EPA is taking final action under Part D of the Clean Air Act to approve the following portions of the Maricopa County Urban Planning Area NAP: emission inventory, modeling, emission reduction estimates, attainment provision (except TSP), reasonable further progress, legally adopted measures, emission growth, annual reporting, resources, public and government involvement, and public hearing. Although EPA is approving the NAP for CO, it should be noted that the CO control strategy is not adequate to attain the standard by 1982. An extension request indicating attainment by 1987 has been submitted and proposed for approval in a separate **Federal Register** notice.

Conditionally Approved Portions of the NAP

As proposed in the May 28 and October 22, 1980 notices, the following portions of the Maricopa County Urban Planning Area NAP contain minor deficiencies and the State has provided assurances to correct these deficiencies: Attainment provision (TSP only) and

permit program. Therefore, EPA is taking final action to conditionally approve these portions of the NAP.

The material required to satisfy conditions of approval must be submitted as an SIP revision as specified below:

New Source Review

By August 3, 1982, the NSR rules must be revised to meet the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980).

Total Suspended Particulate

By August 3, 1982, the State must submit a schedule for the development, adoption, and implementation of those measures necessary for attainment of the particulate standards.

Final Action on the NAP

As described in the May 28 and October 22, 1980 notices, only minor deficiencies remain in the Maricopa County NAP. Therefore, EPA is taking final action today to conditionally approve the overall NAP with respect to Part D. As a result, the current prohibition on construction of certain sources in the Maricopa County Urban Planning Area is no longer in effect.

In those areas for which the State has submitted approvable or conditionally approvable NAPs in accordance with the requirements of Part D of the Clean Air Act, EPA has a responsibility to take final action as soon as possible in order to lift the construction prohibition. Since the State has submitted approvable or conditionally approvable NAPs for the area discussed in this notice, EPA finds that good cause exists for making this action immediately effective.

The new SIP requirements approved or conditionally approved by today's notice are an addition to the existing SIP and do not supersede or replace the "old" SIP requirements until a source comes into compliance with the new requirements. For further information, see EPA's General Preamble.

As a result of approval of certain portions of the NAP, EPA is taking final action to rescind the following analogous portions of 40 CFR Part 52:

§ 52.129 Review of new sources and modifications [paragraph (f) only].

§ 52.137 Employer carpool incentive program.

§ 52.138 Bus/carpool matching program.

Regulatory Process

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it approves state actions. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action merely approves state actions. This action imposes no new requirements.

Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 110, 129, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: April 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart D of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120 is amended by adding paragraphs (c)(27), (28), (29), and (32) to (45) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

* * * * *

(27) The following amendments to the plan were submitted on January 4, 1979 by the Governor's designee.

(i) Arizona State Rules and Regulations for Air Pollution Control.

(A) R–9–3–101, A., Nos. 2, 3, 29, 41, 53, 55, 87, 88, 89, 91, 92, 95, 100 and 117; R9–3–301, paragraphs D, J, and N; R9–3–306, paragraphs D and J; and R9–3–307, paragraphs C and E.

(28) The following amendments to the plan were submitted on January 18, 1979 by the Governor's designee.

(i) Maricopa County Bureau of Air Pollution Control Rules and Regulations.

(A) Rule 33, Storage and Handling of Petroleum Products.

(29) [Reserved]

* * * * *

(32) The following amendments to the plan were submitted on February 23, 1979 by the Governor's designee.

(i) Nonatainment Area Plan for Carbon Monoxide and Photochemical Oxidants, Maricopa County Urban Planning Area.

(33)–(35) [Reserved]

(36) The following amendments to the plan were submitted on July 3, 1979 by the Governor's designee.

(i) Revision to the Nonattainment Area Plan for Carbon Monoxide and Photochemical Oxidants, Maricopa County Urban Planning Area.

(37)–(38) [Reserved]

(39) The following amendments to the plan were submitted on November 8, 1979 by the Governor's designee.

(i) Nonattainment Area Plan for Total Suspended Particulates, Maricopa County Urban Planning Area.

(40)–(42) [Reserved]

(43) The following amendments to the plan were submitted on April 1, 1980 by the Governor's designee.

(i) Arizona State Rules and Regulations for Air Pollution Control.

(A) R9–3–101, A., Nos. 7, 27, 46, 52, 54, 72, 73, 74, 81, 84, 85, 86, 88, 89, 92, 96, 97, 98, 111, 117, 118, and 122; R9–3–301, paragraphs B–1, B–2, C, E, F, H, I, J, K, M, N, O, P, and Q; R9–3–302, (except paragraphs D, E, and I); R9–3–303; R9–3–306, paragraphs B–2, C–1, C–3, and C–5 to C–7, E, F, G–1, G–3, G–4, H, and I; and R9–3–307, paragraphs A, B, D, and F.

(44) The following amendments to the plan were submitted on June 23, 1980 by the Governor's designee.

(i) Maricopa County Bureau of Air Pollution Control Rules and Regulations.

(A) Rule 34, Organic Solvents.

(45) The following amendments to the plan were submitted on July 17, 1980 by the Governor's designee.

(i) Arizona State Rules and Regulations for Air Pollution Control.

(A) R–9–3–101, A., Nos. 73, 74, 75, 83, 86, 87, 88, 90, 91, 94, 98, 99, 100, 113, 119, 120, and 124; R9–3–301, paragraphs A, B–3, G, I, J, K, L, M, N, O, P, Q, and R; R9–3–306, paragraphs A, B–1, B–3, B–4, C–2, C–4, and G–2; and R9–3–320, paragraphs B and C.

2. Section 52.122 is revised to read as follows:

§ 52.122 Extensions.

(a) The Administrator hereby extends for 2 years the attainment date for the national primary standards for sulfur

oxides in the Maricopa, Pima, Central Arizona, and Southeast Arizona Intrastate Regions.

(b) The Administrator hereby extends for 18 months the statutory timetable for submittal of the plan for attainment and maintenance of the secondary standards for sulfur oxides in the Maricopa, Pima, Central Arizona, and Southeast Arizona Intrastate Regions.

(c) The Administrator hereby extends to July 31, 1977, the attainment date for the national primary standards for sulfur oxides in the Northern Arizona Intrastate Region.

(d) The Administrator hereby extends to December 31, 1982 certain attainment dates for the national standards for carbon monoxide (CO), ozone (O_3), and total suspended particulates (TSP), in the following areas:

(1) Maricopa County Urban Planning Area for O_3, and TSP.

3. Section 52.123 is amended by adding paragraphs (c) and (d) reading as follows:

§ 52.123 Approval status.

* * * * *

(c) With the exceptions set forth in this subpart, the Administrator approves the plan with respect to Part D, Title I of the Clean Air Act, as amended in 1977, for the nonattainment areas listed in this paragraph. (1) Maricopa County Urban Planning Area for CO and TSP.

(d) With the exceptions set forth in this subpart, the Administrator approves the plan with respect to Part D, Title I of the Clean Air Act, as amended in 1977, for the nonattainment areas listed in this paragraph. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the State Implementation Plan (SIP) depends on the adoption and submittal by January 1, 1981, of reasonably available control technology (RACT) requirements for sources covered by Control Technique Guidelines (CTG's) published between January 1978 and January 1979.

(1) Maricopa County Urban Planning Area for O_3.

4. Subpart D of Part 52 is amended by adding § 52.124, reading as follows:

§ 52.124 Part D conditional approval.

(a) The following portions of the Arizona SIP contain deficiencies with respect to Part D of the Clean Air Act which must be corrected by meeting the indicated conditions of Part D plan approval.

(1) The Maricopa County Urban Planning Area portion of the Arizona SIP is approved as satisfying Part D requirements provided the following conditions are met:

(i) For carbon monoxide, ozone, and total suspended particulate:

(A) By August 3, 1982, the NSR rules must be revised to meet the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980).

(ii) For total suspended particulate:

(A) By August 3, 1982, the State must submit a schedule for the development, adoption, and implementation of those measures necessary for attainment of the particulate standards.

5. In § 52.131, the entries for Arizona are revised as follows:

§ 52.131 Attainment dates for national standards.

Air quality control region and nonattainment area	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
Central Arizona Intrastate	[1]	[2]	b	b	c	(*)	(*).
Maricopa Intrastate:							
Maricopa County Urban Planning Area Nonattainment Area.	d	d	b	b	c	(*)	d.
Remainder of Interstate	[1]	[2]	b	b	c	(*)	(*).
Mohave-Yuma Intrastate	a	a	a	a	c	a	a.
Northern Arizona Intrastate	a	a	(*)	(*)	c	c	c.
Pima Intrastate	[1]	[2]	b	b	c	(*)	(*).
Southeast Arizona Intrastate:							
Santa Cruz County	[1]	[2]	b	b	c	(*)	(*).
Remainder of Intrastate	a	a	b	b	c	c	c.

[1] July 1975.
[2] July 1977.
[3] July 31, 1977.
[4] May 31, 1977.
[5] May 31, 1975.

NOTE.—Dates or footnotes which are italicized are prescribed by the Administrator because the plan does not provide a specific date or the date provided is not acceptable.

NOTE.—Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.131 (1980).

* * * * *

(d) December 31, 1982.

* * * * *

6. Section 52.136 is revised to read as follows:

§ 52.136 Control strategy: Carbon monoxide.

The requirements of § 51.14 of this chapter are not met because the plan does not contain sufficient measures to provide for attainment and maintenance of the national standards for carbon monoxide in the Pima Intrastate Region as expeditiously as practicable.

7. Section 52.137 is amended by removing and reserving (a)(1) and by revising paragraph (b) to read as follows:

§ 52.137 Employer carpool incentive program.

(a) * * *

(1) [Reserved]

* * * * *

(b) This section is applicable within the Greater Tucson area in the Pima Intrastate Air Quality Control Region.

* * * * *

8. Section 52.138 is amended by removing and reserving paragraphs (a)(1), (c)(1)(i), (c)(2)(i), and (c)(3)(i) and by revising paragraphs (b) and (d)(2), to read as follows:

§ 52.138 Bus/carpool matching program.

(a) * * *

(1) [Reserved]

(2) * * *

(b) This section is applicable within the Greater Tucson Area in the Pima Intrastate Air Quality Control Region.

(c) * * *

(1) * * *

(i) [Reserved]

(ii) * * *

(2) * * *

(i) [Reserved]

(ii) * * *

(3) * * *

(i) [Reserved]

(ii) * * *

(d) * * *

* * * * *

(2) A manual or computer method of matching information that will have provisions for locating each applicant's origin and destination within a grid system in the urban area and the semi-rural region surrounding the Greater Tucson Area and matching applicants with identical origin and destination grids and compatible work schedules.

* * * * *

§ 52.139 [Removed and Reserved].

9. Section 52.139 is removed and reserved.

[FR Doc. 82-12003 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-38-M

40 CFR Part 52

[A-9-FRL-1909-7]

Approval and Promulgation of Implementation Plans; Santa Barbara County, California, Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: On September 5, 1980, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking for the South Central Coast Air Basin nonattainment area plan (NAP) for ozone (O_3), carbon monoxide (CO), and total suspended particulate matter (TSP). EPA is today conditionally approving the South Central Coast Air Basin NAP for the Santa Barbara County nonattainment areas.

DATE: This action is effective on May 5, 1982.

FOR FURTHER INFORMATION CONTACT: David Howekamp, Acting Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 974-8222.

A copy of today's revision to the California State Implementation Plan (SIP) is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1979, the California Air Resources Board (ARB) submitted revisions to the California SIP for the South Central Coast Air Basin including control strategies and regulations for O_3, CO, and TSP for Santa Barbara County. Additional regulatory revisions were submitted on December 24, 1979 and May 1, 1980, by the ARB. These revisions comprise the NAP and are intended to provide for attainment of the National Ambient Air Quality Standards (NAAQS) in the Santa Barbara County nonattainment areas.

On September 5, 1980 (45 FR 58912), EPA published a notice of proposed rulemaking for the Santa Barbara County portion of the NAP. That notice should be used as a guide in reviewing today's notice. The September 5, 1980 notice provides a description of the NAP, summarizes the applicable Clean Air Act requirements into 14 criteria, compares portions of the NAP to those criteria, and proposes to approve and conditionally approve portions of the NAP.

Supplemental Revisions

The September 5, 1980 notice proposed to approve Rule 325, "Storage of Petroleum and Petroleum Products," submitted by the ARB on May 1, 1980. This rule was submitted on October 23, 1981 and was changed to clarify its intent, renumber portions of the rule, and add requirements for internal floating roof covers.

The September 5, 1980 notice also proposed to conditionally approve the TSP attainment provision portion of the NAP. On November 18, 1981, the ARB submitted a schedule to study nontraditional TSP sources and a commitment to implement the control measures which result from the study. This action satisfies the proposed condition of approval.

EPA has determined that "good cause" exists (see Administrative Procedure Act, 5 U.S.C. 553(b)) to approve the above items without providing further notice and opportunity to comment. EPA has already provided opportunity to comment on the substance of these items which were addressed in the September 5, 1980 proposal notice. Additional comment would serve no practical purpose since these revisions merely satisfy certain conditions of approval or are minor changes.

Public Comments

During the public comment period EPA received comments from 8 public interest groups and government agencies. A document containing the summarization of substantive comments and the EPA response to each, entitled "EPA Public Comment Technical Support Document", is available for public inspection as a part of Document File NAP-CA-23 at the EPA library in Washington, D.C., at the EPA Region 9 offices in San Francisco, CA and at the other file locations.

EPA Actions

The criteria used in EPA's review are detailed in the General Preamble and four supplements referenced in the notice of proposed rulemaking.

While EPA's evaluation of the NAP for ozone includes use of "Control Technique Guidelines" ("CTG's") documents as a "presumptive norm," the States may adjust the recommended controls or develop requirements which are not based on the CTG's, provided that they submit information supporting their decisions.

It should be noted that action may be taken on a portion of the NAP for a specific pollutant or rule. Therefore, a portion of the NAP may be adequate for one pollutant but inadequate for others. Further, a rule may be adequate under section 110, but inadequate under section 172 or 173 of the Act. EPA's policy is to take final action on all portions of the NAP for each pollutant. Therefore, this notice contains a series of actions for each pollutant and for each portion of the NAP rather than a single action. The following three actions are possible for each portion of the NAP.

1. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

2. Approval where the portion of the NAP under consideration meets all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and where the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's understanding that the State will proceed expeditiously to correct the noted deficiency by certain dates.

For further information, see the supplements to EPA's General Preamble.

EPA's final actions on the NAP for the Santa Barbara County nonattainment areas for O_3, CO, and TSP are described below and are based on the proposed rulemaking notice and on public comments received by EPA.

Approved Portions of the NAP for Santa Barbara County

EPA is taking final action under section 110 of the Clean Air Act to approve the following rules since they provide emission limits necessary to insure attainment of the NAAQS: rules 316, 320, 321, 323, 325, 327, and 329 to 332. EPA is also taking action under section 172 of the Act to approve rules 316, 321, 325, 329, 330, and 332 since they satisfy the requirement for reasonably available control technology.

As proposed in the September 5, 1980 notice and as discussed in the Public Comment Technical Support Document, EPA has determined that the following portions of the NAP are consistent with Part D of the Clean Air Act. Therefore EPA is taking final action to approve these portions of the NAP:

Emission inventory, modeling, emission reduction estimates, attainment provision, reasonable further progress, emissions growth, annual reporting, public and government involvement, resources, and public hearing requirements.

Conditionally Approved Portions of the NAP for Santa Barbara County

As discussed in the September proposal and the Public Comment Technical Support Document the following portions of the NAP contain minor deficiencies which the State and Santa Barbara County have assured EPA that they will correct. EPA therefore takes final action to conditionally approve the following portions of the NAP: legally adopted measures and permit program.

The material required to satisfy the conditions of approval is specified below and must be submitted as a SIP revision:

1. By July 6, 1982 the New Source Review rules must be revised to meet the requirements in EPA's amended regulations for NSR under section 173 (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980).

2. By July 6, 1982 the cutback asphalt rule must be revised so it does not allow for indefinite compliance date extensions.

Final Overall Action on the NAP for Santa Barbara County

EPA is taking final action under Part D of the Clean Air Act to conditionally approve overall the Santa Barbara County portions of the South Central Coast Air Basin NAP for O_3, CO, and TSP. As a result, the prohibition on construction of major new and modified sources in Santa Barbara County is no longer in effect.

Regulatory Process

The new SIP requirements approved or conditionally approved by today's notice are an addition to the existing SIP and do not supersede or replace the "old" SIP requirements until a source comes into compliance with the new requirements. For further information, see EPA's General Preamble.

As a result of approval of certain rules, EPA is taking final action to rescind the following analogous requirements in 40 CFR Part 52 for Santa Barbara County: §§ 52.252, 52.253, 52.255 and 52.256.

EPA finds good cause to make the action immediately effective since it removes the construction ban.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it approves State actions and imposes no new regulatory requirements. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1982. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action merely approves state actions. This action imposes no new requirements for the sources in California.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110, 129, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601 (a)))

Dated April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F of Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c), is amended by adding subparagraphs (74)(ii), (77)(ii), (103)(iii) and (105) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(74) * * *

(ii) Santa Barbara County.

(A) Rule 316.

* * * * *

(77) * * *

(ii) The South Central Coast Air Basin Control Strategy (Chapter 17 of the Comprehensive Revision to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards). Those portions of the South Central Coast Air Basin Control Strategy identified by Table 17–1 "Location of Plan Elements Which Meet Clean Air Act Requirements-Santa Barbara County," together with the rules identified below comprise the submitted nonattainment area plan. The remaining portions are for informational purposes only.

(A) Santa Barbara County APCD Rules 320, 321, 323, 327, 329 to 332, 201.C and 205.C. (except subparagraph 5.b.8.).

* * * * *

(103) * * *

(iii) Santa Barbara County APCD.

(A) Rule 325.

* * * * *

(105) Schedule to study Nontraditional Total Suspended Particulate Sources and commitment to implement control measures necessary to provide for attainment, submitted on November 18, 1981 by the Governor's designee.

* * * * *

2. Section 52.222, paragraph (b), is amended by adding subparagraph (6), as follows:

§ 52.222 Extensions.

* * * * *

(b) * * *

(6) South Central Coast Air Basin.

(i) Santa Barbara County nonattainment areas for TSP, O_3 and CO.

* * * * *

3. Section 52.223, paragraph (b), is amended by adding subparagraph (6), as follows:

§ 52.223 Approval status.

* * * * *

(b) * * *

(6) South Central Coast Air Basin.

(i) Santa Barbara County nonattainment area for O_3, CO and TSP.

* * * * *

4. Section 52.232, paragraph (a), is amended by adding subparagraph (9), as follows:

§ 52.232 Part D conditional approvals.

(a) * * *

(9) The Santa Barbara County nonattainment areas.

(i) For O_3, TSP, and CO by (90 days from the date of publication of this notice).

(A) The new source review (NSR) rules must be revised to meet the requirements in EPA's amended regulations for NSR under section 173 of the Clean Air Act (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) and submitted as an SIP revision.

(ii) For O_3 by (90 days from the date of publication of this notice), a revised cutback asphalt paving materials rule which does not allow for indefinite compliance date extensions and submitted as an SIP revision.

* * * * *

5. Section 52.238 is amended by the revision of the tabular entries for the "South Central Coast Intrastate" and "South Coast Air Basin" (46 FR 5979, January 21, 1981), as follows:

§52.238 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
* *	*	*	*	*	*	*	
South Central Coast Intrastate:							
Santa Barbara County Non-AQMA portion.							
West area (40 CFR 81.305)	(h)	(h)	(c)	(c)	(c)	(h)	(i).
East area	(c)	(c)	(c)	(c)	(c)	(c)	(i).
San Luis Obispo County:							
Salinas Valley—El Pomar Estrella Planning Area.	(d)	(a)	(c)	(c)	(c)	(c)	(a).
Non-Salinas Valley	(d)	(a)	(c)	(c)	(c)	(c)	(a).
Metropolitan Los Angeles Intrastate:							
South Coast Air Basin (SCAB)	(h)	(c)	(d)	(c)	(h)	(i)	(i).
Santa Barbara County AQMA portion.	(c)	(c)	(c)	(c)	(c)	(h)	(i).
Ventura County (mainland portion) North of Southern Los Padres N.F. boundary.	(1)	(c)	(d)	(a)	(2)	(2)	(2).
South of Southern Los Padres N.F. boundary.	(1)	(c)	(d)	(a)	(2)	(2)	(2).
Channel Islands (other than SCAB islands).	(c)	(c)	(c)	(c)	(c)	(c)	(c).
* *	*	*	*	*	*	*	

[1] July 1975.
[2] May 31, 1977.

* * * * *

6. Section 52.252 is amended by the revision of the introductory text of paragraph (b) and the removal of subparagraphs (b)(2) as follows:

§ 52.252 Control of degreasing operations.

* * * * *

(b) This section is applicable in the Sacramento Valley, San Joaquin Valley, and San Francisco Bay Area Intrastate Air Quality Control Regions (the "Regions"), as described in 40 CFR Part 81, dated July 1, 1979, except as follows:

* * * * *

7. Section 52.253, paragraph (b), is amended by adding subparagraph (2)(iii), as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *

(2) * * *

(iii) This section is rescinded for metal parts coaters that are subject to and in full compliance with Rule 330 submitted on October 18, 1979, in the Santa Barbara County APCD.

* * * * *

8. Section 52.255, paragraph (b), is amended by removing and reserving subparagraphs (1)(v) to (ix) and by adding subparagraph (3)(ix), as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) * * *

(1) * * *

(v)–(ix) [Reserved]

* * * * *

(3) * * *

(ix) Santa Barbara County APCD.

* * * * *

9. Section 52.256, paragraph (b), is amended by adding subparagraph (1)(ii), as follows:

§ 52.256 Control of evaporative losses from the filling of vehicular tanks.

* * * * *

(b) * * *

(1) * * *

(ii) Santa Barbara County APCD.

* * * * *

[FR Doc. 82-11680 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL-2053-6]

Approval and Promulgation of Implementation Plans; New Mexico Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves revisions to the State Implementation Plan (SIP) for both the primary and secondary sulfur dioxide (SO_2) standards for Grant County, New Mexico. EPA propose approval of the revised plan in the December 17, 1981 issue of the **Federal Register** (at 46 FR 61491). These revisions include changes to Regulation 652 which primarily affect emission limitations for the Chino Mines Company primary copper smelter at Hurley, New Mexico. Stack emissions under the revised plan are limited by the following: an annual average emission rate; a median annual emission level; and a series of 3-hour average emission levels, each with a fixed number of allowable cumulative occurrences. The allowable frequency and emission rate levels of these occurrence limits are based upon a statistical analysis of smelter emissions data and air quality data in the Hurley area of Grant County.

EFFECTIVE DATE: June 4,1982.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L St., N.W., Room 8401, Washington, D.C.

Environmental Protection Agency, Public Information Reference Unit, Rm. 2922, EPA Library, 401 M St., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Randy Brown, SIP Section, Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2730.

SUPPLEMENTARY INFORMATION: On June 22, 1981, the Governor of New Mexico submitted a revised Regulation 652 (Non-Ferrous Smelters—Sulfur). On May 12, 1981 and August 13, 1981, the New Mexico Environmental Improvement Division submitted a revised control strategy demonstration for attainment of the primary and secondary SO_2 standards in Grant County with revised Regulation 652.

In the December 17, 1981 issue of the **Federal Register**, EPA proposed to approve the revised primary and secondary SO_2 plan for Grant County, solicited public comments on the Agency's proposed action, and notified the public of the availability of EPA's evaluation report.[1]

A comment was received from the Kennecott Minerals Company supporting the proposed approval action. A comment letter was also received from the State of Connecticut, Department of Environmental Protection (DEP) asking for clarification on two aspects of the statistical control strategy demonstration of attainment submitted by the State of New Mexico. Connecticut DEP's questions and our responses follow:

[1] EPA Review of New Mexico State Implementation Plan Revisions of June 22, 1981 (Non-Ferrous Smelters), August 1981.

Connecticut DEP first asked for an explanation of why dispersion modeling was not used.

EPA Response—Use of dispersion modeling to assess the short term (3-hour and 24-hour) air quality impacts of smelter emissions on complex terrain (terrain higher than stack height) is complicated first by the difficulty in selecting representative emission rates for the highly variable emissions from the smelter (emissions can vary an order of magnitude or more during a given hour). The second complication is that despite the need for a refined complex terrain dispersion model for situations like the smelter in Grant County, such a model has not yet been developed. The lack of very extensive data bases and basic knowledge concerning the behavior of atmospheric variables in the vicinity of complex terrain presents a considerable obstacle to the solution of such problems and development of a refined model. New Mexico chose to use a statistical approach, originally developed for Arizona smelters using a year of actual air quality and emission data, as a more representative method than dispersion modeling to account for the variable emissions and the complex terrain dispersion at the smelter in Grant County. EPA published technical criteria for using such techniques in the December 17, 1981 Federal Register. EPA considers the New Mexico statistical analysis an acceptable alternative to dispersion modeling for the Grant County situation.

Connecticut DEP also asked why the New Mexico statistical analysis is called "multipoint," since only one source is taken into account.

EPA Response—The New Mexico analysis is called multipoint rollback because the emission limits established for the smelter are a series of 3-hour average emission levels, each with a fixed number of allowable cumulative occurrences, instead of a single 3-hour limit never to be exceeded. The series of levels and allowable occurrences define an allowable emissions profile, which ensures attainment of the SO_2 standards.

Statistical Demonstration

The New Mexico approach relies on a statistical calculation of the probability that high emissions will coincide with poor dispersion conditions to demonstrate that the national ambient air quality standards (NAAQS) will be attained and maintained. Although the NAAQS for SO_2 is not expressed in probabilistic terms, EPA recognizes that whenever an emission limit is set there is always some probability that the standards may be violated even though the limit is met. EPA believes that in evaluating the adequacy of a control strategy based on a statistical analysis, it is appropriate to accept a probability of violation that is sufficiently low.

New Mexico has provided estimates of the probability of violation under the revised control strategy. These estimates, and EPA's evaluation of them, are contained in the docket. Based on this analysis and on the factors discussed in the Federal Register proposal, EPA believes that in this case the New Mexico control strategy projects an acceptable probability of attainment.

EPA wishes to emphasize, however, that today's action does not imply that any actual violations of the NAAQS will be acceptable. Today's action indicates only that EPA believes the chance of a violation is acceptably low.

Action

EPA approves the SIP revisions for the primary and secondary SO_2 standards in Grant County, NM submitted by the Governor on June 22, 1981 and supplemented on May 12, 1981 and August 13, 1981.

Regulatory Process

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Note.—Incorporation by reference of the State Implementation Plan for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1981.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 28, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

1. Section 52.1620, paragraph (c) is amended by adding new paragraph (27) as follows:

§ 52.1620 [Amended]

* * * * *

(c) * * *

(27) Revisions to Regulation 652, Non-Ferrous Smelters—Sulfur, submitted by the Governor on June 22, 1981. A revised sulfur dioxide control strategy demonstration for Grant County based on the revised Regulation 652 was submitted by the New Mexico Environmental Improvement Division on May 12, 1981 and August 13, 1981.

§ 52.1624 [Reserved]

2. Section 52.1624 is removed and reserved.

[FR Doc. 82-12230 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-7-FRL-2098-1]

Approval and Promulgation of Implementation Plan: New Mexico: Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: As required by Section 110(a)(1) of the Clean Air Act and the October 5, 1978, (43 FR 46246) promulgation of national ambient air quality standards (NAAQS) for lead, the State of New Mexico has submitted a State Implementation Plan (SIP) for lead. This action approves the SIP which provides for attainment and maintenance of the national ambient air quality standards for lead in all areas of the State except Anapra, New Mexico. Anapra will be addressed in a future rulemaking.

EFFECTIVE DATE: This action will be effective July 6, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State

Programs Section, (6AW-AP) 1201 Elm Street, Dallas, Texas 75270. Copies of the plan, the public hearing minutes, and the technical support memo which explain EPA's actions are available for public review at the following locations:

Air Quality Bureau, State of New Mexico, Environmental Improvement Division, P.O. Box 968, Santa Fe, New Mexico 87503;
Environmental Protection Agency, Region VI, Library, 1201 Elm Street, Dallas, Texas 75270;
EPA, Public Information Reference Unit, Library, Room 2922, PM 213, 401 M Street, SW., Washington, D.C. 20460;
The Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John Hepola at (214) 767-2742 or FTS 729-2742.

SUPPLEMENTARY INFORMATION: On October 5, 1978, the national ambient air quality standards for lead were promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m^3) averaged over a calendar quarter. As required by Section 110(a)(1) of the Clean Air Act (CAA), all States must submit a SIP which will provide for attainment and maintenance of these standards. New Mexico has developed and submitted such a SIP.

The general requirements for a SIP are outlined in Section 110(a)(2) of the Clean Air Act and EPA regulations 40 CFR 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated this plan by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations.

Description of the New Mexico SIP

On May 19, 1980, the Governor of New Mexico submitted to EPA, the States' SIP for attainment and maintenance of the NAAQS for lead. Before the State submitted a SIP to EPA, it held a public hearing on March 26, 1980. The plan does not, in itself, contain a regulation for the review of new sources of lead emissions, as required by 40 CFR 51.18. However, in a letter to EPA dated February 10, 1982 the State clarified that it intends to review new lead sources and modifications of existing lead sources under its existing new source review regulation, No. 702. Further, the State has the authority and intends to subject to this review, any new or modified point source which has the potential to emit five tons/year or more of lead.

More than 1,700 filters from hi-volume particulate monitors have been analyzed since 1977. Four monitoring sites, two in Albuquerque and two in Anapra, recorded exceedances of the NAAQS. The exceedances from both monitoring sites in Albuquerque were in the fourth quarter of 1977 (2.39 and 2.40 $\mu g/m^3$) and were based on less than 12 samples. However, EPA and the State agree that the Federal lead phase-down program will be sufficient to reduce the exceedances below the ambient air quality standards by 1982.

In Anapra, exceedances were recorded at both monitoring sites in the fourth quarter of 1977 (2.47 and 1.65 $\mu g/m^3$), at one site in the first quarter of 1978 (3.68 $\mu g/m^3$) and the first quarter of 1979 (2.36 $\mu g/m^3$). The ASARCO smelter in El Paso, Texas is within a few miles of Anapra and its emissions impact on this area of New Mexico. New Mexico contends that attainment demonstrations at the Anapra sites will depend on control measures applied to the ASARCO facility. EPA Region 6 has reviewed this situation and agrees the Anapra sites are directly influenced by the ASARCO smelter and will address this issue during the review of the Texas Lead SIP.

The plan identifies two point sources of lead—the Kennecott Primary Copper Smelter (Chino Mines Company) in Hurley, and the Phelps Dodge Primary Copper Smelter in Playas. Dispersion modeling performed at these point sources showed attainment of the lead standard around the sources.

EPA's Action

EPA has evaluated the New Mexico lead SIP and has determined that it meets the requirements of Section 110(a) of the CAA and 40 CFR Part 51 Subparts B and E. EPA believes that the SIP is adequate to attain and maintain the lead NAAQS and is, therefore, approving it. EPA finds that the SIPs that have been approved for other NAAQS contain regulations that satisfy general regulations not specifically mentioned in this lead SIP and that these general regulations can be incorporated into the lead SIP.

EPA has determined that this SIP is of limited impact because it relies primarily on the Federal program to reduce lead in gasoline and approval of the Texas SIP to attain the NAAQS for lead. Because of its straight forward nature, EPA does not anticipate any adverse or critical comments and is, therefore, going directly to final rulemaking with this SIP. The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from this date). This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

Under 5 U.S.C. 605(b), I have certified tht SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Note.—Incorporation by reference of the State Implementation Plan for the State of New Mexico was approved by the Director of the Federal Register Office on July 1, 1981.

(Sec. 110(a) of the Clean Air Act, 42 U.S.C. 7410(a))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart GG—New Mexico

Title 40, Part 52 Subpart GG—New Mexico of the Code of Federal Regulations is amended to include the following:

1. Section 52.1620 is amended by adding paragraph (c)(26) as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(26) The New Mexico Plan was submitted to EPA on May 19, 1980, by

the Governor of New Mexico as adopted by the New Mexico Improvement Board on May 9, 1980. A clarifying letter dated February 10, 1982 also was submitted.

2. Section 52.1630 is amended by adding to the table the pollutant "lead" in a new column in the table as follows:

§ 52.1630 Attainment dates for national standards.

AIR QUALITY

Pollutant control region	• • •	Lead
Albuquerque—Mid Rio Grande Intrastate:		
a. Bernalillo County	• • •	b.
b. Remainder of AQCR	• • •	c.
Arizona—New Mexico Southern Border Interstate:		
a. Grant County	• • •	c.
b. Remainder of AQCR		
El Paso—Las Cruces Alamogordo Interstate:		
a. Las Cruces	• • •	c.
b. Anapra	• • •	h.
c. Remainder of AQCR	• • •	c.
Four Corners Interstate:		
a. San Juan County	• • •	c.
b. Remainder of AQCR	• • •	c.
Northeastern Plains Interstate	• • •	c.
Upper Rio Grande Valley Interstate	• • •	c.
Pecos—Permian Basin Interstate:		
a. Eddy and Lea Counties	• • •	c.
b. Remainder of AQCR	• • •	c.
Southwestern Mountains Augustine Plains Interstate	• • •	c.

* * * * *

h. Contingent Upon Approval of Texas Lead SIP.

[FR Doc. 82-12338 Filed 5-4-82; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2544/R419; PH FRL 2114-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide chlorpyrifos and its metabolite in or on corn fodder and forage. This regulation to establish the maximum permissible level for the combined residues of the insecticide and its metabolite was requested by Dow Chemical Co.

EFFECTIVE DATE: Effective on May 5, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of October 27, 1981 (46 FR 52416) which announced that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, had submitted pesticide petition 1F2544 to the EPA proposing that 40 CFR 180.342 be amended by increasing the established tolerances for the combined residues of the insecticide chlorpyrifos [*0,0*-diethyl *0*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities corn fodder and corn forage from 0.1 part per million (ppm) to 10.0 ppm.

No comments were received in response to this notice of filing.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of the tolerances included: A 2-year rat feeding/oncogenicity study and a dog feeding study with a no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg) of body weight (bw) per day based on RBC cholinesterase activity; a mouse oncogenicity study which was negative at 15 ppm (highest dose); and a mouse teratology study which was negative at 25 mg/kg. Studies on delayed neurotoxicity and reproduction showed negative potential. Based on the 2-year chronic rat feeding study with a NOEL of 0.1 mg/kg of bw/day, and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.01 mg/kg of bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from these tolerances and previously established tolerances for residues of chlorpyrifos on a variety of raw agricultural commodities at levels ranging from 0.01 ppm to 3.0 ppm does not exceed the ADI.

The metabolism of chlorpyrifos is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of chlorpyrifos, nor are there any other relevant considerations involved in establishing these tolerances.

Desirable data which are considered lacking from the petition include a 2-generation rat reproduction study and a teratology study in a second species. In a letter dated February 11, 1982, the petitioner indicated that these studies would be submitted to the Agency by June 1983. The petitioner also agreed to voluntarily delete the use of corn from the label should the studies be found to exceed the risk criteria for unreasonable adverse effects.

The established tolerances for meat, milk, poultry, and eggs are adequate to cover secondary residues resulting from this use.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that establishment of these tolerances will protect the public health; therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before June 4, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 5, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.342 is amended by increasing the established tolerances for corn, fodder and corn, forage to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Corn, fodder	10.0
Corn, forage	10.0
* * * * *	

[FR Doc. 82-11830 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These rules amend the Public Health Service (PHS) regulations on health maintenance organizations (HMOs) by implementing certain changes made by the Health Maintenance Organization Amendments of 1981. The provision governing repayment of grant funds under certain circumstances is also amended. In addition, this rule amends the requirements for the award of loans or loan guarantees to qualified HMOs for the acquisition or construction of ambulatory health care facilities and the acquisition of equipment for those facilities (Subpart J). The amendments to Subpart J are made as a result of public comments on the interim regulations published on April 9, 1980.

EFFECTIVE DATE: The amendments made by this document are effective on May 5, 1982, except for the amendments to § 110.1004 (see the heading "Office of Management and Budget Clearance" under "Supplementary Information"). In addition, the Secretary invites comments on a number of specific issues, as described below under "Supplementary Information." These comments should be submitted to Frank H. Seubold, Ph.D., at the address set forth below, by June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Director, Office of Health Maintenance Organizations, Park Building—Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Subtitle F of Title IX of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) revised and extended the provisions of Title XIII of the Public Health Service Act (the Act), as amended. Subtitle F is entitled the "Health Maintenance Organization Amendments of 1981" (HMO Amendments). On September 14, 1981, the Department published a Notice in the **Federal Register** (46 FR 45694) indicating the passage of the HMO Amendments. This Notice further indicated that to the extent that the regulations issued by PHS on HMOs (42 CFR Part 110) are inconsistent with Title XIII, as amended, the provisions of Title XIII will govern. The amendments to the regulations promulgated in this document make the changes necessary to place the regulations (including Subparts A through J) in conformity with the amended Act. In addition, this notice changes the requirement in § 110.211 for the repayment of grant funds, a revision unrelated to the statutory amendments. Finally, this rule amends the PHS regulations for the award of loans or loan guarantees to qualified HMOs for the acquisition or construction of ambulatory health care facilities and the acquisition of equipment for those facilities (Subpart J). Subpart G, which repeats *verbatim* the statutory provisions at section 1311 of the Act, 42 U.S.C. 300e-10, which preempt certain restrictive state laws and practices, has been deleted. The statutory provisions remain in effect. Unlike other provisions of the HMO Act, these provisions do not call for implementing regulations. This deletion has no significance other than avoidance of repetition.

Waiver of Notice of Proposed Rulemaking and of Delayed Effective Date

For the reasons cited below, the Secretary has determined that public participation in rulemaking prior to the issuance of these regulations is unnecessary and that good cause exists for making these regulations effective on May 5, 1982.

With the exception of the revision to the grant repayment requirement, the regulatory changes set forth as final rulemaking reflect and incorporate statutory changes. In many instances, the revisions eliminate provisions that previously were requirements for qualified HMOs. For example, an amendment to section 1301 of the Act eliminated the open enrollment requirement. Consequently, the provision for an open enrollment period, as set forth under § 110.108(c) of the former regulations, is being deleted by this notice. Another example is the drug utilization review formerly authorized by section 1302(1) of the Act and repealed by the recent amendments. This provision, as described under § 110.103(c) of the former regulations, is also being deleted by this notice. (An HMO may continue to undertake this activity despite the repeal of specific reference to it from the statute and regulations.) Because regulatory changes such as these simply implement statutory amendments that lessen the burdens imposed on qualified HMOs, the Secretary has determined that it is unnecessary to obtain public comment prior to their promulgation.

In other instances, the revisions add or modify regulatory requirements to conform with the statutory amendments. Because these changes incorporate the statutory language *verbatim* and because the Secretary believes that the regulations should be consistent with the statute as soon as possible, the Secretary has determined that it is unnecessary to delay their effective date. To the extent that any of the statutory amendments may be subject to different regulatory interpretations (see, for example, item I(7) below), the Secretary intends to invite public comment through a notice of proposed rulemaking to be issued later. The Secretary intends, in that notice of proposed rulemaking, to propose further amendments to the HMO regulations in Part 110 for the purpose of reducing regulatory burdens on both HMOs and employers offering an HMO option in their employees' health benefits plans.

Because, as described more fully below, the amendment to the grant repayment provision in § 110.211 simply clarifies the requirement for repayment of grant funds when a grant-assisted entity becomes a for-profit entity, the Secretary has determined that no individual or entity will be adversely affected by the change. In fact, as explained below, the amendment should benefit HMOs and their enrollees by encouraging private sector investment in these grant-assisted entities. For these reasons, the Secretary has determined that notice and public comment on this amendment and a delay in its effective date would be unnecessary.

The amendments to Subpart J, regarding assistance for acquisition and construction of ambulatory health care facilities, are being made in response to public comments submitted with regard to the interim regulations published on April 9, 1980 (45 FR 24352–7). Because these amendments relieve or relax restrictions set forth in the interim regulations, no delay in their effective date is required, except for the amendments to § 110.1004 (see the heading "Office of Management and Budget Clearance," below).

Set forth below is a discussion of the significant amendments to the regulations.

I. HMO Amendments of 1981

1. The HMO Amendments of 1981 repealed requirements regarding continuing education for health professionals who contract with an HMO, or who are members of the HMO's staff, or who have contracted with an individual practice association dealing with an HMO. Section 942 of Pub. L. 97–35. The Secretary has deleted these requirements from the regulations. (See § 110.101 definitions of "individual practice association," "medical group," and "staff of the HMO".) In addition, because the Secretary understands that Congress' failure to delete a similar statutory requirement for medical groups dealing with HMOs was inadvertent, he is deleting that requirement from the regulations as well. The Secretary believes that it would be inappropriate to require continuing education for health professionals who are associated with a medical group when this is not required for professionals dealing with the HMO through any of the other organizational arrangements permitted. HMOs are encouraged to continue to provide continuing education where appropriate and in the best interests of their enrollees.

2. Because of an editorial revision to the statute, we are deleting the term "non-conforming medical group" from § 110.101 and § 110.104. The provision permitting an HMO, in specified circumstances, to provide health services through medical groups that do not meet the "substantial responsibility" requirement in the definition of "medical group" has been retained in §110.104(a)(3).

3. The statute requires that HMOs fix their health services payments under a community rating system. The definition of "community rating" in section 1302(8) of the Act has been broadened to permit a system of "community rating by class." We have incorporated the statutory language into § 110.105(b). The public is directed to the Congress' conference report on Pub. L. 97–35 for an explanation of how Congress understood this system would work. See H.R. Rep. No. 208, 97th Cong. 1st Sess., July 29, 1981, pp. 812–14.

4. The statutory amendments require at section 1301(c)(8) that the HMO adopt arrangements necessary to protect its members from incurring any liability for payment of fees which are the legal obligation of the HMO. Identical provisions have been included in Subpart A regulations at § 110.106(a)(3). We invite public suggestions on the substantive issues related to member protection.

5. Incorporated into these revised regulations are the significant changes in the provisions and requirements for Federal grant and loan support adopted in the HMO Amendments. In order to be eligible for a feasibility, planning or initial development grant, the entity must have received a grant or contract under section 1303 (feasibility studies) or section 1304 (planning and initial development) of the Act during or before the Federal fiscal year 1981. The HMO Amendments eliminated the non-profit requirement for eligibility for loans, removed a limitation on which for-profit HMOs may obtain loan guarantees, and increased the maximum aggregate amount as well as the yearly disbursement limitations for both loans and loan guarantees. In addition, a major change was made regarding the interest rate applicable to loans and loan guarantees. The Amendments allow the Secretary to set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date each disbursement is made for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

6. In Subpart I, "Continued Regulation of HMOs and Other Entities," § 110.904(d) has been amended to incorporate the statutory provision that the Secretary shall provide the HMO with an opportunity for reconsideration of a decision to revoke the HMO's qualification, including at the HMO's election a fair hearing. We will publish administrative procedures and requirements regarding the reconsideration process at a later date.

7. Section 1310 of the Act, as amended, requires that every two years (or such longer period as the Secretary may by regulation prescribe) after the date an HMO becomes a qualified HMO, the HMO must demonstrate to the Secretary that it is qualified within the meaning of the Act. We have not included provisions for implementing this requirement in this document, since we believe this activity can be implemented within the current compliance process.

II. The Grant Repayment Provision

Section 110.211 of Subpart B explains the effect of a grantee's change from non-profit to for-profit status. Included in this document is an amendment clarifying that the Secretary may, for good cause, waive all or part of the amount of funds repayable to the Secretary upon demand when this happens. This change was precipitated by the Department's goal to provide incentives for private investment in HMOs, which goal is more important to achieve due to the reduced authorization levels for financial assistance enacted by the HMO Amendments of 1981. It has become apparent that private financing may in many cases be more readily available to HMOs if (1) the HMO is for-profit; and (2) the Federal government is willing to forgive or reduce the repayment of grant funds. Section 110.211 has thus been changed to show clearly that the Secretary may waive repayment of all or part of the grant funds upon conversion. The Department has developed a policy statement on the methodology that the Secretary will use to determine the amount of funds repayable to the Federal government. This policy statement can be obtained by writing to the Director, OHMO, at the address listed above, and we invite public comment on the substantive issues involved.

III. Subpart J: Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities

On April 9, 1980, interim regulations were published in the **Federal Register** (45 FR 24352–7) and designated as 42 CFR Part 110, Subpart J. These interim regulations implemented a new section 1305A, 42 U.S.C. 300e–4a, that authorizes the Secretary to make and guarantee loans to qualified HMOs for the acquisition and construction of ambulatory health care facilities and for the acquisition of equipment for those facilities. Interested persons were given an opportunity to submit comments concerning these regulations by June 9, 1980. Sixty persons submitted comments on the interim regulations: twenty-five letters were received on or before the close of the comment period and thirty-five were received following it. All comments were considered in developing the final regulations.

The comments received, responses thereto, and the changes in the Subpart J interim final regulations are summarized in the Appendix to this document.

Executive Order 12291, Federal Regulation

The Department of Health and Human Services has determined that this is not a major rule for the purposes of Executive Order 12291, Federal Regulation, because it will not result in (1) An annual effect on the economy of $100 million or more; (2) A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that these regulations will not have a significant impact on a substantial number of small entities, including HMOs, small businesses, small organizational units, and small governmental jurisdictions. In fact, the amendments to the regulations relieve or relax previous restrictions (see, for example, the discussion on loans and loan guarantees for acquisition and construction of ambulatory health care facilities) and should benefit HMOs and their enrollees by encouraging private sector investment (see, for example, the discussion on the grant repayment provision).

Office of Management and Budget Clearance: Reporting and Recordkeeping Requirements

The Department is required to submit to the Office of Management and Budget (OMB) for review and approval sections of the regulations which deal with reporting or recordkeeping requirements. The following is a status report on those sections of the regulations subject to OMB clearance.

A. *Requirements Already Approved.*

	OMB No.	
Full and fair disclosure 42 CFR 110.108(c)(1).	0937-0093	Apr. 27, 1982.
Reporting and disclosure (National Data Reporting Requirements) 42 CFR 110.108(b).	0937-0032	Do.
42 CFR 110.303		
Planning and initial development 42 CFR 110.403 and 42 CFR 110.404.	0937-0013	Do.
Application for HMO qualification and loan assistance 42 CFR 110.504 and 42 CFR 110.604.	0937-0103	Do.

B. *Requirement for Which OMB Approval Is Being Requested.* In addition, § 110.1004 will be submitted to OMB for their review and clearance. Unlike other provisions in these final rules, the amendments to § 110.1004 will not become effective until the Department receives OMB's approval. The Department will publish in the **Federal Register** the results of OMB's review as soon as possible and if OMB approves this requirement, the notice will indicate an effective date for the amendment to § 110.1004.

List of Subjects in 42 CFR Part 110

Grant programs/health, Health care, Health facilities, Health insurance, Health Maintenance Organizations, Loan programs/health.

Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Part 110, as set forth below.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, as amended, Pub. L. 97–35, 95 Stat. 572–578 (42 U.S.C. 300e–300e–17))

Dated: February 5, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: April 15, 1982.

Richard S. Schweiker,

Secretary.

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

42 CFR Part 110 is amended as follows:

Subpart A—Requirements for a Health Maintenance Organization

§ 110.101 [Amended]

1. In § 110.101, revise the "Individual Practice Association" definition to read as follows:

§ 110.101 [Amended]

* * * * *

"Individual practice association" (IPA) means a partnership, association, corporation, or other legal entity which delivers or arranges for the delivery of health services and which has entered into written services arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written services arrangement shall provide:

(1) That these health professionals shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(2) To the extent feasible, for the sharing by these health professionals of health (including medical) and other records, equipment, and professional, technical, and administrative staff.

* * * * *

2. In § 110.101, revise the "Medical Group" definition to read as follows:

* * * * *

"Medical group" means a partnership, association, corporation, or other group:

(1) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services or which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which:

(i) After the end of the 48 month period beginning after the month in which the HMO for which the group provides health services becomes a qualified HMO, as their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to members of an HMO;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

* * * * *

3. In § 110.101, remove the definition: "Non-conforming medical group".

4. In § 110.101, revise the "Party in interest" definition by (a) adding after the word employee the following words: "responsible for management or administration"; and (b) removing in subparagraph (3) the words "member of

the immediate family" and replacing them with the folowing: "spouse, child, or parent".

5. In § 110.101, revise the "Staff of the HMO" definition by removing subparagraph (4) and redesignating subparagraph (5) as (4).

6. In § 110.103, revise paragraph (a) to read as follows:

§ 110.103 [Amended]

(a) An HMO may provide to its members any health service which is not includes as a basic health service under § 10.102(a). These health services may be limited as to time and cost.

* * * * *

7. In § 110.103, remove paragraph (c).

8. In § 110.104, revise paragraph (a)(3) to read as follows:

§ 110.104 [Amended]

(a) * * *

(3) After the 4 year period beginning with the month following the month in which an HMO becomes a qualified HMO, an entity which meets the requirements of the definition of medical group in § 110.101, except for subdivision (3)(i) of that definition, may be considered a medical group if the Secretrary determines that the principal professional activity (over 50 percent individually) of the entity's members is the coordinated practice of their profession, and if the HMO has demonstrated to the satisfaction of the Secretary that the entity is committed to the delivery of medical services on a prepaid group practice basis by either:

(i) Presenting a reasonable time-phased plan for the entity to achieve compliance with the "substantial responsibility" requirement of subdivision (3)(i) of the definition of "medical group" in § 110.101. The HMO shall update the plan annually and shall demonstrate to the satisfaction of the Secretary that the entity is making continuous efforts and progress towards compliance with the requirements of the definition of "medical group," or

(ii) Demonstrating that compliance by the entity with the "substantial responsibility" requirement is unreasonable or impractical because (A) the HMO serves a non-metropolitan or rural area as defined in § 110.101, or (B) the entity is a multi-speciality group which provides medical consultation upon referral on a regional or national basis, or (C) the majority of the residents of the HMO's service area are not eligible for employer-employee health benefits plans and the HMO has an insufficient number of members to require utilization of at least 35 percent of the entity's services.

* * * * *

9. In § 110.104, remove paragraph (b) and redesignate paragraphs (c) as (b); (d) as (c); (e) as (d); (f) as (e); and (g) as (f);

10. In § 110.104, revise newly redesignated paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) In their contracts with health professionals for the provision of basic and supplemental health services (except for unusual or infrequently used services) at least the provisions described in paragraphs (b)(1) (i), (ii), (iii), and (iv) of this section.

* * * * *

11. In § 110.105, revise paragraph (b) to read as follows:

§ 110.105 [Amended]

* * * * *

(b) *Community rating system.* Under a community rating system, rates of payment for health services may be determined on a per person or per family basis, as described in paragraph (b)(1) of this section or on a per group basis as described in subparagraph (2). An HMO may fix its rates of payment under the system described in paragraph (b)(1) or (b)(2) of this section or under both such systems, but an HMO may use only one such system for fixing its rates of payment for any one group.

(1) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per person or per family basis and may vary with the number of persons in a family. Except as otherwise authorized in this paragraph, these rates must be equivalent for all individuals and for all families of similar composition. Rates of payment may be based on either a schedule of rates charged to each subscriber group or on a per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In the former event, rates may vary from group to group if the projected total revenue from each group is substantially equivalent to the revenue which would be derived if the schedule of rates were uniform for all groups. In the latter event, the payments from each group of subscribers shall be calculated to yield revenues substantially equivalent to the product of the total number of members (or subscribers) expected to be enrolled from the group and the per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. Under the system described in this subparagraph, rates of payment may not vary because of actual or anticipated utilization of services by individuals associated with any specific group of subscribers. These provisions do not preclude changes in the rates of payment which are established for new enrollments or re-enrollments and which do not apply to existing contracts until the renewal of these contracts.

(2) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as otherwise authorized in this paragraph, such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If an HMO is to fix rates of payment for individuals and families by groups, it shall—

(i) Classify all of the members of the organization into classes based on factors which the HMO determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(ii) Determine its revenue requirements for providing services to the members of each class established under paragraph (b)(2)(i) of this section, and

(iii) Fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under paragraph (b)(2)(ii) of this section for providing services to them as members of the classes established under paragraph (b)(2)(i) of this section. The Secretary will review the factors used by each HMO to establish classes under paragraph (b)(2)(i) of this section. If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary will disapprove the factor for that purpose.

(3)(i) Nominal differentials in rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of potential subscribers:

(A) Individual (non-group) subscribers (including their families).

(B) Small groups of subscribers (100 subscribers or fewer).

(C) Large groups of subscribers (over 100 subscribers).

(ii) Differentials in rates may be established for subscribers enrolled in an HMO: (A) Under a contract with a governmental authority under section 1079 ("Contracts for Medical Care for Spouses and Children: Plans") or section 1086 ("Contracts for Health Benefits for Certain Members, Former Members and their Dependents") of Title 10 ("Armed

Forces"), United States Code; or (B) under any other governmental program (other than the health benefits program authorized by chapter 89 ("Health Insurance") of Title 5 ("Government Organization and Employees"), United States Code; or (C) under any health benefits program for employees of States, political subdivisions of states, and other public entities.

(4) An HMO may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration to the Secretary of the following:

(i) Each regional component is geographically distinct and separate from any other regional component; and

(ii) Each regional component provides substantially the full range of basic health services to its members, without extensive referral between components of the organization for these services, and without substantial utilization by any two components of the same health care facilities. The separate community rate for each regional component of the HMO must be based on the different costs of providing health services in the respective regions.

* * * * *

12. In § 110.107, revise the material in introductory text paragraph (b) to read as follows:

§ 110.107 [Amended]

* * * * *

(b) Available and accessible to each of the HMO's members with reasonable promptness with respect to:

* * * * *

13. In § 110.107, revise subparagraph (b)(1) by adding after the word *week*) the following:

* * * * *

(b) * * *

(1) * * *, except that an HMO which has a service area located wholly in a non-metropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency care service and if there is an insufficient number of providers of that basic health service within the service area who will provide that service to members of the HMO;

* * * * *

14. In § 110.108, amend paragraph (a) by adding at the end a new subparagraph (3) to read as follows:

§ 110.108 [Amended]

(a) * * *

(3) *Protection of members.* (i) Each HMO shall adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization:

(A) A contractual arrangement with any hospital regularly used by the members of the HMO prohibiting the hospital from holding any member liable for payment of any fees which are the legal obligation of the HMO;

(B) Insolvency insurance, acceptable to the Secretary;

(C) Adequate financial reserve acceptable to the Secretary;

(D) Other arrangements acceptable to the Secretary to protect members; and

(ii) The requirements of this subparagraph do not apply to an HMO if applicable State law provides the members of the HMO with protection from liability for payment of any fees which are the legal obligation of the HMO.

* * * * *

15. In § 110.108, revise paragraph (b) to read as follows:

* * * * *

(b) *Financial risk.* Each HMO shall assume full financial risk on a prospective basis for the provisions of basic health services, except that it may (1) Obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year;

(2) Obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the HMO because medical necessity required their provision before they could be secured through the HMO;

(3) Obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year; and

(4) Make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

* * * * *

16. In § 110.108, remove paragraphs (d) and (e) and redesignate paragraphs (f) as (d); (g) as (e); (h) as (f); (i) as (g); (j) as (h); and (k) as (i).

17. In § 110.108, remove paragraphs (l), (m), and (n).

18. In §110.108 revise paragraph (o)(2) to read as follows:

* * * * *

(o) * * *

(2) Each HMO shall report to the Secretary annually, within 180 days of the end of its fiscal year (unless for good cause shown, the Secretary authorizes an extension of time):

(i) A copy of the report, if any, filed with the Department's Health Care Financing Administration containing the information required to be reported by disclosing entities under regulations implementing section 1124 and section 1902(a)(38) of the Social Security Act (see 42 CFR 420.206 and 42 CFR 455.104), respectively; and

(ii) A description of the following significant business transactions between the HMO and a party in interest, and a justification that the costs of these transactions do not exceed the costs which would be incurred if these transactions were to be with someone who is not a party in interest (or if they do, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements):

(A) Sale, exchange, or leasing of property;

(B) Furnishing for consideration of goods, services (including management services), or facilities between the HMO and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical groups, IPAs, or any combination thereof; and

(C) Lending of money and other extension of credit.

* * * * *

19. In § 110.108, redesignate paragraphs (o) as (j); (p) as (k); (q) as (l); (r) as (m); and (s) as (n).

Subpart B—Federal Financial Assistance: General

20. In § 110.211, amend paragraph (b) by removing the first sentence and by inserting in its place the following:

§ 110.211 [Amended]

* * * * *

(b) Any grantee which becomes a for-profit entity after receiving a grant under section 1304 of the Act shall immediately upon demand by the Secretary repay to the Secretary the total amount of grant funds received under section 1304, unless the Secretary determines for good cause that waiver of all or part of this amount would be in the interest of the United States. * * *

Subpart C—Grants for Feasibility Surveys

§ 110.302 [Amended]

21. In § 110.302, amend paragraph (a) by adding after the word *organization* the following:

(a) * * * and which received a grant or contract under section 1303 or section 1304 of the Act on or before September 30, 1981.

* * * * *

Subpart D—Grants and Loan Guarantees for Planning and Initial Development Costs

§ 110.402 [Amended]

22. In § 110.402, amend the first paragraph by adding in the first sentence after *HMO* the following words:

* * * and which received a grant or contract under section 1303 or section 1304 of the Act on or before September 30, 1981.

* * * * *

23. In § 110.407, revise paragraph (c) to read as follows:

§ 110.407 [Amended]

* * * * *

(c) *Repayment.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interests, to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan. Principal repayment may be deferred, with payment of interest only by the applicant during a period to be specified in an agreement between the applicant and the Secretary. The Secretary may set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date the disbursement is made for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

Subpart E—Loans and Loan Guarantees for Initial Operating Costs

§ 110.503 [Amended]

24. In § 110.503:

a. Remove in paragraph (a)(2) the word *nonprofit.*

b. Remove paragraph (a)(3).

c. Remove in paragraph (b)(1) the word *nonprofit.*

25. In § 110.503, revise paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) *Loan guarantees.* Loan guarantees may be made pursuant to section 1305 of the Act, and the regulations of Subpart B of this part and this subpart, to guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any private qualified HMO for the amounts referred to in paragraph (b)(1) of this section.

§ 110.507 [Amended]

26. In § 110.507, remove the material in the introductory text to paragraph (a) and combine the material in paragraphs (a) (1) and (2) into a paragraph designated as (a).

* * * * *

27. In § 110.508, revise paragraph (c) to read as follows:

§ 110.508 [Amended]

* * * * *

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan or loan guarantee and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan. Principal repayment during the first 60 months of operation may be deferred, with payment of interest only by the applicant during such period. The Secretary may set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date the disbursement is made for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

Subpart G—Restrictive State Laws and Practices

§ 110.701 [Removed]

28. Remove the heading of Subpart G and remove § 110.701.

Subpart H—Employees' Health Benefits Plans

§ 110.801 [Amended]

29. In § 110.801, amend the "Employer" definition by adding before the words *does not include* the words "includes non-appropriated fund instrumentalities of the Government of the United States, but".

§ 110.805 [Amended]

30. In § 110.805, amend paragraph (a)(1) by adding after the word *provides* the following: "more than one-half of its".

31. In § 110.805, amend paragraph (a)(2) by removing the words *basic health services* where they first appear and replacing them with the following: "its basic health services which are provided by physicians".

Subpart I—Continued Regulation of Health Maintenance Organizations and Other Entities

§ 110.903 [Amended]

32. In § 110.903(a), change the reference to *§ 110.108(o)* to "§ 110.108(j)".

§ 110.904 [Amended]

33. In § 110.904, amend paragraph (d)(1) by inserting after the first sentence the following: "In this notification, the Secretary shall provide the HMO with an opportunity for reconsideration of the revocation, including at the HMO's election a fair hearing. The revocation of qualification shall be effective on the fifth working day after the HMO receives the notice unless the Secretary receives a request for reconsideration by that date. If, upon reconsideration, the Secretary again determines to revoke the HMO's qualification, this revocation shall be effective on the fifth working day after the HMO received notice of the reconsidered decision."

* * * * *

Subpart J—Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities

§ 110.1003 [Amended]

34. In § 110.1003, remove the word "nonprofit" in paragraph (b) and remove paragraph (c).

35. Revise the title of § 110.1004 in the table of sections and revise § 110.1004 to read as follows:

§ 110.1004 What requirements must an applicant meet?

(a) An applicant shall provide an appraisal of the property to be acquired with a loan made or guaranteed under this subpart. The appraisal must be prepared by an independent appraiser approved in advance by the Secretary.

(b)(1) An applicant shall identify any party in interest (as defined in § 110.101 of this part) with whom a transaction is proposed and for which transaction assistance is being requested under this subpart. The applicant must also identify any individual who would become a party in interest as a consequence of a proposed transaction.

(2) Where a party in interest is so identified, the applicant shall provide:

(i) An explanation of the involvement of the party in interest;

(ii) A combined financial statement for the HMO and the party in interest. This statement must be examined by an independent auditor in accordance with generally accepted accounting principles with appropriate opinions and notes;

(iii) Evidence that the proposed transaction with a party in interest will be consistent with the requirements of Subpart A of this Part (for example, the fiscal soundness requirements in 42 CFR 110.108(a)(1)).

(c) The applicant shall provide an assurance satisfactory to the Secretary that the HMO will have title (as defined in § 110.1002) to the facility.

(d) The applicant shall include line drawings of the proposed facility demonstrating that the allocation of square footage complies with the requirements of § 110.1007.

(e) The applicant shall provide assurances satisfactory to the Secretary that—

(1) At the time the application is made the HMO is fiscally sound;

(2) If the application is for a loan, the HMO is unable to secure a loan, at the rate of interest prevailing in the area in which the organization is located, from non-Federal lenders for the project with respect to which the application is submitted, or, if the application is for a loan guarantee, the HMO would be unable to secure a loan from such lenders for the project without the loan guarantee; and

(3) During the period of the loan or loan guarantee, the HMO will remain fiscally sound.

§ 110.1006 [Amended]

36. In § 110.1006(a), change the reference to section 1305A(b)(1) of the Act to "section 1305A(c)(1) of the Act."

37. In § 110.1006, revise paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) The applicant may not use any funds provided under other subparts of this Part to pay for the applicant's portion of eligible costs for a project assisted under this subpart.

38. In § 110.1007, revise paragraph (b)(2) to read as follows:

§ 110.1007 [Amended]

* * * * *

(b) * * *

(2) Where assistance under this subpart is used to acquire or construct facilities for the provision of optical, pharmacy or dental services, the total net assignable square footage available to the HMO for the provision of each of these assisted services may not exceed that needed to serve 110 percent of the projected number of HMO members at the end of the five year period after the acquisition or construction is to be completed. Only the HMO members projected to be enrolled to receive these services on a prepaid basis may be counted for purposes of this limitation. The applicant shall calculate the amount of net assignable square footage which is needed in accordance with instructions provided by the Secretary.

* * * * *

§§ 110.1009, 110.1010, 110.1011, 110.1012, and 110.1015 [Removed]

§§ 110.1013, 110.1014 and 110.1016 Redesignated as 110.1009, 110.1010, and 110.1011

39. Remove §§ 110.1009, 110.1010, 110.1011, 110.1012, and 110.1015, and redesignate § 110.1013 as § 110.1009, § 110.1014 as § 110.1010 and §110.1016 as § 110.1011. Revise the table of sections accordingly.

40. The newly redesignated § 110.1009, is revised to read as follows:

§ 110.1009 [Amended]

(a) Each loan made by the Secretary shall bear interest at a rate comparable to the current rate prevailing, with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges. The Secretary may set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date the disbursement is made for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

(b) Each loan guaranteed by the Secretary shall bear interest at a rate the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States.

Appendix

Analysis of Public Comments on Interim Final Subpart J Regulations

(Editorial note: This Appendix will not appear in the Code of Federal Regulations.)

1. Two commenters raised questions about the definitions at § 110.1002. One commenter suggested that the definition of "ambulatory health care facility" be revised to include a reference to HMO administrative functions in addition to diagnostic, prevention, and treatment services, since § 110.1007 allows loan and loan guarantee proceeds to be used in part to develop HMO administrative space. While the Department recognizes that some administrative activities are necessary in order to facilitate the clinical operation of an HMO, the primary purpose of an HMO is to provide diagnostic, treatment, and prevention services. The Department believes that the present definition sufficiently describes the actual purposes and functions of an HMO, with any administrative activities constituting an implicit part of the clinical functions. The Department notes that the definition in the regulations is identical to the statutory definition. The regulation is not changed.

Another commenter suggested that the definition of "construction" be changed to indicate that the alteration and renovation of leased, newly constructed facilities are acceptable activities under this subpart. Again, the Department notes that the regulations use the statutory definition for the term "construction." Further, the definition permits the renovation of existing facilities and does not preclude the use of funds under this subpart for leased space. Therefore, the regulation is not changed.

2. Section 110.1004 deals with the information and assurances an applicant must provide for a loan or loan guarantee under this subpart. One commenter objected to the requirement at § 110.1004(b) (numbered § 110.1004(c) in the interim regulations) that the HMO identify any party in interest with whom a transaction is proposed and for which transaction assistance is requested on the grounds that the process (1) might result in unacceptable delays of proposed construction projects and (2) was not authorized under Section 1305A of the Act. The commenter asserts that if Congress had wanted disclosure of party in interest transactions for ambulatory health care facility construction projects assisted under this subpart, it would have specifically required such disclosure.

The Department notes that Section 1318 of the Act requires all qualified HMOs to disclose, on an annual basis, party in interest transactions in accordance with regulations of the Secretary. Further, the Department has the authority to issue regulations as needed to protect the Federal interest under discretionary assistance programs such as the HMO ambulatory care facility construction program. It is important to the Department that any involvement in the

management of the HMO by parties in interest occur in a manner which is in the best interest of the HMO. Therefore, it is necessary for the HMO to disclose certain transactions before the Department approves a loan or a loan guarantee under this subpart.

Another commenter requested that a review of any party in interest transactions be expedited so as not to cause undue delays in projects assisted under this subpart. The Department agrees that information disclosed under § 110.1004(b) should be reviewed and evaluated as quickly as possible. In addition, the Department reemphasizes the point made in the preamble to the interim regulations that all disclosures under this section will be scrutinized, and where it is determined that participation of a party in interest in a proposed transaction is likely to affect the HMO adversely, requested financial assistance will not be awarded.

Section 110.1004(b)(2)(ii) requires the HMO to include in its application where a party in interest is identified, a combined financial statement "prepared" by an independent auditor. One commenter observed that independent auditors "examine" financial statements rather than prepare them. The Department agrees that the term "examine" is more precise since financial statements are the representations of management and not necessarily prepared by the auditors. The regulation is changed accordingly. The last phrase in subparagraph (ii) of this section stipulating that the audited financial statement be submitted in the form and manner prescribed by the Secretary has been deleted because independent auditors generally express their opinions concerning the financial statements of their clients in a standard format following generally accepted auditing standards.

3. One commenter objected to the requirement at § 110.1004(c) (numbered § 110.1004(f) in the interim regulations) for the inclusion of line drawings of the proposed facility in the application on the grounds that this requirement would be difficult to comply with if the HMO undertook the fast-track method of construction. The Department points out that the submission of the line drawings is necessary as an indication of whether the scope and purpose of the proposed project will meet the requirements and be consistent with the purposes of this subpart. Further, the Department does not agree that this requirement will prevent an HMO from undertaking fast-track construction, since the HMO is likely to require line drawings for its own purposes at the earliest phases of the project. Therefore, the requirement at § 110.1004(c) is not changed.

4. The Secretary has deleted from § 110.1004 a number of provisions which he views as unnecessary or burdensome. Thus, for example, the requirement at former § 110.1004(c)(2)(iii) for a second appraisal when a party in interest is involved has been removed.

5. With regard to the requirement at § 110.1006(a) limiting the aggregate amount of a loan or loan guarantee to the amount specified in Section 1305A(c)(1) of the Act, one commenter inquired whether an HMO could receive up to the maximum amount allowed for more than one ambulatory health care facility. Section 1305A(c)(1) of the Act provides that the aggregate amount provided per facility may not exceed $2,500,000. Under the definition of "facility" in § 110.1002, if an HMO is located in several buildings, each building in which the HMO provides diagnostic treatment, and prevention services to ambulatory patients is a facility.

6. One commenter observed that § 110.1006(b)(2), which prohibits the HMO from using any funds provided under other sections of Title XIII for any portion of the project not paid for by the loan made or guaranteed under Section 1305A of the Act, was inconsistent with the provisions of Section 1304(b)(4) of the Act, which authorizes grants, contracts or loan guarantees for the expansion of the services or the significant expansion of the membership of the area served by a qualified HMO. The commenter asserts that equipping a facility constructed with funds authorized by Section 1305A with funds authorized under Section 1304(b)(4) would be prohibited by § 110.1006(b)(2) of the regulations.

The Department acknowledges that the commenter's concerns are well founded and that the purpose of § 110.1006(b)(2) was to prohibit use of funds provided under Title XIII by the HMO to cover the applicant's share of costs. Therefore, the regulation is changed to reflect this intent.

7. Two commenters mentioned that requirements in § 110.1007 pertaining to the net assignable square footage limitations applicable to an assisted facility were inappropriate. One commenter noted with regard to the restriction in § 110.1007(a)(1) that not more than 25% of the net assignable square footage may be devoted to administrative space that the limitation would hamper an HMO's flexibility in moving the location of its various functional activities. Another stated that Congress did not intend the HMO clinical function to be favored to the "virtual exclusion" of the HMO administrative function. The commenter asserted that in Section 1305A of the Act, Congress tacitly understood that clinical and administrative functions are inseparable.

While we recognize that the HMO requires administrative space to support its clinical activities, we note that the primary purpose of Section 1305A of the Act is to support the development of space to be used for diagnostic, treatment and preventive services. We believe that permitting up to 25% of the space assisted under this section of the Act to be used for administrative purposes is sufficient to enable HMOs to support the provision of health services. Moreover, the requirements can be waived for good cause. Therefore, the regulation at § 110.1007(a)(1) is not changed.

Two commenters noted that the requirement limiting the net assignable square footage to not more than 110% of the projected number of the HMO members at the end of the 5 year period after the acquisition or construction is to be completed is also unnecessarily rigid in that unanticipated membership growth during the 5 year period could place demands on the HMO which might require rapid reallocation of services and functions among (or between) the HMO's facilities. One commenter suggested that the limitation be increased to 200% of projected membership after 5 years, asserting that this percentage would provide greater flexibility but would not result in overbuilding because HMOs had a disincentive to do so since they could not carry idle space and still remain competitive.

The Department points out that the purpose of the limitation is to protect the financial interest of the Federal government. Overexpansion could have an adverse impact on the financial condition of the HMO as fixed acquisition costs beyond the needs of the members could impair the HMO's ability to support the principal and interest expenses of the Federal loan. Further, the Department believes that the 110% limitation does provide the HMO with adequate flexibility for most situations when enrollment fluctuates upward. Therefore, the requirement at § 110.1007(b)(1) remains unchanged. However, under certain cases, greater than expected growth could justify the need for expansion beyond the original projections. In this event, expansion of space beyond the original level may be warranted so long as the enlarged capacity remains within 110% of the revised membership forecast. The Department notes that § 110.1007 provides that for good cause, the requirements of § 110.1007 may be waived or modified.

There were 46 objections to the requirement at § 110.1007(b)(2), which provides Federal financial assistance to the HMO for the acquisition or construction of that amount of space necessary to provide optical, pharmacy, or dental services to 200% of the projected number of HMO members for whom these services will be provided on a prepaid basis at the end of 5 years. Several of those who objected recommended that the amount of space which could be assisted under this section be reduced to the amount of space needed to serve 100% of the projected number of HMO members at the end of the 5 year period after the acquisition or construction is to be completed. The commenters objected to the existing provision on the grounds that such assistance (1) is an illegal subsidy to non-HMO members, (2) promotes unfair competition between the HMO and unassisted providers of these services and (3) is contrary to the decision in *Abbott Laboratories v. Portland Retail Druggists* (425 U.S. 1, 96 S. Ct. 1305 (1976)). The Supreme Court in *Abbott Laboratories* held that the nonprofit institutions exemption from the price discrimination provisions of the Robinson-Patman Act of 1936, 15 U.S.C. 13(a), 13c, does not exempt all of a nonprofit hospital's drug purchases from the Robinson-Patman Act, but only those purchases which are used as part of or to promote the hospital's intended institutional operation of caring for patients.

To respond to these comments, the Department disagrees with the view that it is without authority to assist HMOs to develop space for certain supplemental services. In enacting Section 1305A of the Act, Congress clearly intended that the Department provide support for HMOs to expand their ability to provide health services. It is significant that

Congress did not differentiate in the Act between basic and supplemental health services in establishing eligibility for assistance. The Department also does not believe that assistance for supplemental services in the form of a loan or a guaranteed loan which must be repaid with interest gives the HMO an unfair competitive advantage over non-HMO providers.

With regard to the applicability of *Abbott Laboratories*, the Department finds that this argument is misplaced inasmuch as this subpart in no way regulates the purchasing policies of HMO pharmacies. To the extent that the HMO might be party to a transaction that violates the Robinson-Patman Act of 1936, it would be doing so entirely apart from carrying out a construction or acquisition project under this subpart. However, the Department does advise HMOs with nonprofit status to be aware of the possible implications of *Abbott Laboratories* for their organizations. While HMOs may properly provide fee-for-service pharmacy or other supplemental services, a nonprofit HMO may possibly be running the risk of being a party to a transaction violating the Robinson-Patman Act if it purchases its fee-for-service products at more favorable prices than those charged to commercial pharmacies by the same supplier. Nonprofit HMOs using the nonprofit institutions exemption, which exempts purchases of supplies by a nonprofit entity for its "own use" from the Robinson-Patman Act prohibitions, should be aware of the Supreme Court's interpretation of the "own use" exemption language in *Abbott Laboratories*. While that case involved a nonprofit hospital and not an HMO, the Court in its decision categorized different types of pharmacy services, some of which were similar to ones an HMO might provide, and then held that only certain ones were reasonably related to the institution's activities and were therefore legitimately for its "own use." The Department does not believe that an HMO's purchase of supplies for the provision of fee-for-service dental, pharmacy, or optical services should necessarily be characterized as being other than for its "own use," but is simply noting that any nonprofit HMOs using the nonprofit institutions exemption to purchase at a discount, supplies such as drugs, for the provision of services on a fee-for-service basis should consider carefully the applicability of the *Abbott Laboratories* guidelines.

The Department has reconsidered this provision, § 110.1007(b)(2), in light of the public comments. The Department notes that HMOs frequently make available a particular service such as pharmacy, to members who may not receive coverage for that service under the HMO's prepaid health package, as a convenience. It agrees, however, that the assistance provided under Section 1305A of the Act is not intended to assist the HMO to expand ambulatory care services on a fee-for-service basis. Therefore, it has amended the regulation to limit the assistance to be provided so that the HMO may only acquire or construct the amount of space necessary to provide optical, pharmacy and dental services to 110% of the projected number of HMO members to be enrolled to receive these services on a prepaid basis at the end of the 5 year period after the acquisition or construction is to be completed. This is consistent with the requirements at § 110.1007(b) (1) and (3). While several commenters recommended using 100%, the Department adopts 110% in order to allow some flexibility in the membership forecasting process. In addition, as noted above, this limitation may be waived or modified for good cause shown.

8. One commenter asked that the term "eligible costs" used in § 110.1008 be defined more precisely. The Department notes that the regulations require that eligible costs must be reasonable and necessary for the acquisition or construction of, or the purchase of equipment for, a facility or portion of a facility. Further clarification of the term is provided in subsection (b), (c), (d), and (e) of § 110.1008 by means of examples of costs which are eligible under certain conditions (e.g., land acquisition is an eligible cost only if it is in connection with the acquisition or construction of a facility on that land), and costs which are not eligible (e.g., leasing land for a facility). The Department believes that further specificity would hamper its ability to assess the unique characteristics of each application. Therefore, these terms are not changed in the regulations.

9. In the interest of simplifying the regulation, we have deleted a number of sections which were simply informational (for example, former § 110.1012, "How are loan closing dates determined?") or which were unnecessary as regulatory provisions and could be more appropriately set forth in the loan documents themselves (for example, § 110.1015, regarding rights and obligations of the holder of a loan in the event of default). Thus, former §§ 110.1009–110.1012 and § 110.1015 have been deleted and the remaining sections renumbered accordingly.

10. One commenter suggested that the regulations at § 110.1009 (§ 110.1013 of the interim regulations) provide more specific information with regard to the interest rate to be charged for loans made or guaranteed under this subpart. As noted above, section 1308(b)(2) of the Act has been amended to permit the Secretary to establish separate interest rates for each disbursement under a loan, each to bear interest at a rate comparable to the current rate of interest prevailing with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges. Section 1308(a)(1) of the Act requires that any loan guarantees under Title XIII must bear interest at a rate not exceeding such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States. We have revised the regulations to reflect these statutory requirements.

[FR Doc. 82-12294 Filed 5-4-82; 8:45 am]
BILLING CODE 4110-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6241

[I-17482, I-18105]

Idaho; Revocation of Secretarial Orders

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two withdrawals affecting 135 acres of national forest land withdrawn for use by the Forest Service as administrative sites. This action will restore the lands to such use and disposition as may, by law, be made of national forest lands.

EFFECTIVE DATE: June 3, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders of August 9, 1907, and January 16, 1909, respectively, are hereby revoked so far as they affect the following described lands:

Boise Meridian

Coeur d'Alene National Forest

T. 50 N., R. 3 E.,
Sec. 28, lot 5.
T. 44 N., R. 3 W.,
Sec. 2, N½SW¼, NW¼SE¼.

The areas described contain 15 acres in Shoshone and 120 acres in Benewah Counties.

2. At 7:45 a.m. on June 3, 1982, the above described lands will be open to such forms of disposal as may, by law, be made of national forest lands.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
April 28, 1982.

[FR Doc. 82-12296 Filed 5-4-82; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6287]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP) and eligible for second layer insurance coverage. These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the regular program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64.

Flood insurance, Flood plains.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Arizona: Navajo County	Snowflake, town of	040070	750530, emergency 820301, regular	740405
California: Marin County	Marin County*	060173	710315, emergency 820301, regular	770325
Idaho: Kootenai County	Kootenai County*	160076	740408, emergency 820301, regular	770507
Illinois:				
Cook County	Elgin, city of	170087	750529, emergency 820301, regular	740503
Kane County	Kane County*	170896	750729, emergency 820301, regular	760514
Winnebago County	Roscoe, village of	170724	740611, emergency 820301, regular	740323
Louisiana: Vermilion Parish	Kaplan, city of	220226	740701, emergency 820301, regular	731102
Michigan:				
Gratiot County	Alma, city of	260068	741226, emergency 820301, regular	740510
Jackson County	Concord, village of	260423	760629, emergency 820301, regular	750711
Shiawassee County	Owosso, city of	260595	750523, emergency 820301, regular	760906
New Jersey:				
Burlington County	Florence, township of	340098	750905, emergency 820301, regular	740328
Camden County	Haddon, township of	340154	740412, emergency 820301, regular	741122
Atlantic County	Mullica, township of	340517	740422, emergency 820301, regular	741101
New York: Erie County	Williamsville, village of	360263	740712, emergency 820301, regular	740521
Oregon:				
Yamhill County	Dundee, city of	410253	740423, emergency 820301, regular	740530
Do	Newberg, city of	410256	740605, emergency 820301, regular	740514
Linn County	Sweet Home, city of	410146	750417, emergency 820301, regular	740125

—Continued

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Washington County	Tigard, city of	410278	750206, emergency 820301, regular	750214
Yamhill County	Yamhill, city of	421631	750210, emergency 820301, regular	731130
Pennsylvania:				
Fayette County	Luzerne, township of	421631	750210, emergency 820301, regular	741227
Montgomery County	Skippack, township of	421149	740409, emergency 820301, regular	740726
Texas:				
Fort Bend County	Stafford, city of	480233	791016, emergency 820301, regular	0
Williamson County	Taylor, city of	480670	741107, emergency 820301, regular	740329
Utah:				
Davis County	Centerville, city of	490040	750724, emergency 820301, regular	740628
Do	Davis County*	490038	750422, emergency 820301, regular	760207
Do	Kaysville, city of	490046	750419, emergency 820301, regular	740628
Weber County	South Ogden, city of	490191	740602, emergency 820301, regular	740405
Vermont: Chittenden County	Colchester, town of	500033	740823, emergency 820301, regular	740823
Washington: Pierce County	Wilkeson, town of	530268	760817, emergency 820301, regular	750629
Wisconsin: Milwaukee County	Milwaukee, city of	550278	740130, emergency 820301, regular	740628
California: San Mateo County	Belmont, city of	065016	710402, emergency 820309, regular	740719
Idaho: Cassia County	Burley, city of	160043	750716, emergency 820309, regular	740524
Arkansas:				
Ouachita County	Camden, city of	050183	711230, emergency 820315, regular	740719
Sebastian County	Hackett, city of	050199	750425, emergency 820315, regular	741016
Do	Hartford, city of	050200	760312, emergency 820315, regular	740906
Monroe County	Holly Grove, city of	050157	750613, emergency 820315, regular	740405
Ashley County	Montrose, town of	050006	741010, emergency 820315, regular	740503
Conway County	Morrilton, city of	050044	750608, emergency 820315, regular	731102
Franklin County	Ozark, city of	050358	750205, emergency 820315, regular	750926
Arizona: Mohave County	Mohave County*	040058	740506, emergency 820315, regular	750110
Connecticut:				
Tolland County	Ellington, town of	090158	750729, emergency 820315, regular	741101
Middlesex County	Killingworth, town of	090174	750715, emergency 820315, regular	750404
Florida:				
St. Lucie County	Port St. Lucie, city of	120287	750607, emergency 820315, regular	741213
Suwannee County	Sumter County*	120296	740821, emergency 820315, regular	770617
Idaho: Bonner County	Clark Fork, city of	160132	760630, emergency 820315, regular	750919
Kentucky: Greenup County	Raceland, city of	210089	760121, emergency 820315, regular	740208
Massachusetts: Worcester County	Southbridge, town of	250334	740514, emergency 820315, regular	740222
Maine: Washington County	Baring Plantation	230468	740319, emergency 820315, regular	750131
Michigan:				
Kalamazoo County	Augusta, village of	260312	750520, emergency 820315, regular	740906
Do	Ross, township of	260624	750724, emergency 820315, regular	0
Minnesota: Houston County	Hokah, city of	270192	741129, emergency 820315, regular	740308
Montana: Gallatin County	Bozeman, city of	300028	750512, emergency 820315, regular	740215
New Jersey: Morris County	Harding, township of	340344	750610, emergency 820315, regular	740412
New York: Westchester County	Harrison, town of	360912	730202, emergency 820315, regular	760305
Oregon:				
Washington County	Forest Grove, city of	410241	750604, emergency 820315, regular	740301
Yamhill County	Willamina, city of	410258	750121, emergency 820315, regular	731228
Pennsylvania:				
Allegheny County	Collier, township of	421058	750707, emergency 820315, regular	740710
Berks County	Exeter, township of	421063	740927, emergency 820315, regular	740913

—Continued

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Montgomery County	Franconia, township of	422494	741024, emergency 820315, regular	741256
Texas:				
Caldwell County	Caldwell County*	480094	750515, emergency 820315, regular	770527
Harris County	Jersey Village, city of	480300	741009, emergency 820315, regular	740405
Uvalde County	Uvalde, city of	480630	750205, emergency 820315, regular	748621
Vermont: Washington County	Duxbury, town of	500110	750610, emergency 820315, regular	740529
Washington: Jefferson County	Port Townsend, city of	530070	750611, emergency 820315, regular	740614
Illinois:				
Jackson County	Makanda, village of	170301	800317, emergency 820315, regular	740823
Cook County	Westhaven, village of	170172	750218, emergency 820315, regular	740405
Indiana:				
Bartholomew County	Bartholomew County*	180006	750120, emergency 820315, regular	740920
Lake County	Cedar Lake, town of	180127	750725, emergency 820315, regular	731226
Louisiana:				
St. Tammany Parish	Folsom, village of	220285	791109, emergency 820316, regular	790718
Tensas Parish	Newellton, town of	220216	730516, emergency 820316, regular	740816
Oklahoma:				
Logan County	Crescent, city of	400096	750707, emergency 820316, regular	740510
Leflore County	Heavener, city of	400081	750528, emergency 820316, regular	740524
Louisiana:				
Union Parish	Farmerville, town of	220325	780518, emergency 820323, regular	750502
De Soto Parish	Grand Cane, village of	220291	790219, emergency 820323, regular	750502
Oklahoma:				
Kiowa County	Roosevelt, town of	400288	761112, emergency 820323, regular	741101
Ellis County	Shattuck, town of	400091	781221, emergency 820323, regular	740524
Louisiana:				
Claiborne Parish	Haynesville, town of	220081	740628, emergency 820330, regular	740906
St. Landry Parish	Sunset town of	220176	750424, emergency 820330, regular	740614
Lafayette Parish	Youngsville, village of	220358	740116, emergency 820330, regular	740405

Total, 79.

Key for reading 5th column (effective date):
First two digits designate the year; middle two digits designate the month; and the last two digits designate the day.
*Unincorporated areas.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 15, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11914 Filed 5-4-82; 8:45 am]

BILLING CODE 6718-03-M

Federal Crime Insurance Program

44 CFR Parts 80, 81, 82, 83, and 84

[Docket No. FEMA-FIA-80]

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: These revisions to the Federal Crime Insurance Program achieve the following purposes: They raise the premiums and deductibles charged for both residential and commercial policies. The use of geographical territories for determining insurance premiums is eliminated and residential and commercial premium rates are made uniform for policyholders regardless of location, resulting in an additional increase in premiums for policyholders. The list of commercial classifications of businesses is revised to distinguish nonprofit organizations, such as churches, libraries, and public properties from commercial enterprises and to provide for a lesser premium increase for the nonprofit organizations and higher rates for commercial businesses with greater than average exposure to crime losses. The protective device requirements are amended for some commercial businesses by requiring alarm systems and additional protective devices for all commercial businesses (except nonprofit), regardless of the amount of gross receipts. The regulations also provide more detailed and helpful instructions for calculating premiums and identifying the classification of businesses.

On December 15, 1981, the Federal Insurance Administrator, Federal Emergency Management Agency, published for comment in the Federal Register a proposed rule containing

these revisions which are based upon experience gained in administering the Federal Crime Insurance Program and from suggestions received from interested parties. The revisions will make the Program more effective in serving the needs of those for whom it was intended and benefit the government as well as insureds.

DATE: This rule will be effective June 1, 1982 so as to be effective at the same time as the new Federal Crime Insurance Program Instructions. It is imperative that these matters be placed in effect on the same day.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, D.C. 20472, Telephone Number (202) 287–0800.

SUPPLEMENTARY INFORMATION: The only written comments received were from an insurance industry organization and the Federal Emergency Management's Inspector General in respect to which the comments were duly considered and some adopted.

These amendments are the result of the experience gained in the eleven years the Federal Crime Insurance Program has been in operation.

The use of territorial differentials in premiums has had an inequitable and unjustifiable impact upon crime insurance policyholders whose exposure to crime is a result of factors beyond their individual control. The use of a uniform premium reflects the existence of a crime threat to all citizens wherever they may reside. However, the refining of the classifications for nonresidential properties takes into account certain differences in exposure which result from the differences in the merchandise or services offered. In general, the premiums resulting from these revisions will produce a higher level to offset the losses which have consistently exceeded the premiums collected.

The significance of the annual gross receipts figure in the rating of commercial policies is emphasized in these regulations and the consequences for material misstatements are clearly spelled out in terms of denial of claims and the voiding of policies.

FEMA has determined that an Environmental Impact Statement is not needed for this final rule. A copy of the Finding of No Significant Impact and An Environmental Assessment is available at the above address.

List of Subjects in 44 CFR Parts 80, 82, 83, and 84

Crime insurance.

List of Subjects in 44 CFR Part 81

Claims, Crime insurance.

Accordingly, 44 FR (Parts 80, 81, 82, 83 and 84 are amended as follows):

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO STATE LICENSED PROPERTY INSURANCE AGENTS AND BROKERS ACTING ON BEHALF OF PURCHASERS OF FEDERAL CRIME INSURANCE

1. Section 80.4 entitled "Offer to Pay Commission to State Licensed Property Insurance Agents and Brokers for Submitting Applications on Behalf of Purchasers of Federal Crime Insurance" is amended by revising paragraph (c) to read as follows:

§ 80.4 [Amended]

* * * * *

(c) Subject to a minimum annual commission of $15 on each commercial policy and $5 on each residential policy, the specified commission percentage of the policyholder premium for both residential and commercial insurance coverages shall be the following: Initial policies 14% and for all renewal policies 12%. The renewal commission rate shall apply to any property that has previously been insured under the Program unless the lapse of time since the termination of the previous policy is in excess of 6 months. The commission for any renewal policy shall be deemed payable only to the property insurance agent or broker, of record, if any. A change of agent or broker made at any time other than on a policy anniversary date must be accomplished by the submission of a new application with the applicable premium and a request to replace the policy in force.

* * * * *

2. Section 80.6 is revised to read as follows:

§ 80.6 Name and address of invoicing company.

The following company has been designated to act as servicing company for the Federal Crime Insurance Program, National Con-Serv Inc., t/a Safety Management Institute. Written communications with the servicing company should be addressed to Federal Crime Insurance, P.O. Box 41033, Washington, D.C. 20014. The toll free telephone number for the servicing company is 800–638–8780 and this number serves the continental United States, Puerto Rico and the Virgin Islands, except for Maryland and the Washington Metropolitan Area. In the Washington Metropolitan Area call 652–2637. In Maryland, outside the Washington Metropolitan Area, call collect (301) 652–2637.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

3. Section 81.2 entitled "Eligibility Requirements Applicable to Property Owners" is amended by revising paragraph (c) to read as follows:

§ 81.2 [Amended]

* * * * *

(c) Any material misstatement of fact in the application or in any form submitted at the time of any subsequent renewal may result in the voiding of the policy and the denial of any claim. Intentionally false or misleading statements, either in the application, at the time of subsequent renewals, or in connection with any claim submitted under this program may also result in prosecution.

§ 81.4 [Amended]

4. Section 81.4 entitled "Terms and Conditions of Policy to Govern" is amended by deleting paragraph (d), thereof.

5.a. Section 81.7 entitled "Cancellations, Modifications and Renewals of Coverage" is amended by adding at the end of paragraph (c) the following sentence:

§ 81.7 Cancellation, modification and Renewals of coverage.

* * * * *

(c) * * * The insurer may, at the request of the insured, permit a retroactive cancellation of a policy, but in no event shall such cancellation be effective earlier than thirty days before receipt by the insurer of a lost policy release or the original policy, and such cancellation shall apply only to the policy in force at the time of the receipt of such request.

* * * * *

b. Section 81.7 is further amended by revising paragraph (d) to read as follows beginning with subparagraph (5) of said paragraph:

* * * * *

(d) * * *

(5) Any other substantial failure to comply with the provisions of this subchapter or of the insurance policy as determined by the insurer and stated in its notice of cancellation. Cancellations or any of the grounds in paragraph (d)(2) (3) or (4) of this section may, at the discretion of the insurer, be made retroactive to the date of application or renewal which immediately precedes the first known wrongful act. Refunds of unearned premiums, if any, shall be subject to offsets for the insurer's

administrative expenses (including the payment of agent's commissions, if any) in connection with the issuance of the policy, any inspections of the insured's premises and the expense of claims adjustment, if any. Cancellations by the insurer on the basis of paragraph (d)(5) of this section or as provided by paragraph (e) of this section shall be upon 30 days written notice, and the insured shall be entitled to a short rate refund of premium, if any.

* * * * *

c. Section 81.7 is further amended by amending paragraph (f) to delete the last sentence, thereof.

§ 81.7a [Amended]

d. Section 81.7a entitled "Cancellations in Order to Renew" is amended by adding the following sentence to the end of paragraph (a) to read as follows:

(a) * * * Cancellation and rewrite of coverage to avoid an impending rate increase shall not be permitted, unless such cancellation was made to accomplish an increase in the amount of insurance coverage or as a result of the removal of the insured to another premises.

* * * * *

PART 82—PROTECTIVE DEVICE REQUIREMENTS

§ 82.1 [Amended]

6. Section 82.1 entitled "Definitions" is amended by adding a paragraph (j) which reads as follows:

* * * * *

(j) "Safe" is a non-portable money storage compartment which is reinforced with a minimum of ¼ inch solid steel plate throughout, with the exception of the door, which must be at least one inch thick solid steel plate and equipped with a combination lock, which is an integral part of the door.

7.a. Section 82.5 entitled "Inspection of Commercial Premises" is amended by revising the existing paragraphs (c) and (d) and by revising the last sentence of paragraph (e) as follows:

§ 82.5 Inspection of commercial premises.

* * * * *

(c) An insured whose commercial premises is not one which is required by Section 82.31 to be protected by any type of alarm system but who elects to utilize an alarm system may select particular accessible openings and exterior doors to be protected only by the alarm systems and may protect other accessible and exterior doors with the physical barriers specified in paragraphs (c) and (e) of Section 82.31.

(d) Because the statement of annual gross receipts is a significant factor in the determination of the applicable protective device requirements as well as in the determination of the correct premium, the annual gross receipts figure reported on the application or at the time of renewal shall be verified at the time of the adjustment of any loss. The applicant or insured shall at the time make available any necessary documentation to substantiate the annual gross receipts figure reported.

(e) * * * The Administrator may also in his discretion determine that the frequency and/or severity of occurrences of loss experienced under any policy issued under the provisions of paragraphs (b) and (c) of this section, requires that as a condition of continuation of coverage or renewal of such policy the premises insured thereunder be protected by one or more of the protective devices described in paragraphs (a), (b), (c), (d), (e), (f), (1), (2), (3) of § 82.31, for applicable points of entry for incurred loses.

b. Section 82.5 is further amended by adding a paragraph (i) as follows:

* * * * *

(i) If an applicant occupies a premises jointly with other businesses, and there exists no physical barrier separating the business of the applicant from the other businesses, the applicant may still obtain insurance coverage provided that the exterior boundaries of the premises that enclose the business of the applicant and the other businesses are protected in accordance with the protective device requirements applicable to the classification governing the applicant's business. In such a case the applicant, as an insured, will be responsible for the continued existence and maintenance and functioning of the required protective devices. For purposes of the burglary insurance coverage, the premises to which there must be forcible signs of entry is the overall premises confining the business of the applicant and the other businesses. As noted in Section 83.22, the maximum limit of coverage which consists of $15,000 may not be increased by insuring several departments of a single business or institution at one premises as separate premises and this paragraph does not supersede Section 83.22.

§ 82.3 [Amended]

8. Section 82.31(f) entitled "Minimum Standards for Industrial and Commercial Properties" is revised as follows:

* * * * *

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b) and (d) of this Section be protected by the type of alarm system indicated. If the system specified in (f)(1) of this Section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(2) of this Section shall be permitted. In addition to, but not in place of, any central station supervised alarm system or silent alarm system required under (f)(1) and (2) of this section, an insured may also utilize a local alarm system.

(1) Central Station, supervised service alarm systems shall be required for the following businesses:

(i) Auto Parts—No Service—Wholesale/Retail/Mfg.

(ii) Beer/Wine with Food Retail.

(iii) Beer/Wine—Wholesale.

(iv) Cameras/Photo Supplies/Film Processing—Wholesale/Retail/Mfg.

(v) Clothing/Men's (age 12 and over)—Wholesale/Retail.

(vi) Clothing/Women's (age 12 and over)—Wholesale/Retail.

(vii) Drug Stores and Druggists' Sundries.

(viii) Drugs—Wholesale.

(ix) Electrical Appliances/Apparatus/Parts—Wholesale/Retail/Mfg.

(x) Food Stuffs/Wholesale.

(xi) Furriers—Retail/Wholesale/Mfg/Storage.

(xii) Gasoline Service Station/Fuel Dealers.

(xiii) Guns/Ammunition—Wholesale/Retail/Mfg.

(xiv) Jewelry—Retail/Wholesale/Mfg/Storage.

(xv) Liquor Sales—Retail.

(xvi) Liquor—Wholesale.

(xvii) Pawnbrokers.

(xviii) Precious Metals/Electroplating—Storage.

(xix) Precious Metals/Electroplating—Mfg/Wholesale/Retail.

(xx) Radio/TV/Stereo/Electronic Equipment/Computers—Wholesale/Retail/Mfg.

(xxi) Record Shop.

(xxii) Tobacco Dealers—Retail.

(xxiii) Tobacco—Wholesale.

(xxiv) Variety Stores/Department Stores.

(2) Silent alarm systems shall be required for the following businesses:

(i) All Risks Not Otherwise Classified.

(ii) Amusement Enterprises.

(iii) Art Supplies—Retail/Wholesale/Mfg.

(iv) Beach Consession Stands/Supplies.

(v) Beauty/Barber Shops.

(vi) Beauty & Health Supplies/Cosmetic—Wholesale/Retail/Mfg.

(vii) Billiard/Pool Parlors.

(viii) Boutiques.
(ix) Building Contractors—Material—Retail/Wholesale.
(x) Candy/Nut Stores—Retail/Wholesale.
(xi) Clothing Apparel (Children 12 & under)—Retail/Wholesale.
(xii) Coin/Stamp Shop.
(xiii) Distributors—Variety/Non-Alcoholic Beverages.
(xiv) Dry Cleaners.
(xv) Dry Goods/Textile/Sewing Material—Retail/Wholesale/Mfg.
(xvi) Fine Arts (Porcelain, Ivory, Oriental Rugs, Paintings, etc.).
(xvii) Flea Markets/Auction Houses.
(xviii) Florist—Wholesale/Retail.
(xix) Funeral Homes.
(xx) Furniture/Home Furnishings/Floor Covering/Upholstery—New/Used—Retail/Wholesale/Mfg.
(xxi) Garages/Auto Repair/Body Shop.
(xxii) Gift Stores—(Costume Jewelry $25.00 Wholesale Limit)—Retail/Wholesale/Mfg.
(xxiii) Golf and Other Sports Professionals.
(xxiv) Grocery Stores/Delicatessens/Health Food Stores.
(xxv) Hardware/Houseware—Retail/Wholesale/Mfg.
(xxvi) Hobby Shops/Toys/Novelty—Retail/Wholesale/Mfg.
(xxvii) Hotel/Motel/Rooming House/Apartments.
(xxviii) Industrial Materials/Iron & Metal Work—Wholesale/Retail/Mfg.
(xxix) Laundries.
(xxx) Leather Products—Retail/Wholesale/Mfg.
(xxxi) Marine/Aircraft Materials—Sales/Service—Retail/Wholesale/Mfg.
(xxxii) Meat/Poultry/Fish Dealers.
(xxxiii) Medical (Doctors, Dentist, etc.) Supplies—Wholesale/Retail/Mfg.
(xxxiv) Music Stores/Instruments/Supplies—Wholesale/Retail/Mfg.
(xxxv) Nursing Homes/Convalescent.
(xxxvi) Office Supplies/Business Machines/Equipment—Retail/Wholesale/Mfg.
(xxxvii) Parking Lots/Rental Cars/Carwash/Taxi Offices.
(xxxviii) Pet Stores/Kennels—Supplies.
(xxxix) Photographers Studios.
(xl) Professional/Specialized Services (Lawyers, Accountants, etc./Couriers, Housekeeping, etc.).
(xli) Realty/Insurance/Travel/Employment (Agencies).
(xlii) Schools (Profit) Day Care Centers/Studios.
(xliii) Security Locksmiths/Alarms—Retail/Wholesale/Mfg.
(xliv) Shoe Stores—Retail/Wholesale/Mfg.
(xlv) Specialized Clothing (Sportswear/Lingerie/Accessories, etc.)—Wholesale/Retail/Mfg.
(xlvi) Stationery/Books/Printing/Engraving/Paper—Plastic Products—Retail/Wholesale/Mfg.
(xlvii) Tavern/Bar/Lounge.
(xlviii) Used Clothing/Shoe Repair/Thrift Shops.
(xlix) Wig Shops.
(3) Local alarm systems shall be required for the following businesses:
(i) Antique Store.
(ii) Art Gallery.
(iii) Auto Parts Sales/Service—Wholesale/Retail/Mfg.
(iv) Check Cashing Agency/Money Exchange—Collectors.
(v) Clothing Manufacturer/Tailoring.
(vi) Clubs (Serving Alcoholic Beverages).
(vii) Discos/Dance Halls/Pavilions.
(viii) Health Clubs/Spas/Massage Parlors.
(ix) Motorbikes/Bicycles/Mopeds.
(x) Radio/TV/Stereo/Electronic Equipment/Computers—Service Only.
(xi) Restaurants.
(xii) Savings/Loans/Banks and Other Financial Institutions excluding check cashing.
(xiii) Sports Goods—General—Wholesale/Retail/Mfg.
(xiv) Vending Machines—Sales/Rentals—Mfg.

PART 83—COVERAGES, RATES AND PRESCRIBED POLICY FORM

§ 83.1 [Amended]

9. Section 83.1 entitled "Description of Residential Coverage" is amended by adding at the end of paragraph (c) the following additional sentences, which read:

* * * * *

(c) * * * A mobile home used as a residence may be insured on a residential application form provided the mobile home has been rendered immobile on a permanent foundation and anchored to resist flotation or lateral movement. A residential premises or a portion thereof owned or leased by a business, corporate or otherwise, may not be insured by said business under a residental policy. A model home held for eventual sale may not be insured under a residential policy. A storeroom used for temporary storage of personal property not pertaining to a business may be insured under a residential policy, provided that the storage area is surrounded by physical barriers which separate it from other storage areas available to other persons and that the storage area utilized by the insured complies with the protective device requirements applicable to residential premises.

10. a. Section 83.2 entitled "Limits of Residential Coverage" is amended to read as follows:

§ 83.2 Limits of residential coverage.

The residential policy may be written in amounts not less than $1,000 and not in excess of $10,000 for each insurable premises. An insurable premises is defined as a physically separate area occupied for residential purposes by one or more persons who are permanent members of a single household. The $10,000 limit of coverage for each insurable premises may not be increased by subdividing the premises shared by members of a common household. Any amount of insurance or fraction thereof, above a specified limit shall be charged the applicable rate for the next higher limit of coverage. Specified limits of coverage are set forth in § 83.4.

§ 83.3 [Amended]

b. The first sentence of § 83.3 entitled "Amount of Residential Policy Deductible" is amended by changing "* * * $50 for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater, * * *" to read "* * * $100 for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater, * * *".

11. Section 83.4 entitled "Residential Crime Insurance Rates" is amended to read as follows:

§ 83.4 Residential crime insurance rates.

The specified limits of coverage and applicable annual premiums for residential crime insurance coverage are as follows:

Policy limit	Annual premium
$1,000	$60
$3,000	70
$5,000	90
$7,000	110
$10,000	120

12. a. Section 83.22 entitled "Limits of Commercial Coverage" is amended to read as follows:

§ 83.22 Limits of coverage and number of applications required.

The Commercial Crime Insurance Policy may be written in amounts not less than $1,000 and not in excess of $15,000 for each insured premises. The maximum limit may not be increased (a) by insuring several departments of a single business or institution at one insurable premises as separate premises, or (b) by establishing separate businesses for different portions of business operations having a common

majority ownership which are located at one insurable premises. Each $1,000 of insurance or fraction thereof shall be charged the applicable rate for the full $1,000 of insurance coverage. Insurable premises is defined as one premises or portion thereof utilized for the purpose of conducting the business of the insured. Two or more buildings which are adjoining and have a common connecting door or passageway are considered one building and should be included in one application. Multiple rooms or floors within one building are considered one premises and should be specifically enumerated on one application. Physically separate buildings or portions thereof must be covered on separate applications using the appropriate IRS number, with a different suffix on each application, in order to identify multiple premises of one business. The commercial policy form must be used by a business for residential properties owned or leased by said business, incorporated or otherwise and for model homes. Such risks must meet commercial protective device requirements. If an insured shares a premises with one or more other businesses but there is no physical barrier meeting protective device requirements to separate the business, the insured is entitled to coverage with limitations as described in §§ 82.5(i) and 83.22.

12. b. Section 83.23 is revised to read as follows:

§ 83.23 Amount of commercial policy deductible.

(a) The Commercial Crime Insurance Policy for industrial and commercial risks shall be subject to a deductible in the following amounts for each loss occurrence or 5 percent of the gross amount of the loss, whichever is greater, in accordance with the following categories of annual gross receipts (or operating budget, if applicable):

Less than $299,999	$250
$300,000 to $499,999	350
$500,000 and above	500

(b) The Commercial Crime Insurance Policy for non-profit or public property risks shall be subject to a deductible in the amount of $250 for each loss occurrence or 5 percent of the amount of loss, whichever is greater.

13. a. Section 83.24 is revised to read as follows:

§ 83.24 Classification of commercial risks.

(a) The governing factor in determining the risk classification applicable to a particular premises is the kind of business conducted by the insured at that location. If there are several types of merchandise applicable to the risk, the highest classification of merchandise inventoried and held for sale governs. For example, a business with the following types of merchandise inventoried, 60% handbags and wigs and 40% fine jewelry, shall be classified as Class 3 Fine Jewelry.

Any change in classification must be reported to the insurer through the servicing company.

(b) Individual concessionaires operating within a premises are classified according to the business or merchandise of the concessionaire.

(c) Warehouses and/or other storage areas shall take the classification of the merchandise or inventory comprising the majority value of the contents.

(d) The following business classifications shall be applicable to the Commercial Crime Insurance Policy:

SCHEDULE 1.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—class 1, gross receipts	Amount of coverage											
	$1,000 options			$2,000 options			$3,000 options			$4,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	120	72	60	228	136	114	324	194	162	408	244	204
25,000–49,999	120	72	60	228	136	114	324	194	162	408	244	204
50,000–99,999	120	72	60	228	136	114	324	194	162	408	244	204
100,000–299,999	180	108	90	342	206	172	486	292	244	612	368	306
300,000–499,999	240	144	120	456	274	228	648	388	324	816	490	408
500,000–999,999	300	180	150	570	342	286	810	486	406	1,020	612	510
1,000,000–1,499,999	480	288	240	912	548	456	1,296	778	648	1,632	980	816
1,500,000–1,999,999	540	324	270	1,026	616	514	1,458	874	730	1,836	1,102	918
2,000,000–2,499,999	600	360	300	1,140	684	570	1,620	972	810	2,040	1,224	1,020
2,500,000–2,999,999	660	396	330	1,254	752	628	1,782	1,070	892	2,244	1,346	1,122
3,000,000–3,499,999	840	504	420	1,596	958	798	2,268	1,360	1,134	2,856	1,714	1,428
3,500,000–3,999,999	900	540	450	1,710	1,026	856	2,430	1,458	1,216	3,060	1,836	1,530
4,000,000–4,999,999	1,080	648	540	2,052	1,232	1,026	2,916	1,750	1,458	3,672	2,204	1,836

Annual premium for class—1, gross receipts	Amount of coverage											
	$5,000 options			$6,000 options			$7,000 options			$8,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	480	288	240	540	324	270	588	352	294	624	374	312
25,000–49,999	480	288	240	540	324	270	588	352	294	624	374	312
50,000–99,999	480	288	240	540	324	270	588	352	294	624	374	312
100,000–299,999	720	432	360	810	486	406	882	530	442	936	562	468
300,000–499,999	960	576	480	1,080	648	540	1,176	706	588	1,248	748	624
500,000–999,999	1,200	720	600	1,350	810	676	1,470	882	736	1,560	936	780
1,000,000–1,499,999	1,920	1,152	960	2,160	1,296	1,080	2,352	1,412	1,176	2,496	1,498	1,248
1,500,000–1,999,999	2,160	1,296	1,080	2,430	1,458	1,216	2,646	1,586	1,324	2,808	1,684	1,404
2,000,000–2,499,999	2,400	1,440	1,200	2,700	1,620	1,350	2,940	1,764	1,470	3,120	1,872	1,560
2,500,000–2,999,999	2,640	1,584	1,320	2,970	1,782	1,486	3,234	1,940	1,618	3,432	2,060	1,716
3,000,000–3,499,999	3,360	2,016	1,680	3,780	2,268	1,890	4,116	2,470	2,058	4,368	2,620	2,184
3,500,000–3,999,999	3,600	2,160	1,800	4,050	2,430	2,025	4,410	2,646	2,205	4,680	2,808	2,340
4,000,000–4,999,999	4,320	2,592	2,160	4,860	2,916	2,430	5,292	3,176	2,646	5,616	3,370	2,808

SCHEDULE I.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERCIAL CRIME INSURANCE RATES—CONTINUED

Annual premium for—class 1, gross receipts	Amount of coverage											
	$9,000 options			$10,000 options			$11,000 options			$12,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	648	388	324	660	396	330	666	400	334	672	404	336
25,000–49,999	648	388	324	660	396	330	666	400	334	672	404	336
50,000–99,999	648	388	324	660	396	330	666	400	334	672	404	336
100,000–299,999	972	584	486	990	594	496	1,000	600	500	1,008	604	504
300,000–499,999	1,296	778	648	1,320	792	660	1,332	800	666	1,344	806	672
500,000–999,999	1,620	972	810	1,650	990	826	1,666	1,000	832	1,680	1,008	840
1,000,000–1,499,999	2,592	1,556	1,296	2,640	1,584	1,320	2,664	1,598	1,332	2,688	1,612	1,344
1,500,000–1,999,999	2,916	1,750	1,458	2,970	1,782	1,486	2,998	1,798	1,498	3,024	1,814	1,512
2,000,000–2,499,999	3,240	1,944	1,620	3,300	1,980	1,650	3,330	1,998	1,666	3,360	2,016	1,680
2,500,000–2,999,999	3,564	2,138	1,782	3,630	2,178	1,816	3,664	2,198	1,832	3,696	2,218	1,848
3,000,000–3,499,999	4,536	2,722	2,268	4,620	2,772	2,310	4,662	2,798	2,332	4,704	2,822	2,352
3,500,000–3,999,999	4,860	2,916	2,430	4,950	2,970	2,417	4,996	2,998	2,498	5,040	3,024	2,520
4,000,000–4,999,999	5,832	3,500	2,916	5,940	3,564	2,970	5,994	3,596	2,998	6,048	3,628	3,024

Annual premium for class—1, gross receipts	Amount of coverage								
	$13,000 options			$14,000 options			$15,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	676	406	340	684	410	342	690	414	346
25,000–49,999	676	406	340	684	410	342	690	414	346
50,000–99,999	676	406	340	684	410	342	690	414	346
100,000–299,999	1,018	610	508	1,026	616	514	1,035	622	518
300,000–499,999	1,356	814	678	1,368	820	684	1,380	828	690
500,000–999,999	1,696	1,018	848	1,710	1,026	856	1,726	1,036	862
1,000,000–1,499,999	2,712	1,628	1,356	2,736	1,642	1,368	2,760	1,656	1,380
1,500,000–1,999,999	3,052	1,832	1,526	3,078	1,848	1,540	3,106	1,864	1,552
2,000,000–2,499,999	3,396	2,034	1,696	3,420	2,052	1,710	3,450	2,070	1,726
2,500,000–2,999,999	3,730	2,238	1,864	3,762	2,256	1,882	3,796	2,278	1,898
3,000,000–3,499,999	4,746	2,848	2,374	4,788	2,872	2,394	4,830	2,898	2,416
3,500,000–3,999,999	5,086	3,052	2,542	5,130	3,078	2,566	5,176	3,106	2,588
4,000,000–4,999,999	6,102	3,662	3,052	6,156	3,694	3,078	6,210	3,726	3,106

Option (1) Burglary and robbery coverage in uniform amount.
Option (2) Robbery only coverage.
Option (3) Burglary only coverage.
The rate for option (4) consists of the sum of the rates for the selected amount of coverage under options (2) and (3).
NOTE.—Consult servicing company for rate information if gross receipts are in excess of $5 million.

SCHEDULE 2.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERCIAL CRIME INSURANCE RATES

Annual premium for—Class 2, gross receipts	Amount of coverage											
	$1,000 options			$2,000 options			$3,000 options			$4,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	144	86	72	274	164	136	398	232	194	490	294	244
25,000–49,000	144	86	72	274	164	136	398	232	194	490	294	244
50,000–99,000	144	86	72	274	164	136	398	232	194	490	294	244
100,000–299,999	216	130	108	410	246	206	594	350	292	734	440	368
300,000–499,999	288	172	144	546	326	274	778	466	388	960	586	486
500,000–999,999	360	216	180	684	410	342	972	584	486	1,224	734	612
1,000,000–1,499,999	576	346	288	1,094	656	548	1,556	934	778	1,958	1,174	980
1,500,000–1,999,999	648	388	324	1,232	740	616	1,750	1,050	874	2,204	1,322	1,102
2,000,000–2,499,999	720	432	360	1,368	820	684	1,944	1,166	972	2,448	1,468	1,224
2,500,000–2,999,999	792	476	396	1,504	902	752	2,138	1,282	1,070	2,692	1,616	1,346
3,000,000–3,499,999	1,008	604	504	1,916	1,150	958	2,722	1,634	1,360	3,428	2,056	1,714
3,500,000–3,999,999	1,080	648	540	2,052	1,232	1,026	2,916	1,750	1,458	3,672	2,204	1,836
4,000,000–4,999,999	1,296	778	648	2,462	1,478	1,232	3,500	2,100	1,750	4,406	2,644	2,204

Annual premium for—class 2, gross receipts	Amount of coverage											
	$5,000 options			$6,000 options			$7,000 options			$8,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	576	346	288	646	388	324	706	424	352	748	448	374
25,000–49,999	576	346	288	646	388	324	706	424	352	748	448	374
50,000–99,999	576	346	288	646	388	324	706	424	352	748	448	374
100,000–299,999	864	518	432	972	584	486	1,058	634	530	1,124	674	562
300,000–499,999	1,152	692	576	1,296	778	648	1,412	848	706	1,498	898	748
500,000–999,999	1,440	864	720	1,620	972	810	1,764	1,058	882	1,872	1,124	936
1,000,000–1,499,999	2,304	1,382	1,152	2,592	1,556	1,296	2,822	1,694	1,412	2,996	1,798	1,498
1,500,000–1,999,999	2,592	1,556	1,296	2,916	1,750	1,458	3,176	1,906	1,588	3,370	2,022	1,684
2,000,000–2,499,999	2,880	1,728	1,440	3,240	1,944	1,620	3,528	2,116	1,764	3,744	2,246	1,872
2,500,000–2,999,999	3,168	1,900	1,584	3,564	2,138	1,782	3,880	2,328	1,940	4,118	2,470	2,060
3,000,000–3,499,999	4,032	2,420	2,016	4,536	2,722	2,268	4,940	2,964	2,470	5,242	3,146	2,620
3,500,000–3,999,999	4,320	2,592	2,160	4,860	2,916	2,430	5,292	3,176	2,646	5,616	3,370	2,808

SCHEDULE 2.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERCIAL CRIME INSURANCE RATES—Continued

Annual premium for—class 2, gross receipts	Amount of coverage											
	$5,000 options			$6,000 options			$7,000 options			$8,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
4,000,000–4,999,999	5,184	3,110	2,592	5,832	3,500	2,916	6,350	2,810	3,178	6,740	4,044	3,370

Annual premium for—class 2, gross receipts	Amount of coverage											
	$9,000 options			$10,000 options			$11,000 options			$12,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	778	466	388	792	476	396	800	480	400	806	484	404
25,000–49,999	778	466	388	792	476	396	800	480	400	806	484	404
50,000–99,999	778	466	388	792	476	396	800	480	400	806	484	404
100,000–299,999	1,166	700	584	1,188	712	594	1,198	718	600	1,210	726	604
300,000–499,999	1,556	934	778	1,584	950	792	1,598	958	800	1,612	968	808
500,000–999,999	1,944	1,166	972	1,980	1,188	990	1,996	1,198	1,000	2,016	1,210	1,008
1,000,000–1,499,999	3,110	1,866	1,556	3,168	1,900	1,584	3,196	1,918	1,598	3,226	1,936	1,612
1,500,000–1,999,999	3,500	2,100	1,750	3,564	2,138	1,782	3,596	2,156	1,798	3,628	2,176	1,814
2,000,000–2,499,999	3,888	2,332	1,944	3,960	2,376	1,980	3,996	2,398	1,998	4,032	2,420	2,016
2,500,000–2,999,999	4,276	2,566	2,138	4,356	2,614	2,178	4,396	2,638	2,198	4,436	2,662	2,218
3,000,000–3,499,999	5,444	3,266	2,722	5,544	3,326	2,772	5,594	3,356	2,796	5,644	3,386	2,822
3,500,000–3,999,999	5,832	3,500	2,916	5,940	3,564	2,970	5,994	3,596	2,998	6,048	3,628	3,024
4,000,000–4,999,999	6,996	4,196	3,500	7,128	4,276	3,564	7,192	4,316	3,596	7,256	4,354	3,628

Annual premium for—class 2, gross receipts	Amount of coverage								
	$13,000 options			$14,000 options			$15,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	814	488	406	826	492	410	828	496	414
25,000–49,999	814	488	406	820	492	410	828	496	414
50,000–99,999	814	488	406	820	492	410	828	496	414
100,000–299,999	1,220	732	610	1,232	740	616	1,242	746	622
300,000–499,999	1,628	976	814	1,642	986	820	1,656	994	828
500,000–999,999	2,034	1,220	1,016	2,052	1,232	1,026	2,070	1,242	1,036
1,000,000–1,499,999	3,254	1,952	1,626	3,284	1,970	1,642	3,312	1,986	1,656
1,500,000–1,999,999	3,662	2,198	1,832	3,694	2,216	1,846	3,726	2,236	1,864
2,000,000–2,499,999	4,068	2,440	2,034	4,104	2,462	2,052	4,140	2,484	2,070
2,500,000–2,999,999	4,474	2,684	2,236	4,514	2,708	2,258	4,554	2,732	2,278
3,000,000–3,499,999	5,696	3,418	2,848	5,746	3,448	2,872	5,796	3,478	2,898
3,500,000–3,999,999	6,102	3,662	3,052	6,156	3,694	3,078	6,210	3,726	3,106
4,000,000–4,999,999	7,322	4,394	3,662	7,388	4,432	3,694	7,452	4,472	3,726

Option (1) Burglary and robbery coverage in uniform amount.
Option (2) Robbery only coverage.
Option (3) Burglary only coverage.
The rate for option (4) consists of the sum of the rates for the selected amount of coverage under options (2) and (3).
NOTE.—Consult servicing company for rate information if gross receipts are in excess of $5 million.

SCHEDULE 3.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERICAL CRIME INSURANCE RATES

Annual premium for—class 3, gross receipts	Amount of Coverage											
	$1,000 options			$2,000 options			$3,000 options			$4,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	168	100	84	320	192	160	454	272	226	572	344	286
25,000–49,999	168	100	84	320	192	160	454	272	226	572	344	286
50,000–99,999	168	100	84	320	192	160	454	272	226	572	344	286
100,000–299,999	252	152	126	476	286	240	680	408	340	856	514	4288
300,000–499,999	336	202	168	636	382	320	906	544	454	1,142	686	572
500,000–4,999,999	420	252	210	798	478	400	1,134	680	56	1,428	856	714
1,000,000–1,499,999	672	404	336	1,276	766	638	1,814	1,088	906	2,284	1,370	1,142
1,500,000–1,999,999	756	454	378	1,436	862	718	2,042	1,226	1,022	2,570	1,542	1,286
2,000,000–2,499,999	840	504	420	1,596	958	798	2,268	1,360	1,134	2,856	1,714	1,428
2,500,000–2,999,999	924	554	462	1,756	1,054	878	2,494	1,496	1,248	3,142	1,886	1,570
3,000,000–3,499,999	1,176	706	588	2,234	1,340	1,118	3,176	1,906	1,588	3,998	2,398	2,000
3,500,000–3,999,999	1,260	756	630	2,394	1,436	1,198	3,402	2,042	1,702	4,284	2,570	2,142
4,000,000–4,999,999	1,512	908	756	2,872	1,724	1,436	4,082	2,450	2,042	5,140	3,084	2,570

Annual premium for—class 3, gross receipts	Amount of coverage											
	$5,000 options			$6,000 options			$7,000 options			$8,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	672	404	336	756	454	378	824	494	412	874	524	436
25,000–49,999	672	404	336	756	454	378	824	494	412	874	524	436

SCHEDULE 3.—FEDERAL CRIME INSURANCE PROGRAM, PART IV—COMMERCIAL CRIME INSURANCE RATES—Continued

Annual premium for—class 3, gross receipts	Amount of coverage											
	$5,000 options			$6,000 options			$7,000 options			$8,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
50,000–99,999	672	404	336	756	454	378	824	494	412	874	524	436
100,000–299,999	1,008	604	504	1,134	680	568	1,234	740	618	1,310	786	655
300,000–499,999	1,344	806	672	1,512	906	756	1,646	986	824	1,748	1,048	874
500,000–999,999	1,680	1,008	840	1,890	1,134	946	2,058	1,234	1,030	2,184	1,310	1,092
1,000,000–1,499,999	2,688	1,612	1,344	3,024	1,814	1,512	3,292	1,976	1,646	3,494	2,096	1,748
1,500,000–1,999,999	3,024	1,814	1,512	3,402	2,042	1,702	3,704	2,222	1,852	3,932	2,360	1,966
2,000,000–2,499,999	3,360	2,016	1,680	3,780	2,268	1,890	4,116	2,470	2,058	4,368	2,620	2,184
2,500,000–2,999,999	3,696	2,218	1,848	4,158	2,494	2,080	4,528	2,716	2,264	4,804	2,882	2,402
3,000,000–3,499,999	4,704	2,822	2,352	5,292	3,176	2,646	5,762	3,458	2,882	6,116	3,670	3,058
3,500,000–3,999,999	5,040	3,024	2,520	5,670	3,402	2,836	6,174	3,704	3,088	6,552	3,932	3,276
4,000,000–4,999,999	6,048	3,628	3,024	6,804	4,082	3,402	7,408	4,444	3,704	7,862	4,718	3,932

Annual premium for—class 3, gross receipts	Amount of Coverage											
	$9,000 options			$10,000 options			$11,000 options			$12,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	908	544	454	924	554	462	932	560	466	940	564	470
25,000–49,999	908	544	454	924	554	462	932	560	466	940	564	470
50,000–299,999	908	544	454	924	554	462	932	560	466	940	564	470
100,000–299,999	1,360	816	680	1,386	832	694	1,400	840	700	1,412	848	706
300,000–499,999	1,814	1,088	908	1,848	1,108	924	1,864	1,118	932	1,882	1,130	940
500,000–999,999	2,268	1,360	1,134	2,310	1,386	1,156	2,332	1,400	1,166	2,352	1,412	1,176
1,000,000–1,499,999	3,628	2,176	1,814	3,696	2,218	1,848	5,130	2,238	1,864	3,764	2,258	1,882
1,500,000–1,999,999	4,082	2,450	2,042	4,158	2,494	2,080	4,196	2,518	2,098	4,234	2,540	2,116
2,000,000–2,499,999	4,536	2,722	2,268	4,620	2,772	2,310	4,662	2,798	2,332	4,704	2,822	2,352
2,500,000–2,999,999	4,990	2,994	2,494	5,082	3,050	2,542	5,128	3,076	2,564	5,174	3,104	2,586
3,000,000–3,499,999	6,350	3,810	3,176	6,468	3,880	3,234	6,526	3,916	3,264	6,586	3,952	3,292
3,500,000–3,999,999	6,804	4,082	3,402	6,930	4,158	3,466	6,994	4,196	3,496	7,056	4,234	3,528
4,000,000–4,999,999	8,164	4,898	4,082	8,316	4,990	4,158	8,392	5,036	4,196	8,468	5,080	4,234

Annual Premium for—class 3 Gross Receipts	Amount of coverage								
	$13,000 options			$14,000 options			$15,000 options		
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)
Less than $25,000	$950	$570	$476	$958	$574	$478	$966	$580	$484
25,000–49,999	950	570	476	958	574	478	966	580	484
50,000–99,999	950	570	476	958	574	478	966	580	484
100,000–299,999	1,424	854	712	1,436	862	718	1,450	870	724
300,000–499,999	1,898	1,138	950	1,916	1,150	958	1,932	1,160	966
500,000–999,999	2,374	1,424	1,186	2,394	1,430	1,196	2,416	1,450	1,208
1,000,000–1,499,999	3,796	2,278	1,898	3,830	2,298	1,916	3,864	2,318	1,932
1,500,000–1,999,999	4,272	2,564	2,136	4,310	2,586	2,156	4,348	2,608	2,174
2,000,000–2,499,999	4,746	2,848	2,374	4,786	2,872	2,394	4,830	2,898	2,416
2,500,000–2,999,999	5,222	3,134	2,612	5,266	3,160	2,634	5,314	3,188	2,656
3,000,000–3,499,999	5,644	3,386	3,322	5,704	4,022	3,352	6,762	4,056	3,382
3,500,000–3,999,999	7,120	4,272	3,560	7,182	4,310	3,592	7,246	4,348	3,622
4,000,000–4,999,999	8,542	5,126	4,272	8,618	5,170	4,310	8,694	5,216	4,348

Option (1) Burglary and robbery coverage in uniform amount.
Option (2) Robbery only coverage.
Option (3) Burglary only coverage.
The rate for option (4) consists of the sum of the rates for the selected amount of coverage under options (2) and (3).
NOTE.—Consult servicing company for rate information if gross receipts are in excess of $5 million.

Premium Code	Premium Class	Description	Alarm type
A1	2	All risks not otherwise classified	2
02	3	Amusement enterprise	2
B1	2	Antique store	3
C1	3	Art gallery	3
33	2	Art supplies—wholesale/retail/mfg.	2
D1	2	Auto parts—no service—wholesale/retail/mfg.	1
03	2	Auto parts sales/service—wholesale/retail/mfg.	3
47	2	Beach concession stands/supplies.	2
32	2	Beauty/barber shops	2
41	2	Beauty and health supplies/cosmetic—wholesale/retail/mfg.	2
C6	3	Beer/wine with food—retail	1
F1	3	Beer/wine—wholesale	1
04	3	Billiard/pool parlors	2
70	2	Boutiques	2
05	2	Bowling lanes/centers/skating rinks.	0
34	2	Building contractors/material—retail/wholesale/mfg.	2
06	3	Cameras/photo supplies/film processing—wholesale/retail/mfg.	1
43	2	Candy/nuts stores—retail/wholesale.	2
G1	3	Check cashing agency/money exchange—collectors.	3
J1	1	Churches, charities, non-profit organizations and public properties.	0
35	2	Clothing apparel/children 12 and under—retail/wholesale.	2
H1	3	Clothing manufacturer/tailoring	3
22	3	Clothing/men's (age 12 and over)—wholesale/retail.	1
30	3	Clothing/women's (age 12 and over)—wholesale/retail.	1
07	3	Clubs (serving alcoholic beverages).	3
K1	2	Coin/stamp shop	2
08	3	Discos/dance halls/pavilions	3
50	2	Distributors—variety/non-alcoholic beverages.	2
C5	2	Donut/pastry/coffee/ice cream/shop seated service.	0
09	3	Drug stores and druggist's sundries.	1
L1	3	Drugs wholesale	1
10	3	Dry cleaners	3
38	2	Dry goods/textile/sewing material—retail/wholesale/mfg.	2
11	3	Electrical appliances/apparatus/parts—wholesale/retail/mfg.	1
E1	2	Fast food/bakery/donut/ice cream—carryout only.	0
39	2	Fine arts (porcelain, ivory, oriental rugs, paintings, etc.).	2
78	2	Flea markets/auction houses	2
40	2	Florist—wholesale/retail	2
M1	3	Food stuffs wholesale	1
N1	2	Fruit/vegetable/news paper stands.	0
45	2	Funeral homes	2
42	2	Furniture/home furnishings/floor covering/upholstery/new/used—retail/wholesale/mfg.	2
12	3	Furriers—retail/wholesale/mfg/storage.	1
13	3	Garages/auto repair/body shops	2
14	3	Gasoline service station/fuel dealers.	1
44	2	Gift stores—(costume jewelry $25.00 wholesale limit)—retail/wholesale/mfg.	2
15	3	Golf and other sports professionals.	3
16	3	Grocery stores/delicatessens/health food stores.	2
17	3	Guns/ammunition—wholesale/retail/mfg.	1
46	2	Hardware/housewares—retail/wholesale/mfg.	2
C2	3	Health clubs/spas/massage parlors.	3
60	2	Hobby shops/toys/novelty—wholesale/mfg.	2
48	2	Hotel/motel/rooming house/apartments.	2
01	3	Industrial materials/iron and metal work—wholesale/retail/mfg.	2
18	3	Jewelry—retail/wholesale/mfg/storage.	1
19	3	Laundries	2
52	2	Leather products—retail/wholesale/mfg.	2
20	3	Liquor sales—retail	1
P1	3	Liquor—wholesale	1
37	2	Marine/aircraft materials—sales/service—retail/wholesale/mfg.	2
21	2	Meat/poultry/fish dealers	2
54	2	Medical (doctors, dentist, etc.) supplies—wholesale/retail/mfg.	2
Q1	2	Motorbikes/bicycles/mopeds	3
56	2	Music stores/instruments/supplies—wholesale/retail/mfg.	2
77	2	Nursing Homes/Convalescent	2
C3	2	Office supplies/business machines/equipment—retail/wholesale/mfg.	2
58	2	Parking lots/rental cars/caravan/taxi offices.	2
23	3	Pawn brokers	1
76	2	Pet stores/kennels—supplies	2
R1	2	Photographers studios	2
61	3	Precious metals/electroplating—storage.	1
C8	3	Precious metals/electroplating—mfg/wholesale/retail.	1
74	2	Professional/specialized services (lawyers, accountants etc./couriers, housekeeping etc.).	2
24	3	Radio/TV/stereo/electronic equipment/computers—wholesale/retail/mfg.	1
C4	2	Radio/TV/stereo/electronic equipment/computers—service only.	3
62	2	Realty/insurance/travel/employment (agencies).	2
T1	3	Record shop	1
25	3	Restaurant/caterer	3
26	3	Savings/loans/banks and other financial institutions excluding check cashing.	3
66	2	Schools (profit) day care centers/studios.	2
64	2	Security locksmiths/alarms—retail/wholesale/mfg.	2
65	2	Shoe stores—retail/wholesale/mfg.	2
H1	3	Specialized clothing (sportswear/lingerie/accessories, etc.)—wholesale/retail/mfg.	2
U1	3	Sports goods—general—wholesale/retail/mfg.	3
80	2	Stationery/books/printing/engraving/paper-plastic products—retail/wholesale/mfg.	2
27	3	Tavern/bar/lounge	2
V1	3	Taxi/limousines (robbery only)	0
28	3	Theatre	0
29	3	Tobacco dealers—retail	1
C9	3	Tobacco—wholesale	1
72	2	Used clothing/shoe repair/thrift shops.	2
W1	3	Variety stores/department stores	1
X1	2	Vending machines—sales/rentals—mfg.	3
Y1	3	Wig shops	2

14. A new section to be designated Section 83.24a entitled "Gross Receipts" is added.

§ 83.24a Gross Receipts.

The annual gross receipts figure of a business is used as a significant factor in calculating the annual premium and for determining the deductible applicable to any loss. It is therefore material to the issuance of a policy and must be correctly stated. Misstatement of gross receipts at the time of application or any subsequent renewal will cause the policy to be voided and any claim denied. Gross receipts must be verified at the time of adjustment of any loss. Renewal payment of a Commercial Crime Insurance Policy will not be accepted and the policy renewed unless the current gross receipts figure is submitted with the premium payment. Failure to submit the gross receipts figure may result in a lapse of coverage. The following guidelines are applicable in determining the correct annual gross receipts figure to be reported.

(a) The annual gross receipts figure should be taken from the most recent annual Federal Income Tax Return (or comparable tax return in Puerto Rico and Virgin Islands) filed prior to the date of the application or renewal date. The figure is applicable to the policy for a period of one year and the policy can be changed in term to reduce or increase the premium because of a reduction or increase in gross receipts provided there are no incurred claims.

(b) A new business that has not as yet filed an annual Federal Income Tax

Return (or ventas netas in Puerto Rico) shall insert an estimated projection of gross sales. However, an applicant is not considered to be a "new business" if any of the owners or officers of the business have been owners or officers of any similar business previously operated at the same address. In such a case the annual gross receipts figure as listed in the most recently filed income tax return of the former business should be used, if available. If such figure is not available, an estimate by the insured's accountant of the annual gross receipts reasonably anticipated during the first year of operation will be accepted.

(c) A non-profit or public entity that has no gross receipts (ventas netas in Puerto Rico) or whose annual operating budget exceeds the gross receipts shall report its operating budget rather than gross receipts.

(d) The gross receipts figure for a bank or other financial institution shall be the total income line of the tax return (ventas netas in Puerto Rico) as derived from dividends, interest, investment income, capital gains and other income. If several branches of one business are covered, the total income shall be divided equally among the branches insured.

(e) The gross receipts figure (ventas netas for Puerto Rico) for a real estate, property management or similar type of business shall be the "Total Income" line of the tax return as derived from interest, rents, capital gains, other, etc.

(f) A warehouse shall report the total gross receipts of the store it supplies. If a warehouse supplies more than one store, it shall report the sum of the gross receipts figures for all the stores it supplies. If more than one warehouse supplies one store, the gross receipts figure applicable to the store shall be apportioned among the warehouses according to the percentage the value of merchandise supplied by each warehouse bears to the total value of merchandise supplied.

(g) If an insured has multiple premises as defined in § 83.22, the gross receipts of the total business shall be divided among the various locations in accordance with the percentage of the total gross receipts generated by each location.

(h) If an insured premises is regularly utilized as a collection center for performing accounting or bookkeeping functions with respect to the receipts delivered from two or more other premises, resulting in the accumulation of the combined receipts from such other premises at one location, the gross receipts for such location shall be determined by using the sum of the gross receipts amounts of all the other premises from which receipts are received. Further, if such insured premises is regularly utilized as a collection center at which there is accumulated money or property for distribution to one or more other insured premises, the gross receipts for such location shall be determined by using the sum of the gross receipt amounts of all the other insured premises to which distribution is made.

(i) Any questions regarding gross receipts should be referred to the servicing company listed in § 80.6 of this chapter.

15. Section 83.25 is revised to read as follows:

§ 83.25 Commercial crime insurance rates.

(a) Premium rates for Commercial Crime Insurance Policies for risks having annual gross receipts of less than $5,000,000 shall be determined by reference to the rate charts contained in paragraph (f) of this section. The annual gross receipts shall be determined in accordance with Section 83.24(a).

(b) Option 1. An applicant may apply for insurance coverage under all of the Insuring Agreements I, II, III, IV, V, VI, and VII of the Commercial Crime Insurance Policy. Agreements I and II deal with Robbery and Observed Theft Inside and Outside the Premises. Agreement III and IV deal with Safe Burglary and Theft from a Night Depository. Agreements V deals with Burglary and Robbery of a Watchman and Agreement VI deals with Damage. Agreement VII limits coverage to losses occurring within the several states, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions and the Trust Territory of the Pacific Islands. This package provides a uniform limit of coverage for all Agreements and is referred to as Option 1.

(c) Option 2. An applicant may apply for insurance coverage under only Insuring Agreements I, II, VI, and VII of the Commercial Policy dealing with Robbery and Observed Theft inside and outside the premises and Damage resulting from losses under Insuring Agreements I and II only. Such coverage shall be referred to as Option 2.

(d) Option 3. An applicant may apply for insurance coverage under only Insuring Agreements III, IV, V, VI, and VII of the Commercial Policy dealing with Safe Burglary, Theft from Night Depository, and Burglary or Robbery of a Watchman, and Damage resulting from losses under Insuring Agreements III and V only. Such coverage shall be referred to as Option 3.

(e) Option 4. An applicant may apply for varying limits of insurance coverage under both Option 2 and Option 3 but only in the same policy. Both Options 2 and 3 must be applied for at the same time. If one of these options has already been selected the other option may be added upon a renewal or upon rewriting the original policy to add the new option.

(f) The following rate tables shall be used to determine rates for risks having annual gross receipts of less than $5 million annually:

(g) The following procedure shall be used to determine the annual premium rates for commercial risks having annual gross receipts in excess of $5 million. § 83.24(a) should be referred to for determination of gross receipts (ventas netas for Puerto Rico) or operating budget.

Coverage	$5,000,000 plus
$1,000	0.0005
$2,000	0.00085
$3,000	0.00135
$4,000	0.0017
$5,000	0.002
$6,000	0.00225
$7,000	0.00245
$8,000	0.0026
$9,000	0.0027
$10,000	0.00275
$11,000	0.002775
$12,000	0.0028
$13,000	0.002825
$14,000	0.00285
$15,000	0.002875

For Option 1: Gross Receipts × the Appropriate Factor.

For Option 2: Option 1 × 0.6 (Robbery).

For Option 3: Option 1 × 0.5 (Burglary).

For Option 4: Add Option 2 and Option 3.

PART 84—CLASSIFICATION OF TERRITORIES [REMOVED]

15. This part is deleted in its entirety.

(Title XII of the Housing and Urban Development Act of 1969 (Public Law 90-488, 88 Stat. 476); Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367) and Delegation of Authority to Federal Insurance Administrator (44 FR 20963))

Issued date: April 22, 1982.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 90

[PR Docket No. 79-335; FCC 82-132]

Private Land Mobile Radio Services; Amendment of the Commission's Rules Concerning Mobile Station, Control Point and Control Station Authorization Procedures for Common User Systems for a Certain MHz Frequency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules and regulations in Part 90—Private Land Mobile Radio Service, by adopting a new temporary licensing procedure for special mobile radio systems (SMRS's) and multiple licensed mobile relay stations operating in the 806–821 and the 851–866 megahertz (MHz) bands. This new system of licensing will benefit radio users by enabling them to begin operations more quickly than in the past, and will not in any way lessen the ability of the Commission to determine whether an applicant is eligible and otherwise possesses the necessary qualifications to be permanently licensed to operate in these bands. This new system is a part of the Commission's on-going program for reviewing its rules and regulations and eliminating unnecessary burdens on licensees to facilitate the administration of the Private Land Mobile Radio Service.

DATES: Effective May 13, 1982.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Borkowski, Private Radio Bureau, (202) 632–7597.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Radio, Specialized Mobile Radio Systems (SMRS).

Adopted: March 18, 1982.

Released: April 6, 1982.

Report and Order

In the matter of amendment of § 90.397 of the Commission's rules concerning mobile station, control point and control station authorization procedures for 800 MHz common user systems.

Introduction

1. On January 11, 1980, the Commission released a Notice of Proposed Rule Making, PR Docket No. 79–335, FCC 79–856, proposing the option of "fleet licensing" for 800 MHz specialized mobile radio systems (SMRS's). This proposal was made as part of the Commission's on-going program for reviewing its rules and eliminating unncessary burdens on licensees in order to facilitate its administration of the private land mobile radio services.

2. Under our existing licensing procedures, a person seeking to operate an SMRS facility must file an application for the base station facility. Thereafter, each user of the SMRS base station must file a separate application for his/her proposed facilities. (*i.e.*, mobile stations and control stations or control points). This constitutes what has commonly been called a "two-tier" licensing format at 800 MHz; one tier being the license for the operation of an SMRS base facility, and the other tier being the licenses for end user systems associated with the SMRS base facility. This "two-tier" method of licensing has been used for both conventional and trunked SMRS facilities and end user systems since the 800 MHz spectrum became available.

3. For a conventional single channel SMRS facility, there may be ten or more end user systems for which ten or more sets of applications must be submitted. For a 20-channel trunked SMRS facility, having a capacity for up to 2,000 mobile units, we may require 200 or more applications.

4. Each person seeking to use an existing licensed SMRS facility must await the processing of his or her application before operation on the SMRS may commence. This docket proposed the alternative of "fleet licensing" to eliminate this built-in waiting period for the initiation of service.

5. "Fleet licensing" is a proposed option whereby the SMRS base station licensees would also be authorized for all associated mobile stations, control stations and control points. The Commission proposed to permit this option by amending §§ 90.359 and 90.397 (47 CFR Parts 359 and 397) of the rules to delete the requirement that users of 800 MHz commercial common user systems must be separately authorized for associated mobile stations, control stations and control points. Deletion of this requirement would allow the licensee of the SMRS facility to elect between the "two tier" licensing format, described above, or, alternatively, to choose a system which shifts to the SMRS facility licensee all licensee responsibility for the SMRS's operation. This latter approach would impose on the SMRS licensee the obligation of insuring that all facilities are only used by entities which are eligible under our rules and would place on the SMRS licensee the burden of assuring that all uses of the system are in accordance with the requirements of Part 90 of the Commission's rules (47 CFR 90.1–90.580).

Comments

6. Bell Communications, Inc. (Bell), American Radio-Telephone Service, Inc. (ARTS), Advanced Mobile Radiotelephone Services, Inc. (Advanced), Cal-Ag Communications, Inc. (Cal-Ag), Mid-Valley Communications (Mid-Valley), Pentacom Corporation (Pentacom), Sunset Electronics (Sunset), R.C.S., Inc. (RCS), James E. Treatch (Treatch), Radio Broadcasting Company (RBC), Kokusai Electric Company of America (Kokusai), the California Mobile Radio Association (now the National Mobile Radio Association, hereinafter NMRA) and the General Electric Company (GE) have submitted comments in support of the rule amendments proposed in this docket.[1] Communications Systems Specialists, Inc. (CCS), Suburban Communications, Inc. (Suburban), Telocator Network of America (TNA), Communications Specialists, Inc. (CSI), Maximum Service Telecasters, Inc. (MST), the National Association of Business and Educational Radio, Inc. (NABER), Motorola, Inc. (Motorola), and General Communications, Inc. (GCI) have submitted comments opposing the rule amendments proposed in this docket.[2] The RCA Corporation (RCA) filed reply comments opposing the proposed rule amendments. GE, Motorola, NMRA and MST also filed reply comments. The docket also contains summaries of oral *ex parte* presentations.

7. Generally, comments supporting the proposed rule making stated:

(1) Speed of licensing service at 800 MHz would be increased by fleet licensing;

(2) Users at 800 MHz would be accommodated more quickly;

(3) Private Radio Bureau (PRB) personnel presently processing 800 MHz

[1] While generally in favor of the proposed rule amendments, ARTS and GE each raise a single particular concern. APTS expressed concern about the realistic power of SMRS operators to enforce user compliance. GE expressed concern about the appropriate effective date.

[2] The comments of GCI, although filed untimely by one business day, are hereby accepted for filing.

user applications would be freed to reduce other backlogs;

(4) Additional paperwork and record keeping requirements for SMRS operators would be minimal;

(5) SMRS operators supporting this rule making stand ready to accept responsibility for proper operation of their radio "fleet," including the duty to insure that SMRS end users are eligible for SMRS service (viewing such a responsibility as entirely consistent with an SMRS licensee's financial interest in the system); and

(6) Adoption of these amendments promotes 800 MHz trunked system use and, concomitantly, promotes 800 MHz spectrum efficiency.

8. Generally, comments opposing the proposed rule making stated:

(1) Single-tier "fleet" licensing may be violative of the Communications Act of 1934, as amended, of the Commission's rules, or of the holding in National Association of Regulatory Utility Commissioners v. F.C.C., 525 F 2d 630, 173 U.S. App. D.C. 413, *cert. denied* 425 U.S. 992, 96 S.Ct. 2203, 48 L. Ed. 2d 816 (1976) (*NARUC I*), because such a licensing structure may "convert" certain types of 800 MHz systems into common carriers;

(2) The proposed licensing structure improperly delegates Federal Communications Commission (F.C.C.) licensing and enforcement functions;

(3) An SMRS operator has no practical method of determining or enforcing user compliance with F.C.C. rules;

(4) Such a licensing system unfairly subjects SMRS operators to penalties for the acts of others (*i.e.*, the SMRS users);

(5) "Point of sale licensing" results in expensive equipment stocking and financial burden to suppliers;

(6) Immediate user access "degrades" the 800 MHz services "to a level comparable to the Citizens Band Radio Service;"

(7) Such a system gives unscrupulous individuals a "go-ahead" for paper loading; and

(8) the benefits of the proposed rule changes are minimal.

9. In addition to the objections set forth in paragraph six, which were common to many comments opposing this rule making, some comments raised other issues. MST questioned whether less-than-rigorous examination of user eligibility by the FCC will result in frequency shortages due to ineligible users, suggesting, alternatively, that there be a thirty day user eligibility review period. GE believes any effective date must provide a six-month lead time to allow SMRS operators to convert to inventory stockpiling and to implement procedures to assure that licensed stations are lawfully used. Both NABER and Motorola question whether "fleet" licensing is in keeping with the historic treatment of the Private Radio services. NABER raises two additional issues:

(1) Whether possible action in this proceeding is contrary to concern expressed in PR Docket 79-107 that all responsible parties in a Private Radio system be licensed for enforcement purposes[3] and

(2) Whether the analogies of time brokering and cooperative use discussed in the NPRM have validity in this context.

TNA questions how processing time for 800 MHz applications can be decreased if the operator must still submit user information.

NMRA proposes, as an alternative to fleet licensing, temporary licensing, such as that adopted for multiple license facility "add-on" users in the Business Radio Service.[4] NMRA suggests that within such a scheme the temporary licenses could automatically mature into permanent licenses or, instead the Commission could issue permanent licenses to replace temporary licenses.

10. Both TNA and Motorola question:

(1) Whether the contemplated rule changes require a change in § 90.355(c) of the Rules, and

(2) Whether the contemplated rule changes create confusion regarding the interconnection rules, particularly § 90.389.

Motorola raises additional concerns relative to particular rule and application requirements, should "fleet licensing" be adopted:

(1) Whether "fleet" licensees should be held responsible for the output power of user control station transmitters;

(2) Whether users' statements made to the SMRS and submitted to the Commission will be subject to the provisions of 18 U.S.C. § 1001;

(3) The equitability of applying §§ 90.359(b), 90.377(d) and 90.391(g) of the Rules, which impose loading criteria and which impose alternate channel assignment where such criteria are not met, to SMRS "fleet" operations;

(4) *Ashbacker* rights relating to channels reassigned for failure to meet loading criteria in instances of "fleet licensing" applications, *cf. Ashbacker Radio Corporation* v. *Federal Communications Commission*, 326 U.S. 327 (1945). *See generally* 47 CFR 90.363 and 90.377; and

(5) Item 3(d) on Form 400-S, a question for applicants intending to use base station facilities furnished by another licensee on a commercial basis, would not be a relevant question to ask a "fleet" license applicant.

Discussion

Fleet Licensing—Legal Validity

11. When we adopted our regulatory approach at 800 MHz for private systems [5] we concluded that SMRS's were not common carriers. The spectrum allocation proceeding was appealed on many grounds, including the theory that SMRS's as contemplated by the new allocation would be common carriers. In upholding our spectrum allocation, the Court in NARUC I held that if SMRS's were to operate as contemplated, they would be lacking one of the three elements essential to common carriage: undertaking indifferently to serve the public.[6] The Court specifically listed which aspects of SMRS operation it viewed as distinguishing such operation from undertaking indifferently to serve the public. *NARUC I* held that the contemplated nature of the service provided by SMRS's involved "the establishment of medium-to-long-term contractual relations, whereby the SMRS's supply the needs of users for dispatch facilities for a period of time," and as such is not an indifferent holding out to the public because the clientele, in the long run, "might remain relatively stable, with terminations and new clients the exception rather than the rule." National Association of Regulatory Commissioners v. F.C.C. supra, at 643. While it appears that these distinguishing characteristics are sufficient to take SMRS service outside of the scope of an indifferent holding out

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[3] Notice of Inquiry, FCC 79-283, PR Docket 79-107, 71 FCC 2d. 1391 (1979).

[4] Report and Order, FCC 80-667, PR Docket No. 79-338 (Sept. 4, 1980), aff'd Telocator Network of America v. F.C.C. and United States of America (D.C. Cir. Aug. 14, 1981), Docket No. 80-2162.

[5] *Land Mobile Service*, Docket No. 18262 (Proceeding terminated) 55 FCC 2d 771 (July 16, 1975); Land Mobile Radio Service, Memorandum Opinion and Order, Docket No. 18262, 51 F.C.C. 2d 945 (March 19, 1975); Land Mobile Radio Service, Second Report and Order, Docket No. 18262, 46 F.C.C. 2d 752 (May 1, 1974); First Report and Order and Second Notice of Inquiry, 35 FR 8644 (May 21, 1970), Docket No. 18262; and Notice of Inquiry and Notice of Proposed Rule Making, Land Mobile Use of 800-960 MHz Band, Docket No. 18262, 14 F.C.C. 2d 311 (July 17, 1968).

[6] For purposes of the Communications Act, a common carrier is "any person engaged as a common carrier for hire * * *" 47 U.S.C. 153(h). Our rules define a common carrier as "any person engaged in rendering communication service for hire to the public." 47 CFR 21.1. It is generally accepted that three elements are essential to classify an entity as a communications common carrier: (1) the entity must provide a communications service; (2) the service must be for hire; and (3) the entity must undertake indifferently to serve the public. American Tel. and Tel. Co. v. F.C.C. 572 F.2d 17 (2d Cir. 1978).

to the public, the Court listed additional indicia of service not constituting such a holding out:

(1) SMRS negotiation with and selection of future clients on a highly individualized basis;

(2) SMRS concerns about the personal and operational compatibility of a given applicant vis-a-vis the SMRS operation as a whole; and

(3) Use of methods of operation and use of time demands as criteria for accepting or rejecting an applicant.

12. It is clear that SMRS's adhering to the criteria laid out by the Court in *NARUC I* would not be common carriers. This is so whether or not an SMRS is fleet licensed.[7] Thus, *NARUC I* clearly provides an SMRS operator with a standard by which the SMRS operator need not be a common carrier under the single tier licensing approach.[8] And we again emphasize that we were not in our proposal mandating fleet licensing; we were merely considering making it available for those who wished to utilize it.

13. Some comments express concern that fleet licensing would improperly delegate our licensing and policing functions. Under fleet licensing the SMRS operator would be the licensee for the entire system and as such would be required to comply *inter alia* with the requirements of § 90.403 of the rules. In a somewhat analogous situation licensees of cooperatively shared systems must assure that persons operating under their authorization must comply with all applicable rule requirements. See §§ 90.179, *et seq.* of the rules. There would be no unlawful delegation of our authority in making the licensee of a fleet licensed system responsible for its proper operation in conformity with our rules were we to adopt such a system.

Temporary Licensing—A Policy Alternative

14. Notwithstanding the legal validity of our fleet licensing proposal, we have considered the comments carefully and we are of the view that the alternative proposed by NMRA, *i.e.*, a system of temporary licensing for "add-on" users of SMRS's similar to the temporary licensing system recently adopted in the Business Radio Service, is a preferable alternative to fleet licensing because it not only would permit users of SMRS facilities to commence immediate operation pending formal consideration of their applications, it would also provide the same advantage of expeditious comunications to add-on users of multiple licensed systems. Thus, the public benefits we sought to promote would be extended to a much broader class of private land mobile radio services eligibles. Therefore, we conclude the public interest is best served by adopting an approach which facilitates expedited service to would-be licensees on both SMRS's and multiple licensed facilities.

15. Under a system of temporary licensing at 800 MHz, an applicant would mail an application to the Commission for a radio station authorization on the usual application forms.[9] At the same time, the applicant would be required to complete and keep a second form verifying:

—That the applicant is a subsequent user of an already licensed 800 MHz facility;

—That the applicant is eligible for licensing under 47 CFR 90.355 (a) or (b); [10]

—That the applicant is not a representative of a foreign government;

—That a formal application has been completed and mailed or otherwise submitted to the Commission; and

—That the applicant is not the subject of any legal action concerning the operation of a radio station.

Once the regular application is mailed or otherwise submitted to the Commission, the second form would be retained as a permanent part of the applicant's station records and would constitute a valid temporary authorization. The applicant could then begin operating his or her radio station using a temporary call sign made up of the prefix plus the applicant's local seven digit business telephone number. This authority would continue until the Commission acts on the application or up to a maximum of 180 days, whichever period is shorter.

16. Such a temporary licensing proposal at 800 MHz has many distinct advantages over the fleet license proposal originally enunciated in this docket:

(a) Temporary licensing requires no increased responsibility for an SMRS operation, requires no change of the present SMRS licensing structure, yet also achieves the primary goal of this docket—to eliminate the unnecessary burden on applicants of awaiting Commission action on separate end user applications before commencing operation on existing SMRS systems.

(b) Fleet licensing is an option requiring an SMR operator to assume greater system responsibility. End-users of systems having SMRS operators unwilling to fleet license for this reason would not benefit from the add-on feature of a fleet licensed system. On the other hand, temporary licensing provides for prompt add-on of all SMRS end users.

(c) Temporary licensing provisions at 800 MHz permit extension of prompt add-on benefits to applicants for use of multiple licensed mobile relay stations (also known as "community repeaters") operating under Subpart M. Fleet licensing would not provide this benefit.

(d) The approach to temporary licensing proposed by NMRA is consistent with our previous actions implementing temporary licensing in the Business Radio Service, Report and Order, FCC 80–887, PR Docket No. 79–338 (Sept. 4, 1980), aff'd Telocator Network of America v. F.C.C. and United States of America (D.C. Cir. August 14, 1981), Docket No. 80–2182, and also with our previous actions implementing temporary licensing in the

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[7] An SMRS choosing not to comport with the test of *NARUC I* does so at its own risk and we specifically stated in Docket No. 18262 that we envisioned an individualized approach to dealing with customers. Land Mobile Radio Service-Memorandum Opinion and Order, Docket No. 18262, 51 FCC 2d 945 (1975) at 966, 970; See Land Mobile Radio Service, Second Report and Order, Docket No. 18262, 46 FCC 2d 752, 785 (1974). Our Rules prohibit SMRS's from rendering a communications common carrier service. 47 CFR 90.415. Opponents of "fleet licensing" contend that under two-tier licensing an SMRS may fail to meet *NARUC I* standards and yet not be a common carrier because it does not provide a communications service. These opponents contend that "fleet licensing" vests SMRS's with additional duties and responsibilities which may make the difference between providing (in the case of "fleet licensing") or not providing (in the case of two-tier licensing) a communications service. While the validity of such a "communications service" analysis is not directly before us in this proceeding, it would not be a basis for rejection of a "fleet licensing" option. SMRS's comporting with *NARUC I* standards avoid classification as common carriers by the nature of their offering—they fail to meet the third test of common carriage (the entity must undertake indifferently to serve the public). Whether they meet the other two tests of common carriage: (1) Providing a communications service (2) for hire, is a question that need not be reached.

[8] TNA's claim that SMRS's are already common carriers, a position which both we and the Courts have rejected, is completely irrelevant to the question of the propriety of adoption of the proposed amendments. The validity and propriety of the proposed amendments is the concern of this rule-making—the validity of SMRS's themselves and prior rules relating to them is an established fact.

[9] FCC Forms 400 and 400-S; *cf.* 47 CFR 1.922 and 90.357.

[10] 47 CFR 90.355 (a) and (b) provide:

The following persons are eligible for licensing in the 806–821 MHz and 851–866 MHz bands.

(a) Any person eligible for licensing under Subparts B, C, D or E of this part.

(b) Any person proposing to provide private dispatch service to any person eligible for licensing under Subpart B, C, D, or E of this part on a not-for-profit, cost-shared basis.

Personal and Marine Radio Services. *See* Order, 44 FR 5288 (Jan. 16, 1979) FCC 78–846 (1979), *Errata*, 44 FR 8878 (Feb. 1, 1979), and *Order*, FCC 76–320 (1976).

(e) The adoption of temporary licensing at 800 MHz renders moot the objections raised in the proceeding to the elimination of the two-tier licensing approach.

17. We recognize that temporary licensing might require somewhat more processing resources that fleet licensing would have required. However, even under fleet licensing, much of the information that would otherwise have been contained in an application would still have to be provided to the Commission and processed. Moreover, the number of SMRS's that would have chosen to fleet license is uncertain.

18. With the addition of a system of temporary licensing at 800 MHz, any paper loading or eligibility misrepresentations can still be considered as they are now, prior to or subsequent to licensing. Because 800 MHz eligibility encompasses a broad cross-section of those otherwise eligible in the land mobile radio services, and in fact includes all local governmental and commercial entities, the risk of allowing an unqualified applicant to operate is minimal. Moreover, even with the addition of a procedure for temporary licensing at 800 MHz, we will continue to grant permanent authorizations only after evaluation of written applications, and only after the requisite public interest determinations have been made.

19. There is little or no likelihood that temporarily licensed add-on users of SMRS's or of multiple licensed mobile relay stations above 800 MHz will cause interference to other users. These temporary licensees merely increase mobile loading on channels using base stations already in operation at previously approved sites. Additionally, the antenna structures involved will already have received any required Federal Aviation Administration clearance—a critically important safety of life consideration.[11]

Conclusion

20. In view of the foregoing, we conclude that the proposed "fleet licensing" rules set forth in the Notice of Proposed Rule Making should not be adopted. Instead, we conclude that adoption of a temporary licensing procedure for SMRS's and multiple licensed mobile relay stations operating in the 806–821 MHz and 851–866 MHz bands will serve the public interest, convenience and necessity and we are adopting the form and the rules set forth in Appendices A and B. This system of licensing will benefit radio users by enabling them to begin operations more quickly than heretofore, and will not in any way lessen our ability to determine whether an applicant is eligible and otherwise possesses the necessary qualifications to be permanently licensed under Subpart M.

21. The new form set forth in Appendix B [12] (FCC Form 577) will replace FCC Form 572, which is now used as a temporary permit to operate a station in the Business Radio Service. FCC Form 577, on the other hand, will be used as a temporary permit for any service for which such permit is available under Part 90. The new form is adopted subject to Office of Management and Budget clearance. Sufficient supplies of the form must be obtained to cover at least initial demand. Unless the public is advised to the contrary, the Rules we here adopt will be effective May 13, 1982.

22. Accordingly, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that effective May 13, 1982, Parts 1, 2 and 90 of the Commission's Rules are amended as set forth in Appendix A.

23. It is further ordered that this proceeding is terminated.

24. It is further ordered that the Secretary shall cause this Report and Order to be published in the Federal Register.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix A

Parts 1, 2 and 90 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. In § 1.922 a new FCC Form and Title are added to read as follows:

§ 1.922 Forms to be used.

FCC form	Title
•	•
577	Temporary Permit To Operate a Part 90 Radio Station.
•	•

2. In § 1.925 a new paragraph (h) is added to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit, or interim amateur permit.

* * * * *

(h) An applicant for a Subpart M radio station license to utilize an already existing SMRS facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit evidenced by a properly executed certification of FCC Form 577 after the mailing of a formal application for station license, provided that the antenna(s) employed by the control station(s) is (are) a maximum of twenty feet above a man-made structure (other than an antenna tower) to which it (they) is (are) affixed.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. In § 2.302, a new class of station, composition of call sign, and call sign block are added to the table of call signs, to read as follows:

§ 2.302 Call signs.

* * * * *

Class of station	Composition of call sign	Call sign blocks
•	•	•
Part 90 temporary permit.	2 letters, 7 digits.	WT plus local telephone number.
•	•	•

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

4. In § 90.357, the existing material is redesignated as paragraph (a), a new paragraph (b) is added to read as follows:

§ 90.357 Forms to be used.

* * * * *

(b) Form 577, Temporary Permit to Operate a Part 90 Radio Station, should be executed if an applicant eligible for a temporary license under Subpart M desires station operation pending

[11] This Report and Orders does not make temporary licensing above 800 MHz available within 85 miles of the Mexican border. The Second Report and Order in PR Docket No. 79–191 will include rules governing use of 800 MHz frequencies in the Canadian border area.

[12] Appendix B (FCC Form 577) was filed as a part of the original document and will not be included in the Code of Federal Regulations.

processing of Forms 400 and 400–S (See also § 90.399).

5. Subpart M of Part 90 is amended by the addition of new § 90.399 to read as follows:

§ 90.399 Temporary permit.

An applicant for a Subpart M radio station license to utilize an already existing SMRS facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit evidenced by a properly executed certification of FCC Form 577 after the mailing of a formal application for station license, provided that the antenna(s) employed by the control station(s) is (are) a maximum of twenty feet above ground or a maximum of twenty feet above a man-made structure other than an antenna tower to which it (they) is (are) affixed.

6. In Section 90.437 a new paragraph (d) is added to read as follows:

§ 90.437 Posting station licenses.

* * * * *

(d) An applicant operating under a temporary permit authorized in accordance with § 90.399 must retain an executed copy of FCC Form 577 as a permanent part of the station records.

[FR Doc. 82-9856 Filed 5-4-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 31

[CC Docket No. 79-105; FCC 82-155]

Accounting for Station Connections, Optional Payment Plan Revenues and Related Capital Costs, Customer Provided Equipment and Sale of Terminal Equipment

AGENCY: Federal Communications Commission.

ACTION: Order on reconsideration and clarification of First Report and Order.

SUMMARY: This document sets forth the Commissions response to a petition for clarification and a petition for reconsideration of its First Report and Order, Commonly known as "Expensing of Station Connections". The First Report and Order, published in the Federal Register at 46 FR 19481, March 31, 1981, adopted changes to the Commissions Rules in Part 31 on uniform system of accounts for Class A and B telephone companies. Both petitioners raised the question of whether, and to what extent the adoption of the First Report and Order limits the discretion of the State commissions to follow different accounting and depreciation procedures for purposes of computing revenue requirements for intrastate telecommunications services.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Carl D. Lawson, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Adopted: April 1, 1982.

Released: April 27, 1982.

By the Commission: Commissioners Fogarty and Jones dissenting and issuing a joint statement. Commissioner Rivera dissenting.

1. We have before us a petition for clarification of our *First Report and Order* in this proceeding (85 FCC 2d 818 (1981)) filed by the National Association of Regulatory Utility Commissioners (NARUC) and a petition for reconsideration of that *Report and Order* filed by the People of the State of California and the Public Utilities Commission of the State of California (California). The *First Report and Order*, commonly known as "Expensing of Station Connections," adopted a number of changes in Part 31 of this Commission's Rules (Uniform System of Accounts for Class A and Class B Telephone Companies). The principal changes required that future costs of installing new inside wiring and similar costs be included as an expense in Account 605 (Repair of Station Equipment). Such costs have previously been capitalized in Account 232 (Station Connections). The *First Report and Order* also required that the present net investment in inside wiring and investment that will be added during a transition period be amortized over a period of 10 years. That requirement superseded existing depreciation prescriptions for such investment.

2. Both petitions raise the question of whether, and to what extent, the adoption of the *First Report and Order* limits the discretion of state commissions to follow different accounting and depreciation procedures for purposes of computing revenue requirements for intrastate telecommunications services. NARUC seeks a clarification of the *First Report and Order* declaring that it does not restrict the discretion of the state commissions and California seeks reconsideration of our decision to the extent that it purports to restrict the discretion of state commissions. GTE Service Corporation (GTE) and American Telephone and Telegraph Company (AT&T) have filed oppositions to the petitions. Those companies contend that the *First Report and Order* does and should restrict the discretion of the state commissions.

3. We have concluded that the *First Report and Order* does not preclude state commissions from using other accounting or depreciation procedures for intrastate ratemaking proceedings. Thus, we are granting the NARUC petition insofar as it seeks such a clarification. In view of our conclusion that state commissions are not precluded from using their own accounting and depreciation procedures for intrastate ratemaking purpose, it is unnecessary to consider further the California petition and it will be dismissed as moot.

I. Nature of the First Report and Order

4. In our Phase II *Final Decision and Order* in Docket 19129, 64 FCC 2d 1, 54–56 (1977), we concluded that it would be desirable to place costs associated with station connections on the causative ratepayer. We accordingly ordered AT&T to submit a plan for changing the accounting treatment of station connection costs that would be consistent with that objective. *Id* at 110. AT&T responded by filing a petition for rulemaking (RM–3017) that proposed amendments to Part 31 of our Rules. After reviewing that petition, we instituted this proceeding by inviting comments upon a somewhat different proposal to modify accounting for station connections.[1]

5. After reviewing the comments, we concluded that any changes in the accounting or other regulatory treatment of station connections should not include drop or block lines and protectors. We also concluded that changes in accounting procedures would not be sufficient in and of themselves to place other station connection costs on the causative ratepayer. This is the case because costs associated with the provision of inside wiring necessarily must be apportioned between the federal and state jurisdictions as long as inside wiring is provided as a tariffed service subject to dual regulation. Complete unbundling cannot be achieved by expensing rather than capitalizing such costs because both the telephone operations investment and telephone operations expenses are apportioned for purposes of computing

[1] Notice of Proposed Rulemaking (CC Docket 79–105), 44 FR 48968 (August 14, 1979). We also invited comment upon some other proposed accounting changes that are closely related to station connections.

an interstate and an intrastate telecommunication service revenue requirement. Complete unbundling could be achieved by determining that the provision of inside wiring should be provided on a detariffed basis. We have, of course, made such a determination with respect to customer premises equipment and have adopted rules to separate that business from the telephone operations that are subject to tariff regulations.[5] We concluded that it would be premature to adopt such a fundamental change in the regulatory status of inside wiring without conducting further inquiry.

6. Nevertheless, we concluded that changes in accounting and depreciation procedures that would facilitate implementation of any decision to change the regulatory status of inside wiring would be desirable in the absence of such a change. We accordingly issued a *First Report and Order* adopting changes in accounting and depreciation rules and a separate *Further Notice of Inquiry* (86 FCC 2d 885 (1981)) inviting additional comments with respect to possible changes in the regulatory status of inside wiring. The *First Report and Order* does not produce any change in regulatory status. The interstate portion of the embedded net investment will be reflected in the return component of the interstate telecommunication service revenue requirement and the interstate portion of the annual amortization and the new installation expenses will be reflected in the expense component of that revenue requirement. Unless and until we determine that inside wiring should not be provided as part of a tariffed service, the new accounting rules will not have a greater or different effect than any other accounting rules we have prescribed for the purpose of computing the interstate telecommunication service revenue requirement.

7. Insofar as the petitions seek a determination with respect to this Commission's purpose and intent, we conclude that the *First Report and Order* was not intended to have any preemptive effect that does not arise by operation of law. The discussion of the effects of expensing upon intrastate rates and revenue requirements in that Order was based upon the assumption that all or most state commissions would choose to follow those rules for purposes of computing intrastate telecommunication service rates. Our decision to permit carriers to accelerate the transition to expensing with the approval of state regulatory commissions was also based on the assumption that few, if any, of the state commissions would choose to prohibit expensing for intrastate ratemaking purposes. Such assumptions appeared reasonable because most state commissions have followed most accounting and depreciation procedures prescribed by this Commission in the past and the considerations that led us to conclude that expensing will benefit both carriers and consumers in the long run are equally applicable to intrastate ratemaking. No policyt of this Commission would be furthered by requiring state commissions to adhere to the rules we have adopted for purposes of computing the interstate revenue requirement. If carriers adhere to our rules for purposes of computing the interstate revenue requirement, our purpose will be achieved.

8. The participants in this proceeding may not view the preemption issue as a question of intent, but rather as a matter of statutory interpretation. The petitioners may be contending that this Commission could not require state commissions to follow our accounting or depreciation rules for intrastate ratemaking purposes and AT&T and GTE apparently contend that section 220 of the Communications Act precludes state commissions from departing from any accounting or depreciation rule that has been prescribed by this Commission. To the extent this is the case, this controversy might more appropriately be characterized as a request for a declaratory ruling with respect to the meaning and effect of section 220 that is not limited to these particular rules. We do not propose to deny relief because the petitions or oppositions may not be properly labeled. We have concluded, for reasons explained in Part II, that section 220 does not preclue state commissions from departing from accounting or depreciation rules prescribed by this Commission for purposes of regulating intrastate telecommunication service rates.

II. Effect of Section 220

9. AT&T and GTE rely primarily upon subsection 220(g) to support their contention that Section 220 precludes the states from departing from our accounting and depreciation rules for purposes of computing intrastate telecommunication service revenue requirements. Subsection (g) provides:

> (g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it *shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed* or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect. (Emphasis added)

10. Subsection (g) does not literally impose any restriction upon the power of the states to regulate intrastate rates or the methods state commissions use to determine whether a particular rate will be approved or prescribed. A state commission could theoretically adjust information derived from a carrier's system of accounts for purposes of its own ratemaking without creating any conflict with obligations that subsection (g) imposes upon carriers. Nevertheless, it would be extremely difficult as a practical matter for a state commission to perform such ratemaking computations without requiring a carrier to collect and compile some data in some form that might be described as "accounts, records or memoranda." Thus, AT&T and GTE may be contending that subsection (g) implicitly precludes the use of other accounting methods or systems for other regulatory purposes when this Commission has prescribed methods that must be used for interstate ratemaking purposes.

11. Subsection (a)–(g) of section 220 were in the main a reprint of provisions contained in section 20 of the Interstate Commerce Act.[3] Although the Interstate Commerce Act was designed for the regulation of railroads, many of the provisions were extended to communications common carriers and the Interstate Commerce Commission was in the process of developing accounting and depreciation rules for telephone companies at the time the Communications Act was adopted. In the absence of statutory changes or indications to the contrary, it is assumed that whenever the legislature enacts or reenacts a provision in an existing statute it has in mind the previous statute relating to the same subject matter.[4] Unless the context indicates

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[5] See *Primary Instrument Concept (PIC)*, 68 FCC 2d 1187 (1978); *Second Computer Inquiry Final Decision*, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980); *further recon.*, (FCC 81–461, released October 30, 1981).

[3] At the time of adoption of section 220(g) of the 1934 Communications Act, section 20(5) of the Interstate Commerce Act provided that "" * * it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed by the Commission * * *" 41 Stat. 493 (1920). See 49 U.S.C. 20(5).

[4] Courts have attached great weight to interpretations of interstate Commerce Act provisions in interpreting the Communications Act.

Continued

otherwise, words and phrases in a provision that were used in a prior act pertaining to the same subject matter will be construed to be used in the same sense.[5]

12. The parallel section 20 language was added to the Interstate Commerce Act by the Hepburn Act of 1906, 34 Stat. 584. The legislative history of the Hepburn Act does not shed any light upon Congressional reasons for prohibiting railroads from maintaining accounts, records on memoranda other than those prescribed by the ICC. Congress may have wished to inhibit the railroads from defrauding investors through fraudulent or sloppy accounting practices or to prevent the railroads from concealing unlawful rebates. There is no indication in the legislative history of the Hepburn Act that the 1906 Congress wished to curb state regulation of railroads. That Act was apparently motivated solely by a desire to make railroad regulation more effective.

13. ICC accounting rules that were promulgated pursuant to section 20 of the Interstate Commerce Act were challenged in *Int. Com. Commission* v. *Goodrich Trans. Co.*, 224 U.S. 194 (1912) (hereinafter cited as *Goodrich*). The railroad contended that the ICC had exceeded its authority by prescribing the form of accounts for activities that were not subject to ICC rate regulation. The Supreme Court sustained the ICC accounting rules on the theory that the ICC needed information about such activities in order to regulate the activities that were subject to ICC rate regulation. The Court said (*id.* at 211):

> If the Commission is to successfully perform its duties in respect to reasonable rates, undue discriminations and favoritism, it must be informed as to the business of the carriers by a system of accounting which will not permit the possible concealment of forbidden practices in accounts which it is not permitted to see and concerning which it can require no information. It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction.

14. *Goodrich* is of limited relevance because that case did not raise any question with respect to the effect of ICC accounting rules upon the regulation of activities that were not subject to ICC rate regulation. Nevertheless, a construction of section 20 that would have limited the states' discretion to regulate intrastate rail rates would have been inconsistent with the Court's description of the nature and function of the accounting rules.

15. The adoption of an interpretation of section 20(5) of the Interstate Commerce Act or section 220(g) of the Commerce Act that restricts state accounting practices for purposes of intrastate ratemaking would also restrict other forms of state or federal regulation that might require accounting records or information that differ from data generated by the rules prescribed for interstate ratemaking. Indeed such an interpretation would appear to preclude carriers from using accelerated depreciation methods for purposes of computing their income taxes since such methods differ from the depreciation methods that have been prescribed for ratemaking purposes.

16. The question of the effect of ICC accounting requirements upon railroad tax accounting did arise before the Communications Act was enacted. The Interstate Commerce Commission had required a railroad to amortize the value of certain abandoned property over a period of 15 years and to charge the amortized amounts as an operating expense for accounting purposes. The railroad contended in *Kansas City Southern Ry. Co. v. Commissioner of Int. Rev.*, 52 F.2d 372 (8th Cir. 1931) that the Commissioner was required to accept the amortized expenses as a deduction from income because failure to do so would violate Section 20 of the Interstate Commerce Act. The Court summarily rejected that contention. The Court said (*Id.* at 378):

> The Commission did not purport in requiring the loss for abandonment to be charged to operating expenses to provide any standards for tax authorities to follow. This would be beyond its province. * * * Systems of accounting for railroads under the control of the Commission cannot interfere with the government's system of taxation. The Commission has no power to direct how the Revenue Laws of the United States shall be interpreted or by its orders provide standards to govern the taxing authorities.

17. AT&T apparently contends that providing standards for state regulators to follow was within the Interstate Commerce Commission's province and that the ICC had specifically rejected contentions that section 20 of the Interstate Commerce Act did not give it that power. AT&T's reliance on *Depreciation Charges of Telephone Companies*, 118 I.C.C. 295 (1926), is misplaced. In the *Depreciation Charge* proceeding, NARUC had argued that the words "as soon as practicable" contained in section 20(5) gave the ICC latitude to refrain from prescribing depreciation requirements for the local telephone companies engaged only to an insignificant extent in interstate commerce. In rejecting NARUC's position, the ICC merely held that its obligation under section 20(5) to prescribe depreciation rates for telephone companies was mandatory, not discretionary.[6] In dicta, the Commission additionally appeared to suggest that its authority under section 20(5) extended to all property "open for use in interstate commerce." Petitioners in CC Docket No. 79-105, however, do not appear to dispute the authority of the FCC, under section 220 of the Communications Act, to extend its accounting and depreciation prescriptions to cover assets used for primarily intrastate purposes. The ICC's 1926 telephone depreciation charge proceeding is silent on the issue of whether federal prescription of depreciation rates preempts the states from prescribing additional and distinct depreciation rates and classifications covering the same property for regulatory purposes.[7]

18. AT&T further cites *Accounting Rules For Telephone Companies*, 203 ICC 13 (1934), in support of its contention that state commissions lack jurisdiction over telephone company accounts insofar as intrastate service is concerned. Here, again, we disagree with AT&T's reading of this opinion. In *Accounting Rules For Telephone Companies* (an advisory opinion for the benefit of the newly created Federal Communications Commission) the ICC concluded, over the objections of the states, only that the federally-prescribed system of accounts should be uniform in its treatment of telephone companies operating among the several states.[8] Indeed, far from preempting the states from independently prescribing separate additional accounts, the ICC expressly recognized that the states might have additional accounting needs and sought to assist the states in this respect by permitting state-prescribed sub-accounts

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See e.g., *American Telephone and Telegraph Company* v. *F.C.C.*, 487 F. 2d 864, 878–874 (2d Cir. 1973).

[5] See Sutherland, *Statutory Construction*, § 51.02 (C. Sands ed. 1972) and cases cited therein.

[6] 118 I.C.C. at 332–33.

[7] Indeed, the Supreme Court has placed this same construction on the ICC's order in the *Depreciation Charge* proceeding. *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 159 (1930).

[8] See also, *Kansas City So. Ry.* v. *United States*, 231 U.S. 423 (1913); and *Int. Com. Comm.* v. *Goodrich Trans. Co.*, *supra*.

within the federally-required books of account. The ICC stated:

> In the measures adopted with respect to the uniform system, we are acting in pursuance of the direction of Congress. Uniformity is the desired and important object. The nature of the undertaking necessarily precludes the incorporation of special provisions covering the requirements of the several State commissions.
>
> We have, however, recognized the needs of the several State commissions in the intrastate regulation which is their duty and have, endeavored to help them in the securing of all necessary information by leaving it open to them to require subdivision of the accounts prescribed.

Since the ICC may not delegate any of its authority under the Interstate Commerce Act to the individual states,[9] ICC acceptance of these state-prescribed sub-accounts may be construed as recognition of the power of the states to require accounts for this own regulatory purposes independent of the scope of the Commission's authority to prescribe accounts for federal purposes.[10]

19. That Commission's conclusion that states may supplement a uniform system would not preclude a conclusion that section 20 of the Interstate Commerce Act or section 220 of the Communications Act forecloses states from departing from a federally prescribed accounting system by adopting accounting methods that are inconsistent with the federal system. That ICC opinion does contain language that indicates that the ICC believed such departures from uniformity would be undesirable, but the ICC did not conclude that such departures are precluded by statute.

20. Supreme Court decisions relating to section 20 of the Interstate Commerce Act never squarely addressed the question of the extent of the states' power to prescribe accounting and depreciation rules that supplement or deviate from rules prescribed by the ICC. A telephone company did challenge certain state-prescribed depreciation requirements in *N.W. Bell Tel. Co.* v. *Ry. Comm'n*, 297 U.S. 471 (1936). The Court concluded that section 20 clearly did not preclude a state commission from adopting and enforcing depreciation rules prior to the adoption of the ICC depreciation rules. The Court expressly declined to determine what effect the adoption of ICC depreciation rules would have upon the state commission's powers.

21. Inasmuch as section 20 had never been construed to restrict state commissions from requiring carriers to keep additional records for purposes of intrastate ratemaking and court decisions in analogous contexts did not adopt an expansive interpretation of that provision, the reenactment of that language should not be interpreted to restrict state commissions from keeping such additional records in the absence of clear evidence that the 1934 Congress intended to produce that result. AT&T and GTE would infer such an intent from that Congress failure to enact a proposed subsection 220(j) that would have provided:

> Nothing in this section (1) limit the power of a State commission to prescribe, for the purposes of the exercise of its jurisdiction with respect to any carrier, the percentage rate of depreciation to be charged to any class of property of such carrier, or the composite depreciation rate, for the purpose of determining charges, accounts, records, or practices;
>
> (2) relieve any carrier from keeping any accounts, records, or memoranda which may be required to be kept by any State commission in pursuance of authority granted under State Law.[11]

22. This version of section 220(j) passed the House but was eliminated from the Senate bill. The revised Senate version of section 220(j) provided instead:

> The Commission shall investigate and report to the Congress whether in its opinion legislation is desirable (1) authorizing the Commission to except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates; and (2) permitting the State commissions, in pursuance of authority granted under State Law, to prescribe their own percentage rates of depreciation or systems of accounts, records, or memoranda to be kept by carriers.[12]

23. The Conference Committee drafted a compromise that retained the House version of subsection 220(h) and substituted a new subsection 220(j) for both the House and Senate versions. The Conference Committee version of Section 220, which was enacted without further modification, also included a subsection (i) that did not parallel Interstate Commerce Act language. Subsections (h)–(j) provided:

> (h) The Commission may classify carrier subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, *except the carriers of any particular class or classes in any state from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section related.* (Emphasis added)
>
> (i) The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views and recommendations.
>
> (j) The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

24. AT&T and GTE argue that statements by witnesses at the committee hearings both in favor of and in opposition of the original version of section 220(j) support the position that Congress intended in dropping this provision to preempt the states for all purposes. They contend that statements by witnesses from both sides were premised on the belief that absent a provision similar to original section 220(j) the states would be bound by federal accounting and depreciation prescriptions in their local regulation. We disagree.

25. The record of the Congressional hearings indicates little more than that the supporters of original section 220(j) believed that the provision was desirable to resolve a previous unsettled point of law under the predecessor provision of the Interstate Commerce Act. This desire on the part of the state commissions to have Congress explicitly recognize the authority of the states to prescribe accounts and depreciation rates for local regulatory purposes is reflected in the following statements of J. E. Benton, NARUC's general solictor (emphasis added).

> Section 220, which is the section giving the Commission jurisdiction to prescribe accounts and reports, also takes account of local conditions and safeguards the powers of State commissions in the matters of depreciation and of accounting regulations. *The State commissions are very solicitous that the act shall be so phrased that it cannot be construed* as imposing any depreciation regulation promulgated by the Federal

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[9] See, 49 U.S.C.A. section 17(2); and Davis, *Administrative Law Treatise*, Ch. 3 (1978).

[10] Significantly, the FCC also has permitted state-prescribed sub-accounts in the USOA books. 47 CFR 31.01–2(f) provides the following:

> Nothing contained in the part shall prohibit or excuse any carrier or receiver or operating trustee of any carrier from subdividing the accounts hereby prescribed *in the manner ordered by any State commission having jurisdiction* or to the extent necessary to secure the information required in the prescribed reports to such commission. (Emphasis added.)

[11] S. 2910, 73d Cong., 2d Sess. Section 220(j) (February 20, 1934); H.R. 8301, 73d Cong., 2d Sess. Section 220(j) (February 27, 1934).

[12] S. 3285, 73d Cong., 2d Sess. section 220(j) (March 28, 1934).

Commission upon the regulatory agencies of the States.

* * * * *

Ever since the power to fix depreciation rates was given to the Interstate Commerce Commission in 1920, *the State commissions have been apprehensive that when an order finally came to be fixed by a Federal Commission it would be pointed to by the utilities as depriving the State commissions thereafter of going into the question of depreciation in rate cases . . .*

* * * * *

[W]e do not ask for any particular form of words, but there should go into the act a provision which makes it clear that in the administration of their laws for the regulation of rates, the State commissions shall have the power in rate cases to determine what allowances shall be made for depreciation in the rates which are fixed.

[T]he State Commissions believe that it is not in the public interest that the act shall contain a mandate to the Federal commission to fix rates of depreciation unless *it shall be made entirely clear* in the act that such determination is for the use of the Federal commission only and is not to affect the State commissions in their regulatory work.

* * * * *

That section merely proposes to provide, in plain terms, that the control of intrastate telephone business as now exercised by the States, shall continue to be exercised by them without interference by the Federal Commission.[13]

26. Several witnesses opposed original section 220(j) on the various grounds that it would create the possibility of unreasonably burdening the carriers with the cost of multiple sets of books,[14] that it would destroy the uniform system of accounts [15] and that it would create conflicts in the exercise of federal and state jurisdiction.[16] Only one opposing witness, however, specifically expressed the view that the then-current law prohibited the states from prescribing accounts and depreciation rates for their own purposes, and this statement was tentative.[17]

27. Even if all the witnesses who testified concerning original section 220(j) had consistently and clearly expressed the view that the states lacked authority to prescribe additional accounts and depreciation rates absent this provision, we could accord little weight to the statements given the silence contained in the Congressional reports.[18] In striking the compromise which became the law, Congress was completely silent as to its intent in eliminating the House version of section 220(j).

28. H. Rep. No. 1918 describes the Conference provisions as follows (p. 47):

Section 220(j) of the Senate bill (accounts and depreciation charges) authorizes the Commission to investigate and report to Congress upon the desirability of legislation authorizing the Commission to except the carriers of any particular class or classes in any State from the requirements of the section and permitting State commissions to prescribe their own percentage rates of depreciation and systems of accounts for carriers. The House amendment (sec. 220(h)) specifically authorizes the Commission to except carriers of any particular class or classes in any State and provides (in sec. 220(j)) that the section shall not limit the power of the State commissions to prescribe percentage rates of depreciation or to require the keeping of accounts.

29. At most this legislative history indicates that the 1934 Congress was not sure whether reenactment of the Interstate Commerce Act language would or would not preempt state accounting and depreciation rules and did not choose to resolve the question at that time. One might infer that Congress believed subsection (g) did not preempt inconsistent state commission accounting and depreciation practices. If subsection (g) produced that effect, any further legislation to "harmonize" the powers of the regulatory commissions might be superfluous.

30. The carriers' contention that subsection (i) demonstrates that the 1934 Congress believed it had preempted State commission accounting and depreciation rules is not persuasive. Congress undoubtedly correctly anticipated that most State commissions would not choose to create a complete system of accounts and would be vitally interested in any rules developed by this Commission. The adoption of special notice and consultation requirements does not demonstrate that Congress assumed all states would be required to adhere to all federal accounting or depreciation rules.

31. Subsections (h)–(j) indicate that the 1934 Congress wished to achieve as much uniformity as possible without coercing any state commission to use ratemaking methods it found unacceptable. This Commission has proceeded in a manner that is consistent with that purpose for nearly four decades. We have always given special consideration to the needs and views of state commissions in developing accounting and depreciation rules and most State commissions have chosen to follow most accounting and depreciation rules prescribed by this Commission. Departures have nonetheless occurred from time to time.[19]

This Commission has never attempted to prevent any State commission from departing from our accounting and depreciation rules. Indeed we have expressly recognized that State commissions have a right to do so.

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[13] Hearings on H.R. 8301, Before the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 73d Cong., 2d Sess. (April 10, 1934), pp. 136–44 (Emphasis added.); see also, Hearings on S. 2910 Before the Committee on Interstate Commerce, United States Senate, 73 Cong., 2d Sess., (March 9–10, 13–15, 1934) pp. 178–84.

[14] See, *e.g.*, Hearings on S. 2910, p. 96; and Hearings on H.R. 8301, p. 191. (Statements of W. S. Gifford, President, AT&T.)

[15] See, *e.g.*, Hearings on S. 2910, p. 206; and Hearings on H.R. 8301, p. 90. (Letters of F. McManamy, Commissioner, ICC)

[16] See, *e.g.*, Hearings on H.R. 8301, p. 243 (Statement of F. B. MacKinnon, President, United States Independent Telephone Association). How this version of section 220(j) would undermine the uniformity of the *federal* accounting system or result in conflict between federal and state authorities was not explained.

[17] Mr. Gifford. [Section 220(j)] throws the whole uniform accounting of the telephone industry out of line too, as I see it. It would make it necessary to keep two sets of accounts, one for the Federal Commission and one for the State Commission, because each State may provide for a different system of accounting. The States will require one system of accounting, and we will also have to keep accounts for the Federal system of accounting. I do not think it is workable.

* * * * *

Mr. Mapes. *Do the States now require you to keep accounts of any kind?*

Mr. Gifford. *No.* The present law, the interstate commerce law, calls for accounts and that controls, as against the State laws.

Mr. Mapes. Exclusively.

Mr. Gifford. *Exclusively, and has since 1913, I think,* when the act was passed. I think the matter ought to be given very serious consideration before we go into that.

Hearings on H.R. 8301, pp. 191–92. (Emphasis added).

[18] Generally, statements made by interested parties as to the nature and effect of a bill are accorded to little or no weight if not incorporated into a committee report. These statements are very weak evidence that the legislature adopted the assumed interpretation, in view of the possibility that the committee believed the changes were unnecessary because the assumed interpretation was erroneous. See, *Sutherland Statutory Construction,* Section 48.10, and cases cited therein.

Similarly, contrary to the contention of AT&T, the mere existence of provisions in the Natural Gas Act, 15 U.S.C.A. Section 717(g) and the Federal Power Act, 16 U.S.C.A. Section 825(a) specifically reserving to the states the right to prescribe additional accounting regulations does little to assist its cause in this case. See, *e.g., Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381 (1939).

[19] For example, our *Order on Reconsideration* (FCC 79–678, released November 6, 1979) with respect to our Docket 21230 decision adopting revised accounting rules for plant under construction noted that many states have adopted different accounting procedures for plant under construction. We expressly acknowledged in paragraph 9 of that order that our decision would not inhibit the discretion of the state commissions. We said:

As our *Final Order* in Docket 21230 make clear, we have in no way attempted to influence, or interfere with, the ratemaking prerogatives of the New York PSC or any other state commission. The states remain free to establish intrastate rates on whatever lawful basis they choose. The fact that separate accounting information will have to be retained to accomplish this and the fact that the gathering and retention of this information may

Continued

32. NARUC correctly notes that this Commission previously has recognized that states are not obligated to follow F.C.C. prescribed accounts in intrastate ratemaking proceedings. Thus, *In the Matter of Amendment of Part 31, Uniform Systems of Accounts for Class A and Class B Telephone Companies*, 68 F.C.C. 2d 902, 906–07 (1978), we stated:

> It should be pointed out that we are not in any way attempting to influence the intrastate ratemaking decisions the several state commissions may make in this area. Of course, they are free to adopt the same ratemaking treatment for plant under construction and interest during construction as we adopted in Docket 19129, or they may prefer to follow a different treatment. We are familiar with at least one state that by statute must follow a different treatment. We do not believe, nor is it intended, that the accounting changes adopted in this proceeding impinge upon the ratemaking prerogatives of any state commission. Further, as everyone is aware, different treatment is already given to a number of items for intrastate vs. interstate ratemaking as well as among the several state commissions for intrastate ratemaking.

See also, *Notice of Proposed Rulemaking*, in CC Docket No. 79–105, at para. 7; and 47 CFR 31.01–2(f).

33. Telephone companies have rarely challenged past state commission departures from accounting or depreciation rules prescribed by this Commission. Such challenges have not been successful. Pacific Telephone did challenge a California Public Utility Commission rate order on the grounds that it was invalid because it was based upon depreciation methods that departed from methods prescribed by this Commission. The California Supreme Court rejected that contention in *Pacific Tel. and Tel. Co.* v. *California*, 401 P.2d 353, 372–73 (1965).[20]

34. Thus, AT&T and GTE are asking us to repudiate nearly forty years of administrative practice and applicable state court precedents by adopting an interpretation of section 220 that would require an unwilling state commission to follow all accounting and depreciation methods prescribed by this Commission. A very compelling showing would be required to persuade us to follow such a course.

35. GTE appears to argue that the existence of such state accounting and depreciation departures would make impossible a federal scheme of accounting and depreciation prescriptions. Past departures have not produced such an effect. If carriers maintain the records we require for purposes of interstate ratemaking, federal regulation will not be frustrated if carriers maintain additional records for other purposes.

36. Unlike GTE, AT&T appears to concede this point. AT&T argues, however, that the sanctioning of state accounting and depreciation departures from the prescriptions contained in the *First Report and Order* would permit the states to burden the carriers with the costs of maintaining multiple sets of records. We, of course, are not free to preempt the states on the theory that they otherwise may impose administrative costs on the carriers in the course of engaging in intrastate ratemaking.

37. Our analysis of section 220 is supported also by section 2(b) of the Act, 47 U.S.C. 152(b), which provides in pertinent part that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges * * * for or in connection with intrastate communication service by wire or radio of any carrier * * *" Section 2(b) does not prohibit preemption of state regulatory actions that might interfere with or tend to frustrate policies or rules we have adopted to carry out statutory objectives with respect to interstate and foreign communications. *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036 (4th Cir. 1977), *cert. denied* 434 U.S. 874 (1977) [hereinafter cited as *NCUC III*]; *North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir. 1976), *cert. denied* 429 U.S. 1027 (1976); *Puerto Rico Telephone Co. v. FCC*, 553 F. 2d 694 (1st Cir. 1977); *People of California v. FCC*, 185 U.S. App. D.C. 217, 567 F.2d 282 (1966), *cert. denied* 325 U.S. 837 (1966). But where state regulation is reconcilable with federal policies or rules, there is no occasion for us to override state agency actions in furtherance of legitimate state regulatory objectives. Section 2(b) makes clear that Congress did not intend this Commission to foreclose state ratemaking actions unless those actions imperiled "important interests of national communications policy * * *." *NCUC II*, 552 F. 2d at 1047. We have found in this instance that federal regulation will not be frustrated if carriers maintain additional records for intrastate ratemaking purposes.

Ordering Clauses

38. Accordingly, it is hereby ordered that the petition for clarification of the National Association of Regulatory Utility Commissioners, filed April 30, 1981, is granted to the extent reflected herein.

39. It is further ordered that the petition for reconsideration of the People of the State of California and the Public Utilities Commission of the State of California, filed April 30, 1981, is dismissed as moot.

40. It is further ordered that the Secretary of the Federal Communications Commission shall cause this *Memorandum Opinion and Order* to be published in the **Federal Register** and in the Federal Communications Reports.

41. It is further ordered that the Secretary shall cause to be served on each party of record in CC Docket No. 79–105 and each state commission having jurisdiction over intrastate communication service a copy of this *Memorandum Opinion and Order.*

Federal Communications Commission.[21]

William J. Tricarico,

Secretary.

April 1, 1982.

Joint Dissenting Statement of Commissioners Joseph R. Fogarty and Anne P. Jones

In Re: Expensing of Station Connections (CC Docket No. 79–105)—Petitions for Clarification and Reconsideration.

We dissent from today's majority decision that the First Report and Order in this proceeding does not preempt State regulators from imposing accounting and depreciation rules for inside wiring which are inconsistent with those prescribed by this Commission.

In its *First Report and Order* the Commission required that account 232 of the Uniform System of Accounts be separated into two subclasses, "Station Connections-inside wiring" and "Station Connections-Other". We further required that the existing investment in Station Connections-inside wiring be amortized over a period of ten years, which represents an accelerated depreciation in contrast to past practices, and that all new investment for inside wiring be expensed rather than capitalized.

Because we wished to ameliorate the effect such an expensing plan could have upon local rates, the Commission required that expensing take place over a four-year period. In discussing this phase-in approach, the Commission stated that ". . . we want to allow all carriers and *state regulatory agencies* as much flexibility as possible in shifting from capitalization to expensing. Hence, for those carriers who feel that a flash-cut approach will not be too disruptive to their operations and who gain state

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involve additional cost does not, in our view, involve any significant interference with state control over intrastate rates.

States have also departed from accounting practices we have prescribed in other situations. Florida requires full nomalization of taxes, this Commission does not. Many states have authorized or required a deferral of expenses when we do not.

[20] The Florida Public Service Commission concluded that it is not required to use depreciation methods prescribed by this Commission. *Southern Bell Telephone and Telegraph Co.*, 66 PUR 3d 1, 57–58 (1966).

[21] See attached joint dissenting statement of Commissioners Joseph R. Fogarty and Anne P. Jones.

regulatory approval, *we will allow them* to use a flash-cut approach".[1] It is clear from this discussion that the Commission intended its decision to be binding upon the States. Since only approximately one-quarter of inside wiring costs are apportioned to the interstate jurisdiction, a phase-in which embraced only these costs would result in about 6¼, 12½, 18¾ and 25 percent of all new inside wiring costs being expensed instead of capitalized in each of the four years respectively. Surely this is not what the Commission intended. It would be nonsensical to order such a time-and resource-consuming process to achieve only such a limited effect.

We also intended the decision in our *First Report and Order* to be binding upon the States for the sound policy reason that telephone operating companies need to obtain a more rapid recovery of capital in order to modernize their plant to meet consumer needs and increased competition in the future.

Further, the FCC may ultimately order the complete detariffing and deregulation of inside wiring. The Commission anticipated this possibility in the *First Report and Order* when we said:

"* * * we believe that the final answer rests not with accounting changes but rather with the ultimate deregulation of this activity. This is nothing more than a logical extension of the recommendations made by parties, our decision in Docket 20828 and our overall regulatory scheme to introduce competition whenever technological and economic circumstances are conducive to such a change."[2]

As the Commission has seen in the deregulation of customer premises equipment, asset valuation is a very difficult problem. If inside wiring is similarly deregulated, asset valuation will be made more difficult if this account is not capped. Furthermore, if there are two sets of accounting books required (one Federal and one State), any eventual detariffing of the inside wiring account will be made all the more difficult, since inside wiring must be deregulated *in toto* or not deregulated at all (unless the Commission contemplates deregulating only the first one-fourth of the length of the wire between the protector block and the wall outlet.

Disregarding these important considerations of Federal policy, the majority has decided that the Commission did not intend to preempt inconsistent State accounting and ratemaking practices and procedures with respect to the Station Connections-inside wiring account. At the same time, the majority allows that the Federal Communications Act—and, in particular, section 2(b) thereof—"does not prohibit preemption of state regulatory actions that might interfere with or tend to frustrate policies or rules we have adopted to carry out statutory objectives with respect to interstate and foreign communications."[3]

The continued capitalization of inside wiring by State regulatory authorities will in fact imperil and frustrate "important interests of national communications policy * * *" [4] enhanced capital recovery and the effective implementation of any ultimate FCC decision on ordering the detariffing and deregulation of inside wiring [5].

We would not—and the majority should not—"defer to the States" on critical capital recovery issues affecting the continued viability and competitiveness of our Nation's telephone industry in providing increasingly essential interstate, as well as intrastate, facilities and services. This Commission has thrust the telephone industry into the brave new world of telecommunications competition and in doing so has overridden the strenuous and in many cases intransigent objections of many State commissions. It is therefore oddly inappropriate for this same Commission now to be so reticent about preempting the State jurisdictions from denying the industry the capital recovery necessary for its full and fair participation in this new competitive world. Here, the Commission curiously appears to have lost the courage of its pro-competitive convictions.

Because the majority's decision is inconsistent with the clear preemptive thrust and intent of the Commission's *First Report and Order* in this proceeding and, further, fails to recognize and support the integrity of our pro-competitive policies, we dissent.

[FR Doc. 82-12206 Filed 5-4-82; 8:45 am]
BILLING CODE 6712-01-M

[1] *First Report and Order*, 85 FCC 2d 818, 820 (Emphasis added).

[2] Ibid, 827.

[3] MO&O, para. 37 (Citations omitted).

[4] *North Carolina Utilities Commission* v. *FCC*, 552 F. 2d 1036, 1047 (4th Cir. 1977), *cert. denied* 434 U.S. 874 (1977).

[5] Several State commissions have already acted to deny the application of FCC policy on inside wiring and related depreciation at the State level, and others appear to be in the process of following suit. Alabama (Sept. 4, 1981), Nebraska (Sept. 1, 1981), South Dakota (Feb. 2, 1982), and Missouri (Nov. 27, 1981) have disapproved carrier filings seeking the expensing of inside wiring.

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47 CFR Part 95

[FCC 82-177]

Citizens Radio Service; Requirements That Licensees in the Personal Radio Services Possess Current Copies of the Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Part 95 of the Commission's Rules for the Personal Radio Services to eliminate the requirements that licensees maintain a current copy of the Rules. The Commission is eliminating these regulations because they are burdensome to the large number of licensees in the Personal Radio Services.

DATE: Effective May 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Teresa C. Sutter, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Radio.

In the matter of amendment of Part 95 of the Commission's Rules to delete requirements that licensees in the Personal Radio Services possess current copies of the Rules.

Adopted: April 14, 1982.

Released: April 22, 1982.

1. In an effort to eliminate rules which are not essential to the administration of the personal radio services, the Commission has under consideration amendment of § 95.105 of the General Mobile Radio Service rules, §§ 95.233 and 95.240(b) of the Radio Control Radio Service rules and § 95.401 of the Citizens Band Radio Service Rules (CB Rule 36 and 44(a)(5)). Those rule sections, contained in Part 95, Subparts A, C and D, respectively, require licensees to maintain a current copy of the Rules as part of their station records. The Commission finds this requirement to be unnecessarily burdensome to the large number of individual licensees in these services. Therefore, this Order will delete from Part 95 those rules which require personal radio services licensees to maintain a current copy of the rules. Licensees are still required to comply with the applicable personal radio service rules.

2. Since the amendment ordered herein is non-substantive in nature, the notice and comment provisions of section 553(b) of the Administrative Procedure Act are not applicable.

3. Accordingly, it is ordered, effective May 6, 1982, that Part 95 of the Commission's Rules is AMENDED as shown in the Appendix attached hereto. Authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

4. For information concerning this rule change, contact Teresa C. Sutter, (202) 632-4964.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 95—CITIZENS RADIO SERVICE

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 95.105 [Reserved]

1. Section 95.105 of the General Mobile Radio Service Rules is removed in its entirety, and that section is marked "Reserved". As amended, § 95.105 reads:

§ 95.233 (R/C Rule 33) [Reserved]

2. Section 95.233 (R/C Rule 33) of the Radio Control Radio Service Rules is removed in its entirety, and that section is marked "Reserved". As amended, § 95.233 (R/C Rule 33) reads:

§ 95.240 [Amended]

3. Paragraph (b) of § 95.240 (R/C Rule 40) of the Radio Control Radio Service Rules is removed in its entirety, and paragraphs (c), (d), (e), and (f) are redesignated as (b), (c), (d) and (e).

§ 95.401 CB Rule 36 [Reserved]

4. CB Rule 36 of § 95.401 of the Citizens Band Radio Service Rules is removed in its entirety. CB Rule 36 is marked "Reserved". As amended, CB Rule 36 reads:

CB Rule 36 [Reserved]

§ 95.401 [Amended]

5. Subparagraph (a)(5) of § 95.401 (CB Rule 44) of the Citizens Band Radio Service Rules is removed in its entirety, and subparagraphs (6) and (7) are redesignated as (5) and (6).

[FR Doc. 82-12234 Filed 5-4-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 97

[FCC 82-176]

Amateur Radio Service; Novice License Exams

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Rules to extend the deadline for return of Novice license exams from 30 to 60 days. The Commission is extending the deadline to compensate for postal delays.

DATES: Effective May 6, 1982.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Teresa C. Sutter, Private Radio Bureau, Washington, DC 20554, (202) 632-4964—Room 5218.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

In the matter of amendment of § 97.28(b)(3) of the Commission's Amateur Radio Service Rules.

Adopted: April 14, 1982.
Released: April 22, 1982.

1. The Commission's Rules set forth the procedures to be followed with respect to written exam papers for the Novice Class operator license in the Amateur Radio Service. Section 97.28(b)(3) of the Amateur Radio Service Rules currently requires that the papers, either completed or unopened in the event the examination is not given, shall be returned by the examiner to the Commission no later than 30 days after the date the Commission mailed the exam papers.

2. The requirement that the exam papers be returned within a 30-day period was established to facilitate Commission record keeping and to control the dissemination of the Commission's examination materials. While the actual length of the return period is not considered to be a critical factor, due to postal delays it appears that the 30-day deadline has placed a burden on examiners and on the Commission's licensing staff as well.

3. In order to lessen that burden, while at the same time insuring that the exam papers are returned, the Commission is amending § 97.28(b)(3) to extend the return period from 30 to 60 days.

4. Since the amendment ordered herein is procedural in nature, the notice and comment provisions of section 553(b) of the Administrative Procedure Act are not applicable.

5. Accordingly, it is ordered, effective May 6, 1982, that Part 97 of the Commission's Rules is amended as shown in the Appendix attached hereto. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended.

6. For information on this rule change, contact Teresa C. Sutter, (202) 632-4964.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—AMATEUR RADIO SERVICE

Part 97, Amateur Radio Service Rules, is amended, as follows: Subparagraph (b)(3) of § 97.28 is revised to read as follows:

§ 97.28 Manner of conducting examinations.

* * * * *

(b) * * *

(1) * * *

(3) The examination papers, either completed or unopened in the event the examination is not taken, shall be returned by the volunteer examiner to the Commission's office in Gettysburg, Pa., no later than 60 days after the date the papers are mailed by the Commission (the date of mailing is normally stamped by the Commission on the outside of the examination envelope).

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[FR Doc. 82-12233 Filed 5-4-82; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 47, No. 87
Wednesday, May 5, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products; Cancellation of Public Hearing

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Cancellation of public hearing.

SUMMARY: The Department of Energy is announcing cancellation of the public hearing regarding energy efficiency standards for appliances scheduled for May 11 and 12, 1982, in Chicago, Illinois, and the proposed rescheduling of this hearing at a date, time and place to be determined.

ADDRESSES: Requests for rescheduling the Chicago, Illinois, public hearing are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Product, Docket No. CAS-RM-78-110, Mail Station 6B-025, Room 5F-078, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Building Energy Research and Development, Test and Evaluation Branch, Mail Station CE-113, Room GH-068, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9510.

SUPPLEMENTARY INFORMATION:

Background

The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances, unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

On April 2, 1982, (47 FR 14424), the Department of Energy (DOE) published a proposed rule regarding energy efficiency standards for refrigerators and refrigerator-freezers, clothes dryers, water heaters, room air conditioners, kitchen ranges, and ovens, central air conditioners and furnaces. In this proposed rule, DOE gave notice that public hearings would be held in Chicago, Illinois, on May 11 and 12, 1982, and in Washington, D.C., on May 18-21, 1982. Interested parties were given until 4:00 p.m., April 20, 1982, to submit requests to speak at Chicago, Illinois. Two requests to speak were received after the deadline. Since each requester has agreed to speak at the hearing to be held in Washington, D.C., the hearing scheduled for May 11 and 12, 1982, in Chicago, Illinois, is hereby cancelled.

However, in order to give interested persons the fullest opportunity to participate in the rulemaking process, the DOE is willing to consider the rescheduling of these cancelled hearings. Persons requesting the Chicago, Illinois, hearing be rescheduled should submit this request to the address indicated at the beginning of the notice.

Issued in Washington, D.C., April 28, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 82-12131 Filed 5-4-82; 8:45 am]

BILLING CODE 6450-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Requirements for Chain Saws and Their Components and Their Replacement Parts; Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on available data, the Commission preliminarily believes that certain chain saws and their components and replacement parts present an unreasonable risk of injury to consumers from kickback. Kickback occurs when the moving chain at the tip of the guide bar contacts an object or when the moving chain is pinched in the cut, leading to the operator being struck by the moving chain. While this notice commences a proceeding to regulate the chain saw products, the Commission also discusses alternative ways to address the risk, including by a voluntary standard, and solicits public comments on those alternatives. Finally, the Commission in this notice specifically invites any person to submit (1) an existing standard that addresses the chain saw product kickback risk or (2) a statement of intention to develop such a standard, along with a plan to do so.

DATE: Comments and submissions are due no later than July 6, 1982.

Address: Comments and submissions should be sent, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Mr. Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has been considering for a number of years the risk presented to consumers by kickback of chain saws. After evaluating that risk preliminarily, the Commission issued a notice of proceeding to develop a proposed consumer product safety

standard in May 1981. 46 FR 26262 (May 11, 1981).

Before and since the notice of proceeding, the chain saw industry has worked on a voluntary safety standard to address the kickback risk, under the leadership of the Chain Saw Manufacturers Association (CSMA). The Commission staff has worked with this CSMA voluntary standard effort and monitored its progress. In addition, the staff independently has developed technical data for chain saw products.

In December 1981 CSMA submitted a voluntary standard to the Commission and to the American National Standards Institute (ANSI). ANSI is now reviewing the CSMA standard for consideration as an amendment to its own chain saw voluntary standard. The Commission has directed its staff to participate in that review process. In addition, the Commission staff has evaluated the CSMA standard preliminarily and found that it might, with modifications, prove effective in reducing kickback injuries.

By issuing this advance notice of proposed rulemaking, the Commission is initiating the three-stage rulemaking process that is now required by recent amendments to the Consumer Product Safety Act, 15 U.S.C. 2056, as amended in August 1981 (Pub. L. 97-35). This advance notice for chain saws, therefore, supersedes the notice of proceeding issued in May 1981 and that notice is hereby withdrawn.

Throughout the discussion below there are citations to documents in the record of this regulatory proceeding. The citations are numbers placed in parentheses, and they refer to the numbered documents listed at the end of this notice. All listed documents are available from the Office of the Secretary.

B. The product

A chain saw is a common type of power saw. It consists of a number of cutting elements linked into a chain that is driven around the outer edge of a guide bar by a powerhead, and it incorporates a gasoline engine or electric motor.

Chain saws and their components and their replacement parts are all included within the scope of this advance notice. The reason for this is that the Commission may decide to regulate certain components or aftermarket replacement parts of chain saws, such as the chains, as well as the saws themselves. For convenience, however, "chain saws" or "chain saw products" will be used throughout this notice to refer to the saws, components, and replacement parts.

The Commission staff has estimated that about 18–20 million chain saws are in use in 1982 (*1*). The Commission knows of about ten major chain saw manufacturers with production facilities in the United States, and about 16–18 companies that import saws from outside the country (*1*). In 1981, the five largest manufacturers of gasoline-powered saws accounted for over 80 percent of that type sold, and the four largest manufacturers of electric saws accounted for 80 percent of that type sold (*1*). The Commission's staff has estimated that 15 percent of chain saws in use are electrically-powered and that the remainder are gasoline-powered (*2*).

The average life of chain saws in consumer use is believed to be about six years (*2*), and a major manufacturer has estimated that one in every 5.5 households in the United States owns a chain saw (*3*). Approximately ten to fifteen percent of chain saws are sold for commercial purposes, but consumer use predominates in any particular category of chain saws with engine displacements of 3.8 cubic inches or less (*4*). It is possible that chain saws with greater engine displacement than 3.8 cubic inches would not be within the scope of a mandatory standard.

In 1980 the Commission asked nine companies in the chain saw industry for certain production and marketing information about the product. Four companies supplied information voluntarily and five companies did not. The Commission has recently decided to issue special orders to the five latter companies to obtain the information. During the course of the rulemaking proceeding commenced by this advance notice, the Commission will be making evaluations and findings about chain saw products on the market, the kickback risk they present, and the costs and benefits of various regulatory alternatives. The Commission will use the information sought by the special orders during the rulemaking process.

C. Risk of injury

The Commission knows of 86 deaths related to chain saws for the years from 1976 through 1980 (reports for 1980 are still being received) (*5*). Twenty-two of these deaths were reported as involving kickback, and another 23 deaths were probably caused by the same hazard (*5*).

During 1981, an estimated 123,000 people required medical attention from injuries associated with chain saws (*6*). This includes injuries treated in hospital emergency rooms and those treated in doctors' offices. The estimated number of injuries involving chain saws almost doubled between 1976 and 1981 (*6*). Based on 1978 data, 23 percent of the reported injuries were believed to be associated with kickbacks (*7*)

Kickback is the sudden and potentially violent rearward and/or upward movement of the chain saw. It can be caused by interference with the movement of the chain, and it can propel the moving saw chain into contact with the operator. Sudden interference with the movement of the chain can be caused by the chain striking the wood or other object on the top quadrant of the tip of the chain guide bar (nose tip kickback) or by the chain on the top of the bar binding in the cut or hitting an obstruction in the wood (pinch kickback).

The interference with the movement of the chain transfers the energy that is driving the chain into a movement of the entire saw, causing the saw (in the case of nose tip kickback) to move back and/or up so far and so fast that the operator may be struck by the moving chain, in the face, neck, or throat area. The great majority of kickback incidents are believed to be the "nose tip" type, caused by a tendency for parts of the chain to catch or "hang up" in the wood as the links travel around the radius at the end of the bar.

D. Alternatives for addressing risk

An advance notice of proposed rulemaking is the first step of a rulemaking proceeding that could lead to a mandatory safety standard for chain saws. The second step is the issuance of a proposed rule, and the third step is the issuance of a final rule. If the Commission decides to proceed with a mandatory standard, its staff could develop a proposed rule for public comment. Instead, a mandatory standard could result from the proposal of an existing standard, followed by public comment. In either case, the Commission would proceed with a proposed and a final rule, under the second and third rulemaking steps.

However, the Commission may not reach the second and third steps. In accordance with the Consumer Product Safety Act and with its own policies, the Commission will not issue a mandatory regulation unless the alternative approaches for addressing the unreasonable risk of injury presented by chain saws are not adequate. If the Commission determines that an alternative approach would be effective, it will terminate this rulemaking proceeding and not issue a mandatory safety standard for chain saws. Specifically, the Commission could find that an existing voluntary standard or a voluntary standard that will be

developed would eliminate or adequately reduce the risk of injury associated with chain saw kickback.

Because this alternative of a voluntary approach is under consideration, the Commission, in this section, will identify, discuss, and evaluate known existing and developing chain saw standards:

1. *ANSI and UL standards.* The American National Standards Institute (ANSI) currently has a voluntary standard that contains provisions addressing chain saw kickback (*8*). Safety Specification for Gasoline Powered Chain Saws, ANSI B–175.1. Without listing all of the possible devices, this standard states that all gasoline chain saws "shall be equipped with a device intended to reduce the hazards associated with kickback." If a chain brake is used for this purpose, there are more specific requirements for chain brake actuation devices and for chain stopping times. In addition, the ANSI standard contains provisions for adjusting chain tensioning since a saw with a loose chain may have a greater kickback tendency. ANSI is now developing a voluntary standard for electric chain saws and, as discussed in **BACKGROUND**, is considering the CSMA standard as a possible amendment.

Underwriters Laboratory has a standard (UL 45) that applies to electric chain saws the ANSI provisions that address the kickback risk (*9*). Like the ANSI standard, UL 45 follows a design approach by requiring that at least one safety feature be present.

The Commission does not believe that the existing ANSI or UL voluntary standards would adequately reduce the kickback risk. One serious weakness is that the standards can be met by use of any one of a range of design features that may not be effective. The standards contain no technical rationale showing that any particular feature will address the kickback risk. In any case, requiring an unspecified "device intended to reduce * * * kickback," without providing any performance criteria or detailed design specifications for the devices (with the possible exception of chain brakes) is a completely inadequate regulatory provision. For example, a removable nose guard could be used by compliance with the ANSI and UL standards. If it is removed by the consumers (or, in the case of a separately packaged nose guard, never attached), there is no protection from kickback.

The Commission is quite familiar with the various design features that could be used to comply with the ANSI and UL standards. In February 1980 the Commission engineering staff evaluated nose guards; low kickback saw chains; low kickback guide bars; designs combining a low kick chain and guide bar; hand guards; and manual or automatic chain brakes (*10*). After fully evaluating the effectiveness, advantages, and disadvantages of each, the staff concluded that none of those approaches by itself yields the most effective reduction in kickback injuries (*10*). Based on that staff evaluation and on other available information concerning chain saw safety features, the Commission presently believes that the ANSI and UL standards do not eliminate or adequately reduce the kickback risk of injury. In effect, they merely require manufacturers to incorporate at least one safety feature of their own choosing, and the feature selected may not be effective (*8, 9*).

2. *Washington State standard.* The State of Washington has proposed safety requirements for chain saws used commercially within that state (*11*). They essentially require chain brakes or tip guards or establish maximum allowable energy levels of kickback for different categories of chain saws. The major drawback to these requirements is that they lack a supporting rationale that justifies the particular requirements. Absent such a rationale, the Commission cannot evaluate the adequacy of the requirements.

3. *Foreign standards.* A number of foreign countries have issued or are developing anti-kickback standards for chain saws (*12, 13, 14, 15, 16, 17, 18*). These countries include Sweden, Finland, France, Canada, England, Australia, and Germany. Taking these standards together, many contain requirements for chain brake actuation force, limitations on the kickback angle of a chain and bar combination (tested separately from the powerhead), and specific chain designs. Some of them require hand guards, chain brakes, and/or low kick chains. As a separate project, the International Standards Organization is developing a chain saw standard (*19*).

The Commission knows of no foreign standard that can be found at this time to be adequate to address the kickback risk of injury. In some cases, the requirements are not sufficiently developed, and in other cases there are insufficient explanations for the particular criteria. For example, a Swedish standard recommends as a goal a 120-degree limit on the angle produced by the chain and bar, when tested without the powerhead (*18, 20*). However, while this 120-degree goal is an indicator of kickback energy, it does not predict the path of the entire saw during kickback. As another example, a French standard under development may have an angle limitation, but does not yet specify any test method (*14, 21*).

4. *CSMA proposed standard.* In December 1981 the Chain Saw Manufacturers Association submitted a proposed standard to the Commission and to ANSI (it is proposed as an amendment to the ANSI chain saw standard) (*22*). Although the CSMA proposal is not currently used within the industry as a standard, and is therefore not an "existing" standard under amended section 9(a)(3) of the Consumer Product Safety Act, the Commission staff has evaluated it preliminarily.

This section will discuss the CSMA proposal and the staff's preliminary evaluation of it. The CSMA proposal includes a number of provisions:

(a) All chain saws must have a hand guard and all chain saws, replacement guide bars, and replacement chains must be accompanied by certain labeling and safety instructions. No other requirements apply to bow-type chain saws, those that use for a guide bar a narrow rail structure with a large center opening.

(b) Chain saws (other than bow saws) smaller than 3.8 cubic inch displacement (CID) must also comply with at least one of the following five requirements:

1. The saw has specified maximum rotational energy for each of three CID classes of saws, when a saw is tested in a kickback machine according to a specified protocol.

2. The saw has a calculated kickback angle of 60 degrees or less, when data from the kickback test is fed into a specified computer simulation model.

3. The saw has a guard at the tip of the bar. This guard can be either permanent or removeable and, if removable, could be packaged with the saw without being installed.

4. The saw has a chain brake complying with the provisions of the present ANSI standard for chain brakes.

5. The saw is equipped with a devise that will prevent a moving chain from striking the operator (e.g., a guard along the top of the chain).

(c) Chain saws larger than 3.8 CID must also be equipped with at least one device intended to reduce the kickback hazard, such as a low-kickback chain or guide bar, bar tip guard, or chain brake.

The Commission's technical staff has performed preliminary analyses of the potential of the CSMA proposed standard to reduce kickback injuries:

(a) *Engineering.* According to the Commisssion's engineering staff, the classification of chain saws by engine size (CID) appears to be technically

sound. A final assessment of the classifications, however, would require analysis of data from kickback tests in which the saw is actually held by an operator.

The engineering staff does not support all of the CSMA procedures for measuring both maximum rotational kickback energy and total kickback energy, but the procedures and the test equipment appear to be basically sound. The staff has some substantive reservations, but they might be able to be resolved.

The CSMA "KICKBACK" computer program contained in the proposal is an improvement over an earlier version, accordingly to the engineering staff. The program was developed from an expanded data base and its contains (1) a straightforward modular approach to represent the effect of the chain saw operator on the saw during kickback and (2) a means to account for the effect on the saw path of the actuation of a chain brake during kickback. Further work will be necessary to determine the validity of the new computer program in predicting the path a chain saw will follow during kickback.

The CSMA proposal calls for round robin tests to determine the "within" (repeatability) and "between" (reproducibility) laboratory variability in a test methodology. Such tests determine the degree to which tests conducted at the same laboratory or different laboratories yield results that are sufficiently consistant to determine the conformance of a product with the standard. The data from two rounds of round robin tests that have been conducted thus far are insufficient to evaluate the adequacy of the proposed methodology. The Commission's engineering staff agrees with CSMA that another round robin test will be necessary.

(b) *Human factors.* The Commission's human factors staff has considered the relationship of kickback energy to kickback angle and the potential effectiveness of removable nose tip guards or chain brakes on the kickback risk. There are currently insufficient data available for the human factors staff to evaluate the potential effectiveness of the CSMA proposed design options to address the kickback, but Commission studies that are underway are likely to provide the necessary data to do so. The human factors staff is continuing to evaluate the correlation between proposed kickback energy criteria and resultant kickback angle for each class of chain saws in the CSMA proposal.

(C) *Economics.* The Commission's economics staff has reported on the percentage of chain saws in use for each class of saw in the CSMA proposal. Based on 1978 data, an estimated 59 percent of the saws are either electric saws rated at less then 15 amperes or gasoline saws of 2.5 CID or less; an estimated 14 percent were either electric saws rated at 15 amperes or more or gasoline saws with CID's greater than 2.5 but less than 3.0; an estimated 19 percent were gasoline saws with CID's of 3.0 to 3.7; and an estimated six percent were gasoline saws of 3.8 CID or greater. Approximately two percent of the chain saws were bow saws.

(d) *Epidemiology.* The Commission's epidemiology staff utilized data from a 1978–1979 special study to assess preliminarily the potential effectiveness of the CSMA proposal. That assessment was limited to electric saws and to gasoline saws with a CID of 3.7 or less, the saws that were involved in 83 percent of the chain saw injuries and that represented 91 percent of the saws in use in 1978. The Commission staff has estimated that if all gasoline saws of 3.7 CID or less in use in 1978 had complied with the 60 degree angle criterion (one of the five tests), the kickback injuries in that year would have been reduced, but only by 50 percent.

Overall, the Commission staff concluded that the CSMA proposal would have to be modified, perhaps substantially, before it could be effective in reducing kickback injuries. Since this assessment is based on preliminary information, more tests will be necessary before any final staff conclusions can be drawn. This testing effort will investigate variables involved in kickback energy determinations such as parameter ranges, test schedules and test procedures. Evaluation of the computer program will require: (1) a detailed examination of CSMA's hand-held testing data, (2) a detailed study of the chain brake treatment, (3) an investigation into kickback energy components, (4) determination of sensitivity to input data, (5) a definition of kickback angle and (6) a detailed review of operator reaction equation formulations. All the above work will be guided by the results of planned additional hand-held kickback tests.

E. Solicitation of public input

This advance notice of proposed rulemaking is the first stage in a three-stage rulemaking process. As discussed above, the Commission may decide to terminate the proceeding and pursue other alternatives for addressing the chain saw kickback risk. Before making any decision, the Commission wants to be as informed as possible about each alternative. Therefore, the Commission is specifically soliciting from all members of the public:

1. comments on the risk of kickback presented by chain saws;

2. comments on the alternatives for addressing the risk (as discussed in section D above), including a mandatory standard, a voluntary standard, and the disemination of comparative safety information;

3. suggestions about any other alternative not discussed in this notice that the Commission might consider to address the risk;

4. submission of any existing standard or portion of a standard that addresses the kickback risk presented by chain saws;

5. submission of any statement of intention to develop or modify an existing standard that addresses the chain saw kickback risk, along with a plan to do so.

Any plan submitted with a statement of intention (item 5) should include, to the extent possible, a description of how interested groups and people will be notified that a voluntary standard project is underway; a description of how the views of interested groups and people will be incorporated into the project; a detailed discussion of how the project will proceed; a realistic estimate of the length of time that the project will take; a detailed schedule for various stages of the project; a list of the people expected to participate in the project, along with some description of their backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

If the CSMA voluntary standard setting effort is submitted as a plan, as it likely will be, the Commission will of course take into account that much of the plan has already been implemented. The Commission will evaluate what has been completed and what remains to be done. Specifically, the Commission will continue with its evaluation of the CSMA proposed standard and its participation in the ANSI review process, as discussed in section A above. The evaluation of the CSMA proposal will not be suspended during the public comment period on this advance notice.

All comments and submissions should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 no later than July 6, 1982.

List of Subjects in 16 CFR Chapter II

Consumer protection, saws, chain saws, safety.

(15 U.S.C. 2056(a))

Dated: April 30, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Documents in Record

(*1*) Economics memo from W. Zamula; April 13, 1982.

(*2*) Economics memo from W. Zamula; October 16, 1980.

(*3*) Article in *Chain Saw Age* entitled "Forecasting Helps Oregon Prepare for Tomorrow;" November 1980.

(*4*) EPA study entitled "Cost Analysis and Economic Impact of Labeling and Noise Regulations for Chain Saws," Contract No. 68-01-3894; February 26, 1980.

(*5*) Epidemiological document entitled "Overview of Chain Saw Related Injuries" by R. Newman; August 1981; page 5.

(*6*) Epidemiological memo from R. Newman; April 13, 1982.

(*7*) Epidemiological document entitled "Hazard Analysis: Chain Saw Related Injuries in 1977–1978" by William D. Barr; June 1979; page 12.

(*8*) ANSI B–175.1 (1979) Safety Specification for Gasoline Powered Chain Saws.

(*9*) Underwriters Laboratories Standard UL 45.

(*10*) Staff briefing package to Commission from D. Parrish containing document entitled "Assessment of Generic Approaches to Addressing Chain Saw Kickback"; February 15, 1980 (package transmitted in April 1980); Tab H, Attachment 2.

(*11*) Article in *Chain Saw Age;* July 1980; page 20.

(*12*) Code of Chain Saw Standard required for Use in Forest Areas of S.E. South Australia and S.W. Victoria Controlled by Woods and Forest Department. Softwood Holdings Ltd, Southern Australian Perpetual Forests and Forests Commissioner of Victoria; amended 17 October 1974.

(*13*) National Standard of Canada CAN–Z62.1–M77.

(*14*) Proposal of Methods for Testing Safety Devices for Chain Saws for the Purpose of Ratification (French).

(*15*) The Finnish Code of Regulations on Chain Saws and Related Materials.

(*16*) Woodworking Machines—Handheld Bar Type Chain Saw Machines for One Man Operation, Safety Technology Requirements DIN 38822 (German).

(*17*) Forestry Safety Council FSC 10–14, 1977; FSC 15; 1978 (British).

(*18*) Petrol Driven Power Chain Saws—Directions No. 46, 1977 Memorandum 1978; Report 2043 (Swedish).

(*19*) Machinery for Forestry—Portable Chain Saws—Technical Data Draft International Standard; ISO/D15 6532—1981 and ISO/D15 6531—1981.

(*20*) Staff briefing package to Commission from D. Parrish (see document 10); Tab H, Attachment 1.

(*21*) Engineering memorandum from H. Lucas; December 10, 1980.

(*22*) Letter from CSMA to Carl Blechschmidt; December 15, 1981.

[FR Doc. 82-12224 Filed 5-4-82; 8:45 am]

BILLING CODE 6355-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XXVI

Semiannual Agenda of Regulations Under Development

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Semiannual agenda of regulations.

SUMMARY: This document sets forth the Pension Benefit Guaranty Corporation's semiannual agenda of regulations it tentatively expects to issue in proposed or final form during the next six months. The agenda indicates whether or not the regulations are "major" under the criteria set forth in Executive Order 12291, and whether or not the regulations are subject to the Regulatory Flexibility Act.

ADDRESS: Office of the General Counsel (210), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Melanie Franco Nussdorf, Special Counsel, Office of the General Counsel, 202–254–6476. For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's Order on Federal Regulation, Executive Order 12291, 46 FR 13193 (the "Executive Order"), each agency is required to publish in April and October an agenda of regulations it has issued or expects to issue, including an agency contact person for each item on the agenda. For each regulation designated as "major" under the criteria contained in the Executive Order, the agenda must include a summary, the objectives and legal basis for the rule, and a schedule for completing action on the rule if a notice of proposed rulemaking has already been issued. To better inform the public, the agenda set forth below includes a summary, the objectives, and the legal basis for all items listed.

The Executive Order requires that the agenda also include those currently effective regulations that are being reviewed by the agency pursuant to the Executive Order. This agenda includes one regulation that is under review pursuant to the Executive Order—item 5, Rules Relating to Reporting and Notification Requirements for Reportable Events.

The Regulatory Flexibility Act, 5 U.S.C. 601, Pub. L. 96–354, 94 Stat. 1164 (the "Act"), has a similar agenda requirement. Under that law, the agenda must list any regulation subject to the Act that is likely to have a significant economic impact on a substantial number of small entities. The Act applies to any regulation for which a notice of proposed rulemaking is issued on or after January 1, 1981. In the interest of clarity, the agenda below indicates those regulations that are not subject to the Act. For those regulations covered by the Act, the agenda indicates whether or not the rule is likely to have a significant economic impact on a substantial number of small entities.

Unless otherwise stated with respect to a particular regulation, the items listed in this agenda are those with respect to which the Pension Benefit Guaranty Corporation ("PBGC") hopes to issue a proposed or final regulation within the next six months, provided that higher priority demands on PBGC's limited resources do not develop.

The first 4 items listed in the agenda pertain to the single-employer insurance program; the next 3 items pertain to both the single-employer and multiemployer insurance programs; the remaining items apply only to the multiemployer program.

Finally, unless otherwise indicated, all citations in the agenda are to sections of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980 ("the Multiemployer Act"), Pub. L. No. 96–364, 94 Stat. 1208 ("ERISA").

1. Rules for Filing a Notice of Intent To Terminate

Summary. This rule involves the issuance of a joint form (Form 5310) by the PBGC and the Internal Revenue Service ("IRS") and amendments to the PGGC's Notice of Intent To Terminate regulation, 29 CFR Part 2616. PBGC and IRS staff are reviewing the form, a portion of which would serve as the Notice required under the regulation. The amendments to the regulation are being reviewed by other government agencies for purposes of coordination. This regulation applies to single-employer plans. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation is necessary to provide plan administrators with simplified procedures for notifying the PBGC of plan terminations and to eliminate duplicative filing requirements of the PBGC and IRS.

Legal Basis. ERISA sections 4002, 4041, and 4043.

Regulatory Flexibility. Not subject to the Act.

PBGC Contact. Mr. William Seals, Deputy Assistant General Counsel, Office of the General Counsel, 202–254–4895.

2. Rules for Valuing Group Insurance Contracts (Amendment to the Valuation of Plan Assets Regulation)

Summary. An amendment to the existing PBGC regulation on valuing plan assets, 29 CFR Part 2620, setting forth rules for valuing group insurance contracts as plan assets, has been drafted and is being reviewed within the PBGC. This regulation applies to single-employer plans. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This rule is necessary to provide uniform standards for plan administrators and employers to use in valuing insurance contracts.

Legal Basis. ERISA sections 4002(b)(3), 4041, 4044, and 4062(b)(1).

Regulatory Flexibility. Not subject to the Act.

PBGC Contact. Ms. Joan Segal, Attorney, Office of the General Counsel, 202–254–3010.

3. Rules for Recovery of Benefit Overpayments and Early Benefit Reduction

Summary. The PBGC is developing a proposed regulation to set forth rules designed: (a) to reduce benefit overpayments made to plan participants after the date of plan termination by requiring plan administrators to reduce benefit payments to the estimated level of Title IV benefits payable; (b) to define the circumstances under which the PBGC will recover overpayments from plan participants; and (c) to describe the method(s) by which the PBGC will recover overpayments. The proposed regulation, which applies only to single-employer plans, has been drafted and is being reviewed within the PBGC. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation is needed to establish rules and procedures for the prompt reduction of benefits after the date of plan termination in order to minimize overpayments to participants and to establish a formal procedure for PBGC recovery of overpayments to participants. This regulation will provide guidance to plan administrators and participants and minimize costs to the insurance system.

Legal Basis. ERISA sections 4002(b)(3), 4022, 4041, 4042, 4044, and 4061.

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. Terence Craig, Attorney, Office of the General Counsel, 202–254–4873.

4. Rules Relating to Plan ERISAfication (Proposed Amendments to the Guaranteed Benefits and Limitation on Guaranteed Benefits Regulations)

Summary. The Multiemployer Act requires the PBGC to guarantee those benefits that are provided under the terms of a plan or that are required by law. Under the Multiemployer Act, all plans that terminate on or after September 26, 1980, are to be treated as though the essential requirements of Title I of ERISA were added to the plan as of the effective date under Section 211 of ERISA with respect to each plan. Accordingly, the PBGC proposes to amend its Guaranteed Benefits regulation, 29 CFR Part 2613, and its Limitation on Guaranteed Benefits regulation, 29 CFR Part 2621, to set forth the essential provisions that will be read into such plans. These amendments now being considered apply only to single-employer plans. The amendments have been drafted and are being reviewed by other clearance agencies within the government. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation is needed in order to ensure that participants and beneficiaries in terminating single-employer plans receive the retirement benefit protection mandated by Congress.

Legal Basis. ERISA sections 4001(a), 4002(b)(3), 4022, and 4022B.

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Ms. Renae Hubbard, Special Counsel, Office of the General Counsel, 202–254–4895.

5. Rules Relating to Reporting and Notification Requirements for Reportable Events

Summary. Section 4043 of ERISA sets forth several types of events of which plan administrators must notify the PBGC and authorizes the PBGC to waive the thirty-day notification requirements for any of those events. The Multiemployer Act amended Section 4065 of ERISA to authorize PBGC to waive the requirement that a list of reportable events be included in the Annual Report filed with the PBGC. In addition, the Multiemployer Act established separate reporting and notification requirements for multiemployer plans. Accordingly, the PBGC is amending its reportable events regulation, 29 CFR Part 2615, which modifies certain of the statutory requirements, to further delete unnecessary reporting requirements for both single-employer and multiemployer plans. The amendment is being reviewed within the PBGC. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. The regulation will reduce the reporting and notification requirements to which plan administrators are subject.

Legal Basis. ERISA sections 4002(b)(3), 4043, and 4065.

Regulatory Flexibility. Not subject to the Act.

PBGC Contact. Mr. Mark Blank, Attorney, Office of the General Counsel, 202–254–3010.

6. Rule on Administrative Review of Agency Decisions.

Summary. This proposed regulation, 29 CFR Part 2606, applies to both multiemployer and single-employer plans. It would amend the procedures governing PBGC's internal review of administrative decisions and modify certain of the review procedures and the membership of the BGC Appeals Board. In addition, the amendment would add certain determinations relating to multiemployer plans that will be subject to administrative review. This regulation is being reviewed within the PBGC. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. The rule is necessary to simplify the PBGC's administrative review procedures and to conform the regulation to the Multiemployer Act.

Legal Basis. ERISA section 4002(b)(3).

Regulatory Flexibility. Not subject to the Act.

PBGC Contact. Ms. Deborah West, Attorney, Office of the General Counsel, 202–254–3010.

7. Rule on Payment of Premiums

Summary. This regulation, 29 CFR Part 2610, applies to both multiemployer and single-employer plans. The amendment notifies the public of a change in the interest rate charged on the late payment of premiums to PBGC. The amendment was published in final form in the Federal Register and was

effective on February 25, 1982, 47 FR 8174.

PBGC Contact. Ms. Lonie Hassel, Attorney, Office of the General Counsel, 202–254–3010.

8. Rules Governing the Arbitration of Disputes Concerning Employer Liability

Summary. Section 4221 of ERISA provides that any dispute between an employer and the sponsor of a multiemployer plan regarding the determination of the employer's withdrawal liability to the plan shall be resolved through arbitration. Section 4221(a)(2) of ERISA provides that an arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures prescribed by the PBGC. The regulation will set forth those procedures. This proposed regulation is being reviewed within the government. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation is needed to provide the rules of procedure under which an arbitration proceeding will be conducted.

Legal Basis. ERISA sections 4002(b)(3) and 4221(a)(2).

Regulatory Flexibility. The PBGC has determined that this rule not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Ms Renae Hubbard, Special Counsel, Office of the General Counsel, 202–254–4895.

9. Rules Establishing Interest on Withdrawal Liability Payments

Summary. Section 4129(c)(6) of ERISA provides that the interest rate charged by a multiemployer plan in the event of delinquency or default in the payment of withdrawal liability shall be based on prevailing market rates for comparable obligations, in accordance with PBGC regulations. A proposed regulation implementing this section is being reviewed within the PBGC. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation will enable employers and plan sponsors to determine the interest charges on withdrawal liability payments.

Legal Basis. ERISA sections 4002(b)(2) and 4219(c)(6).

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. David Weingarten, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

10. Rules Governing the Duties of Sponsors of Plans That Have Terminated by Mass Withdrawal

Summary. Section 4281 of ERISA contains rules relating to the administration and payment of benefits under multiemployer plans that have terminated by mass withdrawal. Under certain circumstances, the sponsor of an insolvent terminated plan is required to suspend payment of any benefits that are in excess of those guaranteed under Section 4022A of ERISA. The PBGC is directed to prescribe rules that ensure that plan participants and beneficiaries receive adequate notice of benefit suspensions. A draft of this final regulation is being reviewed within the PBGC. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation will help protect participants and beneficiaries under plans that terminate by mass withdrawal.

Legal Basis. ERISA sections 4002(b)(2) and 4281(d)(3).

Regulatory Flexibility. Not subject to the Act.

PBGC Contact. Mr. David Weingarten, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

11. Rules Varying the Standards Governing the Sale of Assets

Summary. Section 4204 of ERISA provides that the sale of assets by an employer who contributes to a multiemployer plan which would normally constitute a withdrawal will not be considered a withdrawal if certain requirements are met. This regulation would provide exemptions or variances from the purchaser's bond/escrow requirement and the sale-contract requirement of section 4204(a)(1) (B) and (C) of ERISA under certain conditions. The proposed regulation is being reviewed within the PBGC. PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation will provide relief to certain employers who sold their businesses between April 28, 1980 and shortly after enactment of the Multiemployer Act and who incurred withdrawal liability, as well as to certain other employers who want sales of assets to be covered by Section 4204 of ERISA.

Legal Basis. ERISA sections 4002(b)(2) and 4204(c).

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. James M. Graham, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

12. Rules Governing the Notice of Insolvency

Summary. Section 4245(e) of ERISA requires a multiemployer plan sponsor, upon determining that the plan may become insolvent, to give notice of that fact to the PBGC. In addition, the plan sponsor must inform employees and affected employee organizations of the possible insolvency. Section 4245(e)(4) of ERISA requires that the notice be given in accordance with regulations prescribed by the PBGC. A draft of this regulation is being received within the PBGC. PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation is needed so that plan sponsors can comply with this statutory obligation. In addition, this notice is important to PBGC for program and financial planning.

Legal Basis. ERISA sections 4002(b)(3) and 4245(e)(4).

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. J. R. Goldstein, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

13. Rules Governing the Notice of a Merger or Transfer of Assets Between Multiemployer Plans

Summary. Section 4231(b)(1) of ERISA requires the plan sponsor of a multiemployer plan to notify PBGC, in accordance with regulations prescribed by PBGC, of a merger or transfer of assets or liabilities to another multiemployer plan. A proposed regulation was published in the Federal Register on December 22, 1981, 46 FR 62087. The public comment period ended on February 22, 1982. Drafting of the final regulation will begin shortly. PBGC expects that the regulation will be issued in approximately six months. PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This regulation will provide a procedure for plan sponsors to notify PBGC of mergers or transfers of assets or liabilities between multiemployer plans.

Legal Basis. ERISA sections 4002(b)(3) and 4231(b).

Regulatory Flexibility. The PBGC has determined that this rule will not have a

significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. James M. Graham, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

14. Rules Allowing Plans to Adopt Special Withdrawal Liability Rules

Summary. This regulation prescribes the procedures under which a multiemployer plan may seek PBGC's approval of special withdrawal rules similar to those applicable to the building and construction industry and the entertainment industry. The regulation was published in the **Federal Register** as a final rule and was effective on March 24, 1982, 47 FR 12622.

PBGC Contact. Mr. James M. Graham, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

15. Rules Establishing a Supplemental Guarantee Program

Summary. Section 4022A(g)(2) of ERISA requires PBGC to issue regulations establishing a supplemental program to guarantee benefits under multiemployer plans that would otherwise be guaranteed but for the limitations in section 4022A(c) of ERISA. Participation by plans in this supplemental program is optional. Proposed regulations implementiong this program should be published shortly in the **Federal Register.** The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. This supplemental guarantee program will enable covered plans to obtain a greater benefit guarantee for participants.

Legal Basis. ERISA sections 4002(b)(2) and 4022A(g)(2).

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. David Weingarten, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

16. Rules Defining the "Building and Construction Industry"

Summary. Section 4203(a) of ERISA defines the circumstances under which an employer will have withdrawn from a multiemployer plan. Section 4203(b) of ERISA contains special withdrawal rules for the building and construction industry. ERISA does not, however, contain a definition of the term "building and construction industry"; nor does it define two other terms critical to the special rules, "primarily" and "substantially." This regulation would provide those definitions. PBGC expects to begin drafting this regulation shortly. Because of the difficulty in developing appropriate definitions of these terms and the significant public interest in this regulation, PBGC expects to issue an advance notice of proposed rulemaking on this matter. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. By defining the "building and construction industry", this regulation will provide the scope of the special withdrawal rule contained in section 4203(b) of ERISA.

Legal Basis. ERISA sections 4001(b) and 4002(b)(3).

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. James M. Graham, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

17. Rules Relating to the Reduction or Waiver of Complete Withdrawal Liability

Summary. Section 4207(a) of ERISA requires the PBGC to provide rules for reducing or waiving the liability of an employer who has completely withdrawn from a multiemployer plan and subsequently resumes covered operations or renews the obligation to contribute under the plan. Under section 4207(b) of ERISA, PBGC must also establish a procedure under which plans may adopt their own rules for reduction or waiver of complete withdrawal liability. Drafting of this proposed regulation will begin shortly. The PBGC has determined that this regulation is not a major rule within the meaning of the Executive Order.

Objective. The regulation will identify those situations in which relief under section 4207 of ERISA is appropriate and provide a method for calculating the amount of the reduction or waiver. The regulation also will provide for necessary adjustments to the allocation of unfunded vested benefits under section 4211 of ERISA when the employer returns to the plan.

Legal Basis. ERISA sections 4002(b)(3) and 4207.

Regulatory Flexibility. The PBGC has determined that this rule will not have a significant economic impact on a substantial number of small entities.

PBGC Contact. Mr. David Weingarten, Attorney, Office of the Executive Director, Policy and Planning, 202–254–4862.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12172 Filed 5-4-82; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2645

Extension of Special Withdrawal Liability Rules

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking presents for public comment various issues relating to possible regulatory standards for the Pension Benefit Guaranty Corporation's approval of plan amendments adopting special withdrawal liability rules similar to those applicable to the construction and entertainment industries. Under the Employee Retirement Income Security Act of 1974, as amended, the PBGC may permit a plan to establish special withdrawal liability rules. The PBGC may approve the rules if it determines that they apply to an industry that has the characteristics that would make use of the special rules appropriate, and that the rules would not pose a significant risk to the PBGC insurance system. The effect of this advance notice of proposed rulemaking is to obtain the views of the public with respect to the rules and standards for making those determinations.

DATE: Comments should be received on or before July 6, 1982.

ADDRESSES: Comments should be addressed to the Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, N.W., Washington, D.C. 20006; (202) 254–4862. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Introduction

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96–364, 94 Stat. 1208 (the "Multiemployer Act"), became law on September 26, 1980 and

amended the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (The Act as amended is hereinafter referred to as "ERISA".) As a result of the Multiemployer Act, an employer that withdraws, or partially withdraws, from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. The withdrawal liability rules generally apply to withdrawals occurring after April 28, 1980.

Under section 4203(a) of ERISA, a complete withdrawal is generally defined as the permanent cessation of an employer's obligation to contribute under the plan, or the permanent cessation of all covered operations under the plan. Under section 4205, partial withdrawal generally occurs when an employer reduces covered operations by seventy percent, or removes a continuing facility or bargaining unit from the plan while continuing to do such previously covered work in the area. Thus, the general rules on complete and partial withdrawal identify those events that normally result in a loss to the plan's contribution base.

However, Congress recognized that cessation of the obligation to contribute by an employer in certain industries does not normally weaken the plan's contribution base unless the employer continues the same work in the same area. The construction and entertainment industries were identified as industries in which employer entries and withdrawals typically do not adversely affect the plan. In these industries, work is generally on a project-by-project basis, an employer's covered employment may fluctuate drastically, and when a project ends an employer's workers will normally remain in the labor pool available for employment by other contributing employers. Because of these factors, Congress established special withdrawal rules for the construction and entertainment industries.

The special construction rule applies if (1) the plan primarily covers employees in the building and construction industry, and (2) substantially all of the employees with respect to whom an employer has an obligation to contribute under the plan perform work in the building and construction industry (ERISA section 4203(b)(1)). (For plans that do not cover primarily employees in the building and construction industry, the special construction rule applies only if a plan amendment is adopted which extends the rule to employers in that industry (ERISA section 4203(b)(1)(B)(ii).) The special entertainment rule applies if (1) the plan primarily covers employees in the entertainment industry, and (2) an employer's obligation to contribute for work in the entertainment industry is primarily on a temporary or project-by-project basis (ERISA section 4203(c)(1)).

Under the definition in section 4203(b)(2) of ERISA, a complete withdrawal occurs only if a construction industry employer ceases to have an obligation to contribute under the plan, and the employer either continues to perform previously covered work in the area of the collective bargaining agreement or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent area is the area of the plan rather than the area of the collective bargaining agreement. In contrast, the general definition of complete withdrawn imposes liability regardless of the continued activities of the withdrawal employer.

Congress also modified the partial withdrawal liability rules for the construction and entertainment industries. In construction, a partial withdrawal occurs "only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required" (ERISA section 4208(d)(1)). The entertainment industry is exempt from partial withdrawal liability "except under the conditions and to the extent prescribed by the corporation by regulation" (ERISA section 4208(d)(2)).

During Congress' deliberations on the Multiemployer Act, other industries requested that the special construction and entertainment rules be extended to their plans. However, there were unresolved questions concerning the risks that special rules might impose on the plans and the insurance system. There were also uncertainties as to the precise rule that should apply in other industries. For these reasons, Congress gave PBGC the authority to extend special withdrawal rules to other appropriate industries on a case-by-case basis.

Section 4203(f) of ERISA provides that the PBGC may authorize plans in other industries to adopt special complete withdrawal liability rules. A special rule adopted pursuant to section 4203(f) need only be similar—not identical—to the rules established in section 4203 (b) and (c) of ERISA. The PBGC has interpreted the term "similar rules" to include rules adopted by a plan that permit certain cessations of operations within the jurisdiction of the plan or the collective bargaining agreement not to constitute withdrawals. The special withdrawal rules established by Congress for the construction and entertainment industries are illustrative of the kinds of rules plans might adopt. Section 4203(f) further provides that PBGC may permit use of special rules (1) only in industries (or portions thereof) which the PBGC determines have appropriate characteristics, and (2) only if the PBGC determines in each instance that use of such rules will not pose a significant risk to the insurance system.

Under section 4208(e)(3) of ERISA, PBGC may authorize plans to adpot special partial withdrawal liability rules, subject to approval by the PBGC upon a finding that the rules are consistent with the purposes of Title IV of ERISA. Under that authority, PBGC will permit plans to establish special partial withdrawal liability rules that are consistent with the complete withdrawal rules established by a plan pursuant to section 4203(f) of ERISA.

PBGC has previously issued a regulation prescribing procedures whereby a multiemployer plan can, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request the PBGC to approve a plan amendment which establishes special complete and partial withdrawal liability rules (47 FR 12622 (March 24, 1982)). The purpose of this advance notice of proposed rulemaking is to solicit public comment on possible rules and standards for determining whether plans should be permitted to establish special withdrawal rules. Development of specific rules and standards would provide direction to plan sponsors on the following general matters:

- What are the industry characteristics that would make use of the special rules appropriate?
- What standards should be used for determining whether use of special rules in a particular situation would pose a significant risk to the insurance system?

After reviewing the comments received pursuant to this notice, PBGC may issue a proposed regulation containing specific rules applying the statutory standards.

Standards for Determining Appropriateness of the Industry

Section 4203(f) of ERISA requires that in order for a plan to establish special withdrawal rules, PBGC must find that the rules will apply to an industry that has appropriate characteristics. The legislative history of the Multiemployer Act provides guidance on the circumstances in which special withdrawal rules might be appropriate for a given industry and the factors to be considered by PBGC in making that determination. The Senate Labor and Finance Committees' Joint Explanation indicates the basic rationale for the establishment of special withdrawal liability rules:

"The Committees believe that this special definition is warranted because, in view of the nature of [the construction] industry, it provides substantial protection for the affected plans. For instance, an employer's leaving the jurisdiction of the plan or going out of business does not typically reduce the plan's contribution base. Rather, an employer reduces the plan's contribution base only if it continues to do what would have been covered work but does not have an obligation to contribute to the plan for that work. In order to protect the plan, that continuation of work without contributions is treated as a withdrawal * * * Other characteristics of the [industry], including the mobility of both employers and employees and the intermittent nature of employment, also persuade the Committees that this special rule is needed." (Senate Labor and Finance Committees' Joint Explanation, *Congressional Record*, p. S10116 (July 29, 1980).)

A similar expression of Congressional intent is found in the House Education and Labor Committee report:

"In the construction industry, the funding base of the plan is the construction projects in the area covered by the collective bargaining agreements through which the plan is maintained. An individual employee will typically work for tens or even hundreds of different employers over his or her working career, and the volume of work for a given employer will often fluctuate greatly from year to year. These normal events do not pose an undue threat to a plan as long as contributions are made for whatever work is done in the area." (H.R. Rep. No. 869, Pt. I, 96th Cong., 2d Sess. 75 (1980).)

Finally, according to the House floor explanation, PBGC is authorized to extend special rules—

"* * *to similar industries if the characteristics that would make the use of such rules appropriate are clearly shown * * * In exercising that authority, it is our intention that, in addition to considering the effects of withdrawals on the plan's contribution base, an important element in the corporation's analysis as to whether it will extend the special rules to a requesting industry will be the project-by-project or temporary nature of the employer's participation in the plan, and the existence or non-existence of a consistent pattern of entry and withdrawal by various employers." (House Floor Explanation, *Congressional Record*, p. H7900 (August 26, 1980).)

The legislative history indicates that the basic consideration in determining the appropriateness of special rules is the impact that the cessation of contributions by an individual employer will have on a plan's contribution base. Therefore, whether the use of a special rule is appropriate may be established by showing the existence of certain industry characteristics which, in the normal course of events, indicate that withdrawals in a given industry would not adversely affect a plan's contribution base. That necessarily involves information on the mobility of employees and employers, as well as on the basic nature of work within that industry.

What characteristics are indicative of an industry in which withdrawals typically would not have a weakening effect on a plan's contribution base? The legislative history of the Multiemployer Act suggests some of those characteristics. They include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

The legislative history suggests that extension of special rules to industries that evidence these characteristics would be appropriate, because in such industries employer "withdrawals" as normally defined would not ordinarily adversely affect a plan's contribution base. In such situations, the volume of covered work generally would be fixed, and cessation of operations by one covered employer would not, by itself, result in a reduction in such work. In addition, if an employer's participation in a plan is only temporary, such participation may very well enrich the plan, since the contributions made by the employer may exceed the vested benefits earned by its employees.

Are there other characteristics that identify industries in which employer withdrawals typically do not have an adverse impact on the plan's contribution base? In addition, how many of these characteristics should it be necessary to demonstrate in order to establish the appropriateness of an industry for a special withdrawal rule? For example, should it be required that a plan show that work is both tied to a specific area and performed on a project-by-project basis? Should any of these factors be dispositive standing alone?

The next level of inquiry is how are these various industry characteristics to be established? It may be relevant to determine that work is tied to a specific area. In that connection, should it be necessary to find that the product can only be produced in the area, or that the demand for goods and services can only be satisfied by employers who operate in the area? To cite another example, how should the term "project" be defined in order to determine the "project-by-project" nature of work? Should it be defined in terms of an end product, such as a building or a play; or in terms of the nature of employment that goes into producing the product, *i.e.*, is employment usually of a brief or intermittent nature? What number and frequency of employer entries and withdrawals would demonstrate "a consistent pattern of entry and withdrawal by employers"?

Risk to the Insurance System

After determining whether an industry is appropriate, the PBGC must determine whether the use of a specific withdrawal rule by a particular plan will pose a significant risk to the insurance system. This second general test involves a focused inquiry into the nature of the particular plan and the ways in which that plan may be affected by the operation of the special rule it wishes to adopt.

The Nature of the Plan

There may be situations where an industry in general is appropriate, but where a special rule should not be permitted because of the particular characteristics of the plan. For example a special rule may be inadvisable where a plan has been suffering declines in its contribution base, or where the plan is in severe financial trouble.

How should plan suitability be determined? The stability of the plan's contribution base over a period of years would appear to be a good measure of the financial vitality of a plan. A stable or growing base would indicate a plan that might not be adversely affected by withdrawals, and thus a special rule for that plan might not pose a significant risk to the insurance system. However, if the contribution base has declined substantially, such special rules may create a significant risk. Are there other ways of measuring plan stability? Is it relevant to consider the scope of a plan (*i.e.* local, regional, national) in considering plan stability? Is it relevant to consider the percentage of a plan's

contribution base attributable to a single employer or a small group of employers?

A related question is to what extent should a plan's financial condition be taken into account? What financial or actuarial criteria should be used for determining risk to the insurance system?

Scope and Content of the Rules

The second part of this inquiry is whether, given the nature of a particular plan, the specific rule it proposes will pose a significant risk to the insurance system. It would appear that this inquiry requires an examination of the scope and content of the rule, and the ways in which the rule addresses related questions such as partial withdrawals.

For example, should plans have the flexibility to apply the special rules to an entire industry or just to a segment of an industry, or, in the case of a multi-industry plan, to employers in more than one industry? If so, it may be necessary to place some limits on this flexibility. Clearly plans may apply the special rule to employers doing the type of work that qualifies for the rule. Are there circumstances where plans might be permitted to extend the rule to other employers, even though they do not perform the appropriate work? If so, should there be a requirement that the plan be composed of a certain percentage of employers doing the appropriate-type work? In addition, if a special rule is to apply only to employers doing the appropriate work, when employers do more than one kind of work, how much appropriate-type work must an employer do in order to qualify for the special rule? For the construction industry, the requirement is that "substantially all" of the employees work in the appropriate industry (ERISA section 4203(b)(1)(A)). For the entertainment industry, an employer's covered work must be "primarily" on a temporary or project-by-project basis (ERISA section 4203(c)(1)). What is the appropriate standard, and how should it be defined?

As previously mentioned, the Multiemployer Act provides only general guidance on the specific content of special withdrawal rules. Complete withdrawal liability rules under section 4203(f) need only be similar to the withdrawal rules Congress established for the construction and entertainment industries. The precise rules for those industries may not be suitable for use in other industries.

There are a large number of ways in which plan rules may differ from the construction and entertainment rules. Should PBGC identify the variations that plans might adopt, or allow plans flexibility? What kinds of limits might be imposed? For example, how much flexibility should plans be given in imposing other requirements in lieu of withdrawal liability (*e.g.*, requiring a bond or escrow for a period of time following an employer's cessation of contributions), or in limiting the amount of withdrawal liability (*e.g.*, limiting it to directly attributable unfunded vested benefits)?

Certain types of manufacturing industries illustrate the need for tailoring the withdrawal rules to a specific situation. (While it appears, based on the factors discussed above, that manufacturing generally would not be appropriate for special rules under section 4203(f), there are some types of manufacturing that may have characteristics appropriate for the use of such special rules.) One example is manufacturing that functions primarily or exclusively in a service capacity to other businesses. These employers process material owned by other businesses into intermediate or finished products for those other businesses. While such work does not have to be performed in a specific geographic area, it does have many similarities to construction: the volume of work is outside the control of the employer, employers compete among themselves for a fixed volume of work, and the work is project-by-project. Another example may be an industry that operates primarily or exclusively on a special order basis.

In both these examples, the construction rule *per se* is arguably not a proper rule, because employers would be able to re-locate operations without giving up the work, thereby diminishing the plan's contribution base. However, a modified rule that would exempt from withdrawal liability only those employers who cease doing work of the type for which contributions were previously required might not pose a significant risk to the insurance system, and thus might be used for such industries.

Another issue is the need for special partial withdrawal rules. Such rules may be necessary so that plans that establish special complete withdrawal rules do not continue to be subject to the potentially conflicting general partial withdrawal rules of section 4205. That would result in an anomalous situation: the general statutory rules would impose partial withdrawal liability for an employer's diminished participation under a plan, whereas under a special rule a total cessation might not constitute a complete withdrawal (*e.g.*, a 75 percent reduction in conributions would be a partial withdrawal, but a 100 percent reduction would not be a complete withdrawal).

Special partial withdrawal rules would need to be consistent with the rules adopted on complete withdrawal, but are there any special limitations that should be placed on the kind of partial withdrawal rules a plan might adopt? The options for partial withdrawal rules range from rules like the general statutory rules contained in section 4205[1] to no rule at all, as provided for the entertainment industry in section 4208(d)(2). Should PBGC establish minimum requirements for special partial withdrawal rules? Are there circumstances in which the no-partial-withdrawal rule would be appropriate?

In developing special withdrawal rules, plan rules might well need to address the effect of the rules not only under section 4201 of ERISA, but under other Title IV provisions as well, such as the mass withdrawal and sale of assets provisions. Unless these related areas are addressed, the use of special rules may pose a significant risk to the insurance system. One example of this is the possibility of mass withdrawal.

The possibility exists that an industry can disappear in an area. Absent specific "mass withdrawal" provisions in the plan's special rules, no employer would be liable and the total burden would be shifted to PBGC. How might plan rules be structured to eliminate this risk? Or, would it be advisable for the regulation to require that the special withdrawal liability rule not apply to employers who cease to be obligated to contribute to the plan or cease covered operations within a certain number of years prior to the date that all employers withdraw from a plan?

Sales of assets may also present significant risks to the insurance system under plans that have adopted special rules. If the employer sells its business to a non-contributing employer in the same area, there may be potential harm. Thus, it may be necessary to require that the special rules address what happens

[1] Under ERISA section 4205, several events result in a partial withdrawal for plans other than construction and entertainment industry plans. First, a partial withdrawal occurs if there is a "70 percent contribution decline" in an employers contribution base units. In addition, a partial withdrawal occurs if there is a "partial cessation of the employer's contribution obligation." Under ERISA section 4205(b)(2)(A), such a partial cessation occurs if the employer permanently ceases to have an obligation to contribute—under one or more (but not all) collective bargaining agreements; or with respect to one or more (but not all) of its facilities. Further a partial withdrawal for a partial cessation occurs only if the employer continues to perform work of the type for which contributions were previously required without having an obligation to contribute for such work.

when an employer ceases to have an obligation to contribute as a result of a sale of assets. For example, in the situation posited above, should the sale be treated as a withdrawal unless the purchaser assumes the obligation to contribute for the operations purchased, and assumes the amount of unfunded vested benefits allocable to the seller as of the date of the sale? Should all sales of assets be treated alike?

Requests for Comments and Suggestions

PBGC invites comments on the issues and proposals discussed in this notice, including specific suggestions on how a regulation might address these issues.

List of Subjects in 29 CFR Part 2645

Employee benefit plans, Pensions.

Issued at Washington, D.C. on this 29th day of April, 1982.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12227 Filed 5-4-82; 8:45 am]

BILLING CODE 7708-01

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Surviving Spouse's Delimiting Date, Approval Requirements for Nonaccredited Courses

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The following regulations propose to implement provisions of the Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981 which affect persons receiving educational assistance under chapters 34, 35 and 36, title 38, United States Code. These amendments liberalize the method for determining the last date a surviving spouse may receive dependents' educational assistance, and liberalize the approval requirements for nonaccredited courses.

DATES: Comments must be received on or before June 1, 1982.

In keeping with Pub. L. 97-66, the Veterans Administration proposes to make these regulations effective on October 17, 1981.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be availabe for public inspection at the above address only between the hours of 8 am and 4:30 pm, Monday through Friday (except holidays), until June 11, 1982. Persons visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Verterans Administration, Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.3046 is amended to implement the portion of the Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981 which provides a new method for determining a surviving spouse's delimiting period. This policy change is required by law.

Sections 21.4254 and 21.4255 are amended to permit nonaccredited colleges and universities to obtain a waiver of one of the requirements they ordinarily would have to meet in order to have their courses approved for veterans' training. This policy change is also required by law.

The Veterans Administration has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The proposals will not result in any major increases in cost or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Verterans' Affairs hereby certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. These regulations are exempt under 5 U.S.C. 605(B) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. There are several reasons for this certification.

The amendment to § 21.3046 will regulate recipients of dependents' educational assistance. It will have no significant direct impact on small entities (i.e. small businesses, small private and nonprofit organizations, and small governmental jurisdictions.)

There are 28 publicly supported, degree-granting colleges and universities which are candidates for accreditation by a regional accrediting association. They may possibly be affected by the amendments to §§ 21.4254 and 21.4255. Of these only one is supported by a governmental jurisdiction small enough to be a small entity according to the RFA. This is not a substantial number. The amendments to these sections will have no significant direct impact on other types of small entities such as small businesses and small private and nonprofit organizations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Veterans Administration, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance numbers for the programs affected by these proposed regulations are 64.111, 64.117 and 64.120)

Approved: April 15, 1982.

Robert P. Nimmo,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is proposing to amend 38 CFR Part 21 as follows:

1. In § 21.3046, paragraph (b) is revised to read as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

* * * * *

(b) *Surviving spouses.* (1) If the Veterans Administration determines before December 1, 1968 that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(2) If the veteran's death occurred before December 1, 1968, but the Veterans Administration does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which the Veterans Administration determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968 while a total, service-connected disability evaluated as permanent in nature was in

existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, the beginning date of the 10-year period is:

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which the Veterans Administration determines that the veteran died of a service-connected disability. (38 U.S.C. 1712(b); Pub. L. 97-66, 95 Stat. 1026)

* * * * *

2. In § 21.4254, paragraph (c)(13) is revised as follows:

§ 21.4254 Nonaccredited courses.

* * * * *

(c) *Approval criteria.* * * *

(13) The school either: (i) Has and maintains a policy for the pro rata refund of the unused portion of tuition, fees and charges if the veteran or eligible person fails to enter the course or withdraws or is discontinued from it before completion, or

(ii) Has obtained a waiver of this requirement. See § 21.4255. (38 U.S.C. 1776; Pub. L. 97-66, 95 Stat. 1026)

* * * * *

3. Section 21.4255 is revised as follows:

§ 21.4255 Refund policy; nonaccredited courses.

(a) *Acceptable refund policy.* A refund policy meets the requirements of § 21.4254(c)(13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length. The school may make provision for refund within the following limitations:

(1) *Registration fee.* An established registration fee in an amount not to exceed $10 need not be subject to proration. Where the established registration fee is more than $10, the amount in excess of $10 will be subject to proration.

(2) *Breakage fee.* Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(3) *Consumable instructional supplies.* Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(4) *Books, supplies and equipment.* (i) A veteran or eligible person may retain or dispose of books, supplies and equipment at his or her discretion when:

(A) He or she purchased them from a bookstore or other source, and

(B) Their cost is separate and independent from the charge made by the school for tuition and fees.

(ii) The school will make a refund in full for the amount of the charge for unissued books, supplies and equipment when:

(A) The school furnishes the books, supplies and equipment.

(B) The school includes their cost in the total charge payable to the school for the course.

(C) The veteran or eligible person withdraws or is discontinued before completing the course.

(iii) The veteran or eligible person may dispose of issued items at his or her discretion even if they were included in the total charges payable to the school for the course.

(5) *Tuition and other charges.* Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran or eligible person than the approximate pro rata basis as provided in this paragraph, such established policy will be applicable. Otherwise, the school may charge a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the student to the total number of instructional days in the course.

(6) *Prompt refund.* In the event that the veteran, spouse, surviving spouse or child fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion of the course, the unused portion of the tuition, fees and other charges paid by the individual shall be refunded promptly. Any institution which fails to forward any refund due within 40 days after such a change in status, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this paragraph.

(b) *Waiver.* (1) An educational institution may apply to the Director of the VA field station of jurisdiction for a waiver of the requirements of paragraph (a) of this section as they apply to a veteran or eligible person. The Director shall grant a waiver when he or she finds that the educational institution:

(i) Is a college, university, or similar institution offering post-secondary level academic instruction leading to an associate or higher degree;

(ii) Is operated by an agency of a State or a unit of local government;

(iii) If operated by an agency of a State, is located within that State;

(iv) If operated by a unit of local government, is located within the boundaries of the area over which that unit has taxing jurisdiction;

(v) Is a candidate for accreditation by a regional accrediting agency; and

(vi) Charges the veteran or eligible person no more than $120 per quarter, $180 per semester or $360 per school year in tuition, fees and other charges for the course.

(2) If an educational institution disagrees with a decision of a Director of a VA field station, it may ask that the Director, Education Service review the decision. In reviewing the decision the Director must consider the evidence of record. He or she may not grant a waiver unless all the criteria of paragraph (b)(1) of this section are met. (38 U.S.C. 1776(d); Pub. L. 97-66, 95 Stat. 1026)

[FR Doc. 82-12247 Filed 5-4-82; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124 and 146

[W-4-FRL-2118-1]

Mississippi Department of Natural Resources; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The public hearing on the Mississippi Department of Natural Resources, Underground Injection Control Primacy Application, scheduled for May 10, 1982 has been cancelled. The public hearing had been announced in the Wednesday, April 8, 1982 Federal Register (47 FR 15147).

Inasmuch as EPA has received only minimal response from the public, the Region has determined that insufficient public interest was generated and is cancelling the public hearing.

FOR FURTHER INFORMATION CONTACT: Curtis F. Fehn, Groundwater Section, Environmental Protection Agency,

Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 881–3866.

Dated: April 27, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-12231 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[W-4-FRL-2118-2]

State Oil and Gas Board of Mississippi; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The public hearing on the State Oil and Gas Board of Mississippi Underground Injection Control Primacy Application, scheduled for May 11, 1982 has been cancelled. The public hearing had been announced in the Thursday, April 7, 1982 **Federal Register** (47 FR 14925). No requests for a public hearing have been received.

FOR FURTHER INFORMATION CONTACT: Curtis F. Fehn, Groundwater Section, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881–3866.

Dated: April 27, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-12232 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300059; PH-FRL 2112-7]

Seven Rare Earth Chlorides; Proposed Exemptions From the Requirement of a Tolerance

Correction

In FR Doc. 82–11524, appearing at page 18155, in the issue of Wednesday, April 28, 1982, make the following change:

On page 18157, in the first column, after the "Dated" line, add the following signature:

Frederick Eidaness, Jr.,

Assistant Administrator for Water.

BILLING CODE 1505-01-M

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40 CFR Part 180

[PH FRL 2113-7; PP OE2388/P221]

O,O-Diethyl O-(2-Isopropyl-6-Methyl-4-Pyrimidinyl) Phosphorothioate; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: This notice proposes that tolerances be established for residues of the insecticide *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate in or on the raw agricultural commodities wheat forage, grain, and straw. This proposal to establish a maximum permissible level for residues of the insecticide in or on the commodities was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before June 4, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–7700).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number OE2388 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of California, Illinois, Kansas, Oklahoma, Texas, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide *O-O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate in or on the raw agricultural commodities wheat forage, wheat grain, and wheat straw at 0.05 part per million (ppm).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance included: an NCI bioassay (based on 2-year oncogenicity studies) which was negative for oncogenicity in rats and mice; a multi-generation rat reproduction study with a no-observed-effect level (NOEL) of 0.4 mg/kg/day; a 106-week monkey feeding study with a cholinesterase (ChE) NOEL of 1.0 ppm; a 90-day rat feeding study with a ChE NOEL of 0.025 mg/kg/day; a 90-day dog feeding study with a ChE NOEL of 0.02 mg/kg/day; a two-year rat feeding study with a ChE NOEL not demonstrated at 10 ppm (lowest dose tested; a 2-year dog feeding study with a ChE NOEL not demonstrated at 160 ppm (lowest dose tested); a rabbit teratology study negative for teratogenic and fetotoxic effects at 100 mg/kg (highest level fed) during days 6 to 18 of gestation; a hen demyelination study which was negative at 100 mg/kg.

The acceptable daily intake (ADI), based on the 90-day dog feeding study (NOEL of 0.02 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.002 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.12 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.4137 mg/day; the current action will increase the TMRC by 0.0078 mg/day or approximately 1.8 percent. The current action will utilize 6.48 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method (gas chromatography with a flame photometric detector) is available for enforcement purposes. No secondary residues are expected in meat, milk, poultry, or eggs from the proposed use. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before June 4, 1982, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP OE2388/P221]". All written comments filed in response to this petition will be available for public inspection in the office of Donald Stubbs from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: April 21, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.153 be amended by adding and alphabetically inserting the raw agricultural commodities wheat forage, wheat grain, and wheat straw to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
• • • • •	
Wheat, forage	0.05
Wheat, grain	0.05
Wheat, straw	0.05

[FR Doc. 82-11822 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6286]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4.

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Nevada County (Unincorporated Areas)	Squirrel Creek	50 feet upstream from center of Clover Road	*1,410
		Squirrel Creek Tributary 1	500 feet upstream from confluence with Squirrel Creek	*1,358
		Squirrel Creek Tributary 2	30 feet upstream from center of Penn Valley Drive	*1,384

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Squirrel Creek Tributary 2-1	50 feet upstream from center of Devonshire Circle	*1,411
		Clear Creek	75 feet upstream from center of Penn Valley Drive	*1,408
		Wolf Creek	60 feet southwest from center of intersection of Sutton Way and Idaho-Maryland Road.	*2,528
		South Fork Wolf Creek	500 feet upstream from center of Colfax Highway	*2,436
		Little Wolf Creek	Intersection of Grass Valley corporate limits and creek	*2,447
		Deer Creek	150 feet southwest from center of intersection of Willow Valley Road and Grove Street.	*2,511
		Truckee River	Intersection of Truckee River and center of Old U.S. Highway 40.	*5,640
			25 feet upstream from center of Bridge Streeet	*5,793
		Donner Creek	30 feet upstream from center of State Highway 89	*5,860
		Summit Creek	25 feet upstream from center of Summit Creek Drive	*5,954
		Trout Creek	100 feet upstream from center of East Main Street	*5,822
		Donner Lake	300 feet north from intersection of Dogwood Street with South Shore Drive.	*5,842

Maps available for inspection at Department of Planning, HEW Building, 10433 Willow Valley Road, Nevada City, California.

Send comments to the Honorable Eric Rood, Nevada County Courthouse, Nevada City, California 95959.

Florida	Gainsville (City) Alachua County	Hogtown Creek	At the center of Northwest 6th Avenue crossing	*89
		Hogtown Creek Tributary 1	75 feet upstream from center of Northwest 34th Street	*107
		Hogtown Creek Tributary 2	50 feet upstream from center of Northwest 43rd Avenue.	*166
		Little Hatchet Creek	30 feet upstream from center of Airport Service Road	*110
		Sweetwater Branch	40 feet upstream from center of Southeast 4th Street	*113
		Tumblin Creek	At the center of corporate limit crossing	*66
		Newnans Lake Tributary 1	500 feet south from the intersection of Southeast 26th Street and Southeast 26th Terrace.	*121

Maps available for inspection at Public Works Department, Thomas Center, 306 NE 6th Avenue, Room 319, Gainsville, Florida.

Send comments to the Honorable Courland Collier, P.O. Box 490, Gainesville, Florida 32602.

Florida	Marion County (Unincorporated Areas)	Withlacoochee River	At the center of State Highway 200 crossing	*41
		Blue Run	At the City of Dunnellon corporate limit crossing	*38
		Lake Kerr and Little Lake Kerr	At Petes Island	*27
		Lake Weir and Little Lake Weir	600 feet south from center of intersection of seabord coast line and Alternate U.S. Highways 27 and 441.	*60
		Mill Dam Lake	500 feet north form center of intersection of State Highway 40 and Levee Hammock Road.	*54
		Halfmoon Lake	600 feet southeast from center of intersection of State Highway 40 and Levee Hammock Road.	*55
		Lake Bryant	3000 feet south from center of intersection of State Highway 40 and Levee Hammock Road.	*56

Maps available for inspection at Engineering Department, County Office Building, 19 NW Pine Avenue, Ocala, Florida.

Send comments to the Honorable Bruce Bartlett, 19 NW Pine Avenue, Ocala, Florida 32670.

Georgia	City of Porterdale, Newton County	Yellow River	Just upstream of Highway 81	*622

Maps available for inspection at City Hall, Broad Street, Covington, Georgia 30270.

Send comments to Mayor Smallwood or Mr. Archie Patterson, City Councilman, City Hall, P.O. Box 657, Porterdale, Georgia 30270.

Georgia	City of West Point, Troup County	Chattahoochee River	Just upstream of U.S. Highway 29	*574
		Long Cane Creek	Just upstream of Interstate Highway 85 southbound	*572
			Just upstream of State Highway 18 westbound	*573
		Long Cane Creek Tributary	Just upstream of Interstate Highway 85 northbound	*577

Maps available for inspection at City Clerk's office, City Hall, Second Avenue, West Point, Georgia 31833.

Send comments to the Mayor John Brown or Mr. John Meadors, City Administrator, City Hall, P.O. Box 487, West Point, Georgia 31833.

Hawaii	City and County of Honolulu	Manoa Palolo Drainage Canal	Approximately 700' upstream of confluence with Ala wai Canal.	*7
			Date Street (upstream)	*13
			Downstream of Waialae Avenue	*30
		Manoa Stream	King Stream upstream	*29
			Confluence of Palolo Stream	*35
			Dole Street upstream	*62
			Lowrey Avenue upstream	*167
			Approximately 400' upstream Pawaina Street	*242
			Approximately 150' upstream of confluence with Luaalaea Stream.	*296
		Palolo Stream	Upstream of concrete channel	*53
			3rd Avenue (upstream)	*76
			Downstream of 2nd concrete culvert	*96
		Ala Wai Canal	From approximately 100' upstream of Seaside Avenue extended to Ainakea Way.	6

Maps available for inspection at the City Hall, Department of Land Utilization, 7th Floor, 650 South King Street, Honolulu, Hawaii.

Send comments to Honorable Eileen Anderson, Mayor of the City and County of Honolulu, City Hall, 650 South King Street, Honolulu, Hawaii 96813.

Illinois	(C)Cuba, Fulton County	Shallow Flooding (ponding due to rainfall).	At the intersection of Douglas Street and 9th Avenue	#1
			About 700 feet northeast of the intersection of Toledo Peoria and Western Railroad and 3rd Avenue.	#1

Maps available for inspection at the City Hall, 403 Jefferson Street, Cuba, Illinois.

Send comments to Honorable Gilbert Lemon, Mayor, City of Cuba, City Hall, 403 Jefferson Street, Cuba, Illinois 61427.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V)Lakemoor, McHenry County	Lily Lake	Shoreline	*750
		Shallow Flooding (ponding from rainfall).	Intersection of Rose Dale Drive and Sherry Side Road	*752

Maps available for inspection at the Village Hall, 234 West Rand Road, McHenry, Illinois.

Send comments to the Honorable Richart Hyatt, Village President, Village of Lakemoor, Village Hall, 234 West Rand Road, McHenry, Illinois 60050.

Kansas	(C)McPherson, McPherson County	Dry Turkey Creek	Just upstream of State Route 61	*1,473
			Just upstream of East Avenue A	*1,480
			Just upstream of East Kansas Avenue	*1,483
			Just upstream of Atchison, Topeka and Santa Fe Railway.	*1,486
		East Branch Dry Turkey Creek	Just downstream of County Road A	*1,464
			At confluence with Dry Turkey Creek	*1,475
			Just upstream of South Frontage Street	*1,488
			Just upstream of Chicago, Rock Island and Pacific Railroad.	*1,492
			Just downstream of Atchison, Topeka, and Santa Fe Railway.	*1,494
		Dry Turkey Creek Tributary No. 3	At confluence with Dry Turkey Creek	*1,486
			Just upstream of Briarwood Lane	*1,490
		Bull Creek	At confluence with Dry Turkey Creek	*1,476
			Just upstream of South Main Street	*1,483
			Just upstream of West Kansas Avenue	*1,487
			Just upstream of West Northview Road	*1,491
		Bull Creek Tributary No. 2	Just downstream of County Road A	*1,494
			At confluence with Bull Creek	*1,484
			Just upstream of Atchison, Topeka and Santa Fe Railway	*1,496
			Just downstream of West First Street	*1,492

Maps available for inspection at the City Hall, 400 East Kansas, McPherson, Kansas.

Send comments to Honorable Delbert E. Crabb, Mayor, City of McPherson, City Hall, 400 East Kansas, McPherson, Kansas 67460.

Kansas	(Uninc.) McPherson County	Black Kettle Creek	About 0.8 mile downstream of Old U.S. Highway 81 Bypass.	*1,463
			Just upstream of Old U.S. Highway 81 Bypass	*1,469
			Just upstream of Missouri Pacific Railroad	*1,473
		Black Kettle Creek Tributary No. 1	About 0.96 mile upstream of Durst Street	*1,477
			At confluence with Black Kettle Creek	*1,475
			About 1,150 feet upstream of confluence with Black Kettle Creek.	*1,478
			About 1,650 feet upstream of confluence with Black Kettle Creek.	*1,477
		Galva Drain	About 530 feet downstream of City of Galva corporate limit.	*1,538
			At City of Galva corporate limit	*1,535
		Smoky Hill River	About 1.2 miles downstream of Washington Street	*1,373
			Just upstream of Washington Street	*1,377
		Smoky Hill River Tributary No. 1	About 0.7 mile upstream of Washington Street	*1,379
			About 100 feet downstream of Fifth Street	*1,388
			Just upstream of Missouri Pacific Railroad (upstream crossing).	*1,392
			About 100 feet downstream of State Highway 4	*1,406

Maps available for inspection at the County Courthouse, Box 945, McPherson, Kansas.

Send comments to Honorable Carl Oakleaf, Chairman of the Board of Commissioners, McPherson County, County Courthouse, Box 945, McPherson, Kansas 67460.

Kentucky	Unincorporated Areas of Greenup County.	Ohio River	At confluence of Tygarts Creek	*536
			Just upstream of Greenup Locks and Dam	*541
		Pond Run	Just upstream of Private Road (located approximately 5,500 feet downstream of City of Raceland corporate limits).	*580
		Chinns Branch	Approximately 3,000 feet south of the intersection of U.S. Highway 23 and Chinns Branch Road.	*559
		Coal Branch	Just upstream of Duck Puddle Road	*559
		Smith Branch	Just upstream of Right Fork Smith Branch Road	*548
		Lower White Oak	Just upstream of John Road	*588
			Just upstream of Belleview Drive	*602

Maps available for inspection at Greenup County Judge's Office or County Clerk's Office, Greenup County Courthouse, Greenup, Kentucky 41144.

Send comments to Mr. James Claxon, Greenup County Judge Executive, Greenup County Courthouse, P.O. Box 318, Greenup, Kentucky 41144, or Mr. Sam Santell, Community Planner, FIVCC Area Development District, P.O. Box 636, Catlettsburg, Kentucky 41129.

Kentucky	Unincorporated Areas of Rowan County	Triplett Creek	Just downstream of Round street	*680
			Just downstream of State Highway 32	*748
			Just upstream of Private Road located at Alec Hall Branch.	*790
		Mill Branch	Just upstream of McBrager Road	*723
		Morgan Fork	Just upstream of State Highway 519 crossing Morehead and North Fork Railroad.	*750
			Just upstream of State Highway 519 located approximately 250 feet upstream of Warren Branch.	*830
		Dry Creek	Just upstream of State Highway 519	*718

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of County Road located approximately 300 feet upstream of Timber Branch.	*789
		Christy Creek	Just upstream of Private Road located at Patties Lick Branch.	*813
			Just downstream of Private Road located approximately 500 feet upstream of Kidd Branch.	*850
		North Fork Triplett Creek	Just downstream of State Highway 32	*690
			Just upstream of Private Road located approximately 200 feet downstream of confluence of Big Brush Creek.	*714
			Just downstream of Private Road located approximately 800 feet downstream of Harvey Branch.	*742
		Big Brush Creek	Just downstream of State Highway 377	*715
			Just downstream of Old Sport Arena Road located approximately 1,500 feet downstream of State Highway 785.	*799
			Just upstream of Middle Prong Brush Creek Road	*845

Maps available for inspection at Rowan County Judge Executive's Office, County Courthouse, Morehead, Kenstucky 40351.

Send comments to Mr. Jim Nickell, Rowan County Judge Executive or Mr. Vernon Gross, County Disaster and Emergency Operations Coordinator, Rowan County Courthouse, Morehead, Kentucky 40351.

Kentucky	City of Russell, Greenup County	Ohio River	At the border of Boyd County line	*547
		White Oak Creek	Just upstream of State Highway 693 (Deidrick Boulevard).	*557
			Just upstream of Verna Drive	*569

Maps available for inspection at City Clerk's Office, City Hall, Russell Kentucky 41169.

Send comments to Mayor Wood or Mr. Gary Boyd, City Administrator, City Hall, P.O. Box 394, Russell, Kentucky 41169.

Maine	Kennebunk, Town, York County	Kennebunk River	Approximately 600' upstream of mouth	*0
			Upstream of U.S. Route 1	*45
			Approximately 2,700' upstream of U.S. Route 1	*58
		Day Brook	At confluence with Mousam River	*48
			Approximately 9,500' upstream of Cat Mousam Road	*67
		Atlantic Ocean	From Corporate limits to confluence of Mousam River	*14
			From approximately 320' east of confluence of Mousam River to Access Road extended.	*21
			From approximately 130' east of Access Road extended to Great Hill Road extended.	*18
			From approximately 160' west of Lords Point Road extended to approximately 700' east of Lords Point Road extended.	*19
			From approximately 400' east of Bruen Place extended to Woodland Avenue extended.	*16
			Tidal flooding affecting Little River and Branch Brook	*9
		Mousam River	At State Route 9	*9
			Approximately 2,960' upstream of Boston and Maine Railroad.	*10
			Downstream U.S. Route 1	*26
			Upstream of Mousam River Spillway	*44
			At Interstate Route 95	*49
			Downstream of Twine Mills Dam	*55
			Upstream of Twine Mills Dam	*74
			Upstream Dane Perkins Dam	*80

Maps available for inspection at the Town Manager's Office, Kennebunk Town Hall, 1 Summer Street, Kennebunk, Maine 04043.

Send comments to the Honorable James Nadeau, First Selectman of the Town of Kennebunk, Town Hall, 1 Summer Street, Kennebunk, Maine 04043.

Massachusetts	Uxbridge, Town Worcester County	Blackstone River	Downstream corporate limits	*216
			Downstream South Maine Street	*224
			At confluence of West River	*226
			Upstream of Mendon Street	*229
			Downstream Hartford Avenue	*233
			Upstream corporate limits	*241
		Mumford River	Confluence with Blackstone River	*227
			Upstream of Caprons Pond Dam	*236
			Downstream of Factory Dam	*247
			Upstream corporate limits (first crossing)	*259
			Upstream corporate limits (second crossing)	*318
			Upstream corporate limits	*321
		West River	Confluence with Blackstone River	*226
			Upstream of Mendon Street	*236
			Upstream of Hartford Avenue	*238
			Upstream West Hill Dam	*241

Maps available for inspection at the Office of the Selectman, Uxbridge Town Hall, Uxbridge, Massachusetts.

Send comments to the Honorable Alfred E. Brooks, Chairman of the Town of Uxbridge Board of Selectman, Town Hall, Uxbridge, Massachusetts 01569.

Michigan	(Twp) Kochville Saginaw County	Kochville Drain	About 2.5 miles above mouth at Saginaw River	*585
			At confluence of North Branch Kochville Drain	*587
		South Branch Kochville Drain	Just upstream of Michigan Road	*594
			Just downstream of State Highway 84	*599
		North Branch Kochville Drain	Just upstream of Davis Road	*589
			Just downstream of State Highway 84	*596
		Shallow Flooding	West of Venoy Road and south of Interstate 675	*585

Maps available for inspection at Mr. Trautners' Home, 4510 Pierce Road, Saginaw, Michigan.

Send comments to Honorable Albert Trautner, Supervisor, Township of Kochville, 6150 Bay Road, Saginaw, Michigan 48604

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(Twp.) Thomas Saginaw County	Tittabawassee River	Just upstream of Conrain	*597
			Just downstream of Tittabawassee Road	*603
		Swan Creek	About 3,600 feet downstream of State Highway 46	*593
			Just downstream of Dice Road	*600
		Hatch Run	At confluence with Swan Creek	*598
			About 2,840 feet upstream of Dice Road	*604

Maps available for inspection at the Township Offices, 249 North Miller Road Saginaw, Michigan.

Send comments to Honorable Norman Bell, Supervisor, Township of Thomas, Township Offices, 249 North Miller Road, Saginaw, Michigan 48603.

Minnesota	(C) Winona, Winona County	Mississippi River	About 1.3 miles downstream of Burlington Northern Railroad.	*658
		Gilmore Creek	About 2.7 miles upstream of State Route 43	*662
			About 150 feet downstream of U.S. Route 14	*670
			Just upstream of St. Mary's College Bridge	*699
		Burns Valley Creek	At upstream corporate limits	*700
			About 150 feet downstream of County Highway 17	*667
			About 1,100 feet upstream of Sugar Loaf Road	*678
		Pleasant Valley Creek	About 5,800 feet upstream of Sugar Loaf Road	*681
			Just upstream of County Highway 15	*662
		Crooked Slough	About 1,300 feet upstream of Holler Hill Road	*665
		Shallow Flooding	Shoreline	*654
			North of intersection of Goodview Road and U.S. Route 14.	*662
			East of intersection of Goodview Road and U.S. Route 14.	*671
			South of intersection of Goodview Road and U.S. Route 14.	*671

Maps available for inspection at the Director of Public Works' Office, City Hall, 207 Lafayette Street, Winona, Minnesota.

Send comments to Honorable Robert J. Bollant, Director of Public Works, City of Winona, City Hall, 207 Lafayette Street, Winona, Minnesota 55931.

Missouri	(C) Fayette, Howard County	Adams Fork	About 200 feet downstream of abandoned Missouri-Kansas-Texas Railroad.	*636
			About 800 feet upstream of County Highway E	*658
		Bonne Femme Creek	About 1,500 feet downstream of State Highway 240	*629
			About 3,600 feet upstream of State Highway 240	*635
		West Branch Bonne Femme Creek	About 1,900 feet upstream of mouth	*634
			Just downstream of Reynolds street	*654

Maps available for inspection at the City Hall, 117 South Main, Fayette, Missouri.

Send comments to Honorable Larry Smith, Mayor, City of Fayette, City Hall, 117 South Main, Fayette, Missouri 65248.

Missouri	(C) Franklin Howard County	Cottonwood Creek	At mouth	*601
			At northern corporate limits	*601
		Missouri River	About 0.46 mile downstream of Missouri-Kansas-Texas Railroad.	*600
			About 0.15 mile upstream of Missouri-Kansas-Texas Railroad.	*601
		Sutler Creek	About 950 feet downstream of Missouri-Kansas-Texas Railroad	*600
			About 1,600 feet upstream of Crews Avenue	*601

Maps available for inspection at City Hall, Franklin, Missouri.

Send comments to Honorable Norman Grindstaff, Mayor, City of Franklin, City Hall, Franklin, Missouri 65250

Missouri	(T) New Franklin, Howard County	Bonne Femme Creek	At southeastern corporate limits	*599
			At northern corporate limits	*600
		Missoun River	About 0.9 mile downstream of Highway 40	*599
			About 0.17 mile upstream of U.S. Highway 40	*600

Maps available for inspection at City Hall, New Franklin, Missouri.

Send comments to Honorable Donald E. Lang, Mayor, Town of New Franklin, City Hall, New Franklin, Missouri 65274.

Missouri	(C) Orrick Ray County	Missouri River	About 0.34 mile downstream of Atchison, Topeka and Santa Fe Railway.	*718
			About 1.67 miles upstream of Atchison, Topeka and Santa Fe Railway.	*721
		Keeney Creek	About 2,900 feet downstream of Fleenor Street	*718
			About 260 feet downstream of State Highway 210	*720

Maps available for inspection at the City Hall, Orrick, Missouri.

Send comments to Honorable Lloyd Smith, Mayor, City of Orrick, City Hall, Orrick, Missouri 64077.

Missouri	(Uninc.) Ray County	Missouri River	At downstream county boundary	*692
			Just upstream of State Highway 13	*703
			About 0.75 mile upstream of county boundary	*723
		Fishing River	At mouth	*714
			About 0.1 mile downstream of Norfolk and Western Railway.	*722
			At upstream county boundary	*731
		East Fork Fishing River	About 0.9 mile downstream of County Road	*788
			About 0.3 mile upstream of County Road	*813
		Crooked River	Mouth at Missouri River	*696
			Just downstream of Burlington Northern Railroad	*723

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of County Highway D	*795
			About 5.4 miles upstream of County Highway D	*834
		East Fork Crooked River	At confluence with Crooked River	*704
			Just upstream of Burlington Northern Railroad	*721
			Just upstream of County Road K	*747
			About 1.5 miles upstream of County Highway	*792
		West Fork Crooked River	At mouth	*711
			Just upstream of State Highway 13	*733
			Just upstream of State Route 10	*788
		Keeney Creek	At mouth	*714
			About 0.05 mile downstream of State Highway 210	*720
			Just downstream of Burlington Northern Railroad	*743
		West Fork Crooked River Tributary No. 1.	At mouth	*752
			Just downstream of Swanwick Road	*770
		Cockerel Creek	At mouth	*809
			About 0.1 mile upstream of County Highway BB	*820
		Tributary A	At mouth	*752
			Just downstream of County Highway B	*773
		Tributary B	At mouth	*764
			Just downstream of County Highway V	*817
			About 0.3 mile upstream of County Highway V	*824
		Rocky Fork Crooked River	At mouth	*756
			Just upstream of County Highway FF	*770
		Fire Branch Crooked River	At confluence with Crooked River	*771
			About 0.1 mile downstream of County Highway HH	*806
			About 0.05 mile upstream of County Road D	*856
		Davis Branch Crooked River	At mouth	*785
			Just upstream of County Highway	*787
		Kings Branch Crooked River	At confluence with Crooked River	*791
			About 0.9 mile upstream of confluence with Crooked River.	*793

Maps available for inspection at the Ray County Courthouse, Richmond, Missouri.

Send comments to Honorable Monroe Fields, Presiding Judge, Ray County, Ray County Courthouse, Richmond, Missouri

Nebraska	(Uninc.) Saunders County	Platte River (Riverward of Levee)	At south county boundary 1.1 miles downstream of U.S. Highway 6.	*1,059
			Just 500 feet upstream of State Highway 92	*1,123
			Just downstream of City of Fremont Extraterritorial jurisdiction about 1.5 miles downstream of U.S. Highway 77.	*1,109
			Just downstream of Chicago and North Western Railroad.	*1,224
			At west county boundary 7.16 miles upstream of State Highway 79.	*1,306
		Platte River (Landward of Levee)	About 1.0 mile downstream of the confluence of Elkhorn River.	*1,075
			About 1.5 miles downstream of State Highway 92	*1,114
			About 1.7 miles upstream of State Highway 92	*1,130
			About 400 feet upstream of the Union Pacific Railroad	*1,146
			About 800 feet upstream of State Highway 64	*1,156
			About 1.0 mile upstream of State Highway 64	*1,161
			About 5.9 miles upstream of State Highway 64	*1,183
			Just upstream of State Highway 79	*1,272
			About 1.7 miles upstream of State Highway 79	*1,280
		Clear Creek	Just upstream of County Road 29	*1,077
			Just downstream of County Road 37	*1,079
		Johnson Creek	At mouth	*1,078
			Just downstream of County Road 37	*1,079
		Cottonwood Creek	Just upstream of County Road 77	*1,312
			Just downstream of County Road 85	*1,358
		Tributary to Cottonwood Creek	At mouth	*1,330
			Just upstream of County Road 18	*1,351
		Salt Creek	About 0.6 mile downstream of U.S. Highway 6	*1,059
			Just downstream of County Road 110	*1,085
		Wahoo Creek	At mouth	*1,068
			Just upstream of Burlington Northern Railroad	*1,070
			About 1.6 miles upstream of Old State Highway 63	*1,073
		Shallow Flooding (overflow from Platte River.	West of Burlington Northern Railroad (from County Road 45 south to County Road 21).	*1

Maps available for inspection at the Zoning Administrator's Office, County Courthouse, Wahoo, Nebraska.

Send comments to the Honorable Archie Hightshoe, Chairman of the County Board of Supervisors, Saunders County, County Courthouse, Wahoo, Nebraska 68066.

New Jersey	Cape May City, City Cape May County	Atlantic Ocean	Intersection of Beach and Wilmington Avenues	*14
			Beach Avenue at its intersection with Reading Avenue	*14
			Patterson Avenue extended 100 feet seaward from its intersection with Beach Avenue.	*14
			350 feet east along Mt. Vernon Street from its intersection with 2nd Avenue.	*12
			Intersection of Brooklyn and New Jersey Avenues	*10
			Intersection of Maryland and Madison Avenues	*10
			Intersection of Park Boulevard and Grant Avenue	*10
			Intersection of Wilmington and Delaware Avenues	*10
			Intersection of Washington and Texas Avenues	*10

Maps available for inspection at the Office of the City Clerk, City Hall, 643 Washington Street, Cape May City, New Jersey.

Send comments to Honorable Arthur Blomkvest, Mayor, City of Cape May City, City Hall, 643 Washington Street, Cape May City, New Jersey 08204.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Cape May Point, Borough, Cape May County.	Atlantic Ocean	Brainard Avenue extended 400 feet seaward from its intersection with Pearl Avenue.	*14
			Lake Drive extended 200 feet seaward from its intersection with Harvard Avenue.	*14
			Intersection of Lighthouse and Lincoln Avenues	*14
			Intersection of Alexander and Pearl Avenues	*10
			Intersection of Oak Avenue and Lake Drive	*10
			Intersection of Lincoln and Lehigh Avenues	*10
			Intersection of Princeton and Ocean Avenues	*10
	Maps available for inspection at the Office of the Borough Clerk, Municipal Building, Yale and Lighthouse Avenues, Cape May Point, New Jersey.			
	Send comments to Honorable Frank Rutherford, Mayor, Borough of Cape May Point, 406 Cedar Avenue, Cape May Point, New Jersey 08212.			
New Jersey	Linwood, City, Atlantic County	Patcong Creek	Upstream corporate limits	*12
			From downstream corporate limits to spillway at Central Avenue.	*9
		Scull Bay	Entire shoreline within community	*9
		Isaac's Creek	Entire shoreline within community	*9
		Mulburry Thorofare	Entire shoreline within community	*9
		Steelman Bay	Entire shoreline within community	*9
		Sod Thorofare	Entire shoreline within community	*9
	Maps available for inspection at the Municipal Building, 400 Poplar Avenue, Linwood, New Jersey.			
	Send comments to Honorable Donald B. Vese, Mayor of Linwood, 400 Poplar Avenue, Linwood, New Jersey 08221.			
New Jersey	Northfield, City, Atlantic County	Patcong Creek	Downstream corporate limits	*12
			Confluence of Maple Run	*12
		Maple Run	Confluence with Patcong Creek	*12
			Mill Road upstream side	*14
			Upstream corporate limits	*14
		Great Egg Harbor Bay	Tidal flooding affecting Isaac's Creek and the eastern portion of the community.	*9
	Maps available for inspection at the Municipal Building, 1600 Shore Road, Northfield, New Jersey.			
	Send comments to Honorable Arthur Faden, Mayor of Northfield, 1600 Shore Road, Northfield, New Jersey 08225.			
New Jersey	North Wildwood, City Cape May County	Atlantic Ocean	12th Avenue extended 100 feet seaward from its intersection with Beach Drive.	*14
			Intersection of Beach Drive and 2nd Avenue	*14
			Intersection of New Jersey and Spruce Avenues along Hereford Inlet.	*14
			Maryland Avenue extended 50 feet northeast of its intersection with Anglesea Drive.	*14
			Northeast of State Route 585 in the vicinity of the confluence of Beach Creek with the Hereford Inlet.	*12
			The seaward limit of 23rd Avenue, 100 feet northwest of the Boardwalk.	*11
			Intersection of 6th Avenue and Beach Drive	*11
			Intersection of Surf and 2nd Avenues	*11
			Intersection of Anglesea and Taylor Avenues	*11
			Intersection of Virginia and Oak Avenues	*11
			Intersection of Allen Drive and Seaspray Court	*11
			Intersection of Surf and 21st Avenues	*10
			Intersection of Maryland and 16th Avenues	*10
			Intersection of Central and 9th Avenues	*10
			Intersection of Delaware Avenue and Walnut Street	*10
	Maps available for inspection at the Office of the City Clerk, 9th and Atlantic Avenues, North Wildwood, New Jersey.			
	Send comments to Honorable Anthony T. Catanoso, Mayor, City of North Wildwood, 9th and Atlantic Avenues, North Wildwood, New Jersey 08260.			
New Jersey	Pleasantville, City, Atlantic County	Lakes Bay	Entire shoreline within community	*9
		Absecon Bay	In the vicinity of the northeast portion of the community.	*9
	Maps available for inspection at the Municipal Building, 18 North Front Street, Pleasantville, New Jersey.			
	Send comments to Honorable George Ehr, Mayor of Pleasantville, Municipal Building, 18 North Front Street, Pleasantville, New Jersey 08232.			
New Jersey	Sea Isle City, City, Cape May County	Atlantic Ocean	22nd Street extended 250 feet seaward from its intersection with Landis Avenue.	*14
			34th Street extended 200 feet seaward beyond the Promenade, from its intersection with Pleasure Avenue.	*14
			40th Street extended 75 feet seaward from its intersection with the Promenade.	*14
			56th Street extended 100 feet seaward from its intersection with Pleasure Avenue.	*14
			Portion of 56th Street extending seaward beyond its intersection with Pleasure Avenue.	*14
			Intersection of 23rd Street and Landis Avenue	*12
			Vicinity of the confluence of Swimming Creek with Ludlam Bay.	*12
			Intersection of 32nd Street and Central Avenue	*11
			Intersection of 40th Street and Pleasure Avenue	*11
			Intersection of 52th Street and Landis Avenue	*11
			Intersection of 68th Street and Central Avenue	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Intersection of 91st Street and Pleasure Avenue	*11
			Intersection of 84th Street and Central Avenue	*10
			Intersection of Roberts and 77th Streets	*10
			Intersection of Central Avenue and 71st Street	*10
			Intersection of 54th Street and Central Avenue	*10
			Intersection of 44th Street and Venician Road	*10
			Intersection of Central Avenue and 36th Street	*10
Maps available for inspection at the Office of the City Clerk, City Hall, 4416 Landis Avenue, Sea Isle City, New Jersey.				
Send comments to Honorable Dominic C. Raffa, Mayor, City of Sea Isle City, City Hall, 4416 Landis Avenue, Sea Isle City, New Jersey 08243.				
New Jersey	Wildwood City, Cape May County	Atlantic Ocean	Hand Avenue extended 50 feet seaward from its intersection with the Boardwalk.	*14
			Spencer Avenue extended 50 feet seaward from its intersection with the Boardwalk.	*14
			Popular Avenue extended 50 feet seaward from its intersection with the Boardwalk.	*14
			Intersection of Andrews Avenue and the Boardwalk	*11
			Intersection of Ocean and Wildwood Avenue	*11
			Intersection of Bennett and Atlantic Avenues	*10
			Intersection and Mediterranean Avenues	*10
			Intersection of Ocean and Magnolia Avenues	*10
			Intersection of Park Boulevard and Pine Avenue	*10
Maps available for inspection at the office of the City Clerk, City Hall, 4400 New Jersey Avenue, Wildwood, New Jersey.				
Send comments to Honorable Guy S. Muziani, Mayor, City of Wildwood, City Hall, 4400 New Jersey Avenue, Wildwood, New Jersey 08262.				
New Jersey	Wildwood Crest, Borough, Cape May County.	Atlantic Ocean	St. Louis Avenue extended 400 feet seaward from its intersection with Atlantic Avenue.	*14
			Intersection of Beach Avenue and Rosemary Road	*14
			Heather Avenue extended 400 feet seaward from its intersection with Ocean Avenue.	*14
			Intersection of Ocean Avenue and Primrose Road	*11
			Intersection of Beach Avenue and Lavender Road	*11
			Intersection of Charleston and Pacific Avenues	*10
			Intersection of Ocean Avenue and Orchid Road	*10
			Intersection of Lake and Morning Glory Roads	*10
Maps available for inspection at the office of the Borough Clerk, Borough Hall, 6101 Pacific Avenue, Wildwood Crest, New Jersey.				
Send comments to Honorable John J. Pantalone, Mayor, Borough of Wildwood Crest, Borough Hall, 6001 Pacific Avenue, Wildwood Crest, New Jersey 08260				
New York	Hastings, Town, Oswego County	Oneida River	Downstream corporate limits	*372
			Approximately 19,000' upstream of corporate limits	*372
		Oneida Lake	Entire shoreline within community	*373
Maps available for inspection at the Town Hall, Route 11, Hastings, New York.				
Send comments to Honorable Robert Apgar, Supervisor of Hasting, P.O. Box 71, Central Square, New York 13036				
New York	Kensington, Village, Nassau County	Manhasset Bay	Entire shoreline within Kensington	*15
Maps available for inspection at the Village Hall, 2 Nassau Drive, Great Neck, New York.				
Send comments to Honorable Seymour Cohen, Mayor of Kensington, Village Hall, 2 Nassau Drive, Great Neck, New York 11022.				
New York	Madison, Town, Madison County	Oriskany Creek	Downstream corporate limits	*1,000
			Approximately 3,000' upstream of corporate limits	*1,025
			Approximately 10,500' upstream of corporate limits	*1,066
			Upstream of Water Street	*1,066
			Approximately 2,700' upstream of Dam	*1,126
		Payne Brook	Downstream corporate limits	*1,125
			Downstream of Spillway Road	*1,165
Maps available for inspection at the Town Hall, Route 20, Madison, New York.				
Send comments to Honorable Richard W. Lamb, Town Supervisor of Madison, Town Hall, Route 20, Madison, New York 13402.				
New York	Minden, Town, Montgomery County	Mohawk River	Downstream corporate limits	*307
			Upstream of Bridge Street	*314
			Upstream corporate limits	*320
		Otsquago	Downstream corporate limits	*353
			Upstream of State Route 80	*368
			Upstream of Spring Street	*410
			At Hoffman Road (extended)	*422
			Salt Springville Road	*522
Maps available for inspection at the Minden Town Office, Route 80, R. D. 3, Fort Plain, New York.				
Send comments to Honorable Betty H. Alter, Town Supervisor of Minden, 120 Reid Street, Fort Plain, New York 13339.				
New York	Oriskany Falls, Village, Oneida County	Oriskany Creek	Downstream corporate limits	*927
			Upstream of Cassidy Street	*963
			Upstream of Madison Street	*985
			Upstream corporate limits	*996
		Lindsley Brook	Confluence with Oriskany Creek	*945
			Upstream corporate limits	*945
Maps available for inspection at the Village Hall, 185 Main Street, Oriskany Falls, New York.				
Send comments to Honorable William Tourbaceris, Mayor of Oriskany Falls, Village Hall, 185 Main Street, Oriskany Falls, New York 13425.				
New York	St. Johnsville, Town, Montgomery County.	Mohawk River	Downstream corporate limits	*311
			Upstream corporate limits	*321
Maps available for inspection at the Office of the Town Clerk, 108 West Main Street, St. Johnsville, New York.				
Send comments to Honorable William Dockay, Town Supervisor of St. Johnsville, 99 North Division Street, St. Johnsville, New York 13452.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Tully, Village, Onondaga County	West Branch Tioughnioga River	Downstream corporate limits	*1,229
			Downstream of Clinton Street	*1,246
			Upstream corporate limits	*1,275
		Tributary A	Confluence with West Branch Tioughnioga River	*1,235
			Upstream of Grove Street	*1,236

Maps available for inspection at the Municipal Building, One Railroad Avenue, Tully, New York.

Send comments to Honorable Jack McHerron, Mayor of Tully, Municipal Building, One Railroad Avenue, Tully, New York 13159.

North Carolina	City of Monroe, Union County	Bearskin Creek	Just downstream of Morgan Mill Road	*524
			Just downstream of U.S. Highways 74 and 601	*561
			Just downstream of Charlotte Avenue	*573
		Richardson Creek	Just upstream of Walker Avenue	*486
			Just upstream of U.S. Highway 601	*495
		Bearskin Creek Tributary	Just upstream of Seaboard Coast Line Railroad	*579
			Just downstream of Franklin Street	*588
		Richardson Creek Tributary	Just downstream of Quarry Road	*544
		Still Branch	Just downstream of the confluence of Still Branch Tributary.	*530
			Just downstream of Crescent Street	*574
		Still Branch Tributary	Just upstream of Parker Street	*533
			Just upstream of Hayne Street	*554

Maps available for inspection at City Hall, 300 West Crowell Street, Monroe, North Carolina 28110.

Send comments to Mayor Fred C. Long or Mr. C. F. Boyd, Director of Community Development, City Hall, P.O. Box 961, Monroe, North Carolina 28110.

Ohio	(Uninc.) Miami County	Great Miami River	About 1.66 miles downstream of Conrail	*813
			Just upstream of Eldean Road	*842
			Just upstream of U.S. Highway 36	*863
		Great Miami River Bypass	About 0.27 mile upstream of county boundary	*883
			At confluence with Great Miami River	*824
		Stillwater	At City of Troy corporate limits	*825
			About 0.71 mile downstream of Sugar Grove Road	*871
			Just upstream of Falknor Road	*879
		Garbry Creek	At Village of Covington corporate limits (about 0.57 mile upstream of Conrail).	*895
			At Village of Piqua corporate limits	*903
			Just upstream of Looney Road	*924
		Greenville Creek	Just downstream of Troy Sidney Road	*976
			At mouth at Stillwater River	*869
			About 0.24 mile upstream of Rangeline Road	*924
			Just upstream of Croft Mill Road	*945
		Honey Creek	Just downstream of State Route 721	*961
			About 1.11 miles downstream of State Route 201	*814
			Just upstream of Dayton-Brandt Road	*842
		Shawnee Creek	At county boundary	*860
			At Confluence with Rush Creek	*864
			Just upstream of Industry Road	*901
		Spring Creek	About 0.29 mile upstream of Industry Road	*906
			At mouth at Great Miami River	*838
			Just upstream of Pique-Troy Road	*846
		Rush Creek	About 2.48 miles upstream of Pique-Troy Road	*899
			At mouth at Great Miami River	*864
			Just upstream of Hetzler Road	*886
		Island No. 3 Tributary	Just downstream of Interstate 75	*815
			About 0.41 mile downstream of Chessie System	*813
			Just downstream of Interstate 75	*863
			Just upstream of Barnhart Road	*880
			Just upstream of McKaig Road	*902
			Just upstream of Stanfield Road	*922
			Just upstream of Washington Road	*936
		Eldean Tributary	About 0.71 mile upstream of Washington Road	*945
			At mouth at Great Miami River	*839
			Just upstream of Chessie System	*843
			Just downstream of Eldean Road	*868
		Swailes Road Tributary	At confluence with Island No. 3 Tributary	*817
			Just downstream of Peters Road	*835
		Staunton Tributary	At mouth at Great Miami River	*822
			Just upstream of Staunton Road	*835
			Just upstream of Pique-Troy Road	*846
			Just upstream of Deweese Road	*881
			About 150 feet downstream of Polecat Road	*917
		Jones Run	About 0.1 mile downstream of State Highway 48	*902
			Just upstream of Jay Road	*959
			About 0.78 mile upstream of Jay Road	*991

Maps available for inspection at the County Engineer's Office, 201 West Main Street, Troy, Ohio.

Send comments to Honorable Richard Graef, President of the County Commission, Miami County, 201 West Main Street, Troy, Ohio 45373.

Rhode Island	East Greenwich, Town, Kent County	Frenchtown Brook	Downstream Davisville Road	*47
			Upstream State Route 4	*66
			Upstream South County Trail	*91
			Upstream of Adirondack Drive	*119
			Upstream of Dam between Adirondack Drive and confluence of Mawney Brook.	*162

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Tillinghast Road	*187
			Downstream High Hawk Road	*204
			Upstream Trail Road	*264
			Upstream Carrs Pond Road	*285
			Approximately 575 feet upstream of Carrs Pond Road	*300
		Mawney Brook	Upstream of Dam at Tillinghast Road	*189
			Upstream of Dam located approximately 2,150 feet downstream of Middle Road.	*236
			Upstream Middle Road	*246
			Upstream of Dam at the Access Road between Middle Road and Division Road.	*273
			Division Road upstream side	*285
		Fiske Road Brook	Boston Post Road upstream side	*43
			Maplewood Drive upstream side	*47
			Middle Road upstream side	*60
			Kent Road upstream side	*93
		Maskerchugg River	Confluence with Greenwich Cove	*14
			Upstream of downstream dam	*34
			Kenyon Avenue upstream side	*40
			Sylvan Drive upstream side	*60
			Division Street upstream side	*70
		East Branch Maskerchugg River	Confluence with Maskerchugg River	*42
			Division Street upstream side	*68
		West Branch Maskerchugg River	At confluence of Maskerchugg River	*40
			Balsam Drive downstream side	*68
			Howland Drive upstream side	*83

Maps available for inspection at the Town Hall, East Greenwich, Rhode Island.

Send comments to Honorable Marion L. Fry, President of the East Greenwich Town Council, Town Hall, P.O. Box 111, East Greenwich, Rhode Island 02818.

South Carolina	Unincorporated Areas of Lancaster County.	Camp Creek (South)	Just downstream of County Road 179	*455
			Just upstream of County Road 179	*459
			Just downstream of County Road 19	*497
		Cane Creek	Just upstream of County Road 56 (University Drive)	*444
			Approximately 800 feet downstream of U.S. Highway 521.	*462
		Rum Creek	Just downstream of State Highway 200	*473
			Just downstream of Rum Road	*490
			Just downstream of County Road 449	*506
			Just upstream of County Road 449	*511
		Bear Creek	Just upstream of County Road 19 (Lynwood Drive)	*461
			Just downstream of U.S. Highway 521	*471
			Just upstream of County Road 172	*524
		Gills Creek	Just downstream of County Road 360	*462
			Just upstream of County Road 51	*473
			Just upstream of SCS Dam No. 18A	*518
		Hannahs Creek	Just downstream of County Road 51	*476
			Approximately 240 feet upstream of South Carolina State Highway 9.	*482
		Turkey Quarter Creek	Just downstream of County Road 407	*512
			Just upstream of County Road 149	*535
			Just upstream of County Road 71	*570
		Little Turkey Creek	Just downstream of Cauthen Road	*508
			Approximately 280 feet downstream of County Road 521.	*517
			Just downstream of County Road 38	*537
		Camp Creek	Approximately 200 feet upstream of U.S. Highway 521	*454
			Just upstream of County Road 185 (Craig Drive)	*463
			Just downstream of State Highway 200	*488
		Twelvemile Creek	Approximately 500 feet upstream of U.S. Highway 521	*486
			Just upstream of County Road 92	*499
		Sterile Creek	Just downstream of County Road 66	*503
			Just upstream of County Road 65	*526
			Just downstream of County Road 126	*530
			Just downstream of County Road 54	*563
			Just upstream of County Road 54	*568
		Sugar Creek	Approximately 100 feet downstream of Dobys Bridge Road (State Road 36).	*491
			Approximately 200 feet upstream of Dobys Bridge Road (State Road 36).	*492
			Approximately 200 feet downstream of State Road 1601.	*512
			Approximately 200 feet upstream of the confluence of McAlpine Creek.	*520
			Approximately 100 feet upstream of the Southern Railway.	*536

Maps available for inspection at the County Planning Director's Office, County Office Building, 116 West Dunlap Street, Lancaster, South Carolina 29720.

Send comments to Mr. Carroll Huffman, County Administrator or Mr. Richard Kesler, County Planning Director, County Office Building, P.O. Box 730, Lancaster, South Carolina 29720.

Tennessee	City of Lebanon, Wilson County	Sinking Creek	Just upstream of U.S. Highway 70N Bypass	*523
			Just upstream of Spring Street	*532
			Just upstream of U.S. Highway 231	*544
		Bartons Creek	Just upstream of U.S. Highway 70N Bypass	*515
			Just upstream of West Main Street	*521

Maps available for inspection at City-County Planning Office, Room 5, Wilson County Courthouse, Lebanon, Tennessee 37087.

Send comments to Mayor Willis Maddox, City Hall, 119 South College Street, or Mr. Sam Edwards, Director of Planning, City-County Planning Office, Wilson County Courthouse, Lebanon, Tennessee 37087.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Washington	Aberdeen (City), Grays Harbor County	Grays Harbor	Intersection of S. Washington Street and W. Heron Street.	*10
		Wilson Creek	Intersection of Bay Avenue and N. Conger Street	*18
		Wishkah River	Intersection of Fairfield Street and Summit Street	*12
			Intersection of Thomas Street and Sheriden Street	*10
	Maps available for inspection at Engineering Department, 200 E. Market Street, 2nd Floor, Aberdeen, Washington.			
	Send comments to the Honorable Jack Durney, 200 E. Market Street, Aberdeen, Washington 98520.			
Washington	Naches, Town, Yakima County	Naches River	Approximately 2,700 feet downstream of South Naches Road.	*1,440
			Approximately 2,300 feet upstream of South Naches Road.	*1,470
	Maps available for inspection at the Town Hall, Naches, Washington.			
	Send comments to Honorable Mary E. Tenney, Mayor of Naches, P.O. Box 95, Naches, Washington 98937.			
Wisconsin	(C) Delavan, Walworth County	Turtle Creek	At northwestern corporate limits	*878
			Just downstream of dam at Comus Lake	*865
		Swan Creek	at mouth	*851
			Just upstream of dam near Walworth Street	*890
			Just upstream of Washington Street	*900
			At southern corporate limits	*912
		Comus Lake	Shoreline	*891
	Maps available for inspection at Director of Pubic Works' Office, Municipal Building, Delavan, Wisconsin.			
	Send comments to Honorable A. A. Lagg, Mayor, City of Delavan, Municipal Building, Delavan, Wisconsin 53115.			

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1968 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 7, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11991 Filed 5-4-82; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 47, No. 87
Wednesday, May 5, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rate of Interest on Delinquent Debts

ACTION: Notice of rate of interest on delinquent debts.

SUMMARY: This notice sets forth the rate of interest which the Commodity Credit Corporation (CCC) is charging on delinquent debts. Publication of this interest rate in the **Federal Register** by CCC is in accordance with the regulations found at 7 CFR Part 1403, Interest on Delinquent Debts. In the absence of a different rule prescribed by statute, contract or regulation, it has been determined that the applicable rate which is to be charged by CCC on delinquent debts is 16.25 percent per annum.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis Brown, Claims Specialist, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6614.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformance with Executive Order 12291 and the Secretary's Memorandum 1512–1 and has been classified as "not major." It has been determined that the provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) Major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not have a major impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Attorney General and Comptroller General have jointly promulgated the Federal Claims Collection Standards (FCCS) in 4 CFR Parts 101-105 as mandated by the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 951–953). CCC is generally exempt from the provisions of the FCCS, since CCC has the authority under Section 4(k) of the CCC Charter Act (15 U.S.C. 714b(k) to make final and conclusive settlement and adjustment of all its claims. However, the Board of Directors, CCC, has administratively determined that the FCCS shall be applicable to all claims by CCC regardless of the amount (CCC Claims Policy Docket CZ 161a, Revision 4).

The FCCS requires that interest be charged on delinquent debts. In accordance with the FCCS, CCC issued the regulations at 7 CFR Part 1403, Interest on Delinquent Debts (see 46 FR 71442), to provide that CCC will charge interest on delinquent debts. These regulations provide at 7 CFR 1403.5 that CCC will publish a rate of interest to be charged on delinquent debts as a notice in the **Federal Register.**

Notice

Accordingly, the rate of interest which will be charged by Commodity Credit Corporation (on or after May 4, 1982 with respect to delinquent debts shall be 16.25 percent per annum.

Signed at Washington, D.C. on April 28, 1982.

Everett Rank,

Executive Vice President Commodity Credit Corporation.

[FR Doc. 82–12161 Filed 5–4–82; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Animal Health–Beef and Dairy Respiratory Diseases Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of Section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Animal Health–Beef and Dairy Respiratory Diseases—June 2, 3, and 4, 1982—9:00 a.m. to 5:30 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82–12246 Filed 5–4–82; 8:45 am]

BILLING CODE 3410–22–M

Swine and Sheep Diseases Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Swine and Sheep Diseases. June 15, 16, and 17, 1982—8:30 a.m. to 5:00 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12237 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Antidecertification Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Antidecertification. May 26, and 27, 1982—9:00 a.m. to 5:30 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12236 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Aquaculture Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Aquaculture June 7, 8, and 9, 1982—9:00 a.m. to 5:30 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12239 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which

are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites.

June 9, 10, and 11, 1982—8:30 a.m. to 5:00 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12245 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Beef and Dairy Cattle Reproductive Diseases Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

The Department has an obligation to consider as confidental matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee for Beef and Dairy Cattle Reproductive Diseases June 2, 3, and 4, 1982—8:30 a.m. to 4:30 p.m. daily

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12244 Filed 5-4-82 8:45 am]

BILLING CODE 3410-22-M

Energy Research Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidental matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Energy Research, June 1, 2, and 3, 1982—9:00 a.m. to 5:30 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12241 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Food Quality and Safety Research Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that: (1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Food Quality and Safety Research May 24, 25, and 26, 1982—9:00 am to 5:30 pm

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12240 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Poultry and Horse Diseases Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory groups meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C 552b(c), the Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Poultry and Horse Diseases. June 22, 23, and 24, 1982—8:30 a.m. to 5:00 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12242 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Soybeans Research Subcommittee; Determination To Close an Advisory Group Meeting

It is the policy of the Department of Agriculture to make fullest possible disclosure of its activities to the public. Consistent with this policy, the Department opens to the public as many advisory group meetings as possible. However, advisory group meetings held for the specific purpose of considering grant and contract proposals or applications should not be open meetings.

During such meetings, the material being discussed contains information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals or applications. These matters fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

The Department has an obligation to consider as confidential matters which are submitted as part of grant and contract proposals or applications.

It is hereby determined in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act, as amended, that:

(1) The topics to be discussed at this meeting fall within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

(2) The public interest requires that such matters not be disclosed so that the Department may continue to receive information with respect to grant and contract matters.

The entire meeting, or portion specified below, which is devoted solely to review, discussion, and evaluation of grant and contract proposals or applications should not be open to members of the public.

Subcommittee on Soybean Research May 20 and 21, 1982–9:00 a.m. to 5:30 p.m.

John R. Block,

Secretary of Agriculture.

April 30, 1982.

[FR Doc. 82-12243 Filed 5-4-82; 8:45 am]

BILLING CODE 3410-22-M

Forms Under Review by Office of Management and Budget

April 30, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

NEW

• Forest Service

States, Local Governments, and Other Federal Agencies Grazing Leasing Arrangements and User Charges.

Nonrecurring

State or local governments: 400 responses; 300 hours; not applicable under 3504(h)

Edward Frandsen (202) 235-8139

• Food and Nutrition Service

7 CFR 225—Summer Food Service Program—Recordkeeping.

On occasion

Business or other institutions: 86,000 responses; 8,063 hours; not applicable under 3504(h)

Norma Ball (703) 756-3886

• Food and Nutrition Service

Evaluation of Alternatives to Commodity Donation in the National School Lunch Program.

Quarterly

State or local governments: 2,478 responses; 1,229 hours; not applicable under 3504(h)

Michael Puma (703) 756-3115

• Food and Nutrition Service

7 CFR-227—Nutrition Education and Training Program Regulations—Recordkeeping.

On occasion

State or local governments: 114 responses; 16,074 hours; not applicable under 3504(h)

Joan Turetsky (703) 756-3554

• Food and Nutrition Service

Data on Food Bank Distribution Centers

Nonrecurring

State or local governments: 417 responses; 300 hours; not applicable under 3504(h)

Maure Hurt (301) 656-6346

REVISED

• Farmers Home Administration

7 CFR 1930-C Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

FmHA 444-8, 444-29, 1930-5, 1930-6, 1930-7, 1930-8

On occasion

Individuals or households, State or local governments: 424,420 responses; 629,962 hours; not applicable under 3504(h)
William F. Daniel (202) 382–1611

• Farmers Home Administration
7 CFR 1944–L Farmers Home Administration Tenant Grievance and Appeals Procedure
On occasion
Individuals or households, State or local government: 5,500 responses; 655 hours; not applicable under 3504(h)
William F. Daniel (202) 382–1611

• Forest Service
Experience Questionnaire
FS–6300–27
On occasion and annually
Businesses or other institutions: 4,000 responses; 2,000 hours; not applicable under 3504(h)
Esta Childers (703) 235–8165

• Agricultural Stablization and Conservation Service
Report of Production and Disposition of Peanuts and Report of Marketings of Peanuts to Non-Established Buyers
ASCS–1010 and ASCS–1011
Annually
Farms: 3,100 responses; 516 hours; not applicable under 3504(h)
Paul Kume (202) 382–0153

• Food and Nutrition Service
Part 210—National School Lunch Program—Reporting
Annually
State or local governments: 50,066 responses; 60,935 hours; not applicable under 3504(h)
Don McCreary (202) 447–8386

• Food and Nutrition Service
7 CFR–227—Nutrition Education and Training Program Regulations—Reporting
FNS–42
On occasion
State or local governments: 2,514 responses; 98,090 hours; not applicable under 3504(h)
Joan Turetsky (703) 756–3554

EXTENSION

• Agricultural Marketing Service
Cottonseed Prices
CN–235
Weekly during Selective Season
Businesses or other institutions: 7,980 responses; 399 hours; not applicable under 350(h)
Loyd R. Frazier (202) 447–2147

• Agricultural Marketing Service
Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping
On occasion
Business or other institutions: 4,200 responses; 69,700 hours; not applicable under 3504(h)
Richard W. Webber (202) 447–7473

• Office of Personnel
Advisory Committee Membership Background Information
AD–755
Annually
Individuals or households: 540 responses; 270 hours; not applicable under 3504(h)
Carolyn T. Wright (202) 447–7654

• Food and Nutrition Service
Food Stamp Mail Issuance Report
FNS–259
Quarterly
State or local governments: 7,268 responses; 4,291 hours; not applicable under 3504(h)
David Rathbun (703) 756–3431

REINSTATEMENT

• Extension Service
Soil/Plant Laboratory Testing Activities
ES 288 and ES 289
Biennially
State or local governments: 78 responses; 39 hours; not applicable under 3504(h)
Fred Westbrook (202) 447–5385

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82-12220 Filed 5-4-82; 8:45 am]
BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

Arista International Airlines, Inc.; Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations effective November 8, 1978, notice is hereby given that the Civil Aeronautics Board has received an application, Docket 40605, from Arista International Airlines, Inc., 516 Fifth Avenue, New York, New York 10036, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before May 26, 1982. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-12284 Filed 5-4-82; 8:45 am]
BILLING CODE 6320-01-M

[Order 82-4-137]

Fitness Determination of Air Oregon, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of commuter air carrier fitness determination—Order 82–4–137, order to show cause.

SUMMARY: The Board is proposing to find that Air Oregon, Inc., is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended; that it has the ability to provide reliable essential air service; that it is fit, willing, and able to provide scheduled passenger air transportation pursuant to its existing certificate issued under section 401(d)(5) of the Act; and that the aircraft used in this service conform to the applicable safety standards. The complete text of this order is available as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than May 14, 1982, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Essential Air Services Division, Room 921, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of the order.

FOR FURTHER INFORMATION CONTACT: Barbara Pfeiffer, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5354.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–4–137 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metroplitan area may send a postcard request for Order 82–4–137 to distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Bureau of Domestic Aviation: April 26, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-12285 Filed 5-4-82; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

Allocation of Duty-Free Quotas for Calendar Year 1982 Among Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration,

Commerce, and Office of Territorial Affairs, Interior.

ACTION: Allocation of duty-free quotas for calendar year 1982 among producers located in the Virgin Islands and Guam.

SUMMARY: Pursuant to Pub. L. 89–805 the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of watch quotas among watch assembly firms in the insular possessions. Section 303.5(a)(2) of the Departments' codified watch quota rules (15 CFR Part 303) provides for the annual allocation of watch quotas. The criteria for the calculation of the 1982 watch quotas among producers in the Virgin Islands and Guam are set forth in the final annual rules (the "Rules") published in the **Federal Register** dated March 11, 1982 (47 FR 10614 (1981)). The Departments have verified the data submitted on application form ITA–334P by producers in the Virgin Islands and Guam and inspected the current operations of all producers in accordance with § 303.4(b) of the codified rules. The verification established that in calendar year 1981 the Virgin Islands watch assembly firms shipped 2,628,628 watches and watch movements into the customs territory of the United States under General Headnote 3(a) of the Tariff Schedules of the United States. The dollar amount of corporate income taxes paid by all producers during calendar year 1981, less penalty payments and refunds and subsidies, plus the dollar amount of wages, up to a maximum of $23,000 per person, paid by all producers during calendar year 1981 to residents and attributable to the producers' headnote 3(a) watch and watch movement assembly operations totalled $3,623,868. The calendar year 1982 Virgin Islands annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and are made in accordance with the allocation formula contained in the Rules for that allocation of watch quota for calendar year 1982. The allocations include reallocations of quota pursuant to the codified watch quotas rules, as more fully explained in the Supplementary Information, below.

The duty-free watch quota allocations for calendar year 1982 in the Virgin Islands are as follows:

Name of firm	Annual allocation
1. Atlantic Time Products Corp.	250,000
2. Belair Watch Corp. & Belair Quartz Inc	750,000
3. Cornavin V.I., Inc.	30,000
4. Hampden Watch Co., Inc	250,000
5. Master Time Co., Inc	360,000
6. Progress Watch Co., Inc	800,000
7. Standard Time Co	100,000
8. Unitime Ind., Inc.	300,000
9. Waltham Watch Co. of the V.I. Inc.	50,000

The Guam allocation is made pursuant to Section 2 of the annual rules and is shown below.

Name of firm	Annual allocation
1. Timewise Ltd	503,400

FOR ADDITIONAL INFORMATION CONTACT: Mr. Frank W. Creel, who can be reached on 202–377–1660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 1, 1982 (47 FR 13935 (1982)), the International Trade Commission announced that the apparent U.S. consumption of watch movements for the calendar year 1981 was 90,610,000 units and that the number of watches and watch movements which may be entered free of duty during calendar year 1982 from the Virgin islands is 8,809,000 units and 839,000 units from Guam. Of the Virgin Islands units, 2,000,000 units are set aside for new entrants, leaving 6,809,000 units to be allocated at this time.

The above allocation of quota among Virgin Islands producers reflects: (1) Adjustments made in the data supplied on the producers' annual application forms (ITA Form 334P) as a result of the Department's verification (which adjustments were reviewed by officials of the respective companies during the Departments' Virgin Islands verification of data); and (2) Reallocation of quota which has been voluntarily relinquished by a number of producers pursuant to § 303.5(a)(2) of the codified watch quota rules.

The above allocation of Virgin Islands quota totals 2,880,000 units. The remaining 3,929,000 units of unallocated quota will be treated in accordance with § 303.9(b) of the codified watch quota rules. The remaining 335,600 units of unallocated Guam quota will be treated in accordance with the same codified provision and with sections 3(b) and 6 of the annual rules.

The number of watches and watch movements authorized for shipment on or after January 1, 1982, under initial quotas previously allocated by the Departments, will be applied against the allocations above, which are for the full calendar year 1982.

Issued at Washington, D.C., on April 29, 1982.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff, Import Administration, International Trade Administration, U.S. Department of Commerce.

Pedro A. Sanjuan,

Assistant Secretary for Territorial and International Affairs, U.S. Department of the Interior.

[FR Doc. 82–12143 Filed 5–4–82; 8:45 am]

BILLING CODE 4210–10–M; 3510–25–M

Minority Business Development Agency

Financial Assistance Application Announcement; Minority Export Development Consultant Program

Summary

The Minority Business Development Agency announces that it intends to award fifteen (15) competitive cooperative agreements to carry out its Minority Export Development Consultant program in selected SMSAs. The purpose of the program is to provide intensive support to minority business enterprises (MBEs) that have products and services that are in demand in the international marketplace. The consultant will be expected to:

- Develop export marketing plans.
- Identify potential markets and specific trade leads.
- Provide technical assistance necessary to complete international transactions including documentation, short-term financing and shipping.
- Coordinate with the public sector, i.e., the International Trade Administration, the Small Business Administration, and the Export-Import Bank and the private sector, i.e., export management companies, freight forwarders and banking institutions to insure full access by MBEs to the total realm of initiatives available in international trade.

Federal funds are estimated at $100,000 for each competitive agreement. Fees for services in the amount of 10 percent of assistance rendered will be charged to all clients whose gross sales are less than $500,000, and 25 percent will be charged to clients with gross sales in excess of $500,000. These fees will be treated as program income and will be added to funds committed to the project by MBDA and used to further eligible program objectives.

Cooperative agreements will be awarded without restriction as to type

of recipient, i.e., individuals, non-profit organizations, for-profit firms, local and state governments, federally recognized American Indian tribes and educational institutions. The recipient must have an existing office in the SMSA to be served and be able to demonstrate exporting knowledge and experience.

Application kits may be requested as follows:

Awards for *New York City* and *San Juan, Puerto Rico:* Minority Business Development Agency, 26 Federal Plaza, Room 36–116, New York, New York 10278. Attn: Allan Walls, (212) 264–4741.

Awards for *Baltimore/Washington* and *Philadelphia:* Minority Business Development Agency, 1730 K Street N.W., Suite 420, Washington, D.C. 20006. Attn: Vincent Martin, (202) 634–7883.

Awards for *Atlanta* and *Miami:* Minority Business Development Agency, 1371 Peachtree Street, N.E., Suite 505, Atlanta, Georgia 30309. Attn: Carlton Eccles, (404) 881–4091.

Awards for *Dallas, Houston, New Orleans* and *El Paso:* Minority Business Development Agency, 1100 Commerce Street—Room 7E23, Dallas, Texas 75242. Attn: Cathy Bowman, (214) 767–8001.

Awards for *Chicago* and *Detroit:* Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603. Attn: Celso Moreno, (312) 353–0185.

Awards for *San Francisco/Oakland, Los Angeles* and *San Diego:* Minority Business Development Agency, Federal Building, Room 15043, 450 Golden Gate Avenue, San Francisco, California 94102. Attn: Mikel Cook, (415) 556–6733.

The closing date for submission of ALL applications is May 7, 1982.

Dated: April 28, 1982.

Luis Encinias,

Acting Assistant Director for Enterprise Development.

[FR Doc. 82-12255 Filed 5-4-82; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China To Include a Review of Trade in Categories 337, 640, 641, and 648

May 3, 1982.

Pursuant to paragraph 8 of the bilateral textile agreement of September 17, 1980 between the Governments of the United States and the People's Republic of China, the United States has requested consultations with the Government of the People's Republic of China with respect to Categories 337 (Cotton Playsuits), 640 (Woven Shirts of Man-Made Fibers), 641 (Woven Blouses of Man-Made Fibers), and 648 (Women's, Girls', and Infants' Trousers of Man-Made Fibers). It is anticipated these consultations will be held in the near future.

Any party wishing to comment or provide data or information regarding the treatment of categories 337, 640, 641, and 648 under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textiles and apparel included in these categories, is invited to submit such comments or information in ten copies to Mr. Paul T. O'Day, Chairman, Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary of Commerce for Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-12241 Filed 5-4-82; 8:45 am]

BILLING CODE 3510-25-M

Announcing New TSUSA Numbers for Certain Man-Made Fiber Luggage and Related Products Which Are Exempt From Quota and Export Visa Requirements During 1982

AGENCY: Committee for the Implementation of Textile Agreements.

On December 18, 1981, there was published in the Federal Register (46 FR 61687) a letter dated December 15, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which exempted during 1982 certain luggage, handbags and flat goods of man-made fibers in Category 669 (only T.S.U.S.A. numbers 706.2045, 706.2700, 706.2840, and 706.2850) from the levels of restraint and export visa requirements in effect for certain cotton, wool, and man-made fiber textile products, regardless of the date of export.

The purpose of this notice is to announce that, effective on April 1, 1982, the four T.S.U.S.A. numbers covering man-made fiber luggage, handbags, and flat goods in Category 669 were changed to the following: 706.3400, 706.3900, 706.4140, and 706.4150. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements amends the letter of December 15, 1981 to exempt from the levels of restraint and export visa requirements man-made fiber textile products in Category 669 (only T.S.U.S.A. numbers 706.3400, 706.3900, 706.4140, and 706.4150).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

April 29, 1982.

Committee for the Implemenation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter amends, but does not cancel, the letter of December 15, 1981 which directed you, effective on January 1, 1982 and extending through December 31, 1982, to exempt from levels of restraint and export visa requirements certain specified man-made fiber textile products in Category 669 from all countries, regardless of the date of export.

Effective on April 1, 1982, the T.S.U.S.A. numbers of the designated products in Category 669 were changed to the following: 706.3400, 706.3900, 706.4140, and 706.4150. It would be appreciated if you would exempt these products from the levels of restraint and export visa requirements.

This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-12256 Filed 5-4-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Forms Under Review by OMB

Form: Individual Religious Education Enrollment and Attendance Record (SAC Form 532).

Notice of Information Collection—SAC Form 532 is used to obtain data on dependents of military personnel who wish to receive Religious Education (RE) training on SAC bases. The data is used by Chaplains, chapel management personnel and RE teachers to determine individual RE needs. Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John V. Wenderoth, Agency Clearance Officer, OASD(C), DIRMS, IRAD, Room 4B–929, Pentagon, Washington, DC 20301. A copy of the information collection proposal may be obtained from Henry Dalto, AF/ACMMR, Room 4D–223, Pentagon, Washington, DC 20330, telephone (202) 695–0848.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1982.

[FR Doc. 82-12294 Filed 5-4-82; 8:45 am]

BILLING CODE 3910-01-M

Forms Under Review by OMB

Form: Open Mess Membership Application (SAC Form 100).

Notice of Information Collection—Authorized personnel who wish to become members of the open mess on SAC bases are required to complete SAC Form 100. The form is used to maintain current membership at each mess and is also used as the authority to establish an accounts receivable (charge account) for each member. Forward comment to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John V. Wenderoth, Agency Clearance Officer, OASD(C), DIRM, IRAD, Room 4B–929, Pentagon, Washington, DC 20301. A copy of the information collection proposal may be obtained from Henry Dalto, AF/ACMMR, Room 4D–223, Pentagon, Washington, DC 20330, telephone (202) 695–0848.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1982.

[FR Doc. 82-12293 Filed 5-4-82; 8:45 am]

BILLING CODE 3910-01-M

Forms Under Review by OMB

Form: Sponsor's Report—Youth Activities (SAC Form 897).

Notice of Information Collection—SAC Form 897 is filled out by individuals who have volunteered to be sponsors or chaperones during SAC air base youth center activities. The form is used by the volunteer to record any problems encountered during the activity so management action can be initiated to prevent repeated occurrences. Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, Agency Clearance Officer, OASD(C), DIRMS, IRAD, Room 4B–929, Pentagon, Washington, D.C. 20301. A copy of the information collection proposal may be obtained from Henry Dalto, AF/ACMMR, Room 4D–223, Pentagon, Washington, D.C. 20330, telephone (202) 695–0848.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

April 30, 1982.

[FR Doc. 82-12292 Filed 5-4-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Energy Services, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Energy Services, Inc. as a final order of the Department.

EFFECTIVE DATE: March 15, 1982.

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 E. 11th Street, Kansas City, Missouri 64106–2466, telephone number (816) 374–2092.

SUPPLEMENTARY INFORMATION: On February 12, 1982, Vol. 47, No. 30, FR, Page 6462, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Energy Services, Inc. (Energy Services) on September 21, 1981, which would not become effective sooner that 30 days after publication of that notice. The Order resolves the dispute between the DOE and Energy Services arising out of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR Parts 205, 210, 211, 212, in connection with Energy Services' sales of crude oil during the period June 1, 1979 through January 28, 1981. The Order requires that within thirty (30) days of the effective date of the Consent Order, Energy Services is to deposit $750,000 with the U.S. Treasury to be held in an escrow account, and the ERA will determine ultimate distribution of the funds. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

Four comments were received. None objected to the validity of the Consent Order, rather each comment addressed only the distribution of the escrowed funds suggesting that the funds be allocated to state or local governments for energy related programs which would offer direct benefit and restitution to the unidentified consumer-purchasers.

Since the ERA received no comments objecting to the Consent Order as proposed, the Proposed Consent Order was made final and effective on March 15, 1982 without modification. In determining the ultimate distribution of the escrowed funds, the ERA will consider numerous factors including the suggestions submitted in the comments received.

Issued in Kansas City, Missouri, on the 16th day of March 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

[FR Doc. 82-12295 Filed 5-4-82; 8:45 am]

BILLING CODE 6450-01-M

Northwest Pipeline Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Northwest Pipeline Corporation as a final order of the Department.

EFFECTIVE DATE: March 15, 1982.

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 E. 11th Street, Kansas City, Missouri 64106–2466, telephone number (816) 374–2092.

SUPPLEMENTARY INFORMATION: On February 8, 1982, Vol. 47, No. 26, FR, Page 5758, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Northwest Pipeline Corporation (Northwest Pipeline) on November 10, 1981, which would not become effective sooner than 30 days after publication of that notice. The Order resolves the dispute between the DOE and Northwest Pipeline arising out of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR Parts 205, 210, 211, 212, in connection with Northwest Pipeline's sales of natural gas liquids and natural gas liquid products during the period February 1, 1974 through January 28, 1981. The Order requires that within twelve (12) months of the effective date of the Consent Order Northwest Pipeline is to deposit $1,500,000 with the U.S. Treasury to be held in an escrow account, and the ERA will determine ultimate distribution of the funds. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order. Three comments were received. None objected to the validity of the Consent Order. The comments addressed only the distribution of the escrowed funds. One comment suggested that the funds be allocated to state or local governments for energy related programs which would offer direct benefit and restitution to the unidentified consumer-purchasers; and, the other two comments were notifications of potential claims by purchasers of the products sold.

Since the ERA received no comments objecting to the Consent Order as proposed, the Proposed Consent Order was made final and effective on March 15, 1982 without modification. In determining the ultimate distribution of the escrowed funds, the ERA will consider numerous factors including the suggestions and potential claims submitted in the comments received.

Issued in Kansas City, Missouri, on the 16th day of March, 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

[FR Doc. 82-12286 Filed 5-4-82; 8:45 am]

BILLING CODE 6450-01-M

Robinson Energy Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Robinson Energy Corporation as a final order of the Department.

EFFECTIVE DATE: March 15, 1982.

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 E. 11th Street, Kansas City, Missouri 64106–2466, telephone number (816) 374–2092.

SUPPLEMENTARY INFORMATION: On February 12, 1982, Vol. 47, No. 30, FR, Page 6463, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Robinson Energy Corporation on December 11, 1981, which would not become effective sooner than 30 days after publication of that notice. The Order resolves the dispute between the DOE and Robinson arising out of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR 205, 210, 211, 212, in connection with Robinson's sales of crude oil during the period June 1, 1979 through January 28, 1981. The Order requires that within twenty-four (24) months of the effective date of the Consent Order, Robinson is to deposit $601,000 with the U.S. Treasury to be held in an escrow account, and the ERA will determine ultimate distribution of the funds. Pursuant to 10 CFR § 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

Four comments were received. None objected to the validity of the Consent Order, rather each comment addressed only the distribution of the escrowed funds suggesting that the funds be allocated to state or local governments for energy related programs which would offer direct benefit and restitution to the unidentified consumer-purchasers.

Since the ERA received no comments objecting to the Consent Order as proposed, the Proposed Consent Order was made final and effective on March 15, 1982 without modification. In determining the ultimate distribution of the escrowed funds, the ERA will consider numerous factors including the suggestions submitted in the comments received.

Issued in Kansas City, Missouri, on the 16th day of March, 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

[FR Doc. 82-12287 Filed 5-4-82; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $139,300 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving C. K. Smith & Company, Inc. brought by the DOE's Office of Enforcement.

DATE AND ADDRESS: Comments must be filed by June 4, 1982 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20461. All comments should conspicuously display a reference to case number HEF-0006.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20461, (202) 633–9834.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order relates to a consent order entered into by C. K. Smith & Company, Inc. 44 FR 39242 (1979).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Smith. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased No. 6 residual fuel oil from Smith during the period December 20, 1973 through April 30, 1974. The Proposed Decision and Order provides that in order to be

entitled to receive a portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that it was injured by the alleged unlawful prices for No. 6 residual fuel oil charged by Smith, including specific documentation concerning the date, place, price, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered.

The refund process suggested in the Proposed Decision and Order would take place in two separate stages. In the first stage, all meritorious claims for refunds by persons such as the initial purchasers would be paid. For the second stage, which would take place after the claims procedure is completed, the Proposed Decision and Order suggests that the remainder of the consent order funds might be distributed through rate regulated utilities or other regulated industries to persons who are likely to have been injured by the alleged overcharges. The determination also proposes alternatively to distribute the settlement funds to the governments of the cities or states in which Smith marketed No. 6 residual fuel oil during the period covered by the consent order.

As an alternative, the DOE proposes to deposit all remaining funds directly into the United States Treasury. The Proposed Decision emphasizes that no procedure for the second stage will be adopted until the claims process is completed.

It should be pointed out that until final procedures are adopted for the first stage, no claims for refund can be accepted. Applications for Refund therefore should not be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be given when the submission of claims is authorized. No less than 90 days from publication of such notice in the **Federal Register** will be provided for the filing of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted by June 4, 1982, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1111, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Issued in Washington, D.C. on April 28, 1982.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

April 28, 1982

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matter of C. K. Smith & Company, Inc.

Dates of Filing: November 3, 1981.
Case Numbers: HEF-0006.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the OE filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with C. K. Smith & Company, Inc. (Smith). Smith is a "reseller-retailer" of No. 6 residual fuel oil as that term was defined in 10 CFR 212.31 and 6 CFR 150.352. An audit of Smith's records revealed possible pricing violations with respect to the firm's sales of that product during the period December 20, 1073 through April 30, 1974. In order to settle all claims and disputes between Smith and the DOE regarding Smith's sales of No. 6 residual fuel oil during that period, Smith and the DOE entered into a consent order on May 30, 1979, in which Smith agreed to pay $139,300 to the DOE. Notice of the consent order was published in the **Federal Register** on July 5, 1979. *See* 44 FR 39242 (1979). Interested parties were invited to submit written notice to the DOE of potential claims against the settlement fund. A notice of claim and comments were received from the Braintree Electric Light Department (Braintree).

Jurisdiction and Authority To Fashion Refund Procedures

The OE filed a Petition for the Implementation of Special Refund Procedures under Subpart V in connection with the Smith consent order on November 3, 1981. Subpart V authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute moneys obtained as part of settlement agreements. 10 CFR 205.281, 205.282. The special refund procedures are part of an overall regulatory program which is intended to implement several different statutes. Congress provided for the mandatory allocation and pricing of crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* (1976). The authority to enforce regulations issued under the EPAA was granted by Section 5 of the EPAA, which incorporated enforcement authorities established in the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1970). EPAA, 5(a), 15 U.S.C. 754(a). The statutory authority to enforce the regulations governing the allocation and pricing of petroleum products was delegated to the Administrator of the Federal Energy Administration, and subsequently to the Secretary of Energy. Federal Energy Administration Act (FEAA), § 5, 15 U.S.C. 765 (1974); Department of Energy Organization Act (DOE Act), 201(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, and the DOE have provided throughout the existence of the price control program for the issuance of remedial orders requiring a person to cease a violation or to compensate for the effects of a violation, or both. *See* 6 CFR § 155.81(b) (1973); 10 CFR 205.2 (1974) (defining "remedial order").

In order to implement these statutory and regulatory goals, the DOE's restitutionary authority is designed to accomplish two objectives: Disgorgement of the fruits of a regulatory violation from the wrongdoers, and refunds to persons injured by the regulatory violation. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter referred to as *Vickers*); *Sauder* v. *DOE*, 648 F.2d 1,341 (Temp. Emer. Ct. App. 1981). The latter objective—refunds to overcharged persons—furthers the specific EPAA goal of providing for the "equitable distribution of * * * refined petroleum products at equitable prices * * * among all users." 15 U.S.C. 753 (b)(1)(F).

In the past the Subpart V process has been used in situations where the Department of Energy is unable to readily identify persons who are entitled to refunds or to readily ascertain the amounts that such persons are entitled to receive as a result of enforcement proceedings. 10 CFR 205.280. In several recent decisions we accepted jurisdiction over funds received by the DOE in settlement of enforcement

proceedings underlying Petitions for Implementation of Special Refund Procedures. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,515 (1981); *Office of Enforcement,* 8 DOE ¶ 82,516 (1981). In these decisions we determined that there was a significant degree of difficulty involved in identifying the persons who were injured by the alleged overcharges and that a Subpart V proceeding would be an effective and cost efficient means of making restitution to overcharged persons. After reviewing the record developed with respect to Smith, we have concluded that the implementation of Subpart V proceedings is also appropriate in this case. In this instance there is a significant degree of difficulty inherent in identifying the persons who were injured by the alleged overcharges and ascertaining the level of refunds that such persons should receive. Until recently, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to adversely affected purchasers through price rollbacks. However, on January 28, 1981, the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 FR 9909 (1981). As a result of decontrol, price rollbacks can no longer be used to refund moneys to purchasers who were overcharged in the past. Therefore, to refund money to the parties affected by the alleged overcharges, a determination must be made regarding the extent to which the first purchasers of the products involved absorbed the overcharges or passed the higher costs through to their customers by raising their own sales prices. In the present case, therefore, the persons entitled to refunds are not readily identifiable, and the amount of the refunds that any particular person should receive is not readily ascertainable. Under these circumstances, we believe that Subpart V provides the most useful mechanism to effect restitution to persons who were likely to have been injured by alleged pricing violations. The Office of Hearings and Appeals therefore has decided to exercise jurisdiction over distribution of the funds received by the DOE in settlement of the enforcement proceeding underlying the Petition for Implementation of Special Refund Procedures in the Smith case.

Proposed Refund Procedures

In view of the objectives expressed in the statutes and regulations discussed previously, the procedures to be implemented in this case should, to the maximum exent practicable, provide for the distribution of refunds to parties who were adversely affected by the alleged violations.

As we have stated before, refunding moneys obtained through DOE enforcement proceedings is the primary focus of Subpart V. 10 CFR 205.280; *see Vickers; Office of Enforcement,* No. BEF–0021 (March 13, 1981) (proposed decision), *issued in final form,* 9 DOE ¶ 82,508 (1981). Subpart V offers a means of compensating many individuals who, because they either lack the resources or do not have a sufficient financial stake in the outcome to institute private lawsuits under Section 210 of the ESA, have suffered injuries which would otherwise go unredressed. The Subpart V process is also an efficient administrative mechanism for returning alleged overcharges to injured parties because it eliminates the need for long and costly court actions.

A. *Refunds to Identifiable Purchasers.* During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by the alleged overcharges in sales of No. 6 residual fuel oil by Smith during the applicable period. We note that the first purchasers of that product from the firm are likely to be claimants in this proceeding. First purchasers can generally be categorized as either resellers of No. 6 residual fuel oil or entities which were the ultimate consumers of the product. To the extent that first purchasers can establish that they absorbed the overcharges rather than pass them on to their customers, they will be entitled to receive a portion of the consent order funds. In order to qualify for a refund, first purchasers will be required to demonstrate that during the period covered by the consent order they would have kept their prices for petroleum products or goods and services at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller should generally demonstrate that at the time it purchased the No. 6 residual fuel oil from Smith, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.

With respect to certain first purchasers who are ultimate consumers, we believe that the above showing should not be necessary in order for a firm to qualify for a refund. The operations that would form this group might include hospitals, industrial plants, large apartment buildings and federal, state, and local government entities. In order to establish a claim, this type of first purchaser need demonstrate only that it purchased a specific quantity of No. 6 residual fuel oil which was sold by Smith during the relevant time period.

In *Office of Special Counsel,* 9 DOE ¶—— No. BEF–0072 (March 10, 1982) (hereinafter referred to as *Pennzoil*) we determined that regulated transportation companies, agricultural cooperatives and a corporation which acts as a fuel purchasing agent for several public utilities would not be required to offer proof that they absorbed the overcharges. In reaching that determination we noted the claims made by several regulated entities that any overcharges they suffered would have been channeled to their customers by the regulatory bodies or private contractual agreements that control the prices that they may charge. We also pointed out that the Office of Special Counsel has reviewed the operations of the agencies which regulate transportation companies and utilities and has determined that refunds are factored into their rate making systems. 46 FR at 29500–01 (1981). We further noted that agricultural cooperatives are owned by their customers, and the ultimate consumers of the petroleum products purchased by the cooperative would receive a refund either as a price reduction or as a distribution at the close of the cooperative's fiscal year. In *Pennzoil* we therefor concluded that:

> firms whose prices for goods or services are regulated by a government agency or by the terms of a cooperative agreement will not be required to show that they absorbed the alleged Pennzoil overcharges. Instead, those applicants should supply us with a full explanation of the manner in which refunds will be passed through to their customers in the form of lower prices or better service. In addition, these applicants' receipt of refund money will be conditioned on notice to the appropriate regulatory body or membership group.

Slip op. at 9.

We believe that this approach should be adopted in the Smith proceeding with respect to those types of entities.[1]

In the event that the first purchasers are unable to make the showings described above, firms and individuals

[1] It appears that Braintree, the municipally owned electric system referred to above, may be a regulated entity of the type referred to in *Pennzoil.*

who purchased products from the first purchasers may be eligible to receive a portion of the funds. In order to establish an entitlement to a refund, a person claiming to be an injured party must satisfactorially demonstrate that it purchased, during the relevant time period, a specific quantity of No. 6 residual fuel oil sold by Smith. Privity with either Smith or one of its first purchasers need not be established; evidence need only be presented that the product purchased by the claimant followed through a chain of distribution leading back to Smith. In addition, unless the purchaser is an ultimate consumer, it should generally be able to demonstrate that it did not pass through the cost increases resulting from the alleged overcharges to its own customers. For example, a purchaser who resold the product should be in a position to show that market conditions did not permit it to raise prices charged to downsteam customers, and that consequently it was fored to absorb the cost increases that are represented by the alleged overcharges. In the absence of that showing, we could conclude that the claimant was not injured in amonetary sense by the alleged overcharge. However, in the *Vickers* decision, we noted that the nature of the showing required could be too complicated for those individuals and firms who might otherwise be entitled to apply for refunds and who purchased relatively small amounts of products. We also observed that many of those purchasers might lack the types of records required to support such a showing. We therefore established in that case a 50,000 gallons per month (or 600,000 gallons per year) threshold level of purchases under which applicants, primarily smaller firms and individuals, were not required to make a detailed showing of actual injury. For those applicants who were claiming less than that level of purchases, we required only proof of the amount of product purchased by the applicant during the consent order period. However, the *Vickers* decision did require applicants whose purchases exceeded the threshold level to provide detailed information which would establish that they did not pass through the price increases to their customers. We will consider using the same type of treatment for smaller claimants in this proceeding, and we specifically request comments from the public on this issue. *See Vickers; office of Special Counsel for Complicance*, 4 DOE ¶ 82,511 at 85,043–4 (1979)

In *Vickers* we utilized a "pure" volumetric method of allocating refunds to claimants, *i.e.* refunds were based on the proportion of product purchased by the applicant to the total amount of product sold by the supplier during the relevant audit period. When the *Vickers* decision was issued in July 1981, we believed that this method of distribution was appropriate for allocating the *Vickers* settlement funds because: (i) It is an administratively efficent method for determining what proportion of the settlement fund should go to each successful claimant; (ii) it serves as a useful approximation of injury in the treatment of overcharged claimants who are unable to quantify their alleged injury; and (iii) it allows applicants to recover a significant refund for each gallon of product they purchased.

Based on our experience in Subpart V cases since that time, however, we now believe that the adoption of the "pure" volumetric plan of distribution used in *Vickers* would not be the best mechanism for allocating the Smith consent order funds. There are a number of factors leading to this conclusion. First, we note that the size of the monetary settlements which are involved in Subpart V proceedings are arrived at through negotiations involving the DOE and the firms charged with the alleged regulatory violations. In *Pennzoil*, a recent decision that addressed this issue, we noted that the size of a settlement fund is based upon both the magnitude of the violations alleged by the government and other factors such as each party's views as to the probable length, expense and success of litigation. In *Vickers*, the settlement fund happened to be relatively large in proportion to the volume of product covered by the consent order and would therefore yield a significant per gallon refund. In *Pennzoil*, however, the settlement fund was small in relation to the total volume of products involved, and successful claimants would recover a refund of only $.000375 per gallon if the settlement fund were distributed on a "pure" volumetric basis. Moreover, we believe that as a general proposition many claimants in the present case will be unable to provide the type of evidence necessary to support the approval of a refund application. For example, it may be difficult and costly for potential claimants to demonstrate that the effects of alleged regulatory violations were not passed through to their downstream customers. As a result, the total amount for which meritorious claims are submitted may be far less than the amount of the settlement funds available for distribution. *See Pennzoil*, slip op. at 13.

In this proceeding, we will follow *Pennzoil*, and adopt an alternative mechanism of distribution based on a modified version of the "pure" volumetric distribution scheme used in *Vickers*. As noted above, the size of the fund available for distribution is likely to be less than the amount needed to make full restitution to the injured claimants involved in this proceeding. The use of a "pure" volumetric mechanism would have the undesirable effect of placing a further artificial limitation on the amount of the refunds that are eventually received by successful claimants. We therefore believe that it is fully consistent with the restitutionary objectives of the present proceeding to distribute more than a pure volumetric share of the available Smith funds to successful claimants. First we will establish a "floor" or minimum amount a successful claimant could receive which will assist a potential applicant in deciding whether or not to apply for a refund. In this proceeding the minimum amount that a successful claimant will recover can be determined by multiplying its total product purchases (in gallons) by a factor computed using the total amount of money available for distribution divided by the total sales (in gallons) of the No. 6 residual fuel oil covered by the consent order. However, after the minimum refund amount has been determined for each successful claimant, the OHA will also give consideration to the following factors in determining individual refunds: (i) the amount of interest accumulated in the escrow account since the DOE received settlement funds from Smith; (ii) the number of qualified claimants, and the aggregate volume of their purchases from Smith compared to the amount of products sold by the firm during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) market conditions prevalent during the consent order period; (v) the claimant's position in the distribution chain, *i.e.* whether it is a reseller or ultimate consumer; and (vi) the manner in which the claimant's business is governed by federal, state or local regulatory agencies. A weighing and balancing of these factors will enable us to further the restitutionary goals of Subpart V and the underlying statutory objectives.

Any purchaser claiming a portion of the refund amount should file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim, including specific documentation concerning the

date, place price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers.* Before disposing of any of the funds received as a result of the Smith consent order, we intend to widely publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register,** notice will be provided in publications in the area in which Smith marketed No. 6 residual fuel oil during the period covered by the consent order, and an effort will be made to get a list of the names and addresses of affected first purchasers from Smith. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

B. *Distribution of the Remainder of the Refund Amount.* After all meritorious claimants have received the share of the settlement fund to which they are entitled, the settlement fund, while diminished, may not be exhausted. The remainder of the funds should be distributed during the second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. In this decision, we are proposing several alternatives for the second-stage refund procedure. However, we wish to emphasize that any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As we noted in *Vickers:*

> [such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. As in that case, we intend to set forth a number of second-stage alternatives in this proposed decision, consider the comments received after publication in the **Federal Register,** and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will summarize and address briefly the comments received concerning the proposed second-stage procedure, and will solicit another round of comments on the distribution of the funds remaining after payment of claims in the first stage. In this way, we will have several opportunities to consider the outstanding issues before reaching a final decision on the second stage.

Since refunding money to injured persons is the primary concern of Subpart V proceedings, we believe that the remaining funds should, if administratively and economically feasible, be distributed to groups of ultimate consumers who were likely to have borne a portion of the higher prices charged by Smith. In view of the relatively small sums of money likely to be involved in claims by many ultimate consumers, and the improbability that members of this class will possess records sufficient to establish their claims, we anticipate that only a limited number of ultimate consumers who were actually injured by the alleged overcharges will be able to prove during the first stage of the refund process that they are entitled to refunds. *See Vickers.* The fact that claims to specific refunds may not have been proved, however, does not mean that injuries to ultimate consumers have not occurred. Rather, the absence of claims for the full amount of the settlements would tend to reflect the difficulty such parties encounter in establishing a valid claim for a portion of the consent order funds.

If a second stage should prove necessary in this refund proceeding, refunds might be made in the form of lowered energy costs or energy related costs in the Smith market area. For example, in *Office of Special Counsel for Compliance,* No. DFF-0002 (March 13, 1981) (proposed decision), we proposed that the second-stage refund to consumers who were likely to have been overcharged be effected by using rate-regulated utilities to pass through the remaining funds to consumers through fuel adjustment clauses or other appropriate mechanisms. We observed that it is likely that the persons who purchased motor gasoline or heating oil in a particular area would reside there as well and would ultimately be consumers of electricity. They would therefore benefit from the proposed rate reduction. We further suggested that state governments in the affected areas also may be designated as refund recipients for the purpose of reducing energy-related expenses subject to their direct control. County and local governments are also candidates for distributing the refund amounts to affected citizens. Although we cannot yet determine what actions we will take in the second stage, we will consider these types of restitutionary schemes as possible alternatives.

In the event that the distribution schemes discussed above prove to be inappropriate because of administrative costs or the lack of accurate information, we propose that the portion of the settlement fund which would go undistributed be deposited in the United States Treasury. We also propose as an alternative to the distribution scheme outlined above that any funds remaining after the first stage claims procedure be deposited directly into the United States Treasury. Subpart V regulations specifically sanction this course of action, *see* 10 CFR 205.287(c), and direct payments to the Treasury may well be appropriate in those cases where other remedies would be ineffectual or administratively burdensome. *See Golden Eagle Oil Co.,* 6 DOE ¶ 83,005 at 86,065 (1980); *cf. Chana's Auto Service Center,* 8 DOE ¶ 83,002 (1981). However, as noted above, we will not be in a position to decide what should be done with any remaining funds until after the first-stage refund procedure is completed. Only then will we know the amount of money available for the second stage of the refund process. This factor, as noted above, will strongly influence the ultimate disposition of those funds.

It Is Therefore Ordered That:

The $139,300 refund amount supplied by C. K. Smith & Company, Inc. will be distributed in accordance with the foregoing Decision.

[FR Doc. 82-12146 Filed 5-4-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of March 29 Through April 2, 1982

During the week of March 29 through April 2, 1982, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a

proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of the proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

April 28, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Rogers Fuels, Inc., Middlebury, Vermont, HEE–0015

Rogers Fuels, Inc. (Rogers) filed an Application for Exception from Energy Information Administration reporting requirements. The exception request, if granted, would permit Rogers to be relieved of the obligation to file a Form EIA–9A. On March 29, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the firm be relieved of its obligation to file Form EIA–9A for a temporary period.

[FR Doc. 82–12145 Filed 5–4–82; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Orders Filed; Week of April 5 Through April 9, 1982

During the week of April 5 through April 9, 1982, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 on or before May 26, 1982. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

April 28, 1982

George B. Breznay,

Director, Office of Hearings and Appeals.

Petroleum Delivery Service, Inc., North Miami Beach, Florida, Gasoline and No. 2 Diesel Fuel, HRO–0040

On April 9, 1982, Petroleum Delivery Service, Inc. (PDS) 1375 N.E. 135th Street, N. Miami Beach, Florida 33160, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on March 25, 1982. In the PRO the Southeast District found that during the period November 1, 1973 through July 31, 1974, PDS sold covered products at prices in excess of those permitted under 6 CFR 150.359 and 10 CFR Part 212, Subpart F of the Mandatory Petroleum Price Regulations. According to the PRO the PDS violation resulted in $338,004.03 of overcharges.

Sonat, Inc. (Formerly Southern Natural Resources, Inc.), Birmingham, Alabama, Natural Gas Liquid, Products, HRO–0039

On April 5, 1982, Sonat, Inc., formerly Southern Natural Resources, Inc., P.O. Box 2563, Birmingham, Alabama 35202, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on March 9, 1982. In the PRO the Southeast District found that during September 1, 1973 to July 31, 1975, Sonat, a refiner and gas plant owner, sold natural gas liquid products at prices in excess of those permitted under 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subparts E and K of the Mandatory Petroleum Price Regulations. According to the PRO the Sonat violation resulted in $1,965,554.17 of overcharges.

[FR Doc. 82–12144 Filed 5–4–82; 8:45 am]

BILLING CODE 6450–01–M

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Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: April 28, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** KANSAS CORPORATION COMMISSION **********									
-AMOCO PRODUCTION CO			RECEIVED:	04/05/82		JA: KS			
8226479	K82-0163	1509300000	108			BARROW GAS UNIT #1	HUGOTON	18.0	CITIES SERVICE GA
8226481	K82-0161	1509300000	108			KLEEMAN GAS UNIT "B" #1	HUGOTON	17.8	CITIES SERVICE GA
8226480	K82-0162	1518700003	108			KOENIG GAS UNIT "B" #1	HUGOTON	17.5	CITIES SERVICE GA
8226477	K-82-0165	1505500000	108			MORRIS GAS UNIT "B" #1	HUGOTON	17.5	CITIES SERVICE GA
8226478	K82-0164	1512900000	108			TENNIS GAS UNIT #1	HUGOTON	18.5	CITIES SERVICE GA
8226543	K-82-0144	1508120184	103			VOSHELL C A #2	HUGOTON	B73.0	CITIES SERVICE GA
-ANADARKO PRODUCTION COMPANY			RECEIVED:	04/05/82		JA: KS			
8226535	K-81-1308	1515520430	108			ARCHIE A-1	LANGDON	14.9	PANHANDLE EASTERN
8226495	K-82-0068	1517500080	108			GILMORE B #1	CONDIT	3.4	CIMARRON-QUINQUE
8226494	K-82-0069	1512900000	108			REPUBLIC B #1	SANTA FE TRAIL	4.4	PANHANDLE EASTERN
8226497	K82-0066	1518920405	108			SPIKES C #1	GENTZLER	18.1	CIMARRON-QUINQUE
-ANTARES OIL CORPORATION			RECEIVED:	04/05/82		JA: KS			
8226591	K-82-0123	1515120943	103			SCHREPEL #1	COATS WEST	188.0	KANSAS GAS SUPPLY
-ARCO OIL AND GAS COMPANY			RECEIVED:	04/05/82		JA: KS			
8226488	K-82-0088	1518700080	108			SHELL-WINGER UNIT WN #1	HUGOTON	14.6	EL PASO NATURAL G
-ASSOCIATE RESOURCE CORP			RECEIVED:	04/05/82		JA: KS			
8226484	K82-0093	1512522843	103			BELLAMY #3-A	EAST COFFEYVILLE	10.4	VERDIGRIS ENERGY
8226485	K82-0092	1512522950	103			BERGAN #1	EAST COFFEYVILLE	9.0	VERDIGRIS ENERGY
8226486	K-82-0091	1512522952	103			BERGAN #3	EAST COFFEYVILLE	9.0	VERDIGRIS ENERGY
8226487	K-82-0089	1512523453	103			BERGAN #5	EAST COFFEYVILLE	14.4	VERDIGRIS ENERGY
-BENSON MINERAL GROUP			RECEIVED:	04/05/82		JA: KE			
8226584	K-82-0006	1512524498	102-2			BOLTE #2-5	JEFFERSON-SYCAMORE	9.1	UNION GAS SYSTEMS
8226513	K81-0235	1512522705	108			ERWIN #2-32	JEFFERSON-SYCAMORE	7.3	UNION GAS SYSTEMS
8226585	K-82-0005	1512524500	103			ERWIN #4-32	JEFFERSON-SYCAMORE	21.5	UNION GAS SYSTEMS
8226515	K-81-0451	1503522049	108			JOHNSON #1-12	TISDALE GAS	18.3	COLONIAL CORP
8226514	K-81-0450	1503522088	108			JOHNSON #3-12	TISDALE GAS AREA	18.3	COLONIAL CORP
8226512	K-81-0236	1512522713	108			KAUFMAN #2-31	JEFFERSON-SYCAMORE	7.7	UNION GAS SYSTEMS
8226510	K-81-0233	1512522714	108			KAUFMAN #3-31	JEFFERSON-SYCAMORE	6.6	UNION GAS SYSTEMS
8226587	K-82-0003	1512524502	103			LEMOINE #2-30	JEFFERSON-SYCAMORE	11.0	UNION GAS SYSTEMS
8226586	K-82-0004	1512524503	103			LEMOINE #3-30	JEFFERSON-SYCAMORE	12.1	UNION GAS SYSTEMS
8226505	K-81-0113	1503522017	108			RUSSELL #1-23	TISDALE	17.9	COLONIAL CORP
8226516	K-81-0112	1503522093	108			RUSSELL #2-23	TISDALE	17.9	COLONIAL CORP
8226592	K-82-0125	1514520792	102-2			TAMMEN 1-16	STEFFEN SOUTH	474.5	NORTHERN NATURAL
8226511	K-81-0234	1512522710	108			WISE #2-5	JEFFERSON-SYCAMORE	9.5	UNION GAS SYSTEMS
8226583	K-82-0007	1512524504	102-2			WISE #6-5	JEFFERSON-SYCAMORE	18.3	UNION GAS SYSTEMS
8226582	K-82-0008	1512524505	102-2			WISE #7-5	JEFFERSON-SYCAMORE	11.0	UNION GAS SYSTEMS
-BEREN CORPORATION			RECEIVED:	04/05/82		JA: KS			
8226493	K-82-0070	1509720831	102-2			KELTON "A" #1	CARVER-ROBBINS WEST	100.0	PANHANDLE EASTERN
-BOWERS DRILLING CO INC			RECEIVED:	04/05/82		JA: KS			
8226555	K-82-0105	1507700000	108			AXLINE (MISSISSIPPI) #1	ILS	17.0	CITIES SERVICE GA

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226556	K-82-0106	1500720402		108		AXLINE B-2	ILS	14.0	CENTRAL STATES GA
8226557	K-82-0107	1500720455		108		AXLINE 2-17	ILS	10.0	CENTRAL STATES GA
8226558	K-82-0108	1500720089		108		BAIER #1	AETNA MISSISSIPPI	17.0	CITIES SERVICE GA
8226559	K-82-0109	1500700000		108		BINNING #1	BOGGS	9.0	CITIES SERVICE GA
8226560	K-82-0110	1500700000		108		LONKER B #1	BOGGS	10.0	CITIES SERVICE GA
8226561	K-82-0111	1500700000		108		LONKER C #1	BOGGS	15.0	CITIES SERVICE GA
8226562	K-82-0112	1500720097		108		MCBRAYER A #1	AETNA	16.0	CITIES SERVICE GA
8226585	K-82-0113	1500700000		108		MEE #1	BOGGS	13.0	CITIES SERVICE GA
8226589	K-82-0114	1500720699		108		PENDLEY #1	RHODES SOUTHWEST	5.0	CITIES SERVICE GA
-CITIES SERVICE COMPANY				RECEIVED:	04/05/82	JA: KS			
8226530	K-82-0002	1517520532		103		BAUGHMAN V #1	LEMERT	49.5	NORTHERN NATURAL
8226478	K-82-0036	1505500000		108		TAIT G #1	HUGOTON	15.4	NORTHERN NATURAL
8226521	K-81-1303	1504720926		103		WILSON "B" #4	WIL KINDERHOOK	36.5	NORTHERN NATURAL
-EARL M KNIGHTON				RECEIVED:	04/05/82	JA: KS			
8226570	K-82-0238	1518500000		108		SUITTER "B" #1	MACKSVILLE	7.7	KANSAS-NEBRASKA N
-EDMISTON OIL CO INC				RECEIVED:	04/05/82	JA: KS			
8226544	K-82-0145	1500720759		103		GRAVES #1	HARDTNER	12.0	KANSAS GAS SUPPLY
8226545	K-82-0146	1500720855		103		GRAVES #2	HARDTNER	12.0	KANSAS GAS SUPPLY
8226546	K-82-0147	1500720865		103		GRAVES #3	HARDTNER	12.0	KANSAS GAS SUPPLY
8226547	K-82-0148	1500720957		103		GRAVES #4	HARDTNER	12.0	KANSAS GAS SUPPLY
8226548	K-82-0149	1500720711		103		OHLSON "B" #1	HARDTNER	7.2	KANSAS GAS SUPPLY
8226549	K-82-0150	1500720736		103		OHLSON "B" #2	HARDTNER	20.4	KANSAS GAS SUPPLY
-ELDEN HENKE				RECEIVED:	04/05/82	JA: KS			
8226593	K-82-0126	1511500000		108		HENKE #2	LOST SPRINGS	1.4	KAN-GO INC
8226594	K-82-0127	1511500000		108		HENKE #5	LOST SPRINGS	1.4	KAN-GO INC
8226498	K-82-0128	1511500000		108		HENKE #7	LOST SPRINGS	1.4	KAN-GO INC
-EXXON CORPORATION				RECEIVED:	04/05/82	JA: KS			
8226474	K-82-0027	1504720898		103		PAUL MEYER #5	EMBRY	0.0	NORTHERN NATURAL
-F G HOLL				RECEIVED:	04/05/82	JA: KS			
8226531	K-82-0042	1514520859		102-4		FOX #1-34	MASSEY EXT	14.3	NORTHERN NATURAL
8226508	K-81-0469	1504720563		108		MCKINNEY "C" #1-3	WAYNE S EXT	18.0	REPUBLIC NATURAL
8226507	K-81-0830	1504720184		108		MEYER #1	EMBRY EXT	20.0	KANSAS-NEBRASKA N
8226573	K-82-0041	1504720812		102-4		SCHARTZ #1-14	WIL WEST EXT	75.0	REPUBLIC NATURAL
8226574	K-82-0040	1504720817		102-4		W B CROSS #2-17	WAYNE NW	11.5	REPUBLIC NATURAL
-GATOR OIL CO				RECEIVED:	04/05/82	JA: KS			
8226476	K-82-0025	1512522274		108		MCCONNELL EAST #2	JEFFERSON-SYCAMORE	3.7	UNION GAS SYSTEMS
-GS OIL & GAS CO				RECEIVED:	04/05/82	JA: KS			
8226491	K-82-0081	1502520443		103		NORMAN A GILES #2-24	LEXINGTON (MISSISSIPP	182.5	KANSAS POWER & LI
-GULF OIL CORPORATION				RECEIVED:	04/05/82	JA: KS			
8226503	K-82-0132	1500721298		103		SCHOOL TRUST #17-5	HARDTNER	25.0	CITIES SERVICE GA
8226504	K-82-0134	1500721309		103		SCHOOL TRUST #18-5	HARDTNER	30.0	CITIES SERVICE GA
-HAROLD C LIDDELL				RECEIVED:	04/05/82	JA: KS			
8226575	K-82-0072	1504720128		108		MCCARTY #1	MCCARTY (COND-MISS)	4.7	NORTHERN NATURAL
8226492	K82-0071	1504720127		108		SMITH #1	MCCARTY (CONG) NE	5.3	NORTHERN NATURAL
-HELLAR DRILLING CO INC				RECEIVED:	04/05/82	JA: KS			
8226565	K-82-0243	1516500000		108		BIEBERR #1	REICHEL	7.6	HELLAR DRILLING C
8226566	K-82-0242	1516500000		108		GILLIG #1	REICHEL	5.3	HELLAR DRILLING C
8226571	K-82-0236	1518520355		108		O'CONNER #1	O'CONNER	5.6	KANSAS-NEBRASKA N
8226509	K-81-1107	1505320589		102-2		RATHBUN #1	WILD CAT	25.5	GARFIELD GAS GATH
8226563	K-82-0245	1516500000		108		REICHEL #1	REICHEL	4.6	HELLAR DRILLING C
8226564	K-82-0244	1516500000		108		ROTHE #1	REICHEL	9.4	HELLAR DRILLING C
-HOLLY ENERGY INC				RECEIVED:	04/05/82	JA: KS			
8226475	K-82-0028	1503320467		103		BAKER TRUST #1	COLLIER FLATS SOUTH	70.0	NORTHERN NATURAL

UMI 28855 YM 28124

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8226473	K 82-0029	1503320500		103		BAKER TRUST #2
-IMPERIAL OIL COMPANY				RECEIVED:	04/05/82	JA: KS
8226541	K-82-0137	1509720767		102-2		FRUIT #1-13
8226489	K82-0087	1509720838		102-2		WINKLEPLECK #2-12
-KENNEDY & MITCHELL INC				RECEIVED:	04/05/82	JA: KS
8226506	K-81-1188	1511920351		103		WALKER #25-419
-LEAR PETROLEUM EXPLORATION INC				RECEIVED:	04/05/82	JA: KS
8226500	K-82-0122	1503320438		102-2		BAYNE #2-5
-MOBIL OIL CORP				RECEIVED:	04/05/82	JA: KS
8226552	K-81-1266	1518920547		102-4		FLOWER #1 UNIT #2
-MONSANTO COMPANY				RECEIVED:	04/05/82	JA: KS
8226523	K-81-1309	1509520940		103		RENDER #1
8226524	K-81-1310	1509520999		103		RENDER #2
8226525	K-81-1311	1509521094		103		RENDER #3
8226526	K-81-1312	1509521148		103		RENDER #4
8226527	K-81-1313	1509521134		103		YOUNG #2
-NULL DRILLING CO INC				RECEIVED:	04/05/82	JA: KS
8226528	K-81-1314	1507720711		103		FANNING #1
-N AMER DRILLING & EXPLORATION INC				RECEIVED:	04/05/82	JA: KS
8226568	K-82-0240	1504720478		108		ANDERSON #1
8226567	K-82-0241	1504720546		108		FAIR #3
8226569	K-82-0239	1504720283		108		MILLER #1
-NATIONAL COOP REFINERY ASSOC				RECEIVED:	04/05/82	JA: KS
8226554	K-82-0104	1500721301		103		GOOD #2
-NATIONAL OIL COMPANY				RECEIVED:	04/05/82	JA: KS
8226502	K-82-0132	1511920540		103		HOLMES #24-10
-OMNI PRODUCTION CO INC				RECEIVED:	04/05/82	JA: KS
8226482	K82-0160	1520522082		102-2		LOFLIN #1A
8226483	K-82-0159	1520521322		102-2		POSTIER #1C
8226581	K-82-0234	1520521814		102-2		POSTIER #2
8226572	K-82-0235	1520521970		102-2		POSTIER #3
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/05/82	JA: KS
8226529	K-82-0031	1511900800		108		ADAMS M #1
-PHOENIX RESOURCES COMPANY				RECEIVED:	04/05/82	JA: KS
8226542	K-82-0138	1517520524		103		LIGHT #2-H
-QUINQUE OIL & GAS PRODUCING CO				RECEIVED:	04/05/82	JA: KS
8226553	K-82-0180	1517520548		102-4		KEATING #2-24
-ROBERT F WHITE				RECEIVED:	04/05/82	JA: KS
8226595	K-79-1237	1511500000		108-ER		FRITZ A #1
-ROXANA CORP				RECEIVED:	04/05/82	JA: KS
8226469	K-82-0033	1518520940		103		DEBUSK #3
8226471	K 82-0031	1518521280		103		LINK #3
8226472	K-82-0030	1518521275		103		TURNER #3
-S & G OIL CO INC				RECEIVED:	04/05/82	JA: KS
8226490	K-82-0005	1509520590		108		JOHNSON #3
-SHAWMAR OIL CO INC				RECEIVED:	04/05/82	JA: KS
8226533	K-81-1306	1511520232		108		SCHLEHUBER #1 00173-000004
8226532	K-81-1305	1511520858		108		SCHLEHUBER #2 00173-000004
8226522	K-81-1304	1511520401		108		SCHLEHUBER #3 00173-000004
8226534	K-81-1307	1511520451		108		WIGHT #12 00173-000006
-SOHIO PETROLEUM CO				RECEIVED:	04/05/82	JA: KS
8226496	K-82-0367	1515120914		103		FINCHAM I-A
-TERRY P SILHAN				RECEIVED:	04/05/82	JA: KS

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FIELD NAME	PROD	PURCHASER
COLLIER FLATS SOUTH	70.0	NORTHERN NATURAL
CARVER ROBBINS WEST	2920.0	PANHANDLE EASTERN
CARVER ROBBINS WEST	54.8	PANHANDLE EASTERN
MCKINNEY GAS AREA	150.0	NORTHERN NATURAL
BIRD SOUTH	110.0	MICHIGAN WISCONSI
WILDCAT (WALKEMEYER)	108.9	NORTHERN NATURAL
SPIVEY GRABS	20.0	KANSAS GAS SUPPLY
SPIVEY GRABS	30.0	KANSAS GAS SUPPLY
SPIVEY GRABS	40.0	KANSAS GAS SUPPLY
SPIVEY GRABS	75.0	KANSAS GAS SUPPLY
SPIVEY GRABS	20.0	KANSAS GAS SUPPLY
HIBBORD NE	73.0	PEOPLES NATURAL G
WIL	0.0	PANHANDLE EASTERN
WIL	15.4	CENTRAL STATES GA
WIL	19.8	CENTRAL STATES GA
HARDTNER	25.0	KANSAS GAS SUPPLY
NOVINGER	188.0	PANHANDLE EASTERN
NEODESHA	148.5	TULSA GAS GATHERI
NEODESHA	60.0	TULSA GAS GATHERI
NEODESHA	3.3	TULSA GAS GATHERI
NEODESHA	3.3	TULSA GAS GATHERI
ADAMS RANCH MISS	9.0	COLORADO INTERSTA
THREE STAR	180.0	PANHANDLE EASTERN
WILDCAT	91.2	PANHANDLE EASTERN
LOST SPRINGS	0.0	CITIES SERVICE GA
DILLWYN WEST EXT	150.0	CENTRAL STATES GA
CRISSMAN NO	150.0	CENTRAL STATES GA
CRISSMAN NO	75.0	CENTRAL STATES GA
SPIVEY-GRABS	7.0	PEOPLES NATURAL G
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE POOL	5.0	CITIES SERVICE GA
SWISHER	10.6	CENTRAL STATES GA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8226535	K-82-0236	1520521970		102-2		POSTIER #3
-SUPERIOR OIL CO				RECEIVED:	04/05/82	JA: KS
8226544	K-82-0133	1517520524		103		LIGHT #2-H
-TEXACO INC				RECEIVED:	04/05/82	JA: KS
8226545	K-82-0134	1517520548		102-4		KEATING #2-24
-TEXAS OIL & GAS CORP				RECEIVED:	04/05/82	JA: KS
8226555	K-82-0105	1500721301		103		GOOD #2
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/05/82	JA: KS
8226503	K-82-0133	1511920540		103		HOLMES #24-10
-TEXLAND PETROLEUM INC				RECEIVED:	04/05/82	JA: KS
8226484	K-82-0161	1520521322		102-2		POSTIER #1C
8226582	K-82-0232	1520521814		102-2		POSTIER #2
8226573	K-82-0233	1520521970		102-2		POSTIER #3
-TEXOMA PRODUCTION CO				RECEIVED:	04/05/82	JA: KS
8226546	K-82-0135	1517520524		103		LIGHT #2-H
-TEXOMA PRODUCTION CO				RECEIVED:	04/05/82	JA: KS
8226547	K-82-0136	1517520548		102-4		KEATING #2-24
-TEXOMA PRODUCTION CO				RECEIVED:	04/05/82	JA: KS
8226504	K-82-0134	1511920540		103		HOLMES #24-10
-TIPPERARY CORP				RECEIVED:	04/05/82	JA: KS
8226485	K-82-0162	1520521322		102-2		POSTIER #1C
8226583	K-82-0231	1520521814		102-2		POSTIER #2
8226574	K-82-0232	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226548	K-82-0137	1517520524		103		LIGHT #2-H
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226549	K-82-0138	1517520548		102-4		KEATING #2-24
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226505	K-82-0135	1511920540		103		HOLMES #24-10
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226486	K-82-0163	1520521322		102-2		POSTIER #1C
8226584	K-82-0230	1520521814		102-2		POSTIER #2
8226575	K-82-0231	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226550	K-82-0139	1517520524		103		LIGHT #2-H
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226551	K-82-0140	1517520548		102-4		KEATING #2-24
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226507	K-82-0136	1511920540		103		HOLMES #24-10
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226487	K-82-0164	1520521322		102-2		POSTIER #1C
8226585	K-82-0229	1520521814		102-2		POSTIER #2
8226576	K-82-0230	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226508	K-82-0137	1511920540		103		HOLMES #24-10
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226488	K-82-0165	1520521322		102-2		POSTIER #1C
8226586	K-82-0228	1520521814		102-2		POSTIER #2
8226577	K-82-0229	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226509	K-82-0138	1511920540		103		HOLMES #24-10
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226587	K-82-0227	1520521814		102-2		POSTIER #2
8226578	K-82-0228	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226588	K-82-0226	1520521814		102-2		POSTIER #2
8226579	K-82-0227	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226589	K-82-0225	1520521814		102-2		POSTIER #2
8226580	K-82-0226	1520521970		102-2		POSTIER #3
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS
8226590	K-82-0224	1520521814		102-2		POSTIER #2
-TRANSCONTINENTAL OIL CO				RECEIVED:	04/05/82	JA: KS

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FIELD NAME	PROD	PURCHASER
WILDCAT	91.2	PANHANDLE EASTERN
LOST SPRINGS	0.0	CITIES SERVICE GA
DILLWYN WEST EXT	150.0	CENTRAL STATES GA
CRISSMAN NO	150.0	CENTRAL STATES GA
CRISSMAN NO	75.0	CENTRAL STATES GA
SPIVEY-GRABS	7.0	PEOPLES NATURAL G
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE SE POOL	12.0	CITIES SERVICE GA
ANTELOPE POOL	5.0	CITIES SERVICE GA
SWISHER	10.6	CENTRAL STATES GA
SWISHER	10.6	CENTRAL STATES GA
SWISHER	10.6	CENTRAL STATES

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226578	K-82-0231	1511500000		108		SCHIMPF A-3	ANTELOPE FIELD	2.3	K AN-GO INC
8226579	K-82-0232	1511500000		108		SCHIMPF B-2	ANTELOPE FIELD	2.3	KAN-GO INC
8226580	K-82-0233	1511500000		108		SCHIMPF B-3	ANTELOPE FIELD	2.3	KAN-GO INC
-TXO PRODUCTION CORP				RECEIVED:	04/05/82	JA: KS			
8226576	K-82-0076	1509521166		103		HAMPEL #1	VARNER	36.5	
8226577	K-82-0077	1503320407		102-2		RAFLER #1	HAAS	182.5	
-VINCENT OIL CORP				RECEIVED:	04/05/82	JA: KS			
8226499	K-82-0129	1515500000		108		ROBINSON #1	SPIVEY-GRABS	12.0	PEOPLES NATURAL G
-W. L. KIRKMAN, INC.				RECEIVED:	04/05/82	JA: KS			
8226550	K-81-1281	1503320476		102-4		BOX RANCH "B" #1	TUTTLE EXTENSION	219.0	NORTHERN NATURAL
-WELLS ENERGY CORP				RECEIVED:	04/05/82	JA: KS			
8226551	K-82-0015	1515121006		102-4		LIPPELMANN #1	CARVER-ROBBINS	185.0	
-WELLS-BATTELSTEIN OIL & GAS INC				RECEIVED:	04/05/82	JA: KS			
8226501	K-82-0131	1501922029		103		C E MOORE (#0083) #1	PERU SEDAN	47.5	SHERWIN WILLIAMS
8226500	K-82-0130	1501922265		103		GATES (#0078) #1	PERU SEDAN	52.6	SHERWIN WILLIAMS
8226537	K-81-1295	1501922034		103		OLCC "800" (#0410) PHASE II #14-B	COOKSON HILLS	5.4	COOKSON HILLS GAS
8226539	K-81-1297	1501922172		103		OLCC "800" (#0410) PHASE II #15-B	COOKSON HILLS	4.3	COOKSON HILLS GAS
8226540	K-81-1298	1501922173		103		OLCC "800" (#0410) PHASE II #16-B	COOKSON HILLS	3.6	COOKSON HILLS GAS
8226517	K-81-1299	1501922174		103		OLCC "800" (#0410) PHASE II #17-B	COOKSON HILLS	3.6	COOKSON HILLS GAS
8226518	K-81-1300	1501922929		103		OLCC "800" (#0410) PHASE II #24-B	COOKSON HILLS	4.3	COOKSON HILLS GAS
8226520	K-81-1302	1501922891		103		OLCC "800" (#0410) PHASE II #42-B	COOKSON HILLS	4.3	COOKSON HILLS GAS
8226519	K-81-1301	1501922931		103		OLCC "800" (#0410) PHASE II #44-B	COOKSON HILLS	3.6	COOKSON HILLS GAS
8226538	K-81-1296	1501921858		103		OLCC "800" (#0410) PHASE II #8-B	COOKSON HILLS	2.9	COOKSON HILLS GAS
8226536	K-81-1294	1501922739		103		OLCC E R (#0408) PHASE II #108	PERU SEDAN	8.0	COOKSON HILLS GAS
8226464	K-81-1293	1501922740		103		OLCC E R (#0408) PHASE II #110	PERU SEDAN	11.3	COOKSON HILLS GAS
8226465	K-81-1292	1501922741		103		OLCC E R (#0408) PHASE II #112	PERU SEDAN	8.7	COOKSON HILLS GAS
8226466	K-81-1291	1501922742		103		OLCC E R (#0408) PHASE II #114	PERU SEDAN	9.1	COOKSON HILLS GAS
8226467	K-81-1290	1501922812		103		OLCC E R (#0408) PHASE II #116	PERU SEDAN	7.6	COOKSON HILLS GAS
8226468	K-81-1289	1501922813		103		OLCC E R (#0408) PHASE II #118	PERU SEDAN	9.4	COOKSON HILLS GAS
LOUISIANA OFFICE OF CONSERVATION									
-AMOCO PRODUCTION CO				RECEIVED:	04/05/82	JA: LA			
8226607	81-1444	1702321449		102-4		MIAMI CORP #34	SOUTH PECAN LAKE	1050.0	COLUMBIA GAS TRAN
8226606	81-1443	1702321449		102-4		MIAMI CORPORATION #34-D	SOUTH PECAN LAKE	75.0	COLUMBIA GAS TRAN
-EXCHANGE OIL & GAS CORPORATION				RECEIVED:	04/05/82	JA: LA			
8226605	80-3848	1710922267		102-4	103	PELLEGRIN-PRICE #1	BAYOU SAUVEUR	0.0	
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-CRYSTAL OIL COMPANY				RECEIVED:	04/06/82	JA: MI			
8226463		2108734140		102-4		BROUGHMAN #1-15	MARATHON	109.5	CONSUMERS POWER C
8226461		2108734593		102-4		KERN #1-15	MARATHON	3.6	CONSUMERS POWER C
8226462		2108734596		102-4		KERN #2-16	MARATHON	10.9	CONSUMERS POWER C
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/05/82	JA: NM			
8226596		3002506790		108		ELMER C HILL #1	BLINEBRY	0.0	WARREN PETROLEUM
8226599		3002522959		108		J R CONE "B" #3	WANTZ (ABO)	0.0	WARREN PETROLEUM
8226600		3002509337		108		KING GAS COM WN #1	JALMAT	15.5	EL PASO NATURAL G
8226597		3002509015		108		MCDONALD STATE WN #21	JALMAT (YATES - SEVEN	15.0	EL PASO NATURAL G
8226598		3002521354		138		WIMBERLY WN #10	JUSTIS (BLINEBRY)	15.0	EL PASO NATURAL G

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CITIES SERVICE COMPANY				RECEIVED:	04/05/82	JA: NM			
8226604		3002510019	108			BRUNSON B #5	DRINKARD	11.0	NORTHERN NATURAL
-GETTY OIL COMPANY				RECEIVED:	04/05/82	JA: NM			
8226601		3002524909	108			A L CHRISTMAS #2	JALMAT (GAS)	19.4	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/05/82	JA: NM			
8226602		3002502878	108			E VACUUM GB/SA UNIT TRACT 2648 #023	VACUUM GB/SA	1.0	EL PASO NATURAL G
8226603		3002508525	108			E VACUUM GB/SA UNIT TRACT 2717 #002	VACUUM GB/SA	1.0	EL PASO NATURAL G
********** NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION **********									
-BEREA OIL AND GAS CORPORATION				RECEIVED:	04/06/82	JA: NY			
8226440	2163	3101316053	102-2			C F REYNOLDS UNIT #1	RIPLEY-MINA	30.0	COLUMBIA GAS TRAN
8226425	1849	3101316054	102-2			C H EDSON UNIT #1	WILDCAT	30.0	COLUMBIA GAS TRAN
8226439	2198	3101316434	102-2			H OAG UNIT #2	WILDCAT	30.0	COLUMBIA GAS TRAN
8226420	2160	3101316280	102-2			N REED & SONS INC #1	STEBBINS CORNERS	30.0	COLUMBIA GAS TRAN
8226435	2164	3101316281	102-2			N REED & SONS INC #2	STEBBINS-CORNERS	30.0	COLUMBIA GAS TRAN
8226426	1852	3101316258	102-2			NEWTON BROTHERS #1	WILDCAT	30.0	COLUMBIA GAS TRAN
8226424	2223	3101316259	102-2			NEWTON BROTHERS #3	WILDCAT	20.0	COLUMBIA GAS TRAN
8226431	2048	3101316259	102-2			NEWTON BROTHERS #3	WILDCAT	30.0	COLUMBIA GAS TRAN
8226429	2136	3101316219	102-2			NYS REF #10 - #10	GERRY	30.0	COLUMBIA GAS TRAN
8226454	2161	3101316217	102-2			NYS REF #10 - #4	GERRY	25.0	COLUMBIA GAS TRAN
8226427	2135	3101316397	102-2			NYS REF AREA #10 - #9	GERRY	30.0	COLUMBIA GAS TRAN
8226436	2150	3101316453	102-2			S MCCHESNEY #1	GERRY	35.0	COLUMBIA GAS TRAN
-BOUNTY OIL & GAS INC				RECEIVED:	04/06/82	JA: NY			
8226442	2184	3101315675	102-2			BRATT UNIT #1	BUSTI	0.0	NATIONAL FUEL GAS
8226456	2185	3101315675	107-TF			BRATT UNIT #1	BUSTI	0.0	NATIONAL FUEL GAS
8226455	2190	3101315464	102-2			C LEVIN UNIT #1	BUSTI	0.0	NATIONAL FUEL GAS
8226458	2191	3101315464	107-TF			C LEVIN UNIT #1	BUSTI	0.0	NATIONAL FUEL GAS
8226441	2196	3101315772	102-2			CHENEY #1	WILDCAT	0.0	NATIONAL FUEL GAS
8226457	2187	3101315772	107-TF			CHENEY #1	WILDCAT	0.0	NATIONAL FUEL GAS
8226443	2182	3101315956	102-2			FREDERES #1	WILDCAT	0.0	NATIONAL FUEL GAS
8226438	2188	3101316431	102-2			OVEREND #1	BUSTI	0.0	NATIONAL FUEL GAS
8226445	2183	3101316015	102-2			SEITZ/KOZAK #1	WILDCAT	0.0	NATIONAL FUEL GAS
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/06/82	JA: NY			
8226430	1818	3101312805	102-2			LYLE W COCHRAN WN-1644	CLYMER	10.3	GENERAL SYSTEM PU
-OILMARK & CO INC				RECEIVED:	04/06/82	JA: NY			
8226428	1139	3101314627	102-2			MULLARD SR #2	BUSTI	10.0	NATIONAL FUEL GAS
-SHARON RESOURCES INC				RECEIVED:	04/06/82	JA: NY			
8226447	2154	3112116076	102-2			E BARTZ #1	SHELDON	10.5	COLUMBIA GAS TRAN
8226452	2159	3112116273	102-2			E FONTAINE #1	SHELDON	10.5	COLUMBIA GAS TRAN
8226450	2157	3112116272	102-2			J KERWIN #2	SHELDON	10.5	COLUMBIA GAS TRAN
8226451	2158	3112116271	102-2			L BARTZ #2	SHELDON	10.5	COLUMBIA GAS TRAN
8226446	2153	3112116072	102-2			L SCHILTZ #1	SHELDON	10.5	COLUMBIA GAS TRAN
8226448	2155	3112116090	102-2			R BARVIAN #1	SHELDON	10.5	COLUMBIA GAS TRAN
8226449	2156	3112116266	102-2			E FONTAINE #1	SHELDON	10.5	COLUMBIA GAS TRAN
8226444	2152	3112116057	102-2			H KIRSCH #2	SHELDON	10.5	COLUMBIA GAS TRAN
-TRAHAN PETROLEUM INC				RECEIVED:	04/06/82	JA: NY			
8226418	1704	3101315213	107-DV			B RENDELL - NY #80 31-013-15213	PANAMA	36.0	COLUMBIA GAS TRAN
8226414	1677	3101315523	107-DV			COWEN #3 31-013-15523	ELLINGTON	1.2	COLUMBIA GAS TRAN
8226453	2098	3101315476	102-2			DONALD WHITE #1 31-013-15476	BLOCKVILLE	36.0	NATIONAL FUEL GAS
8226459	1718	3101315520	107-DV			E BLY #1 31-013-15520	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8226413	1736	3101315521	107-DV			E BLY #2 31-013-15521	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8226415	1650	3101314176	107-DV			GEORGE PETERSON-CRONER #4	PANAMA	12.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/06/82	JA: NY			
8226431	1819	3101312806	102-2			LYLE W COCHRAN WN-1645	CLYMER	10.3	GENERAL SYSTEM PU
-DOMINION RESOURCES INC				RECEIVED:	04/06/82	JA: NY			
8226433	2146	3101316429	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
8226434	2147	3101316430	102-2			BOSTWICK #2	BUSTI	0.0	NATIONAL FUEL GAS
-ENERGY DEVELOPMENT CORP				RECEIVED:	04/06/82	JA: NY			
8226437	2149	3101316452	102-2			BOSTWICK #3	BUSTI	0.0	NATIONAL FUEL GAS
-HOPCO				RECEIVED:	04/06/82	JA: NY			
8226422	2142	3101316282	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
8226423	2143	3101316283	102-2			BOSTWICK #2	BUSTI	0.0	NATIONAL FUEL GAS
-MOBIL OIL CORPORATION				RECEIVED:	04/06/82	JA: NY			
8226421	2141	3101316284	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
-PENNZOIL COMPANY				RECEIVED:	04/06/82	JA: NY			
8226432	2144	3101316285	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
-SHELL OIL COMPANY				RECEIVED:	04/06/82	JA: NY			
8226417	2140	3101316286	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
-TEXACO INC				RECEIVED:	04/06/82	JA: NY			
8226419	2145	3101316287	102-2			BOSTWICK #1	BUSTI	0.0	NATIONAL FUEL GAS
-TRAHAN PETROLEUM INC				RECEIVED:	04/06/82	JA: NY			
8226416	1705	3101315214	107-DV			B RENDELL - NY #81 31-013-15214	PANAMA	36.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226433	2096	3101315865		102-2		GREEN-WELLS-CRONER #3 31-013-15865	PANAMA	36.0	COLUMBIA GAS TRAN
8226423	1681	3101315524		107-DV		KEEM #1 31-013-15524	ELLINGTON	1.6	COLUMBIA GAS TRAN
8226460	1716	3101315580		107-DV		LEO ACKLEY #2 31-013-15580	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8226417	1652	3101312533		107-DV		R H MILSPAW NY #16 31-013-12533	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8226422	1720	3101315272		107-DV		ROGER NEIL - NY #7 31-013-15272	PANAMA	36.0	COLUMBIA GAS TRAN
8226416	1672	3101315866		107-DV		THOMAS POTTER #2 31-013-15866	LAKEWOOD	36.0	NATIONAL FUEL GAS
8226419	1700	3101312525		107-DV		VRUWINK - NY #13 31-013-12525	PANAMA	36.0	COLUMBIA GAS TRAN
8226421	1655	3101314284		107-DV		WIDRIG NY #68 31-013-14284	PANAMA	4.8	COLUMBIA GAS TRAN
-US ENERGY DEVELOPMENT CORP		RECEIVED: 04/06/82 JA: NY							
8226437	2035	3101315421		102-2		P HAMMOND #2			
8226432	2052	3101315419		102-2		PAUL HAMMOND #1	GERRY	20.0	NATIONAL FUEL GAS
-VANDERMARK ASSOCIATES		RECEIVED: 04/06/82 JA: NY					GERRY	20.0	NATIONAL FUEL GAS
8226434	2306	3100316239		102-2		BLACK FARM #1 31-003-16239	VANDERMARK CREEK	73.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION									
-ANDOVER OIL COMPANY		RECEIVED: 04/07/82 JA: OK							
8226728	16480	3501722103		102-2		ROTHER #2-4		180.0	DELHI GAS PIPELIN
-ARCO OIL AND GAS COMPANY		RECEIVED: 04/07/82 JA: OK							
8226729	16336	3504722810		102-4		INA HUTCHINGS #1	CARRIER	36.5	PANHANDLE EASTERN
-BRAXTON OIL AND GAS CORP		RECEIVED: 04/07/82 JA: OK							
8226718	13501	3505320627		103		HORNING #1	WAKITA	10.0	SUN GAS CO
-COOK OPERATING CO		RECEIVED: 04/07/82 JA: OK							
8226721	13630	3511720792		103		R D #1	NORTH TERLTON	36.5	H J D CATTLE CO
8226722	13631	3511721000		103		R D #2	NORTH TERLTON	36.5	H J D CATTLE CO
-COTTON PETROLEUM CORPORATION		RECEIVED: 04/07/82 JA: OK							
8226712	17649	3501521186		107-DP		TALKINGTON #1	SW VERDEN	0.0	UNITED GAS PIPELI
-J M HUBER CORPORATION		RECEIVED: 04/07/82 JA: OK							
8226719	13578	3504921480		103		LONGMIRE 1-12	KLONDIKE NORTH	0.0	WARREN PETROLEUM
-LAMMASTER DRILLING CO		RECEIVED: 04/07/82 JA: OK							
8226720	13611	3505121182		103		FARWELL #3		0.0	ARKANSAS LOUISIAN
-MARYMAC CO		RECEIVED: 04/07/82 JA: OK							
8226726	15735	3508520846		102-4		OAKMAN-HERSH 4-1	NORTH PIKE	75.0	AMINOIL USA INC
8226725	15731	3508520424		102-4		PASCHALL #1	NORTH PIKE	75.0	AMINOIL USA INC
-PHOENIX RESOURCES COMPANY		RECEIVED: 04/07/82 JA: OK							
8226727	17636	3504900000		107-PE		WORLEY #1		0.0	TRANSOK PIPE LINE
-POST PETROLEUM COMPANY INC		RECEIVED: 04/07/82 JA: OK							
8226715	13490	3504722690		103		DILLING #1	NE ENID	0.0	
-RED EAGLE OIL CO		RECEIVED: 04/07/82 JA: OK							
8226724	13652	3509322168		103		KATHRYN #1	NORTHWEST OKEENE	55.0	PHILLIPS PETROLEU
-SABINE CORP		RECEIVED: 04/07/82 JA: OK							
8226713	12132	3504520485		108		GILLISPIE #3-2		5.0	PRODUCER'S GAS CO
-SUNDANCE ENERGY CORP		RECEIVED: 04/07/82 JA: OK							
8226714	13487	3504722607		103		HAMMOND #1	E KREMLIN	17.0	
-TOMLINSON OIL CO INC		RECEIVED: 04/07/82 JA: OK							
8226716	13491	3500722028		103		JOSEY 'B' 1-21	WEST ELMWOOD	29.0	PHILLIPS PETROLEU
8226717	13492	3500721968		103		JOSEY 1-21	ANADARKO BASIN	14.5	PHILLIPS PETROLEU
-WHITMAR EXPLORATION CO		RECEIVED: 04/07/82 JA: OK							
8226723	13646	3504921567		103		GOODSON #1-18	EAST ANTIOCH	0.0	BUCKEYE NATURAL G
WEST VIRGINIA DEPARTMENT OF MINES									
-ALLEGHENY LAND & MINERAL COMPANY		RECEIVED: 04/05/82 JA: WV							

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JD NO	JA DAT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8226632		4708300467		103		A - 1009
8226645		4709702238		103		A - 1015
8226623		4708300439		103		A - 1016
8226624		4708300440		103		A - 1017
8226647		4708300496		103		A - 1043
8226636		4709702272		103		A - 1046
8226641		4709702353		103		A - 881
8226646		4704900692		103		A - 912
8226635		4708505214		103		A - 942
8226633		4708300499		103		A - 945
8226634		4708505163		103		A - 949
8226626		4708300466		103		A - 983
8226622		4708300438		103		A-1012
8226613		4704102105		108		A-660
8226611		4703301182		108		A-697
8226610		4703301170		108		A-726
8226612		4703302073		108		A-753
8226608		4703302069		108		A-775
8226614		4709701877		108		A-779
8226609		4701702493		108		A-851
8226621		4701702793		103		A-874
-ASHLAND EXPLORATION INC				RECEIVED:	04/05/82	JA: WV
8226625		4703901176		108		R E ESKINS #2 - 60741
-BLUE CREEK GAS COMPANY				RECEIVED:	04/05/82	JA: WV
8226615		4703903493		108		DAMA HILL #1
8226616		4703903497		108		DAMA HILL #2
-BRAXTON OIL AND GAS CORP				RECEIVED:	04/05/82	JA: WV
8226619		4704102927		108		DAVISSON #1
8226618		4700701534		108		FEENEY #3
-CABOT OIL & GAS CORP				RECEIVED:	04/05/82	JA: WV
8226637		4703903729		107-DV		LOUIE FOSTER #1
8226631		4703903625		107-DV		M K MCCORMICK #1
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/05/82	JA: WV
8226617		4706100375		108		BRUCE BLANEY 12485
-J C BAKER & SONS INC				RECEIVED:	04/05/82	JA: WV
8226620		4700700153		108		HARRY ROBINSON
-J SCOTT TALBOTT				RECEIVED:	04/05/82	JA: WV
8226652		4704302508		103		W-10 BATES #2
-L & M PETROLEUM INC				RECEIVED:	04/05/82	JA: WV
8226651		4707321072		107-DV		ARLINTON SHULTZ #1
-NRM PETROLEUM CORPORATION				RECEIVED:	04/05/82	JA: WV
8226649		4704102523		108		BURTON STALNAKER #1
8226648		4702103411		108		BUSH #1
8226650		4704102563		108		PETE CASTO #1
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/05/82	JA: WV
8226638		4706100289		108		SMITH Q #2
-SPARTAN GAS COMPANY				RECEIVED:	04/05/82	JA: WV
8226642		4707901213		108		WARNER SOVINE 1-S-213
-STERLING DRILLING & PROD CO INC				RECEIVED:	04/05/82	JA: WV
8226639		4701501683		108		ALOI #23 SDP#183
8226640		4701501717		108		ALOI 37 SDP#272
8226627		4700701447		108		ARGABRITE #173 SDP#173
-UNITED PETRO LTD				RECEIVED:	04/05/82	JA: WV

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FIELD NAME	PROD	PURCHASER
MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
BUCKHANNON	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MEADE	0.0	COLUMBIA GAS TRAN
WASHINGTON	0.0	CONSOLIDATED GAS
WINFIELD	0.0	CONSOLIDATED GAS
MURPHY	0.0	CONSOLIDATED GAS
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MURPHY	0.0	CONSOLIDATED GAS
MIDDLE FORK	0.0	COLUMBIA GAS TRAN
MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
SKIN CREEK	0.0	CONSOLIDATED GAS
SARDIS	0.0	CONSOLIDATED GAS
UNION	0.0	CONSOLIDATED GAS
SARDIS	0.0	CONSOLIDATED GAS
SARDIS	0.0	CONSOLIDATED GAS
UNION	0.0	CONSOLIDATED GAS
SOUTHWEST	0.0	CONSOLIDATED GAS
CENTRAL DISTRICT	0.0	CONSOLIDATED GAS
LENS CREEK	15.0	INDUSTRIAL GAS CO
ELK	0.0	COLUMBIA GAS TRAN
ELK	0.0	COLUMBIA GAS TRAN
VANDALIA	10.0	CONSOLIDATED GAS
HEATERS	10.0	CONSOLIDATED GAS
WASHINGTON	17.0	TENNESSEE GAS PIP
JEFFERSON	39.0	TENNESSEE GAS PIP
CLINTON DISTRICT	1.5	GENERAL SYSTEMS P
SALT LICK	6.0	CONSOLIDATED GAS
UNION	0.0	COLUMBIA GAS TRAN
UNION	10.0	COLUMBIA GAS TRAN
SKIN CREEK	13.0	EQUITABLE GAS CO
STEWART CREEK	11.0	COLUMBIA GAS TRAN
HACKERS CREEK	4.0	EQUITABLE GAS CO
SOUTH BURNS CHAPEL	8.0	CONSOLIDATED GAS
CURRY	7.5	PENNZOIL CO
BUFFALO DISTRICT	19.0	EQUITABLE GAS CO
BUFFALO DISTRICT	11.0	EQUITABLE GAS CO
BIRCH	3.0	EQUITABLE GAS CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226644		4709702146		108		BRADLEY LIGGETT #1-A	ABBOTT-FRENCH CREEK A	22.0	COLUMBIA GAS TRAN
8226643		4709702145		108		ONITA C LARAMEY #1	ABBOTT-FRENCH CREEK A	22.0	COLUMBIA GAS TRAN
-W J LYDIC INC				RECEIVED:	04/05/82	JA: WV			
8226629		4709500888		103		ASH #1	MEADE	20.0	
8226628		4709500889		107-DV		PYLE #1	MEADE	182.0	
8226630		4709500890		103		PYLE #1	MEADE	182.0	
********** WYOMING OIL & GAS CONSERVATION COMMISSION **********									
-ANDOVER OIL CO				RECEIVED:	04/06/82	JA: WY			
8226665	NG27-82	4900500080		103		ANDERSON 24-23	S E KITTY	87.0	MGPC INC
-CHEVRON U S A INC				RECEIVED:	04/06/82	JA: WY			
8226663	NG 11-82	4941229800		102-4		PAINTER RESERVOIR UNIT 13-31B	PAINTER RESERVOIR	615.0	NORTHERN NATURAL
8226662	NG 10-82	4904120262		102-4		PAINTER RESERVOIR UNIT 34-1D	PAINTER RESERVOIR	318.0	NORTHERN NATURAL
8226664	NG 12-82	4904120297		102-4		PAINTER RESERVOIR UNIT 41-1D	PAINTER RESERVOIR	214.0	NORTHERN NATURAL
-DAVIS OIL COMPANY				RECEIVED:	04/06/82	JA: WY			
8226672	NG45-82	4900526069		103		ANGELA #1	NORTH HILIGHT	18.0	PHILLIPS PETROLEU
8226676	NG49-82	4900526008		102-2		BELLE FOURCHE #3-A	N W HILIGHT	14.0	PHILLIPS PETROLEU
8226671	NG44-82	4900525872		102-2		HARRY PUTNAM #1	DEVELOPMENT	35.0	BIG HORN FRACTION
8226673	NG46-82	4900526136		103		HOADLEY #2	NORTH HILIGHT	5.8	PHILLIPS PETROLEU
8226674	NG47-82	4900526072		102-2		TERRA #2-A	WILDCAT	13.8	PHILLIPS PETROLEU
8226677	NG-50-82	4900526012		102-2		TERRA #4	WILDCAT	0.0	PHILLIPS PETROLEU
8226675	NG48-82	4900526127		102-2		TERRA #5	BETHLEHEM	13.6	PHILLIPS PETROLEU
-EXETER EXPLORATION COMPANY				RECEIVED:	04/06/82	JA: WY			
8226668	NG32-82	4900921904		103		MOHR 6-21	MIKE'S DRAW	50.0	PHILLIPS PETROLEU
8226669	NG33-82	4900921911		103		STATE 6-16	MIKE'S DRAW	50.0	PHILLIPS PETROLEU
-LADD & LUKOWICZ INC				RECEIVED:	04/06/82	JA: WY			
8226666	NG29-82	4900525873		103		FRED DILTS #1	UNNAMED	90.0	BIG HORN FRACTION
-LOUISIANA LAND & EXPLORATION CO				RECEIVED:	04/06/82	JA: WY			
8226670	NG42-82	4900921796		102-2		STATE 78-874 #1	POWELL	290.0	MOUNTAIN FUEL SUP
-MARATHON OIL COMPANY				RECEIVED:	04/06/82	JA: WY			
8226667	NG31-82	4903721613		102-4		WAMSUTTER UNIT "A" #11	WAMSUTTER	475.0	COLORADO INTERSTA
********** ** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, CASPER,WY **********									
-MIDLANDS GAS CORPORATION				RECEIVED:	04/07/82	JA: MT S			
8226685	M228-1	2507121625		108		FEDERAL 1 0102	BOWDOIN	8.0	KANSAS-NEBRASKA N
8226690	M 236-1	2507121640		108		FEDERAL 1 0251	UNNAMED	10.0	KANSAS-NEBRASKA N
8226686	M 229-1	2507121443		108		FEDERAL 1 0512	WILDCAT	18.0	KANSAS-NEBRASKA N
8226682	M225-1	2507121642		108		FEDERAL 1 0570	UNNAMED	10.0	KANSAS-NEBRASKA N
8226681	M224-1	2510521162		108		FEDERAL 1 0707	WILDCAT	10.0	KANSAS-NEBRASKA N
8226687	M 230-1	2507121658		108		FEDERAL 1 0951	UNNAMED	13.0	KANSAS-NEBRASKA N
8226683	M226-1	2507121644		108		FEDERAL 1 0970	UNNAMED	12.0	KANSAS-NEBRASKA N
8226678	M220-1	2507121647		108		FEDERAL 1 1760	UNNAMED	20.0	KANSAS-NEBRASKA N
8226680	M223-1	2507121637		108		GRIGGS FEDERAL 1 1571	WILDCAT	10.0	KANSAS-NEBRASKA N
8226688	M 232-1	2507121499		108		LARB HILLS A-1 1102	WILDCAT	14.0	KANSAS-NEBRASKA N
8226689	M 233-1	2507121199		108		LARB HILLS A-1 1202	WILDCAT	9.0	KANSAS-NEBRASKA N
8226679	M221-1	2510521054		108		LOBERG 1 2606	WILDCAT	8.0	KANSAS-NEBRASKA N
8226684	M227-1	2507121128		108		MIAMI-FEDERAL 626-35 3512	WILDCAT	14.0	KANSAS-NEBRASKA N
8226707	M489-1	2507121475		108		233631 2361	BOWDOIN	20.0	KANSAS-NEBRASKA N
8226691	M 237-1	2507121608		108		63531 0651	WHITEWATER	5.0	KANSAS-NEBRASKA N
-GULF OIL CORPORATION				RECEIVED:	04/07/82	JA: ND S			
8226708	ND490-1	3300700194		102-2		ELKHORN USA 1-5	ELKHORN RANCH	50.0	KOCH HYDROCARBON

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226709	ND491-1	3300700283		102-2		USA 2-5 GULF SUNBEHM	ELKHORN RANCH	45.0	KOCH HYDROCARBONS
-SINCLAIR OIL CORPORATION				RECEIVED:	04/07/82	JA: ND 5			
8226692	NP 392-1	3305301127		102-2		FEDERAL #2-8 RR	ROUGH RIDER	0.0	KOCH HYDROCARBON
-AMOCO PRODUCTION CO				RECEIVED:	04/07/82	JA: WY 5			
8226695	W 467-1	4900720628		102-2		COAL GULCH "F" #1	COAL GULCH	235.9	CITIES SERVICE GA
8226696	W 468-1 T	4900720628		107-TF		COAL GULCH "F" #1	COAL GULCH	235.9	CITIES SERVICE GA
8226697	W 469-1	4903721701		102-2		SEVEN MILE GULCH UNIT #13	SEVEN MILE GULCH	296.0	CITIES SERVICE GA
8226698	W 470-1 T	4903721701		107-TF		SEVEN MILE GULCH UNIT #13	SEVEN MILE GULCH-FRON	296.0	CITIES SERVICE GA
-APACHE CORPORATION				RECEIVED:	04/07/82	JA: WY 5			
8226693	W-405-1	4903920605		103		BIRD CANYON FEDERAL #1-23	BIRD CANYON	0.0	NORTHWEST PIPELIN
-C & K PETROLEUM INC				RECEIVED:	04/07/82	JA: WY 5			
8226694	W 466-1	4903721565		102-2		BRUFF FEDERAL #1	BRUFF	60.0	
-ENERGY RESERVES GROUP INC				RECEIVED:	04/07/82	JA: WY 5			
8226699	W 471-1	4903585456		108		FIGURE FOUR CANYON UNIT #2	EAST LABARGE	14.3	NORTHWEST PIPELIN
-INDUSTRIAL GAS SERVICE INC				RECEIVED:	04/07/82	JA: WY 5			
8226710	W493-1	4902320449		107-TF		ANDERSON FEDERAL 1-18	WHISKEY BUTTES	204.0	
-INEXCO OIL COMPANY				RECEIVED:	04/07/82	JA: WY 5			
8226700	W 476-1	4530921924		102-4		FEDERAL J T #1-12	SHAWNEE	45.0	INEXCO OIL CO
-INTEGRITY OIL & GAS COMPANY				RECEIVED:	04/07/82	JA: WY 5			
8226701	W 479-1	4902521170		102-4		FEDERAL #2-33	COOPER RESERVOIR	182.5	KANSAS NEBRASKA N
-MARATHON OIL COMPANY				RECEIVED:	04/07/82	JA: WY 5			
*8226705	W 483-1	4908920994		103		CACTUS "A" #11 (TENSLEEP FORMATION)	OREGON BASIN	4.3	CODY GAS COMPANY
-NATURAL GAS CORPORATION OF CALIF				RECEIVED:	04/07/82	JA: WY 5			
8226711	W499-1	4900320442		103		FEDERAL 23-35	FONTENELLE	881.0	PACIFIC GAS TRANS
-NORTEX GAS & OIL CO				RECEIVED:	04/07/82	JA: WY 5			
8226702	W 480-1	4901321101		103		FEDERAL GAS #4-17	FULLER	20.0	INTERNORTH INC
8226703	W 481-1	4901321055		103		FEDERAL GAS #3-17	FULLER RESERVOIR II	10.0	INTERNORTH INC
8226704	W 482-1	4901321057		103		FEDERAL GAS #7-18	UPPER FORT UNION	40.0	INTERNORTH INC
-RESOURCES INVESTMENT CORPORATION				RECEIVED:	04/07/82	JA: WY 5			
8226706	W 484-1	4904521549		102-4		SANDY FEDERAL #1-5	WEST TODD	75.0	PHILLIPS PETROLEU
** DEPARTMENT OF ENERGY									
-NAVAL PETROLEUM RESERVES IN CALIFOR				RECEIVED:	04/06/82	JA: CA 9			
8226659		0402900000		102-2		17S-42	NAVAL PETROLEUM RESER	18.0	CHEVRON USA INC
8226654		0402900000		103		18R-38I	NAVAL PETROLEUM RESER	91.0	CHEVRON USA INC
8226655		0402900000		103		32R-371X	NAVAL PETROLEUM RESER	55.0	CHEVRON USA INC
8226661		0402900000		102-2		32S-38Z	NAVAL PETROLEUM RESER	82.0	CHEVRON USA INC
8226660		0402900000		102-2		34R-32S	NAVAL PETROLEUM RESER	64.0	CHEVRON USA INC
8226656		0402900000		102-2		56-33SA	NAVAL PETROLEUM RESER	73.0	CHEVRON USA INC
8226657		0402900000		102-2		56-38G	NAVAL PETROLEUM RESER	73.0	CHEVRON USA INC
8226658		0402900000		102-2		76-38I	NAVAL PETROLEUM RESER	36.0	CHEVRON USA INC
8226653		0402900000		103		7R-35B	NAVAL PETROLEUM RESER	110.0	CHEVRON USA INC

OTHER PURCHASERS VOLUME NO 1640

8226705 COLORADO INTERSTATE GAS CO

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12218 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-C

[Volume 641]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

[FR Doc. 82-12210 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: April 28, 1982.

JD NO	JA DKT	API NO	D SEC(1) SEC(2) WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES						
-A & R COMPANY			RECEIVED: 04/08/82 JA: OH			
8226730		3416726604	107-DV JOS C EDDY #2-A OH-46-0502	NEWPORT	7.0	COLUMBIA GAS TRAN
-ALSID OIL & GAS DEVELOPMENT CO			RECEIVED: 04/08/82 JA: OH			
8226731		3415520931	103 107-RT WOLFE #1	CHAMPION	15.0	
-ALTEX INC			RECEIVED: 04/08/82 JA: OH			
8226732		3411926225	103 107-TF KILPATRICK #3A	JACKSON	10.0	
-AMERICAN EXPLORATION CO			RECEIVED: 04/08/82 JA: OH			
8226733		3411923278	108 E TUCKER #1		10.0	EAST OHIO GAS
-ATLAS ENERGY GROUP INC			RECEIVED: 04/08/82 JA: OH			
8226745		3415521906	102-2 107-TF C POWELL #2	GUSTAVUS	18.0	COLUMBIA GAS TRAN
-ATWOOD RESOURCES INC			RECEIVED: 04/08/82 JA: OH			
8226746		3403123198	103 107-TF SAM MILLER #1	CLARKE	8.0	
-BANDS COMPANY INC			RECEIVED: 04/08/82 JA: OH			
8226747		3407523356	107-TF SEASON ASSOCIATES #3	HARDY	2.0	COLUMBIA GAS TRAN
-BARCLAY PETROLEUM INC			RECEIVED: 04/08/82 JA: OH			
8226748		3412725412	103 107-TF PUGH-KELLEY #1 LTD	BREMEN	18.0	NATIONAL GAS & OI
-BARTLO OIL AND GAS COMPANY			RECEIVED: 04/08/82 JA: OH			
8226749		3405923265	103 107-TF LEATHERWOOD VALLEY FARMS #2	SENECAVILLE	20.0	
8226750		3410322756	103 107-TF MELVIN LONG #1	WADSWORTH	10.0	
-BELDEN & BLAKE & CO #79			RECEIVED: 04/08/82 JA: OH			
8226753		3413322759	103 107-TF HUGO SAND CO INC-1-341167	FRANKLIN	36.5	
8226752		3401921535	103 107-TF M MOULS-2-341178	BROWN	36.5	
8226751		3401921489	103 107-TF M PONTONES COMM-1-341150	BROWN	36.5	
-BEREA OIL AND GAS CORPORATION			RECEIVED: 04/08/82 JA: OH			
8226756		3415521820	103 107-TF A BUCHANAN #1	HARTFORD	0.0	COLUMBIA GAS TRAN
8226754		3411925797	103 107-TF E MORROW #1	HIGHLAND	0.0	COLUMBIA GAS TRAN
8226755		3411925837	103 107-TF L GOFF #4	UNION	0.0	COLUMBIA GAS TRAN
8226757		3415521880	103 107-TF R WOOFTER #3	HARTFORD	0.0	COLUMBIA GAS TRAN
-BERG PETROLEUM INC			RECEIVED: 04/08/82 JA: OH			
8226758		3416726318	107-DV BARENGO #2-80	AURELIUS	50.0	COLUMBIA GAS TRAN
8226759		3416726320	107-DV SHOOK #1-80	AURELIUS	50.0	COLUMBIA GAS TRAN
-BERMAN J SHAFER			RECEIVED: 04/08/82 JA: OH			
8226901		3410322851	103 PARTLON #1	WESTFIELD CENTER	7.5	COLUMBIA GAS TRAN
-BERWELL ENERGY INC			RECEIVED: 04/08/82 JA: OH			
8226768		3408323017	103 BERWELL ENERGY #3	DANVILLE	36.0	COLUMBIA GAS TRAN
-BLAUSER WELL SERVICE INC			RECEIVED: 04/08/82 JA: OH			
8226763		3410522168	103 EDGAR BREWER #1-149	LEBANON	9.7	COLUMBIA GAS TRAN
8226764		3410522170	107-DV J W SUTTLE #1-50	LEBANON	10.0	COLUMBIA GAS TRAN
-BOBBY ANDERSON			RECEIVED: 04/08/82 JA: OH			
8226734		3416727099	103 EWING #1	MILE RUN	7.3	RIVER GAS CO
-BRIDGE OIL DEV (O'LD) PTY LTD			RECEIVED: 04/08/82 JA: OH			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226765		3416923242		103	107-TF	LOWELL & DIXIE ELSER #1	WEST SALEM	27.0	COLUMBIA GAS TRAN
-C J WARREN OIL COMPANY		RECEIVED: 04/08/82 JA: OH							
8226916		3411925770		103	107-TF	BERRY SKINNER #1	SEGO EAST	0.0	
8226918		3412724803		103	107-TF	BERTHA CLAYTON #4	CLAYTON	0.0	
8226915		3411925698		103	107-TF	FOSTER #1	SEGO SOUTH	0.0	
8226920		3412725481		103	107-TF	HENDERSON #1	SEGO	0.0	
8226914		3408328630	D	103	107-TF	MCMILLAN #3	DANVILLE NORTHEAST	0.0	
8226919		3412724958		103	107-TF	SPOHN #2A	CLAYTON	0.0	
8226917		3412724778		103	107-TF	OHIO-SURFACE BERTHA CLAYTON #3	REHOBATH EAST	0.0	
-CALLANDER & KIMBREL INC		RECEIVED: 04/08/82 JA: OH							
8226769		3403124512		103		B GORBY #1	COSHOCTON	5.0	
8226767		3403124509		107-TF		BARCUS #1	COPPERDALE	3.0	
8226768		3403124511		103		BOWERS #2	COPPERDALE	4.0	
-CANAAN OIL CO		RECEIVED: 04/08/82 JA: OH							
8226770		3400922358	D	102-2		MICHAEL #1	STEWART	1.5	COLUMBIA GAS TRAN
-CAVENDISH PETROLEUM OF OHIO INC		RECEIVED: 04/08/82 JA: OH							
8226772		3412121971		108		DAVIS 2-MD		0.0	EAST OHIO GAS
8226771		3411922957		108		ROSENBERGER #1		0.0	COLUMBIA GAS TRAN
-CHANSE PETROLEUM CORPORATION		RECEIVED: 04/08/82 JA: OH							
8226773		3400721910		103		J & J MCINTOSH #2	NEW LYME	3.1	
-CLARENCE SHERMAN		RECEIVED: 04/08/82 JA: OH							
8226902		3415732197		103	107-RT	MILLER #28	RAGERSVILLE	10.0	EAST OHIO GAS CO
-CLINTON OIL CO		RECEIVED: 04/08/82 JA: OH							
8226777		3411926171		103	107-TF	C AND V BABCOCK #1-706	OTSEGO	10.0	
8226781		3416723911		108		D ROBINSON #1		10.0	RIVER GAS CO
8226774		3411923304		108		G NOVARIA #1		10.0	NATIONAL GAS & OI
8226776		3411926366		103	107-TF	H MORGAN #2-665	DRESDEN	10.0	
8226775		3411925918		103	107-TF	HOWARD HUEY #1-649	ZANESVILLE WEST	10.0	
8226783		3416724040		108		K SILEY #1		10.0	GAS TRANSPORT INC
8226782		3416724038		108		K SILEY #2		10.0	GAS TRANSPORT INC
8226784		3416724473		108		K SILEY #3		10.0	GAS TRANSPORT INC
8226785		3416724474		108		LANG #2		10.0	GAS TRANSPORT INC
8226778		3411926175		103	107-TF	POTTER UNIT #1-707	WILLS CREEK	10.0	
8226780		3416723591		108		R POTTMEYER #1		10.0	RIVER GAS CO
8226779		3416723590		108		SCHWENDEMAN #1		10.0	RIVER GAS CO
-CMC ENERGY INC		RECEIVED: 04/08/82 JA: OH							
8226766		3416931430		103	107-TF	COTTLE #2	PLAIN	5.0	
-COASTAL PETROLEUM CORP		RECEIVED: 04/08/82 JA: OH							
8226787		3410322785		107-TF		BRAMLEY #1	WADSWORTH	9.0	COLUMBIA GAS TRAN
8226786		3410322783		107-TF		BRAMLEY-STACY #1	WADSWORTH	9.0	COLUMBIA GAS TRAN
8226788		3410322802		107-TF		CARMANY #1	WADSWORTH	9.0	COLUMBIA GAS TRAN
-COLLINS-MCGREGOR OPERATING COMPANY		RECEIVED: 04/08/82 JA: OH							
8226790		3416726048		107-DV		JOHN GRIMES #6	GRANDVIEW	5.0	COLUMBIA GAS TRAN
8226789		3408924231		103	107-TF	MOSSMAN #1	HOPEWELL	2.0	NEWZANE GAS CO
-DERBY OIL & GAS CORP		RECEIVED: 04/08/82 JA: OH							
8226792		3416723115		103	107-TF	BYARD E HORST #1	SUGAR CREEK	12.0	COLUMBIA GAS TRAN
8226791		3407523648		103	107-TF	MELVIN R SOMMERS #1A	SALT CREEK	12.0	COLUMBIA GAS TRAN
-DERRICK PETROLEUM INC		RECEIVED: 04/08/82 JA: OH							
8226794		34 3124385		103		MARLENE UNTIED (RILEY) #1	PERRY	0.0	COLUMBIA GAS TRAN
8226793		34 3124292		103		THOMAS JEFFRIES #1	PERRY	0.0	COLUMBIA GAS TRAN
-DOLPHA ANDERSON		RECEIVED: 04/08/82 JA: OH							
8226744		3416725401		108		BLACK RIVER #1	WARREN TWP	5.8	GAS TRANSPORT CO
8226735		3416726062		108		BUCKHORN ENERGY CO #1	WARREN TWP	5.6	GAS TRANSPORT CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226736		3416724321		108		DRAVIS #1	WARREN TWP	5.5	GAS TRANSPORT CO
8226741		3416724941		108		HENTHORNE #1	WARREN TWP	2.9	GAS TRANSPORT CO
8226739		3416724848		108		JOHNSON #1	WARREN TWP	5.8	GAS TRANSPORT CO
8226740		3416724927		108		LEMASTER #1	WARREN TWP	4.8	GAS TRANSPORT CO
8226738		3416724561		108		LEMLEY #1	WARREN TWP	2.2	GAS TRANSPORT CO
8226743		3416752590		108		LEMLEY #2	WARREN TWP	3.7	GAS TRANSPORT CO
8226742		3416724968		108		MILLER #1	WARREN TWP	2.9	GAS TRANSPORT CO
8226737		3416724560		108		WILSON #1	WARREN TWP	6.5	GAS TRANSPORT CO
-DOME DRILLING CO				RECEIVED: 04/08/82 JA: OH					
8226796		3416923090		103	107-TF	FRANCHESTER #5	BURBANK	10.0	COLUMBIA GAS TRAN
8226795		3409321149		103	107-TF	PDK CO-COLUMBIA SCHOOL BOARD #1	WEST VIEW	36.8	COLUMBIA GAS TRAN
-DOMESTIC OIL & GAS CO				RECEIVED: 04/08/82 JA: OH					
8226797		3407523188		103		BARNES #1 - 3188	RICHLAND	4.0	
-DUSTY DRILLING COMPANY INC				RECEIVED: 04/08/82 JA: OH					
8226798		3411522682		103	107-TF	EDWARDS #2-C	ROKEBY LOCK	10.0	COLUMBIA GAS TRAN
8226799		3411522696		103	107-TF	THOMPSON #2-C	ROKEBY LOCK	15.0	COLUMBIA GAS TRAN
-EDCO DRILLING & PRODUCING INC				RECEIVED: 04/08/82 JA: OH					
8226805		3408322517	D	108		DAVIDSON ED-1A		0.0	COLUMBIA GAS TRAN
8226803		3408322503	D	108		DAVIDSON ED-2A		0.0	COLUMBIA GAS TRAN
8226800		3403123427	D	108		MCDONALD MO-1A		18.0	COLUMBIA GAS TRAN
8226804		3408322392		108		PHILLIPS DW-1A		18.0	COLUMBIA GAS TRAN
8226802		3403124634		103	107-TF	POWELL WB-2A	TRINWAY	18.0	
8226801		3403123431		108		RICHCREEK MO-1A		18.0	COLUMBIA GAS TRAN
-ENERGY UNLIMITED INC				RECEIVED: 04/08/82 JA: OH					
8226809		3411122444		103		COCHRAN #1	BENTON TOWNSHIP	0.0	
8226808		3411122159		103		LEATHERMAN #1	BENTON TOWNSHIP	0.0	
8226806		3400922477		107-DV		MERRILL #2	LODI TOWNSHIP	0.0	COLUMBIA GAS TRAN
8226810		3416725716		107-DV		SAGER #2	LUDLOW TOWNSHIP	0.0	COLUMBIA GAS TRAN
8226807		3400922488		107-DV		SCHLOSS #1	CARTHAGE TOWNSHIP	0.0	COLUMBIA GAS TRAN
8226811		3416726508		107-DV		WINLAND #1	LUDLOW TOWNSHIP	0.0	COLUMBIA GAS TRAN
-ENTERPRISE ENERGY CORP				RECEIVED: 04/08/82 JA: OH					
8226817		3416320656		103	107-TF	BENEDICT #2	SWAN	36.5	COLUMBIA GAS TRAN
8226818		3416320691		103	107-TF	ENGLE #1	SWAN	36.5	COLUMBIA GAS TRAN
8226813		3401921529		103		KLOTZ #1	BROWN	18.2	
8226812		3401920904		103		LLOYD #1	ORANGE	36.5	
8226814		3405923118		103		MID-OHIO COAL #12	JACKSON	18.2	COLUMBIA GAS TRAN
8226816		3405923139		103		MID-OHIO COAL #9	JACKSON	27.3	COLUMBIA GAS TRAN
8226815		3405923119		103		VINCENT #1	JACKSON	36.5	COLUMBIA GAS TRAN
-FRANCIS MCKIBBEN				RECEIVED: 04/08/82 JA: OH					
8226849		3413320201		108		MOULTON #1		1.5	EAST OHIO GAS CO
8226850		3415121066		108		OBERLIN #1		2.0	EAST OHIO GAS CO
8226848		3409920178		108		REYNOLDS #1		1.5	EAST OHIO GAS CO
-GNC ENERGY CORP				RECEIVED: 04/08/82 JA: OH					
8226819		3411522400		103		GLADYS MORIN #1	ROKEBY LOCK	150.0	
-GUERNSEY PETROLEUM CORPORATION				RECEIVED: 04/08/82 JA: OH					
8226821		3411923465		108		OHIO POWER 26-MD		11.0	EAST OHIO GAS
-GWF CORP				RECEIVED: 04/08/82 JA: OH					
8226820		3400922136		103		CLARENCE FROST #1	CLARENCE FROST	100.0	COLUMBIA GAS TRAN
-HERALD OIL & GAS CO				RECEIVED: 04/08/82 JA: OH					
8226827		3410521937		108		C O ROGERS #1		5.4	COLUMBIA GAS TRAN
8226825		3410521961		108		DALE LITTLE #1		5.4	COLUMBIA GAS TRAN
8226824		3410521897		108		DAVID PRICE #1		5.4	COLUMBIA GAS TRAN
8226826		3410521913		108		FRED THOMPSON #1		5.0	COLUMBIA GAS TRAN

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JD NO	JA CKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226823		3410521872		108		HARTWELL CURD #1		5.0	COLUMBIA GAS TRAN
8226830		3410522154	D	107-TF		HUGH MITCHELL #1	SALISBURY	5.4	COLUMBIA GAS TRAN
8226829		3410521992		108		JAMES JOHNSON #1		5.0	COLUMBIA GAS TRAN
8226822		3410521871		108		PAUL MCELROY #1		5.4	COLUMBIA GAS TRAN
8226825		3410521909		108		WILLIAM ASBECK #1		5.4	COLUMBIA GAS TRAN
-HOPEWELL OIL AND GAS DEVELOPMENT CO				RECEIVED: 04/08/82		JA: OH			
8226832		3411122249		103		K O MYERS #1	GRAYSVILLE	10.0	COLUMBIA GAS TRAN
8226833		3411925986		103	107-TF	SARAH & FLOYD ALLARD #1	CROOKSVILLE	9.6	NATIONAL OIL & GA
-INLAND DRILLING CO INC				RECEIVED: 04/08/82		JA: OH			
8226834		3413322505		103	107-TF	SMITH #2	HUDSON	5.0	
-IRVIN PRODUCING COMPANY				RECEIVED: 04/08/82		JA: OH			
8226837		3411926222		103	107-TF	MARY MILSTED #1	ZANESVILLE	10.0	COLUMBIA GAS TRAN
8226835		3411522527		103	107-TF	PENNA FARMS #1	YORK	10.0	COLUMBIA GAS TRAN
8226836		3411522528		107-TF		PENNA FARMS #2	BLOOM	10.0	COLUMBIA GAS TRAN
-J D DRILLING CO				RECEIVED: 04/08/82		JA: OH			
8226839		3410522223		107-DV		DIXIE SMITH #1	LIBANON	6.0	COLUMBIA GAS TRAN
8226838		3410521624		108		R J SMITH #1		3.0	COLUMBIA GAS TRAN
-JOHN F WILLIAMS				RECEIVED: 04/08/82		JA: OH			
8226922		34[illegible]7523527		107-TF		GEORGE R STRAITS #2	KILLBUCK	0.0	COLUMBIA GAS TRAN
8226921		3407521439		108		GEORGE STRAITS #1		0.7	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC				RECEIVED: 04/08/82		JA: OH			
8226841		3415321016		103	107-TF	FLICKENGER-SUTPHEN #1	NORTHAMPTON	0.0	
8226842		3415321017		103	107-TF	FLICKENGER-SUTPHEN #2	NORTHAMPTON	0.0	
8226840		3413322309		103	107-TF	MAUR UNIT #2	FREEDOM	0.0	
-LARRY H WRIGHT INC				RECEIVED: 04/08/82		JA: OH			
8226924		3410521976		108		ROBERT L JONES #1		5.0	COLUMBIA GAS TRAN
-LEADER EQUITIES INC				RECEIVED: 04/08/82		JA: OH			
8226843		3411924534		108		W CASTOR #1		15.0	
-LIBERTY OIL & GAS CORP				RECEIVED: 04/08/82		JA: OH			
8226844		3400922202		107-DV		D W DAVIS JR #1	CARTHAGE	18.0	COLUMBIA GAS TRAN
-M B OPERATING CO INC				RECEIVED: 04/08/82		JA: OH			
8226845		3415123469		103	107-TF	FRANK-BAUMAN UNIT #1	MARLBORO	13.1	REPUBLIC STEEL CO
-MCCLAIN OIL CO				RECEIVED: 04/08/82		JA: OH			
8226846		3408924365		103		MCCLAIN UNIT #1	MADISON	0.5	NATIONAL GAS & OI
-MCCORMICK OIL & GAS CO				RECEIVED: 04/08/82		JA: OH			
8226847		3411522613		107-TF		HAINES #1	MC CONNELLSVILLE	200.0	
-MERIDIAN OIL & GAS ENT INC				RECEIVED: 04/08/82		JA: OH			
8226851		3400721515		103	107-TF	GEORGE D BOLTE #1	DORSET	2.0	
8226852		3400721877		103	107-TF	JONATHAN P FREEMAN #1	DORSET	8.0	
-MILLER DAY ISELI ENERGY CO.				RECEIVED: 04/08/82		JA: OH			
8226853		3411122509		107-DV		BLANEY #2-24	WASHINGTON TOWNSHIP	25.0	COLUMBIA GAS TRAN
-MORMACK INDUSTRY INC				RECEIVED: 04/08/82		JA: OH			
8226855		3416922340		107-TF		CHARLES NIEMAN #1	MILTON	42.0	COLUMBIA GAS TRAN
8226857		3416922837		107-TF		FRANK JENNINGS #1	MILTON GAS	48.0	COLUMBIA GAS TRAN
8226856		3416922607		107-TF		JACOB ZIMMERLY #2	MILTON	24.0	COLUMBIA GAS TRAN
8226854		3416922306		107-TF		RICHARD HARTZLIER #1	MILTON	18.0	COLUMBIA GAS TRAN
-NATIONAL PETROLEUM CORP				RECEIVED: 04/08/82		JA: OH			
8226860		3400720861		107-TF		EWING TANSEY #1	NEW LYME	15.0	OHIO GAS CO
8226864		3400720958		107-TF		OHIO LAND & TIMBER #4	LENOX	15.0	OHIO GAS CO
8226858		3400720733		103		SMITH #2	LENOX	15.0	OHIO GAS CO
8226859		3400720804		103		W K SMITH #1	LENOX	15.0	OHIO GAS CO
8226862		3400720863		107-TF		W KELNER #2	LENOX	15.0	OHIO GAS CO
8226861		3400720862		107-TF		W KELNER #3	LENOX	15.0	OHIO GAS CO

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JD NO	JA CKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226863		3400720864		107-TF		W KELNER #4	LENOX	15.0	OHIO GAS CO
8226865		3400720865		107-TF		W KELNER #5	LENOX	15.0	OHIO GAS CO
8226866		3400720866		107-TF		W KELNER #6	LENOX	15.0	OHIO GAS CO
8226867		3400720867		107-TF		W KELNER #7	LENOX	15.0	OHIO GAS CO
8226868		3400720868		107-TF		W KELNER #8	LENOX	15.0	OHIO GAS CO
8226869		3400720869		107-TF		W KELNER #9	LENOX	15.0	OHIO GAS CO
8226870		3400720870		107-TF		W KELNER #10	LENOX	15.0	OHIO GAS CO
8226871		3400720871		107-TF		W KELNER #11	LENOX	15.0	OHIO GAS CO
8226872		3400720872		107-TF		W KELNER #12	LENOX	15.0	OHIO GAS CO
8226873		3400720873		107-TF		W KELNER #13	LENOX	15.0	OHIO GAS CO
8226874		3400720874		107-TF		W KELNER #14	LENOX	15.0	OHIO GAS CO
8226875		3400720875		107-TF		W KELNER #15	LENOX	15.0	OHIO GAS CO
8226876		3400720876		107-TF		W KELNER #16	LENOX	15.0	OHIO GAS CO
8226877		3400720877		107-TF		W KELNER #17	LENOX	15.0	OHIO GAS CO
8226878		3400720878		107-TF		W KELNER #18	LENOX	15.0	OHIO GAS CO
8226879		3400720879		107-TF		W KELNER #19	LENOX	15.0	OHIO GAS CO
8226880		3400720880		107-TF		W KELNER #20	LENOX	15.0	OHIO GAS CO
8226881		3400720881		107-TF		W KELNER #21	LENOX	15.0	OHIO GAS CO
8226882		3400720882		107-TF		W KELNER #22	LENOX	15.0	OHIO GAS CO
8226883		3400720883		107-TF		W KELNER #23	LENOX	15.0	OHIO GAS CO
8226884		3400720884		107-TF		W KELNER #24	LENOX	15.0	OHIO GAS CO
8226885		3400720885		107-TF		W KELNER #25	LENOX	15.0	OHIO GAS CO
8226886		3400720886		107-TF		W KELNER #26	LENOX	15.0	OHIO GAS CO
8226887		3400720887		107-TF		W KELNER #27	LENOX	15.0	OHIO GAS CO
8226888		3400720888		107-TF		W KELNER #28	LENOX	15.0	OHIO GAS CO
8226889		3400720889		107-TF		W KELNER #29	LENOX	15.0	OHIO GAS CO
8226890		3400720890		107-TF		W KELNER #30	LENOX	15.0	OHIO GAS CO
8226891		3400720891		107-TF		W KELNER #31	LENOX	15.0	OHIO GAS CO
8226892		3400720892		107-TF		W KELNER #32	LENOX	15.0	OHIO GAS CO
8226893		3400720893		107-TF		W KELNER #33	LENOX	15.0	OHIO GAS CO
8226894		3400720894		107-TF		W KELNER #34	LENOX	15.0	OHIO GAS CO
8226895		3400720895		107-TF		W KELNER #35	LENOX	15.0	OHIO GAS CO
8226896		3400720896		107-TF		W KELNER #36	LENOX	15.0	OHIO GAS CO
8226897		3400720897		107-TF		W KELNER #37	LENOX	15.0	OHIO GAS CO
8226898		3400720898		107-TF		W KELNER #38	LENOX	15.0	OHIO GAS CO
8226899		3400720899		107-TF		W KELNER #39	LENOX	15.0	OHIO GAS CO
8226900		3400720900		107-TF		W KELNER #40	LENOX	15.0	OHIO GAS CO
8226901		3400720901		107-TF		W KELNER #41	LENOX	15.0	OHIO GAS CO
8226902		3400720902		107-TF		W KELNER #42	LENOX	15.0	OHIO GAS CO
8226903		3400720903		107-TF		W KELNER #43	LENOX	15.0	OHIO GAS CO
8226904		3400720904		107-TF		W KELNER #44	LENOX	15.0	OHIO GAS CO
8226905		3400720905		107-TF		W KELNER #45	LENOX	15.0	OHIO GAS CO
8226906		3400720906		107-TF		W KELNER #46	LENOX	15.0	OHIO GAS CO
8226907		3400720907		107-TF		W KELNER #47	LENOX	15.0	OHIO GAS CO
8226908		3400720908		107-TF		W KELNER #48	LENOX	15.0	OHIO GAS CO
8226909		3400720909		107-TF		W KELNER #49	LENOX	15.0	OHIO GAS CO
8226910		3400720910		107-TF		W KELNER #50	LENOX	15.0	OHIO GAS CO
8226911		3400720911		107-TF		W KELNER #51	LENOX	15.0	OHIO GAS CO
8226912		3400720912		107-TF		W KELNER #52	LENOX	15.0	OHIO GAS CO
8226913		3400720913		107-TF		W KELNER #53	LENOX	15.0	OHIO GAS CO
8226914		3400720914		107-TF		W KELNER #54	LENOX	15.0	OHIO GAS CO
8226915		3400720915		107-TF		W KELNER #55	LENOX	15.0	OHIO GAS CO
8226916		3400720916		107-TF		W KELNER #56	LENOX	15.0	OHIO GAS CO
8226917		3400720917		107-TF		W KELNER #57	LENOX	15.0	OHIO GAS CO
8226918		3400720918		107-TF		W KELNER #58	LENOX	15.0	OHIO GAS CO
8226919		3400720919		107-TF		W KELNER #59	LENOX	15.0	OHIO GAS CO
8226920		3400720920		107-TF		W KELNER #60	LENOX	15.0	OHIO GAS CO

JD NO	J4 CKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226863		3400720864		107-TF		W KELNER #4	LENOX	15.0	OHIO GAS CO
-NATIONAL PRODUCTION CORPORATION		RECEIVED: 04/08/82 JA: OH							
8226866		3411923717		108		CARL C POLK #1		5.2	NATIONAL GAS & OI
8226865		3411923691		108		JOSEPH L MATTINGLY #1		7.1	NATIONAL GAS & OI
-OHIO PRODUCERS SERVICES INC		RECEIVED: 04/08/82 JA: OH							
8226867		3412725406		103		S D & S M LONES #1	JUNCTION CITY	3.0	FORAKER GAS CO IN
-OPEX INC		RECEIVED: 04/08/82 JA: OH							
8226868		3411925869		107-TF		THOMASSON 1-A	NEWTON	1.0	FORAKER GAS CO IN
-OXFORD OIL CO		RECEIVED: 04/08/82 JA: OH							
8226870		3411925866		103	107-TF	JOHN SPRING #1	NEWTON	10.0	
8226869		3407523511		103		SAMUEL KINSEY #1	GLENMONT	11.0	
-PAGE P BLAKEMORE		RECEIVED: 04/08/82 JA: OH							
8226762		3416726341		107-DV		ADKINS #1	NW GRANDVIEW	1.5	
8226761		3416725774		107-DV		WORSTELL #4	BELL RIDGE	9.5	
-POI ENERGY INC		RECEIVED: 04/08/82 JA: OH							
8226871		3415320528		108		CARTER #1		6.7	
8226891		3415326830		108		CASE #2		13.1	
8226884		3415326030		108		CASE #3		1.3	
8226872		3415325330		108		EVANS #1		1.4	
8226874		3415325480		108		FORTUNA #3		1.9	
8226892		3415326980		108		GENOVESE #1		14.1	
8226878		3415325720		108		GENOVESE #2		14.1	
8226879		3415325770		108		GENOVESE-MYERS #1		5.5	
8226875		3415325620		108		GIRL SCOUTS #1		7.9	
8226876		3415325650		108		GIRL SCOUTS #2		4.9	
8226880		3415325840		108		GIRL SCOUTS #5		7.9	
8226885		3415326100		108		HAWLEY #1		2.0	
8226888		3415326480		108		JOHNSON #1		12.9	
8226889		3415326490		108		JOHNSON #2		12.9	
8226887		3415326470		108		JOHNSON #3		12.9	
8226877		3415325670		108		KIRK #1		15.2	
8226882		3415325980		108		KIRK #2		15.2	
8226886		3415326300		108		LEVENTHAL #1		1.9	
8226883		3415325990		108		MATTHEWS #1		3.2	
8226881		3415325970		108		MATTHEWS #2		3.2	
8226890		3415326510		108		MCCLELLAND-CUNNINGHAM #1		13.7	
8226873		3415320534		108		MORGAN EVANS #1		17.7	
-POWER RESOURCES INC		RECEIVED: 04/08/82 JA: OH							
8226893		3415723679	D	107-TF		STRAUB #4	PIKE	0.0	COLUMBIA GAS TRAN
-R A HATFIELD & SON INC		RECEIVED: 04/08/82 JA: OH							
8226831		3410378809		103	107-TF	BARELKA #2	SEVILLE	18.0	
-ROYAL PETROLEUM #81 - II		RECEIVED: 04/08/82 JA: OH							
8226897		3410522262		103		DELONG-THOMPSON #3	POMEROY	5.0	COLUMBIA GAS TRAN
8226898		3410522273		103		NAU #1	POMEROY	5.0	COLUMBIA GAS TRAN
8226899		3410522274		103		NAU #2	BEDFORD	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM 81-I		RECEIVED: 04/08/82 JA: OH							
8226894		3410522135		103		GENHEIMER #1	SALISBURY	5.0	COLUMBIA GAS TRAN
-ROYAL PETROLEUM 81-III LTD		RECEIVED: 04/08/82 JA: OH							
8226895		3410522244		103		JOHNSON #5	POMEROY	5.0	COLUMBIA GAS TRAN
8226896		3410522245		103		JOHNSON #6	POMEROY	5.0	COLUMBIA GAS TRAN
-RYCOL EXPLORATION INC		RECEIVED: 04/08/82 JA: OH							
8226900		3411122487		107-DV		THOMAS E WARD #1	LEE	91.0	COLUMBIA GAS TRAN
-SHIELD DRILLING CO		RECEIVED: 04/08/82 JA: OH							

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226903		3416725418		107-DV		ADA BOHLEN HEIRS #1	INDEPENDENCE	75.0	
8226904		3416726692		107-DV		LAWRENCE SMITH #14	INDEPENDENCE	75.0	
-STRATA EXPLORATION INC LTD				RECEIVED: 04/08/82		JA: OH			
8226905		3407522463		103	107-TF	#2 JAMES FLYNN	KILLBUCK	250.0	COLUMBIA GAS TRAN
-TATCO PETROLEUM INC				RECEIVED: 04/08/82		JA: OH			
8226906		3407522672		103	107-TF	ARCHIE CARPENTER #1	KILLBUCK	81.0	COLUMBIA GAS TRAN
-TEMPLE OIL & GAS CO				RECEIVED: 04/08/82		JA: OH			
8226907		3411924414		107-RT		ARDEN PENNINGTON #1	CLAY	12.0	COLUMBIA GAS TRAN
-THUNDER CORP				RECEIVED: 04/08/82		JA: OH			
8226909		3416725175		103		HART #2	MARIETTA	4.0	RIVER GAS CO
-TNIO PETRO INC				RECEIVED: 04/08/82		JA: OH			
8226908		3407720101		102-2		BARMAN #1	GREENWICH	35.0	
-UNITED PETROLEUM CORP				RECEIVED: 04/08/82		JA: OH			
8226910		3409920801		108		KOPE SIMONS #1	ELLSWORTH	5.0	AMERICAN ENERGY S
8226911		3409920867		108		MATULEK #1	ELLSWORTH	0.0	AMERICAN ENERGY S
-VESCORP INDUSTRIES INC				RECEIVED: 04/08/82		JA: OH			
8226912		3413321323		108		C & M COLLINS #1		10.0	TIMKEN CO
8226913		3413321753		108		GUYETTE #1		10.0	TIMKEN CO
-WORTHINGTON OIL COMPANY INC				RECEIVED: 04/08/82		JA: OH			
8226923		3408924308		107-DV		FARMCO #5	NEWARK NORTH	11.0	COLUMBIA GAS TRAN

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-ADOBE OIL & GAS CORPORATION				RECEIVED: 04/08/82		JA: PA			
8226925	11122	3706326480		103		ANDY PISARCIK #1	BRUSH VALLEY	21.0	
8227016	11127	3706522227		103		BERTHA KOHLER #4	MCGEES MILLS	22.0	CONSOLIDATED GAS
8226927	11124	3706325914		103		EDWIN M LONG #1-D	CLYMER	23.0	COLUMBIA GAS TRAN
8226928	11125	3706522398		103		ELMER REED #1	COOLSPRING	24.0	T W PHILLIPS
8227015	11126	3703321159		103		GERALD LOCKARD	BURNSIDE	0.0	
8226926	11123	3706522290		103		LITTLE LEO CORPORATION #1-D	PUNXSY	25.0	T W PHILLIPS
-ANGERMAN ASSOCIATES INC				RECEIVED: 04/08/82		JA: PA			
8226931	11200	3706300000		103		E S BROWN #1-IND-26373	W PA-UPPER DEVONIAN S	45.0	PEOPLES NATURAL G
8226930	11198	3706300000		103		LLOYD GIBSON TAYLOR #1-IND-26425	W PA-UPPER DEVONIAN S	15.0	PEOPLES NATURAL G
8226929	11197	3706300000		103		SUSIE M GIBSON #1-IND-26424	W PA-UPPER DEVONIAN S	45.0	PEOPLES NATURAL G
-ATLAS RESOURCES INC				RECEIVED: 04/08/82		JA: PA			
8226936	11206	3706326332		102-2		COUDRIET #2	CHERRYHILL	27.0	COLUMBIA GAS TRAN
8226937	11207	3706326480		102-2		IA NA KE #3	CHERRYHILL	47.0	COLUMBIA GAS TRAN
8226934	11204	3706326349		102-2		L BASH #1	CHERRYHILL	46.0	COLUMBIA GAS TRAN
8226935	11205	3706326351		102-2		SCHROTH #1-73A	CHERRYHILL	26.0	COLUMBIA GAS TRAN
8226932	11102	3706326058		102-4		SWANK #4	CHERRYHILL	96.0	COLUMBIA GAS TRAN
8226933	11103	3706326059		102-4		SWANK #5	CHERRYHILL	49.0	COLUMBIA GAS TRAN
-C & C THOYER BROTHERS				RECEIVED: 04/08/82		JA: PA			
8227006	11108	3704920993		102-2		DONNELL #1 (#23)	WATERFORD	15.0	NATIONAL FUEL GAS
-DANSON-LOUDEN CO LTD & NCC-LOUDEN L				RECEIVED: 04/08/82		JA: PA			
8226967	11185	3712921106		108		A B VANCE B451-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226968	11186	3712921131		108		A W CRESSMAN B430-I	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226975	11193	3712921422		108		D A PORTER & R E PORTER BB90-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226952	11170	3712921322		108		D W CRAMER B798-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226971	11189	3712921271		108		D W LEONARD B400-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226962	11180	3712921242		108		E A KOCH B793-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226942	11160	3712921384		108		E C BAKER B846-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226958	11176	3712921339		108		E R BRILHART B765-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226961	11179	3712921247		108		E S BYERS B796-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8226960	11178	3712921024		108		E N STONER TRUST B761-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226974	11192	3712920941		108		G F CROUSHORE JR B368-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226944	11162	3712921391		108		G FELGAR B833-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226954	11172	3712921272		108		G W & F POORBAUGH B797-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226940	11158	3712921455		108		H LEIGHTY B882-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226945	11163	3712921215		108		H M GRIMM B824-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226948	11166	3712921137		108		I HOWSER B819-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226970	11180	3712921105		108		J E LYNCH B411-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226955	11173	3712921246		108		J H BROWN B788-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226950	11168	3712921138		108		J H MOORE B818-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226949	11167	3712921434		108		J H MOORE B818-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226939	11157	3712921340		108		J P SKOVIRA B891-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226953	11171	3712921133		108		J W GAUT B800-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226964	11182	3712921146		108		K HIXSON B789-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226963	11181	3712921392		108		K HIXSON B789-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226969	11187	3712921120		108		M L KOMENDA B429-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226966	11184	3712921135		108		M LONG ET AL B716-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226972	11190	3712920940		108		M S CROUSHORE B388-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226957	11175	3712921268		108		R E GAUT B779-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226956	11174	3712921385		108		R E GAUT B779-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226943	11161	3712921214		108		R L BYERS B842-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226959	11177	3712921116		108		R O LOVE B764-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
8226973	11191	3712921007		108		S H LYNN & F P ALLEGRA B374-2	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226965	11183	3712921257		108		SOUTHMORELAND SCHOOL DIST B748-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226947	11165	3712921151		108		T J CATALINA B822-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226951	11169	3712921343		108		T J SIDLOVSKY B809-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226946	11164	3712921321		108		W C LAYMAN B823-1	E HUNTINGDON	20.0	TEXAS EASTERN TRA
8226941	11159	3712921325		108		W M ADAMS B877-1	E HUNTINGTON	20.0	TEXAS EASTERN TRA
-DELTA 80 S T JOINT VENTURE				RECEIVED:	04/08/82	JA: PA			
*8226977	11156	3706325548		102-2		MARCOLINE-MYERS #1	NONE	25.0	COLUMBIA GAS TRAN
*8226976	11153	3706326176		102-2		MARCOLINE-MYERS #3	NONE	25.0	COLUMBIA GAS TRAN
-DOC-NCC SERVICE CO				RECEIVED:	04/08/82	JA: PA			
8226978	11209	3712921863		103		CLAY G STROHM 1209-1	E HUNTINGDON	30.0	TEXAS EASTERN TRA
-DORAN & ASSOCIATES INC				RECEIVED:	04/08/82	JA: PA			
8226979	11137	3712921755		103		DORAN #1 KZ-6	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
-E M MURDICK				RECEIVED:	04/08/82	JA: PA			
8226997	11225	3706326504		103		CLAWSON #3	BLAIRSVILLE	36.0	T W PHILIPS GAS &
-ENERGY PRODUCTION CO				RECEIVED:	04/08/82	JA: PA			
8226982	11110	3706326431		103		B F OLIVER #5	NOLO MOUNTAIN	37.8	COLUMBIA GAS TRAN
8226981	11109	3706325921		103		EDMONDSON #2	NOLO MOUNTAIN	9.6	COLUMBIA GAS TRAN
8226980	11108	3706326524		103		STEPHENS #1-A	NOLO MOUNTAIN	8.6	COLUMBIA GAS TRAN
-FAIRMAN DRILLING CO				RECEIVED:	04/08/82	JA: PA			
8226983	10753	3706326562		103		MARY J WALKER #1 F-3304	CREEKSIDE	18.0	T W PHILLIPS GAS
-FELMONT OIL CORPORATION				RECEIVED:	04/08/82	JA: PA			
8226984	11203	3706326555		103		DONALD HICKOK #1 F-340	PINETON FIELD	0.0	COLUMBIA GAS TRAN
-J & J ENTERPRISES INC				RECEIVED:	04/08/82	JA: PA			
8226989	11099	3706323357		108		CLAIR FULMER #2	ARMSTRONG	7.0	T W PHILLIPS GAS
8226987	11112	3703320702		103		ROBERT KESTER #7	BELL	0.0	T W PHILLIPS GAS
8226988	11113	3703320663		103		ROBERT KESTER #8	BELL	0.0	T W PHILLIPS GAS
-J E S TRUCKING INC				RECEIVED:	04/08/82	JA: PA			
8226986	11130	3706326393		103		LLOYD & LINDA DEBNAR #1 (001) 1016A	BURRELL	0.0	PEOPLES NATURAL G
-JAMES F SCOTT				RECEIVED:	04/08/82	JA: PA			
8227001	11195	3706326304		103		DALE STARZELL #1 P-357	CANOE	16.0	CONSOLIDATED GAS

UMI 28 85 YM 28174

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-JOHN E SAUL CORP				RECEIVED:	04/08/82	JA: PA
8227000	11129	3700522518		103		JOHN E SAUL #1 (009) 7.5A
8226999	11128	3708522581		103		M C WILSON #3 (0010) 74A
-LAIRD T ORR COAL CO				RECEIVED:	04/08/82	JA: PA
8226998	11199	3706300000		103		LAIRD & RUBY ORR #2-IND-26551
-LAWRENCE BLAIR				RECEIVED:	04/08/82	JA: PA
8226938	11104	3700500000		108		LAWRENCE BLAIR #3
-MERIDIAN EXPLORATION CORP				RECEIVED:	04/08/82	JA: PA
8226992	11211	3704921371		102-2		D TROYER #581-1
8226994	11210	3704921371		107-TF		D TROYER #581-1
8226991	11106	3703921368		102-2		V MAHAN #583-3
8226993	11105	3703921368		107-TF		V MAHAN #583-3
-MITCHELL ENERGY CORPORATION				RECEIVED:	04/08/82	JA: PA
8226995	11067	3703921359		103		CHAPIN #1
8226996	11068	3703921359		107-TF		CHAPIN #1
-R. WESLEY SMITH & W. G. SHANER				RECEIVED:	04/08/82	JA: PA
8227002	11213	3706320453		107-TF		MUSSER #1
-SNYDER BROTHERS INC				RECEIVED:	04/08/82	JA: PA
8227003	11097	3706323210		108		F & M TRUST CO #2
8227005	11098	3706323211		108		F & M TRUST CO #3
8227004	11097	3706323212		108		F & M TRUST CO #4
-TEMPLETON ENERGY INC				RECEIVED:	04/08/82	JA: PA
8226985	11194	3700522640		103		HARRY D HOOVER #1
-TURM OIL INC				RECEIVED:	04/08/82	JA: PA
8227008	11115	3700522557		103		A BLAIR LIAS #1
8227007	11114	3700522567		103		THOMAS E ANDERSON #1
-US ENERGY DEVELOPMENT CORP				RECEIVED:	04/08/82	JA: PA
8227009	11219	3712330105		102-2		A SAVKO #1
8227010	11220	3712330105		107-TF		A SAVKO #1
-VINCENT KUTCH				RECEIVED:	04/08/82	JA: PA
8226990	11117	3706321581		107-TF		HOLMES #2
-WAINOCO OIL & GAS CO				RECEIVED:	04/08/82	JA: PA
8227011	11135	3703920888		102-2		ERNEST B SHREVE #1 (W-72)
8227012	11136	3703920888		107-TF		ERNEST B SHREVE #1 (W-72)
-ZETA S T JOINT VENTURE 80				RECEIVED:	04/08/82	JA: PA
*8227013	11154	3706326289		102-2		RUFFNER #2
*8227014	11155	3706326324		102-2		SICKENBERGER #1

OTHER PURCHASERS VOLUME NO :641

8226976	ATLAS RESOURCES INC
8226977	ATLAS RESOURCES INC
8227013	ATLAS RESOURCES INC
8227014	ATLAS RESOURCES INC

VOLUME 641 PAGE 088

FIELD NAME	PROD	PURCHASER
GILPIN	0.0	PEOPLES NATURAL G
WAYNE	0.0	PEOPLES NATURAL G
W PENNA-UPPER DEVONIA	15.0	PEOPLES NATURAL G
BLANKET HILL	36.5	PEOPLES NATURAL G
WATERFORD	30.0	NATIONAL FUEL GAS
WATERFORD	30.0	NATIONAL FUEL GAS
CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
CONNEAUTVILLE-MEDINA	0.0	COLUMBIA GAS TRAN
CONNEAUTVILLE-MEDINA	0.0	COLUMBIA GAS TRAN
YOUNG	8.5	PEOPLES NATURAL G
BANKS	11.0	T W PHILLIPS GAS
BANKS	11.0	T W PHILLIPS GAS
BANKS	11.0	T W PHILLIPS GAS
WAYNE	60.0	T W PHILLIPS GAS
NUMINE	30.0	PEOPLES NATURAL G
BRYAN	30.0	T W PHILLIPS GAS
FREEHOLD	20.0	COLUMBIA GAS TRAN
FREEHOLD	20.0	COLUMBIA GAS TRAN
CRETE CHURCH	8.0	PEOPLES NATURAL G
ATHENS (BLOOMFIELD)	3.0	COLUMBIA GAS TRAN
ATHENS (BLOOMFIELD)	3.0	COLUMBIA GAS TRAN
NONE	25.0	COLUMBIA GAS TRAN
NONE	25.0	COLUMBIA GAS TRAN

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12218 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-C

[Docket No. ER81-179-004]

Arizona Public Service Co.; Refund Report

April 28, 1982.

The filing Company submits the following:

Take notice that on April 12, 1982, Arizona Public Service Company filed a refund report pursuant to the Commission's order of February 26, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 12, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12206 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-179-005]

Arizona Public Service Co.; Refund Report

April 28, 1982.

The filing Company submits the following:

Take notice that on April 12, 1982, Arizona Public Service Company filed a refund report pursuant to the Commission's order of February 26, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 12, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12209 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5988-000]

Stephen E. and George S. Austin; Application for Preliminary Permit

April 30, 1982.

Take notice that Stephen E. and George S. Austin (Applicant) filed on February 16, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5988 to be known as the Browns Mill Project located on Paul Stream in Essex County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Stephen E. or George S. Austin, Box 20, Concord, Vermont 05824.

Project Description—The proposed project would consist of: (1) A newly constructed 8-foot high concrete dam; (2) a proposed reservoir with a surface elevation of 1,124 feet NGVD and a storage capacity of 7.2 acre-feet; (3) a 100-foot long tailrace; (4) a new powerhouse containing one generating unit with a rated capacity of 47 kW; (5) 2.5 miles of new transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 200,000 to 240,000 kWh. The most likely market for the energy derived at the proposed project would be the Central Vermont Public Service Corporation. The project property is owned by the St. Regis Paper Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,718.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR § 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12210 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5986-000]

Stephen E. and George S. Austin; Application for Preliminary Permit

April 30, 1982.

Take notice that Stephen E. and George S. Austin (Applicant) filed on February 16, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5986 to be known as the Bradley Vail Mill Project located on the Moose River in Essex County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Stephen E. or George S. Austin, Box 20, Concord, Vermont 05824.

Project Description—The proposed project would consist of: (1) A newly constructed 12-foot high concrete dam; (2) a proposed reservoir with a surface elevation of 1,023 feet NGVD and a storage capacity of 27.5 acre-feet; (3) a 100-foot long tailrace; (4) a new powerhouse containing one generating unit with a rated capacity of 83 kW; (5) a new transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 360,000 to 400,000 kWh. The most likely market for the energy derived at the proposed project would be the Central Vermont Public Service Corporation. The project property is owned by William Payeur of North Concord, Vermont, Mrs. Charles Birck of Massapequa Park, New York, and Hyman Abramson, Jr. of Berlin, New Hampshire.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,767.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12211 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5987-000]

Stephen E. and George S. Austin; Application for Preliminary Permit

April 30, 1982.

Take notice that Stephen E. and George S. Austin (Applicant) filed on February 16, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5987 to be known as the Mile One Rapids Water Power Project located on Paul Stream in Essex County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Stephen E. or George S. Austin, Box 20, Concord, Vermont 05824.

Project Description—The proposed project would consist of: (1) A new 11-foot high concrete dam; (2) a proposed reservoir with a surface elevation of 991 feet NGVD and a storage capacity of 12 acre-feet; (3) a 100-foot long tailrace; (4) a new powerhouse containing a single generating unit with a rated capacity of 55 kW; (5) 1.4 miles of new transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 240,000 to 280,000 kWh. The most likely market for the energy derived at the proposed project would be the Central Vermont Public Service Corporation. The project property is owned by the St. Regis Paper Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the

work to be performed under the preliminary permit would be $15,716.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12212 Filed 5–4–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–274–000]

Cities Service Gas Co.; Application

April 29, 1982.

Take notice that on April 6, 1982, Cities Service Gas Company, (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in docket No. CP82–274–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline taps, measuring regulating and appurtenant facilities to enable Applicant to render natural gas service to authorized local natural gas distribution companies for resale to 10 right-of-way customers or to serve same directly if no local authorized natural gas distribution company is willing or able to make such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities:

1. Tap Applicant's Tonganoxie-Kansas City 26-inch transmission pipeline in Leavenworth County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Donald Stockman.

2. Tap Applicant's "C" System 12-inch gathering pipeline in Haskell County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Harriet R. Calihan.

3. Tap Applicant's Jane 20-inch transmission pipeline in Newton County, Missouri, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to W. R. Collie.

4. Tap Applicant's Pleasant Hill 8-inch transmission pipeline in Cass County, Missouri, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Lawrence H. Divine.

5. Tap Applicant's Pleasant Hill 8-inch transmission pipeline in Cass County, Missouri, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Helen H. Gentry.

6. Tap Applicant's McLouth Storage 4-inch pipeline in Jefferson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Dean Hosman.

7. Tap Applicant's McLouth Storage 4-inch pipeline in Jefferson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Howard Hughes.

8. Tap Applicant's McLouth Storage 4-inch pipeline in Jefferson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to George Kays.

9. Tap Applicant's Waynoka Gathering 6-inch lateral pipeline in Woods County, Oklahoma, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Chris Olson.

10. Tap Applicant's Canadian-Blackwell 26-inch transmission pipeline in Kay County, Oklahoma, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Elwood Sneath.

Applicant anticipates that the sales to Harriet R. Calihan, Dean Hosman, Howard Hughes and George Kays would be made directly by Applicant and the sales to the other six customers would be made to The Gas Service Company for resale to these customers.

Applicant estimates that the total cost of the facilities proposed would be approximately $12,032 which cost Applicant would finance from treasury cash.

Applicant estimates average annual sales for each of 9 of the customers would be 2650 Mcf with annual sales to Harriet R. Calihan being 3,000 Mcf to 5,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants

parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12176 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-464-000]

Consumers Power Co.; Filing

April 28, 1982.

The filing Company submits the following:

Take notice that Consumers Power Company (Consumers) on April 19, 1982, tendered for filing Supplemental Agreement No. 2 to the Coordinated Operating Agreement between Consumers Power Company and Northern Michigan Electric Cooperative, Inc., Wolverine Electric Cooperative, Inc., City of Grand Haven, Michigan, City of Traverse City, Michigan and City of Zeeland, Michigan (hereinafter collectively referred to as the "MCP members"). Also tendered for filing is a Supplemental Agreement No. 2 to each of six interconnection facilities agreements between Consumers and Individual MCP members designated as the "Alba"; "Blendon"; "Grand Traverse"; "Hersey"; "Livingston"; and "Redwood" Interconnection Facilities Agreements. By letter of February 16, 1982 in Docket No. ER82-181-000, the Commission accepted for filing the Coordinated Operating Agreement and designated the same as Rate Schedule FERC 53. The Commission also accepted for filing as supplements thereto the related interconnection facilities agreements and Supplemental Agreement No. 1 to the Coordinated Operating Agreement and each of the facilities agreements, which had extended the effective date of each of the agreements.

Supplemental Agreement No. 2 to each of the agreements again extends the effective date of the agreements to April 1, 1982, and extends the time for approval by the Rural Electrification Administration (REA). The supplemental agreements were necessary because of delays in obtaining said approval. Requisite approval of the REA was granted on March 19, 1982 and is included in Consumers' filing.

Consumers requests an effective date of April 1, 1982, and therefore requests waiver of the Commission's notice requirements.

According to Consumers copies of this filing were served on MCP membes and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 82-12191 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-189-003]

Delhi Gas Pipeline Corp.; Amendment To Petition To Amend

April 29, 1982.

Take notice that on March 22, 1982, Delhi Gas Pipeline Corporation (Petitioner), Fidelity Union Tower, Dallas, Texas 75201, filed in Docket No. CP81-189-003 an amendment to its pending petition to amend, in the instant docket, filed pursuant to § 284.127 the Commission's Regulations so as to increase its estimated daily and total volumes of natural gas to be delivered to Transcontinental Gas Pipe Line Corporation (Transco) over the remaining term of the twenty-year transaction, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is submitted that by order issued February 2, 1982, Petitioner was authorized to transport for Transco over a period of twenty years a total of 146,000,000 Mcf of gas at a daily rate of 20,000 Mcf redelivering such gas to Transco at delivery points in Webb, Zapata, and La Salle Counties, Texas.

It is further submitted that on March 5, 1982, Petitioner filed a petition to amend the order issued February 22, 1980, so as to increase its estimated daily and total volumes to be delivered to Transco to 40,000 Mcf and 279,000,000 Mcf of gas, respectively, over the remaining term of the twenty year transaction.

Upon further analysis and review of its contract with Transco, Petitioner proposes to amend its petition to amend so as to increase its estimated daily and total volumes to be delivered to Transco to 45,000 Mcf of gas per day and 312,525,000 Mcf of gas total over the remaining term of the twenty year transaction.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12177 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-50-000]

El Paso Electric Co.; Application

April 28, 1982.

Take notice that on April 21, 1982, El Paso Electric Company (Applicant) filed a request with the Commission,

pursuant to Section 204 of the Federal Power Act, requesting authority to negotiate for the placement of up to 4,000,000 shares of Common Stock, no par value.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12192 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-465-000]

Empire District Electric Co.; Filing

April 28, 1982.

The filing Company submits the following:

Take notice that the Empire District Electric Company (EDE) on April 19, 1982, tendered for filing proposed changes in its FERC Electric Service Tariff, Volume No. One. The proposed changes would increase revenues from present jurisdictional sales and service by $1,277,155 based on the 12-month period ending December 31, 1982.

The presently effective rates are based on costs for the twelve months ending February 28, 1978. Since the time EDE has experienced substantial increase in all elements of its cost, including fuel, labor, interest, taxes and construction to provide additional capacity and meet environmental requirements.

EDE proposes an effective date of July 1, 1982.

Copies of the filing were served upon the public utility's jurisdictional customers, the Missouri Public Service Commission, and the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12198 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3208-003]

Lewis D. Evans; Application for License (5 MW or Less)

April 30, 1982.

Take notice that Mr. Lewis D. Evans (Applicant) filed on February 22, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as Hume Lake Water Power Project No. 3208. The project would be located at the United States Department of Agriculture, Forest Service's existing Hume Lake Dam on Ten Mile Creek within the Sequoia National Forest in Fresno County, California. Correspondence with the Applicant should be directed to: Mr. Lewis D. Evans, P.O. Box 820, Kings Canyon National Park, California 93633.

Project Description—The proposed project would consist of: (1) a 36-inch diameter, 8,000-foot long low pressure pipe; (2) a 30-inch diameter, 4,500-foot long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 3,500 kw; (4) a switchyard adjacent to the powerhouse; (5) a 70-kV, approximately 3-mile long transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company line south of the powerhouse.

Purpose of Project—Project energy would be sold to a public utility company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, or or before July 12, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d)) or a notice of intent (See 18 CFR 4.33(b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protest or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12213 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6076-000]

Fairview Orchards Associates; Application for Preliminary Permit

April 30, 1982.

Take notice that Fairview Orchards Associates (Applicant) filed on March 11, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6076–000 to be known as the Rock Creek Project located on Rock Creek in Nevada County, California. The proposed project would affect U.S. lands under the administration of the U.S. Bureau of Land Management. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Jeffrey C. Reed, Fairview Orchards Associates, P.O. Box 307, Hancock, Maryland 21750.

Project Decription—The proposed project would consist of: (1) the existing 12-foot high concrete Lake Vera Dam owned by Lake Vera Mutual Water Company, and impounding; (2) a 12-acre reservoir; (3) a 7,300-foot long, 48-inch diameter pipeline; (4) a powerhouse containing two generating units, one rated at 1,400 kW and one rated at 2,600 kW; (5) a short access road; and (6) a 3,000-foot long transmission line. The average annual energy generation is estimated to be 12 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would conduct engineering, economic, environmental, and feasibility studies, and prepare an FERC license application. A service road will be required to conduct the studies. The cost of the work to be done under the preliminary permit is estimated to be $100,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 16, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 16, 1982, and should specify the type of application forthcoming. Application for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12214 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1995-000]

Robert M. Hewett; Application

April 29, 1982.

The filing individual submits the following:

Take notice that on March 1, 1982, Robert M. Hewett filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Kentucky Utilities Company
Vice President, Old Dominion Power Company

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to be come a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12178 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-15-000]

Kansas Power & Light Co.; Application for Adjustment

April 29, 1982.

On April 1, 1982, Kansas Power and Light Company (Kansas P&L) filed with the Federal Energy Regulatory Commission an application for an adjustment from the Commission's incremental pricing regulations (18 CFR Part 282). Kansas P&L is engaged in the transmission and distribution of natural gas from sources within the State of Kansas and the sale of gas within Kansas at the wholesale and retail levels. Although none of its customers have been subject to incremental pricing in the past, Kansas P&L intends to purchase interstate gas which will be subject to incremental pricing. Kansas P&L asserts that, unless the relief requested is granted, all of its customers that would be subject to incremental pricing surcharges as a result of the interstate gas purchases will leave Kansas P&L's system and purchase other intrastate gas in order to avoid paying incremental pricing surcharges. Accordingly, Kansas P&L seeks an adjustment to eliminate the impact of incremental pricing with respect to the interstate gas which is to be attached to its system supply.

The procedures applicable to the conduct of this adjustment proceeding are found in section 1.41 of the Commission's Rules of Practice and

Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of section 1.41. All petitions to intervene must be filed on or before April 20, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12179 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6143-000]

Lake Cushman Co.; Application for Preliminary Permit

April 29, 1982.

Take notice that Lake Cushman Company (Applicant) filed on March 30, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 6143 to be known as the Mt. Rose Hydroelectric Project located on an unnamed stream near Hoodsport in Mason County, Washington. The proposed project would affect the U.S. lands within the Olympia National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Michael E. Kirk, Owner, Systems Northwest, P.O. Box 202, Hoodsport, Washington 95848.

Project Description—The proposed project would consist of: (1) A 2-foot high screened diversion structure; (2) a 600-foot long, 18-inch diameter polyethylene pipe; (3) a 600-foot long, 18-inch diameter steel penstock; (4) a powerhouse with a total installed capacity of 200 kW; and (5) a 2,500-foot long, 7.2-kV transmission line interconnecting with an existing PUD No. 3 transmission line. The Applicant estimates that the average annual output would be 972 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for 24 months during which it would conduct engineering, hydrological, economic, and environmental studies, and prepare an FERC license application.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 C.F.R. § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for prelminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protest,s or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12194 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6173-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

April 29, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 6, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6173 to be known as the Bear Creek Project located on Bear Creek within Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 196th NE., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) two 1-foot high diversion structures on Bear Creek and unnamed tributary to Bear Creek; (2) 8,000 feet of 36-inch diameter pipeline conveying water from diversion points to; (3) a power plant to contain a single generating unit with a rated capacity of 2,700 kW, operating under a head of 1,000 feet; and (4) a 12-mile long, 115 kV transmission line to tie into a utility company line. The estimated average energy output is 11.8 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 24 months, during which it would conduct environmental, economic, and technical studies as well as prepare an application for an FERC license. The estimated cost of such studies and the preparation of an FERC license application is $40,000. No new roads will be needed.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption

from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12210 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6174-000]

Metropolitan Water District of Southern California; Application for Exemption of Small Conduit Hydroelectric Facility

April 30, 1982.

Take notice that on April 7, 1982, The Metropolitan Water District of Southern California (Applicant) filed an application under section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Coyote Creek Small Conduit Hydroelectric Project (FERC Project No. 6174) would be located on the Applicant's Lower Feeder Pipeline, in Orange County, California. Correspondence with the Applicant should be directed to: Mr. Evan L. Griffith, General Manager, The Metropolitan Water District of Southern California, P.O. Box 54153, Terminal Annex, Los Angeles, California 90054.

Purpose of Project—The power generated by the project would be sold to a public or private utility.

Project Description—The project would consist of a powerhouse with an installed capacity of 3.1 MW. The powerhouse would operate under a head of 218 feet and would generate approximately 19.6 million kWhs annually.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12215 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP71-54-001]

Michigan Wisconsin Pipe Line Co.; Petition to Amend

April 29, 1982.

Take notice that on April 9, 1982, Michigan Wisconsin Pipe Line Company (Petitioner), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP71-54-001 a petition to amend the order issued December 7, 1970,[1] as

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

amended, in Docket No. CP71-54 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the continuance of an exchange agreement among Petitioner, Natural Gas Pipeline Company of america (Natural) and Phillips Petroleum Company (Phillips), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Petitioner is presently authorized to exchange up to 80,000 Mcf of natural gas per day with Natural and Phillips pursuant to a supplemental gas exchange agreement dated July 17, 1970 as amended on August 19, 1974. It is stated that pursuant to the gas exchange agreement Phillips makes deliveries to Petitioner at the tailgate of Phillips' Sherman Plant located in Hansford County, Texas, and that Petitioner redelivers equivalent volumes to Natural at an existing point of interconnection between the facilities of Petitioner and Natural also located in Hansford County, Texas. It is further stated that the aforementioned amendment to the supplemental gas exchange agreement provided for a primary term through July 31, 1979, and from year to year thereafter.

Petitioner states that the pressure levels at the Hansford delivery point to Natural are such that difficulty is encountered in effectuating deliveries of the exchange gas to Natural. Petitioner states that in order to restore the deliveries of exchange gas to the levels authorized by the certificate Phillips has agreed to operate new facilities necessary to dehydrate and compress the gas delivered by Petitioner at the Hansford exchange point to both the quality and pressure conditions required for utilization by Natural in its pipeline system. Petitioner states that it has therefore agreed to reduce Phillips' contribution for fuel use and shrinkage from 30 Mcf per 1000 Mcf of gas actually received by Petitioner from Phillips at Phillips' Sherman Plant to 10 Mcf per 1000 Mcf. It is stated that Phillips' dollar reimbursement of $12.50 per 1000 Mcf of gas actually delivered to Petitioner covering its compression and dehydration expenses remains unchanged.

Petitioner further states that the second amendment to the supplemental exchange agreement extends the primary term of the agreement through July 31, 1987, and from year to year thereafter unless cancelled by any of the parties by six months prior written notice.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12195 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4870-001 and 4876-001]

Modesto Irrigation District; Application for Preliminary Permit

April 29, 1982.

Take notice that Modesto Irrigation District (Applicant) filed on August 12, 1981, applications for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for projects Nos. 4870 and 4876 to be known as the Mendenhall Creek and the Eden Creek Projects located on Mendenhall and Eden Creeks, respectively, in Mendocino County, California. the appalications are on file with the Commission and available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, P.O. Box 4060, Modesto, California 95352.

Project Description— Each proposed project consists of a 6-foot high diversion structure, a 5,500-foot long conduit, a 1,400-foot long penstock and a powerhouse containing a single generating unit with a rated capacity of 5,700 kW for Project No. 4870 and 5,400 kW for Project No. 4876.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested 24-month permits to prepare definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $45,000 for each project.

Competing Applications—These applications were filed as competing applications to Consolidated Hydroelectric, Inc.'s applications for Projects Nos. 4383 and 4384 filed on March 20, 1981. Public notice of the filing of the initial applications, which have already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any applicaton for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the

Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12197 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP80-144-005 and CP80-144-001]

Mountain Fuel Resources, Inc. et al.; Petition To Amend

April 29, 1982.

Take notice that on March 30, 1982,[1] Mountain Fuel Resources, Inc. (Resources), 36 South State Street, Salt Lake City, Utah 84111, and Mountain Fuel Supply Company (Mountain Fuel), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket Nos. CP80-144-005, CP80-144-001, and CP80-144-002, a joint petition to amend the order issued September 30, 1981, as amended, in the instant dockets pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas to an additional delivery point to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued September 30, 1981, they were authorized to transport up to an aggregate volume of 15,000 Mcf of natural gas per day for Northwest and up to 35,000 Mcf per day for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern). It is stated that the transportation and exchange agreement between Petitioners and Northwest and between Petitioners and Northern provided that the existing point of interconnection between the facilities of Mountain Fuel and Northwest designated as NPC-Red Wash delivery point would be used as an optional delivery point for natural gas transported for the accounts of Northern and Northwest. It is further stated that prior to the issuance of certificate authorization Petitioners filed an amendment to the application in order to avoid a formal determination at that time on the continuing viability of the Hinshaw exemption for the Southern Pipeline System in Utah. Said amendment provided that none of the volumes of natural gas transported by Mountain Fuel for the accounts of Northwest and Northern would be redelivered for their respective accounts at the Red Wash delivery point.

Petitioners state that because of the projected increase in the volumes available for transportation on the Southern System together with reduced summer demand in its Utah distribution system operating conditions now require the activation of the Red Wash delivery point to Northwest on a permanent basis.

Petitioners request amendment of the order issued September 30, 1981, so as to authorize the use of the Red Wash delivery point for the redelivery of natural to Northwest for the account of Northwest and Northern, pursuant to the terms of the long-term gas transportation and exchange agreements on file with the Commission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12198 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2852-000]

New York State Electric & Gas Corp.; Application for License (over 5 MW)

April 29, 1982.

Take notice that the New York State Electric & Gas Corporation (Applicant) filed on June 8, 1978, and supplemented on May 23, 1980, August 11, 1980, and March 23, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C 791(a)—825(r)) for continued operation of a water power project to be known as the Keuka Project No. 2852. The project would be located on the Keuka, Waneta and Lamoka Lakes in Steuben and Schuyler Counties, New York. Correspondence with the Applicant should be directed to: L. Theodore Everett, Senior Vice President, New York State Electric & Gas Corporation, Ithaca, New York 14850.

Project Description—The existing project consists of: (1) The 74,000 acre-foot reservoir formed by the interconnected Lamoka and Waneta Lakes; (2) a 9,288-foot long canal at the northeast of Waneta Lake; (3) a 54-inch diameter concrete penstock 3,600 feet long, connected to; (4) a 42-inch diameter steel penstock 835 feet long; (5) a powerhouse on the shores of Keuka Lake with an installed capacity of 2,000 kW; and (6) other appurtenances. Applicant owns all existing facilities. The average annual generation is 5,520,000 kWh.

A pre-historic Indian Village listed in the National Register of Historic Places is located on the Applicants property between Lamoka and Waneta Lakes. The New York State Department of Environmental Conservation in coordination with the Applicant, will construct two boat launch facilities and two parking areas at the site.

Purpose of Project—Project energy is integrated into the Applicant's main transmission system for ultimte delivery to its customers within New York State.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, or or before July 12, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or §4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of

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[1] The petition was initially tendered for filing on March 30, 1982, however, the fee required by § 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 1, 1982; thus, filing was not completed until the later date.

the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12198 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-278-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

April 29, 1982.

Take notice that on April 8, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-278-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point for its utility customer, Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authority to construct and operate one new delivery point in Kiowa County, Kansas, for Peoples. It is stated that Peoples would use the delivery point to provide natural gas service to at least 13 rural customers to be used primarily for irrigation during the upcoming crop season. It is further stated that additional volumes to be delivered to Peoples through the facilities are within Peoples' present entitlements. It is asserted that Peoples' deliveries to the rural customers would be an approximate maximum summer peak day volume of 1,815 Mcf and an estimated annual volume of 199,000 Mcf.

The estimated cost of the proposed facilities is $21,250 which cost would be financed from cash on hand. Applicant would be reimbursed by Peoples for the cost of constructing the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12161 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-280-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

April 29, 1982.

Take notice that on April 8, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP 82-280-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for and exchange of natural gas with East Tennessee Natural Gas Company (East Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas exchange and transportation agreement dated February 25, 1982, Applicant proposes to exchange certain volumes of natural gas with East Tennessee and to transport and redeliver such volumes to Northern Illinois Gas Company (NI Gas) for East Tennessee's account.

Applicant states that under such agreement it would deliver as exchange gas up to 8,000,000 Mcf of natural gas per year at Ogden, Iowa, for the account of East Tennessee and that the volumes delivered at Ogden wold be thermally equivalent to the volumes that East Tennessee would cause to be delivered to United Gas Pipe Line Company at West Monroe, Louisiana, for Applicant's account.

It is further stated that Applicant would transport the volumes exchanged at Ogden, Iowa, and redeliver thermally equivalent volumes to NI Gas for East Tennessee's account at the existing interconnection between the pipeline systems of Applicant and NI Gas at East Dubuque, Illinois, and that the natural gas redelivered to NI gas would be injected for storage pursuant to the storage agreement between East Tennessee and Mid-Continent Gas Storage Company.

Applicant asserts that it would initially charge East Tennessee the transportation rate of 7.79 cents per Mcf for gas transported from Odgen, Iowa, to East Dubuque, Illinois, and that it would also receive 1.0 percent of all the thermal content delivered to East Dubuque, Illinois, for fuel and unaccounted-for gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12182 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-47-000]

Pacific Power & Light Co.; Supplemental Application

April 28, 1982.

Take notice that on April 23, 1982, Pacific Power & Light Company filed a Supplemental Application pursuant to section 204 of the Federal Power Act, seeking authorization to increase the amount of Preferred Stock to be issued from $50 million to $82.5 million.

Any person desiring to be heard to to make any protest with reference to said Supplemental Application should, on or before May 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Supplemental Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12190 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6136-000]

Ordell O. Packwood and Rita A. Packwood; Application for Preliminary Permit

April 29, 1982.

Take notice that Ordell O. Packwood and Rita A. Packwood (Applicant) filed on March 29, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6136 to be known as the Old Oak Ranch Water Power Project located on North Fork Tule River near Porterville in Tulare County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Richard L. Schafer, R.L. Schafer & Associates, Inc., P.O. Box 1388, Porterville, California 93258.

Project Description—The proposed project would consist of: (1) a 4-foot high diversion structure; (2) a 3-foot diameter conduit; (3) a powerhouse with a total installed capacity of 260 kW; (4) a switchyard located adjacent to the powerhouse; and (5) a 1,000-foot long transmission line interconnecting with an existing Southern California Edison Company transmission line. The Applicants estimate that the average annual output would be 670 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct engineering, hydrological, economic and environmental studies; and prepare an FERC license application. These studies are estimated by the Applicant to cost $45,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept application for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12200 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP77-17-007, CP77-513-002, CP78-510-003, CP78-511-002, CP78-516-003, CP80-489-005, CP81-7-005, CP81-101-003, CP81-109-003]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Petition To Amend

April 29, 1982.

Take notice that on March 31, 1982, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in the above-captioned dockets a petition pursuant to Section 7 of the Natural Gas Act to amend the orders issued in the instant dockets so as to authorize the cessation of certain transportation

services being performed by Petitioners for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), under three transportation arrangements: The Northern Blanket Agreement, The Eight Additional Transport Agreements, and The Eight Companion Transport Agreements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is submitted that by order issued November 11, 1977, in Docket No. CP77–17, Trunkline was authorized to transport gas on Northern's behalf from Longville, Louisiana, and redeliver such gas to Panhandle at the interconnection of Petitioners' facilities in Tuscola, Illinois, for further delivery by Panhandle to Northern near Mullinville, Kiowa County, Kansas, pursuant to The Northern Blanket Agreement dated September 24, 1976. It is further submitted that the Northern Blanket Agreement was amended so as to provide for its termination on January 13, 1982, or upon commencement of the flow of gas in the Northern Border Project, whichever, comes later. Petitioners state that they currently transport up to 175,000 Mcf of gas per day for Northern under The Northern Blanket Agreement.

It is further submitted that as a result of the termination of The Northern Blanket Agreement, The Eight Additional Transportation Agreements between Petitioners and Northern would also terminate. Petitioners asserts that by orders issued December 29, 1977, in Docket No. CP77–613, April 17, 1979, in Docket No. CP78–516, February 26, 1981, in Docket No. CP80–489, June 4, 1981, in Docket No. CP81–7, September 8, 1981, in Docket No. CP81–101, and January 5, 1982, in Docket No. CP81–109, Petitioners were authorized to transport natural gas on Northern's behalf to the Longville, Louisiana, delivery point whereby Petitioners make ultimate redelivery to Northern at Mullinville, Kansas, pursuant to The Eight Additional Transport Agreements. It is further asserted that as partial consideration for Petitioners providing such transportation service Northern has extended Panhandle an option to purchase up to 20 percent of the natural gas, and accordingly, Petitioners have entered into The Eight Companion Transport Agreements whereby Trunkline transports Panhandle's 20 percent Northern purchase option gas. Petitioners state that these Eight Companion Transport Agreements would also terminate.

Therefore, Petitioners request the Commission to amend the orders issued in the instant dockets so as to authorize them to discontinue natural gas transportation service provided for Northern under the terms of the Northern Blanket Agreement, The Eight Additional Transport Agreements, and the Eight Companion Transport Agreements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12183 Filed 5–4–82; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP82–290–000]

Panhandle Eastern Pipe Line Co.; Application

April 29, 1982.

Take notice that on April 19, 1982, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82–290–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated February 23, 1982, Applicant proposes to transport up to 10,000 Mcf of natural gas per day on a firm basis for Trunkline from Mesa Petroleum production in Vermilion Block 348, offshore Louisiana. It is asserted that the point of receipt is Vermilion Block 340, offshore Louisiana, and the point of redelivery is at the existing interconnection of Applicant's and Trunkline's Stingray Pipeline System facilities located in Vermilion Block 321, offshore Louisiana. Applicant states that it has agreed to redeliver a daily quantity of gas equal to the quantity received less the unaccounted for losses on the pipeline system through which the volumes are transported.

It is asserted that Trunkline would pay Applicant a monthly charge of $22,663 and an excess/deficiency charge of 7.45 cents per Mcf.

It is submitted that the proposed service would enable Trunkline to move its Vermilion Block 348 gas supplies to the interstate market.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12184 Filed 5–4–82; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 6150-000]

Rainsong Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

April 30, 1982.

Take notice that on April 1, 1982, Rainsong Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 as amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6150) would be located on Jefferson Creek, tributary of Hamma Hamma River, Mason County, Washington. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) a 50-foot long, 6-foot high diversion structure; (2) a 8,000-foot long, 60-inch diameter pipeline/penstock; (3) a powerhouse containing one generating unit with an installed capacity of 5 MW; and (4) a 15,000-foot, 55–kV transmission line from the powerhouse to an existing 230–kV Bonneville Power Administration transmission line, or a 5.5-mile, 12–kV transmission line to intertie into the existing Mason County P.U.D. No. 1 transmission line. The Applicant estimates that the annual energy production will be approximately 30 GWh. The project is located entirely on Federal lands owned by Olympic National Forest.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of Washington Department of Fisheries, and State of Washington Department of Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 19, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12210 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-110-000]

Ring Power Corp; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 28, 1982

On April 9, 1982, Ring Power Corp., Post Office Box 17600, 8050 Phillips Highway, Jacksonville, Florida 32216 filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facilitity as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is under construction in Jacksonville, Florida. The primary energy source of the facility will be natural gas. The electric power production capacity of the facility will be 975 kilowatts. Waste heat from three new receprocating internal combustion sets will be recovered in boilers and 1.17 million Btu/hr. will be used in heating and cooling systems on an average annual basis. Installation of the facility began in December 1981. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12201 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3783-002]

Rocky Brook Electric, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

April 30, 1982.

Take notice that on March 15, 1982, Rocky Brook Electric, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 as amended), requesting that its accepted license application be treated initially as an application for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The notice of the application for license was issued February 25, 1982. The proposed small hydroelectric project (Project No. 3783) would be located on Rocky Brook in Jefferson County, Washington. Correspondence with the Applicant should be directed to: Joseph B. Clarkson, 460 Duckabush River Road, Brinnon, Washington 98320.

Project Description—The proposed project would consist of: (1) an 8-foot high, 24-foot long steel arch diversion dam; (2) a 500-foot long steel pipe; (3) a surge tank; (4) a 1,230-foot long steel penstock; (5) a powerhouse containing two generating units, one rated at 1,000 kW and one rated at 500 kW; and (6) an underground transmission line. The average annual energy generation is estimated to be 7 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington Departments of Fisheries and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 18, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 18, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12217 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-463-000]

Southwestern Electric Power Co.; Filing

April 28, 1982.

The filing company submits the following:

Take notice that Southwestern Electric Power Company ("SWEPCO") on April 19, 1982, tendered for filing a Power Supply Agreement between SWEPCO and Northeast Texas Electric Cooperative, Inc. ("NTEC"). The Power Supply Agreement provides for power supply arrangements between SWEPCO and NTEC and also provides a formulaic method of determining periodic changes in rates and charges applicable to services rendered NTEC by SWEPCO. Rates determined under the first application of the Power Supply Agreement will result in aggregate increased revenues from NTEC for the 12 months ending June 30, 1983 of about $8,424,000 or 20.1%, over rates presently in effect. SWEPCO requests that the Power Supply Agreement and rates determined thereunder be made effective as of April 1, 1982 and, accordingly, requests waiver of the notice of requirements under the Federal Power Act. NTEC has concurred in the filing and the proposed effective date.

Copies of the filing have been served on NTEC and upon the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12202 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6187-000]

Michael E. Springer and James B. Boulden; Application for Preliminary Permit

April 29, 1982.

Take notice that Michael E. Springer and James B. Boulden (Applicant) filed on March 29, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6187 to be known as the Leavitt Creek Water Power Project located on an unnamed spring, in Mono County, near Walker, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James B. Boulden, 729 Sexton Road, Sebastopal, California 95472.

Project Description—The proposed project would consist of: (1) a collection basin; (2) a 2-mile long water conduit; (3) a powerhouse with an installed capacity of 100 kW; and (4) a 0.3 mile-long transmission line to connect to an existing Sierra Pacific Power Company Line.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new road would be required to conduct the studies.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12200 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-291-000]

Tennessee Gas Pipeline Co.; Application

April 29, 1982.

Take notice that on April 19, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82–291–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 360 horsepower compressor unit and appurtenant facilities in Monroe County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant asserts that it has contracted to purchase gas from the Buttahatchie River Field, Monroe County, Mississippi, and is obligated to install the compression necessary to compress pressure-deficient gas from 250 pounds per square inch guage to a pressure sufficient to cause such pressure deficient gas to be delivered into Applicant's pipeline. Applicant submits that the proposed 360 horsepower compressor would be required to handle the production from the Buttahatchie River Field.

Applicant estimates the cost of the proposed facilities to be $697,000 which would be financed initially from general funds and/or borrowings under revolving credit agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12185 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-281-000]

Texas Gas Transmission Corp.; Application

April 29, 1982.

Take notice that on April 9, 1982, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP82-281-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 3-inch run orifice measuring station and for permission and approval to abandon the Lyons sales meter station all in Coahoma County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon its existing Lyons sales meter station serving Mississippi Valley Gas Company (Mississippi Valley), an existing resale customer, and to replace it with a single 3-inch run orifice measuring station and related equipment. The cost of the proposed construction is estimated to be $29,000 which would be financed by Mississippi Valley.

Applicant explains that an industrial customer served from the Lyons delivery point is expanding and plans to add two turbines which require a fuel gas pressure of at least 250 psig. It is asserted that the upgraded facilities would have a minimum line pressure of 350 psig. Applicant states that construction of the new sales meter station would not result in an increase in Mississippi Vallen's existing contract demand and quantity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12186 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RM79-34 and ST82-197]

Transportation Certificates for Natural Gas Displacement of Fuel Oil and Tennessee Gas Pipeline Co.; Self-Implementing Transactions

April 29, 1982.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Section 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) The "Recipient"column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indictaes transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pirpline pursuant to § 284.142 of the Commission's regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 2894.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to Section 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller		Recipient	Date filed	Part 284 subpart	Expiration date [1]	Transportation rate (C/MMBtu)
ST82-197	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	3/01/82	G		
ST82-198	Dow Pipeline Co	Entex, Inc	3/03/82	C		
ST82-199	Houston Pipe Line Co	Texas Gas Transmission Corp	3/02/82	C		
ST82-200	Oasis Pipe Line Co	Texas Gas Transmission Corp	3/02/82	C		
ST82-201	Transcontinental Gas Pipe Line Corp	Columbia Gulf Transmission Co	3/03/82	G		
ST82-202	Natural Gas Pipeline Co. of America	Entex, Inc	3/08/82	B		
ST82-203	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	3/05/82	G		
ST82-204	United Texas Transmission Co	United Gas Pipe Line Co	3/05/82	C		
ST82-205	Oklahoma Natural Gas Co	Tennessee Gas Pipeline Co	3/05/82	D		
ST82-206	Southern Natural Gas Co	Transcontinental Gas Pipe Line Corp	3/05/82	G		
ST82-207	Delhi Gas Pipeline Corp	Arkansas Louisiana Gas Co	3/08/82	D	8/05/82	33.40
ST82-208	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	3/08/82	C	8/05/82	33.40
ST82-209	Oklahoma Natural Gas Co	Columbia Gas Transmission Corp	3/10/82	D		
ST82-210	Houston Pipe Line Co	Michigan Wisconsin Pipe Line Co	3/11/82	C		
ST82-211	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	3/11/82	C		
ST82-212	Natural Gas Pipeline Co. of America	Transwestern Pipeline Co	3/15/82	G		
ST82-213	Colorado Interstate Gas Co	Cities Service Gas Co	3/15/82	G		
ST82-214	Monterey Pipeline Co	Texas Eastern Transmission, Corp	3/15/82	C	8/12/82	24.40
ST82-215	Transcontinental Gas Pipe Line Corp	Con. Edison Co. of New York, Inc	3/15/82	F		
ST82-216	Transcontinental Gas Pipe Line Corp	Con. Edison Co. of New York, Inc	3/15/82	F		
ST82-218	Rocky Mountain Natural Gas Co., Inc	Cities Service Gas Co	3/15/82	C		
ST82-219	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	3/16/82	G		
ST82-220	Tennessee Gas Pipeline Co	South Jersey Exploration Corp	3/16/82	B		
ST82-221	Tennessee Gas Pipeline Co	Mid Louisiana Gas Co	3/16/82	G		
ST82-222	Caprock Pipeline Co	Westar Transmission Co	3/17/82	B		
ST82-223	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	3/17/82	C		
ST82-225	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America	3/18/82	C		
ST82-226	Trunkline Gas Co	Tennessee Gas Pipeline Co	3/22/82	G		
ST82-227	Natural Gas Pipeline Co. of America	Michigan Wisconsin Pipe Line Co	3/22/82	G		
ST82-228	Northwest Pipeline Corp	Intermountain Gas Co., et al	3/19/82	B		
ST82-229	Louisiana Intrastate Gas Corp	Mid Louisiana Gas Co	3/23/82	C	8/20/82	80.00
ST82-230	Northern Natural Gas Co	Peoples Natural Gas Co	3/22/82	B		
ST82-232	Cabot Corp	Connecticut Natural Gas Corp	3/24/82	G(HS)	8/21/82	70.60
ST82-233	Natural Gas Pipeline Co. of America	Texas Gas Transmission Corp	3/24/82	G		
ST82-234	Intrastate Gathering Corp	United Gas Pipe Line Co	3/25/82	C		
ST82-235	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	3/26/82	G		
ST82-236	United Gas Pipe Line Co	Panhandle Eastern Pipe Line Co	3/25/82	G		
ST82-237	East Tennessee Natural Gas Co	Tennessee Gas Pipeline Co	3/25/82	G		
ST82-238	Tennessee Gas Pipeline Co	Con. Edison Co. of New York, Inc	3/26/82	F		
ST82-239	Northern Utilities, Inc	Montana-Dakota Utilities Co., Inc	3/29/82	C		
ST82-240	United Gas Pipe Line Co	Texas Eastern Transmission Corp	3/30/82	G		

[1] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicted.

[FR Doc. 82-12207 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST80-165-001]

Trunkline Gas Co.; Extension Reports

April 28, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before May 25, 1982 file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter and seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-165-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77251	Columbia Gas Transmission Corp	4/12/82	G	[1] 4/10/82
ST80-279-001	Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas TX 75201	Columbia Gas Transmission Corp	4/05/82	C	7/10/82
ST80-296-001	Alagasco Pipeline Co., 1918 First Avenue North, Birmingham, AL 35295	Southern Natural Gas Co	4/13/82	D	8/16/82

[1] This late request for an extension will be the subject of further Commission action and has not been deemed approved by operation of § 284.125(b)

[FR Doc. 82-12204 Filed 5-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-273-000]

United Gas Pipe Line Co.; Application

April 29, 1982.

Take notice that on April 5, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP82-273-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon minor facilities located in the Carthage Field, Panola County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon 173 feet of 4½-inch pipeline, 127 feet of 3½-inch pipeline and a meter station located in the Carthage Field. It is asserted that such facilities were used to connect the Phillips Petroleum Company Ball No. 1 well in the Carthage Field under a gas purchase contract dated September 22, 1978. It is stated that the facilities in question are no longer used in the purchase of gas by Applicant. Applicant states that such abandonment would have no effect on its existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 20, 982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12187 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-446-005]

United Gas Pipe Line Co.; Petition To Amend

April 29, 1982.

Take notice that on April 13, 1982, United Gas Pipe Line Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-446-005 a petition pursuant to Section 7(c) of the Natural Gas Act to amend the order issued January 8, 1980, in Docket No. CP79-446, as amended, so as to authorize the transportation of an additional 5,000 Mcf of gas per day for Arkansas Louisiana Gas Company (Arkla), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is submitted that by order issued January 8, 1980, in the instant docket Petitioner was authorized to transport up to 20,000 Mcf of natural gas per day for Arkla pursuant to a gas transportation agreement dated May 25, 1979. It is further submitted that under such agreement Arkla was to deliver or cause the delivery thereof of gas to Petitioner at Bayou Sale, St. Mary Parish, Louisiana, (Bayou sale point) while Petitioner was to make deliveries to Arkla at Champlin's East Texas plant, Panola County, Texas, the Bistineau storage facility, Bienville Parish, Louisiana, and the interconnection of Petitioner's 24-inch Carthage-Sterlington line and Arkla's 12-inch ST-1 line in Panola County, Texas.

Such order, Petitioner asserts, was amended on March 3, 1982, so as to authorize Petitioner to provide service at an additional point of delivery at the existing Bienville point and at a new point of interconnection between the facilities of Petitioner and Arkla in Plaquemines Parish, Louisiana, and an additional redelivery point at the existing interconnection between the facilities of Petitioner and Louisiana Interstate Gas Corporation at Exxon Company U.S.A.'s Garden City plant, St. Mary Parish, Louisiana.

It is stated that on June 1, 1981, Petitioner and Arkla further amended their agreement of May 25, 1979, so as to provide for the transportation by Petitioner of up to 5,000 Mcf of additional gas per day for Arkla, which gas would be received at the Plaquemines point. Petitioner, therefore, proposes to increase from 20,000 Mcf per day to 25,000 Mcf per day the total volumes of gas transported for Arkla.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12188 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-404-002]

Washington Natural Gas Co., as Project Operator; Petition To Amend

April 29, 1982.

Take notice that on April 2, 1982, Washington Natural Gas Company (Petitioner), 815 Mercer Street, Seattle, Washington 98111, filed in Docket No. CP79-404-002 a petition to amend the order issued March 4, 1982, in Docket No. CP79-404 pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioner to operate the Jackson Prairie Storage Project, Lewis County, Washington (Storage Project), so as to provide a maximum firm daily deliverability of 325,000 Mcf, 71,800 Mcf of additional daily deliverability on a best-efforts basis and a seasonal deliverability of 12,800,000 Mcf during each winter heating season beginning with the 1982-1983 heating season and continuing through the end of the 1989-1990 heating season, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that the Storage Project is owned in joint and equal undivided

interests by Petitioner, Northwest Pipeline Corporation (Northwest), and the Washington Water Power Company (Water Power) and that Petitioner's activities as project operator are conducted pursuant to the terms of the storage agreement dated June 25, 1970, as amended, which is on file with the Commissioner as Petitioner's Rate Schedule S–1, FERC Gas Tariff, Original Volume No. 1.

Petitioner states that by order issued March 4, 1982, it was granted authorization to expand the seasonal working gas in the Storage Project to 12,800,000 Mcf and the firm daily deliverability to 325,000 Mcf for three winter heating seasons beginning with the 1979–1980 heating season and extending through the 1981–1982 heating season.

Petitioner states that Northwest has requested that Petitioner extend the operation of the Storage Project at the level of 12,800,000 Mcf of seasonal working gas and at a firm daily deliverability of 325,000 Mcf for succeeding heating seasons beginning with the 1982–1983 heating season and continuing through the 1989–1990 heating season for the purpose of supporting an extension of Northwest's Rate Schedule WS–1 service for a like period. It is stated that the additional working gas to provide the increased level of deliverability of the Storage Project would be provided by Northwest and that no additional facilities are required to provide the increased deliverability.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12189 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75–110–012]

Washington Natural Gas Co., as Project Operator; Petition To Amend

April 29, 1982.

Take notice that on April 2, 1982, Washington Natural Gas Company (Petitioner), 815 Mercer Street, Seattle, Washington 98111, as Project Operator of the Jackson Prairie Storage Project (Storage Project), Lewis County, Washington, filed in Docket No. CP75–110–012 a petition pursuant to Section 7(c) of the Natural Gas Act to amend [1] the order issued September 26, 1975,[2] in Docket No. CP75–110 so as to authorize an increase in the level of the cushion gas in the Storage Project beginning with the 1982–1983 winter heating season, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is submitted that the Storage Project is adjacent to and is connected to the facilities of Northwest Pipeline Corporation (Northwest) and is owned in joint and equal undivided interests by Petitioner, Northwest and the Washington Water Power Company (Water Power). It is further submitted that the Storage Project provides an underground natural gas storage facility to support the winter season service rendered by Northwest under Northwest's Rate Schedule SGS–1.

Petitioner states that by order issued September 26, 1975, in the instant docket, as amended, it was authorized to operate the Storage Project at the following levels of storage and service:

Seasonal Working Gas, 10,800,000 Mcf.
Cushion Gas, 18,100,000 Mcf.
Total Storage Gas, 28,900,000 Mcf.
Firm Daily Delivery Rate, 300,000 Mcf.
Daily Best Efforts Rate, 71,800 Mcf.

In order to maintain the delivery capability of the Storage Project to meet the seasonal and daily delivery requirements authorized in this proceeding and to provide for possible future increases in storage capacity, Petitioner proposes that beginning with the 1982 injection season the cushion gas in the Storage Project be increased 150,000 Mcf to a level of not less than 19,450,000 Mcf. Petitioner asserts that total storage gas would, accordingly, be increased to a level of 30,250,000 Mcf.

It is stated that the additional cushion gas would be provided one-third each by Northwest, Water Power, and Petitioner in accordance with the terms of a Storage Agreement. Petitioner asserts that no construction work or additional facilities are required in order to attain the increased level of cushion gas.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1982 file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12190 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[1] Although this filing is entitled a Petition for a Temporary Certificate, it is also being construed as a Petition to Amend.

[2] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Project No. 6066–000]

Western Hydro Electric, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 Mw Capacity

April 29, 1982.

Take notice that on March 12, 1982, Western Hydro Electric, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6066) would be located on Smith Creek, within Gifford Pinchot National Forest in Lewis County, Washington. Correspondence with the Applicant should be directed to: Donald J. White, Vice President, Western Hydro Electric, Incorporated, Commerical Security Bank Building, Suite 600, 50 S. Main Street, Salt Lake City, Utah 84144, with copies to: Mr. Marc A. Auth, J–U–B Engineers, Inc., Industrial Division, 250 S. Beechwood Avenue, Boise, Idaho 83709.

Project Description—The proposed project would consist of: (1) a 6-foot high reinforced concrete diversion structure at elevation 2,650 feet; (2) a 36-inch diameter pipeline 10,700 feet long and penstock 7,300 feet long; (3) a powerhouse at elevation 1,180 feet

containing three turbine generators with 4.74 MW total capacity and 23.8 GWh annual energy production; and (4) a transmission line 3,700 feet long.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applications that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Washington Department of Fisheries and Department of Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's reprentatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 21, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", " PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12205 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 2G2622/T364; PH-FRL 2112-8]

American Cyanamid Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the pesticide (±)cyano(3-phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity apples. This temporary tolerance was requested by American Cyanamid Company.

DATE: This temporary tolerance expires April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Franklin Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540, has requested, in pesticide petition PP 1G281, the establishment of a temporary tolerance for residues of the pesticide (±)cyano(3-phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity apples at 1.0 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 241-EUP-99 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 1, 1983. Residues in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 20, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-11700 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2621/T363; PH-FRL-2113-1]

American Cyanamid Company; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the pesticide (±)cyano(3-phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity pears. This temporary tolerance was requested by American Cyanamid Company.

DATE: This temporary tolerance expires March 22, 1983.

FOR FURTHER INFORMATION CONTACT: Franklin Gee, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540, has requested, in pesticide petition PP 1G2621, the establishment of a temporary tolerance for residues of the pesticide (±)cyano(3-phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity pears at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 241–EUP–100 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 22, 1983. Residues in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 20, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-11711 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50573; PH FRL 2113-6]

AMVAC Chemical Corp.; Receipt of Application for an Experimental Use Permit for 1,2-Dibromo-3-Chloropropane (DBCP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application for an experimental use permit from Amvac Chemical Corporation. The experimental use permit, file symbol 5481–EUP–I, proposes allowing the use of 534 pounds of the nematocide 1,2-dibromo-3-chloropropane (DBCP) on peaches to identify and quantify residues of DBCP in the raw agricultural commodity peaches. Less than 10 acres would be used, all in South Carolina.

DATE: Written comments must be received on or before June 4, 1982.

ADDRESS: Comments should bear the document control number OPP–50573 and be submitted to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–401, 401 M St., SW., Washington, DC 20460.

The public record regarding this notice will be available for public inspection in Rm. E–107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: On March 5, 1981 EPA accepted the requests by all registrants of pesticide products containing DBCP, that all their registrations for DBCP pesticide products for uses other than on pineapples in Hawaii be cancelled. Notice of the acceptance appeared in the **Federal Register** of March 31, 1981 (46 FR 19598). This experimental use permit will be used by AMVAC to develop data specific to the use of DBCP in peach cultures. All peaches harvested from the treated areas will be destroyed and not used for food or animal feed.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: April 21, 1982.

Robert Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-11937 Filed 5-4-82; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed form under review is listed below and identified as an extension (burden change).

DATE: Comments must be received on or before June 4, 1982. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments prompty, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

ADDRESS: Copies of the proposed form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer..

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Thomas P. Goggin, Office of Administration, Room 3230, 2401 E Street, NW., Washington, D.C. 20506; Telephone (202) 634-6983.

OMB Reviewer: LaVerne Collins, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-6880.

List of Form(s)

Extension (Burden Change—Decrease)

Title: Elementary-Secondary Staff Information (EEO-5).

Form Number: EEOC FORMS 168A and B.

Frequency of Report: Biennially.

Type of Respondent: State of local governments.

Standard Industrial Classification (SIC) Code: 821.

Description of Affected Public: Public School Districts and Schools.

Federal Budget Functional Category: Federal law enforcement activities.

Annual Responses: 82,500.

Annual Reporting Hours: 412,500.

Federal Cost: $69,000.

Applicable under Section 3504(h) of Public Law 96-511: Applicable—Notice of Proposed Rule Making for 29 CFR 1602.41(M).

Number of Forms: 2.

Abstract—Needs/Uses: Data used by EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. Data are shared with Department of Education, Office of Civil Rights, National Center for Education Statistics and Department of Justice. Under Section 709(d) of Title VII, data are shared with 23 State and 56 local Fair Employment Practices Commission agencies.

Dated: April 29, 1982.

For the Commission.

Cathie A. Shattuck,

Acting Chairman, Equal Employment Opportunity Commission.

[FR Doc. 82-12280 Filed 5-4-82; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It; Meeting

April 28, 1982.

Task Group B-1 of Working Group B: Legal Implications:

Chairman: Martin Rothblatt (202) 662-5446.

Date: Tuesday, June 15, 1982.

Time: 1:00-4:00 p.m.

Location: Federal Communications Commission, 1919 M Street, NW., Room 650, Washington, D.C.

Agenda:

(1) Review contributions dealing with law relevant to Space WARC, and

(2) Begin legal evaluation of orbit/spectrum access methods and planning approaches.

William J. Tricarico,

Secretary, Federal Communication Commission.

[FR Doc. 82-12120 Filed 5-4-82; 8:45 am]

BILLING CODE 6712-01-M

[FCC 82-52; CC Docket No. 81-351; Transmittal No. 13663]

American Telephone and Telegraph Co.; Revisions to Tariff F.C.C Nos. 258 and 260, and the Establishment of Tariff F.C.C. No. 269, for Series 7000 Terrestrial Television Transmission Services; Memorandum Opinion and Order Instituting Investigation

Adopted: January 28, 1982.

Released: February 23, 1982.

By the Commission: Commissioner Fogarty concurring in the result.

1. On May 21, 1981, the Commission instituted this investigation into the lawfulness of the American Telephone and Telegraph Company's (AT&T) February 13, 1981 tariff filing, which proposed to restructure and increase the rates for Series 7000 terrestrial television transmission service. *AT&T,* 86 FCC 2d 861 (1981) (Investigation Order). We also suspended the effectiveness of the revised tariff material for five months.[1] Based on the record [2] developed in this investigation, we have concluded that certain major provisions of AT&T's tariff filing are unjustified and therefore unlawful. Nevertheless, we believe that much information has been gathered in this proceeding which can aid in the development of a lawful rate structure for this service. We therefore shall commence further proceedings looking toward Commission prescription on an interim basis of the principal Series 7000 service elements. Further comment on the specific terms of this prescription will be requested, although this procedure may be modified or deferred

[1] Since then, at the Common Carrier Bureau's request, AT&T has extended the effective date of the proposed revisions until February 1, 1982.

[2] AT&T filed a direct case. Comments in response have been filed by: The American Broadcasting Companies, Inc., CBS Inc., and the National Broadcasting Company, Inc., jointly (Networks); Cable News Network, Inc. (CNN); Wold Communications, Inc. (Wold); Storer Broadcasting Company (Storer); WETA-TV, Washington, D.C. (WETA); Nebraska Educational Television Commission and KQEP, Inc., jointly (NETC); a group of public television stations and the Public Broadcasting Service (PTV Entities); and Eastern Educational Television Network, Inc., Maryland Center for Public Broadcasting, and Louisiana Educational Broadcasting Authority, jointly (EEN). Hughes Television Network, Inc. (Hughes), Independent Television Stations, Inc., (INTV), and the Commissioner of Baseball (Baseball) have submitted separate comments, and each also submitted an analysis of AT&T's proposals by an independent consultant, Mr. William L. Scott of Walter Hinchman Associates, Inc. (Scott study). The National Basketball Association and National Hockey League (NBA-NHL) associate themselves with Hughes, INTV, and Baseball in their comments. AT&T replied to all the comments. Wold also filed a reply, but this was not permitted in the investigation schedule and was not considered.

if a satisfactory proposal is submitted by AT&T. In either event, we expect to review actual experience and further studies after one year in order to fine tune or, if necessary, revise this rate structure. The order also discusses various other issues raised in the investigation.

I. Background

2. A brief review of the regulatory history of AT&T's terrestrial television transmission service is helpful to indicate the Commission's long-standing concerns in this area. AT&T's Series 7000 tariffs have always been structured to provide separate full time and part time services. The full time service is used almost exclusively by the major commercial networks and has always been much less expensive per unit of time than the part time services which are used by many occasional distributors of sports, news, and entertainment programs as well as by the networks. AT&T has never justified this disparity in rates except with conclusory allegations, unsupported by evidence, that full time is a different service with lower costs. In 1970, a hearing examiner and the review board concluded that AT&T's Series 7000 tariff was unlawfully discriminatory as applied to small or occasional users. *Hughes Sports Network, Inc.* v. *AT&T*, 25 FCC 2d 550, 560 (1970). (*SNI* case.) The Commission also set for investigation two proposed revisions of the tariff in the early 1970's, but in 1973 terminated these proceedings without a decision on the merits, after accepting a stipulation of the parties to a revised tariff. (Aside from across the board increases to all private line rates in 1980 and 1981, those rates have remained in effect.) In 1977, AT&T again sought to revise its Series 7000 rates as part of a larger submission in response to Docket No. 18128 cost allocation principles. This filing proposed to increase part time rates and impose additional restrictions on part time service while generally reducing full time rates. The Commission rejected this filing on various grounds. *AT&T*, 67 FCC 2d 1134 (1978) (*Rejection Order*). Basically, it concluded that full time and part time were like service, within the meaning of Section 202(a) of the Communications Act, 47 U.S.C. 202(a), and that AT&T had failed even to attempt a cost justification for its discriminatory rate structure. The Commission also suggested several improvements to the stipulated tariff, and placed AT&T on notice that "only substantial changes in its ratemaking approach to series 7000 Service, which has always tended to favor its larger customers to the detriment of moderate and smaller users, are likely to satisfy our substantial concerns with respect to this service." *AT&T*, 70 FCC 2d 2031, 2053, (1979) (*Reconsideration Order*). The Commission's decision was affirmed on appeal, *sub nom. ABC* v. *FCC*, No. 79–1261, (D.C. Cir. October 9, 1980), *reh den.* December 5, 1980.

II. Transmittal No. 13663

3. In the Transmittal under investigation here, AT&T orginally proposed to increase the rates for full time service by about 40 percent and for part time by about 4 percent. It also proposed to restructure the various service elements in the tariff. Type 7001, the main television transmission service in the U.S., contains three elements: interexchange channels (IXCs), station connections (SCs), and local channels. Interexchange channels connect AT&T Television Operating Centers (TOCs) located in cities around the country. Station connections (SCs) within the TOCs connect the IXCs to local channels, which are used to pick up the TV signal from the studio or other point of origination and to deliver it at the other end of the network. The service is one-way.

4. In place of the existing full time/part time IXC and SC rate structure, AT&T proposed rates based on consecutive hours of use from 1 to 24 hours, and a flat rate for 24 to 730 hours, *i.e.*, 1 day to 1 month. Any customer desiring service for more than 24 consecutive hours would also be required to obtain permanent facilities and pay special construction charges. For local channels, the full time/part time structure would be replaced by rates based on the number of consecutive days of use, with surcharges for more than four consecutive days' use of temporary channels. AT&T also proposed to eliminate "topping" of local channel rates, *i.e.*, setting a maximum monthly charge for part time use which is about equal to the monthly full time rate.

5. In the May Investigation Order, we observed that the changes AT&T proposed in the IXC and SC rate structures were "largely cosmetic," and that the ostensibly "unified" IXC and SC rate structure continued in fact to be two separate services with no justification for the wide rate differentials. The 24–730 hour rate step was simply the old full time rate under a different name and remained far cheaper than the occassional use rate. For example, one hour of IXC service was $.89 per mile. Under the 24–730 hour rate, the cost per mile per hour was $.00. We found no justification for this rate disparity. We were similarly troubled because the special construction requirement appeared to make the 24–730 hour service a very different offering and to impede any new customers or resellers from obtaining the cheaper (i.e., 24–730 hour) rate.

6. The May order also questioned, among other things local channel rates and regulations, inclusion in the rate base of facilities no longer used or needed to provide TV service, and the pricing of services for non-commercial educational broadcasters. Overall, we concluded that despite improvements, the new filing still seemed unreasonable and unjustified. We went on to suggest that a curvilinear [3] IXC and SC rate structure as proposed might be proper in order to average start-up and discontinuance costs, but questioned whether the filed tariffs did this in a reasonable way. We further stated our intention to consider prescribing a rate structure which reflects a more reasonable means of rate averaging to encourage efficiency and to distribute cost burdens fairly. Accordingly, we set twelve issues for investigation, including, most notably, questions of the reasonableness of the proposed tariff, the prescription of rates and practices, and the treatment of reduced rate services to noncommercial educational broadcasters.

7. In its direct case, AT&T defends the filed rate structure and various of its specific terms. At the same time, though, AT&T proposes an alternative rate structure which it contends would meet the Commission's regulatory goals. It states that it is amenable to withdrawing the February filing and substituting the alternative in its place if we determine the alternative to be acceptable and preferred. Under this two-part structure, a customer would pay a service charge for each newly provided IXC section, *i.e.*, for each new order or addition of an IXC to an existing system. The customer would also pay flat charges per hour for IXC sections and SCs. These usage charges would be the same for all customers.

8. In addition, AT&T proposes to disaggregate local channel rates, reflecting claimed higher costs of mobile and part time services as compared to full-time, in-place facilities. It also continues to propose the elimination of the "topping" maximum charge for part-time use of in-place local channels.

[3] I.e., a structure with gradually declining per hour rates.

III. Issues

9. AT&T's proposal of a new rate structure raises new issues. In effect, the Commission now has three separate rate structures before it—the existing full time/part time rates, the rates filed with Transmittal No. 13663 (hereafter, Plan A) rates and the alternative (hereafter, Plan B) rates. The three IXC–SC and local channel rate structures are shown in accompanying Tables 1–6. We must decide which, if any, of these three rates structure is reasonable. Thus, we face two major issues:

1. Determining a reasonable rate structure for IXC and SC services.
2. Determining a reasonable rate structure for local channel services.

In addition, there are four related, but distinguishable issues:

1. How the investment in unassigned PSV cable should be treated for ratemaking purposes.
2. Whether AT&T has improperly assigned excessive costs to television transmission services which should be removed.
3. Whether the proposed rates and practices for services to public broadcasters are reasonable and in conformity with section 396(h) of the Act.
4. Whether AT&T's special construction policies for local channels are reasonable.

TABLE 1.—PRESENT TYPE 7001 IXC AND SC RATES [1]

Interexchange channels (IXCs):
Part-time, $0.92 Mi/Hr.
Full-time, $67.07 Mi/Mo.
Station Connections (SCs):
Part-time, $97.55 SC/Hr.
Full-time, $1,829.00 SC/Mo.
Full-time is subject to an initial 6-month minimum service period.

[1] These rates are higher than the rates in effect when Trans. 13663 was filed because of the June 28, 1981 16 percent across-the-board rate increase.

TABLE 2.—FILED IXC AND SC RATES—PLAN A

Step	Consecutive hours of use—over to per mile	IXC per SC	
1	0–1	0.89	$95.00
2	1–2	1.73	185.00
3	2–3	2.52	270.00
4	3–4	3.27	350.00
5	4–5	3.96	425.00
6	5–6	4.65	495.00
7	6–7	5.28	560.00
8	7–8	5.87	620.00
9	8–9	6.42	675.00
10	9–10	6.93	725.00
11	10–11	7.41	770.00
12	11–12	7.86	810.00
13	12–13	8.28	845.00
14	13–14	8.67	875.00
15	14–15	9.03	900.00
16	15–16	9.36	920.00
17	16–17	9.66	935.00
18	17–18	9.93	945.00
19	18–19	10.17	952.00
20	19–20	10.38	958.00
21	20–21	10.56	963.00
22	21–22	10.71	967.00
23	22–23	10.83	970.00
24	23–24	10.93	972.00
25	24–730	67.65	1,944.87

NOTE.—New orders for IXCs for more than 24 consecutive hours are required to be by permanent facilities subject to special construction charges.

TABLE 3.—ALTERNATIVE IXC–SC RATES PROPOSED BY A.T. & T. IN DIRECT CASE—PLAN B

Service Charge, $461.
IXC, $0.14 Mi/hr.
SC, $1.94 SC/hr.

TABLE 4.—PRESENT LOCAL CHANNEL RATES [1]

Full time, per month, $1,219.
Part time, per day, $610.
Maximum monthly charge ("Topped" rate), $1,220.
Full time service is subject to an initial six-month minimum service period.

[1] Rates reflect June 28, 1981 16 percent across-the-board rate increase.

TABLE 5.—FILED LOCAL CHANNEL RATES—PLAN A

Step	Consecutive days of use Over-to	Per channel	Additional charge for use of temporary facilities MW	Cable
1	0–1	1,589.00		
2	1–2	884.00		
3	2–3	1,032.00		
4	3–4	1,106.00		
5	4–5	1,154.16	[1] 122.46	[1] 71.38
6	5–6	1,202.32		
7	6–7	1,250.48		
8	7–8	1,298.64		
9	8–9	1,346.80		
10	9–10	1,394.96		
11	10–11	1,443.12		
12	11–12	1,491.28		
13	12–13	1,539.44		
14	13–14	1,587.60		
15	14–15	1,635.76		
16	15–16	1,683.92		
17	16–17	1,732.08		
18	17–18	1,780.24		
19	18–19	1,828.40		
20	19–20	1,876.56		
21	20–21	1,924.72		
22	21–22	1,972.88		
23	22–23	2,021.04		
24	23–24	2,069.20		
25	24–25	2,117.36		
26	25–26	2,165.52		
27	26–27	2,213.68		
28	27–28	2,261.84		
29	28–29	2,310.00		
30	29–30	2,358.16		

[1] Charge would apply per day for the 5th through 30th day in each consecutive 30 day period, for each microwave or cable system used in furnishing temporary facilities.
Initial 6-month minimum service period and maximum charge application eliminated.

TABLE 6.—ALTERNATIVE LOCAL CHANNEL RATES PROPOSED BY A.T. & T. IN DIRECT CASE—PLAN B

Full time, fixed, in-place, $1,292 per month.
Full time, fixed, in-place, $1,288 per day.
Full time, mobile, $2,673 per day.

No six-month minimum service period.
No maximum monthly charge.

III. Discussion

A. IXC and SC Rate Structures

10. In both the SNI and 1978 Rejection cases, the Commission concluded that part and full time IXC are like service and that cost studies were required to support any rate differentials. AT&T has never supplied cost studies and, without these, the rate differentials have always appeared arbitrary.[4]

1. Reasonableness of the Plan A IXC–SC Rate Structure

11. For widely disparate reasons all of the commenters urge that the filed IXC rate structure is unjustified and unreasonable, and should be rejected. The Networks contend that the existing full time/part time rate structure is proper and that AT&T should be required to file cost studies and descriptions of actual facility use preparatory to a full-fledged investigation before an Administrative Law Judge. Hughes, INTV, Baseball, and the associated Scott study agree with the Commission's tentative finding in the Investigation order that the tariff revisions are unlawful, because they perpetuate an unjust and unreasonable discrimination between full-time and occasional users. The Scott study adds that the filing would perpetuate an artificial segmentation of the market, enabling AT&T to impose unjustified rate disparities.

12. For its part, AT&T essentially repeats its earlier justification for the Plan A IXC and SC rate structure. Thus, it defends its aggregation of all usage in excess of 24 hours into a single 24–730 hour rate step on the grounds that it has experienced no demand for non-continuous TV service in excess of 24 hours. The single final rate step has been fixed "to avoid a series of additional steps under which no service would be requested." (Direct Case p. 16) With respect to the consecutive use feature of the proposed structure, AT&T states that this has been generally designed to take account of the costs incurred in establishing occasional service, but attempts no analysis of

[4] In its February filing, for example, there was no explanation or justification for the proposed rate slope which resulted in very wide rate differentials between occasional and full time service.

whether the filed rate structure does this in a reasonable fashion.

13. We find on the record now before us that AT&T has not borne its burden of justifying the proposed rate disparities. Most notably, there still is no cost information to support the proposed rate slope up to 24 hours or the flat hourly rate for consecutive hours after the initial 24 hour period. IXC charges would be almost ten times as great per mile per hour for the first hour of occasional use as compared to full time. SC charges would be 36 times as great. As we admonished in the 1977 Rejection Order, generalized, inverified claims that such disparities are justified are simply inadequate. In other words, even if some differences are reasonable to reflect the spreading of set up charges or other factors, the carrier must explicate the basis for the choice of these particular charges. No such explanation is presented here. We must therefore find the rate differentials to be unjustified and thus unlawful as filed.

14. We also find unreasonable the use of the 24 to 730 hour rate step and the imposition of special construction charges for all IXC use of longer than 24 consecutive hours. As suggested in the May Investigation Order, the fact that historically there has been no demand for occasional service longer than 24 hours is not of itself persuasive, since that history is based upon AT&T's part time/full time rate structures, which segmented a single market into two parts, thus creating distorted demand or usage patterns.

15. The filed Plan A rate structure also maintains an apparent segmentation of the video transmission market, by a misapplication of traditional special construction requirements. The rates and regulations governing charges for special construction in connection with AT&T's private line services are found in AT&T Tariff FCC No. 262. Under its terms, special construction is applied in addition to the regular charges set forth in AT&T private line tariffs when, at the request of the customer, AT&T must construct facilities to provide services or channels which are not available and for which there is no other requirement, or when AT&T performs other special services such as constructing facilities of a type or routing not ordinarily used, expediting construction, or providing temporary facilities while permanent facilities are under construction.[5] In this case, AT&T has departed from its historical practice by proposing to require that all new IXC segments be provided as permanent facilities special construction charges even though none of these conditions is met. The requirement applies, for example, even if the facilities are available and regardless of whether special services are requested by the customer. Moreover, if the facilities are not immediately available, IXC channels would still not qualify as facilities for which there is no other requirement under the special construction tariff or general tariff principles. The construction of IXC facilities is not "special". As explained, these channels connect AT&T's television operating centers. They are not specially designed or built and are presumably provided in exactly the same way for all customers. AT&T incurs no special costs and constructs no special facilities. Rather, the facility is fungible, and if a long term customer ceases to use it the facility would become available to serve other long term or occasional customers. It is unreasonable, therefore, to attribute to any one customer costs which are necessary to the provision of a general offering.

16. IXC should be provided as ordinary tariffed facilities (as they already are for shorter periods). IXC is an ordinary tariffed service. Even if AT&T found it necessary to construct new facilities or shift existing facilities, the new customer should not be liable to pay an additional charge. The general tariff rate includes investment necessary to provide the service, and a customer should not be liable to pay extra charges because it happens that new facilities would be needed for the provision of ordinary service. An individual customer cannot fairly be assessed special construction charges simply because existing facilities are fully utilized and additional facilities are necessary. Such construction is merely part of the general service costs which the tariff rates should be fixed to recover.

17. Even if these facilities could be considered "special construction", AT&T's stated plan to apply a ten-year maximum termination liability (MTL) charge seems unreasonable. The MTL charge is a termination charge if the facility is used less than ten years and has no other use. AT&T's justification for imposing MTL charges is that AT&T always does this for specially constructed facilities used for 30 days or more. For service of less than a month, a one time charge is imposed to cover costs not reflected in the tariff rate. But in this case, the MTL charge would be applied even if the facility was used for only a day or two, solely because AT&T has lumped all service of longer than a day into the 24–730 hr., *i.e.*, 1 day to 1 month rate step. This is so even though all the actual set up and take down costs are already included in the tariff rate, and thus if the service were considered to be for less than a month no extra charges could be justified.

18. In the 1978 Rejection Order, we questioned the 6 month minimum service requirement for full time IXCs. The effect of imposing MTL special construction obligations on all new IXC service of more than one day is in fact to make the service a ten year minimum term (although the actual MTL charge would be reduced or eliminated if the facility is used to meet other requirements). We recognize that the projected transfer of some service to satellites may justify restriction of any new construction or investment in terrestrial video facilities to meet short term demand. Such investment might be wasteful in the long run and we certainly do not wish to encourage inefficient facility investment. But this does not justify a general imposition of MTL charges where no actual new construction is needed. Indeed, if existing customers transfer to satellite service there is if anything likely to be excess, unused IXC capacity. It is difficult to perceive a rationale for imposing special construction charges and long term termination liability on customers subscribing to vacant facilities.

2. Reasonableness of Alternative Rates—(Plan B)

19. In presenting its alternative Plan B rate structure, AT&T generally asserts that this structure would meet Commission concerns by reflecting

[5] AT&T's F.C.C. Tariff No. 262 lists six specific circumstances in which special construction charges are applied:

1. The channel facilities to provide services or channels are not available and, AT&T constructs facilities to provide the services or channels and there is no other requirement for the facilities so constructed.

2. AT&T constructs channel facilities of a type other than that which the Telephone Company would otherwise utilize in order to provide services or channels.

3. Construction by AT&T involves a routing of facilities other than that which it would normally utilize in order to provide services or channels.

4. AT&T constructs a greater quantity of channel facilities than that which it would otherwise construct in order to fulfill the customer's initial requirements for services or channels.

5. The channel facilities to provide services or channels are not available and, AT&T expedites constructions of the facilities at greater expense than would otherwise be incurred.

6. The channel facilities to provide services or channels are not available and, AT&T constructs temporary facilities to provide services or channels for the period during which the permanent facilities are under construction.

front-end and operating costs for all customers uniformly.

20. The comments are divided on this plan. On the one hand, the Networks repeat their position that an evidentiary hearing is necessary before moving from the existing full-time/part time rate structure. The remaining comments vary on how much better they consider the new structure to be. Hughes regards it as only a slight improvement, while CNN believes it could be the basis for lawful rates. The parties who support the structure, however, question the calculation of the service charge. They generally argue that AT&T has included costs in the front end charge which are incurred for continuing use, and that the result is to load these costs unfairly on occasional users. For example, 68 percent of the total front-end costs are for "testing", which amounts to $318 per IXC section. The commenters contend that this is a very high price for testing, and that it is also likely that channels are tested regularly as part of on-going operations, not just when they are set up. The commenters also note that all sales and billing costs are assigned as part to the service charge. They agrue that if the charge is imposed only when a service is set up, a long term user would never be subject to such costs. Baseball suggests as a solution that simple, flat rates without a service charge would be more reasonable.

21. AT&T defends both the proposed structure and the assignment of front-end costs. With regard to the contention that the service charge includes full-time expenses, AT&T answers that most of the expenses included in the charge are generated by newly provided IXCs, although some full-time expenses are included which would requre a 9 to 12 month study to quantity. For example, as to testing, the major expense element, AT&T states that most of the expenses charged to interexchange testing are incurred by the set-up of newly added IXCs and take-down of IXCs.

22. From our examination of the record and the comments, we conclude that the Plan B alternative represents a significant improvement over both the existing rates and the filed Plan A, and could provide a useful framework for a fair and reasonable IXC and SC rate structure. First, although simple, the structure would appear to have the desirable effect of reflecxting the actual costs of IXC service in a manner which is fair to all customers, even if the customers for the service are basically divided between full time and occasional users, as AT&T and the Networks contend. Costs of setting up new transmission networks would properly be assigned to the customers who required this service. Continuous use, on the other hand, would be priced on the amount of actual use, which also should reasonably reflect costs.[6] In the Investigation Order, we noted that it might be proper to use a curvilinear rate structure in order to reflect both front-end start-up and continuing operating costs. The Plan B structure also would reflect those costs and would do so directly.

23. In addition, the Plan B structure also strikes us as relatively easy to implement and to regulate. Under the Plan B structure there is a single but reasonable basis for determining the two parts of the rates: front-end costs are assigned to the service charge and on-going, operating costs are assigned to the hourly charge. Although some study, experience, and estimation may be necessary to draw this line accurately, we believe that the simplicity of the Plan B rate structure makes the task of cost analysis more manageable.

24. While the proposed structure may be sound in principle, we also believe the comments do raise valid points in arguing that the rate for the proposed service charge is too high because it includes charges actually assignable to continuing use. AT&T in fact concedes that some on-going expenses are included in the charge, though it doesn't purport to know how much.

25. The comments also present a number of criticisms and suggested movements to the proposed service charge. The Networks, for example, contend that the application of the charge is so vague and confusing as to be totally unsatisfactory from tariff standpoint. However, we think it unnecessary to consider this argument now. AT&T provides some explanation and examples of the application of the charge in its reply, but, in any event, we are at present considering only overall proposals, not specific traffic language. The important features of the proposal are clear, and any uncertainties which may arise when a tariff is filed may be considered in the review of that tariff.

26. The Networks further contend that, if retained, the service charge should be not on a "per system" basis as AT&T proposes, but rather a "per order" basis. Under the Networks' proposal, there would be a single service charge for each IXC order, even if the order requires set-up of more than one system. On the other hand, the Scott study suggests that smaller systems should have reduced service charges. In addition, the Networks and other parties suggest modifications such as a reduced rate for consecutive days of use or for recurring use. While we have no specific objections to such modifications of the service charge, to the extent that they reflect improved cost allocation or increased efficiency, we also recognize that any tariff inevitably averages costs to some degree. In general, the assignment of a single service charge for each system seems to us a reasonable and straightforward approach, even if it averages front-end costs somewhat. Therefore, we will consider whether any refinements are warranted in a later stage of this proceeding based upon actual operating experience.

B. Local Channels

1. Current Rates and AT&T's Plan A

27. Local channels are currently provided on a per-day basis between any two local points, either as part of an interexchange hookup or to meet local needs. The channel may be provided either by cable or microwave facilities. In the existing rate structure, the part time rate per day is half the full time monthly rate, and part time rates are "topped." (That is, the maximum monthly charge for part time service is about the same as the full time rate or the equivalent of two days of part time use.) There is a six-month minimum service period for full time service. Significantly, in the 1978 Rejection Order, the Commission suggested that AT&T consider eliminating the six-month minimum service requirement and disaggreagating local channel costs and rates to reflect the variety of local channel services. It also strongly criticized AT&T's proposal to eliminate topping.

28. In Plan A, AT&T proposed to increase local channel rates by 124 percent for full time service, and 11 percent for the first day of part time service. These increases would be part of a proposed 30 step declining rate structure which eliminates topping and the six month minimum service period. AT&T does not disaggregate local channel rates, but it does propose a surcharge for temporary facilities used longer than 4 consecutive days. In the Investigation Order, we questioned the elimination of topping, the use of rates based upon consecutive days of use, and the surchages. We were particularly concerned that the proposed structure would encourage inefficient use of local channels and could be unfair to occasional users.[7]

[6] As we discuss, *infra*, we also intend to consider whether peak/off-peak rates might be desirable for the hourly charges.

[7] We also questioned the failure to disaggregate local channel rates, which is discussed *infra*.

29. AT&T defends elimination of topping as a means of reducing current inequities between full time and occasional users. It contends that topping is not cost related but designed to ensure that occasional users pay no more than full time users, regardless of the costs they cause. The Plan A structure is claimed to be more precisely cost related and to encourage use only as it is required.

30. The comments generally disagree. The Networks contend, for example, that elimination of topping is inequitable and not cost related.[8] Other commenters contend that topping has been necessary to prevent discrimination against occasional users, or that it could be helpful as a means to stimulate resale and arbitrage. INTV urges that topping should be retained unless the local channel rate structure is reformed to eliminate preferential rates.

31. In general, we agree with INTV on this point. Topping was adopted by negotiated agreement in the mid-1970's to prevent inequitable rates. As such, it has been a somewhat arbitrary device since its inception rather than one based on cost. At the same time, topping must be perceived as part of an overall rate structure which imposes much higher rates upon occasional use and which itself has not been cost justified.

32. AT&T still has provided no explanation or justification for the proposed rate slope or its use of rates based on consecutive days of use, as we called for in the Investigation Order. As matters currently stand, because of the high first day rate and the consecutive day rate structure, a part time customer for ten non-consecutive days of service a month would pay 240 percent more than th proposed rate for 30 consecutive days. This seems not only unfair on its face but also encourages inefficient use. Assuming such a rate disparity might be justified by a demonstration of actual costs, to date AT&T has presented only general, unsupported claims of reasonableness. These are, obviously, insufficient to meet its burden of proof to justify its Plan A structure.

33. In defense of the proposed surcharge, AT&T explains that it maintains temporary local channel equipment in pools sized to reflect AT&T's experience with service requests. It states that 97 percent of all such requests are for four consecutive days or less. Where facilities are required for longer periods, AT&T contends that it must lease equipment from other suppliers. A surcharge based upon the average lease charge is said to insure that the costs of leasing are borne by the cost-causing customer.

34. We find AT&T's explanation unpersuasive and the surcharge unreasonable. There is no basis for AT&T's assumption that use of more than four consecutive days imposes additional costs. As the Scott Study points out, equipment pools are sized to meet peak demand, not particular service periods. The fact that a customer uses a channel for more than four days does not cause AT&T to lease additional facilities. Rather, AT&T's lack of sufficient facilities to meet the needs of peak period customers causes such additional expenses. Following AT&T's argument to its logical conclusion, AT&T would have to lease additional equipment in the face of a five day service order even if it still had idle facilities of its own. This obviously cannot be the case. The relevant factor is the simultaneous peak daily use, which is a function of overall demand and not simply of long term demand. It similarly is inconsistent to argue as AT&T does on the one hand as AT&T does that long term use is less costly, while on the other hand that it is more costly to provide longer term service on a consecutive day basis because of the way AT&T designs and sizes its pools. For those reasons, we find the proposed surcharge unreasonable.

2. AT&T's Alternative Plan B Rates

35. In its alternative local channel rate structure, AT&T has responded to our suggestion to consider disaggregated local channel rates, to reflect the different technologies for those channels. It proposes a monthly rate for full-time, fixed, in-place facilities of $1288, and a daily rate for part time, mobile facilities of $2673.

36. A basic goal of the Commission's suggestion was to permit competition, if feasible, for mobile microwave channels. Only Wold and the Networks support the proposed disaggregation of rates into full time, part time in place, and part time mobile. Wold is a competitor of AT&T in providing mobile facilities. It contends that on the basis of the record the Commission must conclude that rates should be disaggregated because AT&T's cost study shows that mobile channel rates do not refect costs. Also, it urges that alternative suppliers do exist (though it mentions no suppliers other than itself) and that there is no reason to believe others would not arise. Indeed, it points out, to permit AT&T to offer service below the full and fair price on the grounds that there is no alternative supplier may make that supposition a self-fulfilling prophecy—competition might not arise until the market is permitted to act naturally. The Networks also support disaggregation, though they argue that no credible data has been offered to support the mobile channel rates.

37. The remaining commenters oppose disaggregation. In general, they argue that mobile channels would in fact be used interchangeably with in-place channels, and that the rationale that they use separate, dedicated facilities is an internal AT&T accounting mechanism which bears little relation to reality. It is claimed that local microwave facilities are entirely fungible and interchangeable. According to these commenters, AT&T sets up pools of microwave facilities which it presently classifies as full time and part time. For example, Hughes states that a mobile microwave channel is classified as full time in-place service, where it is leased six months of the year at a stadium for baseball coverage and six months at an arena for basketball and hockey. If AT&T followed this same practice for mobile facilities, the argument runs, it could exercise its considerable discretion to artifically segment the market by presenting purported cost differences in support of differential rates solely on the basis of its own facilities practices. Disaggregation in this manner would provide AT&T with an incentive to create classes of users, some more favored than others.[9] Also, it is argued that disaggregation could lead to the inequitable result of having customers at the same place paying very different rates for the same service,—*e.g.* at sports stadiums where there are several broadcasters. In sum, the comments contend that from the perspective of the customer, there is but a single local channel service.

38. In addition, these commenters argue that the cost support for the disaggregated rates is highly questionable. All of the cost figures,

[8] For example, they point out that under Plan B mobile facilities would be priced at $2673 per day without limit and with no lower rate for additional days. If a facility were kept at the same location, as in the case of an unexpectedly ongoing news event, the local channel rate could exceed $80,000 per month *vs.* the monthly in place Plan B rate of $1292.

[9] One possible remedy to eliminate AT&T's incentive to force customers into the more expensive part time services is a suggestion by Storer that if AT&T fails to fill an order for a full time channel within a reasonable time, it should charge no more than the full time rate regardless of the channel used in providing the service. CNN also suggests that disaggregated rates, if adopted, should be phased in over a reasonable adjustment period, say five years. Wold and the Networks opposed a phase-in. AT&T also states that it is unaware of any problems in obtaining permanent facilities for full time service and attacks the Storer proposal as unreasonable and unrealistic.

they say, are based on unverifiable estimates from aggregated investment categories. The rates themselves are derived from overall costs by estimating that part-time use is only once a month. Yet if part-time use is provided by mobile channels, this presumably means the mobile facility is expected to be idle 29 days out of thirty, which the comments urge is unlikely. Use of mobile channels for sports events, for example, is claimed to be more on the order of 10 times a month.

39. As a separate matter, the comments also object generally to the magnitude of the proposed increases. Hughes claims that its local channel rates for baseball would increase by 204 percent under Plan A and 734 percent under Plan B. Moreover, it claims that it generally is required to pay substantial special construction charges for these channels, often in amounts greater than the tariff rates. [10]

40. In its reply, AT&T states that much of the criticism of the disaggregation of local channel service results from misconceptions and misunderstandings as to how the service is furnished. It contends that local channels are not interchangeable, although full time and part time in-place channels are identical from a facility and equipment standpoint. The distinguishing characteristic is said to be that part time, fixed in-place channels are used intermittently, by a single customer. In-place microwave channels, moreover, are said to differ from mobile facilities because they are provided using permanently installed rack mounted facilities. AT&T says it discourages permanent installation of part-time facilities, in the interest of efficiency, and encourages use of pooled, portable equipment. Mobile channels are furnished using portable microwave and cable systems shipped from AT&T's pool to the telco location serving the site.

41. As we have noted, the proposal to disaggregate local channel rates originated with the Commission, with the intent of achieving rates more closely correlated to relevant costs, efficient use of facilities, and fair competition. Our examination of the comments and the record, however, convinces us that it would be premature to implement the Plan B local channel rates at this time. As we discuss, *infra*, this is principally the result of a failure to disaggregate rates properly or a lack of evidence that disaggregation as Plan B proposes would be reasonable. For one thing, the rate increases are in some cases quite substantial. The Plan B rates would represent a 111 percent increase in part time fixed in place rates and a 338 percent increase for part time mobile. Moreover, if the proposed elimination of topping were also adopted, part time mobile rates could in an extreme case be as much as $800,000 a month, over 65 times the current rate. Increases of this magnitude should be fully justified, and in this case, as the comments point out, the support information is almost entirely based upon unverified and doubtful estimates of costs and usage. AT&T states for example that sufficient data was not available to disaggregate mobile investment, so that an estimate was used. Although the chosen estimation method may be reasonable, as AT&T claims, it is impossible on this record to assess the accuracy of the estimate. [11] In addition, the predicate of the rate, the estimate that part time channels would be used one day a month, is unsupported. But if this is in error by only a few days, the part time rates might be several times too high.

42. It is also far from clear that Plan B would actually disaggregate rates in a rational, consistent way. As we see it, either cable or microwave facilities could be used for any of the local channel categories. What's more, the other characteristics distinguishing one category from another are insubstantial. For example, the only difference between full time and part time in place channels is said to be the amount of time customers use them; the facilities themselves are identical. In-place facilities are also said to use more efficient rack-mounted facilities, but AT&T states that it encourages use of pooled, portable equipment for part time in-place use. Apparently this is the same equipment used for mobile service and if it can be used for part time, in-place service it follows that it can also be used for full time. In other words, as the comments claim, a pooled microwave facility could be used for any of the three services, but would be charged at vastly different rates depending upon whether AT&T classified it as full time, part time, or mobile. In the final analysis, then, it appears that the only solid price justification for disaggregated local channel rates is the relatively minor savings from rack mounting. Without more this seems much too slight a factor upon which to justify the enormous rate differences AT&T would implement in its Plan B.

43. To sum up, the basic purpose of suggesting disaggregation was to recognize the different technologies used for local channels and to assign costs to each in order to achieve fairer rates and greater efficiency. It is far from clear that the Plan B structure would do this, and indeed it might well be less reflective of actual costs than the present rates or Plan A, which at least are not dependent on the availability of equipment resulting from AT&T's planning and pooling practices. Although World's point is well taken that competition is not likely to develop until subsidies are eliminated, we are unable on the basis of this record reasonably to conclude that subsidies in fact exist and if so how large they are. This fact, in combination with the other concerns just discussed persuades us that we should defer efforts at disaggregation at least until we have a better understanding of the costs, facilities, and markets involved. For the time being, the rate increases which would result from immediate disaggregation of local channel rates simply are not supported by the present record. (See also our discussion in Paras. 76–78 below).

3. The Scott Study Alternative Rate Structure

44. The Scott study, supported by Hughes, INTV, Baseball, and the NHL/NBA, presents an alternative local channel rate structure. It employs rates essentially identical to those suggested by AT&T in Plan A, but increased to reflect a 12.75 percent rate of return. However, the Scott proposal has important structural differences. The rate would be based on total days of use

[10] For example, during basketball season, Hughes claims it was charged $1,450 for the first date and $1,390 for each of 20 additional date groupings for service at the Pontiac, Michigan Silverdome for a total cost of $29,250 in addition to the tariff rate.

[11] The derivation of mobile investment is based on residual techniques and various assumptions. The basic assumption is that the unit investments for all non-mobile (fixed in place) channels are the same, whether full time or part time. An estimate of part-time, fixed in place local channels was made since the actual number was unknown. This was accomplished by first deriving the unit investment of station equipment associated with *full time* local channels. Both the numerator and denominator of the unit investment computation were based on estimated or forecasted data. The unit investment figure was then divided into the estimated *part-time,* fixed in place investment related to station equipment to derive a theoretical number of part-time, fixed in place local channels. These hypothetical part-time, fixed in place local channels were used to develop the central office equipment and outside plant investments to be assigned to part-time mobile in the following manner. Estimated investments in full time facilities/equipment were unitized and assumed to be the same for part-time, fixed in place local channels. The unit costs thus derived were multiplied by the estimate number of local channels computed above, resulting in total part-time, fixed in place investments. Finally, these investments were subtracted from an engineering estimate of total part-time (fixed in place plus mobile) cost to arrive at the investments related to mobile.

a month rather than the number of consecutive days, and the surcharges would be eliminated. The Scott study contends that this rate structure would produce as much revenue as AT&T's, but would be non-discriminatory and would encourage efficient use. The first day's rate would be relatively high, to recognize frontend costs, but marginal days would be much less. It is argued that this would provide an incentive for users to take more service, but only as much as actually required, since the rate would never "top" out. Any loss of revenues (because non-consecutive days are not priced at the high first step price) is said to be relatively very small, and eliminated in any event by the stimulated increase in demand.

45. AT&T contends that the significant flaw in the Scott proposal is that it ignores the relationship of the local channel rate element to other TV service elements. The Scott proposal would, it is claimed, reduce local channel revenues which would have to be compensated for by the other elements or by raising local channel rates. AT&T also criticizes the lack of a study to show that the Scott alternative would stimulate demand, and contends that in the absence of such studies and/or changing IXC, SC, or local channel charges, the Scott alternative is unworkable.

TABLE 7.—CORRECTED AT&T RATE STRUCTURE FOR LOCAL CHANNELS TO PRODUCE EARNINGS RATIO AT 12.75 PERCENT [1]

[Unassigned PSV Cable Pairs Excluded]

Step	Rate
1	$552
2	874
3	1020
4	1093
5	1141
6	1189
7	1237
8	1285
9	1333
10	1381
11	1429
12	1478
13	1524
14	1572
15	1620
16	1668
17	1716
18	1764
19	1812
20	1860
21	1908
22	1956
23	2004
24	2052
25	2100
26	2148
27	2196
28	2244
29	2292
30	2340

[1] No consecutive use requirement to qualify for rates and no supplemental charges for temporary facilities for use exceeding four consecutive days.

46. We note at the outset that it would be premature in any case to reach any definite conclusions concerning the Scott rate structure. Because of the pleading cycle in this investigation, AT&T was afforded only fifteen days to reply to this proposal. Other interested parties had no opportunity to comment at all. Nevertheless, our initial examination suggests that the Scott plan may significantly improve the present structure, without the defects of AT&T's Plan A noted above. For example, the Scott plan may well provide the overall revenue AT&T claims to need. AT&T itself estimates that part time demand averages only one day a month and all such single days would be priced at the high first day rate, in the Scott plan as in AT&T's Plan A. Consecutive days of use would also be priced the same way as in Plan A. One advantage of the Scott plan is that it would replace the artificial "topping" provision in a way which would prevent extremely high rates to occasional users while both stimulating additional use and placing a price on such use which would encourage efficiency. AT&T is correct, of course, that there are no studies to indicate that the Scott proposal would stimulate demand sufficient to compensate for lost revenue from non-consecutive days; but AT&T has not, itself, quantified any revenue shortfall which might result or successfully refuted Scott's projection that any revenue loss would be small even in the worst case. We do, of course, recognize the need for the carrier to remain whole with respect to revenue requirements recovery and would not arbitrarily impose rates on a carrier without adequate knowledge of revenue effects. But it is reasonable to expect some stimulation and such projections inevitably are in some degree speculative. Certainly a customer cannot be expected to provide market sensitivity studies comparable to those which AT&T might perform and, as we've seen, much of AT&T's support information is based upon unsupported estimations. If revenues are in fact adequate, there would be no need to adjust these rates or those for IXCs and SCs.

47. In short, although the Scott study lacks an adequate substantive basis for permanent prescription, it does appear to have sufficient merit to warrant further comment in the next phase of this investigation on whether it should be prescribed on a temporary basis. Temporary prescriptions would allow further inquiry to determine whether the proposed structure is in fact reasonable, based upon actual experience. In the comment period we establish below, AT&T and other parties will have an opportunity to examine this proposal more closely to judge whether it is generally within the range of reasonableness, to suggest modifications that may be needed or to propose alternatives. We think the soundest course is to proceed in the direction of a more rational and usage sensitive rate structure, by evaluating the Scott proposal or other alternative for reasonableness and then to fine tune that structure, in light of practical experience.

C. PSV Investment

48. Polyethylene shielded video cables (PSV) are conductors developed for local video transmission. AT&T included PSV with telephone pairs in composite cables as part of its network of permanent, local television distribution facilities in most major U.S. cities. Since the installation of these cables, relocations of TV studios and transmitter locations, abandonment or moves of program source locations (e.g. Ebbets Field and the Polo Grounds) and new technologies such as mobile microwave facilities and video recorders have substantially reduced the need for PSV pairs. In its February filing, AT&T stated that $29.7 million of its investment in PSV cable (55% of all PSV pairs) was not being used for television transmission service and had no current or foreseeable use for television services, although AT&T was exploring the use of these unneeded facilities for future private line applications. The PSV pairs cannot be retired because other cable pairs in the composite cables are still in use. The filed rates included a return for this investment but AT&T states that it is willing to remove it from the television category and assign it to all private line services. The effect of this transfer would be a 13 percent reduction in Type 7001 rates, and an increase in the revenue requirement of the remainder of the Private Line category by 0.3 percent. In the Investigation Order, we noted that this investment could arguably be disallowed as no longer used and useful property and asked for further comment.

49. Upon further examination of the nature and history of these facilities, we do not believe that disallowance would be appropriate in this case. The composite cables containing PSV pairs remain in use providing service. Thus the overall facility is clearly used and useful property. The PSV pairs were included in these cables because this was far more economical than separate video-only cables, $.22 per pair foot compared with $.71 per pair foot according to one study. Inevitably in this sort of planning decision for mixed-use facilities trade-offs must be made between overall economies of operation

and the possibility that particular sub-facilities may become unnecessary because of changing conditions.[12] In this case, video customers have benefitted from the economies of including PSV pairs in composite cables. It would appear unfair to disallow this investment *post facto* as not used and useful when the PSV pairs themselves cannot be retired precisely because the overall composite cable remains in useful service. Since the composite cables themselves remain used and userful we will not disallow that part of the overall investment allocated to PSV.[13] At the same time, we also do not believe that it would be fair to spread the responsibility for these costs to all private line customers as AT&T suggests in its alternative proposal. These facilities were designed and constructed solely to serve video customers, not for other private line use. In general, facility costs should be assigned to the cost-causing customer and we see no reason to depart from this principle here. If AT&T does develop other uses for these facilities, as it suggests it may, then the costs can be reassigned to other services to the extent of such use. But no showing of that kind has yet been made. Accordingly, we conclude that unassigned PSV investment should continue to be included in the Series 7000 terrestrial video category at present.

D. Cost Issues

50. The Networks raise a number of issues concerning AT&T's costs and support information aside from unassigned PSU investment. These are discussed at length in Appendix C. Some of the Networks' arguments appear unfounded, but two problem areas should be mentioned briefly. AT&T uses depreciation reserve ratios which differ significantly from those in its 1979 FDC Report. AT&T has not justified this discrepancy or the specific ratios chosen, nor has it provided alternative ratios as it has done in various other tariff filings. Also, AT&T allocates the expense categories on the basis of revenues, despite the fact that the revenues used to make such allocations reflect growth due to rate increases. This methodology tends to overstate expenses. In its future filings AT&T should justify its depreciation reserve factors and display the impact of using more specific reserve factors related to television services. We will also direct AT&T to develop a more realistic expense allocation scheme as discussed in Appendix C.

E. Services for Noncommercial Educational Broadcasters

51. In the Investigation Order, we separately questioned AT&T's proposal to remove certain tariff offerings for public broadcasters, noting our requirement that free and reduced rate services to public broadcasters under section 396(h) of the Act, 47 U.S.C. 396(h), be tariffed. *Public Broadcasting Service*, 63 FCC 2d 707, 722–23 (1977). In its direct case, AT&T explains that the Commission had misconstructed its proposal, which it says was not to detariff these services but to provide equivalent service under its ordinary commercial tariffs and to report such services quarterly pursuant to 47 CFR 43.74.[14] AT&T also states that it is willing to accept any reasonable approach concerning reduced rate service.

52. In general, the comments agree with AT&T that the Commission misinterpreted AT&T's proposal. However, the comments do urge that Commission action is necessary to implement the reduced rate provision in section 396(h). They suggest that AT&T's proposals to charge relevant costs on a case-by-case basis is too vague and uncertain, and creates difficulties in effective long term planning. Further, it is contended that detariffing would deprive public broadcasters of notice, cost support information, and procedural rights. One commenter goes on to suggest that the Commission amend its rules to require one year's notice for increases in reduced rate services. Several of the comments urge that AT&T's proposal to maintain the February rates to existing public broadcasting customers be accepted, and call for either informal meetings or prescription to set future rates. One suggested approach is to charge rates based on incremental costs, as in Docket No. 18316, 31 FCC 2d 496 (1971) which led to the setting of rates to the Corporation for Public Broadcasting at one third of the commercial rates.

53. As to the actual rate levels, AT&T states that it has no objection to applying a flat percentage discount to its commercial rates, and notes that this would relieve all concerned from the burden of making case-by-case studies. However, AT&T believes that the proposed two-thirds discount is too great in view of the incremental costs, the competitive environment, and AT&T's right to a fair return on its investment. AT&T suggests that a reasonable discounted rate would be on the order of 75 percent of the commercial rates.

54. It appears to us that AT&T's proposal could provide a reasonable framework for implementing section 396(h). It would not roll back the June across-the-board increase of 16 percent nor would it give the requested one year notice for increases as some comments suggest.[15] However, it would protect the rights of public broadcasters in the same fashion as other customers, assure uniform treatment at reduced rates, and relieve all concerned of the burden of unnecessary case-by-case studies. To this end, therefore, we direct the Common Carrier Bureau to pursue this matter informally with AT&T and interested public broadcasters in order to resolve any further issues concerning this approach.

F. Special Construction Charges for Local Channels

55. In their comments, INTV and Hughes question AT&T's application of special-construction charges to local channels. They claim that special construction charges for occasional local channels are a significant expenditure, frequently amounting to several thousand dollars per installation. These charges may even be more than the standard tariff charges and show significant variations which INTV terms unaccountable. Hughes also argues that special construction charges do not reflect cases where there is no foreseeable alternative use for a facility, as AT&T claims, but are part of AT&T's historic facilities pooling practices. In support, Hughes presents a list of its orders for fulltime local channels at sports stadiums which indicate wide variations in the availability of full time channels and in the special construction, and other charges which were imposed. Both INTV and Hughes urge that AT&T should be required to explain and offer

[12] The Networks and Hughes contend that PSV pairs were included in composite cables without regard to future demand solely because AT&T perceived this practice as being in its best interest and because the additional cost was minimal. However, they provide no evidence that AT&T's facility planning practices were unreasonable or that the initial installation of these facilities was unwarranted. We see no substantial reason to institute an investigation of such practices.

[13] We should point out in this regard that a carrier's rate base will normally include facilities which are not being fully utilized to meet current demand but which are, nonetheless recognized as "used and useful."

[14] For example, AT&T states that Type 7003 service customers would receive Type 7000 Local Channels which are, as presently provided, identical to Type 7003 channels in all material respects.

[15] Such a Commission-imposed requirement would probably conflict with section 203(b)(1) of the Act, 47 U.S.C. 203(b)(1) which requires only ninety days notice of tariff changes.

detailed justification for its special construction practices.

56. AT&T replies that an investigation of special construction charges is unwarranted, because the charges are uniformaly applied to cover extraordinary construction and removal costs and, in any event, came under Commission scrutiny in Docket Nos. 11646 and 15471.

57. We find Hughes' undetailed list of charges and the other arguments insufficient to demonstrate unreasonableness. For one thing, Hughes fails to detail the costs such charges were claimed to recover. For this reason, we are not convinced that a formal inquiry or investigation of this issue is warranted. However, we will delegate authority to the staff to request further information from AT&T and other parties and will revisit this issue if necessary at a later stage in this investigation.

Conclusion and Implementation

58. The fundamental goal of this proceeding has been to achieve reasonable rate structures for IXC—SC service and for local channels. For the reasons explained above, we have concluded that major elements of the filed IXC—SC and local channel rate structures are unreasonable, or at least not properly justified. Accordingly, we find the filed rates to be unlawful and we have determined not to allow them to go into effect.

59. At the same time, we believe that significant progress has been made. As discussed, AT&T's alternative rate structure for IXCs seems to provide an equitable approach which could fairly divide front end costs from operating costs for both continuous and occasional users. Also, though more comment is needed, the variation of AT&T's filed local channel rate structures proposed in the Scott Study may provide adequate revenue while encouraging our other policies such as efficient use and avoiding potentially unfair charges.[16] Alternatively, as we discuss below, the Plan B IXC structure could also be adapted for local channels. In both cases, however, certain issues remain. As we see it, the IXC service charge apparently includes some operating costs properly assigned to the hourly charge which AT&T states that it would require a 9 to 12 month study to quantify. For local channels, the Scott study argues that any loss of revenues caused by basing rates on total days of use rather than consecutive days would be offset by the stimulation of increased demand. AT&T notes that no studies are provided to indicate that the Scott alternative would stimulate demand.

60. In addition, the proposed use of flat hourly rates in the Plan B IXC structure also raises other issues which have not yet been considered. The Networks, for example, criticize the Plan B proposal because the flat hourly rates do not reflect the different costs of peak and off-peak use. They argue that occasional users impose peak demands on the video transmission system which require AT&T to construct multiple channels to serve realtively infrequent needs, and suggets that rates should reflect this peak use. While we cannot agree with the Networks' further contention that the present full time/part time rate structure implements peak load pricing in any efficient manner,[17] our tentative view is that there would be merit in pursuing a genuine peak/off-peak structure. Indeed, AT&T has also argued in the past that the capital costs of its plant are principally determined by demand for services during peak periods and that the cost of peak part-time service approaches that associated with full-time service.[18] We are sufficiently persuaded by these arguments to request comments on whether any acceptable Series 7000 tariff should incorporate peak-load pricing, since the market for terrestrial television transmission service appears to have pronounced peak and off-peak periods of demand.[19]

61. The Commission has shown a growing awareness of the importance of improving efficiency and equity by looking at the relationship between pricing strategies and peak demand on the network. The most recent evidence of this is the Commission's action requiring AT&T to adopt peak-load pricing in its offering of Wide Area Telecommunications Service:

> There is considerable economic literature on the subject of peak/off-peak and time-of-day sensitive pricing. According to one generally accepted model, efficient time-of/day rate structures should ideally have off-peak prices which recover variable (operating) costs, and on-peak prices which recover both variable and capacity (capital) costs. The result of such a rate structure is decreased demand during peak hours and increased demand during off-peak hours so that demand is evened as much as possible throughout the day. Thus, the traffic load is leveled across the entire day, making maximum use of the capacity and reducing the need for unnecessary plant expansion. Even if peaking still occurs (the so-called "firm-peak" case), the marginal costs of capacity investment are recovered from the subscribers who cause the need for construction of additional capacity. The result is that both efficiency and equity objectives are met.[20] [Footnotes deleted].

62. In addition, it can also be argued that customers who use service for continuous blocks of time may generate savings to the carrier in the form of increased fill of the available facitlities. Such economics could arguably justify tapered hourly rates for high volume of long duration use.

63. In our investigation Order we questioned the rate slopes proposed by AT&T, particularly the 24 to 730 hour rate step. But we recognized that some form of a tapered or curvilinear rate structure could be reasonable if justified. If AT&T believes that a tapered rate is more closely related to costs than a flat rate, it may propose such a structure in the next phase of this proceeding. A tapered rate structure should of course be justified as reflecting costs more accurately than flat rates and the specific taper should have a demonstrable basis in costs.

64. In order to resolve these various remaining issues we will request further comments on whether we should, on an

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[16] However, the Scott study assumes that the unassigned PSV investment will be disallowed. Since we have concluded that this investment should continue to be included as an allowed cost of Series 7000 service an appropriate adjustment would have to be made to the Scott rates if adopted in principle.

[17] Full time requires the customer to occupy facilities continuously whether it wants them or not in order to obtain the lower rate, through both peak and off-peak periods. Part time, on the other hand, imposes the same rate whether the use is peak or off-peak. neither offering uses a price structure which encourages efficient use by profiding price incentives for off-peak use and disincentives for peak use, nor can the two offerings taken together be considered peak and off-peak.

[18] Brief of AT&T, pp. 4, 10, and Proposed Findings of AT&T, Par. 38, cited in 25 F.C.C. 2d at 579, 580. See also, Docket 18128, 61 F.C.C. 2d 587, 626 (1976), where the Commission gave guarded encouragement to the notion of peak/off-peak pricing of network services. We note that peak-load pricing has already been implemented for satellite television transmission service. For example, RCA Americom charges occasional users of satellite protected service about 60 percent more during the peak period (5:00 p.m. to 1:30 a.m. (EST) than during the off-peak period. See, *RCA American Communications, Inc.* Tariff F.C.C. No. 1, Domestic Satellite Service, at 9th revised p. 29.

[19] Instead of locating single peak and off-peak periods, AT&T may find, for example, that a primery peak exists during "prime time" and that a secondary peak exists during some other period of the day. Perhaps the cost of acquiring advertising time could serve as a guide to the time, duration and magnitude of such peaks. Fortunately, the principles of peak-load pricing are already well developed in the economic literature. For example, see P. O. Steiner, "Peak Loads and Efficiency-Pricing," *Quarterly Journal of Economics* at 585–610 (November 1967); R. Turvey, "Peak-Load Pricing," *Journal of Political Economy* at 107–113 (January/February 1968); and E. Bailey, "Peak-Load Pricing under Regulatory Constraint," *Journal of Political Economy* at 662–679 (July/August 1972).

[20] *AT&T*, Docket No. 80-705, 94 FCC 2d 150, 177 (1980).

interim basis, prescribe the Plan B IXC–SC rate structure with a corrected service charge and to prescribe for local channels either the Scott proposal or an alternative proposal developed by the staff using the Plan B IXC structure. We will also request comments on whether a peak/off-peak structure would be reasonable for hourly IXC and SC charges and what structure would be appropriate for this service. This would include delineation of when peak usage occurs and proposals for corresponding rate differentials. We will also request comments on the use of tapered rate structure.

65. Because further studies will probably be needed to fine tune these rates, for example the study AT&T states is necessary to assign front end costs, we expect that any prescription will be for an interim period of one year. We would require AT&T to perform practical studies during that year to fine tune the rates and indicate any improvements or alternations which may be necessary.

66. AT&T states in its direct case that it is willing to substitute the alternative rates for those it has filed. Nothing in our disposition of this case is intended to discourage AT&T from making a tariff filing of its own, if it desires, which comports with the principles set out in this proceeding. As we have said, we think AT&T's Plan B IXC proposal represents a significant advance in this proceeding. However, we also think if appropriate in order to resolve this long-standing set of controversies that we proceed to consider the prescription of IXC, SC, and local channel rates for a limited period. Under these circumstances, is appears to us that an orderly way to proceed will be to allow AT&T an initial opportunity to comment on the additional issues raised in this order, and on the rates set for comment. It may also submit any alternative proposals or rate structures which it believes would conform to the conclusion reached in this order. Its comments should, in particular, give its views on the use of peak/off-peak hourly rates, and AT&T is also free to propose specific peak/off-peak rates. AT&T is also requested to describe how the pending consent decree negotiated between AT&T and the Justice Department would affect the rates and terms for terrestrial video service. We will allow opportunity for further comment by interested parties on any proposals by AT&T and on the issues and specific rate structures set for comment in this order. At the conclusion of this further round of comments we should be in a position either to accept a voluntary AT&T filing or to prescribe a reasonable rate structure, at least on a temporary basis.

67. Even if AT&T does voluntarily file an acceptable tariff, it is apparent from this proceeding that the same issues of fine tunning will remain as in the case of an interim prescription, and the same need for further studies. For that reason, we will in any event direct AT&T to file a report within 12 to 15 months of the effective date of any revised tariff, or in any subsequent tariff filing for this service before that time (except across-the-board rate changes pursuant to Commission order). This report shall contain an analysis of the effects of the revised tariffs, with an explanation and justification of any changes AT&T proposes, and such other information and material as the staff may require in order finally to resolve these issues and achieve a justified and reasonable rate structure.

68. Before describing the proposed interim prescription, we should explain why we have not chosen to adopt the one major alternative proposal before us, *i.e.*, the Networks' suggestion that the Commission proceed to a full evidentiary hearing. Basically, the Networks contend that AT&T uses separate and distinct facilities for full time and part time needs, and that this operational distinction should be reflected in the tariff structure. They assert that the Commission should undertake a "zero-based" review of this entire matter and require AT&T to provide a cost revenue analysis of the television market reflecting a full time/part time structure. Their contention is that such a cost inquiry would support substantially different part time and full time rates.

69. In our view, the proposal by the Networks would be certain to produce extensive, elaborate, and time-consuming proceeding which would inevitably delay resolution of these issues for several more years at least. [21]

[21] The Networks suggest that AT&T could provide operational and cost data to precisely identify all the facilities used to provide commercial television service, the actual costs associated with particular facilities, and the particular costs associated with facilities for full time and part time use. This analysis would certainly require a long time to complete. For example, AT&T in this proceeding claims it does not even know how many local channels it provides, let alone their actual costs, but can only estimate them based on overall investment accounts. Any formal hearing to consider such a study, with opportunity for presenting and challenging oral testimony by all interested parties, would necessarily be lengthy and extremely expensive, and might well be obsolete by the time it were finished.

We have already undertaken one hearing on this issue, several reviews of tariffs filings, and the present investigation. In each we have placed the burden on AT&T of justifying the full time/part time rate structure. Despite numerous opportunities, AT&T has never filed adequate cost support justifying the extreme rate differences between the two offerings. Although the Networks insist that AT&T could and would supply such justification in a further proceeding,[22] it is difficult to believe that a further lengthy effort to develop such information has any likelihood of success or of being worth what it would cost in time and money.

70. Moreover, we think it is far more likely that a reasonable, justified rate structure which is fair to all customers can be achieved by developing AT&T's proposed Plan B IXC–SC rate structure than by making further efforts to seek justification for full time/part time. Throughout the various proceedings on video transmission service, our primary concern has been to assure that the rates and rate structure would be cost-based and efficient. We have also been aware that AT&T may have a substantial incentive to favor high volume users such as the Networks with low rates to deter competition from microwave and satellite carriers. In the mid-1970's, for example, AT&T specifically defended a proposed rate reduction for full time service and rate increase for part time as necessary to fight off potential competition from microwave carriers. Within this context, we have on each occasion carefully scrutinized AT&T's various proposals for full time services with far lower per unit rates and requirements such as minimum service terms or special construction obligations. These rate offerings have prompted significant concern that their effect is to segment the video market, or to choose a particular set of favored customers for preferential rates. In the absence of cost information justifying the disparate rates, we have found AT&T's proposals to be unlawful. If we were to pursue the suggestion of the Networks and seek justification for a full time/part time structure, it would be tantamount to ignoring our conclusion that the services are like, and starting with the proposition that full time/part time are separate markets which must be priced out separately, which is not the case. We would then face continuing problems of market segmentation.

[22] AT&T itself opposes a further hearing, contending that the Commission has before it an abundantly complete record.

Facilities and rate structures might, for example, be designed to provide lower rates for selected customers. We also fear that the full time/part time structure would be less usage sensitive and less flexible than a rate structure which reflects costs more directly. It would thus be relatively inefficient in allowing customers to obtain the specific service they wish at a rate which reflects the cost of that service.

71. Under the circumstances, we think it will be a more profitable use of our resources to develop and fine tune AT&T's Plan B for IXC and SC service rather than to institute a full rate investigation to defend full time/part time rates as urged by the Networks. If costs are properly assigned to the up-front service charge and the hourly charge, the rates for all users should reasonably reflect costs. Continuous use would be less expensive per unit because the one-time service charge would be spread over more hours of use. Peak/off-peak rates, if adopted, would further implement cost savings justified by continuous use. At the same time, elimination of the arbitrary full time/part time division should mean that customers can choose service to suit their needs more precisely and to aggregate their needs through brokers or resellers to achieve further efficiencies. In our view, this structure has significant advantages over the full time/part time structure for this service as provided to this market and should be relatively simple to implement on an interim basis, subject to any needed modifications which practical experience and further studies may dictate.

Proposed Interim Prescription

72. We are setting the following proposed rates and rate structures for comments in order both to achieve more reasonable rates in the short run and to make the first steps toward an eventual, permanent rate structure. Since we already have considered and tentatively resolved many of the IXC and SC policy issues, our primary concern in this stage of the proceeding will be to ensure that the interim rates as actually applied to customers will be reasonable.

IXC and SC Rates

73. As we discussed above, we find the Plan B IXC rate structure generally reasonable. However, it seems clear that a portion of the costs included in the development of the up-front service charge should be more properly allocated to the hourly IXC and SC rates. AT&T readily admits this (Response, p. 9) and projects that a 9 to 12 month study is required to quantify the separation of these costs between the one-time and recurring rate elements. It is also possible that the proposed service charge of $461 might create a barrier to the use of occasional video service for some users. Moreover, if the service charge is too high, it will discourage any use at all; if too low, usage of IXC, SC, and local channel services is likely to be encouraged, which would to some extent offset any revenue loss.

74. With this in mind we have developed an interim service charge based on the data presented in AT&T's direct case.[33] For this pupose we have assumed that 50 percent of the costs AT&T has allocated to the service charge rate element should have been allocated to the IXC and SC rate elements. Although we do not know with any degree of certainty whether 50 percent is too high or too low an allocation of front end cost we do know it is in the right direction as compared to the AT&T proposal. Even if $230 should represent somewhat less than total front end costs, there would be no harm to the carrier, as it will still recover its revenue requirements. The rate we have developed would apply until AT&T submits tariff revisions reflecting the appropriate costs associated with the service charge and adjusted rates. Until we have the benefit of actual studies and experiences, our estimates should be reasonable on an interim basis.

75. Since AT&T is entitled to recover its total cost of providing television service, adjustments must be made to other rate elements to recover the revenues lost due to the lower interim service charge. We have followed AT&T's methodology to develop these rates as can be seen in Appendix A. The result is an increase in the SC rate from $1.94/hr. to $2.60/hr and in the IXC rate from $.14 to $.15 per channel mile hour. Thus, the overall proposed IXC and SC rate structure is as shown in Table 5:

TABLE 5.—STAFF PROPOSAL: INTERIM IXC AND SC RATES

Service Charge: (per IXC network), $230.00	
IXC (per mi/hr), $0.15	
SC (per hour), $2.60	

NOTE.—The hourly rate is subject to modification if a peak/off-peak structure is found to be desirable.

Local Channel Rates

76. As we explained above, the variation on AT&T's Plan A local channel rates proposed in the Scott study would appear on balance to be superior to other suggested alternatives. For that reason, we will set it for comment as a possible basis for interim prescription. However, we also believe that the two part IXC rate structure might be an appropriate model for the local channel rate structure. As in the case of IXCs, local channels are provided both on a relatively continuous basis and for occasional use. Those channels also have associated front end costs which are essentially independent of the operating costs. Thus, a local channel rate structure with a fixed service charge reflecting front-end costs and a flat daily rate might well provide a non-discriminatory rate structure which fairly assign costs to the cost-causing customer. Moreover, to the extent this structure is consistent with the IXC and SC rates, it would satisfy an important objective of sound ratemaking. In this case consistency might be particularly important, because local channels are likely to be less subject to competition from satellite carriers, and AT&T may well have an incentive to cross-subsidize IXC rates from local channel revenues. Consistent local channel and IXC rates structures should be easier to monitor to assure that rates for both are fair. Since local channel are provided on a per day basis, we do not need to consider peak/off-peak rates for these channels.

77. With this in mind the staff has developed an interim local channel rate structure reflecting the allocation of various costs to the local channel service charge in the same manner as the proposed interim IXC rates.[34] The cost accounts for local channels are essentially identical to those for IXCs, so the same methodology has been used to derive suggested service charge and daily rates as in the case of IXCs. Thus, 50 percent of the costs associated with revenue accounting, sales, commercial, and exchange testing have been allocated to the local channel service charge. The remaining 50 percent of these costs have been assigned to the per day rate. This methodology would produce a service charge of $197 per occurrence and a $95 rate for each day of use. As stated with respect to the interim IXC rates, if this rate structure is adopted on an interim basis, we would expect AT&T to conduct studies to gather the information needed to appropriately allocate costs between the two local channel rate elements. The interim local channel rates do not disaggregate the various types of local channels. As discussed above, the proposed disaggregation lacks adequate justification and could be expected to cause major disruptions among users. Until AT&T has completed its cost

[33] See Appendix A for calculations.

[34] See Appendix B.

studies we see no benefit to be gained by implementing disaggregated local channel rates.

78. We note that this local channel rate structure would result in different and generally lower rates for occasional local channel service than either the existing rate structure or any of the proposed alternatives. For example, the present rate for a single day of local channel service is $610 per day. Under AT&T's Plan A and the Scott study, the rate for a single day would be $582. Under AT&T's Plan B, the rate would be either $1,288 or $2,673. Using the staff's rate studies, the first day rate would be $283. By contrast, full time local channel rates would be higher:

TABLE 6.—FULL TIME LOCAL CHANNEL RATES: A COMPARISON OF ALTERNATIVE RATE STRUCTURES

Existing rates, $1,219 per month.
Plan A and Scott study, 2,340 per month.
Plan B (fixed in place facility), 1,292 per month.
Staff proposal rate, 3,047 per month.

On the other hand, this structure would provide approximately the same revenues as the Plan A or Plan B rates, and would impose generally higher rates for occasional use of several days or more. We expect the comments to provide further information on the relative merits and demerits of these rate structures.

79. Our basic reason for suggesting this rate structure, aside from rate consistency, is that it should in principle reflect and assign costs in a fair and equitable fashion, based upon an explict methodology. If this methodology is reasonable, the specific rates should be fair as an interim matter, and can be adjusted based on further studies and operating experience. We wish to repeat that we do not intend to favor any customer group but rather to assign rates so far as possible based on costs. We will expect the comments to address the basic issues of whether this structure would in fact reflect costs in a reasonable fashion, so that it would be appropriate for interim prescription. Naturally, we will also expect the comments to specify reasons why this structure is superior or inferior to other alternatives including the Scott proposal which is also set for comment. As in the case of IXC rates, any interim local channel structure which we might prescribe would be subject to revisions and adjustments based on further studies and operating experience after one year.

Competition

80. We also will request comment on the extent to which increased opportunities for competition—both facilities based and resale—might reduce the need for continued Commission regulation of the rate structure.[25] Recent evidence suggests that the intercity television transmission market enjoys substantial competition. For example, figures show that the Bell System's share of the intercity transmission market fell from 65 percent in 1979 to 60 percent in 1980.[26] Moreover, these numbers overstate Bell's market share because private carriage and some use of satellite transmission are excluded. Recent Commission actions in authorizing new Domestic Satellite systems in both the 4/6 and 11/12 GHz bands,[27] the continuing reduction in the costs of satellite terminals, the recent practice of television stations to acquire satellite terminals, and recent developments in the use of portable satellite uplinks should also increase the ability of satillite carriers to provide competitive pressure. These additional transponders will be available to provide both full time and occasional services. Resale may also impose a significant restraint upon discrimination against occasional users.

81. In the local channel market there is, at present, less evidence of facilities-based competition. Here again, however, technical and regulatory developments point the way to increased competition. Recent years have seen a major increase in the use and sophistication of private microwave equipment by local television stations. This Electronic News Gathering (ENG) equipment is frequently used to transport video signals in metropolitan areas on an "occasional" basis. The use of ENG-like microwave could provide competitive pressure on AT&T local channel rates.[28] The increased availability of cable television may also provide competitive pressure since cable is a potential competitor to the phone system for local channels. In addition, portable up-link earth stations for satellite compete with terrestrial interexchange service and do not require local channels.

82. We request comments on the entire subject of the competitiveness of the television transmission market and the adequacy of competitive pressures to alleviate the need for continued, detailed regulation of the terms and conditions of the service now and in the future. We are particularly interested in specific discussion of whether any of the terms and conditions of the alternative AT&T tariff and rate structures inhibit the ability of resellers to reduce discrimination against occasional users.

Ordering Clauses

83. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), and 204(a) of the Communications Act, 47 U.S.C. 4(i), (j), 204(a), that the tariff material submitted under Transmittal No. 13663 is found unlawful.

84. It is further ordered, that §§ 61.58 and 61.59 of the Commission's rules, 47 CFR 61.58 and 61.59, are waived for the purpose of allowing AT&T to make tariff changes necessary to continue the currently effective rates and regulations.

85. It is further ordered, that the rates described in paras. 44–47 and 72–79 of this order shall be set for public comment as to whether it would be just and reasonable to prescribe them for an interim, one year period.

86. It is further ordered, that AT&T shall submit its comments within 45 days of the release of this order. Comments shall be filed by interested parties within 30 days thereafter and AT&T's reply within a further 15 days.

87. It is further ordered, that in reaching its decision the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

88. It is further ordered, that this action is effective immediately.

89. It is further ordered, that the Secretary shall cause this Order to be published in the **Federal Register.**

90. This order is exempt from the provision of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It involves a rule applicable to a particular rates and to practice relating to such rates within the meaning of the exemption contained in 5 U.S.C. 601(2).

[25] Given the dominance AT&T currently possesses in the MTS/WATS markets we continue to be concerned about the possibility that MTS/WATS rate payers may be subsidizing AT&T's Series 7000 customers. However, this is not presently at issue in this proceeding. The question at hand is the appropriateness of cost allocations within the Series 7000 service.

[26] Data compiled by Commission staff, submitted to the House Subcommittee on Telecommunications; Consumer Protection, and Finance by letter dated July 7, 1981.

[27] See *Orbit Deployment Plan*, 84 FCC 2d 584 (1981).

[28] While not all current use of ENG microwave may provide adequate quality, more conservative operating practices and/or minor equipment modifications should provide a high quality transmission service.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

STAFF PROPOSAL, AT&T SERIES 7000 SERVICE, CALCULATION OF INTERIM SERVICE CHARGE, IXC RATE AND SC RATE,[1] 1982 RATE LEVELS

Service Charge	
1. IXC portion (50% of Line 4, p. B–25)[2]	$917,871
2. SC portion (50% of Line 9, p. B–25)	$2,796,084
3. Total expenses (L.1+L.3)	$3,713,955
4. Quantity (Line 11, p. B–25)	16,121
5. Interim Service Charge (L.3/L.4)	$230
IXC Rate	
1. Annual Costs (L.1, p. B–26)	$49,541,894
2. Expense associated with svc. chg. (L.1 under svc. chg.)	$917,871
3. Net annual costs for IXC (L.1–L.2)	$48,624,023
4. Market quantity—1982 channel mile hours (L.4, p. B–26)	332,453,340
5. Interim IXC rate per CMH (L.3/L.4)	$0.15
SC Rate	
1. Annual costs (L.10, p. B–27)	$13,851,785
2. Expense associated with svc. chg. (L.2 under svc. chg.)	$2,796,084
3. Net annual costs for SC (L.1–L.2)	$11,055,701
4. Market quantity—1982 SC hours (L.13, p. B–26)	4,258,452
5. Interim SC rate per hour (L.3/L.4)	$2.60

[1] PSV pair investment assigned to Series 7000 Service.
[2] Source documents refer to Attachment B of AT&T's Direct Case.

Appendix B

STAFF PROPOSAL, AT&T SERIES 7000 SERVICE, DEVELOPMENT OF INTERIM LOCAL CHANNEL RATES [1] 1982 RATE LEVELS

Annual Costs	
1. Full Time Fixed (Line 1, p. B–59) [2]	$10,984,067
2. Part Time Fixed (Line 4, p. B–59) [2]	$1,360,073
3. Mobile (Line 7, p. B–59)	$13,180,800
4. Total	$25,534,960
Front-end Costs	
5. Rev. Acct. (Line 69, p. B–33) [2]	$20,859
6. Sales (Lines 65, 66, p. B–33) [2]	$223,258
7. Commercial (Line 72, p. B–34) [2]	$211,374
8. Exchange Testing (Line 3, p. 1–161, Vol. 4 Book 1) [2]	$1,169,859
9. Total	$1,625,350
10. Allocation to service charge (50% × L. 9)	$812,675
11. Number of occurrences (Line 1 p. 3–20, Vol. 2) [2]	4,134
12. Channel days (p. 3–14, Vol. 1) [3]	261,504
13. Interim service charge (L. 10/L. 11)	d6197
14. Interim daily charge (L. 4–L. 10)/L. 12)	$95

[1] PSV pair investment assignment to Series 7000 Service.
[2] Source documents refer to Attachment B of AT&T's Direct Case.
[3] From February 13, 1981 filing

Appendix C.—Cost Issues Raised by the Networks

1. Audio/Video Investment

91. The Networks claim that AT&T has overstated the investment associated with the 7001 interexchange (IX) rate element by a total of $8.5 million which is comprised of $6.4 million of central office equipment (COE–57C) and $2.1 million of outside plant (OSP). The Networks state that these costs for circuit equipment and line haul are for an audio component of television service which is no longer required due to technological changes in the facilities used to provide television service. Thus, it is alleged by the Networks that the $8.5 million should be removed from the rate base. The Networks rely on various AT&T materials to support their contention that although AT&T has in the past requested permission to remove the audio/video investment from its rate base, it has failed to do so herein.

92. Our review of AT&T's workpapers relating to this matter indicates that an insignificant amount of audio/video investment is included in the figures cited by the Networks. The following table depicts the investment date as set forth in AT&T's support material.[29]

	Outside plant	COE–57C
Broadband facilities	$2,135,257	$6,358,734
Audio/video	8,447	17,012
Total (as shown by networks)	2,143,704	6,375,746

As can be seen less than 0.5 percent of the investment is audio/video related with essentially all the investment being associated with broadband facilities used to provide television service. In any event, the Commission has already stated tht these investments are to remain in the television rate base until such plant can be used for other services.[30]

2. Depreciation Reserve Ratios

93. The Networks next claim that the depreciation reserve ratio for 67C radio equipment is too low thereby overstating the television services rate base (Reply Case, App B p2). They believe the ratio for this equipment should be double the .2959 shown in the support material. The Networks buttress their argument by pointing out that the equipment used provides non-growth services and is several decades old. They also allege that the data for television services shown in prior central submission indicates reserve ratios exceeding .45.

94. AT&T responds by stating that the reserve ratios used for televisions service are based on overall private line services averages, which is consistent with the January 6, 1981 Report and Order in the Cost Manual proceeding, Docket No. 79–245.[31]

95. Our analysis indicates that AT&T has indeed used broad average reserve ratios to compute depreciation reserves for television services. However, the January cost manual order is silent as to how AT&T is to allocate costs, including reserves, to the individual private line services. In fact, and as a consequence of this scenario with respect to the costs of individual private line services, AT&T has been making tariff filings for well over a year using different sets of cost factors in the presentation of cost support data. At various times, AT&T has provided data utilizing both average factors and specific factors related to a particular service or item of equipment. For example, in AT&T's support material accompanying its CCSA Access Line Filing of August 15, 1980 (Transmittal No. 13533) reserve ratios were computed for various plant items used to provide the service based on data contained in the 1979 Central Submission.[33] Overall private line ratios were not used, but rather specific ratios computed from CCSA data. The same basic data source also contains data to compute reserve ratios for television service.[33] A comparison of the results of computing depreciation reserve ratios from the 1979 FDC Report and those shown in AT&T's support data herein [34] follows:

DEPRECIATION RESERVE

	1979 FDC report	Instant filing
Interexchange Plant		
Outside plant	0.3104	0.2021
COE-circuit [57C]	0.1482	0.2560
COE-radio [67C]	0.4879	0.2959
Buildings	[1] 0.2317	0.1879
Exchange plant		
Outside plant	0.2559	0.1371
COE	0.5457	0.2166
Station equipment	0.3775	0.2966
Buildings	[1] 0.2317	0.1582

[1] Figures not distinguished in the FDC Report.

96. As can be seen from the above there are substantial differences between the two sets of data. Although we do not know the impact of one set of figures versus the other, it certainly appears that AT&T's choice results in a greater rate base, and, thus higher rate levels. This apparent ability to pick and choose costing methods, depending on preconceived results, cannot be sanctioned by this Commission. Thus, we will require AT&T to justify its choice of factors, explain why it has not provided alternatives as in various other tariff filings, and provide the record with the impact of using more specific reserve factors [35] related to the television services.

3. Station Connection Cost Reductions

97. The Networks allege that AT&T's failure to discuss the impact of its station connection reduction program and any resulting cost savings is grounds for finding the proposed rates unlawful. Reply Case, App. B, page 4. To substantiate their contention the Networks compare station connection investments as derived from AT&T's various Central Submissions and a 1977 forecast with the figure presented in AT&T's direct case here. AT&T agrees that the operational efficiencies were

[29] February 13, 1981 tariff filing, Vol. 4, Book 1. Page 1–6 for Broadband facilities and page 1–11 for Audio/Video.
[30] Memorandum Opinion and Order, Transmittal No. 12293, 67 F.C.C. at 1184–1187.
[31] 84 F.C.C. 2d 384 (1981).
[33] See Section 5, page 2–18 of support material.
[33] 1979 Annual FDC Report, June 30, 1980, Vol. 3 Primary Data, p. 6–21.
[34] Feb. 13, 1981 tariff filing, Vol. 4, Book 1, pages 1–14.
[35] Accounts 171, 172, 175, and 176.

implemented in 1978 and thus the station connection investment reflects the reduction program. The higher than originally projected investment for station connections is due to implementation of the January 1981 cost manual, AT&T maintains. Our review of AT&Ts' support material in this proceeding [36] reveals that the station connection investment alluded to by the Networks is based mainly on direct assignment and separations costs as called for in the January cost manual. The investment presented in prior central submissions were derived on a different basis and thus, a strict comparison of the two sets of investments is not possible for the purpose of determining the reasonableness of a particular amount. We do not find the Network's arguments on this issue persuasive and, therefore, we will reject them.

4. Expense Allocations

98. The Networks claim, generally, that AT&T does not explain how expenses are assigned to and within the television service other than to refer to the principles enunciated in the Interim Cost Allocation Manual (ICAM) (Reply Case, App. B., p. 6). More specifically it is alleged that both sales and commercial expenses are improperly allocated because revenues are used as the allocation base. The Networks suggest using expense to investment ratios for the allocation of these costs related to the IXC rate element. For the station connection rate element the Networks suggest using a labor related measure as the allocator. The Networks also compare television operating expenses, taken from AT&T's 1978 and 1979 Central Submissions, with data presented in the instant filing. The comparison shows an 18.2 percent growth in operating expenses from 1978 to 1979 and a 20.0 percent growth from 1979 to 1981. The Networks contend that the large increase projected in 1981 relative to prior years has not been supported by AT&T and are grossly excessive. Thus they call for rejection of the proposed rates.

99. AT&T again responds by claiming that it has followed the ICAM procedures to allocate costs to television service. These procedures comprehend the direct assignment of certain expenses related to television service while prior Central Submissions used more averaging techniques to develop allocations. AT&T further states that the projected year-to-year growth in commercial and sales expenses as filed is nominal.

100. Our analysis of the support materials filed by AT&T indicates that the methodology and factors used to develop expenses are sufficiently explained to allow for a reasonable review by interested parties. However, we are troubled by certain of the allocative methods used. We do not think it is reasonable or logical to allocate revenue accounting, sales, and commercial expenses based on revenues, when the revenues used to make such allocations reflect growth due to rate increases. This methodology provides the somewhat ludicrous result that when rates increase and quantities demanded decrease, as is the case usually, there will be an increase in total expense related to those reduced quantities. AT&T's methodology tends to overstate expenses and we will direct AT&T to develop a more realistic scheme for allocating these three expense items. Although we are not discounting the suggestions set forth by the Networks, it is our belief that these expenses should be allocated on the basis of some measure of usage of the services involved. Regarding the alleged excessive growth of operating expenses from 1978 and 1979 to 1981, we find that for the most part the differences lie in the application of the various cost manuals in existence over the time period. We do not find that AT&T has arbitrarily inflated costs.

5. Market Studies

101. The Networks contend that, since the study conducted by National Analysis, Inc. was based on only 14 percent of the television population and did not test rates at the level of those proposed, the market survey is invalid for ratemaking purposes. (Reply Case, p. 13–18). The Networks allege that the filed rates were never tested, and thus, any conclusions drawn from projections or cost/revenue analysis utilizing these rates are unreliable. The Networks also point out that AT&T's own data suggests the proposed rates are excessive because in 1983 revenues are projected to decline substantially, reflecting customer dissatisfaction with the high rates. The Networks maintain that lower than filed rate levels would be of more benefit to AT&T than the rates proposed. They cite the lower "illustrative" rates as proving their case on this point whereby in 1983 the projected rate of return shown is 9.6 percent as opposed to 3.8 percent under the proposed rates. Finally, the Networks contend that AT&T's failure to include any market analysis in connection with the rates proposed in its direct case is reason enough not to accept the proposed rates as just and reasonable.

102. AT&T responds that the National Analyst survey is statistically sound because even though it only sampled 14 percent of the population it included two network customers, 29 of the 47 medium-size customers and about 10 percent of small users. It would thus appear to us that the survey sample, as described in Section 1 of Volume 2 of the February 13 filing, represents substantially more than 14 percent of television revenues and can aid us in determining the reasonableness of the proposed rates. As to the levels of rates tested in the survey, AT&T acknowledges that because the ICAM changes and impact on television service were not known until after the survey was conducted it was unable to test higher rate levels required to recover the increased television costs. AT&T maintains that the higher rates required will have to impact on 1981 and 1982 demand but will affect 1983 demand, which has been further analyzed. (Feb. 13 filing, Vol. 1, p. 3–2). AT&T, in its direct case, (p. 40), bases the proposed rates on 1982 demand levels set forth in the February 13 filing claiming that total charges to customers under each proposal are similar even though usage patterns may shift. Indeed, as the Networks maintain, AT&T does not provide an explicit market and revenue forecast in its direct case and in the next phase of the investigation we will require AT&T to submit forecasts along with supporting documentation. Most of the criticisms made by the Networks relative to AT&T's market projections are with regard to the February 13 filing. Since we are rejecting the rates proposed in that filing these objections are mooted. When AT&T comes forth with more detail, as mentioned above, the parties may take the opportunity to comment.

6. Facilities Available for Future Growth (FAFFG)

103. The Networks allege that AT&T incorrectly removes facilities available for future growth (FAFFG) from the rate base of the television services thereby overstating costs to television customers (Reply Case, p. 42). Although pointing out it has appealed the Commission's exclusion of the FAFFG concept [37] as set forth in the Report and Order in CC Docket No. 79–245, the Networks maintain that the exclusion itself was done erroneously. Their basic argument is that even though television service is not growing it is being assigned FAFFG costs caused by other services. The Networks claim that FAFFG related to their services has been expended and no more should be assigned. As a result of AT&T's improper costing procedures regarding FAFFG the Networks indicate that $18.1 million in excessive investment has been allocated to television service.

104. Despite the Networks' statements to the contrary we find their arguments directly attacking the removal of the FAFFG concept from AT&T's cost allocation process. AT&T has allocated costs to television service in accordance with the January 1981 ICAM whereby certain costs are directly assigned to television services and other costs are assigned on a relative use basis. Since AT&T has followed the ICAM procedures, from which the FAFFG concept is excluded, we reject the Networks' contention that AT&T has erroneously accounted for FAFFG related costs. The Networks' court appeal on this matter, rather than this proceeding, is the proper vehicle for deciding the merits of the Commission's decision to eliminate the FAFFG concept.

7. Investment in Local Channel Outside Plant

105. The Networks contend that AT&T has erroneously included $13 million of outside plant investment associated with local channels in its rate base (Reply Case page 35 and Appendix D). This allegation is based on the Networks' analysis of AT&T's FDC Annual Reports (Central Submissions) for the years 1976 thru 1979. In those reports an item of local channel investment for the TV commercial category of service is designated

[36] Feb. 13, 1981 tariff filing, Vol. 4, Book 1, pages 1–72, 73.

[37] The FAFFG concept was developed by AT&T during the Docket No. 18128 implementation consultative sessions held with the Common Carrier Bureau staff. It was intended to allocate certain high capacity high frequency line costs to services in the initial Datum based on projected future use of such plant. The Commission has never adopted or approved the FAFFG concept.

"unassigned." In the 1978 report $12.9 million was shown for this item while in 1979 the figure was $29.7 million. The Networks claim that the $12.9 million of unassigned investment has not been properly removed from the rate base, and is not part of the $29.7 million that AT&T removed from the TV service rates under its alternative rate proposal.

106. The flaw in the Networks' contention may result from a misunderstanding of the FDC Report data as set forth in Appendix D of their Reply Case. As a result of the Commission's decision in the MPL case (Docket No. 20814) exchange plant investment, of which TV service local channels are included, was allocated between the private line and message services in accordance with the jurisdictional separations process for the 1979 report. The impact of the new procedure was to shift substantial amounts of cost from the message services into the private line services.[38] Thus, the 1979 FDC report showed greatly increased exchange investments as compared to the comparable 1978 figures. As a consequence, all items of outside plant investment associated with TV service local channels, not just the unassigned portion, increased significantly as shown by the Networks' own analysis. The $12.9 million figure alluded to by the Networks represents the 1978 amount of unassigned investment. This figure increased to $29.7 million in 1979 because of the FDC methodology change. In its support material AT&T develops an alternative rate schedule that comprehends the removal of the $29.7 million from the TV rate base, distributing it to all private line services. To further eliminate another $12.9 million as the Networks suggest would be to remove an amount already included in the inflated 1979 data, namely the $29.7 million which AT&T has already eliminated. We therefore conclude that AT&T has correctly accounted for the unassigned local channel outside plant investment and reject the Networks' contention.

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[38] Approximately $00 million was transferred to the private line category based on 1978 data.

FEDERAL MARITIME COMMISSION

[Docket No. 82-24; Agreement No. 9925-3]

Order of Further Investigation and Hearing and Pendente Lite Approval

Agreement No. 9925-3, a 10-year extension of the Pacific America Container Express (PACE) cooperative working arrangement, has been filed for approval pursuant to section 15 of the Shipping Act, 1916 (46 U.S.C. 814). The Agreement applies essentially to the trades between the U.S. Atlantic and Gulf Coasts and Australia, New Zealand and the South Pacific and permits Proponents to agree on matters concerning vessel utilization/scheduling, certain conditions of operation, and the apportionment of certain revenues.[1]

An Order of Conditional Approval was issued by the Commission on October 29, 1981. In that Order, the Commission approved the agreement on the condition that it be modified as provided below:

I. Article 1 is amended to read as follows:

The joint service may become a member of, and may resign or withdraw from, any lawful conference, rate agreement, pooling arrangement or other agreement subject to the Shipping Act, 1916, that may operate in the whole or any portion of the trades covered by this Agreement.

The parties agree either to belong to or operate independently from any such conference as a group. When participating in any conference or similar organization, the joint service shall act as a single member and shall be entitled to no more votes than any other single member.

II. Article 4 is amended to read as follows:

The parties will operate a joint service which may include as many as, but no more than, six (6) container vessels which shall carry no more than 1,350 TEU's per voyage (average annually). The parties shall provide equipment such as containers and related equipment by such means and in such proportions as they may determine.

III. Article 5 is amended to delete the reference to the operation of conventional vessels in the trade.

IV. Article 13 is either deleted or amended to substitute the phrase "different vessels" for "additional vessels."

V. The last sentence of Article 14 is amended to read as follows:

The parties shall also submit to the Commission a semi-annual report setting forth the name, refrigerated cargo capacity, general cargo capacity, and ownership of each vessel employed in the joint service, and the per voyage carryings of each such vessel in TEU's and revenue tons for both refrigerated and general cargo. Reports shall be filed with the Commission within 45 days following the end of each semi-annual reporting period.

VI. Articles 8 and 9 are amended to include a clear and accurate description of the Proponents' arrangement for sharing all types of revenues and costs, and the time and manner in which accountings will be made.

VII. Article 21 is amended to read as follows: This agreement shall be governed by and construed in all respects in accordance with the law of England and the United States statutes administered by the Federal Maritime Commission.

VIII. Article 22 is amended to provide for an expiration date of "four years from the date of Commission approval."

IX. The Commission receives within 60 days of the date of the letter transmitting this Order a complete and accurate copy of Agreement No. 9925-3 modified in accordance with the above ordering language and signed by all parties thereto.

On March 8, 1982, Proponents filed a request for a further hearing on conditions I, III and VI above.[2] According to Proponents, the issues to be considered in regard to condition I would be the effect on other carriers and on the trade of separate voting by the Proponents, the interests of the Australian and other foreign governments in avoiding a curtailment of such voting rights, the 15 factors set forth in the *Johnson ScanStar* decision,[3] and the implication of a disenfranchisement of the parties upon their rights and obligations as conference members. With respect to condition III, the Proponents state that the Commission in imposing condition III mistakenly assumed that they did not operate conventional (non-container) ships in addition to the six container vessels. As to condition VI, the Proponents state that they intend to show that such a condition is unfair and arbitrary and that no precedent for such a condition exists. Accordingly, the request for a hearing to determine whether the Proponents should be required to comply with conditions I, III and VI is granted.

On March 25, 1982, Farrell Lines, Inc., a competing carrier filed a "Request for Modification of Conditions of Approval or, Alternatively, Counter Request for Hearing." In addition to opposing approval of Agreement No. 9925-3 without the three modifications to which Proponents object, Farrell requests modifications of or alternatively, a hearing on, conditions II and VIII of the

[1] Proponents of Agreement No. 9925-3 are: Associated Container Transportion (Australia) Ltd., a Commission-approved joint containership service (Agreement No. 9767) among Blue Star Line, Limited, Port Line, Limited and Ellerman Lines, Limited; and, the Australian Shipping Commission, trading as the Australian National Line (ANL).

[2] On November 30, 1981, the Proponents had filed a petition for reconsideration of the Order of Conditional Approval in regard to conditions I, III, and VI above. The petition was denied on the grounds that the Order of Conditional Approval was not a final order.

[3] In *Johnson ScanStar Service (Agreement No. 9973-3)*, the Commission identified 15 factors associated with "singe carrier" or "joint carrier" or "joint service" status. 18 SRR 807 (1978).

October 29, 1981, Order. It argues that Proponents' vessel/TEU limit (condition II) should be changed to limit Proponents to 19,000 TEU's annually in each direction. The basis for Farrell's assertion is that the U.S./Australia and New Zealand Trade has recently become heavily overtonnaged due to an increase in the number of carriers operating in the meat trade and a decrease in the amount of cargo being carried.[4] In addition it states that permitting Proponents to carry not more than 1,350 TEU's per voyage, averaged annually, authorizes a level of carriage in excess of that provided in past years. As for condition VIII, Farrell requests that the agreement be extended for no more than one year. Although Farrell has no objection to *pendente lite* approval of the Agreement, it states that such approval should be subject to the limitations that Proponents may not carry in excess of 19,000 TEU's annually in each direction, and that PACE be restricted to one vote in conference matters.

By letter dated April 15, 1982, Proponents responded to Farrell's request by stating that a reduction of the capacity limitations below those contained in condition II would result in a TEU limitation significantly less than the number of containers annually carried by the parties to the Agreement, and that a one year extension of the Agreement is not consistent with Commission policy.

Although Farrell's request for a hearing or modification of the conditions is untimely in that its comments were not submitted during the public comment period, the overtonnaging allegation raises an issue which the Commission cannot ignore. Farrell has stated that the trade has changed in two fundamental aspects since the Commission last considered this agreement in its October 29, 1981, Order. In light of these changed circumstances, Farrell's request for a hearing will be granted regarding condition II but its request for modification or for hearing will be denied in all other respects. Although Farrell will be permitted to comment on all the issues which are to be addressed in this proceeding, because it raised the overtonnaging issue it has the burden of providing information as to why the capacity limitations in condition II are too liberal.[5]

Pending the ultimate disposition of the agreement, the Commission has determined to grant *pendente lite* approval to Agreement 9925–3 as filed. Abrupt cessation of the PACE joint service would unnecessarily disrupt legitimate commercial expectations of the shipping public.

Therefore it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. §§ 814 and 821), a formal investigation and hearing is hereby instituted to determine whether Proponents should be required to comply with conditions I, II, III, and VI;

It is further ordered, That the request of Farrell Lines Incorported for a hearing with respect to condition II of the Commission's October 29, 1981, Order is granted but that its request for hearing or modification of conditions of approval is denied in all other respects;

It is further ordered, That the carriers party to Agreement No. 9925–3, Australian National Line and Associated Container Transportation (Australia) Ltd., are designated as Proponents in this proceeding;

It is further ordered, That pursuant to § 502.42 of the Commission's rules (46 CFR 502.42), the Commission's Bureau of Hearings and Field Operations (Hearing Counsel), shall be a party to this proceeding;

It is further ordered, That Farrell Lines, Inc., be designated a Protestant in this proceeding;

It is further ordered, That Agreement No. 9925–3 is granted *pendente lite* approval pending a final Commission decision in this proceeding;

It is further ordered, That Proponents and the Protestant will submit two copies each of their direct cases, to the Secretary of the Commission and one copy to each of the parties to this proceeding by June 14, 1982;

It is further ordered, That discovery shall be in accordance with the process set forth in § 502.201 of the Commission's rules (46 CFR 502.2010 but shall not commence until the receipt by the Commission of Proponents' and the Protestant's direct case;

It is further ordered, That after completion of such discovery, all parties shall have an opportunity to submit written rebuttal testimony;

It is further ordered, That this matter is assigned to an Administrative Law Judge for public hearing and decision at a date and place to be hereafter determined by the Administrative Law Judge. This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue otherwise requires an oral hearing and cross-examination for the development of an adequate record;

It is further ordered, That the Administrative Law Judge shall issue an initial decision by January 31, 1983;

It is further ordered, That notice of this Order be published in the **Federal Register** and a copy thereof be served upon all parties named herein; and

It is further ordered, That, all documents submitted by any party in this proceeding be filed in accordance with § 502.118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118) as well as being mailed directly to all parties of record.

By the Commission.[6]

Francis C. Hurney,

Secretary.

[FR Doc. 82–12254 Filed 5–4–82; 8:45 am]

BILLING CODE 6730–01–M

[4] Farrell states that refrigerated meat northbound from Australia, the largest single category of cargo in the inbound trade, has declined from over 300,000 tons annually for 1978 to 1980, to approximately 200,000 tons projected for 1982, and that in November, 1981, two additional carriers, the joint service Bank and Savill, and ABC Containerline, were designated by the Australian Meat and Livestock Commission as additional carriers for the carriage of meat. It also states that outbound liner traffic has decreased.

[5] By objecting to three of the nine conditions set forth in the Order of Conditional Approval, Proponents have implicitly accepted the five uncontested conditions. Therefore, final approval of Agreement No. 9925–3 is contingent upon the submission of an agreement incorporating conditions IV, V, VII, VIII and IX as well as any conditions which may result from this further investigation and hearing.

[6] Commissioner Daschbach dissents and his dissenting opinion will be issued separately.

FEDERAL RESERVE SYSTEM

Banking Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh

possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should indentify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 25, 1982.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Alliance Corporation,* Jacksonville, Florida (mortage banking activities; Alabama, California, Florida, Georgia, Kentucky, Louisiana, Maryland, North Carolina, South Carolina Tennessee, and Virginia): To engage in the business of making or acquiring mortgage loans for its own account or the account of others; servicing mortage loans for others; and reselling such loans in the secondary mortgage markets in accordance with Sections 225.4 (a)(1) and (3) of the Board's Regulation Y. These activities would be conducted from offices in: Birmingham, Huntsville, and Mobile, Alabama; San Jose, California; Daytona Beach, Jacksonville, North Miami Beach, Orlando, Palm Springs, Pensacola, St. Petersburg, and Tampa, Florida; Atlanta, College Park, and Tucker, Georgia; Louisville, Kentucky; Baton Rouge and Lafayette, Louisiana; Camp Springs, Maryland; Greenville and North Charleston, South Carolina; Chattanooga and Knoxville, Tennessee; Virginia Beach, Virginia. They will serve the States of Alabama, California, Florida, Georgia, Kentucky, Louisiana, Maryland, North Carolina, South Carolina, Tennessee, and Virginia.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelario, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Frist National Bancorp, Inc.,* Shreveport, Louisiana (leasing; Louisiana): To engage de novo through a subsidiary, First Leasing Corporation of Shreveport, a leasing company, in the leasing of personal and real property, including acting as agent, broker, or adviser in leasing such property, with its activities to be conducted from an office located at 400 Texas Street, Shreveport, Louisiana 71154, serving the parishes of Caddo and Bossier, Louisiana.

Board of Governors of the Federal Reserve System, April 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12152 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank of Tokyo International, U.S.A.; Corporation To Do Business

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as Bank of Tokyo International, U.S.A., Coral Gables, Florida. Bank of Tokyo International, U.S.A., would operate as a subsidiary of The Bank of Tokyo, Ltd., Tokyo, Japan. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than May 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 28, 1982

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12153 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancshares, Inc.; Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Missouri, has applied for the Board's approval under Section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge through its wholly owned subsidiary Plazco, Inc., Kansas City, Missouri, with Plaza Bancshares, Inc., Kansas City, Missouri. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12186 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bankcore, Inc.,* North Conway, New Hampshire; to become a bank holding company by acquiring 90 per cent or more of the voting shares of North Conway Bank, North Conway, New Hampshire, and indirectly acquire 24.6 percent of the voting shares of North Country Bank, Berlin, New Hampshire. Comments on this application must be received not later than May 26, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Lancaster Bancshares, Inc.*, Lancaster, Wisconsin; to become a bank holding company by acquiring at least 80 percent of the voting shares of Lancaster State Bank, Lancaster, Wisconsin. Comments on this application must be received not later than May 28, 1982.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Cabot Bankshares, Inc.*, Cabot, Arkansas, to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Cabot, Cabot, Arkansas. Comments on this application must be received not later than May 28, 1982.

2. *Hardin County Bancshares, Inc.*, Savannah, Tennessee; to become a bank holding company by acquiring 80 percent or more the voting shares of The Hardin County Bank, Savannah, Tennessee. Comments on this application must be received not later than May 28, 1982.

D. **Federal Reserve Bank of Minneapolis** (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Glenwood Bancshares, Inc.*, Glenwood City, Wisconsin; to become a bank holding company by acquiring 95.7 percent of the voting shares of First National Bank of Glenwood, Glenwood City, Wisconsin. Comments on this application must be received not later than May 28, 1982.

2. *Turtle Bancshares, Inc.*, Turtle Lake, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Turtle Lake, Turtle Lake, Wisconsin. Comments on this application must be received not later than May 28, 1982.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Shoeshone Financial Corporation*, Lovell, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Lovell, Lovell, Wyoming. Comments on this application must be received not later than May 28, 1982.

2. *The Walton Bancshares, Inc.*, Walton, Kansas; to become a bank holding company by acquiring 80 percent or more of the voting shares of The Walton State Bank, Walton, Kansas. Comments on this application must be received not later than May 28, 1982.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *SDN Bancorp*, Encinitas, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Dieguito National Bank, Encinitas, California. Comments on this application must be received not later than May 25, 1982.

Board of Governors of the Federal Reserve System, April 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12134 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Franklin Bancorp*, Somerset, New Jersey; to become a bank holding company by acquiring 80 percent of the voting shares of Franklin State Bank, Somerset, New Jersey. Comments on this application must be received not later than May 28, 1982.

Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to become a bank holding company by Acquiring 100 percent of the voting shares of Fulton Bank, Harrisburg, Pennsylvania. Comments on this application must be received not later than May 26, 1982.

Federal Reserve Bank of Minneapolis (Lester G. Gable, Vice President), 250 Marquette Avenue, Minneapolis, Minesota 55480:

1. *Commercial Holding Company*, Wagner, South Dakota; to become a bank holding company by acquiring 50.8 percent of the voting shares of Commercial State Bank of Wagner, Wagner, South Dakota. Comments on this application must be received not later than May 28, 1982.

Board of Governors of the Federal Reserve System, April 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12136 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Suburban Bancorp, Inc.; Formation of Bank Holding Company

Suburban Bancorp. Inc.; Palatine, Illinois, a Delaware Corporation, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of the following bank holding companies and thereby indirectly acquire shares of their subsidiary banks; Suburban Bancorp, Inc., Palatine, Illinois, an Illinois corporation (Palatine National Bank); Subpal Bancorp, Inc., Palatine, Illinois (Suburban National Bank of Palatine); Cary Grove Bancorp, Inc., Cary, Illinois (Suburban Bank of Cary Grove); Hoffman Bancorp, Inc., Schaumburg, Illinois (Suburban Bank of Hoffman-Schaumburg); Meadows Bankcorp, Inc., Rolling Meadows, Illinois (Suburban Bank of Rolling Meadows); Elk Grove Bancorp, Inc., Elk Grove Village, Illinois (Suburban National Bank of Elk Grove Village); Woodfield Bancorp, Inc., Schaumburg, Illinois (Suburban National Bank of Woodfield). The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Suburban Bancorp, Inc., Palatine, Illinois, has also applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Brockway Insurance Company and Suburban Mortgage Corporation, both of Palatine Illinois.

Applicant states that the proposed subsidiaries would engage in credit related insurance agency and mortgage banking activities. These activities would be performed from an office of Applicant's subsidiary in Palatine, Illinois, and the geographic areas to be

served are the areas served by Applicant's banking subsidiaries. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than May 28, 1982.

Board of Governors of the Federal Reserve System, April 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12150 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Union Commerce Corp.; Acquisition of Bank

Union Commerce Corporation, Cleveland, Ohio, has applied for the Board's approval under section 3(a)(2) of the Bank Holding Company Act (12 U.S.C. 1842(a)(2)) to retain 100 percent of the voting shares of The First National Bank of Nelsonville, Nelsonville, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 182(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than May 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12157 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-0-M

Imperial Bancorp; Proposed Acquisition of Imperial Capital Markets Group, Inc.

Imperial Bancorp, Inglewood, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), and §225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire through its subsidiary, Imperial Securities Corporation, the voting shares of Imperial Capital Markets Group, Inc., Inglewood, California.

Applicant states that the proposed subsidiary would engage in the solicitation, underwriting, dealing in, purchase, and sale of obligations of the United States, general obligations of various States and political subdivisions thereof and such other obligations as state member banks may from time to time be authorized to underwrite and deal in. These activities would be performed from offices of Applicant's subsidiary in Inglewood and San Francisco, California, and Denver, Colorado; and the geographic area to be served in the United States. None of the proposed activities have been specified by the Board in §225.4(a) of Regulation Y as permissible for bank holding companies, but the Board has approved the activities by order.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as under concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later that May 29, 1982.

Board of Governors of the Federal Reserve System, April 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12158 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Zappco, Inc.; Proposed Acquisition of Financorp., Inc.

Zappco, Inc., St. Cloud, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Financorp., Inc., St. Cloud, Minnesota.

Applicant states that the proposed subsidiary would engage in the activity of performing financially related data processing. These activities would be performed from offices of Applicant's subsidiary in St. Cloud, Minnesota, and the geographic area to be served is the area surrounding St. Cloud, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any person wishing to comment on the application should submit views in

writing to the Reserve Bank to be received no later than May 28, 1982.

Board of Governors of the Federal Reserve System, April 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12160 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

April 28, 1982.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report will be published in the **Federal Register**. This information will contain the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries will be grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements. Each report description contains the following information:

—The title of the form.
—The Federal Reserve report form number, if applicable.
—How often the form must be filled out.
—Who will be required or asked to report.
—The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
—Whether small businesses or organizations are affected.
—A description of the Federal budget functional category that covers the information collection.
—An estimate of the number of responses.
—An estimate of the total number of hours needed to fill out the form.
—An estimate of the cost to the Federal Government.
—An estimate of the cost to the public.
—The number of forms in the request for approval.
—An indication of whether section 3504(h) of Pub. L. 96-511 applies.
—The name, address, and telephone number of the person or office responsible for OMB review, and
—An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will provide a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—William R. Jones—Financial Reports Section, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2983)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

New Form Under Review

1. Characteristics of Ceiling-Free Deposits.
FR 2042a.
Twice—May and August.
Sample of insured commercial banks and mutual savings banks.
SIC: 602, 603.
Small business.
General government: 1316 responses; 329 hours; $20,000 Federal cost; $4,935 public cost; 1 form; not applicable under 3504(h).

These data obtain information needed to calculate effective annual rates paid on ceiling-free instruments. Such data are used by the Federal Reserve to observe competitive developments between banks and thrift institutions and to help monitor the earnings position of depository institutions. These data provide the Federal Reserve Board and the Depository Institutions Deregulation Committee (DIDC) with a basis for monitoring the impact of the gradual removal of interest rate ceilings.

Board of Governors of the Federal Reserve System, April 28, 1982.

Dolores S. Smith,

Assistant Secretary of Board.

[FR Doc. 82-12174 Filed 5-4-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of Premerger Notification Rules; Southmark Properties

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger motification rules.

SUMMARY: Southmark Properties is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Syntek Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 22, 1982.

FOR FURTHER INFORMATION CONTACT:

Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-12130 Filed 5-4-82; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

[E-82-14]

Delegation of Authority to the Secretary of Energy

1. *Purpose.* This delegation authorizes the Secretary of Energy to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Idaho Public Utilities Commission involving electric rates, Docket Nos. U-1009-120 and U-1009-124.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Energy to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Idaho Public Utilities Commission involving the application of the Utah Power and Light Company for an increase in its electric rates in Docket Nos. U-1009-120 and U-1009-124.

b. The Secretary of Energy may redelegate this authority to any officer, official, or employee of the Department of Energy.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Energy shall add GSA to its service list in this case so the GSA will receive copies of testimony. briefs, and other Department of Energy filings.

Dated: April 23, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-12171 Filed 5-5-82; 8:45 am]

Billing Code 6820-AM-M

National Archives and Records Service

Advisory Committee on Preservation; Meetings

Notice is hereby given that the Executive Committee and the Ad Hoc Charter Subcommittee of the National Archives and Records Service Advisory Committee on Preservation will meet on May 17, 1982 from 10:00 a.m. to 4:00 p.m., and May 18 from 9:00 a.m. to noon in Room 105, National Archives Building, Washington, D.C. At this time plans will be made for a meeting of the National Archives and Records Service Advisory Committee on Preservation to be held June 14, 1982 from 10:00 a.m. to 4:00 p.m., and June 15 from 9:00 a.m. to noon in Room 105, National Archives Building, Washington, D.C. This meeting will be devoted to developing work plans for the various subcommittees.

The meetings will be open to the public. For further information call Alan Calmes, 202-523-3159.

Dated: May 3, 1982.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 82-12300 Filed 5-4-82; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records 09-60-0058—Master Files of Social Security Number (SSN) Holders, HHS/SSA/OEER. The proposed routine use will permit us to disclose information to the Selective Service System to enforce draft registration pursuant to provisions of the Military Selective Service Act.

We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed without further notice on June 4, 1982, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Swanenburg, Chief, Records Utilization and Services Branch, Office of Enumeration and Earnings Records, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (Area Code 301) 594-3489.

SUPPLEMENTARY INFORMATION: The Selective Service System is attempting to identify and locate individuals who are required to register for the draft, but have not done so. Section 12 of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Public Law 97-86) provides that the President may require the Secretary of HHS to furnish to the Director of Selective Service the name, SSN, date of birth and address of individuals required to register for the draft. In accordance with this provision, we are proposing a routine use statement which would permit the disclosure of information as follows:

To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97-86).

Basically, we will disclose information to Selective Service which pertains to males within a specific age group as determined by Selective Service. Selective Service will match the records against their records and Department of Defense records to determine which individuals are required to register, but have not done so. Of course, we will disclose information only at the request of the President.

We are proposing the routine use in accordance with provisions of the Privacy Act and our disclosure regulation (20 CFR Part 401). Section 401.310 of the regulation permits us to disclose information as a routine use when the information will be used for a purpose which is compatible with the purpose for which we collected the information. It is our policy to consider disclosures which are required by statute as disclosures for compatible purposes. Since the Military Selective Service Act requires disclosure at the request of the President, the above routine use is appropriate.

Since we are proposing the routine use in accordance with all requirements of the Privacy Act, we do not anticipate that disclosure under it would result in any clearly unwarranted adverse effects on the privacy rights of individuals. The notice below contains the proposed routine use statement discussed above.

Dated: April 29, 1982.

John A. Svahn,

Commissioner of Social Security.

09-60-0058

SYSTEM NAME:

Master Files of Social Security Number Holders, HHS/SSA/OEER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have obtained Social Security Numbers.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for Social Security Numbers and any changes in the information on the applications that are submitted by the Social Security Number holder. Cross-reference may be noted where multiple numbers have been issued to the same individual; and indication that benefit claim has been made under this social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act.

PURPOSE(S):

Information in this is used for the following purposes:

(a) By SSA components for various title II, XVI and XVIII claims purposes including usage of the social security number itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the Social Security Number record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;

(b) By SSA as a basic control for retained earnings information;

(c) By SSA as a basic control and data source to prevent issuance of multiple Social Security Numbers;

(d) As the means to identify incorrectly reported names or Social Security Numbers on earnings reports;

(e) For resolution of earnings discrepancy cases;

(f) For statistical studies;

(g) By the Department of Health and Human Services Audit Agency for auditing benefit payments under Social Security programs;

(h) By the HHS Office of Child Support Enforcement for locating deserting parents;

(i) By National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;

(j) By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and

(k) by the HHS Health Care Finance Administration for administering title XVIII claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the Social Security Number of an employee in order to complete their records for reporting FICA to the Social Security Administration pursuant to the Federal Insurance Contributions Act and Section 218 of the Social Security Act.

2. To State welfare agencies, upon written request, of the Social Security Numbers of AFDC applicants or recipients.

3. To the Department of Justice (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Justice (Immigration and Naturalization Service) for the identification and location of aliens.

5. To the Department of Justice (Federal Bureau of Investigation) and the Department of Treasury (United States Secret Service) for national security matters and in connection with threats on the life of the President or other dignitaries.

6. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the railroad Unemployment Insurance Act.

7. To the Energy Research and Development Administration for their study of the long-term effects of low-level radiation exposure.

8. To the Treasury Department for tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

9. To a congressional office in response to an inquiry from the congressional office made at the request of that individual.

10. to the Department of State for administering the Social Security Act in foreign countries.

11. To the American Institute on Taiwan for administering the Social Security Act on Taiwan.

12. To the Veterans Administration, Regional Office Philippines, for administering the Social Security Act in the Philippines.

13. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands.

14. To the Department of Labor for administering provisions of title IV of the Federal Coal Mine Health and Safety Act and for studies of the effectiveness of training programs to combat poverty.

15. To the Veterans Administration for validation of the Social Security Numbers of compensation/pensioners in order to provide the release of accurate pension/compensation data by the Veterans Administration to the Social Security Administration for social security program purposes.

16. To the Veterans Administration of information requested for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

17. To Federal agencies who use the Social Security number as a numerical identifier in their recordkeeping systems, for the purpose of validating Social Security Numbers.

18. To the Department of Justice in the event of litigation where the defendant is:

(a) the Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity;

(b) the United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

19. State Audit agencies for auditing State supplementation payments and medicaid eligibility considerations.

20. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

21. To Federal, State or local agencies (or agents on their behalf) for the purpose of validating social security numbers used in administering cash or noncash income maintenance programs or health maintenance programs.

22. To third party contacts in situations where the party to be contacted has, or is expected to have, information which will verify documents when the Social Security Administration is unable to determine if such documents are authentic.

23. Upon request, information on the identity and location of aliens may be disclosed to the Department of Justice (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected Nazi war criminals in the United States.

24. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Public Law 97–86.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as paper forms, paper lists, punchcards, magnetic tape, microfilm, microfiche files, and disk with on-line access.

RETRIEVABILITY:

Records in this system are indexed both by Social Security Number and name.

SAFEGUARDS:

All magnetic tapes and disks are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges issued only to authorized personnel. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need to know.

For computerized records, electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), systems securities are established in accordance with the HHS ADP System Manual, "Part 6, ADP System Security." Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

Expansion and improvement of SSA's telecommunications systems has resulted in terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminals users.

RETENTION AND DISPOSAL:

All paper forms are retained until they are filmed or are entered on tape, and the accuracy verified. Then they are destroyed by shredding. All tape, disks, microfilm, microfiche files are updated periodically. Out-of-date magnetic tapes and disks are erased. The out-of-date microfiche is disposed of by the application of heat.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enumeration and Earnings Records, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him or her by providing his or her name and Social Security Number, of if the social security number is not known, date of birth, place of birth, mother's maiden name, and father's name, and evidence of identity to the address shown under system manager above. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should also reasonably identify the record and specify the information they are contesting. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

Social Security Number applicants; or individual acting on their behalf. The Social Security Number itself is assigned to the individual as a result of internal processes of this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12173 Filed 5-4-82; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–82–666]

New York Regional Office; Designation of Order of Succession

AGENCY: Housing and Urban Development Department.

ACTION: Designation of order of succession.

SUMMARY: Updates the designation of officials who may serve during the absence, disability, or vacancy in the position of the Regional Administrator.

EFFECTIVE DATE: This designation is effective April 4, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Leonard Feller, Director, Management and Budget Division, Office of Regional Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, N.Y, N.Y. 10278 (264–4078). This is not a toll-free number.

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator during the absence, disability, or vacancy in the position of the Regional Administrator with all the powers, functions, and duties redelegated or assigned to the Regional Administrator. Provided, that no official is authorized to serve as Acting Regional Administrator unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator.

2. The Director, Office of Regional Administration.

3. Regional Counsel.

4. Regional Director of Program Coordination.

5. The Director, Office of Regional Housing.

6. The Director, Office of Community PLanning and Development.

7. The Director, Office of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective May 1, 1979.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Joseph Monticciolo,

Regional Administrator, Region II.

[FR Doc. 82-12349 Filed 5-4-82; 8:45 am]
BILLING CODE 4210-01-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-82-665]

Property Disposition Committees: Redelegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of Assistant Secretary for Housing-Federal Housing Commissioner.

ACTION: Notice of Redelegation of Authority.

SUMMARY: This redelegation of authority is issued to revise the procedures governing Property Disposition Committees, to abolish the Headquarters Committee, and to reserve to the Assistant Secretary for Housing-Federal Housing Commissioner or his/her designee the authority to concur with, reject, modify or suspend dispositions authorized by a Committee.

EFFECTIVE DATE: March 17, 1982.

FOR FURTHER INFORMATION CONTACT: Marvin T. Hilman, Director, Property Disposition Division, Office of Multifamily Financing and Preservation, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washinton, D.C. 20410; (202) 755-7220. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: A redelegation of authority and assignment of functions with respect to the Property Disposition Committee was published on December 4, 1980 at 45 Fr 80359. This Notice revises that redelegation.

Accordingly, the redelegation published December 4, 1980, 45 FR 80359, is revised to read as follows:

Section A. Property Disposition Committee. There is hereby established in each Area Office, Multifamily Service Office and combined Regional/Area Offices a Property Disposition Committee.

1. The Property Disposition Committee in a combined Regional/Area Office shall consist of the following members or their designees: Regional Administrator, Chairperson; Deputy Regional Administrator; Director of Regional Housing; Deputy Director for Housing Management; Deputy Director for Multifamily Development; and such other members as the Regional Administrator shall designate in writing. The Chief, Property Disposition Branch/Chief, Loan Management and Property Disposition Branch shall serve the Committee in an advisory capacity and, except in the event of a tie vote, shall be a non-voting member. The Regional counsel or designee shall serve in an advisory capacity and shall be a non-voting member.

2. The Property Disposition Committee in an Area Office shall consist of the following members or their designees: Area Manager, Chairperson; Deputy Area Manager; Director, Housing Division; Deputy Director for Housing Management; Deputy Director for Housing Development; and such other members as the Area Manager shall designate in writing. The Chief, Property Disposition Branch/Chief, Loan Management and Property Disposition Branch shall serve the Committee in an advisory capacity and, except in the event of a tie vote, shall be a non-voting member. The Area Counsel or designee shall serve in an advisory capacity and shall be a non-voting member.

3. The Property Disposition Committee in a Multifamily Service Office shall consist of the following members or their designees: Service Office Supervisor, Chairperson; Deputy Service Office Supervisor; Deputy Supervisor for Housing Management; Deputy Supervisor for Housing Development; and such other members as the Service Office Supervisor shall designate in writing. The Chief, Property Disposition Branch/Chief, Loan Management and Property Disposition Branch shall serve in an advisory capacity and, except in the event of a tie vote, shall be a non-voting member. The Area Counsel or designee shall serve in an advisory capacity and shall be a non-voting member.

Section B. Redelegation of Authority to Property Disposition Committees. Property Disposition Committees are hereby redelegated the following authority:

1. To pass upon and determine the action to be taken with respect to the disposition program of any property acquired by the Secretary, located within its respective jurisdiction, in connection with multifamily housing under any title of the National Housing Act (12 U.S.C. 1701, et seq.), college housing under Title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749c), housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and nonresidential property under Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b). The disposition programs for such properties shall include the terms of sale, manner of financing, method of carrying out of appropriate advertisement for each public offering and where appropriate, the terms, amounts, interest rates, and amortization plans of mortgages taken as security, and any special provisions in connection with the sale of such properties.

2. To determine whether an expenditure in connection with any multifamily housing project is "necessary to carryout the provisions" of Titles, I, II, VI, VII, VIII, IX, X and XI of the National Housing Act as such term is used in Section 1 of the Act (12 U.S.C. 1702), and to approve such expenditure for and on behalf of the Assistant Secretary for Housing-Federal Housing Commissioner whenever such a determination and approval is necessary to support the legal authority of the Assistant Secretary to make such expenditure.

Section C. Procedures. The following procedures shall apply to Property Disposition Committees:

1. Any Committee action must be approved by a majority vote of all members of the Committee.

2. In order to carry out the functions of a Committee, the Chairperson is authorized to execute any deed, deed of release, assignment and satisfaction of mortgage, contract of purchase (installment contract of purchase), offer, acceptance, or other form of contract sale, or other instrument relating to such properties or any interest therein acquired by the Secretary.

3. Any employee who has been formally designated to serve in an acting capacity for a member of the Committee in connection with his/her Departmental duties shall serve as a member of the Committee in the absence of such member.

Section D. Exercise of Redelegated Authority.

1. Redelegations of authority made under Sections A through C shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Director, Office of Multifamily Financing and Preservation, Regional Administrator, Area Manager or Service Office Supervisor.

2. The Assistant Secretary may require that Committee authorizations be reviewed by the Office of Multifamily Financing and Preservation. When this is required, authorizations shall be forwarded to the Director, Office of Multifamily Financing and Preservation and shall become final disposition program 15 working days after receipt of the authorization by the Office of Multifamily Financing and Preservation, unless the authorization is rejected, modified or suspended, in writing, by the Director, the Deputy Assistant Secretary for Multifamily Housing Programs, or the Assistant Secretary or his/her designee.

3. Each Regional Administrator in a Regional/Area Office, Area Manager, or Service Office Supervisor is authorized to amend Property Disposition Committee authorizations, when required by such circumstances as estimated changes in rental rates or operating expenses, changes in the maximum FHA-insured interest rates, or other similar changes of a non-substantive nature.

Section E. Revocations of Prior Redelegations.

All other redelegations of authority with respect to Property Disposition Committees are hereby revoked upon publication of this redelegation of authority.

(Secretary's delegation of authority to redelegate published at 36 FR 5005, March 16, 1971)

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: April 26, 1982.

Phillip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12246 Filed 5-4-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

District Grazing Advisory Board, Susanville, Calif.; Meeting

Notice is hereby given in accordance with Pub. L. 94-570 (FLPMA), that a meeting of the Susanville District Grazing Advisory Board will be held on June 21, 1982.

The meeting will begin at 10 a.m. in the Surprise Resource Area Office of the Bureau of Land Management, Cedarville, California.

The agenda for the meeting will include:

1. Categorizing of Allotments
2. Stock Driveway Revocation
3. Use of Grazing Fees in Stewardship Areas
4. Update on Forest Boundary Adjustment
5. Allocation of Range Funds in State of California
6. Other Items as Appropriate
7. Public Comments

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 p.m. and 4:30 p.m., or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California 96130-1090, by June 11, 1982. Depending upon the number of persons wishing to make oral statements, a per person list limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: April 28, 1982.

C. Rex Cleary,

District Manager.

[FR Doc. 82-12272 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-84-M

Rawlins District, Final Management Decisions, Coal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Coal Management Decisions, Rawlins District.

SUMMARY: The Rawlins, Wyoming District Office of the Bureau of Land Management has reviewed and made final decisions for federal coal management in the Overland and Divide Planning Units. The purpose for the review was to update the Management Framework Plans (MFPs) for the two planning units and to make certain that the MFPs reflect current statutory requirements and policies to continue carrying out the requirements of Section 522 of the Surface Mining Control and Reclamation Act of 1977. The decisions affect known and potential coal areas in both the Overland and Divide Planning Units. These areas are located in south central Wyoming (western Carbon County and eastern Sweetwater County).

Public participation opportunities were provided by **Federal Register** notice of February 17, 1982; by public meetings conducted in Baggs, Wyoming on February 6; Saratoga, Wyoming on February 7; and Rawlins, Wyoming on February 8 to present the proposed decisions; by an open house and public meeting in Rawlins on March 15 to discuss the proposed decisions; by a public hearing on the evening of March 15 in Rawlins; by public review of the proposed decisions brochure of June 19, 1981; and by informal public contacts in the process of reviewing the area. Public comments were carefully considered and the final coal decisions contained in the Management Framework Plans reflect those considerations.

A brochure summerizing these final coal decisions will be available about April 26, 1982 in the Rawlins District Office. Those who attended the public hearing or expressed interest in these decisions will be mailed a copy of each brochure.

DATES: The brochure will be available to the public on or about May 7, 1982.

ADDRESSES: The Rawlins District, located at: 1300 N. 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: The Divide Resource Area Manager or the Regional Planner at the above address; or call (307) 324-7171. Divide Resource Area Manager: Bud Holbrook, Regional Planner: Gene Kolkman.

David J. Walter,

District Manager.

[FR Doc. 82-12271 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Hungry Horse Powerplant Enlargement and Reregulating Reservoir, Hungry Horse Project, Mont.; Intent To Prepare an Environmental Statement; Correction

This notice is to correct a notice which was printed in Volume 47, Number 78 of the **Federal Register** on Thursday, April 22, 1982. That notice stated that a scoping meeting to help identify significant environmental issues related to increasing the capacity of power generating facilities at Hungry Horse Dam, Hungry Horse, Montana, would be held Tuesday May 19, 1982. The date should be corrected to Tuesday May 18, 1982.

Dated: April 30, 1982.

Eugene Hinds,

Assistant Commissioner.

[FR Doc. 82-12268 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-09-M

Dunn-Nokota Methanol Project; Intent to Negotiate and to Prepare an Environmental Impact Statement and Announcement of Scoping Meeting

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental impact statement (EIS) on the Dunn-Nokota Methanol Project located in Dunn County, North Dakota. The proposed methanol project would involve several Federal agencies. The Bureau of Reclamation (Bureau) has been designated the lead Federal agency in the preparation of the EIS.

The Bureau intends to begin contract negotiations with the Nokota Company

for industrial water service from Lake Sakakawea. The Nokota Company has applied for a contract which would provide up to 16,800 acre-feet of annual water service for the proposed Dunn-Nokota Methanol Project. Construction is planned to begin in 1985 and to be completed early in 1991. Terms and conditions of industrial water service contracts of this type have been completed in similar contract actions for industrial water service from Lake Sakakawea. Other related Federal activities would involve the permitting activities of the Bureau of Land Management and the Corps of Engineers. The Dunn-Nokota Methanol Project is a mine-mouth, coal-to-methanol complex proposed by the Nokota Company for construction and operation in west-central North Dakota in the Fort Union Coal Region at Dunn County, North Dakota. The project would produce 86,940 barrels per stream day (BPSD) of methanol from 43,150 net short tons per stream day (STISD) of run-of-mine (ROM) lignite coal, and have an annual capacity of 29.6 million barrels (1.24 billion gallons) of methanol and 14.7 million tons of ROM coal, based on a 93 percent on-stream factor (340 stream days per year). As an alternative, Nokota is considering co-production of substitute natural gas (SNG) and methanol.

Two scoping sessions will be held on May 18, 1982, to identify significant issues for he EIS. The first will begin at 9 a.m. in the Hospitality Room of the Gate City Savings and Loan Association, 304 E. Rosser Avenue, Bismarck, North Dakota, and the second will begin at 7:00 p.m. at the Dunn Center Community Center, Dunn Center, North Dakota.

Any questions or suggestions regarding the proposed EIS should be addressed to Eley P. Denson, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, telephone number (406) 657–6558, or Rick Blaskovich, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, telephone number (406) 657–6605. Requests for copies of the draft contract may be obtained from Mr. William Crosby, Bureau of Reclamation, attention code UM–440, P.O. Box 2553, Billings, Montana 59103, telephone number (406) 657–6413.

Dated: April 30, 1982.

Eugene Hinds,

Assistant Commissioner of Reclamation.

[FR Doc. 82-12142 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Aminoil USA, Inc., Unit Operator of the East Cameron Block 195 Federal Unit Agreement No. 14–08–001–8855, submitted on April 20, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the East Cameron Block 195 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 28, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12273 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4486, Block 301, Main Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Mineral Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 28, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12274 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 7:30 p.m. (EDT), on Thursday, May 27, 1982, at the Canal Visitor Center located at 6699 Canal Road, one mile south of Rockside Road in Valley View, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff–4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. A presentation on the new headquarters plan
2. A presentation on the Oak Hill Development
3. A presentation on the cultural programs being offered during the summer at Cuyahoga Valley
4. Update on park operations

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area. P.O. Box 158, Peninsula, Ohio 44264, telephone (216) 650–4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: April 26, 1982.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 82–12253 Filed 5–4–82; 8:45 am]

BILLING CODE 4310-70-M

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 8:30 a.m., CDT, on Friday, May 28, 1982, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The Commission was established by the Act of November 5, 1966, 80 Stat. 1309, 16 U.S.C. 460u–7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Benz
Ms. Anna R. Carlson
Mr. R. M. Gacki
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Celia Nealon
Ms. Gail H. Pugh
Dr. John A. Rackauskas
Mr. John Tucker
Mr. Norman Tufford

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report
2. Status of land acquisition
3. Quarterly Status Report of planning and development for Indiana Dunes National Lakeshore
4. Quarterly Status Report of 1982 operations

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact James R. Whitehouse, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219–926–7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dunes National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: April 26, 1982.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 82–12252 Filed 5–4–82; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that by June 4, 1982, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with National Park Concessions, Inc., authorizing it to continue to provide lodging, food and beverage, merchandising, automobile service stations, trailer village and boating facilities and services for the public at Big Bend, Isle Royale, Mammoth Cave and Olympic National Parks and on the Blue Ridge Parkway for a period of twenty (20) years from date of execution of the contract.

The proposals at Blue Ridge Parkway and at Isle Royale and Mammoth Cave National Parks involve no significant change in the present level or scope of services, and are categorically excluded from requirements for preparation of an environmental impact statement. The proposals at Big Bend and Olympic National Parks involve construction and/or improvement programs previously evaluated in environmental assessments prepared for development concept plans in each park; and Findings of No Significant Impact were made in conformance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508).

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1981, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect, grants National Park Concessions, Inc., the opportunity to meet or equal the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by National Park Concessions, Inc. If National Park Concessions, Inc., amends its proposal and the amended proposal meets or equals the better offer, then the proposed new contract will be negotiated with National Park Concessions, Inc.

The Secretary will consider and evaluate all proposals received as a result of this Notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before June 4, 1982 to be considered and evaluated.

Interested parties should contact the Director, National Park Service, 18th & "C" Streets NW., Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: April 29, 1982.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 82-12280 Filed 5-4-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearings, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as states below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto files within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Dated: April 26, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

Agatha L. Mergenovich,

Secretary.

MC-F-14837 filed April 9, 1982. Authority sought by ARNOLD BROS. TRANSPORT, LTD., Suite 200, 851 Lagimodiere Blvd., Winnipeg, Manitoba R2J 3K4, to purchase Certificate No. MC-125628 (Subs 1, 5 and 6X) from S.S. Baird & Sons, Ltd., 155 Whiting Road, Fredericton, New Brunswick E3B 5S5, and for control by Frank E. Arnold and Gerald R. Arnold, (same address as first given above), of said operating rights through the transaction. Representative: Bernard J. Kompare, Suite 1700, 180 N. Michigan Ave., Chicago, IL 60601. Operating rights transferred authorize lumber and wood products between ports of entry on U.S./Canada Boundary Line located in ME, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, and NJ; and (1) commodities the transportation of which because of size or weight require use of special equipment, (2) materials, equipment, supplies, and parts for commodities in (1) above when their transportation is incidental to transportation of commodities in (1) above, (3) Self-propelled articles, each weghting 15,000 lbs. or more, and (4) equipment, machinery, tools, parts and supplies for commodities in (3) above when their transportation is incidental to transportation of commodities in (3) above, between ports of entry on U.S./Canada Boundary Line located in ME, on the one hand, and, on the other, points in the U.S. (except AK and HI). Transferee is a common carrier (MC-118806) operating in all states.

Note.—Transferee presently controls transferor, as approved in MC-F-13582. Transferee will be liquidated upon approval of proposed transfer.

MC-F-14813, Republish VIKING LINE, INC.—Purchase (Portion) TRAILWAYS, INC., republish to correct error made by member Joyce concerning Certs in Kansas intrastate operating rights. The **Federal Register** publication of April 6, 1982 Vol. 47, No. 66 Page 14792 should be corrected in the following manner: By inserting the words "and properties including certain Kansas intrastate operating rights," before the phrase "of Trailways" and after the phrase "a portion of the operating rights" and by deleting the phrase "is published in another section of the **Federal Register**." and inserting in lieu thereof the following: "Was published in at page 14793 of the **Federal Register** of April 6, 1982. This should correct all errors.

Volume No. OP2-87A

Decided: April 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC-F-14838, filed April 6, 1982. ARKANSAS BEST CORPORATION (ABC) (Applicant), 1000 South 21st St., Fort Smith, AR 72901—Continuance in control—CPI, INC. (CPI), 5411 South 31st. St., Fort Smith, AR., 72903. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR., 72902. Applicant seeks authority to continue in control of CPI upon the institution by CPI of operations in interstate or foreign commerce, as a motor common carrier. Applicant seeks to acquire control of said rights and property through the transaction. Applicant, a non-carrier, controls through stock ownership, Arkanasa Best Freight System, Inc., a motor carrier operating pursuant to authority issued in MC-29910 and subs thereto, and Container Carrier Corporation, a motor carrier operating pursuant to authority issued in MC-135419 and subs thereto. Applicant also indirectly controls Trans-States Lines, Inc., a moto carrier operating pursuant to authority issued in MC-149026 and subs thereto.

Note.—CPI has filed as a directly related application its initial common carrier application, docketed MC–161412, published in this same **Federal Register** issue.

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

MCF–14008—Worster Motor Lines, Inc.—Merger—Worster Mighigan, Inc. et al.

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a common carrier, over irregular routes transporting:

(1) *food and kindred products,* and (2) *such commodities* as are dealt in by grocery and department stores, between points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NC, NV, ND, NE, HH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, MN, WI, and DC;

(2) *building materials and contractor's supplies* (a) between points in NJ, on the one hand, and, on the other, points in PA, NY, and NJ, (b) between points in Erie, Niagara and Chautauqua Counties, NY, on the one hand, and, on the other, points in PA and OH, (c) between points in Cuyahoga County, OH and points in PA, and (d) between points in Erie County, PA, on the one hand, and, on the other, points in NY, and OH;

(3) *agricultural, industrial and construction machinery* and *equipment,* and *parts and supplies* for agricultural industrial and construction machinery and equipment, (a) between McKean County, PA, on the one hand, and, on the other, points in Cuyahoga County, and in NY, OH, and PA; (b) between points in Erie, Crawford, Warren, Mercer, Venango, Clarion, and Forest Counties, PA, on the one hand, and, on the other, points in Erie, Niagara and Chautauqua Counties, NY, and Cuyahoga County, OH, and (c) between points in McKean County, PA, and points in NY;

(4) *lumber and wood products,* (a) between points in NY and MD, on the other, points in VT, NH, CT, RI, NY, NJ, PA, DE, MD, WV, OH, IN, IL, MI, ME, MA, VT, and DC, and (b) between points in Erie, Crawford, Warren, Mercer, Venango, Clarion and Forest Counties, PA, on the one hand, and, on the other, points in Erie, Chautauqua and Niagara Counties, NY and Cuyahoga County, OH;

(5) *primary and fabricated metal products,* between points in Erie, Niagara, Cattaraugus, Allegany, Steuben, Wyoming, Livingston, Ontario, Yates, Genesee, Orleans, Monroe, Wayne and Seneca Counties, NY, on the one hand, and, on the other, points in NY,

(6) *petroleum, petroleum products and coal,* (a) between points in PA, on the one hand, and, on the other, points in CT, IL, IN, ME, MA, MD, NH, NJ, NY, RI, VT, and the port of Erie, PA, (b) between points in Erie, Crawford, Warren, Mercer, Venango, Clarion, and Forest Counties, PA, on the one hand, and, on the other, points in Erie, Niagara and Chautauqua Counties, NY, and Cuyahoga County, OH, and (c) between points in McKean County, PA and points in NY;

(7) *leather, leather products, and waste and scrap materials,* (a) between Cattaraugus County, NY, on the one hand, and, on the other, points in PA, ME, and MA, and (b) between points in

Potter County, PA and Cattaraugus County, NY;

(8) *containers and related parts and attachments,* (a) between points in Benton and Washington Counties, AR, on the one hand, and, on the other, points in CT, IA, MA, MI, NE, NH, NJ, NY, PA, RI, and VT, (b) between points in Cook, DuPage, Kankakee, Lake, LaSalle, Livingston, McHenry, and Will Counties, IL, and Lake and Porter Counties, IN, on the one hand, and, on the other, points in CT, RI, and VT, (c) between points in Dearbord, Elkhart, Grant Hamilton, Huntington, Kosciusko, Madison, and Wabash Counties, IN, Boone County, KY, and Hamilton County, OH, on the one hand, and, on the other, points in AR and MI, (d) between points in Johnson, Leavenworth and Wyandotte Counties, KS, and Cass, Clay, Jackson and Platte Counties, MO, on the one hand, and, on the other, points in CT, MA, NH, NJ, NY, PA, RI, VT, and WV, (e) between points in Bullitt, Jefferson Oldham, Shelby and Spencer Counties, KY, and Clark, Floyd and Harrison Counties, IN, on the one hand, and, on the other, points in CT, MA, MI, NH, NJ, NY, OH, PA, RI, VT, and WV, (f) between points in ME, on the one hand, and, on the other, points in NY and PA, (g) between Anne Arundel, Baltimore, Carroll, Hartford, Howard, Kent, Montgomery and Prince Georges Counties, MD, on the one hand, and, on the other, points in AR, IL, IN, MI, MY, OH, and PA, (h) between points in MA, on the one hand, and, on the other, points in AR, IL, IN, MI, NY, OH, PA, WV, and WI, (i) between points in MI, on the one hand, and, on the other, points in AR, CT, NH, NJ, NY, PA, RI, VT, WV, and WI, (j) between points in MN, on the one hand, and, on the other, points in Rock County, WI and Boone and Winnebago Counties, IL, (k) between points in Cass, Clay, Franklin, Jackson, Jefferson, Platte, Ray, St. Charles and St. Louis Counties, MO, Johnson and Wyandotte Counties, KS, Calhoun, Jersey, Macoupin, Madison, Monroe, and St. Claire Counties, IL, on the one hand, and, on the other, points in CT, MA, MI, NH, NJ, NY, PA, RI, VT, and WV, (l) between points in NH, on the one hand, and, on the other, points in IL, IN, NY, OH, and PA, (m) between points in NJ, on the one hand, and, on the other, points in AR, IL, IN, NY, OH, PA, and WI, (n) between points in NY, on the one hand, and, on the other, points in AR, CT, IL, IN, NY, OH, PA, RI, VT, WV, and WI, (o) between points in OH, on the one hand, and, on the other, points in CT, MI, PA RI, and VT, (p) between points in PA, on the one hand, and, on the other, points in CT, IL, IN, PA, RI, VT, and WI, (q) between points in Harrison, Marion, Marshall, Monongalia, Ohio and Taylor Counties, WV, and Belmont County, OH, on the one hand, and, on the other, points in AR, CT, MA, MI, NH, NJ, RI, and VT, and (r) between points in WI, on the one hand, and, on the other, points in CT, NH, RI, and VT;

(9) *parts, materials, ingredients, supplies and equipment* used in the manufacture, production, sale or distribution of the above named commodities, between all named points.

[FR Doc. 82-12162 Filed 5-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-78872, correction. By decision of April 16, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to W.C. HALL GENERAL HAULING, INC., of Callao, VA, of a portion of Certificate NO. MC-99213 (Sub-No. 1) issued December 23, 1968, and all of Certificate No. MC-99213 (Sub-No. 11 issued October 2, 1969, MC 00213 (Sub-No. 12) issued February 13, 1970, MC 99213 (Sub-No. 13) issued January 5, 1970, MC-99213 (Sub-No. 18) issued June 21, 1977, and MC-99213 (Sub-No. 20) issued July 28, 1977, to Virginia Freight Lines, of Kilmarnock, VA, authorizing in Sub-No. 1 the transportation of named commodities (1) from Bound Brook and Jersey City, NJ, and Philadelphia and Reading, PA, to points in Essex, Richmond, Lancaster, Northumberland, and Westmoreland Counties, VA, (2) from Perth Amboy and Manville, NJ, to points in Essex, Richmond, Lancaster, King and Queen, King William, Middlesex, Northumberland, and Westmoreland Counties, VA, (3) from points in King and Queen, King William, Middlesex, and Essex Counties, VA (except Tappahannock), to Baltimore, MD, (4) from points in Essex, King William, and Middlesex Counties, VA, to points in the US (except Baltimore), (5) from Tappahannock, VA, to points in NY and OH, (6) from points in Essex, and King and Queen Counties, VA, to Baltimore, MD, and Washington, DC, (7) from Urbanna, VA, to Philadelphia, PA, and Mullica Hill and Woodstown, NJ, (8) from Baltimore, MD, to points in Essex, and King and Queen Counties, VA, (9) from Baltimore, MD, to points in Essex, King and Queen, and Caroline Counties, VA, (10) from Manville, NJ, to Tappahannock, VA, (11) from Tappahannock, VA, to points in the US (except Baltimore), (12) from Norristown, PA, and Newark, NJ, to Lottsburg, VA, (13) from Lottsburg, VA, to Norristown, PA, and Newark, NJ, (14) from points in Lancaster and Northumberland Counties, VA, to Richmond and West Point, VA, (15) from Richmond and West Point, VA, to points in Lancaster and Northumberland Counties, VA, (16) from points in

Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland Counties, VA, to points in the US (except from points in Gloucester, Mathews and Middlesex Counties, VA, to Baltimore, MD), (17) from the destination points specified next above, to points in Gloucester, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland Counties, VA, (18) between points in Gloucester, Mathews, Middlesex, Lancaster, and Worthumberland Counties, VA on the one hand, and, on the other, points in the US, and (19) between points in Lancaster, Northumberland, Richmond, and Westmoreland Counties, VA, on the one hand, and, on the other, points in MD within 25 miles of Baltimore, not including Baltimore, and points within 25 miles of Washington, DC, not including Washington, DC or points in MD within 25 miles of Baltimore; (Sub-No. 11) (1) *Wooden boxes, furniture frames, appliance bases, pallets, and crates* and (2) *lumber* (except plywood and veneer), in mixed loads with one or more of the commodities in (1), from points in Richmond, Lancaster and Northumberland Counties, VA, to points in DE, PA, NJ, NY, OH, MD (except Baltimore), WV and NC; (Sub-No. 12) named commodities between the plant site and storage facilities of Haynie Products, to Cape Charles and Reedville, VA, Morehead City, NC, Baltimore, MD, Wildwood, NJ, and Moss Point, MS; (Sub-No.13) named commodities, serving the plant site of Mount Rose Canning Co., Inc., at or near Office Hall, VA, as an intermediate point in connection with carrier's presently authorized regular-route operations between Baltimore, MD and Burgess Stores, VA, restricted to the transportation of traffic originating at or destined to the plant site of Mount Rose Canning Co., Inc., at or near Office Hall, VA; (Sub-No. 15) named commodities, from Reedville, VA, to points in CT and OH; (Sub-No. 18), *fish oil,* in bulk, in tank vehicles, from points in Northumberland County, VA, to points in the US and Memphis, TN, from points in the US (except Charlotte and Wilson), and VA, (except Smithfield and Crozet), to points in Northumberland County, VA; and (Sub-No. 20) fish solubles, in tank vehicles, from Cambridge, MD, to points in NY, NC, PA, and VA.

Note.—Notice published October 1, 1981, being corrected to show proper sequence of pages and description. In original publication pages 3 and 4 of Certificate in (Sub-No. 1) had been reversed.

MC–FC–79676. By decision of April 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to PACIFIC NATIONAL LINES, INC., of Tacoma, WA, of Certificate No. MC–152682 (Sub-No. 1), issued to THOUSAND TRAILS, INC., of Seattle, WA, authorizing the transportation, as a common carrier, of *passengers and their baggage,* in special and charter round-trip operations, between points in WA, on the one hand, and, on the other, points in the U.S. (Except HI). Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055.

Note.—TA has not been filed. Transferee is a carrier, operating under MC–134099.

MC–FC–79695. By decision of April 21, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Samuel L. Campbell, dba Campbell Enterprises, of P.O. Box 144 Greensburg, IN 47240, of Permit No. MC–152632 issued to Samuel C. Campbell, Samuel L. Campbell, and Gary W. Campbell, dba Campbell Enterprises (same address) authorizing: General commodities, between points in the U.S., under continuing contract(s) with Greensburg Milling, Inc., and Kora Fertilizer, Inc., both of Greensburg, IN. TA lease is not sought.

MC–FC–79713. By decision of April 20, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Reivew Board Number 3 approved the transfer to Car-Go Express, Inc., of Avon, MA, of Certificate No. MC–15821 issued October 15, 1956, MC–15821 (Sub-No. 1) issued August 25, 1981, MC–15821 (Sub-No. 11) issued June 26, 1969, MC–15821 (Sub-No. 12) issued September 1, 1966, MC–15821 (Sub-No. 13) issued December 10, 1971, MC–15821 (Sub-No. 14) issued September 13, 1973, and MC–15821 (Sub-No. 15G) issued October 23, 1975, issued to Graf Bros., Inc. (Debtor-in-Possession) of Salisbury, MA, authorizing the transportation of (1) general commodities (with exceptions) over a network of regular routes between points in ME, NH, MA, and RI; (2) general commodities (with exceptions) over irregular routes, between points in CT, MA, ME, NH, NJ, NY, PA, RI and VT; and (3) specified commodities, over irregular routes, such as lumber, brick, shoes, machinery, household goods, fish, fishermen's supplies and equipment, agricultural commodities, paint, lead, jute, salt, plumbers' hardware and fittings, paper and paper products, supplies and materials used or useful in paper mills, electrical signs and display material and equipment, bakery and bake-shop equipment, and fixtures, and boats, between points in ME, NH, MA, CT, RI, NJ, NY, and PA. Representatives: Frank J. Weiner, 15 Court Square, Boston, MA 02108; Peter S. Plumb, 30 Exchange Street, Portland, ME 04101. TA lease is sought.

MC–FC–79738. By decision of April 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Albert H. Warrington, Jr. of Berlin, NJ. of Certificate No. MC–133290 issued to Warrington Trucking Co., Inc. of Berlin, NJ, authorizing the transportation of (1) *reinforced concrete products,* from Berlin and Williamstown Junction, NJ to points in CT, DE, MD, NY, PA, VA, and DC, and (2) *materials, supplies and equipment* used in the manufacture of reinforced concrete products, and *damaged and defective shipments* of such commodities, from Washington, D.C., and Greensboro, NC, and points in CT, DE, MD, NY, PA, and VA to Berlin and Williamstown Junction, NJ. The Board has also approved the substitution of Transferee's name in lieu of Transferor's name on Docket No. 133290 (Sub–1–1TA). Applicant's representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Rd. & Cottman St., Jenkintown, PA 19046. TA lease is not sought. Transferee is not a carrier.

MC–FC–79750. By decision of April 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BILL WOLTER INC., of Springfield, MO, of Certificate No. MC–153067 (Sub-No. 1), issued to BILL LUTZ, D/B/A J & B TRUCKING, also of Springfield, MO, which authorizes the transportation of *general commodities* (except classes A and B explosives), between points in Greene County, MO, on the one hand, and, on the other, points in AR and MO. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804.

Note.—TA has not been filed. Transferee is not a carrier.

MC–FC–79753. By decision of April 20, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Sun Motor Lines, Inc., of Oklahoma City, OK, of Permit No. MC–154271 issued August 26, 1981, to Bluebonnet Transit, Inc., of Dallas, TX, authorizing: the transportation of *food and related products,* between points in the US, under continuing contract(s) with Lone Star Company, of Dallas, TX, Swift Independent Packing Company, of Chicago, IL, Vernon Calhoun Packing Company, Inc., of Palestine, TX, and Iowa Beef Processors, Inc., of Dakota City, NE. Applicant's representative:

William Sheridan, P.O. Drawer 5049, Irving, TX. TA lease is sought. Transferee is a carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12168 Filed 5-4-82; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP-2-87]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commision may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: April 28, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

Agatha L. Mergenovich

Secretary.

MC 161412, filed April 8, 1982. Applicant: CPI, INC., 5411 South 31st St., Fort Smith, AR 72903. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. Over Regular Routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Fayetteville, AR, and Greenwood, MS: from Fayetteville over U.S. Hwy 71 to junction AR Hwy 22, then over AR Hwy 22 to junction AR Hwy 27, then over AR Hwy 27 to junction U.S. Hwy 64, then over U.S. Hwy 64 to junction U.S. Hwy 65, then over U.S. Hwy 65 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Greenwood, and return over the same routes, serving all intermediate points.

Note.—This application is directly related to MC-F-14838, published in the same Federal Register issue.

[FR Doc. 82-12169 Filed 5-4-82; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP3-068]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: April 28, 1982.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 161285, filed March 30, 1982. Applicant: MULTI-MODAL TRANSPORTATION, LTD., 6844 West 111th St., Worth, IL 60482. Representative: Larry Koschkee (same address as applicant), (202) 659–4407. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in AZ, AR, CA, IL, IN, IA, LA, MI, MN, MO, NV, NM, OH, TX, and WI.

Note.—This application is directly related to MC–F–14834, published in the same **Federal Register** issue.

[FR Doc. 82–12164 Filed 5–4–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP3–068–A]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: April 28, 1982.

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of an application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

MC F–14834, filed March 30, 1982. THOMAS MOORE (MOORE) (4924 South 13th Street, Milwaukee, WI 53221)—Continuance in Control—Multi-Modal Transportation, Ltd. (Multi-Modal) (6844 West 111th Street, Worth, IL 60482).

Representative: Thomas H. Kritner, 4924 South 13th Street, Milwaukee, WI 53221.

Moore, an individual, seeks authority to continue in control of Multi-Modal upon the institution by Multi-Modal of operations, in interstate or foreign commerce as a motor common carrier. Multi-Modal is a newly formed corporation and holds no interstate operating rights. Moore, also controls Express Freight Lines, Inc., a motor common carrier pursuant to certificates issued in MC–76993 and sub-numbers thereunder, which authorize the transportation of *general commodities,* with the usual exceptions, over regular routes in WI, IL, IN, MI, OH and MN.

Note.—Multi-Modal has filed as a directly related application its initial common carrier application. This application docketed No. MC–161285, is published in this same **Federal Register** issue.

[FR Doc. 82–12165 Filed 5–4–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP3–067]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: April 28, 1982.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

W 534 (Sub-3), filed April 14, 1982. Applicant: CUMBERLAND & OHIO COMPANY, INC., 1136 Second Ave., North, Nashville, TN 37208. Representative: Peter A. Greene, 1920 N St., NW., Suite 700, Washington, DC 20036, (202) 331-8800. Transporting, by water, by non-self-propelled vessels with the use of separate towing vessels in the transportation of *general commodities* and by towing vessels in the performance of *general towage*, between ports and points on the Cumberland, Tennessee, Ohio, Mississippi, Mobile, Alabama, Tombigbee, Black Warrior and Illinois Rivers, the McClellan-Kerr Arkansas Waterway System, the Illinois Waterway, Lake Michigan between Chicago, IL and Burns Harbor, IN, the Gulf of Mexico and the Gulf Intracoastal Waterway between Brownsville, TX and Apalachicola, FL, and tributary and connecting waterways and channels.

MC 1515 (Sub-308), filed April 16, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson, (same address as applicant) (602) 248-5016. Over regular routes, transporting *passengers and their baggage and express and newspapers*, in the same vehicle with passengers, between Phoenix, AZ, and Prescott, AZ, from Phoenix over Interstate Hwy 17 to junction AZ Hwy 69, then over AZ Hwy 69 to Prescott, and return over the same route, serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authority in MC-1515.

MC 16334 (Sub-19), filed April 16, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888-3386. Transporting (1) *clay, concrete, glass or stone products*, and (2) *containers*, between points in Rock Island County, IL, Hennepin County, MN, Polk County, IA, Douglas County, NE, Johnson County, KS, Oklahoma County, OK, Bexar, Dallas, Harris, and Webb Counties, TX, Orleans Parish, LA, Denver County, CO, Maricopa County, AZ, Orange and Alameda Counties, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111045, filed April 20, 1982. Applicant: REDWING CARRIERS, INC., P.O. Box 30063, Tampa, FL 33630. Representative: Stephen F. Wilkens (same address as applicant) (813) 621-2046. Transporting *steel and steel products*, between points in AL, on the one hand, and, on the other, points in AR, FL, GA, LA, MS, NC, SC, TN, and TX.

MC 115554 (Sub-46), filed April 19, 1982. Applicant: HEARTLAND EXPRESS, INC. OF IOWA, P.O. Box 89B, RR 6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501 (402) 475-6761. Transporting (1) *food and related products and (2) pulp, paper and related products*, between points in the U.S. (except AK and HI).

MC 134035 (Sub-51), filed April 16, 1982. Applicant: DOUGLAS TRUCKING COMPANY, P.O. Box 698, Hwy 75 So., Corsicana, TX 75110. Representative: Jack K. Williams (same address as applicant) (214) 872-3017. Transporting *plastic, fiberglass, wood and metal products, furniture and fixtures and electrical equipment*, between points in New Haven County, CT, Los Angeles County, CA, Bell County, TX and Jefferson County, WI, on the one hand, and, on the other, points in the U.S. (except HI).

MC 134614 (Sub-7), filed April 19, 1982. Applicant: SELLAND AUTO TRANSPORT, INC., 5622 First Ave., South, Seattle, WA 98108. Representative: Clyde H. MacIver, 1700 Peoples National Bank Bldg., 1415 Fifth Ave., Seattle, WA 98171, (206) 624-1940. Transporting (1) *new and used automobiles*, and (2) *light duty trucks*, in secondary movements in truckaway service, between points in the U.S. (except HI).

MC 141274 (Sub-11), filed April 19, 1982. Applicant: C. C. ANKENEY, INC., 20809 Currier Rd., Walnut, CA 91789. Representative: C. C. Ankeney (same address as applicant), (213) 620-0607. Transporting (1) *thermal and weatherproofing products and related articles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Thermwell Products Co., Inc., of Patterson, NJ, and (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with DSI-Dairy Specialties, Inc., of St. Louis, MO.

MC 144615 (Sub-1), filed April 16, 1982. Applicant: CARLOS J. STILWELL d.b.a. STILWELL TRUCK SERVICE, Detroit, IL 62332. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544-5468. Transporting *petroleum and petroleum products*, between points in MO and IL.

MC 150105 (Sub-2), filed April 15, 1982. Applicant: KING ASSOCIATED ENTERPRISES, LTD., P.O. Box 253, Butler, WI 53007. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting *such commodities* as are dealt in by manufacturers and distributors of scales, between points in the U.S., under continuing contract(s) with Cream City Scale Co., Inc., of Menomonee Falls, WI.

MC 152355 (Sub-3), filed April 16, 1982. Applicant: THE PRICE

TRANSPORTATION SYSTEM, INC., 203 Brooke Dr., West Chester, PA 19380. Representative: Larry R. McDowell, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, DE, MD, NJ, NY, PA, and DC.

MC 156354 (Sub-2), filed April 20, 1982. Applicant: FICEL SALES, INC., 4678 Big Tree Rd., Hamburg, NY 14075. Representative: Michael A. Wargula, 128 Sherburn Dr., Hamburg, NY 14075, (716) 648-04810. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Weyerhaeuser Company of Chicago, IL.

MC 157955, filed April 19, 1982. Applicant: DON BROWNING, d.b.a. BROWNING TRUCKING, 9325 Malad, Boise, ID 83709. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701, (208) 336–5955. Transporting *lumber and wood products*, between points in CA, CO, ID, MT, NV, OR, UT, WA, and WY.

MC 158024, filed April 16, 1982. Applicant: TRIPLE R TRANSPORT, 807 S. Bundy Ave., Rice Lake, WI 54868. Representative: R. Revel Rustong (same address as applicant), (715) 234–1386. Transporting *used automobiles*, between points in WI, IL, MN, and IA, under continuing contract(s) with J.R. Auto Sales, Skars Auto Sales, and Discount Motors, all of Rice Lake, WI, and Southside Auto, of Cameron, WI.

MC 160785, filed April 16, 1982. Applicant: CASTAR TRUCKING, 7840 "F" St., Omaha, NE 68127. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with The Coca-Cola Company, Foods Division, of Omaha, NE.

MC 161515, filed April 15, 1982. Applicant: METROPLEX TOURS, INC., d.b.a. METROPLEX RACING CLUB, 1903 6th Ave., P.O. Box 7093, Fort Worth, TX 76111. Representative: Rudy J. Wedgeworth (same address as applicant), (817) 654–3455. As a *broker*, at Fort Worth, TX, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, between points in TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161535, filed April 16, 1982. Applicant: FT. INCORPORATED, 2209 S.W. 152nd, Seattle, WA 98166. Representative: Edward A. Francom, P.O. Box 1970, Lake Oswego, OR 97034, (503) 635–4239. Transporting *such commodities* as are dealt in and distributed by manufacturers of building materials, metal products, pulp, paper, and related products, stone, clay, and glass products, between points in AZ, CA, NV, OR, and WA.

MC 161544, filed April 16, 1982. Applicant: D. L. MacLEOD, INC., 14 Warren Lane, Weston, MA 02193. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617) 742–3530. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Zayre Corp., of Framingham, MA.

MC 161545, filed April 16, 1982. Applicant: NORTHWEST PLYWOOD SALES, INC., Rt. 3, Box 296, Caldwell, ID 83605. Representative: Jay B. Hatfield (same address as applicant), (208) 459–4200. Transporting *construction materials and metal products*, between points in ID, OR, and MT.

MC 161554, filed April 19, 1982. Applicant: BERT MATTER, INC., TRUCKING, 1155 Van Wyk Rd., P.O. Box 661, Bellingham, WA 98227. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228–3807. Transporting (1) *construction materials*, (2) *metal products*, and (3) *clay, concrete, glass and stone products*, between points in Skagit and Whatcom Counties, WA, on the one hand, and, on the other, points in the U.S. (except HI).

MC 161565, filed April 19, 1982. Applicant: GARRETT TRANSPORTATION CO., INC., Route 1, Box 216, Springville, AL 35146. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201 (205) 254–3880. Transporting *metal articles*, between points in St. Clair County, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161594, filed April 20, 1982. Applicant: ACCO BUS SERVICE, 17608 Livingston Rd., Accokeek, MD 20607. Representative: Thomas W. Johnson (same address as applicant) (301) 283–3108. Transporting *passengers and their baggage*, in charter and special operations, between Alexandria, VA, points in Fairfax County, VA, MD and DC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 16334 (Sub-17), filed March 29, 1982, previously published in the Federal Register issue of April 19, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212 (913) 888–3386. transporting *food and related products*, between points in the U.S.

Note.—This republication is due to an erroneously inclusion under the *fitness only* category.

[FR Doc. 82-12167 Filed 5-4-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1-75]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of petitions for leave to intervene must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleadings shall address specifically the issue(s) indicated as the purpose for republication.

MC 124230 (Sub-45) (Republication) filed January 15, 1982, previously noticed in the Federal Register issue of February 5, 1982. Applicant: C. B. JOHNSON, INC., P.O. Box Drawer S, Cortez, CO 81321. Representative: David E. Driggers, 1600 Lincoln Center Bldg., 1660 Lincoln Street, Denver, CO 80264. A Decision by the Commission Review Board Number 1, decided April 12, 1982 and served April 22, 1982 finds that the present and future public convenience and necessity require operation by applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Mercer commodities*, (2) *machinery*, and (3) *such commodities as are used in connection with mining and drilling operations*, between points in AZ, CO, KS, MT, NE, NV, NM, ND, OK, SD, TX, UT, and WY. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to show that applicant has been authorized service to meet shippers needs.

MC 157541 (Republication) filed November 20, 1981, previously noticed in the Federal Register issue December 15, 1981. Applicant: WILLIAM WALKER d.b.a. WALKER TRUCK LINE, 5807

South Wabash Avenue, Chicago, IL 60637. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago IL 60637. A Decision by the Commission Review Board Number 1, decided March 18, 1982 and served March 29, 1982, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, (2) *packaging materials*, (3) *chemicals*, and (4) *machinery* (except commodities in bulk), between points in Rensselaer County, NY, and Hillsborough County, NH, and Chicago, IL, Albany, NY, Baton Rouge, LA, Los Angeles, CA, Dallas, TX, Atlanta, GA, and Omaha, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI). Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to omit the facility limitation.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12168 Filed 5-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-168

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 161497 (Sub-3-1TA), filed April 23, 1982. Applicant: NORTH CAROLINA TOURS, INC., Star Route, Box 145, (N.C. Highway 28), Bryson City, NC 28713. Representative: Robert C. Boozer, 1400 Candler Building, 127 Peachtree Street, N.E., Atlanta, GA 30043. *Passengers and their baggage (unchecked), in charter and special operations*, between points in Graham and Swain Counties, NC on the one hand, and on the other, points in Knox and Blount Counties, TN. There are five support statements attached to this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 151215 (Sub-3-3TA), filed April 23, 1982. Applicant: FACTORY SERVICES, INC., P.O. Box 11040, 625 Kennedy Rd., Lexington, KY 40511. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Recyclable materials*, between (1) Huntington and St. Albans, WV, Shelbyville, IN and Wilmington, OH, on the one hand, and, Cincinnati, OH and Louisville, KY, on the other, and (2) between points in KY, on the one hand, and Cincinnati, OH, on the other. Supporting shipper(s): Continental Can, 4745 East River Rd., Chicago, IL 60631.

MC 161498 (Sub-3-1TA), filed April 23, 1982. Applicant: VAN-RIDE, INC., Route 1, Box 305E, East Bernstadt, KY 40729. Representative: Marcus Daly, same address as applicant. *Common carrier*, regular route; *Passengers and baggage of passengers in same vehicle as passengers; special or charter operations, or both, are proposed*, from London and Corbin, KY area to the World's Fair site in Knoxville, TN via Interstate 75 and return to point of origin. Supporting shipper(s): London/Laurel County Chamber of Commerce, P.O. Box 524, London, KY 40741.

MC 85530 (Sub-3-3TA), filed April 23, 1982. Applicant: BLALOCK TRUCK LINE, INC., P.O. Box 734, Charleston, SC 29402. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth Street, N.W., Washington, DC 20005. *Contract Carrier;* Irregular; *Lumber and wood products*, between points in the U.S. on and east of the Mississippi River, under continuing contract(s) with Tolleson Lumber Company, Inc., Perry, GA. Supporting shipper: Tolleson Lumber Company, Inc., P.O. Drawer E, Perry, GA 31069.

MC 145855 (Sub-3-4TA), filed April 23, 1982. Applicant: JOHN RAY TRUCKING CO., INC., P.O. Box 206, Eastaboga, AL 36260. Representative: John W. Cooper, P.O. Box 162, Mentone, AL 35984. *Contract Carrier*, Irregular Routes; *Chemicals, and Materials, Supplies, Equipment and Containers therefor* between Calhoun and Etowah Counties, AL and points in the U.S. except AK and HI under continuing contract with Monsanto Company. Supporting shipper: Monsanto Company, P.O. Box 249, Anniston, AL 36201.

MC 154541 (Sub-3-2TA), filed April 26, 1982. Applicant: SEA ISLAND STAGES OF BEAUFORT/HILTON HEAD, P.O. Box 4031, Beaufort, SC, 29902. Representative: D. R. Wismer, 605 Broad River Drive, Beaufort, SC, 29902. *Passengers and Baggage in the same vehicle, in Special and Charter operations*, between points and places in Beaufort, Jasper, Colleton, and Hampton Counties in SC, and Chatham, Bryan, Effingham and Liberty Counties in GA, on the one hand, and Knoxville, TN, on the other hand. Supporting shippers: The Bank of Beaufort Travel Agency, Beaufort, SC, U.S. Naval Hospital Special Services, Beaufort, SC, and Abba/Yellow, Inc., Savannah, Ga.

Note.—Applicant requests authority to tack this authority with authorities granted under Docket No. 154541, Lead Docket.

MC 31389 (Sub-3-15TA), filed April 27, 1982. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons (same address as applicant). *Contract* Carrier: Irregular: *General Commodities (except Classes A & B explosives, household good as defined by the Commission, and commodities in bulk)*, between Houston and Texas City, TX and Taft, LA on the one hand, and, on the other, points in the U.S., under continuing contract or contracts with Union Carbide Corporation, of Danbury, CT. Supporting

shipper: Union Carbide Corporation, Old Ridgebury Road, Danbury, CT 06817.

MC 129712 (Sub-3–18TA), filed April 27, 1982. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 675, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract,* irregular, *Building materials and supplies, including plywood, paneling, lumber and hardware items used in the installation of these products,* between Oakland County, MI, on the one hand, and, on the other, points in OH, IN, IL and WI, under continuing contract(s) with Markey Forest Products, Inc. Supporting shipper: Markey Forest Products, Inc., P.O. Box 535, Walled Lake, MI 48088.

MC 2934 (Sub-3–45TA), filed April 27, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *Electronic diagnostic equipment;* between points within the Continental U.S. under continuing contracts with Adac Laboratories, 255 San Geronimo Way, Sunnyvale, CA 94086. Supporting shipper: Adac Laboratories, 255 San Geronimo Way, Sunnyvale, CA 94086.

MC 148671 (Sub-3–2TA), filed April 28, 1982. Applicant: HARLAND QUACKENBUSH, An Individual, d.b.a. H & D TRUCKING, 500 Dew Drop Cove, Casselberry, FL 32707. Representative: Elbert Brown, Jr., Post Office Box 1378, Altamonte Springs, FL 32701. *Contract,* Irregular, *Corrugated Shipping Containers,* from Tampa, FL to GA, SC, NC, MD, VA, AL under continuing contract(s) with Weyerhaeuser Company. Supporting shipper: Weyerhaeuser Company, Post Office Box 16909, Tampa, FL 33687.

MC 143185 (Sub-3–1TA), filed April 27, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., Post Office Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Food and related products,* between Pike County, AL, Sussex County, DE, Vigo County, IN and Baltimore, MD, and points in its commercial zone; between Baltimore, MD, and points in its commercial zone, on the one hand, and, on the other, points in AL; and between Pike County, AL, on the one hand, and, on the other points in AR, AL, FL, GA, KY, LA, MS, OK, NC, SC, TN, TX and VA. Supporting shipper: Doxsee Food Corporation, 8640 Kelso Dr., Baltimore, MD 21221.

The following applications were filed in Region 4. Send protests to: Interstate Commerce Commission, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 111310 (Sub-4–14TA), filed April 21, 1982. Applicant: MILLIS TRANSFER, INC., Box 352, Black River Falls, WI 54615. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Food and related products* from Louisville, KY, Battle Creek, MI, and Lancaster and Sharonville, OH to points in WI, MN, IL, IA, MO, KS, AR, OK, TX, PA, and NY. Supporting shipper: Ralston Purina Co., Ralston Purina Company Checkerboard Sq., St. Louis, MO 63164.

MC 144506 (Sub-4–1TA), filed April 14, 1982. Applicant: KOLLER PETROLEUM PRODUCTS, INC., 241 N. Baltimore St., Spring Green, WI 53588. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703. *Petroleum, natural gas and their products,* from Chicago, IL, and points within the Chicago, IL commercial zone, Dubuque, IA, and points within the Dubuque, IA commercial zone, and Minneapolis-St. Paul, MN, and points within the Minneapolis-St. Paul, MN commercial zone to Evansville, Monticello, Blanchardville, Darlington, Lynxville, Dodgeville, Shullsburg, Mount Horeb, Highland, Lancaster, Barneveld, and Mineral Point, WI. Underlying ETA seeks 120 day authority. There are 12 shippers supporting this application.

MC 146108 (Sub-4–6TA), filed April 20, 1982. Applicant: BIG T TRANSFER, INC., 2414 Jacobs Drive, New Albany, IN 47150. Representative: Harold C. Jolliff, 3242 Beech Drive, Columbus, IN 47201, (812) 379–2556. *Containers (Drums),* empty, Between Louisville, KY, on the one hand, and, on the other, Little Rock and Fort Smith, AR, and Memphis, TN. An underlying ETA seeks 120 days authority. Supporting shipper: Allied Drum Service, Inc., 401 Colorado Ave., Louisville, KY, 40208.

MC 148787 (Sub-4–1TA), filed April 21, 1982. Applicant: HOME DELIVERY CORPORATION, 422 North 27th Street, Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 West Wisconsin Avenue, Milwaukee, WI 53203. *Contract* irregular: *toilet preparations and commodities used in the sale of toilet preparations* (except commodities in bulk) between Glenview and Morton Grove, IL, on the one hand, and, on the other hand, points in Brown and Outagamie Counties, WI. Supporting shipper: Avon Products, Inc., 6901 Golf Road, Morton Grove, IL 60053.

MC 161426 (Sub-4–1TA), filed April 21, 1982. Applicant: RYAN TRANSFER CORPORATION, P.O. Box 820A, Green Bay, WI 54305. Representative: James Robert Evans, 145 W. Wisconsin Avenue, Neenah, WI 54956. *(1) Pulp, paper and related products and (2) materials, equipment and supplies used in the manufacture and distribution of commodities named in (1)* between points in Brown, Outagamie and Winnebago Counties, WI, on the one hand, and, on the other, Munising, MI. Supporting shipper: Kimberly-Clark Corporation, 1414 W. Larsen Road, Neenah, WI 54956.

MC 161615 (Sub-4–1TA), filed April 21, 1982. Applicant: SONN LINE TRANSPORT CO., INC., 4320 North 126th Street, Brookfield, WI 53005. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Machinery and metal products,* between the facilities of the Rose Company at Milwaukee, WI, on the one hand, and, on the other, points in CA, CO, MT, ND, NM, OK, SD, TX, and WY. An underlying ETA seeks 120 days authority. Supporting shipper: Rose Company, 7044 North Teutonia Avenue, Milwaukee, WI 53209.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12169 Filed 5-4-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29341]

Port of Pend Oreille Operation of a Line of Railroad in Pend Oreille and Spokane Counties, WA

PORT OF PEND OREILLE (Applicant), represented by Fritz R. Kahn, Esq., Verner, Liipfert, Bernhard and McPherson, Chartered, 1660 L Street NW., Suite 1100, Washington, D.C. 20036, hereby gives notice that on the 31st day of March, 1982, it filed with the Interstate Commerce Commission at Washington, D.C., an application pursuant to 49 U.S.C. 10901 for a certificate of public convenience and necessity authorizing the operation of a line of railroad in Pend Oreille and Spokane Counties, WA.

Applicant is a public port authority of the State of Washington created in 1978 by referendum vote of the registered voters of Pend Oreille County, WA.

The operating rights sought by Applicant were formerly held by the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). Pursuant to orders of the MILW reorganization court, Applicant acquired ownership of a line formerly owned by MILW beginning at milepost 43.6 at Newport, Pend Oreille County, WA, and

extending in a northwesterly direction to milepose 104.7 at Metaline Falls, Pend Oreille County, WA. In addition, MILW conveyed to Applicant its trackage rights over a line owned by the Burlington Northern, Inc., (BN) beginning at milepost 1479.5 near East Spokane, Spokane County, WA, and extending in a northerly direction to milepost 1432 at Newport, Pend Oreille County, WA. Since October 1, 1979, Pend Oreille Valley Railroad, pursuant to an operating agreement with Applicant has interchanged with BN at Newport and provided service between Newport and intermediate points. The purpose of the present application is to establish Applicant's authority to engage as a common carrier in interstate and foreign commerce over the Spokane Metaline Falls line. While Applicant has no immediate plans to operate the subject line itself, it may determine to do so at some future date.

In the opinion of the Applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 22), Revision of National Environmental Policy Act Guidelines, 363 I.C.C. 653 (1980) any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation-National Environmental Policy Act, 1969*, supra, at p. 487.

Pursuant to 49 U.S.C. 10901 the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, or take any other specified action with respect to such application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12170 Filed 5-4-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL COMMUNICATIONS AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

The United States Advisory Commission on Public Diplomacy will conduct a closed meeting on Wednesday, May 5, in Room 1008, 1750 Pennsylvania Avenue, NW., to discuss matters relating to Mr. Arthur Imperatore's role as Ombudsman of the International Communication Agency Mr. Imperatore will meet with the Commission at 11:30 a.m. Director Charles Z. Wick and several associates will meet with the Commission at 4:30 p.m.

The emergency meeting is being held on short notice due to the imminent publication of the Commission's annual report, overseas travel plans made by Commission members, and the unexpected resignation of Mr. Imperatore.

The meeting of the Commission will relate to the internal personnel rules and practices of the Agency. Disclosure of the information to be discussed could result in the invasion of personal privacy and could significantly frustrate the implementation of proposed Agency actions (5 U.S.C. 552b(c)(2), (6), and 9(B)).

Dated: May 3, 1982.

Charles Z. Wick,

Director.

[FR Doc. 82-12342 Filed 5-4-82; 8:45 am]

BILLING CODE 8230-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-99]

Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation; Issuance of Exclusion Order and Cease and Desist Orders

AGENCY: International Trade Commission.

ACTION: Issuance of exclusion order and cease and desist orders.

SUPPLEMENTARY INFORMATION: On April 9, 1982, the Commission issued a general exclusion order and four cease and desist orders in the above-captioned investigation. The Commission ordered that molded-in sandwich panel inserts that infringe U.S. Letters Patent 3,182,015 be excluded from entry into the United States and that respondents The Young Engineers, Inc., Hitco Corporation, Weber Aircraft Division of Kidde, Inc., and Aerospace Division of UOP, Inc., cease and desist from certain activities that infringe U.S. Letters Patents Nos. 3,271,496 or 3,392,225 where such activities involve imported sandwich panel inserts.

Notice of this investigation was published in the **Federal Register** on April 29, 1981 (46 FR 24034).

The Commission Action and Order, the Commission opinion in support thereof, and all othe nonconfidential documents on the record of the investigation are available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

By order of the Commission.

Issued: April 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12258 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-118]

Certain Sneakers With Fabric Uppers and Rubber Soles; Amendment of Notice of Investigations To Add Respondent

AGENCY: International Trade Commission.

ACTION: Amendment of notice of investigation to add one new respondent pursuant to § 210.22(a) of the Commission's rules of practice and procedure (19 CFR 210.22(a)).

SUMMARY: On April 27, 1982, the Commission granted in part a motion (Motion No. 118-2) to amend the notice of investigation in this investigation to add Genesco, Inc., as an additional respondent.

SUPPLEMENTARY INFORMATION: On March 23, 1982, complainant Van Doren Rubber Co., Inc., moved (Motion No. 118-2) to amend the complaint and the notice of investigation to add as a new respondent Genesco, Inc. Genesco is alleged by complainant to be engaged in unfair competition, common law trademark infringement, false designation of origin, and passing off with respect to the sneakers in controversy. On March 31, 1982, the administrative law judge (ALJ) issued a recommended determination that the motion be granted (Order No. 5) insofar as it requests amendment of the notice

of investigation. After consideration of Motion No. 118–2 and the ALJ's recommended determination, the Commission determined to amend its notice of investigation to add Genesco, Inc., Genesco Park, Nashville, Tennessee 37202, as respondent with regard to the unfair competition and common-law trademark infringement allegations.

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, telephone 202–523–0079.

By order of the Commission.

Issued: April 27, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12259 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–155 Through 163 (Preliminary)]

Certain Steel Products From Spain; Investigation and Scheduling of Conference

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and the scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: April 26, 1982.

SUMMARY: On April 26, 1982, the U.S. Department of Commerce notified the United States International Trade Commission that, in accordance with section 702 of the Tariff Act of 1930 (19 U.S.C. 1671a), it was commencing investigations to determine whether producers, manufacturers, or exporters in Spain of certain steel products receive benefits that qualify as subsidies within the meaning of the Act. Accordingly, effective April 26, 1982, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigations Nos. 701–TA–155 through 163 (Preliminary) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of the merchandise which is the subject of the investigations by the Department of Commerce. The products covered in these investigations are as follows: Hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (1982)(TSUSA); hot-rolled carbon steel sheet, provided for in TSUSA items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400; cold-rolled carbon steel sheet, provided for in TSUSA items 607.8320 and 607.8344; galvanized carbon steel sheet, provided for in TSUSA items 608.0730 and 608.1300; carbon steel angles, shapes, and sections, provided for in TSUSA items 609.8005, 609.8015, 609.8035, 609.8041, and 609.8045; hot-rolled carbon steel bar, provided for in TSUSA items 606.8310, 606.8330, and 606.8350; hot-rolled alloy steel bar, provided for in TSUSA items 606.9700; cold-formed carbon steel bar, provided for in TSUSA items 606.8805 and 606.8815; and cold-formed alloy steel bar, provided for in TSUSA item 606.9900.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger, Office of Investigations, International Trade Commission; telephone 202–523–0312.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1982, petitions were filed with the Department of Commerce by the United States Steel Corp. and by counsel for Republic Steel Corp., Inland Steel Co., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Corp. alleging that producers, manufacturers, or exporters in Spain of certain steel products receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303). As Spain was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), there was no requirement for the petitions to be filed with the Commission pursuant to section 702(b)(2) and no requirement for the Commission to conduct preliminary injury investigations pursuant to section 703(a).

On April 14, 1982, however, the United States Trade Representative announced that Spain had become a "country under the Agreement" (47 FR 16697). Accordingly, Commerce terminated its investigations under section 303 and initiated investigations under section 702. The Commission must make its determinations in these investigations within 45 days after the date on which its received notification by the Department of Commerce of its action, or by June 10, 1982 (19 CFR 207.17). The investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457), and particularly subpart B thereof.

Written submissions

Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before May 28, 1982. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR Part 201.6).

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m., e.d.t., on May 24, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to particiate in the conference should contact the investigator for the investigations, Mr. Robert Eninger, telephone 202–523–0312, not later than May 17, 1982, to arrange for their appearance. It is anticipated that parties in support of the imposition of countervailing duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Record

The records of Commission investigations Nos. 701–TA–86 through 144 (Preliminary), 701–TA–146 (Preliminary), 701–TA–147 (Preliminary), and 731–TA–53 through 86 (Preliminary), Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, will be incorporated in the records of

investigations Nos. 701–TA–155 through 163 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201). Further information concerning the conduct of the conference will be provided by Mr. Eninger.

This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR Part 207.12).

By order of the Commission.

Issued April 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12280 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-154 (Preliminary)]

Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod From Spain

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 701–TAa–154 (Preliminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of hot-rolled stainless steel bar, provided for in item 606.9005 of the Tariff Schedules of the United States Annotated (TSUSA), cold-formed stainless steel bar, provided for in TSUSA item 606.9010, and stainless steel wire rod, provided for in TSUSA items 607.2600 and 607.4300 upon which bounties and grants are alleged to be paid.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Leahy, Jr., Office of Investigations, U.S. International Trade Commission; telephone 202–523–1369.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1982, a petition was filed with the Department of Commerce by counsel for Al Tech Specialty Steel Corporation, Armco Stainless Steel Division, Carpenter Technology Corporation, Colt Industries, Inc. (Crucible Materials Group), Cyclops Corporation, Guterl Special Steel Corporation, Joslyn Stainless Steels, and Republic Steel Corporation alleging that producers, manufacturers, or exporters in Spain of stainless steel bar and wire rod receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (the Act). As Spain was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act, there was no requirement for the petition to be filed pursuant to section 702(b)(2) and no requirement for the Commission to conduct a preliminary material injury investigation pursuant to section 703(a).

On April 14, 1982, however, the United States Trade Representative announced that Spain had become a "country under the Agreement" (47 FR 16697). On April 26, 1982, Commerce notified the Commission that it had terminated its investigation under section 303, and that, in accordance with section 702 of the Act, it was commencing a new countervailing duty investigation. Accordingly, the Commission is instituting its investigation.

The Commission must make its determination in the investigation within 45 days after the date on which it receives notice by the administering authority of an investigation commenced under section 702(b) of the Act, or by June 10, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of part 207 of the Commission's rules of practice and procedure (19 CFR 207 (1981), as amended by 47 FR 6190 (February 10, 1982)), and particularly subpart B thereof.

Written submissions

Any person may submit to the Commission on or before May 24, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data".

All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on May 19, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the investigator for the investigation, Mr. Daniel Leahy, telephone 202–523–1369, not later than May 14, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982), and Part 201, Subparts A through E (19 CFR Part 201 (1981), as amended by 47 FR 6188 (February 10, 1982)). Further information concerning the conduct of the conference will be provided by Mr. Leahy.

This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR 207.12 (1981)).

By order of the Commission.

Issued: April 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12257 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-92 (Preliminary)]

Stainless Steel Sheet and Strip From West Germany; Investigation and Scheduling of Conference

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–92 (Preliminary) to determine, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from West Germany of stainless steel sheet, provided for in items 607.7610, 607.9010, and 607.9020 of the Tariff Schedules of the United States Annotated (TSUSA), and stainless steel strip, provided for in TSUSA items 608.4300 and 608.5700 which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Leahy, Jr., Office of Investigations, U.S. International Trade Commission; telephone 202–523–1369.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America. The Commission must make its determination in the investigation within 45 days after the date of receipt of petition, or by June 10, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of Part 207 of the Commission's rules of practice and procedure (19 CFR Part 207 (1981), as amended by 47 FR 6190 (February 10, 1982)), and particularly Subpart B thereof.

Written Sumbmissions

Any person may submit to the Commission on or before May 20, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted (19 CFR 201.8 (1981), as amended by 47 FR 6188 (February 10, 1982)).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business data will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on May 17, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the investigator for the investigation, Mr. Daniel Leahy, telephone 202–523–1369, not later than May 12, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207, as amended by 47 FR 6188 (February 10, 1982)), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 6188 (February 10, 1982)). Further information concerning the conduct of the conference will be provided by Mr. Leahy.

This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR 207.12 (1981)).

By order of the Commission.

Issued: April 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12261 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

[731–TA–3 (Final)]

Sugars and Sirups From Canada

Determination

Based on the record [1] developed in investigation No. 731–TA–3 (Final), the Commission determines [2] that as of March 6, 1980, the date of the Commission's initial determination regarding sugars and sirups from Canada, producers of all, or almost all of the production within the Northeastern regional market were materially injured by reson of the importation of sugars and sirups from Canada sold, or likely to be sold, at less than fair value (LTFV). The determination in this matter is made pursuant to the order of the U.S. Court of International Trade entered December 28, 1981, in the case of *Atlantic Sugar, Ltd., et al.* v. *United States.*

Background—First Remand

In March 1980 the Commission determined that an industry in the United States is being materially injured by reason of imports of sugars and sirups from Canada which the Department of the Treasury had determined are being, or are likely to be, sold in the United States at less than fair value. The Commission's determination was appealed to the United States Customs Court (now known as the U.S. Court of International Trade) on May 6, 1980.

Subsequent to the Commission's determination and the appeal of that determination to the Court of International Trade, errors were discovereed in the information considered by the Commission relating to (1) the regional demand supplied by domestic productive facilities located outside the Northeastern States region, and (2) the financial performance of one of the sugar producers located in the region in question.

In an order issued on July 8, 1981, the Court of International Trade directed that within 90 days the Commission—

> issue a new determination after considering the corrected data regarding the regional demand supplied from elsewhere and, if it is reached, the evidence regarding the profitability of the producers in the region * * *.[3]

On October 5, 1981, the Commission affirmed its prior determination (Commissioner Stern dissenting and Commissioners Bedell, Eckes, and Frank not participating) that as of March 6, 1980, an industry in the United States was materially injured by reason of the importation of sugars and sirups from,

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[1] The "record" is defined in § 207.2(i) of the Commission's rules of practice and procedures, 47 FR 6190, February 10, 1982.

[2] Commissioners Frank and Haggart did not participate.

Vice Chairman Calhoun affirms his earlier determination that an industry in the United States is materially injured by reason of the importation of sugars and sirups from Canada sold, or likely to be sold, at LTFV.

Commissioner Stern determines that as of March 6, 1980, Revere Sugar Corp. was materially injured by reason of the importation of sugars and sirups from Canada sold, or likely to be sold, at LTFV.

Commissioner Stern also affirms her earlier determination that circumstances were not appropriate for consideration of the Northeastern geographic area as a separate and isolated region and that an industry in the United States was not materially injured or threatened with material injury by reason of the importation of sugars and sirups from Canada sold, or likely to be sold, at LTFV.

[3] Atlantic Sugar, Ltd., et al. v. United States, Slip Op. 81–62, 15 Cust. Bull. & Decisions 69, 75–76 (Ct. Int'l. Trade 1981), July 8, 1981.

Canada sold, or likely to be sold, at LTFV.

Second Remand

On December 28, 1981, the Court of International Trade remanded the case to the Commission for a second time and directed the Commission to—

> determine whether the Revere Sugar Corp. suffered injury within the meaning of this statute and if not, whether there is any reason to conclude that those who were injured are the producers of all or almost all the production in the region. The ITC shall report its determination to the Court within 120 days of the date of entry of this order.

In arriving at its determination in response to the second remand, the Commission gave due consideration to information obtained during the course of investigation No. 731–TA–3 (Final), as later corrected.

By order of the Commission.

Issued: April 26, 1982.

Kenneth R. Mason,

Secretary.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Alfred Eckes [4]

These views are submitted in response to the December 28, 1981, order of the United States Court of International Trade [5] remanding to the Commission investigation No. 731–TA–3 (Final), *Sugars and Sirups from Canada.* In October of 1981, the Commission [6 7] on the basis of corrected data affirmed its original determination that there was a regional industry in the Northeastern states region. Although the corrected data demonstrated that the Revere Sugar Corporation, one of the largest producers in the region, had a profit rather than a loss, the Commission went on to reaffirm its original finding that the producers of all or almost all of the production within the region were materially injured. The Commission found that the reported aggregate profits for the seven regional producers had continued to decline, noting that the decline had simply not been as steep as the original data had indicated.[8] The Commission also took the position that in determining whether the producers of all or almost all of the production within a regional market are materially injured, it can rely on aggregate data.

On December 28, 1981, the Court of International Trade affirmed the Commission's determination that a Northeastern states region exists, but took exception with the Commission's analysis regarding material injury. Specifically, the Court (per Judge Watson) disagreed with the Commission's use of aggregate data to determine whether producers of all or almost all of the production within the region were materially injured. Instead the Court determined that in a regional industry case the Commission must make an individual injury determination for each producer within the region and then determine whether the injured producers are the producers of all or almost all of the production within the region.

> Injury to an *industry* cannot be determined without first finding injury to individual producers. That is the unalterable and logical progression of the statutory determination. * * * It seems to the Court that individual firm data are the foundation of this determination and it is only when the facts show injury to individual producers that they may be utilized for broader conclusions about the industry. Furthermore, a conclusion about injury to the *industry* cannot be made until it is determined that those who are injured individually are, *in the aggregate,* the producers of "all or almost all" of the region's production. Thus, the only aggregation permitted by the law is that of the production of those who have been injured individually. If their production represents all or almost all of the region's production then the *industry* has been injured within the meaning of the law. [Emphasis in the original.] [9]

The Court went on to order the Commission to determine specifically whether the Revere Sugar Corporation was materially injured by Canadian imports. The Court also stated that, if the Commission determines that Revere was materially injured, "it may be linked with those other producers who were injured. If the entire injured group produces all or almost all of the production, then a finding of injury to the industry is proper." [10]

In response to this order, we will first separately examine the individual producers within the region to determine whether each was materially injured. We will then combine the data for the injured producers and determine whether they account for all or almost all of the production within the region. We will then discuss our interpretation of the statute.

Revere Sugar Corporation Was Materially Injured by Reason of Less-Than-Fair-Value (LTFV) Imports From Canada [11]

On December 28, 1981, the Court of International Trade ordered the Commission to determine whether as of March 6, 1980, the Revere Sugar Corporation was materially injured by reason of Canadian LTFV imports of sugars and sirups. We determine that Revere was materially injured.

The data in the record concerning injury to Revere covers a period of only two years—1978 and 1979. Profit-and-loss data for 1978 covered the partial accounting year from December 15, 1977, to July 1, 1978, and for 1979 the full accounting year from July 2, 1978, to June 30, 1979.

* * * [12] [13] [14]

Revere was consistently undersold by one or both of the Canadian producers from 1978 to 1980, sometimes by substantial margins. This indicates that Canadian imports were a cause of the material injury experienced by Revere.[15] Revere also argued strongly that it was being materially injured by Canadian imports.[16]

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[4] Commissioner Stern joins in the finding that the Revere Sugar Corporation is materially injured by reason of the subject imports and in its additional views on regional industry, making these findings unanimous. Commissioner Stern dissents from the majority finding that the producers in the Northeastern states geographical area constitute an appropriate regional industry for the purposes of this investigation and reaches a negative determination with respect to the national industry.

Commissioners Frank and Haggart did not participate in this determination.

[5] Atlantic Sugar, Inc. v. United States, Slip Op. 81–119, Dec. 28, 1981.

[6] Commissioner Eckes did not participate in that determination or the original determination.

[7] Commissioner Stern dissenting.

[8] Sugars and Sirups From Canada, Inv. No. 731–TA–3 (Final), October 1981 (hereinafter cited as October 1981 decision) at 14.

[9] Atlantic Sugar v. United States, *supra,* at 9, 10.

[10] *Id.* at 11.

[11] Commissioner Stern joins the majority in this section of the views.

[12] The data for production, capacity, person-hours worked, worker production and profits from Revere's questionnaire include data for Revere's Chicago plant.

[13] Revere Sugar Corporation acquired the business of the Sweetener Division of Sucrest Corporation on Dec. 14, 1977, under the terms of an agreement dated July 30, 1977. After the sale, Sucrest changed its name to the Ingredient Technology Corporation. Revere responded to the Commission's questionnaire, but only provided data for operations subsequent to this acquisition. Although the Staff made inquiries concerning operations prior to the acquisition, Revere officials indicated that data for operations prior to acquisition were not available and probably were still being held by Ingredient Technology Corporation.

[14] There is no alternative to this estimate as Revere did not give the Commission data that could be broken down by month or quarter which would enable the Commission to make a six month comparison.

[15] Commissioner Stern notes: I have reached the above finding regarding Revere to satisfy the Court's remand order. My finding that the Canadian imports are a causal factor of material injury to Revere depends in part on the fact that both the Canadian imports and Revere are competing in the same Northeastern states geographical area. As explained in my separate views which follow, I do not believe that the circumstances are appropriate for a regional industry treatment.

[16] Letter of Leroy Gross, Vice President & Controller, Revere Sugar Corp., to Mr. Fry, Director of Investigations, USITC, dated January 11, 1980 with attached telex (Exhibit 11 of public documents submitted to U.S Court of International Trade).

The Canadian producers have argued that Revere's prices were the lowest in the market and the cause of injury to the domestic industry, and have alleged that Revere's ability to reduce prices was due to an agreement with the Philippine Exchange Company, Inc. (Philex) for a 5-year period which allegedly guaranteed Revere a profit. The auditors' report attached to the Revere questionnaire noted * * * It is not all clear that Revere was guaranted a profit by the terms of the agreement. This state of affairs, in combination with the actual prices of both the Canadian producers and Revere, indicate that Revere was, in fact, not the price leader.

Amstar Corporation Was Materially Injured by Reason of LTFV Imports From Canada

* * * This combined with substantial margins of underselling by the Canadian producers and confirmed lost sales indicate that Amstar was materially injured by reason of Canadian LTFV imports.
* * * * [17]

When weighted average prices are examined for 1978 and 1979, it is apparent that both Canadian producers consistently undersold Amstar by substantial margins. Sales lost by Amstar to Canadian sugar were also confirmed.

National Sugar Refining Co. Was Materially, Injured by Reason of LTFV Imports From Canada

We determine that National Sugar Refining Co. was materially injured by reason of Canadian LTFV imports because * * * Causation is demontrated by the substantial margins of underselling and confirmed lost sales.
* * * * [18]

Durng 1978 and 1979 both Canadian producers undersold National by substantial margins and lost sales were confirmed to Canadian producers.

Refined Syrups and Sugars, Inc. Was Materially Injured by Reason of LTFV Imports From Canada

We determine that Refined Syrups and Sugars (Refined Sugars) was materially injured by reason of Canadian LTFV imports because of * * * and the fact that the two Canadian producers consistently undersold Refined Sugars by substantial margins.
* * * Furthermore, during 1978 and 1979 both Canadian producers consistently undersold Refined Sugars by substantial margins. We conclude, therefore, that Refined Sugars was materially injured by Canadian LTFV imports.

Michigan Sugar Co. Was Not Materially Injured or Threatened With Material Injury by Reason of LTFV Imports From Canada

* * * The Commission concludes that this company was not materially injured by reason of Canadian LTFV imports. There is nothing on the record to suggest a threat of material injury to the Michigan Sugar Co. by reason of Canadian LTFV imports.

Monitor Sugar Co. Was Not Materially Injured or Threatened With Material Injury by Reason of Canadian LTFV Imports

* * * The Monitor Sugar Co., therefore, was not materially injured by Canadian LTFV imports. There is nothing on the record to suggest threat of material injury to Monitor Sugar Co.

Northern Ohio Sugar Co. Was Materially Injured by Reason of LTFV Imports From Canada

* * * Although we do not have any specific price information from Northern Ohio, during October 1978 to March 1979, the Canadian producers were the consistent price leaders in the region.[19] We, therefore, conclude that Canadian imports caused material injury to Northern Ohio.

Producers of all or Almost All of the Production Within the Regional Market Were Materially Injured

Revere, Amstar, National, Refined Syrups and Sugars and Northern Ohio which account for over * * * percent of the production within the region were materially injured by Canadian imports. Therefore, we determine that producers of all or almost all of the production within the region were materially injured. The only two companies that were not materially injured or threatened with material injury were Michigan and Monitor Sugar Companies which are located on the perimeter of the Northeastern Region and account for less than * * * percent of the production within the region.[20]

Additional Views on Regional Industry Analysis [21]

Having addressed what we understand to have been the Court's request of us, we nevertheless feel obliged to express our strong reservation regarding the Court's interpretation of Section 771(4)(c). In its reading, the Court has found that the language "* * * producers of all, or almost all, of the production within that market are being materially injured * * *" requires us first to determine whether each individual producer in the region is materially injured by reason of LTFV imports, then to combine the injured producers to determine whether they account for all or almost all of the production within the region. Clearly, this methodology is consistent with the statutory language.

The language of section 771(4)(c), however, may also be read as permitting a somewhat different analytical approach. This alternative methodology is to examine the aggregate data from the various combinations of producers which represent all or almost all of the production in the region and determine whether, as a group, they suffer material injury by reason of imports. This is the approach we have used in each of our regional industry investigations thus far. Not only do we find that this approach is also consistent with the statutory language and the legislative history,[22] it is, as well, free of the administrative burdens and conflicts with other statutory provisions which accompany the Court's approach.

Indeed, in our view, the Court's reading of section 771(4)(c) presents three serious problems. First, all of our determinations prior to the 1979 Trade Agreements Act relied on aggregate data.[23] We strongly believe that this approach, while greatly different from the Court's view, does no violence to the language of the statute. If the Congress wanted that practice to change in order to make individual determinations in regional cases, it would have made it intent clearer in the statutory language

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[17] Profits for Amstar's sugar operations include its cane sugar operations outside the Northeastern region.

[18] The 1978 figures include data for only 10 months.

[19] Northern Ohio did not supply requested information on production, pricing, capacity, employment, wages, inventories, capital expenditures, and research and development expenditures.

[20] * * *

[21] Commissioner Stern joins the majority in this section of the views.

[22] The Reports of the Ways and Means and Senate Finance Committee address this issue only by way of reciting the statutory language. See Committee on Way and Means, U.S. House of Representatives, Report No. 96-317, 96th Cong., 1st Sess., p. 73, and Committee on Finance, U.S. Senate, Report No. 96-249, 96th Cong., 1st Sess., p. 83.

[23] Chairman Alberger notes that in the Commission's historical practice of primarily relying on aggregate data, it often looks at data from individual producers to help assess the impact of LTFV or subsidized imports on the domestic industry. Aberrations from aggregate trends often provide valuable insights into the overall problems facing an industry.

and would have addressed the change in Commission reports which address other significant changes. Instead, the Congress indicated its concern for other policy considerations, including the need for a speedy, open decisionmaking process with a minimum burden on both the Commission and the public. Second, the Court's analysis poses a substantial administrative burden on the Commission and on the public. Third, it has a serious adverse impact on the Commission's mandate to undertake an open decisionmaking process.

Regarding the second point, in a case such as this in which there are fewer than ten producers in the region, the individual determinations required by the Court's interpretation can usually be made. But in those regional cases in which there are a greater number of producers, it may become administratively impossible to make such individual determinations. For example, in *Fish, Fresh, Chilled, or Frozen, Whether or Not Whole, But Not Otherwise Prepared or Preserved, From Canada,* Inv. No. 701–TA–40 (Final), USITC Pub. 1066, the Commission found an Eastern regional industry consisting of 700 New England fishing vessels and 71 Atlantic Coast processing firms. Plainly, it would have been prohibitive as a practical matter for the Commission to make individual material injury and causation determinations for 700 separate fishing vessels and 71 separate fish processors in the preliminary and final investigations.[24] Even if this analysis could be made, the statutory time constraints and the unavailability of data would have made such a task impossible.

A number of other cases involving a large number of domestic producers in which regional considerations were present demonstrate even further the frequency and magnitude of the potential problem with the Court's analysis causes. In *Tomato Products from the European Community,* Inv. Nos. 701–TA–42–50, USITC Pub. 1076, the domestic tomato processing industry consisted of more than 200 firms, and in *Fresh Cut Roses from the Netherlands,* Inv. No. 701–TA–21, USITC Pub. 1041, the domestic rose industry consisted of over 400 individual producers.

It has long been accepted Commission practice that in cases with a large number of producers, such as *Fresh Cut Roses,* our data are gathered by sampling. Sampling lessens the administrative burden on both the Commission and the public. It allows us to conduct as complete and factual an analysis as is possible given the statutory deadlines within which we must reach these determinations. The Court's interpretation of our responsibilities in regional cases would deny us this investigative tool.

In addition, injury and causation determinations for individual producers create a burden on the public. Producers which account for only a fraction of a percent of the production within the region would be required to answer questionnaires even though it is clear that only a few of the domestic producers account for the bulk, but not "all or almost all," of the production within the region. The recently enacted Paperwork Reduction Act charges the Commission with reducing the administrative burden on the public. Section 3507(a)(1)(B) states: "An agency shall not conduct or sponsor the collection of information unless, in advance of the adoption or revision of the request for collection of such information—the agency has taken actions * * * to reduce to the extent practicable and appropriate the burden on persons who will provide information to the public." [25] It is our experience that the Court's requirement is in direct conflict with this provision. Since individual injury and causation determinations of each producer effectively preclude the use of sampling, the Court's decision will significantly increase rather then decrease the volume of information required from the public.

Furthermore, there are instances during an investigation in which producers, often the smaller companies, do not respond to Commission questionnaires and the Commission often cannot, within the short statutory time limits, utilize its subpoena authority.[26] When questionnaires are not returned in preliminary cases, the Commission relies on the best information available, that is the aggregate data. Under the regional industry standard compelled in this remand, if the Commission does not receive data from producers of all or almost all of the production, the entire industry might be deprived of relief because of the recalcitrance of a few producers.

In our view, given the strict time limitations imposed by the Trade Agreements Act of 1979 and in the asbsence of clearly compelling language to the contrary, the drafters of the Act surely did not intend to hamper the Commission with the requirement of numerous separate individual determinations in regional industry investigations. An administrative agency always has the authority to respond to the administrative difficulties of implementing the commands of the substantive statute. As the United States Court of Appeals for the District of Columbia has stated:

> Considerations of administrative necessity may be a basis for finding implied authority for an administrative approach not explicitly provided in the statute. The relevance of such considerations to the regulatory process has long been recognized. Courts frequently uphold streamlined agency approaches or procedures where the conventional course, typically case-by-case determinations, would, as a practical matter, prevent the agency from carrying out the mission assigned to it by congress.[27]

In this connection, because of administrative impracticality and the added burden on the public, we have in all regional industry cases relied on aggregate data from questionnaires. In some instances, this data has represented fewer than all of the producers within the regional industry. As a practical matter, without such a practice, we may not be able to carry out the statutory mandate.

The third problem the Court's requirement poses is that it runs afoul of one of the goals of the Trade Agreements Act of 1979. From the legislative history it is clear that in passing this legislation Congress attempted to balance the public and the international interest in open hearings against the interest in keeping business information confidential. The Senate Committee on Finance Report states that one of the principal elements of both the Subsidy and Antidumping Agreements was:

> Provisions for "transparency" in all phases of a countervailing duty or dumping case, including publication of laws and regulations, investigations, and decisions, and access to information on which decisions are based, subject to protection of legitimately confidential information. S. Rep. No. 96–249, 96th Cong., 1st Sess. at 41.

Furthermore, section 774(b) provides: "Procedures—Any hearing required or permitted under this title shall be conducted after notice published in the **Federal Register**, and *a transcript of the hearing shall be prepared and made available to the public."* (Emphasis added.) Thus, Congress intended that hearings in antidumping and countervailing duty cases be open to the

[24] In the entire United States, there were more than 1,000 fishing vessels and 100 fish processors.

[25] Pub. L. 96–511, 94 Stat. 2820 (Dec. 11, 1980).

[26] *See* Fish, Fresh, Chilled, or Frozen, Whether or Not Whole, But Not Otherwise Prepared or Preserved, From Canada, Inv. No. 701–TA–40 (Final), USITC PUb. 1066, at 11.

[27] Alabama Power Co. v. Costle, 636 F.2d, 323, 358 (D.C. Cir. 1979).

public. Derogations ought to be exceptional in nature and few in number.

If, as the Court has suggested, individual determinations are required in regional industry cases, most of the conferences and hearings now open would have to be closed to the public. Commission reports would contain substantial amounts of confidential data. Commission opinions would be equally limited. Such a circumstance would be contrary to the United States position in our trade negotiations with foreign countries in which the executive branch has been advocating greater transparency in the decisionmaking process. Closing the decisionmaking process would also be inconsistent with Congressional intent. We cannot believe that Congress could have intended such a result without specifying more clearly the changes in Commission practice it desired.

Views of Commissioner Paula Stern

In response to the December 28, 1981, order of the United States Court of International Trade,[28] I have determined that as of March 6, 1980, the Revere Sugar Corporation was materially injured by reason of the importation of sugars and sirups from Canada sold, or likely to be sold, at less than fair value.

I also reiterate my earlier conclusion that circumstances are not appropriate for the consideration of the Northeastern geographic area as a separate and isolated region.[29] Accordingly, I reaffirm my previous determination that an industry in the United States was not materially injured or threatened with material injury by reason of the importation of sugars and sirups from Canada.

Revere Sugar Corporation is Materially Injured

On December 28, 1981, the Court of International Trade ordered the Commission to determine whether as of March 6, 1980, the Revere Sugar Corporation was materially injured by reason of Canadian imports of sugars and sirups. I determine that Revere was materially injured. I have fully joined the majority analysis on this finding and will not repeat it here. I also concur in the "Additional views on regional industry analysis" of the majority.[30]

Reaffirmation of Previous Determination

In my October 1981 decision, I determined that the Northeastern area was not a separate and isolated regional market and therefore, went on to examine the entire nation's sugar production as a whole. In that opinion, I stated:

> A careful reexamination of the regional industry issue in light of the corrected data has been primarily responsible for my negative determination in the remanded case. Because U.S. producers in the Northeastern states area are not sufficiently separate or isolated to constitute a regional industry, the relevant domestic industry should encompass the entire nation and not the region found by the Commission in the original case or the majority in the present one.[31]
>
> * * * * *
>
> I have found that no natural or commercial reasons *outside* the control of the sugar producers themselves severely limit the quantities of sugar that can flow between geographical areas. Rather, the pattern of supply seems to reflect the historical distribution practice which in and of itself is not a sufficient basis to find that the market is isolated or separate as required by law. (Emphasis in original.)[32]

In his December 28 opinion, however Judge Watson did not determine that the Northeastern states are a separate and isolated region. Rather, he determined that the majority's finding of a region was supported by substantial evidence and not at variance with the law. Therefore, my original finding on regionality was not at variance with the Court's order.

Under section 771(4)(C) the application of a regional industry definition is discretionary. The language of the section provides that "In appropriate circumstances * * * the producers within each market each market *may* be treated as if they were a separate industry * * *." (emphasis added). The Commission does not have a statutory obligation to make a regional industry finding even in cases where "appropriate circumstances" for such a finding exist. As I noted in my October 1981 determination, I do not believe appropriate circumstances for regional industry treatment exist in this case where the sole basis for the geographic distribution of supply is historical marketing practices.

Accordingly, my analysis of injury and causation have once again been made on a national basis. The national data have not changed in any significant fashion. (Corrections to the data primarily affected only the results for the Northeastern states geographic area.) Therefore, the analysis I made in the two prior determinations remains intact: although the raw sugar processing industry was injured, Canadian imports were not a cause of material injury to the nationwide domestic industry, as I continue to believe that industry is most appropriately defined.

[FR Doc. 82-12282 Filed 5-4-82; 8:45 am]
BILLING CODE 7020-02-M

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[28] Atlantic Sugar, Inc. v. United States, Slip Op. 81-119, Dec. 28, 1981.

[29] *See* Sugar and Sirups from Canada, Inv. No. 731-TA-3 (Final), October 1981, Views of Commissioner Stern (hereinafter cited as October 1981 decision) at 18.

[30] See "Views of the Commission" at pp. 3-5 and pp. 9-14.

[31] October 1981 decision at 18.

[32] *Id.* at 19.

[TA-201-46]

Tubeless-Tire Valves; Investigation and Hearing

AGENCY: International Trade Commission.

ACTION: Following receipt of a petition on April 16, 1982, filed on behalf of three U.S. manufacturers of tubeless-tire valves, the U.S. International Trade Commission on April 29, 1982, instituted an investigation (No. TA-201-46) under section 201(b) of the Trade Act of 1974 (19 U.S.C. 2251(b)) to determine whether tubless-tire valves, provided for in items 692.32 and 692.33 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

EFFECTIVE DATE: April 16, 1982.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator, U.S. International Trade Commission, Washington, D.C. 20436 (202-523-0439).

SUPPLEMENTARY INFORMATION:

Public hearing ordered. A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m. on Wednesday, July 14, 1982, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission at his office in Washington no later than the close of business Friday, July 2, 1982.

Prehearing procedures. To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. An original and fourteen copies of such prehearing briefs should be submitted to the Secretary no later than the close of business Wednesday, July 7, 1982. Copies of any prehearing briefs

submitted will be made available for public inspection in the Office of the Secretary. Any prepared statements submitted will be made a part of the transcript. Oral presentations at the hearing should, to the extent possible, be limited to issues raised in the prehearing briefs.

A prehearing conference will be held on Wednesday, July 7, 1982, at 10 a.m., in Room 117 of the U.S. International Trade Commission Building.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined above.

Other written submissions. Other written submissions, except for posthearing briefs, should be filed with the Secretary to the Commission prior to the public hearing. Commercial or financial data which are confidential should be clearly marked "Confidential Business Information" and should be submitted in accordance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Submissions should also conform to the general requirements of § 201.8 of the Commission's rules (19 CFR 201.8).

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: April 30, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12263 Filed 5-4-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1981, and published in the **Federal Register** on December 31, 1981 (46 FR 63409), Aerojet Strategic Propulsion Company, Highway 50 at Hazel Avenue, P.O. Box 15699C, Sacramento, California 95813, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinol (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections having been received and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 28, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-12149 Filed 5-4-82; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Justice

Research on the Utilization of Forensic Evidence in Courts; Grant Solicitation

The National Institute of Justice announces a competitive grant solicitation for research on the utilization of forensic evidence in courts. This research will investigate the use and impact of physical evidence for prosecutors, defense counsels, and courts. The research results are needed to guide law enforcement and criminal justice practitioners on their decisions regarding the use of crime laboratories and physical evidence on criminal cases.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be postmarked no later than June 18, 1982. A total of $200,000 has been allocated for this research.

Additional information and copies of the solicitation may be obtained by contacting: Police Division, National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531, 202/724-2953.

Please enclose a self-addressed mailing label.

Dated: April 29, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-12275 Filed 5-4-82; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel Composers; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers) to the National Council on the Arts will be held on May 25-27, 1982, from 9:30 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on May 26, 1982, from 4:00 p.m.-5:30 p.m. to discuss policy.

The remaining sessions of this meeting on May 25th from 9:30 a.m.-5:30 p.m., May 26th from 9:30 a.m.-4:00 p.m. and on May 27th from 9:30 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 82-12276 Filed 5-4-82; 8:45 am]

BILLING CODE 7527-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council Panel on Future Military Technologies; Meeting

Notice is hereby given that the panel named above will meet at 9:00 a.m. on May 19, 1982, in the Pentagon, Washington, D.C.

The panel will discuss research and development of future military programs.

The meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1): All material under discussion is classified defense information. Authority for closing: Director, Office of Science and Technology Policy.

Contact: Dr. Alf L. Andreassen, Office of Science and Technology Policy, 726 Jackson Place NW., Washington, D.C. 20500, Phone: (202) 395-5884.

Robert D. Linder,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 82-12161 Filed 4-30-82; 2:20 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18680; File No. SR-NYSE-82-6]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.

In the matter relating to proposed rules for the trading of options on mini stock groups.

Comments requested on or before May 26, 1982

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on Aril 9, 1982, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for options on small groups of stocks constituted either on an intra- or inter-industry basis and requiring the delivery of the component stocks ("mini stock group options").

The Exchange currently has pending with the Commission proposed rule changes respecting Treasury security options, File No. SR-NYSE-81-5 (the "Treasury security option filing") and index stock group options, File No. SR-NYSE-82-2 (the "index stock group option filing") (collectively, the "pending option filings"). The pending option filings consist primarily of modifications of and additions to the Exchange's present 700 series rules, which pertain to the "upstairs" regulation of stock options trading. Consequently, the proposed rule change consists for the most part of changes to the pending option filings that are designed to make the Treasury security option rules and index stock group option rules apply to options on mini stock groups as well.

The principal departures from the pending option filings are as follows:

"Pro Forma" Modifications to Rules to Accommodate Mini Stock Group Options—Many of the proposed changes simply seek to apply the concepts of the Treasury security options rules and index stock group options rules to mini stock group options. These changes include:

1. Several new terms are defined by the proposed rule change in order to accommodate mini stock group options. "Stock-related option contract" refers to individual stock options, mini stock options or index stock options. "Stock group option contract" refers only to mini stock options or index stocks options. "Kind of option" can describe either an individual stock option, a Government security option, a mini stock group option, an index stock group option or a GNMA option. The proposed rule change adds several other terms to facilitate reference to mini stock group options.

2. Several existing terms are amended by the proposed rule change to accommodate mini stock group options. For example, the proposed rule change provides that the exercise price for mini stock group options be stated as an average of the prices of the stocks included in the mini group. The aggregate exercise price is determined by multiplying the exercise price by the aggregate number of shares covered by the option.

When writing a call in mini group options, the call is "covered" if the writer owns as to each stock included in the mini group the number of shares of the stock covered by the option.

"Underlying security" is amended to include any of the component stocks delivered on exercise of a mini stock group option. Several additional terms are amended to facilitate reference to the mini stock group option.

3. The proposed rule change provides that bids and offers for mini stock group options be expressed as the premium divided by the aggregate number of shares covered by the option.

4. The proposed rule change proposes minimum fractional changes equal to one-sixteenth (in the case of bids or offers under $3 per underlying share) and one-eighth (in the case of higher bids or offers). Such minimum fractional changes correspond to the minima for bids and offers for individual stock options and index stock group options.

5. To regulate the trading activity of Competitive Options Traders, the same trading restrictions imposed on Competitive Options Traders registered in index stock group options are proposed to be imposed on Competititve Options Traders registered in mini stock group options.

6. The prohibitions on concurrent proprietary transactions in both stock options and their underlying stocks (Rules 96, 102 and 105) are modified by supplementary material to make clear that mini stock group options, but not index stock group options, fall within the prohibitions. This reflects the view that a transaction in a mini stock group option on a group that includes a particular stock achieves the same effect as to that stock as does a transaction in an individual stock option on the same number of shares of the same stock. The modifications' inclusion notwithstanding the Exchange's still-pending 1976 filing regarding these rules, which seeks to confine the prohibitions to options other than those issued by The Options Clearing Corporation, reflects only the inability of the Commission and the Exchange to agree on the appropriateness of the 1976 proposal and is not intended to constitute any modification by the Exchange of the 1976 proposal.

Designation of Mini Stock Group Options—The proposed rule change provides for groups of up to 20 stocks, but initially specific groups of five stocks each. Each five-stock group would have two units of trading: 100 shares (20 shares per component stock) and 500 shares (100 shares per component stock). Assuming an average price per share of $30, this will result in contract sizes of $3000 and $15,000, respectively. Thus, the Exchange proposes to offer one contract size tailored for individual investors ("mini-100 stock group option") and a contract size five times larger for institutions ("mini-500 stock group option"). The smaller contract's 20 shares per stock will result in delivery of odd-lots upon exercise. The larger contract will not. Thus, an institution using the larger contract to hedge an equity position will not be subject to the cost and inconvenience of odd-lot deliveries.

Expiration cycle—As in the case of individual stock options, the proposed rule change provides that mini stock group options will normally have three expiration months. Successive series on mini stock groups will be opened so that series of three, six and nine months' duration will be trading at all times. Such series may follow any three-month expiration cycle (i.e., January-April-July-October, February-May-August-November and March-June-September-December).

Position and Exercise Limits—The proposed rule change provides for the aggregation of mini stock group options and individual stock options in applying position and exercise limits and reporting requirements to affiliated accounts. As proposed, the position limit and the exercise limit for a mini-500 stock group option would be 2000 contracts if the affiliated accounts include (1) no other mini stock group option having one or more component stocks in common with the referent option and (2) no more than 1000

individual stock options on any stock underlying the referent option.

Restrictions on Options Transactions—The proposed rule change imposes certain restrictions on opening writing transactions (modeled on AMEX Rule 909's provisions applicable to individual stock options) if, during a public distribution of a stock included in an underlying mini stock group or a security convertible into the stock, the underwriters are making a stabilizing bid.

Selection of Mini Stock Groups—The proposed rule change provides guidelines for the approval and withdrawal of approval of stocks to be included in an underlying mini stock group. the guidelines are modeled after those applied to individual stock options by Amex Rules 915 and 916. Each component stock must meet initial and maintenance requirements regarding number of publicly held shares, number of shareholders, trading volume, market price per share and other specifications. The fact that a stock may meet the guidelines established by the Exchange does not necessarily mean that it will be approved, or that its approval will not be withdrawn, as a stock qualified for inclusion in a mini stock group.

Trading Halts or Suspensions—The proposed rule change provides for a trading halt or suspension in a mini stock group option whenever trading in a component stock has been halted or suspended in its primary market, the stock's opening has been delayed, or the Exchange has been advised that the issuer of the stock is about to make a significant announcement. These are the same criteria applicable to stocks underlying individual stock options under AMEX Rule 917. The proposed rule change permits the Exchange at its discretion to resume trading in a mini stock group option if the halt or suspension in that option's trading results from the halt or suspension in trading in only one component stock.

Supervisory and Customer-Contact Rules—The proposed rule change also provides that approval of an account for the trading of options on individual stocks will constitute approval of the account for the trading of options on mini stock groups as well as on index stock groups. The OCC prospectus delivery requirement will apply to mini stock group options so that either the OCC prospectus or a supplement thereto containing the requisite material regarding mini stock group options must be delivered.

Exchange Trading of Underlying Stocks—Since the Exchange is likely to be the primary market for most if not all of the stocks included in mini stock groups, the Exchange proposes rule changes and other steps designed to detect and prevent manipulation through concurrent activity in both a mini stock group option and in a stock included in the underlying group. For example, the proposed rule change provides that a specialist cannot act as either an options specialist or a Competitive Options Trader in any mini stock group option whose underlying group includes any of his specialty stocks.

In addition, in order to detect and deter manipulation by means of concurrent activity in mini stock group options and in stocks included in underlying mini stock groups, individual options on such stocks and other mini stock group options (no matter where traded) on any stock group that includes any such stock, the proposed rule change expands the pending option filings' requirements (1) for account identification, and transaction and order reporting, by specialists and Competitive Options Traders and (2) for members' making available books, records and other information to cover all of the above-listed securities. The Exchange also proposes to trade mini stock group options at a location different from that of the underlying stocks.

Specialists and Competitive Options Traders—The proposed rule change carries forward the approach of the index stock group options filing that establishes an independent scheme of affirmative and negative obligations depending upon whether an options specialist or a Competitive Options Trader is registered in Treasury security options, in mini stock groups options or in index stock group options. Thus, for example, a mini stock group options specialist or a mini stock group options Competitive Options Trader would not be required to undertake the obligations of his counterpart registered in index stock group options.

Delivery—The practical difficulties inherent in delivering all underlying shares in the index stock group option context (e.g., delivery of fractional shares and delivery of odd-lots for most or all of the stocks included in the index group) are absent in the mini stock group option context. Therefore, the proposed rule change requires that for mini stock group options, exercise results in delivery of the required number of shares of each stock included in the underlying group.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to permit the Exchange to establish a market for options on small groups of stocks constituted either on an intra- or inter-industry basis and requiring delivery of the component stocks. These proposed options will provide benefits to investors that are not presently available through the trading of individual stock options and that will not be afforded by the trading of index stock group options. Generally, individual stock options allow investors to protect against the risk of short term price fluctuations in the underlying stocks. Index stock group options provide a broad instrument to holders of stock portfolios that permits them to transfer the risk of market- or sector-wide changes in stock prices. The proposed mini stock group options provide a narrow instrument, permitting investors to transfer the risk of select intra- or inter-industry changes in stock prices. The mini stock group options will allow investors to simultaneously hedge against both of these risks through strategic purchases and/or sales of options. For example, a holder of a particular stock who believes that the stock will outperform the stock of other companies in the same industry may be concerned that the price of the stock could decline as a result of factors affecting the industry as a whole. The investor can hedge against the industry risk by buying a put option on a mini stock group comprised only of stock of that industry.

Specific purposes of the various changes to the pending option filings made by the proposed rule change in order to add mini stock group options are noted in Item I above.

(2) *Statutory Basis.* The proposed rule change relates to section 6(b)(1) of the Act in that it would provide a regulatory framework for a market on the Floor in options on mini stock groups. The proposed rule change would give the Exchange the capacity to carry out the purposes of the Act, to comply with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange, and to enforce compliance therewith by Members and persons associated with Members.

Except for the changes necessary to accommodate mini group options trading on the Floor, the Exchange's existing rules, and hence the same bases and policies underlying those rules, apply to the Exchange's proposed market in mini stock group options. Thus, the proposed rule change contemplates the application to Exchange trading of mini stock group options of long-established regulatory principles and techniques that are designed to assure the fairness, orderliness and quality of the Exchange's stock and bond markets.

In particular, the proposed rule change would create rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in connection with transactions in mini stock group options, all as required by section 6(b)(5) of the Act. The Exchange believes that its proposed market for options on mini stock groups will be consistent with the standards of section 6(b)(5), since the Exchange expects such a market to provide increased investment flexibility with respect to individual stocks and portfolios of stocks similar to that provided by the present options markets on other national securities exchanges with respect to individual stocks. Consequently the Exchange believes the public interest will be advanced by Exchange trading of mini stock group options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Quite to the contrary, the Exchange believes that significant benefits will flow to the U.S. economy, to market professionals and to investors from the creation of a free and open market for the trading of standarized options on mini stock groups. The Exchange believes that the proposed rule change will permit the creation of such a market—a market designed to prevent fraudulent and manipulative acts and practices, to permit just and equitable principles of trade, to protect investors and the public interest and to provide appropriate disciplinary procedures applicable to its members and persons associated with its members who violate the rules of the Exchange.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not received or solicited any written comments from members or other interested parties. The Exchange is forming a users advisory committee to assist it in designing its market in options on mini stock groups and will incorporate any appropriate comments suggested by the committee into the proposed rule change by amendment.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before May 26, 1982.

For the Division of Market Regulation, pursuant to delegated authority.

Dated: April 26, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12144 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M.

[Release No. 18690; File No. SR-MSE-82-4]

Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 15, 1982, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule proposal states that, under Article XXX, Rule 6, of the MSE Rules, independent dual issue openings on the MSE will not be permitted solely as an accomodation to member firms.[1] Such openings are prohibited unless the specialist or the firms involved are willing to provide continuous two-sided aftermarkets subsequent to the openings. The MSE states that the purpose of this rule proposal is to remind MSE members of a long-standing policy of the MSE. The MSE further states that the rule proposal is consistent with Section 6 of the Act.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before May 26, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and

[1] An independent dual issue opening occurs where a dually traded security opens on a regional exchange before it has opened on the primary market (typically the New York Stock Exchange).

Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–SE–82–4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12138 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 22-11622]

Petro-Lewis Corp.; Application and Opportunity for Hearing

Notice is hereby given that Petro-Lewis Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of United States Trust Company of New York (the "Trust Company") under the five indentures hereinafter described is not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under all five indentures.

Section 310(b) of the Act provides, in part, that if an indenture trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined therein) it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this Section provides, with certain exceptions stated therein, that a trustee is deemed to have a conflicting interest if it is acting as trustee under a qualified indenture and is trustee under another indenture of the same obligor. However, an issuer may sustain the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under a qualified indentures and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one or more of such indentures.

The Applicant alleges that:

1. It has outstanding, among others, the following five issues of unsecured debentures:

(a) $25,000,000 prinicipal amount of its 11% Subordinated Debentures due 1997 issued under an Indenture dated as of January 1, 1978 (the "11% Debenture Indenture") and executed by the Applicant and the Trust Company, as Trustee. These debentures were registered under the Securities Act of 1933 (File No. 2–60256) and the 11% Debenture Indenture was qualified under the Act.

(b) $35,000,000 principal amount of its 12¼% Subordinated Debentures due 1998 issued under an Indenture dated as of August 1, 1978 (the "12¼% Debenture Indenture") and executed by the Applicant and the Trust Company, as Trustee. These debentures were registered under the Securities Act of 1933 (File No. 2–61875) and the 12¼% Debentures Indenture was qualified under the Act.

(c) $52,000,000 principal amount of its Variable Rate Subordinated Debentures due 2000 issued under an Indenture dated as of July 1, 1980 (the "Variable Rate Debenture Indenture") and executed by the Applicant and the Trust Company, as Trustee. These debentures were registered under the Securities Act of 1933 (File No. 2–67986) and the Variable Rate Debenture Indenture was qualified under the Act.

(d) $125,000,000 principal amount of its Zero Coupon Subordinated Notes due 1989 issued under an Idenure dated as of August 15, 1981 (the "Note Indenture") and executed by the Applicant and the Trust Company, as Trustee. These notes were registered under the Securities Act of 1933 (File No. 2–73406) and the Note Indenture was qualified under the Act.

(e) $129,000,000 principal amount of its Zero Coupon Subordinated Serial Notes in four series, the Series A Notes in the aggregate principal amount of $21,000,000 and the Series B Notes, Series C Notes and Series D Notes, each in the aggregate principal amount of $36,000,000 and Series A Notes due on March 15, 1985, Series B Notes due on March 15, 1986, Series C Notes due on March 15, 1987 and Series D Notes due on March 15, 1987 issued under an Indenture dated as of March 16, 1982 (the "New Indenture") and executed by the Applicant and the Trust Company, as Trustee. These notes were not registered under the Securities Act of 1933 and the New Indenture was not qualified under the Act in reliance on the exemption contained in Section 304(b)(1) of the Act.

2. The debentures and notes issued and outstanding under the 11% Debenture Indenture, the 12¼ Debenture Indenture, the Variable Rate Debenture Indenture, the Note Indenture and the New Indenture are wholly unsecured and are of equal rank as to each other.

3. The Applicant is not in default under any of the five Indentures.

4. With minor exceptions, these five Indentures contain substantially the same provisions, except for variations in aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates, redemption dates, prices and procedures and sinking fund provisions (which are not provided for in the Note Indenture and the New Indenture) and, with respect to the Note Indenture and New Indenture, variations in the provisions relating to events of default and original issue discount. In addition, under the terms of the New Indenture, there are a number of provisions which become operative only upon the qualification of the New Indenture under the Act.

5. In the opinion of the Applicant, any difference in the provisions of the five Indentures is unlikely to cause a conflict of interest in the trusteeship of the Trust Company under said five Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at the Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than May 24, 1982 submit to the Commission, in writing, his views or any substantial facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information

or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert or he may request that he be notified if the Commission should order a hearing thereon. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporate Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12134 Filed 5-4-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 22478; (70-67270)]

Central Appalachian Coal Co., et al.; Proposal To Lease Certain Coal Mining Equipment

April 28, 1982.

Central Appalachian Coal Company ("CACCo"), Southern Appalachian Coal Company ("SACCo"), Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo"), Windsor Power House Coal Company ("WPHCCo"), c/o American Electric Power Service Corporation, 161 West Main Street, Lancaster, Ohio 43130, and Simco Inc. ("SIMCO"), coal mining subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed an application, pursuant to Sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act").

The applicants each propose to enter into a separate Master Leasing Agreement ("Leases") with The Commonwealth System, Inc., of San Mateo, California, (the "Lessor") to lease mining equipment. The Leases will provide for the rental to each Lessee of various types of equipment for surface and underground mining of coal for amortization periods of 3, 5, 7 or 10 years. The total Lessor's Cost (the total price paid by the Lessor for such equipment, including all freight charges, taxes and installation costs) of all equipment to be leased under the Leases shall not exceed an aggregate amount of $16,000,000.

The mining equipment to be leased is necessary for the applicants' mining operations and for the fuel supply operations of Appalachian Power Company, Ohio Power Company and Columbus and Southern Ohio Electric Company. Approximately $14,778,000, or 93% of the mining equipment expected for delivery in 1982, is replacement equipment. In addition, of the $1,222,000 for new equipment, only $225,000 is for actual mining production equipment. The remaining $997,000 is for new equipment which is ancillary to the production equipment.

During the primary term, rent will be payable quarterly in arrears. Rentals will provide for the amortization of Lessor's cost over periods of 12, 20, 28 or 40 calendar quarters. The amortization period of each item will be determined by the Lessee at the time the item is placed under lease. Each quarterly rental payment with respect to an item of equipment under lease will consist of (i) one calendar quarter's amortization of the Lessor's cost of the item on a level basis over the lease term for that item, plus (ii) as an additional rental factor, the Monthly Lease Interest Rate applied to Lessor's unamortized cost of the item on the first day of the calendar quarter. If an item of equipment is placed under lease other than on the first day of a calendar quarter, the rent will be prorated. The Monthly Lease Interest Rate for such quarter shall mean the lowest of the then Base Rate, LIBO Rate or Domestic Money Market bid Rate. The Base Rate will be the rate of interest, as determined by Citibank, in effect on the first day of such calendar quarter, plus 0.15%. The LIBO Rate will be Citibank's 90-day LIBO Rate, as adjusted and determined by the Bank on the first day of such calendar quarter plus .65%. The domestic Money Market Bid Rate will be Citibank's 90-day Domestic Money Market Bid Rate, as adjusted and determined by the Bank, on the first day of such calendar quarter plus .80%.

Assuming a Base Rate of interest of 16% over the term of the leased equipment, the equivalent effective annual interest rate would be 16.15% or lower if the LIBO Rate or Domestic Money Market Bid Rate is less than 16.15%.

With respect to any equipment which is obsolete or no longer useful to Lessee, upon written notice, the Lessee may terminate the lease of all of the equipment thereunder, or of any item of equipment, by purchasing such equipment from the Lessor for the Unamortized Value plus any accrued but unpaid rent and other amounts owing with respect to such equipment and all taxes and charges upon such sale. The Lessee will be required to purchase all items of equipment at the end of the lease term for $1.00. If, during the term of the Lease, the coal supply agreement (the "Coal Supply Agreement") between the Lessee and its immediate parent is terminated for any reason or modified in any way that, in the Lessor's judgment, will materially and adversely affect the ability of the Lessee to perform its obligations under the Lease, the Lessor will have the right to immediately terminate the Lease; in which case the Lessee will be required to pay the Lessor or its Assignee the Unamortized Value of all equipment then under lease plus the prorated lease rate thereon. References in the Leases to the Coal Supply Agreement shall have no effect until such time as a Coal Supply Agreement between Ohio Power and WPHCCo is prepared and all regulatory commission approvals of said agreement where required have been obtained. The Coal Supply Agreement Letter to the Lessor from Ohio Power and WPHCCo will be executed and delivered after all necessary regulatory commission approval has been received. Lessee will not without the prior written consent of Lessor, assign this lease or any interest therein, or sublease or transfer its interest in any of the equipment.

Investment tax credits and accelerated cost recovery system deductions will be for the account of the Lessee. The Leases are structured as net leases, and, accordingly, all costs of operation, maintenance, taxes, (excluding, however, taxes on or measured by the net income or the capital stock or the capital, surplus, undistributed profits and reserves of Lessor), insurance and other affiliated costs are to be borne by the Lessees. The Lessor will be indemnified by the Lessees against all liabilities and risks of loss.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 21, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notifed of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12132 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

International Metals and Petroleum Corp.; Order of Suspension of Trading

April 29, 1982.

It appearing to the Securities and Exchange Commission ("Commission") that there are questions concerning the adequacy and accuracy of the International Metals and Petroleum Corporation ("IMPCO") Form 10-K filing with the Commission with respect to IMPCO's failure to disclose in the Form 10-K the existence of an Order of Permanent Injunction entered against it on November 12, 1981; the suspension of IMPCO's auditor from practicing or appearing before the Commission; and the financial statements contained therein, the Commission is of the opinion that the public interest and the protection of investors requires a summary suspension of trading in the securities of IMPCO.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:30 a.m. on April 29, 1982 through midnight May 8, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12133 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-11423]

R. J. Reynolds Industries, Inc.; Application and Opportunity for Hearing

April 29, 1982.

Notice is hereby given that R. J. Reynolds Industries, Inc. (the "Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that: the trusteeship of The Chase Manhattan Bank (National Association) ("Chase") under an Indenture dated as of May 15, 1980 of the Company (the "Indenture"), which was qualified under the Act, and the trusteeship of Chase under a First Supplemental Indenture dated November 15, 1981 (the "Guarantee") to an Indenture of R. J. Reynolds Tobacco Company ("Tobacco"), dated as of May 1, 1969 (the "Tobacco Indenture"), whereby the Company guarantees the Debentures issued pursuant to the Tobacco Indenture, is not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Irving Trust from acting as trustee under any of said Indentures.

The Company alleges that:

(1) Tobacco is a wholly-owned subsidiary of the Company. At November 1, 1981, Tobacco had outstanding $10,900,000 of its 7% Subordinated Debentures, due June 1, 1989, issued pursuant to the Tobacco Indenture. The 7% Subordinated Debentures were issued in 1969 in a "Rule 133" transaction and the Tobacco Indenture was qualified under the Trust Indenture Act of 1939 (File No. 22-5497). The Company has provided for its guarantee of these Debentures by the Guarantee;

(2) At November 1, 1981, the Company had outstanding $150,000,000 of its 10.45% Notes due May 15, 1990 (the "Notes") issued under the Indenture executed by the Company and Chase, as Trustee. The Indenture was registered under the Securities Act of 1933 (File No. 2-67800) and qualified under the Trust Indenture Act of 1939;

(3) The Indenture and the Guarantee are wholly unsecured, and rank pari passu inter se;

(4) The Company's guarantee of the Debentures is neither superior nor inferior in right of payment to the Notes;

(5) Tobacco is not in default under the Tobacco Indenture or the Debentures. The Company is not in default under the Indenture or the Notes;

(6) Such differences as exist between the Indenture and the Guarantee are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as Trustee thereunder.

The Company has waived notice of hearing any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with the matter.

For a more detailed statement of the matters of fact and law asserted here, all persons are referred to said application, which is a public document on file in the offices of the Commission, at 1100 L Street, N.W., Washington, D.C. 20005.

Notice is further given that any interested person no later than May 25, 1982 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communications or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12135 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18175 (SR-Amex-81-16)]

Self-Regulatory Organizations; American Stock Exchange, Inc., Order Approving Proposed Rule Change

October 16, 1981.

On August 17, 1981, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 (s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which provides for the implementation and operation for options of its Opening Automated Report Service ("OARS"), which is an electronic system to store and automatically report executions of market orders received before the opening of trading. The rule change also provides for special trade comparison and clearing procedures to be used in conjunction with OARS.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-18068, August 28, 1982) and by publication in the **Federal Register** (46 FR 44544, September 4, 1981). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the

requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12136 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18464; SR-Amex-81-23; SR-CBOE-81-29; SR-PSE-81-24; SR-Phlx-81-22]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

February 2, 1982.

The American Stock Exchange, Inc., ("Amex"), 86 Trinity Place, New York, New York 10006,[1] the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Jackson, Chicago, Illinois 60604,[2] the Pacific Stock Exchange, Incorporated ("PSE"), 618 South Spring Street, Los Angeles, California 90014,[3] and the Philadelphia Stock Exchange, Incorporated ("Phlx"), 1900 Market Street, Philadelphia, Pennsylvania 19103,[4] have filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4, proposed rule changes to modify the options allocation plan that the options exchanges use to allocate options on eligible stocks.[5] Among other things, the proposed changes would establish the Options Clearing Corporation as an arbitrator to administer certain parts of the allocation process.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the Amex and CBOE proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, because the rule changes relate solely to a procedural modification in the method by which the existing options exchanges allocate new options, and do not involve matters of broad public interest. Approval of the proposed rule changes before the full notice period will also enable the options exchanges to implement the rule change and conduct allocation procedures for the selection of new options classes as soon as possible. Finally, the fact that no comments were received within the 21 days provided for written comments illustrates the procedural and non-controversial nature of the rule changes. Accordingly, the Commission finds it unnecessary to wait the full statutory period prior to approving the rule changes. The Commission finds good cause for approving the PSE and Phlx proposed rule changes, for which previous notice has not been provided, in that their terms are identical to those of the Amex and CBOE rule changes.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12137 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18689; (SR-NASD-79-1)]

Self-Regulatory Organizations; National Association of Securities Dealers ("NASD"); Order Approving Proposed Rule Change

April 28, 1982.

On March 8, 1982, the NASD filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, Amendment No. 1 to a proposed rule change originally filed on January 22, 1979 (SR-NASD-79-1). The proposed rule change, as amended ("amended proposal"), would amend Schedule D, Part I, section C.3(e) of the NASD's By-Laws to require a registered market maker to clear and settle through the facilities of a registered clearing agency transactions in all securities in which that market maker makes quotes available through the National Association of Securities Dealers Automatic Quotation System ("NASDAQ securities transactions") when such facilities are located within 25 miles of the market maker. The amended proposal, however, would permit a market maker to clear and settle such transactions through any registered clearing agency using a continuous net settlement system; to enter into a correspondent clearing arrangement with an NASD member that clears through a continuous net settlement clearing facility; to settle such transactions "ex-clearing" provided both parties to the transaction agree; or to use direct mail settlement.

Notice of the amended proposal, together with the terms of substance of the amended proposal was given by publication of a Commission Release (Securities Exchange Act Release No. 18575, March 19, 1982) and by publication in the Federal Register (47 FR 12896, March 25, 1982). No comments on the amended proposal were received by the Commission.

The NASD's original proposed rule change (Securities Exchange Act Release No. 15559, February 9, 1979; 44 FR 10163, February 16, 1979) ("original proposal") provided without exception that a registered market maker would have to clear and settle NASDAQ securities transactions through the facilities of a registered clearing agency if such facilities were located within 25 miles of a market maker. Unlike the amended proposal, however, the original proposal did not provide for alternative ways to satisfy the requirement.

The Commission received public comments concerning the original proposal and the NASD forwarded to the Commission comments that it received, including comments received in response to a survey conducted by the NASD to assess the likely impact of the original proposal on market makers. Comments on the original proposal generally were favorable. Commenters noted, for example, that the original proposal would reduce the delays and costs involved in resolving uncompared trades involving market makers that did not participate in the national clearance and settlement system, would reduce the number of fails in the over-the-counter market during higher volume periods, would facilitate the development of a more efficient national clearance and settlement system, and would strengthen the role of the over-the-counter market in the national market system.[1] A few commenters

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[1] File No. SR-Amex-81-23.

[2] File No. SR-CBOE-81-29 as amended January 6, 1982.

[3] File No. SR-PSE-81-24.

[4] File No. SR-Phlx-81-22.

[5] Notice of the Amex and CBOE proposed rule changes together with their terms of substance was given by publication of a Commission release (Securities Exchange Act Release No. 18382, January 4, 1982 and by publication in the Federal Register, 47 FR 1226. No comments were received.

[1] Letters from Jerry Williams, Jerry Williams, Inc. to NASD (June 6, 1978); Edward W. Wedbush,

Continued

asserted, however, that the proposed rule change as originally filed (i) would require market makers within the 25-mile radii to use the particular clearing facilities close to them, rather than the facilities of their choice; and (ii) would require market makers that currently do not use any clearing agency to change their clearing arrangements, which they argued would increase their costs of doing business and thereby reduce their ability to compete effectively as market makers.[3]

As a general matter, the Commission believes that the amended proposal either eliminates or substantially reduces any potentially adverse effects of the original proposal. As the NASD's survey results suggests, only a small percentage of NASDAQ market makers are likely to be affected by the amended proposal,[3] and those market makers will be able to satisfy the requirements of the rule in a number of alternative ways. For example, the amended proposal would permit market makers to participate in any registered clearing agency, to establish correspondent clearing arrangements with an NASD member that clears trades through a continuous net settlement clearing facility, to clear and settle transactions "ex-clearing" whenever both sides to the trades agree, or to use direct clearing services.

The Commission does recognize that the amended proposal will require some market makers to enter into new arrangements for clearing and settling NASDAQ securities transactions and that such a requirement arguably may increase those market makers' costs for clearing and setting transactions.[4] If so, the Commission appreciates that the amended proposal may provide a disincentive to NASDAQ market making by those firms. Nonetheless, the Commission believes that any theoretical burden that may be imposed on competition by the amended proposal is necessary and appropriate to further other purposes of the Act, including purposes articulated in Sections 15A and 17A of the Act.[5] Currently, absent the proposed rule change, market makers that are not members of clearing agencies force *Contra* parties that trade with them to process trades "ex-clearing", even if the *contra* parties participate in the national clearance and settlement system through a registered clearing agency. That result, in effect, means that *contra* parties must use inconvenient, time-consuming and often costly manual processing methods for some over-the-counter trades, notwithstanding their preference to process such trades through registered clearing facilities. Moreover, as a general matter, that forced reliance on antiquated clearance and settlement mechanisms during high volume periods delays trade completion, increases the industry's cost of executing and processing trades, and reduces the percentage of trades that are settled on time.[6] Such results frustrate development of the prompt, accurate, and efficient national system for the clearance and settlement of securities transactions called for by Congress in Sections 17A and 15A of the Act.[7]

Finally, the Commission notes that the requirements of the amended proposal would not apply to all NASD members, but only to market makers in NASDAQ securities. Because NASDAQ market makers play a central role in defining the relative efficiency of the nation's over-the-counter securities markets, the Commission believes the focus of the amended proposal is particularly appropriate. In our view, market makers should not be able to compel parties that deal with them to clear and settle trades inefficiently. Indeed, absent the proposed rule change, market participants may decline to trade with an "ex-clearing" market maker that displays the best bid or offer in a NASDAQ security, simply because those participants do not wish to incure the added incremental costs of processing such trades "inefficiently." Such a result, of course, frustrates the statutory goals of ensuring best execution of public orders and enhancing competition among brokers and dealers.[8]

Accordingly, the Commission believes that the proposed rule change would foster the use of efficient clearing arrangements and thereby facilitate the establishment of a prompt, accurate and efficient national system for the clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and in particular, the requirements of Sections 11A, 15A, and 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12140 Filed 5-4-82; 8:45 am]

BILLING CODE 8010-01-M

Wedbush, Noble, Cooke, Inc. to NASD (June 5, 1978); Jack Rubens, Monroe Securities, Inc. to NASD (May 31, 1978); Herbert I. Levitt, Spear, Leeds & Kellogg to NASD (December 5, 1980); Herbert I. Levitt, Spear, Leeds & Kellogg to the Commission (May 11, 1981); Herbert I. Levitt, Spear, Leeds & Kellogg to the Commission (October 9, 1981); S. Muir Atherton, Pacific Clearing Corporation and Pacific Securities Depository Trust Company to the Commission (May 15, 1980); and Edward I. O'Brien, Securities Industry Association to the Commission (September 30, 1981).

[3] Letters from Gene S. Olson, Securities Clearing of Colorado, Inc. to NASD (June 19, 1978); Joseph F. Dugos, Omega Securities, Inc. to NASD (June 14, 1978); Kenneth W. Cole, First Colorado Investments & Securities, Inc. to NASD (June 16, 1978); Randall Vanek, Harper, McLean & Co. to NASD (June 7, 1978); and John J. Carroll, John J. Carroll & Co. to NASD (May 30, 1978). The NASD also received some unfavorable comments on the original proposal in response to its survey of NASDAQ market makers.

[4] NASD, [Results of] Questionnaire on Market Makers' Use of Clearing Facilities, attached to letter from Frank J. Formica of the NASD to the Commission (October 7, 1980) (File No. SR-NASD-79-1). The survey indicated that 12 of the 225 firms responding to the NASD survey would have to establish new clearing arrangements to comply with the terms of the original proposal.

[4] As a factual matter, however, the Commission questions whether use of clearing agencies would increase the aggregate clearing costs for any particular NASDAQ market maker. The Commission believes that, in general, the efficiencies inherent in clearing agency usage provide significant clearing economies to broker-dealers. Indeed, the Commission expects that market makers affected by the amended proposal may well find their aggregate clearance and settlement costs reduced through direct or indirect participation in the national clearance and settlement system.

[5] When enacting the Securities Acts Amendments of 1975, Congress intended the Commission to evaluate proposed rules by balancing any perceived anticompetitive effects of the rule against other regulatory objectives of the Act that the rule would further. H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 100 (1975).

[6] *See e.g.*, letters from Herbert J. Levitt, Spear, Leeds & Kellogg to NASD (Decemberr 5, 1980) and Edward W. Wedbush, Wedbush, Noble, Cooke, Inc. to NASD (June 5, 1978).

[7] Section 17A of the Act recognizes the need to extend the use of automation and reduce inefficient procedures in securities processing. Section 15A of the Act provides that the rules of a registered securities association must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and facilitating securities transactions.

[8] *See* Sections 11A(a)(1)(C) and 15A(b)(6) of the Act.

[Release No. 18883; File No. SR-NSCC-82-5]

Self-Regulatory Organizations Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation

April 28, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1982, the National Securities Clearing Corporation ("NSCC") filed with the Securities Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

The proposed rule change allows NSCC to expand the number of compared trades in Balance Order Securities to be included in NSCC's Balance Order System. Under the rule change, trades in Balance Order Securities that are compared during the first three days after trade date will be netted, allotted and included in Balance Orders generated by NSCC and distributed to NSCC members on the forth day after trade date. A Compared Summary for Balance Order securities will available to NSCC members on the fourth day after trade date, detailing the compared trades and Balance Order securities due for settlement on the next day. Previously, NSCC's procedures only allowed trades compared on the first two days after trade date to be netted and allotted in NSCC's Balance Order System. Under the rule change, trades in Balance Order Securities that are not compared by the third day after trade date will be designated as "special trades" and, as such, will be settled on a broker-to-broker basis.

The proposed rule change also allows NSCC to include in this netting and allotting procedure compared trades in Balance Order When-Issued Securities and off-lot trades in Balance Order Securities. Previously, NSCC's procedures excluded from the netting and allotting operation of the Balance Order System compared odd-lot trades executed over-the-counter and on national securities exchanges other than the New York and American Stock Exchanges. Under the rule change, odd-lot trades, other than those executed on the New York and American Stock Exchanges, will be aggregated into round lots to the extent that the odd-lots involve the same *contra* broker. Odd-lots that cannot be aggregated and those shares remaining after aggregation will be separately netted and allotted, to the extend possible.

Finally, the rule change makes several procedural amendments to NSCC's procedures. A new formula for "Uniform Settlement Price" is included and the "Clearance Cash Adjustment," which adjusts the Uniform Settlement Price to the price at which the trades were executed, now will appear on the Compared Summary for Balance Order Securities. Also, the rule change adds NSCC RULE 44(2), which requires that physical deliveries pursuant to Balance Orders be made at the receiver's "specified location," that new term being defined in NSCC Rule 1 as "the location where a Member or Non-Member Bank receives envelope deliveries."

The purpose of the rule change, according to NSCC, is to begin implementation of the Physical Inter-Posed Net Settlement System ("PINS"). This rule change is the first in a series that eventually will enable NSCC to be the *contra* side of each Balance Order and will therefore allow NSCC to control open Balance Orders beyond settlement date. NSCC, thus, will be able to provide guarantees and dividend protection for Balance Order Securities similar to the guarantees and dividend protection for securities eligible for inclusion in NSCC's Continous Net Settlement System.

MSCC believes that the rule change is consistent with the Securities Exchange Act of 1934, in that it will provide for the prompt and accurate clearance and settlement of securities transactions.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securites and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–NSCC–82–6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Pulbic Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspeciton and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12139 Filed 5–4–82; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—George G. Kundahl—202–272–2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services Washington, D.C. 20549.

Revision

Notice pursuant to Rule 17f–2(e) (17 CFR 240.17f–2(e)) Sec. File No. 270–37.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance the proposed revision of Rule 17f–2(e), (17 CFR 240.17f–2(e)) which requires every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency to make and keep current a statement entitled "Notice Pursuant to Rule 17f–2" (the "Notice").

The potential respondents are members of a national securities exchange, brokers, dealers, registered transfer agents and registered clearing agencies. The effects of the rule change on these respondents include clarifying the content requirement for Notices, eliminating the Notice "filing" requirement and exempting certain low volume registered transfer agents from the Notice requirement.

Submit comments to OMB Desk Officer: Robert Veeder 202–395–4814.

George A. Fitzsimmons,

Secretary.

April 30, 1982.

[FR Doc. 82–12287 Filed 5–4–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to Section 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective May 1, 1982, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 13.895% per annum.

Dated: April 29, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-12270 Filed 5-4-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/517]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a joint meeting on June 2, 1982, of the Working Groups on Multilateral Investment Standards for MNEs and U.N. Activities and Transfer of Technology of the Advisory Committee on International Investment, Technology, and Development. The two Working Groups will meet from 3:00 p.m. to 5:00 p.m. The meeting will be held in room 1105 of the State Department, 2201 C Street, NW., Washington, D.C.20520. The meeting will be open to the public.

The principal purpose of the meeting will be to review the U.S. position on the U.N. Code of Conduct Relating to Transnational Corporations in preparation for the eighth meeting of the U.N. Commission on TNCs to be held in Manila in August. The meeting will also discuss the Interim Committee meetings on the Transfer of Technology Code, specifically chapter 4 on Restrictive Business Practices and Chapter 9 on Applicable Law, and discuss proposed changes in the status of UNIDO and the implications for U.S. multinationals.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

As time permits, members of the public attending the meeting may make comments.

Dated: April 21, 1982.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 82-12277 Filed 5-4-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/516]

Joint Working Party of the National Organizations of the International Radio Consultative Committee and the International Telegraph and Telephone Consultative Committee; Meeting

The Department of State announces that the Joint Working Party of the U.S. Organizations for the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT), in preparation for the Plenipotentiary Conference of the International Telecommunication Union, September 28-November 5, 1982, Nairobi, Kenya, will meet on May 19, 1982 at 9:30 a.m. in Room 1408, Department of State, 2201 C Street, NW., Washington, D.C.

The main purposes of the meeting will be:

1. To assist the Government in analyzing proposals submitted to the Plenipotentiary Conference by foreign administrations;

2. To assist the Government in rationalizing the ITU's technical cooperation role and the nature and objectives of our interests in this area of the Union's activities;

3. To backstop, generally, the further development of U.S. positions for the Plenipotentiary Conference;

4. Any other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the building is controlled; all persons wishing to attend the meeting must inform their names to Mr. Arthur L. Freeman, Department of State; telephone 202-632-3405. Attendees must use the C Street entance to the building.

Arthur L. Freeman,

Director, Office of International Communications Policy.

April 15, 1982.

[FR Doc. 82-12278 Filed 5-4-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/519]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 19, 1982 at 2:00 p.m. in Room 2722B of the Department of State, 2201 C Street, NW., Washington, D.C. This Study Group deals with international telegraph operations.

The purpose of this meeting is to review four proposed U.S. contributions to CCITT Study Group VIII in the area of recommendations for Group 3 and Group 4 facsimile equipment. The proposed contributions were developed by Committee TR. 29 of the Electronic Industry Association.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to May 19, members of the general public who plan to attend the meeting so advise Mr. Richard H. Howarth, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632-1007. All non-Government attendees must use the C Street entrance to the building.

Dated: April 20, 1982.

Richard H. Howarth,

U.S. CCITT National Committee.

[FR Doc. 82-12279 Filed 5-4-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/518]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting on June 9, 1982, at 9:30 a.m., in Room 3201 of the U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting is to finalize preparations for the 48th Session of the Council of the Intergovernmental Maritime Consultative Organization (IMCO), which is scheduled for June 14–18 in London. In particular, the SHC will discuss development of U.S. positions dealing with, inter alia, the following topics:

—Reports of the various committees
—Implementation of conventions and other multilateral instruments
—Personnel matters
—Financial matters

Members of the public may attend up to the seating capacity of the room.

Interested persons may seek information by writing Mr. G. P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone (202) 426-2280.

Dated: April 21, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82-12280 Filed 5-4-82; 8:45 am]

BILLING CODE 4710-07-M

SUSQUEHANNA RIVER BASIN COMMISSION

Special Studies on Project for Storage and Release of Waters at Cowanesque Reservoir; Public Hearing

The Susquehanna River Basin Commission will hold a public hearing on Thursday, June 10, 1982 at the Holiday Inn—Downtown, 1 Holiday Plaza, Elmira, N.Y. beginning at 10:30 a.m. This hearing will deal with the scope and methodology of certain special studies to be conducted by the Commission in connection with a possible project for storage and release of water at the Cowanesque Lake Project. As required under Article 4 of the Susquehanna River Basin Compact, the studies will: (1) Review pertinent rights, plans and programs of the signatory parties, their political subdivisions and private users; (2) evaluate storage project impacts, if any, on rights, plans, programs, the environment, and existing water users; and (3) develop an operational and management plan for the storage project. The Commission will consider other reasonable subjects for study as may be suggested at this hearing.

The Cowanesque Lake Project is a Corps of Engineers flood control-recreational reservoir located on the Cowanesque River about 2.2 miles upstream of its confluence with the Tioga River near Lawrenceville in northcentral Tioga County, Pennsylvania. The Tioga River flows into New York State where it joins the Cohocton River at Painted Post, New York to form the Chemung River. The Chemung then flows through the Corning-Elmira, New York areas before entering Pennsylvania in the vicinity of Athens-Sayre.

Growing residential, commercial, industrial, agricultural and other water uses in the Susquehanna River Basin prompted the Commission to recommend to the Corps of Engineers an analysis of the full water supply potential of the Cowanesque Lake Project for all likely downstream users. With the Commission's recommendation, and with the receipt of letters from potential downstream users expressing an interest in purchasing water supply storage, the Corps undertook a Reformulation Study of the Project in June 1979. Following completion of the Study, the Corps recommended that the Project be modified to include water supply storage at elevation 1,080 feet. Water supply storage at Cowanesque would be added under the authority of the Water Supply Act of 1958, 43 U.S.C. 390b.

A joint Corps-Commission public hearing was held on the so-called "1080 Plan" in November 1981 at Tioga Junction, Pennsylvania. In January 1982, the Commission adopted the 1080 Plan into the Early Action Section of its Comprehensive Plan for funding and completion as soon as possible. This action was conditioned upon the favorable outcome of special studies to be carried out on the impacts of the storage project. If the studies prove favorable, and participating downstream users fulfill certain obligations to the Commission, the Commission may, at some future time, enter into an agreement with the Federal government for the storage and release of waters for downstream users.

At the hearing, the public will have an opportunity to express directly to the Commission their ideas and opinions regarding the scope and methodology of the proposed special studies. The hearing itself will be informal in nature. Interested parties are invited to participate in the hearing by making oral or written statement presenting their data, views and comments on the proposed special studies. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given an opportunity to be heard, whether or not they have given such notice. After the hearing, the Commission will consider all relevant material and decide on the scope and methodology to be employed in the proposed special studies.

For additional information on this hearing, contact the Secretary, Susquehanna River Basin Commission, 1721 N. Front St., Harrisburg, Pa. 17102-2391, (717) 238-0423.

Dated: April 27, 1982.

Robert J. Bielo,

Executive Director.

[FR Doc. 82-12281 Filed 5-4-82; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Hazardous Substance Liability Insurance: Feasibility of Private Insurance for Post-Closure Financial Responsibility

AGENCY: Office of the Secretary, Office of Financial Institutions and Capital Markets Policy, Treasury.

ACTION: Request for public comments and opportunity for public hearing.

SUMMARY: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 requires the President to make a determination, after a public hearing, on the feasibility of establishing or qualifying an optional system of private insurance for post-closure financial responsibility for hazardous waste disposal facilities. A public hearing on this issue will be held on June 2, 1982 in Room 4121 of the Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, D.C., if interested persons desire to make an oral presentation at that time. The Department will also consider any written data that interested persons may wish to submit in lieu of making a presentation at a hearing.

DATES: All communications regarding a request to appear at a hearing must be

in writing and be received by May 24, 1982. All written material that persons may wish to be considered in this matter must be received by June 9, 1982, whether or not persons submitting such material desire to participate in a hearing.

ADDRESS: All comments should be sent to Gordon Eastburn, Acting Deputy Assistant Secretary, Office of Financial Institutions and Capital Markets Policy, Room 3025, Department of the Treasury, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mark G. Bender, Senior Economist, Office of Financial Institutions and Capital Markets Policy, Room 2206, Department of the Treasury. Telephone (202) 566–2505.

SUPPLEMENTARY INFORMATION: Under Section 107(k)(4)(A) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. 96–510), the Secretary of the Treasury was required to study the "feasibility of establishing or qualifying an optional system of private insurance for post-closure financial responsibility for hazardous waste disposal facilities." A notice requesting public comment on relevant issues was published on July 9, 1981, 46 FR 35604. The study has since been completed and transmitted to Congress (see, *Hazardous Substance Liability Insurance,* Department of the Treasury, March 1982).

Section 107(k)(4)(B) of the Act also requires that the President of the United States make a determination on this question after a public hearing. The Department intends to hold a public hearing on June 2, 1982, in Room 4121 of the Treasury Department, 15th and Pennsylvania Avenue NW., Washington, D.C., only if interested parties desire to make an oral presentation at that time. Otherwise, interested parties are invited to submit written data, views and arguments on this question, which will be considered in lieu of information presented at a hearing. In addition, written comments on this question are requested whether or not a public hearing is held.

The issues to be addressed by written comments and/or in oral presentations at a hearing are as follows:

A. Feasibility of private post-closure insurance coverage under current market conditions;

B. Feasibility of private post-closure coverage under future market conditions;

C. Incentives and disincentives for private insurance coverage;

D. Comparability of private insurance to the Federal Post-Closure Trust Fund;

E. Costs; factors affecting premiums;

F. Minimum standards:

1. Policy endorsement
2. Cancellation restrictions
3. Duration and coverage amounts
4. Exclusions
5. Other

Parties desiring to make oral presentations at a hearing should submit the following information to be received by May 24, 1982, in letter form.

1. Name and address of party or organization to be represented;

2. Name(s) of individual(s) to make the oral presentation;

3. A summary of the information to be presented;

4. A description of any of the information that has been previously submitted by the party;

5. Telephone number where the party can be reached;

6. A statement of whether there will also be written submissions.

Parties desiring to make written submissions, whether or not they wish to participate in a hearing, should see that their materials are received by June 9, 1982.

Dated: April 30, 1982.

Gordon Eastburn,

Acting Deputy Assistant Secretary.

[FR Doc. 82–12150 Filed 5–4–82; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

During the period April 26 through April 29, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634–2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of each entry.

Date Submitted: April 28, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (new submission).

Form Number: DIR–DET 1–201.

Type of Submission: New.

Title: Consent or Request for Disclosure.

Purpose: Provides for taxpayer to designate another person to receive confidential tax information concerning himself/herself.

OMB Reviewer: Karen P. Sagett, (202) 634–6880. Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports, Management Officer.

[FR Doc. 82–12175 Filed 5–4–82; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on May 20, 1982, at 10:30 a.m., the Muskogee Station Committee on Educational Allowances shall at Room 2A20, 125 South Main Street, Muskogee, Oklahoma, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Southwest Automotive and Machinist School, 1520 South Central, Oklahoma City, Oklahoma, should be discontinued, as provided in 38 CFR 21.4134, because of requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: April 27, 1982.

Ray E. Smith,

Director, VA Regional Office.

[FR Doc. 82–12282 Filed 5–4–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 87
Wednesday, May 5, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

TIME AND DATE: 10 a.m., May 7, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items adopted by Notation.
2. *Regulatory Flexibility Act*, definition of "small business". (Memo 1255, OGC).
3. Report to Congress on Airline Mergers. (Memo 1260, OGC)
4. Antitrust Policy for the Airline Industry. (OGC)
5. Docket 39975, *Trenton Hub Express Airline, Inc.*, Order Dismissing Petition for Reconsideration. (OGC)
6. Docket 40603, Application of Air Niagara, Inc. under Subpart Q of the Board's Regulations for a determination of fitness and a certificate of public convenience and necessity to provide scheduled air transportation. (BDA)
7. Docket 32542, 32543, 33362, 30809, 30790, 34579, 36004, 36962, 34485, *Applications of Aeroamerica, Inc., Former Large Irregular Air Service Investigation, Oakland Service Case, U.S.-Benelux Low-Fare Proceeding, Applications of Aeroamerica, Inc. for sections 408 and 409 Approval, for Certificate Authority and for an Exemption.* (OGC)
8. Docket EAS-432, Petition for Reconsideration of the essential air service determination of Augusta/Waterville, Maine. (Memo 261-B, BDA, OCCCA)
9. Docket 40274, Notice of Republic Airlines to terminate scheduled service at Thief River Falls, Minnesota. (BDA, OCCCA)
10. Dockets 40481 and 40484, Cascade's notice to terminate service at Astoria/Seaside, Oregon, and request to suspend early. (Memo 1267, BDA, OCCCA)
11. Dockets 40606 and 40609, Republic Airlines, Inc.'s notice to reduce service at Twin Falls, Idaho below essential level and request for exemption to permit early reduction (Memo 1263, BDA, OCCCA)
12. Docket 34774, Selection of Carrier for Essential Air Service at McAlester, Oklahoma and Paris, Texas. (Memo 507-B BDA, OCCCA)
13. Dockets 36445 and 36536, Air Pacific's Notice of Intent to suspend service at Chico, California. (Memo 867-B BDA, OCCCA, OC)
14. Dockets EAS-633 and 40340, 90-day notice of Continental Airlines to terminate its Honolulu-Pago Pago service. (Memo 227-F, BDA, BCAA, OCCCA)
15. Docket 34681, Application of USAir for compensation for losses for providing interim essential air service at Plattsburgh, Massens, Watertown, Saranac Lake/Lake Placid, and Ogdensburg, New York, and Rutland, Vermont. (Memo 1259, BDA, BCAA, OC, OCCCA)
16. Petitions of Tyee Airlines, Inc., Docket 40516, LAB Flying Service, Inc., Docket 40517, and Channel Flying, Inc., Docket 40519 for a Temporary Mail Rate. (Memo 1256, BDA)
17. Docket 38823, Agreement CAB 28720, R-1 through R-19, IATA agreement establishing a new U.S.-Africa fare structure for the period beginning June, 1982, through March, 1983. (Memo 1254, BIA)
18. Dockets 40576 and 40602, Applications of World Airways and Capitol Air for Newark-London exemption authority. (Memo 1268, BIA, OGC)
19. Docket 40294, Final order in the *United States-Latin America All-Cargo Show Cause Proceeding.* (Memo 960-A BIA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-664-82 Filed 5-3-82; 3:50 pm]

BILLING CODE 6320-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Wednesday, May 12, 1982 Following Oral Argument

The Commission will hold a closed meeting Wednesday, May 12, 1982, for the purpose of issuing instructions to the staff following scheduled oral arguments on Exceptions to Supplemental Initial Decision in the City of New York Municipal Broadcasting System AM radio proceeding (Docket Nos. 11227, 17588, 19403) and Exceptions to the Initial Decision of the Administrative Law Judge granting the renewal application of Radio Station WABZ in the Albemarle, North Carolina, FM radio proceeding and denying the competing application of Victor Broadcasting, Inc. for a construction permit (Docket Nos. 78-63 and 78-64).

Oral Argument in the case of City of New York Municipal Broadcasting System (WNYC), Docket Nos. 11227, 17588 and 19403 is scheduled to start at 9:30 a.m. The parties are to present oral argument as follows:

Midwest Radio-Television, Inc.—Twenty (20) minutes
City of New York Municipal Broadcasting System—Twenty (20) minutes
The State of Minnesota—Five (5) minutes
Aircraft Owners and Pilots Association and National Business Aircraft Association—Five (5) minutes
Chief, Broadcast Bureau—Twenty (20) minutes

Oral Argument in the case of Radio Station WABZ, Inc. and Victor Broadcasting, Inc., Docket Nos. 78-63 and 78-64 is scheduled to start at 10:40 a.m. The parties are to present oral argument as follows:

Victor Broadcasting, Inc.—Twenty (20) minutes
Radio Station WABZ, Inc.—Twenty (20) minutes
Broadcasting Bureau—Twenty (20) minutes

The closed meeting will take place in Room 856 at the same address after the conclusion of the oral arguments. This meeting is closed to the public because of the disposition of adjudicatory proceedings (See 47 CFR 0.603(j)).

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office; telephone number (202) 254-7674.

Issued: April 27, 1982.

William J. Tricarico,

Federal Communications Commission.

[S-656-82 Filed 5-3-82; 10:22 am]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:40 a.m. on Friday, April 30, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Pacific Coast Bank, San Diego,

California, which was closed by the Superintendent of Banks of the State of California on Thursday, April 29, 1982; (2) accept the bid for the transaction submitted by Commonwealth Bank, Hawthorne, California; (3) approve the application of Commonwealth Bank, Hawthorne, California, for consent to purchase the assets of and assume the liability to pay deposits made in Pacific Coast Bank, San Diego, California; and (4) provide such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require condsideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsection (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 30, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-650-82 Filed 5-3-82; 12:50 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

April 30, 1982.

TIME AND DATE: 10 a.m. May 7, 1982.

PLACE: Room 9306, 825 North Capitol Street, NE., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Mid Louisiana Gas Company, et al.* v. *FERC,* 5th Cir. Nos. 80-3804 and 80-4010.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[S-655-82 Filed 4-30-82; 4:25 pm]

BILLING CODE 6717-02-M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 18982, Monday, May 3, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, May 6, 1982.

PLACE: Board room, Sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following items have been added to the open portion of the Bank Board meeting:

FSLIC Insurance Coverage of Deferred Compensation Plans and Trust Accounts Amendments Relating to Change in Control

[No. 29, May 3, 1982]

[S-663-82 Filed 5-3-82; 3:40 pm]

BILLING CODE 6720-01-M

6

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 16701, April 19, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Wednesday, May 12, 1982.

CHANGES IN THE MEETING: Additional agenda item.

4. (a) Miniature, battery-operated, all-terrain wheeled vehicles (Docket No. 818).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-654-82 Filed 4-30-82; 4:08 pm]

BILLING CODE 7020-02-M

7

LEGAL SERVICES CORPORATION

Committee on Operations and Regulations

TIME AND DATE: 9 a.m.-5 p.m., Friday, May 14, 1982.

PLACE: Atlanta Biltmore Hotel, 817 West Peachtree Street, NE., Atlanta, Georgia 30308.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Subcommittees and Membership Thereof.
2. Revision of Regulation Re Board Meetings.
3. Review of Existing Regulations.
4. Litigation Audit Regulations.
5. Future Meetings.
6. Vice-Chairman of Board.
7. Report from President of the Corporation.
8. Other Business.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Date Issued: April 30, 1982.

Gerald M. Caplan,

Acting President.

[S-656-82 Filed 5-3-82; 9:40 am]

BILLING CODE 6820-33-M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9 a.m., May 20, 1982.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: May 3, 1982.

[S-660-82 Filed 5-3-82; 2:20 pm]

BILLING CODE 7600-01-M

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., May 13, 1982.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: May 3, 1982.

[S-661-82 Filed 5-3-82; 2:20 pm]

BILLING CODE 7600-01-M]

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on May 6, 1982.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: May 3, 1982.

[S-662-82 Filed 5-3-82; 2:20 pm]

BILLING CODE 7605-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the Week of May 10, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, May 11, 1982, at 10:00 a.m. An open meeting will be held on Thursday, May 13, 1982, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calandared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9) (A) and (10) and 17 CFR 200.402(a)(4)(8)(9) (i) and (10).

Chairman Shad and Commissioners Loomis, Evans, Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 11, 1982, at 10:00 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.
Institution and settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.
Institution of injunctive action.
Opinions.

The subject matter of the open meeting scheduled for Thursday, May 13, 1982, at 10:00 a.m., will be:

1. Consideration of whether to issue a release (i) seeking comment on whether or not a rule addressing "internalization" of order flow is necessary, and (ii) proposing for adoption various internalization rules. For further information, please contact Bill Uchimoto at (202) 272–2906.

2. Consideration of whether to adopt certain amendments to the investment adviser registration, disclosure and reporting requirements proposed in Advisers Act Release No. 766 and other temporary amendments to Part I of Form ADV which would delete Items 5(b), 7(b), 13(b), 15(i) and (iii), and 16(i) and (iii). For further information, please contact Arthur E. Dinerman, at (202) 272–2079.

3. Consideration of whether to adopt Rule 486 (previously designated Rule 466) under the Securities Act of 1933 under which most post-effective amendments to registration statements filed by insurance company separate accounts would be permitted to become effective automatically without affirmative action on the part of the Commission or its staff. For further information, please contact Kathleen A. Jackson at (202) 272–2115.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Diane Klinke at (202) 272–2178.

April 30, 1982.

[S-657-82 Filed 5-3-82; 9:14 am]

BILLING CODE 8010-01-M

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Federal Register

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Wednesday, May 5, 1982

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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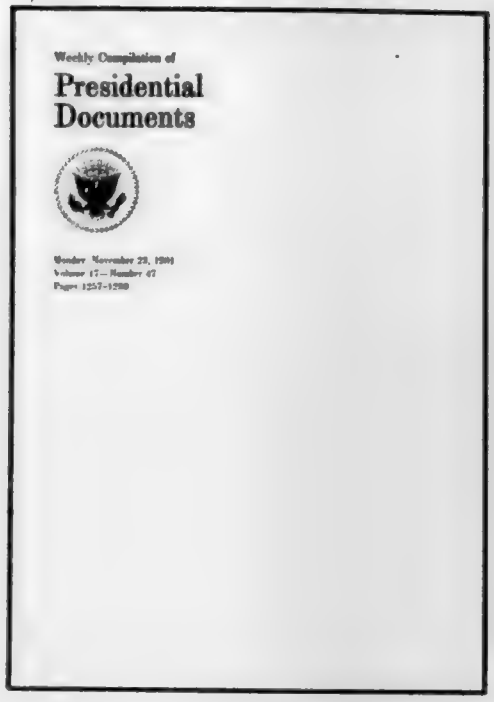

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5-6-82
Vol. 47 No. 88
Pages 19509-19656

federal register

Thursday
May 6, 1982

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Title 3—

The President

Proclamation 4939 of May 4, 1982

Flag Day and National Flag Week, 1982

By the President of the United States of America

A Proclamation

Two hundred seven years ago, in June 1775, the first distinctive American flags to be used in battle were flown over the colonial defenses at the Battle of Bunker Hill. One flag was an adaptation of the British "Blue Ensign" while the other was a new design. Both flags bore a symbol reflecting the experience of Americans who had wrested their land from the great forests: the pine tree.

At the same time, as the colonies moved toward a final break with the mother country, other flags appeared. At least two of them featured a rattlesnake, symbolizing vigilance and deadly striking power. Each of these bore a legend. One was "Liberty or Death," and the other was "Don't Tread on Me." The Grand Union Flag was raised over Washington's Continental Army headquarters on January 1, 1776. It displayed not only the British crosses of St. George and St. Andrew but also thirteen red and white stripes to symbolize the American colonies. In 1776, the Bennington flag appeared. Its design included thirteen stars, thirteen stripes, and the number "76".

On June 14, 1777, two years after the Battle of Bunker Hill, the Continental Congress chose a flag which expressed very directly the unity and resolve of the colonies which had banded together to seek independence. The delegates voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

After more than two centuries, the flag chosen by the Continental Congress on that June day in Philadelphia still flies today over our Nation, symbolizing a shared commitment to freedom and equality and altered only to reflect our growth to fifty states with the gradual addition of thirty-seven more white stars.

To commemorate the adoption of our flag, the Congress by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and the display of the flag of the United States on all Government buildings. The Congress also requested the President by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate June 14, 1982, as Flag Day and the week beginning June 13, 1982, as National Flag Week, and I direct the appropriate officials of the Government to display the flag on all Government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, set aside by Congress as a time to honor America (89 Stat. 211), by having public gatherings and activities at which they can honor their country in an appropriate manner.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th. day of May in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-12496
Filed 5-4-82; 3:27 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 47, No. 88
Thursday, May 6, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 689; Valencia Orange Reg. 689, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 7–13, 1982, and increases the quantity of such oranges that may be so shipped during the period April 30–May 6, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective May 7, 1982, and the amendment is effective for the period April 30–May 6, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1, and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on May 4, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. Section 908.989 is added as follows:

§ 908.989 Valencia Orange Regulation 689.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 7, 1982, through May 13, 1982, are established as follows:

(1) District 1: 441,000 cartons;
(2) District 2: 459,000 cartons;
(3) District 3: Unlimited cartons.

2. Section 908.988 Valencia Orange Regulation 688 (47 FR 16321), is hereby amended to read:

§ 908.988 Valencia Orange Regulation 688.

* * * * *

(1) District 1: 539,000 cartons;
(2) District 2: 561,000 cartons;
(3) District 3: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 5, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82–12581 Filed 5–5–82; 12:33 pm]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Standards for Protection Against Radiation; Replacement of Provisions of Regulatory Guide 8.15

Correction

In FR Doc. 82–10366, appearing at page 16162 in the issue for Thursday, April 15, 1982, please make the following corrections:

(1) On page 16163, in the third column, in the last paragraph, in the first line, the reference to "Footnote (1)" (one), should have read "Footnote (l)" ("ell").

(2) On page 16164, in the first column, in the second line, the reference to "Footnote (1)" (one), should have read "Footnote (l)" ("ell").

(3) On page 16165, in Appendix A, under the table, in footnote $^{4-1}$, the formula should have read:

$$\text{Concentration inhaled} = \frac{\text{Ambient airborne concentration}}{\text{Protection factor}}$$

BILLING CODE 1505–01–M

10 CFR Part 50

Emergency Planning and Preparedness for Research and Test Reactors: Extension of Submittal Dates

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations in order to: (1) Increase the thermal power level threshold for the submittal of emergency plans from 500 kilowatts thermal to 2 megawatts thermal, (2) Extend the submission date for emergency plans for those facilities having power levels of 2 megawatts and above to four months after the effective date of the rule and (3) Require all research and test reactors below 2 megawatts thermal to submit emergency plans by November 3, 1982.[1] The increase in thermal power level threshold for the submittal of emergency plans more accurately reflects the power level at which the potential for any significant offsite consequences exist. The effect of the final amendment would be that affected licensees are provided sufficient time to prepare upgraded emergency plans.

EFFECTIVE DATE: May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Perkins, Acting Chief, Incident Response and Development Branch, Division of Emergency Preparedness, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301–492–7361).

SUPPLEMENTARY INFORMATION:

I. Amendments to 10 CFR Part 50 and Appendix E to Part 50

On August 19, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 55402), amendments to its regulations concerning the upgrading of emergency planning and prepardness. The effective date for these regulations was November 3, 1980.

Among other things, the revised regulations required each licensee authorized to possess and/or operate a research or test reactor facility with power levels greater than or equal to 500 KW thermal, under licenses of the type specified in 10 CFR 50.21(c), to submit emergency plans to the Director of Nuclear Reactor Regulation for approval within one year from the effective date of the rule, *i.e.* by November 3, 1981. A similar requirement for such reactors with power levels less than 500 KW thermal requires emergency plan submittals by November 3, 1982.

II. The Amendment to 10 CFR 50.54(r)

The NRC staff evaluated the capabilities of the 24 licensees operating at 500 KW thermal or above to submit revised emergency plans by November 3, 1981 which would meet all of the requirements in the emergency planning and preparedness regulations. *See* 10 CFR 50.54(r), (q) and Appendix E to Part 50.

These 24 licensees were not able to submit emergency plans fully complying with 10 CFR Part 50 requirements by November 3, 1981. This inability to meet the November 3, 1981 date for submitting emergency plans is attributed to the delay in development of revised guidance criteria for the preparation of emergency plans for research and test reactors that are consistent with the amended regulations.

On December 31, 1981, a proposed rule was published in the **Federal Register** (46 FR 63315), for those research and test reactor licensees required to submit emergency plans by November 3, 1981. The proposed rule would have (1) increased the thermal power level threshold for the submittal of emergency plans from 500 kilowatts thermal to 2 megawatts thermal, (2) extended the submission date for emergency plans for those facilities having power levels of 2 megawatts and above, to four months after the effective date of this rule and (3) required all research and test reactors below 2 megawatts thermal to submit emergency plans by November 3, 1982.

On January 11, 1982, a copy of the **Federal Register** notice was sent to all nonpower reactor licensees to alert them of the proposed rulemaking and provide adequate time for comments. On January 25, 1982, and information letter was transmitted to all research and test reactor licensees by the Office of Nuclear Reactor Regulation. This letter further alerted licensees of the proposed rulemaking and provided additional information on the current status of guidance criteria for use in the development of acceptable radiological emergency response plans for their facilities.

The **Federal Register** notice of proposed rulemaking invited public comment during a 30-day period ending February 1, 1982. Four comments were received from NRC licensees on the proposed amendment. Two fully supported the proposed rule, and the other two, although generally favorable, were primarily concerned about the schedule for upgraded guidance criteria and suggested that the submittal date for emergency plans be one year from the publication date of upgraded guidance criteria.

The January 25, 1982 letter provided the status of the guidance criteria. Two guidance documents were referenced in this letter. DRAFT II, dated November 29, 1982, of the revision to American National Standard ANSI/ANS–15.16–1978, "Emergency Planning for Research Reactors", was published in January 1982 for interim use and comment. Revision 1 to Regulatory Guide 2.6, "Emergency Planning for Research and Test Reactors", which endorses ANSI/ANS–15.16 was published in March 1982 for comment.

Because of the time required for regulatory guide approval procedures, this document probably will not become final before June or July. Therefore, the staff will issue a generic letter to all research and test reactor licensees requesting that they use Revision 1 to Regulatory Guide 2.6 (for comment) and ANSI/ANS–15.16 to meet the requirement of this final rule by September 7, 1982. With regard to the two commenters' (who are in the less than 2 megawatt category) request to extend the date to one year from the publication date of the guidance, the staff considers that the extension by a full year from the original date they were to submit emergency plans is sufficient time for preparation.

While compliance by affected licensees with the November 3, 1981 date for submittal of emergency plans has been delayed, the Commission considers that the state of emergency preparedness has significantly improved within the last year at research and test reactor facilities. This improvement has been confirmed by licensee participation and exchange of information in the development of guidance criteria for preparation and evaluation of radiological emergency response plans for research and test reactors. In addition, all research and test reactor licensees (65 total) presently have emergency plans prepared pursuant to 10 CFR Part 50 prior to the Commission's adoption of the upgraded emergency planning regulations in 1980.

Credible accidents for research and test reactors have been evaluated by the Commission and are discussed in the proposed amendment which was published in the **Federal Register** (46 FR 63315), on December 31, 1981. The Commission concluded that the power level threshold of 2 megawatts thermal

[1] The power levels described here refer to steady-state power levels.

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more accurately reflects the power level at which the potential for any significant offsite consequences exist. Based on this and the above information, the Commission finds that there exists sufficient reason to believe that appropriate protective measures can and will be taken to assure protection of the health and safety of the public in the event of a radiological emergency. This amendment is effective on publication because it "relieves a restriction" under Section 551(d)(1) Administrative Procedure Act.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a determination that this final rule does not impose new nor impact existing information collection requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule concerns and extension of the date for research and test reactor licensees to submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Nuclear Regulatory Commission for approval. Accordingly, there is no significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act of 1980.

List of Subjects in 10 CFR Part 50

Antitrust, Classified Information, Fire Prevention, Intergovernmental Relations, Nuclear Power Plants and Reactors, Penalty, Radiation Protection, Reactor Siting Criteria, Reporting Requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to 10 CFR Part 50 is published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

(For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (r) of § 50.54 is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(r) Each licensee who is authorized to possess and/or operate a research or test reactor facility with an authorized power level greater than or equal to 2 MW thermal, under a licensee of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of the Office of Nuclear Reactor Regulation for approval by September 7, 1982. Each licensee who is authorized to possess and/or operate a research or test reactor facility with an authorized power level less than 2 MW thermal, under a license of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of the Office of Nuclear Reactor Regulation for approval by November 3, 1982.

Dated at Washington, DC this 30th day of April, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12286 Filed 5-5-82; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 22994; Amdt. 39-4380]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale Model SA-360C Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Societe Nationale Industrielle Aerospatiale Model SA-360C series helicopters by individual telegrams. The AD requires inspection of the transmission housing and gimbal ring attachment flange for cracks, and replacement if cracks are found, and repair of any other defects. The AD is necessary to prevent loss of main rotor speed due to a failure in the engine to main transmission connection, which could result in loss of control of the helicopter.

DATES: Effective May 6, 1982, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T80-21-52, issued October 8, 1980, which contained this amendment.

Compliance schedule—as prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: C. Christie, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Chief, Technical Standards Branch, AWS-110, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426-8374.

SUPPLEMENTARY INFORMATION: On October 8, 1980, telegraphic AD T80-21-52 was issued and made effective immediately as to all known U.S. owners and operators of certain Societe Nationale Industrielle Aerospatiale Model SA-360C series helicopters. The AD required a one-time inspection of the transmission housing and gimbal ring attachment flange for cracks, and replacement if cracks are found, and repair of any defects other than cracks. AD action was necessary to prevent loss of main rotor speed due to fatigue cracking in the main transmission housing and eventual failure in the engine to main transmission connection, which could result in loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed for making the AD effective immediately by individual telegrams issued October 8, 1980, to all known U.S. owners and operators of certain Societe Nationale Industrielle Aerospatiale Model SA-360C series helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. The model designation of the helicopter was incorrectly stated as AS-360C in the

telegraphic AD and has been corrected to read SA–360C. Editorial changes have been made for ease of reading.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Societe Nationale Industrielle Aerospatiale.

Applies to Model SA–360C series helicopters, certificated in all categories. Compliance required as indicated, unless already accomplished.

To prevent loss of main rotor speed due to a failure in the engine to main transmission connection, within 10 hours time in service after the effective date of this AD, accomplish the following:

(a) Visually inspect for cracks and other defects in the two half housings and the gimbal ring attachment flange.

Note.—During the inspection required by paragraph (a) of this AD, particular attention should be directed to the attachment points/areas.

(b) Remove the upper housing half and visually inspect the flexible couplings on the clutch and main transmission sides at the attachment points for cracks, breaks, distortion, and fretting corrosion.

(c) Remove the nut from one of the bolts attaching the flexible coupling and check for correct positioning of the flectors.

Note.—1. The press-fit area of the flector bushings should be located on the flange side.

2. Upon re-installation of the nut, dry torque the nut to 4 to 5 mdaN. (30–35 ft lbs).

(d) Check the condition of the main transmission input coupling flange for marks, scores, and impacts.

(e) If during the inspections and checks required by paragraphs (a), (b), (c), and (d) of this AD, a crack is found, inspect the main transmisson flange for cracks using the dye penetrant method.

(f) If cracks are found during the inspections and checks required by paragraphs (a), (b), or (e) of this AD, before further flight, except as provided by paragraph (h) of this AD, replace the main transmission housing and gimbal ring attachment flange with a serviceable part.

(g) If no cracks are found during the inspections and checks required by paragraphs (a), (b), (c), (d), or (e) of this AD, repair other defects as necessary.

(h) The helicopter may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the inspections and repairs required by this AD can be accomplished provided paragraph (a) of this AD has been accomplished.

(i) Report defects found to the Chief, Aircraft Certification Staff, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium. Reporting approved by the Office of Management and Budget OMB No. 04–R0174.

Note.—Aerospatiale Work Cards No. 65–31–601, dated November 1976, and No. 65–31–401, dated June 1975, and Section 02.80 of the Aerospatiale Standard Practices Manual, refer to the inspections and checks required by this AD.

This amendment becomes effective May 6, 1982, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T80–21–52, issued October 8, 1980, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule was previously issued in telegraphic form to known owners and operators to correct an unsafe condition in aircraft. The present action codifies the rule and makes it effective as to all persons. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Washington, D.C., on April 28, 1982.

George J. Pour,

Acting Director of Airworthiness, AWS–1.

[FR Doc. 82-12301 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 82–ASW–16; Amdt. 39–4373]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS350 and AS355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) requiring frequent inspections of the tail rotor blades installed on Aerospatiale Model AS350 and AS355 Series helicopters. The AD is needed to detect possible bond failure between the blade leading edge protection strip and the body of the blade. Loss of the strip may cause separation of the tail rotor from the helicopter due to severe unbalance of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective May 10, 1982. Compliance required as prescribed in the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, or Rules Docket in Room 916, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, or James H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624–4911, extension 502.

SUPPLEMENTARY INFORMATION: Partial bond failure of a tail rotor blade leading edge stainless steel protective strip reportedly occurred at 24 and 47 hours' total time in service on two Aerospatiale Model AS350/AS355 series helicopters. Separation of the protective strip from the blade may cause a severe unbalance of the tail rotor with resulting severe vibration of the tail rotor and possible separation of the tail rotor from the helicopter. Loss of the tail rotor in flight may cause loss of control of the helicopter. Since partial bond failure of the blade protective strip may exist or occur on other helicopters of the same type, an AD is issued for Aerospatiale Model AS350 and AS355 series helicopters to require frequent inspections of the blade strips at intervals not to exceed 10 hours' time in service until 100 hours' time in service has been attained. Tail rotor blades that have protection strips replaced in accordance with an FAA approved repair procedure are also subject to these frequent inspections until 100 hours' time in service has been attained after the repair. Bond failure after 100 hours' time in service should not occur.

Tail rotor blades having strips with partial bond failure that is more than 10 percent of the bond area must be removed before further flight.

Aerospatiale contends that a pilot can accomplish the inspections. The FAA does not agree. Interpretation of the inspection results is beyond the capability of a pilot. The pilot is therefore not permitted to accomplish the inspections.

Since a situation exists that requires immediate adoption of the amendment, it is found that notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than 30 days.

Approximately one half of the U.S. fleet of Model AS350 and AS355 helicopters could be affected by the inspections specified in the AD for an estimated impact of approximately $14,000.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Societe Nationale Industrielle Aerospatiale (SNIAB). Applies to Model AS350 and AS355 Series helicopters certificated in all categories that are equipped with tail rotor blades P/N 350A.12.0030.01, 02, 04, or 05 (Airthworthiness Docket No. 82-ASW-16).

Compliance required before further flight after the effective date of this AD, and thereafter at intervals not to exceed 10 hours' time in service from the last inspection until the tail rotor blades attain 100 hours' or more total time in service since new or since replacement of the stainless steel leading edge strip.

To detect bond failure between each tail rotor blade body and the steel leading edge protective strip, inspect by tapping along the span and over the surface of the leading edge strip with a coin or similar device. Remove the affected tail rotor blade before further flight if a change in sound tone is found that indicates bond failure exceeds 10 percent of the strip bond area.

Equivalent means of compliance with this AD must be approved by the Chief, Aircraft Certification Staff, FAA Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

(Aerospatiale Telex Service No. 2306 for all Model AS350 and AS355 operations dated February 4, 1982, pertains to this subject.)

This amendment becomes effective May 10, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on April 21, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 82-12340 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AGL-48]

Designation of Transition Area; St. Jacob, Ill.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate controlled airspace near St. Jacob, Illinois, to accommodate a new instrument approach into Shafer Metro East Airport, St. Jacob, Illinois, established on the basis of a request from the Shafer Metro East Airport officials to provide that facility with instrument approach capability utilizing the Troy, Illinois, VORTAC.

The intended effect of this action is to insure segregation of the aircraft using approach procedures instrument weather conditions from other aircraft operating under visual weather conditions.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: To clarify the airspace area involved, the description of the transition area extension has been rewritten to make reference to the Shafer Metro East Airport in lieu of the Troy, Illinois, VORTAC; however, this will cause no change from the airspace area depicted on the map included in the Notice of Proposed Rulemaking dated January 20, 1982.

The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure, which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 65726 of the **Federal Register** dated February 8, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to establish a 700-foot controlled airspace transition area near St. Jacob, Illinois. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One letter of objection was received from the owner of the Highland-Winet, Illinois, Airport and that spoke from an economic viewpoint. No objections from an aeronautical standpoint were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective July 8, 1982, as follows:

In § 71.181 (46 FR 540), the following transition area is added:

St. Jacob, Ill.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Shafer Metro East Airport (latitude 38°43'55" N., longitude 89°48'17" W.), and within 1.75 miles each side of the Troy, Illinois, VORTAC facility 090° radial extending from the 5-mile radius to 6.5 miles west of the Shafer Metro East Airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12081 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AGL-42]

Designation Transition Area, New Holstein, Wis.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate controlled airspace near New Holstein, Wisconsin, to accommodate a new instrument approach into New Holstein Municipal Airport, which was established on the basis of a request from the New Holstein Municipal Airport officials to provide that facility with instrument approach capability. The VOR/DME–A procedure under consideration will be based on the Oshkosh, Wisconsin, VORTAC.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200′ above ground to 700′ above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 62471 of the **Federal Register** dated December 24, 1981, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to establish controlled airspace near New Holstein, Wisconsin. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective July 8, 1982, as follows:

In § 71.181 (46 FR 540), the following transition area is added:

New Holstein, Wis.

That airspace extending upward from 700 feet above the surface within a five mile radius of the New Holstein Municipal Airport (latitude 43°56′41″ N., longitude 88°06′57″ W) within two and one-half miles each side of the Oshkosh VORTAC 096 radial extending from the five mile radius area to seven miles west of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12080 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 385

Removal of Reference to Country Group P in § 385.2

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: A document published in the **Federal Register** of December 29, 1981, pages 62836–62840, was intended to remove all references to Country Group P (People's Republic of China) from § 385.2 of the *Export Administration Regulations,* but the document failed to specify removal of the reference in paragraph (b) of that section. This rule, which neither expands nor limits the provisions of the Regulations, removes the reference to Country Group P in § 385.2(b).

DATE: Effective May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 385:

Commodity Control List, Communist countries, Country groups, Export licenses, Exports.

Accordingly, the *Export Administration Regulations* (15 CFR Parts 368–399) are amended as follows:

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

§ 385.2 [Amended]

Paragraph (b) of § 385.2 is amended by removing the symbol "P."

(Secs. 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.;* Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980).)

Dated: April 20, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-12291 Filed 5-5-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 82–88]

Private Aircraft Arriving in the United States

AGENCY: Customs Service, Treasury.

ACTION: Rule.

SUMMARY: By an interim regulation published as T.D. 82–52 in the Federal Register on March 24, 1982 (47 FR 12620), section 6.14, Customs Regulations (19 CFR 6.14), was amended to extend the area of entry from which private aircraft arriving in the United States must furnish a notice of intended arrival to Customs. The interim regulation took effect on April 1, 1982. Section 6.14 had previously provided for a notice of intended arrival for private aircraft arriving in the United States via the U.S./Mexican border. The previous regulation further stated that the aircraft required to furnish such notice must land at *one* of the designated airports. T.D. 82–52 extended the notice requirement to private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts and further provided that the aircraft required to furnish such notice must land at the *nearest* designated airport to the border or coastline crossing point. The list of designated airports was also expanded. The amendment was necessary because of the severity of the drug abuse problem, the major increase in illegal importations, and the need for immediate action to expand the effectiveness of drug smuggling enforcement.

This document adds the Fort Lauderdale Executive Airport and Industrial Airpark, Fort Lauderdale, Florida, and the St. Lucie County International Airport, Fort Pierce, Florida, to the list of designated airports in section 6.14(g). It has been determined that it is necessary to add these airports to the list in order to retain the current level of service at these airports and to alleviate potential congestion at the other designated airports.

EFFECTIVE DATE: These additions to the list of designated airports are effective on May 6, 1982. The interim amendments to section 6.14 became effective on April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Sidney A. Reyes, Arnold L. Sarasky, or David Austin, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5607).

List of Subjects in 19 CFR Part 6

Customs duties and inspection, Air carriers, Air transportation, Aircraft, Airports.

Amendments to the Regulations

PART 6—AIR COMMERCE REGULATIONS

§ 6.14 [Amended]

Section 6.14(g), Customs Regulations (19 CFR 6.14(g)), is amended by inserting the Fort Lauderdale Executive Airport and Industrial Airpark, Fort Lauderdale, Florida, and the St. Lucie County International Airport, Fort Pierce, Florida, in appropriate alphabetical order in the list of designated airports.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 7999, as amended (19 U.S.C. 66, 1624, 49 U.S.C. 1509))

William von Raab,

Commissioner of Customs.

Approved April 21, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 82-12512 Filed 5-5-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has determined that USS BOONE (FFG 28) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval frigate, and (2) has found that USS BOONE (FFG 28) is a member of the FFG 7 class of ships, certain exemptions for which have been previously granted under 72 COLREGS Rule 38. The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: April 9, 1982.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332, Telephone Number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in Executive Order 11964 and 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BOONE (FFG 28) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a) regarding the arc of visibility of its forward masthead light; Annex I, Section 2(a)(i), regarding the height above the hull of its forward masthead light; and Annex I, Section 3(b),

regarding the horizontal relationship of its sidelights to its forward masthead light, without interfering with its special function as a Navy frigate. The Secretary of the Navy has also certified that the above-mentioned light is located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS BOONE (FFG 28) is a member of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of a § 706.3, are equally applicable to this ship. Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISONS AT SEA, 1972

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table One of § 706.2 is amended as follows to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i) Annex I
•	•	•
USS BOONE	FFG 28	1.6
•	•	•

2. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following vessel for which navigational light certifications are herewith issued by the Secretary of the Navy: USS BOONE (FFG 28).

3. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following vessel for which navigational light certifications are herewith issued by the Secretary of the Navy:

Vessel	Number	Distance of sidelights forward of masthead lights in meters
•	•	•
USS BOONE	FFG 28	2.75

(Executive Order 11964; 33 U.S.C. 1605)

Dated: April 9, 1982.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 82-12394 Filed 5-5-82; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80, 93, 94, 95, and 96

[CGD 82-029]

Regulation Update for Inland Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation removes from Title 33 of the Code of Federal Regulations the pilot rules for inland waters and western rivers as well as their respective interpretive rules, and other references that are no longer in effect due to the enactment of the new Inland Navigation Rules. This action is editorial and does not add or delete any legal requirements on the public.

EFFECTIVE DATE: The effective date of this regulation is June 7, 1982.

FOR FURTHER INFORMATION CONTACT: LCDR Kent Kirkpatrick, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 245-0106.

SUPPLEMENTARY INFORMATION: The Inland Navigational Rules Act of 1980 (Pub. L. 96-591, 33 U.S.C. 2001) established a new set of navigation rules which superseded the old Inland Rules, the Western Rivers Rules, their respective regulatory pilot rules, and parts of the Motorboat Act of 1940. The effective date of the new rules was December 24, 1981, except for the Great Lakes, where the date has been established as March 1, 1983. The Inland Navigational Rules Act repealed the old statutory navigation rules and did not contain a savings clause which would have preserved the validity of the regulations that had been issued under the authority of the old statutes. The regulations, however, would remain on the books even though no longer valid, unless removed by administrative action. This action removes those sections which are now invalid.

References to the old navigation rules appear in several places in the regulations which will remain in effect. These references are also being deleted.

Parts 93 through 96, containing the old pilot rules for inland waters and western rivers, and the interpretive rulings for those parts, are being removed. Parts 97 and 98, the pilot rules and interpretive rulings for the Great Lakes, will be deleted after the Inland Rules become effective on the Great Lakes on March 1, 1983.

Part 80 is amended to delete references to the Inland Waters and Western Rivers rules and interpretive rulings.

Part 92, Anchorage and navigation regulations; St. Mary's River, Michigan, will be amended and moved to another location in Title 33, Code of Federal Regulations by a separate rulemaking action.

List of Subjects in 33 CFR Parts 80, 93, 94, 95, and 96

Navigation (water), Waterways.

Drafting Information

The principal persons involved in drafting this rulemaking are LCDR Kent Kirkpatrick, Project Manager, Office of Navigation, and Lieutenant Michael Tagg, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

This regulation removes obsolete materials from the Code of Federal Regulations, and does not substantively change existing requirements or responsibilities of either the public or the Coast Guard. As this rulemaking is solely editorial, the Coast Guard for good cause finds that notice and comments are unnecessary. The rulemaking has been determined to be non-major under Executive Order 12291 and and non-significant under the provisions of DOT Order 2100.5 of May 22, 1980. Since the rulemaking has no

impact, it is certified under section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601) that the rule will not have a significant economic impact on a substantial number of small entities.

PART 80—COLREGS DEMARCATION LINES

Accordingly, Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 80.01 is revised to read as follows:

§ 80.01 General basis and purpose of demarcation lines.

(a) The regulations in this part establish the lines of demarcation delineating those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those water upon which mariners shall comply with the Inland Navigation Rules.

(b) The waters inside of the lines are Inland Rules waters. The waters outside the lines are COLREGS waters.

(c) The regulations in this part do not apply to the Great Lakes or their connecting and tributary waters as described in Part 97 of this chapter.

§ 80.820 [Removed]

2. Section 80.820 is removed.

PART 93 [REMOVED]

3. Part 93, Pilot Rules for Inland Waters, is removed.

PART 94 [REMOVED]

4. Part 94, Interpretive Rulings—Inland Rules, is removed.

PART 95 [REMOVED]

5. Part 95, Pilot Rules for Western Rivers, is removed.

PART 96 [REMOVED]

6. Part 96, Interpretive rulings, is removed.

(Sec. 3, Pub. L. 96-591, 33 U.S.C. 2071, 49 CFR 1.46(n)(14))

Dated: April 13, 1982.

R. A. Badman,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 82-12362 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CCGD11-80-09]

Anchorage Grounds, Los Angeles and Long Beach Harbors, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has revised the anchorage regulations for Long Beach Harbor, California. The affected area lies along the Long Beach shoreline from the mouth of the Los Angeles River to the west jetty at the entrance to Alamitos Bay. This area has experienced an increase in recreational boating use over the last few years and present marina construction activity will inject over 2,000 more pleasure craft into this area. The need for adequate control of vessel activity in this area is paramount if the safety for the boating public is to be maintained.

EFFECTIVE DATE: This amendment becomes effective on June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Commander Lindon A. Onstad, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822. Phone Number: (213) 590-2301.

SUPPLEMENTARY INFORMATION: On February 11, 1982, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (47 FR 6288). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The principal persons involved in drafting the proposal are: Commander Lindon A. Onstad, Project Officer, Marine Safety Division, Eleventh Coast Guard District; and Lieutenant William P. Athayde, Project Attorney, District Legal Office, Eleventh Coast Guard District.

Discussion of Comments

There were no comments received.

Summary of Final Evaluation

These proposed regulations are considered to be nonsignificant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation of the proposal was not conducted since its impact is expected to be minimal. The proposed regulations are not considered major in accordance with the guidelines established in E.O. 12291 addressing regulatory review. The amendment imposes no economic burden and benefits all small vessel owners through the effective and efficient management of the water areas of Queensway Bay. In accordance with sec. 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—ANCHORAGE REGULATIONS

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

1. By revising the geographical description of Commercial Anchorage E found in § 110.214(a)(5) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, Calif.

(a) * * *

(5) Commercial Anchorage E (Long Beach Harbor). An area enclosed by a line beginning at the southeastern point of Pier J at latitude 33°44'18.6" N, longitude 118°11'06.7" W.; thence northerly to latitude 33°45'06.5" N., longitude 118°11'06.7" W.; thence easterly to the southern lighted marker on Island White at latitude 33°45'06.3" N., longitude 118°09'31.0" W.; thence southeasterly to latitude 33°44'35.5" N., longitude 118°08'10.1" W.; thence southerly to latitude 33°44'19.0" N., longitude 118°08'10.1" W.; thence westerly to the southwest lighted marker on Island Chaffee at latitude 33°44'20.0" N., longitude 118°08'20.0" W.; thence westerly to the southeast lighted marker on Island Freeman at latitude 33°44'23.6" N., longitude 118°09'39.1" W.; thence along the south shore of Island Freeman to the southwest lighted marker at latitude 33°44'25.2" N., longitude 118°09'46.0" W.; thence westerly to the beginning point.

* * * * *

2. By revising § 110.214(a)(12) to read as follows:

§ 110.214 [Amended]

(a) * * *

(12) General Anchorage P (Long Beach Harbor). An area enclosed by a line beginning at Alamitos Bay West Jetty Light "1" at latitude 33°44'14.2" N., longitude 118°07'16.2" W.; thence northwesterly to the northwest corner of Nonanchorage W at latitude 33°44'20.6" N., longitude 118°07'28.5" W.; thence

northwesterly to the southern lighted marker on Island White at latitude 33°45'06.3" N., longitude 118°09'31.0" W.; thence along the eastern shoreline of Island White to the northern lighted marker at latitude 33°45'13.5" N., longitude 118°09'31.0" W.; thence northwesterly to latitude 33°45'37.1" N., longitude 118°10'35.5" W.; thence northerly to the shoreline at latitude 33°45'49.6" N., longitude 118°10'35.5" W.; thence easterly and southerly along the Long Beach shoreline and the Alamitos Bay west jetty to the beginning point.

(i) In this anchorage the requirements of recreational and other small craft shall predominate.

(ii) Anchoring, mooring and recreational boating activities conforming to applicable City of Long Beach ordinances and regulations adopted pursuant thereto are allowed in this anchorage.

* * * * *

3. By correcting the coordinates for the northeastern corner of Commer-Anchorage E found in the description of General Anchorage Q (110.214(a) (13)) to read latitude 33°44'35.5" N., longitude 118°08'10.1" W.

4. By adding a new paragraph (a)(18) to § 110.214 to read as follows:

(a) * * *

(18) Nonanchorage X (Long Beach Harbor). Mouth of the Los Angeles River (Queensway Bay). The waters extending westward and northward to the head of navigation from a line beginning at the southeastern point of Pier J at latitude 33°44'18.6" N., longitude 118°11'06.7" W.; thence northerly to latitude 33°45'06.5" N., longitude 118°11'06.7" W.; thence easterly to the southern lighted marker on Island White at latitude 33°45'06.3" N., longitude 118°09'31.0" W.; thence along the eastern shoreline of Island White to the northern lighted marker at latitude 33°45'13.5" N., longitude 118°09'31.0 W.; thence northwesterly to latitude 33°45'37.1" N., longitude 118°10'35.5" W.; thence northerly to the shoreline at latitude 33°45'49.6" N., longitude 118°10'35.5" W.

(i) In Nonanchorage X the requirements of recreational and other small craft shall predominate.

(ii) No vessel may anchor in this area.

(iii) Mooring and recreational boating activities which conform to applicable City of Long Beach ordinances and regulations adopted pursuant thereto are allowed in Nonanchorage X.

(Sec. 7, 38 Stat 1053, as amended, (33 U.S.C. 471); sec. 6(g)(1)(A), 80 Stat 937, (49 U.S.C. 1655(g)(1)(A)); 49 CFR 1.46(c)(1); 33 CFR 1.05-1(g))

Dated: April 12, 1982.

A. P. Manning,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 82-12381 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2066-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice announces EPA's final rulemaking on the State of Minnesota's Part D plan to attain the primary and secondary total suspended particulate (TSP) ambient air quality standards in the Twin Cities Seven County Metropolitan Area and the City of Duluth.

In the November 20, 1981 **Federal Register** (46 FR 57061), EPA proposed to approve the overall TSP plan, which includes numerous State rules, as a revision to the Minnesota SIP. A thirty day public comment period was provided until December 21, 1981. During that time one comment was received from the State of Minnesota regarding APC-29, Standards of Performance for Grain Handling Facilities. In a January 22, 1982, letter the State requested a conditional approval of APC-29. After review of the State's comment and request, EPA takes final action today to approve the State's TSP strategy with the exception of APC-29 which is conditionally approved.

EFFECTIVE DATE: This final rulemaking becomes effective June 7, 1982.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the Clean Air Act (the Act), EPA designated certain areas in each state as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP).

In Minnesota, Air Quality Control Region 131 (the Twin Cities Seven County Metropolitan Area including Hennepin, Ramsey, Scott, Carver, Washington, Dakota, and Anoka Counties, as well as the major cities of Minneapolis and St. Paul) and portions of the City of Duluth are designated nonattainment for the primary and secondary TSP NAAQS. The Cities of Red Wing, East Grand Forks, International Falls, Cloquet, and Silver Bay and portions of the Mesabi Iron Range are designated nonattainment for the secondary TSP NAAQS. EPA notes that on February 24, 1982 the State of Minnesota (State) submitted redesignation requests for the cities of East Grand Forks and Silver Bay. EPA's rulemaking action on these requests will be published in the near future.

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its SIP to meet specific requirements for areas designated as nonattainment. The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979, notice were published July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

These SIP revisions must demonstrate attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. On August 4, 1980 and October 17, 1980, the State submitted TSP control strategies for the primary and secondary nonattainment areas within the Twin Cities Seven County Metropolitan Area and the City of Duluth. As part of the control strategies, the State on January 5, 1981, submitted Rule APC-33, Standards of performance for coal handling facilities, and on January 23, 1981, submitted amendments to their existing rules and added certain new regulations.

The plans submitted for these nonattainment areas contain a strategy that consists of reasonably available control technology (RACT) on traditional (point and fugitive emission) sources and a commitment to study nontraditional (fugitive dust) sources. These plans are intended to insure

attainment of the primary TSP NAAQS by December 31, 1982 and the secondary TSP NAAQS by December 31, 1985. Following is a brief description of the controls:

I. Traditional Control

The strategy for controlling point and fugitive emission sources is based upon (1) rules that limit particulate emissions through the application of RACT, (2) rules that provide for compliance testing procedures and other general requirements, and (3) a permit procedure requiring the application of RACT measures for fugitive emission sources emitting controlled particulate emissions over 25 tons per year. These permits must be submitted to EPA as SIP revisions.

II. Nontraditional Control

The State submitted schedules for the Twin Cities and Duluth areas which present a means for assessing nontraditional source control measures, formulating appropriate control strategies, and implementing legally enforceable provisions to deal with the source.

Based on its review of the control strategies for the Twin Cities Seven County Metropolitan Areas and the City of Duluth, EPA, on November 20, 1981 (46 FR 57061) proposed to approve Minnesota's SIP revision as meeting all applicable requirements for Part D TSP SIPs.

A thirty day public comment period was provided for interested individuals to submit their comments on the proposed revisions to the Minnesota SIP and on EPA's proposed approval. During the public comment period EPA received one comment from the MPCA. The MPCA's comment relates to Rule APC–29, Standards of Performance for Grain Handling Facilities.

In its notice of proposed rulemaking, EPA stated that the opacity limits contained in APC–11, Restriction of Emission of Visible Air Contaminants, would apply to sources regulated under APC–29. In their December 18, 1981 comment the MPCA stated that APC–11 sets forth opacity limitations for an emission facility for which a specific standard of performance has not been promulgated in another regulation. MPCA interprets APC–29 as having a standard of performance requirement and contends that only the provisions of APC–29, rather than APC–11, apply to grain handling facilities.

However, the MPCA recognizes that problems exist in APC–29 with respect to the enforceability of RACT emission limitations and is in the process of amending the rule. Their amendments will include the addition of opacity limitations similar to those contained in APC–11. Therefore, in a letter dated January 22, 1982 the State requested a conditional approval of APC–29 and committed itself to submit the amended rule, containing opacity limits, to EPA by December 31, 1982.

After review of the State's comment and request, EPA is conditionally approving APC–29. EPA notes that the condition may be satisfied in two ways. The State may either (1) submit an amended APC–29 which contains specific opacity limits that are representative of RACT levels of control, or (2) submit operating permits and/or stipulation agreements for the grain handling facilities in these two nonattainment areas which contain opacity limitations equivalent to RACT control levels. Whatever option is chosen, the State must submit the material to EPA by December 31, 1982, as a revision to the Minnesota SIP. This deadline is proposed for public comment today in a separate **Federal Register** action.

If the State submits the required material by December 31, 1982, EPA will follow the procedures described below in determining if the State has satisfied the approval condition.

(1) In a **Federal Register** notice EPA will announce that the material (a) has been received, (b) is available for public comment, and (c) will not affect the conditional approval until EPA acts on the material.

(2) EPA will then evaluate the material and any public comments to determine if the condition has been met. If it has, in a notice of final rulemaking, EPA will then fully approve the rule and consequently the entire TSP control plan. If the condition has not been fully met, EPA will withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

If the State fails to submit the required materials by December 31, 1982 EPA will publish a **Federal Register** notice announcing that the conditional approval is withdrawn, the SIP is disapproved, and Section 110(a)(2)(I) restrictions on growth are in effect.

For a discussion of conditional approval and its practical effect, see 44 FR 38583 (July 2, 1979) and 43 FR 67182 (November 23, 1979).

Final Determination

The strategy to reduce particulates in the Twin Cities Seven County Metropolitan Area and the City of Duluth consists of (1) rules and a permit procedure to control point and fugitive emission sources and (2) a schedule to implement nontraditional source control. EPA is today approving the State of Minnesota's strategy to control particulates in these two areas with the exception of APC–29 which EPA is conditionally approving. Below is a list of the rules which EPA is acting on today.

Rule	Description	Action
APC–2	Definitions, abbreviations, applicability of standards, access to premises, variances, circumvention, severability.	Approved.
APC–4	Standards of performance for fossil fuel-burning indirect heating equipment.	Particulate limits approved.[1]
APC–5	Standards of performance for industrial process equipment.	Approved.
APC–7	Standards of performance for incinerators.	Do.
APC–11	Restriction of emission of visible air contaminants.	Do.
APC–18	Emission source monitoring, performance tests, reports, shutdowns and breakdowns.	Do.
APC–22	Standards of performance for portland cement plants.	Do.
APC–23	Standards of performance for asphalt concrete plants.	Do.
APC–24	Standards of performance for petroleum refineries.	Particulate limits approved.[2]
APC–25	Standards of performance for secondary lead smelters.	Approved.
APC–26	Standards of performance for secondary brass and bronze ingot production plants.	Do.
APC–28	Standards of performance for sewage sludge incinerators.	Do.
APC–29	Standards of performance for grain handling facilities.	Conditionally approved.
APC–32	Standards of performance for fossil fuel-burning direct heating equipment.	Particulate limits approved.[1]
APC–33	Standards of performance for coal handling facilities within designated areas.	Approved.[2]

[1] This rule provides standards for control of particulates, as well as for other criteria pollutants. EPA's proposed action on this rule as it applies to other pollutants will be published shortly.

[2] This rule provides, in Section G, an alternative test method provision. For reasons stated in the November 20, 1981 notice of proposed rulemaking (46 FR 57061), EPA takes no action on this provision.

The measures which EPA is approving today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally-approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally-approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally-approved regulations. Failure of a source to meet applicable pre-existing regulations will result in

appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulations. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemption granted will be reviewed and acted on by EPA.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I have certified that approvals of SIPs under sections 110 and 172 of the Act will not have a significant economic impact on a substantial number of small entities. Today's action approves and conditionally approves a State action under Sections 110 and 172 of the Act. It imposes no new requirements beyond which the State has already imposed.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a regulatory impact analysis. Today's action does not constitute a major regulation since it approves and conditionally approves provisions which the State adopted and submitted to EPA. Thus, no additional requirements will be imposed on these sources. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110(a) and 172 of the Clean Air Act, as amended)

Dated: April 26, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended.

1. Section 52.1220(c) is amended by adding new subparagraph (20) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(20) On August 4, 1980, and October 17, 1980, the State submitted its total suspended particulate Part D control plans for the Twin Cities Seven County Metropolitan Area and the City of Duluth. As part of the control strategies the State on January 5, 1981 submitted rule APC–33 and on January 23, 1981 further submitted amended and new rules. The amended and new rules that control total suspended particulate (TSP) emissions are: Amended APC–2, APC–4, APC–5, APC–7, APC–11; and new APC–18, APC–21, APC–22, APC–23, APC–24, APC–25, APC–26, APC–28, APC–29, and APC–32. Regulations APC–4, APC–24, and APC–32 are only approved as they apply to TSP emissions.

2. Section 52.1226 is revised to read as follows:

§ 52.1226 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Minnesota's plan except where noted.

Air quality control region and nonattainment area	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
Central Minnesota Interstate (AQCR–127):							
a. Primary/secondary nonattainment areas.	j	h	h	h	h	f	j.
b. Remainder of AQCR	c	a	d	d	d	d	d.
Southeast Minnesota—LaCrosse (Wisconsin) Interstate (AQCR–128):							
a. Primary/secondary nonattainment areas.	h	i	f	h	h	f	j.
b. Remainder of AQCR	c	a	a	a	d	d	d.
Duluth (Minnesota)—Superior (Wisconsin) Interstate (AQCR–129):							
a. Primary/secondary nonattainment areas.	f	k	h	h	h	f	j.
b. Remainder of AQCR	a	a	c	a	d	d	d.
Metropolitan Fargo (North Dakota)—Moorhead (Minnesota) Interstate (AQCR–130):							
a. Primary/secondary nonattainment areas.	h	h	h	h	h	h	h.
b. Remainder of AQCR	c	a	d	d	d	d	d.
Minneapolis-St. Paul Interstate (AQCR–131).	f	h	f	h	h	f	j.
Northwest Minnesota Interstate (AQCR–132):							
a. Primary/secondary nonattainment areas.	h	i	h	h	h	h	h.
b. Remainder of AQCR	c	a	d	d	d	d	d.
Southwest Minnesota Interstate (AQCR–133).	d	d	d	d	d	d	d.

a. July 1975.
b. Five years from plan approval or promulgation.
c. Air quality levels presently below primary standards or area is unclassifiable.
d. Air quality levels presently below secondary standards or area is unclassifiable.
e. Transportation and/or land use control strategy to be submitted no later than April 15, 1978.
f. December 31, 1982.
g. December 31, 1987.
h. Not applicable.
i. Eighteen-month extension granted.
j. Attainment dates to be specified in the future.
k. For the secondary nonattainment area of Duluth, Minnesota, located in AQCR–129, attainment of the secondary standard is to be achieved by December 31, 1985. For all other secondary nonattainment areas within the AQCR the attainment date will be specified in the future.

NOTE 1.—For actual nonattainment designations refer to 40 CFR Part 81.

NOTE 2.—Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

NOTE 3.—Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1226.

3. Section 52.1230 is revised as follows:

§ 52.1230 Control strategy and rules: Particulates.

(a) *Part D—Conditional Approval.* The attainment demonstration for the

Twin Cities Seven County Metropolitan Area and the City of Duluth is approved provided that the following condition for rule APC-29 is satisfied by a specified date. The State submit either an amended APC-29 which contains specific opacity limits that are representative of RACT levels of control; or operating permits and/or stipulation agreements which contain opacity limitations equivalent to reasonable available control technology levels.

(b) *Part D—No Action.* EPA takes no action on the alternative test method provision of Section G contained in rule APC-33.

[FR Doc. 82-12290 Filed 5-5-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-7-FRL-2117-5]

Approval and Promulgation of Implementation Plans; State of Missouri; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rulemaking published on January 5, 1981 (46 FR 899). The purpose of the January 5 notice was, in part, to amend the attainment dates for the National Ambient Air Quality Standards in the air quality control regions of the State of Missouri. In doing so, the footnotes at the bottom of the table in § 52.1332 were inadvertently omitted. Today's action corrects that deficiency.

EFFECTIVE DATE: This correction is effective May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger, Air Branch, Environmental Protection Agency, Kansas City, Missouri 64106; (816) 374-3791 (FTS 758-3791).

Dated: April 23, 1982.

William Rice,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Accordingly, 40 CFR Part 52, Subpart AA—Missouri, is corrected by adding the following footnotes at the bottom of the table in § 52.1332:

§ 52.1332 Attainment dates for national standards.

* * * * *

[1] Hydrocarbons.

Note.—Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1978) § 52.1332.

Only portions of those AQCRs with attainment dates after July, 1975 have new attainment dates under the 1977 Clean Air Act Amendments. The reader is referred to 40 CFR Part 81 for identification of the designated areas under section 107(d) of the Act.

a. July 1975.
b. December 31, 1982.
c. December 31, 1987.
d. Air quality levels presently below secondary standards.
e. Secondary standard attainment date to be determined by secondary attainment plan.

[FR Doc. 82-12339 Filed 5-5-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[Docket No. AH300 a/b/e/VA; A-3-FRL-1975-2]

Approval of Revisions to Virginia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The purpose of this Notice is to approve portions of the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia on December 17, 1979, May 15, 1980 and April 3, 1981. EPA is taking no action on several sections of the December 17, 1979 submittal pending revision by the Commonwealth.

This revised SIP pertains to those areas in Virginia designated as nonattainment for the ozone and carbon monoxide National Ambient Air Quality Standards (NAAQS).

EFFECTIVE DATE: June 7, 1982.

ADDRESSES: Copies of the revisions, accompanying support material and EPA's Rationale Document supporting this rulemaking are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106. ATTN: Ms. Patricia Sheridan.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Virginia State Air Pollution Control Board, Ninth Street Office Building, Room 1106, Richmond, Virginia 23219. ATTN: Mr. John M. Daniel, Jr.

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen M. Glen (3AH13), Air Media & Energy Branch, Environmental Protection Agency, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: 215/597-8187.

SUPPLEMENTARY INFORMATION: The Administrator of the Environmental Protection Agency (EPA), in accordance with the requirements of Section 107 of the Clean Air Act, as amended, designated certain areas of Virginia as nonattainment for ozone and carbon monoxide. (See 43 FR 8962, March 3, 1978; 43 FR 40502, September 12, 1978; and, 45 FR 43412, June 27, 1980.) These designations are indicated below:

Ozone

1. Valley of Virginia Intrastate AQCR: Roanoke City, Roanoke County, Salem City; hereinafter referred to as the "Roanoke" area.
2. Northeastern Virginia Interstate AQCR: Stafford County; hereinafter referred to as the "Stafford County" area.
3. State Capital Intrastate AQCR: Richmond City, Henrico County, and Chesterfield County; hereinafter referred to as the "Richmond" area.
4. Hampton Roads Intrastate AQCR: The cities of Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach, Newport News, and Hampton; hereinafter referred to as the "Peninsula" area.
5. National Capital Interstate AQCR.

Carbon Monoxide

1. National Capital Interstate AQCR: City of Alexandria, Arlington County, and Fairfax County; hereinafter referred to as the "Northern Virginia" area.

As a consequence of these designations, the Commonwealth of Virginia was required to develop, adopt and submit to EPA revisions to its SIP for these nonattainment areas.

On January 11, 1979, the Commonwealth submitted its basic nonattainment plan (EPA Docket No. AH300VA). EPA conditionally approved this revision on August 19, 1980 at 45 FR 55180. Several subsequent submittals were made by the Commonwealth which correct deficiencies or revise the basic SIP. These submittals are the subject of separate rulemakings, but are discussed briefly in the Rationale Document.

On December 17, 1979, the Commonwealth submitted a SIP revision that was designed to show attainment of

the .12 ppm statistical ozone standard and to implement the Round II CTG's (Control Technique Guidelines published by EPA between January 1978 and January 1979). See EPA Docket No. AH300aVA.

On May 15, 1980, the Commonwealth submitted its Inspection and Maintenance (I/M) legislation and a schedule for implementing this program in the Richmond and Northern Virginia nonattainment areas (EPA Docket No. AH300bVA).

On April 3, 1981, the Commonwealth submitted a revised schedule for the implementation of the I/M program in Northern Virginia. The revised schedule contains interim dates requested by EPA (EPA Docket No. AH300eVA).

These three submittals are the subject of this rulemaking and are discussed in detail in the Rationale Document.

In general, the SIP is required to provide for attainment and maintenance of the NAAQS for all areas which have been designated "nonattainment" pursuant to Section 107 of the Clean Air Act. Specific requirements for an approvable SIP are discussed in detail in the April 4, 1979 Federal Register (44 FR 20372); as amended by 44 FR 38583, July 2, 1979; 44 FR 50371, August 28, 1979; 44 FR 53761, September 17, 1979; and, 44 FR 67182, November 23, 1979.

EPA Evaluation

The Commonwealth provided proof that, after adequate public notice, public hearings were held with regard to these amendments. The submittal dates of the amendments, as well as the dates and locations of the public hearings, are summarized below:

Submittal date	Public hearing date	Locations
Dec. 17, 1979	Sept. 17, 1979	Richmond, Abingdon, Radford, Lynchburg, Fredericksburg, Virginia Beach and Falls Church.

The May 15, 1980 submittal consists of the State Statute and a revision to Chapter 9 of the Richmond and Northern Virginia plans only. Chapter 9 contains a schedule for the implementation of an I/M program in these two areas. Two of its interim milestones are the adoption of regulations and motor vehicle emission standards. At the time these regulations and standards are proposed by the Commonwealth, a public hearing will be held.

The April 3, 1981 submittal consists of a revision to the Chapter 9 I/M implementation schedule for the Northern Virginia area only. The revised schedule contains additional interim milestones but does not change the final implementation date of January 1, 1982. As a minor revision to the schedule, it was not subject to the public hearng requirements. (See Rationale Document for further information.)

On April 7, 1981 (46 FR 20692), EPA published a proposed rulemaking pertaining to the December 17, 1979 and May 15, 1980 submittals. The April 3, 1981 submittal consists of only minor revisions to the I/M implementation schedule submitted in response to EPA's request for interim milestones. As such, EPA does not believe that it must propose this revision before taking final action.

Although the May 15, 1980 submittal proposes implementation of the Inspection and Maintenance (I/M) program in both the Richmond and Northern Virginia nonattainment areas, a February 16, 1981 submittal by the Commonwealth demonstrated attainment of the ozone standard in Richmond by December 31, 1982. Thus I/M is no longer necessary in the Richmond area. This revision was proposed for approval on September 14, 1981 (46 FR 45628). Final approval of the revision is being published in a separate notice.

For a detailed discussion of EPA's proposed actions and final evaluation, the reader should refer to the April 7, 1981 Federal Register (46 FR 20692) and the Rationale Document.

In response to the call for public comments in the April 7, 1981 Federal Register, EPA received comments from the Virginia State Air Pollution Control Board (VSAPCB), the City of Norfolk, Reynolds Aluminum, CARE, Inc., and the firm of Terris and Sunderland, representing the Citizens Against the Refinery's Effects (CARE) and the Virginia Petroleum Council. These comments have been reviewed and are addressed in detail in the Rationale Document.

EPA Actions

In accordance with the procedures specified above, EPA has reviewed and evaluated these SIP revisions and the public comments and hereby partially approves the December 17, 1979 revision and fully approves the May 15, 1980 revision as amended by the April 3, 1981 and February 16, 1981 revisions. Those portions of the nonattainment plans which are not suspended pending further revision by the Commonwealth are hereby granted final approval.

The following is a list of deficiencies which the Commonwealth has agreed to correct and no action is being taken on these sections at this time.

1. An acceptable definition of "Vapor Tight" must be submitted.

2. Sections 4.54(h) and 4.56(h) must be revised to require semi-annual seal inspections and annual gap measurements. An appropriate SIP revision must be submitted.

3. Section 4.55(m)(2) must be revised to reflect RACT for publication rotogravure as well as packaging rotogravure. While the current 65 percent control for packaging rotogravure is acceptable, this section must be revised to require 75 percent control for publication rotogravure. An appropriate SIP revision must be submitted.

4. Section 4.57(a)(5) must be revised to include § 4.57(c) in the list of sources excluded from the exemptions provided by § 4.57(a)(4). An appropriate SIP revision must be submitted.

The Commonwealth has already submitted a preliminary SIP revision dated October 14, 1981 which corrects these deficiencies. EPA will take final action on these items after Virginia has completed their formal rulemaking process. Therefore, EPA is taking no action at this time on the four deficiencies listed above.

The Commonwealth has also agreed to correct the following deficiencies and, therefore, no further action is being taken on these sections.

5. Chapter 3 of the Roanoke Plan—On December 17, 1979 the Commonwealth submitted a revised Part D plan for all nonattainment areas and addressed attainment of the .12 ppm ozone standard. This submittal revised the RACT regulatory language to state that the regulations applied only to sources in those areas listed in Appendix P. Because Appendix P does not list the Roanoke area, previously approved (August 19, 1980, 45 FR 55180) RACT regulations (Round I CTG's) are deleted and the RACT regulations dealing with the Round II CTG's (CTG's published by EPA between January 1978 and January 1979) will not be imposed.

The Commonwealth has now submitted a request to redesignate the Roanoke area as "attainment". This request is based upon three years of ambient monitoring data which shows no violations of the ozone standard occurred in 1979, 1980 or 1981. The proposed redesignation is still under review and EPA cannot comment on its merits at this time. However, EPA will take no further action on Chapter 3 of the Roanoke plan or Appendix P until it has taken final action on the redesignation request.

6. Chapter 6, Emission Inventory—The Commonwealth has also agreed that the

following deficiencies in the Peninsula, Richmond, and Southeastern Virgina plans will be corrected.

a. Peninsula—The 89 percent projected reduction in emissions from "Other Metal Products Coating" sources must be reviewed and revised to reflect more accurately the reductions which will be achieved as a result of adopted regulations.

b. Richmond—The projected emission reductions for the following source categories must also be reviewed and revised in light of existing regulations to more accurately reflect the reductions which will be achieved: Gasoline Terminal Truck Loading; Paint Manufacturing; Flatwood Products Coating; Auto Refinishing.

c. Southeastern Virginia—The inventory must be revised to include emissions from the following sources: Swann Oil, Chesapeake; Hampton Roads Engery Company, Portsmouth; SPSA Resource Recovery Plant, Norfolk; and, increased emissions from vessels and rail cars due to the new refineries and increased coal handling facilities. It should be noted in Chapter 6 that emissions from HREC are included for completeness purposes only because these emissions and the appropriate offset are the subject of a separate SIP revision and cannot be included in the RFP curve or "bank" of accommodative emissions.

While the Commonwealth has also requested the Peninsula and Southeastern areas be redesignated based on ambient monitoring data, EPA believes the inventories should still be revised to accurately reflect actual and potential emissions. However, EPA will taken no further action regarding the deficiencies noted above until it has acted upon the redesignation request.

Other Actions

On August 19, 1980 (45 FR 55228), EPA proposed approval of a change in the boundary of the urbanized area of Northern Virginia to exclude Loudoun County.

The Commonwealth of Virginia had requested that the boundary of the urbanized area in Northern Virginia be modified to exclude Loudoun County, since this is primarily a rural area which accounts for only 5.0 percent of the light duty vehicle registrations in the Northern Virginia Region. The effect of this modification, if approved, would be to exclude Loudoun County from the requirement to implement I/M. It would not change Loudoun County's designation, under Section 107 of the Clean Air Act, as nonattainment for ozone. In addition, with this modification, Loudoun County will no longer be eligible to receive funds under Section 175 of the Act.

No public comments were received as a result of our Notice. Therefore, EPA is hereby approving the proposed boundary change.

Conclusion

As a result of EPA's decision to approve these revisions to the Virginia Implementation Plan, the following sections of 40 CFR Part 52 are revised: § 52.2420 (Identification of Plan); § 52.2435 (Compliance Schedules); § 52.2441 (Inspection and Maintenance Program); § 52.2442 (Bicycle lanes and bicycle storage facilities); § 52.2443 (Management of parking supply); § 52.2444 (Medium duty air/fuel control retrofit); § 52.2445 (Heavy duty air/fuel control retrofit); § 52.2446 (Oxidizing catalyst retrofit); and, § 52.2447 (Vacuum spark advance disconnect retrofit).

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(42 U.S.C. 7401–7642)

Dated: April 20, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. In § 52.2420, paragraphs (c) (48) and (49) are added as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(48) The revisions submitted on December 17, 1979 by the Secretary of Commerce and Resources related to the ozone and carbon monoxide nonattainment area plans, except § 1.02, "Vapor Tight", §§ 4.54(h), 4.56(h), 4.55(m)(2), and 4.57(a)(5), Chapter 3 of the Roanoke plan, Chapter 6 of the Peninsula, Richmond, and Southeastern Virginia plans, and Appendix P.

(49) The May 15, 1980 revision, as amended by the April 3, 1981 revision, submitted by the Secretary of Commerce and Resources pertaining to Chapter 9 of the Richmond and Northern Virginia nonattainment plans. This submittal includes the State Statute authorizing an Inspection and Maintenance program and a schedule for the implementation of this program.

§§ 52.2441 through 52.2447 [Removed and Reserved]

2. The following provisions are removed and the sections "Reserved" because the provisions are obsolete, have been rendered null by recent court rulings, or have been or will be replaced by more appropriate regulations: § 52.2441 *Inspection and maintenance program*, § 52.2442 *Bicycle lanes and bicycle storage facilities*, § 52.2443 *Management of parking supply*, § 52.2444 *Medium duty air/fuel control retrofit*, § 52.2445 *Heavy duty air/fuel control retrofit*, § 52.2446 *Oxidizing catalyst retrofit*, and § 52.2447 *Vacuum spark advance disconnect retrofit*.

§ 52.2435 [Amended]

3. In § 52.2435, paragraphs (a), (b), (c) and (f) are removed.

§ 52.2435 [Amended]

4. In § 52.2435, paragraphs (g) and (h) are redesignated as (a) and (b).

[FR Doc. 82-12321 Filed 5-5-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-7-FRL-2099-4]

Designation of Areas for Air Quality Planning Purposes; Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA today takes final action to redesignate a portion of the City of Des Moines, Iowa, from nonattainment to attainment with respect to the primary National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP). This portion remains designated nonattainment for the secondary TSP standard. This redesignation is based on a request from the Iowa Department of Environmental quality and data from the TSP monitoring site which shows that the primary standard was not exceeded in 1980 or 1981.

EFFECTIVE DATE: This action will be effective July 6, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The state submission is available at the above address and at the Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319 and the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at 816-374-3791.

SUPPLEMENTARY INFORMATION: On February 3, 1982, the Iowa Department of Environmental Quality (IDEQ) submitted a request to redesignate the attainment status of a portion of the City of Des Moines. The portion in question lies in the south central part of the city just to the east of the Des Moines Airport. The full description is in the state submission. The area was designated primary nonattainment for TSP on March 3, 1978 (43 FR 8962), and is one of four portions of the Des Moines area that remained primary nonattainment when the designated areas were redefined (46 FR 14569, March 6, 1980). It is completely surrounded by an area of secondary nonattainment.

There is one TSP monitoring site located in the area; no others are close enough to represent air quality in this area. Monitoring data from this site shows that the primary 24-hour standard of 260 micrograms per cubic meter ($\mu g/m^3$) was not exceeded in 1980 or in 1981. Also, the geometric mean of all readings for each year is less than the annual standard of 75 $\mu g/m^3$. These values meet the EPA criteria for an attainment designation with respect to the primary TSP standards.

Since the secondary standard of 150 $\mu g/m^3$ for a 24-hour average was exceeded three times in 1980, the area must remain designated secondary nonattainment. However, the primary standard nonattainment designation is hereby removed.

EPA is taking this action without prior proposal because it imposes no new requirements and is noncontroversial. The public is advised that this action will be effective July 6, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities since it imposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

(Sec. 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601))

List of Subjects in 40 CFR Part 81

Air pollution, National parks, Wilderness areas.

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

§ 81.316 [Amended]

1. In § 81.316, in the table "Iowa-TSP," the line reading "areas in central and southern Des Moines, Ankeny and part of" is amended by removing the words "and southern."

[FR Doc. 82-12296 Filed 5-5-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS 00032; TSH-FRL 2116-4]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Recodification

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action recodifies 40 CFR Part 761 which deals with polychlorinated biphenyls (PCBs). The recodification provides for a more orderly organization of the material. No substantive changes are involved.

DATE: This recodification becomes effective May 6, 1982.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Office of Pesticides and Toxic Substances (TS-788), Rm. E-125, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202-382-3637).

SUPPLEMENTARY INFORMATION: In order to make the Code of Federal Regulations easier for users to read and reference, Part 761, which regulates polychlorinated biphenyls, has been reorganized.

This regulation is a nonsubstantive redesignation and reorganization and as such no opportunity for comment or public participation is required.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements.

Dated: April 27, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Part 761 of Chapter I of Title 40, Subchapter R, is amended as follows:

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE AND USE PROHIBITIONS

§ 761.2 [Redesignated as § 761.3]

1. In Subpart A, § 761.2 is redesignated as § 761.3.

§ 761.10 (Subpart B) [Redesignated as § 761.60 (Subpart D)]

2. Current Subpart B is redesignated as Subpart D, and § 761.10 is redesignated as § 761.60 under the new Subpart D.

§§ 761.40–761.43 [Redesignated as §§ 761.70, 761.75, 761.65 and 761.79 respectively]

3. Sections 761.40, 761.41, 761.42 and 761.43 are redesignated as §§ 761.70, 761.75, 761.65 and 761.79, respectively under the new Subpart D.

§ 761.20 [Redesignated as § 761.40]

4. Section 761.20 in Subpart C is redesignated as § 761.40 remaining in Subpart C.

§ 761.44 [Redesignated as § 761.45]

5. Section 761.44 is redesignated as § 761.45 under Subpart C.

§§ 761.30 and 761.31 (Subpart D) [Redesignated as §§ 761.20 and 761.30 (Subpart B) respectively]

6. Current Subpart D is redesignated as Subpart B, and §§ 761.30 and 761.31 are redesignated as §§ 761.20 and 761.30, respectively under the new Subpart B.

7. The heading for Subpart J is added to read as follows:

Subpart J—Records and Reports

§ 761.45 [Redesignated as § 761.80]

8. Section 761.45 is redesignated as § 761.80 under the new Subpart J.

Subpart E—Heading and Annex Nos. I through VI [Removed]

9. The heading for Subpart E and Annex Nos. I through VI are removed.

[FR Doc. 82-12230 Filed 5-5-82; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[Docket No. 19921; RM-1197; RM-1216; RM-1330; FCC 82-129]

Cooperative Use and Multiple Licensing of Stations in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Report and Order.

SUMMARY: The Federal Communications Commission is adopting rules to govern the cooperative sharing and multiple licensing of facilities in its private land mobile radio services. The rules which are adopted define the types of arrangements which will and will not be allowed. These rules have been adopted: (1) To remove certain procedural burdens heretofore required of licensees and user eligibles; (2) To assure adequate licensee control; and (3) To codify permissible licensee and user practices relating to multiple licensed and cooperatively shared systems.

EFFECTIVE DATE: May 20, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Borkowski, Private Radio Bureau, (202) 632-7597.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Radio, Cooperative use, Multiple licensing.

In the matter of amendment of Parts 89, 91, 93 and 95 of the Commission's rules and regulations to adopt new practices and procedures for cooperative use and multiple licensing of stations in the private land mobile radio services;[1 2] Docket No. 19921; RM-1197; RM-1216; RM-1330.

Report and Order

Adopted: March 18, 1982.

Released: April 13, 1982.

1. On June 11, 1981 the Commission released a *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making* (hereinafter *Tentative Decision)* in the above-captioned matter relating to the multiple licensing of facilities and the cooperative sharing of systems in the private land mobile radio service.[3 4 5] In this opinion, we concluded: (1) that third-party equipment companies which furnish services and equipment to private land mobile radio services licensees on a shared basis are not common carriers within the meaning of section 3(h) of the Communications Act of 1934, as

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[1] Parts 89, 91, and 93 have been consolidated under New Part 90, 47 CFR Part 90. Part 95 retained its prior designation. In view of this, reference to the rule parts herein will be to the pertinent provisions under new Part 90. *See Report & Order,* Docket No. 21348, 43 FR 54786 (November 22, 1978).

[2] The rule changes for Part 95 will not be adopted in this proceeding. Instead, these issues will be addressed as part of a comprehensive review of the Part 95 rules.

[3] *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making,* Docket No. 19921, FCC 81-269. Adopted June 4, 1981, released June 11, 1981.

[4] Earlier in this proceeding, in 1970, we had released a *Memorandum Opinion and Order and Notice of Proposed Rule Making* which considered petitions for rule making filed by Chalfont Communications (RM-1197), the National Association of Radiotelephone Systems (RM-1216), and American Radio-Telephone Service, Inc., Caprock Radio Dispatch, Fresno Mobile Radio, Inc., Radiofone, and Rogers Radio Communications Services, Inc. jointly (RM-1330), and granted, in part, the relief requested through the initiation of this proceeding. *Multiple Licensing—Safety and Special Radio Services,* 24 FCC 2d 510 (1970). Although at that time we ruled that neither the cooperative sharing of communications systems nor the multiple licensing of transmitting facilities was unlawful or conflicted with public interest or policy, we did propose rules to better define the nature of the sharing and joint use arrangements we would permit in the private land mobile radio services.

Briefly, we expressed our concern with arrangements for jointly used facilities or cooperatively used systems wherein "packaged" communications services are provided (*i.e.*, all major equipment and associated maintenance, as well as telephone answering and message dispatching, is provided by a single third party). We, therefore, proposed rules to preclude the offering of "packaged" service in these situations and, pending adoption of final rules, implemented this approach as an interim policy. *See Multiple Licensing—Safety and Special Radio Services, supra,* at 519. We also proposed a number of specific rules relative to the joint licensing of facilities and the cooperative sharing of systems. *Id.,* pp. 520–523.

[5] Sharing in the private land mobile radio services is loosely used to cover two entirely separate types of arrangements: (1) Cooperative sharing of a licensee's system by eligible participants or (2) The licensing of several eligibles to use a single transmitting facility (i.e., multiple licensing).

In cooperative use arrangements a base station transmitter ordinarily is authorized to and controlled by a single licensee. The licensee shares this transmitting facility with other persons eligible in the same radio service. All use of the licensee's facility takes place under the licensee's control. Ordinarily the capital and operating expenses associated with the shared system are divided among the system sharers (*i.e.*, the licensee and the other users) on a pro-rated, equitable basis. The licensee is precluded from profiting from the arrangement. *See* 47 CFR 90.179, 90.181, 90.183, 90.185.

In the multiple licensing of facilities, ordinarily the base station transmitter (or as it is sometimes called, the "community repeater") is situated at a desirable site in the area to be served. In most instances, unlike the cooperative sharing approach, the transmitting facility is separately licensed to, and controlled by, each person authorized to use it from stations installed at their respective places of business. Individually assigned "tone" signals are generally employed to activate the repeater, so that the communications of each licensee, to and from his/her respective mobile units are heard only by the licensee, of his/her dispatcher, and the employees in his/her radio equipped vehicles. The spectrum and the transmitter in the multiple licensing situation, in essence, are time-shared. The number of persons that can be accommodated over a repeater varies; sometimes it is as high as 16 but most often it is in the five to ten range, depending on the number of mobile units and the message loads of the individuals sharing the station.

For a discussion of the evolution of sharing arrangements in the private land mobile radio services *see Tentative Decision and Further Inquiry and Notice of Proposed Rule Making, supra,* at paras. 4–11.

amended;[6] (2) that such competition as does exist between equipment companies furnishing physical facilities and associated services to eligibles in the private land mobile radio services and common carriers is neither unjust nor unfair;[7] and (3) that the public interest is served by continuing the authorization of these types of arrangements in the private land mobile radio services.[8]

2. Regarding the specific regulatory plan we had proposed in 1970,[9] based on the comments of the parties, we stated in our Tentative Decision our intention to: (1) Discontinue our "packaged service" policy;[10] (2) modify somewhat the cooperative sharing rules;[11] and (3) alter, in part, our multiple licensing proposal.[12] We also again rejected the application of Section 309 notice procedures [13] to private land mobile applications.[14] Additionally, several miscellaneous matters relating to sharing between parent and subsidiary corporations, sharing among joint venturers, and the identity of dispatching agents were addressed.

3. After tentatively adopting the policies and conclusions discussed above, in consideration of the time that had elapsed since our original Notice, we offered interested parties the opportunity to restate and update their positions. Additionally, we asked for specific views, data and briefs of law on the following subjects.

(a) *Characteristics of Common Carriage.* Do such characteristics as (1) provision of equipment and related services by profit-making third-party entrepreneurs, (2) particular advertising practices, (3) interconnection to the telephone network, (4) failure to observe strict cost sharing, (5) profit making by one or more members directly from cooperative radio activities, or (6) lack of proprietary interest (e.g., lease or ownership) in facilities make it necessary or desirable, as a matter of law or policy, that some multiply licensed or cooperatively shared private radio systems be classified as common carriers?

(b) *Forbearance.* Assuming *arguendo* that at least some cooperative or multiple licensed private radio systems might be or should be classified as common carriers, may the Commission forbear, as a matter of law, from exercising its Title II powers? Is such forbearance desirable as a matter of policy, particularly in terms of its effects on the actual users of cooperative and multiply licensed radio communications systems? If so, what changes in statutes or regulations might be necessary or desirable to achieve such forbearance for cooperative and multiply licensed systems?

(c) *Third Part Licensing.* Would direct licensing of any entrepreneurs now providing equipment or services to cooperative and multiply licensed private radio systems be permissible as a matter of law? Is either mandatory or voluntary licensing of such entrepreneurs a policy that would benefit either the users of these systems or the public interest? What would be the advantages and disadvantages of allowing or requiring the provision of radio communications services to current users of cooperative and multiply licensed systems in a manner analogous to the rules applied now to the Specialized Mobile Radio Systems above 800 MHz?

(d) *Interservice Competition between Private Radio and Common Carriers.* To what extent is competition permissible or desirable between at least some cooperative/multiply licensed private radio systems and common carrier systems in the provision of land mobile radio communications? Should cooperative or multiply licensed systems be differentiated from other private systems in this regard? Should and how may the Commission assess the effects of interservice competition differentially as it affects (1) common carriers, (2) third-party profit making radio entrepreneurs not classified as common carriers, (3) the ultimate users of cooperatively shared or multiply licensed private radio systems, and the public at large?

(e) *Benefits.* What are the relative benefits of common carrier service contrasted to that provided by equipment companies to eligibles in the private services under competitive marketplace conditions? In this connection, consideration should be given to such factors as spectrum efficiency, effective spectrum utilization, availability of service, economics of the several service offerings, and the ability of system operation to satisfy the needs and desires of the users.

(f) *Proposed Rules.* Are the regulations proposed needed and reasonable? Are they sufficient to assure compliance with the underlying policies governing cooperative use and multiple licensing in the private services; and what, if any, additional limitations or restrictions should be imposed?

(g) *Packaging Policy.* Should the packaging policy be retained?

(h) *Cooperative use.* Should licensees be required to submit their plans for sharing radio equipment for approval by the Commission prior to providing service to participants? Should annual reports be required? What records should the licensees keep? Should the line of demarcation between cooperative use and multiple licensing be drawn as rigidly as contemplated under the original proposal or should the more flexible approach now proposed be followed?

(i) *Multiple Licensing.* Should the Commission prohibit payments among persons sharing radio facilities under multiple licensing? Would such a limitation be useful in maintaining a distinction between multiple licensing and cooperative use arrangements? What records should persons sharing facilities under multiple licensing be required to keep? What reports should the licensees make to the Commission?

4. Comments and replies on this phase of this proceeding were submitted by the following parties:

Comments

—Telocator Network of America (TNA)
—Page A Fone Corp. (PAF)
—Tactec Systems (Tactec)
—Central Committee on Telecommunications of the American Petroleum Institute (API)
—The National Association of Business and Educational Radio, Inc. (NABER)
—Metro Mobil Communications, Inc. (MMC)
—John D. Pellegrin, Esquire
—Utilities Telecommunications Council (UTC)
—Special Industrial Radio Service Association, Inc. (SIRSA)
—General Electric Company (GE)
—Motorola, Inc. (Motorola)
—The National Mobil Radio Association (NMRA)
—Mobil Communications Corporation of America (MCCA)
—Mr. P. Randall Knowles
—Mr. Edward W. N. Smith
—Forest Industries Telecommunications (FIT)

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[6] *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making, supra,* at paras. 19–28.

[7] *Id.* paras. 29–40.

[8] *Id.* paras. 41–57.

[9] *See, Multiple Licensing—Safety and Special Radio Services,* 24 FCC 2d 510 (1970), Appendix.

[10] *Id.* paras. 58–61; *see also* 24 FCC 2d 510 (1970) at 519, 521.

[11] *Id.* paras. 62–67.

[12] *Id.* paras. 68–73.

[13] *See* Section 309 of the Communications Act of 1934, as amended, as implemented at Section 1.962 of the Rules.

[14] *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making, supra,* paras. 77–78.

Reply Comments

—SIRSA
—UTC
—Tactec
—NABER
—MCCA
—TNA
—Motorola

5. As in the case of previous comments in this proceeding, the comments basically fell into two categories: (1) Those interests representing the private land mobile radio services (including equipment manufacturers), and (2) those representing the common carrier interests. The private service interests generally endorsed the conclusions reached in the Tentative Decision regarding the legality and public interest benefits of cooperative sharing and multiply licensing. They agreed that third party equipment companies which furnish services and equipment to private land mobile radio services eligibles are not common carriers within the meaning of Section 3(h) of the Communications Act, and that the public interest is served by the Commission's authorizing cooperative sharing and multiple licensing in the private land mobile services. In contrast, the carrier interests disputed those conclusions and maintained, as a matter of law and public policy, that sharing of systems and facilities in the private services should not be allowed. They also maintained that if sharing is allowed, it should only be with rigorous regulation. Regarding the specific rule proposals, there was a great diversity of opinion among the parties.

6. With the exception of the comments and replies directed to the proposed rules themselves, the positions of the parties remained essentially the same as those advanced by them earlier in this proceeding, as modified by more recent precedents which they felt supported their respective positions.

Decision

Summary

7. We have considered the entire record of this proceeding. Based upon this review, we affirm our earlier conclusions that the cooperative sharing of systems and the multiple licensing of facilities in the private radio services are permissible practices as a matter of law, and desirable as a matter of public policy. We also determine that the sale, lease or rental of communications equipment and associated services to licensees in the private radio services by third parties is not common carriage. We also decide that these conclusions are not modified by advertising practices prevalent among licensees of cooperatively shared systems or third party equipment suppliers in multiple licensing situations, or by interconnection with the public switched telephone system, as authorized in the private services.[15] Further, we conclude that there has been no demonstration in the record of this proceeding that such competition as exists between third-party equipment suppliers and common carriers is unfair, destructive, or subjects carriers to a significant economic harm which impedes their ability to provide service to the public. Lastly, we affirm that there are significant public interest benefits in continuing cooperative sharing and multiple licensing practices in the private land mobile radio services.

8. In light of our conclusions that cooperative sharing and multiple licensing in the private land mobile radio services are permissible practices as a matter of law, and that the offering for sale, lease or rental of communications equipment and associated services to eligibles in the private services by third parties does not constitute common carriage, we decline to reach in this proceeding the issue of whether the Commission may forbear from exercising its Title II powers under the Communications Act. This matter is not germane to this proceeding; and we will defer a decision on the issue of forbearance to the resolution of our proceeding in CC Docket No. 79–252.[16]

9. We also decline to adopt rules at this time which would license third party providers of equipment and services in the bands below 800 MHz. Such an approach is not necessary to our regulatory objectives below 800 MHz and the record of this proceeding does not definitively support a need for such a service in these bands.[17]

10. With regard to the major specific rules which we are herein adopting, we have determined to require in the case of cooperatives that all costs associated with the shared service must either be absorbed by the licensee on a no-charge basis to other participants or must be prorated among all participants in the cooperative sharing arrangement. Thus, we have determined not to permit the so-called "stage two" and "stage three" cooperative arrangements [18] which we have heretofore allowed. Both of these types of arrangements have undesirable aspects inimical to true cost sharing. Thus, in the Stage II and Stage III cooperative oftentimes equipment costs and services associated with the cooperative use are not prorated and cost shared among participants. This, we conclude, is not desirable within the framework of our cooperative sharing rule, which contemplates an equitable prorating of costs associated with the sharing of the communications system. Thus, we are confining cooperative sharing to systems in which the licensee shares with the users the costs associated with the operation of his/her system. We are also adopting rules which limit the joint use of multiple licensed facilities to situations in which no consideration is paid by any licensee of the facility to any other licensee for or in connection with any of the equipment or for any services used or rendered in connection with the jointly licensed facility. Lastly, we have decided upon consideration of the record before us to retain the "packaged service" policy which we adopted on an interim basis in 1970.

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[15] *See* 47 CFR 90.476–90.483 and 90.369, as well as the Report and Order in Docket No. 20846. There we conclude that interconnection did not change the essential nature of the private services. *See* 69 FCC 2d 1831, 1837–38 (1978). Nothing in the record of this proceeding causes us to alter our earlier conclusion.

[16] *Deregulation of Telecommunications Service, Further Notice of Proposed Rule Making, In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefore*, CC Docket No. 79–252, 84 FCC 2d 445 (1981).

[17] The SMRS concept derives from our proceeding in Docket No. 18262. *See Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *Memorandum Opinion & Order*, Docket No. 18262, 51 FCC 2d 945 (1975); *Memorandum Opinion & Order*, Docket No. 18262, 55 FCC 2d 771 (1975); *aff'd. sub nom. NARUC v. FCC*, 525 F 2d 630 (1976), *cert. denied*, 425 U.S. 992 (1976). It is a concept specifically tailored to promote the Commission's goal of a potential for increased spectral efficiency and/or grade of service via the introduction of a new and expensive technology. The Commission had large amounts of spectrum then unoccupied which could be structured around this concept. The situation below 800 MHz is vastly different. We therefore choose not to adopt an SMRS concept below 800 MHz.

[18] In our Tentative Decision, *supra*, we defined a Stage II cooperative as an arrangement in which the licensee owned or leased the base station transmitter and made it available to sharing participants either at no charge or at less than cost, but provided participants with some other equipment or service (e.g., mobile stations/paging receivers or equipment service) on a for-profit basis. A Stage III cooperative is a situation in which an eligible in one of the radio service categories agrees with other eligibles in the same radio service to assume the responsibilities as licensee for the cooperative arrangement and arranges for the needed physical radio gear and maintenance service. Under such an arrangement the licensee of the system is paid nothing at all by the other participants; instead, all consideration flows directly to the third party suppliers of goods and services, with the licensee and each participant paying the third-party suppliers individually for any equipment or services provided to them. *See Tentative Decision and Further Inquiry and Notice of Proposed Rule Making*, *supra*., para. 7.

Discussion

The Offering of Equipment and Services by Third Parties Is Not Common Carriage

11. In our Tentative Decision, we concluded that the third-party equipment companies which furnish services and equipment to a group of private land mobile licensees are not common carriers within the meaning of Section 3(h) of the Communications Act of 1934, as amended.[19]

12. As an initial point, we agreed that a business enterprise is a common carrier depending on what it does, and not on what the parties concerned characterize it as being or on what it purports to be. *United States* v. *California*, 297 U.S. 175 (1936); and *United States* v. *Drum*, 368 U.S. 370 (1961). We also agreed that a business enterprise need not serve all the world to be a common carrier. *Terminal Taxicab Co.* v. *District of Columbia*, 241 U.S. 252 (1916) and *Anderson* v. *Fidelity and Casualty Co.*, 228 N.Y. 475, 127 N.E. 584 (Ct. App., N.Y. 1920). Further, we accepted the proposition that the courts have uniformly rejected schemes and devices designed to avoid statutory requirements relating to the control and regulations of public carriers or utilities. *State ex rel. Board of Railroad Commissioners* v. *Rosenstein*, 217 Iowa 985, 252 N.W. 251 (Sup. Ct. Iowa, 1934); *Restivo* v. *West*, 149 Md. 30, 129 Atl. 884 (Ct. App. Md., 1925); *Affiliated Service Corp.* v. *Public Utilities Commission*, 127 Ohio St. 47, 186 N.E. 703 (Sup. Ct. Ohio, 1933) and *Gornish* v. *Pennsylvania Public Utilities Commission*, 134 Pa. Super. 565, 4 A. 2d. 569 (1939).

13. Additionally, there was no issue that the fact that an association or corporation is to be non-profit, or that a cooperative arrangement is to be available on a cost shared basis does not perforce mean that such entities or arrangements are not to be classified and regulated as common carriers. *Celina & Mercer County Telephone Co.* v. *Union Center Mutual Telephone Company Association*, 120 Ohio St. 457, 133 N.E. 540 (Ohio Sup. Ct., 1921); *State Public Utilities Commission* v. *Noble Mutual Telephone Co.*, 268 Ill. 411, 109 N.E. 298 (Sup. Ct. Ill., 1915); and *Peoples Telephone Exchange* v. *Public Service Commission*, 239 Mo. App. 166, 186 S.W. 2d 531 (Kan. Cty. App., 1945). *See also North Shore Fish and Freight Co.* v. *North Shore Businessmen's Trucking Association*, 195 Minn. 336, 263 N.W. 98 (Sup. Ct. Minn. 1935); *State ex rel. Board of Railroad Commissioners* v. *Rosenstein, supra; Affiliated Service Corp.* v. *Public Utilities Commission, supra;* and *Surface Transportation Corporation* v. *Reservoir Bus Lines*, 67 N.Y.S. 2d 135, 271 App. Div. 556 (Sup. Ct. N.Y., App. Div. 1943).

14. Finally, we recognized that the operation of an unregulated third party equipment supplier in a regulated field could give rise to "special problems," and requires "careful analysis" in terms of the public benefits and possible public detriment. *Industrial Gas Co.* v. *Public Utilities Commission of Ohio*, 135 Ohio St. 408, 21 N.E. 2d 166 (Sup. Ct. Ohio, 1939); and *United States* v. *Drum, supra.*

15. Nevertheless, in light of the record in this proceeding, we considered that the "holding out" by equipment companies to provide radio gear and related services to eligibles in the private radio services on a for profit basis did not transform these equipment companies into common carriers. In this regard, we pointed out that all businesses which vend goods or services hold their products out, and that the offering of a combination of services, including equipment rental, antennae sites, maintenance, etc. to a person authorized by the Commission to use the radio spectrum does not result in common carriage. We found this to be true, whether the services are offered by the third party to a single eligible or to a group of eligibles.

16. We also emphasized that a significant factor in our determination was that equipment suppliers had no right to use the radio spectum. Without this right, we concluded, there could be no offering by these parties of a communications service.

17. We concluded our analysis on this first point by stating that in most communications systems, be they private or common carrier services, there is usually some third party to manufacture, supply, and at times, maintain the physical radio gear involved. This is so whether or not facilities are shared (*see e.g., Coleman Petroleum Engineering Co.*, 24 FCC 378 (1970); *Frequency Band 806–960 MHz*, 55 FCC 2d 771 (1975).

18. TNA has challenged our conclusions in the Tentative Decision on this point. It maintains that third party equipment suppliers of facilities which are shared by more than one eligible are engaged in "telecommunications carriage," and that as a matter of law they must be licensed therefore.

19. In support of this proposition TNA essentially makes the following points: (1) That common carriage is only one subset of telecommunications carriage under the Communications Act and that the Act requires all telecommunications carriers, whether or not they are common carriers, to be licensed as such; (2) that the case history of *ATS Mobile Telephone, Inc.* v. *General Communications Co., Inc.* (ATS v. GCC) is a typical example of the multiple licensed sysem;[20] (3) that the Commission's Second Computer Inquiry proceeding [21] makes clear that third party equipment suppliers are common carriers; (4) that the Mississippi Public Service Commission in *Yazoo Answer-Call, Inc.* v. *Motorola Communications and Electronics, Inc.*,[22] has found third party equipment companies to be public utilities; and (5) that the holding of the United States Court of Appeals for the District of Columbia in *NARUC* v. *FCC* (NARUC I) compels the conclusion that third party equipment companies must be licensed as telecommunications carriers.[23]

20. We have reviewed TNA's arguments carefully and disagree with its opinions. We conclude that under the rules we are adopting, the licensees in a multiple licensing situation, and not the third party equipment supplier, will be in both *de jure* and *de facto* control of their systems. (*See* Appendix, § 90.185). There is no communications service, therefore, being provided by these suppliers of radio equipment. With regard to TNA's specific points, Section 3(h) of the Act and Title II speak to common carriers. We find no basis in the cases TNA cites for the conclusion that third party equipment suppliers are telecommunications carriers which must be licensed under the Act. Second, without addressing the merits of the *ATS* v. *GCC* case cited by TNA, we find no basis in TNA's submissions to extrapolate that the GCC operation is typical of the practices of third party equipment suppliers, and we decline to conclude it is. TNA provides no support for its assertion that we should generalize for an entire industry based on one example. Moreover, by the

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[19] No issue of common carriage is raised with respect to the licensees in a multiple licensing arrangement since the typical licensee's use is confined to internal business communications. As noted above, we are not allowing an equipment supplier to also be a licensee on a facility which it makes available for multiple licensing by eligibles. A licensee in a cooperative sharing arrangement is not a common carrier because there is no for profit holding out of the system. *See* fn. 30, *infra.*

[20] *See in the Matter of Petition for Issuance of a Cease and Desist Order and an Order to Show Cause Filed by ATS Mobile Telephone, Inc. against General Communications Company, Inc., a Licensee in the Business Radio Service*, Gen. Docket No. 80-619, for a description of the GCC facility.

[21] 77 FCC 2d 384 (1980), on recon. 84 FCC 2d 50 (1980), appeals pending.

[22] Docket U-2230.

[23] 173 U.S. App DC 413, 525 F.2d 630 (1976), *cert. den.* 425 U.S. 902 (1976).

action we took in Docket 20846 and the action we are herein taking arrangements similar to the one involved in the *ATS* v. *GCC* case would be precluded.[24]

21. With regard to the Computer II proceeding, TNA cites it for the proposition that third-party equipment suppliers provide a "basic service" and therefore, within this decision, are "telecommunications carriers." TNA, however, assumes the very issue in question—that a third-party provider of equipment and service is offering a basic communications service. We do not find our decision in the Computer II proceeding to reach the conclusion that unlicensed third-parties who do not employ spectrum and who sell or lease radio equipment and related services to those eligible for licensing are engaged in offering a basic communications service within the meaning of that proceeding. Quite the contrary, in Computer II we determined that the provision of stand alone customer premises equipment is not a common carrier activity. *Second Computer Inquiry,* on recon., 84 FCC 2d 50, 98 (1980), appeals pending.

22. Addressing the *Yazoo* Case, *supra,* TNA cites it for the proposition that numerous State commissions have routinely found after investigation of community repeater system. (*i.e.* multiple licensing arrangements) that they operate as common carriers. TNA did not mention that the Mississippi Public Service Commission's decision was reversed by the United States District Court.[25] There, the U.S. District Court, *inter alia,* concluded:[26]

> Motorola is not a public utility as defined in this statute, inasmuch as it does not operate equipment or facilities for the transmission of messages by radio "by or for the public." The leasing of a community repeater to users licensed by the FCC, under its Part 91 private Business Radio Service is not an offering to the public for hire. As previously mentioned, only persons licensed by the FCC under Part 91 may be leased a slot on the community repeater and, even then, may be denied the slot. Plaintiff's services are clearly not those offered for public hire, and therefore, cannot be and are not a public utility. 515 F. Supp. 793, 798 (S. D. Miss. 1979).

23. Turning now to *NARUC* v. *FCC,* 525 F.2d 630 (1976), *cert. denied* 425 U.S. 992 (1976) (NARUC I), we had noted in our Tentative Decision our belief that the key elements of common carriage as described by the Court did not apply here.[27] We stated that we saw no quasi-public character, as such, in what third-party equipment companies offer within the framework of the marketplace in which they do business. Moreover, we stated our belief that equipment suppliers do not and could not as a matter of law undertake to carry for all persons indifferently, since they have no spectrum authorized to them to implement such an offering. We emphasized that is was our licensees, not the equipment suppliers, which hold authorizations from us to employ spectrum; and we pointed out that the right to use the spectrum ran to the licensee, not to the equipment which the licensee employed. We concluded that, contrary to TNA's assertion, NARUC I is not to be read in a fashion which precludes the Commission from allowing licensees in the private land mobile radio services, who are otherwise eligible, from sharing equipment furnished by third-parties at the risk of having these systems classified as common carriers.

24. In view of TNA's repeated assertions in its comments that we are wrong in this view, we have again reviewed the NARUC I holding. We conclude nothing in NARUC I is inconsistent with our conclusion that third-party suppliers of equipment and services do not fall within the test of common carriage described by the Court. Thus, there is nothing in the record which would demonstrate that these third-parties' activities are imbued with a quasi-public character which causes them to carry for all people indifferently. TNA's own submission (Appendix C of its Comments) seems to indicate it is the practice of third-party equipment suppliers to make individualized decisions, in particular cases, whether and on what terms to deal.[28] We also note that in the NARUC I case the Court concluded that an SMRS is not a common carrier although it satisfied two of the three criteria there enunciated for common carriage (*i.e.* a for hire offering of a communications service). The non-carrier status of a third-party equipment supplier here is even stronger when it is considered that provision of equipment alone is not provision of a communications service; in this case, only the "for hire" criterion is met. Lastly we point out that the Court recognized the practice of multiple licensing of systems and that it did not conclude that this practice would itself change the classification of a system from non-common carriage to common carriage.[29]

25. In addition, the court in NARUC I ruled that the Commission does not have discretion to confer or not to confer common carrier status on an entity depending on the regulatory goals it seeks to achieve, *NARUC* v. *FCC, supra,* at 644. That is a legal determination to be made under the three-part test enunciated therein. We conclude that, as a matter of law, third-party equipment suppliers are not providing a communications service. We also conclude that third-party equipment suppliers do not carry for all persons indifferently. We therefore conclude they are not common carriers within the meaning of the Act and there is no basis for regulating them under Title II. Similarly, since multiple licensed systems and cooperative cost-shared systems also fail to satisfy the three-part test of common carriage, they also are not common carriers and there is no basis for regulating them under Title II.[30]

26. In light of these conclusions we also determine that the advertising practices of third party equipment suppliers[31] or the inter-connection of

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[24] *First Report & Order,* Docket No. 20846, 69 FCC 2d 1831 (1978); *Memorandum Opinion and Order,* Docket No. 20846, (FCC 79-720), 44 FR 67119 (November 23, 1979); *See also* the Appendix of this document at § 90.185.

[25] *Motorola Communications* v. *Mississippi Public Service Commission,* 515 F. Supp. 793 (S. D. Miss. 1979), *aff'd* 648 F. 2d 1350 (5th Cir. 1981).

[26] This case involved a suit filed by Yazoo Answer-Call, Inc. with the Mississippi Public Service Commission alleging that Motorola, Inc., as the supplier of equipment and services to eligibles under Part 91 (now Part 90) of the Commission's Rules & Regulations, was operating as a public utility within the meaning of the Mississippi public utility law (Section 77-3-3 of the Mississippi Code of 1972) and required a prior certificate of public convenience and necessity.

[27] Common carriage has a three pronged test: (1) provision of a communications service, (2) for hire, (3) to the public. *See NARUC* v. *FCC, supra, construed in American Telephone and Telegraph Co.,* v. *FCC,* 572 F. 2d 17, 24 (1978); *see also FCC* v. *Midwest Video Corp.,* 440 U.S. 689 (1979). "[* * * (A) common carrier is one which undertakes indifferently to provide communications service to the public for hire * * *" *American Telephone and Telegraph Co.* v. *FCC, supra,* at 24.

[28] This is a characteristic which the Court in NARUC I said would be indicative of non-common carrier status.

[29] The Court considered the specific case of cost shared "community repeater" systems. *NARUC* v. *FCC, supra,* at 639 n. 45.

[30] The licensee on a multiple licensed system does not provide a communications service to the public, one of the NARUC I tests. *See* note 19, *infra.* The licensee of a cooperative cost-shared system does not operate for profit, one of the significant indicia that a communications service is offered to the public. *See American Telephone and Telegraph Co.* v. *FCC, supra,* at 26. Therefore, neither of these licensees is properly regulated as a common carrier. With respect to the non-common carrier status of cooperative ventures, we recognize, of course, that a profit-making entity may offer a communications service and nonetheless not be deemed a common carrier; factors other than profit may indicate that a service is not offered indiscriminately to the public and, hence, is not common carriage. *See NARUC* v. *FCC, supra,* at 641. However, because the record and issues in this proceeding have focused principally on the non-profit nature of cooperatives, our findings as to their private status are based primarily on that factor. *See also* note 31, *infra.*

[31] Individual licensees in a multiple licensing arrangement, as a general rule, do not advertise,

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private systems with the public switched telephone network does not alter the essential nature of these private systems and does not result in their becoming common carriers. We have applied the three-pronged test of common carriage to these arrangements and found that they are not common carriers. Neither the existence of advertising nor interconnection affects the reasons we reached this conclusion.[32]

Do Third-Party Suppliers Constitute Unjust or Unfair Competition for Radio Common Carriers?

27. In the Tentative Decision, the Commission concluded that it could not find in this rule making record, nor could it conclude based on its experience, that unjust or unfair competition exists between common carriers and equipment companies furnishing physical facilities and associated services to licensees. We stated that if was not unjust, because it arises essentially out of our decision to make radio spectrum available to certain classes of users to give these users options to conduct their affairs through the use of radio and, in this way, ultimately to promote the public interest.[33]

28. We also pointed out that inherent in our rule making determinations to allocate radio spectrum to the private services is the conclusion that certain classes of eligibles should not be required to take service from common carriers. We added that the fact that we had allocated spectrum to common carriers to permit them to offer radiotelephone and dispatch services to the public did not carry with it any reasonable implication or expectation on their part that licensees in the private services are to be limited or restricted in the arrangements they are to be allowed to make in the marketplace to secure the radio equipment necessary to employ the radio spectrum we have authorized for their use.[34]

29. From an historical perspective, we also pointed out that sharing was allowed in the private services even before the Commission allocated spectrum to the radio common carriers, and that we did not change this approach when these carriers were created.[35] Finally, we noted that we have consistently affirmed this concept in the face of strong carrier opposition.[36]

30. In sum, for many years equipment and services have been provided to private land mobile licensees as an alternative to equipment and services which might be provided to the public by radio common carriers. Because of this, we concluded in our Tentative Decision that continued provision of such equipment and services on a non-common carrier basis is an appropriate user option in the public interest, and not unjust.

31. With regard to the second issue, whether such choices for consumers subject radio common carriers to significant economic harm, or whether such choices impede or destroy these carriers' ability to provide service to the public, we tentatively concluded that such adverse effects have not arisen and will not arise. We noted that we had found no case where such availability of alternatives had resulted in the failure of any carrier. Nor could we find any demonstration that provision of equipment and services by third parties to users of multiple licensed facilities, or of cooperative sharing arrangements, had adversely affected the development of the radio common carrier industry as a whole. To the contrary, we noted that the radio common carrier industry has grown, not only in the number or composite size of radio common carriers, but also in the types and variety of services offered to the public.

32. TNA, PAF, and MCCA dispute these tentative conclusions. They assert that, at least in the case of multiple licensing, a continuation of this practice is contrary to the public interest, convenience and necessity.[37] The thrust of these parties' positions is that in the proceeding in Docket No. 79-107 (an Inquiry addressing multiple licensing at 800 MHz[38]), TNA has made allegations that third-party equipment suppliers, through the way in which they provide equipment and services to licensees under multiple licensing arrangements, do in fact, or are in a position to, restrain or foreclose competition. The carrier interests therefore assert it would "pre-judge" the 79-107 proceeding to act until we have addressed and disposed of this issue.

33. While these parties concede that PR Docket No. 79-107 is concerned with multiple licensing at 800 MHz,[39] they argue "the public interest considerations involved are not peculiar to the 800 MHz band, but reflect (adversely) on the propriety of the licensing technique in general."[40 41]

34. We have considered this point. However, we are unable to agree that the Comments which TNA submitted in Docket No. 79-107, in and of themselves, constitute the predicate for terminating this proceeding and merging it with Docket 79-107 (as at least one of the carrier interest requests), or for delaying a decision here. Docket 79-107 is only at the Inquiry stage and we have not even made a determination that new rules at 800 MHz are necessary. Furthermore, the proceeding was initiated in the context of the 800 MHz regulatory structure where SMRS's provide a possible substitute for multiple licensing. These same options do not exist below 800 MHz. At the bottom line,

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since their systems are not shared, but are used only for internal business communications. There is, therefore, no issue of common carriage. In the cooperative sharing situation, in the context of the rules we are adopting, there is no profit to the licensees and we conclude that such advertising as normally exists in these arrangements does not convert such a shared system into common carriage. *See Resale & Shared Use of Common Services*, 60 FCC 2d 261 (1976) *amended on reconsideration*, 62 FCC 2d 588 (1977), *affirmed American Telephone and Telegraph Co.* v. *FCC*, *supra*.

[33] In Docket No. 20040, *supra*, we concluded that interconnection does not change the basic nature of private systems. *See* 69 FCC 2d 1871, 1237-1238 (1978).

[34] In this regard we noted that the allocation of spectrum to the private services is not to produce or create a "private" benefit, but rather to enhance the "public" benefit which accrues from the use of radio by licensees in the private services.

[35] Thus, for example, in *Special Emergency Radio Service*, 24 FCC 2d 310 (1970), we stated: ". . . the Commission's allocation of frequencies for common carriers and for private systems is premised on the basic philosophy that potential radio users, subject to certain limitations, should have the freedom to choose between meeting their needs through private facilities or taking service from carriers." *Id.* at 312.

[36] *See General Mobile Radio Service*, 13 FCC 1190 (1949).

[37] *See Cooperative Sharing of Operational Fixed Stations*, 4 FCC 2d 408 (1966); *In the Matter of Allocation of Frequencies Above 890 MHz*, 27 FCC 359 (1959). *See also, Aeronautical Radio Inc.* v. *AT&T Co.*, 4 FCC 156 (1937); and *Preston Trucking Company, Inc.*, 31 FCC 2d 766 (1970).

[38] No issue has been raised concerning the public interest benefits of cooperative sharing arrangements, where capital and operating expenses are prorated among participants (with no profit component). *See*, TNA Comments, 28, n. 12; *see also*, Page A Fone Comments, at 12, Mobile Communications Corp. of America Comments, at 23.

[39] Notice of Inquiry, PR Docket No. 79-107, 71 FCC 2d 1291 (1979).

[40] We characterized this proceeding then, "The principal motivation for initiating an inquiry into community repeaters at 800 MHz is our desire to gain a better understanding of the relationship of multiple licensing practices and the major objectives of the Commission's regulatory plan for the private services at 800 MHz. * * * if the public interest requires specific action to eliminate or curtail the practice, that would be the subject of the next phase of this proceeding." *Id.* at 1291.

[41] Comments of TNA, at 12.

[42] Page A Fone argues: "These Comments [those of TNA], although clearly relevant to this proceeding, were not considered in the Tentative Decision. Whether or not the Commission accepts the legal and factual analysis presented in PR Docket No. 79-107 on behalf of the RCC industry, that analysis must be dealt with on a rational basis in any decision sanctioning the continuation of the present policies regarding community repeaters, as liberalized by the Tentative Decision." Comments of Page A Fone, at 26. A similar position is taken by MCCA, *viz.* Comments of MCCA, at 13-18.

TNA's comments are not dispositive of the charges of the anti-competitive practices which it alleges. It appears that its conclusions in several cases are either not supported by factual data or they are inadequately supported. In instances the submission draws conclusions which are inconsistent with assertions made elsewhere. In short, TNA's Comments in Docket 79-107 have arguable probative value at this point and cannot now be used to rationalize the affirmative conclusions urged by TNA. In light of the foregoing, we believe the public interest is served by defining once and for all without further delay the types of sharing we will allow in the private land mobile services below 800 MHz. These matters have been unsettled for almost twelve years, and have fostered uncertainty in the user community. Further delay is not warranted.

35. On the issue of whether the activities of third-party providers of radio equipment are detrimental to and destructive of common carrier service, as we noted in para. 31, *supra*, there has been no demonstrated substantive injury to the common carrier industry or the public from the authorization of cooperative sharing and multiple licensing in the private services. We conclude that such activities are not detrimental to or destructive of common carrier service.

36. The beneficial effects of competition and open entry in the communications field are well known. *See e.g., Resale and Shared Use,* Docket No. 20097, 62 FCC 2d. 588 (1972), *aff'd sub nom. AT&T* v. *FCC,* 572 F. 2d. 17 (2nd Cir. 1978); *In re Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service,* Docket No. 20870, 61 FCC 2d. 266 (1976); *Commonwealth Telephone Co.,* 61 FCC 2d. 246 (1976); *Carterfone,* 12 FCC 2d. 571 (1968); *Above 890,* 27 FCC 359 (1959). While most of these cases concern competition within the carrier industry, we do feel they stand for the general proposition that competition can spur innovation, flexibility and the development of the communications art.

37. It is also well settled that the speculative possibility of adverse effects will not support a policy to curtail competition. *AT&T* v. *FCC, supra; In re Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service, supra; Above 890, supra; Carterfone, supra.* As we stated in a somewhat analogous situation:

> Any party who would have us retain restrictive licensing policies should be prepared to support such a position with concrete factual matter.[43]

Here, where what is being sought is the elimination of a long established licensing option that will affect thousands of licensees in the private services, we think such a standard is even more appropriate.[43] Moreover, the dramatic growth in the land mobile industry in the last decade, both in private and common carrier systems,[44] and the continuing demand by the carriers for additional spectrum in the very urban areas where the growth of private systems has been greatest in order to enable them to serve increasing numbers of customers clearly weakens the persuasiveness of their claims of "destructive" competition.[45]

38. The Commission's statutory mandate is to regulate interstate and foreign communications so as to make available to all the Nation's people rapid, efficient service with adequate facilities at reasonable charges and to encourage the larger and more effective use of radio in the public interest. This is promoted by sharing of systems and facilities in the private services.

Benefits

Spectrum Efficiency

39. Turning now to the issue of whether the multiple licensing of facilities and the cooperative sharing of systems have public benefits, in our Tentative Decision we concluded that permitting these arrangements in the private land mobile radio services promotes spectrum efficiency because it permits better frequency utilization of the limited spectrum resource than a multiplicity of base station transmitters would permit.[46] Additionally, we noted that compatible groupings of users are possible in these situations, so that channel assignments may be employed more efficiently by all. Further, we said that when facility costs are shared, each participant is more responsive to the day-to-day operating requirements of others. Finally, we pointed out that sharing permits the use of better mobile relay facilities and better sites (*i.e.,* ones from which better coverage is possible) and that this allows licensees to make more efficient use of the radio channels assigned to them and therefore enhances their ability to use radio in the furtherance of the public good.

40. At the same time we emphasized that we were not weighing the question of whether private systems or common carrier systems were more spectrally efficient. We pointed out that the two schemes of regulation are totally different.[47]

Effective Spectrum Utilization

41. With regard to the question of effective spectrum utilization, we pointed out in our Tentative Decision that the issue we were addressing was whether sharing within the private services promoted effective utilization, not whether common carrier offerings made more effective utilization of the spectrum than private land mobile joint use arrangements.

42. Thus, we observed that carrier managed radio facilities might in some cases more effectively use spectrum in the sense that channels are not assigned to carrier systems until "need" is demonstrated, and additional radio frequencies are not authorized unless a carrier licensee demonstrates that the capacity of its authorized facility is exhausted.[48] We added, however, that

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[43] *See In re Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service, supra,* para. 8.

[44] TNA, MCCA, and Page A Fone also blame the Commission's Rules and Regulations in hindering their competition with third-party equipment suppliers. We are mindful of these types of concerns and we are attempting to address them. *See, e.g., Further Notice of Proposed Rule Making,* Docket No. 20870, 84 FCC 2d. 837 (1981).

[45] *See, e.g.,* Docket No. 80-440, FCC 80-484, 45 FR 63305 (Sept. 24, 1980) for a discussion of the growth in the use of land mobile radio.

[46] *See, e.g., Notice of Proposed Rule Making,* General Docket No. 80-183, 45 F.R. 32813 (May 15, 1980); *Supplemental Notice of Proposed Rule Making,* General Docket No. 80-183, 45 F.R. 73879 (Nov. 7, 1980); *Memorandum Opinion and Order and Notice of Proposed Rule Making,* Common Carrier Docket No. 80-188, 45 FR 32025 (March 15, 1980); *Report and Order,* Common Carrier Docket No. 80-188, 46 F.R. 36509 (July 28, 1981); *Errata,* Common Carrier Docket No. 80-188, 46 FR 44758 (Sept. 8, 1981); *Docket 20870,* 85 FCC 2d. 294 (1980). And further in this regard we noted, in *In re Elimination of Financial Qualifications in the Public Mobile Radio Service,* 82 FCC 2d. 152 (1980), at para. 5, that the common carrier mobile radio industry is a "relatively low-cost, low-risk business venture."

[47] Although it could be argued that a single large multiple licensed system is not as spectrally efficient as several smaller systems which would reuse the same channel, this disadvantage is offset by the operational incompatibilities and the greater expense associated with several systems.

[48] In this regard we noted that efficiency is a relative term and can be measured in a variety of ways. Thus, if interference contours (service areas) are employed, as in most common carrier operations, then the number of individual systems in a given area employing a common channel may be significantly less than is possible in the absence of protected interference contours. We also pointed out, however, that the general approach in the private land mobile services does not look towards the maintenance of a particular grade of service, as would be the case in most common carrier operations. We concluded that if grade of service is viewed as an important element of efficiency, then we had no way of comparing the efficiency of common carrier operations with the efficiency achieved through the assignment approach employed in the private land mobile services.

[49] In this regard we are constrained to add, however, that the Commission is in the process of

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the rule-making record before us clearly manifested the dissatisfaction of some parties with the carrier services available to them. We also pointed out that the Commission's approach to allocating spectrum to private systems and carriers was different.[49]

43. We, therefore, concluded in our Tentative Decision and conclude herein that within the context of the private land mobile radio service where channels are generally not assigned on an exclusive basis, there were benefits in spectrum utilization gained from eligibles sharing common transmitting facilities. This cut down on the number of separate transmitter installations (sites) and on "equipment clutter." It also promoted greater assurance of compliance with our technical requirements, since it meant there were fewer transmitters which had to be maintained and inspected. Finally, we recognized that sharing could enable greater flexibility in locating transmitters at advantageous sites because sites too expensive for an individual licensee might be available if the site costs were spread over a broader economic base.

Economic Considerations Associated With Multiple Licensing and Cooperative Use

44. The next area of benefit we addressed in our Tentative Decision was the economic consideration associated with permitting these two types of arrangements. After considering the positions of the various parties, we concluded in the Tentative Decision and conclude herein that shared facilities are often cheaper than individual systems and therefore the public interest is furthered by allowing them.

Availability of Service

45. The last area we addressed under benefits was the "availability of service." Specifically, the private interests and their representatives maintained that cooperative sharing and multiple licensing should be allowed since common carrier facilities may not always be available or tailored to the individual and particularized requirements of potential users.[50] The carriers themselves had acknowledged that their facilities are not available everywhere or always. They had argued, however, when they are available they should be used in lieu of sharing.

46. After considering the matter, we stated in the Tentative Decision our belief that the issue of whether or not sharing in the private land mobile radio services should be allowed did not turn on the question of the availability or non-availability of carrier services. Rather, we stated the fundamental question went to the basic allocation issue: should radio spectrum be made available to classes of users to permit them to establish radio facilities of their own and to arrange freely in the marketplace for such equipment and services as they needed to enable them effectively to use the radio spectrum allocated to them for the conducting of their affairs?

47. We then pointed out that the Commission had answered this point affirmatively on a number of occasions.[51] We also noted that based on the record before us, we believed sharing facilities in the private land mobile radio services was a valuable option and that it should not be denied to persons classified by us as eligible in the private services.

48. In summation on this point, we stated that the allocations of spectrum to the private services have their own basis in terms of the public interest, convenience and necessity standard laid down in the Communications Act. These public interest findings are entirely separate and distinct from those which support the allocations made to systems for public communications. Each group has its own public interest rationale. This being so, we concluded there was public benefit to consumers in having a choice between private and common carrier services, and we therefore rejected the notion that in regions where both are available the former should give way to the latter. This being so, we concluded there was no reason to compel private licensees to forego cooperative sharing or multiple licensing options merely because common carrier service was available.

49. Generally, the private radio service interests enthusiastically endorsed these tentative conclusions. The carriers on the other hand reiterated their views that multiple licensing and cooperative sharing were undesirable because they placed carriers at a competitive disadvantage. In light of our previous discussion, we affirm our prior conclusions with regard to the public interest benefits involved in multiple licensing and cooperative sharing.

Rules

We now turn to the specific rules which we are herein adopting.

Packaging

50. The packaging policy, which has been described above, derived from a controversy in *Coleman Petroleum Engineering Co., supra.* Very briefly, in the Coleman case, Caprock Radio Dispatch, an RCC, had complained that Mrs. Nellie Woodruff, a third party, had combined her telephone answering service functions with dispatching and equipment rental. Caprock contended that the arrangement was *de facto* and *de jure* common carriage. We rejected this notion, but stated our intention to look into arrangements of this type in a rule making proceeding.

51. In this docket, therefore, we put into issue the question whether licensees of cooperatively shared or multiple-licensed systems of communications should be permitted to obtain both equipment and dispatching (including transmitter control) services from the same third party. Our concern was not that expressed by the carriers,

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considering means of eliminating and/or objectively quantifying "need" showing for applicants and licensees in the Domestic Public Land Mobile Radio Service. *See Notice of Proposed Rule Making,* General Docket No. 80-183, 45 F.R. 32013 (May 15, 1980); *Supplemental Notice of Proposed Rule Making,* General Docket No. 80-183, 45 F.R. 73979 (Nov. 7, 1980).

[49] Frequencies are assigned to common carriers and made available to enable them to provide public communications services, of a grade which is, in essence, assured through our frequency assignment and interference protection policies. In such circumstances, there may be a regulatory requirement to examine need ("necessity" under the Act) in terms of the services offered and utilization of existing channels; concomitantly, others have standing to protest licensure of common carriers on the basis that they have no need for spectrum to support proposed services. In contrast, in the private services the Commission determines need in terms of generic categories of users (e.g., power companies, police departments, hospitals, businesses, etc.). These determinations are made through the rulemaking process, with radio frequencies allocated for use by generic classes of "eligibles" (categories of licensees eligible for licensing for such frequencies) based on a demonstration in the proceeding of each generic class' need. After such rulemaking, individual frequency assignments are made within the allocation to users which are eligible for use of the frequency, as defined by the adopted rules. These eligibles must share channels with other eligibles (for example, business licensees must share channels with other business licensees). The grade of service attained may be significantly inferior to the grade of service obtainable from a radio common carrier, and messages in the private services, unlike those in common carrier services which are unrestricted, must be restricted to the activity which established eligibility (e.g., messages in the police services must be official police communications and may not be personal). In sum, the Commission examines need in the private services by class of eligibles, and not by licensee.

[50] In this regard it had also been argued by the private land mobile interests that the autonomy they have as licensees in the private services is important. If sharing were removed, they complained, this option would effectively be denied to all but those who found it economically feasible to construct individual private systems.

[51] *See, e.g., Special Emergency Radio Service; Report and Order,* Docket No. 17861, 24 FCC 2d 310 (1970); *In re Joe A. Coleman, d.b.a. Coleman Petroleum Engineering Co., Memorandum Opinion and Order,* 24 FCC 2d 378 (1970); *General Mobile Radio Service,* 12 FCC 1190 (1949).

i.e., that packaged service was a common carrier offering, but rather that in arrangements in which licensees relied on a single third party for associated equipment and dispatching service, there might be a propensity to abdicate to this third-party effective system control.

52. Throughout this proceeding the private interests have opposed this approach; they maintain it is not necessary to our regulatory objective of assuring that licensees control the operation of their systems. *See* 47 CFR 90.403. The carriers, on the other hand, have expressed the view that retention of the prohibition on the offering of packaged service would "aid the Commission in identifying private systems which are functionally equivalent with regulated carriers."[52]

53. After reviewing the record of this proceeding, we affirm our tentative conclusion that the offering of a packaged service, of itself, is not common carriage. However, we are of the view that retention of packaging restrictions for these systems further assures licensee control. Moreover, for the past ten or more years in which we have had the packaging doctrine, there have been no demonstrated adverse effects. Accordingly, we will adopt rules retaining present packaging restrictions.

Cooperative Sharing

54. In our Tentative Decision we delineated three stages in the evolution of cooperative sharing. We also noted that we had limited in the past cooperative arrangements in which the licensee of the cooperative system made equipment or service available to other participants at no cost, or less than cost, but then profited out of the provision of associated equipment or service, *i.e.*, the Stage II cooperative. We also pointed out that in reaction to our limitation of Stage II cooperatives, the Stage III cooperative arose. In this situation no monies for the operation of the system were paid to the licensee. Instead, payments by each participant were made to third parties. In our decision in docket No. 20097 [53] we defined sharing as "a non-profit arrangement in which several users collectively use communications services and facilities * * * with each user paying the communications related costs associated therewith according to its pro rata usage of the communications services and facilities." [54] On reconsideration, we defined sharing "as a non-profit arrangement where several users collectively use, and allocate among themselves the cost of communications services or facilities." [55] Although these decisions were directed towards the sharing of a carrier provided service, we believe the concept can usefully be applied here. If a private land mobile system is to operate under our cooperative sharing rules, then we believe that the costs associated with the system, that is, the services and facilities operated pursuant to the licensee's authorization, should be: (1) prorated by the licensee and apportioned among the participants on a non-profit, equitable basis, *i.e.*, no profit out of any aspect of the sharing arrangement accrues to the licensee or any participant; (2) collected by the licensee; and (3) paid by the licensee to the third party providers, to the extent equipment or service is received from them. This approach is consistent with our conclusions in Docket No. 20097 [56] and promotes consistency in the application of our rules and procedures. We are, therefore, confining cooperative sharing to the Stage I cooperative, because in a Stage I cooperative, all these elements exist.

Prior Approval of Cooperative Sharing Arrangements

55. By and large, the private land mobile interests applaud the proposed elimination of prior approval of cost-sharing arrangements by the Commission. They argue that such deregulation will promote efficiency, and that retention of such a requirement is unnecessary in light of the delineation in our rules of the requirements for cooperative sharing.[57] This view, however, was not shared by the carriers.[58] They felt that the prior filing and approval requirement should be retained to enable "interested parties acting as 'private attorneys general' to investigate questionable practices on their own so that they can bring evidence of rule violations to the Commission's attention." [59]

56. We conclude after considering the various arguments that the rules we are adopting adequately set out the parameters of permissible cost sharing. In consideration of the fact that we are requiring licensees (1) to compile and maintain records reflecting the non-profit nature of the arrangement, and (2) to hold them available for inspection and audit, we conclude this is sufficient for our administrative purposes. We are therefore not requiring the prior submission and approval of cost sharing arrangements.

(b) Nonprofit Corporations and Associations

57. We proposed requiring nonprofit corporations and associations of users eligible for licensing in several of the private land mobile radio services [60] to comply with the new rules governing cooperative use. Nothing in the record persuades us this is not in the public interest. The rules we are adopting therefore require it.

(c) Sharing Between Parent and Subsidiary Corporations

58. A number of parties expressed concern that the proposed rules would require the subsidiaries of a common parent corporation to follow cost-sharing procedures, *e.g.*, in terms of the records to be kept and the reports to be filed with the Commission. We did not intend this. Where a communication service is provided by a subsidiary to its parent or to a sister subsidiary, cost sharing, as such, is not involved. The revised rules set out in the *Appendix* state this explicitly.

(d) Sharing Among Joint Venturers

59. A similar concern was voiced by TAPS Communication Association, but its focus was on the application of the cooperative use rules to joint ventures. We feel the same policy would apply as in the case of parent and subsidiary, *i.e.*, if the communication service is provided essentially to the same entity or party-in-interest, then cooperative use is not

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[52] Comments of Page A Fone Corporation, at 22.

[53] *Resale & Shared Use of Common Services, Report and Order*, Docket No. 20097, 60 FCC 2d 261 (1976).

[54] *Id.* at 282.

[55] *Resale and Shared use of Common Carrier Services Memorandum Opinion and Order*, Docket No. 20097, 62 FCC 2d 588 (1977) at 600, aff'd. *AT&T v. FCC*, 572 F. 2d 17 (2nd Cir. 1978).

[56] *Id.* at fn. 19.

[57] *See e.g.*: "Instead of requiring prior submission and approval of the sharing plan as originally proposed, the revised proposal simply set forth the parameters for cost sharing and requires that records reflecting the nature of the cost sharing arrangement be maintained for possible inspection and audit. In the interest of eliminating unnecessary regulations and easing the Commission's administrative burdens, the Central Committee submits that the adoption of rules reflecting this policy will serve the public interest." Comments of API, at 11.

[58] "Thus, at a minimum, licensees of shared PLMRS facilities should be required to file with the Commission all agreements concerning their use and the sharing of the costs thereof. These records should include all service agreements with individual users. Moreover, shared operations should be required to file a detailed annual report with the Commission—which report should, at minimum, set forth (a) the name, address and business of each shared user; (b) a detailed itemization of all capital and operating expenses applicable to the facility during the subject calendar year; and (c) the prorated contribution made by each user during that year." Comments of Mobile Communications Corporation of America, at 32.

[59] *Id.* at 31–32.

[60] *See* 47 CFR 90.61 and 90.67.

involved. There may be special circumstances where we would not reach this conclusion, but as a general rule this is the policy we will follow.

(e) Control Station and Control Point Authorizations

60. We have mentioned that neither our prior nor our present practice permits participants in cooperative use arrangements to control the licensee's base station facility. In the Tentative Decision, we proposed separate licensing of participants in cooperative sharing arrangements for control points or stations of their own, located on or at their premises, should they so desire, if the base station licensee consents and provided all operation took place under the control of the base station licensee. This approach was generally supported; therefore, our final rules allow it.

(f) Annual Reports

61. We proposed rather detailed record keeping requirements and the filing of detailed annual reports where (under cooperative use) costs are shared, with the licensee reimbursed either in full or in part for his or her capital or operating expenses. PLMRS licensees opposed the new requirements. Some thought them burdensome, and others said they were not at all justified, suggesting that the licensees could keep adequate records at their stations and could make these reports available upon reasonable request for inspection or audit by Commission personnel. Further, it was pointed out, the Commission could always require the licensees to furnish any needed information as to their cost-sharing arrangements; that this was a statutory right of the Commission; and that, in these circumstances, some flexible standard could be devised and still serve the Commission's purpose. As noted above, the carriers opposed this for the reasons previously outlined. We conclude that the submission of annual reports on a routine basis is not necessary. To the extent we wish to examine these reports they must be made available. We believe this satisfies our regulatory requirement to be able to assure our rules are being followed. Our rules therefore do not require the filing of annual reports.

(g) Addition of Participants

62. We also proposed elaborate notification procedures when users were added to cooperative use sharing arrangements. We are looking for ways to simplify administrative procedures and we find we can do so here with no adverse effect. Thus, our modified rule allows licensees to add participants without notification or approval by us.

(h) Mobile Stations in Third-Party Vehicles

63. We had planned to clarify our rules by separating out those arrangements involving cost sharing from those in which none was involved, *e.g.*, where a subsidiary corporation provided radio service to its parent or to another subsidiary of the same parent and where radio service was provided by a licensee to a third party furnishing, under a contract, "non-radio services" to the licensee. In the interim, we developed a new rules structure in consolidating Parts 89, 91, and 93 under the new Part 90. In doing so, we took care of most of the situations mentioned. *See* 47 CFR 90.61, 90.67, and 90. 421. Accordingly, consistent with the Tentative Decision, we will not adopt the separate rules proposed in the original Notice for mobile stations in third party vehicles.

4. Multiple Licensing Arrangements

(a) Unrestricted Transmitter Access

64. Since under multiple licensing arrangements, the base station transmitter is usually at some location remote from the licensees' places of business, we proposed to require a means of unlimited and unconditional access by each licensee to all shared transmitting equipment. While no objection to this proposal was voiced, concern was expressed that in certain cases, such as roof-top locations, site-lessors might be reluctant to permit each licensee to access the transmitter site on demand.

65. While we are mindful of these concerns, we conclude, nonetheless, that each licensee in the private land mobile radio service consistent with his or her status as a licensee must have unlimited and unconditional access to the transmitter for which the licensee is authorized. However, in a fashion analogous to the sharing of an antenna structure for which each licensee has lighting and maintenance responsibility, we will permit the licensees in a multiple licensing arrangement to select one of their number to have primary access responsibility. [61]

(b) Joint and Several Operating Responsibility

66. Our initial plan was to require all persons jointly licensed to use and operate a common facility to be both jointly and severally responsible for the transmitter shared. This was modified in our Tentative Decision. The parties pointed out that joint and several responsibility was an impractical and unfair requirement, that more properly each licensee should be held accountable for his or her individual use and operation of the shared system; and that in the circumstances the rule should not be adopted. After consideration of the arguments before us, we agree. Under multiple licensing each licensee can be held accountable for his or her use and operation of the shared facility, and we think it more equitable that such responsibility be limited as suggested.

(c) Prior Consent for Participation

67. In our original plan, we proposed a rule which would have required all persons sharing a particular facility to consent to the addition of any new participant. The parties thought this unreasonable, since any one participant for any reason could refuse to consent to new users being added. The consequence might well be to drive the costs up to a point at which sharing would not be beneficial. Moreover, the need for the rule was questionable, since any dissatisfied user, as a licensee, could move off the shared facility and establish his or her own station, either at the same site or at some site nearby. Upon further consideration of this matter, we agree with these views. Under multiple licensing, licensees have freedom to modify their licenses and change facilities or to construct their own facilities using the same frequency assignments. Accordingly, we are not adopting final rules on this point.

(d) Payments Among Participants

68. We also proposed in 1970 to forbid payments between persons sharing common transmitting facilities under multiple licensing. This we thought desirable to distinquish multiple licensed sharing arrangements from cooperative use, thereby drawing an absolute and very definitive line between the two. This approach was opposed by several parties. They argued that in many instances persons furnishing service, *e.g.*, equipment companies, have legitimate communication requirements of their own. In such circumstances, the option would be for such equipment companies to build a second facility for their needs, keeping separate ones for use by their customers. Notwithstanding this effect we feel that licensees of community repeaters should not be permitted to profit from the furnishing of equipment or service to other licensees. Therefore, payments among persons sharing

[61] *See* 47 CFR 90.441(b).

common transmitting facilities under multiple licensing will be prohibited.

(e) System Designators

69. To better identify multiple licensed facilities and to account for the number of persons being accommodated through them, we proposed assigning a "system designator" to each shared repeater or shared base mobile system. Since that time, we have found other ways to identify such facilities, including the licensees sharing them and the number of mobile units serviced. In these circumstances, we no longer have a need for the "system designator," and we are not adopting final rules on this point.

(f) Termination of Use

70. It had been our plan to require licensees to notify us of termination of use of a particular facility, and to submit their licenses for cancellation within a specified time. While we are mindful of the comments of those who urge adoption of this rule, citing the benefit of improved frequency coordination, we conclude [42] this proposal is far too restrictive. It does not take into account those situations in which licensees might want to continue to use their assigned channels, perhaps at different sites. As we have already noted, a licensee's authorization does not run to a particular facility. Thus, notification of termination of use of a particular station and a cancellation requirement are not appropriate.

(g) Miscellaneous Matters

1. Public Notice Proposal

71. The radio common carriers requested that public notice be given for all applications proposing cooperative use or multiple licensing and that interested persons be afforded an opportunity to protest. *See* Section 309 of the Communications Act of 1934, as amended, as implemented at § 1.962 of the rules. This was not an area in which we requested comments. We have concluded earlier that such procedures were not necessary. *See Multiple Licensing—Safety and Special Radio Services, supra,* at 515.

72. Nevertheless, TNA and others again requested such procedures, arguing that the dangers of non-compliance with the rules by applicants for cooperative use and multiple licensed facilities were such as to require the services of "private attorney generals," *i.e.,* carriers who would review pending applications and, where appropriate, file petitions to deny.

73. TNA and others with this view presented no new information to support their conclusion. Further, it is apparent that such petitions could be used by carriers as a dilatory tactic to postpone commencement of private service. This would not be in the public interest. Policy issues as to licensing that are raised repetitively are appropriate subjects for rule making and should be handled as such rather than on an *ad hoc* basis. Further, we have administered cooperative use and multiple licensing arrangements for many years, and we have found no evidence to support the contention that there is a need for "private attorney generals" to review applications for such arrangements. Our rules will define the types of sharing we will allow and the conditions under which these arrangements will be authorized. Eligibility standards formulated through rule making, as stated earlier in this proceeding, are preferable to case-by-case determinations. Moreover, the procedures sought by the carriers would have an adverse impact on our ability to process the large volume of land mobile applications which we receive each day. See *Multiple Licensing—Safety and Special Radio Services, supra,* at 515. Based on our experience, this disruptive effect would not be offset by any significant benefits to be gained from these procedures. Therefore, we affirm our earlier decisions not to extend the Section 309 notice procedures to land mobile applications, except to the extent they presently apply. [43]

2. Rule Consolidation

74. As we noted earlier, Parts 89, 91, and 93 of our rules have been consolidated into a single Part 90. We therefore proposed to consolidate our rules governing multiple licensing and cooperative use into the rule provisions under this new Part 90.

3. Procedural Issues

75. Both TNA and MCCA state that they have been given an insufficient amount of time to prepare their comments in response to the Tentative Decision and Notice of Inquiry and Proposed Rule Making. MCCA questions the validity of the proposal to adopt final rules which, it says, are a radical departure from the direction of the original proposal. TNA believes the Tentative Decision is not a reasonable foundation document for many reasons, including lack of an evidentiary hearing, lack of formal finding of fact, and lack of rulings upon disputed issues of fact. We find all of these arguments without merit as a predicate for our inability to issue a final decision in these matters.

76. TNA also claims that the comments filed by John D. Pellegrin, Esquire, in this proceeding are improper and must be stricken from the record because Mr. Pellegrin is not an "interested person" within the meaning of 5 U.S.C. 553(c) or under 47 CFR 1.415(1). TNA's Motion to Strike is denied. [44] The term "interested person" in rule making proceedings is broad, and we feel clearly encompasses, in this context, Mr. Pellegrin. TNA also purports to "invoke" 47 CFR 1.22, to require Mr. Pellegrin to show his authority to act in a representative capacity. We are constrained to point out that it is the Commission, not TNA, which has the authority to invoke this rule section. Given that Mr. Pellegrin is an "interested person" separate and apart from any agency or representation, and given his statement that he represents various clients who are "participants in cooperative/shared use arrangements," the Commission sees no need to invoke 47 CFR 1.22.

Regulatory Flexibility Statement

Statement in Compliance With Regulatory Flexibility Act

77. This Report and Order adopts rules required to codify and regulate cooperative use and multiple licensing operating practices that have evolved with the advent of new technology and advanced marketing practices.

78. In our Initial Regulatory Flexibility Analysis, we determined that the availability of a wide range of alternatives in this docket resulted in the possibility that actions taken in this proceeding could have an economic impact on both the licensees and users of private radio systems and on public common carrier systems, many of which, in each case, are small business entities. No comments, however, were raised in direct response to the Initial Regulatory Flexibility Analysis.

79. The major economic concern of private radio system licensees and users was the possibility that we would eliminate cooperative sharing and multiple licensing in the private services entirely. This *Report and Order* affirms

[42] In many instances, whether a licensee is an individual system operator or is part of a shared system, he forsakes the use of his radio system, although his license term will not expire for years. Absent receipt of the licensee's authorization for cancellation, the Commission does not expunge that licensee from its records.

[43] *See* 47 CFR 1.962.

[44] TNA's Motion to Strike was made in its Reply Comments to the Further Notice. Mr. Pellegrin submitted a response to TNA's Reply Comments together with a request to accept the additional response. Mr. Pellegrin's request to Accept Additional Response is granted.

the permissibility of cooperative sharing and multiple licensing. While private radio system licensees also expressed concern about the "packaging doctrine," which, they maintain, prevented them from freedom of choice in the marketplace and increased their costs, we have retained the doctrine as a method of assuring appropriate licensee control. The packaged service prohibition has been in effect for over a decade and we conclude it has no serious demonstrable adverse affect on licensees. Nothing we are doing here imposes additional burdens or hardships on small entities.

80. The major economic concern of public common carrier systems was their inability to maximize profits because of the available option of private user systems. Nonetheless, we found that the public interest is served by allowing small entities eligible in the private services a variety of means of satisfying their communication requirements. We also concluded that most of the practices we are finalizing have been in existence for many years, and the record demonstrates no harm to carrier operations.

81. In sum, we conclude these rules do not have a significant additional economic impact on a substantial number of small entities. They also impose no additional record keeping requirements and eliminate some restrictions that have heretofore been required.

IV. Ordering Clauses

82. Accordingly, it is ordered, effective May 20, 1982, that 47 CFR Part 90 is amended as shown in the Appendix attached hereto. The authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended. 47 U.S.C. 4(i) and 303. All existing systems must bring themselves into compliance with these rules by September 1, 1982.

83. It is further ordered that this proceeding is terminated.

84. For further information concerning this document, you may contact John Borkowski, (202) 632–7587.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Appendix

Part 90 of the Commission's rules is amended as set forth below.

1. Section 90.35(a)(6) is revised to read as follows:

§ 90.35 Medical services.

(a) * * *

(6) Physicians, schools of medicine, oral surgeons, and associations of physicians or oral surgeons. Associations are subject to the provisions of § 90.179 governing the cooperative use of radio stations.

* * * * *

2. Section 90.61 is revised to read as follows:

§ 90.61 General eligibility.

(a) In addition to the eligibility shown in each Industrial Radio Service, eligibility is also provided for any corporation proposing to furnish nonprofit radiocommunication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary provided the party served is regularly engaged in any of the eligibility activities set forth in the particular service involved. This corporate eligibility is not subject to the cooperative use provisions of § 90.179.

(b) Eligibility is also provided for a nonprofit corporation or association that is organized for the purpose of furnishing a radio communications service to persons actually engaged in any of the eligibility activities set forth in the particular service involved. Such use is subject to the cooperative use provisions of § 90.179.

3. Section 90.87 is revised to read as follows:

§ 90.87 General eligibility.

(a) In addition to the eligibility shown in each Land Transportation Radio Service, eligibility is also provided for any corporation proposing to furnish non-profit radiocommunication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary provided the party served is regularly engaged in any of the eligibility activities set forth in the particular service involved. This corporate eligibility is not subject to the cooperative use provisions of § 90.179.

(b) Eligibility is also provided for a non-profit corporation or association that is organized for the purpose of furnishing a radiocommunication service to persons actually engaged in any of the eligibility activities set forth in the particular service involved. Such use is subject to the cooperative use provisions of § 90.179.

4. Section 90.179 is revised to read as follows:

§ 90.179 Cooperative use of radio stations in the mobile and fixed services.

(a) Licensees of radio stations authorized under this part may share the use of their facilities with other eligible persons, subject to the following conditions and limitations.

(1) Sharing of radio facilities may occur only on frequencies for which all participants would be separately eligible for assignment.

(2) All facilities to be shared must be individually owned by the licensee, jointly owned by the participants and the licensee, leased individually by the licensee, or leased jointly by the participants and the licensee.

(3) The licensee must maintain access to and control over all facilities authorized under its license.

(4) Facilities may be shared only: (i) Without charge; or (ii) on a non-profit basis, with contributions to capital and operating expenses including the cost of mobile stations and paging receivers operated pursuant to the licensee's authorization prorated equitably among all participants; or (iii) on a reciprocal basis, *i.e.*, use of one licensee's facilities for the use of another licensee's facilities without charge for either capital or operating expense.

(5) All sharing arrangements must be conducted pursuant to a written agreement to be kept as part of the station records. The arrangement for shared use must be made directly between the licensee and the participants. Where the facilities are shared on a cost-sharing, non-profit basis, the agreement between the parties shall set forth the method(s) employed for determining the capital and operating expenses of the shared facilities and for allocating these costs among the participants on a prorated basis. If the arrangement involves no cost-sharing, or if the sharing is on a reciprocal basis, the agreeement between the parties must so state and must provide sufficient details to show that this is the arrangement.

(6) No person providing any radio equipment, or maintenance and repair, or dispatching, or telephone answering services for profit for use in or in connection with a shared system, and no employee or agent of such person, may be an officer, director, partner, or employee of the licensee of that system or own or control the licensee of that system.

(7) The licensee or participants in a shared system may not provide any of the equipment used in the system, nor dispatch, telephone answering, or maintenance and repair services to any person sharing the system, except

pursuant to the terms of the cost sharing agreement.

(8) A person who furnishes or has furnished through sale, lease arrangements, or otherwise any of the radio equipment used to operate a cooperatively shared radio station may not provide dispatch service to the licensee of the radio station or to any person cooperatively sharing operation of the licensee's radio station.

(b) Participants in the shared arrangements may obtain a license for their own mobile units (including control points and/or control stations for control of the shared facility). If mobile stations are licensed to participants, the licensee of the shared facilities must maintain a means of isolating and deactivating, or disconnecting from the system any such mobile station, control station or control or dispatch point, or should that not be feasible, deactivating the base station transmitter(s) or repeater(s).

(c) When costs are shared, the licensee must keep records of the following:

(1) Identity of each participant.

(2) Date each participant commenced use.

(3) Date each participant terminated use.

(4) All capital and operating costs incurred for the system.

(5) All charges to each participant and all payments received from each participant, separately stated.

(6) The method of calculation of costs to participants.

Such records must be kept current and must be made available upon request for inspection by the Commission.

(d) When costs are shared, costs must be distributed at least once a year. A report of the cost distribution must be prepared by the licensee, placed in the station records, retained for three years, and be made available to participants in the sharing and the Commission upon request.

§ 90.181 [Reserved]

5. Section 90.181 is removed and reserved.

§ 90.183 [Reserved]

6. Section 90.183 is removed and reserved.

7. Section 90.185 is revised to read:

§ 90.185 Multiple licensing of radio transmitting equipment in the mobile radio service.

Two or more persons eligible for licensing under this rule part may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in § 90.403 of the rules.

(b) Each licensee is eligible for the frequency(ies) on which the licensee operates.

(c) Each licensee must have unlimited and unconditional access to the transmitter for which the licensee is authorized.

(d) No consideration shall be paid, either directly or indirectly, by any participant to any other participant for, or in connection with, the use of the jointly licensed facilities.

(e) No participant shall furnish to any other participant with or without charge, any equipment or service, or facility of any kind, for use in connection with the facility.

(f) A person who furnishes or has furnished through sale, lease arrangements, or otherwise any of the radio equipment used to operate a multiple licensed system may not provide dispatch service to the licensee of any radio station authorized to operate the multiple licensed system.

§ 90.391 [Amended]

8. Section 90.391 is amended by removing paragraph (b), redesignating paragraphs (c) through (h) as (b) through (g), and revising the new paragraph (d) to read as follows:

* * * * *

(d) Licensees furnishing service to eligible persons on a not-for-profit, cost-shared basis shall comply with the provisions of § 90.179 of the rules, and shall, within 30 days of the close of the first full calendar year of operation, and each year thereafter, submit a report setting forth the current total number of mobile units operated by each user and a statement showing whether these units are of the vehicular or portable type.

9. Section 90.421 is amended by revising paragraph (j) to read as follows:

§ 90.421 Operation of mobile units in vehicles not under the control of the licensee.

* * * * *

(j) Mobile units licensed to an eligible in the Railroad Radio Service may be installed in vehicles operated by organizations providing, under contract, facilities or service in connection with railroad operation or maintenance including pickup, delivery, or transfer between stations of property shipped, continued in, or destined for shipment by railroad common carrier. Parties to the contract must comply with the provisions of § 90.179.

[FR Doc. 82-12232 Filed 5-5-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Spiranthes parksii* (Navasota ladies'-tresses) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Spiranthes parksii* (Navasota ladies'-tresses), to be an Endangered Species under the authority contained in the Endangered Species Act. This plant occurs in Texas and is primarily threatened due to extremely low numbers, urbanization, and possible over-utilization. This determination of *Spiranthes parksii* to be an Endangered Species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on June 7, 1982.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 703/235–1975.

SUPPLEMENTARY INFORMATION:

Spiranthes parksii (Navsota ladies'-tresses) is endemic to Brazos County, Texas. It was first collected by Dr. H. B. Parks along the Navasota River in Brazos County, Texas, in 1945. Correll described the species in 1947 based upon the Parks collection. Subsequent efforts to relocate the species in the late forties and fifties were unsuccessful and it was thought to have become extinct. However, in 1978, P. M. Catling rediscovered the species in Brazos County near College Station. Recent searches have resulted in relocation of a second population near the type locality. In 1978, a total of 20 plants were observed at these two stations. In 1979, nine plants were observed at these two stations.

Spiranthes parksii is a small herbaceous perennial orchid which measures approximately 30 cm tall. Most of the leaves are basal and grass-like. The flowering stalk is slender bearing small white flowers with a green mid-vein. *Spiranthes parksii* is one of the rarest and least known orchids of North America.

Spiranthes parksii is endemic to Brazos County, Texas. One population occurs near College Station, where urbanization is increasing and no protection status for the orchid exists. The second population occurs in a rural area on a ranch where the primary use of the land is hunting. No protection status exists at this site either. The extremely small total population size makes *Spiranthes parksii* highly vulnerable to extinction. Due to its rarity and the widespread interest in orchid cultivation, this species may also be sought by collectors.

This rule determines *Spiranthes parksii* to be Endangered and implements the protection provided by the Endangered Species Act, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823–27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within.

On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular plant species to be Endangered Species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975 **Federal Register** publication. *Spiranthes parksii* was included in the July 1, 1975, notice of review and the June 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976 proposal along with four other proposals which had expired. A status report on this species was compiled in 1980 through Service contract. This status report and information gathered by Service personnel in the summer of 1980 provided new biological and economic data on *Spiranthes parksii*. The Secretary determined that sufficient new information was available to repropose *Spiranthes parksii* (45 FR 41326) on June 18, 1980.

In the June 24, 1977, **Federal Register** (42 FR 32373–32381), the Service published a final rulemaking under 50 CFR 17 detailing the regulations to protect Endangered and Threatened plant species. The rulemaking established prohibitions and permit procedures to grant exceptions, under certain circumstances, to the prohibitions.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. Since this rule was proposed before January 1, 1981, a Determination of Effects on Small Entities is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507).

Summary of Comments and Recommendations

In the June 18, 1980, **Federal Register** proposed rule (45 FR 41326) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. A letter was sent to the Governor of Texas notifying him of the proposed rule and soliciting his comments and suggestions. All comments received during the period from June 18, 1980, through October 9, 1980, were considered and these are discussed.

The Governor of Texas had two comments on the proposal: The first concerned the effects of the Navasota ladies'-tresses proposal on the State highway system which was difficult for Texas to determine without knowledge of the actual locations. The U.S. Fish and Wildlife Service has responded to this concern by providing the Texas State Department of Highways and Public Transportation with a generalized map showing the locations of this species. Based on this information, it was determined that the listing of *Spiranthes parksii* is not likely to have any effect on that Agency.

Governor Clements second concern was the potential conflict between the Navasota ladies'-tresses proposal and the federally-authorized Millican Reservoir Project. While the site as authorized by Congress would have posed no conflict, the U.S. Corps of Engineers has evaluated alternative sites so as to avoid substantial lignite deposits for energy needs in the original project area. Since there was the possibility that populations of this species could lie within the alternate sites, potential conflicts between the project and the species and its habitat were further investigated.

The U.S. Army Corps of Engineers (ACE) biological assessment in 1981 of the proposed sites determined the closest Navasota ladies'-tresses or other Endangered and Threatened species to be over a mile from the proposed project sites. The Army Corps has concluded, and it is expected that, the Millican Project should have no affect on the plant.

A member of the U.S. Department of Agriculture Research Service in College Station commented on the habitat requirements of *Spiranthes parksii*, in response to information presented in the proposal. He believes that this plant is not fire-dependent; rather, the open habitat is maintained by soil type, erosion and grazing without the necessary intervention of fire. He goes on to emphasize the threats to *Spiranthes parksii*.

A member of the Department of Botany at the University of Toronto, submitted comments supporting the intent of the proposal. The commentor questioned the extent of the threat posed by collecting and therefore the failure to propose Critical Habitat for *Spiranthes parksii*. The Service feels that while collecting may not be extensive at this time, it remains a potential threat. Only 9–20 individuals of this taxon have been counted since its rediscovery. Because of its limited number, the species could be desired for its rarity or due to the extensive interest in orchid cultivation.

For this reason, the Service concluded that *Spiranthes parksii* would be better protected if Critical Habitat were not formally designated. Designation of Critical Habitat requires that maps of

the affected area be published in the Federal Register and local newspapers. The Service believes that calling attention to this plant in that fashion would make it more vulnerable to extinction. Agencies whose activities may impact the species have been notified of its general locations, thus minimizing the possibility that they will unintentionally destroy the two known sites where *Spiranthes parksii* occurs.

A member of the Department of Biology at Texas A & M University in College Station wrote in support of the proposal of *Spiranthes parksii* to be an Endangered Species.

No public meeting was requested on this listing. No one offered any comments opposing this listing. The Service made efforts to contact the private owners. One owner was reached who supported the listing. No response was received from the second landowner.

Conclusion

After a thorough review and consideration of all available information, the Director has determined that *Spiranthes parksii* Correll (Navasota ladies' tresses) is an Endangered species throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Endangered Species Act. The Director has determined that *Spiranthes parksii* is primarily affected by factors numbers 1, 2, 4, and 5.

All five factors and their application to *Spiranthes parksii* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range. Spiranthes parksii* (Navasota ladies'-tresses) occurs in Brazos County, Texas, as two very small populations on private land comprising 20 plants in total. The larger is in the southeastern part of the county on the outskirts of the College Station-Bryan urban area. Expanding urbanization threatens to destroy this population unless proper planning for the species protection takes place. The second population occurs on a ranch and the only land use is for hunting, however, no protection status exists for the species at this site.

Neither site for this plant currently receives any protection status. Unless proper planning occurs and unless agreements are negotiated to protect the habitat of this rare orchid, the species will remain highly vulnerable to extinction.

Additional potential habitats for this species were searched without success. Thus, two very small populations represent the entire known range of the species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes. Spiranthes parksii* is a rare endemic that is currently little known to the general public. At present, the taking of specimens for scientific study is minimal. Commercial and private taking by the public is a potential threat to this species of rare orchid.

(3) *Disease or predation.* There is no evidence that either disease or predation is a contributing factor to the endangered status of this species.

(4) *The inadequacy of existing regulatory mechanisms.* There is currently no State or Federal protection for *Spiranthes parksii.*

(5) *Other natural or manmade factors affecting its continued existence. Spiranthes parksii* is endemic to small openings in post oak woodland in Brazos County, Texas. The severely restricted distribution of this species to two stations and the extremely low population level intensify any adverse effects (either manmade or natural) occurring in the habitat of this plant. Accidental browsing of the species could occur since no fencing or other actions have been taken to protect the species. Extended periods of drought or changes in land use of these sites could lead to the extirpation of this species. Natural population fluctuations could also lead to the extinction of *Spiranthes parksii.*

Critical Habitat

Section 4(a)(1) of the Endangered Species Act of 1973, as amended, provides, in part:

"* * * At the time any such regulation (any proposal to determine a species to be an Endangered and Threatened species) is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

Critical Habitat has not been proposed for *Spiranthes parksii* because it is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 with respect to plants. This orchid, one of the rarest in North America, could be sought as a curiosity by collectors were Critical Habitat maps published. Publishing these detailed location maps of the *Spiranthes parksii* populations in the Federal Register and local newspapers as is required by the Endangered Species Act would call attention to this species and make it more vulnerable to taking. Therefore it would not be prudent to designate Critical Habitat at this time. After protection plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future.

Effects of This Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. The regulations which pertain to Endangered plants are found at § 17.61 of 50 CFR and are summarized below.

With respect to *Spiranthes parksii* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR Section 17.61 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. International and interstate commercial trade in *Spiranthes parksii* does not exist and few or no permits would probably be requested. Permits would be available for plants of cultivated origin.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Spiranthes parksii.* Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Spiranthes parksii,* but also to insure their actions are not likely to result in the destruction or adverse modificaton of any Critical Habitat which may be determined at some future date by the Director.

The two known populations of *Spiranthes parksii* occur on privately owned lands. The Millican Reservoir project, which was authorized by Congress in 1968, is the only Federal involvement known for the area. The U.S. Army Corps of Engineers' biological assessment of proposed sites showed the closest population of *Spiranthes parksii* to be over a mile from the project area. No Section 7 conflicts are expected.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884). The primary author of this rule is Ms. Rosemary Carey, Region 2, Office of Endangered Species, Albuquerque, New Mexico 87103 (703/766–3972).

Literature Cited

Catling, P. M. and K. L. McIntosh. 1979. Rediscovery of *Spiranthes parksii* Correll. Sida 8(2): 188–193.

Mahler, Wm. F. 1980. Determination of *Spiranthes parksii* Correll as an Endangered Species. Prepared for the U.S. Fish and Wildlife Service.

Texas Almanac, 1980–81. 50th ed. Published by Dallas Morning News, Dallas, Texas.

List of Subjects in 50 CFR Part 17

Fish, Marine mammals, Endangered and threatened wildlife, Plants (agriculture).

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended, as set forth below.

1. Amend § 17.12 by adding, in alphabetical order the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Orchidaceae—*Spiranthes parksii*	Orchid family—Navasota ladies'-tresses.	USA (Texas)	E		NA	NA.

Dated: April 9, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12337 Filed 5-5-82; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 47, No. 88
Thursday, May 6, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Event Report System

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its regulations to require the reporting of operational experience at nuclear power plants by establishing the Licensee Event Report (LER) system. The proposed rule would codify existing LER reporting requirements and establish a single set of requirements that would apply to all operating nuclear power plants. The proposed rule would apply only to licensees of commercial nuclear power plants, and not to licensees of research reactors, fuel processing facilities, or byproduct processing or utilization facilities.

DATE: The comment period expires July 6, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSEES: All interested persons who desire to submit written comments or suggestions in connection with this proposed rule should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of all documents received may be examined and copied in the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Frederick J. Hebdon, Office for Analysis and Evaluation of Operational Date, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; telephone (301) 492–4489.

SUPPLEMENTARY INFORMATION:

Background

The present Nuclear Plant Reliability Data (NPRD) System is a voluntary program for the reporting of reliability data. On January 30, 1980 (45 FR 6793),[1] the NRC published an Advance Notice of Proposed Rulemaking (ANPRM) that described the NPRD System and invited public comments on an NRC plan to make it mandatory. Forty-four letters [1] were received in response to the ANPRM. These comments generally opposed making NPRDS mandatory on the grounds that a system for reporting reliability data should not be made a regulatory requirement.

In December 1980, the Commission decided that the reporting of operational experience date needed major revision and approved the development of an Integrated Operational Experience Reporting (IOER) System. The IOER System would have combined, modified, and made mandatory the existing Licensee Event Report (LER) system and the NPRD System. SECY 80–507 [1] discusses the IOER System.

As a result of the Commission's approval of the concept of an IOER System, the NRC published another ANPRM on January 15, 1981 (46 FR 3541). This ANPRM explained why the NRC needed operational experience data, and described the deficiencies in the existing LER and NPRD systems.

On June 8, 1981, the Institute of Nuclear Power Operations (INPO) decided that, because of its role as an active user of NPRDS data, INPO would assume responsibiity for management and funding of NPRDS. Further, INPO decided to develop criteria that would be used in its management audits of member utilities to assess the adequacy of NPRDS participation.

The two principal deficiencies that had previously made NPRDS an inadequate source of reliability data were the inability of a committee management structure to provide the necessary technical direction and a low level of participation by the utilities.

The commitments and actions by INPO provide a basis for confidence that these two defficiencies will be corrected. For example, centralizing the management and funding of NPRDS within INPO should overcome the previous difficulties associated with management by a committee and funding from several independent organizations. Further, with INPO focusing upon a utility's participation in NPRDS as a specific evaluation parameter during routine management and plant audit activities, the level of utility participation, and therefore, the quality and quantity of NPRDS data, should significantly increase. Finally, the Commission will continue to have an active role in the development of an effective NPRDS by participating in an NPRDS Technical Advisory Committee, by periodically assessing the quality and quantity of information produced by NPRDS, and by assuring the timely availability of the information to the NRC.

The troubled history of the NPRDS, however, makes the Commission cautious. Problems will not be resolved simply by having INPO take over direction of the NPRDS. Nevertheless, INPO and the NRC are well aware of the problems and are prepared to work together in a cooperative effort to assure successful redirection of NPRDS. If in the future, though, if becomes clear that the essential NRC needs for reliability data are not forthcoming from NPRDS, the Commission could consider resumption of the IOERS rulemaking and make mandatory the reporting of reliability data.

Therefore, since there is a likelihood that, in the future, NPRDS under INPO direction can meet the NRC's need for reliability data, there is no longer a need at this time to proceed with the IOERS. Hence, the collection of detailed technical descriptions of significant events can proceed as a separate rulemaking to modify and codify the existing LER reporting requirements and to assure consistency with 10 CFR 50.72, covering the immediate notification of significant events.

Consequently, the Commission has directed the NRC staff to:

(1) Defer rulemaking that would establish the Integrated Operational Experience Reporting System (IOERS);

(2) Develop a proposed rule that would modify and codify the existing Licensee Event Report (LER) reporting requirements and would assure consistency with 10 CFR 50.72 which covers the immediate reporting of significant events;

(3) Prepare this proposed LER rule;

[1] Copies of these documents are available for public inspection and copying at the Public Document Room at 1717 H Street, NW, Washington, D.C. 20555.

(4) Endorse the Institute of Nuclear Power Operations (INPO) plan to assume responsibility for the management, funding, and technical direction of the Nuclear Plant Reliability Data System (NPRDS);

(5) Coordinate closely with INPO to minimize duplication between the LER and the NPRDS systems and between subsequent NRC and INPO analysis of NPRDS data;

(6) Encourage INPO to assure that the NPRDS receives, processes, and disseminates the reliability data needed by industry and the NRC to support probabilistic risk and reliability assessment programs; and

(7) Closely monitor the process of INPO's management of the NPRDS and after INPO takes over the system, provide the Commission with semiannual status reports on the effectiveness of INPO management of NPRDS and the responsiveness of NPRDS to NRC needs.

See SECY 81-494 [2] for additional details.

On October 6, 1981, the NRC published an ANPRM (46 FR 49134) that deferred the IOER system and sought public comment on the scope and content of the LER system. Six comment letters were received in response to this ANPRM.

One letter strongly opposed the NRC's plan to defer the IOERS rulemaking. However, this opposition appears to be due, in part, to a misconception that the NRC had proposed to turn over the INPO responsibility for the management and technical direction of both the NPRD system and the LER system. The writer also appears to have erroneously assumed that the NRC would not longer analyze or evaluate data from either the LER system or the NPRD System.

Two letters forwarded copies of papers or reports that discussed the collection, analysis, and evaluation of LER data. One report, prepared in November 1979 by EG&G in Idaho Falls, had already been reviewed by the staff. The other report was prepared in December 1979 and described potential industry uses of the LERs, including very general recommendations for improving the LERs.

The remaining three letters, which were from utilities, endorsed the NRC decision to defer the IOERS rulemaking. Each letter encouraged the NRC to reduce the overall level of LER reporting by limiting the LER scope to only those occurrences that are of major safety significance. The letters did not specify what constituted an event of major safety significance. One of the letters also encouraged the NRC to eliminate the duplication between the LER system and the NPRD system, and between the LER system and other NRC reporting requirements (e.g., 10 CFR 50.72).

All of the comments received were reviewed by the staff and were considered in the development of the proposed LER rule.

Overview of the LER System

If the proposed LER rule becomes effective, the LER will be a detailed narrative description of safety significant events. By describing in detail the event and the planned corrective action, it will provide the basis for the careful study of more serious events that might be precursors to serious accidents. If the NRC staff decides that the event was especially significant from the standpoint of safety, the staff may request that the licensee perform an engineering evaluation of the event and describe the results of that evaluation.

The licensee will prepare an LER for those events or conditions that meet one or more of the criteria contained in § 50.73(a). The criteria are based primarily on the nature, course, and consequences of the event. Therefore, events that meet the criteria should be reported regardless of the plant operating mode or power level, and regardless of the significance of the components, systems or structures involved. In trying to develop criteria for the identification of events reportable as LERs, the Commission has concentrated on the consequences of the event as the measure of significance. Therefore, the reporting criteria in general do not specifically address classes of initiating events or causes of the event. For example, there is no requirement that all operator errors be reported. However, many reportable events will have been initiated by operator errors.

The proposed rule as presently written requires that the holder of an operating license for a nuclear power plant shall submit an LER within 30 days after the discovery of a reportable event. The NRC has not yet determined the appropriate time. The alternatives under consideration are either 15 or 30 days. If the time for submitting a written report was extended to 30 days then a summary report transmitted by telegraph or facsimile within a few days of the event may be required. Such a report would contain a brief description of the event, the licensee's basis for continued operation or return to operation, and comments on the generic applicability of the event. The NRC's concern with simply extending the time for submission of a written report is the potential for, or the appearance of, a transfer of responsibility for evaluation of the event to the Resident Inspector. The basis for this transfer would be the written inspection report of the event by the inspector which in many cases would be written well in advance of any public record of the event by the licensee. The NRC considers prompt evaluation of an event and reporting of the results of the evaluation important in order to provide assurance for continued safe operation of the plant after an event. The decision for selecting the reporting time and mechanism will be based on an evaluation of the alternatives. The NRC specifically requests public comment on the above reporting alternatives.

It should be noted that § 50.72, "Notification of Significant Events," establishes the requirements for the immediate reporting (i.e., by telephone) of significant events. Many of the criteria contained in § 50.73 are similar to the criteria in § 50.72. However, because of the different purposes served by the two systems, and since § 50.72 is already in use, the Commission has kept § 50.72 and § 50.73 as separate requirements. The Commission plans to continue to work to ensure consistency between the two rules and to provide a clear identification of differences between telephone and written reporting requirements. These efforts may result in combining the existing §50.72 and the proposed § 50.73 into a single final rule. A combined rule could have three elements: (1) One element devoted to prompt notifications which do not require a written report; (2) a second element requiring prompt notifications which also require a written report; and (3) a third element encompassing events which do not require a prompt notification but for which a written report is required. An Alternative would be to process another revision to § 50.72 and the final § 50.73 in a combined package which cross references the requirements in the two rules. These changes would be largely administrative, and the revised § 50.72 would not be significantly modified nor would it be published again for public comment.

In endorsing the proposed rule, the Commission has noted that the ACRS said:

"We believe the Proposed Rule represents a natural evolution in the state-of-the-art in data gathering, and we support its publication for comment. Although subsequent experience will undoubtedly

[2] Copies of these documents are available for public inspection and copying at the Public Document Room at 1717 H Street, NW., Washington, D.C. 20555.

reveal ways in which the Proposed Rule should be revised, and even perhaps replaced, we do not believe its publication should be delayed until a more advanced system is developed. Ultimate goals for such a system include better reporting, analysis, and evaluation of human errors and computer software errors and perhaps the development of a system for more effectively identifying precursors and systems interactions."

The Commission supports the proposed rule and and anticipates substantial improvements from it. The Commission recognizes that the LER system needs revision to make reporting more consistent among licensees, to stop the reporting of unimportant events, and to provide better data on significant events. The Commission agrees with the ACRS comments that this Proposed Rule is a natural evolution in the state-of-the-art in operational experience data-gathering.

Comments are solicited at this time, for Commission consideration prior to issuance of the final rule, on the feasibility and desirability of improving the overall design of the data reporting system, the characteristics of such an improved system, the time and resources required to develop it, and the utility of doing so. A more serviceable data system would have at least two dimensions, one which can be used to support case studies of specific events and a second which will support multivariate, multi-case analyses.

Specifically, the Commission is interested in receiving comments on a more diversified system that would make the LER even a more useful tool for the analysis of operational experience. Of particular interest would be potential improvement to aid in the analysis of trends and patterns that may identify precursors of major incidents. For example, the Commission believes that a more diversified operational data gathering system might involve reporting data recorded directly from the event rather than relying on a narrative description of the event. With increased emphasis on techniques of reporting and storage of event data, the technical record associated with the event would be enhanced with a corresponding potential for increasing the effectiveness of the use of statistical techniques to identify trends and patterns of operational experience. Such a data system would permit the use of more sophisticated statistical procedures to identify signals that may be present only in the aggregate and are essential to the understanding of accident precursor conditions.

Paragraph-by-Paragraph Explanation of the LER Rule

The more important parts of the proposed rule are explained below.

Section 50.73(a)(1) requires reporting of:

"Any event resulting in manual or automatic actuation or the need for actuation of any Engineered Safety Feature (ESF), including the Reactor Protection System (RPS). Actuation of an ESF, including the RPS, that results from and is part of the preplanned sequence during surveillance testing or normal reactor shutdown need not be reported."

This paragraph is intended to capture events during which an ESF actuates or fails to actuate. It is based on the premise that the ESFs are provided to mitigate the consequences of an accident and, therefore, (1) they should work properly when called upon, and (2) they should not be challenged unnecessarily. The staff is interested both in events where an ESF was needed to mitigate the consequences of an event (whether or not the equipment performed properly), and events where an ESF operated unnecessarily.

Operation of an ESF as part of a planned test or operational evolution need not be reported. However, if during the test or evolution the ESF actuates in a way that is not part of the planned procedure, that actuation should be reported. For example, if the normal reactor shutdown procedure requires that the control rods be inserted by a manual reactor trip, the reactor trip need not be reported. However, if conditions develop during the shutdown that require an automatic reactor trip, the reactor trip should be reported. The fact that the safety analysis assumes that an ESF will actuate automatically during an event does not eliminate the need to report that actuation. Actuations that need not be reported are those initiated for reasons other than to mitigate the consequences of an event (e.g., at the discretion of the plant operators, as part of a planned procedure).

Section 50.73(a)(2) requires reporting of:

"Any instance of personnel error, equipment failure, procedure violation or discovery of design, analysis, fabrication, construction, or procedural inadequancies that alone could prevent the fulfillment of the safety function of structures or systems that are needed to—

(i) Shut down the reactor and maintain it in a safe shutdown condition;

(ii) Remove residual heat;

(iii) Control the release of radioactive material."

This paragraph is also based on the assumption that safety-related systems and structures are intended to mitigate the consequences of an accident. While § 50.73(a)(1) applies to actual demands for actuation of an ESF, § 50.73(a)(2) covers an event where a safety system would have failed to perform its intended function because of one or more personnel errors; equipment failures; procedure violations; or design, analysis, fabrication, construction, or procedural deficiencies. The event should be reported regardless of the situation, or condition that caused the structure or system to be unavailable. This paragraph does not include those cases where a system or component is remobed from service as part of a planned evolution, in accordance with an approved procedure, and in accordance with the plant's Technical Specifications. For example, if the licensee removes part of a system from service to perform maintenance, and the Technical Specifications permit the resulting configuration, and the system is returned to service within the time limit specified in the Technical Specifications, the action need not be reported under this criterion. If, however, the licensee takes a component out of service or returns a component to service in a manner resulting in a configuration at the system level that is not permitted by the plant's Technical Specifications, the event should be reported. In addition, if, while the component is out of service, the licensee identifies a condition that could have prevented the system from performing its intended function (e.g., the licensee finds a set of relays that is wired incorrectly), that condition should be reported.

The licensee may use engineering judgment to decide if a failure or operator action that disabled one train of a safety system and might have, but did not, affect the redundant division, constitutes an event that "could prevent" the fulfillment of a safety function. If a component fails by an apparently random mechanism it may not be reportable even if the functionally redundant component could fail by the same mechanism. To be reportable, the failure must indicate a condition where there is a reasonable doubt that the functionally redundant division would remain operational until it completes its safety function. For example, if a pump fails because of improper lubrication, and engineering judgment indicates that there is a reasonable expectation that the functionally redundant pump would have also failed before it completed its safety function, then the failure is reportable.

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Section 50.73(a)(3) requires reporting of:

"Any event caused by a failure, fault, condition, or action that demonstrates a nonconservative interdependance associated with essential structures, components, or systems. Essential structures, components, and systems are those needed to—
(i) Shut down the reactor and maintain it in a safe shutdown condition;
(ii) Remove residual heat;
(iii) Control the release of radioactive material."

The intent of this paragraph is to identify those events where a single failure or group of failures affect redundant or independent portions of safety-related systems. These events can identify previously unrecognized common cause failures and systems interactions. To be reportable, the event must have had the potential to result in the inability of more than one train or channel of the affected system to perform its intended function.

A nonconservative interdependence is one that produces a negative (i.e., nonconservative) synergism which causes a reduction in the ability of a system to perform its intended safety function or causes a system to perform an action which negatively affects the public health and safety.

In addition, the Commission is increasingly concerned about the effect of a loss or degradation of what had been previously assumed to be non-essential inputs to safety systems. Therefore, this paragraph also includes those cases where a service or input which is necessary for the reliable or long term operation of a safety system is lost or degraded. Loss or degradation of these services or inputs are not reportable if they do not degrade the operation of the safety system. The failure need not be reported if it affects only inputs to systems that are not needed for safety.

This paragraph also includes discovery of nonconservative interdependence in which the initiating event is causally linked to the failure of one division (e.g., train) of a safety system required to mitigate that initiating event. It is just as serious for a common cause failure to precipitate a demand for a safety system and fail one of its divisions as it is to fail the redundant divisions but not trigger the initiating event. If an unacceptable event is modeled as (1) an initiating event, (2) a failure of challenged safety division A, and (3) a failure of challenged safety division B, then any two of the three constituent events occurring or potentially occurring due to a common interdependence, and are reportable.

Finally, the licensee may use engineering judgment to decide when an operator's action constitutes a nonconservative interdependence. Any time an operator operates a component, he could conceivably operate all the functionally redundant components (i.e., he *could* create an undesirable interdependence). However, for an event to be reportable the operator must actually operate or attempt to operate components in more than one division of a safety system, and the result of the action must be undesirable from the perspective of protecting the health and safety of the public. The components can be functionally redundant (e.g., two pumps in different trains) or not functionally redundant (e.g., the operator correctly stops a pump in Train "A" and, instead of shutting the pump discharge valve in Train "A," he mistakenly shuts the pump discharge valve in Train "B").

Section 50.73(a)(4) requires reporting of:

"Any event for which plant Technical Specifications require shutdown of the nuclear power plant or for which a plant Technical Specification Action Statement is not met."

This paragraph is similar to § 50.73(a)(1). However, in this paragraph the shutdown is a manual shutdown required by the Technical Specifications, rather than an automatic reactor trip. The intent is to capture those events where the licensee is required to shut down the plant because it cannot meet the requirements of the Technical Specifications. For the purpose of this paragraph, "shutdown" is defined as the point in time where the Technical Specifications require that the plant be in hot shutdown (note; "hot shutdown" as defined in the Standard Technical Specifications). If the condition is corrected before the time limit for reaching hot shutdown, the event need not be reported.

It should be recognized, however, that the paragraph covers, "(a)ny event for which plant Technical Specifications *require* shutdown * * *" (emphasis added). Therefore, this paragraph includes events where the licensee should have shut down the reactor because of a condition that violated the Technical Specifications, and either—

(a) did not recognize until later review that the situation violated the Technical Specifications and, therefore, did not shut down; or

(b) did not recognize until later review that the condition existed an, therefore, did not shut down.

Thus, operation of the plant with a condition that is prohibited by the Technical Specifications should be reported. In addition, if a condition that would have required a plant shutdown exists for a period of time longer than that permitted by the Technical Specifications, it should be reported even if the condition was not discovered until after the allowable time had elapsed and the condition was rectified immediately after discovery.

Finally, the licensee must report events where an Action Statement contained in a Limiting Condition for Operation is not met. For an Action Statement that gives the licensee alternatives (e.g., repair a specific component or achieve hot shutdown within 12 hours), the Action Statement is met if either alternative is met (e.g., the component is repaired or the plant is in hot shutdown within 12 hours). Failure to comply with a Surveillance Requirement need not be reported as an LER, but should be tabulated in the Monthly Operating Report.

Section 50.73(a)(5) requires reporting of:

"Any event that results in the nuclear power plant not being in a controlled condition or that results in an unanalyzed condition that significantly compromises plant safety."

The intent of this paragraph is to capture those events where the plant was in an uncontrolled or unanalyzed condition. For example, small voids in systems designed to remove heat from the reactor core which have been previously shown through analysis not to be safety significant need not be reported. However, the accumulation of voids that could inhibit the ability to adequately remove heat from the reactor core, particularly under natural circulation conditions, would constitute an uncontrolled condition and would be reportable. In addition, voiding in instrument lines that results in an erroneous indication causing the operator to misunderstand the true condition of the plant is also an uncontrolled condition and should be reported.

The Commission recognizes that the licensee may use engineering judgment and experience to determine whether an uncontrolled or unanalyzed condition existed. It is not intended that this paragraph apply to minor variations in individual parameters, or to problems concerning single pieces of equipment. At any time, one or more safety-related components is likely to be out of service due to testing, maintenance, or a not-yet-rectified fault. Any trivial single failure or minor error in performing surveillance tests could produce a

situation in which two or more often unrelated, safety-related components are formally out-of-service. Technically, this is an unanalyzed condition. However, these events should be reported only if they involve functionally related components or if they reflect significantly compromised plant safety.

Finally, this paragraph also includes material (e.g., metallurgical, chemical) problems that cause abnormal degradation of fuel cladding, Reactor Coolant System pressure boundary, or the containment.

Section 50.73(a)(6) requires reporting of:

"Any act of nature, event, or act by personnel, that explicitly threatens the safety of the nuclear power plant or site personnel in the performance of duties necessary for the safe operation of the plant or the security of special nuclear material, including instances of sabotage or attempted sabotage. Threats of violence that are not substantiated by the licensee need not be reported."

This paragraph is intended to capture those events where there is a clear threat to the plant from an act, condition, or natural phenomenon, and where the threat or damage challenges the ability of the plant to continue to operate in a safe manner (including the orderly shutdown and maintenance of shutdown conditions). The licensee should decide if a phenomenon actually threatened the plant. For example, a minor brush fire in a remote area of the site that was quickly controlled by fire fighting personnel and, as a result, did not present a threat to the plant should not be reported. However, a major forest fire, large-scale flood, or major earthquake that presents a clear threat to the plant should be reported.

This paragraph is also intended to capture acts by site personnel and acts by personnel offsite that threatened or have actually damaged the plant. The licensee must decide if the act actually threatened the plant. For example, threats of violence that are not substantiated by the licensee need not be reported (e.g., bomb threats need not be reported if the licensee does not find evidence that an attempt was made to actually plant a bomb).

Section 50.73(a)(7) requires reporting of:

"Any radioactive release that requires the evacuation of a room or building."

In-plant releases should be reported if they require evacuation of rooms or buildings containing systems important to safety, or rooms or buildings which may require access for any test, maintenance, or conduct of emergency procedures. Precautionary evacuations of rooms and buildings that subsequent evaluation determines were not required need not be reported.

Section 50.73(a)(8) requires reporting of:

"Any radioactive effluent release where—

"(i) The quantity of radioactive materials in liquid or gaseous effluents released from the site exceeds the limits specified in the Technical Specifications.

"(ii) The quantity of radioactaive materials contained in a liquid or gas storage tank exceeds the limits specified in the Technical Specifications.

"(iii) With respect to boiling water reactors only, the quantity of radioactive materials in gaseous waste transferred from the primary coolant system to the gaseous radwaste management system exceeds the limits specified in the Technical Specifications."

This paragraph is intended to capture an event that causes the controlled release of a significant amount of radioactive material to offsite areas. "Significant" is based on the plant's Technical Specification limits for the release of radioactive material.

Section 50.73(a)(8)(iii) refers only to the Technical Specification limit that applies directly to the quantity of radioactive material in the gaseous radwaste management system. It is intended to capture those events where the quantity of radioactive material from the reactor coolant system approaches the design basis capacity of the gaseous radwaste management system. These events are frequently indicative of significant fuel cladding failures.

Section 50.73(a)(9) requires reporting of:

"Any event for which the quantity of radioactive materials released during an unplanned offsite release is more than 1 curie of radioactive material in liquid effluents, more than 150 curies of noble gas in gaseous effluents, or more than 0.05 curies of radioiodine in gaseous effluents."

This paragraph is intended to capture those events that cause an unplanned or uncontrolled release of a significant amount of radioactive material to offsite areas.

Section 50.73(b) describes the format and content of the LER. It requires that the licensee prepare the LER in sufficient depth so that knowledgeable readers conversant with the design of commercial nuclear power plants, but not familiar with the details of a particular plant, can understnd the complete event (i.e., the cause of the event, the plant status before the event, and the sequence of occurrences during the event).

Section 50.74 (b)(1) requires that the licensee provide a brief abstract describing the major occurrences during the event, including all actual component or system failures that contributed to the event, all relevant operator errors or violations of procedures, and any significant corrective action taken or planned as a result of the event. This paragraph is intended to give LER data base users a brief description of the event so they can find events of interest.

Section 50.73(b)(2) requires that the licensee include in the LER a clear, specific narrative statement of exactly what happened during the entire event so that readers not familiar with the details of a particular plant can understand the event. The licensee should emphasize how the plant resonded, and how systems, components, and operating personnel performed. Specific hardware problems should not be covered in excessive detail. Characteristics of a plant that are unique and that influenced the event (favorably or unfavorably) should be described. The licensee should also describe the event from the perspective of the operator (e.g., what the operator saw, did, perceived, understood, or misunderstood).

Section 50.73(b)(3) requires that the LER include an assessment of the actual and potential safety consequences and implications of the event. This assessment requires judgment on the part of the licensee. The intent is to require an assesment of whether the incident would have been more severe under reasonable and credible alternative conditions, such as power level or operating mode. For example, if an event occurred while the plant was at 15% power and the same event could have occurred while the plant was at 100% power, and, as a result, the consequences would have been considerably more serious, the licensee should assess those consequences.

Section 50.73(b)(4) requires that the licensee describe in the LER any corrective actions planned as a result of the event that is known at the time the LER is submitted, including actions to reduce the probability of similar events occurring in the future. This is not to say that for every event that occurs there must be 100% assurance that the event will never occur again. Many events are postulated to occur with some frequency throughout the life of the plant. However, if an event occurs that requires corrective actions, the corrective actions should be described. After the initial LER is submitted, only substantial corrective action need be reported as a supplemental LER.

Section 50.73(c) authorizes the NRC staff to require the licensee to submit specific supplemental information and

assessments beyond that required by § 50.73(b). Such information may be required if the staff finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. When a request for supplemental information is made in writing, the licensee should submit the requested information and assessment as a supplement to the initial LER within the time period specified by the staff. Usually a written report will not be required in less than 15 days from the date of receipt by the licensee of the letter requesting the information.

Section 50.73(f) gives the NRC Executive Director for Operations the authority to grant case-by-case exemptions to the reporting requirements contained in the LER system. This exemption could be used to limit the collection of certain data in those cases where full participation would be unduly difficult because of a plant's unique circumstances.

Section 50.73(g) states that the reporting requirements contained in § 50.73 replace the reporting requirements in all nuclear power plant Technical Specifications that are associated with "Reportable Occurrences." The reporting requirements superseded by § 50.73 are those contained in the Technical Specification sections that are usually titled "Prompt Notification with Written Followup" and "Thirty Day Written Reports". The reporting requirements that have been superseded are also described in Regulatory Guide 1.16, Revision 4, "Reporting of Operating Information—Appendix A Technical Specification", Paragraph 2, "Reportable Occurrences."

Paperwork Reduction Act Statement

As required by the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a preliminary determination that these proposed regulations do not impose an additional reporting, recordkeeping, or information collection burden. These proposed regulations will nevertheless be submitted to the Office of Management and Budget for its consideration of the reporting, recordkeeping, or information collection requirements.

Regulatory Flexibility Certification

In accordance with the Regulatry Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These proposed regulations affect electric utilities that are dominant in their respective service areas and that own and operate nuclear utilization facilities licensed under sections 103 and 104b of the Atomic Energy Act of 1954, as amended. The amendments clarify and modify presently existing notification requirements. Accordingly, there is no new, significant economic impact on these licensees, nor are the licensees within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 10 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c) 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2202(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 50.73 is added to read as follows:

§ 50.73 Licensee Event Report System.

(a) *Reportable events.* The holder of an operating license for a nuclear power plant (licensee) shall submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 30 days (Related to this requirement, the Commission is considering alternatives for the timing of these reports. These alternatives are discussed in the Statement of Consideration under (OVERVIEW OF LER SYSTEM) after the discovery of the event. The licensee shall report an event regardless of the plant mode or power level and regardless of the significance of the structure, system, or component that initiated the event. The licensee shall report—

(1) Any event resulting in manual or automatic actuation or the need for actuation of any Engineered Safety Feature (ESF), including the Reactor Protection System (RPS). Actuation of an ESF, including the RPS, that results from and is part of the preplanned sequence during surveillance testing or normal reactor shutdown need not be reported.

(2) Any instance of personnel error, equipment failure, procedure violation, or discovery of design, analysis, fabrication, construction, or procedural inadequacies that alone could prevent the fulfillment of the safety function of structures or systems that are needed to—

(i) Shut down the reactor and maintain it in a safe shutdown condition;

(ii) Remove residual heat;

(iii) Control the release of radioactive material.

(3) Any event caused by a failure, fault, condition, or action that demonstrates a nonconservative interdependence associated with essential structures, components, and systems. Essential structures, components, and systems are those needed to—

(i) Shut down the reactor and maintain it in a safe shutdown condition;

(ii) Remove residual heat;

(iii) Control the release of readioactive material.

(4) Any event for which plant Technical Specifications require shutdown of the nuclear power plant or for which a plant Technical Specification Action Statement is not met.

(5) Any event that results in the nuclear power plant not being in a controlled condition or that results in an unanalyzed condition that significantly compromises plant safety.

(6) Any act of nature, event, or act by personnel, that explicitly threatens the safety of the nuclear power plant or site personnel in the performance of duties necessary for the safe operation of the plant, or the security of special nuclear material, including instances of

sabotage or attempted sabotage. Threats of violence that are not substantiated by the licensee need not be reported.

(7) Any radioactive release that requires the evacuation of a room or building.

(8) Any radioactive effluent release where—

(i) The quantity of radioactive materials in liquid or gaseous effluents released from the site exceeds the limits specified in the Technical Specifications.

(ii) The quantity of radioactive material contained in a liquid or gas storage tank exceeds the limits specified in the Technical Specifications.

(iii) With respect to boiling water reactors only, the quantity of radioactive materials in gaseous waste transferred from the primary coolant system to the gaseous radwaste management system exceeds the limits specified in the Technical Specifications.

(9) Any event for which the quantity of radioactive materials released during an unplanned offsite release is more than 1 curie of radioactive material in liquid effluents, more than 150 curies of noble gas in gaseous effluents, or more than 0.05 curies of radioiodine in gaseous effluents.

(b) *Contents.* The Licensee Event Report must contain:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and any significant corrective action taken or planned to prevent recurrence.

(2) A clear, specific, narrative description of what occurred so that knowledgeable readers conversant with the design of commercial nuclear power plants but not familiar with the details of a particular plant can understand the complete event. The narrative description shall include the following specific information:

(i) Plant operating conditions before the event.

(ii) Status of failed structures, components, or systems before the event.

(iii) Dates and approximate times of occurrences.

(iv) The failure mode, mechanism, and effect of each failed component.

(v) The Energy Industry Identification System component function identifier and system name of each component or system referred to in the LER. The Energy Industry Identification System is defined in:

(A) IEEE Std P803/P803A Recommended Practices for Unique Identification Plants and Related Facilities—Principles and Definitions.

(B) IEEE Std P805 Recommended Practice for System Classification in Nuclear Power Plants and Related Facilities.

(C) These publications have been approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the Federal Register. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017. A copy is available for inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. and at the Office of the Federal Register's information center.

(vi) The function of the component or system in which the failure occurred. For failures of components with multiple functions, the licensee shall include a list of systems or secondary functions that were also affected.

(vii) For each failed component, the number of functionally redundant components installed in the plant, including the degree of diversity and their availability during the event.

(viii) Operator actions that affected the course of the event, including operator errors, procedural deficiencies or both, that contributed to the event.

(ix) Automatically and manually initiated safety system responses.

(x) The manufacturer and model number (or other identification) of each component that failed during the event.

(xi) The number and types of workers exposed and the dose received by each worker as a direct result of a reportable event that results in a total occupational exposure that exceed five manrem. The licensee need not include exposures incurred in corrective action and clean up.

(3) An assessment of the safety consequences and implications of the event.

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future.

(5) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the plant's characteristics.

(c) *Supplemental information.* The NRC staff may require the licensee to submit specific additional information and assessments beyond that required by paragraph (b) of this section, if the staff finds that such supplemental material is necessary for complete understanding of an unusually complex or significant event. When a request for supplemental information is made in writing, the licensee shall submit the requested information and assessment as a supplement to the initial LER within the time period specified by the staff.

(d) *Submission of reports.* Licensee Event Reports must be prepared on form NRC–XXX and submitted within 30 days (Related to this requirement, the Commission is considering alternatives for the timing of these reports. These alternatives are discussed in the Statement of Consideration under OVERVIEW OF THE LER SYSTEM) after the discovery of the event covered in the report. The LER must be submitted to—

(1) The appropriate NRC Regional Administrator (formerly called the Director, NRC Regional Office) as shown in Appendix D to Part 20 of this Chapter; and

(2) The Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(e) *Report legibility.* The reports and copies must be of sufficient quality to permit legible reproduction and micrographic processing.

(f) *Exemptions.* Upon written request from a licensee, including adequate justification, or at the initiation of the NRC staff, the Executive Director for Operations may, by a letter to the licensee, grant exemptions to the reporting requirements under this section.

(g) *Reportable occurrences.* The requirements contained in this section replace all requirements to report "Reportable Occurrences" as defined in individual plant Technical Specifications.

Dated at Washington, D.C., this 30th day of April 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-12280 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Nos. 80-CE-21-AD, 80-CE-22-AD, and 80-CE-23-AD]

Airworthiness Directives; Gates Learjet Models 24D, 24E, 24F, 25B, 25C, 25D, 25F, 28, 29, 35, 35A, 36 and 36A Airplanes; Cessna Models 340, 340A, 414, 414A, 421B, 421C, 441, 500, 501, 550 and 551 Airplanes; Beech Models 58P, B60, 65-90, C90, 65-A90, B90, E90, F90, H90 (Military Model T-44A), A100, B100, 200, 200C, 200T, A100-1 (Military Model RU-21J), A200 (Military Model C-12A and C-12C), and A200C (Military Model UC-12B) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action withdraws the Notices of Proposed Rulemaking (NPRMs) relating to Docket No. 80-CE-21-AD (Gates Learjet Models set forth in the title above), Docket No. 80-CE-22-AD (Cessna Models set forth in the title above) and Docket No. 80-CE-23-AD (Beech Models set forth in the title above). The NPRMs proposed to adopt Airworthiness Directives (ADs) that would require initial and repetitive inspections of the cabin pressurization outflow and safety valves installed on these airplanes, and the replacement of those valves found defective. These ADs would further require that the valves in question be inspected/replaced before another pressurized flight, following any in-flight instance in which abnormal operation of the pressurization system is noted. A system functional check and report to the FAA would also be required following reinstallation of these valves. Subsequent to the issuance of these notices, additional information has been acquired which indicates the proposed actions are no longer necessary. Accordingly, the NPRMs are hereby withdrawn.

DATES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Ed Mosman, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7008.

SUPPLEMENTARY INFORMATION: Three NPRMs applicable to the Gates Learjet, Cessna and Beech Models airplanes listed in the heading of this document were published in the **Federal Register** on Thursday, July 31, 1980. The Notices were issued because there were reports of failed cabin pressurization outflow and safety valves installed on these airplanes. The NPRMs proposed to adopt ADs that would require initial and repetitive inspections of these valves, and their replacement if found defective. These Ads would further require that the valves be inspected/replaced before another pressurized flight, following any in-flight instance in which abnormal operation of the pressurization system is noted. A system functional check and report to the FAA would also be required following reinstallation of these valves.

Interested persons were afforded an opportunity to comment on the proposed ADs.

After issuance of these Notices, the FAA received requests from the manufacturer of the valves and one of the airplane manufacturers who would be affected by the Rulemaking, if adopted, stating that more time was needed to effectively study and evaluate the failure data to obtain the information necessary to develop their comments. The FAA reviewed these requests and determined that extending the comment period would afford the requestors as well as other interested persons additional time to furnish comments that should be considered in determining whether final rulemaking is appropriate and, if so, the opportunity to participate in the development of these final rules. Accordingly, the comment period for Docket Nos. 80-CE-21-AD, 80-CE-22-AD and 80-CE-23-AD was extended from September 4, 1980, to October 18, 1980.

Comments received from interested parties indicated opposition to proceeding with the adoption of the proposals. Three commentors questioned the rationale and facts used by the FAA in reaching the conclusion that failure of the valves was associated with loss of windshield incidents reported on two Cessna Model 421 airplanes. The FAA reviewed its previous analysis, including the facts used and new information and agrees that in one incident both the outflow and safety valves were functioning normally and could not have contributed to the occurrence. In the other incident, only the outflow valve was inoperative but the safety valve functioned properly subsequent to the event. Except for a question raised concerning nicotine induced sticking of the operating valve at the time of the incident, the FAA concludes that a positive relationship between the valve failure and windshield loss cannot be established. Accordingly, the FAA agrees with these commentors.

Some commentors also expressed the opinion that, in addition to warning devices on some airplanes, cabin pressurization irregularities would inform the crew of valve failures and that they could take action to control or prevent cabin overpressurization. Although the FAA does not accept that crew detection of valve failure and control of pressurization can be totally relied on to maintain an acceptable level of safety, it recognizes this factor along with others may establish a satisfactory level of safety.

Some commentors noted that service information issued by the affected manufacturers concurrent with, and subsequent to, the publication of the notices was more appropriate than the proposed AD actions and would have a very beneficial effect on the condition addressed by the notices. The FAA recognizes merit in these comments and believes that subsequent service experience on the valves generally corroborates the opinion expressed on this aspect of the problem.

In addition, the FAA has closely monitored the service reports on the valves subsequent to the issuance of the notices. The FAA records indicate that in the interim between their issuance and this date there has been an approximate 26 percent decrease in valve failure reports while the number of aircraft utilizing these valves has increased 39 percent. More important, no reports of a serious in-flight incident or unsafe condition due to failure of these valves have been received subsequent to the notice.

In view of the improvement in the service record on these valves and absence of serious unsafe conditons resulting from their failures since issuance of the notices, the FAA concludes that voluntary compliance with various manufacturers' service instructions is maintaining a satisfactory level of safety in the operation of airplanes utilizing these valves. Accordingly, since it has been established that the proposed actions are unnecessary, the NPRMs are being withdrawn. The withdrawal of the Notices does not preclude the FAA from issuing similar notices in the future, nor does it commit the FAA to any course of action.

List of Subjects in 14 CFR Part 39

Aviation safety.

The Withdrawal

For the reasons stated above, Notices of Proposed Rulemaking, Docket Nos. 80-CE-21-AD, 80-CE-22-AD and 80-CE-23-AD published in the **Federal Register** on July 31, 1980 (45 FR 50800-50809) are hereby withdrawn.

(Sec. 313(a), 601 and 603 Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) of the Department of

Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.85))

Note.—This withdrawal cancels three proposals which are no longer necessary in the interest of air safety. For this reason, and as discussed in the preample, the FAA has determined that it (1) involves withdrawal of proposed regulations which are not major rules under Executive Order 12291 and (2) are not significant rules pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that the proposed withdrawal will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket covering the three proposed rules.

Issued in Kansas City, Missouri, on April 23, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-12339 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AGL-49]

Proposed Alteration of Transition Area; Fairfield, Ill.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal Action is to designate additional controlled airspace determined necessary to encompass a new instrument procedure and to return some designated airspace to a non-controlled status due to the cancellation of an instrument procedure. Both procedures involve Fairfield Municipal Airport, Fairfield, Illinois.

DATE: Comments must be received on or before May 22, 1982.

ADDRESS: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 81-AGL-49, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The additional airspace required will contain a new NDB Runway 9 approach procedure and will be within 4 miles each side of the 260° bearing from the Fairfield NDB facility extending from the 5-mile radius to 8½ miles west-southwest of the NDB. A prior NDB Runway 36 instrument procedure has been cancelled, and the airspace to be returned to a non-controlled status is within 3 miles each side of the 179° bearing from the Fairfield Airport extending from the 5-mile radius to 8 miles south of the airport.

In the area of the additional airspace, the floor of the controlled airspace will be lowered from 1,200 feet above the surface to 700 feet above the surface. The development of the new procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within the controlled airspace. The minimum descent altitudes for the NDR Runway 9 procedure may be established below the floor of the 700-foot controlled airspace.

In the area of the revoked airspace, the floor of the controlled airspace will be raised from 700 feet above the surface to 1,200 feet above the surface.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 81-AGL-49, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 22, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Fairfield, Illinois. Subpart G of Part 71 was published in the Federal Register on January 2, 1981, (46 FR 540).

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (46 FR 540) the following transition area is amended to read:

Fairfield, Illinois

That airspace extended upward from 700 feet above the surface within a 5-mile radius of the Fairfield Municipal Airport (latitude 38°23'00" N., longitude 88°25'00" W.); and within 4 miles each side of the NDB facility 260° bearing, extending from the 5-mile radius area to 8½ miles west-southwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 30 days; and (5) at promulgation, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 7, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12352 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AGL-4]

Proposed Alteration of Control Zone; Grand Forks Air Force Base, N. Dak.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The nature of this Federal Action is to redescribe the Grand Forks Air Force Base, North Dakota, airport control zone by reference to the airport's geographical position in lieu of any reference to the Red River VOR.

The intended effect of this action is to ensure and maintain controlled airspace within the described control zone as necessary for aeronautical operations at Grand Forks AFB, and to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 82-AGL-4, 2300 East Devon Avenue, Des Plains, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The Grand Forks AFB control zone description currently makes reference to the Red River VOR. The Air Force intends to decommission the VOR for economic and maintenance reasons. It is necessary to redescribe the control zone prior to initiating any action toward decommissioning the Red River VOR. The new description designates small portions of airspace east and west of the current north extension, and east and west of the current south extension, where the airspace will now be designated as controlled from the surface up to the base of the existing 700-foot transition area. The new description will also return a portion approximately 2 miles by 3½ miles of the current south extension to a non-controlled status where the floor of the designated airspace will be raised from the surface up to 700 feet above the surface.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 82-AGL-4, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 28, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone near Grand Forks, North Dakota (Grand Forks Air Force Base). Subpart F of Part 71 was published in the **Federal Register** on January 2, 1982 (46 FR 455).

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.171 (46 FR 455), the following control zone is amended to read:

Grand Forks, North Dakota (Grand Forks Air Force Base)

Within a 5-mile radius of Grand Forks AFB Airport (Latitude 47°57'40"N., Longitude, 97°24'03"W.); within 2.5 miles each side of the 003° bearing from the airport, extending from the 5-mile radius zone to 7 miles north of the airport; within 2.5 miles each side of the 175° bearing from the airport, extending from the 5-mile radius zone to 7 miles south of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certifed that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 30 days; and (5) at promulgation, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issues in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12054 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-AGL-10]

Proposed Designation of Transition Area; Jeffersonville, Ind.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal action is to designate controlled airspace near Jeffersonville, Indiana, to accommodate a new instrument approach into Clark County Airport, Jeffersonville, Indiana, established on the basis of a request from the Clark County Airport officials to provide that facility with instrument approach capability utilizing the Nabb, Indiana, VORTAC.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Send comments on the proposal to FAA Office of Regional Counsel, AGL–7, Attention: Rules Docket Clerk, Docket No. 82–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200′ above ground to 700′ above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedures, which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements. The Clark County Airport symbol will also be depicted at the same time.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL–7, Great Lakes Region, Rules Docket No. 82–AGL–10, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 28, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot controlled airspace transition area near Jeffersonville, Indiana. Subpart G of Part 71 was published in the **Federal Register** on January 2, 1981 (46 FR 540).

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (46 FR 540) the following transition area is added:

Jeffersonville, Indiana

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Clark County Airport (latitude 38°21′57″N, longitude 85°44′18″W.), excluding the portion designated as Louisville, Kentucky; and within 1.75 miles each side of the Nabb, Indiana, VORTAC 199 radial extending from the 6.5-mile radius to 7.5 miles northeast of Clark County Airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 11.61 of the Federal Aviation Regulations (14 CFR 11.61)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; Feburary 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 30 days; and (5) at promulgation, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great lakes Region.

[FR Doc. 82–12067 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82–AGL–6]

Proposed Designation of Transition Area; Greensburg, Ind.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal action is to designate controlled airspace near Greensburg, IN, to accommodate a new instrument approach into Greensburg Airport, Greensburg, IN, established on the basis of a request from the Greensburg Airport officials to provide that facility with instrument approach capability based on the Shelbyville, IN, VORTAC.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

DATES: Comments must be received on or before May 28, 1982.

ADDRESS: Send comments on the proposal to FAA Office of Regional Counsel, AGL–7, Attention: Rules Docket Clerk, Docket No. 82–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200′ above ground to 700′ above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the are in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 82-AGL-6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 28, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to establish a 700 foot controlled airspace transition area near Greensburg, IN. Subpart G of Part 71 was published in the **Federal Register** on January 2, 1981 (46 FR 540).

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (46 FR 540) the following transition area is added

Greensburg, Indiana

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Greensburg Airport (latitude 39°19'35"N, longitude 85°31'21"W.), and within 2.5 miles each side of the Shelbyville, IN, VORTAC 142 radial extending from the 5-mile radius to 7.5 miles northwest of the Greensburg Airport.

(Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 30 days; and (5) at promulgation, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12056 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-AGL-3]

Proposed Designation of Transition Area; Ladysmith, Wisc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal action is to designate controlled airspace near Ladysmith, Wisconsin, to accommodate a new NDB Runway 32 instrument approach into Rusk County Airport, established on the basis of a request from the Rusk County Airport officials to provide that facility with instrument approach capability.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

DATE: Comments must be received on or before May 28, 1982.

ADDRESS: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 82-AGL-3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1,200' above ground to 700' above ground. The development of the proposed instrument procedures requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 82-AGL-3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 28, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot

controlled airspace transition area near Ladysmith, Wisconsin. Subpart G of Part 71 was published in the **Federal Register** on January 2, 1981, (46 FR 540).

List of Subjects in 14 CFR Part 71

Airspace, Airways, Special use airspace, Prohibited areas, Restricted airways

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (46 FR 540) the following transition area is added:

Ladysmith, Wisconsin

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of the Rusk County Airport (latitude 45°29'57" N., longitude 91°00'06" W.) at Ladysmith, Wisconsin, and extending 3 miles either side of the 151° bearing from the Ladysmith NDB, extending from 6½ miles to 8½ miles.

Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.61 of the Federal Aviation Regulations (14 CFR 11.61)

Note.—The FAA has determind that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 30 days; and (5) at promulgation, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on April 13, 1982.

Paul K. Bohr,

Acting Director, Great Lakes Region.

[FR Doc. 82-12063 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

[CGD 09-80-02]

33 CFR Part 110

Special Anchorage Area, Little Traverse Bay, Lake Michigan, Harbor Springs, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard at the request of the City of Harbor Springs, Michigan, is proposing to amend the Anchorage Regulations by establishing a Special Anchorage Area at Little Traverse Bay in Lake Michigan, Harbor Springs, Michigan.

The City of Harbor Springs has requested this Special Anchorage Area in order to reduce harbor congestion and improve navigation.

Establishment of this Special Anchorage Area will eliminate the necessity for displaying anchor lights on vessels of less than 65 feet in length while anchored within the Area.

DATES: Comments must be received on or before: June 21, 1982.

ADDRESSES: Comments should be mailed to Commander, Marine Port Safety, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments and other materials referenced in this notice will be available for inspection or copying at Marine Port Safety Office, room 2019, 1240 East 9th Street, Cleveland, OH 44199. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign Steven J. Boyle, Marine Port Safety Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 552-3918.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include their name and address, identify this notice CGD 09-80-82, and the specific section of the proposal to which their comment applies, and give reasons for the comment. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Ensign Steven J. Boyle, Port Safety Branch, and Lieutenant M. Eric Reeves, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Rule

The City of Harbor Springs, Michigan has requested that an existing area in which pleasure craft are mooring be designated a Special Anchorage Area. The mooring area will accommodate sixty-four (64) vessels. The size of these vessels will not exceed 45 feet due to the design of the anchorage area. The City of Harbor Springs understands and accepts the principle that this mooring area is available for use of the general public. No restrictions on the use by the general public have been established nor contemplated.

An environmental review of the proposal has been performed by the Ninth Coast Guard District Planning Staff who determined that the proposed action will have no significant impact. Preparation of an environmental assessment was not required since the action was found to be categorically excluded in accordance with section 2-B(3)(g) of COMDTINST M16475.1A.

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

PART 110—ANCHORAGE REGULATIONS

In consideration of the foregoing, it is proposed that Part 110 of Title 33 of the Code of Federal Regulations be amended by adding § 110.82a to read as follows:

§ 110.82a Little Traverse Bay, Lake Michigan, Harbor Springs, Michigan.

The area within the following boundaries:

Beginning at latitude 45°25'02" North, longitude 84°59'7.5" West; thence to latitude 45°25'39.5" North, longitude 84°59'09" West; thence to latitude 45°25'35" North, longitude 84°59'07" West; thence to latitude 45°25'35" North, longitude 84°58'24.8" West; thence to a latitude 45°25'36.1" North, longitude 84°58'23" West; thence to latitude 45°25'39.5" North, longitude 84°58'39" West; thence to point of beginning.

(Sec. 1, 28 Stat. 647, as amended (33 U.S.C. 258); sec. 6(g)(1)(c) 80 Stat. 937, (49 U.S.C. 1655(g)(1)(c)); 49 CFR 1.46(c)(3))

Dated: April 12, 1982.

Henry H. Bell,

Commander, Ninth Coast Guard District.

[FR Doc. 82-12368 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2065-8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: In a separate **Federal Register** notice published today EPA is approving the State of Minnesota's Part D plan to attain the primary and secondary total suspended particulate (TSP) ambient standards in the Twin Cities Seven County Metropolitan Area and the City of Duluth, with the exception of one rule which is conditionally approved. The State has committed itself to meet this approval condition by December 31, 1982. This notice solicits public comment on the December 31, 1982 date.

DATE: Comments must be received by June 7, 1982.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Publication Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: EPA proposed to approve the State of Minnesota's overall Part D plan to attain the primary and secondary TSP standards in the Twin Cities Seven County Metropolitan Area and the City of Duluth on November 20, 1981 (46 FR 57061). The plan includes many rules that limit particulate emissions. EPA stated in the November 20, 1981 notice that the opacity limitations contained in rule APC-11, Restriction of Emission of Visible Air Contaminants, would apply to source regulated under APC-29, Standards of Performance for Grain Handling Facilities. During the public comment period EPA received one comment from the Minnesota Pollution Control Agency (MPCA) regarding APC-29. MPCA stated that because APC-29 contains specific standards, the opacity standard in APC-11 cannot be utilized in the rule. However, MPCA realizes that problems exist in APC-29 with respect to the enforceability of reasonably available control technology (RACT) emission limitations and is in the process of amending the rule. Therefore, in a January 22, 1982, letter the MPCA requested a conditional approval of APC-29 and committed itself to amend the rule by December 31, 1982. After review of the public comment and letter, EPA is approving the TSP plan for these two areas with the exception of APC-29 which is conditionally approved. That action is being published today in a separate **Federal Register** notice. EPA noted in that notice that the condition may be satisfied in two ways. The State may either (1) submit an amended APC-29 which contains specific opacity limits that are representative of RACT levels of control, or (2) submit operating permits and/or stipulation agreements for the grain handling facilities in these two nonattainment areas which contain opacity limitations equivalent to RACT control levels. Whatever option is chosen, the State must submit the material to EPA by December 31, 1982 as a revision to the Minnesota State Implementation Plan.

This notice is soliciting public comment on the December 31, 1982 deadline.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a regulatory impact analysis. Today's action does not constitute a major regulation since it only proposes for public comment a date that the State has committed itself to meet. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: February 26, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-12329 Filed 5-5-82; 8:45 am]

BILLING CODE 6560-50

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

41 CFR Part 101-41

U.S. Government Bill of Lading Correction Notice—Standard Form

Correction

FR Doc. 82-11371 (47 FR 18007, Tuesday, April 27, 1982) was edited in such a way as to give the impression that it was a correction. The document was not a correction. The document dealt with standard forms to correct U.S. Government bills of lading. Therefore, please make the following corrections:

(1) Correct the document heading to read as set forth above.

(2) Correct the "Action" statement by removing "; correction" after the words "Proposed rule".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6299]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevation for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determination, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Clovis (City), Fresno County	Dry Creek Pup Creek	Intersection of Creek and Barstow Avenue	*347
		Pup Creek	Intersection of 9th Street and Dewitt Avenue	*352

Maps available for inspection at Department of Public Works, 1033 5th Street, Clovis, California.

Send comments to the Honorable David Prindiville, 1033 5th Street, Clovis, California 93612.

California	Fremont (City), Alameda County	Line B (Zone 5)	Intersection of Tallmen Court and Granville Drive	#1
		Line K (Crandall Creek) (Zone 5)	100 feet upstream from center of Southern Pacific Railroad.	*15
		Line A (Scott Creek) (Zone 6)	200 feet upstream from center of Nimitz Freeway (State Highway 17).	*7
		Line D (Agua Fria Creek) (Zone 6)	100 feet upstream from center of East Warren Avenue	*45
		Line F (Arroyo del Agua Caliente Creek) (Zone 6).	200 feet upstream from center of Kato Road	*19
		Line G (Zone 6)	100 feet upstream from center of Durham Road	*25
		Line J (Canada del Alisa) (Zone 6)	25 feet upstream from center of Mission Boulevard	*222
		Line K (Zone 6)	Intersection of Mission Boulevard and Hunter Lane	*320
		Line L (Mission Creek) (Zone 6)	50 feet upstream from center of Mission Boulevard	*289
		Line L-1 (Zone 6)	Intersection of Gomez Road and Valero Drive	*98
		Line N, N-2 (Zone 6)	Intersection of Boyce Road and Weber Road	#1
		Lake Elizabeth	Confluence of Line M (Morrison Canyon) and Lake	*54
		San Francisco Bay	Intersection of Southern Pacific Railroad Bridge and Newark Slough.	*7

Maps available for inspection at Department of Engineering, 39700 Civic Center Drive, Fremont, California.

Send comments to the Honorable Leon J. Mezzetti, 39700 Civic Center Drive, Fremont, California 94538.

California	Fresno (City), Fresno County	Central Canal	200 feet upstream from center of South Chestnut Avenue.	*296
		Dry Creek	Intersection of North Chestnut Avenue and East Sierra Avenue.	#1
		Dry Creek Canal	Intersection of North Palm Avenue and East Franklin Avenue.	*295
		Fancher Creek Canal	Intersection of Florence Avenue and South Orinda Avenue.	*295
		Herndon Canal	Intersection of West Shields Avenue and North College Avenue.	*305
		Mill Ditch	Intersection of East McKinley Avenue and North Peach Avenue.	#1
		San Joaquin River	100 feet downstream from center of North Blackstone Avenue (State Highway 41).	*298

Maps available for inspection at Department of Inspection, 2326 Fresno Street, Fresno, California.

Send comments to the Honorable Daniel K. Whitehurst, 2326 Fresno Street, Fresno, California 93721.

California	Oakland (City) Alameda County	Line A (Temescal Creek)	Intersection of 47th Street and Market Street	*99
		Line B (Glen Echo Creek)	50 feet upstream from center of 29th Street	*20
		Line C	Intersection of Grand Avenue and Elmwood Avenue	#2
		Line D (Trestle Glen)	Intersection of Park Avenue and Lakeshore Avenue	#2
		Line E (Sausal Creek)	100 feet upstream from center of El Centro Avenue	*218
		Line F (Peralta Creek)	50 feet upstream from center of Florida Street	*206

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Line G	130 feet upstream from center of Fairfax Avenue	*94
		Line I (Seminary Avenue Drain)	50 feet upstream from center of Harmon Avenue	*40
		Line K (Arroyo Viejo Creek)	100 feet downstream from center of MacArthur Boulevard.	*72
		Line M (Elmhurst Creek)	100 feet upstream from center of Hegenberger Expressway.	*10
		Line N (Stonehurst Creek)	100 feet upstream from center of Nimitz Freeway (State Highway 17).	*17
		Line P (San Leandro Creek)	100 feet upstream from center of Nimitz Freeway (State Highway 17).	*17
		San Francisco Bay	Intersection of Tidal Canal and center of Dennison Street.	*7
		Lake Merritt	300 feet north from center of 14th Street Bridge of Line R (Merritt Outflow).	*5
Maps available for inspection at Department of Engineering, 14th & Washington, Oakland, California.				
Send comments to the Honorable Lionel J. Wilson, 14th & Washington Street, Oakland, California 94612.				
California	Orange Cove (City) Fresno County	Orange Cove Drain	Intersection of Third Street and H Street	*424
		Wooten Creek	Intersection of Anchor Avenue and B Street	#2
Maps available for inspection at Department of Public Works, 633 6th Street, Orange Cove, California.				
Send comments to the Honorable Victor Lopez, 633 6th Street, Orange Cove, California 93646.				
California	Reedley (City), Fresno County	Kings River	Downstream side of Olsen Avenue crossing the river	*307
Maps available for inspection at Department of Public Works, 845 G Street, Reedley, California.				
Send comments to the Honorable Lawrence Wilder, 845 G Street, Reedley, California 93654.				
California	Sanger (City), Fresno County	Cherry Avenue Percolation Basin	Intersection of Cherry Avenue and Bethel Avenue	*354
		Greenwood Park Drainage	Intersection of Palm Avenue and Dewitt Avenue	#1
			Intersection of Palm Avenue and Greenwood Avenue	#2
		Southern Pacific Railroad	Intersection of Annadale Avenue and K Street	#2
			Intersection of K Street and Jensen Avenue	#2
Maps available for inspection at Department of Public Works, 1700 7th Street, Sanger, California.				
Send comments to the Honorable Jess Marquez, 1700 7th Street, Sanger, California. 93657.				
Delaware	Bethany Beach, Town, Sussex County	Atlantic Ocean	Entire shoreline within the community	*12
Maps available for inspection at the Town Hall, Bethany Beach, Delaware.				
Send comments to the Honorable Dayard Coulter, Town Manager of Bethany Beach, 214 Garfield Parkway, Box 109, Bethany Beach, Delaware 19930.				
Delaware	Fenwick Island, Town, Sussex County	Atlantic Ocean	Entire shoreline within community	*13
Maps available for inspection at the Office of the Town Clerk, Town Hall, Fenwick Island, Delaware.				
Send comments to the Honorable Marjorie V. Kratz, Council President of Fenwick Island, Town Hall, Fenwick Island, Delaware 19944.				
Delaware	Henlopen Acres, Town, Sussex County	Atlantic Ocean	Entire shoreline within community	*13
Maps available for inspection at the Town Hall, 104 Tidewaters Road, Henlopen Acres, Delaware.				
Send comments to the Honorable Walter C. Deakyne, Jr., Mayor of Henlopen Acres, Town Hall, 104 Tidewaters Road, Henlopen Acres, Delaware 19971.				
Delaware	Rehoboth Beach, City, Sussex County	Atlantic Ocean	Entire shoreline within community	*13
		Lewes and Rehoboth Canal	Entire shoreline within community	*9
Maps available for inspection at the City Hall, 73 Rehoboth Avenue, Rehoboth Beach, Delaware.				
Send comments to Honorable John Hughs, Mayor of Rehoboth Beach, P.O. Box C, 73 Rehoboth Avenue, Rehoboth Beach, Delaware 19971.				
Delaware	South Bethany, Town, Sussex County	Atlantic Ocean	Entire shoreline within community	*11
Maps available for inspection at the Town Hall, 402 Evergreen and Pine Streets, South Bethany, Delaware.				
Send comments to Honorable Margaret Gessinger, Mayor of South Bethany, Town Hall, 402 Evergreen and Pine Streets, South Bethany, Delaware 19930.				
Florida	Hollywood (City), Broward County	Atlantic Ocean—Open Coast	Intersection of North Surf Road and Mead Street	*9
			Approximately 200 feet east of the intersection of North Surf Road and Simms Street.	*11
			Approximately 150 feet east of the intersection of South Surf Road and Jasmine Terrace.	*9
		Atlantic Ocean—Port Everglades	Approximately 1000 feet east of the intersection of Eisenhower.	
			Boulevard and SE 25 Street	*9
		Atlantic Ocean—Intracoastal Waterway.	Intersection of Perry Street and North Ocean Drive	*8
			Intersection on Taft Street and North 11 Avenue	*8
			Intersection of Johnson Street and North 16 Avenue	*7
			Intersection of North 9 Avenue and Buchanan Street	*8
			Intersection of South 7 Avenue and Adams Street	*7
			Intersection of Tyler Street and South 16 Avenue	*7
Maps available for inspection at Building Department, 2600 Hollywood Boulevard, 2nd Floor, Hollywood, Florida.				
Send comments to the Honorable David R. Keating, P.O. Box 2207, Hollywood, Florida 33022.				
Idaho	Rathdrum (City), Kootenai County	Rathdrum Creek	Intersection of 3rd Avenue and Coeur D'Alene Street	*2,182
			Intersection of Post Avenue and Gray Street	*2,209
Maps available for inspection at the City Hall, 311 First Street, Rathdrum, Idaho.				
Send comments to the Honorable Don Zigler, P.O. Box 67, Rathdrum, Idaho 83858.				
Illinois	(V) Channahon, Will County	Du Page River	At mouth at Des Plaines River	*511
			About 800 feet downstream of Channahon Dam	*517

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Rock Run South	Just upstream of Channahon Dam	*522
			About 900 feet upstream of Eames Street	*524
			About 500 feet downstream of Chicago, Rock Island and Pacific Railroad.	*521
			Just downstream of Chicago, Rock Island and Pacific Railroad.	*522

Maps available for inspection at the Village Hall, R.R. #1 CC, Channahon, Illinois.

Send comments to Honorable Steven Rittof, Village President, Village of Channahon, Village Hall, R.R. #1 CC, Channahon, Illinois 60410.

Louisiana	City of New Orleans and Orleans Parish	Gulf of Mexico/Lake Borgne	Intersection of Chef Menteur Pass & Intercoastal Waterway.	*18
		Gulf of Mexico/Lake Pontchartain	At northern cul-de-sac of Francesco Road	*12
			Intersection of Azba Road and Lucrino Road	*11

Maps available for inspection at the Department of Safety and Permits, Building Permit Division, Room 7E04, City Hall, 1300 Perdido, New Orleans, Louisiana 70112.

Send comments to Mr. Barthelemy, President of the City Council, City Hall, Room 2E09, or the Department of Safety and Permits, Building Permit Division, City Hall, Room 7E04, New Orleans, Louisiana 70112.

Louisiana	Unincorporated Areas of St. John the Baptist Parish.	Lake Pontchartrain	Approximately 300 feet from shoreline	*16

Maps available for inspection at St. John the Baptist Police Jury Inspector's Office, Parish Courthouse, 1801 West Airline Highway, LaPlace, Louisiana 70068.

Send comments to Mr. Dowie Gendron, President of St. John the Baptist Police Jury or Mr. Leroy Gravois, Parish Police Jury Inspector, St. John the Baptist Parish Courthouse, P.O. Box 359, LaPlace, Louisiana 70068.

Louisiana	Unincorporated Area of Tangipahoa Parish.	Tangipahoa River	Just downstream of U.S. Highway 190	*92
			Just downstream of State Highway 443	*49
			Approximately 400 feet upstream of State Highway 16	*109
			Just upstream of State Highway 10	*128
			Approximately 500 feet upstream of State Highway 440.	*173
		Natalbany River	Just upstream of State Highway 1054	*226
			Just upstream of State Highway 1064	*44
			Just downstream of State Highway 442	*58
			Just upstream of State Highway 40	*85
			Just upstream of State Highway 16	*124
			Just upstream of Bennett Road	*163
			Just downstream of State Highway 1048	*175
		Ponchatoula Creek	Just upstream of U.S. Highway 190 (westbound)	*30
		Yellow Water River Canal	Just upstream of U.S. Highway 190	*40
		Beaver Creek	Just upstream of Illinois Central Gulf Railroad	*175
		Button Creek	Just downstream of U.S. Highway 51	*199
		Lake Maurepas	Along shoreline	*15
		Lake Pontchartrain	Along shoreline	*16

Maps available for inspection at William Tycer Associates, Inc. 110 East Chestnut, Amite, Louisiana 70422.

Send comments to Mr. Cade Williams, Tangipahoa Parish Police Jury President, P.O. Box 215, or Mr. William Tycer of William Tycer Associates, Inc. P.O. Box 176, Amite, Louisiana 70422.

Maryland	Baltimore, City of	Patapsco River	Southeast of Route 695	*12
			Northwest of Route 695	*10
			East of Baltimore and Ohio Railroad in the vicinity of Wagners Point.	*9
			At Harbor Tunnel	*10
			Northeast of Hanover Street	*10
			At Hanover Street	*9
			At Patapsco Avenue	*9
		Curtis Bay	Northeast of Ferry Point	*10
			Southwest of Ferry Point	*9
		Colgate Creek	At confluence with Patapsco River	*9
			At Conrail Railroad	*9
		Northwest Harbor	At confluence with Patapsco River	*10
			Southeast of Locust Point	*10
			Northwest of Locust Point	*9
		Middle Branch, Patapsco River	At Hanover Street Bridge	*10
			At Western Maryland Railroad	*9

Maps available for inspection at the Planning Department, 222 East Saratoga Street, Baltimore, Maryland.

Send comments to: Honorable William Donald Schaefer, Mayor, City of Baltimore, 250 City Hall, Baltimore, Maryland 21202.

Maryland	Betterton, Town, Kent County	Sassafras River	From eastern corporate limits to Clark Road extended	*14
			From Clark Road extended to western corporate limits	*13

Maps available for inspection at the Town Office, Monday and Friday, between 2:00 p.m. and 4:00 p.m., Betterton, Maryland.

Send comments to Honorable William Fahrman, Mayor of Betterton, P.O. Box 54, Betterton, Maryland 21610.

Maryland	Harford County, Unincorporated Areas	Bush River	Eastern shoreline north of Conrail to Park Beach Drive extended.	*13
			Northern shoreline	*13
			Western shoreline from Birch Avenue extended to the Bush River Yacht Club.	*12
			Western shoreline from Bush River Yacht Club to Baker Avenue West extended.	*14
			Western shoreline north of Conrail	*13
		Otter Point Creek	Southern shoreline in vicinity of Kennard Avenue extended.	*13
			Northern shoreline in vicinity of Harford Boat Club Road extended.	*12

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Gunpowder River	Shoreline from confluence of Foster Branch to confluence with Gunpowder Falls.	*13
		Susquehanna River	Shoreline from Havre de Grace corporate limits to Lapidum Road (extended).	*12
			Conowingo Dam	*38
		Deer Creek	Ady Road (State Route 543) upstream side	*209
			Greir Nursery Road upstream side	*240
			Cherry Hill Road upstream side	*265
			Rocks Road (State Route 24) upstream side	*298
			St. Clair Bridge Road 2nd crossing downstream side	*324
			Federal Hill Road (State Route 165) upstream side	*336
			Dam—upstream side	*355
			Carea Road—upstream side	*387
			Amos Road—upstream side	*413
			State Route 23—upstream side	*452
			Jolly Acres Road—upstream side	*466
			Approximately 1,700' downstream of Long Corner Road.	*498
			County Boundary	*510
		Swan Creek	Aberdeen corporate limits (extended)	*12
			State Route 132 upstream side	*28
			At Oak Street	*56
			State Route 462 upstream side	*153
		Carsins Run	Interstate Route 95 southbound upstream side	*188
			Gilbert Road upstream side	*214
		Bynum Run	Chessie system upstream side	*10
			State Route 7 upstream side	*20
			Hookers Mill Road upstream side	*45
			Most downstream Private Road (ford) upstream side	*87
			Wheel Road upstream side	*131
			At Andrews Way	*203
			MacPhail Road upstream side	*209
			State Route 22 upstream side	*265
			Southampton Road upstream side	*296
			Confluence of Wysong Branch	*324
			U.S. Route 1 Belair Bypass upstream side of culvert	*385
			Bynum Road upstream side	*411
			Approximately 5,900' upstream of Bynum Road	*439
		Tributary 1 to Bynum Run	Confluence of Tributary 2 to Bynum Run	*259
			Fountain Green Road (State Route 543) downstream side.	*293
		Tributary 2 to Bynum Run	Confluence with Tributary 1 to Bynum Run	*269
			Southampton Road upstream side	*294
		Wysong Branch	Confluence with Bynum Run	*324
			Private Farm Road downstream side	*346
		Farnandis Branch	Virginia Avenue (extended)	*248
		Ha Ha Branch	U.S. Route 40 upstream side	*13
			At Philadelphia Road (State Route 7)	*25
			Red Maple Drive extended	*54
			Approximately 140' downstream of Interstate Route 95	*74
		Winters Run	U.S. Route 40 upstream side	*17
			State Route 7 upstream side	*31
			Confluence of Tributary 3 to Winters Run	*60
			Singer Road upstream side	*91
			Atkisson Dam upstream side	*128
			Ring Factory Road upstream side	*143
			Whitaker Mill Road upstream side	*162
			Bel Air Road upstream side	*204
			Wildwood Drive upstream side	*257
			Confluence of Long Branch	*294
			Confluence of West Branch	*337
		East Branch	Confluence of West Branch	*337
			Upstream Cosner Road	*360
			Upstream Phillipsmill Road	*381
			At Poteet Road	*405
			Upstream Morse Road	*440
			Confluence of Tributary to East Branch	*451
			Upstream Jarrettsville Road	*497
			Upstream Federal Hill Road	*630
		West Branch	Confluence with East Branch	*337
			Upstream Putnam Road	*362
			Upstream Baldwin Mill Road	*389
			Upstream Charles Street	*412
			Upstream of most upstream Private Road	*444
			Upstream Durham Road	*460
			Approximately 500 feet downstream of Furnace Road	*499
		Tributary 1 to Winters Run	Upstream Winters Run Road	*40
			Approximately 540' downstream of Clayton Road	*64
		Tributary 2 to Winters Run	Confluence with Winters Run	*26
			Upstream Chipper Drive	*42
		Tributary 3 to Winters Run	Confluence with Winters Run	*60
			Approximately 1,360' upstream of confluence with Winters Run.	*76
		Tributary 4 to Winters Run	Confluence with Atkisson Reservior	*131
			Approximately 60' downstream Wheel Road	*201
		Tributary of East Branch	Confluence with East Branch	*451
			Approximately 1,000 feet upstream of confluence with East Branch.	*487

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Plumtree Run	Confluence with Atkisson Reservior	*136
			Upstream Plumtree Road	*196
			At Tollgate Road	*243
			Upstream Ring Factory Road	*271
			Upstream of downstream Private Road	*292
			Upstream corporate limits	*318
		Bear Cabin Branch	Upstream Carrs Mill Road	*283
			Upstream Grafton Shop Road	*296
			Upstream Bernadette Drive	*326
			Approximately 2,860' upstream of Bernadette Drive	*350
			Approximately 5,400' upstream of Bernadette Drive	*365
		Bread and Cheese Branch	Confluence with Winters Run	*291
			Upstream of Angleside Road	*323
			Upstream Ryan Road	*360
		Long Branch	Confluence with Winters Run	*264
			Upstream Boggs Road	*293
			Upstream Private Road	*294
		Reardon Inlet	Upstream Westwood Road	*20
			Confluence of Tributary to Reardon Inlet	*36
		Tributary to Reardon Inlet	Confluence with Reardon Inlet	*38
			Approximately 840' upstream of confluence with Reardon Inlet.	*43
		Foster Branch	Upstream Joppa Farm Road	*13
			Upstream of Trimble Road	*20
		Wildcat Branch	Approximately 400' upstream of confluence with Little Gunpowder Falls.	*199
			Approximately 1,450' upstream of confluence with Little Gunpowder Falls.	*245
			Upstream Rock Ford Road	*290
			Confluence of Tributary to Wildcat Branch	*328
			Upstream State Route 152 culvert	*371
		Tributary to Wildcat Branch	Approximately 180' downstream of U.S. Route 1	*419
			Approximately with Wildcat Branch	*328
			Upstream U.S. Route 1	*355
		Rocky Branch	Confluence with Wildcat Branch	*297
			Upstream Private Drive	*331
			Downstream State Route 147	*372

Maps available for inspection at the Bel Air Public Library, Hickory Avenue, Bel Air, Maryland.

Send comments to Honorable Thomas Barranger, Harford County Executive, Harford County Office Building, 45 South Main Street, Bel Air, Maryland 21014.

Massachusetts	Milford, Town, Worcester County	Charles River	Upstream of Mellen Street	*239
			Downstream of Howard Street	*242
			Approximately 200' upstream of Central Street	*247
			Approximately 700' upstream of Main Street	*270
			Approximately 300' downstream of Dilla Street	*275
			Approximately 85' upstream of Dilla Street	*276
			Downstream of Cedar Street	*307
			Downstream of Abandoned Railroad	*321
			Upstream corporate limits	*325
		Mill River	Upstream of Milford Street	*298
			Downstream of Whitewood Road	*301
			Upstream of Camp Road	*307
			Upstream of North Pond Dam	*351
		O'Brien Brook	Confluence with Godfrey Brook	*283
			Upstream of Vincenzo Road	*291
		Stall Brook	Upstream corporate limits	*298
			Upstream of Interstate Route 495	*243
			Upstream of Beaver Street	*245
		Godfrey Brook	Confluence with Charles River	*244
			Upstream of South Main Street	*254
			Confluence of O'Brien Brook	*283
			Upstream of West Street	*327
			Upstream of Congress Terrace Culvert	*390
		Huckleberry Brook	Downstream of Abandoned Railroad	*273
			Upstream of upper Louisa Lake Dam	*298
			Upstream of Ebin Street	*330
		Ivy Brook	Confluence with Huckleberry Brook	*300
			Approximately 1,400' downstream of Silver Hill Road	*315
			Approximately 1,300' upstream of Silver Hill Road	*333

Maps available for inspection at the Town Hall, 52 Main Street, Milford, Massachusetts.

Send comments to the Honorable John A. Baccia, Jr., Chairman of the Town of Milford Board of Selectmen, Town Hall, 52 Main Street, Milford, Massachusetts 01757.

Michigan	(Twp.) Bedford, Calhoun County	Kalamazoo River	At downstream corporate limits	*799
			At upstream corporate limits (near Custer Road)	*804
			About 8,750 feet upstream of Custer Road	*806
		Waubascon Creek	At confluence with Kalamazoo River	*804
			Just upstream of Michigan Avenue	*806
			At upstream corporate limits (about 1,500 feet upstream of Cross Street).	*812
		Secondary Channel	At confluence with Kalamazoo River	*803
			At divergence with Kalamazoo River	*803

Maps available for inspection at the Town Hall, 115 South Ulrika, Battle Creek, Michigan.

Send comments to Honorable Bess Jordan, Supervisor, Township of Bedford, Town Hall, 115 South Ulrika, Battle Creek, Michigan 49017.

Michigan	(Twp.) Elmwood, Leelanau County	West Arm-Grand Traverse Bay	Shoreline	*584

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lake Leelanau	Shoreline	*590
		Cedar Lake	Shoreline	*595
		Outflow from Cedar Lake	Shoreline	*584
Maps available for inspection at the Town Hall, 10740 Cherry Bend Road, Traverse City, Michigan.				
Send comments to Honorable Stanley Kauchenevich, Supervisor, Township of Elmwood, Town Hall, 10740 Cherry Bend Road, Traverse City, Michigan 49684.				
Michigan	(Twp.) Milton, Antrim County	Grand Traverse Bay	Shoreline	*584
		Elk Lake	Shoreline	*590
		Torch Lake	Shoreline	*591
		Torch River	Just downstream of Cherry Avenue	*591
			At mouth at Skegemog Lake	*590
Maps available for inspection at Mr. Clays' Residence, Route #1, Box 19D, Kewadin, Michigan.				
Send comments to Honorable Charles Clay, Supervisor, Township of Milton, Route #1, Box 19D, Kewadin, Michigan 49648.				
Michigan	(Cht. Twp.) Waterford, Oakland County	Clinton River	Just downstream of Cass Lake Road	*931
			Just upstream of Elizabeth Lake Road	*939
			Just upstream of Emburke Boulevard	*943
			Just downstream of dam near Hatchery Road	*947
			Just downstream of Oakland Lake East Dam	*954
			About 500 feet downstream of Van Norman Lake Outlet	*961
			Just downstream of Van Norman Lake Outlet	*969
		Oakland Lake West Outlet	Just downstream of Oakland Lake—West Outlet	*954
		Coles Bay—Otter Lake (North Channel)	Just downstream of Cass Lake Road	*932
		Clinton River West Channel	At confluence with Clinton River	*945
			Just downstream of Hatchery Road	*950
		Otter Lake	Shoreline	*931
		Cass Lake	Shoreline	*932
		Loon Lake	Shoreline	*952
		Oakland Lake	Shoreline	*960
		Woodhull Lake	Shoreline	*960
		Van Norman Lake	Shoreline	*969
		Eagle Lake	Shoreline	*960
		Sylvan Lake	Shoreline	*931
		Lester Lake	Shoreline	*969
		Wormer Lake	Shoreline	*953
		Schoolhouse Lake	Shoreline	*953
		Mohawk Lake	Shoreline	*953
		Silver Lake	Shoreline	*952
		Upper Silver Lake	Shoreline	*952
		Lotus Lake	Shoreline	*969
		Maceday Lake	Shoreline	*969
		Williams Lake	Shoreline	*969
Maps available for inspection at the Town Hall, 5200 Civic Center Drive, Waterford, Michigan.				
Send comments to Honorable James E. Seetelle, Supervisor, Charter Township of Waterford, Town Hall, P.O. Box 428, 5200 Civic Center Drive, Waterford, Michigan 48095.				
Missouri	(C) Brunswick, Chariton County	Grand River	About 2,600 feet upstream from mouth	*647
			Upstream corporate limits	*649
Maps available for inspection at the City Hall, Brunswick, Missouri.				
Send comments to Honorable Charles Prottyman, Mayor, City of Brunswick, City Hall, Brunswick, Missouri 65236.				
Missouri	(C) Plattsburg, Clinton County	Concord Creek	Just upstream of East Concord Drive	*901
			About 150 feet downstream of Lake Concord Spillway	*902
			Just downstream of Lake Concord Spillway	*915
			About 6,000 feet upstream of confluence with Funkhouser Creek (near western corporate limit).	*935
		Lake Concord	Shoreline	*921
		Smithville Reservoir	Shoreline	*876
		Funkhouser Creek	Just upstream of confluence with Oak Branch	*876
			About 250 feet upstream Broadway Street	*923
			Just upstream of Plotsky Avenue	*944
			About 3,800 feet upstream of Plotsky Avenue (near western corporate limit).	*971
		Horsefork Creek	Just downstream of State Highway 116	*885
			Just upstream of Atchison, Topeka and Santa Fe Railroad.	*886
		Mirkliers Branch	Confluence with Horsefork Creek	*886
			Just upstream of East Street	*904
			Just upstream of Main Street	*910
			Just upstream of Second Street	*918
			Just upstream of Walnut Street	*929
			Just downstream of Fourth Street	*933
Maps available for inspection at the City Hall, Plattsburg, Missouri.				
Send comments to Honorable Jack Wilson, Mayor, City of Plattsburg, 703 Fairway Drive, Plattsburg, Missouri 64477.				
Missouri	(T) Sumner, Chariton County	Grand River	About 5,100 feet upstream of State Highway 139	*671
			About 6,200 feet upstream of State Highway 139	*672
Maps available for inspection at the City Hall, Sumner, Missouri.				
Send comments to the Honorable Marilyn Lynscott, Mayor, Town of Sumner, City Hall, Sumner, Missouri 64681.				
New Hampshire	Croydon, Town, Sullivan County	North Branch Sugar River	At downstream corporate limits	*778
			At Dartmouth College Road/State Route 10 First Crossing.	*793

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream Gilden Bridge Road	*881
			Upstream Pine Hill Road	*890
			Upstream corporate limits	*913

Maps available for inspection at the home of Rita Gross, Town Clerk, Croydon, New Hampshire.

Send comments to the Honorable Ronald Leslie, Chairman, R.F.D. 1, Box 278, Newport, New Hampshire 03773.

New Hampshire	Stratford, Town, Coos County	Connecticut River	At downstream corporate limits	*861
			Downstream Maidstone-Stratford Hollow Bridge	*865
			At confluence of Connary Brook	*874
			At confluence of Smarts Mill Brook	*881
			Upstream State Route 105	*902
			At upstream corporate limits	*932
		Bog Brook	At confluence with Connecticut River	*865
			Downstream Spur Road	*902
			Upstream Tetu Road	*952
			Downstream Bog Road	*1,032
			Approximately 50' upstream of Egan Road	*1,085

Maps available for inspection at the Stratford Selectmens Office, North Stratford Fire Station, North Stratford, New Hampshire.

Send comments to the Honorable Paul Hawley, Chairman of the Stratford Board of Selectmen, Town of Stratford, R.F.D. #1, Box 82, North Stratford, New Hampshire 03590.

New Hampshire	Warren, Town, Grafton County	Baker River	Downstream of State Route 25	*675
			Confluence of Ore Hill Brook	*713
			Upstream of Studio Road	*762
			Upstream of State Route 118	*871
		Ore Hill Brook	Upstream of Moosilauke Carriage Road	*1,102
			Confluence with Baker River	*713
			Upstream of Lund Road (downstream crossing)	*757
			Approximately 1,560' upstream of Lund Road (upstream crossing)	*777

Maps available for inspection at the Town of Warren Selectman's Office, Town Hall, Warren, New Hampshire.

Send comments to the Honorable Floyd Ray, Chairman of the Town of Warren Board of Selectmen, Town Hall, Warren, New Hampshire 03279.

New Jersey	Avalon, Borough, Cape May County	Atlantic Ocean	76th Street extended 850 feet seaward from its intersection with Dune Drive.	*14
			62nd Street extended 550 feet seaward from its intersection with Dune Drive.	*14
			48th Street extended 700 feet seaward from its intersection with Dune Drive.	*14
			30th Street extended 350 feet seaward from its intersection with Avalon Avenue.	*14
			13th Street extended 700 feet seaward from its intersection with Avalon Avenue.	*14
			Dune Drive extended 500 feet northeast from its intersection with 7th Street.	*14
			74th Street extended 800 feet seaward from its intersection with Dune Drive.	*11
New Jersey	Avalon, Borough, Cape May County	Atlantic Ocean	52nd Street extended 450 feet from its intersection with Dune Drive.	*11
			30th Street at the Boardwalk	*11
			Intersection of 7th Street and First Avenue	*11
			Intersection of 3rd Avenue and 6th Street	*11
			Intersection of 77th Street and Ocean Drive	*10
			Intersection of 53rd Street and Dune Drive	*10
			Intersection of Pelican and Heron Drives	*10
			Intersection of 1st Avenue and 29th Street	*10
			Intersection of 5th Avenue and 21st Street	*10
			Intersection of Dune Drive and 8th Street	*10
			Confluence of Shark Creek with the Gulf Island Thorofare.	*11

Maps available for inspection at the Office of the Municipal Clerk, Municipal Building, 3100 Dune Drive, Avalon, New Jersey.

Send comments to Honorable Ellsworth Armacost, Mayor, Borough of Avalon, Municipal Building, 3100 Dune Drive, Avalon, New Jersey 08202.

New Jersey	Lower, Township, Cape May County	Delaware Bay	Entire shoreline within community	*9
		Atlantic Ocean	Entire shoreline between Borough of Cape May Point and City of Cape May.	*14
			Along the Lower Township/Cape May Point corporate limits between Seagrove Avenue and Sunset Boulevard.	*10
			Along the City of Cape May/West Cape May corporate limits to approximately 920' east of intersection of Seagrove Drive and Sunset Boulevard.	*12
			Along the Lower Township/West Cape May corporate limits to the U.S. Coast Guard Base.	*10
			Entire shoreline between U.S. Coast Guard Base and Wildwood Crest corporate limits.	*14
			Along the corporate limits of Lower Township/Wildwood Crest.	*10
			Along the corporate limits of Lower Township/City of Wildwood.	*10

Maps available for inspection at the Municipal Building, 2600 Bayshore Road, The Villas, New Jersey.

Send comments to Honorable Thomas H. Clydesdale, Mayor of Lower Township, 2600 Bayshore Road, The Villas, New Jersey 08251.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Stone Harbor, Borough, Cape May County.	Atlantic Ocean	82nd Street extended 300 feet seaward from its intersection with First Avenue.	*14
			96th Street extended 400 feet seaward from its intersection with First Avenue.	*14
			111th Street extended 400 feet seaward from its intersection with First Avenue.	*14
			122nd Street extended 400 feet seaward from its intersection with Second Avenue.	*14
			Terrain along the shoreline southwest of 122nd Street and along Hereford Inlet.	*14
			Sand Marsh along the eastern bank of Great Channel, southwest of Ocean Drive.	*12
			Intersection of Third Avenue and 122nd Street	*12
			110th Street extended 300 feet seaward beyond its intersection with First Avenue.	*11
			88th Street extended 250 feet seaward beyond its intersection with First Avenue.	*11
			Intersection of 118th Street and Third Avenue	*10
			Intersection of Golden Gate Road and 104th Street	*10
			Intersection of 100th Street and First Avenue	*10
			Intersection of Second Avenue and 82nd Street	*10
			Intersection of Third Avenue and 82nd Street	*10
Maps available for inspection at the Office of the Borough Clerk, Borough Hall, 9508 Second Avenue, Stone Harbor, New Jersey.				
Send comments to Honorable James Wood, Mayor, Borough of Stone Harbor, Borough Hall, 9508 Second Avenue, Stone Harbor, New Jersey 08247.				
New Jersey	Sussex, Borough, Sussex County	Clove Brook	Clove Acres Lake	*429
			Downstream side of Clove Acres Lake Dam	*414
			Downstream side of Newton Avenue	*409
			Downstream side of Loomis Avenue	*407
			Downstream corporate limits	*401
Maps available for inspection at the Office of the Borough Clerk, Municipal Building, Two Main Street, Sussex, New Jersey.				
Send comments to Honorable Alonzo W. Little, Mayor of Sussex, Municipal Building, Two Main Street, Sussex, New Jersey 07461.				
New York	Cedarhurst, Village, Nassau County	Motts Creek	Entire shoreline within community	*11
Maps available for inspection at the Village Hall, 200 Cedarhurst Avenue, Cedarhurst, New York.				
Send comments to Honorable Nicholas A. Ferina, Mayor of Cedarhurst, 200 Cedarhurst Avenue, Cedarhurst, New York 11516.				
New York	Fort Johnson, Village, Montgomery County.	Mohawk River	Downstream corporate limits (extended)	*278
			Upstream corporate limits (extended)	*280
		Kayaderosseras Creek	Confluence with Mohawk Creek	*279
			Upstream of State Route 67/Fort Johnson Avenue	*315
			Upstream corporate limits	*350
Maps available for inspection at the Office of the Village Clerk, 36 Fort Johnson Avenue, Fort Johnson, New York.				
Send comments to Honorable Thomas W. Deay, Jr., Mayor of Fort Johnson, 58 Fort Johnson Avenue, Fort Johnson, New York 12070.				
New York	Southampton, Village, Suffolk County	Shinnecock Bay	Shoreline from approximately 0.07 mile southwest of Meadow Lane (extended) to a point 0.59 mile west of Shinnecock Road (extended).	*9
			Shoreline from a point of 0.59 mile west of Shinnecock Road (extended) to a point 0.1 mile south of Bostmens Lane (extended).	*8
			Shoreline from a point 0.1 mile south of Bostmens Lane (extended) to a point approximately 120' south of Hill Street.	*7
		Atlantic Ocean	Entire shoreline within community	*14
Maps available for inspection at the Village Hall, 23 Main Street, Southampton, New York.				
Send comments to Honorable Ray L. Wiese, Jr., Mayor of Southampton, Village Hall, 23 Main Street, Southampton, New York 11968.				
North Dakota	Minot (City), Ward County	Souris River	Intersection of 33rd Avenue Southeast and 51st Street Southeast.	*1,547
			Intersection of Burdick Expressway and 15th Street Southeast.	*1,552
			Intersection of 2nd Avenue Northwest and 6th Street Northwest.	*1,557
			Intersection of Camino Arboles and Camino Abierto	*1,569
Maps available for inspection at the City Manager's Office, Minot Civic Center, Minot, North Dakota.				
Send comments to the Honorable Chester Reiten, Minot Civic Center, Minot, North Dakota 58701.				
Ohio	(V) Brilliant, Jefferson County	Ohio River	At downstream corporate limits	*666
			At upstream corporate limits	*667
Maps available for inspection at the Mayor's Office, Village Hall, 409 Prospect Street, Brilliant, Ohio.				
Send comments to the Honorable Rodney Roe, Mayor, Village of Brilliant, Village Hall, 409 Prospect Street, Brilliant, Ohio 43913.				
Ohio	(V) Pataskala, Licking County	South Fork Licking River	About 1,200 feet downstream of Service Road	*975
			Just downstream of Conrail	*991
			Just upstream of Conrail	*997
			About 2,400 feet upstream of State Route 16	*1,016

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Muddy Fork	About 550 feet downstream of County Road 151	*983
			Upstream corporate limit (just downstream of State Route 16).	*1,005
		Pataskala Tributary	Confluence with South Fork Licking River	*997
			Upstream corporate limit (just downstream of Blacks Road.	*1,017

Maps available for inspection at the Clerk Treasurer's Office, Village Hall, 430 South Main Street, Pataskala, Ohio.

Send comments to the Honorable Levi Streets, Mayor, Village of Pataskala, Village Hall, 430 South Main Street, P.O. Box 302, Pataskala, Ohio 43062.

Oklahoma	Town of Alex, Grady County	Washita River	Approximately 800 feet downstream from State Highway 19C.	*1,026
			Approximately 500 feet upstream from State Highway 19C.	*1,027
		Soldier Creek	Approximately 350 feet downstream of the Town of Alex Western Corporate Limits.	*1,029
		Tributary No. 1	Approximately 200 feet upstream of H Avenue	*1,034
			Just upstream of State Highway 19C	*1,045
		Tributary No. 2	Just upstream from H Avenue	*1,027
		Tributary No. 3	Approximately 250 feet downstream from State Highway 19C.	*1,031

Maps available for inspection at the Town Hall, 208 Broadway Street, Alex, Oklahoma 73002.

Send comments to Mayor Gary Williams or Glenda Ward, Town Clerk, Town Hall, 209 Broadway Street, Alex, Oklahoma 73002.

Oklahoma	Town of Colony, Washita County	Cobb Creek	Approximately 350 feet upstream of State Highway 69 (Sager Street).	*1,454
			Approximately 200 feet upstream of State Highway 54A.	*1,470
		Tributary No. 1	Just downstream from School Road	*1,458
			Approximately 100 feet downstream of State Highway 69 (Sager Street).	*1,469

Maps available for inspection at Community Building, Colony, Oklahoma 73021.

Send comments to Mayor Loy Luelsenga, P.O. Box 67 or Mr. Zane Payne, Town Board Member, P.O. Box 65, Colony, Oklahoma 73021.

Pennsylvania	Snyder, Township, Blair County	Little Juniata River	Upstream of Honest Hollow Road	*858
			Upstream of State Route 453 (1st crossing)	*872
			Upstream of Plummer Hollow Road	*886
			Confluence of Hutchinson Run	*906
			Upstream of Conrail	*917
		Bald Eagle Creek	Downstream of Westvaco Bridge	*916
			Confluence of Decker Run	*941
			Downstream of Old U.S. Route 220 (Legislative Route 55).	*966
			Confluence of Vanscoyoc Run	*1,019
			Downstream of U.S. Route 220	*1,045
			Upstream of State Route 350 (Legislative Route 524)	*1,078
		Big Fill Run	Confluence with Bald Eagle Creek	*1,048
			Downstream of State Route 350 (Legislative Route 524).	*1,085
			Upstream of Old U.S. Route 220 (Legislative Route 55).	*1,085
			Downstream of 1st Private Road	*1,120
			Approximately 1,440' upstream of 1st Private Road	*1,142
			Upstream of 2nd Private Road	*1,178
		Decker Run	Confluence with Bald Eagle Creek	*941
			Downstream of 1st Private Road	*987
			Downstream of 3rd Private Road	*1,030
			Approximately 1,340' upstream of 3rd Private Road	*1,060
			Approximately 2,720' upstream of 3rd Private Road	*1,090
			Upstream of 4th Private Road	*1,127
			Approximately 1,490' upstream of 4th Private Road	*1,160
		Schell Run	Approximately 4,650' downstream of Township Route 510.	*907
			Downstream of Township Route 510	*1,086
			Approximately 1,945' upstream of Township Route 510.	*1,146
		Hutchinson Run	Confluence with Little Juniata River	*906
			Upstream of Old U.S. Route 220 (Legislative Route 55).	*911
			Downstream of Private Road	*948
			Approximately 2,155' downstream of Township Route 515.	*1,000
			Upstream of Township Route 55	*1,053

Maps available for inspection at the Snyder Township Building, R.D. 3, Tyrone, Pennsylvania.

Send comments to Honorable Eugene Grazier, Chairman of the Snyder Board of Supervisors, R.D. 3, Box 119, Tyrone, Pennsylvania 16686.

Rhode Island	Newport, City, Newport County	Atlantic Ocean	Entire shoreline within the community	*19
		Narragansett Bay	Entire shoreline within the community	*15

Maps available for inspection at the Office of the City Planner, City Hall, Broadway Street, Newport, Rhode Island.

Send comments to Honorable Paul L. Gaines, Mayor of Newport, City Hall, Broadway Street, Newport, Rhode Island 02840.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Texas	City of Nome, Jefferson County	Cotton Creek	Just upstream of 3rd Street	*42

Maps available for inspection at Mayor Ferguson's Office at the Briggs Motor Company, U.S. Highway 90, Southside, Nome, Texas 77629.
Send comments to Mayor Ferguson or Catherine McDermand, Mayor Pro-tem, City Hall, P.O. Drawer D, Nome, Texas 77629.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: April 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-11992 Filed 5-5-82; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket HM-145D; Notice No. 82-2]

Hazardous Waste Manifest; Shipping Papers; Extension of Time for Public Comment

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking; extension of time for public comment.

SUMMARY: MTB published a notice in the **Federal Register** on March 4, 1982 (Docket HM-145D; Notice No. 82-2; 47 FR 9346) concerning the adoption of a Uniform Hazardous Waste Manifest form. Several requests have been received for an extension of the public comment period. This Notice extends the time for public comment from April 28 to June 17, 1982.

DATE: Comments must be received no later than June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Lee E. Metcalfe, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202) 426-2075.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph [a] [4] of App A to Part 106)

Note.—The Material Transportation Bureau has determined that this document will not result in a "major rule" under terms of Executive Order 12291 and DOT implementing procedures (44 FR 11034) not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.)

Issued in Washington, D.C. on April 28, 1982.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-12047 Filed 5-5-82; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 47, No. 88
Thursday, May 6, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

Notice is hereby given in accordance with § 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet on Tuesday, May 25, 1982, in Room EF–100, United States Capitol, Washington, D.C. The meeting will begin at 9 a.m. The meeting is open to the public.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, Transportation; the General Services Administrator; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor, a Mayor, and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Report of the Task Force on Regulations
II. Report of the Executive Director
  A. Council Reauthorization
  B. ICCROM Reauthorization
III. Report of the Task Force on Federalism and Preservation
IV. Report of the Task Force on Tax Study
V. Report of the General Council
  A. Conflict of Interest Regulations
VI. Section 106 Project Consideration
VII. New Business

Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, Suite 430, 1522 K Street NW., Washington, D.C. 20005, 202–254–3967.

Dated: April 28, 1982.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 82-12310 Filed 5-5-82; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Record of Decision; Final Environmental Impact Statement; Hells Canyon National Recreation Area, Comprehensive Management Plan; Wallowa-Whitman, Nez Perce, Payette National Forests, States of Oregon and Idaho, Counties of Baker and Wallowa in Oregon, Counties of Nez Perce, Idaho and Adams in Idaho

This record of decision pertains to the management of Hells Canyon National Recreation Area as established by Pub. L. 94–199 of December 1975. It replaces my earlier decision of May 28, 1981, which was rescinded for reconsideration prior to the September 3, 1981, scheduled date for implementation. Based on the analysis and evaluation in the final environmental impact statement (published June 6, 1981), it is my reconsidered decision to adopt, with some specific changes, alternative C as the management plan for the Hells Canyon National Recreation Area. Alternative C with modifications provides for a broad range of land uses and recreation opportunities and will continue to assure resource use while protecting natural beauty, historical, and archeological values of the area. This alternative is preferred considering social, economic, and environmental values. Further, it best meets the requirements of Pub. L. 94–199.

Alternative C (the selected alternative) provides for: development of recreation and road facilities consistent with retention of the existing character of the area; timber management to promote stand health, vigor, and diversity and provide between 5 and 9 million board feet annually; grazing use balanced with wildlife needs and range conditions which are maintained in good to better condition; three additions (25,158 acres) to the National Wilderness System are recommended; and, power and floatboat use regulation during the peak recreation season.

In addition, the management plan under this alternative is directed toward meeting State water quality standards and established standards for air quality. Visual Quality Objectives are identified and cultural resource protection provided for. As part of the Comprehensive Management Plan, a transportation plan proposing improved road access on both the east and west rims of Hells Canyon for viewing as well as development of a National Trail is incorporated. To help ensure that provisions of the plan are carried out a monitoring program is also part of the plan and is hereby adopted.

Private land use regulations which rely primarily on county zoning ordinances are a third integral part of the plan. They set forth standards for the use and development of privately owned lands to accomplish the purposes of the Act.

As a result of my review and reconsideration of the original decision, I am by this decision further clarifying and modifying the Comprehensive Management Plan through the incorporation of features considered within the scope of the original evaluation process as defined by the alternatives considered. Modifications and clarifications are as follows:

—The number of commercial powerboat permits (1981), allocations and conditions will generally be continued until better information about capacity, use trends and safety is developed. During the regulated season, from May 15, to September 15 each year, trip permits will be required for floatboat use on the entire river and for powerboat use above Pittsburg Landing beginning in 1983 rather than 1982. Trip permits for commercial operators are in addition to the existing special use permits presently required by law for all commercial operations within the National Forest System. Regulations for floatboat use will continue in accord with requirements adopted in 1978. The public, including floatboaters and powerboat interest

groups will be involved if river use conflicts or other management problems are identified where resolution may be through revision of the regulations and allocations of use. Resolution might include alternating short term closures for different types of watercraft over specified sections of the river. Until then, however, new permits or revised permit conditions will be considered only if they are consistent with the established Comprehensive Management Plan. Commercial permit reduction from the 1981 level is expected to occur through normal permit relinquishment and cancellation due to noncomplaince or nonuse.

—Increased powerboat access and share of the river during the regulated use season are provided. During the regulated period 50 commercial powerboat and 50 private powerboat days per week will be the capacity limit permitted for use of the river from Pittsburg Landing upstream to the base of Rush Creek Rapids. Within this limit, a maximum of six powerboats per day of combined commercial and private use (3 each) may be scheduled to continue up the river from the base of Rush Creek Rapids to Hells Canyon Dam. Because of the hazards of varying water releases from the dam and associated conditions of downstream rapids, powerboat operators applying for permits to use the river above the base of Rush Creek rapids will be asked to meet minimum equipment and experience standards appropriate for the expected conditions. Campsite assignment priority will generally be given to floatboaters on this section of the river.

—The Westside Reservoir Face Wilderness recommendation on page 44 and map is modified to provide for a nonwilderness corridor for the existing 230 KV powerline.

—The last sentence on page 31 of the Comprehensive Management Plan which refers to the removal of the 230 KV powerline from Hells Canyon Dam to Pallette Junction is replaced with the following sentence: "The Forest Service will continue to work with Idaho Power Company and other private and Federal energy suppliers to identify appropriate transmission corridors for the future that will be most compatible with the purposes of Pub. L. 94–199."

—The management direction for Dispersed Recreation/Naive Vegetation Management Areas is supplemented to clarify that insects, disease, and noxious weeds prevention and control by appropriate measures will be undertaken when necessary to protect timber and other vegetation on private or public lands.

—Under the "Kirkwood Road" heading page 6: add "to the vicinity of" in the first sentence in front of "Kirkwood Ranch"; delete the third sentence starting "Close the * * *" Also revise on page 22 under "Dispersed Recreation/Native Vegetation," the last sentence in the paragraph starting "The Kirkwood Cow Camp * * *" to read "The Kirkwood Cow Camp to the vicinity of the Kirkwood Ranch road * * *"

—Under Management Direction for Range Management on page 20: revise the second sentence to read "On the Idaho portion, maintain domestic livestock numbers at approximately the present (1981) permitted levels."

—Under Recreation Use on page 45: revise the first paragraph to read "Permits for wilderness use may be required. Where wilderness values are jeopardized by recreation use, such use will be redirected, regulated, or excluded. Generally party size will be restricted to eight people and 16 head of stock. Exceptions for groups up to a combined total of 30 people and animals may be approved by the Forest Service. Delete the second paragraph starting "Horses associated * * *"

Following, by two geographic areas, are the summarized reasons for my determination.

The National Recreational Area Excluding the Snake River Corridor

—Provides for protection, maintenance, and enhancement of ecological values including wildlife, native vegetation, and unique biological features.

—Emphasizes use of the area for recreation and public enjoyment reasonably balanced with other land and resource uses in appropriately suited areas.

—Establishes direction for coordination with State wildlife agencies to determine wildlife populations and habitat needs in relation to domestic livestock forage requirements and other NRA purposes.

—Offers a wide range of outdoor recreation opportunities and potential developments for increased use.

—Provides for scenic, cultural, scientific, historic, and other publicly valued benefits.

—Recognizes and provides for the traditional and valid uses of the area as they existed on the date of enactment of Pub. L. 94–199.

—Proposes three highly qualified areas for wilderness classification as logical additions to existing classified wilderness. (The proposal for wilderness is a preliminary administrative recommendation which will be further reviewed at the Secretary and Presidential Office levels as a legislative proposal for Congress. It would increase classified wilderness within the area by 4 percent, from the current 30 percent to 34 percent. (Only through Congressional action can Wilderness be designated.)

—Retains 130 thousand acres (20 percent of NRA) in an undeveloped state offering ample primitive recreation opportunities.

—Establishes private land use regulations that rely on county zoning ordinances. Because most private lands within the NRA are being used for agricultural and related pastoral purposes, their use and management is generally in accord with the purposes of the NRA.

—Resolves identified issues and concerns as developed through public involvement efforts.

Within the Snake River Corridor

—Balances traditional recreation uses while maintaining or enhancing Wild and Scenic River values.

—Provides for the regulation of motorized and non-motorized river craft during peak season of use to maintain traditional social and physical carrying capacities and recreation experience opportunities.

Other alternatives developed and considered in the environmental impact statement were:

A. Emphasized a high level of recreation facility and road development to improve access and opportunities for public use of the area by motor vehicle; established highest level of timber and grazing use outputs consistent with the constraints of Pub. L. 94–199; provided no new wilderness recommendations and fewest Wild and Scenic River use restrictions.

B. Proposed a moderate level of recreation facility and road development for public use of the area; sustained moderate level of timber and grazing use outputs in recognition of wildlife and visual resource values; recommended three roadless areas be added to the National Wilderness System and maintained existing levels of power and floatboat use with some regulation during the peak summer season.

D. Provided for recreation development in five selected locations and road access improvements in two locations including the addition of a road along the west rim of Hells Canyon

from the Lookout Mountain area to the Hat Point Road; maintained current levels of livestock grazing use and permitted timber management which promotes stand health, vigor, and diversity; recommended three roadless area additions to the National Wilderness System and provided for power and floatboat use regulation during the peak season with exclusion of powerboats between Rush Creek and Wild Sheep Rapids.

E. Emphasized rustic facility development at a few selected locations, limited new construction for access roads, and focused on the enhancement of ildlife, scenic, and natural values as contrasted to timber, range, and other commodity values; recommended six roadless areas for National Wilderness System classification, and provided for power and floatboat use regulations during the peak season with exclusion of powerboats between Rush Creek and Wildsheep Rapids.

F. Established high priority for primitive recreation opportunities with provisions for only minimum recreation and road improvements; management and harvest of timber would have been provided solely to enhance wildlife, recreation, and visual values. Grazing management focused on achieving an ecological dominance of native species for proportionate use by wildlife and permitted domestic livestock; recommended 15 roadless areas for addition to the National Wilderness System and provided for power and floatboat use regulations with exclusion of powerboats during the peak season from Pittsburg Landing to Hells Canyon Dam.

G. Continued current (1978) management as set forth in the Interim Management Guidelines; would have provided for maintenance of existing recreation and road facilities and proposed no new development, management, and harvest of timber under selective harvest provided for only on available commercial forest land not identified as roadless; grazing use would be maintained at current levels; roadless areas would be maintained so as not to preclude future wilderness designation. Regulation of power and floatboats would be minimal, constrained mostly by facility limitations. Implementation of the revised plan will take place on August 2, 1982. This decision is subject to administrative review (appeal) pursuant to 36 CFR 211.19.

Dated: April 30, 1982.

R. Max Peterson,

Chief, Forest Service, Department of Agriculture.

[FR Doc. 82-12312 Filed 5-5-82; 8:45 am]
BILLING CODE 3410-11-M

Office of the Secretary

World Agricultural Outlook Board; Supply-Demand Report Goes to Subscription Basis

Effective June 1, 1982, World Agricultural Supply and Demand Estimates will be available only on a paid subscription basis. USDA's World Agricultural Outlook Board publishes the report monthly with supplemental issues following the USDA Grain Stocks reports issued four times a year.

This move reflects current budget constraints and a government-wide effort to recover publication costs.

The April 13 and 23 and May 11 issues of the supply-demand report will include a subscription request. Interested organizations and individuals may purchase reports through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The subscription fee is $30, domestic, and $37.50, foreign. Single copies may be purchased for $2, domestic, and $2.50, foreign, also from the Superintendent of Documents.

A limited number of issues will be provided at no cost to land grant university libraries and the news media.

Terry N. Barr,

Acting Chairman.

[FR Doc. 82-12311 Filed 5-5-82; 8:45 am]
BILLING CODE 3410-GL-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Investigation; Sodium Nitrate From Chile

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of a petition filed in proper form with the United State Department of Commerce, we are initiating an antidumping investigation to determine whether sodium nitrate from Chile is being, or is likely to be, sold in the U.S. at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 27, 1982, and we will make ours on or before September 20, 1982.

EFFECTIVE DATE: May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (202-377-3965).

SUPPLEMENTARY INFORMATION:

The Petition

On April 12, 1982, we received a petition from counsel for Olin Corporation of Stamford, Connecticut. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that sodium nitrate is being, or is likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the "Act") and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The allegation of sales at less than fair value is supported by comparisons of United States prices (developed from price lists published by the importer, a wholly owned subsidiary of the exporter) with a constructed value of sodium nitrate produced in Chile (developed from an analysis of the exporter's 1980 annual report). The petition also alleges that sales of sodium nitrate in the home market are being made at less than the cost of production as provided in section 773(b) of the Act and that critical circumstances exist as defined in section 733(e) of the Act.

Initiation of Investigation

Under section 732(c) of the Act, we must determine within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on sodium nitrate from Chile, and we have found that it meets these requirements. Therefore, in accordance with section 732(c)(2) of the Act, we are initiating an antidumping investigation to determine whether sodium nitrate from Chile is being, or is likely to be, sold in the United States at less than fair value.

We will also investigate whether sales in the home market of sodium nitrate are

being made at less than the cost of production, and we will make a determination regarding the critical circumstances allegation. If our investigation proceeds normally, we will make our preliminary determination by September 20, 1982.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrate, a chemical currently classifiable under item 480.2500, *Tariff Schedules of the United States Annotated* ("TSUSA"). Sodium nitrate is used in agricultural applications as a specialty fertilizer and in industrial applications as a constituent of explosives, an oxidizing material in glass making, and an additive to charcoal to facilitate ignition.

Notification to ITC

Section 732(d) of the Act (19 U.S.C. 1673a) requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

Pursuant to section 733(a) of the Act (93 Stat. 163, 19 U.S.C. 1673b(a)), the ITC will determine within 45 days, whether there is a reasonable indication that sodium nitrate from Chile is materially injuring, or is likely to materially injure, a U.S. industry. If the ITC determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

This notice is published pursuant to section 732(c)(2) of the Act (93 Stat. 163, 19 U.S.C. 1673a(c)(2)) and § 353.37(b) of the Commerce Regulations (19 CFR 353.37(b)).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-12287 Filed 5-5-82; 8:45 am]
BILLING CODE 3510-25-M

[Order No. 41-1 (Amendment 1); D.O.O. Reference 10-3, 40-1]

Organization and Function Order; International Trade Administration

Effective date: March 22, 1982.

ITA Organization and Function Order 41-1 of February 15, 1982 is amended to realign functions reporting to the Deputy Assistant Secretary for Export Development and to transfer certain functions to the Director General of the Commercial Services.

1. The introductory paragraph to Section 2 of Part IV is amended by striking the "and" before the last phrase and inserting the following: "maintains an export reference room containing information on major foreign projects under consideration by international financial institutions and information on projected opportunities reported by FCS Posts and USCS District Offices, including counseling to users of the facility; assists in the resolution of trade disputes between U.S. sellers and foreign purchasers; directs the E Awards and seminar programs; and"

2. Part IV, Section 2.05 is amended by striking the "and" before the last phrase and inserting the following: "coordinates the operation of the E Awards and seminar programs; and"

3. Part IV, Section 2.09 is added to read:

.09 The *Commercial Services Information Center* maintains an export reference facility for the use of Government and the business community which includes information on major foreign projects under consideration by international financial institutions, market research and projected opportunities reported by FCS Post and USCS District Offices; provides information and technical assistance to the users of the facility, including information and counseling on a wide range of export services available from the Government and the private sector; provides assistance through FCS Posts and USCS District Offices to resolve trade disputes between U.S. sellers and foreign purchasers; designs, tests and evaluates training materials and techniques to assist U.S. businesses; and provides training for both FCS and USCS personnel in gathering, accessing and disseminating commercial information to the business community.

4. Part VII, Section 2.02 is amended to read:

.02 The *Deputy Assistant Secretary for Export Development* develops domestic and overseas programs designed to stimulate the expansion of U.S. exports, including activities to foster an export consciousness among U.S. manufacturing and service industries, particularly small and medium-sized businesses, and evaluates the effectiveness of these programs; develops programs to improve the access of U.S. products and services to foreign markets, including identifying barriers and surveying U.S. laws and practices affecting international trade; directs the delivery of export development programs relevant to field support implementation through the Regional Managing Directors of the U.S. Commerical Service; provides Departmental recognition of domestic and foreign trade promotion events; and directs overseas event scheduling, including exhibitor recruitment, resource management, and staging of the Department's trade promotion events. The Office of the DAS contains the *International Expositions Staff* which is responsible for Federal recognition of and participation in international expositions to be held in the United States and the *USCS Liaison Staff* which directs the delivery of export development programs relevant to field support implementation through the Regional Managing Directors of the U.S. Commercial Service and administers the Small Business Export Development Assistance Program. The DAS directs the following offices:

a. The *Office of Event Management and Support Services* provides direction for facilitating and executing overseas activities arising from the work of other Offices reporting to the DAS for Export Development or agreements with other Agencies and Departmental operating units; manages the certification of domestic and foreign trade promotion events and activities; directs event scheduling coordination activities; stimulates and arranges visits to U.S. exhibitions and industrial facilities for foreign business people and government officials; manages contract and other efforts to increase private sector assumption of all appropriate export promotion activities; coordinates and develops promotional literature to support export development programs; develops, recruits and manages the staging overseas of catalog and video-catalog exhibitions; and serves as the central point for managing the administrative resources of the Offices reporting to the DAS for Export Development.

b. The *Offices of Consumer Goods, Transportation and Industrial Components Industries; Capital Goods Industries; and Service Industries* develop programs designed to foster an export consciousness in United States industries and stimulate export marketing in all segments of the domestic economy which have the capability to export. Each Office carries out specified export development functions with regard to industries assigned; advises Department officials on U.S. Government actions which would increase the chances for, or present major obstacles to, successful

U.S. competition for export sales abroad; conducts recruitment campaigns to attract U.S. industry to participate in overseas exhibitions; maintains information on U.S. technological developments and marketing trends in selected industry segments with respect to foreign markets and exporting; works with the USCS District Offices to assist export expansion activities of State, regional, and local agencies and works directly or through the District Offices to provide information and counseling to U.S. exporters on the mechanics of exporting; facilitates foreign direct capital investments, joint ventures and licensing by foreign firms in the U.S.; develops and plans trade promotion techniques including operating trade and seminar mission programs and special export promotional events; encourages U.S. firms to export to their full potential and works with the export community to support private sector program initiatives and to develop joint programs.

c. In addition to the functions identified in Section 2.02b, the *Office of Service Industries* provides policy guidance and program recommendations to foster the international operations of U.S. service industries (such as insurance, accounting, engineering and construction, advertising, computer and telecommunications services, leasing, franchising, and air and marine shipping); and develops and implements policies relating to U.S. and foreign taxation of international service and other business operations, international technology transfer, international business practices, international aspects of antitrust, international standardization, patent and copyright protection, and related matters arising from the international commercial and investment operations of U.S. firms.

5. The attached organization chart [1] supersedes the chart attached to ITA Organization and Function Order 41–1 of February 15, 1982.

Lionel H. Olmer,

Under Secretary for International Trade.

[FR Doc. 82–12347 Filed 5–5–82; 8:45 am]

BILLING CODE 3510–25–M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) M. S. Willett, Inc., 220 Cockeysville Road, Cockeysville, Maryland 21030, producer of metal stampings, tools and dies (accepted April 6, 1982); (2) Bamberg Textile Mills, Inc., 7100 Falls Road, Brooklandville, Maryland 21022, producer of cotton gauze (accepted April 7, 1982); (3) Annshire Garment Company, Inc., P.O. Box 647, Pittsburg, Kansas 66762, producer of men's and women's coats (accepted April 8, 1982); (4) Continental Swiss Precision Products, Inc., 7173 Construction Court, San Diego, California 92121, producer of machine tools (accepted April 8, 1982); (5) M–J Industries, Inc., 1000 Washington Avenue, St. Louis, Missouri 63101, producer of men's and boys' coats, jackets and vests (accepted April 8, 1982); (6) Snider Mold Company, Inc., 6303 W. Industrial Drive, Mequon, Wisconsin 53092, producer of metal molds (accepted April 8, 1982); (7) Neptune Electronics, Inc., 934 N.E. 25th Avenue, Portland, Oregon 97232, producer of audio control equipment (accepted April 9, 1982); (8) The American Buckle Company, 291 Campbell Avenue, West Haven, Connecticut 06516, producer of buckles for work clothes and other metal products (accepted April 12, 1982); (9) U.S. High Pile Knitting Corporation, P.O. Box 133, Millbury, Massachusetts 01527, producer of pile fabric (accepted April 13, 1982); (10) Top Look Leather Fashions, Inc., 555 8th Avenue, New York, New York 10018, producer of men's and women's jackets (accepted April 15, 1982); (11) Forrest Mountaineering, Ltd., 1517 Platte Street, Denver, Colorado 80202, producer of sports equipment and men's and women's jackets, vests, pants, socks and mittens (accepted April 16, 1982); (12) Basco, Inc., 441 High Street, Perth Amboy, New Jersey 08861, producer of picture frames (accepted April 20, 1982); (13) Wellington, Ltd., 3300 Princeton, N.E., Albuquerque, New Mexico 87107, producer of jewelry, apparel accessories and lighter cases (accepted April 23, 1982); (14) Craig Byron Dress Company, Inc., 463–7th Avenue, New York, New York 10018, producer of women's dresses (accepted April 26, 1982); (15) Communitron Corporation, 1429 N. Halstead Street, Hutchinson, Kansas 67501, producer of communication equipment (accepted April 27, 1982); and (16) Makray, Ltd., 468 East 58th Avenue, Denver, Colorado 80216, producer of men's and women's coats, vests and jackets; and seat covers and pouches (accepted April 27, 1982).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be recieved by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

This Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted in 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 82–12360 Filed 5–5–82; 8:45 am]

BILLING CODE 3510–25–M

Stainless Steel Plate From Sweden; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on stainless steel plate from Sweden. The review covers one of the two known exporters of this merchandise to the United States covered by the finding, Avesta Jernverks Aktiebolag, for the period October 1, 1976 through May 31, 1980. Avesta's response was inadequate; therefore, the Department intends to use the best information available, which is the most recent margin calculated for Avesta, for assessment and deposit purposes. The Department intends to cover sales prior to October 1, 1976, in a subsequent review. Interested parties are invited to comment.

EFFECTIVE DATE: May 6, 1982.

[1] Filed with original.

FOR FURTHER INFORMATION CONTACT:
Valerie Newkirk or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5345/5289).

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, a dumping finding with respect to stainless steel plate from Sweden was published in the **Federal Register** as Treasury Decision 73–157 (38 FR 15079). On January 1, 1980 the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511–20512) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on stainless steel plate from Sweden. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of stainless steel plate, which is commonly used in scientific and insustrial equipment because of its resistance to staining, rusting, and pitting. Stainless steel plate is currently classifiable under item 607.9005 of the Tariff Schedules of the United States Annotated (TSUSA).

At the time of the finding there were four known Swedish exporters of stainless steel plate to the United States: Avesta Jernverks Aktiebolag ("Avesta"), Stora Kopparbergs Bergslags AB ("Stora"), Granges Stal Nybybruk AB ("Granges"), and Uddeholm Aktiebolag ("Uddeholm"). Stora was excluded at the time of the finding. Granges and Uddeholm merged on July 16, 1979, to begin trading as Uddeholm/Nyby Uddeholm AB. Therefore, at this time there are only two known exporters of this product to the United States covered by the findings. This review covers Avesta for the period October 1, 1976 through May 31, 1980. The Department separately reviewed Uddeholm for the period January 1, 1980 through May 31, 1980 (47 FR 16666–7). We will cover prior shipments by both firms in a subsequent review.

Avesta's response was inadequate; therefore, we used the best information available. The best information is the most recent appraisement instructions ("master list") for this firm.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 5.22 percent exists. Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all entries made with purchase dates during the time period involved. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of 5.22 percent of the entered value shall be required on all shipments of Swedish stainless steel plate produced or exported by Avesta and entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: April 23, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82–12368 Filed 5–5–82; 8:45 am]
BILLING CODE 3510–25–M

Duty-Free Entry of Scientific Article; Decision on Application, University of North Carolina

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 80–00420. Applicant: University of North Carolina, Department of Environmental Sciences and Engineering, School of Public Health 201H, Chapel Hill, North Carolina 27514. Article: Gas Chromatograph/Mass Spectrometer/Data System, Model MM 70/70. Manufacturer: VG-Micromass, United Kingdom. Intended Use of Article: See Notice on page 74957 in the **Federal Register** of November 13, 1980. Advice Submitted By: National Bureau of Standards: March 3, 1981.

Comments: No comments have been received with respect to this application. Decision: Application denied. Reasons: An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Discussion: Subsection 301.11(b) of the Departments Regulations (15 CFR Part 301) provides as follows:

"(b) *Manufactured in the United States.* An instrument, apparatus, or accessory shall be considered as being manufactured in the United States if it is customarily produced for stock, produced on order or custom-made within the United States. In determining whether a U.S. manufacturer is able and willing to produce a produced on order, or custom-made instrument, apparatus, or accessory and have it available without unreasonable delay to the applicant the Deputy Assistant Secretary shall take into account the normal commercial practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category. For example, in determining whether a domestic manufacturer is able to produce a custom-made instrument, apparatus, or accessory the Deputy Assistant Secretary may take into account the production experiences of the domestic manufacturer with respect to the types and complexity of products, the extent of the technological gap between the instrument, apparatus, or accessory to which the application relates and the manufacturer's customary products, and the availability of the professional and technical skills, as well as manufacturing experience, essential to bridging the gap and the time required by the domestic manufacturer to produce an instrument, apparatus or accessory to purchaser's specifications."

This regulation is based on the following evidence of Congressional intent:

"It is considered that there would be justification for a finding that an instrument or apparatus is being manufactured in the United States if a manufacturer in the United States has in stock, or lists in a current catalog and offers for sale, such an instrument or apparatus which it has produced domestically. Moreover, in other instances, such a finding would be justified *if there is satisfactory evidence that a manufacturer is able and willing to produce and have such a domestic article available* promptly so that it may be obtained by the applicant without unreasonable delay, taking into account the normal commercial practice applicable to the production and distribution of instruments or apparatus of the same general type" (emphasis added; H.R. Rep. No. 89–1779, 89th Cong., 2nd Sess. 19).

This application is a resubmission of Docket No. 79–00033, which was denied without prejudice to resubmission on August 3, 1979. In its original application, the applicant listed eleven features as pertinent to its intended uses and claimed that they were not available in the domestic instrument with which the foreign article was compared, the 12–90–G(DF) manufactured by Nuclide. Nuclide had responded to the applicant's request for bid (RFB) in February, 1978, and had taken no exceptions from the specifications shown in the RFB. Our consultants of the National Bureau of Standards (NBS) provided their advice on the original application on February 13, 1979. Of the eleven features listed by the applicant, NBS made no finding on four because they were features of design, maintenance, convenience or cost and therefore not related to the required finding of scientific equivalency. NBS advised that the instrument offered by Nuclide, including its standard catalog items offered as options, satisfied the applicant's specifications, matching and in some cases exceeding the specifications offered by the foreign manufacturer. On the eleventh feature, relating to mass range and minimum ion intensity, NBS advised that the Nuclide instrument offered a mass range "considerably greater" than that of the foreign article. With respect to minimum ion intensity, NBS made no finding because the applicant had failed quantitatively to define its research needs in this respect. In our denial without prejudice to resubmission, we reminded the applicant that specifications "must be presented in a manner that permits comparison of the instruments in question" and noted that the applicant's RFB did not "quantitatively define the required minimum ion intensity." We asked the applicant to show in its resubmission "the actual level of minimum ion intensity required for the planned work." We emphasized that its resubmission should address the "deficiencies described to you in this letter."

In its resubmission the applicant did not satisfactorily address those deficiencies. If failed quantitatively to define a required minimum ion intensity of which the foreign article, but not the Nuclide instrument, is capable. It did not describe any research objective which the foreign article, but not the Nuclide instrument, could achieve on the basis of differing minimum ion intensities of the respective instruments.

The applicant addressed the question of minimum ion intensity in general terms, alleging that "the Nuclide response for mass measurement accuracy as a function of a scan rate is inadequate. We requested the instrument be capable of providing 15 ppm root-mean-square accuracy in mass assignments for all ion 5% full-scale deflection while scanning between m/z 500 and 25 with 1.5 sec. total elapsed time between scans. The Nuclide response specifies a 10 sec/decade scan with no specification of magnet reset time with a mass assignment of 15 ppm. The Nuclide response is unsatisfactory even in the quoted ±5 ppm at 10,000 resolution, 10 sec/decade scan. Nuclide does not specify either a mass range or a minimum ion intensity whereas the VG-Micromass specification includes all ions above 5% full scale deflection. Thus the legal requirements of the Nuclide specification could be met by adjusting the mass spectrometer scan rate so that only one ion from the sample is observed and its assignments be within ±5 ppm. This misses a large part of the purpose of this specification, which is to test the over-all ripple on the instrument and the response of the amplifiers."

NBS advice on this point is as follows:

"Nuclide does not, as stated by the applicant, imply that their system is limited to a scan speed of 10 seconds to obtain the requested mass measurement accuracy. Nuclide offered a reprint of a published paper that demonstrated that they had in fact delivered a system and that this system obtained an even better accuracy (than requested) though at a slower scan rate. In both their bid and their letter of February 9, 1978, Nuclide specifically addressed this point and stated that their system would meet the required specifications."

We concur with NBS. We further note that the foreign article does not offer a guaranteed specification which includes all ions > 5 percent full scale deflection. Its specifications in this application state peak intensity may be measured either by height or area by choice of the operator. The application includes a copy of a paper by the foreign manufacturer which shows that in work done on normal alkanes, C_6–C_{14} the molecular ion intensity relative to the base peak diminishes with the increase in the hydrocarbon molecular weight and is less than 5% for $C_{14}H_{30}$. This paper also indicates the foreign system can normalize peak intensities to any selected species. Nuclide in PUB 1374–0973 states its data system will plot or print mass spectra as raw data, spectra normalized to the most abundant species = 100, or spectra intensities normalized to any operator selected species. Neither system guarantees a minimum ion intensity figure. We find it significant in this regard that the applicant's RFB specified no minimum ion intensity requirement.

In its resubmission the applicant discussed four additional areas in which alleged inadequacies of the Nuclide instrument made it unsuitable for the applicant's research purposes. These related to (1) high resolution multiple ion detection, (2) low resolution mode, (3) scan speed and (4) foreground/background capabilities.

In regard to these, NBS advised:

"1. The Nuclide bid and letter of February 9, 1978, specifically addressed the issue of high resolution multiple ion detection. That particular method of achieving the requirements is not essential to the proposed research. Thus, retuning an instrument after each cycle may in fact not be as useful as having more inherently stable power supplies.

2. In the Nuclide document cited by the applicant (Pub. 1473–1074), the statement is made "Nominal mass—ordinarily integrated mass, but conceivably also mass to the nearest half-mass or tenth of an amu * * *" Nuclide points out in the discussion in this document that to assign masses more accurately than this in the low resolution mode is pointless; and we believe this to be correct. Nuclide also states that the high resolution data system may be used.

3. Nuclide guaranteed the scan speed *at the resolution* specified by the applicant. No specifications for sensitivity are given by the applicant for the proposed research.

4. The Nuclide document covering the data system clearly explains that the system has the capability to simultaneously collect and process data."

These points are further discussed below.

High Resolution Multiple Ion Detection

We note that in PUBS 1621–0476 Nuclide discusses its data system mass measurement capabilities as obtained on an existing double focusing mass spectrometer. It points out that it can do multi-mass monitoring (e.g., MSID, MID

or peak stepping) either by its "hard wired" MMM–1 (MMM–2 is also available; PUBS 1368–0873) or by its automation systems mode (DACS 1.2) software. Nuclide also addressed the issue of high resolution MID in its PUB 1473–1074, where it states that its data system software offers mass measurement to ±5 ppm on the average at exponential scans up to 10 sec/mass decade. We agree with NBS that retuning after each cycle is simply an alternative way (almost a design feature) to achieve high resolution MID requirements. In any event, the applicant has not demonstrated that retuning after each cycle is essential to completion of any of its research and that the same results cannot be achieved through high resolution MID techniques possible with the Nuclide instrument.

Low Resolution Mode

With respect to the applicant's comments on low resolution capabilities of the respective instruments, we note that the applicant's RFB did not specify the need for calculation of mass to the nearest 0.01 Dalton in the low or high resolution mode. The Nuclide reply to the RFB took no exceptions and offered to match the low resolution requirements of the requested system. Nuclide's PUBS 1131–REV–0371 states that its data system for low and medium resolution (DA–CS1) offers mass calculations to 0.25 amu (Nuclide defines "low" resolving power as at 100–1000 resolutions; PUBS 1473–1074). We agree with Nuclide and NBS that more accurate assignments in the low resolution mode are pointless, particularly in view of the availability of high resolution analysis of any given research problem (Nuclide's instrument guarantees resolving powers up to 30,000). Significantly, the applicant offered no convincing examples related to its research in which more accurate low resolution readings would not be pointless.

Scan Speed

Nuclide bid the scan speed in the applicant's RFB (m/z 500 to 25 with 1.5 second cycle times). The applicant now complains that Nuclide did not specify a mass assignment accuracy for these fast scans. The 10 kHz response of Nuclide's amplifiers, the applicant claims, in comparison with the 30 kHz amplifiers of the foreign article, makes it certain that "significant peak distortion is occurring, greatly limiting the practical utility of these scans." The RFB did not specify a need for 30 kHz amplifiers. Had it done so, Nuclide could easily have offered them, or even 50 kHz amplifiers (Nuclide letter to the Department dated February 4, 1970; ref. Docket No. 69–00541).

With respect to the applicant's contention that Nuclide can achieve high scan speed only by reducing acceleration voltage (thus lowering the instrument's sensitivity and resolution), we note that the RFB specified no required sensitivity or resolution at these speeds. In its bid Nuclide guaranteed scan speed, mass measurement accuracy and resolution to the applicant's specifications.

Foreground/Background Capabilities

The applicant now states that what it is interested in "is the ability to simultaneously acquire, process and output data as three independent tasks. The statement that the Nuclide System has foreground/background capabilities with no elaboration does not assure that even simultaneous acquisition/processing is possible."

Nuclide took no exceptions from the applicant's RFB, which specified a data system capable of simultaneous data acquisition and processing. Nuclide's publications (PUBS 1614–0276 DS and PUBS 1614–0278 DS) document this capability. The 12–90–G (DF) is fully computer compatible with provision for external control and is available with a 32K core memory data system with extensive software program (background subtraction real time, foreground/background, metastable and collision activation studies, etc.). In its letter to the applicant of February 8, 1978, Nuclide stated its belief that the system it was offering would meet all of the applicant's requirements and asked for the opportunity "to insure that nothing is omitted." In its formal bid of February 23, Nuclide emphasized the difficulty of "breaking down" its system to obtain a 1:1 match with the system of another manufacturer (the applicant issued its RFB on the basis of the foreign article's published specifications) and included an extensive list of options to ensure the full responsiveness of its bid. We conclude, therefore, that any deficiencies in elaboration of the Nuclide instrument now perceived by the applicant cannot legitimately be attributed to Nuclide.

Additional Observations

The record offers reasonable grounds for concluding that the applicant's decision to purchase the foreign article was based at least partly on considerations unrelated to an impartial comparison of the guaranteed specifications of the two systems.

In issuing its RFB, for instance, the applicant included the following provision:

"The user cannot take the time or develop the expertise to work with equipment which has not already had successful use in the field. Therefore any system quoted must have demonstrated the required features and components in at least one actual field installation, and the vendor must be able to document this existing performance to the user's satisfaction."

After receipt of the bids, the applicant's purchasing department wrote that it would be necessary either to persuade the foreign manufacturer "to modify their payment schedule to comply with State Terms and Conditions, or *to decide that the Nuclide proposal will work* and waive the requirement of a prior successful field installation" (emphasis added). Like the applicant's stated reservations about servicing and maintenance of the Nuclide system, prior conditions designed to reduce the purchaser's risk, such as requiring previous operation in the field, are essentially matters of cost and convenience and inadmissible to the determination of scientific equivalency required by law. While such factors reasonably influence an institution's purchasing decisions, they may not be made the basis for duty-free entry. The statute we administer amounts to a statement that if an institution makes purchasing decisions on the basis of cost, convenience or any other consideration extraneous to the guaranteed performance capabilities of the respective instruments for the institution's scientific program, the institution must also be prepared to factor in payment of the applicable duties if it selects the foreign instrument.

Conclusion

On the basis of the foregoing discussion, the Department of Commerce finds that there is satisfactory evidence that Nuclide was able and willing to produce and have available an instrument scientifically equivalent to the foreign article for the applicant's intended uses.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82–12339 Filed 5–5–82; 8:45 am]

BILLING CODE 3510–25–M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; New Systems Notice

On April 14, 1982, the Commodity Futures Trading Commission ("Commission") submitted a New System Report on CFTC–12[1] and CFTC–20[2] to the Vice President of the United States, the Speaker of the House of Representatives, and the Office of Management and Budget. CFTC–12 and CFTC–20 are two of the systems of records into which certain Commission records have been classified following the directives of the Privacy Act of 1974.[3] These two systems contain registration Forms 7–R and 8–R and related supplements and schedules that have filed with the Commission, either by registrants or by individuals affiliated in certain capacities with futures commission merchants, commodity trading advisors, and commodity pool operators.

Consistent with the Commission's revision of its registration regulations (45 FR 80485 (December 5, 1980) and 46 FR 24940 (May 4, 1981)) and as described in the Commission's New System Report, the Commission has altered these systems of records so that they will now include completed fingerprint cards, and, where appropriate, new Form 8–S and 8–T. It has also altered these systems to include information relating to persons who may apply for registration or be affiliated with a registrant as a principal. In addition, the Commission is putting into affect a new routine use [4] for those systems of records which would permit disclosures by the Commission of information the Commission may receive in the course of its processing of applications for registration of associated persons.

CFTC–12

SYSTEM NAME:

Fitness Investigations—CFTC.

SYSTEM LOCATION:

These records are located in the Division of Trading and Markets in the Commission's principal offices at 2033 K Street, NW., Washington, D.C. 20581. Limited records are located in the Chicago regional office, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply to the Commission for registration as an associated person or as floor broker, principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains various information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes copies of applications for registration (Forms 7–R) and biographical supplements (Form 8–R) as well as fingerprint cards. It also includes correspondence, reports and memoranda reflecting information developed from various sources outside the agency. In addition, the system contains records of each CFTC fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4n(6) and 8a(2)(B) of the Commodity Exchange Act, 7 U.S.C. 6n(6) and 12a(2)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to this system of records are the routine uses applicable to all of the Commission's systems of records and were set forth most recently, under the caption "General Statement of Routine Uses," in 46 FR 45980, 45981 (September 16, 1981), the Commission's annual publication of the existence and character of each system of records that contains information about individuals. In addition, information contained in this system of records may be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files folders and computer tapes.

RETRIEVABILITY:

By the name of the firm or individual.

SAFEGUARDS:

Records are maintained in locked cabinets.

RETENTION AND DISPOSAL:

Applications for registration (Forms 7–R and 8–R) and biographical supplements (Form 8–R), related documents and correspondence are maintained on the premises for three years after the individual's registration, or that of the firm with which the individual is affiliated as a principal, becomes inactive. Records are then held in the Federal Records Center for seven years before being destroyed. Computer records are maintained permanently on the premises and updated periodically as along as the individual remains registered or affiliated with a registrant as a principal. Computer records on persons who may apply may be maintained indefinitely. Computer printouts are maintained on the premises for six months and then destroyed. Microfiche records are maintained permanently on the premises.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Director for Registration, Division of Trading and Markets, in the Commission's principal office and the Chief, Registration Branch, Central Region, Division of Trading and Markets, Commodity Futures Trading Commission, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606. Addresses of CFTC offices are set forth in the Commission's annual publication of the existence and character of each system of records that contains information about individuals, under the caption, "The Location of Systems of Records." *See* 46 FR 45980 (September 16, 1981).

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address their inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–3382.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system of records should address their inquires to the FOI, Privacy and Sunshine Acts Compliance Staff at the address listed in the notification section above.

CONTESTING RECORD PROCEDURES:

Individuals contesting the content of records about themselves contained in this system of records should address their inquiries to the FOI, Privacy and

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[1] Fitness Investigations—FTC.

[2] Registration of Futures Commission Merchants, Floor Brokers, Associated Persons, Commodity Trading Advisors and Commodity Pool Operators—CFTC.

[3] 5 U.S.C. 552a.

[4] The Commission's proposal for adding this new routine use appeared in the Federal Register on December 5, 1980. 45 FR 80573.

Sunshine Acts Compliance Staff at the address listed in the notification section above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained, his employer, federal, state, and local regulatory and law enforcement agencies, commodity and securities exchanges, National Futures Association, National Association of Securities Dealers, and other miscellaneous sources.

CFTC-20

SYSTEM NAME:

Registration of Futures Commission Merchants, Floor Brokers, Associated Persons, Commodity Trading Advisors and Commodity Pool Operators—CFTC.

SYSTEM LOCATION:

The primary files are maintained in the Chicago office. All CFTC offices have summary information in the form of microfiche records. Addresses and telephone numbers of these offices are set forth in the Commission's annual publication of the existence and character of system of records that contains information on individuals, under the caption "The Location of Systems of Records." 46 FR 45980 (September 16, 1981).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Commission for registration as an associated person or as a floor broker and principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R), schedules and supplementary attachments to those Forms, fingerprint cards, and Notices of Termination (Form 8–T). The system also includes correspondence relating to registration between the Commission and the applicant, registrant or principal as well as reports reflecting information developed from various sources outside the agency. A computerized system, consisting primarily of information taken from the registration forms, is maintained by the Chicago office. For example, the computer records include the name, date and place of birth, social security number (optional), exchange membership (floor brokers only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, and principal. In addition, the computer records include information relating to name, trade name, principal office address, records address, names of principals, branch office managers and agents of futures commission merchants as well as names of advisory services for commodity trading advisors and names of pools for commodity pool operators.

Monthly microfiche records list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These microfiche records as well as non-confidential portions of applications for registration and biographical supplements are considered to be public records and are available to any person for inspection and copying. In addition, certain auxiliary records, such as card indices, are maintained which summarize information contained in the system regarding each associated person, floor broker and principal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(2), 4n(1), 8a(1) and 8a(2) of the Commodity Exchange Act, 7 U.S.C. 6f(1), 6k(2), 6n(1), 12a(1) and 12a(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's system of records were set forth most recently under the caption, "General Statement of Routine Uses," in 46 FR 45980, 45981 (September 16, 1981), the Commission's annual publication of the existence and character of each system of records that contains information on individuals. In addition, information contained in this system of records may be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computer memory and in manual form in file folders, on computer printouts, index cards and microfiche records.

RETRIEVABILITY:

By the name of the individual or firm. Where applicable, the computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, commodity trading advisor or commodity pool operator with whom the individual is associated or affiliated.

SAFEGUARDS:

Protection of non-public records is afforded by general office security measures. Records are located in secured rooms or on secured premises with access limited to those whose official duties require access. In appropriate cases, the records are maintained in lockable file cabinets.

RETENTION AND DISPOSAL:

Applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R), related documents and correspondence are maintained on the premises for three years after the individual's registration, or that of the firm with which the individual is affiliated as a principal, becomes inactive. Records are then held in the Federal Records Center for seven years before being destroyed. The computer records are maintained premanently on the premises and updated periodically as long as the individual remains registered or affiliated with a registrant as a principal. Computer printouts are maintained on the premises for six months and then destroyed. Microfiche records are maintained permanently on the premises.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Registration Branch, Central Region, Division of Trading and Markets, Commodity Futures Trading Commission, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address their inquiries to the FOI, Privacy or Sunshine Acts Compliance Staff, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–3382.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff at the address listed in the notification section above.

CONTESTING RECORD PROCEDURES:

Individuals contesting the content of records about themselves contained in

this system of records should address their inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff at the address listed in the notification section above.

RECORD SOURCE CATEGORIES:

The individual on whom the file is maintained, his employer, the commodity and securities exchanges, other government agencies, self-regulatory orgainzations and persons with relevant knowledge about the individual. The computer record is prepared from the application or biographical supplement and from information developed during the fitness inquiry.

Issued in Washington, D.C. on April 30, 1982 by the Commission.

Jean A Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-12280 Filed 5-5-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Requirement for Foreign Currency Arrangement; Service Sought

The U.S. Air Force has a continuing requirement for a foreign currency arrangement to fulfill agreements for European coproduction of the F-16 aircraft. The agreement with the current operator expires August 31, 1982, and there is a requirement to execute a new agreement for a three-year period commencing September 1, 1982.

The agreement involves the countries of Belgium, Denmark, the Netherlands, and Norway, and currencies involved in the arrangement will be the respective currencies of these four countries and U.S. dollars. Central management and accounting will be in Brussels, Belgium; however, one account will be established for each foreign currency and maintained in the respective country. The foreign currency accounts will be used to accept deposits from the European governments and contractors and the U.S. Government, to make disbursements to U.S. contractors for their payment of European subcontractors and vendors, and to make currency exchange for European contractors. A qualified financial institution will have:

a. Correspondent relationships to permit cable transactions among Belgium, Denmark, the Netherlands, Norway, and the U.S.;

b. Capability for timely transfer of U.S. dollars from Europe to financial institutions in the U.S.;

c. Capability to promptly record and confirm foreign currency deposits; and

d. Capability of centrally accounting and providing magnetic tapes of all transactions.

Interested financial institutions may obtain additional information, including specifications and requirements for maintaining the accounts, projected deposits, and procedures for submitting bid proposals by contacting Mr. James B. Sandidge, Assistant for Banking and Contract Financing (SAF/FMB), Department of the Air Force, telephone: (202) 697-2857, not later than May 15, 1982.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-12483 Filed 5-5-82; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Board of Advisors to the President, Naval War College; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Advisors to the President, Naval War College, will meet on June 10, 1982, in room 210, Conolly Hall, Newport, Rhode Island. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. The purpose of the meeting is to elicit the advice of the board on education, doctrinal, and research policies and programs of the Naval War College. For further information concerning this meeting, contact: Miss Elizabeth Crosby, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02840, Telephone number (401) 841-2245.

Dated: April 29, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 82-12313 Filed 5-5-82; 8:45 am]

BILLING CODE 3810-AE-M

Navy Resale System Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Navy Resale System Advisory Committee will meet on May 24, 1982, at the Four Seasons Clift Hotel, 495 Geary Street, San Francisco, California. The meeting will consist of two sessions; the first from 8:00 a.m. to 8:45 a.m., the second from 9:00 a.m. until 12:30 p.m. Topics to be discussed at the meeting will include organization of the Navy Resale System, planning, financial management merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting, which will involve discussion of matters relating solely either to internal agency personnel rules and practices, or to trade secrets and confidential commercial or financial information, be closed to the public. These matters fall within the exemptions listed in subsections 552b(c)(2) and (c)(4) of title 5, United States Code. The first session of the meeting, which will involve other, nonprivileged matters relating to the Navy Resale System, will be open to the public.

For further information concerning this meeting, contact: Captain J. R. Akers, SC, U.S. Navy, Naval Supply Systems Command, NAVSUP 09B, Washington, D.C. 20376, Telephone number (202) 695-5457.

Dated: April 30, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 82-12314 Filed 5-5-82; 8:45 am]

BILLING CODE 3810-AE-M

Office of the Secretary

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in closed session on June 3-4, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on June 3-4, 1982 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will review the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect current international cooperation policies have on the utility of the U.S. its friends and Allies to achieve in good order and sustain mobilization capacities.

In accordance with Title 5, U.S.C. App. 1 10(d) (1976), it has been

determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-12362 Filed 5-5-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-82-013; OFC Case Number 50552-6292-34-22]

Powerplant and Industrial Fuel Uses; Chugach Electric Association, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption by Chugach Electric Association, Inc. and availability of certifications.

SUMMARY: On April 5, 1982, Chugach Electric Association, Inc. (Chugach) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent reliability of service exemption for a powerplant from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any new powerplant without the capability to use coal or any other alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The eligibility and evidentiary requirements for the reliability of service exemption are contained in 10 CFR 503.40 of the final rules.

Chugach requests a permanent reliability of service exemption in order to burn natural gas or petroleum in a new package 28.6 MW gas turbine unit, identified as Unit No. 4, to be operated at Chugach's Bernice Lake powerplant located near Kenai, Alaska. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing the petition as well as other documents and supporting materials on this proceeding is available at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, telephone (202) 252-6020. ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments or a request for public hearing on Chugach's petition for exemption are due on or before June 21, 1982.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Fuels Conversion Division, Forrestal Building, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket Number ERA-FC-82-013 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073G, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252-8162

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252-2967

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, Federal Building, Room 7120, 12th & Pennsylvania Avenue, NW, Washington, D.C. 20561, Phone (202) 633-8108

SUPPLEMENTARY INFORMATION: The powerplant for which the petition for exemption has been filed is a new 28.6 MW natural gas/No. 2 fuel oil fired package combustion turbine unit to be operated at Chugach's Bernice Lake powerplant, located in the vicinity of Kenai, Alaska. The new powerplant, identified as Unit No. 4 by Chugach, has a design heat input rate of approximately 12,200 Btu's per KWH (full load heat rate). The boiler will burn natural gas with No. 2 fuel oil used during gas curtailment.

Chugach submitted certifications described below relating to the eligibility and evidentiary requirements for the permanent exemption for powerplants necessary to maintain reliability of service provided for in 10 CFR 503.40(a). Included in the petition is a description of the powerplant's remote location and the grid which it serves. A map and schematic of the grid were furnished to demonstrate that no alternative power supply is available within a reasonable distance and at a reasonable cost without impairing short-term or long-term reliability of service. The results of a study showing an impairment of reliability of service on Kenai Peninsula without the generating capacity of Unit No. 4 were also included in the petition.

Pursuant to 10 CFR 503.40, Chugach filed the following certifications, together with exhibits containing the basis therefor:

1. Despite a diligent effort to purchase a firm alternative power supply to cover all or a part of the projected power shortfall, the reserve margin in the petitioner's service area in the absence of Unit No. 4 would fall below twenty (20) percent during the first year of proposed operation.

2. The use of a mixture of natural gas or petroleum and an alternate fuel for which a fuels mixture exemption would be available under 10 CFR 503.38 would not be economically or technically feasible for the proposed unit.

3. The petitioner is not able to construct an alternate fuel burning unit in time to prevent impairment of reliability of service; despite diligent, good faith efforts the petitioner is not able to make the demonstration necessary to obtain a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inadequate capital, or State and local requirements in time to prevent an impairment of reliability of service.

With respect to National Environmental Policy Act of 1969 (NEPA) compliance, Chugach included in its petition a Finding of No Significant Impact and Environmental Assessment issued by the Rural Electrification Administration of the U.S. Department of Agriculture on December 22, 1981 (47 FR 86 (January 4, 1982)), relating to the same project which is the subject of this petition.

Pursuant to 10 CFR 503.40(c)(3) and 503.13, Chugach also submitted an environmental checklist and certification, indicating that, prior to operating this unit under the requested exemption, it will secure all applicable

environmental permits and approvals pursuant to, but not limited to, the Clean Air Act, the Clean Water Act, the Rivers and Habors Act, the Coastal Zone Management Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. Prior to issuance of a final order, granting or denying the exemption requested by Chugach, ERA will meet the environmental review requirements of section 102 of NEPA.

Pursuant to 10 CFR 501.3, ERA hereby accepts Chugach's petition for a permanent reliability of service exemption for combustion turbine Unit No. 4. The acceptance of the petition by ERA does not constitute a determination that Chugach is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provide for in this notice.

Issued in Washington, D.C. on April 29, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12318 Filed 5-5-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-002; OFC Case No. 67040-0216-01-24]

Powerplant and Industrial Fuel Use Act; Issuance of Final Order to Turbo-Resources

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of Final Order to Turbo-Resources Pursuant to the Powerplant and Industrial Fuel Use Act.

SUMMARY: On January 19, 1982, Turbo-Resources filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to § 503.37 of ERA's final rules governing the cogeneration exemptions (46 FR 59914, December 7, 1981), seeking a permanent cogeneraton exemption for the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), which prohibit the use of petroleum or natural gas in new powerplants and the construction of new powerplants without alternate fuel burning capability.

Turbo-Resources proposes to install a 48 megawatt refinery fuel gas or natural gas fired (with fuel oil backup) cogeneration powerplant to produce electricity and steam at Tosco Corporation's Bakersfield, California, refinery.

Pursuant to section 212(c) of the Act, and § 503.37 of ERA's final rule, ERA hereby grants a permanent cogeneration exemption to Turbo-Resources to permit the use of natural gas or petroleum in the cogeneration facility.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Forrestal Building, Room GA-093, Washington, D.C. 20585, (202) 252-2201.

Henry Garson, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Forrestal Building, Room 6B-178, Washington, D.C. 20585, (202) 252-2967.

Jack Vandenburg, Office of Public Information, Department of Energy, 12th and Pennsylvania Avenue, Room 7120, Washington, D.C. 20461, (202) 633-8755.

The public file containing a copy of this final order and other documents and supporting materials on this proceeding are available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.—4:00 p.m., Telephone (202) 252-6020.

SUPPLEMENTARY INFORMATION: In accordance with the procedural requirements of FUA and ERA's regulations, ERA published a Notice of Acceptance and Availablility of Certificaton in the **Federal Register** on February 9, 1982 (47 FR 5931). The notice of acceptance commenced a 45-day public comment period during which interested persons could submit comments on the petition for exemption and could request that a public hearing be convened. This period expired on March 26, 1982. No comments were received nor was a public hearing requested.

ERA's staff reviewed the information contained in the record of this proceeding, including added information supplied by Turbo-Resources on April 9, 1982, and has determined that the grant of the requested cogeneration exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the mearning of section 102(2)C) of the National Environmental Policy Act (NEPA). In accordance with section 212 of FUA, ERA has also determined that Turbo-Resources has satisfied the eligibility requirements of 10 CFR 503.37(a)(1) of the final rule by certifying that the oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, and that the use of mixtures is not feasible. Accordingly, ERA hereby grants Turbo-Resource's petition for a permanent cogeneration exemption for the facility to be installed at Tosco Corporation's Bakersfield, California, refinery. The exemption granted by this order shall become effective July 5, 1982.

Pursuant to section 702(c) of the Act, any person aggrieved by this order may at any time on or before the effective date of this order, petition for judicial review thereof.

Issued in Washington, D.C. on April 23, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12319 Filed 5-5-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget (OMB)

May 6, 1982.

Agency Contact: John Gross, 202-633-9464, M.S. 7413, Federal Building, 12th and PA Ave., NW., Washington, D.C. 20461.

Effective May 6, 1982, Department of Energy (DOE) notices of collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to OMB.

OMB has received for review the following DOE proposal(s) for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Each entry contains the following information: (1) Type of request, e.g., new, revision, or extension; (2) The DOE office sponsoring the collection; (3) The title of the collection; (4) The Agency form number, if applicable; (5) How often the collection must be completed; (6) Whether response will be mandatory, voluntary, or required to obtain or retain benefit; (7) Who will be required or asked to report; (8) An estimate of the number of respondents; (9) An estimate of the total or annual number of hours needed to fill out the forms; (10) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (11) A brief abstract describing the collection; (12) The name, telephone number, and address of the OMB reviewer responsible for OMB review; and (13) The date the collection was submitted to OMB for review.

(1) New.

(2) Fossil Energy.
(3) Enhanced Oil Recovery Annual Report.
(4) FE–748.
(5) Annually.
(6) Voluntary.
(7) Oil and gas producers certified to conduct tests in enhanced oil recovery.
(8) 423 respondents.
(9) 3,384 hours.
(10) Form not applicable under 3504(h) of Pub. L. 96–511.
(11) The data collected on the FE–748 will be used to conduct preliminary technical and economic screening and for tracking the progress of enhanced oil recovery projects. The technical and economic information will be disseminated to oil producers and the general public. Collection is expected to begin in June of 1982.
(12) Jefferson B. Hill, 202–395–3785, 726 Jackson Place, NW., Washington, D.C. 20503.
(13) April 30, 1982.

Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., April 30, 1982.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 82–12290 Filed 5–5–82; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Mobil Eugene Island Pipeline Co.; Oil Pipeline Tentative Valuation

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1978, 1979, 1980 Consolidated Report (April 30, 1982).

Valuation Docket No. PV—1448–000. Mobil Eugene Island Pipeline Company, 1201 Elm Street, P.O. Box 900, Dallas, Texas 75221.

On or before June 3, 1982, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 70 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.70), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted, the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82–12291 Filed 5–5–82; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders; Period of March 15 through March 26, 1982

During the period of March 15 through March 26, 1982 the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before May 26, 1982. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

April 30, 1982.

Barkett Oil Co., Miami, Fla., HRO–0033

On March 23, 1982, Barkett Oil Company, Miami, Florida filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on February 23, 1982.

In the PRO the Southeast District found that during January 1, 1980 to March 31, 1980, Barkett, a reseller-retailer, sold motor gasoline at prices in excess of those permitted under 10 CFR 212.93.

According to the PRO the Barkett violation resulted in $783,793.18 of overcharges.

Lawrence Oil Co., Miami, Fla., HRO–0034

On March 23, 1982, Lawrence Oil Company, Miami, Florida filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on February 23, 1982.

In the PRO the Southeast District found that during January 1, 1980 to March 31, 1980, Lawrence, a reseller-retailer, sold motor gasoline at prices in excess of those permitted under 10 CFR 212.93.

According to the PRO the Lawrence violation resulted in $361,828.06 of overcharges.

[FR Doc. 82–12320 Filed 5–5–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–2117–7]

Control Techniques Guideline Document: Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft control techniques guidelines (CTG) document.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from the manufacture of high-density polyethylene, polypropylene, and polystyrene resins is available. The draft CTG has been prepared to assist the States in determining reasonably available control technology (RACT) for VOC emissions from the manufacture of high-density polyethylene, polypropylene, and polystrene resins.

DATES: Comments should be submitted (in duplicate if possible) to the Chemicals and Petroleum Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Jack R. Farmer on or before June 21, 1982. Comments will be available for public inspection and copying between 8:30 a.m. and 4:30 p.m. Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, U.S. Environmental

Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

CONTROL TECHNIQUES GUIDELINE DOCUMENTS: Copies of the draft CTG may be obtained by contacting Ms. Phyllis Clark, Chemicals and Petroleum Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5671.

FOR FURTHER INFORMATION CONTACT: Mr. James Berry, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5605.

SUPPLEMENTARY INFORMATION: CTG documents are informational in nature and provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific stationary source categories of VOC emissions located within areas where an extension was granted to the attainment of the national ambient air quality standard for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291, because it is designed to implement an EPA policy. Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a regulatory impact analysis. This CTG is not a "major rule," because it does not impose any new requirements. The draft CTG document was submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Emission Standards and Engineering Division, Room 730, U.S. Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

Dated: April 28, 1982.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-12316 Filed 5-5-82; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission For Marine Services; Meetings

In accordance with Pub. L. 92–463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Executive Committee Meeting; Notice of May Meeting, Thursday, May 20, 1982—9:30 a.m., Conference Room 9230/9232, Nassif Building, 400 Seventh Street, SW., Washington, D.C.

Agenda

1. Administrative Matters.
2. Special/Ad Hoc Committee Reports.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632–6490).

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-12317 Filed 5-5-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Forms Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 CFR Chapter 35).

Subject: Public perceptions of civil defense.

Respondents: Individuals and households.

Size of Sample: 1,200 every two months.

Authority: Federal Civil Defense Act of 1950, as amended. Information is required on public perception of the civil defense program and the need for it, and on the credibility and acceptability of program elements that depend for success on public acceptance and cooperation. Information obtained will be used to help plan for the civil defense program.

OMB Desk Officer. Robert Veeder, (202) 395–4814.

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection packages should be sent both to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472, and to Robert Veeder, Desk Officer, OMB Reports Management Branch, Room 3206 New Executive Office Building, Washington, D.C. 20503.

Dated: April 27, 1982.

Charles M. Girard,

Associate Director.

[FR Doc. 82-12290 Filed 5-5-82; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Inactive Tariffs- -Bureau of Tariffs; Intent To Cancel

The domestic offshore files of the Federal Maritime Commission contain numerous tariffs which have been classified as inactive either due to the absence of any tariff changes for a period of one year or longer; because the Commission's staff has been unable to contact the tariff filers at the addresses shown on the tariffs; or, because the Commission's staff has been advised that the tariff filers no longer offer a common carrier service. The tariff publications of the following carriers, including their last known addresses, fall into the inactive tariff category:

Matthew P. Guasco, Executive Vice President, Continental Forwarders, Inc., 350 Broadway, New York, New York 10013; FMC–F No. 2

John Day, Vice President, Jax Pax, Inc., 2521 West Edgewood Avenue, Post Office Box 9257, Jacksonville, Florida 32208; FMC–F No. 4

Raymond L. Shunterman, Manager Rates and Tariffs, Kingpak, Inc., Post Office Box 19298, Wichita, Kansas 67218; FMC–F No. 3

F. C. Armentrout, Jr., Tariff Manager, Merchant International, Inc., 623 South Pickett Street, Alexandria, Virginia 23304; FMC–F No. 2

Victor Medina, President, Medina Shipping Co., Inc., 720 Broadway, Newark, New Jersey 07104; FMC–F No. 2

N. A. Michael O'Neal, Jr., Reliance Forwarding Corporation, 67 Kings

Highway, Maple Shade, New Jersey 08052; FMC–F No. 2

Ericilio Luna, President, San Lorenzo Express Corp., 2556 W. Fullerton Avenue, Chicago, Illinois 60647; FMC–F No. 5

Robert Weiss, President, World Wide Forwarding, Inc., 455 Lenox Square, Jacksonville, Florida 32205; FMC–F No. 1

Inactive tariffs reflect inaccurate information to the shipping public and serve no useful purpose in the Commission's files. In addition, 46 CFR 531.3(p)(2), requires the cancellation of inactive tariffs. Accordingly, the Commission proposes to cancel the above listed tariffs in the absence of a showing of good cause as to why they should not be cancelled.

Now, therefore it is ordered, that the above carriers advise the Director, Bureau of Tariffs at 1100 L Street, NW., Washington, D.C. 20573, in writing on or before June 7, 1982 of any reason why the Commission should not cancel inactive tariffs;

It is further ordered, that a copy of this Order be sent by registered mail to the last known address of the carriers listed herein;

It is further ordered, that the tariffs of all carriers named herein not responding to this Order will be cancelled.

It is further ordered, that this notice be published in the **Federal Register** and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by section 9.04 to C.O. No. 1 (Revised) November 12, 1981.

Daniel J. Connors,

Director, Bureau of Tariffs.

[FR Doc. 82-12316 Filed 5-5-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Advisory Health Council; Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control announces the following Council meeting:

Name: National Advisory Health Council.
Date: May 21, 1982.
Place: Room 207, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.
Time: 8:30 a.m. to 10:30 a.m.
Type of Meeting: Open.
Contact Person: J. Michael Lane, M.D., Acting Executive Secretary of Committee, Building 1, Room 3007, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, telephones: FTS: 236–3771, Commercial: 404/329–3771.
Purpose: The Council consults with and advises the Secretary on matters relating to health activities and functions of the Public Health Service, including advice on national health policies, programs, and planning in marshalling the necessary efforts and resources to meet major problems and challenges.
Agenda: The Council will consider and recommend an updated list of those diseases that require patient isolation under Section 361 of the Public Health Service Act, i.e., the newly discovered and highly dangerous communicable diseases such as Lassa Fever, Marburg Disease, etc.
Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 30, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82-12346 Filed 5-5-82; 8:45 am]

BILLING CODE 4160-18-M

Safety and Occupational Health Study Section; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Safety and Occupational Health Study Section
Date: June 15–16, 1982
Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Time and Type of Meeting: Open—8:30 a.m. to 9:15 a.m.—June 15; Closed—9:15 a.m. to 5 p.m.—June 15; Closed—8:30 a.m. to 5 p.m.—June 16
Contact Person: Mark R. Green, Ph.D, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8–63, Rockville, Maryland 20857
Telephone: 301–443–4493
Purpose: The committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the institute staff on training and research needs.
Agenda: Agenda items for the open portion of the meeting will include consideration of minutes of previous meeting and administrative reports. Beginning at 9:15 a.m., June 15, through June 16, 1982, the Study Section will be performing the initial review of research, demonstration and training grant applications for Federal assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 30, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82-12349 Filed 5-5-82; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Health Maintenance Organizations; Continued Regulation; Reestablishment of Compliance

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: On February 17, 1982, the Office of Health Maintenance Organizations (OHMO) notified Westchester Community Health Plan (WCHP), 145 Westchester Avenue, White Plains, New York 10601, a federally qualified health maintenance organization (HMO), that WCHP had successfully reestablished compliance with its assurance to the Secretary that it would (1) maintain a fiscally sound operation and (2) have effective procedures to monitor utilization, to control costs of basic and supplemental health services, and to achieve utilization goals. This determination took effect on January 1, 1982.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph. D., Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (42 U.S.C. 300e–11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO is not organized or operated in the manner prescribed by section 1301(c), then the HMO shall be (1) notified in writing of the determination, and (2) directed to initiate corrective action to bring it into compliance with the assurances it provided to the Secretary under section 1310(d)(1). Section 1312(b)(1) also provides that the Secretary shall publish in the **Federal Register** notices of determinations made under that section.

On February 19, 1980, WCHP was officially notified that it was not in compliance with the assurances it had given the Secretary that it (1) would maintain a fiscally sound operation and (2) have effective procedures to monitor utilization, to control costs of basic and supplemental health services, and to achieve utilization goals. This determination of noncompliance, published in the Federal Register at 45 FR 46488 on July 10, 1980, did not affect WCHP's status as a federally qualified HMO. Subsequently, WCHP successfully implemented corrective action to return to compliance with its assurances. On February 17, 1982, WCHP was notified by OHMO that it had reestablished compliance with the assurances it had given the Secretary. This determination took effect on January 1, 1982.

Dated: April 29, 1982.

Frank H. Seubold,

Director, Office of Health Maintenance Organizations.

[FR Doc. 82-12350 Filed 5-5-82; 8:45 am]

BILLING CODE 4110-17-M

Health Maintenance Organizations; Continued Regulations; Determination of Noncompliance

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: On July 27, 1981, the Office of Health Maintenance Organizations (OHMO) determined that CoMed, Inc., Cedar Knolls Plaza 1, 14 Ridgedale Avenue, Cedar Knolls, New Jersey 07927, a federally qualified health maintenance organization (HMO), was not in compliance with the assurances it had provided to the Secretary that it would maintain (1) a fiscally sound operation and (2) satisfactory administrative and managerial arrangements. CoMed has been given the opportunity to take corrective action to bring itself into compliance with these assurances, and CoMed has, in fact, initiated this action. The determination of noncompliance does not itself affect the status of CoMed as a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D, Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (42 U.S.C. 300e-11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO which provided assurances to the Secretary under section 1310(d)(1) is not organized or operated in the manner prescribed by section 1301(c), then he shall (1) notify the HMO in writing of the determination, (2) direct the HMO to initiate such action as may be necessary to bring it into compliance with the assurances, and (3) publish the determination in the Federal Register.

On July 27, 1981, OHMO notified CoMed that it was not in compliance with the assurance that it had given the Secretary that it would maintain (1) a fiscally sound operation and (2) satisfactory administrative and managerial arrangements. On February 18, 1982, OHMO notified CoMed that it had approved a plan for CoMed to restore compliance with the assurance that it would maintain (1) a fiscally sound operation and (2) satisfactory administrative and managerial arrangements.

Dated: April 29, 1982.

Frank H. Seubold,

Director, Office of Health Maintenance Organizations.

[FR Doc. 82-12351 Filed 5-5-82; 8:45 am]

BILLING CODE 4110-17-M

Health Maintenance Organizations; Continued Regulation; Determination of Noncompliance

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: On October 1, 1981, the Office of Health Maintenance Organizations (OHMO) determined that Greater Bridgeport Medical Foundation, Inc., d.b.a. Physicians Health Services (PHS), 43 Oakview Drive, Trumbull, Connecticut 06611, a federally qualified health maintenance organization (HMO), was not in compliance with the assurance it had provided to the Secretary that it would maintain a fiscally sound operation. PHS has been given the opportunity to take corrective action to bring itself into compliance with this assurance, and PHS has, in fact, initiated this action. The determination of noncompliance does not itself affect the status of PHS as a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H.Seubold, Ph. D., Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (42 U.S.C. 300e-11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO which provided assurances to the Secretary under section 1310(d)(1) is not organized or operated in the manner prescribed by section 1301(c), then he shall (1) notify the HMO in writing of the determination, (2) direct the HMO to initiate such action as may be necessary to bring it into compliance with the assurances, and (3) publish the determination in the Federal Register.

On October 1, 1981, OHMO notified PHS that it was not in compliance with the assurance that it had given the Secretary that it would maintain a fiscally sound operation. On February 19, 1982, OHMO notified PHS that it had approved a plan for PHS to restore compliance with the assurance that it would maintain a fiscally sound operation.

Dated: April 29, 1982.

Frank H. Seubold,

Director, Office of Health Maintenance Organizations.

[FR Doc. 82-12352 Filed 5-5-82; 8:45 am]

BILLING CODE 4110-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-82-1125]

Availability of Funding Under the Fair Housing Assistance Program; Non-competitive and Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of non-competitive and competitive solicitation for funding available to State and local agencies under the Fair Housing Assistance Program.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the Fair Housing Assistance Program (FHAP). Agencies must meet specific eligibility criteria in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5214, 451-7th Street SW., Washington, D.C. 20410. Telephone: (202) 426-3500. This is not a toll-free number. Application kits are available upon written or telephone request. To assure a prompt response, it

is suggested that requests for application kits be made by telephone.

DATE: Applications for both Type I, Non-competitive funding, and Type II, competitive funding may be submitted between May 6, 1982 and June 21, 1982. Any application received after the specified date will not be considered unless it is received before awards are made and meets one of the late application exceptions specified in the application kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for non-competitive and competitive funding available under the FHAP is based on the relevant sections of the Final Rule published by the Department as 24 CFR Part 111 in the **Federal Register** on March 3, 1982, FR Vol. 47 No. 42 pp. 8991–8995. These sections are referenced herein under specific headings of Type I and Type II. Interested agencies are urged to review the referenced sections of that rule and the information in this announcement in order to determine whether or not they should apply under this program. The Program has two types of available funding: Type I—Non-competitive Funding, and Type II—Competitive Funding. Type I—Non-competitive Funding encompasses capacity building, training, complaint monitoring and reporting systems, and contributions. Type II—Competitive Funding, encompasses specialized project proposals developed by State and local agencies to enhance their fair housing programs. Eligible agencies can apply for either or both types of funding. Title VIII of the Civil Rights Act of 1968, as amended (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing in the provision of brokerage services. Section 810(c) of Title VIII provides that wherever a State or local fair housing law provides rights and remedies substantially equivalent to those in Title VIII, the Secretary is required to notify the appropriate State or local agency of any complaint filed under Title VIII that appears to constitute a violation of such State or local fair housing law. Section 816 of Title VIII provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may utilize their services and their employees and may reimburse such agencies for services rendered in carrying out Title VIII.

The Fair Housing Assistance Program was authorized by Congress to provide resources to the Department to enable it to enhance the fair housing capabilities of State and local civil rights agencies. This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance program.

I. Eligibility

In order to be eligible to apply for funds under the program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically, it must (1) be certified as a substantially equivalent agency pursuant to the standards enunciated at 24 CFR Part 115, or have been proposed for such recognition by the Assistant Secretary for Fair Housing and Equal Opportunity, and (2) it must execute a written Memorandum of Understanding with the Department. Such a Memorandum must describe the working relationship to be in force between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity. In the event that an agency has, in fact, applied to the Department for recognition as a substantially equivalent entity, and has been found by the Department to have both statutory authority equivalent to Title VIII and an equivalent operational capability to that of the Department (as evidenced by Secretarial approval to publish such a jurisdiction as a proposed addition to the list of recognized equivalent jurisdictions), the fact that the agency has not yet been certified shall not prevent the agency from submitting funding proposals pursuant to the Fair Housing Assistance Program. In such circumstances, the agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity in order to develop a Memorandum of Understanding and may, at the same time, submit funding proposals. However, no funds will be obligated to any agency until such time as it has been officially recognized as substantially equivalent. All proposals under all components must address or have ultimate relevance to matters affecting fair housing which are cognizable under Title VIII.

II. Method of Distribution: Type I—Non-competitive Funding

A. Scope

Applications are solicited for non-competitive funding as described at 24 CFR 111.102. A total of $3,200,000 is available in this component.

B. Categories of Funding

1. Capacity Building—Pursuant to 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second year with a level of funding based upon HUD records showing the annualized number of complaints of housing discrimination received by HUD from that agency's jurisdiction during July–December, 1981, in accordance with the following formula:

Number of complaints	[1] Maximum payment
10 or less	$20,000
11 to 20	30,000
21 to 35	40,000
36 to 55	50,000
56 to 75	60,000
76 to 95	70,000
96 to 115	80,000
116 to 150	90,000
For each additional complaint over 150 [1]	500

[1] Not to exceed $200,000.

Provided, however, that where the annualized number of complaints received by HUD is less than the number received for calendar 1981, agencies will be eligible for maximum funding levels based upon HUD calendar 1981 receipts, pursuant to the above formula. Pursuant to 24 CFR 111.105(b)(1), all agencies seeking capacity building support must submit a written narrative justification documenting that there is within the jurisdiction a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

Any agency participating for the second time under non-competitive support which can demonstrate that it would be entitled to a greater level of funding based upon direct reimbursement, may apply pursuant to Paragraph 4, Contributions. A second year agency electing to apply pursuant to Paragraph 4, Contributions, retains eligibility for training and complaint monitoring and reporting systems support up to the level the agency would have been entitled to had it applied for capacity building support.

2. Training—Agencies applying for capacity building funds will be required to participate in HUD-sponsored training pursuant to 24 CFR 111.105(b)(2). Funds to support participation in this training are available to the agencies at 20% of their capacity building allocation not to exceed $15,000. Any agency otherwise eligible to receive funding for capacity building but electing not to apply for same, may apply for training support funds up to the level the agency would have been entitled to had it applied for capacity building support.

3. Complaint Monitoring and Reporting Systems—Any agency applying for capacity building funds will be eligible to receive support designed to create, modify or improve the agency's complaint information and

monitoring capability. These funds are available, in a fixed funding amount, on a one time only basis, in accordance with the following formula using the same complaint numbers referenced in Paragraph II. B. 1. above:

50 or fewer complaints—$3,000
51 to 100 complaints—$5,000
More than 100—$8,000

Furthermore, inasmuch as FY 1981 funds which were authorized for noncompetitive data support were not announced pending issuance of a final program rule, for this solicitation only, agencies applying for third year funds which heretofore have not been funded for complaint monitoring and reporting systems are also eligible to apply.

4. Contributions—Pursuant to 24 CFR 111.102(b), agencies applying for their third year of noncompetitive support will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency. The unit reimbursement level will be $500 per complaint, not to exceed Cooperative Agreement maximums based upon prior year complaint levels, unless renegotiated prior to the expiration of any executed Cooperative Agreement.

C. Applications

Applicants must submit all information required in the Type I, Non-competitive Application Kit.

D. Award Procedures

Applications for Type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also, Paragraph IV, below.)

III. Method of Distribution: Type II—Competitive Funding

A. Scope

Applications are solicited for specialized project proposals as described at 24 CFR 111.103. A total of $1.9 million is available in this component.

B. Classes of Funding

Prior experience in competitive funding under the program indicates that larger agencies, particularly those State agencies in the more populous States, have a decided advantage over smaller State and local agencies in an open competition for Type II funds. HUD has therefore determined, pursuant to 24 CFR 111.103(b), to establish separate classes of competition for Type II funds.

1. Class A—Large Jurisdictions—All agencies serving jurisdictions with populations of 3 million or more, or which receive an annual housing discrimination complaint workload of 100 or more as evidenced by the same number of complaints referenced in Paragraph II B. 1. above, will be treated as Class A agencies. All Class A agencies *must* compete within Class A.

2. Class B—Small Jurisdictions—All agencies serving jurisdictions with populations below 3 million and which receive an annual housing discrimination complaint workload fewer than 100 will be treated as Class B agencies. Class B agencies may elect to compete in either Class A or Class B, but not both.

C. Program Totals and Agency Maximums

A total of $1.3 million is available under Class A competition, with a maximum of $150,000 per agency. A total of $600,000 is available under Class B, with a maximum of $75,000 per agency.

D. Applications

Applicants must submit all information required in the Type II application kit and must include sufficient information to establish that the proposal meets the criteria set forth at 24 CFR 111.106. Proposals must include a clear narrative description of the project and a timetable delineating the points at which the various components of the project will be initiated and completed. Projects should be of no longer than two years duration. Applicants should note that any research or evaluation activities must serve to enhance the agency's fair housing programs. An agency may submit only one Type II proposal.

E. Award Procedures

Applications for Type II funding will be evaluated competitively, by class, and awarded points based on the Factors for Award identified below. The weight of each factor is indicated by the assigned number of points. Each sub-factor is considered relatively equal to others within the same factor, except as otherwise indicated.

Factors for Award

1. Substantive Factors (70 points)
   a. Degree to which project concerns significant fair housing problems and issues within the jurisdiction (30 points)
   b. Degree to which the project results can be expected to successfully impact upon the problems or issues which the project addresses, including degree to which the project is of continuing utility to the agency or the outcome will be long-term in effects (30 points)
   c. Utility to other fair housing agencies of the concept, methodology or information resulting from the project (10 points)
2. Planning and Management Factors (30 points)
   a. Qualifications established for selection of key project personnel, including project director, staff, and consultants/subcontractors
   b. Clarity and thoroughness of project description
   c. Reasonableness of estimated timetable for implementation and completion of project
   d. Adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of project and ensuring timely completion
   e. Current or potential availability and adequacy of data or information necessary to successfully complete the project
3. Cost Factors—An offeror's proposed costs shall be considered together with the factors in 1. and 2. above in determining the proposals most advantageous to the Government.

The Assistant Secretary reserves the right to make discretionary awards in an amount not to exceed $350,000 to applicants for proposals which have been determined as responsive under this competitive solicitation. This discretion may be exercised in order to ensure a more equitable geographic distribution or to achieve program objectives which would not otherwise be met under the above stated factors for award.

IV. Applicant Notification and Award Procedures

A. Notification

No information will be available to applicants during the period of HUD evaluation except for notification in writing of those applicants that are determined ineligible. All applicants will be notified of the results of their Type I applications as soon as evaluation of their application is completed. Awards for Type I applications are expected to be announced within four weeks of receipt of the application. Awards for Type II applications are expected to be announced by HUD within eight weeks of the closing date.

B. Negotiations

After submission of the application but prior to award, HUD may require applicants to participate in negotiations and to submit application revisions resulting from negotiations.

C. Type of Funding Instrument

It is expected that applicants will be funded in the form of both fixed price and cost-reimbursable Cooperative Agreements, as appropriate. HUD reserves the right to award the type of agreement most appropriate after negotiation.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)); Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3602))

Dated: April 30, 1982.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 82-12302 Filed 5-5-82; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alabama; Coal Production

AGENCY: Bureau of Land Management, Eastern States Office, Interior.

ACTION: Notice of preparation for coal activity planning.

SUMMARY: Notice is hereby given that the Eastern States Office of the Bureau of Land Management (BLM) is taking steps in preparation for coal activity planning for the second round of competitive coal lease sales in the Alabama Subregion of the Southern Appalachian Coal Production Region. The second round of competitive coal sales is tentatively scheduled to begin between July and September of 1984. The Alabama Subregion consists of Walker, Fayette and Tuscaloosa Counties.

The Bureau of Land Management's Tuscaloosa Office is directly responsible for implementation of Federal coal leasing procedures in Alabama. Employees of that office are now refining and further documenting the North Central Alabama Land Use Analysis (LUA), which was originally published in August, 1979, in preparation for the first round of regional coal sales. This refinement, or "maintenance", of the LUA is being done in accordance with 43 CFR 1601.6-3(a), and will be used as the second-round planning document to fulfill the requirements of 43 CFR 3420.1-5. As part of this procedure, the Tuscaloosa Office is also soliciting from industry representatives and the general public any information they may wish to contribute concerning coal resources in the three counties. Persons with such information are urged to contact Tuscaloosa Office Manager Robert L. Todd or Geologist Robert M. Wilson within the next 30 days. Either one may be reached by phone at (205) 759-5441, or in writing at the Bureau of Land Management, Tuscaloosa Office, 518 19th Avenue, Tuscaloosa, Alabama 35401.

The next announcement in the regional coal leasing process will be a call for expressions of industry interest, scheduled for June, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Todd, Bureau of Land Management, Tuscaloosa Office, 518 19th Avenue, Tuscaloosa, Alabama 35401, (205) 759-5441; or Jeffrey R. Williams, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235-3630.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 82-12340 Filed 5-5-82; 8:45 am]

BILLING CODE 4210-84-M

Colorado and Wyoming; Call for Expression of Leasing Interest in Federal Coal in the Green River-Hams Fork Coal Production Region

April 27, 1982.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This call for expression of coal leasing interest, Phase III, is to integrate potential lessees' data and needs into the coal activity planning phase of the Federal coal management program in the Green River-Hams Fork Coal Production Region. The data received from this call will be used along with existing data to delineate tracts which would be considered for possible competitive leasing.

DATE: Responses to this notice may be received until May 28, 1982.

ADDRESSES: Responses to this call should be sent to each of the following addresses:

State Director (930), Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82001;

and

Casper District Resource Evaluation, Minerals Management Service, 111 South Wolcott, Rm. 305, Casper, WY 82601;

and

State Director (930), Bureau of Land Management, 1037 20th Street, Denver CO 80202.

FOR FURTHER INFORMATION CONTACT: J. Stan McKee, Bureau of Land Management (930), P.O. Box 1828, Cheyenne, WY 82001, 307-772-2413;

or

Donald Sweep, District Manager, BLM, Rock Springs District, P.O. Box 1869, Rock Springs, WY 82901, 307-382-5350.

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that the official call for expressions of interest in Federal coal leasing, Phase III, is now in effect for the second round of coal leasing activity in the Green River-Hams Fork Coal Region for possible lease sales beginning in March 1984. Additional calls for expressions are being made in phases extending through June 1982. The call for Phase I was made in December 1981 and has closed; the Phase II call was made in January 1982 and closed March 15, 1982; the Phase IV call is scheduled to be made in late April 1982; and the Phase V call was made April 16, 1982, and will close May 17, 1982. All areas in all five phases are BLM planning areas. While the total situation and needs of the region should be considered, the responses submitted by May 28, 1982, should be for the Phase III portion only. Areas covered by the calls are as follows:

Phase I (December 1981–January 1982), Big Sandy and Salt Wells Planning Areas, Rock Springs District, Wyoming.

Phase II (January–February 1982), White River Planning Area, Craig District, Colorado.

Phase III (April–May 1982), Pioneer Trails Planning Area, Rock Springs Districts, Wyoming.

Phase IV (April–May 1982), Overland and Divide Planning Area, Rawlins District, Wyoming.

Phase V (May–June 1982), Williams Fork Planning Area, Craig District, Colorado.

This call for expressions of interest is the first step in activity planning under the Federal coal management program. It is being made before any tract boundaries are delineated within an area found acceptable for further consideration for coal leasing through conducting the coal screening/planning process, including application of the coal unsuitability criteria. The results of this call will provide significant information that will be employed in delineating tracts that might be offered for lease sale after they have been through the tract ranking, selection, scheduling, and analysis processes that are an integral part of the Federal coal management program defined in 43 CFR Subpart 3420.

Expressions of interest from small businesses and public bodies are actively invited in accordance with the provisions of 43 CFR 3420.1-4 which

states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses. Entities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for possible public body set asides. Proof of public body status and evidence of qualifications as required by 43 CFR 3420.1–4(b)(1)(ii) shall be submitted with the expression of interest.

A major purpose of this call for expressions of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units which will be considered prior to a lease sale. The BLM hopes to gain sufficient information from this call, as well as from its own site specific analyses, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination on specific tracts.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so and the coal included in the modified or relocated tract is of approximately equal quality and tonnage to that shown in the expression of interest.

Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resource conservation, and State preference and priorities.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.
2. Quality needs (types and grades of coal) for both producers and users.
3. Location:
   a. Tracts desired by mining companies (narrative description with delineation on surface minerals management quad map, available for purchase from the BLM State Office).
   b. Public and private industry user facilities in region.
   c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the joint BLM/MMS delineation team will locate the tract.
4. Type of mine:
   a. Surface or underground.
   b. Technique of mining (i.e., longwall, room and pillar, strip mining, etc.).
5. Proposed uses of coal:
   a. By mining companies.
   b. By public and private industries.
6. Where coal is consumed (include extra-regional markets).
7. Transportation needs (i.e., railroads, pipelines, etc.):
   a. Existing facilities.
   b. Proposed facilities and development timing.
8. Available sources of coal:
   a. Presently operative.
   b. Contingency of other sources.
9. Information relating to mineral ownership:
   a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.
   b. Commitments from fee coal owners or for associated non-Federal coal.
10. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 3472.2–5.

Data which are considered proprietary should not be submitted as part of this expression of leasing interest.

An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

Management framework planning information for the Big Sandy and Salt Wells planning areas may be obtained by contacting the Rock Springs BLM District Manager at the above address. Packets containing all maps and information pertaining to the call are available on request from the Rock Springs District Manager or from J. Stan McKee at the above address.

Maxwell T. Lieurance,

State Director.

[FR Doc. 82–12353 Filed 5–5–82; 8:45 am]

BILLING CODE 4310–84–M

Colorado and Wyoming Call for Expression of Leasing Interest in Federal Coal in the Green River-Hams Fork Coal Production Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of calls for expression of leasing interest in Federal coal, overland and divide planning area, Rawlins District, Wyoming.

SUMMARY: This call for expression of coal leasing interest, Phase IV, (Overland and Divide Planning Areas), is to integrate potential lessees' data and needs into the coal activity planning phase of the Federal coal management program in the Green River-Hams Fork Coal Production Region. The data received from this call will be used along with existing data to delineate tracts which would be considered for possible competitive leasing.

DATE: Responses to this notice may be received until June 7, 1982.

ADDRESSES: Responses to this call should be sent to each of the following addresses:

State Director (930), Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82001; and

Casper District Resource Evaluation, Minerals Management Service, 111 South Wolcott, Rm. 305, Casper, WY 82601; and

District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Mike Karbs or Gene Kolkman, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, 307–324–7171.

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that the official call for expressions of interest in Federal coal leasing, Phase IV, is now in effect for the second round of coal leasing activity in the Green River-Hams Fork Coal Region for possible lease sales beginning in March 1984. Additional calls for expressions are being made in phases extending through June 1982. The call for Phase I was made in December 1981 and has closed; the Phase II call was made in January 1982 and closed March 15, 1982; the Phase III and V calls are scheduled to be made in April 1982. All areas in all five phases are BLM planning areas. While the total situation and needs of the region should be considered, the responses submitted by June 7, 1982, should be for the Phase IV portion only. Areas covered by the calls are as follows:

Phase I (December 1981–January 1982): Big Sandy and Salt Wells Planning Areas, Rock Springs District, Wyoming

Phase II (January–February 1982): White River Planning Area, Craig District, Colorado

Phase III (April–May 1982): Pioneer Trails Planning Area, Rock Springs District, Wyoming

Phase IV (April–May 1982): Overland and Divide Planning Areas, Rawlins District, Wyoming

Phase V (May–June 1982): Williams Fork Planning Area, Craig District, Colorado

This call for expressions of interest is the first step in activity planning under the Federal coal management program. It is being made before any tract boundaries are delineated within an

area found acceptable for further consideration for coal leasing through conducting the coal screening/planning process, including application of the coal unsuitability criteria. The results of this call will provide significant information that will be employed in delineating tracts that might be offered for lease sale after they have been through the tract ranking, selection, scheduling, and analysis processes that are an integral part of the Federal coal management program defined in 43 CFR Subpart 3420.

Expressions of interest from small businesses and public bodies are actively invited in accordance with the provisions of 43 CFR 3420.1–4, which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses. Entities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for possible public body set asides. Proof of public body status and evidence of qualifications as required by 43 CFR 3420.2–4(b)(1)(if) shall be submitted with the expression of interest.

A major purpose of this call for expressions of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units which will be considered prior to a lease sale. The BLM hopes to gain sufficient information from thir call, as well as from its own site specific analyses, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination on specific tracts.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so and the coal included in the modified or relocated tract is of approximately equal quality and tonnage to that shown in the expression of interest.

Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resource conservation, and State preference and priorities.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. Quality needs (types and grade of coal) for both producers and users.

3. Location:

a. Tracts desired by mining companies (narrative description with delineation on surface minerals management quad map, available for purchase from the BLM Wyoming State Office or Rawlins District office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the joint BLM/MMS delineation team will locate the tract.

4. Type of mine:

a. Surface or underground.

b. Technique of mining (i.e., longwall, room and pillar, strip mining, etc.).

5. Proposed uses of coal:

a. By mining companies.

b. By public and private industries.

6. Where coal is consumed (include extra-regional markets).

7. Transportation needs (i.e., railroads, pipelines, etc.):

a. Existing facilities.

b. Proposed facilities and development timing.

8. Available sources of coal:

a. Presently operative.

b. Contingency of other sources.

9. Information relating to mineral ownership:

a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owner or for associated non-Federal coal.

10. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 2472.2–5.

Data which are considered proprietary should not be submitted as part of this expression of leasing interest.

An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

Management framwork planning information for the Overland and Divide planning areas may be obtained by contacting the Rawlins District Manager at the above address. Maps and information pertaining to the call are available on request from the Rawlins District Manager at the above address.

David J. Walter,

District Manager.

[FR Doc. 82-12354 Filed 5-5-82; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District; Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Idaho Falls District Grazing Advisory Board will meet June 10, 1982 for a field tour.

Most Grazing Board members will meet at 8:00 a.m. at the Bureau of Land Management Office, 940 Lincoln Road, Idaho Falls, ID 83401; the remaining members will be picked up at 8:30 a.m. at Beaver Dick Park located 5½ miles west of Rexburg on State Highway 33. The Grazing Board will accept public comments from 9 a.m. to 9:30 a.m. at Beaver Dick Park. The tour is open to the public, who may join the tour at any point. Anyone wishing to make a statement or attend the tour is asked to notify the Idaho Falls BLM District Manager at the above address by June 3, 1982, and must provide their own transportation and lunch.

The purpose of the field tour is to discuss, observe and get Board recommendations on range inventroy work, vegetative manipulation projects and other projects constructed with Range Betterment and Grazing Board funds. The Board will also review minutes of their last meeting and give recommendations on the Big Desert livestock driveway withdrawal review. The tour will take place in the Little Grassy and western Fremont County areas. The Advisory Grazing Board will also make arrangements for their next meeting.

Summary minutes of the Board meeting will be kept in the District Office and be available for public inspection and reproduction during regular business hours within 30 days of the Board meeting.

Note.—This meeting notice replaces FR Doc. 82-11780 which was published at 47 FR 18678, April 30, 1982.

Dated April 29, 1982.

O'dell A. Frandsen,

District Manager.

[FR Doc. 82-12344 Filed 5-5-82; 8:45 am]

BILLING CODE 4310-84-M

Resource Management Planning Commencement of Wilderness Studies in the Billings Resource Area, Lewistown, Montana

April 27, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of planning activity.

SUMMARY: In accordance with 43 CFR 1601.3(g), notice is hereby provided of

resource planning activity now underway.

The proposed action is the preparation of Wilderness Suitability Reports/Environmental Impact Statement for four wilderness study areas in the Billings Resource Area, Lewistown District. The reports will fulfill the requirements of the Federal Land Policy and Management Act (FLPMA), of October 1976. The Billings Resource Management Plan is the planning vehicle to be used in completing the suitability reports/EIS. This planning activity is scheduled for completion by September 30, 1983.

The study process will result in preliminary suitability recommendations which will be forwarded to the Secretary of the Interior. The Secretary will make final recommendations to the President who will then submit them to Congress. Congress will make the final decision on which areas or portions of areas will be designated components of the National Wilderness Preservation System.

The study will include an alternative(s) addressing how these areas will be managed if they are not designated wilderness. Wilderness Management Plans will be prepared for any areas designated components of the National Wilderness Preservation System by Congress.

The four wilderness study areas to be analyzed are:

1. Burnt Timber Canyon, MT–067–205, 3,955 acres
2. Pryor Mountain, MT–067–206, 10,972 acres
3. Bighorn Tack-on, MT–067–207, 4,550 acres
4. Twin Coulee, MT–067–212, 6,870 acres

Three of the study areas are located along the south slopes of the Pryor Mountain Range near the Montana-Wyoming state border approximately 15 miles north of Lovell, Wyoming. These units are Burnt Timber Canyon, Pryor Mountain, and Bighorn Tack-on. The public lands to be analyzed extend across the state boundary in the Pryor Mountain and Bighorn Tack-on units. There are 80 acres in the Bighorn Tack-on unit and 4,352 acres in the Pryor Mountain unit located in Bighorn County, Wyoming which will be analyzed for wilderness potential. The remaining identified acreage for the three Pryor Mountain units is located in Carbon County, Montana.

The Wyoming acreage will be studied by an interdisciplinary review team in the Billings Resource area with consultation provided by the Wyoming and Cody Resource Area BLM offices. Resource skills represented on the interdisciplinary team include wildlife biology, outdoor recreation planning, soil science, hydrology, range management, minerals, and geology.

The following planning criteria and quality standards which are included in BLM's Final Wilderness Study Policy (Federal Register Notice of February 3, 1982) will be used to guide the study process:

Criterion No. 1—Evaluation of Wilderness Values

The extent to which each of the following components contribute to the overall value of an area for wilderness purposes:

1. Mandatory wilderness characteristics: The quality of the area's wilderness characteristics—size, naturalness, and outstanding opportunities for solitude or primitive recreation.
2. Special features: The presence or absence, and the quality of the optional wilderness characteristics—ecological, geological, or other features of scientific, education, scenic, or historical value.
3. Multiple resource benefits: The benefits to other multiple resource values and uses which only wilderness designation of the area could ensure.
4. Diversity in the National Wilderness Preservation System: The extent to which wilderness designation of the area under study would contribute to expanding the diversity of the National Wilderness Preservation System from the standpoint of each of the factors listed below:

a. Expanding the diversity of natural systems and features, as represented by ecosystems and landforms.

b. Assessing the opportunities for solitude or primitive recreation within a day's driving time (5 hours) of major population centers.

c. Balancing the geographic distribution of wilderness areas.

Criterion No. 2—Manageability

The areas must be capable of being effectively managed to preserve their wilderness character. The following quality standards must be addressed:

1. Energy and mineral resources
2. Impacts on other resources
3. Impact of nondesignation on wildeness values
4. Public comments
5. Local social and economic effects
6. Consistency with other plans

The criteria and standards will be used to determine the level of analysis required for identified issues, assist in formulating alternatives, identify the preferred alternative and in estimating the cumulative effects of alternatives.

The public will be invited to participate to the fullest possible extent in the study process. Initial open house meetings to obtain comments and further identify issues will be conducted at the following locations:

1. National Park Service; Visitor Center, Lovell, Wyoming; May 18, 1982; 7:00–10:00 p.m.;
2. Billings Resources Area; 810 E. Main St.; Billings, Montana; May 20, 1982; 7:00–10:00 p.m.; and
3. Bureau of Land Management; Lewistown District Office; Airport Road; Lewistown, Montana; May 26, 1982; 7:00–10:00 p.m.

Future meetings will be announced in the **Federal Register** and in local media notices.

FOR FURTHER INFORMATION CONTACT:

Jerome W. Jack, Area Manager, Billings Resource Area, 810 E. Main, Billings, Montana 59105, Phone: (406) 657–6252.

Michael J. Penfold,

State Director.

[FR Doc. 82-12250 Filed 5-5-82; 8:45 am]

BILLING CODE 4310-84-M

Draft Environmental Impact Statement; Proposed Wind Energy Project; San Gorgonio Pass Area, Riverside County, California

The Bureau of Land Management has prepared a draft environmental impact statement concerning a proposed wind energy project in the San Gorgonio Pass area, Riverside County, California. This statement analyzes the environmental consequences of seven proposals to construct and operate large-scale wind turbine fields on approximately 12,780 acres of public land. The proposed wind farms would include turbine installations, several transmission lines to collect power and interconnect into the local power network, the installation of new substations, and construction of access roads to support system requirements. Alternatives to the proposed project include: development on public lands except where significant surface conflicts exist and no action. Major environmental issues are related to aesthetics, threatened and endangered animal and plant species, bird migration, changes in land use, socioeconomics, noise and communications interference.

Notice is hereby given that a public meeting will be held on May 20, 1982 in Palm Springs, California, to provide interested people the opportunity to review the San Gorgonio Pass Wind Energy EIS and any concerns, suggestions, or viewpoints they may have. The meeting will be held from 7:00 P.M. to 10:00 P.M. in the J.C. Frey Building at 1911 E. Baristo, Palm Springs.

For further information contact Bill Payne, EIS Project Coordinator at (916) 484–4541.

Dated: April 30, 1982.

Ed Hastey,

State Director, California.

[FR Doc. 82–12365 Filed 5–5–82; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Supplemental Notice of Proposed Contractual Actions Pending Through June 1982

The following list of proposed contractual action supplements the tabulation of pending contractual actions published April 26, 1982, 47 FR 17870, for:

Lower Missouri Region, Bureau of Reclamation, P.O. Box 25247, (Building 20, Denver Federal Center) Denver, CO 80225, telephone (303) 234–3327.

9. Exxon Company, U.S.A., Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Industrial water service contract; 6,000 acre-feet; FR notice published November 17, 1981, Vol. 46, page 56509.

10. Battlement Mesa, Inc., Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Municipal and domestic water service contract; 1,250 acre-feet; FR notice published November 17, 1981, Vol. 46, page 56509.

11. West Divide Water Conservancy District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Municipal and domestic water service contract; 100 acre-feet; FR notice published November 17, 1981, Vol. 46, page 56509.

12. Cedar Bluff Irrigation District, Cedar Bluff Unit, P–SMBP, Nebraska; Deferment of repayment obligation for 1981; $18,267 payment deferral; FR notice published October 5, 1981, Vol. 46, page 48996.

13. City of Cheyenne, Kendrick Project, Wyoming; Temporary water storage contract; 10,000 acre-feet; No previous FR notice published.

14. Almena ID, Almena Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1982; $16,002.50 payment deferral; FR notice published June 19, 1981, Vol. 46, page 32087.

15. Central Nebraska Public Power and Irrigation District, Glendo Unit, P–SMBP, Nebraska; Irrigation water service contract; 8,000 acre-feet; FR notice published February 7, 1980, Vol. 45, page 8364.

Southwest Region, Bureau of Reclamation, 714 South Tyler, (Commerce Building, Suite 201) Amarillo, TX 79101, telephone (806) 376–5430.

5. State of Oklahoma, McGee Creek Project, Oklahoma; Repayment contract for State's share of costs associated with development of recreation facilities and certain Fish and Wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act (Pub. L. 89–72), as amended; No previous FR notice published.

6. State of Colorado, Closed Basin Division, San Luis Valley Project; Repayment contract for State's share of costs associated with development of recreation facilities and certain Fish and Wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act (Pub. L. 89–72), as amended; FR notice published February 12, 1982, Vol. 47, page 6493.

Dated: April 30, 1982.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 82–12306 Filed 5–5–82; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Ozark National Scenic Riverways Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Ozark National Scenic Riverways Advisory Commission will be held on Thursday, May 20, 1982, at 10:00 a.m. (CDT), at the Riverways' Headquarters on U.S. Highway 60 in Van Buren, Missouri.

The Commission was established by the Act of August 27, 1964, 78 Stat. 609, 16 U.S.C. 460m–6, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Ozark National Scenic Riverways.

The members of the Commission are as follows:

Mr. John Stanard, Poplar Bluff, Missouri (Chairman)
Mr. H. C. Daniel, Van Buren, Missouri
Mr. Kenneth Fiebelman, Salem, Missouri
Mr. Cecil J. Brallier, Houston, Missouri
Mr. Edward Hodge, Eminence, Missouri

The purpose of this meeting is to review with the Commission progress on the General Management Plan, in particular the DRAFT General Management Plan and procedures to be followed in producing a final plan. A research update will also be provided along with any other topics needing discussion.

The meeting will be open to the public. Any member of the public may file with the Commission, prior to the meeting, a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965, telephone 314–323–4236.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at Ozark National Scenic Riverways' Headquarters in Van Buren, Missouri.

Dated: April 29, 1982.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 82–12345 Filed 5–5–82; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Long-and-Short-Haul Applications for Relief

(Formerly Fourth Section Applications)

April 30, 1982.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of this notice.

No. 43963, Southwestern Freight Bureau, Agent (No. B–154), reduced rates on shipments of barium carbonate or strontium carbonate returned to original shipping point, between stations in Southwestern and Southern Territories, in Supplement 149 to its tariff ICC SWFB 6005–D, effective May 29, 1982. Grounds for relief—Rate Relationships.

No. 43964, Southwestern Freight Bureau, Agent (No. B–155), reduced rates on shipments of chloring, in tank cars, from, to and between points in Southwestern, Southern and Eastern Territories, in Supplement No. 149 to its tariff ICC SWFB 6005–D, effective May 29, 1982. Grounds for relief: To provide reasonable rates on returned shipments.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12308 Filed 5–5–82; 8:45 am]

BILLING CODE 7035–01–M

[Permanent Authority Decision Volume No. OP4-158]

Republications of Grants of Operating Rights Authority Prior to Certification

April 30, 1982

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

By the Commission.

Agatha L. Mergenovich,

Secretary.

MC 103967 (Sub-28) (Republication), filed January 5, 1982; published in the **Federal Register** issue of February 9, 1982; and republished this issue. Applicant: CARRIER VAN SERVICE, INC., 3041 Paseo, Kansas City, MO 64109. Representative: David Earl Tinker, 1000 Connecticut Avenue, N.W., Suite 1112, Washington, DC 20036. In a decision by the Commission, Review Board Number 3, decided April 22, 1982, and finds that performance by the applicant as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over *irregular routes,* transporting *household goods,* (1) between points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina and South Carolina; and (2) between points in Kansas and Missouri, on the one hand, and, on the other, points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina and South Carolina; will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to reflect correctly the authority as granted.

MC 125037 (Sub-26) (Republication), filed June 22, 1981; published in the **Federal Register** issue of July 13, 1981; and republished this issue. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Blvd, McLean, VA 22101. In a decision by the Commission, Division 2, Acting as an Appellate Division, decided April 6, 1982, and finds on reconsideration, that performance by the applicant as a *common carrier,* by motor vehicle, in interstate or foreign commerce, *over irregular routes,* transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the United States (except Alaska and Hawaii); will serve a useful purpose, responsive to a public demand or need. Applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to reflect correctly the granted authority.

MC 144750 (Sub-11) (Republication), filed January 22, 1982; published in the **Federal Register** issue of February 5, 1982; and republished this issue. Applicant: DEDICATED TRUCKING CORP., P.O. Box 1383, Chehalis, WA 98532. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006. In a decision by the Commission, Review Board Number 3, decided April 19, 1982, and finds that performance by the applicant as *a common carrier,* by motor vehicle, in interstate or foreign commerce, over *irregular routes,* transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Arizona, California, Colorado, Idaho, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming; will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing and able properly to perform this service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include Utah in the scope of authority in lieu of Vermont as originally published.

MC 151717 (Sub-2) (Republication), filed January 15, 1982; published in the **Federal Register** issue of January 29, 1982; and republished this issue. Applicant: MONTREAL CONTAINER TERMINALS, INC., 6360 Notre Dame St., E., Montreal, Quebec, CD H1N 2E1. Representative: Adrien R. Paquette, 200 St. James St., Suite 900, Montreal, Quebec, CD. In a decision by the Commission, Review Board Number 2, decided April 27, 1982, and concludes that a grant of authority to applicant to operate as a *common carrier,* by motor vehicle, *in foreign commerce only,* transporting *general commodities* (except classes A and B explosives, household goods, commodities in bulk, items of unusual value, and those items requiring special equipment), between the ports of entry on the International Boundary line between the United States and Canada, on the one hand, and, on the other, points in Connecticut, Maryland, Michigan, Illinois, Ohio, Pennsylvania, and Maine; will serve a useful public purpose, responsive to a public demand or need.

Note.—The purpose of this republication is to reflect correctly the actual grant of authority.

[FR Doc. 82-12300 Filed 5-5-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP2-89

Decided: April 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 4963 (Sub-130), filed April 19, 1982. Applicant: JONES MOTOR CO., INC., Bridge St. & Schuylkill Rd., Spring City, PA 19475. Representative: Robert C. Bamford, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, 703-522-0900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 59332 (Sub-13), filed April 20, 1982. Applicant: TAYLOR'S EXPRESS, INC., 425 North 37th St., Pennsauken, NJ 08110. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, 201-836-1144. Transporting *machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with Komatsu America Corp., of Thorofare, NJ.

MC 145252 (Sub-11), filed April 16, 1982. Applicant: HENRY ANDERSEN, INC., P.O. Box 75, King George, VA 22485. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005, 202-296-3555. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 159932 (Sub-3), filed April 19, 1982. Applicant: CLARENCE KENNEDY, JR., d.b.a. KENNEDY & SON TRUCKING, Route 1, Box 81, Tryon, NC 28782. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., NW, Washington, DC 20005, 202-347-9332. Transporting *ornaments, plastic, glass, paper, and textile mill products, and chemicals and related products*, between points in Gaston County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP3-69

Decided: April 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 1255 (Sub-13), filed April 22, 1982. Applicant: McGINN BUS COMPANY, INC., 31 Milk St., Room 1111, Boston, MA 02109. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783-3525. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip charter and special operations, beginning and ending at points in Essex, Middlesex, Norfolk, and Suffolk Counties, MA, those portions of Bristol and Plymouth Counties, MA, on and north of U.S. Hwy 44, that portion of Worcester County, MA, on and east of a line beginning at the junction of MA Hwy 13 and the MA-NH State line, then along MA Hwy 13 to its junction with MA Hwy 12 at Leominster, MA, then along MA Hwy 12 to its junction with the MA-CT State line, and points in Hillsborough and Rockingham Counties, NH, and extending to points in the U.S. (except HI).

MC 9644 (Sub-19), filed April 22, 1982. Applicant: HAYES TRUCK LINE, INC., 1410 Intercity Trafficway, P.O. Box 4018, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2329. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between points in KS, MO, and NE, on the one hand, and, on the other, points in KS, MO, NE, CO, OK, TX, WY, IA, TN, IL, and AR, and (2) between points in NE on and east of U.S. Hwy 183, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 15015 (Sub-1), filed April 19, 1982. Applicant: KERI TOURS, INC., 545 Fifth Ave., New York, NY 10017. Representative: Robert E. Goldstein, 370 Lexington Ave., New York, NY 10017, (212) 532-5181. As a *broker*, at New York, NY, in arranging for the transportation of *passengers and their baggage*, between points in the U.S.

MC 15364 (Sub-19), filed April 23, 1982. Applicant: WISCONSIN-MICHIGAN COACHES, INC., 725 Smith St., Green Bay, WI 54302. Representative: Daniel C. Sullivan, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263-1600. Over *regular routes*, transporting *passengers and their baggage*, and *express and newspapers*, in the same vehicle with passengers, Between Green Bay and Milwaukee, WI, over Interstate Hwy 43.

MC 67234 (Sub-51), filed April 23, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Control Data Corporation, of Minneapolis, MN.

MC 67234 (Sub-52), filed April 23, 1982. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 So. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Sperry Corporation of Blue Bell, PA.

MC 133154 (Sub-14), filed April 20, 1982. Applicant: BELL TRANSPORT COMPANY, 14000 E. 183rd St., La Palma, CA 90623. Representative: Robert C. Rodgers (same address as applicant), (714) 522-4805. Transporting *paper and related products*, between points in the U.S., under continuing contract(s) with Orchids Paper Products Concel, Inc. of La Palma, CA.

MC 138345 (Sub-12), filed April 20, 1982. Applicant: VALLEY SPREADER, INC., 260 No. Ninth St., Brawley, CA 92227. Representative: Marsha N. Honda, 1545 Wilshire Blvd., No. 606, Los Angeles, CA 90017, (213) 483-4700. Transporting *chemicals and related products*, between points in NM, AZ and CA.

MC 140334 (Sub-13), filed April 20, 1982. Applicant: AM-CAN TRANSPORT SERVICE, INC., P.O. Box 859, Anderson, SC 29621. Representative: John T. Wirth, 2600 Petro-Lewis Tower, 717 17th St., Denver, CO 80202, (303) 892-6700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contracts

with (1) Monsanto Company, of St. Louis, MO, and its subsidiaries and affiliates, and (2) Tenneco Automotive, a division of Tenneco, Inc., of Monroe, MI

MC 142665 (Sub-3), filed April 21, 1982. Applicant: PYNE FREIGHT LINES, INC., 15 So. Keyser Ave., Taylor, PA 18517. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting (1) *metal products and related products, steel articles, tools, tool parts, blades and metal powder,* between points in Bergen County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *such commodities* as are dealt in by manufacturers of hand industrial cutting and power tools and blades, between points in Pittsylvania County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI) and (3) *metal products and related products, steel tubing and springs, welding materials and supplies and anchor reels,* between points in Lackawanna County, PA and Berrien County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142665 (Sub-4), filed April 23, 1982. Applicant: PYNE FREIGHT LINES, INC., 15 S. Keyser Ave., Taylor, PA 18517. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting (1) *building materials,* and (2) *hardware and hand tools,* between points in Lackawanna County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144805 (Sub-5), filed April 20, 1982. Applicant: M–K TRUCKING, INC., 810 First St., So., Hopkins, MN 55343. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolic, MN 55440, (612) 542–1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Stearns, Sherburne and Benton Counties, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146414 (Sub-4), filed April 23, 1982. Applicant: COOL TRANSPORTS, INCORPORATED, 6300 Alondra Blvd., Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. Transporting *petroleum and petroleum products* (a) between points in Los Angeles County, CA, on the one hand, and, on the other, points in AZ, (b) between points in CA, on the one hand, and, on the other, points in NV and UT and (c) between points in NV, on the one hand, and, on the other, points in AZ and UT.

MC 152814 (Sub-3), filed April 21, 1982. Applicant: GOOD TABLES, INC., 1118 E. 223rd St., Carson, CA 90745. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. Transporting *pulp, paper and related products,* between points in WA and CA.

MC 152935 (Sub-9), filed April 21, 1982. Applicant: HILL–ROM COMPANY, INC., Highway 46, Batesville, IN 47006. Representative: Steve A. Oldham (same address as applicant), (812) 934–7169. Transporting *furniture and fixtures,* between points in the U.S., (except AK and HI), under continuing contract(s) with Morgan Wood Products, Inc., of Cloverdale, CA.

MC 154314 (Sub-1), filed April 23, 1982. Applicant: R. S. J. EXPRESS, INC., 127–36 Northern Blvd., Flushing, NY 11368, Representative: Michael R. Werner, 241 Cedar Ln., Teaneck, NJ 07666, (201) 836–1144. Transporting *such commodities* as are dealt in and used by a manufacturer of food, between points in the U.S. (except AK and HI).

MC 160494, filed April 23, 1982. Applicant: CONVOY, INC., P.O. Box 606, Richardson, TX 75080. Representative: Bryant Whitten (same address as applicant), (241) 235–2321. Transporting *automotive chemicals,* between Arlington, TX, and points in CA, AL, IL, under continuing contract(s) with Berry Products Co., of Arlington, TX.

MC 160755, filed April 20, 1982. Applicant: CRYSTAL SPRINGS TRUCKING, INC., Route 2, Box 325, Iola, WI 54945. Representative: Stan Bickley (same address as applicant), (715) 445–3430. Transporting *(1) fertilizer and potash,* in bulk, between points in IL, IA, MN, and WI, and (2) *fieldstone,* between points in Waupaca County, WI, on the one hand, and, on the other, points in Jefferson County, IL.

MC 160884, filed April 20, 1982. Applicant: JACKET CARRIERS INC., 83 Longview Ave., White Plains, NY 10523. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of audio and visual communications, and educational and entertainment devices, between points in GA and NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161204, filed April 20, 1982. Applicant: SHIPPERS SERVICE TRANSPORT, INC., Route 73 & Ramblewood Parkway, Mount Laurel, NJ 08054. Representative: C. Jack Pearce, 1000 Connecticut Ave. NW., Suite 1200, Washington, DC 20036, (202) 785–0048. Transporting *general commodities* (except classes A and B explosives, hazardous wastes, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Robert E. Andersen, Inc., of Cherry Hill, NJ, L & R Traffic Service, Inc., of Philadelphia, PA, and J & V Associates, of Bordentown, NJ.

MC 161414, filed April 9, 1982. Applicant: JOE CAPSHAW, 116 W. Walnut, Altus, OK 73521. Representative: C. L. Phillips, Classen Terrace Bldg., Rm. 248, 1411 N. Classen, Oklahoma City, OK 73106, (405) 528–3884. Transporting *gypsum wallboard and related products,* between points in OK, on the one hand, and, on the other, points in TX.

MC 161555, filed April 19, 1982. Applicant: METRO TOURS, 105 Hopkins Dr., Arlington, SD 57212. Representative: Larry M. Kneip (same address as applicant), (605) 983–5194. As a *broker,* at Arlington, SD, in arranging for the transportation of *passengers and their baggage,* between points in the U.S.

MC 161604, filed April 21, 1982. Applicant: R. & R. WILLIAMS, INC., 208 Paradise Lane, Tonawanda, NY 14150. Representative: Michael A. Wargula, 128 Sherburn Dr., Hamburg, NY 14075, (716) 645–6066. Transporting *construction equipment,* between points in Erie, Niagara, Chatauqua, Cattaraugus, Orleans, Genessee, Monroe, Onondaga, Oneida, Jefferson, St. Lawrence, Clinton, Broome, and Albany Counties, NY, on the one hand, and, on the other, points in and east of MN, IA, MO, AR, and LA.

MC 161625, filed April 23, 1982. Applicant: DAVID GRESSETT, INC., 5601 San Francisco Rd. NE., Albuquerque, NM 87109. Representative: James C. Ash, 2524 Vermont NE., Albuquerque, NM 87110, (505) 298–7511. Transporting (1) *food and related products,* (2) *such merchandise* as is dealt in and distributed by retail, and retail chain grocery stores and food business houses, and (3) *meat by-products* (inedible), between points in AZ, CA, CO, LA, NV, NM, TX and UT.

MC 161654, filed April 23, 1982. Applicant: FILIPPO AND SONS, INC., P.O. Box 374, Plymouth, WI 53073. Representative: Jack Meyer, 111 E. Wisconsin Ave., Suite 1330, Milwaukee, WI 53202, (414) 272–8550. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Consumer Products Division, Borden, Inc., of Columbus, OH.

MC 161655, filed April 23, 1982. Applicant: EGO TRAVEL TOURS, INC., 28 W. Duval St., Philadelphia, PA 19144. Representative: Lawrence A. McGhee (same address as applicant), (215) 848–3481. As a *broker*, in arranging for the transportation of *passengers*, between points in PA, NJ, and DE, on the one hand, and, on the other, points in the U.S.

Volume No. OP4–153

Decided: April 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 60066 (Sub-38), filed April 21, 1982. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul St., Omaha, NE 68102. Representative: Dick Pierson, 1804 Paul St., Omaha, NE 68102, (402) 341–8990. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in NE, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, and DC.

MC 98776 (Sub-10), filed April 20, 1982. Applicant: ELDRIDGE TRUCK LINE, INC., P.O. Box 659, Somerset, KY 42501. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223–8244. Transporting *commodities in bulk*, between points in KY, on the one hand, and, on the other, points in IN, IL, OH, VA, WV, NC, and TX.

MC 113466 (Sub-9), filed April 20, 1982. Applicant: CECIL E. ALTO, d.b.a. ALTO BROS. TRUCKING, Rt. 1, Box 266–D, Eureka, CA 95501. Representative: Earle V. White, 2400 S.W. 4th Ave., Portland, OR 97201, (503) 226–6491. Transporting *lumber and wood products, lumber mill products*, and *wood pulp*, between points in CA, OR, and WA.

MC 134806 (Sub-79), filed April 20, 1982. Applicant: B–D–R TRANSPORT, INC., P.O. Box 1277, Vernon Dr., Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East West Hwy., Suite 404, Bethesda, MD 20814, (301) 257–7721. Transporting (1) *plastic products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Family Products, Inc., of Lowell, MA; (2) *woodburning stoves and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with Garrison Stove Works, Inc., of Claremont, NH; and (3) *games, toys, and hobby items*, between points in the U.S. (except AK and HI), under continuing contract(s) with Kay-Bee Toy & Hobby Shops, Inc., of Lee, MA.

MC 143776 (Sub-50), filed April 20, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., SE., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant), (800) 253–9527. Transporting *electrical equipment and supplies*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lightolier, Incorporated, of Jersey City, NJ.

MC 151566 (Sub-21), filed April 20, 1982. Applicant: PERRY TRANSPORT, INC., 14375 172nd Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant), (616) 842–3550. Transporting *bakery goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with United Biscuit Company of America, Inc., of Grand Rapids, MI.

MC 153146 (Sub-1), filed April 20, 1982. Applicant: DONALD CITRON, d.b.a. D & B TRUCKING, P.O. Box 872, Ceres, CA 95307. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207, (209) 957–6128. Transporting *general commodities* (except classes A and B explosives, household goods, and bulk commodities), between points in CA, OR, WA, and AZ.

Volume No. OP4–154

Decided: April 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 42266 (Sub-5), filed April 26, 1982. Applicant: LANCASTER & NEW YORK MOTOR FREIGHT SERVICE, INC., RD #2, Box 208, Elizabethtown, PA 17022. Representative: John C. Funesco, Suite 960, 1333 New Hampshire Ave. NW., Washington, DC 20036, (202) 659–5157. Transporting *food and related products*, between points in MD, NJ, NY, PA, VA, and DC.

MC 74176 (Sub-5), filed April 15, 1982. Applicant: WILES TRANSPORT, INC., 16901 Van Dam Rd., S. Holland, IL 60473. Representative: Philip A. Lee (same address as applicant), (312) 236–8225. Transporting *iron wire, iron fluxing compound, steel bars and coils and aluminum sheet, plate and coils*, between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111656 (Sub-19), filed April 26, 1982. Applicant: FRANK LAMBIE, INC., Pier 79 North River, New York, NY 10018. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Mitsui & Co (U.S.A.), Inc., of New York, NY.

MC 128016 (Sub-12), filed April 20, 1982. Applicant: BRUCE G. BESH, d.b.a. BRUCE G. BESH TRUCKING, 4101 Center St., Cedar Rapids, IA 50613. Representative: James M. Christenson, 4444 IDS Center, 80 S. 8th St., Minneapolis, MN 55402, (612) 339–4546. Transporting *lumber, wood products and building materials*, between points in AR, IA, KS, LA, MN, MO, NE, OK, TX and WI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application for common control to Team 4, Room 2410.

MC 134086 (Sub-4), filed April 26, 1982. Applicant: LEWIS A. HANNABASS, INC., Route 1, Box 866, Moneta, VA 24121. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, (703) 629–2818. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in KY, OH, NC, TN, VA, and WV, under continuing contract(s) with Montgomery Ward & Co., Inc., of Sharonville, OH.

MC 140036 (Sub-2), filed April 22, 1982. Applicant: WINTERS TRUCKING, INC., 4 Chase Ave., Avenel, NJ 07001. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. Second St., Clearfield, PA 16830, (814) 765–9611. Transporting *chemicals and petroleum products*, between points in the U.S., under continuing contract(s) with C.P.S. Chemical Corporation, of Old Bridge, NJ.

MC 141536 (Sub-4), filed April 20, 1982. Applicant: BILL BLANN, d.b.a. BLANN TRACTOR COMPANY, Route 2, Box 38, Hampton, AR 71744. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *food and related products*, between points in St. Louis County, MO, and Quachita County, AR.

MC 146056 (Sub-5), filed April 21, 1982. Applicant: PURITY TRANSPORTATION COMPANY, 1171 N. Water St., Decatur, IL 62523. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *bakery products*,

between points in AR, IL, IA, IN, KY, MI, MN, MO, OH and WI.

MC 149546 (Sub-32), filed April 26, 1982. Applicant: D & T TRUCKING CO., INC., P.O. Box 12505, New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with First Midwest Corporation, of Des Moines, IA, and Imperial Packaging Company, of Clarksdale, MS.

MC 151826 (Sub-6), filed April 20, 1982. Applicant: J & S TRUCK SERVICE, INC., P.O. Box 807, Lexington, NC 27292. Representative: C. Jack Pearce, Suite 1200 1000 Connecticut Ave. NW., Washington, DC 20036, (202) 785–0048. Transporting (1) *chemicals,* and (2) *such commodities* as are dealt in or used by hospitals, between points in Pittsylvania and Campbell Counties, VA, Nash and Scotland Counties, NC, Spartanburg County, SC, and Franklin County, OH, on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 161446, filed April 26, 1982. Applicant: CHARLES STANLEY HARRIS AND CHARLES STEWART HARRIS, d.b.a. TRAID FURNITURE CARRIERS, 510 Southridge Rd., Jamestown, NC 27282. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. (703) 629–2818. Transporting *furniture and fixtures,* between points in Guilford County, NC, on the one hand, and, on the other points in the U.S. (except AK and HI).

Volume No. OP4–155

Decided: April 30, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 48176 (Sub-2), filed April 23, 1982. Applicant: RICH-HIL TRANSPORTATION, INC., RD 5, Box 64, Flemington, NJ 08822. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048 (212) 466–0220. Transporting *such commodities as are dealt in or used by manufacturers or distributors of plastic products,* between points in the U.S. (except AK and HI), under continuing contract(s) with G.F.C. Foam Corporation, d.b.a. General Foam Corporation, of Paramus, NJ.

MC 115067 (Sub-8), filed April 23, 1982. Applicant: INDEPENDENT MOTOR TRANSPORT, INC., P.O. Box 368, Albany, OR 97321. Representative: James L. Kampstra (same address as appliant), (503 241–0212. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, OR, and WA.

MC 119656 (Sub-84), filed April 23, 1982. Applicant: NORTH EXPRESS, INC., 219 Main St., Winamac, IN 469996. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) (1) between points in AL, AR, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, VA, WV, WI, and DC, and (2) between those points in (1) above, on the one hand, and, on the other, points in AZ, CA, CO, CT, ID, ME, MA, MT, NH, NV, NM, OR, RI, UT, VT, WA, and WY.

MC 144506 (Sub-1), filed April 23, 1982. Applicant: KOLLER PETROLEUM PRODUCTS, INC., 241 N. Baltimore St., Spring Green, WI 53588. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *petroleum, natural gas and their products,* between Chicago and Rockford, IL, Dubuque, IA, and Minneapolis, MN, on the one hand, and, on the other, points in WI.

MC 149416 (Sub-1), filed April 23, 1982. Applicant: R. J. MOSUR, d.b.a. R. J. MOSUR & SON, 1501 16th Ave., P.O. Box 244, Menominee, MI 49858. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *metal and metal products,* between points in Marinette County, WI, and Menominee County, MI, on the one hand, and, on the other, points in AR, IL, LA, MO, OK, TX, and WI.

MC 151616, filed April 20, 1982. Applicant: TRUCKERS, INC., 625 Dilger Ave., Waukegan, IL 60085. Representative: James O'Grady, 420 Grand Ave., Waukegan, IL 60085, (312) 244–8169. Transporting *general commodities,* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, OH, MI, WI, IA, KY, MO, MN, and TN.

MC 161606, filed April 21, 1982. Applicant: CHAMPION FOREST TOURS, 12501 Champion Forest Dr., Houston, TX 77066. Representative: Dr. Douglas A. Wood (same address as applicant), (713) 440–3800. To operate as a *broker,* at Houston, TX, in arranging for the transportation of *passengers and their baggage,* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 161638, filed April 23, 1982. Applicant: SUNSHINE TOURS, INC., 1111–B N. Main St., Blacksburg, VA 24060. Representative: Carroll E. Stone (same address as applicant), (703) 951–8127. To operate as a broker at Blacksburg, VA, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of *passengers and their baggage,* between points in VA, on the one hand, and, on the other, points in the U.S.

Volume No. OP5–96

Decided: April 28, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 114098 (Sub-62), filed April 15, 1982. Applicant: LOWTHER TRUCKING COMPANY, INC., P.O. Box 3117, C.R.S., Rock Hill, SC 29731–3117. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Ste 1203, Alexandria, VA 22304, 703–751–2441. Transporting (1) *general commodities* (except classes A and B explosives, commodities in bulk and household goods), between points in the U.S. (except in AK and HI), under continuing contract(s) with Champion International Corporation of Stamford, CT; and (2) *metal products and machinery,* under continuing contract(s) with Gill Manufacturing Co., of Charlotte, NC, between points in the U.S. (except AK and HI).

MC 115099 (Sub-3), filed April 16, 1982. Applicant: CAPE COD BUS LINES, INC., 11 Walker St., Falmouth, MA 02540. Representative: Matthew L. McGrath, 39 Richwood St., West Roxbury, MA 02132, (617) 323–3533. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Plymouth, Bristol, Barnstable, and Dukes Counties, MA, on the one hand, and, on the other, points in the U.S.

MC 119079 (Sub-2), filed April 21, 1982. Applicant: DLM COMPANY, INC., 921 West 80th St., Minneapolis, MN 55420. Representative: Daryl D. Swanson (same address as applicant), (612) 888–5800. Transporting *bulk commodities* between points in MN, ND, SD, IA, NE, WI, and IL.

MC 146729 (Sub-15), filed April 20, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd., Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, 214–358–3341. Transporting *food and related products,* between points in TX on the

one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148969 (Sub-2), filed April 20, 1982. Applicant: STAN KOCH AND SONS TRUCKING, INC., 4901 Excelsior Blvd., St. Louis Park, MN 55416. Representative: Stanely C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *such commodities* as are dealt in or used by hardware and farm supply stores, (1) between points in WA, OR, ID, NT, WY, CA, NV, UT, AZ, NM, TX, OK, AR, LA, MS, AL, FL, GA, TN, KY, NC, SC, VA, WV, MD, DE, NJ, PA, NY, CT, RI, MA, NH, VT, ME, and DC, and (2) between points in (1) above, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 147279 (Sub-4), filed April 20, 1982. Applicant: SALO TRUCKING, INC., P.O. Box 505, Gilbert, MN 55741. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *lumber, wood products, and forest products*, between points in Carlton, Beltrimi, and St. Lous Counties, MN, on the one hand, and, on the other, points in IL, IA, MI, MN, MO, MT, NE, ND, SD, WI, and WY.

MC 148598 (Sub-8), filed April 19, 1982. Applicant: BATROCK, INC., U.S. Hwy 127 North, P.O. Box 220, Lawrenceburg, KY 40342. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223–8244. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MI, MS, MO, NC, OH, PA, SC, TN, VA, WV, and WI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecesary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application for common control to Team 5, Room 6370.

MC 148818 (Sub-7), filed April 20, 1982. Applicant: CARL PRINCE, d.b.a. PRINCE TRUCKING, P.O. Box 37, Cane Hill, AR 72717. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A , Prairie Grove, AR 72753, (501) 846–2185. Transporting *paper, paper products, wood pulp products, and plastic and plastic products*, between Oklahoma City, OK, and points in Washington, Osage, and Tulsa Counties, OK, Jefferson, Faulkner, Madison, and Conway Counties, AR, Jefferson, Etowah, Madison, and Montgomery Counties, AL, Putnam, Volusia, Lee, Duval, and Dade Counties, FL, Dougherty, Fulton, and Dekalb Counties, GA, East Baton Rouge, Jefferson, and Orleans Parishes, LA, and Taylor, Travis, Harris, and Bexar Counties, TX.

MC 153279 (Sub-1), filed April 16, 1982. Applicant: BONWAY SERVICE TRANSPORT, INC., 692 Bailey Ave., Buffalo, NY 14206. Representative: Anthony J. Zaleski (same address as applicant), 716–832–0272. Transporting (1) *Chemicals and related products*, and (2) *food and related products*, between points in NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153938 (Sub-9), filed April 20, 1982. Applicant: ENERGY EXPRESS, INC., P.O. Box 27605, Salt Lake City, UT 84127. Representative: Norval Millsap (same address as applicant), (801) 364–4532. Transporting *petroleum, natural gas and their products*, between points in the U.S., under continuing contract(s) with H.C. Oil Company of Billings, MT.

MC 156039, filed April 12, 1982. Applicant: WADDELL & SONS, INC., 118 Yates St., Dallas, NC 28034. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–8730. Transporting *steel products* between points in the U.S., under continuing contract(s) with B & G Manufacturing, Inc., and Green Bay Supply Company, Inc., both of Hatfield, PA, Alloy & Stainless Fasteners, Inc., of Houston, TX, and Cavalier Bolt & Nut, Inc., of Virginia Beach, VA.

MC 161609, filed April 20, 1982. Applicant: RICH WORLDWIDE TRAVEL, INC., 711–3rd Ave., New York, NY 10017. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10017, 212–755–9500. As a *broker* at New York, NY and Scarsdale, NY, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-12304 Filed —82; 8:45 am]

Motor Carriers; Permanent Authority Decision; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's

other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP3-066.

Decided: April 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 25255 (Sub-5), filed April 16, 1982. Applicant: LEE ROY HEERMAN, d.b.a. COIN TRANSFER, P.O. Box 296, Coin, IA 51636. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Clarinda, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail service.

MC 138225 (Sub-14), filed April 12, 1982. Applicant: HEDRICK ASSOCIATES, INC., R.R. #2, Box 10A2, Douglas Rd., Far Hills, NJ 07931. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525-4050. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown, and Covington, IN, Buzzards Bay, Sagamore, Sandwich, and Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood, and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pompton Plains, Pemberton, and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tillson, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malone, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris, Sonyea, Linden, Oneida Castle, Red Oaks Mills, Fishkill Plains, St. Andrew, Plattekill, Ilion, and Stafford, NY, Berwick, Ellis, Dresden, Cadiz, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham, and Crooksville, OH, and Heilwood, Mountain Home, Strawberry Ridge, Eyers Grove, Pulaski, Spring City, Seiple, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Glo, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranton, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oakville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Bradford, Degolia, Custer City, Lewis Run, and Slatington, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 149565 (Sub-3) filed April 12, 1982. Applicant: G. L. DUNPHY & SON, INC., Box 2350, North Anson, ME 04958. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525-4050. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown, and Covington, IN, Buzzards Bay, Sagamore, Sandwich, and Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood, and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pompton Plains, Pemberton, and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tillson, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malone, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris, Sonyea, Linden, Oneida Castle, Red Oaks Mills, Fishkill Plains, St. Andrew, Plattekill, Ilion, and Stafford, NY, Berwick, Ellis, Dresden, Cadiz, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham, and Crooksville, OH, and Heilwood, Mountain Home, Strawberry Ridge, Eyers Grove, Pulaski, Spring City, Seiple, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Glo, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranton, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oakville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Bradford, Degolia, Custer City, Lewis Run, and Slatington, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 154535 (Sub-2), filed April 19, 1982. Applicant: JAN PACKAGING, INC., P.O. Box 448, Dover, NJ 07801. Representative: Michael R. Werner, 241 Cedar Ln., Teaneck, NJ 07666, (201) 836-1144. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 161455, filed April 12, 1982. Applicant: WADE D. STREET, Rt. 1, Box 100, Florence, MT 59833. Representative: Wade D. Street (same address as applicant) (406) 273-0358. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 161524, filed April 15, 1982. Applicant: LEWIS D. SEXTON, Route 1, So. Greenfield, MO 65752. Representative: Lewis D. Sexton, (same address as applicant) (417) 452-3667. Transporting *food and other edible products and byproducts intended for*

human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161564 filed April 16, 1982. Applicant: TRAXX FREIGHT SYSTEM, INC., 3407 W. Pershing Rd., Chicago, IL 60632. Representative: Owen B. Katzman, 1828 L St., NW., Suite 1111, Washington, DC 20036, (202) 822-8200. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4-152

Decided: April 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 161567, filed April 19, 1982. Applicant: LORENE STOVALL, d.b.a. INTERCHANGE, 3050 Norco Drive, Norco, CA 91760. Representative: Lorene Stovall, (same address as applicant), (714) 735-6571. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5-97

Decided: April 28, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 12429 (Sub-1), filed April 20, 1982. Applicant: EADS TRANSFER & STORAGE COMPANY, 350 W. 5th St., Ste. 210, San Pedro, CA 90731. Representative: Don Estrin (same address as applicant), 213-775-8824. As a *broker* at points in Los Angeles and Orange Counties CA, of *used household goods*, between points in the U.S. (including AK and HI).

MC 161579, filed April 20, 1982. Applicant: R. L. STARR, INC., 17404 Cheyenne Drive, Independence, MO 64056. Representative: Ronald L. Starr, (same address as applicant), (816) 257-2836. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12306 Filed 5-5-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29729]

Denver and Rio Grande Western Railroad Company—Exemption—Acquisition and Operation—Near Craig in Moffat County, CO

AGENCY: Interstate Commerce Commission.

AGENCY: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, on its own initiative, pursuant to 49 U.S.C. 10505(b), exempts from the requirements of 49 U.S.C., 10901 Denver and Rio Grande Western Railroad Company's acquisition of a 1.05-mile segment of track from Colorado-Ute Electric Association, Inc. Operations over the involved track remain subject to 49 U.S.C. Subtitle IV.

DATES: This exemption shall be effective on May 6, 1982. Petitions to reopen must be filed by May 26, 1982.

ADDRESSES: Send petitions to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423.

(2) Samuel R. Freeman and John S. Walker, P.O. Box 5482, Denver, CO 80217.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the decision write to: TS Infosystems, Inc., Room 2227, Washington, DC 20423, or call the Washington area number 202-289-4359 or toll free 800-424-5403.

Decided: April 30, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12307 Filed 5-5-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Partial Consent Decree in Action to Obtain Clean-Up of Waste Storage Site by South Carolina Recycling and Disposal, Inc., Near Columbia, South Carolina

Notice is hereby given that on March 23, 1982, a Partial Consent Decree in *United States* v. *South Carolina Recycling and Disposal, Inc., et al.*, (S.C.D.I.) Civil Action No. 80-1274-6 was filed with the United States District Court for the District of South Carolina.

The consent decree provides for surface cleanup measures at the hazardous waste disposal site on Bluff Road near Columbia, South Carolina, on which over 7200 drums of hazardous wastes were improperly stored. Defendant RAD Services, Inc. will perform a significant portion of the cleanup, with funding provided by some of the alleged generators of wastes at the site. The remaining portion of the cleanup will be undertaken with funds from the Hazardous Substances Response Trust Fund of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund). RAD Services Inc. has already started work on the site and has agreed to complete the work in 210 days.

Under the provisions of 28 CFR 50.7 it is the policy of the Department of Justice to provide an opportunity to the public to comment on proposed judgments in pollution cases prior to their entry by the Court. However, in this case, the instability and the dangerous conditions on the "Bluff Road" site necessitated an immediate implementation of a clean-up, without waiting the usual 30-day comment period on the decree. Consequently, the decree has been entered without prior opportunity for comment. Nonetheless, comment is invited on the decree.

The partial consent decree may be examined at the Office of the U.S. Attorney, District of South Carolina, P.O. Box 2266, Columbia, S.C. 29202; at the Region IV Office of EPA, Enforcement Division, 345 Courtland Street, NE., Atlanta, Georgia 30308; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530. In requesting a copy, please send a check or money order payable to the Treasurer of the United States in the amount of $1.50 ($0.10 per page reproduction cost).

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-12363 Filed 5-5-82; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Form Under Review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Agency form under review.

SUMMARY: This document gives notice that NCUA has submitted to the Office of Management and Budget (OMB) a

request for approval of the Supervisory Committee Manual for Federal Credit Unions information collection requirement, which describes the standards, procedures and recordkeeping requirements for audits of Federal credit unions.

DATE: Submitted to OMB: April 29, 1982.

ADDRESS: Comments may be submitted to the National Credit Union Administration, 1776 "G" Street, NW., Washington, D.C. 20456 and the Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: D. Lynn Gordon, telephone: (202) 357–1202 (NCUA) or Phillip T. Balazs, telephone: (202) 395–4814 (OMB).

Wendell A. Sebastian,

Executive Director.

[FR Doc. 82–12297 Filed 5–5–82; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Group "A" of the Subpanel on Neurobiology; Amended Notice of Meeting

Group "A" of the subpanel on Neurobiology of the Advisory Panel for Behavioral and Neural Sciences is meeting in Washington, D.C. on May 17–18, 1982. The agenda for this meeting is being amended to include an open session on May 18 from 1 p.m. to 2 p.m. For convenience, the meeting notice is being reprinted in its entirety.

Name: Subpanel on Neurobiology (Group A) of the Advisory Panel for Behavioral and Neural Sciences.

Date and place: May 17 and 18, 1982, Room 540, 1800 G St. NW., Washington, D.C.

Type of meeting: Part Open—CLOSED—May 17, from 9 a.m. to 5 p.m. and May 18 from 9 a.m. to 1 p.m. OPEN—May 18 from 1 p.m. to 2 p.m.

Contact person: Steven E. Kornguth, Program Director for Neurobiology, National Science Foundation, Room 320, Washington, D.C. 20550, telephone—202–357–7471.

Purpose of subpanel: To provide advice and recommendations concerning support for research in Neurobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

This notice originaly appeared in the **Federal Register** on Thursday, April 29, 1982.

M. Rebecca Winkler,

Committee Management Coordinator.

May 3, 1982.

[FR Doc. 82–12300 Filed 5–5–82; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Reports, Recommendations, Responses; Availability

Aircraft Accident Report—McDonnell Douglas Corporation DC–9–80, N980DC, Edwards Air Force Base, California, May 2, 1980 (NTSB–AAR–82–2).

Safety Recommendations to—

Association of American Railroads, Apr. 28, I–82–1 through –4: Reevaluate practices and standards influencing the placement of hazardous materials storage that may be vulnerable to damage by derailed railroad cars in train accidents; develop changes to identify and protect vulnerable hazardous materials storage near mainline railroad tracks; identify actions States might take to require adequate protection of future hazardous materials storage near mainline railroad tracks; coordinate development of recommended practices with the National Fire Protection Association and the American National Standards Institute to assure consistency.

National Association of Regulatory Utility Commissioners, Apr. 28, I–82–5: Reevaluate State statutes and administrative orders to identify action States might take to improve protection of hazardous materials storage near railroad right-of-way against damage by derailed railroad cars.

National Fire Protection Association, Apr. 28, I–82–6: Reevaluate NFPA No. 30 "Flammable and Combustible Liquids Code" to assure adequate protection of hazardous materials storage near mainline railroad tracks.

American National Standards Institute, Apr. 28, I–82–7: Reevaluate and amend ANSI Standard K61.1–1972, "Safety Requirements for the Storage and Handling of Anhydrous Ammonia," to provide adequate protection of hazardous materials containers located near mainline railroad tracks.

Recommendation Responses from—

Federal Aviation Administration, Apr. 20, A–81–128: Sent letter to all Principal Operations Inspectors reasserting the need for crew training in the use of the megaphone as emergency equipment. *Apr. 23, A–81–24:* Issued Change 2 to Advisory Circular 135–3B regarding engine failure in Part 23 twin-engine aircraft, and changed Handbook 8430.1B to emphasize the need for initial and recurrent training on emergencies during takeoff.

Federal Highway Administration, Apr. 14, H–81–37 and –38: Current data do not warrant a revision to Sections 393.75 (b) and (c) of the FMCSR, and the FHWA cannot justify the added cost associated with a regulatory change prohibiting the use of tires worn to noncontinuous tread groove depths; developing an On-Guard Bulletin about problems with operating vehicles equipped with tires worn to noncontinuous tread groove depths.

Apr. 26, H–80–52 through –57: Issued Technical Advisory (TA) T5040.17, "Skid Accident Reduction Program," which provides methods and factors that States should consider as elements of their highway programs; FHWA's Implementation Program promotes new findings, methods, and equipment by providing financial assistance to States which implement and verify research. *H–80–64 through –66:* Currently revising the *1977 AASHTO Guide for Selecting, Locating, and Designing Traffic Barriers:* studying performance standards for bridge rails; continuing performance testing of inservice highway appurtenances; planning study of "Performance of Longitudinal Traffic Barriers."

New York City Transit Authority, Apr. 12, R–81–103 through –115: In addition to established courses, a trainee program was begun on Mar. 1, 1982, and formal programs of recurrent training are being developed; car maintenance is now provided every 5,000 miles; instituted a pre-service inspection program for cars; priority is now given to train crew personnel at the Fire Fighting School; emergency training is given at Fire Fighting School and discussed in "School Car" instructions, Rule 43, and a film; additional information cards for cars are being developed; small fire extinguishers are ineffective, subject to theft and vandalism, and impractical for crewmembers to carry around; extinguishers are located every 600 feet on the roadway; will continue to investigate new technologies in rail equipment and will test equipment before use; procedures require that the city fire department be summoned immediately if a *serious* fire/smoke condition is reported or if a train is stalled in such a condition; any other report of fire/smoke is immediately investigated by NYCTA personnel; Rule 52(c) states that a motorman must stop a train if smoke is seen ahead; has ordered a feasibility study to relocate the main air brake line away from the motor control group; installing an automatic air shutoff valve (velocity fuse) on cars; revising car Equipment Information System to provide documentation of all movement and operational status changes of cars and serialized components.

Amtrak, Apr. 19, R–81–67 and –68: Will furnish ICG Railroad with all locomotive tapes removed after trips for review of performance of locomotive engineers; Amtrak Operations Audit personnel determined that trains can be operated safely over the ICG Alton District as currently scheduled and routed.

State of Hawaii, Apr. 14, H–81–69: No legislation regarding passenger occupation of cargo areas of pickup trucks is being considered currently.

American Bureau of Shipping, Apr. 12, M–81–64: Revised Circular No. 45, Index 6.1.1 dealing with "Outstanding Recommendations on Survey Reports."

American Society of Civil Engineers, Apr. 22, P–82–11: Concurs.

Ohio Turnpike Commission, Apr. 22, H–82–7: Recommendation is being considered.

Kansas Public Service Co., Apr. 13, P–78–25 through –32: Transition fittings on certain plastic pipe have been replaced; consulting engineers have reviewed system compliance with DOT requirements and conducted tests of polyethylene pipe and fittings; service vehicles carry maps showing shutoff valves and regulator locations; emergency plans have been developed and discussed with company personnel and local emergency personnel; the superintendent of construction, his assistant, and each crew foreman is trained as an inspector; after-hours telephone numbers are in the company emergency plan.

ARCO Petroleum Products Company, Apr. 16, H–82–5: ARCO has a comprehensive tank truck driver safety program.

Note.—In the past, NTSB publications have been mailed free of charge to organizations and individuals who NTSB determined had a transportation interest and could influence transportation safety. However, because of recent personnel and budget reductions, NTSB can no longer provide publications free of charge. Beginning with reports adopted in 1982, interested organizations and individuals must order reports from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630. Single copies of recommendation letters (identified by recommendation number) and responses are free on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

May 6, 1982.

[FR Doc. 82–12335 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Clinch River Breeder Reactor; Meeting

The ACRS Subcommittee on Clinch River Breeder Reactor (CRBR) will hold a meeting on May 24 and 25, 1982, Room 1046, 1717 H Street, NW, Washinton, DC. The Subcommittee will discuss potential threats to the CRBR plant containment integrity. Notice of this meeting was published April 13.

In accordance with the procedures outlines in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Monday, May 24, 1982, 8:30 a.m. until the conclusion of business, Tuesday, May 25, 1982, 8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Project Management Corporation, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Industrial Security information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: April 30, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–12339 Filed 5–5–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348]

Alabama Power Co.; Proposed Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–2, issued to Alabama Power Company (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Unit No. 1 located in Houston County, Alabama.

The amendment would revise the provisions in the Technical Specifications relating to the spent fuel pool. This change would permit the licensee to replace all of the storage racks in the present spent fuel pool with high density, poisoned racks, increasing its capacity frm 675 fuel assemblies to 1407 fuel assemblies, in accordance with the licensee's application for amendment dated March 19, 1982.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 7, 1982, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the rules of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the

nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements, described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: (petitioner's name and telephone number); (date petition was mailed); (Farley Unit 1); and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 19, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Bethesda, Maryland, this 28th day of April 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12321 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 76 to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment was effective March 24, 1982.

The amendment on a one-time only basis allows an additional fifteen day extension to the maximum time between tests specified in Table 4.1-3 for the turbine stop and control valve closure test. The amendment was authorized on an expedited basis to maintain the plant at a steady-state condition and avoid a shutdown transient shown by our evaluation to be unnecessary but required by Technical Specifications unless amended.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the requests for amendment dated March 24, 1982 and March 26, 1982, (2) the Commission's letter dated March 25, 1982, (3) Amendment No. 76 to License No. DPR-26, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12322 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 OM, 50-330 OM, 50-329 OL, and 50-330 OL]

Consumers Power Co. (Midland Plant, Units 1 and 2); Cancellation of Evidentiary Hearings and Conference of Counsel or Representatives

April 28, 1982.

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Board's Memorandum and Order dated April 28, 1982 the

evidentiary hearings scheduled for May 11–14, 1982, and the conference of counsel or representatives in the OL proceeding scheduled for May 13, 1982, have been cancelled. The conference is to be replaced with a telephone conference call.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 82-12326 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, OP 722–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Qualifications for the Radiation Safety Officer in a Large-Scale Non-Fuel-Cycle Radionuclide Program" and is intended for Division 8, "Occupational Health." It is being developed to provide guidance on the qualifications of the radiation safety officer for a large non-fuel-cycle program involving the use of radioactive materials under an NRC license.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by June 30, 1982.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of April 1982.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Facility Operations, Office of Nuclear Regulatory Research.

[FR Doc. 82-12327 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR–50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, and GPU Nuclear Corporation (the licensees), which revised the Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania. The amendment becomes effective 4 months after its date of issuance or upon reactor initial criticality following authorization to restart, whichever occurs first.

The amendment revises the Administrative Controls Section of the Technical Specifications to reflect major changes in the GPU Nuclear Corporation organization and internal safety review process. Some aspects of the amendment have been the subject of litigation in the TMI–1 restart proceeding and are consistent with the Licensing Board's findings in that proceeding.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negaive declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 10, 1981, as supplemented August 13, 1981, and November 25, 1981 (2) Amendment No. 77 to License No. DPR–50, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of April 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-12323 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 3); Issuance of Amendment to Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Construction Permit No. CPPR–113. The amendment reflects the addition of the Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Public Power Supply Authority and Washington Electric Cooperative, Inc., as co-owners and transfers

ownership shares for the Millstone Nuclear Power Station, Unit 3 (the facility), located in New London County, Connecticut as follows:

	Shares (percent)
To:	
Massachusetts Municipal Wholesale Electric Co	2.527
Vermont Electric Generation and Transmission Cooperative, Inc	0.600
Vermont Public Power Supply Authority	1.048
Washington Electric Cooperative, Inc	0.139
Total	4.314
From:	
Hartford Electric Light Co	1.079
Western Massachusetts Electric Co	3.235
Total	4.314

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment, dated December 30, 1981; (2) amendment to the letter of application dated February 24, 1982; (3) Amendment No. 8 to Construction Permit CPPR–113; and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. Item 3 may be requested by writing to the U.S Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Technical Information and Document Control.

Dated at Bethesda, Maryland, this 29th day of April 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82-12334 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR–70 and Amendment No. 7 to Facility Operating License No. 75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generation Station, Unit Nos. 1 and 2 (the facilities) located in Salem County, New Jersey. The amendments are effective as of the date of issuance.

The amendments revise the Radiological Technical Specifications to provide better control and surveillance of containment ventilation valves in both Unit No. 1 and Unit No. 2.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated January 15, 1982, (2) Amendment Nos. 41 and 7 to License Nos. DPR–70 and DPR–75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 19th day of April 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12335 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointments to Performance Review Board for Senior Executive Service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Board (PRB) roster:

John C. Hoyle, Assistant Secretary of the Commission

Guy H. Cunningham, Executive Legal Director

Hugh L. Thompson, Director, Planning and Program Analysis Staff, NRR

Ralph G. Page, Chief, Uranium Fuel Licensing Branch, NMSS

Ronald C. Haynes, Regional Administrator, Region I

These appointements are to three year terms and are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

In addition to the above new appointments, the following members are continuing on the PRB:

Patricia G. Norry, Acting Director, Office of Administration

John G. Davis, Director, Office of Nuclear Material Safety and Safeguards

Richard C. DeYoung, Director, Office of Inspection and Enforcement

Thomas E. Murley, Director, Regional Operations and Generic Requirements Staff

James A. Fitzgerald, Assistant General Counsel

Denwood F. Ross, Deputy Director, Office of Nuclear Regulatory Research

James G. Keppler, Regional Administrator, Region II

Ormon E. Bassett, Director, Division of Accident Evaluation, RES

Clemens J. Heltemes, Deputy Director, Office of Analysis and Evaluation of Operational Data

Edson G. Case, Deputy Director, Office of Nuclear Reactor Regulation

EFFECTIVE DATE: May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia G. Norry, Chair, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–492–7335.

Dated at Bethesda, Maryland, this 3rd day of May, 1982.

For the Nuclear Regulatory Commission.

E. Kevin Cornell,

Chairman, Executive Resources Board.

[FR Doc. 82-12377 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

Docket Nos. STN 50-528, STN 50-529, and STN 50-530]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Issuance of Amendments to Construction Permits

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 4 to Construction Permit Nos. CPPR–141, CPPR–142, and CPPR–143. The amendments add Los Angeles Department of Water and Power (LADWP) and Southern California Public Power Authority (SCPPA) as co-owners and reflect a transfer of a 5.70% and 5.91% undivided ownership interests from Salt River agricultural Improvement and Power District to LADWP and SCPPA, respectively, for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (the facilities), located in Mariiicopa County, Arizona. The amendments are efferctive as of their date of issuance. The present applicants for Palo verde are Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern california Edison Company, Public Service company of New Mexico and M–S–R Public Power Agency.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendments. The Commission has also concluded that the amendments involve actions which are insignificant from the standpoint of environmental impact and that, pursuant to 10 CFR 51.5(d)(4), and environmental impact statement or negative declaration and an environmental impact appraisal need not be prepared in connection with the issuance of the amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendments, dated July 31, 1981; (2) Amendments No. 4 to Construction Permit Nos. CPPR–141, CPPR–142, and CPPR–143 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C, and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Arizona 85004. Items 2 and 3 may be requested by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Technical Information and Document Control.

Dated at Bethesda, Maryland, this 28th day of April, 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-12370 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 OL and 50-455 OL]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of April 30, 1982, oral argument on the appeal of intervenor The Rockford League of Women Voters from the October 27, 1981 and January 27, 1982 orders of the Licensing Board will be heard at *2:00 p.m. on Wednesday, May 26, 1982,* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: May 3, 1982.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-12378 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237, 50-249, 50-254 and 50-265

Commonwealth Edison Co. and Iowa-Illinois Gas and Electric Co.; Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 70 to Provisional Operating License No. DPR–19, and Amendment No. 62 to Facility Operating License No. DPR–25, issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located in Grundy County, Illinois. The Commission has also issued Amendment No. 76 to Facility Operating License No. DPR–29, and Amendment No. 70 to Facility Operating License No. DPR–30, issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operation of the Quad-Cities Nuclear Power Station, Unit Nos. 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of issuance.

The amendments authorize changes to the Technical Specifications to provide additional surveillance requirements for safety-related hydraulic and mechnical snubbers.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated April 16, 1981 as supplemented by letters dated September 29 and October 21, 1981, (2) Amendment No. 70 to License No. DPR–19, Amendment No. 62 to License No. DPR–25, Amendment No. 76 to License No. DPR–29, and Amendment No. 70 to License No. DPR–30, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois, for Dresden 2 and 3 and at the Moline Public Library, 504 17th Street, Moline, Illinois, for Quad Cities 1 and 2. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of April 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-12371 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

Florida Power and Light Co., et al.; Availability of the Final Environmental Statement for St. Lucie Plant, Unit No. 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (NUREG–0842) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida. The owners of St. Lucie 2 are Florida Power and Light Company and Orlando Utilities Commission of the City of Orlando, Florida.

The Final Environmental Statement (NUREG–0842) is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and at the Indian River Community College Library, 3900 Virginia Avenue, Ft. Pierce, Florida. The Final Environmental Statement is also being made available at the State Planning & Development Clearinghouse, Office of Intergovernmental Coordination, Executive Office of the Governor, the Capitol, Tallahassee, Florida 32301 and at the Treasure Coast Regional Planning Council, P.O. Box 2395, Stuart, Florida 33494.

The notice of availability of the Draft Environmental Statement for the St. Lucie Plant, Unit No. 2 and request for comments from interested persons was published in the **Federal Register** on October 30, 1981 (46 FR 53822). Comments received from Federal, State, and local agencies and an interested member of the public have been included in an appendix to the Final Environmental Statement.

Copies of the Final Enviornmental Statement (NUREG–0842) may be purchased at current rates, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and by GPO deposit account holders by calling (301) 492–9530 or by writing to the U.S. Nuclear Regulatory Commission, Division of Techncial Information and Document Control, Washington, D.C. 20555, Attn: Publication Sales Manager.

Dated at Bethesda, Maryland, this 23d day of April, 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-12372 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-496/499]

Houston Lighting and Power Company, et al.; Order Extending Construction Completion Dates (South Texas Project, Units 1 and 2)

Houston Lighting and Power Company, the City Public Service Board of San Antonio, Texas, Central Power and Light Company, and the City of Austin, Texas, are the holders of Construction Permits No. CPPR–128 and CPPR–129 issued by the Nuclear Regulatory Commission on December 22, 1975 for the South Texas Project, Units 1 and 2. This facility is presently under construction at the applicants' site in Matagorda County, Texas.

By letter dated March 12, 1982, Houston Lighting and Power Company filed a request for extension of the latest construction completion date for the facility. This request is to extend the latest completion date to December 31, 1987 for Unit 1 and to December 31, 1989 for Unit 2.

Houston Lighting and Power Company stated that this extension is requested because construction has been delayed due to:

(1) Replacement of Brown and Root as Architect/Engineer and Construction Manager by Bechtel Power Corporation.

(2) Replacement of Brown and Root as constructor by Ebasco Services, Inc.

(3) The design of the project did not proceed as quickly as expected, the scope of the construction work was more expensive than originally estimated, and extected unit construction rates were not achieved, in part due to changes in complexity attributable to evolving regulatory requirements, as were experienced by other nuclear power plants of the same vintage.

(4) Certain concrete placement and welding activities were suspended by HL&P in 1979–80 as a result of investigations that disclosed problems relating to those activities.

Corrective measures had been implemented and a limited resumption of these activities had begun prior to the decision to remove Brown & Root as Architect/Engineer and Construction Manager.

(5) Progress on the South Texas Project has been essentially halted since December, 1981, as a consequence of Brown & Root's withdrawal as constructor.

Prior public notice of this extension was not required since the Commission has determined that this action involves no significant hazards consideration; good cause has been shown for the delays; and the requested extension is for a reasonable period of time. The staffs conclusions are set forth in the NRC staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff's evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, at the Bay City Library, 1900 Fifth Street, Bay City, Texas 77414 and at the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78768.

It is hereby ordered that the latest completion date for CPPR–128 is extended from May 31, 1982 to December 31, 1987 and for CPPR–129 from October 31, 1983 to December 31, 1989.

Date of Issuance: April 30, 1982.

For the Nuclear Regulatory Commission.

Robert Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12373 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Co., et al.; Issuance of Amendment Facility Operating License No. NPF–10

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Facility Operating License No. NPF–10, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (licensees) for the San Onofre Nuclear Generating Station, Unit 2 (the facility) located in San Diego County, California. The amendment is effective as of April 9, 1982.

This amendment (1) clarifies the testing and acceptance criteria for low and medium voltage circuit breakers and (2) deletes the nominal trip setpoint

and short circuit response time values contained in the Technical Specifications.

Issuance of this amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Southern California Edison Company's letter dated April 7, 1982, (2) Amendment No. 2 to Facility Operating License No. NPF-10 and (3) the Commission's related Safety Evaluation.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Mission Viejo Branch Library, 24851 Chrisanta Drive Mission Viejo, California 02676. A copy of these items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of April, 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-12374 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensees), which revised Technical Specifications for operation of the Kewaunee Nuclear Plant (the facility) located in Kewaunee County, Wisconsin. The amendment is effective 30 days from the date of issuance.

The amendment revises the Technical Specifications in respect of Power Distribution Control, Allowable Control Rod Misalignment, and Control Rod Position Indication Systems.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated August 7, 1981, November 23, 1981, December 8, 1981, and December 23, 1981, (2) Amendment No. 41 to License No. DPR-43 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12375 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 42 to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensees), which revised Technical Specifications for operation of the Kewaunee Nuclear Plant (the facility) located in Kewaunee, Wisconsin. The amendment is effective as of June 1, 1982.

This amendment changes the Technical Specifications to reflect modifications to the plant electrical distribution systems and to resolve the generic issues related to the Subjects of Degraded Grid Voltage Protection and Adequacy of Station Electric Distribution System Voltages.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 4, 1977 and as subsequently revised on January 28, 1981, May 1, 1981, November 30, 1981 and February 1, 1982, (2) Amendment No. 42 to License No. DPR-43 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of April, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-12376 Filed 5-5-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 1-6828 and 1-7959]

Hotel Investors Trust and Hotel Investors Corp.; Application To Withdraw From Listing and Registration

April 30, 1982

In the matter of Hotel Investors Trust, Shares of Beneficial Interest ($1 par value) (File No. 1-6828) and Hotel Investors Corporation, Common Stock ($1 par value) (File No. 1-7959).

The above named issuers have filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

1. The shares of beneficial interest of Hotel Investors Trust ("Trust") and the common stock of Hotel Investors Corporation ("Corporation") are listed and registered on the Amex and are paired securities and therefore trade in tandem. Pursuant to a Registration Statement on Form 8-A which became effective on March 24, 1982, the Trust and the Corporation are also listed and registered on the New York Stock Exchange, Inc. ("NYSE"). The Trust and the Corporation have determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the securities on the Amex and the NYSE.

2. This application relates solely to withdrawal of the shares of beneficial interest and the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stocks on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before May 21, 1982 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12384 Filed 5-5-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22479; 70-6718]

Northeast Utilities and Connecticut Light and Power Co.; Proposed Capital Contribution to Subsidiary Company

April 30, 1982.

In the matter of Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089 and The Connecticut Light and Power Company, 107 Selden Street, Berlin, Connecticut 06037 (70-6718).

Northeast Utilities ("Northeast"), a registered holding company, and The Connecticut Light and Power Company, ("CL&P"), a public-utility subsidary of Northeast, have filed with this Comission a post-effective amendment to the declaration in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By order in this proceeding dated April 23, 1982 (HCAR No. 22470), Northeast, among other things, was authorized to make capital contributions of up to $40,000,000 to CL&P. The funds derived from the capital contributions are being used by CL&P to reduce its short-term debt. Such short-term debt amounted to $184,400,000 at March 1, 1982, and was incurred primarily for the purpose of financing CL&P's construction program and refunding debt.

Northeast now proposes to make an additional capital contribution to CL&P in the amount of $10,000,000. Such capital contribution will be converted from an interest-free open account advance of $10,000,000 being made by Northeast to CL&P on or about May 4, 1982, pursuant to Rle 45(b)(3). It is stated that the additional cash is needed in order to retire short-term debt of CL&P and to give CL&P greater assurance of its ability to meet the earnings coverage requirements of its preferred stock provisions in connection with CL&P's proposed issue and sale of 800,000 shares of Preferred Stock, Series M, $50 par value (File No. 70-6719).

The post-effective amendment to the declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 25, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12385 Filed 5-5-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12414; 812-5095]

Tri-Continental Corp.; Filing of Application

April 30, 1982.

In the matter of Tri-Continental Corporation, One Bankers Trust Plaza, New York, New York 10006 (812-5095).

Notice is hereby given that Tri-Continental Corporation ("Applicant"), a closed-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 28, 1982, and an amendment thereto on April 7, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act declaring that William M. Rees shall not be deemed an interested person of Applicant or of its investment adviser, J. & W. Seligman & Co. Incorporated ("Seligman"), as that term is defined in Section 2(a)(19) of the Act, solely by reason of his being a director of The Chubb Corporation ("Chubb"). All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein, which are summarized below.

Applicant states that Mr. Rees, a director of Applicant, is a director and

chairman of the executive committee of Chubb and a director of certain Chubb subsidiaries: Federal Insurance Company, Vigilant Insurance Company, Great Northern Insurance Company and Bellemead Development Corporation. Applicant states that Mr. Rees is not a director, officer or employee of any other Chubb subsidiary and is not an officer or employee of Chubb. According to Applicant, Mr. Rees also beneficially owns 16,300 shares of the common stock of Chubb, which represents less than 1% of Chubb's outstanding common stock. Applicant represents that Chubb is primarily engaged, through subsidiaries, in the businesses of property and casualty insurance, life insurance and real estate. However, Chubb Securities Corporation ("Securities"), an indirect subsidiary of Chubb, is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act"). Applicant states that Securities is engaged in the sale of shares of open-end investment companies, both alone and in combination with life insurance, the sale of variable annuity contracts and the sale of tax-sheltered programs involving limited partnership interests in oil and gas and real estate ventures. Securities is not a member of a securities exchanges, does not make a market in securities, does not execute or clear securities transactions, except as described above, and is not, according to Applicant, otherwise engaged in the securities business. Applicant asserts that, for 1981, net income of Securities represented less than 1% of the consolidated net income of Chubb.

Sections 2(a)(19)(A)(v) and (B)(v) of the Act, in pertinent part, define an interested person of an investment company or its investment adviser to be any affiliated person of a broker-dealer registered under the 1934 Act. Section 2(a)(3) of the Act, in pertinent part, defines an affiliated person to be any person directly or indirectly controlling, controlled by or under common control with such other person. Applicant states that because of Mr. Rees' status as an affiliated person, as defined by Section 2(a)(3) of the Act, of Chubb, which is an affiliated person of Securities, Mr. Rees might be deemed to be an interested person of both Applicant and Seligman by reason of Section 2(a)(19).

Section 10(a) of the Act prohibits Applicant from having a board of directors more than 60% of which are interested persons of Applicant. Although the composition of Applicant's board of directors presently complies with Section 10, even if Mr. Rees were considered to be an interested person of Applicant, Applicant states that its charter includes a provision requiring that at least 75 percent of its directors shall be persons who are not interested persons of Seligman. Since Applicant's board of directors consists of eight persons, of whom five are not interested persons, excluding Mr. Rees, Applicant would not be in compliance with its charter provision if Mr. Rees were deemed to be an interested person of Seligman. Such provision, according to Applicant, was included in its charter to insure the independence of its board of directors from Seligman following the externalization of Applicant's management arrangements effective January 1, 1981. Applicant states that it does not believe that Mr. Rees' position as a director of both Chubb and Applicant is inconsistent with this purpose.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it believes that the order requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant asserts that if Securities were engaged solely in the business of selling open-end investment company shares and variable annuity contracts, Mr. Rees would not be deemed an interested person of Applicant or Seligman by reason of Rule 2a–5 under the Act which provides, as pertinent herein, that a person shall not be deemed an interested person of another person, with respect to an investment company or any investment adviser for such company, within the meaning of Section 2(a)(19) solely because such person is a broker or dealer as described in subparagraphs (A)(v) or (B)(v) of Section 2(a)(19), or an affiliated person of such broker or dealer, provided that (a) such broker or dealer does not directly or indirectly act as a broker or dealers except in distributing shares issued by one or more registered investment companies other than such investment company and (b) no such shares are distributed to such investment company. Applicant does not believe that the sale of tax-sheltered programs by Securities, which accounted for less than 20 percent of its sales in 1981, should change that analysis.

Moreover, Applicant argues that Mr. Rees' position as a director of both Applicant and Chubb does not present the potential for conflict of interest which the provisions of the Act and of its charter were designed to guard against. Applicant states that it has not and does not intend to purchase securities from or through, or sell securities to or through, Securities. Because Applicant's securities are listed, Applicant asserts that Securities, which is not a member of any exchange, would not be in position to sell Applicant's securities. Additionally, Applicant undertakes not to transact any business with Securities as long as Mr. Rees is a director of Applicant. Applicant states that such restriction will not adversely affect its activities. Applicant further states that it has been informed by Seligman that neither Seligman nor any of its subsidiaries presently has or expects to have any business dealing with Securities. Although Applicant and Seligman maintain fidelity insurance with Chubb, Applicant asserts that such insurance is immaterial to Chubb. Applicant claims that the indirect financial interest of Mr. Rees in Securities is de minimis. Finally, Applicant represents that Mr. Rees will not become an officer or director of Securities nor will he have any direct responsibility for the operations of Securities as long as he is a director of Applicant.

Notice is further given that any interested person may, not later than May 25, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a

hearing is ordered, will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12366 Filed 5-5-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18697; SR-CBOE-821-3]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

April 30, 1982.

In the matter of Chicago Board Options Exchange, Inc., LaSalle at Jackson Street, Chicago, Illinois 60604 (SR-CBOE-82-3).

The Chicago Board Options Exchange, Inc. ("COBE") submitted on February 22, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend CBOE Rule 9.3 which provides, in relevant part, that CBOE member organizations must report to the exchange the termination of employment or of affiliation of a registered representative. Under the proposed rule change, member organizations would be required only to report "terminations for cause." These reports would be made on the Uniform Termination Notice for Securities Industry Registration (Form U-5).[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18573, March 19, 1982) and by publication in the **Federal Register** (47 FR 12896, March 25, 1982). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 82-12367 Filed 5-5-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18696; File No. SR-MSE-82-3]

Midwest Stock Exchange Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

April 30, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1982, the Midwest Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The MSE proposes to increase the fee for registration of officers and partners of non-NYSE member firms and corporations from $40.00 to $50.00. In its filing with the Commission the MSE has stated that the purpose of this proposed rule change is to bring the fee charged for registration of principals of member organizations in line with the fee for salesman since the processing of either of these applications requires the same administrative time and expense. The NASD currently processes these registrations for all dual MSE-NASD member organizations. The MSE, in its filing with the Commission, has indicated that the statutory basis for the proposed change is section 6(d)(4) of the Act, which provides for the equitable allocation of reasonable dues, fees, and other changes among its members and issuers and other persons using its facilities.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission by May 27, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary, and Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-82-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12368 Filed 5-5-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18695; SR-NYSE-82-3]

New York Stock Exchange, Inc.; Order Granting Accelerated Approval Proposed Rule Change

April 30, 1982.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005 (SR-NYSE-82-3).

The New York Stock Exchange, Inc. submitted on March 12, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and

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[1] The term "termination for cause" would be defined to include any termination where:

(1) *the Registered Representative has been discharged or has been permitted to resign; (2) there is reason to believe that the Registered Representative, while employed by or associated with the member organization, may have violated any provision of any securities law or regulation or any agreement with or rule of any governmental agency or self-regulatory body, or engaged in conduct that may be inconsistent with just and equitable principles of trade; or (3) the Registered Representative is or was recently the subject of one of more of the following:*

(a) *any investigation or proceeding conducted by any governmental agency or self-regulatory body which has jurisdiction over the securities, insurance, banking, real estate or commodities industry;*

(b) *a refusal of registration, censure, suspension, expulsion, fine or any disciplinary action by any governmental agency or self-regulatory body having jurisdiction over the securities, insurance, banking, real estate or commodities industry;*

(c) *any major complaint of or any legal proceeding brought by a customer of the member organization; or*

(d) *any conviction involving a felony or misdemeanor (other than minor traffic violation).*

Rule 19b–4 thereunder, to conform its rules governing capital requirements for NYSE member organizations to the recent amendments to the Commission's Uniform Net Capital Rule (Rule 15c3–1 of the Act) whch will become effective on May 1, 1982.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–18618, April 5, 1982) and by publication in the **Federal Register** (47 FR 15945, April 13, 1982). No comments have been received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed NYSE rule change prior to the thirtieth day after the date of publication of notice of the filing thereof. Accelerated approval of the subject rule change is necessary to permit NYSE member organizations to avail themselves of the recent amendments to the Commission's Uniform Net Capital Rule which are to become effective on May 1, 1982.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12368 Filed 5–5–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that Seattle Trust & Savings Bank, with offices at 804 Second Avenue, Seattle, Washington, has been approved as Trustee pursuant to Pub. L. 89–346 and 46 CFR 221.21–221.30.

Dated: April 28, 1982.

By Order of the Maritime Administrator.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82–12019 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. EX82–2; Notice 1]

Boyertown Auto Body Works, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

Boyertown Auto Body Works, Inc., of Boyertown, Pennsylvania, has petitioned for temporary exemption of its Track Lorry from six Federal motor vehicle safety standards. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with NHTSA regulations on this subject (49 CFR 555.7) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Boyertown intends to produce a Track Lorry for the railroad industry to use as a rail track inspection vehicle. But because it is not designed exclusively for use on rails and would make some use of public roads, it is a motor vehicle and required to comply with all applicable Federal motor vehicle safety standards. The standards for which it has requested exemption are No. 203, *Impact Protection for the Driver From the Steering Control System*, No. 204, *Steering Control Rearward Displacement*, No. 208, *Occupant Crash Protection*, No. 212, *Windshield Mounting*, No. 219, *Windshield Zone Instrusion*, and No. 310, *Fuel System Integrity*. The company appears unsure of the extent to which it may already comply with these standards and intends to make a study of it, at a cost to it of $18,000. Retooling costs to comply with these standards could amount to $300,000. It produced 1,000 other types of motor vehicles last year and had a net loss in 1981 of $14,500. It has requested the exemptions for a three-year period.

Boyertown argues that an exemption would be in the public interest and consistent with traffic safety objectives because of its use as a track inspection vehicle and the fact that it would not be operated extensively at high speeds on the public roads.

Interested persons are invited to submit comments on the petition of Boyertown Auto Body Works, Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent possible. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 7, 1982.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on April 27, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82–12107 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP82–3; Notice 1]

Dunlop Tire and Rubber Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Dunlop Tire and Rubber Corp. of Buffalo, New York, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.5 of Standard No. 119 requires tires to be marked with certain information on each sidewall. Dunlop has produced 562 tires with incorrect or missing information on both sidewalls. The tire in question is the 10–15 LT Centennial Canyon Climber Nylon Bias Traction with raised white letters. The tires were produced in Buffalo in the 40th, 47th, and 48th weeks of 1981, and the first week of 1982.

[1] Securities Exchange Act Release No. 18617 (January 13, 1982), 47 FR 2012 (January 25, 1982).

The correct sidewall marking for the tire is: 10–15LT, Load Range B, 4 PR, Nylon Tread: 4 Plies/Sidewall: 4 Plies Max Load 1760 lbs. at 30 PSI Cold.

On the raised white letters side the word "POLYESTER" appears instead of the word "NYLON". On the black side or serial side, "Load Range C, 6 PR, Max. Load 2230 lbs. at 45 PSI Cold" appears.

Upon discovery, Dunlop impounded and corrected 345 tires in its possession, so that this petition covers only the remaining 217 tires shipped to the field. It also "began a test program to determine the tires' capability to endure testing to the higher Load Range C requirements of FMVSS 119". In the endurance test (S7.2), the company extended the test at 131% of scheduled load (2921 lbs.) and ran a total of 10,000 machine miles. One tire "showed looseness at the ply turnup afterwards". In the strength test (S7.3), the tire registered 3795 inch-pounds, exceeding "the DOT minimum of 3200 inch-pounds by 18%". The company also conducted hydrostatic burst testing. In summary, Dunlop argues that if the tires are loaded to Range C limits they will perform "very adequately" but that since the correct load and pressure appear on the raised letter side, "the likelihood of excess loading is diminished".

Interested persons are invited to submit written data, views and arguments on the petition of Dunlop Tire and Rubber Corp. described above. Comments should refer to the docket number and submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Art Neill and Taylor Vinson, respectively.

Comment closing date: June 7, 1982.

(Sec. 102, Pub. L. 93–492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.1)

Issued on April 27, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82–12108 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP82–10; Notice 1]

Modular Ambulance Corp.; Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

Modular Ambulance Corp. of Grand Prairie, Texas, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for two apparent noncompliances with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* on the basis that the are inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 distinguishes between vehicles whose overall width is less than 80 inches, and those of 80 inches or more overall width. The latter are required to be equipped with clearance lamps, to indicate the overall width, and identification lamps, a cluster of three lamps generally located at or near the top, to identify that the vehicle is a wide vehicle. Table II of Standard No. 108 establishes location requirements for lighting equipment. Clearance lamps are to be mounted "to indicate the overall width of the vehicle * * * as near the top as practicable." Identification lamps are to be mounted "as close as practicable to the top of the vehicle * * * with lamp centers spaced not less than 6 inches or more than 12 inches apart."

Modular has produced 60 Type I ambulances between September 1980 and March 1982 in which the front clearance and identification lamps have not been located as close as practicable to the top of the vehicle; they have been located on the truck cab roof rather than the top of the ambulance module behind the cab.

Furthermore, the identification lamp cluster on the rear has its lamp centers spaced at 5¾ inches, slightly under the minimum of 6 inches established by Table II.

Modular argues that the noncompliances are inconsequential "because they do not represent a safety hazard to the vehicle occupants, or to traffic * * *" As a practical matter, it would cost $21,000 to repair all vehicles, two-thirds of which are "over 1,500 miles from our plant location."

Interested persons are invited to submit written data, views and arguments on the petition of Modular Ambulance Corp. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered.

The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney principally responsible for this notice are Marx Elliott and Taylor Vinson, respectively.

Comment closing date: June 7, 1982.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 27, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82–12108 Filed 5–5–82; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 86
Thursday, May 6, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 17156, April 21, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., April 30, 1982.

CHANGES IN THE MEETING: The Oral Argument before the Commission in the Matter of Indiana Farm Bureau Cooperative Association, Inc., and Louis M. Johnston—CFTC Docket No. 75–14, has been changed to 2:00 p.m., May 21, 1982, in the 5th floor Hearing Room, 2033 K Street, NW., Washington, D.C.

[S–671–82 Filed 5–4–82; 3:53 pm]

BILLING CODE 6351–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:55 p.m. on Saturday, May 1, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to make funds available for the payment of insured deposits in Carroll County Bank, Huntingdon, Tennessee, which was closed by the Commissioner of Banking for the State of Tennessee on Friday, April 30, 1982.

At that same meeting, the Board of Directors (1) received sealed bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Coles County National Bank of Charleston, Charleston, Illinois, which was closed by the Acting Comptroller of the Currency on Saturday, May 1, 1982; (2) accepted the bid for the transaction submitted by the newly-chartered Eagle Bank of Charleston, Charleston, Illinois; (3) approved the application of Eagle Bank of Charleston, Charleston, Illinois, for Federal deposit insurance and for consent to purchase the assets of and assume the liability to pay deposits made in Coles County National Bank of Charleston, Charleston, Illinois; and (4) provided such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effectuate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Paul M. Homan, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A) (ii), and (c)(9)(B)).

Dated: May 3, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–667–82 Filed 5–4–82; 11:13 am]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Monday, May 3, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague, concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and Resolution re: Delegation of Authority to the Executive Secretary to Extend Hearing Dates in Administrative Enforcement Proceedings.

Memorandum and Resolution re: San Francisco Regional Office—Ecker Square Condominium Office Building.

Memorandum and Resolution re: Proposed Revisions of the "Delegations of Authority Relating to the Staffing Table."

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,214–L—Franklin National Bank, New York, New York.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: May 3, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–668–82 Filed 5–4–82; 11:13 am]

BILLING CODE 6714–01–M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 11, 1982, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, May 13, 1982, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:
Setting of dates for future meetings
Correction and approval of minutes
Advisory opinions:
Draft AO 1982–4: Lee Witt, Jerry Apodaca for U.S. Senate Committee
Draft AO 1982–28: Robert E. Moss, American Public Power Association
Draft AO 1982–30: Vincent R. Agnelli, President, Sunrise-Sunset Corp.
Draft AO 1982–32: Jay B. Meyerson, Jackson Can Win Committee
Party committee expenditures
Legislative recommendations
Appropriations and budget
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-669-82 Filed 5-4-82; 3:14 pm]
BILLING CODE 6715-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., May 12, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Petition of National Customs Brokers and Forwarders Association requesting Commission investigation concerning alleged concerted action of conferences to limit payment of freight forwarder compensation on bunker and currency surcharges.

Portions closed to the public:

1. Docket No. 79–59: Stute International, Inc.—Independent Ocean Freight Forwarder Application—Consideration of the record.
2. Docket No. 79–9: Prudential Lines, Inc. v. Continental Grain Company—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S-666-82 Filed 5-4-82; 10:45 am]
BILLING CODE 6730-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 30, 1982.

TIME AND DATE: 2 p.m., Wednesday, April 28, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission considered and acted upon the following:

1. Jones and Laughlin Steel Corporation, Docket No. PENN 81–96–R.

Vote.—Voting to Close the Meeting: Chairman Collyer, Commissioners Backley, Jestrab, Lawson. It was determined by this vote that Commission business required that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S-665-82 Filed 5-4-82; 10:16 am]
BILLING CODE 6735-01-M

7

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, May 12, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed revision and extension of the Survey of Terms of Bank Lending (FR 2028A, A–S, and FR 2028B).
2. Proposed revision and extension of the Survey of Debits to Demand and Savings Deposits Accounts (FR 2573).
3. Proposed weekly survey on holdings of overnight Eurodollar deposits for selected money market mutual funds.
4. Consideration of the application by Prudential Funding Corporation for an exemption from Regulation G (Securities Credit by Persons other than Banks, Brokers, or Dealers), to make unsecured loans to affiliates.

Discussion Agenda:

5. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to permit brokers and dealers to borrow and lend securities against letters of credit and government securities. (Proposed earlier for public comment; Docket No. R–0370.)
6. Proposed amendments to Regulations G (Securities Credit by Persons other than Banks, Brokers, or Dealers), T (Credit by Brokers and Dealers), and U (Credit by Banks for the purpose of Purchasing or Carrying Margin Stocks), changing the criteria for inclusion of a stock on the List of OTC Margin Stocks. (Proposed earlier for public comment; Docket No. R–0372.)
7. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 4, 1982.

James McAfee,
Associate Secretary of the Board.

[S-670-82 Filed 5-5-82; 8:45 am]
BILLING CODE 6210-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE–82–15B]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 16701, April 19, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Wednesday, May 12, 1982.

CHANGES IN THE MEETING: Emergency notice to add an additional item to agenda.

By action jacket SE–82–6, the United States International Trade Commission, in conformity with 19 CFR 206.37(b), voted to add the following item to its agenda for the meeting of Wednesday, May 12, 1982:

4. (b) Plastic-capped decorative emblems (Docket No. 815).

Commissioners Alberger, Calhoun, Stern, Eckes, Frank, and Haggart determined by recorded vote that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S-672-82 Filed 5-4-82; 3:30 pm]
BILLING CODE 7020-02-M

9

NUCLEAR REGULATORY COMMISSION

DATE: Week of May 10, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW. Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED: *Monday, May 10:*

2:30 p.m.:
Briefing on Revised Value-Impact Procedures and Guidelines re EO12291 (public meeting)

Tuesday, May 11:

10:30 a.m.:
Briefing on Status of Regionalization (public meeting)
2:00 p.m.:
Briefing on Long Range Research Plan (public meeting)

Wednesday, May 12:

10:00 a.m.:
Discussion of Management-Organization and Internal Personnel Matters (closed)
2:00 p.m.:
Status Report on Capability of Reactors to Go to Cold/Hot Shutdown (public meeting)

Thursday, May 13:

10:00 a.m.:
Briefing on Report from the Reactor Operator Qualifications Peer Review Panel (public meeting)
3:00 p.m.:
Affirmation/Discussion Session (public meeting)
a. 10 CFR Part 50—Proposed Rule To Clarify Applicability of License Conditions and Technical Specifications in an Emergency
b. NRDC Motion To Supplement the Record of the Waste Confidence Proceeding.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

May 3, 1982.

Walter Magee,

Office of the Secretary.

[S-673-82 Filed 5-4-82; 4:01 pm]

BILLING CODE 7590-01-M

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federal register

Thursday
May 6, 1982

Part II

Department of Health and Human Services

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for Determination of Disability

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed amendments revise the medical evaluation criteria for both the title II and title XVI disability programs. These criteria were last revised in 1979. The proposed revisions reflect advances in the medical treatment of some conditions and in the methods of evaluating certain impairments. These proposals will provide up-to-date medical criteria for use in the evaluation of disability claims.

DATE: We will consider your comments if we receive them no later than July 6, 1982.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days.

Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7415.

SUPPLEMENTARY INFORMATION:

The Programs

The Social Security Act provides, under title II, for the payment of Federal disability insurance benefits to individuals insured under the Social Security Act. The Act also provides, in title XVI, for the payment of benefits under the Supplemental Security Income program to persons who are blind or disabled and have limited income and resources. Under both programs, blindness means a central visual acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the field of vision so that the widest diameter of visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. Disability under both programs means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

The Listing of Impairments

The medical criteria for evaluating disability and blindness without considering vocational factors are found in the Listing of Impairments (the Listing). From the beginning of the disability program in 1955, there has been an established list of medical impairments which, in and of themselves, are considered sufficient to preclude any gainful activity, absent evidence to the contrary. The original Listing was based upon advice from a national group of medical advisors and, in part, the experience of other agencies administering disability programs. As the Social Security Administration gained experience in evaluating disability claims, the Listing was periodically reviewed and revised as appropriate. Changes in the Social Security law also have affected the Listing.

In 1968, after over a decade of operating experience, the Listing was revised and incorporated into the regulations as an appendix to Subpart P of Part 404. This appendix is presently divided into a Part A and a Part B. The criteria in Part A apply mainly to evaluating impairments of adults but may be appropriate in some cases to evaluating impairments in children under age 18. Part B of Appendix 1 contains medical criteria for the evaluation of impairments of children under age 18, where criteria in Part A do not give appropriate consideration to the particular disease processes in childhood. Part B was initially included in Appendix 1 of Subpart I of Part 416 in 1977, subsequent to the enactment of the Supplemental Security Income Program. While Part B applies mainly to claims under title XVI, it also applies in evaluating some claims under the title II disability insurance program.

In 1979, the Listing was updated again to reflect advances in the medical treatment of some conditions and in the methods of evaluating certain impairments. These revised rules were published in the **Federal Register** (44 FR 18170) on March 27, 1979. Until 1980, the Listing was contained in the regulations as an appendix to Subpart P of Part 404 (title II disability program) and also as an appendix to Subpart I of Part 416 (title XVI disability program). In recodifying these subparts in 1980, we took the medical criteria used in making disability determinations out of Part 416 and placed them only in Appendix 1 of Subpart P of Part 404. This was done to eliminate repetition in our regulations, since the same medical criteria generally apply to both the title II and title XVI disability programs. In view of the fact that Parts 404 and 416 are both published in Chapter III (Parts 400 to 499) of title 20 of the Code of Federal Regulations (CFR), this material is available to everyone in one volume of the CFR. This recodification was published in the **Federal Register** (45 FR 55566) on August 20, 1980. No further revisions in the Listing were made after that date.

The listing includes medical conditions frequently diagnosed for people who file for disability benefits. It describes, for each of the 13 major body systems, impairments that are severe enough to prevent a person from doing gainful activity. Most of the listed impairments are permanent or are expected to result in death, or a specific statement of duration is made. The evidence must show that the impairment has lasted or can be expected to last for a continuous period of not less than 12 months.

Purpose of the Listing

Using the Listing should assure that our disability determinations have a sound medical basis, that we will be able to treat equally all persons applying for disability benefits who are similarly situated, and that we will be able to readily identify those persons who are unable to do any gainful activity. The Listing sets out medical impairments which, in and of themselves, are considered severe enough to preclude gainful work, absent evidence to the contrary. Thus, if a person's impairment or combination of impairments equals or exceeds the level of severity described in the Listing, we find that he or she is disabled solely on the basis of the medical facts, unless we have evidence to the contrary; for example, evidence that the person is actually doing substantial gainful activity.

The Listing does not include all impairments. An unlisted impairment or impairments may be determined to be medically equivalent to an impairment contained in the Listing.

How We Use the Listing

Since the Listing contains the medical criteria we use for evaluating disability, it is an essential tool in the disability evaluation process. In determining whether or not a person's impairment constitutes a disability, we normally follow a sequential evaluation process. We do not go through this sequence for title II claims of widow(er)s, or SSI claims of children under age 18. This process consists of 5 steps as follows:

(1) If the person is actually doing substantial gainful activity, we determine that he or she is not disabled, no matter how severe his or her impairment(s) may be.

(2) If a person does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, we determine that he or she does not have a severe impairment and is not disabled, without considering the person's age, education and work experience.

(3) If a person has an impairment(s) that is described in the Listing or has one or more impairments medically equal to one of the listed impairments (and meets the duration requirement) and is not actually engaging in substantial gainful activity, we determine, without considering his or her age, education and work experience, that the person is disabled.

(4) If a person has a severe impairment which does not meet or medically equal any of the listed impairments and is not actually doing substantial gainful activity, we evaluate the person's residual functional capacity and consider the physical and mental demands of his or her past work. If we find that the person can do his or her past work, we determine that the person is not disabled.

(5) If a person cannot do any work that he or she did in the past because of a severe impairment(s), but has the remaining physical and mental capacities to meet the demands of other jobs that exist in significant numbers in the national economy, we determine that the person is not disabled. To make this determination, we consider, in addition to the impairment, the person's age, education, and work experience, including the presence of any acquired work skills that can be transferred to other jobs. If, however, the person's physical or mental capacities, together with the factors of age, education, and work experience, do not permit an adjustment to work different from work the person did in the past, we determine that the person is disabled.

Consultative Examinations

When necessary, we obtain additional medical findings to resolve the issue of medical severity. We obtain these medical findings by the use of consultative medical examiners at no expense to the applicant. It is not practicable, however, to obtain some types of findings by such a medical examination, either because hospitalization is required or because it is questionable whether an individual should be required to undergo a highly specialized procedure for the sole purpose of disability evaluation. However, many tests of this type are frequently used during the ordinary course of medical treatment and, when available, are of great value in the evaluation of disability. Therefore, while several tests of this type are mentioned in the medical criteria, in each case they are accompanied by a statement that they should be obtained independently of the Social Security disability evaluation process since we will accept this evidence, if available, but will not request that an individual undergo those tests.

Proposed Amendments

We are proposing revisions in the medical criteria for 11 of 13 body system listings in Part A of Appendix 1, including numerous revisions and a major reorganization of the respiratory system listing. In Part B of Appendix 1 we are proposing revisions in 5 body system listings. However, the background explanations and the listed impairments for all the body system listings in both Part A and Part B of Appendix 1 are being shown in full to provide a more complete explanation of each system listing, to show the relation of the medical evaluation criteria, and to give the public a better understanding of the Listing in general and the purposes of the changes.

The medical input for these revisions was supplied by three groups of physicians. The revisions were initially proposed by the Medical Consultant Staff of the Office of Disability Programs, whose members represent all medical specialties. Conferences were then held with other physicians employed by Social Security Regional Offices and Disability Determination Services, the State agencies that make disability determinations for us. After a preliminary consensus was reached, the revisions were then submitted for comment to all SSA Regional Office and State Disability Determination Services medical staffs, which resulted in further modifications.

Following is a summary of the proposed changes in each of the body system listings being revised, including proposed changes in the prefaces that introduce each body system listing and explain how the Listing is used in connection with the specific body system. We invite your comments about these changes.

Revisions to Part A of Appendix 1

1.000 Musculoskeletal System

Listing 1.02, which provides findings for the evaluation of rheumatoid arthritis, refers to joint changes that are found in severe, active arthritis. There has been some misunderstanding as to which joints this listing applies. To clarify this, section A of this listing will be revised by inserting the word "major" before the word "joints." This addition makes it clear that this listing would not be met by the involment of isolated small joints of the hands or feet. Wording has also been added to make it clear that the joints that are affected must show significant restriction of function.

Section B of this listing gives findings that confirm the diagnosis of rheumatoid arthritis. A fourth finding will be added: a biopsy report showing tissue changes characteristic of rheumatoid arthritis. This finding has not been included in this listing for several years because it is not obtained by treating physicians as frequently as the others cited, and when it is included in medical reports, in most cases other findings in the current listing are also reported. Its inclusion will, however, expedite the disability determination in the event a biopsy report is the only confirming finding reported in a particular case.

Section B of Listing 1.03, which provides findings to evaluate arthritis of the hip, specifies a condition in which the hip becomes fixed at an unfavorable angle. This section will be deleted, since findings showing the fixation of a hip at an unfavorable angle are seldom reported and may not properly reflect the required level of severity intended by the listings. Hip impairments caused by arthritis will be evaluated under section A of the Listing, which provides medical descriptions that are more often associated with severe limitations of standing and walking because of a hip impairment.

A revision will also be made in section A. Specific reference to hip and knee joints will be added to the current statement, which now can be interpreted to include the ankle joint. This change is necessary because the condition described in this section,

when it occurs in the ankle, does not produce a level of impairment comparable to that produced in the hip or knee.

Listing 1.04 provides medical findings that establish a disabling impairment of the upper extremities, including the shoulder joints, because of arthritis. One requirement is a finding of joint enlargement or effusion. This requirement is now located in the heading of this listing, which indicates that it pertains to all sections within the listing, including the section for the evaluation of shoulder joints. For shoulder joints, joint enlargement or effusion cannot be reliably detected by physical examination. Therefore, this requirement will be removed from the heading of this listing and placed in section B, the section that applies to joints of the upper extremity other than the shoulder joint.

Listing 1.08 provides findings for osteomyelitis. These findings are equally valid for another condition, septic arthritis, and the title of this listing will be expanded to include both conditions. Also, one of the medical signs of osteomyelitis, drainage, will be deleted from this listing, because it has been found to be a less reliable finding for evaluation than the others cited.

Section C of Listing 1.10 concerns complications following a leg amputation that can prevent walking effectively with an artificial leg. A key requirement of this section is that the complication must prevent unassisted walking. This is currently expressed by a phrase referring to the need to use "obligatory assistive devices." This will be replaced with more concrete language that makes it clear that the devices intended are those that provide support to both arms or shoulders, such as a walker or crutches, as contrasted to one arm assistance, such as provided by a cane.

The term "mobility restrictions" in Listing 1.10C.4 has also been clarified.

2.00 Special Senses and Speech

Section 2.00 is an introductory section that includes general principles to be used in the listings that concern loss of sight, hearing and speech. A new paragraph will be added to Section A to explain the technical specifications for the Goldman perimeter, a commonly used method of measuring one aspect of vision. The word "spectacle" has been entered in the first paragraph of section 2.00A.3. This is to indicate that contact lenses may be worn during the performance of the visual test described.

3.00 Respiratory System

Extensive changes will be made in this system, both in the introduction and the listings themselves. A number of evaluation revisions have been made. In addition, there has been a reorganization in order to make the presentation easier for disability evaluators to use. This is especially important in this system because many of the listings are interrelated by their mutual dependence on tables that give values for breathing tests. In view of the extensive changes, this system has been completely rewritten.

The major revisions of the introduction, section 3.00 are as follows:

Section A of 3.00 will be expanded to give a detailed discussion of the approach to the evaluation of respiratory diseases. This includes a discussion of how disability occurs because of lung diseases, and the place of breathing tests and tests of gas exchange (exchange between the lungs and blood) in the evaluation of disability.

Section B will be expanded to include the evaluation approach to most of the lung infections that are of concern for disability evaluation. Currently, this section is confined to a discussion of one general type of lung infection, which is caused by mycobacteria, primarily tuberculosis. The revision will apply the same evaluation approach to conditions caused by mycotic organisms. The course of these two types of infection and their response to treatment do not justify separate principles of evaluation.

Section D concerns the use of breathing tests in the evaluation of disability. The title of this section has been changed to more accurately describe its content—from "documentation of pulmonary insufficiency" to "documentation of ventilatory function tests." A sentence has been added to the second paragraph of this section to specify that height, which is used in tests of breathing to predict normal values, should be measured without shoes. Another change in this paragraph provides a highly technical addition that describes the calibration of units of volume on equipment that records breathing function.

A new section, section E, will be added to the introduction. This section will give a more complete explanation of the use of tests that determine the adequacy of the exchange of gases between the lungs and blood. It also gives a more complete discussion of the place of these tests in disability evaluation. This includes the evidence that shold be obtained before resorting to this type of testing. This is an important consideration because the tests are highly specialized and expensive, and should be used only in the small percentage of cases in which they are essential.

Numerous changes are also being made in the listings for specific lung diseases.

Listing 3.02, which currently gives criteria for one type of lung condition, has been expanded to include evaluation of the various types of lung conditions that result in permanent impairment of breathing or in the capacity to exchange gases between the lungs and blood. This will simplify the cross referencing of different listings that are based, in part, on these tests, and will give a more unified presentation of how the values obtained from breathing tests relate to evaluation.

In addition to this basic reorganization, a number of technical changes will be included in the revised listing. Table 1, the table for obstructive pulmonary disease, will contain technical adjustments to make the two values used in this table more consistent. Revision of the values will also be made to make them more accurate for taller individuals.

Listing 3.02B, which includes the evaluation of spinal curvatures that diminish breathing, will specify that when the spine is deformed to the extent that it distorts height, arm span should be substituted for height in interpreting the results of breathing tests.

The data for the measurement of gas exchange in Listing 3.02C have been expanded to include values for testing during controlled exercise. Another revision in this section will recognized the influence of air pressure differences, because of elevation, on the tests of gas exchange. Separate tables will be provided based on the elevation at which the test is performed.

Listing 3.03 provides for the evaluation of chronic asthma, by giving criteria for the frequency of attacks, their severity, and the presence of remaining symptoms between severe attacts. Language will be added to the last sentence of section B of this listing to emphasize that findings between attacks must be documentated by medical examinations.

A significant change will be made in Listing 3.09, the listing that gives criteria for mycotic lung infections. Currently, this infection is evaluated by findings indicating continuing infection. The change will provide for evaluation of the permanent lung damage caused by the disease after the acute infection is past. This revision is based on changing

treatment which makes it improbable that this condition will meet the 12 months duration required for a finding of disability. (However, an evaluation approach to rare cases of prolonged infection is contained in section 3.00B.)

Listing 3.12, the listing for fistulas that arise from the pleura, or covering of the lung, will be deleted. It is now obsolete because of surgical and medical treatment. Fistulas of this type are now often of short duration or, if prolonged, are improved to the extent that they do not reflect the severity intended when this listing was first published. The existing listings now provide for adequate evaluation of fistulas on the basis of the primary medical conditions that cause them.

4.00 Cardiovascular System

Section 4.00 is an introduction to the listings for heart conditions and other vascular diseases. Several items in this introduction will be changed. The fourth paragraph of subsection F.1 will be revised to make it clear that descriptions of electrocardiograms are not sufficient for disability evaluation, and that a copy of the electrocardiogram must also be submitted. A sentance has been added after the second sentence of the first paragraph of subsection F.2 to explain that a type of electrocardiogram reading, called a posthyperventilation tracing, may be essential to evaluate people with certain medical conditions.

The following segment has been deleted from the first sentence of subsection G.2 of this introduction: "as typified by the Bruce protocol." This protocol, a well-known procedure used in treadmill testing for heart conditions, was used as an example. The increasing use of treadmill exercise tests in the medical management of heart conditions now makes this example unnecessary.

The first paragraph of subsection G.3 lists conditions in which treadmill exercise testing should not be obtained for the evaluation of heart disease, in most cases because of the potential hazard. Another situation, involving the recent onset of chest pains that are considered to be caused by a heart condition, will be added to the first paragraph. This is widely recognized by physicians as a reason for delaying this type of testing.

A sentence has been added at the end of section I in recognition of the increasing use of echocardiography, a method of determining the characteristics of heart conditions. This sentence points out that this method may not be a conclusive test for specific heart conditions.

Another addition to this introductory section concerns vascular disease of the legs rather than heart disease. This addition, section K, gives background material on how a medical technique (Doppler study) is used for the measurement of the adequacy of blood circulation in the legs.

Section A of Listing 4.04 contains technical requirements for findings obtained from electrocardiograms made during exercise. Two revisions to the section are proposed—one in item 1, another in item 2. Both concern one aspect of an electrocardiogram, called the ST segment. The first revision provides more detail on the measurement of this aspect of the electrocardiogram; the second adds an additional characteristic of this measurement that can verify an abnormality of heart function. Section D of this listing will also be revised by adding evidence obtained by the radio-isotopic method, a method that is being increasingly used by physicians to determine the characteristics of heart abnormalities.

The title of Listing 4.13 will be changed to "peripheral arterial desease." This replaces a title that cites two common conditions that often produce severe impairment because of decreased functioning of the arteries in the legs. The revised title makes it clear that evaluation under this listing is not restricted to conditions with these two specific diagnoses. Section B of Listing 4.13 concerns testing the adequacy of blood flow in the legs by using a technique (Doppler study) that detects blood flow by sound waves. The required values from this test, which are now contained in supplemental instructions, will be included in the listing.

5.00 Digestive System

Section A of Listing 5.05 gives one of several findings used to confirm advanced, chronic liver disease. This is based on bleeding from lesions (varices) that are caused by liver disease. While this is usually a good indicator of disabling liver disease, in some cases prolonged periods of improvement can occur after bleeding of this type. Therefore, this section will be revised to state that when bleeding has not occurred for 12 months at the time disability is being considered, this factor alone will not be used to establish that liver disease is disabling. A similar change has been made in section B of this listing. In this case, the need for surgery for these lesions caused by liver disease is used as a measure of the severity of the condition. The same 12-month statement will be added because in some cases prolonged improvement occurs after this surgery. A new section, D, will be added to Listing 5.05. This is based on another reliable indicator of advanced liver disease, the accumulation of fluid in the abdomen. Presently, there is a section, 5.05F.1, that uses this finding in combination with evidence from a liver biopsy. This new section will allow this finding to be used in the absence of liver biopsy, and substitutes for equivalent meaning a requirement that the fluid accumulation must be present for a longer period of time than is required when a liver biopsy has been obtained. In the same listing, the phrase "for at least 3 months" has been added at the end of subsection 2 of section F. This corrects a printing omission made during a prior revision.

Listing 5.08 uses extreme weight loss as a measure of the severity of diseases of the intestines and other organs of the gastrointestinal system. Language will be added to the heading of this listing to emphasize that the weight loss must be persistent. This addition is needed to prevent this listing from being applied to gastrointestinal conditions which, though severe, are subject to definite improvement over a period of less than 12 months.

7.00 Hemic and Lymphatic System

Section 7.00 is an introduction to the listings for blood diseases. A sentence will be added to section E, the part of this introduction that concerns the evaluation approach to acute leukemia. This addition will specify that a phase of one type of chronic leukemia should be evaluated in the same manner as acute leukemia. This is necessary because the usual course for this phase of chronic leukemia is similar to that for acute leukemia.

An additional finding showing chronic anemia will be added to the listing for sickle cell disease. This measure of chronic anemia, added as section C of Listing 7.05, is already included in the listing for sickle cell disease for children under 18 in Part B. Its inclusion in the adult listing will facilitate proper decisions for young adults with this condition.

Listing 7.12, the listing for chronic leukemia, will retain the same wording, but the concluding references to other listings will be changed, with the addition of references to Listings 7.11 and 7.17. This is made necessary by the addition of another listing, 7.17, and the additional consideration of one phase of chronic leukemia discussed in the explanation of the change in section 7.00E. See the explanation of the revision of section 7.00E and Listing 7.17

for a further understanding of the purpose of the additional references.

Listing 7.16 provides findings for a type of bone tumor that produces changes in the blood. Reference to pathological bone fracture, fractures which occur without definite trauma, has been removed from section A of the listing. Another listing, 1.11, gives more accurate criteria for this condition than provided in this listing.

A new listing, 7.17, will be added to recognize the treatment of severe anemias and blood malignancies by the transplantation of bone marrow. It will provide for consideration of the improvement that occurs in many cases after this method of treatment.

9.00 Endocrine System

One word has been changed in section C of Listing 9.08, the listing for diabetes mellitis. The work "vascular" will be replaced with "arterial," because this condition is caused by disease of the arterial system in the legs rather than in the veins of the leg.

10.00 Multiple Body Systems

Section 10.00 is an introduction to the listings for conditions that affect several body systems. Item B of this introduction concerns the evaluation approach to massive obesity and provides background information on the use of Listing 10.10, the listing for extreme obesity. Both this part of the introduction and the listing for obesity will be revised on the basis of experience gained in the evaluation of extreme obesity. The revision contains tables which provide weights that are approximately 100 percent above the average weights for men and women of specific heights. Experience has shown that when obesity reaches these extremes disabling complications may be assumed on the basis of impairments of the respiratory, cardiovascular or musculoskeletal systems. Therefore, when a person's weight meets or exceeds the appropriate weight in the tables, disability will be established. Disability may occur in association with obesity that is less than that shown on these tables. Thus, the introductory section, 10.00B, will state that impairments of various body systems may be complicated by extreme obesity, although the person's weight is not as great as that shown in the tables, and must be evaluated.

11.00 Neurological

Section 11.00 is an introduction to the listings for the evaluation of neurological impairments. Item A of this introduction includes the approach to the evaluation of epilepsy. Additional language added to the third paragraph will specify that a medical test (determination of drug levels in the blood serum) must be considered in determining whether prescribed medication for seizures is being taken. This revision is necessary because of the increasing ability to control seizures by using proper drug therapy regimens. Item B of this introduction concerns brain tumors, which often cause disability by affecting the nervous system. A change in the first sentence of section B of this introduction points out that the diagnosis and persistence of brain tumors should be determined before applying the findings in the neurological listings. The listings used to evaluate brain tumors provide only descriptions of signs, symptoms and findings. These descriptions cannot be used without consideration of the specific type of tumor involved, because characteristics of these tumors vary. Some respond rapidly to surgery or other treatment and the neurological findings in the listings may in some cases be temporary. A change will also be made in the last sentence of section B of the introduction. The word "benign" will be removed from before the word "tumor." For certain brain tumors, the distinction between benign and malignant tumors may be controversial, but the distinction is not important for the proper use of the listing.

12.00 Mental Distorders

The name of the well-known intelligence test (Wechsler Adult Intelligence Scale) referred to in this preface has been changed to show the name for the latest version of this test (Wechsler Adult Intelligence Scale-Revised).

13.00 Neoplastic Diseases

Several changes will be made in section C of the introduction to the listings for the evaluation of neoplastic diseases. In the first and fourth paragraphs, wording changes will be made that do not change the substance. An added fifth paragraph will state that the neoplastic listings do not apply in cases where the original tumor and any spread from it have disappeared for 3 or more years. Although the conditions described in these listings are those in which improvement is unlikely, varying responses to therapies make this time qualification necessary.

Listing 13.03 will be revised to ensure there will be no misunderstanding of the extent of tumor spread that is intended. The reference to lymph nodes in section B will be replaced with a reference to the specific nodes intended—the regional lymph nodes. Similar changes have been made in Listings 13.21C, 13.22B, and 13.26B.

In Listing 13.21, a change will also be made in section B to specify the type of tumor spread required.

Listing 13.13, which provides for the evaluation of malignant lung tumors, will be revised to reflect current medical knowledge about the expected course of different types of lung tumors. Sections D and E of this listing will provide different standards based on the extent of tumor spread, depending on the type of tumor shown by cell examination.

Section A of Listing 13.16 current provides different standards for tumors of the esophagus, depending on the location of the tumors, with evidence of greater tumor spread being required for those located in the lower part of the esophagus. The revision will eliminate the separate requirement. Program and general medical experience have not shown that there are sufficient differences in the course of these tumors to justify a requirement of greater spread for tumors located in the lower part of the esophagus.

The requirement in Listing 13.19, section C, for one type of tumor of the bile ducts will be revised. Evidence of the extension of this tumor from the original location will no longer be required. This is based on additional medical data showing the usual course of tumors in this area.

Two additional listings will be provided for this body system: 13.29, which gives evaluation criteria for one type of malignant tumor of the penis; and 13.30, which gives criteria for the vulva. The requirements for both are based on the expected course of these conditions, considering available treatment.

Revisions to Part B of Appendix 1

101.00 Musculoskeletal System

Listing 101.02 gives findings for children with rheumatoid arthritis. Section A of this listing now specifies that signs of joint inflammation must persist or recur despite 6 months of medical treatment. This period will be changed to 3 months, the period now specified for the comparable adult listing, which is sufficient time to establish a chronic condition for the purpose of disability evaluation.

102.00 Special Senses and Speech

Listing 102.08 provides standards to measure hearing loss in children. The hearing threshold in B1, which applies to older children, will be revised to conform to the threshold in the comparable adult listing.

106.00 Genito-Urinary System

Listing 106.02 provides laboratory values for the evaluation of chronic kidney disease in children. These laboratory findings will be revised to make them consistent with those in the comparable adult Listing, by eliminating use of BUN findings and substituting laboratory findings based on creatinine values, which are more reliable measures of chronic kidney disease.

112.00 Mental and Emotional Disorders

The name of the well-known intelligence test (Wechsler Adult Intelligence Scale) referred to in this preface has been changed to show the name for the latest version of this test (Wechsler Adult Intelligence Scale-Revised).

113.00 Neoplastic Diseases

Listing 113.02 provides medical criteria for malignant tumors that involve the lymph system. Section A of this listing will be revised to provide separate criteria for Hodgkin's disease. The revision states that Hodgkin's disease must be shown to be progressive and uncontrolled by prescribed therapy. General medical experience over the past several years has shown increasingly successful treatment of this condition.

Executive Order 12291. These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The revisions are of a technical-medical nature and no significant change in disability allowance and denial rates is expected. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act. We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they only affect disability determinations under title II and title XVI of the Act.

Paperwork Reduction Act. These regulations impose no reporting/recordkeeping requirements necessitating OMB clearance.

The proposed amendments are issued under the authority contained in sections 205, 216(i), 223, 1102, 1614(a) and 1631 of the Social Security Act, as amended; 53 Stat. 1668, as amended; 66 Stat. 771, as amended, 70 Stat. 815, as amended; 49 Stat. 647, as amended; 86 Stat. 1471(a); 86 Stat. 1475; 42 U.S.C. 405, 416(i), 423, 1302, 1382c(a) and 1383.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security-Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disabled; Old-Age, Survivors and Disability Insurance.

Dated: March 9, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: April 16, 1982.

Richard S Schweiker,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950———)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

20 CFR Part 404, Subpart P is amended as follows:

The authority citation for Subpart P reads as follows:

Authority: Issued under Secs. 202, 205, 216, 221, 222, 223, 225, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 66 Stat. 1080, as amended, 68 Stat. 1081, as amended, 68 Stat. 1082, as amended, 70 Stat. 815, as amended, 70 Stat. 817, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425, and 1302.

2. In Part 404, Appendix 1 (Listing of Impairments) of Subpart P is revised to read as follows:

Appendix 1.—Listing of Impairments

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

1.00 Musculoskeletal system.
2.00 Special sense and speech.
3.00 Respiratory system.
4.00 Cardiovascular system.
5.00 Digestive system.
6.00 Genito-urinary system.
7.00 Hemic and lymphatic system.
8.00 Skin.
9.00 Endocrine system.
10.00 Multiple body systems.
11.00 Neurological.
12.00 Mental disorders.
13.00 Neoplastic diseases—malignant.

1.00 Musculoskeletal System

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine,* associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated, in 1.05C represent the requirements for the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the severity of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be take to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising

test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12), or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); American Medical Association, 1971.

1.01 Category of Impairments, Musculoskeletal

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.*

With both A and B:

A. History of persistent joint pain, swelling, and tenderness involving multiple major joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and

B. Corroboration of diagnosis at some point in time by either:

1. Positive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate; or

4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule.

1.03 *Arthritis of a major weight-bearing joint (due to any cause):*

With history of persistent joint pain and stiffness with signs of severe limitation of motion of the affected joint on current physical examination. With:

A. Gross anatomical deformity of hip or knee (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) with X-ray evidence of either severe joint space narrowing or significant bony destruction *and* severely limiting ability to walk and stand; or

B. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of severe limitation of motion of the affected joints on current physical examination, and X-ray evidence of either severe joint space narrowing or significant bony destruction. With:

A. Abduction and forward flexion (elevation) of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability, ulnar deviation) and enlargement or effusion of the affected joints.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.06 *Osteomyelitis or septic arthritis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation, or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, and requiring obligatory bilateral upper limb assistance (e.g., walker, crutches), due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity which severely limits ability to walk and stand.

1.11 *Fracture of the femur, tibia, tarsal bone, or pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be

determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7 foot candles. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without a lens), a 6 mm. white disc target will be used. In neither instance should corrective spectacle lenses be worn during the examination but if they have been used, this fact must be stated.

Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For measurements obtained using the Goldman perimeter, the object size designation III and the illumination designation 4 should be used for the phakic eye, and the object size designation IV and illumination designation 4 for the aphakic eye.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscles of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function mus be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of its value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of severity in a claimant alleging deafness, the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as light-headedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular function is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained, in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or laryngectomy or cicatricial laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 209), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; of

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the

percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater, and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000, and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear.

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard, understood, and sustained.

TABLE NO. 1.—PERCENTAGE OF CENTRAL VISUAL EFFICIENCY CORRESPONDING TO CENTRAL VISUAL ACUITY NOTATIONS FOR DISTANCE IN THE PHAKIC AND APHAKIC EYE (BETTER EYE)

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic monocular [2]	Aphakic binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30	.....	22
20/200	6/60	20	.....	.....

Column and Use

[1] Phakic—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens is absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however the central visual acuity in the poorer eye after best correction is 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

Table No. 2.—*Chart of visual field showing extent of normal field and method of computing percent of visual field efficiency*

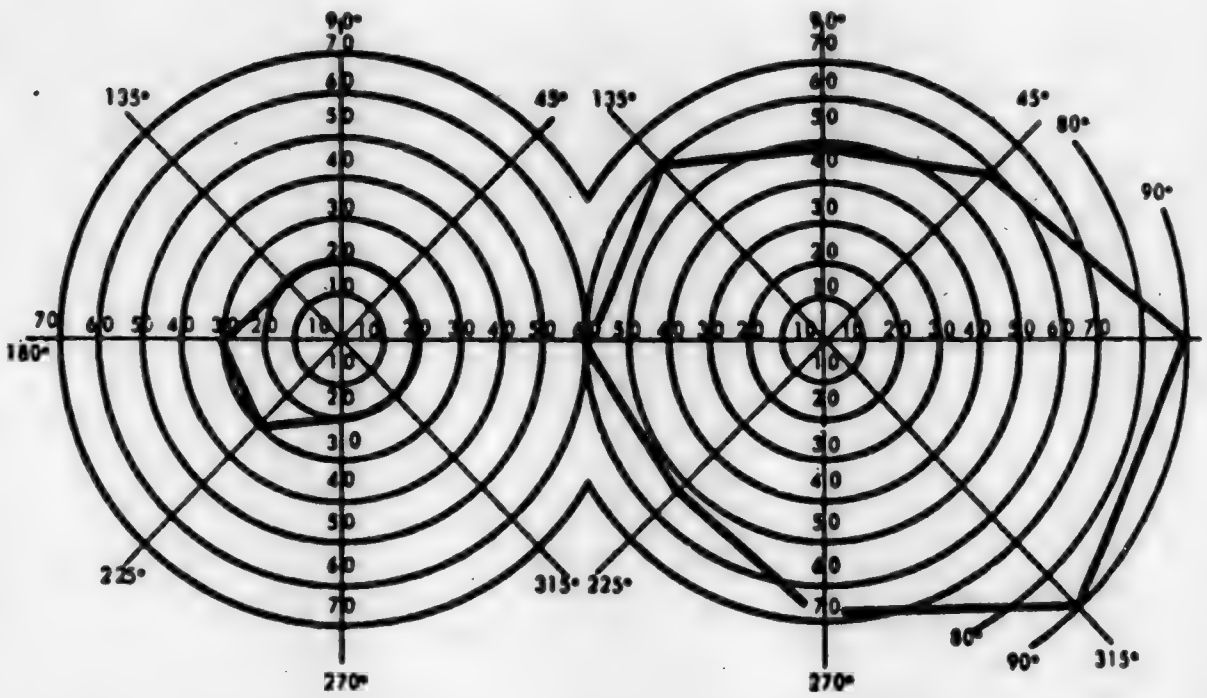

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field

efficiency of this field is: $6\times20+2\times30=180\div500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 *Respiratory System*

A. *Introduction:* Impairments caused by chronic disorder or the respiratory system generally result from irreversible loss of pulmonary functional capacity (ventilatory impairment, gas exchange impairment, or a combination of both). The most common symptom attributable to these disorders is dyspnea on exertion. Cough, wheezing, sputum production, hemoptysis, and chest pain may also occur, but need not be present. However, since these symptoms are common to many other diseases, evaluation of impairments of the respiratory system requires a history, physical examination, and chest roentgenogram to establish the diagnosis of a chronic respiratory disorder. Pulmonary function testing is required to provide a basis for assessing severity of the impairment, once the diagnosis is established by appropriate clinical findings.

Alternation of ventilatory function may be due primarily to chronic obstructive pulmonary disease (emphysema, chronic bronchitis, chronic asthmatic bronchitis) or restrictive disorders with primary loss of lung volume (pulmonary resection, thoracoplasty, chest cage deformity as seen in kyphoscoliosis), or infiltrative interstitial disorders (diffuse fibrosis). Impairment of gas exchange without significant airway obstruction may be produced by interstitial disorders (diffuse fibrosis). Primary disease of pulmonary circulation may produce pulmonary vascular hypertension and, eventually, heart failure. Whatever the mechanism, any chronic progressive pulmonary disorder may result in cor pulmonale or heart failure. Chronic infection caused, most frequently, by mycobacterial or mycotic organisms, may produce extensive lung destruction resulting in servere loss of pulmonary functional capacity. Some disorders such as bronchiectasis and asthma may be characterized by acute, intermittent illnesses of such frequency and severity to produce severe impairment apart from intercurrent functional loss, which may be mild.

Most chronic pulmonary disorders may be adequately evaluated on the basis of history, physical examination, chest roentgenogram, and ventilatory function tests. Direct assessment of gas exchange by exercise arterial blood gas determination or diffusing capacity is required only in specific relatively rare circumstances, depending on the clinical features and specific diagnosis.

B. *Mycobacterial and mycotic infections of the lung will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active mycobacterial or mycotic infection, such as positive cultures, increasing lesions, or cavitation, is not, by itself, a basis for determining that the individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistent pulmonary infection caused by mycobacterial or mycotic organisms for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed determined whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchietasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in section 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of ventilatory function tests.* The results of ventilatory function studies for evaluation under tables I, II, and III should be expressed in liters or liters per minute (BTPS). The reported one second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV_1. These studies should be repeated after administration of a nebulized bronchodilator unlesss the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables I, II, and III assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in tables I, II, and III.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The manufacturer and model number of the device used to measure and record the ventilatory function should be stated. If the spirogram was generated other then by direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show the calibration of volume units through mechanical means such as would be obtained using a giant syringe. The FEV_1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV_1 from a flow volume loop is not acceptable. The recording device must provide a volume excursion of at least 10 mm. per liter. The MVV should be represented by the tidal excursion measured over a 10-to-15 second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The ventilatory function tables are based on measurement of the height of the individual without shoes. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions and cooperate in performing the test.

3.00E *Documentation of chronic impairment of gas exchange—Arterial blood gases and exercise tests.*

1. *Introduction:* Exercise tests with measurement of arterial blood gases at rest and during exercise should be purchased when not available as evidence of record in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed ventilatory function tests, is not adequate to evaluate the severity of the impairment. Before purchasing arterial blood gas tests, medical history, physical examination, report of chest roentgenogram, ventilatory function tests, electrocardiographic tracing, and hematocrit must be obtained and should be evaluated by a physician competent in pulmonary medicine. Arterial bloold gas tests should not be purchased where full development short of such purchase reveals that the impairment meets or equals any other listing or when the claim can be adjudicated on some other Capillary blood analysis for PO_2 or PCO_2 is not acceptable. Analysis of arterial blood gases obtained after exercise is stopped is not acceptable.

Generally, individuals with an FEV_1 greater than 2.5 liters or an MVV greater than 100 liters per minute would not be considered for blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on chest X-ray or documented by tissue diagnosis. The exercise test facility should be provided with the clinical reports, report of chest roentgenogram, and spirometry results obtained by the DDS. The testing facility should determine whether exercise testing is clinically contraindicated. If an exercise test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

2. *Methodology.* Individuals considered for exercise tesing first should have resting PaO_2, $PaCO_2$, and pH determinations by the testing facility. The samples should be obtained in the sitting or standing position. The individual should be exercised under steady state conditions, preferably on a treadmill for a period of 6 minutes at a speed and grade providing a workload of approximately 17 ml. O_2/kg./min. If a bicycle ergometer is used, an exercise equivalent of 450 kgm./min., or 75 watts, should be used. At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated level, a lower speed and/or grade may be selected in keeping with the exercise capacity estimate. The individual should be monitored by electrocardiogram throughout the exercise and representative strips taken to provide heart rate in each minute or exercise. During the 5th or 6th minute of exercise, an arterial blood gas sample should be drawn and

analyzed for PO_2, PCO_2, and pH. If the facility has the capability, and at the option of the DDS and the facility, minute ventilation (BTPS) and oxygen consumption per minute (STPD) and CO_2 production (STPD) should be measured during the 5th or 6th minute of exercise. If the individual fails to complete 6 minutes of exercise, the facility should comment on the reason.

The report should contain representative strips of electrocardiograms taken during the exercise, hematocrit, resting and exercise arterial blood gas value, speed and grade of the treadmill or bicycle ergometer exercise level in watts or kgm./min., and duration of exercise. The altitude of the test site, barometric pressure, and normal range of blood gas values for that facility should also be reported.

3. *Evaluation.* Three tables are provided in Listing 3.02C2 for evaluation of arterial blood gas determinations at rest and during exercise. The blood gas levels in Listing 3.02C2, Table IV–A, are applicable at test sites situated at less than 3000 feet above sea level. The blood gas levels in Listing 3.02C2, Table IV–B, are applicable at test sites situated at 3000 through 6000 feet above sea level. The blood gas levels in Listing 3.02C2, Table IV–C, are applicable for test sites over 6000 feet above sea level. Tables IV–B and C take into account the lower blood PaO_2 normally found in individuals tested at the higher altitude. When the barometric pressure is unusually high for the altitude at the time of testing, consideration should be given to those cases in which the PaO_2 falls slightly above the requirements of Table IV–A, IV–B, or IV–C, whichever is appropriate for the altitude at which testing was performed.

3.01 *Category of Impairments, Respiratory*

3.02 *Chronic Pulmonary Insufficiency.* With:

A. Chronic obstructive pulmonary disease (due to any cause). With: Both FEV_1 and MVV equal to or less than values specified in Table I corresponding to the person's height without shoes.

TABLE I

Height (inches without shoes)	FEV_1 equal to or less than (L, BTPS)	MVV (MBC) equal to or less than (L/min.)
60 or less	1.0	40
61–63	1.1	44
64–65	1.2	48
66–67	1.3	52
68–69	1.4	56
70–71	1.5	60
72 or more	1.6	64

B. *Chronic restrictive ventilatory disorders.* With: Total vital capacity equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height.

TABLE II

Height (inches without shoes)	VC equal to or less than (L)
59 or less	1.0
60–63	1.1
64–66	1.2
67–69	1.3
70 or more	1.4

C. *Chronic impairment of gas exchange (due to any cause).* With:

1. Total vital capacity equal to or less than the values in Tables III below, corresponding to the person's height without shoes.

TABLE III

Height (inches without shoes)	VC equal to or less than (L)
57 or less	1.2
58–59	1.3
60–61	1.4
62–63	1.5
64–65	1.6
66–67	1.7
68–69	1.8
70–71	1.9
72 or more	2.0

or

2. Steady-state exercise blood gases demonstrating values of PaO_2 and simultaneously determining PaO_2, measured at a workload of approximately 17 ml. O_2/kg./min. or less of exercise, equal to or less than the values specified in Table IV–A or IV–B or IV–C

TABLE IV–A

[Applicable at test sites less than, 3,000 feet above sea level]

Arterial PCO_2 (mm Hg—)	Arterial PO_2 equal to or less than (mm Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

TABLE IV–B

[Applicable at test sites 3000 through 6000 feet above sea level]

Arterial PCO_2 (mm Hg)	Arterial PO_2 equal to or less than (mm Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51

TABLE IV–B—Continued

[Applicable at test sites 3000 through 6000 feet above sea level]

Arterial PCO_2 (mm Hg)	Arterial PO_2 equal to or less than (mm Hg)
40 or above	50

TABLE IV–C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm Hg)	Arterial PO_2 equal to or less than (mm Hg)
30 or above	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

OR

3. Diffusing capacity for the lungs for carbon monoxide less than 6 ml./mm. Hg/min. (steady-state methods) or less than 9 ml./mm. Hg/min. (single breath method) or less than 30 percent of predicted normal. (All methods, actual values, and predicted normal values for the methods used should be reported.): OR

4. Mixed obstructive ventilatory and gas exchange impairment. Evaluate under the criteria in 3.02A and B, and C.

3.03 *Asthma.* With:

A. Chronic asthmastic bronchitis. Evaluate under the criteria for chronic obstructive ventilatory impairment in 3.02A; OR

B. Episodes of severe attacks (See 3.00C), in spite of prescribed treatment, occurring at least once every 2 months or on an average of at least 6 times a year, and prolonged expiration with wheezing or rhonchi on physical examination between attacks.

3.06 *Pneumoconiosis (demonstrated by roentgenographic evidence).* Evaluate under criteria in 3.02.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least every 2 months; OR

B. Impairment of pulmonary function due to extensive disease should be evaluated under the applicable criteria in 3.02.

3.08 *Mycobacterial infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under appropriate criteria in 3.02.

3.09 *Mycotic infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.11 *Cor pulmonale or pulmonary vascular hypertension.* Evaluate under the criteria in 4.02D.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and/or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart disease or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertensive, rheumatic, plumonary, congential, or other organic heart disease). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with the clinical diagnosis. [Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be causally related to the current episode of severe impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart disease such as caused by cardiomyopathy or aortic stenosis may result in severe impairment due to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptoms of dyspnea, fatigue, rhythm disturbances, etc. should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vascular disease* does not reult in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart disease* may result in severe impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F, G, or H.

E. *Chest pain of cardiac origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing, squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and response to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (e.g., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing, appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large QRS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracings should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Detailed descriptions or computer interpretations without the original or legible copies of the ECG are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of appropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A posthypervetilation tracing may be essential for the proper evaluation of a "positive" test in certain circumstances, such as in women with evidence of mitral valve prolapse. A tracing should be taken at approximately 5 METs of exercise and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at the time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test should be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise tests should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen. The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to that heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate (see also 4.00F.2). Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; recent onset (approximately 2 months) of angina; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled severe hypertension; severe aortic stenosis; severe pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments; or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of the social security disability program, treadmill

exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in § 4.04A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test. If there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of METs (metabolic equivalent units). One MET is the basal O_2 requirement of the body in an inactive state, sitting quietly. It is considered by most authorities to be approximately 3.5 ml. O_2/kg./min.

H. *Angiographic evidence.*

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with severe proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should described the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch;

b. Left anterior descending coronary artery proximal to the first septal perforator; and

c. Left circumlex coronary artery proximal to the first obtuse marginal branch.

I. *Results of other tests.* Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the listing. An ejection fraction measured by echocardiography is not determinative, but may be given consideration in the context of associated findings.

J. *Major surgical procedures.* The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment of severity postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the severity of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

K. *Evaluation of peripheral arterial disease.* The evaluation of peripheral arterial disease is based on medically acceptable clinical findings providing adequate history and physical examination findings describing the impairment, and on documentation of the appropriate laboratory techniques. The specific findings stated in Listing 4.13 represent the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. The severity of the impairment is based on the symptomatology, physical findings, Doppler studies before and after a standard exercise test, and/or angiographic findings.

The requirements for evaluation of peripheral arterial disease in Listing 4.13B are based on the ratio of systolic blood pressure at the ankle, determined by Doppler study, to the systolic blood pressure at the brachial artery determined at the same time. Results of plethysmographic studies, or other techniques providing systolic blood pressure determinations at the ankle, should be considered where the information is comparable to the requirements in the listing.

Listing 4.13B.1 provides for determining that the listing is met when the resting ankle/brachial systolic blood pressure ratio is less than 0.50. Listing 4.13B.2 provides additional criteria for evaluating peripheral arterial impairment on the basis of exercise studies when the resting ankle/brachial systolic blood pressure ratio is 0.50 or above. The results of exercise studies should describe the level of exercise (e.g., speed and grade of the treadmill settings), the duration of exercise, symptoms during exercise, the reasons for stopping exercise if the expected level of exercise was not attained, blood pressures at the ankle and other pertinent levels measured after exercise, and the time required to return the systolic blood pressure toward, or to, the preexercise level. When exercise Doppler studies are purchased by the Social Security Administration, it is suggested that the requested exercise be on a treadmill at 2 mph. on a 12 percent grade for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated. The methodology of a qualified, competent facility should be accepted. In any case, a precise description of the protocol that was followed must be provided.

It must be recongized that application of the criteria in Listing 4.13B may be limited in individuals who have severe calcific (Monckeberg's) sclerosis of the peripheral arteries or severe small vessel disease in individuals with diabetes mellitus.

4.01 Category of Impairments, Cardiovascular System

4.02 *Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema).* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with S_{v_1} plus R_{v_5} (or R_{v_6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:

1. ECG showing QRS duration less than 0.12 second with S_{v_1} plus R_{v_5} (or R_{v_6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves; or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_2 to V_5 or V_6; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram of fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6.

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 or 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain of cardiac origin as described in 4.00E.* With:

A. Treadmill exercise test (see 4.00 F and (G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or downsloping depression (from the standing control) of the ST segment to 1.0 mm. or greater, lasting for at least 0.08 second after the J junction, and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Junctional depression occurring during exercise, remaining depressed (from the standing control) to 2.0 mm. or greater for at least 0.08 second after the J junction (the so-called slow upsloping ST segment), and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

3. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

4. ST segment elevation to 3 mm. or greater; or

5. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least 1/3rd or R wave and with a duratioin of 0.04 second or more. (If these are present in leads III and aVF only, the requisite Q wave fidings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see § 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and aVL and V_6 or (b) leads II and III and aVF or (c) leads V_3 through V_6; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and aVL and V_6 or (b) leads II and III and aVF or (c) leads V_3 through V_6; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or V_1 or V_2; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, V_3 to V_6 *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of social security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, V_5, or V_6, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7); or

D. Akinetic or hypokinetic myocardial wall or spetal motion with left ventricular ejection fraction of 30 percent or less measured by contrast or radio-isotopic ventriculographic methods (obtained independent of social security disability evaluation).

4.05 *Recurrent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated syncopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Peripheral arterial disease.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of social security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication with severe impairment of perihpheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at ankle on exercise (see 4.00K) to 50 percent or less of preexercise level *and* requiring 10 minutes or more to return to preexercise level.

C. Amputation at or above the tarsal region due to peripheral arterial disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in severe impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g., enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders, of malabsorption, malassimilation, or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a severe impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and phloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent of less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under § 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy)* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy; or

D. Weight loss as described under § 5.08.

5.05 *(Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices. Consider under a disability for 12 months following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

B. Performance of a shunt operation for esophageal varices. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment; or

C. Serum bulirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbumnemia of 30 gml per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluated under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of social security (disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less.

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater on repeated examinations for at least 3 months.

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 *(Chronic ulcerative or granulomatous colitis (demonstrated by endoscropoy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrence of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under § 5.08.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestional obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as decribed under § 5.06.

5.08 *Weight loss due to any persisting gastrointestinal disorder.* (The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months.) With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less: or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4. Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglocemia, or ketosis; or

5. Fat in stool or 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.08.

TABLE I.—MEN

Height (inches)[1]	Weight (pounds)
61	90
62	92
63	94
64	97
65	99
66	102
67	105
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

TABLE II.—WOMEN

Height (inches)[1]	Weight (pounds)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	96
67	101
68	104
69	107
70	110
71	114
72	117
73	120

TABLE III.—MEN

Height (inches)[1]	Weight (pounds)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	125
72	129
73	133
74	136
75	139
76	143

TABLE IV.—WOMEN

Height (inches)[1]	Weight (pounds)
58	82
59	84
60	87
61	89
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	124
73	128

[1] Height measured without shoes.

6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritoneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post-transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neuropathy, etc.), and side effects of corticosteroids or immuno-suppressive agents. A convalescent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

6.01 Category of Impairments, Genito-Urinary System

6.02 Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolitiasis, polycystic disease, bilateral hydronephrosis, etc.). With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatinine to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, severe osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.08, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.06 *Nephrotic syndrome, with severe anasarca, persistent for at least 3 months desite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less *and* proteinuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen-carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vaso-occlusive or aplastic episodes should be documented by description of severity, frequency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with antihemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The acute phase of chronic myelocytic (granulocytic) leukemia should be cosidered under the requirements for acute leukemia.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

7.01 Category of Impairments, Hemic and Lymphatic System

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).*

A. Evaluate the resulting impairment under criteria for the affected body system; or

B. Requiring one or more blood transfusions on an average of at least once every 2 months.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

D. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (nemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of § 7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, 7.11, 7.17, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresis. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least 1 month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow transplantation. Consider under a disability for 12 months following transplantation; thereafter, evaluate according to the primary characteristics of the residual impairment.

8.00 Skin

A. *Skin lesions* may result in severe, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable resumption to be made that severe impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problem, evaluation should occur according to the criteria in the appropiate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments, Skin

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections.* With extensive fungating, ulcerating lesions not responding to prescribed treatment.

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions,

including involvement of the hands or feet which impose a severe limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axilae or perineum not responding to prescribe medical treatment and not amenable to surgical treatment.

9.00 Endocrine System

Cause of impairment. Impairment is caused by overproduction or underproduction of hormones, resulting in structural of functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 Category of Impairments, Endocrine

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

10.00 Multiple Body Systems

A. The impairments included in this section usually involve more than a single body system.

B. Long-term massive obesity may be associated with disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the occurrence of these disorders is the major cause of impairment. The evaluation of these impairments should be considered under the criteria for the affected body system. Extreme obesity may result in restrictions imposed by body weight. The criteria in 10.10 provide tables for weight by sex and height and represent approximately 100 percent above the average weight for the 1971–74 population reported in "Vital and Health Statistics, Series 11—Number 208" from the U.S. Department of Health and Human Services.

If the individual's weight is equal to or exceeds the values in the tables in 10.10, the inability to perform any work is established, without the need to evaluate the specific restriction imposed on the various body systems because of extreme obesity.

If the individual's weight does not meet the level required by the appropriate table, the specific impairments associated with or resulting from the obesity should be evaluated under the criteria for the affected body system.

10.01 Category of Impairments, Multiple Body Systems

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involment.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progressive systemic sclerosis (the diffuse or generalized form).* With

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, caridac, or pulmonary impairment

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males and Table II for females, which has been demonstrated to have persisted at this level for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months:

TABLE I.—MALES

Height (inches) [1]	Weight (pounds)
62 or less	280
63	290
64	300
65	310
66	320
67	330
68	340
69	350
70	360
71	370
72	380
73	390
74	400
75	410
76	420

[1] Height measured without shoes.

TABLE II.—FEMALES

Height (inches) [1]	Weight (pounds)
57	246
58	252
59	258
60	264
61	270
62	276
63	282
64	288
65	294
66	300
67	306
68	312
69	318
70	324
71	330
72	336

[1] Height measured without shoes.

11.00 Neurological

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology, severity will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such description includes the presence or absence of aura, tongue bits, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate the extent to which description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electroencephalogram (EEG).

Under 11.02 and 11.03, a severe impairment is considered present only if it persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsant therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepsy. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs serves to indicate whether the prescribed medication is being taken. When seizures are occurring at the frequency stated in 11.02 or 11.03, evaluation of the severity of the impairment must include consideration of the blood drug levels. Should blood drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idosyncrasy in absorption or metabolism of the drug. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must also be assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment severity.

B. *Brain tumors.* The diagnosis of malignant brain tumors should be established, and the persistence of the tumor should be evaluated, under the criteria described in 13.00B and C for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected

duration (see 11.05A). For other tumors of the brain, the severity and duration of the impairment will be determined on the basis of symptoms, signs, and pertinent laboratory findings (11.05B).

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

11.01 Category of Impairments, Neurological

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Diurnal episodes (loss of consciousness and convulsive seizures); or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—minor motor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once-weekly in spite of at least 3 months of prescribed treatment.* With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebal palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02.

11.10 *Amyotrophic lateral sclerosis.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Persistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.* With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.* With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as described in 11.04B or 11.15B, not significantly improved by prescribed treatment.*

11.17 *Degenerative disease not listd elsewhere, such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:* Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

11.19 *Syringomyelia.* With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

12.00 Mental Disorders

A. *Introduction:* The evaluation of disability applications on the basis of mental disorders requires consideration of the nature and clinical manifestations of the medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, as reflected by (1) daily activities both in occupational and social spheres; (2) range of interest; (3) ability to take care of personal needs; and (4) ability to relate to others. This evaluation must be based on medical evidence consisting of demonstrable clinical signs (medically demonstrable phenomena, apart from the individual's symptoms, which indicate specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality) and laboratory findings (including psychological tests) relevant to such issues as restriction of daily activities, constriction of interests, deterioration of personal habits (including personal hygiene), and impaired ability to relate to others.

To severity and duration of mental impairment(s) should be evaluated on the basis of reports from psychiatrists, psychologists, and hospitals, in conjunction with adequate descriptions of daily activities from these or other sources. Since confinement in an institution may occur because of legal or social requirements, confinement per se does not establish that impairment is severe. Similarly, release from an institution does not establish improvement. As always, severity and duration of impairment are determined by the medical evidence. A description of the individual's personal appearance and behavior at the time of the examination is also important to the evaluation process.

Diagnosis alone is insufficient as a basis for evaluation of the severity of mental impairment(s). Accordingly, the criteria of severity under mental disorders are arranged in four comprehensive groups; chronic brain syndromes (see 12.02), functional (nonorganic) psychotic disorders (see 12.03), functional nonpsychotic disorders (see 12.04), and mental retardation (see 12.05). Each category consists of a set of clinical findings, one or more of which must be met, and a set of functional restrictions, all of which must be met. The functional restrictions are to be interpreted in the light of the extent to which they are imposed by psychopathology.

The criteria for severity of mental impairment(s) are so constructed that a decision can be reached even if there are disagreements regarding diagnosis. All available clinical and laboratory evidence must be considered since it is not unusual to find, in the same individual, signs and test results associated with several pathological conditions, mental or physical. For example, an individual might show evidence of depression, chronic brain syndrome, cirrhosis of the liver, etc., in various combinations.

In some cases, the results of well-standardized psychological tests, such as the Wechsler Adult Intelligence Scale—Revised (WAIS–R) and the Minnesota Multiphasic Personality Inventory (MMPI), may contribute to the assessment of severity of impairment. To provide full documentation, the psychological report should include key data on which the report was based, such as MMPI profiles, WAIS–R subtest scores, etc.

B. *Discussion of Mental Disorders:*

1. *Chronic brain syndromes* (organic brain syndromes) result from persistent, more or less irreversible, diffuse impairment of cerebral tissue function. They are usually permanent and may be progressive. They may be accompanied by psychotic or neurotic behavior superimposed on organic brain pathology. The degree of impairment may range from mild to severe. Acute brain syndromes are temporary and reversible conditions with favorable prognosis and no significant residuals. Occasionally, an acute brain syndrome may progress into a chronic brain syndrome.

2. *Functional psychotic disorders* are characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue. Mood disorders (involutional psychosis, manic-depressive illness, psychotic depressive reaction) or thought disorders (schizophrenias and paranoid states) are characterized by varying degrees of personality disorganization and accompanied by a corresponding degree of inability to maintain contact with reality (e.g., hallucinations, delusions).

3. *Functional nonpsychotic disorders* are likewise characterized by demonstrable mental abnormalities without demonstrable structural changes in brain tissue (psychophysiologic, neurotic, personality and certain other nonpsychotic disorders).

a. *Psychophyiologic (autonomic and visceral)* disorders (e.g., cardiovascular, gastrointestinal, genitourinary, musculoskeletal, respiratory). In these conditions, the normal physiological expression of emotions is exaggerated by chronic emotional tensions, eventually leading to a disruption of the autonomic regulatory system and resulting in various visceral disorders. If the condition persists, it may lead to demonstrable structural changes (e.g., peptic ulcer, bronchial asthma, dermatitis).

b. *Neurotic disorders* (e.g., anxiety, depressive, hysterical, obsessive-compulsive, and phobic neuroses). In these conditions there are no gross falsifications of reality such as observed in the psychoses in the form of hallucinations or delusions. Neuroses are characterized by reactions to deep-seated conflicts and are classified by the defense mechanisms the individual employes to stave off the threat of emotional decompensation (e.g., anxiety, depression, conversion, obsessive-compulsive, or phobic mechanism). Anxiety or depression occurring in connection with overwhelming external situations (i.e., situational reactions) are self-limited and the symptoms usually recede when the situational stress diminishes.

c. *Other functional nonpsychotic disorders*, including paranoid, cyclothymic, schizoid, explosive, obsessive-compulsive, hysterical, asthenic, antisocial, passive-aggressive, and inadequate personality; sexual deviation; alcohol addiction and drug addicition. These disorders are characterized by deeply ingrained maladaptive patterns of behavior, generally of long duration. Unlike neurotic disorders, conflict in these cases is not primarily within the individual but between the individual and his environment. In many of these conditions, the patient may experience little anxiety and little or no sense of distress, except when anxiety and distress are consequences of maladaptive behavior.

4. *Mental retardation* denotes a lifelong condition characterized by below-average intellectual endowment as measured by well-standardized intelligence (IQ) tests and associated with impairment in one or more of the following areas: learning, maturation, and social adjustment. The degree of impairment should be determined primarily on the basis of intelligence level and the medical report. Care should be taken to ascertain that test results are consistent with daily activities and behavior. A well-standardized, comprehensive intelligence test, such as the Wechsler Adult Intelligence Scale—Revised (WAIS–R) should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices or the Arthur Point Scale, may be substituted.

Unfortunately, identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function. In this connection, it may be noted that on the WAIS–R perhaps currently the most widely used measure of intellectual ability in adults, IQ's of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it will be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by the IQ scores. Where more than one IQ is customarily derived from the test administered, i.e., where Verbal, Performance, and Full Scale IQ's are provided as on the WAIS–R, the lowest of these is to be used in conjunction with 12.05.

In cases where the nature of the individual's impairment is such that testing, as described above, is precluded, medical reports specifically describing describing the level of intellectual, social, and physical function should be obtained. Actual observations by district office or State DDS personnel, reports from educational institutions, and information furnished by public welfare agencies or other reliable, objective sources should be considered as additional evidence.

12.01 Category of Impairments, Mental

12.02 *Chronic brain syndromes* (organic brain syndromes). With both A and B:

A. Demonstrated deterioration in intellectual functioning, manifested by persistence of one or more of the following clinical signs:

1. Marked memory defect for recent events; or

2. Impoverished, slowed, perseverative thinking, with confusion or disorientation; or

3. Labile, shallow, or coarse affect;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.03 *Functional psychotic disorders* (mood disorders, schizophrenias, paranoid states). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Depression (or elation); or

2. Agitation; or

3. Psychomotor disturbances; or

4. Hallucinations or delusions; or

5. Autistic or other regressive behavior; or

6. Inappropriateness of affect; or

7. Illogical association of ideas;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and seriously impaired ability to relate to other people.

12.04 *Functional nonpsychotic disorders* (psychophysiologic, neurotic, and personality disorders; addictive dependence on alcohol or drugs). With both A and B:

A. Manifested persistence of one or more of the following clinical signs:

1. Demonstrable and persistent structural changes mediated through psychophysiological channels (e.g., duodenal ulcer); or

2. Recurrent and persistent periods of anxiety, with tension, apprehension, and interference with concentration and memory; or

3. Persistent depressive affect with insomnia, loss of weight, and suicidal preoccupation; or

4. Persistent phobic or obsessive ruminations with inappropriate, bizarre, or disruptive behavior; or

5. Persistent compulsive, ritualistic behavior; or

6. Persistent functional disturbance of vision, speech, hearing, or use of a limb with demonstrable structural or trophic changes; or

7. Persistent, deeply ingrained, maladaptive patterns of behavior manifested by either:

a. Seclusiveness or autistic thinking; or

b. Pathologically inappropriate suspiciousness or hostility;

B. Resulting persistence of marked restriction of daily activities and constriction of interests and deterioration in personal habits and seriously impaired ability to relate to other people.

12.05 *Mental retardation.* As manifested by:

A. Severe mental and social incapacity as evidence by marked dependence upon others for personal need (e.g., bathing, washing, dressing, etc.) and inability to understand the spoken word and inability to avoid physical danger (fire, cars, etc.) and inability to follow sample directions and inability to read, write, and perform simple calculations; or

B. IQ of 59 or less (see 12.00B4); or

C. IQ of 60 to 69 inclusive (see 12.00B4) and a physical or other mental impairment imposing additional and signficant work-related limitation of function.

13.00 Neoplastic Disease—Malignant

A. *Introduction:* The determination of the level of severity resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post-therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumor should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation.* Usually, when the malignant tumor consists of a local lesion with metastasis to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastasis is not anticipated. A number of exceptions are noted in the specific Listings. For adjudicative purposes, "distant metastasis" or "metastasis beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathlogical evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable."

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the severity of the impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment will usually be found to meet the requirements of a specific listing. Exceptions are hormone-dependent tumors, isotope-sensitive metastases, and metastases from seminoma of the testicles which are controlled by definitive therapy.

When the original tumor and any metastases have apparently disappeared and have not been evident for 3 or more years, the impairment does not meet the criteria under this body system.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):

A. Inoperable; or

B. Not controlled by prescribed therapy; or

C. Recurrent after radical surgery or irradiation; or

D. With distant metastasis; or

E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of Skin:*

A. Angiosarcoma with metastasis to regional lymph nodes or beyond; or

B. Mycosis fungoides with metastases to regional lymph nodes, or with visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*

A. Recurrent after wide excision; or

B. With metastasis to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*

A. Hodgkin's disease or non-hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or

B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or

C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastasis beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastasis beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*

A. Inoperable carcinoma; or

B. Inflammatory carcinoma; or

C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or

D. Distant metastasis from breast carcinoma (bilateral breast carcinoma, synchronous or metachronus, is usually primary in each breast); or

E. Sarcoma with metastasis anywhere.

13.10 *Skeletal system* (exclusive of the jaw):

A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or

B Metastic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*

A. Sarcoma of any type with metastasis; or

B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastasis; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intracranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastasis.

13.12 *Brain or spinal cord:*

A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumours under the criteria described in 11.05 and 11.06.

13.13 *Lungs:*

A. Unresectable or with incomplete excision; or

B. Recurrence or metastases after resection; or

C. Oat cell (small cell) carcinoma; or

D. Squamous cell carcinoma, with metastases beyond the hilar lymph nodes; or

E. Other histologic types of carcinoma, including undifferentiated and mixed-cell types (but excluding oat cell carcinoma, 13.13C, and squamous cell carcinoma, 13.13D), with metastases to the hilar lymph nodes.

13.14 *Pleura or mediastinum:*

A. Malignant mesothelioma of pleura; or

B. Malignant tumors, metastatic to pleura; or

C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*

A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or

C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*

A. Carcinoma or sarcoma of the esophagus; or

B. Carcinoma of the stomach with metastasis to the regional lymph nodes or extension to surrounding structure; or

C. Sarcoma of stomach not controlled by prescribed therapy; or

D. Inoperable carcinoma; or

E. Recurrence or metastasis after resection.

13.17 *Small intestine*

A. Carcinoma, sarcoma, or carcinoid tumor with metastasis beyond the regional lymph nodes; or

B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or

C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—Carcinoma or sarcoma.

A. Unresectable; or

B. Metastasis beyond the regional lymph nodes, or

C. Recurrence or metastasis after resection.

13.19 *Liver or gallbladder:*

A. Primary or metastatic malignant tumors of the liver; or

B. Carcinoma of the gallbladder; or

C. Carcinoma of the bile ducts.

13.20 *Pancreas:*

A. Carcinoma except islet cell carcinoma; or

B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters—carcinoma:*

A. Unresectable; or

B. With hematogenous spread to distant sites; or

C. With metastases to regional lymph nodes.

13.22 *Urinary bladder—carcinoma.* With:

A. Infiltration beyond the bladder wall; or

B. Metastases to regional lymph nodes; or

C. Unresectable; or

D. Recurreence after total cystectomy; or

E. Evaluate renal impairment after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*

A. Choriocarcinoma; or

B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).

A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent after total hysterectomy; or

C. Total pelvic extenteration.

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:

A. Ascites with demonstrated malignant cells; or

B. Unresectable infiltration; or

C. Unresectable metastasis to omentum or elsewhere in the peritoneal cavity; or

D. Distant metastasis.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic System.

13.28 *Uterine (Fallopian) tubes—carcinoma or sarcoma:*

A. Unresectable; or

B. Metastases to regional lymph nodes.

13.29 *Penis—carcinoma, with metastases to regional lymph nodes.*

13.30 *Vulva—carcinoma, with distant metastases.*

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.

100.00 Growth Impairment.

101.00 Musculoskeletal System.

102.00 Special Senses and Speech.

103.00 Respiratory System.

104.00 Cardiovascular System.

105.00 Digestive System.

106.00 Genito-Urinary System.

107.00 Hemic and Lymphatic System.

109.00 Endocrine System.

110.00 Multiply Body System.

111.00 Neurological.

112.00 Mental and Emotional Disorders.

113.00 Neoplastic Diseases—Malignant.

100.00 Growth impairment

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familiar characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of impairments, growth

100.02 *Growth impairment,* considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment,* not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal system

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases,* Vol. 23, 1972–1973 Series, p. 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment,* Chicago, American Medical Association, 1971, Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders, septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of impairments, musculoskeletal

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite three months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene.

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss).

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height.

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.06 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Senses and Speech

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of an ophtalmologic disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction in 102.08 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in § 102.08.

102.01 Category of Impairments, Special Sense Organs

102.02 *Impairment of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less.

B. For children below 3 years of age at time of adjudication.

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear.

B. For children 5 years of age and above at time of adjudication.

1. Inability to hear air conduction thresholds at an average of 90 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters. The reported FEV_1 should represent the largest of at least three satisfactory attempts, and should be within 10 percent of another FEV_1. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and the cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of Impairments, respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonic; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

TABLE I

Height (in centimeters)	FEV_1 equal to or less than (liters)
110 or less	0.6
120	0.7
130	0.8
140	1.1
150	1.3
160	1.5
170 or more	1.8

104.00 Cardiovascular System

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included.

B. *Evaluation of cardiovascular impairments in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congential or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catherization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnoses made according to the revised Jones Criteria.

104.01 Category of Impairments, cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

TABLE I.—TACHYCARDIA AT REST

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yr	130
4 through 9 yr	120
10 through 15 yr	110
Over 15 yr	100

TABLE II.—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yr	35
6 through 9 yr	30
Over 9 yr	25

104.30 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.2.

TABLE III.—ELEVATED BLOOD PRESSURE

Age	S (over) mm.	Diastolic (over) in mm.
Under 6 mo	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 Cyanotic congenital heart disease.

With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristics squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block,or A–V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 Digestive System

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To consutitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestional impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition uder the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congential lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of impairments, digestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in 105.00.* With one fo the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.000 Genito-Urinary System

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post-transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of impairments, genito-urinary

106.02 *Chronic renal disease.* With:

A. Persistent elevation of serum creatinine to 4 mg. per deciliter (100 ml.) or greater over at least 3 months; or

B. Reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) per 1.73 m2 of body surface area over at least 3 months; or

C. Chronic renal dialysis program for irreversible renal failure; or

D. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73m² day.

107.00 Hemic and Lymphatic System

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyeltis, pulmonary infestions or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 Category of impairments, hemic and lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagualtion disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

109.00 Endocrine System

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 Category of impairments, endrocrine

109.02 *Thyroid Disorders.*

A. Hyperthyroidism (as documented in 109.00C). With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T^4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyroidism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudohypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under the criteria in 100.02 A and B.

109.05 *Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycortico steroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 109.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.2B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.2 A or B.

109.12 *Hypoglycemia (as documented in 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonodal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate

the resulting impairment under the criteria for the appropriate body system.

110.00 Multiple Body Systems

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders; diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 Category of impairments, multiple body systems

110.06 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years in not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

E. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 Neurological

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 of 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-Gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of impairment, neurological

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Diurnal episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors.* A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma, or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; or

B. Gait and station.

111.07 *Cerebral palsy.* With: A. Motor dysfunction meeting the requirements of 111.06 or 111.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing, or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of § 111.03 or § 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in effective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

112.00 Mental and Emotional Disorders

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 1120.5A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children—Revised (WISC–R), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal tests results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmental milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in

testing children a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physican to established developmental norms of the kind found in any widely used standard pediatrics text.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completely substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 Category of impairments, mental and emotional

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activites; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypchondriasis; or

F. Hysteria; or

G. A social or antisocial behavior.

112.05 *Mental retardation.*—A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progession.

113.00 Neoplastic Diseases Malignant

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of heoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part of skeletal metastasis, and significant post-therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.*

A. Hodgkin's disease with progressive disease not controlled by prescribed therapy; or

B. Non-Hodgkin's lymphoma. Consider under a disability:

1. For 2½ years from time of initial diagnosis; or

2. For 2½ years from time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a disability.

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:

A. Extension across the midline; or

B. Distant metastasis; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

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May 6, 1982

Part III

Department of the Interior

National Park Service

Indicative Inventory of Potential Future U.S. Nominations to the World Heritage List

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DEPARTMENT OF THE INTERIOR

National Park Service

Indicative Inventory of Potential Future U.S. Nominations to the World Heritage List

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, has compiled the following indicative inventory of cultural and natural properties in the United States that, based on preliminary examination, appear to qualify for World Heritage status and that may be considered for nomination to the World Heritage Committee over the next ten years. The inventory has been prepared to satisfy a provision of the World Heritage Convention, and incorporates the comments received on the draft World Heritage inventory, which was earlier published in the **Federal Register** on September 1, 1981 (46 FR 43892). Inclusion of a property on this inventory does not confer World Heritage status on it, but merely indicates that a property may be further examined for possible nomination in the future. The inventory will be used as the basis for selecting future United States nominations, and provides a comparative framework within which the outstanding universal value of a property may be effectively judged. The Department of the Interior will transmit the indictative inventory of potential future World Heritage nominations, on behalf of the United States, to the World Heritage Committee in fulfillment of Article 11(1) of the Convention.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Ritsch, Associate Director, Recreation Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, (202/243–4462).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, now ratified by the U.S. and 62 other nations, has established a means through which natural and cultural properties of outstanding universal value to mankind may be recognized and protected. Sites are identified and nominated by participating nations for inclusion on the World Heritage List, which currently includes 112 properties. The 21-member nation World Heritage Committee judges the nominations against established criteria, which were most recently published in the **Federal Register** on January 8, 1982 (47 FR 1034) and appear as § 73.9 of the proposed World Heritage rules (46 FR 51561). The country nominating a site for inclusion on the World Heritage List assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the protection, conservation, presentation, rehabilitation, and transmission to future generations of the property it nominates.

In the United States, the Secretary of the Interior is responsible for implementing provisions of the World Heritage List. The Secretary has delegated this responsibility to the Assistant Secretary for Fish and Wildlife and Parks. Recommendations on World Heritage policy, nominations, and related matters are made to the Department of the Interior by the Federal Interagency Panel for World Heritage, which includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the National Oceanic and Atmospheric Administration; Department of Commerce; and the Department of State.

The Department of the Interior, through the National Park Service, is implementing its responsibilities under the World Heritage Convention in accordance with the statutory mandate of Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On January 13, 1981, the Department announced its interpretive guidelines for implementing the World Heritage Convention in accordance with this new legislative mandate (46 FR 3073). The Department has since issued proposed rules for implementing the World Heritage Convention (October 20, 1981; 46 FR 51557), and is currently in the process of preparing final rules.

In particular, the 1980 legislation specified several requirements which U.S. properties must satisfy in order to be considered for nomination for World Heritage status. Before a property may be nominated:

1. *It must have previously been determined to be nationally significant,* e.g., designated as a national natural landmark or national historic landmark by the Secretary of the Interior, or established by the Congress as an area of national significance;

2. *Its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.* For properties owned or controlled by Federal, State, and/or local governments, such evidence includes reference to all legislative and administrative measures that would ensure satisfactory maintenance and preservation of the property in perpetuity. For properties owned or controlled by private organizations or individuals, such evidence includes a written covenant prohibiting in perpetuity any use which threatens or damages the property's universally significant values, the opinion of counsel on the legal status and enforceability of such a prohibition, and other measures or requirements which the Department may prescribe; and

3. *Its owner or manager must concur in writing to such nomination.*

Summary of Public Comment on the Draft Indicative Inventory

In total, the National Park Service received 43 comments on the draft indicative inventory of potential future U.S. World Heritage nominations. Responses were received from Federal and State agencies, Congressional and State elected representatives, private industry, conservation and preservation organizations, academic institutions, local governments, and individuals. All comments have been studied carefully and considered in the preparation of the final indicative inventory.

Out of the 43 responses, 19 discussed and/or expressed support for properties included on the draft inventory, and 23 suggested additional properties for the inventory, while 4 expressed some concern over the possible regulatory impact of having a property inscribed on the World Heritage List. One respondent requested an extension of comment period, which was granted. Three respondents were complimentary of the inventory effort, noting that it will provide direction for the U.S. nomination process. Twenty-four respondents dealt primarily with cultural properties, with eight emphasizing natural sites and five commenting on both cultural and natural properties.

(Totals may not add as one response may have dealt with more than one of the above categories.) All comments received on the draft World Heritage indicative inventory are on file with the International Affairs Branch, National Park Service, U.S. Department of the Interior, 1100 L Street NW., Room 3121, Washington, D.C. 20240, and are available for public inspection by appointment during normal business

hours (7:45 a.m.–4:15 p.m., Monday–Friday).

In response to the comments received and additional study and comparative evaluation, a number of changes have been made in the indicative inventory. For example, the theme for archeological properties has been renamed as "Prehistory and Living Communities" and is expanded into six categories that better illustrate 15,000 years of American prehistory and history. Several outstanding properties have been grouped under the heading of a single nomination proposal, thus reflecting the desire to consder the nomination of certain, closely related properties as components of an ensemble or theme.

Scholarly and scientific evaluation is the basis for selecting properties listed on the indicative inventory. The inventory, while not exhaustive, represents the pool from which future potential U.S. World Heritage nominations will be drawn. The 47 cultural and 34 natural properties on the final inventory include 37 cultural and 29 natural areas from the draft inventory, and 10 cultural and 5 natural areas not previously listed. Seven cultural properties listed on the draft inventory have not been included on the final inventory as preliminary comparative evaluation indicated that they did not appear to meet the criteria for World Heritage status. One property (the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge) appears in the listing of both cultural and natural properties.

Indicative Inventory of Potential Future U.S. Nominatons to the World Heritage List

The indicative inventory which follows includes cultural and natural properties in the U.S. that, based on preliminary evaluation, appear to qualify for nomination to the World Heritage List and that may be considered for nomination during the next ten years. The inventory is indicative in nature, in that it indicates the types of properties that will be seriously considered for nomination, but does not represent a commitment to nominate any specific property at a specific point in time. This indicative inventory, which is not considered exhaustive, will enable both the U.S. and the World Heritage Committee to consider properties within a broad comparative context so that the claim of outstanding universal value for any property can be effectively evaluated. The indicative inventory strengthens U.S. participation in the Convention and provides direction for a rational, systematic nomination process.

At its fifth ordinary session in October 1981, the World Heritage Committee adopted a resolution which stated that state parties to the Convention should provide the following types of information in indicative inventories:

—The name of the property;
—The geographical location of the property;
—A brief description of the property; and
—A brief justification of the outstanding universal value of the property (criteria).

The Committee also recommended that natural properties be grouped by biogeographical provinces, and cultural properties be grouped by cultural periods or themes.

Accordingly, the cultural properties in the inventory are grouped by theme, e.g., prehistory and living communities, architecture, etc. The natural properties are grouped according to the physiographic province (Fenneman 1928) in which they occur, e.g., Rocky Mountains, Atlantic Coastal Plain, etc., and arranged alphabetically. The approximate latitude and longitude of each property's geographic center is given in parentheses. A brief description is provided for each property, along with the criteria which it appears to satisfy.

Each property included in the inventory may not ultimately constitute a separate nomination, but rather, significant portions of certain, closely related proprties may be nominated together to represent an important theme; i.e., rather than nominating individual examples of the erosional landforms of the Colorado Plateau, portions or all of Arches, Bryce Canyon, Canyonlands, Capitol Reef, and Zion National Parks, and other areas may ultimately be proposed as a single thematic nomination. Likewise, with respect to outstanding examples of modern U.S. architecture, buildings in Chicago, St. Louis, and Buffalo might be nominated within the context of a single proposal. The inventory does not include U.S. properties that have already been approved for inscription on the World Heritage List, or those which the U.S. has formally nominated for World Heritage status. The indicative inventory is subject to periodic review and revision, as future circumstances warrant.

I. Cultural Properties

Prehistory and Living Communities (formerly Archaeology)

Post-Contact Aboriginal

Taos Pueblo, New Mexico. (36°25′ N.; 105°40′ W.) A center of Indian culture since the 17th century, the pueblo of Taso, still active today, symbolizes Indian resistance to external rule. The mission of San Geronimo, one of the earliest in New Mexico, was built near Taos Pueblo in the early 17th century. *Criteria:* (v) An outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change.

Post-Contact Aboriginal/Developed Agriculture

Pecos National Monument, New Mexico. (35°35′ N.; 105°45′ W.) This site was occupied since before A.D. 900 up until the 19th century. The archaeological excavations of the area led to the development of a cultural sequence which in turn enabled the comparative dating of southwestern U.S. sites. This classification is the cornerstone of the understanding of Southwestern archaeology. In addition to the archaeology at Pecos, there are the foundations of a Spanish mission, the ruins of an 18th-century church, and numerous Pueblo Indian structural remains, including restored kivas. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Developed Agriculture

Moundville Site, Alabama. (33°0′ N.; 87°40′ W.) This is probably the site described by De Soto in his Mississippian expedition. This site demonstrates the Mesoamerican influence on the culture of the Southeast. It is a "ceremonial" site with over twenty extant mounds and burial areas. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Casa Grande National Monument, Arizona. (33°0′ N.; 111°30′ W.) Casa Grande is a four-story tower of packed earthen walls built over 600 years ago by the agricultural Indians of the Gila River Valley. The site also contains important Hohokam Indian remains dating from about 900 A.D. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Hohokam Pima National Monument, Arizona. (32°55′ N.; 111°30′ W.) Hohokam Pima is part of the site of Snaketown, which was continously inhabited by the Hohokam/Pima cultures for over 2,000 years. This site

contains essentially all phases of Hohokam cultural development from the earliest villages established around 400 B.C. up to A.D. 1450. Subsequently this same site was occupied by the Pima from the time of contact with the Spanish until around 1940. The Hohokam Pima site clearly demonstrates the Mesoamerican influence in the Southwestern U.S. The site is located on a Pima reservation. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Ocmulgee National Monument, Georgia. (32°50′ N.; 83°40′ W.) The large mounds and surrounding villages at Ocmulgee demonstrates the cultural evolution of the Indian mound-builder civilization in the southern U.S. *Criteria:* (iii) Bears an exception testimony to a civilization which has disappeared.

Poverty Point, Louisiana. (32°40′ N.; 91°25′ W.) An archaeological site that flourished from 1,000–600 B.C. It contains a geometric earthwork complex, consisting of 11.2 miles of raised terraces arranged in six concentric octagons, and Poverty Point Mound, a bird-shaped ceremonial structure. *Criteria:* (iii) Bears an exception testimony to a civilization which has disappeared.

Chaco Culture National Historical Park, New Mexico. (36°10′ N.; 108°0′ W.) This property bears testimony to the first five periods of the Chacoan variant and one period of the Mesa Verdean variant of the Pueblo civilization. Chaco Canyon is a large canyon which contains approximately 1100 ruins including 13 major Pueblo Indian villages. These villages consist of 3–5 story buildings which often contain over 1,000 rooms. The ceremonial complex consisting of the large villages is dated between A.D. 1,110 and 1,300 and clearly demonstrates the cultural links between the Mesoamerican cultures and the Pueblo Indians of the Southwestern U.S. *Criteria:* (ii) Exerted great influence, over a span of time and within a cultural area of the world, on developments in town-planning; and (iii) bears a unique testimony to a civilization which has disappeared.

Mound City Group National Monument, Ohio. (39°25′ N; 83°1′ W.) Twenty-three burial mounds of Hopewell Indians (200 B.C.–A.D. 500) have yielded vast quantities of artifacts that give insights into the ceremonial customs of the Hopewell people. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Archaic/Paleo–Indian

Cape Krusenstern Archaeological District, Alaska. (67°0′ N.; 164°0′ W.) Cape Krusenstern consists of a series of marine beach ridges (and nearby hills) which contain evidence of nearly every major cultural period in Arctic prehistory and history. This area is very near the probable route taken by man's first crossing into North America and is still inhabited today. Due to land subsidence along the coast a unique stratigraphy has formed which allows a complete dating sequence in an area where few dates are available. Each ridge represents approximately a 200-year time span for a total of approximately 8,000 years. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Ventana Cave, Arizona. (32°25′ N.; 112°15′ W.) Ventana Cave offers a unique history of the hunter/gatherer cultural development and continuity. This site has been occupied continuously from 200 B.C. until the present. Excavations here solidified the stratigraphi sequence dates, and made a significant contribution to knowledge of the development of Hohokam culture in this area. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Paleo-Indian

Lindenmeir Site, Colorado. (40°55′ N.; 105°10′ W.) This site was one of the earliest Folsom sites to be excavated by archaeologists and was instrumental in establishing man's presence in North America at its current early date. The site consists of a kill site marked by numerous bison bones and a camp a short distance away. This is one of the few early man sites where both site types were found, and it gives a more complete picture of the early hunters' life and cultural adaption. *Criteria:* (iii) Bears a unique testimony to a civilization which has disappeared.

Hawaiian

Pu'uhonua O Honaunau National Historical Park, Hawaii. (19°25′ N.; 155°55′ W.) This area (formerly known as City of Refuge National Historical Park) includes sacred ground, where vanquished Hawaiian warriors, noncommbatants, and kapu breakers were granted refuge from secular authority. Prehistoric housesites, royal fishponds, and spectacular shore scenery are features of the park. *Criteria:* (v) An outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change.

European Exploration and Colonial Settlement

La Fortaleza-San Juan National Historical Site, Puerto Rico. (18°28′ N.; 66°10′ W.) Spanish defenses at San Juan guarded their sea lanes to the Caribbean; at this site they founded one of their earliest colonies in the Americas. La Fortaleza, the first fortification of San Juan (built 1533–40), has been the residence of the island's governors since the 1620s. The massive masonry citadel of El Morro was begun in 1591. *Criteria:* (iv) An outstanding example of a type of structure which illustrates a significant stage in history; and (vi) directly and tangibly associated with events of outstanding universal significance.

San Xavier Del Bac, Arizona. (32°10′ N.; 111°0′ W.) One of the finest Spanish colonial churches in the United States, having a richly ornamented baroque interior. (Comparative national and international study will be necessary before the United States would consider nominating property representative of this important international development. For example, the California and Texas mission systems would be examined.) *Criteria:* (iv) An outstanding example of a type of structure which illustrates a significant stage in history.

Savannah Historic District, Georgia. The first settlement in the English colony of Georgia, which was founded with philanthropic intent, Savannah has retained much of James Oglethorpe's original city plan and possesses many structures of architectural merit. *Criteria:* (ii) Has exerted great influence, over a span of time, or within a cultural area of the world, on developments in town-planning; and (vi) directly and tangibly associated with events or with ideas of outstanding universal significance.

Architecture: Early United States

Monticello, Charlottesville, Virginia. (38°0′ N.; 78°30′ W.) Thomas Jefferson, the third American President, was a popularizer of the Classic Revival architectural style. In Monticello, his mansion, he combined elements of Roman, Palladian, and 18th-century French design with features expressing his extraordinary personal inventiveness. *Criteria:* (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on developments in architecture.

University of Virginia Historic District, Charlottesville, Virginia. (38°0′ N.; 78°30′ W.) Includes original classrooms and professors' quarters housed in pavilions aligned on both sides of an elongated terraced court, as well as the domed Rotunda, a scaled-

down version of the Pantheon which was the focal point of Thomas Jefferson's design. Jefferson envisioned a community of scholars living and studying in an architecturally unified complex of buildings. *Criteria:* (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on developments in architecture.

Architecture: Modern U.S.

Consideration will be given to the nomination of a "thematic" Chicago School district, including some of the properties listed in this grouping.

Auditorium Building, Chicago, Illinois. (41°52′ n.; 87°40′ W.) Constructed in 1889, this building is one of the most important works by Chicago School architects Dankmar Adler and Louis Sullivan. *Criteria:* (i) A unique artistic achievement, a masterpiece of creative genius; and (ii) has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Carson, Pirie, Scott and Company Store, Chicago, Illinois. (41°52′ N.; 87°40′ W.) A commercial establishment designed by Louis Sullivan in an original and practical form, Carson, Pirie, Scott and Company was his last large commercial commission. An iron and steel framework supports the structure, which is most notable for its elaborate ironwork ornament on the first and second floor facades. Sullivan's designs combine organic and geometric shapes in intricate and delicate patterns, in a type of ornament that is the hallmark of his work. The addition was by Daniel H. Burnham in 1904–6. *Criteria:* (i) A unique artistic achievement, a masterpiece of creative genius; and (ii) has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Leiter II Building, Chicago, Illinois. (41°52′ N.; 87°40′ W.) Constructed in 1889–91, this building is the masterwork of architect William Le Baron Jenny. One of the earliest surviving examples of the Chicago School curtain wall proto-skyscraper. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Marquette Building, Chicago, Illinois. (41°52′ N.; 87°40′ W.) Architects William Holabird and Martin Roche made their first decisive statement on a new concept in building—steel framing. Constructed 1893–4. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Reliance Building, Chicago, Illinois. (41°52′ N.; 87°40′ W.) This building (1890–5) by Daniel Burnham and John Root is a key monument of the "Chicago School." It has a steel framework and is covered with terra cotta sheathing except on the granite first floor. Windows form continuous bands and are "Chicago windows"—large single, fixed panes of glass which fill an entire bay except for narrow, movable, double hung sash in the projecting bays. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Rookery Building, Chicago, Illinois. (41°52′ N.; 87°40′ W.) One of the last great masonry strucutues of the 19th century, designed by Daniel Burnham and John W. Root. Constructed in 1886–88, The Rookery is a transitional structure which presaged the modern steel frame office building. It combines skeletal cast-iron columns and spandrel beams supporting masonry with granite and brick and terra cotta. *Criteria:* (ii) Has exerted great influence, over a span to time, and within a cultural area of the world, on developments in architecture.

South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois. (41°52′ N.; 87°40′ W.) This commercial district contains landmark structures in the development of skyscraper construction and some of the finest achievements of the "Chicago School" of architects: The Manhattan Building by William Le Baron Jenny, the first complete steel skeleton building, with wind bracing; the Daniel Burnham-designed Fisher Building, an early curtain wall structure; the Old Colony Building by Holabird and Roche, using Corydon Purdy's wind bracing system; and the Monadnock Building, by Burnham and Root (north section) and Holabird and Roche (south section), one of the largest masonry bearing-wall structures ever built. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Prudential (Guaranty) Building, Buffalo, New York. (42°50′ N.; 78°50′ W.) The last collaborative effort of Dankmar Adler and Louis Sullivan, the 13-story Prudential, constructed in 1895, is a triumph of early skyscraper design. It links two skyscraper periods and departs from the earlier commercial use of elaborate ornamentation in favor of an emphatically vertical appearance. Although appearing rectangular in shape, it is actually U-shaped due to light corridors above the first floor. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Wainwright Building, St. Louis, Missouri. (38°40′ N.; 90°10′ W.) Significant prototype of the modern office building, constructed in 1890–91. This building represents a deliberate attempt to create an a historical form expressive of the new mass of the multistory office block. For Sullivan, the potential aesthetic quality of the tall building lay in its unusual height. To emphasize this height to the maximum degree, he devised a system of closely ranked, pierlike verticals that give the street elevations their forceful thrust. *Criteria:* (i) Represents a unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Architecture: Wright School

A single, or thematic, nomination representative of this group will be considered.

Frank Lloyd Wright Home and Studio, Illinois. (41°52′ N.; 87°50′ W.) Wright lived and practiced here, in the Shingle-style home he built for his family, during the "First Golden Age" of his long career. Constructed 1889–90. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Unity Temple, Oak Park, Illinois. (41°52′ N.; 87°50′ W.) Wright designed the Temple with a rooftop skylight, rather than a steeple. Constructed in 1906 of poured concrete, the Temple is basically a concrete cube with stark and largely unornamanted interior walls. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Robie House, Chicago, Illinois. (41°52′ N.; 87°40′ W.) This brick house, with its low horizontal emphasis, was designed by Wright in his "Prairie" style, utilizing an open plan focused on a large central chimney mass. He continued inside walls to the exterior to tie the surrounding landscape to the house. Constructed 1907–9. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Taliesin, Wisconsin. (43°10′ N.; 90°10′ W.) The second great center of Wright's activity, this combination of home, workshop, laboratory, and retreat consists of several groupings of structures designed individually to suit their different uses. It is the summer home and studio of the Taliesin

Fellowship. *Criteria:* (ii) Has exerted great influence, over a span of time, and within a cultural area of the world, on developments in architecture.

Fallingwater, Pennsylvania. (39°55′ N.; 90°25′ W.) One of the most famous of Frank Lloyd Wright's designs, regarded by many as his masterwork. *Criteria:* (i) A unique artistic achievement, a masterpiece of the creative genuis.

Engineering

Brooklyn Bridge, New York. (40°42′ N.; 73°57′ W.) Built by John A. and Washington A. Roebling, the Brooklyn Bridge was one of the world's first wire cable suspension bridges. The technical, problems faced in its construction were solved by solutions that established precedents in bridge building. The cables themselves are supported by two massive Gothic pylons, each with two pointed arches. The main span is 1595 feet. *Criteria:* (iv) An outstanding example of a type of structure which illustrates a significant stage in history.

Eads Bridge, Illinois-St. Louis, Missouri. (38°40′ N.; 90°10′ W.) The first major bridge in the world in which steel was employed in the principal members. The secondary members and the tubes enveloping the steel staves forming the arch ribs are of wrought iron. *Criteria:* (iv) An outstanding example of a type of structure which illustrates a significant stage in history.

Washington Monument, District of Columbia. (38°52′ N.; 77°02′ W.) The hollow shaft, free of exterior decoration, is the tallest free-standing masonry structure in the world (555 feet). It commemorates the achievements of George Washington, first President of the United States. *Criteria:* (iv) An outstanding example of a type of structure which illustrates a significant stage in history.

Science and Industry

McCormick Farm and Workshop, Virginia. (37°40′ N.; 79°35′ W.) Of the inventions that revolutionized agriculture during the first half of the 19th century, the mechanical reaper (1834), was probably the most important. The well-preserved farmhouse and workshop of Cyrus McCormick, its inventor, are included within this property. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Original Bell Telephone Laboratories, New York. (40°45′ N.; 74°0′ W.) From 1898 to 1967, America's largest industrial research laboratory, responsible for numerous contributions to pure science and pioneering work in telecommunications technology. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

General Electric Research Laboratory, Schenectady, New York. (42°50′ N.; 73°55′ W.) A three-building complex recognized as the first industrial research facility in the United States. Since its construction in 1900, work at the laboratory has made many contributions to scientific knowledge, especially in the areas of physics and chemistry. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Goddard Rocket Launching Site, Massachusetts. (42°12′ N.; 71°50′ W.) At this site, on March 16, 1926, Dr. Robert H. Goddard launched the World's first liquid propellant rocket, an event that set the course for future developments in rocketry. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Lowell Observatory, Arizona. (35°12′ N.; 111°40′ W.) Astronomical research conducted at this observatory, founded by Dr. Percival Lowell, has greatly enhanced man's knowledge of the universe. Most significant of the observatory's discoveries was the first observable evidence of the expanding universe, made by Dr. V.M. Slipher in 1912. The observatory is also noted for intensive studies of Mars, the discovery of Pluto, and research in zodiacal light and sunspot phenomena. The 24-inch Lowell refracting telescope, installed in 1896, is in operation in its original housing. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Pupin Physics Laboratories, Columbia University, New York. (40°45′ N.; 73°58′ W.) Enrico Fermi conducted his initial experiments on the fission of uranium in these laboratories. In addition, the uranium atom was split here on January 25, 1939, 10 days after the world's first splitting in Copenhagen. The cyclotron control room contains the table which held the instruments used on that night. The United States would consider nominating this site only if the Copehagen location is no longer extant. *Criteria:* (vi) Directly and tangibly associated with an event of outstanding universal significance.

Trinity Site, New Mexico. (33°45′ N.; 106°25′ W.) The world's first nuclear device was exploded here in July 1945. *Criteria:* (vi) Directly and tangibly associated with an event of outstanding universal significance.

Humanitarian Endeavor and Social Reform

New Harmony Historic District, Indiana. (38°08′ N.; 87°55′ W.) Founded by the Rappite religious sect in 1815, New Harmony was purchased in 1825 by British visionary and socialist reformer Robert Owen, who sought to alleviate evils spawned by the factory system. Some 35 structures from the Rappite-Harmonist period survive. This property will be compared to Owenite remains in the United Kingdom and to other communal societies in the U.S. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Chapel Hall, Gallaudet College, District of Columbia, District of Colombia. This large Gothic Revival structure (1867–70) is the earliest major building at the college, the only institution of higher learning specifically devoted to the education of the deaf. *Criteria:* (vi) Directly and tangibly associated with events or ideas of outstanding universal significance.

Warm Springs Historic District, Georgia. (32°50′ N.; 84°40′ W.) The National Foundation for Infantile Paralysis, which grew out of the Warm Springs Foundation established by Franklin D. Roosevelt, became one of the leading charitable institutions of the 20th century. Warm Springs Hospital was the major international center for the treatment of infantile paralysis (polio); the research that led to the development of the preventive vaccines had its roots here. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

International Affairs

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries), Alaska. (57°30′ N.; 170° 30′ W.) Originally frequented by the native peoples of Alaska, these islands have lured Russian, British, French, Spanish, and American fur hunters since the 18th century. The seal herds have several times been threatened with extinction due to indiscriminate hunting, but a notable 1911 convention between the United States, the United Kingdom, Russia (USSR), and Japan has provided them with international protection and management. Today's flourishing herds illustrate the international application of conservation principles. *Criteria:* (vi) Directly and tangibly associated with events of outstanding universal significance.

Statute of Liberty National Monument, New Jersey-New York. (40°37′ N.; 74°03′ W.) French historian Edouard Laboulaye suggested the presentation of this statue to the United States, commemorating the alliance of France and the United States during the American Revolution. The copper colossus was designed by Frederic Auguste Bartholdi and erected

according to plans by Gustave Eiffel. The national monument also includes Ellis Island, the depot through which many millions of immigrants and emigrants passed. *Criteria:* (iv) An outstanding example of type of structure which illustrates a significant stage in history, and (vi) directly and tangibly associated with events of outstanding universal significance.

II. Natural Properties

Appalachian Ranges

Great Smoky Mountains National Park, Tennessee/North Carolina. (35°37′ N.; 83°27′ W.) This tract, which includes one of the oldest uplands on earth, has a diversity of lush vegetation associated with its varied topography, including spruce-fir, hemlock, deciduous, and mixed forests. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of biological evolution, and (iii) contains superlative natural phenomena and areas of exceptional natural beauty.

Atlantic Coastal Plain

Okefenokee National Wildlife Refuge, Georgia/Florida. (30°48′ N.; 82°17′ W.) This tract includes a vast peat bog, interspersed with upland prairies, marshes, and open water. These diverse habitats are some for a wide range of uncommon, threatened, and endangered species, including the American alligator. *Criteria:* (ii) An outstanding example of biological evolution, and (iv) habitat of endangered animal species.

Virginia Coast Reserve, Virginia. (37°30′ N.; 75°40′ W.) The Virginia Coast Reserve is the most well-preserved extensive barrier island system remaining on the Atlantic Coast of North America. The system of barrier islands, saltmarshes, and lagoons demonstrate dune and beach migration and storm action on barrier islands, and include virtually all of the plant communities which once occurred along the Atlantic Coast. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena and formations.

Brooks Range

Arctic National Wildlife Refuge, Alaska. (69°0′ N.; 143°0′ W.) This area's varied topography, extending from the Brooks Range north to the Arctic Ocean, is habitat for a tremendous diversity of wildlife, including caribou, polar and grizzly bears, musk ox, Dall sheep, Arctic peregrine falcons, and golden eagles. It is a virtually undisturbed arctic landscape, with coastal plain, tundra, valley, and mountain components. *Criteria:* (ii) An outstanding example of biological evolution, and (iii) superlative natural phenomena and areas of exceptional natural beauty.

Gates of the Arctic National Park, Alaska. (67°30′ N.; 153°0′ W.) Gates of the Arctic includes a portion of the central Brooks Range and is characterized by jagged mountain peaks, gentle arctic valleys, wild rivers and numerous lakes. *Criteria:* (ii) An outstanding example of significant ongoing geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Cascade Range

Crater Lake National Park, Oregon. (42°55′ N.; 122°06′ W.) This unique, deep blue lake lies at the center of Mount Mazama, an ancient volcanic peak that collapsed centuries ago. The lake is bounded by multicolored lava walls extending 500 to 2000 feet above the lake's waters. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Mount Rainier National Park, Washington. (46°52′ N.; 121°41′ W.) Mount Rainier National Park includes the greatest single-peak glacial system in the U.S., radiating from the summit and slopes of an ancient volcano. Dense forests and subalpine meadows here are characteristic of the Cascade Range. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution; and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

North Cascades National Park, Washington. (48°40′,N.; 121°15′ W.) The tall, jagged peaks of the North Cascades intercept moisture-laden winds off the Pacific Ocean, which produce glaciers, waterfalls, and ice falls in this wild alpine region where plant and animal communities thrive in mountain valleys. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Chihuahuan Desert

Big Bend National Park, Texas. (29°15′ N.; 103°11′ W.) This area has many excellent examples of mountain systems and deep canyons formed by a major river. A variety of unusual geological formations are found here, with many vegetation types—dry coniferous forest, woodland, chaparral, and desert—associated with them. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Carlsbad Caverns National Park, New Mexico. (32°10′ N.; 104°40′ W.) This series of connected caverns, which include the largest underground chambers yet discovered, have many magnificent and curious cave formations, including an array of speleothems. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Guadalupe Mountains National Park, Texas. (31°50′ N.; 104°50′ W.) Rising abruptly from the surrounding desert, the mountain mass constituting this national park contains portions of the world's most extensive and significant Permian limestone fossil reef. A tremendous earth fault and unusual flora and fauna are also found here. *Criteria:* (i) An outstanding example illustrating a major stage of the earth's evolutionary history, (ii) an outstanding example of significant geological processess, and (iii) contains superlative natural phenomena and formations.

Colorado Plateau

Arches National Park, Utah. (38°40′ N.; 109°30′ W.) Arches National Park contains many extraordinary products of erosional processes, including giant arches, windows, pinnacles and pedestals. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Bryce Canyon National Park, Utah. (37°30′ N.; 112°10′ W.) Bryce Canyon includes innummerable highly colorful and bizarre pinnacles, walls and spires, perhaps the most colorful and unusual erosional forms in the world. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Canyonlands National Park, Utah. (38°20′ N.; 109°50′ W.) this area's diverse geological features, which include arches, fins pillars, spires, and mesas, exemplify the array of erosional

patterns carved primarily by running water. *Criteria:* (ii) An outstanding example of signficant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Capitol Reef National Park, Utah. (38°20′ N.; 111°10′ W.,) The 100-mile long Waterpocket Fold is one of the world's most graphic examples of a monoclinal folding of the earth's crust. A striking variety of features, including volcanic dikes and sills, arches and bridges, and monoliths and sinkholes, have been created or exposed by wide-scale erosion occurring over the past 270 million years. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Colorado National Monument, Colorado. (39°0′ N.; 108°40′ W.) Sheer-walled canyons, towering monoliths, bizarre formations, and dinosaur fossils are contained within this national monument. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Rainbow Bridge National Monument, Utah. (37°0′ N.; 111°0′ W.) Rainbow Bridge is the greatest of the world's known natural bridges, rising 290 feet above the floor of Bridge Canyon. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Zion National Park, Utah. (37°20′ N. 113°0′ W.) Zion's colorful canyon and mesa vistas include erosion and rock-fault patterns that produce phenomenal shapes and landscapes. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Hawaiian Islands

Hawaii Volcanoes National Park, Hawaii. (19°20′ N.; 155°20′ W.) This site contains outstanding examples of active and recent volcanism, along with luxuriant vegetational development at its lower elevations. The area has been designated a Biosphere Reserve. *Criteria:* (i) An outstanding example illustrating the earth's evolutionary history, (ii) an outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Mohave Desert

Death Valley National Monument, California/Nevada. (36°30′ N.; 117°0′ W.) This large desert area, which is nearly surrounded by high mountains, contains the lowest point in the Western Hemisphere. It is highly representative of Great Basin/Mohave Desert (mountain and desert) ecosystems. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena.

Joshua Tree National Monument, California. (33°50′ N.; 116°0′ W.) This area, located at the junction of the Mohave and Sonoran Deserts, contains an unusually rich variety of desert plants, including extensive stands of Joshua trees, set amongst striking granitic formations. *Criteria:* (ii) An outstanding example of biological evolution, and (iii) contains superlative natural phenomena and formations.

New England-Adirondacks

Acadia National Park, Maine. (44°20′ N.; 68°20′ W.) Acadia, situated on a rocky archipelago along the Maine coast, is an area of diverse geological features, dramatic topography (including the highest headlands along the entire Atlantic coast), and outstanding scenic beauty. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional beauty.

North Pacific Border

Point Reyes National Seashore/ Farallon Islands National Wildlife Refuge, California. (38°0′ N.; 123°0′ W.) This proposal includes properties within the Point Reyes/Farallon Islands National Marine Sanctuary. The Point Reyes Peninsula, an unique living example of tectonic and seismic activity, has moved more than 300 miles in the past 80 million years. A complex active rift zone, including the famed San Andreas Fault, occurs where the Peninsula meets the California mainland. The area is characterized by a diverse set of habitats, striking scenery, and a large variety of terrrestrial and aquatic animal species. The Farallon Islands support the largest seabird rookeries in the contiguous United States, including species such as the ashy storm petrel, western gull, Brandt's cormorant, black oystercatcher, and Cassin's auklet. *Criteria:* (ii) An outstanding example of significant geological processes and bioligcal evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Pacific Mountain System

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska. (54°40′ N.; 164°10′ W.) The Aleutians represent a mixture of flora and fauna found in both the North American and Asian continents, and serves as a resting place for migratory species. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of biological evolution.

Denali National Park, Alaska. (63°20′ N.; 150°40′ W.) This tract embodies a unique and spectacular combination of geologic features, including active glaciers, major earthquake faults, and Mt. McKinley, the highest mountain peak in North America. It also includes outstanding examples of tundra and boreal forest ecosystems. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Glacier Bay National Park, Alaska. (58°30′ N; 136°30′ W) Great tidewater glaciers, a dramatic range of plant communities from rocky terrain recently covered by ice to lush temperature rainforest, and a large variety of animals, including brown and black bear, mountain goats, whales, seals and eagles, can be found in this Park. *Criteria:* (ii) an outstanding example of significant ongoing geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Katmai National Park, Alaska. (58°30′ N.; 155°20′ W.) This area's interior wilderness includes the Valley of 10,000 Smokes, the result of the 1917 volcanic eruption of Mt. Katmai. The eruption produced countless fumaroles, a few of which are still active. *Criteria:* (ii) an outstanding example of significant geological processes, and (iii) contains superlative natural phenomena and formations.

Rocky Mountains

(Includes northern, middle, and southern Rocky Mountain natural regions.)

Glacier National Park, Montana. (48°40′ N.; 113°50′ W.) With mountain peaks exceeding 10,000 feet, this site includes nearly 50 glaciers, many lakes and streams, and a wide variety of wild flowers and wildlife, including bighorn sheep, bald eagles and grizzly bears. The area has been designated a

Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Grand Teton National Park, Wyoming. (43°40′ N.; 110°40′ W.) Containing the most impressive portion of the Teton Range in the Rocky Mountains, this series of peaks rise more than a mile above surrounding sagebrush plains. The park includes the winter feeding ground of the largest American elk herd. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Rocky Mountain National Park, Colorado. (40°20′ N.; 105°40′ W.) Within this 412-square mile national park, peaks towering over 14,000 feet shadow wildlife and wildflowers that are characteristic of the Front Range of the Rocky Mountains. The area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Sierra Nevada

Sequoia/Kings Canyon National Parks, California. (36°40′ N.; 118°30′ W.) A combination of two adjoining national parks, this tract includes Mount Whitney, the tallest mountain in the United States outside of Alaska, Mineral King Valley, and two enormous canyons of the Kings River. Groves of giant sequoia, the world's largest living things, are found here. This area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, and areas of exceptional natural beauty.

Yosemite National Park, California. (37°50′ N.; 119°30′ W.) Granite peaks and domes rise high above broad meadows in the heart of the Sierra Nevada, along with groves of sequoias and related tree species. Mountains, lakes, and waterfalls, including the nation's highest, are found here. *Criteria:* (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Sonoran Desert

Organ Pipe Cactus National Monument, Arizona. (32°0′ N.; 112°50′ W.) This park contains block-faulted mountains separated by wide alluvial valleys, along with playas, lava fields, and sands. It includes representative examples of the Sonoran Desert found in this region and nowhere else in the United States. This area has been designated a Biosphere Reserve. *Criteria:* (ii) An outstanding example of biological evolution, and (iii) contains superlative natural phenomena.

Saguaro National Monument, Arizona. (32°10′ N.; 110°40′ W.) Giant saguaro cactus, unique to the Sonoran Desert of southern Arizona and northwestern Mexico, reach up to 50 feet in height in the cactus forest in this park. *Criteria:* (ii) An outstanding example of biological evolution, and (iii) contains superlative natural phenomena.

Dated: April 30, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12283 Filed 5-5-82; 8:45 am]

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/RSPA			DOT/RSPA	
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DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER, 1981

Additions to Table III, January 1981 through December 1981

This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the first session of the 97th Congress which require Federal agencies to publish documents in the **Federal Register.** Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1982.

Description of Act	*Citation*
Steel Industry Compliance Extension Act of 1981	Public Law 97-23; 95 Stat. 139; 42 U.S.C. 7413.
Omnibus Budget Reconciliation Act of 1981	Public Law 97-35; 95 Stat. 433, 453, 502, 601, 639, 658, 679, 704, 708, 711, 900; 12 U.S.C. 3026, 20 U.S.C. 1089, 42 U.S.C. 9839, 42 U.S.C. 10008, 45 U.S.C. 231u, 45 U.S.C. 767, 45 U.S.C. 748, 15 U.S.C. 2058, 15 U.S.C. 1261, 15 U.S.C. 1193, 42 U.S.C. 8626.
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Bandon Marsh National Wildlife Refuge, establishment	Public Law 97-137; 95 Stat. 1709, 1711.

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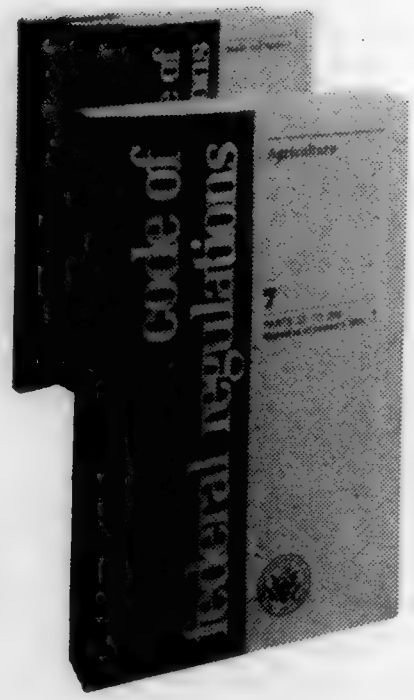

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May 7, 1982

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Title 3—

The President

Proclamation 4940 of May 5, 1982

Import Fees on Certain Sugars, Sirups and Molasses

By the President of the United States

A Proclamation

1. The Secretary of Agriculture has advised me that he has reason to believe that certain sugars, sirups and molasses derived from sugar cane or sugar beets, classified under items 155.20 and 155.30, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are being, or are practically certain to be, imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or to materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar cane and sugar beets. The Secretary of Agriculture has also advised me that he has reason to believe that the import fees imposed by Proclamation 4887 of December 23, 1981, should be modified in order to prevent the importation of the items described above from rendering or tending to render ineffective, or materially interfering with the price support operations being conducted by the Department of Agriculture for sugar beets and sugar cane.

2. I agree that there is reason for such beliefs by the Secretary of Agriculture. By Proclamation 4887 I requested the United States International Trade Commission to make an immediate investigation with respect to such matters pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), and to report its findings and recommendations to me as soon as possible. The United States International Trade Commission is presently conducting such an investigation, and has not yet submitted its report to me. I am therefore requesting that the United States International Trade Commission continue its investigation with respect to such matters and to report its findings and recommendations to me as soon as possible.

3. The Secretary of Agriculture has also determined and reported to me with regard to such sugars, sirups and molasses that a condition exists which requires emergency treatment and that the import fees hereinafter proclaimed should be imposed without awaiting the report and recommendations of the United States International Trade Commission.

4. I find and declare that the imposition of the import fees hereinafter proclaimed, without awaiting the recommendations of the United States International Trade Commission with respect to such action, is necessary in order that the entry, or withdrawal from warehouse for consumption, of certain sugars, sirups and molasses described below by value, use and physical description and classified under TSUS items 155.20 and 155.30 will not render or tend to render ineffective, or materially interfere with, the price support operations being conducted by the Department of Agriculture for sugar cane and sugar beets.

NOW THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by section 22 of the Agricultural Adjustment Act of 1933, as amended, and the Statutes of the United States, including Section 301 of Title 3 of the United States Code, do hereby proclaim until otherwise superseded by law:

A. Headnote 4 of part 3 of the Appendix to the TSUS is continued in effect and amended, effective 12:01 a.m. (Eastern Daylight Time) of the day following the

date of the signing of this Proclamation, by changing paragraph (c) to read as follows:

(c)(i) The quarterly adjusted fee provided for in items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent per pound.

(ii) The quarterly adjusted fee provided for in item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar and Cocoa Exchange) expressed in United States cents per pound, in bulk, is less than the applicable market stabilization price: *Provided,* That whenever the average of the daily spot (domestic) price quotations for 10 consecutive market days within any calendar quarter (1) exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent per pound, or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent per pound. The adjusted daily spot (domestic) price quotation for any market day shall be the daily spot (domestic) price quotation for such market day less the amount of the fee for item 956.15 that is in effect on that day.

(iii) The market stabilization price for the remainder of the second, and the third calendar quarters of 1982 shall be 19.8800 cents per pound. The market stabilization price that shall be applicable to each subsequent fiscal year shall be determined and announced by the Secretary of Agriculture (hereafter the "Secretary") in accordance with this headnote no later than 30 days prior to the beginning of the fiscal year for which such market stabilization price shall be applicable. The market stabilization price shall be equal to the sum of: (1) the price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent. The adjusted average transportation costs shall be the weighted average cost of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs shall be the amount of interest, as determined or estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable if a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

(iv) The Secretary shall determine the amount of the quarterly fees in accordance with this headnote and shall announce such fees not later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary shall certify the amount of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. The Secretary shall determine and announce any adjustment in the fees made within a calendar quarter in accordance with the proviso of paragraph (ii) hereof, shall certify such adjusted fees to the Secretary of the Treasury, and shall file notice thereof with the **Federal Register** within 3 market days of the fulfillment of that proviso.

(v) If an adjustment is made in the fee in accordance with the proviso of paragraph (ii) hereof, any subsequent adjustment made within that quarter shall only be made on the basis of the average spot price for any 10 consecutive market day period following the effective date of the immediately preceding fee adjustment. No adjustment shall be made in any fee in accordance with the proviso of paragraph (ii) hereof during the last fifteen market days of a calendar quarter.

(vi) Any adjustment made in a fee during a quarter in accordance with the proviso of paragraph (ii) hereof shall be effective only with respect to sugar entered or withdrawn from warehouse for consumption after 12:01 a.m. (local time at point of entry) on the day following the filing of notice thereof with the **Federal Register**: *Provided,* That such adjustment in the fee shall not apply to sugar exported (as defined in section 152.1 of the Customs Regulations) on a through bill of lading to the United States from the country of origin before such time. The exemption contained in the preceding proviso shall apply regardless of whether the adjustment in the fee is upward or downward.

B. Items 956.05, 956.15 and 957.15 of part 3 of the Appendix to the TSUS are continued in effect and amended to read as follows:

Item	*Articles*	*Rates of Duty (Section 22 Fees)*
	Sugars, sirups and molasses derived from sugar cane or sugar beets, except those entered pursuant to a license issued by the Secretary of Agriculture in accordance with headnote 4(a):	
	Principally of crystalline structure or in dry amorphous form, provided for in item 155.20 part 10A, schedule 1:	
956.05	Not to be further refined or improved in quality	5.0703 cents per lb. adjusted quarterly in accordance with headnote 4(c), but not in excess of 50% ad val.

Item	Articles	Rates of Duty (Section 22 Fees)
956.15	To be further refined or improved in quality	4.0703 cents per lb. adjusted quarterly in accordance with headnote 4(c), but not in excess of 50% ad val.
957.15	Not principally of crystalline structure and not in dry amorphous form, containing soluble nonsugar solids (excluding any foreign substance that may have been added or developed in the product) equal to 6% or less by weight of the total soluble solids, provided for in item 155.30, part 10A, schedule 1	5.0703 cents per lb. of total sugars, adjusted quarterly in accordance with headnote 4(c), but not in excess of 50% ad val.

C. The provisions of this proclamation shall terminate upon the filing of a notice in the **Federal Register** by the Secretary of Agriculture that the Department of Agriculture is no longer conducting a price support program for sugar beets and sugar cane.

D. The fees established in paragraph B of this proclamation shall be adjusted on a quarterly basis beginning July 1, 1982. Such fees shall be adjusted on an intra-quarterly basis as provided by the proviso of paragraph (c)(ii) of Headnote 4 of part 3 of the Appendix to the TSUS, as added herein, beginning with any 10 consecutive market day period following the day this proclamation is signed.

E. The provisions of Proclamation 4887 of December 23, 1981 are hereby terminated, except with respect to those articles which are exempted from the provisions of this proclamation under paragraph F below.

F. This proclamation shall be effective as of 12:01 a.m. (Eastern Daylight Time) on the day following its signing. However, the provisions of this proclamation shall not apply to articles entered, or withdrawn from warehouse for consumption, prior to July 1, 1982, and which had been exported (as defined in section 152.1 of the Customs Regulation) on a through bill of lading to the United States from the country of origin prior to April 23, 1982.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

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Editorial Note: The President's statement of May 5, 1982, concerning Proclamation 4940, is printed in the Weekly Compilation of Presidential Documents (vol. 18, no. 18).

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Proclamation 4941 of May 5, 1982

Modification of Quotas on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

1. Headnote 2 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202), hereinafter referred to as the "TSUS", provides, in relevant part, as follows:

"(i) . . . if the President finds that a particular rate not lower than such January 1, 1988, rate, limited by a particular quota, may be established for any articles provided for in item 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, . . ."

"(ii) . . . any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; . . ."

2. Headnote 2 was added to the TSUS by Proclamation No. 3822 of December 16, 1967 (82 Stat. 1455) to carry out a provision in the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade (Note 1 of Unit A, Chapter 10, Part 1 of Schedule XX; 19 U.S.T., Part II, 1282). The Geneva Protocol is a trade agreement that was entered into and proclaimed pursuant to section 201(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)). Section 201(a) of the Trade Expansion Act authorizes the President to proclaim the modification or continuance of any existing duty or other import restriction or such additional import restrictions as he determines to be required or appropriate to carry out any trade agreement entered into under the authority of that Act.

3. I find that the quantitative limitations hereinafter proclaimed are appropriate to carry out the trade agreement described in paragraph 2 of this proclamation and the International Sugar Agreement, 1977 (31 U.S.T. 5135), and give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and statutes, including section 201 of the Trade Expansion Act of 1962, section 301 of Title 3 of the United States Code, and the International Sugar Agreement, 1977, Implementation Act (P.L. 96–236, 94 Stat. 336), and in conformity with Headnote 2 of subpart A of part 10 of schedule 1 of the TSUS, do hereby proclaim until otherwise superseded by law:

A. Headnote 3 of subpart A, part 10, schedule 1 of the TSUS is modified to provide as follows:

3. (a) The total amount of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, between May 11, 1982 and June 30, 1982, inclusive, shall not exceed, in the aggregate, 220,000 short tons, raw value.

(b) Beginning with the third calendar quarter of 1982, the Secretary of Agriculture (hereafter the Secretary) shall establish for each calendar quarter the total amount (expressed in terms of raw value) of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, which may be entered, or withdrawn from warehouse for consumption, during such calendar quarter. The Secretary shall determine such amount, inform the Secretary of the Treasury of his determination, and file notice thereof with the **Federal Register** no later than the 15th day of the month immediately preceding the calendar quarter during which such determination shall be in effect. In determining such amounts the Secretary shall give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

(c) The total amounts of sugars, sirups, and molasses permitted to be imported under paragraphs (a) and (b) of this headnote shall be allocated to the following supplying countries or areas in the following percentages:

Country	*Percentage*	*Country*	*Percentage*
1. Canada	1.1	14. Peru	4.1
2. Guatemala	4.6	15. Brazil	14.5
3. Belize	1.1	16. Argentina	4.3
4. El Salvador	2.6	17. Thailand	1.4
5. Honduras	1.0	18. Philippines	13.5
6. Nicaragua	2.1	19. Taiwan	1.2
7. Costa Rica	1.5	20. Australia	8.3
8. Panama	2.9	21. Mauritius	1.1
9. Jamaica	1.1	22. Mozambique	1.3
10. Dominican Republic	17.6	23. Rep. S. Africa	2.3
11. Colombia	2.4	24. Swaziland	1.6
12. Guyana	1.2	25. Other specified countries and areas	5.9
13. Ecuador	1.1		100.0

The category "Other specified countries and areas" shall consist of the following: Mexico, Haiti, Barbados, Trinidad-Tobago, Bolivia, Paraguay, France, India, Anguilla, Antigua, Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Montserrat, Saint Christopher-Nevis, British Virgin Islands, Fiji, Tonga, Nauru, Malagasy Republic, Zimbabwe and Malawi.

Notwithstanding the allocation provisions set forth above, the Secretary may, after consultation with the U.S. Trade Representative, the Department of State, and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other specified countries and areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the United States sugar market. Such regulations may, among other things, provide for the establishment of minimum quota amounts, the establishment of quota periods other than quarterly periods, and the carrying forward of unused quota amounts into subsequent quota periods.

(d) The Secretary, after consultation with the U.S. Trade Representative and the Department of State, may suspend the allocation provisions of paragraph (c), or may establish quantitative limitations for periods of time other than calendar quarters as provided in paragraph (b), if the Secretary determines that such action or actions are appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. The Secretary may reinstate the allocation provisions of paragraph (c), or may amend any quantitative limitations (including the time period for which such limitations are applicable) which have previously been established under this paragraph or paragraph (b), if the Secretary determines that the considerations set forth in the previous sentence so warrant. The Secretary shall inform the Secretary of the Treasury of any determination made

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under this paragraph. Notice of such determinations shall be filed with the **Federal Register**, and such determinations shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the Secretary.

(e) The U.S. Trade Representative or his designee, after consultation with the Department of Agriculture and the Department of State, may modify the allocation provisions of paragraph (c) (including the deletion or addition of any country or area), and may prescribe further rules, limitations or prohibitions on the entry of sugar if he finds that such actions are appropriate to carry out the obligations of the United States under the International Sugar Agreement, 1977, or any successor agreement thereto, and that such actions give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. If the U.S. Trade Representative takes any such action, he shall so inform the Secretary of the Treasury and the Secretary of Agriculture and shall publish notice thereof in the **Federal Register**. Such action shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the U.S. Trade Representative.

(f) The Secretary shall, in consultation with the U.S. Trade Representative, the Department of State, and other concerned agencies, review the operation of this headnote prior to September 1 of each year. In making such review, the Secretary shall determine whether the continued operation of paragraphs (b), (c), (d), and (e) of this headnote gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and whether the operation of paragraph (g) of this headnote would give due consideration to such interests. The Secretary shall file a notice of such determinations in the **Federal Register** no later than September 1 of each year. If the Secretary determines that the continued operation of paragraphs (b), (c), (d), and (e) of this headnote would not give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and that the provisions of paragraph (g) of this headnote would give due consideration to such interests, paragraphs (b), (c), (d), and (e) of this headnote shall terminate as of the first day of October following such determinations.

(g) If paragraphs (b), (c), (d), and (e) of this headnote are terminated under the provisions of paragraph (f) of this headnote, the total amount of sugars, sirups, and molasses described in items 155.20 and 155.30, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, in any fiscal (October 1–September 30) year shall not exceed, in the aggregate, 6,900,000 short tons, raw value. The U.S. Trade Representative or his designee may allocate this quantity among supplying countries or areas, and may prescribe further rules, regulations, limitations or prohibitions on the entry of sugar in accordance with the International Sugar Agreement, 1977, and Public Law 96–236. The U.S. Trade Representative or his designee shall inform the Commissioner of Customs of any such action regarding the importation of sugar, and shall publish notice thereof in the **Federal Register**.

(h) For the purposes of this headnote, the term "*raw value*" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. Such regulations may, among other things, provide: (1) for the entry of such articles pending a final determination of polarity; and (2) that positive or negative adjustments for differences in

preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

(i) For articles described in item 155.20, by multiplying the number of pounds thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

(ii) For articles described in item 155.30, by multiplying the number of pounds of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(iii) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provisions.

B. Those parts of Proclamation 4334 of November 16, 1974, Proclamation 4610 of November 30, 1978, Proclamation 4663 of May 24, 1979, and Proclamation 4770 of July 1, 1980, which are inconsistent with the provisions of paragraph (A) above, are hereby terminated.

C. The provisions of this Proclamation shall be effective as of May 11, 1982. However, the quantitative limitations imposed by paragraphs (a) and (c) of Headnote 3 of subpart A, part 10, schedule 1 of the TSUS, as modified herein, shall not apply to articles entered, or withdrawn from warehouse for consumption, prior to July 1, 1982, which are exported (as defined in section 152.1 of the Customs Regulations) on a through bill of lading to the United States from the country of origin prior to April 23, 1982.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-12828
Filed 5-6-82; 9:35 am]
Billing code 3195-01-M

Editorial Note: The President's statement of May 5, 1982, concerning Proclamation 4941, is printed in the Weekly Compilation of Presidential Documents (vol. 18, no. 18).

Rules and Regulations

Federal Register
Vol. 47, No. 89
Friday, May 7, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[Amdt. 2]

Food Distribution Programs on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule applies only to the capability and program implementation schedules for the Food Distribution Program on Indian Reservations and is based on a Court of Appeals decision (*Chico Antone*, et al., v. *Bob Bergland*, et al., D.C. Cir.; No. 80–1053, August 10, 1981) in favor of this Department. This rule republishes final regulations issued on June 19, 1979 (44 FR 35904) in accordance with notice and comment rulemaking. The June 19, 1979, rules had been changed by order of a Federal district court (*Antone* v. *Bergland*, D. D.C. November 14, 1979) which order was reversed, as noted above, on appeal. This rule reinstates the original time frame for FNS to determine Tribal capability to operate a food distribution program within 60 days of receipt of a completed application.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food and Nutrition Service, Food Distribution Division, Park Office Center, Room 506, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under the USDA criteria established to implement Executive Order No. 12291 and Secretary's Memorandum No. 1512–1. This action would not result in an annual effect on the economy of $100 million or more or a major increase in cost or price for consumers, industries, Federal, State or local governments, or geographical regions. Additionally, this action would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified "not major."

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator, Food and Nutrition Service, has certified that this action has no economic impact on small entities. This action simply reinstates the original timeframes for the capability and program implementation phases of the Food Distribution Program on Indian Reservations. The regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Background

On March 4, 1980 (FR Vol. 45, No. 44), the Department issued regulations as mandated by a Federal district court order to reduce the timeframes for 1) FNS to determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations from 60 days, as stated in the June 19, 1979, regulations, to 30 days after the receipt of a completed application and 2) a State agency to submit a plan of operation and to commence program operations for an Indian tribal organization (ITO) determined not capable of program administration from 180 days, as stated in the June 19, 1979, regulations, to 120 days after FNS' determination of capability. On August 10, 1981, the Federal district court order that required the reduced timeframes was reversed by the Court of Appeals for the District of Columbia.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs-social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

The Department is, therefore, reinstating the original timeframes based on the rulemaking record as explained in the preamble to the June 19, 1979, regulations. Accordingly, Part 253 is being amended as follows:

§ 253.5 [Amended]

In § 253.5, paragraph (m) is revised and reads as follows:

* * * * *

(m) *Implementation.* The State agency shall implement changes required by amendments to these regulations in accordance with schedules specified in the amendment. (1) Amendment 2. (i) If an ITO currently participates in, but does not administer, the Food Distribution Program on Indian Reservations:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 60 days of receipt of a completed application. If an incomplete application is received, FNS shall within 15 days, notify the ITO of what additional information is required. The processing time for the capability determination shall start from the date the additional information is received by FNS.

(B) Upon FNS' determination that the ITO will administer the Food Distribution Program on Indian Reservations, FNS shall expeditiously plan for and provide needed training and technical assistance to facilitate timely commencement of tribal administrative responsibilities. The ITO shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation, operating manuals, and to commence program operations under the regulations as specified in this part. Extensions may be granted by FNS to ITOs if good cause is shown.

(C) If FNS determines that an ITO is not capable of administering the Food Distribution Program on Indian Reservations, FNS shall direct the State to continue program operations and

submit a new plan of operation and to commence program operations under the regulations as specified in this part within 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section.

(ii) If an ITO currently administers the Food Distribution Program on Indian Reservations, the timeframes specified in paragraph (m)(1)(i) of this section apply except that:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 30 days of receipt of a completed application.

(B) If FNS determines that the ITO will not administer the Food Distribution Program on Indian Reservations, FNS shall direct the ITO to continue program operations until the State government can commence program operations. The State government shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation and to commence program operations under the regulations as specified in this part.

(iii) If an ITO does not currently participate in a Food Distribution Program on Indian Reservations, the timeframes in paragraph (m)(1)(i) of this section apply except that if FNS determines that an ITO cannot administer the program, FNS shall direct the State to submit a plan of operation and to commence program operations under the regulations as specified in this part within 180 days from the determination.

(iv) Extensions to the above implementation timeframe (except for those timeframes set forth in paragraphs (m)(1)(i)(A) and (ii)(A) of this section) may be granted by FNS to ITOs or State government agencies if there is compelling justification involving circumstances which were not reasonably foreseeable and which are not the fault of the ITO or the State agency and which circumstances present extraordinary problems that would render earlier implementation impossible.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: April 23, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-12349 Filed 5-6-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1981–82 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1981–82 crop year, which began July 1, 1981. The salable percentage is increased from 90 percent to 100 percent, and the reserve percentage is correspondingly decreased from 10 percent to 0 percent. This action is taken under the marketing order for almonds grown in California to promote orderly marketing conditions.

EFFECTIVE DATES: July 1, 1981 through June 30, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 26 handlers.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and must be taken promptly to ensure an adequate supply of almonds for normal domestic and export needs and maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The relevant provisions of the marketing order for California almonds require that revised salable and reserve percentages established for a particular crop year shall apply to all marketable California almonds received by handlers from the beginning of that year. The 1981–82 crop year began July 1, 1981.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for an increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On September 1, 1981, an emergency interim final rule was published in the **Federal Register** (46 FR 43824) establishing on an interim basis salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for the 1981–82 crop year. That action was based on a recommendation of the Almond Board of California, which works with USDA in administering the order, at its July 29, 1981, marketing policy meeting. A final rule establishing those percentages for the 1981–82 crop year was published in the November 30, 1981, issue of the **Federal Register** (46 FR 58061).

On February 10, 1982, the Board met to review the salable and reserve percentages established for the 1981–82 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 90 percent and a corresponding decrease in the reserve percentage to 10 percent. A final rule establishing those revised percentages for the 1981–82 crop year was published in the March 8, 1982, issue of the **Federal Register** (47 FR 9809).

On April 16, 1982, the Board met again to review the 1981–82 salable and reserve percentages and recommended an increase in the salable percentage to 100 percent and a corresponding

decrease in the reserve percentage to 0 percent. In arriving at this recommendation, the Board increased the quantity of almonds deemed desirable to be carried out on June 30, 1982, from 118.7 million pounds to 157.1 million pounds. The Board noted that adverse weather conditions in California during recent weeks make it unlikely that the 1982 crop will meet normal expectations. Therefore, an increase in carryover is desirable to ensure that ample supplies of good quality almonds are available to meet trade demand during the 1982–83 crop year.

The estimates used by the Board in making its April 16, 1982, recommendation to revise the salable and reserve percentages are tabulated below. The Board's July 29, 1981, and February 16, 1982, estimates are shown as a basis of comparison.

	Initial estimate July 29, 1981	Millions of pounds: 1st revised estimate Feb. 16, 1982	2d revised estimate Apr. 16, 1982
Production			
1. 1981 crop	458.0	406.0	406.4
2. Loss and exempt	27.0	26.0	26.0
3. Marketable supply	423.0	380.0	380.4
Trade Shipments			
4. Domestic	125.0	125.0	125.0
5. Export	200.0	200.0	200.0
6. Total	325.0	325.0	325.0
Inventory Adjustments			
7. Carryover, July 1, 1981	101.7	101.7	101.7
8. Estimated carryover, June 30, 1982	94.0	118.7	157.1
9. Adjustment	[7.7]	17.0	55.4
Salable and Reserve			
10. Salable supply [6+9]	317.3	342.0	380.4
11. Reserve supply [3–10]	105.7	38.0	0
12. Salable percentage [10÷3×100]	75	90	100
13. Reserve percentage [100%–12]	25	10	0

NOTE.—List of Subjects in 7 CFR Part 981 Marketing Agreements and Orders, Almonds, California.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 981—ALMONDS GROWN IN CALIFORNIA

Therefore, § 981.230 is revised to read as follows: (The following provisions will not appear in the Code of Federal Regulations)

Subpart—Salable, Reserve, and Export Percentages

§ 981.230 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1981.

The salable, reserve, and export percentages during the crop year beginning July 1, 1981, shall be 100, 0, and 0 percent, respectively.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: May 3, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 82-12544 Filed 5-6-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 358]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period May 9–15, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 9, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on May 4, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.658 is added as follows:

§ 910.658 Lemon Regulation 358.

The quantity of lemons grown in California and Arizona which may be handled during the period May 9, 1982, through May 15, 1982, is established at 300,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: May 5, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-12564 Filed 5-6-82; 11:41 am]

BILLING CODE 3410-02-M

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7 CFR Part 1011

[Milk Order No. 11; Docket No. AO–251–A22]

Milk in the Tennessee Valley Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action makes several changes in the Tennessee Valley Federal milk order. The changes relate

basically to the performance standards that determine which distributing plants and supply plants qualify under the order as fully regulated pool plants. Other changes pertain to those provisions that determine which persons shall be defined as handlers and producers under the order. The changes, which are based on a public hearing held in March 1980, are necessary to maintain orderly conditions for the marketing of milk in the area. The changes were approved by cooperative associations representing more than two-thirds of the producers supplying the market.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447-4829).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Tennessee Valley Order

Notice of Hearing: Issued February 11, 1980; published February 14, 1980 (45 FR 9942).

Correction: Published February 21, 1980 (45 FR 11503).

Notice of Rescheduled Hearing: Issued February 28, 1980; published March 5, 1980 (45 FR 14218).

Recommended Decision: Issued July 1, 1981; published July 8, 1981 (46 FR 35284).

Extension of Time: Issued July 28, 1981; published August 3, 1981 (46 FR 39440).

Extension of Time: Issued August 28, 1981; published September 2, 1981 (46 FR 43997).

Final Decision: Issued March 12, 1982; published March 18, 1982 (47 FR 11679).

Tennessee Valley Order (Reopening) and 28 Other Orders

Notice of Hearing: Issued July 10, 1980; published July 15, 1980 (45 FR 47432).

Supplemental Notice of Hearing: Issued July 21, 1980; published July 25, 1980 (45 FR 49584).

Recommended Decision: Issued February 11, 1981; published February 18, 1981 (46 FR 12709).

Extension of Time: Issued March 9, 1981; published March 12, 1981 (46 FR 16270).

Extension of Time: Issued March 19, 1981; published March 25, 1981 (46 FR 18558).

Final Decision: Issued July 8, 1981; published July 14, 1981 (46 FR 36151).

Order Amending Order: Issued August 25, 1981; published August 28, 1981 (46 FR 43371).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tennessee Valley marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1011

Milk marketing orders. Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Tennessee Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.7 is revised to read as follows:

§ 1011.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month:

(1) Route disposition, except filled milk, in the marketing area is not less than 10 percent of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to effect a similar adjustment pursuant to § 1011.13(e)(3). Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being

considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from dairy farmers (including producer milk diverted from the plant pursuant to § 1011.13 but excluding milk diverted to such plant) and handlers described in § 1011.9 (c) and (d). The operator of such a plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1011.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under an other Federal order.

2. In § 1011.9, paragraphs (d), (e) and (f) are redesignated as paragraphs (e), (f) and (g) and a new paragraph (d) is added to read as follows:

§ 1011.9 Handler.

* * * * *

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1011.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in an area that includes the marketing area plus the area within 100 miles of the marketing area boundary at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person who operates a partially regulated distributing plant;

(f) A producer-handler; and

(g) Any person who operates an other order plant described in § 1011.7(d).

3. In § 1011.12, paragraph (b)(5) is removed and paragraphs (a)(2), (b)(3) and (b)(4) are revised to read as follows:

§ 1011.12 Producer.

(a) * * *

(2) Received by a handler described in § 1011.9(c) or (d); or

* * * * *

(b) * * *

(3) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1011.44(a)(8)(iii) and the corresponding step of § 1011.44(b); and

(4) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

4. Section § 1011.13 is revised to read as follows:

§ 1011.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1011.9(c);

(c) Received by a handler described in § 1011.9(d), excluding milk diverted pursuant to paragraph (e) of this section;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1011.9(a), (b) or (d) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of August through February, six days' production; and

(ii) In any month of March through July, two days' production.

(2) During each of the months of August through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from pool plants;

(3) The total quantity of milk diverted by a proprietary bulk tank handler described in § 1011.9(d) shall not exceed 40 percent of the producer milk that such handler caused to be delivered to or diverted from pool plants in each month of August through November and January and February, and 60 percent in each of the other months. The applicable diversion percentage of this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary

to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(4) A handler described in § 1011.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraph (e)(2) or (3) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of August through November and January and February;

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2), (3) or (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(6) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association or a proprietary bulk tank handler from the pool plant of an other handler shall not be producer milk; and

(7) The cooperative association or proprietary bulk tank handler shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (e)(6) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant to which diverted.

5. In § 1011.14, paragraph (a) is revised to read as follows:

§ 1011.14 Other source milk.

* * * * *

(a) Receipts of fluid milk products and bulk products specified in § 1011.40(b)(1) from any source other than producers, handlers described in § 1011.9(c) and (d) or pool plants;

* * * * *

6. In § 1011.30, paragraphs (a) and (c) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1011.9(c);

(3) Receipts of milk from handlers described in § 1011.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(7) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler described in § 1011.9(b), (c), and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

* * * * *

§ 1011.31 [Amended]

7. In paragraph (a) of § 1011.31, the section reference "1011.9(a), (b), and (c)" is changed to "1011.9(a), (b), (c), and (d)".

§ 1011.32 [Amended]

8. In paragraph (a) of § 1011.32, the section reference "1011.9(a), (b) and (c)" is changed to "1011.9(a), (c), and (d)".

9. In paragraph (b)(2) of § 1011.41, the section reference "1011.9(c)" is changed to "1011.9(c) and (d)", and paragraph (c) of § 1011.41 is revised to read as follows:

§ 1011.41 Shrinkage.

* * * * *

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1011.(9)(b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1011.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association or the proprietary bulk tank handler shall be zero.

10. In § 1011.42, the introductory text of paragraph (a) is revised to read as follows:

§ 1011.42 Classification of transfers and diversions.

* * * * *

(a) *Transfers and diversions (including deliveries by a handler described in § 1011.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1011.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

* * * * *

11. In § 1011.43, paragraphs (a) and (c) are revised to read as follows:

§ 1011.43 General classification rules.

* * * * *

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1011.30 and shall compute separately for each pool plant, for each proprietary bulk tank handler pursuant to § 1011.9(d), and for each cooperative association with respect to milk for which it is the handler pursuant to § 1011.9(b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1011.40, 1011.41, and 1011.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1011.9(b), (c) or (d) shall be such handler's classification of producer milk;

* * * * *

(c) The classification of producer milk of a handler pursuant to § 1011.9(b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

12. In § 1011.44, paragraph (a)(7)(vii) is removed and paragraphs (a)(7)(v) and (vi), (a)(8)(ii)(*b*), and (a)(13) are revised to read as follows:

§ 1011.44 Classification of producer milk.

* * * * *

(a) * * *

(7) * * *

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) * * *

(ii) * * *

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1011.9 (c) or (d), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

* * * * *

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from an other pool plant or a handler described in § 1011.9(d) according to the classification of such products pursuant to § 1011.42(a); and

* * * * *

§ 1011.52 [Amended]

13. In paragraph (a) of § 1011.52, the section reference "1011.9(c)" is changed to "1011.9 (c) or (d)", and in paragraph (b)(1)(i) the section reference "1011.9(c)" is changed to "1011.9(c) and 9(d)".

14. In § 1011.60, the introductory text and paragraph (d) are revised to read as follows:

§ 1011.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1011.9(a) with respect to each of its pool plants, for each handler described in § 1011.9 (b) and (c) with respect to milk that was not received at a pool plant, and for each handler described in § 1011.9(d) as follows:

* * * * *

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1011.44(a)(7) (i) through (iv) and the corresponding step of § 1011.44(b), excluding receipts of bulk fluid cream products from an other order plant;

* * * * *

15. In § 1011.76, paragraphs (a)(2)(i) and (b)(1)(i) are revised to read as follows:

§ 1011.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(2) * * *

(i) As Class I milk from pool plants, handlers pursuant to § 1011.9(b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

* * * * *

(b) * * *

(1) * * *

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1011.9(b) or (d), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1011.42 with respect to receipts from a handler described in § 1011.9 (b) or (d);

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Effective date: July 1, 1982.

Signed at Washington, D.C., on May 3, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-12539 Filed 5-6-82; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Delay of Implementation of Effective Date.

SUMMARY: A final rule was published in the December 22, 1981, **Federal Register** (Volume 46, No. 245, pages 62049–53) to amend Appendix A—REA Bulletins by revising REA Bulletin 44–2 (Electric) and 345–1 (Telephone), "REA Specification for Wood Poles, Stubs, and Anchor Logs." Due to unavoidable delays in the approval, printing and distribution process, the bulletin was not available until early February 1982.

EFFECTIVE DATE: The effective date is extended to July 1, 1982.

FOR FURTHER INFORMATION CONTACT: George J. Bagnall, Chief, Engineering Services Branch, Engineering Standards Division, Rural Electrification Administration, Room 1271, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–9064.

SUPPLEMENTARY INFORMATION: On December 22, 1981, REA published in the **Federal Register** (Volume 46, No. 245, pages 62049–53) a final rule to amend Appendix A by revising REA Bulletin 44–2:345–1, "REA Specification for Wood Poles, Stubs, and Anchor Logs." When the revised specification was originally prepared it was anticipated that it would be approved and available in advance of January 1, 1982. However, due to unavoidable delays the bulletin was not available until after January 1, 1982, thereby resulting in the necessity to extend the effective date to July 1, 1982.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this extension of effective date is impracticable and contrary to the public interest, and good cause is found for making this extension date effective less than 30 days after publication of this document in the **Federal Register**.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; and 10.852—Rural Telephone Bank Loans.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Electric utilities, Loan Programs—communications, Loan Programs—energy, Telecommunications, Telephone.

Dated: May 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-12540 Filed 5-6-82; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Pinnacle Port of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Pinnacle as a subport of entry of the Richford, Vermont master port, St. Albans District No. 1. This is a port of entry for aliens

arriving by any means of travel other than aircraft.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting, Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: William F. Doyle, Immigration Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-2899.

SUPPLEMENTARY INFORMATION: This rule provides notice to the public regarding the Service's operation of the Pinnacle port of entry, a subport of the Richford, Vermont port, within the St. Albans district. The port is a Class A port of entry for aliens arriving by vessel or by land transportation, but not by aircraft. A Class A port means that the port is a designated port of entry for all aliens.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the rule is limited to agency practice and procedure which is of benefit to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Aliens, Authority delegation, Harbors, Organization and functions, and Port of entry (both aircrafts and vessels).

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. In § 100.4(c)(2), District No. 1—St. Albans, Vt. is revised to read as follows:

§ 100.4 Field Service.

(c) * * *

(2) * * *

District No. 1—St. Albans, Vt.

Class A

*Alburg, Vt.
*Alburg Springs, Vt.
*Beebe Plain, Vt.
*Beecher Falls, Vt.
*Canaan, Vt.
*Derby Line, Vt.
*East Richford, Vt.
*Highgate Springs, Vt.
Morses Line, Vt.
*Newport, Vt.
*North Troy, Vt.
*Norton, Vt.
*Richford, Vt. (includes the Pinnacle port of entry)
St. Albans, Vt.
*West Berkshire, Vt.

* * * * *

(Sec. 103, 66 Stat. 173 (8 U.S.C. 1103))

Dated: May 3, 1982.

Perry A. Rivkind,

Acting, Associate Commissioner, Management, Immigration and Naturalization Service.

[FR Doc. 82-12333 Filed 5-6-82; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 82-311]

Conversions from Mutual to Stock Form

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations governing the conversion to the stock form of mutual savings and loan institutions the accounts of which are insured by the FSLIC ("insured institutions"). In general, the amended regulations will allow converting insured institutions significant flexibility in structuring their conversions to meet particular marketing circumstances. Full utilization of the amended regulations also will permit converting insured institutions to significantly reduce the expense and time required for conversion. In addition, the Board is broadening and confirming certain rights of the members of converting insured institutions to allow them to participate more effectively in conversions. Finally, the Board has determined to accept on a test-case basis applications for conversion involving holding company and merger transactions.

DATES: Effective May 5, 1982. Comments by July 6, 1982.

ADDRESS: Send comments to Director, Information Services, Federal Home Loan Bank Board, 1700 G Street, NW., Washington D.C. 20552.

FOR FURTHER INFORMATION, CONTACT:

Harry M. Zimmerman, (202-377-6459), Director, Division of Securities and Corporate Analysis, or J. Larry Fleck, (202-377-6413), Deputy Director, Division of Securities and Corporate Analysis, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The principal amendments are the following: (1) Deletion of the restriction that officers and directors of converting insured institutions not purchase more than one-tenth of one percent of the conversion stock in the public offering; (2) a provision increasing the maximum percentage of shares that may be purchased by any person in the public offering or the direct community offering from two percent to five percent; (3) a provision increasing the maximum percentage of shares that may be purchased in the public or the direct community offering from five percent to less than ten percent, subject to certain limitations; (4) a provision requiring that members of converting insured institutions be permitted in the subscription offering to subscribe for the maximum percentage of shares that may be purchased by any person in the public offering or the direct community offering; (5) a provision permitting on a sliding scale based on institutional size increased aggregate purchases of conversion stock by the officers and directors of converting insured institutions from 25 percent for larger converting insured institution to 35 percent for smaller converting insured institutions; (6) reduction of the no-sale restriction applicable to conversion stock purchased by officers and directors of converting insured institutions from three years to one year; (7) provisions requiring converting insured institutions to market conversion stock in a manner that will achieve widest distribution of the stock; (8) a provision reducing filing requirements under certain circumstances; (9) deletion of the requirements that converting insured institutions mail to each of their members written notice of the filing with the Board of an application for conversion; (10) deletion of the requirement that converting insured institutions mail copies of the conversion proxy statement to eligible account holders and supplemental eligible account holders who do not have voting rights; (11) a provision permitting converting insured institutions to limit the distribution of the subscription offering circular to eligible account holders, supplemental eligible account holders, and voting

members who request receipt of the subscription offering circular; (12) a provision permitting converting insured institutions a two-year period in which to commence and complete their conversions; (13) a provision permitting converting insured institutions to combine their proxy solicitation with their subscription offering and their public offering or their direct community offering; (14) a provision requiring converting insured institutions to pay interest at no less than the passbook rate on all subscriptions and orders received in the subscription offering and the direct community offering; (15) a provision requiring converting insured institutions to permit subscribers and persons ordering stock in the direct community offering to increase, decrease, or rescind their subscriptions or orders in the event the public offering or the direct community offering is not completed within 45 days after the completion of the subscription offering; (16) a provision requiring converting insured institutions to file with the Board and distribute to subscribers and persons who have ordered stock in the direct community offering a post-effective amendment to the subscription offering circular upon the occurrence of a material event, circumstance, or change of circumstance concerning the converting insured institution or its conversion; (17) provisions making less restrictive current limitations on post-conversion acquisition of the equity securities of converted insured institutions; (18) a provision establishing the permissible terms of employee stock option plans adopted in connection with a conversion; (19) a provision permitting simultaneous conversion and holding company formation; (20) provisions permitting simultaneous conversion and acquisition by an existing holding company, and simultaneous conversion and merger with an existing insured stock institution; and (21) a provision delegating to the General Counsel the authority to approve mutual-to-stock conversion applications.

The basic structure of the Board's regulations governing the conversion of insured mutual institutions to insured stock institutions, Part 563b of the rules and regulations for the Federal Savings and Loan Insurance Corporation ("Conversion Regulations"), was established by Board Resolution No. 74–144 (39 FR 9142), adopted on February 28, 1974. The Board's last major revisions to the Conversion Regulations were adopted on March 21, 1979, pursuant to Resolution No. 79–200 (44 FR 18880).

Because of various study moratoria imposed upon mutual-to-stock conversions by the Board and Congress during the mid-1970's, the Board's conversion program did not gain significant momentum until 1979. However, the Board's conversion program has been remarkably successful; 108 conversions have been completed under the Board's Conversion Regulations (most of them after 1979) resulting in an approximate aggregate capital infusion to the savings and loan industry of $490,000,000.

The success of the conversion program is in large part attributable to the Board's Conversion Regulations, which strike an appropriate balance between the benefits to an institution of flexibility in structuring a reorganization and the rights of association members to participate in the reorganization process. Because of this balance, which provides both access to the means for corporate reorganization and recognition of the participation rights of the members of the institution to be reorganized, the legal grounds for the Board's Conversion Regulations have been firmly established. *See, York* v. *Federal Home Loan Bank Board,* 624 F. 2d 495 (4th Cir. 1980), *cert. den.* 449 U.S. 1043 (1980).

As is the case with every major corporate reorganization, the conversion process is quite expensive and time-consuming. Many of the factors which contribute to the expense and time of conversion are not within the power of the Board to control. The solicitation of proxies, the establishment of the appraised value of the conversion stock, and the sale of the conversion stock require the professional services of attorneys, accountants, financial analysts, investment bankers, and proxy solicitation and conversion agent firms; the preparation of conversion documents, the review of the documents by the Board, and the sale of conversion stock require the expenditure of time. Despite these inhibiting factors, however, the Board has undertaken a thorough review of its Conversion Regulations to determine what measures, if any, it could take to relieve converting insured institutions of unnecessary regulatory burdens. The Board believes that it has identified several instances in which the conversion process has been over-regulated, and it is amending its regulations to ease unnecessary restrictions and to allow converting insured institutions greater flexibility in structuring their conversions. In addition, the Board during its review of the Conversion Regulations applied the experience it has gained with mutual-to-stock conversions for the past three years to identify other areas of the conversion process that its experience indicated required regulatory action, particularly those relating to membership participation in the purchase of conversion stock, lengthy extensions of time to complete the public sale of conversion stock, and restrictive post-conversion stock acquisition regulations and charter provisions. Finally, in response to increased institutional interest, and the Board's perception that intra-industry acquisitions and corporate reorganizations will benefit individual converting insured institutions and the savings and loan industry, the Board has determined to permit on a test-case basis complex multi-party conversions.

The particular regulations being adopted by the Board are discussed in more detail below.

Purchase Limitations

The Board has determined to ease current restrictions on percentage purchases of conversion stock by association members, the management of converting insured institutions, and the public in order to facilitate the marketing of conversion stock under varying market conditions.

1. Management Purchases in the Public Offering

Current § 563b.3(c)(6)(i) limits purchases in the public offering or the direct community offering by each of the officers and directors of a converting insured institution to one-tenth of one percent of the total offering. Because that limitation serves no apparent well-defined purpose, the Board has deleted it from the amended regulations.

2. Purchases by any person in the Public Offering

Current § 563b.3(c)(6)(ii) limits purchases by any person in the public offering to two percent of the total offering. In order to facilitate the marketing of conversion stock, the Board has waived that provision in the past to permit purchases by any person of up to five percent of the total offering, and the five-percent limitation now is established in revised and redesignated § 563b.3(c)(6)(i). In addition, the Board provides in new § 563b. 3(d)(5) that a converting insured institution may adopt in its plan of conversion a provision permitting any person in the public offering or the direct community offering to purchase a percentage of stock less than ten percent of the total offering, provided that orders for conversion

stock exceeding five percent of the total offering shall not exceed in the aggregate ten percent of the total offering.

3. Subscription Rights

Because of its revision of the purchase limitations, the Board has determined to revise its current regulations establishing the subscription rights of eligible account holders, supplemental eligible account holders, and voting members. Under the subscription rights formulas established in the current regulations, very few association members receive subscription rights to purchase a percentage of stock equal to the percentage of stock that may be purchased by any person in the public offering or the direct community offering. Of course, subscribers are free to participate in the public offering or the direct community offering, subject to the general purchase limitations established in the Conversion Regulations. The Board realizes, however, that this is not always practicable for subscribers, particularly those without established brokerage accounts. Therefore, the Board is revising the current regulatory formulas for determining subscription rights to provide that all eligible account holders (§ 563b.3(c)(2)), supplemental eligible account holders (§ 563b.3(c)(4)), and voting members (§ 563b.3(c)(5)) shall have the right to purchase, at a minimum, the maximum percentage of stock that may be purchased by any person in the public offering or the direct community offering. Oversubscriptions will be adjusted according to the priorities already established in the regulations. In addition to ensuring receipt by association members of full and equitable stock subscription rights, the Board's revisions will reduce the expense of conversion by enabling converting insured institutions to eliminate fees paid to conversion agents to determine each individual association member's subscription rights. To further encourage full participation in the conversion by association members, the Board is amending § 563b.7(g)(3), which requires a converting insured institution to refund to subscribers any difference between the maximum subscription price and public offering price, to provide that subscribers may affirmatively elect to have the difference applied to the purchase of additional shares.

4. Aggregate Purchases by Management

Current § 563b.3(c)(6) limits the aggregate purchases of conversion stock by the officers and directors of converting insured institutions to 25 percent of the total offering. The purpose of the limitation is to assure that ownership control of converting insured institutions will not be acquired by management during a conversion. The Board believes, however, that the 25-percent limitation is too restrictive in the case of smaller institutions, where percentage stock ownership has less of an impact than in large institutions the stock of which is actively traded. Therefore, the Board is providing in revised § 563b.3(c)(6) for increased aggregate management purchases pursuant to a sliding scale based on institutional size, from 25 percent for larger institutions to 35 percent for smaller institutions.

5. Management Resale Restrictions

In order to make management participation in the conversion process subject to less restriction, the Board is amending § 563b.3(c)(17) to reduce from three years to one year the no-resale restriction on stock purchased in a conversion by officers and directors.

6. Wide Distribution of Conversion Stock

One of the purposes of the Board's conversion stock purchase limitations is to ensure as much as is possible that there will be a sufficiently wide distribution of the conversion stock to support an active trading market. This enables association members to sell securities acquired in the conversion for their established market value. The Board does not believe that this objective will be comprised by the easing of current purchase limitations. However, in view of that objective, the Board is adding new §§ 563b.3(c)(6)(ii) and 563b.3(c)(6)(iii) to provide (a) a requirement that orders for stock in the public offering or the direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares basis per order until all orders have been filled, and (b) a requirement that the stock be offered and sold in the public offering or the direct community offering in a manner that will achieve the widest distribution of the stock.

Conversion Process—Filing, Notice, Proxy Solicitation, Subscription Offering, Public Offering

The Board has determined that the following revisions to the Conversion Regulations will enable converting insured institutions to significantly reduce the expense and time of conversion.

1. Minimal Filing Requirement

Current § 563b.8(b) provides that an application for conversion shall not be accepted for filing unless it includes (a) a plan of conversion, (b) a preliminary proxy statement with signed financial statements, and (c) a preliminary form of proxy. Because the Board's Form PS proxy statement requires disclosure of the estimated pro forma market value of the conversion stock, § 563b.8(b) effectively also requires the filing of the independant appraisal. It has been the Board's experience, however, that many conversion applicants file applications for the purpose of establishing a filing date for processing purposes rather than with an intent to immediately proceed with conversion. For these applicants the § 563b.8(b) requirements result in a very substantial expenditure of funds that will have to be incurred a second time when all of the documents are updated to reflect the financial condition of the converting insured institution as of the date of Board approval. The Board therefore is revising § 563b.8(b) to provide that an application which contains only a materially complete plan of conversion shall be accepted for filing if the applicant requests that the application not be reviewed until the applicant requests and the Corporation consents to the filing of the other conversion documents.

2. Deletion of Mailing of Notice of Filing

Current § 563b.4(b) requires a converting insured institution to mail to each eligible account holder a prescribed written notice that it has filed a properly executed and materially complete application for conversion with the Board. The Board believes that this mailing requirement results in unnecessary expense to converting insured institutions, and is amending § 563b.4(b) to provide for the posting of the written notice in the offices of converting insured institutions. The requirement that the notice also be published in appropriate newspapers is being retained.

3. Limited Proxy Statement Distribution

Current § 563b.6(c) requires that the proxy statement authorized for use by the Corporation in connection with the meeting of the association members held to vote on the plan of conversion be mailed not only to the voting members of the converting insured institution but to eligible account holders and supplemental eligible account holders who may no longer be voting members. The Board is deleting the latter requirement from § 563b.6(c), and in new § 563b.6(d) provides that a

converting insured institution may give written notice to eligible account holders and supplemental eligible account holders who are not voting members of the proposed conversion and the meeting of the association members.

4. Limited Subscription Offering Circular Distribution

Current §§ 563b.7(g)(1) and 563b.7(g)(2) require converting insured institutions to distribute the final offering circular for the subscription offering and subscription order forms to eligible account holders, supplemental eligible account holders, and voting members. It has been the Board's experience that in most conversions a relatively small percentage of eligible subscribers actually subscribe for the purchase of conversion stock. Therefore, the Board is amending §§ 563b.3(d)(6) and 563b.3(d)(7) to permit a converting insured institution to adopt in its plan of conversion the provision that the converting insured institution shall not be required to distribute copies of the final subscription offering circular to voting members who receive a proxy statement pursuant to § 563b.6(c) and eligible account holders and supplemental eligible account holders who receive written notice of the proposed conversion pursuant to § 563b.6(d) and do not return to the converting insured institution a request for the receipt of the final subscription offering circular enclosed with the proxy statement or notice. Current § 563b.7(g)(1) also is amended to conform with these new optional provisions.

5. Commencement and Completion of Conversion Stock Offering

It is a standard condition to Board resolutions approving applications for conversion that the converting insured institution commence its subscription offering within 45 days after the meeting of the association members held to vote on the plan of conversion. A principal purpose of this requirement was to enable the Board to regulate the order of its approvals of conversion applications in a manner that would enable those applicants who were prepared to market their stock to be processed on a priority basis.

It is the view of the Board that the management of converted insured institutions should be given the flexibility to determine when to commence the marketing of conversion stock to take advantage of optimal market conditions. Therefore, the Board has determined not to impose the 45-day requirement for the commencement of the subscription offering in future Board resolutions, and it is providing in new § 563b.3(c)(11) that a converting insured institution may have as long as two years from the date the association members approve the plan of coversion to complete the sale of all the conversion stock. However, in order to continue to regulate the processing of conversion applications, the Board in new § 563b.3(d)(2) provides that a converting insured institution may adopt as an optional provision in its plan of conversion a requirement that the subscription offering be commenced within 45 days after the meeting of the association members, and provides in new § 563b.3(j) that the applications of converting insured institutions which contain that provision will be processed for Board review and approval on a priority basis.

6. Concurrent Proxy Solicitation and Stock Offering

Under the Board's current regulations, the subscription offering cannot begin until the plan of conversion is approved by the association members. The Board believes that some converting insured institutions may wish to take advantage of a compressed conversion procedure, and it therefore is providing in new § 563b.3(d)(1) that a converting insured institution may commence the subscription offering, and provided that the subscription offering has commenced, may commence the public offering or the direct community offering concurrently with the mailing of the proxy statement to the association members, and may close the subscription offering prior to the meeting of the association members, provided that all offers and sales of conversion stock are conditioned upon the approval of the plan of conversion by the association members. Also, the Board is amending § 563b.7(g)(4)(ii) to provide that the maximum period for the subscription offering shall be 50 days after the mailing of the subscription offering order forms.

Extended Public Sales

It is not contemplated under the Board's current Conversion Regulations that there shall be an extended period of time between the completion of the subscription offering and the completion of the public offering or the direct community offering. Indeed, § 563b.7(i) requires that the public sale of all non-subscribed shares be completed within 45 days after the completion of the subscription offering, unless extended by the Corporation. The reason that the public sale should be completed as soon as possible after the subscription offering is that the converting insured institution is holding in the interim between the subscription offering and the public sale funds paid by association members in the exercise of their subscription rights. Disclosure to potential subscribers that the public sale may be delayed with the Corporation's consent does not, in the Board's view, adequately address the issue of whether it is fair treatment to association members to hold their funds for an indefinite period of time in connection with the sale of all the remaining stock to the public; nor does it adequately address the issues that may arise when during the interval between the subscription offering and the public sale there occurs a material event, circumstance, or change of circumstance concerning the converting insured institution or its conversion. Clearly, subscribing association members are entitled to base their investment decisions upon the same information provided to the investing public.

Because of the recent volatile market for the stock of savings and loan institutions, the Board has witnessed a significant increase in the number of converting insured institutions which seek one or more extensions of time to complete the public sale of their stock due to adverse market conditions. In granting extentions of time the Board routinely has imposed the conditions that subscribers (a) be paid interest on their subscriptions at no less than the passbook rate from the date the extension of time is granted, and (b) be given the right to increase, decrease, or rescind their subscriptions during the extension period. Communications to subscribers concerning their recission rights constitute additional subscription offering materials which must be declared effective by the Corporation, and the Corporation has conditioned its declaration of effectiveness upon the inclusion in the communications of current financial and other information concerning the converting insured institution.

The Board has determined to confirm in new §§ 563b.7(j) and 563b.7(k) the continued applicability of the conditions it has required in connection with the granting of extensions of time to complete the public sale of conversion stock. Section 563b.7(j) provides that a converting insured institution shall pay interest at no less than the passbook rate on all amounts paid by cash, check, or money order to purchase stock in the subscription offering and the direct community offering from the date payment is received until the completion or termination of the conversion. Section

563b.7(k)(1) provides that the Corporation may grant one or more extensions of time to complete the sale of all shares of stock, provided that no single extension shall exceed 90 days. Section 563b.7(k)(2) provides that a converting insured institution shall distribute to subscribers and persons who may have ordered stock in a direct community offering a post-effective amendment to the offering circular filed and declared effective by the Corporation under § 563b.7(k) (k) which shall notify subscribers and ordering persons of the extension of time and of their right to increase, decrease, or rescind their subscriptions or orders at any time prior to (1) 20 days before the end of the extension period, or (2) the date of the commencement of the public offering or the direct community offering, provided that if the public offering or the direct community offering is not completed within 20 days after commencement, the converting insured institution shall honor all instructions received during the 20-day period to increase, decrease, or rescind subscriptions or orders. Section 563b.7(k)(3) defines for the purpose of § 563b.7(k)(2) the commencement of the public offering as the date of the filing with the Corporation of the preliminary offering circular, and the commencement of the direct community offering as the date of the declaration of effectiveness of the final offering circular. Section 563b.7(k)(4) requires converting insured institutions to file with and have declared effective by the Corporation a post-effective amendment to the subscription offering circular upon the occurrence of an event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or an ordering person. Finally, § 563b.7(k)(5) requires that a § 563b.7(k)(4) post-effective amendment be distributed to all subscribers and ordering persons, and that they be given the opportunity to increase, decrease, or rescind their subscriptions or orders.

Acquisition of the Securities of Converting and Converted Insured Institutions

Acquisitions of securities of converting and converted insured institutions are regulated by the Board under §§ 563b.3(i) and 563b.9. Section 563b.3(i)(2) requires converting insured institutions to enter into an agreement with the Corporation not to permit for three years following conversion the acquisition of 25 percent of the stock of the converted insured institution by any company significantly engaged in an unrelated business activity. Under § 563b.3(i)(3), converting insured institutions may provide in their stock charters a provision substantially similar to the agreement with the Corporation, except that there is no time limit on the effectiveness of the optional charter provision, and the charter may provide that the provision may be amended only by a supermajority vote of 75 percent of the eligible votes. In addition, the Board since 1980 has permitted converting insured institutions to include in their stock charters a five-year prohibition against the acquisition by any person of ten percent or more of the converted insured institution's stock. Section 563b.9 restricts pre-conversion and post-conversion offers to acquire and acquisitions of subscription rights and capital stock. The post-conversion restriction, § 563b.9(d), prohibits for three years after conversion an offer to acquire or the acquisition by any person of more than ten percent of any class equity security of a converted insured institution without prior Board approval.

The Board does not believe that it is proper for it to be interposed, as it is under § 563b.9(d), between a converted insured institution and an acquiring party in situations that do not require the Board's oversight. A principal purpose of the § 563b.9(d) three-year acquisition restriction is to protect the integrity of the conversion process, particularly the independent appraisal. However, the Board believes that a one-year restriction is sufficient for its oversight purposes. Therefore, the Board is amending § 563b.9(d) to reduce the restricted acquisition period from three years to one year. In addition, the Board is taking this opportunity to locate in a single section of the Conversion Regulations all of the pre-conversion and post-conversion acquisition restrictions. Therefore, the various subsections of § 563b.9 have been redesignated as subsections of § 563b.3(i)

As a matter of policy, the Board does not believe that it should impose upon converting insured institutions provisions that restrict the acquisition of their stock for a significant period of time. Therefore, the Board is deleting the requirement of § 563b.3(i)(2) and that a converting insured institution agree with the Corporation not to permit a company engaged in an unrelated business to acquire control of the converted insured institution for three years following the completion of the conversion.

The Board also as a matter of policy does not favor perpetual anti-takeover charter provisions, particularly those which require a supermajority vote to amend. However, the Board recognizes that stockholders of converted insured institutions should be permitted substantial latitude in determining whether it is in the corporate interest to adopt anti-takeover charter provisions. Therefore, the Board is deleting the current optional anti-takeover charter provision of § 563b.3(i)(3), and is adding new § 563b.3(i)(6), which permits converting insured institutions to adopt a charter provision which prohibits for a three-year period following conversion the acquisition by any person of more than ten percent of the equity securities of the converted insured institution. The optional charter provision may be amended upon the minimum stockholder vote required for charter amendments under applicable Federal or State law, and it may be readopted annually by the stockholders of a converted insured institution for successive one-year terms after the expiration of the original three-year period.

Stock Option Plans

The Board is redesignating § 563b.3(d)(6) as § 563b.3(d)(11), and is amending redesignated § 563b.3(d)(11) to specify the permissive terms of employee stock option plans adopted in connection with a conversion.

Holding Company and Merger Transactions

Pursuant to revised § 563b.9, the Board will accept on a test-case basis applications for conversion that provide for the acquisition of all of the stock of a converting insured institution by a newly formed holding company. In such a transaction, eligible account holders, supplemental eligible account holders, voting members, and the public will be offered the stock of the holding company for an aggregate price based upon an independent appraised valuation.

Pursuant to new § 563b.10, the Board will accept on a test-case basis applications for conversion that provide for one of three possible transactions: (1) The acquisition of all of the stock of a converting insured institution by an existing savings and loan holding company; (2) the merger of a converting insured institution into an existing insured stock institution subsidiary of a holding company; and (3) the merger of a converting insured institution into an existing insured stock institution. In transactions (1) and (2), holding company stock will be offered to eligible account holders, supplemental eligible account holders, voting members, and the public at a price based upon an independent appraised valuation; in transaction (3), the securities offered

will be the stock of the surviving stock institution.

The Board is adopting these provisions because it believes that savings and loan institutions should be given the flexibility to determine their operating structures. Moreover, § 563b.10 holding company and merger transactions will facilitate the conversions of insured institutions since existing stock institutions with established markets for their stock often are in a better position to market additional equity securities than are newly-organized stock institutions. In addition, subscribing association members will benefit from the more liquid market for the equity securities of larger insured stock institutions or holding companies.

Delegation of Authority

The Board in new § 563b.8(w) is delegating to the General Counsel or his designee (1) the authority to establish the order of processing of applications for conversion pursuant to Section 402 (j)(6) of the National Housing Act of 1934, as amended, 12 U.S.C. § 1725(j)(6), and (2) the authority to approve but not to deny applications for conversion, and, with certain exceptions, to exercise any other authority of the corporation under Part 563b.

Solicitation of Comments

The Board has determined that the notice and public comment procedures of 5 U.S.C. 552(b) and 12 CFR 508.11, and the 30-day delayed effective date imposed by 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary and not in the public interest. The amendments adopted by the Board significantly ease current restrictions, provide increased flexibility to converting insured institutions, and will enable converting insured institutions to substantially reduce the time and expense of conversion. Because of these factors, the Board finds that it is in the public interest for insured institutions which intend to convert to the stock form of organization to be permitted to take immediate advantage of the revised regulations. However, the Board solicits comments on its Conversion Regulations, both as to the amendments adopted here and as to any other current provision or provisions of the Conversion Regulations. Comments will be accepted for a 60-day period following the effective date of the amendments.

Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board certifies that the amendments will not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 563b

Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. Revise § 563b.2(a)(31) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(31) *Subscription offering.* The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (1) eligible account holders as required by § 563b.3(c)(2); (2) supplemental eligible account holders as required by § 563b.3(c)(4); (3) members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5); (4) directors, officers and employees, as permitted by § 563b.3(d)(3); and (5) eligible account holders, supplemental eligible account holders, and voting members as permitted by § 563b.3(d)(4).

* * * * *

2. Amend § 563b.3 by revising paragraphs (c)(2), (4), (5), (6), (7), and (8); redesignating paragraphs (c)(11) through (20) as (c)(12) through (21), respectively; adding new paragraph (c)(11); and revising redesignated paragraph (c)(17); to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

* * * * *

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(5) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution.

(i) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(2), shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation equal to 100 shares.

(ii) Any shares not allocated in accordance with paragraph (c)(2)(i) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

* * * * *

(4) Provide that, in plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to Board approval, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of the converting institution shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(5) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting insured institution on the supplemental eligibility record date.

(i) Subscription rights received pursuant to this paragraph (c)(4) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to paragraphs (c)(2) and (c)(3) of this section.

(ii) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with paragraph (c)(2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c)(4) of this section.

(iii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(4), shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation (including the number of shares, if any, allocated in accordance with paragraph (c)(2) of this section) equal to 100 shares.

(iv) Any shares not allocated in accordance with paragraph (c)(4)(iii) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(5) Provide that association voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(8) or (d)(5) of this section, or one-tenth of one percent of the total offering of shares.

(i) Subscription rights received pursuant to this paragraph (c)(5) shall be subordinated to all rights received by eligible account holders and supplemental account holders to purchase shares pursuant to paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(ii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(5), shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of conversion.

(6) Provide that any shares of the converting insured institution not sold in the subscription offering shall be sold either in a public offering through an underwriter or directly by the converting insured institution in a direct community offering, subject to the applicant demonstrating to the Corporation the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to a percentage of the total offering of shares not exceeding five percent.

(ii) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on a equal number of shares basis per order until all orders have been filled.

(iii) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will achieve the widest distribution of the stock.

(iv) A condition that any direct community offering by the converting insured institution shall give a preference to natural persons residing in the counties in which the institution has an office.

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this section, provide that the number of shares which any person together with any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent of the total offering of shares. For the purpose of this paragraph (c)(7), the members of the converting insured institution's board of directors shall not be deemed to be associates or a group of persons acting in concert solely as a result of their board membership.

(8) Provide that the total number of shares which officers and directors of the converting insured institution and their associates may purchase in the conversion shall not exceed 35 percent of the total offering of shares in the case of a converting insured institution with total assets of less than $50 million, or 25 percent of the total offering of shares in the case of a converting insured institution with total assets of $500 million or more; in the case of a converting insured institution with total assets in excess of $50 million but less than $500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 30 percent in the case of a converting insured institution with total assets of $275 million).

* * * * *

(11) Establish a time period within which the conversion must be completed prior to termination. The time period shall be not more than 24 months from the date the association members approve the plan of conversion and shall not be extended by the converting insured institution or the Corporation.

* * * * *

(17) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the insured institution (by subscription or otherwise) or from an underwriter shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or officer.

* * * * *

3. Further amend § 563b.3 by redesignating paragraph (d)(1) as (d)(3); (d)(2) as (d)(4); (d)(3) as (d)(8); (d)(4) as (d)(9); (d)(5) as (d)(10); (d)(6) as (d)(11); (d)(7) as (d)(12); and § (d)(8) as (d)(13); adding new paragraphs (d)(1), (d)(2), (d)(5), and (d)(6); and revising redesignated paragraph (d)(11); to read as follows:

* * * * *

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That the converting insured institution may commence the subscription offering and, provided that the subscription offering has commenced, may commence the public or the direct community offering concurrently with the mailing to association members pursuant to § 563b.6(c) of this Part of the proxy statement authorized for use by the Corporation, and may close the subscription offering before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(2) That the subscription offering shall commence within 45 days after the date of the meeting of the association members held to vote on the plan of conversion.

* * * * *

(5) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to a percentage less than ten percent of the total offering of shares, provided that orders for conversion stock exceeding five percent of the total offering shall not exceed in the aggregate ten percent of the total offering.

(6) If the subscription offering is not commenced prior to the approval of the plan of conversion by the association members, the proxy soliciting material distributed to association members pursuant to § 563b.6(c) may include the statement that the converting insured institution is not required to furnish a

subscription offering circular to an association member unless the association member returns by a date certain prior to the commencement of the subscription offering an attached postage paid postcard or other written communication requesting the receipt of the subscription offering circular.

(7) If the subscription offering is not commenced prior to the approval of the plan of conversion by the association members, the notice distributed to eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) may include the statement that the converting insured institution is not required to furnish a subscription offering circular to an eligible account holder or a supplemental eligible account holder without voting rights unless the eligible account holder or the supplemental eligible account holder returns by a date certain prior to the commencement of the subscription offering an attached postage paid postcard or other written communication requesting the receipt of the subscription offering circular.

* * * * *

(11) Any stock option plan adopted by a converted insured institution in connection with the conversion or within one year after completion of the conversion shall: (i) Be limited to ten percent of the number of outstanding shares of capital stock; (ii) provide for an option exercise price of not less than the fair market value at the date of grant; (iii) limit the maximum number of options that may be granted to any person to 30 percent of the shares covered by the stock option plan; (iv) restrict any person from receiving or exercising stock options if he owns five percent of the outstanding shares of capital stock; (v) limit the maximum number of options that may be granted in the aggregate to all persons who are not full-time employees to 30 percent of the shares covered by the stock option plan; (vi) comply with Rule 16b–3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, 12 CFR 240.16b–3; (vii) in the case of options granted to full-time employees, be limited to options that qualify as incentive stock options as defined in section 422A of the Internal Revenue Code of 1954, as amended; and (viii) in the case of any options granted to persons who are not full-time employees, be limited to options that would qualify as incentive stock options under such section 422A other than with respect to the requirement for full-time employment.

* * * * *

4. Further amend § 563b.3 by revising paragraph (i) and adding new paragraph (j), to read as follows:

* * * * *

(i) *Acquisition of the securities of converting and converted insured institutions.*—(1) *Prohibited transfers.* Prior to the completion of a conversion, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.

(2) *Prohibition of offers during conversion.* Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer or intent to make an offer, for any security of the converting insured institution issued in connection with the conversion.

(3) *Prohibition on offers to acquire and acquisitions of stock for one year following conversion.* No person for a period of one year following the date of the completion of the conversion shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of an insured institution converted in accordance with the provisions of this Part 563b, without the prior written approval of the Corporation.

(4) *Exceptions.* (i) Paragraphs (i)(1) and (i)(2) of this section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which (A) pertains only to securities to be purchased pursuant to paragraphs (c)(6), (d)(6), or (d)(13); and (B) has the prior written approval of the Corporation.

(ii) Paragraphs (i)(2) and (i)(3) shall not apply to any offer with a view toward public resale made exclusively to the association or underwriters or selling group acting on its behalf.

(iii) Unless made applicable by the Corporation by prior advice in writing, the prohibition contained in paragraph (i)(3) shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the class of securities.

(5) *Criteria for denial.* The Corporation shall not approve an application involving an offer for, or an announcement thereof, or an acquisition of any security of a converted association submitted under paragraph (i)(3) of this section if it finds that such offer frustrates the purpose of the provisions of this Part 563b, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the association, is not consistent with economical home financing, or is otherwise violative of law or regulation.

(6) *Optional charter provision.* To the extent permitted by applicable Federal or State law, the plan of conversion may provide for the charter of the converted insured institution to state that, for a period of three years following the date of the completion of the conversion, no person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of the converted insured institution. The charter provision may also provide that it may be readopted annually by the stockholders of the converted insured institution for successive one-year periods. Amendment and readoption of the charter provision shall be permitted by the minimum stockholder vote required for charter amendments under applicable Federal or State law.

(7) *Definitions.* For the purpose of this paragraph (i), the term "person" means an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, and any unincorporated organization or similar company; the term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value; and the term "security" includes nontransferable subscription rights issued pursuant to a plan of conversion.

(8) *Penalty for willful violations.* For willful violation or assistance of any violation of any provision of this section, any person who (i) has any connection with the management of a converting or converted association, including any director, officer, employee, attorney, or agent, or (ii) controls more than ten percent of the outstanding shares of any class of equity security or voting rights thereto of a converting or converted association, shall be subject to a civil penalty of not more than $500 (which penalty shall be cumulative to any other remedies) for each day that such violation continues, which penalty the Corporation may recover by suit or otherwise for its own use. The Corporation in its discretion may, at any time before collection of such penalty (whether before or after the bringing of any action or other legal proceedings, the obtaining of any

judgment or other recovery, or the issuance or levy of any execution or other legal process thereof), compromise or remit in whole or in part any such penalty.

(j) *Priority of processing.* The Board will process for approval on a priority basis applications for conversion which include in the plan of conversion the optional provision set forth in paragraph (d)(2) of this section. The Board will approve an extension of time to commence a subscription offering under the optional provision of paragraph (d)(2) only when the converting insured institution demonstrates that the estimated actual subscription price is lower than the minimum of the estimated price range stated in the Board's approval, or when the converting insured institution demonstrates the existence of unforeseen material adverse marketing circumstances.

5. Amend § 563b.4 by revising paragraph (b) to read as follows:

§ 563b.4 Notice of filing; public statements; confidentiality.

* * * * *

(b) *Notice of filing.* (1) Upon determination that an application for conversion is properly executed and is not materially incomplete, the Corporation will advise the applicant, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the applicant shall prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

Notice of Filing of an Application for Conversion to Convert To a Stock Savings and Loan Association

Notice is hereby given that, pursuant to Part 563b of the Rules and Regulations for Insurance of Accounts

---

(fill in name of applicant)
has filed an application with the Federal Savings and Loan Insurance Corporation ("Corporation") for approval to convert to the

---

(state chartered or Federally-chartered) stock form of organization. Copies of the application have been delivered to the Division of Securities and Corporate Analysis, Office of General Counsel of the Corporation, 1700 G Street, N.W., Washington, D.C. 20552, and to the Office of the Supervisory Agent of the Corporation at the Federal Home Loan Bank of

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(Street address) (City) (State) (Zip Code)

Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Corporation if filed within 20 business days after the date of this notice. Failure to make the written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the Division of Securities and Corporate Analysis of the Office of General Counsel, and one copy should be sent to the Office of the Supervisory Agent. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Office of General Counsel and at the Office of the Supervisory Agent. A copy of the plan of conversion may also be inspected at each office of the applicant.

(2) If a significant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.

(3) Promptly after publication of the notice or notices prescribed in paragraphs (b)(1) and (b)(2), the applicant shall file four copies of each notice with the Corporation accompanied by an affidavit of publication from each publisher.

* * * * *

6. Amend § 563b.6 by revising paragraph (c); redesignating paragraph (d) as paragraph (e); and adding new paragraph (d); to read as follows:

§ 563b.6 Vote by members.

* * * * *

(c) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation. The notice shall be given not more than 45 nor less than 20 days prior to the date of the meeting to each association member, unless State law requires a different notice period.

(d) *Notice to eligible account holders and supplemental account holders who are not voting members.* The converting insured institution may give notice of the proposed conversion and the meeting of the association members by letter or other written communication authorized for use by the Corporation to eligible account holders and supplemental account holders who are not voting members. The contents of the notice shall be subject to §§ 563b.4(a) (4) and (5), and 563b.5(g); the use of the notice shall be subject to § 563b.5(b); and filing of the notice with the Corporation shall be subject to § 563b.5(e) (1), (3), (5), and (7) of this Part.

* * * * *

7. Amend § 563b.7 by revising paragraphs (a), (b), (g)(1), (g)(3), and (g)(4)(ii); and adding new paragraphs (j) and (k); to read as follows:

§ 563b.7 Pricing and sale of securities.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Corporation of the application for conversion and until the proxy statement has been authorized for use by the Corporation. No sale of securities in the subscription offering may be made except by means of the final offering circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the final offering circular for the public offering or the direct community offering. The offering of shares in the public offering or the direct community offering may commence during the subscription offering upon the declaration of effectiveness of the offering circular proposed for the public offering or the direct community offering. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

(b) *Distribution of offering materials.* Any preliminary offering circular for the subscription offering or the direct community offering which has been filed with the Corporation may be distributed to eligible account holders or supplemental eligible account holders not entitled to vote on the plan of conversion and to others in connection with the subscription offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c). Any preliminary offering circular for the public offering or the direct community offering of unsubscribed securities which has been filed with the Corporation may also be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this Part. No final offering circular shall be distributed until the offering circular has been declared effective by the Corporation. The declaration of effectiveness of the final offering circular by the Corporation shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (l) of this section, or beyond such period of time the Corporation shall establish upon a subsequent declaration of effectiveness in the event

of the granting of an extension of time under paragraph (k) of this section.

* * * * *

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Corporation has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable), voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting insured institution shall have adopted in its plan of conversion the optional provisions set forth in § 563b.3(d) (6) or (7), the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the subscription offering circular.

* * * * *

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the Corporation's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain an amendment to the Corporation's approval. If appropriate, the Corporation will condition its approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(4) * * *

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

* * * * *

(j) *Interest on subscriptions and direct community offering purchase orders.* The converting insured institution shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to purchase shares of capital stock in the subscription offering and the direct community offering from the date payment is received until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.* (1) The Corporation may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i), provided that no single extension of time shall exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1), the converting insured institution shall distribute to each subscriber in the subscription offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the subscription offering circular filed with and declared effective by the Corporation pursuant to paragraph (k)(4) which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease, or rescind their subscriptions (i) at any time prior to 20 days before the end of the extension period, or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering, provided that if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting insured institution.

(3) For the purpose of this paragraph (k), the public offering shall be deemed to commence upon the filing with the Corporation of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Corporation of the final offering circular.

(4) After the completion of the subscription offering, the converting insured institution shall file with and have declared effective by the Corporation a post-effective amendment to the subscription offering circular upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to the subscription offering circular shall be distributed by the converting insured institution immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting insured institution shall grant to each subscriber and ordering person the right to increase, decrease, or rescind their subscriptions or orders for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Corporation pursuant and subject to the provisions of paragraph (k)(2).

8. Amend § 563b.8 by revising paragraph (b); removing paragraph (o)(3); and adding new paragraph (w); to read as follows:

§ 563b.8 Procedural requirements.

* * * * *

(b) *Return of improperly executed or materially incomplete filings.* (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3), any application for approval that does not contain copies of (i) a plan of conversion, (ii) a preliminary proxy statement with signed financial statements, and (iii) a preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant. Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned by the Corporation to the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Corporation until the applicant requests and the Corporation consents to the filing of the additional materials set forth in paragraph (b)(2).

* * * * *

(w) *Delegation of Authority.*—(1) *Regulation of approvals of applications for conversions.* The Corporation delegates to the General Counsel or his designee the authority to establish the order of processing of applications for conversion pursuant to the criteria set forth in section 402(j)(6) of the National Housing Act of 1934, as amended, 12 U.S.C. 1725(j)(6), and § 563b.3(j) of this Part 563b.

(2) *Approval of applications for conversion.* The Corporation delegates to the General Counsel or his designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this Part 563b, and to exercise any other authority of the Corporation under this Part 563b, excepting (i) the authority to waive any provision of this Part 563b pursuant to § 563b.1(a); (ii) the authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(13); (iii) the authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1); (iv) the authority to approve or deny an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted insured institution under § 563b.3(i)(3); (v) the authority to approve or deny applications for conversion pursuant to § 563b.9; and (vi) the authority to approve or deny applications for conversion pursuant to § 563b.10.

9. Revise § 563b.9, to read as follows:

§ 563b.9 Conversion of an insured institution in connection with the formation of a holding company.

(a) An insured institution may convert to the stock form pursuant to this Part 563b as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted insured institution. In such a transaction eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) to purchase all of the capital stock of the newly formed holding company in lieu of all of the capital stock of the converting institution, and all of the shares of capital stock of the holding company not purchased in the subscription offering shall be offered and sold in a public offering or a direct community offering as provided in § 563b.3(6). The total price at which the capital stock shall be sold shall be based upon an independent valuation, as provided in § 563b.7. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this § 563b.9.

(b) *Acceptance of test case applications.* (1) The Corporation will accept applications under this § 563b.9 on a test-case basis.

(2) No application may be filed under this § 563b.9 without the prior written approval of the Corporation.

(c) *Delegation of Authority.* The Corporation delegates to the General Counsel or his designee the authority of the Corporation under paragraph (b) of this section.

10. Add new § 563b.10, to read as follows:

§ 563b.10 Conversion of an insured institution in connection with an acquisition by an existing holding company; conversion of an insured institution through merger with an existing insured stock institution.

(a) *Conversion involving an existing holding company.* An insured institution may convert to the stock form pursuant to this Part 563b as part of a transaction in which an existing holding company acquires upon issuance all the capital stock of the converted insured institution. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) from the holding company to purchase its equity securities in lieu of all the capital stock of the converting institution, and all of the equity securities of the holding company not purchased in the subscription offering shall be offered and sold in a public offering or a direct community offering as provided in § 563b.3(c)(6). The total price at which the securities of the holding company shall be sold shall be based on an independent valuation, as provided in § 563b.7. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (a).

(b) *Merger involving the issuance of holding company equity securities.* An insured institution may convert to the stock form pursuant to this Part 563b by merging into an existing insured stock institution which is a wholly-owned subsidiary of a holding company. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting insured institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) from the holding company to purchase its equity securities in lieu of all the capital stock of the converting insured institution, and the equity securities of the holding company not purchased in the subscription offering shall be offered and sold in a public offering or a direct community offering as provided in § 563b.3(c)(6). The total price at which the equity securities of the holding company shall be sold shall be based on an independent valuation, as provided in § 563b.7. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (b).

(c) *Merger into an existing insured stock institution.* An insured institution may convert to the stock form by merging into an existing insured stock institution as part of a transaction in which the equity securities of the existing insured stock institution are issued. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting institution shall receive, without payment, nontransferable rights under § 563b.3(c) (2), (4), and (5) from the existing insured institution to purchase its equity securities in lieu of all the capital stock of the converting insured institution, and the equity securities of the existing insured stock institution not purchased in the subscription offering shall be offered and sold in a public offering or a direct community offering as provided in § 563b.3(c)(6). The total price at which the equity securities of the existing insured stock institution shall be sold shall be based on an independent valuation, as provided in § 563b.7. Unless clearly inapplicable, all of the requirements of this Part 563b shall apply to a conversion under this paragraph (c).

(d) *Acceptance of test-case applications.* (1) The Corporation will accept applications under this § 563b.10 on a test-case basis.

(2) No application may be filed under this § 563b.10 without the prior written approval of the Corporation.

(e) *Delegation of Authority.* The Corporation delegates to the General Counsel of his designee the authority of the Corporation under paragraph (d) of this section.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. 1071)

By the Federal Home Loan Bank Board.

James J. McCarthy,

Acting Secretary.

[FR Doc. 82-12580 Filed 5-6-82; 9:15 am]

BILLING CODE 6720-01-M

CIVIL AERONAUTICS BOARD

[Docket No. 39744; Reg. ER-1294; Amdt. 4 to Part 297]

14 CFR Part 297

Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB relieves foreign air freight forwarders and foreign cooperative shippers associations from the provisions of the Federal Aviation Act which prevent them from consolidating freight in interstate and overseas air transportation. Previously CAB regulations prevented foreign indirect air carriers from operating in domestic markets. CAB's present action will promote competition among indirect air carriers, increase business on U.S. direct carriers, provide consumers with more price/service options, and reaffirm the U.S. commitment to promote competition in the air transportation industry.

Foreign air freight forwarders interested in exercising these new rights must register with the Board. This action is taken by the CAB at its own initiative as an adjunct to similar authority granted to foreign charter operators by a final rule issued contemporaneously with this one.

DATES: Adopted: April 15, 1982. Effective: June 5, 1982, except CAB Form 297–A which contains information collection requirements which are under review by OMB.

FOR FURTHER INFORMATION CONTACT: Glenn M. Datnoff, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5203.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the change in Form 297–A that is included in this final rule is being submitted for approval to the Office of Management and Budget (OMB). The change is not effective until OMB approval has been obtained, and the public notified to that effect through a technical amendment to this regulation. The Board will place the OMB approval number on Form 297–A when approval is obtained.

Background

By EDR–427/SPDR–82, 46 FR 35664, July 10, 1981, the Board proposed to relieve foreign air freight forwarders and foreign cooperative shippers associations that were registered with the Board from various provisions of the Federal Aviation Act to the extent necessary to permit the consolidation and shipment of freight in interstate and overseas air transportation, provided that adequate reciprocity exists and that such goods are transported only by U.S. direct air carriers. The Board proposed the same relief for foreign charter operators. We found that the elimination of restrictions that now prevent foreign indirect air carriers from operating in domestic markets would promote competition among indirect air carriers, increase business on U.S. direct carriers, provide consumers with more price/service options, and reaffirm the U.S. commitment to promote competition in the air transportation industry.

Comments were received from the A.W. Fenton Co., Inc., Thomson Vacations, Inc., Arthurs Travel, Inc., Unitours, Inc., the International Airforwarder and Agents Association (IAAA), the Air Freight Association of America (AFAA), Alltrans Courier, Inc., International Weekends' Value Vacations, Inc. (Weekends) and Wilma Becker. Only the A.W. Fenton Co., Inc. and Wilma Becker objected to the fundamental principles of our proposal. All other comments either supported our action *in toto* or requested some changes or clarifications. These responses will be discussed below. We have decided to adopt our rule permitting foreign air freight forwarders and foreign cooperative shippers associations to operate in domestic markets as proposed in EDR–427.

Objections

Most of the comments strongly supported the Board's proposed rulemaking. Unitours, Thomson Vacations and Arthurs Travel stated that adoption of the proposed rulemaking would provide increased benefits to U.S. consumers and additional business to U.S. direct air carriers. The AFAA noted that the air freight industry has flourished in a deregulated environment for several years and that free competition in the marketplace is preferable to governmental regulation. It stated that additional competition from foreign indirect carriers poses no threat to the U.S. cargo industry.

The A.W. Fenton Co., Inc. and Ms. Wilma Becker object to our action. Their primary concern is that U.S. indirect air carriers would be placed at a competitive disadvantage by foreign indirect air carriers because of foreign government subsidies or unethical practices. We disagree.

Considering the large number of U.S. firms now engaged in international forwarding, the absence of such complaints indicates that problems of restrictions, discrimination, or unfair competitive practices by foreign governments against U.S. forwarders within foreign countries, to the extent they may exist, are not serious enough to generally deny the public and U.S. carriers the benefits of shipments by foreign indirect carriers within the U.S. Rather, to the extent such restrictions may arise, it is preferable to deal with them on a case-by-case basis. We have ample powers and procedures for doing so. In order to clearly reflect this intent in the rule, we are amending § 297.22(b) to explicitly provide for rejection of an application because of a failure of reciprocity or when it is otherwise in the public interest to do so. Therefore, we have no reason to believe that the general opening of U.S. markets to foreign indirect air carriers will have an adverse impact on the competitive positions of U.S. carriers.

In our Notice of Proposed Rulemaking (NPRM), we stated that grants of domestic operating authority to foreign indirect air carriers would only be approved if the Board concluded that the carriers' home governments afforded U.S. indirect air carriers effective reciprocity, which would include not only identical authority to U.S. indirect air carriers but also Fifth Freedom operating rights to U.S. indirect air carriers. This would entail a Board analysis of reciprocity prior to the grant of operating authority.

Weekends objects to foreign indirect carriers receiving domestic operating rights based upon a Board evaluation of reciprocity. It prefers that such rights be specified in bilateral agreements. Alltrans, on the other hand, does not protest the Board's reciprocity determination, but fails to understand why Fifth Freedom authority is included as part of the *quid pro quo*. It requests that this feature be eliminated from the Board's test of mutuality.

We see little benefit and potential harm in Weekends' suggestion that we preclude foreign indirect carriers from operating in domestic markets unless there is a specific bilateral air transportation agreement allowing such services. The fact of the matter is that most of our major trading partners do not regulate air freight forwarding and charter/tour organizing and allow U.S. citizens to operate these services within their borders. In these circumstances, we are unable to find a pressing need for the approach suggested by Weekends. On the other hand, the time

that it would take to conclude bilateral agreements on this issue would surely delay the entry of foreign indirect air carriers into domestic markets and therefore deprive them, U.S. carriers, and consumers of valuable new business opportunities and services. This result would not be consistent with the public interest in the context of this case. As to Weekends' apparent skepticism concerning our ability to evaluate the adequacy of reciprocity, we need only point out that the Board has evaluated the nature of reciprocal aviation relations with foreign governments for over forty years and our experience makes us qualified to undertake that assessment here.

With regard to Alltrans' comment, we stated in the NPRM that Fifth Freedom operating authority would be required as an additional element for evaluating reciprocity because an exact *quid pro quo* would leave our indirect operators with less valuable rights than those granted to the foreign counterpart. This is due, in large part, to the disparity between the geographical size and population of the U.S. and most developed countries that would likely attract U.S. operators. Receipt of Fifth Freedom and domestic opportunities will afford a more equivalent exchange of rights between U.S. and foreign operators. Alltrans has presented no information or arguments that cause us to reach a different conclusion. Finally, Alltrans requested leave to file a petition for reconsideration should we decide not to eliminate the Fifth Freedom element from our test for reciprocity. We shall deny this request. Alltrans has been afforded the opportunity to express its views on this subject and is not foreclosed from subsequently petitioning the Board to amend the rule.

Other Matters

For some time, the foreign indirect air carrier application (Form 297–A) required applicants to certify that they hold operating authority from their home country. The IAAA opposes our proposed elimination of this requirement. We carefully considered the IAAA's comments in a contemporaneous rulemaking proceeding (Docket 38023). Based on our examination of the entire record in that case, we determined that home-government certification of air freight forwarders and shippers associations is of little value and may impose an undue burden on such carriers. Accordingly, in ER–1265, 46 FR 56601, November 18, 1981, we decided to eliminate the certification requirement from Form 297–A. For the same reasons, we eliminated the certification requirement from Form 300, applicable to foreign charter operators. See SPR–179, 46 FR 56605, November 18, 1981.

The amendment of § 297.22(b), that is discussed above, clarifies that the Board has authority to reject applications in whole or in part for lack of effective reciprocity or where denial is in the public interest. With respect to interstate and overseas air transportation, this amendment is within the scope of the issues raised in the NPRM. With respect to foreign air transportation, this amendment merely makes explicit a procedural option that is implicit in the range of options already specified in § 297.22(b). Moreover, the amendment does not impose additional burdens on affected persons. The Board therefore finds good cause for dispensing with notice and further public procedure on the change.

All foreign consolidators of freight, including those that are already registered with the Board, must fill out the registration applications (Form 297–A) prior to instituting service in interstate or overseas air transportation.

Final Regulatory Flexibility Analysis

The discussion above constitutes the Board's final regulatory flexibility analysis of this rule, pursuant to 5 U.S.C. § 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5432, by referring to the "ER" number at the top of the document.

List of Subjects In 14 CFR Part 297

Air carriers, Air transportation-foreign, Freight, Freight forwards, Insurance, Reporting requirements.

PART 297—FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATIONS

Accordingly, the Board (A) denies the request by Alltrans Courier, Inc. for leave to file a petition for reconsideration, and (B) amends 14 CFR Part 297, *Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations*, as follows:

1. The authority for Part 297 is:

Authority: Secs. 204, 416, Pub. L. 85–726, as amended, 72 Stat. 743, 92 Stat. 1731, 1732 (49 U.S.C. 1324, 1386).

2. In Part 297, the Table of Contents is amended by revising the title of § 297.10 to read:

Sec.

* * * * *

297.10 Relief from the Act.

* * * * *

3. Section 297.1 is revised to read:

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate, overseas, or foreign air transportation of property. It relieves these carriers from certain provisions of the Act, and establishes simplified reports for them.

4. Section 297.2 is revised to read:

§ 297.2 Applicability.

This part applies to interstate and overseas air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.

5. Paragraph (d) of § 297.3 is revised to read:

§ 297.3 Definitions.

* * * * *

(d) "Foreign indirect air carrier" means any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property.

6. In § 297.10, *Exemption from the Act*, the title and introductory text are revised and a new paragraph (d) is added to read:

§ 297.10 Relief from the Act.

Foreign indirect air carriers with an effective registration under this part are relieved from the following provisions of the Act only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange their air freight shipments:

* * * * *

(d) If awarded interstate or overseas air transportation operating rights, any other provision of the Act that would otherwise prohibit them from engaging in the interstate or overseas indirect air transportation of property.

7. A new § 297.12 is added to read:

§ 297.12 General requirements.

(a) The direct air transportation provided must be performed by direct air carriers that hold authority under section 401, 402, 416 or 418 of the Act or are operating under Part 298 of this chapter;

(b) Only U.S. citizen direct air carriers may provide direct air transportation

operations in interstate and overseas air transportation.

(c) Foreign indirect air carriers that hold authority to engage in foreign air transportation must apply additionally for permission to consolidate freight in interstate and overseas air transportation.

8. In 3297.22 the introductory text and paragraph (b) are revised to read:

§ 297.22 Procedure on receipt of registration application.

After review of a registration form filed under § 297.20, the Board will take one or more of the following actions:

* * * * *

(b) Reject an application for registration for failure to comply with this part, for reasons relating to the failure of effective reciprocity, or if the Board finds that it is in the public interest to do so.

* * * * *

9. In § 297.25, the introductory text, paragraphs (d) and (e) are revised, and a new paragraph (f) is added, to read:

§ 297.25 Cancellation or conditioning of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions or limitations if:

* * * * *

(d) A substantial ownership or control interest is acquired by persons who are not citizens of the country of citizenship of the registrant;

(e) There is a failure of effective reciprocity; or

(f) The Board finds that it is in the public interest to do so.

10. CAB Form 297–A is revised to read as follows:

BILLING CODE 6320-01-M

Approved by OMB
OMB No. 3024–0039
Expires 11–30–84

CAB Form 297A
(Rev. 4–82)

REGISTRATION OR AMENDMENTS UNDER PART 297 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD

FOR USE BY CAB ONLY

Effective date of registration/amendments:

☐ Foreign air transportation

☐ Interstate air transportation

☐ Overseas air transportation

INSTRUCTIONS: This form must be submitted in duplicate to Regulatory Affairs Division, B–58 Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428. Date of filing for the purposes of the Board's regulations is deemed to be the date the completed forms are received by the Board.

1. Name, Mailing Address, and Telephone Number (including Area Code) of Registrant in the United States:

NOTE: Name should include any other names under which business will be conducted. If registering a name change, show new name(s) here, and previously registered name(s) in block 9a on reverse. There is no Board rule governing the name that must be used in advertisements but all names that might be used should be listed here.

2. Address of principal place of business in the United States (if different from above) and registrant's Area Code and Telephone Number:

3. Indicate country of citizenship. List below the names and citizenship and percentage owned or held of each person or entity owning or holding beneficial ownership of 10 percent or more of the applicant's stock.

Applicant's Country of Citizenship		
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage
Name	Citizenship	Percentage

4. Name, address, and telephone number (including Area Code) of designated agent residing within the United States for service of process:

5. Is this filing registrant's

☐ Initial Registration

☐ Amendment to reflect changes since previous filing (Please explain on reverse)

6. If this is an initial registration, give proposed date of commencement of operations:

7. Check type or types of service registrant intends to perform upon commencement of operations:

☐ Foreign air transportation

☐ Interstate air transportation

☐ Overseas air transportation

8. Certification

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Signature: _____

Date: _____ Name (please type) _____

Place: _____ Title: _____
(see note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer of a corporation or association, or partner or owner of other non-corporate applicants.

9. (For use in reporting any changes or amendments to information previously filed).

a. Previously registered name and/or address:

b. Description of any other changes or amendments:

BILLING CODE 6320-01-C

14 CFR Part 315

[Reg. PR-247 Amendment No. 1; Docket 37970]

Information Submitted in Section 408 Applications

AGENCY: Civil Aeronautics Board.

ACTION: Finalization of interim rule.

SUMMARY: The CAB finalizes and makes technical changes to an interim rule, published at 45 FR 23646, Apr. 8, 1980, setting forth who must file a merger application, the information submitted with the application, and the procedures followed if the Board or other person considers the application incomplete. This action is taken on the basis of public comment received and as a result of Board experience under the present rule.

DATES: Adopted: April 15, 1982. Effective: June 5, 1982.

FOR FURTHER INFORMATION CONTACT: Susan B. Jollie, Associate General Counsel, Antitrust Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-6011; or David Schaffer, Rules & Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: By PR-221, 45 FR 23646, April 8, 1980, the Board adopted an interim rule (14 CFR Part 315) governing the information that airlines must submit in a merger application under section 408 of the Federal Aviation Act. As explained at that time, the short time (6 months) now allowed the Board for deciding merger cases required that most of the necessary information be submitted with the initial application rather than weeks later in response to an evidence request, as was previously the practice. Part 315 sets forth who must file a merger application and the procedures that will be followed if the Board or any other person considers the application to be incomplete. It requires applicants to submit background, financial, equipment, and competitive information, documents on the impact of the proposed transaction on service, competition, and labor, and data on the availability of landing slots and fuel. By PDR-71, 45 FR 47698, July 16, 1980, the Board invited comments on this rule with a view to issuing a revised rule later if necessary. Comments were submitted by USAir and the United States Department of Justice (DOJ).

Section 315.1 states that the filing requirements of the rule apply to consolidations or acquisitions of control that involve two air carriers, or an air carrier and a foreign air carrier. Air carrier is defined in section 101(3) of the Act as including only carriers that provide interstate, overseas, or foreign air transportation. DOJ sought to have the coverage of the rule expanded in two ways. First, it wanted consolidations or acquisitions of control involving intrastate carriers to be within the coverage of Part 315. It also asked that the rule apply to mergers involving an air carrier and any other person substantially engaged in the business of aeronautics.

Although most carriers providing only intrastate transportation are likely to be air taxis, which are already exempt from section 408 of the Act and this rule by 14 CFR 298.11(g), Part 315 should apply to any others that may exist now or in the future. To broaden the coverage of Part 315, we are amending § 315.1 by adding the term "intrastate air carrier." This term covers carriers that operate entirely within one state. Part 315 will now apply to "any proposed consolidation or acquisition of control that is not exempt from section 408 and that directly or indirectly involves two or more air carriers, an air carrier and a foreign air carrier, or an air carrier and an intrastate air carrier, * * *" The phrase "two or more," which is not in the interim rule, is added now to make clear that Part 315 applies regardless of how many air carriers are involved in the transaction.

The other change suggested by DOJ, applying the rule in situations where one of the parties is a person substantially engaged in the business of aeronautics, does not seem appropriate here. Most of the information requirements of this rule are directed toward air carriers and would not make sense when applied to other persons. Although not subject to this rule, these transactions still require Board approval under section 408 of the Act.

Section 315.3 sets forth the procedures for filing applications under this rule. For consensual transactions, the application must contain the required information from both parties. For nonconsensual mergers, the applicant must provide the required information for its target to the extent that such information is available to it. After the application is filed, any person may file a motion asking the Board to dismiss it on the grounds that it lacks information required by Part 315. This motion must be filed within 10 days after the application is filed. After the 10-day period has passed, and the Board has disposed of all motions, the application will not be dismissed on the grounds that it is incomplete unless there is an omission so substantial that the Board cannot reasonably act on it at all, or within the statutory time period. Throughout the period of consideration of the application, the applicant must continually update the information in it.

USAir requested two modifications of these procedures. It asked for 20 days to review an application and file a motion for dismissal on the grounds of incompleteness. It also sought to limit the updating requirement to SEC filings, annual reports, and data on newly acquired or leased equipment.

The Board has decided not to make any changes in the procedures of § 315.3. While the 10-day period is a short time to review the application and file a motion, the 6-month period for the Board to decide the entire case is an even more difficult deadline to meet. It is important to resolve the technical objections to the application as soon as possible, in order to move expeditiously to the merits of the case. The 10-day period for motions is not unreasonable, since what parties must do during that period is mostly mechanical. Parties are not expected to use that time to consider the sufficiency of the evidence presented or the merits of the applicant's case, but only to determine whether the applicant has met the information filing requirements of Subpart B of Part 315.

The Board does not find the updating requirement to be a significant burden on merger applicants. The requirement is for only a limited time, 6 months or less. It is meant to ensure that the Board and the parties receive relevant information even after the application is submitted.

Both USAir and DOJ had comments on § 315.10, *Background Information,* particularly paragraph (g) of that section. That paragraph requires merger applicants to submit all studies, reports, and analyses about the proposed transaction, or about the other party to the merger, that were done within 3 years of the filing of the application. DOJ suggested that the applicant should also submit studies about other possible mergers it had considered in addition to the one that is the subject of the application. It also asked that reports made by or on behalf of the other party to the proposed transaction be included in the application. USAir considered 3-year old studies and reports to be long outdated and not pertinent. It argued

that only studies, reports, or analyses that were prepared in the most recent year or two would have decisional value.

As a general matter, it is not necessary to obtain studies of all possible mergers that the applicant may have considered. These proceedings are not a comparative selection of the airline that would make the best merger partner for the applicant. The Board's role is merely to determine whether the proposed merger would be anticompetitive or not in the public interest. It is not likely that any more significant information relevant to that inquiry will be obtained by requiring the submission of these additional studies.

If, however, the applicant is relying on the "savings clause" for approval of the merger, then studies of other possible mergers it had considered might be relevant. This clause states that the Board may approve an otherwise anticompetitive combination if it finds that the transaction would meet significant transportation needs of the public and that these needs "may not be satisfied by a reasonably available alternative having materially less anticompetitive effects." Section 408(b)(1)(B). Section 315.10 is amended to require studies of other possible mergers in this limited situation.

DOJ's other request, that studies and reports made by or on behalf of the other party to the transaction be submitted, is already covered by this rule. Paragraphs (b) and (c) of § 315.3 require applicants to submit all the information required by Subpart B of Part 315 for the other party to the proposed transaction. This imposes on applicants the filing requirement that DOJ requested.

The Board does not find the 3-year requirement to be unduly burdensome, as USAir claimed. Companies may court each other for a long time and the studies, reports, and analyses performed during that time may be important in the evaluation of the case. Such studies are likely to be in the same company file regardless of whether they are 1, 2, or 3 year old. Producing a 3-year-old study should not, therefore, create more problems for the applicant than producing one that is 2 years old or less.

Section 315.13 requires applicants to submit competitive information. This includes a list of nonstop city-pairs that the applicant or other party serves or may serve. It also includes documents about route development, internal expansion, marketing strategies, the possibility of new entry, capacity, and breakeven levels in any area served by either party, and changes in conditions in any area that they serve. USAir asked that this section be limited in various ways. Rather than requiring the submission of documents that were submitted 2 years prior to the filing of the application, USAir suggested that 1 year be the cutoff. It wanted the number of documents limited further by requiring the submission of only those that deal with near-term implementation as opposed to those that are for long-range planning purposes. It considered long-range planning documents too indefinite to be pertinent. USAir also asked that the term "any area" be more narrowly defined. It suggested that paragraphs (c) and (d) be modified to refer only to points, city-pairs, routes and hubs of both parties or of the other party.

The Justice Department favored an expansion of § 315.13. It asked that paragraph (a) of that section be amended to require applicants to list all nonstop and single-plane city-pairs that either party serves or proposes to serve, not merely the nonstop city-pairs. DOJ pointed out that in many instances, single-plane service is competitive with nonstop service.

The Board has decided not to make any change in § 315.13. It is important to obtain the information required by this section for all areas where the carriers complete. It is not necessary, however, for applicants to list all the single-plane city-pairs in addition to the nonstop city-pairs that they serve or propose to serve. This may be burdensome for applicants and is obtainable by the Board from other sources.

USAir was concerned about disclosure of confidential information that may be filed in an application. Section 315.4 now addresses this problem by limiting access to confidential information to attorneys of record and their experts who filed affidavits promising not to disclose the information, and to Board personnel. USAir wanted to make sure that only Board personnel assigned to the proceeding will have access to the documents. To accomplish this, the phrase "working on the proceeding" will be added after "Board personnel." This will ensure that only the Administrative Law Judge, Board attorneys and analysts assigned to the case, senior Board staff personnel, and Board members have access.

The Board is also, on its own initiative, amending § 315.17 *Labor Relations*, by deleting paragraphs (d), (e), and (g). These provisions require applicants to list the domiciles of their flight personnel, to describe the effect of the merger on existing collective bargaining agreements, and to file a copy of each pension plan covering their employees. The information obtained under these provisions has not proved useful to the Board. Eliminating them in no way affects the Board's ability to impose labor protective provisions in a particular case. If a party considers this information to be needed in a particular case, it may ask the Administrative Law Judge in the pre-hearing conference to order its production.

List of Subjects in 14 CFR Part 315

Air Carriers, Antitrust, Energy, Labor.

PART 315—INFORMATION SUBMITTED IN SECTION 408 APPLICATIONS

Accordingly, the Board adopts 14 CFR Part 315, published at 45 FR 23646, Apr. 8, 1980, as final with the following changes:

1. The authority for Part 315 is:

Authority: Secs. 204, 407, 408, 1010, Pub. L. 85-726, as amended, 72 Stat. 743, 766, 767, 92 Stat. 1743 (49 U.S.C. 1324, 1377, 1378, 1490).

2. Section 315.1 is revised to read:

§ 315.1 Purpose and applicability.

This rule sets forth the form and content of applications that must be submitted to the Board under section 408(b)(1) of the Act. It applies to any proposed consolidation or acquisition of control that is not exempt from section 408 and that directly or indirectly involves two or more air carriers, an air carrier and a foreign air carrier, or an air carrier and an intrastate air carrier, including transactions involving persons in control of such carriers.

3. Paragraph (a) of § 315.3 is revised, as follows:

§ 315.3 Filing of applications.

(a) Each person required to file an application under section 408(b)(1) of the Act for Board approval of transactions described in § 315.1 shall file 20 copies of a complete application as required by Subpart B of this part in the Board's Docket Section, except that only two copies of the information required by §§ 315.11 and 315.17(f) must be filed.

* * * * *

4. Paragraph (b) of § 315.4 is revised, as follows:

§ 315.4 Confidentiality.

* * * * *

(b) No person shall have access to the confidential information except (1) attorneys of record and their experts who file affidavits promising not to disclose the information and to use it only in connection with the section 408 proceedings to which the information is

directed, and (2) Board personnel working on the proceeding. Inspection of confidential documents may begin as soon as the affidavits are filed.

* * * * *

5. A new paragraph (h) is added to § 315.10, as follows:

§ 315.10 Background information.

* * * * *

(h) If the applicant is relying for approval of the proposed transaction on a claim that that transaction would meet significant transportation needs of the public and that these needs may not be satisfied by a reasonably available alternative having materially less anticompetitive effects, all studies, reports and analyses made within 2 years preceding the filing of the application regarding other possible mergers, consolidations, or acquisitions that it had considered.

§ 315.17 [Amended]

6. In § 315.17, paragraphs (d), (e), and (g) are removed and reserved.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc 82-12462 Filed 5-6-82; 8:45 am]
BILLING CODE 6320-01-M

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14 CFR Part 380

[Docket No. 39744; Reg. SPR-188; Amdt. No. 16 to Part 380]

Public Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB relieves foreign charter operators from the provisions of the Federal Aviation Act which prevent them from organizing charter/tours in interstate and overseas air transportation. Foreign charter operators interested in exercising these new rights must register with the Board. This action will benefit consumers and the U.S. airline industry through increased competition.

DATES: Adopted: April 15, 1982. Effective: June 5, 1982, except CAB Form 300 which contains information collection requirements which are under review by OMB.

FOR FURTHER INFORMATION CONTACT: Glenn M. Datnoff, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5203.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the change in Form 300 that is included in this final rule is being submitted for approval to the Office of Management and Budget (OMB). The change is not effective until OMB approval has been obtained, and the public notified to that effect through a technical amendment to this regulation. The Board will place the OMB approval number on Form 300 when approval is obtained.

Background

By EDR-427/SPDR-82, 46 FR 35664, July 10, 1981, the Board proposed to relieve foreign charter operators and foreign consolidators of freight from the provisions of the Federal Aviation Act which prevent them from operating in interstate and overseas air transportation. We stated that all direct carrier services must be performed by U.S.-flag carriers, and that only foreign charter operators whose governments provided reciprocal domestic operating rights, as well as fifth freedom operating authority, to U.S. indirect carriers would receive U.S. domestic operating authority. In ER-1294, issued contemporaneously with this final rule, we addressed the objections to this proposal in the context of expanded operating rights for foreign air freight forwarders and foreign cooperative shippers associations. In brief, we stated that the alleged harmful effects of opening domestic markets to foreign competitors were too remote to outweight the potential benefits that would accrue to the consumer and the airline industry from the adoption of our proposal. Those findings are equally applicable to passenger charters. Since we have already discussed the generic objections to this proposal in ER-1294, we shall only discuss here clarifications pertinent to foreign charter operators.

Certification

Foreign charter operators interested in organizing tours in interstate and overseas air transportation must obtain operating authority pursuant to the simplified registration procedures recently approved by the Board in SPR-179, 46 FR 56605, November 18, 1981. Requests for authority shall be filed on Form 300 which will now provide space to indicate whether the operator wants foreign, interstate or overseas air transportation authority.

In the Notice of Proposed Rulemaking (NPRM) initiating this proceeding, we did not attach a specimen registration form for foreign charter operators because the rulemaking considering the format of this registration form had not yet been finalized. We stated that the only format alterations which would be required here were the addition of spaces to indicate the three types of air transportation that could be requested and authorized. The attached Form 300 is identical to that issued in SPR-179 except that Item 7 has been added to distinguish among the types of air transportation applied for and the authorization section is similarly amended to distinguish among the types of air transportation approved.

Upon further review of the registration requirements of § 380.64, we note that the current rules explicitly provide for rejection of a registration only if the application does not explicitly comply with the filing requirements or if the public interest so requires. The rule does not specify that a public interest consideration in rejecting applications will be an imbalance of reciprocity between the U.S. and other countries. In order to make that fact clear, we shall amend § 380.64(a)(6). Since this amendment is interpretative in nature and merely enunciates authority currently held by the Board, the Board finds good cause for dispensing with notice and further public procedures on this amendment.

Interstate and Overseas Charter Operations

In SPR-179, the Board adopted § 380.68, which prevents foreign charter operators from organizing charter tours in domestic markets. We have previously recognized the anomaly between this provision and the authority we are now granting to foreign charter operators. Indeed, we said in the NPRM initiating this rulemaking that should § 380.68 be adopted in a then-pending rulemaking, we would eliminate it here. Since this provision is inconsistent with the objectives of this rulemaking, it is being deleted.

The Final Rule

Our proposed amendments to §§ 380.62 and 380.66 were predicated upon the proposal for those sections in Docket 38023. The final rules adopted for those two sections in SPR-179 were slightly different from those proposed in the NPRM initiating that rulemaking (SPDR-77, 45 FR 26084, April 17, 1980), because of changes we made as a result of comments received from the public. We have therefore, amended the language we proposed for §§ 380.62 and 380.66 in the NPRM initiating this rulemaking (SPDR-82) to conform to the language adopted for those sections in SPR-179.

Final Regulatory Flexibility Analysis

The discussion above and in ER-1294, issued along with this rule, constitutes

the Board's final regulatory flexibility analysis of this rule, pursuant to 5 U.S.C. 604. Copies of these documents can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5432, by referring to ER-1294, and the "SPR" number at the top of this document.

List of Subjects in 14 CFR Part 380

Advertising, Antitrust, Charter flights, Consumer protection, Educational study programs, Surety bonds, Travel agents.

PART 380—PUBLIC CHARTERS

Accordingly, the Board amends 14 CFR Part 380, *Public Charters,* as follows:

1. The authority for Part 380 is:

Authority: 101(3), 204, 401, 402, 407, 416, and 1102, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 797 (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502).

2. In Part 380, the Table of Contents is amended by revising the title of § 380.20 and removing § 380.68, to read:

Sec.

* * * * *

380.20 Relief from the Act.

* * * * *

380.68 [Removed]

* * * * *

3. Paragraph (b) of § 380.5 is revised to read:

§ 380.5 Procedures for imposition of limitations and restrictions on Public Charter operations.

* * * * *

(b) Petitions seeking the issuance of such an order to show cause may be filed by any person. Answers to such petitions are permitted, but a failure to file an answer shall not prejudice anyone. Each such petition and any answer thereto shall conform to the requirements of § 302.3 of the Board's rules of practice. Copies of such petitions and answers shall be served on such persons as the Director, Bureau of Domestic Aviation, or, in the case of operations by foreign charter operators, the Director, Bureau of International Aviation, or their designee, shall direct.

* * * * *

4. Paragraph (d) of § 380.10 is revised to read:

§ 380.10 Public Charter general requirements.

Public Charters under this part shall meet the following requirements:

* * * * *

(d) The air transportation portion of the charter must be performed by direct air carriers that hold authority under section 401, 402 or 416 of the Act, or are operating under Part 298 of this chapter, except that only U.S. citizen direct air carriers may provide air transportation for operations in interstate and overseas air transportation;

5. In § 380.20, *Exemption,* the title and the introductory text of paragraph (a) is revised and a new paragraph (a)(7) is added, to read:

§ 380.20 Relief from the Act.

(a) Charter operators and foreign charter operators are hereby relieved from the following provisions of the Federal Aviation Act of 1958, as amended, only if and so long as they comply with the provisions of this part and the conditions imposed here, and to the extent necessary to permit them to organize and arrange Public Charters:

* * * * *

(7) If foreign charter operators receive interstate or overseas air transportation rights, any other provision of the Act that would otherwise prohibit them from organizing and arranging Public Charters in interstate or overseas air transportation.

* * * * *

6. Section 380.21 is revised to read:

§ 380.21 Approval of certain interlocking relationships.

To the extent that any officer or director of a charter operator (other than a foreign charter operator) would be in violation of any of the provisions of section 409(a) (3) and (6) of the Act by participating in interlocking relationships covered by the relief granted by § 380.20, such participation is hereby approved by the Board.

7. Section 380.62 is revised by adding a new paragraph (c) to read:

§ 380.62 Registration applications.

* * * * *

(c) The applicant shall clearly indicate in its application for registration whether it requests authority to engage in foreign, interstate and/or overseas air transportation.

8. The introductory text of paragraph (a) and paragraph (a)(6) of § 380.64 are revised to read:

§ 380.64 Board action on a registration application.

(a) After a registration is received, one of the following actions will be taken.

* * * * *

(6) The registration application will be rejected for reasons relating to the failure of effective reciprocity or if the Board finds that it would be in the public interest to do so.

* * * * *

9. The introductory text and paragraph (c) of § 380.66 are revised to read:

§ 380.66 Cancellation or conditioning of the registration.

The registration of a foreign charter operator may be canceled or subjected to additional terms, conditions, or limitations if any of the following occur:

* * * * *

(c) The Board finds, after notice and an opportunity for responses, that it is in the public interest to do so. In making this finding, the Board will consider whether effective reciprocity exists between the United States and the government of the foreign charter operator.

* * * * *

§ 380.68 [Removed and reserved]

10. Section 380.68, *Interstate and overseas charters prohibited,* is removed and reserved.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

11. CAB Form 300 is revised to read as follows:

BILLING CODE 6320-01-M

CAB Form 300
(Rev. 4-82)

REGISTRATION OR AMENDMENTS UNDER PART 380
OF THE ECONOMIC REGULATIONS OF THE
CIVIL AERONAUTICS BOARD

FOR USE BY CAB ONLY

INSTRUCTIONS: This form must be submitted in duplicate to Regulatory Affairs Division, B-58, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428. Date of filing for the purposes of the Board's regulations is deemed to be the date the properly completed forms are received by the Board.

1. Name and Mailing Address of Registrant in the United States:

NOTE: Name should include any other names under which business will be conducted. If registering a name change, show new name(s) here, and previously registered name(s) in block 8a on reverse. There is no Board rule governing the name that must be used in advertisements but all names that might be used should be listed here.

2. Address of principal place of business in the United States (if different from above) and registrant's Area Code and Telephone Number:

4. Name and address of designated agent residing within the United States for service of process.

5. Is this filing registrant's

☐ Initial Registration

☐ Amendment to reflect changes since previous filing (Please explain on reverse)

NOTE: Carriers already holding permit authority should check "Initial Registration"

6. If this is an initial registration, give proposed date of commencement of operations:

7. Check type or types of service registrant intends to perform upon commencement of operations:

☐ Foreign air transportation

☐ Interstate air transportation

☐ Overseas air transportation

☐ Foreign air transportation

☐ Interstate air transportation

☐ Overseas air transportation

3. Indicate country of citizenship. List below the names and citizenship of each person owning or holding beneficial ownership of 10 percent or more of the applicant's stock and the percentage of ownership.

Applicant's Country of Citizenship

Name	Citizenship	Percent

[FR Doc.
BILLING

8. Certification:

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge. Furthermore, I certify that all public charter operations performed by the registrant will be conducted in accordance with the provisions of Part 380 of the Board's Special Regulations (14 CFR 380) and that no flights will be advertised, sold, or operated unless and until the registrant has entered into financial security arrangements as prescribed in Part 380.

Signature: _____

Date: _____ Name (please type): _____

Place: _____ Title: _____ (see note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary or Treasurer of a corporation or association, or partner or owner of other non-corporate applicants.

9. (For use in reporting any changes or amendments to information previously filed)

a. Previously registered name and/or address:

b. Description of any other changes or amendments:

[FR Doc. 82-12489 Filed 5-6-82; 8:45 am]
BILLING CODE 6320-01-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2048-6]

Approval and Promulgation of Implementation Plans; San Joaquin Valley Air Basin, California, Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: On September 5 and 15, 1980, the Environmental Protection Agency (EPA) published notices of proposed rulemaking concerning the San Joaquin Valley Air Basin nonattainment area plan (NAP) for carbon monoxide (CO), ozone and particulate matter (PM). Today's notice takes final action to conditionally approve the NAP for six counties in the San Joaquin Valley Air Basin with respect to Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas."

DATE: This action is effective May 7, 1982.

ADDRESS: A copy of the NAP is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: David Howecamp, Acting Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 974–8222.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1979, the California Air Resources Board (ARB) submitted revisions to the California State Implementation Plan (SIP) consisting of a control strategy and regulations for the San Joaquin Valley Air Basin. These revisions, which comprise the San Joaquin Valley Air Basin NAP, are intended to provide for attainment of the ozone, CO, particulate matter (PM), and sulfur dioxide (SO_2), national ambient air quality standards (NAAQS) in the San Joaquin Valley Air Basin.

On September 5 and 15, 1980 (45 FR 58897 and 60931), EPA published notices of proposed rulemaking for the NAP, which covers the Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare County nonattainment areas. Those notices should be used as references in reviewing today's notice. The two notices provide a description of the NAP, summarize the applicable Clean Air Act requirements into 14 criteria, compare the NAP to those criteria, and proposed to approve and conditionally approve portions of the NAP. Today's notice addresses all of these counties, except Kern and Fresno which are addressed in separate **Federal Register** notices (see 46 FR 42450 for final action on Kern County).

Supplemental Revisions

After EPA's review, which appears in the September 5, 1980 notice, the State submitted several revisions to the NAP as discussed below.

California Environmental Quality Act (CEQA)

On October 20, the State submitted the following portions of CEQA:

Sections 21000; 21001; 21002; 21002.1, 21061; 21063; 21065; 21080.1; 21080.4(a); 21080.5(a), (b), (c) and (d); 21081; 21082; 21100; 21104; 21151; 21153; and 21160.

As discussed in the January 21, 1981 final rulemaking notice (46 FR 5967), EPA has determined that these portions of CEQA satisfy the requirements of section 172(b)(11)(A) of the Clean Air Act. Therefore, EPA is deleting the proposed minor deficiency concerning the submittal of CEQA in today's notice.

Volatile Organic Compound Rules

The following rules were submitted by the State on the dates indicated:

Kings County:
- Rule 414, "Wastewater Separators," submitted on May 13, 1980.
- Rule 410.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.
- Rule 411, "Storage of Organic Liquids," submitted on March 30, 1981.
- Rule 412.2, "Transfer of Gasoline into Vehicle Fuel Tanks, Phase II," submitted on October 23, 1981.

Madera County:
- Rule 410.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.

Merced County:
- Rule 409.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.

San Joaquin County:
- Rule 409.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.
- Rule 409.5, "Cutback Asphalt Paving Materials," submitted on July 14, 1981.
- Rule 409.6, "Can and Coil Coating Operations," submitted on July 14, 1981.

Stanislaus County:
- Rule 409.3, "Organic Solvent Degreasing Operations," submitted on June 22, 1981.
- Rule 409.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.
- Rule 409.5, "Cutback Asphalt Paving Materials," submitted on May 28, 1981.
- Rule 409.6, "Can and Coil Coating Operations," submitted on July 14, 1981.

Tulare County:
- Rule 410.4, "Surface Coating of Manufactured Metal Parts and Products," submitted on October 10, 1980.
- Rule 412, "Gasoline Transfer into Stationary Storage Containers," submitted on December 15, 1980.

All of these rules, except as discussed below contain very minor changes which either add clarity to the rule or correct typographical errors.

Kings County Rule 411, "Storage of Organic Liquids," has been amended by changing the exemption for tanks storing crude oil prior to lease custody transfer to tanks with throughputs *less* than 6300 gallons per day rather than *greater* than 6300 gallons per day. This amendment satisfies one of the conditions of approval specified in the September 5, 1980 notice.

Kings County Rule 414, "Wastewater Separators," has been amended by eliminating the exemptions for separators which recover less than 200 gallons of product per day and those that handle materials with a Reid Vapor Pressure of less than 0.5 psi. The elimination of these exemptions satisfies another of the conditions of approval specified in the September 5, 1980 notice.

San Joaquin County and Stanislaus County Rules 409.6, "Can and Coil Coating Operations," are similar and equivalent to the Model Rule which was described in the September proposal and thus satisfy two proposed conditions of approval.

Rule 409.3, "Organic Solvent Degreasing Operations," for the Stanislaus County, has been amended by changing the title of the Rule. This amendment satisfies one of the conditions of approval specified in the September 5, 1980 notice.

Rule 409.5, "Cutback Asphalt Paving Materials," for San Joaquin and Stanislaus Counties requires that emulsified asphalts contain no more than 3% solvent. The compliance date for this limit has been revised from January 1, 1985 to January 1, 1982. This revision satisfies the deficiency noted in the September 5, 1980 notice.

Since there were only very minor revisions to these rules or conditions of approval were satisfied by the revisions, EPA finds that for good cause additional notice and comment on these rules are unnecessary (see U.S.C. Section

553(b)(B), Administrative Procedure Act).

New Source Review (NSR) Rules

On July 25, 1980 the State submitted revisions to the Stanislaus County NSR Rule 209.1, "Standards for Authority to Construct." Paragraphs 209.1(3)(F)(8) and 209.1(3)(F)(9) have been added to the "Applicability and Exemptions" portions of the Rule and a portion of 209.1(3)(F)(5) has been amended to reflect this change.

The revisions to Rule 209.1 have been reviewed with respect to Section 173 of the Clean Air Act. These revisions provide additional exemptions from Lowest Achievable Emission Rate (LAER) which are not authorized by Section 173. EPA has determined that these exemptions constitute a minor deficiency.

EPA's September 5 notice addressed exemptions from LAER that are similar to the supplemental revisions noted here. In addition, this notice reflects comments received regarding the LAER exemptions. Thus, EPA feels that the public has been provided adequate opportunity to comment on the approvability of the LAER exemptions and that further notice and comment are unnecessary. Therefore, EPA is taking final action on the rules noted above in today's notice.

Public Comments

During the public comment period, EPA received comments from the ARB, the local air pollution control districts (APCDs), the Stanislaus Area Association of Governments, the San Joaquin County Planning Department, the San Joaquin Board of Supervisors and the Pacific Gas and Electric Company. Comments received are specifically identified and responded to in EPA's Public Comment Technical Support Document (contained in Document File NAP–CA–04 at the ARB, EPA Library in Washington, D.C. and the Region IX Office).

EPA Actions

Introduction

The criteria used in EPA's review are detailed in the General Preamble and four supplements referenced in the notice of proposed rulemaking.

While EPA's evaluation of the NAP for ozone includes use of "Control Technique Guidelines" ("CTG's") documents as a "presumptive norm," the states may adjust the recommended controls or develop requirements which are not based on the CTG's, provided that they submit information supporting their decisions.

It should be noted that action may be taken on a portion of a NAP for a specific pollutant or rule. Therefore, a portion of a NAP may be adequate for one pollutant but inadequate for others. Further, a rule may be adequate under section 110, but inadequate under section 172 or 173 of the Act. It is EPA's policy to take final action on all portions of a NAP for each pollutant.

Therefore, a final rulemaking notice contains a series of actions for each pollutant and for each portion of the NAP rather than a single action. One of the following three actions may be taken for each portion of a NAP:

1. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective of the NAP; or

2. Approval where the portion of the NAP under consideration meets all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and where the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's understanding that the State will proceed expeditiously to correct the noted deficiency by certain dates.

For further information, see the supplements to EPA's General Preamble.

EPA's final actions described below are based on the proposed rulemaking notice, supplemental revisions submitted by the State, and public comments received by EPA.

Approved Portions of the NAP

EPA is taking final action under section 110 of the Clean Air Act to approve the following rules since they provide emission limits necessary to insure attainment of the NAAQS: Kings County rules 410.1 to 410.5, 411, 412.1, 412.2, 413, 413.3, 414, 414.1 and 414.2; Madera County rules 410.1, 410.3, 410.4, 410.5, 411, and 412; Merced County rules 409.1, 409.3, 409.4, 409.5, 410 and 411; San Joaquin County rules 409.1, 409.3, 409.4, 409.5, 410, 411.1, 413, 413.1, 413.2, and 413.3; Stanislaus County rules 409.1, 409.3, 409.4, 409.5, 409.6, and 411; and Tulare County rules 410.1, 410.3, 410.4, 410.5, 412, and 413.

EPA also is taking action under section 172 of the Act to approve the following rules, since they fully satisfy the requirement for RACT: Kings County rules 410.3, 410.4, 410.5, 411, 412.1, 413, 413.3, 414 and 414.2; Madera County rules 410.3, 410.4, and 412; Merced County rules 409.4, 410, and 411; San Joaquin County rules 409.3, 409.4, 410, 411.1, 413, 413.2, and 413.3; Stanislaus County rules 409.3, 409.4, 409.5 and 411; and Tulare County rules 410.4, 410.5, 412, and 413.

As proposed in the September 1980 notices, EPA is taking final action under section 172 to approve the following portions of the NAP for the six counties discussed in today's notice for ozone and/or CO: emission inventory, modeling, emission reduction estimates, attainment provision, reasonable further progress, emissions growth, annual reporting, resources, public and government involvement, and public hearing.

Conditionally Approved Portions of the NAP

As discussed in the September 1980 notices the Public Comment Technical Support Document and in the SUPPLEMENTAL REVISIONS section of this notice, for following portions of the NAP for the six counties contain minor deficiencies with respect to Section 172: legally adopted measures, permit program, and (in San Joaquin County only) extension requirements. Since the State and the APCD's have assured EPA that they will submit the material to correct the minor deficiencies, EPA takes final action to conditionally approve these portions of the NAP.

To satisfy the conditions of approval, the State must submit the following material by the indicated dates:

1. By September 7, 1982, the NSR rules for the six counties must be revised to meet the requirements in EPA's amended regulations for NSR under section 173 of the Clean Air Act (May 13, 1980, 45 FR 31307 and August 7, 1980, 45 FR 52676) as a SIP revision.

2. By September 7, 1982, the State must provide either (1) an adequate demonstration that the following regulations represent RACT, (2) amend the regulations so that they are consistent with the CTG, or (3) demonstrate that the regulations will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations.

Madera County APCD: Rule 411, "Storage of Petroleum Distillates and Light Crude Oil"
Merced County APCD: Rule 409.3, "Organic Solvent Degreasing Operations"
Stanislaus County APCD: Rule 410, "Storage of Petroleum Products"
Tulare County APCD: Rule 410.3, "Organic Solvent Degreasing Operations"

3. By September 7, 1982, implementation commitments and schedules for the adopted transportation control measures in the San Joaquin County NAP.

Final Overall Action on the NAP for the Six Counties

Since the San Joaquin Valley Air Basin NAP for ozone, CO, and PM for Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare counties contain only minor deficiencies and since the State has provided assurances to correct these deficiencies, EPA is taking final action to conditionally approve the NAP overall for these counties with respect to Part D. As a result, the current prohibition on construction of certain sources is no longer in effect in these counties.

Regulatory Process

In those areas for which the State of California has submitted approvable or conditionally approvable NAPs in accordance with the requirements of Part D of the Clean Air Act, EPA has a responsibility to take final action as soon as possible in order to lift the construction prohibition. Since the State has submitted a conditionally approvable NAP for the counties discussed in this notice, EPA finds that good cause exists for making this action immediately effective.

The new SIP requirements approved or conditionally approved by today's notice are an addition to the existing SIP and do not supersede or replace the "old" SIP requirements until a source comes into compliance with the new requirements. For further information, see EPA's General Preamble.

As a result of approval of certain portions of the NAP, EPA is taking final action to rescind the following analogous portions of 40 CFR Part 52:

Sec.
Section 52.233 Review of new sources and modifications: Subparagraphs (d)(8), (11), (13), (20), (24) and (26) and (g)(1)(viii).
Section 52.245 Control of oxides of nitrogen, hydrocarbon, and carbon monoxide emissions from in-use vehicles.
Section 52.253 Metal surface coating thinner and reducer.
Section 52.254 Organic solvent usage.
Section 52.255 Gasoline transfer vapor control.
Section 52.256 Control of evaporative losses from the filling of vehicular tanks.
Section 52.265 Mass transit and transit priority planning.

Under Executive Order 12291, EPA must judge whether a rulemaking action is "major". Further, under the Regulatory Flexibility Act, EPA must assess the effect of the rulemaking action on "small entities". This regulation is not "major" because it approves state and local actions and imposes no new requirements. I hereby certify that the action will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 12291, this regulation was submitted to the Office of Management and Budget (OMB) for review.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action merely approves state actions. This action imposes no new requirements for the sources in California.

(Secs. 110, 129, 171–178, and 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a))

Dated: April 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. In § 52.220(c) subparagraphs (50)(vi), (51)(viii)–(x), (52)(iv)–(ix), (71)(i)–(iv), (83)(ii), (84)(i)–(vi), (85)(i), (88)(i), (89)(i), (92)(i), (93)(i), (102)(i)–(ii) and (103)(i) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(50) * * *

(vi) Merced County APCD.

(A) New or amended Rule 409.1.

* * * * *

(51) * * *

(viii) San Joaquin County APCD.

(A) New or amended Rule 409.1.

(ix) Stanislaus County APCD.

(A) New or amended Rule 409.1.

(x) Tulare County APCD.

(A) New or amended Rules 410.1 and 413.

* * * * *

(52) * * *

(iv) Kings County APCD.

(A) New or amended Rules 210.1 (except paragraphs (3)(D) and (5)(B)(8)), 210.2, 410.1, 410.2, 410.3, 410.5, 412.1, 413, 414.1, and 414.2.

(v) Madera County APCD.

(A) New or amended Rules 210.2, 410.1, 410.3, 410.5, 411, and 412.

(vi) Merced County APCD.

(A) New or amended Rules 210.1 (except paragraphs (3)(D) and (5)(B)(8)), 210.2, 409.5, and 411.

(vii) San Joaquin County APCD.

(A) New or amended Rules 209.1 (except paragraphs (B)(3) and (D)(2)(b)), 209.2, 409.3, 410, 411.1, 413, 413.1, 413.2, and 413.3.

(viii) Stanislaus County APCD.

(A) New or amended Rules 209.2 and 411.

(ix) Tulare County APCD.

(A) New or amended Rules 210.1 (except paragraphs (C)(4) and (e)(2)(H)), 210.2 and 410.5.

* * * * *

(71) The *San Joaquin Valley Air Basin Control Strategy* (Chapter 16 of the Comprehensive Revisions to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards) submitted on October 11, 1979, by the Governor's designee. Those portions of the *San Joaquin Valley Air Basin Control Strategy* identified by Tables 16–1a, 1b and 1c (Summary of Plan Compliance with Clean Air Act Requirements) except which pertain to Fresno County and the six transportation control measures for Stanislaus County, comprise the submitted plan. The remaining portions are for informational purposes only. The following rules were also submitted on October 11, 1979 as part of the enforceable plan:

(i) Kings County APCD.

(A) New or amended Rules 411 and 413.3.

(ii) Madera County APCD.

(A) New or amended Rule 210.1 (except paragraphs (3)(D) and (5)(B)(8)).

(iii) Merced County APCD.

(A) New or amended Rules 409.3 and 410.

(iv) Tulare County APCD.

(A) New or amended Rule 410.3.

* * * * *

(83) * * *

(ii) Kings County APCD.

(A) New or amended Rule 414.

* * * * *

(84) Revised regulations for the following APCDs submitted on October 10, 1980, by the Governor's designee.

(i) Madera County APCD.

(A) New or amended Rule 410.4.

(ii) Merced County APCD.
(A) New or amended Rule 409.4.
(iii) Kings County APCD.
(A) New or amended Rule 410.4.
(iv) San Joaquin County APCD.
(A) New or amended Rule 409.4.
(v) Stanislaus County APCD.
(A) New or amended Rule 409.4.
(vi) Tulare County APCD.
(A) New or amended Rule 410.4.

* * * * *

(85) Revised regulations for the following APCDs submitted on December 15, 1980, by the Governor's designee.
(i) Tulare County APCD.
(A) New or amended Rule 412.

* * * * *

(88) Revised regulations for the following APCDs submitted on July 25, 1980, by the Governor's designee.
(i) Stanislaus County APCD.
(A) New or amended Rule 209.1 (except paragraphs (3)(E) and (5)(B)(8)).

* * * * *

(89) Revised regulations for the following APCDs submitted on March 30, 1981, by the Governor's designee.
(i) Kings County APCD.
(A) New or amended Rule 411.

* * * * *

(92) Revised regulations for the following APCDs submitted on May 28, 1981, by the Governor's designee.
(i) Stanislaus County APCD.
(A) New or amended Rule 409.5.

* * * * *

(93) Revised regulations for the following APCDs submitted on June 22, 1981, by the Governor's designee.
(i) Stanislaus County APCD.
(A) New or amended Rule 409.3.

* * * * *

(102) Revised rules for the following APCDs submitted on July 14, 1981 by the Governor's designee.
(i) San Joaquin County.
(A) New rules 409.5 and 409.6.
(ii) Stanislaus County.
(A) New rule 409.6.

* * * * *

(103) Revised rules for the following APCDs, submitted on October 23, 1981 by the Governor's designee.
(i) Kings County.
(A) Amended rule 412.2.

* * * * *

2. Section 52.222 is amended by adding paragraphs (b)(5) and (d)(4)(i) as follows:

§ 52.222 Extensions.

* * * * *

(b) * * *
(5) San Joaquin Valley Air Basin.
(i) Kings County APCD for O_3 and TSP.
(ii) Madera County APCD for O_3 and TSP.
(iii) Merced County APCD for O_3 and TSP.
(iv) San Joaquin County APCD for TSP.
(v) Stanislaus County APCD for CO, O_3 and TSP.
(vi) Tulare County APCD for O_3 and TSP.

* * * * *

(d) * * *
(4) San Joaquin Valley Air Basin.
(i) San Joaquin County for CO and O_3.

* * * * *

3. Section 52.223 is amended by adding paragraphs (b)(5)(ii)–(vii) as follows:

§ 52.223 Approval status.

* * * * *

(b) * * *
(5) * * *
(ii) Kings County for O_3 and TSP.
(iii) Madera County for O_3 and TSP.
(iv) Merced County for O_3 and TSP.
(v) San Joaquin County for CO, O_3 and TSP.
(vi) Stanislaus County for CO, O_3 and TSP.
(vii) Tulare County for O_3 and TSP.

* * * * *

4. Section 52.232 is amended by adding paragraph (a)(10) as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(10) Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare County APCDs.

(i) For O_3 and PM [and CO in San Joaquin and Stanislaus Counties]

(A) By September 7, 1982 the NSR rules must be revised to meet the requirements in EPA's amended regulations for NSR under section 173 of the Clean Air Act (May 13, 1980, 45 FR 31307 and August 7, 1980, 45 FR 52676) as an SIP revision.

(ii) For O_3.

(A) For the APCDs indicated below, by September 7, 1982, the State must either (*1*) Provide an adequate demonstration that the following regulations represent RACT, (*2*) Amend the regulations so that they are consistent with the CTG, or (*3*) Demonstrate that the regulations will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations.

Madera County APCD

Rule 411, "Storage of Petroleum Distillates and Light Crude Oil"

Merced County APCD

Rule 409.3, "Organic Solvent Degreasing Operations"

Stanislaus County APCD

Rule 410, "Storage of Petroleum Products"

Tulare County APCD

Rule 410.3, "Organic Solvent Degreasing Operations"

(iii) For CO and O_3 for San Joaquin County.

(A) By September 7, 1982, implementation commitments and schedules for the adopted transportation control measures.

* * * * *

§ 52.233 [Amended]

5. In § 52.233, paragraphs (d) (8), (11), (13), (20), (24), and (26), and paragraph (g)(1)(viii) are removed and reserved.

6. In § 52.238, the entry for "Kern County nonattainment areas" is removed and the entry for San Joaquin Valley Intrastate is revised to include the Kern County area, and reads as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
* * *	*		*	*	*	*	*
San Joaquin Valley Intrastate:							
a. Fresno County	July 1975	July 1975	e	e	e	May 31, 1977	May 31, 1977.
b. Kern County	h	c	h	h	d	h	h.
c. Kings County	h	h	e	e	e	May 31, 1977	h.
d. Madera County	h	h	e	e	e	May 31, 1977	h.
e. Merced County	h	h	e	e	e	May 31, 1977	h.
f. San Joaquin County	h	h	e	e	e	i	i.
g. Stanislaus County	h	h	e	e	e	h	h.
h. Tulare County	h	h	e	e	e	May 31, 1977	h.

* * * * *

7. Section 52.253 is amended by adding paragraphs (b)(3) (ii) through (vi) to read as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *
(3) * * *

(ii) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Madera County APCD's Rule 410.4 submitted on October 10, 1980.

(iii) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Merced County Rule 409.4 submitted on October 10, 1980.

(iv) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with San Joaquin County Rule 409.4 submitted on October 10, 1980.

(v) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Stanislaus County Rule 410.4 submitted on October 10, 1980.

(vi) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Tulare County Rule 410.4 submitted on October 10, 1980.

(vii) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Kings County Rule 410.4 submitted on October 10, 1980.

* * * * *

8. Section 52.254 is amended by adding paragraph (a)(1)(i) to read as follows:

§ 52.254 Organic solvent usage.

(a) * * *

(1) * * *

(i) This section is rescinded entirely for metal parts and products coaters which are subject to and in full compliance with Rule 410.4 for the Kings County APCD, Rule 410.4 for the Madera County APCD, Rule 409.4 for the Merced County APCD, Rule 409.4 for the San Joaquin County APCD, Rule 409.4 for the Stanislaus County APCD, and Rule 410.4 for the Tulare County APCD.

* * * * *

9. Section 52.255 is amended by reserving paragraphs (b)(1) (iii), (v), (viii), and (ix), and by adding paragraphs (b)(3) (iii) through (viii) to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) * * *

(1) * * *

(iii) [Reserved]

* * * * *

(v) [Reserved]

* * * * *

(viii) [Reserved]

* * * * *

(ix) [Reserved]

* * * * *

(3) * * *

(iii) Merced County APCD.

(iv) San Joaquin County APCD.

(v) Stanislaus County APCD.

(vi) Tulare County APCD.

(vii) Madera County APCD.

(viii) Kings County APCD.

* * * * *

10. Section 52.256 is amended by adding paragraph (b)(2) to read as follows:

§ 52.256 Control of evaporative losses from the filling of vehicular tanks.

* * * * *

(b) * * *

(2) In the following portions of the San Joaquin Valley Intrastate Region, this section is rescinded.

(i) Kings County APCD.

* * * * *

§§ 52.245 and 52.265 [Removed and reserved]

11. Sections 52.245 and 52.265 are removed and reserved.

[FR Doc. 82-12380 Filed 5-6-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 123

[W-4-FRL 2120-6]

Hazardous Waste Management Programs; Florida: Authorization for Interim Authorization Phase I

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination.

SUMMARY: The State of Florida has applied for Interim Authorization Phase I. EPA has reviewed Florida's application for Phase I and has determined that Florida's hazardous waste program is substantially equivalent to the Federal program covered by Phase I. The State of Florida is, hereby, granted Interim Authorization for Phase I to operate the State's hazardous waste program, in lieu of the Federal program.

EFFECTIVE DATE: Interim Authorization Phase I for Florida shall become effective on May 19, 1982.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The RCRA Act includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program will be implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous wastes, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123 Subpart F (46 FR 8298).

Draft Application

The State of Florida submitted its draft application for Phase I Interim Authorization on November 4, 1981. After detailed review, EPA identified several areas of major concern and transmitted comments to the State for its consideration. After reviewing these comments, State Officials determined that the issues raised by EPA could be resolved without changes in State regulations and legislative authority. Florida subsequently made revisions to the Program Description, Memorandum of Agreement and Attorney General's Statement to answer those questions or issues that had been raised during the review of the draft application.

Final Application

On January 15, 1982, Florida submitted to EPA a Final Application for Interim Authorization, Phase I under RCRA. An EPA review team consisting of both Headquarters and Regional Office

personnel made a detailed analysis of Florida's Hazardous Waste Management Program. The Final Application met all the requirements of 40 CFR Part 123, Subpart F, for Phase I Interim Authorization.

Public Hearing and Comment Period

As noticed in the **Federal Register**, on February 12, 1982 (47 FR 6444), EPA held a public hearing in Tallahassee, Florida on March 16, 1982, and gave the public until March 23, 1982, to comment on the State's application.

Two people spoke at the public hearing. Their comments and EPA's response are presented below.

Comment: One speaker expressed support for Florida's application for Phase I Interim Authorization, stressing the State has developed a program that provides the State with the legal authority, program components, and personnel to meet Phase I requirements.

EPA Response: No response needed.

Comment: Another speaker supported the delegation of Federal programs to the State and said he had no objections to the adoption of the regulations that the State has currently approved to achieve Phase I delegation.

EPA Response: No response needed.

Comment: The same speaker expressed concern over the Phase II delegation because Florida and EPA would operate a dual permit program if Florida only received Phase I interim authorization. The speaker asked a series of questions related to this issue and how EPA will review Florida's Phase II application.

EPA Response: Florida has submitted a draft Phase II application. A separate decision will be made on that application at a later date.

We are assisting the State in developing a hazardous waste program that could be authorized for Phase II and ultimately final authorization. Such authorization would eliminate the dual permitting program.

Comment: One letter was received with the following comments: #1) The writer expressed concern that Florida's regulations require all existing facilities to apply for a Temporary Operating Permit (TOP), and the TOP is not equivalent to interim status under Federal requirements, and the State is, in effect, requiring all Part B's for existing storage facilities to be submitted by November 19, 1982. The writer's opinion was that Phase I authorization is, therefore, not appropriate.

EPA Response: EPA can certainly understand how the commenter could be confused in comparing Florida's procedures for issuing TOP's to EPA's procedures for issuing RCRA permits. We hope the following discussion will clarify the issue.

Florida DER has adopted the 40 CFR 265 interim status standards by reference and their legal counsel has assured EPA that these standards are enforceable against existing facilities whether or not the facility has a Temporary Operating Permit (TOP).

As an administrative expedient, DER can include in the TOP a compliance schedule for any interim status standards that are being violated by the facility at the time the TOP application is submitted. However, the TOP will require compliance in the shortest time possible. DER also may issue a compliance order to require immediate compliance with the interim status standards where this action is appropriate.

In addition, DER has adopted 40 CFR 264 which includes standards a facility must meet before a full "RCRA" permit can be issued by EPA or an authorized (Phase II) State. The State TOP will contain a schedule which provides for complying with the more rigorous standards in 40 CFR Part 264 no later than three years from the date the TOP is issued. The State will thus be issuing "final" state permits to facilities faster than EPA can issue final RCRA permits. By adopting the 40 CFR Part 264 standards now, the State is effectively calling for the permit applicants' "Part B" (See 40 CFR 122.21–25 for discussion of Federal permit program) six months after the detailed standards are effective in Florida. The Federal program, by contrast, staggers the Part B call over an eight to ten year period. However, Section 3009 of RCRA (Pub. L. 94–580) allows states to be more stringent than the Federal program.

The assertion that there is no "interim status" in Florida's program is not correct because the facility is allowed to operate for up to three years without meeting the rigorous permitting standards, while only complying with the interim status standards. The major difference in the State and Federal permit program is that facilities could operate under interim status for up to eight years under the Federal program versus three years under the State program.

Comment: #2) The writer requested EPA oppose Florida's implementation of Part IV, FAC 17–30, Permitting, until such time that the State could be granted Phase II authorization because both the Federal and State permitting programs will be in effect until Phase II is granted to Florida.

EPA Response: EPA is assisting Florida in developing a hazardous waste program that could be authorized for Phase II and ultimately final authorization. Such authorization would eliminate the dual permitting program.

Comment: #3) The writer's opinion is that Florida's definition of a hazardous waste facility is not equivalent to 40 CFR 260.10, and that under this definition multiple permits for one contiguous site could be required.

EPA Response: This is not an issue concerning Phase I authorization. Florida is free to exercise its own judgment in how many permits a facility needs. However, Florida DER has informally assured EPA that their definition of a facility will be the same as ours.

Comment: #4) The writer suggested that all Federal facilities be exempt from the State's $500 application fee or pay a reduced fee since the State receives Federal grants to administer the hazardous waste program.

EPA Response: This is not a Phase I issue. EPA does not have authority to change or restrict this provision.

Decision

EPA has reviewed the State of Florida's complete application for Interim Authorization Phase I and has determined that the State program is substantially equivalent to Phase I of the Federal program as defined in 40 CFR Part 123 Subpart F. In accordance with Section 3006(c) of RCRA, the State of Florida is, hereby, granted Interim Authorization for Phase I to operate the State's hazardous waste program in lieu of the Federal program.

Compliance with Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification: Florida Application for Interim Authorization Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 123

Hazardous materials, Reporting and recordkeeping requirements, Waste

treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

(Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b))

Dated: May 3, 1982.

John A. Little,

Regional Administrator.

[FR Doc. 82-12534 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1034

Rerouting of Traffic, Appointment of Agents

AGENCY: Interstate Commerce Commission.

ACTION: Fourth Revised Service Order No. 1344.

SUMMARY: Fourth Revised Service Order No. 1344 revises the appointment of agents of the Commission, vested with the authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United Sates whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines.

EFFECTIVE DATE: 11:59 p.m., May 18, 1982, continuing in effect until 11:59 p.m., May 18, 1983.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTARY INFORMATION:

Decided: April 29, 1982.

When, for any reason, a carrier by railroad, subject to Section 10501 of the Recodified Interstate Commerce Act, is unable to transport traffic offered, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to reroute and divert such traffic. Notice and public procedure are impracticable and contrary to the public interest, and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1034.1344 Rerouting of traffic; appointment of agents.

(a) J. Warren McFarland, Director, and Bernard Gaillard, Associate Director, Office of Compliance and Consumer Assistance, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(c) *Effective date.* This order shall become effective at 11:59 p.m., May 18, 1982.

(d) *Expiration date.* This order shall expire 11:59 p.m., May 18, 1983, unless otherwise modified, amended or vacated by order of this Commission.[1]

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11124.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1034

Railroads.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12437 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

[1] Change in expiration date.

Proposed Rules

Federal Register
Vol. 47, No. 89
Friday, May 7, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307 and 381

[Docket No. 82-007P]

Reimbursement for Preparation and Cleanup Time

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) proposes to amend the overtime and holiday inspection service sections of the Federal meat and poultry inspection regulations. This proposal is in response to an agreement with the National Joint Council of Food Inspection Locals, AFGE (hereinafter referred to as the National Joint Council) implementing a decision by the Comptroller General that certain preparatory and cleanup activities performed by slaughter line inspectors and those inspectors required to work the slaughter line are compensable under the Fair Labor Standards Act. The proposed amendment would provide that the time spent on such activities, up to 15 minutes per day, per inspector, would be treated the same as any other inspection service for the purpose of determining the cost of overtime and holiday inspection service to be reimbursed by official establishments.

DATE: Comments must be received on or before July 6, 1982.

ADDRESSES: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Food Safety and Inspection Service, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to: Mark Manis, (202) 447–4820. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mark Manis, Acting Director, Labor Management Relations Staff, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4820.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action is issued in conformance with Executive Order 12291 and has been determined not to be a "major" rule. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). If adopted, it would impact on those official establishments where the compensable activities are performed outside of the 8-hour workday. The increased cost to small entities within this class is not expected to be significant.

Comments

Interested persons are invited to submit comments concerning this notice. Written comments must be submitted in duplicate to the Regulations Office. Comments should reference the docket number located in the heading of this document. Any person desiring opportunity for oral presentation of views with respect to the effect of this proposal on the poultry products inspection regulations must make such request to Mark Manis so that arrangements may be made for all such views to be presented. A transcript will be made of all views orally presented. All Comments submitted pursuant to this notice will be made available for public inspection in the Regulations Office between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

On July 31, 1981, the Comptroller general of the United States, in the *Matter of Department of Agriculture Meat Inspectors*, No. B–195821, resolved a longstanding dispute between the FSIS and the National Joint Council concerning the inclusion of clothes changing and cleanup activities as hours of work under the Fair Labor Standards Act (FLSA), (29 U.S.C. 201 *et seq.*). The FLSA, as amended by the Portal to Portal Act (29 U.S.C. 251 *et seq.*), has been interpreted by the Supreme Court to provide that time spent on preparatory and cleanup activities that are a necessary and integral part of the principal activity of an employee's position is compensable. Conversely, preparatory and cleanup activities performed primarily for the personal convenience of the employee are not compensable.

Prior to the Comptroller General decision, FSIS maintained that clothes changing and cleanup activities were not integrally related to the principal activities of the food inspector's job. Therefore, FSIS determined that such activities were not considered hours of work under the FLSA and no compensation was made to the inspectors. The Comptroller General rejected FSIS' determination and held that clothes changing and cleanup activities conducted by red meat slaughter inspectors and other similarly situated inspectors at their worksite before and after the regular work shift were integral and indispensable parts of their principal activities and compensable under the FLSA.

Following this decision, the Comptroller General in the *Matter of Nancy C. Jones*, B–196571, August 17, 1981, determined that time spent by a slaughter line inspector engaged in meat and poultry inspection on preparatory, cleanup, and other activities was compensable under the FLSA. The activities found to be compensable in addition to clothes changing and cleanup were knife sharpening and administrative paperwork. No distinction was made with respect to whether these activities were performed by slaughter line inspectors at meat establishments or poultry establishments.

Proposed Rule

As a result of the Comptroller General's decisions, the FSIS entered into negotiations with the National Joint Council and agreed to include preparatory and cleanup time in calculating the hours of work of slaughter line inspectors and those inspectors required to work the slaughter line who perform preparatory and cleanup activities necessary and integral to the primary activity of a slaughter line inspector. In certain instances, because of the operating practice at the official establishment where such inspectors are assigned, the time spent on preparatory and cleanup activities will fall outside of the regular work shift or on a holiday. Hours of work beyond the regular work shift or on a holiday are compensable at the overtime or holiday rate in effect when such work is performed. Thus, in situations where slaughter line inspectors or inspectors required to work the slaughter line perform compensable preparatory and cleanup activities outside of the regular work shift or on a holiday or where such inspectors are already in an overtime status and these activities are performed, the inspectors will be entitled to compensation at the overtime or holiday pay rate for the time expended on the performance of the compensable activities. Of course, no inspector will be paid overtime for any such activities not actually performed.

The reimbursement section of the Federal Meat Inspection Act (FMIA), 7 U.S.C. 394, and the reimbursement section of the Poultry Products Inspection Act (PPIA), 21 U.S.C. 468, provide that the cost of overtime work performed in official establishments shall be borne by such establishments. Sections 307.5(a) and 381.38(a) of the meat and poultry products inspection regulations (9 CFR 307.5(a) and 381(a)) provide that the management of an official establishment shall reimburse FSIS for the cost of overtime inspection services performed; i.e., for more than 8 hours work performed by an inspector on one day; for more than 40 hours work performed by an inspector in any administrative workweek, Sunday through Saturday; or for any work performed on any holiday.

Since the policy of the Department of Agriculture prior to the Comptroller General's decisions was to deny compensation for time spent on any such preparatory, cleanup, or other activities, these reimbursement provisions were not applied so as to require reimbursement for any overtime associated with the performance of such activities. With the Comptroller General's decisions holding that certain preparatory and cleanup activities are compensable, and the subsequent agreement with the National Joint Council, it is necessary to amend the regulations so that when the compensable preparatory, cleanup, or other activities are performed under circumstances making the time spent on such activities compensable at an overtime or holiday rate, the accompanying costs may be recovered by FSIS in accordance with the FMIA, PPIA, and the regulations thereunder. Therefore, the Administrator is proposing to amend §§ 307.5 and 381.38 of the meat and poultry products inspection regulations (9 CFR 307.5 and 381.38) by adding to each a new paragraph that would provide that the time spent on such activities, up to 15 minutes per day, per inspector, would be treated the same as any other inspection service for purposes of determining the cost of overtime and holiday inspection service to be reimbursed by official establishments.

The effect of the proposed rule would be limited to only those activities compensable under the FLSA. Not more than a daily total of 15 minutes per inspector will be provided to slaughter line inspectors or those inspectors required to work the slaughter line to perform these activities, and not more than 5 minutes of this time will be provided prior to the official reporting time. Further, overtime incurred in the performance of the compensable activities will be credited and recorded in accordance with the United States Department of Agriculture (USDA) policy for scheduling and recording overtime as set forth in USDA, Personnel Letter No. 551–8, December 1, 1980.

For the purpose of the proposed rule, the total number of minutes required to perform the preparatory and cleanup activities compensable under the FLSA outside of the regular work shift would be the sum of the time reasonably necessary to perform the activities before work not to exceed 5 minutes and the time reasonably necessary to perform the activities after work; the total not to exceed 15 minutes.

Issues concerning how this proposed amendment will be applied in official establishments will be addressed in an Agency bulletin prior to the effective date of the final regulation. The Agency intends to issue instructions to all affected field personnel on how to monitor preparation and cleanup time and calculate any overtime and holiday pay involved.

List of Subjects

9 CFR Part 307

Meat inspection, official establishment, reimbursable services.

9 CFR Part 381

Poultry and poultry products, official establishment, reimbursable services.

Accordingly, Part 307 of the Federal meat inspection regulations (9 CFR Part 307) and Part 381, Subpart G of the Federal poultry products inspection regulations (9 CFR Part 381, Subpart G) would be amended as set forth below:

PART 307—FACILITIES FOR INSPECTION

1. The authority citation for Part 307 reads as follows:

Authority: 34 stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254).

2. Section 307.5 of the Federal meat inspection regulations (9 CFR 307.5) would be amended by adding a new paragraph (c) to read as follows:

§ 307.5 Overtime and holiday inspection service.

* * * * *

(c)(1) Time spent performing tasks which are compensable under the Fair Labor Standards Act, such as clothes changing and cleanup activities, knife sharpening, administrative paperwork, and drawing and securing tags, shall be treated the same as any other inspection service for the purpose of determining the cost of overtime or holiday service to be reimbursed under paragraphs (a) and (b) of this section.

(2) Not more than 15 minutes will be provided to all slaughter line inspectors and/or those inspectors required to work the slaughter line and who perform the aforementioned tasks. Not more than 5 minutes of this time will be provided prior to the inspectors' reporting time. If any of the aforementioned employees, for personal reasons, wish to spend more time on such activities, such time would not be official duty time for which they would be paid or for which reimbursement would be charged.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Public

Law 91-224 and by other laws (33 U.S.C. 1254).

4. Section 381.38 of the poultry products inspection regulations (9 CFR 381.38) would be amended by adding a new paragraph (c) to read as follows:

§ 381.38 Overtime and holiday inspection service.

* * * * *

(c)(1) Time spent performing tasks which are compensable under the Fair Labor Standards Act, such as clothes changing and cleanup activities, knife sharpening, administrative paperwork, and drawing and securing tags, shall be treated the same as any other inspection service for the purpose of determining the cost of overtime or holiday service to be reimbursed under paragraphs (a) and (b) of this section.

(2) Not more than 15 minutes will be provided to all slaughter line inspectors and/or those inspectors required to work the slaughter line and who perform the aforementioned tasks. Not more than 5 minutes of this time will be provided prior to the inspectors' reporting time. If any of the aforementioned employees, for personal reasons, wish to spend more time on such activities, such time would not be official duty time for which they would be paid or for which reimbursement would be charged.

Done at Washington, D.C. on: May 4, 1982.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 82-12545 Filed 5-6-82; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 10, 11, 25, and 95

Revision and Clarification of Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to clarify and update the criteria and procedures used for determining the eligibility of an individual for access to Restricted Data or national security information, or an employment clearance. The amendments are in response to an indepth study and analysis to determine and recommend necessary amendments. The proposed amendments would improve the timeliness for reviewing cases by using individual Hearing Examiners and Hearing Review Examiners, clearly distinguishing "access authorization" from "clearance for employment" and presenting the hearing and administrative review procedures in a more logical, clear, and concise manner. This amendment also makes conforming changes to other parts of the Commission's regulations.

DATES: Comment period expires July 6, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments or suggestions for consideration in connection with the proposed amendments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Martin J. King, Chief, Personnel Security Branch, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 427-4474.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission adopted the former Atomic Energy Commission's 10 CFR Part 10 in March 1975. Minor clarifying and corrective amendments were made by the Nuclear Regulatory Commission in 1977.

Staff review subsequently indicated that many of the criteria were outdated and in need of revision. Also, during the rulemaking proceeding on 10 CFR Part 11 some commenters were critical that the rule contained criteria regarding homosexuality and refusal to serve in the armed forces. As a result of these and other comments, a study was undertaken to provide an overall assessment of both the criteria and the procedures for Part 10. Based on the study, the following revision to Part 10 is being proposed.

Access authorization and employment clearance have been defined separately to permit an individual to continue employment even though it may be necessary to suspend the individual's access authorization pending resolution of derogatory information which raises a question concening the individual's access eligibility.

The two separate categories of derogatory information criteria, "A" and "B", have been combined in § 10.11 with determination as to eligibility for access authorization and/or employment clearance based upon a comprehensive common-sense judgment, made after consideration of all relevant information, favorable and unfavorable.

The number of criteria listed as examples for consideration in determining eligibility have been reduced from 22 to 13 by combining several of the criteria and eliminating others. Criteria concerning "homosexuality," "refusal to serve in the Armed Forces," and family relatives "residing in a nation whose interest may be inimical to the United States" have been deleted. Also, reference to activities of the spouse have been deleted from the criteria.

Procedures for administrative review hearings have been rewritten and revised. Most significantly, the Personnel Security Board has been replaced by a single Hearing Examiner. Also, the Personnel Security Review Board was eliminated in favor of three Hearing Review Examiners who individually and independently consider the case under review. Implementation of this system is expected to improve the timeliness in which cases are administratively reviewed under Part 10. As a result of these amendments, conforming amendments to Parts 11, 25, and 95 are also being proposed.

Regulatory Flexibility Statement

This rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b). This proposed rule contains modifications to the criteria and procedures for determining the eligibility of individuals for access to Restricted Data, national security information, or an employment clearance. It should not result in any increased costs to licensees.

List of Subjects in 10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that the adoption of the following revision to 10 CFR Parts 10, 11, 25, and 95 is contemplated.

The authority citation for Part 10 is presented in the revision of that part. The authority for the amendments to

Parts 11, 25, and 95 is Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201).

1. Part 10 is revised to read as follows:

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

Subpart A—General Provisions

Sec.
10.1 Purpose.
10.2 Scope.
10.3 [Reserved]
10.4 Policy.
10.5 Definitions.

Subpart B—Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

10.10 Application of the criteria.
10.11 Criteria.
10.12 Interview and Other Investigation.

Subpart C—Procedures

10.20 Purpose of the procedures.
10.21 Suspension of access authorization and/or employment clearance.
10.22 Notice to individual.
10.23 Failure of individual to request a hearing.
10.24 Procedures for hearing and review.
10.25 NRC Hearing Counsel.
10.26 Appointment of Hearing Examiner.
10.27 Prehearing proceedings.
10.28 Conduct of hearing.
10.29 Recommendation of the Hearing Examiner.
10.30 New evidence.
10.31 Actions on the recommendations.
10.32 Recommendation of the NRC Personnel Security Review Examiners.
10.33 Action by the Executive Director for Operations.
10.34 Action by the Commission.
10.35 Reconsideration of cases.

Subpart D—Miscellaneous

10.36 Terminations.
10.37 Attorney representation.
10.38 Certifications.

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201, sec. 201(f) 88 Stat. 1243, 42 U.S.C. 5841; E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR, Chap. IV.

Subpart A—General Provisions

§ 10.1 Purpose.

This part establishes the criteria, procedures, and methods for resolving questions concerning: (a) the eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by Executive Director for Operations of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and (b) the eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance. This part is published to implement such Statutes and Executive Orders 10865, 25 FR 1583 (February 24, 1960), and 10450, 18 FR 2489 (April 27, 1954).

§ 10.2 Scope.

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) Licensees of the NRC and their employees (including consultants) and applicants for employment; and

(c) NRC employees (including consultants) and applicants for employment;

(d) Any other person designated by the Executive Director for Operations of the Nuclear Regulatory Commission.

§ 10.3 [Reserved]

§ 10.4 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its responsibility for the security of the nuclear energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and/or employment clearance and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization and/or employment clearance.

§ 10.5 Definitions.

As used in this part.

(a) "Accessed authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

(b) "Hearing Examiner" means a qualified attorney appointed by the Director, Office of Administration, to conduct a hearing in accordance with this part.

(c) "Hearing Counsel" means an NRC attorney assigned by the Executive Legal Director to prepare and administer hearings in accordance with this part.

(d) "Personnel Security Review Examiners" are persons designated by the Executive Director for Operations to conduct a review of the record in accordance with this part.

(e) "Commission" means the Nuclear Regulatory Commission of five members or a quorum thereof sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, or its designee.

(f) "Employment Clearance" means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Executive Director for Operations of the NRC is eligible for employment or continued employment pursuant to subsection 145 b. of the Atomic Energy Act of 1954, as amended.

(g) "Eligible" or "Eligibility" means both initial eligibility and continued eligibility of an individual for access authorization and/or employment clearance.

(h) "National Security Information" means information that is owned by, produced for or by, or under the control of the United States Government, and that has been determined, pursuant to Executive Order 12065 or antecedent orders, to require protection against unauthorized disclosure, and is so designated.

(i) "Restricted Data" means all data concerning design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

Subpart B—Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

§ 10.10 Application of the criteria.

(a) The decision as to access authorization and/or employment clearance is a comprehensive, common-sense judgment, made after consideration of all the information, favorable or unfavorable, relevant to whether the granting of access authorization and/or employment clearance would not endanger the common defense and security and

would be clearly consistent with the national interest.

(b) The criteria in § 10.11 set forth a number of the types of derogatory information used to assist in making determinations of eligibility for access authorization and/or employment clearance. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization and/or employment clearance. While there must necessarily be adherence to such critera, the NRC is not limited to them, nor precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as derogatory and shall create a question as to the individual's eligibility for access authorization/and/or employment clearance. A question concerning the eligibility of an individual for access authorization and/or employment clearance shall be resolved in accordance with the procedures set forth in/§ 10.20 *et seq.*

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization and/or employment clearance, the following principles shall be applied by the Director, Division of Security, hearing Examiners, and Personnel Security Review Examiners:

(1) Information reasonably tending to establish the truth of one or more of the items in the criteria shall be the basis for recommending denial or revocation of access authorization and/or employment clearance unless evidence to support faith in the individual's reliability and trustworthiness is affirmatively shown.

(2) When deemed material to the deliberations, the extent of the activity, conduct, or condition, the period in which they occurred or existed, the length of time which has since elapsed, and the attitude and convictions of the individual shall be considered in determining whether the recommendation will be adverse or favorable.

§ 10.11 Criteria.

(a) The criteria for determining eligibility for access authorization and/or employment clearance shall relate, but not be limited, to the following where an individual:

(1) Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.

(2) Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(3) Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any state or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, criteria (3) and (4) will not include chance or casual meetings or contacts limited to normal business or official relations.)

(5) Deliberately misrepresented, falsified or omitted relevant and material facts from or in a personnel security questionnaire, a personal qualifications statement, a personnel security interview, or any other information submitted pursuant this part.

(6) Willfully violated or disregarded security regulations or was grosly negligent with respect thereto to a degree which could endanger the common defense and security; or by intention or gross carelessness disclosed Restricted Data or national security information to any person not authorized to receive it.

(7) Has any illness or mental condition which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the individual.

(8) Has been convicted of crimes indicating habitual criminal tendencies.

(9) Has been convicted of crime, or has a background, where the facts, circumstances, or conduct are of a nature indicating poor judgment, unreliability, or untrustworthiness.

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation.

(11) Has been, or is, a user of a drug or other substance listed in the schedules of Controlled Substances established pursuant to the Controlled Substances Act of 1970 (such as amphetamines, barbiturates, narcotics, etc.), except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, without adequate evidence of rehabilitation.

(12) Refused, without satisfactory explanation, to answer questions before a congressional committee, Federal or state court, or Federal administrative body including the NRC regarding charges relevant to the individual's eligibility for access authorization and/or employment clearance.

(13) Engaged in any other conduct or is subject to any other circumstances which tend to show that the individual is not reliable or trustworthy, or which furnishes reason to believe that the individual may be subject to coercion, influence, or pressures which may cause the individual to act contrary to the national interest.

§ 10.12 Interview and other investigation.

(a) The Director, Division of Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize the conduct of an interview with the individual, if the individual consents to be interviewed, or such other investigation as the Director deems appropriate. On the basis of such interview and/or investigation, the Director may authorize the granting of access authorization and/or employment clearance.

(b) The individual may elect on constitutional or other grounds not to participate in an interview or other investigation; however, such refusal or failure to furnish or authorize the furnishing of relevant and material information is deemed to be derogatory information pursuant to § 10.11(a)(5) and (12).

(c) If the Director, Division of Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility shall be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

Subpart C—Procedures

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for access authorization and/or employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450 and 10865, when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for access authorization and/or employment clearance, the Director, Division of Security, through the Director, Office of Administration, shall forward to the Executive Director for Operations, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Security, shall consider such factors as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance shall not be suspended except by the direction of the Executive Director for Operations.

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Security, approved by the Office of the Executive Legal Director, and signed by the Director, Office of Administration, shall be presented to each individual whose eligibility for access authorization and/or employment clearance is in question. Where practicable, such letter shall be presented to the individual in person. The letter will be accompanied by a copy of this part and shall state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for access authorization and/or employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for access authorization and/or employment clearance, which shall be as comprehensive and detailed as the national security permits;

(c) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter, the Director, Division of Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Executive Director for Operations on the basis of the information in the possession of the MRC.

(d) That if the individual files a written request for a hearing with the Director, Officer of Administration, the individual must file with that request a written answer under oath or affirmation which admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation.If the individual is without knowledge, he or she shall so state and that statement shall operate as a denial. The answer shall also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact shall be deemed an admission that the allegation or fact is true.

(e) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of his receipt of the notification letter, a written answer in accordance with the requirements of paragraph (d) of this section.

(f) That the procedures in § 10.24 *et seq.* shall apply to any hearing and review.

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a written request for a hearing pursuant to § 10.22 within 20 days of his receipt of the notification letter, a recommendation as to the final action to be taken shall be made by the Director, Division of Security, through the Director, Office of Administration, to the Executive Director for Operations on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

§ 10.24 Procedures for hearing and review.

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in § 10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the Executive Legal Director shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the individual of the identity of the Hearing Examiner and a proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual's reasons for seeking disqualification. The time for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 shall, prior to the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other

physical evidence relied upon by the Director, Division of Security, in making his or her finding that a question exists regarding the eligibility of the individual for NRC access authorization and/or employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Security, shall make arrangements for the production of such evidence and for such witnesses to appear at the hearing by subpoena or otherwise.

(b) Hearing Counsel is authorized to consult directly with individual's counsel or representative or the individual, if the individual is not so represented, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues and stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the NRC for the purposes of this part. Prior to any consultation with the individual, the Hearing Counsel shall advise the individual of his or her rights under this part, of his or her right to counsel or other representation, and of the possibility that any statements made by the individual to the Hearing Counsel may be used in subsequent proceedings.

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answer and defense to the allegations contained in the notification letter. When requested, however, Hearing Counsel shall assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such assistance has been made.

§ 10.26 Appointment of Hearing Examiner.

The appointment of a Hearing Examiner, pursuant to § 10.24 of this part, shall be from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents or licensees. However, no employee or consultant of the NRC shall serve as Hearing Examiner hearing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Hearing Examiner hearing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Hearing Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

§ 10.27 Prehearing proceedings.

(a) After the appointment of the Hearing Examiner, he or she shall be furnished the record in the case, which shall consist of the letter of notification, the request for hearing and its supporting answer, and the notice of hearing, if it has been issued, and any stipulations agreed to by the individual and the Hearing Counsel.

(b) The Hearing Examiner may on his or her own motion, or on that of either party, convene a prehearing conference with the Hearing Counsel and the individual and his or her counsel or representative, if any, for the purpose of clarifying the issues, identifying witnesses who may be called, identifying documents and other physical evidence that may be offered into evidence, and entering into stipulations of fact.

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Executive Director for Operations on the basis of the information in the possession of the NRC.

§ 10.28 Conduct of hearing.

(a) The Hearing Examiner shall conduct the hearing in an orderly, impartial and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. Hearsay evidence may for good cause shown be received at the discretion of the Hearing Examiner and accorded such weight as the circumstances warrant.

(b) The proceedings shall be open only to duly authorized representatives of the staff of the NRC, the individual, his or her counsel or representative, and such persons as may be officially authorized by the Hearing Examiner. Witnesses shall not testify in the presence of other witnesses except that the Hearing Examiner may, at his or her discretion, allow for expert witnesses to be present during testimony relevant to their own testimony.

(c) Witnesses, including the individual, shall be examined under oath or affirmation by the party who called them and may be cross-examined by the other. The Hearing Examiner shall rule on all evidentiary matters, may further examine any witness, and may call for additional witnesses or the production of documentary or other physical evidence if, in the exercise of his or her discretion, such additional evidence is deemed necessary to the resolution of an issue.

(d) If it appears during the hearing that Restricted Data or national security information may be disclosed, the Hearing Examiner shall assure that disclosure is made only to persons authorized to receive it.

(e) The Hearing Examiner may, at any time during the hearing, permit the Hearing Counsel to amend the notification letter to add or modify allegations to be considered. In the event of such an amendment to the notification letter, the individual shall be given an opportunity to answer the amended allegations. If the changes are of such a substantial nature that the individual cannot answer the amended allegations without additional time, the Hearing Examiner shall grant such additional time as he or she deems necessary.

(f) The Hearing Examiner may receive and consider evidence in the form of depositions or responses to interrogatories upon a showing that the witness is not available for good reason such as death, serious illness or similar cause, or in the form of depositions, interrogatories, affidavits or statements with agreement of the parties. The Hearing Examiner may take official notice at any stage of the proceeding, where appropriate, of any fact not subject to reasonable dispute in that it is either (1) generally known within the United States or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A party is entitled upon timely request to an

opportunity to be heard as to the propriety of taking such official notice. In the absence of prior notification the request may be made after notice is taken.

(g) Hearing Counsel shall examine and cross-examine witnesses and otherwise assist the Hearing Examiner in such a manner as to bring out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Examiner. In performing these duties, the Hearing Counsel shall avoid the attitude of a prosecutor and shall always bear in mind that the proceeding is an administrative hearing and not a trial.

(h) Hearing Counsel shall not participate in the deliberations of the Hearing Examiner, and shall express no opinion to the Hearing Examiner concerning the merits of the case. Hearing Counsel shall also, during the course of the hearing, advise the individual of his or her rights under these procedures when the individual is not represented by counsel or other representative.

(i) The individual shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the individual relating to a controverted issue except that any such statement may be received and considered by the Hearing Examiner without affording such opportunity in either of the following circumstances:

(1) The head of the department or agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would substantially harm the national interest or would endanger the well-being of the informant.

(2) The Commission has determined, after considering the information furnished by the investigative agency concerning the reliability of the person who furnished the information and the accuracy of the statement concerned, that the statement appears to be reliable and material, and that failure of the Hearing Examiner to receive and consider such statement would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify due to death, serious illness, or similar cause.

(j)(1) Whenever the procedure under paragraph (i)(1) of this section is used, the individual shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits. (2) Whenever the procedure under paragraph (i)(2) is used, the individual shall be provided the identity of the person and the information to be considered. (3) In both paragraph (i) (1) and (2) procedures, appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such informant or person.

(k) Records provided by investigative agencies that were compiled as a regular or routine procedure by the business or agency from which obtained, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that the investigative agency furnished such information to the NRC pursuant to its responsibilities in connection with assisting the NRC in determining the individual's eligibility for access authorization and/or employment clearance.

(l) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Commission has made a determination that such records or other physical evidence appears to be material;

(2) The Commission has made a determination that failure to receive and consider such records or other physical evidence would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such records or other physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(m) If the Hearing Examiner determines that additional investigation of any material information is required, he or she shall request in writing that the Director, Office of Administration, arrange for the investigation and shall specify those issues upon which more evidence is requested and identify, where possible, any persons or sources that might provide the evidence sought.

(n) A written transcript of the entire proceeding shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or national security information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

§ 10.29 Recommendation of the Hearing Examiner.

(a) The Hearing Examiner's findings and recommendation shall be based upon the entire record consisting of the transcript of the hearing, the documentary and other evidence adduced therein, and the letter of notification and answer. The Hearing Examiner shall also consider the circumstances of the receipt of evidence pursuant to § 10.28, the individual's record of past employment, and the nature and sensitivity of the job the individual is or may be expected to perform.

(b) The Hearing Examiner shall make specific findings on each allegation in the notification letter including the reasons for his or her findings, and shall make a recommendation as to the action which should be taken in the case.

(c) The Hearing Examiner's recommendation shall be predicated upon his or her findings. If, after considering all the factors in light of the criteria in this part, the Hearing Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, a favorable recommendation shall be made; otherwise, an adverse recommendation shall be made.

(d) The Hearing Examiner shall submit his or her findings and recommendation in a signed report together with the record of the case to the Director, Office of Administration, with the least practical delay.

(e) The Hearing Examiner shall not consider the possible impact of the loss of the individual's services upon the NRC program.

§ 10.30 New evidence.

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the Hearing Examiner if the Hearing Examiner's recommendation has not yet been issued, or thereafter, the Director, Office of Administration, to reopen the record to receive that evidence. If the Hearing Examiner or the Director, respectively, deem it material

and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the Hearing Counsel, or in a reconvened hearing.

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Executive Director for Operations who at his or her discretion may return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Executive Director for Operations;

(b)(1) In the event of a recommendation by the hearing Examiner that an individual's access authorization and/or employment clearance by denied or revoked, the Executive Director for Operations shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by NRC Personnel Security Review Examiners and of the right to submit a brief in support of his or her contentions. The request for a review shall be submitted to the Executive Director for Operations within five days after the receipt of the notice. The brief shall be forwarded to the Executive Director for Operations, for transmission to the NRC Personnel Security Review Examiners, not later than 10 days after receipt of such notice.

(2) In the event the individual fails to request a review by NRC Personnel Security Review Examiners of an adverse recommendation within the prescribed time, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. The request shall set forth those matters at issue in the hearing on which the individual desires a review by the NRC personnel Security Review Examiners.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. If such a request is made, the Executive Director for Operations shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Executive Director for Operations desires a review by the NRC Personnel Security Review Examiners. The Executive Director for Operations shall further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, The Hearing Counsel may file a brief within 10 days of being notified by the Executive Director for Operations that a review has been requested. The brief shall be forwarded to the Executive Director for Operations for transmissin to the NRC Personnel Security Review Examiners.

(e) The Hearing Counsel may also request a review of the case by NRC Personnel Security Review Examiners. The request for review, which shall set forth those matters at issue in the hearing on which the Hearing Counsel desires a review, shall be submitted to the Executive Director for Operations within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which shall be forwarded to the Executive Director for Operations fof transmission to the NRC Personnel Security Review Examiners. A copy of the request for review, and a copy of any brief filed, shall be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Executive Director for Operations for good cause shown.

(g) In the event a request is made for a review of the record by NRC Personnel Security Review Examiners, the Executive Director for Operations shall forthwith send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Examiners. If neither the individual, the Executive Director for Operations, nor the Hearing Counsel requests such a review, the final determination shall be made by the Executive Director for operations on the basis of the record with all findings and recommendations.

§ 10.32 Recommendation of the NRC Personnel Security Review Examiners.

(a) The Executive Director for Operations shall designate three NRC Personnel Security Review Examiners to conduct a review of the record of the case. To qualify as a Review Examiner, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as Review Examiner reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Review Examiner reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Review Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The designated Review Examiner shall individually and independently, without consulting or otherwise communicating with one another, consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. Review Examiners may request such additional briefs as any of them deems appropriate, which will be obtained by the Executive Director for Operations and provided to each Review Examiner. When a Review Examiner determines that additional evidence or further proceedings are necessary, the record may be returned to the Executive Director for Operations with a recommendation that the case be remanded to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony.

(c) In conducting the review, Review Examiners shall make individual findings and recommendations as to the eligibility or continued eligibility of an individual for access authorization and/or employment clearance on the record supplemented by additional testimony or briefs as have previously been determined by a Review Examiner(s) as appropriate. When additional testimony is taken by the Hearing Examiner, a

written transcript of such testimony shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or national security information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

(d) The Review Examiners shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, a Review Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the Review Examiner shall make a favorable recommendation; otherwise, the Review Examiner shall make an adverse recommendation. Each Review Examiner shall individually prepare a report of his or her findings and recommendation and submit the report in writing to the Executive Director for Operations, who shall furnish a copy to the individual. The findings and recommendations shall be fully supported by stated reasons supporting the findings and recommendations.

§ 10.33 Action by the Executive Director for Operations.

(a) The Executive Director for Operations, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Executive Director for Operation's determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether access authorization and/or employment clearance shall be granted, denied, or revoked, the Executive Director for Operations or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration, of his or her decision that access authorization and/or employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration.

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Executive Director for Operations, the Commission shall review the record and determine whether access authorization and/or employment clearance shall be granted, denied, or revoked, based upon the record.

(b) When the Commission determines to deny or revoke access authorization and/or employment clearance, the individual shall promptly be notified through the Director, Office of Administration, of its decision that access authorization and/or employment clearance is being denied or revoked and of its findings and conclusions with respect to each allegation contained in the notification letter for transmittal to the individual.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Commission to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised when the Commission determines that invocation of the procedures prescribed in this part is inconsistent with the national security. Such determination shall be conclusive.

§10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Executive Director for Opertions or the Commission has made a determination granting access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or national security information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Executive Director for Operations has made a determination denying or revoking access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or national security information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is is convincing evidence of reformation or rehabilitation. Requests for reconsideration shall be submitted in writing to the Executive Director for Operations through the Director, Office of Administration. Such requests shall be accompanied by an affidavit setting forth in detail the information referred to above. The Executive Director for Operations shall cause the individual to be notified as to whether his or her eligibility for access authorization and/or employment clearance will be reconsidered and if so, the method by which such reconsideration will be accomplished.

(c) Where access authorization and/or employment clearance has been granted to an individual by the Director, Division of Security, without recourse to the procedures set forth in §§ 10.20 through 10.34, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or national security information, to which the individual has or will have access, has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

Subpart D—Miscellaneous

§ 10.36 Terminations.

In the event the individual is no longer an applicant for access authorization and/or employment clearance or no longer requires such, the procedures of this part shall be terminated without a final determination as to the individual's eligibility for access authorization and/or employment clearance.

§ 10.37 Attorney representation.

In the event the individual is represented by an attorney or other representative, the individual shall file with the Director, Office of Administration, a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this part.

§ 10.38 Certifications.

Whenever information is made a part of the record under the exceptions authorized by § 10.28 (i), (j), or (l), the record shall contain certificates evidencing that the required determinations have been made.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

2. In § 11.21, paragraphs (c) and (d) are revised to read as follows:

§ 11.21 Application of the criteria.

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(c) When the reports of investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it shall create a question as to the individual's eligibility for special nuclear material access authorization. In such cases, the application of the criteria shall be made in light of and with specific regard to whether the existence of such information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Security, may authorize the granting of special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as the Director deems appropriate, may authorize the granting of special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for special nuclear material access authorization shall be resolved in accordance with the procedures set forth in §§ 10.20–10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for special nuclear material access authorization by action of the Hearing Examiner,[4] the following principle shall be applied by the Examiner: Where there are grounds sufficient to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of such information supports a reasonable belief that granting access would be inimical to the common defense and security, this shall be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. In § 25.5 the definition for "Access Authorization" is revised to read as follows:

§ 25.5 Definitions.

"Access authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. In § 95.5 the definition for "Access authorization" is revised to read as follows:

§ 95.5 Definitions.

"Access authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

* * * * *

Dated at Bethesda, Md., this 23d day of April 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-12027 Filed 5-6-82; 8:45 am]

BILLING CODE 7590-01-M

[4] The function of the Hearing Examiner is described in Part 10 of this chapter.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 555, 561, and 570

[No. 82-310]

Home Loan Amendments; Adjusted Net Worth

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to simplify its regulations governing home lending by federally-chartered thrift institutions. The proposal would replace the existing regulations authorizing issuance of specific types of mortgage instruments with a general authorization to make home loans on which the interest rate, the payment, the loan balance or the term to maturity may be adjusted. Such adjustments would have to be tied to specified indices, and the proposed regulation would require associations to provide loan applicants with comprehensive written disclosure statements. The proposal would also make several technical and clarifying amendments to the real estate lending regulations and would remove the definition of adjusted net worth. These proposed admendments are intended to enhance the ability of associations and borrowers to develop a broader variety of mortgage instruments to meet their home financing needs.

DATE: Comments must be received by July 6, 1982.

ADDRESS: Send comments to the Director, Information Services, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Hall, (202-377-6466), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 545.6-2(a) of the Board's regulations authorizes federal savings and loan associations to make loans on the security of homes or combinations of

homes and business property ("home loans") (12 CFR 545.6–2(a) (1981)). Paragraph (a)(1) of that section prohibits increases in the monthly payment on a home loan where the home is or is to be occupied by the borrower. Since 1979, when the Board first permitted the issuance nation-wide of variable-payment loans, each alternative mortgage instrument involving payment adjustment has been authorized as a specific exception to the prohibition in paragraph (a)(1). The loan types so authorized are the graduated payment mortgage (GPM), the variable-rate mortgage (VRM), the reverse-annuity mortgage (RAM), the renegotiable-rate mortgage (RRM), the adjustable mortgage loan (AML), the graduated payment adjustable mortgage loan (GPAML) and the balloon-payment loan. Recently, the Board received several requests to authorize the issuance of a number of new and viable types of mortgage instruments, including instruments pursuant to which the monthly payment or the loan balance would vary based on changes in an index tied to the rate of inflation.

To avoid the proliferation of new regulations that would be required to authorize such mortgage instruments, and based on its view that lenders and borrowers should have broad flexibility to use instruments suitable to their individual needs, the Board proposes to replace both the prohibition against increased payments on loans secured by borrower-occupied homes and the regulations authorizing the use of specific types of mortgage instruments with a general authorization to make home loans on which the interest rate, the payment, the loan balance and the term to maturity may be adjusted. The proposed amendments would establish basic parameters within which adjustments could take place, and would require associations to provide each loan applicant with an extensive written disclosure of the specific terms of the loan offered to the applicant. The individual amendments contemplated under the proposal are discussed below.

Adjustments to Rate, Payment, Loan Balance or Term

The proposed revision to paragraph (a)(1) of § 545.6–2 would provide a general authorization for all types of home loans and would grant an association only those rights and powers expressly incorporated in the loan contract. Proposed paragraph (a)(2) sets forth the parameters within which the interest rate, the payment, the loan balance or the loan term could be adjusted, and expressly provides that such adjustments could be made subject to limitations contained in the loan contract. Any combination of adjustments, as described below, would be permissible. The proposed regulation draws no distinction between home loans based on whether or not the security property is occupied by the borrower. Under the existing regulation, associations are not limited as to adjustment of the rate, payment or balance on loans secured by non-borrower-occupied property.

Interest-Rate Adjustment

Under the proposal, the interest rate could be increased to reflect increases in any index representative of the interest cost of borrowing money, which would include all indices currently permitted to be used under the AML regulation (12 CFR 545.6–4a; 46 FR 24148, 37625 (1981)), or representative of the rate of inflation. This provision for the first time would authorize federal associations to make loans that tie changes in the loan interest rate to actual changes in the rate of inflation. (Although associations currently are permitted to make such loans under their leeway authority (12 CFR 545.6–5(b) (1981)), no more than five percent of assets may be invested in loans made pursuant to that authority.)

The interest rate carried on such a loan is made up of two elements—one element is equivalent to what the cost of borrowing money would be if no inflation were expected, and thus would be much lower than the interest rate on a conventional mortgage; the second element is the most recent percentage change in inflation, as measured by an inflation index. The interest on this type of loan is likely to be lower than that on a conventional loan. This is because lenders are protected from the adverse effects of inflation on the value of the dollar by tying the loan interest rate to an index that reflects the actual performance of inflation rather than to a money-market index, which normally includes an inflation risk premium because of the market's uncertainty over future rates of inflation.

The proposed regulation would also permit an association to decrease the rate at any time. As with the adjustable mortgage loan, current interest-rate adjustments would have to reflect the difference between the value of an index at the time of loan commitment or loan closing and its value at the time of adjustment or as of the time notice of an adjustment must be given.

Payment Adjustment

Under the proposal, the monthly payment would be permitted to be decreased only to reflect a decrease in the interest rate or in the loan balance. This provision is intended to preclude associations from reducing the payment in a situation that, although advantageous to the association, might not be beneficial to the borrower (*e.g.*, a reduction that would lengthen the loan term and increase the borrower's total interest cost). The provision would not prohibit a decrease that is mutually agreed to at the time of the decrease by the association and the borrower.

The proposed regulation would permit a payment increase only if—

(1) The contract requires that increases be made pursuant to a schedule set forth in the contract that specifies the percentage or dollar increase per adjustment—this would permit associations to make loans under which the payments to principal would increase steadily during the loan term and, in combination with subdivision (2)(iii)(*a*) of the proposal (see discussion below), to make what currently are called graduated payment loans and graduated payment adjustable mortgage loans;

(2) The increase reflects an increase in the interest rate or in the loan balance; or

(3) The contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation, that is readily available to and verifiable by the borrower, and that is beyond the control of the association—such a provision normally would result in the payment of the principal loan balance over a shorter term than that over which the balance of a conventional loan would be paid, since the payments to principal normally would increase at an accelerated pace.

Adjustment of Loan Balance

Under paragraph (a)(2)(iii) of the proposal, the loan balance could be increased or decreased if the adjustment reflects an increase or decrease in the loan rate and the contract ties changes in the loan balance to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association. In addition, the loan balance could be adjusted if the contract provides for periodic payments to the borrower at least semi-annually directly from the association.

Specifically, paragraph (a)(2)(iii)(*a*) would permit negative amortization (*i.e.*, the deferral and capitalization of interest). This is authority that federal associations already possess under the Board's alternative mortgage instrument regulations.

Paragraph (a)(2)(iii)(*b*) would authorize federal associations for the first time to make what is commonly known as a price-level adjusted mortgage (PLAM) without the requirement that such loans be carried in associations' leeway lending category (12 CFR 545.6–5(b) (1981)). A PLAM ties the loan balance to an inflation index, thus assuring the lender that the value of the loan will stay current with the value of the dollar. The interest rate carried on a PLAM is equivalent to what the cost of borrowing money would be if no inflation were expected and thus is much lower than the interest rate on a conventional mortgage.

Paragraphs (a)(1) and (a)(2)(iii)(*c*) would provide the authorization currently contained in 12 CFR 545.6–4(c) to issue reverse-annuity mortgages by permitting an association to make a rising-debt loan with payments deferred until maturity, or a loan for the purpose of purchasing an annuity from an insurance or other company with payments deferred until maturity. The proposal also would go one step beyond the existing authority by permitting a lump-sum disbursement of loan proceeds, with payments deferred until maturity. The proposal would *not* permit an association to provide a borrower with a line-of-credit secured by a home with payments deferred until maturity. Such a loan may be made only under an association's consumer lending authority (12 CFR 545.7–10 (1981)). Associations currently may offer such loans under their real estate lending authority only if the contract provides for at least semiannual payments of interest. The Board requests comment on whether such loans with payments deferred until maturity should be permitted. It is noted that the maximum 125 percent loan-to-value limitation in proposed subparagraph (a)(3) would apply to all loans permitting the deferral of payments.

Paragraph (a)(2)(iii)(*d*) would effectively authorize federal associations to make shared appreciation mortgages (SAMs). Authorization of this type of instrument was proposed by the Board on September 30, 1980 (FHLBB Res. No. 80–610; 45 FR 66801 (1980)). SAMs typically differ from other types of mortgages by permitting an association, in exchange for charging a below-market, fixed interest rate over the term of the loan, to charge contingent deferred interest based on the appreciation in value of the property securing the loan. Under the Board's 1980 proposal, contingent interest would have been payable on the earlier of maturity or payment in full of the loan or the sale or transfer of the security property. The share of appreciation payable as contingent interest would have been determined at the time of origination of the loan and would have been limited to a maximum of 40 percent of the net appreciation in value. The term of the loan would have been limited to a maximum of ten years, but the association would have been required to guarantee refinancing of the outstanding indebtedness on the loan, including contingent interest, at maturity.

The Board received approximately 350 comments on the SAM proposal. Almost two-thirds of the comment letters were from individual consumers, 51 letters were from associations, and 39 letters were from realtors. Other commenters included other real estate professionals, trade associations, consumer representatives, accountants, lawyers, title insurers and the Federal Home Loan Banks. Individual consumers opposed the proposal by a 55 to 45 percent split. While some of the negative consumer letters pointed to practical difficulties such as the accuracy of appraisals and affordability of refinancing, the majority viewed authorization for associations to share in the appreciation in value of a house as an attack on homeownership or as a means for lenders to benefit from inflation.

In contrast, consumer letters in favor of the proposal focused on the increased opportunities for homeownership resulting from the below-market rate of interest associated with the instrument. Many of these letters recognized the potential difficulties faced by first-time home buyers in an era of expensive housing and high-cost financing. A strong majority of every other class of commenters also supported the Board's proposal. While many of these comments recommended changes in the proposal, it is fair to conclude that the concept of giving mortgage lenders a share in a home's appreciation in value was well received by the public as one alternative for dealing with the high cost of mortgage financing.

After reviewing the comments, however, it was determined that further staff work was needed on several issues raised by the comments. Therefore, no final action on the proposal was taken at that time. It now appears to the Board that some of the problems raised resulted from the excess of constraints contained in the proposal, although the questions would remain of how the lender's portion of the property's appreciation in value would be treated for tax purposes and what impact the reduced cash flow inherent in SAMs would have on associations.

The current proposal would give associations and borrowers broader flexibility to structure SAMs to meet their needs. The proposal would permit a portion of the interest to be taken in the form of a share in the appreciation in value of a home, but, in contrast to the 1980 proposal, would not limit the maximum term to ten years or the maximum share in the appreciation in a home's value to 40 percent. In addition, as is the case under the existing balloon-loan regulation, associations would not be required to refinance the loan at its maturity. As with the reverse-annuity mortgage, it is believed that deletion of this requirement should add to the marketability of SAMs, although associations would not be prohibited from guaranteeing refinancing.

Adjustment to Loan Term

Paragraph (a)(2)(iv) of the proposal would permit adjustments to the loan term to reflect increases or decreases in the interest rate, the payment or the loan balance. The loan term would not be permitted to be changed independently of a change in one of these items. As under the current regulations, the total loan term could never exceed 40 years.

The Board notes that the proposed amendments would permit associations to make or otherwise deal in "call" or "demand" loans— *i.e.,* loans with long-term amortization schedules that give lenders the right to call the loan due and payable either after a specified number of years following closing or upon the occurrence of a specified event external to the loan (*e.g.,* market rates drop below X%, or the rate of inflation exceeds Y%). Currently, associations may make such loans only under their leeway authority (12 CFR 545.6–5(b) (1981)).

Notice of Adjustment

Notice of an adjustment, or of the muturity of a non- or partially-amortized loan, would have to be given at least 30 but not more than 120 days prior to the adjustment or at least 90 but nor more than 120 days prior to maturity. This should provide borrowers with sufficient advance notice of adjustments while leaving some flexibility to lenders to structure notice schedules compatible with their data-processing systems. It is noted that the proposed disclosure provision, discussed below, would require associations to indicate how far in advance of each adjustment notice will be given, thus effectively forcing associations to decide the matter prior to loan closing. The proposed regulation

would also provide, however, that, where the contract states that rate changes shall occur more frequently than payment changes, notice of rate changes, or of changes to the loan balance or term resulting from rate changes, need not be given until such time as notice of a payment change is given. This provision is similar to the existing notice requirement of the Board's adjustable mortgage loan regulation (12 CFR 545.6–4a; 46 FR 24148 (1981)). In addition, if the contract sets out a schedule of adjustments to the monthly payment, such as would be possible with a graduated payment mortgage loan, which carries a fixed interest rate, then notice would not have to be given of each payment change made pursuant to that schedule.

Prepayment Penalty

The proposed amendments would permit the imposition of a penalty for the prepayment of all or any part of a loan only if the loan carried a fixed interest rate and permitted no adjustments except to the loan balance resulting from the deferral and capitalization of interest. Currently, § 545.8–5(b) (12 CFR 545.8–5(b) (1981)) authorizes associations to provide for prepayment penalties in their loan contracts, except to the extent such penalties are expressly prohibited by other regulations of the Board. The Board's existing alternative mortgage instrument regulations, except the regulation relating to fixed rate balloon-payment loans (12 CFR 545.6–2(a)(4); 46 FR 51893 (1981)), require associations to permit borrowers to prepay such loans in whole or in part at any time without penalty. In the Board's view, since under the proposal associations would have broad flexibility in shaping rate and inflation-sensitive loan instruments, borrowers should continue to be given maximum flexibility in locating alternative services of financing. Therefore, associations would not be permitted to impose a pre-payment penalty on instruments that provide the association with protection against interest-rate fluctuations.

Loan-to-Value Ratio Limitations

The proposed regulation would retain the loan-to-value ratio limitations currently set forth in the home loan regulations with one change—the loan-to-value ratio would be permitted to exceed the ratio at loan closing as long as, during the loan term, the loan balance never exceeded 125 percent of the appraised value of the property at the time of loan closing. The 125-percent limitation would replace the current requirement that the monthly payment be brought to a fully amortizing level at least once each five years, which has proven to create costly administrative and data-processing problems for some associations. The 125-percent limitation would not, however, apply to a loan made under subdivision (2)(iii)(*b*) of the proposed regulation, which would permit PLAMs, nor to a loan that provided for adjustment of the payment at least once each five years to a level sufficient to fully amortize the loan at the then-existing interest rate and loan balance.

The proposal would remove the existing restriction that individuals borrowing on the security of condominium or co-operative dwellings in the process of conversion from rental units in an amount greater than 80 percent of the value of such dwellings must certify that they intend to occupy the dwellings as their principal residences. Such a change would be consistent with the Board's proposal to eliminate from the basic 90-percent loan authority distinctions based on borrower occupancy.

Finally, the proposal would provide that associations making loans exceeding 90 percent of the value of the security property would be required to ensure only that that part of the loan exceeding 90 percent is guaranteed or insured during the time that the loan balance exceeds 90 percent. Currently, during the time the loan balance exceeds 90 percent, the regulation requires insurance of the portion of the loan exceeding 80 percent. Such a change would conform the regulatory provisions to the statutory requirement (Section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(c)). The proposed regulation would not, though, prohibit associations from requiring insurance of a greater portion of the loan balance.

Pledged-Account and Other Loans

The proposed regulation would retain the existing authority to make pledged-account loans, loans to facilitate the trade-in or exchange of property, "blanket" loans on cooperatives as well as loans on individual cooperative units, and non-monthly-installment loans. The paragraph authorizing pledged-account loans would contain a minor amendment to clarify that the restrictions set out in that paragraph apply only when a loan exceeds 90 percent of the *combined* value of the security property and the pledged account.

Disclosure

The disclosure requirements in the proposed amendments are similar to the requirements contained in the Board's existing alternative mortgage instrument regulations except that associations would not be required to use a standardized format or standardized language. Given the variety of mortgage instruments that would be permissible under the proposal, it would be impossible to construct a single or even several standardized disclosures that would be fully descriptive of all possible variations. In view of the fact that the Board believes the disclosures should be as complete, informative and accurate as possible, the proposal omits standardized language in favor of comprehensive requirements as to the information each disclosure must provide.

The proposed disclosure requirements are more extensive in several respects than previous disclosures required by the Board. In addition to requiring a description and an example of how the interest rate, payment, loan balance and term to maturity may be adjusted, the proposed disclosure would require the association to explain that (1) the association and the applicant become bound by the terms of the loan contract upon signing it, (2) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (3) since normally the contract and mortgage (or deed of trust) alone establish the rights of the borrower, the borrower should be familiar with and understand fully every provision of the contract. The purpose of this disclosure is to alert applicants to the significance of entering the loan transaction, and to encourage both applicants and associations to ensure that all understandings reached by an applicant and an association are incorporated in the contract.

The proposed disclosure provision would also require associations to describe what information will be contained in each notice of an adjustment or, in the case of a non- or partially-amortized loan, of the loan's maturity, and of how far in advance such notice will be provided. An association offering a non- or partially-amortized loan that the association did not intend to contractually obligate itself to refinance would have to state that a large payment will be due at maturity. Associations intending to offer refinancing would have to disclose all terms and conditions applicable to the offer, such as whether the offer was on a one-time or continuing basis and borrower-eligibility standards.

Under the proposal, an association would be required to disclose all

contractual contingencies under which the loan might become due or which might result in a forced sale of the home. An association would also have to describe any provision requiring escrow payments as well as the purpose of such payments and how their amount is established. Finally, the proposed disclosure would require the provision of an example showing the interaction of all variable features of the loan over a period of time, which may be of any length adequate to demonstrate how the loan would operate. The purpose of the latter requirement is to ensure the example consists of more than just one adjustment at one point in time.

The Board specifically requests comment on whether the proposed disclosure provisions would be adequate to ensure that borrowers are given the information needed to compare the mortgage programs of various lenders and to make informed decisions as to which mortgage instrument is best suited to a borrower's individual needs. The Board welcomes suggestions as to what additional disclosures, if any, should be required of associations.

Miscellaneous Amendments

Home Improvement and Manufactured Home Loans

The Board proposes to amend its regulations authorizing the issuance of home improvement and manufactured home loans (12 CFR 545.6–3 and 545.7–6, respectively) to permit the same range of adjustments that would be permissible for home loans under the proposed changes to paragraph (a) of § 545.6–2. Currently, home improvement and manufactured home loans may be structured as ballon payment loans, graduated payment loans and adjustable mortgage loans (*see* 12 CFR 545.6–3, 545.7–6; 46 Fed. Reg. 51897 (1981), 47 Fed. Reg. 10785 (1982)). The rationale for broadening associations' flexibility to make home loans appears to apply equally well to home improvement and manufactured home loans.

Leeway Authority

The Board proposes to amend paragraph (b) of § 545.6–5 of its regulations to require that any loan made thereunder must comply with the requirements of proposed paragraph (a)(2), relating to notice of adjustments, and (a)(8), relating to disclosure of loan terms, of § 545.6–2. Paragraph (b) authorizes associations to invest up to five percent of assets in loans secured by residential or commercial-farming real estate that are not otherwise authorized by the lending regulations. The regulation currently contains no requirements as to disclosure. There appears to be no justification, however, for excluding from full disclosure the terms of every residential loan made by associations.

Initial Loan Charges

The Board proposes to amend its regulations governing initial loan charges (12 CFR 545.8–2 (1981)) to confirm associations' authority to require the prepayment of a fixed amount of interest at the time a loan is made ("points"). Section 545.8–2 currently makes no express reference to this common practice. The proposed amendment would refer to such interest as an "acquisition credit," the definition of which and the accounting for which is contained in § 563.23–1(g)(2) of the Board's regulations (12 CFR 563.23–1(g)(2); 47 FR 3094 (1982)).

Escrow Accounts

The Board proposes to make two changes to its regulation governing the establishment of escrow accounts (12 CFR 545.8–3(b) (1981)). One change would conform the regulation to section 10 of the Real Estate Settlement Procedures Act of 1974 as that section was amended in 1976 (*see* 12 U.S.C. 2609 (1980)). Currently, § 545.8–3 permits federally-chartered thrift institutions to require the deposit in an escrow account, (1) on or before the date of settlement, of a sum equal to taxes, assessments, insurance premiums, and other charges applicable to the period up to the date of settlement plus one-twelfth of the charges expected to accrue during the 12-month period following settlement, plus, (2) beginning with the first month following settlement and each month thereafter, an amount equal to one-twelfth of the charges expected to accrue during the twelve-month period following the first day of each month.

Ambiguous wording, however, has resulted in some associations interpreting the regulation to permit the escrowing of a full year's worth of charges in advance. In addition, the Real Estate Settlement Procedures Act as amended permits lenders to require maintenance of a surplus in escrow equal to one-sixth of the charges expected to become due during the upcoming 12-month period. Previously, lenders were permitted to require a surplus of only one-twelfth of such charges, as is noted above.

The Board therefore proposes to amend paragraph (b) of § 545.8–3 to omit the ambiguous language and conform the regulation to the Real Estate Settlement Procedures Act, as amended. The proposed regulation would permit associations to require the setting aside in escrow, (1) on or before the date of settlement, a sum equivalent to the charges applicable to the period up to the due date of the first payment under the loan plus one-sixth of the charges expected to become due during the 12-month period following the due date of the first payment and, (2) beginning with the due date of the first payment and monthly thereafter, a sum equivalent to one-twelfth of the charges expected to become due during the 12-month perioid following the due date of the first payment. In addition, the association would be permitted to require that a surplus be maintained in escrow equivalent to one-sixth of the charges expected to become due during the following 12-month period.

The second change the Board proposes to make in its escrow account regulations would be to require associations to provide notice to a borrower of a deficiency in the amount required to be kept in escrow. Such a deficiency could arise if taxes or other charges increased. Currently, paragraph (b) of § 545.8–3 provides simply that, "if the association determines there will be a deficiency on the due date, it may require additional monthly deposits * * *" (12 CFR 545.8–3(b)(2) (1981)). This has been interpreted to permit associations to make up any deficiency in an escrow account by reducing the amount of a loan payment allocated to principal and interest due on the loan. While the vast majority of associations provide borrowers with notice of and the opportunity to make up any deficiency prior to adjusting a loan payment, it has come to the Board's attention that some associations have not done so. Therefore, the Board proposes to amend paragraph (b) to require such notice.

Appraisals

The Board also proposes to amend section 545.8–8 of its regulations (12 CFR 545.8–8 (1981)), which requires an association to obtain a signed appraisal from a qualified person designated by the association's board of directors before making a loan secured by the appraised property. The proposed amendments to paragraph (a) of § 545.6–2 would authorize associations to develop loan plans, such as the SAM or PLAM, under which it might be advantageous for an association or borrower to secure a reappraisal of the security property during the term of a loan. It appears unfair to make either party bear the costs of an appraisal desired solely by one party during the

term of a loan. Therefore, the Board proposes to provide that an association must pay for any appraisal of the property during the loan term unless the borrower has requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan. This language would not prohibit an association from requiring a borrower to bear the cost of an appraisal undertaken at maturity of the loan, such as might be necessary if the association were entitled to a portion of the appreciation in value of the security property over the entire loan term.

Definition of Adjusted Net Worth

The Board proposes to remove § 561.14 of its regulations (12 CFR 561.14 (1981)), which defines "adjusted net worth" (*i.e.*, net worth less 15 percent of scheduled items in 1964 and net worth less 20 percent of the scheduled items thereafter). Under a previous version of the net-worth regulations (12 CFR 563.13(b) (1965)), insured institutions were required to make semiannual credits to their Federal Insurance Reserve when their adjusted net worth was less than ten percent of specified assets. This provision was deleted in 1972 (*see* 37 FR 26580 (1972)) and the term "adjusted net worth" is not used elsewhere in the regulations.

Miscellaneous Technical Amendments

The Board also proposes to make a number of technical amendments that would update its regulations. The proposed amendments are as follows:

1. Remove from paragraph (a) of § 545.6–9 the reference to section 545.6–8, which was rescinded effective November 17, 1980 (45 FR 76095 (1980));

2. Remove paragraph (d) of § 545.7–11, which references now-rescinded section 545.8–7 (*see* 45 FR 76095 (1980));

3. Change the reference in Section 555.3 from 80 to 90 percent to reflect the similar change made in paragraph (a) of § 545.6–2 in 1980 (45 FR 76095 (1980));

4. Remove § 555.6, regarding the refinancing of home improvement loans with unsecured loans, in view of associations' broadened authority to make consumer loans (*see* 12 CFR 545.7–10 (1981));

5. Change the citation in § 555.11 from § 545.6–6 to paragraph (c) of § 545.6–2, where the authority to make acquisition loans currently is located;

6. Clarify in § 545.7–9 that a collateral loan need not be secured by an assignment of secured loans, but by an assignment of any loan, whether or not secured, that the federal association could make directly; and

7. Remove § 570.9, regarding insured institutions' lending territory, in view of the previous elimination of geographical restrictions on lending (*see* 45 FR 76095 (1980)).

Commercial Real Estate Loans

Section 545.6–6 of the Board's regulations (12 CFR 545.6–6 (1981)) authorizes loans secured by first liens on "other improved real estate," defined in § 541.17(a) and (c) to be commercial real estate containing a permanent structure or improvements that make it usable by a business or industrial enterprise, or real estate used for commercial farming. The Board requests comment on whether associations should be permitted to issue commercial real estate loans that provide for negative amortization, and, if so, what restrictions, if any, to put on such loans. Currently, § 545.6–6 requires the payment of interest at least semiannually on such loans. By comparison, the Office of the Comptroller of the Currency interprets 12 U.S.C. 371(a)(1) (Supp. 1982) to permit negative amortization on any loan made by a national bank that does not exceed 75 percent of the value of the security property.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply equally to all institutions chartered by the Board.

3. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposal.

4. *Alternatives to the proposed rule.* To the extent that small insitutions improve future profitability and reduce interest-rate risk by using the expanded lending authority, the proposal would benefit their operations. The proposal would not have a disproportionate impact on small institutions, and there is no alternative action that would change the impact of broadened lending authority on small institutions.

List of Subjects in 12 CFR Parts 545, 555, 561 and 570

Savings and loan associations.

Accordingly, the Board proposes to amend Parts 545 and 555 of Subchapter C and Parts 561 and 570 of Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, to read as set forth below.

PART 545—OPERATIONS

1. Amend § 545.6–2 by revising paragraph (a), to read as follows:

§ 545.6–2 Other residential real estate loans.

(a) *Home loans*—(1) *Authorization.* A Federal association may make, sell, purchase, participate, or otherwise deal in loans on the security of homes or combinations of homes and business property (including non-amortized and partially-amortized loans) on which the interest rate, the payment, the loan balance or the term to maturity may vary, as provided in this paragraph. Such loans shall be repayable in monthly installments over a term not exceeding 40 years, except that a loan authorized by paragraph (a)(2)(iii)(*c*) of this section or a loan under which an association purchases an annuity from an insurance company on behalf of a borrower need not require any payment until maturity. An association making a home loan shall possess only such rights and powers as are expressly set forth, by incorporation or otherwise, in the loan contract.

(2) *Adjustments to rate, payment, balance or term.* Subject to such limitations on adjustments as are set forth in the loan contract, an association may adjust the interest rate, the payment, the loan balance or the term to maturity as follows:

(i) interest rate—adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation, either of which is readily available to and verifiable by the borrower and is beyond the control of the association, provided that the interest rate may be decreased at any time;

(ii) payment—the payment may be decreased to reflect a decrease in the interest rate or in the loan balance, and may be increased if (*a*) the contract requires that increases be made pursuant to a schedule set forth in the contract that specifies the percentage or dollar increase in the payment per adjustment, (*b*) the increase reflects an increase in the interest rate or the loan balance, or (*c*) the contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association;

(iii) loan balance (*i.e.*, principal plus deferred, capitalized interest)—the loan

balance may be increased or decreased if (*a*) the contract provides for the deferral and capitalization of interest, (*b*) the contract provides that changes in the loan balance shall be tied to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association, (*c*) the contract provides for lump-sum disbursement of the loan proceeds or for scheduled periodic disbursements to the borrower made directly by the association, or (*d*) the contract provides that a portion of the consideration to be received by the association in return for making the loan shall be interest in the form of a percentage, fixed at or before the time of loan closing, of the amount by which the current market value of the property (as determined in accordance with § 545.6(b) of this Part) exceeds the original appraised value; and

(iv) term to maturity—the loan term may be increased or decreased to reflect an increase or decrease in the interest rate, the payment or the loan balance. In making any of the above-described adjustments, any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan. Adjustments shall be based on the difference between the index value most recently available as of the time of loan commitment or loan closing, or, if one index is substituted for another during the loan term, the value most recently available as of the date of substitution, and its value as of the time of adjustment or as of the time within which notice of adjustment must be given. At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the maturity of a non- or partially-amortized loan, an association shall provide the borrower with notice of the adjustment or of maturity. However, where the contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, or of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. In addition, where the loan contract sets out a schedule of adjustments to the payment, notice need not be given of each payment change made pursuant to that schedule.

(3) *Loan-to-value ratio.* A home loan shall not at the time of origination exceed 90 percent of the value of the security property. During the term of a home loan, the loan-to-value ratio may increase above 90 percent if pursuant to an increase in an index set forth in paragraph (a)(2)(i) of this section. The Board will assume continued compliance with the loan-to-value-ratio limitations where the original ratio met the requirements of this paragraph (a)(3), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan unless pursuant to subdivision (2)(iii)(*b*) of this paragraph (a) or unless the loan contract provides that the payment shall be adjusted at least once each five years to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. Notwithstanding the foregoing, the loan-to-value ratio at the time of origination may be 95 percent if:

(i) The loan contract requires that, in addition to full or partial amortization of the loan, one-twelfth of estimated annual taxes and assessments on the security property be paid monthly in advance to the association;

(ii) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower occupies, or in good faith intends to occupy, the property (or one dwelling on the property) as the borrower's principal residence; and

(iii) The unpaid balance of the loan exceeding 90 percent of the value of the security property is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer": *Provided,* however, that any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(4) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed 90 percent of value and shall be repayable within 18 months, with interest payable at least semi-annually.

(5) *Pledged-account loans.* Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (a), with such excess secured by savings accounts: *Provided,* that loans that exceed 90 percent of the value of the combined security are subject to the following restrictions:

(i) The loan shall not exceed the appraised value of the real estate;

(ii) The savings account shall consist only of funds belonging to the borrower, members of the borrower's family, or the borrower's employer; and

(iii) The association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone.

(6) *Loans on cooperatives.* Such loans may be made under this paragraph (a), subject to the following requirements:

(i) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration;

(ii) *Loans on individual cooperative units.* Such loans may be made on the security of (*a*) a security interest in stock, a membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization, and (*b*) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(7) *Non-monthly-installment loans.* The term-of-years limitation shall be 15 years on loans made with interest payable less frequently than monthly but at least semi-annually and principal payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term, and 40 years on loans made on farm residences or combinations of farm residences and commercial farm real estate with principal and interest payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term.

(8) *Disclosure.* Prior to making a home loan, an association must provide each loan applicant with a written disclosure describing in plain language the specific terms of the loan offered to the applicant. The purpose of the disclosure is to ensure full understanding of the operation of the loan being offered. The disclosure shall contain such of the following information as is relevant to the type of loan being offered:

(i) A general explanation of the fact that (*a*) the association and the applicant become bound by the terms of the loan contract upon signing it, (*b*) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (*c*) since normally the contract and mortgage (or deed of trust) alone establish the rights of the

borrower, the borrower should be familiar with and understand the provisions of the contract;

(ii) The term to maturity, and any provisions of the loan contract that would authorize the association to lengthen or shorten the term;

(iii) The initial interest rate and, if the contract provides for adjustment of either the interest rate, the payment, the loan balance or the term in accordance with changes in an index, the base index rate, or, if neither fact is known, the manner in which the initial interest rate and base index rate will be established;

(iv) The amount of the initial payment, if known, and an explanation of how the association establishes an amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest;

(v) A full explanation of how the interest rate, the payent, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others;

(vi) What information will be contained in each notice of an adjustment or, in the case of non- or partially-amortized loans, of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(vii) If the loan is non- or partially-amortized and the association does not intend to contractually obligate itself to refinance the loan unless the loan is formally in default, a statement that a large payment will be due at maturity of the loan; if the loan is non- or partially-amortized and the association intends to obligate itself contractually to refinance the loan, the terms and conditions under which it will do so;

(viii) A description of all contractual contingencies under which the loan may become due or which may result in a forced sale of the home;

(ix) Whether the loan contract will provide for escrow payments, the purpose of requiring escrow payments, and how the amount of an escrow payment is established; and

(x) An example of the interaction of all variable features of the loan over any period of time.

* * * * *

2. Amend § 545.6–3 by revising the second sentence thereof, to read as follows:

§ 545.6–3 Home improvement loans.

* * * Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under § 545.6–2(a) of this Part.

3. Remove existing §§ 545.6–4, 545.6–4a and 545.6–4b, to read as follows:

§ 545.6–4 Alternative mortgage instruments. [Removed eff.]

§ 545.6–4a Adjustable mortgage loans [Removed eff.]

§ 545.6–4b Graduated payment adjustable mortgage loans. [Removed eff.]

4. Amend § 545.6–5 by revising paragraph (b) thereof, to read as follows:

§ 545.6–5 Leeway authority for loans relating to residential real estate and farms.

* * * * *

(b) *Nonconforming secured loans.* In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding five percent of its assets in loans, advances of credit, and interests therein, secured by residential real estate or real estate used or to be used for commercial farming, which are not otherwise authorized under this Part: *Provided,* that such loans must conform to the notice and disclosure requirements of § 545.6–2(a)(2) and (8) of this Part.

§ 545.6–9 [Amended]

5. Amend paragraph (a) of § 545.6–9 by removing from the first sentence the phrase ", except limitations in § 545.6–8,".

6. Amend § 545.7–6 by revising paragraph (e)(2)(iii) thereof, to read as follows:

§ 545.7–6 Manufactured home financing.

* * * * *

(e) *Retail financing.* * * *

(2) *Conventional loans.* * * *

(iii) the manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.6–2(a) of this Part; and

7. Revise § 545.7–9, to read as follows:

§ 545.7–9 Collateral loans.

An association may make a loan secured by an assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loan(s).

§ 545.7–11 [Amended]

8. Amend § 545.7–11 by removing paragraph (d) thereof.

9. Revise § 545.8–2, to read as follows:

§ 545.8–2 Initial loan charges.

Except as provided in § 563.35(d) of this Chapter, a Federal association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs, in such reasonable amounts as the board of directors may fix. The association may collect the charges from the borrower and pay the persons rendering services. An association also may require the payment of interest at the time of loan closing in the form of "acquisition credits," as defined in § 563.23–1(g)(2) of this Chapter.

10. Amend § 545.8–3 by revising paragraph (b) thereof, to read as follows:

§ 545.8–3 Contract provisions for real estate loans.

* * * * *

(b) *Escrow accounts.* (1) An association may require that all or any part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the association, in addition to interest and principal payments on the loan, to enable the association to pay such charges as they become due. With regard to any loan on the security of a home, made in whole or in part by the association, the association shall not require that the borrower deposit in any escrow account established to assure payment of taxes, assessments, insurance premiums, and other charges, (i) before or on the date of settlement, an aggregate sum in excess of the total amount of such charges owed by the borrower and due and payable during the period ending on the due date of the first installment payment under the loan *plus* one-sixth of the estimated total amount of such charges that will become due and payable during the 12-month period beginning on the due date of the first installment payment, or (ii) in any month beginning with the due date of the first installment payment, one-twelfth of the estimated total amount of such charges that will become due and payable during the 12-month period beginning on the due date of the first installment payment *plus* such amount as is necessary to maintain the additional balance of one-sixth of the estimated total amount of such charges deposited pursuant to paragraph (b)(1) of this section. (2) If the association determines there will be a deficiency on the due date of such charges, it may require that additional deposits, sufficient to make up the deficiency, be

submitted in equal amounts with each payment up to the date upon which such charges become due and payable. After giving the borrower notice of such deficiency and of the additional deposits required to make up the deficiency, the association may deduct the necessary amounts from the borrower's regularly-scheduled installment payments if the borrower fails to make the additional deposits.

11. Amend § 545.8–5 by revising paragraph (b) thereof, to read as follows:

§ 545.8–5 Loan payments.

* * * * *

(b) *Loan payments and repayments.* Payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or party to offset payments which subsequently accrue under the loan contract. A borrower on a loan secured by a home or combination of home and business property may prepay the loan without penalty unless the loan contract expressly provides for all of the following: (1) a prepayment penalty, (2) a fixed interest rate, and (3) only such increases in the loan balance as result from the deferral and capitalization of interest. The prepayment penalty for a loan secured by a home or combination of home business property shall not be more than six months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12-month period which exceeds 20 percent of the original principal amount of the loan.

12. Amend § 545.8–8 by adding a second sentence thereto, to read as follows:

§ 545.8–8 Appraisals.

* * *The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan unless the borrower specifically requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

PART 555—BOARD RULINGS

§ 555.3 [Amended]

13. Amend paragraph (b) of § 555.3 by removing "80" and inserting in its place "90".

14. Remove § 555.6, to read as follows:

§ 555.6 Refinancing unsecured loans. [Removed eff.]

§ 555.11 [Amended]

15. Amend § 555.11 by removing the term "§ 545.8–6" and inserting in its place the term "§ 545.8–2(c)".

PART 561—DEFINITIONS

16. Remove § 561.14, to read as follows:

§ 561.14 Adjusted net worth. [Removed eff.]

PART 570—BOARD RULINGS

17. Remove § 570.9 to read as follows:

§ 570.9 Lending territory; relocation of principal office. [Removed eff.]

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1728, 1730); Reorg. Plan No. 3 of 1947; 3 C.F.R., 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

James J. McCarthy,

Acting Secretary.

[FR Doc. 82–12988 Filed 5–6–82; 8:45 am]

BILLING CODE 6720–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–6400; 34–18701; IC–12413]

Financial Statement Requirements for Registered Investment Companies; Proposed Revision of Rules

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Commission announces that it is extending for 30 days the date by which comments should be received on a proposed revision of financial statement requirements for registered investment companies. The Commission has received requests that the comment period be extended and believes that a 30-day extension will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments should be received by the Commission on or before May 30, 1982.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7–918. All comments will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Clarence M. Staubs, or John W. Albert, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202–272–2133).

SUPPLEMENTARY INFORMATION: On January 11, 1982, the Commission proposed for public comment Release No. 33–6374 (46 FR 2776) which would revise requirements for financial statements of registered investment companies. In order to receive the benefit of the comments of a greater number of interested parties, and in view of the requests received by the Commission for additional time in which to comment, the Commission has extended the comment period on this release by 30 days, until May 30, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 30, 1982.

[FR Doc 82–12532 Filed 5–6–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76 (New Mexico–14)]

High-Cost Gas Produced From Tight Formations; New Mexico

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Dakota Formation be

designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on June 2, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on May 18, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: May 3, 1982.

I. Background

On April 19, 1982, the State of New Mexico Energy and Minerals Department Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in San Juan County, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New Mexico's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Dakota Formation is located in San Juan County, New Mexico, in a portion of Township 31 North, Range 13 West, NMPM, in the Basin Dakota Gas Pool, in the northwestern portion of the San Juan Basin near Hogback Monocline. The average depth to the top of the Dakota Formation is 6,544 feet. The gross thickness of the formation is approximately 400 feet.

The recommended area is subject to New Mexico Order No. R–1670–V, issued on May 22, 1979, which authorizes infill drilling in the Basin-Dakota Gas Pool. Accordingly, certain portions within the proposed area may be subject to exclusion pursuant to § 271.703(c)(2)(i)(D) of the regulations.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7116 De Novo convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Dakota Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 2, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (New Mexico–14), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than May 18, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is revised by adding new paragraph (d)(117) to read as follows:

§ 271.703 Tight formations.

* * * * * *

(d) *Designated tight formations.* * * *

(78) through (116) [Reserved]

(117) *Dakota Formation in New Mexico.* RM79–76 (New Mexico–14).

(i) *Delineation of formation.* The Dakota Formation is located in Township 31 North, Range 13 West, Sections 1 through 12, Sections 14 through 21, Sections 28 through 32, NMPM, San Juan County, New Mexico. The formation is within the Basin-Dakota Gas Pool, in the northwestern portion of the San Juan Basin near the Hogback Monocline.

(ii) *Depth.* The Dakota Formation delineates the "Dakota Producing Interval" which includes the Granerous Shale Formation and the productive upper portion of the Morrison Formation as well as the Dakota Formation. The average depth to the top of the Dakota Formation is 6,544 feet. Gross thickness of the formation is approximately 400 feet.

[FR Doc. 82–12475 Filed 5–6–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0050]

Drug Products for Over-the-Counter Human Use for the Treatment of Acute Toxic Ingestion; Establishment of a Monograph

Correction

In FR Doc. 82-3 appearing at page 444 in the issue for Tuesday, January 5, 1982, please make the following corrections:

(1) On page 451, in the right column, in paragraph (d)(1) (§ 357.54(d)(1)), in the second line, please insert "syrup" immediately after "ipecac".

(2) In the same line, the word "indice" should have been "induce".

(3) In the same paragraph, in the fourth line, the word "absorb" should have been "adsorb".

BILLING CODE 1505-01-M

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21 CFR Part 357

[Docket No. 81N-0064]

Deodorant Drug Products for Internal Use for Over-the-Counter Human Use; Establishment of a Monograph

Correction

In FR Doc. 82-8 appearing at page 512 in the issue for Tuesday, January 5, 1982, please make the following correction:

On page 519, in the third column, in § 357.850(b)(1), in the first line, the word "of" should have been "or".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Surface Coal Mining and Reclamation Enforcement in Ohio; Review of State Program Submission

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of public comment period.

SUMMARY: The Office of Surface Mining (OSM) is reopening the period for review and comment on the resubmission by Ohio of its program for the regulation of surface coal mining and reclamation in the State. Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on the proposed Ohio regulatory program in light of modifications and additions that the Ohio Department of Natural Resources (ODNR) submitted to OSM on May 7, 1982. The modifications and additions alter the content of the proposed State program.

DATES: Written comments, data or other relevant information relating to Ohio's program submission must be received on or before 4:00 p.m., June 7, 1982, to be considered.

ADDRESSES: Comments on the Ohio program submission should be sent or hand-delivered to: Office of Surface Mining Reclamation and Enforcement, *Attention:* Ohio Administrative Record, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204, Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION: On January 26, 1982, at 47 FR 3571-3573, the Regional Director, OSM, published notice of the public hearing and public comment period on the resubmitted Ohio program. The comment period closed on February 20, 1982. On March 22 through March 24, 1982, officials of OSM met in executive session in Washington, D.C. with representatives of ODNR to discuss the Ohio regulatory program submission (Administrative Record No. OHIO 270). On April 7 and 8, 1982, officials of OSM met with representatives of ODNR, members of the public and representatives of industry in Columbus, Ohio to discuss the Ohio regulatory program submission (Administrative Record No. 271). Also, on April 28 through April 30, 1982, officials of OSM met in executive session in Columbus, Ohio with representatives of ODNR to discuss issues raised at the earlier meetings (Administrative Record No. 272).

As a result of discussions at the above meetings ODNR submitted on May 7, 1982, to OSM new materials revising and modifying the Ohio regulatory program. The new materials are contained in the Ohio Administrative Record, No. 274.

Thus, OSM is reopening the public comment period until 4:00 p.m., June 7, 1982, to allow the public time to review and comment on the above cited Administrative Record material and to allow the public time to consider and comment on the Ohio program resubmission in light of the new material.

This anouncement is made in keeping with OSM's commitment to public participation as a vital component in fulfulling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Dated: May 4, 1982.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-12536 Filed 5-6-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Surface Coal Mining and Reclamation Enforcement in Pennsylvania: Review of State Program Submission

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of public comment period.

SUMMARY: On April 9, 1982, at 47 FR 15388, the Office of Surface Mining (OSM) reopened the public comment period until May 10, 1982, to allow the public sufficient time to consider and comment on revisions to the proposed program submitted by Pennsylvania. On May 5, 1982, Pennsylvania submitted a legal analysis and a section-by-section comparison of the Federal regulations with the corresponding revised sections of Pennsylvania's regulations with narrative explaining any differences and their legal effect and additional material. Therefore, OSM is extending the public comment period until May 21, 1982, so that the public may consider and comment on the legal analysis and the program revisions.

DATES: Written comments, data or other relevant information relating to Pennsylvania's revisions to its proposed program submission, the legal analysis and additional material must be received on or before 4:00 p.m., May 21, 1982, to be considered.

ADDRESSES: Comments on Pennsylvania's revisions to its proposed program should be sent or hand-delivered to: Office of Surface Mining Reclamation Enforcement, Office of the Field Solicitor, Second Floor, 603 Morris Street, Charleston, West Virginia 25301, (*Attention:* Pennsylvania Administrative Record).

The Pennsylvania proposed program and the proposed revisions are available for public inspection at the OSM address above, the Pennsylvania Department of Environmental Resources (DER), Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4666, and other

OSM and DER field locations in Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Patrick Boggs, Regional Director, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7175.

SUPPLEMENTARY INFORMATION: On April 9, 1982, at 47 FR 15368, OSM reopened the public comment period to allow the public sufficient time to review and comment on revisions to the proposed program submitted by Pennsylvania. This material has been placed in the Pennsylvania Administrative Record, PA No. 321.

On May 5, 1982, Pennsylvania submitted a legal analysis and a section-by-section comparison of sections of the Federal regulations with the corresponding revised sections of Pennsylvania's regulations with narrative explaining any differences and their legal effect. This legal analysis and additional material have been placed in the Pennsylvania Administrative Record, PA No. 336.

Thus, OSM is extending the public comment period until May 21, 1982, so that the public may consider and comment on the legal analysis and other program revisions submitted May 5, 1982.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

List of Subjects in 30 CFR Part 938

Coal Mining, Intergovernmental Relations, Surface Mining, Underground Mining.

Dated: May 4, 1982.

Arthur W. Abbs,

Acting Assistant Director—Programs Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-12525 Filed 5-6-82; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-1938-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 25, 1980, the State of Ohio submitted to EPA revisions to its State Implementation Plan (SIP). The revisions were to rules 01 through 06, 08 and 09, of Chapter 3745-15 of the Ohio Administrative Code (OAC) which establish general provisions for the control of air pollution under section 110 of the Clean Air Act. The purpose of today's action is to propose rulemaking action and to solicit public comment on these revisions.

DATE: Public comments must be received on or before June 7, 1982.

ADDRESSES: Copies of this SIP revision are available for review at the following addresses:

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Seija, Regulatory Analysis Section, Air Programs Branch, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: Rules 01 through 09 of Chapter 3745-15 of the Ohio Administrative Code establish general provisions for the control of air pollution. At various times, rules 01 through 09 have been recodified. Originally, these rules were codified as AP-2-01 through 09. The AP-2 series were the rules approved by EPA as part of the Ohio SIP on April 15, 1974 (39 FR 13539). Subsequent to that date, these rules were recodified as EP-10-01 through 09 and then as 3745-15-01 through 09. On February 25, 1980, the State of Ohio submitted to EPA revisions to rules 3745-15-01 through 06, 08 and 09.

The major changes to Chapter 3745-15 are in rules 01 (Definitions), 04 (Measurement of emissions of air contaminants), 05 (Control plan compliance schedule) and 06 (Malfunction of equipment; scheduled maintenance; reporting). Rules 3745-15-02 (Purpose), 03 (Submission of emission information), and 09 (Severability) have been changed to replace references to the Ohio Environmental Review Board (Board) with references to the Director of Ohio EPA (Director). EPA believes that this change is acceptable and therefore proposes to approve the changes made in Rules 3745-15-02, 03, 06 and 09.

Rule 3745-15-01 defines certain basic terms which are utilized throughout the Air Pollution Control Chapters of the OAC. Terms which are pertinent only to specific Air Pollution Control Chapters are not defined in rule 3745-15-01, but are defined in the appropriate Chapters of the OAC. Rule 3745-15-01 differs from AP-2-01 in that it contains definitions for three new terms in subparagraphs (P), (T) and (S): facility, owner and non-methane hydrocarbon. A facility is defined in subparagraph (P) as "any building, structure, installation, operation or combination thereof which contains one or more stationary sources of air contaminants." An owner, or operator, is defined in subparagraph (T) as "any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment." A nonmethane hydrocarbon is defined in subparagraph (S) as "any chemical compound containing carbon but excluing: carbon monoxide, carbon dioxide, carbides, metallic carbonates, ammonium carbonate and methane." EPA has reviewed these new definitions and has determined that they are acceptable. Therefore, EPA is proposing to approve new subparagraphs (P), (T) and (S).

Rule 3745-15-04 provides the Director of Ohio EPA with the authority to require, under certain circumstances, any person who is responsible for pollutant emissions to conduct tests on the source of those emissions. The purpose of the test is to determine the quantity of emissions from the particular source and, thereby, to determine whether the source is in compliance with the applicable emission limitation. Rule 3745-15-04 differs from AP-2-04 in that it expands the Director's authority by explicitly stating that he may reject the results of any test which is not performed in accordance with approved test procedures or in accordance with the other provisions of this rule. EPA has reviewed this rule and has determined that it is acceptable. Therefore, EPA proposes to approve this rule. EPA notes that, under certain circumstances, the Ohio air pollution control regulations provide the Director of Ohio EPA with the authority to specify an alternate compliance test method. Any test method which is different from what is contained in the federally approved SIP must be submitted as a SIP revision.

Rule 3745-15-05, formerly codified as AP-2-05, has been repealed. This rule

was entitled "Control plan compliance schedule." It established deadlines by which new and existing air pollution sources were to comply with the control requirements of the appropriate air pollution regulation. For new sources, compliance was to be the date of initial operation of the source. For existing sources, compliance was to be immediate. Where an owner or operator of an existing source was not able to demonstrate compliance, the rule established alternate procedures for the source to follow to ensure that it did not operate in violation of the appropriate emission limitation.

Rule 3745–15–05 states that the compliance schedules specified in other Air Pollution Control Chapters of the Ohio Administrative Code (OAC) are to supersede the requirements of rule 3745–15–05. Thus, rule 3745–15–05 becomes unnecessary when other OAC Chapters specify compliance dates. Chapter 3745–17 (Control of Particulate Emissions) and 3745–21 (Control Volatile Organic Compounds) specify compliance dates for new and existing air pollution sources. EPA believes that rule 3745–15–05 is no longer necessary. Therefore, EPA proposes to delete 3745–15–05 from the Ohio SIP.

Rule 06 of Chapter 3745–15, formerly codified as AP–2–06, establishes procedures to be followed by a source in the case of the malfunction or scheduled maintenance of its air pollution control equipment. The State has revised paragraphs (A), (B), and (C) and has added a new paragraph.

According to old rule AP–2–06(A), when an owner shuts down its air pollution control equipment due to the scheduled maintenance of the control equipment, but left the air pollution source in operation, it was required to supply the Ohio Environmental Review Board (Board) with certain information 24 hours prior to the planned shutdown of the control equipment. New rule 3745–15–06(A), while retaining this provision, has added three new provisions in subparagraphs (1), (2) and (3). A definition of malfunction is contained in subparagraph (1). In particular rule 3745–15–06(A)(1) states that "* * * maintenance of air pollution control equipment which is scheduled to prevent a malfunction, which would occur within 2 weeks if the maintenance were not performed, shall be considered to be a malfunction. Subparagraph (2) requires the owner to shut down the air pollution source whenever the scheduled maintenance of its air pollution control equipment requires the control equipment to be shut down or bypassed. Subparagraph (3) allows an exemption from the requirements of subparagraph (2) when the owner demonstrates that a complete shutdown of the source may result in damage to the source or is otherwise impossible or impractical. This exemption is subject to the Director's judgment and will require the source to report certain information about the emissions that will result, the length of time that the control equipment will be shut down, the measures being taken to minimize the length of the shutdown and the estimated amount of pollutant emissions as a result of the shutdown of the control equipment.

Old rule AP–2–06(B) required the owner or operator of an air pollution source to immediately notify the Board when any malfunction which caused a violation occurred and when it was corrected. New rule 3745–15–06(B), while retaining these provisions, also requires the owner or operator to also supply the Ohio EPA with certain additional information such as the identification of the source, the duration of the malfunction, the quantity of air contaminants likely to be emitted and the measures that will be implemented to reduce any potential adverse impact on the public health or welfare. If the malfunction has lasted more than 72 hours, then the owner of the air pollution source must develop and submit to Ohio EPA a detailed report which identifies a program which will prevent, detect and correct, as expeditiously as practicable, similar future breakdowns or failures of the air pollution source.

Old rule AP–2–06(C) authorized the Board to take appropriate action with respect to the source after the Board had determined that either the control equipment shutdown was avoidable, or was induced or prolonged in bad faith, or was not in accordance with certain provisions of AP–2–06. New rule 3745–15–06(C) has been revised to give the Director the authority which was previously vested in the Board. Additionally, the Director's authority has been expanded. The Director is now empowered to take appropriate action if the reporting requirements of this rule have not been met; the equipment was not properly operated and maintained prior to breakdown; shutdown of the source or operation during the period of maintenance or breakdown has become practicable; the shutdown or breakdown was or has become avoidable; or was induced or prolonged in bad faith; or the emissions endanger or tend to endanger the health or safety of the public.

A new paragraph (D) has been added to rule 3745–15–06. This paragraph allows the Director to require the submission of a preventive maintenance and malfunctiuon abatement plan to prevent, detect, and correct malfunctions or equipment failures which could result in emissions exceeding any applicable law. Such malfunction abatement plans, however, would only be required in situations where the Director has determined that excessive or unduly prolonged malfunctions of any emission source, air pollution control equipment or related facility have occurred. The required contents of such a malfunction plan are specified in this paragraph. Any acceptable preventive maintenance and malfunction abatement plan will be specified in the terms and conditions of an applicable permit or variance for the source. Where such a malfunction plan is approved, the owner or operator of the source must maintain operation and maintenance records for a minimum of 2 years to demonstrate that the plan has been implemented properly.

EPA's approval of new rule 3745–15–06 is contingent on the rule's compatibility with EPA's malfunction policy. this policy is stated in the April 27, 1977 **Federal Register** (42 FR 21472). According to the malfunction policy, EPA will not approve any regulatory provision which would automatically exempt a source from complying with its applicable mass and/or visible emission limitation. In addition, the malfunction policy provides that EPA will independently evaluate, on a case-by-case basis, the appropriateness of any exemption granted. This evaluation would include any exemption regarding the impossibility or impracticality of shutdown of any source which was granted pursuant to the Director's authority as set out in 3745–15–06(A)(3).

EPA does not believe that this rule is inconsistent with its malfunction policy as published in the April 27, 1977, **Federal Register** (42 FR 21472). Although this rule does not specify what the appropriate action shall be if there is a malfunction, EPA interprets paragraph 3745–15–06(c) as empowering the Director with the authority to approve or disapprove a source's request to operate the source without its control equipment and to take appropriate enforcement action against a source which has operated in bad faith or has caused emissions which endanger or tend to endanger the health or safety of the

public. EPA does not interpret paragraph (C) or any other paragraph of rule 3745–15–06 as providing a source with an automatic opportunity to violate any mass or visible emission limitation due to a maintenance/malfunction problem. EPA, therefore, proposes to approve new rule 3745–15–06.

A 30-day public comment period is being provided on this notice of proposed rulemaking. EPA is specifically soliciting the State and interested individuals to comment on its interpretation of rule 3745–15–06(C) and its proposed approval of rule 3745–15–06. Public comment received on or before June 7, 1982, will be considered in EPA's final rulemaking. When possible comments should be submitted in triplicate. All comments received will be available for inspection during normal business hours at the Region V Office listed at the beginning of this notice. Please call the contact person listed at the beginning of this notice before visiting the Region V Office.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certified on January, 27, 1981 (46 FR 8709) that approvals of State Implementation Plans under section 110 of the Act would not have a significant economic impact on a substantial number of small entities. Today's action proposes to approve a State action under section 110 of the Act. It imposes no new requirements beyond those which the State has already imposed.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a major regulation since it approves provisions which the State adopted and submitted to EPA. EPA is not imposing any requirements which are different from those already required by the State.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Section 110 of the Clean Air Act)

Dated: August 28, 1981.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc 82-12511 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 60

[AD–FRL 2119–4]

Standards of Performance for New Stationary Sources; VOC Fugitive Emission Sources; Availability of Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Document and Request for Comments.

SUMMARY: Standards of performance for fugitive emission sources of volatile organic compounds (VOC) in the organic chemical manufacturing industry were proposed on January 5, 1981 (46 FR 1136). EPA has prepared a document to describe the estimation methodologies and data and the resulting fugitive emissions, emission reductions and costs that will be used in making final decisions concerning standards for the organic chemical manufacturing industry. The document represents EPA's current understanding of fugitive emission sources and the effectiveness of controls as applied to these and other VOC fugitive emission sources. Public comments on this document are requested and will be considered before making final decisions on these standards.

DATES: *Comments.* Comments on the proposed standards must be received by July 6, 1982.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket No. A–79–32, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Documents. EPA has prepared an additional information document (AID) which discusses potential changes to the technical basis of the background information document (BID) for fugitive emission sources in the synthetic organic chemical manufacturing industry. The AID (EPA–450/3–82–010) may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs," EPA–450/3–82–010.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Wyatt, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578. Do not call this telephone number to request the AID.

SUPPLEMENTARY INFORMATION:

Background

EPA proposed standards on January 5, 1981 (46 FR 1136), for fugitive emission sources of volatile organic compounds (VOC) within the synthetic organic chemical manufacturing industry (SOCMI). EPA provided an accompanying background information document (BID) to describe the technological and cost basis of these proposed standards. The BID presents a technical discussion of fugitive emission sources and emission reduction techniques for these sources of VOC. The BID also estimates VOC emission reductions and costs of alternative emission reduction techniques. When EPA proposed these standards, EPA invited comments on the standards, including the technical discussions and calculations in the BID.

After reviewing comments on the proposed standards for fugitive emission sources within SOCMI, EPA published a notice of availability of reports and comment period extension in the **Federal Register** on April 14, 1981 (46 FR 21789). That notice announced the availability of several technical reports that were completed by EPA's Office of Research and Development (ORD) after the standards had been proposed. EPA requested comments on the ORD reports because they contained results of pertinent studies. The studies provided additional information on VOC emissions and emission reductions for fugitive emission sources.

EPA has completed a review of the ORD reports and public comments on these reports. Based on this review, EPA has reached preliminary conclusions on the estimation methodologies and data which most accurately reflect the emissions, emission reductions and cost impacts of emission reduction techniques for fugitive emission sources within SOCMI. These methodologies and data will form the basis for final decisions on the standards for fugitive emission sources of VOC within the organic chemical manufacturing industry. To assure the best possible basis for these decisions, EPA is publishing the results of the review presented in an additional information document (AID). The methodologies and data used in the BID for VOC fugitive emission sources are generally similar to those in the background information document for benzene fugitive emission sources for which a standard was proposed on January 5, 1981 (46 FR 1165), and in the document that discusses the control techniques guidelines for synthetic organic

chemical, polymer, and resin manufacturing equipment. Therefore, the AID and comments on the AID will be considered before making final decisions on standards for fugitive emission sources of benzene and before publishing the final document that discusses the control techniques guidelines. It should be understood that the AID and the conclusions in it may not apply in all respects to fugitive emission sources of benzene or VOC in other industries. For example, the methodologies for calculating SOCMI VOC fugitive emissions and emission reductions presented in the AID are generally applicable to other VOC fugitive emission sources. However, data used in the methodologies for calculating SOCMI emissions are not necessarily applicable to other source categories where, for instance, better data exist for those source categories. A summary of the conclusions presented in the AID are presented in the next section of this notice.

It should also be understood that the conclusions summarized below and detailed in the AID do not reflect decisions on final standards. These decisions will not be made until the methodologies and data receive public review.

Summary of Conclusions and Changes

The principal conclusions concern which methodologies and data to use in estimating emissions, emission reductions, and costs for control techniques for fugitive emission sources. After EPA reviewed the methodologies and data in the BID for VOC fugitive emission sources, in the ORD reports, and in comments on these reports, EPA concluded that the impacts presented in the BID are reasonably valid. EPA also concluded, however, that new data are available and certain revisions to the methodologies are possible to improve estimates of emissions, emission reductions, and costs for fugitive emission sources.

Emission Estimates. In the BID for VOC fugitive emission sources, estimates of VOC emissions are based on a comprehensive study of fugitive emission sources within petroleum refineries. When the standards were proposed, EPA considered data for fugitive emission sources within SOCMI. However, these data were not used in making emission estimates because EPA did not gather the data for determining emission factors, and, therefore, EPA did not consider them representative of the industry.

In contrast, commenters requested that EPA use these data and other new data in making emission estimates for this industry. EPA agrees that these data can be used to estimate the precent of fugitive emission sources which leak. However, EPA continues to believe that, except for valves in gas service, data from petroleum refineries provide the best estimates of the quantity of VOC emissions from sources which leak. The percent of fugitive emission sources which leak and the quantity of VOC emissions from sources which leak are primary factors which influence the magnitude of emission estimates for VOC fugitive emission sources.

Data contained in the ORD reports on the percent of fugitive emission sources which leak are based on a cross section of process units within this industry and not a representative selection of process units. EPA believes, however, that this cross section of process units can be used to estimate the percent of fugitive emission sources which leak. Data contained in the ORD reports and other new data on the quantity of VOC from sources which leak were not developed to estimate emissions of VOC from fugitive emission sources. Rather, they were developed to estimate the effect of maintenance on fugitive emission sources. In contrast, data in the petroleum refinery study were developed specifically to estimate the magnitude of VOC emissions from fugitive emission sources. These data can be used to estimate the quantity of VOC from sources which leak. After comparing emission estimates based on the petroleum refinery study to those based on the ORD reports, EPA considers the data on the quantity of VOC from petroleum refinery sources which leak to represent the quantity of VOC from SOCMI sources which leak, except for valves in gas service. For valves in gas service, EPA has decided to use the data in the ORD reports to represent emissions from valves which leak. EPA considers emission estimates based on these sets of data to represent the emissions of VOC from fugitive emissions sources within SOCMI.

Emission Reduction Estimates. In the BID, emission reduction estimates were based partly on engineering judgments that were supported by data obtained in a study of petroleum refineries and presented in Appendix C of the BID. Commenters requested that EPA use data from the ORD studies in estimating emission reductions for fugitive emission sources. As explained in the AID, EPA has decided to use, when technically reasonable, data from the ORD studies. In addition, EPA has decided to use a leak detection and repair model (LDAR model) that estimates the emission reduction effectiveness and other consequences of a leak detection and repair program.

The LDAR model is more complex than the approach used in the BID and requires more data. The LDAR model allows analysis of the impacts of emission reduction techniques on a per-source basis. This model also allows better analysis of the effects of staggered leak detection and repair programs, such as the program allowed by the proposed standards. Data are available to use the LDAR model for some fugitive emission sources (pumps in light liquid service and valves in gas and light liquid service); however, they are not available for other fugitive emission sources. As a consequence, EPA plans to use the LDAR model for pumps and valves and the approach in the BID for other fugitive emission sources. Even though EPA will reconsider its engineering judgments in the BID, EPA considers the approach in the BID reasonable when it is not practicable to use the LDAR model.

Cost Aspects. In the BID for VOC fugitive emission sources, EPA also presented estimated costs of the emission reduction techniques in the BID. EPA has now reviewed these aspects of the BID in light of comments on the BID and data in the ORD reports. On this basis, EPA concludes that the BID in general continues to reflect EPA's technical conclusions but that some of the data used in cost estimates should be changed. Even though some of the data have changed, the cost methodology and most of the data used in cost estimates have not changed. In addition, EPA has adjusted the model units based on information contained in the ORD reports.

Requests for Comments

EPA requests comments on its conclusions concerning emission estimates, emission reduction estimates, and other aspects of EPA technical judgments and the rationale for these conclusions as presented in the AID. This **Federal Register** notice and the AID discuss technical decisions only; they do not discuss any regulatory decisions. Therefore, EPA is requesting comments only on its technical decisions and the rationale for these decisions as presented in the AID.

EPA specifically requests comments on (1) the use of the LDAR model for pumps and valves and (2) the data selected by EPA for use in estimating the impacts of emission reduction techniques for fugitive emission sources. Persons providing comments should give a complete technical explanation of their view and, if they disagree with

EPA's judgments, recommend alternative methodologies and data to be used in estimating the impacts of emission reduction techniques for fugitive emission sources.

(Secs. 111 and 301(a), Clean Air Act as amended (42 U.S.C. 7411 and 7601(a)))

Dated: April 28, 1982.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-12827 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 122, 123, 124, and 146

[W-1-FRL 2120-3]

New Hampshire Water Supply and Pollution Control Commission; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received a complete application from the New Hampshire Water Supply and Pollution Control Commission requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the States complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary either to approve, disapprove, or approve in part and disapprove in part the application from the New Hampshire Water Supply and Pollution Control Commission to regulate Classes I, II, III, IV, and V injection wells.

DATES: Requests to present oral testimony should be filed by May 28, 1982. A public hearing will be held June 4, 1982, 10:00 a.m. Comments must be received by June 7, 1982. Should EPA not receive sufficient public comments or requests to present oral testimony by May 28, 1982, the Agency reserves the right to cancel the public hearing.

ADDRESSES: Comments and requests to testify may be mailed to Jerome J. Healey, Drinking Water Branch, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203. Copies of the application and pertinent material are available for review and/or copying between 9:00 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region I, Library, 21st Floor, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5791

New Hampshire Water Supply and Pollution Control Commission, P.O. Box 95, Hazen Drive, Concord, New Hampshire 03301, (603) 271-3398.

The hearing will be held in the Health and Welfare Building, Room 112C, Hazen Drive, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Jerome J. Healey, Drinking Water Branch, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-6486. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The application from the New Hampshire Water Supply and Pollution Control Commission is for the regulation of all injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable regulations and forms, a statement of legal authority, and the memorandum of agreement between the New Hampshire Water Supply and Pollution Control Commission and the Region I office of the Environmental Protection Agency.

List of Subjects in 40 CFR Parts 122, 123, 124, 146

Hazardous materials, Waste treatment and disposal, Water supply.

Dated: April 23, 1982.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 82-12828 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-252; RM-4032]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The Commission has granted in part a request by TRT Telecommunications Corporation ("TRT") for three week extension of time in which to file Comments and Reply Comments in *Further Notice of Proposed Rulemaking* (47 FR 17308, April 22, 1982). There we asked the public to comment by April 30, 1982, on our proposal to expand the scope of the *Competitive Carrier Rulemaking* (45 FR 76148, November 18, 1980) to include the domestic operations of the international record carriers ("IRCs"). The Commission decided that, given its interest in expediting consideration of issues pending in the *Competitive Carrier* proceeding, TRT has shown good cause for an extension of only two weeks.

DATES: Under the revised schedule, Comments must be received on or before May 14, 1982, and Reply Comments must be received on or before May 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Anne M. Coffey, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 29, 1982.

Released: May 3, 1982.

1. On April 27, 1982, TRT Telecommunications Corporation ("TRT") requested a three week extension of time in which to file comments and replies, respectively, in the above-captioned matter. See Further Notice of Proposed Rulemaking ("IRC Further Notice"), FCC 82-187, (released April 21, 1982). There, we invited the public to comment by April 30, 1982, on whether the international record carriers ("IRCs") are non-dominant in their provision of domestic telex service, and what effect their entry will have on Western Union Telegraph Company's market power. In so doing, we proposed to expand the scope of the Competitive Carrier Rulemaking to include the IRC's domestic offerings.[1]

2. In support of its request, TRT claims that the IRCs are now undertaking to comply with the requirements of the Record Carrier Competition Act of 1981 ("RCCA"), as well as the Commission's order in Docket No. 82-122 for establishment and implementation of interconnection arrangements mandated

[1] Notice of Inquiry and Proposed Rulemaking (CC Docket No. 79-252), 77 FCC 2d 308 (1979), First Report and Order, 85 FCC 2d 1 (1980), Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981).

by the RCCA. See Interim Order, FCC–82–158 (released April 8, 1982). TRT asserts that its involvement in this proceeding has made compliance with the IRC Further Notice's comment period (*i.e.*, seven days) unworkable. In any event, it maintains, assessment of the IRCs' non-dominance will be impossible until these interconnection arrangements have been implemented.

3. We disagree with the contention that it is premature for the Commission to solicit information on the IRCs' role in the domestic market. As the Commission itself observed in the IRC Further Notice, n. 4, certain IRCs already have effective tariffs on file for provision of domestic telex service. Moreover, we believe that sufficient progress has been made in the interconnection proceeding to enable parties to comment on the competitive impact of the IRC's domestic entry.

4. The IRC Further Notice established a relatively short comment period in order to facilitate an expeditious resolution of the issues pending in the Competitive Carrier docket. While this concern remains paramount, we also believe TRT has shown good cause for an extension, albeit a more limited one than requested. We conclude that a two week extension of the comment and reply periods, respectively, will best enable us to accommodate these competing considerations. We therefore will allow the parties until May 14, 1982 to file comments, and until May 28, 1982 to file replies.

5. Accordingly, it is ordered That the petition for extension of time filed by TRT Telecommunications Corporation is granted to the extent indicated above, and is otherwise denied.

6. It is further ordered That this order shall be published in the **Federal Register**, but shall be effective upon its release.

Federal Communications Commission.

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc 82–12644 Filed 5–6–82; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 47, No. 89
Friday, May 7, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Services

Certain Stockyards and Livestock Markets; Notice of Approval and Withdrawal of Approval

Correction

In FR Doc. 82–9517 appearing at page 15381 in the issue for Friday, April 9, 1982, please make the following correction:

On page 15388, in the first column, after the last entry in the table "'Torrington Livestock Commission Co." delete all material to the end of the document. The material to be deleted begins with "The State of New York" and ends with "*Services*". The "FR Doc." line and Billing Code, however, are correct.

In place of the deleted material please insert the following:

"*Effective Date:* The foregoing notice shall become effective on April 9, 1982.

Done at Washington, D.C., this 5th day of April 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services."

BILLING CODE 1505–01–M

Rural Electrification Administration

Continental Telephone Company of Missouri; Wentzville, Missouri; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 320–22, "Guarantee of Loans for Telephone Facilities," dated February 4, 1975, published in proposed form in the **Federal Register**, September 16, 1974 (Vol. 39 No. 180, pages 33228–33229), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $32,500,000 to Continental Telephone Company of Missouri, Wentzville, Missouri. The loan funds will be used to finance the construction of facilities to extend telephone service to new subscribers, and improve telephone service for existing subscribers.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information and details of the proposed project from Mr. Eugene J. Fix, President, Continental Telephone Company of Missouri, P.O. Box 307, Wentzville, Missouri 63385.

To assure consideration, proposals must be submitted June 7, 1982 to Mr. Eugene J. Fix. The right is reserved to given such consideration and make such evaluation or other disposition of all proposals received, as Continental Telephone Company of Missouri and REA deem appropriate. Prospective lenders are advised that it is anticipated that financing for this project will be available from the Federal Financing Bank under a standing loan commitment agreement with the Rural Electrification Administration.

Copies of REA Bulletin 320–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

Dated at Washington, D.C., this 29th day or April, 1982.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 82–12343 Filed 5–6–82; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Cushman Road Agricultural Land Drainage RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cushman Road Agricultural Land Drainage RC&D Measure Plan, Franklin County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns argicultural land drainage to relieve wetness problems that are extensive enough to adversely effect the communities efficiency of land use, level of income, and quality of the environment. The planned works of improvement include modification of 8,225 feet of existing channel by clearing and deepening to a depth of approximately 5 feet, revegetation of disturbed areas, and installation of side inlets for surface water control.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**. (June 7, 1982).

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 26, 1982.

Paul A. Dodd,

State Conservationist.

[FR Doc. 82–12286 Filed 5–6–82; 8:45 am]

BILLING CODE 3410–16–M

Asticou Gardens RC&D Measure, Maine; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Asticou Gardens Critical Area Treatment RC&D Measure, Hancock County, Maine.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Abercrombie, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone (207) 866–2132.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Billy R. Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include removing sediment and installing two sediment basins. Conservation practices include sediment control basins and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register** (June 7, 1982).

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 28, 1982.

Billy R. Abercrombie,

State Conservationist.

[FR Doc. 82–12379 Filed 5–6–82; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 10:00 a.m., and will end at 12 noon, on May 26, 1982, at the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110. The purpose of this meeting is to hold a news conference to issue a report on teacher layoffs and to announce a new project on successful affirmative action efforts in Massachusetts.

Persons desiring additional information should contact the Chairperson, Bradford E. Brown, 17 Roberta Jean Circle, Post Office Box 95, East Falmouth, Massachusetts, 02536, (617) 548–5123 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–12305 Filed 5–6–82; 8:45 am]

BILLING CODE 6335–01–M

Oregon Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 12:00 p.m., and will end at 5:00 p.m., on May 26, 1982, at the Portland Hilton, 921 South West Sixth, in the Studio Suite, Portland, Oregon, 97204. The purpose of this meeting is to orientate the new members of the Advisory Committee and to discuss program plans for the remaining period of Fiscal Year 1982.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Thomas J. Sloan, 215 North West Orchard Drive, Portland, Oregon, 97229, (503) 627–8127 or the Northwestern Regional Office, 915 Second Avenue, Room 2852, Seattle Washington, 98174, (206) 442–1246.

The meeting will be conducted to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–12306 Filed 5–6–82; 8:45 am]

BILLING CODE 6335–01–M

Texas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 8:30a, and will end at 10:00p, on May 27, 1982, at the Sheraton Crest Inn, 111 East First Street, Austin, Texas. The purpose of this meeting will be to conduct a consultation on block grants in Texas.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Denzer Burke, 1421 Pine Street, Texarkana, Texas 75501, (214) 794–9741 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas 78204, (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–12307 Filed 5–6–82; 8:45 am]

BILLING CODE 6335–01–M

Virginia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:00p and will end at 5:00p, on May 20, 1982, at the John Marshall

Hotel, Fifth and Franklin Streets, Richmond, Virginia 23219. The purpose of this meeting is to discuss plans for a forum on migrant and seasonal farmworkers, and programs plans for the remainder of the fiscal year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Reverend Curtis W. Harris, 209 Terminal Street, Hopewell, Virginia 23860, (804) 458–7404 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Room 510, Washington, D.C. 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-12306 Filed 5-6-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to review status reports on the development of fishery management plans, consider foreign fishing applications, if any, and conduct other fishery management business.

DATES: The public meetings will convene on Wednesday, June 2, 1982, at approximately 10:30 a.m., and will adjourn at approximately 5 p.m.; reconvene on Thursday, June 3, 1982, at approximately 8:30 a.m., and will adjourn at approximately noon.

ADDRESS: The public meetions will take place at the Prince Charles Room of the Oak Manor Motor Hotel, 8181 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228–2815.

Dated: May 3, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-12400 Filed 5-6-82; 8:45 am]

BILLING CODE 3510-22-M

Taking of Engangered Species; Issuance of Permit

On October 1, 1981, Notice was published in the **Federal Register** (46 FR 48324) that an application had been filed with the Fish and Wildlife Service by Lawler, Matusky and Skelly Engineers, One Blue Hill Plaza, Peal River, New York 10965 for a permit to capture, weigh, measure, and release shortnose sturgeon (*Acipenser brevirostrum*) in the Hudson River diring fisheries monitoring research. The application was transmitted to the National Marine Fisheries Service for processing.

Notice is hereby given that on May 3, 1982, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to Lawler, Matusky and Skelly Engineers, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: May 3, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-12401 Filed 5-6-82; 8:45 am]

BILLING CODE 3510-22-M

Southeast Fisheries Center; Modification

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) the Scientific Research Permit No. 267 issued to the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149 (44 FR 37024) is modified as follows:

Section B–2 is deleted and replaced by the following: "2. This Permit is valid with respect to the authorized taking until December 31, 1984."

This modification becomes effective May 7, 1982.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149.

Dated: April 28, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-12402 Filed 5-6-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Level of Restraint for Certain Cotton Fabrics From Thailand

May 4, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by 3 million square yards the consultation level of 8 million square yards established for other woven cotton fabrics, such as lawn and voile, among others, in Category 320, produced or manufactured in Thailand and exported during the twelve-month period which bagan on January 1, 1982. The new level will be 11 million square yards.

(A detailed described description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), and February 9, 1982 (47 FR 5926)).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand provides consultation levels for certain categories of textile products, such as Category 320, which are not subject to specific ceilings and which may be adjusted upon agreement between the two governments. At the request of the Government of Thailand,

the Government of the United States has agreed to increase the level for cotton textile products in Category 320 by 3 million square yards to 11 million square yards.

EFFECTIVE DATE: May 4, 1982.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61689) a letter dated December 14, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements establishing levels of restraint for certain categories of cotton, wool, and man-made fiber textile products, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982. The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amends the letter of December 14, 1981 to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 320, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982, in excess of the increased level of 11 million square yards.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

May 4, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 14, 1981, from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Thailand, in excess of designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 4, 1982 and for the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 320, produced or manufactured in Thailand, in excess of 11 million square yards.[1]

The actions taken with respect to the Government of Thailand and with respect to imports of cotton textile products have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-12843 Filed 5-6-82; 11:13 am]

BILLING CODE 3510-25-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 80-4]

Partial Distribution of 1979 Cable Royalty Fees; Request for Comments

AGENCY: Copyright Royalty Tribunal.

ACTION: Request for comments on possible partial distribution of the 1979 cable royalty fees.

SUMMARY: The Copyright Royalty Tribunal (Tribunal) published in the **Federal Register** of March 8, 1982 (47 FR 9879–9900) its final determination concerning the 1979 Cable Royalty Fees Distribution Proceeding.

Several parties filed petitions for judicial review of the Tribunal's final determination. On April 23, 1982, a joint motion for a partial distribution of 50% of the 1979 cable royalty fees to the claimant categories in the same proportionate shares as the categories were allocated in the Tribunal's Notice of Final Determination (47 FR 9879) was filed with the Tribunal by the following parties:

1. Program Suppliers, represented by the MPAA and the following other companies in this category: Multimedia, SIN, Mutual of Omaha and NAB.
2. Joint Sports Claimants and NCAA.
3. Public Broadcasting Service.
4. U.S. Television Broadcasters.
5. Music Performing Rights Societies (ASCAP, BMI, SESAC).
6. Canadian Television Broadcasters.
7. National Public Radio.

The Tribunal approved a similar motion in the 1978 Cable Royalty Fees Distribution Proceeding (46 FR 21637), which order was upheld by the Court of Appeals for the District of Columbia Circuit.

The Tribunal now invites comments on whether there should be a partial distribution of the 1979 cable royalty fees. Any comments on this subject shall be submitted not later than May 20, 1982. Reply comments may be submitted not later than May 24, 1982. The Tribunal will consider this item at a meeting to be held on May 26, 1982 at 2:00 p.m. at the Postal Rate Commission, 2000 L Street, N.W., Room 500, Washington, D.C. 20036.

ADDRESS: Comments shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street, N.W., Rm. 450 Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Commissioner Frances Garcia, Chairman, (202) 653–5157.

Dated: May 4, 1982.

Frances Garcia,

Chairman.

[FR Doc. 82-12836 Filed 5-6-82; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant a Limited Exclusive License to Swiss Serum and Vaccine Institute Berne

Pursuant to the provisions of the General Services Administration's temporary licensing regulations, the Department of the Army announces its intention to grant to Swiss Serum and Vaccine Institute Berne of Berne, Switzerland, a limited exclusive license under U.S. Patent Application Serial Number 289,013 filed July 31, 1981, entitled "Oral Vaccine for Immunization Against Enteric Disease" invented by Samuel B. Formal.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Intellectual Property Division, Office of The Judge Advocate General, Department of the Army, Washington, DC 20310 within 60 days of this notice.

For further information concerning this notice, contact: LTC Neil K. Nydegger, HQDA (DAJA–IP) Pentagon,

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1981.

Room 2D 444, Washington, DC 20310, Telephone No. 695–9356.

John O. Roach II,

Army Liaison Officer With the Federal Register.

[FR Doc. 82–12540 Filed 5–6–82; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Defense Science Board Task Force on Continuous Patrol Aircraft (CPA): Advisory Committee Meeting

The Defense Science Board Task Force on Continuous Patrol Aircraft will meet in closed session on May 28 1982 in Washington, D.C.

The mission of the mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on 28 May 1982, the Task Force will continue discussions on the survivability of continuous patrol aircraft.

In accordance with 5 U.S.C. App. 1 § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 4, 1982.

[FR Doc. 82–12480 Filed 5–6–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Rapid Deployment Forces (RDF): Advisory Committee Meeting

The Defense Science Board Task Force on Rapid Deployment Forces will meet in closed session on 2–3 June 1982 at MacDill Air Force Base, Florida.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on 2–3 June 1982, the Task Force will conclude discussions on the application of technology to rapidly deploying forces.

In accordance with 5 U.S.C. App. 1 § 10(d)(1976), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 4, 1982.

[FR Doc. 82–12487 Filed 5–6–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Delegation of Authority to Issue Interpretations of DOE Regulations to the Assistant General Counsel for Coal Regulations, the Assistant General Counsel for Conservation and Renewable Energy, the Assistant General Counsel for Natural Gas and Mineral Leasing and the Assistant General Counsel for Regulatory Oversight

AGENCY: Department of Energy.

ACTION: Notice of delegations.

SUMMARY: Notice is hereby given of delegations of the DOE General Counsel's authority to issue interpretations of the DOE regulations, to the Assistant General Counsel for Coal Regulations, the Assistant General Counsel for Conservation and Renewable Energy, the Assistant General Counsel for Natural Gas and Mineral Leasing, and the Assistant General Counsel for Regulatory Oversight. In light of the dissolution of the Office of Interpretations and Rulings, the delegation of authority to issue interpretations of the DOE regulations to the Assistant General Counsel for Interpretations and Rulings has been revoked. In its place, the above-referenced Assistant General Counsels have been delegated the authority to issue interpretations of regulations for which they are responsible.

EFFECTIVE DATE: April 27, 1982.

FOR FURTHER INFORMATION CONTACT: Barbara D. Sherman, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252–8618.

Issued in Washington, D.C. on April 27, 1982.

R. Tenney Johnson,

General Counsel.

Delegation of Authority to the Assistant General Counsel for Natural Gas and Mineral Leasing

Pursuant to the authority vested in me as the General Counsel of the Department of Energy (DOE), there is hereby delegated to the Assistant General Counsel for Natural Gas and Mineral Leasing, on a nonexclusive basis, the authority:

(1) To issue interpretations of regulations promulgated under the Natural Gas Act and the Natural Gas Policy Act.

(2) To sign and documents, relating to such interpretations, submitted to the **Federal Register** for publication.

The authority delgated herein shall not be further delegated in whole or in part.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the General Counsel or his delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

Nothing in this Order shall preclude the General Counsel from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

The authority delegated on April 6, 1978 to the Assistant General Counsel for Interpretations and Rulings is revoked.

This Order is effective April 27, 1982.

R. Tenney Johnson,

General Counsel.

Delegation of Authority to the Assistant General Counsel for Coal Regulations

Pursuant to the authority vested in me as the General Counsel of the Department of Energy (DOE), there is hereby delegated to the Assistant General Counsel for Coal Regulations, on a nonexclusive basis, the authority:

(1) To issue interpretations of regulations promulgated under the Power Plant and Industrial Fuel Use Act of 1978 and the Energy Supply and Environmental Coordination Act of 1974.

(2) To sign any documents, relating to such interpretations, submitted to the **Federal Register** for publication.

The authority delegated herein shall not be further delegated in whole or in part.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the General Counsel or his delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

Nothing in this Order shall preclude the General Counsel from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

The authority delegated on April 6, 1978 to the Assistant General Counsel for Interpretations and Rulings to issue interpretations is revoked.

This Order is effective April 27, 1982.

R. Tenney Johnson,

General Counsel.

Delegation of Authority to the Acting Assistant General Counsel for Conservation and Renewable Energy

Pursuant to the authority vested in me as the General Counsel of the Department of Energy (DOE), there is hereby delegated to the Assistant General Counsel for Conservation and Solar Energy, on a nonexclusive basis, the authority:

(1) To issue interpretations of regulations promulgated under the Energy Security Act; the Energy Policy and Conservation Act; the Automobile Fuel Efficiency Act; the Emergency Energy Conservation Act of 1979; the Energy Conservation and Production Act; the National Energy Conservation Policy Act; and the National Energy Extension Service Act.

(2) To sign any documents, relating to such interpretations, submitted to the Federal Register for publication.

The authority delegated herein shall not be further delegated in whole or in part.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the General Counsel or his delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

Nothing in this Order shall preclude the General Counsel from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

The authority delegated on April 6, 1978 to the Assistant General Counsel for Interpretations and Rulings is revoked.

This Order is effective April 27, 1982.

R. Tenney Johnson,

General Counsel.

Delegation of Authority To the Assistant General Counsel for Regulatory Oversight

Pursuant to the authority vested in me as the General Counsel of the Department of Energy (DOE), there is hereby delegated to the Assistant General Counsel for Regulatory Oversight, on a nonexclusive basis, the authority:

(1) To issue interpretations of regulations promulgated under the Emergency Petroleum Allocation Act of 1973, as amended.

(2) To sign any documents, relating to such interpretations, submitted to the Federal Register for publication.

The authority delegated herein shall not be further delegated in whole or in part.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the General Counsel or his delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

Nothing in this Order shall preclude the General Counsel from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

The authority delegated on April 6, 1978 to the Assistant General Counsel for Interpretations and Rulings is revoked.

This Order is effective April 27, 1982.

R. Tenney Johnson,

General Counsel.

[FR Doc. 82-12305 Filed 5-6-82; 8:45 am]

BILLING CODE 6450-01-M

U.S. and European Atomic Energy Community; Proposed Subsequent Arrangements for Peaceful Uses of Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval for the following sales:

Contract Number S–EU–732, to the Office des Rayonnements Ionisants, France, 575.9 grams of natural uranium for use as standard reference material.

Contract Number S–EU–733, to the University of Durham, the United Kingdom, 29.45 grams of natural uranium, and 5.1 grams of thorium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subesequent arrangements will take effect no sooner than May 24, 1982.

Dated: May 3, 1982.

For the Department of Energy.

Harold D. Bengelsdorf,

Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-12304 Filed 5-6-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Action Taken on Consent Order; Guam Oil and Refining Company, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Guam Oil and Refining Company, Inc. (GORCO) as a final order of the Department.

EFFECTIVE DATE: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, RG–30, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–9165.

SUPPLEMENTARY INFORMATION: On January 7, 1982, 47 FR 844, the ERA published a notice in the Federal Register that it had executed a proposed Consent Order with GORCO on December 18, 1981, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

After careful consideration of the comments received in response to the Notice of Proposed Consent Order, the following modifications to the Consent Order have been made:

(1) The $2.5 million paid pursuant to the Consent Order shall be deposited into the Deposit Fund Escrow Account of the U.S. Treasury for future disposition by the ERA.

(2) The Consent Order shall become final upon execution of the Consent Order as modified.

Six comments were received. None of the comments objected to the settlement. Citing the recent decision of the Temporary Emergency Court of Appeals in *Citronelle-Mobile Gathering, Inc. v. Edwards*, Nos. 5–60 and 5–61 (January 21, 1982), each of the comments questioned the appropriateness of making a payment to the U.S. Treasury, rather than having payments made to allegedly overcharged customers. Three of the comments also suggested that with respect to alleged violations relating to GORCO's participation in the Entitlements Program, all of the refiners that participated in the program should receive refunds.

Unlike the facts underlying this Consent Order, the *Citronelle* case dealt with a contested remedial order in

which overcharges were adjudicated and purchasers identified. In any event, it has been DOE's practice to provide, when possible, for refunds to be made directly to those customers who DOE believes bore the ultimate burden of the violation. DOE regulations at 10 CFR 205.199I, provide for refunds to such injured purchasers even when they purchased petroleum products from intermediate distributors. However, for a variety of reasons, it is not always possible to identify specific customers as injured or to determine the extent of their injury. This is particularly so concerning the Entitlements Program.

DOE's dispute with GORCO primarily concerned GORCO's compliance with the Entitlements Program. Several comments suggested that it should be possible to compute the effect of reversing the entitlements benefits received by GORCO to determine the impact on the Entitlement Program. While it may be theoretically possible to do so, we do not believe it is administratively feasible, particularly if such a recalculation were required each time an entitlements dispute was resolved. The administrative burden would be multiplied by the need to monitor the reissuance of orders for the months involved and to determine the impact on each refiner's price determinations for product sold and resold in the distribution chain. Furthermore, each refiner's opportunity to pass through increased costs suggests that a refiner whose entitlements burden was increased did not necessarily bear the burden of GORCO's action.

Notwithstanding the foregoing, DOE will consider further the disposition of the monies to be paid by GORCO pursuant to the Consent Order. However, because this review will not involve GORCO's obligation under the Consent Order, we determined to make the Consent Order final. The funds will be deposited into an escrow account maintained by the DOE. We will determine the appropriate use of these funds. GORCO will have no responsibility in this decision.

Accordingly, DOE and GORCO executed a Consent Order with the modifications noted above which was effective on the date of execution, April 1, 1982.

Issued in Washington, D.C. on the 26th day of April 1982.

Milton C. Lorenz,

Special Counsel.

[FR Doc. 82-12391 Filed 5-6-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

Correction

In FR Doc. 82-10948 appearing on page 16883 in the issue of Tuesday, April 20, 1982, make the following correction. On page 16884, first column, in the table, the "Dollars per million Btu's" for "Virginia", the figure "3.71" should read "3.61".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket No. ER75-530-000]

Arizona Public Service Co.; Notice of Refund

April 29, 1982.

Take notice that on April 19, 1982, Arizona Public Service Company filed a refund report pursuant to the Commission's order on remand issued January 25, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 14, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12412 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-69-000]

Arkansas Louisiana Gas Co.; Proposed Change in FERC GAS Tariff

April 29, 1982.

Take notice that on April 12, 1982, Arkansas Louisiana Gas Company (Arkla) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 3, all of which are dated as issued on April 9, 1982, proposed to be effective thirty days after filing (or earlier as authorized), and identified as follows:

First Revised Sheet No. 180, Superseding Original Sheet No. 180
First Revised Sheet No. 182, Superseding Original Sheet No. 182
Eight Revised Sheet No. 185, Superseding 27th Revised Sheet No. 185
Third Revised Sheet No. 186, Superseding First Substitute Second Revised Sheet No. 186

Arkla states that it only has FERC rate schedules for pipeline-type sales:

(1) Rate Schedule X-26 covering Arkla's sale for resale to Cities Service Gas Company at Jane, Missouri; and
(2) Rate Schedule G-2 that Arkla inherited when it acquired the properties of another gas company in 1960, under which Arkla is still selling gas for resale to several relatively small city-gate customers in Oklahoma and Kansas.

In addition, Arkla states that a source of inconvenience and potential confusion in their rate cases for many years has been the fact that the pressure base for measurement purposes in Arkla's Rate Schedule X-26 is 14.65 psia while the pressure base in Rate Schedule G-2 is FERC's regular pipeline standard 14.73.

Consequently, Arkla, to correct this historical anomaly in its Gas Tariff, has amended the several affected provisions in the contract between the parties to change the pressure base in Rate Schedule X-26 to 14.73 psia in order to be consistent with the pressure base in Arkla's other Rate Schedule G-2.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12417 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-713-000]

Arkansas Power and Light Co.; Notice of Refund

April 29, 1982.

Take notice that on April 20, 1982, Arkansas Power and Light Company filed a refund compliance report pursuant to the Commission's order issued March 9, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or

before May 14, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12418 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-344-000]

Carolina Power & Light Co.; Notice of Refund Report

April 28, 1982.

Take notice that on April 23, 1982, Carolina Power & Light Company filed a refund compliance report pursuant to the Commission's order issued March 25, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 11, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12413 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-467-000]

The Cleveland Electric Illuminating Co.; Notice of Filing

April 29, 1982.

The filing company submits the following:

Take notice that on April 20, 1982, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 50 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on April 1, 1982.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12414 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4075-001]

Consolidated Hydroelectric, Inc.; Notice of Application for License (5MW or Less)

April 29, 1982.

Take notice that Consolidated Hydroelectric, Inc. (Applicant) filed on March 26, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the East Fork Indian Creek Project No. 4075. The project would be located on East Fork Indian Creek in Siskiyou County, California. Correspondence with the Applicant should be directed to: Terence L. O'Rourke, Consolidated Hydroelectric, Inc., 434 Redcliff Drive, Redding, California 96002.

Project Description—The proposed project would consist of: 1) An 8-foot high rock-filled gravity diversion structure with a fishladder; 2) a concrete intake structure; 3) a 12,135-foot long low pressure buried pipeline; 4) a 3,360-foot long, 48-inch diameter steel penstock; 5) a powerhouse containing two generating units, each rated at 2.35 MW; 6) a 3-mile long access road; and 7) a 3-mile long, 69-kV transmission line. The average annual energy generation is estimated to be 12.4 million kWh.

Purpose of Project—The energy generated by the project would be sold to the Pacific Power & Light Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, or before July 1, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12421 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-474-000]

Florida Power & Light Co.; Notice of Tariff Change

April 30, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on April 22, 1982, tendered for filing the following tariff sheets as a part of its FPC Electric Tariff, Original Volume No. 1: Second Revised Sheet No. 2, Third Revised Sheet No. 23, Original Sheet No. 24 and Original Sheet No. 25.

FPL states that the Second Revised Sheet No. 2 is a revised Table of Contents and Third Revised Sheet No. 23, Original Sheet No. 24 and Original Sheet No. 25 are a revised Index of Customers and Delivery Points as of April 1, 1982.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the filed tariff sheets be made effective April 1, 1982.

Copies of the filing were served upon FPL's sales-for-resale customers and upon the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR Section 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12422 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-470-000]

Interstate Power Co.; Notice of Filing

April 29, 1982.

The filing Company submits the following:

Take notice that Interstate Power Company (Interstate) on April 22, 1982, tendered for filing an electric service agreement dated March 29, 1982 with the City of Springfield, Minnesota. The substitute Amendment described above provides for the delivery of firm power and energy Interstate receives from Western Area Power Administration (WAPA) for delivery to the City. A transmission service charge of 4.34 miles per Kwh will be applicable to energy deliver as described above. The transmission service charge is the same as that approved in Docket ER76-555 and applied to other wholesale towns which receive wheeling service.

Interstate requests waiver of the Commission's notice requirements to allow for an effective date of March 29, 1982.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12610 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES-82-51-000]

Iowa Electric Light & Power Co.; Notice of Application

April 30, 1982.

Take notice that on April 26, 1982, the Iowa Electric Light and Power Company (Applicant) filed an application pursuant ot Section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authority to issue and sell 1,000,000 shares of Common Stock pursuant to the Company's Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make protest with reference to this Application should on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12423 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-468-000]

Kansas City Power & Light Co.; Notice of Filing

April 29, 1982.

The filing Company submits the following:

Take notice that on April 21, 1982, Kansas City Power & Light Company (KCPL) filed with the Commission revised Service Schedules for Firm Power Service to supersede and replace Service Schedules for Firm Power Service in contracts and agreements with the following wholesale customers:

1. Missouri Power & Light Company (MPL), FPC No. 73.
2. City of Marshall, Missouri (Marshall), FPC No. 83.
3. Missouri Public Service Company (MPS), FPC No. 74.
4. City of Gardner, Kansas (Gardner), FPC No. 79.
5. City of Higginsville, Missouri (Higginsville), FERC No. 91.
6. City of Pomona, Kansas (Pomona), FPC No. 82.
7. City of Prescott, Kansas (Prescott), FPC No. 76.
8. City of Salisbury, Missouri (Salisbury), FERC No. 87.
9. City of Slater, Missouri (Slater), FPC No. 81.
10. City of Baldwin City, Kansas (Baldwin), FERC No. 85.
11. City of Carrollton, Missouri (Carrollton), FERC No. 86.
12. City of Garnett, Kansas (Garnett), FPC No. 78.
13. City of Osawatomie, Kansas (Osawatomie), FPC No. 77.
14. City of Ottawa, Kansas (Ottawa), FERC No. 90.
15. Coffey County Rural Electric Cooperative Association, Inc. (Coffey County), FPC No. 69.
16. United Electric Cooperative, Inc. (United), FPC No. 84.
17. Kansas Electric Power Cooperative, Inc.—Coffey County (KEPCo-Coffey), FPC No. 69.
18. Kansas Electric Power Cooperative, Inc.—United (KEPCo-United), FPC No. 84.

KCPL states that proposed effective date for each new Schedule of Rates and Charges is June 20, 1982, or in the alternative, June 21, 1982, and that the new Schedules of Rates and Charges reflect an increase of $978,910 in annual revenues to KCPL based on its cost of service to wholesale firm power customers during the 12-month test period ended December 31, 1981. Additionally, KCPL states that the changes embodied in the new Service Schedules include only changed rates for Demand and Energy Charges and minor wording changes to standardize schedule formats.

Any person desiring to be heard to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party a must file a petition to intervene. Copies of KCPL's submittal are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12426 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-453-000]

Kansas Gas & Electric Co.; Notice of Filing

April 29, 1982.

The filing Company submits the following:

Take notice that on April 9, 1982, Kansas Gas and Electric Company (KG&E) tendered for filing Exhibits A and C of the Transmission Agreement tendered for filing on January 28, 1982, between KG&E and Kansas Electric Power Cooperative (KEPCo).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12425 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-104-000]

Koppers Co., Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 30, 1982.

On April 1, 1982, Koppers Co., Inc., Organic Materials Group, Pittsburgh,, Pennsylvania 15219 filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located in Oroville, California. The electric power production capacity of the facility will range from 3.0 megawatts with 30,000 1b/hr, 65 psi extraction steam, to 5.5 megawatts with zero extraction, depending on the plant's need of process steam. The primary energy source will be biomass in the form of wood waste and agricultural waste products. Installation of the facility will begin in January 1988. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 7, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12424 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4861-001]

Modesto Irrigation District; Application for Preliminary Permit

May 3, 1982.

Take notice that Modesto Irrigation District (Applicant) filed on August 12, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 4861 to be known as the Kanaka Creek Project located on Kanaka Creek in the Tahoe National Forest in Sierra County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231–11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) A 6-foot-high, 100-foot-long diversion structure located at elevation 2,850 feet; (2) a 60-inch-diameter, 3,700-foot-long conduit; (3) a 38-inch-diameter, 720-foot-long penstock; (4) a powerhouse at elevation 2,350 feet containing a single 4,700-kW generating unit; and (5) associated electrical and transmission equipment. Applicant estimates that the project would generate an average of 41,400 MWh annually.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorized construction. During the term of the permit Applicant would conduct engineering, financial, and environmental feasibility studies. Applicant estimates that the studies will cost $45,000.

Competing Applications—This application was filed as a competing application to Consolidated Hydroelectric, Inc.'s application for Project No. 4100 filed on February 2, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or § 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be

obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12425 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-71-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 29, 1982.

Take notice that Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), on April 26, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase revenues from jurisdictional sales and transportation services by $169,992,742 annually, based on sales volumes, transportation volumes, and costs for the twelve months ended January 31, 1982, as adjusted for the Test Period. In addition, the proposed changes would modify the Tariff to provide for a Btu adjusted billing procedure for commodity sales volumes, to revise the contract overrun provisions, and to revise the Billing and Payment provisions.

Northern states the principal reasons for the proposed rate increase are (1) increased costs of obtaining new gas supplies; (2) the need to provide a return of 15.12% on its utility investment; (3) loss of revenues due primarily to reduction in sales volumes; and (4) increased costs of operations.

The company states that copies of the filing have been mailed to each of its Gas Utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before May 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12427 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-471-000]

Pacific Power & Light Co.; Notice of Filing

April 30, 1982.

The filing Company submits the following:

Take Notice that Pacific Power & Light Company (Pacific) on April 23, 1982, tendered for filing, in accordance with § 35.13a(d) Part IV of the Commission's Interim Rule (Docket No. RM81-41), Pacific's Revised Appendix 1 for the state of Oregon dated November 8, 1981. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective November 8, 1982, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville and the Oregon Public Untility Commissioner.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-12428 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER79-478-002]

Public Service Company of New Mexico; Notice of Compliance Filing

April 29, 1982.

The filing Company submits the following:

Take notice that on April 14, 1982, the Public Service Company of New Mexico filed revisions to the rate schedule for service to the City of Gallup, New Mexico, filed on March 31, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 17, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12429 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-489-000]

Southern Company Services, Inc.; Notice of Filing

April 30, 1982.

The filing Company submits the following:

Take notice that on April 26, 1982, Southern Company Services, Inc. on behalf of Alabama Power Company,

Georgia Power Company, Gulf Power Company, and Mississippi Power Company (The Southern Companies), tendered for filing a power sale agreement providing for a long term power sale from the Southern Companies to Savannah Electric and Power Company. The power sale agreement between the Southern Companies and Savannah Electric and Power Company provides for a long term power sale from the Southern Companies to Savannah Electric and Power Company and specifies the rates for capacity and energy transactions to be conducted pursuant to such agreement.

Southern Companies requests an effective date of June 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12430 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-466-000]

Utah Power & Light Co.; Notice of Filing

April 29, 1982.

The filing Company submits the following:

Take notice that on April 20, 1982, Utah Power & Light Company (Utah) tendered for filing Appendix 1 to Residential Purchase and Sale Agreement between Utah and the Bonneville Power Administration (BPA).

Utah states that this filing applies to the exchange of power beginning on October 1, 1981 and continuing through February 28, 1982.

Copies of this filing have been sent to BPA and the Idaho Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12431 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-20-006]

Algonquin Gas Transmission Co.; Proposed Tariff Sheet

April 29, 1982.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 21, 1982, tendered for filing Third Revised Sheet No. 32 to its FERC Gas Tariff, First Revised Volume No. 1.

Algonquin Gas states that such filing is being made to reflect an increase from 1.02 cents to 1.43 cents under Section 6.4 ("Basic Withdrawal Quantity Adjustment") of the Rate Schedule STB Provisions of Algonquin Gas' FERC Gas Tariff, First Revised Volume No. 1.

Algonquin Gas further states that such increase was inadvertently omitted from its February 19, 1982 filing under Rate Schedule STB to track an increase under Texas Eastern Gas Transmission Corporation's ("Texas Eastern") Rate Schedule SS-II.

Algonquin Gas respectfully requests that the Commission grant any requisite special permissions to allow it to become effective February 14, 1982, the same date as the underlying rate change from Texas Eastern.

Algonquin Gas notes that a copy of this filing is being mailed to each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12419 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-472-000]

American Electric Power Service Corp.; Notice of filing

April 30, 1982.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on April 23, 1982, tendered for filing on behalf of its affiliate Ohio Power Company Modification No. 20 dated March 1, 1982 to the Operating Agreement dated June 14, 1982, between Ohio Power Company and the Cleveland Electric Illuminating Company.

Section 1 of this Agreement revises the Short Term Power Service Schedule to include a provision which shall allow either party to sell short term power on a daily basis at the rate of one-fifth (1/5) of their weekly demand rate. The terms and conditions of this proposed change are substantially the same as the short term power service schedule presently on file with the Commission between Indiana & Michigan Electric Company (an AEP operating subsidiary) and Illinois Power Company (Docket ER81-767-000) which has been accepted by the Commission by Letter Order dated November 9, 1981.

AEP requests an effective date of April 1, 1982, and therefore requests waive of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12439 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-128-007, et al.]

Alabama-Tennessee Natural Gas Company, et al.; Filing of Pipeline Refund Reports and Refund Plans

April 30, 1982.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may summit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 17, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Apr. 14, 1982	Alabama-Tennessee Natural Gas Company.	RP81-128-007	LFUT report.
Apr. 15, 1982	Northern Natural Gas Company	RP81-52-003	Report.
Apr. 15, 1982	Western Gas Interstate Company	RP81-10-006	Report.
Apr. 16, 1982	Transwestern Pipeline Company	RP82-24-001	LFUT report.
Apr. 19, 1982	Southern Natural Gas Company	RP81-105-014	LFUT report.
Apr. 9, 1982	Transcontinental Gas Pipe Line Corporation.	RP77-106-021	Report.
Apr. 22, 1982	Transwestern Pipeline Company	RP82-24-002	LFTU report.
Apr. 26, 1982	Arkansas Louisiana Gas Company	RP81-101-008	LFUT report.
Apr. 28, 1982	Florida Gas Transmission Company	RP81-7-005	Compliance report.
Apr. 28, 1982	Tennessee Gas Pipeline Company	RP81-44-004	Report.

[FR Doc. 82-12440 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-266-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Application

May 3, 1982.

Take notice that on March 30, 1982, Arkansas Louisiana Gas Company, a division of Arlka, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP82-266-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing with the date of the order and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant. Applicant request authorization herein to make routine rearrangements of facilities and service including taps and town border stations as necessary to accommodate more efficient natural gas distribution service. Such facilities, it is asserted, are required to meet growth needs of service areas served by Applicant's distribution system.

Applicant states that the total cost of the proposed facilities would not exceed $300,000 and would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12441 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6112-000]

Village of Chittenango, New York; Application for Preliminary Permit

May 3, 1982.

Take notice that the Village of Chittenango, New York (Applicant filed on March 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6112 to be known as the Chittenango Project located on Chittenango Creek in Madison County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Philip J. Movish, Senior Project Engineer, Daverman & Associates, P.C., 500 South Salina Street, Syracuse, New York 13202.

Project Description—The proposed run-of-river project would consist of: (1) An existing 137-foot long and 9-foot high stone masonry dam owned by the New York State Department of Transportation; (2) an existing reservoir with a surface area of 1.5 acres at a surface elevation of 1,192 feet m.s.l.; (3) modification of the existing controlled

spillway section to form an intake structure; (4) a proposed powerhouse containing one 100–kW tubular turbine/generator unit; (5) a proposed tailrace; (6) a proposed 250-foot long 13.2–kV transmission line; (7) a proposed electrical substation; and (8) appurtenant facilities. Applicant estimates that average annual energy output would be 400,000 kWh. Project energy would be sold to and/or exchanged with Niagara Mohawk Power Corporation.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 9, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 9,, 1982, and should specify the type of application forthcoming. Application for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12488 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6137-000]

Big Wood Canal Co.; Application for Exemption of Small Conduit Hydroelectric Facility

May 3, 1982.

Take notice that on March 29, 1982, The Big Wood Canal Company (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) (16 U.S.C. 823(a)), for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Black Canyon No. 3 Project (FERC Project No. 6137) would be located on Gooding Main Canal in Gooding County, near Gooding, Idaho. Correspondence with the Applicant should be directed to: Consulting Associates, Inc., Helen Chenoweth, P.O. Box 893, Boise, Idaho 83701.

Purpose of Project—The project energy would be sold to the Idaho Power Company.

Project Description—The proposed project would consist of: (1) Intake facilities; (2) a 350-foot long, 24-inch diameter steel penstock; (3) a powerhouse with a rated capacity of 150 kW operating under a head of 62 feet and with an average annual generation of 580,000 kWhs.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission,

Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12447 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6126-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 3, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on March 25, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6126 to be known as the Ohio River Lock and Dam No. 53 Hydroelectric Project located on the Ohio River, 11 miles upstream from Mound City, Illinois in Ballard County, Kentucky, and Pulaski County, Illinois. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Ohio River Lock and Dam No. 53 and would consist of: (1) A proposed powerhouse with generating units having an estimated installed capacity of 23,000 kW and producing an average annual energy output of 200 GWh; (2) a proposed ½-mile 161 kV transmission line to connect to an existing Union Electric Company line; and (3) appurtenant facilities. The proposed market for the power is Union Electric Company and Electric Energy, Inc.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant has requested a 36-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental, and economic feasibility studies. The cost of these activities along with obtaining agreements with the public utilities, consulting Federal, State, and local agencies, and preparing a license application is estimated by the Applicant at $50,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 9, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obainted by agencies directly from the Applicant.) If an agency not does file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petiton to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—An filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12448 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6102-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 5, 1982.

Take notice that ENERGENICS SYSTEMS, INC. (Applicant) filed on March 18, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6102 to be known as the Oologah Lake Dam Project located on the Verdigris River in Rogers and Nowata Counties, Oklahoma. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., ENERGENICS SYSTEMS, INC., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing Corps of Engineers' Oologah Dam and would consist of: (1) A new powerhouse containing one or more generating units with a total rated capacity of 2.3 MW; (2) existing 115-kV transmission lines, owned by the Verdigris Valley Electric Cooperative; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10.0 GWh. The most likely market for the energy derived at the proposed project is the Verdigris Valley Electric Cooperative.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 10, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application

for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12405 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6214-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 4, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on April 15, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r)] for Project No. 6214 to be known as the Curwensville Project located on the West Branch of the Susquehanna River in Clearfield County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the Corps of Engineers' constructed Curwensville Dam and Reservoir, and would consist of: 1) A new penstock 10 feet in diameter and 150 feet long; 2) a new powerhouse containing a crossflow turbine/generator unit operating under a head of 25 feet and rated at 1.75 MW; 3) a new tailrace 8.5 feet wide, 4.25 feet deep and 75 feet long; 4) a new 115-kV transmission line 5 miles long; and 5) appurtenant facilities. The 6,000,000 kWH of energy generated yearly by the project would be sold to the Pennsylvania Electric Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 9, 1982, the competing application itself [see: 18 CFR 4.30 et. seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12463 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6189-000]

Falling Waters Development, Inc. VIII; Notice of Application for Preliminary Permit

May 5, 1982.

Take notice that Falling Waters Development, Inc. VIII (Applicant) filed on April 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6189 to be known as the Falling Waters Development, Inc. VIII Project located on Mawah Creek, Near Weitchpec, in Humboldt County, California. The Application is on file with the Commission with the Commission and is avaialble for public inspection. Correspondence with the Applicant should be directed to: Mr. E. H. Ochinero, 2811 Bechelli Lane, Redding, California 96002.

Project Description—The project would consist of: (1) A 5-foot high, 10-long diversion structure; (2) a 800-foot long, 24-inch diameter conduit; (3) a 650-foot long, 18-inch diameter penstock; (4) a powerhouse with an installed capacity of 300 Kw and (5) a 0.5-mile long, 12-kV transmission line from the powerhouse to a proposed Falling Waters Development, Inc. transmission facility. The Applicant estimates that the average annual energy production would be 2.6 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental and economic studies; and prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $45,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 16, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 16, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 14, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, if an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12440 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6192-000]

Goldenwest Power; Application for Preliminary Permit

May 5, 1982.

Take notice that Goldenwest Power (Applicant) filed on April 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6192 to be known as the Tully Creek Power Project located on Tully Creek, near Weitchpec in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. E. H. Ochinero, 2811 Bechelli Lane, Redding, California 96002.

Project Description—The project would consist of: (1) A 5-foot high, 50-foot long diversion structure; (2) a 9,000-foot long, 60-inch diameter conduit; (3) a 1,100-foot long, 4 8-inch diameter penstock; (4) a powerhouse with an installed capacity of 1,300 kW; and (5) a 9-mile long, 12-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company transmission line. The Applicant estimates that the average annual energy production would be 11.4 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental and economic studies; and prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $45,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 16, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 F.R. 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to

submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 16, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 14, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12480 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6177-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 4, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6177 to be known as the Howard Creek Project located on Howard Creek, within the Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122 196th NE., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structure placed in the streambed at elevation 3,000 feet; (2) a diversion pipeline 10,000 feet long; (3) a powerhouse at 1,120 feet containing a turbine generator with 3.45 MW capacity and 15.13 GWh annual energy production; and (4) a transmission line 7 miles long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept application for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriated].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12464 Filed 5-6-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6179-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 4, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6179 to be known as the Upper Found Creek Project located on Found Creek, within the Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122-196th NE., Redmond, Washington 98052.

Project Description—The proposed project would consist of (1) a 36-inch wide concrete intake structure place in the streambed at elevation 3,000 feet; (2) a diversion pipeline 6,000 feet long; (3) a powerhouse at 2,000 feet containing a turbine generator with 1.87 MW capacity and 8.2 GWh annual energy production; and (4) a transmission line 8 miles long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any Application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12465 Filed 5-6-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6182-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 4, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6182 to be known as the Excelsion Creek Project located on Excelsion Creek, within Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122—196th NE., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structure placed in the streambed at elevation 2,000 feet; (2) a diversion pipeline 4,000 feet long; (3) a powerhouse at 1,100 feet containing a turbine generator with 1.63 MW capacity and 7.15 GWh annual energy production; and (4) a transmission line 4 miles long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic, environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response

to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12466 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6184-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 4, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6184 to be known as the Goblin Creek Project located on Goblin Creek, within Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122—196th NE., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structure placed in the streambed at elevation 3,000 feet; (2) a diversion pipeline 10,000 feet long; (3) a powerhouse at 1,920 feet containing a turbine generator with 1.98 MW capacity and 8.66 GWh annual energy production; and (4) a transmission line 14 miles long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimate cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12487 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4869-001]

Modesto Irrigation District; Application for Preliminary Permit

May 4, 1982.

Take notice that Modesto Irrigation District (Applicant) filed on August 14, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 4869 to be known as the Deadwood Creek Project located on Deadwood Creek in the Plumas National Forest in Yuba County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231–11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) A 5-foot-high, 40-foot-long diversion structure located at elevation 2,975 feet; (2) a 42-inch-diameter, 4,000-foot-long conduit; (3) a 42-inch-diameter, 1,150-foot-long penstock; (4) a powerhouse at elevation 2,250 feet containing a single 2,750-kW generating unit; and (5) associated electrical and transmission equipment. Applicant estimates that the project would generate an average of 23,900 MWh annually.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. During the term of the permit Applicant would conduct engineering, financial, and environmental feasibility studies. Applicant estimates that the studies will cost $45,000.

Competing Applications—This application was filed as a competing application to Consolidated Hydroelectric, Inc.'s application for Project No. 4382 filed on March 23, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12488 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-153-001]

Mountain Fuel Supply Co.; Amendment to Application

May 3, 1982.

Take notice that on March 29, 1982,[1] Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP82-153-001 an amendment to its application in the instant docket filed pursuant to Section 7(c) of the Natural Gas Act so as to reflect its intention to utilize the Red Wash interconnection in Utah as a redelivery point to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant submits that in its application it requested pursuant to a gas transportation and exchange agreement dated December 15, 1980, authorization to transport and exchange up to 35,000 Mcf of natural gas per day that Northwest may control in the areas of Utah within the vicinity of Applicant's Southern System for which Applicant presently holds a Hinshaw exemption granted by order issued August 6, 1964, in Docket No. CP64-221 (32 F.P.C. 535). It is further submitted that such application specifically disclaimed any request for authorization to utilize the nearby existing Red Wash interconnection between the facilities of Applicant and Northwest.

Applicant asserts that because of the anticipated increase in the volumes available for transportation on the Southern System operating conditions require the activation on a permanent basis of the Red Wash interconnection as a redelivery point to Northwest.

It is stated that only minor compression and other facilities, consisting of an 800 horsepower site compressor, control and metering facilities, and minor yard piping to connect the compressor, would be installed to effect delivery to Northwest at Red Wash. Applicant further states that such additional facilities would be installed pursuant to the budget authorization granted Applicant by order issued January 13, 1981, in Docket No. CP81-50.

Therefore, Applicant requests that the application filed in the instant docket be amended so as to include a request for authorization for the use of the above-described Red Wash interconnection for the redelivery of natural gas to Northwest in Utah.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the

[1] The amendment was initially tendered for filing on March 29, 1982; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 1, 1982; thus, filing was not completed until the latter date.

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considerd by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12460 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5752-000]

New York State Department of Environmental Conservation; Notice of Application for License (Over 5 MW)

May 3, 1982.

Take notice that the New York State Department of Environmental Conservation (Applicant) filed on December 14, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Ticonderoga Project No. 5752. The project would be located on Ticonderoga Creek in the Village of Ticonderoga, Essex County, New York. Correspondence with the Applicant should be directed to: Mr. Herbert Doig, Assistant Commissioner—Natural Resources, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

Project Description—The proposed project would consist of two tandem developments, the first comprising: (1) The existing "Dam A", 8 feet high and 110 feet long, with an uncontrolled spillway 59 feet long, with three slide gates; (2) Lake George, 31 miles long and 2.5 miles wide, with a usable storage of 15,000 acre feet; (3) a new concrete intake structure; (4) a new penstock nine feet in diameter, 380 feet underground and 2,170 feet above ground; (5) a new concrete powerhouse, 37 by 74 feet, containing one 4.2- and one 2.1-MW turbine/generator unit operating under a net head of 122 feet; (6) a rehabilitated tailrace 40 feet wide and 120 feet long; (7) a new three-phase, 13.2-kV transmission line; and (8) appurtenant facilities.

The second development would consist of: (1) The existing "Dam D", 11 feet high and 350 feet long, with a primary spillway 60 feet long and a secondary spillway 110 feet long; (2) a pond covering six acres with no usable storage; (3) a renovated intake structure; (4) a new underground penstock, 9 feet, 10 inches in diameter and 2,570 feet long; (5) a new concrete powerhouse, 37 by 75 feet, containing one 3.15- and one 1.55-MW turbine/generator unit operating under a net head of 85 feet; (6) a new tailrace, 45 feet wide and 120 feet long; (7) a new three-phase, 13.2-kV transmission line; and (8) appurtenant facilities.

Purpose of Project—The average annual generation of 37.7 million kWh would be sold to the Niagara Mohawk Power Corporation.

Competing Applications—This application was filed as a competing application to Long Lake Energy Corporation's application for Project No. 4356–001 filed on September 21, 1981. Public notice of the filing of the initial application, which has already been given established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 18, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12461 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-289-000]

Panhandle Eastern Pipe Line Co.; Application

May 3, 1982.

Take notice that on April 19, 1982, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82–289–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Toledo Edison Company (Toledo Edison), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that Toledo Edison's distribution company is currently operating at a poor load factor due to current economic conditions and as a result has excess gas which it desires to sell to its power generating plant. It is explained that this sale would be in addition to the 1,500 Mcf of gas per day which Applicant is delivering to the power plant under its current industrial sales contract.

Pursuant to a transportation agreement dated February 23, 1982, Applicant proposes to receive up to 5,000 Mcf of such excess gas per day by displacement at the existing point of interconnection between the facilities of Applicant and Toledo Edison's distribution company in Defiance, Ohio, and redeliver these volumes on an interruptible basis at the existing point of interconnection between Applicant and Toledo Edison's power plant also in Defiance, Ohio. Applicant asserts that Toledo Edison would pay a unit charge of 2.48 cents.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person

wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12670 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6193-000]

Public Utility District No. 1 of Lewis County, Washington; Application for Preliminary Permit

May 3, 1982.

Take notice that Public Utility District No. 1 of Lewis County, Washington (Applicant) filed on April 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6193 to be known as the Prairie Mountain Waterpower Project located on Davis Creek, partially within Gifford Pinchot National Forest in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Gary H. Kalich, Manager, Public Utility District No. 1 of Lewis County, Post Office Box 330, Chehalis, Washington 98532, with a copy to Mr. James V. Williamson, Partner, R. W. Beck and Associates, 200 Tower Building, 7th Avenue at Olive Way, Seattle, Washington 98101.

Project Description—The proposed project would consist of: (1) A 5-foot high concrete gravity dam at elevation 2,000 feet; (2) a 24-inch pipeline 6,600 feet long and penstock 2,900 feet long; (3) a powerhouse at elevation 960 feet containing a turbine generator with 2.3 MW capacity and 8.6 GWh annual energy production, and (4) a transmission line 0.25 mile long. Generated energy would be used as a system resource or sold to the Bonneville Power Administration.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasiblity and to support application for a license to construct and operate the project. The estimated cost of permit activities is $200,000.

Competing Applications—This application was filed as a competing application to Western Power, Incorporated's application for Project No. 5449 filed on October 5, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12671 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6089-000]

Rainsong Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 4, 1982.

Take notice that on March 15, 1982, Rainsong Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposes hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6089) would be located on Skate Creek, Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) A 80-foot long, 6-foot high diversion structure; (2) a 11,000-foot long, 60-inch diameter pipeline/penstock; (3) a powerhouse containing one generating unit with a rated capacity of 5 MW; and (4) a 3,000-foot long transmission line from the powerhouse to an existing 69-kV transmission line. The Applicant estimates that the average annual energy production would be 32.00 GWh. The project is located entirely on Federal lands within the Gifford Pinchot National Forest.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects projects the Exemptee from

permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, the State of Washington Department of Fisheries and State of Washington Department of Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file coments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 21, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petition to intervene must be received on or before June 21, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by tahe Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12471 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6061-000]

Southern Pacific Land Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 5, 1982.

Take notice that on March 8, 1982, Southern Pacific Land Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6061) would be located on Haypress Creek, near Sierra City, Sierra County, California. Correspondence with the Applicant should be directed to: Mr. Erik A. Stenstedt, Southern Pacific Land Company, One Market Plaza, San Francisco, California 94105.

Project Description—The project would consist of: (1) A 6-foot high, 18-foot long diversion structure; (2) a 3,100-foot long, 54-inch diameter low pressure conduit; (3) a 2,500-foot long, 36-inch diameter penstock; (4) a powerhouse containing one generating unit with an installed capacity of 4.9 MW; and (5) a 60-kV transmission line from the powerhouse to an existing Sierra City Substation or a proposed transmission line. The Applicant estimates that the average annual energy production would be 12 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission on or before July 16, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12453 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6028-000]

Southern Pacific Land Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 5, 1982.

Take notice that on February 25, 1982, Southern Pacific Land Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6028) would be located on Haypress Creek, within the lands of Tahoe National Forest, near Sierra City, Sierra County, California.

Correspondence with the Applicant should be directed to: Mr. Erik A. Stendstedt, Southern Pacific Land Company, One Market Plaza, San Francisco, California 94105.

Project Description—The project would consist of: (1) A 6-foot high, 18-foot long diversion structure at Haypress Creek; (2) a 1,300-foot long diversion channel; (3) a 6-foot high, 18-foot long diversion structure at Milton Creek; (4) a 4,200-foot long, 54-inch diameter low pressure conduit; (5) a 1,100-foot long, 36-inch diameter penstock; (6) a powerhouse containing one generating unit with an installed capacity of 4 MW; and (7) a 60-kV transmission line from the powerhouse to an existing Sierra City Substation or a proposed transmission line. The Applicant estimates that the average annual energy production would be 8.5 million kWh

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 25, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 25, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12454 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 405-011]

Susquehanna Power Co. and; Philadelphia Electric Power Co.; Application for Amendment of License

May 3, 1982

Take notice that on March 23, 1982, the Susquehanna Power Company and the Philadelphia Electric Power Company (Licensees) filed an application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for amendment of their license for the Conowingo Project No. 405, located on the Susquehanna River, in York and Lancaster Counties, Pennsylvania and Cecil and Harford Counties, Maryland. Correspondence with the Licensees should be directed to: Mr. Eugene J. Bradley, 2301 Market Street, Philadelphia, Pennsylvania 19109.

The license amendment would involve the removal of the existing highway bridge built on the powerhouse, spillway, and abutment sections of the dam, and that portion of the bridge over the Conrail railroad, to be replaced by the construction of a new highway bridge and modifications to the east and west approaches. The new bridge will consist of two 14-foot wide traffic lanes at the spillway and abutment sections. A cantilevered concrete cap will be constructed on exising piers to support precast concrete members of the new bridge structure at this location. At the powerhouse, the new bridge will have a cast-in-place concrete deck on steel framing, supported by the existing powerhouse structure and the existing headworks structures. The new roadway will be widened to approximately 21.5 feet without modifying the existing powerhouse structure. The bridge over the Conrail railroad will be widened to improve the intersection of U.S. Route 1 with Maryland 222 at the east approach. Modifications to the bridge approaches will consist of improved grade conditions at the east and west approaches, and a truck climbing lane at the east approach.

Anyone desiring to be heard or make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 18, 1982. The Commission's address is 825 North Capitol Street, NE., Washington, D.C. 20426. The Application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12456 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-285-000]

Texas Gas Transmission Corp.; Application

May 3, 1982.

Take notice that on April 15, 1982, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP82-285-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to the City of Carrollton, Kentucky (Carrollton), in lieu of Ohio River Pipeline Corporation (Ohio River Pipeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that pursuant to a sales agreement dated March 8, 1982, Ohio River Gas Company, Inc. (Ohio River) which is now engaged in the business of rendering gas utility service in the town of Milton, Kentucky, has agreed to transfer all of its gas utility properties to Carrollton which through the Carrollton Utilities Commission renders gas utility service to the residents of Carrollton. It is further submitted that such sale is conditioned upon approval of both the Kentucky Public Service Commission and the authorization saught in the instant application from the Commission.

Petitioner asserts that after the effective date of such sale Carrollton would render gas service to those areas and customers being served by Ohio River. It is further asserted that in order to accomplish such service Ohio River Pipeline, an affiliate and supplier of Ohio River, has agreed to transfer to Carrollton its right to purchase from Applicant 600 Mcf of natural gas per day which approximates the peak day requirements of the City of Milton, Kentucky. Applicant states that Ohio River Pipeline has also agreed to the transfer of the following seasonal entitlements: Summer—62,424 Mcf, Winter—59,963 Mcf.

Applicant proposes for the purpose of administrative efficiency, to file with the Commission two superseding service agreements between Applicant and Ohio River Pipeline and Applicant and Carrollton reflecting the changes brought about by the sale of the subject facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12472 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6020-000]

Thousand Trails, Inc.; Application for Preliminary Permit

May 5, 1982.

Take notice that Thousand Trails, Inc. (Applicant) filed on February 24, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6020 to be known as the Thousand Trails, Inc. Small Hydro Project located on a Tributary of the Yuba River in Yuba County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James J. Jaeger, Project Manager, Thousand Trails, Inc., 4800 South/68th Way, Seattle, Washington 98188.

Project Description—The proposed project would consist of: (1) A 56.6-foot high, 340-foot long existing Los Verjels Dam with a storage capacity of 1,500 acre-foot; (2) two 14-inch diameter, 71-foot long penstocks; (3) a powerhouse containing a turbine-generating unit with a rated capacity of 50 kW; and (4) appurtenant facilities. Applicant estimates a 0.2 GWh average annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $20,000. Excess power would be sold to Pacific Gas and Electric Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 16, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 15, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 15, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12458 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-476-000]

Vermont Electric Power Co.; Filing

April 30, 1982.

The filing company submits the following:

Take notice that on April 26, 1982, Vermont Electric Power Company, Inc. (VELCO) tendered for filing Rate Schedules containing a Unit Contract between VELCO and Fitchburg Gas and Electric Light Company (Fitchburg) of Fitchburg, Massachusetts, dated as of May 1, 1982 and a revised Exhibit A to Power Purchase Agreement dated as of June 1, 1981, FERC Rate Schedule No. 234, Supplement No. 18 between VELCO and the Village of Stowe (Stowe).

VELCO states that the service to be rendered under these Rate Schedules consists of the sale of capacity and related energy from the Merrimack No. 2 Unit and the Vermont Yankee Nuclear Electric Generating Unit for the monthly amounts and period as follows:

	Fitchburg	Stowe
KW	403	930
KWH	153,000	534,000
Charges	$4,700	$13,000

VELCO states that charges of the power will be at VELCO's costs. Therefore, there will be no change in the overall rate of return of VELCO.

VELCO further states that the service under these Rate Schedules will commence on May 1, 1982, and will terminate on October 31, 1982.

VELCO requests an effective date of May 1, 1982, and therefore, requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12457 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6145-000]

Delmer Wagner; Application for Preliminary Permit

May 5, 1982.

Take notice that Delmer Wagner (Applicant) filed on March 30, 1982, an

application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 6145 to be known as the Grave Creek Project located on Grave Creek near Grants Pass In Josephine County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Delmer Wagner, 326 Pine Grove Road, Rogue River, Oregon 97537.

Project Description—The proposed project would consist of: (1) a 4-foot high, 30-foot long diversion dam; (2) a 2,775-foot long diversion ditch; (3) a 3.5-foot diameter, 990-foot long pipeline; (4) a powerhouse with a total installed capacity of 900 kW; and (5) a 12-kV, 1,000-foot long transmission line interconnecting with an existing transmission line. The Applicant estimates that the average annual energy output would be 1.44 million kWh.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a preliminary permit for a 24 months during which he would conduct engineering, environmental, economic studies and prepare an FERC license application.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (se: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 10, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12473 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6054–000]

Ralph Wagner, Consulting Engineer, Inc.; Application for Preliminary Permit

May 4, 1982.

Take notice that Ralph Wagner, Consulting Engineer, Inc. (Applicant) filed on March 3, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6054 to be known as the Lake Arrowhead Waste Water Power Project located on an existing Lake Arrowhead Sanitation Districts Pipeline within the San Bernardino National Forest in San Bernardino County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Ralph Wagner, 27896 Peninsula Drive South, P.O. Box 13, Lake Arrowhead, California 92352.

Project Description—The proposed project would consist of: (1) A 8 to 10-inch diameter, 8.5-mile long existing Lake Arrowhead Sanitation District Pipeline; (2) a equalization basin with an estimated storage capacity of 625,000-gallons; (3) a series of 10 reaction turbines installed in the pipeline with a total rated capacity of 300 kW; and (4) appurtenant facilities. Applicant estimates a 260,000 kWh annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $6950.00. Power would be sold to Southern California Edison Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 12, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 20, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application.

(A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12674 Filed 5-6-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6141-000]

Willow Creek Community Services District; Application for Preliminary Permit

May 3, 1982.

Take notice that Willow Creek Community Services District (Applicant) filed on March 30, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6141 to be known as the Willow Creek Power Project located on the Willow Creek near the town of Willow Creek, partly within the Six Rivers National Forest in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Marc Rowley, General Manager, Willow Creek Community Services District, P.O. Box 255, Willow Creek, California 95573.

Project Description—The proposed project consists of two developments:

A. The Upper Facility Comprising: (1) A 3-foot high diversion structure; (2) a 20-inch diameter, 10,200-foot long penstock; (3) a powerhouse containing generating units with combined rated capacity of 500 kW; and (4) a 500-foot long, 12.5-kV transmission line connecting the powerhouse to an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse.

B. The Lower Facility, approximately 3 miles downstream of the Upper Facility, comprising: (1) A 3-foot high diverson structure; (2) a 24-inch diameter, 9,000-foot long penstock; (3) a powerhouse containing generating units with combined rated capacity of 500 kW; and (4) a 300-foot long, 12.5-kV transmission line connecting the powerhouse to an existing PG&E line east of the powerhouse.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of environmental and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $50,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 9, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 9, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 7, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12680 Filed 5-6-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5563-000]

Wyandotte Hydro Associates; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 5, 1982.

Take notice that on October 26, 1981, and amended on March 1, 1982, East Coast Engineering (Applicant) filed an application, under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project, Project No. 5563 would be located on the Cocheco River in Strafford County, New Hampshire. Correspondence with the Applicant should be directed to: James M. Rea, Wyandotte Hydro Associates, c/o East Coast Engineering, P.O. Box 25, Barrington, New Hampshire 03825.

Project Description—The project would consist of: (1) The existing City Dam #1, a concrete gravity structure 13.2 feet high and 215 feet long; (2) an existing impoundment with a maximum storage capacity of 423 acre-feet at a normal water-surface elevation of 221.75 feet m.s.l.; (3) a rebuilt intake structure; (4) a new powerhouse with a single unit having a generating capacity of 51 kW; (5) a new 400-foot long transmission line connecting with the existing Public Service Company of New Hampshire (PSC) 4.16-kVA distribution line; (6) the existing Hatfield Dam, a concrete gravity structure 20 feet high and 106 feet long; (7) an existing impoundment with a maximum storage capacity of 7 acre-feet and a normal water surface elevation of 210.71 feet m.s.l.; (8) the existing 6 inch diameter riveted steel penstock 285 feet long; (9) an existing powerhouse, to be refurbished and to contain 3 new units having a total generating capacity between 266 kW and 300 kW; (10) the existing tailrace; (11) a new 400-foot long transmission line connecting with the existing PSC of New Hampshire 4.16-kVA distribution line; and (12) appurtenant facilities. The Applicant states that the total average annual energy output of 1,500,000 kW would be sold to the PSC. The existing project facilities are owned by the City of Rochester, New Hampshire.

Purpose of Project—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New Hampshire State Fish and Game Department are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 23, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12400 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-M

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[Volume 642]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: April 30, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
						TEXAS RAILROAD COMMISSION			
-ABRAXAS PETROLEUM CORP				RECEIVED:	04/09/82	JA: TX			
8227143	F-04-045648	4224931410		102-2	103	KNOX #1	ALICE DEEP (YEGUA) AL	110.0	TENNESSEE GAS PIP
-AEC OIL & GAS				RECEIVED:	04/09/82	JA: TX			
8227168	F-7B-046654	4242932875		102-2		J N CRUDGINGTON #1	REID-MCLENNAN (MISS)	15.0	PETCO
-AMERADA HESS CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227305	F-8A-048567	4216500000		108		ADAIR SAN ANDRES UNIT #385	ADAIR	0.0	PIONEER NATURAL G
8227306	F-7C-048568	4238300000		108		G L ALDWELL #202	SPRABERRY TREND	5.5	EL PASO NATURAL G
-ANNEX PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227198	F-03-047631	4214930935		102-2	103	LETA UNIT #1	GIDDINGS (AUSTIN CHAL	54.0	CLAJON GAS CO
8227152	F-03-045969	4214931164		102-2	103	VIDA UNIT #1	GIDDINGS (EDWARDS GAS	446.4	CLAJON GAS CO
8227208	F-03-047634	4205131998		102-2	103	WARD UNIT #1	BIG A (TAYLOR)	415.0	CLAJON GAS CO
-AMOCO PRODUCTION CO				RECEIVED:	04/09/82	JA: TX			
8227395	F-08-048839	4213533661		103		NORTH COWDEN UNIT #1099	COWDEN NORTH	1.1	WESTAR TRANSMISSI
8227396	F-08-048840	4233531889		102-4		SUSIE SNYDER RANKIN #1	COAHOMA N (WOLFCAMP)	2.7	
-ANDERSON PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227125	F-7C-044241	4210533507		103	107-TF	ALMEDA M HOOVER 2-21	OZONA (CANYON SAND)	35.0	ANDERSON PIPELINE
8227097	F-7C-042061	4210533511		103	107-TF	AUSTIN C MILLSPAUGH "A1" 5-12	OZONA (CANYON SAND)	0.0	ANDERSON PIPELINE
8227022	F-7C-031337	4210532628		103	107-TF	ELOISE CARSON CLEGG ET VIR "C"1-61	OZONA (CANYON SAND)	30.0	ANDERSON PIPELINE
8227096	F-7C-042060	4210533588		103	107-TF	L B COX JR D 2-25A	OZONA (CANYON SAND)	0.0	ANDERSON PIPELINE
8227084	F-7C-040573	4210533207		103	107-TF	PEERY HOLMSLEY "A2" 2-1	OZONA (CANYON SAND)	35.0	ANDERSON PIPELINE
8227085	F-7C-040578	4210533211		103	107-TF	PEERY HOLMSLEY 2-68	OZONA (CANYON SAND)	35.0	ANDERSON PIPELINE
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/09/82	JA: TX			
8227275	F-7C-048451	4223500364		108		KETCHUM MT CLEARFORK UT #55-16	KETCHUM MT (CLEARFORK	1.7	J L DAVIS
8227069	F-04-039066	4221531081		102-4		SCHUSTER UNIT #2	DONNA (10820)	285.0	TENNESSEE GAS PIP
-ASPEN PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227312	F-10-048585	4217930918		103		FIELDS #3 04899	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227314	F-10-048587	4217930940		103		FIELDS #7 04899	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227313	F-10-048586	4217930970		103		FIELDS #8 04899	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227343	F-10-048652	4217930924		103		HARRIS #1 04971	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227342	F-10-048651	4217930923		103		HARRIS #2 04971	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227341	F-10-048650	4217930995		103		HARRIS #5 04971	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
8227340	F-10-048649	4217930994		103		HARRIS #6 04971	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
-B D K PRODUCTION CO INC				RECEIVED:	04/09/82	JA: TX			
8227150	F-03-045935	4214900000		102-2	103	YOUNG-MUTSCHNIK #1	GIDDINGS	150.0	PHILLIPS PETROLEU
-BAR M PETROLEUM CO INC				RECEIVED:	04/09/82	JA: TX			
8227300	F-03-048561	4228731083		103		BECKER #1	GIDDINGS (AUSTIN CHAL	7.0	PERRY GAS PRODUCT
-BERRY BROTHERS PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227155	F-03-046070	4205100000		102-2		KILGORE UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227156	F-03-046251	4205100000		102-2		MCGOWAN UNIT #1	GIDDINGS (AUSTIN CHAL	8.0	FERGUSON CROSSING
-BLUE JAY EXPLORATION CO				RECEIVED:	04/09/82	JA: TX			
8227238	F-02-048081	4246931857		102-4		LINWOOD KOLLE #1	COLLETTOVILLE CREEK (	50.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227166	F-02-046548	4246900000		102-4	103	WALDINE FRANKE #1	BATTLE (VICKSBURG 2ND	200.0	
-BLUESKY OIL & GAS INC				RECEIVED:		04/09/82 JA: TX			
8227052	F-03-037101	4214930698		102-2		ARNIM "M" UNIT #13	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8227102	F-01-042615	4217730680		102-2		H GESCHEIDLE #1	PEACH CREEK (AUSTIN C	0.0	VALERO TRANSMISSI
8227057	F-03-037448	4204130560		102-2	103	R CONAWAY UNIT III #1	KURTEN (WOODBINE)	0.0	PRODUCER'S GAS CO
-BURK ROYALTY CO				RECEIVED:		04/09/82 JA: TX			
8227204	F-01-047689	4250731242		102-4	103	J W & BESSIE FITE STUART	JOHNSON (PEARSALL)	0.0	SONCETT ENERGY IN
-C & K PETROLEUM INC				RECEIVED:		04/09/82 JA: TX			
8227068	F-10-039040	4235731106		103		GUIPEL #1	LOCKHART (MORROW BASA	0.0	AMERICAN PIPELINE
-CALUMET CORP				RECEIVED:		04/09/82 JA: TX			
8227289	F-09-048517	4250300000		108		ROSSER #2 RRC #89592	EILEEN JANE CONGLOMER	12.8	PETROLEUM CORP OF
-CARTER EXPLORATION CO				RECEIVED:		04/09/82 JA: TX			
8227082	F-04-037958	4242700000		102-4		F B GUERRA ESTATE #1	DELMITA (FRIO 5928' F	500.0	TENNESSEE GAS PIP
-CASHCO OIL CO				RECEIVED:		04/09/82 JA: TX			
8227110	F-03-042894	4218530292		102-4	103	B B NICKS #2	MARTINS PRAIRIE (SUB	0.0	LONE STAR GAS CO
8227029	F-03-033094	4218530247		102-2		GIBBS BROTHERS #1	MARTINS PRAIRE (SUB-C	0.0	LONE STAR GAS CO
8227028	F-03-033086	4218532052		102-2		MCDUFFIE #1	IOLA (SUB-CLARKSVILLE	0.0	LONE STAR GAS CO
8227027	F-03-033085	4218530250		102-2		YEAGER ADAMS #1	IOLA (GEORGETOWN)	0.0	LONE STAR GAS CO
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:		04/09/82 JA: TX			
8227137	F-03-045243	4205132021		102-2	103	ALFRED H ROBERTS #1	GIDDINGS (AUSTIN CHAL	39.0	FERGUSON CROSSING
8227043	F-01-035737	4212700000		103		BETTY ANN STEDMAN RANCH #11	STEDMAN	0.0	
*8227148	F-04-045838	4224900000		108		G P WARDNER #124 J	STRATTON (WARDNER WES	4.2	TENNESSEE GAS PIP
8227071	F-03-039214	4205100000		102-2		MARY ANN ZGABAY "A" #1	GIDDINGS	0.0	FERGUSON CROSSING
-CHARLES L WALKER				RECEIVED:		04/09/82 JA: TX			
*8227332	F-08-048634	4200333017		103		SAVAGE #6	SHAFTER LAKE (SAN AND	9.0	PHILLIPS PETROLEU
-CICO OIL & GAS CO				RECEIVED:		04/09/82 JA: TX			
8227058	F-02-037602	4246931690		102-4		R H WELDER #1-T ID#93523	ROB WELDER SW (WILCOX	180.0	VALERO TRANSMISSI
-CIRCLE SEVEN PRODUCTION CO				RECEIVED:		04/09/82 JA: TX			
8227164	F-09-046541	4223732295		103		CAMPBELL-WOOD #1 (19025)	NEWPORT S (BEND CONGL	0.0	CITIES SERVICE CO
8227163	F-09-046538	4223733657		102-4		D C CRANFORD ESTATE "A" #1	PERRIN N (4500)	0.0	LONE STAR GAS CO
8227162	F-09-046529	4223733758		102-4		D C CRANFORD ESTATE "B" #1	PERRIN EAST (STRAWN U	0.0	LONE STAR GAS CO
8227040	F-09-035579	4249731562		102-4		D W PEWITT #1 ID NO 86191	TERESA (CONGLOMERATE)	0.0	NATURAL GAS PIPEL
8227165	F-09-046544	4223733683		103		DAVID MAIRE #1	CUNDIFF SOUTH (ATOKA	0.0	LONE STAR GAS CO
8227042	F-09-035581	4249731920		102-4		HALL-STARK #1 ID NO 98428	TERESA (CONGLOMERATE)	0.0	NATURAL GAS PIPEL
8227280	F-09-048479	4223733515		102-4		SHAWVER "D" #1 (LEASE NO 215866)	LENORA (D-ZONE CONGL)	0.0	CITIES SERVICE CO
8227041	F-09-035580	4249731767		102-4		T W MILLER #1 ID NO 98579	TERESA (CONGLOMERATE)	0.0	NATURAL GAS PIPEL
8227161	F-09-046528	4223734051		102-4		TODD LOOP #1	PERRIN SW (CONGL 4850	0.0	LONE STAR GAS CO
-CISCO PETROLEUM CORP				RECEIVED:		04/09/82 JA: TX			
8227279	F-78-048477	4213333093		102-4		ROBINSON #2 15402	MANGUM WEST (3100)	36.5	WEST CEN-TEX GAS
-CITIES SERVICE COMPANY				RECEIVED:		04/09/82 JA: TX			
8227178	F-03-047052	4204130594		102-2		GARZA "B" #1	BRYAN (GEORGETOWN)	288.0	PRODUCERS GAS CO
-CLARION RESOURCES INC				RECEIVED:		04/09/82 JA: TX			
8227019	F-78-028518	4222100000		103	108	ATOR-CROSS 84713	LIPAN (MARBLE FALLS)	10.0	NORTHERN GAS PROD
8227122	F-78-043956	4214300000		102-4		MINNIE B LOWE 1 71168	MINNIE (STRAWN 1380)	18.0	NORTHERN GAS PROD
8227123	F-78-044182	4214300000		102-4	103	RICHARDS-CALABRIA 1	MINNIE (STRAWN 1380)	36.0	NORTHERN GAS PROD
-CLAYTON W WILLIAMS JR				RECEIVED:		04/09/82 JA: TX			
8227032	F-03-033910	4205100000		102-2		CHRISTOPHER HAL #1	CLAY NE (DEEP)	0.0	VALERO TRANSMISSI
8227113	F-03-043137	4205100000		102-2		KAZMIR-MATCHE UNIT A #2	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
8227024	F-03-032810	4205100000		102-2		MELVIN LEWIS UNIT #1	GIDDINGS	0.0	VALERO TRANSMISSI
8227067	F-03-038695	4205100000		102-2		WALTER ALBRECHT UNIT #1	GIDDINGS	0.0	VALERO TRANSMISSI
-CLEAR FORK GAS CO				RECEIVED:		04/09/82 JA: TX			
8227274	F-78-048448	4244700000		102-4		S T POAGE #1-16896	CURLEY B (CADDO)	0.0	LONE STAR GAS CO
-COLA PETROLEUM INC				RECEIVED:		04/09/82 JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227199	F-06-047633	4240131001		103	107-TF	KENNEDY #4
-CONOCO INC				RECEIVED:	04/09/82	JA: TX
8227195	F-08-047593	4222732477		103		H R CLAY-E-#56 ID#18993
8227277	F-04-048458	4213100000		108		ROBERT DRISCOLL #110
8227203	F-04-047684	4242700000		108		T B SLICK EST B-266 #162
-CORDOVA RESOURCES INC				RECEIVED:	04/09/82	JA: TX
8227129	F-7B-044501	4213332972		103	108	D K SCOTT #3
-COTTON PETROLEUM CORPORATION				RECEIVED:	04/09/82	JA: TX
8227216	F-10-047886	4235731181		103		MCLAIN "A" #1
8227167	F-10-046600	4229530888		103		PARKER "B" #2
-D E BROWN				RECEIVED:	04/09/82	JA: TX
8227287	F-09-048511	4223700000		108		HOUSE RANCH #1 RRC #48709
-DALECO RESOURCES				RECEIVED:	04/09/82	JA: TX
8227136	F-03-044926	4205100000		102-4		JESSE MOORE #5
-DAWSON OIL CORPORATION				RECEIVED:	04/09/82	JA: TX
8227184	F-04-042721	4240900000		102-4		RACHAEL S KOLB #1
-DELTA DRILLING CO				RECEIVED:	04/09/82	JA: TX
8227039	F-7C-035358	4243500000		103	107-TF	SHURLEY #4
-DELTA OIL & GAS CO				RECEIVED:	04/09/82	JA: TX
8227352	F-7B-048672	4242900000		108		BLANCHE WINSTON RRC #32821
8227263	F-7B-048281	4242900000		108		E J & MARSHALL THOMPSON RRC #68485
8227327	F-7B-048626	4242900000		108		ERNEST WRIGHT RRC #72674
8227265	F-7B-048322	4242900000		108		J E TOMLIN "A" RRC #85788
8227284	F-7B-048506	4242900000		108		R J KELLY ESTATE "A" RRC #65152
8227286	F-7B-048508	4242900000		108		R J KELLY ESTATE RRC #64706
8227285	F-7B-048507	4242900000		108		R J KELLY ESTATE RRC #65092
8227326	F-7B-048625	4242900000		108		R J KELLY ESTATE RRC #72673
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	04/09/82	JA: TX
8227146	F-10-045772	4229531074		103		GEORGE EARL TUBB "B" 2-378
8227339	F-10-048648	4221100000		108		JOHN C ISAACS "J" #8
8227338	F-10-048647	4221100000		108		JOHN C ISAACS "K" #1-206
8227130	F-10-044542	4229530968		103		W A MURPHY "B" #2-427
-DOME OIL & GAS CO				RECEIVED:	04/09/82	JA: TX
8227020	F-7B-028526	4214300000		103	108	MEYER #1 - RRC #85222
-DORCHESTER EXPLORATION INC				RECEIVED:	04/09/82	JA: TX
*8227237	F-08-048079	4243131036		103		F CONGER 38-4
8227273	F-08-048447	4243131057		103		FOSTER 9
*8227248	F-08-048188	4243131027		103		R T FOSTER 11-4
*8227094	F-08-041947	4243131003		103		WESTBROOK 5-3
-E D ANDERSON				RECEIVED:	04/09/82	JA: TX
8227364	F-7B-048705	4223700000		108		C J COKER #1
8227366	F-7B-048708	4236300000		108		C P CLAYTON #1
8227365	F-7B-048707	4236300000		108		J T COOK #1
-E M NORTHAM				RECEIVED:	04/09/82	JA: TX
8227269	F-09-048419	4200934686		103		A D BRITTON #1 RRC#20523
8227270	F-09-048420	4200900000		103		A D BRITTON #2 RRC#20523
8227268	F-09-048418	4200934223		103		PERKINS "G" #1 RRC#19959
8227271	F-09-048421	4200935347		103		UNITED PRESBYTERIAN UNIT-RRC #21592
-EAGLE EXPLORATION CO INC				RECEIVED:	04/09/82	JA: TX
8227229	F-10-048003	4219500000		102-4		NOBLES-CATOR #3
-EASTLAND WELL SERVICE INC				RECEIVED:	04/09/82	JA: TX
8227278	F-7B-048460	4213300000		103		W L CURTIS #1 (13726)
-ECHO PRODUCTION INC				RECEIVED:	04/09/82	JA: TX

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FIELD NAME	PROD	PURCHASER
OAK HILL S (COTTON VA	290.0	TEXAS EASTERN TRA
HOWARD GLASSCOCK	3.7	PHILLIPS PETROLEU
CONOCO-DRISCOLL (UPPE	1.0	TRANSCONTINENTAL
RINCON (FRIO B-2)	17.0	TENNESSEE GAS PIP
EASTLAND COUNTY REGUL	16.0	ODESSA NATURAL GA
PAN PETRO (MORROW UPP	10.0	
KIOWA CREEK N MORROW	0.0	NORTHERN NATURAL
NEHER CONGLOMERATE FI	21.7	SOUTHWESTERN GAS
CLAY NE (EDWARDS LIME	0.0	CLAJON GAS CO
MORGAN W (FRIO 5140)	0.0	VALERO TRANSMISSI
SAWYER (CANYON)	0.0	NORTHERN NATURAL
STEPHENS COUNTY REGUL	4.9	LONE STAR GAS CO
STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
KELLY/STRAWN	1.4	LONE STAR GAS CO
TOMLIN (LAKE SAND)	3.0	LONE STAR GAS CO
KELLY/STRAWN	4.7	LONE STAR GAS CO
KELLY/STRAWN	4.2	LONE STAR GAS CO
KELLY/STRAWN	4.5	LONE STAR GAS CO
KELLY/STRAWN	2.8	LONE STAR GAS CO
LIPSCOMB SW	473.0	
CANADIAN SE	8.0	NORTHERN NATURAL
CANADIAN WEST	20.0	NORTHERN NATURAL
LIPSCOMB SOUTH	230.0	
LIPAN (MARBLE FALLS)	16.0	NORTHERN GAS PROD
CONGER (PENN)	0.0	TEXAS UTILITIES F
CONGER (PENN)	355.0	ESPERANZA PIPELIN
CONGER (PENN)	0.0	TEXAS UTILITIES F
CONGER (PENN)	1095.0	VALERO TRANSMISSI
GRAFORD (BEND CONGL)	0.0	LONE STAR GAS CO
GRAFORD (BEND CONGL)	0.0	LONE STAR GAS CO
GRAFORD (BEND CONGL)	0.0	LONE STAR GAS CO
ARCHER COUNTY REGULAR	7.0	EAGLE PETROLEUM C
ARCHER COUNTY REGULAR	7.0	EAGLE PETROLEUM C
ARCHER COUNTY REGULAR	25.0	EAGLE PETROLEUM C
ARCHER COUNTY REGULAR	18.0	EAGLE PETROLEUM C
MORSE N (CLEVELAND)	90.0	PANHANDLE EASTERN
FOSTER (MARBLE FALLS)	73.0	ODESSA NATURAL CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227248	F-09-048127	4250300000		102-4	103	CEARLEY #1	FRANK (4200)	73.0	SOUTHWESTERN GAS
-EGAN-WILSON PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227109	F-04-042882	4240900000		103		J D PATRICK JR #1	PATRICK (5900)	275.0	ESPERANZA TRANSMI
-ENERGY RESERVES GROUP INC				RECEIVED:	04/09/82	JA: TX			
8227187	F-7C-047469	4223531179		103		ELA C SUGG 69 #3	SPRABERRY (TREND AREA	28.9	NORTHERN NATURAL
-EXPANDO OIL CO				RECEIVED:	04/09/82	JA: TX			
8227121	F-09-043589	4223733788		102-4		HOEFLE #2	STEWART CONGLOMERATE-	8.0	SOUTHWESTERN GAS
-EXXON CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227282	F-82-048496	4285731829		103		E H WELDER #45 ID #04308	HEYSER (F-41)	74.0	TENNESSEE GAS PIP
8227256	F-08-048147	4237133491		103		FORT STOCKTON UNIT #618	FORT STOCKTON	1.0	NUECES CO
8227302	F-08-048563	4210300000		108		J B TUBB A/C 2 #3	SAND HILLS (JUDKINS)	8.0	EL PASO NATURAL G
8227135	F-08-044857	4210332620		103		J B TUBB E #2L	SAND HILLS (TUBB)	35.0	EL PASO NATURAL G
8227359	F-08-048687	4210300000		108		J B TUBB F #2	SAND HILLS (TUBB)	9.0	EL PASO NATURAL G
8227357	F-08-048685	4210300000		108		J C TUBB A/C 1 #113	SAND HILLS (MCKNIGHT)	5.0	EL PASO NATURAL G
8227356	F-08-048684	4210300000		108		J C TUBB A/C 1 #18	SAND HILLS (MCKNIGHT)	4.0	EL PASO NATURAL G
8227169	F-08-046655	4210332665		103		J C TUBB A/C 1 #252U	SAND HILLS (MCKNIGHT)	21.0	EL PASO NATURAL G
8227358	F-08-048686	4210300000		108		J C TUBB A/C 1 #82	SAND HILLS (MC KNIGHT	9.0	EL PASO NATURAL G
8227303	F-08-048564	4210300000		108		J C TUBB A/C 2 #22	SAND HILLS (JUDKINS)	8.0	EL PASO NATURAL G
8227301	F-08-048562	4210300000		108		J C TUBB A/C 2 #25	SAND HILLS (JUDKINS)	10.0	EL PASO NATURAL G
*8227255	F-04-048144	4226130663		102-4		K R TIO MOYA 8 (96281)	CALANDRIA (F-06 W)	400.0	ARMCO STEEL CORP
*8227329	F-04-048628	4226130663		102-4		K R TIO MOYA 9 (96894)	CALANDRIA (F-47)	550.0	ARMCO STEEL CORP
*8227254	F-04-048143	4227331585		102-4		K R VISNAGA 23 (96614)	EL INFERNILLO (I-87)	985.0	ARMCO STEEL CORP
*8227585	F-82-048766	4239100000		108		MARY ELLEN O'CONNOR A-8 (83087)	MARY ELLEN O'CONNOR (	14.0	ARMCO STEEL CORP
8227179	F-04-047069	4226130644		103		MRS S K EAST 127-D (ID PENDING)	RITA (12-X SEG III)	110.0	NATURAL GAS PIPEL
*8227308	F-06-048571	4240100000		103		NE TRAVICK GAS UNIT 4-2	TRAVICK NE (PETTIT)	100.0	ARMCO STEEL CORP
*8227370	F-06-048713	4207330428		102-4		ORVAN B JONES #1	REKLAW (TRAVIS PEAK)	280.0	ARMCO STEEL CORP
*8227283	F-04-048498	4213135235		103		PAUL E WHITE B-111 #96602	LUNDELL MIRANDO NO 1	37.0	ARMCO STEEL CORP
*8227372	F-06-048715	4240131187		102-4		R E L SILVEY "C" OIL UNIT NO 1-1	OVERTON NE (PETTIT)	50.0	ARMCO STEEL CORP
8227353	F-04-048680	4226130662		103		SARITA FLD OIL & GAS U 166 ID#04130	SARITA (8-D.S)	51.0	NATURAL GAS PIPEL
8227171	F-04-046699	4226130639		103		SARITA OIL & GAS UNIT 162-D	SARITA (1-A)	160.0	NATURAL GAS PIPEL
8227170	F-04-046687	4226130636		103		SARITA OIL & GAS UNIT 163	SARITA (5-G W)	292.0	NATURAL GAS PIPEL
8227174	F-7C-046896	4223531784		103		STATE UNIVERSITY "EM" #1	CAL SOUTH (CANYON)	1.0	
8227371	F-03-048714	4220131137		103		WEBSTER FIELD UNIT #1319	WEBSTER	25.0	HOUSTON PIPELINE
8227307	F-03-048570	4220100000		103		WEBSTER FIELD UNIT #2773	WEBSTER	146.0	HOUSTON PIPELINE
8227373	F-03-048716	4220131282		103		WEBSTER FIELD UNIT #2774	WEBSTER	60.0	HOUSTON PIPELINE
-FAGADAU ENERGY CORP				RECEIVED:	04/09/82	JA: TX			
8227227	F-09-047919	4207732433		103		SCALING RANCH "C" #1 21775	CLAY COUNTY REGULAR	25.0	BLUEGROVE GASOLIN
-FERGUSON & BOSWORTH				RECEIVED:	04/09/82	JA: TX			
8227127	F-04-044430	4224931406		102-4		HAVERLAH #1	WILDCAT	0.0	VALLEY GAS TRANSM
-FORTUNE PRODUCTION CO				RECEIVED:	04/09/82	JA: TX			
8227350	F-7C-048632	4241331029		102-4	103	UNIVERSITY "11" #1	UNIVERSITY 54 (CANYON	199.0	CRA INC
8227330	F-7C-048632	4241331029		107-TF		UNIVERSITY "11" #1	UNIVERSITY 54 (CANYON	199.0	CRA INC
8227331	F-7C-048633	4241331029		102-2	103	UNIVERSITY "11" #1	UNIVERSITY 54 (ELLENB	79.2	CRA INC
-FUNK EXPLORATION INC				RECEIVED:	04/09/82	JA: TX			
8227201	F-10-047650	4229531838		103		P S REYNOLDS #1	RICKS (MORROW UPPER)	0.0	HIGH PLAINS NATUR
8227208	F-10-047731	4229531078		103		P S REYNOLDS #2	RICKS (MORROW UPPER)	0.0	HIGH PLAINS NATUR
-GALAXY OIL COMPANY				RECEIVED:	04/09/82	JA: TX			
8227060	F-03-037861	4204130521		102-2		LILLY CARLL WATSON 92616	BRYAN (AUSTIN CHALK)	550.0	PRODUCERS GAS CO
-GENERAL PRODUCTION CORP				RECEIVED:	04/09/82	JA: TX			
8227066	F-03-040814	4228730882		103		E MICHAEL LALLINGER #1	GIDDINGS (AUSTIN CHAL	8.0	CLAJON GAS CO
8227030	F-03-033239	4205131140		103		T A PEEK "A" #1	WILLARD (NAVARRO)	0.0	FERGUSON CROSSING
-GETTY OIL COMPANY				RECEIVED:	04/09/82	JA: TX			
8227103	F-03-042697	4205100000		102-2		BELLE BRISCOE #1	GIDDINGS (AUSTIN CHAL	200.0	FERGUSON CROSSING

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227059	F-03-037741	4205100000		102-2		C LEDNICKY #1
-GHR ENERGY CORP				RECEIVED:	04/09/82	JA: TX
8227188	F-04-047472	4250531389		102-4		ASCHE #3
*8227106	F-04-042844	4247932970		102-4	107-TF	BRUNI RANCH #6-T
8227086	F-04-040617	4247932989		102-4	107-TF	LECHENGER #4
8227112	F-04-043050	4247932497		102-4	107-TF	LUNDELL #14
-GILLRING OIL CO				RECEIVED:	04/09/82	JA: TX
8227264	F-04-048211	4238500000		108		C P TALBERT #4-I033036
-GO OIL CORP				RECEIVED:	04/09/82	JA: TX
8227064	F-7B-038289	4205900000		102-4		BERRY #3
-GOLDSTON OIL CORP				RECEIVED:	04/09/82	JA: TX
8227328	F-03-048627	4248132248		103		LISSIE GAS UNIT #1 #2
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/09/82	JA: TX
8227389	F-7C-048799	4223510302		108		ELTA T MURPHY "A" #1
8227049	F-06-036389	4236531139		103	107-TF	WOOLWORTH GAS UNIT #1
-GREAT WEST OPERATING CO INC				RECEIVED:	04/09/82	JA: TX
8227099	F-7B-042339	4213332783		102-4		SCHREINER #2
-GULF OIL CORPORATION				RECEIVED:	04/09/82	JA: TX
8227379	F-08-048748	4213533827		103		C A GOLDSMITH 1360
8227378	F-08-048744	4213533628		103		C A GOLDSMITH 1361
8227334	F-09-048639	4249700000		103		I G YATES #8
8227048	F-06-036287	4248138998		103	107-TF	JOHN THOMPSON #2
8227220	F-08-047820	4249530458		108		KEYSTONE CATTLE CO #328
8227335	F-09-048648	4249700000		103		L O FANCHER #2
8227219	F-08-047819	4238900191		108		RANDOLPH A T STATE #5
8227221	F-08-047821	4238908194		108		RANDOLPH A T STATE #8
-GULF SANDS OIL CO				RECEIVED:	04/09/82	JA: TX
8227034	F-02-034573	4202631296		102-4		ESTELLA MAE PURCELL CAGE NO 1
-GUS EDWARDS CO				RECEIVED:	04/09/82	JA: TX
8227390	F-03-048808	4205131677		102-2		VARREECE BERRY #1
-H & L OPERATING COMPANY				RECEIVED:	04/09/82	JA: TX
8227236	F-10-048054	4229531077		102-4		HOCKING "A" #1-59
8227247	F-10-048120	4235731224		102-4		SELL #2-38
-H-R OIL CO				RECEIVED:	04/09/82	JA: TX
8227228	F-03-047959	4248132262		102-4	103	AUGUST BACAK #1
8227289	F-03-047732	4248132120		102-4	103	FLORENCE FROMEN #1
-HAMILL RESOURCES INC				RECEIVED:	04/09/82	JA: TX
8227361	F-04-048689	4227331609		102-4		MICHALK-MEYER #1 RRC ID #96957
-HARRISON INTERESTS LTD				RECEIVED:	04/09/82	JA: TX
8227276	F-7C-048455	4210533631		102-4	103	UNIVERSITY LAND B-33 #26
-HENRY PETROLEUM CORP				RECEIVED:	04/09/82	JA: TX
8227038	F-02-034983	4249300000		102-2		LASKOWSKI "B" #1
-HNG OIL COMPANY				RECEIVED:	04/09/82	JA: TX
8227186	F-7C-047446	4243500000		103	107-TF	ESPY "41" #5
8227176	F-7C-046952	4243532568		103	107-TF	FIELDS "52" #4
-HOME PETROLEUM CORPORATION				RECEIVED:	04/09/82	JA: TX
8227063	F-05-036191	4216130616		107-TF		LORENA C MANAHAN #1
-HORIZON OIL & GAS CO OF TEXAS				RECEIVED:	04/09/82	JA: TX
8227369	F-10-048711	4235731202		103		SWINK "A" #2-119
8227374	F-10-048718	4235731203		103		SWINK "A" #3-119
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	04/09/82	JA: TX
8227101	F-03-042507	4214930644		102-2		HARDING UNIT #1
8227139	F-03-045331	4228700000		103		O J FARRACK #1

FIELD NAME	PROD	PURCHASER
GIDDINGS (AUSTIN CHAL	105.0	FERGUSON CROSSING
CHARCO (9400)	730.0	VALERO TRANSMISSI
BRUNI RANCH (LOBO 10.	365.0	VALERO TRANSMISSI
SAMUELS (LOBO)	183.0	VALERO TRANSMISSI
LUNDELL (LOBO)	438.0	VALERO TRANSMISSI
AQUA DULCE /6020/ FIE	20.0	TENNESSEE GAS PIP
BAIRD EAST (STRAWN SA	0.0	LONE STAR GAS CO
LISSIE SOUTH (WILCOX	350.0	TENNESSEE GAS PIP
SPRAYBERRY TREND	8.8	EL PASO NATURAL G
CARTHAGE (COTTON VALL	0.0	
SHOAF-MERGNER (DUFFER	100.0	ODESSA NATURAL GA
LAWSON (SAN ANDRES)	766.5	PHILLIPS PETROLEU
LAWSON (SAN ANDRES)	693.5	PHILLIPS PETROLEU
BOONSVILLE (CADDO CON	62.0	NATURAL GAS PIPEL
OAK HILL (COTTON VALL	0.0	DELHI GAS PIPELIN
KEYSTONE (SAN ANDRES)	1.0	CABOT CORP
BOONSVILLE (CADDO CON	13.1	NATURAL GAS PIPEL
SABRE (DELAWARE)	1.0	CONTINENTAL OIL &
SABRE (DELAWARE)	1.0	CONTINENTAL OIL &
LITTLE JOHN (3600)	54.0	GULF STATE EQUITY
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
BOOKER N (MORROW UPPE	10.0	PHILLIPS PETROLEU
BOOKER N (MORROW UPPE	73.0	PHILLIPS PETROLEU
HOLUB (5520)	0.0	UNITED TEXAS TRAN
HOLUB (6980)	0.0	UNITED TEXAS TRAN
RICARDO NORTH (FRIO 5	100.0	HOUSTON PIPELINE
PERNER RANCH (STRAWN)	180.0	INTRATEX GAS CO
PATTON (AUSTIN CHALK)	0.0	
SAWYER (CANYON)	55.8	INTRATEX GAS CO
SAWYER CANYON	182.8	INTRATEX GAS CO
CANEY CREEK (BOSSIER)	327.0	UNITED TEXAS TRAN
HORIZON (CLEVELAND)	21.0	DIAMOND SHAMROCK
HORIZON (CLEVELAND)	21.0	DIAMOND SHAMROCK
GIDDINGS (AUSTIN CHAL	0.0	SOUTH CEN-TEX GAS
GIDDINGS (AUSTIN CHAL	8.0	PGP GAS PRODUCTS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227237	F-10-048062	4229531078		102-4		HOCKING "A" #2-59
8227238	F-10-048070	4229531079		102-4		HOCKING "A" #3-59
-HOWELL PETROLEUM CORP				RECEIVED:	04/09/82	JA: TX
8227240	F-10-048088	4229531080		102-4		HOCKING "A" #4-59
8227241	F-10-048096	4229531081		102-4		HOCKING "A" #5-59
-HUNT OIL COMPANY				RECEIVED:	04/09/82	JA: TX
8227242	F-10-048104	4229531082		102-4		HOCKING "A" #6-59
8227243	F-10-048112	4229531083		102-4		HOCKING "A" #7-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227244	F-10-048120	4229531084		102-4		HOCKING "A" #8-59
8227245	F-10-048138	4229531085		102-4		HOCKING "A" #9-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227246	F-10-048146	4229531086		102-4		HOCKING "A" #10-59
8227248	F-10-048153	4229531087		102-4		HOCKING "A" #11-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227249	F-10-048161	4229531088		102-4		HOCKING "A" #12-59
8227250	F-10-048179	4229531089		102-4		HOCKING "A" #13-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227251	F-10-048187	4229531090		102-4		HOCKING "A" #14-59
8227252	F-10-048195	4229531091		102-4		HOCKING "A" #15-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227253	F-10-048203	4229531092		102-4		HOCKING "A" #16-59
8227254	F-10-048211	4229531093		102-4		HOCKING "A" #17-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227255	F-10-048229	4229531094		102-4		HOCKING "A" #18-59
8227256	F-10-048237	4229531095		102-4		HOCKING "A" #19-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227257	F-10-048245	4229531096		102-4		HOCKING "A" #20-59
8227258	F-10-048252	4229531097		102-4		HOCKING "A" #21-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227259	F-10-048260	4229531098		102-4		HOCKING "A" #22-59
8227260	F-10-048278	4229531099		102-4		HOCKING "A" #23-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227261	F-10-048286	4229531100		102-4		HOCKING "A" #24-59
8227262	F-10-048294	4229531101		102-4		HOCKING "A" #25-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227263	F-10-048302	4229531102		102-4		HOCKING "A" #26-59
8227265	F-10-048310	4229531103		102-4		HOCKING "A" #27-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227266	F-10-048328	4229531104		102-4		HOCKING "A" #28-59
8227267	F-10-048336	4229531105		102-4		HOCKING "A" #29-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227268	F-10-048344	4229531106		102-4		HOCKING "A" #30-59
8227269	F-10-048351	4229531107		102-4		HOCKING "A" #31-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227270	F-10-048369	4229531108		102-4		HOCKING "A" #32-59
8227271	F-10-048377	4229531109		102-4		HOCKING "A" #33-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227272	F-10-048385	4229531110		102-4		HOCKING "A" #34-59
8227273	F-10-048393	4229531111		102-4		HOCKING "A" #35-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227274	F-10-048401	4229531112		102-4		HOCKING "A" #36-59
8227275	F-10-048419	4229531113		102-4		HOCKING "A" #37-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227277	F-10-048427	4229531114		102-4		HOCKING "A" #38-59
8227278	F-10-048435	4229531115		102-4		HOCKING "A" #39-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227279	F-10-048443	4229531116		102-4		HOCKING "A" #40-59
8227280	F-10-048450	4229531117		102-4		HOCKING "A" #41-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227281	F-10-048468	4229531118		102-4		HOCKING "A" #42-59
8227282	F-10-048476	4229531119		102-4		HOCKING "A" #43-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227283	F-10-048484	4229531120		102-4		HOCKING "A" #44-59
8227284	F-10-048492	4229531121		102-4		HOCKING "A" #45-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227285	F-10-048500	4229531122		102-4		HOCKING "A" #46-59
8227286	F-10-048518	4229531123		102-4		HOCKING "A" #47-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227287	F-10-048526	4229531124		102-4		HOCKING "A" #48-59
8227288	F-10-048534	4229531125		102-4		HOCKING "A" #49-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227290	F-10-048542	4229531126		102-4		HOCKING "A" #50-59
8227291	F-10-048559	4229531127		102-4		HOCKING "A" #51-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227292	F-10-048567	4229531128		102-4		HOCKING "A" #52-59
8227293	F-10-048575	4229531129		102-4		HOCKING "A" #53-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227294	F-10-048583	4229531130		102-4		HOCKING "A" #54-59
8227295	F-10-048591	4229531131		102-4		HOCKING "A" #55-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227296	F-10-048609	4229531132		102-4		HOCKING "A" #56-59
8227297	F-10-048617	4229531133		102-4		HOCKING "A" #57-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227298	F-10-048625	4229531134		102-4		HOCKING "A" #58-59
8227299	F-10-048633	4229531135		102-4		HOCKING "A" #59-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227300	F-10-048641	4229531136		102-4		HOCKING "A" #60-59
8227301	F-10-048658	4229531137		102-4		HOCKING "A" #61-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227302	F-10-048666	4229531138		102-4		HOCKING "A" #62-59
8227303	F-10-048674	4229531139		102-4		HOCKING "A" #63-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227304	F-10-048682	4229531140		102-4		HOCKING "A" #64-59
8227305	F-10-048690	4229531141		102-4		HOCKING "A" #65-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227306	F-10-048708	4229531142		102-4		HOCKING "A" #66-59
8227307	F-10-048716	4229531143		102-4		HOCKING "A" #67-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227308	F-10-048724	4229531144		102-4		HOCKING "A" #68-59
8227309	F-10-048732	4229531145		102-4		HOCKING "A" #69-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227310	F-10-048740	4229531146		102-4		HOCKING "A" #70-59
8227311	F-10-048757	4229531147		102-4		HOCKING "A" #71-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227312	F-10-048765	4229531148		102-4		HOCKING "A" #72-59
8227313	F-10-048773	4229531149		102-4		HOCKING "A" #73-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227314	F-10-048781	4229531150		102-4		HOCKING "A" #74-59
8227315	F-10-048799	4229531151		102-4		HOCKING "A" #75-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227316	F-10-048807	4229531152		102-4		HOCKING "A" #76-59
8227317	F-10-048815	4229531153		102-4		HOCKING "A" #77-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227318	F-10-048823	4229531154		102-4		HOCKING "A" #78-59
8227319	F-10-048831	4229531155		102-4		HOCKING "A" #79-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227320	F-10-048849	4229531156		102-4		HOCKING "A" #80-59
8227321	F-10-048856	4229531157		102-4		HOCKING "A" #81-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227322	F-10-048864	4229531158		102-4		HOCKING "A" #82-59
8227323	F-10-048872	4229531159		102-4		HOCKING "A" #83-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227324	F-10-048880	4229531160		102-4		HOCKING "A" #84-59
8227325	F-10-048898	4229531161		102-4		HOCKING "A" #85-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227326	F-10-048906	4229531162		102-4		HOCKING "A" #86-59
8227327	F-10-048914	4229531163		102-4		HOCKING "A" #87-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227329	F-10-048922	4229531164		102-4		HOCKING "A" #88-59
8227330	F-10-048930	4229531165		102-4		HOCKING "A" #89-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227331	F-10-048948	4229531166		102-4		HOCKING "A" #90-59
8227332	F-10-048955	4229531167		102-4		HOCKING "A" #91-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227333	F-10-048963	4229531168		102-4		HOCKING "A" #92-59
8227336	F-10-048971	4229531169		102-4		HOCKING "A" #93-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227337	F-10-048989	4229531170		102-4		HOCKING "A" #94-59
8227338	F-10-048997	4229531171		102-4		HOCKING "A" #95-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227339	F-10-049003	4229531172		102-4		HOCKING "A" #96-59
8227340	F-10-049011	4229531173		102-4		HOCKING "A" #97-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227341	F-10-049029	4229531174		102-4		HOCKING "A" #98-59
8227342	F-10-049037	4229531175		102-4		HOCKING "A" #99-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227343	F-10-049045	4229531176		102-4		HOCKING "A" #100-59
8227344	F-10-049052	4229531177		102-4		HOCKING "A" #101-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227345	F-10-049060	4229531178		102-4		HOCKING "A" #102-59
8227346	F-10-049078	4229531179		102-4		HOCKING "A" #103-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227347	F-10-049086	4229531180		102-4		HOCKING "A" #104-59
8227348	F-10-049094	4229531181		102-4		HOCKING "A" #105-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227349	F-10-049102	4229531182		102-4		HOCKING "A" #106-59
8227350	F-10-049110	4229531183		102-4		HOCKING "A" #107-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227351	F-10-049128	4229531184		102-4		HOCKING "A" #108-59
8227352	F-10-049136	4229531185		102-4		HOCKING "A" #109-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227353	F-10-049144	4229531186		102-4		HOCKING "A" #110-59
8227354	F-10-049151	4229531187		102-4		HOCKING "A" #111-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227355	F-10-049169	4229531188		102-4		HOCKING "A" #112-59
8227356	F-10-049177	4229531189		102-4		HOCKING "A" #113-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227357	F-10-049185	4229531190		102-4		HOCKING "A" #114-59
8227358	F-10-049193	4229531191		102-4		HOCKING "A" #115-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227359	F-10-049201	4229531192		102-4		HOCKING "A" #116-59
8227360	F-10-049219	4229531193		102-4		HOCKING "A" #117-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227362	F-10-049227	4229531194		102-4		HOCKING "A" #118-59
8227363	F-10-049235	4229531195		102-4		HOCKING "A" #119-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227365	F-10-049243	4229531196		102-4		HOCKING "A" #120-59
8227366	F-10-049250	4229531197		102-4		HOCKING "A" #121-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227367	F-10-049268	4229531198		102-4		HOCKING "A" #122-59
8227368	F-10-049276	4229531199		102-4		HOCKING "A" #123-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227370	F-10-049284	4229531200		102-4		HOCKING "A" #124-59
8227371	F-10-049292	4229531201		102-4		HOCKING "A" #125-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227372	F-10-049300	4229531202		102-4		HOCKING "A" #126-59
8227373	F-10-049318	4229531203		102-4		HOCKING "A" #127-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227375	F-10-049326	4229531204		102-4		HOCKING "A" #128-59
8227376	F-10-049334	4229531205		102-4		HOCKING "A" #129-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227377	F-10-049342	4229531206		102-4		HOCKING "A" #130-59
8227380	F-10-049359	4229531207		102-4		HOCKING "A" #131-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227381	F-10-049367	4229531208		102-4		HOCKING "A" #132-59
8227382	F-10-049375	4229531209		102-4		HOCKING "A" #133-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227383	F-10-049383	4229531210		102-4		HOCKING "A" #134-59
8227384	F-10-049391	4229531211		102-4		HOCKING "A" #135-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227385	F-10-049409	4229531212		102-4		HOCKING "A" #136-59
8227386	F-10-049417	4229531213		102-4		HOCKING "A" #137-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227387	F-10-049425	4229531214		102-4		HOCKING "A" #138-59
8227388	F-10-049433	4229531215		102-4		HOCKING "A" #139-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227391	F-10-049441	4229531216		102-4		HOCKING "A" #140-59
8227392	F-10-049458	4229531217		102-4		HOCKING "A" #141-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227393	F-10-049466	4229531218		102-4		HOCKING "A" #142-59
8227394	F-10-049474	4229531219		102-4		HOCKING "A" #143-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227395	F-10-049482	4229531220		102-4		HOCKING "A" #144-59
8227396	F-10-049490	4229531221		102-4		HOCKING "A" #145-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227397	F-10-049508	4229531222		102-4		HOCKING "A" #146-59
8227398	F-10-049516	4229531223		102-4		HOCKING "A" #147-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227399	F-10-049524	4229531224		102-4		HOCKING "A" #148-59
8227400	F-10-049532	4229531225		102-4		HOCKING "A" #149-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227401	F-10-049540	4229531226		102-4		HOCKING "A" #150-59
8227402	F-10-049557	4229531227		102-4		HOCKING "A" #151-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227403	F-10-049565	4229531228		102-4		HOCKING "A" #152-59
8227404	F-10-049573	4229531229		102-4		HOCKING "A" #153-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227405	F-10-049581	4229531230		102-4		HOCKING "A" #154-59
8227406	F-10-049599	4229531231		102-4		HOCKING "A" #155-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227407	F-10-049607	4229531232		102-4		HOCKING "A" #156-59
8227408	F-10-049615	4229531233		102-4		HOCKING "A" #157-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227409	F-10-049623	4229531234		102-4		HOCKING "A" #158-59
8227410	F-10-049631	4229531235		102-4		HOCKING "A" #159-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227411	F-10-049649	4229531236		102-4		HOCKING "A" #160-59
8227412	F-10-049656	4229531237		102-4		HOCKING "A" #161-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227413	F-10-049664	4229531238		102-4		HOCKING "A" #162-59
8227414	F-10-049672	4229531239		102-4		HOCKING "A" #163-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227415	F-10-049680	4229531240		102-4		HOCKING "A" #164-59
8227416	F-10-049698	4229531241		102-4		HOCKING "A" #165-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227417	F-10-049706	4229531242		102-4		HOCKING "A" #166-59
8227418	F-10-049714	4229531243		102-4		HOCKING "A" #167-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227419	F-10-049722	4229531244		102-4		HOCKING "A" #168-59
8227420	F-10-049730	4229531245		102-4		HOCKING "A" #169-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227421	F-10-049748	4229531246		102-4		HOCKING "A" #170-59
8227422	F-10-049755	4229531247		102-4		HOCKING "A" #171-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227423	F-10-049763	4229531248		102-4		HOCKING "A" #172-59
8227424	F-10-049771	4229531249		102-4		HOCKING "A" #173-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227425	F-10-049789	4229531250		102-4		HOCKING "A" #174-59
8227426	F-10-049797	4229531251		102-4		HOCKING "A" #175-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227427	F-10-049805	4229531252		102-4		HOCKING "A" #176-59
8227428	F-10-049813	4229531253		102-4		HOCKING "A" #177-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227429	F-10-049821	4229531254		102-4		HOCKING "A" #178-59
8227430	F-10-049839	4229531255		102-4		HOCKING "A" #179-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227431	F-10-049847	4229531256		102-4		HOCKING "A" #180-59
8227432	F-10-049854	4229531257		102-4		HOCKING "A" #181-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227433	F-10-049862	4229531258		102-4		HOCKING "A" #182-59
8227434	F-10-049870	4229531259		102-4		HOCKING "A" #183-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227435	F-10-049888	4229531260		102-4		HOCKING "A" #184-59
8227436	F-10-049896	4229531261		102-4		HOCKING "A" #185-59
-HUNTER OIL CORP				RECEIVED:	04/09/82	JA: TX
8227437	F-10-049904	4229531262		102-4		HOCKING "A" #186-59
8227438	F-10-049912	4229531263		102-4		HOCKING "A" #187-59
-HUNTER OIL COR

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227188	F-83-842445	4231338318		103		W H RANDOLPH #1	FT TRINIDAD-BARRETT E	13.0	LONE STAR GAS CO
-HUNT OIL COMPANY				RECEIVED:	04/09/82	JA: TX			
8227187	F-83-842845	4235138144		102-4		KIRBY LUMBER CO #1	WEIRGATE (WOODBINE)	360.0	NATIONAL GATHERIN
-INVESTEK INC				RECEIVED:	04/09/82	JA: TX			
8227368	F-89-848688	4207700888		102-4		TALLY A #1	TALLY CONGLOMERATE	146.0	SANFORD FAGADAU
-J CLEO THOMPSON & JAMES CLEO THOMPS				RECEIVED:	04/09/82	JA: TX			
8227181	F-76-847128	4218533657		103	107-TF	UNIVERSITY 38-4 #1	OZONA (CANYON SAND)	528.0	PHILLIPS PETROLEU
-J M HUBER CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227386	F-10-848770	4206530943		103		BURNETT "RC" #18	PANHANDLE	15.0	PHILLIPS PETROLEU
8227148	F-10-845371	4223331877		103		CHRISTIAN SHAFFER #5	PANHANDLE	40.0	COLORADO INTERSTA
8227387	F-10-848771	4223331279		103		SOUTH HERRING #165	PANHANDLE	43.0	COLORADO INTERSTA
-JAMES COLVIN				RECEIVED:	04/09/82	JA: TX			
8227037	F-10-834831	4200700000		108		MORGAN #1 TRRC ID #33884	EAST PANHANDLE	18.0	EL PASO NATURAL G
-JEN PETROLEUM CORP				RECEIVED:	04/09/82	JA: TX			
8227367	F-8A-848709	4203330717		103		MCKNIGHT #2	LUCY NE (STRAWN-B) FI	18.0	SUN OIL CO
8227355	F-78-848683	4243331346		103		UPSHAW #1	UPSHAW (CONGLOMERATE)	18.0	CITIES SERVICE CO
-JENNINGS EXPLORATION CO				RECEIVED:	04/09/82	JA: TX			
8227281	F-81-848494	4258731472		102-4		GEORGE THOREEN 93059	THOREEN (ELAINE 3530)	109.0	
-JONES CO				RECEIVED:	04/09/82	JA: TX			
8227339	F-78-848894	4248933603		102-4		MINNIE CORBETT #1	CORBETT (CONGL MID)	242.0	SOUTHWESTERN GAS
-K L H OIL & GAS INC				RECEIVED:	04/09/82	JA: TX			
8227225	F-78-847868	4204932701		102-4		O B FOMBY "A" #10	DALE (CADDO)	7.0	ODESSA NATURAL CO
-K R WITHROW ENGINEERING INC				RECEIVED:	04/09/82	JA: TX			
8227304	F-89-848566	4218100000		102-4		DON HEFTON #1	SOUTHMAYD	40.0	WARREN PETROLEUM
8227286	F-89-848515	4218100000		102-4		GRAYSON COUNTY FARM #2	SOUTHMAYD NE (DAVIS)	40.0	WARREN PETROLEUM
-L & M OIL CO				RECEIVED:	04/09/82	JA: TX			
8227177	F-09-847050	4207732261		102-4	103	GARNER "E" #2	GRETCHEN (ELLEN-B)-PR	18.0	TEXAS UTILITIES F
-LADD PETROLEUM CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227131	F-09-844683	4236731375		103		BELL UNIT #2	BOONSVILLE (BEND CONG	134.4	LONE STAR GAS CO
8227846	F-01-848115	4212732069		103		FITZSIMONS RANCH #1-42T	HUGH FITZSIMONS (SAN	27.3	
8227245	F-01-848114	4212732091		103		FITZSIMONS RANCH #1-45	HUGH FITZSIMONS (SAN	88.8	
8227844	F-01-848113	4212731953		103		FITZSIMONS RANCH #1-46	HUGH FITZSIMONS (SAN	1.6	
8227243	F-01-848112	4212732106		103		FITZSIMONS RANCH #2-46	HUGH FITZSIMONS (SAN	18.4	
8227242	F-01-848111	4212732180		103		FITZSIMONS RANCH #3-46	HUGH FITZSIMONS (SAN	73.1	
-LAMBERT HOLLUB DRILLING CO				RECEIVED:	04/09/82	JA: TX			
8227180	F-83-847079	4205131682		103		TARWATER "A" #1-RRC #N/A	WILLARD	8.3	
-LOUISIANA LAND & EXPLORATION CO				RECEIVED:	04/09/82	JA: TX			
8227866	F-06-838594	4222530372		102-4		FRANK C DAILY #1	NAVARRO CROSSING	365.0	LONE STAR GAS CO
-LUCKY BIRD PETROLEUM, INC.				RECEIVED:	04/09/82	JA: TX			
8227394	F-10-848836	4206500000		103		PREWIT #1	PANHANDLE	8.0	GETTY OIL CO
8227393	F-10-848835	4206500000		103		THORNBURG #5	PANHANDLE	8.0	GETTY OIL CO
-MARSHALL EXPLORATION INC				RECEIVED:	04/09/82	JA: TX			
8227865	F-86-838419	4241930344		102-4		CROCKER #1	WILDCAT (PETTIT)	200.0	UNITED GAS PIPELI
8227119	F-78-843542	4236332323		108		DUNNAWAY "A" #2	NORTH BRANSON (BIG SA	24.0	SOUTHWESTERN GAS
8227880	F-06-839872	4236531218		103		MCNEESE #2	BELLE BOWER (TRAVIS P	119.0	UNITED GAS PIPELI
8227173	F-06-846880	4220330531		108		W R FURRH #1	ELYSIAN N (COTTON VAL	18.0	NATURAL GAS PIPEL
-MATAGORDA PRODUCTION CO				RECEIVED:	04/09/82	JA: TX			
8227021	F-02-830197	4217531561		103		J E MCCORD #2	DALLAS HUSKY (VICKSBU	0.0	TEXAS EASTERN TRA
-MCBRAYER OIL CORP				RECEIVED:	04/09/82	JA: TX			
8227108	F-05-842872	4234900000		107-TF		SEALE GAS UNIT #1	WILDCAT (COTTON VALLE	447.1	DELHI GAS PIPELIN
-MCCORMICK OPERATING CO				RECEIVED:	04/09/82	JA: TX			
8227078	F-06-839754	4240131189		103	107-TF	THOMPSON GAS UNIT NO 4-A	OAK HILL (COTTON VALL	585.0	HYDROCARBON TRANS
-MCFARLANE OIL CO INC				RECEIVED:	04/09/82	JA: TX			

UMI 28 87 MAY 69 81 74 V

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227035	F-82-834756	4246900000		103		MCFARLANE FEE #4
8227036	F-82-834820	4246900000		103		PICKERING & ROOS #37
				RECEIVED:	04/09/82	JA: TX
-NEWBOURNE OIL COMPANY						
8227114	F-86-843293	4240100000		102-4		LEON ROPER #1
				RECEIVED:	04/09/82	JA: TX
-NGF OIL CORP						
8227093	F-7C-841822	4238300000		103		UNIVERSITY "16-A" #1
				RECEIVED:	04/09/82	JA: TX
-MITCHELL ENERGY CORPORATION						
8227092	F-09-841707	4249732174		103		A S C C U #10-3
8227018	F-09-825344	4249731770		103		ALVORD SOUTH (CADDO CONGL) U #95
8227044	F-09-835928	4249732039		103		E O HARRIS #2
8227033	F-05-834584	4216130639		103	107-TF	G C HARRISON #1
8227153	F-09-846007	4223734106		108		J R HALSELL #16
8227168	F-09-846458	4249700000		108		M D CULWELL #1 28613
8227050	F-09-836873	4249700000		108		TCWB #7 #28827
-MOBIL PRDG TEXAS & NEW MEXICO INC						
8227185	F-8A-847415	4221932626		103		MAPLE WILSON #72
8227389	F-08-848575	4233531411		103		MARY FOSTER #116
*8227337	F-08-848646	4232930859		103		PRESTON SPRABERRY UNIT #2108
				RECEIVED:	04/09/82	JA: TX
-MOLE OPERATING COMPANY INC						
8227282	F-8A-847663	4211500000		102-4		BAPTIST FOUNDATION OF TEXAS #1
				RECEIVED:	04/09/82	JA: TX
-MONSANTO COMPANY						
8227299	F-10-848518	4235700000		107-PE		HALLIBURTON #1
8227272	F-8A-848446	4250132163		103		SAWYER #9
				RECEIVED:	04/09/82	JA: TX
-MURPHY H BAXTER						
8227362	F-03-848692	4215700000		102-4		ALMEDA HAROLD CORP
				RECEIVED:	04/09/82	JA: TX
-NATURAL GAS ANADARKO INC						
8227076	F-10-839707	4235731108		102-4		BENNY #1-404
8227077	F-10-839710	4235731080		102-4		LELAND #2-301
				RECEIVED:	04/09/82	JA: TX
-NUGGET OIL CORP						
8227233	F-82-848028	4212331172		102-4		J B LEWRIGHT #2
				RECEIVED:	04/09/82	JA: TX
-OWL PETROLEUM CO						
8227075	F-83-839462	4248131788		102-4		D S BABCOCK #1
8227074	F-03039461	4248132015		102-4		D S BABCOCK #3
				RECEIVED:	04/09/82	JA: TX
-OXOCO EXPLORATION CORP						
8227315	F-06-848589	4242330372		103		ROOSTH & GENECOV #1 TEXAS #10428
				RECEIVED:	04/09/82	JA: TX
-PANHANDLE PRODUCING COMPANY						
8227232	F-10-848011	4223300000		103		COCKRELL C-20 (00816)
8227230	F-10-848009	4223300000		103		COCKRELL C-21 (00816)
8227231	F-10-848010	4223300000		103		COCKRELL C-22 (00816)
				RECEIVED:	04/09/82	JA: TX
-PAR PRODUCING CO						
8227142	F-03-845546	4214900000		102-2		ROY PIETSCH #1
				RECEIVED:	04/09/82	JA: TX
-PARAMOUNT PETROLEUM CORPORATION						
8227133	F-86-844724	4220300000		108		DAVID PILOT GAS UNIT NNC #35151
				RECEIVED:	04/09/82	JA: TX
-PENINSULA RESOURCES CORPORATION						
8227147	F-82-845829	4229732684		102-4		LYNE #1
8227087	F-04-848757	4224931378		102-4	103	MINTEN "B" #1
				RECEIVED:	04/09/82	JA: TX
-PENNZOIL PRODUCING COMPANY						
8227257	F-84-848158	4221501845		108		ADERHOLD UNIT #3-M
8227053	F-86-837104	4236500000		103	107-TF	CRENSHAW UNIT #2
8227144	F-86-845714	4287338432		102-4		SOUTH #1
8227115	F-86-843295	4256531289		103	107-TF	WILSON UNIT #2
8227054	F-86-837105	4206730340		103	107-TF	WYATT KING #2
				RECEIVED:	04/09/82	JA: TX
-PETROLEUM CORPORATION OF TEXAS						

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FIELD NAME	PROD	PURCHASER
PLACEDO	0.0	TENNECO CHEMICALS
PLACEDO	0.0	TENNECO CHEMICALS
ROPER (PETTIT)	75.0	UNITED GAS PIPE L
SPRABERRY (TREND AREA	0.0	J L DAVIS
ALVORD SOUTH (CADDO C	55.0	NATURAL GAS PIPEL
ALVORD SOUTH (CADDO C	46.0	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	225.0	NATURAL GAS PIPEL
COTTON GIN (COTTON VA	330.0	
ARCO (CONGLOMERATE)	50.0	SOUTHWESTERN GAS
BOONSVILLE (BEND CONG	11.9	NATURAL GAS PIPEL
CAP YATES (CONSOLIDAT	4.5	NATURAL GAS PIPEL
SLAUGHTER	0.4	AMOCO PRODUCTION
IATAN EAST HOWARD	0.4	GETTY OIL CO
SPRABERRY (TREND AREA	1.8	PHILLIPS PETROLEU
CHRISTINE (SPRABERRY)	0.0	GETTY OIL CO
KIOWA CREEK	146.0	DIAMOND SHAMROCK
WASSON	9.0	SHELL OIL CO
FRELS (WILCOX FIRST)	350.0	TENNGASCO INC
	140.0	TRANSWESTERN PIPE
TURNER S E (MORROW LO	360.0	TRANSWESTERN PIPE
WARMSLEY (HILGARTNER)	55.0	VALERO TRANSMISSI
MENEFEE (FRIO 4825)	40.0	TRANSCONTINENTAL
MENEFEE (FRIO 4150)	45.0	TRANSCONTINENTAL
CHAPEL HILL (UPPER RO	68.0	EAST TEXAS PRODUC
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
GIDDINGS (AUSTIN CHAL	36.5	PHILLIPS PETROLEU
WOODLAWN (ODESSA)	0.0	
KATZ-SLICK (WILCOX B)	0.0	HOUSTON PIPE LINE
FALFURRIAS (8100')	180.0	DELHI GAS PIPELIN
SAN CARLOS (FF-18)	18.0	TRUNKLINE GAS CO
BETHANY EAST (COTTON	600.0	UNITED GAS PIPE L
PERCY WHEELER /TRAVIS	550.0	
CARTHAGE (COTTON VALL	420.0	UNITED GAS PIPE L
KILDARE (COTTON VALLE	720.0	TEXAS EASTERN TRA

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227234	F-82-848029	4212331173		102-4		J B LEWRIGHT #3
				RECEIVED:	04/09/82	JA: TX
-OWL PETROLEUM CO						
8227073	F-83-839461	4248131788		102-4		D S BABCOCK #2
				RECEIVED:	04/09/82	JA: TX
-OXOCO EXPLORATION CORP						
8227314	F-06-848588	4242330372		103		ROOSTH & GENECOV #2 TEXAS #10428
				RECEIVED:	04/09/82	JA: TX
-PANHANDLE PRODUCING COMPANY						
8227237	F-10-848014	4223300000		103		COCKRELL C-23 (00816)
8227236	F-10-848013	4223300000		103		COCKRELL C-24 (00816)
8227235	F-10-848012	4223300000		103		COCKRELL C-25 (00816)
				RECEIVED:	04/09/82	JA: TX
-PAR PRODUCING CO						
8227141	F-03-845545	4214900000		102-2		ROY PIETSCH #2
				RECEIVED:	04/09/82	JA: TX
-PARAMOUNT PETROLEUM CORPORATION						
8227132	F-86-844723	4220300000		108		DAVID PILOT GAS UNIT NNC #35152
				RECEIVED:	04/09/82	JA: TX
-PENINSULA RESOURCES CORPORATION						
8227146	F-82-845828	4229732683		102-4		LYNE #2
8227088	F-04-848758	4224931379		102-4	103	MINTEN "B" #2
				RECEIVED:	04/09/82	JA: TX
-PENNZOIL PRODUCING COMPANY						
8227256	F-84-848157	4221501844		108		ADERHOLD UNIT #3-L
8227052	F-86-837103	4236500000		103	107-TF	CRENSHAW UNIT #1
8227143	F-86-845713	4287338431		102-4		SOUTH #2
8227114	F-86-843294	4256531288		103	107-TF	WILSON UNIT #1
8227055	F-86-837106	4206730341		103	107-TF	WYATT KING #1
				RECEIVED:	04/09/82	JA: TX
-PETROLEUM CORPORATION OF TEXAS						

FIELD NAME	PROD	PURCHASER
PLACEDO	0.0	TENNECO CHEMICALS
PLACEDO	0.0	TENNECO CHEMICALS
ROPER (PETTIT)	75.0	UNITED GAS PIPE L
SPRABERRY (TREND AREA	0.0	J L DAVIS
ALVORD SOUTH (CADDO C	55.0	NATURAL GAS PIPEL
ALVORD SOUTH (CADDO C	46.0	NATURAL GAS PIPEL
BOONSVILLE (BEND CONG	225.0	NATURAL GAS PIPEL
COTTON GIN (COTTON VA	330.0	
ARCO (CONGLOMERATE)	50.0	SOUTHWESTERN GAS
BOONSVILLE (BEND CONG	11.9	NATURAL GAS PIPEL
CAP YATES (CONSOLIDAT	4.5	NATURAL GAS PIPEL
SLAUGHTER	0.4	AMOCO PRODUCTION
IATAN EAST HOWARD	0.4	GETTY OIL CO
SPRABERRY (TREND AREA	1.8	PHILLIPS PETROLEU
CHRISTINE (SPRABERRY)	0.0	GETTY OIL CO
KIOWA CREEK	146.0	DIAMOND SHAMROCK
WASSON	9.0	SHELL OIL CO
FRELS (WILCOX FIRST)	350.0	TENNGASCO INC
	140.0	TRANSWESTERN PIPE
TURNER S E (MORROW LO	360.0	TRANSWESTERN PIPE
WARMSLEY (HILGARTNER)	55.0	VALERO TRANSMISSI
MENEFEE (FRIO 4825)	40.0	TRANSCONTINENTAL
MENEFEE (FRIO 4150)	45.0	TRANSCONTINENTAL
CHAPEL HILL (UPPER RO	68.0	EAST TEXAS PRODUC
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
PANHANDLE HUTCHINSON	0.0	GETTY OIL CO
GIDDINGS (AUSTIN CHAL	36.5	PHILLIPS PETROLEU
WOODLAWN (ODESSA)	0.0	
KATZ-SLICK (WILCOX B)	0.0	HOUSTON PIPE LINE
FALFURRIAS (8100')	180.0	DELHI GAS PIPELIN
SAN CARLOS (FF-18)	18.0	TRUNKLINE GAS CO
BETHANY EAST (COTTON	600.0	UNITED GAS PIPE L
PERCY WHEELER /TRAVIS	550.0	
CARTHAGE (COTTON VALL	420.0	UNITED GAS PIPE L
KILDARE (COTTON VALLE	720.0	TEXAS EASTERN TRA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227226	F-08-047906	4247532061		103		TREBOL #17
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/09/82	JA: TX
8227872	F-10-039253	4217900000		108		PANHANDLE #3
-PRENTICE PETROLEUM INC				RECEIVED:	04/09/82	JA: TX
8227345	E-7B-048656	4213300000		108		HOLLIS SHULTS #1 (14986)
-PYRO ENERGY CORP				RECEIVED:	04/09/82	JA: TX
8227336	F-01-048645	4217731175		102-2		B W ILEY #2
8227388	F-01-048795	4217731044		103		L F BURCHARD B #4
-R A W ENERGY CORP				RECEIVED:	04/09/82	JA: TX
8227182	F-7B-047241	4236732070		102-4		HOLLOWAY #3-U
8227183	F-7B-047243	4236732070		102-4		TEXACO #1
8227141	F-7S-045500	4236332704		102-4		WIGGINS #1 RRC #96806
-R LACY INC				RECEIVED:	04/09/82	JA: TX
8227126	F-06-044268	4236531330		102-4		BURNETT UNIT 18 #6 RRC # N/A
-RALPH L WAY INC				RECEIVED:	04/09/82	JA: TX
8227194	F-08-047563	4232931803		103		WASHBURN #1
-RANDOLPH ACOCK				RECEIVED:	04/09/82	JA: TX
8227193	F-03-047554	4205131561		102-2		F S NEAL #1
-REMUDA OIL & GAS CO				RECEIVED:	04/09/82	JA: TX
8227266	F-06-048412	4240131220		103		OREN HAYS #1
8227267	F-06-048413	4240131219		103		W C JARREL #1
-SAGE ENERGY CO				RECEIVED:	04/09/82	JA: TX
8227299	F-03-048558	4205131314		102-2		ASH UNIT #1 RRC #14743
8227298	F-03-048557	4205131330		102-2		BIRCH CREEK "A" #2 RRC #13891
8227297	F-03-048556	4214931235		102-2		BROWN UNIT #1 RRC #15063
8227128	F-03-044474	4214931145		102-2		LA RUE UNIT #1 RRC #14664
8227296	F-03-048554	4205131528		102-2		MEL UNIT #1 RRC #14859
8227295	F-03-048553	4214931215		102-2		PLUM "F" #1 RRC #14858
8227294	F-03-048552	4214931173		102-2		PLUM "K" #1 RRC #14960
8227234	F-7C-048045	4238331951		103		UNIVERSITY 2-GA #1 RRC#08908
8227235	F-7C-048046	4238300000		103		UNIVERSITY2-G #2 RRC#08905
8227293	F-03-048551	4214931604		102-2		WHISKEY RIVER #1 RRC #14530
-SAMEDAN OIL CORPORATION				RECEIVED:	04/09/82	JA: TX
8227259	F-8A-048166	4216532072		103		SOUTH CENTRAL ROBERTSON UNIT 54
-SANDIA RESOURCES CORP				RECEIVED:	04/09/82	JA: TX
8227149	F-7B-045888	4238332390		102-4		WHITTINGTON #1 (97361)
-SANTA FE ENERGY PRODUCTS CO				RECEIVED:	04/09/82	JA: TX
8227189	F-8A-047509	4250132126		103		REEVES UNIT #132
-SANTA FE-WINDSOR PRODUCING CO				RECEIVED:	04/09/82	JA: TX
8227222	F-03-047829	4228731183		103		KURIO #3
-SAXON OIL COMPANY				RECEIVED:	04/09/82	JA: TX
8227184	F-7C-047373	4246100000		103		BRUSENHAN #2
8227205	F-08-047702	4231700000		103		CORRIGAN #1
8227118	F-08-043473	4211500000		103		GAY WADE "Y" #1
8227098	F-7C-041248	4246131799		103		RATLIFF "A" #1
8227354	F-7C-048681	4238331957		103		UNIVERSITY 28 "A"-1 #1
8227206	F-7C-047703	4238300000		103		UNIVERSITY 28-9 #2
8227207	F-08-047707	4231700000		103		WEMPLE #1
-SEATEX ENERGY CORP				RECEIVED:	04/09/82	JA: TX
8227377	F-09-048739	4250335473		103		KINDLEY #1 OIL LEASE #21808
-SEELY OIL CO				RECEIVED:	04/09/82	JA: TX
8227392	F-7B-048834	4236332700		103		BOWMAN-STATE GAS UNIT #2 97392
-SHELL OIL CO				RECEIVED:	04/09/82	JA: TX

FIELD NAME	PROD	PURCHASER
WARD-ESTES NORTH	0.4	
PANHANDLE GRAY	0.0	
BLIND HOG (RANGER)	4.0	SIOUX PIPELINE
CHRISTIAN (6800)	0.0	VALERO TRANSMISSI
CHRISTIAN (6800)	0.0	VALERO TRANSMISSI
LAKE MINERAL WELLS (4	72.0	SOUTHWESTERN GAS
M E S ELLENBERGER	0.0	SOUTHWESTERN GAS
NESSLER (3980)	1460.0	SOUTHWESTERN GAS
CARTHAGE (TRAVIS PEAK	183.0	ARKANSAS LOUISIAN
SPRABERRY TREND AREA	95.8	PHILLIPS PETROLEU
CALDWELL (AUSTIN CHAL	100.0	CLAJON GAS CO
LANEVILLE NE (PETTIT	36.5	TEXAS UTILITIES F
LANEVILLE NE (PETTIT	365.0	TEXAS UTILITIES F
GIDDINGS (AUSTIN CHAL	140.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	150.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	15.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	36.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	30.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	21.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	130.0	PHILLIPS PETROLEU
FARMER (SAN ANDRES)	0.1	NORTHERN NATURAL
FARMER (SAN ANDRES)	0.1	NORTHERN NATURAL
GIDDINGS (AUSTIN CHAL	280.0	PHILLIPS PETROLEU
ROBERTSON NORTH/CLEAR	10.0	PHILLIPS PETROLEU
SANDIA (FRY)	76.0	UNION TEXAS PETRO
REEVES (SAN ANDRES)	1.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	365.0	PERRY PIPELINE CO
SPRABERRY (TREND AREA	0.0	MOBIL PRODUCING T
BREEDLOVE EAST (SPRAB	0.0	PHILLIPS PETROLEU
BREEDLOVE EAST (SPRAB	0.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
TEXON WEST (SPRABERRY	13.6	DORCHESTER GAS PR
SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
BREEDLOVE EAST (SPRAB	0.0	PHILLIPS PETROLEU
JAMES N (MISS)	20.0	SUN GAS TRANSMISS
MINERAL WELLS (BIG SA	175.0	SOUTHWESTERN GAS

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JD NO	JA DKT.	API NO	D	SEC(1)	SEC(2)	WELL NAME
*8227253	F-8A-048135	4216531873		103		DENVER UNIT #6736
*8227252	F-8A-048134	4216531868		103		DENVER UNIT #6737
*8227251	F-8A-048133	4216532067		103		DENVER UNIT #6824
*8227250	F-8A-048131	4216532060		103		DENVER UNIT #7433
*8227249	F-8A-048130	4216532080		103		DENVER UNIT WELL NO 7718
8227083	F-04-040497	4250531222		107-DP		G L LEYENDECKER #1-R
8227368	F-08-048710	4249531416		103		SEALY SMITH FOUNDATION 68 2R
8227098	F-08-042279	4213500000		108		TXL-E-#12
-SHOW PETROLEUM INC				RECEIVED:	04/09/82	JA: TX
8227260	F-7B-048172	4242932926		102-4		BONEY #1
8227262	F-7B-048174	4213333087		102-4		DILLINDER "F" #1
8227261	F-7B-048173	4242932990		102-4		HAMES "C" #4
-SIMPSON-MANN INC				RECEIVED:	04/09/82	JA: TX
8227192	F-7C-047517	4210533245		103	107-TF	BAGGETT UNIT 1 #6-2
8227190	F-7C-047514	4210533266		103	107-TF	BAGGETT UNIT 2 #7-1
8227191	F-7C-047515	4210533265		103	107-TF	BAGGETT UNIT 3 #8-1
-SOUTHLAND ROYALTY CO				RECEIVED:	04/09/82	JA: TX
8227363	F-8B-048694	4210332694		103		EDWARDS GRAYBURG UNIT #7-33
-STAHL PETROLEUM CO				RECEIVED:	04/09/82	JA: TX
*8227383	F-10-048761	4248330817		108		LULA #2
*8227382	F-10-048768	4248330824		108		LULA #3
8227380	F-10-048758	4217900000		108		PATTERSON #2
*8227384	F-10-048762	4248330811		108		ROGERS #1
*8227381	F-10-048759	4217930648		108		WEBB #1 #88328
-SUGARBERRY OIL & GAS CORP				RECEIVED:	04/09/82	JA: TX
8227196	F-7C-047689	4241331137		107-TF		CASE #4
8227197	F-7C-047611	4241331123		107-TF		HARPER #2
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/09/82	JA: TX
8227319	F-81-048599	4212732177		103		BIG WELLS (SAN MIGUEL) UNIT #2502
8227325	F-06-048610	4220330872		103	107-TF	BLOCKER HEIRS GAS UNIT #1
8227328	F-09-048600	4249700000		108		HENRY KELLY UNIT #1
8227322	F-04-048605	4242731370		103		I V MONTALVO -C- #40
8227323	F-04-048608	4242731448		103		MARTHA A TILLETT
8227317	F-08-048595	4200332950		103		NELLIE C MARTIN #7
8227321	F-10-048603	4235700000		108		R F NEWMAN #1-A
8227324	F-8A-048609	4221933218		103		SOUTHEAST LEVELLAND UNIT #263
8227316	F-08-048594	4210332637		103		UNIVERSITY "L" #9
8227318	F-8A-048598	4207931412		103		WRIGHT UNIT #2-A
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/09/82	JA: TX
8227158	F-6F-046296	4210300000		108		M T COLE #34
-TAUBERT & STEED				RECEIVED:	04/09/82	JA: TX
8227025	F-8A-032292	4226930278		102-4		S B BURNETT ESTATE N-8
-TENROC CORP				RECEIVED:	04/09/82	JA: TX
8227134	F-03-044816	4247730428		102-2		NEINAST "B" #4
-TERRA RESOURCES INC				RECEIVED:	04/09/82	JA: TX
8227089	F-04-041103	4213134960		102-4		FROST NATIONAL BANK & TRUST #1
-TEXACO INC				RECEIVED:	04/09/82	JA: TX
8227095	F-04-042026	4221500000		107-DP		A E GUERRA #20
8227073	F-03-039432	4229131383		107-DP		BOYT-HEIRS G/U O/A #1
8227124	F-08-044192	4243130948		103		E B COPE #3
8227310	F-10-048580	4242100000		108		M DORTCH #6
8227311	F-8A-048582	4216532251		103		ROBERTSON UNIT #40
8227172	F-08-046778	4200331169		103		STATE OF TEXAS "S" #3

FIELD NAME	PROD	PURCHASER
WASSON	0.4	SHELL OIL CO
WASSON	4.8	SHELL OIL CO
WASSON	8.3	SHELL OIL CO
WASSON	4.8	SHELL OIL CO
WASSON	0.4	SHELL OIL CO
FANDANGO (UPPER WILCO	750.0	UNITED TEXAS TRAN
DARNER NE (PENN)	3.7	WARREN PETROLEUM
TXL (SAN ANDRES)	4.5	SHELL OIL CO
RANGER NW (MARBLE FAL	5.0	LONE STAR GAS CO
DESDEMONA N (CONGL)	1.0	NORTHERN GAS PROD
RANGER NW (MARBLE FAL	2.0	LONE STAR GAS CO
ADAMS BAGGETT RANCH (	162.0	VALERO TRANSMISSI
ADAMS BAGGETT RANCH (	165.6	VALERO TRANSMISSI
ADAMS BAGGETT RANCH (	237.6	VALERO TRANSMISSI
EDWARDS	1.0	PHILLIPS PETROLEU
EAST PANHANDLE	0.0	TRANSWESTERN PIPE
EAST PANHANDLE	0.0	TRANSWESTERN PIPE
WEST PANHANDLE	0.0	EL PASO NATURAL G
EAST PANHANDLE	0.0	TRANSWESTERN PIPE
EAST PANHANDLE	4.4	TRANSWESTERN PIPE
VELREX (HENDERSON UPP	76.7	CRA INC
VELREX (HENDERSON UPP	164.3	CRA INC
BIG WELLS (SAN MIGUEL	19.0	HOUSTON PIPELINE
BLOCKER (COTTON VALLE	45.0	UNITED GAS PIPE L
BOONSVILLE (BEND CONG	13.0	NATURAL GAS PIPE
SUN NORTH/DX-G/	566.0	
LOCKHART	20.0	TENNESSEE GAS PIP
MARTIN (TUBB)	79.0	PHILLIPS PETROLEU
SMITH PERRYTON (L MOR	4.0	NATURAL GAS PIPE
LEVELLAND	4.0	AMOCO PRODUCTION
DUNE	0.3	PHILLIPS PETROLEU
LEVELLAND	3.0	CITIES SERVICE CO
EAST TEXAS	1.0	ARCO OIL & GAS CO
ANNE TANDY (STRAWN 54	0.7	LONE STAR GAS CO
GIDDINGS (AUSTIN CHAL	525.0	PHILLIPS PETROLEU
RANCHO SOLO	1500.0	VALERO TRANSMISSI
MCALLEN RANCH EAST (V	438.0	TENNESSEE GAS PIP
COTTONWOOD S E (YEGUA	1460.0	
CONGER SW (PENN)	161.3	VALERO TRANSMISSI
STRATFORD (CISCO LIME	6.8	TRANSWESTERN PIPE
ROBERTSON N (CLEARFOR	17.1	PHILLIPS PETROLEU
BLOCK 12 (YATES)	122.3	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-TEXAS GENERAL PETROLEUM CORP				RECEIVED:	04/09/82	JA: TX			
8227045	F-04-035995	4235531599		102-4		LESLIE MUMME THOMAS #1-T	DOUGHERTY	0.5	UNITED GAS PIPE L
-TEXAS OIL & GAS CORP				RECEIVED:	04/09/82	JA: TX			
8227026	F-02-032954	4205730906		102-4		CLARK "H" #1	LONG MOTT (9100)	0.0	UNITED GAS PIPELI
8227023	F-06-031860	4240131036		103		GILBERT "A" #1	MINDEN E (TRAVIS PEAK	0.0	
8227070	F-08-039157	4232900008		107-PE		TOYAH SECTION 23 #2-20935	TOYAH (DEVONIAN)	250.0	DELHI GAS PIPELIN
-THE ANSCHUTZ CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227046	F-02-036026	4219732599		102-4		ROY LAY #2 (RRC ID #92124)	DINERO W (4300')	80.0	VALLEY GAS TRANSM
-THROCKMORTON GAS SYSTEMS				RECEIVED:	04/09/82	JA: TX			
8227151	F-78-045952	4244731678		102-4		F T RICHARDS #1 (14584)	JERRY (MISS)	0.0	WARREN PETROLEUM
8227055	F-78-037150	4244732299		102-4		RICHARDS #4-H 16477	RICHARDS RANCH (CONGL	0.0	WARREN PETROLEUM
8227061	F-78-038025	4244732554		102-4		RICHARDS "H" #6	RICHARDS RANCH (TANNE	0.0	WARREN PETROLEUM
8227056	F-78-037151	4244732370		102-4		RICHARDS H-5 16477	RICHARDS RANCH (CONGL	0.0	WARREN PETROLEUM
-TRAVELERS OIL CO				RECEIVED:	04/09/82	JA: TX			
8227031	F-10-033496	4217900888		108		CHAPMAN "A" #2 25853	EAST PANHANDLE	6.0	TRANSWESTERN PIPE
-TREPEL PETROL EXPLOR & DEV CORP				RECEIVED:	04/09/82	JA: TX			
8227391		4245130657		103		J W JOHNSON #1	MT SUSAN S (STRN LIME	30.0	ARCO OIL & GAS CO
-U S OPERATING INC				RECEIVED:	04/09/82	JA: TX			
8227120	F-03-043551	4228730839		102-2		ADEENA #1	GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
8227117	F-08-043556	4205131811		102-2		CLARA #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227116	F-03-043555	4205131149		102-2		DOLORES UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8227157	F-03-046279	4228731818		102-2		IRENE #1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
8227159	F-03-046440	4228731036		102-2		KERRY #1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
8227105	F-03-042826	4205131628		102-2		LILLY UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227051	F-03-037085	4228730477		102-4		PATTI UNIT #1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	91.0	PGP GAS PRODUCTS
8227138	F-03-045274	4205131964		102-2		SABRINA UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227132	F-03-044705	4205131867		102-2		WANDA UNIT #1 RRC ID N/A	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/09/82	JA: TX			
8227241	F-08-048183	4208332992		103		FUHRMAN-MASCHO UNIT #706 BLK #10	FUHRMAN-MASCHO	3.0	PHILLIPS PETROLEU
-UPHAM OIL & GAS CO				RECEIVED:	04/09/82	JA: TX			
8227154	F-09-046015	4223700000		102-4		RALPH TIPTON UNIT #2	NEW DISCOVERY	0.0	LONE STAR GAS CO
-VANDERBILT RESOURCES CORPORATION				RECEIVED:	04/09/82	JA: TX			
8227145	F-01-045716	4217700000		102-4 103		BURCHARD #1	PEACH CREEK (AUSTIN C	175.0	VALERO TRANSMISSI
-VAUGHN PETROLEUM INC				RECEIVED:	04/09/82	JA: TX			
8227224	F-78-047856	4235331210		102-4		BOYD EDNA 17973	J&J (CADDO)	0.0	PALO DURO PIPE LI
8227333	F-78-048636	4235331211		102-4		J C MORRIS EST 18084	THANKSGIVING (ELLENBE	0.0	PALO DURO PIPELIN
-VORTT EXPLORATION CO INC				RECEIVED:	04/09/82	JA: TX			
8227047	F-09-036161	4258332622		102-4		A BERNHARDT #1 (19602)	FRANKIE B (CADDO MIDD	0.0	GAS ASSOCIATED SY
8227215	F-78-047796	4236332340		108		D BAUM UNIT I #1 (88442)	MINERAL WELLS S (STRA	0.0	SOUTHWESTERN GAS
8227214	F-78-047794	4236332613		108		B BAUM UNIT III #1 (93944)	MINERAL WELLS S (STRA	0.0	SOUTHWESTERN GAS
8227212	F-78-047790	4236332482		108		D E EATON UNIT I #1 (93943)	MINERAL WELLS S (STRA	0.0	SOUTHWESTERN GAS
8227211	F-78-047789	4236332426		108		LEON JENKINS UNIT I #1 (94397)	MINERAL WELLS S (CONG	0.0	SOUTHWESTERN GAS
8227213	F-78-047793	4236332412		108		V KELLY #1 (93733)	MINERAL WELLS S (STRA	0.0	SOUTHWESTERN GAS
-W B TRAMMELL				RECEIVED:	04/09/82	JA: TX			
8227258	F-78-048159	4215131416		102-4		W B TRAMMELL #3-24	JUDY GAIL EAST (CANYO	0.0	PALO DURO PIPELIN
-W L BRUCE OPERATOR				RECEIVED:	04/09/82	JA: TX			
8227375	F-10-048732	4206531055		103		ENSERCH #1 RRC #04953	PANHANDLE CARSON	144.0	GETTY OIL CO
8227376	F-10-048733	4217931036		103		FRASHIER #1 RRC #04928	PANHANDLE	144.0	CABOT PIPELINE CO
-WES-TEX DRILLING COMPANY				RECEIVED:	04/09/82	JA: TX			
8227079	F-08-039861	4222732203		103		J L JONES HEIRS #7	VINCENT (CLEAR FORK L	12.0	GETTY OIL CO
8227081	F-78-039931	4235330725		103		MCLAUGHLIN #1	ADAIR CREEK (COOK SAN	0.0	SUN GAS CO
8227210	F-7C-047743	4243532533		103		VALLIANT #2	WHITEHEAD (STRAWN)	0.0	NORTHERN NATURAL
-WHEELER OIL COMPANY				RECEIVED:	04/09/82	JA: TX			

UMI 28 7 YM 6 8 1 7 4 V

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227291	F-10-048543	4248330784		103		AUSTIN (97261) #1
8227351	F-10-048669	4208730102		103		HAWKINS (97257) #3
8227292	F-10-048544	4248330807		103		HOLMES (97259) #1
-WILBROOK EXPLORATION INC				RECEIVED:	04/09/82	JA: TX
8227350	F-7B-048661	4213332449		102-4		PARSLEY #1 (16341)
8227349	F-7B-048660	4213332576		102-4		PARSLEY #2 (16341)
8227346	F-7B-048657	4213332450		102-4		WOOLLEY #1 (16449)
8227347	F-7B-048658	4213332575		102-4		WOOLLEY #2 (16449)
8227348	F-7B-048659	4213332914		102-4		WOOLLEY #3 (16449)
-WILLIAM PERLMAN				RECEIVED:	04/09/82	JA: TX
8227017	F-7C-025115	4210532762		103	107-TF	GENERAL CRUDE 100-1 89783
8227091	F-7C-041442	4240330271		103	107-TF	MITCHELL STATE 22-4
8227062	F-7C-038142	4243532473		102-4		S H ALLISON 11-1
-WINDSOR PRODUCING CO				RECEIVED:	04/09/82	JA: TX
8227111	F-03-042977	4228731040		102-2	103	ERWIN UNIT #1
8227175	F-03-046915	4228731033		102-2	103	HARRY MITSCHKE ESTATE #1
-WINN EXPLORATION/DULCE CO				RECEIVED:	04/09/82	JA: TX
8227218	F-01-047814	4250731227		102-4		PRYOR RANCH #30-C 96409
8227217	F-01-047813	4250731227		102-4		PRYOR RANCH #30-T 96408
-WOODS PETROLEUM CORPORATION				RECEIVED:	04/09/82	JA: TX
8227223	F-10-047851	4222131237		102-4		THIERSTEIN #75-1
-WORLDWIDE ENERGY CORPORATION				RECEIVED:	04/09/82	JA: TX
8227344	F-06-048653	4242330499		102-4		DENMAN #F-1

WEST VIRGINIA DEPARTMENT OF MINES

-BKK PROSPECTING LTD				RECEIVED:	04/12/82	JA: WV
8227412		4707301134		107-DV		BOARD OF EDUCATION #2
8227411		4707301150		107-DV		HIRAM WHERRY #2
-BRAXTON OIL AND GAS CORP				RECEIVED:	04/12/82	JA: WV
8227397		4708300478	D	103		PREISSE #1
8227398		4708300477	D	103		PREISSE #2
-CHASE PETROLEUM				RECEIVED:	04/12/82	JA: WV
8227405		4704102890		103		STALNAKER #6
8227404		4704102891		103		STALNAKER #7
-J & J ENTERPRISES INC				RECEIVED:	04/12/82	JA: WV
8227399		4703302273	D	103		B-323
8227403		4708101455		103		B-382
-QUAKER STATE OIL REFINING CORP				RECEIVED:	04/12/82	JA: WV
8227410		4703923582		103		J H COPENHAVER #14
8227409		4703923583		103		J H COPENHAVER #15
8227408		4703923589		103		O GILBERT #12
-ROBERT R JONES				RECEIVED:	04/12/82	JA: WV
8227407		4702103765		103		ROGERS #1-A
-UNITED PETRO LTD				RECEIVED:	04/12/82	JA: WV
8227401		4701303220		103		RANDY FRY #2
8227402		4701303219		103		RANDY MARGOLIS #1
8227406		4701303283		103		W VA PULP & PAPER #2
-W C HURTT DRILLING CO				RECEIVED:	04/12/82	JA: WV
8227406		4708504811		103		FLEMMING #1

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FIELD NAME	PROD	PURCHASER
EAST PANHANDLE	5.0	HIGH PLAINS NATUR
EAST PANHANDLE	5.0	EL PASO NATURAL G
EAST PANHANDLE	12.0	HIGH PLAINS NATUR
MANGUM NORTH (3200)	44.0	ODESSA NATURAL CO
MANGUM NORTH (3200)	41.0	ODESSA NATURAL CO
MANGUM NORTH (3200)	96.0	ODESSA NATURAL CO
MANGUM NORTH (3200)	42.0	ODESSA NATURAL CO
MANGUM NORTH (3200)	9.0	ODESSA NATURAL CO
OZONA (CANYON)	20.0	EL PASO NATURAL G
OZONA (CANYON)	0.0	EL PASO NATURAL G
CAUTHORN RANCH (STRAW	0.0	EL PASO NATURAL G
GIDDINGS (BUDA)	36.5	PGP GAS PRODUCTS
GIDDINGS (BUDA)	0.0	PERRY PIPELINE CO
WINN-DULCE	0.0	NORTHERN NATURAL
WINN-DULCE	0.0	NORTHERN NATURAL
MEG (GRANITE WASH)	1533.0	NORTHERN NATURAL
SUNSHINE (RODESSA)	165.0	SEMCO GAS INC

UNION	2.8	COLUMBIA GAS TRAN	
UNION	54.8	COLUMBIA GAS TRAN	
ELLAMORE	40.0	COLUMBIA GAS TRAN	
ELLAMORE	58.8	COLUMBIA GAS TRAN	
COURT HOUSE & SKIN CR	20.8	CONSOLIDATED GAS	
COURT HOUSE & SKIN CR	20.0	CONSOLIDATED GAS	
EAGLE	0.0	CONSOLIDATED GAS	
ELK	0.0	CONSOLIDATED GAS	
ELK DISTRICT	11.0	COLUMBIA GAS TRAN	
ELK DISTRICT	11.0	COLUMBIA GAS TRAN	
ELK DISTRICT	5.5	COLUMBIA GAS TRAN	
GLENVILLE NORTH	50.0	CONSOLIDATED GAS	
RUSH RUN	6.0	CONSOLIDATED GAS	
RUSH RUN	6.0	CONSOLIDATED GAS	
RUSSETT	6.0	CONSOLIDATED GAS	
UNION	36.0	CONSOLIDATED GAS	

OTHER PURCHASERS VOLUME NO :642

OTHER PURCHASERS VOLUME NO :642

8227094	TEXAS UTILITIES FUEL CO
8227106	UNITED TEXAS TRANSMISSION CO
8227148	COLUMBIA GAS TRANSMISSION CORP
8227237	VALERO TRANSMISSION CO
8227240	VALERO TRANSMISSION CORP
8227249	COLTEXO CORP
8227250	COLTEXO CORP
8227251	COLTEXO CORP
8227252	COLTEXO CORP
8227253	COLTEXO CORP
8227254	E I DUPONT DE NEMOURS & CO INC
8227255	E I DUPONT DE NEMOURS & CO INC
8227283	E I DUPONT DE NEMOURS & CO INC
8227308	E I DUPONT DE NEMOURS & CO INC
8227329	E I DUPONT DE NEMOURS & CO INC
8227332	EL PASO NATURAL GAS CO
8227337	EL PASO NATURAL GAS CO
8227370	E I DUPONT DE*NEMOURS & CO INC
8227372	E I DUPONT DE*NEMOURS & CO INC
8227381	COLTEXO CORP
8227382	WARREN PETROLEUM CO
8227383	WARREN PETROLEUM CO
8227384	WARREN PETROLEUM CO
8227385	E I DUPONT DE NEMOURS & CO INC

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before May 24, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1,000 ft. rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12334 Filed 5–6–82; 8:45 am]
BILLING CODE 6717–01–M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-AMAX PETROLEUM CORPORATION			RECEIVED:	04/14/82		JA: TX			
8227635	F-03-048765	4207131131	102-4	103		STATE TRACT 116 #I	TRIUNE (FRIO F-1)	73.0	UNITED TEXAS TRAN
-AMERICAN CRUDE INC			RECEIVED:	04/14/82		JA: TX			
8227436	F-08-038147	4231732219	102-4			STANLEY #1	LUCKY STAN (ATOKA REE	273.7	NORTHERN NATURAL
-AMERICAN QUASAR PETROLEUM CO			RECEIVED:	04/14/82		JA: TX			
8227474	F-06-042491	4244530988	102-4			MITCHELL FLACHE #I-71	BROWNFIELD S (STRAWN)	0.0	
-AMOCO PRODUCTION CO			RECEIVED:	04/14/82		JA: TX			
8227643	F-08-048825	4200332430	102-4			FRANK COWDEN R/A "E" #19	COWDEN N (STRAWN)	260.6	WESTAR TRANSMISSI
8227602	F-08-048225	4200333018	103			MIDLAND FARMS UNIT #554	MIDLAND FARMS	6.2	AMOCO PRODUCTION
8227642	F-88-048824	4213533676	103			NORTH COWDEN UNIT #1109	COWDEN NORTH	4.4	WESTAR TRANSMISSI
8227641	F-08-048823	4213533669	103			NORTH COWDEN UNIT #1113	COWDEN NORTH	17.2	WESTAR TRANSMISSI
8227639	F-8A-048821	4221933358	103			SUNDOWN UNIT #53	SLAUGHTER	5.1	EL PASO NATURAL G
8227640	F-8A-048822	4250131976	103			WASSON ODC UNIT #532	WASSON	2.6	SHELL OIL CO
-ANDERSON PETROLEUM INC			RECEIVED:	04/14/82		JA: TX			
8227582	F-7C-044460	4210533652	103	107-TF		AUSTIN C MILLSPAUGH "A1" 3-5	OZONA (CANYON SAND)	35.0	ANDERSON PIPELINE
-ARCO OIL AND GAS COMPANY			RECEIVED:	04/14/82		JA: TX			
8227744	F-8A-049145	4216532200	103			ASHENHURST "D" #1	SEMINOLE EAST (SAN AN	5.8	PHILLIPS PETROLEU
-BAR M PETROLEUM CO INC			RECEIVED:	04/14/82		JA: TX			
8227681	F-83-048209	4228730968	103			FITE #1	GIDDINGS (AUSTIN CHAL	73.0	PERRY PIPELINE CO
-BOB WALLACE OIL INC			RECEIVED:	04/14/82		JA: TX			
8227617	F-10-048495	4206531079	103			CULBERTSON (04944) #3-6	PANHANDLE CARSON COUN	236.0	CABOT PIPELINE CO
-BORDER EXPLORATION CO			RECEIVED:	04/14/82		JA: TX			
8227495	F-04-044227	4242731570	103			NIMMO G U #1 3-P	YZAGUIRRE (9400')	521.0	VALERO TRANSMISSI
-BRIDWELL OIL CO			RECEIVED:	04/14/82		JA: TX			
8227695	F-09-049021	4249700008	103			BERRY "A" #1	CHICO WEST (CONGL 570	75.0	TEXAS UTILITIES F
8227697	F-7B-049024	4213300008	103			JACK G BISHOP #1	EASTLAND COUNTY REGUL	10.0	NORTHERN GAS PROD
8227696	F-7B-049022	4213300009	103			JACK G BISHOP #2	EASTLAND COUNTY REGUL	10.0	NORTHERN GAS PROD
8227698	F-7C-049025	4239900808	103			MRS H S BRIGHT "A" #2	CREE-SYKES (GARDNER U	36.0	UNION TEXAS PETRO
8227427	F-09-037930	4207731192	103			SCALING RANCH "P" #1	LAZY "B" (STRAWN)	6.0	FAGADAU ENERGY CO
-BTA OIL PRODUCERS			RECEIVED:	04/14/82		JA: TX			
8227612	F-7C-048469	4238331807	103			JACKSON -B- #13	SPRABERRY (TREND AREA	22.0	EL PASO NATURAL G
-C & K PETROLEUM INC			RECEIVED:	04/14/82		JA: TX			
8227440	F-10-039323	4235731110	103			SANTA FE #1	LOCKHART (MORROW BASA	0.0	
-CAMPBELL ENERGY CORP			RECEIVED:	04/14/82		JA: TX			
8227548	F-83-047377	4248132020	103			M D CORBETT #1	SPANISH CAMP (SPANISH	90.0	NATURAL GAS PIPEL
-CASSELL OIL CO			RECEIVED:	04/14/82		JA: TX			
8227537	F-7B-046911	4204931655	102-4			O B BYRD #1	PALO DAVIS (DUFFER)	109.5	ODESSA NATURAL CO
8227538	F-7B-046934	4204932076	102-4			O B BYRD #2	PALO DAVIS (DUFFER)	66.8	ODESSA NATURAL CO
-CHAMPLIN PETROLEUM COMPANY			RECEIVED:	04/14/82		JA: TX			
8227514	F-02-045836	4239100088	108			O'CONNOR LAWRENCE W ESTATE OF #11	MARY ELLEN O'CONNER (	8.4	TENNESSEE GAS PIP
-CHAS-MANN PETROLEUM INC			RECEIVED:	04/14/82		JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD.	PURCHASER
8227662	F-7B-048883	4213333346		102-4		CHARLES G PENCE -FC- #1 (17942)	CAMERON P (MARBLE FAL	31.0	ODESSA NATURAL CO
-CHEVRON U S A INC				RECEIVED:	04/14/82	JA: TX			
8227738	F-8A-049125	4241532073		103		SACROC UNIT #139-4	KELLY-SNYDER	64.0	EL PASO NATURAL G
8227701	F-8A-049031	4241532070		103		SACROC UNIT #141-6	KELLY-SNYDER	22.0	EL PASO NATURAL G
8227702	F-8A-049032	4241531928		103		SACROC UNIT #61-7	KELLY-SNYDER	309.0	EL PASO NATURAL G
8227708	F-8A-049030	4241532069		103		SACROC UNIT #67-12	KELLY-SNYDER	74.0	EL PASO NATURAL G
8227740	F-8A-049127	4241532021		103		SACROC UNIT #69-7	KELLY - SNYDER	13.0	EL PASO NATURAL G
8227699	F-8A-049029	4241531937		103		SACROC UNIT #70-7	KELLY-SNYDER	14.0	EL PASO NATURAL G
8227739	F-8A-049126	4241531939		103		SACROC UNIT #72-7	KELLY - SNYDER	2.0	EL PASO NATURAL G
8227741	F-8A-049128	4241532032		103		SACROC UNIT #9-14	KELLY - SNYDER	4.0	EL PASO NATURAL G
-CINCO OIL & GAS INC & NRM				RECEIVED:	04/14/82	JA: TX			
8227600	F-01-048207	4217700000		102-3		REAVES #1	PEACH CREEK (AUSTIN C	905.0	TIPPERARY CORP
-CIRCLE SEVEN PRODUCTION CO				RECEIVED:	04/14/82	JA: TX			
8227672	F-09-048941	4223732074		103		COX-STEWART UNIT #1 1 (LSE #18806)	HANLON (CADDO)	0.0	SOUTHWESTERN GAS
8227614	F-09-048480	4223734046		102-4		SHAWVER "E" #1 (LEASE NO 21876)	PERRIN SW (4850 CONGL	0.0	CITIES SERVICE CO
-CLEAR FORK GAS CO				RECEIVED:	04/14/82	JA: TX			
8227671	F-7B-048937	4244731832		102-4		JOE EDENS "C" #1 14848	HUGHES-ODELL NE (CADD	0.0	LONE STAR GAS CO
-COLOGNE PRODUCTION CO				RECEIVED:	04/14/82	JA: TX			
8227572	F-02-047880	4246931727		102-4	103	CHRISTIAN SCHAAR -B- #6	COLOGNE (4040')	100.0	HOUSTON PIPELINE
-COMINCO AMERICAN INC				RECEIVED:	04/14/82	JA: TX			
8227451	F-10-039792	4229500000		102-4		STUART RANCH "B" #9	LADY (MORROW UPPER)	0.0	MICHIGAN WISCONSI
-CONOCO INC				RECEIVED:	04/14/82	JA: TX			
8227494	F-09-044202	4248500000		108		T J & J L WAGGONER-ADE-#62 ID#18376	WICHITA COUNTY REGULA	0.1	EAGLE PETROLEUM C
8227591	F-08-048078	4213533713		103		TXL 44-5-#1	LAWSON (SAN ANDRES)	10.2	PHILLIPS PETROLEU
8227627	F-7B-048642	4243331394		103		W FLOWERS UNIT #62 ID #11787	FLOWERS W (CANYON SAN	125.9	CITIES SERVICE CO
-CONVEST ENERGY CORP				RECEIVED:	04/14/82	JA: TX			
8227542	F-8A-047253	4226330832		102-2		WAYNE WILLIAMS 4-S	POLLAN - STRAWN	0.0	EL PASO NATURAL G
-CORDOVA RESOURCES INC				RECEIVED:	04/14/82	JA: TX			
8227644	F-7B-048828	4213332761		103		ALEXANDER "C" #1	EASTLAND COUNTY REGUL	356.2	SOUTHWESTERN GAS
8227580	F-7B-047917	4213333111		103		T BOUQUET #2	NORTH PIONEER (CADDO)	125.6	SOUTHWESTERN GAS
8227503	F-7B-044494	4213300000		103	108	WEBB "B" #1	EASTLAND COUNTY REGUL	0.4	ODESSA NATURAL CO
-CROWN EXPLORATION CO				RECEIVED:	04/14/82	JA: TX			
8227690	F-8A-049003	4203300000		102-4		HODNETT-SHAFER-WOLF UNIT #1	REINECKE SOUTH (WOLFC	8.0	GETTY OIL CO
-DALECO RESOURCES				RECEIVED:	04/14/82	JA: TX			
8227424	F-03-036816	4205130767		102-2		MABLE WILKINS #2	CLAY-NE (AUSTIN CHALK	8.0	CLAJON GAS CO
-DAVID ALBERT OIL & GAS				RECEIVED:	04/14/82	JA: TX			
8227593	F-09-048171	4223700000		108		TST#1 RRC#71972	JACK COUNTY REGULAR	8.0	CITIES SERVICE CO
-DELHI OIL CORP				RECEIVED:	04/14/82	JA: TX			
8227462	F-03-041897	4214900000		102-2		APPELT #5 (RRC # NOT ASSIGNED)	GIDDINGS (EDWARDS GAS	1600.0	PHILLIPS PETROLEU
-DELTA OIL & GAS CO				RECEIVED:	04/14/82	JA: TX			
8227742	F-7B-049138	4242900000		108		BLANCHE WINSTON "A" RRC#32888	STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
8227735	F-7B-049114	4242900000		108		JUDITH WINSTON KIGHT 1U RRC#14747	STEPHENS COUNTY REGUL	0.0	LONE STAR GAS CO
-DEMARCO OIL & GAS INC				RECEIVED:	04/14/82	JA: TX			
8227598	F-7B-048199	4244131758		103		PATTERSON 17466	LAWN SOUTHWEST	12.0	UNION TEXAS PETRO
-DIVERSE ENERGY INC				RECEIVED:	04/14/82	JA: TX			
8227656	F-7B-048864	4244732684		102-4		KUNKEL #1	WATSON (CONGL)	9.0	DELHI GAS PIPELIN
8227655	F-7B-048863	4244732887		102-4		KUNKEL #2	WATSON (CONGL)	12.0	DELHI GAS PIPELIN
8227654	F-7B-048862	4244732088		102-4		LEECH #1	WATSON (CONGL)	0.0	DELHI GAS PIPELIN
8227653	F-7B-048861	4244732572		103		TEINERT-HARDIN #1	THROCKMORTON COUNTY R	9.0	DELHI GAS PIPELIN
8227657	F-7B-048866	4244732789		103		TEINERT-RILEY #1	THROCKMORTON COUNTY R	9.0	DELHI GAS PIPELIN
-DMC OIL & GAS PRODUCERS				RECEIVED:	04/14/82	JA: TX			
8227736	F-7B-049121	4213300000		103		HANSON "A" #1	EASTLAND COUNTY - REG	108.0	ODESSA NATURAL CO
-DORCHESTER EXPLORATION INC				RECEIVED:	04/14/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
*8227449	F-08-039591	4243138969		103		WESTBROOK 8
-EASTLAND OIL CO				RECEIVED:	04/14/82	JA: TX
8227611	F-08-048401	4233500000		102-4		HARRELL #2
8227636	F-08-048797	4233500000		102-4		WULFIEN "F" #2
-EDWARDS HAMILTON & FORD				RECEIVED:	04/14/82	JA: TX
8227557	F-02-047524	4246900000		102-4		WELDER R H #2
-EDWIN L COX				RECEIVED:	04/14/82	JA: TX
8227585	F-04-047958	4247933150		103	107-TF	OLMITOS RANCH #1
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/14/82	JA: TX
8227477	F-7C-042712	4243530316		108		MECKEL #7
-EPOCH PETROLEUM CORP				RECEIVED:	04/14/82	JA: TX
8227565	F-06-047746	4206730361		103		S E GEORGE #1 ID 96515
-ERSO INC				RECEIVED:	04/14/82	JA: TX
8227563	F-06-047682	4236500000		103	107-TF	LOUIS WERNER #3
-ESTORIL PRODUCING CORP				RECEIVED:	04/14/82	JA: TX
8227545	F-7C-047286	4210532646		103		R ELLIOTT #1
-EXXON CORPORATION				RECEIVED:	04/14/82	JA: TX
*8227637	F-06-047[illegible]	4240131191		102-4		A WILSON OIL UNIT #1-1
8227679	F-03-04[illegible]973	4237330501		103		C B GRANBURY A/C 4 #80
*8227680	F-03-0[illegible]3978	4214930831		102-2		CHARLES KOCIAN #1
*8227678	F-03-0[illegible]8972	4214930585		102-2		DOROTHY R PAVLICA #1
*8227687	F-03-0[illegible]8999	4214930603		102-2		DOROTHY R PAVLICA "B" #1
8227688	F-03-0[illegible]9000	4220131166		103		EXXON-WEST FEE "C" A/C 1 #82
8227682	F-06-048980	4207330452		103		HARRY L CARTER C-12
8227707	F-08-049047	4210331860		103		J B TUBB A/C 1 #159L
8227708	F-08-049048	4210331920		103		J B TUBB A/C 1 #171
8227706	F-08-049046	4210332187		103		J B TUBB A/C 1 #212U
8227472	F-08-042397	4210332628		103		J B TUBB A/C 1 #247L
8227689	F-06-049001	4207330448		103		JOHN E CHRISTIAN #3
*8227709	F-04-049049	4227331596		102-4		K R LOS SAUCES 7 (09957)
*8227710	F-04-049051	4227331622		102-4		K R MORGAN M-77-F (09958)
*8227681	F-03-048979	4215731186		103		LOCKWOOD & SHARP A-93
8227623	F-10-048549	4219530797		103		OIL DEVELOPMENT CO OF TEX #8
*8227605	F-04-048246	4213132505		103		PAUL E WHITE B-109 #89607
8227711	F-04-049052	4204730960		103		RJK JR TR VIBORAS PAST 96-D #97146
8227519	F-04-045968	4248930659		103		SAUZ RANCH MULATOS PAST 167 #97151
*8227560	F-06-047635	4234730519		103		TRAWICK GAS UNIT 60 1U
-FAGADAU ENERGY CORP				RECEIVED:	04/14/82	JA: TX
8227548	F-7B-046989	4242932824		103		C W WULFJEN #1 96641
8227638	F-7B-048820	4242933110		102-4		CECIL BROWN #3 RRC #16902
-FEAGAN ENERGY INC				RECEIVED:	04/14/82	JA: TX
8227686	F-7C-048998	4241331130		103	107-TF	GETTY-ROYSTER #1
-FLAG-REDFERN OIL CO				RECEIVED:	04/14/82	JA: TX
8227667	F-08-048911	4247532340		103		RILEY #1
8227666	F-08-048909	4247532403		103		RILEY #2-A
-FORA CO				RECEIVED:	04/14/82	JA: TX
8227632	F-10-048726	4206530879		103		PERCIVAL #7
8227630	F-10-048724	4206530962		103		PERCIVAL "B" #1A
8227631	F-10-048725	4223331044		103		SANFORD #1
-FOREST OIL CORPORATION				RECEIVED:	04/14/82	JA: TX
8227509	F-04-045503	4221500000		107-TF		A A MCALLEN #13
-G & C GAS CO				RECEIVED:	04/14/82	JA: TX
8227458	F-7B-039667	4236332515		102-4		HAROLD SLEMMONS #1 (94308)

FIELD NAME	PROD	PURCHASER
CONGER (PENN)	1462.0	TEXAS UTILITY FUE
CHAMPION LAKE (YATES)	0.0	ODESSA NATURAL CO
CHAMPION LAKE (YATES)	25.0	ODESSA NATURAL CO
COUSINS (FRIO 3050)	298.0	VALERO TRANSMISSI
MUJERES CREEK (LOBO 6	730.0	
SONORA-CANYON UPPER	22.0	EL PASO NATURAL G
RODESSA (HILL NORTH)	550.0	ARKANSAS LOUISIAN
CARTHAGE (COTTON VALL	0.0	TENNESSEE GAS PIP
BUCKHORN (ELLENBURGER	486.0	EL PASO NATURAL G
OVERTON NE (PETTIT)	75.0	ARMCO STEEL CORP
LIVINGSTON (WILCOX)	18.6	UNITED TEXAS TRAN
GIDDINGS (AUSTIN CHAL	36.5	ARMCO STEEL CORP
GIDDINGS (AUSTIN CHAL	5.5	ARMCO STEEL CORP
GIDDINGS (AUSTIN CHAL	5.5	ARMCO STEEL CORP
CLEAR LAKE W (FRIO)	143.0	HOUSTON PIPELINE
NECHES (WOODBINE)	41.1	UNITED GAS PIPELI
SAND HILLS (TUBB)	29.0	ODESSA NATURAL GA
SAND HILLS (TUBB)	138.0	ODESSA NATURAL GA
SAND HILLS (MCKNIGHT)	43.0	ODESSA NATURAL GA
SAND HILLS (TUBB)	46.0	EL PASO NATURAL G
NECHES (WOODBINE)	3.8	UNITED GAS PIPELI
BISHOP EAST (M-78)	26.0	ARMCO STEEL CORP
BORREGOS WEST (F-63)	11.0	ARMCO STEEL CORP
THOMPSON	171.1	ARMCO STEEL CORP
HANSFORD (MARMATON)	5.0	NORTHERN NATURAL
LUNDELL (HOCKLEY J)	73.0	ARMCO STEEL CORP
VIBORAS (F-52)	730.0	ARMCO STEEL CORP
WILLAMAR WEST (MIOCEN	250.0	NATURAL GAS PIPEL
TRAWICK (JAMES)	100.0	ARMCO STEEL CORP
FOUR J (ATOKA 4800) F	100.0	WARREN PETROLEUM
FOUR J (CONGL 3650)	50.0	WARREN PETROLEUM
ELDORADO N (CANYON -A	105.0	ARCO OIL & GAS CO
RHODA WALKER (CANYON	36.5	
RHODA WALKER (CANYON	36.5	
PANHANDLE CARSON COUN	9.0	GETTY OIL CO
PANHANDLE CARSON COUN	8.0	KERR-MCGEE
PANHANDLE HUTCHINSON	25.0	PHILLIPS PETROLEU
MCALLEN RANCH (VICKSB	350.0	VALERO TRANSMISSI
WILLIE MAE (2ND CONGL	503.0	SOUTHWESTERN GAS

UMI 28 87 YM 98174V

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-GETTY OIL COMPANY				RECEIVED:	04/14/82	JA: TX			
8227498	F-03-044253	4205100000		102-2		C O FICK #1	GIDDINGS (AUSTIN CHAL	50.0	FERGUSON CROSSING
8227506	F-03-044698	4205100000		102-2		C O FICK "A" UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227470	F-04-042089	4247900000		102-4	107-TF	EL GATO #4	EL GATO (LOWER WILCOX	365.0	TRANSCONTINENTAL
8227497	F-03-044251	4205100000		102-2		H VAJDAK "A" #1	GIDDINGS (AUSTIN CHAL	140.0	FERGUSON CROSSING
8227526	F-78-046189	4235331135		103		LAKE TRAMMEL UNIT #102	LAKE TRAMMEL W (CANYO	15.0	WEST LAKE NATURAL
8227416	F-06-029300	4236531166		103	107-TF	MINNIE BELL YOUNG #1	DIRGIN (COTTON VALLEY	0.0	
8227496	F-03-044247	4205100000		102-2		NADA WOMBLE #1	GIDDINGS (AUSTIN CHAL	300.0	FERGUSON CROSSING
8227501	F-03-044449	4205100000		102-2		SANTA FE ENERGY CO #2	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8227568	F-08-047823	4249531118		103		UNIVERSITY 7-21 #1	BLOCK 21 NW (WOLFCAMP	11.0	NATURAL GAS PIPEL
8227505	F-03-044697	4205100000		102-2		W H GIESENSCHLAG "D" UNIT #1	(GIDDINGS (AUSTIN CHA	0.0	FERGUSON CROSSING
-GHK CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227413	F-10-002056	4208700000		108-ER		L M TITTLE 1-84 2-044-38268-3	PANHANDLE EAST	2.5	EL PASO NATURAL G
-GOLDEN PETOLEUM				RECEIVED:	04/14/82	JA: TX			
8227518	F-09-045922	4223733577		103		EATHERLY-BETHESDA LTD #2	BRYSON SW (STRAWN)	30.0	SOUTHWEST GAS PIP
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227571	F-06-047870	4241938316		102-4		C H BEARD GAS UNIT #1	GARRISON	0.0	UNITED GAS PIPELI
-GRAHAM ENERGY LTD				RECEIVED:	04/14/82	JA: TX			
8227703	F-7C-049035	4235331222		102-4		JAMESON "6" #2 09083	SILVER (CANYON)	292.0	SUN OIL CO
-GULF OIL CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227676	F-10-048962	4242188000		107-PE		BLAKE TRUST #1	TEXAS HUGOTON	36.0	DIAMOND SHAMROCK
8227745	F-10-049146	4219500000		108		CLEMENTINE #1	CLEMENTINE	5.0	NORTHERN NATURAL
8227683	F-08-048235	4245732423		103		CRAWAR FIELD UNIT #18	CRAWAR (ELLENBURGER)	128.0	TRANSWESTERN PIPE
8227586	F-08-047960	4247501181		108		ESTES E W #116	WARD-ESTES NORTH	1.0	CABOT CORP
8227587	F-08-047961	4247501227		108		ESTES E W #142	WARD-ESTES NORTH	1.0	CABOT CORP
8227584	F-08-047953	4247510599		108		ESTES E W #186	WARD-ESTES NORTH	1.0	CABOT CORP
8227583	F-08-047952	4247510891		108		ESTES E W #192	WARD-ESTES NORTH	1.0	CABOT CORP
8227589	F-08-047966	4247530297		108		ESTES E W #227	WARD-ESTES NORTH	1.0	CABOT CORP
8227737	F-08-049122	4247532433		103		HUTCHINGS STOCK ASSN #1063	WARD-ESTES NORTH	38.0	CABOT CORP
8227515	F-08-045851	4247532393		103		HUTCHINGS STOCK ASSN #1133	WAGON WHEEL (PENN)	8.0	CABOT CORP
8227712	F-08-049059	4247532399		103		HUTCHINGS STOCK ASSN #1136	WAGON WHEEL (PENN)	68.0	CABOT CORP
8227418	F-03-031842	4247532139		103		P WALKER #4	QUITO EAST (CHERRY CA	366.0	TEXACO
-H&S PRODUCTION INC				RECEIVED:	04/14/82	JA: TX			
8227556	F-09-047508	4207732486		103		UNDERWOOD #1 RRC#21719	MONTAGUE COUNTY REGUL	0.0	CITIES SERVICE CO
-HAILEY ENERGY				RECEIVED:	04/14/82	JA: TX			
8227582	F-78-047943	4213333243		102-4		COCA COLA #1 (97430)	LOYCE (STRAWN)	298.0	SOUTHWESTERN GAS
-HARRISON INTERESTS LTD				RECEIVED:	04/14/82	JA: TX			
8227674	F-7C-048955	4210532707		102-4	103	NO 19 UNIVERSITY LAND 21-30	HOWARDS CREEK N (PENN	45.0	INTRATEX GAS CO
-HENDERSON CLAY PRODUCTS INC				RECEIVED:	04/14/82	JA: TX			
8227478	F-06-042949	4248131257		102-4		MCWILLIAMS BROS -A- #1	RUFUS (TRAVIS PEAK)	146.0	HENDERSON CLAY PR
-HENRY HYDROCARBON INC				RECEIVED:	04/14/82	JA: TX			
8227439	F-78-039824	4236388888		103		JENKINS #1	MINERAL WELLS (CADDO)	35.0	SOUTHWESTERN GAS
-HENRY PETROLEUM CORP				RECEIVED:	04/14/82	JA: TX			
8227463	F-81-041375	4249388888		102-2		JASKINIA UNIT #1	PRUSKE (BUDA)	0.0	
-HILLIARD OIL & GAS INC				RECEIVED:	04/14/82	JA: TX			
8227561	F-06-047687	4206788888		103	107-TF	HASKELL YOUNG #3	KILDARE (COTTON VALLE	540.0	TEXAS EASTERN TRA
-HINSON BROTHERS A PARTNERSHIP				RECEIVED:	04/14/82	JA: TX			
8227634	F-02-048751	4223988888		108		HINSON #3 OB&JH FENNER UNIT 76199	FENNER (FRIO 3200)	0.0	TRUNKLINE GAS CO
-HNG OIL COMPANY				RECEIVED:	04/14/82	JA: TX			
8227646	F-02-048848	4202500000		108		C H BAST #1	MINERAL (MACKHANK LOW	56.2	TRANSCONTINENTAL
8227685	F-02-048996	4202500000		108		HOLZMARK "D" #2	RAGSDALE (1100)	57.8	HOUSTON PIPELINE
8227647	F-7C-048849	4243500008		103	107-TF	ROSS "43" #1	SAWYER (CANYON)	942.0	INTRATEX GAS CO
-HOME PETROLEUM CORPORATION				RECEIVED:	04/14/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-HOUSTON OIL & MINERALS CORP				RECEIVED:	04/14/82	JA: TX			
8227552	F-09-047504	4207732486		103		UNDERWOOD #2 RRC#21720	MONTAGUE COUNTY REGUL	0.0	CITIES SERVICE CO
-HUNT OIL COMPANY				RECEIVED:	04/14/82	JA: TX			
8227624	F-7C-048988	4235331222		102-4		JAMESON "6" #1 09083	SILVER (CANYON)	292.0	SUN OIL CO
-HUNTER ENERGY CORP				RECEIVED:	04/14/82	JA: TX			
8227600	F-08-048000	4247532399		103		HUTCHINGS STOCK ASSN #1135	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227601	F-08-048001	4247532399		103		HUTCHINGS STOCK ASSN #1134	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227602	F-08-048002	4247532399		103		HUTCHINGS STOCK ASSN #1137	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227603	F-08-048003	4247532399		103		HUTCHINGS STOCK ASSN #1138	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227604	F-08-048004	4247532399		103		HUTCHINGS STOCK ASSN #1139	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227605	F-08-048005	4247532399		103		HUTCHINGS STOCK ASSN #1140	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227606	F-08-048006	4247532399		103		HUTCHINGS STOCK ASSN #1141	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227607	F-08-048007	4247532399		103		HUTCHINGS STOCK ASSN #1142	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227608	F-08-048008	4247532399		103		HUTCHINGS STOCK ASSN #1143	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227609	F-08-048009	4247532399		103		HUTCHINGS STOCK ASSN #1144	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227610	F-08-048010	4247532399		103		HUTCHINGS STOCK ASSN #1145	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227611	F-08-048011	4247532399		103		HUTCHINGS STOCK ASSN #1146	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227612	F-08-048012	4247532399		103		HUTCHINGS STOCK ASSN #1147	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227613	F-08-048013	4247532399		103		HUTCHINGS STOCK ASSN #1148	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227614	F-08-048014	4247532399		103		HUTCHINGS STOCK ASSN #1149	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227615	F-08-048015	4247532399		103		HUTCHINGS STOCK ASSN #1150	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227616	F-08-048016	4247532399		103		HUTCHINGS STOCK ASSN #1151	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227617	F-08-048017	4247532399		103		HUTCHINGS STOCK ASSN #1152	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227618	F-08-048018	4247532399		103		HUTCHINGS STOCK ASSN #1153	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227619	F-08-048019	4247532399		103		HUTCHINGS STOCK ASSN #1154	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227620	F-08-048020	4247532399		103		HUTCHINGS STOCK ASSN #1155	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227621	F-08-048021	4247532399		103		HUTCHINGS STOCK ASSN #1156	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227622	F-08-048022	4247532399		103		HUTCHINGS STOCK ASSN #1157	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227623	F-08-048023	4247532399		103		HUTCHINGS STOCK ASSN #1158	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227624	F-08-048024	4247532399		103		HUTCHINGS STOCK ASSN #1159	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227625	F-08-048025	4247532399		103		HUTCHINGS STOCK ASSN #1160	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227626	F-08-048026	4247532399		103		HUTCHINGS STOCK ASSN #1161	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227627	F-08-048027	4247532399		103		HUTCHINGS STOCK ASSN #1162	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227628	F-08-048028	4247532399		103		HUTCHINGS STOCK ASSN #1163	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227629	F-08-048029	4247532399		103		HUTCHINGS STOCK ASSN #1164	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227630	F-08-048030	4247532399		103		HUTCHINGS STOCK ASSN #1165	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227631	F-08-048031	4247532399		103		HUTCHINGS STOCK ASSN #1166	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227632	F-08-048032	4247532399		103		HUTCHINGS STOCK ASSN #1167	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227633	F-08-048033	4247532399		103		HUTCHINGS STOCK ASSN #1168	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227634	F-08-048034	4247532399		103		HUTCHINGS STOCK ASSN #1169	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227635	F-08-048035	4247532399		103		HUTCHINGS STOCK ASSN #1170	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227636	F-08-048036	4247532399		103		HUTCHINGS STOCK ASSN #1171	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227637	F-08-048037	4247532399		103		HUTCHINGS STOCK ASSN #1172	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227638	F-08-048038	4247532399		103		HUTCHINGS STOCK ASSN #1173	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227639	F-08-048039	4247532399		103		HUTCHINGS STOCK ASSN #1174	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227640	F-08-048040	4247532399		103		HUTCHINGS STOCK ASSN #1175	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227641	F-08-048041	4247532399		103		HUTCHINGS STOCK ASSN #1176	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227642	F-08-048042	4247532399		103		HUTCHINGS STOCK ASSN #1177	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227643	F-08-048043	4247532399		103		HUTCHINGS STOCK ASSN #1178	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227644	F-08-048044	4247532399		103		HUTCHINGS STOCK ASSN #1179	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227645	F-08-048045	4247532399		103		HUTCHINGS STOCK ASSN #1180	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227646	F-08-048046	4247532399		103		HUTCHINGS STOCK ASSN #1181	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227647	F-08-048047	4247532399		103		HUTCHINGS STOCK ASSN #1182	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227648	F-08-048048	4247532399		103		HUTCHINGS STOCK ASSN #1183	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227649	F-08-048049	4247532399		103		HUTCHINGS STOCK ASSN #1184	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227650	F-08-048050	4247532399		103		HUTCHINGS STOCK ASSN #1185	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227651	F-08-048051	4247532399		103		HUTCHINGS STOCK ASSN #1186	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227652	F-08-048052	4247532399		103		HUTCHINGS STOCK ASSN #1187	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227653	F-08-048053	4247532399		103		HUTCHINGS STOCK ASSN #1188	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227654	F-08-048054	4247532399		103		HUTCHINGS STOCK ASSN #1189	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227655	F-08-048055	4247532399		103		HUTCHINGS STOCK ASSN #1190	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227656	F-08-048056	4247532399		103		HUTCHINGS STOCK ASSN #1191	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227657	F-08-048057	4247532399		103		HUTCHINGS STOCK ASSN #1192	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227658	F-08-048058	4247532399		103		HUTCHINGS STOCK ASSN #1193	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227659	F-08-048059	4247532399		103		HUTCHINGS STOCK ASSN #1194	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227660	F-08-048060	4247532399		103		HUTCHINGS STOCK ASSN #1195	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227661	F-08-048061	4247532399		103		HUTCHINGS STOCK ASSN #1196	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227662	F-08-048062	4247532399		103		HUTCHINGS STOCK ASSN #1197	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227663	F-08-048063	4247532399		103		HUTCHINGS STOCK ASSN #1198	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227664	F-08-048064	4247532399		103		HUTCHINGS STOCK ASSN #1199	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227665	F-08-048065	4247532399		103		HUTCHINGS STOCK ASSN #1200	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227666	F-08-048066	4247532399		103		HUTCHINGS STOCK ASSN #1201	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227667	F-08-048067	4247532399		103		HUTCHINGS STOCK ASSN #1202	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227668	F-08-048068	4247532399		103		HUTCHINGS STOCK ASSN #1203	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227669	F-08-048069	4247532399		103		HUTCHINGS STOCK ASSN #1204	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227670	F-08-048070	4247532399		103		HUTCHINGS STOCK ASSN #1205	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227671	F-08-048071	4247532399		103		HUTCHINGS STOCK ASSN #1206	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227672	F-08-048072	4247532399		103		HUTCHINGS STOCK ASSN #1207	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227673	F-08-048073	4247532399		103		HUTCHINGS STOCK ASSN #1208	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227674	F-08-048074	4247532399		103		HUTCHINGS STOCK ASSN #1209	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227675	F-08-048075	4247532399		103		HUTCHINGS STOCK ASSN #1210	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227676	F-08-048076	4247532399		103		HUTCHINGS STOCK ASSN #1211	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227677	F-08-048077	4247532399		103		HUTCHINGS STOCK ASSN #1212	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227678	F-08-048078	4247532399		103		HUTCHINGS STOCK ASSN #1213	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227679	F-08-048079	4247532399		103		HUTCHINGS STOCK ASSN #1214	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227680	F-08-048080	4247532399		103		HUTCHINGS STOCK ASSN #1215	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227681	F-08-048081	4247532399		103		HUTCHINGS STOCK ASSN #1216	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227682	F-08-048082	4247532399		103		HUTCHINGS STOCK ASSN #1217	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227683	F-08-048083	4247532399		103		HUTCHINGS STOCK ASSN #1218	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227684	F-08-048084	4247532399		103		HUTCHINGS STOCK ASSN #1219	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227685	F-08-048085	4247532399		103		HUTCHINGS STOCK ASSN #1220	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227686	F-08-048086	4247532399		103		HUTCHINGS STOCK ASSN #1221	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227687	F-08-048087	4247532399		103		HUTCHINGS STOCK ASSN #1222	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227688	F-08-048088	4247532399		103		HUTCHINGS STOCK ASSN #1223	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227689	F-08-048089	4247532399		103		HUTCHINGS STOCK ASSN #1224	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227690	F-08-048090	4247532399		103		HUTCHINGS STOCK ASSN #1225	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227691	F-08-048091	4247532399		103		HUTCHINGS STOCK ASSN #1226	WAGON WHEEL (PENN)	68.0	CABOT CORP
-HUNTER ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227692	F-08-048092	4247532399		103		HUTCHINGS STOCK ASSN #1227	WAGON WHEEL (PENN)	68.0	CABOT CORP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227426	F-05-037537	4216130616		103		LORENA C MANAHAN #1	MIMMS CREEK (BOSSIER)	327.0	UNITED TEXAS TRAN
8227479	F-05-042966	4216130663		103	107-TF	MARIE RICHARDSON #1	REED (HAYNESVILLE)	125.7	UNITED TEXAS TRAN
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227606	F-03-048320	4231330328		103		HENSARLING #1	FT TRINIDAD BARRETT (	0.0	LONE STAR GAS CO
8227618	F-08-048384	4231732395		103		MAIL C-12 #1	SPRABERRY (TREND AREA	0.0	
-HUMBLE EXPLORATION CO INC				RECEIVED:	04/14/82	JA: TX			
8227444	F-03-039469	4214930827		102-2	103	MARGARET JOHNSON #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-INEXCO OIL COMPANY				RECEIVED:	04/14/82	JA: TX			
8227567	F-03-047817	4214931172		102-2		EVELYN CARLSON UNIT #1	GIDDINGS (AUSTIN CHAL	13.0	PHILLIPS PETROLEU
-J CLEO THOMPSON & JAMES CLEO THOMPS				RECEIVED:	04/14/82	JA: TX			
8227562	F-7C-047642	4243532520		103	107-TF	MAYER "A" #6	SAWYER (CANYON)	150.0	NORTHERN NATURAL
8227619	F-7C-048519	4210533748		102-4		UNIVERSITY 29-27 #1	UNIVERSITY 29 (STRAWN	270.0	PHILLIPS PETROLEU
-J M HUBER CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227716	F-10-049071	4223331296		103		BRYAN MAYFIELD UNIT #9-26	PANHANDLE	55.0	COLORADO INTERSTA
8227743	F-10-049143	4223331288		103		SOUTH HERRING #164	PANHANDLE	55.0	COLORADO INTERSTA
-JACK L PHILLIPS				RECEIVED:	04/14/82	JA: TX			
8227618	F-06-048504	4228330713		103		E RAVENS #1 96845	BETHANY (TRAVIS PEAK	146.0	TEJAS GAS CORP
-JIM QUINN				RECEIVED:	04/14/82	JA: TX			
8227481	F-09-043250	4250334720		103		W M HUGHES #1	WILDCAT	139.0	LONE STAR GAS CO
-JOHN M YOUNG INC				RECEIVED:	04/14/82	JA: TX			
8227527	F-03-046191	4214930852		102-3		M WILLMAN UNIT #1 92816	GIDDINGS (AUSTIN CHAL	595.0	CLAJON GAS CO
-JOHN L COX				RECEIVED:	04/14/82	JA: TX			
8227429	F-7C-037992	4238331952		103		AGNESS SCOTT #1	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227454	F-7C-039891	4238331868		103		HALFF ESTATE "42" #1 RRC #NA	SPRABERRY (TREND AREA	10.0	NORTHERN NATURAL
8227455	F-08-038009	4231700000		103		MABEE B 86-X (#22451)	SPRABERRY (TREND AREA	18.0	ALPINE OIL CO
8227434	F-08-038010	4231700000		103		MABEE B #8-X (22451)	SPRABERRY (TREND AREA	10.0	ALPINE OIL CO
8227468	F-7C-041783	4238332053		103		MARY HUGHES "168" #1	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227467	F-7C-041782	4238332054		103		MARY HUGHES "168" #2	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227431	F-7C-038005	4238331908		103		MARY HUGHES "169" #1	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227466	F-7C-041781	4238332051		103		MARY HUGHES "182" #2	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227469	F-7C-041790	4238332052		103		MARY HUGHES "182" #3	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227432	F-7C-038006	4238331909		103		MARY HUGHES "183" #1	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227453	F-7C-039886	4246100000		103		NEAL "30" #1 RRC #NA	SPRABERRY (TREND AREA	20.0	MOBIL PRODUCING T
8227488	F-7C-043620	4246131819		103		NEAL "39" #1	SPRABERRY (TREND AREA	10.0	MOBIL PROD TEXAS-
8227438	F-7C-038000	4246131776		103		POWELL "23" #1	SPRABERRY (TREND AREA	10.0	MOBIL PRODUCING-T
8227465	F-7C-041760	4246100000		103		POWELL "28" #1	SPRABERRY (TREND AREA	10.0	MOBIL PRODUCING T
8227487	F-7C-043619	4246131815		103		POWELL "30" #1	SPRABERRY (TREND AREA	10.0	MOBIL PROD TEXAS-
8227452	F-7C-039883	4246100000		103		POWELL "33" #1 RRC #NA	SPRABERRY (TREND AREA	10.0	MOBIL PRODUCING T
8227464	F-7C-041759	4246100000		103		POWELL "33" #2	SPRABERRY (TREND AREA	10.0	MOBIL PRODUCING T
8227490	F-7C-043653	4246131817		103		POWELL "34" #1	SPRABERRY (TREND AREA	10.0	MOBIL PRODUCING T
8227428	F-7C-037988	4238300000		103		ROCKER B "N" #18-X (#05142)	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227423	F-7C-034699	4238331763		103		ROCKER B "P" #8-X (RRC #05173)	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8227489	F-7C-043623	4246100000		103		VIRGIL POWELL #1	DAVIS (PENN)	10.0	MOBIL PROD TEXAS-
8227435	F-7C-038011	4246131745		103		W GREENE #1 (NA)	BENEDUM (FUSSELMAN)	20.0	PHILLIPS PETROLEU
-K L M OIL & GAS INC				RECEIVED:	04/14/82	JA: TX			
8227713	F-7B-049060	4204932839		102-4		O B FOMBY #12 (16890)	DALE (CADDO)	24.0	ODESSA NATURAL CO
8227714	F-7B-049061	4204932840		102-4		O B FOMBY #13 (16890)	DALE (CADDO)	22.0	ODESSA NATURAL CO
8227715	F-7B-049062	4204932852		102-4		O B FOMBY #15 (16890)	DALE (CADDO)	26.0	ODESSA NATURAL CO
-K&M LTD W E CARL & GULF ENERGY				RECEIVED:	04/14/82	JA: TX			
8227483	F-04-043504	4250331486		102-4		BERTA VELA CAVAZOS #3	EL GRULLO (7780)	0.0	INTRASTATE GATHER
-KERR-MCGEE CORPORATION				RECEIVED:	04/14/82	JA: TX			
8227663	F-10-048893	4223331240		103		COCKRELL #34	PANHANDLE (HUTCHINSON	55.0	GETTY OIL CO
-KILLAM & HURD LTD				RECEIVED:	04/14/82	JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227442	F-04-039390	4247932900		102-4	107-TF	A M BRUNI EST "1571" #4
-KIM PETROLEUM CO INC				RECEIVED:	04/14/82	JA: TX
8227546	F-10-047308	4206531022		103		KIRBY #1
-KIRBY EXPLORATION CO				RECEIVED:	04/14/82	JA: TX
8227446	F-10-039575	4239330807		102-4		LARD 1-61
8227448	F-10-039577	4239330779		102-4		MAULSBY 1-4
8227447	F-10-039576	4239330808		102-4		MAULSBY 2-4
-L & B OIL CO INC				RECEIVED:	04/14/82	JA: TX
8227536	F-03-046881	4248730451		102-4		ROBERTS ET AL UNIT #2
-LA PARRITA OIL & GAS CORP				RECEIVED:	04/14/82	JA: TX
8227609	F-04-048379	4226130642		102-4	103	L C MAY #1
-LAUREL FUEL CO				RECEIVED:	04/14/82	JA: TX
8227415	F-03-028538	4248131954		102-4		WINTERMAN #3 RRC ID #90185
-LEAR PETROLEUM CORPORATION				RECEIVED:	04/14/82	JA: TX
8227455	F-03-040487	4218530276		102-2		LEAR #1 MCDUFFIE
8227491	F-03-043656	4218530295		102-2		LEAR SELECTED LANDS #1
-LENOIR M JOSEY INC				RECEIVED:	04/14/82	JA: TX
8227473	F-06-042483	4248131196		103	107-TF	T PRITCHARD UNIT #2
-LULING OIL AND GAS CO INC				RECEIVED:	04/14/82	JA: TX
8227683	F-78-048981	4208300000		103		WHITTINGTON "A" LEASE #1
-MARATHON OIL COMPANY				RECEIVED:	04/14/82	JA: TX
8227525	F-7C-046186	4238332076		103		UNIVERSITY "L" #8
8227520	F-7C-046179	4210533666		103		UNIVERSITY "M" #8
8227524	F-7C-046184	4238332072		103		UNIVERSITY "N" #5
8227521	F-7C-046180	4238332075		103		UNIVERSITY "N" #6
8227523	F-7C-046183	4238332074		103		UNIVERSITY "N" #8
8227522	F-7C-046182	4210533668		103		UNIVERSITY "O" #6
-MARSHALL AND WINSTON INC				RECEIVED:	04/14/82	JA: TX
8227517	F-08-045867	4233531967		103		J F MCCABE "C" #2
8227516	F-08-045866	4233532111		103		J F MCCABE "C" #3
-MARSHALL EXPLORATION INC				RECEIVED:	04/14/82	JA: TX
8227485	F-7B-043540	4236332383		108		DUNNAWAY #1
8227484	F-7B-043539	4236332332		108		J B DAVIS "B" #3
-MAY PETROLEUM INC				RECEIVED:	04/14/82	JA: TX
8227691	F-10-049004	4235731145		103		MCCLAIN #1
-MCCORMICK OPERATING CO				RECEIVED:	04/14/82	JA: TX
8227499	F-06-044391	4248131255		103	107-TF	BURNETT #1
8227507	F-08-044874	4231732390		102-4		DOROTHY #1
8227508	F-06-044392	4248131260		103	107-TF	LONGHORN #3
8227539	F-06-046950	4248131323		103	107-TF	LONGHORN #4
8227508	F-06-045411	4248131295		103	107-TF	OVERTON #3
-MCKENZIE OPERATING CO INC				RECEIVED:	04/14/82	JA: TX
8227559	F-7B-047582	4236300000		102-4		WELCH #1
-MEG PETROLEUM CORP				RECEIVED:	04/14/82	JA: TX
8227534	F-7C-046686	4223531791		102-2	103	SUGG-FARMAR #3
-MELBOURNE OIL COMPANY				RECEIVED:	04/14/82	JA: TX
8227550	F-10-047452	4235731113		103		HARDY #7
-MHM INC				RECEIVED:	04/14/82	JA: TX
8227512	F-7B-045734	4213333374		102-4		CMOATE "B" #6
-MITCHELL ENERGY CORPORATION				RECEIVED:	04/14/82	JA: TX
8227597	F-09-048183	4249732166		103		C L GAGE C #1 21697
8227566	F-7B-047765	4236700000		108		G D WILEY #4 #91453
8227492	F-03-043849	4228700000		102-2	103	GERSCH UNIT C #1

FIELD NAME	PROD	PURCHASER
JUANITA (LOBO)	0.0	
PANHANDLE CARSON COUN	146.0	NORTHERN NATURAL
LARD RANCH (GRANITE W	275.0	SOUTHERN NATURAL
LARD RANCH (GRANITE W	640.0	SOUTHERN NATURAL
LARD RANCH (GRANITE W	425.0	SOUTHERN NATURAL
SHEPHERD S (WILCOX 86	290.0	TENNESSEE GAS PIP
SARITA W (2000)	1971.0	TEXAS EASTERN TRA
BONUS S (WILCOX-13900	52.0	TRUNKLINE GAS CO
IOLA (GEORGETOWN)	720.0	PRODUCER'S GAS CO
IOLA (SUBCLARKSVILLE)	12.7	PRODUCER'S GAS CO
OAK HILL (COTTON VALL	0.0	DELHI GAS PIPELIN
GLEN COVE E	0.0	UNION TEXAS PETRO
AMIGO (SAN ANDRES)	27.0	BIG LAKE GAS CORP
AMIGO (SAN ANDRES)	27.0	BIG LAKE GAS CORP
AMIGO (SAN ANDRES)	33.0	BIG LAKE GAS CORP
AMIGO (SAN ANDRES)	33.0	BIG LAKE GAS CORP
AMIGO (SAN ANDRES)	33.0	BIG LAKE GAS CORP
AMIGO (SAN ANDRES)	33.0	BIG LAKE GAS CORP
JAMESON N (ELLENBURGE	15.0	SUN GAS CO
JAMESON NORTH (ELLEN)	7.0	SUN GAS CO
NORTH BRANSON (CONGL	55.0	SOUTHWESTERN GAS
NORTH BRANSON (BIG SA	394.0	SOUTHWESTERN GAS
PAN PETRO (MORROW UPP	36.5	PHILLIPS PETROLEU
OAK HILL (COTTON VALL	215.0	HYDROCARBON TRANS
J L M (MISSISSIPPIAN)	19.0	NORTHERN NATURAL
OAK HILL (COTTON VALL	200.0	HYDROCARBON TRANS
OAK HILL (COTTON VALL	300.0	HYDROCARBON LTD
OAK HILL (COTTON VALL	225.0	HYDROCARBON TRANS
MINERAL WELLS S (4270	538.0	SOUTHWESTERN GAS
ROCK PEN (CANYON)	198.0	NORTHERN NATURAL
BULER N (CLEVELAND)	22.0	TRANSWESTERN PIPE
WILDCAT	45.0	LONE STAR GAS CO
BOONSVILLE SOUTH (ATO	5.6	NATURAL GAS PIPEL
CANTER CREEK (BEND CO	11.8	SOUTHWESTERN GAS
GIDDINGS (BUDA)	26.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227438	F-03-038368	4228730576		102-2		KRAUSE UNIT A #1
8227531	F-03-046341	4204130673		102-2		PATTERSON #1 14934
8227530	F-09-046338	4249700000		103		TARRANT CNTY WATERBOARD #35 #17355
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED:	04/14/82	JA: TX
8227511	F-03-045731	4224531521		103		C B WRIGHTSMAN "A" #1
8227726	F-7B-049098	4217900000		108-SA		FEE LAND #5
*8227728	F-04-049100	4224900000		108-SA		LAGLORIA GAS UNIT #85
8227725	F-10-049097	4234100000		108-SA		MARY MILLER #1
8227730	F-08-049104	4237105419		108-SA		STATE VOLLMAR #2
8227727	F-10-049099	4206500000		108-SA		VICARS #2
8227460	F-04-040899	4235531767		103		W F L LEHMAN #6
8227729	F-02-049102	4217530165		108-SA		W W BOYCE #14
-MORAN EXPLORATION INC				RECEIVED:	04/14/82	JA: TX
8227581	F-7C-047927	4223531745		103		MURPHY "B" #4
-MR OIL CO				RECEIVED:	04/14/82	JA: TX
8227476	F-08-042678	4247500000		108		AMERICAN NATIONAL LIFE INS CO #35
8227665	F-08-048907	4247532409		103		DORR #14 #25917
-NATOMAS NORTH AMERICA INC				RECEIVED:	04/14/82	JA: TX
8227488	F-09-043067	4232131115		102-2		CORNELIUS #1
-NORTH CENTRAL OIL CORP				RECEIVED:	04/14/82	JA: TX
8227421	F-04-033258	4247900000		107-TF		WEBB COUNTY SCHOOL BOARD #1-87366
-NORTH CENTRAL OIL CORPORATION				RECEIVED:	04/14/82	JA: TX
8227417	F-04-030669	4247900000		102-4	107-TF	WEBB COUNTY SCHOOL BOARD #2
-OLYMPIA OIL CO				RECEIVED:	04/14/82	JA: TX
8227445	F-7B-039501	4205933122		102-4		STEWART #1-A
-OMEGA ENERGY				RECEIVED:	04/14/82	JA: TX
8227661	F-10-048880	4217930876		103		DAVIDSON (04985) #1
-OMNI-EXPLORATION INC				RECEIVED:	04/14/82	JA: TX
8227670	F-02-048929	4217531432		103		LOUIS HEINRICH #2
-OXOCO EXPLORATION CORP				RECEIVED:	04/14/82	JA: TX
8227625	F-06-048590	4242330407		103		FORD #1 TEXAS #91566
-P & R OIL INC				RECEIVED:	04/14/82	JA: TX
8227746	F-7B-049152	4242932460		102-4		TOLLE #1 (89463)
-PARKER & PARSLEY INC				RECEIVED:	04/14/82	JA: TX
8227532	F-08-046592	4217331193		103		HUTCHISON "C" #1
8227552	F-08-047461	4232931038		103		MURRAY #1
8227553	F-08-047462	4232931043		103		MURRAY "A" #1
8227551	F-08-047460	4232931033		103		STIMSON-BURLEY "A" #1
8227616	F-08-048491	4232931039		103		STIMSON-BURLEY "B" #1
8227615	F-08-048490	4232931044		103		STIMSON-BURLEY "B" #2
8227677	F-08-048968	4232931045		103		STIMSON-BURLEY "B" #3
-PENINSULA RESOURCES CORPORATION				RECEIVED:	04/14/82	JA: TX
8227457	F-04-040764	4227331550		103		KAUFER #1 LOWER
-PENNZOIL PRODUCING COMPANY				RECEIVED:	04/14/82	JA: TX
8227461	F-06-041024	4206700000		103	107-TF	DAVIS #1
8227633	F-04-048738	4235531376		108		MINNIE BROWN #5
8227547	F-04-047363	4250531441		102-4		ROBERTO VELA #1
-PETROLEUM CORPORATION OF TEXAS				RECEIVED:	04/14/82	JA: TX
8227590	F-7B-048025	4242932759		103		A S VEALE #10
8227664	F-08-048895	4249531281		103		IDA HENDRICK "F" #16
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/14/82	JA: TX
8227719	F-7C-049082	4238301167		108		(03593) ZULETTE #4
8227420	F-10-032635	4217900000		108		ANNIE #9

FIELD NAME	PROD	PURCHASER
GIDDINGS (BUDA)	0.0	PGP GAS PRODUCTS
KURTEN (WOODBINE)	19.0	FERGUSON CROSSING
MORRIS (CONSOLIDATED	0.0	NATURAL GAS PIPEL
STOWELL S (ENGLIN)	298.2	LIQUID ENERGY COR
PANHANDLE WEST	244.3	PHILLIPS PETROLEU
LAGLORIA/LOS OLMOS	11.6	NATURAL GAS PIPEL
PANHANDLE WEST	8.5	PANHANDLE EASTERN
ABELL (CLEARFORK)	91.1	PGP GAS PRODUCTS
PANHANDLE WEST	17.6	NORTHERN NATURAL
MOBIL DAVID (ANDERSON	1.5	VALERO TRANSMISSI
BOYCE SOUTH (PETTUS)	366.6	UNITED GAS PIPELI
SPRABERRY (TREND AREA	0.0	NORTHERN NATURAL
WARD-ESTES NORTH	0.4	CABOT CORP
WARD SOUTH	75.0	DELHI GAS PIPELIN
CORNELIUS (FRIO LO 10	706.6	TEXCOL GAS SERVIC
RANCHO PRADO (L-1)	0.0	TRANSCONTINENTAL
RANCHO PRADO (L-1)	365.0	TRANSCONTINENTAL
NUGENT'S NOOK (DUFFER	130.0	DELHI GAS PIPELIN
PANHANDLE GRAY COUNTY	61.0	CABOT PIPELINE CO
GOVITT (WILCOX 8800)	0.0	HOUSTON PIPE LINE
CHAPEL HILL (PALUXY 5	43.0	EAST TEXAS PRODUC
BAGGETT (RANGER)	185.0	LONE STAR GAS CO
SPRABERRY (TREND AREA	15.0	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	15.0	EL PASO NATURAL G
SPRABERRY (TREND AREA	15.0	EL PASO NATURAL G
SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
SPRABERRY (TREND AREA	15.0	ADOBE OIL & GAS C
S MAY (B-MASSIVE 3)	270.0	TEXAS EASTERN TRA
KILDARE (COTTON VALLE	900.0	
AGUA DULCE (5350')	20.0	UNITED GAS PIPELI
COMITAS S (8850')	949.0	
TULLOS (CADDO)	2.9	LONE STAR GAS CO
HENDRICK	57.3	PHILLIPS PETROLEU
SPRABERRY (TREND AREA	13.0	NORTHERN NATURAL
PANHANDLE GRAY	0.0	

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227419	F-10-032626	4217900000		108		DAVIDSON M #4	PANHANDLE GRAY	0.0	
8227721	F-08-049084	4200332407		108		EMBAR B #41	EMBAR (PERMIAN)	2.0	EL PASO NATURAL G
8227733	F-08-049107	4213602429		108		GOLDSMITH ANDECTOR #J-05	GOLDSMITH (CLEARFORK)	15.0	EL PASO NATURAL G
8227734	F-08-049108	4213508450		108		GOLDSMITH ANDECTOR #K-02	GOLDSMITH (CLEARFORK)	19.0	EL PASO NATURAL G
8227732	F-08-049106	4213502629		108		GOLDSMITH ANDECTOR UNIT F-04	GOLDSMITH (CLEARFORK)	23.0	EL PASO NATURAL G
8227720	F-08-049083	4208310950		108		HOLT H #5	TRIPLE N (PENN UPPER)	6.0	NORTHERN NATURAL
8227533	F-06-046628	4242300000		108		MCMINN #2	SOUTH TYLER	3.0	
8227718	F-08-049081	4208304588		108		UNIVERSITY ANDREWS #69	EMBAR (PERMIAN)	10.0	EL PASO NATURAL G
8227731	F-7C-049105	4238330328		108		WEATHERBY B #2	SPRABERRY (TREND AREA	3.0	INTRATEX GAS CO
-PIONEER PRODUCTION CORPORATION				RECEIVED:		04/14/82 JA: TX			
8227486	F-10-043573	4229531008		103		DOROTHY WHEELER #1-369	LIPSCOMB SW (CLEVELAN	8.0	PIONEER CORP
-PRICE DRILLING & EXPLORATION CO				RECEIVED:		04/14/82 JA: TX			
8227458	F-04-040810	4247931817		102-4		J O WALKER #1	CAROLINA-TEX SW (1260	73.0	VALERO TRANSMISSI
8227459	F-04-040811	4247931875		102-4		S BENAVIDES ESTATE #1-2272	CAROLINA-TEX SW (1260	73.0	VALERO TRANSMISSI
-PRO OIL				RECEIVED:		04/14/82 JA: TX			
8227594	F-7C-048179	4245130832		102-2	103	PRO OIL GLASS #3	S S R (CANYON UPPER)	50.0	ODESSA NATURAL CO
8227596	F-7C-048181	4245130822		102-2	103	PRO OIL PERRY #4"D"	R L G (CANYON LOWER)	50.0	ODESSA NATURAL CO
8227595	F-7C-048180	4245130821		102-2	103	PRO OIL PERRY #5 "E"	R L G (CANYON LOWER)	50.0	ODESSA NATURAL CO
-PRODECO EXPLORATIONINC				RECEIVED:		04/14/82 JA: TX			
8227576	F-03-047884	4204130574		102-2		A C RISINGER UNIT I #1-A (14119)	KURTEN (WOODBINE)	255.5	PRODUCERS GAS CO
8227577	F-03-047886	4204130633		102-2		A C RISINGER UNIT III #1 (14769)	KURTEN (WOODBINE)	82.1	PRODUCERS GAS CO
8227579	F-03-047888	4204130600		102-2		B A RISINGER UNIT I #1 (14566)	KURTEN (WOODBINE)	949.0	PRODUCERS GAS CO
8227573	F-03-047881	4204130618		102-2		CHAS D PALMER UNIT I #1 (14766)	KURTEN (BUDA)	949.0	FERGUSON CROSSING
8227580	F-03-047964	4204130641		102-2		DEGELIA UNIT I #1 (14768)	KURTEN (BUDA)	723.0	FERGUSON CROSSING
8227574	F-03-047882	4204130598		102-2		FRAME UNIT I #1 (14754)	KURTEN (BUDA)	650.0	FERGUSON CROSSING
8227578	F-03-047887	4204130690		102-2		PULTS UNIT I #1 (14941)	KURTEN (WOODBINE)	1095.0	PRODUCERS GAS CO
8227575	F-03-047883	4204130667		102-2		WEIDO UNIT I #1 (14932)	KURTEN (BUDA)	1095.0	FERGUSON CROSSING
-PYRO ENERGY CORP				RECEIVED:		04/14/82 JA: TX			
8227620	F-01-048539	4217730941		102-2		A E SCHIEBERLE #1	TWIN RIVERS (AUSTIN C	0.0	VALERO TRANSMISSI
-R C HARRIS				RECEIVED:		04/14/82 JA: TX			
8227658	F-02-048869	4202531568		102-4		MARTINSON #1 (RRC #97345)	TULETA WEST - 12910	456.3	TRANSCONTINENTAL
-R K G ENGINEERING INC				RECEIVED:		04/14/82 JA: TX			
8227608	F-08-048363	4237133139		103		MOBIL 13 (26097)	TROPORO (DEVONIAN)	0.0	NORTHERN NATURAL
-RAIDER OIL CORP				RECEIVED:		04/14/82 JA: TX			
8227629	F-09-048698	4207732291		103		L C CAMPSEY #1 RRC ID #21435	DILLARD SW (ELLENBURG	18.2	TEXAS UTILITIES F
-RALPH L WAY INC				RECEIVED:		04/14/82 JA: TX			
8227694	F-7C-049014	4238331895		103		UNIVERSITY "8" #12	FARMER (SAN ANDRES)	17.3	NORTHERN NATURAL
8227693	F-7C-049013	4238331887		103		UNIVERSITY "8" #8	FARMER (SAN ANDRES)	20.9	NORTHERN NATURAL
-REO INDUSTRIES INC				RECEIVED:		04/14/82 JA: TX			
8227717	F-10-049076	4223300000		103		WHITTENBURG A 8-17	PANHANDLE HUTCHINSON	278.0	TRANS-PAN GATHERI
-RESOURCES INVESTMENT CORPORATION				RECEIVED:		04/14/82 JA: TX			
8227518	F-04-045673	4235531719		102-4		STATE TRACT #58 #1	CRANE ISLAND SOUTH (I	193.0	HOUSTON PIPE LINE
-RIO PETROLEUM INC				RECEIVED:		04/14/82 JA: TX			
8227669	F-10-048922	4206530869		103		RIO #1 NANCY	BOBBITT (BROWN DOLOMI	0.0	PIONEER CORP
-RK PETROLEUM CORP				RECEIVED:		04/14/82 JA: TX			
8227554	F-08-047464	4231732456		103		CASTLE 1-X	SPRABERRY/TREND AREA	28.5	PHILLIPS PETROLEU
-ROBERT E BYRNE				RECEIVED:		04/14/82 JA: TX			
8227622	F-7B-048548	4213332072		108		KING #1 (15648)	EASTLAND COUNTY REGUL	13.0	LONE STAR GAS CO
-ROCKWOOD RESOURCES INC				RECEIVED:		04/14/82 JA: TX			
8227613	F-02-048478	4217531535		102-4		FRANKE NO 1	MAETZE (2978)	0.0	DELHI GAS PIPELIN
-RYDER SCOTT OIL CO				RECEIVED:		04/14/82 JA: TX			
8227549	F-05-047395	4207732368		102-4		SLAYTON #1	SLAYTON (CONGL)	75.0	SANFORD P FAGADAU
-SAGE ENERGY CO				RECEIVED:		04/14/82 JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227624	F-03-048555	4214900000		102-2		JOE #1 RRC #
-SHA-JAN CORP				RECEIVED:	04/14/82	JA: TX
8227558	F-03-047548	4214930995		103		J WETH #2
8227443	F-03-039427	4214930781		103		POLLY #1
8227513	F-01-045739	4217730825		103		RONNIE #1
-SNOW OIL CO				RECEIVED:	04/14/82	JA: TX
8227747	F-78-049154	4213333560		102-4		ALEXANDER #2 (17907)
-SOUTHERN CRUDE OIL RESOURCES INC				RECEIVED:	04/14/82	JA: TX
8227668	F-78-048920	4236732113		102-4		GREEN #1 (ID NO 97428)
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/14/82	JA: TX
8227626	F-10-048604	4235700000		108		HOMER GURLEY GAS #1-L
8227555	F-10-047489	4235700000		108		PERRY UNIT "A" #1
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/14/82	JA: TX
8227422	F-04-033581	4242731467		102-4		BETTY J B HILES #1
8227529	F-8A-046293	4207931374		103		LEAGUE 91 PROJECT #2-8
-TAMARACK PETROLEUM CO INC				RECEIVED:	04/14/82	JA: TX
8227599	F-08-048200	4232900000		103		DIXON #1 (RRC #25814)
-TAYLOR OPERATING COMPANY				RECEIVED:	04/14/82	JA: TX
8227471	F-89-042128	4207700000		103		NOLEN #1 (21210)
-TDC EXPLORATION INC				RECEIVED:	04/14/82	JA: TX
8227621	F-03-048545	4214931265		102-2		HAVEMANN UNIT #1
-TEMPLETON ENERGY INC				RECEIVED:	04/14/82	JA: TX
8227628	F-84-048644	4224931496		102-4		FITZSIMMONS #1
-TEXACO INC				RECEIVED:	04/14/82	JA: TX
8227584	F-8A-044547	4221933223		103		BOB SLAUGHTER BLK #331
8227528	F-8A-046200	4221933229		103		BOB SLAUGHTER BLK #335
8227564	F-8A-047712	4221933227		103		BOB SLAUGHTER BLOCK #336
8227569	F-10-047866	4217900000		108		G H SAUNDERS NCT-1 #1
8227570	F-10-047867	4217900000		108		G H SAUNDERS NCT-2 #111
8227784	F-18-049037	4217900000		108		H W OLCOTT #2
8227650	F-8A-048857	4221933300		103		IRA P DELOACHE #31
8227543	F-8A-047270	4221933299		103		IRA P DELOACHE #32
8227705	F-8A-049039	4221933387		103		MONTGOMERY ESTATE DAVIES NCT-2 #85
8227541	F-8A-047053	4250132060		103		ROBERTS UNIT #4446
8227544	F-8A-047272	4216532258		103		ROBERTSON UNIT #41
8227535	F-08-046834	4243130910		103		STERLING M FEE #3
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	04/14/82	JA: TX
8227425	F-06-037065	4240131123		103	107-TF	C GRIFFITH UNIT #1
-THROCKMORTON GAS SYSTEMS				RECEIVED:	04/14/82	JA: TX
8227437	F-78-038261	4244732553		102-4		MORRISON #3-A
-TOM L INGRAM				RECEIVED:	04/14/82	JA: TX
8227649	F-08-048853	4200332888		103		THORNBERRY "H" #1
8227648	F-08-048852	4200332887		103		THORNBERRY "H" #2
-TRANS-AMERICAN DEVELOPMENT CORP				RECEIVED:	04/14/82	JA: TX
8227475	F-8A-043591	4236700000		102-2		TIDWELL #1
-TUCKER DRILLING COMPANY INC				RECEIVED:	04/14/82	JA: TX
8227645	F-7C-048846	4223531848		103		J W FIELD #4
-TX PETROLEUM CO				RECEIVED:	04/14/82	JA: TX
8227482	F-04-043266	4224931441		102-4		H BIERSTEDT #1
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/14/82	JA: TX
8227692	F-08-049012	4200332955		103		FUHRMAN-MASCHO UNIT #606 BLK 10
-UNION TEXAS PETROLEUM				RECEIVED:	04/14/82	JA: TX
8227441	F-08-039347	4230130294		102-4		RED BLUFF B #1

FIELD NAME	PROD	PURCHASER
GIDDINGS (AUSTIN CHAL	13.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	36.5	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	7.3	SOUTH CEN TEX GAS
MAG (AUSTIN CHALK)	21.9	TIPPERARY GATHERI
CISCO (CONGL 3600)	350.0	LONE STAR GAS CO
HOLDEN (STRAWN)	0.0	LONE STAR GAS CO
N FARNSWORTH (MISSIS	10.0	NATURAL GAS PIPEL
PERRYTON (MORROW LOWE	8.5	NORTHERN NATURAL
LOCKHART	173.0	TENNESSEE GAS PIP
SLAUGHTER	22.0	AMOCO PRODUCTION
SPRABERRY (TREND AREA	8.0	EL PASO NATURAL G
BUFFALO SPRINGS SOUTH	44.5	LONE STAR GAS CO
GIDDINGS (AUSTIN CHAL	18.0	SOUTH CEN-TEX GAS
BRAMAN 8150	365.0	
SLAUGHTER	0.0	AMOCO PRODUCTION
SLAUGHTER	0.1	AMOCO PRODUCTION
SLAUGHTER	8.4	AMOCO PRODUCTION
PANHANDLE EAST	16.1	COLTEXO CORP
PANHANDLE EAST	16.0	COLTEXO CORP
PANHANDLE EAST	1.7	WESTAR TRANSMISSI
LEVELLAND	8.7	AMOCO
LEVELLAND	0.0	AMOCO PRODUCTION
LEVELLAND	58.0	AMOCO PRODUCTION
WASSON	27.1	SHELL OIL CO
ROBERTSON N (CLEARFOR	39.1	PHILLIPS PETROLEU
CONGER (PENN)	245.3	VALERO TRANSMISSI
DIRGIN (COTTON VALLEY	400.0	DELHI GAS PIPELIN
RICHARDS (CONGL UPPER	0.0	WARREN PETROLEUM
FUHRMAN-MASCHO	36.5	PHILLIPS PETROLEU
FUHRMAN-MASCHO	18.3	PHILLIPS PETROLEU
WILDCAT (NEW FIELD NO	100.0	SOUTHWESTERN GAS
ARDEN S (CANYON SAND	168.8	ESPERANZA PIPELIN
GRABEN (4950)	91.8	VALERO TRANSMISSI
FUHRMAN-MASCHO	80.0	PHILLIPS PETROLEU
RED BLUFF (WOLFCAMP)	2928.8	

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JD NO   JA DKT        API NO      D SEC(1) SEC(2) WELL NAME                          VOLUME  643          PAGE  010

                                                                                    FIELD NAME             PROD   PURCHASER
                                                                                    ----------             ----   ---------
-UNIT DRILLING & EXPLORATION CO       RECEIVED:  04/14/82    JA: TX
 8227673  F-10-048952  4229531110    103          RANDALL #7                        BRADFORD (TONKAWA)      30.0  PHILLIPS PETROLEU
-VERNON E FAULCONER INC               RECEIVED:  04/14/82    JA: TX
 8227675  F-06-048959  4236500080    108          T C CADENHEAD RRC ID #29380       BETHANY (PETTIT)         1.5  TENNESSEE GAS PIP
-W L PENNINGTON INC                   RECEIVED:  04/14/82    JA: TX
 8227456  F-10-040557  4208730154    108-ER       ENNERT 4-99 ID #93034             PANHANDLE EAST          20.0  EL PASO NATURAL G
-W W BOLDT                            RECEIVED:  04/14/82    JA: TX
 8227493  F-7B-043949  4208332672    102-4        W W BAKER #1 (97429)              BAKER (MORRIS)         436.0  LONE STAR GAS CO
-WAGNER & BROWN                       RECEIVED:  04/14/82    JA: TX
 8227607  F-08-048324  4243131075    103          MAHAFFEY "A" #1-4                 CONGER (PENN)           51.0  VALERO TRANSMISSI
-WALTER EXPLORATION INC               RECEIVED:  04/14/82    JA: TX
 8227604  F-8A-048245  4210130313    102-4        OPAL-RRC ID #97157                INDEPENDENT (BEND CON  588.0  PALO DURO PIPELIN
-WARREN PETR CO A DIV OF GULF OIL CO RECEIVED:  04/14/82    JA: TX
 8227652  F-08-048859  4210332662    103          W N WADDELL #1154                 DUNE                    10.1  EL PASO NATURAL G
 8227651  F-08-048858  4210332692    103          W N WADDELL #1206                 SAND HILLS (WICHITA A   69.2  EL PASO NATURAL G
-WARRIOR MANAGEMENT CO                RECEIVED:  04/14/82    JA: TX
 8227592  F-04-048149  4242731439    102-4  103   STATE OF TEXAS #1                 ROSS N (1580)           47.0  TENNESSEE GAS PIP
-WES-MOR DRILLING INC                 RECEIVED:  04/14/82    JA: TX
 8227684  F-7B-048992  4236300000    108          STEPHENS "A" #1 RRC ID #45570     BRAD SW (BIG SALINE C    0.0  LONE STAR GAS CO
-WES-TEX DRILLING COMPANY             RECEIVED:  04/14/82    JA: TX
 8227722  F-7B-049087  4235331138    103          MCLAUGHLIN #3                     ADAIR CREEK (COOK SAN    0.0  SUN GAS CO
 8227723  F-7B-049088  4235331206    103          MCLAUGHLIN #4                     ADAIR CREEK (COOK SAN    0.0  SUN GAS CO
-WILLIAM PERLMAN                      RECEIVED:  04/14/82    JA: TX
 8227414  F-7C-027532  4244330006    107-TF       TOM MITCHELL STATE 22-1           OZONA (CANYON)           0.0  EL PASO NATURAL G
-WY-VEL CORP                          RECEIVED:  04/14/82    JA: TX
 8227724  F-10-049091  4206530999    103          BURNETT (84270) #8                PANHANDLE CARSON COUN   77.0  GETTY OIL CO
 8227660  F-10-048876  4223331245    103          SOUTHLAND (84341) #8              PANHANDLE HUTCHINSON    48.0  PHILLIPS PETROLEU
 8227659  F-10-048875  4223331244    103          SOUTHLAND (84341) #9              PANHANDLE HUTCHINSON    40.0  PHILLIPS PETROLEU


OTHER PURCHASERS        VOLUME NO :643

8227449    VALERO TRANSMISSION CO
8227560    E I DUPONT DE NEMOURS & CO INC
8227605    E I DUPONT DE NEMOURS & CO INC
8227637    E I DUPONT DE NEMOURS & CO INC
8227678    E I DUPONT DE NEMOURS & CO INC
8227680    E I DUPONT DE NEMOURS & CO INC
8227681    E I DUPONT DE NEMOURS & CO INC
8227687    E I DUPONT DE NEMOURS & CO INC
8227709    E I DUPONT DE NEMOURS & CO INC
8227710    E I DUPONT DE NEMOURS & CO INC
8227728    TRANSCONTINENTAL GAS P L CORP
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Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12565 Filed 5-6-82; 8:45 am]

BILLING CODE 6717-01-C

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59067; TSH FRL 2120-1]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the Federal Register of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: June 7, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59067]" and the specific TME number should be sent to:

82T-1280

Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the TMEs received by the EPA:

TME 82-15

Close of Review Board. June 10, 1982.
Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Cationic substituted acid amide.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, 12 workers, 8 hrs/da, 20 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 100-1,000 kg/yr to land. Off-gases treated by scrubber system, wastes disposed of by activated sludge system and on-site incineration.

TME 82-16

Close of Review Period. June 10, 1982.
Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Cationic substituted acid amide polymer.
Use/Production. (G) Additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, 12 workers, 8 hrs/da, 20 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air, 100-1,000 kg/yr to land, 10-100 kg/yr to water. Off-gases treated by scrubber system, wastes disposed of by activated sludge system and on-site incineration.

Dated: April 30, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-12078 Filed 5-6-82; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51412; TSH FRL 2119-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:
PMN 82-305 & 82-306—July 22, 1982.
PMN 82-307, 82-308, 82-309, 82-310, 82-311, 82-312 & 82-313—July 25, 1982.
PMN 82-314, 82-315 & 82-316—July 26, 1982.
PMN 82-317 & 82-318—July 27, 1982.
PMN 82-319, 82-320 & 82-321—July 28, 1982.
Written comments by:
PMN 82-305 & 82-306—June 22, 1982.
PMN 82-307, 82-308, 82-309, 82-310, 82-311, 82-312 & 82-313—June 25, 1982.
PMN 82-314, 82-315 & 82-316—June 26, 1982.
PMN 82-317 & 82-318—June 27, 1982.
PMN 82-319, 82-320 & 82-321—June 28, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51412]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, D.C. 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82-305

Manufacturer. Hercules Incorporated.
Chemical. (G) Modified hydroxyethylcellulose.
Use/Production. (G) Open use. Prod. range: Confidential.
Toxicity Data. No data available.
Exposure. Manufacture: dermal and inhalation, 150 workers, 7 hrs/da.
Environmental Release/Disposal. Confidential.

PMN 82-306

Manufacturer. Confidential.
Chemical. (G) Disubstituted benzenamine.
Use/Production. (G) A minor constituent of an article for commercial and consumer use. Prod. range: 6,000-8,000 kg/yr.
Toxicity Data. Acute oral: > 3,000 mg/kg, Acute dermal: > 1,000 mg/kg, Skin: Slight, Eye: Slight.
Exposure. Manufacture and processing: dermal and inhalation, a total of 65 workers, up to 3 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. No release to land with minimal to air and water. Disposal by biological treatment system and incineration.

PMN 82-307

Manufacturer. Confidential.

Chemical. (G) Polyhaloalkoxyaroyl halide.
Use/Production. (G) Site-limited captive intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. None.
Environmental Release/Disposal. None. Disposal by incineration.

PMN 82–308

Importer. Confidential.
Chemical. (G) Substituted benzotriazole..
Use/Import. (G) Open use. Import range: Confidential.
Toxicity Data. Acute oral: 1,500 mg/kg, Skin: Moderate irritant, Eye: Marked irritant.
Exposure. Processing: dermal, 2 hrs/da, 20 da/yr.
Environmental Release/Disposal. No release. Disposal by incineration and approved landfill.

PMN 82–309

Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Cationic substituted acid amide.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 100–1,000 kg/yr to land. Disposal by incineration.

PMN 82–310

Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Cationic substituted acid amide polymer.
Use/Production. (S) Additive. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air, 10–100 kg/yr to water and 100–1,000 kg/yr to land. Disposal by incineration.

PMN 82–311

Manufacturer. Confidential.
Chemical. (G) Unsaturated alkyl amino alkyl dioxlane.
Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: < 500 mg/kg and > 1,000 mg/kg, Acute dermal: Neat[a]–743 mg/kg, Toulene–982 mg/kg.
Exposure. During sampling.
Environmental Release/Disposal. Disposal by EPA approved incinerator.

PMN 82–312

Manufacturer. Confidential.
Chemical. (G) Dihaloethylacetate.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. Acute oral: 470 mg/kg, Acute dermal: 1,558 mg/kg, Acute inhalation 16 parts per million (ppm).
Exposure. During sampling.
Environmental Release/Disposal. Disposal by EPA approved incinerator.

PMN 82–313

Manufacturer. PPG Industries, Inc.
Chemical. (S) Acetamide, 2,2-dichloro-N-(1,3-dioxlan-2-ylmethyl)-N-2-propenyl.
Use/Production. (S) Pesticide safener. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Accidential spills.
Environmental Release/Disposal. Disposal by EPA approved incinerator.

PMN 82–314

Manufacturer. Confidential.
Chemical. (G) Copolymer of alkyl acrylates and methacrylates.
Use/Production. (S) Site-limited coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. None.
Environmental Release/Disposal. No release.

PMN 82–315

Manufacturer. Confidential.
Chemical. (G) Polyester polymer derived from a carbomonocyclic anhydride and containing a mixture of substituted alkane diols.
Use/Production. (G) Open use. Prod. range: 0–6,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, inhalation and eye, a total of 33 workers, up to 8 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with less than 10 up to 10,000 kg/yr to land. Disposal by incineration and landfill.

PMN 82–316

Manufacturer. Texaco Chemical Company.
Chemical. (S) 4-butylmorpholine.
Use/Production. (S) Industrial and commerical polyurethane catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: 0.336 g/kg, Acute dermal: 1.82 g/kg, Skin: 1.36/8.0, Eye: 31.5/110.0, Ames Test: Negative.
Exposure. Manufacture and disposal: dermal and inhalation, a total of 2 workers, up to 2 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land 1–2 hrs/da, 50 da/yr. Disposal by publicly owned treatment works (POTW).

PMN 82–317

Manufacturer. Monsanto Company.
Chemical. (G) Metal alkanoate.
Use/Production. (S) Plastic film additive. Prod. range: Confidential.
Toxicity Data. Acute oral: < 5,010 mg/kg, Acute dermal: 2,000 mg/kg, Skin: None, Eye: Slight.
Exposure. Manufacture and processing: dermal.
Environmental Release/Disposal. Released to water and land. Disposal by incineration and approved landfill.

PMN 82–318

Importer. Confidential.
Chemical. (G) A mixture of naphthalene sulfonic acid, -(substituted amino)-hydroxy-[(substituted phenyl)azo) and naphthalene sulfonic acid, -(substituted amino)-hydroxy -[(substituted phenyl)azo), compounded with organic acids.
Use/Import. (S) Industrial colorant for paper. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Negligible.
Environmental Release/Disposal. No release to air, water or land.

PMN 82–319

Manufacturer. Confidential.
Chemical. (G) Alkyl oligoglycosides.
Use/Production. (S) Surfactant for commercial and consumer use. Prod. range: Confidential.
Toxicity Data. Acute oral: > 12.5 g/kg, Acute dermal: > 2 g/kg, Skin: Mild irritant, Eye: Mild transient irritant, Skin sensitization: None, LC_{50}: 8–102mg/1.
Exposure. Dermal, inhalation and eye, a total of 44 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. Release to air and water. Disposal by POTW.

PMN 82–320

Manufacturer. Confidential.
Chemical. (S) Phenol, 4-nitroso-, magnesium salt, hexahydrate.
Use/Production. Confidential. Prod. range: Confidential.
Toxicity Data. Acute oral: 508 mg/kg, bw males, 670 mg/kg bw females, Eye: Moderate to severe irritant, Ames Test: Positive.
Exposure. Disposal: dermal, 8 workers, 8 hrs/da, 240 da/yr.
Environmental Release/Disposal. 1,000–10,000 kg/yr released to water 24 hrs/da, 365 da/yr. Disposal by National

Pollution Disposal Elimination System (NPDES).

PMN 82–321

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Polyester random copolyester.

Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

Toxicity Data. Skin: Slight irritant.

Exposure. Manufacture: dermal, a total of 4 workers, up to 24 hrs/da, up to 36 da/yr.

Environmental Release/Disposal. Disposal by incineration.

Dated: April 30, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-12479 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

[SA FRL 2119–1]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a one-day meeting of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in Conference Room 3906, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, D.C., on May 25, 1982. The meeting will begin at 9:00 a.m. and last until approximately 5:00 p.m.

The purpose of this meeting is to organize the Committee's review of technical support data pertaining to the Effluent Guidelines for the Organic Chemicals/Plastics and Synthetic Fibers Industries developed under the Clean Water Act.

EPA's Office of Water Regulations and Standards (OWRS) has identified the following four categories of issues to discuss with the Committee:

1. *Analytical Methods:* At the inception of OWRS's study of organic priority pollutant discharges from the organics/plastics industry, no analytical methods existed which has been validated (precision and accuracy defined) for the industry. Therefore, EPA relied upon a site-specific methodology to gather data on these pollutants. The site-specfic methodology incorporated a QA/QC (quality assurance/quality control) program to establish the precision and accuracy of each site-specific method. The methods became generally applicable through subsequent use and development. The Committee has been asked to review this site-specific development of analytical methods.

2. *Relationships Between Feedstock/Generic Chemical Process Combinations Used in the Industry and the Occurrence of Priority Pollutants in the Industry:* OWRS studied 176 products, manufactured through 123 processes, in the industry and concluded that priority pollutants in these 176 product/processes are discharged as the result of five types of sources. Based on similarities among the raw materials and chemical processes used in all industry product/processes, OWRS developed a predictive approach to identify occurrences of priority pollutants in discharges from product/processes other than the 176 studied. This result provides a basis for extending of regulatory coverage beyond the 176 product/processes to the entire industry. The Committee has been asked to review the predictive approach.

3. *Estimation of the Performance of Treatment Technologies by Mathematical Models Based on Theoretical and Empirical Factors:* OWRS has developed mathematical models to represent the performance of both physical/chemical and biological treatment systems under a variety of conditions. These models are based on theoretical and empirical information developed by OWRS during its study as well as data contained in the technical literature. The models are used to calculate treatment system sizes and operating characteristics and to determine the costs of achieving various levels of treatment. The Committee has been asked to review the models.

4. *Performance Capability of Treatment Technology Combinations:* PWRS has designed models of various combinations of treatment technologies to determine the appropriate set and sequencing of individual treatment modules needed to treat all wastes at an entire typical facility and to compute the associated cost. The combinations have been found, with computer assistance, by specifying selection rules (rules which direct the computer to "select" treatment equipment in particular sequences to meet designated treatment levels) based on factors such as the types and quantities of pollutants discharged from various product/processes within a plant and the relative costs of different treatment combinations. The Committee has been asked to review the selection rules and treatment levels used to select combinations of treatment technologies for entire plants, including an evaluation of their applicability throughout the industry; the validity of the operating and design ranges used in the selection criteria; and the representativeness of the resulting combinations.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Acting Director, Science Advisory Board, at (202) 755–0996 before close of business May 20, 1982.

Terry F. Yosie,

Acting Director, Science Advisory Board.

April 29, 1982.

[FR Doc. 82-12480 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

[A–2 FRL 2119–2]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between February 1, 1982 and March 31, 1982, the U.S. Environmental Protection Agency, Region II, issued eleven final determinations relative to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 (45 FR 52676). A listing of these final determinations includes eight applicability determinations and three final permit decisions. These PSD determinations are final actions under the Clean Air Act.

DATES: The effective dates for the above PSD determinations are delineated in the following chart. (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278 (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA has made final determinations for the following sources:

This notice contains only a list of the sources which have received PSD determinations. Copies of these determinations and related materials are available for public inspection at: Environmental Protection Agency, Region II Office, Permits Administration Branch, Office of Policy and Management, 26 Federal Plaza, Room

432, New York, New York 10278, (212) 264–4711.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these determinations is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by (60 days from the date on which these determinations is published in the **Federal Register**). Under Section 306(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Jacqueline E. Schafer,

Regional Administrator.

Name of applicant	Type of source	Approximate location	Type of final action	Date of final action
B. F. Goodrich Company	Expansion of polyvinyl chloride plant	Pedricktown, NJ	PSD applicability	2/9/82
Hess Oil Virgin Islands Corporation	Expansion of petroleum refinery/addition of new fluid catalytic cracking units.	St. Croix, USVI	Final PSD permit	2/9/82
Westchester County Industrial Development Agency.	New solid waste resource recovery facility	Peekskill, NY	Final PSD permit	2/22/82
The Procter and Gamble Company	New waste wood-fired boiler to be installed at existing plant	Staten Island, NY	Final PSD permit	2/25/82
Alpha Portland Cement Company	Increase in liquid waste fuel consumption at existing cement plant.	Cementon, NY	PSD nonapplicability	2/25/82
New York City Department of Environmental Protection.	Modifications to design of secondary sewage treatment plant (North River Water Pollution Control Project).	New York City, NY	PSD nonapplicability	2/25/82
U.S. Army Corps of Engineers	Addition of a heat recovery incinerator at army training base	Fort Dix, NJ	PSD applicability	2/25/82
Eastman Kodak Company	Addition of a new pulverized coal suspension-fired boiler at existing chemical plant.	Rochester, NY	PSD applicability	3/3/82
Puerto Rico Aqueduct and Sewer Authority	New sludge incinerator	Aguadilla, PR	PSD nonapplicability	3/4/82
Puerto Rican Cement Company	New coal handling facility	Ponce, PR	PSD nonapplicability	3/5/82
General Electric Company	Addition of a new vent gas fume incinerator at existing chemical plant.	Waterford, NY	PSD nonapplicability	3/17/82

[FR Doc. 82-12481 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Policy for Use of the Federal Portion of the Land and Water Conservation Fund

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final policy statement.

SUMMARY: The Assistant Secretary for Fish and Wildlife and Parks has adopted a policy statement concerning use of the Federal portion of the Land and Water Conservation Fund (LWCF). This policy statement provides broad guidance to four Federal agencies in use of the LWCF to achieve natural, cultural, wildlife, and recreation management objectives in accordance with Congressional mandates and statutory authorities.

The policy applies to the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management, in the Department of the Interior and the Forest Service in the Department of Agriculture. The statement was developed by the LWCF Policy Group which is composed of the Directors of these three Interior agencies, Chief of the Forest Service, and a chairman who is designated by the Assistant Secretary for Fish and Wildlife and Parks. The LWCF Policy Group (LPG) was originally established in 1974 to review, comment on and coordinate proposals that may affect the Federal portion of the Land and Water Conservation Fund.

EFFECTIVE DATE: May 15, 1982.

FOR FURTHER INFORMATION CONTACT: Ric Davidge, Chairman, LWCF Policy Group, Room 3156, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The public was invited to comment on the proposed policy statement which appeared in the **Federal Register** March 18, 1982, (Vol. 47, No. 53, pages 11777–8).

There were several comments received via phone expressing support for the policy statement and an interest in the rapid implementation of the policy. Seventy-five written comments were received. Seventy fully supported the policy and its immediate implementation by all of the Federal agencies using the Land and Water Conservation Fund. Five comments expressed concerns that the new policy was too general to be evaluated, eliminated the use of full fee title acquisition, was contrary to the 1980 policy for potential additions to the Federal estate, and that a fair analysis could not be made without analysis of the case studies that are not as yet available.

The new policy is by design general. Its purpose is to encourage the use of cost effective tools to protect the essential resource values in authorized areas. Full fee title acquisition is anticipated in areas where this method of acquisition is required by the land protection plan. Each individual area land protection plan must comply with all environmental protection requirements and it is at this specific point where the application of the policy should be evaluated. This policy is an extension of the 1980 policy for potential additions to the Federal estate in that it encourages the same alternative protection and acquisition methods but for authorized rather than proposed areas. Review and comment on the subject policy should not have been dependent upon a review of the case studies that were to be made available by the National Park Service after April 12, 1982, as reported in the March 18, 1982, **Federal Register**. These case studies were undertaken to provide the National Park Service with an initial sample of how land protection plans could be recrafted and were not a test of the policy per se. It is anticipated that these case studies will be available on or about June 22, 1982.

The policy was developed in response to the decreasing availability of Land and Water Conservation Fund monies annually appropriated by Congress, concerns voiced by a number of sources including hearings by the Senate Subcommittee on Public Lands and Reserved Waters on July 9 and 10 of 1981; and reports by the General Accounting Office concerning Federal land acquisition practices. The recently adopted policy generally refines and expands the basic concepts included in the policy statement which appeared in the **Federal Register** of May 7, 1980 (45 FR 30306). The previous policy statement only addressed studies and recommendations for new areas to be funded under the Land and Water Conservation Fund program. The recent drop in the level of the annual Land and Water Conservation Fund appropriation created a need to apply the various

alternatives to fee title land acquisition to all currently authorized areas in an effort to stretch available LWCF monies. The recently adopted policy supplements the 1980 statement to include existing units of the National Park, Wildlife Refuge, Forest, and recreation or conservation area systems where acquisition of private land is planned using LWCF monies.

The policy provides general guidance and does not replace the more detailed policies and procedures governing the land acquisition and management programs of each agency. However, each agency affected by the Policy is expected to make revisions in its policies and procedures as necessary and appropriate to reflect the direction of the general policy. This direction includes emphasis on responsiveness to Congressional mandates; cost effective alternatives to Federal fee simple purchase of private lands; improved cooperation with landowners, other Federal agencies, and State and local governments, and the private sector; and development of plans considering socio-cultural impacts.

ADOPTED POLICY: The following statement has been adopted after consideration of public comments: Policy for Use of the Federal Portion of the Land and Water Conservation Fund.

The Federal portion of the Land and Water Conservation Fund will be used to acquire lands, waters, and interests therein necessary to achieve the natural, cultural, wildlife, and recreation management objectives of the National Park Service, Fish and Wildlife Service, Bureau of Land Management, and Forest Service. The fund will be used in accord with management objectives for each currently authorized area based on agency missions and Congressional mandates. The agencies using the Federal portion of the Land and Water Conservation Fund will, to the extent consistent with statutory authorities:

—Identify what land or interests in land need to be in Federal ownership to achieve management unit purposes consistient with public objectives in the unit.

—Use to the maximum extent practical cost-effective alternatives to direct Federal purchase of private lands and, when acquisition is necessary, acquire or retain only the mininum interests necessary to meet management objections.

—Cooperate with landowners, other Federal agencies, State and local governments, and the private sector to manage land for public use or protect it for resource conservation.

—Formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure the socio-cultural impacts are considered and that the most outstanding areas are adequately managed.

Dated: April 29, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12303 Filed 5-6-82; 8:45 am]

BILLING CODE 4310-10-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2121-1]

Availability of Environmental Impact Statements Filed April 26 Through April 30, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson, (202) 245-3006.

Corps of Engineers:
- EIS No. 820248, Draft, COE, GU, Apra Harbor/Commercial Port Navigation Improvement, Due: June 21, 1982.
- EIS No. 820237, Draft, COE, HI, Alenaio Stream and Watershed Flood Control, Hawaii County, Due: June 21, 1982.
- EIS No. 820244, Final, COE, LA, Lafourche Parish Sand Dredging Operations, Permits, Due: June 7, 1982.
- EIS No. 820252, Final, COE, MI, Grand Marais Harbor Shoreline Erosion Control, Alger County, Due: June 7, 1982.
- EIS No. 820235, Final, COE, OR, North Bay Marine Industrial Park Development, Permit, Coos County, Due: June 7, 1982.
- EIS No. 820249, FSuppl, COE, SEV, AL, MS, Tennessee-Tombigbee Waterway Navigation Project, Due: June 14, 1982.

Department of Energy:
- EIS No. 820255, Draft, BPA, SEV, PRO, 1982 BPA Wholesale Power Rate Increase, Due: June 25, 1982.
- EIS No. 820250, FSuppl, BPA, WA, Crow Butte Slough Crossing/Ashe Slatt Transmission Line, Benton Co., Due: June 7, 1982.

Department of Interior:
- EIS No. 820239, Draft, BLM, CA, San Gorgonio Pass Wind Energy Site-Specific Project, Due: June 8, 1982.
- EIS No. 820236, Draft, BLM, NM, West Socorro Rangeland Management Program, Due: July 9, 1982.
- EIS No. 820246, Draft, BLM, OR, Brothers Area Grazing Management Program, Due: June 30, 1982.

Department of Transportation:
- EIS No. 820247, Draft, FHW, IN, Western-Grand Avenue Improvements, Fayette County, Due: June 29, 1982.
- EIS No. 820254, Draft, FHW, MN, TH-60 Improvement, St. James to Worthington, Due: June 30, 1982.
- EIS No. 820253, Draft, FHW, TN, I-40 Interchange Construction at Hammer Road, Knox County, Due: June 21, 1982.

Environmental Protection Agency:
- EIS No. 820245, Final, EPA, SEV, REG, Lead-Acid Battery Manufacture, Standards, Due: June 7, 1982.
- EIS No. 820242, Final, EPA, NM, Twining Wastewater Treatment Facilities, Grant, Taos County, Due: June 7, 1982.

Department of Housing and Urban Development:
- EIS No. 820241, Final, HUD, GA, Indian Creek Development, Mortgage Insurance, Dougherty County, Due: June 7, 1982.

Nuclear Regulatory Commission:
- EIS No. 820251, Final, NRC, FL, St. Lucie Plant, Unit No. 2, License, St. Lucie County, Due: June 7, 1982.

Department of Agriculture:
- EIS No. 820240, Draft, AFS, MT, Beaverhead National Forest Land Management Plan, Due: June 21, 1982.
- EIS No. 820238, DSuppl, AFS, OR, Umpqua National Forest Land Management Plan, Due: June 21, 1982.
- EIS No. 820243, Final, SCS, MS, Upper Yocona River Watershed Flood Control Project, Due: June 7, 1982.

Amended Notices:
- EIS No. 820224, Draft, AFS, AK, Situh River Wild and Scenic Designation Study. *Published FR 4-30-82 with incorrect due date, Due: *July 28, 1982.
- EIS No. 820229, Draft, DLA, CA, Terminal Island Complex, Fuel Pier Relocation, Los Angeles County. *Published FR 4-30-82 with incorrect due date, Due: *July 1, 1982.
- EIS No. 790363, Draft, NOA, MXG, East and West Flower Gardens Marine Sanctuary. *Published FR 4-13-79—Officially Withdrawn, Due:
- EIS No. 820222, FSuppl, COE, IA, Rettendorf Local Flood Protection Plan, Mississippi River, Scott Co. *Published FR 4-30-82—Review period reestablished due to noncompletion of distribution, Due: June 7, 1982.

Dated: May 4, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-12352 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2121-1]

Cancellation of Environmental Impact Statement; East Texas Synthetics Project and Troup Lignite Mine

AGENCY: U.S. Environmental Protection Agency, Region 6.

ACTION: Cancellation of the EIS on the East Texas Synthetics Project and Troup Lignite Mine.

SUMMARY: Exxon Company, USA, has decided it will not proceed at this time with the East Texas Synthetics Project and Troup Lignite Mine near Troup, Texas. In light of this development, EPA has terminated the Environmental Impact Statement that was under preparation for the proposed issuance of

a NPDES permit. Therefore, the Notice of Intent, published in the Federal Register of October 27, 1980 (45 FR 70973), is hereby rescinded. For further information contact: Mr. Clinton B. Spotts, Regional EIS Coordinator, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270; telephone: 214–767–2716 or 8–729–2716.

Dated: May 4, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-12580 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-20-M

[AD-FRL 2119-3]

National Air Pollution Control Techniques Advisory Committee; Notice of Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on June 16 and 17, 1982, at the Olde Colony Motor Lodge, Commonwealth Room—Convention Center, North Washington and First Streets, Alexandria, Virginia 22313. The commerical telephone number is (703) 548–6300.

The tentative agenda for the meeting is as follows:

June 16 (Wednesday)

9:00 a.m.—Fossil and Nonfossil Fuel Fired Industrial Boilers-Patriculate and Nitrogen Oxide Emissions, New Source Performance Standard (Section 111 of the Clean Air Act)

June 17 (Thursday)

9:00 a.m.—Continuation of June 16—As Required

9:30 a.m.—Discussion of the Advantages and Disadvantages of Incorporation of "Bubble" Provisions, New Source Performance Standards (Section 111 of the Clean Air Act)

11:00 a.m.—Status Report on Development of Hazardous Pollutants: Benzene, Arsenic, Coke Oven Emissions, Arcylonitrile, Cadmium, Carbon Tetrachloride, and Solvents (Section 112 of the Clean Air Act)

1:00 p.m.—Status Report on Review/Revision of National Ambient Air Quality Standards: Particulate Matter, Sulfur Oxides, Ozone, Carbon Monoxide, Hydrocarbons, Lead, and Nitrogen Dioxide (Section 109 of the Clean Air Act)

All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by June 8, 1982. The commerical telephone number is (919) 541–5571, and the FTS number is 629–5571.

The docket containing material relevant to industrial boilers (A–79–02) is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby-Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: April 23, 1982.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 82-12581 Filed 5-6-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Commission Selects Participants for En Banc Meeting on AT&T's Migration Strategy

April 29, 1982.

On April 22 the Commission released a Public Notice (published at 47 CFR 18047; April 27, 1982) announcing an en banc meeting on AT&T's migration strategy. The Notice asked interested parties to notify the Commission of their intent to participate by April 26, 1982.

The parties who will have an opportunity to address the Commission at the en banc meeting have now been established. The parties to be represented at the meeting, the panels upon which they will appear, their scheduled times of appearance, and the time which has been allotted to each party are listed below. The meeting will commence at 9:00 a.m. on May 18, 1982, with a Staff overview of AT&T's migration strategy and Commission proceedings which relate to embedded customers' premises equipment. The Staff presentation will be open to the public. Thereafter, two panels of speakers will appear before the Commission. Subsequent to each panel's presentations, the Commission may direct questions to panel members.

Each panel member should submit to the Commission a written statement of his views no later than May 11, 1982. The written statement need not be confined to the oral remarks to be made before the Commission but may contain additional pertinent material. We reiterate that other parties who will not appear at the meeting may also submit written statements by May 11, 1982, and these will receive consideration by the Commission. Written statements should be sent to the Secretary, FCC, 1919 M Street, NW., Washington, D.C. 20554.

For further information please contact Theodore Boll, (202) 632–7084.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Schedule for En Banc Meeting

9:00 Staff Presentation and Introduction

9:15–10:45 *Panel One*

1. American Telephone and Telegraph Company—25 minutes
2. Ad Hoc Telecommunications Users Committee—20 minutes
3. National Retail Merchants Association—10 minutes
4. W. Kenneth Edwards (on behalf of Sonitrol Distributors Council, Inc. and the Western Burglar and Fire Alarm Association)—15 minutes

10:50–12:40 *Panel Two*

1. NARUC/State Commission—15 minutes
2. Society of Telecommunications Consultants—10 minutes
3. North American Telephone Association—20 minutes
4. Associated Telephone Answering Exchanges, Inc.—20 minutes
5. International Communications Association—20 minutes

[FR Doc. 82-12604 Filed 5-6-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 82–231 and 82–232; File Nos. 21429–CD–P–(1)–82 and 21987–CD–P–(1)–82]

La Vergne's Telephone Answering Service and Southern Message Service, Inc.; Hearing Designation Order.

In the matter of applications of La Vergne's Telephone Answering Servcie (CC Docket No. 82–231; File No. 21429–CD–P–(1)–82), for a construction permit to add an additional one-way frequency, 158.70 MHz, for Station KLF657 in the Domestic Public Land Mobile Radio Service at Alexandria, Louisiana and Southern Message Service, Inc. (CC Docket No. 82–232; File No. 21987–CD–P–(1)–82), for a construction permit for a new one-way station to operate on frequency 158.70 MHz in the Domestic Public Land Mobile Radio Service at Natchitoches, Louisiana: Designating Applications for Consolidated Hearing on Stated Issues.

Adopted April 23, 1982.

Released April 29, 1982.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of La Vergne's Telephone Answering Service (La Vergne's) and Southern Message Service, Inc. (Southern).[1] These

[1] We note that while Southern's application is for a new facility, La Vergne's is seeking to add an additional frequency for Station KLF657. A grant of either application would preclude a grant of the other.

applications are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of La Vergne's Telephone Answering Service, File No. 21429-CD-P-(1)-82, and Southern Message Service, Inc., File No. 21987-CD-P-(1)-82, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commisison's Rules,[3] and to determine the relative demand for the proposed service in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

3. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

4. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. It is further ordered, that the applicants shall file written notices of appearances under § 1.221(c) of the Commission's Rules within 20 days of the release date of this order.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

0[FR Doc. 82-12287 Filed 5-6-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 82-237 and 82-238; File Nos. 5924-CM-P-80 and 10693-CM-P-80]

Microband Corporation of America and Hi-Band Broadcasting Co.; Hearing Designation Orders

In the matter of applications Microband Corporation of America (CC Docket No. 82-237; File No. 5924-CM-P-80), and Hi-Band Broadcasting Company (CC Docket No. 82-238; File No. 10693-CM-P-80), for construction permits in the multipoint distribution service for a New Station at Fayetteville, North Carolina, memorandum opinion and order Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: April 20, 1982.

Released: April 30, 1982.

1. For consideration are the above-referenced applications.[1]

These applications are for construction permits in the Mutipoint Distribution Service and they propose operations on Channel 1 at Fayetteville, North Carolina. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and 0.291 of the Commission's Rules, 47 CFR § 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[3]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Hi-Band Broadcasting Company and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 82-12288 Filed 5-6-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 82-239 and 82-240; File Nos. 2711-CM-P-79 and 3840-CM-P-79]

Microband Corporation of America and Midwest Corp.; Hearing Designation Order

In the matter of applications of Microband Corporation of America (CC Docket No. 82-239; File Nos. 2711-CM-P-79), and Midwest Corporation (CC Docket Nos. 82-240; File No. 3840-CM-P-79), for Construction Permits in the Multipoint Distribution Service for a New Station at Greenville, South Carolina; Memorandum opinion and order.

Adopted: April 20, 1982.

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[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6406, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(a) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[1] On August 18, 1980, Tymshare, Inc. (Tymshare) and Arthur Lipper Corperation (ALC) executed a contract whereby ALC agreed to transfer control of Microband to Tymshare. *Transfer of Control/MDS, 85 FCC 2d 1023 (1981).*

[2] By Memorandum Opinion and Order adopted June 26, 1981 and released July 2, 1981, Mimeo No. 001663, Microband was granted an exemption from the Commission's "cut-off" rules pursuant to Section 21.31 of the Rules, 47 CFR 21.31, to preserve the status of its pending mutually exclusive application.

[3] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain, 77* FCC 2d 20 (1980).

Released: April 30, 1982.

1. For consideration are the above-referenced applications.[1] These applications are for a construction permit in the Multipoint Distribution Service and they propose operations on Channel 1 at Greenville, South Carolina. The applications are therefore mutually exclusive under present procedures and require comparative consideration. The applications have been amended as a result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the capitioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[3]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in hearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Midwest Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 82-12369 Filed 5-6-82; 8:45 am]

BILLING CODE 6712-01-M

[1] On August 18, 1980, Tymshare, Inc. (Tymshare) and Arthur Lipper Corporation (ALC) executed a contract whereby ALC agreed to transfer control of Microband to Tymshare. *Transfer of Control/MDS*, 86 FCC 2d 1023 (1981).

[2] By Memorandum Opinion and Order adopted June 26, 1981 and released July 2, 1981, Mimeo No. 001883, Microband was granted an exemption from the Commission's "cut-off" rules pursuant to § 21.31 of the Rules, 47 CFR 21.31, to preserve the status of its pending mutually exclusive applications.

[3] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

FEDERAL DEPOSIT INSURANCE CORPORATION

Forms Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of forms submitted to OMB for review.

TITLE OF INFORMATION COLLECTION: Requests for Relief from Reimbursement under the Truth in Lending Act.

BACKGROUND: In accordance with requirements of the Paperwork Reduction Act of 1980, the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments may be sent to Mr. Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, D.C. 20429 and to Mr. Richard Sheppard, Reports Management Branch, Office of Management and Budget, Washington, D.C. 20503. Comments should be received on or before July 6, 1982.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the "Request for OMB Review" or related information, contact Dr. Panos Konstas, Information Clearance Officer, FDIC, telephone (202) 389-4351.

SUMMARY: The Board of Directors of the FDIC has delegated authority to the FDIC's Board of Review to act on requests by insured nonmember banks for relief from the requirement for making adjustments to the accounts of affected consumers for certain violations of the Truth in Lending Act, as amended (15 U.S.C. 1601, *et seq.*). In the **Federal Register** announcement of the delegation of authority (47 FR 9810 (1982), to be codified at 12 CFR 303.11(f)), the Board of Directors indicated that a bank requesting such relief has the option, but is not required, to include such information as: (a) a description of each type of violation; (b) a citation of applicable provisions of the Truth in Lending Act; (c) the bank's argument for relief from reimbursement; (d) efforts made to correct violations; (e) total reimbursement involved; and (f) a statement of whether the reimbursement will have any significant impact on the safety or soundness of the bank.

The FDIC estimates that approximately 50 insured nonmember banks will expend a total of approximately 200 staff hours in submitting this information in support of requests for relief during the current year. The FDIC anticipates that progressively fewer banks will request relief in later years.

Dated: May 4, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-12535 Filed 5-6-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Sea Express Service—Joint Service; Cancellation of Agreement No. 9967

Agreement No. 9967, approved by the Federal Maritime Commission pursuant to section 15, Shipping Act, 1916, on December 29, 1971, authorizes Thai Merchantile Marine Limited and P. T. Samudera Indonesia to operate a joint service in the foreign commerce of the United States under the name of Sea Express Service. Thai Merchantile Marine Limited, P. T. Samudera Indonesia and Sea Express Service do not maintain tariffs on file with this Commission and, therefore, apparently are no longer operating as ocean common carriers in the foreign commerce of the United States. Therefore, it appears that the parties to Agreement No. 9967 are no longer parties subject to the Shipping Act, 1916, and the agreement should be terminated. Accordingly, notice is hereby given that Agreement No. 9967 will be terminated effective 15 days following publication of this notice in the **Federal Register**.

Dated: May 3, 1982.

Robert G. Drew,

Director, Bureau of Agreements.

[FR Doc. 82-12660 Filed 5-6-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 25.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 25, 1982.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island (consumer finance activities; Wisconsin): To engage through its subsidiary, Kensington Mortgage and Finance Corp., in the origination of loans for the purchase of mobile homes. This activity would be conducted from an office in Milwaukee, Wisconsin, serving the State of Wisconsin.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank Limited* and its subsidiary, *Barclays Bank International Limited*, London, England (commercial finance—Texas, Arkansas, Louisiana and New Mexico): To engage through a Subsidiary, BarclaysAmerican/Business Credit, Inc., in marketing and administering commercial loans secured by accounts receivable, inventory and chattel mortgages. These activities would be conducted from an office in Dallas, Texas, serving customers in Texas, Arkansas, Louisiana and New Mexico. This notice is for the relocation of an existing office located at One Main Place, Dallas, Texas, to an office at 3500 Oaklawn Avenue, Dallas, Texas.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Valley Corporation*, Bethlehem, Pennsylvania (leasing activities; Pennsylvania, New York, New Jersey, Delaware and Maryland): To engage, through its subsidiary, First Valley Leasing, Inc., in the making of commercial leases of personal property in accordance with the Federal Reserve Board's Regulation Y. These activities would be conducted from an office at One Bethlehem Plaza, Bethlehem, Pennsylvania, serving Pennsylvania, New York, New Jersey, Delaware, and Maryland.

D. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte North Carolina, (consumer finance and insurance activities; Florida): To engage, through its subsidiary, TranSouth Financial Corporation of Florida, in making direct loans for consumer and other purposes under the Florida Consumer Finance Act, purchasing retail installment notes and contracts and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit and through its subsidiary, TranSouth Mortgage Corporation of Florida, in making direct loans for consumer and other purposes under the general usury statues, pruchasing retail installment notes and contracts, making direct loans to dealers for the financing of inventory (floor planning) and working capital purposes and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit from a common office to be located at 3971 N.W. 79th Avenue, Miami, Florida 33166, serving an area consisting of a 25 mile radius of said office. This notification is for the relocation of an existing office at 8373 Bird Road, Miami, Florida 33155.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *First Interstate Bancorp*, Los Angeles, California (investment or financial advisory activities to the extent set forth in the Board's Regulation Y; Nevada, Oregon, California, Arizona, Utah and Idaho): To engage through its wholly-owned subsidiary, First Interstate Investment Advisers of Nevada, Inc., in acting as an investment or financial adviser to the extent set forth in the Board's Regulation Y. These activities would be conducted from offices in Reno, Nevada, and Las Vegas, Nevada, serving Nevada, Oregon, California, Arizona, Utah, and Idaho.

2. *Old National Bancorporation*, Spokane, Washington, (mortgage banking and insurance agency activities; Washington): Making or acquiring, for its own account or for the account of others, loans or other extensions of credit, secured by real estate mortgages or deeds of trust, and the servicing of such loans, and such other activities as are incidental to the operations of a mortgage company, including, but not limited to, acting as agent or broker for the sale of mortgage redemption life and disability insurance and property and casualty insurance to be issued in connection with the making, acquiring or servicing of such loans. Such activities will be conducted at offices at the following location; 1111 Third Avenue, Suite 1400, Seattle, Washington 98101, serving the State of Washington.

3. *Treasure Valley Bancorp*, Fruitland, Idaho (insurance activities; Idaho): To engage through its subsidiary, Peoples Insurance, in the sale of general insurance in a town with a population not exceeding 5,000. These activities would be conducted from an office at Gayway Center #2, Fruitland, Idaho, serving the community of Fruitland, Idaho and surrounding rural areas.

4. *U.S. Bancorp*, Portland, Oregon (lending, servicing, insurance and real estate appraisal activities; Arizona): To engage through a proposed *de novo* branch office of its subsidiary, U.S. Creditcorp, in the activities of making, acquiring and servicing of loans and other extensions of credit secured by real estate mortgages for its own account or for the account of others,

including but not limited to first and second mortgage loans, commercial, income and business loans; to act as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Creditcorp and to perform real estate appraisals in conformance with the provisions of sections 225.4(a)(1), 225.4(c)(2), 225.4(a)(9)(i)(a), and 225.4(a)(14) of Regulation Y. The proposed activities will be conducted from an office located in Phoenix, Arizona, within an area bounded by Thomas Road in the south, McDonald Drive and extension of McDonald Drive in the north, 24th Street on the west and 60th Street in the east. The geographic area to be served will be principally Phoenix and Maricopa County, Arizona.

5. *U.S. Bancorp*, Portland, Oregon (consumer loan and insurance activities; California): To engage through a proposed de novo subsidiary, U.S. Bancorp Financial Services, Inc. ("Bancorp Services"), a proposed wholly-owned subsidiary of an existing non-bank subsidiary, U.S. Bancorp Financial, Inc. ("Bancorp Financial"), in the activities of making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others, including, but not limited to, consumer loans; installments sales contracts and other forms of receivables; making investments and acting as and acting as insurance agent with regard to credit life and disability insurance, property and casualty insurance, solely in connection with extensions of credit by Banccorp Services. Bancorp relies upon the relevant provision of § 225.4(a) of Regulation Y as follows: 225.4(a)(1), (2), (3), and (9)(i)(a). These activities would be conducted from an office at 753–1 El Camino Real, Sunnyvale, California 94087. The geographic area to be served will be principally the SMSA defined as Santa Clara County. A primary service area within the SMSA has been identified as the City of Sunnyvale.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc 82-12367 Filed 5-6-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of Texas Commerce Bank-Champions Park, N.A., Houston, Texas. Comments on this application must be received not later than May 29, 1982.

2. *United Texas Financal Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of The Farmers National Bank of Seymour, Seymour, Texas. Comments on this application must be received not later than May 29, 1982.

B. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Industrial Bancshares, Inc.*, Kansas City, Kansas, and Valley View Bancshares, Inc., Overland Park, Kansas; to acquire 7.45 percent respectively of the voting shares or assets of Security Bancshares, Inc., Kansas City, Kansas. Comments on this application must be received not later than May 29, 1982.

2. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares or assets of Bank of Milton-Freewater, Milton-Freewater, Oregon (In Organization). Comments on this application must be received not later than May 29, 1982.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12290 Filed 5-6-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Fidelity BancShares (N.C.), Inc.*, Fuquary-Varina, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Fidelity Bank, Fuguary-Varina, North Carolina. Comments on this application must be received not later than June 2, 1982.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First American Acquisition Corp.*, Nashville, Tennessee; to become a bank holding company by acquiring 50 percent or more of the voting shares of First Eastern Bank, Kingsport, Tennessee. Comments on this application must be received not later than May 24, 1982.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Elgin State Bancorp, Inc.*, Elgin, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of The Elgin State Bank, Elgin, Illinois. Comments on this application must be received not later than June 2, 1982.

2. *Parke Bancorp*, Rockville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares, less directors' qualifying shares, of the successor by merger to The Parke State Bank, Rockville, Indiana. Comments on this application must be received not later than June 2, 1982.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *MidAmerica BancSystem, Inc.*, Fairview Heights, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of MidAmerica Bank and Trust Company of Alton, Alton, Illinois; MidAmerica Bank and Trust Company of Edgemont, East St. Louis, Illinois; and MidAmerica Bank and Trust Company of Fairview Heights, Fairview Heights, Illinois. Comments on this application must be received not later than June 2, 1982.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. SGV Financial Corp., El Monte, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Gabriel Valley Bank, El Monte, California. Comments on this application must be received not later than June 2, 1982.

F. **Secretary, Board of Governors of the Federal Reserve System**, Washington, D.C. 20551:

1. *Dixie Bancorp Inc.*, Miami, Florida, and *Dixie Financial Services Inc.*, Miami, Florida; to become bank holding companies by acquiring 80 percent or more of the voting shares of Dixie National Bank of Dade County, N.A., Miami, Florida. Comments on this application must be received not later than June 2, 1982.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12290 Filed 5-6-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Southern Wisconsin Bancshares Corporation*, Mineral Point, Wisconsin; to become a bank holding company by acquiring 90 percent of the voting shares of Farmers Savings Bank, Mineral Point, Wisconsin. Comments on this application must be received not later than May 29, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Valley Capital Corporation*, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent, less directors' qualifying shares, of the voting shares of the successor by merger to Valley bank of Nevada, Las Vegas, Nevada. Valley Capital Corporation, has also applied to become a bank holding company under section 18(c) of the Federal Deposit Insurance Act. Comments on this application must be received not later than May 29, 1982.

C. **Secretary, Board of Governors of the Federal Reserve System**, Washington, D.C. 20551:

1. *American-DeKalb Bancorp Inc.*, DeKalb, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The American National Bank of DeKalb, DeKalb, Illinois. Comments on this application must be received not later than May 29, 1982.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12289 Filed 5-6-82; 8:45 am]

BILLING CODE 6210-01-M

MidAmerica BancSystem, Inc.; Formation of Bank Holding Company

MidAmerica BancSystem, Inc., Fairview Heights, Illinois, has applied for the Board's approval under section 3(a)(5)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5) to merge with Carbondale Bancshares, Inc., Carbondale, Illinois; Illinois Bancshares, Inc., Mascoutah, Illinois; and MidAmerica Bancshares, Inc., Lebanon, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

MidAmerica BancSystem, Inc., Fairview Heights, Illinois, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Lincoln Trail Insurance Agency, Inc., Lebanon, Illinois, a subsidiary of MidAmerica Bancshares, Inc.

Applicant states that the proposed subsidiary would engage in the activities of acting as insurance agent or broker with respect to credit life, accident, health, property, and casualty insurance directly related to an extension of credit by subsidiaries of Applicant. These activities would be performed from offices of Applicant's subsidiary in Lebanon, Illinois, and the geographic ares to be served are Carbondale, Masoutah, Lebanon, Alton, East St. Louis, and Fairview Heights, Illinois. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissable for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarying the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than June 2, 1982.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12288 Filed 5-6-82; 8:45 am]

BILLING CODE 6210-01-M

Chase Manhattan Corp.; Proposed Acquisition of Suburban Coastal Corp.

The Chase Manhattan Corporation, New York, New York, has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR

225.4(b)(2)), for permission to acquire through its subsidiary, Chase Home Mortgage Corporation, substantially all of the assets of Suburban Coastal Corp. ("Coastal"), Wayne, New Jersey, a mortgage banker engaged in the servicing of residential mortgage loans on a national basis, the origination of mortgage loans, and the sale of mortgage term life insurance, and accident and health insurance and disability insurance directly related to the proposed lending activities from offices in the following locations: Arizona (Phoenix and Tucson), California (Newport Beach, Carmichael, Covina, Fresno, Modesto, San Mateo, Santa Ana, and Woodland Hills), Colorado (Denver), Florida (Orlando, Jacksonville, West Jacksonville, Lantana, Lauderhill, Miami, Palm Beach Gardens, South Daytona, and Tampa), Illinois (Rolling Meadows, Oak Brook, and Schaumberg), Louisiana (New Orleans), Maryland (Rockville and Baltimore), Minnesota (Minneapolis), Nevada (Las Vegas), Pennsylvania (Pittsburgh), Texas (Arlington, Bedford, Dallas, Fort Worth, Grand Prairie, and Houston), Washington (Bellevue), and Wisconsin (Green Bay and Milwaukee). In addition, Applicant will also indirectly acquire Coastal's wholly-owned subsidiary, Suburban Coastal Systems Corp., which will engage in the processing of financial data for Coastal and on an interim basis for Coastal's parent, Suburban Savings and Loan Association.

These activities have been determined by the Board in section 225.4(a) (1), (3), (8) and (9) of Regulation Y as closely related to banking.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 24, 1982.

Board of Governors of the Federal Reserve System, May 6, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-12606 Filed 5-6-82; 11:00 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82P-0113]

Precision-Cosmet Co., Inc.; Premarket Approval of Tenant™ and Kelman™ Type II Anterior Chamber Intraocular Lenses

Correction

In FR Doc. 82-10503, published on page 16886, on Tuesday, April 20, 1982, in the second column, in the first paragraph under "Opportunity for Administrative Review", in the seventeenth line, "A petitioner shall identify advisory" should be corrected to read "A petitioner shall identify the form of review requested (hearing or independent advisory".

BILLING CODE 1505-01-M

[FDA-225-82-4003]

Cooperative Food and Cosmetic Program; Memorandum of Understanding With the Defense Personnel Support Center, Department of Defense

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Defense Personnel Support Center, Department of Defense. The agreement concerns food and cosmetic recalls and hazardous food situations involving military sales. The purpose of the understanding is to clarify responsibilities and to maintain continuity of cooperative efforts regardless of personnel changes.

EFFECTIVE DATE: March 23, 1982.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: FDA's policy is to publish in the Federal Register all agreements and memoranda of understanding between FDA and others (21 CFR 20.108(c)). Therefore, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the Defense Personnel Support Center, Department of Defense and the Food and Drug Administration, Department of Health and Human Services

I. Purpose

The purpose of this agreement is to formalize and understanding between the Defense Personnel Support Center (DPSC), Philadelphia, PA, and the Food and Drug Administration (FDA), Rockville, MD, under which FDA assumes the responsibility for providing to DPSC notices of food and cosmetic recalls and of any hazardous food situation brought to FDA's attention that may involve military sales, and the DPSC assumes the responsibility for notifying FDA of food and cosmetic products found to be hazardous or unfit for their intended use or otherwise in violation of the Federal Food, Drug, and Cosmetic Act (the act). This agreement is intended to clarify responsibilities and to maintain continuity of cooperative efforts regardless of personnel changes.

II. Background

FDA and DPSC have for several years, by verbal agreement, cooperated in the evaluation, notification, and coordination of actions concerning food and cosmetic deficiencies and recall situations through telephonic, written, or TWX communication.

FDA is charged with the enforcement of the act. It is FDA's policy that recalls are an appropriate method for removing or correcting marketed consumer products that violate the laws administered by FDA. Within FDA, the Emergency and Epidemiological Operations Branch (EEOB) serves as the agency focal point for information, advice, and direction regarding the field operations aspects of all recalls. Included among EEOB responsibilities is the notification of certain Federal agencies, such as DPSC, which have mutual or complementary responsibilities for recalls.

The Director of Subsistence for DPSC has been designated as the sole agent for the Department of Defense (DoD) to coordinate all activities related to the

handling of food and cosmetic products deemed adulterated, misbranded, or hazardous. This includes responsibility for assuming expeditious notification and coordination of all food and cosmetic recall actions within worldwide military channels and with other Federal agencies serviced by the DoD overseas communication network.

III. Substance of Agreement

A. DPSC will:

1. Evaluate reports of adulterated or misbranded foods and cosmetics received from within DoD, from FDA, and from other sources to determine actions to be taken by DoD.

2. Telephone FDA to advise of and to discuss any deficiencies in FDA-regulated products brought to DPSC's attention by DoD or other sources. If requested by FDA, DPSC will provide a copy of the complaint report and military laboratory analysis.

Normal duty hour notification will be made directly to the Emergency and Epidemiological Operations Branch (EEOB), 301–443–1240.

Off-duty notification will be made to FDA's answering service, 202–737–0448. Name, telephone number, and reason for the call will be left with the answering service, so that EEOB personnel may return the call.

3. Provide FDA with an information copy of "ALLFOODACT" messages transmitted.

4. Serve as liaison between FDA and worldwide military commanders/installations in regard to recalls or other actions concerning foods and cosmetics.

5. Establish standard operating procedures for off-hour Duty Officers to contact responsible personnel to activate DPSC's recall/alert system upon off-hour contact by FDA.

B. FDA will:

1. Provide DPSC with information on all food and cosmetic recalls via the "Initial Notification of Recall" document routinely distributed to all FDA field offices and other government agencies.

2. Provide DPSC with telephonic notification, before release if possible or as soon as possible thereafter, of messages or press releases of all class I food and cosmetic recalls, or other food and cosmetic situations that may be of significance to the military. This notification will enable DPSC to expeditiously release "ALLFOODACTS" messages.

Normal duty hour notification will be made directly to the Acquisition Support Section, DPSC-STQA, 215–052–2956/2957.

Off-hour notification will be made to the HQ DPSC Staff Duty Officer, 215–952–2341.

3. Coordinate with DPSC on all appropriate followup actions, including evaluation of reported product deficiencies, verification of recall notification to consignees, and determination of disposition of recalled products.

4. Provide DPSC with a list of military consignees of products recalled under class I or II designations as such information becomes available. FDA will also provide information on military consignees of food or cosmetic products that are not under recall but that may be in violation of the provisions of the act.

IV. Name and Address of Participating Parties

A. Department of Defense, Defense Personnel Support Center, 2800 S. 20th St., Philadelphia, PA 19101.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. For the Defense Personnel Support Center: Chief, Acquisition Support Section (DPSC–STQA), Directorate of Subsistence, Defense Personnel Support Center, Philadelphia, PA 19101, 215–952–2956/2957.

B. For the Food and Drug Administration: Director, Emergency and Epidemiological Operations Branch (HFO–510), Executive Director of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1240.

VI. Period of Agreement

This agreement becomes effective upon signature of both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon 180 days written notice.

Dated: February 22, 1982.

Approved and accepted for the Defense Personnel Support Center

Bobbe E. Hunsiker Lt. Col., USAF,

Director, Installation Services, Defense Pers. Supt. Cntr.

Dated: March 23, 1982.

Approved and accepted for the Food and Drug Administration

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs, Food and Drug Administration.

Effective date. This memorandum of understanding became effective March 23, 1982.

Dated: April 29, 1982.

William F. Randolph,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12139 Filed 5-6-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N–0145]

International Drug Scheduling; Convention on Psychotropic Substances; Benzodiazepines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) requests interested persons to submit data or comments concerning abuse potential, actual abuse, and medical usefulness of 15 "benzodiazepine" or "minor tranquilizer" drugs. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability of these drugs. WHO will use this information to consider whether to recommend that international restrictions be placed on these drugs. Benzodiazepines are used to treat anxiety or seizure disorders and have a tranquilizing action on the central nervous system. This notice requesting information is required by law.

DATE: Comments by June 21, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6600.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to that Convention or the World Health Organization (WHO) has information about a substance that is not yet under international control, which in its opinion may require such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion.

The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that, when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances

that it has information that may justify adding a drug or other substance to one of the schedules of that Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of the Department of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of HHS received the following notice from WHO on behalf of the Secretary-General:

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform His Excellency's Government that he has been asked to assist the Director General of the World Health Organization in obtaining data on certain substances. A WHO expert group will review these substances in September with a view to determining whether any of them should be brought under the control of the 1971 Convention on Psychotropic Substances. The substances to be reviewed are alprazolam, bromazepam, camazepam, clobazam, cloxazolam, estazolam, fludiazepam, flunitrazepam, halazepam, ketazolam, nimetazepam, nordazepam, pinazepam, tetrazepam and triazolam.

The Secretary-General would therefore be most grateful if His Excellency's Government would submit data on each substance concerning the extent or likelihood of abuse, the degree of seriousness of the public health and social problems associated with such abuse and the usefulness in medical therapy.

It would also be very useful if His Excellency's Government would indicate whether any of the above-mentioned substances have been seized from the illicit drug traffic during the past three years, and, if so, the amount seized, the number of such seizures and, where this could be determined, the provenance of the substances. Any additional information on clandestine laboratories where these substances may have been manufactured and on precursors used in this process would also be valuable.

In view of the fact that the Secretary-General must prepare a report for WHO on this subject, it would be appreciated if the information requested in this note could be sent to the Director, United Nations Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria, as soon as possible, and preferably before 30 June 1982.

Therefore, as required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), FDA on behalf of HHS invites interested persons to submit data or comments regarding the named benzodiazepine drugs. As stated in the notice above, the 15 minor tranquilizer drugs are alprazolam, bromazepam, camazepam clobazam, cloxazolam, estazolam, fludiazepam, flunitrazepam, halazepam, ketazolam, nimetazepam, nordazepam, pinazepam, tetrazepam, and triazolam.

Alprazolam and halazepam are the only drugs among the group of 15 that are currently commercially available in the United States and controlled under the CSA. Both are currently controlled domestically in schedule IV of the Controlled Substances Act. It should be noted, however, that drugs not marketed nor controlled currently in the United State if controlled under the Psychotropic Convention would have to be placed into a schedule under the CSA. Drugs (or substances) that are not legally marketed in the United States but which are controlled under the CSA are normally placed in CSA schedule I even if they are under investigation to establish their medical usefulness. None of the 15 "tranquilizer" drugs listed above is currently scheduled internationally.

Data and information received in response to this notice will be used to prepare a scientific and medical evaluation of these 15 drugs, with a particular focus on each drug's abuse liability. HHS will forward that evaluation to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

HHS will not make any recommendations to WHO regarding whether any of these 15 drugs should be subjected to international controls. Rather, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in the fall of 1982. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment, as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before June 21, 1982, submit to the Docket Management Branch (address above), written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Note.—In the **Federal Register** of April 10, 1981 (46 FR 21447), FDA requested the submission of information similar to the information requested by this notice for 12 other benzodiazepine drugs. These other 12 drugs are chlordiazepoxide, clonazepam, clorazepate, diazepam, flurazepam, lorazepam, medazepam, nitrazepam, oxazepam, oxazolam, prazepam, and temazepam.

These other 12 drugs were recommended for international control by WHO to the Commission on Narcotic Drugs (CND) at the February 1982 session. At that CND session, however, these 12 drugs were not voted upon for control, but were sent back to the WHO for further review. These 12 drugs and the 15 drugs that are the subject of this notice are now expected to be considered together by WHO when making its recommendations to the CND for the possible international control of each member of the entire class at the February 1983 session.

The information and comments submitted in response to the April 10, 1981 **Federal Register** notice on these other 12 benzodiazepine drugs have been retained by FDA. Thus, it is not necessary for interested persons to resubmit those data for these other 12 drugs. Any new information on these other 12 drugs, i.e., information generated since April 1981 may, however, be submitted to the Docket Management Branch (address above).

Dated May 4, 1982.

William Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12550 Filed 5-6-82; 8:45 am]
BILLING CODE 4160-01-M

Office of Human Development Services

Administration on Aging

[Program Announcement No. 13638-822]

Multidisciplinary Centers of Gerontology Program: Long Term Care Gerontology Centers

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Financial Assistance for the Long Term Care Gerontology Centers Program.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted for the Multidisciplinary Centers of Gerontology Program authorized by Title IV of the Older Americans Act of 1965, as amended (42 U.S.C. 3032) to support Stage I, Planning and Development of Long Term Care Gerontology Centers only. Eligibility for these awards is limited to institutions located in Department of Health and Human Services Region VI (Arkansas, Louisiana, Oklahoma, New Mexico, Texas) which have not received a planning award prior to this announcement under Title IV

Multidisciplinary Centers of Gerontology: Long Term Care Gerontology Centers.

DATE: Closing date for receipt of applications is July 15, 1982.

Scope of this Announcement

This program announcement describes the purpose and overall goals and objectives of the Long Term Care Gerontology Centers Program announced in this issue of the Federal Register. Information describing specific project activities and application requirements for Stage I Planning Grants which are covered by this announcement and other special requirements of the program are contained in *Guidelines for Preparation of Grant Applications—Long Term Care Gerontology Centers Title IV of the Older Americans Act—Fiscal Year 1982.*

Program Purpose

The purpose of the Long Term Care Gerontology Centers Program is to foster the planning and development of multidisciplinary gerontology centers oriented around the continuum of community-based health and social services for the elderly.

Program Goal and Objectives

The goal of the Administration on Aging's Long Term Care Gerontology Centers program is to foster the capability to develop the knowledge base and methods required for improving the health care and social services needed by functionally impaired older people. The objectives of these centers will be to promote an interdisciplinary approach to career and continuing education and training, the development of models of service delivery oriented around the health and social services needs of the functionally impaired elderly, and research. An essential condition for achieving these program objectives is the development of a viable organizational center structure. The program objectives will be achieved through a collaborative effort to join the interests of the Federal government and educational institutions to assist states and communities to improve the planning, management, and implementation of services for the functionally impaired elderly. Such an effort is expected to produce knowledge about the long term care needs of older people and develop a cadre of professionals from a multiplicity of disciplines who can meet these needs. Centers will have applied settings and carry out their mission through collaboration with health, social service, and aging agencies.

Long Term Care Gerontology Centers will combine the functions of a university based or affiliated medical school, other health and social services professional schools, and, if appropriate, a public or private non-profit health or social service organization to achieve the goals and objectives of the program. Centers will accomplish the following programmatic objectives:

- Develop the health and social services personnel required to meet the needs of functionally impaired older persons through interdisciplinary career and continuing education and training; and provide to the aging network (i.e., State and Area Agencies on Aging, and service providing agencies supported under Older Americans Act programs), as well as other public and private agencies, curricula and other education and training materials designed to advance the skills of practitioners in the field,
- Develop and evaluate models of health care and social services provided through interdisciplinary teams on a continuum of care, in order to enable functionally impaired older persons to remain in the least restrictive settings consonant with their needs,
- Develop a knowledge base for long term care through the conduct of interdisciplinary clinical, applied, and policy research,
- Provide technical assistance to State and Area Agencies on Aging, health care and social service agencies, academic institutions, and professional organizations, and
- Disseminate findings from the Center's research and model development activities as well as other information concerning long term care to State and Area Agencies on Aging, service providers and consumers, policy makers and program managers, educators and researchers.

It is expected that centers have established the appropriate governance and structure in order to develop the organizational capability required to achieve the programmatic objectives. Therefore, Long Term Care Gerontology Centers will have accomplished the following organizational objectives:

- Have institutional support and commitment to the center at the highest levels of the larger organization and hold a relatively high position in the institutional hierarchy,
- Have their own charter, goals and objectives, and responsibility for a range of administrative functions including budgetary control, faculty appointment, and space allocation,
- Have their own center director, core faculty, and facilities in order to carry out center programmatic, administrative, and data collection activities,
- Have the ability to generate their own funding, and maintain such funds for use within the center, especially for various discretionary programmatic activities,
- Utilize in a full participatory way their own advisory or steering committee and develop and use its own internal peer review system for the allocation of discretionary funds.

There are three (3) stages of center development:

- Stage I—Planning
- Stage II—Operational
- Stage III—Comprehensive

1. Planning Stage of Center Development

At the planning stage, grantees specify their programmatic and organizational goals and objectives, organize their resources, establish university commitments, and create and/or expand community linkages. The Administration on Aging provides centers one year of support for planning. Such centers have the potential, through the competitive process, to obtain multiyear awards for the operational stage.

2. Operational Stage of Center Development

At the operational stage, centers will be implementing activities relative to their organizational structure and in the program areas of education, development of service and practice models, and research. The Administration on Aging will give operational stage centers up to four years of core support.

3. Comprehensive Stage of Center Development

It is the Administration on Aging's intent eventually to designate a select number of Comprehensive Centers. Comprehensive designation will be a recognition that these select centers have achieved programmatic excellence and strong organizational development within the institution.

A center may apply for comprehensive designation at the end of any budget period in the operational stage at which time a full review will be held to determine the center's readiness for comprehensive status. A complete review will take place at the end of the fourth operational year to determine if a center can be designated as comprehensive.

Coordination With Appropriate Office on Aging

Activities conducted under Title IV Long Term Care Gerontology Center grants are expected to be coordinated with the appropriate DHHS Regional Office and with State and Area Agencies on Aging. This coordination will facilitate information exchange on policy and program developments in long term care, provide a basis for informed transfer and dissemination of findings from research and model demonstrations, and facilitate program and policy technical assistance to State and local governmental officials.

Coordination will facilitate educational placement opportunities for students, explore opportunities for collaborative training, research and demonstrations in social services, mental health, rehabilitation, and health services as related to the purposes and programs of the Centers. Centers will regularly provide information to the appropriate offices on aging and collaborate with the agencies regarding education and training, research, and service activities and seek advice and counsel with respect to these activities.

Eligible Applicants

Only public or non-profit organizations or institutions are eligible under the provisions of Title IV, Multidisciplinary Centers of Gerontology.

To be eligible for this Stage I, Planning Award competition, applicants must be located within the Department of Health and Human Services Region VI (Arkansas, Louisiana, Oklahoma, New Mexico, Texas) and have not received a planning award prior to this announcement under Title IV, Multidisciplinary Centers of Gerontology: Long Term Care Gerontology Centers. Eligible applicants are any university or public or private non-profit health or social service organization provided the applicant is affiliated with a medical school, or has a letter of agreement with a medical school.

Available Funds

It is anticipated that the Administration on Aging will make two awards beginning September 30, 1982 for Center planning projects for a period of twelve (12) months in the amount of $100,000 each.

Grantee Share of the Project

Cost sharing is considered to be an important means of demonstrating an applicant's commitment to the objectives of this program. Grantees are expected to provide at least five (5) percent of the total allowable project costs. The grantee share may be cash or in-kind, and must be project related and allowable under the Department's applicable regulations published in 45 CFR Part 74, subparts G and Q (see 43 FR 34076, August 2, 1978).

The Application Process

Availability of Forms and Technical Assistance

Application for a grant under the Long Term Care Gerontology Centers Program must be submitted on Standard Form 424, Application for Federal Assistance, and other forms provided for this purpose. Application kits and appropriate instructions are included in *Guidelines for Preparation of Grant Applications, Long Term Care Gerontology Centers, Title IV of the Older Americans Act, Fiscal Year 1982.* Copies of the Guidelines, as well as technical information to assist in the preparation of applications, may be obtained by writing or calling: Division of Long Term Care, Administration on Aging, Room 4146, DHHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201, Telephone: (202) 245-0768.

Application Submission

One (1) singed original and four (4) copies of the grant application, including all attachments, must be prepared. The original and two (2) copies must be submitted to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 1740, HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

One (1) copy is to be submitted to the appropriate State Agency on Aging and one (1) copy is to be submitted to the Regional Program Director of the DHHS Region VI Office of Aging. Addresses of State Agencies on Aging are included in the application instructions.

A-95 Notification Process

Applications for Long Term Care Gerontology Centers must follow the provisions of OMB Circular A-95. Applicants for grants must, prior to the submission of an application, notify *both* the State and Areawide A-95 Clearinghouse of their interest to apply for Federal assistance for this program. Applicants should contact the appropriate State Clearinghouse (listed in 42 FR 2210, January 10, 1977), or the DHHS Regional Office of Aging for information on how they can meet the A-95 requirements.

Application Consideration

The Commissioner on Aging will make the final decision on each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will undergo a competitive review and evaluation by qualified persons outside the Administration on Aging. Applications considered as approvable by the review committee will be reviewed by AoA staff for consistency with AoA policy and priorities and appropriateness of the funding which is requested. In making a decision on awards the Commissioner on Aging will consider results of the review, AoA staff recommendations, and comments by the appropriate State Agency on Aging. Successful applicants will be notified through the issuance of Notice of a Financial Assistance Awarded. This notice sets forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is intended.

Special Consideration for Funding

In determining the order of funding of applications which have been recommended for approval, priority will be given to applications which propose to establish a center responsive to the special needs of underserved populations including minority and rural elderly.

Criteria for Review and Evaluation of Applications

Each application will be administratively reviewed to determine that it meets the objectives of the program; includes all required elements for a complete review; and meets all applicable Federal statutes and regulations.

Review Criteria for Stage I Planning Grants:

Criterion 1. The application proposes a project consistent with the programmatic and organizational objectives for a Long Term Care Gerontology Center as set forth in the guidelines. 25 points.

Criterion 2. The project narrative adequately describes and documents the purpose and the need for the project the applicant proposes. 10 points.

Criterion 3. The implementation plan is capable, if properly executed, of assuring the accomplishment of the proposed project's programmatic and organizational objectives. Specifically:

a. The proposal appropriately identifies the tasks to be accomplished related to:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points.

b. The proposal presents an appropriate and feasible method of approach to task accomplishment over the proposed project period relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points.

c. The proposal documents the extent to which the necessary commitments from within and outside the applicant institution have been secured to assure task accomplishment relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 10 points.

d. The proposal provides time-lines for task accomplishment that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

e. The proposal indicates staff loadings by tasks that are appropriate and reasonable relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

f. The proposal specifies how task accomplishment will be evaluated relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

Criterion 4. The proposed resources are appropriate and sufficient to assure the accomplishment of both of the project's programmatic and organizational goals. Specifically:

a. The proposed project staff are well qualified and sufficient to carry out the project tasks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

b. Sufficient time of senior staff is allocated to the project to assure adequate and appropriate management of the project taks relative to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

c. Other facilities and resources are appropriate and adequate to assure task accomplishment related to:

(1) The programmatic objectives.

(2) The organizational objectives. 5 points.

Criterion 5. The proposed budget is appropriate, justifiable, and reasonable in relation to support needed for project activities. 5 points.

Closing Dates for Receipt of Application

The closing date for receipt of applications under this program announcement is July 15, 1982. All applications must be received by no later than 5:30 p.m. on the applicable closing date. Applications sent by mail will be considered to be received on time if:

- The application was sent by registered or certified mail and mailed no later than July 12, 1982 as evidenced by the U.S. Postal Service postmark on the wrapper or the original receipt from the U.S. Postal Service, unless the application arrives too late to be considered by the review panel;
- The application is received on or before close of business on July 15, 1982 in the DHHS mailroom in Washington, D.C.; or
- The application is hand-delivered to the address included under "application submission" in this announcement by close of business July 15, 1982.

Hand-delivered applications will be accepted daily from 9 a.m. to 5:30 p.m. except Saturdays, Sundays and Federal holidays. In establishing the date of receipt, consideration will be given to the time date stamps of the mailroom or other documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline because they were postmarked or hand-delivered too late or addressed incorrectly will not be accepted and will be returned to the applicant without consideration.

(Catalog of Federal Domestic Assistance Program Number 13.636, Multidisciplinary Centers of Gerontology Program)

Dated: April 23, 1982.

Lennie-Marie P. Tolliver,

Commissioner on Aging.

Approved: May 4, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 82-12366 Filed 5-6-82; 8:45 am]

BILLING CODE 4130-01-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 30.

Public Health Service

National Institutes of Health

Subject: Pretesting of Printed Health Messages—NEW

Respondents: Individuals

Office of the Assistant Secretary for Health

Subject: Hispanic Health and Nutrition Examination Survey—(Dress Rehearsal and Full Survey)—REVISION

Respondents: Individuals or households

OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: State Estimate and Financial Status Reports for both Indochinese and Cuban/Haitian Refugees—ORR-1 (4-82), ORR-2 (4-82)—NEW

Respondents: State or local governments

OMB Desk Officer: Richard Eisinger

Health Care Finance Administration

Subject: Surveys on the Institutional Status of Medicare Beneficiaries for Calculating Average Per Capita Costs for HMO's—Extension/No Changes

Respondents: Businesses or other institutions

Subject: Professional Standards Review Organization Grant Application Forms—Extension/No Changes

Respondents: Businesses or other institutions

OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524.F, Washington, D.C. 20201

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; ATTN: (name of OMB Desk Officer)

Dated: April 29, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-12445 Filed 5-6-82; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

Continued use of Certain Former Public Health Service Facilities; Delegation of Authority

Notice is hereby given that on April 20, 1982, the Secretary of Health and Human Services delegated to be

Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982" (42 U.S.C. 248c), as amended, concerning the contined use of certain former Public Health Service facilities.

Dated: April 26, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82–12488 Filed 5–6–82; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 11304]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands; Correction

In FR Doc. 82–10371, appearing on Page 16420 of the issue of Friday, April 16, 1982, add "Sec. 34, W½NE¼, W½, and NW¼SE¼" to the land description under the heading "T. 40 S., R. 8 W."

Dated: April 29, 1982.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–12489 Filed 5–6–82; 8:45 am]

BILLING CODE 4310–84–M

Western Counties Pre-Planning Analysis; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the pre-planning analysis for the Western Counties Wilderness Study Report (also known as the Western Counties Wilderness Study Project) and Environmental Impact Statement (EIS) is available for public review and comment.

DATES: Comments are being accepted from the public on or before June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Russell Kaldenberg, Project Manager, Escondido Resource Area, California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: The study effort will evaluate wilderness values, reosurces, and uses for approximately 31,000 acres in western Riverside and San Diego Counties, California. Five Wilderness Study Areas (WSAs) are involved: Beauty Mountain (11,342 acres), Hauser Mountain (5,469 acres), Western Otay Mountain (5,751 acres), Southern Otay Mountain (7,941 acres), and Agua Tibia (360 acres).

The preplan describes the following topics:

1. Purpose of and need for the action;
2. Geographic setting;
3. Scope and Level of Analysis Planned;
4. Significant Resource Values and Issues;
5. Alternative Management Options;
6. Preliminary Environmental Document Outline;
7. EIS Preparation Schedule and Public Participation Schedule;
8. Other Government Agency Involvement;
9. EIS Preparation Staff.

Dated: April 28, 1982.

Westley Chambers,

Acting District Manager.

[FR Doc. 82–12487 Filed 5–6–82; 8:45 am]

BILLING CODE 4310–84–M

[AA–39904 and AA–39921]

Alaska Native Claims Selection

The document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area was ratified by Pub. L. 94–204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), authorized the Secretary of the Interior to identify and reserve within 2 years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and to issue immediately thereafter a revised conveyance reflecting such reservation.

On May 20, 1980, Patent No. 50–80–0081 and Interim Conveyance No. 316 were issued to Cook Inlet Region, Inc., for 5,600.12 acres and approximately 3,870.00 acres, respectively, of the surface and subsurface estates of lands conveyed to the United States by the State of Alaska. The lands were conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94–204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), and are described as follows:

Patent No. 50–80–0081 of May 20, 1980

Seward Meridian, Alaska (Surveyed)

T. 5 N., R. 9 W.
Sec. 16, NE¼NW¼.
Containing 40.00 acres.
T. 4 N., R. 11 W.
Sec. 16, W½NW¼.
Containing 80.00 acres.
T. 1 S., R. 13 W.
Sec. 22, E½E½, E½SW¼, W½SE¼;
Sec. 23, W½, SE¼;
Sec. 24, E½, SW¼;
Secs. 25 and 26, all;
Sec. 27, E½, E½W½, SW¼NW¼, W½SW¼;
Secs. 35 and 36, all.
Containing 4,440.00 acres.
T. 2 S., R. 13 W.
Sec. 3, lot 1, SE¼,NW¼.
Containing 80.12 acres.
T. 5 S., R. 14 W.
Sec. 2, S½SW¼, SW¼SE¼;
Sec. 10, E½, E½W½, SW¼SW¼;
Sec. 15, NE¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, NW¼, N½SW¼.
Containing 960.00 acres.
Aggregating 5,600.12 acres.

Interim Conveyance No. 316 of May 20, 1980

Seward Meridian, Alaska (Surveyed)

T. 1 S., R. 11 W.
That portion of Tract "A" previously described as protracted:
Sec. 4, all.
Containing approximately 652.00 acres.
T. 1 S., R. 12 W.
Those portions of the surveyed township previously described as protracted:
Sec. 1, all;
Sec. 7, S½SE¼;
Sec. 8, S½, S½N½
Sec. 18, NE¼, W½;
Sec. 19, W½;
Sec. 30, all.
Containing approximately 2,550.00 acres.
T. 2 S., R. 13 W.
That portion of Tract "A" previously described as protracted:
Sec. 3, SE¼SE¼.
Containing approximately 40.00 acres.
T. 3 S., R. 13 W.
That portion of the surveyed township previously described as protracted:
Sec. 30, all.
Containing approximately 628.00 acres.
Aggregating approximately 3,870.00 acres.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA. When this decision becomes final, revised conveyance documents will be issued to Cook Inlet Region, Inc., for the above-described lands with no Sec. 17(b) easements reserved. The revised conveyance documents will remain subject to all other rights, terms, conditions, and covenants contained in Patent No. 50–80–0081 and Interim Conveyance No. 316.

In accordance with Departmental regulations 43 CFR 2650.7(d), notice of this decision is being published once in

the Federal Register and once a week, for four (4) consecutive weeks, in the Anchorage Daily News.

Any party claiming property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99501, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99510. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until June 7, 1982, to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the Appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-12402 Filed 4-6-82; 8:45 am]

BILLING CODE 4310-84-M

[CA-6230]

California; Proposed Withdrawal

On May 3, 1982, a petition was approved allowing the Bureau of Reclamation to file a withdrawl application for the National Forest lands described in an emergency withdrawal published in the **Federal Register** of May 16, 1979, F.R. Doc. 79–15265, pages 28666 and 28667. The application will withdraw the lands from the mining laws subject to valid existing rights.

The withdrawal will be used for the protection of the Casitas Reservior watershed in the Los Padres National Forest.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the mining laws as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Bureau of Reclamation.

All communications in connection with this proposed withdrawal should be addressed to the Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Walter F. Holmes,

Chief, Branch of Lands and Minerals Operations.

May 3, 1982.

[FR Doc. 82-12403 Filed 5-6-82; 8:45 am]

BILLING CODE 4310-84-M

[Sale CA 12524]

Public Lands in Kern County, Calif.; Realty Action

The following described land has been identified as suitable for disposal by sale under Sec. 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), at no less than the fair market value shown. Legal description: Lots 5 to 11, inclusive, in sec. 18, T. 26 S., R. 33 E., Mount Diablo Meridian, California, a strip of land, 50' x 416', containing a total of 0.48 acre; value: $825 for each lot. The subject land will be sold by direct sale to Hubert F. Lucas, Charles A. and Margaret Gray, Edward J. and Deborah A. Grelle, Francis H. and Wilma R. Belt, Lloyd A. and Agnes Williams, Virgil W., Jr., and Gwynn A. Hansen, and Elmer H. and Jeanette Norman. The above named people placed improvements on the subject land based upon an incorrect survey marker. Thus, their improvements and backyards each extend 50 feet onto the public land. It is this land, unintentionally developed and used by the above named, which is proposed for sale. The sale is compatible with Bureau planning. The subject land is difficult and uneconomic to manage because of the presence of the unauthorized improvements, and is not suitable for management by another Federal department or agency. The public interest would be well served by offering this land for sale. The terms and conditions applicable to the sale are: (1) A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945); (2) All minerals in the land will be reserved to the United States (43 U.S.C. 1719); and (3) Lot 7 will be subject to a right-of-way granted to the Southern California Edison Company for electric distribution line purposes under serial number Los Angeles 0153094 (Act of March 4, 1911, 43 U.S.C. 961). Detailed information concerning the sale, including the land report and environmental assessment report, is available for review at the California State Office, Bureau of Land Management, Room E–2811, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the State Director, Bureau of Land Management, at the above address. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Dated: April 29, 1982.

Harold R. Dietz,

Acting Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 82-12404 Filed 5-6-82; 8:45 am]

BILLING CODE 4310-84-M

Gulf of Mexico Outer Continental Shelf Oil and Gas Leasing; Intent To Prepare a NEPA Document for Proposed OCS Oil and Gas Lease Sales 81 and 84

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and subsequent implementing Council on Environmental Quality regulations, and in keeping with the objective of streamlining the Outer Continental Shelf (OCS) leasing process, the Bureau of Land Management's New Orleans OCS Office intends to prepare a NEPA document for proposed OCS Lease Sale 81 covering the Central Gulf of Mexico OCS planning area and proposed OCS Lease Sale 84 covering the Western Gulf of Mexico OCS planning area. These planning areas include blocks offshore the coastal States of Alabama, Mississippi, Louisiana and Texas. Proposed Sales 81 and 84 are tentatively scheduled for April and July of 1984, respectively.

The purpose of the NEPA document for Sales 81 and 84 is to provide a detailed statement describing the environmental impact of, and alternatives to, a proposed major Federal action. The major Federal action, if implemented, would be the offering for lease for oil and gas

purposes, certain blocks in the Gulf of Mexico. The NEPA document will describe OCS oil and gas leasing program objectives and policies for the Central and Western Gulf of Mexico, including, but not limited to, the amount and location of leasing acreage; development and transportation assumptions; lease stipulations and other mitigation measures; and studies program requirements. It will also describe the environmental effects of the leasing program and the major alternatives being considered. It will focus on the major concerns and issues related to OCS oil and gas developments in the Gulf of Mexico. These concerns and issues will be identified and analyzed along with related decision options and alternatives during the scoping process. Alternatives that may be considered include: holding the sales as proposed, delay the proposed sales, no action, and modifying the proposal by deletion of blocks for various reasons such as biological, national security, etc.

The scoping process for Sales 81 and 84 will update and supplement the scoping process initiated for the Gulf of Mexico Regional Environmental Impact Statement which specifically addresses proposed OCS Lease Sales 72, 74, and 79, presently under preparation. Scoping activities will include meetings with representatives of government, industry, and environmental interest groups. Additionally, solicitation will be made for the identification of issues and concerns from the public at large through coastal media contacts comprised of newspapers, radio and television. Should response from these solicitations indicate considerable public interest and concern about the proposals and need for additional public contact to define the concern, the New Orleans OCS Office will implement more direct communications with identified individuals and interest groups.

Additional information concerning this NEPA document or comments on issues to be addressed in this document should be brought to the attention of Mr. Douglas Elvers, Chief, Environmental Assessment Division, New Orleans OCS Office, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130, telephone (504–589–6541).

Dated: May 4, 1982.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 82-12699 Filed 5-6-82; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Oil Shale Land Classification Order Nevada No. 1

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of classification of oil shale land in Nevada.

SUMMARY: By Executive Order 5327, April 15, 1930, lands containing oil shale deposits owned by the United States were withdrawn from lease or other disposal and reserved for investigation, examination, and classification. Accordingly, this order classifies lands described in Nevada as prospectively valuable oil shale lands, and as non-oil shale lands.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald W. Michelson, Deputy Minerals Manager, Resource Evaluation, Minerals Management Service, Western Region, 345 Middlefield Rd., (Mailstop 80), Menlo Park, California, Telephone: (415) 323–8111, ext. 2053, FTS 467–2053.

SUPPLEMENTARY INFORMATION: This order is issued under authority of the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950 under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title remains in the United States, are classified as follows:

Oil Shale Land Classification Order Nevada No. 1

Mount Diablo Meridian

Prospectively Valuable Oil Shale Lands

T. 33 N., R. 54 E.,
Secs. 1 to 3, inclusive;
Secs. 9 to 12, inclusive;
Secs. 14 to 17, inclusive;
Secs. 19 to 23, inclusive;
Secs. 29 and 30.
T. 34 N., R. 54 E.,
Secs. 12 and 13;
Secs. 23 to 26, inclusive;
Secs. 35 and 36;
T. 33 N., R. 55 E.,
Secs. 5 to 7, inclusive;
Secs. 12 and 13;
Secs. 23 to 27, inclusive;
Secs. 34 to 36, inclusive;
T. 34 N., R. 55 E.,
Secs. 1 to 14, inclusive;
Sec. 15, N½, N½S½, SW¼SW¼, SE¼SE¼;
Secs. 16 to 21, inclusive;
Sec. 22, NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
Secs. 23 to 25, inclusive;
Sec. 26, E½, N½NW¼, SE¼NW¼, E½SW¼;
Sec. 27, N½NE¼, NE¼NW¼;
Sec. 28, N½, N½S½, S½SW¼, SW¼SE¼;
Secs. 29 to 32, inclusive;
Sec. 33, W½NE¼, W½;
Sec. 35 and 36.
T. 35 N., R. 55 E.,
Secs. 12 to 14, inclusive;
Secs. 22 to 26, inclusive;
Secs. 32 to 36, inclusive.
T. 33 N., R. 56 E.,
Secs. 2 to 19, inclusive;
Secs. 16 to 20, inclusive;
Sec. 30.
T. 34 N., R. 56 E.,
Sec. 6.
Sec. 7, lots 1 to 4 inclusive, W½NE¼, E½NW¼, NE¼SW¼;
Sec. 18, lots 1, 2, 10, and 11;
Sec. 19, lots 1, to 4, inclusive, E½SW¼;
Secs. 27 and 28;
Sec. 29, lot 4, NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
Sec. 30, NW¼NW¼, S½;
Secs. 31 to 35, inclusive.
T. 35 N., R. 56 E.,
Sec. 5;
Secs. 7 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 29 to 32, inclusive.

Non-Oil Shale Lands

T. 34 N., R. 55 E.,
Sec. 15, SE¼SW¼, SW¼SE¼;
Sec. 22, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 26, SW¼NW¼, W½SW¼;
Sec. 27, NW¼NW¼, S½N½, S½;
Sec. 28, SE¼SE¼;
Sec. 33, E½NE¼, SE¼.
T. 34 N., R. 56 E.,
Sec. 7, E½NE¼, SE¼SW¼, SE¼;
Sec. 8;
Sec. 17;
Sec. 18, lots 3 to 9, inclusive, lots 12 to 14, inclusive, E½NW¼;
Sec. 19, lots 6 and 7, NE¼, E½NW¼, N½SE¼;
Sec. 20;
Sec. 29, lots 1 to 3, inclusive, NW¼NE¼, E½NW¼, NE¼SW¼;
Sec. 30, NE¼, E½NW¼, SW¼NW¼.

The areas described aggregate: 80,919 acres (32,747 hectares), more or less, of which are classified as prospectmore or less, of which are classified as prospectively valuable oil shale lands; and 4,4963 acres (2,009 hectares), more or less, of which are classified as non-oil shale lands.

Dated: April 22, 1982.

William P. Pendley,

Director, Minerals Management Service.

[FR Doc. 82-12697 Filed 5-6-82; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Padre Island National Seashore; Kleberg, Willacy and Kenedy Counties; Texas; Availability of a Finding of No Significant Impact for the Draft General Management Plan/ Development Concept Plan/ Environmental Assessment

An Evironmental Assessment for the Draft General Management Plan/ Development Concept Plan for Padre Island National Seashore, Kleberg,

Willacy and Kenedy Counties, Texas, was distributed and made available by publication in the Federal Register of December 15, 1981, and a News Release in local news media sources.

A Finding of No Significant Impact has now been completed and plan proposals selected, based on public review input received and on management objectives. The plan proposals selected best provide a management strategy to insure all reasonable ways of achieving the intent of Congress and the management objectives of Padre Island National Seashore.

Copies of the Finding of No Significant Impact for the Draft General Management Plan/Development Concept Plan/Environmental Assessment are available at the following locations: Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418; and the Southwest Regional Office, 1100 Old Santa Fe Trail, Post Office Box 728, Santa Fe, New Mexico 87501.

Anyone wishing to provide comments on the Finding of No Significant Impact for the Draft General Management Plan/ Development Concept Plan/ Environmental Assessment should provide them to the Superintendent, Padre Island National Seashore, at the address provided above, on or before June 7, 1982.

It is the conclusion of the National Park Service that the plan proposals will not constitute a major Federal action significantly affecting the human enviornment; therefore, an environmental impact statement will not be prepared. Following public review of the Finding of No Significant Impact, a final General Management Plan/ Development Concept Plan will be prepared and implemented.

Dated: April 27, 1982.

Donald A. Dayton.

Acting Regional Director, Southwest Region.

[FR Doc. 82-12491 Filed 5-6-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC 43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: April 28, 1982.

Tiger Transportation, Inc. (No. MC–104186), and Eugene Tripp Trucking (No. MC–143328) have filed a petition for waiver of Subpart B (§1057.11 and § 1057.12), except for paragraphs (b) and (c) of § 1057.11 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057) with respect to equipment augmented between them.

Findings

1. Petitioners are commonly controlled.

2. Petitioners jointly administer a common safety program.

3. Petitioners have acceptable fitness records.

4. Greater economy and efficiency would result if the waiver were granted.

It is ordered: 1. That the petition of Tiger Transportation, Inc., and Eugene Tripp Trucking, for waiver of Subpart B (§ 1057.11 and § 1057.12), except for paragraphs (b) and (c) of § 1057.11, is granted, provided that petitioners agree in writing that control and responsibility for operating the equipment shall be in the lessee from the time lessee takes possession of the equipment and the receipt required under § 1057.11(b) is given to the lessor, until possession is returned to the lessor or the equipment is interchanged with another authorized carrier, and a copy of the agreement is carried in the vehicle while it is in the lessee's possession.

2. The waiver granted in this decision does not affect the application of the leasing regulations to leases between owner-operators and the lessor carrier.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien, Board Member McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12495 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC 43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: April 29, 1982.

Apple Lines, Inc. (No. MC–114632) and Merchants Dutch Express, Inc. (No. MC–143389), petition for waiver of Paragraph (d)(1) of § 1057.12 of the *Lease and Interchange of Vehicles Regulations* (49 CFR Part 1057). Neither petitioner holds authority to transport household goods. However, the purpose of the waiver is to allow execution of a master lease providing for intermittent possession by Apple Lines of the equipment owned by Merchants Dutch Express and also providing that receipts will not be given when possession is transferred, but at the time the master lease is executed.

Findings

1. There is no evidence petitioners are commonly controlled or have a jointly administered safety program.

2. The petition presents no evidence to justify waiver of paragraph (d)(1) of § 1057.11 in order to permit intermittent leasing. The facts show nothing peculiar with respect to petitioners' operations, when compared with other authorized transportation other than household goods.

3. In addition, petitioners have not requested waiver of paragraph (b) of § 1057.11 (which requires an exchange of receipts at the time possession of equipment is taken) nor have they presented any evidence to support such waiver, even though they would not observe such requirements if waiver of paragraph (d)(1) were granted.

It is ordered, that the petition of Apple Lines, Inc. (No. MC–114632) and Merchants Dutch Express, Inc. (No. MC–143389), for waiver of Paragraph (d)(1) of § 1057.12 is denied.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien, Board Member J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12494 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-115)]

Railroads; Burlington Northern Railroad Co.; Abandonment Between Lass and Garden Plain, IL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its rail line between milepost 54.06 near Lass to railroad milepost 59.63 at the end of the line near Garden Plain, a distance of 5.57 miles located in Whiteside County, IL, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available

during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Acting Deputy Director, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12436 Filed 5-6-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29918]

Railroads; Batten Kill Railroad Co.; Petition for Exemption From 49 U.S.C. 10901, 11301, 11322, 10713, 10705a, and 10762

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemptions.

SUMMARY: The Commission exempts the following related transactions from the requirement of its prior review and approval: (1) Under 49 U.S.C. 10901, the acquisition by Eagle Bridge—Thomson Development Corporation (a noncarrier corporate governmental agency of the State of New York), and subsequent lease and operation by Batten Kill Railroad Company (BKRR), of 35.03 miles of track of Delaware and Hudson Railway Company (D&H) and a wholly owned subsidiary (a) between Eagle Bridge and Salem, NY, (b) between Greenwich and Greenwich Junction, NY, and (c) between Greenwich Junction and Thomson, NY; (2) under 49 U.S.C. 11301, the issuance of certain common stock and promissory notes by BKRR; (3) under 49 U.S.C. 11322, the holding of a directorship with BKRR by a corporate officer of D&H, subject to specified conditions; (4) under 49 U.S.C. 10713, the 30 day notice requirement for filing of a contract between BKRR and a shipper (Agway, Inc.), subject to specified conditions; (5) under 49 U.S.C. 10705a, the 45 day notice requirement for the filing of new surcharges, subject to conditions; and (6) under 49 U.S.C. 10762 the 20 day notice requirement for the filing of new rates, subject to conditions.

DATES: These exemptions will be effective on May 7, 1982. Protests to the exemptions from the notice requirements referred to in (4), (5) and (6) of the above "Summary" must be filed within 15 days after this publication. Petitions to reopen must be filed within 20 days after this publication.

ADDRESSES: Send pleadings to:

(1) Interstate Commerce Commission, Section of Finance, Room 5414, Washington, DC 20423;
and
(2) Petitioner's representative: Andrew P. Goldstein, 706 Ring Building, 1200 18th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: A decision in this proceeding, served concurrently with this notice, contains further information. For a copy of the full decision, write to: TS Infosystems, Inc., Room 2227, 12th St. and Constitution Ave., NW., Washington, DC 20423;
or call:
(202) 289-4357—Local, (800) 424-5403—toll free for outside DC area.

Decided: May 5, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12438 Filed 5-6-82; 8:45 am]
BILLING CODE 7035-01-M

[Second Revised I.C.C. Order No. 81 under Service Order No. 1344]

Railroads; Consolidated Rail Corp., et al.; Rerouting Traffic

TO: Consolidated Rail Corporation; Michigan Interstate Railway Company; Chesapeake and Ohio Railway; Grand Trunk Western Railroad Company; Michigan Northern Railway Company; Green Bay and Western Railroad Company; Chicago and North Western Transportation Company; Soo Line Railroad Company; Norfolk and Western Railway Company, and Detroit, Toledo and Ironton Railroad Company.

In the opinion of J. Warren FcFarland, Agent, the Ann Arbor Railroad System (Michigan Interstate Railway Company—Operator) is unable to transport traffic over its line north of Ann Arbor, Michigan, and to Kewaunee and Manitowoc, Wisconsin, via Frankfort, Michigan, due to the termination of its Designated operations for the State of Michigan. This matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and therefore, requires this action by the Commission.

It is ordered:

(a) *Rerouting traffic.* The Ann Arbor Railroad System (AA) (Michigan Interstate Railway Company—Operator) being unable to transport promptly all traffic over its line north of Ann Arbor, Michigan, and to Kewaunee and Manitowoc, Wisconsin, via Frankfort, Michigan, due to the termination of its Designated operations at those points (See AA Embargo 2-82, Amendment 2, 4/23/82) that line and its connections are authorized to divert or reroute any traffic destined to or via the points indicated. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars, in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4:00 p.m., April 23, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 23, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-12432 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have not further effect.

It is Ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effect notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79747. By decision of April 23, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to EUGENE THORNTON, d.b.a. THORNTON'S MOTOR FREIGHT, of Linton Falls, NJ, of Permit No. MC–140540 (Sub-No. 2) issued November 17, 1981, to L. MONTGOMERY, INC., of Linton Falls, NJ, authorizing the transportation of rubber and plastic products between points in the United States, under continuing contract(s) with Thompson Industries Co., of Phoenix, AZ. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904.

MC–FC–79755. By decision of April 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to J. J. MESA TRUCKING CO., INC. of San Antonio, TX of Certificate No. MC 51207 and subs thereunder issued to P.S.T. TRANSPORT, INC. of San Antonio, TX authorizing (1) *malt beverages,* from the facilities of Pearl Brewing Company, Inc. at San Antonio, TX, to points in AL, AR, AZ, CA, FL, IL, IN, LA, MS, NC, NM, NV, OH, OR, SC, TN, and WA. (2) *materials and supplies* used in the manufacture of malt beverages, from the above-named points to the facilities of Perl Brewing Company, Inc., at San Antonio, TX. Applicants' representative: Ronald Mercier, 1500 S. Zarzamora St., San Antonio, TX 78207. TA lease is sought, transferred is a carrier.

MC–FC–79756. By decision of April 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to CONNOR EXPRESS, INC. of certificate No. MC 21572 (Sub-No. 3) and No. MC 21572 (Sub-No. 4) issued August 25, 1978 to SCRINNER'S EXPRESS, INC. authorizing the transportation of (A) *general commodities* (with the usual exceptions) (1) over regular routes, between numerous OH points including Cincinnati, Cleveland, Toledo, Circleville, Ravenna, Dayton, Zenia, Springfield, Lebanon, Lima, Sidney, Piqua, Fremont, Bellefontaine, Wapakoneta, and Columbus and (2) *special equipment,* over irregular routes, between Cincinnati OH, on the one hand, on the other points in OH, and (3) over regular routes between Huntington, WV, and Portsmouth, OH, serving all intermediate points. Applicants' representative: Micheal Spurlock, 275 East State Street, Columbus, OH 43215.

Note.—Application for TA has been filed. Transferee is a non-carrier.

MC–FC–79758. By decision of April 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to DALLAS G & G EXPRESS, INC. of Dallas, TX of Certificate No. MC 151134 issued to KARTRAN INCORPORATED of Garland, TX, authorizing general commodiites (with usual exceptions), in containers, between points in Harris and Galveston Counties, TX, on the one hand, and, on the other, points in Archer, Bonham, Clay, Colin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Grayson, Hunt, Jack, Johnson, Faufman, Lamar, Montauq, Olney, Palo Pinto, Parker, Rockwall, Stephens, Tarfant, Wichita and Wise Counties, TX, restricted to traffic having a prior or subsequent movement by water or rail. Applicants' representative: William Sheridan, P.O. Box 5049, Irving, TX 75062. TA lease is sought. Transferee is not a carrier.

MC FC–79766. By decision of April 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BROOKLINE MOVING CO., IN. of Certificate No. MC–76518 issued to FULTON MOVING COMPANY, INC. authorizing the transportation of household goods, between Boston, MA and points in Massachusets, within 25 miles of Boston, on the one hand, and, on the other, points in MA, VT, NH, ME, RI, CT and NY. Applicants' representative: George C. O'Brien, 342 Wild Harbor Rd., North Falmouth, MA

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12433 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Buckhorn Inc., P.O. Box 689, 3592 Corporate Drive, Columbus, Ohio 43216–0689.

2. Wholly-owned subsidiaries which will participate in the operations and State of Incorporation:

a. Applied Distribution Systems, Inc. an Ohio Corporation.

b. Applied Distribution Systems Corp., an Ohio Corporation.

c. Applied Distribution Systems Company, an Ohio Corporation.

d. NesTier Corporation, an Ohio Corporation.

e. New Idria, Inc., a Nevada Corporation.

1. Parent Corporation and address of principal office: A. Burlington Industries, Inc., 3330 West Friendly Avenue, Post Office Box 21207, Greensboro, North Carolina 27420.

2. Wholly-owned subsidiaries which will participate in the operation, address of its principal offices, and state and country of incorporation:

A. B. I. Transportation, Inc., Tucker Street Extension, Post Office Box 691, Burlington, North Carolina 27215, Incorporated in the State of Delaware.

B. Burlington Carpet Mills Canada, Ltd., 130 St. Joseph Boulevard, Lachine, Quebec H8S–2L4, Canada, Incorporated in Canada.

C. Burlington Carpet Sales Canada, Ltd., 501 Norsinch Drive, Downsview, Ontario M3N–1Y7, Canada, Incorporated in Canada.

D. Burlington Canada, Inc., 130 St. Joseph Boulevard, Lachine, Quebec H8S–2L4, Canada, Incorporated in Canada.

E. Textile Morelos, S.A. de C.V., San Juan del Aguila No. 401, Cuetnazaca, Motelos, Mexico, Incorporated in Mexico.

F. Noblis-Lees, S.A. de C.V., Calzada Ermita-Ixtapalapa No. 401 Local "(C)", Colonia Unidad Modelo, Mexico 13 D.F. Mexico, Incorporated in Mexico.

1. Parent corporation and address of principal office: Chrysler Corporation, 12000 Lynn Townsend Drive, Highland Park, Michigan, Mailing address: P.O. Box 1919, Detroit, Michigan 48288.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

(a) Wholly-owned domestic subsidiaries: Chrysler Export Corporation, Chrysler Export Sales, Inc., Chrysler Outboard Corporation, Chrysler Plastic Products Corporation, Chrysler Transport, Inc., New Process Gear Corporation, Nu Car Prep System, Inc., Van Pool Services, Inc.

All of the above-named subsidiaries are incorporated in the State of Delaware.

(b) Wholly-owned Canadian subsidiaries: Chrysler Canada Ltd., Chrysler Canada Outboard Ltd.

1. The parent corporation and address of principal office: Color Tile, Inc., 1820 Two Tandy Center, Fort Worth, Texas 76102.

2. The wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Color Tile Supermart, Inc., a Colorado corporation,

(ii) Color Tile Manufacturing, Inc., a Texas corporation,

(iii) C. Title Transportation, Inc., a Texas corporation.

1. Parent corporation and address of principal office: PepsiCo, Inc., Purchase, NY 10577.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Beverages, Foods & Service Industries, Inc., c/o PepsiCo, Purchase, NY 10577.

(2) Conroe Packaging, Inc., 222 Loop 336 East, P.O. Box Y, Conroe, TX 77301.

(3) Frito-Lay, Inc., P.O. Box 35034, Dallas, TX 75235.

(4) National Beverages, Inc., 1700 Directors Row, Orlando, FL 32809.

(5) PBG Beverage Distributors, Inc., c/o PepsiCo, Purchase, NY 10577.

(6) Pepsi-Cola Bottling Co. of Los Angeles, Inc., P.O. Box 3338, Torrance, CA 90510.

(7) Pepsi-Cola Bottling Co. of Puerto Rico, Inc., P.O. Box 1709, Hato Rey, Puerto Rico 00919.

(8) Pepsi-Cola Interamericana, S.A., c/o PepsiCo, Purchase, NY 10577.

(9) Pepsi-Cola Metropolitan Bottling Company, Inc., c/o PepsiCo, Purchase, NY 10577.

(10) Pepsi-Cola Panamericana, S.A., c/o PepsiCo, Purchase, NY 10577.

(11) PepsiCo World Trading Company, Inc., c/o PepsiCo, Purchase, NY 10577.

(12) Advance Moving & Storage, Inc., 650 North Second Ave., Phoenix, AZ 85003.

(13) Agency Media Services, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(14) Fleet Insurance Management, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(15) Great Falls North American, Inc., P.O. Box 1414, Great Falls, MT 59401.

(16) Lee Way Motor Freight, Inc., P.O. Box 12750, Oklahoma City, OK 73157.

(17) Marlew of El Paso, Inc., 8201 Lockheed Drive, El Paso, TX 79225.

(18) Moving Credit, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(19) NACAL, Inc., 12842 Valley View, Garden Grove, CA 92645.

(20) North American Distribution Systems, Inc., P.O. Box 411, New Haven, IN 46774.

(21) North American Forwarding, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(22) North American Moving & Storage, Inc., 2122 Bremer Road, Fort Wayne, IN 46803.

(23) North American Properties, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(24) North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801.

(25) North American Van Lines of Texas, Inc., 811 Central Expressway, Richardson, TX 75080.

(26) Tractor Power, Inc., d/b/a Fleet Service, c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(27) Transportation Collections, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(28) Triangle Fleet Service, Inc., 801 W. California Road, Fort Wayne, IN 46808.

(29) PepsiCo Building Systems, Inc., 3031 LaJolla St., Anaheim, CA 92806.

(30) Pizza Hut, Inc., P.O. Box 428, Wichita, KS 67201.

(31) Aurora Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(32) Bender Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(33) Buckeye PH, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(34) Blues Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(35) Chesapeake Bay Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(36) Denver Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(37) East Moline Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(38) Fiesta Cantina of Ohio, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(39) Franchise Services, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(40) Franchise Services of Kansas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(41) Indianapolis Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(42) J & G Products, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(43) Lake Michigan Management Co., Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(44) Long's Appleton, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(45) Long's Green Bay #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(46) Long's Marshfield, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(47) Long's Neenah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(48) Long's Wausau #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(49) Mountaineer Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(50) Oriole Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(51) Pizza Hut, Inc. of LaCrosse, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(52) Pizza Hut of America, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(53) Pizza Hut of Boston, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(54) Pizza Hut of Columbia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(55) Pizza Hut of Gainesville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(56) Pizza Hut of Georgia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(57) Pizza Hut of Jeffersonville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(58) Pizza Hut of Kalamazoo, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(59) Pizza Hut of Knoxville Corporation c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(60) Pizza Huts of Las Vegas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(61) Pizza Hut of Louisiana, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(62) Pizza Hut of Louisville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(63) Pizza Hut of Massachusetts, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(64) Pizza Huts of North Carolina, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(65) Pizza Hut of North Haven, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(66) Pizza Hut of Oklahoma, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(67) Pizza Hut of Oregon, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(68) Pizza Hut of Racine, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(69) Pizza Hut of Rochester, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(70) Pizza Hut of San Diego, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(71) Pizza Hut of Santa Fe, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(72) Pizza Hut of Spokane, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(73) Pizza Hut of Utah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(74) Pizza Hut of Virginia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(75) Pizza Hut of West Allis, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(76) Pizza Hut of Wichita, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(77) Pizza Hut of Wisconsin, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(78) Pizza Hut of Zion, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(79) Ross Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(80) Second Concept, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(81) Sioux Falls Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(82) Sun Devil Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(83) Taco Kid of Whichita #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(84) Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.
(85) Bell Food Services, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.
(86) Taco Bell of Ohio, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.
(87) Southwest Snack Equipment, Inc., 900 North Loop 12, Irving, TX 75061.
(88) Marlew of Lubbock, Inc., 23rd St. at Ave. E., Box 818, Lubbock, TX 79408.
(89) Tri-City Moving & Storage, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(90) PepsiCo Foods System, Inc., P.O. Box 3037, Wichita, KS 67201.
(91) Wilson Sporting Goods Co., 2233 West St., River Grove, IL. 60171.
(92) Sabritas S.A. de C.V., Apartado Postal 15–112, Mexico 15, D.S., Mexico.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–12439 Filed 5–6–82; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. OP1–81]

Motor Carriers Permanent Authority Decision; Decision-Notice

Decided: May 3, 1982.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the followng operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be sat forth in a notification of effectiveness of this decision-notice Within 60 days after publication and applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Parker, Chandler and Fortier.

Agatha L. Mergenovich,

Secretary.

MC 160291 (republication) filed March 25, 1982, previously noticed in the **Federal Register** issue of April 22, 1982. Applicant: TOTAL TRANSPORTATION TRUCKING, INC., P.O. Box 6931, Cleveland, OH 44101. Representative: William J. Eely (same address as applicant), (216) 341–5448. Transporting *general commodities* (except classes A and B explosives, and household goods) having a prior or subsequent movement by rail, between points in CT, DE, IL, IN, KY, MD, MA, MI, MO, NJ, NY, OH, PA, RI, TN, VA, WV, and DC.

Note.—This application is directly related to MC–F–14833, published in the FR issue of April 22, 1982. The purpose of this republication is to delete the commodities in bulk exception.

[FR Doc. 82–12440 Filed 5–6–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Finding

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–77

Decided: April 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF–541 (Sub-1), filed April 23, 1982. Applicant: ALASKA EXPRESS FORWARDERS, INC., 1123 North 4th Ave., Kent, WA 98031. Representative: David W. Wiley, 110 Norton Bldg., Seattle, WA 98031, (206) 622–4067. As a freight forwarder in connection with the transportation of *general commodities* (except classes A and B explosives and household goods), between points in AK and WA, on the one hand, and, on the other, points in CA and OR.

MC 13070 (Sub-5), filed April 20, 1982. Applicant: GERALD P. LIPPOLD AND RODNEY L. ARNETT, d.b.a. LIPPOLD & ARNETT, 1302 So. Broad St., Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Nabisco Brands, Inc., of East Hanover, NJ 07936.

MC 29550 (Sub-1), filed April 20, 1982. Applicant: TERMINAL VAN LINES, INC., 4001 25th St. No., St. Petersburg, FL 33733. Representative: Bernard C. Pestcoe, 201 Alhambra Circle, Suite 511, Coral Gables, FL 33134, (305) 445–9666. Transporting *Household goods,* between points in FL, on the one hand, and, on the other, points in MA, VT, NH, RI, WI, TX, OK, LA, MS, AR, MO, IA, and MN.

MC 30260 (Sub-5), filed April 23, 1982. Applicant: DELMONT MOTOR EXPRESS, INC., 1024 Lackawanna Ave., Elmira, NY 14901. Representative: Jermery Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005, (202) 783–3525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Bradford, Lycoming, and Tioga Counties, PA, and Chemung and Steuben Counties, NY, on the one hand, and, on the other, points in PA and NY.

MC 37640 (Sub-11), filed April 20, 1982. Applicant: TRANSPORTATION ENTERPRISES, INC., 1135 Gunter, Austin, TX 78702. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768, (512) 476–6391. Transporting *passengers and their baggage,* in charter and special operations, beginning and ending at points in Williamson, Travis, Hays, Comal and Bexar Counties, TX, and extending to points in the U.S. (except AK and HI).

MC 99680 (Sub-19), filed April 23, 1982. Applicant: NORTH SHORE & CENTRAL ILLINOIS FREIGHT CO., 7701 W. 95th St. Hickory Hills, IL 60457. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Over regular routes, transporting: *general commodities* (except classes A and B explosives, household goods and commodities in bulk); Between Quincy, IL and Keokuk, IA: From Quincy over U.S. Hwy 24 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Wayland, then over U.S. Hwy 136 to Keokuk and return over the same route, serving all intermediate points.

MC 102181 (Sub-13), filed April 20, 1982. Applicant: O. H. & F., INC., P.O. Box 129, Grayville, IL 62844. Representative: Richard Elliott (same address as Applicant). Transporting *Mercer commodities,* between points in IL, IN, KY, MI, MS, MO, NE, NY, OH, PA, TN, and WV, on the one hand, and, on the other, points in CO, MT, ND, and WY.

MC 103051 (Sub-1), filed April 20, 1982. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, TN 37209. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216)–566–5639. Transporting (1) *commodities in bulk;* and (2) *building materials,* between points in the U.S. (except AK and HI).

MC 114011 (Sub-8), filed April 20, 1982. Applicant: PETE'S SERVICE & TRUCK RENTAL, INC., 550 Brunson St., St. Paul, MN 55101. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612)–542–1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Minneapolis, MN, and points in Blue Earth County, MN, and Saint Croix County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 115931 (Sub-197), filed April 20, 1982. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59806. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108. Transporting *forest products, lumber and wood products, and pulp, paper and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Potlatch Corporation, of San Francisco, CA.

MC 119531 (Sub-187), filed April 20, 1982. Applicant: SUN EXPRESS, INC., P.O. Box 1031, Warren, OH 44482–1031. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between the facilities used by ITOFCA, Inc., at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124841 (Sub-9), filed April 19, 1982. Applicant: MOUNTAIN OIL TRANSPORT, INC., P.O. Box 2216, Walla Walla, WA 99362. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228–3807. Transporting *food and related products,* between points in WA, OR, ID, MT, NV, AZ, CO, NM, SD, ND, IA, WY, WI, MN, IL, NE, IN, TX, and OK.

MC 141870 (Sub-7), filed April 23, 1982. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Ave., Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401, (205) 578–3212. Transporting *commodities as are dealt in by food and grocery houses,* between points in AL, NY, NJ, MA, PA, IL, GA, TX, WI, VA, MD, SC, KS, MO and RI, under continuing contract(s) with Kane-Miller Corp., and its subsidiaries, of Birmingham, AL.

MC 142240 (Sub-1), filed April 20, 1982. Applicant: WESTERN HYWAY DISTRIBUTING CO., INC., 2700 Wear Rd., Bakersfield, CA 93302. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting (1) *chemicals and related products,* between points in CA, on the one hand, and, on the other, points in AZ; and (2) *petroleum, natural gas and their products,* (a) between points in CA, on the one hand, and, on the other, points in AZ and NV; and (b) between points in Clark County, NV, on the one hand, and, on the other, points in Mohave County, AZ.

MC 147491 (Sub-6), filed April 13, 1982. Applicant: TAB TRUCKING, INC., 4342 Janitrol Road, Columbus, OH 43228. Representative: Paul R. Brown, 31 West Whittier St., Columbus, OH 43206, (614) 445–7228. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI.

MC 148490 (Sub-17), filed April 21, 1982. Applicant: C. & N. EVANS TRUCKING COMPANY, INC., Route 2, Box 39 E, Stoneville, NC 27048–9630. Representative: Harry G. Grubbs (same address as applicant), (919) 573–3761. Transporting *food and related products,* between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, under continuing contract(s) with Krispy Kreme Doughnut Corporation, of Winston-Salem, NC.

MC 149351 (Sub-6), filed April 20, 1982. Applicant: HEYMAN TRUCKING, INC., Box 97, 212 Mulberry St., Stephens City, VA 22655. Representative: Edward N. Button, 635 Oak Hill Avenue, Hagerstown, MD 21740. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of automobile accessories, between Philadelphia, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150951 (Sub-10), filed April 15, 1982. Applicant: CRANSTON TRUCKING COMPANY, 1381 Cranston Street, Cranston, RI 02920. Representative: Paul M. Overton, (same address as applicant), (401) 943–4800. Transporting *rubber products,* between points in the U.S., under continuing contract(s) with Fulfex, Inc., of Bristol, RI.

MC 150951 (Sub-12), filed April 23, 1982. Applicant: CRANSTON TRUCKING COMPANY, 1381 Cranston St., Cranston, RI 02920. Representative: Paul M. Overton, (same address as applicant), (401) 943–4800. Transporting *chemicals and related products,* between points in the U.S., under continuing contract(s) with Eastern Color & Chemical Company, of Providence, RI.

MC 155981 (Sub-1), filed April 20, 1982. Applicant: ARMORED SERVICES, INC., Suite 614, St. Joseph Bank Bldg., South Bend, IN 46601. Representative: John W. Bryant, 900 Guardian Bldg., Detroit, MI 48226, (313) 963–3750. Transporting *currency, coin, securities, checks, documents, and other valuables,* between points in the U.S., under continuing contract(s) with banks and banking institutions.

MC 156800 (Sub-4), filed April 20, 1982. Applicant: SEABOARD EXPRESS, INC., 565 Plank Road, Waterbury, CT 06705. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Connecticut Shippers Association of Meriden, CT, and Universal Wire Products, Inc., of North Haven, CT.

MC 157100 (Sub-1), filed April 22, 1982. Applicant: CHARLES D. & SHERYL J. HOEKEMA, d.b.a. CHARLES HOEKEMA TRUCKING, Route 1, Box 20A–1, Manhattan, MT 59741. Representative: Joe Gerbase, 100 Transwestern I Bldg., Billings, MT 59101, (406) 248–2611. Transporting *lumber and wood products,* between points in MT, ID, OR, and WA, on the one hand, and, on the other, points in IA, NE, IL, MN, SD, MO, WI, and KS.

MC 160721 filed April 20, 1982. Applicant: RICHARD BELLERUD & ORVIN BELLERUD, d.b.a. B & H ENTERPRISES, P.O. Box 344, Grafton, ND 58237. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *food*

and related products, between points in ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161210, filed March 25, 1982. Applicant: J–R TRANSPORTATION SERVICES, INC., RD #6, P.O. Box 385, Hammonton, NJ 08037. Representative: Ray DeSimone (same address as applicant), (609) 561–9257. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with (1) Alberto-Culver Company, of Melrose Park, IL; (2) American Color & Chemical Corp., of Reading, PA; (3) American Food Labs, of Brooklyn, NY; (4) Caloric Corporation, of Topton, PA; (5) Colonial Metals Co., of Columbia, PA; (6) Construction Fasteners, Inc., of Wyomissing, PA; (7) R. T. French Co., of Souderton, PA; (8) General Battery Corporation, of Reading, PA; (9) Glyco Inc., of Greenwich, CT; (10) Hoeganaes Corporation, of Riverton, NJ, (11) Olin Corporation, of Stamford, CT; (12) Pennwalt Corporation, of Philadelphia, PA; (13) Reed & Prince Mfg. Co., of Jaffrey, NH; (14) Scott Paper Company, of Philadelphia, PA; and (15) Tamaqua Cable Products Corporation, of Schuykill, PA.

MC 161370 filed April 20, 1982. Applicant: ROBERT L. KELLER, d.b.a. KELLER TRANSIT, P.O. Box 6, Kempton, IN 46049. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6555. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Central Indiana Supply Company, of Indianapolis, IN.

MC 161601, filed April 20, 1982. Applicant: PENN FREIGHTWAYS, INC., 24 Brooklane Dr., Harrison City, PA 15636. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281–9494. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Gibraltar Steel Corporation, of Buffalo, NY, Henry Miller Spring and Manufacturing Company and Penn Associates, both of Pittsburgh, PA.

MC 161610, filed April 20, 1982. Applicant: C. A. TUCKER d.b.a. "AB" TUCKER TRUCKING, Rt. 4, Box 57B, Lubbock, TX 79424. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408, (806) 763–9555. Transporting *agricultural machinery,* between points in TX, OK, KS, NE, CO, LA, TN, MS, AR, NM, MO, CA, and AZ.

MC 161651, filed April 23, 1982. Applicant: R. HELFRICH & SON CORP., 503 South Laurel Ave., West Keansburg, NJ 07734. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212)–239–4610. Transporting *passengers and their baggage,* in special and charter operations, beginning and ending at points in Monmouth and Ocean Counties, NJ, and extending to points in the U.S. (except AK and HI).

Volume No. OP1–79

Decided: April 30, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 38400 (Sub-9), filed April 23, 1982. Applicant: HITCHCOCK BROS., INC., Box 212, Canaan, CT 06018. Representative: C. Frank Hitchcock (same address as applicant) (203) 824–5332. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 87231, (Sub-30), filed April 20, 1982. Applicant: BAY & BAY TRANSFER CO., INC., 7200 West 128th St., Savage, MN 55378. Representative: Pamela N. Merkle, 300 Roanoke Bldg., Minneapolis, MN 55402, (612) 343–2978. Transporting *silica sand,* between points in MI and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 99961, (Sub-5), filed April 26, 1982. Applicant: BIG CHIEF TRUCK LINES, INC. Rt. 1 Box 321–B, Lafayette, LA 70505. Representative: Ronald Marchand, (same address as applicant), (318) 837–1885. Transporting *oilfield drilling rigs, supplies and waste material,* between points in LA and MS.

MC 107010 (Sub-71), filed April 23, 1982. Applicant: BULK CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting (1) *food and related products,* (2) *petroleum, natural gas and their products,* and (3) *chemicals and related products,* between points in NE, IA, KS and MO, on the one hand, and, on the other, points in WI, IL, MN, IA, MO, AR, LA, ND, SD, NE, KS, OK, TX, NM, CO, WY and MT.

MC 108380 (Sub-112), filed April 23, 1982. Applicant: JOHNSTON'S FUEL LINERS, INC., 808 Birch St., Newcastle, WY 82701. Representative: Manuel Andrade, Jr., 770 Grant St., Suite 228, Denver, CO 80203, (303) 861–4273. Transporting (1) *bentonite, additives and chemicals,* between points in WY, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, OK and TX (except AK and HI), (2) *machinery, metal products and building materials,* between points in WY, on the one hand, and, on the other, points in AZ, CO, IA, ID, IL, IN, KS, KY, MN, MO, NE, OH, OK, OR, SD, TX, and WI, (3) *machinery, metal products and building materials,* between points in CA, ID, MT and OR, on the one hand, and, on the other, points in CO, WY, KS, MO, SD and TX, and (4) *such commodities* as are dealt in and used in the construction, manufacture and design of oil and gas processing equipment, between points in WY, on the one hand, and, on the other, those points in the U.S. in and west of AL, TN, NC, VA, WV and PA (except AK and HI).

MC 111941 (Sub-45), filed April 23, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943, (219) 982–2175. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204–3491. Transporting *commodities in bulk,* between points in the U.S. (except AK and HI), under continuing contract(s) with Resource Recovery of Indiana, Inc., of Morristown, IN.

MC 111941 (Sub-46), filed April 27, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204–3491, (317) 636–1301. Transporting *metal products,* between those points in IN on and north of U.S. Hwy 40, on the one hand, and, on the other, points in WA, OR, CA, ID, NV, AZ, UT, WY, MT, ND, SD, NE, NM, CO, CT, RI, MA, VT, NH and ME.

MC 115880 (Sub-6), filed April 27, 1982. Applicant: BROOKFIELD BUS SERVICE, INC., 3 Railroad Place, Maspeth, NY 11378. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755–9500. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, between points in the U.S., under continuing contract(s) with Twenty First Century Tours, of Maspeth, NY.

MC 116710 (Sub-44), filed April 12, 1982. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., P.O. Box 6176, Bossier City, LA 71111. Representative: Claire M. Goldsworthy, 535 North 6th St., Baton Rouge, LA 70802, (504) 383–4528. Transporting *commodities in bulk,* between points in

the U.S., under continuing contract(s) with Ethyl Corporation, of Richmond, VA.

MC 134970 (Sub-35), filed April 23, 1982. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, Highway 24 East, El Paso, IL 61738. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *meat, meat products, meat by-products and articles distributed by meat packinghouses,* between points in AL, AR, KS, KY, IL, IN, IA, LA, MI, MN, MS, MO, NE, OH, OK, SD, TN, TX, and WI.

MC 138861 (Sub-44), filed April 16, 1982. Applicant: C-LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St., NW., Suite 501, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 142601 (Sub-9), filed April 28, 1982. Applicant: CECO TRANSORT, INC., 1400 Kensington Rd., Oak Brook, IL 60521. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with ITOFCA, Inc., of Downers Grove, IL.

MC 148490 (Sub-18), filed April 21, 1982. Applicant: C. & N. EVANS TRUCKING COMPANY, INC., Route 2, Box 39E, Stoneville, NC 27048–9630. Representative: Harry G. Grubbs, (same address as applicant) (919) 573–3761. Transporting *textile mill products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Pannill Knitting Company, Inc., of Martinsville, VA.

MC 148731 (Sub-7), filed April 26, 1982. Applicant: MINKEVITCH TRUCKING & HAULING, 6290 S. Holladay Blvd., Salt Lake City, UT 84121. Representative: Fred J. Minkevitch, Jr., (same address as applicant), (801) 972–6373. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Domtar Industries, Inc., of Schiller Park, IL.

MC 150301 (Sub-20), filed April 20, 1982. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Davidson Rubber Division, Ex-Cell-O Corporation, of Dover, NH.

MC 151721 (Sub-5), filed April 23, 1982. Applicant: LAUFENBERG FEED & AGRI-SERVICE, INC., Route 1, Box 90–A, Highland, WI 53543. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *fertilizer, fertilizer ingredients, and such commodities* as are dealt in or used by farm supply stores, between points in IL, IA, MN, and WI.

MC 156690, filed April 26, 1982. Applicant: PIEDMONT, INC., 2706 Bartol Ave., Baltimore, MD 21209. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. Transporting *lumber and wood products,* between Baltimore, MD, and points in York County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157230, filed April 23, 1982. Applicant: NERCON TRANSPORT, INC., 3972 Fond du Lac Road, Oshkosh, WI 54901. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting (1) *metal products,* between points in Chicago, IL, on the one hand, and, on the other, points in Fond du Lac, Outagamie, and Winnebago Counties, WI, and (2) *machinery and metal products,* between points in Winnebago and Oconto Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157280 (Sub-1), filed April 23, 1982. Applicant: DATIM, INC., 925 East Broadway, Madison, WI 53716. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719, (608) 273–1003. Transporting *food and related products,* between those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 158621 (Sub-1), filed April 12, 1982. Applicant: BACHMAN TRANSPORT CORPORATION, 50 N. 4th St., P.O. Box 896, Reading, PA 19603. Representative: James F. Rehr, (same address as applicant) (215) 320–7878. Transporting (1) *food and related products,* between those points in the U.S. in and east of MN, IA, MO, AR, and LA, and (2) *such commodities* as are dealt in or used by food business houses, between the facilities used by Wetterau Incorporated, at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159220 (Sub-2), filed April 26, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara St., Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th St., N.W., Suite 800, Washington, DC 20036, (404) 577–5100. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Wegman Food Markets, Inc., of Rochester, NY.

MC 160290, filed April 26, 1982. Applicant: GERARD C. PETERS AND JOHN G. PETERS, d.b.a. PETERS BROS. TRUCKING, 4948 North Oakley Avenue, Chicago, IL 60625. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603, (312) 236–0548. Transporting (1) *machinery,* between points in the U.S., under continuing contract(s) with Italtractor America Inc., of Addison, IL; and (2) *such commodities* as dealt in or used in the manufacture, distribution and installation of cable television, between points in the U.S., under continuing contact(s) with Cable TV Supply Co., of Addison, IL.

MC 161641, filed April 23, 1982. Applicant: R AND P TRUCKING, INC., P.O. Box 1678, Covington, GA 30209. Representative: Virgil H. Smith, 74 Highway N. Box 245, Tyrone, GA 30290, (404) 969–1980. Transporting *plastic articles,* between the facilities used by Mobil Chemical Company in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161670, filed April 26, 1982. Applicant: DORIS J. PEAK d.b.a. BLUE GOOSE CHARTER LEASING, 1004 E. Orangefair Lane, Anaheim, CA 92801. Representative: Donald R. Hedrick, POB 4334, Santa Ana, CA 92702, (714)–677–8107. Transporting *passengers and their baggage* in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Los Angeles and Orange Counties, CA, and extending to points in AZ, NV and UT.

MC 161680, filed April 26, 1982. Applicant: J. L. SHACKELFORD, 852 Holcombe Avenue, Mobile, AL 36606. Representative: J. L. Shackelford, (Same address as applicant), (205) 473–9453. As a broker at Mobile, AL, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, between points in Mobile and Baldwin Counties, AL, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 161690, filed April 26, 1982. Applicant: TIMBER PRODUCTS SALES CO., OREGON LTD. P.O.Box 269, Springfield, OR 97501. Representative: Kerry D. Montgomery, 400 Pacific Bldg., 520 S. W. Yamhill St., Portland, OR 97204, (503)–228–5275. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk, between points in CA, CO, ID, MT, NV, OR, TX, WA, WY and UT.

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Decided: April 29, 1982.
By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 70267 (Sub-23), filed April 23, 1982. Applicant: ECKERT TRUCKING, INC., 1090 E. Springettsbury Ave., York, PA 17403. Representative: David Zimmerman, (same address as applicant), (717) 843–0995. Transporting (1) *scrap metals*, (2) *metal products*, and (3) *machinery*, between points in DE, FL, GA, IL, IN, MD, MI, NJ, NY, NC, OH, PA, SC, VA, WV, and DC.

MC 124027 (Sub-19), filed April 26, 1982. Applicant: MIDWEST BULK, INC., 901 Lyndale Ave., Neenah, WI 54956. Representative: Frank M. Coyne, 25 W. Main St., Madison, WI 53703. (608) 255–1388. Transporting *coke*, between points in Winnebago County, WI, on the one hand and, on the other, points in IL, IA, MN, and those in the Upper Peninsula of MI.

MC 135827 (Sub-6), filed April 23, 1982. Applicant: PANTIER, INC., 1501 2nd St., Perry, IA 50220. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309 (515) 244–2329. Transporting *chemicals*, between points in Webster County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136247 (Sub-21), filed April 23, 1982. Applicant: WRIGHT TRUCKING, INC., P.O. Box 346, 303-18th St., S.W., Jamestown, ND 58401. Representative: Richard P. Anderson, P.O. Box 2561, Fargo, ND 58108, (701) 235–3300. Transporting *food and related products*, between points in Columbia County, WI and points in ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139857 (Sub-4), filed April 26, 1982. Applicant: T. W. TRANSPORT, INC., P.O. Box 3347, Spokane, WA. Representative: James E. Wallingford, P.O. Box 2647, Spokane, WA 99220, (509) 328–1252. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 146807 (Sub-36), filed March 29, 1982, previously noticed in the FR issue of April 20, 1982, and republished herein. Applicant: S-N-W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F. V. Pietrowski, Scranton Life Bldg., Suite 430, Scranton, PA 18503 (717) 346–5761. Transporting *chemicals and related products*, between points in CA, NV, NY, PA, OR, WA, MN, TX, IL, IN, MO, KS, GA, TN, MI and LA. NOTE: The purpose of this republication is to reflect the full scope of the authority sought.

MC 146597 (Sub-1), filed April 23, 1982. Applicant: NORRIS SUPPLY COMPANY, INC., Box 2006, Sparks, NV 89431. Representative: Mike Pavlakis, Box 646, Carson City, NV 89702 (702) 882–0202. Transporting *petroleum products, crude petroleum, natural gas or gasoline, and coal products*, between Lincoln and Carson City, and points in Humboldt, Elko, Pershing, Churchill, Lander, Eureka, White Pine, Storey, Lyon, Douglas, Mineral, Esmeralda, and Nye Counties, NV, San Francisco, San Mateo, Alameda, Contra Costa, Solano, Napa, Sonoma, Marin, Yolo, Sacramento, Sutter, Yuba, Colusa, Lake, Mendocino, Glenn, Butte, Tehama, Shasta, Trinity, Humboldt, Del Norte, Siskiyou, San Joaquin, Amador, Calaveras, Tuolumne, Mariposa, Madera, Fresno, Tulare, Kings, Monterey, San Benito, Merced, Stanislaus, Santa Clara, Santa Cruz, and points in Alpine, Mono and Inyo Counties west of U.S. Hwy 395, east of U.S. Hwy 6 and south of Bishop, CA, and Klamath County, OR.

MC 155487, filed April 22, 1982. Applicant: BUR–COLD EXPRESS, INC., P.O. Box 3192, Brownsville, TX 78520. Representative: Kenneth R. Hoffman, 1600 W. 38th St., Suite 410, Austin, TX 78731 (512) 451–7409. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IN, IA, LA, MN, OK, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK, HI, CO, ID, MT, NE, NV, ND, OR, SD, UT, WA, and WY).

MC 155637, filed April 12, 1982. Applicant: DAVID STEIN d.b.a. DISTRIBUTION SERVICES, INC., 3663 Route 60 East Barboursville, WV 25504. Representative: Homer Hanna 1510 Kanawha Blvd. East, Charleston, WV 25311 (304) 342–2137. Transporting *cleaning compounds, prepared foods, food supplements, and personal care products*, between Pittsburgh, PA, Chicago, IL, Atlanta, GA, and points in Middlesex County, NJ, on the one hand, and, on the other, points in WV, OH, KY, PA, VA, NC, SC, GA, AL, TN, MS, IN, and FL, under continuing contract(s) with Shaklee Corporation, of San Francisco, CA.

MC 158617, filed April 23, 1982. Applicant: TENAJA TRANSPORT, INC., 2111 Clark Lane, Redondo Beach, CA 90278. Representative: William A. Phelps, Jr. (same address as applicant) (213) 633–0494. Transporting (1) *forest products*, (2) *clay, concrete, glass and stone products*, (3) *commodities* which because of their size or weight require the use of special handling or equipment, (4) *building materials*, (5) *construction equipment*, (6) *rubber and plastic products*, (7) *lumber and wood products, (7) furniture and fixtures*, (8) *machinery*, (9) *metal products and electrical equipment*, between points in the U.S., under continuing contract(s) with Pacific Frames, Inc., of Los Angeles, CA; Standun, Inc., of Compton, CA; C.G.I. Systems, of Paramount, CA; Willoughby-Norris Construction Co., of Hermosa Beach, CA, and Dick Cepek, Inc., of South Gate, CA.

MC 160657, filed April 20, 1982. Applicant: A AND B TRUCKING, INC., Highway 17A North P.O. Box 582, Summerville, SC 29483. Representative: Joseph M. Epting, P.O. Box 11414, Columbia, SC 29211 (803) 799–9427. Transporting *wrecked and disabled vehicles and scrap metal*, between points in Richmond County, GA and points in Charleston and Georgetown Counties, SC, under continuing contract(s) with Automotive Recycling Company, a division of Addlestone International Corporation, of Augusta, GA.

MC 160847, filed April 20, 1982. Applicant: SCOTT CARTAGE CO., INC., P.O. Box 716, Midlothian, IL 60445. Representative: Richard A. Kerwin, 180 North LaSalle St., Chicago, IL 60601, (312) 332–5106. Transportation *plastic products*, between points in Cook County, IL, on the one hand, and, on the other, points in IN, KS, MI, MN, MO, MD, OH, PA, TX, and WI.

MC 161597, filed April 20, 1982. Applicant: SARAH LEE RICHARDSON, 1300 Warwick Dr., P.O. Box 325, Marion, SC 29571. Representative: William H. Seals, P.O. Box 1041, Marion, SC 29751, (803) 423–5122. To operate as a *broker*, at Marion, SC, in arranging for the transportation of *passengers and their baggage*, between points in SC, on the one hand, and, on the other, points in the U.S.

MC 161607, filed April 20, 1982. Applicant: J. B. SAWYER TRUCKING, INC., 2205 Shannon Drive, Valparaiso, IN 46383. Representative: John B. Sawyer (same address as applicant)

(219) 462–4779. Transportating *lumber and wood products,* between points in CA, ID, OR, and WA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161647, filed April 23, 1982. Applicant: CORE, LTD., 336 State St., North Haven, CT 06473. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *beverages and containers,* between points in Hartford County, CT, on the one hand, and, on the other, points in MA, NH, NJ, PA, and RI, under continuing contract(s) with Pepsi Cola Bottling Co. of Hartford/Springfield, Inc. of Windsor, CT.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12438 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 78]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously notice in the **Federal Register.**

An original and one copy of petitions for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleadings shall address specifically the issue(s) indicated as the purpose for republication.

MC 107151 (Sub-30), (republications), filed June 19, 1981 published in **Federal Register,** and republished this issue. Applicant: H. F. JOHNSON, INC., P.O. Box 1435, Billings, MT 59103. Representative: Donald L. Sand (same address as applicant). The Commission, by decisions of Review Board 2, decided November 16, 1981 served December 2, 1981 and division 2, decided March 4, 1982 served March 10, 1982, found that the present and future public convenience and necessity require operation by applicant as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products,* between points in Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah, Idaho, and Washington. Condition: To the extent that the certificate in this proceeding authorizes the transportation of liquefied petroleum gas, it will expire 5 years from the date of issuance. Applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect the broader scope of authority which was granted.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc 82-12441 Filed 5-6-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 253]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: April 30, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 F.R. 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 217 (Sub-28)X, filed March 19, 1982. Applicant: POINT TRANSFER, INC., P.O. Box 1441 Station C, Canton, OH 44708. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Lead and Subs 3, 4, 5, 6, 11 and 21 (1) remove all exceptions other than classes A and B explosives, household goods and commodities in bulk from general commodities authority, lead and Subs 3, 5, and 6; (2)(a) allow service at all intermediate points on regular routes, (b) broaden off-route points from Bethany, WV to Brooke County, Youngstown, OH to Mahoning and Trumbull Counties; Elizabeth, Glassport, McKeesport, West Newton, Mars, Callery, Evans City and Ellwood City, PA to Allegheny, Westmoreland, Butler, and Lawrence Counties, PA and Sodus and Palmyra, NY to Wayne County, NY and (c) remove restriction to service at named NY off-route points for pick-up only, lead; (3) off-route point service at plantsite (Darrowville, OH) to Summit County, Sub 3, (4) New Galilee, PA and points within 5 miles thereof to Beaver and Lawrence Counties, PA, Sub 4; (5) remove restriction limiting traffic moving from, to, or through New Galilee, PA and points within five miles thereof, Sub 6; (6) facilities at Burns Habor, Porter County, IN to Porter County, Sub 5; (7) remove originating at/destined to restriction, Sub 5, (8) broaden automobile bodies, wrecked or scrapped to "waste or scrap metals not identified by industry producing", Sub 11; precast building components and prefabricated building modules to "buildings and building materials," Sub 21F, part (1); (9) facilities at Summit County, OH to Summit County, Sub 21; (10) to radial authority, lead and Sub 11, (11) household goods and general commodities (except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading to "household goods and general commodities (except classes A and B explosives and commodities in bulk), Sub 4.

MC 35320 (Sub-666)X, filed March 29, 1982. Applicant: T.I.M.E.-DC, INC., 2506 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: John T. Coon (same address as applicant). Lead certificate (1) (a) remove: except those of unusual value, commodities in bulk, those requiring special equipment, those

injurious or contaminating to other lading, articles requiring other than van-type equipment, livestock, cotton, cigaretts, intoxicating beverages, sand, gravel, coal and automobiles, from general commodities (with exceptions); (b) broaden: perishable food products requiring refrigeration in transit, dairy products, fruits, fresh and dried, vegetables, milk, packing-house products and supplies, to "food and related products"; cosmetics, toilet preparations, and beauty supplies, to "chemicals and related products"; grains and seeds, in bulk, during a specific season each year, and natural stone and volcanic cinders, in bulk, to "commodities in bulk"; wool and mohair, water well equipment, casings, generators, motors and transformers, pole line construction materials and machinery, civilian conservation corporation supplies and construction equipment and machinery, materials, supplies and equipment incidental to or used in the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum to "textile mill products, machinery, building materials and mercer commodities"; lard substitutes, glass, pecans and petroleum products to "clay, concrete, glass or stone products, food and related products, and petroleum, natural gas and their products"; (2) (a) authorize service on all intermediate points, regular routes; (b) change one-way to radial authority, irregular routes; (3) expand: (a) off-route points within five miles of specified routes between Hill, NM, and the NM–TX State line, to points in El Paso County, TX and Dona Ana County, NM (regular route #34); (b) points in AZ within 25 miles of Routes Number 9 to 13 inclusive, to points in Cochise, Gila, Graham, Greenlee, Maricopa, Pima, Santa Cruz, Yavapai and Yuma Counties, AZ; (c) points in that part of NM within three miles of U.S. Highway 70 . . ., U.S. Highway 80 and New Mexico Highway 478 . . ., to Hidalgo, Luna, Dona Ana Counties, NM; (d) points in CA on and within ten miles of U.S. Highway 89 and points within 10 miles of U.S. Highway 70 between Indio and Los Angeles to Los Angeles, Orange, Riverside and San Bernardino Counties, CA; (e) points within 125 miles of Oklahoma City, OK to all points in Oklahoma except those in Ottawa, Texas and Cimafron County, OK; (4) remove various restrictions such as: the transportation of arbon black only; restricted to pick-up and delivery of commodities other than household goods as defined by the Commission; restricted to traffic moving from El Paso, TX, and restricted to delivery of empty milk containers; originating at and/or destined to restrictions.

MC 87928 (Sub-56)X, filed April 12, 1982. Applicant: WEBBER TRANSPORT CO., 885 U.S. Route 1, Avenel, NJ 07001. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Sub-Nos. 53X and 55: (1) replace Naperville with DuPage County, IL in Sub 53X (part 64); (2) broaden commodity description from automobiles, trucks, and chassis, new, used, unfinished and/or wrecked to "motor vehicle" in Sub 55; (3) remove the restrictions limiting traffic to that in initial" and "in secondary" movements, "in truckaway and driveway service" and to that having an immediately prior movement by rail in Sub 55; and (4) change one-way to radial authority in Sub 55.

MC 121589 (Sub-12)X, filed March 30, 1982. Applicant: N & W TRANSFER, INC., P.O. Box 188, Nehawka, NE 68413. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. Subs 2, 3, 5F, 6F, and 7. Broaden: general commodities with exceptions, to "general commodities (except classes A and B explosives and household goods as defined by the Commission)" (Sub 2); to radial authority (Subs 3, 5F, and 6F); drainage systems and irrigation equipment, and grain bins to "metal products and machinery" (Sub 3); iron and steel articles to "metal products" (Subs 5F and 7); grain and grain products, in bags, to "food and related products" (Sub 6F); off-route points (regular route) of Avoca and Nehawka, NE to Cass and Otoe Counties, NE; Manley, NE to Cass County, NE; Cook, NE to Johnson County, NE; Otoe, Talmage, Palmyra, and Unadilla, NE to Otoe County, NE; Springfield, NE to Sarpy County, NE; and Ohama, NE (irregular route) to Washington, Douglas, Sarpy and Cass Counties, NE, and Pottawattamie and Mills Counties, IA and points in Butler, Seward, Saline Counties, NE east of NE Hwy 15 to the entire county, (Sub 2); Carthage, MO to Jasper County, MO; and Kansas City, MO to Jackson, Cass, Clay and Platte Counties, MO and Wyandotte, Johnson and Leavenworth Counties, KS (Sub 3); Omaha, NE to same counties as Sub 2 and Fergus Falls, MN to Otter Tail County, MN (Sub 6F); remove "(except Nebraska City)" from points in Otoe County, NE (Sub 3).

MC 136699 (Sub-2)X, filed April 22, 1982. Applicant: ROBERT ASCHENBRENNER, d.b.a. BOB'S TRUCKING, P.O. Box 37, Surrey, ND 58785. Representative: Harris P. Kenner, Box 970, 615 South Broadway, Minot, ND 58701. Sub 1 permit, broaden (1) to "such commodities as are used in the manufacture and distribution of non-alcoholic beverages," from non-alcoholic beverages in cans, glass beverage containers, and sugar in bags; and (2) to "between points in the U.S.," under continuing contracts(s) with the named shipper.

MC 144617 (Sub-1)X, filed April 20, 1982. Applicant: AUSTIN TRUCKING COMPANY, INC., 14 West Morgan Street, Austin, IN 47102. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Lead permit, broaden (1) to "food and related products, and equipment, materials and supplies used in the manufacture of food and related products," from (a) canned goods (except frozen) and (b) materials, equipment and supplies used in the manufacture and distribution of canned goods (except commodities in bulk); and (2) to "between points in the U.S.," under continuing contract(s) with the named shipper.

MC 147576 (Sub-1)X, filed April 26, 1982. Applicant: AWC TRANSPORTATION INC., 2113 West 30th St., Jacksonville, FL 32209. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval St., Jacksonville, FL 32202. Lead certificate: broaden to county-wide authority: facilities—Jacksonville, to Duval, Nassau, Baker, Bradford, and Clay Counties, FL.

MC 148649 (Sub-1)X, filed April 16, 1982. Applicant: H & W INC., 2411 La Fayette Parkway, Opelika, AL 36801. Representative: William P. Jackson, P.O. Box 1240, Arlington, VA 22210. Lead permit: broaden (1) lumber to "lumber and wood products" (2) to between points in the U.S. (except AK and HI) under continuing contract(s) with a named shipper.

[FR Doc 82-12462 Filed 5-6-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29696]

Dakota Rail, Inc.; Exemption; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption—Correction.

SUMMARY: This document is to correct the notice in this proceeding previously published on April 29, 1982, at 47 FR 18441. Under 49 U.S.C. 10505, the Interstate Commerce Commission exempted the operation by Dakota Rail,

Inc., of certain track in South Dakota from prior approval under 49 U.S.C. 10001.

The effective date given for the exemption was incorrectly published as May 28, 1982, with petitions to reopen to be filed by May 19, 1982. The correct date of effectiveness for the exemption is April 29, 1982, with petitions to reopen to be filed by May 19, 1982.

DATES: This notice is corrected to read: Exemption effective on April 29, 1982. Petitions to reopen must be filed by May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Agatha L. Mergenovich,

Secretary.

[FR Doc 82-12670 Filed 5-6-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 346 (Sub-7)]

Railroad Exemption; Export Coal

AGENCY: Interstate Commerce Commission.

ACTION: Notice of oral argument on proposed exemption.

SUMMARY: This proceeding involves the possible full or partial exemption of export coal from regulation. Because of its importance, oral argument will be heard on June 16, 1982. The filing of supplemental written statements on certain other issues is also being permitted.

DATES: The oral argument will be heard at 9:30 a.m. on June 16, 1982. Notification, by letter or telephone, of participation in the oral argument must be received by June 4, 1982. Supplemental statements must be received by June 4, 1982.

ADDRESS: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th Street and Constitution Avenue, N.W., Washington, D.C.

If you desire to participate, please inform: James H. Bayne, Assistant Secretary, Interstate Commerce Commission, Room 2215, 12th St. & Constitution Ave., N.W., Washington, D.C. 20423.

Send an original and, if possible, 15 copies of supplemental written statements to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

On Oral Argument: James H. Bayne, (202) 275-7429.

On Supplemental Statements: Principal Attorney, Section of Rates, (202) 275-7277.

SUPPLEMENTARY INFORMATION: This proceeding involves the possible full or partial exemption of export coal from regulation. Because of its importance, oral argument will be heard on June 16, 1982. Participation is not limited to parties who filed written comments earlier in response to the notice of proposed exemption, published September 4, 1981 (46 FR 44529).

Parties wishing to appear at oral argument are requested to focus on the topics in the Appendix and to inform the Secretary's Office in advance of the specific topics they will address. We contemplate allowing petitioners and opponents each a total of 1½ hours for their respective presentations.

When an organization or individual notifies us that it wishes to make an oral presentation, it should also indicate a telephone number, whether the appearance is in support of or in opposition to the exemption, and the amount of time sought. Those with similar interests should designate a single spokesman to advance their views. A schedule of appearances and presentation times will be made available before the argument.

We especially encourage the participation of small entities and have directed our Office of Communications to ensure sufficiently wide publicity through the trade associations and the trade press to bring this matter to their attention.

Additionally, we are concerned that there may be gaps in the record. For this reason interested parties may supplement the record by June 4, 1982 on the following:

1. To what extent are railroads tied to pre-Staggers Act contracts for export coal? In addition, what percentage of export coal is delivered to foreign customers who are tied to long-term purchasing contracts with particular mines, especially those with only one transportation source?

2. Is the United States the dominant supplier of metallurgical ("met") coal?

a. What are the shares, by country, of world met coal exports, production, and reserves?

b. What is the likelihood of innovation rendering met coal less crucial to the coking process?

c. Can foreign coal be substituted for American coal in the coking process?

3. Is there significant competition in the world market for steam coal?

a. Is there one world market, or is world trade divided into submarkets, such as Eastern Europe and the Pacific Rim countries?

b. If there are several distinct submarkets, do the same countries supply each market? If not, are there any trade barriers which preclude wider competition, and if so, how?

c. What premium will foreign buyers pay for the perceived reliability of U.S. coal?

d. Are there capacity constraints in other countries? What is the probable degree of competition?

e. Do the Norfolk and Western Railroad and the CSX maintain routing restrictions that effectively limit shippers on either line to the ports served by that line?

(49 U.S.C. 10321, 10505, and 5 U.S.C. 553)

Decided: May 3, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

Appendix—Topics Which May Be Addressed at Oral Hearing

1. *Competition:* For example, is the world market for coal and other energy sources sufficiently competitive to prevent railroads from significantly increasing their coal rates? Are there effective intermodal or intramodal transportation alternatives available to the shippers of export coal which would tend to prevent railroads from significantly increasing rates?

2. *Effect on Market for Dometic Coal:* For example, to what extent, if any, would the deregulation of export coal affect the price and consumption of domestic coal?

3. *Effect on Volume of Export Movement:* For example, if the exemption is granted, would rail rates for export coal tend to increase? If so, would higher coal rates affect the volume of coal exports?

The Department of Justice has taken that position that abuse of market power does not occur unless coal output is reduced. Please comment on this. Are there other definitions of abuse of market power which we should consider?

4. *Effect on Individual Mines:* For example, would the exemption affect high cost or small mines? Can mines divert coal to the domestic market? If the exemption is granted, should the Commission continue to regulate in the areas of discrimination, car service, war powers, or "commodities clause" sections of the Act?

[FR Doc. 82-12677 Filed 5-6-82; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Delaware

This notice announces the beginning of a new Extended Benefit Period in the State of Delaware, effective on April 18, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State unemployment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minuimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on April 3, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on April 18, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on May 4, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-12830 Filed 5-6-82; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-75; Exemption Application No. D-2717]

Exemption From the Prohibitions for Certain Transactions Involving the Adler, Pollock & Sheehan, Inc. Money Purchase Pension Plan Located in Providence, Rhode Island

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt the proposed loan of money by the Adler, Pollock & Sheehan, Inc. Money Purchase Pension Plan (the Plan) to Adler, Pollock & Sheehan, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 5, 1982, notice was published in the **Federal Register** (47 FR 9617) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspecion at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements for notice to interested persons as stated in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act,

which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan by the Plan to the Employer of $110,000, provided the terms and conditions of the loan are at least as favorable to the Plan as those obtainable in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12523 Filed 5-6-82; 8:45 am]
BILLING CODE 4510-29-M

[Application Nos. D-3210 and D-3211]

Proposed Exemption for Certain Transactions Involving the Bell System Trust; Located in New York, New York

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The lease (the Lease) of a portion of an office building (the Building) by the Bell System Trust (the Trust) to Citicorp Acceptance Corporation (CAC), a wholly-owned subsidiary of Citicorp which is a party in interest with respect to the Trust; and (2) the future renewal or extension of the Lease. The proposed exemption, if granted, would affect Citicorp, CAC, the Trust and its participants and beneficiaries, and other parties involved in the proposed transactions.

DATES: Written comments must be received by the Department on or before June 17, 1982.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D-3210 and D-3211. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of two applications for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in applications filed on behalf of the Trust by First National Bank, Dallas (FNB), A Trust investment manager, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicant.

1. The Trust is a group trust in which the assets of the Bell System Pension Plan Trust (Pension Plan) and the Bell System Management Pension Plan Trust (Management Plan, collectively, the Plans) have been pooled for investment. As of December 31, 1980, the Plans covered approximately 1.1 million participants and had total assets of approximately $33.5 billion. FNB is one of more than 100 independent investment managers and trustees that have been retained by American Telephone & Telegraph Company (AT&T), the Trust sponsor, to manage the assets of the Trust. As of December 31, 1981, FNB was responsible for the management of approximately $780 million in Trust assets, $44 million of which is invested in real estate. FNB will make all determinations on the Plans' behalf regarding the transactions described herein.

2. Pursuant to a lease which is dated September 15, 1980, Service Corporation of Tulsa (the Seller), which is unrelated to any of the parties involved in the transactions discussed herein, leased approximately 2,746 square feet of space in the Building (about 3.3% of the total) to CAC. The lease was for an initial term of five years for a rental of $2,288.33 per month. It is represented that the terms and conditions of the lease were the same as then used by the Seller for leasing space in the Building to all other tenants, and the rental was comparable to that obtained from other tenants in the Building for similar space.

3. By contract of sale (the Contract) dated December 17, 1981, FNB, acting as nominee on behalf of RepublicBank Dallas, N.A. (RBD), a trustee of the Trust, contracted with the Seller to purchase the Building for the Trust. The Building is known as Lot Three, Block One, MidAmerica Office Park, located in Tulsa, Oklahoma. The purchase price is $7.7 million plus an additional amount not to exceed $50,000 which is incentive compensation relating to the Seller's subsequent management of the Building. The Contract provides that if it is not closed by April 30, 1982, the Trust may cancel the Contract. If the Contract is not so cancelled, the Trust will have to pay an additional $20,000 at any closing so delayed. Upon the closing of the Contract, the Trust will replace the Seller as the lessor under the pre-sale lease and the Lease will become effective.

4. Citibank, N.A., another wholly-owned subsidiary of Citicorp, is a trustee of the Trust. Citibank is not a trustee with regard to any of the assets subject to FNB's discretionary authority. While CAC is not a party in interest with respect to the Trust and the Plans, its parent, Citicorp, is a party in interest under section 3(14)(H) of the Act and the applicant believes that the Lease with CAC might constitute an indirect lease or benefit to Citicorp and therefore a prohibited transaction under section 406(a).

5. It is possible that the Lease with CAC may be renewed or extended on the expiration of the initial term. FNB requests an exemption to cover the possible renewal and extension of the Lease subject to the conditions that:

(a) Any such renewal or extension will be at rental rates no less favorable to the Trust than current rental rates then charged to unrelated parties leasing space in the Building, which shall be not less than the current rental rate charged in Tulsa, Oklahoma for similar space in buildings of comparable size, quality, facilities and location, and

(b) Any such renewal or extension shall contain the same terms and conditions and be in the same form as approved by RBD for current use by the then manager of the Building in leasing space to unrelated parties.

6. In summary, the applicant believes that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) FNB, an independent investment manager, has determined that the proposed transactions are protective of and in the best interests of the Plans' participants and beneficiaries;

(b) The terms and conditions of the Lease were negotiated at arm's length; and

(c) Any renewal or extension of the Lease would be negotiated on an arm's length basis by FNB on behalf of the Trust.

Notice to Interested Persons

Notice of the proposed exemption will be posted on all bulletin boards normally used for employee notices of all companies whose employees are covered by the Plans within ten business days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will contain a copy of the notice of pendency published in the **Federal Register** and a statement advising interested persons of their rights to comment on the exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited tansaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to: (1) The Lease by the Trust to CAC; and (2) the renewal or extension of the Lease, provided that the terms and conditions of the Lease and any extension or renewal thereof are and will remain at least as favorable to the Trust as those it could obtain from an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–12517 Filed 5–6–82; 8:45 am]
BILLING CODE 4510–29–M

[Application No. D–3193]

Proposed Exemption for Certain Transactions Involving the Earth Consultants, Inc. Profit Sharing Plan Located in Bellevue, Washington

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a parcel of real property by the Earth Consultants, Inc. Profit Sharing Plan (the Plan) to Robert and Eloise Levinson (the Levinsons), parties in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Levinsons, and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 17, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3193. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a qualified profit sharing plan maintained by Earth Consultants, Inc., a Washington corporation (the Employer). The Plan was established effective August 1, 1976, and currently has 9 participants. The Plan's net assets were valued at $155,383 as of July 31, 1981.

2. Robert Levinson is currently President of the Employer and owns 60% of the outstanding stock issued by that corporation. Mr. Levinson is a Plan participant and a member of the Plan's Administrative Committee. Eloise Levinson, Mr. Levinson's wife, is the Plan Trustee.

3. On May 1, 1979, the Plan purchased for investment purposes vacant property located on the east side of 136th Place N.E., in the Northeasterly portion of the city of Bellevue, Washington (the Property). The Property was purchased on a real estate contract (the Contract) from an unrelated third party for a price of $130,000. The Plan paid $20,000 down and obligated itself to make annual principal payments of $10,000 plus interest of 10% per annum every May 1 for 11 years beginning May 1, 1980. The Plan has made the following payments in connection with the Property: downpayment $20,000, principal payments $20,000, interest $21,000, utilities, water and sewer, $328.09, real property taxes $2,588.28 and legal fees $160 (total payments $84,076.37). An additional $10,000 principal payment and $9,000 interest payment is due on May 1, 1982. The Property currently produces no income. The Property is adjacent to a parcel of realty owned by the Levinsons.

4. The applicant proposes that the Levinsons purchase the Property from the Plan for a total purchase price of $160,000.[1] The terms of sale will call for a cash payment and the assumption of the Plan's remaining obligations under the Contract by the Levinsons. In no event will the cash payment received by the Plan be less than the total cash payments made by the Plan in connection with the Property.

5. An appraisal of the Property prepared by Leslie W. Eastman, Jr., (Mr. Eastman) M.A.I., dated January 22, 1982, concludes that the present value of the Property is $160,000. Mr. Eastman stated that the value of the Property is independent of the value of adjacent property owned by the Levinsons and that the adjacent parcel, which contains an office building, has already been improved to its highest and best use.

6. The applicant represents that the Property is currently unproductive and constitutes a high percentage of the Plan's assets. Sale of the Property, as proposed, would reduce the cash flow demand on the Plan and consequently, Plan liquidity would be increased. The applicant represents that the current real estate market conditions in the Bellevue, Washington area dictate that a sale at this time would be prudent and in the best interests of the Plan and its participants and beneficiaries. There would be no sales commission paid in connection with the sale. In addition, the Plan will not incur additional expenses incident to the sale of the Property.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (a) the sale will be a one time transaction for cash; (b) the sales price of the Property was determined pursuant to an appraisal; (c) the sale will enable the Plan to divest itself of an asset producing no income; (d) the Plan will not have any real estate commissions or fees in connection with the sale; (e) the sale will allow the Plan to improve its liquidity; and (f) the Trustee has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

On or before May 17, 1982, notice will be given to all Plan participants and beneficiaries by mail. Notice will also be posted at the Employer's office on a bulletin board regularly reviewed by all employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified

[1] The Levinsons propose to construct an office building on the Property.

person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of the Property by the Plan to the Levinsons provided that the terms and conditions of sale are at least as favorable to the Plan as those obtainable in an arms length transaction with an unrelated party at the time of consummation of the transaction, and further provided that the cash payment received by the Plan is no less than the Plan's cash expenditures in connection with the Property.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12818 Filed 5-6-82; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-77; Exemption Application No. D-2919]

Exemption from the Prohibitions for Certain Transactions Involving Gearhart Employees' Trust Plan Located in Fort Worth, Texas

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit the proposed sale of certain real property (the Property) by the Gearhart Employees' Trust Plan (the Plan) to Gearhart Industries, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5511) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of

section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 495(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of the Property by the Plan to the Employer for $925,000 provided that this amount is at least the fair market value of the Property at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consumated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12821 Filed 5-6-82; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82–79; Exemption Application No. D–3074]

Exemption From the Prohibitions for Certain Transactions Involving the Goel Medical Corporation Defined Contribution Pension Plan Located in Merriville, Indiana

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt the sale of 20 limited partnership interests (the Partnership Interests) by the Goel Medical Corporation Defined Contribution Pension Plan (the Plan) to Arun Goel, M.D. (Dr. Goel), a disqualified person with respect to the Plan. Since Dr. Goel and his wife Sarla Goel, M.D., are the only shareholders of the employer maintaining the Plan and the only participants in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act), pursuant to 29 CFR 2510.3(3). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20216. (202) 523–7462. (This in not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 12, 1982, notice was published in the **Federal Register** (47 FR 10928) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, for the transaction described in the application filed on behalf of Dr. Goel and the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any praohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of 20 Partnership Interests by the Plan to Dr. Goel, provided that the amount received by the Plan is not less than the fair market value of the Partnership Interests at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12519 Filed 5-6-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-76; Exemption Application No. D-2734]

Exemption From the Prohibitions for Certain Transactions Involving Internal Medicine Group of Cape Girardeau, Inc. Profit Sharing Plan Located in Cape Girardeau, Missouri

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale by the Internal Medicine Group of Cape Girardeau, Inc. Profit Sharing Plan (the Plan) to Internal Medicine Real Estate Company (the Partnership), a partnership composed of shareholders, officers and directors of Internal Medicine of Cape Girardeau, Inc., the Plan sponsor, of certain bonds (the Bonds) issued by Cape Girardeau Doctors Park.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 18, 1981, notice was published in the **Federal Register** (46 FR 61755) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the requirements set forth in the proposed exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of the Bonds by the Plan to the Partnership for a cash purchase price of $25,300, provided that this amount is not less than the Bonds' fair market value on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3d day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12522 Filed 5-6-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3021]

Proposed Exemption for Certain Transactions Involving the JMB Institutional Realty Corp., Located in Chicago, Illinois

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the

Code). The proposed exemption would allow collective investment funds (together, the Funds) that are managed by the JMB Institutional Realty Corporation (JMB), in which employee benefit plans participate, to engage in certain transactions provided specified conditions are met. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, employers of employees covered under such plans, the Funds, and other persons engaging in the described transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 21, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective June 29, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3021. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the JMB Group Trust (the Group Trust), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. JMB acts as manager and investment adviser for the Group Trust. JMB was formed in 1979 for the purpose of managing and operating real estate investments owned by various real estate funds. It is a wholly-owned subsidiary of JMB Realty Corporation which currently has approximately 600 employees. Since its founding in 1968, JMB Realty Corporation has made over $2 billion of real estate investments and has purchased for its own account or those of its clients over 200 properties, principally consisting of office buildings, shopping centers, and other commercial properties.

2. The Group Trust was created on August 1, 1979, as a group trust described in Rev. Rul. 56–267, 1956–1 C.B. 206 (subsequently superseded, without substantial change, by Rev. Rul. 81–100, 1981–13 I.R.B. 32), to provide pension and profit-sharing plans, the trusts of which are qualified under section 401(a) of the Code and exempt from federal income taxation under Code section 501(a), with a medium for pooling a portion of their funds for investment in real estate. The trustees of the Group Trust are Messrs. Neil G. Bluhm, John S. Lillard, Judd D. Malkin, Burton E. Glazov, and Jerome J. Claeys, III, all of whom are officers or directors of JMB or its parent corporation. The trustees are not compensated by the Group Trust.

The Group Trust holds title to real estate, receives income therefrom, and turns over the entire amount of such income, less expenses, to the participating pension and profit-sharing plans. It is anticipated that real estate investments will provide to participating pension and profit-sharing plans attractive returns and also assist fiduciaries in achieving the diversificaion required by the Act.

To avoid holding uninvested cash pending investment in real property or distribution to the participating pension and profit-sharing plans, the Group Trust has retained Scudder, Stevens & Clark, a registered investment adviser under the Investment Advisers Act of 1940, to invest excess cash in short-term investments including, but not limited to, corporate and governmental obligations or related repurchase agreements, certificates of deposit, bankers' acceptances, government obligations, and variable amount notes of credit-worthy borrowers typically having a stated maturity date of one year or less. Scudder, Stevens & Clark receives its normal fees for such services; JMB receives no fees with respect to assets of the Group Trust managed by Scudder, Stevens & Clark or held in cash.

A second Fund, essentially equivalent to the Group Trust, was created on January 1, 1982 (the "Group Trust II"), and it is anticipated that subsequent Funds, also similar to the Group Trust, will be organized thereafter at 12 to 18 month intervals. JMB would serve as the real estate adviser and manager for all such subsequent Funds.

3. As of the September 30, 1981, quarterly valuation date, there were 25 pension and profit-sharing plans participating in the Group Trust (the Partcipating Plans), and the gross total value of the assets of the Group Trust was $161 million. Approximately $20 million in additional subscriptions will be "called" by the trustees and contributed by the 25 Participating Plans in early 1982. Although the Group Trust is "open-end", the trustees have limited

its size by discontinuing offering additional units to new Participating Plans. Thus, the Group Trust is now considered "fully subscribed" and is in the process of investing its assets in real estate.

The Group Trust had no minimum or maximum size for its operation, and the size of subsequent group trusts will be determined principally by the amounts committed by qualified pension and profit-sharing plans. Group Trust II is closed-end, with a maximum size of $200 million, unless increased by the trustees. Although there is no strict minimum size of Group Trust II, if $100 million of subscriptions have not been received by the closing date (April 14, 1982, unless extended by the trustees), subscribing trusts may cancel their subscriptions and redeem their subscription deposits, together with any net earnings on such deposits. There was a minimum investment by each Participating Plan of $150,000 in the Group Trust, and there is a minimum investment of $150,000 in Group II.

All pension and profit-sharing plans applying to invest in the Group Trust or subsequent trusts must be approved by the trustees, but no formal requirements, other than qualification under Code section 401(a), have been imposed. The trustees and JMB, however, have advised the fiduciaries of any plan that wishes to participate that their investment in the Group Trust should not exceed 7% or 8% of the total assets of the plan, and, to the applicants' knowledge, all of the Participating Plans have less than 20% of their total assets invested in real estate.

The decision whether it is appropriate to invest in the Group Trust or in subsequent trusts is not made by JMB or the trustees of the Group Trust, for any particular plan described in Code section 401(a) (except to the extent that the trustees reserve the right to reject any application) but is left to the fiduciaries of the particular plan who are in the best position to determine whether such an investment is appropriate considering the overall investments, policies, and objectives of the particular plan desiring to invest in the Group Trust.

4. The Group Trust may be terminated at any time at the sole discretion of the trustees or by an affirmative vote of Participating Plans holding at least two-thirds of the units of the Group Trust.

Although the original Offering Memorandum had no statement regarding the term of the Group Trust, the trustees and JMB informed each prospective Participating Plan of an intent to liquidate the real estate investments of the Group Trust within 15 years and thereafter to return, on a pro-rata basis, the capital and realized earnings thereon to the Participating Plans (i.e., liquidate the Group Trust) as sales of real estate investments permit. The Group Trust's indefinite existence is intended to permit an orderly winding down of investments and to avoid "forced" sales on less than the most favorable terms for the Group Trust merely because of an artificial "deadline" for liquidation.

Rev. Rul. 56–267 (and its successor, Rev. Rul. 81–100), in accordance with which the Group Trust was formed, prohibits the interest of any Participating Plan in the Group Trust from being transferable or assignable to third parties. Fiduciaries desiring to invest plan assets in the Group Trust have been fully advised that only long-term investment must be considered. If, however, any Participating Plan wishes to dispose of its investment, it may apply to the trustees for redemption of its units in the Group Trust. JMB may sell assets of the Group Trust in order to permit a redemption of the units of a withdrawing Participating Plan, provided that JMB, in its sole discretion, determines that it is not disadvantageous to the Group Trust or the remaining Participating Plans to do so. The Group Trust may also sell additional units to new Participating Plans to raise cash to redeem units of any current Participating Plan. After receiving notification that a Participating Plan desires redemption, the Group Trust is prohibited from making any new real estate investments until the redemption is made.

In addition, upon receipt of an application for redemption from any Participating Plan, before selling any property of the Group Trust or attempting to sell units to new Participating Plans JMB will notify all existing Participating Plans of the availability of additional units which may be purchased on a pro-rata basis at the then existing unit net asset value, at which point the withdrawing Participating Plan's units will be redeemed and reissued to those Participating Plans making additional contributions. Alternatively, any remaining Participating Plan may apply its share of distributable cash flow from the Group Trust to acquire units of any Participating Plan wishing to redeem its units. In that case, the units of the withdrawing Participating Plan would be redeemed and reissued to the remaining Participating Plans as cash flow permits at the unit net asset value at the time of redemption. Thus, property of the Group Trust will be sold or new Participating Plans added only if no existing Participating Plan desires to acquire additional units.

5. The Offering Memorandum by which interests in the Group Trust were offered to qualified pension and profit-sharing plans which were potential investors describes the management, operation, investment objectives, and income tax consequences of the Group Trust, and the compensation received by JMB from the Group Trust. In addition, the Trustees have retained Peat, Marwick, Mitchell & Co., an independent certified public accounting firm (PMM), to prepare a balance sheet, profit and loss statement, and statement of change in financial position for the Group Trust as of the end of each fiscal year, which will be distributed to each Participating Plan within 90 days after the close of the fiscal year. The PMM statements will show all fees paid to JMB and all distributions and new investments made within the year.

Appraisals will be mde from time to time, but not less frequently than every two years on each property, by independent real estate appraisers, and Participating Plans will be notified each fiscal year that such appraisals are available from JMB upon request, without charge.

Furthermore, at least quarterly, the trustees will distribute to each Participating Plan a balance sheet and statement of all property purchased since the date of the last report. All records pertaining to the Group Trust are available for inspection, during reasonable business hours, by fiduciaries or other representatives of the Participating Plans, and JMB has notified each of the Participating Plans that it is always available to discuss matters pertaining to the Group Trust with any of them.

6. As required by Rev. Rul. 56–267 (and its successor, Rev. Rul. 81–100), interests in the Group Trust may only be held by employee benefit plans described in Code section 401(a). None of the individual trustees of the Group Trust, nor any of the employees, officers, directors, or shareholders of JMB or its affiliates serve as a fiduciary of any Participating Plan (except to the extent that they are fiduciaries by reason of the Participating Plan's investment in the Group Trust) or as a director or officer of any sponsor of any Participating Plan.

7. As manager and investment adviser for the Group Trust, JMB evaluates potential real estate investments for the Group Trust, periodically reviews the Group Trust's portfolio to determine if particular properties should be retained, recommends the acquisition or disposition of any real estate

investments or substantial changes in the terms of those investments to the trustees, who must approve all real estate investments on behalf of the Group Trust, and handles the execution of any purchase or sale of real estate on behalf of the trustees and the Group Trust.

In addition, JMB manages and operates the Group Trust on a day to day basis, including authorizing and supervising property maintenance and repair, rent collection, bookkeeping, and lease negotiation. Generally, JMB provides all services, including property management services, when possible, directly. In appropriate cases, JMB may retain unrelated property managers, who are reimbursed out of JMB's management fee, to assist in managing property owned by the Group Trust. Direct expenses of on-site management, however, including costs and salaries of normal on-site building personnel (including on-site supervisory and office staff), are charged to the Group Trust.

8. JMB receives a single management fee which is based in part on the value of the real estate investments of the Group Trust and in part on rents derived from each property. JMB receives no fees with respect to assets not invested in real estate. JMB receives no sales commissions, real estate brokerage fees, or mortgage fees with respect to property transactions nor any lease renewal or lease negotiation fee or commission with respect to management of the property.

9. The applicants seek relief similar to that granted to bank collective investment funds in PTE 80–51. The Group Trust has not intentionally entered into any of the subject transactions and does not intend to enter into such transactions until an exemption is granted. However, by reason of a merger of the sponsor of a Participating Plan with a lessee of a property owned by the Group Trust, a subject transaction has occurred as of June 29, 1981, and the applicants accordingly seek relief retroactive to that date.

10. The Group Trust leases real estate to tenants. Prospective tenants include employers whose plans participate in the Group Trust, persons providing services to such plans, fiduciaries of such plans, and affiliates of each. Any given lease typically accounts for a small percentage of rental income to the Group Trust, and the participation of any single tenant who may be a party in interest is proportionally small.

Nonetheless, without an exemption, it is necessary to verify that every prospective tenant of any property owned by the Group Trust is not a party in interest with respect to any Participating Plan in the Group Trust. If the requested exemption is not granted, the Group Trust may be faced with the prospect of denying leases to the best tenants available or with the prospect of failing to purchase attractive properties, either of which could result in a failure to obtain the best investment return for the Participating Plans of the Group Trust.

11. The Group Trust is annually audited by the national accounting firm of PMM, which has adapted its audit and examination procedures to the requirements of the Group Trust, including reviewing the history of ownership of property acquired by the Group Trust to ensure that JMB and its affiliates have never had a prior interest in the property, reviewing lease transactions to ensure that they are not entered into with any party related to JMB, its affiliates, or any of the Participating Plans, verifying independently all aspects of any property transaction with other parties to the transaction to ensure that the transactions have been fully reported and reflected in the records of the Group Trust, verifying the computation of JMB's fees, and generally reviewing all Group Trust operations to ensure compliance with the Act, the Group Trust Agreement, the Participation Agreements, and the Investment Management Agreement. PMM maintains its own files of parties in interest with respect to Participating Plans and of affiliates of JMB and reviwes these files periodically to ensure that they are accurate and complete.

12. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The Funds will provide Participating Plans with the best possible real estate investments and leasing opportunities, efficient and relatively inexpensive property management, and a broader selection of appropriate real estate investment vehicles; (2) each of the protections provided to Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisified for the subject transactions, except that the Funds are privately maintained; and (3) the decisions to invest in any of the Funds are made by knowledgeable fiduciaries of large employee benefit plans on the basis of a detailed offering memorandum. Furthermore, such fiduciaries are unrelated to JMB or any of its affiliates. In addition, the proposed exemption imposes limitations which are designed to prevent the potential for abuse while permitting the relief requested by the applicants.

Notice to Interested Persons

On or before May 21, 1982, the applicants will send by mail a copy of such notice to the fiduciaries of each Participating Plan in the Group Trust and the Group Trust II. The notice will also inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Fund

(a) Effective June 29, 1981, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties In Interest and the Fund: General.*

Any transaction between a party-in-interest with respect to a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party-in-interest is not JMB or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the plan, together with the interests of any other plans maintained by the same employer or employee organization in the Fund, does not exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiple Employer Plan and the Fund.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan that is a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiple employer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act), or

(B) The interest of the multiple employer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(3) *Acquisitions, Sales or Holding of Employer Securities and Employer Real Property.*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to JMB or to the employer, or any affiliate of JMB or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real preperty—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither JMB nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. JMB, its affiliates and any collective investment fund maintained by JMB or its affiliates shall be considered to be persons independent of the issuer if JMB is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which JMB or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which JMB or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective June 29, 1981, the restrictions of section 406(a)(1) (A), (B), (C), and (D) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Transactions With Persons Who Are Parties in Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Fund and a person who is a party-in-interest with respect to a Participating Plan if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund, and

(B) The person is not an affiliate of JMB.

(2) *Certain Leases and Goods*

The furnishing of goods to the Fund by a party-in-interest with respect to a

Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not JMB, any affiliate of JMB, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property*

Any services provided to the Fund by JMB or by an affiliate of JMB in connection with the management of the real property owned by the Fund, if the compensation paid to JMB or its affiliate does not exceed the cost of the services to JMB or its affiliate.

(4) *Transactions Involving Places of Public Accommodation*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) Effective June 29, 1981, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of JMB or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) JMB or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of JMB or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Partcipating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of JMB or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include the Group Trust, the Group Trust II and any collective investment fund that may hereafter be established, operated and managed by JMB or its affiliate in essentially the same manner as the current Funds.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A) (i), (ii) and (v) of the Act and section 414(f)(1) (A), (B) and (E) of the Code.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose,

assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

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BILLING CODE 4510-29-M

[Application No. D-3172]

Proposed Exemption for Certain Transactions Involving the Retail Clerks Union and Employers Midwest Pension Plan Located in Chicago, Illinois

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed purchase of certain real property (the Property) by the Retail Clerks Union and Employers Midwest Pension Plan (the Plan) from the United Food & Commercial Workers Union Local 1550 (the Union), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Union, the participants and beneficiaries of the Plan and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before June, 10, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-3172. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, Telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees (the Trustees) of the Plan, pursuant to section 406(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multiemployer pension plan which as of November 30, 1980 had assets of $102,225,121. All Union members become Plan participants as soon as they begin their employment and a short time thereafter become participants in the Retail Clerks Unions and Employers' Midwest Health Benefits Plan (the Health Plan). The Plan has four trustees (two Employer Trustees and two Union Trustees) of whom three are also trustees of the Health Plan. The Plan and the Health Plan also share personnel and equipment.

2. The applicants are requesting an exemption which will permit the Plan to purchase the Property from the Union for cash in the amount of $441,000. The Plan will pay no commissions in the proposed purchase. On May 20, 1981 the Property was appraised by the independent real estate appraisal firm of Lloyd-Thomas/Coats & Burchard Co. (Lloyd-Thomas) which has its office in Chicago, Illinois. Lloyd-Thomas represents that as of May 20, 1981 the Property had a fair market value of $441,000. The Property consists of land and a building (the Building). Currently, thirty percent of the Building is leased to the Plan; forty percent of the Building is leased to the Health Plan; and the remaining thirty percent of the Building is occupied by the Union. The applicants represent that it would be in the best interests of the participants and beneficiaries of the Plan for the Plan to buy the Property because the Plan needs more space and the Property meets the specific needs of the Plan. The applicants state that by purchasing the Property the Plan will be able to maintain its continuity of services in the most economical manner. In addition, the Trustees represent that the purchase of the Property will be a good real estate investment for the Plan. The Union wants to sell the Property because it recently merged with a union that has a building with adequate space for the Union's needs. After the Property is purchased by the Plan, it will be occupied in its entirely by the Plan and the Health Plan. The applicants are not requesting an exemption for the leasing of the Property by the Plan to the Health Plan because they represent that such leasing is covered by Class Exemption 76-1.

3. In summary, the applicants represent that the proposed transaction will satisfy section 408(a) of the Act as follows: (1) the Trustees represent that the proposed transaction is in the best interests of the participants and beneficiaries of the Plan; (2) the sale price of the Property will be determined by an independent appraisal; (3) the Plan will be able to obtain the additional space which it needs; and (4) the Trustees represent that the Plan will obtain a good real estate investment.

Notice to Interested Persons

On or before May 14, 1982, a copy of the notice of pendency and a statement advising participants and beneficiaries

of the Plan of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code dose not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary repsonsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and benficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase of the Property by the Plan from the Union for cash in the amount of $441,000 provided that this amount is not greater than the fair market value of the Property at the time of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–12514 Filed 5–6–82; 8:45 am]
BILLING CODE 4510–29–M

[Application No. D–3276]

Proposed Exemption for a Certain Transaction Involving the Sakas, Inc. Employees Pension Plan Located in Baltimore, Ohio

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of 15 acres of real property (the Property) by the Sakas, Inc. Employees Pension Plan (the Plan) to George Sakas (Sakas), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect Sakas, the Plan and its participants and beneficiaries, and others participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3276. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523–7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan with 39 participants. The trustee of the Plan is the Huntington National Bank of Columbus, Ohio (the Trustee).

2. Sakes, Inc. (the Plan Sponsor) is a plastic products company. Sakas is the president of the Plan Sponsor.

3. On August 7, 1972, the Plan purchased the Property, which consists of farm land, as an investment. The Plan leased the Property to a local farmer who farmed it and paid a rental for its use. The Property appreciated in value and coupled with the rental income, appeared to be a good investment for the Plan. The Property has never been leased to a party in interest with respect to the Plan.

4. In later years, the Property developed into a swamp. At the present time the Property is developing little income and the Trustee has determined that the Property is no longer a prudent investment for the Plan, and should be sold.

5. Mr. Ray L. Finley, a real estate broker, has determined that the current value of the Property is $15,000. The Plan's current carrying value of the Property is $24,800 based on prior years appreciation.

6. Sakas proposes to purchase the Property for $15,000 in cash, the value established by the appraisal.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) It will be a one-time, cash transaction;

(2) The Plan will be able to dispose of real property which generates little rental income and which is depreciating in value;

(3) The Plan will receive the fair market value of the Property; and

(4) The Trustee of the Plan has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

Notice of Interested Persons

Notice of the proposed exemption as published in the **Federal Register**, will be furnished to all employees of the Plan sponsor, all retired employees receiving benefits under the plan and to all former employees who have terminated with a vested interest. These persons will also be informed of their rights to comment and request a hearing. The notice of pendency will be placed on the bulleting board accessible to all employees. Retired employees, beneficiaries and terminated employees with vested benefits will be notified by mail. The notice will be provided within ten (10) days of publication in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of the Property by the Plan to Sakas for $15,000, provided that the amount received by the Plan is not less than the fair market value of the Property at the time of the sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Managment Services Administration, Department of Labor.

[FR Doc. 82–12515 Filed 5–6–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–80; Exemption Application No. D–3113]

Exemption From the Prohibitions for Certain Transactions Involving the Hoyle E. Setzer Pension Plan and Trust Located in Billings, Montana

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed sale of certain real property (the Property) by the Hoyle E. Setzer P.C. Pension Plan and Trust (the Plan) to Hoyle E. Setzer (Setzer), a disqualified person with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 5, 1982, notice was published in

the Federal Register (47 FR 9616) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The notice erroneously indicated that the comment period would close on March 5, 1982 rather than the correct closing date of April 5, 1982. Because the Plan has only one participant and since no public comments and no requests for a hearing were received by the Department, the Department is granting this exemption in the form in which it was proposed. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secrtary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(C)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of the Property for $71,452.50 by the Plan to Setzer provided that such price is at least the fair market value of the Property at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–12518 Filed 5–6–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–74; Exemption Application No. D–2462]

Exemption From the Prohibitions for Certain Transactions Involving Tech Plastics, Inc. Employees' Profit Sharing Plan Located in Phoenix, Arizona

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits: (1) The proposed exchange (the Exchange) by the Tech Plastics, Inc. Employees' Profit Sharing Plan (the Plan) of 24,160 shares of the common stock (the Stock) of Tech Plastics, Inc. (the Employer), the sponsor of the Plan for certain real property (the Property) owned by Steve Uhlmann (Uhlmann), a party in interest with respect to the Plan, (2) The subsequent proposed leasing of the Property by the Plan to the Employer; and (3) The guarantee by the Employer against any loss by the Plan in the event the Property is sold by the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the Federal Register (47 FR 5532) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification requirements as set forth in the notice of pendency. The Department received one comment which was from the applicant. In its comment, the applicant noted that paragraph number three of the notice of pendency stated that "the Stock which the Employer will give to Uhlmann in such Exchange will be obtained by the Employer from the Plan." The applicant stated that the Stock which the Plan will give to the Employer will be held by the Employer and that the Employer will issue a like amount of shares of the Employer from shares presently held by the Employer and transfer these shares to Uhlmann. The Department notes and incorporates such change in the grant. No requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being

granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed Exchange of the Stock by the Plan with Uhlmann for the Property provided that the terms and conditions of the Exchange are at least as favorable to the Plan as those which they could receive in a similar transaction with an unrelated party; (2) the proposed leasing of the Property by the Plan to the Employer provided that the terms and conditions of the lease are at least as favorable to the Plan as those which the Plan could receive in a similar transaction; and (3) the guarantee by the Employer against any loss to the Plan in the event of a sale of the Property by the Plan.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-12524 Filed 5-6-82; 8:45 am]

BILLING CODE 4510-24-M

[Prohibited Transaction Exemption 82-76; Exemption Application No. D-2957]

Exemption From the Prohibitions for Certain Transactions Involving W. G. Yates & Sons Construction Co., Employee Trust Located in Philadelphia, Miss.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt for a period of five years, the proposed loans (the Loans) of money by the W. G. Yates & Sons Construction Company Employee Trust (the Plan) to W. G. Yates & Sons Construction Company (the Employer), the Plan sponsor.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5549) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the requirements set forth in the proposed exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrtive or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Loans by the Plan to the Employer, provided that the terms and conditions of the Loans remain at least as favorable to the Plan as those it could obtain from an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3d day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Servcies Administration, Department of Labor.

[FR Doc. 82–12520 Filed 5–6–82; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Avisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, May 25, 1982, in Room S–4215, C, U.S. Department of Labor, Third and Constitution Avenue, N.W., Washington, D.C.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Administrator's Report.
2. Advisory Council Work Group Reports:

Investment and Fiduciary
Communications
Reporting, Disclosure and Recordkeeping
Prohibited Transactions

3. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Monday, May 24, 1982, to the Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room S–4522, Third and Constitution Avenue, N.W., Washington, D.C. 20216.

Persons desiring to address the Council should notify Edward F. Lysczek, Executive Secretary of the Advisory Council, in care of the above address or by calling (202) 523–8753.

Signed at Washington, D.C. this 3rd day of May 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs.

[FR Doc. 82–12411 Filed 5–6–82; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel (Sculpture); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Sculpture) to the National Council on the Arts will be held on June 1–4, 1982, from 9:00 a.m.—5:30 p.m. in the Consul Building of the Columbia Plaza Complex, 2400 Virginia Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: April 29, 1982.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 82–12110 Filed 5–6–82; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.
Dates: May 24, 1982, 9 a.m. to 5 p.m.; May 25, 1982, 9 a.m. to 4 p.m.
Place: National Science Foundation, 1800 G Street, NW., Washington, D.C.; Room 1224.
Type of meeting: Open.
Contact person: Dr. Bodo Bartocha, Director, Division of International Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–9552.
Summary of minutes: May be obtained from Contact Person.
Purpose of committee: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.
Agenda: May 24: Recent events affecting the Division of International Programs. Discussion of Science in the International Setting. Cooperative programs with LDC's and Spain; May 25: Continuation of discussion of LDC and Spain programs.

U.S.–China program of NSF. Summarizing discussions. Resolutions and assignments. Future meetings.

M. Rebecca Winkler,

Committee Management Coordinator.

May 4, 1982.

[FR Doc. 82-12500 Filed 5-6-82; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for PCM Subpanel on Genetic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Genetic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology.

Date and time: May 27–29, 1982, 9:00 AM–5:30 PM

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. DeLill Nasser, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9867.

Purpose of subpanel: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

FR Doc. 82-12504 Filed 5-6-82; 8:45 am]

BILLING CODE 7555-01-M

Executive Committee of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Executive Committee of the Advisory Committee for Ocean Sciences.

Date and time: May 26 and 27, 1982—9:00 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, NW, Washington, DC.

Type of Meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, DC 20550; Telephone: (202) 357–9639.

Summary minutes: May be obtained from the Contact Person, Dr. Grant Gross, at the above address.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF's Division of Ocean Sciences.

May 26

0900

I. Introduction, Dr. Albert L. Bridgewater, Deputy Assistant Director, AARO

II. Adoption of the Agenda, Dr. Dirk Frankenberg, Acting Chairman of the Executive Committee, and Dr. M. Grant Gross, Director, OCE

III. Recent OCE Activities, Dr. Gross and OCE staff

IV. Plans for Future Ocean Scientific Drilling, Dr. Allen M. Shinn, Director, Office of Scientific Ocean Drilling

V. Support of External Advisory Committees, Mr. Louis Brown, OCE

VI. NCAR's Long-Range Plans for Computer and Aircraft Facilities, Dr. Lawrence A. Lee, Division of Atmospheric Sciences

VII. OCE Long-Range Planning, Dr. Gross

A. Actions of OCE's Ocean Sciences Research Section (OSRS) with Respect to Long-Range Planning, Dr. Robert E. Wall, Head, OSRS

1145

Lunch

1315

B. Actions of OCE's Oceanographic Facilities Support (OFS) with Respect to Long-Range Planning Mr. Ronald R. La Count, Head, OFS

1700

Adjourn

May 27

0900

Agenda Item VII.B. (continued)

1145

Lunch

1315

VIII. Planning for the Required Advisory Committee Oversight Review of the OCE/OSRS Program, Drs. Gross and Wall, OCE

IX. Arrangements for the Next Meeting, Mr. Frank R. Alexander, OCE

1700

Adjourn

M. Rebecca Winkler,

Committee Management Coordinator.

May 4, 1982.

[FR Doc. 82-12501 Filed 5-6-82; 8:45 am]

BILLING CODE 7555-01-M

Subpanel for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Behavioral and Neural Sciences Subpanel on Sensory Physiology and Perception.

Date and time: May 27–28, 1982, 9:00–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 643, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. John K. Harting, Staff Associate, Sensory Physiology and Perception Program, National Science Foundation, Washington, D.C., Room 320, (202) 357–9485.

Purpose of subpanel: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

May 4, 1982.

[FR Doc. 82-12499 Filed 5-6-82; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–462, The National Science Foundation announces the following meeting:

Name: Subpanel on Cellular Physiology of the Advisory Panel for Physiology, Cellular and Molecular Biology.
Date and time: May 27, 28, 1982—starting at 8:30 a.m. to 5:00 p.m.
Place: Room 338, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Joseph F. Albright, Program Director, Cellular Physiology Program, Room 332, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7377.
Purpose of subpanel: To provide advice and recommendations concerning support for research in Cellular Physiology.
Agenda: To review and evaluate research proposals as part of the selection process of awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,
Committee Management Coordinator.
May 4, 1982.
[FR Doc. 82-12500 Filed 5-6-82; 8:45 am]
BILLING CODE 7555-01-M

Subpanel on Molecular Biology, Group B, of the Advisory Panel for the Division of Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel on Molecular Biology, Group B, of the Advisory Panel for Physiology, Cellular, and Molecular Biology.
Date and time: May 24 & 25, 1982, 9:00 a.m. to 5:00 p.m. each day.
Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Michael A. Cusanovich, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, D.C. 20550.
Purpose of subpanel: To provide advice and recommendations concerning support for research in Molecular Biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 6 U.S.C. 552(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,
Committee Management Coordinator.
May 4, 1982.
[FR Doc. 82-12502 Filed 5-6-82; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Co. (Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2); Exemption

I

The Alabama Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 which authorize operation of the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located near the City of Dothan, Alabama.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated June 23, 1981, as amended January 28, 1982, and April 20, 1982, Alabama Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend the date for installation of modifications needed in "inaccessible areas" of Unit 1 (as listed in licensee's letter dated March 19, 1981 and not requiring NRC approval but requiring plant shutdown) from the first outage more than 180 days after the effective date of the Fire Protection Rule, February 17, 1981, to the fifth refueling outage scheduled April 1, 1984.

(2) Extend from March 19, 1981, to July 1, 1982, the date for submittal of design descriptions of alternate or dedicated shutdown systems needed to satisfy Section III.G.3.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determined whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign

could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Farley Units had been reviewed against the criteria of Appendix R to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria develop further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A summary of the alternate shutdown methods and final Technical Specifications remained unresolved. Resolution of the Technical Specifications issue is documented in a supplement to the FPSER issued with License Amendment No. 26 on March 1, 1982 for Unit 1. The FPSER and its supplement supported the issuance of amendments to the operating license of Farley Unit 1 and issuance of the operating license for Unit 2 [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Farley Units have upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Farley Units 1 and 2 in conformance with the requirements of the Fire Protection Rules and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of the reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the dated granted.

By letter dated March 19, 1981, Alabama Power Company provided their plan and schedule to achieve compliance with Appendix R including a design schedule and a contractor schedule. This plan and schedule has been reviewed by the NRC staff. We consider it a reasonable schedule which will not require unnecessary plant shutdown time. The licensee's plan includes separates licensee and contractor walkdown inspections as well as analysis of these walkdown inspections.

For the inaccessible areas of Unit 1 the final walkdown inspection is scheduled for about April 1, 1983. This schedule is based on an orderly progression of preparation, walkdown inspection, analysis of each walkdown and design selection. Alabama Power Company has determined that the outlined schedule allows the required actions to be taken within the constraints of planned plant operations. We find that for the inaccessible areas of Unit 1, a delay in completing the installation does not cause undue risk to the health and safety of the public. Therefore, an exemption should be granted for the inaccessible areas.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR 50:

(1) The date from the first outage more than 180 days after the effective date of the rule is extended to the first extended outage § 50.48(c)(3)) commencing more than 180 days after the outage presently scheduled for April 1, 1983;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the deteriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previouslyapproved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic

[1] Farley Unit 1—Operating License NPF–2. Amendment 11 supported by FPSER issued February 12, 1979.
Amendment 26 supported by supplement to FPSER issued March 1, 1982.
Farley Unit 2—Operating License NPF–8 dated March 31, 1981.
Supported by FPSER issued February 12, 1979.

letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 19 CFR 50.48(c) even though the submittal may be made within the time granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the work-load associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Md., this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 12541 Filed 5-6-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–445 and 50–446]

In the matter of Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., Comanche Peak Steam Electric Station, Units 1 and 2.

Texas Utilities Generations Co.; Order Extending Latest Construction Completion Dates

The Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. are the holders of Construction Permit Nos. CPPR–126 and CPPR–127 issued by the Atomic Energy Commission [1] on December 19, 1974 for construction of the Comanche Peak Steam Electric Station, Units 1 and 2. The Texas Utilities Generating Company has sole responsibility for the design, construction, and operation of the facilities, which are presently under construction at a site located in Somervell County, Texas.

By a letter dated June 19, 1981 the Texas Utilities Generating Company filed a request for an extension to the latest construction completion dates specified in Construction Permit Nos. CPPR–126 and CPPR–127 from August 1, 1981 and August 1, 1983 respectively to August 1, 1985 and August 1, 1987 respectively. Reasons given for the requested extension in time were: (1) construction delays due to extended delivery of materials and components, (2) delays due to design modifications resulting from revised or additional regulatory requirements, (3) construction delays due to difficulties encountered in the installation of various components, primarily pipe hangers and restraints, and (4) to provide a considerable margin for unforeseen contingencies.

This action involves no significant hazards consideration, good cause has been shown for the delays, and the requested extension is for a reasonable period, the bases for which are set forth in the staff's safety evaluation of the request for extension.

The preparation of an environmental impact statement for this particular action is not warranted because there will no significant environmental impact attributable to the Order other than that which has already been predicted and evaluated in the Commission's Final Environmental Statement for Comanche Peak Steam Electric Station, Units 1 and 2, issued in June 1974, or in the Commission's Final Environmental Statement related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2, NUREG–0775, issued in September 1981.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The applicant's letter dated June 19, 1981, and the NRC staff's safety evalution supporting the Order are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Somervell County Public Library, On the Square, Glen Rose, Texas, 76043.

It is hereby ordered that the latest completion date for CPPR–126 be extended from August 1, 1981 to August 1, 1985 for Unit 1, and that the latest completion date for CPPR–127 be extended from August 1, 1983 to August 1, 1987 for Unit 2.

Date of Issuance: April 30, 1982.

Robert Purple,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82–12542 Filed 5–6–82; 8:45 am]

BILLING CODE 7590–01–M

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[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and Permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on May 26, 1982, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the NRC Research Program on advanced reactors in conjunction with the ACRS Report on the NRC Long Range Research Plan.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, May 26, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary

views regarding the topics to be discussed.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary and Industrial Security information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 4, 1982.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc 82–12381 Filed 5–6–82; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on May 20, 1982, in Room 330, Old Executive Office Building, Washington, D.C. The meeting will begin at 9:00 a.m. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

A portion of the meeting will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President, and information the premature disclosure of which likely would significantly frustrate implementation of our agency's action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 9:00 a.m. Because of security in the Old Executive Office Building, persons wishing to attend the open portion of the meeting should contact Dr. Thomas H. Johnson, Special Assistant to the Director of OSTP at (202) 456–7740, prior to 4:30 p.m. on May 19th. Dr Johnson is also available to provide further information.

Robert D. Linder,

Executive Director, Office of Science and Technology Policy.

May 4, 1982.

[FR Doc. 82–12406 Filed 5–4–82; 11:29 am]

BILLING CODE 3170–01–M

White House Science Council; National Airspace System Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: White House Science Council Panel on the National Airspace System Plan.

Dates and times and locations: May 21, 1982—8:30 a.m., Mitre Corporation, 1820 Dolly Madison Boulevard, McLean, Virginia; May 22, 1982—8:30 a.m.—Room 5104 New Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20500

Type of meeting: Part Open—May 21, 1982—1:30 p.m.–4:00 p.m., May 22, 1982—8:30 a.m.–3:00 p.m.; Part Closed—May 21, 1982—8:30 a.m.–11:45 a.m., May 22, 1982—3:00 p.m.–4:30 p.m.

Purpose of Panel: To review certain aspects of the Federal Aviation Administration's National Airspace System Plan (NASP) and comment on technological applications embraced by the plan. Comments and recommendations will be provided to the President's Science Advisor by August 1, 1982; May 22, 1982—National Airspace System user groups presentations and comments on the NASP regarding operational and economic impacts.

Reason for closed meeting: Discussion of plan impact/implications in regard to national defense.

Authority to close meeting: These matters are within the exemptions of 5 U.S.C. 552b (c)(1), in that they deal with classified defense information. Closing is pursuant to a determination by the Director of the Office of Science and Technology Policy.

Public particpation: Parts of the meeting, as indicated above, are open to the public. Due to limited meeting room capacity, individuals planning attendance should contact the Executive Secretary prior to the meeting. Written comments should be submitted to the panel at the address listed below prior to July 1, 1982.

Contact: James R. Banks, Executive Secretary, White House Science Council Panel on the National Airspace System Plan. Office of Science and Technology Policy, Room 5013, New Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20500—Telephone (202)395–3157.

Robert D. Linder,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 82–12405 Filed 5–4–82; 11:29 am]

BILLING CODE 3170–01–M

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; New System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notification of a new system of records.

SUMMARY: This document provides notice of the system of records maintained by the Pension Benefit Guaranty Corporation which covers plan participants and beneficiaries who file appeals with regard to pension benefits under plans trusteed by PBGC. There is also notice of four routine uses relating to the new system of records.

EFFECTIVE DATE: The new system of records and its routine uses shall become effective without further notice on July 6, 1982 unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Send comments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7000, at the same address, on weekdays between 9 A.M. and 4 P.M.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, (202) 254–3010.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation

("PBGC") is establishing a new system of records entitled Administrative Appeals File (PBGC–10). This system will contain information regarding appeals filed by pension plan participants and beneficiaries under 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions. Notice is also given of four routine uses under this system.

Notice of a New System of Records

This document provides notice of the existence and character of a proposed new system of records. This system is designated PBGC–10, Administrative Appeals File. The PBGC will establish and maintain this system, PBGC–10, to enable the PBGC to maintain files of appeals filed by pension plan participants and beneficiaries under certain sections of the PBGC administrative appeals regulation, "Rules for Administrative Review of Agency Decisions", 29 CFR Part 2606. Under this regulation, an individual who is a participant or beneficiary in a terminated pension plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), may appeal certain PBGC determinations regarding pension benefits paid by PBGC under the terms of that plan. In addition, an individual who is a participant or beneficiary in a plan which has been determined not to be covered under Title IV of ERISA may appeal that determination. This new system of records will contain information regarding these types of appeals, including information regarding the coverage of the pension plan, the calculation of benefits, the participants' and/or beneficiaries' eligibility for benefits and the recapture of benefits from participants and/or beneficiaries. These four determinations are appealable pursuant to 29 CFR 2606.1(b)(5), (6), (7) and (8). The information in the new system will inlcude such personal information as participants' age, length of employment, salary, martial status and medical history. This information will enable the PBGC Appeals Board to make a determination as to the correctness of participants' and beneficiaries' benefit amounts, participants' and beneficiaries' entitlement to benefits, the amounts to be recaptured from participants and beneficiaries by the PBGC in the event of overpayment, and coverage of the plan under Title IV of ERISA.

The records in this system come into existence only when the individual involved begins the appeal process by filing an appeal. The appellants will be aware that certain personal information must be examined, verified and used to determine the accuracy of the PBGC's decision. The effect of this system is to enable plan participants and beneficiaries to be sure they will receive the pension benefit to which they are entitled. For these reasons, the PBGC believes that this system will not adversely affect the privacy and other personal or property rights of individuals covered by this system. This system has no effect on the preservation of the constitutional principles of federalism and separation of power.

A report on this new system of records was filed with the President of the Senate, the Speaker of the House of Representatives and the Office of Management and Budget on May 4, 1982, as required by 5 U.S.C. 552a(o).

Routine Uses

There are four routine uses which are proposed to be applicable to PBGC–10, Administrative Appeals File. The first routine use allows the release of information contained in this system of records to third parties who may be aggrieved by the decision of the Appeals Board. Third parties may include the employer who maintained the plan, any predecessor or successor employer and any member of a controlled group which includes the employer. In the event a participant's benefit has been incorrectly calculated at a lower amount than is actually payable, and the Appeals Board action will increase the benefit, this increase will produce a corresponding increase in employer liability which must be paid to PBGC by the employer. The PBGC must be able to inform the employer how the calculations were made that produced an increase in the employer's liability to PBGC.

The second routine use allows release of information contained in this system of records to a representative, including a labor union, which represents a participant or beneficiary, and has a power-of-attorney, if necessary pursuant to § 2606.6, and wishes to appeal on behalf of the participant or beneficiary. The representative would need to have access to the participant's or beneficiary's appeal file without the administrative burden of requiring each participant or beneficiary to execute a release so that the representative can have access to his or her records.

The third routine use allows release of information to third parties who are trust fund management trustees and who are actually making benefit payments to the participants and/or beneficiaries. This disclosure would be necessary when the benefit amount is to be changed or stopped.

The fourth routine use allows release of information to third parties with whom the Appeals Board contracts to provide expert analysis of material in the appeal file. Such expert analysis would include examination of medical records by a physician or review of benefit calculations by an actuary.

Section 552a(e)(11) of the Privacy Act requires that notice of an intended routine use of records be published at least 30 days prior to the implementation of the use and that the public be given an opportunity to comment on the routine use. The proposed routine uses are set forth below. They will become final 60 days after publication of this notice, when the new system also becomes effective, unless PBGC publishes a notice to the contrary. The propose routine uses read as follows:

1. Disclosed to third parties who may be aggrieved by the decision of the Appeals Board under 29 CFR 2606.58, including disclosure to the employer who maintained the plan, including any predecessor or successor employer and to any member of a controlled group of which the employer is a part.

2. Disclosed to a representative of a participant or beneficiary who has a power-of-attorney, if necessary, under 29 CFR 2606.6, including an official of a labor organization which is the duly-recognized collective bargaining representative of the individual about whom the request is made.

3. Disclosed to third parties, such as banks, insurance companies and trustees, for the purpose of paying benefits to plan participants and beneficiaries.

4. Disclosed to third parties, such as contractors and expert witnesses, for the purpose of providing expert analysis of the appeal.

Interested persons are invited to submit written data, views or arguments on the proposed routine uses. The routine uses may be changed in light of the comments received.

The new system, PBGC–10 and its routine uses are hereby proposed as follows.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

PBGC–10

SYSTEM NAME:

Administrative Appeals File—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Plan participants and beneficiaries in terminated pension plans covered by Title IV of ERISA who have filed appeals with PBGC pursuant to 29 CFR 2606.1(b) (5), (6), (7) or (8), Rules for Administrative Review of Agency Decisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain the name of pension plan, name of the participant or beneficiary and personal information such as address, social security number, sex, date of birth, date of hire, salary, marital status, medical records, date of commencement of plan participation or employment, statements regarding employment, date of termination of plan participation or retirement, benefit payment data, pay status, Social Security Administration determinations, insurance claims and awards, workman's compensation awards, correspondence relating to the Appeal, calculations of benefit amounts, calculations of amounts subject to recapture, and final determination of the Appeals Board. The individual records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 4002, 4022, 4041 and 4045, Pub. L. 93–406, 88 Stat. 1004, 1016, 1020, 1027, (1974), as amended by secs. 403(1), 406(a), 403(c) and 403(d), Pub. L. 96–364, 94 Stat. 1302, 1303, 1301, (1980) (29 U.S.C. 1302, 1322, 1341 and 1345).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosed to third parties who will be aggrieved by the decision of the Appeals Board under 29 CFR 2606.58, including disclosure to the employer who maintained the plan, including any predecessor or successor employer and to any member of a controlled group of which the employer is a part.

2. Disclosed to a representative of a participant or beneficiary who has a power of attorney, if necessary under 29 CFR 2606.8, including an official of a labor organization which is the duly-recognized collective bargaining representative of the individual about whom the request is made.

3. Disclosed to third parties, such as banks, insurance companies and trustees, for the purpose of paying benefits to plan participants and beneficiaries.

4. Disclosed to third parties, such as contractors and expert witnesses, for the purpose of providing expert analysis of the appeal.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by participant or beneficiary name, plan name, and appeals number.

SAFEGUARDS:

Manual records are kept in areas of restricted access and in lockable file cabinets which are locked after office hours. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Records are proposed to be retained for a closed file for two fiscal years after the Appeals Board's final opinion is issued, transferred to a Federal Records Center and destroyed 6 years later.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of the Appeals Board, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information may be received from the Plan Administrator, the Plan Sponsor, the employer who maintained the plan, the labor organization which is the duly-recognized collective bargaining representative of the participant, the Social Security Administration and the participant and/or beneficiary.

[FR Doc. 82-12396 Filed 5-6-82; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Philadelphia Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 3, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Hitachi, Ltd., American Depository Shares, 50 Yen Par Value (File No. 7–6212)

Paradyne Corporation, Common Stock, $.10 Par Value (File No. 7–6213)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 24, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12401 Filed 5-6-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12415; 812-5119]

Southwest Funding Corp.; Filing of Application

May 3, 1982.

Notice is hereby given that Southwest Funding Corp. ("Applicant"), 165 Broadway, New York, NY 10080, a Delaware corporation, filed an application February 23, 1982, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant's sole business will consist of issuing and selling its commercial paper notes and advancing the net proceeds of sale thereof, to United States entities ("Borrowers") engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and other interest in real estate. Substantially all of Applicant's assets will consist of promissory notes issued

by Borrowers ("Notes") evidencing the obligations of the Borrowers arising by reason of advances made to the Borrowers by Applicant from the proceeds of sales of Applicant's commercial paper notes. Each Note will be supported by a separate irrevocable letter of credit and issued in favor of the holder of the Note by Mercantile National Bank at Dallas ("Mercantile") for the account of the Borrower.

None of Applicant's outstanding common stock is, or in the future will be, owned by Mercantile or any of the Borrowers, or by any affiliate of any of them. Applicant represents that there has been, and undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security of Applicant.

Applicant proposes to enter into arrangements with the Borrowers pursuant to which the Borrowers may request or direct Mercantile to request Applicant to make advances to the Borrowers. To obtain funds to make the advances, Applicant proposes to issue and sell short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 ("Securities Act") by virtue of section 3(a)(3) thereof and generally referred to as commercial paper ("Commercial Paper Notes"). The Commercial Paper Notes will be sold in minimum denominations of $100,000, will have a maturity not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holder or the issuer.

Applicant undertakes not to market any Commercial Paper Notes prior to receiving an opinion of counsel to the effect that the proposed offering of commercial paper is exempt from the registration requirements of the Securities Act by virture of section 3(a)(3) thereof. Applicant further undertakes that, in respect of any future offerings of Applicant's debt securities, it will obtain an opinion of counsel regarding compliance with, or availability of an exemption from, the registration requirements of the Securities Act. Applicant does not request Commission review or approval of counsel's opinion regarding the availability of an exemption for the Commercial Paper Notes under section 3(a)(3) of the Securities Act.

The Commercial Paper Notes will be offered publicly, through one or more major dealer, only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market. While an announcement of the establishment of the commercial paper facility may be made as matter of record, the offering will not be advertised. Applicant undertakes to ensure that each dealer in the Commercial Paper Notes will furnish each offeree memoranda describing the businesses of Mercantile and Applicant and providing the most recent annual and quarterly financial information for Mercantile. The memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of Applicant or Mercantile and will be at least as comprehensive as memoranda customarily used in offering commercial paper.

Applicant states that it will select a major commercial bank to act as issuing and paying agent for the Commercial Paper Notes ("Depositary"). It is expected that Morgan Guaranty Trust Company of New York, through its corporate trust department, will be selected. Mercantile will consent to the appointment of the Depositary. As trustee for the benefit of holders of the Commercial Paper Notes, Applicant states that the Depositary will receive an assignment of Applicant's rights to payments of the Notes and of Applicant's rights under the letters of credit attached thereto. The Depositary will receive proceeds from Applicant's sales of the Commercial Paper Notes and will collect payments made in respect of the Notes upon maturity. Maturing Commercial Paper Notes will be paid by the Depositary with funds from the foregoing sources. Applicant believes, on the basis of estimates provided by Mercantile, that in the first year in which Commercial Paper Notes are issued the face amount of Commercial Paper Notes outstanding will average approximately $50,000,000.

Applicant represents that, prior to their issuance, the Commercial Paper Notes, and any future issue of Applicant's debt securities, will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. However, no such rating shall be required to be obtained with respect to an issue of the Commercial Paper Notes or of Applicant's debt securities if, in the opinion of counsel, an exemption is available for the issue pursuant to section 4(2) of the Securities Act.

Applicant and each Borrower will enter into an agreement pursuant to which the Applicant will agree to make advances to the Borrower solely from the net proceeds of the Commercial Paper Notes. Each Borrower and Mercantile will enter into a loan agreement pursuant to which Mercantile will agree (i) to issue for the account of the Borrower letters of credit, to be attached to each Note, in favor of the Applicant as the holder of the Note for the advance value of the advance evidenced by the Note and (ii) to make loans to the Borrower. For each Borrower the aggregate amount of (1) Commercial Paper Notes issued to fund advances to that Borrower, (2) disbursements under the letters of credit issued for its account and (3) the loans, will not be permitted to exceed a designated amount specified for that Borrower. Each Borrower will agree to pay the Notes it issues to Applicant, any disbursements made under the letters of credit issued for the Borrower's account and any loans made to the Borrower.

Applicant states that it will advance all of the proceeds from sales of the Commercial Paper Notes to the Borrowers. Each advance will be evidenced by a Note of the Borrower which will have the same maturity date as the maturity date of the Commercial Paper Notes issued by Applicant to obtain funds to make the advance. Each Borrower will be obligated to use the proceeds of the advances in the ordinary course of its business to purchase or otherwise acquire mortgages and other liens on and other interests in real estate or to retire indebtedness to Mercantile specifically incurred by the Borrowers for the purpose of purchasing or otherwise acquiring mortgages and other liens on and other interests in real estate.

According to the application, the payment obligations of each Borrower to Applicant with respect to its Notes will be supported by separate letters of credit attached to each Note and issued in favor of the holders thereof by Mercantile for the account of the Borrower. Each letter of credit will entitle Applicant, as holder of the Note to which it is attached, to demand payment thereunder in the event of a failure of the Borrower for whose account the letters of credit was issued to pay the Borrower's Notes upon maturity. At the request of a Borrower, Mercantile will make loans directly to the Borrower pursuant to the loan agreement. Each Borrower will be obligated to use the proceeds of any Loans in the ordinary course of its business to purchase or otherwise acquire mortgages and other liens on and other interests in real estate.

To secure its obligations to pay the Notes and the Loans to Applicant and Mercantile, Applicant states that each Borrower will execute and deliver to Mercantile a security agreement

pursuant to which the Borrower will pledge and assign to Mercantile, individually and as collateral agent for Applicant as the holder of the Notes, a security interest in mortgage notes secured by mortgages on real estate, cash collateral and Government National Mortgage Association securities having a value equal to or greater than the principal amount of the Notes, letter of credit disbursements and the outstanding loans. While in the first instance the collateral will be held by Mercantile as collateral agent for Applicant as the holder of the Notes, Applicant's interest in the collateral, together with all Applicant's rights in the Notes and all its rights to receive payment thereon and all its rights under the letters of credit, will be assigned to the Depositary as trustee for the benefit of the holders of Commercial Paper Notes.

Each Borrower with which Applicant currently intends to enter into an agreement will either be (i) an entity primarily engaged in the buisness of purchasing or otherwise acquiring mortgages and other liens on and other interests in real estate or (ii) a savings and loan association organized under state law engaged in those activities. Each Borrower with which Applicant currently intends to enter an agreement is currently issuing commercial paper through one or more dealers directly to sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. Applicant understands that currently the proceeds of each Borrower's commercial paper and of any loans the Borrower may obtain from Mercantile under an existing loan agreement are used by the Borrower for purposes of purchasing or otherwise acquiring mortgages and other liens on and other interests in real estate. Applicant understands that currently each Borrower issues, executes and delivers to Mercantile a promissory note evidencing the Borrower's indebtedness to Mercantile and that to secure those obligations, each Borrower grants a security interest in all real estate mortgages to Mercantile, individually and as agent for holders of the Notes issued directly by the Borrower.

Applicant undertakes to enter into credit relationships only with entities which are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on an other interests in real estate or with savings and loan associations engaged in those activities. Applicant will receive assurances from each Borrower, both at the time an agreement with such Borrower is entered into and for a period during which any Note of the Borrower is outstanding, that the Borrower either is not an investment company within the meaning of section 3(a) of the Act or is not deemed to be an investment company by virtue of one or more of the exceptions from the definition of investment company provided in section 3(c) of the Act.

As here pertinent, section 3(a)(3) of the Act defines "investment company" as an issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(3) provides, with three exceptions not pertinent to the application, that any security is an "investment security." The definition of "security" in section 2(a)(36) of the Act includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, transferable share, investment contract, voting trust certificate, certificate of deposit for a security or, in general, any interest or instrument commonly known as a security. Applicant states that, under the Act's definition of a security, the Notes, which would constitute virtually all Applicant's assets, could be deemed to be investment securities, and that, pursuant to section 3(a)(3) of the Act, Applicant could be deemed to be an investment company subject to the Act's registration requirements.

Section 3(c)(5) of the Act excepts from the definition of investment company, any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of a variety of businesses, including purchasing or otherwise acquiring mortgages and other liens on and other interests in real estate.

Each Borrower with which Applicant currently contemplates entering into a credit relationship in the future, will either be an entity primarily engaged in the business of making or acquiring real estate mortgage loans and mortgages or be a savings and loan association engaged in those activities. Applicant states that while it would not directly purchase or otherwise acquire mortgages and other liens on and other intersts in real property and, accordingly, would not itself qualify for a section 3(c)(5)(C) exception, and while Applicant is not itself a savings and loan association, Applicant's operations would be conducted only in order to provide funds to entities qualifying under section 3(c)(5)(C) and to savings and loan associations, and, in all cases, only for the purpose of enabling the Borrowers to engage in the activities to which the section 3(c)(5)(C) exception relates.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if an to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that repayment of the Commercial Paper Notes will effectively be supported by the assignment to the Depositary, as trustee for holders of the Commercial Paper Notes, of Applicant's rights to the collateral and under the irrevocable letters of credit issued by Mercantile and attached to each of the Notes. Applicant states that this will adequately protect the holders of the Commercial Paper Notes in the event the Borrowers fail to meet their repayment obligations.

Applicant states that, the exemption sought would be consistent with the purposes fairly intended by the policy and provisions of the Act. As a special purpose corporation established solely to issue commercial paper to obtain funds to make advances to the Borrowers for the purposes specified herein, Applicant submits that its operations do not lend themselves to the abuses against which the Act was directed. Applicant states that its only outstanding securities will be the Commercial Paper Notes, and the entire net proceeds of Applicant's sales of the Commercial Paper Notes (except for amounts needed to repay maturing Commercial Paper Notes and to meet certain of Applicant's expenses) will be advanced to the Borrowers.

Applicants submits that the proposed activities are in the public interest and are consistent with the protection of investors and the purposes of the Act. In addition, Applicant asserts that the activities in which Applicant proposes to engage are essentially indistinguishable from the activities of the Borrowers which either are entitled

to an exception from the definition of the Act pursuant to section 3(c)(5)(C) or are savings and loan associations engaged in the activities contemplated by that section.

Notice is further given that any interested person may, not later than May 28, 1982, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion, persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12469 Filed 5-6-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22484; 70-6736]

System Fuels, Inc., et al.; Proposal To Lease Railroad Equipment

Notice of Proposal To Lease Railroad Equipment

May 3, 1982.

In the matter of System Fuels, Inc., 666 Poydras, Noro Plaza, New Orleans Louisiana 70130; Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205; and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service, Inc. ("New Orleans"), (collectively the "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. ("Middle South"), a registered holding company, together with System Fuels, Inc., ("SFI"), a jointly owned nonutility subsidiary company of the Operating Companies, have filed an application-declaration with this Commission pursuant to sections 9, 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 45 promulgated thereunder.

SFI proposes to enter into a lease of railroad equipment ("Lease") with a commercial bank as trustee ("Owner Trustee") designated as such in an agreement between the Owner Trustee and Xerox Credit Corporation or a wholly owned subsidiary thereof, under which SFI will lease from the Owner Trustee 580 100-ton rotary dump coal cars ("Equipment").

The Equipment is presently being manufactured by Bethlehem Steel Corporation ("Bethlehem") and delivery of, and payment for, the Equipment is presently expected to commence in July 1982. Bethlehem will sell the Equipment to the Owner Trustee at a currently established cost of $21,100,000 ("Owner's Cost"). The cost is subject to change but in no event will the cost to the Owner Trustee exceed $23,287,000. SFI will be obligated to purchase any cars which are not purchased by the Owner Trustee as a result of the cost ceiling guarantee.

Concurrently with the initial purchase of Equipment by the Owner Trustee, SFI will enter into the Lease with the Owner Trustee. The basic term of the Lease will terminate on September 1, 2000. SFI will have the option to renew the Lease at that time for one two-year period. The Lease will be a net lease conferring all responsibility for operation maintenance, insurance, certain taxes, and other expenses upon SFI. The Lease will be noncancellable except: (a) In the event of total loss, destruction or irreparable damage of the Equipment; or (b) after September 1, 1987, upon a determination by SFI that the Equipment has become economically obsolete.

Lease payments will be made by SFI in thirty-six semi-annual installments, payable in arrers, commencing on March 1, 1983. Each of the first 12 semi-annual payments will equal approximately 5.03% of the Owner's Cost. Each of the last 24 will equal approximately 6.15% of such cost. These rates are equivalent to an effective annual interest rate over the basic term of the Lease of 8.66%.

So long as SFI makes timely payments and fully performs all of its obligations under the Lease and related documents, the Owner Trustee covenants, as lessor, that it will not hinder or interfere with SFI's peaceable and quite enjoyment of the possession and use of the Equipment.

SFI does not presently contemplate subleasing any of the Equipment. However, SFI may sublease to third parties a portion of the Equipment which at that time represents excess coal transportation capacity. Any such subleasing transactions would be of a temporary nature. SFI will apply the proceeds therefrom to reduce the cost of transportation of fuel and will credit the account in its books normally designated for this type of transaction with the amount of such proceeds.

In connection with the proposed transactons, Arkansas, Louisiana, Mississippi and New Orleans, will convenant and agree that so long as SFI shall have any obligations under the Lease and certain related documents the Operating Companies will, severally in accordance with their present respective shares of ownership of the common stock of SFI, take any and all action as, from time to time, may be necessary to keep SFI in a sound financial condition and to place SFI in a position to perform and discharge, in a timely manner, all of its obligations under the documents referred to above.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 27, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the application-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will received a copy of any notice or order issued in this matter. After said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effecitve.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12490 Filed 5-6-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 805]

Argentine Republic; Determination Under Section 2(b)(1)(B) of The Export-Import Bank Act of 1945, As Amended, and Executive Order 12166

April 30, 1982.

By virtue of the authority vested in me as Secretary of State by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and Executive Order 12166, I hereby determine that denial by the Export-Import Bank of applications for credit by or with respect to the Argentine Republic for non-financial or non-commercial consideration would clearly and importantly advance United States policy and would be in the national interest.

Alexander M. Haig, Jr.,

Secretary of State.

[FR Doc. 82-12303 Filed 5-6-82; 8:45 am]
BILLING CODE 4710-10-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Orders Nos. 97 (Rev. 19) and 114 (Rev. 3)]

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: These Delegation Orders are revised to effect the reorganization of the Internal Revenue Service as prescribed by Department of the Treasury Order Numbers: 150-95 and 150-96. The text of the Delegation Orders appears below.

EFFECTIVE DATE: March 21, 1982.

FOR FURTHER INFORMATION CONTACT: Martha M. Seeman, PM:S:FM:IMD, 1111 Constitution Avenue, N.W., Room 3526, Washington, D.C. 20224, Telephone number 202-566-4273 (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1978.

Martha M. Seeman,

Acting Chief, Internal Management Documents Branch.

Delegation Order—Closing Agreements Concerning Interal Revenue Tax Liability

[Order No. 97 (Rev. 19)]

Date of issue: March 21, 1982.
Effective Date March 21, 1982.

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a); Treasury Department Order No. 150-32; Treasury Department Order No. 150-36; and Treasury Department Order No. 150-83, subject to the transfer of authority covered in Treasury Department Order No. 221, as modified by Treasury Department Order No. 221-3 (Rev. 2), as revised, this authority is hereinafter delegated.

The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Assistant Commissioner (Examination) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Associate Commissioner (Operations) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Assistant Regional Commissioners (Examination); District Directors; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. The Associate Chief Counsel (Technical); the Assistant Commissioner (Employee Plans and Exempt Organizations); Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Director, Foreign Operations District, is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue Tax liability of such person (or of the person or estate for whom he/she acts) to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008, under Revenue Procedure 72-22, C.B. 1972-1, 747, and under Revenue Procedure 69-13, C.B. 1969-1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65-17, C.B. 1965-1, 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associate Chief Counsel (Technical) and to the technical advisors on the staff of the Associate Chief Counsel (Technical) for cases that do not involve precedent issues, the Assistant Commissioner (Examination) may redelegate the authority contained in paragraph 2 of this Order to the Deputy Assistant Commissioner (Examination), except that the authority relating to the performance of his/her functions as the competent authority under the tax conventions of the United States may not be redelegated; and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues.

9. Delegation Order No. 97 (Rev. 18), issued February 28, 1980, is hereby superseded.

James I. Owens,

Deputy Commissioner.

Delegation Order—Designation to Act as "Competent Authority" Under Tax Treaties

[Order No. 114 (Rev. 3)]

Date of issue: March 21, 1982.

Effective Date: March 21, 1982.

1. Pursuant to the authority delegated to me by Treasury Department Order No. 150-83,

there is hereby delegated to the Associate Commissioner (Operations) and to Director, Foreign Operations District as stated below, the authority to act as "competent or taxation authority" under the tax treaties of the United States.

2. The Associate Commissioner (Operations) shall have the authority to administer all those functions derived from the operating provisions of the tax treaties, other than those delegated below to the Director, Foreign Operations District. This authority may be redelegated, but not lower than the Assistant Commissioner level.

3. The Associate Commissioner (Operations) is also delegated the authority to interpret and apply such tax treaties, but in such matters shall act only with the concurrence of the Associate Chief Counsel (Technical). This authority may be redelegated, but not lower than the Assistant Commissioner level.

4. The Director, Foreign Operations District, shall have the authority to administer the following functions deriving from the operating provisions of the tax treaties: the Routine and Specific Exchange of Information Programs and the Program for Mutual Assistance in Collection. This authority may not be redelegated.

5. Delegation Order No. 114 (Rev. 2), issued August 28, 1980, is superseded.

James I. Owens,

Deputy Commissioner.

[FR Doc. 82-12539 Filed 5-6-82; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by section 1521, title 38, United States Code, will be held in Room 1010 by the Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, June 9 and 10, 1982, at 9 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator as the Committee determines appropriate.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Norwood L. Williams, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-389-3098) prior to June 1, 1982.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:30 p.m. on June 10, 1982.

Dated: April 29, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-12465 Filed 5-6-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 89
Friday, May 7, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, May 14, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–661–82 Filed 5–5–82; 3:40 pm]

BILLING CODE 6351–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, May 11, 1982.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote: Freedom of Information Act Appeal No. 82–3–FOIA–46.
2. Freedom of Information Act Appeal No. 82–3–FOIA–038–MK, concerning a request for information from an open investigative case file.
3. Freedom of Information Act Appeal No. 82–3–FOIA–2–AT, concerning a request for information from open Title VII investigative files.
4. Freedom of Information Act Appeal No. 82–3–FOIA–21–SL, concerning a request for records in a charge file.
5. Freedom of Information Act Appeal No. 82–2–FOIA–10–ME, concerning a request for contents of a charge file.
6. Freedom of Information Act Appeal No. 82–2–FOIA–33, concerning a request for the contents of an age charge file.
7. Report on Commission Operations by the Executive Director:

Closed:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Officer, at (202) 634–6748.

This Notice Issued May 4, 1982.

[S–675–82 Filed 5–5–82; 9:16 am]

BILLING CODE 6570–06–M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Wednesday, May 12, 1982.

PLACE: Board room, sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

MATTERS TO BE CONSIDERED:

Bank Membership and Insurance of Accounts—Amador Valley Savings and Loan Association, Pleasanton, California
Proposed Merger—Pipestone Federal Savings and Loan Association, Pipestone, Minnesota *into* Twin City Federal Savings and Loan Association, Minneapolis, Minnesota
Concurrent Branch Office Applications—(1) Home Federal Savings and Loan Association of San Diego, San Diego, California, (2) Coast Federal Savings and Loan Association, Los Angeles, California, (3) California Federal Savings and Loan Association, Los Angeles, California
Bank Membership and Insurance of Accounts—La Cumbre Savings and Loan Association, Santa Barbara, California

[S–676–82 Filed 5–5–82; 9:24 am]

BILLING CODE 6720–01–M

4

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2 p.m., Wednesday, May 5, 1982.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel and budget-related matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570; Telephone: (202) 254–9430.

By direction of the Board.

Dated: May 4, 1982.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[S–678–82 Filed 5–5–82; 12:47 pm]

BILLING CODE 7545–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

TIME AND DATE:

(1) May 6, 1982—8:30 a.m.–4:30 p.m.
(2) May 7, 1982—8 a.m.–4:30 p.m.

PLACE:

(1) Meeting of the Northwest Power Planning Council, May 6, 1982, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205.
(2) Tour of Mid-Columbia Dams and Fisheries Facilities, May 7, 1982. Tour will begin at Campbell's Lodge, 104 West Woodin St., Chelan, Washington.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Council Meeting: Status reports on Mudule I and Module IV plus discussion of the response to "The Path Along the Ridge."
(2) A tour of Mid-Columbia dams and fisheries facilities will begin at Campbell's Lodge and conclude at Desert Airstrip. A quorum of the Council may be present during the tour. Space in the tour vans will be open to the public and press on a first come first serve basis.

CONTACT PERSON FOR FURTHER INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[S-679-82 Filed 5-5-82; 2:07 pm]

BILLING CODE 0000-00-M

6

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 17360, April 22, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., May 4, 1982.

CHANGES IN THE MEETING: Forecasting Subcommittee meeting will be May 5, 1982, at 9 a.m.

Edward Sheets,

Executive Director.

[S-680-82 Filed 5-5-82; 2:51 pm]

BILLING CODE 0000-00-M

7

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, May 12, 1982.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket R81–1 (and MC81–2) Attached Mail. (Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–5614.

[S-677-82 Filed 5-5-82; 10:08 am]

BILLING CODE 7715-01-M

8

UNITED STATES SYNTHETIC FUELS CORPORATION

ACTION: Cancellation of closed meeting.

SUMMARY: Interested members of the public are advised that the closed meeting of the Board of Directors of the United States Synthetic Fuels Corporation to consider matters relating to the Tosco loan guarantee, scheduled for May 10, 1982, and announced at 47 FR 19267, May 4, 1982, has been cancelled. This public announcement is made pursuant to the requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this notice, please contact Mr. Owen J. Malone, Office of General Counsel (202) 653–4230.

May 4, 1982.

United States Synthetic Fuels Corporation.

Edward E. Noble,

Chairman of the Board.

[S-674-82 Filed 5-5-82; 9:09 am]

BILLING CODE 0000-00-M

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federal register

Friday
May 7, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC81–3040	June 5, 1981.
Alabama: AL82–1020	Apr. 2, 1982.
Connecticut:	
CT81–3032	May 15, 1981.
CT82–3001	Feb. 5, 1982.
Iowa:	
IA81–4089	Nov. 13, 1981.
IA81–4090	Dec. 11, 1981.
IA81–4091	Nov. 13, 1981.
IA81–4092	Nov. 27, 1981.
IA81–4093	Do.
IA81–4096	Do.
IA81–4097	Do.
Hawaii: HI82–5105	Mar. 12, 1982.
Maryland:	
MD81–3074	Oct. 9, 1981.
DC81–3040	June 5, 1981.
New Jersey: NJ–3053	Oct. 9, 1981.
New York: NY80–3054	Sept. 5, 1980.
Texas:	
TX81–4064	Aug. 7, 1981.
TX81–4074	Oct. 2, 1981.
TX81–4075	Do.
TX81–4076	Do.
TX81–4078	Do.
TX81–4079	Do.
TX82–4005	Jan. 29, 1982.
Virginia: DC81–3040	June 5, 1981.
Arizona: AZ82–5109	Apr. 23, 1982.
Illinois: IL81–3062	Oct. 16, 1981.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of pulbication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois:	
IL79–2077 (IL82–2034)	Sept. 14, 1979.
IL81–2005 (IL82–2031)	Mar. 27, 1981.
Louisiana:	
LA81–4064 (LA82–4021)	Nov. 6, 1981.
LA81–4064 (LA82–4022)	Do.
LA81–4065 (LA82–4023)	Do.
LA81–4066 (LA82–4020)	Do.
Ohio:	
OH81–2064 (OH82–2035)	Dec. 4, 1981.
OH81–2066 (OH82–2036)	Dec. 18, 1981.
Texas: TX81–4063 (TX82–4019)	Nov. 6, 1981.

Please note that we are changing the format for Federal Register wage decisions to coincide with the provisions of All Agency Memorandum No. 132 dated January 29, 1980, which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which cannot be stated in monetary terms will be shown in footnotes. This procedure will be phased in gradually.

Signed at Washington, D.C. this 30th day of April 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-30-M

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Modification Page 1

DECISION NO. DC81-3040 - MOD. #7 (46 FR 30290 - June 5, 1981)	Basic Hourly Rates	Fringe Benefits
District of Columbia; Maryland-Montgomery and Prince Georges; and D.C. Training School; Virginia Independent City of Alexandria; Arlington and Fairfax Counties		
Change:		
Asbestos Workers	15.93	2.61
Bricklayers	16.05	2.86
Carpenters	14.92	1.55
Cement Masons	14.00	2.62
Electricians	16.25	1.60+3%
Laborers (Excluding Heavy Construction)		
Common Laborers, landscapers	11.53	1.63
Acetylene burners used on wrecking	12.12	1.63
Air tool op. scaffold builders, paving breakers, towmasters, buggy mobiles, spaders, mortar men and scootcretes	11.72	1.63
Pipelayers	11.87	1.63
Powdermen	13.135	1.63
Power saw, wellpoint	11.87	1.63
Plumbers' laborers	10.52	1.51
Line Construction:		
Linemen, cable splicers equipment operators	16.91	.70+3%+5%
Truck with winch, truck pole or steel handling	9.09	.70+3%+5%
Millwrights	15.61	1.55
Piledrivermen	15.25	1.55
Plasterers	14.89	1.46
Roofers:		
Composition	14.72	1.69
Slate, tile mopmen, waterproofer, sprayers, sprandrel and ironite	15.44	1.69
Material handlers (only to supply materials and to prepare decks for new roofs or repairs	9.92	1.69

	Basic Hourly Rates	Fringe Benefits
Heavy Construction (Excluding Water and Sewer Lines):		
Building Construction:		
Power Equipment Operators:		
Group I	16.33	1.62
Group II	15.99	1.62
Group III	15.43	1.62
Group IV	14.22	1.62
Group V	10.26	1.62
Group VI	17.41	1.62
Laborers (Heavy Construction Excluding Water and Sewer Lines):		
Group I	11.63	1.63
Group II	11.82	1.63
Group III	11.90	1.63
Group IV	11.97	1.63
Group V	12.24	1.63
Group VI	12.52	1.63
Group VII	12.605	1.63
Group VIII	13.235	1.63
Laborers (Heavy Construction)		
Group I	12.005	1.63
Group II	12.385	1.63
Group III	13.305	1.63
Group IV	13.655	1.63
Add:		
Sewer and Water Line Construction Projects		
Laborers:		
Open Cut:		
Laborers, jackhammer, rammers and spaders	11.78	.61
Timberman, sheeting-men, shoring-men, caulkers, pipelayers helpers	12.93	.61
Bottom man	12.83	.61
Wagon drillers- air track drillers	6.13	.61
Pipelayers	6.13	.61
Rock drillers	5.88	.61
Tunnel:		
Brakeman, bull gang, dumper, trackmen, concrete man	6.415	.61
Chuck tender, power in		

Modification Page 2

	Basic Hourly Rates	Fringe Benefits
prime house, form setters and movers, nipper, cablemen, hosemen, grout men, bell or signal men, top or bottom, vibrator operator, caulkers' tenders	6.715	.61
Miners, rodmen, re-bar underground, concrete or gunite nozzlemen, powermen, timbermen and re-timberman wood or steel including liner plate or any other support material, motorman, caulkers, diamond drill riggers, cement finishers (underground), welders and burners, shield driver	7.365	.61
Mucking machine operator air	7.615	.61
Power Equipment Operators:		
Backhoes, cable ways, cranes, draglines, power shovels, tunnel shovels, tunnel mucking machines, derricks, 1 cu. yd. and over	10.29	1.45
Backhoes, cableways, cranes, derricks, dragline, tunnel shovels, tunnel mucking machines up to 1 cu. yd., boom cats, elevating graders, hoists, paving mixers, piledriving engines, batch plants, concrete pumps	10.14	1.45
Trenching machines (above 8'3")	9.94	1.45
Backhoes (Hydraulic, under ½ c.y.)	10.02	1.45
Trenching machines (up to 8'3"), boilers skeleton, well drilling machines	9.84	1.45
Air compress, tunnel	9.81	1.45
Front end loaders (high lift), bulldozers	9.79	1.45

	Basic Hourly Rates	Fringe Benefits
Concrete mixers, power wheel scoops and scrapers, motorgraders, tunnel motor men, blade graders, tunnel mechanics	9.69	1.45
Mechanics	10.02	1.45
Bulldozer, hydraulic tampers	9.59	1.45
Roller	9.49	1.45
Air compressors, pump, welding machine well points	9.415	1.45
Truck Drivers:		
Dump trucks	6.10	.415+a
Dump trucks over 8 wheels	6.20	.415+a
Flat trucks	6.20	.415+a
Trailers	6.45	.415+a
Fuel and Oil trucks	6.10	.415+a
Euclids	6.60	.415+a
FOOTNOTE:		
a. $10.00 per week when employee has worked 90 days and work three days in any work week.		
DECISION NO. AL82-1020 - Mod. # 1 (47 FR 14341 dated April 2, 1982)		
Madison County, Alabama (Building Construction)		
CHANGE:		
Electricians	$13.80	1.70+4%

Modification Page 3

Modification Page 4

DECISION NO. CT81-3032 - MOD. #12 (46 FR 27040 - May 15, 1981) Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut	Basic Hourly Rates	Fringe Benefits
Change:		
Heavy & Highway Construction:		
Bricklayers; Cement Masons; Finishers; Stonemasons	12.40	1.75
Carpenters And Pile-drivermen		
Area 1	12.95	2.40+f
Area 2	13.70	1.60+f
Area 3	13.70	1.55+f+e
Area 4	13.70	1.58+f
Laborers		
Laborers	11.05	2.15
Acetylene burners; Asphalt raker; chain saw operators; fence & guard rail erectors; form setters; hand operated vibratory compactor operators; Mason tenders; pipelayers; pneumatic gas & electric drill operators; powdermen & wagon drill operators	11.30	2.15
Air track operators; block paver; curb setters	11.55	2.15
Blasters	11.80	2.15
Truck Drivers		
Class 1	11.26	2.59+a
Class 2	11.36	2.59+a
Class 3	11.46	2.59+a
Class 4	11.41	2.59+a
Class 5	11.51	2.59+a
Class 6	11.56	2.59+a

DECISION NO. CT82-3001 MOD. #5 (47 FR 5621 - February 5, 1982) Fairfield, Litchfield and Windham Counties, Connecticut	Basic Hourly Rates	Fringe Benefits
Change:		
Heavy & Highway Construction:		
Bricklayers; Cement Masons; Finishers; Stonemasons		
Area 1,2,3,6,7,8&9	12.40	1.75
Area 4	13.07	1.08
Area 5	11.95	2.20
Carpenters and Pile-drivermen		
Area 1	13.70	1.55+c+d
Area 2	13.70	1.65+d
Area 3	13.70	1.65+d
Area 4	13.70	1.60+d
Area 5	13.70	1.58+d
Laborers:		
Laborers	11.05	2.15
Acetylene burners; Asphalt raker; chain saw operator; Concrete & power buggy operators; Concrete saw operators; fence & guard rail erectors; form setters; hand operated concrete vibrator operators; hand operated vibratory compactor operators; Mason tenders; pipelayers; pneumatic gas & electric drill operators; powderman & wagon drill operators	11.30	2.15
Air track operators; block paver; curb setters	11.55	2.15
Blaster	11.80	2.15
Truck Drivers		
Class 1	11.26	2.59+a
Class 2	11.36	2.59+a
Class 4	11.41	2.59+a
Class 5	11.51	2.59+a
Class 6	11.56	2.59+a

DECISION NO. IA81-4089 - MOD. #5 (46 FR 56122 - 11/13/81) Clinton County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plants:		
Glaziers	$15.71	1.77
Plumbers & pipefitters	16.65	2.32

DECISION NO. IA81-4090 - MOD. #4 (46 FR 60752 - 12/11/81) Des Moines County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plants:		
Bricklayers & stonemason	15.08	1.57
Carpenters:		
Carpenters	15.70	2.13
Millwrights & pile-drivermen	16.40	2.13
Cement masons	17.55	
Glaziers	15.71	1.77
Ironworkers	16.45	1.91
Laborers - Group 1	13.75	1.35
Group 2	13.91	1.35
Group 3	14.01	1.35
Group 4	14.12	1.35
Group 5	14.22	1.35
Plasterers	17.18	
Roofers	14.13	
Soft floor layers	15.70	2.13

DECISION NO. IA81-4091 - MOD. #4 (46 FR 56123 - 11/13/81) Dubuque County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plants:		
Ironworkers - Southeast portion	16.40	2.375

DECISION NO. IA-81-4092 - MOD. #5 (46 FR 58025 - 11/27/81) Johnson County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plants:		
Glaziers	15.71	1.77
Plasterers	16.47	
Sheet metal workers	17.20	1.11

DECISION NO. IA81-4093 - MOD. #5 (46 FR 58018 - 11/27/81) Linn County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plant:		
Glaziers	$15.71	1.77
Plasterers	16.47	
Sheet metal workers	17.20	1.11

DECISION NO. IA81-4096 - MOD. #4 (46 FR 58023 - 11/27/81) Woodbury County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers	15.38	1.02
Carpenters:		
Carpenters & drywall hangers	14.18	1.94
Millwrights & pile-drivermen	14.68	1.94
Ironworkers	14.64	1.495
Lathers	14.18	1.94
Marble setters	15.38	1.02
Painters - Group 1	13.1[illegible]	1.95
Group 2	13.63	1.95
Plumbers & pipefitters	15.57	1.84
Terrazzo workers	15.38	1.02
Power equipment ops.:		
Group 1	14.145	2.10
Group 2	13.90	2.10
Group 3	12.63	2.10
Group 4	11.85	2.10

DECISION NO. IA81-4097 - MOD. #4 (46 FR 58016 - 11/27/81) Cerro Gordo County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bldg., Water Treatment & Sewage Disposal Plant:		
Bricklayers	12.92	1.07
Glaziers	13.66	1.31+b+4.35%

DECISION NO.HI82-5105- Mod. #2(47 FR 10948- March 12, 1982) STATEWIDE HAWAII	Basic Hourly Rates	Fringe Benefits
CHANGE		
BRICKLAYERS;Stonemasons	$13.48	$5.15
TERRAZZO WORKERS & TILE SETTERS	14.28	4.35
Terrazzo Base Grinders	12.77	4.35
Terrazzo Floor Grinder and Finisher	11.42	4.35

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DECISION NO. MD81-3074 - MOD. #5
(46 FR 50238 - October 9, 1981)
ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND AND FOR HEAVY CONSTRUCTION PROJECTS IN HARFORD AND HOWARD COUNTIES, MARYLAND

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Cement Masons	13.94	1.72
Ironworkers:		
Ironworkers, finishers, rodmen; pre-cast and pre-stress erectors	13.99	2.38
Fence erectors	13.64	2.38
Sheeters	14.24	2.38
Lead Burners	16.35	1.01
Painters:		
Brush, roller, spackling, taping and wallcovering	12.08	2.28
Steel, spray, swinging stages, boarswain chain, sand and waterblasting, steam cleaning and epoxies	12.80	2.29
Plasterers	13.25	2.10
Plumbers	16.12	2.55
Roofers	11.35	1.35
Sheetmetal Workers	13.84	2.42
Steamfitters	16.68	2.31
Tile, Marble and Terrazo Finishers	9.48	.90
Power Equipment Operators (Building and Hmavy Construction):		
Group I	15.08	2.45
Group II	13.78	2.45
Group III	13.07	2.45
Group IV	12.40	2.45
Group V	11.05	2.45
Truck Drivers: Building		
Euclid wagon and dumpster	11.21	2.40
Drop frame gooseneck and trailers	11.07	2.40
Dump	10.82	2.40
Pick-up	11.16	2.40
Truck Drivers: Heavy		
Euclid wagon and dumpsters	10.34	2.40
Drop frame, gooseneck and trailers	10.10	2.40
Dump, sweeper, boring machine and miscellaneous equipment, water trucks, fuel and lube truck	9.85	2.40
Pick-up	9.58	2.40
Line Construction:		
Zone 1 - Zero milestone (Baltimore City Hall) to 45 miles (air line)		
Linemen, cable splicers, digging and equipment operators	15.50	.70+8%
Truck Drivers	9.69	.70+8%
Groundmen	9.30	.70+8%
Zone 2 - Over 45 miles to (air line) limit of jurisdiction		
Linemen, cable splicers, digging and equipment operators	15.75	.70+8%
Truck Drivers	9.94	.70+8%
Groundmen	9.55	.70+8%
Electricians	15.18	1.80+ 3.5%

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DECISION NO. NJ81-3053 - MOD. #12
(46 FR 50243 - October 9, 1981)
BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET, SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS, STONE MASONS, CEMENT MASONS & PLASTERERS:		
ZONE 3	14.87	4.48
ZONE 4		
Bricklayers & Stone Masons	13.66	1.77
Cement Masons & Plasterers	15.35	2.15
ZONE 7	15.75	1.62
ZONE 8	15.61	2.09
CARPENTERS, INSULATORS & MILLWRIGHTS:		
ZONE 1	14.88	3.83
ZONE 3		
Carpenters	16.05	15-5/12%
Millwrights	16.55	"
ZONE 4		
Carpenters	16.05	"
Millwrights	16.55	"
ZONE 5		
Carpenters	15.38	20-5/10%
Millwrights	15.88	"
LABORERS, BUILDING CONSTRUCTION:		
ZONE 2	10.55	2.55
ZONE 3		
Laborers	11.30	3.20
Mortar mixers, scaffold men, pneumatic hammer ops., bell men & carpenter tenders	11.05	3.20
ZONE 7	10.30	3.05
ZONE 8		
Laborers	10.75	3.38
Vibrator handler, power hammer handler, tamper & fork lift op.	11.00	2.35
ZONE 9		
Laborer	11.30	1.80
Vibrator handler, power hammer handler, tamper, & fork lift op.	11.55	1.80
ZONE 10	11.75	1.10
ZONE 12	10.80	2.30
ZONE 14	10.65	2.30
ZONE 15	10.70	2.40
ZONE 17	11.35	1.55
PAINTERS:		
ZONE 3		
Painters on new construction and major alterations	13.38	1.88
Painters on repaint work	12.30	1.88
Spraying or application of hazardous or dangerous materials on repaint work	12.90	1.88
Exterior work exceeding 3 stories in height for painting of open structural steel and tanks under 3 stories in height except flat tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to machinery or equipment located therein)	13.45	1.88
Repaint work as described above	12.45	1.88
On bridges, television and radio towers, structural steel and tanks above 3 stories in height (30' or over), smoke stacks, water towers, sandblasting, steamcleaning, spraying or application of hazardous materials	13.90	1.88

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Decision No. NY-80-3054 - Mod.#2
(45 FR 59104 - September 5, 1980)

Modification Page 8

DECISION NO. TX81-4064 - MOD. #2

DECISION NO. TX81-4078 -

Decision No. NY-80-3054 - Mod.#2
(45 FR 59104 - September 5, 1980)
Jefferson County, New York

CHANGE: LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits
Electrical Overhead & Underground Distribution Work		
Journeyman Lineman & Technician	12.00	5%+3.40 +a
Cable Splicer	16.00	"
Groundman Digging Machine Operator, Groundman Dynamite Man	10.80	"
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.60	"
Groundman Truck Driver (Tractor Trailer)	10.20	"
Driver Mechanic, Groundman - Experienced	9.00	"
All Overhead Transmission Line Work and Lighting for Athletic Fields		
Journeyman Lineman & Technician	13.80	"
Groundman Digging Machine Operator, Groundman Dynamite Man	12.42	"
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.04	"
Groundman Truck Driver (Tractor Trailer Unit)	11.73	"
Driver Mechanic, Groundman - Experienced	10.35	"
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems		
Journeyman Lineman & Technician	14.55	"
Cable Splicer	16.005	"
Groundman Digging Machine Operator, Groundman Dynamite Man	13.095	"
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.64	5%+3.40 +a
Groundman Truck Driver (Tractor Trailer Unit)	12.37	"
Driver Mechanic, Groundman - Experienced	10.91	"
All Pipe type Cable Installation, Maintenance Job or Projects		
Journeyman Lineman	14.55	"
Certified Lineman Welder	15.28	"
Cable Splicer	16.005	"
Groundman Equipment Operator	14.55	"
Groundman Truck Driver (Tractor Trailer Unit)	12.37	"
Groundman Truck Drivers	11.64	"
Groundman	10.91	"

FOOTNOTE:
a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

DECISION NO. TX81-4064 - MOD. #2 (46 FR 40487 - August 7, 1981) El Paso County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers	$11.75	2.95
DECISION NO. TX81-4074 - MOD. #8 (46 FR 48861 - October 2, 1981) Travis County, Texas		
CHANGE:		
Ironworkers	13.35	2.62
DECISION NO. TX81-4075 - MOD. #9 (46 FR 48863 - October 2, 1981) Galveston & Harris Cos., Texas		
CHANGE:		
Elevator constructors:		
Mechanics	15.34	2.465+ a+b
Helpers	70%JR	"
Helpers (Prob.)	50%JR	"
Ironworkers	15.46	2.90
Painters:		
Galveston County:		
Group 1	14.345	3.05
Group 2	14.645	3.05
Group 3	13.59	3.05
DECISION NO. TX81-4076 - MOD. #9 (46 FR 48857 - October 2, 1981) Brazos County, Texas		
CHANGE:		
Elevator constructors:		
Mechanics	15.34	3.465+ a+b
Helpers	70%JR	"
Helpers (Prob.)	50%JR	"
Ironworkers	15.46	2.90

DECISION NO. TX81-4078 - MOD. #7 (46 FR 48865 - October 2, 1981) Bexar County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers	$12.55	2.87
DECISION NO. TX81-4079 - MOD. #5 (46 FR 48867 - October 2, 1981) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas		
CHANGE:		
Building Construction:		
Ironworkers	13.35	2.62
DECISION NO. TX82-4005 - MOD. #4 (47 FR 4465 - January 29, 1982) Jefferson & Orange Cos., Texas		
CHANGE:		
Elevator constructors:		
Mechanics	15.34	2.465+ a+b
Helpers	70%JR	"
Helpers (Prob.)	50%JR	"
DECISION NO. AZ82-5109 - Mod. #1 (47 FR 17723 - April 23, 1982) Statewide, Arizona		
Omit:		
Landscape Gardener and Nurseryman classification from Laborers, Group 1:		
ADD:		
Plumbers:		
Hoover Dam Only:		
Zone 4	$19.35	$3.83

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DECISION NO.IL81-2062 - MOD. #1 (46 FR 51155 - October 16, 1981) Cook, Illinois	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
BRICKLAYERS; STONEMASONS	$15.61	1.25	1.10		.11
CAULKERS; CLEANERS AND POINTERS	15.25	1.05	1.10		.04
CARPENTERS:					
Building, Heavy & Highway: Carpenters; Millwrights; Piledrivermen and Soft floor layers	15.50	1.43	1.08		.10
IRONWORKERS:					
Riggers & machinery movers	12.755	1.345	2.475	1.75	.15
Metal fence Erectors:					
Black book	16.20	1.28a	1.36		.05
Red book	11.57	1.28a	1.36		.05
MARBLE SETTERS'FINISHERS	12.45	1.10	.05	.50	
PAINTERS:					
Brush, Decorators, Paperhangers and tapers	14.00	.675	.75		.05
ROOFERS	15.80	1.56	1.15		.04
TILE SETTERS	14.66	1.00	1.27		.05
TRUCK DRIVERS:					
Building and Residential:					
4 Axle Trucks	13.575	40.00c	49.00c	d & e	
5 Axle Trucks	13.775	40.00c	49.00c	d & e	
6 Axle Trucks	13.975	40.00c	49.00c	d & e	
2-3 Axle Trucks	13.325	40.00c	49.00c	d & e	
Heavy And Highway:					
2-3 Axle Trucks	13.15	1.45	1.00	d & e	
4 Axle Trucks	13.40	1.45	1.00	d & e	
5 Axle Trucks	13.60	1.45	1.00	d & e	
6 Axle Trucks	13.80	1.45	1.00	d & e	
Add:					
FOOTNOTES:					
d. 6 paid holidays A thru E & G					
e. 900 straight-time hours or more in one calender year for same employer - 1 week paid vacation; three years-2 weeks paid vacation; ten years-3 weeks paid vacation; twenty years - 4 weeks paid vacation					

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DECISION NO. IL81-2062 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers:					
Common; Plasterer Tenders; Pumps for Dewatering & other unclassified Laborers	12.40	.62	1.30		
Cement Gun Laborers	12.475	.62	1.30		
Scaffold Laborers & Chimney Laborers over 40 ft.	12.50	.62	1.30		
Windlass & Cement Gun Nozzle Laborers - Gunnite	12.55	.62	1.30		
Stone Handlers & Derrickmen	12.60	.62	1.30		
Jackhammermen	12.625	.62	1.30		
Concrete Vibrator; Plumbers' Tenders; & Chain Saw Operators	12.65	.62	1.30		
Firebrick & Boiler Setters' Tenders	12.725	.62	1.30		
Chimney Tenders on Firebrick; Caisson Diggers & Well Point System Men	12.75	.62	1.30		
Boiler Setter Plastic Tenders	12.85	.62	1.30		
Jackhammer on Firebrick Only	12.975	.62	1.30		
Omit:					
Landscape Work					
Add:					
Landscape Work:					
Building, Residential, Heavy & Highway Const.:					
Landscape Plantsmen	8.18			f&g	
Truck Driver - Tractor Trailer (3 axle or more) and Equipment Operator	8.86			f&g	
Truck Driver - 2 Axle	8.24			f&g	

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SUPERSEDEAS DECISION

DECISION NO. IL81-2062

STATE: Illinois

COUNTIES: *See Below

DECISION NO. IL81-2062
(Cont'D)

FOOTNOTES:

f. Six Paid Holidays; New Year's Day; Memorial Day; July Fourth; Labor Day; Thanksgiving Day; Christmas Day

g. 1 year's service - 1 week's Paid Vacation; 3 or more year's service - 2 weeks' Paid Vacation

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Power Equipment Operators:					
Building and Residential Construction:					
Class 1	15.80	1.50	1.35	.80	.05
Class 2	14.50	1.50	1.35	.80	.05
Class 3	13.05	1.50	1.35	.80	.05
Class 4	11.60	1.50	1.35	.80	.05
Sewer, Heavy and Highway Construction:					
Class 1	15.45	1.50	1.35	.80	.05
Class 2	14.90	1.50	1.35	.80	.05
Class 3	13.90	1.50	1.35	.80	.05
Class 4	12.65	1.50	1.35	.80	.05
Class 5	11.55	1.50	1.35	.80	.05

SUPERSEDEAS DECISION

STATE: Illinois — COUNTIES: *See Below
DECISION NO.: IL82-2034 — DATE: Date of Publication
Supersedes Decision No. IL79-2077, dated September 14, 1979 in 44 FR 53642
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

*Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Macon, Moultrie, Piatt, Shelby, & Vermilion

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Champaign, Douglas (N. of US Rte. #36), & Piatt (NE ¼) Cos.:					
Carpenters	$14.655	.65	1.30		.08
Piledrivermen	15.155	.65	1.30		.08
Clark, Coles, Cumberland, Douglas (Remainder of Co.), Edgar, Moultrie (Exclu. area N. of Rte. #133), & Shelby (Exclu. Moweaqua & N. thereof) Cos.:					
Carpenters	15.005	.75	1.10		.08
Piledrivermen	15.505	.75	1.10		.08
DeWitt Co.:					
Carpenters	14.58	.75	1.50		.07
Piledrivermen	15.08	.75	1.50		.07
Macon, Moultrie (N. of Rte. #133) Piatt (SW ¼), & Shelby (Moweaqua & N. thereof) Cos.:					
Carpenters	15.005	.75	1.00		.08
Piledrivermen	15.505	.75	1.00		.08
Vermilion Co.:					
Carpenters	14.755	.75	1.10		.08
Piledrivermen	15.255	.75	1.10		.08
CEMENT MASONS:					
Champaign, Clark, Cumberland, Douglas, Moultrie (Exclu. NE Corner), Piatt (Monticello & N. thereof), & Shelby (Exclu. Lovington, Bethany & Moweaqua) Cos.	15.475	.55			.025
Coles & Edgar Cos.	15.725				
DeWitt (Clinton & S. thereof), Macon, Moultrie (NE Corner), Piatt (S. of Monticello), & Shelby (Lovington, Bethany & Moweaqua) Cos.	14.80	.65	.375		
Vermilion Co.	14.725		1.00		

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DECISION NO. IL82-2034

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Champaign, DeWitt (Santa Anna Twp.), Douglas (N ½), & Piatt (Blue Ridge, Sangamon & Monticello Twps.) Cos.	$16.05	.80	3%+.75		.3%
Clark & Edgar Cos.	16.00	.65	3%+1.00		.01
Coles, Cumberland, DeWitt (Harp, Wapella, Barnett, Clintonia, DeWitt, Turnbridge, Texas, Creek & Nixon Twps.), Douglas (Arcola, Burbon, Garrett Twps. & that portion of Tuscola lying W. of the city of Tuscola & the Ill. Central RR Tracks), Macon, Moultrie, Piatt (Goose Creek, Willow Branch, Cerro Gordo, Bement & Unity Twps.), & Shelby Cos.	16.45	.61	3%+.65		.35%
DeWitt (Waynesville, Wilson & Rutledge Twps.) Co.	15.65	.65	3%+.85		½%
Vermilion Co.	15.97	.65	3%+.30		½%
IRONWORKERS:					
Champaign, Coles, Cumberland, DeWitt (E ½), Douglas, Edgar, Macon (E. of Decatur), Moultrie, Piatt, Shelby (E ½), & Vermilion Cos.	15.50	.95	1.50		.08
Clark Co.	14.15	1.00	2.70		.10
DeWitt (W ½), Macon (Except portion E. of Decatur), & Shelby (W ½) Cos.	16.25	.80	1.05		.08
LINE CONSTRUCTION:					
Champaign, Coles (E. Oakland, Humboldt, Morgan, N. Okaw, & Seven Hickory Twps.), DeWitt, Douglas, Edgar, Macon, Moultrie (Except Whitley Twp.), Piatt, Shelby (W. of Holland, Prairie, Richland, & Windsor Twps.), & Vermilion (Except work performed on Ill. Power Company & REA Co-op properties) Cos.:					

DECISION NO. IL82-2034

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen	$17.16	.45	7%		.5%
Groundmen-Equipment Operator, Class I	16.01	.45	7%		.5%
Groundmen-Truck Driver w/Winch	12.16	.45	7%		.5%
Groundmen-Truck Driver w/o Winch	11.45	.45	7%		.5%
Groundmen	10.91	.45	7%		.5%
Clark, Coles (S ½), Cumberland, Moultrie (Whitley Twp.), Shelby (Except W. of Holland, Prairie, Richland, & Windsor Twps.) Cos.:					
Linemen	15.80	.45	13%		½%
Groundmen Equipment Operator, Class I	13.51	.45	13%		½%
Groundmen Equipment Operator, Class II	12.10	.45	13%		½%
Groundman	10.09	.45	13%		½%
PAINTERS:					
Champaign, Coles, Cumberland, & Douglas Cos.	16.27	.35	.40		.04
Clark & Edgar Cos.:					
Brush up to 30 ft.	14.30	.65	.35		
Brush over 30 ft.	15.10	.65	.35		
Roller up to 30 ft.	15.15	.65	.35		
Roller over 30 ft.	15.95	.65	.35		
Sandblasting up to 30 ft.	15.80	.65	.35		
Sandblasting over 30 ft.	16.60	.65	.35		
Spray up to 30 ft.	15.30	.65	.35		
Spray over 30 ft.	16.10	.65	.35		
DeWitt, Macon, Moultrie, Piatt, & Shelby Cos.:					
Brush & Roller	15.05	.80	.60		
Spray	15.80	.80	.60		
Radio & TV Towers; Steeples; & Structures over 50 ft.	16.05	.80	.60		
LABORERS:					
Champaign, DeWitt, & Piatt (N ½) Cos.:					
Unskilled	15.00	.70	.60		.05
Semi-Skilled	15.20	.70	.60		.05
Skilled	15.35	.70	.60		.05

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DECISION NO. IL82-2034

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Clark, Douglas, Edgar, Moultrie (E ½), & Piatt (S ½) Cos.:					
Unskilled	$14.75	.55	1.00		.05
Semi-Skilled	14.95	.55	1.00		.05
Skilled	15.10	.55	1.00		.05
Coles & Cumberland Cos.:					
Unskilled	15.00	.80	.50		.05
Semi-Skilled	15.20	.80	.50		.05
Skilled	15.35	.80	.50		.05
Macon & Moultrie (W ½) Cos.:					
Unskilled	14.75	.65	.90		.05
Semi-Skilled	14.95	.65	.90		.05
Skilled	15.10	.65	.90		.05
Shelby Co.:					
Unskilled	14.65	.65	1.00		.05
Semi-Skilled	14.85	.65	1.00		.05
Skilled	15.00	.65	1.00		.05
Vermilion Co.:					
Unskilled	14.10	.65	1.55		.05
Semi-Skilled	14.30	.65	1.55		.05
Skilled	14.45	.65	1.55		.05

LABORERS CLASSIFICATIONS:

UNSKILLED - Common Laborers
SEMI-SKILLED - Asphalt Rakers; Asphalt Saw Operators; Blade Grade Operators; Cement Handlers; Chain Saw Operators; Concrete Saw Operators; Dumping Dry Cement From Dump & Batch Trucks; Form Setters; Handling of Creosote Lumber & Lime; Hopper Men; Mechanical Form Tampers; Powder Men; Powdermen & Dynamite Men ($1.00 premium); Power Tool Operators; Priming & Wrapping of Gas Lines; Puddlers; Rubbing of Concrete; Sewer or Conduit, Tunnel Miners, Top Men, Muckers, & Bottom Men ($.25 premium); Sewer Tile & Pipe Layers; Shoring & Bracing in Sewer & Tunnels; & Spotters & Dumpmen or on Levees, Fills, or Grades
SKILLED - Air Spades; Brick Tenders; Gunnite Nozzlemen; & Jackhammers

DECISION NO. IL82-2034 ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS: Champaign, Clark, Coles, Cumberland, Douglas, Edgar, Moultrie, & Vermilion Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$14.95	.75	.75		.08
CLASS II	14.85	.75	.75		.08
CLASS III	14.65	.75	.75		.08
CLASS IV	9.25	.75	.75		.08

CLASS I - Master Mechanic
CLASS II - Utility Operator
CLASS III - Power Cranes, Draglines, Derricks, Shovels, Gradalls, Mechanics, Concrete Mixers with Skip, Tournamixers, Two Drum Machine, One Drum Hoists with Tower or Boom, Cableways, Tower Machines, Motor Patrol, Boom Tractor, Boom or Winch Truck, Winch or Hydraulic Boom Truck, Truck Crane, Tournapull, Tractor Operating Scoops, Bulldozer, Push Tractor, Asphalt Planer, Finishing Machine on Asphalt, Large Rollers on Earth, Rollers on Asphalt Mix, Ross Carriers or similar Machine, Gravel Processing Machine, Asphalt Plant Engineer, Paver Operator, Farm Tractor w/half yard Bucket and/or Backhoe Attachment, Dredging Equipment or Dredge Engineer or Dredge Operator, Central Mix Plant Engineer, CMI or similar type machine, Concrete Pump, Truck or Skid Mounted, Tower Crane, Engine or Rock Crusher Plant, Concrete Plant Engineer, Ditching Machine with dual attachment, Tractor Mounted Loaders, Cherry Picker, Hydro Crane, Standard or Dinkey Locomotives, Scoopmobiles, Euclid Loader, Soil Cement Machine, Back Filler, Elevating Machine, Power Blade , Drilling Machines, incl. Well Testing, Caissons, Shaft or any similar type Drilling Machines, Motor Driven Paint Machine, Pipe Cleaning Machine, Pipe Wrapping Machine, Pipe Bending Machine, Apsco Paver, Boring Machine, Head Equipment Greaser, Barber-Greene Loaders, Formless Paver, Well Point System, Concrete Spreader, Hydra Ax, Resco Concrete Saw, Marine Scoops, Brush Mulcher, Brush Burner, Mesh Placer, Tree Mover, Helicopter Crew (3), Piledriver - Skid or Crawler, Stump Remover, Root Rake, Tug Boat Operator, Refrigerating Machine, Freezing Operator, Chair Cart - Self-Propelled, Hydra Seeder, Straw Blower, Power Sub Grador, Bull Float, Finishing Machine, Self-Propelled Pavement Breaker (Backhoe Attached), Lull (or similar type machine), Two Air Compressors, Compressors hooked in Manifold, Overhead Crane, Chip Spreador, Mud Cat, Sull-Air

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DECISION NO. IL82-2034

POWER EQUIPMENT OPERATORS (CONT'D):

CLASS IV - Concrete Mixers without Skips, Rock Crusher, Ditching Machine under 6', Curbing Machine, One Drum Machines without Tower or Boom, Air Tugger, Self Propelled Concrete Saw, Machine Mounted Post Hole Digger, Two to Four Generators, Water Pumps, or Welding Machines, within 400 feet, Air Compressor 600 cu. ft. and under, Rollers on Aggregate and Seal Coat Surfaces, Fork Lift, Concrete and Blacktop Curb Machine, Farm Tractor with less than half yard Bucket, One Water Pump, Oilers, Air Valves or Steam Valves, One Welding Machine, Truck Jack, Mud Jack, Gunite Machine, House Elevators when used for Hoisting Material, Engine Tenders, Fireman, Wagon Drill, Flex Plane, Conveyor, Siphons and Pulsometer, Switchman, Fireman on Paint Pots, Fireman on Asphalt Plants, Distributor Operator on Trucks, Tampers, Self-Propelled Power Broom, Striping Machine (motor driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser, Deck Hands, Truck Crane, Oiler Driver, Cement Blimps, Form Grader, Temporary Heat, Throttle Valve, Farm Tractor

DECISION NO. IL82-2034

POWER EQUIPMENT OPERATORS:

Remaining Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$16.25	.85	.95		.05
CLASS II	14.60	.85	.95		.05
CLASS III	13.00	.85	.95		.05

CLASS I: Asphalt Plant Engineer; Asphalt Screed Man; Apsco Concrete Spreaders; Asphalt Pavers; Asphalt Rollers on Bituminous Concrete; Athey Loaders; Backfillers; Crane Type Backhoes; Cableways; Cherry Pickers; Clam Shell; C.M.I. & Similar Type Autograde Formless Paver, Autograde Placer & Finisher; Concrete Breakers; Concrete Plant Operators; Concrete Pumps; Cranes; Derricks; Derrick Boats; Draglines; Earth Auger Boring Machines; Elevating Graders; Engineers on Dredge; Gravel Processing Machines; Head Equipment Greasers; High Lift or Fork Lifts; Hoist w/two Drums or Two or more Loadlines; Locomotives; Mechanics; Motor Graders or Auto Patrols; Operators or Levelman on Dredges; Operators Power Boat; Operators Pug Mill (Asphalt Plants); Orange Peels; Overhead Cranes; Paving Mixers; Piledrivers; Pipe Wrapping & Painting Machines; Push Dozers, or Push Cats; Rock Crushers; Ross Carriers or Similar Machines; Scoops; Skimmers 2 cu. yds., cap. & under; Sheep Foot Roller (Self-propelled); Shovels; Skimmer Scoops; Test Hole Drilling Machines; Tower Cranes; Tower Machines; Tower Mixers; Track Type & Loaders; Track Type Fork Lifts or High Lifts; Track Jacks & Tampers; Tracters; Sideboom; Trenching Machines; Ditching Machine; Tunnel Luggers; Wheel Type End Loaders; Winch Cat; Scoops (All or Tournapull)

CLASS II: Asphalt Boosters & Heaters; Asphalt Distributors; Asphalt Plant Fireman; Building Elevator; Bull Floats or Flexplanes; Concrete Finishing Machines; Concrete Saws, Self-propelled; Concrete Spreader Machines; Gravel or Stone Spreaders, Power Operated; Hoist Automatic; Hoist w/1 Drum & 1 Load Line; Oiler on 2 Paving Mixers when used in Tandem Boom or Winch Truck; Post Hole Diggers, Mechanical; Road or Street Sweeper-Self-propelled; Scissors Hoist; Seaman Tiller; Straw Machine; Vibratory Compactor; Well Drill Machines; & Mud Jacks (Hvy & Hwy only)

CLASS III: Air Compressor*; Air Compressors, Track or Self-propelled; Bulk Cement Batching Plants; Conveyors*; Concrete Mixers (except plant, paver, tower); Firemen; Generators*; Greasers; Light Plants*; Mechanical Heaters*; Oilers; Power Form Graders; Power Sub-Graders; Pug Mills, when used for other than Asphalt Operation; Rollers (except Bituminous Concrete); Tractors w/o Power Attachments Regardless of size or type; Truck Crane Oiler & Driver (1 man); Vibratory Hammer; Water Pumps*; Welding Machines (one 300 amp. or over*); Welding Machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS, WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

SUPERSEDEAS DECISION

DECISION NO. IL82-2034

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$14.325	1.15	51.00a		
GROUP II	14.725	1.15	51.00a		
GROUP III	14.925	1.15	51.00a		
GROUP IV	15.175	1.15	51.00a		

GROUP I: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

GROUP II: 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

GROUP III: 2, 3 or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

GROUP IV: Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:
a. Per Week Per Employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NUMBER: IL82-2031
Supersedes Decision No. IL81-2005, dated March 27, 1981 in 46 FR 19166
COUNTIES: Madison & St. Clair
DATE: Date of Publication
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.49	1.00	1.26		
BOILERMAKERS	17.05	1.275	1.60		.03
BRICKLAYERS; Caulkers; Cleaners; Pointers; & Stonemasons:					
Madison County	15.40	.80	.75		.10
St. Clair County	15.40	.80	.75		.10
CARPENTERS:					
Madison County:					
Carpenters; Lathers; Millwrights; Piledrivermen; & Soft Floor Layers:					
Commercial Building	14.585	1.05	1.25		
Residential:					
Southern Part of Madison Co. Bounded by Rte #4 on East, #143 on North, #111 on West & to the Place Where #111 & Madison Co. Line Intersect excluding Bethalto & Godfrey	13.735	1.05	1.25		
Remainder of Madison Co.	14.185	1.05	1.25		
St. Clair County:					
Carpenters; Millwrights; Piladrivermen; & Soft Floor Layers:					
Commercial Building	14.935	1.05	1.00		
Residential:					
Freeburg	14.435	1.05	1.00		
Chester	14.735	1.05	1.00		
CEMENT MASONS	14.755	1.25	1.02		
ELECTRICIANS:					
Madison Co. (Alton & Vic.)	16.81	.65	3%+1.50		.3%
Madison (Rem. of Co.) & St. Clair Co.	14.80	.59	3%+1.04	.89	1%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	14.19	1.345	1.085	3%+a&b	.035
Helpers	70%JR	1.345	1.085	3%+a&b	.035
Helpers (Prob.)	50%JR				
GLAZIERS	14.79	1.43	2.65	13.2%	.05

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DECISION NO. IL82-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS	$15.85	.80	1.05		.05
LABORERS:					
Madison Co.					
Alton					
Common	13.60	.65	.60		.05
Laying Sewer & All Sewer Work	13.70	.65	.60		.05
Well Digging; Gunnite Machine; Gunnite Nozzle Operator; Rip-Rapping	13.85	.65	.60		.05
Wood River					
Common	13.20	.65	1.00		.05
Laying Sewer & All Sewer Work	13.30	.65	1.00		.05
Well Digging; Gunnite Machine & Nozzle Operator	13.45	.65	1.00		.05
Granite City, Madison, Venice, Nameoki & Mitchell					
Common	13.05	1.80c			.05
Cutting, Burning & Welding	13.325	1.80c			.05
Plasterers' & Brick Masons' Tenders	13.55	1.80c			.05
Dynamite & Powdermen	14.575	1.80c			.05
Dynamite & Powdermen Tenders	13.575	1.80c			.05
Collinsville					
Common	13.45	.65	.75		.05
Mason & Plasterers' Tenders	13.95	.65	.75		.05
Dynamite Men	14.75	.65	.75		.05
Dynamite Men Tenders	14.00	.65	.75		.05

DECISION NO. IL82-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
Edwardsville					
Common	$13.85		1.00		.05
Men Working on Sewer Work from Building to Main Sewer	13.95		1.00		.05
Men Working in Main Sewer Ditch & Cutting w/a Torch	14.10		1.00		.05
Plaster & Mason Tenders	14.35		1.00		.05
Glen Carbon					
Common	13.85		1.00		.05
Mason & Plaster Tenders	14.35		1.00		.05
Dynamite Men	15.45		1.00		.05
Highland & St. Jacob					
Common	14.15		.60		.05
Mason & Plasterers Tenders	14.65		.60		.05
Workmen cutting & Burning w/a Torch	14.40		.60		.05
Dynamite Men	15.75		.60		.05
Livingston					
Common	14.25		.50		.05
Working on the Bottom of Sewer	14.50		.50		.05
Mason & Plasterer Tenders	14.75		.50		.05
Dynamite Men	15.85		.50		.05
Marine					
Common	14.55		.20		.05
Mason & Plasterer Tenders	15.05		.20		.05
Working on the Bottom of Sewer	14.80		.20		.05
Dynamite Men	16.15		.20		.05
Troy & Vicinity					
Common	13.75		1.00		.05
Mason & Plasterer Tenders	14.25		1.00		.05
Working on the Bottom of Sewer	14.00		1.00		.05
Dynamite Men	15.35		1.00		.05

DECISION NO. IL82-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: (Cont'd)					
St. Clair County:					
E. St. Louis & Vicinity					
Laborers	$13.05	1.80c			.05
Dynamite Men & Powder Men	14.575	1.80c			.05
Belleville & Vicinity					
Laborers	13.00	.55	1.30		.05
Dynamite Men & Powder Men	14.50	.55	1.30		.05
Working w/a Torch at Bottom of Sewer	13.25	.55	1.30		.05
O'Fallon, Mascoutah, Scott AFB, Shilo & Lebannon & Vicinity					
Laborers	13.60	.65	.60		.05
Bottom Man on Sewer Work	13.85	.65	.60		.05
Dynamite Men	14.45	.65	.60		.05
Freeburg & Vicinity					
Laborers	12.40	.50	.60		.035
All Sewer Work	12.65	.50	.60		.035
Mason & Plaster Tenders	12.90	.50	.60		.035
Dynamite Man	14.00	.50	.60		.035
New Athens & Vicinity					
Laborers	13.25	.55	.95		.05
Bottom Man on Sewer Work	13.50	.55	.95		.05
Mason & Plaster Tenders	13.75	.55	.95		.05
Dynamite Men	14.85	.55	.95		.05
LATHERS: St. Clair County	14.735			.65	.01
PAINTERS:					
Residential - Commercial	14.72	.70	.60		
Industrial & Taping	14.97	.70	.60		
Bridges; Grain Elevators, Water; Radio & TV Towers; Stacks	15.22	.70	.60		
Residential & Commercial Spray & Blast	15.72	.70	.60		
Industrial Spray & Blast	15.97	.70	.60		

DECISION NO. IL82-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS	$16.275				
PLUMBERS & STEAMFITTERS:					
Alton & Northern part of Madison Co., North of Mitchell	18.90	.48	.96	d	.05
Granite City; Southern ½ of Madison Co., & E. St. Louis & Vic. in St. Clair Co.	14.20	1.00	1.42	1.00	.03
Belleville & Vicinity	15.40	.80	1.00		
ROOFERS:					
Composition-Slate-Tile	13.85	.92	.85		.03
SHEET METAL WORKERS	14.78	.80	1.00	6%	.06
SPRINKLER FITTERS	15.31	.95	1.40		.08
WELDERS - recieve rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years and 6% of regular hourly rate for employee who has worked in business more than 5 years.

b. 7 Paid Holidays; A through G

c. Includes Pension

d. Paid Holiday: 4 Hours for Christmas Eve if Holiday falls on Monday through Friday

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POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MASTER MECHANIC	$15.67	.87	1.51		.10
GROUP I	15.17	.87	1.51		.10
GROUP II	12.64	.87	1.51		.10
GROUP III	11.99	.87	1.51		.10
GROUP IV	11.89	.87	1.51		.10
GROUP V	11.64	.87	1.51		.10
GROUP VI:					
a	17.32	.87	1.51		.10
b	17.62	.87	1.51		.10
c	13.74	.87	1.51		.10
d	14.24	.87	1.51		.10

POWER EQUIPMENT OPERATORS:

GROUP I Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers, Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't. Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 drum or more, Hoists-2 Drum or more, Hydraulic Backhoes, Ditching Machines or Backfiller Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boat Oprs., (25' & over), Motor Graders or Pushcats, Scoops or Tournapulls, Bulldozers, Endloaders or Fork-Lifts, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drills (other than derrick type) 1-drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Firemen on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machines, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft., conveyors (1), Distribution Oprs., On Trucks, Siphons or Jets (1) Winch Heads or Apparatuses (1), Light Plant (1) Mixers (under 2 bags)

GROUP II Air Compressor (1), Water Pumps regardless of size (1) Welding Machines (1)

GROUP III Firemen and Asphalt Spreader Oilers

GROUP IV Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)

GROUP V Oilers

GROUP VI

a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$14.325	1.15	51.00a		
GROUP II	14.725	1.15	51.00a		
GROUP III	14.925	1.15	51.00a		
GROUP IV	15.175	1.15	51.00a		

GROUP I: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

GROUP II: 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

GROUP III: 2, 3 or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

GROUP IV: Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:
a. Per Week Per Employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

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SUPERSEDEAS DECISION

STATE: Louisiana PARISHES: Bossier & Caddo

SUPERSEDEAS DECISION

SUPERSEDEAS DECISION

STATE: Louisiana
DECISION NO.: LA82-4021
PARISHES: Bossier & Caddo
DATE: Date of Publication
Supersedes Decision No. LA81-4084, dated November 6, 1981, in 46 FR 55203.
DESCRIPTION OF WORK: Residential Projects consisting of single family homes & apartment up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.71	2.475
BRICKLAYERS & STONEMASONS	12.80	1.60
CARPENTERS:		
Carpenters & soft floor layers	12.55	1.48
Millwrights	13.30	1.48
Piledrivermen	12.80	1.48
CEMENT MASONS	11.65	.80
ELECTRICIANS:		
Electricians	14.60	3.40+ 4%
Cable splicers	15.10	"
ELEVATOR CONSTRUCTORS:		
Mechanics	12.56	2.33 + a
Helpers	70%JR	"
Helpers (Prob.)	50%JR	
GLAZIERS	9.88	.34
IRONWORKERS	13.60	3.36
LABORERS:		
GROUP 1 - Laborers	7.53	.57
GROUP 2 - Mason tenders, plasterer tenders; asphalt rakers, asphalt smoothers	7.83	.57
GROUP 3 - Mortar mixers	7.88	.57
GROUP 4 - Air jacks, vibrators; sewer pipe layer & wipers	7.73	.57
LATHERS	13.05	1.48
MARBLE, TILE & TERRAZZO WORKERS	11.30	.85
PAINTERS - Painters, tape & float, vinyl & paperhangers	11.40	1.10
PLASTERERS	11.65	.80
PLUMBERS & PIPEFITTERS	12.69	2.99
ROOFERS:		
Roofers	12.86	.24
Kettlemen	8.90	.24
SHEET METAL WORKERS	8.35	3%+.82
SPRINKLER FITTERS	13.69	2.43
TRUCK DRIVERS:		
GROUP 1 - Pick-ups, spotters & dumpers	9.47	
GROUP 2 - Stake bodies; flat beds (all sizes)	9.85	
GROUP 3 - Single axle dump & water trucks; transit mix up to & including 3 yds.	9.80	
GROUP 4 - Tandem axle dump, batch & water truck over 3 tons, pick-ups with trailer	9.95	
GROUP 5 - Mississippi wagons, floats, tractor trailers, rubber-tired tractors & wobble wheel	10.10	
GROUP 6 - Euclids, low-boy, Dempsey dumpsters, Koehring dumps, 5 axle truck, transit mix over 3 yds.	10.30	
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.		

FOOTNOTE FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos.-none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate. 7 paid holidays - New Years' Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the Friday after Thanksgiving Day; Christmas Day

Unlisted classification needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Louisiana
DECISION NO.: LA82-4022
PARISHES: Calcasieu
DATE: Date of Publication
Supersedes Decision No. LA81-4084, dated November 6, 1981, in 46 FR 55203.
DESCRIPTION OF WORK: Residential Projects consisting of single family homes & apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.755	2.215
BRICKLAYERS & STONEMASONS	14.80	1.73
CARPENTERS:		
Carpenters, piledrivermen & soft floor layers	13.81	1.40
Millwrights	13.91	.07
CEMENT MASONS	13.93	
ELECTRICIANS:		
New & old single or multiple family residence & apt. complex not to exceed 12 units 2-story walk-ups	11.45	.95 + 3-3/10%
Other electricians:		
Electricians	18.25	.95 + 3-5/10%
Cable splicers	18.75	"
ELEVATOR CONSTRUCTORS:		
Mechanics	13.43	2.465 + a
Helpers	70%JR	"
Helpers (Prob.)	50%JR	
GLAZIERS	14.05	.02 + b
IRONWORKERS	14.41	1.55
LABORERS:		
GROUP 1 - Building & general laborers; tenders (carpenter, plaster, cement finisher, masons); tank & vessel cleaners	10.56	.89
GROUP 2 - Mechanical tool op. (except jackhammer); interior of closed tanks & vessels power equipped	10.66	.89
GROUP 3 - Mortar mixers	10.71	.89
GROUP 4 - Jackhammer ops.	10.81	.89
GROUP 5 - Blasterers	11.52	.89
GROUP 6 - Blaster tender; concrete cutters behind paving machines & puddlers; form setters & lines asphalt worker	11.08	.89
GROUP 7 - Wipe joints, laying pipe & tile from pumpcrete	10.92	.89
GROUP 8 - Interior of closed tanks & vessels manually	10.61	.89
LATHERS	$13.81	1.40
MARBLE & TERRAZZO WORKERS	14.80	1.73
PAINTERS:		
GROUP 1 - Brush, roller buffer	14.745	.30
GROUP 2 - Paperhangers, taping & floating	14.945	.30
GROUP 3 - Spray, sandblast	15.09	.30
PLASTERERS	14.75	
PLUMBERS & PIPEFITTERS	16.98	2.00
ROOFERS	14.06	.20
SHEET METAL WORKERS	14.75	3%+1.74
SPRINKLER FITTERS	13.69	2.43
TILE SETTERS	11.07	1.70
TRUCK DRIVERS:		
GROUP 1 - Pick-ups	11.31	.70
GROUP 2 - Stake bodies (all sizes)	11.75	.70
GROUP 3 - Truck trailer & dump over 8 yds.; mixer on trucks over 3 yds.; Miss. wagon & Koehring dumpsters & similar dirt moving equip. up to & including 8 yds.	12.52	.70
GROUP 4 - Mixers on truck up to & including 3 yds.	11.81	.70
GROUP 5 - Winch truck	11.91	.70
GROUP 6 - Dump truck	11.83	.70
GROUP 7 - Miss. wagons & Koehring dumpsters & similar dirt moving equip. over 8 yds.	12.25	.70
POWER EQUIPMENT OPS.:		
GROUP 1	10.61	1.95
GROUP 2	10.29	1.95
GROUP 3	10.08	1.95
GROUP 4	10.89	1.95
GROUP 5	14.01	1.95
GROUP 6	11.50	1.95
GROUP 7	12.38	1.95
GROUP 8	12.38	1.95
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.		

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PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS & GLAZIERS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Firday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS & GLAZIERS
a - 1 st mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Seven Paid Holidays
b - 5 days paid vacation; Paid Holidays A, C, D, E, G & Good Friday

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Scale ops.; oiler-driver on motor crane; batch plant op.
GROUP 2 - Pumps under 3 inch suction
GROUP 3 - Oiler
GROUP 4 - Fireman
GROUP 5 - Combination oiler-compressor; combination oiler-fireman; asphalt spreaders; backhoe (all types); bulldozers; cableways; cherry pickers (all ty concrete mixer (over 1 sack); cranes; deck winch (2 drum or over); derricks; ditching or trenching machines (riding type); draglines; dredges; fork lifts (other than farm type) outside warehouse; foundation drill; front end loaders (except farm type); grease serviceman; hoist-1 drum (4 stories or more on bld hoist-1 drum (over 40 ft.on structures other than bldgs.); hoist (2 drums or over); locomotive (all types); mechanic; mixer plant op.-central mix; motor patrols; piledrivers; pull cat; pump crete-6" & over discharge; push cat; road pavers; rollers (plant mix asphalt); scrapers; shovels; sidebooms, welde journeyman; well point system; whirleys; winch cats (cat D-4 & over); winch truck with A-frame (5 tons & over); work boats-requiring licensed operator
GROUP 6 - Bush hog; compressor; concrete pump-under 6" discharge; concrete saw deck winch (1 drum); distributors; ditching or trenching machines (non-riding type); dowel bar machine; farm-type tractors (when used to pull discs, grass cutters, etc.); hoist-1 drum (under 4 stories on bldgs.); hoist-1 drum (40 ft or under on structures other than bldgs.); Kolum buff machines; mixers (1 sac & under); motorized street sweepers, self-propelled; pump (3" & over); test pump-internal combustion engine powered; water blast pumps
GROUP 7 - Asphalt plant op.; boom trucks; bull floats; concrete spreader; farm type front end loaders; finishing machines (roadway, riding type); rolle (other than plant mix asphalt); straddle buggies; winch truck with A-frame (under 5 tons); work boats-requiring licensed operator
GROUP 8 - Unit operators

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION
STATE: Louisiana
PARISHES: Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles
DECISION NO.: LA82-4023 DATE: Date of Publication
Supersedes Decision No. LA81-4085, dated Nov. 6, 1981, in 46 FR 55206.
DESCRPTION OF WORK: Highway Projects (does not include building structures in rest area projects & airports in Bossier, Caddo, Calcasieu, Jefferson & Orleans Parishes.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS & STONEMASONS:		
ZONE 1	$13.95	1.63
ZONE 2	12.80	1.60
ZONES 3, 4 & 5	14.80	1.73
CARPENTERS & PILEDRIVERMEN:		
ZONE 1	13.20	1.86
ZONE 2	11.97	1.36
ZONE 3	13.08	1.40
ZONE 4	10.40	1.40
ZONE 5	9.90	1.40
CEMENT MASONS:		
ZONE 1	12.57	1.48
ZONE 2	11.80	.70
ZONE 3	13.40	
ZONE 4	11.80	
ZONE 5	11.30	
ELECTRICIANS:		
ZONE 1 - Electricians & cable splicers	15.78	3% + 1.3%
ZONE 2 - Electricians	14.60	4% + 2.4%
Cable splicers	15.10	"
ZONES 3, 4 & 5:		
Electricians	18.25	.95 + 3-5/10%
Cable splicers	18.75	"
IRONWORKERS:		
ZONE 1	13.56	1.66
ZONE 2	11.80	2.31
ZONE 3	13.50	1.30
ZONE 4	10.50	1.30
ZONE 5	10.00	1.30
LABORERS:		
ZONE 1 - GROUP 1	9.23	.62
GROUP 2	9.33	.62
GROUP 3	9.78	.62
GROUP 4	10.03	.62
ZONE 2 - GROUP 1	7.98	.57
GROUP 2	8.08	.57
GROUP 3	8.53	.57
GROUP 4	8.78	.57
ZONE 3 - GROUP 1	9.28	.57
GROUP 2	9.38	.57
GROUP 3	9.83	.57
GROUP 4	10.08	.57
ZONE 4 - GROUP 1	7.48	.57
GROUP 2	7.58	.57
GROUP 3	8.03	.57
GROUP 4	8.23	.57
ZONE 5 - GROUP 1	7.28	.57
GROUP 2	7.38	.57
GROUP 3	7.83	.57
GROUP 4	8.03	.57
LINE CONSTRUCTION:		
ZONE 1:		
GROUP 1 - Linemen	15.70	3%+1.35
GROUP 2 - Op. hole digging equip,; op. tractor with winch & derrick; op. line truck with winch & derricks working hot lines	75%JM	3%+1.35
GROUP 3 - Op. using hole truck & trailer or pole hauling & setting truck (not in energized lines)	65%JM	3%+1.35
GROUP 4 - Op. using truck without winch	45%JM	3%+1.35
GROUP 5 - Groundmen	50%JM	3%+1.35
ZONE 2:		
GROUP 1 - Linemen;ops.	14.60	2.40 + 3-3/4%
GROUP 2 - Cable splicer	15.10	"
GROUP 3 - Groundmen	12.60	"
ZONES 3, 4 & 5:		
GROUP 1 - Linemen;ops.	18.25	.95 + 3-1/10%
GROUP 2 - Cable splicer	18.75	"
GROUP 3 - Groundmen	16.25	"
PAINTERS:		
ZONE 1:		
GROUP 1 - Painters	12.055	1.895
GROUP 2 - Spray	12.43	1.895
GROUP 3 - Industrial	14.005	1.895
ZONE 2 - All painters ZONES 3, 4 & 5 (Allen Par. except northeast corner):	11.40	1.10
GROUP 1 - Brush	14.745	.30
GROUP 2 - Spray, sandblasting, hydroblasting, spider op., rubberizing & pyroflexing, steam jennies	15.09	.30
Allen Par.(northeast most corner, north of Rt. 10):		
GROUP 1 - Painters	10.35	
GROUP 2 - Spray	10.85	
GROUP 3 - Industrial	11.35	

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS:		
ZONE 1	$14.90	2.43
ZONE 2	12.69	2.99
ZONES 3, 4 & 5	16.98	2.00
POWER EQUIPMENT OPERATORS:		
ZONE 1 - GROUP 1	13.36	1.95
GROUP 2	13.61	1.95
GROUP 3	13.11	1.95
GROUP 4	11.54	1.95
GROUP 5	11.09	1.95
GROUP 6	9.81	1.95
GROUP 7	8.38	1.95
GROUP 8	11.14	1.95
GROUP 9	11.39	1.95
GROUP 10	8.63	1.95
ZONE 2 - GROUP 1	12.28	1.95
GROUP 2	12.53	1.95
GROUP 3	12.03	1.95
GROUP 4	10.72	1.95
GROUP 5	10.02	1.95
GROUP 6	8.74	1.95
GROUP 7	7.77	1.95
GROUP 8	10.35	1.95
GROUP 9	10.62	1.95
GROUP 10	8.35	1.95
ZONE 3 - GROUP 1	13.01	1.95
GROUP 2	13.26	1.95
GROUP 3	12.76	1.95
GROUP 4	11.22	1.95
GROUP 5	10.51	1.95
GROUP 6	9.23	1.95
GROUP 7	7.77	1.95
GROUP 8	10.82	1.95
GROUP 9	11.07	1.95
GROUP 10	8.02	1.95
ZONE 4 - GROUP 1	9.95	1.95
GROUP 2	10.20	1.95
GROUP 3	9.70	1.95
GROUP 4	8.52	1.95
GROUP 5	7.94	1.95
GROUP 6	6.77	1.95
GROUP 7	6.21	1.95
GROUP 8	8.21	1.95
GROUP 9	8.46	1.95
GROUP 10	6.46	1.95
ZONE 5 - GROUP 1	9.45	1.95
GROUP 2	9.70	1.95
GROUP 3	9.20	1.95
GROUP 4	8.02	1.95
GROUP 5	7.44	1.95
GROUP 6	6.27	1.95
GROUP 7	5.71	1.95
GROUP 8	7.71	1.95
GROUP 9	7.96	1.95
GROUP 10	5.96	1.95

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS:		
ZONE 1	$14.25	3%+2.32
ZONE 2	13.04	3%+1.62
ZONE 3	14.75	3%+1.74
ZONES 4 & 5	14.12	1.51
TRUCK DRIVERS:		
ZONE 1 - GROUP 1	9.33	.70
GROUP 2	9.46	.70
GROUP 3	9.52	.70
GROUP 4	9.60	.70
GROUP 5	9.79	.70
ZONE 2 - GROUP 1	9.21	
GROUP 2	9.31	
GROUP 3	9.54	
GROUP 4	9.75	
GROUP 5	10.17	
ZONE 3 - GROUP 1	9.49	.70
GROUP 2	9.62	.70
GROUP 3	9.68	.70
GROUP 4	9.75	.70
GROUP 5	9.94	.70
ZONE 4 - GROUP 1	7.37	.70
GROUP 2	7.50	.70
GROUP 3	7.56	.70
GROUP 4	7.63	.70
GROUP 5	7.82	.70
ZONE 5 - GROUP 1	7.27	.70
GROUP 2	7.40	.70
GROUP 3	7.46	.70
GROUP 4	7.53	.70
GROUP 5	7.73	.70

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

ZONE DEFINITIONS

ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars.
ZONE 2 - Bossier & Caddo Pars.
ZONE 3 - Calcasieu Par.
ZONE 4 - Cameron & Jefferson Davis Pars.
ZONE 5 - Allen & Beauregard Pars.

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Laborers, including but not limited to foundation driller & demolishing & dismantling man
GROUP 2 - Raker, concrete spreader, carpenter tenders, distributor man, finisher tenders, formsetter tenders, jackhammer op., jetting laborer, painter tenders, pit man, pipelayer or tile layer, power monkey tender, tamper, tree pruner, stonemason tenders, stoker, asphalt raker, concrete shovelers, power tool op. & motorized buggy op.
GROUP 3 - Formsetter, head or master--high type pavement
GROUP 4 - Powderman

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - 60 ton crane & over; crane with 125 ft. boom
GROUP 2 - Crane with 175 ft. boom
GROUP 3 - Crane all types; derricks; deck winches (2); hi-ho & similar type equip.; 3 drums (or more) stabilizers; pulls all types; concrete mixer 1 yd. & over; all pavers; ditching or trenching machines (track type); mechanics & equip. welders; well point system; hoist,2 drums or more; hoist,1 drum,40 vertical ft. or more; scrapers, bulldozers, rubber-tired or track other than farmtype; scoopmobiles; motor patrol; gradall; rollers on hot mix; asphalt paving machines; front end loaders, other than farmtype, 1 cu. yd. or over; shovels & backhoes, all types & equivalent equip.; piledrivers; sideboom cats; A-frame trucks when handling steel or pipe; work boats requiring licensed ops.; tugboats; fork lifts over 10 ton capacity; foundation drilling machines
GROUP 4 - 2 drums stabilizers; front end loaders under 1 cu. yd.; A-frame truck except when handling steel or pipe; finishing machines (concrete); power subgraders; 2 tractor (crawler type); 1 drum hoist under 40 vertical ft.; firemen; concrete spreader; pugmill; bituminous distributor on surface treatment & equivalent equip.; bullfloats & equivalent equip.; job grease man; unit op.; work boats not requiring licensed ops.; inboard motored crew boats
GROUP 5 - Single drum stabilizers; concrete mixer under 1 yd.; spray curing machines; roller on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screed man; pump over 4"; scale op.; crusher op.; concrete jointing machines; concrete saw; tack machines & equivalent equip.; pumpcrete; electric elevator (inside); oiler-driver; farmtype rubber tired tractor, with attachment, except backhoes; kolum buff & similar equip.; fork lifts 10 ton capacity & under; outboard crew boats
GROUP 6 - Batch plant operator
GROUP 7 - Oiler
GROUP 8 - Firemen
GROUP 9 - Fireman operating steam valve
GROUP 10 - Oiler on crane using air to drive piles

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP 1 - 1 ton & under; warehouseman, material checker, receiving clerk, spotter & dumper
GROUP 2 - 1-1/2 tons to & including 2 tons (exclusive of dump trucks)
GROUP 3 - Single axle dump trucks, single axle water trucks
GROUP 4 - Heavy equipment, tandem axle dump & tandem axle water trucks, winch lift, transit mix, floats, pole trailers, 4 axle trailers & truck mechanic
GROUP 5 - Special equipment, euclids & 5 axle moving equipment

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SUPERSEDEAS DECISION

STATE: Louisiana PARISH: Statewide
DECISION NO.: LA82-4020 DATE: Date of Publication
Supersedes Decison No. LA81-4086, dated November 6, 1981, in 46 FR 55189.
DESCRIPTION OF WORK: Building projects (does not include single family homes & apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS - ZONE 1	$16.755	.925	1.23		.06
ZONE 2	14.71	.95	1.48		.045
ZONE 3	13.00	.75	1.40		.07
ZONE 4	13.29	.84	.50		.02

ZONE DEFINITIONS FOR ASBESTOS WORKERS
ZONE 1 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Rapides, Vermilion & Vernon Parishes
ZONE 2 - Bienville, Bossier, Caddo, Caldwell, Claiborne, DeSoto, Grant, Jackson, Lincoln, Natchitoches, Ouachita, Red River, Sabine, Union, Webster & Winn Parishes
ZONE 3 - Ascension, Assumption, Avoyelles, Catahoula, Concordia, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 4 - East Carroll, Franklin, Madison, Morehouse, Richland, Tensas & West Carroll Parishes

BOILERMAKERS	14.80	1.275	1.00		.04
BRICKLAYERS & STONEMASONS					
ZONE 1	14.55	.80	1.15		.31
ZONE 2	12.06	.53	.67		
ZONE 3	14.80	.68	1.00		.05
ZONE 4	13.95	.95	.585		.10
ZONE 5	13.00				
ZONE 6	12.80	.85	.75		
ZONE 7	12.70		.30		
ZONE 8	13.80		.75		
ZONE 9	14.00				

ZONE DEFINITIONS FOR BRICKLAYERS & STONEMASONS
ZONE 1 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 2 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Pointe Coupee, Rapides & St. Landry Parishes
ZONE 3 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from Tangipahoa Par. on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58, through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Mississippi State Line) & Terrebonne Parishes
ZONE 5 - St. Tammany (north half including Covington north of Hwy. 90) & Washington Parishes
ZONE 6 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 7 - Natchitoches & Sabine Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 9 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Pars.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS					
ZONE 1 - Carpenters	$12.65	.55			.05
Millwrights	13.37	.55			.05
Piledrivermen	13.55	.55			.05
ZONE 2 - Carpenters, piledrivermen & soft floor layers	13.81	.85	.48		.07
Millwrights	15.91				.07
ZONE 3 - Carpenters	13.15	.90	.90		
Millwrights	13.84	.90	.90		
Piledrivermen	13.55	.90	.90		
ZONE 4 - Carpenters & piledrivermen	14.30	.65	.70		.11
Millwrights	18.025				18
ZONE 5 - Carpenters & soft floor layers	13.45	.90	.90		.06
Millwrights	13.84	.90	.90		.06
Piledrivermen	13.55	.90	.90		.06
ZONE 6 - Carpenters & soft floor layers	13.285	.90	.90		.06
Millwrights	13.84	.90	.90		.06
Piledrivermen	13.55	.90	.90		.06
ZONE 7 - Carpenters & soft floor layers	12.55				
Millwrights	13.30				
Piledrivermen	13.05				
ZONE 8 - Carpenters & soft floor layers	12.55	.80	.60		.08
Millwrights	13.30	.80	.60		.08
Piledrivermen	12.80	.80	.60		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 9 - Carpenters & soft floor layers	$12.05	.80	.85		.10
Millwrights	12.95	.80	.85		.10
Piledrivermen	12.55	.80	.85		.10

ZONE DEFINITIONS FOR CARPENTERS
ZONE 1 - All of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars.; Parts of Iberia, St. Martin & St. Mary Pars. (west of the Atchafalaya River)
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Parts of St. Tammany & Tangipahoa (north of I-12 from the Mississippi State Line to the western boundary of Tangipahoa Par.) & Washington Parishes
ZONE 4 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James (north of the Mississippi River), West Baton Rouge & West Feliciana Pars.
ZONE 5 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles & St. John the Baptist Pars.; Parts of St. Tammany & Tangipahoa (south of I-12 from the Mississippi State Line to the western boundary of Tangipahoa Par.) Parishes
ZONE 6 - Assumption, Iberia (east of the Atchafalaya River), Lafourche, St. James (south of the Miss. River), St. Martin (eastern segment of the Atchafalaya River), St. Mary (east of the Atchafalaya River) & Terrebonne Parishes
ZONE 7 - Avoyelles, Grant, LaSalle, Natchitoches, Rapides & Sabine
ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 9 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS					
ZONE 1	$13.11				.05
ZONE 2	13.93				
ZONE 3	12.10	.55	1.00		.05
ZONE 4	13.555	.79	.60		.09
ZONE 5	12.55				
ZONE 6	9.70				
ZONE 7	11.65	.80			
ZONE 8	12.30		.75		
ZONE 9	11.20		.30		

ZONE DEFINITIONS FOR CEMENT MASONS
ZONE 1 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (north to Interstate Hwy. 12) & Terrebonne Parishes
ZONE 5 - St. Tammany (northern half including Covington north of Hwy 190) & Washington Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle & Rapides Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 9 - Natchitoches & Sabine Parishes

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS					
ZONE 1 - Electricians	$16.64	5%	8%		5/10%
Cable splicers	16.89	5%	8%		5/10%
ZONE 2 - Electricians	14.50	.60	3%		.02
Cable splicers	15.00	.60	3%		.02
ZONE 3 - Electricians	18.25	.55	3%+.40		5/10%
Cable splicers	18.75	.55	3%+.40		5/10%
ZONE 4 - Electricians	16.35	.70	3%		2/10%
Cable splicers	16.60	.70	3%		2/10%
ZONE 5 - Electricians	15.70	.80	3%+.50		.05
Cable splicers	15.70	.80	3%+.50		.05
ZONE 6 - Electricians	14.15	1.15	3%		1/2%
Cable splicers	14.65	1.15	3%		1/2%
ZONE 7 - Electricians	14.60	2.40	3%		1%
Cable splicers	15.10	2.40	3%		1%
ZONE 8 - Electricians	14.74	.60	3%		1/2%
Cable splicers	14.99	.60	3%		1/2%

ZONE DEFINITIONS FOR ELECTRICIANS
ZONE 1 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Parishes
ZONE 2 - St. Tammany, Tangipahoa & Washington Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Pars.
ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes
ZONE 5 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northest of the Atchafalaya River) & Terrebonne Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Parm.
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS					
ZONE 1 - Mechanics	$13.43	1.345	1.085	a+b	.035
Helpers	70%JR	1.345	1.085	a+b	.035
Helpers (Prob.)	50%JR				
ZONE 2 - Mechanics	12.56	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (Prob.)	50%JR				

FOOTNOTES FOR ELEVATOR CONSTRUCTORS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate
b - 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the Friday after Thanksgiving Day; Christmas Day

ZONE DEFINITIONS FOR ELEVATOR CONSTRUCTORS
ZONE 1 - Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 2 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

GLAZIERS -	ZONE 1	14.05			c+d	.02
	ZONE 2	11.25				.01
	ZONE 3	13.80	.32	.40		.01
	ZONE 4	9.88		.30		.04
	ZONE 5	6.80				
	ZONE 6	10.99				

FOOTNOTES FOR GLAZIERS
c - 5 days Paid Vacation
d - 6 Paid Holidays: New Year's Day; Good Friday; Fourth of July; Labor Day; Thanksgiving Day; Christmas Day

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ZONE DEFINITIONS FOR GLAZIERS

ZONE DEFINITIONS FOR GLAZIERS

ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 2 - Acadia, Ascension (north of Hwy. 22), Assumption (north of Hwy. 22), East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston (north of Hwy. 22), Pointe Coupee, St. Helena, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area), Tangipahoa (west of Hwy. 51), Vermilion, West Baton Rouge & West Feliciana Parishes

ZONE 3 - Ascension (south of Hwy. 22), Assumption (south of Hwy. 22), Jefferson, Lafourche, Livingston (south of Hwy. 22), Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne Parishes

ZONE 4 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to city of Natchitoches), Red River, Sabine & Webster

ZONE 5 - Bienville (eastern portion everything east of Rt. 9 inclusive), Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half everything north of a line running east & west through Winfield, excluding Winfield) Parishes

ZONE 6 - St. Tammany (northern 2/3 everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Rt. 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS					
ZONE 1	$14.02	.93	.65		.08
ZONE 2	14.69	.60	.75		.04
ZONE 3	13.60	.60	1.65		.11
ZONE 4	13.85	.60	1.35		.06
ZONE 5	11.50	.60	.95		.04
ZONE 6	14.41	.60	.90		.05

ZONE DEFINITIONS FOR IRONWORKERS

ZONE 1 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Pars.; Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, east of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico)

ZONE 2 - All of Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, Iberia, Iberville, Pointe Coupee, St. Helena, St. Martin, St. Mary, West Baton Rouge & West Feliciana Pars.; Parts of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars. (east of a line drawn from the meeting point of the boundaries of the Pars. of Rapides, Avoyelles & Evangeline, southeast along the western city limits of Abbeville to the Gulf of Mexico); Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, west of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico); Parts of Catahoula, Concordia & LaSalle Pars. (south of a line drawn from Natchez through the city of Cottonport to the Rapides Par. line, then west along the southern border of Rapides Par.)

ZONE 3 - All of Bossier, Caddo, DeSoto, Red River & Webster Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (west of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Sabine Par. (north of a line drawn from the Natchitoches Par. boundary west through the city of Peason to the Tex.-La. border)

ZONE 4 - All of Caldwell, East Carroll, Franklin, Grant, Jackson, Lincoln, Morehouse, Ouachita, Rapides, Richland, Tensas, Union & West Carroll Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (east of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Madison Par. (except the cities of Mound, Delta & adjacent areas); Parts of Catahoula, Concordia & LaSalle Pars. (north of a line drawn from Natchez through the city of Cottonport to the Rapides Par. line)

ZONE 5 - That part of Madison Par. (including the cities of Mound, Delta & adjacent areas)

ZONE 6 - All of Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Pars.; Parts of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars. (southwest of Rapides Par. & west of a line south of the western most border between Rapides & Evangeline)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
ZONE 1 - Group 1	$ 7.20	.30			
Group 2	7.40	.30			
Group 3	7.45	.30			
ZONE 2 - Group 1	8.52	.30	.40		.05
Group 2	8.72	.30	.40		.05
ZONE 3 - Group 1	10.56	.30	.54		.05
Group 2	10.66	.30	.54		.05
Group 3	10.71	.30	.54		.05
Group 4	11.52	.30	.54		.05
Group 5	11.08	.30	.54		.05
Group 6	10.92	.30	.54		.05
Group 7	10.61	.30	.54		.05
Group 8	10.81	.30	.54		.05
ZONE 4 - Group 1	9.77	.40	.40		.05
Group 2	9.87	.40	.40		.05
Group 3	9.92	.40	.40		.05
ZONE 5 - Group 1	9.37	.40	.40		.05
Group 2	9.47	.40	.40		.05
Group 3	9.52	.40	.40		.05
ZONE 6 - Group 1	10.55	.30	.27		.05
Group 2	10.65	.30	.27		.05
Group 3	10.80	.30	.27		.05
ZONE 7 - Group 1	8.075	.25	.27		.05
Group 2	8.225	.25	.27		.05
Group 3	8.275	.25	.27		.05
ZONE 8 - Group 1	7.81	.30	.40		.05
Group 2	8.01	.30	.40		.05
Group 3	8.06	.30	.40		.05
Group 4	8.11	.30	.40		.05
Group 5	8.46	.30	.40		.05
ZONE 9 - Group 1	7.53	.25	.27		.05
Group 2	7.63	.25	.27		.05
Group 3	7.68	.25	.27		.05
Group 4	7.73	.25	.27		.05
ZONE 10 - Group 1	7.28	.25	.27		.05
Group 2	7.38	.25	.27		.05
Group 3	7.53	.25	.27		.05

LABORERS - ZONE 1 (CLASSIFICATION DEFINITIONS)
GROUP 1 - Building and labor construction
GROUP 2 - Stone mason tenders, mechanical tool operators, sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers, layers & ditchers 4 ft. or over); tender of all crafts; sandblaster (nozzlemen); sandblaster (pot tender); laying non-metallic pipe over 4 ft. deep, including sewer, drain & underground tile; septic tank diggers & installers, over 4 ft. deep; gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators
LABORERS - ZONE 2
GROUP 1 - Building laborer; rotary drill laborers; foundation drill crewman
GROUP 2 - Mason mixer; plaster mixer; mechanical tool op. (jackhammer, vibrator, tamper, chipping gun, soil tillers); sandblaster; laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers
LABORERS - ZONE 3
GROUP 1 - Building & general laborer; tenders (carpenter, plaster, cement finisher, mason), tank & vessel cleaners
GROUP 2 - Mechanical tool op. (except jackhammer); interior of closed tanks & vessels power equipped
GROUP 3 - Mortar mixers
GROUP 4 - Blasterers
GROUP 5 - Blaster tenders; concrete cutters behind paving machine & puddlers; form setters & liner asphalt worker
GROUP 6 - Wiping joints, laying pipe & tile from pumpcrete
GROUP 7 - Interior of closed tanks & vessels manually
GROUP 8 - Jackhammer operators
LABORERS - ZONES 4 & 5
GROUP 1 - Building and general laborers, carpenter tenders
GROUP 2 - Power tool ops. (hammer men, tamper, vibrator, power buggies, concrete chippers & cutters, chain saw ops., etc.); pipelayers (non-metallic)
GROUP 3 - Mason tenders, plaster tenders, cement mix (wet or dry) tenders, hod carrier tender; mortar mixers & cement mixers (wet or dry)
LABORERS - ZONE 6
GROUP 1 - Laborers
GROUP 2 - Laborers handling steel pans, stone mason tenders, mechanical tool ops., sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers , layers & ditchers 4 ft. & over), sandblaster (nozzlemen & pot tender); laying non-metallic pipe over 4 ft. deep, septic diggers & installers over 4 ft. deep, gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators
LABORERS - ZONE 7
GROUP 1 - Common laborers
GROUP 2 - Jackhammermen, sewermen, mason tenders, plaster tenders, stone mason tenders, vibratormen
GROUP 3 - Mortar mixers
LABORERS - ZONE 8
GROUP 1 - Common laborers; carpenter tenders; mason tenders (other than cement); plasterers tenders; stone mason tenders; concrete workers; scaffold builders

LABORERS - ZONE 8 (CONT'D)
GROUP 2 - Air tool ops. (jackhammer, vibrator & tamper); sandblaster (nozzlemen); sandblaster (pot tender); laying non-metallic pipe over 4 ft. deep, including sewer, drain & underground tile; septic tank diggers & installers, over 4 ft. deep; gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators
GROUP 4 - Mason mixer; plaster mixer; mechanical tool op. (jackhammer, vibrator, tamper, chipping gun, soil tillers); laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers
GROUP 5 - Blaster tenders; concrete cutters behind paving machine & puddlers; form setters & liner asphalt worker
GROUP 6 - Wiping joints, laying pipe & tile from pumpcrete
GROUP 7 - Interior of closed tanks & vessels manually
GROUP 8 - Jackhammer operators
LABORERS - ZONE 9
GROUP 1 - Building laborer; rotary drill laborers; foundation drill crewman
GROUP 2 - Mason mixer; plaster mixer; mechanical tool op. (jackhammer, vibrator, tamper, chipping gun, soil tillers); sandblaster; laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers
LABORERS - ZONE 10
GROUP 1 - Building laborer; rotary drill laborers; foundation drill crewman
GROUP 2 - Mason mixer; plaster mixer; mechanical tool op. (jackhammer, vibrator, tamper, chipping gun, soil tillers); sandblaster; laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers

LABORERS - ZONE 10 (CONT'D)
GROUP 3 - Laborers handling steel pans, stone mason tenders, mechanical tool ops., sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers , layers & ditchers 4 ft. & over), sandblaster (nozzlemen & pot tender); laying non-metallic pipe over 4 ft. deep, septic diggers & installers over 4 ft. deep, gas & oil pipeline laborers & wrappers
GROUP 4 - Gunite tool operators

LABORERS - ZONE 8 (CONT'D)
GROUP 2 - Air tool ops. (jackhammer, vibrator & tamper); sewer pipe joiners & setters; concrete cutters; hod carriers; creosote materials handler; acid worker; mason tenders (cement); Mortar mixer (wet or dry); motorized buggy op.; water proofers (mastic); form setters (steel paving forms)
GROUP 3 - Chain saw operator
GROUP 4 - Asphalt raker, tamper, smoother & shovelers; sewer pipelayers; blaster tenders
GROUP 5 - Powderman
LABORERS - ZONE 9
GROUP 1 - Laborers
GROUP 2 - Mason tenders, plaster tenders, asphalt rakers & smoothers
GROUP 3 - Mortar mixers
GROUP 4 - Air jack op.; vibrator ops. sewer pipelayers & wrappers
LABORERS - ZONE 10
GROUP 1 - Laborers, tenders (brickmasons, stonemasons, cement masons, carpenters, plasterers), stripping & dismantling; concrete form work; loading, unloading, carrying & handling steel & steel mesh; assisting to the setting of cut stone, granite or artificial stone; building scaffolds; shoring
GROUP 2 - Mechanical tool op. (air, electric, motor, engine, etc.); sewer pipelayers; mortar mixers (hand or machine); gunite op., tile, terrazzo & marble setter finishers
GROUP 3 - Pipe dopers & burners

ZONE DEFINITIONS FOR LABORERS
ZONE 1 - St. Tammany (as far south as Bayou Lacombe & east to the Miss. State Line at Pearlington), Tangipahoa (all but southwestern corner) & Washington Parishes
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary (excluding that part of Par. to the Calumet Locks west) & Vermilion
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge & West Feliciana Pars.; Parts of Assumption, St. James, St. John the Baptist Pars. (north of a line drawn from the southern limits of the town of St. James in St. James Par. to the northern limits of the town of Napoleonville in Assumption Par. & then directly west to the Par. Line, all of St. James Par. except that part which is east of a line drawn from Lutcher to U.S. Hwy. 61 (Airline Hwy.) then west on U.S. 61 to Blind River & on a direct line to Manchac)
ZONE 5 - Livingston, St. Helena & Tangipahoa (south & west of a line running from the western Par. line to a point directly east which touches the northern limits of the town of Independence, then directly south to Lake Pontchartrain) Parishes
ZONE 6 - Jefferson (except Grand Isle), Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist (on the west bank of the Miss. River & the portion of St. John the Baptist on the east bank of the Miss. River as far as the Sycamore Inn at Lutcher & north to Blind River & Manchac) & St. Tammany (north as far as Bayou Lacombe, east to the Miss. State Line at Pearlington) Pars.
ZONE 7 - Assumption (north of Napoleonville), Jefferson (Grand Isle), Lafourche, St. James (on the west bank & including the town of Vacherie), St. Mary (that part of Parish to the Calumet Locks west) & Terrebonne Parishes

LABORERS ZONE DEFINITIONS (CONT'D)
ZONE 8 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides & Winn Parishes
ZONE 9 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Parishes
ZONE 10 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS					
ZONE 1	$12.33	.55	.40		.05
ZONE 2	12.48	.55	.40		.05
ZONE 3	12.73	.55	.40		.05
ZONE 4	13.08	.55	.40		.05
ZONE 5	14.30	.65	.70		.10
ZONE 6	12.65	.55			.05
ZONE 7	13.81	.85	.48		.07
ZONE 8	12.55	.80	.60		.08
ZONE 9	12.55				
ZONE 10	12.05	.80	.85		.10

ZONE DEFINITIONS FOR LATHERS
ZONE 1 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are 12.5 miles from center of New Orleans
ZONE 2 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are within a 22.5 mile radius of New Orleans Center
ZONE 3 - That part of Jefferson, Lafourche (except that area southeast of Raceland to Bayou Lafourche), Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Tangipahoa Pars. which are within a 32.5 mile radius of New Orleans Center
ZONE 4 - That part of Jefferson, Lafourche (including that area southeast of Raceland to Bayou Lafourche), Livingston (westward to Rt. 22 including towns of Maurepas, Killian & Springfield), Plaquemines, St. Bernard, St. James (including towns of Gramercy, Lutcher & Paulina), St. Tammany, Tangipahoa (northward to Rt. 16 including towns of Amite & Holton), Terrebonne (westward to Rts. 24 & 315 including city of Houma) & Washington (only northward to Rt. 10 to southern limits of towns of Bogalusa, Sheridan & Franklinton) Pars. outside 32.5 mile radius of New Orleans Center

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ZONE DEFINITIONS FOR LATHERS (CONT'D)
ZONE 5 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston (western part), Pointe Coupee, St. Helena, St. James (only towns of Union, Hymel, Convent & Lutcher), St. Martin (only lower separated section), St. Mary (only Morgan City), Tangipahoa (north of Rt. 16 & west of Rt. 51 including Amite, Hammond & Pontchatoula), Washington (only north of Rt. 16 & west of Rt. 25), West Baton Rouge & West Feliciana Parishes
ZONE 6 - Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin (excluding lower separated section), St. Mary (east to Berwick) & Vermilion Parishes
ZONE 7 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 9 - Avoyelles, Grant, LaSalle, Natchitoches, Rapides & Sabine Pars.
ZONE 10 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
ZONE 1 - GROUP 1	$15.70	.80	3%+.50		.05
GROUP 2	75%JR	.80	3%+.50		.05
GROUP 3	65%JR	.80	3%+.50		.05
GROUP 4	45%JR	.80	3%+.50		.05
GROUP 5	50%JR	.80	3%+.50		.05
ZONE 2					
Linemen	16.64	5%	8%		3/10%
Cable splicers	16.89	5%	8%		3/10%
Equipment operators	12.48	5%	8%		3/10%
Truck drivers & groundmen	7.49	5%	8%		3/10%
ZONE 3					
Linemen, equipment op	18.25	.55	3%+.40		1/10%
Cable splicers	18.75	.55	3%+.40		1/10%
Groundmen	16.25	.55	3%+.40		1/10%
ZONE 4					
Linemen, equipment op.	14.60	.70	3%		
Cable splicers	14.85	.70	3%		
Groundmen	50%JR	.70	3%		
ZONE 5					
Linemen, equipment ops.	15.36		3%		1/2%
Cable splicers	15.61		3%		1/2%
Groundmen	40%JR		3%		1/2%
ZONE 6					
Linemen, equipment ops.	14.15	1.15	3%		1/2%
Cable splicers	14.65	1.15	3%		1/2%
Groundmen	4.19	1.15	3%		1/2%

GROUP 1 - Linemen
GROUP 2 - Op. hole digging equip.; op. tractor with winch & derrick; op. line truck with winch & derrick working hot lines
GROUP 3- Op. using hole truck & trailer or pole hauling & setting truck (not in energized lines)
GROUP 4 - Op. using truck without winch
GROUP 5 - Groundmen

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 7					
Linemen, operators	$14.60	2.40	3%		3/4%
Cable splicers	15.10	2.40	3%		3/4%
Groundmen	12.60	2.40	3%		3/4%

ZONE DEFINITIONS FOR LINE CONSTRUCTION
ZONE 1 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northeast of the Atchafalaya River) & Terrebonne Parishes
ZONE 2 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Pars.
ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes
ZONE 5 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Pars.

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE, TILE & TERRAZZO WORKERS & FINISHERS					
ZONE 1					
Marble setters	13.95	.95	.585		.10
Tile & terrazzo workers	13.55	.40			.10
Marble, tile & terrazzo finishers	9.75	.40		.30	
ZONE 2					
Marble & terrazzo workers	14.80	.68	1.00		.05
Tile setters	11.07	.68	1.00		.02
ZONE 3					
Marble setters	14.00				
Terrazzo workers	11.65				
ZONE 4					
Marble, tile & terrazzo workers	12.50		.75		
ZONE 5					
Marble, tile & terrazzo workers	11.30	.85			
ZONE 6					
Marble, tile & terrazzo workers	16.50				
Marble, tile & terrazzo finishers	9.75	.40		.30	
ZONE 7					
Tile setters	13.00				
Tile finishers	9.75	.40		.30	

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ZONE DEFINITIONS FOR MARBLE, TILE & TERRAZZO WORKERS & FINISHERS
ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from the Tangipahoa Par. Line on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58 through the lower limits of Covington, along State Hwy. 58 through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes
ZONE 2 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Pars.
ZONE 4 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 5 - Natchitoches, Bossier, Caddo, Claiborne, De Soto, Red River & Webster Parishes
ZONE 6 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 7 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Parishes

		Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS						
ZONE 1 -	GROUP 1	$14.745		.30		
	GROUP 2	14.945		.30		
	GROUP 3	15.09		.30		
	GROUP 4	16.535		.30		
ZONE 2 -	GROUP 1	11.50		.75		.08
	GROUP 2	12.92		.75		.08
ZONE 3 -	GROUP 1	12.055	.975	.80		.12
	GROUP 2	12.43	.975	.80		.12
	GROUP 3	14.005	.975	.80		.12
ZONE 4 -	GROUP 1	10.99				
	GROUP 2	11.43				
	GROUP 3	11.12				
	GROUP 4	12.25				
	GROUP 5	12.59				
	GROUP 6	11.09				
	GROUP 7	11.33				
ZONE 5 -	GROUP 1	10.35				
	GROUP 2	10.85				
	GROUP 3	11.35				
ZONE 6 -	Painters, taps & float, vinyl & paperhanger	11.40	.75	.30		.05
ZONE 7 -	GROUP 1	8.55				
	GROUP 2	9.55				
	GROUP 3	9.05				
ZONE 8 -	Painters	10.85		.75		.08
	Industrial	12.92		.75		.08

PAINTERS CLASSIFICATION DEFINITIONS
ZONE 1 - GROUP 1 - Painters brush, roller & buffer
GROUP 2 - Paperhanging, taping & floating
GROUP 3 - Spray, sandblasting, hydroblasting, spider op., rubberizing & pyroflexing, steam jennies, taping & floating machine
GROUP 4 - Water towers, radio & TV towers
ZONE 2 - GROUP 1 - Brush; taping; floating & texture
GROUP 2 - Sandblasting, industrial & steel
ZONE 3 - GROUP 1 - Painters, paperhangers & sheetrock tapers & floaters
GROUP 2 - Structural steel painters of new building under construction; the following overall of 30 ft.: tanks, air conditioning, towers, smoke stacks, sprinkler systems, wharves & structural steel in old buildings; spray painters, swing stage painter
GROUP 3 - Industrial
ZONE 4 - GROUP 1 - Brush
GROUP 2 - Brush swing stage
GROUP 3 - Brush industrial
GROUP 4 - Spray; spray steel, sandblasting
GROUP 5 - Spray swing stage
GROUP 6 - Paperhanger
GROUP 7 - Sheetrock finishers
ZONE 5 - GROUP 1 - Painters, paperhangers, tapers, floaters, commercial steel, such as churches or any commercial building with closed roof deck or walls
GROUP 2 - Other commercial work brush spray, stage, window jacks flagpoles & steeple work
GROUP 3 - All industrial work including sandblasting or power tools of any kind
ZONE 7 - GROUP 1 - Painters, paperhangers, tapers & floaters
GROUP 2 - Stage, window jacks, bosun chairs, structural steel, rollers, equipment painting; sandblating, spray, stack sign, tank painting, steeple jack
GROUP 3 - Structural steel brush

PAINTERS ZONE DEFINITIONS
ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 2 - Ascension (north of Hwy. 22), Assumption (north of Hwy. 22), East Baton Rouge, East Feliciana, Iberville, Livingston (north of Hwy. 22), Pointe Coupee, St. Helena, Tangipahoa (west of Hwy. 51), West Baton Rouge & West Feliciana Parishes
ZONE 3 - Ascension (south of Hwy. 22), Assumption (south of Hwy. 22), Lafourche, Livingston (south of Hwy. 22), Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne
ZONE 4 - St. Tammany (northern 2/3, everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Rt. 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Pars.

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PAINTERS ZONE DEFINITIONS (CONT'D)
ZONE 5 - Allen (northeastern most corner, north of Rt. 10), Avoyelles, Catahoula, Evangeline, Grant, LaSalle, Natchitochas (southern half, everything south of Rt. 6 including City of Natchitoches), Rapides, St. Landry (northern portion) & Winn (southern half from a line running east & west through the intersection of Rts. 84 & 71, including the town of Winnfield at that intersection) Parishes
ZONE 6 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to City of Natchitoches), Red River, Sabine & Webster
ZONE 7 - Bienville (eastern portion, everything east of Rt. 9 inclusive), Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half, everything north of a line running east & west through Winnfield, excluding Winnfield) Parishes
ZONE 8 - Acadia, Iberia, Lafayette, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area) & Vermilion Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS					
ZONE 1	$12.45				
ZONE 2	12.25				.01
ZONE 3	14.75				
ZONE 4	14.55				.01
ZONE 5	11.48	.60	.55		.03
ZONE 6	8.00				.01
ZONE 7	11.65	.80			
ZONE 8	13.80		.75		
ZONE 9	12.70		.30		

PLASTERERS ZONE DEFINITIONS
ZONE 1 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Parishes
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. James, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (Par. line on the west along U.S. Hwy. 190 through the lower limits of Covington & Abita Springs along State Hwy. 435 to Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangline, Grant, LaSalle & Rapides Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 9 - Natchitoches & Sabine Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & PIPEFITTERS					
ZONE 1	$14.90	1.00	1.30		.13
ZONE 2	16.145	1.26	.955		.09
ZONE 3	13.10	1.05	1.20		.10
ZONE 4	12.69	.80	1.10	1.00	.09
ZONE 5	16.98	.92	1.00		.08
ZONE 6	14.05	.75	.80		.10

PLUMBERS & PIPEFITTERS ZONE DEFINITIONS
ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James (northern 2/3 of Par.), St. John the Baptist, St. Tammany, Tangipahoa, Terrebonne & Washington Parishes
ZONE 2 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia (eastern 1/2 of Par.), Iberville, Livingston, Pointe Coupee, St. Helena, St. James (western 1/3 of Par.), St. Martin (southern part of eastern 1/2 of Par.),St. Mary, West Baton Rouge & West Feliciana Parishes
ZONE 3 - Avoyelles, Catahoula, Concordia,Evangeline, Grant, LaSalle, Natchitoches (south of Hwy. 84 & 86 from Winnfield to Natchitoches & southeast from Natchitoches to Anacoco through Bellwood), Rapides, Vernon (northeast of Hwy. 10 & Winn (south of Hwy. 84) Parishes
ZONE 4 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Pars.; Parts of Natchitoches & Vernon Pars. (northwest from a line drawn from Natchitoches to Anacoco through Bellwood & north of Hwy. 111 between Anacoco & Haddens) Parishes
ZONE 5 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia (western 1/2 of Par.), Jefferson Davis, Lafayette, St. Landry, St. Martin (west of Hwy. 31) & Vermilion Parishes
ZONE 6 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn north of Hwy. 84) Parishes

POWER EQUIPMENT OPERATORS					
ZONE 1 -	GROUP 1	9.87	.65	1.20	.10
	GROUP 2	10.61	.65	1.20	.10
	GROUP 3	10.75	.65	1.20	.10
	GROUP 4	11.12	.65	1.20	.10
	GROUP 5	12.85	.65	1.20	.10
	GROUP 6	11.95	.65	1.20	.10
ZONES 2, 3 & 4 -	GROUP 1	9.44	.65	1.20	.10
	GROUP 2	10.43	.65	1.20	.10
	GROUP 3	10.53	.65	1.20	.10
	GROUP 4	10.98	.65	1.20	.10
	GROUP 5	13.07	.65	1.20	.10
	GROUP 6	12.32	.65	1.20	.10
ZONE 5 -	GROUP 1	10.61	.65	1.20	.10
	GROUP 2	10.29	.65	1.20	.10
	GROUP 3	10.08	.65	1.20	.10
	GROUP 4	10.89	.65	1.20	.10
	GROUP 5	14.01	.65	1.20	.10
	GROUP 6	11.50	.65	1.20	.10
	GROUP 7	12.38	.65	1.20	.10
	GROUP 8	12.38	.65	1.20	.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OP. (CONT'D)					
ZONE 6 - GROUP 1	$14.26	.65	1.20		.10
GROUP 2	14.51	.65	1.20		.10
GROUP 3	14.76	.65	1.20		.10
GROUP 4	15.01	.65	1.20		.10
GROUP 5	15.51	.65	1.20		.10
GROUP 6	15.26	.65	1.20		.10
GROUP 7	14.01	.65	1.20		.10
GROUP 8	12.48	.65	1.20		.10
GROUP 9	10.91	.65	1.20		.10
GROUP 10	9.93	.65	1.20		.10
GROUP 11	9.25	.65	1.20		.10
GROUP 12	10.33	.65	1.20		.10
ZONE 7 - GROUP 1	13.88	.65	1.20		.10
GROUP 2	11.99	.65	1.20		.10
GROUP 3	12.18	.65	1.20		.10
GROUP 4	11.99	.65	1.20		.10
GROUP 5	10.44	.65	1.20		.10
GROUP 6	8.93	.65	1.20		.10
GROUP 7	14.13	.65	1.20		.10
GROUP 8	14.38	.65	1.20		.10
GROUP 9	14.63	.65	1.20		.10
GROUP 10	14.38	.65	1.20		.10
GROUP 11	15.38	.65	1.20		.10
GROUP 12	15.88	.65	1.20		.10

POWER EQUIPMENT OPERATORS - ZONE 1 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler
GROUP 2 - Oiler-Driver
GROUP 3 - Scaleman
GROUP 4 - Air compressor, Asphalt plant; Bulldozers, D-4 & equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe); Front end loader 1-1/2 yd. bucket & below
GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Dragline; Fork lifts (setting steel, machinery or pipe); Front end loaders over 1-1/2 yd. bucket (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe); Well point system
GROUP 6 - Unit & well point operator

POWER EQUIPMENT OPERATORS - ZONE 2 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler
GROUP 2 - Oiler-Driver
GROUP 3 - Scaleman
GROUP 4 - Air compressor; Asphalt plant op.; Bulldozer, D-4 equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)
GROUP 5 - Asphalt spreader, Backhoe, Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes, Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe)
GROUP 6 - Well point system & unit operator

POWER EQUIPMENT OPERATORS - ZONE 3 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler
GROUP 2 - Oiler-Driver
GROUP 3 - Scaleman
GROUP 4 - Air compressor; Asphalt plant; Bulldozer, D-4 equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)
GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman
GROUP 6 - Well point & unit operator

POWER EQUIPMENT OPERATORS - ZONE 4 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler
GROUP 2 - Oiler-Driver
GROUP 3 - Scaleman

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POWER EQUIPMENT OPERATORS - ZONE 4 (CONT'D) - CLASSIFICATION DEFINITION

GROUP 4 - Air compressor; Asphalt plant; Bulldozer, D-4 & equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)

GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe)

GROUP 6 - Unit operator

POWER EQUIPMENT OPERATORS - ZONE 5 - CLASSIFICATION DEFINITIONS

GROUP 1 - Scale op.; Oiler driver on motor crane; Batch plant

GROUP 2 - Pumps under 3 inch suction

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination oiler-compressor; Combination oiler-fireman; Asphalt spreader; Backhoe (all types); Bulldozers; Cableways; Cherry pickers (all types); Concrete mixers (over 1 sack); Cranes; Deck winch (2 drums or over); Derricks; Ditching or trenching machines (riding types); Draglines; Dredges; Fork lifts (other than farm type); Outside warehouses; Foundation drill; Front end loaders (except farm type); Grease serviceman; Hoist-1 drum (4 stories or more on buildings); Hoist-1 drum (over 40 ft. on structures other than buildings); Hoist (2 drums or over); Locomotives (all types); Mechanic; Mixer plant-central mix; Motor patrols; Piledrivers; Pull cats; Pump crete-6" & over discharge; Push cat; Road pavers; Rollers (plant mix asphalt); Scrapers; Shovels; Sidebooms; Welder, journeyman; Well point system; Whirleys; Winch cats (Cat D-4 & over); Winch truck with A-frame (5 tons & over); Work boats-requiring licensed op.

GROUP 6 - Bush hog; Compressor; Concrete pump-under 6" discharge; Concrete saw; Deck winch (1 drum); Distributors; Ditching or trenching machines (non-riding type); Dowell bar machines; Farm-type tractor (when used to pull discs, grasscutters, etc.); Hoist-1 drum (under 4 stories on buildings); Hoist-1 drum (40 feet or under on structures other than buildings); Kolum buff machines; Mixers (1 sack & under); Motorized street sweepers (self-propelled); Pump (3 inch & over); Test pump-internal combustion engine powered; Water blast pump

GROUP 7 - Asphalt plant; Boom trucks; Bullfloats; Concrete spreader; Farm-type front end loaders; Finishing machines (roadway, riding type); Roller (other than plant mix asphalt); Straddle buggies; Winch truck with A-frame (under 5 tons); Work boats-not requiring licensed operator

GROUP 8 - Unit operator

POWER EQUIPMENT OPERATORS - ZONE 6 - CLASSIFICATION DEFINITIONS

GROUP 1 - Crane op. 60 tons & over; Crane op boom 100 ft. & over but less than 150 ft.; Piledriver op. leads 100 ft. & over but less than 150 ft.

POWER EQUIPMENT OPERATORS - ZONE 6 (CONT'D) - CLASSIFICATION DEFINITION

GROUP 2 - Crane op. 100 tons up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Piledriver op. leads 150 ft. & over but less than 225 ft.

GROUP 3 - Crane op. 125 tons up to 200 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Piledriver op. leads 225 ft. & over but less than 300 ft.

GROUP 4 - Crane op. 200 tons up to 300 tons

GROUP 5 - Crane op. 300 tons

GROUP 6 - Crane op. boom 300 ft. & over

GROUP 7 - Crane; Backhoe; Cableway; Concrete mixer, 16S & up; Derrick; Dragline; Dredge; Hoist-2 drums; Locomotvie crane; Paving mixer; Piledriver; Road paver; Roller on asphalt or brick (5 tons or over); Shovel; Sideboom cat; Bulldozer; Motor patrol; Scraper; Hydrolift crane; Hydrolift truck, yard crane, cherry picker, etc.; Foundation, boring & reaming machine; Cement stabilizer; Trenching machine; Asphalt spreader; Traxcavator & similar front end loading equipment with scoop or bucket of 1 cu. yd. or more capacity; Tug boat op.; Turnapull, euclid, DW-10 & other similar self-loading earth moving equipment; Concrete pump (not pumpcrete)

GROUP 8 - A-frame truck; Crew boat op.; Fireman; Fork lift; Straddle buggy; Traxcavator, scoopmobile & similar front end loading equipment with scoop or bucket under 1 cu. yd. capacity; Locomotive; Well point system; Unit operator; Hoist-1 drum, 4 stories & over

GROUP 9 - Air compressor; Asphalt plant engineer; Blade grader; Distributor (bitum surface); Finishing machine (concrete, paving); Hoist-1 drum, less than 4 stories; Concrete mixer under 16-S; Oiler driver; Pump crete; Street & road sweeper; Roller (except on asphalt or brick); Roller, asphalt or brick (under 5 tons); Post-hole digger; Tractor operator bush hog & similar grass or bush cutting equipment

GROUP 10 - Batch plant operator

GROUP 11 - Oiler

GROUP 12 - Pumps, over 3 inch suction; Snatch cat

POWER EQUIPMENT OPERATORS - ZONE 7 - CLASSIFICATION DEFINITIONS

GROUP 1 - A-Frame truck when working with ironworkers, pipefitters, boilermakers & electricians; Bulldozers & tractors; Cableways; Concrete mixer (over 16S) paving machines, crane, derricks, draglines & clamshells; Concrete pump/boom combinations; Deck winches (2); Economobile model #620B or equivalent or heavier equipment; Gradealls; Hi-Ho & similar type equipment; Hoist, 1 drum, 4 stories & over; Hoist, 2 drums or more; Hydro cranes; Mechanics; Motor patrols; Piledrivers; Rollers on brick & asphalt; Rubber-tired front end loader, with or without blade attachment, 1 cu. yd. capacity or more; Scraper; Shovels, Backhoes (all types); Side boom cats; Stabilizers, 3 drums or more; Traxcavators; Trenching machines; Welder, journeyman; Work boats requiring licensed ops.

GROUP 2 - A-frame truck except when working with ironworkers or pipefitters; Air compressor; Asphalt plant engineer; Asphalt finisher, screed men; Blade graders; Small boat op.; Bullfloats; Concrete joining machines; Concrete mixer, 16S & under; Concrete spreader; Crusher op.; Deck winch (1); Distributors, asphalt; "Ditch witch" & similar equipment; Electric elevator (inside); Finishing machine; Firemen; Form graders; Fork lifts; Hoist, 1 drum, under 4 stories; Power subgraders; Pug mill; Pull tractors; Pump; Pump crete; Rollers except on brick & asphalt; Rubber-tired front end loader (with or without attachments) less than 1 cu. yd. capacity; Scale op.; Scoopmobile; Snatch cats; Spray machines; Stabilizers, less than 3 drums; Straddle buggy; Track machines & equivalent machine

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POWER EQUIPMENT OPERATORS - ZONE 7 (CONT'D) CLASSIFICATION DEFINITIONS

GROUP 3 - Unit and well point operator
GROUP 4 - Outside electric elevator operator
GROUP 5 - Batch plant operator, oilers(driver)
GROUP 6 - Oiler
GROUP 7 - Crane op. 60 tons & above; Crane op. boom 100 ft. & over but less than 150 ft.; Tower crane op. boom height 100 ft. & over but less than 150 ft.
GROUP 8 - Crane op. 100 tons & up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Tower crane op. boom height 150 ft. & over but less than 225 ft.
GROUP 9 - Crane op. 125 tons & up to 200 tons
GROUP 10 - Crane op. 200 tons & up to 300 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Tower crane op. boom height 225 ft. & over up to 30 floors
GROUP 11 - Crane op. 300 tons & up to 400 tons; Crane op. boom 300 ft. & over but less than 400 ft.; Tower crane over 30 floors
GROUP 12 - Crane op. over 400 tons; Crane op boom 400 ft & over

POWER EQUIPMENT OPERATORS ZONE DEFINITIONS

ZONE 1 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 2 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry & Winn Parishes
ZONE 3 - All of Acadia, Lafayette & Vermilion Parishes; Parts of Iberia, St. Martin & St. Mary Parishes (west of a line drawn from the City of Berwick to the junction of Iberville-St. Landry Pars. border)
ZONE 4 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes
ZONE 5 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 6 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, St. Helena, West Baton Rouge & West Feliciana Pars.; Parts of Assumption & St. James Pars. (northwest of a straight line drawn from the City of Berwick to the City of Lutcher); Parts of Iberia & southern & northern St. Martin Pars. (east & west of a line from the City of Berwick north to the eastern boundary of the City of Krotz Springs); Parts of Livingston, Tangipahoa & Washington Pars. (west of a line drawn north from the City of Lutcher to the east side of the City of Hammond to the Louisiana-Mississippi border)
ZONE 7 - All of Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Terrebonne Pars.; Parts of Assumption, Livingston, St. James, St. Martin, St. Mary, Tangipahoa & Washington Pars. (that portion of southeastern Louisiana bounded on the north by the State of Mississippi, on the east by the State of Mississippi & the Mississippi Sound, on the south by the Gulf of Mexico & on the west by a line drawn as follows: beginning at a point on the Louisiana-Mississippi boundary in Washington Par., due north of the town of Hackley, then southwesterly in a straight line to a point on the east bank of the Mississippi River at the southernmost point of Lutcher (including Gramercy in the area), thence in a more southwesterly direction in a straight line to midstream of the Atchafalaya River at Morgan City-Berwick (including Morgan City in this area), thence southerly on a line following midstream of the Atchafalaya River to the Atchafalaya Bay & in a line due south to the Gulf of Mexico

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS					
ZONE 1 - Roofers	$14.06		.20		
ZONE 2					
Roofers	10.36	.85	.85	.50	.70
Preparers remove old roofing, place, stock or move materials, tools or equipment for the journeyman	4.50	.55			
ZONE 3					
Roofers	10.98	.75	.95		.04
Preparers removes old roofing, place, stock or move material, tools or equipment for the journeyman	5.00				
ZONE 4 - Roofers	10.50		.30		
Kettlemen	8.80		.30		
ZONE 5 - Roofers	12.86		.20		.04
Kettlemen	8.90		.20		.04

ZONE DEFINITIONS FOR ROOFERS

ZONE 1 - Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Vermilion & Vernon Parishes
ZONE 2 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, South St. Martin, St. Mary, St. Tammany, Terrebonne & Washington Parishes
ZONE 3 - Acadia, Ascension, East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, North St. Martin, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 4 - Avoyelles, Caldwell, Catahoula, Concordia, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Rapides, Richland, Tensas, Union, West Carroll & Winn Parishes
ZONE 5 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine & Webster Parishes

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS					
ZONE 1	$14.75	3%+.70	.84		.20
ZONE 2	14.25	3%+.85	1.31		.16
ZONE 3	14.12	.55	.80		.16
ZONE 4	13.04	3%+.80	.60		.22

ZONE DEFINITIONS FOR SHEET METAL WORKERS
ZONE 1 - Calcasieu Parish
ZONE 2 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne & Washington Parishes
ZONE 3 - Acadia, Allen, Ascension, Assumption, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Mary, Tangipahoa, Vermilion, West Baton Rouge & West Feliciana Parishes
ZONE 4 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SPRINKLER FITTERS	$13.69	.95	1.40		.08
TRUCK DRIVERS					
ZONE 1 - GROUP 1	11.31	.70			
GROUP 2	11.79	.70			
GROUP 3	12.02	.70			
GROUP 4	11.81	.70			
GROUP 5	11.91	.70			
GROUP 6	11.83	.70			
GROUP 7	12.25	.70			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (CONT'D)					
ZONE 2 - GROUP 1	$ 8.70	.55			
GROUP 2	8.95	.55			
GROUP 3	9.50	.55			
GROUP 4	9.35	.55			
GROUP 5	9.80	.55			
GROUP 6	9.90	.55			
GROUP 7	10.20	.55			
GROUP 8	10.35	.55			
ZONE 3 - GROUP 1	9.47				
GROUP 2	9.55				
GROUP 3	9.80				
GROUP 4	9.95				
GROUP 5	10.10				
GROUP 6	10.30				
GROUP 7	10.65				
ZONE 4 - GROUP 1	11.23				
GROUP 2	11.53				
GROUP 3	11.68				
GROUP 4	11.88				
GROUP 5	12.03				
GROUP 6	11.83				
ZONE 5 - GROUP 1	10.59	.70			
GROUP 2	11.20	.70			
GROUP 3	11.25	.70			
GROUP 4	11.51	.70			

ZONE DEFINITIONS FOR TRUCK DRIVERS
ZONE 1 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes
ZONE 3 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster
ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Parishes

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TRUCK DRIVERS CLASSIFICATION DEFINITIONS

SUPERSEDEAS DECISION

STATE: OHIO COUNTIES: Statewide

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

ZONE 1 - GROUP 1 - Teamsters, pick-up drivers
GROUP 2 - Stake bodies (all sizes)
GROUP 3 - Trrucks trailer & dumps over 6 yds.; mixers on trucks over 3 yds.; Miss. wagons & Koehring dumpsters & similar dirt moving equipment (up to & incl. 8 yds.)
GROUP 4 - Mixers on trucks up to & including 3 yds.
GROUP 5 - Winch trucks
GROUP 6 - Trucks, dump
GROUP 7 - Miss. wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.

ZONE 2 - GROUP 1 - Teamsters, pick-up drivers
GROUP 2 - Stake bodies (all sizes); platform dump
GROUP 3 - Truck & trailer; dump
GROUP 4 - Mixers on trucks up to & including 3 yds.
GROUP 5 - Mixers over 3 yds.
GROUP 6 - Winch trucks
GROUP 7 - Miss. wagons & Koehring dumpster, tandem dumps & similar dirt moving equip, up to & including 8 yds.
GROUP 8 - Miss. wagons, Koehring dumpsters, tandem dumps & similar dirt moving equipment over 8 yds.

ZONE 3 - GROUP 1 - Pick-ups, spotters & dumpers of dirt, gravel, etc.
GROUP 2 - Stake bodies; flat beds (all sizes)
GROUP 3 - Single axle dumps & water trucks; transit mix, up to & including 3 yds.
GROUP 4 - Tandem axle dump, batch & water trucks over 3 tons, pickups with trailer
GROUP 5 - Miss. wagons, floats, tractor trailers; ribber tired tractors & wobble wheels
GROUP 6 - Euclids, lowboys, dempsey dumpster, Koehring dumps, 5 axle trucks, transit mix over 3 yds.
GROUP 7 - Fork lift

ZONE 4 - GROUP 1 - Pick-ups
GROUP 2 - Over 1 ton up to but not including 3 tons
GROUP 3 - 3 tons up to but not including 5 tons
GROUP 4 - 5 tons & over including but not limited to: winch, dempsey dumpster, lowboy, semi-trailer, euclid, tournapull & similar equipment when used for transporting material
GROUP 5 - Larger trucks, carrying capacity rear axles 50,000 lbs. & over
GROUP 6 - Winch truck with A-frame when used for transporting

ZONE 5 - GROUP 1 - Up to but not including 1-1/2 tons
GROUP 2 - 1-1/2 tons up to but not including 3 tons
GROUP 3 - 3 tons up to but not including 5 tons
GROUP 4 - 5 tons & over

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications neeeded for work not included within the scope of the classifciations listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: OHIO COUNTIES: Statewide
DECISION NO: OH82-2035 DATE: Date of Publication
Supersedes Decision No. OH81-2064, dated December 4, 1981 in 46 FR 59442
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

BRICKLAYERS & STONE MASONS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS & SCIOTO COUNTIES	$ 15.07		.50		.05
ALLEN, AUGLAIZE, MERCER & VAN WERT COS.	13.94	.90	.95		.02
ASHLAND, CRAWFORD, HARDIN, HOLMES, MARION, MORROW, RICHLAND, & WAYNE (except Twps. of Milton & Chippewa) COS. & WYANDOT Co. (except Twps. of Crawford, Richland, Ridge & Tymochtee)	13.38	.90	2.00		.04
ASHTABULA COUNTY					
Bricklayers	16.42	.95	1.50		
Sewer Bricklayers	16.67	.95	1.50		
ATHENS COUNTY	14.90	.90	1.00		.05
BELMONT, JEFFERSON (Warren, Mt. Pleasant, & Dillonvale), & MONROE COS.	13.77	.80	1.10		.02
BROWN, BUTLER, CLERMONT, HAMILTON, PREBLE (Twps. of Dixon, Gratis, Israel, Lanier, & Somers), & WARREN COS.	16.445	.80	.45		.02
CARROLL, COLUMBIANA (Twps. of Butler, Hanover, Knox & West), STARK, & TUSCARAWAS COS.	15.74	1.20	1.35		.02
CHAMPAIGN, CLARK & LOGAN COS.	13.94	1.25	1.45		.08
CLINTON & HIGHLAND COS.	12.50				
COLUMBIANA CO., (Twps. of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem & Unity), MAHONING CO. & City of Youngstown	14.695	1.00	1.25		.02

DECISION NO. OH82-2035

BRICKLAYERS & STONEMASONS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COLUMBIANA Co. (Twps. of E. Liverpool, Franklin, Madison, St. Clair, Washington, Wayne & Yellow Creek), JEFFERSON CO. (Twps. of Bush, Creek & Saline)	$ 14.15	.90	1.00		
COSHOCTON, FAIRFIELD, GUERNSEY, HOCKING, KNOX, LICKING, MORGAN, MUSKINGUM, & PERRY COUNTIES	13.00	1.30	1.85		.10
CUYAHOGA CO. & MEDINA CO. (except the Twps. of Chatham, Wadsworth, Guilford, Westfield, Sharon, Lafayette, Harrisville, Homer, Litchfield & Spencer)	15.97	1.31	1.33		.10
DARKE, MIAMI, & SHELBY COS.	14.60	1.25	1.45		.08
DEFIANCE, FULTON (except Twps. of Amboy, Fulton, & Swan Creek), HENRY (except Twps. of Barlow, Damascus, Liberty, Marion, Monroe, Richfield, Washington & that part of Harrison outside City limits of Napolean), PAULDING, PUTNAM, & WILLIAMS Cos.	16.22	1.06	1.00		
DELAWARE, FRANKLIN, MADISON, PICKAWAY & UNION COS.	15.09	.90	1.50		.10
ERIE, HANCOCK & HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.) WYANDOT (Tymochtee, Crawford, Ridge, & Richland Twps.) COS. & ISLAND OF LAKE ERIE N. of SANDUSKY	14.34	.90	1.80		.02
FAYETTE, PIKE, & ROSS COS.	14.96		.50		.05
FULTON (Rem. of Co.), HENRY (Rem. of Co.), LUCAS, & WOOD (Rem. of Co.) COS.	16.135	1.06	1.90		.03
GALLIA & MEIGS COS.	14.90	.70			
GEAUGA & LAKE COS.	16.72	.90	1.15		75.00p/y
GREENE & MONTGOMERY COS. & Remainder of PREBLE CO.	14.60	1.25	1.45		.08

DECISION NO. OH82-2035

BRICKLAYERS & STONEMASONS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HARRISON CO. & the Remainder of JEFFERSON CO.	$14.03	.90	.50		.03
JACKSON & VINTON COS.	13.85	.90	.80		.05
LAWRENCE COUNTY	15.29		.50		.05
LORAIN CO. & MEDINA CO. (Chatham, Harrisville, Homer, Litchfield, & Spencer Twps.)	18.05		.80	a	.01
MEDINA (Remainder of Co.), PORTAGE, SUMMIT & WAYNE (Twps. of Milton & Chippewa) COS. Bricklayers	15.52	1.17	1.05		.02
NOBLE CO. (Remainder of Co.) & WASHINGTON CO.	14.00	.70	.50		.05
TRUMBULL COUNTY (except City of Youngstown)	14.94	1.00	1.00		.02

FOOTNOTE: a. 2 pd. Holidays: Independence Day & Labor Day

CARPENTERS & PILEDRIVERMEN					
ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS.					
Carpenters	14.33	.75	1.25		.05
Piledrivermen	14.62	.75	1.25		.05
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT, & WYANDOT COS.					
Carpenters	13.92	.90	1.25		.04
Piledrivermen	14.57	.90	1.25		.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHLAND, CRAWFORD, ERIE (East of B & O Railroad Tracks), HURON, LORAIN and RICHLAND COUNTIES					
Carpenters	$ 15.37	.90	1.25	b	.08
Piledrivermen	15.50	1.20	2.02		.09
ASHTABULA, CUYAHOGA, GEAUGA and LAKE COUNTIES					
Carpenters	15.67	1.20	1.85		.09
Piledrivermen	15.50	1.20	2.01		.09
ATHENS, HOCKING, VINTON and WASHINGTON COUNTIES					
Carpenters	13.92	.90	1.15		.04
Piledrivermen	14.37	.90	1.15		.04
BELMONT and MONROE COUNTIES					
Carpenters	13.83	1.04	1.50		.05
Piledrivermen	14.55	1.04	1.50		.05
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON and WARREN COUNTIES					
Carpenters	15.80	.90	1.10		.075
Piledrivermen	15.80	.90	1.10		.075
CARROLL, STARK, TUSCARAWAS and WAYNE COUNTIES					
Carpenters	13.93	.70	1.03		.02
Piledrivermen	16.41	.70	1.05		.02
COLUMBIANA, & JEFFERSON COUNTIES					
Carpenters	13.83	1.04	1.50		.05
Piledrivermen	14.05	6%	10%		.5%
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE & SHELBY COUNTIES					
Carpenters	14.30	1.00	1.40		.07
Piledrivermen	14.30	1.00	1.40		.07
DEFIANCE, HENRY, PAULDING and WILLIAMS COUNTIES					
Carpenters	16.76	1.06	.75		
Piledrivermen	15.90	1.06	1.25		.10
ERIE (West of B & O Railroad Tracks), OTTAWA, SANDUSKY & SENECA COS. and City of Postoria in HANCOCK & WOOD COUNTIES					
Carpenters	15.37	.90	1.25	b	.08
Piledrivermen	15.90	1.06	1.25		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FULTON, LUCAS, HANCOCK & WOOD COS. excluding the City of Postoria					
Carpenters; Piledrivermen	$15.90	1.06	1.25		.10
HARRISON COUNTY					
Carpenters	13.83	1.04	1.50		.05
Piledrivermen	14.55	1.04	1.50		.05
MAHONING & TRUMBULL COS.					
Carpenters	13.87	1.34	1.50		.05
Piledrivermen	14.66	1.34	1.50		.05
MEDINA, PORTAGE, & SUMMIT COS.					
Carpenters	15.35	.75	1.50		.04
Piledrivermen	15.50	1.20	2.02		.09
FOOTNOTE: b. 2 Paid Holidays: Memorial Day and Independence Day					
CEMENT MASONS:					
ASHTABULA, CUYAHOGA, FULTON, GEAUGA, HANCOCK, HENRY, LAKE, LUCAS, PUTNAM, & WOOD COUNTIES	16.23	.70	1.70		.02
BROWN, BUTLER, CLERMONT, COLUMBIANA, DEFIANCE, ERIE, HAMILTON, HIGHLAND, HURON, LORAIN, MAHONING, MEDINA, OTTAWA, PAULDING, PORTAGE, SANDUSKY, SENECA, STARK, SUMMIT, TRUMBULL, WARREN, & WILLIAMS COS.	15.38	.70	1.20		.02
REMAINING COUNTIES	15.03	.70	1.20		.02
ELECTRICIANS:					
ADAMS, JACKSON (All but Coal, Jackson, Liberty, Milton & Washington Twps.), PIKE (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish, & Union) & SCIOTO COS.	15.48	.30	3%+1.00	1.00	.08
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, & VAN WERT COS. & WYANDOT CO. (West of Crane, Pitt, & Tymochtee Twps.)	14.75	1.35	3%+.43		.04

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ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHLAND, CRAWFORD, HURON (Twps. of Greenwich, New Haven, Richmond, & Ripley) Knox (N½ inclu. Clinton, Howard, Liberty, Monroe & Union Twps.), MARION, MORROW, RICHLAND, & WYANDOT (Rem. of Co.) COS.	$16.03	.60	3%+.72		.2%
ASHTABULA CO. (all but Colebrook, Orwell, Wayne, Williamsfield & Windsor Twps.)	17.25	1.00	3%+1.75		.3%
ASHTABULA (Rem. of Co.), GEAUGA (Twps. of Auburn, Middlefield, Parkman, & Troy), MAHONING (Milton Twp.), PORTAGE (Twps. of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris, & Windham) & TRUMBULL (except Hubbard & Liberty Twps.) COS.	16.62	1.00	9%		.702%
ATHENS, MEIGS, MONROE, MORGAN, NOBLE, VINTON (East of Clinton, Elk and Swan Twps.) & WASHINGTON COS.	14.90	.50	3%+1.25	1.75	.04
BELMONT CO.	14.66	.50	3%+1.25	1.50	.04
BROWN, CLERMONT & HAMILTON COUNTIES					
Within 18 Mi. of Hamilton County Court House	16.70	.85	3%+1.00		½%
From 18 to 21 Miles	17.00	.85	3%+1.00		½%
From 21 to 25 Miles	17.10	.85	3%+1.00		½%
Over 25 Miles	17.25	.85	3%+1.00		½%
BUTLER CO. & WARREN CO. (excluding Clear Creek, Franklin & Wayne Twps.)	16.55	1.00	3%+1.00		½%
CARROLL (S. of Fox, Harrison, Rose & Washington Twps.), HARRISON, & JEFFERSON COS.	17.00	8%	19%	10%	1%

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ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARROLL (Rem. of Co.), COLUMBIANA (Knox Twp.), HOLMES, MAHONING (Smith Twp.), STARK, TUSCARAWAS (N ½ excl. Twps. of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, & Bucks), & WAYNE (S. of Baughman, Chester, Green, & Wayne Twps.) COS.	$ 15.70	1.00	3%+1.00		.3%
CHAMPAIGN & CLARK COS. & MADISON CO. (Twps. of Paint, Pike, Somerford, Stokes & Union)	14.24	.75	3%+1.00		.04
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE COS. & WARREN CO. (Rem. of Co.)					
Within 11 Mi. Radius of 3rd & Main Streets, Dayton	15.63	.75	3%+1.00		.5%
Beyond 11 Mi. Radius	15.86	.75	3%+1.00		.5%
COLUMBIANA CO. (except Twps. of Butler, Fairfield, Knox, Perry, Salem & Unity)	13.30	2.00	3%+.53		.09
COLUMBIANA (Twps. of Butler, Fairfield, Perry, Salem, & Unity), MAHONNING (exclu. Milton & Smith Twps.), & TRUMBULL (Twps. of Hubbard & Liberty) COS.	16.09	1.00	11%		.5%

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ELECTRICIANS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COSHOCTON, GUERNSEY, KNOX (Jackson, Clay, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, and College Twps.), LICKING, MUSKINGUM, PERRY, TUSCARAWAS (E½ incl. Twps. of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks) COS.	14.70	.70	3%+1.02		.03
CUYAHOGA, GEAUGA (Twps. of Bainbridge, Chester, & Russell), and LORAIN (Twp. of Columbia) COS.	15.84	1.10	3%+.39		.06
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD COS.	19.00	.85	3%+.95		.3%
DELAWARE, FAIRFIELD, FRANKLIN, MADISON (Rem. of Co.) & PICKAWAY CO. (Excl. Deer Creek, Perry, Pickaway, Salt Creek & Wayne Twps.) & UNION COS.	14.00	.50	3%+1.02		.05
ERIE CO., HURON CO. (Rem. of Co.)	16.05	.98	3%		.1%
FAYETTE, HIGHLAND, HOCKING, JACKSON (Rem. of Co.), PICKAWAY, PIKE, ROSS, & VINTON COS.	13.80	.70	3%		.06
GALLIA CO.	16.22	.50	3%+1.00	1.00	.04
GEAUGA (except Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, & Troy Twps.), & LAKE COS.	18.73	.85	3%+.70		.2%
LAWRENCE COUNTY	15.72	.50	3%+1.00	1.00	.04
LORAIN CO. (Rem. of Co.) and MEDINA CO. (Twps. of Litchfield & Liverpool)	18.75	.85	3%+1.00		.1%

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ELECTRICIANS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MEDINA (Rem. of Co.), PORTAGE (exclu. Twps. of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris, & Windham), SUMMIT, & WAYNE (Rem. of Co.) COS.	16.67	.74	3%+.84		.2%
IRONWORKERS:					
ADAMS (E½), GALLIA, JACKSON (S½), LAWRENCE, PIKE (S½), & SCIOTO COS.					
Up to 10 miles from Union Hall in Ashland, Ky.	15.96	1.00	1.85		.01
10 to 60 miles from Union Hall in Ashland, Ky.	16.27	1.00	1.85		.01
60 Miles & Over from Union Hall in Ashland, Ky.	18.08	1.00	1.85		.01
ADAMS, (W½), BROWN, BUTLER (S½), CLERMONT, CLINTON (S. of a line drawn from Blanchester to Lynchburg), HAMILTON, HIGHLAND (exclu. E 1/5 and portion of Co. inside lines drawn from Marshall to Lynchburg & from the N. Co. line through E. Monroe to Marshall) & WARREN (S ½) COS.					
Reinforcing	15.58	1.00	1.85		.02
Ornamental; Structural	15.03	1.00	1.85		.03
ALLEN (S½), Auglaize, BUTLER (N ½), CHAMPAIGN (W 2/3), CLARK (W 3/4), CLINTON (excl. S. of a line drawn from Blanchester to Lynchburg), Darke, Greene, Highland (Inside lines drawn from Marshall to Lynchburg & from the N. Co. line through E. Monroe to Marshall), LOGAN (W 2/3),					

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IRONWORKERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MERCER (S½), MIAMI, MONTGOMERY, PREBLE, SHELBY, & WARREN (N½) COS					
Within 15 miles radius of Local Union Office #290	15.36	1.00	1.85		.10
Outside 15 miles radius of Local Union Office #290	15.51	1.00	1.85		.10
ALLEN (N½), DEFIANCE (except portion S. of a line drawn from where Rt. 66 meets the N. line through Independence to the E. Co. border), Mercer (N½), PAULDING, PUTNAM (except portion E. of a line drawn from the N. border down thru Miller city to where 696 meets the S. border), VAN WERT, & WILLIAMS (except portion E. of a line drawn from Pioneer thru Stryker to the S. border) COS.	15.00	1.00	3.05		.04
ASHLAND, CARROLL, COSHOCTON (exclu. portion w. of a line beginning at NW Co. line going thru Walhonding & Tunnel Hill to the S. Co. line), HOLMES, RICHLAND, STARK, TUSCARAWAS, & WAYNE COS.	14.43	1.05	1.80		.07
ASHTABULA (NE ¼) CO.	14.50	1.86	1.51		.15
ASHTABULA (NW¼), CUYAHOGA, ERIE (Exclu. W 1/3), GEAUGA (except portion E. of a line from Austinburg to Middlefield & South), HURON (Exclu. portion W.					

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IRONWORKERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
of a line drawn from the N. border through Monroeville & Willard), LAKE, LORAIN, MEDINA, PORTAGE (Exclu. Ravenna Ordnance Depot), & SUMMIT COS.	16.22	1.05	1.45		.08
ASHTABULA (S ½), COLUMBIANA, GEAUGA (E. of a line from Austinburg to Middlefield & South), MAHONING, PORTAGE (E. of a line from Middlefield to Shalersville to Deerfield), & TRUMBULL COS.	15.26	1.00	1.30		.09
ATHENS, MEIGS, MORGAN, NOBLE & WASHINGTON COS.	13.85	1.00	1.85		.03
BELMONT, GUERNSEY, HARRISON, JEFFERSON, MONROE, & MUSKINGUM (except portion W. of a line starting at Adams Mill going to Adamsville & going from Adamsville through Blue Rock to the S. border) COS.	13.22	1.05	2.55	8%	.05
CHAMPAIGN (E 1/3), CLARK (E½), COSHOCTON (W. of a Line Beginning at NW Co. line going through Walhonding & Tunnel Hill to the S. Co. line), CRAWFORD (S. of Rte 30), FAYETTE, HARDIN (except a line drawn from Roundhead to Maysville), HIGHLAND (E 1/5), HOCKING, JACKSON (N½ of Co.), KNOX, LOGAN (E 1/3), MARION, MORROW, MUSKINGUM (W. of a line starting at Adams Mill going to Adamsville and going from Adamsville thru Blue Rock to the S. border), PERRY, PIKE (N½), ROSS, VINTON, & WYANDOT (S. of Rte 30) COS.	15.20	1.00	2.60		.05

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IRONWORKERS (CONT'D)

DECISION NO. OH82-2035

IRONWORKERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CRAWFORD (Area between lines drawn from where hwy 598 & 30 meet thru N. Liberty to the N. border & from said hwy junction point due W. to the border), DEFIANCE (S. of a line drawn from where Rte. 66 meets the N. line thru Independence to the E. Co. border), ERIE (W 1/3), FULTON, HANCOCK, HARDIN (N. of a line drawn from Maysville to a point 4 miles S. of the N. line on the E. line), HENRY, HURON (W. of a line drawn from the N. border thru Monroeville & Willard), LUCAS, OTTAWA, PUTNAM (E. of a line drawn from the N. border down thru Miller City to where 696 meets the S. border), SANDUSKY, SENECA, WILLIAMS (E. of a line drawn from Pioneer thru Stryker to the S. border), WOOD, & WYANDOT (Area N. of Rte. # 30) Cos.	16.38	1.06	1.82		.09
DELAWARE, FAIRFIELD, LICKING, MADISON, PICKAWAY, & UNION COUNTIES	15.10	1.00	2.60		.05
FRANKLIN COUNTY	14.95	1.00	2.60		.05
PAINTERS:					
ADAMS, HIGHLAND, JACKSON, PIKE & SCIOTO COUNTIES					
Brush	14.35		1.00		.03
Spray	15.35		1.00		.03
ALLEN, AUGLAIZE, DEFIANCE, HARDIN, MERCER, PAULDING, PUTNAM, SHELBY, VAN WERT & WILLIAMS COS.					
Brush & Roller	13.05	1.06	.50		.03
Sandblasting; Spray; Steam Cleaning	13.55	1.06	.50		.03
ASHLAND, CRAWFORD, MARION, MORROW, & RICHLAND COS.					
Brush	12.25		.80		
Structural Steel	12.75		.80		
Spray	13.00		.80		

DECISION NO. OH82-2035

PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHTABULA, CUYAHOGA, GEAUGA, & LAKE COS., LORAIN (North East Part) and PORTAGE & SUMMIT COS. (North of the Ohio Turnpike)					
Brush	15.06	.97	1.60		.05
Bridge and Open Steel; Closed Steel Over 55'	15.76	.97	1.60		.05
Closed Steel Below 55'; Spray	15.46	.97	1.60		.05
ATHENS & HOCKING COUNTIES					
Brush	14.60				
Spray	15.25				
BROWN, CLERMONT & HAMILTON COS.					
Brush	15.80		.75		
Spray	16.30		.75		
BUTLER & WARREN COUNTIES					
Brush	14.23				
Spray	15.23				
CARROLL, HOLMES, STARK, TUSCARAWAS & WAYNE COS.					
Brush	13.56	1.08	1.00		.02
Spray	14.09	1.08	1.00		.02
Structural Steel	14.27	1.08	1.00		.02
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY & PREBLE COUNTIES					
Brush; Roller	15.47		1.00		
Structural Steel	15.87		1.00		
Spray; Sandblast	15.97		1.00		
COLUMBIANA, MAHONING, PORTAGE (Ravenna Ordnance Depot), & TRUMBULL COS.					
Brush	14.65	1.00	1.25		
Sandblasting; Spray	15.35	1.00	1.25		
CHAMPAIGN, CLARK, LOGAN, & MADISON COS.:					
Brush	13.75		1.00		
Spray	14.45		1.00		

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PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, PICKAWAY, ROSS, & UNION COUNTIES					
Brush	$ 14.19	.95	1.00		.02
Structural Steel	14.49	.95	1.00		.02
Spray	14.69	.95	1.00		.02
ERIE, HANCOCK, HURON, SANDUSKY, SENECA & WYANDOT COUNTIES					
Brush	13.80	.70	.90		50.00p/yr
Structural Steel	14.25	.70	.90		50.00p/yr
FULTON, HENRY, LUCAS, OTTAWA & WOOD COUNTIES					
Brush	14.70	1.06	2.00		
Spray	15.25	1.06	2.00		
Bridge Railings	14.95	1.06	2.00		
GALLIA, LAWRENCE, MEIGS, & VINTON COUNTIES					
Brush; Roller	13.20	.70		c	
Sandblasting; Spray; Waterblasting	13.90	.70		c	
KNOX, LICKING, MUSKINGUM and PERRY COUNTIES					
Steel; Bridge	12.50				
Spray	13.00				
Sandblasting	14.00				
LORAIN COUNTY (Rem. of Co.)					
Brush	16.22	1.15	.90	d	
Spray; Sandblasting	16.72	1.15	.90	d	
MEDINA, PORTAGE (Up to & incl. the Ohio Turnpike), & SUMMIT (Up to & incl. the Ohio Turnpike) COS.:					
Brush; Paperhanger; & Roller	14.65	1.07	.60		
Structural Steel	15.40	1.07	.60		
Spray	15.50	1.07	.60		

FOOTNOTES: c. 6 Paid Holidays: Decoration Day; July 4th; Thanksgiving Day; Christmas Day; New Year's Day & Veteran's Day

d. 2 Paid Holidays: Labor Day & July 4th.

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PLUMBERS; STEAMFITTERS; & PIPEFITTERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, ATHENS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, PIKE, SCIOTO, & VINTON COS.	$ 16.34	.95	1.00		
ALLEN, AUGLAIZE, HARDIN, MERCER, SHELBY & VAN WERT COS.	15.75	1.10	1.05		.05
ASHLAND, CRAWFORD, ERIE, HURON, KNOX, LORAIN, MORROW, RICHLAND & WYANDOT COS.	16.75	1.00	1.10		.10
ASHTABULA, CUYAHOGA, GEAUGA, LAKE, MEDINA (N. of Rt. 18 exclu. city of Medina), PORTAGE (N. of #303), & SUMMIT (N. of Rt. #303, excl. city of Hudson) COS.:					
Plumbers	16.03	1.20	1.40		.02
Pipefitters; & Steamfitters	15.92	1.45	1.35		.10
BELMONT & MONROE (North of Rt. 78) COS.	13.39	.75	9%	10%	.05
BROWN, CLERMONT, & HAMILTON COS.:					
Plumbers; Gas Fitters	16.57	1.25	1.50		.07
Steamfitters; Pipefitters	16.23	1.095	2.20		.08
BUTLER (North Half) & WARREN (N. of Rte. #63 exclu. Lebanon & S. Lebanon) COS.	17.00	.90	1.00		.05
BUTLER (South Half) & WARREN (S. of Rte. #63 including Lebanon and S. Lebanon) COS.	17.33	.90	1.20		.02
CARROLL CO. (Except Twps. of Ross, Monroe, Union, Lee, Orange, Perry & London), STARK & WAYNE COS.	14.67	1.35	.70	e	.10
CARROLL (Twps. of Ross, Monroe, Union, Lee, Orange, Perry & London), COSHOCTON, GUERNSEY, HOLMES, MORGAN (South of State Rte. #78 & from McConnelsville West on State Rte #37 to the Perry Co. line); MUSKINGUM, NOBLE, & TUSCARAWAS COS.	17.00	1.00	.70		

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				Fringe Benefits Payments	

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PLUMBERS; STEAMFITTERS; & PIPEFITTERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHAMPAIGN, CLARK, GREENE (Twps. of Cedarville, Ceasar Creek, New Jasper, Jefferson, & Ross), LOGAN & MADISON (West of Rt. 38 including the city of London) COS.	$15.65	$1.08	$1.10		.04
CLINTON, DARKE, FAYETTE, GREENE (Rem. of Co.), MIAMI, MONTGOMERY, & PREBLE COUNTIES	17.46	1.05	1.20		.08
COLUMBIANA (excluding Washington & Yellow Creek Twps. & Liverpool Twp. secs. 35 & 36 - West of County Rd. #427), MAHONING COS. & TRUMBULL CO. (Hubbard & Liberty Twps. Youngstown Municipal Airport & the Filtration Plant of the Mahoning Valley Sanitary District)	15.79	1.17	.80		.05
COLUMBIANA (Washington & Yellow Creek Twps., & Liverpool Twp. secs 35 & 36 West of County Rd. #427), HARRISON AND JEFFERSON COUNTIES	16.07	1.23	3.43		.13
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD COS.	16.90	1.50	1.20		.12
DELAWARE, FAIRFIELD, FRANKLIN, HOCKING, LICKING, MADISON (Rem. of Co.), MARION, PERRY, PICKAWAY, ROSS & UNION COS.	16.84	1.15	1.05		.07
MEDINA (Rem. of Co.), PORTAGE, & SUMMIT (S. of Rte #303) COS.	15.24	.91	1.60		.05
MEIGS, MONROE (Rem. of Co.), MORGAN (Rem. of Co.), & WASHINGTON COS.	14.76	.78	.75		.06
TRUMBULL CO. (Rem. of Co.)	15.45	1.57	1.15		.03

FOOTNOTE:
@. One paid holiday: Labor Day providing employee has worked 5 consecutive days before and after the holiday.

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LABORERS: (Excluding Railroad Construction)	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2	Basic Hourly Rates ZONE 3	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$ 14.68	$ 13.25	$ 12.82	.95	$ 1.50		.05
GROUP II	14.805	13.375	12.945	.95	1.50		.05
GROUP III	14.88	13.45	13.02	.95	1.50		.05
GROUP IV	15.03	13.60	13.17	.95	1.50		.05
GROUP V	15.33	13.90	13.47	.95	1.50		.05

GROUP I - Asphalt Laborer; Carpenter Tender; Concrete Curing Applicator; Dump Man (Batch Trucks); Flagman; Grade Checker; Guardrail & Fence Installers; Joint Setter; Laborers (Construction); Landscape Laborer; Mesh Handlers & Placers; Plant Laborers or Yardmen; Right-of-way Laborers; Riprap Laborer & Grouter; Scaffold Erector; Seal Coating Surface Treatment or Road Mix Laborer; Sign Installer; Slurry Seal; Utility Man or Handyman; & Waterproofing Laborer
GROUP II - Asphalt Raker; Concrete Puddler; Kettle Man (Pipeline); Machine Driven Tools; Mason Tender; Mortar Mixer; Power Buggy or Power Wheelbarrow; Sheeting & Shoring Man; & Surface Grinder Man
GROUP III - Air Track & Wagon Drill; Bottom Man; Car Pusher (Without Air); Cofferdam (Below 25 feet deep); Concrete Saw Man; Cutting with Burning Torch; Form Setter; Hand Spiker (Railroad); Pipelayer; Tunnel Laborer (Without Air) and Caisson; Undergroundman (Working in Sewer & Waterline, Cleaning, Repairing & Reconditioning); & Welder Tender (Pipeline)
GROUP IV - Blaster; Muckers; Powder Man; Top Lander; Wrencher (Mechanical Joints & Utility Pipeline); & Yarner
GROUP V - Concrete Crew in Tunnels; Curb Setter & Cutter; Gunnite Nozzle Man; Miner Without Air; Utility Pipeline Tapper; & Waterline Caulker

ZONE DEFINITIONS

ZONE 1 - Cuyahoga, Geauga & Lake Cos.
ZONE 2 - Ashtabula, Erie, Huron, Lorain, Lucas, Mahoning, Medina, Ottawa, Portage, Stark, Summit, Trumbull & Wood Cos.
ZONE 3 - Remainder of Counties

LABORERS: (Railroad Construction)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cuyahoga, Geauga, Lake, Lorain, Lucas, Portage, & Summit Coun Counties	$7.25	.00	.80		.10
Remaining Counties	6.75	.00	.80		.10

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POWER EQUIPMENT OPERATORS ZONE 1 - Columbiana, Mahoning & Trumbull Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 15.61	1.05	1.00		.16
CLASS II	14.92	1.05	1.00		.16
CLASS III	14.28	1.05	1.00		.16
CLASS IV	13.87	1.05	1.00		.16
CLASS V	13.77	1.05	1.00		.16
CLASS VI	15.88	1.05	1.00		.16

CLASS I - Asphalt Planer Heater; Austin Western & Similar Type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Beam Builder-Automatic; Backfiller W/Drag Attachments; Boat Derrick; Boat-Tug; Boring Mach. Attached to Tractor; Bullclam; Bulldozer; C.M.I. Road Builder & Similar Types; Cable Placer & Layer; Carrier-Straddle; Carryall - Scraper or Scoop; Chicago Boom; Compactor W/Blade attached; Concrete Spreader Finisher Comb., Crane; Crane-Stationary or climbing; Crane-Electric Overhead; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Diggers-Wheel (Not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Electromatic; Fork Lift; Frankie Pile; Gradall; Grader-Power; Gurry; Gurry-Self-Propelled; High Lift; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist-2 or 3; Jackall; Jumbo Mach.; Kocal or Kuhlman; Land-Seagoing Vehicle; Loader - Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Clip Harvester w/ Boom; Mucking Mach.; Paver-Asphalt Finishing Mach.; Paver - Road Concrete; Paver-Slipform; Place Crete Mach; Post Driver; Power Driven Hydraulic Pumps & Jacks; Pump Crete Machine; Regulator-Ballast; Rigs-Drilling; Shovels; Spikemaster; Stonecrusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor w/ Attachments; Trucks-Boom; Truck-Tire-Assigned to Job; Trench Mach.; Tunnel Machine (Mark 21 Java or Similar); Whirley

CLASS II - Asphalt Plant; Bending Machine; Boring Mach.; Chip Harvester W/O Boom; Cleaning Mach.- Pipeline Type; Coating Mach-Pipeline Type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Mach.; Grease Truck Op.; Grout Pump; Gunnite Mach.; Huck Bolting Mach.; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Fireman; Power Broom; Refrigeration Plant; Sasgen Derrick; Seeding Mach.; Self-Propelled Mobile Vibrator Compactor or Roller; Hoist-Single Drum; Soil Stabilizer (Pump Type); Spray Cure Mach.-Self Propelled; Straw Blower Mach.; Sub-Grader; Tube Finisher or Broom C.M.I. or Similar Type; Tugger Hoist

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POWER EQUIPMENT OPERATORS
ZONE 1 - Columbiana, Mahoning & Trumbull Counties (Cont'd)

CLASS III - Batch Plant-Job Related; Boiler Op.; Compressor (125 CFM or Over); Curb Builder (Self-Propelled); Generator- Steam; Jack-Hydraulic Driven; Mixer-Concrete; Mulching Mach.; Pin Puller; Pulverizer; Pump; Road Finishing Mach. (Pulltype); Roller; Saw-Concrete-Self-Propelled; Signal Man; Spray Cure Mach. Motor Powered; Spreader (Side Driver Shoulder Attachment); Tractor; Trencher-Form; Water Blaster

CLASS IV - Brake Man; Compressor Under 125 CFM; Conveyor; Conveyor 12 Feet or Under Other Than Servicing Bricklayers; Deck Hand; Drill Wagon; Fireman; Generator Sets; Heaters-Portable Power (2 to 5); Ladavator; Roller (Walk Behind 1 Ton or over); Steam Jenny; Syphons; Tender-Mechanic; Jacks Hydraulic (Railroad); Vibrator-Gasoline; Welding Machines (2) (Fuel Burning)

CLASS V - Oiler

CLASS VI - Rigs-Pile Driving or Caisson Type

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POWER EQUIPMENT OPERATORS ZONE 2 - Ashtabula, Geauga, Lake & Portage Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 15.61	1.05	1.00		.16
CLASS II	14.92	1.05	1.00		.16
CLASS III	14.28	1.05	1.00		.16
CLASS IV	13.87	1.05	1.00		.16
CLASS V	13.77	1.05	1.00		.16
CLASS VI	15.88	1.05	1.00		.16

CLASS I - Asphalt Planer Heater; Austin Western & Similar Type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Beam Builder-Automatic; Backfiller W/Drag Attachments; Boat Derrick; Boat-Tug; Boring Mach. Attached to Tractor; Bullclam; Bulldozer; C.M.I. Road Builder & Similar Types; Cable Placer & Layer; Carrier-Straddle; Carryall - Scraper or Scoop; Chicago Boom; Compactor W/Blade attached; Concrete Spreader Finisher Comb., Crane; Crane-Stationary or climbing; Crane-Electric Overhead; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Diggers-Wheel (Not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Electromatic; Fork Lift; Frankie Pile; Gradall; Grader-Power; Gurry; Gurry-Self-Propelled; High Lift; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist-2 or 3; Jackall; Jumbo Mach.; Kocal or Kuhlman; Land-Seagoing Vehicle; Loader - Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Clip Harvester w/ Boom; Mucking Mach.; Paver-Asphalt Finishing Mach.; Paver - Road Concrete; Paver-Slipform; Place Crete Mach; Post Driver; Power Driven Hydraulic Pumps & Jacks; Pump Crete Machine; Regulator-Ballast; Rigs-Drilling; Shovels; Spikemaster; Stonecrusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor w/ Attachments; Trucks-Boom; Truck-Tire-Assigned to Job; Trench Mach.; Tunnel Machine (Mark 21 Java or Similar); Whirley

CLASS II - Asphalt Plant; Bending Machine; Boring Mach.; Chip Harvester W/O Boom; Cleaning Mach.- Pipeline Type; Coating Mach-Pipeline Type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Mach.; Grease Truck Op.; Grout Pump; Gunnite Mach.; Huck Bolting Mach.; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Fireman; Power Broom; Refrigeration Plant; Sasgen Derrick; Seeding Mach.; Self-Propelled Mobile Vibrator Compactor or Roller; Hoist-Single Drum; Soil Stabilizer (Pump Type); Spray Cure Mach.-Self Propelled; Straw Blower Mach.; Sub-Grader; Tube Finisher or Broom C.M.I. or Similar Type; Tugger Hoist

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POWER EQUIPMENT OPERATORS
ZONE 2 - Ashtabula, Geauga, Lake & Portage Counties (Cont'd)

CLASS III - Batch Plant-Job Related; Boiler Op.; Compressor (125 CFM or Over); Curb Builder (Self-Propelled); Generator- Steam; Jack-Hydraulic Driven; Mixer-Concrete; Mulching Mach.; Pin Puller; Pulverizer; Pump; Road Finishing Mach. (Pulltype); Roller; Saw-Concrete-Self-Propelled; Signal Man; Spray Cure Mach. Motor Powered; Spreader (Side Driver Shoulder Attachment); Tractor; Trencher-Form; Water Blaster

CLASS IV - Brake Man; Compressor Under 125 CFM; Conveyor; Conveyor 12 Feet or Under Other Than Servicing Bricklayers; Deck Hand; Drill Wagon; Fireman; Generator Sets; Heaters-Portable Power (2 to 5); Ladavator; Roller (Walk Behind 1 Ton or over); Steam Jenny; Syphons; Tender-Mechanic; Jacks Hydraulic (Railroad); Vibrator-Gasoline; Welding Machines (2) (Fuel Burning)

CLASS V - Oiler

CLASS VI - Rigs-Pile Driving or Caisson Type

DECISION NO. OH82-2035

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates ZONE 2	Basic Hourly Rates ZONE 3	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Master Mechanic	$ 17.38	$ 16.64	$1.41	1.50		.15
CLASS A	17.13	16.39	1.41	1.50		.15
CLASS B	17.03	16.27	1.41	1.50		.15
CLASS C	15.99	15.23	1.41	1.50		.15
CLASS D	15.52	14.80	1.41	1.50		.15
CLASS E	11.83	10.94	1.41	1.50		.15

CLASS A - Air Compressor On Steel Erection; Asphalt Plant Engineer (Cleveland District Only); Boiler Op.; Compressor or Generator When Mounted On Rig; Cableway; Combination Concrete Mixer & Tower; Concrete Plants (Over 4 Yds. Cap.); Concrete Pumps; Cranes (All Types Incl. A Frames, Boom Trucks, Cherry Pickers); Derricks; Draglines; Dredge (Dipper Clam or Suction); Elevation Grader or Euclid Loader; Floating Equipment (All Types); Helicopter Crew (Hoist or Winch); Hoes (All Types); Hoisting Engines (Including Shaft & Tunnel Work); Industrial Type Tractor; Jet Engineer Dryer (D8 or D9) Diesel Tractor; Locomotives (Standard Guage); Maintenance Op. Class A; Mixer (Paving Single or Double Drum); Mucking Mach.; Multiple Scraper; Piledriving Mach. (All Types); Power Shovel; Quad 9 (Double Pusher); Refrigerating Mach. (Freezer Operation); Rotary Drill on Caisson Work; Slip Form Paver; Tower Derricks; Tree Shredder; Trench Mach. (Over 24" Wide); Truck Mounted Concrete Pump; Tug Boat; Tunnel Mach. and/or Mining Machine; Wheel Excavator

CLASS B - Asphalt Paver; Automatic Subgrader Mach. Self-Propelled (CMI Type); Boring Mach. Op. (More than 48"); Bulldozers; Endloader; Kolman Loader (Production Type Dirt); Lead Grease Man; Maintenance Op., Class B (in Zone 2 Portage & Summit Cos. only); Power Grader; Power Scraper; Push Cat; Trench Mach. (24" Wide & Under)

CLASS C - Air Compressor on Tunnel Work (Low Pressure); Asphalt Plant Engineer (in Zone 2 Portage & Summit Cos. Only); Locomotive (Narrow Guage); Concrete Mixers (More than 1 Bag Cap.); Mixers (1 Bag Cap. - Side Loader); Power Boiler over 15 lb. Pressure; Pump Op. Installing & Operating Well Points; Pumps (4" & Over Discharge); Rollers (Asphalt); Utility Op. (Small Equipment); Welding Mach. & Generators.

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POWER EQUIPMENT OPERATORS (CONT'D)

CLASS D - Back Fillers; Bar (Joint & Mesh Installing Mach.); Batch Plant; Boring Mach. Op. (48" or less); Bull Floats; Burlap & Curing Mach.; Compressor (Portable, Sewer, Hvy. & Hwy.); Concrete Plant (4 Yd. & Under Cap.); Concrete Saw (Multiple); Conveyors (Hwy.); Crusher, Deckhand; Drill Highway (W. Integral Power); Farm Type Tractors W/ Attachs. (Hwy.); Finishing Mach.; Fireman (Floating Equipment, All Types); Fork Lift (Hwy.); Form Trenchers; Hydro Hammer; Hydro Seeder; Pavement Breaker; Plant Mixers; Post Driver; Post Hole Digger (Power Auger); Power Brush Burner; Power Form Handling Equip.; Road Widening Trencher; Rollers (Brick, Grade, Macadam); Self-Propelled Power Spreader; Self Propelled Power Subgrader; Steam Fireman; Tractor (Pulling Sheepfoot Roller or Grader); Vibratory Compactor W/Integral Power

CLASS E - Drum Fireman (Asphalt Plant); Inboard-Outboard, Motor Boat-Launch; Oil Heaters (Asphalt Plant); Oilers; Power Driven Heaters; Pumps (Under 4" Discharge); Signalmen; Tenders; Tire Repairmen

ZONE DEFINITIONS

ZONE 2 - Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage & Summit Counties

ZONE 3 - Remainder of Counties

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DECISION NO. OH82-2035

TRUCK DRIVERS ZONE 1 - CUYAHOGA, GEAUGA, and LAKE COUNTIES:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 13.15	38.00a	30.00a	b&c	.05
CLASS II	13.30	38.00a	30.00a	b&c	.05
CLASS III	13.65	38.00a	30.00a	b&c	.05

CLASS I - Straight & Dumps (Including Asphalt); Straight Fuel;

CLASS II - Semi Fuel; Semi Pole Drivers (Hauling Steel Pipe); & Semi Tractor Drivers

CLASS III - Ready-Mix (Agitator or non Agitator); Bulk Concrete Drivers; Dry Batch Trucks; Carry-All Driver; Darts; Double Hook-up Tractor Trailers Including Team Track & Railroad Siding; Euclids; Extra Long Trailers & Semi Pole Trailers, Except When Hauling Steel Pipe; Fork Lifts; Hi-Lifts; Low Boys; Semi-Tractor & Tri-Axle Trailer; Tag Along Trailer, Expandable Trailers, Load (Requiring Road Permits); Tandem Tractor, Tandem Trailer & Tri-Axle Trailer; Tank Asphalt Spreaders; & Tournarockers

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independunce Day; D-Labor Day; E-Thanksgivng Day; F-Christmas Day.

FOOTNOTES:

a. Per Week Per Employee

b. One week's paid vacation for one year of service; two weeks for five years; three weeks for ten years & four weeks for seventeen years.

c. Seven paid holidays: A through F Plus National Election Day

DECISION NO. OH82-2035

TRUCK DRIVERS ZONE II - Remainder of the State	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 13.47	41.00a	24.00a		.05
CLASS II	13.52	41.00a	24.00a		.05
CLASS III	13.57	41.00a	24.00a		.05
CLASS IV	13.67	41.00a	24.00a		.05
CLASS V	13.94	41.00a	24.00a		.05
CLASS VI	13.77	41.00a	24.00a		.05

CLASS I - Asphalt Distributors; Batch Trucks; 4 Wheel Service Truck; 4 Wheel Dump Trucks; & Oil Distributors
CLASS II Tandems
CLASS III - Fuel Trucks; Pole Trailers; Ready Mix Trucks; & Semi-Tractor Trucks; Asphalt Oil Spraybar Man
CLASS IV - All Trucks Five Axle & Over
CLASS V - Asphalt Oiler Spraybar Man When Operated From Cab
CLASS VI - Euclid Wagons; Euclid End Dumps; Heavy Duty Equipment over 12 cu. yd. cap.; & Low Boys

FOOTNOTE:
a. Per Week Per Employee

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LINE CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, ATHENS, GALLIA, LAWRENCE, MEIGS, & SCIOTO COS., JACKSON CO. (except Coal, Jackson, Liberty, Milton & Washington Twps.), PIKE CO. (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish & Union), & VINTON CO. (E. of Clinton, Elk & Swan Twps.):					
Cable Splicers; Linemen Welders	$18.35	.70	3%+.50	1.00	½%
Linemen	16.68	.70	3%+.50	1.00	½%
Operators: All Mechanized Equipment	13.34	.70	3%+.50	1.00	½%
Groundmen	10.84	.70	3%+.50	1.00	½%
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT, & WYANDOT (Twps. of Crawford, Jackson, Marseil, Mifflin, Ridgeland, Ridge & Salem) COS.:					
Linemen	15.17	.70	3%		½%
Equipment Operators	13.65	.70	3%		½%
Groundmen; Truck Drivers	9.97	.70	3%		½%
ASHLAND, CRAWFORD, HURON (Twps. of Richmond, New Haven, Ripley & Greenwich), KNOX (Twps. of Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown & Jefferson), MARION, MORROW, RICHLAND, & WYANDOT (Twps. of Sycamore, Crane, Eden, Pitt, Antrim & Tymochtee) COS.:					
Equipment Operators; Linemen	16.03	.60	3%+.72		½%
Line Truck Driver	9.62	.60	3%+.72		½%
Groundmen	10.42	.60	3%+.72		½%
ASHTABULA CO., except Twps. of Colebrook, Orville, Wayne; Williamsfield, & Windsor:					
Cable Splicers; Equipment Ops.; Line Truck Drivers; & Linemen	13.05	.90	3%+.05		½%
Groundmen	9.80	.90	3%+.05		½%

DECISION NO. OH82-2035

LINE CONSTRUCTION (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHTABULA (Twps. of Colebrook, Wayne, Williamsfield, Orwell, & Windsor), COLUMBIANA (Twps. of Butler, Fairfield, Perry, Salem, & Unity), GEAUGA (Twps. of Auburn, Middlefield, Parkman, Burton, & Troy), MAHONING (excl. Smith Twp.), PORTAGE (Charleston, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris, Windom Twps.), & TRUMBULL COS.:					
Cable Splicers; Linemen; Operator - Poledigging Equipment	$ 17.08	.70	8%		½%
Groundmen	13.66	.70	8%		½%
BELMONT COUNTY:					
Equipment Operators; Linemen & Technicians	14.66	.50	3%+1.25	1.50	
Cable Splicers; Welders	14.91	.50	3%+1.25	1.50	
Groundmen	11.73	.50	3%+1.25	1.50	
BROWN, CLERMONT, & HAMILTON COS.:					
ZONE I: Up to & incl. 18 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	16.70	.85	3%+1.00		½%
Groundmen	12.53	.85	3%+1.00		½%
ZONE II: Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati;					
Linemen; Machine Ops.	17.00	.85	3%+1.00		½%
Groundmen	12.75	.85	3%+1.00		½%
ZONE III: Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	17.10	.85	3%+1.00		½%
Groundmen	12.825	.85	3%+1.00		½%
ZONE IV: Over 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	17.25	.85	3%+1.00		½%
Groundman	12.94	.85	3%+1.00		½%

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LINE CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUTLER, WARREN (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Twps.) COS.:					
Linemen	$ 16.55	1.00	3%+1.00		½%
Cable Splicers	17.05	1.00	3%+1.00		½%
Groundmen	11.59	1.00	3%+1.00		½%
CARROLL (N. ½ incl. Fox, Harrison, Rose & Washington Twps.), COLUMBIANA (Knox Twp.), HOLMES, MAHONING (Smith Twp.), STARK, TUSCARAWAS (N. of Auburn, Clay, Rush, & York Twps.), & WAYNE (S. of Baughman, Chester, Green & Wayne Twps.) COS.:					
Cable Splicers	14.59	1.00	3%+1.00		.3%
Linemen	15.70	1.00	3%+1.00		.3%
Line Equipment Ops.	13.44	1.00	3%+1.00		.3%
Groundmen; Truck Drivers	9.84	1.00	3%+1.00		.3%
CARROLL (S. of Fox, Harrison, Rose & Washington Twps.), HARRISON, & JEFFERSON COS.:					
Linemen; Line Equipment Ops.; Truck Drivers	17.00	8%	19%	10%	½%
Cable Splicers	17.50	8%	19%	10%	½%
Groundmen	11.05	8%	19%	10%	½%

DECISION NO. OH82-2035

LINE CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHAMPAIGN, CLARK, CUYAHOGA, GEAUGA (Bainbridge, Russell & Chester Twps.), LORAIN (Columbia Twp.), & MADISON (except Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, & Pleasant Twps.) COS.:					
Cable Splicers; Equipment Ops.; Linemen	$17.93	.60	3%		½%
Groundmen	11.65	.60	3%		½%
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, WARREN (Wayne, Clear Creek, & Franklin Twps.), COS.:					
Cable Splicers; Linemen	15.63	.75	3%+1.00		½%
Operators:					
Hole Digging Equipment, Cranes, Hydraulic Lift or Bucket	15.63	.75	3%+1.00		½%
Line Truck with Winch or Pole & Steel Handling	11.71	.75	3%+1.00		½%
None-Specialized Truck & Misc. Equipment;					
Groundmen - Truck Driver	9.38	.75	3%+1.00		½%
COLUMBIANA (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West & Yellow Creek Twps.) CO.:					
Linemen; Heavy Equipment Ops.	13.30	15%	7%		½%
Groundmen & Truck Drivers	11.90	15%	7%		½%
COSHOCTON, GUERNSEY, MUSKINGUM, PERRY, & TUSCARAWAS (Rem. of Co.) COS.:					
Cable Splicers; Equipment Ops.; Linemen	15.69	.50	3%		½%
Groundmen	9.39	.50	3%		½%

DECISION NO. OH82-2035

LINE CONSTRUCTION (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.:					
Linemen	$ 17.24	.70	3%	a	1%
Technicians	16.72	.70	3%	a	1%
Cable Splicers	19.83	.70	3%	a	1%
Operator Class I	13.79	.70	3%	a	1%
Operator Class II	12.07	.70	3%	a	1%
Groundmen	10.34	.70	3%	a	1%
DELAWARE, MADISON, (Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range & Pleasant Twps.), PICKAWAY (Twps. of Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlenburg, Scioto, Walnut, & Washington), & UNION COS.:					
Cable Splicers; Equipment Ops. & Linemen	16.67	.50	3%		1%
Groundmen	9.39	.50	3%		1%
ERIE, & HURON (Lyme, Ridgefield, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarksfield, Norwick, Greenfield, Fairfield, Fitchville, & New London Twps.) COS.:					
Cable Splicers; Equipment Ops. and Linemen	16.05	.98			
Truck Driver (winch) Groundman	8.83	.98			
Groundman	10.43	.98			
FAIRFIELD, KNOX (Butler, Clay, College, Harrison, Hilliar, Jackson, Morgan, Milford, Miller, & Pleasant), & LICKING COS.:					
Cable Splicers; Linemen; Operators: All Mechanized Equipment	14.85	.70	3%		1%
Groundmen - Truck Driver	11.78	.70	3%		1%
Groundmen	9.08	.70	3%		1%

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LINE CONSTRUCTION (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FAYETTE, HIGHLAND, HOCKING, JACKSON (Coal, Jackson, Liberty, Milton, & Washington Twps.), PICKAWAY (Deer Creek, Perry, Pickaway, Salt Creek, & Wayne Twps.), PIKE (Excl. Camp Creek, Marion, Newton, Scioto, Sunfish, & Union Twps.), ROSS, VINTON (W ½ of Co., incl. Clinton, Elk & Swan Twps.) COS.:					
Cable Splicers	$ 16.985	.70	3%		1%
Linemen; Equipment Operator	15.80	.70	3%		1%
Truck Drivers	9.49	.70	3%		1%
Groundmen	9.08	.70	3%		1%
FRANKLIN COUNTY:					
Cable Splicers; Linemen	14.18	.50	3%		1%
Equipment Operators	12.43	.50	3%		1%
Groundmen	9.39	.50	3%		1%
GEAUGA (Excl. Bainbridge, Chester, Russell, Auburn, Middlefield, Parkman & Troy Twps.), & LAKE COS.:					
Cable Splicers; Equipment Ops. & Linemen	18.73	.85	3%+.70		1%
Truck Drivers (Winch) Groundman; Groundman	12.17	.85	3%+.70		1%
LORAIN (Exclu. Columbia Twp.), & MEDINA (Litchfield & Liverpool Twps.) COs.:					
Cable Splicers; Equipment Op.; & Linemen	16.75	.75	3%+1.00		1%
Truck Driver (winch) Groundman; Groundman	10.89	.75	3%+1.00		1%
MEDINA (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, & York Twps.), PORTAGE (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro & Suffield Twps.), SUMMIT, & WAYNE (Northern ½ of Co.) COS.:					

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LINE CONSTRUCTION (CONT'D)

MEDINA CO. (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen	$16.67	.74	3%+.84		½%
Cable Splicers	17.72	.74	3%+.84		½%
Equipment Operators	12.50	.74	3%+.84		½%
Truck Drivers; Groundman	8.34	.74	3%+.84		½%
MONROE, MORGAN, NOBLE, & WASHINGTON COUNTIES:					
Cable Splicers; Equipment Operators.; Linemen	14.93	.60	3%		½%
Groundmen	8.41	.60	3%		½%

FOOTNOTE: a. 10 paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; Christmas Eve; Christmas Day; New Year's Eve Day; & Good Friday.

POWER EQUIPMENT OPERATORS:					
Statewide, except Columbiana, Mahoning & Trumbull Cos.:					
Well & Pump Work (Incl. Drilling & Repair of all Water Wells; Test Holes & Wells; & Installation & Repair of Deep Well Type & Shallow Well Pumps on Water wells)					
Well Driller & Pump Installer	8.10	.34	.27	a&b	

DECISION NO. OH82-2035

FOOTNOTES:

a. 9 Paid Holidays: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Eve Day; & Christmas Day

b. Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 wks' paid vacation; 11th continuous calendar year - 3 wks' paid vacation

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

SUPERSEDEAS DECISION

STATE: OHIO
COUNTIES: *SEE BELOW
DECISION NO.: OH82-2036
DATE: Date of Publication
Supersedes Decision No. OH81-2066, dated December 18, 1981 in 46 FR 61781
DESCRIPTION OF WORK: Building Construction Projects (Does not include single family homes and apartments up to and including 4 stories)

*ADAMS, ALLEN, ASHLAND, AUGLAIZE, BELMONT, BROWN, BUTLER, CARROLL, CHAMPAIGN, CLARK, CLERMONT, CLINTON, COLUMBIANA, COSHOCTON, CRAWFORD, DARKE, DEFIANCE, DELAWARE, ERIE, FAIRFIELD, FAYETTE, FRANKLIN, FULTON, GALLIA, GEAUGA, GREENE, GUERNSEY, HAMILTON, HANCOCK, HARDIN, HARRISON, HENRY, HIGHLAND, HOCKING, HOLMES, HURON, JACKSON, JEFFERSON, KNOX, LAWRENCE, LICKING, LOGAN, MADISON, MARION, MEDINA, MEIGS, MERCER, MIAMI, MONROE, MONTGOMERY, MORGAN, MORROW, MUSKINGUM, NOBLE, OTTAWA, PAULDING, PERRY, PICKAWAY, PIKE, PREBLE, PUTNAM, RICHLAND, ROSS, SANDUSKY, SCIOTO, SENECA, SHELBY, TUSCARAWAS, UNION, VAN WERT, VINTON, WARREN, WASHINGTON, WAYNE, WILLIAMS, WOOD, & WYANDOT

ASBESTOS WORKERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, BROWN, BUTLER (Twps. of Fairfield, Hanover, Liberty, Milford, Morgan, Oxford, Ripley, Ross, St. Clair, Union & Wayne), CLERMONT, HAMILTON, HIGHLAND, & WARREN (Twps. of Deerfield, Hamilton, Harlan, Salem, Union, & Washington) COS.	$15.96	1.40	1.75		.02
ALLEN, DEFIANCE, MERCER, PAULDING, VAN WERT, & WILLIAMS COS.	15.90	.65	1.45		
ASHLAND, COSHOCTON, HOLMES, MEDINA, RICHLAND, TUSCARAWAS, & WAYNE COS.	16.10	.70	1.30		.04
AUGLAIZE, BUTLER (Middletown & Vic.), CHAMPAIGN, CLARK, CLINTON, DARKE, GREENE, LOGAN, MIAMI, MONTGOMERY, PREBLE, SHELBY, & WARREN (Twps. of Clear Creek, Franklin, Massie, Turtle Creek, & Wayne) COS.	13.65	.55	1.57		.02
BELMONT, JEFFERSON, & MONROE COS.	15.06	1.00	2.27		
CARROLL, COLUMBIANA, & HARRISON COS.	15.64	.65	1.75		.02
CRAWFORD, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, GUERNSEY, HARDIN, HOCKING, KNOX, LICKING, MADISON, MARION, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, ROSS, UNION, & VINTON COS.	17.07	.95	1.45		.02
ERIE (E½), GEAUGA, & HURON COS.	$ 16.29	.99	1.25		
ERIE (W½), FULTON, HANCOCK, HENRY, OTTAWA, PUTNAM, SANDUSKY, SENECA, WOOD & WYANDOT COS.	16.85	.70	1.70		.02
GALLIA, JACKSON, LAWRENCE, MEIGS, PIKE, SCIOTO, & WASHINGTON COS.	15.60	.60	1.10		.03

BOILERMAKERS					
ADAMS, BROWN, BUTLER, CHAMPAIGN, CLARK, CLERMONT, CLINTON, FAIRFIELD, FAYETTE, FRANKLIN, GALLIA, GREENE, GUERNSEY, HAMILTON, HIGHLAND, HOCKING, JACKSON, LAWRENCE, LICKING, MADISON, MEIGS, MIAMI, MONTGOMERY, MORGAN, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PIKE, PREBLE, ROSS, SCIOTO, VINTON, & WARREN COS.	14.40	1.475	1.20	2.00	.04
ALLEN, ASHLAND, AUGLAIZE, CRAWFORD, DARKE, DEFIANCE, DELAWARE, ERIE, FULTON, HANCOCK, HARDIN, HENRY, HURON, KNOX, LOGAN, MARION, MERCER, MORROW, OTTAWA, PAULDING, PUTNAM, RICHLAND, SANDUSKY, SENECA, SHELBY, UNION, VAN WERT, WILLIAMS, WOOD, & WYANDOT COS.	17.90	1.275	1.50		.28
BELMONT, MONROE, & WASHINGTON COS.	16.50	1.375	1.20		.04
CARROLL, COSHOCTON, GEAUGA, HARRISON, HOLMES, MEDINA, TUSCARAWAS, & WAYNE COS.	15.755	1.275	1.50		.03
COLUMBIANA & JEFFERSON COS.	14.93	5%	7% +1.12		.02
BRICKLAYERS; CAULKERS; CLEANERS; POINTERS; & STONEMASONS					
ADAMS & SCIOTO COS.	15.07		.50		.05
ALLEN, AUGLAIZE, MERCER & VAN WERT COS.	13.94	.90	.95		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHLAND, CRAWFORD, HARDIN, HOLMES MARION, MORROW, RICHLAND, WAYNE (Except Milton & Chippewa Twps.) & WYANDOT (Except Crawford, Ridge, Richland & Tymochtee Twps.) COS.	$15.38	.90	2.00		.04
BELMONT, JEFFERSON (Warren & Mt. Pleasant Twps. & Village of Dillonvale), & MONROE COS.	13.77	.80	1.10		.02
BROWN, BUTLER, CLERMONT, HAMILTON PREBLE (Dixon, Israel, Lanier, Somers & Gratis Twps.) & WARREN COS.	16.445	.80	.45		.02
CARROLL, COLUMBIANA (Twps. of Knox, Butler, West, & Hanover), & TUSCARAWAS COS.	15.74	1.20	1.35		.02
CHAMPAIGN, CLARK, & LOGAN COS.	13.94	1.25	1.45		.08
CLINTON & HIGHLAND COS.	12.50				
COLUMBIANA (East Liverpool, Wayne, Franklin, Madison, St. Clair, & Yellow Creek Twps.), & JEFFERSON (Brush Creek & Saline Twps.) COS	14.15	.90	1.00		
COLUMBIANA (Center, Elk Run, Fairfield, Middleton, New Waterford, Perry, Salem & Unity Twps.) CO.	14.693	1.00	1.25		.02
COSHOCTON, FAIRFIELD, GUERNSEY, HOCKING, KNOX, LICKING, MORGAN, MUSKINGUM, & PERRY COS.	13.00	1.30	1.85		.10
DARKE, MIAMI, & SHELBY COS.	14.60	1.25	1.45		.08
DEFIANCE, FULTON (Except Fulton, Amboy & Swan Creek Twps.), HENRY (Except Monroe, Barlow, Liberty, Washington, Richfield, Marion & Damascus Twps. & that part of Harrison outside city limits of City of Napolean), PAULDING, PUTNAM, & WILLIAMS COS.	16.22	1.06	1.00		
DELAWARE, FRANKLIN, MADISON, PICKAWAY, & UNION COS.	15.09	.90	1.50		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ERIE, HANCOCK, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.), & WYANDOT (Tymochtee, Crawford, Ridge, & Richland Twps.) COS. & ISLAND OF LAKE ERIE NORTH OF SANDUSKY	$14.34	.90	1.80		.02
FAYETTE, PIKE, & ROSS COS.	14.96		.50		.05
FULTON (Fulton, Amboy, & Swan Creek Twps.), HENRY (Washington, Damascus, Richfield, Bartlow, Liberty, Harrison, Monroe, & Marion Twps.), & WOOD (Ross, Perrysbury, Lake, Troy, Freedom, Montgomery, Webster, Center, Portage, Middleton, Plain, Liberty, Henry, Washington, Weston, Milton, Jackson, & Grand Rapids Twps.) COS.	16.135	1.06	1.90		.03
GALLIA & MEIGS COS.	14.90	.70			
GEAUGA CO.	16.72	.90	1.15		a
GREENE, MONTGOMERY, & PREBLE (Except Dixon, Israel, Lanier, Somers, & Gratis Twps.) COS.	14.60	1.15	1.45		.08
HARRISON, JEFFERSON (Except Mt. Pleasant, Warren, Brush Creek, & Salineville Twps. & village of Dillonvale) COS.	14.03	.90	.50		.03
JACKSON & VINTON COS.	13.85	.90	.80		.05
LAWRENCE CO.	15.29		.50		.05
MEDINA (Hinckley, Granger, Brunswick, Medina, Liverpool, Montville, & York Twps.) CO.	15.97	1.31	1.33		.10
MEDINA (Wadsworth, Guilford, Westfield, Lafayette, & Sharon Twps.), & WAYNE (Milton & Chippewa Twps.) COS.	15.52	1.17	1.05		
MEDINA (Litchfield, Chatham, Harrisville, Homer, & Spencer Twps.) CO.	18.05		.80	b	.01
NOBLE (Brookfield, Noble, Center, Sharon, Olive, Enoch, Stock, Elk & Jackson Twps.) & WASHINGTON COS.	14.00	.70	.50		.05

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CARPENTERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS.	$14.19	.80	1.50		.05
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT, & WYANDOT COS.	13.92	.90	1.25		.04
ASHLAND, CRAWFORD, ERIE, HANCOCK (City of Fostoria), HURON, OTTAWA, RICHLAND, SANDUSKY, SENECA, & WOOD (City of Fostoria) COS.	15.37	.90	1.25	c	.08
BELMONT, COLUMBIANA, HARRISON, JEFFERSON, & MONROE COS.	13.83	1.04	1.50		.05
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON, & WARREN COS.	15.80	.90	1.10		.075
CARROLL, TUSCARAWAS, & WAYNE COS.	15.93	.70	1.05		.02
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	15.15	1.25	2.00		.07
DEFIANCE, HENRY, PAULDING, & WILLIAMS COS.	16.76	1.06	.75		
FULTON, HANCOCK (Except city of Fostoria), & WOOD (Except city of Fostoria) COS.	15.90	1.06	1.25		.10
GEAUGA COUNTY	15.67	1.20	1.85		.09
HOCKING, VINTON, & WASHINGTON COS.	13.90	.65	.70		.04
MEDINA COUNTY	15.35	.75	1.50		.04
CEMENT MASONS					
ADAMS, LAWRENCE (Except Fayette, Union & Rome Twps.), PIKE & SCIOTO COS.	15.86		.60		.05
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, & VAN WERT COS.	12.25	.70	.75		.05
ASHLAND, CRAWFORD, MARION, MORROW, RICHLAND, & WYANDOT (Exclu. Tymochtee, Crawford, Ridge, & Richland Twps.) COS.	12.95	.80	1.25		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BELMONT, HARRISON, & JEFFERSON COS.	$ 14.13	.65			.03
BROWN, BUTLER, CLERMONT, HAMILTON, HIGHLAND, & WARREN COS.	15.43	1.10	1.15		.30
CARROLL & TUSCARAWAS COS.	15.74	1.20	1.35		.02
CHAMPAIGN, CLARK, CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	15.28	.80	1.00		
COLUMBIANA CO.	14.80	.80	1.00		.05
DEFIANCE, PAULDING, & WILLIAMS COS.	15.40	.80	1.40		
DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, HOCKING, KNOX, LICKING, MADISON, MORGAN, MUSKINGUM, PERRY, PICKAWAY, ROSS, & UNION COS.	12.15	.70	1.25		.03
ERIE, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.), WYANDOT (Tymochtee, Crawford, Ridge & Richland Twps.) COS. & THE ISLAND OF LAKE ERIE W. OF SANDUSKY	14.34	.90	1.80		.02
FULTON, HANCOCK, HENRY, PUTNAM, & WOOD (Exclu. Perry & Bloom Twps.) COS.	13.50	.70	1.40		.02
GALLIA & MEIGS COS.	14.90	.70			
GEAUGA CO.	16.72	.90	1.15		a
HOLMES, & WAYNE (Except Milton & Chippewa Twps.) COS.	16.23		2.00		.04
JACKSON & VINTON COS.	13.85	.90	.80		.05
LAWRENCE (Fayette, Union, & Rome Twps.) CO.	15.29		.90		.05
MEDINA (Litchfield, Chatham, Homer, Harrisville, & Spencer Twps.) CO.	18.05		.80	b	.01
MEDINA (Except Litchfield, Chatham, Homer, Harrisville & Spencer Twps. Twps.) CO.	15.19	.70	1.00		.02
MONROE, NOBLE, & WASHINGTON COS.	12.26	.80	1.25		.03

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ELECTRICIANS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, JACKSON (Bloomfield, Franklin, Hamilton, Jefferson, Lick, Madison, & Scioto Twps.), PIKE (Camp Creek, Marion, Newton, Scioto, & Sunfish), & SCIOTO COS.	$15.48	.50	3%+1.00	1.00	.06
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT, WYANDOT (Crawford, Jackson, Marseil, Mifflin, Ridgeland, Ridge & Salem Twps.) COS.	14.75	1.55	3%+.43		.04
ASHLAND, CRAWFORD, HURON (New Haven, Richmond, Ripley & Greenwich Twps.), KNOX (Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown & Jefferson Twps.), MARION, MORROW, RICHLAND, & WYANDOT (Sycamore, Crane, Eden, Pitt & Antrim Twps.) COS.	16.93	.60	3%+.72		.1%
BELMONT COUNTY	14.66	.50	3%+1.25	1.50	.04
BROWN, CLERMONT, & HAMILTON COS.: Up to & Incl. 18 mi. radius of Hamilton Co. Court House, Cincinnati	16.70	.85	3%+1.00		½%
Over 18 mi. radius up to & Incl. 21 mi. radius of Hamilton Co. Court House, Cincinnati	17.00	.85	3%+1.00		½%
Over 21 mi. radius up to & Incl. 25 mi. radius of Hamilton Co. Court House, Cincinnati	17.10	.85	3%+1.00		½%
Over 25 mi. radius of Hamilton Co. Court House, Cincinnati	17.25	.85	3%+1.00		½%
BUTLER, & WARREN (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union, & Washington Twps.) COS.	16.55	1.00	3%+1.00		½%
CARROLL (N ½ incl. Fox, Harrison, Rose & Washington Twps.), COLUMBIANA (Knox Twp.), HOLMES, TUSCARAWAS (N. of Auburn, Clay, Rush, & York Twps.), & WAYNE (S. of Baughman, Chester, Green & Wayne Twps.) COS.	15.70	1.00	3%+1.00		.3%

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	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARROLL (S ½ Exclu. Fox, Harrison, Rose & Washington Twps.), HARRISON, & JEFFERSON COS.	$17.00	8%	19%	10%	1%
CHAMPAIGN, CLARK, & MADISON (Pike, Paint, Somerford, Union, & Stokes Twps.) COS.	14.24	.75	3%+1.00		.04
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & WARREN (Twps. of Wayne, Clear Creek, & Franklin Twps.) COS.: Electrical Communications Installers within 11 mi. radius of 3rd & Main Street, Dayton	15.63	.75	3%+1.00		.5%
Electrical Communications Installers beyond 11 mi. radius of 3rd & Main Street, Dayton	15.86	.75	3%+1.00		.5%
COLUMBIANA (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West & Yellow Creek Twps.) CO.	13.30	2.00	3%+.53		.09
COLUMBIANA (Butler, Fairfield, Perry, Salem, & Unity Twps.) CO.	16.09	1.00	11%		.5%
COSHOCTON, GUERNSEY, KNOX (Clay, Jackson, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, & College Twps.), LICKING, MUSKINGUM, PERRY, & TUSCARAWAS (Auburn, York, Jefferson, Clay, Rush, Oxford, Washington, Salem, Perry & Bucks Twps.) COS.	14.70	.70	3%+1.02		.03
DEFIANCE, FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.	19.00	.85	3%+.95		.3%
DELAWARE, FAIRFIELD, FRANKLIN, MADISON (Canaan, Darby, Deer Creek, Fairfield, Jefferson, Monroe, Oak Run, Pleasant & Range Twps.), PICKAWAY (Darby, Circleville, Harrison, Jackson, Madison, Monroe, Washington, Muhlenberg, Scioto & Walnut Twps.), & UNION COS.	14.00	.50	3%+1.02		.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ERIE & HURON (Lyme, Ridgefield, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarkfield, Norwick, Greenfield, Fairfield, Fitchville, & New London Twps.) COS.	$16.05	.95	3%		.1%
FAYETTE, HIGHLAND, HOCKING, JACKSON (Coal, Jackson, Liberty, Milton, & Washington Twps.), PICKAWAY (Deer Creek, Perry, Pickaway, Salt Creek, & Wayne Twps.), PIKE (Except Camp Creek, Marion, Newton, Scioto, Sunfish & Union Twps.), ROSS, & VINTON (Clinton, Eagle, Elk, Harrison, Jackson, Richland, & Swan Twps.) COS.	15.80	.70	3%		.06
GALLIA CO.	16.22	.50	3%+1.00	1.00	.04
GEAUGA (Russell, Chester, & Bainbridge Twps.) CO.	16.84	1.10	3%+.39		.06
GEAUGA (Auburn, Middlefield, Parkman & Troy Twps.) CO.	16.62	1.00	9%		.702%
GEAUGA (Rem. of Co.) CO.	18.73	.85	3%+.70		.2%
LAWRENCE CO.	15.72	.50	3%+1.00	1.00	.04
MEDINA (Litchfield, & Liverpool Twps.) CO.	16.75	.85	3%+1.00		.1%
MEDINA (Rem. of Co.) & WAYNE (N½) COS.	16.67	.74	3%+.84		.2%
MEIGS, MONROE, MORGAN, NOBLE, VINTON (Brown, Knox, Madison, Vinton, & Wilkesville Twps.), & WASHINGTON COS.	14.90	.50	3%+1.25	1.75	.04
ELEVATOR CONSTRUCTORS					
ADAMS, BROWN, BUTLER, CLERMONT, CLINTON, DARKE, GREENE, HAMILTON HIGHLAND, MIAMI, MONTGOMERY, PREBLE, & WARREN COS.:					
Elevator Constructors	15.65	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, DEFIANCE, MERCER, PAULDING, PUTNAM, VAN WERT, & WILLIAMS COS.:					
Elevator Constructors	$13.535	1.195	.95	d&e	.035
Helpers	70%JR	1.195	.95	d&e	.035
Helpers (Prob.)	50%JR				
ASHLAND, CHAMPAIGN, CLARK, COSHOCTON, CRAWFORD, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, HARDIN, HOCKING, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MORGAN, MORROW, MUSKINGUM, PERRY, PICKAWAY, RICHLAND, ROSS, SHELBY, TUSCARAWAS, UNION, & VINTON COS.:					
Elevator Constructors	13.77	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				
BELMONT, CARROLL, GUERNSEY, HARRISON, JEFFERSON, MONROE, NOBLE, & WASHINGTON COS.:					
Elevator Constructors	13.91	1.345	1.085	d&e	.035
Helpers	70%JR	1.345	1.085	d&e	.035
Helpers (Prob.)	50%JR				
COLUMBIANA COUNTY:					
Elevator Constructors	14.61	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				
ERIE, GEAUGA, & HURON COS.:					
Elevator Constructors	16.13	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				
FULTON, HANCOCK, HENRY, OTTAWA, SANDUSKY, SENECA, WOOD, & WYANDOT COS.:					
Elevator Constructors	16.57	1.345	1.085	d&e	.035
Helpers	70%JR	1.345	1.085	d&e	.035
Helpers (Prob.)	50%JR				
GALLIA, JACKSON, LAWRENCE, MEIGS, PIKE, & SCIOTO COS.:					
Elevator Constructors	15.37	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MEDINA & WAYNE COS.:					
Elevator Constructors	15.645	1.345	.95	d&e	.035
Helpers	70%JR	1.345	.95	d&e	.035
Helpers (Prob.)	50%JR				
GLAZIERS					
ADAMS, BROWN, BUTLER (Hamilton & Vic.), CLERMONT, CLINTON (S½), HAMILTON, HIGHLAND (S. Part), & WARREN (Lebanon & South) COS.	$16.36		1.50		.01
ALLEN, AUGLAIZE, HANCOCK, HARDIN, LOGAN, MERCER, PAULDING, PUTNAM, SHELBY (N. Part), VAN WERT, & WYANDOT (Western Part) COS.	11.00		.90		
ASHLAND, CRAWFORD, HURON (S½), KNOX, MARION, RICHLAND & WYANDOT (E. Part) COS.:					
Outside Replacement	12.08	.50			.01
Outside All Other Work	12.58	.50			.01
BUTLER (Exclu. Hamilton & Vic.), CHAMPAIGN, CLARK, CLINTON (N½), DARKE, FAYETTE (W½), GREENE, HIGHLAND (N. Part), MIAMI, MONTGOMERY, PREBLE, SHELBY (S. Part), WARREN (N. of Lebanon) COS.	14.53		1.00	f	.01
CARROLL, COSHOCTON, HOLMES, MEDINA (S½), TUSCARAWAS, & WAYNE COS.	14.08	1.21	1.17	.20	.01
COLUMBIANA COUNTY	14.36	1.00	1.50		
DEFIANCE, ERIE (NW Tip to Rte. #4), FULTON, HENRY, OTTAWA, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.	15.89	.85	1.10		.01
DELAWARE, FAIRFIELD, FAYETTE (E½), FRANKLIN, HOCKING, JACKSON, LICKING, MADISON, MORGAN, MUSKINGUM, PERRY, PICKAWAY, PIKE, ROSS, UNION, & VINTON COS.	13.99		.80		.01
ERIE (Exclu. NW Tip to Rte. #4), GEAUGA, HURON (N½), & MEDINA COS.	16.28	.60	1.75		.01

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IRONWORKERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS (E½), GALLIA, JACKSON (S½), LAWRENCE, PIKE (S½), & SCIOTO COS.:					
Up. to 10 mi. from Union Hall in Ashland, Ky.	$15.96	1.00	1.85		.01
10 to 60 mi. from Union Hall in Ashland, Ky.	16.27	1.00	1.85		.01
Over 60 mi. from Union Hall in Ashland, Ky.	18.08	1.00	1.85		.01
ADAMS (W½), BROWN, BUTLER (S½), CLERMONT, CLINTON (S. of a line drawn from Blanchester to Lynchburg), HAMILTON, HIGHLAND (Exclu. E. 1/3 and portion of Co. inside lines drawn from Marshall to Lynchburg & from the N. Co. line through E. Monroe to Marshall), & WARREN (S½) COS.:					
Reinforcing	15.58	1.00	1.85		.02
Ornamental; Structural	15.03	1.00	1.85		.03
ALLEN (S½), AUGLAIZE, BUTLER (N½), CHAMPAIGN (W 2/3), CLARK (W 3/4), CLINTON (Exclu. S. of a line drawn from Blanchester to Lynchburg), DARKE, GREENE, HIGHLAND (Inside lines drawn from Marshall to Lynchburg & from the N. Co. line through E. Monroe to Marshall), LOGAN (W 2/3), MERCER (S½), MIAMI, MONTGOMERY, PREBLE, SHELBY, & WARREN (N½) COS.:					
Within 15 mi. mi. radius of Local Union Office #290	15.36	1.00	1.85		.10
Outside 15 mi. radius of Local Union Office #290	15.51	1.00	1.85		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN (N½), DEFIANCE (Except Portion S. of a line drawn from where Rte. 66 meets the N. line through Independence to the E. Co. border), MERCER (N½), PAULDING, PUTNAM (Except Portion E. of a line drawn from the N. border down thru Miller City to where 696 meets the S. border), VAN WERT & WILLIAMS (Except portion E. of a line drawn from Pioneer thru Stryker to the S. border) COS.	$15.00	1.00	3.05	-	.04
ASHLAND, CARROLL, COSHOCTON (Exclu. Portion W. of a line beginning at W. W. Co. line going thru Walhonding & Tunnel Hill to the S. Co. line), HOLMES, RICHLAND, TUSCARAWAS, & WAYNE COS.	14.43	1.05	1.80		.07
CHAMPAIGN (E 1/3), CLARK (E½), COSHOCTON (W. of a line Beg. at N.W. Co. line going through Walhonding & Tunnel Hill to the S. Co. Line), CRAWFORD (S. of Rte 30), FAYETTE, HARDIN (Except a line drawn from Roundhead to Maysville), HIGHLAND (E 1/5), HOCKING, JACKSON (N½), KNOX, LOGAN (E 1/3), MARION, MORROW, MUSKINGUM (W. of a line Starting at Adams Mill going to Adamsville & going from Adamsville thru Blue Rock to the S. Border), PERRY, PIKE (N½), ROSS, VINTON, & WYANDOT (S. of Rte. #30) COS.	15.20	1.00	2.60		.05
CRAWFORD (Area bet. lines drawn from where Hwy #598 & #30 meet thru N. Liberty to the N. Border & from said Hwy junction point due W. to the Border), DEFIANCE (S. of a line drawn from where Rte. #66 meets the N. Line. thru Independence to the E. Co. Border), ERIE (W. 1/3), FULTON,					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HANCOCK, HARDIN (N. of a line drawn from Maysville to a point 4 mi. S. of the N. line on the E. line), HENRY, HURON (W. of a line drawn from the N. Border thru Monroeville & Willard), OTTAWA, PUTNAM (E. of a line drawn from the N. Border down thru Miller City to where #696 meets the S. Border), SANDUSKY, SENECA, WILLIAMS (E. of a line drawn from Pioneer thru Stryker to the S. Border), WOOD, & WYANDOT (Area N. of Rte. #30) COS.	$ 16.58	1.06	1.82		.09
DELAWARE, FAIRFIELD, LICKING, MADISON, PICKAWAY, & UNION COS.	15.10	1.00	2.60		.05
COLUMBIANA (Exclu. portion E. of a line from Damascus to Highlandtown), ERIE (Exclu. W 1/3), GEAUGA (Except portion E. of a line from Austinburg to Middlefield & South), HURON (Exclu. portion W. of a line drawn from the N. Border through Monroeville & Willard), & MEDINA COS.	16.22	1.05	1.45		.08
COLUMBIANA (E. of a line from Damascus to Highlandtown), & GEAUGA (E. of a line from Austinburg to Middlefield & S.) COS.	15.76	1.00	1.30		.09
FRANKLIN CO.	14.95	1.00	2.60		.05
MEIGS, MORGAN, NOBLE, & WASHINGTON COS.	13.85	1.00	1.85		.03
BELMONT, GUERNSEY, HARRISON, JEFFERSON, MONROE, & MUSKINGUM (Except portion W. of a line starting at Adams Mill going to Adamsville & going from Adamsville through Blue Rock to the S. Border) COS.	13.22	1.05	2.33	8%	.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS					
AUGLAIZE, BUTLER (N½), CHAMPAIGN (W½), CLARK (W½), CLINTON (N½), FAYETTE (W½), LOGAN (W½), MERCER, & WARREN (N½) COS.	$13.39		.40		.01
BELMONT, COLUMBIANA, HARRISON, JEFFERSON, & MONROE COS.	13.83	1.04	1.50		.05
CLERMONT, HAMILTON, HIGHLAND (Except NE Tip), & WARREN (S½) COS.	15.42		1.10		.075
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	14.65	1.25	2.00		.07
DEFIANCE, HENRY, PAULDING, & WILLIAMS COS.	16.76	1.06	.75		.01
ERIE & HURON COS.	16.30				
FULTON, HANCOCK, OTTAWA, SANDUSKY, SENECA, & WOOD COS.	15.51	1.06	1.25		.10
MARBLE SETTERS; TERRAZZO WORKERS; & TILE SETTERS					
ADAMS & SCIOTO COS.	15.07		.50		.05
ALLEN, AUGLAIZE, MERCER, & VAN WERT COS.:					
Tile Setters	13.94	.90	.95		.02
ASHLAND, CRAWFORD, HARDIN, HOLMES, MARION, MORROW, RICHLAND, WAYNE (Except Milton & Chippewa Twps.), & WYANDOT (Except Crawford, Ridge, Richland, & Tymochtee Twps.) COS.	13.38	.90	2.00		.04
BROWN, BUTLER, CLERMONT, HAMILTON, PREBLE (Dixon, Israel, Lanier, Somers, & Gratis Twps.), & WARREN COS.:					
Marble Setters	16.285	.80	.45		
Terrazzo Workers; & Tile Setters	16.235	.80	.45		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARROLL & TUSCARAWAS COS.:					
Marble Setters	$13.52	1.05	1.05		
Terrazzo Workers	13.44	1.05	1.05		
Tile Setters	13.35	1.05	1.05		
CHAMPAIGN, CLARK, DARKE, GREENE, LOGAN, MIAMI, MONTGOMERY, PREBLE (Except Dixon, Israel, Lanier, Somers, & Gratis Twps.), & SHELBY COS.	13.67	1.25	.75		
CLINTON & HIGHLAND COS.	11.50				
COLUMBIANA (Center, Elk Run, Fairfield, Middleton, New Waterford, Perry, Salem & Unity Twps.) CO.	16.505				
COLUMBIANA (St. Clair, Madison, Wayne, Franklin, Washington, Yellow Creek, & Liverpool Twps.), & JEFFERSON (Brush Creek & Saline Twps.) COS.	14.15	.90	1.00		
COSHOCTON, FAIRFIELD, GUERNSEY, HOCKING, KNOX, LICKING, MORGAN, MUSKINGUM, & PERRY COS.	13.00	1.30	1.85		.10
DEFIANCE, FULTON (Except Fulton, Amboy & Swan Creek Twps.), HENRY (Except Monroe, Barlow, Liberty, Washington, Richfield, Marion & Damascus Twps. & that part of Harrison outside City limits of City of Napolean), PAULDING, PUTNAM, & WILLIAMS COS.:					
Marble Setters	16.21	1.06	1.00		
DELAWARE, FRANKLIN, MADISON, PICKAWAY, & UNION COS.	15.45				
ERIE, HANCOCK, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.), & WYANDOT (Ridge, Tymochtee, Crawford, & Richland Twps.) COS. & ISLAND OF LAKE ERIE NORTH OF SANDUSKY	14.34	.90	1.80		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FULTON (Fulton, Amboy, & Swan Creek Twps.), HENRY (Washington, Damascus, Richfield, Bartlow, Liberty, Harrison, Monroe, & Marion Twps.), & WOOD (Ross, Perrysburg, Lake, Troy, Freedom, Montgomery, Webster, Center, Portage, Middleton, Plain, Liberty, Henry, Washington, Weston, Milton, Jackson & Grand Rapids Twps.) COS.	$16.135	1.06	1.90		.03
FULTON (Except Fulton, Amboy, & Swan Creek Twps.), & WOOD (Except Troy, Freedom, Montgomery, Webster, Center, Portage, Middleton, Plain, Liberty, Henry, Washington, Weston, Milton, Jackson & Grand Rapids Twps.) COS.:					
Terrazzo Workers; & Tile Setters	17.00	1.06	.30		
GALLIA & MEIGS COS.:					
Terrazzo Workers; Tile Setters	14.90	.70			
GEAUGA CO.	16.72	.90	1.15		a
HARRISON, & JEFFERSON (Except Mt. Pleasant, Warren, Brush Creek, & Salineville Twps. & the Village of Dillonvale) COS.:					
Tile Setters	13.78	.90	.50		.03
JACKSON & VINTON COS.	13.85	.90	.80		.05
LAWRENCE CO.	15.29		.50		.05
MEDINA (Hinckley, Granger, Brunswick, Medina, Liverpool, Montville, & York Twps.) CO.:					
Marble Setters; Terrazzo Workers	15.97	1.31	1.33		.10
Tile Setters	15.905		2.25		
MEDINA (Wadsworth, Guilford, Westfield, Lafayette, & Sharon Twps.), & WAYNE (Milton & Chippewa Twps.) COS.	14.77	.91	.90		
MEDINA (Litchfield, Chatham, Homer, Harrisville, & Spencer Twps.) CO.	18.05		.80	b	.01
NOBLE (Brookfield, Noble, Creek, Sharon, Olive, Enoch, Stock, Elk, Jackson, & Jefferson Twps.) & WASHINGTON COS.:					
Marble Setters & Tile Setters	14.80	.70	.30		.03

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS' FINISHERS; TERRAZZO WORKERS' FINISHERS; & TILE SETTERS' FINISHERS					
ADAMS, BROWN, BUTLER, CLERMONT, CLINTON, FAYETTE, GALLIA, HAMILTON, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, SCIOTO, VINTON, WARREN, & WASHINGTON COS.:					
Finishers & Grinders	$15.35				
Marble Sanders; Polishers; Sawyers; & Waxers	15.515				
Terrazzo Base Grinders (While Operating base grinding machine)	15.77				
ALLEN, DEFIANCE, FULTON, HENRY, PAULDING, PUTNAM, WILLIAMS & WOOD (Exclu. Perry & Bloom Twps.) COS.	14.42	1.06			
ASHLAND, GEAUGA, MEDINA (Exclu. Wadsworth, Guilford, Westfield, Lafayette, & Sharon Twps.), & RICHLAND COS.:					
Marble Setters' Finishers	14.51		2.50		
Terrazzo Workers' Finishers	15.07		2.50		
Tile Setters' Finishers	15.04		2.50		
AUGLAIZE, CHAMPAIGN, CLARK, DARKE, GREENE, HARDIN, LOGAN, MERCER, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	10.84				
CARROLL & TUSCARAWAS COS.:					
Terrazzo Workers' Finishers	12.06	1.05	1.05		
Terrazzo Grinders	12.90	1.05	1.05		
Tile Setters' Finishers	11.94	1.05	1.05		
COLUMBIANA, COSHOCTON, HARRISON, HOLMES, JEFFERSON, & WAYNE (Exclu. Milton & Chippewa Twps.) COS.	14.405				
DELAWARE, FAIRFIELD, FRANKLIN, MADISON, PICKAWAY, & UNION COS.	12.65				
ERIE, HANCOCK, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.), WYANDOT (Tymochtee, Crawford, Ridge, & Richland Twps.) COS. & THE ISLAND OF LAKE ERIE NORTH OF SANDUSKY	11.47	.90	1.80		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MEDINA (Wadsworth, Guilford, Westfield, Lafayette, & Sharon Twps.), & WAYNE (Milton & Chippewa Twps.) COS.	$14.27	.91	.90		
MILLWRIGHTS					
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT & WYANDOT COS.	14.57	.90	1.75		.04
ASHLAND, CRAWFORD, ERIE (E. of B & O RR Tracks), GEAUGA, HURON, MEDINA, & RICHLAND COS.	15.10	1.20	2.32		.09
BELMONT, COLUMBIANA, HARRISON, JEFFERSON, & MONROE COS.	14.64	.885	EZ		.05
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON, & WARREN COS.	16.44	.60	1.10		.10
CARROLL, TUSCARAWAS, & WAYNE COS.	16.41	.70	1.05		.02
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	16.11	1.23	1.25		.07
DEFIANCE, ERIE (W. of B & O RR Tracks), FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.	15.90	1.06	1.25		.10
HOCKING, VINTON, & WASHINGTON COS.	14.57	.65	.55		.06
PAINTERS					
ADAMS, HIGHLAND, JACKSON, PIKE, & SCIOTO COS.:					
Brush; Exterior Bldgs. under 25 ft.; Paper or Wall covering; Taping & Washing	13.35		1.00		.03
Floor Sanding; Power Tools; Rollers; & Swing Stage	13.85		1.00		.03
Burning; Sandblasting; Spray & Steamcleaning	14.35		1.00		.03

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, DEFIANCE, HARDIN, MERCER, PAULDING, PUTNAM, SHELBY, VAN WERT, & WILLIAMS COS.:					
Brush; Drywall Taping; & Rollers	$13.05	1.06	.50		.03
Wallcovering	13.30	1.06	.50		.03
Sandblasting; Spray; & Steamcleaning	13.55	1.06	.50		.03
ASHLAND, CRAWFORD, MARION, MORROW, & RICHLAND COS.:					
Brush; Cleaner; Roller; & Washer	12.25		.80		
Drywall; Paperhanger; Pot Tender; Spray & Wall Coverer	13.00		.80		
BROWN, CLERMONT, & HAMILTON COS.:					
Brush; Paperhanging; Roller; Taping; Wallcovering; & Washing	15.65		.75		
Steamcleaning	15.80		.75		
Spray	16.15		.75		
Hopper Tender; Sandblasting; & Waterblasting	16.55		.75		
BUTLER & WARREN COS.:					
Brush; Paperhanging; Roller; Taping; Wallcovering; & Washing	14.08				
Hopper Tender; Sandblasting & Spray	15.08				
CARROLL, HOLMES, TUSCARAWAS & WAYNE COS.:					
Brush; Rollers	13.26	1.08	1.00		.02
Paperhangers	13.36	1.08	1.00		.02
Drywall	13.66	1.08	1.00		.02
Spray	13.76	1.08	1.00		.02
CHAMPAIGN, CLARK, LOGAN, & MADISON COS.:					
Brush	13.75		1.00		
Drywall Tapers & Finishers	14.10		1.00		
Spray	14.45		1.00		
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE COS.:					
Brush; Roller	15.47		1.00		
Drywall Taping & Spackling; & Wallcovering	15.82		1.00		
Structural Steel	15.87		1.00		
Cleaning; Sandblast; & Spray	15.97		1.00		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COLUMBIANA CO.:					
Brush; Hydro-jet Cleaning; Paperhanging; Roller; Steamcleaning; Wallwashing; & Waterproofing	14.45	1.00	1.25		
Drywall Taping	14.60	1.00	1.25		
Open Structural Steel	14.66	1.00	1.25		
Spray	14.95	1.00	1.25		
DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, PICKAWAY, ROSS & UNION COS.:					
Drywall Sanders	13.94	.95	1.00		.02
Brush; Paperhangers; Rollers; & Wall Washing	14.19	.95	1.00		.02
Structural Steel	14.49	.95	1.00		.02
Drywall Tapers & Finishers	14.59	.95	1.00		.02
Spray	14.69	.95	1.00		.02
Sandblasting; Steam Cleaning	14.89	.95	1.00		.02
ERIE, HANCOCK, HURON, SANDUSKY, SENECA, & WYANDOT COS.:					
Old Commercial:					
Brush; Rollers; & Wash & Clean Surfaces	12.50	.70	.90		g
Drywall & Paperhangers	12.75	.70	.90		g
Sandblasting; & Spray	13.00	.70	.90		g
New Commercial:					
Brush; Rollers; & Wash & Clean Surfaces	13.80	.70	.90		g
Drywall & Paperhangers	14.05	.70	.90		g
Sandblasting; & Spray	14.30	.70	.90		g
FULTON, HENRY, OTTAWA, & WOOD COS.:					
Brush; Drywall Tapers & Finishers; Paperhangers; Spray & Sandblasting Pot Tenders	14.70	1.06	2.00		
Pressure Cleaning; Sandblasting & Spray	15.25	1.06	2.00		
GALLIA, LAWRENCE, MEIGS & VINTON COS.:					
Brush; Roller	11.55	.70		h	
Drywall Tapers & Finishers; Paperhangers; Wall Washers	12.50	.70		h	
Spray	12.25	.70		h	

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GEAUGA CO.:					
Brush; Paperhangers & Rollers	$15.06	.97	1.60		.05
Spray	15.46	.97	1.60		.05
HOCKING CO.:					
Brush; Roller; Washing; Wallcovering; & Paperhanging	13.30				
Open Structural Steel	14.00				
Taping; Beding; Finishing & Sanding	14.25				
Spray; Sandblasting; Hopper Tender; Swing Stage; & Window Jacks	14.50				
KNOX, LICKING, MUSKINGUM, & PERRY COS.:					
Brush	11.00				
Spray	12.00				
MEDINA CO.:					
Brush; Paperhangers; & Rollers	14.65	1.07	.60		
Structural Steel; Drywall Finishers & Tapers	15.40	1.07	.60		
Spray	15.50	1.07	.60		
PILEDRIVERMEN					
ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS.	14.55	.80	1.30		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT, & WYANDOT COS.	$14.57	.90	1.25		.04
ASHLAND, CRAWFORD, ERIE (E. of B & O RR Tracks), GEAUGA, HURON, MEDINA, & RICHLAND COS.	15.50	1.20	2.02		.09
BELMONT, HARRISON, & MONROE COS.	14.55	1.04	1.50		.05
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON, & WARREN COS.	15.80	.90	1.10		.075
CARROLL, TUSCARAWAS, & WAYNE COS.	16.41	.70	1.05		.02
COLUMBIANA & JEFFERSON COS.	14.05	6%	10%		½%
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	15.15	1.25	2.00		.07
DEFIANCE, ERIE (W. of B & O RR Tracks), FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, SANDUSKY, SENECA, WILLIAMS & WOOD COS.	15.90	1.06	1.25		.10
HOCKING, VINTON, & WASHINGTON COS.	14.20	.65	.70		.04
PIPEFITTERS; PLUMBERS; & STEAMFITTERS					
ADAMS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, PIKE, SCIOTO, & VINTON COS.:					
Within 10 mi. radius of Portsmouth	16.34	.95	1.00		
Over 10 and within 20 mi. radius of Portsmouth	16.59	.95	1.00		
Over 20 and within 35 mi. radius of Portsmouth	16.69	.95	1.00		
Over 35 mi. radius of Portsmouth	16.94	.95	1.00		
ALLEN, AUGLAIZE, HARDIN, MERCER, SHELBY, & VAN WERT COS.	15.75	1.10	1.05		.05
ASHLAND, CRAWFORD, ERIE, HURON, KNOX, MORROW, RICHLAND, & WYANDOT COS.	16.75	1.08	1.10		.10

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		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BELMONT, & MONROE (N. of Rte #78) COS.	$13.39	.75	9%	10%	.05
BROWN, CLERMONT, HAMILTON, & WARREN (S 1/3 of Co.) COS.:					
Pipefitters; Steamfitters	16.23	1.095	2.20		.08
Plumbers; Gas Fitters	16.57	1.25	1.50		.07
BUTLER (N½), & WARREN (N. of Rte. #63, exclu. Lebanon & South Lebanon) COS.	17.30	.90	1.00		.05
BUTLER (S½) & WARREN (S. of Rte. #63 to Hamilton Co. line, W. to Indiana State line, E. to Rte. #42, incl. Lebanon, S. Lebanon, & Mason) COS.	17.33	.90	1.20		.01
CARROLL (Ross, Monroe, Union, Lee, Orange, Perry, & Loudon Twps.), COSHOCTON, GUERNSEY, HOLMES, MORGAN (S. to State Rte. #78 & from McConnelsville W. on State Rte. #37 to the Perry Co. line), MUSKINGUM, NOBLE, & TUSCARAWAS COS.	17.00	1.00	.70		
CARROLL (Exclu. Ross, Monroe, Lee, Union, Orange, Perry, & Loudon Twps.), & WAYNE COS.	14.67	1.35	.70	I	.10
CHAMPAIGN, CLARK, GREENE (Ross, Cedarville, Jefferson, Ceasar Creek, & New Jasper Twps.), LOGAN, & MADISON (W. of Rte. #38, incl. city of London) COS.	15.65	1.08	1.10		.04
CLINTON, DARKE, FAYETTE, GREENE (Exclu. Miami, Cedarville, Ross, Jefferson, Ceasar Creek, & New Jasper Twps.), MIAMI, MONTGOMERY, & PREBLE COS.	17.46	1.05	1.20		.08
COLUMBIANA CO. (Exclu. Washington & Yellow Creek Twps. & Liverpool Twp. - Secs. 35 & 36 - W. of Co. Rd. #427)	15.79	1.17	.80		.05
COLUMBIANA (Washington & Yellow Creek Twps. & Liverpool Twp. - Secs. 35 & 36 - W. of Co. Rd. #427), HARRISON, & JEFFERSON COS.	16.07	1.23	3.43		.11

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DEFIANCE, FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.	$14.90	1.30	1.20		.12
DELAWARE, FAIRFIELD, FRANKLIN, HOCKING, LICKING, MADISON (E. of Rte. #38 not incl. city of London), MARION, PERRY, PICKAWAY, ROSS, & UNION COS.	16.84	1.15	1.03		.07
GEAUGA, & MEDINA (N. of #18, exclu. City of Medina) COS.: Pipefitters; Steamfitters	15.92	1.45	1.35		.10
GEAUGA, & MEDINA (N. of #18 & Smith Rd.) COS.: Plumbers	16.03	1.20	1.40		.02
MEDINA (S. of #18, exclu. City of Medina) CO.	15.24	.91	1.60		.05
MEIGS, MONROE (S. of Rte. #78), MORGAN (S. of Rte. #76), & WASHINGTON COS.	14.76	.78	.75		.06
PLASTERERS					
ADAMS, LAWRENCE (Except Fayette, Union & Rome Twps.), PIKE & SCIOTO COS.	15.86		.60		.05
ALLEN, AUGLAIZE, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, HARDIN, HOCKING, KNOX, LICKING, LOGAN, MADISON, MERCER, MORGAN, MUSKINGUM, PERRY, PICKAWAY, ROSS, UNION, & VAN WERT COS.	14.54	.80	.50		.02
BELMONT, HARRISON, & JEFFERSON COS.	14.28	.35			
BROWN, BUTLER, CLERMONT, HAMILTON, HIGHLAND, & WARREN COS.	16.145		1.25		.02
CARROLL & TUSCARAWAS COS.	15.74	1.20	1.35		.02
CHAMPAIGN, CLARK, CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.	16.45				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COLUMBIANA CO.	$15.61	.80			.03
ERIE, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.), & WYANDOT (Tymochtee, Crawford, Ridge & Richland Twps.) COS. & THE ISLAND OF LAKE ERIE N. OF SANDUSKY	14.34	.90	1.80		.02
FULTON, HANCOCK, HENRY, PUTNAM & WOOD (Exclu. Perry & Bloom Twps.) COS.	18.02	.70			.01
GALLIA & MEIGS COS.	14.90	.70			
GEAUGA CO.	16.72	.90	1.15		a
HOLMES & WAYNE (Except Milton & Chippewa Twps.) COS.	16.23		2.00		.04
JACKSON & VINTON COS.	13.85	.90	.80		.03
LAWRENCE (Fayette, Union, & Rome Twps.) CO.	15.29		.30		.05
MEDINA (Litchfield, Chatham, Homer, Harrisville & Spencer Twps.) CO.	18.05		.80	h	.01
MEDINA (Except Litchfield, Chatham, Homer, Harrisville & Spencer Twps.) CO.	15.04	.70	1.00		.01
ROOFERS					
ADAMS, GALLIA, GUERNSEY, JACKSON, LAWRENCE, MEIGS, MORGAN, MUSKINGUM, NOBLE, PIKE, SCIOTO, & VINTON COS.	13.50		.65		
ALLEN, AUGLAIZE, CHAMPAIGN, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, HARDIN, HOCKING, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORROW, PERRY, PICKAWAY, PUTNAM, ROSS, UNION, VAN WERT, & WYANDOT COS.	16.11	.92	.65		.01
ASHLAND, CARROLL, COLUMBIANA, COSHOCTON, CRAWFORD, HOLMES, MEDINA, RICHLAND, TUSCARAWAS, & WAYNE COS.	14.89	1.47	.93		.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BROWN, BUTLER, CLERMONT, HAMILTON, & WARREN COS.	$16.67		1.50		.03
CLARK, CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & SHELBY COS.:					
Composition, Damp, & Waterproof	15.00	.80	1.00		
Slate, Tile & Asbestos	15.22	.80	1.00		
DEFIANCE, FULTON, HANCOCK, HENRY, PAULDING, WILLIAMS & WOOD COS.	15.95	1.06	2.00		.03
ERIE, GEAUGA, HURON, OTTAWA, SANDUSKY, & SENECA COS.	17.78	.25	.50		.05
SHEET METAL WORKERS					
ADAMS, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, GALLIA, GUERNSEY, HOCKING, JACKSON, KNOX, LAWRENCE, LICKING, MADISON, MARION, MEIGS, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PIKE, ROSS, SCIOTO, UNION, & VINTON COS.	15.05	1.04+j	1.32		.16
ALLEN, AUGLAIZE, BUTLER, CHAMPAIGN, CLARK, CLINTON, DARKE, GREENE, HARDIN, LOGAN, MERCER, MIAMI, MONTGOMERY, PREBLE, SHELBY, VAN WERT, WARREN & WYANDOT COS.	16.46	1.10+j	1.23		.19
ASHLAND, CARROLL, COSHOCTON, CRAWFORD, HOLMES, MEDINA, RICHLAND, TUSCARAWAS, & WAYNE COS.	15.17	.94+j	1.10		.10
BELMONT, HARRISON, JEFFERSON, & MONROE COS.	14.07	.81	1.10		.07
BROWN, CLERMONT, HAMILTON, & HIGHLAND COS.	16.94	1.18	.86		.08
COLUMBIANA CO.	15.14	.75	.83		.06
DEFIANCE, FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, PUTNAM, SENECA, WILLIAMS, & WOOD COS.	16.145	1.06	2.18		.075
ERIE, HURON, & SANDUSKY COS.	13.91	.85	1.20		.06
GEAUGA CO.	14.69	.90	1.68		.06

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS					
ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS.	$14.19	.80	1.50		.05
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT, & WYANDOT COS.	13.97	.90	1.25		.04
ASHLAND, CRAWFORD, ERIE, HURON, OTTAWA, RICHLAND, SANDUSKY, & SENECA COS. & the portion of the city of Fostoria located in HANCOCK & WOOD COS.	15.37	.90	1.25	e	.08
BELMONT, COLUMBIANA, HARRISON, JEFFERSON, & MONROE COS.	13.83	1.04	1.50		.05
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON, & WARREN COS.	11.72	.90	1.10		.075
CARROLL, TUSCARAWAS, & WAYNE COS.	15.76	.70	1.05		.02
DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE & SHELBY COS.	13.80	1.25	1.35		.07
DEFIANCE, FULTON, HANCOCK (Except city of Fostoria), HENRY, PAULDING, WILLIAMS, & WOOD (Except city of Fostoria) COS.	15.14	1.04	1.25		.05
GEAUGA CO.	15.67	1.20	1.85		.09
HOCKING, VINTON, & WASHINGTON COS.	13.50	.65	.70		.04
MEDINA CO.	14.30	.70	2.00		k
SPRINKLER FITTERS					
GEAUGA, & MEDINA (N. of #18, exclu. City of Medina) COS.	15.92	1.45	1.35		.10
REMAINING COS..	16.11	.95	1.40		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

a. $75.00 per year
b. 2 paid holidays: C & D
c. 2 paid holidays: B & D
d. 7 paid Holidays: A through F and Day after Thanksgiving
e. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for employee who has worked in business less than 5 years.
f. 3 paid holidays: D, E, & F
g. $50.00 per year
h. 6 paid holidays: A, C, E, F, Decoration Day, & Veterans' Day
i. 1 paid Holiday: D, providing the employee has worked 5 consecutive days before and after the holiday.
j. 3% of gross earnings to SASMI
k. $150.00 per year

LABORERS

	Basic Hourly Rates	Fringe Benefits Payments[1]			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, & SCIOTO COS.:					
Bottom men; Building & Construction Laborers; Carpenters' Tenders; Mason Tenders; Mortar Mixers; Pipelayers; Plasterers' Tenders; Sheeting & Shoring Men	$11.57	.75	1.30		.05
Air & Machine Driven Tool Op.; Asphalt Rakers & Smoothers; Burning & Cutting Torches; Chain saws; Form Setters; Hand Spikers & Powered Concrete Buggies	11.82	.75	1.30		.05
Gunnite Machine Op.; Gunnite Nozzlemen; Powdermen & Blasters	12.09	.75	1.30		.05
ALLEN, AUGLAIZE, MERCER, PAULDING, PUTNAM, SHELBY & VAN WERT COS.:					
Building Laborers; Laser Beam; Power Wheelbarrow or Power Buggy	11.00	.95	1.50		.05
All Machine Driven Tools (Gas, Electric, Air); Asphalt Rakers; Caisson; Cement Finishers' Tenders; Cofferdam; Demolition; Packers; Pot Tenders; Pump Man Under 4" Discharge; Spikers by Hand (Railroad); Tamper; Torch Man; Tunnel & Vibrators	11.15	.95	1.50		.05
Blaster Tender; Cylinder, Shaft; Jackhammer; Manhole Builders; Mason Tenders; Mortar Mixers; Plasterers' Tenders; Sewer Bottom Man; Sewer Pipelayer; Sewer, Water Conduit, Gas, Oil Pipeline, except Mainlines; Wagon Drill Tender; Blaster-Powderman; Gunnite Ops.; Muckers & Miners (Tunnel & Caisson) Free Air; Sandblasters; & Wagon Drill Ops.	11.30	.95	1.50		.05

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		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHLAND, CRAWFORD, KNOX, MORROW, & RICHLAND COS.:					
GROUP 1: Building & Construction Laborers; Carpenter Tenders; Concrete Handler; Finisher Tender; Guard Rail Erector; & Tool Cribmen	$12.66	.95	1.50		.05
GROUP 2: Air & Power Driven Tools; Bottom Men; Burner on Demolition Work; Caisson Worker; Cofferdam Worker; Creosote Worker; Form Setter; Hod Carrier; Laser Beam Set-Up Man; Mason Tender; Mortar Mixer; Mucker; Pipe Layer; Plasterer Tender; Powder Men; Scaffold Builder; Stonemason Tender; Swinging Scaffold; & Tunnel Laborers	12.86	.95	1.50		.05
GROUP 3: Gunnite Operator	13.26	.95	1.50		.05
CARROLL, COSHOCTON, HOLMES, TUSCARAWAS, & WAYNE COS.:					
GROUP 1: Building & Construction Laborers; Carpenter Tender; Concrete Handler; Finisher Tender; Guard Rail Erector; & Tool Cribmen	12.81	.95	1.50		.05
GROUP 2: Air & Power Driven Tools; Bottom Men; Burner on Demolition; Caisson Worker; Cofferdam Worker; Creosote Worker; Form Setter; Hod Carrier; Laser Beam Setup Man; Mucker; Pipelayer; Plasterer Tender; Powder Men; Scaffold Building; Swinging Scaffold; & Tunnel Laborer	13.01	.95	1.50		.05
GROUP 3: Mason Tender; Mortar Mixer; & Stonemason Tender	13.11	.95	1.50		.05
GROUP 4: Gunnite Operator	13.41	.95	1.50		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BELMONT CO.:					
Unskilled	$11.72	.80	.80		.05
Semi-Skilled	12.02	.80	.80		.05
Skilled	12.37	.80	.80		.05
BROWN, CLERMONT, CLINTON, & HAMILTON COS.:					
GROUP 1	13.95	.95	.90		.05
GROUP 2	14.05	.95	.90		.05
GROUP 3	14.10	.95	.90		.05
GROUP 4	14.15	.95	.90		.05
GROUP 5	14.30	.95	.90		.05
GROUP 6	14.45	.95	.90		.05
GROUP 7	14.70	.95	.90		.05
GROUP 8	13.42	.95	.90		.05
GROUP 9	13.57	.95	.90		.05

GROUP 1 - Common Laborers; Cement Masons' Tenders; Hand Operated Mechanical Mule; & Mechanical Sweeper
GROUP 2 - Bottom Man; Pipelayer
GROUP 3 - Burning Torch Operator; Concrete Pump Hose Man; Jackhammer; Mechanical & Air Tamper Operator; Mechanical Concrete Buggies; Power Operated Mechanical Mule; Vibrator Man
GROUP 4 - Bottom Jackhammer Man; Mason Tenders; Plasterers' Tenders; Stonemasons' Tenders
GROUP 5 - Plaster Mixer Pump Operator
GROUP 6 - Tunnel Laborer
GROUP 7 - Gunnite Nozzle Operator
GROUP 8 - Demolition Construction - Wrecking Laborers
GROUP 9 - Demolition Construction - Jackhammer Man; Burner; & Wall Man

BUTLER & WARREN COS.:					
Common Laborers	12.59	.95	1.35		.05
Asphalt Rakers; Hand Air Tamper Chisel; Smoothers Hand Air Pump; Tampers; Vibrator Power Tamper Op.	12.69	.95	1.35		.05
Mason Tenders; Mortar Mixers; & Scaffold Builders	12.92	.95	1.35		.05
Concrete Pumps & Hose Men; Gunnite Operators; & Sandblasters	12.94	.95	1.35		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHAMPAIGN, CLARK, & LOGAN COS.:					
Carpenters' Tenders; Laborers	$11.15	.95	1.50		.05
Air & Machine Driven Tool Ops.; Asphalt Raker & Tamper; Barko & Chain Saw; Bottom Man; Gunnite Machine Op. & Nozzle Man; Hand Spikers; Jackhammer; Power Concrete & Buggies; Sewer Pipelayers; & Wagon Drill	11.40	.95	1.50		.05
Mason Tenders; Mortar Mixers; & Plasterers' Tenders	11.55	.95	1.50		.05
Miners & Muckers for Tunnel & Caisson; Powderman & Blasters	11.65	.95	1.50		.05
COLUMBIANA, HARRISON, & JEFFERSON COS.:					
Carpenters' Tenders; General Laborers	11.30	.95	1.50		.05
Brick Handlers; Men Mixing Cement for Cement Finishers; Mortar Mixer Machine Op.; Mortarmen for Masons & Plasterers; Scaffold Builders; Tenders for Brick Masons, Plasterers, Stonemasons, & Tile Setters	11.47	.95	1.50		.05
Acetylene Burners; Air Blow Pipe; Air Pump; Air Spades; Air Tampers; Power Driven Tools; Chipping Hammers; Concrete Saw; Jackhammers; Laborers Operating Concrete Busters; Panel Cleaning Machine Operators; Pipelayer & Tenders Working in Ditches or Tunnels & Hand Spikers on Railroads, & Laborer Handling Concrete for Test or Working with Tar, Acid, & Creosote; Power Buggy; Power Saw; Sandblaster; Scuba Divers; Vibrators; & Welders	11.50	.95	1.50		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE COS.:					
Laborers	$12.09	.95	1.30		.05
All Machine & Power Driven Tools; Chipping Hammers; Power Buggies; Railroad Spikers by Hand; Swinging Scaffold over 15 ft.; & Vibrators	12.24	.95	1.30		.05
Air Drill; Batter Board Setter & Bottom Men; Jackhammer; Man Hole Builders; Sandblasters; & Sewer Pipelayers	12.29	.95	1.30		.05
Caisson Work; Scaffold W/Power Tools	12.34	.95	1.30		.05
Torch Man on Wrecking	12.39	.95	1.30		.05
Caisson Work w/Jackhammer	12.54	.95	1.30		.05
Gunnite Operator; Wagon Drill Operator, and Blaster - Powder Man	12.39	.95	1.30		.05
Tenders for Bricklayers and Masons	12.69	.95	1.30		.05
Tenders for Lathers and Plasterers	12.76	.95	1.30		.05
DEFIANCE, FULTON, HENRY, & WILLIAMS COS.:					
Carpenter Tenders; Cement Finishers' Tenders; Laborers	12.42	.95	1.35		.05
Gunnite Pot Man; Mason Tenders	12.54	.95	1.35		.05
All Power Driven Tools Buggies	12.57	.95	1.35		.05
Burners, Torchmen & Nozzlemen for Concrete Pumps	12.565	.95	1.35		.05
Plasterers' Tenders	12.595	.95	1.35		.05
Bellman; Bottom Man; & Brick Expeditor	12.655	.95	1.35		.05
Nozzle Operator for Gunnite Work	13.07	.95	1.35		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DELAWARE, HANCOCK, HARDIN, MARION, SENECA, & WYANDOT COS.:					
GROUP 1: Building & Construction Laborer; Tool Cribman; Carpenter Tender; Finisher Tender; Concrete Handler; Utility Construction Laborer; Guard Rail Erector	$13.11	.95	1.50		.05
GROUP 2: Bottom Man; Scaffold Builder; Tunnel Laborer; Pipelayer; Air & Power Driven Tool; Burner on Demolition Work; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Man & Dynamite Blaster; Creosote Worker; Mortar Mixer; Form Setter; Mason Tender; Plasterer Tender; Hod Carrier; Laser Beam Set-up Man; & Stonemason Tender	13.31	.95	1.50		.05
GROUP 3: Gunnite Operator	13.71	.95	1.50		.05
ERIE, HURON, OTTAWA, & SANDUSKY COS.:					
GROUP 1: Building & Construction Laborer; Carpenter Tender; Concrete Handler; Finisher Tender; Guard Rail Erector; Tool Cribman; & Utility Construction Laborer	13.81	.95	1.50		.05
GROUP 2: Air & Power Driven Tool; Bottom Man; Burner on Demolition Work; Caisson Worker; Cofferdam Worker; Creosote Worker; Form Setter; Hod Carrier; Laser Beam Set-Up Man; Mason Tender; Mortar Mixer; Mucker; Pipelayer; Plasterer Tender; Powder Man & Dynamite Blaster; Scaffold & Swinging Scaffold; & Tunnel Laborer	14.01	.95	1.50		.05
GROUP 3: Gunnite Operator	14.41	.95	1.50		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FAIRFIELD, FAYETTE, FRANKLIN, HOCKING, MADISON, PICKAWAY, & UNION COS.:					
Carpenter Tenders; Cleaning, Debris; Cleaning of all Material; Common Laborers; Conveyor Belt; General Clean Up; Handling & Conveying All Material; Lanscape; Loading and Unloading All Trucks; Man on Bucket Pouring Concrete; Pouring of all Concrete; Salamander; Sod Layers; Washing of all Windows; & Wire Mesh Handlers or Setters	11.74	.70	.90		.10
Air or Electrical Pneumatic Tool Operator; All Scaffold Builders (Swinging Scaffold); Asphalt and Blacktop Rakers; Bottom Man; Brick Tenders; Caisson Bottom Man; Cement Mason Tender; Concrete Saw Operator, and Brush Feeders on Pulverizers; Forklift Operator; Gunnite Nozzle Man; Jackhammer Operator; Laser Gun, Burners; Mortar Mixers & Operator; Pipe Layers; Plasterers' Tenders; Power Buggy Operator; Power Driven Tools; Power Wheelbarrow Operator; Sand and Vacuum Cleaning; Sandblasting of Concrete; Stone Mason Tender; Vibrator Man; Wagon and Churn Drill Operators; & Wall Wrecker & Bar Man on Demolition	12.04	.70	.90		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GEAUGA CO.:					
Equipment Replacing Wheelbarrow & Concrete Buggy; Laborers	$13.49	1.70	1.85		
Fire Brick Tenders; Power Driven Tools & Vibrators; Sewer & Utilities Laborers	13.64	1.70	1.85		
Acetylene Burner; Jackhammer; & Mucker	13.69	1.70	1.85		
Air Track and Wagon Drill; Mason Tender Handling Carbon Block & Bottom, Block Material; & Swinging Scaffold	13.74	1.70	1.85		
Acid Brick Tenders; Blasters & Shooters; Caisson; Cofferdams; Cylinder; Gunnite Operator; Mine Workers w/o Air; & Well	13.97	1.70	1.85		
Topman on Free Standing Radial Stack	14.14	1.70	1.85		
LICKING CO.:					
All Portable Heaters; Carpenter Tender; Cleaning of All Material; Common Laborers; Conveyor Belt; General Clean-up Incl. Vacuum Cleaning; Handling and Conveying All Material; Landscape; Loading & Unloading all Trucks; Man on Bucket Pouring Concrete; Pouring of all Concrete; Sod Layers; Washing of all Windows; Water Pumps up to & Incl. 4" Intake	11.74	.70	.90		.05
Air or Electrical Pneumatic Tool Operators; All Scaffold Builders; Asphalt & Blacktop Rakers; Bottom Man; Brick Tender; Brush Feeders on Pulverizers; Burners; Cement Mason Tender; Concrete Saw Operators; Fork Lift Operators					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Gunnite Nozzleman; Jackhammer Operator; Laser Gun; Mortar Mixer & Operator; Pipelayers; Plasterers' Tender; Power Buggy Operators; Power Driven Tools; Power Wheelbarrow Operators; Sandblasting; Stonemason Tender; Swinging Scaffolds; Vibrator Man; Wagon & Churn Drill Operators; Wall Wrecker & Bar Man on Demolition; Welders on Demolition	$12.04	.70	.90		.05
MEDINA Co.:					
Carpenter Tenders; Common Laborers; Concrete Bucket Tender; Landscape Laborers; Mason Tender; & Welder Tenders	13.27	.95	1.50		.11
Air Driven boring Machine; Asphalt Raker; Hook-up Man on Demolition Work; Material Mixer; Paving Bed Maker; Power Tools - Air, Gas, or Electric; Scaffold Erector; Structural Precast Erector; Tamper Operator; & Wire Mesh Handler	13.42	.95	1.50		.11
Barco Type Tampers; Bottom Man; Burners; Form Setters; Hod Carriers; Jackhammer; Muckers - Tunnel; Pipelayers; Power Buggy or Power Wheelbarrow; Power Saws; & Rock Drillers	13.42	.95	1.50		.11
Dynamite Men; Gunnite Nozzlemen; Pump Hose Nozzlemen; Tunnel Miners; & Water Line Caulkers	13.27	.95	1.50		.11
MONROE, MORGAN, & WASHINGTON COS:					
Unskilled	11.95	.70	.90		.10
Semi-Skilled	12.30	.70	.90		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GUERNSEY, MUSKINGUM, NOBLE, & PERRY COS.:					
Building & Construction Laborers; Carpenter Tenders; Planters (Landscape); Plumbers Tenders & Tree Trimmers	$11.52	.95	1.35		.05
Air & Machine Driven Tools Operators; Asphalt Plant Aggremeter Operator; Asphalt Plant Mixer Men; Brick Slingers; Car Pushers & Tunnel Laborers; Caulkers; Cement Handlers; Concrete Puddlers (behind mixers); Curb Cutters & Setters; Cutting with Burning Torches; Dumpmen (Batch Trucks); Hand Spikers Operators; Jackhammer Operator; Mason Tenders; Mortar Mixers; Muckers; Pipelayers; Plasterers' Tenders; Proportioning Plant Operator; Pump Men (Under 4"); Road Form Setters; Sewer Bottom Men Sheeting & Shoring Men; Stone Mason Tenders; Vibrator Operator; & Yarners & Wrenchmen	11.62	.95	1.35		.05
Brick Droppers; Lock Tenders; & Powdermen or Blasters	11.87	.95	1.35		.05
ROSS & VINTON COS.:					
All Water Pumps Up to & Incl. 3" Intake; clean-Up Incl. Vacuum Cleaning; Cleaning Debris; Common Laborers; Conveyor Belt; Handling & Conveying All Materials; Landscape; Loading & Unloading All Trucks; Man on Bucket Pouring Concrete; Pouring of All Concrete; Sod Layers; & Washing of All Windows	10.27	.95	1.35		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air or Electrical Pneumatic Tool Operators; All Scaffold Builders (Swinging Scaffolds); Asphalt & Blacktop Rakers; Bottom Man; Brick Tenders; Brush Feeders on Pulverizers; Burners; Carpenters' Tenders; Cement Masons' Tenders; Concrete Saw Operators; Forklift Operators; Gunnite Nozzle Man; Jackhammer Operator; Laser Gun; Mortar Mixer & Operators; Pipelayers; Plasterers' Tenders; Power Buggy Operators; Power Driven Tools; Power Wheelbarrow Operators; Sandblasting; Stonemasons' Tenders; Vibrator Man; Wagon & Churn Drill Operators; Wall Wreckers & Bar Man on Demolition; Welders on Demolition	$10.07	.95	1.35		.05
WOOD CO.:					
Unskilled Laborers	14.08	.95	1.50		.11
Plasterers' Tenders; Mixers	14.10	.95	1.50		.11
Mason tenders	14.16	.95	1.50		.11
All Power Driven Tools & Buggies	14.235	.95	1.50		.11
Gunnite Pot Men	14.28	.95	1.50		.11
Mortar Mixers	14.23	.95	1.50		.11
Pipelayers	14.335	.95	1.50		.11

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LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, GALLIA, JACKSON (Bloomfield, Franklin, Hamilton, Lick, Jefferson, Scioto, & Madison Twps.), LAWRENCE, MEIGS, PIKE (Camp Creek, Marion, Newton, Scioto, Sunfish, & Union Twps.), SCIOTO, & VINTON (Brown, Knox, Madison, Vinton, & Wilkesville Twps.) COS.:					
Cable Splicers	$18.35	.70	3%+.50	1.00	½%
Linemen	16.68	.70	3%+.50	1.00	½%
Operators: All Mechanized Equipment	13.34	.70	3%+.50	1.00	½%
Groundmen	10.84	.70	3%+.50	1.00	½%
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT, & WYANDOT (Crawford, Jackson, Marseil, Mifflin, Ridgeland, Ridge & Salem Twps.) COS.:					
Linemen	15.17	.70	3%		½%
Equipment Operators	13.65	.70	3%		½%
Groundmen; Truck Drivers	9.97	.70	3%		½%
ASHLAND, CRAWFORD, HURON (New Haven, Richmond, Ripley & Greenwich Twps.), KNOX (Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown, & Jefferson Twps.), MARION, MORROW, RICHLAND, & WYANDOT (Sycamore, Crane, Eden, Pitt, Antrim & Tymochtee Twps.) COS.:					
Equipment Operators; Linemen	16.03	.60	3%+.72		½%
Line Truck Driver	9.62	.60	3%+.72		½%
Groundmen	10.42	.60	3%+.72		½%
BELMONT CO.:					
Linemen; Technicians	14.66	.50	3%+1.25	1.50	
Cable Splicer	14.91	.50	3%+1.25	1.50	
Groundman	11.73	.50	3%+1.25	1.50	
BROWN, CLERMONT, & HAMILTON COS.:					
ZONE I: Up to & incl. 18 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Operators	16.70	.85	3%+1.00		½%
Groundman	12.53	.85	3%+1.00		½%

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	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE II: Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	$17.00	.85	3%+1.00		½%
Groundmen	12.75	.85	3%+1.00		½%
ZONE III: Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	17.10	.85	3%+1.00		½%
Groundmen	12.825	.85	3%+1.00		½%
ZONE IV: Over 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine Ops.	17.25	.85	3%+1.00		½%
Groundmen	12.94	.85	3%+1.00		½%
BUTLER, WARREN (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Twps.) COS.:					
Linemen	16.55	1.00	3%+1.00		½%
Cable Splicers	17.05	1.00	3%+1.00		½%
Groundmen	11.59	1.00	3%+1.00		½%
CARROLL (N ½ Incl. Fox, Harrison, Rose & Washington Twps.), COLUMBIANA (Knox Twp.), HOLMES, TUSCARAWAS (N. of Auburn, Clay, Rush, & York Twps.), & WAYNE (S. of Baughman, Chester, Greene & Wayne Twps.) COS.:					
Cable Splicers	14.59	1.00	3%+1.00		.3%
Line Equipment Ops.	13.44	1.00	3%+1.00		.3%
Groundmen; Truck Drivers	9.84	1.00	3%+1.00		.3%
Linemen	15.70	1.00	3%+1.00		.3%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARROLL (S. of Fox, Harrison, Rose & Washington Twps.), HARRISON & JEFFERSON COS.:					
Linemen; Line Equipment Ops.; Truck Drivers	$ 17.00	[illegible]	19%	10%	½%
Cable Splicers	17.50	[illegible]	19%	10%	½%
Groundmen	11.05	[illegible]	19%	10%	½%
CHAMPAIGN, CLARK, GEAUGA (Bainbridge, Russell & Chester Twps.), & MADISON (except Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, & Pleasant Twps.) COS.:					
Cable Splicers; Equipment Ops.; Linemen	17.93	.60	3%		½%
Groundmen	11.85	.60	3%		½%
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, & WARREN (Wayne, Clear Creek, & Franklin Twps.), COS.:					
Cable Splicers; Linemen Operators:	13.63	.75	3%+1.00		½%
Hole Digging Equipment, Cranes, Hydraulic Lift or Bucket	13.63	.75	3%+1.00		½%
Line Truck with Winch or Pole & Steel Handling	11.72	.75	3%+1.00		½%
None-Specialized Truck & Misc. Equipment; Groundmen - Truck Driver	9.38	.75	3%+1.00		½%
COLUMBIANA CO. (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West & Yellow Creek Twps.):					
Linemen; Heavy Equipment Ops.	13.30	15%	7%		½%
Groundmen & Truck Drivers	11.90	15%	7%		½%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COLUMBIANA (Twps. of Butler, Fairfield, Perry, Salem, & Unity), & GEAUGA (Twps. of Auburn, Middlefield, Parkman, Burton, & Troy) COS.:					
Cable Splicers; Linemen; Operator - Poledigging Equipment	$17.08	.70	8%		½%
Groundmen	13.66	.70	8%		½%
COSHOCTON, GUERNSEY, MUSKINGUM, PERRY, & TUSCARAWAS (Rem. of Co.) COS.:					
Cable Splicers; Equipment Op.; Linemen	15.69	.50	3%		½%
Groundmen	9.39	.50	3%		½%
DEFIANCE, FULTON, HANCOCK, HENRY, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.:					
Linemen	17.24	.70	8%	a	½%
Technicians	16.72	.70	8%	a	½%
Cable Splicers	19.83	.70	8%	a	½%
Operator Class I	13.79	.70	8%	a	½%
Operator Class II	12.07	.70	8%	a	½%
Groundmen	10.34	.70	8%	a	½%
DELAWARE, MADISON (Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range & Pleasant Twps.), PICKAWAY (Twps. of Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlenburg, Scioto, Walnut, & Washington), & UNION COS.:					
Cable Splicers; Equipment Ops. & Linemen	16.67	.50	3%		½%
Groundmen	9.39	.50	3%		½%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ERIE & HURON (Lyme, Ridgefield, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarksfield, Norwick, Greenfield, Fairfield, Fitchville, & New London Twps.) COS.:					
Cable Splicers; Equipment Ops. & Linemen	$16.05	.98	3%		½%
Truck Driver (Winch) Groundman	8.83	.98	3%		½%
Groundman	10.43	.98	3%		½%
FAIRFIELD, KNOX (Butler, College, Clay, Harrison, Hilliar, Jackson, Morgan, Milford, Miller, & Pleasant Twps.), & LICKING COS.:					
Cable Splicers; Linemen; Ops.: All Mechanized Equipment	14.85	.70	3%		½%
Groundmen - Truck Driver	11.78	.70	3%		½%
Groundmen	9.08	.70	3%		½%
FAYETTE, HIGHLAND, HOCKING, JACKSON (Coal, Jackson, Liberty, Milton, & Washington Twps.), PICKAWAY (Deer Creek, Perry, Pickaway, Salt Creek, & Wayne Twps.), PIKE (Exclu. Camp Creek, Marion, Newton, Scioto, Sunfish, & Union Twps.), ROSS, & VINTON (Clinton, Eagle, Elk, Harrison, Jackson, Richland, & Swan Twps.) COS.:					
Cable Splicers	16.985	.70	3%		½%
Linemen; Equipment Operators	15.80	.70	3%		½%
Truck Drivers	9.49	.70	3%		½%
Groundmen	9.08	.70	3%		½%
FRANKLIN CO.:					
Cable Splicers; Linemen	14.18	.50	3%		½%
Operators	12.43	.50	3%		½%
Groundmen	9.39	.50	3%		½%
GEAUGA (Exclu. Bainbridge, Chester, Russell, Auburn, Middlefield, Parkman & Troy Twps.) CO.:					
Cable Splicers; Equipment Ops. & Linemen	18.73	.85	3%+.70		½%
Truck Drivers (Winch) Groundman; Groundman	12.17	.85	3%+.70		½%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MEDINA (Litchfield, & Liverpool Twps.) CO.:					
Cable Splicer; Equipment Op.; & Linemen	$16.75	.75	3%+1.00		½%
Truck Drivers(Winch) Groundman; Groundman	10.89	.75	3%+1.00		½%
MEDINA (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, & York Twps.), & WAYNE (Northern ½ of Co.) COS.:					
Linemen	16.67	.74	3%+.84		½%
Cable Splicers	17.72	.74	3%+.84		½%
Equipment Operators	12.50	.74	3%+.84		½%
Truck Drivers; Groundman	8.34	.74	3%+.84		½%
MONROE, MORGAN, NOBLE, & WASHINGTON COS.:					
Cable Splicers; Linemen; & Equipment Operators	14.93	.60	3%		½%
Groundmen	8.41	.60	3%		½%

FOOTNOTE:
a. 10 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; Christmas Eve; Christmas Day; New Year's Eve; & Good Friday

POWER EQUIPMENT OPERATORS:					
All Counties, except Columbiana:					
Well & Pump Work (Incl. Drilling & Repair of all Water Wells; Test Holes & Wells; & Installation & Repair of Deep Well Type of Shallow Well Pumps on Water Wells)					
Well Driller & Pump Installer	8.10	.34	.27	a&b	

FOOTNOTES:

a. 9 Paid Holidays: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Eve Day; & Christmas Day
b. Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 wks' paid vacation; 11th continuous calendar year - 3 wks' paid vacation

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POWER EQUIPMENT OPERATORS
COLUMBIANA COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 15.46	1.05	1.15		.16
CLASS II	14.77	1.05	1.15		.16
CLASS III	14.13	1.05	1.15		.16
CLASS IV	13.72	1.05	1.15		.16
CLASS V	13.62	1.05	1.15		.16
CLASS VI	15.73	1.05	1.15		.16

CLASS I - Asphalt Planer Heater; Austin Western & Similar Type; Backfiller W/Drag Attachment; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Berm Builder-Automatic; Boat Derrick; Boat-Tug; Boring Mach. Attached to Tractor; Bullclam; BullDozer; C.M.I. Road Builder & Similar Types; Cable Placer & Layer; Carrier-Straddle; Carryall - Scraper or Scoop; Chicago Boom; Compactor W/Blade Attached; Concrete Spreader Finisher Comb.; Crane; Crane-Stationary or Climbing; Crane- Electric Overhead Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Diggers-wheel (not trencher or road widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Electromatic; Fork Lift; Frankie Pile; Gradall; Grader-Power; Gurry; Gurry-Self-Propelled; High Lift; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist-2 or 3; Jackall; Jumbo Mach.; Kocal and Kuhlman; Land-Seagoing Vehicle; Loader - Elevating; Loader-Front end; Locomotive; Mechanic as Welder; Metro Clip Harvester W/Boom; Mucking Mach.; Paving-Asphalt Finishing Mach.; Paver Road Concrete; Paver-Slip Form; Place Crete Mach; Post Driver; Power Driven Hydraulic Pumps & Jacks; Pump Crete Machine; Regulator-Ballast; Reigs-Drilling; Shovels; Spikemaster; Stone-crusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor w/Attachments; Trench Mach.; Trucks-Boom; Truck-Tire-Assigned to Job; Tunnel Machine (Mark II Java or Similar); Whirley

CLASS II - Asphalt Plant; Bending Machine; Boring Mach.; Chip Harvester W/O-Boom; Cleaning Mach.- Pipeline Type; Coating Mach.-Pipeline Type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Mach.; Grease Truck Op.; Grout Pump; Gunnite Mach.; Hoist-Single Drum; Huck Bolting Mach.; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Fireman; Power Broom; Refrigeration Plant; Sasgen Derrick; Seeding Mach.; Self-Propelled Mobile Vibrator Compactor or Roller; Soil Stabilizer (Pump Type); Spray Cure Mach.-Self Propelled; Straw Blower Mach.; Sub-Grader; Tube Finisher or Broom C.M.I. or Similar Type; Tugger Hoist

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CLASS III - Batch Plant-Job Related; Boiler Op.; Compressor (125 CFM or Over); Curb Builder (Self-Propelled); Generator-Steam; Jack-Hydraulic Driven; Mixer-Concrete; Mulching Mach.; Pin Puller; Pulverizer; Pump; Road Finishing Mach. (Pulltype); Roller; Saw-Concrete-Self-Propelled; Spray Cure Mach.-Motor Powered; Spreader (Side Driver Shoulder Attachment); Tractor; Trencher Form; Water Blaster

CLASS IV - Brake Man; Compressor Under 125 CFM; Conveyor; Conveyor 12 Feet or Under Other Than Servicing Bricklayers; Deck Hand; Drill Wagon; Fireman; Generator Sets; Heaters-Portable Power (2 to 5); Jacks Hydraulic (Railroad); Ladavator; Roller (Walk Behind 1 Ton or Over); Steam Jenny; Syphons; Tender Mechanic; Vibrator-Gasoline; Welding Machines (2) (Fuel Burning)

CLASS V - Oiler

CLASS VI - Rigs-Pile Driving or Caisson Type

POWER EQUIPMENT OPERATORS

	ZONE I Basic Hourly Rates	ZONE II Basic Hourly Rates	ZONE III Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$17.24	$16.96	$17.52	1.41	1.50		.11
GROUP B	17.08	16.80	17.37	1.41	1.50		.11
GROUP C	16.78	16.44	17.02	1.41	1.50		.11
GROUP D	15.92	15.66	16.24	1.41	1.50		.11
GROUP E	15.59	15.33	15.92	1.41	1.50		.11
GROUP F	13.38	13.13	13.74	1.41	1.50		.11

ZONE I: Allen, Ashland, Belmont, Carroll, Coshocton, Defiance, Fulton, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Jefferson, Monroe, Noble, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Tuscarawas, Van Wert, Washington, Wayne, Williams, & Wood Counties

ZONE II: Adams, Auglaize, Brown, Butler, Champaign, Clark, Clermont, Clinton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Montgomery, Morgan, Morrow, Muskingum, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union, Vinton, Warren, & Wyandot Counties

ZONE III: Erie, Geauga, Huron, & Medina Counties

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GROUP A - A-Frames; Boiler or Compressor Operator Mounted on Crane (Piggy-Back Operation); Boom Trucks (All Types); Cableways; Cherry Pickers; Combination Concrete Mixer and Tower; Concrete Pumps; Cranes (All Types); Derricks (All Types); Draglines; Dredge (Dipper, Clam or Suction) 3 Man Crew: Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Hammerhead Tower Cranes; Helicopter Operator and Helicopter Winch Operator When Hoisting Builders Materials; Hoes (All Types); Hoisting Engines (Two or More Drums); Lift Slab or Panel Jack Operator; Locomotives (All Types); Maintenance Engineer (Mechanic or Welder); Mixer Paving (Multiple Drum); Mobile Concrete Pumps with Boom; Panelboard (All Types on Site); Pile Driver; Power Shovels; Rotary Drills used on Caisson Work for Foundations and Substructure Work; Side Boom; Slip Form Pavers; Straddle Carriers Building Construction on Site); Trench Machine (Over 24" Wide); Tug Boat

GROUP B - Asphalt Paver; Bulldozer; C.M.I. Type Equipment; End-Loaders; Kohlman Type Loaders (Dirt Loading); Lead Greaseman; Mucking Machines; Power Grader; Power Scoops; Power Scrapers; Push Cat

GROUP C - Air Compressor (Pressurizing Shafts or Tunnels); Asphalt Rollers; Fork Lifts; Hoist (One Drum); House Elevators; Man Lift; Power Boilers (Over 15 lbs. Pressure); Pump Operators Installing Well Points or other Type of Dewatering System; Pumps (4" and Over Discharge); Submersible Pumps (4" and Over Discharge); Trenchers 24" and under

GROUP D - Compressors on Building Construction; Conveyors (Building Material); Generators; Gunnite Machines; Mixers, (Capacity more than One Bag); Mixers (One Bag Capacity, Side Loader); Pavement Breaker (Hydraulic or Cable); Post Driver; Post Hole Diggers; Road Widening Trencher Rollers; Welder Operator

GROUP E - Backfiller & Tampers; Bar and Joint Installing Machines; Batch Plant; Bullfloats; Burlap and Curing Machines; Clefplanes; Concrete Spreading Machine; Crushers; Deck Hands; Drum Fireman (Asphalt); Farm Type Tractors Pulling Attachments; Finishing Machines; Form Trenchers High Pressure Pumps Over 4" Discharge; Hydro Seeders; Self-Propelled Power Spreader; Self Propelled Sub-Grader; Tire Repairman; Tractors Pulling Sheeps Foot Roller or Grader; Vibratory Compactor (With Integral Power)

GROUP F - Inboard & Outboard Motor Boat Launch; Light Plant Operator; Oiler; Power Driven Heaters (Oil Fired); Power Boilers (Less than 15 lbs. Pressure); Pumps under 4" Discharge Submersible Pumps under 4" Discharge; Tenders

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TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, DEFIANCE, HANCOCK, HARDIN, LOGAN, MERCER, PAULDING, PUTNAM, SHELBY, UNION, & VAN WERT COS.:					
Lowboys	9.60	31.00a	13.00a		
Tenders	8.60	31.00a	13.00a		
BELMONT, JEFFERSON (N. to Short Creek), & MONROE COS.:					
Pickups; Tenders	11.30	32.35a	46.00a		
Mechanic Tenders	11.31	32.35a	46.00a		
Flatbed Material Trucks; Dumps, & Semi-Dumps	11.35	32.35a	46.00a		
Tank Truck (Straight & Semi)	11.38	32.35a	46.00a		
Semi-Tractor Trailers	11.40	32.35a	46.00a		
Pole Trailer	11.50	32.35a	46.00a		
Agitator & Mixer Trucks (Up to 5 cu. yds.)	11.58	32.35a	46.00a		
Euclids; Dumpsters; Turnarockers; Ross Carriers; & Athey Wagons	11.63	32.35a	46.00a		
Agitator & Mixer Trucks (Over 5 cu. yds.)	11.68	32.35a	46.00a		
Lowboy Trailer; Winch; Fork & Distributor Trucks (Front & Back End) & Truck Crane	11.93	32.35a	46.00a		
A-Frame	12.00	32.35a	46.00a		
Mechanics	12.03	32.35a	46.00a		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUTLER & WARREN COS.:					
Jeeps; Pickups; & Single Axle Trucks	$10.89	25.00b	51.00a		
Fork Lifts; Tandem Axles; Dumps; Tandem Axles; & Winch Trucks	11.04	25.00b	51.00a		
Semi-Combination & Combination of Hauling Units	11.14	25.00b	51.00a		
Drag & Lowboys	11.30	25.00b	51.00a		
Euclids; Mechanics	11.34	25.00b	51.00a		
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE COS.:					
Straight Flat & Dumps; Winches	9.58	39.50a	16.00a	c&d	
Ready Mix Dump Crete	9.64	39.50a	16.00a	c&d	
Tandems & Tractor Trailer Combination	9.69	39.50a	16.00a	c&d	
Euclids to & including 12 Yds.	9.75	39.50a	16.00a	c&d	
Euclids over 12 Yds.	10.11	39.50a	16.00a	c&d	
DELAWARE, FAYETTE, FRANKLIN, MADISON, PICKAWAY & ROSS COS.:					
Dumps & Straight	12.15	43.00a			
Tandem & Semi-Farm Tractor	12.25	43.00a			
Lowboy	12.35	43.00a			
HARRISON & JEFFERSON (S. to Short Creek) COS.:					
Truck Tenders	10.76	39.50a			
Mechanic Tenders	10.77	39.50a			
Flatboy Material Trucks; Dumps & Semi-Dumps	10.81	39.50a			
Tank Trucks (Straight & Semi)	10.84	39.50a			
Semi-Trailers & Tractor Trailers	10.86	39.50a			
Euclids; Dumpsters; Turnarockers; Ross Carrier; Athey Wagons	11.09	39.50a			
Lowboy Trailers; Winches; A-Frames; Forks; Distributors (Front & Back End); & Truck Cranes	11.39	39.50a			
Mechanics	11.49	39.50a			

DECISION NO. OH82-2036

FOOTNOTES:

a. Per week per employee

b. Per week per employee providing employee has been on payroll at least 30 days

c. 1 year's employment - 1 week's paid vacation; 7 years' employment - 2 weeks' paid vacation providing the employee has been on payroll for 8 months during the previous 12 month period

d. An employee who has been on the payroll 30 days or more & has worked his last scheduled workday within 7 calendar days before his next scheduled workday within 7 calendar days after New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, & Christmas Day shall receive 8 hours' pay for said holidays.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

DECISION NO. TX82-4019

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise

DECISION NO.: TX82-4019 DATE: Date Of Publication

Supersedes Decision No. TX81-4083, dated November 6, 1981 in 46 FR 55213

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving Incidental to Building Construction in Tarrant Co. and for Paving & Utilities Incidental to Building Construction in remaining Cos.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 14.71	.95	1.48		.045
BOILERMAKERS	14.80	1.275	1.00		.04
BRICKLAYERS & STONEMASONS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman, Rockwall	15.63	.67	1.00		.07
ZONE 2 - Grayson Co.	12.77	.67	1.00		.07
ZONE 3 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	15.62	.67	1.00		.04
CARPENTERS:					
ZONE 1 - Grayson Co.:					
Carpenters	14.61	.85	.80		.005
Millwrights	15.01	.85	.80		.005
Piledrivermen	15.11	.85	.80		.005
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.:					
Carpenters	14.44	.85	.80		.08
Millwrights	14.51	.85	1.35		.08
CEMENT MASONS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	13.95	.40	.80		
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	14.45	.65	.75		.02
ELECTRICIANS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.:					
Electricians	14.45	.60	7%		1%
Cable splicers	14.70	.60	7%		1%
ZONE 2 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Cos.:					
Electricians	15.15	.60	8%		1%
Cable splicers	16.67	.60	8%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	$12.87	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (Prob.)	50%JR				
GLAZIERS:					
Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.	15.025	.40	.75		.025
IRONWORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto (excluding northwest corner), Rockwall, Tarrant & Wise (excluding northwest 1/2)Cos.	14.20	.80	2.00		.07
ZONE 2 - Palo Pinto (northwest corner) & Wise (northwest 1/2) Cos.	12.425	.55	1.70		.10
LABORERS:					
ZONE 1 - Grayson Co.:					
GROUP 1 - Unskilled labor	9.675	.275	.50		
GROUP 2 - Air tool op. (jackhammer, vibrator), mason tenders & mortar mixers, pipelayers	9.925	.275	.50		
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.:					
GROUP 1	9.67	.30	.50		.05
GROUP 2	9.82	.30	.50		.05
GROUP 3	9.92	.30	.50		.05
GROUP 4	10.07	.30	.50		.05

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LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging dirt work & backfilling; firing of salamanders, loading & unloading of materials to & from hoist or cages; loading & unloading of tools & equipment; wheeling, placing & pouring of concrete; all excavation; handling of lumber, steel, cement; distribution of all materials; miscellaneous job clean-up; wrecking & razing of buildings & all structures; Cleaning & clearing of all debris; handling of broken concrete or other damanged or undamanged materials; removing, moving, handling & greasing of forms, wrecking forms; storing materials to storage place; slip form jacks, scaffold builders, checking materials & tools in & out of receiving lots & sheds; tool house men; landscaper; asphalt ironer & raker; waterproofing tender; dumper; spotter; concrete pumpcrete pipe (handling & laying); carpenter tender

GROUP 2 - All power tool & equipment operators (gas, electric or air); cutting torch man; concrete grademan; power buggy operator; wagon drill operator, well driller, drilling rig tender; cement finisher tender; metal pan & steel form men; handling creosoted materials; liquid acids or like materials injurious to health, eyes,skin or clothes; all newly developed equipment which replaces wheelbarrows or buggies previously used by laborers; scale men on batch plants

GROUP 3 - Concrete & clay pipe (handling & laying); mason handler; scaffold builder; mason tender; hod carrier mortar mixers; lather tenders, plaster tenders; water pump operators up to 4 inches; cement masons tenders; mortar mixers; hod carriers; dry mixers; tank cleaning; all pipe doping, treating & wrapping, including all men working with dope, mortar & plaster mixing machines; grout machines, pumpcrete machines, gunite mixing machine, including placing & cleaning of pipe & conduits used in placing of concrete, handling & placing of gunite materials from stockpile; screening sand, running sand dryer & loading & operating sand blaster, except nozzle, conveying, stocking & handling of all materials for brickmasons, lathers, cement finisher, plasterers; ditch work over 6 ft. & cleaning out drill piers

GROUP 4 - Sand blaster, blaster powderman; gunite worker; gunite nozzleman & terrazzo grinder

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$15.25				.04
LINE CONSTRUCTION:					
Linemen	15.15	.60	8%		1/2%
Cable splicers	16.66	.60	8%		1/2%
Operators	15.91	.60	8%		1/2%
Groundmen	10.60	.60	8%		1/2%
MARBLE, TILE & TERRAZZO WORKERS:					
Collin, Dallas, Denton, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise	11.94	.67	.30		.10
MARBLE & TILE FINISHERS:					
Collin, Dallas, Denton, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise	8.99				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall Cos.:					
GROUP 1 - Brush	$11.65	.55	.85		.07
GROUP 2 - All wall covering work: paper, fabric sheeting, flexwood,etc.	13.90	.55	.85		.07
GROUP 3 - Ames tools op.	13.775	.55	.85		.07
GROUP 4 - Structural steel, stage work, bosun, chair, spray gun, sandblasting & window jacks & fire escapes	14.025	.55	.85		.07
ZONE 2 - Hood, Johnson, Palo Pinto, Tarrant & Wise:					
GROUP 1	14.91	.50	.40		.12
GROUP 2	15.16	.50	.40		.12
GROUP 3	16.16	.50	.40		.12
GROUP 4	15.285	.50	.40		.12

GROUP 1 - Brush

GROUP 2 - Wallcovering; pressure roller; sandblasting; structural steel; bosun chair, window jack & window sill; stage, fire escape; steel storage tank; stilts; mittens; ames tools, drywall finishing

GROUP 3 - Steeple jack (radio & TV towers, smoke stacks, chimneys & water towers & similar facilities & flag poles atop buildings located closer to the edge of the building than the height of the pole); toxic material rate (creosote, coal tar products or similar materials injurious to the skin)

GROUP 4 - Spray

PLASTERERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	14.92	.50	1.50		.04
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	16.95				.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Collin, Dallas, Ellis, Grayson, Hood, Hunt, Kaufman & Rockwall Cos.	$15.77	.71	1.00		.10
ZONE 2 - Denton, Johnson, Palo Pinto, Tarrant & Wise Cos.	14.92	.64	1.00		.12
ROOFERS:					
GROUP 1 - Slate & tile	12.845				
GROUP 2 - Composition & built-up roofing, damp-proofing & bituminous waterproofing	12.695				
SHEET METAL WORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Rockwall, Tarrant & Wise Cos.	12.645	.70	.84		.145
ZONE 2 - Palo Pinto Cos.	12.84				.09
SOFT FLOOR LAYERS	14.40	.50	.60		.06
SOUND INSTALLERS - repair, service & installation of intercommunication telephone interconnect sound & public address equipment, electronic systems, music & television distributing systems for commercial buildings & shall include the pulling of all wires in conduit or raceways or surface wiring, the running of conduit & raceways not to exceed 10 ft. in length & the wiring of all electrical communication devises of 100 volts or less controlling the equipment described above	10.42	.54	3%	c	
SPRINKLER FITTERS	14.68	.95	1.40		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES

a - 1st 6 mos. - none; 6 mos to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate

b - Paid Holidays A thru G

FOOTNOTES (CONT'D)

c - Sick of Injury Pay:
1st day out - no pay
2nd day out - 1/2 pay
3rd day out & thereafter - full pay for a maximum of 10 days pay per year of the Contract
Employees who receive pay for less than 5 sick days per year shall receive on Aug. 31 of each year incentive pay equal in amount to a day's pay for each day that such days were less than 5.

Employees who are members of a reserve component of the Armed Services & are ordered to annual active duty for training as a normal part of their reserve obiligation shall be eligible for & shall receive differential pay equal to the difference between their computed daily base rate (excluding overtime compensation) & their daily military base pay (excluding quarters & subsistence allowances) for each day of military leave where the employee would normally have performed work up to a maximun of 10 work days per year.

Employees absent from work while serving as jurors shall be paid at their hourly rate excluding overtime for the hours actually lost from work less any amount received by the employee as juror's fee.

Up to 3 days paid leave for death of immediate family member (spouse, child, parent, brother, sister, mother-in-law, father-in-law, grandparents & grandchildren)

Paid Vacation:
after 1 year service - 1 week vacation
after 2 years service - 2 weeks vacation
after 5 years service - 2 weeks & 1 day vacation
after 6 years service - 2 years & 2 days vacation
after 7 years service - 2 years & 3 days vacation
after 8 years service - 2 years & 4 days vacation
after 9 years service - 3 weeks vacation

Paid Holidays - A thru G plus the last working day preceding Christmas Day and another day designated by the Company

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
ZONE 1 - Dallas County					
Group 1	$13.62	.65	1.15		.20
Group 2	14.02	.65	1.15		.20

GROUP 1 - Air compressor, water pumps, welding machines (2 to 6 machines) & generators; Blade grader, towed; Flex plane; Form grader; Concrete mixer, less than 14 cu. ft.; Pulsometer; Wagon drill operator; Conveyor; Hoist, single drum; Scraper, 3 cu. yd. or less; Bob cat with loader

GROUP 2 - Heavy duty mechanic; Asphalt mixer operator on job; Blade grader, self-propelled; Hull clam; Backfiller; Bulldozer & all cat type tractors; Backhoe; Concrete mixers over 14 cu. ft.; Crusher operator on job; Concrete batch plant operator; Clam shell; Cranes (all types); Truck mounted or crawler requires oiler including groves (hydraulic) or similar type over 12-1/2 ton capacity; Escalated rate on crane and derricks booms: .01¢ per hour, per foot over 90 ft. including jib; Draglines; Derricks, power operated (all types); DW-10 caterpillar, S-8 Euclid and similar tractors; Elevating grader, self-propelled; Foundation drilling machines (all); Forklifts used in handling machinery on construction; Gradeall; Hoist, motor driven, 2 drums or more; Locomotive crane; Mixmobile; Paving mixers (all types); Pile-driver; Pumpcrete machines; Pneumatic rollers, self-propelled; Shovels, power operated; Scrapers, over 3 cu. yds.; Scoopmobile; Trenching machines, all types; Winch trucks, when pole and winch is used; Water well drilling machines, used on construction; Well point pump; Welding machines (7 to 13 machines)

[FR Doc. 82-12223 Filed 5-6-82; 8:45 am]
BILLING CODE 4510-30-C

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONT'D):					
ZONE 2 - Collin, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.:					
GROUP 1	$ 7.265	.65	1.50		.15
GROUP 2	14.11	.65	1.50		.15
GROUP 3	14.58	.65	1.50		.15

GROUP 1 - Oiler-Fireman

GROUP 2 - Air compressors, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon drill; Elevators Building; Form Graders; Hoist, Single drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cu. ft.; Screening Plants; Crushing Plants; Fork lifts (short under 25 feet); Concrete Pumps (all types); Bobcat type equipment

GROUP 3 - Ford Tractor or like with any attachments (except blade and mower on rear); Drilling Machines (all types); Scoop-mobiles; Hoist, two drums or more; Forklifts (over 25 ft.); Winch Truck, six wheel truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cu. ft. or over; Blade Graders, self-propelled; Cableways; Cranes - power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

federal register

Friday
May 7, 1982

Part III

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Wage Matching; Final Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 198]

Food Stamp Program: Wage Matching

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This final rule amends the Food Stamp Program regulations, published October 17, 1978 (43 FR 47846), which implemented the Food Stamp Act of 1977. Public Law 96–249 amended the Internal Revenue Code of 1954 to permit access by officials of the U.S. Department of Agriculture and State agencies which administer the Food Stamp program to certain information provided by the Internal Revenue Service to the Social Security Administration concerning earnings from self-employment, wages and retirement income. In implementing this law, this rulemaking will result in savings due to a reduction in errors and fraud.

EFFECTIVE DATE: These rules are effective on June 7, 1982.

FOR FURTHER INFORMATION CONTACT: If you have any questions, contact Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, Alexandria, VA. 22302, 703–756–3429.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed with regard to the requirements of Executive Order 12291, and it has been determined that the rule is not a major rule as defined by that Order. It is not likely to result in an annual effect on the economy of $100 million or more. Several State agencies currently operate a matching system in their Aid to Families with Dependent Children Program, and it will cost very little to expand the use of the system for food stamp purposes. This rule is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. State food stamp agencies that choose to implement wage matching might experience some increase in Program administrative costs, but it is not anticipated that such an increase would be major. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of Public Law 96–354, the Regulatory Flexibility Act, and the Administrator of the Food and Nutrition Service has determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule has no impact whatsoever on small businesses or small organizations. It authorizes State agencies to access wage and benefit information in the files of the Social Security Administration in determining food stamp eligibility. The primary impact is on State governments and individual recipients. To the extent that county governments operate the Food Stamp Program within States, they may be affected. However, this does not require States or counties to take any action; it authorizes these actions in an effort to provide tools and flexibility to State and local administrators to reduce error rates. Moreover, there should not be significant economic costs where wage matching is conducted.

Introduction

A provision in the recently passed Farm Bill (Pub. L. 97–98, 95 Stat. 1213, December 22, 1981) mandates wage matching, either with Social Security Administration (SSA) information or unemployment compensation (UC) agencies. However, since the rules based on the new legislation will mandate wage matching, rather than allowing State agencies to opt to wage match, the Department believes that State agencies should be offered the opportunity to comment on the rules implementing mandatory wage matching. Consequently, the Department will issue proposed rules based on the Farm Bill separately. To enable those State agencies which want to begin wage matching to do so as soon as possible, the Department is issuing these final rules based on Pub. L. 96–249, 94 Stat. 357, May 26, 1980.

A full explanation of the rationale and purposes for this rule was provided in the preamble to the proposed rulemaking, published at 46 FR 35658, July 10, 1981. Therefore, this preamble deals only with significant changes from the proposed rulemaking. The reasons supporting those proposed rules which are unchanged by the final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or preamble, the rationale contained in the proposal should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the proposed rulemaking.

A total of 25 commenters sent in comments and suggestions on the proposed rules on wage matching. There were 14 comment letters received from State agencies, five from public interest groups, five from regional Food and Nutrition Service offices and one from the Office of Inspector General, USDA.

There were numerous general comments on the proposed regulation as a whole. The majority of the commenters, State agencies, were generally supportive of the rules. Several commenters believed that the rules should include provisions addressing wage matching with UC data. These commenters pointed out that SSA data is usually outdated and that UC data is much more valuable for wage matching purposes. The Department recognizes the value of the more current UC data. However, that portion of the 1980 legislation relative to UC matching specifically states that the UC provision "shall take effect on January 1, 1983." The Farm Bill legislation does not change this date. Therefore, the Department has not included wage matching with UC data in this rulemaking. SSA wage data will be useful in identifying overpayments and in fraud investigations. It can also serve as an indicator of a household's employment pattern even though the information is not current. Moreover, SSA is the best source for interstate data and self-employment wage data (which is not included in UC wage data).

One commenter supporting the proposed rules suggested that the regulation require State agencies to establish a wage match system for those areas which show the need for a verification system (as reflected in the statewide error rate). The Department feels that this type of decision is best left to the State agency and, consequently, has not included this suggestion in the final rules.

Three public interest groups strongly opposed the proposed rule. One commenter opposed the wage matching rules on the basis that they expand "the unnecessary intrusion of government into the privacy of individuals." The Department would like to reiterate that the option to wage match is provided by statute. Two commenters believed that the proposed rules are weighted in favor of obtaining information without regard to the recipients' privacy rights. The

Department disagrees. State agencies will have to comply with stringent Internal Revenue Service safeguard provisions when accessing SSA data. The Department believes that these safeguards are a more than sufficient protection of individuals' privacy rights. The safeguard issue is discussed in detail later in this preamble.

Discrepancy in Information

Eight comments were received concerning the provision in the proposed rule which would permit a household to resolve a discrepancy between information provided by the household and information received from SSA. Three commenters supported the proposed rules as written although one of these felt that the rules should specify how the discrepancy should be resolved. The Department believes that this degree of specificity is not necessary. Three commenters suggested that the rules should specify the length of time which should be allowed in which to resolve discrepancies. The Department wants to point out that the language in the proposed rules simply reflects current procedures; to add any more requirements in this area would result in overregulation. Consequently, the final rules do not contain a time limit for resolution of discrepancies. One State agency objected to allowing the household to resolve a discrepancy in information. This commenter believed that SSA data should be considered valid even though the household may have later data. The Department believes that the most current and accurate data available should be used to resolve discrepancies, whether from the recipient or SSA, and consequently did not adopt this suggestion in the final rules.

One commenter suggested that the rules be amended to permit the procedural safeguard of a fair hearing to ensure that the household will have a fair chance to resolve alleged discrepancies. The Department agrees that a fair hearing is one way to resolve a discrepancy in information. However, current regulations guarantee a household's right to a fair hearing when the household does not agree with the State agency. Consequently, no additional language to this effect is added in this final rule.

Use of Earnings Information

Two of the public interest groups commenting believed that the use of wage match data to conduct criminal or civil prosecutions is inconsistent with the statute and with legislative intent. They believed that deterrence is the purpose of the wage match, not detection and prosecution of fraud cases. The Department concurs that deterrence is a primary purpose of wage matching. However, the Department believes that wage matching is a deterrent only if it is recognized that fraudulent reporting of income can result in civil or criminal prosecution. As pointed out in the legislative history (H.R. Rep. No. 96–788, 96th Cong., 2nd Sess., 1980, p. 105), "* * * the widespread recognition by applicants and recipients that computer matching will ultimately disclose earnings and benefit information, with ensuing punishment where appropriate, should substantially increase the incentive to report earnings and benefit payments accurately in filling out application forms (as well as subsequent reports)." Based on this history, the Department believes Congress contemplated that when information obtained from SSA indicates likely fraudulent acquisition of coupons by a household, the information would be used in the investigation and possible prosecution of the household for fraud. The final rules continue to reflect this belief but have been reworded slightly for purposes of clarification. The commenters concerned with this area felt that, at the least, the final regulations should contain standards outlining when a fraud investigation or prosecution is proper. It would be difficult, at best, to formulate standards to address the several instances when a fraud investigation or prosecution is proper. The current fraud regulations of 7 CFR 273.16 do not establish such standards and the Department does not believe that a State agency needs this type of direction. Consequently, such standards are not included in the final rules.

Safeguard Procedures

Two commenters felt that the proposed rules do not provide any guidance for SSA as to what information may be released to a State agency. It is not the purpose of this rule, however, to regulate the SSA. That agency must determine what information it may disclose to a State agency under the Code amendment. Therefore, the suggestion for guidance in this area has not been adopted in the final rule.

Relative to safeguards to be observed by State agencies, the proposed rules would have required that a State agency accessing SSA wage information comply with sections 6103 and 7213 of the Code. These sections govern the disclosure and use of information on earnings and retirement income released by SSA to State agencies. The Department has been advised by IRS that the Treasury Secretary has chosen to implement all of the provisions in sections 6103 and 7213 of the Code by publishing a brochure entitled *Tax Information Security Guidelines*. State agencies must follow the requirements in this brochure when accessing SSA data. The final rules have been modified slightly to reference this publication. Since the safeguard provisions, as well as the reporting requirements (an initial report describing safeguard procedures and an annual safeguard activity report) and monitoring information are clearly outlined in the *Tax Information Security Guidelines*, the Department believes it is unnecessary to repeat the provisions in the rule. The brochure is easily obtainable. It should be identified as the *Tax Information Security Guidelines*, Publication 1075 (Rev. 6–81), and requested from the Internal Revenue Service district disclosure officer in the appropriate IRS district.

Technical Corrections

One State agency pointed out that the proposed rules deleted instructions in the current regulations which address action to be taken if information is unavailable through SDX, BENDEX, or SSA files. This was an oversight and has been corrected in the final rules.

The Department also became aware that the proposed rules overlooked a reference in the existing regulation which precluded matching wage data. This reference is in § 273.2 (k)(1)(iii)(A)(3). This oversight has been corrected in the final rules.

Finally, we have deleted in the final rules the reference to disclosure of information to officials of the U.S. Department of Agriculture (USDA). These rules address only the accessing of SSA information by State agencies. Investigators in the USDA Office of Inspector General can access such information under separate legislative authority, in particular the Inspector General Act of 1978.

Note.—This action does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Implementation

State agencies which opt to wage match will need to execute appropriate data exchange agreements with SSA as a prerequisite to securing access to wage information in SSA files. Once these agreements are executed (and after the effective date of these rules), State agencies may implement the wage match provisions at their discretion. SSA has drafted a data exchange agreement for this purpose.

List of Subjects:

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs/social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs/social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Therefore Parts 272 and 273 are amended as follows.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new paragraph (g)(34) is added to § 272.1 as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(34) *Amendment 198.* State agencies opting to match earnings data provided by applicants and participants with information maintained by the Social Security Administration shall first execute data exchange agreements with the Social Security Administration. After the effective date of this rule and after execution of this agreement, State agencies may implement wage match provisions at their discretion.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2 paragraph (f)(7) is removed, paragraph (f)(8) is designated (f)(7) and revised, paragraph (f)(9) is designated (f)(8), and paragraph (k)(1)(iii)(A)(3) is revised, as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification* * * *

(7) *State Data Exchange (SDX) and Beneficiary Data Exchange (BENDEX).*

(i) The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may also use SDX and BENDEX data to verify other foor stamp eligibility criteria. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(ii) The State agency may verify applicants' and participants' statements regarding income (or the lack of income) through access to data concerning self-employment, wages and payments of retirement income which has been disclosed to the Social Security Administration pursuant to paragraphs (l) (1) or (5) of section 6103 of the Internal Revenue Code of 1954. If such SSA data, which may affect eligibility or benefit levels, contradicts statements made by a household or contained on a household's application, the household shall be afforded an opportunity to resolve the discrepancy prior to the eligibility determination or to an action to terminate or reduce the household's benefits.

(iii) Information on earnings and benefits disclosed by the Social Security Administration may be used only for the purposes of:

(A) Verifying a household's eligibility;

(B) Verifying the proper amount of benefits;

(C) Investigating to determine whether participating households received benefits to which they were not entitled; and

(D) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(iv) Information on earnings and benefits may be disclosed by SSA and used by a State agency only to the extent provided in the data exchange agreement between SSA and the State agency. These agreements shall specify the procedures to be used in requesting and providing this information. The agreements shall assure compliance with the safeguard, reporting, and other requirements contained in sections 6103 and 7213 of the Internal Revenue Code as implemented by the Internal Revenue Service in its publication, *Tax Information Security Guidelines.* The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA.

* * * * *

(k) *SSI households.* * * *

(1) * * *

(iii) * * *

(A) * * *

(3) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistances Program No. 10.551 Food Stamps)

Dated: April 20, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82-12225 Filed 5-6-82; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 213]

Food Stamp Program; Wage Matching

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would amend the Food Stamp Program regulations, published October 17, 1978 (43 FR 47846), as amended, which implemented the Food Stamp Act of 1977. Pub. L. 97–98 amended the Food Stamp Act to require State agencies to request information concerning wages from the Social Security Administration (SSA) unless they request such information from the agencies administering the State unemployment compensation laws. This rulemaking will implement this law and will result in savings by reducing errors and fraud.

DATE: Comment Period: Comments must be received on or before July 6, 1982 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at Park Office Center, 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 708.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, Alexandria, Virginia, 22302. Phone (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

This proposal has been reviewed with regard to the requirements of Executive Order 12291, and it has been determined that the proposal is not a major rule as defined by that order. It is not likely to result in an annual effect on the economy of $100 million or more. State food stamp agencies, when implementing wage matching, might experience some increase in program administrative costs, but it is not anticipated that such an increase would be major. If State agencies have a matching system operating it will cost very little to expand the use of the system for food stamp purposes. This proposal is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this proposed rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, and the Administrator of the Food and Nutrition Service has determined that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal has no impact whatsoever on small businesses or small organizations. The primary impact is on State governments and individual recipients. To the extent that county governments operate the Food Stamp Program within States, they will be affected. Moreover, there should not be significant economic costs where wage matching is already conducted.

Introduction

Pub. L. 96–58, 93 Stat. 389, August 14, 1979, amended the Food Stamp Act of 1977 to enable the Secretary and State agencies to require, as condition of eligibility for participation in the Food Stamp Program, that applicants furnish their social security numbers (SSN's). State agencies were authorized by the legislation to use SSN's to access Social Security Administration (SSA) records for the purpose of verifying unearned income for individuals receiving benefits under Title XVI (the Supplement Security Income Program) and as a means of preventing duplicate participation. With the passage of the 1980 amendments to the Food Stamp Act (Pub. L. 96–249, 94 Stat. 357, May 26, 1980), Congress has expanded the use to which the SSN's can be put. Section 127 of the 1980 amendments (94 Stat. 365–366) amends the Internal Revenue Code of 1954 and the Social Security Act to provide statutory authority for accessing wage, benefit, and other information contained in the SSA files and in files maintained by State unemployment compensation (UC) agencies. Subsection (b) of the amendment, allowing access to wage information from State unemployment compensation agencies, is effective January 1, 1983. Most recently, the passage of the Food Stamp and Commodity Distribution Amendments of 1981 expands the use of wage matching by requiring that State agencies request wage information from SSA unless they are requesting the same or similar information from the agencies administering the State unemployment compensation laws. (See Pub. L. 97–98, 95 Stat. 1287, December 22, 1981.)

The legislative history of the 1980 amendments indicates that Congress believes wage matching will prove to be a useful tool for avoiding incorrect eligibility determinations and for limiting end identifying overpayments. See H.R. Rpt. No. 96–786, 96th Cong., 2nd Sess., pp. 101–111. The Department's Inspector General has also testified to this effect. Matching techniques would allow State agencies to identify more readily those households with unreported or incorrectly reported earnings or benefits, thereby preventing error and abuse. The AFDC program now requires wage matching, and has already profited from the availability to States of wage information contained in SSA records. Congress expects that increased matching will also be productive in the Food Stamp Program and consequently is now mandating this activity instead of merely permitting it. Correspondingly, these proposed rules would mandate wage match activity and would supercede final rules being issued simultaneously which simply allow State agencies the option to wage match.

The Department would like to note that the section of the regulations pertaining to wage matching has been reorganized. This was done for purposes of clarity.

When State Agencies Should Wage Match

When developing these proposed rules, which would mandate wage matching, the Department considered whether to specify when State agencies must wage match. Mandating when State agencies will wage match limits State agency discretion in this area. However, specifying when and how often State agencies must wage match would ensure that wage matching is done on a regular basis and would be consistent with the wage matching requirements in the Aid to Families with Dependent Children (AFDC) Program. For AFDC, State agencies are required to wage match with UC data on a quarterly basis or with SSA on a semiannual basis. The quarterly requirement is based on the fact that wage information is reported quarterly by employers to agencies administering

unemployment compensation laws. The semiannual requirement for SSA matching is believed necessary by the Department of Health and Human Services because of the frequency with which applicants and recipients enter and leave the assistance roles. Although most SSA wage information is updated only annually, updating is not done at the same time in the year for everyone. Therefore, changes to various people's wage records become available at different times.

In order to ensure consistency between AFDC and the Food Stamp Program in this area the Department is proposing that State agencies match with SSA wage data semiannually and/or with UC wage data quarterly. In addition, the Department believes that this proposed requirement will result in the optimum use of available wage data.

Agreements Between the State Agency and the Agency Supplying the Information

The proposed rules stipulate that a State agency would have to execute a data exchange agreement with SSA and/or the UC agencies specifying the procedures to be used in requesting and providing wage information. The agreement would contain, at a minimum, the identification of all agency officials with authority to request wage information, methods and timing of the request for information and the safeguard provisions limiting release or redisclosure. These specifics were included to provide some minimum requirements for the agreements with UC agencies. There are currently agreements between SSA and State agencies for AFDC wage matching, and SSA has drafted a data exchange agreement for food stamp wage matching with SSA. The agreement drafted by SSA includes information to meet the minimum requirements established in these rules.

Safeguard Provisions

Section 127(a) of the 1980 amendments provides, through conforming amendments to sections 6103 and 7213 of the Internal Revenue Code, safeguards and procedures to assure proper handling of the information provided by SSA in light of the privacy interests associated with such information. The safeguards and procedures imposed by the Internal Revenue Code provide for, among other things, restricting access to persons who have a legitimate need for the information released, assuring that those persons are trained on privacy issues and assuring proper physical security for the information. The proposed regulation would require that State agencies agree to comply with the provisions in the IRS brochure entitled *Tax Information and Security Guidelines*. This brochure implements the safeguard and monitoring provisions and the reporting provisions (an initial report describing safeguard procedures and an annual safeguard activity report) of sections 6303 and 7213 of the Code. This requirement is contained in the final wage matching rules simultaneously issued with this proposed rule. The brochure should be identified as the *Tax Information and Security Guidelines*, Publication 1075 (Rev. 6–81) and requested from the Internal Revenue Service district disclosure officer in the appropriate IRS district.

Section 127(b) of the 1980 amendments provides that the State agency administering the State unemployment compensation law must establish confidentiality safeguards as are necessary as determined by the Secretary of Labor. Therefore, the proposed rule would require incorporation into the UC data exchange agreements such State agency established safeguards, as well as any other safeguards required by Federal or State law or regulation.

Use of Information

The Department has specified in this proposed rule the same four uses of the information obtained from wage matching that are specified in the final wage matching rules simultaneously published. Specifically, the rules state that data obtained from matching efforts shall be used for verifying a household's eligibility, verifying the proper amount of benefits, investigating to determine whether participating households received benefits to which they were not entitled, and substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled. As pointed out in the preamble to the proposed wage matching rules published on July 10, 1981, at 46 FR 35658, section 127 of Pub. L. 96–249 amended the Internal Revenue Code of 1954 to permit the Commissioner of Social Security to disclose information from SSA files only to the extent needed to determine Food Stamp Program eligibility and benefit levels. These proposed rule would restrict the use of SSA and UC information by State agencies to these same purposes.

The only issue relative to the use of this data which was questioned by commenters on the July 10, 1981, proposed rules on matching was the fourth use, i.e., its use in civil or criminal prosecutions. Since the legislative history of section 127 clearly indicates that one of the purposes of the section is to detect fraud (H.R. Rpt. 96–788, pp. 101–111), the Department believes Congress contemplated that when information obtained from SSA or UC agencies indicated likely fraudulent acquistition of coupons by a household, the information would be used in the investigation and possible prosecution of the household for fraud. Recognition by applicants and recipients that such prosecution is possible should also act as a deterrent to incorrect reporting of earnings and benefits. As pointed out in the legislative history (H.R. Rpt. No. 96–788, p. 105), "* * * the widespread recognition by applicants and recipients that computer matching will ultimately disclose earnings and benefit information, with ensuing punishment where appropriate, should substantially increase the incentive to report earnings and benefit payments accurately in filling out application forms (as well as subsequent reports)." Based on this history, the proposed rules, like the final wage match rules simultaneously published, reflect as one of the uses of wage matching, the use of the information in investigations and prosecutions.

Entry of SSN Into an Automatic Data Base

The Department has become aware that, while State agencies are requiring SSN's in accordance with current regulations, some State agencies with computerized systems for food stamps are not entering the SSN's into their automated data bases. As pointed out earlier in this preamble, Congress authorized the collection of SSN's so that State agencies would have the means to access, from various sources, wage benefits, and other information about program participants. If State agencies with the computer capability to do so fail to use the SSN as an identifier in data matching efforts, then the purpose in collecting SSN's is thwarted. Consequently, in these proposed rules the Department has added language to the current regulation on SSN's that would require that State agencies with automated data bases for the Food Stamp Program enter all SSN's collected into their data bases.

Discrepancy in Information

In accordance with existing food stamp regulations (§ 273.2(f)(4)(iv)), the proposed rule would provide that if information provided through wage matching contradicts statements made

by the household, the household would be afforded an opportunity to resolve the discrepancy. This is necessary because the household may have more current wage information than the data available from SSA or the UC agency.

Amendatory Language

The Department would like to note that the proposed regulatory language changes the wage match provisions contained in a final rule on this subject issued today and appearing elsewhere in this **Federal Register.**

Implementation

These proposed rules require that State agencies implement wage matching with SSA or UC on January 1, 1983. State agencies may wage match with SSA on UC data before that date if they execute the appropriate data exchange agreements. The January 1, 1983, implementation date is based on subsection (b) of section 127 of Pub. L. 96–249 which contains the statement that the amendments made by the subsection shall take effect on January 1, 1983. This section pertains to information maintained by State unemployment compensation agencies. Congress, in the Food Stamp and Commodity Distribution Amendments of 1981, did not modify this date. As a result, the January 1, 1983, date in the 1980 legislation remains the date when State agencies are required to begin wage matching. The Department believes that the January 1, 1983, date allows adequate time for State agencies to develop wage matching systems.

Note.—This action does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs/social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs/social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Therefore, Parts 272 and 273 are proposed to be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new paragraph (g)(40) is added to § 272.1 as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(40) *Amendment 213.* State agencies shall implement the provisions of this amendment on January 1, 1983. State agencies may opt to match earnings data with information maintained by the Social Security Administration upon publication of final regulations provided they have executed data exchange agreements with the Social Security Administration.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2 paragraph (f)(7) is revised and a new paragraph (f)(9) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(7) *State Data Exchange (SDX) and Beneficiary Data Exchange (BENDEX).* The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX of BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

* * * * *

(9) *Access to wage information.* (i) The State agency shall request wage information available from the Social Security Administration (SSA) under provisions of Section 6103(l)(7) of the Internal Revenue Code of 1954 and/or from agencies administering State unemployment compensation (UC) laws under provisions of Section 303(d) of the Social Security Act. State agencies are not required to request wage information from SSA if such information is available from agencies administering UC laws. State agencies shall request wage data semiannually from SSA and/or quarterly from agencies administering State unemployment compensation laws.

(ii) Information on earnings and benefits disclosed by SSA or UC agencies shall be used only for the purposes of:

(A) Verifying a household's eligibility;

(B) Verifying the proper amount of benefits;

(C) Investigating to determine whether participating households received benefits to which they were not entitled; and

(D) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(iii) FNS reserves the right to review State Agencies' use of data obtained from wage matching and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

(iv) Prior to accessing wage information from SSA and/or UC agencies, State agencies shall execute data exchange agreements with SSA and/or the agency administering UC detailing the procedures to be used in requesting and providing wage information. These agreements shall include, at a minimum, the following:

(A) Identification of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested wage information; and

(C) Safeguards limiting release or redisclosure as required by Federal or State law or regulation. The agreement with SSA shall assure compliance with the safeguard, reporting, and other requirements contained in sections 6103 and 7213 of the Internal Revenue Code as implemented by the Internal Revenue Service in its publication, *Tax Information Security Guidelines.*

(v) The State agency may access SSA and UC data without release statements from households, provided the State agency makes the appropriate data request to SSA and/or the UC agency and executes the necessary data exchange agreements. The household shall be given an opportunity to verify information from another source if the SSA or UC data is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph

(g) of this section if SSA or UC data is unavailable.

* * * * *

3. In § 273.6 a new paragraph (g) is added as follows:

§ 273.6 Social security numbers.

* * * * *

(g) *Entry of SSN's into automated data bases.* State agencies with automated food stamp data bases shall enter all social security numbers obtained in accordance with § 273.6(a)(1) into their data bases.

(91 Stat. 958 (7 U.S.C. 2011–2027))
(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

Dated: April 28, 1982.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 82-12226 Filed 5-6-82; 8:45 am]

BILLING CODE 3410-30-M

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federal register

Friday
May 7, 1982

Part IV

Department of Health and Human Services

Office of Community Services

Availability of Funds and Requests for Applications Under the Community Services Discretionary Authority

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-82-1]

Availability of Funds and Requests for Applications Under the Community Services Discretionary Authority

AGENCY: Office of Community Services, HHS.

SUBJECT: Announcement of availability of funds and requests for applications under the Community Services Discretionary Authority.

SUMMARY: The Office of Commmunity Services (OCS) announces that applications are being accepted for grants, and cooperative agreements pursuant to the Secretary's discretionary authority under Title VI, section 681 of the Community Services Block Grant Act.

DATES: Closing date for receipt of applications is June 21, 1982. No applications will be accepted if they are postmarked after that date.

Scope of This Announcement:

Section 681 of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to support ongoing activities of national or regional significance to alleviate the causes of poverty in communities. Approximately $25,000,000 will be available for Fiscal Year 1982 under this discretionary authority.

Applicants must satisfactorily demonstrate that the project they propose represents either an ongoing activity of the applicant or an ongoing activity previously funded by the Community Services Administration (CSA). In either case, applicants must show that such activity is of regional or national significance and clearly related to the purposes of the CSBG Act, i.e. to alleviate the causes of poverty in communities.

For purposes of this announcement, the term "ongoing activity" means an activity that is actually in progress, that will continue to move toward meeting specific goals and objectives with OCS support, and that has a meaningful and measurable impact on the area and population to be served. The term "national or regional significance" means activities that address the causes of poverty in a way that could be replicated in another part of the region or the country. Projects under this announcement must address primarily low-income people as defined in the Annual Revision of Poverty Income Guidelines, **Federal Register**, pp. 15417–15418, April 9, 1982.

The Administration's FY 1983 budget contains no request for funds under the OCS discretionary authority. Accordingly, each applicant must demonstrate the ability to carry out the work program with FY 1982 funds without substantial start-up costs, to achieve measurable results within one year of funding, and to show the ability to continue operating or to meet program objectives after the cessation of OCS funding.

An applicant can be engaged in a qualified "ongoing activity" without having been a recipient of funds from the former Community Services Administration. Grantees previously funded by CSA may apply but such an application would constitute an application for new funding, rather than an application for continuation funding. These applications will be considered in competition with all other acceptable applications.

Community Economic Development will be the area of major program and funding priority. In addition, the Department has identified assistance to States, Territories and Indian organizations in their implementation of the Community Services Block Grant. However, consistent with what we believe to be expressions of interest by the Congress in ongoing antipoverty activities of national or regional significance, we will consider applications in such areas Rural Housing; Community Facilities Development; and Assistance for Migrant and Seasonal Farmworkers. These other areas of consideration are described in the attachment to this announcement.

Under the Economic Development priority area funds will be reserved for other activities of national or regional significance—projects that demonstrate innovative public-private sector linkages or that support other Administration initiatives such as enterprise zones. Funds will be awarded based on the number and quality of proposals received.

Applications must include an Executive Summary of the proposal not to exceed five pages. This outline must address the program principles within this announcement and document that the proposed activities are ongoing activities of national or regional significance.

Each application must specify a number of measurable end products—e.g., the number of new jobs to be created under an economic development proposal, or the number of personnel to be trained under the Assistance to States priority area—and the cost per unit for the end products. The end results and unit costs should appear in the Executive Summary mentioned above.

Projects normally will be funded under this authority for a period not to exceed twelve months, and each project will have a termination date. However, at the discretion of the Director, shorter or longer project periods may be established. The Office of Community Services does not expect that funds will be available for these projects in Fiscal Year 1983. Therefore, the demonstrated capacity of a grantee to secure other sources of funds—before, during, and after the termination date of the project period—will be a key evaluation criterion for all the major priority areas. Projects which have little or no opportunity to continue through other sources of funding will receive lower priority in the review process.

Priority Area 1: Community Economic Development

The overall purpose of this priority area is to encourage the development of special programs by which the residents of urban and rural low-income areas may through self-help and mobilization of the community-at-large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

Narrative Description

Area 1.1 *Urban and Rural Economic Development.* The Office of Community Services will provide funds for business and community development assistance to a limited number of organizations. Funding for these activities will primarily be limited to investment capital and will require the submission of business or community development proposals that meet the test of feasibility. Financial assistance will be limited to those organizations which meet the eligibility requirements under Section(s) 611–619 of the Ominibus Budget Reconciliation Act of 1981.

(a) The objective of this priority area is to test community economic development financing concepts in urban and rural areas. The program emphasizes support for strategies to alleviate poverty by organizations representative of low-income area residents, experienced in dealing with economic development problems. It stresses group, rather than individual, efforts to provide expanded

opportunities for target area residents to increase their ownership of, employment in, and/or income from local economic enterprises.

(b) In accomplishing this objective, a successful applicant must coordinate and leverage its own resources with those of other government agencies and private sources. The project must be complemented by the provision of ample technical assistance in order to enhance the ability of the ventures to become self-sufficient. However, while encouraging the development of new and imaginative community economic development ventures, OCS will assure that the program's operations are conducted on a sound fiscal basis.

(c) The purpose of this priority area is not only provision of resources to eligible applicants, but also the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. To this end, the program seeks to attract additional private capital into special impact communities, build and expand the ability of local institutions to serve better the economic needs of local residents, and provide new employment and ownership opportunities for low-income people through group ventures and community development financing techniques.

Proposals submitted under this priority area must include the following:

A full description of the proposed use of the requested financial assistance, whether it is a business facility or community development project, and how increased income, ownership or employment opportunities for low-income area residents will be provided; the ability to strengthen linkages with, or leverage from other public and private resources; participation of the private sector.

In order to assure OCS that there is reasonable assurance that the amount of the request, together with other funds available, is adequate for the completion of the project or achievement of the purposes for which the award is being made, this description also should be accompanied by:

(1) A summary statement detailing the total cost of the project, delineating fixed assets and working capital, and explaining what other funds may be available or committed;

(2) Detailed and realistic feasibility studies and costs analyses;

(3) Audited financial statements for the immediately preceding three years or from the commencement of operation, whichever period is shorter, and if funds will be used for the acquisition, preservation or expansion of an existing business, similar audited financial statements for such venture;

(4) Cash-flow projections and pro forma financial statements and balance sheets estimated for three years, with the cash flow projections on a monthly basis and (pro forma) financial statements on a yearly basis;

(5) Estimated purchase price for any proposed purchase of real property, accompanied by an indepenent appraisal of the property establishing that the proposed purchase price is reasonable;

(6) a statement detailing what other conventional private sources or Federal, state or local programs are available, and which of these resources are being utilized for the proposed project.

The OCS will accept funding requests from eligible applicants for administrative overhead. These funds will be limited and no funds will be awarded if the applicant is not successful in receiving an award for investment capital. The applicant must show that it has been previously involved in substantial economic and community development activities and has a successful record of implementation with a high degree of success.

At the minimum, each applicant must document that it has a firmly established and quantifiable record indicating the following activities:

—To plan and implement major activities in (1) business development, (2) housing, (3) physical development, and (4) financial services;

—To leverage and mobilize dollars from the (1) private sector (corporations, banks, etc), (2) foundations, (3) public sector, (4) State and local governments, and (5) individuals;

—To establish and maintain relationships within the community (with public officials, financial institutions, corporations and other community organizations);

—To maintain an asset base and organizational structure in terms of (1) net worth, (2) stability, and (3) capability;

—To develop and maintain a stable and diversified program in terms of business, physical and community development activities that have provided needed services and other benefits to community residents, and otherwise impacted on community-wide problems and needs;

—To recruit and maintain both a qualified and demonstrably capable staff and a functioning Board of Directors that is capable of setting appropriate policy, making necessary program decisions, and providing adequate programmatic oversight;

—To have in place sound administrative and fiscal systems and controls, and;

—To establish and maintain partnerships with the private sector in the form of financial support, volunteerism, executives on loan etc.

The applicant must match each OCS dollar with two non-OCS dollars.

Area 1.2 *Community Economic Development—Demonstrations.* The purpose of this sub-priority area is to provide funding support to a limited number of unique and innovative projects. These projects must further Administration goals of private-public sector partnerships, volunteerism, and new Federal initiatives such as urban and rural enterprise zones. Applicants under this sub-priority area must demonstrate that they are engaged in ongoing activities of national or regional significance.

The Office of Community Services is interested in receiving proposals from national intermediary organizations which have a proven ability to attract funds and pro bono technical assistance from the private sector (corporations, financial institutions and foundations) targeted towards community based economic development efforts.

The Office of Community Services is extremely interested in furthering the objectives of section 615(c) of the Omnibus Budget Reconciliation Act, and the overall objectives of the President's Task Force on Private Sector Initiatives and Ecnomic Recovery Programs on a local level through national intermediary organizations.

The Office of Community Services will accept applications that stress public-private partnerships that are directed towards the development of economic self-sufficiency of distressed communities through a focus on economic expansion. Special consideration will be given to applications from organizations that can both document and demonstrate a record of performance and ability to mobilize private sector resources and involvement in antipoverty efforts. At the minimum, OCS expects each applicant to match every OCS dollar with two dollars from the corporate private sector and/or private foundations.

Priority Area 2: Assistance to States, Territories and Indian Tribes and Tribal Organizations Under the Community Services Block Grant

Narrative Description

The purpose of this priority area is to provide a wide range of assistance to States, territories, Indian tribes and tribal organizations as defined under the Community Services Block Grant. Applications will be accepted from States, territories, tribes and tribal organizations, or non-profit national associations to accomplish the following:

—To make the transition to the Community Services Block Grant without disrupting services to the poor by developing the necessary management and administrative systems and techniques necessary for successful implementation of the CSBG;
—To identify, develop and package successful managerial and administrative practices and low-cost service delivery approaches so that these best practices may be transferred among States, territories and Indian Tribes and tribal organizations;
—To design and develop methods to coordinate community-based antipoverty agencies and efforts with public and private voluntary, civic, social and community resources to meet the needs of the poor.

Applicants for funding under this priority area must present a design and delivery approach that is comprehensive enough to cover the wide range of potential needs of States, territories tribes and tribal organizations in implementing the Community Services Block Grant yet specific to each participant's needs and priorities. Since the assistance will be provided upon request, applicants should design a program that will be perceived by participants as interesting, useful and effective in assisting their efforts to implement the CSBG. To assure that the assistance is important and useful, the providers under this priority area must collect matching funds from the States, Territories or Indian tribes or tribal organizations which receive the assistance. This matching requirement must total at least ten percent of the cost. Applications which show interest on the part of the States, Territories or Indian organizations will receive greater consideration. Up to one-half of the matching requirements, or five percent of the total cost of the assistance, may be comprised of in-kind contributions.

Since there has been little or no activity in this priority area, applicants need not document an ongoing activity, unless present efforts are relevant and applicable. However, each applicant must document that it has previously performed activities of this nature with a similar group of participants in this priority area.

Each applicant must include in their proposal a discussion or evidence of the following:

—How each of the above objectives of the priority area will be implemented;
—Types of assistance needed to meet State/local needs under the CSBG, how this assistance is different from past approaches, why States and others would perceive such assistance as useful in implementing the CSBG, and the benefits of the assistance provided;
—How priority needs of States and others will be identified, how experts in the field and state-of-the-art information, practices and techniques will be utilized, and how the training, if necessary, of personnel will be conducted;
—How requests for assistance will be handled and decisions made on delivery of assistance;
—Breakdown of the costs involved in each discrete activity as well as the costs entailed in carrying out each of the objectives and the relative priority on each objective along with a rationale for the priorities chosen; and
—How this effort will become institutionalized in the State and how the applicant's approach to assistance will build the State's capacity to provide such assistance in the future.

Criteria for Review and Evaluation of all Applications

The competitive review process will take place as described below:

OCS central office personnel will review the Executive Summary and other relevant documents requested in the program announcement to determine whether the basic requirements for applications have been met. If the application is complete and acceptable, Federal, State and local officials, and experts from outside the government will conduct a formal objective review process. Applications ranked highly by the review panels and approved by Executive Staff will be considered for funding.

The application must be relevant to the goals and objectives of the enabling legislation and the Office of Community Services. Specifically, applicants must address the tasks and activities related to the OCS target populations and the particular priority areas of interest.

Each application must contain an Executive Summary, not to exceed five pages, which details the measurable results, intended beneficiaries, the capacity to secure sources of ongoing funding, and an explanation to show that the applicant has been engaged in these ongoing activities which are of national or regional significance. The cost per unit for each measurable outcome must be included in this summary.

Every application must document that the activity being proposed has either (a) made substantial progress towards reducing dependence on Federal funding; and demonstrated a high probability for self-sufficiency for the activity; or (b) the ongoing activity involves significant and substantial involvement of the private sector.

Additionally, Office of Community Services will review each application carefully in terms of responsiveness to the specific requirements and program needs as identified in project descriptions for the individual area of competition to which the applicant is responding.

The Executive Summary of the proposal should address each of the evaluation criteria that will be reviewed in the objective review process.

Criterion I: Project Implementation and Technical Approach Plan (25 points)

A. The application must specify a sound and feasible plan to accomplish identified tasks over the proposed project period. The application should describe how staff will be allocated to accomplish the tasks.

B. The application must contain a well-defined and carefully-designed technical approach which identifies problems and defines issues, and which describes the specific tasks to be completed during the project period. The description must show that these tasks, if executed as projected, will enable the organization to fully achieve the objectives of the project. If applicable, the proposal must contain a suitable plan for encouraging the use of the results of the project by other appropriate users.

C. All proposals should contain an evaluation component. Evaluation data collection and analysis procedures should assess the degree to which intended objectives are achieved. Qualitative and quantitative measures should be used to the maximum extent possible.

Criterion II: Significant Impact (30 points)

A. Projects funded under this program must produce measurable results to alleviate the causes of poverty. Specific

outputs for priority areas 1.1, 1.2 and 2 include, for example:

Area 1: *Community Economic Development—Urban and Rural Economic Development:* The number of new permanent direct jobs to be created; the number of permanent jobs maintained; the amount of public and private dollars leveraged for the project; and the number of business enterprise(s) to be initiated.

Area 1.2: *Community Economic Development Demonstrations:* The number of organizations to be directly assisted; the amount of private sector resources to be mobilized; the degree of involvement by private sector individuals and organizations in the implementation of the project.

Area 2: *Assistance to States, Territories, and Indian Tribes and Tribal Organizations:* The number of days of training provided; the number of personnel to be trained compared to the cost of training; the number and types of entities to be trained and the types of training to be provided.

(B) *Unit Costs:* Each application must provide specific and detailed information relating the Office of Community Services share of the project costs to the cost for each unit of measurable outcome.

Criterion III: Organizational Capability and Capacity (15 points)

A. The application must describe the experience and skills of staff to show their qualifications to carry out the project.

B. The assigned responsibilities of staff must be appropriate to project tasks. Sufficient time of senior staff must be budgeted to assure adequate management of the project.

C. The applicant must document a history of sound management practices, audit compliance and adequate and timely reporting.

D. The applicant must document prior achievement and a record of concern in the program area in terms of effective performance, cost effectiveness, targeting and permanent benefits.

E. The applicant organization must show that it has adequate facilities, resources and experience to carry out the tasks of the proposed project.

F. The application must contain a full description of the applicant organization, including information about its by-laws, articles of incorporation, its governing board and the representational nature of the board, if applicable. Applications must also contain information about the qualifications of the management team.

Criterion IV: Public-Private Partnerships (20 points)

The Office of Community Services does not expect that funding will be available under the Discretionary Authority in Fiscal Year 1983. Therefore, the demonstrated ability of applicants to mobilize and leverage other funds and volunteer services—especially from the corporate private sector—will be an important evaluation criterion. The application should document how other sources of funds will be used to continue the project after the termination date of the OCS award.

The Office of Community Services will give special consideration to applicants which offer significant and substantial linkages and leverage from other private and public resources that are documented and in place. Project descriptions should also demonstrate the increased use of private sector resources in addressing the needs of the target population.

Specifically, under priority area 1.1, Urban and Rural Economic Development, funds provided by the Office of Community Services may not exceed 33 percent of total project funding. Under all other areas, except assistance to States, a minimum two-to-one ratio between non-OCS and OCS dollars is required. Projects which exceed such ratios will receive greater consideration.

Each applicant should provide a detailed description of the amount, type (cash, in-kind contributions, training and technical assistance, etc.), the sources (Federal, State, Local, Corporate and Private) of funding or other support the applicant has received or is receiving.

Criterion V: Budget (10 points)

The proposed budget must be commensurate with the level of effort necessary to accomplish the project objectives. Costs must be reasonable and necessary in relation to the value of the anticipated results.

The contribution of any other public and/or private sector agencies or organizations must be assured in writing and included with the application when it is submitted.

Available Funds: The Office of Community Services expects to award approximately $25 million for projects during the third and fourth quarters of Fiscal Year 1982. The awards will be made on the basis of successful competition in an objective review process among all applicants.

The Application Process:

(1) *Availability of Forms:* Applications under the OCS Discretionary Authority must be submitted on standard forms provided for this purpose. Application kits and packages which include the forms and other information may be obtained by writing to: Office of Community Services, Office of State and Project Assistance, Attn: Discretionary Program Request, 1200 19th Street, N.W., Room 436–A, Washington, D.C. 20506; Telephone: (202) 254–6298.

(2) *Application Submission:* One signed original and two copies of the application, including all statements, must be submitted to the address indicated in the application instructions.

(3) *A–95 Notification Process:* The OCS Discretionary Authority is covered under the provisions of OMB Circular A–95. Applicants, except for Indian tribes or tribal organizations, must notify both the State and Areawide A–95 Clearinghouses of their intent to apply for assistance before they submit their applications.

A signed and dated copy of the Standard Form 424, as submitted to the Clearinghouse by the applicant, must be included with the application.

Comments from A–95 Clearinghouses must be forwarded to OCS within 60 days after the full application is submitted to the Clearinghouse for review and comment. OCS will not accept applications if the A–95 requirements have not been met, or if applications are submitted to the A–95 Clearinghouses after the closing date of this announcement.

Application Consideration: The Office of Community Services will determine the final action to be taken with respect to each application for this program. Applications which are complete, timely and conform to the requirements of this program announcement will be subjected to an objective competitive review and evaluation. Appropriate specialists from inside and outside of the Federal Government will participate in the review process.

The results of the review will be the basis for making final determinations among competing applicants. The comments of the A–95 clearinghouses will also be considered.

After a final decision has been made, applicants will be notified in writing. Successful applicants will receive information concerning funds to be awarded, terms and conditions of the award, budget period for which support will be given, the total grantee share expected, and the total period for which project support will be provided.

Closing Dates for Receipt of Applications: The closing date for receipt of applications for priorities identified in this program announcement is 45 calendar days from the date of this program announcement.

Applications may be mailed or hand delivered to: Office of Community

Services, Office of State and Project Assistance, Attn: Discretionary Program, 1200—19th Street, NW., Suite 436–A, Washington, D.C. 20506.

Applications must be received at the above address by the closing date or be clearly postmarked by that date. Hand delivered applications are accepted during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday.

An application will be considered to be received on time if:

(1) It was sent by registered or certified mail not later than the closing date, as evidenced by the U.S. Postal Service;

(2) It is received on or before the closing date by the Office of Community Services, Department of Health and Human Services in Washington, D.C. (In establishing the date of receipt, consideration will be given to the time date stamp of the mailroom or other documentary evidence of receipt maintained by OCS/HHS).

Robert L. Trachtenberg,

Acting Director, Office of Community Services.

Attachment

Other Areas of National or Regional Significance

Applications for the areas of Rural Housing, Rural Communities Facilities Development, and programs to assist Migrant and Seasonal Farmworkers must meet the criteria for review and evaluation of applications as previously stated above. Examples of specific outcomes for Criterion II: Significant Impact (30 points) are listed following each program description.

Rural Housing Repair, Rehabilitation and Production

Narrative Description: The purpose of this area of consideration is (1) to assist low-income residents in rural communities to rehabilitate or repair existing sub-standard housing units; or to construct or acquire ownership of adequate housing; and/or (2) to support the development of innovative ways to meet the housing needs of the rural poor.

We will consider applications from such entities as non-profit rural housing development corporations and cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of funds will result in tangible improvements in the housing conditions of the rural poor, including one or more of the following:

—Interior or exterior structural repairs including weatherization to improve housing conditions that threaten the health, safety or well-being of the rural poor;
—Provision of job opportunities to local unskilled residents while assuring quality work;
—Development of low-income housing alternatives including but not limited to innovative factory systems, pre-fab construction and local self-help projects; and
—Development of innovative housing strategies to help low-income rural residents acquire housing.

Specific Outcomes: The number of sub-standard housing units to be repaired and/or rehabilitated; the number of units to be constructed through low-cost housing production alternatives; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of unskilled disadvantaged to be employed in such projects; total non-OCS dollars mobilized; and, justifications for selecting target communities that are based on the housing needs of local residents and show the types and amounts of assistance that has been provided in the community in previous years.

Rural Communities Facilities Development

(i.e. Water and Waste Water Treatment Systems Development)

Narrative Description: The purpose of this area of consideration is to help low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and appropriate water and waste water treatment facilities. Since many rural poor people live with sub-standard water and waste water treatment systems, and the inadequacy of such systems threatens the health of rural people, this program area addresses the Department's priority efforts in health promotion and illness prevention.

We will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs.

Proposals should fully describe how the proposed use of funds will result in tangible improvements in the quality of water and waste water treatment systems for the rural poor including one or more of the following:

—To assist rural communities in the operation and management of water and waste water facilities;
—To develop local expertise and capability in water and waste water development and engineering services;
—To improve the adequacy and dissemination of information to rural communities in engineering services; and
—To improve the State and local water and waste water service delivery system to serve rural communities more adequately.

Funds are not available under this area for the construction or hook-up of water and waste water treatment systems, nor for operating subsidies for such systems. However, applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that hardware for local community projects is available.

Specific Outcomes: The number of rural communities and the number of rural poor individuals directly served by improved water and waste water systems; the decrease in the number of inadequate water systems; the number of newly-established treatment systems; and the increase in local capacity in engineering and other areas of expertise.

Programs to Assist Migrant and Seasonal Farmworkers

Narrative Description: The purpose of this area is to fund a limted number of projects to alleviate the causes of poverty among migrant and seasonal farmworkers.

Special consideration will be given to projects that emphasize the involvement of the private sector in addressing the unique problems of farmworkers. The Office of Community Services is especially interested in projects that increase the proportion of migrant and seasonal farmworkers in alternative work situations. Such projects may use job training vouchers or other mechanisms to accomplish this goal.

Under the Community Services Block Grant Act, States may use block grant funds to provide services and assistance to migrant and seasonal farmworkers. Projects under this area must not duplicate services provided by the States through block grant funds. The Office of Community Services is therefore especially interested in ongoing national and regional programs serving migrant and seasonal farmworkers who must cross State boundaries in pursuit of work.

Specific Outcomes: The number of farmworkers who have gained alternative permanent employment; total non-OCS dollars mobilized; and the degree of private sector involvement in developing alternative work situations.

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federal register

Friday
May 7, 1982

Part V

Department of Health and Human Services

Food and Drug Administration

Exemption of Antibiotic Drugs and Antibiotic Susceptibility Medical Devices From Certification

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314, 433, and 510

[Docket No. 82N-0033]

Exemption of Antibiotic Drugs and Antibiotic Susceptibility Medical Devices From Certification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug and new animal drug regulations to exempt all classes of antibiotic drugs from batch certification requirements. FDA is also proposing to exempt antibiotic susceptibility devices from batch certification. Because of the high level of manufacturer compliance with existing standards, FDA has tentatively determined that batch-by-batch testing by FDA is not necessary to ensure the safety and efficacy of antibiotic drugs and antibiotic susceptibility devices. Under the exemption, manufacturers would not be required to obtain, before marketing, certification of each batch of antibiotic drug. In the **Federal Register** of May 11, 1982, FDA will announce an interim policy of discretionary replication of manufacturer's tests to avoid interruption of supplies of antibiotic drug products pending its final decision on this proposal.

DATES: Comments by June 7, 1982; requests for informal conference by May 17, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For human drugs: Robert J. Meyer, Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

For animal drugs: Frank G. Pugliese, Bureau of Veterinary Medicine (HFV-103), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

For medical devices: Thomas M. Tsakeris, Bureau of Medical Devices (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (the act), antibiotic drugs, like most other new drugs, are required to be shown to be both safe and effective on the basis of adequate and well-controlled investigations, before marketing. Sections 507 and 512(n) of the act (21 U.S.C. 357, 360(b)(n)), however, in setting forth requirements for the approval of antibiotic drugs for human use and certain antibiotic drugs for animal use (i.e., antibiotic drugs composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivative thereof), respectively, require that each batch of antibiotic drug also be subject to certification before marketing. Certification procedures, which are set forth in §§ 431.1 and 514.50 (21 CFR 431.1 and 514.50), involve the testing of each batch for compliance with monograph requirements set forth in 21 CFR Parts 436 through 460 and 536 through 555, and require that manufacturers submit to FDA information on the product, a sample of each batch, and the results of their own tests. If, on the basis of the information and replication testing of the batch, FDA determines that the antibiotic drug conforms to the applicable standards of identity, strength, quality, and purity found in the monograph, the agency certifies the batch and issues a certificate attesting that the batch conforms to the applicable monograph standards.

Certification of antibiotic drugs originated with the 1945 penicillin amendments to the act (59 Stat. 463), which required batch certification for penicillin because of the newness of the drug and a heightened concern for its quality. This concern was based largely on the fact that penicillin's method of manufacture involved a biological process, and because potency was determined by biological assay, which was though to require careful control and checking in order to assure its accuracy.

In enacting these requirements, however, Congress was aware that the need for the special type of control offered by certification might subsequently be rendered unnecessary. Section 507(c) permitted the exemption of penicillin from the certification requirements if "developments [occurred] in manufacturing technology or otherwise that may render the need for these special types of control unnecessary * * *" S. Rep. No. 410, 79th Cong., 1st Sess. 3 (1945). The exemption authority of section 507(c) has been retained through subsequent amendments of section 507 and was significantly expanded in 1962 to add the suggested criteria for exemption now found in section 507(c)(1) and (2) (76 Stat. 785, 786, 787).

In the **Federal Register** of October 28, 1980 (45 FR 71354), FDA issued regulations (21 CFR 433.1) setting forth conditions for exempting from certification all human antibiotic drug products intended solely for dermatologic or vaginal use. When the conditions of that section are met, manufacturers are not required to apply for and obtain certification of each batch of any product covered by the exemption. In the preamble to that final rule, FDA stated that exempting dermatologic and vaginal antibiotic drug products was the first step in implementing an FDA program to eliminate or modify batch certification requirements where they are found to be no longer necessary to ensure the safety and efficacy of antibiotic durgs (45 FR 71355).

In proposing the exemption for dermatologic and vaginal antibiotic drug products, FDA pointed out that antibiotic drugs, in general, on the basis of the state of manufacturing technology and the high level of compliance with existing monograph requirements, appeared to be meeting the requirements for consistency set forth in section 507(c) of the act (July 6, 1979; 44 FR 39470). With respect to dermatologic and vaginal antibiotic drug products, FDA pointed specifically to an extremely low rejection rate, one-half of one percent or less, during the 2 years before the proposal. It noted further that dermatologic and vaginal antibiotic products were being considered first because of their manner of use (i.e., local or topical application with a relatively low level of absorption), and because limited conditions for their exemption have existed since 1966. Because topical antibiotic drug products for animal use are indicated and certified for otic as well as dermatologic use, and because none are labeled for vaginal use, no corresponding class exemptions were promulgated for topical animal antibiotic drug products.

Initially, FDA intended to consider exempting the remaining classes of antibiotic drugs (i.e., otic and ophthalmic, oral, injectable, and bulk) from batch certification on a step-by-step basis, continuing with antibiotic drug products for ophthalmic and otic use and finishing with bulk antibiotic drugs. Upon further consideration, the agency believes that it can exempt all remaining classes of antibiotic drugs for human and animal use, including bulk as well as finished dosage forms, from batch certification without compromising the public health

considerations that certification was intended to advance.

For the past several years, the rejection rate for all antibiotic drug products has been extremely low. In a recently published General Accounting Office report entitled "FDA Should Reduce Expensive Antibiotic Testing and Charge Fees Which More Closely Reflect Cost of Certification" (B–203287, October 28, 1981), it was demonstrated that the rejection rate for batches of antibiotic drugs for FY '72 through FY '80 decreased from 0.70 to 0.16 percent. Specifically, by antibiotic class, the rejection rates for FY '77 through FY '80 have averaged: (1) Less than 1 percent for otic and ophthalmic products for human use, no rejections for animal use; (2) less than 1 percent for oral products for human use, less than 1 percent for animal use; (3) less than 1 percent for injectable products for human use, no rejections for animal use; and (4) approximately 1 percent for bulk drug for human and animal use. Thus, FDA finds that the manufacturers of antibiotic drugs have demonstrated a high level of consistency in the quality of their manufacture over the past several years.

The agency has tentatively concluded, therefore, that the high level of compliance with existing monograph requirements demonstrated by manufacturers of antibiotic drugs for human and animal use meets the requirements for consistency in sections 507(c) and 512(n)(3) of the act and warrants exempting all classes of antibiotic drugs, including bulk as well as finished dosage forms, from batch certification. The agency proposes that (1) section 433.1 be revised to provide a general exemption from batch certification of all antibiotic drugs for human use, and (2) a new § 510.520 (21 CFR 510.520) be established to provide a corresponding exemption for all antibiotic drugs for animal use subject to section 512(n) of the act.

Requirements for Exempted Antibiotic Drugs

Under these proposed regulations, manufacturers of antibiotic drugs for human and animal use would be exempt from obtaining FDA's certification of each manufactured batch before marketing. Manufacturers would not be required to submit to FDA samples and test results for individual batches and could distribute these drugs without FDA's notification that a specific batch is certified.

Exemption from certification would not affect other regulations to which antibiotic drugs are subject. Antibiotic drugs would continue to be required to meet all standards of identity, strength, quality, and purity under the appropriate antibiotic monographs. Manufacturers would also be required to continue to conform to all applicable provisions of the current good manufacturing practice (CGMP) regulations. FDA would continue to inspect establishments for compliance with CGMP requirements and to survey products in the marketplace through routine sampling and testing programs. These mechaniams, together with the requirements under the new drug provisions of section 505 (21 U.S.C. 355) and the new animal drug provisions of section 512(n) of the act (discussed later under "New Drug Status"), will be adequate, in FDA's view, to ensure the continued quality of these drugs, just as similar mechanisms are currently satisfactory to ensure the quality of nonantibiotic drugs. The final rule would not affect existing requirements for premarket approval of new drugs, for approval of any proposed changes in the conditions of approved applications, or for reporting of adverse experiences with these drugs.

New Drug Status

In accordance with section 507(e) of the act, antibiotic drugs for human use exempted from batch certification would be new drugs subject to section 505 of the act. To implement that requirement, the agency would apply the same rules and procedures that were adopted in connection with the exemption of dermatologic and vaginal products. The exemption of any approved antibiotic drug product for human use from the certification requirements of section 502(1) (21 U.S.C. 352(1)) and section 507 of the act would be equivalent to the approval of a new drug application (NDA) for the product under section 505 of the act. Under proposed § 433.1 of the regulation, the agency would continue to require the submission of an antibiotic Form 5 application from any person seeking approval to market a new antibiotic drug for human use for which no monograph exists, and an antibiotic Form 6 application from any person seeking approval to market an antibiotic drug for human use for which there is an approved monograph. On the approval date of the antibiotic Form 5 or Form 6 application, the approved form, together with the information that accompanied it, would be considered an approved NDA or abbreviated new drug application (ANDA), respectively. Thus, on the date an antibiotic Form 5 or Form 6 application would be approved for an antibiotic drug for human use, the approved product would be made subject to the new drug requirements of section 505 of the act and would be exempt from the certification requirements of section 507 of the act.

As of the effective date of the final rule based on this proposal, moreover, all approved antibiotic Form 5 applications for antibiotic drugs for human use on file with FDA would be deemed to be approved NDA's under § 314.1(a) (21 CFR 314.1(a)). Previously approved antibiotic Form 6 applications (except those for bulk antibiotic drug substances, discussed later under "Bulk Antibiotic Drugs") for these antibiotic drugs would be deemed to be approved ANDA's under § 314.1(f).

Under section 512(n)(1) of the act, antibiotic drugs for animal use are required to be the subject of approved new animal drug applications (NADA's) under section 512(b) of the act. Thus, exemption from certification would not change the new animal drug status of these animal antibiotic drugs. The agency would continue to require the submission of an NADA from any person seeking approval to market a new antibiotic drug product for animal use subject to section 512(n) of the act.

The exemption of antibiotic drugs from certification would not, as a practical matter, change the practices the agency has followed in approving the marketing of antibiotic drugs by original and subsequent manufacturers. These practices would be retained because they would be needed if manufacturers request certification (discussed later under "Manufacturers' Requests for Certification") or if FDA determines, under the provisions of the regulations, that it needs to reimpose certification for particular antibiotic drugs or classes of antibiotic drugs. FDA would continue, therefore, to retain in the Code of Federal Regulations the regulations (monographs) under which these antibiotic drugs have been approved in the past. These will serve as public standards and, as contemplated by section 507(e), as standards for drug quality, packaging, and labeling for purposes of enforcement of the adulteration and misbranding sections of the act, sections 501(b) and 502(g) (21 U.S.C. 351(b) and 352(g)). The regulations will also describe the conditions for certification for manufacturers who elect to request batch certification of antibiotic drugs as provided for in sections 507(c) and 512(n)(3) of the act. As new antibiotic drugs are approved under an applicable antibiotic Form 5 or Form 6 application or new animal drug application, the regulations would be amended to include appropriate monographs. Subsequent manufacturers of antibiotic

drugs for human use would be permitted, as they are now, to market equivalents of new antibiotic drugs before publication in the **Federal Register** of the appropriate monograph, which would still follow by a short period of time approval of the antibiotic Form 5 application.

In the case of antibiotic drugs for animal use, section 512(i) of the act requires the approval of an NADA to be in the form of a regulation published in the **Federal Register**. Marketing of antibiotic drugs for animal use would continue to be contingent upon publication of the appropriate regulation.

Bulk Antibiotic Drugs

Because FDA reviews data about new drug substances in the context of its review of an application for a new drug product, FDA accepts applications only for finished dosage forms, such as tablets, capsules, or solutions. A manufacturer's data establishing the safety of ingredients, including bulk drug substances, that may be used in new drugs are submitted to the agency in the form of a so-called "drug master file." A drug master file is a body of information that a person (the drug master file holder) submits to the agency permitting its holder to incorporate the information by reference in subsequent applications or submissions to the agency without having to submit repeatedly individual copies of the information. FDA ordinarily neither reviews nor approves or disapproves submissions to a drug master file.

In the case of antibiotics, the agency now certifies bulk antibiotic drug substances, as well as antibiotic drug products, based on antibiotic Form 5 or Form 6 applications. The agency's review and approval of requests for certification of bulk antibiotic drug substances stems from the history of the certification requirements themselves. The rudimentary technology associated with the manufacture of early antibiotic drugs led to the belief that they had a greater potential for quality deficiencies than other drugs. Because levels of potency and impurities in bulk antibiotic drug substances could be more easily determined before they were incorporated into finished dosage forms, the agency started the practice of certifying bulk antibiotic drug substances through the approval of antibiotic Form 5 or Form 6 applications.

Consistent with the agency's determination that the current high quality of antibiotic drugs in general obviates the necessity for batch certification, it is unnecessary to continue the policy of reviewing and approving antibiotic Form 5 or Form 6 applications for bulk antibiotic drug substances. Therefore, on the effective date of the final regulations, all approved antibiotic Form 5 or Form 6 applications for bulk antibiotic drug substances would be incorporated into the drug master file system. After the effective date of the final regulations, all data and other information relating to bulk antibiotic drug substances would be accepted by the agency in the form of a drug master file. (The agency would then proceed to withdraw approval of antibiotic Form 5 or Form 6 applications for bulk antibiotic drug substances that were converted to drug master files.) As in the case of nonantibiotic drugs, data on bulk antibiotics would be reviewed in the context of the agency's review of an application for a new antibiotic drug product. The disclosure of data and information contained in an antibiotic drug master file would be governed by § 431.71 (21 CFR 431.71) (discussed below under "Disclosure of Data and Information in an Antibiotic NDA or ANDA File").

Export of Antibiotic Drug Products

The proposal would not change current policy concerning the export of uncertified antibiotic drugs. Under the proposal, antibiotic drugs for human use that meet the conditions of § 433.1(b) would be deemed approved under section 505 of the act, and, therefore, exportable similarly to other approved new drugs. However, as the new drug provisions of the act would apply to antibiotic drugs for human use only as of the date of approval of the antibiotic Form 5 or Form 6 application, antibiotic drugs that are not yet approved, and thus not yet exempted from certification under § 433.1(b), would remain subject to all provisions governing certifiable antibiotic drugs, including section 502(l) and the export provisions of section 801(d) of the act. The conditions for export of antibiotic drugs for animal use would continue to be governed by the separate statutory restrictions contained in section 801(d), which prohibit the export of a new animal drug that is unsafe within the meaning of section 512 of the act.

Disclosure of Data and Information in an Antibiotic NDA or ANDA File

The current regulations allow public disclosure of data and information contained in the file of an approved human antibiotic drug, including all safety and effectiveness data and information (21 CFR 431.71). The agency has decided that exempting antibiotic drugs from certification does not require a change in the current rule. As subsequent manufacturers of new antibiotic drugs would continue to be able to obtain FDA approval for them if the products conform to the applicable monographs, the reasons currently justifying disclosure of safety and effectiveness data under § 431.71 would likewise continue to apply, even though certification would no longer be required. The same disclosure policy would also continue to apply to safety and effectiveness data for bulk antibiotic substances. Antibiotic drugs for animal use subject to section 512(n) of the act will continue to be subject to the same disclosure regulations as are other new animal drugs, as specified in § 514.10 (21 CFR 514.10).

Drug Products Subject to Drug Reviews

Any final rule issued under this proposal would not affect findings under the Drug Efficacy Study Implementation (DESI) review or the Over-the-Counter Drug Review for Human Drugs, and any drug product subject to requirements as a result of either of those reviews would still be required to conform to them. Insofar as any such requirements might conflict with the provisions of a final rule based on this proposal, the former would prevail. If an antibiotic drug product whose effectiveness has not been resolved in the DESI program were approved through the proposed procedure of conferring NDA or ANDA approval when the final regulation becomes effective, it would have the same status as that of any other less-than-effective DESI drug that is the subject of an approved or effective NDA under the transitional provisions (section 107(c), 76 Stat. 780) of the 1962 Drug Amendments to the act.

As previously stated, antibiotic drug products for animal use are currently required to be the subject of approved new animal drug applications. Therefore, the status of any of these still subject to FDA's implementation of the National Academy of Sciences/National Research Council review remains unchanged.

Reimposition of Certification

The regulatory scheme would include provisions for the reimposition of certification for particular antibiotic drugs or for classes of antibiotic drugs if the agency finds that certification becomes necessary to ensure safety and efficacy of use. To accomplish this, the agency is proposing to continue to follow the procedures of § 433.2.

The reimposition of certification for cause was clearly contemplated by Congress in enacting section 507(c) of the act. See, S. Rep. No. 410, 79th Cong.,

1st Sess. 3 (1945). Specific products would be selected for either voluntary or mandatory certification if an industry-wide quality problem is found to exist and the problem is believed to pose as high potential for health risk. Certification would only be required if it is the best approach to quality assurance. In this case, the requirement for certification would be short-term and would be eliminated once the problem is resolved. Technical or isolated violations of monographs or current good manufacturing practice requirements would be dealt with under the adulteration and misbranding provision of the act. FDA is accordingly reproposing § 433.2 for comment. The animal drug regulations are also proposed to be amended to provide a new § 510.521 (21 CFR 510.521), to contain similar provisions.

Refusal to Approve or Withdrawal of Approval of Antibiotic Drugs

To be exempt from certification under the conditions of § 433.1(b) of this proposal, an antibiotic drug for human use must be the subject of an approved antibiotic Form 5 or Form 6 application. Until the date of the approval of the antibiotic Form 5 or Form 6 application, antibiotic drugs for human use remain subject to all provisions governing certifiable antibiotic drugs. Thus, refusals to approve antibiotic Form 5 or Form 6 applications would continue to be the subject of current antibiotic drug regulations issued under section 507 of the act and requirements under 21 CFR 430.20.

Antibiotic drugs for human use that meet the conditions of § 433.1(b) of the proposal would be deemed approved under section 505 of the act. Thus, withdrawal of approvals for these antibiotic drugs would be subject to the provisions of section 505(e) of the act, including those pertaining to imminent hazard authority, and requirements under 21 CFR 314.115 and 314.116.

Exemption from certification under section 512(n)(3) of the act would not change the new animal drug status of antibiotic drugs for animal use. Accordingly, refusals to approve and withdrawal of approvals would continue to be the subject of requirements under 21 CFR 514.111 and 514.115, as applicable.

Interim Certification Procedures: Discretionary Replication of Manufacturer-Conducted Tests for Antibiotic Drugs

On several occasions in the past, the agency has been informed by manufacturers that the length of time that it has taken to obtain certification delayed the distribution of products and sometimes resulted in unnecessary disruption in the supply of certain antibiotic drug products to the marketplace. In the past, the agency has responded to this problem by issuing a certificate or release based only upon a manufacturer's test results and before the agency's replication of the manufacturer's tests. Upon completion of the agency's testing, the certificate or release was amended and reissued based upon the agency's test results.

The agency will adopt a new policy in order to avoid any potential operational difficulties in FDA's laboratory during the pendency of this proposed rule which might result in long delays in certification and unnecessary disruption in the supply of some antibiotic drug products to the marketplace.

The agency has conducted a review of the certification process with the objective of initiating procedures to avoid these delays and shortages. Based on this review, the agency has decided to adopt an interim policy of discretionary replication of manufacturer tests to avoid interruption of supplies of antibiotic drug products. This interim policy will be announced in the **Federal Register** of May 11, 1982. Under this interim policy, if batch certification submissions of any antibiotic drug product exceed the agency laboratory's capacity to perform all replicate testing within usual and customary time frames, the agency will not, for randomly selected batches, replicate some or all of the manufacturers' tests. Thus, the agency may issue a certificate of certification or release for a batch of an antibiotic drug product based solely or in part on manufacturers' test results, without agency replication. As it has been done in the past, when the availability of facilities permits, the agency may replicate the manufacturer's tests at a later time, and amend and reissue certificates issued on the basis of manufacturer test results alone.

This interim policy will not require the submission of additional data by persons requesting certification or release of antibiotic drug products above that which is routinely received with each request for batch certification or release. The agency believes that this interim policy will prevent disruption in the supply of antibiotics to the marketplace caused by certification delays and, because of the high degree of industry compliance in this area, will not compromise the safety or efficacy of these drug products. The agency specifically requests comments on this new interim policy. The comments will be considered in determining whether revisions of the interim policy are warranted.

Manufacturers' Requests for Certification

Under section 507(c) of the act, when an antibiotic drug has been exempted from the requirement of certification, a manufacturer may, in its discretion, still obtain certification of a batch or batches of that drug if the manufacturer applies for and meets the requirements for certification. Because the agency has determined that replication testing is not necessary to ensure the safety and efficacy of the exempted drugs, the agency will not use its limited laboratory facilities to replicate the manufacturer's tests of these drugs but will base certification on a review of the results of the manufacturer's tests. Appropriate fees will be charged for the certification.

Antibiotic Susceptibility Devices

Certain antibiotic susceptibility devices (e.g., antimicrobial susceptibility test discs and tests powders) are subject to section 507 of the act. Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295), these products were considered drugs. Although they now are considered devices due to the amendments' broadened definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)), another provision of the 1976 amendments (section 520(1) of the act) states that a device intended for human use which was subject to the requirements of section 507 on the amendments date of enactment (May 28, 1976) continues to be subject to these requirements until the effective date of one of the following: a regulation classifying the device into class I (general controls), a performance standard for the device if it is classified into class II (performance standards), or a requirement to have in effect in approved premarket approval application if it is classified into class III (premarket approval). (See 42 FR 63472; December 16, 1977.) In the **Federal Register** of April 22, 1980 (45 FR 27204, 27211, and 27213), FDA proposed to classify into class II antimicrobial susceptibility test discs and test powders.

Because manufacturers of antibiotic susceptibility devices that are now subject to certification have demonstrated consistently high quality in the production of these devices, sufficient to ensure their safety and efficacy of use, FDA is proposing under section 507(c) of the act to except all antibiotic susceptibility devices from

batch certification requirements. Those devices that are now subject to requirements under section 507 of the act other than batch certification would continue to be subject to such other requirements. Furthermore, all antibiotic susceptibility devices would, of course, continue to be subject to the other statutory and regulatory requirements applicable to devices. After consideration of the comments received on this proposal, FDA will publish a regulation adding to Title 21, Chapter I, Subchapter H, Code of Federal Regulations, the necessary exempting provisions for antibiotic susceptibility devices. FDA also will explain in the preamble to the regulation how those devices will be regulated.

Pertinent background data on which the agency relies in proposing these amendments are on public display in the Dockets Management Branch (address above).

The agency has determined under 21 CFR 25.24(b)(32) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has considered the economic impact of this proposed rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would eliminate batch certification costs for the manufacturers of antibiotic drugs and antibiotic susceptibility devices. The fees totaled approximately $6.1 million in FY '81 for certification of about 19,000 batches of antibiotic drugs and devices. Approximately $1 million of these fees were paid by 84 small pharmaceutical and device manufacturers. The elimination of these fees, although beneficial to both large and small firms, is a comparatively small financial consideration in the manufacture of antibiotic drugs and antibiotic susceptibility devices, whose total sales are estimated to exceed $1 billion per year. Accordingly, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Because this proposed rule is subject to 5 U.S.C. 556 and 557, it is not subject to Executive Order 12291.

List of Subjects in 21 CFR

Part 314

Administrative practice and procedure, Drugs.

Part 433

Antibiotics, Labeling.

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 512(n), 701 (f) and (g), 52 Stat. 1050-1053 as amended, 1055-1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350-351 (21 U.S.C. 355, 357, 360b(n), 371 (f) and (g))) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), it is proposed that Parts 314, 433, and 510 be amended as follows:

PART 314—NEW DRUG APPLICATIONS

1. Part 314 is amended in § 314.14 by adding new paragraph (j), to read as follows:

§ 314.14 Confidentiality of data and information in a new drug application (NDA) file.

* * * * *

(j) The availability for public disclosure of any record in a file for an antibiotic drug that is exempt from certification under § 433.1 of this chapter shall be determined in accordance with § 431.71 of this chapter.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

2. Part 433 is amended:

a. By revising § 433.1, to read as follows:

§ 433.1 Exemption of antibiotic drugs for human use from batch certification requirements.

(a) Antibiotic drugs for human use are exempt from the batch certification requirements of Part 431 of this chapter if the conditions of this section are met.

(b) The conditions are as follows:

(1) The antibiotic drug is approved for marketing under an appropriate antibiotic Form 5 or Form 6 application.

(2) The antibiotic drug is packaged and labeled for dispensing in accordance with the applicable regulation (monograph) in this chapter except where other labeling has been approved in an applicable antibiotic Form 5 or Form 6 application.

(3) The bulk antibiotic drug used in preparing the antibiotic drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulation (monograph) in this chapter except where other standards have been approved in an applicable antibiotic Form 5 or Form 6 application.

(4) The antibiotic drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulation (monograph) in this chapter except where other standards have been approved in an applicable antibiotic Form 5 or Form 6 application.

(c) In accordance with the provisions of section 507(e) of the act, an antibiotic-containing drug for human use exempt from the requirements for batch certification under this section is subject following its approval to section 505 of the act and applicable regulations for new drugs, generally parts 310 through 314 of this chapter. For each antibiotic drug subject to an exemption under this section:

(1) An approved antibiotic Form 5 application is regarded to be an approved new drug application under § 314.1(a) of this chapter.

(2) An approved antibiotic Form 6 application is regarded to be an approved abbreviated new drug application under § 314.1(f) of this chapter, except that an antibiotic Form 6 application for a bulk antibiotic drug substance approved before the effective date of this section shall be considered a drug master file.

(d) Nothing in this section prevents a manufacturer from applying for batch certification of an antibiotic drug for human use subject to an exemption under this section as provided in section 507(c) of the act.

(e) All exemptions from batch certification requirements for antibiotic drugs for human use under this section are subject to the conditions of effectiveness under § 433.2.

(f) Reporting/recordkeeping requirements contained in this Part 433 have been approved by the Office of Management and Budget and assigned approval numbers 0910-0007, 0910-0009, and 0910-0055.

b. By revising § 433.2, to read as follows:

§ 433.2 Conditions on the effectiveness of exemptions of antibiotic drugs for human use from batch certification requirements.

(a) If at any time after an exemption from batch certification requirements for an antibiotic drug for human use has been granted, the Commissioner finds on the basis of new information before the agency with respect to such

exempted drug, evaluated together with the evidence available to the agency when such exemption was granted, that certification of each batch is necessary to ensure its safety and efficacy of use, the Commissioner shall act immediately to revoke all exemptions from batch certification requirements granted for such drug.

(b) If the Commissioner finds that the person granted an exemption from batch certification requirements for an antibiotic drug for human use has failed to comply with the requirements of section 505 of the act and the regulations promulgated thereunder; or if the Commissioner finds that the requirements of § 433.1 have not been met; or if the Commissioner finds that the petition for exemption from batch certification contains any false statements of fact, the Commissioner may revoke the exemption from batch certification requirements immediately and require batch certification of the drug until such person shows adequate cause why the exemption from batch certification requirements should be reinstated.

(c) If the Commissioner repeals or suspends an exemption from batch certification requirements for an antibiotic drug for human use, a notice to that effect and the reasons therefor will be published in the **Federal Register.**

(d) Any person who contests the revocation or suspension or denial of reinstatement of an exemption from batch certification requirements for an antibiotic drug for human use shall have an opportunity for a regulatory hearing before the Food and Drug Administration under Part 16 of this chapter.

PART 510—NEW ANIMAL DRUGS

3. Part 510 is amended:

a. By adding new § 510.520, to read as follows:

§ 510.520 Exemption from batch certification requirements for antibiotic drugs for animal use subject to section 512(n) of the act.

(a) In addition to the exemptions from certification provided in §§ 510.505, 510.510, and 510.515, antibiotic drugs subject to section 512(n) of the act are also exempt from the batch certification requirements under §§ 514.50 and 514.51 of this chapter, if the following conditions are met:

(1) The antibiotic drug is the subject of a new animal drug application approved under § 514.105 of this chapter.

(2) The antibiotic drug is packaged and labeled in accordance with the conditions of marketing described in the approved new animal drug application.

(3) The bulk antibiotic drug used in preparing the antibiotic drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulation (monograph) in this chapter.

(4) The antibiotic drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulation (monograph) in this chapter.

(b) Nothing in this section prevents a manufacturer from applying for batch certification of an antibiotic drug for animal use subject to an exemption under this section as provided in section 512(n)(3) of the act.

(c) All exemptions from batch certification requirements for antibiotic drugs for animal use under this section are subject to the conditions of effectiveness under § 510.521.

(d) Reporting/recordkeeping requirements contained in this Part 510 have been approved by the Office of Management and Budget and assigned approval numbers 0910–0007, 0910–0009, and 0910–0032.

b. By adding new § 510.521, to read as follows:

§ 510.521 Conditions on the effectiveness of exemptions of antibiotic drugs for animal use from batch certification requirements.

(a) If at any time after an exemption from batch certification requirements for an antibiotic drug for animal use has been granted, the Commissioner finds on the basis of new information before the agency with respect to such exempted drug, evaluated together with the evidence available to the agency when such exemption was granted, that certification of each batch is necessary to ensure its safety and efficacy of use, the Commissioner shall act immediately to revoke all exemptions from batch certification requirements granted for such drug.

(b) If the Commissioner finds that the person granted an exemption from batch certification requirements for an antibiotic drug for animal use subject to section 512(n) of the act has failed to comply with the requirements of section 512 of the act and the regulations promulgated thereunder; or if the Commissioner finds that the requirements of § 510.520 have not been met; or if the Commissioner finds that the petition for exemption from batch certification contains any false statements of fact, the Commissioner may revoke the exemption from batch certification requirements immediately and require batch certification of the drug until such person shows adequate cause why the exemption from batch certification requirements should be reinstated.

(c) If the Commissioner repeals or suspends an exemption from batch certification requirements for an antibiotic drug for animal use, a notice to that effect and the reasons therefor will be published in the **Federal Register.**

(d) Any person who contests the revocation or suspension or denial of reinstatement of an exemption from batch certification requirements for an antibiotic drug for animal use shall have an opportunity for a regulatory hearing before the Food and Drug Administration under Part 16 of this chapter.

The Commissioner has determined, under § 10.40(d) of the regulations (21 CFR 10.40(d)), that good cause exists for a comment period of 30 days rather than the usual 60 days. Nor will any extension of the 30-day comment period be granted. In December 1981, FDA publicly announced its plan to phase out the antibiotic certification program because it is no longer necessary to protect the public health. The President's proposed budget for fiscal year 1983, transmitted to Congress on February 8, 1982, contemplates that the continued need for the antibiotic certification program will receive early consideration. Prompt completion of this rulemaking would facilitate the orderly phase-out of the antibiotic certification program if the regulations are adopted as proposed. The phase-out would include the difficult task of accomplishing a reduction in force due to abolishment of positions in the program. Accordingly, a 30-day comment period is justified.

Interested persons may, on or before June 7, 1982 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received

comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before May 17, 1982 submit to the Dockets Management Branch (address above) a request for an informal conference. The participants in an informal conference, if one is held, will have until June 7, 1982, or 10 days after the day of the conference, whichever is later, to submit their comments.

Dated: March 10, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: April 30, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/MA	LABOR		DOT/MA	LABOR
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DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing May 3, 1982

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S. 266/Pub. L. 97–174 Veterans' Administration and Department of Defense Health Resources Sharing and Emergency Operations Act (May 4, 1982; 96 Stat. 70) Price: $1.75.

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Monday
May 10, 1982

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Rules and Regulations

Federal Register
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Monday, May 10, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

Organization, Functions and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization of the Animal and Plant Health Inspection Service (APHIS) by transferring the Agency's Equal Employment Opportunity Staff (EEO) from the Office of the Administrator to the Human Resources Division (HRD) under the direction of the Deputy Administrator for Management, and makes other such functional changes in the Agency's organizational structure as are concerned with furnishing personnel services to employees in international programs and the responsibility for negotiating and implementing cooperative agreements. In addition, a new address is inserted for Veterinary Services Program's North Central Regional Office.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, Hyattsville, MD 20782 (301–436–6466).

SUPPLEMENTARY INFORMATION: Over the last several years, APHIS has made steady gains in EEO programs. Managers who are directly responsible for these gains depend on the EEO staff, servicing personnel officers, and many employees with collateral duty responsibilities in EEO programs. The need for coordination and cooperation is the greatest between the EEO staff and the personnel management programs of HRD. By combining the EEO staff with HRD, APHIS will be ensuring a totally coordinated approach to carrying out a comprehensive personnel management program. By organizing the EEO programs within HRD, more resources, information, and qualified staff will be directly available to the EEO Manager in carrying out the assigned functions. In addition, the responsibility for furnishing personnel services to personnel stationed at foreign duty posts is transferred from the International Programs Support Staff of HRD to the Field Servicing Office. Finally, responsibility for negotiating and implementing cooperative agreements is being transferred from the Administrative Services Division to the Budget and Accounting Division. APHIS believes that this alignment of organizational functions conforms to the mission of the Agency and that placing these functional responsibilities as indicated will enable APHIS to serve the public more efficiently and therefore, the statement of organization, functions and delegations of authority for APHIS is being amended as outlined.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Organization and functions (Government Agencies).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 reads as follows:

Authority: 5 U.S.C. 301.

2. Section 371.1 is amended by revising paragraphs (b) and (c)(2) to read as follows:

§ 371.1 General statement.

* * * * *

(b) *Central Office.* The central offices of APHIS are located at Washington, D.C. and Hyattsville, Maryland, and consist of the Office of the Administrator, Associate Administrator, and three Deputy Administrators as follows:

Office of the Administrator
Information Division
Associate Administrator
Deputy Administrator, Plant Protection and Quarantine
Deputy Administrator, Veterinary Services
Deputy Administrator for Management

(c) * * *

(2) *Veterinary Services.*

Laboratories

National Veterinary Services Laboratories, P.O. Box 844, Ames, IA 50010.

Regions

North Central: 317 Inverness Way South, Englewood, CO 80112
Northern: Bldg. 12, GSA Depot, Scotia, NY 12302
Southeastern: 700 Twiggs St., Rm. 821, Tampa, FL 33602
South Central: 221 West Lancaster Ave., Suite 310, Ft. Worth, TX 76102
Western: 245 E. Liberty St., Rm. 300, Reno, NV 89501

3. Section 371.2 is amended by revising paragraph (a) as follows and by removing and reserving paragraph (f).

§ 371.2 The Office of the Administrator.

(a) *The Administrator.* The Administrator of APHIS, under the direction of the Assistant Secretary for Marketing and Inspection Services, formulates, directs, and supervises the execution of APHIS policies, programs and activities. The Administrator is authorized to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order or instruction required by or authorized by law and deemed by the Administrator to be necessary and proper to the discharge of the functions assigned to APHIS and to delegate, and provide for redelegation of authority to appropriate officers and employees consistent with, and with due regard to the continuing responsibility for the proper discharge of delegations made by the Administrator. Delegations and

provisions for redelegations are stated in Section 371.6.

* * * * *

(f) [Reserved]

* * * * *

4. Section 371.5 is amended by adding a new paragraph (a)(5) and by revising paragraphs (b) (2), (3) and (4), (c)(2), and (g)(2), to read as follows:

§ 371.5 Administrative Management.

* * * * *

(a) * * *

(5) Planning and providing for the selection, documentation, negotiation, and implementation of cooperative agreements.

(b) * * *

(2) Planning, providing staff leadership and assistance to APHIS management and program leaders in the areas of EEO and Civil Rights, organization, position classification, salary and wage administration, employee development and training pertaining to executive and managerial development, supervisory, administrative and clerical training and related activities, recruitment and placement, safety, employee relations and labor management relations.

(3) Providing leadership and coordination to liaison activities associated with APHIS international programs.

(4) Providing leadership to and coordination of personnel management review and evaluation activities throughout APHIS to ensure that personnel management programs are effective, efficient, and in compliance with laws, regulations and policy.

* * * * *

(c) * * *

(2) Planning, providing staff leadership and operating administrative services and assisting APHIS managers and supervisors in: real and personnel property management and utilization, procurement of supplies, equipment, and services through competitive and noncompetitive procedures or from established contract sources, providing for the development and control of forms, records systems and disposal, correspondence, reports, records security, printing and distribution, mail and shuttle service, and providing overall direction and coordination for the design and construction of APHIS facilities, and directives management.

* * * * *

(g) * * *

(2) Within the provisions of applicable policies, procedures and laws, provides personnel, financial and administrative services to all APHIS personnel.

Issued at Washington, D.C., this 3rd day of May 1982.

Harry C. Mussman,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 82-12835 Filed 5-7-82; 8:45 am]

BILLING CODE 3410-07-M

Farmers Home Administration

7 CFR Parts 1861, 1872, and 1965

Security Servicing for Multiple Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises, renumbers, and updates its regulations relating to security servicing for multiple family housing loans made by the Agency. This action is taken to reflect changes which have previously occurred in the respective loan programs involving rural rental housing, farm labor housing, rural cooperative housing, and rural housing site loans. The regulation prescribes the actions necessary to process security servicing actions including transfers, reamortizations, consolidations, and other servicing actions affecting the FmHA loan security. These regulations will improve the response time by FmHA to requests from borrowers for servicing action by redelegating certain approval authorities to the field staff and establishing uniform procedures for processing these requests and the accompanying servicing actions.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Dean Greenwalt, Multiple Housing Servicing Officer, Multi-Family Housing Servicing and Property Management Division, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, S.W., Washington, D.C. 20250. Telephone: (202) 382–1615.

SUPPLEMENTARY INFORMATION:

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be nonmajor. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This instruction does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

CFDA numbers and titles: 10.405 Farm Labor Housing Loans and Grants, 10.411 Rural Housing Site Loans, 10.415 Rural Rental Housing Loans.

This action requires no increase in costs to the Government or the public. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action. We have determined that this regulation maximizes net benefit to society at the lowest net cost.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 19–190, an Environmental Impact Statement is not required.

FmHA revises and redesignates its regulations on security servicing for multiple family housing loans from Subpart C of Part 1861 to a new Subpart B of Part 1965. This regulation consolidates the security servicing activities relating to the rural rental housing (RRH), rural cooperative housing (RCH), farm labor housing (LH), and rural housing site (RHS) loan programs and prescribes servicing actions not adequately addressed by the current Agency servicing procedures which it replaces and coincides with program authorizations currently implemented.

The regulations relative to security servicing which are being replaced were issued in 1965 and are inadequate, often requiring special authorization from the National Office for certain routine servicing functions. These security servicing regulations are now consistent with the reassignment of responsibility for these loans from the FmHA County Office to the FmHA District Office. FmHA loans will be serviced according to the security instruments of the loan in a manner which will assure that the long term loan objectives are met and are consistent with the respective loan program requirements.

These regulations will also improve the Agency's ability to assure the continued availability of the facilities financed under the FmHA multiple housing programs to eligible users.

The alternatives to issuance of these regulations which were considered included not changing existing regulations, partial revision of selected portions of the current regulations, and allowing each FmHA State Office to establish procedures consistent with local practices. Each of these alternatives was rejected because it did not promote efficiency in Agency operations, assure long term compliance with the objectives for which the FmHA assistance was provided, and could lead to a proliferation of regulations and requirements more stringent than necessary and confusing to the public, especially borrowers with operations in more than one jurisdiction. On this basis, the Agency has determined that the chosen alternative maximized the net benefit to society at the lowest net cost.

On October 2, 1981 FmHA published in the Federal Register (46 FR 48693) a notice of proposed rulemaking setting forth the proposed changes in the regulations. Interested parties were given the opportunity to submit, not later than December 1, 1981 any comments, views, or recommendations regarding the proposed changes.

During the public comment period 33 individuals and organizations submitted comments. An additional 6 comments were received shortly after the closing date.

The final rule contains revisions to the proposed rule which reflect FmHA's consideration of the comments received as well as other information available to FmHA. The final regulation also reflects recent experiences between borrowers and the FmHA staff at the District, State, and National levels. The following is a discussion of the comments received and the significant changes made:

§ 1965.52. One comment was received requesting the definition of District Director be expanded to include the Area Loan Supervisor for Alaska. We concur with this comment and have incorporated it, as well as expanded the definition to include Island Directors for Hawaii.

§ 1965.55. It was suggested the amount of approval authority for the State Director be clarified. This suggestion has been incorporated to be consistent with specific loan program authorizations.

§ 1965.58. Three comments were received questioning the ability of the District Director to provide technical guidance to multiple housing borrowers. However, FmHA is providing training to State and District staffs and we believe adequate guidance is available from the State Director's staff to supplement the District Office in providing the technical guidance needed.

§ 1965.61. One comment was received suggesting FmHA permit leasing of RRH and LH projects to other nonprofit organizations, limited equity cooperatives, and limited partnerships. This change will not be made since one of the basic eligibility requirements to obtain these loans is the borrower's intention to own and operate the project for the purposes for which the loan was made.

§ 1965.63. Several comments were received suggesting this paragraph be revised to clarify the information needed to admit limited partners in a limited partnership with or without FmHA consent. This section has been revised to establish consistency with specific loan program regulations and the agreements executed to secure the indebtedness.

§ 1965.65. Comments on this section indicated that the proposed rule was unclear and would prevent the resale of RRH projects at a fair market value. Comments also suggested that payment of equity to the transferee and the subsequent increase in the return of investment would be disadvantageous to the tenants. It was further suggested transfers be allowed when, "not to the tenants' or Government's detriment", that additional explanation of the transfer terms be included, and that budgets and tenant certifications be directly assumed by the transferee. Additionally, individual comments were received suggesting that transfers be made to ineligible applicants only after the State Director has canvassed all other potentially eligible applicants, that junior liens on the project be allowed to secure equity payments to the transferor, that transfers only to obtain equity not be allowed, that all transfers made only to obtain equity be made subject to the prepayment restrictions, and that FmHA authorize the expanded use of deep subsidy payments (Rental Assistance) to assist tenants in projects where the transfer is made to obtain equity and the transferee's initial investment increases causing the rents to increase.

Based on these comments this section was clarified to permit the transfer of projects for equity but not to increase the amount of initial investment. This will reduce impact of transfers of ownership on tenants currently in the project. It has also been clarified to specifically allow the transferee to utilize the current tenant certifications. The position on equity payments has been clarified to allow greater flexibility for the transferor and transferee to negotiate the equity payments, provided neither the project nor project income are encumbered.

Other suggestions were not adopted due to the additional restrictions they would place on the transferor and transferee, or due to the increased costs to the Government and the need for increased involvement by FmHA in the transfer process.

§ 1965.68. Three comments were received. It was suggested that consolidation authorities be expanded to permit consolidation of all loans in the market area including those on scattered sites, without transfer of title, and that the loans be consolidated at the highest interest rate of any existing loan being consolidated. These suggestions were not adopted since we believe there is sufficient flexibility to accomplish the intended purposes of consolidation. Also consolidation of scattered projects in the market area is not practical since each project has already established an independent identity. Consolidation of loans is only practical at the time of transfer or new terms because a new account will be established for the specific borrower.

§ 1965.70. Comments received suggested reamortization be allowed at less than the thresholds established. This suggestion was rejected because the insignificant difference in the rental rates which would be passed on to the tenants as a result of the reamortization negate the possible limited benefits to the borrower.

§ 1965.75. This section has been revised to clarify the actions necessary to obtain the services of management agents or caretakers for abandoned projects.

§ 1965.77. One comment received suggested this section be expanded to include utility easements. It was rejected on the basis that utility easements are generally established prior to approval of the loan and thus considered when determining the market value. Subsequent utility easements serving other than the project could diminish the market value of the security and would therefore require adequate compensation before being authorized.

§ 1965.79. This section was revised to clarify the conditions for subordination of LH and RRH loans.

§ 1965.85. Three comments were received suggesting that quarterly delinquency reports be provided to the District Office. Presently, these reports are provided to the FmHA State Office for program monitoring and the information passed on to the District Office for implementation of the appropriate followup or servicing action. No further action is planned because the proposed regulations were consistent

with current agency policies and procedures.

§ 1965.90. Three comments were received. This section will not be changed to require additional restrictions on the prepayment of FmHA accounts. All loans approved after December 21, 1979 will remain subject to the prepayment restrictions as established to prevent any increase in the public reporting burden or unduly restrict free enterprise. Tenants who may be displaced as a result of prepayment will continue to be offered priority occupancy rights in other FmHA financed projects.

List of Subjects

7 CFR Part 1861

Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Loan programs—Housing and community development, Low and moderate income housing, Rental housing, Mortgages, Rural areas.

Therefore, for the reasons stated above, Chapter XVIII of Title 7, Code of Federal Regulations is amended as follows:

PART 1861—ROUTINE

1. Sections 1861.41—1861.48 (Subpart C) are Redesignated as Subpart B of Part 1965 and revised.

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

2. Paragraph (a) of § 1872.1 is revised to read as follows:

§ 1872.1 General.

(a) *Purpose.* The purpose of this subpart is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) loans to individuals, including loans on leasehold interests, and certain note-only cases, except Rural Rental Housing (RRH) and Labor Housing (LH) loans to individuals or to Business and Industrial (B&I) loans. This subpart does not apply to loans subject to an FmHA Contract or Guarantee.

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PART 1965—REAL PROPERTY

3. Subpart C of Part 1861 is revised and redesignated to a new Subpart B of Part 1965 which reads as follows:

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

Sec.
1965.51 General.
1965.52 Definitions.
1965.53—1965.54 [Reserved]
1965.55 Authority of State Director.
1965.56—1965.57 [Reserved]
1965.58 Responsibilities.
1965.59—1965.60 [Reserved]
1965.61 General loan servicing requirements.
1965.62 [Reserved]
1965.63 Issuance or transfer of stock, or change in membership or membership interest in organizations indebted to FmHA.
1965.64 [Reserved]
1965.65 Transfer of real estate security and assumption of loans.
1965.66—1965.67 [Reserved]
1965.68 Consolidation.
1965.69 [Reserved]
1965.70 Reamortization.
1965.71 [Reserved]
1965.72 Deceased borrower.
1965.73 Bankruptcy and insolvency.
1965.74 Divorce actions.
1965.75 Abandonment.
1965.76 [Reserved]
1965.77 Consent to sale or other disposition of security property.
1965.78 [Reserved]
1965.79 Subordinations.
1965.80 [Reserved]
1965.81 Severance agreements.
1965.82 [Reserved]
1965.83 Consent to junior liens.
1965.84 [Reserved]
1965.85 Default and liquidation.
1965.86 [Reserved]
1965.87 Miscellaneous security.
1965.88 [Reserved]
1965.89 Obtaining additional security for inadequately secured loans.
1965.90 Payment in full.
1965.91 Servicing loans in formerly eligible areas.
1965.92—1965.93 [Reserved]
1965.94 State Supplements.
1965.95 [Reserved]
1965.96 Nondiscrimination.
1965.97 Exception authority.
1965.98—1965.100 [Reserved]
Exhibit A—Notice of Prepayment

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.51 General.

This Subpart prescribes the policies, procedures, and authorizations for servicing and liquidating all Farmers Home Administration (FmHA) multiple housing type loans and labor housing grants. These loans include Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Farm Labor Housing (LH). The servicing functions described in this Subpart are for the purpose of assisting the borrower in meeting the objectives of the loan, repaying loans on schedule, complying with FmHA agreements and regulations, protecting the interest of FmHA, and maintaining the security property. Borrowers will be required to pay their debts to the FmHA and other creditors according to their agreements. Borrowers shall be required to operate their facilities according to FmHA regulations and applicable State and local laws and regulations. State Directors with the assistance of OGC should issue necessary State Supplements to assure compliance with State laws. After careful analysis, any borrower in default who does not evidence prospects of attaining successful operations within a reasonable time will have its loan liquidated according to authorizations contained in this Subpart and Subpart A of Part 1955.

§ 1965.52 Definitions.

(a) *FmHA.* "FmHA" means the United States of America acting through the Farmers Home Administration; it also includes FmHA's predecessor agencies.

(b) *OGC.* "OGC" means the Regional Attorney or the Attorney in charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(c) *Servicing.* "Servicing" includes the broad scope of activities undertaken by FmHA to see that the objectives of the loan are carried out; to assure compliance with the respective policies, procedures and authorizations set forth for each respective loan program; or to bring to a successful conclusion each loan or grant made by FmHA through transfer, sale, reamortization, payment or liquidation.

(d) *Borrowers.* "Borrowers" means all individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations which have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

(e) *Governing body.* "Governing body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(f) *District Director.* For the purpose of this Subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be

delegated responsibilities under this Subpart according to the provisions of Subpart F of Part 2006 (available in any FmHA office). In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition also includes the Area Supervisor and Island Directors and other qualified members of their staff in Alaska and Hawaii, respectively.

(g) *Note.* "Note" includes any note, bond, assumption agreement, or other evidence of indebtedness, including the obligations of labor housing grant only recipients operating under a grant agreement. All LH grant only recipients will be serviced in strict accordance with their grant agreement, appropriate program regulations, and this Subpart.

(h) *Mortgage.* "Mortgage" includes deeds of trust and similar real estate security instruments and where appropriate chattel security instruments.

(i) *Case file.* "Case file" includes the total cumulative records concerning a borrower.

§§ 1965.53—1965.54 [Reserved]

§ 1965.55 Authority of State Director.

(a) Each State Director is authorized to perform the following functions upon determining that the action will not be to the financial detriment of FmHA:

(1) Require additional security in accordance with § 1965.89 of this Subpart.

(2) Require borrowers to carry insurance of the types and amounts determined necessary on property mortgaged to the FmHA. Evidence of insurance is required for Multiple Housing loans according to the provisions of Subpart A of Part 1806 (FmHA Instruction 426.1).

(3) Approve the issuance or transfer of stock, change or transfer of membership, admittance of new or substitute partners, or withdrawal of partners from a partnership, provided the State Director determines that the requirements of § 1965.63 of this Subpart have been met, and that the change will not jeopardize the successful operation of the project, the soundness of the loan, or the eligibility of the borrower.

(4) Approve transfers with assumption of FmHA loan accounts when all development has been completed and the unpaid principal balance and accrued interest does not exceed the State Director's loan approval authority as set forth in Subpart A of Part 1901 for the type of loan(s) involved. Transfers will be processed according to § 1965.65 of this Subpart.

(5) Approve the reamortization of FmHA indebtedness that is within the State Director's loan approval authority as set forth in Subpart A of Part 1901 for the type of loans involved according to the provisions of § 1965.70 of this Subpart.

(6) Consent to the sale, exchange, or release of security property according to the applicable provisions of § 1965.77 of this Subpart.

(7) Accept prepayment of RRH, RCH and LH loans subject to the provisions of § 1965.90 of this Subpart.

(8) Approve subordination of FmHA lien position if the total debt against the security after the transaction is within the State Director's approval authority as set forth in Subpart A of Part 1901 for the type of loan(s) involved according to the provisions of § 1965.79 of this Subpart.

(9) Approve requests from borrowers for the creation of additional indebtedness on the security property. These approvals must take into account the provisions of loan resolutions or other agreements with FmHA and other existing creditors. If the proposed additional debt would make the total outstanding obligations of the borrower exceed the FmHA loan approval limit of the State Director as set forth in Subpart A of Part 1901, the borrower's request, complete documentation, and the State Director's recommendations must be sent to the National Office for prior review and authorization to approve.

(10) Renew existing security instruments after consulting with OGC.

(11) Approve, with the concurrence of OGC, changes in a borrower's legal organization such as revisions to certifications of limited partnership, partnership agreements, articles of incorporation or charter, bylaws, or trust agreements when the changes proposed will promote better borrower organization and business operation, and will not adversely affect the repayment of the loan, impair the security rights of the FmHA, or make the borrower ineligible for FmHA loan or grant assistance.

(12) Approve the borrower's execution, extension, renewal, modification, or cancellation of contracts of types not covered elsewhere in § 1965.55 when the State Director, with the legal advice of OGC, determines that the action is in the best interest of both the borrower and the FmHA; and, in the case of RRH, RCH, and LH projects, will not be detrimental to the tenants.

(13) Approve the extension or expansion of facilities and services when the action will best serve the interest of both the borrower and the FmHA, and will not be in conflict with the FmHA regulation under which the loan was made.

(14) Approve the lease of security property according to § 1965.61(e) of this Subpart.

(b) The State Director may reject any servicing request not in accordance with the guidelines of this Subpart.

(c) Any borrower directly and adversely affected by action under this subpart will be granted the appropriate appeal rights according to Subpart B of Part 1900. Any authority not specifically delegated to the State Director may be requested from the National Office. The requests must be submitted in writing to the National Office for prior authorization and must be consistent with the intent and requirements of each respective loan program. The request will be accompanied by the complete docket and the State Director's specific recommendations.

§§ 1965.56—1965.57 [Reserved]

§ 1965.58 Responsibilities.

(a) *District Directors.* (1) Keeping sufficiently informed of the borrower's operations to know whether they are operating successfully and complying with their obligations to the FmHA.

(2) Furnishing borrowers with information, notices, reminders, advice and assistance, and taking other actions regarding the loan obligations and compliance therewith as considered necessary to determine whether borrowers are operating successfully, are complying with their loan obligations, and are likely to continue with compliance.

(3) Promptly reporting to the State Director the failure of any borrower to comply with the terms and conditions of its agreements with FmHA after noncompliance has been brought to the attention of the borrower and recommended corrective action has not be taken.

(4) Furnishing training and technical guidance not readily available through other sources to borrowers to protect the FmHA's interests. This training and guidance may relate to business operations, project management, personnel training, membership activities, or any other phase which vitally affects the borrower's operations.

(5) Maintaining the Management System Card System according to Subpart A of Part 1905 (available in any FmHA office) to assure prompt compliance by borrowers with FmHA requirements relating to repayments, budgets and reports, taxes, insurance and bond renewals, reports required by State law or regulations as indicated in

State Supplements, security instrument expirations, and other items of loan and security servicing.

(6) Maintaining the official borrower case files according to the requirements of Subpart A of Part 2033 (available in any FmHA office).

(7) Prompt collection of loan obligations to the FmHA and servicing security for those loans.

(b) *State Directors.* (1) Coordinating and directing loan servicing activities relating to borrowers and performing other functions as prescribed by this Subpart.

(2) Designating appropriate State staff member(s) responsible for loan servicing, appraising and for providing District Directors with technical guidance, training and follow-up supervision to service loans.

(3) Administrative follow-up to ascertain that District Directors carry out their responsibilities.

(4) Coordination with OGC.

(5) Maintaining necessary liaison with State and local officials.

§§ 1965.59—1965.60 [Reserved]

§ 1965.61 General loan servicing requirements.

(a) *Payments.* Payments will be handled according to the applicable provisions of Subparts A and B of Part 1951, and Subparts D and E of Part 1944.

(b) *Borrower reports, audits, and analyses.* Borrower reports, audits, and analyses, including the approval or disapproval of annual operating budgets, requests for rent increases, and occupancy problems will be processed and handled according to Subpart C of Part 1930.

(c) *Maintenance.* Project maintenance is of utmost importance. All projects must be adequately maintained not only to protect the Government's interest, but also to attract potential clients (tenants for rental projects, purchasers for RHS). Maintenance should be reviewed during each supervisory visit and appropriate recommendations made to the borrower. The District Director will inspect the real estate security as required by Subpart C of Part 1930.

(d) *Actions by third parties affecting FmHA security.* Cases including third party action will be handled according to the provisions of § 1872.2(c) of Subpart A of Part 1872 (Paragraph II C of FmHA Instruction 465.1), except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) *Lease of security property.* The leasing of property (except to tenants for specific program purposes) serving as security for multiple housing loans and grants other than as indicated in this Section is not authorized. Approval of leases by the State Director is authorized in the following cases:

(1) *Leases to public housing authorities.* RRH or RCH borrowers may be permitted to continue leasing all or part of the housing facilities to a housing authority with the benefits of the HUD Section 23 leasing program as the leases are renewed. No new leases will be entered into. The lease will be on a form provided by the housing authority and must be on terms that will enable the borrower to continue the objectives of the loan and make payments on schedule.

(2) *Lease of a portion of the security property.* When the RRH or RCH borrower will continue to operate the facilities for the purpose for which the loan or grant was made, the State Director or his/her designee may approve the leasing of related facilities such as laundries, commissary stores, recreational facilities and community buildings, subject to the applicable provisions of § 1944.212 of Subpart E of Part 1944 and according to the following conditions:

(i) The lease is advantageous to the borrower and the tenants, and will not impair the Government's interest.

(ii) The amount of the consideration is adequate. The consideration must be sufficient to pay all prorated expenses and the prorated part of the loan amortization at the note rate of interest.

(iii) The lease should provide for restoration of the leased space to its original condition or a condition acceptable to the owner and FmHA.

(iv) Consent to the lease shall not exceed one year at a time.

(v) If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions from OGC or the U.S. Attorney as appropriate.

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to FmHA approval of the lease.

(vii) The authority to approve the lease of laundry facilities may be redelegated in writing to the District Director by the State Director.

(3) *Mineral leases.* Mineral leases will be handled according to § 1872.8(d) of Subpart A of Part 1872 (Paragraph VIII D of FmHA Instruction 465.1) except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

(4) *Processing.* When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form FmHA 465–1, "Application for Partial Release, Subordination or Consent," will be prepared.

(i) The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

(ii) The form will be submitted to the State Director, along with a copy of the lease, official borrower case files, the District Director's comments and recommendations, and any other information pertinent to the transaction.

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form FmHA 465–1, and provide additional servicing instructions to the District Director.

(f) *Consent of lienholders.* Before FmHA consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be obtained. The consent will include an agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

§ 1965.62 [Reserved]

§ 1965.63 Issuance or transfer of stock, or change in membership or membership interest in organizations indebted to FmHA.

Organizations which may be indebted to FmHA include, but not limited to, (1) public bodies, (2) broadly-based nonprofit corporations, (3) nonprofit organizations of farmworkers, (4) nonprofit organizations that are not broadly-based, such as those receiving LH loans prior to June 10, 1973, or those indebted for RHS loans, (5) associations of farmers, (6) consumer cooperatives, (7) profit and limited profit corporations, (8) trusts, (9) profit and limited profit partnerships, and (10) limited partnerships. This section describes the policy of FmHA in approving changes of membership, membership interest, or transfer or issuance of stock in these organizations, to determine the continued eligibility of the borrower entity. It *does not* cover the sale or exchange of title to the security property.

(a) *Broadly-based nonprofit corporations or nonprofit organizations of farmworkers.* FmHA consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to FmHA to change or transfer membership. Each organization, however, must maintain the number and type of members

required by its Articles of Incorporation and Bylaws. Organizations not maintaining the required membership will be serviced according to § 1965.63 (d) of this Subpart.

(b) *Other organizations.* Other organizations indebted to FmHA may or may not issue stock. They are, however, required by the loan agreement or resolution to obtain prior FmHA consent to transfer stock, to transfer any interest or to change any interest in the borrower. Therefore, when organizations with an existing loan request FmHA consent to: issue additional stock; transfer stock; change membership or membership interests; admit new or substitute general partners of any kind; withdraw general partners of any kind; alter the beneficiary of the trust; or, when such a change has taken place without FmHA consent, the District Director shall process Form FmHA 465–1 for submission to the State Director. The State Director is authorized under § 1965.55 (a) of this Subpart to approve or disapprove these transfers or changes on Form FmHA 465–1. For approval, the State Director must determine that the following conditions will be met:

(1) The borrower shall provide a listing showing the name, address, and percent of ownership of each member, stockholder, partner, or beneficiary of a trust that will have an interest in the organization.

(2) All new or substitute general partners, trustees, members, stockholders, or beneficiaries that will hold an interest in the organization in excess of 10 percent must submit a current, dated, and signed financial statement showing assets and liabilities, with information on the status and repayment schedule of each debt. In lieu of a financial statement, each limited partner in a limited partnership will submit a dated and signed statement certifying the approximate net worth of the limited partner. All financial statements submitted must comply with the reporting requirements set forth in Exhibit A–6 to Subpart E of Part 1944. A resume must also be submitted, together with a statement setting forth any identity of interest as described in Exhibit A–6 to Subpart E of Part 1944. The resume should also explain the past performance, experience, qualifications, and abilities of the individual or organization except for limited partners in a limited partnership, who are obtaining an interest in the borrower organization.

(3) The borrower must be unable to provide the housing or other facilities from its own resources and must be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the borrower to refinance the FmHA indebtedness and operate the project for amounts within the payment ability of those eligible to occupy the housing or benefit from the project. When tenants are benefiting from any FmHA or other Government subsidy program, the continued availability of the subsidy will be considered in making this decision. For profit and limited profit organizations, the assets of the individual general partners, members or stockholders will also be considered.

(4) This type of change may be permitted if the State Director determines that the transaction will not adversely affect the operations of the project. Liens may not be taken against the security. Payments on any debt incurred for the purchase of the stock or interest in the organization will *not* be considered authorized debt payments and will not be included in project operations as a budgeted expense.

(5) In the case of the sale of the interest of a general partner, or the admission of a substitute general partner, in either a limited partnership or a general partnership, the new or substituted general partner must agree to assume the responsibilities and obligation of the withdrawing general partner under the terms of the FmHA promissory note, mortgage, and the borrower's partnership agreements. This includes the assumptions of the personal liability, if any, of the withdrawing general partner. After consulting OGC, the State Director will require the new or substitute general partner to execute an agreement as follows for inclusion in position 5 of the official case file:

ASSUMPTION OF WITHDRAWING PARTNER'S OBLIGATIONS

In consideration for being approved by the Farmer's Home Administration (FmHA) for admission as a general partner into ———— (the partnership), the undersigned hereby assumes all responsibilities and obligations of ———— under the terms of the Partnership Agreement dated ————, the terms of (a) (all) note(s) or assumption agreement(s) dated ———— in the respective amount(s) of ————, and the terms of the FmHA security instrument(s) taken on the partnership property dated ———— and filed for record in the ———— office at

Document No. or Book and Page No.

Date

Signature of New or Substitute Partner

(6) Any stockholder, member, or partner personally liable for the FmHA indebtedness will not be released of liability unless the new stockholder, member, or partner is made personally liable for the FmHA debt on an agreement approved by OGC, and the State Director determines that the assets and net worth of the new stockholder, member, or partner are substantially the same as or greater than that of the party to be released.

(7) The State Director must determine that approval of the transaction will not adversely affect the FmHA program in the area, that the objectives of the loan will not be changed, and that the successful operation of the project will not be jeopardized. In making this determination, the State Director must consider the past performance, experience, qualifications and abilities of any individual or organization obtaining an interest in the borrower organization, other than a limited partner in a limited partnership. However, the past performance, experience, qualifications and abilities of any individual or organization will be considered when that individual or organization is obtaining the majority interest of the limited partners in a limited partnership and the partnership agreement permits the limited partners to remove and replace the general partner by a consensus of the majority of the limited partners.

(8) For LH loans made to an association of farmers, the new member (stockholder) or members must be eligible farmers as described in Subpart D of Part 1944.

(9) For loans made to a Trust, any proposed changes in the beneficiary will be reviewed by OGC for compliance with program requirements before the State Director takes action on the borrower's request.

(c) *RCH consumer cooperatives.* Changes in the membership of RCH consumer cooperative borrowers will be processed according to the provisions of the Subscription Agreement and the Occupancy Agreement (Exhibits A and B to FmHA Instruction 444.7 (available in any FmHA office)).

(d) *Changes in required membership number.* Should the minimum number of required members in any organization fall below that prescribed by their organizational documents, the following actions will be taken:

(1) The District Director will provide the State Director with a complete written report of the circumstances including the organization's plan for obtaining additional membership and the continued operation of the project. The District Director should submit this report only after he or she has personally met with the governing body and found that they will not be able or willing to comply with FmHA

requirements. The report should be precise and include recommendations on further servicing actions.

(2) The State Director will review the report and evaluate the adverse effect the noncompliance will have on the loan. If it appears that the interest of the United States will be adversely affected, the State Director will forward the material together with appropriate comments and recommendations, to the Regional Attorney for review and guidance in the continued servicing or liquidation of the account as appropriate. The State Director will provide the District Director with instructions for servicing the account.

(e) *Unauthorized stock, partnership, or membership changes.* Unauthorized stock, partnership, or membership changes which the State Director cannot approve under the conditions of this section will be submitted to the National Office for handling.

§ 1965.64 [Reserved]

§ 1965.65 Transfer of real estate security and assumption of loans.

This section applies when there is an actual transfer of title to the security property and liability for the FmHA indebtedness is assumed by an organization or an individual who is not presently liable for the debt against the security property.

(a) *General.* Borrowers should be properly informed during loan processing that each applicant must have the ability and intention to own and operate the proposed housing project for the purposes for which the loan is made. Only RHS loans can be approved or closed for applicants that plan to sell their projects within a short period of time.

(1) When the mortgage or deed of trust requires FmHA consent to the sale or other transfer of real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the District Director should be contacted relative to the proposed sale or transfer.

(2) Proposed transfers must benefit the tenant and not be to the detriment of the Government to be approved. Transfers of projects solely to obtain equity within the first 5 years will not be authorized unless equity from the transfer is needed to remove a hardship which would have forced the borrower out of operation or seriously restricted the borrower's ability to successfully continue operations if the transfer had not been approved. All RRH transferees are subject to these provisions if ownership is again transferred within 5 years of their assumption of the FmHA loan. LH loans will only be transferred when they will continue to be used to provide housing for farm laborers as defined in Subpart D of Part 1944.

(3) If a proposed sale will not result in the FmHA account being paid in full, the District Director will explain the transfer requirements of this section as they relate to the transaction.

(4) In all cases, the purchaser is required to provide evidence of its inability to obtain credit elsewhere on rates and terms that will not cause rental rates in excess of what low- and moderate-income tenants could afford.

(b) *State Director authority.* The State Director is authorized under § 1965.55(a)(4) of this Subpart to approve initial and subsequent transfers to eligible and ineligible transferees with an appropriate assumption of the FmHA unpaid loan balance when the principal amount plus accrued interest is within the State Director's loan approval authority, subject to the following general conditions and requirements:

(1) Transfers will be made to either eligible or ineligible applicants. Eligible applicants are those applicants meeting all of the eligibility criteria as defined by the appropriate loan program regulations. Ineligible applicants are those applicants failing to meet the eligibility requirements for the respective loan type. Transfers to eligible applicants will receive perference over transfers to ineligible applicants, provided recovery to FmHA is not less than it would be if the transfer were to an ineligible applicant.

(i) Transfers to eligible applicants will generally be completed on the basis of same terms if the loan account is current or can be brought current when the transfer and assumption is closed.

(ii) Eligible applicants assuming loans which are delinquent and cannot be brought current at the time of closing, and transfers to ineligible applicants, will be transferred on the basis of new terms.

(2) If the authorized FmHA appraiser determines that the total secured FmHA debt(s) exceeds the present market value of the security, the transferee must assume an amount at least equal to the present market value less any prior liens. In those cases, the transferor will not be released from liability and the remaining debt will be processed according to the applicable provisions of Part 1864 (FmHA Instruction 456.1). Otherwise, the transferee will assume the total FmHA secured debt(s). Security must be adequate for the FmHA indebtedness being assumed. Security will be upgraded if necessary to meet FmHA standards.

(3) The transferor should not receive any equity payment unless the total unpaid FmHA indebtedness is assumed, all real estate taxes are current, and the FmHA loan payment and reserve account is on schedule at the time of transfer, less any authorized withdrawals. Any equity payment due the transferor should be paid in cash at the time of transfer or, if paid on terms, the terms and conditions must be documented in the file and the transferee must be able to show that the obligations can be met from outside sources of income without jeopardizing the operation of the project. Any equity payment to be made on terms shall not be considered an authorized debt payment of the project. Furthermore, any equity payment which includes an unsecured note is not authorized unless the approval official determines:

(i) No rental income will be used to make payments on the note.

(ii) No liens will attach either to the secured property or to revenue from operation of the property.

(iii) An assignment of project income will be taken by FmHA as additional security with the advice and guidance of OGC.

(iv) The reserve account is current.

(4) If a payment to the transferor is to be made in connection with the transfer, the total FmHA debt on the property must be assumed unless the payment received by the transferor is applied on a prior lien or to the portion of the transferor's FmHA debt not assumed. When the full amount of the FmHA secured debt is assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any equity payment be applied on those debts.

(5) There must be no lien, judgment, or other claims against the security being transferred other than those by FmHA and those authorized prior liens to which FmHA has previously agreed, unless prior written approval is obtained from the National Office.

(6) When the loan(s) is secured by both chattel and real estate, all chattel security must be transferred, sold, or liquidated by the time of closing the transfer of the real estate.

(7) The transferee must complete and submit Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for the State Director's approval.

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through the use of Form

FmHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," on the same rates and terms if the spouse is determined to be an eligible applicant according to the applicable provisions of the respective loan program and this Subpart.

(9) In the case of borrowers with a loan agreement or resolution, the transfer must be completed with the advice and closing instructions of the OGC.

(10) The rents can be increased to the tenants only if the provisions of paragraph IX of Exhibit B to Subpart C of Part 1930 are met. In considering any rent increase, the rents of comparable units in the community must be considered. In no case should the rents be higher than comparable rents in the area for units available to low and moderate income tenants.

(11) The transferee will be required to submit reports according to § 1930.124 of Subpart C of Part 1930.

(c) *Transfers to eligible applicants.* Transfers of security with an assumption of FmHA debts by transferees who are eligible applicants for the type of loan being assumed may be approved subject to the general conditions contained in § 1965.65(b) of this Subpart and the following:

(1) An eligible transferee will be required to make any necessary improvements to assure that the housing will be decent, safe and sanitary. Funds for such improvements may be from the reserve account being transferred, contributions by the transferee, or, if loan funds are available, from the use of an RRH or LH loan as appropriate.

(2) If the full debt is assumed at the same interest rate and terms, Form FmHA 460–9 will be executed by the transferee according to the Forms Manual Insert (FMI).

(3) The unpaid FmHA indebtedness being transferred should be current at the time of transfer. If this is not the case, the transfer may be authorized on new terms to remove any delinquency or to extend the existing loan repayment period to the extent possible, considering the remaining security. Transfers of rental property, on new terms may increase the interest rate to the current rate and extend the final due date to the maximum term authorized by the appropriate loan program. The new repayment period, however, cannot exceed the repayment period for a new loan of the type involved. To complete the transfer on new terms, the transferee may execute Form FmHA 460–5, "Assumption Agreement (New Terms)." (RRH loans being transferred on new terms may be consolidated under § 1965.68 of this Subpart). The interest rate charged in those cases will be as follows:

(i) All loans except LH loans will be transferred at the current rate being charged for those loans, or the note rate of interest, whichever is greater.

(ii) LH loans will be transferred at the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farmworkers, and broadly-based non-profit corporations for LH purposes may be at a one percent interest rate regardless of the rate specified in the note if the State Director determines that the reduction is necessary in order to maintain rental rates at a level affordable to the tenants. When the State Director determines that a transfer at one percent is necessary for other types of LH transferees, the case should be submitted to the National Office, with the State Director's recommendations and justifications for consideration.

(iii) Loans for RRH and RCH projects which are amortized on an annual payment basis and are transferred on new terms through the use of Form FmHA 460–5, shall be converted to a monthly payment amortization. This may be accomplished by changing the date to be inserted for item 15 of the Forms Manual Insert for Form FmHA 460–5 to the date which is one month from the effective date of Form FmHA 460–5. Also, the words "each January 1" on the fifth line of payment alternative (a) on the reverse of Form FmHA 460–5 should be deleted. In their place should be the word "the" followed by the numerical day of the month in which Form FmHA 460–9 is effective (or 28th, whichever is less), and the words "day of the month".

(4) For rental projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account, and any equipment purchased with project funds, will be transferred to the transferee. Any RA payments not received by the transferor, will be assigned to the transferee. Every attempt should be made to have the funds in the reserve account at the scheduled level and transferred to the transferee at the time of transfer. If the RRH transferee wishes to convert to the loan agreement/resolution format of Form FmHA 1944–33, "Loan Agreement", 1944–34, "Loan Agreement", or 1944–35, "Loan Resolution", as appropriate, the transferee may accomplish this by amending the existing loan agreement/resolution with the advice of OGC according to § 1965.65(c)(10) of this Subpart.

(5) Any excess development funds held in a supervised bank account must be refunded to the respective loan account upon receipt of the transfer request.

(6) A loan and/or grant may be made in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may *not* be used, however, to pay equity to a transferor.

(7) The transferee must prepare operating budgets, as required by the appropriate program regulations governing the kind of loan being transferred, covering the first partial year and the next full year's operation. The budgets must be realistic and reflect sufficient funds to pay operation and maintenance expenses, maintain any required reserve, and keep the FmHA account(s) current. The charges for the use of the facility or services must be within the payment ability of those it is intended to serve. A current utility allowance must also be prepared when required by program regulations.

(8) For transfers of RRH loan accounts, current executed tenant certifications using Form FmHA 444–8, "Tenant Certification," or a HUD approved form of "Certification or Recertification of Tenant Eligibility" for any tenants receiving Section 8 subsidy, must be on file with FmHA or provided for each tenant, as required by Paragraph VI E of Exhibit B to Subpart C of Part 1930, evidencing that the units are or will be occupied by eligible tenants when the transfer is closed.

(9) For transfers of RRH and LH loan accounts, all leases should also be assigned to the transferee no later than the date of closing.

(10) The proper type of loan agreement or loan resolution for the type of transferee involved must be in effect and secured by the mortgage or deed of trust at the time of transfer. If changes are needed in the existing loan agreement or loan resolution to accomplish this, amendments must be made to the existing loan agreement or resolution secured by the mortgage on the security property with the advice and approval of OGC or any other method acceptable to OGC.

(11) A limited profit RRH transferee's initial investment in the project will remain the same as that originally provided to the transferor. If a loan to a nonprofit or profit type borrower is being transferred to a limited profit type transferee, the initial investment to be shown in the loan resolution or agreement will be "None" unless an exception is made by the National

Office. An exception will be considered when the transferee contributes funds for repairs or authorized improvements. In exception cases, the transfer will be referred to the National Office with the appropriate recommendations and a request to establish an initial investment for the transferee. Any initial investment established by the National Office will not exceed 5 percent of the original loan amount.

(12) The rate of return permitted on a limited profit RRH transferee's initial investment will not exceed the rate stated in the appropriate loan agreement or resolution for the type of borrower as set forth in § 1944.215(e) of Subpart E of Part 1944 when the transfer is approved.

(13) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement" in effect, it will be cancelled as of the date of the transfer. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the transferor was eligible for interest credit according to Exhibit B to Subpart E of Part 1944. A new Form FmHA 444–7 will be executed by the transferee, attached to Form FmHA 460–5 or 460–9, as appropriate and submitted (simultaneously with any interest credit cancellation for the transferor) to the Finance Office when the transfer is closed.

(14) A transferee may participate in the rental assistance program if the transferor's project is an eligible project and the transferee is an eligible borrower according to Exhibit C to Subpart E of Part 1944. If the transferor participates in the rental assistance program, the transferee may assume the remaining portion of the transferor's rental assistance agreement if the transferee is eligible. When the transferee is assuming the transferor's rental assistance agreement, the transferor's rental assistance agreement will be described on the assumption agreement (Form FmHA 460–5 or 460–9, as appropriate) giving the date executed, number of units, term of agreement, and the amount of obligation remaining. If the transferee will not be assuming an existing Rental Assistance Agreement, the agreement will be cancelled and Finance Office notified of the cancellation.

(15) If a project operates under the HUD Section 8 program the HAP contract must also be assigned to the transferee with prior approval from HUD. This approval must be obtained so that the assignment of the HAP contract occurs no later than the closing of the transfer.

(16) The transferee must thoroughly understand all loan requirements including the tenant eligibility, the management, reserve account, audit, and reporting requirements of applicable FmHA regulations, and the loan agreement or loan resolution. Before the transfer is closed the District Director shall carefully review with the transferee Subparts E and L of Part 1944, Subpart C of Part 1930, and the loan agreement or resolution with the transferee.

(17) Release of liability will be considered according to the following:

(i) When all FmHA security is transferred and the total outstanding debt is assumed, the policy will be to release the transferor from liability.

(ii) In those cases where the value of the security transferred and debt assumed is less than the full amount of the FmHA debt, the transferor may be released from liability if the State Director determines that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer, and certifies that the transferor has cooperated in good faith, has used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of the borrower's ability. The approval official must execute a memorandum containing the following statement for inclusion in the official case file:

(Transferor's name), in our opinion, does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of personal liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security property.

(18) All transfers of RRH, RCH and LH loans approved prior to December 21, 1979 which are transferred to eligible applicants on new terms will become subject to the prepayment requirements of Section 502(c) of Title V, Housing Act of 1949, as amended. The appropriate restrictive language concerning prepayment set forth in § 1944.176(c)(2) of Subpart D of Part 1944 for LH loans or § 1944.236(b)(4) of Subpart E of Part 1944 for RRH and RCH loans must be inserted in the Assumption Agreement and in the Loan Agreement or Resolution. For transfers on new terms the period will begin on the date the transfer and assumption is closed.

(d) *Transfers to ineligible applicants.* The transfer of an FmHA loan account to a transferee who is an ineligible applicant for the type of loan involved will be considered only when the transfer is needed as a method for servicing a problem case in which the objectives of the original loan cannot be realized and an eligible transferee is not available. Transfers will not be considered when they basically serve as a method for providing a means by which members of a borrower-organization can obtain an equity payment, or when they serve basically as a method of providing a source of credit for purchasers. The State Director is authorized to approve transfers to ineligible applicants, subject to the general conditions of § 1965.85(b) and the following:

(1) Each ineligible transferee will be encouraged to make as large a downpayment on the FmHA secured indebtedness as the transferee is financially able. Ineligible applicants can only be approved when a downpayment is made equivalent to 10 percent of the remaining loan balance to be assumed.

(2) The transferee must have the ability to pay the FmHA debt(s) according to the assumption agreement and must possess the legal capacity to enter into the contractual agreement.

(3) The balance of the FmHA indebtedness assumed must be scheduled for repayment in two years or less for RHS accounts, and usually 10 years or less for other types of multiple family loan accounts. If longer terms are needed for LH, RRH, or RCH projects with multiple unit structures, the State Director may authorize longer terms up to 20 years (Single family type structures may be sold on terms for 15 years or less.) Amortized monthly or annual installments will be charged with interest to the transferee at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note(s) being assumed, whichever is greater. Form FmHA 460–5 will be executed by the transferee.

(4) The State Director may release the transferor from liability under the same provisions as stated in § 1965.85(c)(17) of this Subpart only when all of the real estate security for a loan is transferred; the total outstanding indebtedness or that portion of the debt equal to the present market value of the security is assumed; and the debt assumed by the ineligible transferee is scheduled for repayment in five years or less from the date of the assumption agreement.

(5) When an ineligible transferee assumes an FmHA loan scheduled for repayment in more than 5 years from the date of the assumption agreement, the transferor must acknowledge their continued liability for the debt by signing an agreement as follows:

Continued Liability Agreement of Present Debtors

The undersigned hereby acknowledges the continued personal liability for the indebtedness owed to the FmHA and assumed by (assuming parties) under assumption agreement
dated _____
Date _____
(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's District Office case folder, and a copy provided the transferor.)

(6) Transfers to ineligible applicants of loans made on or after December 21, 1979, will not be authorized without the prior consent and authorization of the National Office. Authorization must be requested in writing and include all the information required in § 1965.65(e) of this Subpart.

(7) Those loans which are transferred to ineligible applicants will be classified as Other Real Estate (ORE) and serviced according to this Subpart to the extent possible. Those cases which cannot be serviced according to this Subpart will be forwarded to the National Office for advice and guidance.

(e) *Submission to National Office.* In those cases where the proposed transfer cannot be made in compliance with § 1965.65 (a) and (b) or (c) of this Subpart, the State Director may submit the entire proposal, complete with all the case files, the State Director's specific recommendations and justifications to the National Office for review, consideration, and any special instructions for handling the account(s). The State Director must have determined prior to submission, however, that it is in the best interest of the Government to permit the transfer before submitting the proposal for consideration. All transfers where the total indebtedness (principal and interest) exceed the State Director's approval authority must be submitted to the National Office for prior review and authorization to approve the transfer request.

(f) *Processing transfers.* (1) Form FmHA 465–5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the prorating of taxes and insurance, title, legal and filing fees, equity and method of payment, assignment of project accounts and leases, and other appropriate items. The effective date of the transfer is the actual date the transfer is closed and Form FmHA 460–5 or 460–9, as appropriate, is executed. This is the date the loan account(s) is/are assumed by use of Form FmHA 460–5 or 460–9, as appropriate. The unpaid principal balance and accrued interest to be shown on Form FmHA 460–5 or 460–9 will be computed from Form FmHA 451–26, "Transaction Record," or Form FmHA 451–11, "Statement of Account." The transferee also will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date, and any payments required to bring any monthly or annual payments current. If the loan account cannot be brought current the transfer will be closed on new terms at the note rate or current interest rate, whichever is greater.

(2) When the property transferred will continue to be used for the same or a similar purpose for which Federal financial assistance was extended, the transferee must sign Form FmHA 400–4, "Assurance Agreement."

(3) An FmHA official authorized to make the appropriate type of appraisal involved will supplement the present appraisal report by attaching information to the "Remarks" section as to the present market value of the property to be transferred if the last appraisal is less than one year old and the transfer is within the State Director's approval authority. A new appraisal prepared according to program requirements is required in all other cases or whenever the Transfer Approval Official determines that a new appraisal report is needed.

(4) When the transfer docket forms are completed, the approval official must determine that:

(i) The proposed transfer conforms to the applicable procedural requirements,

(ii) Each form is prepared correctly according to the Forms Manual Insert or other appropriate regulations, and

(iii) Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

(5) The District Director will record in the Running Case Record or in memo form the pertinent information concerning the negotiations made by an eligible transferee and the discussion between FmHA personnel, the applicant's creditors, and other lenders concerning the availability of other credit. The investigation and availability of other credit for eligible transferees will be documented in the case file as required for the kind of loan being assumed. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain credit elsewhere on rates and terms that would not cause rental rates to be in excess of what low and moderate-income tenants could afford will be included in the docket.

(6) A compliance review should be conducted as required by Subpart E of Part 1901, if one has not recently been completed.

(7) The District Director will forward the transferee's application docket and the official case file, with any comments and recommendations to the State Office. The following table will be used as a guide in distributing the necessary forms for a transfer docket:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	No. for loan docket	Copy for borrower
AD-427*	Application for Federal Assistance (Short Form)	3	1	2-O and 1C	1-O.
HUD Form 2530*	Previous Participation Certificate	2	1	2-O and 1C	1-C.
	Information to be Submitted with Preapplication for Loan as required by program regulations specifically related to applicant eligibility*.	2	0	1-O	1-C.
	Letter of Application with applicable attachments as required in Subpart G of Part 1822 (FmHA Instruction 444.8) or Subpart D or E of Part 1944*.	2	1	1-O	1-C.
	Evidence of Legal Authority (Copies of citation of specific provisions of State constitution, statutory authority, etc) **.	2	1	1-O	1-C.
	Proof of Organization (certified copy of Charter, Articles of Incorporation, or Certificate of Limited Partnership, etc.)**.	2	1	1-O	1-C.
	Certified copies of bylaws, partnership agreement, or regulation**	2	1	1-O	1-C.
	List of names and addresses of officers, directors, and members, and ownership interest held by each **.	2	1	1-O	1-C.

Form No.	Name of form or document	Total No. of copies	Signed by borrower	No. for loan docket	Copy for borrower
	A current financial statement from the transferee, and others, as required by appropriate program regulations.	2	1	1-O	1-C.
	Credit Report(s)*	1		1-O	
FmHA 465-5	Transfer of Real Estate Security [3]	3	1-O	1-O	1-C.
FmHA 1930-7*	Statement of Budget, Income, and Expense (excluding Depreciation) (Operating Budget-first year) (Operating Budget-typical year).	2	2-O and 1C	1-O	1-C.
HUD 935.2	Affirmative Fair Housing Marketing Plan, or evidence of being signatory to a HUD approved voluntary agreement.	2	1-O	1-O	1-C.
FmHA 400-1*	Equal Opportunity Agreement	2	2-O and 1C	1-O	1-C.
FmHA 400-4*	Assurance Agreement	2	2-O and 1C	1-O	1-C.
FmHA 1940-1	Request for Obligation of Funds [3]	3	2-O and 1C	2-O and C	1-C.
FmHA 451-26	Transaction Record (mail record)	1		1	
FmHA 451-10*	Request for Statement of Account	2		2-O and C (O to FO)	
FmHA 451-11*	Statement of Account	1		1	
FmHA 451-25*	Status of Account	2	0	2-O and C	
FmHA 422-7*	Appraisal Report For Multiunit Housing	1		1-O	
FmHA 422-8*	Property Information and Appraisal Report—Rural Housing Nonfarm Tract (2 units or less).	1		1-O	
FmHA 426-1*	Valuation of Buildings	1		1-O	
FmHA 424-1*	Development Plan	2	1-O	2-O and C	1-C.
FmHA 460-5*	Assumption Agreement (New Terms)	4	1-O	1-O	1-C.
FmHA 460-9*	Assumption Agreement (Same Terms)	4	1-O	1-O	1-C.
FmHA 465-8*	Release from Personal Liability [1]	2		1-C	1-C.
FmHA 440-9*	Supplementary Payment Agreement [1]	3	1-O	2-O and C	1-C.
FmHA 444-7*	Interest Credit and Rental Assistance Agreement (RRH and RCH Loans)[2].	3	1-O	1 (O to FO)	1-C.
FmHA 444-27*	Rental Assistance Agreement	2	1-O	1-O	1-C.
	Loan Agreement*	2	1-O	1-O	1-C.

O = Original; C = Copy.
*When applicable.
**When applicant is an organization.
[1] The original Form will not be executed until date of closing the transfer.
[2] When requested, prepare an additional copy for delivery to transferor.
[3] Applicant must sign and date this form unless a similar certification is obtained on the application form. For ineligible transferees, delete the first sentence referring to other credit in item 34 of the form. The applicant must initial each deletion.

Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property, purchase contract or other instrument of ownership, assignment of HUD Section 8 Housing Assistance Payments contract, and information on prior or junior mortgage(s). When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making instruction. (Subsequent loans will not be made to pay equity.)

(8) If the transfer is within the State Director's loan approval authority, the docket will be forwarded to OGC for review and necessary closing instructions. If the transfer is not within the State Director's loan approval authority, or all planned development is not complete; the complete transfer docket, borrower case file, OGC comments, and complete comments and recommendations of both the District and State Director will be forwarded to the National Office for review and approval authorization.

(9) During the period that a transfer is pending in the District Office, payments received by the Finance Office will continue to be applied to the transferor's account. Those payments include any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record will be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

(i) *Identification* For payments received on the date of transfer, Form FmHA 451-2, "Schedule of Remittances," or Form FmHA 444-9, "Multiple Housing Certification and Payment Transmittal," as appropriate will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 or 444-9, and the amount paid.

(ii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the transferee's name.

(g) *Closing transfer cases.* (1) Title clearance and legal services will be obtained according to Part 1807 (FmHA Instruction 427.1) and when appropriate, OGC closing instructions.

(2) The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer. A profit or limited profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions if the attorney or the title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable and typical for the area, and is earned.

(3) The transferee will obtain insurance according to the appropriate program requirements for the outstanding loan(s) involved, unless the State Director requires additional insurance as a condition of approval. When insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(4) The proper type of loan agreement or resolution for type of transferee involved must be in effect at the time of

the transfer. If changes are needed in the existing loan agreement or resolution cited in the mortgage, the changes should be made by amending the existing loan agreement or resolution after obtaining the advice of OGC.

(5) The restrictive language contained in § 1944.178(c)(1) of Subpart D of Part 1944 and § 1944.238(b)(1) of Subpart E of Part 1944 must be inserted in the deed of conveyance or other instruments as required by OGC for RRH, RCH, and LH loans.

(6) At a time no later than the transfer closing, the transferee will be provided copies of the security instruments (promissory note, mortgage or deed of trust, rental assistance agreement, loan agreement or resolution, etc.) which were executed by the transferor or previous borrower to originally secure the loan being assumed.

(h) *Transfer not completed.* If for any reason a transfer will not be completed after approval, the District Director will immediately notify the State Director. The State Director will notify the Finance Office. Servicing of the account will be resumed in the name of the borrower.

§§ 1965.58—1965.67 [Reserved]

§ 1965.68 Consolidation.

(a) *General.* RRH and LH loans can be consolidated at FmHA's option upon request by the borrower as a servicing tool only when the loans are for security on the same or contiguous property and are being transferred under new terms to the transferee. Loan agreements can be consolidated to improve the effectiveness of borrower operations only when the loans described are for security on the same or contiguous property. These actions may be approved by the State Director only with the advice of OGC and if all the following conditions are met:

(1) The security offered is adequate for the total indebtedness.

(2) The total indebtedness of all loans being consolidated does not exceed the State Director's approval authority.

(3) The loans being consolidated are for the same purposes. Loans specifically made for senior citizen projects cannot be consolidated with loans for family projects.

(4) The consolidation will not cause rents to exceed the repayment ability of eligible occupants.

(5) For RRH loans, the transferee must agree to operate on a limited profit basis and Interest Credit Plan II must be implemented.

(6) FmHA's security position must not be lessened as a result of the consolidation.

(7) Consolidation of notes under a transfer on new terms will not cause the term of the loan to exceed the maximum time allowed by the respective loan programs.

(8) The notes to be consolidated must be current. Delinquent accounts can only be consolidated with prior National Office authorization.

(b) *Processing.* All consolidations will be processed with the advice of OGC and assistance of the State Director.

(1) Loan consolidation with transfers on new terms will be processed as follows:

(i) Form FmHA 440–16, "Promissory Note," will be prepared for notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will ask the Finance Office to return the original form so it is in the District Office *before* Form FmHA 440–16 is processed. A copy of Form FmHA 440–16 will be sent to the Finance Office according to the FMI. All promissory notes will be prepared on a monthly payment basis.

(ii) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "Consolidated", by the District Office. The original instruments being consolidated will be filed with the borrower's new consolidated note and a copy will be filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of § 1951.15 of Subpart A of Part 1951.

(iii) Revised loan agreements or resolutions will be provided to reflect current reporting requirements and the authorized initial investment attributable to the owner.

(iv) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory *notes* be consolidated if the security position of FmHA will be adversely affected.

(v) New security instruments which describe the consolidated note will be filed to perfect the FmHA lien position. If the new lien position taken is junior only to the previous lien position securing the loan being consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(2) Consolidation of loan agreements or loan resolutions may be used as a security tool to provide more effective management and supervision, as follows:

(i) All of the general requirements of § 1965.68(a) of this Subpart are met;

(ii) A revised loan agreement or loan resolution must be executed which accurately reflects the total indebtedness, reserve requirements, and return originally described in the individual agreements;

(iii) All of the loan agreements or loan resolutions being consolidated must be secured by a deed of trust or mortgage describing all of the loans for the project;

(iv) Neither the terms nor the due dates of the loan(s) involved are altered, and other security instruments remain unchanged.

(v) The advice and assistance of OGC will be obtained when processing consolidation of loan agreements or loan resolutions.

§ 1965.69 [Reserved]

§ 1965.70 Reamortization.

(a) *General.* State Directors may approve the reamortization of RRH, RCH, and LH loan accounts within their approval authority for the type of loan involved. RHS loans will not be reamortized and will be serviced according to program requirements. If an RHS loan becomes seriously delinquent and efforts to sell the lots are not successful, the account will be liquidated according to Subpart A of Part 1955.

(b) *Conditions for reamortization.* The conditions under which a reamortization will be considered are:

(1) The borrower has made extra payments and/or refunds totaling 10 percent or more of the original loan amounts being reamortized (from sources other than the sale of units within the LH, RRH, or RCH project), and the State Director determines that the borrower and the tenants cannot reasonably be expected to meet their obligations unless the account is reamortized to reduce substantially the FmHA installments and rental rates; or,

(2) The borrower has a substantial delinquency which cannot be liquidated within one year; which was caused by circumstances beyond the ultimate control of the borrower, however, the borrower has acted in good faith and has complied with all applicable FmHA procedures and policies governing the particular program under which the loan is made; and,

(3) All of the following conditions exist and are adequately documented in the official case file and on Form FmHA 451–33, "Reamortization Request (Association Loan)", as appropriate:

(i) The reamortization will not operate to the financial detriment of the Government or impair the security rights of the Government.

(ii) The budget or plan of operations for the borrower provides reasonable assurance that the newly scheduled payments will be made according to the terms of the proposed reamortization, and that the charges for the use of the facility or service are within the payment ability of those it is intended to serve; are comparable to other units in the area; and, the rent increase procedures set forth in Exhibit C of Subpart C of Part 1930 will be followed if any increase in rental rates is required.

(iii) The Board of Directors and membership will retain, or have definite plans for obtaining, membership and community support and, will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.

(iv) The State Director believes that reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.

(v) The FmHA lien position remains unchanged.

(vi) The security must be adequate to protect the Government's interests. A current appraisal must be made and must reflect that the security is adequate for the principal and interest being reamortized.

(c) *Submission to National Office.* When the unpaid indebtedness of the borrower's account(s) to be reamortized exceeds the State Director's approval authority and the State Director determines that the conditions of § 1965.70(b) of this Subpart can be met, the request for reamortization, official case file and all other pertinent information, along with complete comments and recommendations by both the State and District Directors, will be sent to the National Office. The State Director shall submit all subsequent reamortization requests to the National Office for prior authorization.

(d) *Processing reamortizations.* To reamortize the account, the following actions will be taken:

(1) Form FmHA 452–2, "Reamortization and/or Deferral Agreement," will be completed according to the FMI. (Only Item A will be used. Payments on Multiple Family Housing Loans cannot be deferred.)

(2) If the note or assumption agreement being reamortized is not held in the District Office, the District Director will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: "A reamortization agreement dated 19 , in the principal sum of $, has been given to modify the payment schedule of this note."

(4) The end of the amortization period will be the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC, it is permissible according to State and local Statutes, and the FmHA lien position is not altered. (Any extension of the final due date will not exceed the lesser of the remaining useful life of the security property or the maximum term authorized by the respective loan program authorizations.)

(5) The interest rate for the account will be unchanged, except when the final due date has been extended, the interest rate will be either the note rate or the current interest rate whichever is greater.

(6) The reamortization will be processed with the guidance of OGC.

(7) If the borrower is to receive interest credit benefits following the reamortization of the account, a new Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement," will be prepared and attached to Form FmHA 452–2 for submission to the Finance Office.

(8) The prepayment provisions of Section 502(c) of Title V, Housing Act of 1949 will be applied to any reamortization which extends the final due date regardless of when the loan was originally approved. The appropriate restrictive language set forth in § 1944.176(c)(2) of Subpart D of Part 1944 for LH loans, or § 1944.236(b)(4) of Subpart E of Part 1944 for RRH or RCH loans, will be inserted in the reamortization agreement and in the revised loan agreement or resolution which will be obtained to accurately reflect the revised terms.

§ 1965.71 [Reserved]

§ 1965.72 Deceased borrower.

Deceased borrower cases will be handled according to the policy outlined in § 1962.46 of Subpart A of Part 1962 except that all references to the County Supervisor are now construed to mean the District Director. The advice of OGC will be obtained as necessary.

§ 1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in § 1962.47 of Subpart A of Part 1962 except that all references to the County Supervisor now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of those cases. The advice of OGC will be obtained as necessary.

§ 1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action, the District Director will review the case after the final divorce decree has been granted to determine future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the Government's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made as a result of a divorce action.

§ 1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applies to those instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or also cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property and/or secure eligible occupants and comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repairs necessary. If no prior lienholder is involved or the

prior lienholder cannot immediately be contacted or refuses to make the emergency repairs, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation, make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the FmHA should take possession of the property to best protect the interest of the Government subject to the following:

(1) *Selection of a caretaker or management agent.* Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business background or experience which qualifies them to perform the needed services. They must be located near the property to provide day-to-day supervision or appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects which are occupied. Selection procedures will be in accordance with § 1955.63(a) of Subpart B of Part 1955, and will be appropriately documented.

(2) *Fees.* The amount of the management agent or caretaker's fee should be no more than the typical rate for similar services in the area. The amount may be based on a percentage of the income from the property or a flat fee amount. The fees will be considered a recoverable cost and charged to the borrower's account. The fees will be paid by processing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," on a monthly basis.

(3) *Rental rates for abandoned projects.* Rental rates will normally remain the same for eligible occupants as when the project was under the control of the borrower. Rental rates may be revised, however, with the approval of the State Director under the following conditions:

(i) Any lease agreement between the borrower and tenant will permit changing the rates.

(ii) A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule.

(iii) Any increase will not result in rental rates above the payment ability of eligible occupants, unless the State Director has given the authority to rent units to ineligible occupants.

(d) All these actions shall be fully documented in the official case file. Liquidation will immediately be instituted according to Subpart A of Part 1955.

§ 1965.76 [Reserved]

§ 1965.77 Consent to sale or other disposition of security property.

(a) *General policies.* The State Director may approve requests for and consent to:

(1) Use of the proceeds from the sale of a portion of or an interest in the security,

(2) Exchange of all or a part of the undeveloped security for other real estate, or

(3) Granting or conveyance of rights-of-way subject to the conditions and requirements of this section.

(b) *Processing requests.* These requests will be made on Form FmHA 465–1. The District Director will forward a properly completed and executed Form FmHA 465–1, the proposed deed, easement, or other forms of title conveyance, and the case file to the State Director with a memorandum containing additional information, as needed, to justify the approval or disapproval of the proposed transaction.

(c) *Conditions of approval.* The State Director may grant consent provided:

(1) The orderly repayment of the FmHA indebtedness will not be impaired. This requirement will not apply in condemnation cases after the final judgment or award has been granted and is not appealed.

(2) The transaction will not interfere with the successful operation of the multiple housing project or prevent the borrower from carrying out the purpose for which the loan was made. This requirement will not apply in the case of a condemnation action in which a final judgment or award has been made and is not appealed.

(3) The sale of individual units or developed portions of an RRH, RCH or LH project shall require the prior concurrence and authorization of the National Office.

(4) If property to be sold or exchanged is to be used for the same or similar purpose for which the FmHA loan or grant was made, the purchaser shall execute Form FmHA 400–4. The agreement will remain in effect as long as the property continues to be used for the same or similar purpose for which the FmHA loan or grant was made.

(5) The consideration is at least equal to the market value of the security property disposed of or the rights being granted. However, right-of-way easements may be granted or conveyed without consideration if the value of the security property will not be reduced, its suitability for the intended purpose will not be impaired, and the easement is granted for the borrower to develop additional lots or units which will be integrated into the project. A FmHA official authorized to appraise multi-unit housing properties shall either make a new appraisal if the current appraisal is more than one year old, or supplement the present appraisal report by inserting in or attaching to the "Remarks" section, information as to the market value of the security disposed. However, if the proceeds are to be used for development or enlargement, a new appraisal reflecting the market value of the security property as improved or enlarged will be made in all cases. The State Director may request an appraisal for any transaction involving security property whenever necessary.

(6) The remaining property is adequate security for the unpaid balance of the FmHA loan, or the transaction will not adversely affect FmHA's security position or interfere with the successful operation of the security property.

(7) The proceeds from the disposition of the security are used for one or more of the following purposes:

(i) To pay the customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which arrangements to pay cannot otherwise be made.

(ii) To pay debts owed to any prior lienholders.

(iii) To make extra payments on the FmHA loan.

(iv) To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs.

(v) To pay real estate brokers' commissions if a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained had the sale been made without the assistance of the real estate broker.

(vi) To develop or enlarge the borrower's facility for purposes for which a loan of the same type involved

could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further the objectives of the FmHA loan. Any proposed development will be planned and performed according to Subpart A of Part 1924 and funds to be used for development or enlargement will be handled according to Subpart A of Part 1902.

(vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the FmHA debt will be as well secured after the transaction as before. FmHA will obtain a lien on the acquired property, and will obtain title evidence according to Part 1807 (FmHA Instruction 427.1).

(viii) To pay any additional income tax which the borrower must pay for the year because of the capital gain or royalty tax attributable to the transactions. Funds for back taxes must be estimated and held in a supervised bank account until actual payment of the tax.

(8) FmHA liens are not released until receipt of the appropriate sales proceeds for application on the Government's claim.

(d) *Releasing security.* Security for FmHA loans addressed in this Subpart will be released according to applicable program regulations and as follows:

(1) Borrowers will be held strictly accountable to the FmHA for all proceeds derived from the sale of mortgaged property which the FmHA is entitled to receive under its lien.

(2) Consent to disposition of part of, or an interest in, security property as authorized in this subpart may be given by approving a completed Form FmHA 465–1 or other forms approved by OGC or prescribed in State Supplements. Upon request for consent, the District Director will forward Form FmHA 465–1, the borrower's case folder, and any other pertinent information to the State Director.

(i) Chattel security may be released from a chattel mortgage by use of Form FmHA 460–1, "Partial Release," or other approved form, and from a security interest under the Uniform Commercial Code by use of Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignment, Etc." Satisfaction or termination of chattel security instruments will be accomplished following the guidance of Subpart A of Part 1962.

(ii) Real estate security may be released by use of Form FmHA 460–1 or other form approved by OGC. Satisfaction or termination of real estate security instruments when the FmHA debt has been paid in full or satisfied by debt settlement action will be accomplished with the use of Form FmHA 460–4, "Satisfaction."

(iii) Any consent which would result in the FmHA loan account being paid in full will be subject to the prepayment provisions of § 1965.90 of this Subpart as applied to RRH, RCH, and LH loans.

§ 1965.78 [Reserved]

§ 1965.79 Subordination.

(a) *General policies.* The State Director is authorized to approve request for a subordination according to this section, if the total debt against the security after the transaction does not exceed the State Director's loan approval authority for the type of loan involved. subordination requests exceeding this limit must be submitted to the National Office for prior authorization to approve. Each request for subordination will be made on Form FmHA 465–1. The District Director will forward a properly completed and executed copy of the form to the State Director with a memorandum containing any needed information to justify approval or disapproval of the request.

(b) *Conditions of approval.* The subordination must be for the purpose of permitting another creditor to refinance, extend, reamortize, or increase the amount of a prior lien, or place a lien ahead of the FmHA lien. When the prior lien is being increased by an amount which exceeds normal transaction costs or a new prior lien is being placed against the security, an FmHA official authorized to make appraisals for the type of project involved will supplement the present appraisal report by inserting in the "Remarks" section information as to the market value of the security after the transaction if the appraisal is less than one year old. If the appraisal is more than one year old, a new appraisal must be completed. The State Director may also request an appraisal at any time deemed appropriate. In all cases, the following conditions must be met:

(1) The transaction must either further the objectives for which the FmHA loan was made or improve the borrower's debt-paying ability and, in either case, must result in the FmHA's debt being adequately secured.

(2) The borrower is unable to refinance the FmHA loan on terms which can reasonably be expected to be met yet still meet the original intent of the program.

(3) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(4) The amount of the indebtedness against the security property, including the amount of the subordination, will not exceed its present market value.

(5) When an increase in the amount of the prior lien or a new prior lien is involved, subordination will be granted only when the funds will be used for the same purposes for which a loan of the same type is authorized; except LH loans on a farm tract may be subordinated for essential farm improvements and any other purpose for which an FmHA Farm Ownership loan can be made as described in § 1943.16 of Subpart A of Part 1943. LH loans will not be subordinated to provide operating capital or purchase chattels. If the LH loan is secured only by the LH units and the project site, the LH loan will only be subordinated for purposes for which an LH loan may be made.

(6) Any proposed development will be planned and performed according to Subpart A of Part 1924 or in a manner directed by the other creditor which reasonably attains the objectives of Subpart A of Part 1924 and is concurred with by the State Director.

(7) Funds to be used for development or enlargements will be handled as prescribed for loan funds in Subpart A of Part 1902 except that, if the creditor will not permit the use of a supervised bank account, arrangements should be made to assure that funds will be spent for planned purposes and should be approved by the District Director before being released.

(8) In case of land purchase, FmHA will obtain the best lien obtainable on the land purchased.

(9) Subordinations need not cover the entire site. If a subordination is requested to permit an interim lender to advance construction funds, only the portion of the site scheduled for construction will be subordinated. If the entire farm tract has been taken as security for a LH loan, subordination of the lien on all property except the minimum adequate site, including necessary ingress and egress, on which the LH units are situated, may be authorized for any purpose consistent with the LH program regulators and § 1965.79(b)(5). For RHS loans, the prorated portion of the lien for the individual lots may be subordinated to permit construction of dwelling units utilizing conditional commitments as authorized in the RHS program regulations.

(10) All subordination requests will be forwarded to OGC for review. The guidance of OGC should be obtained in the preparation of the documents necessary to effect the subordination.

(11) The subordination is for a specific amount.

(12) The proposed action will not so change the nature of the borrower's activities as to make it ineligible for appropriate loan program assistance.

§ 1965.80 [Reserved]

§ 1965.81 Severance agreements.

(a) *General policies.* Severance agreements or other instruments of similar effect under which a borrower may acquire through other credit, items such as laundry equipment, air conditioning units, and basic household furnishings that will not become part of real estate security, may be approved by the State Director, provided:

(1) The transaction will not adversely affect the FmHA's security position and any additional obligations incurred will be within the borrower's repayment ability.

(2) The items covered by the severance agreement are needed in the successful operation of the security property.

(3) The financing arrangements are otherwise sound and proper.

(b) *Handling requests.* Requests will be made on Form FmHA 465–1. The District Director will forward to the State Director a properly completed and executed Form FmHA 465–1, any proposed severance agreement, the case file, and specific recommendations regarding the request.

(c) *Consent and approval.* The State Director will indicate approval or disapproval on Form FmHA 465–1. The OGC will be requested to prepare or approve the form of severance agreement and issue any special instructions when necessary.

§ 1965.82 [Reserved]

§ 1965.83 Consent to junior liens.

(a) *General policies.* Borrowers will be strongly discouraged from giving junior liens to other creditors on the FmHA security property. Each request for consent to junior liens will be made on Form FmHA 465–1.

(b) *Conditions of approval.* The State Director may approve a junior lien if the request for the lien is authorized prior to the lien being placed against the property under the following conditions:

(1) The junior lien will enable the borrower to obtain additional credit to make needed improvements or repairs on the security property for purposes for which a loan of the same type involved could be made and funds in the reserve account have been depleted.

(2) The junior lien will improve the borrower's total financial condition or debt-paying ability as it relates to the multiple family housing project.

(3) The terms of the junior lien will not jeopardize the borrower's ability to repay the FmHA indebtedness and, in the case of RRH, RCH, and LH loans, will not result in increased rental rates for the project unless authorized according to Exhibit C to Subpart C of Part 1930.

(4) The junior creditor agrees in writing that foreclosure action under their lien will not be initiated before holding a discussion with the District Director and after giving a reasonable period of notice to FmHA, and any operating plans of the junior lien holder are consistent with FmHA requirements.

(5) Security for the junior lien must not include project income or revenue.

(6) No junior liens will be authorized in connection with a transfer of ownership.

(7) The total FmHA debt is within the State Director's approval authority. All other requests for consent to junior liens must be submitted to the National Office with complete comments and recommendations from both the District Director and State Director, and all of the borrower's case files.

(8) When a junior lien is placed on any property without the prior consent of FmHA, the account will be serviced for liquidation with the guidance of OGC according to the security instruments. However, the State Director may request permission to post approve the junior lien by submitting a formal request to the National Office provided he/she determines that all other conditions set forth in this section are met.

§ 1965.84 [Reserved]

§ 1965.85 Default and liquidation.

(a) *General.* Liquidation will be recommended only after all efforts by FmHA officials have failed to effect a satisfactory solution whereby the borrower will comply with its obligations under the note, mortgage, loan agreement or resolution, and all related security agreements and other instruments. Liquidation, whether by voluntary conveyance or foreclosure, will be handled in strict accordance with the provisions of Subpart A of Part 1955.

(b) *Servicing delinquent accounts.* Delinquent multiple housing accounts will be serviced according to the respective program requirements and the following:

(1) The District Director will service delinquent accounts with guidance and assistance as necessary from the State Director. Every delinquent borrower will be serviced according to a routine established for the particular loan type by the State Director. The following sequential steps should be taken for each delinquent account:

(i) Each quarterly delinquency report will be reviewed for accuracy by the District Director.

(ii) If the report is in error, the District Director will immediately contact the Finance Office and provide any information necessary to remove the account from the delinquent status. These communications with the Finance Office should be directed to the Multiple-Family Housing unit. Before contacting the Finance Office, the District Director must complete a field audit of the account to be submitted with the inquiry.

(iii) If the report is accurate and a delinquency indeed exists, the District Director will immediately contact the borrower to determine the reason for the delinquency and will attempt to collect either in a lump sum or in additional monthly payments over a short period of time, usually not to exceed one year. This should include foregoing any cash return until the account is current.

(iv) Within 30 days of receipt of the quarterly delinquency report, the District Director will submit to the State Director a detailed report and specific comments and recommendations for servicing each delinquent account. The State Director will assist the District Director in developing a realistic servicing plan for each delinquent account. Appropriate consideration should be given to reamortizing, transferring, conveying or foreclosing the account recognizing the willingness of the borrower to cooperate and comply with FmHA requirements and to meet the purposes for which the loan was made. Consideration should also be given to:

(A) Adequate budgeting.

(B) Improving management and outreach.

(C) Implementing interest credit and/or rental assistance if the borrower and project qualify.

(D) Participating in the HUD Section 8 program for existing housing through the local Public Housing Agency (PHA).

(E) Effecting a justified rent increase according to applicable program requirements.

(F) Obtaining an assignment of project income.

(2) District Directors should be firm in dealing with the borrower or the borrower's representative. However, the management agent is not the party ultimately responsible for the loan, and it is therefore imperative that the

borrower fully understand the consequences of the default. Courtesy, cooperation and sound judgment must be involved. If the delinquent account cannot be brought current within a reasonable period, steps should be taken according to Subpart A of Part 1955 to protect the Government's interest.

(c) *Failure to maintain reserves.* A borrower's failure to maintain adequate reserves should be treated in a manner similar to delinquent accounts. The District Director should carefully monitor the required transfers to the reserve account. Borrowers who fail to make the required transfers or use reserve funds without prior FmHA authorizations should be carefully counselled. Demand should be made upon borrowers willfully misusing the reserve account to promptly correct any deficiency. As appropriate, the District Director may request assistance from the State Director. As necessary to protect the Government's interests, assistance from OGC or OIG should be requested through the State Office.

(d) *Non-monetary defaults.* Attempts to resolve nonmonetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should counsel with OGC, to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District Office level. These actions may include liquidation of the account.

(e) *Liquidation.* Liquidation of all multiple-family type loans will be handled according to the applicable portions of Subpart A of Part 1955. In cases of forced liquidation where the acceleration notice has been delivered and the borrower has willfully failed to make the required loan payments, any outstanding interest credit agreement will be cancelled after the appeal period prescribed in Subpart B of Part 1900 has expired; eligible tenants are not occupying the units; and/or the borrower is not collecting the approved rents or transmitting the required payments to FmHA. In all liquidation cases, the State Director will be responsible for the final decision to liquidate the account based upon an opinion from the OGC and the following information supplied by the District Director:

(1) The specific recommendations of the District Director on the method of carrying out the liquidation,

(2) The case file and any other pertinent information developed in support of the accusations,

(3) A summary of FmHA efforts to work out an acceptable solution short of liquidation,

(4) A current appraisal of the security property completed by an FmHA official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets,

(5) The most recent balance sheet or financial statement from the borrower,

(6) A current statement of account from the Finance Office, and

(7) A problem case report using Form FmHA 465–7, or Exhibit A to Subpart A of Part 1955 as appropriate.

§ 1965.86 [Reserved]

§ 1965.87 Miscellaneous security.

(a) *Membership liability agreements.* As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or they may have instruments which are commonly referred to as individual liability agreements which are usually assigned to and held by the FmHA as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. These security and liability instruments will be serviced in a manner indicated by the agreements to adequately protect the interest of the FmHA. The State Director will develop servicing actions with the assistance of OGC.

(b) *Other security.* Other security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest will be serviced according to acceptable practices in the respective states. The State Director should develop any special servicing actions with the assistance of OGC to protect the interest of FmHA. Evidence of the security will be filed in the loan docket in the District Office. A notation will be made on the Management System Card showing that the security has been retained. When this other security is taken, a plan for servicing it should be developed by the approval official and included as an approval condition at the outset.

§ 1965.88 [Reserved]

§ 1965.89 Obtaining additional security for inadequately secured loans.

(a) *General policies.* As a general policy, additional security for multiple housing loans should not be needed or taken to protect the interest of FmHA. However, the State Director may authorize taking additional security in the form of real estate or other security as described in § 1965.87(b) of this Subpart when the additional security will enhance the chances that the Government will not suffer a loss and any of the following conditions exist:

(1) The account is behind schedule.

(2) The property has not been properly managed or maintained.

(3) There is serious doubt that the borrower can carry out the objectives of the loan.

(b) *Conditions of approval.* In cases where the District Director determines that the conditions as stated in § 1965.89(a) of this Subpart exist, the borrower's case file will be forwarded to the State Director with a memorandum providing the following information:

(1) The facts which justify the taking of additional security.

(2) A conservative estimate of the market value of any real estate to be mortgaged; however, it will not be necessary to make a formal appraisal of the property to be mortgaged unless determined necessary by the State Director.

(3) A brief description of any existing liens on the additional security including the repayment terms and unpaid balance.

(4) The name of the title holder and how title to the property is held. Title evidence need not be required.

(5) A plan for servicing the additional security to be taken.

(6) A description of the other servicing alternatives available to assure that the objectives of the loan will be met and to protect the Government from loss.

(c) *Processing.* The guidance and assistance of OGC will be obtained whenever additional security is taken. The highest quality security will be taken whenever additional security is considered.

§ 1965.90 Payment in full.

(a) *General.* Payment in full of a loan will be handled according to Part 1866 (FmHA Instruction 451.4), subject to any applicable prepayment provisions in the respective program regulations, loan agreements, or mortgages. For RRH, RCH, and LH loan prepayments, the borrower must submit a written request to prepay the loan(s) to the District Director at least 60 days prior to actually making the offer to prepay.

(b) *Prepayment of loans approved prior to December 21, 1979.* For any RRH, RCH, or LH loans approved prior to December 21, 1979, the District Director will accept prepayment or graduation when he/she can assure that conditions are met:

(1) The borrower has been advised that any valid existing leases must be honored until they expire or are terminated under the provisions of the lease.

(2) Upon acceptance of the offer to prepay, assure written notice of approval is given to each tenant. This notice should include a statement advising the tenants of their priority rights for occupancy in other FmHA financed projects if they are displaced or if the prepayment has caused them to experience rent overburden as defined in Paragraph XIII A 4 of Exhibit B to Subpart C of Part 1930. The tenants should be advised in the notice that they have six (6) months from the date of prepayment to exercise their priority right by applying for a letter of priority from the District Director. This information should be posted within the building(s) upon notification of approval. Exhibit A of this Subpart is provided as guide for the District Director's use.

(3) Upon receiving an application submitted within six (6) months of the prepayment by a tenant displaced as a result of prepayment, provide to the affected tenant a letter of priority entitlement to all other FmHA RRH projects in the area. This area includes FmHA projects within a reasonable commuting distance of the affected project. The letter of priority entitlement should include a statement that the affected tenant has thirty (30) days to apply with other FmHA RRH projects in the area. The letter of priority entitlement will enable those tenants to move to the top of any waiting list in those projects. A list of FmHA RRH projects in the area will be included as part of the letter of priority entitlement. Eligible tenants in LH projects will also be advised of other available LH projects in the area.

(4) Provide the State Director with a detailed report in the format set forth in § 1965.90(d) of this Subpart. This report must be provided upon acceptance of the offer to prepay.

(c) *Prepayment of loans approved on or after December 21, 1979.* For any RRH, RCH, or LH loan approved on or after December 21, 1979, or which has subsequently been made subject to the prepayment restrictions of Section 502 of Title V of the Housing Act of 1949, the District Director may accept prepayment or graduation with the prior concurrence of the State Director provided all of the following conditions are met:

(1) The written notice requirement set forth in § 1965.90(b) of this Subpart is satisfied.

(2) A report is provided to the State Director with sufficient detailed information regarding occupancy and need so that the State Director can examine the offer and its likely consequences.

(3) The offer may be accepted with the State Director's concurrence, unless the State Director determines:

(i) That due to a change in the use of the housing and related facilities, or to an increase in rental or other charges likely to occur as a result of prepayment, the low and moderate income and elderly or handicapped tenants occupying the assisted housing at the time of the offer or request cannot reasonably be expected to remain in occupancy for that period. However, in spite of this determination, the offer or request to prepay may be processed only *if* affordable, decent, safe, sanitary, and nonassisted alternative housing, or vacant assisted units for which there is no waiting list, is available to the tenants who are likely to be displaced as a result of the change or increase, and

(ii) In the case of housing or related facilities containing more than 10 dwelling units, that the changes likely to occur as a result of the prepayment will have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low- and moderate-income and elderly or handicapped persons in the area in which the housing and related facilities are located.

(4) For transfers outside the program, if the State Director makes an affirmative determination under § 1965.90(c) (1) or (2) of this Subpart, then prepayment may be accepted only if the following clause is included in the deed or other document of conveyance:

The purchaser agrees that the housing located on this property will be used only as authorized under section 514 of the Housing Act of 1949 and FmHA regulations then extant until (insert date, 15 years for unsubsidized or 20 years for subsidized loans from the date the last loan on the project was closed). A tenant may seek enforcement of this provision as well as the United States. No person occupying the housing shall be required to vacate during such period because of early repayment.

(5) That if the borrower wishes to prepay and operate the property within the objectives of the program or transfer the loan to a transferee that will keep the housing within the program, a document containing the restrictive language that appears below must be executed. In the case of transferees, the restrictive language will be inserted in the Assumption Agreement. In the case of borrowers prepaying but not transferring the property, the following restrictive language will be inserted in the deed of release and filed for record:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 514 or 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during the (15 years for unsubsidized and 20 years for subsidized loans) year period beginning (the date the last loan on the project is closed). The borrower also agrees that no person occupying the housing shall be required to vacate prior to the close of such (15 years for unsubsidized and 20 years for subsidized loans) year period because of early prepayment. The borrower will be released from these obligations only when the Government determines that there is no longer a need for the housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(6) The District Director will provide the State Director with a detailed report in the format set forth in § 1965.90(d) of this Subpart upon servicing information.

(d) *Prepayment report.* Immediately upon receiving information regarding the prepayment of any RRH, RCH, or LH loans the District Director will send a report on each prepayment case to the State Director for indefinite retention containing the following information:

(1) Date of initial loan approval.

(2) Type of borrower entity and plan of operation.

(3) The number of units in the project.

(4) The number of eligible tenants presently occupying the units.

(5) The estimated replacement cost per unit.

(6) The estimate of the number of households that will be displaced as a result of prepayment.

(7) The estimated relocation cost of the households being displaced.

(8) An indication of the displaced households' ability to pay relocation costs.

(9) The income range of the tenants presently in the project.

(10) The number of elderly tenants in the project.

(11) The present and projected rents.

(12) The number of Section 8 or RA units, and whether Section 8 will continue after prepayment.

(13) Any cause of displacement other than rent.

(14) The availability of other vacant units in the area.

(e) *Final payment and release.* Final payments and the release of security will be handled according to Subpart B of Part 1951, Subpart A of Part 1962, and Part 1866 (FmHA Instruction 451.4), and appropriate program requirements and regulations. In all cases, references to

County Supervisor shall be construed to mean District Director when applied to multiple family type borrowers. The District Director will notify the bonding company in writing that the government no longer has an interest in the fidelity bond and will release the FmHA's interest in insurance policies according to the applicable provisions of Subpart A of Part 1806 (FmHA Instruction 426.1) FmHA's interest in any other security will also be released in the manner prescribed by the State Director with the assistance of OGC as necessary.

§ 1965.91 Servicing loans in formerly eligible areas.

All servicing actions contained in this subpart are authorized without regard to whether the area may no longer be defined as an eligible area.

§§ 1965.92—1965.93 [Reserved]

§ 1965.94 State Supplements.

State Supplements will be prepared with the advice of OGC as necessary to comply with State laws and to provide guidance to the District Director in the servicing actions required. All State Supplements must be submitted for prior National Office approval before implementation. Requests for approval must include complete justification, citations of State law, and appropriate legal opinions from the respective Regional Attorney.

§ 1965.95 [Reserved]

§ 1965.96 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following covenant: "The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title IV of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations as issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended or for so long as the purchaser owns it, whichever is later."

§ 1965.97 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect: (a) the interest of the Government; or (b) the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data which demonstrates the adverse impact, identifies the particular requirement involved, shows proper alternative courses of action, and identifies how the adverse impact will be eliminated.

§§ 1965.98—1965.100 [Reserved]

Exhibit A—FmHA Instruction 1965-B

Notice of Prepayment

TO: Tenants of

_____

(Project Name)

On _____, (Date) Farmers Home Administration (FmHA) accepted payment in full of the loan which financed your rental unit. As a condition of acceptance, you are hereby advised that the new owners will be bound by the terms of your existing lease until it expires or is terminated in accordance with the provisions of such lease.

You are further advised that you may have priority rights for occupancy in other FmHA financed projects within a reasonable commuting distance from your present location if you are displaced without cause because any subsequent increase in rents causes you to experience rent overburden. You have six (6) months from the above date to exercise this priority right. You may do this by applying to my office for a letter of priority.

If you have any questions you may contact my office at:

_____

_____

_____

_____

(Signature)

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: April 1, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-12632 Filed 5-7-82; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 459

[Docket No. CAS-RM-81-127]

Residential Energy Efficiency Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy, in accordance with a statutory requirement, issues a final rule for the Residential Energy Efficiency Program, a Federal financial assistance program authorized by the Energy Security Act of 1980 to demonstrate the feasibility of capturing wasted energy through retrofit of existing residential buildings. The delivery of these conservation services would be accomplished through a cooperative venture between the private sector, utilities and State and local governments. Most of the comments on the proposed rule were negative to the program in concept, finding it unnecessary or unlikely to be workable or fair. The few positive comments cited the program's value in facilitating delivery of conservation services but recognized the complex administrative burdens it would pose. While issuance of this rule is required by statute, providing Federal financial assistance under it is not. The Department does not intend to fund the program. The Department's 1982 appropriations, moreover, do not require that any financial assistance be provided under the program. The Administration has requested that Congress again appropriate no funds for the program for fiscal year 1983.

EFFECTIVE DATE: June 9, 1982.

FOR FURTHER INFORMATION CONTACT:

Susan Heard, Building Services Division, Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, S.W., Room 5F-044, Washington, D.C. 20585, telephone (202) 252-0426.

Daniel Ruge, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-144, Washington, D.C. 20585, telephone (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background.

II. Comments on Proposed Rule and Content of Final Rule.

III. Regulatory Impact, Regulatory Flexibility Act, and Environmental Reviews.

I. Introduction and Background

In order to comply with a statutory requirement, the Department of Energy (DOE or Department) today issues a final rule for the Residential Energy Efficiency Program (REEP or program), under Subtitle C of Title V of the Energy Security Act (ESA), Pub. L. 96-294, June 30, 1980, adding Part 5 to Title II of the National Energy Conservation Policy Act (NECPA), 42 U.S.C. 8235 *et seq.*

Section 265(b) of the NECPA requires DOE to issue final rules and regulations for the REEP, 42 U.S.C. 8235d(b). Providing Federal financial assistance under the program, however, is discretionary, 42 U.S.C. 8235e(c).

Today's notice satisfies the requirement for final rules and regulations.

The program as envisioned by the statute authorizes the Department, in its discretion, to award financial assistance to States and local governments for the establishment of not more than four demonstrations to test one possible approach to increasing residential energy efficiency. Under the program, a public utility would contract with an independent company (Energy Conservation Company or ECCO) to provide energy conservation retrofit services (such as the installation of wall and attic insulation) to the residences of all residential customers in a designated demonstration area, who were willing to accept the services. The utility would make payments to the ECCO to the extent that the retrofit services actually resulted in utility savings in the form of reduced purchases of generating fuel and/or of avoided construction of new generating capacity.

Before applying for Federal funding, the State or local government would have to develop a detailed plan for the demonstration. A State or local application for Federal funding would contain a description of both the REEP plan and the contract to be entered into between the utility and the Energy Conservation Company and a description of the manner in which the various statutory requirements applicable to the plan and/or contract would be met. These statutory responsibilities include, among others, a particular process for selecting the ECCO; a requirement on the ECCO to offer and perform inspections and to inform residents of the energy conservation measures which would be installed and the measures' expected savings; ECCO warranties on installation and materials; development and use of a specific methodology for measuring energy savings; and the requirement for payment of an agreed-to price for energy saved.

The statute directs DOE to consider several factors in deciding whether a REEP application should be selected for award. These statutory evaluation criteria include the energy savings potential of the demonstration, its anticipated anticompetitive effects, and the likelihood that the value of energy saved would be sufficient to compensate for the estimated supply and installation costs.

II. Comments on Proposed Rule and Content of Final Rule

DOE received 29 written comments and three individuals testified at the public hearing held on the proposed rule 46 FR 6016, January 20, 1981. A substantial majority of the comments expressed opposition to REEP. They stated that REEP was neither feasible nor necessary to achieve the main program objective of energy conservation. Many commentors felt that the program would be ineffective because of its administrative complexity and the difficult issues that would be involved, such as calculating the amount and monetary value of energy saved.

Commentors also stated that REEP would pose virtually unresolvable anticompetitive problems. The Antitrust Division of the United States Department of Justice expressed its concerns in a written comment which characterized the REEP as "a fundamentally anticompetitive program."

A number of comments addressed the problems associated with utility recovery of costs for REEP-related payments. The statute requires that the retrofitting services be performed "without charge" to the owner or occupant of any building retrofitted, 42 U.S.C. 8235a. This would preclude a direct charge to these individuals and might well also preclude an indirect charge to them through the rate structure. Moreover, some commentors thought that an indirect charge would reduce the program's likelihood of success. At the same time, commentors frequently felt that neither all the ratepayers nor the stockholders should be required to subsidize those customers who directly benefited from the program. Some also felt that it would be particularly unfair for the rates of those customers who had already undertaken conservation efforts on their own to reflect any of the costs of the program.

There were also some concerns raised as to the usefulness of REEP in various regions of the country. Several utilities in the South felt that the program would not enable them to reduce the peaking demands in their service areas during the summer months when air-conditioning use is at its highest. A commentor in the Northeast felt that the program would be least beneficial in that region because gas and electric utilities would be unwilling to pay for the installation of conservation measures which would reduce the consumption of oil, the predominant heating fuel in the region. Also, several commentors felt that the program would be unnecessary in light of substantial continuing individual initiative and the various State and utility conservation programs currently in effect. Finally, one positive comment stated that while the program raises many of the serious concerns discussed above, it does address an important conservation problem by facilitating delivery of conservation measures and practices.

The final rule is brief. Section 459.101 states that the regulations are those required for REEP by section 265(b) of the NECPA.

Section 459.102 states that no financial assistance will be made available for a REEP demonstration unless there is a solicitation at some future date in accordance with the Department's generic financial assistance rules, 10 CFR Part 600, and then only subject to the availability of appropriated funds. Section 459.102 also precludes the consideration of any unsolicited proposals for REEP funding.

Section 459.103 incorporates by reference the generic financial assistance regulations and the program's authorizing legislation, as applicable, to govern the award and administration of any financial assistance under the program. Incorporating applicable provisions of the NECPA by reference would achieve the same effect as the extensive provisions in the proposed rule which quoted or paraphrased the program legislation.

III. Regulatory Impact, Regulatory Flexibility Act, and Environmental Reviews

This final rule was reviewed under Executive Order 12291, 46 FR 13193, February 19, 1981. DOE has concluded that because the rule affects only the possible implementation of a maximum of four demonstrations, it is not a "major rule," as defined by section 1(b) of the Executive Order.

The final rule was also reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The maximum possible implementation of four projects should not involve a substantial number of small entities as defined by the Act. Section 264(b)(3) of NECPA, moreover, should operate to preclude approval of any demonstration the anticipated anticompetitive effects of which were judged to be unduly burdensome on small entities within the geographic area of the demonstration. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant impact on a substantial number of small entities.

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service (RCS) program. A notice of availability of the final EIS was published on November 7, 1979, 44 FR 64602.

In the event that the REEP were ever implemented, DOE expects that its implementation would be adequately covered by the RCS program EIS since it should involve generally the same measures and impacts addressed in the program EIS. Given the limited number of possible demonstrations that would ever be approved, it is highly unlikely that any implementation of REEP would have significant environmental impact. In any event, the final rule itself is purely procedural in nature and clearly will have no significant environmental impact. Consequently, no NEPA review is required for promulgation of the rule. If, in the future, it is proposed to implement the program, DOE will determine whether additional environmental review is required.

List of Subjects in 10 CFR Part 459

Energy audits, Energy conservation, Housing, Energy retrofits, Grant programs-energy.

In consideration of the foregoing, DOE hereby amends Chapter II of Title 10 of the Code of Federal Regulations by establishing Part 459 as set forth below.

Issued in Washington, D.C., April 12, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR is amended by adding a new Part 459 entitled "Residential Energy Efficiency Program" to read as follows:

PART 459—RESIDENTIAL ENERGY EFFICIENCY PROGRAM

Sec.

459.101 Purpose and scope.
459.102 Availability of financial assistance.
459.103 Award and administration of financial assistance.

Authority: Part 5 of Title II of the National Energy Conservation Policy Act, 42 U.S.C. 8235 *et seq.*, as added by Subtitle C of Title V of the Energy Security Act; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*

§ 459.101 Purpose and scope.

As required by section 265(b) of the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8235d, this part sets forth the procedures for awarding and administering financial assistance under the Residential Energy Efficiency Program.

§ 459.102 Availability of financial assistance.

No financial assistance will be made available under this part without a prior solicitation issued in accordance with 10 CFR Part 600 and then only subject to the availability of appropriated funds. The Department of Energy will not consider any unsolicited proposal for financial assistance under this part.

§ 459.103 Award and administration of financial assistance.

The award and administration of financial assistance under this part are governed by:

(a) Part 5 of Title II of the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8235 *et seq.*; and

(b) Applicable provisions of 10 CFR Part 600, insofar as these provisions do not conflict with Part 5 of Title II of the National Energy Conservation Policy Act, as amended.

[FR Doc. 82-12800 Filed 5-7-82; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 305, 306, 307 and 308

Miscellaneous Amendments to Financial Assistance Programs Regarding Energy Conservation

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends several of EDA's program regulations which were published in final form (45 FR 57960 *et seq.*, August 29, 1980, as amended 45 FR 65997, October 6, 1980) to implement Executive Order 12185 which directed Federal agencies to revise their regulations to encourage recipients of Federal financial assistance to conserve energy. During the 15 months that these regulations have been in effect, EDA's experience indicates that several of the energy conservation provisions adopted have tended to be unduly burdensome upon its grantees and borrowers, have impeded the administration of its financial assistance programs, and would require an excessive diversion of limited staff resources to administer the programs and to monitor compliance in an effective manner. The energy conservation goals of EO 12185 can be attained through cooperation between the agency and the recipient of its financial assistance on a voluntary basis that will not strain the available resources of either the recipient or the agency.

Because the existing rules are impeding the orderly administration of EDA's programs and are unduly burdening potential recipients of financial assistance, the amendments will be published as interim rules, taking effect as of the date of publication, however, the public is invited to provide written comments within sixty (60) days. Comments received will be considered before these rules are published in final form.

DATES: Effective date: May 10, 1982. Comments by: July 9, 1982.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Alan Gregerman, U.S. Department of Commerce (EDA), Operations Directorate, Room 7824, Washington, D.C. 20230. Telephone: (202) 377-3081.

SUPPLEMENTARY INFORMATION: EDA is amending its program regulations in the following manner:

1. 13 CFR Part 305, § 305.59(a) is amended by deleting "encourage the conservation of energy" and by substituting "promote the conservation of energy," and by deleting "will" and substituting "are encouraged to." The mandatory "will" is inconsistent with the voluntary nature of the compliance to be requested. The word "requirements" is removed and "procedures" is substituted therefor.

2. Section 305.59(a)(1) is removed for the same reason. An applicant for a public works project will no longer be required to submit an energy efficiency analysis as part of the application. The applicant will be encouraged to prepare an energy efficiency analysis, for submission with the application or at an appropriate time during the project design process. Submission of an energy efficiency analysis will no longer be a requirement for project approval.

3. Section 305.59(a)(1)(i) is redesignated as "§ 305.59(a)(1)"; the word "prepare" is added as the initial word of this paragraph as redesignated.

4. Sections 305.59(a)(1)(i) (A), (B), (C), (D), and (E) are redesignated as "§§ 305.59(a)(1) (i), (ii), (iii), (iv), and (v)," respectively.

5. Section 305.59(a)(1)(ii) is amended by adding the words "and where able," immediately after the initial comma, and this section is redesignated as "§ 305.59(a)(2)."

6. Sections 305.59(a)(1)(ii) (A), (B), (C), (D), and (E) are redesignated as "§§ 305.59(a)(2) (i), (ii), (iii), (iv), and (v)", respectively.

7. Section 305.59(a)(2) is amended by deleting "Applicants will" and by substituting "Applicants, where able, may" as the initial words of the section. It is redesignated as "§ 305.59(a)(3)."

8. Section 305.59(a)(3) is amended by adding "where appropriate" between

"change" and "evolving", and by deleting "must be" and substituting "may be" between "consumption" and "justified" in the first sentence of that paragraph. The term "should be" is deleted, and "may be" is substituted between "employed" and "consistent" in the second sentence. The section is redesignated as "§ 305.59(a)(4)."

9. Section 305.59(a)(4) is amended by deleting "will", and by substituting "may, where able," between "applicants" and "incorporate", and by redesignating it as "§ 305.59(a)(5)."

10. Section 305.59(a)(5) is redesignated as "§ 305.59(a)(6)."

11. 13 CFR Part 306, § 306.12(g)(4) is amended by deleting "must" from the second sentence and substituting "may, where able" between "Applicants" and "demonstrate."

12. Section 306.12(j) is amended by adding "where able" between "Applicants" and "constructing," and by deleting "are required to" and substituting "may, where able," between "processes" and "analyze" in the first sentence thereof; the second sentence is amended by deleting "must" and substituting "may, where able" between "projects" and "contain." The third sentence is amended by deleting "should be" and substituting "may be" between "employed" and "consistent."

13. 13 CFR Part 307, § 307.22(b) is amended by deleting "shall" between "recipients" and "ensure," and between "subpart" and "provide," substituting "may" in both instances.

14. Section 307.28(c)(6) is amended by adding "Possible" as the initial word of this paragraph.

15. Section 307.55(a)(5) is amended by deleting "will be," and by substituting "may be" between "process" and coordinated; also, "where able," is inserted between "efforts" and "to ensure."

16. Section 307.55(c)(5) is amended by deleting "shall be" from the second sentence thereof, and substituting "may be" between "process" and "coordinated."

17. Section 307.56(h) is amended by deleting the phrase "as required by this subpart" from its first sentence and substituting the phrase, "as suggested by this subpart."

18. Section 307.57(a)(6) is amended by adding the phrase "may be submitted" to the end of this paragraph.

19. 13 CFR Part 308, § 308.6(a)(8) is amended by adding to its first sentence the phrase, "and where able," immediately after "where appropriate,"; its second sentence is amended by deleting "shall be" and substituting "may be" between "analysis" and "generally"; its third sentence is amended by deleting, "The energy efficiency and analysis will include the following:", and substituting, therefor, "The energy efficiency analysis may include the following:".

Because this rule relates to EDA's grant and loan programs, it is exempt from the notice and comment procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, while the rule will become effective upon publication in interim form, the public will be given an opportunity to comment before it is published in final form. In accordance with Section 3(c)(3) of Executive Order No. 12291, this rule has been submitted to the Director of the Office of Management and Budget. It is not a major rule as defined in that Order. The requirement for an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, is also inapplicable. Because this amendment does not contain an information collection requirement, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, does not apply.

List of Subjects in 13 CFR Parts 305, 306, 307 and 308

Grant programs, Loan programs, Public works, Energy conservation.

Accordingly, EDA amends the following regulations:

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. 13 CFR 305.59(a) is revised to read as follows:

§ 305.59 Energy conservation and other requirements.

(a) *Energy conservation.* In order to promote the conservation of energy in connection with public works facilities assisted under this part, applicants are encouraged to comply with the following procedures:

(1) Prepare an energy efficiency analysis of the facilities for which EDA assistance is requested. Such analysis may include the following:

(i) The overall design of the facilities;

(ii) Special conservation measures to be utilized;

(iii) Fuel requirements for heating, cooling and production processes of the facilities;

(iv) Consideration given to the use of cost-effective alternative and renewable energy sources for heating, cooling and production processes of the facilities; and

(v) BTU savings resulting from the design of the facilities compared to standard design criteria.

(2) Where appropriate, and where available, the following information concerning energy considerations of the firms which will use the facilities for which EDA assistance is requested:

(i) Fuel needs;

(ii) Fuel sources;

(iii) Transportation needs;

(iv) Provisions being made for renewable fuel sources; and

(v) Energy conservation decisions made in order to determine the site and users of the facilities.

(3) Applicants, where able, may base the energy efficiency analysis on energy evaluation techniques which are broad enough to permit the use of any recognized and accepted methodology that is most appropriate to project needs.

(4) Each design change, where appropriate, evolving from the basic design which results in higher initial costs and lower energy consumption may be justified by a life cycle cost analysis. The life cycle cost methodology employed may be consistent generally with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436.

(5) Applicants may, where able, incorporate into the project those energy conservation features identified in the energy efficiency analysis unless funds are not available from EDA and/or the applicant to cover the costs of such measures, or unless there are other overriding economic development considerations;

(6) The requirements of this subsection apply to applications authorized on or after October 1, 1980.

* * * * *

PART 306—BUSINESS DEVELOPMENT PROGRAM

2. 13 CFR 306.12 is amended by revising paragraphs (g)(4) and paragraph (j) to read as follows:

§ 306.12 Allowable costs for projects involving fixed assets.

* * * * *

(g) * * *

(4) In otherwise eligible projects, costs associated with incorporating energy conserving features into facilities and production processes. Applicant, may, where able, demonstrate that incorporation of the proposed features for which assistance is being requested will result in the more efficient and cost-effective use of non-renewable energy

sources and/or renewable sources of energy.

* * * * *

(j) Applicants, where able, constructing new facilities or proposing expansion or rehabilitation of existing facilities and planning to use petroleum or natural gas for new heating, cooling or production processes may analyze alternatives for long-run cost savings. Applications for such project, may, where able, contain an architect/engineer's or operating engineer's certification that the proposed alternative is the most feasible and energy conserving available based on a life cycle cost analysis. The life cycle cost methodology employed may be consistent generally with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436.

3. 13 CFR 307.22(b) is revised to read as follows:

§ 307.22 Planning grant objectives.

* * * * *

(b) In order to further the objectives of Executive Order 12185 to conserve petroleum and natural gas, recipients may ensure that economic development planning processes assisted under this subpart may provide a means for addressing energy conservation concerns and principles.

4. 13 CFR 307.28(c)(6) is revised to read as follows:

§ 307.28 Continuation planning grants.

* * * * *

(6) Possible incorporation by the grantee of energy conservation concerns and principles into the economic development planning process.

* * * * *

5. 13 CFR 307.55 is amended by revising paragraph (a)(5) and paragraph (c)(5) to read as follows:

§ 307.55 Application requirements.

* * * * *

(a) * * *

(5) That the planning process may be coordinated with energy conservation planning efforts, where able, to ensure that energy conservation principles, activities and measures are reflected in State economic development plans, programs and projects.

* * * * *

(c) * * *

(5) That, in undertaking the activities described in paragraphs (c)(3) and (c)(4) of this section, attention will be given to incorporating energy conservation concerns and principles into any economic development plans, programs, and projects. The economic development planning process may be coordinated with existing State and local energy conservation planning efforts.

6. 13 CFR 307.56(h) is revised to read as follows:

§ 307.56 Grant limitations.

* * * * *

(h) Grants may cover costs incurred for ensuring that energy conservation concerns are incorporated into the economic development planning process and resultant plans and programs as suggested by this subpart. Such costs will not be allowed if the grantee is receiving other Federal assistance to perform the above activity.

7. 13 CFR 307.57(a)(6) is revised to read as follows:

§ 307.57 Annual reports.

* * * * *

(a) States. * * *

(6) For grants approved after October 1, 1980, certification regarding the manner in which the State incorporated energy conservation concerns into the activities of its planning process may be submitted.

* * * * *

PART 308—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE GRANTS

* * * * *

8. 13 CFR 308.6(a)(8) is revised to read as follows:

§ 308.6 Planning requirements.

(a) * * *

(8) Where appropriate, and where able, a completed energy efficiency analysis and life cycle cost analysis of the facilities for which EDA assistance is requested. The life cycle cost analysis may be generally consistent with the Department of Energy's Methodology and Procedures for Life Cycle Cost Analyses, as set forth in 10 CFR Part 436. The energy efficiency and analysis may include the following:

(i) The overall design of the facilities;

(ii) Special conservation measures to be utilized;

(iii) Fuel requirements for heating, cooling and production processes of the facilities;

(iv) Consideration given to the use of alternative and renewable energy sources for heating, cooling and production processes of the facilities; and

(v) BTU savings resulting from the design of the facilities compared to standard design criteria.

* * * * *

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Executive Order 12185; Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

Dated: April 23, 1982.

Carlos C. Campbell,

Acting Assistant Secretary for Economic Development.

[FR Doc. 82-12834 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-NW-23-AD; Amdt. 39-4375]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Boeing Model 727 airplanes which requires either color-coding or modification of the ground spoiler hydraulic lines to eliminate the possibility of cross-connecting them. Cross-connection of these lines will cause inadvertent, asymmetric extension of the ground spoilers, resulting in a hazardous flight condition if takeoff is attempted. This AD is required to assure proper operation of the ground spoilers.

DATE: Effective date June 11, 1982. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from The Boeing Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to adopt an Airworthiness Directive which requires modification or color-coding of the ground spoiler hydraulic lines on the Boeing Model 727 airplanes was published in the Federal Register on

June 22, 1981 (46 FR 32266). The ground spoiler up and down lines run parallel to each other and in close proximity for most of the distance between the wheel well and the wings. The connections in each of these lines are arranged so that it is possible to cross-connect them. Three operators have reported inadvertently cross-connecting a ground spoiler-up hydraulic line with a ground spoiler-down hydraulic line during routine maintenance, which resulted in asymmetric ground spoiler extension when the hydraulic system was pressurized. In two of these instances, the discrepancy was detected and corrected prior to flight. In one instance, the airplane took off with the right wing ground spoiler panels extended. The airplane experienced a No. 3 engine compressor stall and required lateral and directional control to maintain level flight. The airplane subsequently returned and made a safe landing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Nineteen comments were received in response to the Notice of Proposed Rulemaking. Most of the commenters stated that an AD is not needed, since existing maintenance procedures are adequate to detect crossed lines prior to flight. The FAA disagrees. Three occurrances of crossed lines, with two discovered during taxi-out and the third not detected until after takeoff, clearly show that an additional means of preventing crossed hydraulic lines is required.

Most commenters objected to the proposed requirement to replace hydraulic tubing with new tubing containing staggered unions, citing long delays due to parts availability and airplane down time, in addition to substantial economic penalty. These commenters asserted that permanently color-coding the lines at each connection point would provide an equivalent level of safety without the severe penalty associated with tubing replacement. The FAA agrees. Color-coding of the affected tubing would provide the required additional check of proper tubing hook-up without the substantial costs and airplane downtime associated with tubing replacement.

The Boeing Company issued Revision 1 to Service Bulletin 727-27-202 on December 18, 1981. This revision expanded the effectivity of the optional color-coding method of compliance to include all 727 airplanes. The original issue, which was referenced in the NPRM, provided instructions for tubing color-coding as an alternate method of compliance for certain earlier airplanes only. For operators that choose to replace the tubing instead of color-coding, this procedure is explained in the revised bulletin and is an acceptable method of compliance with the AD.

After a careful review of all available data, including the comments above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to Boeing Model 727 airplanes, line number 1 through 1612, certificated in all categories. Compliance is required within the next 2500 hours time-in-service from the effective date of this AD, unless already accomplished. To minimize the possibility of cross-connecting the ground spoiler hydraulic tube assemblies, accomplish either one of the following, unless already accomplished:

A. Replace the ground spoiler hydraulic tube assemblies per figure 1 of Boeing Service Bulletin 727-27-202, Revision 1, dated December 18, 1981, or later revisions approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

B. Color code the ground spoiler hydraulic tube assemblies per figure 2 of the same bulletin.

Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This Amendment becomes effective June 11, 1982.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certify that this rule will not have a significant economic effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since it involves few, if any, such entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identfied under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review only by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington on April 27, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-12582 Filed 5-7-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-CE-4-AD; Amdt. 39-4379]

Airworthiness Directives; Helio Models H-250, H-295, HT-295, H-391, H-391B, H-395 and H-395A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule. Revision of existing Airworthiness Directive (AD).

SUMMARY: This amendment revises Airworthiness Directive (AD) 81-26-07, applicable to Helio Models H-250, H-295, HT-295, H-391, H-391B, H-395 and H-395A airplanes. The revision adds a paragraph providing for approval of an equivalent means of AD compliance. This action is necessary to facilitate approval of acceptable inspection procedures which were not considered when AD 81-26-07 was issued.

EFFECTIVE DATE: May 14, 1982.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT:

Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7005.

SUPPLEMENTARY INFORMATION:

Amendment 39-4319 (47 FR 9196 thru 9199), AD 81-26-07, applicable to Helio Models H-250, H-295, HT-295, H-391, H-391B, H-395 and H-395A airplanes, requires initial and repetitive inspections of the P/N 295-030-401 carry-through assembly for cracks and replacement of cracked assemblies. Subsequently, the FAA found that the inspection procedure prescribed in the AD is inappropriate for those airplanes

equipped with floats. Accordingly, AD 81-26-07 is being revised to add a paragraph providing for approval of an equivalent means of compliance for those airplanes on floats and/or to cover other unusual circumstances not envisioned by the AD.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 81-26-07, Amendment 39-4319 (47 FR 9196 through 9199), § 319.3 of the Federal Aviation Regulations (14 CFR 39.13) is amended as follows: Add paragraph (E) which reads as follows:

"(E) An equivalent means of compliance with this AD may be used, if approved by Chief, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209."

This amendment becomes effective on May 14, 1982.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).

Note.—The FAA has determined that this amendment involves revision of a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and certifies that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves inspection and possible repair of only a few aircraft owned by small entities.

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on April 28, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-12260 Filed 5-7-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-NM-35-AD; Amdt. 39-4378]

Airworthiness Directives; McDonnell Douglas Model DC-9, Series 30, 50, 80 and C-9B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) which requires inspection and replacement, as necessary, of the horizontal stabilizer alternate longitudinal trim actuator motors on certain McDonnell Douglas DC-9 and C-9B series airplanes. Failure of the trim actuator motor will result in inability to trim the airplane using the stabilizer primary trim system.

DATE: Effective date May 18, 1982. Compliance is required within the next 90 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, or 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Lonnie F. Tarver, Aerospace Engineer, ANM-130L, Federal Aviation Administration, Northwest Mountain Region, Los Angeles Area Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2031.

SUPPLEMENTARY INFORMATION: There has been one (1) reported instance in which a flight crew experienced the inability to trim the aircraft using the stabilizer primary trim system. Investigation revealed that the auxiliary trim motor brake had failed in the release position due to shearing of rivets which were not of the specified type design for this assembly.

Subsequent review of the available manufacturing records indicated that installation of the improper rivets is isolated to a particular manufacturing lot and certain reworked units. McDonnell Douglas issued Alert Service Bulletin A27-234 on January 14, 1982, and Revision 1 dated January 16, 1982, requesting that inspection and replacement of the defective parts be accomplished within 90 days from issuance of the Service Bulletin. McDonnell Douglas additionally issued All Operator Letter AOL 9-1333 dated January 21, 1982, which apprised operators of the reported incident, and enclosed Flight Operations letter C1-255-GRJ-L666 dated December 21, 1981, containing information relative to flight crew recognition of this failure mode and appropriate interim flight procedures in the event of such failure. Flight Operations letter C1-E80-GRJ-L021 dated January 14, 1982, contained information to correct errors in letter C1-255-GRJ-L666.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the alternate longitudinal trim actuator motor and replacement as necessary on certain McDonnell Douglas DC-9 and C-9B series airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to McDonnell Douglas DC-9, series 30, 50, 80 and C-9B airplanes certificated in all categories, with factory serial numbers listed in Service Bulletin A27-234. Compliance required within 90 days unless already accomplished.

To prevent loss of ability to trim the aircraft by use of the primary longitudinal trim system, accomplish the following:

A. Determine serial number of horizontal stabilizer alternate longitudinal trim motor P/N D1775 by visual examination of motor or from aircraft maintenance records.

B. Replace trim motor if serial number is listed in table of item #2 in Service Bulletin A27-234.

Note.—Service Bulletin A27-234 contains recommended procedures for gaining access to the horizontal stabilizer alternate longitudinal trim motor, and for checkout of the trim system subsequent to replacement of the motor.

C. Alternative means of compliance which provide an equivalent level of safety may be used when approved by the Chief, Los Angeles Area Aircraft Certification Office, FAA Northwest Mountain Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein

and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60).

These documents also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; or Los Angeles Area Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808.

This Amendment becomes effective May 18, 1982.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 2979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review only by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington on April 28, 1982.

Wayne Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-12580 Filed 5-7-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-NM-17-AD; Amdt. 39-4376]

Airworthiness Directives; Rockwell International Models NA 265-60 (Modified by STC SA687NW) and NA 265-65 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) which requires initial and repetitive inspections to detect potentially defective internal bearings in the flap screwjack actuators of all Sabreliner Model NA 265–65 series airplanes and Model NA 265–60 airplanes which are modified per STC SA687NW. Failure of these bearings could cause a malfunction of the screwjacks allowing the flap to be driven beyond the limits of the skew detection system during extension or retraction. Possible flap to aileron interference and loss of aileron control may result.

DATES: Effective date May 17, 1982. Compliance schedule as prescribed in the body of the AD.

ADDRESS: Sabreliner Service Bulletin No. 81–14 dated December 28, 1981, pertains to this matter. This bulletin may be obtained from Rockwell International, Sabreliner Division, 6161 Aviation Drive, St. Louis, MO 63134; Telephone (314) 731–2260.

FOR FURTHER INFORMATION CONTACT: Marvin D. Beene, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269–7005.

SUPPLEMENTARY INFORMATION: A failure in the flap system on a Sabreliner Model NA 265–65 airplane occurred during a landing approach. The failure, at a preselected flap setting of 10 degrees, resulted in an asymmetric flap condition with the right flap skewed such that its outboard trailing edge contacted the inboard edge of the aileron. The cause was a failure of the internal ball bearings in the outboard screwjack actuator on the right flap that allowed the flap to be driven beyond the limits of the skew detection system. With aileron movement restrained by the nonretractable flap, the crew landed the airplane without further incident, using aileron trim and rudder. Subsequent inspections of the screwjack indicate the failure was due to either defective or inadequate bearing lubrication.

Rockwell International has devised an inspection technique to detect defective bearings within the screwjack assembly without disassembly of the actuator. This technique is based upon listening to the sounds emitted from the bearings while extending or retracting the flaps. A constant high pitch grinding or growling noise from the actuator is an indication of a malfunctioning bearing. Rockwell Service Bulletin 81–14 dated December 28, 1981, pertains to these inspections. Rockwell International is developing a modification to the actuator which, when incorporated, will eliminate the need for the recurring inspections defined in the Service Bulletin and this Airworthiness Directive.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires repetitive inspections of the screwjack actuators to detect failed bearings, which may cause interference between the flaps and ailerons which may result in loss of lateral control of the airplane.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Rockwell International: Applies to Models NA 265–60 modified per STC SA 687 NW (S/N 306–5, –6, –12, –34, –60, –71, –108, –110, –119, and –122); NA 265–65, S/N 465–1 through 465–76, and S/N 306–114 airplanes certificated in all categories. Compliance required as indicated unless already accomplished. To reduce the possibility of a flap screwjack actuator malfunction due to bearing failure, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD and within each additional 300 hours time-in-service, inspect each flap screwjack in accordance with Rockwell International Service Bulletin 81–14 dated December 28, 1981. Replace or repair any flap screwjack not meeting the acceptance criteria in this service bulletin.

B. Model NA 265–65 Sabreliner airplanes are approved for take-offs and landings with zero degree flap settings and may, therefore, be operated with a defective flap screwjack, provided the flap system is deactivated and the airplane operated in accordance with the zero flap performance data in the Airplane Flight Manual SR–77–006.

C. Model NA 265–60 airplanes may be operated with a defective flap screwjack, provided the flap system is deactivated and the following operating limitations are observed:

1. Takeoff must be conducted in compliance with Airplane Flight Manual zero flap requirements.

2. Landing weather minimums are one mile or RVR 5000.

3. Zero flap, dry runway landing distance must be determined by multiplying the *factored* landing distance shown in the Rockwell International Airplane Flight

Manual, Supplement No. SR–81–018, by a factor of one point five.

4. Zero flap, wet runway landing distances must be determined by multiplying the distance obtained in "3." above by a factor of one point one five.

5. Thrust reversers must be operative prior to takeoff.

D. Alternative means of compliance with this AD which provide an equivalent level of safety must be approved by the Chief, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269–7000.

This amendment becomes effective May 17, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington, on April 27, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82–12561 Filed 5–7–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 81–NW–42–AD, Amdt. 39–4377]

Airworthiness Directive; Rockwell NA 265–80 Airplanes Modified in Accordance With STC SA687NW and Equipped With Lear Siegler Flap Actuation System, and Rockwell NA 265–80 Airplanes Modified in Accordance With STC SA847NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On July 9, 1981, the FAA issued a Telegraphic Airworthiness Directive, (AD) T81–15–51, to all known operators of Rockwell NA 265–80 airplanes modified in accordance with STC SA687NW and equipped with Lear Siegler Flap Actuation System, and all known operators of Rockwell NA 265–80 airplanes modified in accordance with STC SA847NW, effective upon receipt. This AD required operators to remove and rework the power drive unit and flap jackscrew actuators, and to repetitively accomplish a torque check and shear pin replacement, in order to prevent improper flap motion caused by a failure in the flap actuating system. This action was prompted by an incident which revealed that the flap actuation system may fail in such a way that a trailing edge flap may skew while extending or retracting, thus imposing unusual loads on the flap tracks. If a flap track fails due to skewed flap motion, airloads may cause the flap to separate from the airplane. This AD is hereby published in the **Federal Register** to make it effective to all persons. Further, this document amends T81–15–51 to increase the allowable repetitive rework interval, and to modify the rework procedures.

DATES: Effective date May 18, 1982. This AD was effective earlier to all recipients of Telegraph AD T81–15–51 dated July 9, 1981.

ADDRESSES: The service bulletin specified in the Airworthiness Directive may be obtained upon request to Rockwell International, Sabreliner Division, Technical Publications, Dept. 632, 6161 Aviation Drive, St. Louis, Missouri 63134, or may be examined at the FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767–2500.

SUPPLEMENTARY INFORMATION: A reported incident revealed that the flap actuation system on the modified Rockwell Sabreliners listed above may fail in such a way that a trailing edge flap may skew while extending or retracting, thus imposing unusual loads on the flap tracks. If a flap track fails due to skewed flap motion, airloads may cause the flap to separate from the airplane. Service Bulletin No. 81–5 dated July 10, 1981, was issued by the manufacturer which required removal and rework of the power drive unit and the four flap jackscrew actuators prior to the accumulation of 200 landings on the system, and repetitively at 200 landings thereafter, performance of a torque check on the power drive unit and removal and rework and four flap jackscrew actuators. A telegraphic AD was issued on July 9, 1981, to require compliance with the service bulletin, with the exception that the 200 landing interval for the power drive unit torque check was reduced to 100 landings.

On December 15, 1981, an amendment to the service bulletin was issued which required that the torque check of the power drive unit be performed by the manufacturer at the factory, rather than on the airplane, in order to insure the accuracy of the torque checks. The results of the manufacturer's torque checks performed thus far, plus the fact that the checks are now controlled by the manufacturer, indicate that the 100 landing check specified in the telegraphic AD may be relaxed to the 200 landing interval recommended by the manufacturer. In addition, an incident involving the jamming of a no-back clutch in the flap jackscrew actuator revealed that an extra hole may exist in some of the drive shafts now in service. This extra hole may have contributed to the jamming of the clutch. When the flap jackscrew actuators are recycled through the manufacturer for overhaul, these suspect shafts will be replaced with new drive shafts that do not have the extra hole. This AD publishes the original telegraphic AD in the **Federal Register**, as well as requires the changes discussed above.

Since this condition was likely to exist or develop on other airplanes of the same type design, a telegraphic airworthiness directive was issued which requires inspections and modification to certain Rockwell NA 265–60 and 265–80 airplanes. It is now published to make it effective to all persons.

Since a situation existed and still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Rockwell: Applies to all Rockwell NA 265–60 airplanes modified in accordance with

STC SA687NW and equipped with Lear Siegler Flap Actuation System, and all Rockwell NA 265–80 airplanes modified in accordance with STC SA847NW. To prevent improper flap motion caused by a failure in the flap actuation system, accomplish the following unless already accomplished:

A. Within the next 20 landings following the effective date of this AD, or prior to the accumulation of 200 landings after incorporation of STC SA687NW or STC SA847NW, whichever comes later, rework the power drive unit and flap jackscrew actuators in accordance with paragraphs 1(a) and 1(b) of Rockwell International Sabreliner Service Bulletin 81–5, dated July 10, 1981. During rework of the flap jackscrew actuators, replace any drive shaft, part No. 57400–1640, found to have an extra hole with a new part that does not contain an extra hole.

B. Repetitively, on or before every 200 landings following the accomplishment of paragraph (A) above, remove and replace the power drive unit and flap jackscrew actuators in accordance with paragraphs 3(a) and 3(b) of Rockwell International Sabreliner Service Bulletin 81–5, Revision 1, dated December 15, 1981.

Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197 and FAR 21.199.

Alternate means of compliance or other actions which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the addresses listed above. These documents may also be examined at FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective May 18, 1982 and was effective earlier to those recipients of Telegraph AD T81–15–41 dated July 9, 1981.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington on April 28, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-12558 Filed 5-7-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 22050; Reference SFAR No. 44–3]

Air Traffic Control System; Interim Operations Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy.

SUMMARY: Because of the limited capacity of the Air Traffic Control System resulting from the illegal air traffic controllers' strike, rights to land ("slots") at 22 of the Nation's busiest airports have been allocated to air carriers by the Federal Aviation Administration (FAA) under the Interim Operations Plan, Special Federal Aviation Regulation (SFAR) Nos. 44 through 44–3. Some air carriers contend that seasonal changes in demand for airline services and other market forces require greater flexibility in the allocation of slots. Since March of this year, carriers have been able to exchange slots through a procedure conducted by the Air Transport Association (ATA) under a grant of antitrust immunity by the Civil Aeronautics Board (CAB).

Under SFAR 44–3, airlines may only operate flights for which they hold a slot. The FAA maintains a master list of slot allocations and formally advises each carrier of the slots it may use. Exchanges of slots made under the ATA procedure are therefore reported to the FAA, which must verify them to update each carrier's base before it may operate flights associated with the exchanged slots. To date, the FAA has only accepted one-for-one slot exchanges made under the ATA procedure.

DATE: Effective immediately, but for a limited period, the FAA will "approve" any transfer of arrival slots at the 22 impacted airports between carriers, subject to certain limitations, if the transferee of each slot or set of slots provides evidence that the transferor in fact had been allocated the slot or slots in its "base" allocation under SFAR 44–3 and has agreed to the transfer. Slots whose transfers have been "approved" will be added to a carrier's base. This policy will be in effect for a limited period only, until June 10, and then will be reviewed for possible continuation.

FOR FURTHER INFORMATION CONTACT:

Franklin K. Willis, Deputy Assistant Secretary for Policy and International Affairs, Office of the Secretary of Transportation, Washington, D.C. 20590, 202–426–4540.

or

Donald R. Segner, Associate Administrator for Policy and International Aviation, Federal Aviation Administration, Washington, D.C. 20591, 202–426–3030

SUPPLEMENTAL INFORMATION: The actions of certain air traffic controllers in August of 1981 reduced the number of controllers available to operate the Air Traffic Control (ATC) system. In order to assure the safe and efficient use of the navigable airspace, the FAA has been obliged to ration the limited ATC capacity among users. It has done so by assigning "slots" (rights to land) under a series of emergency regulations [SFAR No. 44 (46 FR 30806; August 4, 1981); SFAR No. 44–1 (46 FR 44424; September 4, 1981); SFAR No. 44–2 (46 FR 48906, October 5, 1981); and SFAR No. 44–3 (47 FR 7816, February 22, 1982)].

Airlines began the period of restricted operations with a "base" number of slots at 22 restricted airports derived from their pre-strike operations. As the capacity of the ATC system has increased, additional slots have been awarded in response to requests of the carriers under procedures prescribed by SFARs 44–1, 44–2, and 44–3. These regulations also provide that air carriers must use slots awarded to them or lose them from their base.

Because SFAR No. 44–3 does not provide for adjustments in slot assignments that may be occasioned by seasonal variations in demand, competitive pressures, or economic decisions of the carriers, the FAA has been receptive to efforts to add flexibility to the slot allocation system. To this end, the FAA withdrew its opposition to an air carrier request for antitrust immunity from the CAB to permit blind trades of slots between

carries under a procedure administered by the ATA. While this procedure has been successful in increasing scheduling flexibility among the carriers, many believe it is not adequate.

To administer the slot allocation system, the FAA has maintained a computerized recordkeeping system. Because of the highly complex nature of the system, the FAA has only accepted exchanges of slots between air carriers conducted under the CAB-approved trade procedures. Other transfers of slots proposed by carriers have been disapproved.

In the interest of allowing air carriers maximum flexibility while at the same time maintaining strict regimen of slot control, the FAA is now prepared, for a limited period, to accept transfers of slots between carriers in any number and for any type of consideration.

Before a carrier may operate a flight with a transferred slot or slots, it must report the transfer to the FAA with suitable evidence that the transferor has agreed to the transfer. The FAA will verify that the transfor actually held the transferred slot or slots in its base allocation, and then "approve" the transaction, as it presently does with all slot allocations. FAA's handling of trades made under the ATA procedures will remain unchanged.

FAA "approval" of transfers at the 22 impacted airports will be given under the following circumstances:

1. Any slot or slots to be transferred must come from the transferor's FAA-approved April 25–May 31 operating base, as determined under SFAR 44–3.

2. All requests for approval must be submitted in writing to the Associate Administrator for Policy and International Aviation, API–1, Federal Aviation Administration, Washington, D.C. 20591 in the same format as slot requests submitted under SFAR No. 44–3. Transfer requests combined with other requests under the SFAR (such as slides) will not be accepted.

3. Written evidence of the transferor's consent to the transfer must be provided.

4. A record of the transfer will be made available to the public.

5. Transfers that would reduce the number of slots allocated to an air carrier that has been afforded priority treatment in the distribution of new slots under ¶3(c) of the Appendix to SFAR No. 44–3 (certain new entrant airlines) will not be approved unless the transferor waives its right to be considered a "new entrant" in future distributions under the Interim Operations Plan.

6. Transfers of slots necessary for the provision of essential air service within the meaning of section 419 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1389, will not be approved.

7. Applications for transfer will be accepted only until June 10.

The provisions of SFAR No. 44–3 continue to apply. In particular, it should be noted that only carriers may hold slots, and that a single slot covers only an arrival in a given hour at a single airport. In addition, for the present, the transfer of "tower en route" and ARTCC slots will not be "approved".

Affirmative approval must be obtained from the FAA before slots may be used. The FAA anticipates that properly documented transfer requests will be approved within two weeks of the receipt of a request.

Such "approval" by the FAA does not indicate any approval of the terms of a transfer. The FAA will not base its "approval" on the consideration for the transfer. A slot is a temporary creation of FAA emergency regulations, and does not confer on any carrier a long-term right. Slots can be taken from any carrier in accordance with the terms of the existing SFAR or any amendments to it. Moreover, the FAA does not guarantee that slots will be required at any airport for any particular period of time. As soon as possible, the FAA intends to relieve the carriers from the requirement of obtaining slots.

After reviewing the results of this temporary policy, we will consider whether further transfers can be permitted under these less restrictive procedures consistent with the purposes of the Interim Operations Plan.

(49 U.S.C. 1301 *et seq.* and 49 U.S.C. 1651 *et seq.*)

Issued at Washington D.C. on May 6, 1982.

Andrew L. Lewis, Jr.,

Secretary of Transportation.

[FR Doc. 82-12794 Filed 5-7-82; 9:33 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

Civil Procedures; Correction

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rule; correction.

SUMMARY: On December 18, 1981, NOAA published interim final rules providing consolidated civil penalty assessment, hearing, and appeal procedures for various statutes it administers. This document amends the interim final rules by correcting citations to the Lacey Act, 16 U.S.C. 3371–3378.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell at (202) 254–8350.

SUPPLEMENTARY INFORMATION: In FR Doc. 81–34431, appearing at page 61644 in the issue of December 18, 1981, the citations of authority are corrected in the second and third columns by changing "Lacey Act, 18 U.S.C. 42–44, 3054, 3112" to read "Lacey Act, 16 U.S.C. 3371–3378"; and appearing at page 61645, 15 CFR 904.100(a)(1)(iv) is corrected by changing "16 U.S.C. 42–44, 3045, 3112" to read "16 U.S.C. 3371–3378".

Dated: May 3, 1982.

Francis J. Balint,

Director, Office of Information and Management Services.

[FR Doc. 82-12822 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-22-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9028]

Brunswick Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies the Commission's final order issued on August 14, 1980, 96 F.T.C. 151, 45 FR 62032, by adding Paragraphs IX and X to the order, in accordance with the decision and judgment of the Eighth Circuit Court of Appeals. The new paragraphs: (1) Limit Yamaha's liability in this matter solely to violations of section 5 of the Federal Trade Commission Act; and (2) insures that nothing in the order prevents respondents from imposing upon themselves, their dealers and distributors, vertical restraints in connection with the sale by them for resale in the U.S. of outboard motors.

DATES: Final order issued August 14, 1980. Modifying order issued April 29, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/C, Thomas J. Campbell, Washington, D.C. 20580. (202) 523–3601.

SUPPLEMENTARY INFORMATION: In the Matter of Brunswick Corporation, a corporation; Yamaha Motor Co., Ltd., a corporation; and Mariner Corp., a corporation. Codification under 16 CFR

Part 13, appearing at 45 FR 62032, remains unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Investments, Labeling, Packaging and containers, Securities, Trade practices, Warranties, Credit.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

The Modified Order To Cease and Desist, including further order requiring report of compliance therewith, is as follows:

United States of America Before the Federal Trade Commission

Commissioners: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia Bailey.

In the Matter of *Brunswick Corporation*, a corporation; *Yamaha Motor Co., Ltd.*, a corporation; and *Mariner Corp.*, a corporation.

Docket No. 9028

Modified Order To Cease and Desist

The Commission having issued a final cease and desist order herein on August 14, 1980, and such order having been modified and affirmed by the United States Court of Appeals for the Eighth Circuit, and the Supreme Court having denied the petition for certiorari filed by respondents Brunswick Corporation and Mariner Corp.:

Now, therefore, it is ordered that the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

For the purposes of this Order:

(a) "Brunswick" shall mean the Brunswick Corporation, together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations (including Mariner Corp.), and corporations controlled by Brunswick Corporation; and all successors to Brunswick Corporation and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Brunswick Corporation.

(b) "Yamaha" shall mean Yamaha Motor Co., Ltd., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Yamaha Motor Co., Ltd.

(c) "Mariner" shall mean Mariner Corp., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Mariner Corp.; and all successors to Mariner Corp. and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Mariner Corp.

I

It is ordered that within 90 days of the date this Order becomes final, Brunswick and Mariner shall sell to Yamaha, and Yamaha shall buy from Brunswick and Mariner, all capital stock, bonds, debentures, and other securities and other interests held by Brunswick and Mariner in Sanshin Kogyo Co., Ltd. ("Sanshin"). The purchase price shall be equal in dollars to the value of the net tangible assets per share, computed and adjusted to the last day of the six month term immediately preceding the date of the sale.

II

It is further ordered that, on or before 90 days from the date this Order becomes final, Brunswick, Yamaha, and Mariner shall rescind in all respects the Joint Venture Agreement, and the agreements attached thereto, entered into on November 21, 1972, and all agreements modifying the Joint Venture Agreement and the agreements attached thereto, shall consider them null and void, and shall cease and desist from observing or enforcing the terms of said agreements.

III

It is further ordered that from the date this Order becomes final, Brunswick and Mariner shall cease any and all representation on the board of directors of Sanshin, cease and desist from taking any steps to nominate, seat, or admit any representatives of Brunswick and Mariner to the board of directors of Sanshin, and cease and desist from exercising any of the rights of a shareholder of Sanshin except the right to receive dividends.

IV

It is further ordered that from the date this Order becomes final, neither Brunswick nor Mariner shall enter into, continue to be a party to, or enforce any agreement which in whole or in part prevents a manufacturer, seller, or distributor of outboard motors from manufacturing, selling, or distributing such motors in the United States, its territories or possessions.

V

It is further ordered that from the date this Order becomes final, Yamaha shall not enter into, continue to be a party to, or observe any agreement which in whole or in part prevents Yamaha from manufacturing, selling, or distributing outboard motors in the United States, its territories or possessions.

VI

It is further ordered that Brunswick, Yamaha, and Mariner shall, for a period of three years from the date this Order becomes final, cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, all or any part of the stock or share capital of any concern, corporate or noncorporate, engaged in the production, distribution or sale of outboard motors in or for the United States, or capital assets pertaining to such production, distribution or sale of such motors in or for the United States.

VII

It is further ordered that Brunswick, Yamaha, and Mariner notify the Federal Trade Commission at least 30 days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in the corporation which may affect compliance obligations arising out of this Order.

VIII

It is further ordered that Brunswick, Yamaha, and Mariner shall within 120 days of the date this Order becomes final, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Brunswick, Yamaha, and Mariner each intends to comply or has complied with this Order. Brunswick, Yamaha, and Mariner shall submit such other information as may from time to time be requested by the Commission.

IX

Nothing in this Order or in the opinions of the Commission in this case shall be construed as a finding or conclusion that Yamaha has violated Section 7 of the Clayton Act. All findings and relief against Yamaha are based solely on Section 5 of the Federal Trade Commission Act.

X

Nothing in this Order, including in particular Paragraphs IV or V hereof, shall prevent either Brunswick, Mariner, or Yamaha, respectively, from imposing upon itself, its dealers, or its distributors, ancillary vertical restraints in connection with the sale by it for resale in the United States of outboard motors.

By the Commission.

Issued: April 29, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-12044 Filed 5-7-82; 8:45 am]

BILLING CODE 6750-01-M

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act (NEPA); Amendment of Public Notice Provisions

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service relaxes certain provisions of its environmental impact procedures, inasmuch as those procedures unnecessarily require, rather than permit, the mailing of notices of local actions to potentially interested community organizations and to owners and occupants of nearby or affected property. The relaxed procedures are substantially similar to comparable

permissive provisions of the NEPA regulations of the Council on Environmental Quality.

EFFECTIVE DATE: June 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Royal Rasmussen, (202) 245–4354.

SUPPLEMENTARY INFORMATION: On March 12, 1982, the Postal Service published for comment in the **Federal Register** (47 FR 10859) a proposal to make certain of its procedures in 39 CFR 775.10 regarding notice to the public of environmental actions permissive rather than mandatory. No comments were received.

List of Subjects in 39 CFR Part 775

Environmental impact statements, Postal Service.

Accordingly, the Postal Service amends title 39 Code of Federal Regulations as follows:

PART 775—ENVIRONMENTAL PROCEDURES

In § 775.10, revise paragraph (a) to read as follows:

§ 775.10 Public notice and information.

(a) Public notice is given of NEPA-related hearings, intent to undertake environmental assessments and environmental impact statements, and the availability of environmental documents (that is, environmental assessments, findings of no significant impact, and environmental impact statements), as follows:

(1) Notices must be mailed to those who have requested them.

(2) Notices concerning a proposal of national concern must be mailed to national organizations reasonably expected to be interested. Any such notice must be published in the **Federal Register.** (See paragraph (a)(4) of this section.

(3) Notices of any proposed action having effects primarily of local concern are given as follows:

(i) Any such notice, including a copy of any pertinent environmental document, must be mailed to state, areawide, and local A–95 clearinghouses listed in OMB Circular A–95 (Revised) for the geographic area involved, to the State Historic Preservation Officer, and to local public officials.

(ii) Any such notice must be published in one or more local newspapers.

(iii) Any such notice must be posted on and near any proposed and alternate sites for an action.

(iv) Any such notice may be mailed to potentially interested community organizations, including small business associations.

(v) Any such notice may be mailed to owners and occupants of nearby or affected property.

(4) A copy of every notice of intent to prepare an environmental impact statement must be furnished to the Assistant General Counsel, Legislative Division, Law Department, who will have it published in the **Federal Register.**

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-12589 Filed 5-7-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2111-6]

Approval and Promulgation of Implementation Plans; Florida; Volatile Organic Compounds Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving three Florida State Implementation Plan (SIP) revisions which delete the regulation on existing petroleum refineries in nonattainment areas and add test methods for gasoline truck tanks, vapor collection systems, volatile organic compound (VOC) content of coating materials and gasoline bulk terminals for sources located in ozone nonattainment areas. The revised rules establish incremental compliance dates for existing VOC sources and extend final compliance dates for certain gasoline service stations. The rules also establish test methods for certain VOC sources, three definitions used in the test methods, and exemption of six VOCs.

EFFECTIVE DATE: This action will be effective on July 9, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460;

Library, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365;

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005;

Bureau of Air Quality Mgmt., Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Gilbert, Air Programs Branch, EPA Region IV at the above address and telephone number 404/881–3286 or FTS 257–3286.

SUPPLEMENTAL INFORMATION: EPA is taking action on three SIPs submitted by the Florida Department of Environmental Regulation (FDER) concerning VOC sources: May 30, 1980, July 14, 1980, and December 23, 1981. For clarity, the applicable regulations being approved are identified in this notice by both the rule numbers in effect when these revisions were submitted and when the entire regulations were reformatted on August 11, 1981.

The *May 30, 1980, submittal* establishes incremental compliance dates for existing VOC sources and extends final compliance date for certain gasoline service stations. Final compliance is to be achieved during or prior to 1982. There are also certain reporting requirements and exemptions on certain sizes of sources. The submittal was subject to a hearing and adopted by FDER on March 12, 1980. It contains the following regulations:

1. 17–2.100—Definitions, (170)—Vapor Control Systems (previously 17–2.02(132))

2. 17–2.510—New Source Review for Nonattainment Areas, (3)—General Exemptions and Special Provisions, (b)—Special Provisions, 2.—Pollutant Specific Special Provisions, a.—Cutback Asphalt/Gasoline Service Stations concerning compliance schedules (previously 17–2.17(3)(b)(2)(a))

3. 17–2.650—Reasonably Available Control Technology (RACT), (1)—Volatile Organic Compounds, (b)—Compliance, reporting, Permits, 1.a., b., c. and d. concerning compliance schedules (previously 17–2.(2)(a))

4. 17–2.650—Reasonably Available Control Technology (RACT), (1)—Volatile Organic Compounds, (b)—Compliance, reporting, Permits, 2.—Permits—Special Considerations and 3.—Reporting (previously 17–2.(2)(b) and (c))

5. 17–2.650—Reasonably Available Control Technology (RACT), (1)—Volatile Organic Compounds, (f)—Specific Emission Limitations, 6.—Petroleum Liquid Storage, (a)—applicability and (ii)(B) exempting

certain vessels (previously 17-2.17(8)(a) 2.B.(ii))

6. 17-2.650—Reasonably Available Control Technology (RACT), (1)—Volatile Organic Compounds, (f)—Specific Emission Limitations, 11.—Gasoline Service Stations—Stage I, a. and b(i) (previously 17-2.16(8)(k)1. and 2.(a))

The *July 14, 1980, submittal* deletes the regulation on existing petroleum refineries in nonattainment areas since such sources do not exist in nonattainment areas in Florida. The revision also includes test methods for gasoline truck tanks, vapor collection systems, VOC content of coating materials and gasoline bulk terminals located in ozone nonattainment areas. On May 15, 1980, FDER held a hearing and adopted rules 17-2.02 (Definitions) and 17-2.16,

(Nonattainment Areas and Emission Limits for Volatile Organic Compounds), Florida Administrative Code (FAC) to comply with the requirements of EPA and to correct an error in Chapter 17.2. The revisions are as follows:

1. The following definitions were deleted because these terms correspond to the Petroleum Refinery Source section 17-2.16(8)(1) which was also deleted.

Section 17-2.02(2), "Accumulator";
Section 17-2.02(30), "Condenser";
Section 17-2.02(49), "Forebay";
Section 17-2.02(57), "Hot Well";
Section 17-2.02(127), "Turnaround";
Section 17-2.02(129), "Vacuum Producing Systems"

2. Section 17-2.16(8)(1), Petroleum Refinery, which contained emission limitations for existing sources in ozone nonattainment areas was deleted because no sources of this type exist in ozone nonattainment areas.

3. Section 17-2.650—Reasonably Available Control Technology (RACT), (1)—Volatile Organic Compounds, (g)—Standards and Tests for Emission Limits, 1.—Delivery Vessels—Gasoline Truck Tanks (previously section 17-2.16(7)(a)) was added to FDER's rules. This section contains the test for leaks in gasoline truck tanks servicing ozone nonattainment areas.

4. Section 17-2.650(1)(g)2., Vapor Collection System on Vapor Balance System (previously section 17-2.16(7)(b)), was added to FDER's rules. This section contains the test for leaks in vapor collection and vapor balance systems during loading and unloading at gasoline bulk plants and terminals in ozone nonattainment areas.

5. Section 17-2.650(1)(g)3., VOC Content of Coating Materials (previously Section 17-2.16(7)(c)), was added to FDER's rules. This added section contains tests for determining the volatile content of coating materials in ozone nonattainment areas.

6. Section 17-2.650(1)(g)4., Gasoline Bulk Terminals (previously Section 17-2.16(7)(d)), was added to FDER's rules. This added section contains the test for determining VOC emissions from vapor control systems in gasoline terminals located in ozone nonattainment areas.

The *December 23, 1981, submittal* amended (at a hearing on October 28, 1981) the following parts of Chapter 17-2, Florida Administrative Code: Part I Definitions; Part VI, Emission Limiting and Performance Standards; and Part VII, Source Sampling and Monitoring. These amendments pertained to test methods for sources of volatile organic compounds and to the addition of six organic compounds to the list of those exempted from control for VOC sources in nonattainment areas.

Part VII, section 17-2.700(6)(b), EPA Test Procedures, was amended by the addition of EPA test methods 24 and 25. Further, the method contained in the Document EPA 450/2-78-041 was included in the new section 17-2.700(6)(c)—Supplementary Test Procedures. Adoption of these methods was necessary to meet the EPA test requirement for a number of RACT sources in VOC nonattainment areas, and to replace the test for coating operations deleted from Part VI with the updated version contained in EPA method 24. In addition, compliance verification procedures were adopted in section 17-2.700(6)(c), Supplementary Test Procedures for sources, such as gasoline storage tanks and perchloroethylene dry cleaners, which are not required necessarily to have compliance demonstrated by a test (method 25 or the method contained in the document EPA 450/2-78-041) or by the solvent coating content test (method 24). With minor changes, the test method for tank trucks, leaks in vapor balance systems, and bulk terminals deleted from Part VI were added to Part VII under section 17-2.700(6)(c)—Supplementary Test Procedures. Also included in this section were various ASTM and API test methods which are referred to in the Definitions section of the rule and in section 17-2.650. EPA is acting only on the VOC test methods described herein and not those included in the September 8, 1981, **Federal Register** (46 FR 44763) proposal on point source emission testing.

This revision necessitated the adoption of three new definitions (17-2.100): (8)(a)—Destructive control device, (8)(b)—Non-destructive control device and (112)(a)—halogenated organic compound. Also, the revision exempts 6 additional organic compounds from the provisions of 17-2.650 (1)(d) to be consistent with the same change in the New Source Review section 17-2.510. Trichlorotrifluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, dichlorotetrafluoroethane, and chloropentafluoroethane are organic compounds exempted from Reasonably Available Control Technology (RACT). In addition, section 17-2.600(1)(g), Standards and Tests for Emission Limits containing VOC test methods for tank trucks, vapor collection systems' leaks, coating operations and gasoline bulk terminals was deleted, and its contents transferred to Part VII.

These regulations meet EPA requirements.

Based on the foregoing, EPA hereby approves revisions in Florida's VOC regulations identified herein. The public should be advised that this action will be effective July 9, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: April 30, 1982.
Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

In § 52.520 is amended by adding paragraph (c)(43) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(43) On July 14, 1980, the Florida Department of Environmental Regulation (FDER) submitted a revision pertaining to deletion of the regulation on existing petroleum refineries in nonattainment areas and adding test methods for gasoline truck tanks, vapor collection systems, volatile organic compound (VOC) content of coating materials and gasoline bulk terminals for sources located in ozone nonattainment areas. On May 30, 1980, FDER submitted a revision establishing incremental compliance dates for existing VOC sources and extending final compliance dates for certain gasoline service stations. On December 23, 1981, FDER submitted a revision establishing test methods for certain VOC sources, adopting three definitions used in the test methods, and exempting six VOCs.

[FR Doc. 82-12594 Filed 5-7-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL 2103-3]

Approval and Promulgation of Louisiana State Implementation Plan: New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of today's rulemaking is to approve a revision to section 6.1 of Louisiana State Air Quality Regulation 6.0 which has been adopted by the Louisiana Environmental Control Commission and submitted to EPA by the Governor for approval as a revision to the Louisiana State Implemation Plan (SIP). This action approves a State SIP revision under Section 110 of the Clean Air Act to adopt, by reference, EPA regulations on New Source Performance Standards (NSPS).

EFFECTIVE DATE: This action will be effective on July 9, 1982, unless notice is received within 30 days that someone wishes to submit critical or adverse comments.

ADDRESSES: Copies of the State's submittal are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Branch, First International Building, 1201 Elm Street, Dallas, Texas 75270

Louisiana Department of Natural Resources, Air Quality Division, Room 825, 625 North Fourth Street, Baton Rouge, Louisiana 70804

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, Room 8401, 1100 L Street NE., Washington, D.C. 20408.

Written comments on this action should be submitted to William H. Taylor, Jr., at the address given below.

FOR FURTHER INFORMATION CONTACT: William H. Taylor, Jr., Chief, Technical Section, Air Branch, Air and Waste Management Division, Region 6, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270; (214) 767-1594 or (FTS) 729-1594.

SUPPLEMENTARY INFORMATION: On November 30, 1981, the Governor submitted a SIP revision to EPA concerning Section 6.1 of Regulation 6.0 of the Louisiana Air Quality Regulations. Section 6.1 of Regulation 6.0 adopts by reference EPA's NSPS regulations. Section 6.1 was adopted to allow the State to receive delegation of authority from EPA to enforce the Federal NSPS regulations. EPA approves this revision to the Louisiana SIP. The approval of this regulation by EPA does not affect in any way EPA's authority to enforce NSPS regulations.

This revision is being approved today without a prior proposed rulemaking because EPA does not anticipate that this rulemaking will generate adverse public comments. The public should be advised that this action will be effective 60 days from (the date of publication). However, if EPA receives a notice within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this final action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). This action may not be challenged later in proceedings to enforce its requirements (section 307(b)(2)).

Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director on July 1, 1981. This notice is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

Under 5 U.S.C. Section 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: April 30, 1982.
Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

Section 52.970, *Identification of Plan,* is amended by adding a new paragraph (c)(33).

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(33) Section 6.1 of Regulation 6.0 amended and adopted by the Louisiana Environmental Control Commission on October 22, 1981, was submitted by the Governor on November 30, 1981.

[FR Doc. 82-12595 Filed 5-7-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL-2107-3]

Approval and Promulgation of Implementation Plans; Approval of Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces EPA's approval of a revision of Maryland's State Implementation Plan. The revision is a Modified Amended Consent Order for the Potomac Electric Power Company's (PEPCO) Chalk Point generating station. The Order allows PEPCO until March 31, 1983 to complete the installation and testing of particulate control equipment on Chalk Point Units No. 1 and 2.

EFFECTIVE DATE: This action will be effective July 9, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision and accompanying documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs & Energy Branch, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

All comments should be addressed to: Henry J. Sokolowski, P.E. Chief, MD–DE–DC Metro Section (3AW12), Air Programs & Energy Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: AH036MD.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Clark (3AW12), U.S. Environmental Protection Agency, Region III, Sixth & Walnut Streets, Philadelphia, PA 19106, telephone: 215/597–9377.

SUPPLEMENTARY INFORMATION: The State of Maryland submitted for EPA's approval a revision of its State Implementation Plan (SIP). The revision is a Modified Amended Consent Order for the Potomac Electric Power Company's (PEPCO) Chalk Point generating station. The Order revises a previously approved Amended Consent Order (see 44 FR 18182, April 2, 1979) by allowing PEPCO until March 31, 1983 to complete the installation and testing of particulate control equipment on Units No. 1 and 2. The equipment is necessary to bring the units into full compliance with COMAR 10.18.09.03B—Control of Particulate Matter.

The original Order required compliance with the regulation by December 31, 1981. PEPCO requested an extension of the final compliance date because of unforeseen delays in acquiring and installing the control equipment and auxiliary apparatus.

During the term of the extension, visible emissions are limited to 40 percent opacity and the ash content of coal used as fuel is limited to 15 percent. The time extension will not cause a violation of the National Ambient Air Quality Standards.

The SIP revision was the subject of a public hearing on October 27, 1981 as required by 40 CFR 51.4. No public comments were received. The revision satisfies all Federal requirements and is approvable by EPA.

The public is advised that this action will become effective 60 days from the publication date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and other notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 Fed. Reg. 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (insert 60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons.

(42 U.S.C. 7401–642)

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart V—Maryland

In § 52.1070, paragraph (c)(64) is added to read as follows:

52.1070 Identification of plan.

* * * * *

(c) * * *

(64) A revision submitted by the State of Maryland on November 18, 1981, consisting of a Modified Amended Consent Order for Potomac Electric Power Company's Chalk Point generating station.

[FR Doc. 82-12268 Filed 5-7-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 264 and 265

[SWH-FRL-1962-7b]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements

Correction

In FR Doc. 82–9262 appearing at page 15032 in the issue for Wednesday, April 7, 1982, please make the following correction:

(1) On page 15060, in the third column, under the heading "Financial Guarantee Bond", in the first line, "Dated" should be "Date".

(2) On page 15061, in the middle column, under the heading "Performance Bond", in the eleventh line, the second word should be "Identification".

(3) Two lines farther down, the word "quaranteed" should be "guaranteed".

(4) On page 15061, in the third column, in the next to last paragraph, in the fifth line, the next to last word should be "performance".

Note.—All corrections are to the "Trust Agreement" contained in § 264.151 which begins on page 15059.

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Emergency Determination of Endangered Status for Two Fish Species in Ash Meadows, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service determines the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish to be Endangered species. This action is being taken because the distribution of these species is restricted to the Ash Meadows region and groundwater basin in Nye County, Nevada. Imminent land development for housing subdivisions, clearing of land for road construction and agricultural purposes, mining, pumping of groundwater and diversion of surface flows threaten the integrity of the species' habitat and, therefore, their survival. This emergency rule provides protection to these species for 240 days (until January 5, 1983).

DATES: This emergency determination is effective on May 10, 1982, and expires on January 5, 1983.

ADDRESS: Interested persons or organizations can obtain information from the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232 or phone (503/231–6131).

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows Amargosa pupfish *(Cyprinodon nevadensis mionectes)* and Ash Meadows speckled dace *(Rhinichthys osculus nevadensis)* are found only in the Ash Meadows basin and require the integrity of its physical environment and maintenance of spring, surface, and subsurface flows for survival.

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River. These wetlands are maintained by flow from several dozen springs and seeps which are fed by an extensive groundwater system which extends more than 167 km northeast of Ash Meadows. Hundreds of plant and animal species (many of them endemic) are associated with these wetlands and depend upon them for survival.

Homesteaders originally attempted to farm Ash Meadows because of the plains-like topography and availability of free-flowing water from the springs; these efforts failed because the salty, clay soils were not suitable for crops.

Interest in agricultural usage in the late 1960's and early 1970's caused large tracts of land to be plowed and the installation of groundwater pumps and diversion ditches to support a cattle-feed operation. This resulted in the destruction of many populations of plant and animal species and their wetland habitats by alteration of the land surface and lowering the water table. In 1976, the Supreme Court limited the amount of groundwater pumping in Ash Meadows to protect water levels in the only known habitat of the Endangered Devil's Hole pupfish. The agricultural interests in Ash Meadows sold approximately 36 km^2 of land to a real estate developer, Preferred Equities Corporation (PEC), in 1977.

While BLM is the principal landowner in Ash Meadows, PEC owns most of the surface water rights, presently designed for municipal use. Groundwater pumping would be required to develop and support agricultural activities. Development and concomitant destruction of Ash Meadows by PEC is imminent unless an acceptable alternative can be devised with BLM to protect this fragile habitat. A possibility did exist whereby BLM would have exchanged land suitable for development in Pahrump, approximately 20 miles SE of Ash Meadows, with PEC for its Ash Meadows holdings; BLM would then have managed Ash Meadows. However, recent negotiations between FWS, BLM, and PEC proved fruitless: PEC found BLM lands in Pahrump unacceptable because of inadequate water supply. PEC had intended to commence lot sales in early March and construction in early summer of 1981. The initial phase of construction would result in the destruction of Crystal, Point-of-Rocks, and Jackrabbit Springs and possibly lower the level of other springs by groundwater pumping; the amount of land which would be altered for housing is unknown. PEC has recently constructed a multi-lane road which connects Ash Meadows at Point-of-Rocks Spring with Pahrump Valley, a connecting section of road (2 miles long and 80 feet wide) north of Jackrabbit Spring, and a new road (1.5 miles long and 30 feet wide) east of Crystal Pool. It has also substantially altered surface flows and spring hole morphometry at these sites. In addition, approximately 1,000 acres of cotton have been planted west of Point-of-Rocks Spring.

Construction activity, however, has not been limited to areas within the initial phase. Fairbanks Spring, the northernmost spring, has recently been excavated by heavy equipment and its pristine character destroyed.

The imminent threat to the existence of the Ash Meadows species is the proposed development of Ash Meadows by PEC into a residential, recreational, industrial, and agricultural community. Construction activities will clear large tracts of essential habitat; extirpate many populations of fish, wildlife, and plant species; and alter surface drainage patterns. Human habitation will require great quantities of potable water; utilization of surface outflows from springs and pumping of the aquifer will reduce or eliminate surface flows, lower the groundwater table, and interfere with groundwater recharge which will destroy down-gradient wetlands. Development of an Ash Meadows residential community will cause the extirpation of the Ash Meadows biological community.

The Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*) and Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*) are restricted to the larger warmwater springs and related outflows of Ash Meadows. The pupfish inhabits the pools and outflows of at least eight of the largest springs (Crystal, Fairbanks, Point-of-Rocks, Big, Longstreet, Jackrabbit, Rogers, and Bradford) which are oriented along an irregular north-south contour line for an approximate distance of 16 km at elevations from 655 to 700 km above sea level; water temperatures remain constant between 24° and 30° C. Flowing water of spring outflows is preferred by the speckled dace. Although formerly inhabiting much of the interconnected surface drainage in Ash Meadows, dace populations have been severely reduced and are now restricted to only four of the springs (Crystal, Big, Jackrabbit, and Bradford) which also support the pupfish. A number of exotic species, such as mosquitofish and black mollies, have been introduced to these springs and compete with the native fishes.

The Service has previously proposed the Ash Meadows turban snail (*Fluminicola erythropoma*) as Threatened on April 28, 1976 (41 FR 17742) and withdrawn on December 10, 1979 (44 FR 70796) as a result of the 1978 Amendments to the Endangered Species Act. Current evidence indicates that, as proposed, this entry comprised more than one species. This area has an extraordinarily diverse freshwater mollusk fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails which are found within a five-mile radius in Ash Meadows and give Ash Meadows the highest concentration of endemic species of animals in the United States. Most of these mollusk species have not been scientifically described and named.

A general notice of review on candidate plants in the December 15, 1980 Federal Register (45 FR 82479) included seven Ash Meadows plant species, but only included general state distributions. These plant species were not included in this listing because, although restricted to specific soil types and discrete surface and groundwater regimes, they do not directly inhabit the springs and their immediate surface outflows. These species and edaphic associations are as follows: the spring-loving centaury (*Centaurium namophilum* var. *namophilum*) is restricted to wet clay soils of spring areas and stream banks; the Amargosa niterwort (*Nitrophila mohavensis*) is only found on undisturbed, salt-encrusted, heavy alkaline mud flats in the Carson Slough area in Inyo County, California; the Ash Meadows gum plant (*Grindelia fraxino-pratensis*) occurs in small populations in mostly undisturbed moist to wet clay soils of spring areas and stream banks, and is often associated with the spring-loving centaury; the Ash Meadows stick-leaf (*Mentzelia leucophylla*) is associated with desert washes in coarse-grained, water-sorted, alkaline soils; the Ash Meadows milk-vetch (*Astragalus phoenix*) occurs in washes and on flats and low knolls in fine-grained, clay-like soils; the King Ivesia (*Ivesia eremica*) occurs on light-colored clay uplands and occasionally in spring areas associated with other rare and endemic plants; the corrugated sunray (*Enceliopsis nudicaulis* var. *corrugatum*) occupies strongly alkaline and often poorly drained soils in several localities.

Three additional species which occur in Ash Meadows included in that review were not included in this listing because their distribution is more extensive; these species are the Merriam desert-poppy (*Arctomecon merriamii*), Tecopa bird's-beak (*Cordylanthus tecopensis*), and alkali mariposa lily (*Calochortus striatus*).

Factors Affecting the Species

The Service's listing regulations (50 CFR Part 424) provide for a review of the five factors below when listing (or reclassifying or delisting) a species (§ 424.11):

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;

(3) Disease or predation;

(4) Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and

(5) Other natural or manmade factors affecting its continued existence.

These findings are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the subject species, are as follows:

1. *Habitat.* The two species included in this rulemaking are endemic to the Ash Meadows basin and depend upon the integrity of this fragile ecosystem for their survival. These species require undisturbed flows from the extensive Ash Meadows basin aquifer.

The availability of potable and irrigation water is the primary factor motivating development of Ash Meadows. Diversion of spring outflows and pumping of spring holes and groundwater to provide water for the proposed residential, recreational, agricultural, and industrial development of Ash Meadows will destroy essential habitat of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish. Since all springs in this aquifer are intricately connected, drawdown at one location would affect water levels of many other springs. In addition, such alteration of surface flows will prevent migration to other suitable habitats and therefore prevent expansion of range by these species.

2. *Overutilization for commercial, sporting, scientific or educational purposes.* Although taking endangered wildlife is prohibited, these activities could affect the tenuous existence of the fish species.

3. *Disease or predation.* Introduction of exotic fish species by tropical fish breeders and individuals to spring pools has proved detrimental to the fish species; in many instances, aggressive exotic species have eliminated native species by predation and competition for food and territory.

4. *The inadequacy of existing regulatory mechanisms.* No regulations exist to protect the Ash Meadows species included in this rulemaking.

5. *Other natural or man-made factors affecting its continued existence.* Because these species are restricted to very specialized aquatic habitats and are limited to a small geographical area, the magnitude of adverse activities which occur in these species' habitats would tend to be intensified. Vandalism has been reported at a number of pools; the dumping of toxic chemicals and alteration of surface flows can have deleterious and irreversible effects on the aquatic habitats.

Critical Habitat

Service listing regulations for Critical Habitat (50 CFR 424.12) provide in part that: (a) Critical Habitat shall be specified to the maximum extent prudent at the time a species is proposed for addition to the list. If the Director determines that the designation of Critical Habitat is not prudent, he will state the reasons for such determination in the proposed and final rules listing a species. Conditions under which a designation of Critical Habitat is not prudent include, but are not limited to the following:

(1) When the species is threatened by taking or other human activity and identification of Critical Habitat can be expected to increase the degree of such threat to the species, or

(2) When such designation of Critical Habitat would not be beneficial to the species.

Publication of Critical Habitat maps could prove detrimental to the fragile aquatic ecosystems which are inhabited by the subject fish species. Public notice could increase vandalism in this area; incidents of toxic chemical dumping and destruction of natural features have already occurred in this area. Because such action could increase the threats to the Ash Meadows ecosystem and therefore not be beneficial to the subject species, designation of Critical Habitat is not deemed prudent at this time. After recovery and protection plans for these species have been developed, Critical Habitat may be considered in the future.

Reasons for Emergency Determination

Under authority conferred by 50 CFR 424.19, this listing of two Ash Meadows species shall take place immediately upon publication of this rulemaking. An emergency exists which poses an immediate threat to the survival of these sixteen species. Initial construction activities in late spring and summer of 1981 to develop the Ash Meadows ecosystem for housing, agriculture, and recreation have severely altered the watercourses of two springs (Point-of-Rocks and Bradford) and related spring hole morphometry; these activities severely reduced the populations of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish in Bradford Springs. According to Service biologists, recent excavation of Fairbanks Spring has apparently eliminated all but one pupfish.

These latest events complement the destruction of fish habitat which has occurred since the advent of agricultural activities at Ash Meadows. The ranges of the pupfish and dace have been

reduced at the following springs: Bradford Springs outflow, from 1 mile to 200 yards; Big Spring outflow, from 3 miles to 1.5 mile; Point-of-Rocks outflow, from 6 miles to 200 yards, and extirpation of the dace; Fairbanks-Rogers-Longstreet Springs complex, from 2,000 acres to approximately 0.5 acre, and extirpation of the dace; Crystal Spring, which formerly supported substantial populations of both species, presently contains few pupfish and no dace; at Jackrabbit Spring, a pump was suspended over the pool and the dace and pupfish populations were temporarily extirpated when the pool was pumped dry; dace and pupfish populations have been extirpated from Tubbs Spring and Forest Spring.

Ash Meadows springs are intricately interconnected and are the sole discharge for groundwater from this extensive aquifer. Because of this relationship, pumping of groundwater from one spring may also affect the water levels in other springs, as evidenced by the situation which occurred at Devil's Hole in the 1970's. Pumping of groundwater from nearby wells for agriculture was lowering the water level in Devil's Hole, which caused a severe decline in the population of the Endangered Devil's Hole pupfish; continued pumping could have caused the extinction of that species. In 1976, the Supreme Court ruled (*United States vs. Cappaert et al.*) that a minimum water level must be maintained to protect the Devil's Hole pupfish. While Devil's Hole is the most sensitive spring in Ash Meadows and the springs are interconnected, the impact of groundwater pumping from wells south of Devil's Hole appears to be greater than from those located in the north. However, because agricultural and municipal activities require large volumes of water and pumping of groundwater from the northern areas may be necessary to supplement flows from the south, it is expected that the proposed development by PEC will create a demand for water throughout Ash Meadows.

Long-term development plans call for direct alteration of many of these springs with construction to progress in 3 phases in the following areas: Phase I—Crystal Pool; Phase II—Point-of-Rocks Spring; Phase III—Fairbanks Spring complex. The Nye County Commission has already approved Phases I and II, and work has begun. To date, the outflow channels of Crystal Pool and King Pool (Point-of-Rocks Spring) have been modified to increase flows which have lowered the level of the pools 1–1.5 feet and, consequently, decreased riparian habitat; Fairbanks Spring has been excavated by heavy equipment. Further, PEC, as principal owner of water rights, has made application to the State of Nevada to divert water from many of the other Ash Meadows springs which will destroy more riparian habitat. Groundwater pumping may seriously deplete water levels (directly and indirectly) upon which the fish species depend. Introduction of exotic fish and other aquatic species which compete with or prey upon native species has caused the extinction of the Ash Meadows killifish (*Empetrichthys merriami*) and reduced or extirpated other native fish populations; increased human activity can only exacerbate this problem. Sequential extirpation of these fish populations will soon cause extinction of the species.

The terrestrial habitats of the Ash Meadows ecosystem are as fragile as the aquatic habitats. Many candidate plant species are dependent upon the unique hydrological characteristics of this basin and require undisturbed soils for sustenance and propagation. Earthmoving activities will directly eliminate populations of these species and preclude successful reproduction in or recolonization of these areas; lowering of water levels by diversion and pumping will eliminate essential habitat areas for terrestrial and aquatic species. A significant area of land has already been altered by road construction in the vicinity of Crystal, Point-of-Rocks, and Jackrabbit Springs. Because such construction activities have begun and will create irreversible changes to this unique and fragile ecosystem, they will result in the extinction of these species.

Recent negotiations between PEC, BLM, Nevada Department of Wildlife, and FWS, to reach a compromise on land use planning have proved fruitless, to date. PEC has yet to offer lots for sale and it therefore remains the largest private landowner in Ash Meadows. However, once lot sales begin, negotiations will involve hundreds of interested parties rather than four, and a suitable agreement to protect this unique ecosystem will be highly unlikely. Because these circumstances create severe time constraints, it would be impossible to list these species pursuant to normal procedures before the habitat was destroyed and these species jeopardized.

Pursuant to 50 CFR 424.19 the Governor of Nevada has been notified of this action. This emergency rule shall remain in effect for only 240 days following publication in the **Federal Register**. Therefore, the Service intends formally to propose some or all of these species for listing pursuant to 50 CFR 424.16 and 424.17. Comments will be requested on the proposed rulemaking from the public and other concerned Federal and State agencies and private interests as required by those regulations.

Since this is issued under the emergency circumstances noted above, the Department has determined that this emergency rule is exempt from the rulemaking procedures of Executive Order 12291 and 43 CFR Part 14. Compliance with such procedures will be ensured during development of the proposed and final rules for permanent listing.

Effect of the Rule

Endangered Species regulations already published in Title 50, § 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations referred to above which pertain to such species are summarized below.

With respect to the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, will apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the **Federal Register** of September 26, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Subsection 7(a)(2) of the Act requires Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the subject

species, but also requires them to insure that their actions are not likely to result in the destruction or adverse modification of the species' habitat which has been determined to be critical by the Secretary. Provisions of Interagency Cooperation are codified at 50 CFR Part 402.

National Environmental Policy Act

A draft Environmental Assessment will be prepared when this rule is formally proposed pursuant to regulations in 50 CFR 424.16 and 50 CFR 424.17. A determination will be made at the time of finalizing this rule as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500 through 1508.

References

The following documents were consulted in preparing this rule:

(1) Bateman, R.L., A.L. Mindling, and R.L. Naff. 1974. Development and Management of Ground Water in Relation to Preservation of Desert Pupfish in Ash Meadows, Southern Nevada. Center for Water Resources Research, Desert Research Institute, University of Nevada System; Publication No. 17.

(2) Beatley, J.C. 1977. *Ash Meadows: Nevada's unique oasis in the Mojave Desert.* Mentzelia 3:20–24.

(3) Dudley, W.W. and J.O. Larson. 1976. Effect of irrigation pumping on desert pupfish habitats in Ash Meadows, Nye County, Nevada. United States Geological Survey, Professional Paper 927:1–52.

(4) Fiero, G.W. and G.B. Maxey. 1970 (June). Hydrogeology of the Devil's Hole area, Ash Meadows, Nevada. Center for Water Resources Research, Desert Research Institute, University of Nevada System.

(5) Hardy, T. In press. The Inter-Basin Area Report—1979. A Summary of the Proceedings of the Eleventh Annual Symposium of the Desert Fishes Council.

(6) Naiman, R.J. and D.L. Soltz. 1981. *Fishes in North American Deserts.* John Wiley and Sons, New York.

(7) Soltz, D.L. and R.J. Naiman. 1978. The Natural History of Native Fishes in the Death Valley System. Natural History Museum of Los Angeles County, Science Series 30:1–76.

(8) Williams, J.D., and C.K. Dodd, Jr. 1978. Importance of Wetlands to Endangered and Threatened Species. In *Wetland Functions and Values: The State of Our Understanding.* Ed. by P.E. Greeson, et. al. American Water Resources Assoc.

The primary author of this rule is Thomas A. Strekal, U.S. Fish and Wildlife Service, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife.

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, until January 5, 1983, Part 17 of Title 50 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; and Pub. L. 96–159, 93 Stat. 1241 (16 U.S.C. 1531, et seq.).

2. Amend § 17.11(h) by adding in alphabetical order to the list of animals:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical Habitat	Special rules
Common name	Scientific name						
Fishes:							
Dace, Ash Meadows speckled	*Rhinichthys osculus nevadensis*	USA (CA,NV)	Entire	E		N/A	N/A
Pupfish, Ash Meadows Amargosa	*Cyprinodon nevadensis mionectes*	USA (NV)	Entire	E		N/A	N/A

* * * * * * *

Dated: May 5, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12630 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery for 1982.

The purpose of these regulations is to achieve conservation measures, and protective measures where necessary, to help rebuild and sustain at an adequate level the halibut stocks of the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586–7221, or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, (206) 634–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, D.C. on March 29, 1979), has promulgated regulations governing the Pacific halibut fishery for 1982. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada, by Order-in-Council. On behalf of the International Commission, the 1982 regulations are published in the **Federal Register** in order to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The regulations are very similar to those which have been in effect in previous years under the Convention,

except for establishment of different seasons and catch limits, and except for reformulation of certain sections for purposes of clarity and simplicity. Only those sections or paragraphs which have been changed since 1981 are published; sections which remain the same can be found at 50 CFR Part 301 (46 FR 30345, June 8, 1981).

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F. 2d 1189 (9th Cir., 1975), the Administrative Procedures Act, Section 553, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: May 4, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 301—PACIFIC HALIBUT FISHERIES

50 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 reads as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 772–772j.

2. Section 301.1 is revised to read as follows:

§ 301.1 Regulatory areas.

(a) "Convention waters" means the waters off the west coasts of the United States and Canada, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each Party exercises exclusive fisheries jurisdiction as of March 29, 1979. For purposes of this Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of that Party. All bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issued by the United States Coast and Geodetic Survey or National Ocean Survey.

(b) Area 2A includes all waters off the coasts of California, Oregon, and Washington in which the United States claims exclusive fisheries jurisdiction.

(c) Area 2B includes all waters off the coast of British Columbia in which Canada claims exclusive fisheries jurisdiction.

(d) Area 2C includes all waters off the coast of Alaska, in which the United States claims exclusive fisheries jurisdiction that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(e) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then southeast by east one-quarter east (121°).

(f) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.).

(g) Area 4 includes all waters in the Bering Sea and all waters in the Gulf of Alaska west of Area 3B.

3. Section 301.3 is revised to read as follows:

§ 301.3 Fishing seasons.

(a) The fishing seasons for each Regulatory Area are shown in the following table and will apply providing that the catch limits specified in § 301.6 are not taken earlier.

Regulatory Area and fishing period	Opening date	Closing date
2A:		
1	May 12	May 24.
2	June 9	June 21.
3	July 7	July 19.
4	Aug. 9	Aug. 22.
5	Sept. 4	Sept. 16.
2B:		
1	May 12	May 24.
2	June 9	June 21.
3	July 7	July 19.
4	Aug. 9	Aug. 22.
5	Sept. 4	Sept. 16.
2C:		
1	May 12	May 17.
2	June 10	June 15.
3	July 10	July 15.
3A:		
1	May 11	May 19.
2	June 9	June 17.
3	July 9	July 17.
3B:		
1	May 11	May 19.
2	June 9	June 17.
3	July 9	July 17.
4	August 30	Aug. 27.
4:		
1	May 11	May 19.
2	June 9	June 28.
3	July 9	(1)

[1] To be determined under provisions of Section 6.

(b) Notwithstanding the provisions of paragraph (a), if Area 3A is closed under the provisions of § 301.6 prior to attaining the catch limit in Area 3B, Area 3B will close on the same date. Area 3B will reopen on August 20 and continue until the catch limit specified in § 301.6 is attained.

(c) Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates. All hours of opening and closing shall be Pacific Standard Time.

4. Section 301.6 is revised to read as follows:

§ 301.6 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.3 shall be limited to the pounds or metric tons shown in the following table:

Regulatory Area	Catch limits	
	Pounds	Metric tons
2A	200,000	91
2B	5,400,000	2,449
2C	3,400,000	1,542
3A	14,000,000	6,350
3B	3,000,000	1,361
4	1,500,000	680

(b) The Commission will determine and announce the date on which the catch limits will be attained in each area. Fishing for halibut in the area will be prohibited after that date.

5. Section 301.10 is revised to read as follows:

§ 301.10 Fishing gear.

(a) Halibut are to be taken only with hook and line gear. The retention or possession of halibut taken with any other gear, such as nets or pots, is prohibited except as provided in § 301.11.

(b) The retention or possession of halibut is prohibited when any commercial fishing gear other than hook and line gear or nets used solely for the capture of bait are on board.

(c) No person or vessel that uses longline fishing gear to fish for any species of fish during the 72 hours prior to the opening of a halibut fishing period shall catch, retain, or possess halibut in convention waters during that halibut fishing period.

[FR Doc. 82-12894 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 90
Monday, May 10, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-37-AD]

Airworthiness Directives; Lockheed-Georgia Company Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new Airworthiness Directive (AD) that would require inspection of the outer wing rib caps and braces on Lockheed Model L-382 series airplanes with greater than 10,009 hours time in service, within the next 200 hours time in service and thereafter at intervals not to exceed 6,300 hours time in service. The proposed AD is needed to detect cracks in the rib caps and braces which could result in structural failure of the wing and loss of the airplane, if not corrected.

DATE: Comments must be received no later than July 9, 1982. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-Georgia Company, Marietta, Georgia 3063. This information may also be examined at FAA, Atlanta Aircraft Certification Office, 3400 Norman Berry Drive, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, ACE-120A, Atlanta Aircraft Certification Office, FAA, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness rules Docket No. 82-NM-37-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports of cracks in the outer wing rib caps and braces on Lockheed Model L-382 series airplanes. Propagation of these cracks, if uncorrected, could result in structural failure of the wing and loss of the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require an initial and repetitive inspection of the rib caps and baces on these airplanes.

Therefore, in consideration of the hazardous consequence of possible structural failure due to cracks in the outer wing rib and braces, the proposed AD is considered to be necessary.

It is estimated that 20 airplanes will be affected by this AD, that it will take approximately 600 man-hours per airplane to accomplish an inspection and repair, and that the average labor cost will be $22 per man-hour. Based on these figures, initial cost impact of this AD is estimated to be about $264,000. This action is to be repeated after 6,300 hours time-in-service (about 2 years) with a somewhat smaller economic impact. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administraion proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Lockheed-Georgia Company: Applies to Lockheed Model L-382 series airplanes, serial numbers 3946 and subsequent, certificated in all categories. Compliance is required within the next 200 hours time in service after the effective date of this AD or upon reaching 10,200 hours total time in service, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 6,300 hours time in service.

To prevent possible structural failure of the outer wing and loss of the airplane, accomplish the following:

a. Inspect the outer wing rib caps and braces in accordance with Lockheed-Georgia Company Service Bulletin No. 382-57-51, dated March 2, 1982, Appendix "A".

b. If cracks are found, replace the cracked caps and braces with serviceable parts and fasteners, before further flight.

c. Alternative means of compliance providing an equivalent level of safety may be used when approved by the Chief, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region.

d. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base in order to comply with the inspection requirements of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-Georgia Company, Marietta, Georgia 30063.

These documents also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, or Atlanta Aircraft Certification Office, 3400 Norman Berry Drive, East Point, Georgia.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a proposed regulation that is not major under the provisions of Executive Order 12291, because of its minimal economic impact, as summarized earlier in this document. It has been further determined that this proposed regulation is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." In addition, I certify that under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since it involves few, if any, small entities.

Issued in Seattle, Washington, on April 28, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-12867 Filed 5-7-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Cancellation of Public Hearing on the Proposed Utah Permanent Program Cooperative Agreement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Cancellation of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is announcing the cancellation of a public hearing on the proposed permanent program cooperative agreement between the Department of the Interior and the State of Utah for the regulation of surface coal mining and reclamation operations on Federal lands in Utah.

This notice cancels the public hearing scheduled for May 13, 1982, announced in the Federal Register on March 31, 1982 (47 FR 13738). It does not alter the time and location at which the proposed rule or related information are available for public inspection or the comment period during which interested persons may submit written comments on the proposed rule.

DATE: The following hearing is cancelled: The public hearing on the proposed Utah permanent program cooperative agreement, May 13, 1982, at 9:00 a.m., in Salt Lake City, Utah.

ADDRESSES: Written comments must be mailed to: Administrative Record R&I-05, Office of Surface Mining, Room 5315-L, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Written comments may be hand carried to:

Administrative Record R&I-05, Office of Surface Mining, Room 239, South Interior Building, 1951 Constitution Avenue NW., Washington, D.C.

or

Administrative Record R&I-05, Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Andrew DeVito, Office of Surface Mining, South Interior Building, 1951 Constitution Avenue NW., Washington, D.C. 20240; Phone: (202) 343-5866.

SUPPLEMENTARY INFORMATION: On March 31, 1982, a notice of proposed rulemaking announcing an opportunity for public hearing on the proposed Utah permanent program cooperative agreement was published in the Federal Register (47 FR 13738). The hearing, which was to have been held on May 13, 1982, at 4241 State Office Building, Salt Lake City, Utah, is cancelled. The proposed rule, published on March 31, 1982, would adopt a cooperative agreement between the Department of the Interior and the State of Utah for the regulation of surface coal mining and reclamation operations on Federal lands in Utah pursuant to section 523(c) of the Surface Mining Control and Reclamation Act of 1977.

The March 31, 1982, notice stated that any person interested in making an oral or written presentation at the hearing should contact OSM by April 30, 1982, and that if no person contacted OSM by that date to express an interest in participating in the hearing, the hearing would be cancelled. Because no one expressed an interest in attending the hearing by April 30, 1982, the hearing is cancelled.

While there will be no public hearing, interested persons may still submit written comments on the proposed rule. Written comments should be mailed or hand-delivered to the addresses listed above. Written comments must be received by June 1, 1982, before 5:00 p.m., local time, in order to be considered.

Copies of the proposed cooperative agreement are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining, 4241 State Office Building, Salt Lake City, Utah 84114

or

Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C. 20005.

Dated: May 5, 1982.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-12823 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On April 15, 1982, the State of Wyoming submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State Plan.

DATES: Written comments on the Plan must be received on or before 5:00 p.m., June 9, 1982. Written comments on whether OSM should hold a public hearing on the Plan must be received by 5:00 p.m., May 25, 1982. A public hearing will be held on May 25, 1982 at 2:00 p.m. and will continue until all discussions have been completed. The hearing may be cancelled, as discussed under Supplementary Information below.

ADDRESSES: The public hearing, if held, will be at Ramada Inn, at Interstate 25 and Center Avenue, Casper, Wyoming. The hearing may be cancelled, as discussed under Supplementary Information below. Copies of the full text of the proposed Wyoming Plan are available for review during regular business at the following locations:

State of Wyoming, Land Quality Division, 401 West 19th Street, Cheyenne, Wyoming 80202

Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644.

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Rm. 5315, 1100 "L" Street, N.W., Washington, D.C. 20240

Written comments must be mailed or hand carried to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644. Comments received after 5:00 p.m., June 9, 1982 will not ordinarily be considered or included in

the administrative record for this rulemaking.

The administrative record will be available for public review at the OSM Mills, Wyoming Office, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Bertram, Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644. Telephone: (307) 261–5550.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there in no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive responsibility and authority to implement the approved program.

On April 15, 1982, OSM received a proposed Abandoned Mine Land Reclamation Plan from the State of Wyoming. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter VII, Subchapter R) as published in the Federal Register (FR) on October 25, 1978, 43 FR 49932–49952.

This notice describes the proposed program and sets forth information concerning public participation in the Assistant Secretary's determination of whether or not the sumbitted Plan may be approved. The public participation requirements for the consideration of a State Plan are found in 30 CFR 884.13 and 884.14 (43 FR 49948 (1978)). Additional information may be found under corresponding sections of the preamble to OSM's AMLR Program Final Rules (43 FR 49932–49940 (1978)).

The receipt of the Wyoming Plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in Wyoming.

By submitting a proposed Plan, Wyoming has indicated that it wishes to be primarily responsible for this program. If the submisson is approved by the Assistant Secretary for Energy and Minerals of the Department of the Interior, the State will have primary responsibility for the reclamation of abandoned mine lands in Wyoming. If the program is disapproved and the State does not choose to revise the Plan, a Federal AMLR program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to OMS's State Office Director at the Mills, Wyoming address listed above under "Addresses." Written comments may be hand carried to the public hearing, if a public hearing is found to be necessary, and submitted as exhibits to the proceedings.

If OSM's State Office Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing will be cancelled.

Written comments on the issue of waiver of the public hearing must be received by 5:00 p.m., May 25, 1982.

Representatives of OSM's State Office Director will be available to meet Monday through Friday, excluding holidays, between 8:00 a.m. and 4:00 p.m. at OSM's office in Mills, Wyoming, indicated above under "Addresses", at the request of members of the public to receive their advice and recommendations concerning the proposed Wyoming Reclamation Plan and Program.

Persons wishing to meet with representatives of the State Director's Office during this time period may place such request with Ronald Bertram, telephone 307/261–5550.

The Department intends to continue to discuss the State's Plan with representatives of the State throughout the review process. All contracts between Departmental personnel and respresentatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

Further, the Office of Surface Mining has determined that the Wyoming Plan will not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of the Interior Manual DM 5162.3(A)(1), the Assistant Secretary's decision on the Wyoming Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Moreover, an EA or an EIS will be prepared for the approval of grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

The Wyoming Abandoned Mine Land Reclamation Plan can be approved if:

1. The Assistant Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure to carry out the Plan.

4. The Plan meets all requirements of the OSM, AMLR Program Provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. It is determined that the Plan is in compliance with all applicable State and Federal laws and regulations.

The Wyoming Division of Land Quality has been designated by the Governor of the State of Wyoming to implement and enforce the Abandoned Mine Land Reclamation Program in accordance with SMCRA. The Department has developed State regulations to carry out the State mandate. Contents of the State Plan submission include:

(a) Designation of authorized State Agency to administer the Program;

(b) State's chief legal officer's opinion on the authority of the designated agency to conduct the program in accordance with Title IV of the SMCRA;

(c) Description of the policies and procedures to be followed in conducting the Program including:

(1) Goals and objectives;

(2) Project ranking and selection procedures;

(3) Coordination with other reclamation projects;

(4) Land acquisition, management and disposal;

(5) Reclamation on private land;

(6) Rights of entry; and

(7) Public participation in the Program;

(d) Description of the administrative and management structure to be used in the Program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the Program;

(2) Personnel staffing policies;

(3) Purchasing and procurement systems and policies; and

(4) Description of the accounting system including specific procedures for operation of the reclamation fund;

(e) Description of the public's participation in the preparation of the Plan;

(f) A general description of activities to be conducted under the Plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map;

(2) General description of the problems identified and how the Plan proposes to deal with them;

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses;

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the Plan;

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base;

(ii) Sociologic and demographic characteristics;

(iii) Significant aesthetic, historic or cultural, and recreational values;

(iv) Hydrology, including water quality and quantity problems associated with past mining;

(v) Flora and fauna, including endangered and threatened species and their habitat;

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction; and

(vii) Anticipated benefits from reclamation.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

Dated: April 28, 1982.

J. R. Harris,

Director, Office of Surface Mining.

Dated: May 4, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

[FR Doc 82-12744 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Definition of Term "Former Prisoner of War"

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendment.

SUMMARY: The Veterans Administration is proposing to amend its adjudication regulations to implement a provision of a new law, the Former Prisoner of War Benefits Act of 1981, section 3, Pub. L. 97-37, which defines the term "former prisoner of war."

DATES: Comments must be received on or before June 7, 1982. We propose to make this change effective August 14, 1981, the date of enactment of Pub. L. 97-37.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 17, 1982. Persons visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202-389-3005).

SUPPLEMENTARY INFORMATION: Section 3(a), Pub. L. 97-37 amends 38 U.S.C. 101 by adding the following new paragraph to section 101:

(32) The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty—

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, during a period other than a period of war in which such person was held under circumstances which the Administrator finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods or war.

The Veterans Administration is proposing to implement this definition of the term "former prisoner of war" by adding paragraph (y) to 38 CFR 3.1.

Prior to enactment of 38 U.S.C. 101(32), the Veterans Administration accepted a service department finding that a veteran had been a prisoner of war. We find nothing in the language of section 101(32), or in its legislative history, to indicate that Congress intended to change this long established policy insofar as POW (prisoner of war) status during wartime is concerned. Therefore, the proposed 38 CFR 3.1(y)(1) provides that the Veterans Administration shall continue to accept a service department finding that a person was a POW during a period of war.

Under 38 U.S.C. 101(32)(B), however, the Veterans Administration is specifically charged with determining whether a serviceperson was a POW during peacetime. The proposed 38 CFR 3.1(y)(2) sets forth the factors that the Veterans Administration intends to use to determine peacetime POW status.

The legislative history of 38 U.S.C. 101(32)(B) indicates that Congress wants

to extend the POW benefit provisions of title 38, United States Code, to peacetime veterans who are detained or interned in situations similar to the "Pueblo incident." The crew of the *Pueblo* was taken captive on January 23, 1968 by North Korea. They were considered POW's because they were captured during the Vietnam era, a period of war, even though their capture was not related to the Vietnam war. If the "Pueblo incident" had occurred during a peacetime period, the captured crew would not have been entitled to consideration as POW's by the Veterans Administration. Section 101(32)(B) was enacted since it would "give the Administrator the authority to determine if such an incident occurring in a time other than a period of war would be comparable to a period of war for purposes of title 38." S. Rep. No. 88, 97th Cong. 1st Sess. 19 (1981).

The legislative history does not specifically address what Congress intended by the phrase "under circumstances which the Administrator finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war" in section 101(32)(B). The Veterans Administration has considered whether the reasons for the capture as well as the nature of the deprivations endured by the captured serviceperson should be included as factors for determining whether the detainment or internment occurred under comparable circumstances. Following discussions with the Department of Defense regarding these factors, the Veterans Administration has concluded that information concerning the deprivations endured by a captured serviceperson may not be available to the Veterans Administration because of its classified nature. Therefore, the Veterans Administration proposes to use the reasons for a serviceperson's capture as the determining factor in extending POW status to a serviceperson detained or interned during a peacetime period.

Therefore, the proposed 38 CFR 3.1(y)(2)(i) provides that the reason for detainment or internment is the determinative factor in deciding whether a serviceperson was a POW during a period other than a period of war. During wartime, servicepersons are taken prisoner because of their status as members of the Armed Forces, or because of their military mission, and not for personal reasons. When a serviceperson is detained or interned during a period other than a period of war by a foreign government or its agents, or a hostile force, primarily to further or enhance anti-American military, political or economic objectives or views, or to embarrass the United States, the detained or interned serviceperson is being held under circumstances comparable to those under which servicepersons have been detained or interned during periods of war, and not for reasons personal to the serviceperson.

The language of section 102(32)(B) requires a forcible detainment or internment during a peacetime period to have occurred in line of duty. This language necessitates that such a finding be made on a case by case basis. Under the proposed § 3.1(y)(2)(iii), the Veterans Administration shall consider that forcible detainment or internment was in line of duty unless the evidence or record discloses that forcible detainment or internment was proximately caused by the serviceperson's willful misconduct.

The term "hostile force" is not defined in section 101(32)(B) and there is nothing in the legislative history which would indicate its meaning. The proposed § 3.1(y)(2)(iv) defines the term to mean "any force whose actions are taken to further or enhance anti-American military, political or economic objectives or views or to attempt to embarass the United States."

The Chief Benefits Director, consistent with the delegation of authority contained in §§ 2.67 and 3.100, has designated the Director of Compensation and Pension Service, Veterans Administration Central Office as the approving official of all determinations of peacetime POW status. This will insure a uniform decision for all servicepersons whose forcible detainment or internment arose from the same incident. This will also permit faster adjudication since the first decision may serve as a precedent for other claims arising out of the same incident. Proposed § 3.1(y)(2)(v) reflects this designation.

Final regulations to implement section 4, Pub. L. 97-37 were previously published. See 47 FR 11655 (1982) (to be codified in 38 CFR 3.307, 3.309).

The Administrator hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact, in terms of compliance costs, paperwork and recordkeeping, or any other regulatory burden, on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this regulation only affects individuals applying for Veterans Administration benefits as former prisioners of war. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed regulation change is nonmajor for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.109)

Approved: April 15, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

The Veterans Administration proposes to amend 38 CFR Part 3 as follows:

Section 3.1 is amended as follows:

(a) By removing "Secretary of Health, Education, and Welfare" and inserting "Secretary of Health and Human Services" in paragraph (g)(5).

(b) By adding a note following paragraph (m) as follows:

Note.—See § 3.1(y)(2)(iii) for applicability of "in line of duty" in determining former prisoner of war status.

(c) By adding a note following paragraph (n) as follows:

Note.—See § 3.1(y)(2)(iii) for definition of "willful misconduct" in determining former prisoner of war status.

(d) By adding paragraph (y) as follows:

§ 3.1 Definitions.

* * * * *

(y) *"Former prisoner of war"*—(1) *Wartime service.* The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty by an enemy government or its agents, or a hostile force, during a period of war. The Veterans Administration shall accept

the finding of the appropriate service department that a person was a prisoner of war during a period of war.

(2) *Peacetime service.* The term "former prisoner of war" also means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty by a foreign government or its agents, or a hostile force, during a period other than a period of war in which the serviceperson was held under circumstances which the Veterans Administration finds to have been comparable to the circumstances under which servicepersons have generally been forcibly detained or interned by enemy governments during periods of war. The Veterans Administration shall use the following factors to determine if a serviceperson was a POW (prisoner of war) in a period other than a period of war:

(i) *Reason for forcible detainment or internment.* To be considered a former prisoner of war during a period other than a period of war a serviceperson shall have been forcibly detained or interned by a foreign government or its agents, or a hostile force, primarily to further or enhance anti-American military, political or economic objectives or views, or to embarrass the United States. A serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW based on that period of detainment or internment, unless the charges are a sham intended to legitimize anti-American military, political or economic objectives or views, or actions embarrassing to the United States.

(ii) *Treatment during detainment or internment.* The manner in which a serviceperson is treated during detainment or internment is immaterial in determining whether a serviceperson was a POW during a period other than a period of war.

(iii) *In line of duty.* The Veterans Administration shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was proximately caused by the serviceperson's willful misconduct. Willful misconduct means an act involving conscious wrongdoing or known prohibited action. It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(iv) *Hostile force.* For the purposes of peacetime former prisoner of war determinations, the term "hostile force" means any force whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(v) *Determinations of Peacetime POW status.* The Director of the Compensation and Pension Service, VA Central Office, shall approve all Veterans Administration Regional Office determinations establishing or denying peacetime POW status. (38 U.S.C. 101(32))

[FR Doc. 82-12586 Filed 5-7-82; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Carrier Route Presort Customer Products

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service provides free carrier route information to mailers monthly and on a semi-annual basis in several formats, including computer tape and hardcopy. In order to reduce the amount of paper being generated and distributed through the Carrier Route Information Sytem (CRIS), the Postal Service proposes to produce this information in microfiche form for customers currently receiving hardcopy (paper) who desire national or regional carrier route information. In addition, the Postal Service is consolidating the ordering of carrier route scheme information into a single location.

DATE: Comments must be received on or before June 9, 1982.

ADDRESS: Written comments should be directed to the Director, Office of Post Office Services, Delivery Services Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday in room 7347, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW, Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Richard D. Moskal, Address Information Systems Division, (800) 238-3150.

SUPPLEMENTARY INFORMATION: The Postal Service produces CRIS delivery schemes for use by postal customers in preparing carrier route presorted mailings. The National schemes are currently available in computer tape and hardcopy (paper) format. Hardcopy national or regional schemes, on 8-½ x 11 paper, are now being provided for 211 customers. Over the past several months, the scheme file has grown to a total of 3.2 million records. The hardcopy paper scheme for the national file now comprises 66 cubic feet of paper, weighing 594 lbs., and equivalent of 22 ten-ream cartons of paper.

The number of postal customers using the CRIS presort system for various classes of mail has also increased dramatically, and is expected to continue to grow due to the rate incentives associated with the presort programs. With the increase in both file size and customers requesting CRIS products, the Postal Service desires to reduce the burden and expense of hardcopy schemes for the Postal Service and for customers. The Postal Service proposes that hardcopy schemes be provided in the form of microfiche (59x) at no charge to customers requesting hardcopy schemes for the entire United States, or for one or more regions. The computer scheme tape will continue to be available for customers requesting national or regional computer tapes. In addition, customers who desire national or regional hardcopy in paper format will be able to borrow a CRIS scheme print tape, which contains carrier route information in machine sensible (print image) form, to allow mailers to generate hardcopy locally. The Postal Service will continue to provide hardcopy schemes for customers requesting CRIS information for specific 3-digit or 5-digit ZIP Code areas rather than for an entire region or the nation.

In addition to the change described above, the Postal Service is providing a single address for fulfillment of all customer requests for CRIS products, instead of the existing two addresses for different kinds of requests.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the **Federal Register**. 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Part 620—Classification

In 622.1 revise .11e(2) to read as follows:

622.1 Eligibility

* * * * *

.11 Carrier Route Presort Level

* * * * *

e. Current Scheme

* * * * *

(2) Obtaining Schemes

(a) *Ordering CRIS Products.* Mailers ordering any of the CRIS products described in (b)–(e) below may do so by sending a written request to the following address:

CRIS, Customer Fulfillment Requests, National ZIP Code Data Center, Memphis, TN 38185–0006

(b) *CRIS Hardcopy (paper) Semi-Annual Updates and Monthly Scheme Changes.* Hardcopy paper schemes are available only for specific 5-digit or specific 3-digit ZIP Code areas. Hardcopy in paper form is not available from the Postal Service on a regional or national basis. In the written request, mailers must specify which specific 5-digit or 3-digit ZIP Code scheme are desired.

(c) *CRIS National and Regional Semi-Annual Updates and Monthly Scheme Microfiche Changes.* CRIS schemes for one or more postal regions, or for the entire United States are available on microfiche (reduction rate of 50x) by sending a written request specifying which postal regions are desired.

(d) *CRIS National Semi-Annual Updates and Monthly Scheme Tape Changes.* CRIS scheme information in machine sensible form is available for one or more postal regions, or for the entire United States.

(e) *CRIS National Semi-Annual Updates and Monthly Scheme Print Tape Changes.* CRIS scheme information in machine sensible (print image) form is available on loan for one or more postal regions or for the entire United States to allow mailers the ability to generate hardcopy (paper) locally if required.

Note.—In any CRIS National Scheme Tape and/or regional or national print image tape request, the mailer must specify which Postal Service regions are desired and which of the following magnetic tape characteristics are required:

—7 or 9 track
—800, 1,600 or 6,250 bits per inch
—ACSII or EBCDIC
—If Header/Trailer Labels are desired

(f) *Other Methods.* Mailers may, under the provisions of 945.4, request a copy of the city scheme used by clerks for sorting mail. They may also request that the Postal Service sort address cards, plates or stencils by carrier routes. However, the mailer is responsible for sorting in accordance with the latest CRIS scheme provided in 622.11e(2)(a)–(e). The mailer is considered to have made a sorting error only if the mail was not sorted according to the latest CRIS scheme.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401, 403, 404)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-12547 Filed 5-7-82; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-2109-1]

Commonwealth of Pennsylvania; Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this notice, EPA is proposing the substitution of an expanded ridesharing program in place of the electrification of the Newtown Branch commuter rail line. The Newtown branch project was originally submitted as a transportation control measure (TCM) in Pennsylvania State Implementation Plan (SIP) under Section 175 of the Clean Air Act. However, changes in the region's transit priorities have necessitated the substitution of an alternative TCM which will provide equivalent air quality benefits. This substitute project will result in equivalent hydrocarbon reductions, and therefore will not degrade air quality.

DATE: Comments must be submitted on or before June 9, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106, Attn: Patricia Sheridan (3AW12).

Delaware Valley Regional Planning Commission, 1819 J. F. Kennedy Blvd., Philadelphia, Pa. 19103, Attn: John J. Coscia.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, Pa. 17120, Attn: James K. Hambright.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before June 9, 1982 will be considered and should be directed to Glenn Hanson at the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Hanson, Chief, Pennsylvania Section (3AW11), Air and Waste Management Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, Philadelphia, Pa. 19106 (215) 597–8173.

SUPPLEMENTARY INFORMATION: The proposed changes to the Pennsylvania SIP were submitted on December 9, 1981 after a public hearing on October 15, 1981.

On May 20, 1980, EPA published a conditional approval of Pennsylvania's SIP, which includes the transportation element for the Delaware Valley area. One of the conditions on this SIP was that the Delaware Valley Regional Planning Commission (DVRPC), as lead agency for transportation/air quality planning, must obtain firm commitments for the implementation of the Newtown Branch electrification project by December 31, 1980, or obtain commitments for a substitute measure by June 30, 1981. (These deadlines were finalized in the **Federal Register** notice of March 19, 1981, 46 FR 17552).

On December 9, 1981, Acting Secretary Peter S. Duncan, Pennsylvania Department of Environmental Resources (DER), submitted a revision to the Pennsylvania SIP which substitutes an expanded ridesharing program in the Delaware Valley for the Newtown branch electrification project. This substitution became necessary when the electrification project was withdrawn from the fiscal year 1981 Annual Element of the Transportation Improvement Plan for the Delaware Valley. This withdrawal resulted from changes in priorities for capital projects managed by the Southeastern Pennsylvania Transportation Authority. This project may be completed in the future, but not soon enough to satisfy emission reduction commitments made in the 1979 SIP.

The existing ridesharing program has been operating since 1974, and has aided in the initiation of 250 vanpools and 3,172 carpools during this time. The measure being proposed today consists of an expansion of this existing ridesharing program. An expected 30 vanpools and 67 carpools will result from this program expansion.

DVRPC has submitted an adequate commitment to implement the expanded program. This commitment is the adoption by the DVRPC Board of the expanded ridesharing program on June 25, 1981. In addition, on October 22, 1981, the Board adopted a recommendation that DER add the expanded ridesharing program to the Early Action Program of the Transportation Element of the Pennsylvania SIP.

EPA has reviewed the information submitted by the State and is today

proposing the approval of the expanded ridesharing program as a satisfactory substitute for the Newtown Branch electrification project.

Based upon the above evaluations, the Administrator is proposing to approve this revision to the Pennsylvania State Implementation Plan as discussed in this notice.

The public is invited to submit comments on whether these amendments should be approved as a revision to the Pennsylvania State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based upon the comments received and on a determination as to whether they meet the requirements of Part D of Title I and Section 110(a)(2) of the Clean Air Act.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons.

(42 U.S.C. 7401–7642)

Dated: April 13, 1982.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1981.

Peter N. Bibko,

Regional Administrator.

[FR Doc. 82-12588 Filed 5-7-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 262

[SWH-FRL-2120-8]

Hazardous Waste Management Systems: Standards for Generators, Transporters, Owners and Operators, Storage and Disposal Facilities; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period for proposed rule.

SUMMARY: On March 4, 1982, the Environmental Protection Agency, in a joint rulemaking with the Department of Transportation, proposed a rule which would establish a uniform hazardous waste manifest form (47 FR 9336). Generators would be required to use this form for all shipments of hazardous waste. The proposed rule announced that public comments must be submitted before May 3, 1982. EPA has received several requests for an extension to the comment period and concluded they are meritorious. Accordingly, the Agency is extending the comment period for an additional 45 days to June 17, 1982.

DATE: Comments on the national manifest proposed March 4, 1982, must be received on or before June 17, 1982.

ADDRESS: Comments should be addressed to the Docket Clerk (3002—Manifest), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., 20460, (202) 382–4487.

The public docket for this rulemaking is available in Room S–269, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., 20460 and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For technical information on the proposal or on the extension, contact Rolf P. Hill, Environmental Protection Agency, Office of Solid Waste (WH-563), 401 M Street SW, Washington, D.C. 20460 or call (202) 382–4753. For additional assistance, call the RCRA Hotline at (800) 424–9346 (in Washington, D.C. call 382–3000).

SUPPLEMENTARY INFORMATION: On March 4, 1982, in a joint rulemaking effort, the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) published a draft Uniform Hazardous Waste Manifest form and proposed its required use by generators for the interstate and intrastate transportation of hazardous waste.

A manifest form is a control and transport document that travels with the waste from its point of generation to its point of disposal. EPA's Resource Conservation and Recovery Act (RCRA) regulations presently require generators who transport, or offer for transportation, hazardous waste for offsite treatment, storage or disposal to prepare a manifest which must accompany the waste. Although the regulations specify certain required information that must appear on the manifest, there are no requirements for a standard form to be used.

Since the RCRA regulations became effective, numerous States have developed their own manifest forms which meet Federal requirements but require additional State information. These differing manifest requirements among States have resulted in confusion and compliance difficulties for the transport of hazardous waste. EPA and DOT proposed to resolve these difficulties through a joint rulemaking effort. EPA, on March 4, 1982, proposed to amend its regulations to require the use of a specific manifest form. DOT, in a companion action, proposed to amend its Hazardous Materials Regulations to require that shippers and carriers of hazardous waste comply with EPA's proposed amendments and to clarify that, whether or not a State has interim or final authorization by EPA, any requirement of a State or political subdivision of a State specifying a different or additional manifest is inconsistent with the Hazardous Materials Regulations (47 FR 9346).

Several requests to extend the comment period have been received from the regulated community and a State association. One comment received by telephone indicated that the California Public Utility Commission would not be able to submit comments before the May 3, 1982, comment deadline because the Commission board only meets periodically and could not approve the comment submission until later in May. In addition, the Hazardous Material Advisory Council and the Association of State and Territorial Solid Waste Management Officials requested extra time to enable them to work together on several of the complex issues raised in the proposed rule.

The Agency wants to encourage talks between the Hazardous Material Advisory Council (which represent industry) and the States. The comments and suggestions which result from these talks should enable EPA and DOT to develop a manifest form which better accommodates the views of the regulated community and the States. The Agency is therefore extending the comment period for an additional 45 days. EPA will accept comments on the proposed rule on or before June 17, 1982. (The DOT is also extending its comment period until June 17, 1982.)

Dated: May 2, 1982.

Rita Lavelle,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc 82-12584 Filed 5-7-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Subtitle A and Subtitle B

Wildlife Program Policy Statement; Availability for Review and Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of draft wildlife program policy statement; availability for review and comment.

SUMMARY: The Bureau of Land Management proposes to publish its basic policies for managing and safeguarding wildlife resources on the public lands. This statement provides an overview of existing Bureau policies, priorities, and philosophies concerning management of wildlife resources. It also addresses how wildlife is integrated with other multiple uses. This statement is being developed to enhance public understanding of the Bureau's wildlife program since most people are unfamiliar with our internal policy Manual Sections and materials. To summarize, the statement outlines the magnitude of the Bureau's wildlife responsibilities; emphasizes the need for open communication and partnership with the States, adjoining landowners, and other interests; outlines key program goals and policies; and provides information on resolving conflicts among resource uses and on program priorities.

DATE: Comments must be received on or before June 30, 1982.

ADDRESS: Copies are available from: Director (240), Bureau of Land Management, 1800 C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: J. David Almand, Assistant Chief, Division of Wildlife (240), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240, 202–653–9202.

SUPPLEMENTARY INFORMATION: This draft policy statement is part of the Bureau's continuing efforts to inform the public of its programs and to secure the benefit of public views and comment. The Bureau is charged by legislation, including the Federal Land Policy and Management Act, the Sikes Act, as amended, and the Endangered Species Act—to name a few—with protection and enhancement of wildlife resources on the public lands. The Federal Land Policy and Management Act, for example, directs that wildlife is one of the seven principal or major uses of the public lands.

In managing wildlife resources on the public lands, the Bureau works in partnership with the States who are responsible for the management of resident wildlife species. This partnership is evidenced by long-standing formal agreements with each of the Western States and a few in the East where the Bureau administers land. On-the-ground cooperation is typified by over 200 habitat management plans, encompassing over 30 million acres. We view this continuing cooperation with the States and others as vital to the cost-effective and efficient management of wildlife resources.

The Bureau is also striving to integrate wildlife in other Bureau programs and activities such as livestock grazing, mining and mineral development, timber management, and other such resource programs. Through such efforts, millions of additional acres of public land are being protected or managed in varying degrees for wildlife. This multiple-use/sustained-yield approach will be continued to the maximum extent practical.

Important wildlife habitats and management opportunities will be identified during the land-use planning process. Management decisions made subsequent to planning will fully consider wildlife needs and opportunities. Public involvement in all phases of the program will continue to be encouraged to make full use of the interest, knowledge, and experience of others interested in sound and proper management of wildlife and its habitat and for other multiple uses on a sustained-yield basis.

Copies of the draft wildlife program policy statement are available from the Director (240), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: May 4, 1982.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 82-12701 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 2820

Roads and Highways; Revocation of Regulations Concerning Roads and Highways

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revoke the existing regulations concerning the granting of rights-of-way to State agencies by the Bureau of Land Management in coordination with the Federal Highway Administration. These regulations are burdensome, counterproductive and are no longer needed. They will be replaced with a Memorandum of Understanding between the Department of the Interior and the Department of Transportation as authorized by section 307 of the Federal Land Policy and Management Act.

DATE: Comments should be submitted by June 9, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public inspection in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Leon Kabat, (202) 343–5441.

SUPPLEMENTARY INFORMATION: Sections 107(d) and 317 of title 23 of the United States Code provide for appropriation of lands by the Secretary of Transportation from the Secretary administering Federal lands which are desired for use in connection with the Federal-aid highway program. The law sets out the procedures to be followed in the coordination between the Department of Transportation and other agencies in determining whether designated lands are or are not available for appropriation for the Federal-aid highway program. This coordination can be carried forward without regulations. This is especially true with regard to lands under the jurisdiction of the Bureau of Land Management because section 307 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737) authorizes the use of a Memorandum of Understanding as an appropriate tool for the management, protection, development and sale of public lands. The Memorandum of Understanding will provide adequate protection of any public lands under the jurisdiction of the Bureau of Land Management that might be needed for the Federal-aid highway program, while at the same time reducing the complex and time-consuming application and granting process now imposed on the States by the Bureau of Land Management under the regulations in 43 CFR Part 2820.

Action is now progressing on the completion of a Memorandum of Understanding that will be the basis of an on-going program of providing available public lands under the jurisdiction of the Bureau of Land

Management for the Federal-aid highway program.

The principal author of this proposed rulemaking is Leon Kabat, Division of Rights-of-Way, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the authority of sections 107(d) and 317 of Title 23 of the United States Code (72 Stat. 885, 892, 916) and section 307 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737), it is proposed to amend Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations, as set forth below:

PART 2820—ROADS AND HIGHWAYS [REMOVED]

Part 2820 is removed in its entirety.

Dated: March 24, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-12021 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-84-M

Notices

Federal Register
Vol. 47, No. 90
Monday, May 10, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Agreement With National Park Service (Department of the Interior) Regarding the Lease and Exchange of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on a proposed Programmatic Memorandum of Agreement providing for the protection of historic and cultural properties that may be affected by leasing or exchange authorized pursuant to the National Historic Preservation Act of 1966 (NHPA).

DATE: Comments must be submitted on or before June 9, 1982.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, DC 20005, telephone 202–254–3974.

SUPPLEMENTARY INFORMATION: The Council proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulations "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the National Park Service, Department of the Interior, and the National Conference of State Historic Preservation Officers concerning the leasing and exchanges of historic and cultural properties authorized in accordance with Section 111 of the National Historic Preservation Act of 1966. The proposed Programmatic Memorandum of Agreement will establish standards for identifying properties eligible for leasing or exchange and guidelines for treatment of historic properties to meet the requirements of Section 106 of the NHPA (16 U.S.C. 470(f)).

The intent of this Agreement is to protect historic properties and to reduce the time and expense of treating historic properties as opportunities arise for their leasing or exchange. Interested parties are encouraged to obtain a copy of the proposed Programmatic Memorandum of Agreement from the Council and submit comments.

Dated: May 4, 1982.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 82-12004 Filed 5-7-82; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81–00358. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Ultra High Vacuum Sample Manipulator. Manufacturer: VG Scientific, United Kingdom. Intended use of article: See Notice on page 48279 in the Federal Register of October 1, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket No. 81–00127, which was denied without projudice to resubmission for informational deficiencies (July 14, 1981). The foreign article provides for a Z shift of 150 mm. The National Bureau of Standards advises in its memorandum dated February 17, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,
Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12045 Filed 5-7-82; 8:45 am]
BILLING CODE 3510-25-M

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81–00292. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Article: Electron Spectrometer used in ADES 400 System. Manufacturer: V.G. Scientific Instruments, United Kingdom. Intended use of article: See Notice on page 48279 in the Federal Register of October 1, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application

is a resubmission of Docket No. 81–00121 which was denied without prejudice to resubmission for informational deficiencies (April 7, 1981). The foreign article is an accessory which, with its compact size and mountability on a goniometer, permits angle resolved photoemission studies within an existing vacuum chamber. The National Bureau of Standards advises in its memorandum dated February 16, 1982 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc. 82–12846 Filed 5–7–82; 8:45 am]

BILLING CODE 3510-25-M

Final Affirmative Countervailing Duty Determination; Ceramic Tile From Mexico and Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final affirmative countervailing duty determination and countervailing duty order.

SUMMARY: We have determined that the government of Mexico is providing its manufacturers, producers, and exporters of ceramic tile with benefits that are bounties or grants within the meaning of the countervailing duty law. Future imports of this mechandise will be subject to the assessment of countervailing duties.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Streeet and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377–1279.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation and in accordance with section 705(a) of the Tariff Act of 1930 ("the Act"), we have determined that the government of Mexico provides its manufacturers, producers, and exporters of ceramic tile certain benefits that are bounties or grants within the meaning of section 303 of the Act. We have determined the net subsidy to be 15.84 percent of the f.o.b. value of the imported merchandise.

Case History

On October 5, 1981, we received a countervailing duty petition from counsel for the Tile Council of America, Inc., alleging that the government of Mexico is providing bounties or grants to its producers and exporters of ceramic tile. After reviewing the petition we initiated an investigation on October 26, 1981 (46 FR 53738).

On November 2, 1981, we presented a questionnaire to the government of Mexico, at its embassy in Washington, D.C. and requested a response. We determined that the case was extraordinarily complicated. On December 15, 1981, we published a notice of postponement of the preliminary countervailing duty determination (46 FR 61160). We presented a supplementary questionnaire to the government of Mexico on December 29, 1981, and requested a response. The government of Mexico provided a response to each of the questionnaires.

Counsel on behalf of Jesus Garza Arocha ("Arocha"), a manufacturer and exporter of ceramic tile in Mexico, requested exclusion from any preliminary or final determination. The reason cited for the request for exclusion was that Arocha has not applied for or received benefits under the CEDI and CEPROFI programs and, although it received FOMEX benefits during six months of 1980, it has not applied for them since and will not apply for or receive them in the future. On January 29, 1982, the government of Mexico submitted information that Arocha has never requested or received benefits under the CEDI or CEPROFI programs, and that Arocha has received loans during the first seven months of 1980 but has not requested or received any other loan from FOMEX.

The Department of Commerce ("the Department") published a notice in the **Federal Register** (47 FR 7866) on February 23, 1982, of its preliminary affirmative countervailing duty determination. It stated that we had preliminarily determined that the government of Mexico is providing its manufacturers, producers, and exporters of ceramic tile with benefits that are bounties or grants within the meaning of the countervailing duty law. We estimated the net subsidy to be 17.36 percent of the f.o.b. value of the imported merchandise, and directed the U.S. Customs Service to suspend liquidation of all entries, or warehouse withdrawals for consumption, of this merchandise and to require a cash deposit, bond or other security in an amount equal to the estimated net subsidy.

On March 10–18, 1982, Department personnel verified in Mexico the government of Mexico's response to our questionnaires. We also verified that Arocha has not applied for or received CEDI and CEPROFI benefits and has not received FOMEX loans since 1980. Accordingly, on April 1, 1982, we notified the U.S. Customs Service to reduce the countervailing duty deposit rate for imports of ceramic tile produced and exported by Arocha to a zero rate.

Scope of Investigation

The merchandise included in this investigation is ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. It is currently classified under items numbers 532.24 and 532.27 of the *Tariff Schedules of the United States*. Section 303 of the Act applies to this investigation because Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act. Under the applicable law, no injury determination is required.

Programs Under Investigation

We have determined that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of ceramic tile under three programs: CEDI, CEPROFI and FOMEX.

The CEDI

The Certificado de Devolucion de Impuesto ("CEDI") is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are utilized, a percentage of the c.i.f. value of the exported product. The Secretary of Commerce of Mexico is responsible for setting the CEDI rate, which is not published; it is a percentage of the value of the product. Beginning December 1, 1980, the CEDI rate for ceramic tile was raised from 5 percent to 10 percent of the f.o.b. value. Based upon the government of Mexico's responses to our questionnaires and our verification of those responses we have found that the current rate for exports of ceramic tile is 10 percent of the f.o.b. value. We verified that generally all ceramic tile producers who properly apply for a 10 percent CEDI certificate on their tile exports receive it. Exporters

are required to apply for each CEDI by providing to the Ministry of Commerce ("SECOM") documentation with respect to each individual shipment of qualifying exports. SECOM processes the application and, on approval, instructs the Ministry of Treasury ("TESORERIA") to issue the CEDI's in the amount specified. The CEDI's are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

In general, when a subsidy program contains carry-over provisions, we calculate the benefit based on the value of the entire outstanding balance. However, where: (1) the amount of the benefit is known or easily foreseeable at the time of export; (2) the benefits may be used at once, both in the legal sense (the CEDI program does not require delay in using the credits) and the practical sense (the certificates may be used for a wide range of taxes, including, several which must be paid even by a firm not earning a profit); and (3) our investigation reveals that the credits are almost always utilized as soon as they become available rather than carried forward, then the amount of countervailable benefits utilized in a particular year may be considered equivalent to the value of credits made available during that year. Under these circumstances, the CEDI may be treated as the equivalent of a direct cash grant which is countervailable in full in the amount of 10 percent of the f.o.b. value of the exported merchandise.

Issue

Counsel for certain ceramic tile exporters argue that the CEDI is not countervailable in full since: (a) Not all exporters make application for, and thus do not receive the CEDI, and (b) the CEDI's are not necessarily utilized in the same period in which the shipment was exported, this reducing the value of the *ad valorem* benefit in situations of rising exports. Counsel argues that because receipt and utilization experience varies by each firm, the actual benefit amounts to less than the nominal CEDI rate allowed, and the Department should instead allocate total CEDI benefits received during a specific period of time over total exports to the United States during the same period.

Counsel cites *Industrial Fasteners Group, American Importers Association v. United States*—C.I.T. —, Slip. Op. 82–13, February 11, 1982, wherein the court held that any estimate of the tax benefits allowed by the government of India to exporters as a whole must take into account, *inter alia*, the fact that certain exporters neither filed for nor received any or all tax benefits under the program. Counsel argues that if the Department uses an industry-wide rate, the exports for which the firms do not make an application for a CEDI must be factored into the calculation to reflect the rate of beneift received by the industry as a whole. Counsel also cites the Brazilian countervailing duty cases wherein the Department allocated the benefits earned over exports made during the period in which the tax credits were utilized (i.e., in the period following the fiscal year in which the tax credits were earned).

DOC Position

If we were to calculate one countervailing duty rate on the CEDI program by using an average receipt or utilization rate (i.e., less then 10 percent), we would be applying a countervailing duty to firms which receive no benefit, and applying an average rate (i.e., less then 10 percent) to firms which receive the full 10 percent CEDI. Since all firms can receive the 10 percent CEDI upon approval of their application, we will apply a 10 percent countervailing duty to the CEDI program, and we will provide for a certification process that will allow an adjustment to the duty deposit rate to zero for firms certified and verified as not applying for the countervailable benefits.

Our verification of the government of Mexico's responses revealed that CEDI applicants utilize the certificates for payment of a wide variety of taxes within a relatively short time after receipt. The primary reason that certain companies utilized certificates to pay taxes at a rate lower then 10 percent of exports in 1980 and 1981 was that the companies' exports have been increasing. If exports of ceramic tile from Mexico were to decrease, then CEDI applicants could utilize the certificates at a rate greater than 10 percent of exports. In addition, it was demonstrated during the verification that there may be short delays from the time of application for CEDI to the time individual firms receive the CEDI certificates, but such delays do not constitute the basis for an offset under our law.

The Department believes that the facts in *Indian Fasteners* and Brazilian countervailing duty cases are not directly comparable to the facts in this case, and that those decisions do not have direct bearing on this determination. In contrast to the Indian tax deduction program, the actual CEDI benefit allowed and received is the same since the CEDI is consistently granted as a fixed proportion of the f.o.b. value of each export shipment. The Department has also allowed imports from those exporters who are properly certified and verified as not applying for any subsidy to be exempt from the posting of any duty deposits. Furthermore, the controlling factor in the Department's decision in the Brazilian cases is that the value of the firm's tax credit is based on the ratio of its annual exports to its total annual revenues, and utilization is dependent upon the federal income tax liability of the firm in that given year. There is no provision for carrying forward any unused portion of the firm's tax credit. Under these conditions, the Brazilian exporters do not know the amount of benefit, if any at all, until the end of their fiscal year. Mexican tile exporters, however, not only know the full value of the benefit from the start, but they have demonstrated that they use the full face value of the certificate in a short period of time.

Issue

Counsel for the respondents also argued that if the Department declined to calculate a single rate for the entire industry in the manner outlined by counsel above, the Department should calculate company-specific rates or a weighted average utilization rate for the two largest exporters.

DOC Position

It is the longstanding practice of the Department to set country-wide countervailing duty rates where at all possible. The Department believes that be setting a zero duty deposit rate for imports from firms properly certified and verified as not applying for subsidies, it has adequately protected against the assessment of duties where clearly no benefits have been bestowed.

The Department has determined that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of ceramic tile under the CEDI program in the amount of 10 percent of the f.o.b. value. In calculating the value of the countervailable benefit attributable to the CEDI, the Department determines that the benefit is the nominal rate granted on each shipment of the subject merchandise (i.e., 10 percent of the f.o.b. value of ceramic tiles). For those firms which are properly certified by the government of Mexico as not applying for any subsidies whatsoever, upon proper verification the duty deposit rate may be reduced to zero percent.

The CEPROFI Program

In 1979, the government of Mexico introduced a four-year National Industrial Development Plan ("NIDP") which spells out broad economic goals for the country. Tax credits, which are called Certificates of Fiscal Promotion ("CEPROFI"), are used to increase employment and to promote the NIDP goals, which include the promotion of regional decentralization, industrial investment, and small and medium sized firms.

CEPROFI certificates are similar to CEDI certificates; both are non-transferable tax certificates of a set value which may be used for a five-year period to pay federal taxes. CEPROFI certificates are granted for carrying out invetments in "priority" industrial activities. The amount of the CEPROFI is based upon the location of the activity, the number of jobs generated, the value of the investments in new plants and equipment, or the amount of purchase of capital goods produced in Mexico.

We found that CEPROFI's granted with respect to ceramic tile manufacturers were intended to encourage industrial development in specific regions in Mexico. The Department has consistently held that regional development benefits are countervailable. We, therefore, have determined that the CEPROFI's granted in this case are domestic subsidies.

The Department notes that the promotion of exports is included in the extensive list of NIDP goals and the objectives listed in the preamble to the CEPROFI decree. The Department may in other instances determine that the CEPROFI's serve as export subsidies. However, in this particular case, the Department did not find significant evidence to indicate that the CEPROFI's granted to the ceramic tile manufacturers was for the primary purpose of promoting exports. The ceramic tile manufacturers have a large home market for their products and are not geographically concentrated along the border or port areas. A CEPROFI such as this may be expected to benefit the entire production of the firm and not exports alone.

The Department has determined that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of ceramic tile under the CEPROFI program. We have allocated the countervailable CEPROFI benefits received in the first nine months of 1981 over the total production of tile produced during that period, which results in a net subsidy of .09 percent *ad valorem*.

Preferential Financing Programs

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust established by the Government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico (Mexico's central bank) acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions. The financial institutions establish contracts for lines of credit with manufacturers and exporters of ceramic tile.

We found that FOMEX loans are available at preferential rates to producers, manufacturers, and exporters of ceramic tile for two purposes: pre-export (production) financing or export financing.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commerical risks to the extent of the loans. We found that the maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent in the currency of the country of importation.

Issue

The government of Mexico contends that the FOMEX loans are comparable to loans authorized by the OECD arrangement on export credits ("Arrangement"), that such loans under the Arrangement are not countervailable, and that therefore FOMEX loans are not countervailable. The Mexican government and counsel for certain exporters believe that paragraph K of the Illustrative List of Export Subsidies (Annex A of the Agreement of Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade) establishes the standard of review for FOMEX financing under the United States countervailing duty law.

DOC Position

FOMEX terms and rates are different from those under the OECD Arrangement, Mexico is not a member of the Arrangement, and the U.S. government has not recognized loans under the Arrangement as non-countervailable. There are a large number of precedents in previous cases before the Department supporting a determination that similar preferential loans are countervailable, and the benefits should be calculated on the basis of commerically available rates.

We believe that regardless of what effects the Illustrative List of Prohibitive Export Subsidies may have on U.S. law otherwise, the uniform past practices on this issue in comparison with the legislative history of the Trade act requires us to calculate the bounty or grant provided under a preferential loan program on the basis of a comparison between the preferential rate and the commerically available rate rather than on the basis of a comparison with the cost of the funds to the government.

The government of Mexico did not provide information on the commerical rate of interest in Mexico which was available to tile manufactures and exporters. We contracted various banks in Mexico City and consulted with the American Embassy in Mexico City and the U.S. Department of the Treasury to determine what the comparable commerical rate of interest was in Mexico for ceramic tile exporters during the first nine months of 1981. During our verification of the government of Mexico's response, we verified that certain exporters received commerically available dollar-denominated and peso-denominated loans.

On the basis of the best information available, the Department has determined that the government of Mexico is providing bounties or grants to its manufacturers, producers, and exporters of ceramic tile under the FOMEX program. We have determined that during the first nine months of 1981, comparable dollar-denominated loans were available at 23.49 percent, which is 4 percent over the average U.S. prime rate for the first three quarters of 1981. For comparable peso-denominated loans, we found that interest rates were commerically available at 45 percent interest for large ceramic tile manufacturers and exporters and 55 percent interest for other ceramic tile manufacturers and exporters during the period.

For those FOMEX loans obtained by ceramic tile manufacturers during the period January 1, 1981—September 30,

1981, we computed the difference in interest expense between the FOMEX loans and that which would have been incurred had the loans been made at commercial rates. We allocated this amount over the value of total exports during the same period in the case of pre-export financing loans, and over the value of exports to the U.S. during the same period in the case of export financing loans. We have determined the net amount of the benefit rate for loans granted for pre-exports to be 3.42 percent *ad valorem* and the net amount of the benefit rate for export financing to be 2.33 percent *ad valorem*, for a a total subsidy under the two programs of 5.75 percent *ad valorem*.

Final Determination

We have determined that the government of Mexico is providing bounties or grants within the meaning of section 303 of the Act to its producers, manufacturers, and exporters of ceramic tile and that the estimated net amount of these bounties or grants equal 15.84 percent of the f.o.b. value of the exported merchandise.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with the Department of Commerce's Regulations (19 CFR 353.35). No request was received for a public hearing in this case. In addition, written views have been received in accordance with the Department of Commerce's Regulations (19 CFR 355.34(a)).

Customs officers are directed to continue the suspension of liquidation ordered in the preliminary determination. Effective upon the publication of this notice in the **Federal Register** and until further notice a cash deposit, in the amount of 15.84 percent *ad valorem*, must be posted on all cermic tile entering the United States from Mexico or being withdrawn from warehouses for consumption, except for those manufactured by Jesus Garza Arocha for which the duty deposit rate is zero.

We have deleted from the Commerce Regulations Annex III, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Gary N. Horlick,

Acting Assistant Secretary for Trade Administration.

May 3, 1982.

[FR Doc. 82-12837 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-25-M

Frederick Cancer Research Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00379. Applicant: Frederick Cancer Research Center, P.O. Box B, Frederick, MD 21701. Article: Digital Scan Control Unit. Manufacturer: VG Micromass/VG Data Systems, United Kingdom. Intended Use of Article: See Notice on page 51626 in the **Federal Register** of October 21, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket No. 80-00394, which was denied without prejudice to resubmission for informational deficiencies (March 5, 1981). The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12847 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-25-M

Smithsonian Institution; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issed thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00360. Applicant: Smithsonian Institution, U.S. National History, Washington, D.C. 20560. Article: Scanning Electron Microscope, Stereoscan 250 T with Accessories. Manufacturer: Cambridge Instruments, Ltd., United Kingdom. Intended use of article: See Notice on page 48279 in the **Federal Register** of October 1, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides large specimen (30 mm x 5 mm) XY motion of 100 mm, Z motion of 20 mm, tilt of 0–40° and rotation of 300°. The National Bureau of Standards advises in its memorandum dated February 22, 1982 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12646 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-25-M

Texas Tech University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00322. Applicant: Texas Tech University, Department of Industrial Engineering, Lubbock, TX 79409. Article: Respiration Gas Meter Model 59 with Accessories. Manufacturer: Gesellschaft Fur Geratebau, West Germany. Intended Use of Article: See Notice on page 43729 in the Federal Register of August 31, 1981.

Comments: No comments have been received with respect to this application. Decision: application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United states. Reasons: The foreign article is a portable device capable of taking samples of exhaled air. The Department of Health and Human Services and the National Bureau of Standards advise in their memoranda dated December 1, 1981 and February 23, 1982, respectively, that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other insturment or apparatus of equivalent scientific value to the foreign article. for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12649 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

SN 6-140,063, N-Sulfonyl Amine-Mediated Sulfamation of Amines. Filed 19 April 80 by Dept. of HHS. Inventor: Grant E. Dubois.

SN 6-140,064, Sulfamo Dihydrochalcone Sweeteners. Filed 14 April 80 by Dept. of HHS. Inventor: Grant E. Dubois.

SN 6-148,491, Apparatus and Method for Continuous Countercurrent Extraction and Particle Separation. Filed 9 May 80 by Dept. of HHS. Patent 4,324,661 issued 13 April 82. Inventor: Dr. Yoichiro Ito.

SN 6-330,020, Self-Contained Lysis-Filtration Blood Culture Chamber. Filed 11 Dec 81 by Dept. of HHS. Inventor: Dr. Charles H. Zierdt.

SN 6-349,313, Modified Silver Stain for Proteins in Polyacrylamide Gels. Filed 16 Feb 82 by Dept. of HHS. Inventor: James H. Morrissey.

SN 6-363,480, Neisseria Gonorrhoeae Vaccine. Filed 30 March 82 by Dept. of HHS. Inventor: Buchanan et al.

[FR Doc. 82-12611 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Efratom Systems Corporation having a place of business at Irvine, California 92715 an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Frequency Stabilization Utilizing Multiple Modulation," U.S. Patent No. 4, 122,408 (dated October 24, 1978). The availability of this invention for licensing was announced in the Federal Register (43 FR 22232, dated May 24, 1978). Copies of the Patent may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the adress above. NTIS will maintain and make available for public inspection a file containing all inquries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: May 3, 1982.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

[FR Doc. 82-12612 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Amendment to System of Record

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of Amendment to System of Records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records subject to the Privacy Act of 1974. Specific changes to the system is set forth below followed by the system notice published in its entirely as amended.

DATES: This system shall be amended as proposed without further notice on June 9, 1982.

ADDRESSES: All comments should be addressed to Civilian Personnel, DLA-KW, Hq., DLA, Cameron Station,

Alexandria, Virginia 22314, telephone 202/274–6039.

FOR FURTHER INFORMATION CONTACT: Mr. Preston B. Speed, DLA-XAM, Hq. DLA, Cameron Station, Alexandria, VA 22314, telephone 202/274–6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records subject to the Privacy Act of 1974, Title 5 U.S.C. 552a (Pub. L. 93–579, 44 stat. 1896, *et seq.*) were published in the **Federal Register** at FR Doc. 82–674 (47 FR 2544), January 18, 1982.

This proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires the submission of an altered system report.

M. S. HEALY,
OSD Federal Register Liaison Officer, Department of Defense.
May 5, 1982.

Admendment

S434.15 DLA–KP

System name:

S434.15 Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem (44 FR 5700) January 29, 1979.

System location:

Add the following activities:
Defense Contract Administration Services Region (DCASR), Atlanta
Defense Contract Administration Services Region (DCASR), Boston
Defense Contract Administration Services Region (DCASR), Chicago
Defense Contract Administration Services Region (DCASR), Cleveland
Defense Contract Administration Services Region (DCASR), Dallas
Defense Contract Administration Services Region (DCASR), Los Angeles
Defense Contract Administration Services Region (DCASR), New York
Defense Contract Administration Services Region (DCASR), St. Louis

Authority:

Change "Chapter 293" to "Chapters 290 and 293."

Safeguards:

Change the second paragraph from "Civil Service Commission Officials" to "Office of Personnel Management Officials."

System manager:

Add "DCASR Atlanta, DCASR Boston, DCASR Chicago, DCASR Cleveland, DCASR Dallas, DCASR Los Angeles, DCASR New York, DCASR St. Louis."

Record Source Categories:

Change "U.S. Civil Service Commission" to "U. S. Office of Personnel Management."

S434.15 DLA–KP

SYSTEM NAME:

434.15 Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem.

SYSTEM LOCATION:

Offices of Civilian Personnel at:
Defense Construction Supply Center (DCSC)
Defense Electronics Supply Center (DESC)
Defense General Supply Center (DGSC)
Defense Personnel Support Center (DPSC)
Defense Property Disposal Service (DPDS)
Defense Depot Memphis (DDMT)
Defense Depot Ogden (DDOU)
Defense Depot Tracy (DDTC)
Defense Depot Mechanicsburg (DDMP)
Defense Logistics Agency Administrative Support Center (DASC)
Defense Contract Administration Services Region (DCASR), Atlanta
Defense Contract Administration Services Region (DCASR), Boston
Defense Contract Administration Services Region (DCASR), Chicago
Defense Contract Administration Services Region (DCASR), Cleveland
Defense Contract Administration Services Region (DCASR), Dallas
Defense Contract Administration Services Region (DCASR), Los Angeles
Defense Contract Administration Services Region (DCASR), New York
Defense Contract Administration Services Region (DCASR), St. Louis

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees serviced by Offices of Civilian Personnel at the activities listed under LOCATION and other Department of Defense civilian employees who are both serviced by the Offices of Civilian Personnel and paid by the activities listed under LOCATION.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee data segment of APCAPS data bank, including data being manually collected prior to implementation of the automated record system. For the civilian personnel segment of APCAPS, the employee data segment of the APCAPS data bank contains, for civilian employees, current personnel data on employment status and selected personal data, such as Social Security Number (SSN), name, sex, minority group designator, date of birth, age physical handicap, Government insurance, military reserve status, retired military status, education, whether individual passed the Federal Service Entrance Examination or the Professional and Administrative Career Examination, status preceding employment with DLA, U.S. citizenship, and veterans preference.

Position data segment of APCAPS data bank. For the civilian personnel segment of APCAPS, the position data segment of the APCAPS data bank contains position data pertinent to established positions, both those positions occupied by a civilian employee as well as those not so occupied.

Personnel history file. The personnel history file contains a profile of selected civilian employee personnel data as of the most recent transaction processed against it, as well as a chronological extract of all prior transactions processed on the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302; E.O. 10561; Federal Personnel Manual, Chapters 290 and 293.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purposes of the system are to affect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration.

Prospective employees. For employment determination purposes.

Credit firms. For verification of data for credit determination purposes.

Taxing authorities. For tax administration purposes.

Officials of the Executive Branch. For performance of official duties.

Officials of the Judicial Branch. For performance of official duties.

Hospitals, medical offices and institutions. For medical/hospital administration purposes.

Executor or administrator of the estate of a deceased employee, former employee, or annuitant, or next-of-kin. For estate settlement purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Computer magnetic tapes or discs. Computer paper printouts. Paper records in file folders.

RETRIEVABILITY:

Information identified to a specific civilian employee is accessed and retrieved by Social Security Number.

SAFEGUARDS:

Records are either secured in locked storage and/or file cabinets or under the constant observation of personnel office officials during duty hours. During non-duty hours, records are either secured in locked storage and/or file cabinets; the records file area is locked, and/or the building in which the records are stored is protected by building security guard. If the records area is not protected by security guard, all records must be locked. Individually indentifiable personnel documents will either be handcarried or will be transmitted in envelops addressed to a specific office or individual and marked to be opened by addressee only. Magnetic tapes and discs are kept in the computer room which is itself a security container with locked door and access limited to persons appropriately cleared and identified. Tapes and disc packs are stored in a tape library when not used in processing, and are logged in and out only to cleared personnel with an official need. Reports with individual data are closely controlled. Computer personnel who process these reports are appropriately cleared and maintain continuous observation of reports during all processing phases. Individual requesting information must identify himself/herself and his/her relationship to the individual upon whom the record information is being requested. Individual other than the individual of record must specify what information is requested and the purpose for which it would be used if disclosed. Personnel office official determines if request is reasonable and consistent with provisions of the Freedom of Information Act and the Privacy Act of 1974. In order to prevent unauthorized modification of records contents, original records documents may only be reviewed in the presence of a witness designated by the Personnel Office.

Physical access, that is the ability to obtain the record, is limited to:
Personnel office officials
Office of Personnel Management officials
Date processing officials

Supervisors for those records for which they are authorized to maintain. Responsible officials are granted temporary custody of an original record in order to monitor the review of the record by the individual to whom it pertains, when the individual is geographically remote from the personnel office.

RETENTION AND DISPOSAL:

Records which are filed in the Official Personnel folder (OPF) are retained in the personnel office until the employee leaves the agency. At that time the permanent portion of the OPF is transferred to the gaining Federal agency and temporary OPF records are destroyed by shredding or burning. Copies of records which are furnished to the employee concerned may be retained at his or her discretion. Copies of records authorized to be maintained by supervisors or other operating offices are destroyed by shredding or burning when the emploee leaves the agency. Operating records maintained within the Civilian Personnel Office may be retained up to three years, as needed. At that time, or sooner, they may be destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Civilian Personnel, HQ DLA and Directors of Civilian Personnel at DCSC, DPDS, DESC, DGSC, DPSC, DDMT, DDOU, DDTC, DDMP, DASC, DCASR Atlanta, DCASR Boston, DCASR Chicago, DCASR Los Angeles, DCASR New York or DCASR St. Louis.

NOTIFICATION PROCEDURE:

Written or personal requests may be directed to the System Manager at the activity where the record is maintained. Individual must provide name (last, first, middle intitial) and SSN in order to determine whether or not the system contains a record about him/her. If a written request, individual must provide a return address.

For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Written requests are required. The request is to contain the name of the individual (last, first, middle initial), SSN, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous Federal employers, U.S. Office of Personnel Management, applications and forms completed by individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12583 Filed 5-7-82; 8:45 am]
BILLING CODE 3820-01-M

Department of the Navy

Privacy Act of 1974; Addition of Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Addition of one system of records notice.

SUMMARY: The Department of the Navy proposes to add one new system of records to its inventory of systems of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice on June 9, 1982, unless comments are received which would result in a contrary determination.

ADDRESS: Any comments, to include written data, views or arguments concerning the action proposed should be addressed to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B1P), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy inventory of systems of records notices as prescribed by the Privacy Act have been published in the Federal Register at: FR. Doc. 81-674 (47 FR 2574) January 18, 1982.

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.
May 5, 1982.

1. *System Identification and Name:* N01131-2, "U.S. Naval Academy Admissions Records."

2. *Responsible Official:* Comments on the proposed new System notice may be

directed to: Admissions Officer, Office of the Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, telephone: (301) 267–4361, extension 39.

3. *Purpose:* To provide a data base from which: the Admissions Board can examine each candidate's school records (SAT and ACT scores), recommendations from school officials, record of extracurricular activities, and other evidence of character, leadership potential, and academic aptitute and achivement, to assist in selecting candidates for admission; the Naval Academy can provide the applicant's Congressman or other nominating official with periodic status reports, including a preliminary evaluation of the applicant, results of the medical examination, and other information which may assist the applicant in being selected for a Congressional nomination; and to enable Naval Academy officials to counsel applicants on all aspects of admission.

4. *Authority for Maintenance System:* 5 U.S.C. 301; 10 U.S.C. 6956, 6957 and 6958; 44 U.S.C. 3101.

5. *Number of Individuals:* The system will affect each of the current 4500 midshipmen and each year will affect approximately 1500 additional candidates for admission.

6. *Information on First Amendment Activities:* No information relating to the individual's exercise of First Amendment rights is contained in this system.

7. *Measures to Assure Information Accuracy:* Data is verified by educational technicians who screen records prior to submitting to the Admissions Board for final review. All self-reported data is verified by school officials. Updating provides for subsequent changes/corrections of data as it is received.

8. *Other Measures to Assure System Security:* Files are maintained in a controlled environment with permission to view records on a need to know basis only to those in the midshipman's chain of command, both military and academic.

9. *Relations to State/Local Government Activities:* None.

10. *Supporting Documentation:* No changes to existing procedural or exemption rules are required.

N01131–2

SYSTEM NAME:

U.S. Naval Academy Admissions Records.

SYSTEM LOCATION:

U.S. Naval Academy, Leahy Hall, Annapolis, Maryland 21402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All candidates for admission to the Naval Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records, including information on nominations and appointments, and candidate guidance files. Admissions files contain personal data, personal statements, transcripts from previous academic institutions, admission tests results, physical aptitude exam results, recommendation letters from school officials and others, interest inventory, extracurricular activities report, and report of officer interveiw. Nominations and appointments records consist of card files of all Congressional Offices and who each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source, of all candidates appointed, admitted, and graduated or resigned prior to graduation. Similar files are separately kept on foreign candidates. Candidate guidance files consist of precandidate questionnaires concerning educational background, personal data, physical data, extracurricular activities and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 6956, 6957, and 6958, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Nominations and admissions records, including pre-candidate questionnaires, are the starting point of records for all future midshipmen. They are used to keep track of all candidates nominated by Congress and other sources. All nominating sources have access to records. The Academy admissions department uses the records to determine qualification status for candidates. The records may also be used by various faculty department heads, and the Naval Academy Prep School.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are filed in folders or index boxes, and stored in file cabinets in the appropriate offices.

RETRIEVABILITY:

Basic admissions records are retrieved by use of a six digit candidate number. Nominations and Appointment personal data, physical data, extracurricular activities and employment.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301, 10 U.S.C. 6956, 6957, and 6958, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Nominations and admissions records, including pre-candidate questionnaires, are the starting point of records for all future midshipmen. They are used to keep track of all candidates nominated by Congress and other sources. All nominating sources have access to records. The Academy Admissions department uses the records to determine qualification status for candidates. The records may also be used by various faculty department heads, and the Naval Academy Prep School.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are filed in folders or index boxes, and stored in file cabinets in the appropriate offices.

RETRIEVABILITY:

Basic admissions records are retrieved by use of a six digit candidate number. Nominations and Appointment records are indexed either by candidate names or by nomination source. Candidate guidance questionnaires are stored by candidate names alphabetically.

SAFEGUARDS:

Visitor control and all files are kept in locked file cabinets and locked offices.

RETENTION AND DISPOSAL:

Admissions records of admitted candidates are kept by the Registrar's office after a candidate reports. Unsuccessful candidate files are kept for one year in locked file, then destroyed. Nomination and Appointment files vary in retention. All Congressional Office card files are kept for 10 years on the premises. Status cards of admittees are kept until graduation or resignation, and then transferred to the Academy archives and microfilmed. Nominations files are disposed of yearly through normal refuse removal methods. Candidate guidance files are destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESS:

Admissions Officer, Office of the Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402.

NOTIFICATION PROCEDURE:

Written request may be made to the system manager.

RECORD ACCESS PROCEDURES:

Rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

Rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Educational institutions, nominating sources, individual candidates, school officials, personal statements, Blue and Gold officer interviews, and letters of recommendation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12593 Filed 5-7-82; 8:45 am]

BILLING CODE 3810-AE-M

Office of the Secretary

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board Subcommittee on Disease Control
Date of meeting: June 23, 1982
Time: 0900-1600
Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, D.C.

Proposed Agenda

Antibiotic use in rickettsial and diarrheal disease, immunization schedules in the Armed Forces, multiple immunizations and use of quadravalent meningococcal vacine.

This meeting will be open to the public, but limited by space accomodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Pentagon, Washington, D.C. 20310 (Telephone 695-9115).

Dated: April 30, 1982.

Charles W. Halverson,

Captain, MSC, USN Executive Secretary.

[FR Doc. 82-12638 Filed 5-7-82; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board Task Force on Epidemiological Methods in the Health Care Delivery System
Date of meeting: June 23, 1982
Time: 0900-1600
Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, D.C.

Proposed Agenda

Presentations and discussions by the services and DOD concerning Medical Lost Time by AFSC, service-wide ambulatory care information systems, Navy occupational health information monitoring systems, utilization of current health information systems by departmental planners and policy makers, Navy hearing conservation program data management system and medical health care delivery systems within the U.S. Army.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the Committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Penatgon, Washington, D.C. 20310. (Telephone 695-9115).

Dated: April 30, 1982.

Charles W. Halverson,

Captain, MSC, USN, Executive Secretary.

[FR Doc. 82-12639 Filed 5-7-82; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board
Date of meeting: June 24-25, 1982
Time: 0900-1600 June 24, 1982, 0900-1400 June 25, 1982
Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, D.C.

Proposed Agenda:

Recent trends in surveillance and control of penicillinase producing *Neisseria gonorrhoeae* (PPNG) in the U.S., Service preventive medicine reports, update on Operation Ranch Hand (herbicide orange) and reports from the AFEB Subcommittees on Disease Control, Environmental Quality and Health Maintenance.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Pentagon, Washington, D.C. 20310. (Telephone 695-9115).

Dated: April 30, 1982.

Charles W. Halverson,

Capt, MSC, USN, Executive Secretary.

[FR Doc. 82-12640 Filed 5-7-82; 8:45 am]

BILLING CODE 3710-08-M

Defense Intelligence Agency Advisory Committee; Meeting Cancellation

The closed meeting of the DIAAC on the special study on bomber prelaunch survivability scheduled for May 13, 1980, at Plaza West, Rosslyn, Virginia, as published in the **Federal Register** (47 FR 15406) April 9, 1982, has been canceled.

Dated: May 5, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-12805 Filed 5-7-82; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Portfolio Business Profile

The Booker T. Washington Foundation, under a Department of Defense contract, has developed the DOD portfolio system; an outreach program which seeks out, on a voluntary basis, those disadvantaged business firms who desire to participate in DOD's acquisition program. The Portfolio Business Profile form is used by Booker T. Washington Foundation Account Executives to obtain significant data from such firms through personal interview with appropriate officials. It lists their capabilities and capacities in terms of equipment, numbers and skills of employees, kinds of work done in the past, and general capability to perform.

Disadvantaged Business Firms: 5,000 responses; 10,000 hours.

Forward comments to Kenneth Allen, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 4B929, Pentagon, Washington, D.C. 20601, telephone (292) 697–1195.

A copy of the information collection proposal may be obtained from A. F. Williams, OPI, Room 2A340, Pentagon, Washington, D.C. 20301, telephone (202) 697–1481.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 5, 1982.

[FR Doc. 82–12626 Filed 5–7–82; 8:45 am]

BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 19, 1982, commencing at 1:30 a.m. The hearing will be a part of the Commission's regular May business meeting, which is open to the public. Both the hearing and the meeting will be held in the Pilot Room at the Virden Conference Center, University of Delaware, Lewes, Delaware. The subject of the hearing will be application for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *Cape May County Municipal Utilities Authority (D–74–153 CP).* Expansion of a sewage collection system and upgrading of a sewage treatment plant to serve the City of Cape May, the Boroughs of West Cape May and Cape May Point and a portion of the Township of Lower, Cape May County, New Jersey. The proposed treatment facilities are designed to remove 85 percent of BOD and suspended solids from a peak flow of three million gallons per day projected for 1990. Treated wastewater will continue to be discharged, via the outfall from the existing plant, into Delaware Bay.

2. *New York State Environmental Facilities Corp. (D–81–66 CP).* A sewage treatment project serving the Village of Woodridge and portions of the Town of Fallsburg, Sullivan County, New York. An existing treatment facility will be replaced by a new plant designed to provide a minimum of 90 percent removal of BOD from a sewage flow of 790,000 gallons per day. Treated effluent will discharge to the Neversink River.

3. *J. O. Ryder Rendering Company, Inc. (D–82–18).* Expansion of industrial wastewater treatment facilities to serve the existing rendering plant in Westfall Township, Pike County, Pennsylvania. The expanded facilities are designed to remove approximately 96 percent of BOD and 94 percent of the suspended solids from a flow of 161,000 gallons per day. Treated effluent will continue to be discharged into the Delaware River.

Documents relating to the above-listed projects may be examined at the Commission's offices. Contact Mr. David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

W. Brinton Whitall,

Secretary.

May 3, 1982.

[FR Doc. 82–12613 Filed 5–7–82; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Ethnic Heritage Studies; Meeting

AGENCY: National Advisory Council on Ethnic Heritage Studies. Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Advisory Council on Ethnic Heritage Studies. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 25, 1982—9:00 a.m. to 4:30 p.m., May 26, 1982—9:00 a.m. to 12 noon.

ADDRESS: Federal Office Building 6, Room 3000, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Wilton Anderson, Chief, Program Assistance and Operations Branch, Education Program Support Division, Room 1167 Donohoe Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202) 245–8213.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Ethnic Heritage Studies is established under Section 956 of the Elementary and Secondary Education Act of 1965 as amended (20 U.S.C. 3366). The Council makes recommendations regarding the collection of data to facilitate program planning and evaluation; suggests innovations to meet program needs or otherwise improve ethnic heritage studies; recommends appropriate areas for research; and provides such administrative and legislative proposals as may be appropriate.

The meeting of the Council shall be open to the public. The proposed agenda includes the introduction and swearing in of new Council members; review of current status and past accomplishments in ethnic heritage education; issues and recommendations regarding the future of ethnic heritage education; and Council business, old and new.

Records are kept of all Council proceedings and are available for public inspection at the Program Assistance and Operations Branch, Room 1157 Donohoe Building, 400 6th Street, S.W., Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: May 5, 1982.

Monika Edwards Harrison,

Director of Policy Planning and Program Development/Executive Assistant.

[FR Doc. 82–12654 Filed 5–7–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Public notice of proposed new system of records.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) proposes to establish a new system of record keeping to be identified as the Time Distribution

Reporting System (TDRS). The proposed system will be used to secure and maintain data on the time expended on the various items of the Commission's workload. Collection of this data will promote the budget formulation process and facilitate the determination of fees to be charged for Commission services. The Commission will accept public comments on the proposal.

DATES: This system shall become effective as proposed on July 1, 1982, unless comments are received on or before that date which would result in a contrary or changed determination.

ADDRESS AND COMMENT PROCEDURES: All comments must be submitted in writing. Three copies of any comments should be submitted to: Office of the Secretary, ATTENTION: Kenneth M. Pusateri, Office of Program Management, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, Office of Program Management, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8002.

SUPPLEMENTARY INFORMATION: The Commission herein provides notice of a proposed new system of record keeping. The system involves bi-monthly report forms completed by Commission employees in order to record time expended against specified Commission activities. Utilizing electronic data processing methods, individual records are summarized to produce organizational reports on time expended by activity. The purpose of the system is to enhance the formulation of the Commission's budget, improve the management of staff resources, and provide data for the assessment of fees for Commission services.

Information to be stored in the system will come from reports by Commission personnel. The proposed system will summarize individual reports into organizational components to permit access by the Commission's managerial and supervisory staff. While control of the data will remain at all times with the Commission, the computer facilities of Boeing Computer Services will be used to process and store some of the data as provided in the contract between Boeing and the Department of Energy; these services are available to the Commission pursuant to a common support agreement entered into between the Department and the Commission.

As required by section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(o) (1977), the Commission has submitted to Congress and the Office of Management and Budget (OMB) advance notice of the proposed new system of record keeping. The report was made pursuant to OMB Circular No. A-108, and OMB Transmittal Memoranda Nos. 1 and 3.

FERC-13

SYSTEM NAME:

Time Distribution Reporting System (TDRS)—FERC-13.

SYSTEM LOCATION:

Commission computer facilities, Washington, D.C.; Boeing Computer Services, Inc. computer facilities, Vienna, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioners, Administrative Law Judges, attorneys, technical, environmental, managerial, and all other staff personnel. With respect to information concerning these individuals, their name, organizational component, position, grade, dates of Commission employment, and time expended on designated activities will be entered into the system. Staff hours expended by individuals on specific activities will be maintained only for the current or most recent calendar quarter before the personal identifiers are deleted from the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain (1) information regarding the amount of time expended by individuals on the designated work products and activities performed at the Commission, and (2) information relating to each individual employed during the reporting period. Each calendar quarter, individual records for each Commission organization will be totalled by activity and all reference to individual staff hours will be removed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 717; 16 U.S.C. 825H, 42 U.S.C. 7172(a)(2), 44 U.S.C. 3101.

ROUTINE USES:

The records and information may be used:

(a) By authorized Commission personnel to identify the distribution of Commission staff time by work product, by organization, and by budget decision unit;

(b) By authorized Commission personnel to extract manpower processing requirements for determination of fees to be charged for certain filings with the Commission;

(c) By authorized Commission personnel to allocate manpower and make staff resource adjustments for the effective management of the Commission workload;

(d) By authorized Commission personnel to forecast staff requirements for development of budget requests;

(e) By authorized Commission personnel to produce management reports;

(f) By authorized Commission personnel to monitor and analyze Commission productivity;

(g) As a data source for management information, for production of summary statistics and analytical studies in support of the function for which these records are collected and maintained, or for related personnel management functions or manpower studies compiled by the staff or a contractor of the Commission;

(h) By members of advisory committees that are created by the Commission or by the Congress to render advice and recommendations to the Commission or the Congress to be used solely in connection with their official designated functions;

(i) By any person with whom the Commission contracts to reproduce by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or by any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission;

(j) To aid in responding to inquiries from members of Congress, other federal agencies, the press, and the public.

RECORDS MANAGEMENT POLICIES AND PRACTICES STORAGE:

Maintained on magnetic tape and computer disk files.

RETRIEVABILITY:

Records will be retrieved by work product identify elements (product category, docket number, task code, budget decision unit), organizational component (office, division, branch, section), report period, and position identifier.

SAFEGUARDS:

Stored in a secured computer facility, with access limited to selected authorized TDRS project management personnel.

RETENTION AND DISPOSAL:

Records will be maintained by employee and activity for the current or most recent calendar quarter. All employee staff hours will then be compiled into organizational level records and transferred to a history file for permanent retention.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Program management, Federal Energy Regulatory Commission, Room 3311, 825 North Capitol Street, NE., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual should be made in accordance with the Commission's General Rules, 18 CFR 3b.220 (a) and (b). Individuals should provide the appropriate identifying information as specified in 18 CFR 3b.222.

RECORDS ACCESS PROCEDURES:

Requests for access to records in this system should be made in accordance with 18 CFR 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR 3b.222.

CONTESTING RECORD PROCEDURES:

Requests to amend records should be made in accordance with 18 CFR 3b.224.

RECORD SOURCE CATEGORIES:

Individuals covered by the system.

Dated: May 4, 1982.

Joseph R. Neubeiser,

Deputy Director, Office of Program Management.

[FR Doc. 82-12383 Filed 5-7-82; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Ord, Brough & Collins, Inc., c/o Susan Kohn Ross, Esquire, 420 So. Beverly Drive, Suite 207, Beverly Hills, CA 90212,
Officers: Ray Lewis, Vice President—Operations, B. I. Horowitz, President

Unitrans International Corp. (S.F.), 905 Grand View Drive, So. San Francisco, CA 94080
Officers: Fred E. Saxer, President, Frank J. Gulli, Vice President, H. Rudy Ehrat, Vice President/Director, John B. Laviaguerre, Vice President/Director

TransHansa Projects, Inc., 21 West Street, New York, NY 10004,
Officers: Frank E. Olschewski, President/Director, Christiane Scribner, Treasurer/Secretary, Karl Georg Gorski, Vice President/Director

By the Federal Maritime Commission.

Dated: May 5, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12842 Filed 5-7-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1671-R]

Benedict Shipping International Inc.; Order of Revocation

On April 27, 1982, Benedict Shipping International, Inc., 80 Wall Street, Suite 618, New York, NY 10005 surrendered its Independent Ocean Freight Forwarder License No. 1671-R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1671-R issued to Benedict Shipping International Inc. be revoked effective April 27, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Benedict Shipping International Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-12841 Filed 5-7-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Jefferson Bankshares, Inc.*, Charlottesville, Virginia; to acquire 100 percent of the voting shares or assets of First National Bank of the Valley, Luray, Virginia. Comments on this application must be received not later than May 28, 1982.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **State Bancshares, Inc.**, Littlefield, Texas, to acquire 58.78 percent of the voting shares of West Texas Bancshares, Inc., Muleshoe, Texas. Comments on this application must be received not later than June 2, 1982.

C. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Consolidated Bancshares, Inc.*, Abilene, Texas; to acquire 100 percent of the voting shares or assets of American National Bank, Wichita Falls, Texas. Comments on this application must be received not later than June 2, 1982.

3. *Consolidated Bancshares, Inc.*, Abilene, Texas; to acquire 100 percent of the voting shares or assets of Travis Bank & Trust, Austin, Texas. Comments on this application must be received not later than June 2, 1982.

2. *Consolidated Bancshares, Inc.*, Abilene, Texas; to acquire 100 percent of the voting shares or assets of Western State Bank, Midland, Texas. Comments on this application must be received not later than June 2, 1982.

Board of Governors of the Federal Reserve System, May 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12572 Filed 5-7-82; 8:45 am]

BILLING CODE 6210-01-M

Southeast Banking Corp.; Merger of Bank Holding Companies, Indirect Acquisition of Banks, and Acquisition of Florida National Credit Corporation and Florida National Financial Services, Inc.

Southeast Banking Corporation, Miami, Florida ("Southeast"), has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to

merge with Florida National Banks of Florida, Inc., Jacksonville, Florida ("Florida National"). Southeast has also applied for the Board's prior approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire indirect ownership, control, or power to vote voting shares of each of Florida National's subsidiary banks. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Subsidiaries of Southeast are also engaged in the following nonbank activities: mortgage banking, consumer financing, leasing, data processing, credit insurance, and real estate management. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposed merger and acquisition in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

Southeast has also applied, pursuant to section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to indirectly acquire voting shares of Florida National Credit Corporation, Jacksonville, Florida, and Florida National Financial Services, Inc., Jacksonville, Florida, through Southeast's proposed merger with Florida National.

Southeast indicates that the proposed subsidiaries would engage in the leasing of personal property and the arrangement of credit life insurance for consumer loan customers of Florida National's subsidiary banks, respectively. These activities would be performed from existing offices of Florida National in Jacksonville, Florida, and the geographic areas to be served are the banking markets for the banking subsidiaries of Florida National. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the banking factors involved in the applications submitted under section 3 of the Act and on the question whether consummation of the acquisitions proposed under section 4 of the Act can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these issues must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 5, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12572 Filed 5-7-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; American Financial Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: American Financial Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Penn Central Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by American Financial Corp. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 22, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-12573 Filed 5-7-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Damson Oil Corp.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Damson Oil Corp. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Juniper Petroleum Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 29, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-12602 Filed 5-7-82; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Farm House Foods

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Farm House Foods is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Great Atlantic & Pacific Tea Comany from Tengelmann Warengesellschaft. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: April 29, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–12883 Filed 5–7–82; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

[Intervention Notice 140]

Washington Gas Light Co.; Public Service Commission of the District of Columbia; Proposed Intervention in Gas Rate Increase Proceeding

April 28, 1982.

The General Services Administration (GSA) seeks to intervene in a proceeding before the Public Service Commission of the District of Columbia concerning the application of the Washington Gas Light Company for an increase in its gas rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to John L. Stanberry, Assistant Commissioner, Office of Public Utilities, General Services Administration, Washington, D.C. (mailing address: General Services Administration (TU), Washington, D.C. 20406), 202–275–1027, on or before June 9, 1982, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Service Act. 40 U.S.C. 481(a)(4))

Janice Mendenhall,

Acting Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82–12807 Filed 5–7–82; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Bodies; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of June 1982.

Basic Psychopharmacology and Neuropsychology Research Review Committee, June 3–4; 9:00 a.m., Ramada Inn, Skyview and Terrace C Conference Rooms, 8400 Wisconsin Avenue, Bethesda, Maryland 20814
Open—June 3, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The Basic Psychopharmacology and Neuropsychology Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in the fields of basic psychopharmacology and neuropsychology and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Psychopathology and Clinical Biology Research Review Committee, June 3–5; 9:00 a.m., Shoreham Americana, 2500 Calvert Street, N.W., Washington, D.C. 20008

Open—June 3, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Christine Peers, Room 9C24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The Psychopathology and Clinical Biology Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in the fields of clinical psychopathology and clinical biology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Crimimal and Violent Behavior Review Committee, June 9–11; 9:00 a.m., Gramercy Inn, Parkview and Westview rooms, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036

Open—June 9, 9:00–10:30 a.m.
Closed—Otherwise
Contact: Phyllis Pinzow, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1888.

Purpose: The Criminal and Violent Behavior Review Committee is charged with the initial review of applications

for assistance from the National Institute of Mental Health for support of research and training activities and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:30 a.m., June 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal Assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Mental Health Reserach Education Review Committee, June 10–11; 9:00 a.m., Sheraton Inn Washington-Northwest, 8727 Colesville Road, Silver Spring, Maryland 20910

Open—June 10, 1:00–2:00 p.m.
Closed—Otherwise
Contact: Emilie Embrey, Room 9–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Mental Health Research Education Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the fields of biological sciences, the phychological sciences, and the applied behavioral sciences areas, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 1:00–2:00 p.m., June 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix 1).

- Life Course Review Committee, June 10–11; 9:00 a.m., Shoreham Hotel, Club Room B, 2500 Calvert Street, N.W., Washington, D.C. 20008

Open—June 10, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Dee Herman, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Life Course Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Research Scientist Development Review Committee, June 14–16; 9:00 a.m., Coolfront Conference Center, Berkeley Springs, West Virginia 25411

Open—June 14, 9:00–9:30 a.m.
Closed—Otherwise
Contact: Diana Souder, Room 9–97, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4844.

Purpose: The Research Scientist Development Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for the support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals engaged full time in research and related activities relevant to mental health, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., June 14, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Alcohol Biomedical Research Review Committee, June 16–18; 9:00 a.m., Embassy Square Hotel, 2000 N Street, N.W., Washington, D.C. 20036

Open: June 16, 9:00–11:00 a.m.
Closed—Otherwise
Contact: Harvey P. Stein, Ph.D., Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Alcohol Biomedical Research Review Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11 a.m., June 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, June 17–18; 9:00 a.m., Holiday Inn Capital, 550 C Street, S.W., Washington, D.C. 20024

Open—June 17, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell, Room 4–66, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: Psychopharmacological, Biological, and Physical Treatments Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities in the fields of development and assessment of psychopharmacological, biological, and physical treatments of mental illness, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and

Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Mental Health Small Grant Review Committee, June 17–19; 1:30 p.m., The Canterbury Hotel, Rooms 208, 209, and 201, 1733 N Street, N.W., Washington, D.C. 20036

Open—June 17, 1:30–2:30 p.m.
Closed—Otherwise
Contact: Virginia Harter, Room 9–104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Mental Health Small Grant Review Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institue of Mental Health for support of research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychiatry, sociology, anthropology, psychological sciences, biological sciences, and epidemiology, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30–2:30 p.m., June 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Cognition, Emotion, and Personality Research Review Committee, June 18–19; 9:00 a.m., Holiday Inn, Lobby Room, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open—June 18, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Jean Pierce, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The Cognition, Emotion, and Personality Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research activities in the fields of personality, cognition, emotion and higher mental processes and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Drug Abuse Clinical and Behavioral Research Subcommittee of the Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee, June 21–24; 9:00 a.m., Linden Hill Hotel, Longwood Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814

Open—June 21, 9:00–9:30 a.m.
Closed—Otherwise
Contact: Daniel L. Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Drug Abuse Clinical and Behavioral Research Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., June 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

- Drug Abuse Psychosocial Research Subcommittee of the Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee, June 21–24; 8:30 a.m., Conference Room "I", Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open —June 21, 8:30–9:00 a.m.
Closed—Otherwise
Contact: Ron Gold, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Drug Abuse Psychosocial Research Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:00 a.m., June 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

- Drug Abuse Biomedical Research Review Committee, June 21–25; 9:00 a.m., Linden Hill Hotel, Sea Pines Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814

Open —June 21, 9:00–9:30 a.m.
Closed—Otherwise
Contact: Alan A. Schreier, Ph.D., Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Drug Abuse Biomedical Research Review Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., June 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room

17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, (301) 443–4333.

Dated: May 4, 1982.

Elizabeth A. Connolly,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82-12388 Filed 5-7-82; 8:45 am]
BILLING CODE 4160-20-M

Office of Human Development Services

Debt Collection Procedures

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice and request for comments.

SUMMARY: The Office of Human Development Services (OHDS) is publishing this notice to advise the public of the new procedures governing collection of debts owed by recipients of discretionary grants or cooperative agreements awarded by HDS program offices (i.e., the Administration for Children, Youth and Families, Administration on Aging, Administration on Developmental Disabilities, Administration for Native Americans, Office of Policy Development, and the Office of Program Coordination and Review.)

These policies and procedures incorporate the Department of Health and Human Services debt collection procedures and supplement the Departmental policies by addressing the methods by which debts will be collected. The policies will soon be published as Chapter 10 of the HDS Grants Administration Staff Manual.

DATE: Comments must be received by June 9, 1982.

ADDRESS: In order to be considered, comments must be addressed to: Department of Health and Human Services, Office of Human Development Services, Division of Grants and Contracts Management, Room 1296, North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Beverly Córdova, (202) 472–6709 or Jack Daschbach, (202) 472–3243.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Under the Federal Claims Collection Act (31 U.S.C. SS 951–953) and the regulations issued jointly by the Comptroller General and the Attorney General (4 CFR Parts 101–104), an agency must take aggressive action, on a timely basis with effective follow-up, to collect all debts owed to the United States by the public. The Department of Health and Human Services at 45 CFR Part 30 adopted for Department operation all provisions of the joint regulations.

On September 17, 1980, the Department of Health and Human Services published in the **Federal Register** (45 FR 61792) its Debt Collection Procedures. A subsequent notice was published in the **Federal Register** (45 FR 73523) on November 5, 1980, to notify the public of an internal Department-wide policy on resolution of audit findings affecting the Department's grants, contracts, and cooperative agreements. The latter policy provides basic standards and comprehensive instructions for resolving audit findings from receipt of an audit report to final resolution. The audit resolution policy is published as Chapter 1–105 of the Department's Grants Administration Manual.

For grant-related purposes, a debt arises when a recipient receives money from the Federal Government and fails to fulfill the resulting obligation to the Government by either charging costs to the grant determined to be unallowble or failing to meet the cost-sharing or matching requirements of the grant. A disallowance of a cost, or the failure of a recipient to meet its cost-sharing or matching requirement, has the net effect of financial assistance being paid to the recipient by the Federal Government in excess of the amount to which the recipient was entitled. The excess amount constitutes the debt owed by the recipient to the Federal Government for which the Government is obliged to seek recovery.

In accordance with Departmental policy, all debts are due thirty (30) days from the date of the official notification of the disallowance, regardless of whether the disallowance is for an unallowable cost or for the failure of a recipient to meet its cost-sharing or matching requirement. Interest will be charged on the amount uncollected as of the due date and will be computed every 30 days on the uncollected balance. The due date is not extended by the filing of any form of appeal.

Prior Policy and Procedures

In the past, HDS has collected monetary audit disallowances by one of the following methods:

- Direct check payment to the Department.
- Writing a check from non-Federal resources to the grant account.
- Allowing recipients to increase the non-Federal share participation (usually through third-party in-kind contributions) in the current or subsequent budget period.
- Offsetting the Federal share of the current or subsequent year's grant.

These methods were used interchangeably regardless of whether the disallowance was for an unallowable cost charged to the Federal share of the grant or because the recipient failed to meet its cost-sharing or matching requirement.

New Policies and Procedures

In response to Departmental guidelines, we have determined that the methods by which debts are collected depend on the reason for the monetary audit disallowance. Thus, certain methods must be used when the disallowance is in the expenditure of Federal funds and other methods when the recipient has failed to provide adequate cost-sharing or matching for the Federal funds advanced for the period in which the disallowance was made. If an inappropriate method is applied, the recipient could carry the disallowance from one budget period to another and indefinitely postpone possible recoupment by the Federal Government.

The following procedures shall govern collection of debts owed by recipients of HDS discretionary grants.

- *Where the disallowance is in the expenditure of Federal funds* (i.e., an unallowable cost charged to the Federal share of the grant), the debt must be repaid either by direct check payment to the Government [*not* to the grant account] or through offset of the grant.

Offset means that subsequent Federal funds due a recipient will be reduced by the amount of the disallowance. The recipient *may not* repay the debt by increasing the non-Federal share through grantee-incurred costs or third-party in-kind contributions in the current or subsequent budget period.

Exended payment plans may be negotiated if the recipient is unable to pay in one lump sum. If an extended payment plan is approved, the recipient must send a check to the Department for a predetermined amount (principal plus interest) at regular intervals over a specified period of time, generally not to exceed three years. Provided an extended payment plan has been negotiated and confirmed in writing within 90 days from the date of the official notification of the disallowance, the recipient will continue to receive grant payments *in advance* as long as the installment payments are made according to schedule.

If offset is required (i.e., where refund is not made, an extended payment plan

is not negotiated, or an appeal is not filed or is denied), the recipient will be removed from advance funding and placed on a reimbursement method of payment. Once the full amount of disallowed Federal funds [plus interest] has been recovered by offset against reimbursement vouchers, the net amount due the recipient will be paid by U.S. Treasury check. Thereafter, the payment of advances may be reestablished based on the undisbursed Federal balance of the award, and the reimbursement method discontinued.

In accordance with departmental regulations, interest will be charged on the amount uncollected as of the due date and will be computed every thirty days on the uncollected balance.

Where the disallowance is for failure to meet the cost-sharing or matching requirement of the grant, the recipient may elect to (1) repay the excess Federal funds advanced by direct check payment to the Government; (2) offset the current or subsequent year's grant; or (3) increase the non-Federal share participation in the current or subsequent budget period. In the latter case, the recipient may provide in-kind services or non-Federal cash over a specified period to make up the shortage of matching funds.

In accordance with Departmental regulations, interest will be charged on the amount uncollected as of the due date and will be computed every thirty days on the uncollected balance.

If the recipient chooses to increase the non-Federal share participation in the current or subsequent budget period to make up the shortage of match from the prior period involved in the disallowance, interest will be charged on the excess Federal funds until such time as the contribution is completed. The interest computation shall be based on the appropriate Treasury rate for a like period of an extended payment plan. The interest must be paid in cash or check.

The contributions provided will be applied to any disallownace from the prior year before being counted for the current year's matching requirement. The principle that will be applied in this case will be the "first-in, first-out" concept (i.e., the first costs incurred that are charged to the non-Federal share plus the value of third-party in-kind contributions will be applied as match for the excess Federal funds advanced in the prior period). An interim SF–269, Financial Status Report, shall be submitted as soon as this action has occurred. Once the prior year Federal funds have been matched, the recipient must then match all Federal funds drawn against the current year's award.

Where the debt is owed for any reason other than a monetary audit disallowance (e.g., interest earned on advances of grant funds, money from the sale of property, failure to deduct program income, etc.), the debt must be repaid by either direct check payment to the Government or through offset of the grant.

Dated: May 5, 1982.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 82–12850 Filed 5–7–82; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee, Divison of Research Resources, June 3 and 4, 1982, Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

This meeting will be open to the public June 3 from 1:00 p.m. to approximately 5:00 p.m., and from 8:00 a.m. to adjournment on June 4 for analysis and discussion of current and future needs for support of technologies by the Biotechnology Resources Program over the next five years and for discussions of the guidelines for Biotechnology Resources Program applications and potential new areas for grants. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8:15 a.m. to approximately 12:00 noon on June 3 for the review, discussion, and evaluation of individual research prospectuses submitted by organizations seeking access to PROPHET System services. These prospectuses and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the prospectuses, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496–5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496–5411, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that circular.

Dated: April 29, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82–12896 Filed 5–7–82; 8:45 am]

BILLING CODE 4140–01–M

General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Research Support Review Committee, Division of Research Resources, June 24–25, 1982 at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 1:30 p.m. on June 24, 1982, to discuss policy matters relating to the Minority Biomedical Research Support Program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 24, 1982, from approximately 1:30 p.m. to 5:00 p.m. and on June 25 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted to the Minority Biomedical Research Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20205, telephone (301) 496–5545, will

provide summaries of meeting and rosters of committee members. Dr. Sidney A. McNairy, Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B29, Bethesda, Maryland 20205, telephone (301) 496-6743 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-12597 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, on July 9-10, 1982, in Building 31, Conference Room 7.

This meeting will be open to the public on July 9, 1982 from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 9, from approximately 9:30 AM until adjournment on July 10, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Larry Blaser, Chief of the Research Reporting Section, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Research Review Committee A, Westwood Building, Room 548, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

National Institute of Health, Committee Management Officer.

[FR Doc. 82-12598 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, on July 9-10, 1982, in Building 31, Conference Room 9.

This meeting will be open to the public on July 9, 1982, from 8:30 a.m. to approximately 10:00 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 9, 1982, from approximately 10:15 a.m. to adjournment on July 10, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Larry Blaser, Chief of the Research Reporting Section, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meetings and rosters of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

NHI Committee Management Officer.

[FR Doc. 82-12599 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

Maternal and Child Health Research Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Maternal and Child Health Research Committee, National Institute of Child Health and Human Development, on June 21-22, 1982, in the Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on June 21, from 9:00 to 10:15 a.m. to discuss items relative to the Committee's activities including announcements by the Acting Director, Associate Director for Scientific Review and Chiefs of the Human Learning and Behavior and the Clinical Nutrition and Early Development Branches and the Executive Secretary of the Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6) and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 21 from 10:30 a.m. to adjournment on June 22 for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property. Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members. Dr. Jane Showacre, Executive Secretary, Maternal and Child Health Research Committee, NICHD, Landow Building Room 6C03, National Institutes of Health, Bethesda, Maryland, Area Code

301, 496-1696, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.865, Research for Mothers and Children, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-12880 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

Minority Access to Research Careers Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, National Institutes of Health, Building 31-C, Conference Room 8, on June 10-11, 1982, 9:00 a.m.

This meeting will be open to the public on June 10, 9:00 a.m. to 10:30 a.m. This portion will consist of opening remarks and discussion of procedural matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public for approximately the last six hours of the day on June 10, and until adjournment on June 11. It is estimated that this will occur from 10:30 a.m. to 5:00 p.m., on June 10, and on June 11 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of institutional and individual grant applications.

These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A-10, 5333 Westbard Avenue, Behtesda, Maryland 20205, telephone (301) 496-7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Harriert L. Gordon, M.D., Executive Secretary, Westwood Building, Room 949, Bethesda, Maryland 20205, telephone (301) 496-7585.

(Catalog of Federal Domestic Assistance Program 13.880, Minority Access to Research Careers (MARC), National Institutes of Health, Department of Health and Human Services)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

National Institutes of Health.

[FR Doc. 82-12881 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), June 7-8, 1982, Conference Room 10, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting will convene in open session on June 7, at 9:00 a.m., for the regular conduct of Council business, a report of the Acting Director, DRR, staff reports by the Program Directors of the Animal Resources, Biomedical Research Support, Biotechnology Resources, General Clinical Research Centers, and Minority Biomedical Research Support Programs, a budget report by the Executive Officer, DRR, an update of the DRR Five-Year Plan, and a review of the Council Operating Procedures. The meeting will continue as follows from approximately 11:00 a.m. to 3:00 p.m.: Animal Resources Program Work Group, Rm. 2A52; Biotechnology Resources Program Work Group, Rm 9A51; Biomedical Research Support Program Work Group, Rm. 5B23; General Clinical Research Centers Program Work Group, Rm. 5B03; and Minority Biomedical Research Support Program Work Group, Conference Rm 10. The meeting will reconvene, in open session, on June 8 from 8:30 a.m. to approximately 10:30 a.m. for Program Work Group reports and recommendations to the full Council for discussion and action. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 7 from approximately 3:00 p.m. to recess, and on June 8 from approximately 10:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Mr. James Augustine, Information Officer, Division of Research Resources, Rm. 5B10, Bldg. 31, National Institutes of Health, Bethesda, MD 20205, (301) 496-5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Acting Director, Division of Research Resources, Rm. 5B03, Bldg. 31, National Institutes of Health, Bethesda, MD 20205, (301) 496-6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistant Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-12882 Filed 5-7-82; 8:45 am]

BILLING CODE 4140-01-M

Pharmacological Sciences Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pharmacological Sciences Review Committee, National Insititute of General Medical Sciences, National Institutes of Health, June 18, 1982, at the Dulles Marriott Hotel, Dulles International Airport, Washington, D.C. 20041.

This meeting will be open to the public on June 18 from 8:30 a.m. to 9:30 a.m. for opening remarks and general administrative business. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public for approximately 8 hours for the review, discussion, and evaluation of individual grant applications. It is anticipated that this will occur on June 18, from approximately 9:30 a.m. to adjournment. These applications and the discussion could reveal personnel information concerning individuals

associated with the applications, disclosure of which constitute a clearly unwarranted invasion of personnel privacy.

Ms. Ellen Casselberry, Public Information Officer, NIGMS, Westwood Building, Room 9A10, Bethesda, Maryland 20205, Telephone: 301, 496–7301, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Anthony Demsey, Executive Secretary, Pharmacological Sciences Review Committee, Westwood Building, Room 950, Bethesda, Maryland, Telephone: (301) 496–7125.

(Catalog of Federal Domestic Assistant Program 13–859, Pharmacology-Toxicology Research, National Institute of General Medical Sciences, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular.

Dated: April 29, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–12603 Filed 5–7–82; 8:45 am]

BILLING CODE 4140–01–M

Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Transplantation Bilogy and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on June 24–25, 1982, at the National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Maryland 20205. The meeting will be open to the public on June 24 from 8:30 a.m. until 9:30 a.m. for approval of the minutes of the previous meeting, selection of future meeting dates and comments from the Director, and Deputy Director, NIAID, the Director of the Immunology, Allergy, and Immunologic Diseases Program and the Acting Director, Extramural Activities Program with regard to (among other items) budget, and review policies and procedures. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting of the AITRC Transplantation Biology and Immunology Subcommittee will be closed to the public for review, evaluation, and discussion of individual grant applications and contracts proposals from 9:45 a.m. to approximately 5:00 p.m. on June 24 and from 8:30 a.m. until adjournment on June 25.

These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Resonse, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the Committee members as requested.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, telephone (301) 496–7966, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in sections 8(b) (4) and (5) of that Circular.

Dated: May 3, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82–12596 Filed 5–7–82; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Availability of Cancer Bioassay Report on 1,2-Dibromo-3-chloropropane

The HHS' National Toxicology Program today announces the availability of a Technical Report on a carcinogenesis bioassay of 1,2-dibromo-3-chloropropane (DBCP).

DBCP, once a widely-used pesticide, caused cancer in both sexes of rats and mice in this 103-day inhalation study. It produced nasal and tongue cancers in both sexes of rats, adrenal gland tumors in female rats, and both nasal and lung cancers in male and female mice.

DBCP was used to kill nematodes on vegetables, fruits, nuts, and ornamental plants. By 1972, an estimated 12.3 million pounds were produced. In 1977, 800,000 pounds were used in California, mostly on grapes and tomatoes.

In 1977, after workers manufacturing DBCP were found to have testicular dysfunction and a few became sterile, DBCP was banned in California. Subsequently, the Environmental Protection Agency announced that most uses of DBCP were suspended.

Copies of the Technical Report—*Carcinogenesis Bioassay of 1,2-dibromo-3-chloropropane* (T.R. 206)—are available without charge by writing to the NTP Public Information Office, MD B2–04, Box 12233, Research Triangle Park, NC 27709; Telephone: (919) 541–3991, FTS 629–3991.

Dated: April 29, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82–12592 Filed 5–7–82; 8:45 am]

BILLING CODE 4140–01–M

Office of the Secretary

Office for Civil Rights; Statement of Organization, Functions, and Delegation of Authority

Part A, Chapter AT (Office for Civil Rights) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (43 FR 40927, September 13, 1978, as amended most recently at 45 FR 47474, July 1, 1980) is amended to reflect significant organizational changes within the Office for Civil Rights. The changes are being made to further strengthen and improve overall program management and include: (1) the disestablishment of the three major program offices (Office of Program Development, Office of Compliance and Enforcement and Office of Technical Assistance), the staff offices of the Associate Director for Administration, the Office of Public Affairs, the Office of Intergovernmental Affairs, the Office of Quality Assurance, and the Office of the Principal Deputy; (2) the establishment of two new program offices, the Office of Management and Policy and the Office of Program Operations, and the transfer of the functions the disestablished offices (Office of Public Affairs, Intergovernmental Affairs, Quality Assurance, Administration, Program Development, Compliance and Enforcement and Technical Assistance) to these new program offices.

Part A, Chapter AT as revised reads as follows: Chapter AT, Office for Civil

Rights, AT.00 Mission, AT.10 Organization, AT.20 Functions.

Section AT.00 Mission: The primary mission of the Office for Civil Rights is to eliminate unlawful discrimination and to insure equal opportunities for the beneficiaries and potential beneficiaries of Federal financial assistance provided by the Department of Health and Human Services. This shall be accomplished as quickly and effectively as possible, but with meaningful efforts at voluntary compliance.

Section AT.10 Organization: The Office for Civil Rights is under the supervision of the Director who reports to the Secretary. The Director also serves as the Secretary's Special Assistant for Civil Rights, responsible for overall coordination of the Department's Civil rights activities. The Office is comprised of the following headquarters components.

Organization, Office of the Director, Executive Secretariat, EEO/ Affirmative Action Coordinator.
Office of the Deputy Director for Management and Policy, Policy and Special Projects Division, Quality Control and Management Analysis Division, Administration and Management Information Division, Planning, Evaluation and Budget Division.
Office of the Deputy Director for Program Operations, Voluntary Compliance and Outreach Division, Operational Analysis and Training Division, Investigations Division.

Section AT.20 Functions:

A. *Office of the Director:* As the Department's chief officer for the enforcement of the nondiscrimination provisions of law and as adviser to the Secretary on civil rights, the Director is responsible for the overall operations of the Office for Civil Rights; establishes policy and serves as adviser to the Secretary on civil rights matters, including intradepartmental activities aimed at incorporating civil rights compliance into programs the Department administers; sets overall direction and priorities of the Office through budget requests and long-range operating plans; determines policies and standards for the civil rights investigative and voluntary compliance programs in coordination with the Secretary and other Federal agencies; determines cases for enforcement action. In consultation with the Office of the General Counsel (OGC), identifies cases for referral to the Department of Justice for legal action and cases for the institution of administrative enforcement proceedings; consults with and advises the Assistant General Counsel, Civil Rights Division; represents the Secretary before Congress and the Executive Office of the President on matters relating to civil rights; and solicits the participation of beneficiaries and recipients in the conduct of the Department's civil rights enforcement and voluntary compliance programs.

1. *Executive Secretariat:* Review all documents forwarded to the Director for approval; establishes and monitors procedures for timely responses to the Secretary, Department components, Congress, government agencies, and the public; assigns responsibility for preparation of documents and clearance dates; determines internal clearance procedures; arranges for necessary coordination with other Department components; follows up on work assignments made by the Director; disseminates Director's decisions in headquarters; serves as liaison with Secretary's executive secretariat; and maintains Director's official files.

2. *EEO/Affirmative Action Coordinator:* Serves as principal adviser to the Director regarding EEO/ affirmative action planning, implementation, and direction. Is responsible for assisting OCR Senior Staff and Regional Civil Rights Directors to indentify and achieve affirmative action goals. Works with Department-level EEO/Affirmative Action Staff to insure that OCR's plans and procedures adhere to Departmental and Equal Employment Opportunity Commission (EEOC) guidelines. Serves as primary liaison to OS Personnel for the implementation of OCR's Federal Equal Opportunity Recruitment Program (FEORP) in headquarters, and advises Regional Civil Rights Directors on FEORP liaisons with Regional Personnel Offices. Serves as primary contact with all standing OCR affirmative action committees. Facilitates settlement of EEO complaints made against OCR and assists in implementing EEO settlements.

B. *Office of Management and Policy:* Serves as the Director's principal adviser in civil rights policy, public and legislative affairs, quality assurance, management policy, long-range planning, budget formulation and execution, and automated data processing systems for the office. In addition, provides administrative, logistical, evaluative, analytical and management information support services. As directed, undertakes special projects in progam areas to provide guidance in implementation strategies for new or revised programs. Develops and disseminates civil rights policy, legal standards, regulations and guidelines.

1. *Policy and Special Projects Divisions:* Conducts a research program to develop and maintain a body of information on civil rights issues in health and human services; in cooperation with the Office of Program Operations, collects and maintains information on recurrent and special policy issues and needs; develops civil rights policy, legal standards, regulations and guidelines; provides policy interpretations and policy research information to other OCR components; reviews Departmental regulations for civil rights adequacy; reviews policy implications of legislative proposals and budget documents submitted to the Director for approval; and maintains and disseminates a policy digest.

Initiates and implements pilot or model compliance reviews to test new program approaches or to validate standards and procedures; translates pilot or model review findings into specific program activities needed to support similar reviews; and conducts special studies involving new or revised programs and makes recommendations for implementation.

Maintains liaison with Congress and other Federal departments and agencies charged with civil rights enforcement responsibilities; prepares the Interagency Report and other cross-cutting reports for which OCR plays a lead role; conducts activities in coordination and consultation with the Assistant Secretary for Legislation; reviews pending legislation for civil rights implications; notifies appropriate Congressional committees of significant civil rights developments and informs members of compliance developments affecting recipients of Federal funds in their Congressional districts; coordinates preparation of responses to Congressional inquiries; coordinates OCR public affairs activities with the Assistant Secretary for Public Affairs including facilitating coverage and interpretation of OCR's programs; prepares news releases; articles and other informational material; administers FOIA and Privacy Act.

2. *Quality Control and Management Analysis Division:* Develops and conducts ongoing substantive quality assurance program for field and headquarters components; performs review and analysis of selected completed cases to assess consistency in the application of Office policies and procedures; analyzes case processing and support systems to assess efficiency and effectiveness; prepares reports and

recommendations for improving program activity; identifies areas in which new or modified compliance policies are necessary and makes recommendations; through quality assurance program indentifies programmatic training needs in headquarters and the field and makes appropriate recommendations to the Office of Program Operations; conducts audits and management studies to assess effectiveness and efficiency of OCR component operations and develops recommendations for improvement; develops, tracks, analyzes and reports on Secretary and Director level OMS; develops and disseminates administrative policy and guidance; advises OCR components on effect of changes in Departmental administrative policy; provides management analysis services; assists in the development of performance standards for headquarters personnel; monitors implementation of standards in headquarters and, through the Office of Program Operations, in the field; administers employee performance management, merit pay and SES systems for headquarters and the field.

3. *Administration and Management Information Division:* Functions as liaison with Department personnel, logististical support and management information offices; provides administrative support for all OCR training activities; provides full range of property management services, including space, equipment and supplies management; insures adherence to Federal and Departmental policies and standards regarding security of records, files and equipment; manages files and records maintenance systems; develops and directs counseling and training activities concerning employees' career development opportunities and other programs for personnel development; collects, maintains and disseminates automated management information; coordinates management information requests for all OCR components; provides ADP support services to all OCR components including studies to determine areas where needs could be met by the use of data processing technology; conducts studies to determine methods of reducing costs and improving quality and effectiveness of data collection and referral; acquires equipment, supplies and products necessary to support the ADP system; insures adherence to Department and Federal ADP standards; establishes controls, to assure the security of the ADP equipment and the data within the information systems; as directed, develops programs to be incorporated in the system.

4. *Planning, Evaluation and Budget Division:* Conducts program surveys and other studies to identify areas for compliance activities; evaluates survey and study data and develops, in concert with the Office of Program Operations, an annual operating plan for the office; coordinates preparation of OCR component workplans.

Plans and directs research on recipient and beneficiary populations and analyzes the resulting data to identify unresolved policy issues and to provide Policy and Special Projects Division with information to be used in policy formulation; provides statistical analysis and research support for the recipient and beneficiary information needs throughout the office; establishes evaluation systems and conducts studies.

Formulates and executes OCR Budget; serves as liaison with departmental financial management units; reports to the Deputy Director on fiscal and planning matters; translates office-wide goals into budgets with supporting documentation for legislative recommendations; planning calendar and develops resource and operations planning and budget development guidelines within OMB's framework; prepares testimony for use by the Director before appropriation committees of Congress.

C. *Office of Program Operations:* Directs and manages a national program of civil rights complaints investigations and voluntary compliance outreach activities. Serves as principal adviser to the Director in field enforcement and voluntary compliance activities. Supervises OCR field components and serves as their representative in headquarters. Identifies and fills field training and procedures needs. Carries out the responsibility for the uniform and timely implementation of program and administrative policies in field components. Reviews cases recommended for enforcement and makes final enforcement recommendations to the Director and the Office of General Counsel.

1. *Voluntary Compliance and Outreach Division:* Oversees a systematic compliance review program for recipients; provides assistance to field offices for uniform implementation of voluntary compliance policies; provides field offices with necessary headquarters assistance concerning program matters in compliance reviews; develops and manages the provision of intradepartmental technical assistance and outreach programs aimed at civil rights policy implementation; develops and manages the provision of comprehensive outreach programs to constituent groups; develops and disseminates specialized materials for recipients and beneficiaries; provides leadership and guidance in planning and implementing civil rights compliance activities in the operating divisions (OPDIVs) of the Department; plans and conducts a continuing program of evaluating civil rights compliance activities in the OPDIVs; conducts program of training for OPDIV staff to carry out their civil rights responsibilities; facilitates communication of matters related to civil rights with other Departmental offices, Federal departments, non-HHS agencies, and State and local governments, including organizations representing such units of government; and advises recipients on requirements for filing civil rights compliance assurance forms and maintains a file of completed forms.

2. *Operational Analysis and Training Division:* Develops and monitors OMS goals, timeframes and internal objectives for case processing; acts as central intake control point for tracking case related activities in headquarters; analyzes field workloads through the Case Management Information System and recommends adjustments in case processing goals; develops, implements and monitors field management systems, including a comprehensive work measurement system; serves as liaison with the Office of Management and Policy in the development of performance standards in the field; provides guidance to insure uniform implementation of administrative and management policy in the field and serves as a liaison with the Office of Management and Policy in these matters; conducts management studies and reviews of field offices to identify problems and needs; recommends operational resource adjustments to improve field office efficiency and effectiveness; serves as the representative of the field in management and administrative areas. Develops and directs civil rights training programs for headquarters and field offices; assists Office components identifying training needs; locates appropriate sources to meet those needs, including outside training courses, consultant instruction, and development of internal programs; identifies needs for procedures/manuals; develops and disseminates procedures/manuals for the conduct of investigations and compliance activities.

3. *Investigations Division:* Oversees conduct of investigations that result from constituent complaints or other

information requiring formal investigation; provides assistance to field offices for uniform and timely implementation of regulations and policies in investigations; monitors investigations activities to determine procedural problems; assesses investigative plans and letters of finding to insure proper case development and supportable findings; provides field offices with necessary headquarters assistance concerning technical program matters in investigations; provides liaison between headquarters and field offices to facilitate resolution of issues and policy questions; serves as intake unit and determines jurisdiction in age discrimination complaints and forwards them to the Federal Mediation and Conciliation Service; reviews cases recommended for enforcement and makes final enforcement recommendations to the Deputy Director; conducts negotiations in conjunction with field offices to secure compliance in cases recommended for enforcement; secures resource persons for preparation of testimony in enforcement cases; provides supplemental staff and technical support in precedent setting or extensive investigations; maintains a library of letters of finding issued by OCR; and operates an office system to warn the Deputy Director, Director and Secretary of imminent case decisions and their potential effects.

Dated: April 30, 1982.

Richard Schweiker,

Secretary.

[FR Doc. 82-12578 Filed 5-7-82; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions and Delegations of Authority

This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, to reflect certain changes in Chapter AF, Office of the Inspector General (42 FR 17531, April 1, 1977, as amended by 43 FR 50508, October 30, 1978; 43 FR 58871, December 18, 1978; and 45 FR 16567, March 14, 1980).

The description of the Office of Inspector General is republished below in its entirety, in order to reflect substantial revisions of the organization of the Immediate Office of the Inspector General, the Audit Agency, and the Office of Investigations, as well as a change in the name of the Office of Health Care and Systems Review to the Office of Systems Integrity and a change in the name of the Audit Agency to the Office of Audit. Along with the structural reorganization of the Office, there are significant reassignments of functions performed by the Office of Inspector General. The most significant purposes of this reorganization are to improve the management of the Immediate Office of the Inspector General, to broaden the responsibilities of the Office to cover non-criminal investigations, to encourage greater managerial responsiveness to audit or investigative findings, and to parallel more closely the operating divisions (OPDIVs) of the Department.

Chapter AF is amended to read as follows:

AF.00 Mission. The Office of Inspector General, under the general supervision of the Inspector General and the Secretary, is responsible for:

(1) Conducting and supervising audits and investigations relating to programs and operations of the Department;

(2) Maintaining security programs designed to protect government property, sensitive information, and personnel;

(3) Providing leadership and coordination for, and recommending policies and corrective actions concerning, activities designed to:

(A) Promote economy and efficiency in the administration of, and

(B) Prevent and detect fraud and abuse in, the Department's program and operations; and

(4) Providing a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations, and the need for corrective action.

AF.10 Organization. The Office of Inspector General, under the supervision of an Inspector General, consists of:

Office of the Inspector General
Immediate Office of the Inspector General
Office of Audit
Office of Investigations
Office of Systems Integrity

AF.20 Functions.

A. *Office of the Inspector General.* The Inspector General operates under the general supervisions of the Secretary or the Under Secretary, and (1) supervises, coordinates, and provides policy direction for auditing, investigative, and security activities relating to programs and operations of the Department; (2) recommends policies for, and conducts, supervises, or coordinates other activities carried out or financed by the Department for the purposes of promoting economy and efficiency in the administration of, or detection and prevention of fraud and abuse in, the programs and operations of the Department; (3) recommends policies for, and conducts, supervises, or coordinates relationships between the Department and other federal agencies, state and local governmental agencies, and other non-governmental entities with respect to audit and investigative matters relating to (a) the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department or (b) the identification and prosecution of participants in such fraud and abuse; (4) keeps the Secretary and the Congress informed concerning fraud and other serious problems, abuses, and deficiencies in the administration of programs and operations administered or financed by the Department; recommends corrective actions concerning such problems, abuses, and deficiencies; and reports on the progress made in implementing such corrective action; (5) delivers reports to the Secretary, Congress, and others as required by section 204 of P.L. 94-505; (6) to avoid duplication and provide efficient use of time and funds, keeps apprised of activities of the Comptroller General of the United States pertaining to the Department, and coordinates and reviews the Department's responses to draft and final reports by the GAO; (7) gives prior notice to the Secretary of major investigations to be undertaken with respect to programs and operations of the Deparment; and (8) in general, coordinates activities with the Office of General Counsel.

B. *The Immediate Office of the Inspector General.*—(1) *The Inspector General.* The Inspector General is the senior official of the office. The Inspector General is responsible for the management of all office personnel, for determining the budget needs of the office, for setting office policy and priorities, for oversight of office operations, and for reporting to the Secretary and Congress.

(2) *The Deputy Inspector General.* The Deputy Inspector General assists the Inspector General in the administration of the office and during the absence or temporary incapacity of the Inspector General, or during a vacancy in the office, acts as the Inspector General.

(3) *Executive Secretariat.* Establishes and monitors control procedures to insure that correspondence referred to the Inspector General's Office is responded to in a timely and complete manner. Serves as point of contact with the Secretary's Executive Secretariat; and maintains official office

correspondence files and records. Directs OIG records management system and maintains directives system. Assesses effectiveness of paperwork management processes, and recommends changes to increase efficiency.

(4) *Public Affairs Staff.* Exercises functional management of all public affairs activities for the Inspector General, including policy direction and technical assistance. Serves as the Inspector General's principal counsel on public affairs matters, and processes requests for information under the Freedom of Information and Privacy Acts. Reviews and disseminates all informational materials produced by OIG. Cooperates in Department-wide public affairs programs as established by the Assistant Secretary for Public Affairs.

(5) *Legislative Liaison Staff.* Maintains liaison with Congress. In consultation with the Assistant Secretary for Legislation, establishes processes to facilitate exchange of information between the OIG and the Congress; reviews pending legislation of concern to OIG; develops position statements; and coordinates policy and legal or statutory interpretation issues for OIG in the development of legislative proposals. Coordinates with appropriate OIG and Departmental offices on testimony and briefing materials for Congressional hearings pertaining to OIG.

(6) *Planning and Coordination Staff.* Develops long-range goals and plans for the Office of Inspector General. Updates multi-year plan annually for use by OIG operating components. Advises on effects of changes in economic, administration, and legislative policies and recommends courses of action to insure appropriate internal OIG priorities. Serves as principal advisor on planning and serves as principal staff coordinator on such matters with staffs of the Assistant Secretary for Planning and Evaluation and the Immediate Office of the Secretary. At the direction of the Inspector General, develops and coordinates special projects which involve complex issues and one or more OIG components. Monitors all special projects for the Inspector General. Prepares the Inspector General's Annual Report. Acts as principal liaison with special activities of the Office of Management and Budget and the President's Council on Integrity and Efficiency.

(7) *Medical Advisor Staff.* Responsible for advising the Inspector General and Assistant Inspector Generals and their staffs regarding studies and recommendations regarding health programs administered or financed by the Department. Provides professional assistance and recommendations on complex medical administrative and management problems in programs relating to health care and health research. Prepares technical reports and recommendations, related to medical management improvement methods. Makes recommendations for policy changes as relates to audit and investigative procedures.

(8) *Administrative Office.* The Administrative Office serves as the principal advisor to the Inspector General on management and administrative activities of the Office of Inspector General. Manages and coordinates functions in the areas of resources planning, budgeting, resource management, personnel, and training.

(a) *Planning, Budget, and Resource Management Staff.* Develops long-range budget guidelines within the framework of the OIG multi-year plan and advises on out-year effects of changing goals and priorities. Serves as principal advisor on budget matters emanating from the Office of the Secretary and serves as principal staff coordinator to develop OIG annual budget. Assists OIG offices and divisions in the development of financial resource requirements and justifications; and provides actual cost data and estimates of fuuture obligations for current and long-range budgets. Develops and implements OIG control sytem to insure conformance with allotments and timely reporting on commitments and expenditures. Manages OIG budget execution system and insures control and reprograming of allocated funds. Advises on fiscal effect of reallocations of funds. Submits regular financial status reports. Implements OIG contract program; establishes policies, procedures, and reports on fiscal matters including pay, travel, contract services, supplies, and space. Responsible for managing the budget and grant award processes for the State Medicaid Fraud Control Units, including the coordination of termination and suspension actions.

(b) *Human Resources Management Staff.* Provides liaison with the Office of the Assistant Secretary for Personnel Administration, the Office of the Secretary Personnel Office, and the regional personnel offices regarding OIG personnel matters. Develops and maintains the internal personnel data sytem for the Office of Inspector General. Directs and supervises all personnel planning and recruiting efforts and administers a position management system. Develops and coordinates an employee awards program, equal employment opportunity program, and an upward mobility program. Participates with other OIG components in planning, scheduling, and preparing materials for training professional personnel in headquarters and regional offices and conducts a training program covering all non-professional areas. Responsible for counseling activities concerning employee career development opportunities and staff development. Monitors OIG personnel authority as delegated to HHS components.

C. *The Office of Audit.* The Office of Audit is under the general supervision of the Assistant Inspector General for Audit.

1. *The Office of Audit:*

(a) Provides audit services to all management levels within the Department through the conduct of comprehensive audits which include examinations of the operations of the Department and its grantees and contractors;

(b) Works with other components of the Office of Inspector General on special assignments and projects;

(c) Provides technical assistance as necessary to federal, state, and local investigative staffs on matters concerning the Department's programs or operations;

(d) Develops policies, procedures, standards, and criteria relating to audit activities at all levels within the Department;

(e) Participates in interagency cooperative efforts intended to implement OMB Circulars A–102 and A–110, which call for use of the single audit concept for most external audits;

(f) Develops general and special audit programs as may be necessary to conduct audits of programs and activities performed by the Department and its operating divisions;

(g) Determines when audits can be most appropriately carried out by other audit organizations outside of the Department, including those by other agencies of government, or by private organizations;

(h) Evaluates the adequacy of audits performed for the Department by others;

(i) Performs audits and activities administered by other federal departments in accordance with the system of audit cognizance administered by the Office of Management and Budget;

(j) Accumulates and provides the Inspector General with data on unresolved audit findings—such data serving as the basis for quarterly reports to the Congress, and for the Under

Secretary's use as Chairman of the Audit Resolution Council;

(k) Conducts follow-ups and special analyses to determine completeness and propriety of actions taken on previously reported audit findings and recommendations;

(l) Prepares and disseminates reports of audits or special studies to OPDIVs, Regional Directors, and others who may be concerned;

(m) Reviews legislative and program proposals for audit implications;

(n) Performs special reviews of grant or contract proposals for the purpose of determining the financial capabilities of the grantees or contractors;

(o) Provides assistance to appropriate OPDIVs and staff divisions of the Secretary (STAFFDIVs) in the development of grants and procurement management policy and in the formulation of policy to govern establishment of indirect cost rates;

(p) Acts as Departmental liaison with the General Accounting Office (GAO). With respect to this responsibility:

(i) Reviews drafts and final reports concerning Department activities, and through the Inspector General, advises the Secretary and other officials of significant findings.

(ii) Reviews all replies to GAO reports on behalf of the Inspector General to insure that they are responsive, properly coordinated, and represent Departmental policy.

(iii) Maintains and fosters liaison with representatives of the Office of Management and Budget and others regarding GAO reports and proposed Department responses.

The Office of Audit consists of the following divisions:

(a) Audit Coordination Division
(b) Advanced Audit Techniques Staff
(c) National Professional Development Center
(d) Social Security Audit Division
(e) Health Care Financing Audit Division
(f) Grants and Internal Systems Audit Division
(g) EDP Audit Division
(h) Regional Audit Offices

(a) *Audit Coordination Division:*

(i) Develops policies, procedures, and instructions for Office of Audit staff;

(ii) Develops audit plans and audit schedules and recommends or approves adjustments to such plans and schedules as determined necessary;

(iii) Coordinates development and handling of responses to GAO reports and letters;

(iv) Maintains liaison with other federal audit organizations in determining audit cognizance and arranging for cross-servicing;

(v) Develops policies and procedures for OIG or Department application on matters that transcend or cut across the individual responsibilities of other divisions and offices;

(vi) Develops and evaluates results of the OIG audit effort, including appraising effectiveness of field office management and general quality of audit performance.

(b) *Advanced Audit Technique Staff:*

(i) Researchers and develops new techniques to use the computer in detecting fraud, abuse, and waste in HHS programs, nationwide;

(ii) Develops OIG-wide policies and instructions for use of advanced techniques associated with the use of electronic data processing, statistical sampling, and mathematical analysis;

(iii) Provides technical guidance (in the areas of computers, statistical sampling, and mathematical techniques) during OIG nationwide initiatives to combat and prevent fraud, abuse, and waste.

(c) *National Professional Development Center (NPDC):*

(i) Develops and implements a comprehensive professional development program (the program is technical in nature and provides both professional enhancement and state-of-the-art courses);

(ii) Initiates and coordinates studies on professional problems, standards and policies and is responsible for joint initiatives with other government agencies, professional organizations, and the academic communities.

(d, e, f) *Social Security Audit Division, Health Care Financing Audit Division, Grants and Internal Systems Audit Division* each, for their assigned functional area:

(i) Develops standards and policies for audits;

(ii) Develops audit guides and programs to review financial aspects, compliance aspects, economy and efficiency, and where feasible, program results achieved;

(iii) Plans, arranges for, or performs an appropriate program of internal audits;

(iv) Reviews issued audit reports;

(v) Visits regional offices and audit sites to appraise technical adequacy of audits and to provide technical assistance on audits;

(vi) Develops audit reports for the Secretary and top officials on findings from audit assignments at multi-location, interregional audit assignments.

(g) *EDP Audit Division:*

(i) Reviews design and development of Departmental computer-based systems as required by the Comptroller General in "Standards for Audit of Governmental Organization, Programs, Activities and Functions", 1981 Revision;

(ii) Performs comprehensive audits of general and application controls in computer-based systems;

(iii) Extracts and compares computer data to probe for fraud and abuse involving computer transactions;

(iv) Provides EDP support to OIG and regional offices.

(h) *Regional Audit Offices.* Carry out the full range of duties of the Office of Audit in their assigned geographic areas.

D. *The Office of Investigations.* The Office of Investigations is under the general supervision of the Assistant Inspector General for Investigations.

1. *The Office of Investigations:*

(a) Provides leadership, policy direction, planning, coordination, and management of the investigative programs of OIG and is responsible for the physical, documentary, and executive security programs of the Department;

(b) Reports results of investigations to the Inspector General and keeps the Inspector General informed of significant developments regarding OI activities;

(c) Provides technical assistance and advice to the program staffs of the OPDIVs within the Department in identifying areas of high fraud potential and in developing integrity controls to minimize that potential;

(d) Reports information, allegations, and complaints regarding suspected criminal activity and conduct involving Departmental employees to the Department of Justice pursuant to the requirements of 28 U.S.C. 535;

(e) Serves as the Department's principal liaison with the Department of Justice on all matters relating to investigations of Departmental programs and personnel;

(f) Provides technical assistance and advice to the program staffs of the OPDIVs of the Department regarding physical and documentary security concerns and the integrity of program files;

(g) Reports information, allegations, and complaints regarding the compromise, theft, or loss of classified material to the Department of Justice and other interested Government agencies;

(h) Advises appropriate Department OPDIVs and STAFFDIVs of the results of investigations and security surveys conducted by the Office of Investigations, including the disposition of any matter presented to the Department of Justice for possible criminal prosecution;

(i) Works with other OIG components and other investigative agencies on special assignments and projects; and

(j) Reviews legislative and program proposals for investigative implications.

The Office of Investigations consists of the following divisions and staff offices:

(a) Criminal Investigations Division
(b) Civil Fraud Division
(c) State Fraud Division
(d) Security and Protection Division
(e) Investigative Systems Staff
(f) Regional and Field Offices

(a) *The Criminal Investigations Division:*

(i) Provides direction and coordination to the investigative field offices concerning projects and investigations;

(ii) Implements guidelines and policies for the detection, investigation, and prevention of fraud and abuse in Department programs, and for the investigation of wrongdoings by grantees or contractors, or by Department employees in the performance of their official duties;

(iii) Identifies systemic and programmatic vulnerabilities in the Department's operations, and makes recommendations for changes in statutes, policies, and procedures;

(iv) Develops investigative techniques and programs and coordinates investigative projects with other OIG components and with other agencies;

(v) Provides programmatic expertise and disseminates information on new programs, procedures, regulations, and statutes to the field offices;

(vi) Reviews completed reports of investigation for accuracy and compliance with OI guidelines and policies and disseminates reports to prosecutive agencies management officials, and through the Inspector General, to the Secretary;

(vii) Maintains liaison with OPDIVs and STAFFDIVs, OIG counterparts, and other investigative and law enforcement agencies;

(viii) Assists Assistant Inspector General for Investigations in establishing investigative priorities, supervising and evaluating field offices, and monitoring and reporting on the effectiveness of Division efforts;

(ix) Prepares management and statistical reports for the Assistant Inspector General for Investigations;

(x) Assists OIG in responding to Congressional inquiries, and requests for information made under the Privacy and Freedom of Information Acts;

(xi) Maintains a laboratory facility which provides examination and analysis of questioned documents to establish authorship and authenticity.

(b) *The Civil Fraud Division:*

(i) Investigates or coordinates investigations which result in civil fraud litigation or imposition of a civil money penalty;

(ii) Investigates or coordinates investigations which result in administrative actions against employees, contractors, or grantees for misconduct;

(iii) Investigates or coordinates investigations of allegations of violations of standards of conduct by Department employees;

(iv) Recommends to the Secretary, OPDIVs and STAFFDIVs, when necessary, consideration of debarment actions against contractors and grantees, and personnel actions against employees who have committed wrongful acts against the Department;

(v) Monitors and coordinates administrative sanctions taken by OPDIVs or STAFFDIVs as a result of OIG referrals;

(vi) Maintains liaison with OPDIVs and STAFFDIVs to insure that appropriate procurement review and action is made on OIG referrals;

(vii) Maintains an index of individuals, corporations, and organizations which are prohibited from conducting business with the Department or any of its components;

(viii) Operates the OIG Hotline and receives and evaluates all complaints against HHS employees or programs, which have been filed with GAO or other agencies' Hotlines;

(ix) Conducts a Department-wide employee education program regarding availability of the Hotline;

(x) Analyzes patterns or trends which indicate problems developing within STAFFDIVs and OPDIVs, and conducts management reviews when necessary.

(c) *The State Fraud Division:*

(i) Develops strategies, techniques, and manuals to assist State efforts to detect, prevent, investigate, audit, prosecute, or take administrative or programmatic action against those who defraud or abuse governmental programs funded by the Department;

(ii) Fosters improved relations and effective interaction among federal, state, and local agencies and organizations responsible for the investigation and prosecution of fraudulent and abusive activities within the programs funded by the Department;

(iii) Analyzes, reviews, and evaluates State efforts in the administration of such programs, and their efforts to control fraud and abuse, and recommends improvements;

(iv) Reviews Federal policies, practices, and statutes which impact upon State effectiveness to control fraud and, when necessary, recommends improvements;

(v) Administers program aspects of grants to States for the investigation and prosecution of Medicaid provider fraud, and certifies State units designated for this purpose;

(vi) Plans, coordinates, and conducts regional and National training conferences relevant to fraud and abuse in HHS programs;

(vii) Assists various jurisdictions in investigations and prosecutions through the detailing of personnel; the coordination of multi-jurisdictional investigations; and the development of computer profile techniques, which identify suspected fraudulent activity.

(d) *The Security and Protection Division:*

(i) Provides for the personal protection of the Secretary, and when necessary the Secretary's family, in order that the Secretary may effectively execute the duties of his office;

(ii) On a contingency basis provides personal protection, guidance, and assistance to other high-level Department officials;

(iii) Provides and maintains Department-wide policy, oversight, and guidance for the protection of Department property, activities, and personnel;

(iv) Develops and maintains an Occupant Emergency Plan (OEP), pursuant to GSA Federal Property Management Regulations, for the HHS Headquarters complex and provide OEP policy guidance to OPDIVs and STAFFDIVs;

(v) Establishes departmental policies, procedures, and guidelines for the protection of classified (national security) information, as mandated by Executive Order 12065, National Security Information; for communications security and industrial security; and for development, control, and safeguarding of all Departmental identification media;

(vi) Conducts evaluations, inspections, and reviews to ascertain the effectiveness of Department-wide executive, physical, and information security programs;

(vii) Provides and maintains a Department-wide security awareness/education/training program relating to the safeguarding of classified and non-classified sensitive information, protection of Government property, and crime prevention;

(viii) Maintains liaison with OPDIVs and STAFFDIVs and other federal agencies on all matters pertaining to executive protection and other security programs affecting the Department.

(e) *Investigative Systems Staff:*
(i) Provides for the development, maintenance, and operation of all centralized investigative data and management information systems for OI;
(ii) Analyzes, distributes, and reports the information required by the Assistant Inspector General for Investigations to support OI Headquarters and field activities;
(iii) Renders technical electronic data processing assistance to OI investigative units in the form of evidence analysis and computerized data interpretation;
(iv) Maintains official OI investigative files and indices;
(v) Operates mail and supply distribution functions for OI Headquarters.
(f) *Regional and Field Investigative Offices:*
(i) Receives and evaluates allegations of fraud, abuse, or wrongdoing;
(ii) Initiates and conducts investigations under guidelines and policies established by the Assistant Inspector General for Investigations;
(iii) Prepares investigative, management, and statistical reports;
(iv) Assists government attorneys in criminal, civil, or administrative proceedings resulting from investigations;
(v) Provides assistance to the Civil Fraud Division, State Fraud Division, and Security and Protection Division in the furtherance of their missions;
(vi) Within their area of responsibility, maintains liaison with and provides assistance to local HHS officials; other OIG components; other federal, state, and local enforcement agencies; and U.S. Attorneys and other prosecutors.
D. *The Office of Systems Integrity.* The Office of Systems Integrity is under the general supervision of the Assistant Inspector General for Systems Integrity.
The Office of Systems Integrity:
(a) Reviews management of the Department's programs, giving particular attention to management information systems, quality control systems, and program integrity;
(b) Works with other OIG staff offices on special cross-cutting projects and assignments;
(c) Encourages Department officials to be sensitive to risk analysis and fraud prevention;
(d) Analyzes OIG audit and investigative reports and other documents and data to ascertain patterns and trends of fraud;
(e) Reviews existing and proposed legislation and regulations to assess fraud, abuse, and waste implications in HHS programs and operations;
(f) Maintains liaison with other offices of Inspectors General, related professional organizations, federal agencies, and non-governmental entities to promote the objectives of the OIG;
(g) Conducts special research and analysis projects at the request of the Secretary or the Congress;
(h) Assesses the impact and effectiveness of HHS delivery of services and programs for the Secretary;
(i) Serves as a policy, strategy and program advisor to the Inspector General and Deputy Inspector General.
The Office of Systems Integrity consists of the following divisions:
(a) Social Security Division
(b) Health Care Financing Division
(c) Grants and Internal Systems Division
(d) Service Delivery Assesssment Division
The functions of the divisions of the Office of Systems Integrity are:
(a, b, c) *Social Security Division, Health Care Financing Division, and the Grants and Internal Systems Division:* Are concerned specifically with improving efficiency and preventing conditions that provide the potential for fraud, abuse, and waste in the Social Security programs; medicare and medicaid programs; and human services, health services, and other HHS programs and functions which may involve management of HHS programs or contrats, loans, and grant practices; respectively. Within its functional area, each Division:
(i) Reviews the Department's legislative and regulatory proposals and makes recommendations for modification where necessary to provide better safeguards against fraud, abuse, or waste.
(ii) Studies the Department's programs for systemic vulnerabilities and recommends alternatives that would reduce the potential for fraud, abuse, or waste.
(iii) Undertakes reviews of specific projects or activities where there are allegations of waste or abuse which do not involve fraud or misuse of federal funds.
The Health Care Financing Division is established pursuant to section 203(d) of Pub. L. 94–505, and working with the Office of the Medical Advisory, who reports directly to the Deputy Inspector General, they have the specific full time responsibility for overseeing antifraud and antiabuse activities relating to the Medicare, Medicaid, Renal Disease, and Maternal and Child Health programs.
(d) *The Service Delivery Assessment Division* provides the management direction and oversight of regional Service Delivery Assessment offices, including preparation of the work plan, determination of project assignments, staff training, and supervises and coordinates each project. Service Delivery Assessments are national in scope and provide the Secretary and HHS operating components with information and recommendations for improving the effectiveness, timeliness, and economy by which HHS programs are serving its clients.

Dated: April 29, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-12579 Filed 5-7-82; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Mangement

Moab District, Price River and Range Creek Planning Units; Unleased Federal Coal Lands; Meeting and Comment Period

April 30, 1982.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of public meeting and public comment period.

SUMMARY: Notice is hereby given that the unsuitability criteria (43 CFR Part 3460) have been applied to 3,869.13 acres of unleased Federal coal lands within the Price River and Range Creek planning units of the Bureau of Land Management's Moab District and that the land use plan for the Price River/Range Creek Coal Area is being accordingly amended. A public comment period is provided during the period May 10, 1982 through June 10, 1982. A public open house is provided on May 27, 1982 at the "contact" address below during the hours 9:00 am through 3:00 pm.

CONTACT: Leon E. Berggren, Price River Resource Area Manager, Bureau of Land Management, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501; (801) 637–4584.

BACKGROUND: Notice of application of the unsuitability criteria within the Price River/Range Creek Coal Area was made in FR Doc. 81–20831 dated July 16, 1981, pages 36947–36948. Notice of amending the associated land use plan for the application of the unsuitability criteria to the additional 3,869.13 acres was made in FR Doc. 82–8737 dated April 1, 1982, pages 13911–13912.

Through the application of unsuitability criteria to the 3,869.13 acres, only Criteria 3 (public roads) and 11 (golden eagle nests) have been found to be applicable. Criterion 14 (migratory birds) has not been fully applied due to

a lack of data. Lands identified as unsuitable have been found acceptable for further consideration for leasing with the underground mining exemption and appropriate stipulations.

Documents relating to the Price River/Range Creek Coal Area remain available for public review at the "contact" address. A brochure which summarized the results of the original land use plan remains available on request. The preliminary results of the land use plan amendment and maps of the area considered in the amendment are also available from the "contact".

Gene Nodine,

District Manager.

[FR Doc. 82-12614 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron, U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3398, Block 277, Vermilion Area, offshore Lousiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Managements Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 3, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12615 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Transco Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Transco Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3546, Block 58, Vermilion Area, offshore Lousiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Managements Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 3, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12616 Filed 5-7-82; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Petition To Designate Certain Federal Lands on Camp Swift Military Reservation, Bastrop County, Texas, Unsuitable for Surface Coal Mining and Reclamation Operations; Public Hearing; Availability of Petition Draft Evaluation Document for the Camp Swift Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the draft petition evaluation document evaluating certain lands on Camp Swift Military Reservation as to whether they are unsuitable for surface coal mining and reclamation operations and Notice of Public Hearing to receive comments on the draft document.

SUMMARY: The Office of Surface Mining (OSM) received a petition August 7, 1981, to designated 9,500 acres within Camp Swift Military Reservation in Bastrop County, Texas unsuitable for surface coal mining and reclamation operations. This petition, which was filed by John R. Prager, was amended by him on October 13, 1981. The petition alleges that the mining of lands on the Camp Swift Military Reservation would irreparably harm quantity and quality of the surface and ground waters. It further alleges that soil conditions would make reclamation technically and econmically infeasible, that harm would be done to the endangered Houston toad, and that cultural resources (cemeteries) would be impacted.

DATES: A Public Hearing will be held on June 7, 1982. It will begin at 9:00 a.m. and continue with appropriate recesses until all who desire to speak have been heard. Written comments on the draft document must be received by 5:00 p.m. (local time) on June 14, 1982, at the address given below:

ADDRESSES: Copies of the draft document are available at the OSM Western Technical Center, 2nd Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202. Written comments on the draft document may be mailed or handcarried, and must be received by the date and time given above, to Mr. Richard Dawes, Deputy Administrator, Western Technical Center, OSM, 1020 15th Street, Denver, Colorado 80202.

A Public Hearing will be held on June 7, 1982, in the Cafeteria of the Bastrop Public High School, 1602 Hill Street, Bastrop, Texas.

FOR FURTHER INFORMATION CONTACT: Mel Shilling; Office of Surface Mining, Western Technical Center, 1020 15th

Street, Denver, Colorado 80202; telephone (303) 837–5656.

SUPPLEMENTARY INFORMATION: The draft petition evaluation document presents an analysis of the allegations made in the petition. The document summarizes available information on the petition area (including related NEPA reviews) as well as material from new studies. The document also contains discussion of the potential coal resources in the area; the demand for coal resources; the impact of designation on the environment, the economy and the supply of coal; and the impacts of alternatives available to the Secretary.

Two petitions were also filed with the Texas Railroad Commission for designating non-Federal lands outside of Camp Swift as unsuitable for surface mining. OSM will process the petition on Federal lands, while the Railroad Commission will process the petitions on non-Federal lands. Each agency will have a hearing.

The OSM, with the assistance of several Federal, State, and county agencies, has been evaluating the petition. Copies of the draft evaluation document are being made available today. OSM has arranged delivery to assure that known interested parties have a full 30 days for review. The public is encouraged to comment on the document. Additional information on the mailing address for comments is given below.

Copies of the draft evaluation document are being made available today. OSM has arranged delivery to assure that known interested parties have a full 30 days for review. The public is encouraged to comment on the document.

A public hearing is scheduled at the time and place indicated under "DATES" and "ADDRESSES" above. Individual testimony at this hearing will be limited to 10 minutes except where the number of persons wishing to comment is small enough to allow more time. Anyone who wishes to comment will be given the opportunity to do so. Persons wishing to be scheduled to present testimony should contact OSM Western Technical Center at the address given above. An opportunity to register to speak will also be available at the hearing. Witnesses are encouraged to bring three copies of written statements to the hearings for presentation to the hearing panel. Submission of written statements to the OSM address given above, in advance of the hearing date would give OSM officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person commenting. All written comments may be mailed to the OSM Western Technical Center at the address listed above under **"ADDRESSES"**, But must be received no later than the time indicated under "DATES" in order to be considered.

Until June 4, 1982, at 5:00 p.m., any person may file an application for intervention in the proceeding at the above address. Such application must contain allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

Dated: May 4, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–12585 Filed 5–7–82; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 817, Permanent Program Performance Standards (Underground)
Bureau Form Number: None
Frequency: Nonrecurring, Annually, Quarterly, and on occasion.
Description of Respondents: State Governments and Underground Coal Mine Operators.
Annual Responses: 41,168
Annual Burden Hours: 1,273,138
Bureau clearance officer: Darlene Grose 202–343–5447

Carson W. Culp,

Acting Assistant Director, Management and Budget.

[FR Doc. 82–12742 Filed 5–7–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–00

Decided: April 30, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 30650 (Sub-8), filed April 12, 1982. Applicant: C. HARRELL, INC., Garrison Road, R.D. 3, Elmer, NJ 08381. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *general commodities* (except classes A and B explosives and household goods), between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown and Covington, IN, Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pemberton and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tillson, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malane, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris, Sonyea, Linden, Oneida Castle, Red Oaks Mill, Fishkill Plains, St. Andrew, Plattekill, Ilion and Stafford, NY, Berwick, Ellis, Dresden, Cadiz, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham and Crooksville, OH, and Heilwood, Mountain Home, Strawberry Ridge, Eyers Grove, Pulaski, Spring City, Seiple, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Glo, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranton, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oakville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Brandford, Degolia, Custer City, Lewis Run and Slatington, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 94990 (Sub-3), filed April 23, 1982. Applicant: NASSAU WORLD-WIDE MOVERS, INC., 57 Central Avenue, Farmingdale, NY 11735. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, D.C. 20423, (202) 785–0024. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 116841 (Sub-24), filed April 12, 1982. Applicant: PORT NORRIS EXPRESS CO., INC., North Avenue, Port Norris, NJ 08349. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, (703) 525–4050. Transporting *general commodities* (except classes A and B explosives and household goods), between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown and Covington, IN, Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pemberton and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tillson, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malone, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris, Sonyea, Linden, Oneida Castle, Red Oaks Mill, Fishkill Plains, St. Andrew, Plattekill, Ilion and Stafford, NY, Berwick, Ellis, Dresden, Cadiz, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham and Crooksville, OH, and Heilwood, Mountain Home, Strawberry Ridge, Eyers Grove, Pulaski, Spring City, Seiple, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Glo, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranton, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oakville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Bradford, Degolia, Custer City, Lewis Run and Slatington, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note. Applicant proposes to provide a substituted motor-for-rail service.

MC 147311 (Sub-9), filed April 12, 1982. Applicant: T & S TRANSPORTATION, INC., 7420 Ranco Road, P.O. Box 9729, Richmond, VA 23228. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Kansas, Windsor, Ashmore, and Tower Hill, IL, Huntertown, Wallen, Laotto, Swan, Avilla, Gadsden, Toto, Tefft, Charlottesville, Greenfield, Philadelphia, Gem, Cumberland, Hebron, Denham, Plainfield, Clayton, Amo, Coatesville, Fillmore, Pennville, West Cambridge City, Hillsboro, Waynetown and Covington, IN, Ludlow, MA, Clinton, Tekonsha, Homer, Concord, Spring Arbor, Centreville, Nottawa, Fairfax, Colon, Sherwood and Union City, MI, Elm, Mt. Hope, Vernon, Rudeville, Highland Lakes, Blairstown, Marksboro, Greendell, Cranberry Lake, Lake Lackawanna, Pemberton and Ft. Dix, NJ, New Milford, Rosendale, High Falls, Rifton, Tillson, Williamsville, Gardiner, Modena, Lee, Blossvale, Lima, Malone, Constable, Trout River, Leicester, LaGrange, Groveland, Mt. Morris, Sonyea, Linden, Oneida Castle, Red Oaks Mill, Fishkill Plains, St. Andrew, Plattekill, Ilion and Stafford, NY,

Berwick, Ellis, Dresden, Cadiz, Patterson, Grant, Lisbon, Westerville, Galena, Sunbury, Centerburg, Bangs, Mount Liberty, Millwood, Phalanx, Garrettsville, Piney Fork, Pekin, Paris, Amsterdam, Wolf Run, Pattersonville, Augusta, Mechanicstown, Bergholz, Harrod, White Cottage, Moxahala Park, Roseville, Hepburn, Meeker, Big Island, New Lexington, Savona, Fort Jefferson, Germantown, Farmersville, Ingomar, West Alexandria, Trotwood, Brookville, Bachman, West Sonora, Eldorado, Glass Rock, Mt. Perry, Fultonham, East Fultonham and Crooksville, OH, and Heilwood, Mountain Home, Strawberry Ridge, Eyers Grove, Pulaski, Spring City, Seiple, Upland, Carlton, Dimeling, Madera, Potts Run, Nanty Glo, Lilly, Alexandria, Mount Pleasant, Hepburnville, Woodland Park, Cochranton, Utica, Niles, New Providence, Garland, Pittsfield, Youngsville, Irvine, Starbrick, Waterford, Union City, Beaver Dam, Elgin, Spring Creek, Greason, Audubon, Newville, Oakville, Cornwall, Northwood, Vail, Bald Eagle, Port Matilda, Julian, Unionville, Wingate, South Bradford, Degolia, Custer City, Lewis Run and Slatington, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note. Applicant proposes to provide a substituted motor-for-rail service.

MC 161590, filed April 20, 1982. Applicant: B-SURE ENTERPRISES, INC., P.O. Box 319, Holmdel, NJ 07733. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 161640, filed April 23, 1982. Applicant: BUD KENT, d.b.a. KENT TRUCKING, Route 1, Box 74, Palouse, WA 99161. Representative: Kevin M. Clark, 2417 Bank Dr., Ste., Boise, ID 83705. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161661, filed April 26, 1982. Applicant: MICHAEL HEIM, d.b.a. HEIM TRUCKING, Route 3, Denmark, WI 54208. Representative: Nancy J. Johnson, 103 East Washington St., Box 216, Crandon, WI 54520, (715)–478–3341. Transporting (1) *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.; and (2) for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 161671, filed April 26, 1982. Applicant: JACK L. SMOOT, 1061 Black Oak Drive, Roseburg, OR 97470. Representative: Jack L. Smoot (same address as applicant), (503) 673–3220. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume NO. OP4–158

Decided: April 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 144757 (Sub-19), filed March 16, 1982, previously noted in the Federal Register issue of April 27, 1982, and republished this issue. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 3104 E St Patrick, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701, (605) 343–4036. Transporting *general commodities* (except classes A and B explosives and household goods), between Irvington, NE, Evanston, IA, Orange City, IA, Beech Bluff, Lexington and Luray, TN, Ralston and Terrell, TN, Benton, Dexter, Hardin and Pl Junction, KY, Broughton, Dales, Equality and Havoline, IL, Paoli, IN, Big Sandy, TN, DeWalt, Herbert, and Smada, TX, Boyd, Fox, Joliet, Red Lodge and Roberts, MT, Dunseith and Thorne, ND, Maxine, KS, Empire, MO, Ashley, Benton, Eddy, Foraker, Hamilton, Helmer, Hudson, South Milford, Stoney Creek, Topeka and Wolcottville, IN, Edon, OH, Bloomfield, Carbon, South Ottumaw, and West Grove, IA, Villa Park, CA, Alden, Barker Creek, Bellaire, Bendon, Central Lake, Chief Lake, Douglas, Ellsworth, Harpers, Interlochen, Norwalk, State Hospital, Rapid City and Wealthy, MI, Beecher City, Berry, Breckenridge, Converse Branch, Edinburg, Iola, Lakewood, Louis, Millersville, Oweneco, Rochester, Sharpsburg, and Tower Hill, IL, Barton, Furman, Kline, Lena, Seigling and Valentine, SC, Alfords and Gorday, GA, Abbeville, College Hill, Hudsonville, Lamar, McClary, Michigan City, Oxford, Spraggins, Taylor, Waterfood and Water Valley, MS, Bolivar, Congor, Hichery Valley, Malesus, Medon, Middleburg, and Toone, TN, Deanfield, Oakridge, Philpot, and Whitesville, KY, Edgoten, Masonville, and Thompsonville, KY, Ashland City, Chapmansboro, Doddsville, Fox Bluff, Hichery Point, Jordonia, Kenwood, Riverside, Scottsboro, and Steel City, TN, Blackford, Camp Breckenridge, Clay, Corydon, Crayne, Crider, De Koven, Fluornoy, Fredonia, Grove Center, Henshaw, Marion, Mexico, Morganfield, Repton, St. Vincent, Sturgis, Sullivan, Uniontown, Waverly and Wheatcroft, KY, Flanagan, Graymont, and Rook's Creek, IL, Deanburg, Hornsby, Lacy, Parksburg, Serles, and Silerton, TN, Cumberland, Dancy, Gibbons, Mantee, Reform, Sherwood and Woodland, MS, Lexington and Owens Wells, MS, Fordsville and Narrows, KY, Caroleen and Henrietta, NC, Arnheim, Chassel, Hancock, Keweenaw and Pilgrim, MI, Forest, Starrucca, Thompson and Uniondale, PA, Chatsworth, Winslow Junction and Woodmansie, NJ, Transfer, PA, Light Street, PA, Westminster, OH, Clarksville, IN, Garrett Road, Llanerch and Grassland, PA, Napier, PA, Cromby, Parker Ford, Pennhurst and Spring City, PA, Newton Square Brance, PA, Honey Brook, PA, Carlon, PA, Allendale, IL, Rosendale, NY, Jacobs, Pauls and Rands, ME, Bell and NcNary, AZ, Mottville, and Skaneateles Falls, NY, Readers, AL, and Sherryl Spur, MT, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a Certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operatng Rights, Interstate Commerce Commission, Washington, DC 20423.

Notes.—The purpose of this application is to substitute motor common carrier for abandoned rail service.

The purpose of this republication is to correctly indicate the proper means of protesting this application. The earlier publication allowed more liberal intervention.

Volume No. OP2–88

Decided: April 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 160033 (Sub-1), filed April 16, 1982. Applicant: PENN TRUCKING & WAREHOUSING CO., 2147 South Delaware Ave., Philadelphia, PA 19148. Representative: Barbara S. Chesarek, 2600 The Fidelity Bldg., Philadelphia, PA 19109, 215–875–7000. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 161243, filed April 20, 1982. Applicant: B. L. CHESSER, d.b.a. HARPER TRANSFER & STORAGE, 1101 Front St., Laurel, MS 39440. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *used household goods* for the account of the United States Governmenf incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 161332, filed April 2, 1982. Applicant: LEE EWING & ASSOCIATES, P.O. Box 976, Gardnerville, NV 89410. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, (702) 882–5649. (1) Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161562, filed April 16, 1982. Applicant: CENTAUR CORPORATION, P.O. Box 3658, Mission Viego, CA 92690. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW., Washington, DC 20005, 202–296–3555. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12570 Filed 5-7-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–169

The following applications were filed in Region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 116652 (Sub-1–1TA), filed April 21, 1982. Applicant: CHARLES W. ASCHE, 5910 Edgewood Drive, Niagara Falls, NY 14304. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Passengers and their baggage, in special operations, in round-trip sightseeing or pleasure tours, limited to the transportation of not more than 14 passengers in any one vehicle, but not including the driver thereof and not including children under ten years of age who do not occupy a seat or seats,* beginning and ending at Niagara Falls, NY, and points in Niagara County, NY, and extending to ports of entry on the US/CD Boundary line at Niagara Falls and Lewiston, NY. Supporting shipper: Niagara Falls Motel, 8710 Pine Avenue, Niagara Falls, NY.

MC 78039 (Sub-1–2TA), filed April 27, 1982. Applicant: B & R MOTOR EXPRESS, INC., P.O. Box 4085, Utica, NY 13504. Representative: Murray J. S. Kirshtein, 118 Bleecker Street, Utica, NY 13501. *Contract carrier:* irregular routes: *Machinery, and materials and supplies used in the manufacture and marketing of machinery* between Rome, NY and points in the U.S. except AK and HI under continuing contract(s) with National-Standard of Rome, NY. Supporting shipper: National-Standard, RD #3, Box 227, Rome, NY 13440.

MC 65491 (Sub-1–7TA), filed April 28, 1982. Applicant: GEORGE W. BROWN, INC., P.O. Box 1208, Hightstown, NJ 08520. Representative: Irving Klein, Suite 7, 1205 Franklin Avenue, Garden City, NY 11530. *Sheet steel and metal parts used in the manufacture of containers* between Chicago, IL, on the one hand, and, on the other, Williamsport, PA. Supporting shipper: Rheem Manufacturing Company, 7600 So. Keozie Avenue, Chicago, IL 60652.

MC 160570 (Sub-1–1TA), filed April 28, 1982. Applicant: CITY SERVICE TAXICAB OF BUFFALO, INC., 1379 Niagara Street, Buffalo, NY 14213. Representative: Cohen, Lombardo, Blewett, Fisher, Hite and Spandau, 343 Elmwood Avenue, Buffalo, NY 14222. *Contract carrier:* irregular routes: *Patients for the Veterans Administration Medical Center* from The Veterans Administration Medical Center in Buffalo, NY, to all points in PA under continuing contract(s) with The Veterans Administration Medical Center, Buffalo, NY. Supporting shipper: Veterans Administration Medical Center, 3495 Bailey Avenue, Buffalo NY 14215.

MC 146957 (Sub-1–2TA), filed April 21, 1982. Applicant: DACIANO A. SANTOS, d.b.a. CONNECTICUT AIRPORT SERVICE, 17 Fairfield Avenue, Danbury, CT 06810. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114. *Passengers and their baggage, in charter service,* between Bethel, Bridgewater, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Weston, Danbury, Naugatuck, Waterbury, Bridgeport, La Guardia Airport, John F. Kennedy Airport, NY and Newark International Airport, NJ, on the one hand, and, on the other, points in the U.S. east of the Mississippi River. Supporting shipper(s): There are six statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 142603 (Sub-1–34TA), filed April 21, 1982. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 179, Springfield, MA 01101. Representative: Barbara J. Withers (same as applicant). *Contact carrier:* irregular routes: *General commodities (except articles of unusual value, classes A and B explosives, commodities in bulk, commodities which because of size or weight, require the use of special equipment, household goods as defined by the Commission, and hazardous waste),* between Westfield and Chester, MA, Niagara

Falls, NY, and points in the U.S. (except AK and HI), under continuing contract(s) with General Abrasive/Div. of Dresser Industries, Inc., Niagara Falls, NY. Supporting shipper: General Abrasive/Div. of Dresser Industries, Inc., 2000 College Avenue, Niagara Falls, NY 14305.

MC 161416 (Sub-1–1TA), filed April 8, 1982. Applicant: GOULET TRUCKING, INC., 27 South Maple Street, Hadley, MA 01035. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Agricultural fertilizers and fertilizer related materials,* between Albany County, NY, on the one hand, and, on the other, points in CT, MA and NH. Supporting shipper: Agway, Inc., P.O. Box 4933, Syracuse, NY 13221.

MC 16961 (Sub-1–1TA), filed April 23, 1982. Applicant: HUTCHINS TRUCKING COMPANY, 1000 Congress Street, P.O. Box 95 West End, Portland, ME 04102. Representative: John C. Lightbody, Esq., 30 Exchange Street, Portland, ME 04101. *Such commodities as are dealt in by wholesale and retail chain grocery and food house* between Portland, ME, on the one hand, and, on the other, Newington, NH and Bedford, MA. Supporting shipper: S. Prawer & Co., 150 Read Street, Portland, ME 01404.

MC 145468 (Sub-1–9TA), filed April 27, 1982. Applicant: KSS TRANSPORTATION CORP., Route 1 & Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, Westergren, Hauptman & O'Brien, P.C., Suite 201, 9202 W. Dodge Road, Omaha, NE 68114. *Food and related products* between Lackawanna Cold Storage at Scranton, PA and Lehigh Valley Refrigerated Services at Allentown, PA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Lackawanna Cold Storage and Lehigh Valley Refrigerated Services, Divisions of Beatrice Foods Company, 355 Snowdrift Road North, Fogelsville, PA 18051.

MC 111656 (Sub-1–1TA), filed April 27, 1982. Applicant: FRANK LAMBIE, INC., Pier 79 North River, New York, NY 10018. Representative: John L. Alfano, Esq., Alfano & Alfano, P.C., 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract Carrier:* irregular routes: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between New York, NY, and points in AL, AR, CA, CT, DE, FL, GA, IL, IN, KS, MD, MA, MI, NJ, NY, OH, PA, and VA, under continuing contract(s) with Mitsui & Co. (U.S.A.), Inc. of New York, NY. Supporting shipper: Mitsui & Co. (U.S.A.), Inc., 200 Park Avenue, New York, NY 10166.

MC 161711 (Sub-1–1TA), filed April 28, 1982. Applicant: MAMAX INDUSTRIES, INC., P.O. Box 1061, Buffalo, NY 14240. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Unfinished steel stampings,* between Buffalo, NY, on the one hand, and, on the other, Cleveland, OH, under continuing contract(s) with The Crosby Company, Buffalo, NY. Supporting shipper: The Crosby Co., 183 Pratt Street, Buffalo, NY 14204.

MC 161711 (Sub-1–2TA), filed April 28, 1982. Applicant: MAMAX INDUSTRIES, INC., P.O. Box 1061, Buffalo, NY 14240. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Wood waste, wood flour and flock fillers,* between North Tonawanda, NY, on the one hand, and, on the other, points in IN, LA, MD, MI, NJ, NY, OH, and PA, under continuing contract(s) with International Filler Corporation, North Tonawanda, NY. Supporting shipper: International Filler Corporation, North Tonawanda, NY. 14120

MC 153204 (Sub-1–2TA), filed April 23, 1982. Applicant: MANCHESTER SECURITY SERVICE, INC., 600 Harvey Road, P.O. Box 4916, Manchester, NH 03108. Representative: L. John Osborn, Esq., Verner, Liipfert, Bernhard and McPherson, Suite 1100, 1660 L Street, NW., Washington, D.C. 20036. *Banking commodities, including currency, coin, gold, silver, negotiable and non-negotiable instruments, safety deposit boxes, diamonds and other valuables, and bank documents and memoranda* between points in Windham and Windsor Counties, VT and points in MA. Supporting shipper: Bellows Falls Trust Company, P.O. Box 399, Bellows Falls, VT 05101.

MC 123274 (Sub-1–2TA), filed April 27, 1982. Applicant: MARSHALL SERVICE, INC., Pearl Street, Newfield, NJ 08344 Representative: George A. Olsen P.O. Box 357 Gladstone, NJ 07934. *(1) Plastic containers, and (2) materials equipment, and supplies used in the manufacture, sale, and distribution of plastic containers,* between McKee City, NJ, on the one hand, and, onthe other, points in CT, DE, GA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, and DC. Supporting shipper(s): Atlantic Plastic Containers, Inc., West Jersey Ave., McKee City, NJ 08232.

MC 140608 (Sub-1–3TA), filed April 22, 1982. Applicant: BENTLEY WARREN TRUCKING, INC., Newburyport Turnpike, Ipswich, MA 10938. Representative: Ignatius C. Goode, 132 Harris Road, Nashua, NH 03062. *Pig iron in dump vehicles having a prior movement by water* from Portsmouth, NH to Laconia, NH. Supporting shipper: Phillips Bros. Inc., 1221 Avenue of the Americas, New York, NY 10020.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 158994 (Sub-2–2TA), filed April 21, 1982. Applicant: ABLE TRANSPORT, INC., 307 Progress Avenue, Zilienople, PA 16063. Representative: Brian L. Troiano, 918 16th Street, NW., Washington D.C. 20006. *Contract; irregular:* (1) *Cement, in dump vehicles,* from ports of entry on the U.S.-Canada Boundary Line in NY to Tarentum PA, and (2) *Coal, in dump vehicles,* from points in PA on the west of a line beginning at the NY-PA border at U.S. Highway 219, thence south on U.S. Highway 219 to its intersection with U.S. Highway 119, thence south on U.S. Highway 119 to the PA-WV border, to ports of entry on the U.S.-Canada Boundary Line in NY, under continuing contract with Independent Cement Corp., Albany, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Independent Cement Corporation, Washington Avenue Extension, P.O. Box 12–319, Albany, NY 12212

MC 161474 (Sub-II–1TA), filed April 12, 1982. Applicant: FRANKLIN R. ABSHER, d.b.a. ABSHER TRUCKING, Route 1, Box 107A, Arvonia, VA 23004. Representative: John M. Schilling, 300 W. Main St., Richmond, VA 23220. *Bogged fertilizer,* from Richmond, VA to points in NC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s) Richmond Guano, 9 S. Fifth St., Richmond, VA 23219.

MC 35519, (Sub-II–2TA), filed April 26, 1982. Applicant: J. W. ATHEY, SR. & J. W. ATHEY, JR., d.b.a. ATHEY TRUCKING, Rt. 1, Box 364, Stephens City, VA 22655. Representative: Frank B. Hand, Jr., 523 S. Cameron St., Winchester, VA 22601. *Malt beverages,* fRom Philadelphia, PA and Hammonton, NJ to Winchester, VA. Supporting shipper(s): S & F Distributing Co., 2705 Papermill Rd., Winchester, VA 22601.

MC 157691 (Sub-II–1TA), filed April 26, 1982. Applicant: BLUE VELVET TRANSPORT, INC., 50 West Broad Street, Columbus, OH 43215. Representative: James W. Muldon, 50 West Broad Street, Columbus, OH 43215. *Malt beverages,* from Fort

Wayne, IN to points in CT, NJ, NY, OH and PA for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper(s): Falstaff Brewing Corporation, 1025 Grant Street, Fort Wayne, IN 46801.

MC 69695 (Sub-II-2TA), filed April 30, 1982. Applicant: RAY L. BRANDT TRUCKING CO., 468 W. Philadelphia St., York, PA 17404. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. *Ground limestone, in bulk in tank vehicles,* from York, PA to Falling Waters, WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: White Pigment Co., York, PA 17405.

MC 146685 (Sub-II-3TA), filed April 28, 1982. Applicant: BEN CAPOBIANCO TRUCKING, INC., 9614-16 Princeton-Glendale Road, Cincinnati, OH 45246. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. *(1) Compressors and pumps, liquid or gas, cooling or freezing machines, and evaporator coils,* between Sidney, Fostoria, Wapakoneta and West Union, OH; Brushville, IN; Hartselle, AL; and Shelby, NC, on the one hand, and, on the other, pts in AR, AZ, CA, CO, NM, OR, TX and UT; and *(2) used compressors for reconditioning, and cooling or freezing machines,* between pts in AR, AZ, CA, CO, NM, OR, TX and UT, on the one hand, and, on the other, pts in Sidney, Fostoria, Wapakoneta and West Union, OH; Brushville, IN; Hartselle, AL; and Shelby, NC, for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper: Copeland Corproation, West Campbell Road, Sidney, OH 45365.

MC 146080 (Sub-II-1TA), filed April 26, 1982. Applicant: McKINLEY MUNCY, JR., d.b.a. CARNAL BUS LINES, 2759 5th Ave., Huntington, WV 25702. Representative: McKinley Muncy, Jr., (same address as applicant). *Passengers and their baggage, in special and charter operations,* between points in WV, KY and, OH, on the one hand, and, on the other, points in the U.S. (including AK & HI), for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Dorsey Tours, 504 Elizabeth Ave., S. Charleston, WV 25303, Owenetta Club, 8th Ave. & 5th St. W., Huntington, WV 25704, Westmoreland Womens Club, 3509 Auburn Rd., Huntington, WV 25704, INCO Retirees, 331 Lynda Ct., Huntington, WV 25704.

MC 152500 (Sub-II-26TA), filed April 27, 1982. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same as applicant). *Contract:* irregular: *adhesives, chemicals, paint increasing compounds, plasticizers and titanium dioxide* between Jersey City and Sayreville, NJ; Charleston, WV; St. Louis, MO; and Newberry, CA, on the one hand, and, on the other, pts in the U.S. (except AK and HI), under continuing contract(s) with N.L. Chemicals, Hightstown, NJ, for 270 days. Supporting shipper: N.L. Chemicals, P.O. Box 700, Highstown NJ 08520.

MC 151518 (Sub-II-2TA), filed April 26, 1982. Applicant: JOHN V. DONVITO, 1001 Eynon St., Scranton, PA 18504. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517. *Foodstuffs and related products,* between Luzerne and Lackawanna Counties, PA on the one hand, and, on the other, Albany County, NY and the New York Commercial Zone, NY; Essex and Hudson Counties, NJ; Baltimore County, MD; and New Castle County, DE, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Dousihy & Hazzouri & Co., 211 7th Ave., Scranton, PA 18504; Halem Hazzouri Wholesale Bananas, 117 6th St., Scranton, PA 18504.

MC 151686 (Sub-II-1TA), filed April 26, 1982. Applicant: LEWIS B. FISHER, d.b.a. FISHER TRUCKING AND CARTAGE, 1343 Buford Rd., Richmond, VA 23235. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. Contract, irregular: *pet and animal foods,* from the facilities of Ralston Purina Company at or near Mechanicsburg (Cumberland CY), PA, to the facilities of Ralston Purina Company at or near Richmond, VA, under continuing contract(s) with Ralston Purina Company of St. Louis, MO. An underlying ETA seeks 120 days authority. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63164.

MC 149111 (Sub-II-4TA), filed April 26, 1982. Applicant: GENERAL COMMODITIES WAREHOUSE & DISTRIBUTING CO., INC., 1200 Lebanon Rd., West Mifflin, PA 15122. Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. *Contract; irregular:* (1) *Alcoholic beverages,* between pts. in Baltimore County, MD, on the one hand, and, on the other, pts. in Lebanon County, PA, under continuing contract(s) with Joseph E. Seagram & Son, Inc., New York, NY; and (2) *Such commodities as are dealt in and distributed by wholesale, retail and chain grocery stores and food business houses,* between pts. in Alliance, Archibold, Boardman, Cincinnati, Cleveland, Columbus, Fostoria, Maple Heights, Napoleon and Youngstown, OH; and Buffalo, Dunkirk, Rochester and Niagara Falls, NY, on the one hand, and, on the other, pts. in Allegheny and Butler Counties, PA and Mahoning County, OH, under continuing contract(s) with Giant Eagle Markets, Inc., Pittsburgh, PA, for 270 days. Supporting shipper(s): Joseph E. Seagram & Sons, Inc., 800 Third Ave., New York, NY 10022; Giant Eagle Markets, Inc., 101 Kappa Dr., RIDC Park, Pittsburgh, PA 15238.

MC 161618 (Sub-II-1TA), filed April 26, 1982. Applicant: GOLLERS EXPRESS, INC., 10155 Reading Rd., Cincinnati, OH 45241. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *Laminated products and materials, equipment and supplies used in the manufacture, sale and distribution of laminated products,* between the facilities of Formica Corporation at or near Cincinnati, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Formica Corporation, 10155 Reading Rd., Cincinnati, OH 45241.

MC 134086 (Sub-II-2TA), filed April 27, 1982. Applicant: LEWIS A. HANNABASS, INC., Route 1, Box 866, Moneta, VA 24121. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Contract, irregular: *General commodities,* (except Class A and B explosives, household goods as defined by the Commission and commodities in bulk) between points in KY, OH, NC, TN, VA, and WV under continuing contract with Montgomery Ward & Co., Inc., Sharonville, OH. Supporting shipper: Montgomery Ward & Co., Inc. 2101 E. Kemper Road, Sharonville, OH 45265.

MC 146407 (Sub-II-1TA), filed April 27, 1982. Applicant: KING CARRIAGE CO., 2200 Victory Parkway, Cincinnati, OH 45206. Representative: Gilbert D. Kaffeman, 1240 Madison Ave., Covington, KY 41011. *General commodities,* between pts. in Covington, Ludlow and Erlanger, KY, on the one hand, and, on the other, pts. in the U.S. (except AK and HI), for 270 days. Applicant intends to tack authority sought herein with authority held under MC 146407. Supporting shipper(s): There are 7 supporting shippers. Their statements may be examined at the ICC Regional Office, Philadelphia, PA.

MC 151767 (Sub-II-2TA), filed April 30, 1982. Applicant: BOYD F. POWERS AND MICHAEL J. POWERS, d.b.a. POWERS TRUCKING CO., 52 Market St., Lock Haven, PA 17745. Representative: John E. Fullerton, 407 N. Front Street, Harrisburg, PA 17101. *Food*

products, between points in Clinton and Bradford Counties, PA on the one hand, and, on the other, Wilmington, DE; Baltimore, MD; Camden, Elizabeth, Jersey City and Newark, NJ; and Buffalo and Rochester, NY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Velda U S Inc., P.O. box 313, McElhattan, PA 17748.

MC 136077 (Sub-II–6TA), filed April 28, 1982. Applicant: REBER CORP., 2216 Old Arch Road, Norristown, PA 19401. Representative: Richard L. Thurston, 15th Floor, One Franklin Plaza, Philadelphia, PA 19102. *Cement in bags and bulk,* from the facilities of Coplay Cement Co., in Nazareth (Northampton County), PA and Egypt (Lehigh County), PA, to points in VA, WV, DE, MD, and DC for 270 days. Supporting shipper: Coplay Cement Co., Nazareth, PA 18064.

MC 141483 (Sub-2–1TA), filed April 26, 1982. Applicant: VALCON PACKAGE DELIVERY, INC., 3840 West St., Landover, MD 20785 Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. *Contract;* Irregular: *Such commodities as are dealt in, sold by, or used by manufacturers of cosmetics and personal grooming aids,* from Hagerstown and Cumberland, MD, to points in Allegany, Garrett and Washington Cointies, MD, Frederick County, VA, and points in WV under contract with Avon Products, Inc., for 270 days Underlying ETA seeks 120 days authority. Supporting shipper: Avon Products, Inc., Ogeltown Rd., Newark, DE 19711.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 145637 (Sub-3–6TA), filed April 29, 1982. Applicant: B&B EXPRESS, INC., P.O. Box 5552, Station B, Greenville, SC 29606. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Plastic film, sheeting and tape, materials, supplies and equipment used in the manufacture, sale and distribution of same,* between Florence County, SC, on the one hand, and, on the other, points in CA. Supporting shipper(s): E. I. DuPont De Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19398.

MC 157925 (Sub-3–2TA), filed April 29, 1982. Applicant: DANNY GOUGE d.b.a. GOUGE TRUCKING COMPANY, Route 1, Box 34, Greenmountain, NC 28740. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005. *Olivine,* between points in Yancey County, NC, on the one hand, and, on the other, points in the U.S. in and east of TX, OK, KS, NE, SD, and ND. Supporting shipper: International Minerals and Chemicals Corporation, 421 East Hawley Street, Mundelein, IL 60060.

MC 161232 (Sub-3–1TA), filed April 28, 1982. Applicant: ROMANS TRANSPORTATION, INC., 3101 Dixie Highway, Louisville, KY 40216. Representative: Cecil Romans (same address as applicant). *General commodities (except classes A and B explosives, household goods, and commodities in bulk),* between points in AL, AR, DE, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MO, MS, NE, NJ, NY, NC, OH, OK, PA, TN, TX, VA, WV, and WI. There are five (5) supporting shipper statements attached to this application which may be reviewed at the Regional ICC office in Atlanta, GA.

The following protests were filed in Region 4. Send protests to: Interstate Commerce Commission, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 113855 (Sub-4–4TA), filed April 27, 1982. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Representative: Thomas J. Van Osdel, 15 Broadway—Suite 502, Fargo, ND 58102. *Contract,* Irregular, *General commodities (except household goods, commodities in bulk and classes A and B explosives),* between points in the U.S., under a continuing contract(s) with United Air Lines, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: United Air Lines, Inc., P.O. Box 66100, Chicago, IL 60666.

MC 115651 (Sub-4–15), filed April 26, 1982. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road—P.O. Box 39, Rockford, IL 61105. Representative: R. D. Higgins (same as applicant). *Liquified petroleum gas in bulk, in tank vehicles,* from points in the state of WI, to points in the state of MI. Supporting shipper: Universal Energy Corporation, 1301 East Main Street, Waukesha, WI 53186.

MC 123499 (Sub-4–1TA), filed April 23, 1982. Applicant: LOWELL L. TREFFERT, INC., 3323 Rodney Lane, Racine, WI 53406. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, WI 53203, (414) 273–7410. *Malt beverages,* from Memphis, TN, to Racine, WI, and return of empty containers from Racine, WI, to Memphis, TN. An underlying ETA seeks 120 days authority. Supporting shipper: Rapids Beer Distributors, Inc., 2924 Rapids Dr., Racine, WI 53404.

MC 140276 (Sub-4–5TA), filed April 26, 1982. Applicant: LARRY SCHEFUS TRUCKING, INC., Route 1, Box 202, Redwood Falls, MN 56283. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Steel Tubing,* from Chicago, IL, Detroit, MI, Cleveland, OH, Birmingham, AL, Tampa, FL, Memphis, TN and Baltimore, MD to points in the U.S. in and east of TX, OK, KS, NE, SD and ND. Restriction: Restricted to traffic for the account of Metal Specialists International, Inc., Palm Harbor, FL. Supporting shipper: Metal Specialists International, Inc., 1114 Florida Ave., Suite C, Palm Harbor FL 33563.

MC 141361 (Sub-1–TA), filed April 26, 1982. Applicant: LONSBERG TRUCKING AND MATERIALS, INC., 545 Broadway, Platteville, WI 53818. Representative: A. R. Hanson, Atty., 2105 Madison Street, Madison, WI 53711. *Fertilizer,* in bags, in bulk and liquid from Dubuque, IA and East Dubuque, IL, including their respective commercial zones, to points in Grant, Iowa and Lafayette Counties, WI. There are seven supporting shippers.

MC 143885 (Sub-4–2TA), filed April 1, 1982. Applicant: HARLAND A. WILCOX, and LEROY H. WILCOX, d.b.a. WILCOX TRUCKING, 206 Charles St., Elk Rapids, MI. 49629. Representative: Rick A. Rude, Esq., Suite 611 1730 Rhode Island Ave., N.W., Washington, D.C. 20036. *Canned goods, and Materials, Equipment and Supplies used in the manufacture of such commodities,* between Elk Rapids, East Jordan, and Traverse City, MI., on the one hand, and, on the other, points in the U.S. (except AK. and HI). Supporting shippers: Traverse City Canning Co., 3710 Cass Road., Traverse City, MI. 49684; Sherman Canning Company, P.O. Box R, East Jordan, MI 49727; and Elk Rapids Packing Co., P.O. Box 128, Elk Rapids, MI 49629.

MC 145807 (Sub-4–4TA), filed April 26, 1982. Applicant: DERBY TRANSPORT, INC., 609 First Ave., N., Box 695, Weyburn, Saskatchewan, Canada S4H1P1. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Weed killer (in bags),* between ports of entry on the International Boundary Line between the U.S. and Canada located at points in ND, on the one hand, and, on the other, points in ND. Supporting shipper: G & R Trucking, Ltd., #6 Robertson Bay, Regina, Saskatchewan, Canada S4R6H4.

MC 149094 (Sub-4–2TA), filed April 23, 1982. Applicant: JAMES PRINCL d.b.a., JAMES PRINCL TRUCKING, 1641 Carole Lane, Green Bay, WI 54303. Representative: Richard A. Westley,

Attorney, 4506 Regent Street, Suite 100, Madison, Wisconsin 53705. *Crude Asphalt, in bulk, in tank vehicles* from the facilities of Koch Asphalt Company at or near Chicago, IL to Oak Creek, WI. Supporting shipper: Koch Asphalt Company, 6866 South 10th Street, Oak Creek, WI 53154.

MC 154127 (Sub-4-8TA), filed April 26, 1982. Applicant: A. LUURTSEMA PRODUCE, INC., 5367 School St., P.O. Box 67, Hudsonville, MI 49426. Representative: Michael D. McCormick, SCOPELITIS & GARVIN, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contact*, irregular, *Food and related products* (canned or preserved foodstuffs), From Kent City, MI to points in IL, IN, KY, OH, and WI, under a continuing contract or contracts with National Fruit Products, Inc., Winchester, VA. An underlying ETA seeks up to 120 days of operating authority. Supporting shipper: National Fruit Products, Inc., 550 Fairmont Avenue, Winchester, VA 22601.

MC 155021 (Sub-4-2TA), filed April 27, 1982. Applicant: ECONEXPRESS INCORPORATED, 618 South West St., Wheaton, IL 60187. Applicant's Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603. *Contract* irregular: *General Commodities* (except Classes A & B Explosives, commodities in bulk, and household goods, as defined by the ICC); between points in IL, IN, IA, KY, MI, MN, MO, OH, and WI, on the one hand, and, on the other, points in the U.S., under continuing contracts with Capitol Mfg. Co., Faygo Beverages, Inc., Great Lakes Terminal & Transport, and Purex Industries, Inc. Supporting shippers: Capitol Mfg. Co., 753 W. Fulton, Columbus, OH 43216; Faygo Beverages, Inc., 3579 Gratiot Avenue, Detroit, MI 48207; Great Lakes Terminal & Transport, 1750 N. Kingsbury St., Chicago, IL 60614; and Purex Industries, Inc., 6120 N. Detroit Ave., Toledo, OH 43612.

MC 155136 (Sub-4-2TA), filed April 26, 1982. Applicant: RED TRAIL TRANSPORT, INC., Box 997, Beach, ND 58621. Representative: Charles E. Johnson, Box 2050, Bismarck, ND 58502. *Mercer commodities* (except commodities in bulk), between points in ND, SD, MT, and WY. ETA seeks 120 days authority. Supporting shippers: AL Acquitane, Route 2, Box 86, Belfield, ND 58622, Jerry Chambers Division, Box 245, Belfield, ND 58622.

MC 15735 (Sub-4-13TA), filed April 27, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contact* irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Associates Corporation of North America. Supporting shipper: Associates Corporation of North America, Dallas, TX 75222.

MC 161285 (Sub-4-1TA), filed April 26, 1982. Applicant: H. B. C. TRUCKING CO., 24105 Pierce, Southfield, MI 48075. Representative: Henry B. Gavins (same as above). *Contract* irregular: *Couplings and oil well parts* between Detroit, MI and points in OH, IN, IL, KY, TN, MS, LA, AR, and TX. Supporting shipper: Clipper International Corp., 8651 E. 7 Mile, Detroit, MI 48234.

MC 161650 (Sub-4-1TA), filed April 23, 1982. Applicant: G & S TRUCKING, 3117 Columbus Ave. So., Minneapolis, MN 55407. Representative: James F. Crosby, Associates, 7363 Pacific St., Suite 210B; Omaha, NE 68114. *Machinery, equipment, materials and supplies used* in, or in connection with, the discovery, development, production, refining, manufacturing, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, between Natrona, Campbell, and Converse Counties, Wyoming on the one hand, and, on the other, points in TX and OK. An underlying ETA seeks 120 day authority. Supporting shipper: Sivalls Tanks, Inc., P.O. Box 5456, Casper, WY 82604.

MC 161696 (Sub-4-1TA), filed April 27, 1982. Applicant: MARATHON TRANSPORT INC., 3977 County Hwy. J., Schofield, WI. 54476. Representative: Odin Hansen, 908 7th St., Wausau, WI. 54401. *Contract carrier* irregular: *General commodities* (except class A & B explosives) between points in the U.S., under continuing contract with Marathon Intermodal Shippers Association Inc. Supporting shipper: Marathon Intermodal Shippers Association Inc. 3977 County Hwy. J., Schofield, WI. 54476.

MC 140276 (Sub-4-6TA), filed April 29, 1982. Applicant: LARRY SCHEFUS TRUCKING, INC., Route 1, Box 202, Redwood Falls, MN 56283. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Contract:* irregular: *Farm equipment and machinery*, from Clay Center, KS, Shelbyville, Valparaiso and Indianapolis, IN and Chicago, IL, to Redwood Falls and Moorhead, MN for the account of Wood and Conn, Inc., Redwood Falls, MN. Supporting shipper: Wood and Conn, Inc., Hwy. 19 and 71 East, Box 187, Redwood Falls, MN 56283.

MC 142901 (Sub-4-1TA), filed April 28, 1982. Applicant: CECO TRANSPORT, INC., 1400 Kensington Road, Oak Brook, IL 60521. Applicant's Representative: Daniel C. Sullivan, Sullivan & Associates, Ltd., 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601. *Such commodities* as are dealt in or utilized by manufacturers of mobile homes, between Pulaski Co., AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).Supporting shipper: Elixir Industries, 10001 Colonel Glen Rd., P.O. Box 5420, Little Rock, AR 72215.

MC 154258 (Sub-4-1TA), filed April 26, 1982. Applicant: G. L. WASKO AND SONS, Stevensville, MI 49127. Applicant's Representative: Paul M. Ross, Attorney, 3104 S. Cedar Street, Lansing, MI 48910, (517) 394-4220. *Contract* irregular: Transporting *food and related products* between Eau Claire, MI, and points in IL, IN, MN, WI, MO, and OH, on the one hand, and, on the other, between points in the United States under continuing contract with Fruit Hill, Inc., of Eau Claire, MI. An underlying ETA seeks 90 day authority. Supporting shipper: Fruit Hill, Inc., Old Pipestone Road, Eau Claire, MI.

MC 159008 (Sub-4-2TA), filed April 28, 1982. Applicant: NORTHERN CARRIERS, INC., 3814 11th St., Rockford, IL 61110. Representative: William D. Brejcha, 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601. *Contract; Irregular: Such commodities as are dealt in, used by or distributed by manufacturers of paint and paint products*, between points in the U.S. (except AK and HI) under continuing contract(s) with Valspar Corporation. Supporting shipper: Valspar Corporation, 1101 S. Third St., Minneapolis, MN 55415.

MC 161673 (Sub-4-1TA), filed April 26, 1982. Applicant: RAILHEAD CARTAGE, INC., 10742 South Western Ave., Chicago, IL 60643. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60643. *General commodities* (except Classes A & B explosives, household goods, and commodities in bulk), between Chicago, IL and its commercial zone, on the one hand, and, on the other, points in IL, IN, IA, MI, MN, MO, OH, and WI. Supporting shippers: Acme Fast Freight, Inc., 2841 South Leavitt Avenue, Chicago, IL 60608; Maytag Company, Newton, IA 50208; Transamerica Transportation Services, 1800 West 43rd Street, Chicago, IL 60604; and Transportation Rail Services, 3750 West 47th Street, Chicago, IL 60632.

MC 161674 (Sub-4–1TA), filed April 26, 1982. Applicant: B KOSZYLKO d.b.a., B & K TRUCKING, 5144 W. 83rd St., Burbank, IL 60459. Representative: Bob Koszylko, 3112 W. 40th St., Chicago, IL 60632. *General Commodities* (except Classes A & B explosives, commodities in bulk and those requiring special equipment), between Chicago, IL and its Commercial Zone, on the one hand, and, on the other, points in IL, IN, WI, IA, and MI. Supporting shipper: C.S. Greene and Company, Inc.,-Ill Corp., 2803 Butterfield Road, Oak Brook, IL 60521.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 16334 (Sub-5–6TA), filed April 26, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212. *Food and related products* between points in Marshall County, MS; Ontario County, NY; and San Bernardino County, CA, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Master of Mixes, Inc., 8717 W. 110th Street, Corporate Woods 14, Overland Park, KS 66212.

MC 26825 (Sub-5–26TA), filed April 26, 1982. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Lubricating oil (except in bulk)* between pts in Union County, NJ, on the one hand, and, on the other, pts in the U.S. Supporting shipper: Borne Chemical Company, Inc., 632 South Front Street, P.O. Box 256, Elizabeth, NJ 07207.

MC 86539 (Sub-5–1TA), filed April 26, 1982. Applicant: HIPKE TRUCKING, INC., Route 5, Atkinson, NE 68713. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Fertilizer,* (1) from Lea and Eddy Counties, NM to pts in NE; and (2) from Caribou County, ID to pts in IA, NE and SD. Supporting shipper: O'Neill Fertilizer, Inc., O'Neill, NE 68763; Beker Industries, Inc., Conda, ID 83230; Tilden Fertilizer, Inc., Crookston, NE 69212; and Ag-Supply Center, Inc., Petersburg, NE 68652.

MC 129222 (Sub-5–2TA), filed April 26, 1982. Applicant: FORD TRUCK LINE, INC., South Lynn Street, Tipton, IA 52772. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Liquid nitrogen fertilizer solution, in bulk,* (1) From East Dubuque, IL to pts in IA and WI; and (2) From Hampton, IA to pts in MN. Supporting shipper(s): Twin-State Engineering & Chemical Co., 341 East Kimberly Road, Davenport, IA 52807.

MC 133035 (Sub-5–1TA), filed April 26, 1982. Applicant: DILTS TRUCKING, INC., P.O. Box 156, Crescent, IA 51526. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Fertilizers, in bulk,* from Sugar Creek, MO to pts in KS, NE, and IA. Supporting shipper: Chevron Chemical Company, P.O. Box 282, Fort Madison, IA 52627.

MC 135693 (Sub-5–1TA), filed April 26, 1982. Applicant: SOUTHERN CEMENT TRANSPORT, INC., P.O. Box 98, Saratoga, AR 71859. Representative: M. J. Lucy, No. 2 Cement Road, Saratoga, AR 71859. Contract; Irregular. *CEMENT, in bulk and in packages,* from Okay Junction, AR to points in MO. Supporting shipper: Ideal Basic Industries, Inc., Cement Division, P.O. Box 8789, Denver, CO.

MC 146787 (Sub-5–1TA), filed April 26, 1982. Applicant: DEAN ALBAUGH & MICKEY ALBAUGH, d.b.a. ALBAUGH FARMS, R.R. #2, Ankeny, IA 50021. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Building materials* between Kane County, IL on the one hand, and, on the other, pts in IA and NE. Supporting shipper: Contractors Steel Corp., Des Moines, IA.

MC 147196 (Sub-5–48TA), filed April 27, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 10686, Jefferson, LA 70181–0686. Representative: Martin White, P.O. Box 5387, Richardson, TX 75080. *Paper and Paper products, Copy machines noi and copy machine parts* between OK, TX, and AR on the one hand, and, AR, CA, CO, GA, IL, KS, LA, MS, MO, NM, OK, TN, and TX on the other. Supporting shipper: Xerox Corp. 2810 Ave E East, Arlington, TX.

MC 147536 (Sub-5–16TA), filed April 26, 1982. Applicant: D.L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Boulevard, Oklahoma City, OK 73118. *Metal building materials and materials, equipment and supplies used in the manufacture thereof,* between points in Jasper County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper(s): Appleton Supply Co South Inc, 3602 East 20th Street, Joplin, MO 64801.

MC 150534 (Sub-5–3TA), filed April 26, 1982. Applicant: ENERGY SALES, INC., P.O. Box 128, Cabool, MO 65689. Representative: David Montgomery (same address as applicant). *Petroleum and petroleum products* (1) from Cicero and Wood River, IL to points in MO, (2) from Lawrenceville and Pekin, IL to points in KS, MO, and OK, and (3) from Memphis, TN to points in MO, and *ashpalt and asphalt products* from Wood River, IL, and Memphis, TN, to Cabool, MO. Supporting shipper: (1) Hugh Dennis Grease & Oil Co., 1101 E. Tampa, Springfield, MO 65801; (2) Southern Missouri Oil Company, Inc., Hwy 181 South, Cabool, MO 65689; and (3) Southern States Asphalt Company, 1003 Ashland Dr., P.O. Box 14, Cameron, MO 64429.

MC 151178 (Sub-5–2TA), filed April 26, 1982. Applicant: DIXON FARM SUPPLY, 102 S.W. A St., Stigler, OK 74462. Representative: Kenneth Dixon (same as applicant). Contract; Irregular. *Coal in Bulk* from points in Haskell County, OK and LeFlore County, OK to Howe, OK for furtherance by interstate rail carrier. Supporting shipper: K & R Coal Company, Box 586, Stigler, OK 74462.

MC 151368 (Sub-5–3TA), filed April 26, 1982. Applicant: KOCH TRUCK LINE, INC., 619 Iowa, Sabetha, KS 666534. Representative: Eugene W. Hiatt, 207 Casson Building, 603 Topeka Boulevard, Topeka, KS 6603. *Agricultural machinery, parts, supplies and steel products* between all points in KS, NE and MO west of Hwy 63 on the one hand, and, on the other, points in IL, IN, IA, NM, ND, SD, CO, OK and TX. Supporting shipper: TravAlong, Inc., Blue Rapids, KS 66411; Linn Enterprises, Inc., Linn, KS 66953; Plymouth Manufacturing, Inc., Plymouth, NE 68424.

MC 152277 (Sub-5–6TA), filed April 27, 1982. Applicant: LONG MILE RUBBER COMPANY, 6820 Forest Park, Exchange Park, Dallas, TX 75245. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Food and related products* from Salem, Eugene and Medford, OR and Lynden, WA to points in TX, OK, AR, GA, AL, LA, MS, CO, TN, SC and NC. Supporting shipper(s): Agripac, Inc., 325 Patterson, Salem, Oregon 97304.

MC 152959 (Sub-5–13TA), filed April 26, 1982. Applicant: MOBILE EXPRESS, INC., P.O. Box 8167, Longview, TX 75607. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular, *Trailer or Trailer Chassis and/or Parts Thereof* between points in the United States. Under continuous contract(s) with The Heil Company of Lancaster, PA; ARCO Trailer Company of Springfield, MO.

MC 153025 (Sub-5–3TA), filed April 26, 1982. Applicant: FLANCO TRANSPORTATION, INC., 104 Thompson Avenue, Corsicana, TX

75110. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Such articles as are dealt in by manufacturers or distributors of machinery, farm equipment, metal products and oil field materials, equipment or supplies* between TX on the one hand, and, on the other, points in the U.S. Supporting shipper(s): There are five (5) supporting shippers to this application.

MC 157957 (Sub-5–2TA), filed April 26, 1982. Applicant: LORAS KALB, 904 Monticello Drive, Dubuque, IA 52001. Representative: Carl E. Munson, P.O. Box 798, Dubuque, IA 52001. Contract; Irregular. *Coal and coal products,* from pts in Dubuque County, IA, to pts in Richland County, WI. Supporting shipper: ContiCarriers & Terminals Inc., 1050 Kerper Blvd., Dubuque, IA 52001.

MC 158959 (Sub-5–2TA), filed April 26, 1982. Applicant: RINEHART'S MEAT PROCESSING, INC., SR 2, Hollywood Hills, Branson, MO 65616. Representative: Charles J. Fain, 333 Madison Street, Jefferson City, MO 65101. Contract; Irregular. *Food and related products* from Branson, MO between points in AR, OK, KS, NE, MO, IA, TN, IL and MS. Supporting shippers: Ozark Food Sales, Springfield, MO 65802 Consumer's Market, Inc., Springfield, MO 65804.

MC 159155 (Sub-5–3TA), filed April 27, 1982. Applicant: PULLEN BROS., INC., Rt. 4, Box 6H, Sikeston, MO 63801. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. *Frozen confections,* between Mississippi county, MO, on the one hand, and, on the other, in the U.S. (except AK and HI). Supporting shipper: Gold Bond Ice Cream Co., Inc., 808 Packerland Dr., Green Bay WI 54303.

MC 160592 (Sub-5–3TA), filed April 26, 1982. Applicant: BACK TRUCKING CO., P.O. Box 293, Denison, IA 51442. Representative: D. Douglas Titus, 340 Insurance Exchange Building, Sioux City, IA 51101. Contract irregular *meat, meat products, meat byproducts and articles and supplies used or distributed by meat packinghouses,* between Cherokee, Denison, Des Moines, Fort Dodge, and Iowa Falls, IA and Crete, Lincoln, and Omaha NE, on the one hand, and, pts in the U.S. except AK and HI, on the other. Supporting shipper: Farmland Foods INC., P.O. Box 403, Denison, IA 51442.

MC 161452 (Sub-5–2TA), filed April 26, 1982. Applicant: COWBOY TRANSPORTATION CO., 401 East 6th Street, P.O. Box 215, Stillwater, OK 74076. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Paper and paper products,* between the facilities of Fort Howard Paper Company at or near Green Bay, WI and Muskogee, OK, on the one hand, and, on the other, points in AZ, CO, KS, MO, NE, NM, OK, UT, WI, and WY. Supporting shipper: Fort Howard Paper Company, 1919 S. Broadway, Green Bay, WI 54305.

MC 161664 (Sub-5–1TA), filed April 26, 1982. Applicant: DISTRIBUTION SERVICE CORPORATION, P.O. Box 65093, Des Moines, IA 50322. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. Carpet from Des Moines, IA to pts in IA, IL, NE, SD, MN, and MO. Supporting shipper: Hawkeye Carpet Association, Inc., P.O. Box 3602, Des Moines, IA 50322.

MC 161666 (Sub-5–1TA), filed April 26, 1982. Applicant: TOMMY DAVIDSON, INC., Hwy 7 South, Russellville, AR 72801. Representative: James K. Young, P.O. Box 761, Russellville, AR 72801. Contract, Irregular. *Breading, flour, food and related products* from Chicago, IL and Ponchatoula, LA to Russellville, AR under continuing contract with Valmac Industries (Tasty Bird), P.O. Box 847, Russellville, AR 72801.

MC 9644 (Sub-5–4TA), filed April 29, 1982. Applicant: HAYES TRUCK LINE, INC., P.O. Box 4018, Kansas City, MO 64101. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Transportation equipment,* between Shenandoah, IA, and Kansas City, MO. Supporting shipper: Kenworth Truck Company, 5300 Kenworth Road, Kansas City, MO 64120.

MC 61396 (Sub-5–22TA), filed April 28, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Cement, in bag and in bulk,* between pts in Forsyth and Durham Counties, NC, on the one hand, and, on the other, in VA, TN, and WV. Supporting shipper: Santee Portland Cement Corporation, a subsidiary of Dundee Cement Company, One Windsor Point Road, Columbia, SC 29206.

MC 128087 (Sub-5–3TA), filed April 30, 1982. Applicant: JOHN N. JOHN III, INC., P.O. Box 921, Crowley, LA 70526. Representative: William M. John (same as above). Liquid Amorphous Polypropylene from Lake Charles LA to Cleveland OH. Applicant intends to tack. Supporting shipper: Hercules Inc., Lake Charles, LA.

MC 146055 (Sub-5–16TA), filed April 30, 1982. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Meats and packinghouse products,* from the facilities of E.A. Miller & Sons Packing Company of Hyrum, UT to pts in the U.S. Supporting shipper: E.A. Miller & Sons Packing Company, Inc., 200 West 400 North, Hyrum, UT 84319.

MC 146388 (Sub-5–2TA), filed April 28, 1982. Applicant: GRANTSKI GRAIN CORPORATION, P.O. Box 158, Beaver Crossing, NE 68313. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506. *Salt and salt products,* from pts in Salt Lake County, UT, to pts in CO, IA, KS, MI, MN, MT, NE, OK, ND, IL, SD, WI, WY, OH, TX, and IN. Supporting shipper: Domtar Industries, Inc., Sifto Salt Division, 4825 North Scott, Schiller Park, IL 60176.

MC 147196 (Sub-5–49TA), filed April 30, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 10686, Jefferson, LA 70181–0686. Representative: Martin White, P.O. Box 5387, Richardson, TX 75080. Common Carrier Irregular Route: Water proofing compounds and materials and oils and grease. Between: Tarrant County, TX, on the one hand, and, on the other points in the U.S. Supporting shipper: Southwestern Petroleum Corporation, 534 N. Main, Ft. Worth, TX 76101.

MC 149088 (Sub-5–7TA), filed April 28, 1982. Applicant: TRANSPORTATION, INC., P.O. Box 362, Ottawa, KS 66067. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Cementatious products, building materials and sand,* between the commercial zones of Wichita, KS, Kansas City, KS; Oklahoma City, OK and Dallas, TX, on the one hand, and, points and places in KS, OK, TX, MO, NE, IA, and CO, on the other hand. Supporting shipper: Quickrete Division of Ritchie Packing, Inc., P.O. Box 4048, Wichita, KS 67204.

MC 152599 (Sub-5–5TA), filed April 28, 1982. Applicant: SOUTHERN CARRIERS, INC., P.O. Box 631, Galena Park, TX 77547. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *General commodities (except classes A and B explosives or hazardous materials) in containers having a prior or subsequent movement by rail or water* between Dallas, Ft. Worth, and Houston, TX and points in their commercial zone, on the one hand, and, on the other, points in AR, CO, KS, LA, MO and NM. Supporting shipper(s): (22).

MC 154121 (Sub-5–11TA), filed April 28, 1982. Applicant: TRAILINER CORP., 2109 E. Blaine, Springfield, MO 65803. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *General*

commodities (except classes A and B explosives, household goods, and commodities, in bulk) between the facilities used or utilized by Becton, Dickinson and Company, its subsidiaries, divisions, and vendors, at points in the US (except AK and HI), on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper(s): Becton, Dickinson and Company, Rutherford, NJ 07070.

MC 154488 (Sub-5–6TA), filed April 28, 1982. Applicant: LASLEY TRUCKING COMPANY, INC., P.O. Box 1368, Conway, AR 72032. Representative: John B. Fowlkes, Jr. (same address as applicant). Contract: irregular, *steel sucker rod and such commodities as may be used in the manufacture thereof* between points in AR, LA, MS, OK, and TX. Supporting shipper: J. A. Patton Corporation, 11800 Arch Street, Little Rock, AR.

MC 158786 (Sub-5–2TA), filed April 28, 1982. Applicant: ILCON INC., 2105 Anthony Drive, Tyler, TX 75701. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Mercer commodities* between points in Gregg, Harrison and Panola Counties, TX, on the one hand, and, on the other, points in LA. Supporting shippers: Marshall Exploration, Inc., P.O. Box 1689, Marshall, TX 75670 and Pool Well Service, Inc., P.O. Box 911, Kilgore, TX 75662.

MC 159367 (Sub-5–2TA), filed April 28, 1982. Applicant: MID-AMERICA TRAVEL CENTERS, INC., 508 6th Street, Grundy Center, IA 50638. Representative: Martha Martell, 600 Fifth Avenue Plaza, Des Moines, IA 50309. *Passengers and their baggage, in the same vehicle as passengers, in round-trip charter operations,* beginning and ending at pts in Blackhawk County, IA, and extending to pts in the U.S. (including AK, but excluding HI). Supporting shippers: Cedar Falls Chamber of Commerce, 10 Main Street, Cedar Falls, IA 50613; Sunnyside Temple, 3520 Ansborough, Waterloo, IA 50701.

MC 161646 (Sub-5–1TA), filed April 28, 1982. Applicant: JAMES PATTON, 1570 Tarberry, Houston, TX 77088. Representative: C. W. Ferebee, 3910 FM 1960 W. Suite 106, Houston, TX 77068. *Construction equipment, and parts and accessories thereof* between the facilities of Case Power and Equipment located in Houston and Alvin, TX, on the one hand, and points in OK, LA, and AR on the other hand. Supporting shipper: Case Power and Equipment, Houston, TX.

MC 161705 (Sub-5–1TA), filed April 28, 1982. Applicant: JIM MARCUM, INC., Rt. 1, Box 67, Fordland, MO 65652. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. (1) *Bananas* from Gulfport, MS and Galveston, TX to points in AR, MO, and KS; and (2) *meat and meat products* from Waterloo and Cedar Rapids, IA, Marshall, MO, Dakota City, NE, and Amarillo, TX to Baton Rouge, LA. Supporting shippers: Groover Fruit Company, Box 3184, Glenstone Station, Springfield, MO 65808; Castle & Cooke Foods, P.O. Box 8743, Metairie, LA 70011; Associated Wholesale Grocery, 3201 Division Street, Springfield, MO 65808; Amanda Brothers, P.O. Box 3374, Baton Rouge, LA 70821.

MC 161767 (Sub-5–1TA), filed April 30, 1982. Applicant: BOBBY SMITH BROKERAGE, INC., P.O. Box 7026, Fort Worth, TX 76111. Representative: (same address as applicant). *Frozen foods* between points in WA, ID, CA, UT, on the one hand, and, on the other, points in KS, OK, TX, AR, LA, and NM. Supporting shipper: The Lemmons Co., Inc., Dallas, TX.

MC 161768 (Sub-5–1TA), filed April 30, 1982. Applicant: HOLMAN-MARRS, INC., P.O. Box 6821, Moore, OK 73153. Representative: Trent Holman (same as above). *Motors, tools, and drilling jars in shipments not to exceed 20,000 pounds per shipment,* between Moore, OK on the one hand, and, on the other, points in AR, CA, CO, IL, IN, KS, LA, MI, MO, MS, NM, TX and WY. Supporting shipper: Baker International Services, Tool Division (Drilling Motors), 120 N.E. 27, Moore, OK.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 159777 (Sub-6–1TA), filed April 22, 1982. Applicant: CAR-DEL, INC., d.b.a. AABCO, INC., P.O.B. 16112, Sacramento, CA 95816. Representative: John F. Parks, III (same as applicant). *Contract Carrier,* Irregular Route: *Such commodities as are dealt with or used by mail order houses* from railyards in Oakland, San Jose, and Richmond, CA to all points in CA, and to Reno, NV and all points within a 50 air-mile radius of Reno, NV for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Spiegel's Corporation, 1515 West 22nd Street, Oak Brook, IL 60521.

MC 153713 (Sub-6–2TA), filed April 26, 1982. Applicant: ADAMS DELIVERY SERVICE, INC., 600 Montague St., San Leandro, CA 94577. Representative: Marshall G. Berol, 601 California St., Suite 1900, San Francisco, CA 94108. *Contract carrier,* Irregular route, *medical supplies and equipment, drugs, and sundries,* between points in Santa Clara County, CA, on the one hand, and, on the other, points in NV, for 270 days. Supporting shipper: Travenol Laboratories, Inc., 569 Charcot Ave., San Jose, CA 95131.

MC 161687 (Sub-6–1TA), filed April 28, 1982. Applicant: JAMES B. DEGEN, 6983 London Drive, Eureka, CA 95501. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract carrier,* irregular routes, *such commodities as are dealt in by distributors, retailers and wholesalers of lumber and building materials,* between CA, AZ, ID, MT, NV, OR, UT, WA, NM and TX for the account of Schaller Forest Products, Marquart Wolfe Lumber Company and Noble Lumber Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Schaller Forest Products, Co., P.O. Box "N", Redding, CA 96099; Marquart Wolfe Lumber Company, P.O. Box 127, Tustin, CA 92680; Noble Lumber Company, P.O. Box "P", San Rafael, CA 94903.

MC 160977 (Sub-6–1TA), filed April 23, 1982. Applicant: MAX R. GOULD, 205 W. Main, Teton, ID 83451. Representative: J. D. Hancock, P.O. Box 427, Rexburg, ID 83440. (1) *Coal* from and to all points in ID, UT, MT, WY, and WA; and (2) *fertilizer,* between all points in ID, UT, MT, WY, and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 5 shippers. Their statements may be examined at the Regional office listed above.

MC 161701 (Sub-6–1TA), filed April 27, 1982. Applicant: INTERNATIONAL LIQUID TRANSPORT, INC., 18261 Colville St., Fountain Valley, CA 92708. Representative: Donald B. Dixon (same as applicant). *Alcoholic beverages, liquors and wine, juice and juice concentrates, tallows and yellow greases, and alcohol and distilled spirits used in manufacture, production or distillation of the above named commodities in bulk* between Ports of Entry on the International Boundary Line between the U.S. and the Republic of Mexico located in CA and TX and points in CA and TX on the one hand, and, on the other, points in CA, AZ, OR, WA, NM, TX, UT, ID, KS, PA, IL, NY, NJ, IA, LA, MN, KY, OH, WI and from point in NM to points in AZ and TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 supporting shippers. Their statements may be examined in the Regional Office listed.

MC 159678 (Sub-6–1TA), filed April 26, 1982. Applicant: K–K JR. TRUCKING, A

DIVISION OF K–K JR. ENTERPRISES, 14286 Catalina St., San Leandro, CA 94577. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract Carrier,* Iregular routes, *magazines, magazine paper, scrap or waste paper for recycling, materials and supplies used in the operation and production of printing and publishing plants (except in bulk) and commodities manufactured, used, and dealt in by the printing industry (except in bulk),* between Los Angeles, CA and San Francisco, CA, on the one hand, and Albequerque, NM, Boise, ID, Butte, MT, Coeur D' Alene, ID, Craig, CO, El Paso, TX, Laramie, WY, Las Vegas, NV, Phoenix, AZ, Portland, OR, Reno, NV, Salt Lake City, UT, Seattle, WA, Spokane, WA and Tucson, AZ, for the account of Pacific Press, Inc., Division of Arcata Graphics, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pacific Press, Inc., Division of Arcata Graphics, 5201 S. Soto St., Vernon, CA 90058.

MC 161707 (Sub-6–1TA), filed April 27, 1982. Applicant: MONTY PETERSEN, d.b.a. PETERSEN TRUCKING, 3909 South 7th West, Missoula, MT 59801. Representative: William E. O'Leary, 4G Arcade Building, Helena, MT 59601. Transporting *heavy machinery, equipment* and *supplies* (including logging, mining and construction machinery, equipment and supplies dismantled or otherwise), between points in: MT, WA, OR, ID, WY, ND, SD, UT, CO, AZ, NV, IL, WI, CA, and MN, for 270 days. Supporting shippers: There are 5 supporting shippers. Their statements may be examined in the regional office listed.

MC 34227 (Sub-6–5TA), filed April 27, 1982. Applicant: PACIFIC INLAND TRANSPORTATION COMPANY, 15810 E. Colfax Ave., Denver, CO 80011. Representative: Steven K. Kuhlmann, Ste. 2800, Petro-Lewis Tower, 717 17th St., Denver, CO 80202. *Contract carriage,* irregular routes: Glassware, from Lancaster and Columbus, OH and their commerical zones to points in the U.S. (except AK and HI), restricted to a transportation service to be provided under contract(s) with Simon Marketing, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Simon Marketing, Inc., 1379 Logan Circle, NW, Atlanta, GA 30318.

MC 133172 (Sub-6–1TA), filed April 27, 1982. Applicant: GREAT SOUTHWEST WAREHOUSES, INC., d.b.a. SEATTLE TRANSFER & STORAGE, E. 108 Jackson, Spokane, WA 99207. Representative: James E. Wallingford, POB 2647, Spokane, WA 99220. *General Commodities* (excluding Type A & B explosives, and bulk commodities) between points in ID, MT, OR, and WA; for a period of 270 days: Supporting shippers: Trailer Train, 82 S. Massachusetts, Seattle, WA; Allied Van Lines, P.O.B. 4403, Chicago, IL 60680; Pudget Sound Traffic Association, P.O.B. 68927, Seattle, WA; and ITOFCA, INC., P.O.B. 88924, Tukwila, WA 98188.

MC 158657 (Sub-6–2TA), filed April 27, 1982. Applicant: PATRICK A. BARRETT, d.b.a. SHAMROCK ENTERPRISES, 2540 Gail Dr., Riverside, CA 92509. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. *Petroleum products,* in packages, from Compton, CA to Reno and Las Vegas, NV; El Paso, TX; Salt Lake City and Roosevelt, UT; Rock Springs and Sheridan, WY; Phoenix and Tucson, AZ; Denver, CO; Boise and Pocatello, ID; Glendive, Billings, Butte, Great Falls, Helena and Missoula, MT; Williston and Minot, ND; and Farmington and Albuquerque, NM, for 270 days. Supporting shipper: Mouren Laurens Oil Co., Inc., 641 E. Compton Blvd., Compton, CA 90220.

MC 161656 (Sub-6–1TA), filed April 23, 1982. Applicant: WILLIAM R. WOFFORD, d.b.a. WOFFORD TRUCKING COMPANY, P.O.B. 1078, Walden, CO 80480. Representative: Nancy P. Bigbee, 745 E. 18th Ave., #101, Denver, CO 80203. *Crude oil* from Grand, Jackson, Routt, and Moffat Counties, CO to Laramie and Sweetwater Counties, WY; for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Quality Exploration Incorporated, 3545 E. 51st Street, Suite 24, Tulsa, OK 74135; Lemmon Drilling, P.O.B. 772981, Steamboat Springs, CO 80477; and Jackson County Limited Partnership, Box 617, Walden, CO 80480.

MC 161740 (Sub-6–1TA), filed April 28, 1982. Applicant: DALE BYBEE, d.b.a. 4–D TRUCKING, P.O.B. 65, Preston, ID 83263. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Pet foods and materials and supplies used in the manufacture thereof,* from Ogden, UT to points in ID, OR and WA, for the account of American Nutrition, Inc., for 270 days. Supporting shipper: American Nutrition, Inc., P.O.B. 1405, Ogden, UT 84402.

MC 161742 (Sub-6–1TA), filed April 28, 1982. Applicant: D. FERBER TRUCKING LTD., #202—201—16 Ave. N.E., Calgary, Alberta, T2G 1J9. Representative: Murray K. Mullen, P.O.B. 8984 Stn. F, Calgary, Alberta, T2J 5S8. *Contract Carrier,* irregular routes: *Non-Alcoholic Beverages,* from points on the International Boundary line between CD and the U.S. located in MT, to points in CA under a continuing contract(s) with Renoir Water Multinational Ltd., of Calgary, AB, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Renoir Water Multinational Ltd., of #3—3640—26th St. N.E., Calgary, Alberta T1Y 4T7.

MC 161741 (Sub-6–1TA), filed April 29, 1982. Applicant: DONALD HOLLANDSWORTH, 1150 Carriage Lane, Casper, WY. Representative: Donald Hollandsworth (same as applicant). *Machinery, material, equipment and supplies* used in, or *in connection with* the *discovery, development, production, refining, manufacturing, processing, storage transmission and distribution of natural gas and petroleum and their products* and *by products.* Between points in WY, TX, OK, ND, SD, MT, CO, NM, AZ, UT, ID, NV, CA, WA, for 270 days. Supporting shippers: There are 7 supporting shippers. Their statements may be examined in the Regional office listed.

MC 161725 (Sub-6–1TA), filed April 28, 1982. Applicant: LAR-CO EXPRESS, 10803 Los Jardines E., Fountain Valley, CA 90278. Representative: Lawrence J. Exe (same as applicant). *Contract Carrier:* Irregular Routes, (1) *General Commodities* (except classes A and B explosives). Between the commercial zone of Los Angeles, CA, Maricopa County, Tucson, and Bagdad, AZ; Portland, OR, Seattle, and Tacoma, WA, and between points in the U.S., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Lawi/CSA Consolidators, Inc., 5610 So. Soto St., Hunt-ngton Park, CA 90255.

MC 133545 (Sub-6–1TA), filed April 28, 1982. Applicant: LEMONS HOUSE MOVING, INC., 1250 Houston Rd., Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Buildings, prefabricated and building materials,* from the facilities, of The Boise Co., at or near Laurel, MT to points in ND, for 270 days. Supporting shipper: The Boise Co., P.O.B. 8358, Boise, ID 83707.

MC 161721 (Sub-6–1TA), filed April 28, 1982. Applicant: JOHN S. POCOCK AND RALPH R. POCOCK, d.b.a. POCOCK FARMS, Route 1, Sugar City, ID 83448. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Chemicals and fertilizers,* from points in UT and WA to points in ID, south of the southern boundary of Idaho County, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: J. R. Simplot Co., P.O.B. 27, Boise, ID 83701.

MC 144108 (Sub-6–1TA), filed April 29, 1982. Applicant: RELIABLE CARTAGE, INC., 5100 Amelia Earhart Dr., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O.B. 2465, Salt Lake City, UT 84110. *Contract Carrier,* Irregular routes: *General commodities* (except household goods, commodities in bulk and Classes A and B explosives), between points in the U.S. (except AK and HI), for the account of Facet Automotive Filter Company of Salt Lake City, UT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Facet Automotive Filter Company, 1900 South 3480 West, Salt Lake City, UT 84104.

MC 161528 (Sub-6–1TA), filed April 29, 1982. Applicant: T.O.S.M. TRUCKING, INC., 306 Lone Pine Drive, Navajo, NM 87328. Representative: Steve Maynerich, 305 Valentina Drive, Gallup, NM 87301. *Contract Carrier,* Irregular routes: *Lumber, and lumber products,* between Navajo, NM and points in AZ, CO, NM, and TX, for the account of Navajo Forests Products, Ind., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Navajo Forest Products Ind., P.O. Box 1280, Navajo, NM 87328.

MC 126327 (Sub-6–10TA), filed April 29, 1982. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Santa Clara, CA 95050. Representative: William J. Monheim, P.O. B. 1756, Whittier, CA 90609, 213/945–2745. *General commodities* (except commodities in bulk, Classes A and B explosives, hazardous waste and household goods), between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. There are 115 statements in support attached to this application which may be examined at the Regional Office listed.

MC 161739 (Sub-6–1TA), filed April 29, 1982. Applicant: WILLS FREIGHT LINE, INC., 1700 West Grand Ave., Oakland, CA 94623. Representative: Armand Karp, 743 San Simeon, Dr., Concord, CA 94518. *Contract Carrier,* Irregular routes: *Electrical machinery, equipment or supplies, and materials, equipment and supplies used in the manufacture, distribution and sale thereof,* between Oakland, CA and points in the counties of Alameda, Contra Costa, Fresno, Madera, Marin, Merced, Monterey, Napa, Placer, Sacramento, San Benito, San Francisco, San Joaquin, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Yolo and Yuba, all in CA, for the account of General Electric Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: General Electric Company, 5420 East 12th St., Oakland, CA 94601.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12577 Filed 5–7–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–9449 appearing on page 15168 in the issue of Thursday, April 8, 1982, make the following correction.

On page 15169, third column, second complete paragraph, "MC–149400 (Sub-2)" the states MD and MO were reversed in lines 11 and 13. As corrected those lines should read:

"bulk), between points in *MD,* on the one hand, and, on the other, points in MI, *MO,* KS, and IA.".

BILLING CODE 1505–01–M

[Ex Parte No. MC–82 (Sub-No. 4)]

New Procedures in Motor Carrier Revenue Proceedings—Inclusion of Niagara Frontier Tariff Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final decision.

SUMMARY: In a decision in this proceeding published at 46 FR 62959 (December 29, 1981), the Commission adopted cost justification procedures for Niagara Frontier Tariff Bureau, Inc. The Commission provided that, unless it received comments which warranted reconsideration of the procedures, the decision would become effective February 12, 1982. No comments were received. Therefore, the Commission's December 29, 1981, decision became effective February 12, 1982.

FOR FURTHER INFORMATION CONTACT: Jane Mackall (202) 275–7656 or Raymond Hobbs (202) 275–6780.

Dated: April 30, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12574 Filed 5–7–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-318N)]

Rail Carriers; Conrail Abandonment Between Bayard and Fairhope, OH; Notice of Findings

Correction

In FR Doc. 82–9760 appearing on page 15667 in the issue of Monday, April 12, 1982, make the following correction:

On page 15667, third column, in the last line of the page, "$71,352" should have read "$741,352".

BILLING CODE 1505–01–M

[Docket No. AB–167 (Sub-273N)]

Rail Carriers; Conrail Abandonment Between Williams & Clark and End of Track, NJ; Notice of Findings

Correction

In FR Doc. 82–9602 appearing on page 15434 in the issue for Friday, April 9, 1982 please make the following correction:

In the second paragraph, in the second line, "$19,412" should have read "$91,412".

BILLING CODE 1505–01–M

[EX Parte No. 387 (Sub-126]

Railroads; Texas Mexican Railroad Co., Exemption for Contract Tariff ICC–TM–C–14

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirement of 49 U.S.C. 10713(e) and may file this contract traiff on one day's notice. This exemption may be revoked if protests are filed wihtin 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7656.

SUPPLEMENTARY INFORMATION: The Texas Mexican Railroad Company (TM) filed on April 20, 1982, a petition for exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests we permit contract tariff ICC–TM–C–14 to become effective on one day's notice. The contract provides allowances to the shipper on carloads of iron or steel billets, rods or wire rods. The contract was filed with the Commission on April 16, 1982 with a schedule effective date of May 24, 1982.

Under 49 U.S.C. 10713(e) contracts must be filed to become effective on not

less than 30 nor more than 60 days' notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under section 10505 exemption authority in exceptional situations.

The petition shall be granted. As a result of the contract, the rail contract shipper will more promptly receive allowances on these export movements permitting the carrier to ship greater volumes on a more consistent basis. This is the type of exceptional or emergency situation which warrants an exception. We thus conclude that authorization of a provisional exemption is warranted and the contract may become effective on on day's notice.

We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding, on its own initiative or on complaint, to review this contract and to disapprove it.

Subect to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking these exemptions under 49 U.S.C. 10105(c) if protests are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Dated: April 29, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12575 Filed 5-7-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-207N)]

Rail Carriers; Conrail Abandonment Between E. Longbranch and Branchport, NJ; Notice of Findings

Correction

In FR Doc. 82-9121 appearing on page 14799 in the issue for Tuesday, April 6, 1982, please make the following correction:

In the last paragraph of the document, in the second line, "$71,950" should have been $171,950".

BILLING CODE 1505-01-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

In accordance with Pub. L. 94-463, the Board of Trustees of the American Folklife Center announces its meeting to be held on Saturday, June 5, 1982, in the Whittall Pavilion of the Library of Congress from 9:30 a.m. to 5:00 p.m. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Eleanor Sreb, American Folklife Center, (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publication, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has begun energetically to carry out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 82-12606 Filed 5-7-82; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), as amended notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, May 24 and 25, 1982. The meeting will be held in Rooms 416 and B-100, Page Building 1, 2001 Wisconsin Avenue, NW., Washington, D.C.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations and State and local government, was established by Congress by Public Law 95-63, on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, or reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, May 24, 1982 (Room 416)

9:00 a.m.-12:30 p.m.—Plenary
9:00 a.m.-9:30 a.m.—Swear-In Ceremony for New Member: Edward N. Gladish, Manager, Land Services, Champlin Petroleum, Co., CA
9:30 a.m.-12:30 p.m.—Review and Approval of Fisheries Panel Report
12:30 p.m.-1:30 p.m.—Lunch
1:30 p.m.-4:30 p.m.—(To Be Announced)
4:30 p.m.—Recess

Tuesday, May 25, 1982

8:00 a.m.-9:30 a.m.—Panel meeting
- OCS Revenue Sharing

Topic: Review Proposed Legislation and Refine Position
9:30 a.m.-12:30 p.m.—Plenary
9:30 a.m.-11:30 a.m.—Adm. John B. Hayes, Commandant, U.S.C.G
11:30 a.m.-12:30 p.m.—To Be Announced
12:30 p.m.-1:30 p.m.—Lunch
1:30 p.m.-3:00 p.m.—Plenary
- Review of Action Items

OCS Revenue Sharing Position for Testimony
Ocean Satellites Initiative
Annual Report Review
3:00 p.m.—Adjourn Regular Meeting
3:00 p.m.-6:00 p.m.—Panel Meeting
- Marine Minerals Chairman: Burt Keenan (Room 416)

Topic: Work Session—Draft Report
6:00 p.m.—Recess

Wednesday, May 26, 1982

9:00 a.m.-1:00 p.m.—Panel meeting continued
- Marine Minerals Chairman: Burt Keenan (Room B-100)

Topic: Work Session—Draft Report
1:00 p.m.—Adjourn.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting.

The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235.

Dated: May 5, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82-12817 Filed 5-7-82; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted to OMB for Review

In accordance with the Paperwork Reduction Act and OMB guidelines, NSF is posting this notice of recordkeeping requirements that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-7580.

Title: Survey of Individual Demographic Characteristics in Systematic Biology (Phase Two)—Revision.

OMB No.: 3145-0089.

OMB Officer: Anita Ducca (202) 395-7340. This report is non-recurring.

Affected public: Systematic Biologists.

Number of responses: 10,000; total number of hours: 33,000 hrs.

This data system, which is unavailable from any other source provides demographic information on the individual researcher in the systematic community. These data will help in the planning and evaluation of long-term programs and give insight into the upcoming generation of systematic biologists and their goals, education, and needs.

Herman G. Fleming,

Clearance Officer.

[FR Doc. 82-12825 Filed 5-7-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN-50-528-OL; STN-50-529-OL; STN-50-530-OL]

Arizona Public Service Co.; et al.; Resumption of Hearing

May 5, 1982.

In the Matter of Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3 Operating License Proceeding), Docket Nos. STN-50-528-OL; STN-50-529-OL; STN-50-530-OL.

The evidentiary hearing in the above identified proceeding will resume on May 25, 1982 at 9:00 a.m., local time, in Courtroom 2 of the Federal Building, 230 N. First Avenue, Phoenix, Arizona 85025.

It is so ordered.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 82-12861 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8355]

AMAX Inc.; Negative Declaration Regarding Storage of Contaminated Soil Under License

The U.S. Nuclear Regulatory Commission (the Commission) is considering licensing AMAX Inc., to stabilize and store soil contaminated with source material at a site in Wood County, West Virginia. The low-level contamination resulted from past zirconium ore processing operations at the site. AMAX Inc. has proposed to collect and move all soil contaminated above acceptable limits to a central area on the site and to stabilize the wastes under a clay cap designed to reduce water infiltration, prohibit dispersal of solid radioactive particulates into air and to limit any radon or thoron emissions. The stabilized material would remain in storage under a license issued by the Commission to AMAX Inc.

The Commission's Division of Fuel Cycle and Material Safety has prepared an environmental impact appraisal for the proposed contaminated soil stabilization and storage actions. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed actions would not be significant and does not warrant the preparation of an environmental impact statement, and, accordingly, it has been determined that a negative declaration is appropriate. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 3rd day of May, 1982.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 82-12859 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 63 to facility Operating License No. DPR-25 issued to Commonwealth Edison Company, which revised the License and Technical Specifications for operation of the Dresden Nuclear Power Station Unit 3 located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The changes to the License and Technical Specifications support Cyle 8 operation of the facility using reload fuel supplied by, and the associated analyses performed by the Exxon Nuclear Company. Previous plant operation utilized fuel and analyses provided by the General Electric Company.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 11, 1982, (2) Amendment No. 63 to License No. DPR-25, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room,

1717 H Street NW. Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of April 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-12857 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Fort Calhoun Station, Unit No. 1; Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit No. 1 (the facility), located in Washington County, Nebraska.

In accordance with the licensee's application for amendment dated March 12, 1982, the amendment would permit the expansion of the facility's spent fuel storage capacity. This expansion will be accomplished by replacing the existing spent fuel storage racks, which have a capacity for 483 fuel assemblies, with new storage racks which will have a capacity for approximately 728 fuel assemblies.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 9, 1982, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (In Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: (petitioner's name and telephone number); (date petition was mailed); (Fort Calhoun); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to LeBoef, Lamb, Leiby and Mac Rae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, attorneys for licensee. Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 12, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska, 68102.

Dated at Bethesda, Maryland, this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-12058 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued revisions to two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by

the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 19, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 19, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. These two guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 3rd day of May 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-12800 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

State of Colorado; Discontinuance of Certain Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with State of Colorado.

SUMMARY: Notice is hereby given that on March 30, 1982, the Honorable Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission, and that on April 20, 1982, the Honorable Richard D. Lamm, Governor of the State of Colorado, signed an Amendment to the existing section 274b. Agreement between NRC and the State of Colorado pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. The amendment permits the State to continue to regulate byproduct material as defined in section 11e.(2) of the Act (uranium mill tailings) in conformance with the requirements of section 274o. of the Act.

The proposed Amendment to the existing section 274b. Agreement was published in the Federal Register for public comment for four consecutive weeks beginning October 14, 1981 (46 FR 50628–50632). A minor change to the introductory text was made to conform the Amendment to the requirements of the "Stratton-Schmitt" amendment (Pub. L. 97–88). The amended agreement was modified to delete the following paragraph:

Whereas, it is necessary to enter into this amendment in order to implement new requirements of Section 274 of the Act which become fully effective on November 8, 1981; and,

Public Law 97–88 makes it clear that such an amended agreement is not "necessary" for the State to continue to regulate uranium mill tailings after November 8, 1981. The following was inserted in its place:

Whereas, the Governor of the State has requested this amendment in accordance with Section 274 of the Act; and.

The Amendment is published in accordance with the requirements of Public Law 86–373. A copy of the consolidated version of the Agreement is available at the Office of State Programs.

FOR FURTHER INFORMATION CONTACT: John R. McGrath, Office of State Programs, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Phone: (301) 492–9889.

SUPPLEMENTARY INFORMATION:

Amendment to Agreement Between the United States Nuclear Regulatory Commission and State of Colorado for Discontinuance Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Atomic Energy Commission [1] (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of January 16, 1968) with the State of Colorado under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on February 1, 1968, and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State has requested this amendment in accordance with section 274 of the Act; and

Whereas, the Commission found on March 1, 1982, that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of January 16, 1968, is amended by adding "as defined in section 11e.(1) of the Act;" after the words "byproduct materials" in paragraph A., by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in section 11e.(2) of the Act;".

Section 2. Article II of the Agreement of January 16, 1968, is amended by inserting "A." before the words "This agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Nothwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable

[1] Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are now carried out by the Nuclear Regulatory Commission as of January 19, 1975.

standards and requirements pertaining to such material have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site:

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b. of this Article, but such use of land transferred to the State may be made only with the concurrence of the State;

"d. The authority to require the Secretary of the Department of Energy, other Federal Agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

"e. The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.".

Section 3. Article III of the Agreement of January 16, 1968, is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

Section 4. Article VII of the Agreement of January 16, 1968, is amended by inserting "all or part of" after the words "terminate or suspend," by inserting "(1)" after the words "finds that," and by adding at the end before the period the following:

", or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with the provisions of section 274 of the Act.".

Section 5. Article VIII of the Agreement of January 16, 1968, is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

"In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long term surveillance or maintenance of such material,

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site.".

This amendment shall become effective on April 20, 1982, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Denver, State of Colorado, in triplicate, this 20th day of April 1982.

For the State Of Colorado.

Richard D. Lamm,

Governor.

Done at Washington, District of Columbia, in triplicate, this 30th day of March 1982.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 4th day of May, 1982.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 82-12059 Filed 5-7-82; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A82-10; Order No. 432]

Oceana Station, Virginia Beach, Virginia 23453 (T. J. Hutchings, Jr., Petitioner); Filing of Appeal

May 4, 1982.

On April 12, 1982, the Commission received a letter from T. J. Hutchings, Jr. (hereinafter "Petitioner"), concerning alleged United States Postal Service plans to close the Oceana station in Virginia Beach. Following a response from the Secretary of the Commission, Petitioner sent a second letter, with a copy of the Postal Service's notice that it had decided to close the Oceana Station permanently. Although the letters make no explicit reference to the Postal Reorganization Act, we believe they should be construed as a petition for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)), so as to preserve Petitioner's right to appeal which is subject to a 30-day time limit.[1] However, section 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.[2]

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "ensure that such persons will have an opportunity to present their views".[3] The petitions request that the decision to close the Oceana station be reconsidered. The April 10, 1982, petition states that the alternative postal station suffers from inconvenient parking and overcrowding. The petition also states the alternative facility would be a hardship for the elderly. From the face of the petition it is unclear whether any hearings were held and whether a determination has been made in

[1] 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

[2] 39 CFR 3001.1.

[3] 39 U.S.C. 404(b)(1).

accordance with 39 U.S.C. 404(b)(3). The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[4]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.

Upon preliminary inspection, the petition appears to raise the following issues of law:

1. Whether the Postal Service's actions with regard to the Oceana station in Virginia Beach, Virginia must comply with the requirements of 39 U.S.C. 404(b).

2. Whether the Postal Service considered the change the closing would cause in the community's use of the postal services under the effect on postal service factor, section 404(b)(2)(C).

The first issue, whether a closing of the Oceana station is a consolidation or closing of a post office within the meaning of 39 U.S.C. 404(b), is a threshold question which should be addressed at an early stage in this proceeding. Therefore, we are requesting the Postal Service to file, within 20 days of the issuance of this Order, a memorandum on this subject. The Postal Service is to serve Petitioner with a copy of the memorandum. In the interests of procedural fairness and administrative efficiency, we will modify the usual schedule for the filing of the Petitioner's brief so that it is due after the Postal Service is to file its memorandum rather than 30 days after the petition is filed.

[4] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in Lone Grove, Texas, *et al.*, Docket Nos. A79–1, *et al.* (May 7, 1979), and the Commission's subsequent decisions on appeals of post office closings and consolidations. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserve the right to request a legal memorandum from the Service in addition to the one requested previously in this Order on one or more of the issues described above and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the determination and record pursuant to section 113 of the rules of practice (39 CFR 3001.113) make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioner by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution in appropriate circumstances, the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in Section 404(b) cases, and none is being appointed. The Commission orders that:

(A) The letters of April 12 and 28, 1982, from T. J. Hutchings, Jr. be construed as a petition for review pursuant to Section 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register**.

(C) The Postal Service shall file a memorandum by May 24, 1982, on whether 39 U.S.C. 404(b) is applicable to the action of the Postal Service complained of in the petition.

By the Commission.

David F. Harris,

Secretary.

Appendix

April 12, 1982—Filing of Petition.
May 4, 1982—Notice and Order of Filing of Appeal.
May 14, 1982—Filing of Record by Postal Service (*see* 39 CFR 3001.113(a)).
May 14, 1982—Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
May 24, 1982—Filing of Postal Service's legal memorandum.
June 14, 1982—Petitioner's initial brief (*see* 39 CFR 3001.115(a)).
June 29, 1982—Postal Service answering brief (*see* 39 CFR 3001.115(a)).
July 14, 1982—(1) Petitioner's reply brief, should petitioner choose to file such brief (*see* 39 CFR 3001.115(c)).
(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
August 20, 1982—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 82–12569 Filed 5–7–82; 8:45 am]
BILLING CODE 7715–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–5207]

Capital-Management Services, Inc.; Filing an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR 107.701(1981)) for transfer of ownership and control of Capital-Management Services, Inc., 1910 North Grant, Suite 200, Little Rock, Arkansas 72201, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Capital-Management Services, Inc., which was licensed March 14, 1979, is subject to the prior written approval of SBA.

During the course of the Board of Directors' meeting of September 24, 1981, an informal agreement was made between Mr. David & Linda Hale and the other stockholders, whereby Mr. & Mrs. Hale would purchase their stock, with the exception of Mr. Carter Dennis, and the ownership of the Licensee's stock to be as follows:

Name	Office	Percent of ownership
David L. Hale	President	66.75
Carter Dennis	Stockholder	25.00
Linda Sue Hale	Assistant Secretary	8.25

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners and management, and the probability of successful operations of the company under this management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is given that any person may, not later than May 25, 1982, submit written comments on the proposed transfer of ownership and control to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Little Rock, Arkansas.

Dated: May 3, 1982.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-12008 Filed 5-7-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0163]

First Ohio Capital Corp.; Issuance of a Small Business Investment Company License

On January 27, 1982, a notice was published in the **Federal Register** (47 FR 1228) stating that an application has been filed by First Ohio Capital Corporation 606 Madison Avenue, Toledo, Ohio 43604, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)) for a license as a small business investment company.

Interested parties were given until close of business February 11, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0163 to First Ohio Capital Corporation to operate as a small business investment company.

Dated: April 29, 1982.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-12009 Filed 5-7-82; 8:45 am]

BILLING CODE 8025-01-M

[SBLC No. 03/B-0024]

Gulf American SBL, Inc.; Filing of Application for Eligibility Determination as a Small Business Lending Company

An Application for Eligibility Determination as a Small Business Lending Company has been filed by Gulf American SBL, Inc. (Applicant), 659 Jenks Avenue, P.O. Box 2062, Panama City, Florida 32401, with the Small Business Administration pursuant to § 120.4(b) of the SBA Regulations (13 CFR 120.4(b) (1981)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations. It will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Florida and will commence operation with minimum capitalization of $1,000,000, which will be raised through the sale of 100% of its common shares to Gulf American Financial Corporation, 659 Jenks Avenue, P.O. Box 2062, Panama City, Florida 32401. Gulf American Financial Corporation was formed on March 30, 1981, for the primary purpose of engaging in lending, financing, and other related commercial and financial activities. It is a controlled subsidiary of H. G. Harders and Son, Inc., 5521 East Highway 98, Panama City, Florida 32401, which will own 80% of Gulf American Financial Corporation's common shares.

The Officers and Directors of the Applicant as well as the parent are:

William E. Welliver, 604 Bunkers Cove Road, Panama City, Florida 32401—President and Director
Ryan D. Tennyson, 4623 North Shore Road, Lynn Haven, Florida 32444—Vice President and Director
Fred M. Webb, 4605 North Shore Road, Lynn Haven, Florida 32401—Director
Randolph T. McInvale, 4510 Aster Street, Panama City, Florida 32401—Director
John B. Jinks, 100 Cherry Street, Unit #4, Panama City, Florida 32401—Director
Donald R. Crisp, 731 Driftwood Drive, Lynn Haven, Florida 32444—Director
Julian Bennett, 8127 West 30th Court, Panama City, Florida 32405—Director
Lydia L. Frein, 5618 S. Lagoon Drive, Panama City Beach, Florida 32401—Director
J. Paul Padgett, 6506 Minneola Street, Panama City, Florida 32401—Director
John Christo, III, 808 W. 39th Court, Panama City, Florida 32401—Director
Girard L. Clemons, Jr., 518 Bunkers Cove Road, Panama City, Florida 32401—Director

The Applicant intends to initially conduct its operations in the State of Florida and sell in the Secondary Market the SBA's guaranteed portion of loans made to small business concerns.

Matters involved in SBA's consideration of the Application include the general business reputation and character of management, and the probability of successful operation of the corporation under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than May 25, 1982 submit to SBA written comments on the proposed Applicant and/or its management. Any such communications should be addressed to: Wayne S. Foren, Director, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Panama City, Florida, as well as in the Eastern Regional Edition of the *Wall Street Journal.*

Dated: April 30, 1982.

(Catalogue of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-12010 Filed 5-7-82; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Import Relief on Prepared or Preserved Mushrooms: Request for Public Comment on Retention or Termination of Relief for Canned and Frozen Mushrooms Broiled in Butter or in Butter Sauce

By Presidential Proclamation 4801 of October 29, 1980, the President provided for increase for 3 years in the duty on

imports of prepared or preserved mushrooms provided for in item 144.20 of the Tariff Schedules of the United States (TSUS). That proclamation implemented the President's determination, under section 202(b) of the Trade Act of 1974 (the Act) (19 U.S.C. 2252(b)), which was contained in a Memorandum from the President to the United States Trade Representative dated October 17, 1980.

By Presidential Proclamation 4904 of February 27, 1982, the President provided for the termination of import relief with respect to certain wild specialty mushrooms valued at over $1.60 per pound and to certain whole oriental mushrooms in retail-size containers. That proclamation implemented the President's determination pursuant to section 203(h)(4) of the Act (19 U.S.C. 2253(h)(4)).

At the request of the United States Trade Representative, the International Trade Commission (the Commission) instituted an investigation on December 29, 1981, in order to advise the President with respect to (1) developments in the mushroom industry since import relief became effective, and (2) the probable economic effect on the domestic mushroom industry of exempting canned and frozen mushrooms broiled in butter or in butter sauce (buttered mushrooms) from the import relief duties currently in place. In the report of their findings, dated April 15, 1982 (Report to the President, Investigation No. TA–203–10), the Commission advises that termination of the import relief for buttered mushrooms would have an adverse economic effect on the domestic industry concerned.

The Trade Policy Staff Committee (TPSC) must prepare a recommendation to the United States Trade Representative concerning what action, if any, he should advise the President to take. To assist the TPSC in developing that recommendation, interested persons are invited to submit written views on the advice given on buttered mushrooms in the Commission's April 15 report.

Comments should be submitted to the Secretary, Trade Policy Staff Committee, Room 500, 600 17th Street, NW., Washington, D.C. 20506. Submissions must be received no later than close of business May 21, 1982. For further information, call Robert Simpson on 202–395–5008. Legal questions should be directed to Alice Zalik on 202–395–3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 82–12987 Filed 5–7–82; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82–048]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC). TSAC advises the Commandant on rulemaking matters related to shallow draft inland and coastal waterway navigation and towing safety.

Nine (9) members will be appointed as follows: Five (5) members from the barge and towing industry, reflecting a geographical balance; one (1) member from port districts, authorities or terminal operators; one (1) member from maritime labor; and two (2) members of the general public, preferably those with environmental backgrounds. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is particularly interested in receiving applications from minorities and women. The committee will meet at lease once per year at a location selected by the sponsor.

DATE: Requests for applications should be received no later than June 24, 1982.

ADDRESS: Persons interested in applying should write to: Commandant (G–CMC/44), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR A.D. UTARA, Executive Secretary, Towing Safety Advisory Committee (G–CMC), Room 4402, U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426–1477.

Dated: May 5, 1982.

A. D. Utara,

Commander, USCG, Regulations Officer.

[FR Doc. 82–12989 Filed 5–7–82; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 82–87]

Reimbursable Services—Excess Cost of Preclearance Operations

May 5, 1982.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning May 16, 1982.

Installation	Biweekly excess cost
Montreal, Canada	[illegible]
Toronto, Canada	31,294
Kindley Field, Bermuda	6,577
Nassau, Bahama Islands	18,682
Vancouver, Canada	14,151
Winnipeg, Canada	1,722
Freeport, Bahama Islands	[illegible]
Calgary, Canada	[illegible]
Edmonton, Canada	5,013

Jack T. Lacy,

Comptroller.

[FR Doc. 82–12855 Filed 5–7–82; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in room 817 at the Veterans Administration Central Office, 810 Vermont Avnue, NW, Washington, DC, on May 20 and 21, 1982. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research Education and Clinical Centers established by the Department of Medicine and Surgery.

The sessions on May 20 will be open to the public from 8:30 a.m. to 12 noon and will be closed from 1 p.m. to 4:30 p.m. The sessions on May 21 will be closed from 8:30 a.m. to 12 noon and open to the public from 1 p.m. to

conclusion. Because seating capacity of the meeting room is limited, it will be necessary for those wishing to attend the open sessions to contact Mrs. Barbara Pryor, Executive Secretary, Geriatrics and Gerontology Advisory Committee, Veterans Administration Central Office (phone 202–389–2298) prior to May 12, 1982.

The two sessions will be closed since they involve discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents in connection with the committee's evaluation of the Geriatric Research Education and Clinical Centers. The discussion and recommendations will deal with qualifications of personnel conducting these studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. Closure of the meeting is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(6) and (9)(B).

The appearance of this notice in the **Federal Register** at least 15 calendar days prior to the meeting date has been hindered due to administrative delays within the agency.

Dated: May 5, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82–12580 Filed 5–7–82; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 47, No. 90
Monday, May 10, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 13, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. *Summary:* The Commission is soliciting public comments, through a series of documents in this proceeding (Docket 80-739), on national implementation of the Final Acts of the 1979 World Administrative Radio Conference. This Notice of Inquiry considers the technical standards for transmitters authorized by the Commission.

General—2—*Title:* Notice of Proposed Rulemaking to expand the frequencies available for use by Aural broadcast STL and Intercity relay stations. *Summary:* The Commission will consider the merits of RM-2897, filed by the National Association of Broadcasters (NAB), to reallocate the 942-947 MHz band back to the Broadcast Auxiliary Service and RM-3246, filed by Moseley Associates, Inc., to use unassigned UHF-TV channels for Broadcast Auxiliary Service. Additionally, the Commission will consider the merits of sharing the 2130-2150 MHz and 2180-2200 MHz bands, presently allocated to the Private Operational-Fixed Microwave Service, with the Broadcast Auxiliary Service.

General—3—*Title:* An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing it. *Summary:* This proceeding requests public comment concerning Commission preparation for a World Administrative Radio Conference on the use of the geostationary-satellite orbit and the planning of the space service utilizing it. The Conference will be held in two sessions in 1985 and in 1987. This item before the Commission is the second Notice in this proceeding. It provides objectives, principles and other guidance for U.S. preparations in the development of the Commission's recommendations for U.S. proposals.

General—4—*Title:* Amendment of Parts 2, 21, 87 and 90 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems for the Provision of Digital Communications Services. *Summary:* The Commission considers petitions for reconsideration of the First Report and Order in Docket 79-186, which request modification of technical standards for digital termination systems (DTS) and of policy, procedural, and legal matters relating to the use of DTS in the Digital Electronic Message Service.

Private Radio—1—*Title:* In the Matter of Amendment of Section 90.555(b) of the Commission's Rules to provide for Geographic Reallocation of certain channels in the Detroit area to the Business Radio Service—PR Docket No. 81-1, RM-3368. *Summary:* The FCC has before it for consideration disposition of its proceeding in Docket No. 81-1 to amend Part 90 of the Commission's Rule to provide for geographic reallocation from other private land mobile radio services to the Business Radio Service of all channels in the bands 150-174 MHz and 450-470 MHz in the Detroit area which show both zero-measured use and no licensees authorized to use them.

Common Carrier—1—*Title:* Application of Williamsport Mobile Telephone Company for review of the Common Carrier Bureau's grant of the application of Buffalo Valley Telephone Company, File No. 21754-CD-P-81. *Summary:* The Commission will consider the Application for Review filed by Williamsport Mobile Telephone Company (WMTC) challenging the Common Carrier Bureau's grant of the application of Buffalo Valley Telephone Company for a one-way frequency in Union, Pennsylvania. WMTC has argued that Buffalo Valley's application failed to adequately demonstrate need, was incomplete in regard to required information, and unjustifiably requested a waiver of certain Commission Rules. WMTC has also challenged the Mobile Services Division's authority to act upon contested applications.

Common Carrier—2—*Title:* Alfred C. Cordon, Jr., *Summary:* The Commission will consider whether to reconsider its declaratory ruling in *Alfred C. Cordon, Jr.*, 80 FCC 2d 328 (1980), which ruled that applications in the Domestic Public Land Mobile Radio Service (DPLMRS) will be returned if the applicant has been denied state certification and the state appeal process has been exhausted. The Commission will also consider whether the Common Carrier Bureau properly returned applications filed by Radio and Communication Consultants, Inc. for DPLMRS stations at Shreveport, Louisiana, pursuant to the Commission's *Cordon* ruling.

Common Carrier—3—*Title:* Comsat's participation in the provision of ship earth station equipment. *Summary:* Memorandum Opinion and Order: (1) severing the ship earth station issue from the other issues raised in the Notice of Proposed Rulemaking in CC Docket No. 80-634 (see Communications Satellite Corporation, 81 FCC 2d 287 (1980); and (2) addressing the issue of whether applicable law and policy prohibit COMSAT General TeleSystems, Inc., a Comsat subsidiary, from supplying ship earth station terminal equipment for use in the INMARSAT global maritime satellite system. The issue was raised when COMSAT General notified the Commission of the intent to engage in such activities, and was addressed in comments filed in the CC Docket No. 80-634 rulemaking proceeding.

Renewal—1—*Title:* License Renewal Applications of Dena Pictures, Inc. and Alexander Broadcasting Company, a joint venture d/b/a Kaye-Smith Enterprises for Stations KJRB and KEZE-FM, Spokane, Washington; KISW(FM), Seattle, Washington; and KXL(AM) and KXL-FM, Portland, Oregon and Applications for Assignment of Licenses of the above referenced stations from Kaye-Smith Enterprises to Alexander Broadcasting Company. *Summary:* The Commission will consider a petition to deny and informal objections to the renewal and assignment of licenses of the above stations filed by Vincent L. Hoffart.

Renewal—2—*Title:* Competing Applications of Dena Pictures, Inc. and Alexander Broadcasting Company, a joint venture d/b/a Kaye-Smith Enterprises for renewal of license of Station KISW(FM), Seattle, Washington, and Vincent L. Hoffart d/b/a/ Hoffart Broadcasting for a construction permit. *Summary:* The Commission will consider designating the Kaye-Smith and Hoffart applications for hearing in a consolidated proceeding.

Renewal—3—*Title:* "Petition for Review By Review Board" filed July 27, 1981 by Vincent L. Hoffart of denial of an informal objection to the assignment of licenses of Stations KCKN and KCKN-FM, Kansas City, Kansas. *Summary:* Vincent L. Hoffart seeks review by the Review Board of the denial of his informal objection to the assignment of licenses of Stations KCKN

and KCKN–FM, Kansas City, Kansas by the Broadcast Bureau. Denial was made pursuant to delegated authority on July 14, 1981.

Aural—1—*Title:* In re application of Soundamerica Corporation, licensee of WDWQ(FM), St. George, South Carolina. *Summary:* The Commission considers its action of January 15, 1982 granting the application by delegated authority and applications for review of that action filed by WEZL, Inc. and KTM Broadcasting, Inc., licensees of FM Stations WEZL and WKTM, Charleston and North Charleston, South Carolina, respectively.

Aural—2—*Title:* Seven applications for authority to operate the facilities of former stations WMOU(AM) and WXLQ(FM), Berlin, New Hampshire. *Summary:* The Commission considers the applications and a petition to denty two of them.

Television—1—Applications of Charleston, S.C. VHF television stations (WCBD, WCIV, WCSC, and WITV to make changes in their facilities; petitions to deny. *Summary:* The Commission will consider whether grant of the applications will have an impact on UHF stations in Columbia and Florence, S.C., which would adversely affect the public interest.

Broadcast—1—*Title:* Changes in the rules relating to non-commercial, educational FM broadcast stations. *Summary:* The Commission will consider a *Second Further Notice of Proposed Rule Making* which would address the unresolved issues in the Docket 20735 proceeding.

Broadcast—2—*Title:* Petitions for Reconsideration of Report and Order In the Matter of Petition for Rule Making to Amend the Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming. (Docket No. 20418—"VFH Drop-Ins".) *Summary:* Petitioners seek Commission reconsideration of its Report and Order in Docket 20418 either in whole or in part. The Memorandum Opinion and Order discusses and resolves the issues raised in those petitions.

Broadcast—3—*Title:* Amendment of Parts 2 and 73 of the Commission's AM broadcast rules with reference to the use of the AM carrier for utility load management purposes. *Summary:* On December 17, 1981, the Commission adopted a *Notice of Proposed Rule Making* (47 FR 1386, January 13, 1982) proposing to permit utility load management signals to be transmitted through the AM broadcast carrier as long as they do not degrade AM main channel broadcasting. This new authorization would allow expansion of energy management communication alternatives for utilities. The *Report and Order* discusses and resolves this issue.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 5, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–687–82 Filed 5–5–82; 3:06 pm]

BILLING CODE 6712–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, May 13, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1.—Application for Review of the Review Board Decision (88 FCC 2d 401) in the Sulphur Springs, Texas, FM comparative proceeding (Docket Nos. 80–60 and 80–61).

Hearing—2.—Application for Review in the Dale A. Owens, Beaverton, Oregon AM comparative proceeding (BC Docket Nos. 81–919, 81–920).

These items are closed to the public because they concern Adjudicatory Matters (See CFR 0.603(J)).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 5, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–686–82 Filed 5–6–82; 3:06 pm]

BILLING CODE 6712–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Meeting

May 5, 1982.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: May 12, 1982, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Washington, D.C. 20426 Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—749th Meeting, May 12, 1982, Regular Meeting (10 a.m.)

CAP–1. Project No. 2965–000, East Coast Energy Technology, Inc.; Project No. 3040–000, New Hampshire Water Resources Board; Project No. 3254–000, Concord Electric Co.

CAP–2. Project Nos. 4161–001, 4162–000, 4163–000 and 4164–000, Sierra Pacific Power Co.

CAP–3. Project Nos. 4008–000, 4008–001 and 4008–002, Long Lake Energy Crop.; Project No. 4938–000, Villiage of Ilion, New York

CAP–4. Project No. 5601–001, Oroville-Wyandotte Irrigation District

CAP–5. Project No. 3878–001, Gregory Wilcox; Project No. 5343–000, Montana Power Co.; Project No. 5375–000, Utah Power & Light Co.

CAP–6. Project No. 3344–000, Town of Gassaway, West Virginia; Project No. 3808–000, Old Dominion Electric Cooperative; Project No. 3929–000, Southeastern Renewable Resources, Inc., and the County of Braxton

CAP–7. Project No. 2629–000, the Village of Morrisville, Vermont

CAP–8. Project No. 5234–001, County of Calaveras, California

CAP–9. Project Nos. 67–000, and 2868–000, Southern California Edison Co.; Project No. 2904–000, Cities of Anaheim and Riverside, California

CAP–10. Project No. 3687–000, Tuolumne County Water District No. 2

CAP–11. Project No. 2866–000, the Metropolitan Sanitary District of Greater Chicago

CAP–12. Project No. 5586–001, Eda I. Brown

CAP–13. (A) Project No. 3568–001, Mitchell Energy Co., Inc.; Project No. 3952–000, Energenic Systems, Inc.; Project No. 4031–000, City of Peru, Illinois; Project No. 4038–000, Cities of Oglesby and Ladd, Illinois; Project No. 4447–000, Village of Winetaka, Illinois. (B) Project No. 3594–001, Mitchell Energy Co., Inc.; Project No. 4459–000, City of Marseilles, Illinois; Project No. 4499–000, Village of Winnetka, Illinois. (C) Project No. 3567–000, Mitchell Energy Co., Inc.; Project No. 3944–000, Village of Rockdale, Illinois; Project No. 4523–000, City of Joliet, Illinois; Project No. 4577–000, Commonwealth Edison Co.; Project No. 4571–000, Village of Winnetka, Illinois.

CAP–14. Docket No. ER82–257–001, Kansas Gas and Electric Co.

CAP–15. Docket No. ER82–301–000, Connecticut Light & Power Co.

CAP–16. Docket Nos. ER82–389–000 and ER82–80–000, Public Service Co., of Oklahoma

CAP–17. Docket No. ER82–404–000, Upper Peninsula Power Co.

CAP–18. Docket Nos. ER82–155–000, and ER82–188–000, Central Maine Power Co.

CAP–19. Docket Nos. ER76–304–005, ER76–317–001, ER76–498–001 and E–8641, New England Power Co.

CAP–20. Project No. 2861–000, Robert W. Shaw

CAP–21. Project No. 5358–002, Woods Creek, Inc.
CAP–22. Docket No. ER76–828–000, Nantahala Power and Light Co.; Docket No. EL78–18–000, Town of Highlands, North Carolina, et al., V. Nantahala Power and Light Co.
CAP–23. Project No. 2890–000, Kings River Conservation District

Consent Miscelleneous Agenda

CAM–1. Docket No. QF82–48–000, Nornev Demonstration Geothermal Co.
CAM–2. Docket No.QF82–80–000, Windfarms, Ltd., Small Power Production and Cogeneration Facilities—Qualifying Status
CAM–3. Docket No. RM79–76 (New Mexico—10), High-Cost Gas Produced From Tight Formations
CAM–4. Docket No. GP82–20–000, Public Service Co. of Okalahoma
CAM–5. Docket No. GP81–37–000, Northwest Pipeline Corp.
CAM–6. Docket No. GP81–27–000, Railroad Commission of Texas, Section 108 NGPA Determination, Gulf Oil Corp., Cap Yates Well No. 8 JD No. 79–17112
CAM–7. Docket No. GP80–96, State of Kansas, Section 108 NGPA Determination, Texaco Inc., Garden City Unit #1, JD No. 80–04002, Anderson-Shrier unit #1, JD No. 80–040006, Landgraf Unit #1, JD No. 80–04005
CAM–8. Docket Nos. RO81–4–000, RO81–6–000, RO81–7–000, RO81–9–000, RO81–11–000, RO81–12–000, RO81–13–000, RO81–14–000, RO81–15–000, RO81–16–000, RO81–17–000, RO81–19–000, RO81–21–000, RO81–22–000, RO81–23–000, RO81–24–000, RO81–25–000, RO81–26–000, RO81–27–000, RO81–28–000, RO81–29–000, RO81–30–000, RO81–31–000, RO81–32–000, RO81–33–000, RO81–34–000, RO81–35–000, RO81–38–000, RO81–39–000, RO81–40–000, RO81–41–000, RO81–42–000, RO81–43–000, RO81–45–000, RO81–46–000, RO81–48–000, RO81–49–000, RO81–50–000, RO81–51–000, RO81–52–000, Sunset Boulevard Car Wash; Docket No. RO81–56–000, Albert Torretta, Ye Old Pump House; Docket No. RO81–57–000, Bud Dietrich, d.b.a. Bud Dietrich's Orinda Shell; Docket No. RO81–58–000, George Cravines, d.b.a. Circle Service; Docket No. RO81–70–000, A. J. Ataie, d.b.a. Sycamore Shell; Docket No. RO81–71–000, Bob Oyster, d.b.a. Sharon Heights Shell; Docket No. RO82–1–000, Anthony N. Marrazzo, d.b.a. Sherwood Garden Chevron; Docket No. RO82–2–000, Richard Atkinson & John Galbraith, d.b.a. Alcatraz Mobil Service; Docket No. RO82–4–000, Ed Manz, d.b.a. A–1 Arco; Docket No. RO82–6–000, Gerald Bushman, d.b.a. Gerald Bushman Chervon; Docket No. RO82–7–000, Harvey Miller, d.b.a. Harv's Sacramento Car Wash; Docket No. RO82–8–000, Ben Sosbee's, d.b.a. Ben Sosbee's Chevron Service; Docket No. RO82–9–000, Bill Nelson, d.b.a. Nelson's Service Center, Inc.; Docket No. RO82–10–000, Jim Daniels, d.b.a. Jim's Texaco Service; Docket No. RO82–11–000, Howard De Rouen, d.b.a. Howard De Rouen Shell; Docket No. RO82–12–000, Jerry Bullard, d.b.a. Jerry Bullard's Chevron; Docket No. RO82–13–000, Don Skilling, d.b.a. Don Skilling Chevron Service; Docket No. RO82–14–000, Ed Forrester, d.b.a. Ed's Exxon; Docket No. RO82–21–000, Herbert Bailey, d.b.a. Aptos Shell; Docket No. RO82–22–000, Ken Betts, d.b.a. Bubble Machine; Docket No. RO82–23–000, Bud Adams, d.b.a. Bud's Exxon Service; Docket No. RO82–24–000, C. J. King, d.b.a. C. J. King Chevron; Docket No. RO82–25–000, Charles Sallas, d.b.a. Charlie's Exxon Service; Docket No. RO82–26–000, Roland K. Aronson, d.b.a. Crossroad Texaco; Docket No. RO82–27–000, Demitrius Montalvano, d.b.a. Dimitri's Arco; Docket No. RO82–28–000, Eugene Lew, d.b.a. Eugene's Chevron Service; Docket No. RO82–29–000, John J. Hughes Jr., d.b.a. Hughes Burlingame Shell; Docket No. RO82–30–000, Jerry Anderson, d.b.a. Jerry's Shell Service; Docket No. RO82–31–000, Young Kim, d.b.a. Kim's Mobil; Docket No. RO82–32–000, V. J. Haavisto, d.b.a. Mowry Chevron Service; Docket No. RO82–33–000, Vic Sosskian, d.b.a. Pacifica Shell Service; Docket No. RO82–34–000, Paul Provost, d.b.a. Paul Provost Chevron; Docket No. RO82–35–000, Bill Sandusky, d.b.a. Sandusky's Service; Docket No. RO82–36–000, Bud Tuite, d.b.a. Shelter Creek Chevron; Docket No. RO82–38–000, Charles Arivett, d.b.a. Skycrest Shell; Docket No. RO82–38–000, Jim Campbell d.b.a. Suds Machine Chevron; Docket No. RO82–39–000, Ed Neiman, d.b.a. Union Park Service
CAM–9. Docket No. RO81–72–000, Gray Goodnough d.b.a. Gateway Texaco

Consent Gas Agenda

CAG–1. Omitted
CAG–2. Omitted
CAG–3. Docket No. TA82–2–33–000 (PGA82–2, IPR82–2, AP82–2 & TT82–2), El Paso Natural Gas Co.
CAG–4. Docket No. TA82–2–42–002 (PGA82–2, IPR82–2), Transwestern Pipeline Co.
CAG–5. Docket No. RP80–72–007, Algonquin Gas Transmission Co.
CAG–6. Docket No. RP81–49–000, RP81–134–000, RP81–135–000 and RP82–5–000, Natural Gas Pipeline Co. of America
CAG–7. Docket Nos. ST81–260 and CP82–206, Mustang Fuel Corp.
CAG–8. Docket No. RI74–188–003, RI74–188–004 and RI75–21–002, Indepent Oil and Gas Association of West Virginia
CAG–9. Docket Nos. CI82–177–000 and CI82–185–001, Texama Production Co.; Docket No. CI82–201–001, the Superior Oil Co.; Docket No. CS71–658–001, A. R. Dillard, Jr. and Cobra Oil Gas & Gas Corp., A. R. Dillard, Jr., et al.; Docket No. CS75–470–002, TXO Production Corp., Tonkawa Gas Processing Co., and the Nueces Co. [Texas Oil & Gas Corp., Tonkawa Gas Processing Co. and the Nueces Co.; Docket No. CS78–543–001, Rockwood Resources, Inc. [Rockwood Oil & Gas Corp.] Rate Schedule No. 543, Exxon Corp.
CAG–10. Docket No. CS78–543–000, 001, Rockwood Resources, Inc.[Rockwood Oil & Gas Corp.]
CAG–11. Docket No. CP82–49–000, 001, Locust Ridge Gas Co.
CAG–12. Docket No. CP77–435–004, United Gas Pipeline Co.; Docket No. CP77–435–005, Transcontinental Gas Pipe Line Corp.
CAG–13. Omitted
CAG–14. Docket No. CP77–421–019, Transcontinental Gas Pipe Line Corp.; Docket Nos. CP77–321–003, CP78–241–003, CP79–73–002, Southern Natural Gas Co.
CAG–15. Docket No. CP81–518–000, Mountain Fuel Supply Corp.
CAG–16. Docket No. CP82–117–000, Texas Eastern Transmission Corp.
CAG–17. Docket No. CP82–81–000, Columbia Gas Transmission Corp.
CAG–18. Docket Nos. TA81–2–11–000 (PGA81–2, LFUT81–2) and TA82–1–11–000 (PGA82–1, IPR82–1, IPR82–1) (not consolidated), United Gas Pipe Line Co.
CAG–19. Docket No. TA82–1–4–000, Granite State Gas Transmission, Inc.

I. Licensed Project Matters

P–1. Reserved

II. Electric Rate Matters

ER–1. Docket No. ER82–225–001 and ER82–225–002, Resources Recovery (Date County), Inc.
ER–2. Omitted
ER–3. Omitted
ER–4. Docket No. ER81–388–000, et al., Virginia Electric and Power Co.
ER–5. Docket No. ER80–71–000, Central Illinois Public Service Co.
ER–6. Docket No. ER77–277–002 (Phase II), Pennsylvania Power Co.
ER–7. Docket No. ER77–347–000, Wisconsin Power & Light Co.
ER–8. (A) Docket No. EF80–2011–000 (Remand), U.S. Secretary of Energy, Bonneville Power Administration; (B) Docket Nos. EF81–2011–000 and EF81–2021–000, Bonneville Power Adminstration
ER–9. Docket No. EF81–5021–000, Western Area Power Administration
ER–10. Docket No. EL81–14–000, American Municipal Power-Ohio, Inc., and the City of St. Mary's, Ohio, v. The Dayton Power & Light Co.
ER–11. Omitted

Miscellaneous Agenda

M–1. Docket No. RM82–28–000, Extension of Filing Date Under Section 133 of PURPA
M–2. Omitted
M–3. Reserved
M–4. Reserved

Gas Agenda

I. Pipeline Rate Matters

RP–1. Omitted
RP–2. Docket No. TA81–2–17–002 (PGA81–2, IPR81–2, DCA81–2, LFUT81–3 and TT81–2), Texas Eastern Transmission Corp.
RP–3. Docket No. TA81–1–32–000, Colorado Interstate Gas Co.
RP–4. Omitted

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1. Docket No. CP74–192–005 (Remand), Florida Gas Transmission Co.
CP–2. Docket Nos. CP77–330–001, CP77–331–001 and CP77–270–001, El Paso Eastern Co.; Docket No. CP77–332–001, El Paso Natural Gas Co.; Docket No. CP77–269–001, El Paso LNG Terminal Co.; Docket No. CP77–271–001, United Gas Pipeline Co.
CP–3. Docket Nos. G–17370–001 and G–17371, the Montana Power Co.
CP–4. (A) Docket No. CP81–52–00–000, United Gas Pipeline Co.; (B) Docket No. CP81–99–000, Transwestern Pipeline Co.; (C) Docket No. CP81–496–000, Delhi Gas Pipeline Corp. and Houston Pipe Line Co.
CP–5. Docket No. CP80–346–000, Consolidated Gas Supply Corp. and Consolidated Gas Transmission Corp.
CP–6. Docket No. CP81–273–000, Cities Service Gas Co.
CP–7. Omitted
CP–8. Docket Nos. CP78–123, et al., Alaskan Northwest Natural Gas Transportation Co.
CP–9. Docket No. CP82–50–000, Natural Gas Pipeline Co. of America

Kenneth F. Plumb,

Secretary.

[S–683–82 Filed 5–6–82; 11:22 am]
BILLING CODE 6717–01–M

4

FEDERAL HOME LOAN BANK BOARD:

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 47, Page No. 19507, Date Published Wednesday, May 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 A.M., Thursday, May 6, 1982.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679)

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board Meeting.

Service Corporation Activity—Coast Federal Savings and Loan Association, Sarasota, Florida, Perpetual American Federal Savings and Loan Association, Washington, D.C., California Federal Savings and Loan Association, Los Angeles, California.

[No. 31, May 6, 1982]

[S–682–82 Filed 5–6–82; 9:47 am]
BILLING CODE 6725–01–M

5

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 6, 1982, 47 FR 19613.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: May 12, 1982, 9:00 A.M.

CHANGES IN THE MEETING: Additions of the following items to the closed session:

3. Docket No. 73–17; Sea-Land Service, Inc. and Gulf Puerto Rico Lines, Inc.—Proposed Rules on Containers and Docket No. 74–40: Puerto Rico Maritime Shipping Authority—Proposed ILA Rules on Containers—Consideration of remand from the court.

4. Docket No. 81–11: "50 Mile Container Rules" Implementation by Common Carriers by Water Serving the Atlantic and Gulf Coast Ports of the United States—Possible Violations of the Shippping Act, 1916, and of the Intercoastal Shipping Act, 1933—Consideration of procedural motions.

[S–684–82 Filed 5–6–82; 1:12 pm]
BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Friday, May 14, 1982

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried foward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204

Dated: May 6, 1982.

James McAfee,

Associate Secretary of the Board.

[S–689–82 Filed 5–6–82; 3:15 pm]
BILLING CODE 6210–01–M

7

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–12]

TIME AND DATE: 9 a.m., Tuesday, May 18, 1982

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594

STATUS: Open

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Ronson Aviation Bell 206B, (N27670) and Seminole Air Charter Piper PA–34–200T, (N811OR) Midair Collision, East Rutherford, New Jersey, September 23, 1982.

2. *Recommendation* to Federal Aviation Administration regarding pilot and air traffic control training.

3. *Aircraft Accident Report:* Sky Train Air, Inc., Gates Learjet 24, N44CJ, Felt, Oklahoma, October 1, 1981.

4. *Railroad Accident Report:* Side Collision and Derailment of Norfolk & Western Railway Company Trains Nos. 6B578, Yard Shifter, and 67HNP, Crewe, Virginia, November 28, 1981.

[S–685–82 Filed 5–6–82; 1:55 pm]
BILLING CODE 4910–58–M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–13]

TIME AND DATE: 9 a.m., Thursday, May 20, 1982.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: The first three items will be open to the public; the remainder will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Proposed Board Order:* Safety Studies Program.
2. Safety Studies Proposals.
3. *Brief of Aviation Accident:* U.S. Air Carrier, File No. 1–0015; Texas International Airlines, Baton Rouge, Louisiana, March 15, 1980.
4. *Opinion and Order:* Administrator v. Blackburn, Dkt. SE–5262; disposition of the appeals of both parties.
5. *Opinion and Order:* Administrator v. Garber, Dkt. SE–5252; disposition of respondent's appeal.
6. *Opinion and Order:* Administrator v. Honan, Dkt. SE–5192; disposition of respondent's appeal.

[S–666–82 Filed 5–6–82; 1:55 pm]

BILLING CODE 4910–58–M

V 4 7 / 9 0 C M Y 1 0 8 2 UMI

federal register

Monday
May 10, 1982

Part II

Department of Transportation

Coast Guard

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 153 and 154

[CGD 81-052]

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to revise the rules for self-propelled vessels carrying hazardous liquids and bulk liquefied gases. The proposed rule would make the examination and certification procedures for tankers carrying cargoes regulated under Subchapter O, regarding certain bulk dangerous cargoes, more consistent with those for other tankers. The proposed rule would accomplish this by rescinding the requirement for foreign flag tankers to obtain a Letter of Compliance to carry hazardous liquids or liquefied gases in United States waters.

The proposed rule also would reduce the amount of information the vessel owner must supply to Commandant (G-MHM) with the initial application. When an examination is required, the proposed rule would substitute a twenty-four hour advance notice to the local Officer in Charge, Marine Inspection, for the fourteen day advance notice to Commandnt (G-MHM) required under the present rules.

DATE: Comments must be received on or before August 9, 1982.

ADDRESS: Comments should be submitted to: Commandant (G-CMC/24) (CGD81-052), U.S. Coast Guard, Washington, D.C. 20593.

Between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/24), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Winston S. Jones, Office of Merchant Marine Safety (G-MHM/14), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202-426-1217).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD81-052), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. If an acknowledgment is desired, a stamped addressed postcard should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard discussed this rulemaking at a public meeting of the Chemical Transportation Advisory Committee (CTAC) which was held on October 8, 1981 at U.S. Coast Guard Headquarters, Washington, D.C. At this meeting the Coast Guard presented the objectives of this rulemaking, described the proposed changes to procedures for foreign flag tankers, and explained the benefits expected from it. Two questions were directed to the Coast Guard. The first concerned the length of the comment period. The Coast Guard explained it planned a ninety day comment period and questioned the committee about the adequacy of the ninety days. The members of CTAC made no conclusive comment on the adequacy of a ninety day comment period. The second question addressed the mechanics of the proposed examination procedures. The Coast Guard responded by describing in detail how the proposed rule would be implemented. The Coast Guard received no comments at this meeting which were incorporated into the proposed rule. A transcript of the meeting has been placed in the public docket and a tape recording is available from Commandant (G-CMC/24), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, D.C., 20593. No other public hearing is planned, but one will be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). The principal benefit of this rulemaking will be reduced vessel delays associated with examination arrangements; this is estimated to be 1.2 million dollars per year. Additional benefits will include an estimated 670 hour reduction in annual paperwork burden resulting in savings of $13,400 to the marine industry and of $13,000 to the Coast Guard. The Coast Guard expects this proposed rule to permit a reduction in supporting staff. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules, if promulgated, will not have a significant impact on a substantial number of small entities. We do not expect this rulemaking to impose any new costs on vessel owners and operators. The $1.2 million dollars per year benefits which will result from reduced vessel delays equals $2,400 per vessel per year which is 10 percent of one day's operating costs. Though beneficial, we do not consider the impact significant. A draft evaluation has been prepared and placed in the public docket.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Commander Winston S. Jones, Project Manager, Office of Merchant Marine Safety and Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulation

The Letter of Compliance program was developed when there were no international standards for chemical and liquefied gas tankers and when there was little operational experience with these types of vessels. At that time the Coast Guard performed complete plan review of foreign vessels carrying these cargoes and then examined the vessels to ensure they were built to the approved plans. Fourteen days' advance notice was required to arrange delivery of the approved plans to the inspecting office and to provide technical assistance from Coast Guard Headquarters. Adoption of the IMCO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, Resolution A.212, (Chemical Code) and the IMCO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, Resolution A.328, (Gas Code), which are similar to United States regulations, by most vessels' flag administrations has practically eliminated the need for Coast Guard plan review. In most cases review of vessel's IMCO Certificate of Fitness is all that is necessary to verify that the vessel is designed to U.S. standards. Consequently, the requirement to arrange the biennial examination through commandant (G-MHM) no longer serves its original purpose and is unnecessary.

This proposed rule would make the examination and certification procedures for chemical and liquefied gas tankers more consistent with those for other types of tankers. Procedures for foreign barges and existing liquefied gas tankers (currently in 46 CFR Part 154a) will be updated in future rulemakings. The special "Letter of Compliance" would no longer be required for chemical and new liquefied gas tankers. Under the proposed rules chemical and liquefied gas tankers would receive a "Certificate of Compliance" as required by the Port and Tanker Safety Act of 1978 for all foreign flag vessels carrying oil or hazardous materials in bulk. The Certificate of Compliance would include an endorsement listing the cargoes the vessel is authorized to carry. The basis for authorizing cargoes would be the initial application which would consist of the vessel's IMCO Certificate of Fitness and additional information required to verify compliance with U.S. standards which exceed the IMCO Codes; Commandant (G–MHM) would continue to review this material. Under the proposed rule the vessel owner would arrange vessel examinations directly with the Officer in Charge, Marine Inspection, having jurisdiction over the port where the examination is to be conducted. To facilitate the examination, the Officer in Charge, Marine Inspection, would be able to require the vessel owner to submit a basic set of plans prior to the examination; in most cases these would be the plans carried on board the vessel. Following satisfactory completion of the examination, the Officer in Charge, Marine Inspection, would issue the vessel a Certificate of Compliance to be valid for a period not to exceed twenty-four months. As with other foreign flag tankers, the Coast Guard would continue to examine a chemical or liquefied gas tanker annually, provided the vessel calls at a U.S. port at least that often.

Comments on Specific Sections

Section 1.01(b)(1) Organization. In the description of the duties of the Chief, Cargo and Hazardous Materials Division, the specific reference to the "Letter of Compliance program" would be replaced with the more general statement "* * * administers the program to certificate foreign vessels carrying cargoes of unusual hazard * * *."

In the following sections of Parts 153 and 154 the words "Letter of Compliance" have been replaced with "Certificate of Compliance."

Sec.
153.8
153.16
153.808
153.809
153.900
153.902
153.904
154.5
154.150
154.151
154.1802
154.1805
154.1805

Part 153, Authority:

The proposed rule would revise the authority cited for this part to reflect the increased authority granted to the Coast Guard to issue regulations for hazardous materials carried in bulk on vessels.

Section 153.2 Definitions. The definition of "Letter of Compliance" would be deleted. Two new definitions are proposed: "Certificate of Compliance," and "Officer in Charge, Marine Inspection." These definitions are necessary to clarify the procedures proposed in this rulemaking. A Certificate of Compliance form is presently being developed by the Coast Guard and will be implemented in a future rulemaking. The proposed definition of the term "Certificate of Compliance" would be broad enough to include a Tank Vessel Safety Examination Letter endorsed to certify compliance with the regulations in this chapter.

Section 153.7 Existing tankships. The proposed rule would add the Certificate of Compliance to the list of documents defined as "permits" under § 153.7(a)(1). The proposed rule would add a definition for "Letter of Compliance" which was the permit issued to a foreign tankship prior to December 27, 1977.

Section 153.9 Foreign flag vessel endorsement application. The proposed rule would simplify the application for a vessel whose flag administration issues IMCO certificates. In most cases the IMCO certificate itself would be sufficient to verify that the vessel is designed to comply with U.S. regulations. Since Commandant (G–MHM) no longer performs plan review and since the design of these vessels is reasonably standard, there is no need to maintain a set of plans at Coast Guard Headquarters. Plans carried onboard the vessel would be sufficient for inspectors to use during examinations. Submission of the IMCO Certificate to Commandant (G–MHM) is necessary to verify that the vessel is designed to U.S. standards and so that Commandant (G–MHM) can monitor the implementation of the IMCO Chemical Code in other nations.

For certain cargoes the proposed rule would require additional supporting statements in addition to the IMCO Certificate. An additional statement would be required for vessels which are to carry alkylene oxides. This statement would verify that the vessel complies with § 153.530 (b), (d), and (p)(1). It is needed because these standards exceed those in the IMCO Chemical Code. The Coast Guard in the past has requested this type of statement under § 153.9(c). An additional statement would also be required for vessels which are to carry high vapor pressure cargoes. This statement is needed to ensure that the vessel meets § 153.370 or § 153.371 and § 153.438. The Coast Guard standards in this case exceed those of IMCO by requiring, in the absence of cargo cooling, pressure containment; IMCO does not specifically require pressure containment.

The proposed rule would not change the application procedure for a vessel whose flag administration does not issue IMCO Certificates. Such vessels would continue to be accepted after Coast Guard plan review identical to that required for a U.S. flag vessel.

The proposed rule would renumber § 153.9(c) as § 153.9(c)(1). The proposed rule would add as § 153.9(c)(2) the requirement that IMCO Certificates be submitted in English or French.

Section 153.808 Examination required for a Certificate of Compliance. The proposed rule would clarify this section by explaining that the Officer in Charge, Marine Inspection, will determine during the examination whether or not the vessel meets the requirements of 46 CFR, and that the examination is required for both initial issue and reissue of the Certificate of Compliance.

Section 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance. Under the proposed procedure the vessel owner would arrange the required examination through the local Officer in Charge, Marine Inspection, by providing twenty-four hour notice of the vessel's arrival. The proposed rule adds a provision to allow the Officer in Charge, Marine Inspection, to require the owner to provide a basic set of plans prior to commencement of the examination so that the Coast Guard inspectors may familiarize themselves with the vessel before conducting the examination. These plans would be returned to the owner after the examination.

Under § 153.809(c) of the proposed rule fourteen day notice to Commandant (G–MHM) would be required for the initial examination of vessels accepted on the basis of plan review under § 153.9(b). This is necessary to allow for transmission of the approved plans to the examining office so that the Officer in Charge, Marine Inspection, can verify the vessel is built according to the approved design.

Section 153.810 Fourteen day notice required for a Letter of Compliance examination. The proposed rule would remove this section. Except in the situation described in § 153.809(c), fourteen day notice is not required under the proposed procedures.

Section 153.811 Carrying cargo in U.S. waters on the voyage for a Letter of Compliance examination. The proposed rule would remove this section because it is unnecessarily burdensome to require a vessel to sail to the United States for an examination without cargo on board.

Section 153.900 Certificates, letters, endorsements required. The proposed rule would delete the incorrect references to § 153.808 from § 153.900(b)(2) and § 153.900(c)(2).

Section 153.901 Certificates or letters required to be on bridge. The proposed rule would make this section consistent with § 31.05–5 and § 154.1804 by requiring only the Certificate of Inspection issued to a U.S. flag vessel to be posted in the wheel house.

Section 153.902 Expiration of Certificate of Compliance. The proposed rule would also substitute "twenty-four months" for "two years" to make the language of the rule consistent with the language in the Port and Tanker Safety Act of 1978. The proposed rule would delete the requirement for the Coast Guard to enter the expiration date on the Certificate of Compliance.

Section 153.903 Expiration of IMCO Certificates. The proposed rule would add this section to make it clear that the Certificate of Compliance endorsement to carry cargoes from Table I, issued under § 153.9(a), is based upon the presumption that the vessel possesses an IMCO Certificate. Since the IMCO Certificate is accepted by the Coast Guard in place of plan review, a current IMCO Certificate is needed to ensure that a vessel continues to meet United States standards. This situation is distinct from the expiration of the Cerificate of Compliance under § 153.902. When the IMCO Certificate expires only the carriage of Table I cargoes would be affected; the Certificate of Compliance would remain valid for carriage of other cargoes, such as flammable and combustible materials.

Part 154, Authority

The proposed rule would revise the authority cited for this part to reflect the increased authority granted to the Coast Guard to issue regulations for hazardous materials carried in bulk on vessels.

Section 154.3 Definitions and abbreviations. The proposed rule would delete the definition of "Letter of Compliance." Two new definitions are proposed: "Certificate of Compliance" and "Officer in Charge, Marine Inspection." These definitions are necessary to clarify the procedures proposed in this rulemaking. A Certificate of Compliance form is presently being developed by the Coast Guard and will be implemented in a future rulemaking. The proposed definition of the term "Certificate of Compliance" would be broad enough to include a Tank Vessel Safety Examination Letter endorsed to certify compliance with the regulations in this chapter.

Section 154.5 Foreign flag vessel: Certificate of Compliance endorsement application. The only change the proposed rule would make to the application is to delete the requirement for submission of SOLAS Certificates. Commandant (G–MHM) needs the other information required by § 154.5(a) (1) and (2) to verify that a vessel meets United States standards which exceed the IMCO Gas Code in the areas of design ambient temperatures, tank design stress factors, crack arresting steels, and pressure and temperature control. Commandant (G–MHM) needs the plan set described by § 154.5(a) (3) through (8) to ensure that foreign administrations do not unilaterally accept novel liquefied gas containment system designs under one of the categories presently described in the IMCO Gas Code. The Coast Guard intends to continue its program of conceptual approval of new liquefied gas containment systems. Because of the wide variety of liquefied gas containment system designs, the plan set is also needed by Commandant (G–MHM) and (G–MMT) to provide technical assistance to Coast Guard field units. Since this additional information would normally be required for liquefied gas tankers, footnote 1 would be removed.

The proposed rule would not change the application procedure for a vessel whose flag administration does not issue IMCO Certificates. Such vessels would continue to be accepted after Coast Guard plan review identical to that required for U.S. flag vessels.

Section 154.150 Examination required for a Certificate of Compliance. The proposed rule would revise this section to make it clear that the examination to which this section refers is required if a vessel is to carry a cargo from Table 4 of 46 CFR 154. The proposed rule would also explicitly state that it is Officer in Charge, Marine Inspection, who conducts the examination and that the examination is required for both initial issue and reissue of the Certificate of Compliance.

Section 154.151 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance. Under the proposed procedure the vessel owner would arrange the required examination through the local Officer in Charge, Marine Inspection, by providing twenty-four hour notice of the vessel's arrival. The proposed rule would add a provision to allow the Officer in Charge, Marine Inspection, to require the owner to provide a general arrangement plan, showing the location of fire and safety equipment, and a cargo manual prior to commencement of the examination so that the Coast Guard inspectors can familiarize themselves with the vessel. These materials would be returned to the owner after the examination.

Under § 154.151(c) of the proposed rule, fourteen day notification to Commandant (G–MHM) would still be required for the initial examination of vessels accepted on the basis of plan review under § 154.5(b). This is necessary to allow for transmission of the approved plans to the examining office so that the Officer in Charge, Marine Inspection, can verify that the vessel is built according to the approved design.

Section 154.152 Notification of arrival for a Letter of Compliance examination. The proposed rule would remove this section. Except in the situation described in § 154.5(c), fourteen day notice is not required under the proposed procedure.

Section 154.153 Carrying a cargo into U.S. waters for a Letter of Compliance examination. The proposed rule would remove this section because it is unnecessarily burdensome to require a vessel to sail to the United States for an examination without cargo on board.

Section 154.1802 Certificates, letters, and endorsements: Foreign flag vessels. The proposed rule would remove the references to § 154.153 which would be removed.

Section 154.1803 Expiration of Certificate of Compliance. To make the language of this section consistent with that of the Port and Tanker Safety Act of 1978, the proposed rule would substitute "twenty-four months" for "two years." The proposed rule would delete the requirement for the Coast Guard to enter the expiration date on the Certificate of Compliance.

The proposed rule would add a subsection to make it clear that the Certificate of Compliance endorsement to carry cargoes from Table 4, issued under § 154.5(a), is based upon the presumption that the vessel possesses

an IMCO Certificate. Since the IMCO Certificate is accepted by the Coast Guard is place of plan review, a current certificate is needed to ensure that a vessel continues to meet U.S. standards. This situation is distinct from the expiration of the Certificate of Compliance under § 154.1803(a). When the IMCO Certificate expires only the carriage of Table 4 cargoes would be affected; the Certificate of Compliance could remain valid for carriage of other cargoes.

For the foregoing reasons, Chapter I of Title 46, Code of Federal Regulations is proposed to be amended as follows:

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies).

46 CFR Part 153

Tank vessels, Barges, Hazardous materials transportation.

46 CFR Part 154

Natural gas vessels, Gases, Hazardous materials transportation, Marine safety, Foreign trade, Harbors.

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

1. By revising § 1.01(b)(1)(iv) to read as follows:

§ 1.01 Organization.

* * * * *

(b) * * *

(1) * * *

(iv) The Chief, Cargo and Hazardous Materials Division, at Coast Guard Headquarters, under the direction of the Chief, Office of Merchant Marine Safety, administers the program for the development of safe containment systems for certain bulk dangerous cargoes, administers the program to certificate foreign vessels carrying cargoes of unusual hazard, and evaluates the hazards involved in the shipment of dangerous cargoes.

PART 153—SAFETY RULES FOR SELF-PROPELLED VESSELS CARRYING HAZARDOUS LIQUIDS

2. By revising the authority citation for Part 153 to read as follows:

Authority: 46 USC 391a, 49 USC 1801–11; 49 CFR 1.46 (n)(4) and (t).

§ 153.2 [Amended]

3. By removing the definition for "Letter of Compliance" from § 153.2.

4. By amending § 153.2 by adding in alphabetical sequence the following definitions:

"Certificate of Compliance" means a certificate issued by the Coast Guard which certifies that a foreign flag vessel has been examined and found to comply with the regulations in this chapter.

* * * * *

"Officer in Charge, Marine Inspection," is defined in § 1.05(b) of this chapter.

5. By revising § 153.7(a)(1) and adding a new paragraph (a)(3) to read as follows:

§ 153.7 Existing tankships.

(a) * * *

(1) "Permit" means a Certificate of Inspection, Letter of Compliance, or Certificate of Compliance.

(2) * * *

(3) "Letter of Compliance" means a letter formerly issued by the Coast guard which permitted a foreign flag tankership to carry a bulk cargo regulated under this part.

6. By revising § 153.9(a), the introductory text of (b), and (c) to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) *Application for a vessel whose flag administration issues IMCO Certificates.* A person who desires a Certificate of Compliance endorsed with the name of a cargo in Table I of this part, as described in § 153.900, must submit to Commandant (G–MHM) an application which includes a copy of the IMCO Certificate [2] issued by the vessel's flag administration with:

(1) If a person desires a Certificate of Compliance endorsed with the name of an alkylene oxide, and additional classification society statement that the vessel complies with § 153.530 (b), (d), and (p)(1); and

(2) If a person desires a Certificate of Compliance endorsed with the name of a cargo whose vapor pressure exceeds 100 kPa absolute at 37.8°C (approximately 14.7 psia at 100°F), an additional classification society statement that the vessel complies with § 153.370, § 153.371, and § 153.438.

(b) *Application for a vessel whose flag administration does not issue IMCO Certificate.* A person who desires a Certificate of Compliance endorsed with the name of a cargo in Table I of this part, as described in § 153.900, must submit an application to Commandant (G–MHM) which includes the following information:

* * * * *

(c) *Conditions applying to all Certificate of Compliance applications.*

(1) If requested by the Commandant (G–MHM), a person desiring a Certificate of Compliance for a vessel must furnish any other vessel information such as plans, design calculations, test results, certificates, and manufacturer's data, that the Coast Guard needs to determine that the vessel meets the standards of this part.

(2) Correspondence with the Coast Guard and vessel information submitted under this part must be in English except IMCO Certificates which may be in French.

7. By revising the introductory text of § 153.16 to read as follows:

§ 153.16 Requirements for foreign flag vessel permits.

To have its Certificate of Compliance endorsed with the name of a cargo listed in Table I, a foreign flag vessel must:

* * * * *

8. By revising § 153.808 to read as follows:

§ 153.808 Examination required for a Certificate of Compliance.

Before a vessel receives either an initial or a reissued Certificate of Compliance endorsed with the name of a cargo from Table I of this part, the vessel must call at a U.S. port for an examination during which the Officer in Charge, Marine Inspection, will determine whether or not the vessel meets the requirements of this chapter.

9. By revising the introductory text, (b) and (c) of § 153.809 to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

To have the Coast Guard examine the vessel for a Certificate of Compliance, as required in § 153.808, the owner of a foreign flag vessel must proceed as follows:

* * * * *

(b) Except when paragraph (c) of this section applies,

(1) After receiving notification that review is complete and the application is acceptable, dispatch the vessel to a United States port;

(2) Contact the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least 24 hours before the vessel arrives and

[2] Generally, the IMCO Certificate is sufficient for the Coast Guard to endorse the vessel's Certificate of Compliance with the names of those cargoes in Table I that are listed on the IMCO Certificate. The IMCO Certificate would not be sufficient when the Certificate authorized a cargo that is not permitted in U.S. waters, when the Certificate is in error or waives part of the Code, when the regulations in this part exceed those of the Code, or similar situations.

arrange the exact time and other details of the examination;

(3) If requested by the Officer in Charge, Marine Inspection, the vessel owner shall provide the following plans before the examination required by § 153.808:

(i) A general arrangement (including the location of firefighting, safety, and lifesaving gear);

(ii) A capacity plan;

(iii) A schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(iv) A schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

These plans will be used to facilitate the required examination and will be returned when it is completed.

(c) If the vessel was accepted for U.S. service on the basis of the Coast Guard plan review under § 153.9(b), the vessel owner shall notify Commandant (G–MHM) fourteen days prior to the vessel's first arrival at a U.S. port. This notification must include:

(1) The name of the vessel's first U.S. port of call;

(2) The date the vessel is scheduled to arrive;

(3) The name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in Table I of this part that will be on board the vessel.

§ 153.810 [Removed]

10. By removing § 153.810.

§ 153.811 [Removed]

11. By removing § 153.811.

12. By revising § 153.900 (b) (1) and (2) and (c) (1) and (2) to read as follows:

§ 153.900 Certificates, letters, endorsements required.

* * * * *

(b) * * *

(1) An IMCO Certificate issued by the flag administration and a Certificate of Compliance issued and endorsed under this part with the name of the cargo; or

(2) Prior written authorization under § 153.5(b) from the Commandant (G–MHM).

(c) * * *

(1) A Certificate of Compliance issued and endorsed under this part with the name of the cargo; or

(2) Written authorization under § 153.5(b) from the Commandant (G–MHM).

13. By revising 153.901 to read as follows:

§ 153.901 Certificates or letters required to be on bridge.

No person may operate a U.S. flag tankship unless the endorsed Certificate of Inspection is posted in a conspicious place in the wheelhouse.

14. By revising § 153.902 to read as follows:

§ 153.902 Expiration of Certificates of Compliance.

A Certificate of Compliance expires after a period not to exceed twenty-four months from the date of examination under § 153.808.

15. By adding a new § 153.903 to read as follows:

§ 153.903 Expiration of IMCO Certificates.

If a vessel's IMCO Certificate expires or otherwise becomes invalid, its Certificate of Compliance becomes invalid for the carriage of cargoes listed in Table I of this part. To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of any revised or reissued IMCO Certificate to Commandant (G–MHM).

16. By revising § 153.904 to read as follows:

§ 153.904 Limitations in the endorsement.

No person may operate a tankship unless that person complies with all limitations in the endorsement on the tankship's Certificate of Inspection or Certificate of Compliance.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

17. By revising the authority citation for Part 154 to read as follows:

Authority: 46 U.S.C. 391a, 49 U.S.C. 1801–11; 49 CFR 1.46 (n)(4) and (t).

§ 154.3 [Amended]

18. By removing the definition of "Letter of Compliance" from § 154.3.

19. By amending § 154.3 by adding in alphabetical sequence the following definitions:

"Certificate of Compliance," means a certificate issued by the Coast Guard which certifies that a foreign flag vessel has been examined and found to comply with the regulations in this chapter.

* * * * *

"Officer in Charge, Marine Inspection," is defined in § 1.05(b) of this chapter.

20. By revising the introductory text of paragraph (a), (a)(9), (b) and (c) of § 154.5 to read as follows:

§ 154.5 Foreign flag vessel: Certificate of Compliance endorsement application.

(a) A person who desires an endorsed Certificate of Compliance required under § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMCO Certificates, must submit to the Commandant (G–MHM). U.S. Coast Guard, Washington, D.C. 20659, an application which includes a copy of the IMCO Certificate issued to the vessel with:

* * * * *

(9) Any additional plans, certificates, and information that the Commandant (G–MHM) may request.

(b) A person who desires an endorsed Certificate of Compliance required under § 154.1802(b) for a foreign flag vessel, whose flag administration does not issue IMCO Certificates, must submit to the Commandant (G–MHM) the plans, calculations, and information under § 154.4(b).

(c) Correspondence to the Coast Guard and vessel information submitted under this part must be in English, except IMCO Certificates which may be in French.

21. By removing footnote 1 to § 154.5.

22. By revising the center heading preceding § 154.150 to read as follows:

Examination Requirements for Foreign Flag Vessels.

23. By revising § 154.150 to read as follows:

§ 154.150 Examination required for a Certificate of Compliance.

Before a vessel receives an initial or reissued Certificate of Compliance endorsed with the name of a cargo from Table 4 of this part, the vessel must call at a United States port for an examination, during which the Officer in Charge, Marine Inspection, will determine whether or not the vessel meets the requirements of this chapter.

24. By revising § 154.151 to read as follows:

§ 154.151 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

To have the Coast Guard examine the vessel for a Certificate of Compliance, as required in § 154.150, the owner of a foreign flag vessel must proceed as follows:

(a) After submitting an application under § 154.5, await notification by the Commandant (G–MHM) that review of the vessel's plans or IMCO Certificate and supporting documents is complete.

(b) Exept when paragraph (c) of this section applies,

(1) After receiving notification that review is complete and the application is acceptable, dispatch the vessel to a United States port;

(2) Contact the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least 24 hours before the vessel arrives and arrange the exact time and other details of the examination; and

(3) If requested by the Officer in Charge, Marine Inspection, the vessel owner shall provide the following information before the examination required by § 154.150:

(i) A general arrangement (including the location of firefighting, safety, and lifesaving gear); and

(ii) The cargo manual required by § 154.1810.

This information will be used to facilitate the examination and will be returned after it is completed.

(c) If the vessel was accepted for U.S. service on the basis of Coast Guard plan review under § 154.5(b), the vessel owner must notify Commandant (G–MHM) fourteen days prior to the vessel's first arrival at a U.S. port. This notification shall include:

(1) The name of the vessel's first U.S. port of call;

(2) The date the vessel is scheduled to arrive;

(3) the name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in Table 4 of this part which will be on board the vessel.

§ 154.152 [Removed]

25. By removing § 154.152.

§ 154.153 [Removed]

26. By removing § 154.153.

27. By revising § 154.1802 (a)(1), (a)(2), (b)(1) and (b)(2) to read as follows:

§ 154.1802 Certificates, letters, and endorsements: Foreign flag vessels.

(a) * * *

(1) An IMCO Certificate issued by the flag administration that is endorsed with the name of the cargo that it is allowed to carry, and a Certificate of Compliance issued by the Coast Guard Endorsed under this part with the name of the cargo that it is allowed to carry; or

(2) Special approval under § 154.12.

(b)* * *

(1) A Certificate of Compliance issued by the Coast Guard endorsed under this part with the name of the cargo it is allowed to carry; or

(2) Special approval under § 154.12.

* * * * *

28. By revising § 154.1803 to read as follows:

§ 154.1803 Expiration of Certificates of Compliance.

(a) A Certificate of Compliance expires after a period not to exceed twenty-four months from the date of the examination under § 154.150.

(b) If a vessel's IMCO Certificate of Fitness expires or otherwise becomes invalid, its Certificate of Compliance becomes invalid for the carriage of cargoes listed in this part. To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of any revised or reissued IMCO Certificate to Commandant (G–MHM).

29. By revising § 154.1808 to read as follows:

§ 154.1808 Limitations in the endorsement.

No person may operate a vessel unless that person complies with all limitations in the endorsement on the vessel's Certificate of Inspection or Certificate of Compliance.

Clyde T. Lusk, Jr.,

Rear Admiral, Coast Guard Chief, Office of Merchant Marine Safety.

May 3, 1982.

[FR Doc. 82–12384 Filed 5–7–82; 8:45 am]

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Monday
May 10, 1982

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Comprehensive Outpatient Rehabilitation Facility Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 481

Medicare Program; Comprehensive Outpatient Rehabilitation Facility Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would implement section 933 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) by expanding the scope of benefits under Medicare to include services furnished by comprehensive outpatient rehabilitation facilities. The purpose of this proposal is to define comprehensive outpatient rehabilitation facility services, to specify the conditions under which these services may be furnished, and to establish the conditions of participation that these facilities must meet to be certified as provided of services in the Medicare program.

DATE: To assure consideration, comments should be mailed by July 9, 1982.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–145–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave, S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT:

Anthony Lovecchio (Coverage of Services) (301) 594–8561
Royal Crystal (Conditions of Participation) (301) 594–7910
John Callahan (Reimbursement) (301) 594–8480

SUPPLEMENTARY INFORMATION:

I. Background

Under current law, Medicare covers certain rehabilitation services in a variety of settings under the Supplementary Medical Insurance Program (Part B). Such services are included among those that may be covered when furnished "incident to" a physician's professional services, as authorized in sections 1832(a)(1) and 1861(s)(2) of the Social Security Act and in regulations at 42 CFR 405.231(b). For example, an individual may receive physical therapy as an integral, although incidental, part of a physician's professional service in the course of treatment of an injury. The service will be covered if it is furnished by the physician or under the physician's direct supervision. Section 1861(s)(2)(B) of the Act also provides coverage of rehabilitiation services when provided incident to physicians' services furnished to hospital outpatients. This provision is set forth in regulations at 42 CFR 405.231(c).

In addition, coverage of outpatient physical therapy and outpatient speech pathology is authorized by sections 1832(a)(2)(C) and 1861(p) of the Act when furnished by a provider of services, clinic, rehabilitation agency, public health agency, or by others under an arrangement with these entities. Under the second sentence of section 1861(p) of the Act, outpatient physical therapy services may also be provided by an independently practicing physical therapist in an office setting (subject to certain dollar limits on the amount of payment during a year). These provisions on physical therapy and speech pathology are set forth in regulations at 42 CFR 405.231(l), 405.231(m), 405.232(e), and 405.232(j).

II. New Legislation

In order to provide Medicare coverage of a wide range of rehabilitative services, when these services are provided under a plan of treatment on an outpatient basis, in a coordinated setting, Congress enacted section 933 of Pub. L. 96–499. Section 933 amends sections 1861(u), 1861(z), 1863, and 1864(a) of the Act and adds sections 1832(a)(2)(E), 1835(a)(2)(E), and 1861(cc) to the Act.

Section 1835(a)(2)(E) of the Act requires, as a condition of payment under Medicare, that a physician must certify that (1) CORF services are required because the beneficiary needs skilled rehabilitation services, (2) a plan for furnishing those services has been established and is periodically reviewed by a physician, and (3) those services are furnished while the beneficiary is under the care of a physician.

Section 1861(cc)(1) of the Act provides Medicare coverage for a broad range of items and services when they are provided by a physician or other qualified professional personnel to a beneficiary who is an outpatient at a CORF approved for participation in Medicare. Section 1861(cc)(2) of the Act sets forth the requirements that CORF's must meet in order to participate in the Medicare program as providers. These requirements are known as the conditions of participation. The remaining sections amended or added by section 933 of Pub. L. 96–499 are conforming amendments.

III. Provisions of the Regulations

A. *Requirements for coverage.*

1. *Referral to a CORF for treatment.* To receive covered CORF services, a beneficiary must be referred for admission by a physician who certifies that the beneficiary needs skilled rehabilitation services. The referring physician must advise the CORF of the beneficiary's medical history, current diagnosis and medical findings, contraindicated actions or limitations on type or intensity of rehabilitation services to be provided, and rehabilitation goals, if determined. This information must be available to the CORF for establishing the beneficiary's need for rehabilitative services and for developing an appropriate plan of treatment.

2. *Coverage of rehabilitation programs.* We propose to restrict coverage of CORF services to those individuals who have significant potential for restoration or improvement of lost or impaired functions. These individuals must require a relatively intense rehabilitative services program, aimed at achieving specific goals in a predictable period of time. We would not cover such programs as (1) general conditioning or ambulation for patients experiencing a temporary loss or reduction of function that is expected to improve spontaneously, and (2) maintenance programs, involving repetitive services that do not require the skilled services of nurses or therapists. Programs of this type would not meet the statutory requirement of a need for skilled rehabilitation services.

3. *Plan of treatment.* In accordance with the statute, the proposed regulations would require that upon a beneficiary's referral for care by a CORF, a physician must establish a written plan of treatment. Congress did not specify whether the physician responsible for establishing the plan of treatment should be a facility physician or the referring physician. However, we

expect that the physician who is onsite at the CORF would be responsible for establishing the plan of treatment unless the referring physician provides a detailed plan of treatment that meets the facility's requirements for these plans.

The plan of treatment must contain the diagnosis; the type, amount, frequency, and duration of services to be performed; and the anticipated rehabilitation goals. The inclusion of those items in the plan of treatment is consistent with the Medicare requirements for the plan of treatment for outpatient physical therapy and speech pathology services (42 CFR 405.250–1). Our experience indicates that these requirements are both workable and effective. We believe a plan of this scope represents the minimum necessary to assure that the beneficiary will receive the type of treatment appropriate to his or her needs.

The statute requires that the plan of treatment be reviewed periodically by a physician. We propose that the periodic review be performed at least once every 30 days. This proposal is consistent with the 30-day review period presently required by regulation (42 CFR 405.250–1) for beneficiaries receiving outpatient physical therapy and speech pathology services.

We also think that the health condition of a person receiving comprehensive rehabilitation services can change frequently enough that a monthly review period is needed to guard against a continuation of inappropriate care or a failure to recognize the need for a new treatment mode. In addition, the fact that the plan will often cover a comprehensive range of services that interact with one another requires a reasonably close followup of how well the total plan is meeting the patient's current needs.

These regulations would require that, during the periodic review, the physician would certify that the plan of treatment is being followed and that the patient is making progress in attaining the rehabilitation goals without harmful effects on the patient. When the patient has reached a point where no further progress is being made toward one or more of the goals, we would expect that the physician would eliminate those aspects of the plan of treatment.

Although a physician would be responsible for establishing the plan of treatment and continual review of the patient's goals and progress in attaining these goals, we would expect that the physician would involve qualified professional facility personnel in preparing and carrying out the plan. For example, the physician may consult with a speech pathologist at the CORF while establishing the type of speech pathology services the beneficiary should receive.

4. *Site of CORF services.* The regulations would require that all services provided by a CORF must be furnished on the premises of the CORF. This requirement is supported by language included in the House Committee on the Budget Report on the Omnibus Reconciliation Act of 1980 (H.R. Rep. No. 96–1167, 96th Congress 2d Session 375 (1980)).

5. *Under the care of a physician.* The regulations would require that the beneficiary must be under the care of a physician during the period CORF services are being received; that is, a physician is responsible for the duration, amount, and scope of the services received by the beneficiary. This requirement is contained in the statute and we have adopted it unchanged for the regulations.

B. *Items and services included as CORF services.*

In its definition of comprehensive outpatient rehabilitation facility services, Congress included, in section 1861(cc)(1) of the Act, the following: Physicians' services; physical therapy, occupational therapy, speech pathology services, and respiratory therapy; prosthetic and orthotic devices, including testing, fitting, or training in the use of these devices; social and psychological services; nursing care provided by or under the supervision of a registered professional nurse; drugs and biologicals which cannot be self-administered; supplies, appliances, and equipment, including the purchase or rental of equipment; and other such items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by CORFs. We are proposing to define the specific CORF services as follows:

1. *Physicians' services.* Covered physicians' services are the personal services of a facility physician provided to or for an outpatient of the CORF. These services include:

a. The examination and diagnosis of patients referred to the CORF to determine the need for skilled rehabilitation services and to establish the patients' plans of treatment;

b. The prescription of medications and therapies; and

c. Consultation with and medical supervision of nonphysician staff professionals and auxiliary personnel assisting in the establishment, implementation, and review of a patient's plan of treatment.

In some cases, physicians also perform administrative services such as management and medical direction of the CORF's rehabilitation activities; participation in developing, executing, and periodically reviewing the written policies governing the way in which CORF services are furnished; review of patient's clinical records; participation in an evaluation of the facility for licensing or accreditation; participation in review of CORF utilization; and participation in the preparation of an overall plan and budget for the facility's operation. These activities are reimbursable to the facility under the usual Medicare rules for allowing the salary expenses of physicians who perform administrative functions (see 42 CFR 405.480).

2. *Physical therapy services.* We are proposing to define physical therapy services provided by CORFs in the same way these services are defined presently when provided under other coverage provisions (section 3101.8 of the Part A Intermediary Manual (HIM–13)). This definition has worked well in practice, and has been useful in determining whether Medicare payment is proper.

As proposed, physical therapy would be covered if it were furnished by a qualified physical therapist or by a qualified physical therapy assistant under the supervision of a qualified physical therapist, as defined in 42 CFR 405.1702(d), for purposes of restoring a lost or impaired function. Physical therapy would be prescribed by the physician only when there is an expectation, based on his or her assessment of the patient's restorative potential, that the patient will improve significantly in a reasonable, generally predictable period of time. Maintenance physical therapy (that is, repetitive services required to maintain a level of functioning) would not be covered under this provison because this type of therapy is concerned with maintenance rather than restoration.

Although maintenance therapy would not be covered, the establishment of a maintenance program for a patient whose restoration potential has been reached would be a covered service. This would include examinations, evaluations of the patient's condition and preparation of the program.

3. *Occupational therapy services.* The following services would be covered as occupational therapy services when furnished by a qualified occupational therapist or by a qualified occupational therapy assistant under the supervision of a qualified occupational therapist, as defined in 42 CFR 405.1202(f): (1) Assessment of vocational potential; (2) evaluation of a patient's level of independent functioning; (3) the

selection and teaching of task-oriented therapeutic activities to restore sensory-integrative function (such as artwork or tilework to restore eye-hand control and coordination); and (4) the teaching of compensatory techniques to permit engaging in daily activities by making accommodations for physical impairments or limitations (for example, instruction in the use of crutches or a prosthetic device). These coverage provisions have been adopted from those that are currently in use and have proven practical with respect to inpatient hospital and home health agency services (section 3101.9 of the Part A Intermediary Manual (HIM–13)).

However, services involving vocational assessment would not be covered when they are related *solely* to vocational rehabilitation; that is, to prepare the patient to qualify for specific employment opportunities, achieve certain work skills, or accommodate a certain work setting. Coverage of these services would not be available because they are not related to the diagnosis or treatment of the condition for which rehabilitation services are being furnished.

4. *Speech pathology services.* In these regulations, speech pathology services would have the same definition they do under current Medicare provisions (section 3101.10A of the Part A Intermediary Manual (HIM–13)). These services would be covered if furnished by or under the supervision of a qualified speech pathologist, as defined in 42 CFR 481.22, and if the are necessary for the diagnosis and treatment of speech and language disorders that have caused communication difficulties.

These services would include assessment testing to ascertain the type, cause(s), and severity of the disorder to determine the patient's restorative speech potential, and training in development of esophageal speech and the use of an electronic larynx. Therapy for speech difficulties not related to the injury, disability, or illness for which the patient is receiving CORF services (for example, stuttering or lisping) would not be covered as speech pathology services under this provision because this therapy would not be necessary for the diagnosis or treatment of the condition for which the rehabilitation services are being furnished.

5. *Respiratory therapy services.* Respiratory therapy services would be defined as those services prescribed by a physician for the assessment, diagnostic evaluation, treatment, management, and monitoring of individuals with deficiencies and abnormalities of cardiopulmonary function. These services would include, but are not limited to, the following:

a. The application of techniques for support of oxygenation and ventilation of the patient; for example, maintenance of artificial airways, ventilator and aerosol therapy and other means of airway maintenance, precise delivery of oxygen concentration, and techniques to aid removal of secretions from the pulmonary tree;

b. The therapeutic use and monitoring of medical gases, such as oxygen; bland and pharmacologically active mists and aerosols; and such equipment as intermittent positive pressure breathing (IPPB) machines;

c. Bronchial hygiene therapy, including deep breathing and coughing exercises, IPPB, postural drainage, chest percussion and vibration, and nasotracheal suctioning;

d. Diagnostic tests to be evaluated by a physician; for example, pulmonary function tests, spirometry, and blood gas analysis;

e. Pulmonary rehabilitation techniques such as exercise conditioning, breathing retraining, and patient education in management of respiratory problems; and

f. Periodic assessment and monitoring of chronically ill patients and their need for respiratory therapy.

These are the services currently covered by Medicare when provided to a hospital inpatient (section 3101.10 of the Part A Intermediary Manual (HIM–13)). We believe the breadth of respiratory therapy services covered in CORFs should correspond with those already covered elsewhere in the Medicare program. Respiratory therapy must be performed by qualified respiratory therapists or respiratory therapy technicians under the supervision of a respiratory therapist as defined in 42 CFR 481.22. The respiratory therapy services described in c., e., and f. above, may also be performed by a qualified physical therapist as defined in 42 CFR 405.1702(d) or by respiratory therapy technicans under the supervision of a physical therapist.

6. *Prosthetic and orthotic devices.* Our proposal would allow coverage for prosthetic devices, other than dental, ordered by a physician and fitted by a prosthetist as defined in 42 CFR 481.22 that replace all or part of an internal body organ or external body member (including contiguous tissue), or that replace all or part of the function of a permanently inoperative or malfunctioning internal body organ or external body member. Renal dialysis machines and services are not included in the definition of prosthetic devices.

Coverage of a prosthetic device includes all services necessary for fomulation of its design, material, and component selection; measurement, fittings, static and dynamic alignments; and instruction of the patient in its use. Such coverage is included as an integral part of the fabrication of the device. The prescribing physician would make the final determination of the device's suitability, safety, and effectiveness.

Orthotic devices are those orthopedic appliances or apparatus used to support, align, prevent, or correct deformities, or to improve the function of moveable parts of the body. These devices would be covered when ordered by a physician and fitted by an orthotist as defined in 42 CFR 481.22. As with prosthetic devices, the coverage of an orthosis includes its design, materials, measurements, fabrications, testing, fitting, and training in the use of the orthosis. The prescribing physician determines the orthosis' suitability, safety, and effectiveness.

7. *Social services.* We propose to define social services as any of the following services that contribute to the improvement of the individual's condition and that are ordered by a physician and are provided by a qualified social worker or rehabilitation counselor as defined in 42 CFR 481.22. These would include: (1) Assessment of the social and emotional factors related to the patient's illness, need for care, response to treatment, and adjustment to care in the CORF; (2) casework services to assist in resolving problems in these areas; and (3) assessment of the relationship of the patient's medical and nursing requirements to his or her home situation, financial resources, and the community resources available when the patient is no longer receiving CORF services.

8. *Psychological services.* Psychological services would be covered only when a physician certifies that the patient exhibits a special need for these services and they are furnished by a psychologist or rehabilitation counselor who meets the definition in 42 CFR 481.22. For example, the testing or treatment of all cardiac rehabilitation patients for mental, psychoneurotic, or personality disorders would not be covered; however, diagnostic testing for a mental problem would be covered for a cardiac patient who exhibits excessive anxiety or fear following the acute phase of a cardiac problem.

Family counseling services would be covered only where the Primary purpose of that counseling is the treatment of the patient's condition; that is, there is a need to observe the patient's interaction

with family members or to assess the capability of family members to aid in the rehabilitation of the patient. Family counseling services that are primarily directed toward the treatment of a family member's problem with respect to the patient's condition are not covered because these services are not sufficiently related in a direct way to the patient's medical rehabilitative needs to be reimbursable as a CORF service under Medicare.

9. *Nursing care.* Nursing services would be covered if provided by a registered professional nurse or by a licensed pratical nurse under the supervision of a registered professional nurse as defined in 42 CFR 461.22.

10. *Drugs and biologicals.* These items would be covered when they cannot be self-administered, are furnished by or under the supervision of a physician or registered nurse, and are not otherwise excluded from Medicare coverage, such as most injections for immunization.

Thus, when a patient is given tablets or other oral medication, these are excluded from coverage since the form of the drug given to the patient is usually self-administered. Similarly, if a patient is given an injection that is usually self-injected, such as insulin, this drug would be excluded from coverage unless administered in an emergency situation, such as a diabetic coma or administered to a patient who is unable to self-administer due to his or her physical condition. However, if a patient receives an injection of a drug that is not usually self-injected and that is also available in oral form, that drug would not be subject to the self-administration drug exclusion, since it is not self-administerable in the form in which it was furnished to the patient.

Immunizations are excluded from Medicare coverage under section 1862(a)(7) of the Act, unless directly related to the treatment of an injury or of direct exposure to a disease or condition, such as rabies or tetanus. However, pneumococcal vaccinations are now covered under the provisions of section 1 of Pub. L. 96–611.

11. *Supplies, appliances, and equipment.* Non-reusable supplies, such as oxygen, bandages, or ceramic tiles, used in the various therapeutic modalities, such as occupational therapy, would be covered when furnished by the facility. Supplies, equipment, and appliances of a more durable nature, such as exercycles, crutches, canes, and wheelchairs, would be covered when provided by the CORF for use by patients while they are receiving services in the CORF.

We are not proposing to cover, as a part of CORF services, supplies, equipment, and appliances purchased or rented by the patients for use outside the CORF because we believe that the CORF benefit should be akin to the services provided by a hospital outpatient rehabilitation department. We do not think that Congress anticipated expanding the rehabilitation services already available under Part B to beneficiaries, but rather to make the services available in a freestanding comprehensive facility. We invite comments on this issue.

12. *Such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by CORFs.* The statute gave the Secretary the discretion to include as CORF services the items and services that might fit into the category of "other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by CORFs". Rather than propose specific items and services in this document, we are soliciting public comment as to the most appropriate items and services to be included. We would expect the commenters to describe the conditions under which the coverage of these items and services would be medically necessary.

We are also requesting public comment on how we can best accomplish utilization control. In particular, we are concerned with which professional would be the most appropriate to oversee the utilization of CORF services. For example, if a referring physician establishes the plan of treatment, should that physician or the facility physician be responsible for determining whether the services furnished are necessary and efficiently provided.

C. *Items and services excluded from coverage as CORF services.* The proposed regulations specify that no item or service would be included as a covered CORF service if it would not be included as a covered service when furnished to a hospital patient. This reflects section 1861(cc)(1)(following (H)) of the Act.

D. *Application of the psychiatric services limitation.* We are proposing to apply the psychiatric (mental health) services limitation (now restricted to expenses incurred for physicians' services) to CORF services. Section 1833(c) of the Act limits coverage under Medicare Part B for the treatment of mental, psychoneurotic, and personality disorders of a beneficiary who is not an inpatient of a hospital. This limit is applied by capping the amount of each beneficiary's incurred expenses for the treatment of these disorders per calendar year. The allowable maximum is the lesser of:

a. $312.50 or

b. 62½ percent of these expenses.

Since program reimbursement for these services is generally subject to a 20 percent coinsurance, actual program payment cannot exceed $250 per year.

Current regulations at 42 CFR 405.243 further restrict the application of this limit to expenses incurred for physicians' services and items and supplies furnished by the physician in connection with his treatment of these psychiatric disorders. This limit applies to the services of nonpsychiatric physicians as well as psychiatrists. The regulations exempt from the limit expenses incurred for services of health personnel other than physicians, including those furnished incident to physicians' services, home health services, and outpatient services.

The variation between the statute and the regulations originated when the Medicare program was first developed in the late 1960's. At that time, the decision was made to limit the psychiatric services limitation to only physicians' services. The rationale for this decision was that:

—Physicians' services generally represent the greatest cost factor in the outpatient care of psychiatric illnesses, so that the intent of the law would be adequately served by applying the limit only to physicians' services; and

—It would be operationally difficult to determine when the limit should apply in individual cases, and to keep overall accounting of the limit, if nonphysician services were subject to the limit.

Significant changes in the practice of medicine and in the Medicare program over the last 15 years no longer support this rationale. Physicians' services are not always the most costly service. For example, the median cost of psychiatric day hospitalization (which could be covered under Medicare as hospital outpatient services) was $1,700 per patient in 1978. The primary services in day hospitalization such as counseling, art therapy, and dance therapy are furnished by nonphysicians. In addition, the proposed CORF regulations could make benefits available through mental health clinics that have not been eligible for medicare coverage until now. Regarding the second part of the original rationale, operational difficulties, we do not believe that accounting for this limit should be any more difficult than accounting for the Part B deductible.

We are not proposing to exend the $250 psychiatric services limitation to all outpatient psychiatric services covered under Medicare Part B. We believe that would be too drastic a step to take at this time since it would limit reimbursement that is currently available for Part B services. However, since CORF services are a new item of coverage under Medicare Part B, we are proposing to apply the $250 limit to all psychiatric (mental health) services provided by a CORF. We believe this policy is consistent with the original intent of the statute. Thus, expenses incurred by CORF services in connection with the treatment of a mental, psychoneurotic, or personality disorder are limited to the lesser of $312.50 or 62½ percent of these expenses for each beneficary per calendar year.

E. *Method of reimbursement.*

Section 942 of Pub. L. 96–499 amended section 1833(a)(3) of the Act to authorize Medicare payment for CORF services based on "the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A) * * *" less applicable Part B deductible and coinsurance amounts.

Section 1861(v)(1)(A) of the Act contains the basic requirement for payment of reasonable cost for certain Medicare services. It defines reasonable cost as the cost actually incurred, excluding any cost found unnecessary for efficient delivery of needed health services, and authorizes the Secretary to prescribe in regulations how reasonable cost will be determined. Regulations establishing the reasonable cost determination are found in 42 CFR Part 405, Subpart D. We are proposing that, with the exception of 42 CFR 405.455 (lower of costs or charges), the reimbursement regulations applicable to other providers would be equally applicable to CORFs. Since section 1833(a)(3) does not provide, as is the case with other providers, for reimbursement based on the lower of the reasonable costs of services furnished to beneficiaries or the provider's customary charges for the same services, we are proposing to amend 42 CFR 405.455 to specifically state that the lower of reasonable cost or customary charges limitation does not apply to CORFs.

All CORF services are subject to the Medicare Part B deductible. In addition, a CORF may charge the beneficiary an amount not to exceed 20 percent of its customary charges for the items and services furnished to the beneficiary. In accordance with section 1833(a)(3) of the Act, after subtracting any Part B deductible amounts, payment to the CORF will be based on the lesser of:

1. 80 percent of the reasonable cost of services; or

2. The reasonable cost of services furnished, less 20 percent of customary charges.

All payment for CORF services would be made to the facility. That is, separate payment would not be made to those individual practitioners who actually provide the services in the CORF. Payment to the CORF for services furnished by therapists or other health related personnel (other than physicians), individually or through an organization, under an arrangement with the facility would be subject to guidelines issued under 42 CFR 405.432 for determining the reasonable cost of therapy and other health services furnished under arrangements.

Payment to the CORF for physician services provided under arrangements that are paid for by the CORF on a fee-for-service basis would be limited in the aggregate to 60 percent of the amount that would have been paid as the reasonable charges, as defined in 42 CFR Part 405, Subpart E. We base the 60 percent of the reasonable charge limitation on data indicating that overhead costs are 40 percent of a physician's gross revenues. Since the CORF, rather than the physician, would incur and be reimbursed for the overhead costs associated with physician services provided in the CORF, 60 percent of reasonable charges is an appropriate parameter to establish reasonable payments to physicians for CORF services and to avoid duplicate payment of overhead expenses.

In the interests of implementing the CORF provision quickly, we are proposing to determine reimbursement on the reasonable cost basis applicable to other providers. However, we are concerned that this basis may not promote the economic and efficient delivery of CORF services and that another basis for determining the reasonableness of the costs and appropriate payment levels, such as a prospective reimbursement method, may be more suitable. Therefore, we intend to adopt the reasonable cost provisions as a temporary measure only and to develop and establish an alternative prospective payment mechanism as soon as practical. We invite commenters to specifically address this issue.

F. *Conditions of participation.* Prior to developing these proposed conditions of participation, we solicited and received significant comment from many national trade and professional organizations, as well as from individuals, expert in the field of rehabilitation. These comments were analyzed and considered in the final development of these conditions.

1. *Required services.* In accordance with the statute (section 1861(cc)(2)(B) of the Act), the proposed regulations would require a CORF to provide at least the following services:

(a) Physicians' services.

(b) Physical therapy services.

(c) Social or psychological services.

This requirement would not limit the CORF from furnishing and receiving reimbursement for as many other necessary covered CORF services as it would wish to provide.

2. *Facility physician.* The regulations would require that a CORT provide, by or under the supervision of at least one physician, diagnostic, therapeutic, and restorative services. In addition, each patient must be treated under a plan established and reviewed by a physician. The facility physician(s) must assume certain administrative responsibilities in addition to direct patient care responsibilities. In developing the definition of a facility physician, we realized that although it would be desirable for a CORF to have available a physician with considerable experience and specialized training in rehabilitation, some facilities could have difficulty in obtaining the services of a physician with these qualifications. However, given the nature of the comprehensive services provided by CORFs, the specialized needs of patients, and the physician's responsibilities, any physician associated with the CORF should have some expertise in the field of rehabilitation. Therefore, we are proposing that the physician associated with the CORF have at least 1 year experience or training in the medical management of patients requiring rehabilitation services. We believe that this requirement, while not compromising patient welfare, allows the CORF greater flexibility in obtaining a facility physician than would be possible under a more restrictive definition.

The proposed regulations do not specify the amount of time the physician must be on the premises of the CORF. Rather, we have proposed a functional approach requiring that a physician be on the premises for a time sufficient to carry out his or her responsibilities. The amount of time will depend on variables such as the scope of services provided by the facility, the volume and type of patients treated, and the problems encountered during treatment.

3. *Plan of treatment.* It is a statutory requirement (section 1835(a)(2)(E) of the Act) that each patient be under the care of a physician and that the rehabilitation services be furnished under a plan of treatment established and periodically reviewed by a physician. We anticipate that the physicians involved in these activities may, at times, include both the patient's referring physician and the physician associated with the CORF. Where this situation exists, the proposed regulations contain provisions that provide for and encourage this ongoing integration of professional activity. Where this integration of activity for some reason does not exist, the regulations would allow the plan of treatment to be established by either the patient's referring physician or a physician associated with the CORF. However, we are proposing that the plan of treatment be reviewed every 30 days by the CORF physician.

We have elected to specify that the facility physician has the primary responsibility for reviewing the plan of treatment because, in most cases, the facility physician would be more familiar with the facility's services and the patient's status and have easier access to the patient's record and the professionals providing the services than the referring physician. Thus, in our view, the result would be a more complete, accurate, and beneficial plan of treatment review. However, these proposed provisions allow the referring physician the opportunity to provide input into or revise the plan of treatment because the results of the review must be communicated to the referring physician for his or her concurrence before the facility continues or discontinues patient treatment.

In addition, findings resulting from patient management activities, that is, the comprehensive initial assessment, subsequent reassessments, and case review conferences, must be communicated to the referring physician. It is reasonable to require ongoing communication between a CORF physician and the referring physician, as it is a vital element in maintaining continuity of patient care.

4. *Patient assessment.* Each qualified professional providing a service established in the plan of treatment must assess the patient's status before implementing his or her respective part of the plan. This is a traditional practice in the rehabilitation field and we have included it as a requirement to ensure the compatability of the plan of treatment with the needs of the patient. The proposed regulations do not contain a similar requirement that the facility physician initially assess each patient that is referred to the facility. This would not be required because the referring physician may have initially assessed the patient and it would be a duplication of services for the facility physician to perform a similar patient assessment. However, we would expect the facility physician to perform an initial assessment when necessary, especially in cases where professional judgment determines additional assessment needs.

5. *Group of professional personnel.* In accordance with the statute (section 1861(cc)(2)(D) of the Act) the proposed regulations would require that a group of professional personnel associated with the facility, including at least one physician, establish policies that govern the services the facility provides. Additionally, we propose that this group include at least one qualified professional from each of the services provided by the facility. This proposal would ensure that each service has professional input into the policy making process. The proposed regulations do not specify the method of operation of this group as we believe that a CORF would utilize input from the various professionals commensurate with the intensity and type of services they provide at the facility.

Another important function that would be required of this group is that they act on the recommendations of the utilization review committee if it is distinct from the committee. The group of professional personnel could carry out the utilization review plan, or the use of an outside group of similar composition would be allowed.

6. *Coordination of services.* An important element of service delivery that contributes to patients receiving maximum benefits from a comprehensive outpatient rehabilitation program is providing services in a coordinated setting. Coordination of services is maximized when multi-disciplinary team members provide services in a common facility, participate in the facility's patient management activities, and are accountable to the facility for the services they provide. Accordingly, the proposed regulations contain provisions that are essential in maximizing the coordination of comprehensive outpatient rehabilitation services. The regulations would require that the facility develop mechanisms to assist in the coordination of services and that it designate a qualified professional to ensure that all professional personnel coordinate their related activities and exchange pertinent patient information. This individual would not be required to be at the facility full-time. In addition, regardless of the relationship of the professionals to the facility (that is, employees or personnel under contract), the administrator of the facility would be required to retain professional and administrative responsibility for all services provided.

7. *Provision of services.* A facility that presents itself and is certified as a facility providing comprehensive outpatient rehabilitation services must be able to provide the services needed by the patients they accept for treatment. Consequently, the regulations would require that a CORF have adequate space, equipment, and personnel to provide the services established in a patient's plan of treatment before it accepts or retains a patient for treatment. Otherwise, a patient whose established plan of treatment requires five services, two of which the CORF is unable to provide, would have to obtain those two services at other locations. This situation is contrary to congressional intent and serves as a primary basis for the enactment of CORF legislation.

IV Regulatory Analysis

A. *Executive Order 12291.*

We have determined that these proposed rules will not result in an economic impact of $100 million or more or meet any other criteria established in section 1(b) of the order. These proposed rules implement the changes legislated by section 933 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499).

The exact amount of the increase in Medicare expenditures resulting from coverage of CORF services s difficult to estimate. We cannot now determine the extent to which individual rehabilitation centers will respond to these changes. We believe the costs will be approximately $13 million in FY 82, and $20 million in FY 85. This estimate was made by the Congressional Budget Office (CBO) (House Report No. 96–1107, p. 521).

Accordingly, a regulatory impact analysis is not required.

B. *Regulatory Flexibility Act*

The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations, if promulgated, will not have a significant impact on a substantial number of small entities.

We estimate that there are about 500 potentially participating CORFs. Using the CBO cost estimates, these facilities

would gain, on an average, about $40,000 in revenues by FY 1985. However, this impact is not caused by this regulation but by the law, which creates this new benefit entitlement.

Accordingly, a regulatory flexibility analysis is not required.

C. *Reporting and Recordkeeping Requirements*

Sections 405.260, 481.24, 481.25, 481.26, 481.28 and 481.29 of these regulations contain recordkeeping requirements that have not yet been approved by the Executive Office of Management and Budget (EOMB) but are subject to the Paperwork Reduction Act (Pub. L. 96–511).

V. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule we will consider all comments and respond to them in the preamble to that rule.

VI. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Comprehensive outpatient rehabilitation facilities, Contracts (Agreements), End-Stage Renal Disese (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 481

Administrative practice and procedure, Clinics, Comprehensive outpatient rehabilitation facilities, Health facilities, Medicaid, Medicare, Nurse practitioner, Rural areas.

42 CFR Chapter IV is amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The table of contents for Part 405, Subpart B is amended by revising §§ 405.243 and 405.250, adding, §§ 405.260–405.262, and revising the authority citation to read as follows:

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

* * * * * *

Sec.

405.243 Psychiatric services limitation; expenses incurred for Physician services and comprehensive outpatient rehabilitation facility services.

* * * * *

405.250 Procedures for payment; medical and other health services furnished by participating provider or ESRD facility; home health services; comprehensive outpatient rehabilitation facility services.

* * * * *

405.260 Comprehensive outpatient rehabilitation facility services; requirements for coverage.

405.261 Comprehensive outpatient rehabilitation facility services; items and services included.

405.262 Comprehensive outpatient rehabilitation facility services; exclusions.

Authority: Sec. 1102 1831–1833, 1835–1843, 1861, 1862, 1866, 49 Stat. 647, as amended, 79 Stat. 301–312, 313, 325, 327, 331; 42 U.S.C. 1302, 1395j–1395l, 1395n–1395v, 1395x, 1395y, 1395cc, and 1395hh.

2. The table of contents for Part 405, Subpart D is amended by adding § 405.431 and revising the authority citation to read as follows:

Subpart D—Principles of Reimbursement for Provider Costs and for Services by Hospital-Based Physicians.

* * * * *

Sec.

405.431 Payment to comprehensive outpatient rehabilitation facilities for services furnished under arrangements.

* * * * *

Authority: Secs. 1102, 1814(b), 1833(a), 1861(v), and 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 302, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395f(b), 1395l(a), 1395x(v), and 1395hh, unless otherwise noted.

3. In § 405.230, the introductory language for paragraph (a) is reprinted, paragraphs (a)(4) and (a)(5) are revised, paragraph (a)(6) is reserved, and paragraph (a)(7) is added to read as follows:

§ 405.230 Supplementary medical insurance benfits.

(a) *Benefits provided.* Any individual who is enrolled under the supplementary medical insurance plan established by Part B of title XVIII of the Act is, subject to the conditions, limitations, and exclusions described in this Part 405, entitled to have:

* * * * *

(4) Payment made on his or her behalf for home health services (see § 405.233) for up to 100 visits (as discussed in § 405.238) furnished by a participating home health agency during a calendar year;

(5) Payment made on his or her behalf to a participating clinic, rehabilitation agency, public health agency, or other provider of services (see § 405.231 (l) and (m)) for outpatient physical therapy services furnished after June 30, 1968, and for outpatient speech pathology services furnished after December 31, 1972; and

(6) [Reserved]

(7) Payment made on his or her behalf for comprehensive outpatient rehabilitation facility services, as defined in § 405.261, furnished by a participating comprehensive outpatient rehabilitation facility.

4. Section 405.243 is amended by revising the title, reprinting paragraph (a), and revising paragraph (b) to read as follows:

§ 405.243 Psychiatric services limitation; expenses incurred for physician services and comprehensive outpatient rehabilitation facility services.

(a) *Limitation.* With respect to expenses incurred in any calendar year in connection with the treatment of a mental psychoneurotic, or personality disorder of an individual who is not an inpatient of a hospital (as described in paragraph (b) of this section) at the time such expenses are incurred, only the lesser of (1) $312.50; or (2) 62½ percent of such expenses, is considered as incurred expenses for purposes of §§ 405.240 and 405.245.

(b) *Application of limitation.* Notwithstanding any other provision of this Subpart B, paragraph (a) of this section applies to specific expenses incurred for physisians' services (with no distinction being made between the services of psychiatrists and nonpsychiatrist physicians) and comprehensive outpatient rehabilitation facility services (as defined in § 405.261) provided to an individual who is not an inpatient of a hospital, in connection with the treatment of a mental, psychoneurotic, or personality disorder of such individual, and any items or supplies furnished by the physician in connection with his or her treatment of such disorder. The term "mental, psychoneurotic, or personality disorder" means the specific psychiatric conditions described in the American Psychiatric Association's Diagnostic and Statistical Manual—Mental Disorders. Expenses incurred for services other than comprehensive outpatient rehabilitation facility services furnished by health personnel other than physicians, including home health services and outpatient services, as well as physicians' services furnished to an individual who is an inpatient of a

hospital are not subject to such limitation even though the services are in connection with a condition which is included in the definition of mental psychoneurotic, or personality disorder. For purposes of this paragraph (b), "hospital" means a hospital which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons; or psychiatric services for the diagnosis and treatment of mentally ill persons; or medical services for the diagnosis and treatment of tuberculosis.

Example: As a private patient, Mr. X's only medical expenses during the calendar year 1982 amounted to $750 for physicians' services in connection with the treatment of a mental disorder which did not require inpatient hospitalization. The statutory limit for any calendar year on the amount of these expenses that is covered under this Subpart B is $312.50 ($312.50 being lesser in amount than 62½ percent of $750). Mr. X is required to meet the first $75 as a deductible, and 20 percent of the balance. The remaining 80 percent is payable under this Subpart B.

Total covered expenses	Mr. X's payment	Payment under subpart B
$312.50	[3] $437.50	
−75.00 [1]	[1] 75.00	
237.50	[2] 47.50	[4] 190.00

[1] Deductible, (see § 405.245).
[2] In excess of $312.50
[3] 20 percent of total covered expenses less deductible.
[4] 80 percent of total covered expenses less deductible.

If Mr. X had incurred $350 of the above expenses while an inpatient of an institution (see paragraph (b) of this section), and the remaining $400 while not an inpatient of an institution, payment would be computed as follows:

Total covered expenses	Mr. X's payment	Payment under subpart B
$250 [1]	[3] $150	
+350 [2]		
600	[4] 75	
−75		
525	[5] 105	[6] 420

[1] 62½ percent of $400.
[2] In excess of 62½ percent of $400.
[3] 100 percent of expenses incurred while an inpatient.
[4] Deductible.
[5] 20 percent of total covered expenses less deductible.
[6] 80 percent of total covered expenses less deductible.

5. Section 405.250 is amended by revising the title and introductory language, reprinting paragraph (b), and adding paragraph (b)(4) to read as follows:

§ 405.250 Procedures for payment; medical and other health services furnished by participating provider or ESRD facility; home health services; comprehensive outpatient rehabilitation facility services.

Payment for medical and other health services (see §§ 405.230(a)(3), 405.231, and 405.232), for home health services (see §§ 405.230(a)(4), 405.233 through 405.236), and for comprehensive outpatient rehabilitation facility services (see §§ 405.230(a)(6) and 405.260–405.262), furnished by a participating provider of services is made to such provider only if:

* * * * *

(b) A physician certifies, and recertifies (see Subpart P of this part) when required, that:

(4) In the case of comprehensive outpatient rehabilitation services:

(i) The services were required because the individual needed skilled rehabilitation services;

(ii) A written plan for furnishing the services has been established and is periodically reviewed by a physician; and

(iii) The services were furnished while the individual was under the care of a physician.

* * * * *

6. A new § 405.260 is added to read as follows:

§ 405.260 Comprehensive outpatient rehabilitation facility services; requirements for coverage.

The items and services described in § 405.261 are "comprehensive outpatient rehabilitation facility services" (unless excluded under § 405.262) if the following conditions are met:

(a) The services are furnished to an individual who is referred to the facility by a physician who certifies that the individual needs skilled rehabilitation services. The referring physician must make the following information available to the facility before or at the time of initiation of treatment:

(1) The individual's significant medical history.

(2) Current medical findings.

(3) Diagnosis(es).

(4) Rehabilitation goals, if determined.

(5) Contraindications to any treatment modality.

(b) The services are furnished onsite at a participating comprehensive outpatient rehabilitation facility (see Part 481, Subpart B of this chapter for the conditions of participation) to an individual who has been accepted as an outpatient of the facility.

(c) The services are provided under a plan of treatment that meets the following requirements:

(1) The plan must be established in writing and signed by a physician before treatment is begun.

(2) The plan must prescribe the type, amount, frequency, and duration of the services that are to be furnished to the individual and indicate the diagnosis and anticipated rehabilitation goals.

(3) The plan must be reviewed by a physician at least once every 30 days. Upon review, the physician must recertify that the plan of treatment is being followed and that the patient is making progress in attaining the rehabilitation goals without harmful effects on the patient.

(d) The services are furnished to an individual who is under the care of a physician.

7. A new § 405.261 is added to read as follows:

§ 405.261 Comprehensive outpatient rehabilitation facility services; items and services included.

Subject to the exclusions specified in § 405.262, "comprehensive outpatient rehabilitation facility services" means the following items and services furnished to an individual in accordance with § 405.260:

(a) *Physicians' services.* These are the personal services of a facility physician provided to or for an outpatient of the facility. These services include, but are not limited to, examinations and diagnosis, prescription of medications and therapies, consultation with and medical supervision of nonphysician staff, and establishment and review of the plan of treatment.

(b) *Physical therapy services.* Physical therapy services are services provided by a qualified physical therapist (defined in § 405.1702(d)) or a qualified physical therapy assistant (defined in § 405.1702(e)) under the supervision of a qualified physical therapist that restore a lost or impaired function. The establishment of a maintenance therapy program for an individual whose restoration potential has been reached is a physical therapy service; however, maintenance therapy itself is not covered as part of these services.

(c) *Occupational therapy services.* (1) Except as excluded in paragraph (c)(2) of this section, the following are occupational therapy services when provided by a qualified occupational therapist (defined in § 405.1202(f)) or a qualified occupational therapy assistant (defined in § 405.1202(g)) under the

supervision of a qualified occupational therapist:

(i) Assessment of an individual's vocational potential.

(ii) Evaluation of an individual's level of independent functioning.

(iii) Selection and teaching of task-oriented therapeutic activities to restore sensory-integrative function.

(iv) Teaching of compensatory techniques to permit an individual with a physical impairment or limitation to engage in daily activities.

(2) Services involving vocational assessment related solely to vocational rehabilitation are not occupational therapy services.

(d) *Speech pathology services.* Speech pathology services are those services provided by or under the supervision of a qualified speech pathologist (defined in § 481.22 of this chapter) that are necessary for the diagnosis and treatment of speech and language disorders which result in communication difficulties.

(e) *Respiratory therapy services.* Respiratory therapy services are those services that are prescribed by a physician for the assessment, diagnostic evaluation, treatment, management, and monitoring of patients with deficiencies and abnormalities of cardiopulmonary function.

(1) Except as provided in paragraph (e)(2) of this section, these services must be performed by a qualified respiratory therapist (defined in § 481.22 of this chapter), or respiratory therapy technicial (defined in § 481.22 of this chapter) under the supervision of a qualified respiratory therapist.

(2) Respiratory therapy service such as bronchial hygiene therapy and pulmonary rehabilitation, as well as the periodic assessment and monitoring of these services, may be performed by a qualified physical therapist (defined in § 405.1702(d)) or respiratory therapy technician under the supervision of a qualified physical therapist.

(f) *Prosthetic devices.* Prosthetic devices are those devices, other than dental, ordered by a physician, that replace all or part of an internal body organ or external body member (including contiguous tissue) or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ or external body member. Included in coverage of a prosthetic device are those services and items necessary for forumlating its design, material, and component selection; measurements, fittings, static and dynamic alignments; and instruction in use of the device. These services must be performed by a qualified prosthetist (defined in § 481.22 of this chapter). Excluded from coverage are renal dialysis machines and services.

(g) *Orthotic devices.* Orthotic devices are those orthopedic appliances or apparatus ordered by a physician, that support, align, prevent, or correct deformities, or improve the function of moveable parts of the body. Included in coverage of an orthotic device are those services and items necessary for formulating its design, material, and component selection; measurements, fittings, static and dynamic alignments; and instruction in use of the device. These services must be performed by a qualified orthotist (defined in § 481.22 of this chapter).

(h) *Social services.* Any of the following services, if ordered by a physician and furnished by a social worker or rehabilitation counselor (defined in § 481.22 of this chapter), are social services:

(1) Assessment of the social and emotional factors related to the individual's illness, need for care, response to treatment, and adjustment to care in the facility.

(2) Casework services to assist in resolving these social and emotional problems.

(3) Assessment of the relationship of the individual's medical and nursing requirements to his or her home situation, financial resources, and the community resources available upon discharge from the facility.

(i) *Phychological services.* The services of a psychologist or rehabilitation counselor (defined in § 481.22 of this chapter) are included when a physician certifies that the individual exhibits a specific need for those services.

(j) *Nursing care.* Nursing services provided by a registered professional nurse or by a licensed practical nurse (defined in § 481.22 of this chapter) under the supervision of a registered professional nurse are included as nursing care services.

(k) *Drugs and biologicals.* Drugs and biologicals that are prescribed by a physician and furnished by or under the supervision of a physician or registered nurse, are included, unless they are excluded from Medicare Part B payment under the provisions of § 405.232(c).

(l) *Supplies, appliances, and equipment.* Non-reusable supplies, such as oxygen and bandages, are included when furnished by the facility. Supplies, appliances, and equipment of a more durable nature, such as exercycles and wheelchairs, are included when provided by the facility for use by individuals in the facility.

B. A new § 405.262 is added to read as follows:

§ 405.262 Comprehensive outpatient rehabilitation facility services; exclusions.

No item or service listed in § 405.261 is included as a "comprehensive outpatient rehabilitation facility service" if the item or service—

(a) Would not be included as a covered service when furnished to a patient of a hospital;

(b) Is provided to an individual who is experiencing a temporary loss or reduction of function that is expected to improve spontaneously; or

(c) Is provided as a part of a maintenance program that involves repetitive services that do not require the skilled services of nurses or therapists.

9. A new § 405.431 is added to read as follows:

§ 405.431 Payment to comprehensive outpatient rehabilitation facilities for services furnished under arrangements.

(a) The aggregate amount paid by a comprehensive outpatient rehabilitation facility on a fee-for-service basis to physicians for physicians' services provided under arrangements is an allowable expense to the extent it is not in the aggregate in excess of 60 percent of the reasonable charges, as defined in Subpart E of this part. Therefore, payment is limited to 60 percent of the amount that would otherwise be paid if the services were provided by the physician to title XVIII beneficiaries who are not outpatients of the comprehensive outpatient rehabilitation facility.

(b) Payment to the comprehensive outpatient rehabilitation facility for services furnished by health related personnel (other than physicians), individually or through an organization, under an arrangement with the facility is subject to the provisions of § 405.432 that determine the reasonable cost of therapy and other health services furnished under arrangements.

10. Section 405.455 is amended by revising paragraph (a) to read as follows:

§ 405.455 Amount of payments where customary charges for services furnished are less than reasonable cost.

(a) *Principle.* Providers of services, other than comprehensive outpatient rehabilitation facilities, will be paid the lesser of the reasonable cost of services furnished to beneficiaries or the customary charges made by the provider for the same services. (Payment to comprehensive outpatient rehabilitation facilities is based on the reasonable cost

of services.) Public providers of service furnishing services free of charge or at a nominal charge will be paid fair compensation for services furnished to beneficiaries. This principle is applicable to services furnished by providers in cost reporting periods beginning after December 31, 1973. For special rules concerning HMO's and providers of services and other health care facilities that are owned or operated by an HMO, or related to an HMO by common ownership or control, see §§ 405.2042(b)(14) and 405.2050(c).

* * * * *

PART 481—CERTIFICATION OF CERTAIN HEALTH FACILITIES

1. The table of contents for Part 481 is amended by adding a Subpart B to read as follows:

Subpart B—Comprehensive Outpatient Rehabilitation Facilities: Conditions of Participation

Sec.
481.21 Purpose and scope.
481.22 Definitions.
481.23 Condition of participation: Compliance with State and local laws.
481.24 Condition of participation: Governing body and administration.
481.25 Condition of participation: Comprehensive rehabilitation program.
481.26 Condition of participation: Clinical records.
481.27 Condition of participation: Physical environment.
481.28 Condition of participation: Disaster procedures.
481.29 Condition of participation: Utilization review plan.

Authority: Secs. 1102, 1861(cc), and 1871; 49 Stat. 647, 79 Stat 313, 331; 42 U.S.C. 1302, 1395x(cc), 1395hh.

2. A new subpart B is added to read as follows:

Subpart B—Comprehensive Outpatient Rehabilitation Facilities: Conditions of Participation

§ 481.21 Purpose and scope.

This subpart sets forth the conditions that facilities must meet to be certified as comprehensive outpatient rehabilitation facilities under section 1861(cc)(2) of the Social Security Act. These requirements will serve as the basis for survey activities by Federal and State surveyors. These facilities will be certified for participation in Medicare in accordance with Subpart S of Part 405 of this chapter.

§ 481.22 Definitions.

As used in this subpart, unless the context indicates otherwise:

"Comprehensive outpatient rehabilitation facility" or "Facility" means a freestanding facility (that is, one not administratively or otherwise affiliated with or currently certified as another Medicare provider or supplier of services) primarily engaged in providing, by or under the supervision of a physician, diagnostic, therapeutic, or restorative services at a single location to outpatients for the rehabilitation of injured, disabled, or sick persons, and meeting all requirements of this subpart.

"Facility physician" means a doctor of medicine or osteopathy, who is—

(a) Licensed under State law to practice medicine or surgery, and

(b) Has had at least 1 year of experience or training in the medical management of patients requiring rehabilitative services of the type required to be furnished by a comprehensive outpatient rehabilitation facility.

"Licensed practical nurse" means a nurse who is licensed as a practical or vocational nurse by the State in which practicing.

"Occupational therapist" means a person who meets the definition in § 405.1202(f) of this chapter.

"Occupational therapy assistant" means a person who meets the definition in § 405.1202(g) of this chapter.

"Orthotist" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Has successfully completed a training program in orthotics that is jointly recognized by the American Council on Education and the American Board for Certification in Orthotics and Prosthetics; and

(c) Is eligible to take that Board's certification examination in orthotics.

"Physical therapist" means a person who meets the definition in § 405.1702(d) of this chapter.

"Physical therapy assistant" means a person who meets the definition in § 405.1702(e) of this chapter.

"Prosthetist" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Has successfully completed a training program in prosthetics that is jointly recognized by the American Council on Education and the American Board for Certification in Orthotics and Prosthetics; and

(c) Is eligible to take that Board's certification examination in prosthetics.

"Psychologist" means a person who is certified and licensed by the State in which practicing, if applicable, and—

(a) Holds a Masters' Degree in psychology from a training program approved by the State, or

(b) Is eligible for membership in the American Psychological Association.

"Registered nurse" means a graduate of an approved school of nursing who is licensed as a registered nurse by the State in which practicing, if applicable.

"Rehabilitation counselor" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Holds at least a Bachelor's degree; and

(c) Is eligible to take the certification examination administered by the Commission on Rehabilitation Counselor Certification.

"Respiratory therapist" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Has successfully completed a training program accredited by the Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(c) Is either—

(1) Eligible to take the registry examination for respiratory therapists administered by the National Board for Respiratory Therapy, Inc., or

(2) Has equivalent training and experience as determined by the National Board for Respiratory Therapy, Inc.

"Respiratory therapy technician" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Has successfully completed a training program accredited by the Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(c) Is either—

(1) Eligible to take the certification examination for respiratory therapy technicians administered by the National Board for Respiratory, Inc., or

(2) Has equivalent training and experience as determined by the National Board for Respiratory Therapy, Inc.

"Social worker" means a person who—

(a) Is licensed by the State in which practicing, if applicable;

(b) Holds at least a Bachelor's Degree from a school accredited or approved by the Council on Social Work Education; and

(c) Has 1 year of social work experience in a health care setting.

"Speech pathologist" means a peran who—

(a) Is licensed by the State in which practicing, if applicable; and

(b) Is eligible to take the examination for a Certification of Clinical Competence (CCC) in speech-language pathology or audiology administered by the American Speech-Language Hearing Association; or meets the education requirements for certification and is in the process of accumulating the supervised clinical experience required for certification.

§ 481.23 Condition of participation: Compliance with State and local laws.

The facility must be in compliance with applicable State and local laws and regulations.

(a) *Standard: Licensure.* Except as specified in paragraph (b) of this section, the facility must be currently licensed in accordance with State and local law.

(b) *Standard: Facilities not subject to licensure.* If the facility is not required to be licensed, it must be approved as meeting the standards established for licensure.

481.24 Condition of participation: Governing body and administration.

The facility must have a governing body that assumes full legal responsibility for establishing and implementing policies regarding the management operation of the facility.

(a) *Standard: Disclosure of ownership.* The facility must comply with the provisons of Part 420, Subpart C of this chapter that require health care providers and fiscal agents to disclose certain information about ownership and control.

(b) *Standard: Administrator.* The governing body must appoint an administrator who-

(1) Is responsible for the overall management of the facility under the authority delegated by the governing body;

(2) Implements and enforces the facility's policies and procedures relating to the health and safety of patients;

(3) Designates, in writing, an employee who in the absence of the administrator, acts on behalf of the administrator; and

(4) Retains professional and administrative responsibility for all personnel providing facility services.

(c) *Standard: Group of professional personnel.* The facility must have a group of professional personnel associated with the facility that—

(1) Develops and periodically reviews policies to govern the services provided by the facility; and

(2) Consists of at least one physician and one professional representing each of the services provided by the facility.

(d) *Standard: Institutional budget plan.* The facility must have an institutional budget plan that meets the following conditions:

(1) It is prepared—

(i) Under the direction of the governing body, and

(ii) By a committee consisting of representatives of the governing body and the administrative staff.

(2) It provides for an annual operating budget prepared according to generally accepted accounting principles.

(3) It provides for a capital expenditure plan for at least a 3 year period for anticipated expenditures in excess of $100,000 related to the acquisition of land; the improvement of land, buildings, and equipment; and the replacement, modernization, and expansion of buildings and equipment.

(4) It provides for annual review and updating by the governing body.

(e) *Standard: Patient care policies.* The facility must have written patient care policies that govern the services it provides. The patient care policies must provide for the following:

(1) A description of the services the facility furnishes through employees and those furnished by other than employees.

(2) Rules for and personnel responsibilities in handling medical emergencies.

(3) Rules for the storage, handling, and administration of drugs and biologicals.

(4) Criteria for patient admission, continuing care, and discharge.

(5) Procedures for preparing and maintaining clinical records on all patients.

(6) A procedure for explaining to the patient or the patient's family the extent and purpose of the services to be provided.

(7) A procedure to assist the referring physician in locating another level of care—

(i) For patients whose treatment has terminated and who are discharged; and

(ii) For patients who are in need of services not available through the facility.

(8) A requirement that patients accepted by the facility must be under the care of a physician.

(9) A plan of treatment established by a physician for each patient.

(10) A procedure to ensure that the group of professional personnel reviews and takes appropriate action on recommendations from the utilization review committee regarding patient care policies.

(f) *Standard: Delegation of authority.* Administrative and supervisory functions must not be delegated to another agency, organization, or individual.

(1) The facility may enter into a contract for purposes of assistance in financial management and may delegate to others the following and similar services:

(i) Bookkeeping.

(ii) Assistance in the development of procedures for billing and accounting systems.

(iii) Assistance in the development of an operating budget.

(iv) Purchase of supplies in bulk form.

(v) The preparation of financial statements.

(2) When the services listed in paragraph (f)(1) of this section are delegated, a contract must be in effect and provide for the following:

(i) The length of the contract must not exceed 5 years.

(ii) The contract must contain a termination clause pertaining to all provisions, that becomes effective within 60 days of written notice by either party.

(iii) The contract must contain a clause requiring renegotiation of any provision that the Secretary finds to be in contravention to any new, revised, or amended Federal regulation or law.

(iv) The contract must state that only the facility may bill the Medicare program.

(v) The contract must not include clauses that state or infer that the outside resource has power and authority to act on behalf of the facility, or clauses that give the outside resource rights, duties, discretions, and responsibilities involved in dictating the administration, management, or operation of the facility.

§ 481.25 Condition of participation: Comprehensive rehabilitation program.

The facility must provide a coordinated rehabilitation program that includes, at a minimum, physicians' services, physical therapy services, and social or psychological services. Provision of these services must be consistent with the plan of treatment and the results of comprehensive patient assessments.

(a) *Standard: Physician services.*

(1) Any physician associated with the facility must be present in the facility for a sufficient time to—

(i) Provide, in accordance with accepted principles of medical practice, medical direction, medical care services, and consultation;

(ii) Establish the plan of treatment in cases where a plan has not been established by the referring physician;

(iii) Assist in establishing and implementing the facility's patient care policies; and

(iv) Participate in plan of treatment reviews, patient case review conferences, comprehensive patient assessment and reassessments, and utilization review.

(2) The facility must provide for emergency physician services during the facility operating hours.

(b) *Standard: Plan of treatment.* For each patient, a physician must establish a plan of treatment before the facility initiates treatment. The plan of treatment must meet the following requirements:

(1) It must delineate anticipated goals and specify the type and intensity of services to be provided.

(2) It must be promptly evaluated after changes in the patient's condition and revised when necessary.

(3) It must, where appropriate, be developed in consultation with the facility physician and the appropriate facility professional personnel.

(4) It must be reviewed at least every 30 days by the physician associated with the facility and the professional personnel providing services. The results of this review must be communicated to the patient's referring physician for concurrence before treatment is continued or discontinued.

(5) It must be revised if the comprehensive reassessment of the patient's status or the results of the patient case review conference indicate the need for revision.

(c) *Standard: Coordination of services.* The facility must designate, in writing, a qualified professional to ensure that professional personnel coordinate their related activities and exchange information about each patient under their care. Mechanisms to assist in the coordination of services must include—

(1) Providing to all personnel associated with the facility, a schedule indicating the frequency and type of services provided at the facility;

(2) A procedure for communicating to all patient care personnel pertinent information concerning significant changes in the patient's status;

(3) Periodic clinical record entries, noting at least the patient's status in relationship to goal attainment; and

(4) Scheduling patient case review conferences for purposes of determining appropriateness of treatment, when indicated by the results of the initial comprehensive patient assessment, reassessment(s), the recommendation of the facility physician (or other physician who established the plan of treatment), or upon the recommendation of one of the professionals providing services.

(d) *Standard: Provision of services.*

(1) All patients must be referred to the facility by a physician who provides the following information to the facility before treatment is initiated:

(i) The patient's significant past history.

(ii) Current medical findings.

(iii) Diagnosis and contraindications.

(iv) Rehabilitation goals, if determined.

(2) In order for a facility to accept or retain a patient for treatment, it must have available on its premises each of the services required by the patient as established in the plan of treatment.

(3) The facility must have on its premises the necessary equipment to implement the plan of treatment and sufficient space to allow adequate care.

(4) The number of qualified personnel must be adequate for the volume and diversity of services offered and all personnel must meet the definitions specified in § 481.22. Personnel other than those defined in § 481.22 may be used by the facility in assisting qualified staff. When an appropriate qualified professional is assisted by these personnel, the professional must instruct these personnel in appropriate patient care service techniques and retain responsibility for their activities.

(5) A qualified professional must initiate and coordinate the appropriate portions of the plan of treatment, monitor the patient's progress, and recommend changes, if necessary, to the plan.

(6) A qualified professional representing each service available at the facility must be either on the premises of the facility or must be available through direct telecommunication for consultation and assistance during the facility's operating hours. At least one qualified professional must be on the premises during the facility's operating hours.

(7) All services must be provided on the premises of the facility.

(8) All services must be provided consistent with accepted professional standards and practice.

(e) *Standard: Patient assessment.* Each qualified professional involved in the patient's care, as specified in the plan of treatment, must—

(1) Carry out an initial patient assessment; and

(2) In order to identify whether or not the current plan of treatment is appropriate, perform a patient reassessment—

(i) After significant changes in the patient's status;

(ii) Within 60 calendar days of the initial patient assessment; and

(iii) Within 60 calendar days of each subsequent reassessment unless documentation as to why the reassessment is deferred is provided.

§ 481.26 Condition of participation: Clinical records.

The facility must maintain clinical records on all patients in accordance with accepted professional standards and practice. The clinical records must be completely, promptly, and accurately documented, readily accessible, and systematically organized to facilitate retrieval and compilation of information.

(a) *Standard: Content.* Each clinical record must contain sufficient information to identify the patient clearly and to justify the diagnosis and treatment. Each entry in the clinical record must be made as frequently as is necessary to insure effective treatment, must be signed by personnel providing services, and all entries made by assistant level personnel must be countersigned by the corresponding professional. Documentation on each patient must be consolidated into one clinical record that must contain—

(1) The initial assessment and consequent reassessments of the patient's needs;

(2) Current plan of treatment;

(3) Identification data and consent or authorization forms;

(4) Pertinent medical history, past and present;

(5) A report of pertinent physical examinations, if any;

(6) Where necessary, progress notes or other documentation reflecting patient reaction to treatment, tests, patient injury, or necessity to change the established plan of treatment; and

(7) Upon discharge, a discharge summary including patient status relative to goal achievement, prognosis, and future treatment considerations.

(b) *Standard: Protection of clinical record information.* The facility must safeguard clinical record information against loss, destruction, or unauthorized use. The facility must have procedures that govern the use and removal of records and the conditions for release of information. The facility must obtain the patient's written consent before releasing information not required to be released by law.

(c) *Standard: Retention and preservation.* The facility must retain clinical record information for 5 years after patient discharge and must make provision for the maintenance of such records in the event that it is no longer able to treat patients.

§ 481.27 Condition of participation: Physical environment.

The facility must provide a physical environment that protects the health and safety of patients, personnel, and the public.

(a) *Standard: Safety and comfort of patients.* The physical premises of the facility and those areas of its surrounding physical structure utilized by the facility's patients including, at a minimum, all stairwells, corridors, and passageways must meet the following requirements:

(1) Applicable Federal, State, and local building, fire, and safety codes must be met.

(2) Fire extinguishers must be easily accessible and fire regulations must be prominently posted.

(3) A fire alarm system with local (in-house) capability must be functional, and where power is generated by electricity, and alternate power source with automatic triggering must be present.

(4) Lights, supported by an emergency power source, must be placed at exits.

(5) A sufficient number of staff to evacuate patients during a disaster must be on the premises of the facility whenever patients are being treated.

(6) Lighting must be sufficient to carry out services safely; room temperature must be maintained at comfortable levels; and ventilation through windows, mechanical means, or a combination of both, must be provided.

(7) Safe and sufficient space must be available for the scope of services offered.

(b) *Standard: Sanitary environment.* The facility must maintain a sanitary environment and establish a program to identify, investigate, prevent, and control the cause of patient infections.

(1) The facility must establish written policies and procedures designed to control and prevent infection in the facility and to investigate and identify possible causes of infection.

(2) The facility must monitor the infection control program to ensure that the staff implement the policies and procedures and that the policies and procedures are consistent with current practices in the field.

(3) The facility must make available at all times a quantity of laundered linen adequate for proper care and comfort of patients. Linens must be handled, stored, and processed in a manner that prevents the spread of infection.

(4) Provisions must be in effect to ensure that the facility's premises are maintained free of rodent and insect infestation.

(c) *Standard: Maintenance of equipment, physical location, and grounds.* The facility must establish a written preventive maintenance program to ensure that—

(1) All equipment is properly maintained and equipment needing periodic calibration is calibrated consistent with the manufacturer's recommendations; and

(2) The interior of the facility, the exterior of the physical structure housing the facility, and the exterior walkways and parking areas must be clean and orderly and maintained free of any defects that are a hazard to patients, personnel, and the public.

(d) *Standard: Access for the physically impaired.* The facility must ensure the following:

(1) Doorways, stairwells, corridors, and passageways used by patients are—

(i) Of adequate width to allow for easy movement of all patients (including those on stretchers or in wheelchairs); and

(ii) In the case of stairwells, equipped with firmly attached handrails on at least one side.

(2) At least one toilet facility is accessible and constructed to allow utilization by ambulatory and nonambulatory individuals.

(3) At least one entrance is usable by individuals in wheelchairs.

(4) In multi-story buildings, elevators are accessible to and usable by the physically impaired on the level that they use to enter the building and all levels normally used by the patients of the facility.

(5) Parking spaces are large enough and close enough to the facility to allow safe access by the physically impaired.

§ 481.28 Condition of participation: Disaster procedures.

The facility must have written policies and procedures that specifically define the handling of patients, personnel, records, and the public during disasters. All personnel associated with the facility must be knowledgeable with respect to these procedures, be trained in their application, and be assigned specific responsibilities.

(a) *Standard: Disaster plan.* The facility's written disaster plan must be developed and maintained with assistance of qualified fire, safety, and other appropriate experts. The plan must include—

(1) Procedures for prompt transfer of casualties and records;

(2) Procedures for notifying community emergency personnel (for example, fire department, ambulance, etc.);

(3) Instructions regarding the location and use of alarm systems and signals and fire fighting equipment; and

(4) Specification of evacuation routes and procedures for leaving the facility.

(b) *Standard: Drills and staff training.*

(1) The facility must provide ongoing training and drills for all personnel associated with the facility in all aspects of disaster preparedness.

(2) All new personnel must be oriented and assigned specific responsibilities regarding the facility's disaster plan within two weeks of their first workday.

§ 481.29 Condition of participation: Utilization review plan.

The facility must have in effect a written utilization review plan that assesses the necessity of services and promotes the most efficient use of services provided by the facility.

(a) *Standard: Utilization review committee.* The utilization review committee, consisting of the group of professional personnel described in § 481.24(c) or a group of similar composition, must carry out the utilization review plan.

(b) *Standard: Utilization review plan.* The utilization review plan must contain written procedures for evaluating—

(1) Admissions, continued care, and discharges using, at a minimum, the criteria established in the patient care policies;

(2) The applicability of the plan of treatment to established goals and patient assessments; and

(3) The adequacy of clinical records with regard to—(i) Assessing the quality of services provided; and

(ii) Determining whether the facility's policies and clinical practices are compatible and promote appropriate and efficient utilization of services.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 26, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: April 22, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-12501 Filed 5-7-82; 8:45 am]

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This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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Federal Register
Vol. 47, No. 91
Tuesday, May 11, 1982

Presidential Documents

Title 3—

The President

Order of May 7, 1982

National Security Information

Pursuant to the provisions of Section 1.2 of Executive Order No. 12356 of April 2, 1982, entitled "National Security Information," I hereby designate the following officials to classify information originally as "Top Secret", "Secret", or "Confidential":

TOP SECRET

EXECUTIVE OFFICE OF THE PRESIDENT:

The Vice President
The Counsellor to the President
The Chief of Staff and Assistant to the President
The Deputy Chief of Staff and Assistant to the President
The Director, Office of Management and Budget
The United States Trade Representative
The Assistant to the President for National Security Affairs
The Director, Office of Science and Technology Policy
The Chairman, The President's Foreign Intelligence Advisory Board
The Chairman, The President's Intelligence Oversight Board

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Attorney General
The Secretary of Energy
The Chairman, Nuclear Regulatory Commission
The Director, United States Arms Control and Disarmament Agency
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Administrator of General Services
The Director, Federal Emergency Management Agency

SECRET

EXECUTIVE OFFICE OF THE PRESIDENT:

The Chairman, Council of Economic Advisers
The President's Personal Representative for Micronesian Status Negotiations

The Secretary of Commerce

The Secretary of Transportation

The Administrator, Agency for International Development

The Director, International Communication Agency

CONFIDENTIAL

The President, Export-Import Bank of the United States

The President, Overseas Private Investment Corporation

The Administrator, Environmental Protection Agency

Any delegation of this authority shall be in accordance with Section 1.2(d) of the Order.

This Order shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
May 7, 1982.

[FR Doc. 82-12891
Filed 5-7-82; 3:39 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 91
Tuesday, May 11, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the schedule of fees and charges for inspection of processed fruits, vegetables and certain other products to reflect increased costs associated with the programs.

EFFECTIVE DATE: June 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricutural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. It will not result in an annual effect on the economy of $100 million or more. If the increased fees for inspection of processed fruits and vegetables and certain other related products were passed on by processors, the increase would represent less than 0.002 percent of the total wholesale value of these processed products, and this is not considered to be a major increase in costs or price for consumers or individual industries. Likewise, this rule should have no impact on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The use of grades and grading services increases the efficiency in the marketing system and facilitates order by marketing of agricultural products.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601) because it reflects on a cost-per-unit-graded basis a minimum increase in the costs currently borne by those entities utilizing the inspection and grading services, and those services are voluntary.

It is found that good cause exists for making this final rule effective 30 days after the date of publication in the Federal Register because the present fees are not adequate to recover the cost of providing the different types of services. The need for the change and the amount thereof are dependent upon factors within the knowledge of the Agricultural Marketing Service.

The schedule for fees and charges for services rendered to the processed fruits and vegetable industry are amended to reflect the costs associated with the program. Such services are authorized under the Agricultural Marketing Act of 1946, sec. 203(h), which requires that fees be reasonable and, as nearly as possible, cover the costs of rendering the services.

Each fiscal year, the fees for certain services are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services. Specifically included in the analysis are consideration of overtime and holiday pay incurred in connection with inspection, certification and laboratory services performed for the fruit and vegetable processing industry.

An analysis of data on the current cost for services was conducted. Costs of providing services as determined by the grader's or inspector's salary and fringe benefits, supervision, travel, and other overhead and administrative expenses have increased significantly since the last fee adjustment.

The increase in cost can also be attributed to the salary increase for Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970. Federal employees received a 4.8 percent pay increase effective October, 1981.

No appropriated funds are provided to the agency to offset costs of rendering the services. Therefore, we must recover them in full through user fees charged to the establishments which request the services.

Through fee analysis, the Agency assures that fees charged neither exceed nor fall short of full reimbursement for cost of the service. These analyses also help assure that our costs are kept to a minimum as needed to carry out an effective program.

The following table compares current fees and charges for processed fruit and vegetable inspection with the new schedule.

Current	Now
Section 52.42 Schedule of fees:	
Per inspector hour	Per inspector hour.
$22.00/hr plus	$24.00/hr plus.
$5.00/hr overtime	$5.00/hr overtime.

	Current	New
Section 52.52(c) Charges for inspection service on a contract basis:		
(1) For personnel assigned on a year-round basis.	$17.00/hr	$18.06/hr.
(2) For personnel assigned on less than a year round basis.	$19.00/hr	$21.00/hr.
Each Subordinate Inspector on same shift with an inspector.	$14.00/hr	$14.00/hr.
(6) Overtime. All Overtime hours charged at regular rate specified in (c) (1) and (2).		(*)
Section 52.52(d) Charges for less than year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours with a minimum of 40 hours per week, holiday pay and night differential for each inspector assigned to perform the inspection services in accordance with the following schedule:		
(1) Each Inspector	$24.00/hr	$25.00/hr.[2]

[1] All overtime hours charged at regular rate specified in (c) (1) and (2) plus $5.00/hr.
[2] A minimum of 8 hours per day in lieu of a minimum of 40 hours a week for intermittent type in-plant services and short term in-plant assignments will be billed at the $24.00 per hour rate plus travel expenses.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

List of Subjects in 7 CFR Part 52

Food grades and standards, Processed fruits and vegetables.

Accordingly, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42 and 52.52) are amended as follows:

1. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in part, including analyses specified in § 52.47, shall be at the rate of $24.00 per hour plus an additional $5.00 per hour for all scheduled overtime hours.

2. In Section 52.52, paragraphs (c) (1), (2), and (6) and (d) are revised to read as follows:

§ 52.52 Charges for inspection service on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant at least once every 28 days for all hours worked with a minimum of 40 hours per week, holiday pay and night differential for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis: Each inspector—$19.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—$21.00 per hour.

Each subordinate inspector on the same shift with an inspector—$14.00 per hour.

* * * * *

(6) *Overtime.* All overtime hours will be charged at the regular rate specified in paragraphs (c) (1) and (2) of this section plus $5.00 per hour.

(d) Charges for less than year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours with a minumum of 40 hours per week, holiday pay and night differential for each inspector assigned to perform the inspection services in accordance with the following schedule: [1]

(1) Each inspector—$26.00 per hour.[1]

(2) Travel expense. The above rate applies to hours worked on the assignment. The salary for inspectors enroute and other travel expenses including per diem will not be billed for inspectors assigned on this type of contract.[1]

* * * * *

(Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on May 6, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82-12800 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-02-M

[1] Except a minimum of 8 hours per day in lieu of a minimum of 40 hours a week for intermittent type in-plant services and short term in-plant assignments will be billed at the $24.00 per hour rate plus travel expenses.

Food and Nutrition Service

7 CFR Part 246

Extension of Implementation Date for Food Package Regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC Program)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: As a result of public comments received on a proposed rule at 47 FR 15348 on April 9, 1982, the implementation date for the food package regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC Program) is extended until December 31, 1982. The complete food package regulations were published in the **Federal Register** on November 12, 1980, at 45 FR 74854. This action is taken as part of the Department's initiative to deregulate Federal programs. During the extension period, the Department may propose changes in the food package regulations designed to reduce Federal involvement in decisions more appropriately made by State agencies.

EFFECTIVE DATE: This final rule is effective May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Barbara P. Sandoval, Director; Supplemental Food Programs Division; Food and Nutrition Service, USDA; Alexandria, Virginia 22302, Telephone 703-756-3748.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and has been classified not major because it does not meet any of the three criteria under the Executive Order. This action will not have an annual effect on the economy of $100 million or more. Nor will it cause major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have a significant adverse economic impact on competition, employment, investments, productivity, innovation or on the ability of U.S. enterprises to compete.

This rule has been examined and found not to contain any reporting or recordkeeping requirements which would necessitate clearance by the Office of Management and Budget (OMB).

New Implementation Date

The implementation date for the food package regulations is extended until December 31, 1982.

On November 12, 1980, the Department published final WIC food package regulations. These regulations, which were revised August 26, 1977, food package provisions, appeared in the **Federal Register** at 45 FR 74854. The original date for full implementation by State agencies was November 12, 1981.

Subsequent to publication, the Department realized that State agencies were experiencing difficulties in implementing the regulations. Therefore, the implementation date was extended 6 months, until May 12, 1982, via publication of a final rule in the **Federal Register** on September 1, 1981, at 46 FR 43823.

In recent months, the Department has begun initiatives aimed at deregulating Federal programs and increasing State flexibility. The Department has determined that the WIC Program food package regulations are an area in which deregulation and increased State responsibility may be both beneficial and feasible. The Department will consider, and may propose, changes in the food package regulations. In particular, the Department will consider ways of reducing the regulatory burden on State agencies.

Pending publication of proposed and final food package regulations, the Department has decided that it is appropriate that States not be required to make further investments of time or funds to effect the 1980 changes. Therefore, on April 9, 1982, the Department published a proposed rule in the **Federal Register** (47 FR 15348) to extend the implementation date until December 31, 1982.

The Department received 51 comments in response to the proposal. Of these, 32 supported the proposal as written, 8 opposed the extension, and 11 either did not address the proposed implementation date or were unclear as to whether they opposed or supported the proposal.

The Department is committed to reducing the regulatory burden on State

agencies. For this reason, the implementation date for the November 1980 WIC Program food package regulations has been extended until December 31, 1982. Because the 1980 regulations allowed States time to phase in those regulations in piecemeal fashion, States may be operating presently under a combination of the 1977 and 1980 regulations. Therefore, until December 31, 1982, State agencies may follow the November 1980 regulations, the August 1977 regulations, or any combination of the two. This is to allow States the option of enacting the 1980 regulations in a measured fashion; continue operation under the 1980 regulations; or revert to the 1977 regulations.

Authority: Pub. L. 95-627.

List of Subjects in 7 CFR Part 246

Food assistance program, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, WIC, Women.

Dated: May 7, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82-12987 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Forestry Incentives Program (FIP) to reduce from 75 to 65 percent the maximum level at which ASCS will share with landowners the actual cost of performing a practice under the program. The effect of the final rule will be to make assistance available to a greater number of producers within established funding limits while increasing the cost-effectiveness of the program.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Gordell A. Brown, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202-447-6221. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed for compliance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Forestry Incentives Program; Number—10.064; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local Governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since ASCS is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this rule.

The FIP is authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313, 92 Stat. 365). Under the program, the Secretary of Agriculture is authorized, in consultation with a committee of at least five State foresters or equivalent State officials, to develop and implement a forestry incentives program to encourage the development and protection of the Nation's nonindustrial private forest lands. The purpose of the program is to encourage landowners to apply forestry practices that will provide for the afforestation of suitable open lands and reforestation of cutover or understocked forest lands; and timber stand improvement measures in existing stands. The program is also designed to encourage intensive multipurpose forest resource management and protection in order that cost-effective timber production and other related forest resource benefits can be realized.

A notice of proposed rulemaking was published in the **Federal Register** on December 11, 1981, (46 FR 60616) providing for a reduction in the maximum level of cost-share assistance which ASCS will make available to landowners under FIP. ASCS received only one response with respect to this proposed rule.

Comment

The person commenting felt that the State ASC Committee should be delegated the responsibility for determining the maximum level at which cost-share assistance would be provided under FIP.

Response

The increasing popularity of FIP, with no corresponding increase in funding, has created a large backlog of landowners' requests for cost-share assistance. Thus, it has been determined that a national policy setting forth uniform reduction in the maximum cost-share level is perferable in order to make limited program funds available to a greater number of applicants.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forests and forest products, Grant programs—agriculture, Grant programs—natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

Final Rule

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

Accordingly, the regulations at 7 CFR 701.37(b) are revised to read as follows:

§ 701.37 Level and rates of cost-sharing.

* * * * *

(b) Levels of cost-sharing shall be approved by the State ASC committee and shall not be in excess of 65 percent of actual costs incurred by the landowners.

* * * * *

Signed at Washington, D.C., May 4, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc 82-12819 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Trans-Florida Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Trans-Florida Airlines, Inc. to the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States. Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

EFFECTIVE DATE: February 24, 1982.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.4 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization entered into agreement with Trans-Florida Airlines, Inc. to guarantee the preinspection of their passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)).

Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier to the listing and is editorial in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Common carriers, Government contracts, Inspections, Transportation, Travel restriction, Treaties.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding alphabetical sequence, "Trans-Florida Airlines, Inc." under "AT FREEPORT".

* * * * *

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: May 6, 1982.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc 82-12738 Filed 5-10-82; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

Interpretation of the Federal Consistency Term: "Directly Affecting the Coastal Zone"

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Confirmation of effective date of withdrawal of final rule.

SUMMARY: On January 29, 1982, NOAA issued a notice in the **Federal Register** withdrawing final rules published in the **Federal Register** on July 8, 1981, that define the term "directly affecting the coastal zone". According to Pub. L. 96-184 this withdrawal would become effective only after 60 calendar days of continuous session of Congress had elapsed (after notice to both Houses of Congress) and both Houses had failed to adopt a concurrent resolution disapproving the withdrawal. The 60-day period expired on April 27, 1982.

EFFECTIVE DATE: The withdrawal of the July 8, 1981, final rules defining "directly affecting the coastal zone" is effective as of April 28, 1982.

FOR FURTHER INFORMATON CONTACT: JoAnn Chandler, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, DC 20235, Telephone: (202) 634-4245.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307(c)(1) of the CZMA states that: "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state coastal management programs."

Regulations published by NOAA on June 25, 1979 (44 FR 37142), implementing the Federal consistency provisions define all the key terms of Section 307(c)(1) except "directly affecting." On May 14, 1981, regulations defining this term were proposed (46 FR 26658) and on July 8, 1981, these regulations were published in final form (46 FR 35253).

The July 8 regulations were submitted to Congress for review in accordance with Pub. L. 96-184. The 60-day period specified by this Act had not yet expired, and the regulations had not yet become effective on October 16, 1981, when NOAA published in the **Federal Register** a notice suspending the effective date of the July 8 regulations (46 FR 50937) and a notice proposing to withdraw these regulations (46 FR 50976).

On January 29, 1982, NOAA published a final withdrawal of the July 8 regulations (47 FR 4231). This withdrawal was also submitted to Congress for the requisite 60-day review period. That period expired on April 27, 1982. Therefore the effective date of the withdrawal is April 28, 1982.

II. Other Matters

The regulation that is being withdrawn was determined to be a "major rule" under Executive Order 12291 and its repeal would also be a "major rule." However, in view of the extensive review, analysis and consultation which was involved in defining the term "directly affecting," the Director of the Office of Management and Budget has waived the requirements of Section 3 of Executive Order 12291 for this rule.

Neither the Regulatory Flexibility Act nor the Paperwork Reduction Act apply to these regulations. These regulations define actions required to be taken by Federal agencies and have no impact on small entities. The regulations impose no additional paperwork or recordkeeping requirements and therefore the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 15 CFR Part 931

Administative practice and procedure, Coastal zone, Natural resources.

Dated: May 4, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc 82-12703 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 546

Tetracycline Antibotic Drugs for Animal Use; Tetracycline Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., proposing that the marketing status of its tetracycline calf bolus be changed from use by or on the order of a licensed veterinarian to over-the-counter (OTC) use.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Carnevale, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1768.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplemental NADA (65-004) proposing OTC use of tetracycline calf boluses for treatment of bacterial pneumonia and bacterial enteritis. The bolus is administered orally at 10 milligrams per pound of body weight daily divided into 2 doses, for no more than 5 days. Animals for food use are not to be slaughtered within 12 days of treatment.

FDA originally approved the bolus as an over-the-counter drug. Although the conditions for marketing a drug that is subject of an approved NADA are not ordinarily established by rulemaking, the agency changed the drug's marketing status to prescription through rulemaking. The agency proposed the change in the **Federal Register** of April 10, 1969 (34 FR 6284), and issued a final rule making the change in the **Federal Register** of November 4, 1971 (36 FR 21184). The agency stated in the preamble to the regulation that "* * * when more than 10 days is required to deplete the tissues of tetracycline drug residues, such drugs should be available only on a prescription basis."

The Director of the Bureau of Veterinary Medicine has determined that good cause exists for the issuance of a final rule returning the bolus to over-the-counter status without first publishing a proposal for public comment. The change in the drug's marketing status from over-the-counter to prescription occurred at a time of growing concern about the safety of drug residues in edible products, especially the safety of antibotic residues. Because the information that caused the concern was new, the agency could not draw on experience in determining the most appropriate methods to use in minimizing the effect of harmful residue. One method the agency selected was the imposition of a prescription requirement for drugs with withdrawal periods in excess of 10 days. This restriction was based on the assumption that the intervention of a veterinarian would enhance adherence to the labeled withdrawal period. At that time, farmers and other drug users had had little experience with, and knowledge of, withdrawal periods.

In the intervening years, prominent label warnings and directions and a widespread education program conducted by FDA and the U.S. Department of Agriculture (USDA) have greatly enhanced the level of user knowledge of withdrawal period requirements. In addition, several drugs in the tetracycline family have been approved for use over-the-counter even though withdrawal periods exceeded 10 days. Although the presence of tetracycline residues in veal remains a concern of both FDA and USDA, the Director of the Bureau of Veterinary Medicine believes that it is generally accepted that the length of the withdrawal period should not, by itself, determine whether a veterinary drug should be sold as a prescription or over-the-counter. The Bureau has concluded that adequate directions for lay use can be written for the tetracycline calf boluses. As a result, the supplemental application for over-the-counter use can be approved.

Therefore, the agency has determined that good cause exists to find that notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, the agency finds good cause for not delaying the effective date of this regulation.

The supplemental NADA is approved, and § 546.180c *Tetracycline boluses* is amended to reflect that Upjohn's tetracycline calf bolus is now to be marketed as an OTC product.

The Bureau of Veterinary Medicine concludes that approval of this supplemental NADA poses no increased risk from exposure to residues of the new animal drug tetracycline because the number of food-producing animals receiving medication will not significantly increase as a result of this approval. Accordingly, under the Bureau's supplemental NADA approval policy (42 FR 64367, December 23, 1977), this is a Category II approval which does not require a reevaluation of the human safety or animal effectiveness data in the parent application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary is not required for this action.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics, Tetracycline.

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 546.180c [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 546.180c *Tetracycline boluses* is amended in paragraph (c)(6)(ii)(*b*) by removing the final sentence "Federal law restricts this drug to use by or on the order of a licensed veterinarian", removing the semicolon after the word "tetracycline", and inserting in its place a period.

Effective date. May 11, 1982.

(Sec. 512 (i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b (i) and (n)))

Dated: May 3, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-12618 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulation for virginiamycin to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products, Division of SmithKline Corp., providing for administrative waiver of the ministerial requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)) with regard to the manufacture of swine feeds, for increased rate of weight gain and improved feed efficiency, from a premix containing virginiamycin at a level of not more than 10 grams per pound.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Corp., 1500 Spring Garden St., Philadelphia, PA 19101, filed supplemental NADA 91-513 providing for waiver of the requirements of section 512(m) of the act for the manufacture of swine feeds, for increased rate of weight gain and improved feed efficiency, from a premix containing virginiamycin at a concentration of not more than 10 grams per pound.

Virginiamycin as the sole drug premix meets the uniform criteria set forth in the 1971 Bureau of Veterinary Medicine memorandum for administrative waiver of the ministerial requirements of section 512(m) of the act. The pertinent provisions of the memorandum indicate that waiver is appropriate if:

1. The feeding of 1.5× to 2× level of the product in the finished feed does not have an impact on the tissue residue picture, i.e., an impact on an existing withdrawal period or tolerance.

2. The product is not a known carcinogen or is not classed with a family of known carcinogens.

3. Appropriate documentation covering animal safety is on file. This will not require additional data since this documentation is by definition a part of the NADA.

4. The margin of safety to the animal and the consumer is such that the product label does not have to contain a statement such as "Use as the sole source of * * *."

5. Data are on file to demonstrate that the product is efficacious over the approved range. This data should satisfy current standards for the demonstration of efficacy.

6. Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of the available Drug Experience Reports.

The 1971 memorandum explains that waiver of the ministerial requirements of section 512(m) of the act is permitted only for specific efficacy claims or at specific levels of the drugs, and that distinct products with corresponding labeling for those claims or levels should exist. This is necessary to cover those premixes that can be made into finished feeds with various concentrations of drugs.

The foregoing criteria established in the 1971 memorandum constitute an interim agency policy. In waiving the ministerial requirements of section 512(m) of the act, the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for feedmills mixing such feeds.

In the **Federal Register** of January 9, 1981 (46 FR 2456), the agency stated that it would no longer grant exemptions from the requirement of an approved medicated feed application on the basis of complying with certain uniform criteria set forth in a 1971 Bureau of Veterinary Medicine memorandum. Since publication of that statement, however, the agency has reconsidered and has concluded that it would be unfair to continue denying waivers pending revisions in the procedures and requirements for approval of medicated feed applications. Accordingly, the agency has withdrawn the policy announced in the January 9, 1981 **Federal Register**, and has resumed the granting of exemptions on an interim basis.

Approval of this supplement is an administrative action that did not require the generation of new effectiveness or safety data in support of the waiver. Therefore, a freedom of information summary is not required for this action.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.635 by adding new paragraph (e)(4) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.635 Virginiamycin.

* * * * *

(e) * * *

(4) Finished swine feeds processed from premixes containing not more than 10 grams of virginiamycin per pound, and which conform to the requirements of paragraph (f)(1) (iv) or (v) of this section are not required to comply with the provisions of section 512(m) of the act.

* * * * *

Effective date: May 11, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)))

Dated: May 3, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-12570 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Nutra-Blend Corp. providing for use of a 10-gram-per-pound tylosin premix for making complete swine, beef cattle, and chicken feeds in addition to its current use for making certain swine feeds.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Nutra-Blend Corp., Route 7—Box 192A, Neosho, MO 64850, is sponsor of NADA 122–158 providing for use of 4- and 10-gram-per-pound tylosin premixes for making complete swine feeds for increased rate of weight gain and improved feed efficiency. On behalf of Nutra-Blend, Elanco Products Co. submitted a supplement to the NADA which provides for use of the 10-gram-per-pound tylosin premix for making complete swine, beef cattle, chicken, and layer, broiler, and replacement chicken feed. The swine feed is used, in addition to use for increased rate of weight gain and improved feed efficiency, for prevention, treatment, and control of swine dysentery, and for maintenance of weight gains and promotion of feed efficiency in the presence of atrophic rhinitis; the beef cattle feed for reduction of incidence of certain liver abscesses; the chicken feed for increased rate of weight gain and improved feed efficiency; the layer feed for improved feed efficiency; and the broiler and replacement chicken feed for control of chronic respiratory disease.

Approval of this supplemental NADA relies upon safety and effectiveness data contained in NADA 12–491. Elanco has authorized use of the data in NADA 12–491 to support this supplement. This approval does not change the approved use of the drug. Consequently, approval of this supplement poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in NADA 12–491 or NADA 122–158.

The supplement is approved and the regulations are amended accordingly.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(71) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(71) To 050568: 4 and 10 grams per pound; paragraph (f)(1)(vi)(*a*) of this section; 10 grams per pound paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Effective date: May 11, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 4, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–12750 Filed 5–10–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Ch. II

[Docket No. N–82–1126]

Nomenclature Changes

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Nomenclature changes.

SUMMARY: This rule removes obsolete references to the Department of Health, Education, and Welfare and the Atomic Energy Commission found in Chapter II of the Department's regulations. Both of these agencies have been renamed.

EFFECTIVE DATE: This change is effective May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, telephone number (202) 755–6207. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: 24 CFR Chapter II is amended as follows:

PARTS 200, 226, AND 227—[AMENDED]

(1) In Part 200, § 200.15, and Parts 226 and 227, references to the "Atomic Energy Commission", "Chairman of the Atomic Energy Commission", and "AEC" are changed to read "U.S. Nuclear Regulatory Commission", "Chairman of the U.S. Nuclear Regulatory Commission", and "NRC", respectively.

PARTS 232 AND 242—[AMENDED]

(2) In Parts 232 and 242, references to the "Secretary of Health, Education, and Welfare", "U.S. Department of Health, Education, and Welfare", and "HEW" are changed to read "Secretary of Health and Human Services", "U.S. Department of Health and Human Services", and "HHS", respectively.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: May 5, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82–12702 Filed 5–10–82; 8:45 am]

BILLING CODE 4210–01–M

24 CFR Part 885

[Docket No. R–82–982]

Housing for the Elderly or Handicapped; Amendment to Implement Cost Savings Procedures

AGENCY: Department of Housing and Urban Development (Office of the Assistant Secretary for Housing—Federal Housing Commissioner).

ACTION: Interim rule.

SUMMARY: This amendment requires the use of competitive bidding by Section 202 borrowers in all cases where the construction contract exceeds $100,000, raises the minimum capital investment for borrowers to one percent of the mortgage amount, not to exceed $25,000, and amends the per unit cost limits to bring them into conformity with the limits which apply to nonprofit sponsors

under the Section 221(d)(3) mortgage insurance program.

EFFECTIVE DATE: June 22, 1982. Comment due date: July 12, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410. Communications should refer to the above docket number and title. Copies of the comments submitted will be available at the above address for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Wilden, Director, Elderly, Cooperative, Congregate and Health Facilities Division, Office of Housing, Department of Housing and Urban Development, Washington, DC 20410, (202) 755-6528. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This interim rule establishes procedures designed to hold down the cost of Section 202 projects and increase borrower commitment and performance in the development of such projects. The first major change is to require competitive bidding for all Section 202 projects which have construction contracts exceeding $100,000. This requirement should result in reduced construction costs over the present system of using cost plus contracts. It will also eliminate paperwork and reduce processing time by eliminating the requirement for the contractor to participate in the cost certification process.

A second change will permit the use of simplified cost certification by the borrower in small projects. This change will also reduce paperwork and processing time.

A third change to the Section 202 regulations is to increase the minimum capital investment required of borrowers from the level of one-half of one percent of the mortgage amount, not to exceed $10,000, to a level of one percent of the mortgage amount, not to exceed $25,000. The provisions that the minimum capital investment be escrowed at initial loan closing, that any unexpended amount be returned to the borrower at the end of the escrow period, and fixing the term of the escrow period are unchanged. The reason for the increase in the minimum capital investment is two-fold. First, substantial inflation has occurred since the $10,000 ceiling was imposed in 1976, suggesting that a substantial increase is appropriate. Second, experience under the Section 202 program suggests that an increased financial commitment from the nonprofit borrower will represent an increased commitment to the success of the project, thereby reducing the risk of subsequent cancellation of the Section 202 fund reservation or of financial default under the mortgage.

A fourth change to the Section 202 regulations is an amendment to the per unit limits to bring them into conformity with the Section 221(d)(3) limits for nonprofit borrowers. The Department, in its Report to Congress entitled "Section 202 Housing Cost Reduction," stated that a new requirement would be made which would assure that "the average 202 development cost per unit for each Area Office not exceed the average Section 8 limited dividend cost for elderly units in that same office." The major vehicle used by limited dividend borrowers for financing Section 8 projects is the Section 221 program. The Section 221(d)(3) per unit limits for nonprofit borrowers are proportionally higher than the per unit limits for limited dividend borrowers, in order to reflect the fact that nonprofit borrowers are eligible for mortgages up to 100 percent of replacement cost, whereas limited dividend borrowers are restricted to mortgages up to 90 percent of replacement cost. The Section 221 limits, while generally lower than the Section 202 limits, have been adequate to generate the construction of a significant number of Section 8 projects both for the elderly and for families. The Department does not believe that imposing the Section 221(d)(3) limits for nonprofit borrowers on the Section 202 program violates the requirement of Section 202(d) of the Housing Act of 1959, as amended in 1977, because Section 202(d) states that Section 202 limits "shall be determined without regard to mortgage limits applicable to housing projects subject to mortgages insured under Section 231 of the National Housing Act." The Section 221(d)(3) per unit limits for nonprofit borrowers are unrelated to the Section 231 limits, and in fact the Section 221(d)(3) limits are significantly higher than the Section 231 limits. The use of the Section 221(d)(3) limits will not restrict borrowers from providing special facilities, such as congregate dining and community space, in Section 202 projects, because such facilities are treated as costs not attributable to dwelling use, and therefore the cost of such facilities is not counted as a part of the per unit cost. The Department believes that the use of the Section 221(d)(3) per unit limits for nonprofit borrowers in the Section 202 program will carry out the intent of the 1977 Senate Committee Report which states, "Section 202 loans should be made only to those projects which the Secretary determines will be constructed 'in an economical manner' and which 'will not be of elaborate or extravagant design or materials.' "

A detailed description of the proposed changes to Part 885 is as follows:

(1) Section 885.410(b) and (c) are amended to provide dollar cost limits which conform to the per unit cost limits for nonprofit sponsors for the Section 221(d)(3) mortgage insurance program.

(2) Section 885.410(j) is amended to increase the minimum capital investment required of nonprofit borrowers to one percent of the mortgage amount, not to exceed the amount of $25,000.

(3) Section 885.415(m) is amended to require Section 202 projects which have construction contracts exceeding $100,000 to use competitive bidding.

(4) Section 885.425, Completion of Construction of Substantial Rehabilitation, Execution of HAP Contract, and Cost Certification and Approvals by HUD, is amended as follows:

(a) Subparagraph (c)(1) is amended to include fixed price contracts, which shall be used for all projects subject to competitive bidding;

(b) Subparagraph (c)(3) is amended so as to cover only projects not subject to competitive bidding. Contractors will not be required to certify cost in cases where the contract is awarded through competitive bidding procedures.

(c) Subparagraph (d), (e) and (f) are added to permit simplified cost certification procedures for small projects and to assure that contract rents are reduced to reflect any reduction in the Section 202 loan amount.

This revision to the Section 202 housing for the elderly or handicapped program (with the exception of § 885.425 (d), (e) and (f) dealing with simplified cost certification and reduction of contract rents) will apply only to Section 202 borrowers which receive fund reservations for new projects subsequent to the effective date of this interim rule. It will not affect projects which received fund reservations in Fiscal Year 1981 or prior years. The Department has determined that this revision is necessary to bring about significant cost savings under the Section 202 program. These savings will be in the form of reduced per unit costs and rents, which will save both Section 202 loan authority and Section 8 subsidy costs over the term of the Section 8 contract. The Department, therefore, believes that it is in the public interest to implement as soon as possible the

changes being made by this rule. Offering an opportunity for public comment prior to the effective date of this rule would cause a significant delay in implementation of this change, making it impossible to apply this rule to applications to be funded in the Fiscal Year 1982 funding cycle. Accordingly, the Secretary has determined that prior public comment would be impracticable and contrary to the public interest, and that good cause exists for omitting such prior public comment and publishing this amendment as an interim rule. However, interested persons are invited to submit comments for a 60-day period following this publication.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations, 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semi-annual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.157, Housing for the Elderly or Handicapped (202).

Information collection requirements contained in this regulation (Sections 885.425 (c)(1), (c)(3), and (d) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2502-0044).

List of Subjects in 24 CFR Part 885

Aged, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

Accordingly, Part 885 is amended as follows:

1. By revising § 885.410 (b), (c), and (j) to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms shall be:

(1) $21,563 per family unit without a bedroom,

(2) $24,062 per family unit with one bedroom,

(3) $29,984 per family unit with two bedrooms,

(4) $38,379 per family unit with three bedrooms, restricted to nonelderly handicapped families,

(5) $42,756 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit as provided in paragraph (b) of this section, not to exceed:

(1) $22,692 per family unit without a bedroom,

(2) $26,012 per family unit with one bedroom,

(3) $31,031 per family unit with two bedrooms,

(4) $40,919 per family unit with three bedrooms, restricted to nonelderly handicapped families,

(5) $44,917 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

* * * * *

(j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of Section 202 Borrowers of one percent (1.0%) of the mortgage amount committed to be disbursed, not to exceed the amount of $25,000. Section 106(b) loans made pursuant to Section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the Section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a three-year period from the the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

* * * * *

2. By revising § 885.415(m) to read as follows:

§ 885.415 Requirements prior to initial loan closing.

* * * * *

(m) Construction or Substantial Rehabilitation Contract between the Borrower and the General Contractor which shall be:

(1) In the case of projects which have construction contracts amounting to $100,000 or less, a cost plus contract with an upset price and may provide for an incentive payment to the Contractor for an early completion;

(2) In the case of all other projects, the contract shall be at a fixed price based on competitive bidding open to all general contractors who furnish a Bid Bond guaranteeing their bid and their ability to furnish a Payment-Performance Bond. Competitive bids shall be opened publicly in the presence of the Regional Administrator or his designee, and may follow procedures of any federal agency and may provide for an incentive payment to the Contractor for an early completion.

* * * * *

3. In § 885.425, paragraphs (c)(1) and (c)(3) are revised, and paragraphs (d), (e), and (f) are added to read as follows:

§ 885.425 Completion of construction or substantial rehabilitation, execution of HAP contract, and cost certification and approvals by HUD.

* * * * *

(c)(1) A Borrower's/Mortgagor's Certificate of Actual Cost, showing the actual cost to the mortgagor of the construction contract, architectural, legal, organizational, offsite costs, and

all other items of eligible expense. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, or members. (Approved by the Office of Management and Budget under OMB control number 2502–0044).

* * * * *

(3) In the case of projects not subject to competitive bidding, a certification of the general contractor (and such subcontractor, material suppliers, and equipment lessors, as the Assistant Secretary or field office may require), on a form prescribed by the Assistant Secretary, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or members. (Approved by the Office of Management and Budget under OMB control number 2502–0044).

(d) In lieu of the requirements as set forth in paragraph (c) of this section a simplified form of cost certification must be completed and submitted by the Borrower for small sized projects with mortgages of $500,000 or less. A certification by a Certified Public Accountant or an Independent Public Accountant shall accompany the submisson. (Approved by the Office of Management and Budget under OMB control number 2502–0044).

(e) If the Borrower's certified costs provided in accordance with paragraph (c) or (d) of this section and as approved by HUD are less than the loan amount established pursuant to § 885.405, the contract rents will be reduced accordingly.

(f) If the contract rents are reduced pursuant to paragraph (e) of this section, the maximum annual HAP Contract commitment will be reduced. If contract rents are reduced based on cost certification after HAP Contract execution, any overpayment after the effective date of the Contract will be recovered from the Borrower by HUD.

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: April 19, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12805 Filed 5-10-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Removal of Certain Conditions of Approval of the Missouri Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 925 by removing certain conditions of approval of the Missouri permanent program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri has submitted provisions to the Office of Surface Mining (OSM) which satisfy some of the conditions of the Secretary's approval of November 21, 1980 (45 FR 77017–77028).

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Director, Missouri State Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

Background on the Missouri Program Submission

On February 1, 1980, OSM received a proposed regulatory program from the State of Missouri. The program was submitted by the Missouri Land Reclamation Commission, the agency that administers the Missouri permanent program. Following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of various minor deficiencies. The approval was effective upon publication in the November 21, 1980 **Federal Register** (45 FR 77017–77028).

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 **Federal Register** (45 FR 77017–77028).

Background on the Secretary's Conditional Approval

The Secretary of the Interior determined that the Missouri program met all criteria for approval pursuant to Section 503 of SMCRA and 30 CFR Part 732 except for 23 minor deficiencies. These deficiencies are as follows:

(a) The Missouri program did not provide 21 program provisions:

(1) Absence of regulatory provisions consistent with 30 CFR Part 843, relating to: enforcement of cessation orders (Section 843.11); enforcement of notices of violation (Section 843.12); suspension or revocation of permits (Section 843.13); service of notices of violation and cessation orders (Section 843.14); formal review of citations (Section 843.16); inability to comply (Section 843.18); and injunctive relief (Section 843.19).

(2) Absence of regulations providing for citizen suits consistent with 30 CFR 700.13.

(3) Absence of regulatory provisions providing for recovery of costs and expenses, including attorneys' fees, consistent with 43 CFR 4.1290–4.1296.

(4) Absence of regulatory provisions providing for procedures for petitioning the Director of the Land Reclamation Commission to initiate rulemaking consistent with 30 CFR 700.12.

(5) Absence of permitting requirements and performance standards for concurrent surface and underground mining operations consistent with 30 CFR 785.18 and 30 CFR Part 818.

(6) Absence of permitting requirements and performance standards for *in situ* processing activities consistent with 30 CFR 785.22 and 30 CFR Part 828.

(7) Inconsistency between the Missouri regulations and 30 CFR 816.65(a)(2)(ii) in that the Missouri regulations did not require "persons" to be notified prior to night blasting.

(8) Absence of specific performance standards for the revegetation of commercial forest land consistent with 30 CFR 816.117(b)(4).

(9) Absence of requirements that the Land Reclamation Commission notify the public upon receipt of a lands unsuitable petition consistent with 30 CFR 764.15(b)(2).

(10) Absence of a provision requiring that all persons engaged in surface coal mining and reclamation operations comply with the terms and conditions of their permits and the State's permanent regulatory program consistent with 30 CFR 771.19.

(11) Absence of a provision requiring a description in an operations and reclamation plan of how toxic material will be disposed of consistent with 30 CFR 780.18(b)(7).

(12) Absence of a provision granting the right of entry to mine sites to authorized representatives of the Secretary of the Interior for inspection

and enforcement purposes consistent with 30 CFR 786.27(b).

(13) Absence of specific parameters to determine what changes constitute significant departures from the method of conduct of mining or reclamation operations contemplated by the original permit consistent with 30 CFR 788.12(a)(1).

(14) Inconsistency between the Missouri regulations and 30 CFR 807.11(g) in that the Missouri regulations did not expressly state that a permittee or any affected person may request a hearing on bond release decisions.

(15) Absence of a procedure for bond forfeiture where the permittee fails to comply with a compliance schedule consistent with 30 CFR 808.13(a)(4).

(16) Absence of the phrase "persons required to hold a permit" in the definition of permittee consistent with 30 CFR 701.5.

(17) Inconsistency between Missouri's definition of "surface coal mining operations" and the definition in the Federal rules at 30 CFR 701.5.

(18) Absence of a definition of "underground development waste" in the Missouri regulations consistent with the definition found at 30 CFR 701.5.

(19) Absence of a provision requiring the Land Reclamation Commission to notify an operator of a penalty assessment within thirty days as required by 30 CFR 845.17(b).

(20) Inclusion in the Missouri regulations of a broad variance for restoration of stream channels and construction of permanent diversions after temporary diversions were constructed. This variance is not allowed under SMCRA and 30 CFR 816.44(d).

(21) Inclusion in the Missouri regulations of an exception from revegetation requirements for long term intensive agricultural land uses. This exception is inconsistent with 30 CFR 805.13(d) as suspended by court order.

(b) The Missouri program did not contain provisions relating to permitting requirements and performance standards for underground mining operations consistent with 30 CFR Parts 782, 783, 784 and 817.

(c) The Missouri program did not contain provisions for protection of Missouri Land Reclamation Commission employees performing their duties as stringent as those in section 704 of SMCRA.

In accepting the Secretary's conditional approval, Missouri agreed to correct deficiencies (a) and (b) by April 1, 1981, and deficiency (c) by October 1, 1981.

Submission of Revisions

To correct deficiency (a) above, Missouri submitted fully enacted rules dated December 3, 1980. The provisions submitted to correct deficiency (a) were published in the Missouri Register, August 1, 1980 (5 MO Reg 859–862) and September 2, 1980 (5 MO Reg 1149–1150); also see administrative record document number MO–223.

Missouri submitted enacted rules dated March 12, 1981, to correct deficiency (b) above. These rules were published in the Missouri Register, December 1, 1980 (5 MO Reg 1432–1436). Also see administrative record document number MO–230. To correct deficiency (c), Missouri submitted an opinion from the State Attorney General. See administrative record document number MO–213.

OSM published a notice in the **Federal Register** on August 25, 1981, announcing receipt of these provisions and inviting public comment on whether the proposed program amendments corrected the deficiencies (46 FR 42875–42876). The public comment period ended September 25, 1981. A public hearing scheduled for September 22, 1981, was not held because no one expressed a desire to present testimony.

On December 3, 1980, and March 12, 1981, when the State submitted the amendments to satisfy the conditions of the Secretary's approval, it also submitted other regulatory amendments. These amendments are not being considered in this **Federal Register** notice and will be the subject of a future **Federal Register** notice pursuant to 30 CFR 732.17.

Secretary's Findings

The Secretary finds the amendments submitted by Missouri dated December 3, 1980, and March 12, 1981, correct the deficiencies in the Missouri program as follows:

(a)(1) Missouri regulations 10 CSR 40–8.030 (6), (7), (8), (9), (10), (11), (12) and (13) incorporate enforcement provisions consistent with 30 CFR 843.11, 843.12, 843.13, 843.14, 843.16, 843.18 and 843.19 with one exception.

Missouri rule 10 CSR 40–8.030(13)(A) makes injunction actions dependent on the prerequisite of a "final order or decision." It appears to preclude injunctive relief against operators who might ignore cessation orders or remedial orders in notices of violation during the time of an appeal to the Land Reclamation Commission. The rule is consistent with the Missouri statute (RSMo. 444–885.5(1), which has the same language, but is inconsistent with 30 CFR 843.19 and section 521(c)(A) of SMCRA, which provide for injunctive relief for violation of *any* order or decision.

Because Missouri submitted material to satisfy this condition which the State, in good faith, believed to be adequate to satisfy this deficiency, the Secretary has decided to extend the date by which Missouri must submit new material to satisfy the last element of this condition. OSM has discussed this matter with the State, including the State administrative procedures involved in rulemaking. In order to allow Missouri adequate time to draft and promulgate suitable regulations, the Secretary hereby extends the date by which Missouri must satisfy the last element of condition (a)(1) to October 15, 1982.

Although Missouri submitted provisions satisfying condition (a)(1), with the one exception noted above, OSM has identified a number of minor errors in the cross-references used throughout 10 CSR 40–8.030(6)–(13). While these errors do not affect the substance of the regulations, they could be misleading, and OSM has notified Missouri by letter dated April 7, 1982, that the State should correct these errors.

(2) Missouri regulation 10 CSR 40–8.030(5) incorporates provisions dealing with citizen suits consistent with 30 CFR 700.13.

(3) Missouri regulations 10 CSR 40–8.030(14)–(17) incorporate provisions providing for recovery of costs and expenses including attorneys' fees consistent with 43 CFR 4.1290–4.1296.

(4) Missouri regulation 10 CSR 40–8.070(5) incorporates provisions providing for procedures for petitioning the Director of the Land Reclamation Commission to initiate rulemaking consistent with 30 CFR 700.12.

(5) Missouri regulations 10 CSR 40–4.060 (1) through (4) and 10 CSR 40–6.060(7) incorporate provisions for permitting requirements and performance standards for concurrent surface and underground mining operations consistent with 30 CFR 785.18 and 30 CFR Part 818.

(6) Missouri regulation 10 CSR 40–6.060(8) incorporates provisions for *in situ* permitting requirements and Missouri regulation 10 CSR 40–4.070 incorporates provisions for *in situ* performance standards consistent with 30 CFR 785.22 and 30 CFR Part 828.

(7) Missouri regulation 10 CSR 40–3.050(4) incorporates requirements for notification of persons prior to night blasting consistent with 30 CFR 816.65(a)(2)(ii).

(8) Missouri regulation 10 CSR 40–3.120(7)(B)4 incorporates revegetation

requirements for commercial forest land consistent with 30 CFR 816.117(b)(4).

(9) Missouri regulation 10 CSR 40–5.020(5)(B), as amended, incorporates the requirement for public notice of receipt of a lands unsuitable for mining petition consistent with the requirements of 30 CFR 764.15(b)(2).

(10) Missouri rule 10 CSR 40–6.010(1)(C), as amended, incorporates the requirement that persons engaged in surface coal mining and reclamation operations must comply with the terms and conditions of their permit and the State regulatory program consistent with 30 CFR 771.19.

(11) Missouri rule 10 CSR 40–6.050(8)(B)7 incorporates the requirement in an operation and reclamation plan for a description of how toxic material will be disposed of consistent with 30 CFR 780.15(b)(7).

(12) Missouri rule 10 CSR 40–6.070(12)(B) incorporates provisions granting the right of entry to mine sites to authorized representatives of the Secretary consistent with 30 CFR 786.27(b).

(13) Missouri rule 10 CSR 40–6.090(4)(A) incorporates provisions that define what changes constitute significant departures from a mining permit consistent with the requirement of 30 CFR 788.12(a)(1).

(14) Missouri rule 10 CSR 40–7.030(1)(F), as amended, incorporates provisions to clarify whether a permittee or any affected person may request a hearing on bond release decisions consistent with the requirements of 30 CFR 807.11(g).

(15) Missouri rule 10 CSR 40–7.040(2)(A)2, as amended, incorporates provisions to provide for a procedure for bond forfeiture when a permittee fails to comply with a compliance schedule consistent with the requirements of 30 CFR 808.13(a)(4).

(16) Missouri rule 10 CSR 40–8.010(1)(A)60, as amended, incorporates a definition of "permittee" consistent with the definition at 30 CFR 701.5.

(17) Missouri rule 10 CSR 40–8.010(1)(A)87, as amended, incorporates a definition of "surface coal mining operations" consistent with the definition at 30 CFR 701.5.

Although the definition adopted by Missouri satisfies conditions (a)(17), OSM has identified an incorrect cross reference used in 10 CSR 40–8.010(A)(87). This minor cross reference error does not affect the substance of the definition, but could be confusing, and OSM has notified Missouri by letter dated April 7, 1982, that the State should correct this error.

(18) Missouri rule 10 CSR 40–8.010(1)(A)39 incorporates a definition of "underground development waste" consistent with the definition at 30 CFR 701.5.

(19) Missouri rule 10 CSR 40–8.040(1), as amended, incorporates a provision requiring the Land Reclamation Commission to notify an operator of a penalty assessment within thirty days of issuance of a notice of violation or cessation order consistent with 30 CFR 845.17(b).

(20) Missouri rule 10 CSR 40–3.040(4), as amended, removes the broad variance for restoration of stream channels, and is consistent with the requirements of 30 CFR 816.44(d).

(21) Missouri rule 10 CSR 40–7.010(7), as amended, deletes subsection (D) providing an exception to the revegetation requirements for a long term, intensive agricultural land use and is now consistent with the requirements of 30 CFR 805.13(d).

(b) Missouri regulations 10 CSR 40–3.310 and 10 CFR 40–8.010–40–8.120 incorporate provisions for performance standards and permitting requirements for underground mining consistent with 30 CFR 782, 783, 784 and 817.

(c) Rather than submit amendments to the State program providing for protection of Land Reclamation Commission employees, Missouri submitted an opinion from the State Attorney General dated October 27, 1980, which concludes that already-approved provisions of the State program and other State law when taken together provide protection at least as stringent as Section 704 of the Act. The opinion states that Section 567.030 RSMo 1978, is virtually identical to Section 704 of the Act. Section 567.030 states:

1. A person commits the crime of obstructing government operations if he purposely obstructs, impairs, hinders or perverts the performance of a governmental function by the use or threat of violence, force, or other physical interference or obstacle.

The only difference between this section and section 704 is the penalty provision. Section 704 provides for a fine of not more than $5,000 or imprisonment for not more than one year or both, whereas § 567.030 provides a fine of up to $500 or six months imprisonment or both for individuals, and a fine for corporations of up to $2,000 or any higher amount not exceeding double the amount of the corporation's gain from the commission of the offense.

Missouri also requires, pursuant to 10 CSR 40–8.070(12) and § 620.2(17) RSMo (Supp 1979), that the following language be included in all permits:

* * * We also agree not to resist, prevent, impede or interfere with the Land Reclamation Commission, the Staff Director or their authorized representatives in the performance of their duties pursuant to the Land Reclamation Law and regulations.

(Section 444.820.2(17) and § 444.885.2 and .4, RSMo (Supp 1979)].

Sections 885.2 and 885.4 RSMo (Supp. 1979) also state:

"* * * 2. Authorized representatives of the commission, without advance notice and upon presentation of appropriate credentials (1) shall have the right of entry to, upon or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under subsection 1 are located; and (2) may, at reasonable times, and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation." * * *

"4. No person shall refuse entry or access requested for purposes of inspection, to any member of the commission or authorized representative who presents appropriate credentials, nor obstruct or hamper any such person in carrying out the inspection." * * *

The penalties for violation of any of these provisions are contained in §§ 870.1 and 870.5, RSMo. (Supp. 1979). Section 870.1 provides: "Any permittee who violates any permit condition or any provision of the reclamation plan or who violates any provisions of this law or rules and regulations, may be assessed a civil penalty by the commission." * * * Such penalty shall not exceed $5,000 for each violation." Section 870.5 provides: "Any person who willfully and knowingly violates a condition of a permit or fails or refuses to comply with any order issued under Section 444.885 or 444.900 * * * shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both."

The Secretary has concluded, based upon the Attorney General's opinion and analysis of these provisions, that the Missouri program provides for protection of employees of the Land Reclamation Commission in accordance with section 704 of the Act. The combination of possible civil and criminal penalties available under Missouri law can result in penalties as stringent as those imposed by section 704.

Disposition of Public Comments

1. The Environmental Policy Institute (EPI) commented that Missouri rule 10 CSR 40–8.090(4)(A) still does not specify the parameters that will be used to determine what changes constitute significant departures from a mining permit and that the language is vague and amorphous.

The Missouri rule defines a significant departure as "any change in the permit area, mining method or reclamation procedure which would, in the opinion of the Director, significantly change the effect the mining operation would have on either those persons affected by the present operation or on the environment."

Although the standard is a judgment matter for the Director of the Land Reclamation Commission, the Secretary is confident that the judgment will be exercised in good faith on a case-by-case basis. The public is adequately protected by its power to challenge the Director's decisions if they prove arbitrary.

While Missouri might have imposed more specific parameters than those in its rule, the Secretary believes that the State has met the requirements of 30 CFR 788.12(a)(1).

2. EPI commented that Missouri's provisions for protection of employees are not as stringent as those in section 704 of SMCRA. EPI asserted that employees are only protected from physical harassment on the general level in § 567.030 RSMo. (1978) and, even when taken in conjunction with §§ 865.2 and .4 (Supp. 1979), 870.1 (Supp. 1979) and 870.5 RSMo. (1979), the Missouri law is not as stringent as section 704 of SMCRA.

The Secretary disagrees with the comment because the combination of Missouri laws and regulations provide for penalties as stringent as section 704 of SMCRA and for protection of the Commission's employees in accordance with section 704. For further discussion, see Finding (c) above.

3. EPI commented that Missouri rule 10 CSR 40–8.030(13)(A) is inconsistent with section 521(c)(A) of SMCRA because it exclusively allows "any final order" to be enforced, while section 521(c)(A) allows "any order or decision" to be enforced. The Secretary agrees with this comment. For further discussion of this issue, see Finding (a)(1) above.

Approval of Amendments To Satisfy Condition

Accordingly, the first six elements of condition (a)(1), conditions (a)(2) through (a)(21), (b) and (c) are hereby removed. 30 CFR 925.11 is amended to indicate: (1) Approval of the December 3, 1980, and March 12, 1981, program amendments and (2) an extension of time by which Missouri must satisfy the last element of condition (a)(1). 30 CFR 925.10, incorporates approval of the corresponding December 3, 1980, and March 12, 1981, program amendments.

Additional Determinations

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 6 and 8 of Executive Order 12291 for all actions to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, these program and extension amendments are exempt from the requirement of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment, EIS or FONSI.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities.

On November 13, 1981, the Administrator of the Environmental Protection Agency transmitted her written concurrence on those aspects of the amendments approved in this document relating to air or water quality standards under the authority of the Clean Water Act, as amended (33 U.S.C. 1151 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

For the reasons stated in the preamble above, Part 925 of Title 30, Chapter VII, is amended as set forth herein.

Dated: May 4, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 925—MISSOURI

1. Section 925.10 is amended by revising paragraph (a) to read as follows:

§ 925.10 State program approval.

(a) The Missouri State program submitted on February 1, 1980, as amended and clarified on May 14, 1980, and as further amended December 3, 1980, and March 12, 1981, is approved effective May 11, 1982. Copies of the approved program, as amended, are available for review at:

Missouri Land Reclamation Commission, 1026–D N.E. Drive, Jefferson City, Missouri 65101, Telephone: (314) 751–3241

Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 5th Floor, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5315, Washington, D.C. 20240, Telephone: (202) 343–7896

* * * * *

2. Section 925.11 is revised to read as follows:

§ 925.11 Conditions of State program approval.

The approval of the State program is subject to the following conditions:

(a) The approval found in 30 CFR 925.10 will terminate on October 15, 1982, unless Missouri submits to the Secretary by that date copies of program provisions that are the same or similar to those found in:

(1) 30 CFR Part 843, relating to injuctive relief (Section 843.19), and providing such relief for violation of any order or decision in accordance with section 521(c)(A) of SMCRA.

[FR Doc. 82-12745 Filed 5-10-82; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 948

Approval of Permanent Program Amendment From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On October 29, 1981, the State of West Virginia submitted revised Coal Refuse Disposal Regulations to the Office of Surface Mining (OSM) as a program amendment to the State's permanent regulatory program (hereinafter referred to as the West Virginia Program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

After considering all written comments received during the comment period and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal permanent program regulations except for minor deficiencies discussed below. Accordingly, the Director has conditionally approved the West Virginia amendment.

As a result of this approval, 30 CFR Part 948 has been amended to delete the previously included coal refuse regulations and to include the amended regulations.

EFFECTIVE DATE: This approval is effective May 11, 1982. The approval will terminate as specified in the revised 30 CFR 948.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 948.11 as amended.

ADDRESSES: Copies of the West Virginia program and the administrative record on the West Virginia program, including the letter from the West Virginia Department of Natural Resources (DNR) agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during business hours at:

West Virginia State Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158

West Virginia Department of Natural Resources, Room 630, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone: (304) 348–9160

Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, D.C. 20240, Telephone: (202) 343–7986

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, West Virginia State Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

A. Background

The general background on the permanent program, the general background on the State program approval process and the background on the West Virginia program and the conditional approval can be found in the Secretary's initial decision on the program and in the Secretary's conditional approval. These documents were published in the October 20, 1980, Federal Register (45 FR 69249–69271) and the January 21, 1981, Federal Register (46 FR 5915–5956).

In June 1981, OSM reviewed and commented on proposed coal refuse regulations submitted for informal review by the State of West Virginia (Administrative Record Nos. 400 & 401a). The proposed regulations were promulgated by the State effective October 1, 1981, and on October 7, 1981, OSM received a side-by-side analysis of the revised regulations from the West Virginia Attorney General's Office (Administrative Record No. 410). The State formally submitted the revised regulations as a program amendment on October 29, 1981.

The receipt of the amendment and a public comment period and hearing were announced in the December 21, 1981, Federal Register (46 FR 61807). The notice provided that if no person expressed an interest in participating in a public hearing by January 4, 1982, the hearing would be cancelled. Since no interest was expressed, the notice announcing cancellation of the hearing was published in the Federal Register on January 15, 1982 (47 FR 2340).

Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.17 that the program amendment submitted by West Virginia on October 29, 1981, meets the requirements of SMCRA and the Federal permanent program regulations except for minor deficiencies discussed below.

The Secretary's conditional approval of the West Virginia State program on January 21, 1981, contained two conditions relating to its coal refuse regulations. These conditions have not been satisfied by the amended regulations and have been included as Findings 5 and 6, below.

1. Amended sections D.05a.1.(a), D.06b.1.(f), E.03b.1, E.07 and E.08b.5. require compliance with various provisions of the State's "Interim Regulations." Since the State is now implementing the permanent program, all references should address applicable requirements of the permanent regulations. Approval of the amended Coal Refuse Regulations is conditioned on the inclusion of references to appropriate provisions of the approved permanent program regulations.

2. Amended section D.05d.2.(c) requires approval of the Director of the DNR to divert surface runoff or slurry into an underground mine. Since approval of the Mine Safety and Health Administration (MSHA) is also required, approval of the amended Coal Refuse Regulations is conditioned on the inclusion of a provision requiring MSHA approval for diverting surface runoff or slurry into underground mines.

3. Amended section D.05f. allows the Director the the DNR to waive the stability requirements if site conditions indicate that failure will not occur. While the West Virginia regulations contain provisions that go beyond the scope of the Federal regulations and which may be waived by the regulatory authority; no provision is made in the Federal regulations for a waiver of the basic stability requirements. Approval of the amended Coal Refuse Regulations is conditioned on deletion or justification of the section to indicate that the basic stability requirements which are equivalent to those in the Federal regulations cannot be waived.

4. Amended section E.03 relates the quality of water leaving the permit area to the quality of the receiving stream. Federal regulations (30 CFR 816.41 and 817.41) prohibit violation of Federal or State water quality statutes, regulations, standards or effluent limitations. Approval of the amended Coal Refuse Regulations is conditioned on the inclusion of appropriate provisions requiring compliance with all Federal and State water quality provisions.

5. Amended section D.07f. requires a cover of a minimum of three feet of coarse refuse on coal refuse disposal areas prior to final soil covering unless otherwise approved by the Director. 30 CFR 816.85(d) and 817.85(d) requires that coal refuse shall be covered with four feet of non-toxic and non-combustible material, except under specified conditions. Approval of the amended Coal Refuse Regulations is conditioned upon justification of the variation from the Federal regulations or the addition of corrective language in its regulations or other program amendment to provide standards consistent with the Federal requirements.

6. Amended State regulations fail to require compliance with the provisions of 30 CFR 816.71(g), 816.71(j), and 816.72 (b)(1) and (b)(4). Approval of the amended Coal Refuse Regulations is conditioned upon inclusion of the provisions identified above.

Disposition of Comments

During the public comment period, several Federal agencies made comments dealing with provisions of the revised regulations which were unchanged from the language contained in the regulations conditionally approved by the Secretary on January 21, 1981. Since the program amendment process is designed to consider only those provisions of the State's program which have been changed, comments addressing the unchanged provisions will not be addressed in this document. Please refer to the Secretary's conditional approval published in the Federal Register on January 21, 1981, for comments which may have been made on these portions of the regulations.

The following is a summary of comments made by Federal agencies which dealt with unchanged provisions of the regulations. The section number of the conditionally approved regulations which corresponds to the Federal agency comment is included.

1. The Forest Service was concerned with sections C.01b.1. and 2.; D.02; and,

D.07a. These sections are unchanged from conditionally approved sections 10A.01b.1. and .2.; 10B.02; and, 10B.06a.

2. The Soil Conservation Service (SCS) was concerned with sections D.05d.2.(a)(3)(i); D.05f.1.(a); D.05f.2.(c); and, E.06c.2. These sections are unchanged from conditionally approved sections 10B.04c.6.(a); 10B.04e.1.(a); 10B.04e.4.; and, 10C.06c.2.

3. MSHA was concerned with sections D.05b.1. and D.07. These sections are unchanged from conditionally approved sections 10B.04b.1. and 10B.06.

4. The Bureau of Mines was concerned with sections D.05i. and E.06c.2. These sections are unchanged from conditionally approved sections 10C.06c.2. and 10B.04e.9.

5. The Environmental Protection Agency (EPA) was concerned with section D.07a. This section is unchanged from conditionally approved section 10B.06a.

Comments made on amended portions of the regulations were as follows:

1. SCS stated that Rural Abandoned Mine Program projects and other Federal reclamation efforts should be exempt from the State requirements. Since the Federal regulations do not provide such an exemption, the State's regulations are acceptable.

2. SCS stated that requirements for seeding materials and methods should be specified. It stated that all that is required is a "Plan." However, section E.09b.5. of the amended West Virginia regulations requires revegetation in accordance with Section 12 of the interim regulations. See Finding 1 for a discussion of references to the interim regulations.

3. SCS stated that section D.05f.3. (page 25) of the amended West Virginia regulations should require that the long-term seepage condition be determined for a specific water level behind the impoundment. It suggested using the water elevation when storing the Probable Maximum Precipitation. State regulations require that the water elevation in the impoundment return to the "normal pool" level within 10 days of a design storm. Therefore, a long term seepage condition would exist only on the "normal pool" level and the State's provision is acceptable.

4. MSHA stated that its regulations require that diversion of surface runoff or slurry into underground mines must be approved by MSHA. Section D.05d.2.(c) of the amended West Virginia regulations fail to require this approval. The Director agrees with the comment and is conditioning approval of the amended regulations to include a provision requiring MSHA approval for diverting surface runoff or slurry into underground mines. *See* finding 2.

5. MSHA stated that its regulations require that all impoundment plans must be analyzed if the site meets the size criteria. Section D.05f. of the amended West Virginia regulations provide that the analysis may be waived if obvious site conditions indicate that failure will not occur. The Director is conditioning approval of the amended regulations to delete or justify the section to indicate that basic stability requirements which are equivalent to those in the Federal regulations cannot be waived. *See* Finding 3.

6. MSHA stated that its regulations required MSHA approval to return coal refuse to underground mines. It stated that amended section E.10 of the West Virginia regulations did not require this approval. However, the Director notes that the approval of MSHA is required by Section D.05i.

7. EPA stated that section E.06 of the amended West Virginia regulations makes no mention of the latest state-of-the-art methodology developed by the West Virginia task force on mine drainage and described in the publication "Suggested Guidelines for Method of Operation in Surface Mining of Areas with Potentially Acid Producing Materials." Although use of the method discussed by EPA is not required by the State regulations, the requirements discussed in Section E.06 are adequate to satisfy the provisions of the Federal requirements. In addition, section E.06b provides the flexibility to allow the Director to specify additional requirements to neutralize toxicity if he determines it is necessary. The method discussed by EPA could be specified by the Director.

8. EPA stated that the requirement of E.06b for six inches of cover may often be insufficient. The requirement to which this comment relates provides that a minimum of six inches of cover will be provided, and that the Director shall specify thicker amounts where necessary to protect against upward migration of salts, etc. In addition, it requires that the toxic or acid forming material shall be treated, if necessary, to prevent water pollution or to minimize adverse effects on plant growth and land uses. These requirements, together with the Director's condition of approval discussed in finding 5 above, will eliminate the concerns expressed by EPA.

9. EPA was concerned that the Office of Emergency Services mentioned in section D.05c. may not have an adequate means of financial support. Since the funding for this Office is controlled by the State, the Director assumes that adequate funding will always be available for its operation.

10. EPA was concerned that sections D.05j. and E.03 of the amended West Virginia regulations make no mention of financial assurance. Since the total permit area will be covered by a bond in accordance with State bonding procedures, it is not necessary to mention the bonding provisions in each sub-section of the regulations.

Conditional Approval of Program Amendment

The amended West Virginia Coal Refuse Regulations submitted as an amendment to the approved West Virginia Program under the provisions of 30 CFR 732.17 are conditionally approved. The approval of this amendment is effective upon publication, subject to the conditions contained in amended 30 CFR Part 948.

Additional Determinations

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 6 and 8 of Executive Order 12291 for all actions to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, this program amendment is exempt from the requirement of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment, EIS or FONSI.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities.

In accordance with section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), OSM solicited and publicly disclosed on April 26, 1982 (47 FR 17829), the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the revised West Virginia Coal Refuse Disposal Regulations.

On April 25, 1982, the Environmental Protection Agency transmitted its written concurrence on those aspects of the amendments approved in this document relating to air or water quality standards under the authority of the Clean Water Act, as amended (33 U.S.C.

1151 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

West Virginia has agreed, by letter dated April 14, 1982, to correct the deficiencies by the dates specified in Condition 8 under 30 CFR 948.11.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 948 is amended as set forth herein.

Dated: May 5, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

Part 948 of Title 30 is amended as follows:

1. 30 CFR 948.10 is revised to read as follows:

§ 948.10 State regulatory program approval.

The West Virginia State program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, and resubmitted December 19, 1980, was conditionally approved, effective January 21, 1981. Beginning on that date, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Beginning on May 11, 1982 the program also includes the coal refuse regulations conditionally approved as a program amendment on that date. Section 10 of the regulations contained in the conditionally approved program of January 21, 1981, are deleted from the program as of the date of this publication. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the West Virginia permanent regulatory program. Copies of the approved program, together with copies of the letters of the Department of Natural Resources agreeing to conditions in 30 CFR 948.11, are available at:

(a) West Virginia Department of Natural Resources, Room 630, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone: (304) 348-2160.

(b) Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

(c) Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240, Telephone: (202) 343-7896.

§ 948.11 [Amended]

2. 30 CFR 948.11 is amended as follows: Paragraph (a)(8) is revised to read as follows:

(a) * * *

(8) The approval found in § 948.10 will terminate on November 1, 1982, unless West Virginia submits by that date copies of enacted regulations requiring compliance with permanent program regulations rather than interim program regulations.

(i) The approval found in § 948.10 will terminate on November 1, 1982 , unless West Virginia submits by that date copies of enacted regulations requiring approval of the Mine Safety and Health Administration to direct surface runoff or slurry into an underground mine.

(ii) The approval found in § 948.10 will terminate on November 1, 1982, unless West Virginia submits by that date copies of enacted regulations eliminating the waiver for stability requirements if site conditions indicate that failure will not occur or otherwise amends its program to be consistent with Federal requirements.

(iii) The approval found in § 948.10 will terminate on June 15, 1982, unless West Virginia submits by that date copies of enacted regulations requiring that all water leaving the permit area meet Federal and State water quality statutes, regulations, standards or effluent limitations.

(iv) The approval found in § 948.10 will terminate on November 1, 1982, unless West Virginia submits by that date copies of enacted regulations which (i) require covering of coal mining waste banks with non-toxic and non-combustible material consistent with 30 CFR 816.85(d) and 817.85(d); (ii) specify construction criteria for subdrainage systems consistent with 30 CFR 816.72(b)(1) and (b)(4); (iii) prohibit the use of impoundments on constructed fills consistent with 30 CFR 816.71(g); and (iv) require inspection of coal refuse piles consistent with 30 CFR 816.71(j) or otherwise amends its program to accomplish the same results.

[FR Doc. 82-12740 Filed 5-10-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Regulation 6010.8-R, Amdt. No. 15]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Amendment on Elimination of Nonavailability Statement Where Primary Insurance Covers 75 Percent of the Cost

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: This amends the CHAMPUS Regulation to implement section 741 of Pub. L. 97-114. This public law eliminates the requirement for a nonavailability statement where the beneficiary has other insurance which will pay for at least 75 percent of the services. The intent of these changes is to encourage the use of other insurance to pay for necessary medical care, thus reducing the Government's expense through the direct care system. It also gives beneficiaries with other insurance greater freedom of choice as to where they obtain medical services.

DATES: This amendment is effective for claims submitted for payment on or after October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, Aurora, Colorado 80045 telephone (303) 361-8608.

SUPPLEMENTARY INFORMATION: Currently a nonavailability statement is required in order for CHAMPUS to pay for nonemergency inpatient hospital care available at a facility of the uniformed services within a 40-mile radius of the patient's residence. Nonavailability statements are issued by Uniformed Services Hospital Commanders (or their designees) under rules promulgated by the Assistant Secretary of Defense (Health Affairs). If the care is available at the uniformed services facility, a nonavailability statement can not be issued and the services must be obtained at the facility and at government expense.

On December 29, 1981, Pub. L. 97-114 was signed into effect. Section 741 of that law provides an exception to the requirement for a nonavailability statement. That is, a nonavailability statement is no longer required if the beneficiary has other insurance which pays for at least 75 percent of the covered services. Thus, a beneficiary who has other insurance which will pay

for at least 75 percent of the services no longer must obtain medical services through the direct care system, even though they are available. In these circumstances, where the services are obtained at a civilian facility, the government will realize an overall cost savings since the beneficiary's other insurance will pay for at least 75 percent of the services.

As authorized under title 5, United States Code, paragraph 553(b)(3)(B), the final regulation is being published and no previous public comment has been requested. The change is mandated through public law signed into effect on December 29, 1981, and we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I, is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Section 199.10 is amended:

a. By Removing the existing "Note" immediately following paragraph (a)(9)(i) and adding a new "Note".

b. By adding a "Note" immediately following paragraph (b)(5)(iii).

c. By adding a "Note" immediately following paragraph (c)(3)(xiii).

§ 199.10 Basic program benefits.

* * * * *

(a) * * *
(9) * * *
(i) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97–114) a Nonavailability Statement must be obtained for payment of non-emergency civilian inpatient care if a Uniformed Services hospital is within a 40-mile radius of the patient's residence. Effective October 1, 1981, this limitation shall not apply to payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 percent of the covered services. Application of these provisions after September 30, 1982, will depend on the language of future Appropriation Acts.

* * * * *

(b) * * *
(5) * * *
(iii) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97–114), and effective October 1, 1981, a Nonavailability Statement is not required for payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 percent of the covered services. Application of this provision after September 30, 1982, will depend on the language of future Appropriation Acts.

* * * * *

(c) * * *
(3) * * *
(xiii) * * *

Note.—According to section 741 of the Department of Defense Appropriation Act, 1982, (Pub. L. 97–114), and effective October 1, 1981, a Nonavailability Statement is not required for payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 percent of the covered services. Application of this provision after September 30, 1982, will depend on the language of future Appropriation Acts.

* * * * *

(Pub. L. 97–114)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 6, 1982.

[FR Doc. 82-12798 Filed 5-10-82; 8:45 am]
BILLING CODE 3810-01-M

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32 CFR Part 199

[DOD Regulation 6010.8-R, Amdt. No. 14]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Amendment on Electric-Powered, Cart-Type Vehicles

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: This amends language in the CHAMPUS Regulation to allow benefit consideration for electric-powered, cart-type vehicles. This revised language will allow benefit consideration for these vehicles which may be appropriately used as alternatives to electric wheelchairs, when they are medically necessary and certified by a physician to best meet the patient's medical care needs based on the patient's physical condition and which can be operated safely by the patient.

EFFECTIVE DATE: Retroactive to October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone 303–361–8808.

SUPPLEMENTARY INFORMATION: In FR Doc. 81–3380, appearing in the Federal Register on May 4, 1981 (46 FR 24984), the Office of the Secretary of Defense published a proposed amendment to rule regarding a revision to the language of the CHAMPUS Regulation to allow benefit consideration for electric-powered cart-type vehicles which may be appropriately used as alternatives to electric wheelchairs, when they are medically necessary and certified by a physician to best meet the patient's medical care needs based on the patient's physical condition and which can be operated safely by the patient.

Paragraphs 199.10(d)(3)(ii)(4) "Note" and 199.11(h)(2)(ii)(a)(4) "Note" specifically exclude cart-type vehicles (such as the Amigo) as durable medical equipment and durable equipment, respectively. It has been determined that classification of electrically-powered cart-type vehicles as always being primarily transportation is no longer appropriate.

While some cart-type vehicles are prescribed primarily for purposes of the patient's convenience and transportation, it is felt that benefits should be available under those special circumstances where an electric-powered, cart-type vehicle can be appropriately used as an alternative to an electric wheelchair and (1) it is determined the patient cannot, from a medical standpoint, use a standard, nonelectric wheelchair; and (2) the physician has determined that this particular type of vehicle best meets the patient's medical needs. A proper evaluation of the patient's medical and physical condition must be made to determine whether the patient requires such a vehicle and is capable of handling it safely. Program benefits will not be available for both an electric-powered, cart-type vehicle and an electric wheelchair at the same time.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. Section 199.10 is amended by revising the "Note" following paragraph (d)(3)(ii)(*a*)(*4*) to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(d) * * *
(3) * * *
(ii) * * *
(*a*) * * *
(*4*) * * *

Note.—A wheelchair (or program-approved alternative) is not considered transportation in the sense of paragraph (d)(3) (ii)(*a*)(*4*) of this section. It is qualified as durable medical equipment under paragraph (d)(3)(ii)(*a*)(*2*) of this section, because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond

basic mobility provided by a wheelchair (or a program-approved alternative) is considered to be primarily transportation.

* * * * *

2. Section 199.11 is amended by revising the "NOTE" following paragraph (h)(2)(ii)(*a*)(*4*) to read as follows:

§ 199.11 Program for the handicapped.

* * * * *

(h) * * *
(2) * * *
(ii) * * *
(*a*) * * *
(*4*) * * *

Note.—A wheelchair (or program-approved alternative) is not considered transportation in the sense of this paragraph (h)(2)(ii)(*a*)(*4*) of this section. It is qualified as durable equipment under paragraph (h)(2)(ii)(*a*)(*2*) of this section above because by providing basic mobility, it retards further deterioration of the patient's physical condition. Mobility beyond that basic mobility provided by a wheelchair (or a program-approved alternative) is considered to be primarily transportation.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 6, 1982.

[FR Doc. 82-12790 Filed 5-10-82; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[A-9-FRL-2116-2]

Denial of Petition for Reconsideration Filed by Pacific Legal Foundation; California State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition for reconsideration.

SUMMARY: The Administrator of the Environmental Protection Agency (EPA) is denying a petition for reconsideration filed on July 31, 1981 by the Pacific Legal Foundation. This petition concerns two EPA actions under the Clean Air Act which affect six urban areas in the State of California: A July 1, 1979 interpretive rule which imposed a construction moratorium on States which had not revised State Implementation Plans (SIPs) as required by Part D of Title I of the Act, and a final action of December 12, 1980 imposing restrictions on certain federal funds for areas which failed to provide evidence of legal authority to implement a vehicle inspection/maintenance program.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, United States Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974-8201.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act enacted in 1977 required States to revise their State Implementation Plans (SIPs) to prohibit, after July 1, 1979, the construction or modification of major stationary sources of pollution in any area which has not obtained one or more of the national ambient air quality standards, unless the State has in effect a revised SIP meeting the requirements of Part D of Title I of the Act. See Sections 110(a)(2)(I) and 172(a).

On July 2, 1979 (44 FR 38471) EPA promulgated an interpretive rule which had the effect of inserting this ban into each State's SIP and making it effective in each State which has not yet received EPA approval for its Part D SIP. (See also 40 CFR 52.24 (1981)).

Another provision of the 1977 amendments to the Clean Air Act requires EPA and the Department of Transportation to restrict federal funds made available under the Clean Air Act and Title 23 of the United States Code in any area where transportation controls are needed to assure attainment and a State has not submitted (or is not making reasonable efforts to submit) a revised SIP meeting the requirements of Section 172. See Section 176(a). In addition, Section 316(b) authorizes EPA to limit grants for sewage treatment construction if the State does not have in effect an approved SIP which accounts for direct or indirect increases in air pollution caused by sewage treatment construction. EPA published policies and procedures to implement Sections 176(a) and 316 on April 10, 1980 (45 FR 24692) and August 11, 1980 (45 FR 53382).

On July 2, 1979 California had not received approval of the SIP revisions required for its nonattainment areas. Accordingly, the construction moratorium required under Section 110(a)(2)(I) went into effect in these areas. Moreover, when the State did submit its SIP revisions, it requested attainment date extensions for ozone and/or carbon monoxide for several urban areas. Six of these areas had populations exceeding 200,000.[1] Under the Clean Air Act and EPA policy, the State was required to submit a schedule for the implementation of vehicle inspection/maintenance (I/M) programs in these areas. See Section 172(b)(11)(B) and 44 FR 20372 (April 4, 1979). It was also required to submit evidence of adequate legal authority to carry out the I/M programs. See Section 172(b)(10).

Although the State submitted a schedule for an I/M program in all six areas, it did not submit evidence of legal authority needed to implement the program. On December 12, 1980 (45 FR 81746) EPA found that the State legislature had repeatedly introduced, but failed to enact legislation that could authorize I/M. EPA concluded that the State was not making "reasonable efforts" to adopt and submit the needed legal authority. Therefore, EPA imposed the funding restrictions required by Section 176(a) and authorized by Section 316(b).

Petition for Reconsideration

On July 31, 1981 the Pacific Legal Foundation (PLF) submitted a petition for reconsideration of the funding limitations imposed on December 12, 1980 in the six urban areas of California that had not submitted evidence of legal authority of I/M. The petition also requested EPA to reconsider the construction moratorium imposed on July 2, 1979 insofar as it affected the same areas.[2]

I have reviewed the petition and concluded that it presents no new information warranting the reopening of the December 12, 1980 action imposing funding restrictions or the July 2, 1979 action imposing the construction moratorium in the six California urban

[1] The areas and plans affected are: South Coast Air Basin (ozone, carbon monoxide); San Francisco Bay Area Air Basin (ozone, carbon monoxide); San Diego Air Basin (ozone, carbon monoxide); Sacramento Metropolitan Area (ozone, carbon monoxide); Ventura County (ozone only); and Fresno County (ozone, carbon monoxide).

[2] With respect to the construction moratorium for these areas, as noted above California subsequently submitted SIP revisions for all six of the areas needing I/M programs. The Agency has taken final action to disapprove the ozone and carbon monoxide plan revisions for two of these areas on the basis that these plans do not satisfy Part D because they failed to provide evidence of legal authority to implement an I/M program. See 46 FR 5965 (South Coast Air Basin) and 47 FR 11666 (San Francisco Bay Air Basin). These actions had the effect of reaffirming the construction moratorium for these areas. No challenge to either action has been filed, although the period for filing a challenge to the San Francisco disapproval is still open. EPA has proposed to disapprove the SIP revisions for the other four areas on the same grounds. EPA expects to take final action on these revisions in the near future.

areas required to implement I/M.[3] Accordingly, the petition for reconsideration is denied.

This determination is a final agency action of local or regional effect. Under Section 307(b)(1) jurisdiction for review of this action is available only in the U.S. Court of Appeals for Ninth Circuit, by filing on or before July 12, 1982.

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-12587 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-30-M

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40 CFR Part 52

[A-4-FRL-2108-5]

Approval and Promulgation of Implementation Plans; Kentucky, Bubble Action for Borden Chemical Co. in Jefferson County

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a State Implementation Plan (SIP) revision to bring Borden Chemical Company into compliance with emission limits of the Air Pollution Control District of Jefferson County (the District). On March 5, 1982, EPA received the revision submitted by the Kentucky Department for Natural Resources and Environmental Protection (Kentucky DNREP). The SIP revision presents an alternative emission reduction, or "bubble", plan for Borden's plant in Jefferson County.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Programs Branch, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C. 20005

Division of Air Pollution Control, Kentucky Department for Natural Resources and Environmental Protection, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Ms. Sally Bethea, Air Programs Branch, EPA Region IV at the above address and telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1981 a public hearing was held in Louisville on the proposed SIP revision for the Borden compliance plan. The Jefferson County Air Pollution Control Board approved the plan, immediately after the hearing. On March 5, 1982, EPA received the SIP revision from Kentucky DNREP.

Discussion

Borden Chemical Co. (the Company) stores methanol in a 740 thousand gallon uninsulated fixed roof tank prior to production of formaldehyde. The District's Regulation 6.13 Sec. 3(a) requires a vapor recovery system, or equivalent measure, to control volatile organic compounds (VOC), such as methanol, under an established vapor pressure. Borden chose to use banked VOC emission credits purchased from B. F. Goodrich to provide the required emission reductions at the facility, in lieu of installing control equipment. Borden chose this approach because it was the most cost effective and the quickest way to achieve compliance, in comparison with the other alternatives.

On September 1, 1981, the District issued Banking Permit No. 391-81 to Borden, reflecting the purchase by Borden of 25 tons of banked VOC emission credits from the B. F. Goodrich Company. The District's banked emission ledger for Goodrich Banking Permit 89-79 indicates a corresponding reduction of 25 tons per year (TPY) of VOC credits.

Borden proposes to use its banked emission credits to offset the 15.64 TPY of actual methanol emissions from its Jefferson County storage tank. The Company has agreed to use 17.2 of the 25 tons of credit to offset the actual emissions at a 1.1 to 1 ratio. Both the Borden banking permit and its operating permit reflect this 17.2 TPY offset. This action is in accordance with the attainment strategy for the District as outlined in the Kentucky SIP. Under the Kentucky SIP, the banked emission limits are permanent and enforceable.

Action

EPA today approves the SIP revision submitted by Kentucky. This approval is being made without prior proposal because the bubble procedure used in this case is straightforward, noncontroversial, and affects only the two companies involved. In addition, we anticipate no comments.

This action will be effective 60 days from the date of this Federal Register notice. However, if we receive notice within 30 days that someone wishes to submit critical comments, we will withdraw this action and will publish two subsequent notices before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from today]. This action may not be challenged later in proceedings to enforce its rquirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

On July 1, 1981, the Director of the Federal Register approved the incorporation by reference of the State Implementation Plan for the State of Kentucky.

(Section 110 of the Clean Air Act (42 U.S.C. 7410))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

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[3] PLF also submitted a supplement to its petition on December 8, 1981. In this supplement PLF urged EPA to reconsider the funding limitations and the construction moratorium in light of a recent decision by the U.S. Court of Appeals for the Fifth Circuit in *City of Seabrook* v. *EPA*, 659 F. 2d 1349 (5th Cir. 1981). The Fifth Circuit, in reviewing EPA's approval of a Texas I/M statute, held that Section 172 of the Act does not require states to submit evidence of legal authority for I/M until July 1, 1982—unless EPA makes a finding that I/M is available before that date. EPA does not agree with the Fifth Circuit's interpretation of Section 172 for the reasons set out in its brief in *Pacific Legal Foundation* v. *Gorsuch* (9th Cir. Nos. 81-7060 and 80-4442). Accordingly, the *Seabrook* decision does not provide a basis for granting the petition for reconsideraton.

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

In § 52.920, paragraph (c) is amended by adding subparagraph (32) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(32) Revision to the State Implementation Plan for a bubble action at Borden Chemical Co., Jefferson County, Kentucky, received by EPA from the Kentucky Department for Natural Resources and Environmental Protection on March 5, 1982.

[FR Doc. 82-12748 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 62

[A-3-FRL-2055-2]

Approval of Revisions of Maryland's Air Quality Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of several amendments of the Maryland regulations submitted on May 18, 1981 as revisions to the Maryland Air Quality Plans. These revisions include new regulations for the control of Volatile Organic Compound (VOC) emissions and for the control of total reduced sulfur emissions from kraft pulp mills, as well as miscellaneous State-initiated regulation changes and revised stack test procedures. Additionally, EPA is removing obsolete provisions of the Maryland SIP relating to transportation control plans. These changes provide for attainment of the ozone and carbon monoxide standard without relying on the Federally promulgated measures.

EFFECTIVE DATE: June 10, 1982.

ADDRESSES: Copies of the revision and associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Vollberg (3AW12), U.S. Environmental Protection Agency, Region III, Sixth & Walnut Streets, Philadelphia, PA 19106, telephone: 215/597-8990.

SUPPLEMENTARY INFORMATION: On May 18, 1981, the Governor of the State of Maryland submitted numerous regulation changes as revisions to the Maryland State Implementation Plan. The amendments include:

1. The adoption of reasonably available control technology (RACT) regulations for the Round II Control Techniques Guidelines for the control of volatile organic compound (VOC) emissions.
2. The adoption of regulations to control the total reduced sulfur (TRS) emissions from kraft pulp mills in accordance with Section 111(d) of the Clean Air Act and Part 60 of Title 40 of the Code of Federal Regulations.
3. Miscellaneous State regulation changes.
4. Revised stack test procedures.

A public hearing on the changed and new regulations was held on December 15, 1980 in Baltimore, Maryland. The regulations were adopted on April 8, 1981 and became effective State regulations on June 8, 1981. These amendments have been developed and submitted in accordance with the requirements of Title 40, Code of Federal Regulations, Part 51. Further, on January 20, 1981, the Governor of Maryland requested that the federally promulgated transportation measures in 40 CFR Part 52 that were obsolete be deleted. EPA is deleting them because Maryland has submitted plan revisions satisfying the requirements of Part D of Title I of the Clean Air Act (the Act), as amended, (45 FR 53470, August 12, 1980). These revisions provide for attainment of the ozone and carbon monoxide standard without relying on the federally promulgated measures.

EPA proposed action on the revisions submitted by the State of Maryland in the Federal Register on October 1, 1981 at 46 FR 48240. The regulation amendments and EPA's evaluation were explained in detail in that notice. Those wishing a complete description of Maryland's revisions are referred to the proposal notice.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Public Comments

EPA solicited public comment on the new and amended regulations and the changes to 40 CFR Part 52 in the proposed rulemaking notice. One comment discussed below was received concerning the regulation governing the VOC emissions from synthesized pharmaceutical manufacture (COMAR 10.18.21.14).

Comment: The commenter was concerned with the EPA approval of the regulation which he referred to as "* * * not sufficiently stringent to meet the RACT definition as provided in the relevant control techniques guideline." Further, he is concerned that new facilities would be allowed by the regulation to have emissions greater than those represented by the CTG guidelines.

Response: In the proposed rulemaking notice, EPA noted that Maryland exempted sources emitting less than 40 lbs/day from emission controls on all air dryers and production equipment exhaust systems. This differed from the EPA guidance which recommended controls on sources which emit 33 lbs/day or more of VOC emissions. Further, EPA noted that the one source affected by the regulation has emissions greater than 40 lbs/day. The source is meeting the Maryland regulation achieving the required 90% emission reductions from air dryers and process equipment exhaust systems. This level of control is compatible with the CTG guidelines. Therefore, EPA determines that this regulation as applied, reflects RACT for the pharmaceutical category in the State of Maryland.

In response to the commenter's concern regarding new facilities locating in the State of Maryland emitting VOC's in amounts greater than those represented by the CTG guidance, it should be noted that Maryland has regulations for New Sources in Nonattainment Areas. These regulations were developed to satisfy the requirements of section 173 of the Clean Air Act, and were approved by EPA on September 11, 1981 (46 FR 45340). One of the requirements of the regulation is that a new source must meet the Lowest Achievable Emission Rate (LAER). By

definition, the emission rate would be more stringent than RACT. For this reason, the commenter should be assured that his concern for new facilities is satisfactorily protected by the new source requirements.

The commenter requested that EPA have the regulation changed "* * * to bring them into conformity with the CTG guideline." EPA finds that the regulations are consistent with the CTG and do not need to be amended. The air quality effect would not change as pointed out in the above discussions; the emission reduction will be the same and new sources would be required to apply LAER control.

EPA Evaluation

EPA evaluated each individual change in the notice of proposed rulemaking (46 FR 48241, October 1, 1981) and therefore refers those wishing a complete description to that notice.

Based upon the agency's review, the amendments to COMAR 10.18.01, 10.18.06, 10.18.08, 10.18.09, 10.18.11, 10.18.12, 10.18.13, 10.18.14, 10.18.21, and Technical Memorandum TM–116 as submitted on May 18, 1981 have been found to satisfy the requirements of 40 CFR Part 51 and they are approvable. Further, the amendments to 40 CFR Part 52, Subpart V-Maryland are found to be appropriate to reflect the current version of the SIP and to correct previous typographical errors in the Identification of Plan section.

EPA is not acting on the version of 10.18.10, the iron and steel regulations, as submitted on May 18, 1981 as discussed in the proposed rulemaking on October 1, 1981 (46 FR 48242).

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

COMAR 10.18.14 comprises the regulations for the control of total reduced sulfur (TRS) emissions from kraft pulp mills. It was submitted by Maryland to satisfy the requirements of Section 111(d) of the Clean Air Act. For the description and EPA evaluation of the regulation, interested persons are directed to the notice of proposed rulemaking published in the Federal Register on October 1, 1981 at 46 FR 48242.

Public Comment

EPA solicited public comments on the new regulations in the proposed rulemaking. No comments were received relative to COMAR 10.18.14.

EPA Evaluation

EPA has evaluated the regulation (described in detail in the proposed rule, 46 FR 48242, October 1, 1981) and finds that it was developed and submitted in accordance with the requirements of section 111(d) of the Act and 40 CFR Part 60, Chapter I. Based upon this COMAR 10.18.14 is approvable and therefore 40 CFR Part 62 is amended to include the regulation.

Final Action

In view of this evaluation, the Administrator approves the above described amendments as a revision to the Maryland State Implementation Plan and COMAR 10.18.14 as satisfying the requirements of section 111(d) of the act and 40 CFR Part 60.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

I hereby certify that the plan approval contained herein under section 111(d) of the Clean Air Act will not have a significant economic impact on a substantial number of small entities because it only covers one facility, which is already meeting the applicable total reduced sulfur limitation for kraft pulp mills. Furthermore, this action only approves a State action and imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR

Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(42 U.S.C. 7401–642)

Dated: April 28, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. In § 52.1070 Identification of Plan, by revising paragraphs (c) (19) and (20), and by adding (c)(58) to read as follows:

* * * * *

§ 52.1070 Identification of plan.

(c) * * *

* * * * *

(19) Amendments to Sections .03 (Air Pollution Episode System), .06 (Test Methods) and .11 (Permits); and deletion of Section .04 (Prior Registration of Proposed Installations) of Maryland Regulation 10.03.35 (Regulations Governing Air Pollution Control in the State of Maryland); amendments to Sections .03 (Control of Particulate Emissions), .04 (Control and Prohibition of oxides of nitrogen emissions), and associated tables of Maryland Regulations 10.03.36, 10.03.37, 10.03.40, and 10.03.41 (Regulations Governing Air Pollution Control in the Cumberland-Keyser, Central Maryland, Southern Maryland, and Eastern Shore AQCRs); amendments to Sections .03 (Control and Prohibition of Particulate Emissions), .04 (Control and Prohibition of Hydrocarbons and Oxides of Nitrogen Emissions) and .06 (Control and Prohibition of Installations and Operations) and associated tables of Maryland Regulations 10.03.38 and 10.03.39 (Regulations Governing Air Pollution Control in the Metropolitan Baltimore and National Capital AQCRs);

submitted on April 24, 1974 by the Governor.

(20) Amendments to Sections .01 (Definitions), .04 (Ambient Air Quality Standards (former Section .05 of Regulations)), 10.03.36 through 10.03.41 (Regulations Governing Control of Air Pollution in the State of Maryland); amendments to Sections .01 (Control and Prohibition of Open Burning), .02 (Control and Prohibition of Particulate Emissions), .03 (Control and Prohibition of Sulfur Oxides, Hydrocarbons and Oxides of Nitrogen Emissions), and .06 (Control and Prohibition of Installations and Operations) of Maryland Regulations 10.03.36, 10.03.37, 10.03.40, and 10.03.41 (Regulations Controlling Air Pollution in the Cumberland-Keyser, Central Maryland, Southern Maryland and Eastern Shore AQCRs); amendments to Section .02 (Control and Prohibition of Visible Emissions), .03 (Control and Prohibition of sulfur oxides, hydrocarbons, and oxides of nitrogen emissions), and .06 (Control and Prohibition of Installations and Operations) of Maryland Regulations 10.03.38 and 10.03.39 (Regulations Controlling Air Pollution in the Metropolitan Baltimore and National Capital AQCRs); submitted on December 11, 1974 by the Governor.

* * * * *

(58) Amendments to COMAR 10.18.01, 10.18.06, 10.18.08, 10.18.09, 10.18.11, 10.18.12, 10.18.13, 10.18.14, 10.18.21, and Technical Memorandum TM–116 (amended November 1980) as submitted by the Governor on May 18, 1981.

2. In § 52.1073, Approval Status, paragraph (b) is revised, paragraph (c) and paragraph (e) are removed, paragraph (d) is redesignated (c) and revised, paragraph (f) is redesignated (d) to read as follows:

§ 52.1073 Approval status.

* * * * *

(b) With respect to the strategies submitted on April 16, May 5, June 15, June 22, June 28, July 9, 1973 and July 1, 1975, the Administrator approves the measures for the National Capital region for dry cleaning solvent use, and gasoline vapor recovery with the exceptions set forth in §§ 52.1074, 52.1077, 52.1080, 52.1082, and 52.1086.

(c) With respect to the strategies submitted on April 16, June 15, June 28, and July 9, 1973 and July 1, 1975, the Administrator approves the measures for the Metropolitan Baltimore Intrastate Region for dry cleaning solvent use and gasoline vapor recovery with the exceptions set forth in §§ 52.1074, 52.1077, 52.1080, 52.1082, and 52.1101.

§ 52.1074 [Amended]

3. In § 52.1074, Legal authority, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated (a).

§ 52.1075 [Amended]

4. In § 52.1075, Conditional approvals, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated (a).

§ 52.1076 [Reserved]

5. Section 52.1076 is removed and reserved.

§ 52.1077 [Amended]

6. In § 52.1077, Source surveillance, paragraphs (b) and (c) are removed.

§ 52.1080 [Amended]

7. In § 52.1080, Compliance schedule, paragraphs (c) through (e), (h), (i), and (k) are removed.

§ 52.1081 [Reserved]

8. Section 52.1081 is removed and reserved.

§ 52.1083 [Reserved]

9. Section 52.1083 is removed and reserved.

§ 52.1084 [Reserved]

10. Section 52.1084 is removed and reserved.

§ 52.1089 [Reserved]

11. Section 52.1089 is removed and reserved.

§ 52.1090 [Reserved]

12. Section 52.1090 is removed and reserved.

§ 52.1091 [Reserved]

13. Section 52.1091 is removed and reserved.

§ 52.1092 [Reserved]

14. Section 52.1092 is removed and reserved.

§ 52.1093 [Reserved]

15. Section 52.1093 is removed and reserved.

§ 52.1094 [Reserved]

16. Section 52.1094 is removed and reserved.

§ 52.1095 [Reserved]

17. Section 52.1095 is removed and reserved.

§ 52.1096 [Reserved]

18. Section 52.1096 is removed and reserved.

§ 52.1097 [Reserved]

19. Section 52.1097 is removed and reserved.

§ 52.1098 [Reserved]

20. Section 52.1098 is removed and reserved.

§ 52.1099 [Reserved]

21. Section 52.1099 is removed and reserved.

§ 52.1100 [Reserved]

22. Section 52.1100 is removed and reserved.

§ 52.1103 [Reserved]

23. Section 52.1103 is removed and reserved.

§ 52.1104 [Reserved]

24. Section 52.1104 is removed and reserved.

§ 52.1105 [Reserved]

25. Section 52.1105 is removed and reserved.

§ 52.1106 [Reserved]

26. Section 52.1106 is removed and reserved.

§ 52.1108 [Reserved]

27. Section 52.1108 is removed and reserved.

§ 52.1109 [Reserved]

28. Section 52.1109 is removed and reserved.

§ 52.1111 [Reserved]

29. Section 52.1111 is removed and reserved.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40, Code of Federal Regulations is amended by revising Subpart V to read as follows:

Subpart V—Maryland

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.5110 Identification of plan.

(a) Title of Plan: "Control of Kraft Pulp Mill TRS Emissions."

(b) The plan was officially submitted by the Governor of Maryland on May 18, 1981.

(c) Identification of sources:

Westvaco, Fine Papers Division, Luke, Maryland.

[FR Doc. 82-12774 Filed 5-10-82; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-161]

Commission Organization; Amendment of the Commission's Rules With Respect to Delegation of Authority to the Chief, Broadcast Bureau of Designation Orders and Petitions To Deny Relating to Renewal, Assignment and Transfer Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 0.281 of the Commission's rules to delegate authority to the Chief, Broadcast Bureau to designate renewal and mutually exclusive construction permit applications for hearing and to act on certain petitions to deny filed against renewal, assignment or transfer of control applications. These rule changes will contribute to regulatory efficiency by limiting the number of agenda items routinely presented to the Commission and thereby freeing Commission time to consider those matters posing unique or serious problems that require in depth scrutiny and review.

DATES: Effective: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kreisman, Broadcast Bureau, (202) 632-7542.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

In the matter of: amendments to Part 0; § 0.281(a)(11), (i) and (ii) and § 0.281(b)(1), with respect to delegation of authority to the Chief, Broadcast Bureau of designation orders and petitions to deny relating to renewal, assignment and transfer applications.

Memorandum Opinion and Order

Adopted: April 1, 1982.

Released: May 3, 1982.

1. The Commission hereby amends its rules, Part 0, § 0.281(a)(11), (i) and (ii) and § 0.281(b)(1) as follows. Where a renewal application is mutually exclusive with a timely filed competing application for a construction permit, power increase or other modification of facilities and no new or novel issues are presented, such applications may be designated for comparative hearing by the Chief, Broadcast Bureau by delegated authority. Further, where petitions to deny are filed against renewal, assignment or transfer of control applications that neither raise new or novel questions nor warrant designation of the application for evidentiary hearing, they may be acted on by the Chief, Broadcast Bureau by delegated authority. However, petitions to deny filed against renewal, assignment or transfer of control applications which contain documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies or address stations that fall outside applicable processing criteria in their employment of women and minorities, will be referred to the Commission *en banc*. These rule changes will contribute to regulatory efficiency by limiting the number of agenda items routinely presented to the Commission and thereby freeing Commission time to consider those matters posing unique or serious problems that require in depth scrutiny and review.

2. Section 0.281 of the Commission's rules provides that all renewal applications which appear to call for an evidentiary hearing should be referred by the Chief, Broadcast Bureau, to the Commission *en banc* for disposition. Section 0.281(a)(11). However, by our action today, where an evidentiary hearing is called for merely because a renewal application is mutually exclusive with a construction permit application and no new or novel issues have been raised, then such applications may be designated for hearing by the Chief, Broadcast Bureau, by delegated authority.[1] This is consistent with 0.281(a)(11)(i) of the rules, which delegates to the Chief, Broadcast Bureau authority to designate routine mutually exclusive construction permit applications.

3. Section 0.281(b)(1) requires that the Commission *en banc* consider Petitions to Deny directed against AM, FM and TV applications for renewal, assignment or transfer of control, when such petitions are timely filed and properly lie as a matter of law. That rule section previously provided that petitions to deny filed against construction permit applications and applications for new or modified facilities were also to be referred to the Commission. However, in the *Second Report and Order*, FCC 81-276, 49 RR2d 1219 (1981), the Chief, Broadcast Bureau was delegated authority to act on all petitions to deny applications that do not involve license renewal, assignment or transfer if the petitions do not raise new or novel issues. The rule modification herein establishes a more consistent guideline for Commission review of petitions, no longer segregating renewal, assignment and transfer applications for such disparate treatment.

4. The instant modification with respect to petitions is appropriate for other reasons. The basis for evaluation as to whether a filing constitutes a "petition," mandating consideration by the Commission *en banc*, turns on such matters as—party standing, timeliness and submission of supporting affidavit. The evaluation does not require a determination based on the nature and/or seriousness of the substantive allegations. *John F. Runner*, FCC 76-186, 36 RR2d 773 (1976). Thus, in many instances, a pleading that meets the technical requirements of a "petition" is forwarded for Commission consideration although the substance fails to present a new or novel issue. At times, such petitions may even be characterized as frivolous. Commission time directed to addressing such petitions is not warranted. Furthermore, we believe that institution of this procedure will expedite action on contested applications and related pleadings.[2]

5. It is important to acknowledge that these delegation modifications will not result in prejudice accruing to any party. Section 0.281(b)(2) remains intact. Pursuant to that section, petitions or other requests for reconsideration of actions taken by the Chief, Broadcast Bureau, must be referred to the Commission *en banc* when they set forth new or novel arguments not previously considered; when they appear to justify a change in Commission policy; or request reconsideration of hearing designation orders. Further, pursuant to § 1.115 of the Commission's Rules "any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission." Generally, it is the Commission's policy that a petition for reconsideration of a designation order or other interlocutory order will only be entertained if the petition relates to an adverse ruling pertaining to the petitioner's participation in the proceeding, *Federal*

[1] Other renewal and assignment and transfer applications which appear to call for an evidentiary hearing will continue to be referred to the Commission *en banc*.

[2] This rule modification follows closely other delegation modifications. In Amendments of Part 0, § 0.281(b)(6), Part 1, §§ 1.401 and 1.405(d) of the Rules (Delegation of Authority to the Chief, Broadcast Bureau and Procedures Regarding Petitions for Rule Making, 79 FCC 2d 1, 47 RR 2d 1088 (1968)), authority was delegated to the Broadcast Bureau to dismiss or deny broadcast related petitions for rule-making which are moot, repetitive, premature, frivolous or do not warrant consideration by the Commission.

Broadcasting System, Inc., 60 FCC 2d 1036, 1038, 38 RR 2d 692, 696 (1976). However, the Commission has under unique circumstances waived this policy. (See *Alabama Citizens for Responsive Public Television Inc.*, 69 FCC 2d 1062, 1066, 43 RR 2d 999, 1004 (1978), where the applicant's limited financial resources threatened its continued participation in the proceeding.) Moreover, our present hearing procedures provide for motions to delete issues and the summary decision procedure. *Federal Broadcasting System, Inc., supra; WIOO, Inc.*, 68 FCC 2d 127, 129, 42 RR 2d 1356, 1357 (1978).

6. In view of the foregoing, the amendments set out herein will streamline the regulatory process by eliminating the requirement that all renewal applications that are to be designated for hearing and all petitions to deny directed against AM, FM and TV applications for renewal, assignment or transfer of control be routinely referred to the Commission *en banc* for consideration.

7. Authority for the adoption of this Order is contained in Sections 4 (i), (j), 5(d), and 303(r) of the Communications Act of 1934, as amended, and § 1.412(b)(5) of the Commission's rules. Since it relates to internal Commission organization, practice and procedure, and because early implementation of these changes will expedite the transaction of public business, compliance with the usual notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) is not required. See *Petitions for Rule Making supra.*

8. Accordingly, it is ordered, That effective as of the adoption date of this Order, § 0.281(a)(11) (i) and (ii) and (b)(1) of the Rules is amended.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—COMMISSION ORGANIZATION

47 CFR Part 0 is amended by revising § 0.281(a)(11) (i), (ii), and (b)(1) to read as follows:

§ 0.281 Authority delegated.

* * * * *

(a) * * *

(11) * * *

(i) Mutually exclusive applications, including renewal and construction permit applications, involving non-routine hearing issues.

(ii) Other renewal and assignment and transfer applications which appear to call for an evidentiary hearing.

* * * * *

(b) * * *

(1) Petitions to deny, informal objections, and other petitions, directed against AM, FM, and TV applications for new or modified facilities, or for renewal, assignment or transfer of control, will be referred to the Commission if they: (1) Contain new or novel issues not previously considered by the Commission; (2) appear to justify a change in Commission policy; or (3) present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies, or the applicant in question falls outside the applicable processing criteria in its employment of women and minorities.

* * * * *

[FR Doc. 82-12796 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-615; RM-3897]

Radio Broadcast Services; FM Broadcast Station in Thoreau, N. Mex.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 260 to Thoreau, New Mexico, as its first commercial FM channel in response to a request filed by Hal, Inc.

DATE: Effective: June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

Adopted: April 23, 1982.

Released: May 4, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Thoreau, New Mexico), BC Docket No. 81-615, RM-3897.

1. The Commission has before it for consideration a Notice of Proposed Rule Making, 46 FR 45169, published September 10, 1981, in response to a petition filed by Hal, Inc. ("petitioner"), proposing the assignment of FM Channel 260 to Thoreau, New Mexico, as that community's first FM assignment. Supporting comments were filed by petitioner in which it affirmed its intention to file for the channel, if assigned. Oppositions were filed by Grants Broadcasting Company ("GBC"), licensee of FM Station KYKN, Grants, New Mexico, and by John R. Catsis ("Catsis"), petitioner in another proceeding (BC Docket No. 81-776) to assign FM Channel 256 to Gallup, New Mexico. Reply comments were filed by the petitioner, by GBC and by Catsis. The channel may be assigned to Thoreau in compliance with the minimum distance separation requirements.

2. Thoreau (population 950)[1] is an unincorporated community in McKinley County (population 54,950),[2] located approximately 145 kilometers (90 miles) northwest of Albuquerque, New Mexico. Thoreau presently has no local broadcast service. Petitioner asserts that with the expansion of uranium mining and milling operations in the area Thoreau is expected to become a major residential and commercial community.

3. Basically, petitioner contends that a Class C channel should be assigned to Thoreau because it would provide the community with its first local broadcast service and provide a first, second, and third FM service to a substantial population and area. The opponents contend that a Class C channel should not be assigned to a community as small as Thoreau.

4. In response to the Notice, petitioner shows that 58,786 persons (1980 U.S. Census) in a 3,850 square mile area would receive a first, second or third FM service as follows:

	Area (square miles)	Population
1st service	1,457	7,233
2d service	240	20,656
3d service	2,153	30,865
Total	3,850	58,786

Petitioner alleges that in view of this showing, a Class C channel is warranted.

5. GBC comments that Thoreau is too small to warrant a Class C FM channel assignment in accordance with the

[1] This population figure was provided by the petitioner. Thoreau does not appear in the 1980 U.S. Census.

[2] This population figure was taken from the 1980 U.S. Census, Advance Reports.

Commission's policy. The community has few businesses, none of which is sizeable. In GBC's opinion, those businesses could not be expected to generate adequate advertising revenues to support a wide area Class C FM service. Instead, GBC contends the licensee would have to depend in large measure on revenues from Grants and/or Gallup, New Mexico, to sustain itself. Accordingly, GBC states a serious question is raised as to whether petitioner really intends to service Thoreau rather than the larger nearby population centers of Gallup and Grants. GBC also alleges that the assignment would threaten the viability of its Station KYKN(FM), the only FM service in Grants, and jeopardize the station's continued existence. Finally, GBC urges us to consider the large preclusive impact that the assignment would cause.

6. In comments by Catsis, he points out that he had filed a conflicting proposal to assign Channel 280 to Gallup, New Mexico.[3] Catsis argues that Thoreau is too small ot warrant a Class C channel assignment, and that it is smaller than other communities to which the Commission declined to assign a Class C channel, assigning a Class A channel instead, citing *Cabool, Missouri*, 33 RR 2d 585 (1975); *Bolivar, Missouri*, 3 F.C.C. 2d 671, 673 (1966); and *Refugio, Texas*, 12 F.C.C. 2d 664, 666 (1968). Catsis also argues that since Thoreau is too small to support a Class C assignment, petitioner could be expected to use the station primarily for the neighboring, larger communities of Grants and Gallup.

7. In reply comments, petitioner contends that opponents have failed to show that the public interest would not be served by adoption of his proposal. Petitioner asserts that providing a first FM service to an unserved area tops the list of the Commission's FM assignment priorities. Thus its proposal which would provide a first local aural service to Thoreau and a first and second service to a significant area and population justifies a Class C assignment. The cases cited by the opponents, petitioner says, are not similar to the instant case as each would either have provided little or no service to white or gray areas, or the small community in question was a suburb of a major city. On its behalf, petitioner cited a number of instances in which a Class C channel "was assigned with less white or gray area than is proposed here."

[3] The conflict was later removed when the Notice in BC Docket No. 81-776 was issued to propose adding Channel 280 instead of Channel 280 to Gallup.

8. With respect to the size of Thoreau, petitioner points out that, although the population was 950 in 1980, it has expanded in just the past year of 1981. In this regard, petitioner states that a project planner for McKinley County has estimated the population of Thoreau to reach 1,200 in 1981, and 3,500 by 1990, not including 1,000 families (4,000 persons) located within two miles of Thoreau. Petitioner also claims "that Thoreau is growing and will boom in the 80's." It notes a new FDIC insured bank has opened, and a second bank received FDIC clearance to begin operation; that the new high school expansion has been completed; and that eight corporations have requested permits to mine over two billion tons of coal. We are also told that the Santa Fe Railroad will provide a shipping terminal at Thoreau and a new electric plant is under planning and construction.

9. Petitioner denies the claim of opponents that a Thoreau Class C station would in fact operate as a Grants or Gallup station, in derogation of the Commission's policy against *de facto* reallocation of FM channels. See *Berwick Broadcasting Corp.*, 17 RR 2d 884 (1969). In this regard petitioner cites our *Notice of Proposed Rule Making* in BC Docket No. 80-130 which proposed to adopt an approach which would give consideration to the *de facto* reallocation issue during the application stage. Petitioner states that Thoreau can, and will in the future, be able to support its own FM station. Noting that both Grants and Gallup are over 25 miles away, petitioner asserts that Thoreau's peculiar needs can only be met by its own station without reliance on service from other communities.

10. In opponents' reply comments, both restate their contention that assignment of a Class C channel to Thoreau would be contrary to Commission policy. The assignment's proposed service area is said to be adequately served and a Class A channel could provide sufficient service to Thoreau. Opponents further argue that petitioner is attempting to use a first local assignment to Thoreau in order to service Grants and Gallup since Thoreau could not support a station. Finally they reassert that the economic impact on Station KYKN(FM) would cause a loss or cutback of the only local radio service to Grants.

11. The controlling question before us is whether the public interest would be served by the assignment of a Class C Channel to the small community of Thoreau. We conclude that it would.

12. First the assigment would provide a first local aural broadcast service to Thoreau. The population of Thoreau in 1981 is estimated at 1,200 with additional growth anticipated. The showing made by the petitioner indicates that Thoreau is located in an area of extensive mining of coal, an important product in our national energy program.

13. More importantly, the assignment would provide a first FM service to an area of approximately 1,457 square miles with a population of 7,233 and a second FM service to an area of approximately 240 square miles with a population of 20,668. This showing is compelling for a Class C assignment. The cited cases in paragraph 6, *supra*, are distinguishable. In all three cases, *Cabool, Missouri, Refugio, Texas*, and *Bolivar, Missouri, supra*, an exception to our policy of assigning Class C channels only to larger communities was not found to be justified where little, if any, first or second FM service would be provided. In the instant case, it has been shown that a very large area and population could receive a first or second FM service. Such service is of the highest public benefit warranting a departure from our policy. As for the suburban community issue that has been raised, we don't agree that a Thoreau assignment would necessarily be used to serve communities over 25 miles away. Opponents have not cited any cases [4] and we have been unable to find a case where the distances involved (over 25 miles) were considered close enough to find a departure from the suburban community assignment policy. In this case we find no evidence of an intent to seek a Thoreau assignment in order to obtain revenues and provide service to Gallup and Grants. Based on the distances between the communities, we cannot infer such a result will inevitably follow.

14. Accordingly, we conclude that the assignment of a Class C channel to Thoreau as its first local aural service would serve the public interest.

15. Authority for the adoption of the amendment herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204 and 0.281 of the Commission's rules.

16. Accordingly, it is ordered, that effective June 29, 1982, § 73.202(b) of the Commission's Rules, the FM Table of

[4] In reviewing the cases cited by opponents, *Carson City, Nevada*, 48 RR 2d 1700 (1981), and *Santa Fe, New Mexico*, 46 RR 2d 1433, the larger city was selected for the Class C assignment on the basis of distances of 15 miles between the major city and the smaller community. This 15-miles distance is the standard used in § 73.203(b) which permits licensing to nearby communities.

Assignments, is amended with regard to the following community:

City	Channel No.
Thoreau, N. Mex.	250

17. It is further ordered, that this proceeding is terminated.

18. For further information concerning the above, contact Philip S. Cross, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1060, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12770 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-839; RM-3912]

Radio Broadcast Services, TV Broadcast Station in Shawnee, Oklahoma; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 30 to Shawnee, Oklahoma, in response to a petition filed by Canadian Valley Television, Inc. The assignment could provide a first commercial television service to Shawnee.

DATE: Effective: July 6, 1982.

ADDRESS: Federal Communications Commssion, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Shawnee, Oklahoma), BC 81–839, RM–3912.

Report and Order

(Proceeding Terminated)

Adopted: April 29, 1982.

Released: May 5, 1982.

1. The Commission has under consideration a Notice of Proposed Rule Making, 46 FR 61303, published December 16, 1981, proposing the assignment of UHF television Channel 30 to Shawnee, Oklahoma, as its first commercial television assignment. The notice was issued in response to a petition filed by Canadian Valley Television, Inc. ("petitioner"). Supporting comments were filed by petitioner. No oppositions to the proposal were received

2. Shawnee (population 25,075),[1] seat of Pottawatomie County (population 43,134), is located approximately 50 kilometers (33 miles) east of Oklahoma City. It has no local television service.

3. In comments to the proposal, the petitioner incorporated by reference the information contained in the Notice demonstrating the need for a first television assignment to Shawnee. Petitioner also restated its intention to apply for the channel, if assigned.

4. We believe that the petitioner has adequately demonstrated a need for a first UHF television assignment to Shawnee, and that the public interest would be served by assigning UHF television Channel 30 to that community. The assignment can be made in compliance with the minimum distance separation requirements and other technical criteria.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective July 6, 1982, the Television Table of Assignments (§ 73.606(b) of the rules) is amended with respect to the community listed below:

City	Channel No.
Shawnee, Oklahoma	30

6. It is further Ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12767 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures derived from the 1980 U.S. Census Advance Report.

47 CFR Part 73

[BC Docket No. 81-785; RM-3940]

Radio Broadcast Services, FM Broadcast Station in Minor Hill, Tennessee; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 221A to Minor Hill, Tennessee, in response to a petition filed by Burwood Broadcasting Corporation. The assignment could provide for a first FM Service to Minor Hill.

DATE: Effective: June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Minor Hill, Tennessee), BC Docket No. 81–785, RM–3940.

Report and Order

Proceeding Terminated

Adopted: April 23, 1982.

Released: April 30, 1982.

1. The Commission herein considers the Notice of Proposed Rule Making, 46 FR 58723, published December 3, 1981, proposing the assignment of Channel 221A to Minor Hill, Tennessee. The Notice was issued in response to a petition filed by Burwood Broadcasting Corporation (petitioner). Supporting comments were filed by the petitioner stating its intention to apply. No oppositions to the proposal were received.

2. Minor Hill (population 584),[1] in Giles County (population 24,625), is located approximately 167 kilometers (104 miles) west of Chattanooga, Tennessee. It is without local broadcast service.

3. Petitioner incorporated by reference the reasons stated in the Notice for the proposed FM assignment to Minor Hill.

4. The Commission believes that the public interest would be served by assigning Channel 221A to Minor Hill. The petitioner has shown that there is

[1] Population figures are taken from the 1980 U.S. Census.

an apparent need for a first FM service to that community. The transmitter site is restricted to 1.9 kilometers (1.8 miles) northwest of the city to avoid short-spacing to Stations WKLN (Channel 221A), Cullman, Alabama, and WDEF (Channel 222), Chattanooga, Tennessee.

5. In view of the above and pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective June 29, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Minor Hill, Tennessee	221A

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12798 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-884; RM-4007]

Radio Broadcast Services, FM Broadcast Station in Wichita Falls, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 292A to Wichita Falls, Texas, in response to a petition filed by Broadco, Incorporated. The assignment could provide Wichita Falls with a fourth FM service.

DATE: Effective: June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Wichita Falls, Texas), BC Docket No. 81-884, RM-4007.

Report and Order

(Proceeding Terminated)

Adopted: April 21, 1982.

Released: April 30, 1982.

1. The Commission has before it for consideration the Notice of Proposed Rule Making herein, 46 FR 62880, published December 29, 1981, in response to a petition filed by Broadco, Incorporated ("petitioner"), proposing the assignment of FM Channel 292A to Wichita Falls, Texas, as that community's fourth FM assignment. Supporting comments were filed by petitioner in which it reaffirmed its intention to file for the channel if assigned as proposed. No oppositions to the proposal were received.

2. Wichita Falls (population 94,201),[1] the seat of Wichita County (population 121,082), is located near the Texas-Oklahoma border, approximately 192 kilometers (120 miles) northwest of Dallas, Texas. It is currently served by three FM stations (KNIN-FM, Channel 225; KKQV, Channel 277; and KLUR, Channel 280), as well as three full-time AM stations (KNIN, KTRN and KWFT).

3. Petitioner submitted information with respect to Wichita Falls which is persuasive as to its need for a fourth FM assignment.

4. In response to our request in the Notice for preclusion information, petitioner advises that twenty-two communities[2] containing a population in excess of 1,000 persons, and without any aural service, would sustain preclusion as a result of the proposed assignment. However, it notes that twenty of these communities have an alternate channel available for assignment. The remaining two, Montague and Forestburg (population 1,300 each),[3] are located in close proximity to Dallas and Ft. Worth, Texas. Petitioner asserts that there is little likelihood of a viable FM operation at either of those two communities.

5. On the basis of the above representation, we find that the preclusive effect on surrounding communities is insubstantial. Except for two communities, Montague and Forestburg, alternate channels are available thereto. The two precluded communities do not appear to be of sufficient size to warrant our reserving a channel there for future use at the expense of another community where demand is present. *See, Sonora, California,* 46 FR 48200, published October 1, 1981, and cases cited therein.

6. As stated in the Notice, the assignment will create intermixture of a Class A channel in a community dominated by Class C stations. However, petitioner has reaffirmed its intention to apply for the Class A assignment, notwithstanding the possible competitive advantage that may accrue to the Class C operations. Therefore, intermixture is not an obstacle to the assignment herein. *See, Yakima, Washington,* 42 F.C.C. 2d 548, 550 (1973); *Key West, Florida,* 45 F.C.C. 2d 142, 145 (1974).

7. In consideration of the foregoing, we believe that the public interest would be served by the assignment of Channel 292A to Wichita Falls as that community's fourth FM allocation. The assignment can be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

8. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, that effective June 29, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to Wichita Falls, Texas, as follows:

City	Channel No.
Wichita Falls, Texas	225, 280, 277, and 292A.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12799 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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[1] Population figures are derived from the 1980 U.S. Census, Advance Reports.

[2] The precluded communities are as follows: *Oklahoma:* Tipton, Grandfield, Walters, Temple, Waurika, Ringling, Ryan, Rush Springs, and Apache; *Texas:* Lockett, Olney, Jacksboro, Saint Jo, Montague, Forestburg, Nocona, Joy, Henrietta, Electra, Iowa Park, Holliday and Archer City.

[3] Population figures supplied by petitioner. Both places are unincorporated and thus not listed in the preliminary 1980 U.S. Census.

47 CFR Part 73

[BC Docket No. 81-769; RM-3943]

Radio Broadcast Services, FM Broadcast Station in Eagar, Arizona; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 223 to Eagar, Arizona, in response to a petition filed by Eastern Arizona Broadcasting Company. The assignment could provide a first local broadcast service to Eagar.

DATE: Effective: July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Report and Order; Proceeding Terminated

Adopted: April 29, 1982.

Released: May 5, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, Broadcast Stations, (Eagar, Arizona), BC Docket No. 81-769, RM-3943.

1. The Commission has under consideration the Notice of Proposed Rule Making, 46 FR 56835, published November 19, 1981, proposing the assignment of Class C FM Channel 223 to Eagar, Arizona, in response to a petition filed by Eastern Arizona Broadcasting Company (petitioner). Supporting comments were filed by the petitioner restating its intention to apply for Channel 223, if assigned. No oppositions to the proposal were received.

2. Eagar (population 2,791),[1] in Apache County (population 52,083), is located approximately 264 kilometers (165 miles) east of Phoenix. It is without local broadcast service.

3. In its comments, the petitioner again noted the need for an FM facility to serve Eagar and the surrounding area. The Notice had set forth in the preclusion information as provided by the petitioner pertaining to Channel 250. That channel conflicted with the proposed assignment of Channel 260 to Thoreau, New Mexico (BC Docket Number 81-815). Thus we substituted Channel 223 for assignment to Eagar. Since petitioner has already provided one preclusion study we did not request an additional study for the substituted channel. Our own review of the impact of this assignment is that a large availability of FM channels for this area will remain despite the assignment of Channel 223 to Eagar.

4. The Commission believes that the public interest would be served by assigning Channel 223 to Eagar, Arizona. The petitioner has shown that there is a need and it is willing to operate a first FM station in that community. Although a community the size of Eagar is not normally assigned a Class C channel, we proposed the assignment based on the community's inability to receive usable signals and the fact that the nearest station is 44 miles away (in Show Low, Arizona). In view of the insignificant preclusion impact and the apparent need for a wide coverage area station, we find the proposal justified.

5. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, that effective July 6, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Eagar, Ariz.	223

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12771 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

47 CFR Part 73

[BC Docket No. 81-872; RM-4009]

Radio Broadcast Services, FM Broadcast Station in Pagosa Springs, Colorado; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 292A to Pagosa Springs, Colorado, as a first FM assignment, in response to a petition filed by Don Davis.

DATE: Effective: July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Pagosa Springs, Colorado), BC Docket No. 81-872, RM-4009.

Report and Order—Proceeding Terminated

Adopted: April 29, 1982.

Released: May 5, 1982.

1. The Commission herein considers the Notice of Proposed Rule Making, 47 FR 2890, published January 20, 1982, which seeks the assignment of Channel 292A to Pagosa Springs, Colorado, as its first FM channel. The Notice was issued in response to a petition filed by Don Davis ("petitioner"). Comments in support of the proposal were filed by the petitioner. No oppositions were received.

2. Pagosa Springs (population 1,331),[1] seat of Archuleta County (population 3,664), is located approximately 320 kilometers (200 miles) southwest of Denver, Colorado. It is served by fulltime AM Station KPAG.

3. In his comments to the proposal, the petitioner refers to the data in the Notice which demonstrated the need for a first FM assignment to Pagosa Springs. He indicated that the AM facility and a weekly newspaper were inadequate to provide the desired sources of news and information to the community. Petitioner also restated his intention to apply for the channel, if assigned.

4. The Commission believes that the public interest would be served by assigning Channel 292A to Pagosa Springs, since it would provide that community with an opportunity for a first local FM broadcast service. The channel can be assigned in compliance with the minimum distance separation requirements.

5. In review of the above and pursuant to authority contained in sections 4(i), 5(d)(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as

[1] Population figures are taken from the 1980 U.S. Census.

amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, that effective July 6, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Pagosa Springs, Colo.	293A

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-12772 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-812; RM-3941]

Radio Broadcast Services, FM Broadcast Stations in Lamoni, Iowa; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 249A to Lamoni, Iowa, in response to a petition filed by Lamoni Broadcasting Company. The assigned channel could provide a first FM service to Lamoni.

DATE: Effective: June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Lamoni, Iowa), BC Docket No. 81–812, RM–3941.

Report and Order—Proceeding Terminated

Adopted: April 23, 1982.

Released: April 30, 1982.

1. The Commission has under consideration a Notice of Proposed Rule Making, 46 FR 58712, published December 3, 1981, proposing the assignment of Channel 249A to Lamoni, Iowa, as that community's first FM assignment. The Notice was issued in response to a petition filed by Lamoni Broadcasting Company ("petitioner"). Comments in support of the proposal were filed by the petitioner. No oppositions to the proposal were received.

2. Lamoni (population 2,705)[1] is located in Decatur County (population 9,794), near the Missouri border, approximately 112 kilometers (70 miles) south of Des Moines, Iowa. It has no local broadcast service.

3. In its comments, the petitioner restated the need for an FM assignment to Lamoni and urged the Commission to adopt its proposal. It also stated that it would apply for Channel 249A, if assigned.

4. The Commission has determined that the public interest would be served by assigning Channel 249A to Lamoni, Iowa, since it would provide the community with an opportunity for its first FM broadcast service.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and sections 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective June 29, 1982, § 73.202(b) of the Commission's Rules is amended with regard to the following community.

City	Channel No.
Lamoni, Iowa	249A

6. *It is further ordered,* That this proceeding is terminated.

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12773 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

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47 CFR Part 73

[BC Docket No. 81-778; RM-3946]

Radio Broadcast Services, FM Broadcast Station in Great Bend, Kansas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channel 300 to Great Bend, Kansas, in response to a petition filed by John E. Bozeman. The assignment could provide Great Bend with a second local commercial FM service.

DATE: Effective: July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order—Proceeding Terminated

Adopted: April 29, 1982.

Released: May 5, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Great Bend, Kansas), BC Docket No. 81–778, RM–3940.

1. The Commission has under consideration herein the Notice of Proposed Rule Making, 46 FR 58713, published December 3, 1981, proposing the assignment of Class C FM Channel 300 to Great Bend, Kansas, as that community's second commercial FM assignment, in response to a petition filed by John E. Bozeman ("petitioner"). Supporting comments were filed by petitioner in which he reaffirmed his intention to apply for the channel, if assigned.

2. Great Bend (population 16,606),[1] the seat of Barton County (population 31,343), is located approximately 144 kilometers (90 miles) northwest of Wichita, Kansas. It is served by co-owned Stations KVGB(AM) and KVGB–FM (Channel 282), as well as noncommercial FM Station KBJC (CP issued for Channel 220A). Channel 300

[1] Population figures are extracted from the 1980 U.S. Census, Advance Reports, unless otherwise indicated.

may be assigned to Great Bend in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In support of his proposal, petitioner submitted information with respect to Great Bend which is persuasive as to its need for a second commercial FM channel assignment.

4. As indicated in the Notice, the assignment of Channel 300 to Great Bend would cause preclusion to occur in nine communities [2] with a population in excess of 1,000, and which currently have no FM service. However, petitioner indicated that alternate channels would be available for assignment to each of the communities that lie within the precluded area.

5. In view of the interest expressed in the proposed channel allocation, the demonstration of need for additional service, and the fact that the preclusion impact does not appear to be significant, we believe that the public interest would be served by a grant of the requested assignment.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective July 6, 1982, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the community listed below, as follows:

City	Channel No.
Great Bend, Kans	262, 300

7. It is further ordered, that this proceeding IS TERMINATED.

8. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended; 1066, 1068; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-12788 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

[2] The precluded communities consist of: *Oklahoma:* Buffalo (population 1,381); *Kansas:* Greensburg (population 1,685), Kinsley (population 2,074), St. John (population 1,346), Ness City (population 1,769), Dighton (population 1,390), La Crosse (population 1,618), Syracuse (population 1,654), and Leoti (population 1,669). Leoti was recently assigned FM Channel 260 in BC Docket 81-502, released January 13, 1982.

47 CFR Part 73

[BC Docket No. 82-2; RM-3991]

Radio Broadcast Services, FM Broadcast Station in Cut Bank, Montana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 274 to Cut Bank, Montana, in response to a petition filed by Glacier Communications, Inc. The assignment could provide Cut Bank with its first local aural service.

DATE: Effective: June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Cut Bank, Montana), BC Docket No. 82-2, RM-3991.

Report and Order—Proceeding Terminated

Adopted: April 26, 1982.

Released: April 30, 1982.

1. The Commission herein considers the Notice of Proposed Rule Making, 47 Fed. Reg. 2891, published January 20, 1982, in response to a petition filed by Glacier Communications, Inc. (petitioner) proposing the assignment of Channel 274 to Cut Bank, Montana, as its first FM assignment. Supporting comments were filed by the petitioner in which it reaffirmed its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Cut Bank (population 3,668),[1] seat of Glacier County (population 10,628), is located approximately 144 kilometers (90 miles) northwest of Great Falls, Montana. It has no local aural service.

3. Petitioner incorporated by reference the information in the Notice which demonstrated the need for a first FM assignment to Cut Bank. In response to the request for additional demographic and economic information, petitioner submits that Cut Bank serves as the center of most political activities within the area. Its economic base is derived primarily from agriculture. In addition, Cut Bank has a wide range of community services.

4. As stated in the Notice, the proposed station would provide a first FM service to 9,977 persons residing in an area of 3,942 square kilometers (1,552 square miles) and a second FM service to 10,761 persons in an area of 3,726 square kilometers (1,467 square miles).[2] In the Notice, we also stated that only one community, Conrad, Montana, would be affected as a result of the assignment of Channel 274 to Cut Bank. However, Channels 222 and 278 are available for assignment to that community.

5. After consideration of the proposal, we have concluded that Channel 274 should be assigned to Cut Bank. Although a community the size of Cut Bank is not normally assigned a Class C channel, we are convinced from the information submitted by the petitioner that the proposal would provide substantial first and second services to the outlying area. Since alternate channels are available to the precluded area, we believe the preclusion impact is insignificant. Thus, in view of the need for a wide coverage area station, we find the proposal justified.

6. Canadian concurrence in the assignment of Channel 274 to Cut Bank, Montana, has been obtained.

7. In view of the foregoing and pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective June 29, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to Cut Bank, Montana, as follows:

City	Channel No.
Cut Bank, Mont	274

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

[1] Population figures are taken from the 1980 U.S. Census, Advance Reports.

[2] Petitioner provided an additional engineering study in its comments demonstrating the amount of first and second nighttime aural service that could be provided by its proposed station. Although no population figures were submitted, the showing reveals a significant amount of new nighttime aural service providing further justification for the assignment.

Federal Communications Commisson.
Roderick K. Porter,
Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-12790 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission (IWC) adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946, which established a three-year quota for the taking of the Bering Sea stock of bowhead whales for calendar years 1981, 1982, and 1983 of 45 landed or 65 struck with a maximum of 17 landed in any one year. All amendments to the Schedule of the Convention adopted at the 32nd Annual Meeting, including the three-year quota, became effective on November 25, 1980 (45 FR 85031, December 24, 1980). A Cooperative Agreement between NOAA and the Alaska Eskimo Whaling Commission, also published in this issue of the **Federal Register**, will provide specifically for the management of the bowhead whale hunt. This rule complements the Cooperative Agreement.

DATE: The rule becomes effective May 6, 1982.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, Washington, D.C. 20235, telephone (202) 634–7461.

SUPPLEMENTARY INFORMATION: Proposed bowhead whale management regulations were published January 16, 1981. The Cooperative Agreement between NOAA and the Alaska Eskimo Whaling Commission, also published in this issue, replaces the regulatory measures contained in the proposed regulations of January 16, 1981. This final regulation prohibits any bowhead whaling except under the terms of the Cooperative Agreement. The purpose is to ensure that only the traditional nine whaling villages engage in whaling, as has been the case in the past.

The Department of Commerce has determined that this is not a major regulation under Executive Order 12291, does not have a significant economic impact on a substantial number of small entities, and does not require reporting by ten or more persons.

List of Subjects in 50 CFR Part 230

Whales.

PART 230—WHALING PROVISIONS

50 CFR Part 230 is amended by revising § 230.70 to read as follows.

Subsistence

§ 230.70 General.

No person shall hunt, strike, harass, kill or land a bowhead whale except in accordance with the Cooperative Agreement between the Administrator of the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission, dated March 26, 1981 and extended on February 28, 1982 (47 FR 20137 May 11, 1982), and the Alaska Eskimo Whaling Commission's Management Plan as referenced in that Agreement.

(Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), Whaling Convention Act, (16 U.S.C. 916, et seq.))

Dated: May 5, 1982.
William G. Gordon,
Assistant Administrator for Fisheries.

[FR Doc. 82-12883 Filed 5-6-82; 11:20 am]
BILLING CODE 3510-22-M

50 CFR Part 230

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes; Cooperative Agreement Between NOAA and the Alaska Eskimo Whaling Commission

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Rule related notice.

SUMMARY: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission (IWC) adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946, which established a three-year quota for the taking of the Bering Sea stock of bowhead whales for calendar years 1981, 1982, and 1983 of 45 landed or 65 struck with a maximum of 17 landed in any one year. All amendments to the Schedule of the Convention adopted at the 32nd Annual Meeting, including the three-year quota, became effective on November 25, 1980 (45 FR 85031, December 24, 1980). This notice publishes a Cooperative Agreement between the Alaska Eskimo Whaling Commission (AEWC) that implements this three-year quota.

DATES: The Cooperative Agreement became effective on March 26, 1981 and was amended and extended on February 28, 1982.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, Washington, D.C. 20235, telephone (202) 634–7461.

SUPPLEMENTARY INFORMATION: Prior to 1977, the IWC Schedule exempted the native subsistence harvest of bowhead whales from its otherwise total prohibition of the hunting of bowhead whales. In 1977, the IWC removed that exemption and established annual quotas each year from 1977 to 1980.

The IWC Schedule including the bowhead whale catch limits is published in the **Federal Register** annually which makes it effective with respect to all U.S. citizens as required by the Whaling Convention Act of 1949.

At the 32nd Annual Meeting of the IWC in July 1980, the IWC adopted a three year quota for bowhead whales of 45 whales landed or 65 struck with a maximum of 17 landed in any one year.

The National Oceanic and Atmospheric Administration (NOAA) believes that the best long-term approach to bowhead whale management is in designing procedures that provide for the development of a full record in a fair and open manner that will lead to acceptance of management decisions by the Eskimos and concerned individuals more readily than in the past. We also believe successful bowhead whale management must provide for more Eskimo participation. To achieve these goals, NOAA entered into a two-year Cooperative Agreement in 1981 with the Alaska Eskimo Whaling Commission (AEWC) for cooperative bowhead whale management. This Agreement has

been amended and extended through December 31, 1983. We believe the Agreement provides the Eskimos with a greater role in management and improves monitoring and enforcement of the bowhead whale hunt.

The Cooperative Agreement recognizes that the federal government has primary responsibility for bowhead whale management. It also provides for the AEWC to cooperate in whaling management under the AEWC's Management Plan incorporated into the Agreement. If the conditions of the Cooperative Agreement are not met, NOAA reserves the right to assert its federal authority for management.

The Agreement established a strike quota for 1981 of 32 whales, and was amended to provide a strike quota of 19 for 1982. The Management Plan provides for civil assessments of up to $10,000 and for withholding a whaling captain's privilege to whale for up to 5 years for whales taken over 19 struck, or for other violations of the Management Plan. The AEWC will initially make the assessments and transfer the assessment to NOAA. If NOAA does not agree with the assessments, it may seek review in an administrative trial-type hearing.

The Management Plan includes regulations adopted by the AEWC. Although the individual whaling villages are not specifically listed in Section 100.21 of the Management Plan, they are defined as those which are represented by a Commissioner to the AEWC, i.e., the nine traditional whaling villages, and are listed in the AEWC regulations. The Marine Mammal Protection Act of 1972 and Endangered Species Act of 1973, as amended, prohibit whaling by any person except natives. Any whaling captain registered under Section 100.22 of the AEWC Management Plan is considered licensed for the purposes of any federal licensing requirements. The strike quota is divided among the villages. Each AEWC Commissioner is responsible for reporting daily to the whalers the numbers of whales landed and struck. Each Commissioner is also responsible for reporting to the AEWC headquarters in Barrow and the NOAA representative assigned to each village, the number of whales landed or struck at any given time. We believe this arrangement will improve monitoring of the hunt in that communication among the whalers is conducted in Eskimo and communication among the various whaling teams can best be coordinated by their own representative.

A NOAA representative will be present in the villages during the whaling season and will monitor the hunt in cooperation with the Eskimos.

In summary, we believe that this Agreement meets our international legal obligations and provides the best opportunity for the cooperation of the Eskimos in resolving bowhead whale management issues.

Each section of the 1981 agreement is printed below, followed by those amendments that were made in 1982.

List of Subjects in 50 CFR Part 230

Whales.

Dated: May 5, 1982.

William G. Gordon,

Assistant Administrator for Fisheries.

Cooperative Agreement Between the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission

Purpose

The purpose of this agreement is to provide for cooperation between members of the Alaska Eskimo Whaling Commission (AEWC) and the National Oceanic and Atmospheric Administration (NOAA) in management of the bowhead whale hunt for 1981 and 1982.

1982 Amendment

The purpose of this agreement is to provide for cooperation between members of the Alaska Eskimo Whaling Commission (AEWC) and the National Oceanic and Atmospheric Administration (NOAA) in management of the bowhead whale hunt for 1981, 1982, and 1983.

Responsibilities

NOAA has primary responsibility within the United States Government for management and enforcement of programs concerning the bowhead whale. The AEWC is an association governing Alaskan Eskimo whalers who hunt for bowhead whales. The AEWC adopted a Management Plan on March 4, 1981, to govern hunting for bowhead whales by Alaskan Eskimos. Under this cooperative agreement the AEWC will, in cooperation with NOAA, manage the 1981 and 1982 bowhead whale hunt. The authority and responsibilities of the AEWC are contained in and limited to this Agreement and the Management Plan as amended on March 25, 1981, to the extent the Management Plan is not inconsistent with this agreement. If the AEWC does not meet the conditions of this agreement, or the Management Plan, NOAA may withdraw the authority of the AEWC for management and will manage the bowhead whale hunt in a manner consistent with federal law, this agreement and the Management Plan.

1982 Amendment

NOAA has primary responsibility within the United States Government for management and enforcement of programs concerning the bowhead whale. The AEWC is an association governing Alaskan Eskimo whalers who hunt for bowhead whales. The AEWC adopted a Management Plan on March 4, 1981, to govern hunting for bowhead whales by Alaskan Eskimos. Under this cooperative agreement the AEWC will, in cooperation with NOAA, manage the 1981, 1982, and 1983 bowhead whale hunt. The authority and responsibilities of the AEWC are contained in and limited to this Agreement and the Management Plan as amended on March 25, 1981, August 11, 1981, and February 28, 1982, to the extent the Management Plan is not inconsistent with this agreement. If the AEWC does not meet the conditions of this agreement, or the Management Plan, NOAA may assert its federal authority for management and will manage the bowhead whale hunt in a manner consistent with federal law, this agreement and the Management Plan.

Inspection and Reporting

NOAA personnel shall monitor the hunt and the AEWC shall assist such personnel with such monitoring. The AEWC will provide an oral report to NOAA daily regarding the number of strikes and landings. The AEWC will also inform all whaling captains who are engaged in whaling activities of the number of whales struck or landed at all times. The AEWC will also provide a report to NOAA within 30 days after the conclusion of the spring hunt and the fall hunt containing at least the following information:

(1) The number, dates, and locations of every strike or landing;

(2) The length, (as measured from the point of the upper jaw to the notch between the tail flukes) the extreme width of the flukes, and the sex of the bowhead whales landed;

(3) The length and sex of a fetus, if present, in a landed bowhead whale; and

(4) An explanation of circumstances associated with the striking of any bowhead whale not landed, and an estimate of whether a harpoon or bomb emplacement caused a wound which might be fatal to the animal (e.g., the harpoon entered a major organ of the body cavity and the bomb exploded).

NOAA will provide technical assistance in collection of the above information. The AEWC shall assist appropriate persons in collection of

specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. Such specimens shall be available to appropriate government officials. NOAA personnel cooperating with AEWC will work closely with the AEWC Commissioner in each whaling village to facilitate the accurate monitoring of the hunt.

Management

(1) No more than a total of 32 whales shall be struck in 1981. The AEWC and NOAA shall determine the total number of whales that may be struck in 1982 through negotiations that shall be concluded by March 15, 1982.

(2) The AEWC may determine the allocation of these permitted strikes among the whaling villages.

(3) The AEWC agrees that whaling captains will be subject to civil monetary assessments for whales struck over the strike limit contained in this agreement, and for whales landed over 17 in 1981 or 1982 (if 17 are not landed in 1981) or over 15 in 1982, if 17 are landed in 1981. The AEWC will collect the assessments from the whaling captains and deposit them with NOAA representatives. In the event of a dispute between NOAA and the AEWC over the number of whales landed or struck, or the amount of the assessment, or other factual matters, NOAA will consult with the AEWC about the matter. If the dispute cannot be resolved, it will be referred to a NOAA administrative law judge for determination under a trial-like administrative proceeding of factual findings and the amount of assessment. The procedures contained in 50 CFR §§ 218.21–218.25 will control these proceedings. The decision of the administrative law judge may be appealed to the Administrator of NOAA. Whaling captains may also be liable for civil assessments for other violations of the management plan as determined by the AEWC or by an administrative law judge under the procedures described above.

1982 Amendment

(1) No more than a total of 19 whales shall be struck in 1982. The AEWC and NOAA shall determine the total number of whales that may be struck in 1983 through negotiations that shall be concluded by March 15, 1983. The AEWC management plan will provide that whaling captains and crews will use their best efforts to land every whale that is struck, and strike whales that are under 12 meters (39 feet) and presumed to be sexually immature.

(2) The AEWC may determine the allocation of these permitted strikes among the whaling villages.

(3) The AEWC agrees that whaling captains will be subject to civil monetary assessments for whales struck over the strike limit contained in this agreement, and for whales landed over 17 in 1981. The AEWC will collect the assessments from the whaling captains and deposit them with NOAA representatives. In the event of a dispute between NOAA and the AEWC over the number of whales landed or struck, or the amount of the assessment, or other factual matters, NOAA will consult with the AEWC about the matter. If the dispute cannot be resolved, it will be referred to a NOAA administrative law judge for determination under a trial-like administrative proceeding of factual findings and the amount of assessment. The procedures contained in 50 CFR sections 218.21–218.25 will control these proceedings. The decision of the administrative law judge may be appealed to the Administrator of NOAA. Whaling captains may also be liable for civil assessments for other violations of the management plan as determined by the AEWC or by an administrative law judge under the procedures described above.

Authorities

This cooperative agreement is concluded under the authorities governing management of living marine resources, including but not limited to the Marine Mammal Protection Act of 1972.

Duration

This agreement expires on December 31, 1982.

1982 Amendment

This agreement expires on December 31, 1983.

Consultation

NOAA and the AEWC shall consult during the operation of this agreement concerning the matters addressed herein as well as other matters related to bowhead whale management which either party believes are suitable for such consultation.

1982 Amendent

NOAA and the AEWC shall consult during the operation of this agreement concerning the matters addressed herein as well as all other matters related to bowhead whales which either party believes are suitable for such consultation. Specifically, NOAA shall consult with the AEWC on any action undertaken or any action proposed to be undertaken by any agency or department of the Federal Government that may affect the bowhead whale and shall use its best efforts to have such agency or department participate in such consultation with the AEWC.

Amendment

This agreement may be amended by the written agreement of the parties. Done in duplicate in Washington, D.C., on the 28th of March, 1981. James P. Walsh (for NOAA) and Eugene Brower (for AEWC).

Done in duplicate in Anchorage, Alaska, on the 28th of February, 1982. Robert W. McVey (initialling for NOAA), Roger Silook (for AEWC), and John V. Byrne (final approval for NOAA).

AEWC Management Plan

Subpart A—Introduction

§ 100.1 Purpose of Regulations

It is the purpose of the regulation contained herein to: (a) insure an efficient subsistence harvest of bowhead whales; and (b) provide a means within the Alaskan Eskimo customs and institution of limiting the bowhead whale harvest in order to prevent the extinction of such species.

§ 100.2 Scope of Regulations

The regulation contained herein applies to the subsistence hunting of bowhead whales by Eskimos located in the State of Alaska.

Subpart B—Alaska Eskimo Whaling Commission

§ 100.11 Powers

(a) The Alaska Eskimo Whaling Commission (hereinafter AEWC) is empowered to administer the regulations contained herein to insure that the purposes in § 100.1 of these regulations are attained.

(b) The AEWC is empowered to enforce these regulations by:

(1) Denying any person who violates these regulations the right to participate in hunting the bowhead whale.

(2) Making civil assessments.

(3) Acting as an enforcement agent for any governmental entity authorized to enforce these regulations.

(c) The AEWC is empowered to promulgate interim regulations that are in addition to, but not inconsistent with, regulations contained herein.

§ 100.12 Duties

(a) The AEWC shall administer and enforce the regulations contained herein (including any interim regulations).

(b) The AEWC shall conduct village educational programs to facilitate compliance with these regulations, including training programs for whaling captains and crews.

(c) The AEWC shall initiate research for improvement of the accuracy and reliability of weapons.

Subpart C—Regulations

§ 100.21 Definitions

(a) "Bowhead whale" means a whale whose scientific name is *Balaena mysticetus* and which migrates past whaling villages in Alaska.

(b) "Captain" means the person in charge of a whaling crew.

(c) "Harvest" means to kill and bring to shore or butchering area.

(d) "Non-traditional weapons" means any instrument that could be used to harvest a bowhead whale that is not a traditional weapon.

(e) "Traditional weapon" means a harpoon with line attached, darting gun, shoulder gun, lance or any other weapon approved by the AEWC as such a weapon in order to improve the efficiency of the bowhead whale harvest.

(i) "Harpoon with line attached" means a harpoon with a rotating head which is attached to a line and float and which has no explosive charge. (See Figures 7 and 8 of Appendix E of the FEIS on the International Whaling Commission's Deletion of Native Exemption for the Subsistence Harvest of Bowhead Whales. (October, 1977) (hereafter FEIS)

(ii) "Darting gun harpoon" means a harpoon with an explosive charge and with a line and float attached. (See Appendix E of the FEIS in Figure 4)

(iii) "Shoulder gun" means a whaling gun, adapted from the era of commercial whaling in the 19th Century, which has an explosive charge and which has no attached line and float. (See Appendix E of the FEIS in Figure 5)

(iv) "Lance" means a non-explosive sharply pointed weapon without a harpoon head.

(f) "Whaling crew" means those persons who participate directly in the harvest or attempted harvest of the bowhead whale and are under the supervision of a captain.

(g) "Whaling village" means the Alaska Eskimo village in which resides a whaling captain and crew which participate in the harvest of bowhead whales and which is represented by a Commissioner of the AEWC.

(h) "Whaling season" means customary period of time during which the bowhead whale is harvested, either in the Spring of Fall.

§ 100.22 Registration

(a) Each captain shall register with the AEWC on forms provided by the AEWC for that purpose which discloses his name, address, age, qualifications as captain, names of the crew members, name(s) of harpooner(s), and his willingness to abide by the regulations of the AEWC and to require his crew to abide by those regulations.

(b) The AEWC shall take into account any reading or language difficulties in developing procedures and forms for registration.

§ 100.23 Reports

(a) Each whaling captain shall be responsible for keeping a written record of the number of whales:

(1) Attempted to be harvested by using traditional weapons but not harvested,

(2) Harvested by the captain or his crew, and

(3) Sighted by the captain or his crew.

(b) Each whaling captain shall report the date, place, and time of any striking not resulting in harvesting and shall describe:

(1) The size and type of the bowhead whale,

(2) Any known later attempted harvest or actual harvest of said whale,

(3) The reason for the captain or crew not harvesting the whale, i.e. environmental factors, the failure of traditional weapons, or other reason, and

(4) The condition of the whale that was not harvested.

(c) Each whaling captain shall make such other reports as the AEWC requires in order to accomplish the purposes of the regulations herein or in order to advance the scientific knowledge of the bowhead whale.

§ 100.24 Permissible Harvesting Methods

(a) No whaling captain or crew shall harvest or attempt to harvest the bowhead whale in any manner other than the traditional harvesting manner.

(b) "Traditional harvesting manner" means:

(1) Only traditional weapons shall be used, as defined in § 100.21(e).

(2) The bowhead whale may be struck with a harpoon or darting gun with line and float attached or simultaneously with harpoon and shoulder gun or darting gun.

(3) The shoulder gun may be used.

(i) When accompanied by harpoon with or without a darting gun,

(ii) After a line has been secured to the bowhead whale, or

(iii) When pursuing a wounded bowhead whale with a float attached to it.

(4) The lance may be used after a line has been secured to the bowhead whale.

1981 Amendment (August 11, 1981)

§ 100.24 Permissible Harvesting Methods

(a) No whaling captain or crew shall harvest or attempt to harvest the bowhead whale in any manner other than the traditional harvesting manner.

(b) "Traditional harvesting manner" means:

(1) Only traditional weapons shall be used, as defined in § 100.21(e).

(2) The bowhead whale may be struck with a harpoon or darting gun with line and float attached.

(3) The shoulder gun may be used

(i) After a line has been secured to the bowhead whale, or

(ii) When pursuing a wounded bowhead whale with a float attached to it.

(4) The lance may be used after a line has been secured to the bowhead whale.

§ 100.25 Traditional Proprietary Claim

The bowhead whale shall belong to the captain and crew which first strikes the bowhead whale in the manner described in § 100.24.

§ 100.26 Level of Harvest

(a) The AEWC shall establish the levels of harvest or attempted harvest for each whaling village during each season or seasons.

(b) In establishing the levels of harvest or attempted harvest, the AWEC shall consult with each whaling village.

§ 100.31 Denial of Participation in Harvest

(a) Any person who the AEWC determines has violated the regulations contained herein shall, after opportunity for a hearing before the AWEC, be prohibited from harvesting or attempting to harvest the bowhead whale for a period of not less than one whaling season nor more than five whaling seasons.

(b) Any person who violates the regulations contained herein shall be subject to a fine of not less than $1,000 nor more than $10,000 as assessed by the AEWC. No person shall harvest or attempt to harvest the bowhead whale until such fine has been paid.

AEWC Regulations for the 1981 Whaling Season

A. Under authority of § 100.26 of the AEWC Management Plan, the AEWC establishes levels of attempted harvest (strikes) for bowhead whales for each whaling village during the 1981 season as follows:

Savoonga	8
Gambell	8
Kivalina	2
Wales	1
Pt. Hope	8
Wainwright	4
Barrow	10
Kaktovik	8
Nuiqsut	1
Total	32

B. Under authority of § 100.11(c) of the AEWC Management Plan, the AEWC prohibits any whaling captain in any whaling village from whaling for any calf or any bowhead whale accompanied by a calf.

AEWC Regulations for the 1982 Whaling Season

A. Under authority of § 100.26 of the AEWC Management Plan, the AEWC establishes levels of attempted harvest (strikes) for bowhead whales for each whaling village during the 1982 season as follows:

1. Savoonga	2
Gambell	2
Kivalina	1
Wales	1
Pt. Hope	3
Wainwright	2
Barrow	5
Kaktovik	2
Nuiqsut	1
Total	19

2. Kivalina is authorized to transfer any unused strike to Point Hope. The AEWC may make any other transfers it deems appropriate by majority vote of its Commissioners in a telephone poll conducted for that purpose. The AEWC recognizes the hardship imposed on Nuiqsut during the fall of 1981 and will be sympathetic to any requirement for a transfer of an unused strike. Any other unused strikes from the Spring Hunt not otherwise transferred and any unused strikes from Fall Hunt whaling villages that have ceased hunting shall be transferred to Barrow for the Fall Hunt.

B. Under authority of § 100.11(c) of the AEWC Management Plan, the AEWC

prohibits any whaling captains in any whaling village from whaling for any calf or any bowhead whale accompanied by a calf.

C. The AEWC hereby provides that whaling captains and crews will use their best efforts to land every whale that it struck and strike whales that are under 12 meters (approximately 39 feet) and presumed to be sexually immature.

D. Because the IWC has requested the AEWC to reduce the number of whales struck but not landed to zero as quickly as possible, the AEWC will pay a civil monetary assessment for any whales landed in excess of 16 but not in excess of 19.

[FR Doc. 82-12662 Filed 5-6-82; 11:30 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 91
Tuesday, May 11, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Intergovernmental Personnel Act Programs: Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to issue revised Standards for a Merit System of Personnel Administration. The revision would: (1) Better implement the requirement of the Intergovernmental Personnel Act to minimize Federal intervention in State and local personnel administration; (2) Remove unnecessarily burdensome and costly restrictions on State and local merit personnel systems; (3) Effect cost savings by eliminating the need for dual personnel systems that the existing Standards have forced some State and local governments to maintain; (4) Recognize the voluntary progress of State and local governments, over the years, in implementing the intent of the Standards thus making detailed Federal requirements no longer necessary; (5) Encourage innovation and allow for diversity in merit systems as required in the Intergovernmental Personnel Act; (6) Recognize fully the rights, powers, and responsibilities of State and local government; (7) Provide State and local governments more flexibility in administering their merit personnel systems, while maintaining protections where there is a Federal interest in promoting proper and efficient administration of Federal grants.

Under this revision, OPM will adopt the merit principles of the Intergovernmental Personnel Act as the basic personnel management requirements for administering all Federal grant assistance programs that require, by statute or by regulation, that the State or local agency receiving the grant maintain a merit system of personnel administration. These standards recognize equal employment opportunity requirements insofar as they apply by statute to State and local jurisdictions under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the State and Local Fiscal Assistance Act and other relevant laws. Consistent with merit principles, affirmative actions shall be pursued, where necessary, to overcome barriers to equal employment opportunity.

DATES: Comments must be received on or before July 12, 1982.

ADDRESS: Send or deliver comments to: U.S. Office of Personnel Management, Office of Planning and Evaluation, 1900 E Street, N.W., Room 7R48, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Sanera, (202) 254–3134.

SUPPLEMENTARY INFORMATION: Under Section 208(a) of the Intergovernmental Personnel Act, as amended, the U.S. Office of Personnel Management (OPM) is responsible for prescribing personnel standards which are to be followed by State and local governments as a condition of participation in Federal assistance programs which require systems of personnel administration on a merit basis for persons engaged in carrying out such programs.

On February 16, 1979, OPM exercised the authority contained in Section 208(a) and published a revision of the Merit Systems Standards. These Standards now appear at 5 CFR 900 Subpart F.

While the 1979 revision had as one of its purposes the removal of unnecessarily detailed and restrictive material, the final background statement and regulations and guidelines were over 25 pages in length in the **Federal Register.** Consistent with OPM's experience with State and local government implementation of the intent of the Standards, the requirement of the Intergovernmental Personnel Act itself that Federal intervention be minimized, and the President's goal to reduce unnecessary regulatory burdens on State and local governments, the Standards have been carefully reviewed again to identify unnecessary requirements.

As a result of this review, it has been determined that the basic merit principles of the Intergovernmental Personnel Act contain the essential elements needed to assure merit personnel administration in the operation of those Federal assistance programs which require it.

These merit principles are currently incorporated in the Standards, but are accompanied by a considerable number of other requirements and guides. Therefore, it has been possible to achieve the purposes of the Intergovernmental Personnel Act while, at the same time, making a major reduction in the regulations by removing most of the existing detailed provisions except for the basic merit principles themselves.

The approach to administration of the Standards, in this proposal, is predominantly reliance on self-certification of compliance by State and local chief executives. The proposal affirms the responsibility of chief executives to assure compliance of their jurisdictions with the Standards. The proposal further specifies that OPM will assist chief executives in resolving issues of compliance, and that Office only may provide recommendations to the responsible Federal grantor agency.

The proposal deletes from the existing Standards, Appendix B, the Uniform Guidelines on Employee Selection Procedures (1978). This appendix has been deleted because the Guidelines are included in other regulations which apply to agencies of State and local governments, namely 29 CFR Part 1607, 41 CFR Part 60.3, and 28 CFR 50.14. To include the Guidelines in this proposal would result in unnecessary regulatory duplication.

This regulation will reduce reporting and other requirements now imposed on governmental jurisdictions that receive grants under numerous Federal assistance programs.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based interprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdicitions.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government employees, Grant programs-education, Handicapped, Intergovernmental relations.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 900 by revising Subpart F to read as follows:

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

* * * * *

Subpart F—Standards for a Merit System of Personnel Administration

Sec.

900.601 Purpose.
900.602 Applicability.
900.603 Standards for a Merit System of Personal Administration.
900.604 Compliance.
900.605 Establishing a Merit Requirement.
Appendix A The Standards for a Merit System of Personnel Administration.

Authority: 42 USC 4728, 4763; E.O. 11589, 3 CFR 557 (1971–1975 Compliation).

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provision of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governmental and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration.

(b) Certain Federal grants programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grants statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603–604 apply to those State and local governments that are required to operate merit personnel systems as a conditions of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishement and maintenance of such systems. A reasonable number of positions may be exempted from merit personnel system coverage where such exemption would not substantially affect proper and efficient administration of the affected Federal assistance programs.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a Merit System of Personnel Administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as—

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring non-discrimination for applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age, or handicap and with proper regard for their privacy and constitutional rights as citizens.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) *Certification by Chief Executives.* (1) Certification of agreement by the chief executives of State or local jurisdictions to maintain a system of personnel administration in conformance with these Standards meets the merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) States will maintain these certifications and make them available, on request, to the Office of Personnel Management or Federal grantor agencies.

(3) The Governor may designate an agency or agencies to supervise certifications from local chief executives and make them available, on request, to Federal grantor agencies or the Office of Personnel Management.

(4) If no State agency supervises local government administration, local governments will maintain the certifications and make them available to Federal grantor agencies or the Office of Personnel Management, on request.

(5) In the absence of certification by the chief executive, assurance as to compliance with the Standards may be effected by certification from the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

(b) Resolution of Compliance Issues. (1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance of their jurisdictions with the Standards. They shall resolve all questions regarding compliance of their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management or the Federal grantor agency responsible for the program in question.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employees.

(3) If a chief executive is unable to resolve a compliance issue to the

satisfaction of the Office of Personnel Management, that Office will assist the Chief executive in resolving the issue, and that Office only may provide recommendations to the responsibile Federal grantor agency.

§ 900.605 Establishing a Merit Requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management.

Appendix A—The Standards for a Merit System of Personnel Administration

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, § 1522, on January 2, 1975; 42 U.S.C. 300m–1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, § 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).

Employment Security (Unemployment Insurance and Employment Service), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, § 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 8–775, § 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families With Dependent Children, Social Security Act (Title IV–A), as amended by the Social Security Act Amendments of 1939, § 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, § 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, § 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, § 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, § 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, § 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Adoption Assistance and Foster Care, Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, William-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR § 1902.3(h).

Occupational Safety and Health Statistics, William-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV–B); 45 CFR § 1392.49(c).

Developmental Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Pub. L. 95–602, on November 6, 1978; 45 CFR § 1386.21.

Emergency Management Assistance, Civil Defense Act of 1950 (Title II), as amended; 44 CFR § 302.5.

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR § 98.14(a).

Part III: The following programs have personnel requirements which may be met by a merit system which conforms to the Standards for Merit System of Personnel Administration.

Program Legislation, and Reference

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1.

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV § 4510(a).

[FR Doc. 82–12007 Filed 5–10–82; 8:45 am]
BILLING CODE 8325–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Elimination of Cost as a Factor for Reimbursement to Child Care Centers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the Child Care Food Program (CCFP) regulations to allow State agencies the option to eliminate costs as a factor in reimbursement to child care centers. However, State agencies can still elect to reimburse these institutions according to the lesser of costs or meals times rates. The method chosen by the State agency must be applied to all institutions participating in the CCFP in that State. The State agencies shall also be responsible for reviewing and monitoring the institution's nonprofit food services and the net cash resources of the participating CCFP institutions. This rule also includes definitions of net cash resources and nonprofit food service. This amendment is authorized by Pub. L. 97–35, the Omnibus Reconciliation Act of 1981, enacted August 13, 1981.

DATE: The Department is establishing a 60-day comment period. Comments must be received on or before July 12, 1982 to be assured of consideration for the final rule.

ADDRESS: Written comments should be sent to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

The Draft Impact Statement describing the options considered in developing this proposed rule and the impact of implementing each option is available on request at the above address. Copies of all written comments will be available for review during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Benderly or Ms. Walstrom at the above address or by telephone at (703) 756–3886.

SUPPLEMENTARY INFORMATION:

Classification: This proposed rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete.

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Changes Necessitated by the Omnibus Reconciliation Act of 1981

The CCFP is authorized by section 17 of the National School Lunch Act, which was amended August 13, 1981, by Pub. L. 97–35, the Omnibus Reconciliation Act of 1981. Section 819(k) of Pub. L. 97–35 which amends section 17(f), eliminates the requirement that reimbursement to institutions be limited to the cost of producing the meals served.

To comply with the mandate of the law, the Department is proposing to amend 7 CFR 226.2, 226.6(k), 226.7(b), 226.9(c), 226.11(d), 226.15(e), and 226.16(h) of the CCFP regulations to remove the references to costs as a limiting factor on payments, to define net cash resources and nonprofit food service. The proposed requirement as defined by the new definitions would require participating institutions to maintain revenue and expenditure records in order to substantiate the nonprofit status of their food service. The proposed rule would also require State agencies to monitor and review the CCFP institutions' net cash resources to ensure that the resources do not exceed three months' operating cost. The requirement that State agencies establish and maintain financial management systems conforming the standards enumerated in the Departmental regulations (7 CFR Part 3015, Subpart H) remains in effect. The Department will no longer require the centers to report their operating costs on the monthly claim for reimbursement. Effective January 1, 1982, States were able to determine the method of reimbursement to centers: (1) Meals by type times the appropriate rate of reimbursement or (2) meals by type times the appropriate rate of reimbursement or costs, whichever is lesser. If the States chose option one, it would provide the State agencies with added flexibility in Program operations. However, institutions would still be required to maintain records to justify the nonprofit status of their food service programs. Whichever method the State elects to use, it must be applied to all institutions participating in the CCFP in that State. Furthermore, this proposal would give the State agencies the capability of ensuring the nonprofit status of the institution's food service.

The proposed amendments to 7 CFR Part 226 involve the following provisions of the Child Care Food Program:

1. Definitions of net cash resources and nonprofit food service. The proposed rule amends § 226.2 to include a definition of net cash resources and will require State agencies to monitor the net cash resources available to each institution's food service. Net cash resources at any time would include but not be limited to cash on hand, cash receivable (Program payments-reimbursements, advances, start-ups) or income to the Program. The value of food inventories would not be included in net cash resources.

Section 226.2 is also amended to include the definition of nonprofit food service. While institutions have always been required to maintain a nonprofit food service program, the Department believes that, in view of the elimination of the Federal requirement to report cost for reimbursement, it was appropriate to define nonprofit food service. Nonprofit food service would incorporate all food service operations conducted by the institution principally for the benefit of enrolled children. The requirement that an institution's food service be nonprofit would be implemented by determined the financial status of the entire food service of the institution rather than the financial status of the Program alone. Institutions would be required to maintain revenue and expenditure records for their nonprofit food service and State agencies would be responsible for determine the manner in which records are maintained.

State agencies would be given the flexibility to determine: (1) When and how to monitor net cash resources for each institution to determine that the resources do not exceed three month's normal operating cost for the nonprofit food services; (2) when and how to monitor revenue and expenditure records to determine the food service's nonprofit status; (3) whether the resources accruing to the food service are in excess of three months' normal operating cost; and (4) whether corrective actions are necessary. As part of its ongoing management evaluation process, FNS would review each State agency's system for monitoring and controlling the net cash resources of the institutions participating in the Program.

2. Financial management requirements. Section 226.6 is amended to revise paragraph (k). This subparagraph requires the State agencies, as part of their Program review of financial management standards, to also review the net cash resources.

3. Monitoring nonprofit food service. Section 226.7(b) is amended to add subparagraph (8). This subparagraph establishes the State agencies' responsibility to monitor the net cash resources and nonprofit food service programs of participating institutions. In the event such resources are in excess of three month's normal operating cost, the State agencies would be required to take corrective actions.

4. Assignment of rates of reimbursement for centers. Section 226.9(c) is being eliminated. The purpose of this section has been to allow State agencies to reassign payment rates for lunches and suppers claimed on an institution's final claim for the fiscal year. With the elimination of the Federal requirement that reimbursement include a comparison of costs to rates, this purpose is no longer served.

5. Program payments for child care centers and outside-school-hours care centers. Section 226.11(d) is being amended to emphasize that State agencies may elect to reimburse institutions on the basis of cost; however, the Federal requirement to do so has been eliminated.

6. Institution provisions. Section 226.15(e) is being amended to add a new paragraph to require the institutions as part of their established recordkeeping procedures to collect and maintain documentation of their net cash resources to ensure that the level of resources does not exceed three months' normal operating cost of the nonprofit food service.

7. Sponsoring organization provisions. The last phrase of § 226.16(h) is being amended to eliminate the reference to Program costs as a limiting factor in reimbursing child care centers.

Participating institutions will be required to maintain records of revenue and expenditures for food service for review and audit purposes, regardless of the manner in which the State agency elects to reimburse them. Further, this rule will not prohibit State agencies which do not reimburse according to costs from requiring that related Program costs be entered on the claim for reimbursement. This information may be necessary to the States as a means of targeting technical assistance needs, planning audit activity, and monitoring programs' nonprofit status.

PART 226—CHILD CASE FOOD PROGRAM

Accordingly, the Department is amending 7 CFR Part 226 as follows:

1. Section 226.2 is amended to include definitions of "net cash resources" and "nonprofit food service", to read as follows:

§ 226.2 Definitions.

* * * * *

"Net cash resources" means all monies that are available to an institution's nonprofit food service at any given time. Such monies include, but are not limited to, cash on hand, cash receivable (Program payments-reimbursements, advances, start-upa) or income to the Program.

"Nonprofit food services" means all food service operations conducted by the institution principally for the benefit of enrolled children, all of the revenue from which is used solely for the operation or improvement of such food service.

* * * * *

2. Section 226.6, paragraph (k), the third sentence is revised to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(k) *Program Assistance.* * * * Program reviews shall assess institutional compliance with meal requirements, family-size and income documentation where applicable, financial management standards including net cash resources, and nondiscrimination regulations. * * *

* * * * *

3. Section 226.7 paragraph (b) is amended by adding a new paragraph (8), to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(b) *State level responsibilities.* * * *

(8) State agencies, or FNSROs where applicable, shall have a system in place for monitoring and reviewing the nonprofit status of institutions' food service programs and the net cash resources to ensure that the institution has not exceeded three months normal operating cost. In the even that such resources exceed the three months normal operating cost, the State agency or FNSRO where applicable, may require the institution to reduce children's prices, improve food quality, or take other actions designed to improve the status of the nonprofit food service.

* * * * *

§ 226.9 [Amended]

4. Section 226.9(c) is removed.

5. Section 226.11(d) is revised to read as follows:

§ 226.11 Program payments for child care centers and outside-school-hours care centers.

* * * * *

(d) Reimbursement paid to any institution for meals served to children during the fiscal year shall not exceed the sum of the products obtained by multiplying the total number of free, reduced price and paid meals, respectively, served to eligible children during the fiscal year by the applicable rate for each meal type.

6. Section 226.15 paragraph (e) is amended by removing the period at the end of paragraph (10) and adding a semi-colon and adding a new paragraph (11), to read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) *Recordkeeping.* * * *

(11) Documentation of net cash resources to ensure that the level of resources does not exceed three months normal operating cost for its nonprofit food service.

* * * * *

7. Section 226.16(h) is revised to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(h) Disbursements from sponsoring organizations for child care centers or outside-school-hours care centers shall be made within fifteen working days of receipt of payment, on the basis of the management plan approved by the State agency.

* * * * *

(Secs. 810 and 820, Public Law 97–35, the Omnibus Reconciliation Act of 1981. Sec. 2, Pub. L. 95–627, Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1979))

Dated: May 6, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-12747 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1033

Milk in Ohio Valley Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain order provisions affecting the regulatory status of milk plants under the Ohio Valley Federal milk order. The action was requested by a proprietary handler operating five distributing plants pooled under the order. It would suspend for the months of May through August 1982 the requirement that a distributing plant dispose of not less than 45 percent of its receipts as route disposition in order to be a pool plant.

DATE: Comments are due on or before May 18, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6273.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

It also has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures and the inclusion of May 1982 in the suspension period if this is found necessary. The request for the action was received April 30, 1982.

William T. Manley, Acting Administrator, Agricultural Marketing

Service, has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Ohio Valley marketing area is being considered for May 1982 through August 1982:

In § 1033.12, paragraph (a)(2).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 18, 1982.

The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include May 1982 in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for May 1982 through August 1982 the provision requiring a distributing plant to dispose of not less than 45 percent of its receipts as route disposition during the months of March through August in order to remain pooled. The suspension was requested by Beatrice Foods Co., a proprietary handler which operates five pool distributing plants under the order.

In support of its request, Beatrice cites producer milk deliveries in the Ohio Valley market which are increasing both seasonally and over the levels of previous years. At the same time milk production is at its seasonal peak, Beatrice anticipates a decline in Class I disposition from its plants due to summer closure of schools and the resulting loss of fluid milk sales to schools.

For the first three months of 1982, producer milk pooled on the Ohio Valley order increased nearly 1 percent over production during the same period in 1981 while producer milk allocated to Class I for the same period declined 1.4 percent from the level of the previous year. With these trends of increasing production and declining Class I use, Beatrice states that it expects that less than 45 percent of the milk regularly associated with its distributing plants will be needed to meet its route disposition requirements in the months of May through August this year.

In the absence of suspension action, Beatrice indicated that it would be necessary to make costly and inefficient movements of milk solely for the purpose of pooling its distributing plants and the milk of dairy farmers who regularly have supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1033

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 5, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-12709 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Nonimmigrant Classes: Uniform Minimum Admission Period for Admissible Visitors

AGENCY: Immigration and Naturalization Service.

ACTION: Proposed rule.

SUMMARY: INS proposes to amend 8 CFR 214.2(b) to provide that temporary visitors for pleasure in possession of nonimmigrant visas who are found admissible to the United States are admitted for a uniform minimum period of six months. This amendment will save the Government over $625,000 now being expended annually on the adjudication of routine extension of stay applications filed by temporary visitors who were admitted for less than six months. It will allow INS to instead concentrate these resources on reducing backlogs of other more important cases, such as relative and temporary worker petitions. Additionally, the rule will eliminate the need for 140,000–150,000 visitors to apply to INS for extension of stay each year.

DATE: Written comments will be considered if received on or before June 10, 1982.

ADDRESS: Please submit comments, in duplicate, to the Commissioner of Immigration and Naturalization, Room 7100, 425 I Street, N.W., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536. Telephone: (202) 633–3048.

For specific information: Roger J. Lucas, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536. Telephone: (202) 633–3242.

SUPPLEMENTARY INFORMATION: The proposed amendment to 8 CFR Part 214 will modify the existing rule concerning the period of admission granted to admissible visitors for pleasure. INS has determined that 93% of all visaed visitors for pleasure (B–2's) it admits are admitted for six months or less, and that the average period of admission is 3.8 months. We have found that of those visitors who file applications for extensions of their initial admission, 50% wished to remain in the United States for a combined period of six months or less (period of initial admission plus period of requested extension).

Based on these data, we estimate that we can reduce the INS extension of stay workload by 50%, or 140,000–150,000 cases annually by adopting a uniform six-month admission policy for admissible B–2 visitors with visas. In addition to the positive effect this reduction of workload will have on the ability of INS to deliver other, more significant immigration benefits, major administrative savings also will be realized because INS will annually have 140,000–150,000 fewer cases to service, store, retrieve, file, and generate resource-consuming status inquiries and complaints of delay.

There are three major issues relating to the adoption of a uniform six month admission policy for admissible B–2 visitors for pleasure. The first is that the policy will reduce the level of control INS now exerts over these visitors. While lessened control over temporary visitors will result from the proposal, INS believes that the current policy exerts excessive control in view of the relative risk of status violations which visaed visitors present. Before being admitted, visitors are screened twice, once by State Department officers abroad and then by INS officers at the United States port of entry. Virtually all visitors with visas are found admissible, and approximately 95% of those who subsequently apply to INS for extensions of their initial admissions are routinely granted this benefit. In view of these facts, INS has determined that the degree and cost of the control it now exerts over B–2 visitors is unwarranted

and should be adjusted to correspond to the actual need for control.

While some "temporary visitors for pleasure" enter the United States to work or immigrate, contrary to the purpose for which they were granted B–2 visas, the cost to the Government of attempting to control these aliens through nonstandard periods of admission and the extension of stay process cannot be justified because of their proportionately insignificant numbers. Nor can it be justified operationally because these mala fide visitors do not generally apply to INS for extensions of stay once they gain entry. Thus, the current INS admission policy exerts its primary control over the very large number of law abiding visitors who do not need Government control, and fails to control the relatively few violators who do. Attempting to control the relatively few violators by imposing extension of stay requirements on *all* visitors is not only costly but ineffective.

The second issue is that adoption of the uniform admission policy would entice lawful visitors for pleasure to violate their status. It should be pointed out that the policy would only apply to admissible visitors. Visitors who voluntarily withdraw their applications for admission to the United States and those who are excluded would obviously not be affected. The proposed rule thus focuses on the most bona fide members of an already low risk group.

INS believes that legitimate visitors who, for example, plan to come to the United States for only four months, arrange an itinerary for only four months, and bring funds for only four months, would not feel compelled or enticed to stay here longer simply because INS admitted them for six months instead of four. But even if a uniform six month admission did prompt any of these visitors to stay here longer, that fact would not be of any concern as long as they continued to maintain lawful status.

A six-month period of admission is similarly of little consequence to visitors who violate status. These aliens have but a single purpose in mind when applying for admission, to be *admitted.* The length of their admission is irrelevant; it makes no difference to them whether they are admitted for six months under the proposed policy or six days under the current policy, as long as they are admitted. Once admitted, these aliens will take up unauthorized employment, begin the immigration process, or otherwise fulfill their true purpose for coming here. As to these aliens, they only effective deterrent to violating status is exclusion, because an extremely short period of admission satisfies their purposes just as effectively as a longer one. Furthermore, as soon as any visitor for pleasure violates status, he or she immediately becomes deportable, regardless of length of admission.

The third major issue raised with respect to the uniform admission policy is that it would eliminate the inspecting officer's discretion to fix the individual period of admission for every visitor. A uniform six-month admission period will not affect the officer's discretion to make the basic determination of whether or not the visitor is admissible. Under the proposed rule, the inspecting officer will be required to question the visitor as to the purpose of stay, sufficiency of funds, validity of documents, and other relevant matters. The officer will also be required to question the applicant regarding the length of proposed stay.

But the period of stay the visitor requests or is granted actually bears little relationship to the basic issue of admissibility. This can be readily demonstrated by a scenario which takes place thousands of times daily at United States ports of entry. A visitor for pleasure applies for admission and requests, for instance, three months (the actual period of time requested is irrelevant for the purposes of this analysis). Upon questioning, the inspecting officer decides that the visitor is otherwise admissible, but believes that the visitor has neither the need nor the finances to stay here for a full three months. But simply because the visitor may not be admissible for the full period requested does not mean that he or she is automatically inadmissible. In other words, just because the visitor has failed to satisfy the inspecting officer that he or she is admissible for three months, the visitor is not placed under exclusion proceedings. On the contrary, because the visitor is otherwise admissible, he or she is usually admitted for that lesser period of time which the officer in his or her discretion decides is appropriate. The point is not that this visitor is admitted for only three weeks instead of three months, but that he or she is *admitted.* Once a bona fide visitor is admitted, INS almost always grants his or her subsequent request for extension of stay; and once a violator is admitted, the damage has already been done.

It is the visitor's admission, not period of admission, which is paramount. The fact remains that most visitors who apply to INS for extension routinely receive it, and that violators do not generally apply anyway. But even if they did, they would certainly not enumerate on their applications the circumstances which make them mala fide, e.g., working illegally, engaging in criminal activity, etc. Thus, while admitting visitors for non-standard periods of time may seem like a useful practice, in effect it is not. In fact, its primary effect is that it causes tens of thousands of lawful temporary visitors to file extension of stay applications with INS, nearly all of which are routinely approved.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, will not have significant impact on a substantial number of small entities. The proposed rule will not be a major rule as defined in section 1(b) of E.O. 12291. It will not have an effect on the economy of $100 million or more; result in an increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Crime, Employment, Passports and visas.

In view of the foregoing, the following amendment is proposed to chapter I of Title 8 of the Code of Federal Regulations:

PART 214—NONIMMIGRANT CLASSES

1. It proposed to revise 8 CFR 214.2(b) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) *Visitors*—(1) *General.* Any B–1 visitor for business or B–2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of a temporary stay in increments not exceeding six months each.

(2) *Minimum six month admissions.* Any B–2 visitor who is found otherwise admissible and issued a Form I–94, will be admitted for a minimum period of six months, regardless of whether less time is requested, *provided,* that any required passport is valid as specified in section 212(a)(26) of the Act. Exceptions to the minimum six month admission may be made only in individual cases upon the specific approval of the district director for good cause.

(Secs. 103, 214 of the I&N Act, as amended; 8 U.S.C. 1102, 8 U.S.C. 1184)

Dated: April 28, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-12753 Filed 5-10-82; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Certification of Industrial Radiographers; Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings.

SUMMARY: The NRC published in the Federal Register on May 4, 1982 (47 FR 19152), an advance notice of proposed rulemaking concerning certification of radiographers. In the notice, the NRC presented a third-party certification program as an alternative to the present system of permitting radiography licenses to train and to designate individuals as radiographers. In order to obtain broader public input, the NRC is supplementing the advance notice with a series of public meetings. This notice provides the dates, locations and times of the public meetings.

DATES: See Supplementary Information for dates of meetings.

ADDRESSES: See Supplementary Information for meeting locations.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Jones, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-5970.

SUPPLEMENTARY INFORMATION: Public meetings on the advance notice of proposed rulemaking on certification of industrial radiographers will be held on the dates and at the locations listed below:

Tuesday, June 8, 1982; Atlanta, GA. Location: Colony Square Hotel, Peachtree and 14th Street. Time: 9:00 a.m. to 5:00 p.m.

Thursday, June 10, 1982, Houston, TX. Location: University of Texas, School of Public Health Auditorium, 12000 Hermann Pressler Boulevard (Address may be listed on older maps as 6905 Bertner Avenue). Time: 9:00 a.m. to 5:00 p.m.

Tuesday, June 15, 1982, Oakland, CA. Location: Hyatt Oakland Hotel, 455 Hegenberger Road. Time: 9:00 a.m. to 5:00 p.m.

Thursday, June 17, 1982, Chicago, IL. Location: Americana Congress Hotel, 520 S. Michigan Avenue. Time: 9:00 a.m. to 5:00 p.m.

Wednesday, June 23, 1982, Washington, D.C. Location: General Services Administration Auditorium, 18th and F Street, N.W. Time: 9:00 a.m. to 4:30 p.m.

Persons wishing to make an oral presentation should contact Mr. Jones by May 25, 1982 either in writing or by telephone. The following information is required: (1) Names of participants; (2) length of oral presentation (not to exceed 15 minutes, written presentation of any length may be submitted at any time); (3) organization represented, if any; and (4) daytime telephone number. Arrangements may also be made at the time of the meeting on a time-available basis.

Dated at Washington, D.C. this 30th day of April, 1982.

For the Nuclear Regulatory Commission.

Robert E. Alexander,

Chief, Occupational Radiation Protection Branch, Office of Nuclear Regulatory Research.

[FR Doc. 82-12756 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 215, 235, 236 and 812

[Docket No. R-82-974]

Restriction on Use of Assisted Housing

Correction

In FR Doc. 82-11840, appearing in the issue of Monday, May 3, 1982, at page 18914, make the following changes:

1. On page 18914, in the first column, the Docket No. should read "[Docket No. R-82-974]";

2. On page 18914, in the first column, the last word in the first line of the SUMMARY: should be "812";

3. On page 18914, in the second column, the 12th line from the top, change "190" to "1980"; and in the same column, the 15th line change "191" to "1981";

4. On page 18914, the second column, change the date in the DATE: line to read June 2, 1982;

5. On page 18914, in the 4th line of the ADDRESSES: paragraph in column 2, change "521" to"5218";

6. On page 18914, in the second column, in the 8th line of the FOR FURTHER INFORMATION CONTACT: paragraph, change "426-730" to "426-8730";

7. On page 18914, in the second column, the 16th line of the FOR FURTHER INFORMATION CONTACT: paragraph should read "For Part 812: ";

8. The 22nd line of the same paragraph should read "(202) 755-5840.";

9. In the 3rd line of the SUPPLEMENTARY INFORMATION: paragraph in the second column on page 18914, change "190" to read "1980";

10. In the second line of the third column, on page 18914, change "191" to "1981";

11. In the third line of the first paragraph of the third column, on page 18914, change "191" to "1981";

12. In the 15th line of the same paragraph change "194" to 1948";

13. In the same paragraph, line 16, change "prsent" to "present";

14. In the same paragraph, line 24 change "190" to 1980";

15. On page 18914, in paragraph 1. in the third column, the first line should read: "1. In part 200, §§ 200.180—200.183 are";

16. On page 18915, in the first column, paragraph 3.c. in the 9th line, change "mortgate" to "mortgage";

17. On page 18918, in the first column, § 236.70, the second line of (a)(1) should read "occupancy in a project by tenant-lessees".

BILLING CODE 1505-01-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 209, 211, 221, 228, and 235

[Docket No. R-82-979]

Mutual Mortgage Insurance and Rehabilitation Loans

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require mortgagees to pay the annual mortgage insurance premium (MIP) in installments due on or before the 10th of the month following the month in which payments are received from the mortgagors. The change would be implemented in order to comply with § 530 of the National Housing Act. Under the proposed rule mortgagees would not be relieved of the obligation to pay the annual premium should the

borrower fail to make payments into the escrow account.

DATE: Comments Due: June 10, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. The Proposed rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9180, Washington, D.C. 20410, Telephone (202) 755-6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In enacting § 530 of the National Housing Act, Congress intended to remedy two problems. First, it wanted the Insurance Funds to receive the benefit of interest on the MIP payments made by the mortgagor. Second, it intended to eliminate the financial advantages inuring to mortgagees under the present system which allows them to hold premiums in escrow until receiving the annual billing from HUD. The proposed rule would bring the Department into compliance with the intent of the law.

The proposed rule, when effective, will implement the procedures whereby mortgagees will remit all mortgage insurance premiums they hold in a lump sum and thereafter remit premiums as they receive them from the borrower. By shortening the public comment period to 30 days instead of the usual 60 days, it is anticipated that the funds will be collected within the Fiscal Year 1982. It is estimated that mortgagees hold some $200 million in premiums which, upon implementation of the new system, will be remitted to HUD for the benefit of the insurance funds. By requesting the shortened period, HUD is attempting to avoid further delays in implementing the provisions of Section 530 of the National Housing Act.

This rule would not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is estimated that at any given time, mortgagees hold in excess of $200 million in mortgage insurance premiums that have been collected from mortgagors but not remitted to HUD. Mortgagees would be required by the amendment to remit all such funds they hold by a specific date. Thereafter on a monthly basis, mortgagees would have to remit MIP payments promptly upon receipt from the borrower. These funds would be invested for the benefit of the Federal Government and would generate a cost avoidance of some $30 million each year. Mortgagees could be expected to be deprived of a like amount. The effect, therefore, would be below the $100 million threshold. Some additional costs to the mortgage banking industry cannot be estimated at this time because without a finalized system in place the industry cannot project the cost of converting computerized systems to the monthly remittances. Other costs, such as monthly record-keeping and increased interest rates at which mortgagees will borrow funds once the MIP funds held in escrow are removed, likewise, cannot be predicted at this time.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, that would be affected by the proposed regulation changes: 14.105, 14.108, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.140, 14.152, 14.157, 14.161, 14.165.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

Part 204

Mortgage insurance.

Part 209

Mortgage insurance, War housing.

Part 211

Mortgage insurance, War housing.

Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

Part 228

Federally affected areas, Defense housing, Mortgage insurance, Single family housing.

Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

Accordingly, the Department proposes to amend Chapter II of 24 CFR as follows:

PART 223—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

§ 203.44 [Amended]

1. By amending § 203.44(d) to change the "§ 203.307" reference therein to "§ 203.269".

2. By revising §§ 203.260 through 203.270 to read as follows:

§ 203.260 Amount of mortgage insurance premium (MIP).

The mortgagee shall pay to the Commissioner an initial MIP in an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the first year of amortization. After payment of the initial MIP, the mortgagee shall pay to the Commissioner an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the twelve-month period preceding each subsequent anniversary date of the beginning of amortization.

§ 203.261 Calculation of MIP.

The amount of any MIP shall be calculated in accordance with the original amortization provisions of the

mortgage, without taking into account deliquent payments, prepayments, agreements to postpone payments or agreements to recast the mortgage.

§ 203.262 Due date of MIP.

The full initial or annual MIP shall be due on the anniversity date of the beginning of amortization.

§ 203.263 Adjustment of initial MIP.

If the Mortgage Insurance Certificate was issued prior to the beginning of amortization, the initial MIP shall be adjusted to include an additional premium from the date of issuance of the Mortgage Insurance Certificate to the date of the beginning of amortization. If the Mortgage Insurance Certificate was issued in the second half of the amortization year, the initial MIP shall be adjusted to include only that part of the premium year from the date of the issuance of the Mortgage Insurance Certificate to the first anniversary date of the beginning of amortization.

§ 203.264 Payment of MIP.

(a) *Method of Payment.* The payment of any MIP under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures at par plus accrued interest.

(b) *Time of Payment.* Any portion of the MIP received by the mortgagee from the mortgagor on or after (*the effective date*) shall be paid to the Commissioner on or after the tenth day of the month following the month in which it was received, provided that the full initial or annual MIP shall be paid by the mortgagee not later than 10 days after the due date established by this part even if not collected by the mortgagee from the mortgagor.

(c) *Payment of Outstanding MIP.* All MIPs that have been collected by mortgagees from mortgagors prior to (*effective date,*) but not remitted pursuant to an annual HUD billing shall be remitted to the Commissioner not before (*effective date),* but not later than (*10 days after effective date*). All annual MIP bills received by mortgagees from HUD prior to the (*effective date*) shall be paid on their specified due dates.

§ 203.265 Mortgagee's late charge and interest.

(a) MIPs which are remitted to the Commissioner after the payment dates prescribed by §§ 203.262 and 203.264 shall include a late charge of four percent of the amount paid.

(b) In addition to the late charge provided in paragraph (a) of this section, the mortgagee shall pay interest at a rate established from time to time by the Secretary on any MIP which are remitted to the Commissioner more than 30 days after the due dates prescribed in §§ 203.262 and 203.264. Such interest rate shall be not less than 10 percent per annum nor more than 20 percent per annum.

§ 203.266 Period covered by MIP.

The initial MIP shall cover the period beginning with the date of the issuance of a Mortgage Insurance Certificate and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve-month period preceding each subsequent anniversary date.

§ 203.267 Duration of MIP.

The mortgagee shall pay MIP to the Commissioner until the deed to the Commissioner is filed for record or the contract of insurance is terminated.

§ 203.268 Pro rata payment of MIP.

(a) If the insurance contract is terminated before the due date of the initial MIP, the mortgagee shall pay a portion of the MIP prorated from the following dates to the date of termination:

(1) From the beginning of amortization if the Mortgage Insurance Certificate is issued in the first half of the amortization year, or

(2) From the date of the issuance of the Mortgage Insurance Certificate if the Certificate is issued at any time prior to the beginning of amortization or during the second half of the amortization year.

(b) If the insurance contract is terminated after the due date of the initial MIP, the mortgagee shall pay a portion of the current annual MIP prorated from the due date of the last annual MIP to the date of termination.

(c) A pro rata MIP shall not be due or payable where the mortgagee notifies the Commissioner that foreclosure or other action to acquire the property has been completed and that the property will not be conveyed to the Commissioner in exchange for insurance benefits. Any MIP due and paid after the institution of foreclosure or the date the property was otherwise acquired by the mortgagee will be refunded to the mortgagee upon receipt by the Commissioner of the notice from the mortgagee that the property will not be conveyed to the Commissioner.

§ 203.269 Open-end insurance charge.

The amount of any insured open-end advance shall be added to the average outstanding principal obligation of the mortgage for the purpose of determining the amount of MIP as provided in § 203.260 except that the initial additional charge shall be prorated to cover the period beginning with the first day of the month following the issuance of a certificate evidencing the insurance of the open-end advance and ending on the due date of the next MIP.

§ 203.270 MIP in federally impacted areas.

All of the provisions of § 203.260 shall apply to mortgages meeting the eligibility requirements of § 203.43e except that the amount of the premiums specified therein shall be calculated on the basis of one percent in lieu of one-half percent.

§§ 203.275 through 203.279 [Removed]

3. By removing §§ 203.275 through 203.279.

§§ 203.275 through 203.309 [Removed]

4. By removing §§ 203.305 through 203.309.

5. By revising § 203.433, to read as follows:

§ 203.443 Insurance premium.

All of the provisions of §§ 203.260 through 203.269 concerning mortgage insurance premiums apply to loans insured under § 203.50.

§§ 203.444 through 203.456 [Removed]

6. By removing §§ 203.444 through 203.456.

PART 204—COINSURANCE

7. By revising § 204.260 to read as follows:

§ 204.260 Mortgage insurance premiums for co-insured mortgages.

All of the provisions of §§ 203.260 through 203.269 concerning mortgage insurance premiums with respect to mortgages insured under 203(b) of the National Housing Act, apply to mortgages covering one-to-four family dwellings to be insured under 203(b) pursuant to the coinsurance authority of 244 of the National Housing Act.

§§ 204.260a through 204.268 [Removed]

8. By removing §§ 204.260a through 204.268.

PART 209—INDIVIDUAL HOMES; WAR HOUSING MORTGAGE INSURANCE [SEC. 603]

§ 209.251 [Amended]

9. By amending paragraph (a) of § 209.251 as follows:

a. "§ 203.266 Due date of initial MIP" is changed to "§ 203.262 Due date of MIP."

b. "§ 203.268 Adjustment of initial MIP" is changed to "§ 203.263 Adjustment of initial MIP."

c. "§ 203.269 Pro rata payment of initial MIP" is changed to "§ 203.268 Pro rata payment of MIP."

d. "§ 203.275 Amount of annual MIP" is removed.

e. "§ 203.276 Due date of annual MIP" is removed.

f. "§ 203.278 Pro rata payment of annual MIP" is removed.

g. "§ 203.280 Amount of Mortgage Insurance Premium (MIP)" is added.

10. By revising § 209.265 to read as follows:

§ 209.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in § 203.264 and § 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

PART 211—SINGLE FAMILY PROJECT LOANS; WAR HOUSING MORTGAGE INSURANCE [SEC. 611]

§ 211.251 [Amended]

11. By amending paragraph (a) of § 211.251 as follows:

a. "§ 203.266 Due date of initial MIP" is changed to "§ 203.262 Due date of MIP."

b. "§ 203.268 Adjustment of initial MIP" is changed to "§ 203.263 Adjustment of initial MIP."

c. "§ 203.269 Pro rata payment of initial MIP" is changed to "§ 203.268 Pro rata payment of MIP."

d. "§ 203.275 Amount of annual MIP" is removed.

e. "§ 203.276 Due date of annual MIP" is removed.

f. "§ 203.278 Pro rata payment of annual MIP" is removed.

g. "§ 203.280 Amount of Mortgage Insurance Premium (MIP)" is added.

12. By revising § 211.265 to read as follows:

§ 211.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in § 203.264 and § 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

§ 221.251 [Amended]

13. By amending paragraph (a) of § 221.251 as follows:

a. "§ 203.260 Method of payment of MIP" is changed to "§ 203.264 Payment of MIP."

b. "§ 203.265 Amount of initial MIP" is changed to "§ 203.260 Amount of Mortgage Insurance Premium (MIP)."

c. "§ 203.266 Due date of initial MIP" is changed to "§ 203.262 Due date of MIP."

d. "§ 203.267 Period covered by initial MIP" is changed to "§ 203.266 Period covered by MIP."

e. "§ 203.268 Adjustment of initial MIP" is changed to "§ 203.263 Adjustment of initial MIP."

f. "§ 203.269 Pro rata payment of initial MIP" is changed to "§ 203.268 Pro rata payment of MIP."

g. "§ 203.275 Amount of annual MIP" is removed.

h. "§ 203.276 Due date of annual MIP" is removed.

i. "§ 203.277 Duration of annual MIP" is changed to "§ 203.267 Duration of MIP."

j. "§ 203.278 Pro rata payment of MIP" is removed.

PART 226—INDIVIDUAL RESIDENCES; NATIONAL DEFENSE HOUSING MORTGAGE INSURANCE [SEC. 903]

§ 226.251 [Amended]

14. By amending paragraph (a) of § 226.251 as follows:

a. "§ 203.266 Due date of initial MIP" is changed to "§ 203.262 Due date of MIP."

b. "§ 203.268 Adjustment of initial MIP" is changed to "§ 203.263 Adjustment of initial MIP."

c. "§ 203.269 Pro rata payment of initial MIP" is changed to "§ 203.268 Pro rata payment of MIP."

d. "§ 203.275 Amount of annual MIP" is removed.

e. "§ 203.276 Due date of annual MIP" is removed.

f. "§ 203.278 Pro rata payment of MIP" is removed.

g. "§ 203.280 Amount of Mortgage Insurance Premium (MIP)" is added.

15. By revising § 226.265 to read as follows:

§ 226.265 Amount of MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid as provided in § 203.264 and § 203.265 of this chapter. The MIP shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

§ 235.201 [Amended]

16. By amending paragraph (a) of § 235.201 as follows:

a. "§ 203.265 Amount of initial MIP" is changed to "§ 203.260 Amount of Mortgage Insurance Premium (MIP)."

b. "§ 203.268 Adjustment of initial MIP" is removed.

c. "§ 203.275 Amount of annual MIP" is removed.

d. "§ 203.305 Open-end advance subject to open-end charge" is changed to "§ 203.289 Open-end insurance charge."

e. §§ 203.306 through 203.309 are removed.

§ 235.203 [Removed]

17. By removing § 235.203.

(Secs. 203(c) and 211 of the National Housing Act, as amended (12 U.S.C. 1701(d), 1715(b)))

Dated: April 12, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 82-12762 Filed 5-10-82; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Cancellation of Public Hearing on Modified Portion of the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Cancellation of public hearing.

SUMMARY: The Office of Surface Mining (OSM) is announcing the cancellation of

a public hearing on the substantive adequacy of program modifications to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) to satisfy two of the conditions imposed by the Secretary of the Interior on the approval of the Virginia program submitted by Virginia pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR 732.17.

This notice cancels the public hearing but does not alter the time and location at which the Virginia program and proposed amendments are available for public inspection, or the comment period during which interested persons may submit written comments on the proposed program elements.

DATES: The following hearing is cancelled: The public hearing on the proposed modification to the Virginia program, May 12, 1982.

ADDRESS: Written comments should be mailed or hand delivered to: Ralph Cox, State Office Director, Virginia State Office, Office of Surface Mining Reclamation and Enforcement, Route 3, Box 183–C–1, Big Stone Gap, Virginia 24219.

Copies of the Virginia program, the proposed modifications to the program, a listing of scheduled public meetings, and all written comments are available for review at the OSM Offices and the office of the State regulatory authority listed below, Monday through Friday 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, N.W., Washington, D.C.
Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219
Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266
Virginia Division of Mined Land Reclamation, 620 Powell Avenue, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Ralph Cox, State Office Director, Virginia State Office, Route 3, Box 183–C–1, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION: On January 28, 1982, Virginia submitted to OSM a revised policy statement to satisfy condition "k" of the Secretary's approval of the Virginia program (See Administrative Record No. VA 376). Condition "k" requires Virginia to submit a revised policy clearly granting field inspectors the authority to issue immediate cessation orders for imminent danger or harm if they are unable to contact the supervisor or enforcement manager.

On March 31, 1982, Virginia submitted a letter describing the action which has been taken and will be taken by the Commonwealth to resolve condition "r" (Administrative Record No. VA 383). Condition "r" requires Virginia to submit a copy of revised policy statement or otherwise amend its program to make its coal haul roads policy consistent with the Federal requirements. This policy must be accompanied by a legal opinion which states that it is enforceable under existing State law and regulations.

On April 28, 1982, notice of opportunity for public hearing on the proposed modifications to the Virginia program, was published in the **Federal Register** (47 FR 17827–17829). The notice stated that any person interested in making an oral or written presentation at the hearing should contact Mr. Cox by May 5, 1982, and that if no person contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing would be cancelled.

Because no one expressed an interest in attending the hearing by May 5, 1982, the hearing has been cancelled.

While there in no public hearing, interested persons may still submit written comments on the proposed program elements. Written comments must be received on or before 4:00 p.m., on May 26, 1982, to be considered in the Secretary's decision on whether the proposed amendments are acceptable.

Dated: May 6, 1982.

W. B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-12797 Filed 5-10-82; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS-FRL-2074-6]

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standard for JT3D Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed amendment would eliminate the requirement for retrofitting the remaining unmodified JT3D aircraft engines in service to and from United States points with low smoke combustors. There will be no significant adverse impact on the environment and cost savings could reach $35 million. This action responds to a petition from AVMARK, Inc., 1120 19th Street, NW., Washington, D.C. 20036.

DATE: All relevant comments received on or before June 10, 1982.

ADDRESS: Interested persons may participate in this rulemaking by submitting written comments to the U.S. Environmental Protection Agency, Central Docket Section (A–130), Attn: Docket No. A–82–18, 401 M Street, SW., Washington, D.C. 20460. Two copies of comments are requested but not required. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kitredge, U.S. Environmental Protection Agency, Office of Mobile Source Air Pollution Control (ANR–455), 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 426–2514.

SUPPLEMENTARY INFORMATION:

I. Background

The Pratt and Whitney JT3D engine is one of the aircraft gas turbine engines whose heavy smoke emissions during take-off and climb operations drew Congressional attention to the air pollution impact of aircraft during the mid-1960's.

The Clean Air Amendments of 1970 added new provisions (Sections 231–3) which give EPA the authority to proceed with emission standards if justified by air quality projections and if emission control technology can be developed. With this background, standards limiting visible smoke were incorporated as a public welfare measure in the overall program of emission standards which were eventually promulgated in response to the 1970 legislation on July 17, 1973 (38 FR 19088). Because of the very large numbers of JT3D and JT8D engines in service at that time, those two engines were singled out for retrofit programs, which required installation of low smoke combustor kits. The JT8D retrofit program was completed by the end of 1974, while the JT3D program was delayed, first because of developmental problems and later because of a decision (at the request of the Federal Aviation Administration (FAA)) to adjust the schedule for the retrofit program to match the FAA schedule for a noise retrofit program, which affects the same aircraft. Since January 1978, the JT3D low smoke combustor kit has been certified and available for

purchase. The present schedule requires 25% compliance by February 1, 1981 (orginally January 1, 1981), 50% compliance by January 1, 1983, and 100% compliance by January 1, 1985. There is an "escape route" built into this schedule for the benefit of airlines who have FAA-approved plans for replacement of their B707's and DC8's by 1985 instead of retrofitting these aircraft or simply withdrawing them from service. Section 87.31(c) of Title 40, Code of Federal Regulations relieves operators from the 1981 and 1983 partial compliance requirements, "If, under an approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery prior to January 1, 1985." This has been provided because the new aircraft will be much more desirable in both environmental and energy conservation terms than the retrofitted aircraft. Since there is no currently certificated noise retrofit kit for B707 and DC8 aircraft, it is assumed that all operators will retire them from U.S. service by 1985 or install replacement engines which are capable of meeting the noise and emission standards—a trend which is strongly stimulated by their excessive fuel consumption in comparison with newer aircraft.

As a result of these combined pressures, major U.S. airlines began selling their B707 aircraft as the January 1, 1981 date for 25% compliance approached. Some operators are also selling their DC8 aircraft while others plan to retrofit them with a more modern engine, the GE/SNECMA CFM 56. The market for these surplus aircraft has become very depressed and most of them are being sold to small air charter companies, new small airlines formed as a result of deregulation and other organizations, such as travel clubs, which would normally not aspire to use aircraft in the B707 category. Purchasers of this type in many cases were unaware of the smoke retrofit standard and did not take steps to comply with the January 1, 1981 25% compliance date until too late to obtain delivery of the necessary engine parts from the supplier (Pratt and Whitney). Therefore, a series of requests for temporary exemption from the compliance date were received and granted by the Administrator. In other cases, operators of these aircraft were able to take advantage of the "escape route" and comply by submitting aircraft replacement plans to FAA, describing their intentions to replace their B707 and DC8 aircraft by January 1, 1985, as provided in the amended standards, while others simply retired 25% of their JT3D-powered aircraft.

The changes made to the engines to achieve compliance with smoke standards invariably reduce HC and CO emissions as well, while tending to increase NO_x. The following tabulation compares the gaseous emission characteristics of the JT3D engine with and without the low smoke combustor with three, more modern, engines:

EMISSIONS, GRAMS/KILONEWTONS RATED THRUST/LANDING/TAKEOFF CYCLE

	JT3D-7 (orginal)	JT3D-7 (low smoke)	JT9D-70	CF6-50	RB211-524
HC	356	158	26	63	110.4
CO	294	252	87.5	119.5	145.1
NO_x	31.0	53.0	54.3	60.8	61.4

II. Discussion of Issue

On October 21, 1981, the AVMARK Corporation, a Washington, D.C., aviation management service representing "Ports-of-Call" travel club of Denver, Colorado, and other unnamed clients, submitted a petition requesting that EPA amend 40 CFR Part 87 to eliminate any further requirement to retrofit JT3D engines manufactured before January 1, 1978, with the low smoke combustors developed by the engine manufacturer (Pratt & Whitney) for this purpose. As justification, the petition cites the economic benefits to the small aircraft operators who are the major customers for surplus B707 and DC8 aircraft together with the elimination of government expenses associated with the remaining exemption and compliance activities in support of this standard. The complete petition is available for public review in Docket No. A–82–18 at the address given earlier, along with an EPA commentary.

Environmental Impact

The petition argues that the steady migration of JT3D-powered aircraft from first line service with major airlines to more intermittent usage with small new operators has greatly reduced their adverse environmental impact.

To investigate this claim, statistical data were obtained from the Federal Aviation Administration's monthly publication, "Aircraft Utilization and Propulsion Reliability Report" for the period from late 1972 through late 1981.

Table 1 shows a trend towards diminishing numbers of U.S.-registered JT3D-powered aircraft through this period. Of the roughly 200 remaining aircraft, over 40 are now owned by small organizations which have acquired them during the last 5 years and which fall in the category of business concerns described in the AVMARK petition.

Table 2 shows a trend towards sharply diminishing utilization for average JT3D-powered aircraft through the same period. Therefore, the environmental impact represented by the remaining domestic JT3D-powered fleet has been drastically lessened both through their reduction in numbers and the reduced utilization of the remaining aircraft. For comparison, 134,702 hours were flown by these aircraft in November 1973, which dropped to 33,672 in October 1981—a fourfold reduction. We would expect this trend to continue.

Table II also compares the average hours flown by JT3D-powered aircraft still owned by three of the major domestic airlines in October 1981 to the average of eight small new operators, showing that the latter category of operator does tend to utilize the aircraft less than their former owners.

The foregoing considers only U.S. registered aircraft and there will, of course, be operators of JT3D-powered aircraft of foreign registry to and from U.S. points through the 1982–1984 period prior to the final compliance date for the FAA noise standard. Comments are invited as to the extent to which trends in operation of foreign-registered aircraft would run counter to those displayed in Tables I and II for aircraft of U.S. registry.

TABLE I.—NUMBER OF JT3D—POWERED AIRCRAFT REGISTERED IN THE UNITED STATES

Date	Number of aircraft		
	All operators	Major operators	Small new operators
November 1972	526	526	
November 1973	498	498	
November 1974	447	447	
November 1975	430	430	
November 1976	422	421	1
November 1977	380	367	9
October 1978	366	360	6
November 1979	335	327	8
November 1980	272	257	15
October 1981	205	164	41

TABLE II.—AVERAGE MONTHLY USAGE OF JT3D-POWERED AIRCRAFT REGISTERED IN THE UNITED STATES

Date	Monthly hours of operation		
	All operators	Major operators	Small new operators
November 1972	258	256	
November 1973	[1] 257	[1] 257	
November 1974	258	258	
November 1975	218	218	0
November 1977	224	224	163
October 1978	241	244	78
November 1979	206	210	123
November 1980	162	166	87
October 1981	164	100	102

[1] TWA omitted from average because of unusually low operations caused by strike.

The trends described are the natural result of the high operating costs for these JT3D-powered aircraft plus the approaching 1985 cut-off date represented by the FAA noise standard. It appears that, from the environmental point of view, achievement of compliance with the EPA smoke retrofit standard for the remaining aircraft affected is almost irrelevant. Compliance will likely be achieved in almost all instances either by withdrawing the aircraft from service or by submitting aircraft replacement plans to FAA, the same actions which operators would have to take in any case to comply with the noise standard, for which no retrofit option is available. Therefore, the Agency has determined that some form of relief should be provided to eliminate the remaining administrative costs to both the aircraft operators and the Federal government which would otherwise be incurred in satisfying the remaining provisions of the JT3D smoke retrofit standard.

It appears that elimination of the smoke retrofit standard would eliminate lost time, cost and uncertainty to the small business organizations who are becoming the principal operators of the remaining JT3D-powered aircraft as well as the continued expenditure of Federal resources in its administration through 1984. While individual compliance problems could be accommodated through considering and granting exemptions on a case-by-case basis, the evaluation of exemptions and the preparation of individual exemption decisions consumes the time of experience Federal engineers within both EPA and FAA. If all such requests by small operators of lightly utilized aircraft were to be routinely granted, as seems likely, this work would be non-productive. Similarly, EPA would not expect the continuation of the smoke retrofit standard to result in significant future purchases or installation of retrofit kits. Thus elimination of the standard is not expected to create significant equity issues or economic losses.

On balance, it appears that the JT3D smoke retrofit standard has become unnecessary, because the aircraft have become inefficient to operate and because they must be retired by 1985 in any case to comply with the FAA noise standard. The modern aircraft and engines which will replace the JT3D-powered aircraft will be substantially lower in smoke, hydrocarbon and carbon monoxide emissions than the retrofitted JT3D engines would have been, as well as quieter and more fuel efficient. Accordingly, EPA proposes to delete the JT3D smoke retrofit standard.

The Agency asks that comments specifically address these three issues:

1. Since this retrofit program is already in progress, with the first partial compliance date already past, will elimination of the smoke retrofit standard adversely affect those operators who have already made good faith efforts to comply, either by purchasing the retrofit combustors, withdrawing aircraft from service or by filing aircraft replacement plans with FAA documenting their business arrangements for replacing the aircraft by January 1, 1985?

2. What economic losses, if any, will be incurred by suppliers of low smoke combustor kits as a result of pending orders for the low smoke combustor kits which would likely be cancelled if the petition is granted? Also, what economic losses, if any, will be incurred by operators who have purchased the kits but not yet installed them?

3. Is there an advantage to be gained by aircraft operators through eliminating the JT3D smoke retrofit standard completely, or do present mechanisms for achieving relief from the 1981 and 1983 intermediate compliance dates provide all the flexibility needed?

III. Public Participation

Comments are invited on the merits of the petition and on the benefits, penalties, costs or equity considerations associated with granting the petition. The comments should be submitted in writing to the EPA Central Dockets Section (Docket Number A–82–18) at the address given above.

IV. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements for a Regulatory Analysis. This rulemaking is not major because it will result in an annual adverse effect on the economy of less than $100 million. Based on the estimated 251 aircraft powered by JT3D engines which may use U.S. airspace between now and 1985 (the number stated in the petition), the costs eliminated by granting the petition would be a maximum of $34,960,000. The figure assumes an installed cost of $40,000 per engine and deducts the costs already expended for the 130 kits which have been purchased. However, it is very unlikely that many more of the remaining 251 aircraft would be retrofitted at this time, since only three years remain in which to recover the costs of doing so prior to the 1985 noise standard effective date, which (in any event) would terminate their operations at that time. Therefore, the true cost savings are probably far less than this amount. To the extent that any more smokeless combustor kits would have been ordered through this period, an undeterminable negative impact would be felt by Pratt and Whitney and by independent aircraft service organizations who would otherwise have been hired by some operators to install them.

There are no discernible effects on competition, productivity, investment, employment or innovation. For these reasons EPA has not prepared a formal Regulatory Impact Analysis.

This proposal has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291.

V. Impacts on Reporting Requirements

There are no reporting requirements directly associated with this rulemaking.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.*, EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a regulatory flexibility analysis. This rulemaking action will presumably have some effect on the small operators of surplus B707 and DC8 aircraft who are its intended beneficiaries, although the effect cannot be established accurately, because the exact plans of each such organization are not known to EPA. In fact, only one of the organizations in whose behalf the petition was submitted was identified. There is no reason to believe at this time that the effect would be "significant" and would require a regulatory analysis. Accordingly, I hereby certify that this rulemaking will not have a significant effect on a substantial number of small entities.

List of Subjects in 40 CFR Part 87

Air pollution control, Aircraft.

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

§ 87.31 [Removed]

For the reasons set forth above, it is proposed to amend Part 87, Chapter I of Title 40 of the Code of Federal Regulations to delete § 87.31(c).

[FR Doc. 82-12749 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-50-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Ch. 51

Semiannual Agenda of Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: Pursuant to Executive Order 12291 and section 602 of the Regulatory Flexibility Act (5 U.S.C. Ch. 6), this Committee is not planning to issue or review any significant regulations or any regulations which would have a significant economic impact on small entities during the period from April through October 1982.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street, North, Suite 610, Arlington, Virginia 22201, Telephone: 703/557-1145.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-12752 Filed 5-10-82; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-235; RM-4071]

TV Broadcast Station in Mountain Home, Ark.; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 43 to Mountain Home, Arkansas, as its first television assignment in response to a petition filed by Baxter Broadcasting, Inc.

DATES: Comments must be filed on or before June 14, 1982, and reply comments on or before June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Adopted: April 23, 1982.

Released: May 3, 1982.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Mountain Home, Arkansas.)

1. The Commission herein considers a petition for rule making filed March 3, 1982, by Baxter Broadcasting, Inc. ("petitioner"), which seeks the assignment of UHF television Channel 43 to Mountain Home, Arkansas. Petitioner expressed an interest in applying for the channel, if assigned.

2. Mountain Home (population 7,447),[1] seat of Baxter County (population 27,409), is located in north central Arkansas, approximately 180 kilometers (110 miles) north of Little Rock. It has no local television broadcast service.

3. According to petitioner, Mountain Home's economy would support a first television assignment. It is the seat of Baxton County, the economic and commercial center of the area, and has become an attraction as a recreation center and retirement community. Petitioner notes that the community's dramatic population growth over the last decade has greatly expanded the area's economy. Mountain Home has light industry, tourism, construction, retail sales, and a pharmaceutical laboratory (Baxton Laboratories) employing 2,500 persons. Petitioner states that there is a growing need for a local television facility with programming directed toward the needs of the community, and coverage of local news, weather, sports and community activities. Mountain Home is said to receive service only from KOLR-TV and KYTV, Springfield, Missouri, neither of which presents programming pertaining to Mountain Home.

4. In view of the fact that Mountain Home could receive a first television service, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the rules), with regard to the city of Mountain Home, Arkansas, as follows:

City	Channel No.	
	Present	Proposed
Mountain Home, Arkansas		43+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before June 14, 1982, and reply comments on or before June 29, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11540, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[1] Population figures are derived from the 1980 U.S. Census, Advance Report.

Federal Communications Commission.
Roderick K. Porter,
Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even it is only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the date set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 82-12778 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-234; RM-4046]

FM Broadcast Station in Hahaina, Hawaii; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 266 to Lahaina, Hawaii, in response to a petition filed by Maui Broadcast Company. The proposal could provide a first aural service to Lahaina.

DATES: Comments must be filed on or before June 14, 1982, and reply comments on or before June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast stations (Lahaina, Hawaii).

Adopted: April 21, 1982.

Released: May 3, 1982.

1. The Commission herein considers a petition for rule making filed January 25, 1982, by Maui Broadcast Company (petitioner) which seeks the assignment of Class C FM Channel 266[1] to Lahaina, Hawaii. Petitioner stated its intent to apply for the channel, if assigned.

2. Lahaina (population 3,718),[2] in Maui County (population 70,647),[3] is located approximately 128 kilometers (80 miles) east-southeast of Honolulu. It is without local broadcast service.

3. Petitioner states that Lahaina is experiencing rapid growth in tourism and agriculture. It adds that the area is very mountainous requiring a Class C facility to offset fade and skips in coverage. Also, a station operating with high power could serve isolated areas of the Island of Maui. The proposed station would provide agricultural weather information, news coverage, music and other programming designed to meet community needs; according to the petitioner.

4. The petitioner indicated that no community would be precluded by the proposed assignment, since numerous Class A and Class C channels are available throughout the region. In the absence of a *Roanoke/Rapids* study petitioner alleged that the proposed assignment would provide service to isolated areas of the Island.

5. Our established policy is to reserve Class C channels for larger urban areas. However, a departure from this policy can be considered where the Class C proposal could provide a significant amount of first and second service or where as here, the assignment would enable a sparsely populated (isolated) area to be served.

6. In view of the fact that the proposed assignment could provide a first service to Lahaima and provide service to the surrounding area, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Lahaina, Hawaii		266

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

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[1] Originally, petitioner requested that Channel 258 be assigned to Lahaina. This request conflicts with the proposal to assign Channel 258 to Honolulu, Hawaii (BC Docket No. 82-124, RM-3782). Petitioner has amended its request to specify Channel 266 instead of Channel 258.

[2] Population figure is taken from the 1970 U.S. Census.

[3] Population figure is taken from the 1980 U.S. Census.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comment on or before June 14, 1982, and reply comments on or before June 29, 1982, and are advised to read the Appendix for the proper procedures.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-12770 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-783; RM-3939, RM-4067]

FM Broadcast Station in McPherson and Lindsborg, Kansas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to a counterproposal, action taken herein proposes optional assignment plans for the use of FM Channel 240A at either McPherson or Lindsborg, Kansas. The assignment could provide a second FM channel to McPherson or a first local aural service to Lindsborg.

DATES: Comments must be filed on or before June 14, 1982, and reply comments must be filed on or before June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: April 23, 1982.

Released: May 4, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast stations, (McPherson and Lindsborg,[1] Kansas).

1. Before the Commission is a *Notice of Proposed Rule Making*, 46 FR 58715, published December 3, 1981, proposing the assignment of FM Channel 240A to McPherson, Kansas, as that community's second allocation, in response to a petition filed by Dean Curfman ("petitioner"). A timely counterproposal was submitted by McPherson Broadcasting, Inc.[2] ("MBI"), on behalf of Bethany College [3]

[1] This community has been added to the caption.

[2] McPherson Broadcasting, Inc. is the existing licensee of co-owned Stations KNEX (AM & FM) in McPherson, Kansas.

[3] MBI states that Bethany College is a four-year liberal arts college with a current enrollment of

Continued

("Bethany"), seeking the assignment of Channel 240A to Lindsborg, Kansas, as that community's first FM allocation. Petitioner, MBI, and Bethany each filed reply comments. Because spacing restrictions preclude assigning Channel 240A to both communities, the proposals are mutually exclusive.[4]

2. McPherson (population 11,753) [5] is located in McPherson County (population 26,855), approximately 80 kilometers (50 miles) north of Wichita, Kansas. It is presently served by daytime-only Station KNEX(AM) and Station KNEX–FM (Channel 244A).

3. Lindsborg (population 3,155), in McPherson County (population 26,855), is located approximately 96 kilometers (60 miles) north of Wichita, Kansas. It is currently devoid of any local aural broadcast service.

4. In its comments, MBI asserts that the assignment of Channel 240A to McPherson would constitute its third local radio facility and would preclude its use in the Kansas communities of Clay Center (population 4,948), Minneapolis (population 2,075), Chapman (population 1,255) and Lindsborg (population 3,155). It was proposed on behalf of Bethany College, that Channel 240A be assigned to Lindsborg as its first local aural assignment.

5. In support of the proposal, MBI states that Lindsborg has a reputation as a center of Swedish life and culture. The community and Bethany College are said to be renowned for Scandinavian art. Lindsborg has its own local government, municipal services, and unique cultural resources. MBI also states that a local weekly newspaper is available to the residents of Lindsborg.

6. MBI declares that it has offered to assist Bethany in its efforts to secure a station by underwriting the legal and engineering costs related to the licensing process. Further, MBI states its monetary assistance to Bethany would be a donation, and exempt from any conditions. It advises that, on the authority and statement of Dr. Arvin W. Hahn, President of Bethany College, such a facility would be utilized to present educational and cultural programming objectives and to assist students in learning commercial radio operation. Further, MBI adds that a commercial operation could enable Bethany College to obtain financial support for its costs of operating the station and to fund other college programs and activities.

7. In reply comments, Bethany confirms the offer of MBI to donate the legal and engineering costs of licensing. It assures that would operate the station free of any connection with MBI. Indeed, it states that there would be competition between its proposed operation and that of MBI, "particularly in its commercial operations." In supplemental comments, Bethany states its intention to apply for the channel, if assigned, and essentially reiterates previous statements concerning its projected use of the channel.

8. In its reply comments petitioner states that we should treat MBI's sister AM and FM stations as a single aural service in McPherson. As such, the addition of Channel 240A should be considered a second aural service for McPherson. The precluded communities listed by MBI are said to be too small to support their own station. Petitioner argues that Bethany College should file for a noncommercial educational station which would more closely accord with the institution's purposes

9. We are issuing this *Further Notice* to invite comments on the comparative need of both communities for the assignment. Although the proponents have addressed this issue, we have not yet given formal notice of the Lindsborg proposal. In addition, more information is needed as discussed below. Our initial reaction is to assign the channel to Lindsborg as a first assignment since McPherson presently has local aural service. This view is consistent with the mandate of section 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio service among various communities. However, the petitioner may wish to set forth in comments any other pertinent information with respect to McPherson which it feels may strengthen its proposal to assign Channel 240A to that community. An assignment to Lindsborg may be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules, whereas an assignment to McPherson, as indicated in the *Notice*, requires a site restriction.

10. Petitioner's response to our request for preclusion information has not been satisfied adequately. MBI disclosed that the communities of Clay Center, Minneapolis, Chapman and Lindsborg, each with a population in excess of 1,000, would sustain preclusion as a result of the proposed assignment to McPherson. Petitioner responded by supplying information with respect to Clay Center only, the larger of the precluded communities. Since the purpose of a preclusion study is to put other communities on notice that the opportunity to receive an FM assignment may be foreclosed, petitioner should supply us with a list of alternate channels available for the remaining communities listed above that are devoid of any local aural service.

11. Based on the information before us, it is not entirely clear that Bethany College actually desires a commercial channel for its proposed operation, or whether it would be interested in applying for an educational frequency. If the latter is indicated, reserved Channels 215 and 217 are available for such use.

12. A staff engineering study reveals that no other Class A channels are available at McPherson.[6] However, Channel 285A may become available to Lindsborg, depending on the outcome of the comparative hearing now pending for Channel 287 at Wichita, Kansas. Three applications are under consideration in that proceeding, only one of which (Wood of Chattonooga, Inc., BPH–810904) would preclude the assignment of Channel 285A to Lindsborg.

13. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commisson's Rules, with respect to the communities listed below, as follows:

Channel No.	City	
	Present	Proposed
McPherson, Kansas	244A	240A, 244A
or		
Lindsborg, Kansas		240A

14. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is

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approximately 1,000 students. It is owned and operated by the Central States Synod of the Lutheran Church of America.

[4] The distance between Lindsborg and McPherson is approximately 23 kilometers (14 miles). Section 73.207 requires a 65 mile separation between co-channel Class A assignments.

[5] Population figures herein are extracted from the 1980 U.S. Census, Advance Reports, unless otherwise indicated.

[6] If the Commission determines that the assignment of Channel 240A should be made to Lindsborg, petitioner may wish to explore the possibility of applying for an FM frequency at McPherson if the proposals made in BC Docket No. 80–90, a pending rule making proceeding, are adopted. See, *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 76 F.C.C. 2d 1235 (1980). Proposals made in that docket would, *inter alia*, permit the use of Class A facilities on Class B/C channels.

required by paragraph 2 of the Appendix before a channel will be assigned.

15. Interested parties may file comments on or before June 14, 1982, and reply comments on or before June 29, 1982, and are advised to read the Appendix for the proper procedures.

16. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rulemaking To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

17. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-12700 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-241; RM-4062]

FM Broadcast Station in Breckenridge, Minn.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 286 for Channel 285A in Breckenridge, Minnesota, in response to a petition filed by Ingstad Broadcasting, Inc. Also, the license for Station KKWB so proposed to be modified to specify the new channel.

DATES: Comments must be filed on or before June 21, 1982, and reply comments on or before July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Edythe Wise, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Breckenridge, Minnesota).

Adopted: April 29, 1982.

Released: May 6, 1982.

1. The Commission is considering a petition for rulemaking filed on March 15, 1982, by Ingstad Broadcasting, Inc. ("Ingstad"), licensee of Station KKWB, Breckenridge, Minnesota. Ingstad seeks to substitute Class C FM Channel 286[1] for Channel 285A at Breckenridge, Minnesota, and to modify its license for 285A to specify operation on the Class C channel. Ingstad states that, should this rule making proposal be adopted, it would modify the facilities of its station to meet all technical standards for a Class C FM operation.

[1] The proposed substitution is mutually exclusive with one of the plans in BC Docket No. 81-737 involving the assignment of Channel 287 to Ortonville, Minnesota. Since there are other possible assignments to Ortonville in that proceeding, we have decided not to delay the commencement of this proceeding. However, action on the proposal herein is contingent on the outcome of BC Docket No. 81-737.

2. In support of its request, petitioner states that the proposed upgrading of the facilities of Station KKWB would provide a first FM service to 1,945 square kilometers (760 square miles) for 6,740 persons and a second FM service to 389 square kilometers (152 square miles) for 1,470 persons (1970 U.S. Census). Petitioner also argues that, in much of its service area, it is forced to compete with several Class C FM stations from the cities of Fargo, North Dakota, Morehead, Minnesota, and Fergus Falls, Minnesota. In addition, the petitioner states that the combined population of Breckenridge and Wahpeton, North Dakota (considered by petitioner as a single community), was 12,973 according to the 1980 U.S. Census. Petitioner argues that the Breckenridge-Wahpeton community, therefore, should be allocated a Class C rather than a Class A station.

3. Breckenridge, the seat of Wilken County, is located on the North Dakota-Minnesota border approximately 296 kilometers (185 miles) northwest of Minneapolis, Minnesota. Breckenridge has a population of 3,909 and Wilken County has a population of 8,382 (1980 U.S. Census). It is presently served by Station KKWB (Channel 285A) and a full-time AM station, KBMW.

4. Petitioner has made reference to the communities of Breckenridge, Minnesota, and Wahpeton, North Dakota, as a single community. We do not ordinarily make hyphenated assignments and based on the information provided, we do not believe such treatment is warranted here. In this regard, petitioner concedes that the two cities have separate governmental services. Should petitioner wish to pursue this matter further, it may do so in comments. *See, e.g., Roy, Utah*, 46 FR 15150 (1981). *N.J. Coalition for Fair Broadcasting v. F.C.C.*, 574 F. 2d 1119, 1122 (3rd Cir. 1978).

5. Although it has been general Commission policy to assign Class C channels only to larger communities, exceptions have been made when the assignment of a Class C channel would provide first or second service to outlying areas. The showing of such service here is sufficient to justify proposing the Class C channel.

6. The engineering study submitted by petitioners indicates that substitution of Channel 286 will preclude the assignment of Channels 285A, 286, 287 and 288A. However, petitioner has listed alternate available channels for the precluded communities over 2,000 population.

7. In accordance with Commission policy, should there be another interest in the Class C assignment to Breckenridge, the modification of license for Station KKWB–FM could not be made. *See, Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

8. Canadian concurrence in the proposal is required.

9. Comments are invited on the proposal to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to Breckenridge, Minnesota, as follows:

City	Channel No.	
	Present	Proposed
Breckenridge, Minn.	285A	286

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before June 21, 1982, and reply comments on or before July 6, 1982, and are advised to read the Appendix for the proper procedures.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

13. For further information concerning this proceeding, contact Edythe S. Wise, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and

regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

[FR Doc. 82-12761 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-249; RM-4083]

FM Broadcast Station in Clarion, Pa.; Proposed Changes in Table of Assignments.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of a Class A FM channel to Clarion, Pennsylvania, in response to a petition filed by Clarion County Broadcasting Corporation. The proposed assignment could provide a first commercial FM broadcast service to Clarion.

DATE: Comments must be filed on or before June 21, 1982, and reply comments on or before July 6, 1982.

ADDRESS: Federal Communications Commission Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast stations (Clarion, Pennsylvania).

Adopted: April 29, 1982.

Released: May 6, 1982.

1. The Commission herein considers a petition for rule making filed March 18, 1982, by Clarion County Broadcasting Corporation ("petitioner"), proposing the assignment of FM Channel 244A to Clarion, Pennsylvania, as that community's first FM assignment. Petitioner stated its intention to apply for the channel, if assigned.

2. Clarion (population 6,664), the seat of Clarion County (population 43,362),[1] is located approximately 96 kilometers (60 miles) northeast of Pittsburgh, Pennsylvania. It is served by daytime-only AM Station WWCH, and noncommercial FM Station WCUC-FM.

3. Petitioner states that Clarion has its own local government, police and fire protection, court system, post office, religious and cultural institutions, school system and recreation facilities. Petitioner states that Clarion could support a first commercial FM assignment. Petitioner alleges a need for the assignment in order to provide more extensive coverage to the cultural needs of the community and to allow the business community better access to the public. Although local service is provided by two local stations, the AM facility is daytime-only and the noncommmercial FM station does not operate during the summer when Clarion State College is not in session. Petitioner included supporting statements of several county and local officials.

4. The transmitter site must be restricted to 4 miles north of the city to meet spacing requirements to Station WFFM(FM) (Channel 245) Braddock, Pennsylvania.

5. In view of the fact that the proposed assignment could provide Clarion with its first local commercial FM broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) with regard to the following community:

City	Channel No.	
	Present	Proposed
Clarion, Pa.		244A

6. Since Clarion, Pennsylvania, is within 402 kilometers (250 miles) of the U.S.-Canadian border, the proposed assignment requires corrdination with the Canadian Government.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before June 21, 1982, and reply comments on or before July 6, 1982, and are advised to read the Appendix for the proper procedures.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Mark N. lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule*

[1] Population figures are derived from the 1980 U.S. Census, Advance Report.

Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counter proposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-12770 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-248; RM-4063]

FM Broadcast Station in Bastrop, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 296A to Bastrop, Texas, in response to a petition filed by East Texas Wireless Radio. The assignment could provide a first FM service to Bastrop.

DATES: Comments must be filed on or before June 21, 1982, and reply comments on or before July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast stations (Bastrop, Texas).

Adopted: April 29, 1982.

Released: May 6, 1982.

1. A petition for rule making was filed by East Texas Wireless Radio ("petitioner") on February 15, 1982, proposing the assignment of Channel 296A to Bastrop, Texas, as its first FM channel. Petitioner stated its intention to apply for the channel, if assigned. A separate petition was filed by Texan Broadcasting Company, Inc. for the same channel assignment. We have treated the petition as comments in support. If Texan Broadcasting seeks an additional channel assignment it should submit a counterproposal with a mileage separation study for the channel.

2. Bastrop (population 3,789),[1] seat of Bastrop County (population 24,726), is located approximately 48 kilometers (30 miles) southeast of Austin, Texas. It is without local broadcast service.

3. In support of the proposal petitioner claims that Bastrop's 1980 population showed an increase to nearly 4,000 persons over the 1970 population figures of 3,112. It adds that with the recent addition of a federal correctional institution and the planned mining of large lignite coal deposits near Bastrop, the population is expected to grow at an even faster rate. Petitioner asserts that the city can be supportive of an FM station based on its anticipated growth.

4. In view of the fact that a first local broadcast service could be provided to Bastrop, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as it relates to Bastrop, Texas, as follows:

City	Channel No.	
	Present	Proposed
Bastrop, Tex.		296A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before June 21, 1982, and reply comments on or before July 6, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court

[1] Population figures are taken from the 1980 U.S. Census.

review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1062; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it is only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 82-12777 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-233; RM-4048]

FM Broadcast Station in Chadron, Nebraska; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes a second Class C FM channel to Chadron, Nebraska, in response to a petition filed by Nebraska Broadcasting Group, Inc.

DATES: Comments must be filed on or before June 14, 1982, and reply comments on or before June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

Adopted: April 21, 1982.
Released: May 3, 1982.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Chadron, Nebraska); BC Docket No. 82-233, RM-4048.

By the Chief, Policy and Rules Division:

1. The Commission herein considers a petition filed by Nebraska Broadcasting Group, Inc. (petitioner) on January 26, 1982, which seeks the assignment of Class C FM Channel 234 to Chadron, Nebraska, as its second Class C allocation. Petitioner stated its intention to apply for the channel, if assigned.

2. Chadron (population 5,933),[1] seat of Dawes County (population 9,609), is located in the northwest corner of the state approximately 568 kilometers (355 miles) northwest of Lincoln, Nebraska. It is served by daytime-only AM Station KCSR and FM Station KQSK (Channel 248).

3. According to the petitioner, Chadron serves as the commercial, educational and recreational center for the surronding area. The economy is based on wholesale and retail sales, agriculture, transportation and education. The Chadron area is said to have grown significantly in the past years, due in part to the exploration for and development of energy resources (uranium, oil and gas). Additional development which will further expand the population is anticipated. Petitioner also states that the proposed assignment will provide a competitive broadcast voice to Chadron.

4. The preclusion study submitted by the petitioner shows that ten communities, eight of which have no FM assignment and a population over 1,000,[2]

[1] Population figures are taken from the 1980 U.S. Census.

[2] *Colorado:* Julesburg (population 1,324), Holyoke (population 2,096); *Nebraska:* Chappell (population 1,066), Oshkosh (population 1,080); Rushville (population 1,340), Valentine (population 2,824); and *South Dakota:* Martin (population 1,017), Philip (population 1,066).

would be precluded from future assignments on Channels 233 and 234. Numerous channels are said to be available to the precluded communities. Inasmuch as the petitioner did not submit a *Roanoke Rapids* study we assume that no first or second service will be provided by the assignment. The channel can be assigned in compliance with the miminum distance separation requirements.

5. In view of the foregoing information and the fact that the proposed assignment would provide a second commercial FM broadcast service to Chadron, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules as follows:

City	Channel No.	
	Present	Proposed
Chadron, Nebraska	246	234, 246

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 14, 1982, and reply comments on or before June 29, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes and *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompained by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-12788 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 82–83, RM–3705, RM–3729, RM–3734, RM–3778, RM–3831, RM–3833, RM–3860]

Amateur Radio Service; Expansion of the Telephony Segments of the High Frequency Bands; Extension of Time To File Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and proposed rule; extension of comment deadlines.

SUMMARY: The Commission is extending the deadlines for filing comments in the above proceeding concerning expansion of the telephony segments of the Amateur Radio Service High Frequency bands. The American Radio Relay League, Incorporated has requested that the Commission extend the comment period in the Notice of Inquiry in order to provide a greater opportunity for

information to be disseminated to interested parties and therefore provide a greater amount of informed participation in the proceeding. The Commission, recognizing that the issues involved are complex, agrees that an extension of time would serve the public interest and is granting the request. The extension of the comment period will also apply to the Notice of Proposed Rule Making for administrative reasons.

DATES: New closing date for filing comments is August 16, 1982. New closing date for filing reply comments is September 16, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Lett, Private Radio Bureau, Special Services Division, (202) 632-4954.

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1982.

Released: April 30, 1982.

1. On February 24, 1982 the Commission released a Notice of Inquiry and Proposed Rule making in the above-captioned matter (47 FR 8798, March 2, 1982). That Notice proposes expanding the segments available for radiotelephone use in the 14 MHz amateur frequency band. The Notice also inquires about expanding the segments for such use in the other high frequency (HF) amateur bands (the bands between 3 and 30 MHz). As specified in the Notice, comments were to be due on July 1, 1982 and reply comments were to be due August 2, 1982.

2. The Commission now has before it a request from the American Radio Relay League, Incorporated (ARRL) for an extension of time to file comments on the Inquiry in the Notice. In support of its request the ARRL states that while "(t)he League plans to file timely comments in response to the proposal contained in the *Notice* . . . (i)t was determined that the Commission's inquiry was of such magnitude and breadth, especially in view of the detailed questions asked in paragraph numbered 17 in the *Notice,* that an extensive effort should be made to publicize the Inquiry and the questions asked therein, and to seek membership input." The request goes on to state that "(i)t is thus necessary to request a brief extension of time in order to accomplish the above. No party to the proceeding will be disadvantaged thereby, and the public interest will be served by a greater amount of informed participation in the proceeding occasioned by the publicity permitted by the brief extension of time." The ARRL specifically requests that ". . . the Commission extend the time for filing comments and reply comments in response to the Inquiry portion of the *Notice of Inquiry and Proposed Rule Making* in this proceeding to and including August 16, 1982 and September 16, 1982, respectively."

3. The Commission concurs with the ARRL that well informed comments are most important to the subject proceeding due to the complex issues involved. It is also evident that more time for dissemination of information on the issues would aid in meeting this objective and thus be in the public interest. However, due to the large number of informal comments that the Commission has already received which address both the proposal in the Notice and the Inquiry in the same filing, it is not feasible to separate these two aspects of the proceeding for the purpose of setting comment deadlines. Therefore, the Commission is granting the request of the ARRL, but is also applying the extension of time for filing comments to the proposal in the Notice as well.

4. Accordingly, it is ordered that the time period for filing comments in the above-captioned proceeding is extended from July 1, 1982 to August 16, 1982 and it is further ordered that the time period for filing reply comments in the above-captioned proceeding is extended from August 2, 1982 to September 16, 1982. This action is taken pursuant to the authority contained in § 0.331 of the Commission's rules and regulations.

James C. McKinney,

Chief, Private Radio Bureau.

[FR Doc. 82-12775 Filed 5-10-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 91
Tuesday, May 11, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Fire-Cured (Types 21–24) and Dark Air-Cured (Types 35 and 36); Marketing Quota Referenda Results; 1982 Through 1984 Crops of Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (USDA).

ACTION: Notice of results of marketing quota referenda for 1982 through 1984 crops of fire-cured (types 21–24) and dark air-cured (types 35 and 36) tobaccos.

SUMMARY: This notice proclaims the results of marketing quota referenda for fire-cured (types 21–24) and dark air-cured (types 35 and 36) tobaccos which were held during the period February 22–26, 1982, in accordance with section 312(c) of the Agricultural Adjustment Act of 1938, as amended. The referenda were conducted in order to determine whether producers of those kinds of tobacco favor or oppose marketing quotas. Producers of these kinds of tobacco approved marketing quotas which will be in effect for the 1982, 1983, and 1984 marketing years.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Tobacco and Peanuts Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. (202) 447–4281.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified "not major." The provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or a geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies as set forth in the Catalog of Federal Domestic Assistance are: Title: Commodity Loan and Purchases; Number: 10.051. This notice will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In a notice of determination published in the **Federal Register** on February 9, 1982 (47 FR 5916) the Secretary of Agriculture announced that marketing quotas would be in effect for the 1982 through 1984 marketing years for fire-cured and dark air-cured tobaccos. The Secretary also announced the amount of the national marketing quota and national acreage allotments for fire-cured, dark air-cured, Virginia sun-cured, cigar-binder and cigar-filler and binder tobaccos for the 1982 marketing year. In addition, it was announced that referenda for fire-cured and dark air-cured tobaccos would be held during the period February 22–26, 1982, inclusive, in accordance with section 312(c) of the Agricultural Adjustment Act of 1938, as amended. That statute requires that within thirty days after the proclamation of national marketing quotas, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years.

Since the only purpose of this notice is to announce the results of referendums, it is hereby determined that no further public rulemaking is required. Accordingly, the results of such referenda are set forth below:

Notice

Results of the national marketing quota referenda for the 1982 through 1984 crops of fire-cured (types 21–24) and dark air-cured (types 35 and 36) tobaccos.

(1) *Referendum period.* The national marketing quota referenda for the 1982 through 1984 crops of fire-cured and dark air-cured tobaccos were held by mail ballot during the period February 22–26, 1982, inclusive, in accordance with 7 CFR Part 717.

(2) *Farmers Voting.* The following is a summary of the results by State of votes by producers engaged in the production of the 1981 crop of fire-cured and dark air-cured tobaccos:

FIRE-CURED [1] (TYPES 21–24)

State	Yes	No	Total
Kentucky	8,529	152	4,085
Tennessee	3,445	245	3,690
Virginia	2,152	106	2,256
Total	9,529	512	10,041

[1] Of those voting, 9,529 producers, or 94.90 percent, favored fire-cured tobacco marketing quotas, and 512 producers, or 5.10 percent, opposed quotas.

DARK AIR-CURED [1] (TYPES 35 AND 36)

State	Yes	No	Total
Indiana	11	4	15
Kentucky	7,661	374	8,035
Tennessee	1,951	145	2,096
Total	9,623	523	10,146

[1] Of those voting, 9,623 producers, or 94.85 percent, favored dark air-cured tobacco marketing quotas, and 523 producers, or 5.15 percent, opposed quotas.

(3) *Marketing quotas will be in effect for the 1982 through 1984 crops of fire-cured and dark air-cured tobaccos.* Since more than two-thirds of the producers voting favored quotas, and since the 1981–82 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect, a national marketing quota shall be in effect for fire-cured (types 21–24) and dark air-cured (types 35 and 36) tobaccos for the marketing years 1982–83, 1983–84, and 1984–85, inclusive.

(Secs. 312(c), 52 Stat. 46, as amended; 7 U.S.C. 1312(c))

Signed at Washington, D.C. on May 4, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82-12630 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Big Slough Watershed, Georgia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Big Slough Watershed project, Mitchell and Grady Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Dwight M. Treadway, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue (P.O. Box 832), Athens, Georgia 30613, telephone 404-546-2273.

SUPPLEMENTARY INFORMATION: A determination has been made by Dwight M. Treadway that the proposed works of improvement for the Big Slough Watershed project will not be installed. The sponsoring local orgainzations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Dwight M. Treadway, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 9, 1982.

Dwight M. Treadway,

State Conservationist.

[FR Doc. 82-12734 Filed 5-10-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended April 30, 1982

Subpart Q application—The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Apr. 26, 1982	40634	United Air Carriers, Inc., d/b/a Overseas National Airways, c/o Richard J. Kendall, Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036. Application of United Air Carriers, Inc., d/b/a Overseas National Airways pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled air transportation of passengers, property, and mail, as follows: a. Interstate scheduled air transportation between and among all points within the United States. Conforming Applications, motions to modify scope, and Answers may be filed by May 24, 1982.
Do.	40635	United Air Carriers, Inc., d/b/a Overseas National Airways, c/o Richard J. Kendall, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036. Application of United Air Carriers, Inc., d/b/a Overseas National Airways pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled air transportation of passengers, property, and mail, as follows: a. Foreign scheduled air transportation between a point or points in the United States and a point or points in Belgium, the Netherlands, Luxembourg and the Federal Republic of Germany. Conforming Applications, motions to modify scope, and Answers may be filed by May 24, 1982.
Apr. 27, 1982	40639	Aeroamerica, Inc., c/o A. Joel Eisenberg, 7777 Perimeter Rd. S. Seattle, Washington 98108. Application of Aeroamerica, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessary to engage in interstate charter air transportation of persons and property. Conforming Applications, motions to modify scope, and Answers may be filed by May 25, 1982.
Apr. 28, 1982	40647	Trans World Airlines, Inc. 605 Third Avenue, New York, New York 10158. Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests amendment of its certificate of public convenience and necessity for Route 147 to expand the number of areas and/or points for which its authority would be on a permanent basis, rather than temporary. Specifically, TWA requests that in its present certificate for Route 147 the third paragraph following the enuerated terms and conditions be revised as follow: "The authority in this certificate for Segment I, except with respect to Boston, MA; New York, NY-Newark, NJ; Philadelphia, PA; Washington, DC-Baltimore, MD; Chicago, IL; Detroit, MI; Los Angeles and San Francisco-Oakland-San Jose, CA; McGuire Air Force Base, NJ; Dover Air Force Base, DL; intermediate points within Ireland, Switzerland, Greece, Egypt, Israel, Jordan, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Sri Lanka, that portion of India which lies south of the twentieth parallel, and Thailand; and the intermediate points Paris, France, Hamburg, Cologne-Dusseldorf, Frankfurt, Stuttgart and Munich, Germany, and Rome, Italy, shall expire on January 28, 1983." "The authority in this certificate for Segement II, except with respect to Boston, MA; New York, NY-Newark, NJ; Philadelphia, PA; Washington, DC-Baltimore, MD; Chicago, IL; Detroit, MI; Los Angeles and San Francisco-Oakland-San Jose, CA; and intermediate points within Egypt, shall expire on January 28, 1983." Conforming Applications, motions to modify scope, and Answers may be filed by May 25, 1982.
Do	40649	Global International Airways Corp., c/o James M. Burger, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Suite 900 South, Washington, D.C. 20036. Application of Global International Airway Corp., pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority to provide scheduled foreign air transportation of persons, property, and mail as follows: Between a point or points in the United States and a point or points in Kuwait, Bahrain, Egypt, Oman, Qatar, the United Arab Emirates, and Athens, Greece. Conforming Applications, motions to modify scope, and Answers may be filed by May 26, 1982.
Apr. 28, 1982	40651	Pan American World Airways, Inc., Pan Am Building, 200 Park Ave. New York, New York 10166.

Date filed	Docket No.	Description
Apr. 30, 1982	40652	Application of Pan American World Airways, Inc., pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests the Board to renew its certificate of public convenience and necessity for Route 246 on a permanent basis, or alternatively for a period of five years, to engage in foreign air transportation of persons, property and mail between the coterminal points Los Angeles, California; New York, New York; San Francisco, California; Honolulu, Hawaii; the intermediate point Tokyo or another intermediate point in Japan; and the terminal points Beijing and Shanghai, the People's Republic of China. Conforming Applications, motions to modify scope, and Answers may be filed by May 27, 1982.
Do.	40653	Air Nauru, c/o Andrew T. A. Macdonald, Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Application of Air Nauru pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations, requests an amendment to its foreign air carrier permit to authorize it to engage in foreign air transportation of persons, property and mail over a new and revised Segment 1 as follows: "1. Between a point or points in the Republic of Nauru; the intermediate points Tarawa, Kiribati; and Majuro, Trust Territory of the Pacific Island; and the terminal point Honolulu, Hawaii." Answers may be filed by May 29, 1982.
Do.	40654	Air Nauru, c/o Andrew T. A. Macdonald, Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Application of Air Nauru pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests an amendment to its foreign air carrier permit to authorize it to engage in foreign air transportation of persons, property and mail over a new and revised Segment 4 as follows: "4. Between a point or points in the Republic of Nauru; the intermediate points Tarawa, Kiribati; Canton Island; Apia, Western Samoa; Pago Pago, American Samoa: and (a) Beyond Pago Pago, the intermediate point Rarotonga, Cook Islands; and the terminal point Papeete, Society Islands; and (b) Beyond Pago Pago, the intermediate point Niue Island, Niau; and the terminal point Auckland, New Zealand." Answers may be filed by May 28, 1982.
Do.	40655	Air Nauru, c/o Andrew Air Nauru, c/o Andrew T. A. Macdonald, Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Application of Air Nauru pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations, requests an amendment to its foreign air carrier permit so as to delete the restriction set forth in Condition 2 to that permit. Condition 2 reads as follows: "The authority of the holder to serve Ponape and Guam, on the one hand, and Okinawa, on the other, and to serve Ponape on the one hand and Kagoshima on the other, is subject to the limitation that the holder shall not deplane at one of said points persons, property or mail enplaned at the other including stopover, connecting or any other revenue traffic." Answers may be filed by May 28, 1982.
Do.	40656	The Hawaii Express, Inc. c/o Eric L. Martin, Verner, Liipfert, Bernhard & McPherson, 1660 L Street, N.W., Suite 1100, Washington, D.C. 20036. Application of The Hawaii Express, Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, applies for a certificate of public convenience and necessity to engage in interstate and overseas air transportation in the Los Angeles-Honolulu market. Conforming Applications, motions to modify scope, and Answers may be filed by May 28, 1982.
Do.	40655	T-Bird Air, Inc. c/o Richard J. Kendall, Shaw, Pittman, Potts, & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036. Application of T-Bird Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority to provide additional foreign charter air transportation of persons, property, and mail, between a point or points in the United States, and: a. Any point in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east of (and including) India, and b. Any point in Australasia, Indonesia, or Asia as far west as longitude 70 degrees east via a transpecific routing. Conforming Applications, motions to modify scope, and Answers may be filed by May 28, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-12760 Filed 5-10-82; 8:45 am]
BILLING CODE 6320-01-M

[Docket 40534]

Braniff-Pan American Route Transfer Case; Cancellation of Prehearing Conference and Hearing

By Order 82-4-113, Issued April 20, 1982, the Board instituted the *Braniff-Pan American Route Transfer Case,* Docket 40534, to determine, among other issues, whether it is in the public interest to approve the transfer of Braniff Airways' Latin American route system to Pan American World Airways.

By Order 82-4-144, the Board granted interim approval to an agreement reached between Braniff and Eastern Air Lines, Docket 40636, for a similar route transfer and stayed all proceedings in Docket 40534, pending further Board Order.

In light of the Board's action in Order 82-4-144, notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the prehearing conference (47 FR 18159, April 28, 1982), which was assigned to be held on May 12, 1982, at 9:30 a.m. (local time), in Room 1003, Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., and the hearing (47 FR 18159, April 28, 1982), which was assigned to be held commencing on June 7, 1982, at 9:30 a.m. (local time), in Room 1003, Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., in the above-entitled proceeding, are cancelled.

Dated at Washington, D.C., May 6, 1982.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 82-12761 Filed 5-10-82; 8:45 am]
BILLING CODE 6320-01-M

[Docket 40253]

Northeast Sunrise Airlines, Inc., Fitness Investigation; Postponement of Hearing

On April 6, 1982, a procedural schedule was established during the prehearing conference held in this proceeding. Pursuant to this schedule, the applicant was to submit responses to the Bureau of Domestic Aviation's (BDA) request for information by May 4, 1982; BDA was to notify all parties and the undersigned of a need for a hearing by May 13, 1982; and the hearing, if needed, was scheduled for May 20, 1982.

By letter dated May 3, 1982, counsel for the applicant notified the undersigned that they have been unable to reach satisfactory economic arrangements with the applicant and requested permission to withdraw from the case. On May 4, 1982, the undersigned received a letter from the case. on May 4, 1982, the undersigned received a letter from the applicant's new representative. In this letter, counsel states that he was not engaged by the applicant until the previous day (May 3) and requests an extension of time until May 14, 1982, for filing the information responses. BDA does not object to this request provided it also

receives a 10-day extension to evaluate the material to be submitted on May 14.

Upon consideration of these documents, all the above requests will be granted. The applicant's response to BDA's request for information will be submitted on or before May 14, 1982. BDA will notify all parties and the undersigned of a need for hearing on or before May 24.

Accordingly, notice is hereby given that the hearing in this proceeding, assigned to be held on May 20, 1982 (47 FR 16364, April 16, 1982) is postponed until further notice.

Dated at Washington, D.C., May 5, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12763 Filed 5-10-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40583]

Saipan/Guam/Palau-Philippines Service Case; Postponement of Prehearing Conference

This case was instituted by Order 82-3-179, issued March 31, 1982, to decide which carrier should be authorized to engage in foreign air transportation of persons, property and mail between Saipan, Guam, Palau and points in the Philippines, and to determine the fitness of Island Aviation, an applicant for authority in this proceeding, to provide the scheduled air transportation included in its application. The Instituting Order consolidated into this proceeding the Application of Continental Air Lines, Inc., in Docket 40346, the Application of Air Micronesia Inc., in Docket 40347 and the Application of Island Aviation, Inc., in Docket 40369, and set April 26, 1982 as the date by which additional applications for authority were due. No further applications were filed.

On April 27, 1982, Island Aviation filed a Motion for Leave to Withdraw Application. Island's Motion was granted by Order of the undersigned dated May 6, 1982.

On April 30, 1982, Continental and Air Micronesia filed a Motion for Final Order Granting Certificates of Public Convenience and Necessity. Continental/Air Micronesia argued that since Island has requested that it be permitted to withdraw its application, and there are no other competing applicants, no need exists for holding an oral evidentiary hearing that the Board should enter an Order amending the carriers' certificates to grant the authority requested. Answers to Continental/Air Micronesia's Motion are not due until May 11, 1982, the scheduled date of the prehearing conference in this matter.

In light of the changed procedural posture of this case it would be inadvisable to hold further proceedings until answers, if any, have been received and Continental/Air Micronesia's Motion has been ruled upon. Accordingly, notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the prehearing conference in the above-entitled proceeding (47 FR 16364, April 16, 1982) which was assigned to be held on May 11, 1982, at 9:30 a.m. (local time), in Room 1003, Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., will be postponed until further notice.

Dated at Washington, D.C., May 6, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-12762 Filed 5-10-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40269]

Visit USA Fare/Export Inland Contract Rate Investigation; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on May 6, 1982 (47 FR 18159, April 28, 1982) is hereby postponed until May 25, 1982 at 10:00 a.m. (local time) in Room 1012, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. In addition to the matters specified in the earlier notice of prehearing conference, the status of this proceeding and need for further procedural dates will also be discussed.

Dated at Washington, D.C., May 5, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12704 Filed 5-10-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Idaho Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 12:00 p.m., and will end at 5:00 p.m., on May 22, 1982, at the Sheraton-Red Lion Hotel, 1901 Main, Boise, Idaho, 83702. The purpose of this meeting is to orientate the new members of the Advisory Committee and discuss program plans for the remaining period of Fiscal Year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Rudy M. Pena, 2410 Joretta, Boise, Idaho, 83704, (208) 334-3993 or the Northwestern Regional Office, 915 Second Avenue, Room 2852, Seattle, Washington, (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-12683 Filed 5-10-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Membership of the Bureau of the Census Performance Review Board

The following individuals shall serve as members of the Census Bureau Performance Review Board:

(1) Barbara A. Bailar
(2) Shirley Kallek
(3) James D. Lincoln
(4) Jerome A. Mark
(5) Stanley D. Moore

Dated: May 5, 1982.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 82-12681 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-7-M

International Trade Administration

Instant Potato Granules From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On November 30, 1981 the Department of Commerce published the preliminary results of its administrative review and its tentative determination to revoke in part the antidumping finding on instant potato granules from Canada. This review covers the three known producers/exporters of this merchandise to the United States and consecutive periods generally from January 1, 1974 through September 30, 1980. This review indicates the existence of dumping margins in particular periods for one producer/exporter.

Interested parties were given an opportunity to submit written comments or request a hearing on the preliminary results. The Department received comments from representatives of one exporter. Based on these comments, the Department has made adjustments which result in reduced weighted-average margins for that firm. We will revoke the finding with regard to one other company, if appropriate, at the time we publish the final results of our next review.

EFFECTIVE DATE: (Date of publication in the **Federal Register**.)

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or David R. Chapman, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4793/2657).

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1972, a dumping finding with respect to instant potato granules from Canada was published in the **Federal Register** as Treasury Decision 72–263 (37 FR 18505). On November 30, 1981, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the finding and a tentative determination to revoke in part (46 FR 55297–55298). The Department has now completed the administrative review.

Scope of the Review

Imports covered by the review are shipments of instant potato granules, currently classifiable under item 140.7000 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of three Canadian firms engaged in the production and exportation of instant potato granules to the United States. This review covers separate time periods through September 30, 1980 for each of the firms. The Treasury Department reviewed all prior time periods.

One firm, Vauxhall Foods, did not ship during its review period. There were no exportations by Carnation, Inc. at less than fair value for the period January 1, 1974 through December 3, 1978, and there have been no shipments since that time. Carnation has requested a revocation.

Analysis of Comments Received

In our notice of preliminary results, we stated that we had not allowed a claimed adjustment for a volume rebate by McCain Foods because it was not properly quantified. During the comment period, McCain demonstrated the actual amounts given, rather than the average, to our satisfaction. Therefore, we have made an adjustment to the home market price for the volume rebate in our final results.

Final Results of Review

As a result of our analysis of comments received, we determine that the following weighted-average margins exist:

Exporter	Time	Margin (percent)
Carnation, Inc.	1/74 to 12/78	0
	1/79 to 9/80	[1] 0
McCain Foods, Inc.	1/76 to 12/77	25.17
	1/78 to 12/78	27.92
	1/79 to 12/79	.71
	1/80 to 9/80	8.7
Vauxhall Foods	1/74 to 9/80	[1] 30.5

[1] No shipments during period.

The Department will examine exports by Carnation made during the period October 1, 1980 through November 30, 1981 in its next administrative review and, if Carnation had no sales with dumping margins or no shipments, we will publish a revocation of the finding with respect to Carnation together with the final results of that review.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates or export dates during the periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins listed above shall be required on all shipments by these firms of Canadian instant potato granules entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

For any shipment from a new exporter not covered in this administrative review, unrelated to the covered firms, a cash deposit shall be required at the highest rate for responding firms with shipments during the most recent period in which shipments occurred. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of September 1982. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 3, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-12714 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-25-M

[A–435–007]

Pig Iron From Czechoslovakia; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On March 18, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pig iron from Czechoslovakia. The review covers the only known exporter of this merchandise to the United States, Ferromet, and the period October 1, 1980 through September 30, 1981.

Interested parties were given an opportunity to submit oral or written comments on these preliminary results. The Department received no comments.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202–377–3814/5289).

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1968, an antidumping finding with respect to pig iron from Czechoslovakia was published in the **Federal Register** as Treasury Decision 68–262 (33 FR 15904). On March 18, 1982, the Department of Commerce ("The Department") publishes in the **Federal Register** (47 FR 11743) the preliminary results of its administrative review of that finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such

as pig, automobile castings, and machinery parts. Pig iron is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of only one exporter of pig iron from Czechoslovakia to the United States, Ferromet. The review covers the period October 1, 1980 through September 30, 1981.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review. There were no known shipments to the United States during this time period and there are no known unliquidated entries.

Since there have been no shipments for over 13 years the Department waives the requirement for a cash deposit of estimated duties, as provided for by § 353.48(b) of the Commerce Regulations, on any shipments of pig iron from Czechoslovakia entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of September 1983. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 3, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-12718 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-25-M

Pig Iron From East Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pig iron from East Germany. The review covers the only known exporter of this merchandise to the United States, Deutshe, Stahl-Metall, and the period October 1, 1980 through September 30, 1981. There have been no known shipments to the U.S. during this period and there are no known unliquidated entries.

As a result of this review, the Department has decided to require a cash deposit equal to the margin calculated during the original fair value investigation. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4793/2657).

SUPPLEMENTARY INFORMATION:

Background

On November 20, 1981 the Department of Commerce ("the Department") published in the Federal Register (46 FR 57103-57104) the final results of its first administrative review of the antidumping finding on pig iron from East Germany and announced its intent to conduct the next administrative review by the end of October 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machinery parts. Pig iron is currently classifiable under items 606-1300 and 606-1500 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of one exporter of pig iron from East Germany to the United States, Deutsche Stahl-Metall. The review covers the period October 1, 1980 through September 30, 1981.

Preliminary Results of the Review.

As a result of our review, we preliminary determine that there were no shipments by Deutsche Stahl-Metall during the review period and there are no known unliquidated entries. Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication of this notice or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit based on the most recent margin for the firm shall be required on all shipments of pig iron from East Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. Deutsche Stahl-Metall failed to respond to our questionnaire for the review period. The most recent margin calculated for Deutsche Stahl-Metall is the rate of 70 percent calculated during the original fair value investigation. This rate shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53)).

Dated: May 3, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-12719 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-25-M

Pig Iron From the U.S.S.R.; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pig iron from the U.S.S.R. The review covers the only known exporter of this merchandise to the United States, Promyarioimport, and the period October 1, 1980 through September 30, 1981. There have been no known shipments to the U.S. during this period and there are no known unliquidated entries.

As a result of this review, the Department has decided to require a cash deposit equal to the margin calculated during the original fair value investigation. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4793/2657).

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1981 the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 56227–56228) the final results of its first administrative review of the antidumping finding on pig iron from the U.S.S.R. and announced its intent to conduct the next administrative review by the end of October 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machinery parts. Pig iron is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of one exporter of pig iron from the U.S.S.R. to the United States, Promysrioimport. The review covers the period October 1, 1980 through September 30, 1981.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that there were no shipments by Promysrioimport during the review period and there are no known inliquidated entries. Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit based on the most recent margin for the firm shall be required on all shipments of pig iron from the U.S.S.R. entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. Promysrioimport failed to respond to our questionnaire for the review period. The most recent margin calculated for Promysrioimport is the rate of 70 percent calculated during the original fair value investigation. This rate shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 33.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 3, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc 82-12717 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-25-M

[A–423–065]

Viscose Rayon Staple Fiber From Belgium; Preliminary Results Of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Belgium. The review covers the only known exporter of the merchandise to the United States, Fabelta Zwijnaarde N.V., for the period December 1, 1980 through November 30, 1981. There were no known shipments to the U.S. of this merchandise during the period. There are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits equal to the calculated margins on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher of John Kugelman, Office of Compliance, International trade Administration, U.S. Department of Commerce Washington, D.C. 20230 (202–377–4273/5289).

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 46962–3) the final results of its administrative review of the antidumping finding on viscose rayon staple fiber from Belgium (43 FR 55240, November 27, 1978) and announced its intent to conduct the next administrative review by the end of November 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). Viscose rayon staple fiber is currently classifiable under items 300.4320 and 300.4325 of the Tariff Schedules of the United States Annotated (TSUSA).

Fabelta Zwijnaarde N.V. is the only known exporter to the United States of Belgian viscose rayon staple fiber. This review covers the period December 1, 1980 through November 30, 1981. There were no known shipments to the United States during the review period and there are no known unliquidated entries.

Preliminary Results of the Review

As provided by § 353.48(b) of the Commerce Regulations, we preliminarily determine that a cash deposit of 57.0%, based upon the last known shipments by Fabelta Zwijnaarde, shall be required on any shipments of Belgian viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication of this notice or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 5, 1982

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration

[FR Doc. 82-12718 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Announcement; Business Development Center (BDC) Program; Shreveport, Louisiana, and Beaumont/Port Arthur/Orange, Texas, SMSA's

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications for cooperative agreements under its Business Development Center (BDC) program to operate pilot projects for a twelve (12) month period.

Applicants will be required to contribute at least 10% to the total program costs through non-federal funds. Cost sharing contributions can be in the form of cash contributions, fees for services or in-kind contributions.

The estimated cost of each project includes the maximum federal participation and the minimum amount required for non-federal participation is included in the following description of each project.

CLOSING DATE: June 11, 1982.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Williams at (214) 767-8001.

(1) A cooperative agreement for BDC services to operate in Beaumont/Port Arthur/Orange, Texas (SMSA) counties of Hardin, Jefferson and Orange. The total cost will not exceed $170,000 including a maximum of $153,000 in federal funds and a minimum of non-federal participation of $17,000. The anticipated start date for the project is August 1, 1982 and the Project I.D. number is 06-10-82015-01.

(2) A cooperative agreement for BDC services to operate in Shreveport, Lquisiana (SMSA) parishes of Bossier, Caddo, and Webster. The total cost will not exceed $170,000 including a maximum of $153,000 in federal funds and a minimum of non-federal participation of $17,000. The anticipated start date for the project is August 1, 1982 and the Project I.D. Number is 06-10-82011-01.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The BDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA offers Cooperative Agreements that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit—through which and from which information and assistance to and about minority businesses are funneled. Legal services are excluded.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, forprofit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Business Development Center Application

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. Capability and Experience of Firm/Staff

Provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: Inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local public and private entities—that can possibly enhance the BDC program effort-i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experiences. Provide resumes for all professional staff personnel.

—demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint ventures.

—provide organization chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. Techniques and Methodology

Specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the BDC responsibilities as guides and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; developing and maintaining the

profile inventory of minority business; and brokering of new business ownership, market and capital opportunities. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. Resources

Address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost sharing requirement to include a fee for services for assistance provided clients. The fee for services will be 10% for firms with gross sales of $500,000 or less and 25% for firms with gross sales of over $500,000.

Cost sharing in that portion of project costs not borne by the Federal Government. The composition and amount of cost sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order of priority: 1. Cash contributions; 2. fee for services; and 3. in-kind contributions.

A. *Cash contribution*—Means cash that is contributed or donated by the recipient, by other non-federal, public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—Are charges to the client for asstance provided by BDC.

C. *In-Kind contribution*—Represent the value of non-cash contributions provided by the recipient and non-federal parties. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution.

IV. Costs

Demonstrate in narriative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost sharing plan information in terms of methodology and format for billing the cost of management and technical assistance to clients.

Total project costs will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and

—The extent to which the applicant can leverage federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of BDC operation should be included in Part Two. Part Two will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement award.

A detailed justification of all proposed costs is required for Part Four and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered nonresponsive and consequently, dropped from competition.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grants Officer. Organizations whose proposals are unsuccessful will be advised by the Regional Director.

F. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants. The program is subject to OMB Circular A–95 requirements.

OMB Number: 0640–0006.

(Catlog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: May 4, 1982.

Richard H. Sewing,

Regional Director.

[FR Doc. 82–12700 Filed 5–10–82; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammal Protection; Issuance of Permit

On March 26, 1982, Notice was published in the Federal Register (47 FR 13024), that an application had been filed with the National Marine Fisheries Service by Mr. William Ford Dolphin, Department of Biological Sciences, Boston University, 2 Cummington Street, Boston, Massachusetts 02215, for a permit to take humpback whales (*Megaptera novaeanglice*) by potential harassment including close approaches up to 10 individual whales for deployment of ingestible transmitters for the purpose of scientific research.

Notice is hereby given that on May 5, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Research Permit to Mr. William Ford Dolphin for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973, is based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973.

The Permit and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 5, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–12758 Filed 5–10–82; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammal Protection; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant:

a. Name: LGL Alaska Research Associates, Inc. (P273A).

b. Address: P.O. Box 80007, Fairbanks, Alaska 99708.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Gray whales (*Eschrichtius robustus*).

4. Type of Take: Harassment by shipboard and underwater observations.

5. Location of Activity: Chirikof Basin in Bering Sea.

6. Period of Activity: 6 months.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, by June 10, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 5, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-12787 Filed 5-10-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

National Commission on Excellence in Education; Meeting

AGENCY: National Commission on Excellence in Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of the fourth full meeting of the National Commission on Excellence in Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: May 25, 1982.

LOCATION: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Penthouse, Room 800.

FOR FURTHER INFORMATION CONTACT: Milton Goldberg, Executive Director, 1200 19th Street, NW., Washington, D.C. 20208, (202) 254-7920 or Betty Baten, Administrative Liaison, (202) 254-7920.

The National Commission on Excellence in Education is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of advisory committees. The Commission is established to advise and make recommendations to the nation and to the Secretary of Education.

The meeting of the Commission is open to the public. The agenda will include:

- Issues related to the transition between different levels of schooling;
- Reports of previous Commission hearings held to date; and
- Preliminary discussion by the Commission on aspects of the Final Report.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the National Commission on Excellence in Education, 1200 19th Street, NW., room 639, from the hours of 8:00 a.m. to 5:00 p.m.

Dated: May 5, 1982.

Fred Decker,

Deputy Assistant Secretary for Educational Research and Improvement.

[FR Doc. 82-12829 Filed 5-10-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board, Conservation Panel; Meeting

Notice is hereby given of the following meeting:

Name: Conservation Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770).

Date and time: June 18, 1982, 9 a.m. to 5 p.m.

Place: Department of Energy, Forrestal Building, Room 4A-110, 1000 Independence Avenue, SW, Washington, DC 20585.

Contact: Mary Gant, Energy Research Advisory Board, Department of Energy, Forrestal Building, ER-6, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252-8933.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide longrange guidance in these areas to the Department.

Tentative Agenda

—Discussion of final draft report to be submitted to ERAB in September.

Public Participation

—The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 6, 1982.

J. Ronald Young,

Director for Management, Office of Energy Research.

[FR Doc. 82-12708 Filed 5-10-82; 8:45 am]

BILLING CODE 6450-01-M

Solar Panel, Energy Research Advisory Board; Meeting

Notice is hereby given of the following meeting:

Name: Solar Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770).

Date and time: June 14, 1982, 9 a.m. to 5 p.m.

Place: Department of Energy, Forrestal Building, Room 4A-110, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Contact: William Woodard, Energy Research Advisory Board, Department of Energy, Forrestal Building, ER-6, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252-8933.

Purpose of the Parent Board

To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

—Discussion of the Draft Report Outline.

—Federal Solar R&D Programs.

—Industrial Solar R&D Programs.
—Future Meeting Plans.

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forestal Building, 1000 Independence Avenue, SW, Washington, D.C. between 8:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 6, 1982.

J. Ronald Young,

Director for Management, Office of Energy Research.

[FR Doc. 82-12707 Filed 5-10-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6166-000]

Banta Carbona Irrigation District; Exemption From Licensing

May 5, 1982.

A notice of exemption from licensing of a small hydroelectric project known as Pumping Plant No. 6, Project No. 6166, was filed on April 5, 1982, by Banta Carbona Irrigation District. The proposed hydroelectric project would have an installed capacity of 108 kW and would be located on Banta Carbona's major water conveyance system, San Joaquin County, California.

Pursuant to §§ 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in § 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of May 5, 1982.

Robert E. Cackowski,

Acting Director, Office of Electric Power Regulation.

[FR Doc. 82-12676 Filed 5-10-82; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 80-765; FCC 82-179]

American Telephone and Telegraph Co.; Instituting Investigation

Memorandum Opinion and Order

Adopted: April 14, 1982.

Released: April 16, 1982.

By the Commission: Commissioner Fogarty concurring in the result and issuing a separate statement.

1. As a result of several proceedings before both this Commission and the U.S. Court of Appeals for the District of Columbia Circuit,[1] the American Telephone and Telegraph Company ("AT&T") in September 1980 proposed extensive revisions to its WATS tariff.[2] These revisions, among other things would have:

(a) Established separate rates for InWATS and OutWATS;

(b) Changed the Full Business Day and Measured Time options into a tapered structure with lower hourly rates as usage increased;

(c) Reduced the number of WATS service areas from 6 to 5; and

(d) Unbundled access lines charges (*i.e.*, recovered these costs through a fixed monthly charge rather than as part of the initial period change).

See Tr. No. 13555, cost justification, Vol. I at 2–7 to 2–9.

2. Although in some respects the September tariff revisions appeared to improve the then existing, unlawful WATS tariff, we nevertheless recognized that AT&T still had failed to adequately address our often-stated concerns with the effect of WATS on efficient use of the public switched telephone network ("PSN"). *See* 84 FCC 2d at 168. Therefore, we decided to investigate the revisions and to suspend them for five months for the protection of users. In the past, we had attempted to investigate all problem areas of previous WATS filings at the same time. However, since this proved very unwieldly and had not resulted in lawful WATS rates, we decided to separate issues for this investigation in a more manageable fashion in the hope that this would lead expeditiously to lawful WATS rates.

3. One of the most apparent defects of the WATS rate structure was its failure to incorporate peak/off-peak, time-of-day pricing. We decided to resolve this issue as a first step. After examining the problem, we concluded that AT&T's failure to incorporate a time-of-day sensitive rate element into its WATS tariff was unlawful.[3] 86 FCC 2d 820, 827–30 (1981) (hereafter "Time-of-day Order"), *appeal docketed sub nom. Southern Pacific Communications Company* v. *FCC*, D.C. Cir. No. 81–1594. However, we took note that AT&T in its comments had proposed a time-of-day rate structure element which could be incorporated into the September filing. *Id.* at 851–54. We recognized that this hybrid structure was only an initial effort, but it nevertheless provided incentives for off-peak use and represented a move toward more equitable rates for peak and off-peak users as well. *Id.* at 834–35, 852. Thus, we authorized AT&T to file tariff revisions incorporating its proposal. *Id.* at 856. These revisions in turn were permitted to become effective on June 1, 1981. We now set for investigation the remaining issues raised by that filing.[4]

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[1] Among the more significant of these are our prescription of unlimited reseale and sharing of Wide Area Telecommunications Service ("WATS") and Message Telecommunications Service ("MTS"); our prescription of new costing methodologies for AT&T's interstate service offerings; and a judicial mandate to obtain a just and reasonable WATS tariff. *See* Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services (Docket No. 80–54), 77 FCC 2d 274 (1980), 83 FCC 2d 167 (1980), 86 FCC 2d 820 (1981); Manual and procedures for the Allocation of Costs (Docket No. 79–245), 73 FCC 2d 629 (1979), 78 FCC 2d 1296 (1980), 84 FCC 2d 384 (1981), *recon.*, 86 FCC 2d 667 (1981); AT&T (Long Lines Department), 66 FCC 2d 9 (1977), *recon.*, 69 FCC 2d 1672 (1978), *remanded and jurisdiction retained sub nom.* MCI Telecommunications Corp. v. FCC ("MCI v. FCC"), 627 F. 2d 322 (D.C. Cir. 1980).

[2] WATS consists of Outward WATS, or OutWATS, and Inward WATS or InWATS, now called 800 Service. We will refer to each service separately when appropriate, and otherwise use the term WATS inclusively.

[3] Additionally, we prescribed a time-of-day sensitive rate structure element for WATS as a general matter. *See* 86 FCC 2d at 856.

[4] We have subsequently denied both a petition for expedited reconsideration and a motion for stay of that order. *See* 86 FCC 2d 883 (1981). Additionally, there are several pleadings before us which were filed after that action. Specifically, Southern Pacific Communications Company ("SPCC") has filed an Emergency Motion for Temporary Stay and the Common Carrier Conference—Irregular Route, a user group affiliated with the American Trucking Association, Inc., has petitioned for stay. We deny both on the same grounds discussed at length in our previous order. Specifically, the possibility of irreparable injury has not been shown, and we are not convinced in any case that there is a substantial likelihood that our orders will be overturned on judicial review. *See id.*

The Common Carrier Conference-Irregular Route has also petitioned to suspend and investigate the tariff filing AT&T made pursuant to our Time-of-day Order. Additionally, Comdata Network, Inc. ("Comdata") urges suspension. We deny both petitions. As explained in our Time-of-day Order, the June 1, 1981 revisions are a distinct improvement over the unlawful WATS rates then in effect. Moreover, we are continuing to investigate other criticisms of the WATS offering in this proceeding.

Finally, we note that AT&T has submitted a conditional request to defer the effective date of

Discussion

4. Since many issues concerning the WATS tariff have already been addressed by the parties to this proceeding, we draw on an extensive record in moving to the next stage of our investigation. This record includes the petitions to suspend or reject the original September filing; AT&T's reply; the comments and reply comments from the first stage of our investigation; and the pleadings submitted after AT&T refiled its WATS tariff revisions with a time-of-day sensitive rate structure. Based on our analysis to date, we believe that the following issues raised by the September WATS filing now warrant immediate attention.

I. Issues To Be Investigated

A. The Current Rate Structure

5. (i) *AT&T's Cost Justification.* In 1978, following an inquiry, we determined that WATS and MTS are "like" communication service under Section 202(a) of the Act, 47 U.S.C. § 202(a). [5] As a result, AT&T was required to either justify rate differentials between MTS and WATS, or eliminate such discrimination. *See* 70 FCC 2d at 612–15.

6. By way of justification for the rate differentials it retained, AT&T has submitted a cost comparison study of MTS and WATS ("Volume 3–10") conducted in three phases.[6] There, traffic load patterns on the domestic PSN, including time-of-day message distribution, minutes of use, conversation holding time and length of haul, are analyzed. The information is then used to develop the costs of handling both MTS and WATS traffic loads. Specifically, OutWATS is compared to the MTS Business Direct Distance Dial ("DDD") category, while InWATS is compared to the MTS Operator Station Business Collect category. These MTS categories purportedly have been selected on the basis of their resemblance to the respective WATS offerings based on relative usage by time of day, relative length of haul, and average conversation holding time by time of day. *See* Vol. 3–10 at 2–9, 2–11 to 2–29.

7. According to AT&T, while there is little difference in investment costs between WATS and the chosen MTS category, per minute WATS expenses are significantly lower than the corresponding MTS figures. *Id.* at 1–2. Thus, the third phase of AT&T's study attempts to quantify the underlying expense differences between WATS and the selected MTS category of service. This phase consists of an analysis of the expenses of the services which was conducted by AT&T Long Lines with the assistance of selected Bell Operating Companies. *Id.* at 3–2. AT&T asserts that this survey confirms that traffic and administrative costs are lower for WATS. *Id.* at 1–2.

8. In the suspension order, we found the submission inadequate to meet the carrier's burden under the like service test, stating that AT&T had failed to provide sufficient information to permit us to determine whether the per-minute cost differences it attempts to demonstrate between MTS and WATS are accurately reflected in the rate differences between MTS and WATS. *See* 84 FCC 2d at 198.[7] We noted that the task of making rate comparisons between the two services was complicated by, among other things, the following pronounced dissimilarities in the tariff structures:

(1) WATS ratemaking uses the concept of service areas or bands; the "like" or comparable MTS rate classification uses rates based on distance usage.

(2) The sizes of the bands used in WATS rate making are determined by measures of telephone density and geographical area, while interstate MTS ratemaking relies simply on point-to-point measurement.

(3) The WATS tariff utilizes volume discounts; MTS does not.

(4) Access line charges are bundled in the per-minute charges for MTS, but are unbundled for WATS.

(5) MTS utilizes a ratemaking scheme whereby each discrete conversation or message is individually priced, whereas WATS does not.

(6) WATS is billed in one-tenth of an hour increments whereas MTS is charged on a per-minute basis.

9. As a result of these differences in rate structures between WATS and MTS, there are no two readily comparable categories for cost and rate purposes, a problem we discussed in the suspension order. 84 FCC 2d at 200–03. This problem is best illustrated by the choice of MTS Operator Station Business Collect for comparison with InWATS. AT&T's study shows that there are large cost savings for InWATS over MTS Operator Collect. However, Operator Collect MTS is certainly more expensive to provide in large part because it is a labor intensive service whereas InWATS is, in effect, an automatic reverse billing feature. Alternatively, AT&T might have based its comparison on an MTS category, such as direct dial Day Rate MTS or Remote Call Forwarding ("RCF"), which has service features similar to InWATS. [8] In any event, the difficulty of the comparisons necessary to obtain some idea of the rate differences involved should not obscure the basic fact that InWATS is simply a PSN service like MTS, with additional blocking and billing options which make it attractive to certain large volume PSN users. *See Like Service*, 70 FCC 2d 593 (1978).

10. In spite of the difficulty of comparing the two services, we were able to obtain some idea of the magnitude of the rate discounts involved. Thus, our calculations, based on Volume 3–10 and certain assumptions necessary to permit comparsion of the two dissimilar rate structures, showed that even the revamped WATS tariff structure gave OutWATS users substantial discounts over MTS users. *See* 84 FCC 2d at 199. Now, in the face of AT&T's new time-of-day sensitive WATS rate structure, we have repeated the process for OutWATS and, although the figures are approximate, the following chart

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resale and sharing of MTS and WATS should the proposed WATS tariff be stayed. In view of our denial of these pleadings, AT&T's request is now moot.

[5] AT&T, 66 FCC 2d 224 (1977), 67 FCC 2d 240 (1977), 70 FCC 2d 593 (1978), *recon. denied*, 79 FCC 2d 10 (1980), *appeal docketed sub nom.* Ad Hoc Telecommunications Users Committee v. FCC, D.C. Cir. No. 80–1785 ("Like Service"). Section 202(a) in pertinent part makes it unlawful for any common carrier to unjustly or unreasonably discriminate in connection with like communication services. A more complete discussion of the Like Service proceeding may be found at 84 FCC 2d at 192–93, 197–205.

[6] This material was provided as part of the economic cost support material filed with its September 1980 WATS tariff revisions. The study of cost differences between services was done for AT&T by the Management Analysis Center, Inc. and Professor Gordon Shillinglaw, and constitutes Section 2 of Vol. 3–10.

[7] A number of petitioners criticize AT&T's September proposal on this score as well. *See, e.g.*, petitions of MCI Telecommunications Corp. ("MCI"), Satellite Business Systems ("SBS") SPCC, United States Transmission Systems, Inc. ("USTS"), and Western Union Telegraph Company ("WU"). *See also* the comments submitted during the first phase of this investigation by SBS, SPCC, MCI, and the reply comments of SPCC.

[8] Remote Call Forwarding ("RCF") permits a call placed to a given number in one exchange to be automatically forwarded to a customer-designated station in another exchange. *See* 84 FCC 2d at 201–02. In our view, RCF is a better basis for comparing InWATS and MTS because it, unlike Operator Assisted Collect MTS, enables a customer to construct an InWATS-equivalent network (albeit with less geographic coverage) priced on the basis of MTS. *Id.* at 201. Further, as discussed above, the per minute expense for RCF is more comparable to InWATS than Operator Assisted Collect MTS because both use automatic billing.

demonstrates that substantial discounts remain:[9]

OUTWATS DISCOUNT FROM MTS AS A PERCENT OF MTS RATES [1]

WATS rate step	MTS mileage	Hours of usage 15 (percent)	40 (percent)	80 (percent)	140 (percent)
Business Day					
1	71 to 124	26.3	31.4	37.0	43.1
9	431 to 925	27.0	32.0	37.5	43.6
18	1,911 to 3,000	25.6	30.8	36.4	42.6
Evening					
1	71 to 124	26.4	31.4	37.1	43.2
9	431 to 925	27.0	32.0	37.5	43.6
18	1,911 to 3,000	25.7	30.8	36.4	42.7
Night/Weekend					
1	71 to 124	36.0	35.0	36.0	35.0
9	431 to 925	36.0	36.5	36.6	36.6
18	1,911 to 3,000	35.0	35.6	35.0	35.0

[1] The source of the figures used in our calculations for WATS rates is Tariff F.C.C. No. 259 at 9th revised page 14.1, effective June 29, 1981 and for MTS rates Tariff F.C.C. No. 263 at 19th revised page 26, effective June 29, 1981. AT&T supplied information in Vol. 3–10 showing that the average MTS Business DDD call is 4.5 minutes, and the average conversation holding time for total MTS is 7.5 minutes. Six minutes is the average of these two numbers. Thus, in computing MTS hourly rates, we have assumed 10 six-minute calls per hour; hence, each hour of use contains 10 initial minutes and 50 additional minutes.

Despite these actual rate differentials, the data supplied by AT&T in Volume 3–10 reflects actual cost differentials between MTS and OutWATS of only about 11 percent.[10]

11. A comparison between InWATS and MTS reveals a similarly wide margin between differentials in actual rates and expenses as set forth in Volume 3–10. As shown in the following chart, InWATS rates are on the order of 50 to 60 percent lower than Business DDD, whereas we clculate that AT&T's cost figures in Volume 3–10 show a differential of approximately only 30 percent: [11]

INWATS DISCOUNT FROM MTS AS A PERCENT OF BUSINESS DAY MTS RATES [1]

WATS rate step	MTS mileage	Hours of usage 15 (percent)	40 (percent)	80 (percent)	140 (percent)
1	71 to 124	50	52	56	60
9	431 to 925	52	55	58	61
18	1911 to3000	54	54	58	61

[1] The source of the figures used in our calculations for WATS rates is Tariff F.C.C. No. 259 at 9th revised page 14.2 and for MTS rates Tariff F.C.C. No. 263 at 19th revised page 26. In converting MTS rates to an hourly basis, we have relied on AT&T data which shows that the average conversation time for a business collect call is 5.27 minutes. *See* Vol. 3–10 at p. 4–16. Each hour, therefore, contains on the average 11 calls, or 11 initial three-minute periods and 27 additional minutes.

12. These discrepancies between the relative costs of providing WATS and MTS as contrasted with their actual rate differences are a major shortcoming of AT&T's cost comparison study. It has failed in this regard to take the important last step of showing a nexus between cost savings and the large rate discounts available to WATS users, as opposed to similarly situated MTS users. As a result, AT&T does not answer the very question which most concerns us, that is what are the real cost differences between WATS and MTS? Further, we are left without a basis for determining whether alleged expense differences are, in fact, the reason for the differential between WATS and MTS rates. It seems clear to us that AT&T must provide solid justification for rate differences which so substantially exceed corresponding differentials in costs. In sum, AT&T still has not faced squarely our basic concern in the *Like Service* decision, which is "to ensure fair and equitable rate treatment of *all* users of the public switched network such that one user class is not unduly discriminated against. . ." 70 FCC 2d at 613.

13. (ii) *The PSN Tariff Structures.* The record before us raises other questions of lawfulness concerning AT&T's PSN tariff structures. As explained (para. 8, *supra*,) AT&T offers functionally similar PSN services under rate structures which differ substantially. There are several reasons why these rate structure differences concern us. For one, the structures as currently constituted effectively impede meaningful comparisons between MTS and WATS by this Commission, customers, and even competitors. Moreover, these rate structure differences have never been shown to stem from technological imperatives, and as such seem unnecessary. Perhaps the most compelling reason for our concern, however, is that rate structure symmetry between these like PSN services may be a necessary prerequisite for assuring that actual rates being charged are just and reasonable. As we emphasized in discussing AT&T's September submission:

> These and other ratemaking differences (between MTS and WATS) make it exceedingly difficult or impossible to compare the costs and charges for equivalent units of service under MTS and WATS * * * If AT&T does not meet its justification burden in the investigation we plan to conduct, it may become necessary to order changes to the WATS rate structure which may for the first time * * * achieve the service comparability necessary for us to prescribe WATS rates. 84 FCC 2d at 198–99.

14. Equally significant, it is uncontested that WATS and MTS calls use the network in the same way once they enter the PSN. *See* 70 FCC 2d at 596. It follows that they are also indistinguishable in terms of cost causation to the PSN.[12] Further, service usage patterns are strikingly similar. AT&T itself states that "all service categories and subcategories of service that were examined * * * tend to exhibit relatively similar length-of-haul patterns." Vol. 3–10 at 2–13.[13]

15. Such heterogeneous tariff structures for functionally equivalent services make the detection of price discrimination extremely difficult. Price discrimination arises where firms charge different prices for goods or services which cost the same per unit to produce. One prerequisite for such discrimination is the ability of the price discriminator to segment markets by customer price elasticities of demand. The general effect of such discrimination is a redistribution of income from the customers discriminated against to the price discriminator or favored customers. *See* 83 FCC 2d at 174.

16. The notion that rate structure elements in the WATS tariff may be a means to achieve price discrimination is not a new one. Indeed, we have evidence that WATS provisions in the past may have prevented economic activity, such as arbitrage, the effect of which is to reduce price discrimination between users of the like services, MTS and WATS.[14] For example, in the *Resale*

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[9] AT&T recently established rate changes for MTS. *See* Transmittal No. 13004 ("Equalization Filing"), effective April 2, 1982. Our rate comparison between OutWATS and these new MTS rates demonstrates that the discounts set forth in the following charts have not changed signficantly as a result of the Equalization Filing.

[10] This calculation is based on Tr. No. 13655, cost justification material, Vol. 3–10. The 10 percent figure we calculated in the suspension order (84 FCC 2d at 199) has been adjusted to include not only expense differentials but also a return factor.

[11] The 30 percent discount figure, also derived from Volume 3–10, has been adjusted from the 50 percent figure calculated in the suspension order (84 FCC 2d at 200) in order to take into account a return factor.

[12] We assume here that the calls are made to the same point at the same time of day.

[13] The similarity shown by AT&T in the average distance of MTS and WATS calls is striking, and underscores the question of why WATS is priced by area while MTS is priced on a point-to-point basis. Indeed, given the close correspondence, we are reluctant to rule out the possibility that service area pricing may be an unreasonable discrimination. *See* Vol. 3–10 at 2–13, 2–16, 2–19, 2–22, 2–27. Accordingly, parties may wish to comment on this question as well.

[14] Arbitrage is the purchase of a product in one market and the resale of it in another market at a higher price, thereby obtaining a guaranteed profit.

and Shared Use proceeding, we found that restrictions on resale and sharing of MTS and WATS artificially segmented the PSN market by preventing arbitrage. *See* 83 FCC 2d at 174–76. When we ordered the restrictions removed, AT&T admitted that unless it was allowed to drastically revise its WATS tariff, it would lose $0.7 to $1.3 billion per year. *See* AT&T comments in Docket No. 80–54 at 26 and Appendix B. The possibility, therefore, that the disparities identified earlier (*supra.*, paras. 10–11) between rates and expenses may reflect unjust discrimination is one that warrants serious consideration.

17. There is a definite link between complex, difficult to compare PSN tariff structures and this Commission's continuing difficulties in assuring cost-based, non-discriminatory rates for PSN services. To the extent AT&T tariffs functionally similar PSN services in structurally different ways, it not only permits possible price discrimination, but greatly impedes effective regulatory oversight.[15] In the face of statutory deadlines and limited resources, we are frequently unable to analyze each filing in terms of possible interservice discrimination or broad market implications. Instead, the filing as a practical matter is frequently analyzed as an isolated, separable whole. As a result, we may not detect even over time basic market manipulations or possible underlying discriminations which may be present.

18. The situation here, then, may be simply summarized. WATS and MTS have been found to be like service. They have similar costs within the PSN, and exhibit virtually identical calling patterns in terms of distance. However, the tariff structures as designed by AT&T are different in many important respects. Such completely different structures have created market segmentation, which is one prerequisite for price discrimination. That massive price discrimination among PSN services previously existed is evidenced by the WATS tariff revisions AT&T made as a result of the introduction of arbitrage activity pursuant to our *Resale and Sharing* decision. The probability that price discrimination still exists is evidenced by the wide difference between the discounts still obtainable by large volume WATS users *vis-a-vis* similarly situated MTS users, despite the relatively minor cost differences suggested by the showing in Volume 3–10. This situation persists notwithstanding our many years of investigating, questioning, and rejecting WATS tariffs in an effort to obtain a lawful WATS tariff.[16] Thus, it is probable that unreasonable discrimination may still be present in these offerings, and that the current tariff structures contribute to the continuation of such discrimination.

19. (iii) *Focus of the Investigation.* As a result of the differences in rates between MTS and WATS and the failure of the data supplies by AT&T to justify this discrimination, we conclude that the time has come to resolve whether it is reasonable for AT&T to maintain two separate PSN rate structures which result in MTS customers paying far more than those who can avail themselves of the discounted offering, WATS. Mindful of the need for a definitive answer, we shall now pursue two parallel courses of action. First, AT&T may attempt for a final time to justify the rate discrimination and disparate tariff structure practices between the two services. Second, in order to be prepared to resolve these issues in the event AT&T does not meet its burden to demonstrate that the discrimination in its current WATS tariff is reasonable, we will invite comment on whether some form of unified PSN tariff encompassing both MTS and WATS would overcome such discrimination. In this regard, we will invite AT&T as well as other parties to submit proposals for a unified PSN rate structure.

20. Consistent with this view, we first will investigate whether the differences between the WATS and MTS tariffs and rate structures are justified. Specifically, we seek comment on whether, under Section 202(a), 47 U.S.C. § 202(a), the discrimination between WATS and MTS is lawful. This will require AT&T to submit data which neutralizes structural differences between MTS and WATS so that we may determine whether any remaining cost differences justify the rate differentials.[17] To this end, special concern should be given to ascertaining, in light of our discussion above the para. 9, a proper basis for comparing costs of InWATS and MTS. We also seek comment on whether, under Section 202(a), the volume discount incorporated into the WATS tariff gives these customers an unlawful preference over MTS customers for whom such a discount is not made available. In this regard, AT&T should demonstrate [by its data submission that the volume discount structure characteristic of WATS which is denied MTS users has a basis in costs or other justification.

21. We will also investigate whether the current WATS tariff is unjust and unreasonable, and hence unlawful, under Section 201(b) of the Act.[18] Here we will focus on the question of whether WATS, which we have found to be discounted MTS with auxiliary switching, accounting, and billing functions, can justly and reasonably be offered under a tariff differing so completely from MTS. AT&T's use of completely different rate structure elements does not automatically make WATS a separate service from MTS. As discussed above, the offering of PSN service pursuant to nonuniform rate structures provides a foundation for possible segmentation of the PSN market into submarkets for customer price elasticities of demand. *See* para. 15, *supra.* Moreover, the two rate structures give rise to unnecessary complexity in AT&T's offering of PSN service, thereby hampering customer efforts to assess which options would best meet their service requirements.[19] We will therefore expressly require AT&T to justify under Section 201(b) its classification of the PSN into two separate services, MTS and WATS, rather than a single service offering having various optional features.

22. In the event AT&T does not satisfy our Section 201 and 202 concerns, we next will consider whether resolution of

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See 83 FCC 2d at 175. In the present context, arbitrage would limit AT&T's ability to charge different prices for the same product, *i.e.* PSN service. *See id.*

[15] Greatly varying tariff structures for similar services are not desirable generally, as they impose costs on regulators, consumers, and competitors alike, without any obvious efficiency gains. It is arguable that, to the extent such structures permit price discrimination, they may be desirable if such price discrimination permits the achievement of economies of scale which then benefit all consumers. However, we have no evidence that this latter phenomenon is occurring in the case of PSN services. *See generally* 83 FCC 2d at 174 n.17.

[16] For a discussion of the twenty year history of our efforts to regulate WATS, *see* 83 FCC 2d at 176–77; 84 FCC 2d at 159–64.

[17] As a related matter, we note that AT&T has recently proposed in its Equalization filing to increase the discount available to evening MTS users from 65 percent to 40 percent. It will be recalled that in designing its WATS time-of-day rate structure, AT&T based its off-peak discounts on those applicable to MTS. We therefore expect AT&T to address in its comments here whether, in light of the Equalization filing, it intends to increase the WATS evening discount, and if not, to provide justification for this omission.

[18] 47 U.S.C. 201(b). This section declares unlawful any unjust and unreasonable charge, practice or classification.

[19] For example, it is difficult even to compare the rate for a basic MTS telephone call with the equivalent rate for a WATS call. The MTS rate would be for a given point-to-point call regardless of the caller's previous PSN use, whereas the WATS schedule would yield multiple rates for the same call depending on service area and volume of previous calling. Thus, not only are similarly situated PSN users treated differently under the two tariffs, but a comparison of costs given the differing tariff structures must necessarily be imprecise.

these issues will require creation of a unified PSN tariff. Generally, such a tariff would result in similar services involving PSN use being offered as part of a simple, unified tariff. There could be separate service options for cases in which the major component is PSN use, but for which additional features (*e.g.*, operator assistance and automatic collect calling) are desired.[20] Volume discounts, if justified by cost data, might be based on total monthly messages, while distance discounts could be based on airline mileage. For example, all interstate calls made within a given mileage radius over a specified volume level might be discounted. Similarly, customers who desire more expensive options, such as itemized billing, would bear the cost associated with their choice.

23. Although we do not prejudge the merits of this approach, it appears that a unified tariff could overcome many of the problems with the WATS tariff we have repeatedly identified in the past. For example, by pricing the major component of WATS and MTS, *i.e.* PSN use, in the same way for similarly situated users, a unified PSN tariff would reduce the opportunity for market segmentation and thus price discrimination. Users of like PSN service would be treated more equitably; if usage patterns justify a cost-based volume or distance discount, it would be available to all. As such, we seek to fulfill our duty under Section 202(a) to prevent unjust discrimination against users of like service, as well as unreasonable preference to a particular class of similarly situated customers.

24. Equally important, a unified tariff structure would permit customers, competitors, and the Commission to compare PSN service options. Monitoring the costs of a unified tariff would be easier than the rough comparisons between MTS and WATS rates now possible. Customers could more readily determine the costs and options which would maximize their utility, and competitors would be better able to determine where entry might be profitable.

25. A further potential benefit is that rates under such a structure would be more cost-based, since the relationship between options and their associated costs would be more apparent. This is one of our long-standing policy objectives. *See AT&T* (Docket No. 19989), 59 FCC 2d 671, 178 (1976) and cases cited there; 83 FCC 2d at 167; 84 FCC 2d 835. In other words, the costs a PSN user imposes on the system by its choice of options would be directly reflected in the rates for that option. Subsidies between users could thus be more easily detected, quantified and evaluated. If individual uses of the PSN are priced according to the costs they cause, more efficient allocation of telecommunications resources can also be expected. *See* 86 FCC 2d at 836–38.[21] Thus, under a unified tariff, we would expect to achieve not only more equitable, cost-based rates, but a more efficient allocation of telecommunications resources as well.

26. Finally, many of the cost phenomena which are particularly difficult to analyze, such as non-traffic sensitive ("NTS") and traffic sensitive ("TS") cost allocations or costs associated with appropriate peak load pricing, are intractable precisely because they should properly be considered on a PSN-wide basis. For example, since all PSN services (not just WATS) contribute to PSN peaks, it is much more useful to consider the effect of WATS usage on peak cost causation when the analysis is based on a PSN-wide approach. A unified tariff would make the essential nature of InWATS, OutWATS and MTS as PSN services more apparent, and allow better regulatory oversight of such phenomena as peak costs and NTS and TS cost allocation. This is highly desirable since one of the most serious impediments to effective Commission regulation of WATS has been the division and assignment of common PSN costs to a number of unnecessarily differentiated PSN services. Thus, we have too often been called upon to evaluate such phenomena in the context of a restrictive tariff filing for a particular PSN service. A unitary PSN tariff structure would help alleviate this situation.

27. At the same time, implementation of a unified tariff would not seem to involve any undue expense to AT&T or result in less efficient or more expensive service to the telecommunications consumer. Indeed, the unbundling involved in implementing such a structure can be expected to increase consumer choice. By providing that some elements of present bundled PSN service be made optional, it is likely that lower costs to consumers would ensue. Thus, althought we recognize that any tariff structure change involves some short run transitional costs as consumers, competitors, and AT&T itself adjust, it appears to us that the potential benefits of such a tariff structure far outweigh these minimal costs.[22]

28. In sum, a unified PSN tariff structure could reasonably be anticipated to further the public interest in several ways. It would reduce the opportunity for market segmentation and thus price discrimination, as well as aid the effectiveness of our regulation of PSN services by providing a simpler structure under which costs associated with the service can be more easily determined. It would facilitate comparability among PSN options by customers, competitors, and the Commission. It should result in more cost-based rates, in keeping with long-standing Commission policy. This in turn could be expected to result in a more efficient allocation of telecommunications resources. A unified PSN tariff, by making the similar nature of MTS, OutWATS and InWATS clear, would aid sound regulatory oversight of such PSN-wide phenomenon as peak costs and proper allocation of TS and NTS costs. Finally, the unbundled nature of such a tariff has the potential to result in increased choice and lower rates to customers.

29. In considering the possibility of creating a unified PSN tariff, we are not treading on entirely unfamiliar ground. SPCC, for example, has already submitted one such proposal in this proceeding (Comments at 36–37):

> * * * WATS service (should) be offered as a bulk discount of MTS. It should be made available to those customers who have a sufficient volume of usage to warrant qualifications for a bulk discount. Charges will accrue to each customer on a call-by-call basis, as with MTS, based on length of call, distance, and time-of-day. Customers will be charged the effective MTS rate for all hours of use below the minimum volume needed for the bulk discount. Above that minimum they will receive a bulk discount. That discount may be flat or increasing with usage, but in the aggregate it cannot exceed that amount AT&T demonstrates is saved by providing WATS * * * Additionally customers will receive a time-of-day discount equivalent to that of MTS (*i.e.*, 35% in the evening and 60% during the late night). To obtain WATS service a customer must use an access line dedicated to interstate toll use. The full cost of the access line and any other non-traffic sensitive costs not already included in the

[20] Indeed, many of the expense differences listed by AT&T in Vol. 3–10 could easily be offered as options (*e.g.* credit card calling and billing expenses, public coin service expenses, hotel/motel billing expenses, bill itemization, different payment methods). *See* Vol. 3–10 at 3–2 to 3–6.

[21] For example, optional itemized billing would provide users with a choice between itemized bills with detailed usage information or a less expensive non-itemized bill. Those who desired the additional service could pay the charges for it. Indeed, most WATS customers can obtain itemized bills for a small additional charge at the present time. *See* 70 FCC 2d at 610–11.

[22] Of course, some users who may now be enjoying the fruits of any unjustified price discrimination present in the WATS tariff structure would lose such benefits. *See 86 FCC at 834–36.*

MTS tariff should be charged as a flat monthly fee. This proposal eliminates the requirement for mileage bands to restrict calling distance.*

*Although the carrier may continue to offer such service under WATS, the customers should be charged separately to cover the added costs of screening equipment and its maintenance.

30. We do not endorse SPCC's plan, but we do view it as one possible structure. Others are surely conceivable, and we do not bind ourselves to any particular proposal at this stage. Nevertheless, we observe that several features would appear to be necessary for cost-based rates. Because much of PSN investment is driven by peak usage patterns (*see* 84 FCC 2d at 177, 86 FCC 2d at 830–33 and n. 17), the first prerequisite is some form of time-of-day sensitive, peak/off-peak pricing. A second is that any volume or distance discount justified by cost differences should be available to all users whose usage patterns result in the appropriate cost savings. The conceptual focus of such a rate structure should be a simple, unified tariff reflecting the common PSN use of InWATS, OutWATS and MTS, with specialized functions for various features, such as the billing and blocking funtions of InWATS and OutWATS, offered as additional options. The basic offering, of course, should be expressed in terms of a common service unit.

31. With these considerations in mind, we invite commenting parties to originate proposals for a unified tariff structure. We specifically encourage AT&T to submit a complete sample unified tariff structure based on our comments here. It should make the submission sufficiently detailed to permit meaningful analysis by the Commission and the parties.[33] Although rates need not be specified in this regard, discount rate levels and other structural elements should be provided. We believe that this submission would greatly assist us in the expeditious resolution of the discrimination issues previously discussed in the event AT&T is unable to justify such discrimination. Parties choosing to respond to the proposals in their reply comments should frame their analyses in terms of the regulatory goals we have enunciated for such a rate structure. Finally, notice is given that the record established in this investigation may form the basis for further Commission action under Section 205 of the Act, 47 U.S.C. § 205.[34]

B. Issues Relating to the Current Peak/Off-Peak Rate Structure

32. (i) *The Taper.* Rates under the current WATS tariff are determined by use of a taper.[35] The taper consists of four rate periods, or blocks of time. Although AT&T did not show that its per unit costs in providing WATS lessen as customers accumulate hours of use throughout the month, unit charges on the taper decrease as hours of use increase. The original stated justification for this feature was to encourage off-peak use of the PSN. *See* AT&T reply, Tr. No. 13555, at 57; 84 FCC 2d at 178–80; 86 FCC 2d at 829. The taper was retained in AT&T's proposal as a result of the expedited pace of the first phase of the investigation, as well as because lengthy proceedings would have been required if a completely new rate structure had been proposed by AT&T. *See* 84 FCC 2d at 210; 86 FCC 2d at 850–51. At the time, however, we explicitly recognized that the rate structure as proposed was only an initial effort, to be improved in light of further experience. *See* 84 FCC 2d at 161, 86 FCC 2d at 851–52.

33. We believe that it is now time to consider whether the tapers, which by AT&T's admission reflect increasing off-peak usage, are redundant in the presence of the current peak/off-peak rate structure element. Moreover, the Peak/Off-Peak study recently submitted by AT&T (see discussion below) may contain information useful in making this determination. AT&T, of course, will have the opportunity to advance other justifications for some form of tapered structure. However, in doing so it should be prepared to meet our concern that the tapered rate structure may constitute an unjustifiable bulk discount.

34. (ii) *Non-Cumulative Billing.* AT&T's non-cumulative billing approach, which arises as a direct result of the tapered schedule, also raises questions of reasonableness. Under the non-cumulative rate structure presently in effect for WATS, a user's charges for evening discounts begin on the first taper regardless of how much day use has been accumulated. By contrast, under a cumulative rate structure, a user with extensive peak use would move directly to a more heavily discounted evening taper. For example, a user who had accumulated 45 hours of peak use would have his first hour of evening use billed at the discount rate in effect for the 40–80 hour evening taper, as opposed to the higher 0–15 hour taper rates.

35. In allowing AT&T to implement its peak/off-peak rate structure element, we recognized that the effect of its non-cumulative billing feature might be to lessen the incentive of WATS customers to shift use to off-peak periods. *See* 86 FCC 2d at 852. This result is at cross purposes to the basic goals of such a rate structure. However, we explicitly declined to take a position on this issue because it had not been fully explored in the record. *Id.* at n. 40. We believe that by inviting the public to comment now on this issue we will be able to determine its effect on peak/off-peak usage.

36. (iii) *Group Average Billing.* One of the most controversial issues raised by the September filing is AT&T's use of group average billing. This feature of the WATS tariff provides that a customer's usage is to be averaged over the number of access lines in a WATS service group.[36] A customer who uses two lines for 80 hours each and a third line for 5 hours would pay for 55 hours of use on each of the three lines instead of receiving the benefits of greater discounts for 80 hours usage on its two lines, with overflow routed to the third line. (Calculating the actual billing rate is much more complex than in our simplified example; in actuality, nine separate steps are required to arrive at the appropriate charge. *See* 84 FCC 2d at 183.) Accordingly, the general effect of the structure has been to increase charges to customers who are unable to maintain approximately equal usage levels on each access line.

37. In particular, this rate structure element has been extensively criticized in petitions to suspend or reject AT&T's September filing. *See, e.g.*, petitions of

[32] We recognize that the need to bill InWATS calls to the receiving rather than originating station may give rise to technical differences between the handling of InWATS and other calls made on the PSN. These technical differences may create difficulties in any attempt to bill InWATS calls on the basis of actual airline mileage distance of each individual call. Although it would appear that such difficulties will be ameliorated as Common Channel Interoffice Signaling ("CCIS") becomes more widely available, we would in the meantime allow the necessary flexibility to implement a practical rate consolidation plan.

[34] Section 205 authorizes the Commission after full opportunity for hearing to determine and prescribe just, fair and reasonable tariff charges, classifications, regulations, or practices.

[35] The current WATS taper consists of four rate periods reflecting increases in monthly usage per WATS access line (*i.e.* 0 to 15 hours, 15 to 40 hours, 40 to 80 hours, and over 80 hours). Under the taper, per unit charges decrease during business day (8 a.m. to 5 p.m.) and evening (5 p.m. to 11 p.m.) periods as hours of use are accumulated. The night (11 p.m. to 8 a.m.) and weekend schedule is not tapered, rather a flat rate applies during these periods.

[36] An OutWATS service group consists of one or more OutWATS access lines for the same service area terminating in the same system at the same premises. An InWATS service group consists of access lines for the same service area arranged in central office equipment furnished by the carrier as part of a given hunting arrangement. *See* 84 FCC 2d at 182–84 and n. 55.

Aeronautical Radio, Inc. ("ARINC"); American Telemarketing Association ("American Telemarketing"); Comdata; Howard Johnson Co.; National Data Corp. ("National Data"); and Ryder Systems, Inc. ("Ryder"). These petitioners complain that the requirement is unreasonable, because it results in higher charges for a given amount of monthly usage than would be paid by a similarly situated customer with fewer access lines. The Commission itself highlighted this problem when AT&T first proposed such a rate structure element in 1977. ("The filing fails to demonstrate that this *per se* discrimination between users based on the number of access lines used is just and reasonable and does not constitute an unreasonable preference in favor of customers with approximately equal per-line usage.") *AT&T (Long Lines Department)* (WATS Rejection), 66 FCC 2d 9, 45 (1977).

38. AT&T has sought to justify the group average billing requirement as a reflection of peak use patterns and a step towards cost-based, usage sensitive WATS rates. *See* AT&T reply, Tr. No. 13555, at 64–70; 84 FCC 2d at 180, 182–84; 86 FCC 2d at 829. The carrier also claims that technical problems have precluded the collection of usage data on an individual line basis for all WATS customers. *See* AT&T reply, Tr. No. 13555 at 67. We have previously indicated that we do not find this argument persuasive, since AT&T routinely gathers such information and provides it to WATS customers at extra cost. *See* 84 FCC 2d at 183 n. 61. Nonetheless, we also recognize that there may be isolated instances of technical inability to capture the necessary data. Therefore, we will require AT&T to document any such instances in its comments, and to advance proposals for alleviating the situation.

39. At the same time, we recognize that elimination of the group average billing requirement may have implications for the WATS time-of-day rate structure. The present tariff, as we have stated, is a preliminary effort at time-of-day pricing, and may require adjustment to account for revenue shifts in the event group average billing is terminated. If this is the case, we expect AT&T to quantify the revenue shifts involved and provide an explanation of necessary adjustments to the peak/off-peak time-of-day rate structure to counter such effects.

40. (iv) *AT&T's Peak/Off-Peak Study.* In our order prescribing a peak/off-peak rate structure element for WATS, we directed AT&T to perform a study on the functioning of its time-of-day proposal ("Peak/Off-Peak Study"). *See* 86 FCC 2d at 834. AT&T submitted its study on February 1, 1982 and our analysis of it is on-going. We invite the public to comment on the study itself, as well as to consider any implications it may have for the taper, non-cumulative billing and group average billing issues discussed above.

C. Non-Traffic Sensitive Costs

41. In preparing the cost justification material for its September filing, AT&T divided the costs it associated with the usage rates into two categories, traffic sensitive ("TS") and non-traffic sensitive ("NTS") costs. TS costs generally relate to trunking and switching functions, while NTS costs (along with the catch-all "other" category of costs) are essentially the residual costs. *See* 84 FCC 2d at 195–96. According to AT&T, NTS costs account for about 60 percent of WATS usage costs. Under its methodology, these NTS costs are allocated in the same manner as TS costs.[37] Thus, larger volume users pay rates which appear to cover TS costs as well as an increasing percentage of NTS costs.

42. This approach has been the subject of substantial controversy, with numerous large users arguing that it is unjustly discriminatory. *See, e.g.,* petitions of American Telemarketing, AHMA, the Executive Agencies, Firestone, National Data Corp., SPCC, ARINC. AT&T responds that under separations procedures,[38] non-traffic sensitive costs are allocated to the intrastate and interstate jurisdictions on the basis of usage, and, as a result, large volume WATS users cause more non-traffic sensitive costs to be allocated to the interstate jurisdiction.

43. In our suspension order, we noted that such a scheme for allocating costs among rate elements was not the only alternative, and expressed dissatisfaction with the residual methodology AT&T used to derive NTS costs, which include "other" costs. *See* 84 FCC 2d at 195. Accordingly, we directed staff to obtain data from the carrier to determine what specific costs were included in this category. We indicated that we would determine our future action after analysis of AT&T's response. *Id.* at 196. Subsequently, on March 2, 1981 AT&T provided its response to the staff's information request. Although our review of the submission is still on-going, we believe it would be helpful to allow other parties to comment on the document. We will therefore entertain comments on AT&T's submission.

44. It is our preliminary view that the ultimate questions relating to AT&T's chosen allocation methodology may best be considered once the unified PSN tariff issues discussed above have been fully explored in this investigation. It appears in this regard that the allocation methodology may be affected by the like service problem. As with peak/off-peak concerns, the assignment of NTS costs to rate elements calls for a consideration of the PSN as a whole. The question as we see it is not so much how to assign NTS costs to WATS elements, but how to properly assign NTS costs for all PSN rate elements. Underlying all of the costing issues is the requirement that rates be cost-based or otherwise cost-justified. In the case of WATS and MTS, most of the costs derive from precisely the same source, namely use of the PSN. Thus, the most effective means of resolving this issue may be to consider PSN cost allocation as a whole. In short, it is only the present WATS–MTS rate structure dichotomy which raises the question of NTS use *vis-a-vis* WATS alone.

II. Issues That Do Not Warrant Investigation

45. Since mid-1974 AT&T has required that WATS calls be billed as if they averaged a minimum of one minute. This is the so-called "minimum average time requirement," or "MATR." Although we have not yet ascertained whether this requirement is directly cost-based, we have noted that this rate mechanism appears to be an attempt to recover the set-up costs of each WATS call. *See* 84 FCC 2d at 184. Thus, there is some rationale for this billing procedure, and accordingly, we see no basis to devote our limited resources to its investigation at this time.[39]

46. Several parties have also argued that the rate differences between InWATS and OutWATS, which have separate rate schedules for the first time as a result of the revisions, are not justified. *See, e.g.,* petitions against Transmittal No. 13555 by American Hotel and Motel Association ("AHMA") and Howard Johnson Company. However, as we have already observed,

[37] For a detailed description of AT&T's rate development procedure, *see* 84 FCC 2d at 192–96.

[38] The Separations Manual, incorporated by reference in Part 67 of the Commission's Rules, essentially allocates investment and expenses between the intra- and interstate jurisdictions. For a brief description of the process, *see* MTS and WATS Market Structure, Docket No. 78–72, 77 FCC 2d 224, 229–32 (1980).

[39] This is not to say we approve of MATR, or, for that matter, any of the other issues which we choose not to investigate here.

the rate differences involved are generally small (*see* 84 FCC 2d at 167–188; 86 FCC 2d at 652–55), and we are aware there may be actual technical differences in the way each of these services is provided. Furthermore, there are more important issues which should receive our immediate attention. Therefore, we choose not to investigate this issue.

47. Finally, two other issues raised by the September WATS filing which we chose to defer are the requirement that an InWATS user order a minimum of two lines, and a provision authorizing AT&T to compel a subscriber to add more lines or face termination of service. Both provisions appear to be designed to protect the PSN from over load conditions that would occur in the event an excessive number of calls were accessing limited facilities. Such overloads impose additional costs on the PSN. It therefore appears, in the framework of separate rate structures for MTS and WATS, that these provisions are a reasonable means of maintaining the integrity of the PSN, and we will not require AT&T to justify them. However, in the event that this investigation gives rise to a unified PSN rate structure and AT&T decided to retain these requirements, we may need to consider this matter further.

48. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

Ordering Clauses

49. Accordingly, it is ordered, That the motion filed by Southern Pacific Communications Company and the petitions filed by the Common Carrier Conference-Irregular Route and Comdata Network, Inc., are denied.

50. It is further ordered, That, the conditional request to defer the effective date of resale and sharing of MTS and WATS filed by American Telephone and Telegraph Company is dismissed as moot.

51. It is further ordered, That pursuant to the provisions of Sections 4(i), 4(j), 201–205 and 403 of the Communications Act, 47 U.S.C. 154(i), (j), 201–205 and 403, the issues set forth in this order shall be investigated.

52. It is further ordered, That the American Telephone and Telegraph Company and other interested parties shall file comments on the matters set for investigation in this Memorandum Opinion and Order, as well as on the interim submissions filed by AT&T, on or before June 17, 1982. Reply comments shall be filed on or before July 15, 1982. An original and five copies of all pleadings shall be filed with the Commission. Parties are on notice that these comments may form the basis for further Commission action under section 205, 47 U.S.C. 205. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

53. It is further ordered, that the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, make further inquiries, and modify dates and procedures if necessary to provide for a fuller record and more efficient proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Concurring Statement of Commissioner Joseph R. Fogarty

In Re: American Telephone and Telegraph Company, Revisions to Tariff F.C.C. No. 259, Wide Area Telecommunications Service (WATS).

I concur in the Commission's decision to initiate the second stage of the WATS investigation. I support consideration of a unified public switched network (PSN) tariff because, given this Commission's decision in the *Like Service* case[1] that MTS and WATS are "like" services, such a tariff is probably inevitable.

I am particularly pleased by the discussion contained in this Order of the problem of rate discrimination. This discussion strongly underscores the aberrant nature of the majority's recent *RCAA* decision.[2] In discussing the difference between MTS and WATS rates, we state at Paragraph 12 that "it is clear to us that AT&T must provide solid justification for rate differences which so substantially exceed corresponding differentials in costs. In sum, AT&T still has not faced squarely our basic concern in the *Like Service* decision, which is 'to ensure fair and equitable rate treatment of *all* users of the public switched network such that one user class is not unduly discriminated against.'" At Paragraph 15 we state:

> Such heterogeneous tariff structures for functionally equivalent services make the detection of price discrimination extremely difficult. Price discrimination arises where firms charge different prices for goods or services which cost the same per unit to produce. One prerequisite for such discrimination is the ability of the price discriminator to segment markets by customer price elasticities of demand. The general effect of such discrimination is a redistribution of income from the customers discriminated against to the price discriminator or favored customers.

This is a perfect description of the tariff we confronted in the *RCAA* case. Additionally, Paragraph 16 of this Order states: "we have evidence that WATS provisions in the past may have prevented economic activity, such as arbitrage [i.e., resale], the effects of which is to reduce price discrimination between users of the like services, MTS and WATS." It is interesting to note that in the *RCAA* decision one of the justifications for the $13 million Fixed Rate tariff was that it would end arbitrage by shifting profits to the carrier from the resellers.

The only difference between those two decisions appears to be that while the Commission considers AT&T a dominant carrier, a majority would like to act as if RCAA is not, even though according to applicable Commission decisions and reality both are dominant carriers in their fields. In the case of AT&T we are actively pursuing an investigation of the WATS tariff. However, with regard to RCAA we have no plans to investigate and probably never will

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[1] *AT&T*, 66 FCC 2d 226 (1977), 67 FCC 2d 266 (1977), 70 FCC 2d 288 (1978), *recon. denied*, 79 FCC 2d 10 (1980), *appeal docketed sub nom. Ad Hoc Telecommunications Users Committee v. FCC*, D.C. Cir. No. 80–1785.

[2] *RCA American Communications, Inc.*, —— FCC 2d —— (1982), *appeal docketed sub nom. Authority for Kentucky Educational Television and UTV Cable Network, Inc. et al. v. FCC*, D.C. Cir. Nos. 82–1918, 82–1919, 82–1920.

investigate RCAA's Fixed Rate tariff even though on its face that tariff is more discriminatory than the WATS tariff before us today. There is no consistency nor reason for this disparate treatment. It is the public interest—the interest of consumers—which suffers from this disparity.

[FR Doc. 82-12728 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1350]

Petitions for Reconsideration of Actions in Rule Making Proceedings

May 5, 1982.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 14 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (North Charleston, Eastover, and Ravenel, South Carolina) (BC Docket No. 80-201, RM's 3249 & 3710)
Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Elloree, South Carolina) (BC 80-211, RM-3579)
Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Mount Pleasant, Parris Island, Manning, Bamberg, and Batesburg, South Carolina) (BC Docket No. 80-213, RM's 3406, 3718 & 3719)
Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Johnston, Leesville, Winnsboro Mills, Saluda, Union, and Batesburg, South Carolina) (BC Docket No. 81-171, RM's 3516, 3556, 3613, 3666 & 3771)
Filed by: Clarence E. Jones, db/as Santee-Cooper Broadcasting Company, on 4-7-82.
Lawrence J. Bernard, Jr., Attorney for Clarendon County Broadcasting Company, (WTWE-FM), on 4-7-82. (Addendum filed 4-8-82)
Subject: An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System. (BC Docket No. 78-253)
Filed by: Sherman Block, Sheriff for The Los Angeles Sheriff's Department on 4-27-82.
Subject: Amendment of Form 324, Annual Financial Report of Broadcast Stations (BC Docket No. 80-190)
Filed by: Jeffrey H. Olson, Attorney for Media Access Project on 4-21-82.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 82-12725 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows: Special Committee No. 79, "Universal Marine Radiotelephone Compatibility," Notice of 6th Meeting, Wednesday, May 19, 1982—9:30 a.m., Conference Room A-106, FCC Annex, 1229 20th Street, N.W., Washington, D.C.

Agenda

1. Administrative Matters.
2. Consideration of Working Papers.

T. B. Miller, Chairman SC-79, WJG Telephone Company, P.O. Box 9363, Memphis, TN 38109, Phone: (901) 789-3800.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission
William J. Tricarico,
Secretary.

Justification for less than two weeks notice in Federal Register:

This meeting is a continuation meeting of RTCM Special Committee 79. The date of this meeting was not made firm until the 1982 RTCM Assembly Meeting which was conducted in Seattle, Washington, April 25-29, 1982. This is the first opportunity to initiate action to put the notice in Federal Register.

[FR Doc. 82-12724 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

May 5, 1982.

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 26, 1982, at 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications question relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Group III and I meetings.

Members of the general public may attend the meeting and join in the discussion subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

Federal Communications Commission.
William J. Tricarico,
Secretary

[FR Doc. 82-12723 Filed 5-10-82; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

West Coast of India and Pakistan/U.S.A. Conference; Cancellation

FILING PARTY: Charles F. Fischer, Chairman, West Coast of India and Pakistan/U.S.A. Conference, 19 Rector Street, New York, New York 10006.

AGREEMENT NO. 8040.

SUMMARY: On April 26, 1982, the Commission received notice to cancel Agreement No. 8040, the West Coast of India and Pakisan/U.S.A. Conference effective May 1, 1982 since the remaining members Hoegh Lines and Sea-Land Service tendered their resignations to the conference to become effective May 1, 1982.

By Order of the Federal Maritime Commission.

Dated: May 5, 1982.

Francis C. Hurney,
Secretary.

[FR Doc. 82-12682 Filed 5-10-82; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 3, 1982.

Thursday, June 10, 1982.
Thursday, June 17, 1982.
Thursday, June 24, 1982.

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW, Washington, D.C. 20415 (202-632-9710).

William B. Davidson, Jr.,
Chairman, Federal Prevailing Rate, Advisory Committee.

May 6, 1982.

[FR Doc. 82-12867 Filed 5-10-82; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

Acquistion of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C.1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Royal Trustco Limited,* Toronto, Canada, and its wholly-owned subsidiary, Royal Trust Bank Corp., Miami, Florida; to acquire 80 percent of the voting shares or assets of Century First National Bank of Pinellas County, St. Petersburg, Florida. Comments on this application must be received not later than May 27, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Munter Agency, Inc.,* Strawberry Point, Iowa; to retain 10.92 percent of the voting shares or assets of Union Bank and Trust Company, Strawberry Point, Iowa. Comments on this application must be received not later than June 1, 1982.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corp.,* Wichita, Kansas; to retain 8.1 percent of the voting shares or assets of The Towanda State Bank, Towanda, Kansas. Comments on this application must be received not later than May 27, 1982.

D. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C.:

1. *Bank Securities, Inc.,* Albuquerque, New Mexico; to acquire 100 percent of the voting shares or assets of International State Bank, Raton, New Mexico. Comments on this application must be received not later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 5, 1982.

Dolores S. Smith,
Assistant Secretary of the Board.

[FR Doc 82-12877 Filed 5-10-82; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0150]

Antibiotic Drugs and Antibiotic Susceptibility Medical Devices; Interim Certification Procedures

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an interim policy of discretionary replication of manufacturer's tests of batches of antibiotic drugs and antibiotic susceptibility devices. The agency is inviting public comments on the interim policy to assist FDA in deciding whether revisions in it are warranted. The purpose of the interim policy is to avoid interruption of supplies of antibiotic drug products pending its final decision on the proposed rule to exempt these products from certification published in the Federal Register of May 7, 1982 (47 FR 19954).

DATES: Effective May 11, 1982; comments by June 11, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, RM. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For human drugs: Robert J. Meyer, Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

For animal drugs: Frank G. Pugliese, Bureau of Veterinary Medicine (HFV-103), Food and Drug Administration,

5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

For medical devices: Thomas M. Tsakeris, Bureau of Medical Devices (HFK–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 7, 1982 (47 FR 19954), FDA proposed to amend the antibiotic drug and new animal drug regulations to exempt all classes of antibiotic drugs from batch certification requirements. FDA also proposed to exempt antibiotic susceptibility devices from batch certification. Because of the high level of manufacturer compliance with existing standards, FDA tentatively determined that batch-by-batch certification by FDA is not necessary to ensure the safety and efficacy of antibiotic drugs and antibiotic susceptibility devices. Under the exemption, manufacturers would not be required to obtain, before marketing, certification of each batch of antibiotic drug.

Under the Federal Food, Drug, and Cosmetic Act (the act), antibiotic drugs, like most other new drugs, are required to be shown to be both safe and effective on the basis of adequate and well-controlled investigations, before marketing. Sections 507 and 512(n) of the act (21 U.S.C. 357, 360b(n)), however, in setting forth requirements for the approval of antibiotic drugs for human use and certain antibiotic drugs for animal use (i.e., antibiotic drugs composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivative thereof), respectively, require that each batch of antibiotic drug also be subject to certification before marketing. Certification procedures, which are set forth in §§ 431.1 and 514.50 (21 CFR 431.1 and 514.50), involve the testing of each batch for compliance with monograph requirements set forth in 21 CFR Parts 436 through 460 and 536 through 555, and require that manufacturers submit to FDA information on the product, a sample of each batch, and the results of their own tests. If, on the basis of the information and replication testing of the batch, FDA determines that the antibiotic drug conforms to the applicable standards of identity, strength, quality, and purity found in the monograph, the agency certifies the batch and issues a certificate attesting that the batch conforms to the applicable monograph standards.

On several occasions in the past, the agency has been informed by manufacturers that the length of time that it has taken to obtain certification delayed the distribution of products and sometimes resulted in unnecessary disruption in the supply of certain antibiotic drug products to the marketplace. In the past, the agency has responded to this problem by issuing a certificate or release based only upon a manufacturer's test results and before the agency's replication of the manufacturer's tests. Upon completion of the agency's testing, the certificate or release was amended and reissued based upon the agency's test results.

The agency is adopting a new policy in order to avoid any potential operational difficulties in FDA's laboratory during the pendency of the proposed rule which might result in long delays in certification and unnecessary disruption in the supply of some antibiotic drug products to the marketplace.

The agency has conducted a review of the certification process with the objective of initiating procedures to avoid these delays and shortages. Based on this review, the agency is adopting an interim policy of discretionary replication of manufacturer tests to avoid interruption of supplies of antibiotic drug products. Under this interim policy, if batch certification submissions of any antibiotic drug product exceed the agency laboratory's capacity to perform all replicate testing within usual and customary time frames, the agency will not, for randomly selected branches, replicate some or all of the manufacturers' tests. Thus, the agency may issue a certificate of certification or release for a batch of an antibiotic drug product based solely or in part on manufacturers' test results, without agency replication. As it has been done in the past, when the availability of facilities permits, the agency may replicate the manufacturer's tests at a later time, and amend and reissue certificates issued on the basis of manufacturer test results alone.

This interim policy, which is authorized by sections 507 and 512(n) of the act and § 431.10 of the regulations (21 CFR 431.10) will not require the submission of additional data by persons requesting certification or release of antibiotic drug products above that which is routinely received with each request for batch certification or release. The Commissioner of Food and Drugs believes that there is good cause for putting this interim policy into effect immediately to prevent disruption in the supply of antibiotics to the marketplace caused by certification delays. Furthermore, because of the high degree of industry compliance in this area, this action will not compromise the safety or efficacy of these drug products. The agency requests comments on this interim policy and will consider comments received in determining whether revisions of the interin policy are warranted.

Interested persons may, on or before June 10, 1982, submit to the Dockets Management Branch (address above), written comments regarding this interim policy. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12885 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-01-M

Radiological Health and Safety Advisory Committee; Request for Nominations of Voting Members

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for membership on the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC). Four vacancies will occur on December 31, 1982.

DATE: Nominations must be received by July 12, 1982.

ADDRESS: Nominations must be submitted to the Executive Secretary, TEPRSSC (HFX–460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Zory R. Glaser, Executive Secretary, TEPRSSC, at the address shown above; 301–443–3429.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services, and by delegation, the Commissioner of Food and Drugs, and the Director of the Bureau of Radiological Health, are charged with administration of those portions of the Public Health Service Act that are designed to protect the public health from hazardous radiation emissions from electronic products.

TEPRSSC, established under section 358(f)(1)(A) of the Public Health Service

Act as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)(1)(A), must be consulted before promulgation of any performance standard for electronic product radiation safety.

Nominations Due Date, and Accompanying Information

All interested persons are invited to nominate qualified condidates for consideration as members of this Committee. Nominations must be received by July 9, 1982 and be accompanied by a curriculum vitae that states where the nominee may be contacted and that provides detailed evidence of the nominee's qualifications, including current employment and professional affiliations. Nominations must also state that the person nominated is aware of the nomination, is interested in becoming a member of TEPRSSC, and appears to have no conflict of interest. FDA will ask candidates from the public and government sectors to provide detailed information concerning financial holdings, consultancies, and research grants or contracts to permit evaluation of possible conflicts of interest.

FDA has a special interest in ensuring that women, minoirity groups, and he physically handicapped are adequately represented on advisory committees and, therefore, particularly encourages the nomination of appropriately qualified female, minority, and physically handicapped candidates. FDA also welcomes the nomination of technically qualified individuals to represent the consumer perspective on issues before the Committee. People who have previously served are eligible for reappointment.

Further information on requirements of eligibility for membership on the Committee is provided below.

In a notice published in the **Federal Register** of May 22, 1981 (46 FR 28012), the Commissioner requested nominations of qualified persons to replace members of TEPRSSC whose terms expired in 1981. Eligible individuals nominated in response to that earlier **Federal Register** publication who did not receive committee appointments will be reconsidered for a period of 2 years after nomination, along with those newly nominated for the vacancies. The following are the names and affiliations of the members of TEPRSSC, including those appointed as a result of the May 22, 1981 request for nominations.

Current members of TEPRSSC are (dates shown are December 31 of the year in which their appointments expire):

1. Public sector: Dr. Valerie A. Brookeman (1982), Professor, Radiology Department, University of Florida College of Medicine, Gainesville, FL; Dr. Thomas F. Budinger (1985), Professor of Bioinstrumentation and Electrical Engineering, Donner Laboratory, University of California, Berkeley, CA; Ms. Janice L. Gordon (1985), Safety and Health Coordinator, International Union of Electrical, Radio and Machine Workers, Washington, DC; Dr. Wende W. Logan (1983), Consultant in Radiology, Rochester, NY; and Ms. Mary E. Moore (1983), Associate Radiological Physicist, Cooper Medical Center, Camden, NJ.

2. Industrial sector: Mr. Cazamer L. Crouch (1983), Consultant in Illumination Engineering, Bellerose, NY; Dr. William R. Ingles (1983), Director of Radiological Services, American Medical International, Inc., Beverly Hills, CA; Mr. Howard W. Johnson (1982), Staff Vice President, Product Safety, RCA Corp., Cherry Hill, NJ; Mr. Gerald A. Richardson (1982), Technical Director, Irex Medical Systems Corp., Upper Saddle River, NJ; and Dr. Max M. Weiss (1985), Director, Radiation Protection Group, Industrial Hygiene and Safety Administration Department, Bell Laboratories, Murray Hill, NJ.

3. Government: Mr. David E. Janes (1985), Chief, Nonionizing Radiation Surveillance Branch, Office of Radiation Programs, Environmental Protection Agency; Mr. Maurice E. Neuweg (1985), Deputy Director, Office of Radiation Safety, Illinois Department of Nuclear Safety, Springfield, IL; Mr. Gerald S. Parker (Chairperson) (1982), Assistant Commissioner for Environmental Health, Massachusetts Department of Public Health, Boston, MA; Mr. David H. Sliney (1985), Chief, Laser/Microwave Branch, U.S. Army Environmental Hygiene Agency, Aberdeen Proving Ground, MD; and Ms. Goldie B. Watkins (1983), Deputy Commissioner for Prevention and Special Health Programs, New York State Health Department, New York, NY.

Since its inception in 1969, TEPRSSC has provided valuable technical and scientific advice to the Bureau of Radiological Health, FDA, on the development of electronic product radiation safety performance standards. Thus far, regulatory performance standards have been issued under 21 CFR Chapter I, Subchapter J, for television receivers, cold cathode gas discharge tubes, microwave ovens, diagnostic x-ray systems and their major components, cabinet x-ray equipment (including x-ray baggage inspection devices for use at airports and similar facilities), laser products, sunlamp products (for skin tanning purposes), high-intensity mercury vapor discharge lamps, and ultrasound therapy equipment. The Committee meets approximately once each year for approximately 2 days and occasionally also reviews documents transmitted by mail.

Under section 358(f) of the Radiation Control for Health and Safety Act of 1968, members will be appointed by the Commissioner after consultation with public and private agencies concerned with the technical aspect of electronic product radiation safety. Each member shall be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. As required by that Act, the Committee is composed of 15 members selected as follows:

1. Five from governmental agencies, including State and Federal governments;

2. Five from the affected industry, after consultation with industry representatives; and

3. Five from the general public, one of which shall be a representative of organized labor. The representative of organized labor also must be technically qualified by education or experience in one or more fields of electronic product radiation safety.

Effective December 31, 1982, two members from industry, one member from the public sector, and one member from the governmental sector will complete their terms.

FDA solicits nominations of individuals qualified in electronic radiation safety to fill these vacancies for a 4-year term. It invites nominations from labor, industry, consumer, government, trade, and professional organizations, as well as from the public at large. Curriculum vitae and other pertinent information should be submitted with nominations.

Dated: May 3, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12571 Filed 5-10-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket Nos. 80P-0501 and 81P-0115]

Coherent, Inc. and Cooper Medical Devices Corp.; Microsurgical Argon Laser Intended for Use in Otology; Panel Recommendations on Petitions for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendations of the Ear, Nose and Throat Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (the Section) that the microsurgical argon laser intended for use in otolaryngology (otology and laryngology) be reclassified from class III (premarket approval) into class II (performance standards). The recommendations were made after review by the Section of reclassification petitions filed by two manufacturers of the same generic type of device: Cooper Medical Devices Corp. (formerly Spectra-Physics, Inc.), Mountain View, CA 94042 (Docket No. 81P-0115) and Coherent, Inc., Palo Alto, CA 94303(Docket No. 80P-0501). After reviewing the Section recommendation and any public comments received, FDA will approve or deny the reclassification petitions by order in the form of letters to the petitioners. FDA has tentatively concluded that the device should be reclassified into class II when it is intended for use in otology, but not when it is intended for use in laryngology or general use in otolaryngology. FDA's decisions on the reclassification petitions will be announced in the **Federal Register.**

DATE: Comments by June 10, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry R. Sauberman, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Petition 81P-0115

Cooper Medical Devices Corp.

On November 8, 1979, Cooper Medical devices Corp. (formerly Spectra-Physics, Inc.), Mountain View, CA 94042, submitted to FDA a premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) stating that it intended to market an argon laser device model 770 with microsurgical attachments for use in otolaryngological surgery. After reviewing the information in the premarket notification, FDA determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976, nor is the device substanially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Accordingly, the new device is automatically classified into class III under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)).

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approved application for premarket approval under section 515 of the act. Such a device may be shipped in commerce, however, if there is in effect for the device an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)). There is no approved premarket approval application or investigational device exemption in effect for the argon laser with microsurgical attachments for use in otolaryngological surgery.

On October 15, 1980, Cooper Medical Devices Corp. submitted to FDA under section 513(f)(2) of the act a reclassification petition for an argon laser device model 770 with microsurgical attachments intended for use in otolaryngological surgery. Section 513(f)(2) of the act requires FDA to refer a reclassification petition to the appropriate advisory panel and to receive a recommendation on whether to approve or deny the petition. Before submission to a panel, however, section 513(f)(2)(A) of the act (21 U.S.C. 360c(f)(2)(A) and § 860.134(b)(2) (21 CFR 134.(b)(2)) of the regulations governing reclassification under section 513(f) require FDA to determine whether the petition contains any deficiency which prevents FDA from making a decision on the petition and to notify the petitioner of any such deficiency. FDA determined that the petition contained certain deficiencies and sent a letter to the petitioner requesting additional information. Cooper submitted a supplement to the petition, and FDA determined that the petition, with the supplement, was in the proper format with sufficient data for review.

Petition 80P-0501

Coherent, Inc.

On August 12, 1980, Coherent, Inc., Palo Alto, CA 94303, submitted to FDA a premarket notification under section 510(k) of the act stating that it intended to market an argon laser device model 900S with microsurgical attachments for surgical applications in otology (a subspecialty of otolaryngology). After reviewing the information in the premarket notification, FDA determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976, nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Accordingly, the new device is automatically classified into class III under section 513(f)(1) of the act.

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approved application for premarket approval under section 515 of the act. Such a device may be shipped in commerce, however, if there is in effect for the device an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)). There is no approved premarket approval application or investigational device exemption in effect for the argon laser with microsurgical attachments for use in otolaryngological surgery.

On December 4, 1980, Coherent submitted to FDA under section 513(e) of the act (21 U.S.C. 360c(e)) a reclassification petition for an argon laser device model 900S with microsurgical attachments intended for surgical application in otology. For a petition submitted under section 513(e) of the act, FDA may receive from the appropriate advisory panel a recommendation respecting the proposed change in the devices classification. In this case, before submitting the petition to an advisory panel, FDA determined that the petition contained certain deficiencies and sent a letter to the petitioner requesting additional information. Coherent submitted a supplement to the petitition, and FDA determined that the petition, with the supplement, was in the proper format with sufficient data for review.

FDA has determined that the two petitions (81P-0115 and 80P-0501) concern the same generic type of device as that term is defined in § 860.3(i) of the classification regulations (21 CFR 860.3(i)). Further, FDA has determined that the devices subject to the two petitions are substantially equivalent to each other. Petition 80P-0501 was submitted under section 513(e) of the act; petition 81P-0115 was submitted under section 513(f) of the act. However, because both petitions concern the same generic type of device, and because the devices subject to the petitions are substantially equivalent to each other, FDA has processed both petitions under the procedures specified in section 513(f) of the act and § 860.134 of the regulations. Accordingly, FDA referred both petitions to the Ear, Nose, and Throat Device Section of the Ophthalmic Ear, Nose, and Throat Device Section of

the Ophthalmic, Ear, Nose, and Throat; and Dental Devices Panel (the Section), and in accordance with section 513(f)(2) and § 860.134(b)(6) of the regulations will, after reviewing the Section recommendations and any public comments received, approve or deny both petitions by orders in the form of letters to the petitioners.

Section Review

On April 27 and 28, 1981, the Section reviewed petition 80P-0501, from Coherent, as well as petition 81P-0115, from Cooper. The Section recommended that the generic type of device, the microsurgical argon laser intended for use in otolaryngology, be reclassified from class III into class II.

To determine the proper classification of the generic type of device subject to the two petitions, the Section considered the criteria specified in section 513(a)(1) of the act. For the purpose of classification, the Section assigned to this generic type of device the name, "argon laser for use in otolaryngology," and identified the device as having indications for use in otolaryngological surgery. The Section noted that the use of the argon laser is an alternative modality for surgical excision or alteration of soft tissue and bone in the middle and inner ear. The Section noted that the device has applications in general otolaryngology as, for example, it may be used for ablation of acoustic neuronomas or for removal of laryngeal papillomas.

Summary of the Reasons for the Recommendation

The Section gave the following reasons in support of its recommendation:

1. The device is not an implant, is neither life sustaining nor life supporting, and, when used in accordance with instructions in the labeling, does not present a potential unreasonable risk of illness or injury.

2. Although general controls alone are insufficient to provide reasonable assurance of safety and effectiveness of the device, sufficient scientific and medical data exist to establish a performance standard to provide such assurance. Many safety features of medical lasers are already controlled by existing FDA standards (21 CFR 1040.10 and 1040.11). A new standard or amendments to the existing standard for medical laser products may be developed for this device.

3. Failure of the device to perform in accordance with a standard possibly could cause injury to tissue in or around the operating site. Inappropriate use could lead to risks to the health of the patient. The Section noted that specific risks include thermal injury due to beam exposure, electrical shock from excessive voltage or current limits, and explosion from operating the device in an oxygen-enriched environment.

Summary of Data Upon Which the Recommendation is Based

The Section based its recommendation on the safety and performance characteristics of the generic type of device identified in the two petitions and the supplements to the petitions (Refs. 1 and 2). FDA's evaluation of the two petitions and supplements were considered by the Section (Ref. 3). The Section also considered the information on the generic type of device that was presented to the Section during its meetings of October 27 and 28, 1980, and April 27 and 28, 1981 (Refs. 4 and 5).

The Section noted that Drs. DiBartolomeo and Ellis reported on the use of the argon laser in treating 30 patients during otologic surgery for disease of the middle and external ear. Fifteen of the patients had surgical alteration of soft tissues, and 15 patients were treated for disease of the bony external canal or disease of the middle ear ossicles, including otosclerosis (ref. 6). Results revealed the ability of the argon laser to ablate tissue or bone. When the laser was used to perform a myringotomy, the procedure was accomplished without disturbing the fluid of the middle ear or the natural bone behind the eardrum. Of 10 patients who had a stapedectomy performed with an argon laser, 3-month postoperatfve findings indicated that 9 of the patients had satisfactory closure of the air-bone gap. One patient demonstrated closure of the air-bone gap at 2 months, but developed a major dental infection on the same side as the ear surgery. When treatment by root canal surgery using a high speed dental drill was completed, the patient reported the return of the preexisting conductive hearing loss.

Because the light energy generated by the argon laser is converted to thermal energy upon absorption, members of the Section asked about possible injury to structure of the inner ear during middle ear surgery. DiBartolomeo and Ellis reported that patients under local anesthesia were questioned as to any sensation of vertigo and observed for the presence of nystagmus (involuntary movement of the eyeball). None of the patients evaluated experienced any vertigo during removal of their stapes footplate. Observation for ocular movements also failed to reveal any nystagmus that might be due to disturbances in the labyrinth. The authors concluded that use of the argon laser is compatible with conventional surgery of the soft tissues and ossicular structures within the temporal bone. They stated that of 10 patients tested for sensorineural hearing loss following stapedectomy, only 1 patient demonstrated a loss at 4,000 hertz; this loss was less than 10 decibels. (db) (Ref. 6)

Dr. Perkins provided audiometric results following a series of stapedotomies on 11 patients that were performed with an argon laser (Ref. 7). All the patients had 6-week postoperative audiograms available for analysis; seven patients had 8-week audiograms; and five patients had 4-month audiograms. At 6 weeks, all 11 patients showed closure of the air-bone gap between 0 to 10 db with 82 percent closing between 0 to 5 db. At 8 weeks, all seven patients showed closure between 0 to 10 db with 86 percent closing between 0 to 5 db. At 4 months, all five patients showed closure between 0 to 10 db, and 80 percent closing between 0 to 5 decibels. Dr. Perkins noted that the majority of patients in the study reported no intra-operative or postoperative balance disturbances. Dr. Perkins stated, however, that some patients exhibited a mild, temporary, postoperative, positional disequilibrium. For eight patients examined on the second postoperative day, nystagmus was not present.

Dr. Perkins discussed the absorption of argon laser energy by middle and inner ear structures, with respect to device safety and effectiveness during otologic surgery. Dr. Perkins explained that the energy density of the laser beam decreases as the square of the distance from the focal point, i.e., from the point of surgery. Dr. Perkins also discussed use of the argon laser in surgery of different tissue areas encountered in general otolaryngology. As an example, use of the laser was described for treatment of acoustic neuromas (Ref. 7).

The current performance standards for light-emitting products in §§ 1040.10 and 1040.11 (21 CFR 1040.10 and 1040.11) contain safety requirements that apply to medical lasers. The intent of the standard issued under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f) is to reduce the possibility of injury from electromagnetic radiation from a laser device by providing the operator with improved control of the emitted radiation and by assuring that individuals who use lasers are adequately warned of the hazards

associated with this type of nonionizing radiation. The standard is designed to assure adequate protection for the patient, the surgeon, and others from inadvertent exposure to hazardous levels of radiation that are outside the direct field of device operation. The Section noted that the FDA laser standard relates only to the radiation safety of the device, and not to the effectiveness of the device, or to the particular skills of the user or operator. Thus, the laser standard may not prevent an undesired exposure of a patient during a surgical procedure because this exposure is under the surgeon's control. The Section also noted that, although FDA can regulate a device's safety and effectiveness, it cannot regulate a surgeon's skill.

Recommendation of Section

The Section believed that the petitioners had shown that reclassification of the generic device into class II would assure the safety and effectiveness of the microsurgical argon laser intended for use in otolarygology. The Section also believed that application in otology represented the most precise and critical use of the device. On this basis, and upon the judgment and expertise of its members, the Section recommended reclassification of the microsurgical argon laser from class III into class II when it is intended for use in surgery in both otology and laryngology (otolaryngology).

Risks to Health

The Section noted that inappropriate use of the argon laser can lead to injury to patients. Beam overexposure may cause thermal injury; excessive voltage or current limits may produce electrical shock; and operation of the device within an oxygen-enriched environment may cause explosion.

Additional Findings

The Section recommended that FDA assign a high priority to the establishment of a performance standard for the microsurgical argon laser intended for use in otolaryngology. The Section recommended that labeling for the device include a comprehensive description of the techniques, risks, and hazards which accompany the use of the argon laser for applications in otolaryngology. In addition, the Section recommended that labeling of the device include a discussion on how the attendant risks and hazards can be avoided.

FDA Position

Petition 81P-0115 requested reclassification of the generic type of device from class III into class II when the device is intended for use in otolaryngology. Petition 80P-0501 requested reclassification of the generic type of device from class III into class II when the device is intended for use in otology. The Section recommended that the generic type of device be reclassified from class III into class II when the device is intended for general use in otolaryngology.

FDA disagrees in part with the Section and believes that the microsurgical argon laser should be reclassified from class III into class II only for use in otology. FDA bases its belief on the medical and scientific data presented in the two petitions, the supplements to the petitions, and the information presented at the Section meetings of October 27 and 28, 1980, and April 27 and 28, 1981. FDA notes that most of the data available on the device involve its use in otology. Only brief remarks were made during the meetings of the Section citing its general use in otolaryngology,and no medical or scientific reports or published clinical studies were submitted to support its general use in otolaryngology. FDA informed Cooper that insufficient information had been provided to support reclassification from class III into class II of the generic device when it is intended for uses other than otological surgery. Cooper responded by submitting to FDA additional supplements to its petition which were intended to substantiate use of the device in general otolaryngology. These supplements to petition 81P-0115 were insufficient to alter FDA's belief that the manufacturer had failed to demonstrate that the device should be reclassified from class III into class II when intended for use in otolaryngology. Further, on October 27, 1980, Stuart M. Strong, M.D., Section consultant, advised the Section that the microsurgical argon laser has had very limited use within otolaryngology other than in otology and that medical and scientific questions remain to be answered concerning use of the device for soft tissue destruction. Thus, FDA has tentatively concluded that the petition should be denied insofar as it requests reclassification of the generic type of device for use in laryngology or general use in otolaryngology.

In FDA's judgment, a microsurgical argon laser intended for medical purposes other than in otology presents a sufficiently serious risk to the health, safety, or welfare of patients and that it therefore is a "significant risk" device (see 21 CFR Part 812). FDA advises, therefore, that any investigational study of such use of the device is required to be conducted in accordance with the investigational device exemption regulations applicable to "significant risk" devices.

References

The following material is on public file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, where it may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cooper Medical Devices Corp., petition and supplements.

2. Coherent, Inc., petition and supplements.

3. FDA evaluation of petitions and supporting data.

4. Summary Minutes: Ear, Nose, and Throat Device Classification Section Meeting, Washington, DC, October 27, and 28, 1980.

5. Summary Minutes: Ear, Nose, and Throat Device Classification Section Meeting, Washington, DC, April 27, and 28, 1981.

6. DiBartolomeo, J. R. and M. Ellis, "The Argon Laser in Otology," *Laryngoscope*, pp. 1786-1798, November 1980.

7. Perkins, R. C., "Laser Stapedotomy for Otosclerosis," *Laryngoscope*, pp. 228-241, February 1980.

After considering the economic consequences of approving these reclassification petitions, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). If FDA approves the petition that requests reclassification of the device when it is intended for use in otology, the petitioners and any other future manufacturer of the device intended for this use would be relieved of the costs of complying with the premarket approval requirements in section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e). The costs the petitioners would incur from reclassification into class II cannot be quantified until performance standards are developed. Because of statutory deadlines (section 513(f)(2) of the act) and requirements in the regulations (21 CFR 860.134(b)(5)), FDA is required to publish this notice in the **Federal Register** as soon as practicable. As authorized by section 8(a)(2) of Executive Order 12291, FDA is publishing in the **Federal Register** this notice without clearance of the Director, Office of Management and Budget. As soon as practicable, FDA will notify that office of the publication of this notice.

Interested persons may, on or before June 10, 1982, submit to the Dockets Management Branch (address above), written comments on this recommendation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the generic name of the device and the docket numbers found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12080 Filed 5-10-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 82N-0125]

Puerto Rico Community Blood Center, Inc.; Opportunity for Hearing on Intent To Revoke U.S. License No. 397

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is giving notice of opportunity for hearing on a proposal to revoke the establishment and product licenses issued to Puerto Rico Community Blood Center, Inc., for the manufacture of Whole Blood (Human). The proposed revocation is based on failure to conform to certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing by June 10, 1982, and any data justifying a hearing must be submitted by July 12, 1982; other interested persons may submit comments on the proposed revocation to the Dockets Management Branch by July 12, 1982.

ADDRESS: Written requests for hearing and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment and product licenses (U.S. License No. 397) issued to Puerto Rico Community Blood Center, Inc., 1824 Fernandez Juncos Ave., Santurce, PR 00909, for the manufacture of Whole Blood (Human). The proposed revocation is based on the failure of the firm and its responsible management to conform to the applicable standards and conditions established in its license and the requirements in Parts 600, 601, 606, 610, and 640 (21 CFR Parts 600, 601, 606, 610, and 640) and failure to comply with § 600.10 (21 CFR 600.10) in that no person exercised control over the establishment in matters relating to compliance with the biologics regulations for a significant period of time. FDA concludes that these actions present an unreasonable hazard to the health of donors and recipients of whole blood collected at the establishment.

An FDA inspection of this firm from July 15 to August 17, 1981, revealed numerous deviations from applicable standards designed to ensure the well-being of blood donors and the continued safety, purity, and potency of the product. FDA concluded that the nature and extent of noncompliance with the applicable standards observed during this inspection also demonstrated a failure of responsible personnel to exercise control over the establishment's operations.

By letter dated September 15, 1981, issued under § 601.6 (21 CFR 601.6), FDA suspended U.S. establishment License No. 397 and the product license for Whole Blood (Human) issued to Puerto Rico Community Blood Center, Inc. The letter detailed the grounds for suspension and instructed the firm to, among other things, cease collecting and shipping Whole Blood (Human) until otherwise notified and to notify the Bureau of Biologics in writing of the specific actions taken to correct all of the deviations noted. The letter also offered the firm the opportunity to request that revocation be held in abeyance pending resolution of the matters involved.

In a telephone conversation on September 25, 1981, the Executive Director of the firm requested that the revocation be held in abeyance. The verbal request for abeyance was confirmed in a letter to FDA dated October 5, 1981, which indicated that the firm's corrective measures would consist of training two identified "responsible heads," purchasing new equipment, meeting with FDA, and remodeling its building. The letter acknowledged the absence of a responsible head (a term in 21 CFR 600.10 that applies to an individual appointed by the firm and approved in advance by FDA, whose responsibilities include assuring compliance with all applicable regulations), and admitted to "much harm" done to the firm by unidentified individuals. In apparent recognition of its deficiencies, the firm, in its letter, requested probation (of its establishment license) for 6 months instead of revocation of its license. The regulations do not provide for "probation" of an establishment license and, irrespective, such an action would be tantamount to reinstatement of the firm's license—an unacceptable alternative. On the basis of a review of the firm's records obtained during the July 15 through August 17, 1981 inspection and the firm's October 1981 letter, FDA has determined that the firm's response is totally inadequate to determine compliance with the applicable regulations and, moreover, demonstrates a lack of understanding of the meaning and intent of the regulations. Accordingly, FDA is proceeding directly to revocation without providing the firm further opportunity to achieve compliance.

In a letter dated January 18, 1982, issued under § 601.5(b) (21 CFR 601.5(b)), FDA provided the firm with due notice of the agency's intent to revoke U.S. License No. 397 and to issue a notice of opportunity for hearing. The letter also instructed the firm to contact the Director, Division of Compliance, Bureau of Biologics within 10 working days of receipt of the letter if its wished to waive the opportunity for a hearing. In a telephone conversation with FDA's San Juan District on March 11, 1982, the Executive Director of the firm responded to FDA's notice of intent to revoke U.S. License No. 397 by declining to waive the right of an opportunity for a hearing. Accordingly, FDA is now issuing a notice of opportunity for hearing on the matter under § 12.21(b) (21 CFR 12.21(b)).

Copies of the letter dated September 15, 1981, detailing the grounds for suspension, the letter dated October 5, 1981, in response to this suspension, and the letter dated January 18, 1982, setting forth the notice and intent to revoke U.S. License No. 397 are on file at the Dockets Management Branch (address above).

The grounds for revocation include, but are not limited to, the following significant deviations found during the July 15 through August 17, 1981 FDA inspection of the firm at the location cited above. Further grounds are set forth in the September 15, 1981 and January 18, 1982 letters.

1. For at least the period June 18, 1981, through July 22, 1981, no person exercised control of the establishment in all matters relating to compliance with the provisions of 21 CFR 600.10(a).

2. Records were not made of each step in the collection, processing, storage, and distribution of each unit of blood and blood components so that all steps

could be clearly traced (21 CFR 606.160(a)(1), for example:

a. Many donor records for units collected between June 18 and July 22, 1981, lacked, among other things, medical histories, vital signs, dates of collection, and/or hemoglobin determinations (21 CFR 606.160(b)(1));

b. Processing records for units BA56791 through BA56861 lacked results of ABO and Rh blood group tests (21 CFR 606.160(b)(2)(i));

c. Although blood components were prepared and distributed, there were no records of component preparation, including relevant dates and times (21 CFR 606.160(b)(2)(ii));

d. There were no records available of tests for the presence of the hepatitis B surface antigen (HB$_s$Ag) for units BA56768 through 56777 and BA56805 through 56861 (21 CFR 606.160(b)(2)(i));

e. Distribution records were incomplete or inaccurate (21 CFR 606.160(b)(3)); and

f. Compatability test/distribution records often contained several different collections and/or expiration dates for the same unit (21 CFR 606.160(a)(1)).

3. Units of Whole Blood (Human) collected in anticoagulant citrate phosphate dextrose solution (CPD) were labeled with expiration dates well in excess of 21 days, some as much as 35 days; and at least one unit collected in CPD was relabeled with collection and expiration dates different from those on the original label (21 CFR 606.120(b)(5) and 610.53(a)).

The Commissioner of Food and Drugs is offering an opportunity for a hearing under § 12.21(a) on the proposed revocation of the establishment and product licenses (U.S. License No. 397) issued to Puerto Rico Community Blood Center, Inc., for the manufacture of Whole Blood (Human). The firm may submit written request for a hearing to the Dockets Management Branch by June 10, 1982, and any data justifying a hearing must be submitted by July 12, 1982; other interested persons may submit comments on the proposed revocation to the Dockets Management Branch by July 12, 1982.

The procedures and requirements governing this notice of opportunity for hearing, other comments, a grant or denial of hearing, a notice of appearance and request for hearing, the submission of data, and information and analyses to justify a hearing are contained in 21 CFR Part 12 and 21 CFR 314.200 (see 21 CFR 601.7(a)).

The failure of a licensee to file timely written appearance and request for a hearing constitutes an election of the licensee not to avail itself to the opportunity for a hearing concerning the proposed license revocation and a waiver of any contentions governing the legal status of the product at issue. Any such product may not thereafter lawfully be marketed, and FDA will initiate appropriate regulatory action to remove such product from the market. Any biological product marketed without an approved license is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears on the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of the license, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the licensee requesting the hearing, making findings and conclusions that justify denying a hearing.

Two copies of any submissions are to be submitted, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371).)

Dated: May 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12879 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81P-0167]

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a temporary permit has been issued to the Bison Canning Co., Inc., to market test tomato juice from concentrate. This action enables the Bison Canning Co. Inc., to initiate its experimental market testing of tomato juice from concentrate.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than August 9, 1982. However, the permit may terminate sooner, depending upon the final action on FDA's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

FOR FURTHER INFORMATION CONTACT: F. Leo Kaufman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: A temporary permit was issued to the Bison Canning Co., Inc., 200 South Main St., Angola, NY 14006, under § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the **Federal Register** of June 2, 1981 (46 FR 29542). The Bison Canning Co., Inc., has requested that the existing temporary permit be extended for the duration of the administrative proceedings pertaining to the proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). Because the firm did not begin market testing under the original permit before the August 31, 1981 deadline, it is necessary that the agency issue a new temporary permit. The permit covers limited interstate marketing tests of tomato juice that deviated from the standard of identity prescribed for tomato juice under § 156.145 (21 CFR 156.145). The product is prepared from tomato paste that complies with the requirements of § 155.191(a)(1) (21 CFR 155.191(a)(1)). The test product contains not less than 5.5 percent by weight of tomato soluble solids, which is equivalent to a single-strength tomato juice normally found in the marketplace. The permit provides for the temporary marketing of a total of 25,000 cases of twenty-four 13½-ounce cans of the product to be distributed in the State of New York, and in Metropolitan Detroit, MI, Cleveland, OH, and Pittsburgh, PA.

The test product is to be packed at the Bison Canning Co., Inc., plant located in Angola, NY.

The principal display panel of the label will state the product name as "Tomato Juice From Concentrate." Each of the ingredients used will be stated on the label as required by the applicable sections of Part 101 (21 CFR Part 101), except that the tomato ingredient complying with the requirements of § 155.191(a)(1) will be declared as "tomato concentrate."

This permit is effective for 15 months beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than August 9, 1982. If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: May 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12878 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

National Professional Standards Review Council; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Council meeting:

Name: National Professional Standards Review Council.

Date and time: May 24, 1982 (10:00 a.m. to 5:00 p.m.); May 25, 1982 (9:00 a.m. to 12 noon).

Place: Multi-Purpose Room, Altmeyer Building, 6401 Security Boulevard, Woodlawn, Maryland 21235.

Purpose of the Meeting: The Council was established to advise the Secretary of Health and Human Services on the administration of Professional Standards Review (Title XI, Part B, Social Security Act). Professional Standards Review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conform to appropriate professional standards for the provision of quality health care. The Council's agenda will include discussion of a variety of issues relevant to the implementation of the PSRO program. On May 3, 1982, a tentative agenda will be made available to the public.

The meeting of the Council is open to the public. Public attendance is limited to space available.

Any member of the public may file a written statement with the Council before, during, or after the meeting. To the extent that time permits, the Council Chairperson will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Daniel E. Nickelson, National Professional Standards Review Council, Health Standards and Quality Bureau, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Md., 21207, (301) 594-0207.

Dated: April 24, 1982.

Daniel E. Nickelson,

National Professional Standards Review Council.

[FR Doc. 82-12759 Filed 5-10-82; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

[Program Announcement 13612-825]

Availability of FY 1982 Financial Assistance for Native Hawaiian Economic Development Project

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Fiscal Year 1982 Financial Assistance for one Native Hawaiian Economic Development Project.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for financial assistance under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, as amended. Eligible applicants are Native Hawaiian organizations as described in the Eligible Applicant Section. Regulations governing this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATES: The closing date for the receipt of applications is July 12, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance, and research, demonstration, and evaluation activities as authorized by the Native American Programs Act.

The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

The Administration for Native Americans bases it program and policy initiatives on the following three program goals:

- To develop or strengthen tribal governments and Native American institutions and local leadership to assure local control and decision making over all resources.
- To foster the development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being, and reduce dependency on social services.
- To support local access to, and coordination of, services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

Project Goal and Objectives

The goal of this program is to increase the economic self-sufficiency of a specific community within the Native Hawaiian population in Hawaii. Financial assistance will be provided to a Native Hawaiian organization to be used as a catalyst for economic growth, for establishing a viable community-based economic institution and/or for increasing Native Hawaiian participation in the economy of the State of Hawaii.

Applicants must indicate that the project will address one or more of the following ANA program objectives:

- Implement economic development projects which provide for more effective use of available land, minerals and other natural resources for the benefit of the Native Hawaiian constituency.
- Develop Native Hawaiian entrepreneurship, and economic development projects which support current and future private enterprise development.
- Develop community controlled enterprises and cooperative ventures.
- Increase employment opportunities for Native Hawaiians.

The following project ideas are offered in the hope that they will stimulate the thinking of applicants as they develop projects and objectives specific to their own community needs:

- Development of a project design to increase Native Hawaiian ownership of business and/or to assist those Native Hawaiian businesses already established;
- Development of a specific Native Hawaiian community-owned enterprise in any of a number of areas. This objective could be oriented toward an agricultural, aquacultural, commercial or industrial project which would increase the economic stability and livelihood of a given community; or
- A project designed to create or increase Native Hawaiian employment opportunities and/or employability of community members. Such a project might, for instance, be related to development of a job/skills bank, matching individual Native Hawaiian skills with available jobs. A subobjective might be to develop an affirmative action plan in conjunction with appropriate State/local agencies and/or private employers.

Project Considerations

In the application, assurance must be provided that the proposed project will in no manner replace or duplicate economic related activities supported by another Federal or State agency, but ANA encourages linkages with Federal and State economic development activities.

The economic feasibility or viability of the project must already be determined and must be clearly presented in the application. Additionally, the application must provide objective(s) for interacting and coordinating with appropriate Federal, State or local governmental agencies or community-based projects with economic development responsibilities.

Since the expected project period will be for two years, all applications should include objectives for each of the two years with clear explanation as to how one year's funding relates to the other.

ANA is interested in funding projects which will result in benefits to the community which extend beyond the project period. The projects developed by the applicant must relate to clearly identified community needs and must be a priority of the applicant organization. The application is expected to reflect significant community involvement and support in the development of project goals, and ensure continuing community input in project implementation. The projects to be funded are expected to be self-sustaining or completed at the end of the project period.

The applicant should also identify by source, purpose and amount, other Federal and non-Federal resources and show how these resources will be coordinated with the proposed project.

The description of the activities in the application to accomplish each objective will be a major consideration by which ANA will review the reasonableness of estimated costs.

We encourage applicants, where feasible, to develop their projects jointly with other Native Hawaiian organizations, or colleges, universities, community agencies or business and industry interests that result in multi-organizational support or the potential of future joint funding.

Eligible Applicants

Any non-profit Native Hawaiian organization in Hawaii governed by an openly and publicly elected board of at least 51% of Native Hawaiians, and not presently receiving direct ANA funding, is eligible to apply for a grant under this program announcement. Island Centers are eligible applicants.

Available Funds

ANA expects to award $200,000 in Fiscal Year 1982 for one grant award under this program announcement. The budget period will be 12 months and the project period will be two (2) years.

Refunding after the first year will depend upon the grantee's satisfactory progress, the availability of funds, the grantees' compliance with the Native American Program Regulations, and the submission of a quality application in response to ANA's FY '83 Funding Guidance.

However, the applicant must note that expected funding for the second year will be less than the $200,000 for the first year and must analyze and propose costs accordingly.

Grantees Share of Project

Grantee must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contributions must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as the application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730; Attention: No. 13612–825.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit.

The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Program Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program

annoucement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

1. The overall application is consistent with the ANA program objectives as described in this program announcement and reflect efforts directed towards achieving self-sufficiency for the constituent community. (10 points)

2. Applicant's objectives are quantifiable, measurable, and are supported by and interrelated to the activities, budget, and personnel components of the application. If training and technical assistance is required to support the objectives/activities, the T/TA plan must detail tasks specifying resources available and/or required, person-days allocated, time and cost. (20 points)

3. That the proposed activities are defined, detailed, in support of the objectives and, if well executed, will achieve the intended results. (14 points)

4. Applicant's objectives reflect community priorities as evidenced by references to the applicant's short- and long-range plans and by the involvement of the community in the development of the project objectives. (10 points)

5. Applicant's budget is presented in detail, with complete explanations and justifications of line items and is of reasonable cost to the government. (15 points)

6. Project personnel are or will be well qualified to achieve project objectives as demonstrated by resumes and/or position descriptions. (7 points)

7. Applicant demonstrates the necessary management and administrative capabilities in such areas as financial, personnel, property, travel, etc., to justify receipt of Federal funds and to ensure accountability of funds, and that the applicant has adequate facilities. (4 points)

8. Applicant demonstrates that at the end of the 2-year project period, the project will be (1) completed, (2) self-sustaining, or (3) continuing with non-ANA support. If the project will continue beyond the project period, the applicant describes their plan for coordination of non-ANA resources. (10 points)

9. That the project is economically feasible or viable as presented in the application. (10 points)

Closing Date for Receipt of Application

The closing dates for receipt of all applications under this program announcement are July 12, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Applications recieved after July 12, 1982 because they were postmarked or hand-delivered too late or addressed incorrectly will not be accepted and will be returned to the applicant without consideration.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 28, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 5, 1982.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 82–12870 Filed 5–10–82; 8:45 am]

BILLING CODE 4130–01–M

[Program Announcement 13612–826]

Availability of FY 1982 Financial Assistance for Native American Projects

AGENCY: Office of Human Development Services, DHHS.

SUBJECT: Announcement of Available Fiscal Year 1982 Financial Assistance for Native American Projects.

SUMMARY: The Administration for Native Americans announces that applications are being accepted for financial assistance under section 803 of the Native American Programs Act of 1974, Pub. L. 93–644, as amended. Eligible applicants are indian tribes and Native American groups and organizations as described in the Eligible Applicant Section. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATE: The closing date for receipt of all applications is July 12, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and native Hawaiians through financial assistance, training and technical assistance, and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

The Administration for Native Americans bases its program and policy initiatives on the following three program goals:

(1) To develop or strengthen tribal governments and Native American institutions and local leadership to assure local control and decision making over all resources.

(2) To foster the development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being, and reduce dependency on social services.

(3) To support local access to, and coordination of, services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

The overall strategy followed by ANA in the accomplishment of these goals is centered on supporting tribal governments and other Native American organizations in the development and implementation of community-based, long-term social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This strategy is based on two fundamental principles:

(1) That the local community and its leadership are responsible for determining their own needs, setting priorities, planning and implementing programs aimed at satisfying those needs; the unique mix of socio-economic, political and cultural factors operating at each community make this a necessity; only the local community is in a position to apply its own cultural values, and weigh the trade-offs in deciding on various strategies and programs which invariably have socio-cultural as well as economic consequences.

(2) That economic and social development are interrelated, and that development in one area should be balanced with development in the other, in order to enhance self-sufficiency. Without a careful balance of the two, serious dislocations may result that can jeopardize all of the community's development efforts. It is now an accepted premise that an expansion of social services, without a concomitant strengthening of incentives for employment and economic development, will invariably lead to greater dependency; conversely, inadequate social services can seriously impede efforts aimed at increased productivity and economic development.

The fundamental task which Native American communities face is that of building an enduring social and economic foundation in keeping with local needs, resources and cultural values. This goal is impeded by underdevelopment or inaccessibility of human, natural and financial resources at all levels of the public and private sector—as these resources relate to Native American needs. The problem of social and economic underdevelopment is characterized by:

- Inadequate development of tribal governments, community institutions and Native American leadership to assume the role they must plan in controlling and directing development toward social and economic self-sufficiency;
- Inaccessible, fragmented and uncoordinated services at all levels of government—tribal, state and federal—resulting in a social service base for Native Americans which is insufficient to support and advance economic development;
- Non-existent or infrequent linkages with the private sector economy and social service systems; and
- Undeveloped or underdeveloped local economies so lacking in diversification that they cannot provide the jobs, the economic stability or the foundation for economic progress which would increase individual productivity and reduce dependence on welfare services.

Project Goals and Objectives

The goal of this program announcement is to assist Indian tribes and local, community-based Native American organizations to develop and implement a joint effort with the private sector segment of the community to undertake a project(s) which will increase the social and economic self-sufficiency of the Native American community. The private sector refers to all non-government sectors in the community and has two sub-sectors. The first one is the business sector with a basic setting in the commercial marketplace, operating for profit through competitive economics; the second is the voluntary sector, dependent largely on voluntary donations of time and money, operating through persuasion and social and moral incentives. The business sector encompasses major corporations, small businesses, and industry associations, such as Chambers of Commerce, National Association of Manufacturers. The voluntary sector is comprised of foundations, unions, professional organizations (i.e., American Nurses Association), civic, fraternal and denominational organizations (i.e., Kiwanis, Junior League, United Methodist Church) and organizations whose members provide direct services (i.e., American Hospital Association, National League for Nursing).

ANA considers a joint effort to be a partnership between two or more parties where each agrees to contribute its own distinctive talents/resources to a common enterprise. By stimulating private sector involvement in Native American communities, ANA seeks to reduce Native Americans' dependency on public services, encourage local control of resources and promote economic growth. ANA is interested in funding alternative strategies, undertaken jointly by Native Americans and the private sector, which can best assist Native American communities and tribal governments achieve a *balanced* social and economic development, overcome economic isolation, build community-based and diversified local economies, and maximize the utilization of the existing capacities/resources (human, financial, natural) at the community level for development purposes.

Applicants, in the development and implementation of a partnership arrangement with the private sector, must indicate that the proposed project(s) will address one or more of the following ANA program objectives:

- Achieve effective use of available land, minerals and other natural resources for the benefit of the Native American constituency.
- Achieve effective and efficient management, planning, and coordination of economic development projects.
- Develop Native American entrepreneurship, and economic development projects which support current and future private enterprise development.
- Develop community controlled enterprises and cooperative ventures.
- Increase employment opportunities for Native American.
- Obtain the legal capabilities necessary for economic development in the Native American community.
- Increase the accountability and responsiveness of social service delivery organizations to the Native American constituency.
- Develop or access the resources, services, and/or benefits which are necessary for meeting the health, education, and social needs of the Native American constituency in a culturally appropriate way.

- Achieve comprehensive, effective and efficient management, planning, and coordination of social development services and programs.

ANA is interested in funding initiatives or projects where the private sector partner assumes an active role in the development and implementation of the project, not merely contributes money to the effort. ANA is seeking projects where the private sector plays a substantive role. The following project ideas are offered in the hope that they will stimulate the thinking of applicants as they develop projects and objectives specific to their own community needs.

- A partnership where one party provides training and the other party provides guaranteed employment.
- A partnership in which one party provides institutional infrastructures, and/or legal and regulatory support and the other party provides the technical expertise and resources necessary for a common effort.
- A partnership that might include the exchange of technical, managerial, legal, administrative expertise.
- A partnership in which one party provides access to capital and the other party provides market guarantees.
- A Native American applicant may act as a catalyst to bring about a partnership between two parties in the community in order to increase Native American employment, widen/increase the economic and/or tax base of the community, or in other ways increase the Native American community's self-sufficiency.

Contact Person

Applicants who wish further clarification of this announcement may call Ms. Janice Phalen, ANA, Washington, D.C., (202) 245–7730.

Eligible Applicants

Indian tribes, community-based Indian urban centers, rural, nonreservation Indian groups, Native American nonprofit organizations serving one or more specifically defined Native American communities, Native Hawaiian community-based organizations, and Alaskan Native nonprofit regional corporations are eligible to apply for a grant under this program announcement.

Available Funds

ANA expects to award $300,000 in Fiscal Year 1982 under this program announcement. It is anticipated that 4–8 grant awards will be made with a range of $40,000 to $50,000 per award. The budget period will be 12 months and the project period will be one year.

Grantee Share of Project

Grantees must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contributions must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as the application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730; Attention: No. 13612–826.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit.

The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants with the exception of Federally recognized tribes, who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

1. The overall application is consistent with the ANA program announcement and reflects efforts directed towards achieving self-sufficiency for the constituent community. (20 points)

2. Applicant's objectives are quantifiable, measurable, and are supported by and interrelated to the activities, budget, and personnel components of the application. If training and technical assistance is required to support the objectives/activities, the T/TA plan details tasks specifying resources available and/or required, person-days allocated, time and cost. (20 points)

3. Applicant's proposed activities are defined, detailed, in support of the objectives and, if well executed, will achieve the intended results. (10 points)

4. Applicant's objectives reflect community priorities as evidenced by references to the applicant's short- and long-range plans and by the involvement of the community in the development of the project objectives. (10 points)

5. Applicant's budget is presented in detail, with complete explanations and justifications of line items and is of reasonable cost to the government. (10 points)

6. Project personnel are or will be well qualified to achieve project objectives as demonstrated by resumes and/or position descriptions. (15 points)

7. Applicant demonstrates the necessary management and administrative capabilities in such areas as financial, personnel, property, travel, etc. to justify receipt of Federal funds and to ensure accountability of funds, and that the applicant has adequate facilities. (5 points)

8. The applicant evidences active involvement by the private sector; projects proposed are viable, feasible, and are supported by the private sector. (10 points)

Closing Date for Receipt of Application

The closing date for receipt of all applications under this program announcement is July 12, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Potal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 26, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 5, 1982.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 82-12871 Filed 5-10-82; 8:45 am]
BILLING CODE 4130-01-M

[Program Announcement 13612-823]

Availability of FY 1982 Financial Assistance for Native American Projects

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of Availability of Fiscal Year 1982 Financial Assistance for Native American projects.

SUMMARY: The Administration for Native Americans announces that applications are being accepted for financial assistance under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644 as amended. Eligible applicants are Indian Urban Centers and rural non-reservation tribes. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATE: Closing date for receipt of all applications under this program announcement is July 12, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

In order to accomplish its mission, ANA has established three broad program goals as follows:

(1) To develop or strengthen tribal and/or community institutions and Native American leadership to assure local control and decision-making over all resources.

(2) To foster development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being and reduce dependency on social services.

(3) To support efforts to develop local access to and coordination of projects and services which are necessary to achieve *balanced* social and economic development, which safeguard the health and well-being of Native American people, and which are essential to a thriving self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This strategy is based on two fundamental principles:

(1) That the local community and its leadership are responsible for determining their own needs, setting priorities, planning and implementing programs aimed at satisfying those needs; the unique mix of socio-economic, political and cultural factors operating in each community make this a necessity; only the local community is in a position to apply its own cultural values, and weigh the trade-offs in deciding on various strategies and programs which invariably have socio-cultural as well as economic consequences.

(2) That economic and social development are interrelated, and that development in one area should be balanced with development in the other, in order to enhance self-sufficiency. Without a careful balance of the two, serious dislocations may result that can jeopardize all of a community's development efforts. It is now an accepted premise that an expansion of social services, without a concomitant strengthening of incentives for employment and economic development, will invariably lead to greater dependency; conversely, inadequate social services can seriously impede efforts aimed at increased productivity and economic development.

The fundamental task which Native American communities face is that of building an enduring social and economic foundation in keeping with local needs, resources and cultural values. This goal is impeded by underdevelopment or inaccessibility of human, natural and financial resources at all levels of the public and private sector—as these resources relate to Native American needs. The problem of social and economic underdevelopment is characterized by:

- Inadequate development of tribal governments, community institutions and Native American leadership to assume the role they must play in controlling and directing development toward social and economic self-sufficiency;
- Inaccessible, fragmented and uncoordinated services at all levels of government—tribal, state and federal—resulting in a social service base for Native Americans which is insufficient to support and advance economic development;
- Non-existent or infrequent linkages with the private sector economy and social service systems; and
- Undeveloped or underdeveloped local economies so lacking in diversification that they cannot provide the jobs, the economic stability or the foundation for economic progress which would increase individual productivity and reduce dependence on welfare services.

Project Goals and Objectives

The goal of this program announcement is to provide financial assistance to urban Indian organizations and rural non-reservation Indian organizations to join together with local governments (city and county) to develop and carry out joint efforts in planning and/or delivering human services and in creating a better economic environment for Indians in the community.

Many of the social and economic development efforts undertaken by and for Indians are not as effectively linked with similar efforts underway in cities/counties as they could be. This results from cultural and historic traditions, as well as the separate administration of many Indian grant-in-aid prgrams. In many instances neither planning nor programmatic efforts are coordinated. As a result, many cities/counties do not take full advantage of information and expertise that rests with the Indian organizations, many local Indian organizations do not take full advantage of the resources that may be available to them, and there is overlap and duplication of efforts in many program areas.

Some local officials are not sufficiently aware of their Indian constituency, of its needs, and of its resources. Indians have not always effectively sought out services and assistance from city or community agencies. To begin to link Indian efforts in a city/county with other local efforts, local officials require more information about the urban Indian population and Indian organizations need to strengthen their linkages with local government officials and agencies. Under a joint venture, both local governments and Indian agencies may need initially to assess Indian social and economic service needs and determine the costs of those services. In addition, many cities need information on the resources available to serve the Indian population.

- It is anticipated that, as linkages of programs are undertaken, Indian needs and resources will be integrated with those of the rest of the community in the planning process.
- There is a need to develop joint Indian/local government efforts to coordinate planning, programming and budgeting of social programs.
- There is need to find mechanisms to involve Indian organizations in local economic development efforts and to assist them to build relationships with the private sector.

Under this program announcement an applicant must submit as part of the application a formal agreement between the applicant and a local government official and/or agency to address one or more of the following ANA program objectives:

- Achieve effective and efficient management, planning, and coordination of economic development projects.
- Develop Native American entrepreneurship, and economic development projects which support current and future private enterprise development.
- Develop Native American community controlled enterprises and cooperative ventures.
- Increase employment opportunities for Native Americans.
- Increase the accountability and responsiveness of social service delivery organizations to the Native American constituency.
- Develop or access the resources, services, and/or benefits which are necessary for meeting the health, education, and social needs of the Native American constituency in a culturally appropriate way.
- Achieve more comprehensive, effective and efficient management, planning, and coordination of social development services and programs.

The following project ideas are provided in the hope that they will stimulate the thinking of applicants as they develop projects and objectives specific to their own community needs. ANA wishes to make clear that this list is offered simply to provide suggestions. It is not intended to be a total list of project ideas.

- Operating human service programs that reduce duplication;
- Local/city affirmative action plans which address urban/off-reservation Indians;
- Joint training, apprenticeship or intern programs with the private sector and/or government agencies;
- Work study programs with colleges and universities;
- Increasing city procurement of services and goods from Indian vendors;
- Creating or strengthening Indian-owned businesses; and
- Utilizing Indians for outreach efforts of the local government agency.

Additional Information

Concurrent with this program announcement ANA is publishing Program Announcement 13612–824, with the purpose of funding one grant award to a national Indian organization representative of urban and rural/non-reservation Indian interests. This grantee will provide for exchange of information among the grantees of 13612–823 and coordinate and provide assistance to the grantees and local governments in undertaking these joint ventures. It is to be noted that the national grant will not be operating until after the individual grants to urban centers and/or off-reservation tribes have been awarded.

It should be noted that ANA views the resultant grant awards of this announcement as essentially "seed money" for the projects. The project development should not be limited by the size of the grant award ($40,000 to $60,000) or by the project period (12 months). ANA expects that projects funded under this announcement will continue to benefit the community beyond the project period.

Conditions for Funding

The applicant must submit in the application a signed formal agreement between the Indian organization and the local government official or agency to undertake this joint venture. If the application does not contain the agreement, the application will be

considered non-conforming and will not be reviewed.

The costs incurred by the local government for staff time and project related direct costs may be reimbursed through the ANA grant, not to exceed 50% of the Federal share of the grant award. Therefore, an appropriate sub-grant or contractual arrangement for reimbursement between the applicant and the local government should be included in the application.

Contact Person

Applicants who wish further clarification of this announcement may call Ms. Janice Phalen, ANA, Washington, D.C. (202) 245–7730.

Project Consideration

ANA is interested in funding projects which will result in benefits to the community which extend beyond the project period. The projects developed by the applicant must relate to clearly identified community needs and must be a priority of the applicant tribe/organization, as evidenced through long-range goals, comprehensive plans, community profiles.

The applicant should also identify by source, purpose and amount, other Federal and non-Federal resources and show how these resources will be coordinated with the proposed project.

The description of the activities in the application to accomplish each objective will be a major consideration by which ANA will review the reasonableness of estimated costs.

Applicants must have an adequate system for evaluating their progress toward meeting goals and objectives.

Eligible Applicants

Multi-purpose Indian urban centers and non-profit, rural, nonreservation tribes and groups are eligible to apply for a grant award under this announcement. Federally recognized tribes are *not* eligible applicants.

Available Funds

ANA expects to award $350,000 in Fiscal year 1982 for new projects under this program announcement. It is anticipated that 6–7 grant awards will be made with a range of $40,000 to $60,000 per award.

The project period for each grant will be twelve (12) months.

Grantee Share of Project

Grantees must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contribution must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as an application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730; Attention: No. 13612–823.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit.

The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Program Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and the program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

1. The overall application is consistent with the ANA program objectives as described in this program announcement and reflect efforts directed towards achieving self-sufficiency for the constitutent community. (15 points)

2. Applicant's objectives are quantifiable, measurable, and are supported by and interrelated to the activities, budget, and personnel conmponents of the application. If special assistance is required to support the objectives/activities, the T/TA plan must detail tasks, specifying resources available and/or required, person-days allocated, time and cost. (15 points)

3. Applicant's proposed activities are defined, detailed, in support of the objectives and, if well executed, will achieve the intended results. (15 points)

4. Applicant's objectives reflect community priorities as evidenced by references to the applicant's short- and long-range plans. (5 points)

5. Applicant's budget is presented in detail, with complete explanations and

justifications on line items and is of reasonable cost to the government. (15 points)

6. Project personnel are or will be well qualified to achieve project objectives as demonstrated by resumes and/or position descriptions, and the applicant has adequate facilities for the project. (7 points)

7. Applicant's plan for monitoring and evaluation clearly describes how progress toward meeting the project objectives will be measured. (8 points)

8. Applicant describes their plan for a coordinated use of current non-ANA and future non-ANA resources for the project which will support continued social and economic development for the constituent community. (5 points)

9. That the agreement between the applicant and local government clearly indicates the ways in which the responsibility to actively develop a stronger working relationship between the two parties is to be carried out. (15 points)

Closing Date for Receipt of Application

The closing date for receipt of all applications under this program announcement is July 12, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 28, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 5, 1982.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 82-12888 Filed 5-10-82; 8:45 am]
BILLING CODE 4130-01-M

[Program Announcement 13612-824]

Availability of FY 1982 Financial Assistance for Native American Project

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of Availability of Fiscal Year 1982 Financial Assistance for a Native American project.

SUMMARY: The Administration for Native Americans announces that applications are being accepted for financial assistance under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644 as amended. Eligible applicants are national Indian organizations representing urban Indian centers and rural/nonreservation Indian tribes and groups. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATE: Closing date for receipt of all applications under this program announcement is July 12, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance, and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

In order to accomplish its mission, ANA has established three broad program goals as follows:

(1) To develop or strengthen tribal and/or community institutions and Native American leadership to assure local control and decision-making over all resources.

(2) To foster development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being and reduce dependency on social services.

(3) To support efforts to develop local access to and coordination of projects and services which are necessary to achieve *balanced* social and economic development, which safeguard the health and well-being of Native American people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This strategy is based on two fundamental principles:

(1) That the local community and its leadership are responsible for determining their own needs, setting priorities, planning and implementing programs aimed at satisfying those needs; the unique mix of socio-economic, political and cultural factors operating in each community make this a necessity; only the local community is in a position to apply its own cultural values, and weigh the trade-offs in deciding on various strategies and programs which invariably have socio-cultural as well as economic consequences.

(2) That economic and social development are interrelated, and that development in one area should be balanced with development in the other, in order to enhance self-sufficiency. Without a careful balance of the two, serious dislocations may result that can jeopardize all of a community's development efforts. It is now an accepted premise that an expansion of social services, without a concomitant strengthening of incentives for employment and economic development, will invariably lead to greater dependency; conversely, inadequate social services can seriously

impede efforts aimed at increased productivity and economic development.

The fundamental task which Native American communities face is that of building an enduring social and economic foundation in keeping with local needs, resources and cultural values. This goal is impeded by underdevelopment or inaccessibility of human, natural and financial resources at all levels of the public and private sector—as these resources relate to Native American needs. The problem of social and economic underdevelopment is characterized by:

- Inadequate development of tribal governments, community institutionals and Native American leadership to assume the role they must play in controlling and directing development toward social and economic self-sufficiency;
- Inaccessible, fragmented and uncoordinated services at all levels of government—tribal, state and federal—resulting in a social service base for Native Americans which is insufficient to support and advance economic development;
- Non-existent or infrequent linkages with the private sector economy and social service systems; and,
- Undeveloped or underdeveloped local economies so lacking in diversification that they cannot provide the jobs, the economic stability or the foundation for economic progress which would increase individual productivity and reduce dependence on welfare services.

Project Goals and Objectives

The goal of this program announcement is to provide assistance to a national Indian organization to work with urban Indian organizations and rural non-reservation Indian organizations and local governments to carry out joint efforts in planning and/or delivering human services and in creating a better economic environment for Indians in the community.

Many of the social and economic development efforts undertaken by and for Indians are not effectively linked with similar efforts which serve non-Indian populations in the community. In many instances neither planning nor programmatic efforts are coordinated. As a result, many cities do not take full advantage of information and expertise that rests with the Indian organizations, many local Indian organizations do not take full advantage of the resources that may be available to them, and there is overlap and duplication of efforts in many program areas.

Some local officials are not sufficiently aware of their Indian constituency, of its needs, and of its resources. Indians have not always effectively sought out services and assistance from city or community agencies. To begin to link Indian efforts in a city with other local efforts, city officials require more information about the urban population and Indian organizations need to strengthen their linkages with local government officials and agencies. Under a joint venture, both local governments and Indian agencies may need initially to assess Indian social and economic service needs and determine the costs of those services. In addition, many cities need information on the resources available to serve the Indian population.

- It is anticipated that, as linkages of programs are undertaken, Indian needs and resources will be integrated with those of the rest of the community in the planning process.
- There is a need to develop joint Indian/local government efforts to coordinate planning, programming and budgeting of social programs.
- There is a need to find mechanisms to involve Indian organizations in local economic development efforts and to assist them to build relationships with the private sector.

Concurrently with Program Announcement 13612–823, under which grant awards will be made to Indian centers and Indian tribes to undertake specific joint ventures with local government agencies, ANA is interested in funding one national grant to provide oversight assistance to those Indian grantees and local governments and to disseminate information among the grantees and other interested Indian organizations and local governments about the efforts being undertaken as a result of Program Announcement 13612–823. ANA hopes the efforts of the national grantee will encourage more local and perhaps state governments to enter effective joint efforts with their Indian constituencies.

Under this program announcement the national Indian organization applicant must indicate that the proposed project will assist the grantees of 13612–823 to address one or more of the following ANA program objectives:

- Achieve effective and efficient management, planning, and coordination of economic development projects.
- Develop Native American entrepreneurship, and economic development projects which support current and future private enterprise development.
- Develop Native American community controlled enterprises and cooperative ventures.
- Increase employment opportunities for Native Americans.
- Increase the accountability and responsiveness of social service delivery organizations to the Native American constituency.
- Develop or access the resources, services, and/or benefits which are necessary for meeting the health, education, and social needs of the Native American constituency in a culturally appropriate way.
- Achieve more comprehensive effective and efficient management, planning, and coordination of social development services and programs.

The projects which the applicant may undertake to achieve the above ANA program objectives *must include*, but are not limited to the following:

- Identify exemplary Indian/local government practices.
- Assist Indian organizations to adopt exemplary coordinative practices.
- Disseminate to Indian organizations information regarding exemplary coordination practices via publications, workshops, etc.
- In cooperation with city governments, and human services and health agencies, bring together Indian leaders and city officials to plan and carry out activities that increase Indian participation in services, employment and in the formulation of policies and procedures.
- Inform mayors and city human service officials of their responsibilities to provide services to Indians notwithstanding the right to Indians to IHS, BIA, Indian CETA or other federal Indian programs.
- Promote city/urban Indian cooperation through training sessions, publication, and annual conferences.
- Bring together Indian leaders and city officials to plan and carry out activities that increase Indian participation in services, employment, and in the formulation of policies and procedures.
- Identify exemplary city government practices that promote Indian participation in services and in policy boards.
- Develop a summary of the efforts of the grantees of 13612–823 to disseminate among the grantees and interested parties. The summary should analyze the impact of the projects under 13612–823 on the Native American communities.
- Determine if, as a result of the national organization's efforts, similar

projects have been undertaken in other communities without ANA support.

Contact Person

Applicants who wish further clarification of the program aspects of this announcement may call Ms. Janice Phalen, ANA, Washington, D.C. (202) 245–7730.

Eligible Applicants

National Indian non-profit organizations representing Indian urban centers and rural/non-reservation Indian tribes and groups are eligible to apply for a grant award under this announcement. National Indian organizations must have the comprehensive direct access to mayors and local governments necessary for the purpose of this grant award, either through their own experience or through a delegate agency or contractual agreement with a national organization representing mayors and/or city/local governments.

The applicant, or subcontractors, if appropriate, must demonstrate that it has an existing network and regular communications, through vehicles such as meetings and publications, with mayors and lay city officials such as city human service directors, city health officers, CETA prime sponsors and community development directors. In addition, the applicant organization must show it has experience in providing technical assistance to these local officials, that it has existing linkages with organizations representing urban and rural/non-reservation Indians, and that it has experience in carrying out similar national initiatives with local off-reservation Indian community-based organizations.

Available Funds

ANA expects to award $150,000 in Fiscal Year 1982 for one grant under this program announcement. The project period for the grant will be 15 months.

Grantee Share of Project

The grantee must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to plant, equipment, and services. The contribution must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related.

Under certain circumstances, some or all of the non-Federal share of the projects may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as an application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 254–7730; Attention: to No. 13612–824.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit. The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Program Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and other use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirement.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and the program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

1. The overall application is consistent with the ANA program objectives as described in this program announcement. (15 points)

2. Applicant's objectives are quantifiable, measurable, and are supported by and interrelated to the activities, budget, and personnel components of the application. (25 points)

3. Applicant's proposed activities are defined, detailed, in support of the objectives and, if well executed, will achieve the intended results. (15 points)

4. Applicant's budget is presented in detail, with complete explanations and justifications of line items and is of reasonable cost to the government. (15 points)

5. Project personnel are or will be well qualified to achieve project objectives as demonstrated by resumes and/or position descriptions, the the applicant has adequate facilities for the project. (15 points)

6. The applicant organization and the sub/grantee (contractor) evidence their capability to undertake the project objectives as described in the program announcement. (15 points)

Closing Date for Receipt of Applications

The closing date for receipt of all applications under this program announcement is July 12, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service

shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Servcie. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 26, 1982.

A. David Lester,

Commissioner Administration for Native Americans.

Approved: May 5, 1982.

Jaime L. Manzano,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 82-12660 Filed 5-10-82; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Assessment of Medical Technology

The Public Health Service (PHS) through the Office of Health Research, Statistics, and Technology (OHRST) announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness of Photoplethysmography for Diagnosis of Peripheral Artery Disease. The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government.

PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHRST with information relevant to this assessment should do so in writing no later than August 9, 1982. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to: Medical and Scientific Evaluation Staff, Office of Health Research, Statistics, and Technology, Room 17A40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Dennis J. Cotter, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: May 3, 1982.

Harold Margulies,

Acting Deputy Assistant Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 82-12672 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-17-M

Assessment of Medical Technology

The Public Health Service (PHS) through the Office of Health Research, Statistics, and Technology (OHRST) announces that it is coordinating an assessment of what is known of the safety and clinial effectiveness of Endothelial Cell Photography. The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government.

PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHRST with information relevant to this assessment should do so in writing no later than August 9, 1982. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to: Medical and Scientific Evaluation Staff, Office of Health Research, Statistics, and Technology, Room 17A40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Dennis J. Cotter, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: May 3, 1982.

Harold Margulies,

Acting Deputy Assistant Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 82-12673 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-17-M

Assessment of Medical Technology

The Public Health Service (PHS) through the Office of Health Research, Statistics, and Technology (OHRST) announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness of Liver Transplantation as a Treatment for Liver Disease. The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government.

PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHRST with information relevant to this assessment should do so in writing no later than August 9, 1982. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to: Medical and Scientific Evaluation Staff, Office of Health Research, Statistics, and Technology, Room 17A40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Dennis J. Cotter, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: May 3, 1982.

Harold Margulies,

Acting Deputy Assistant Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 82-12874 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-17-M

Assessment of Medical Technology

The Public Health Service (PHS) through the Office of Health Research, Statistics, and Technology (OHRST) announces that it is coordinating an assessment of what is known of the safety and clinical effectiveness of Photocoagulation Treatment for Macular Degeneration. The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government.

PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHRST with information relevant to this assessment should do so in writing no later than August 9, 1982. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to: Medical and Scientific Evaluation Staff, Office of Health Research, Statistics, and Technology, Room 17A40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Dennis J. Cotter, Health Science Analyst, at the above address or by telephone (301) 443-4090.

Dated: May 3, 1982.

Harold Margulies,

Acting Deputy Assistant Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 82-12875 Filed 5-10-82; 8:45 am]

BILLING CODE 4160-17-M

Privacy Act of 1974; Notification of New Routine Uses

AGENCY: Public Health Service, HHS.

ACTION: Notification of new routine uses permitting disclosure of information from Privacy Act system of records 09-25-0099, "Clinical Research: Patient Medical Records," HHS/NIH/CC.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish three new routine uses and to modify two existing routine uses permitting disclosure of information from Privacy Act system of records 09-25-0099, "Clinical Research: Patient Medical Records," HHS/NIH/CC.

The National Institutes of Health (NIH) Clinical Center maintains this system of records to document patient care and provide for clinical research. The new and modified routine uses are compatible with and will facilitate accomplishment of these established purposes.

In addition, NIH is deleting an existing routine use which has become obsolete.

PHS invites interested persons to submit comments on the proposed routine uses on or before June 10, 1982.

DATE: NIH will adopt the new routine uses without further notice on June 10, 1982, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection during office hours, Monday through Friday, in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205, or call 301-496-4606.

SUPPLEMENTARY INFORMATION: The new and modified routine uses are wholly compatible with the purposes of this system. Those purposes are to document treatment of patients in the NIH Clinical Center and to provide data for clinical research.

NIH is modifying an existing routine use which allows for disclosure to HHS grantees, contractors and collaborators. The modification clarifies when and why such disclosures are made.

NIH is also modifying a routine use permitting release of information by the Clinical Center Social Work Department. The modification specifies that the Social Work Department makes such disclosures when needed to assist the families of patients as well as the patients themselves. This modification is desirable because in some cases illness creates serious financial or other problems for the family of a patient. In such cases disclosure of some information from the medical record may be necessary to establish that the family is qualified to receive assistance or to indicate what kind of assistance is needed. This modification was inadvertently included in the annual republication of HHS systems of records in the **Federal Register** of October 27, 1981. It is being republished at this time to allow for public comment.

The first two proposed new routine uses are directly related to patient care and clinical research. The first one will allow the Clinical Center to disclose medical information to physicians or agencies who refer patients to assist them in continuing treatment of the patients after discharge from the Clinical Center. The second one will allow for disclosure to tumor registries which maintain information on tumor occurrence for research purposes.

The third proposed new routine use will allow the Clinical Center to disclose medical information to the Joint Commission on Accreditation of Hospitals for audit or review of medical care or medical record-keeping. Thus these disclosures will be in the interest of patients.

NIH is also deleting a routine use which allowed disclosure of research information to the Smithsonian Science Information Exchange, Inc. (SSIE). This routine use has become obsolete because the SSIE has been discontinued.

The system notice was last published in the **Federal Register** on October 27, 1981 (46 FR, p. 52824). We are republishing the entire notice to incorporate the proposed new and modified routine uses, and to update the "Safeguards" section of the notice. This last change is technical in nature and does not require a public comment period.

Dated: April 27, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-25-0099

SYSTEM NAME:

Clinical Research: Patient Medical Records. HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 1N116, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients. Some individuals not registered as patients but seen in Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248.

PURPOSE(S):

1. To provide a continuous history of the treatment afforded individual patient in the Clinical Center;

2. To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF THE USERS AND THE PURPOSES OF SUCH USES:

Information may be used to respond to Congressional inquiries for constituents concerning admission to NIH Clinical Center.

Social Work Department may give pertinent information to community agencies to assist patients or their families.

Information regarding diagnostic problems, or having unusual scientific value may be disclosed to HHS contractors, grantees, collaborators or to appropriate medical or medical researcher organizations in connection with treatment of patients or in order to accomplish the research purpose of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to protect such records from improper disclosure.

Referring physicians receive medical information for continuing patient care after discharge.

Medical information may be disclosed to tumor registries for maintenance of health statistics regarding tumor occurrence.

Records may be disclosed to representatives of the joint commission on Accreditation of Hospitals conducting inspections to ensure that the quality of Clinical Center medical record-keeping meets established standards.

Certain infectious diseases are reported to State Government as required by law.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employer of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice of other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche and computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number and patient name.

SAFEGUARDS:

(1) Authorized Users: Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals participating in patient care or for whom a specific authorization is on file.

(2) Physical Safeguards: All record facilities are locked when system personnel are not present.

(3) Procedural Safeguards: Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific.

These safeguards were developed in accordance with chapter 45–13, Safeguarding Records Contained in Systems of Records, of the HHS General Administration Manual, corresponding chapter PHS hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–E–22. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Medical Record Department, Building 10, Room 1N116, 9000 Rockville Pike, Bethesda, Md. 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative. The representative may be a physician, or other health professional, or other responsible individual, who has indicated that he or she is willing to review the record and inform the subject individual of its contents at the representative's discretion. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative. The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate in writing a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sougnt.

CONTESTING RECORD PROCEDURES:

Contact the system manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12739 Filed 5-10-82; 8:45 am]

BILLING CODE 4110-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-82-1127]

Availability of Documents Issued by Participation and Compliance Division to General Public

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is giving notice that certain documents issued by its Participation and Compliance Division will now be made available to members of the general public upon request.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Jon Will Pitts, Director, Participation and Compliance Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone number (202) 755-6776. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The following documents issued by the Participation and Compliance Division will be available to any interested person upon submission of a written request addressed to Jon Will Pitts, Director, Participation and Compliance Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410:

1. Notices of proposed debarment issued pursuant to 24 CFR 24.7.
2. Notices of suspension issued pursuant to 24 CFR 24.16.
3. Notices of determination issued pursuant to 24 CFR 200.239.
4. Requests for reconsideration or for a hearing made pursuant to 24 CFR 200.241.
5. Requests for hearing made pursuant to 24 CFR 200.243.

These documents will be available for the three month period preceding the request. Charges will be assessed at 10 cents per page for copies of the documents; any assessment below $5.00 will be waived.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Dated: May 6, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12704 Filed 5-10-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mescalero Apache Tribe; Plan for the Use and Distribution of Mescalero Apache Tribe Judgment Funds in Docket 22-G Before the United States Court of Claims

April 22, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 27, 1981, in satisfaction of the award granted to the Mescalero Apache Tribe in United States Court of Claims Docket 22-G. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated October 23, 1981, and was received (as recorded in the Congressional Record) by the House of Representatives on October 26, 1981, and by the Senate on October 27, 1981. The plan became effective on February 9, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated in satisfaction of an award granted to the Mescalero Apache Tribe of the Mescalero Reservation in the State of New Mexico in Docket 22-G before the United States Court of Claims, including all interest and investment income accruing thereto, less attorney fees and litigation expenses, shall be utilized as herein provided.

Funds totaling $1,000,000.00 will be utilized to make per capita payments to tribal members. These funds and their accumulated interest will be used to finance two per capita payments of $200.00 and $300.00 respectively to all enrolled members of the Mescalero Apache Tribe to meet economic and social needs of the members. A dividend payment of $200.00 was made to tribal members from other available funds in June 1981 with the understanding that the tribe would be reimbursed from accounts used to pay said dividend. A second payment of $300.00 to all enrolled members will be made immediately upon adoption of this plan.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 115.5 (25 CFR Part 104 redesignated to 25 CFR Part 115, as published in **Federal Register** of March 30, 1982, page 13327). The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. The per capita shares of minors shall be handled pursuant to Pub. L. 95-433, 92 Stat. 1047.

The remaining fund and the accrued interest shall be utilized by the tribe for the purposes and in the amounts described below:

Land Purchase ($350,000.00)

These funds are to be used to acquire lands adjacent to the Mescalero Community Center which are in private ownership for the purpose of construction of the Mescalero School and other public buildings.

Re-Paint the Mescalero Community Center ($50,000.00)

These funds are to be used to re-apint and make minor decorative repairs to the Mescalero Community Center. The need is self-evident after 12 years of continuous heavy use.

Loan to the Inn of the Mountain Gods ($100,000.00)

These funds are to be loaned to the Inn of the Mountain Gods to make improvements in the outdoor recreation facilities. There is need at the Inn to provide protected recreation during the winter months.

Replace Tribal Aircraft ($500,000.00)

These funds will be used to acquire a new Tribal aircraft. The present aircraft which is three years old will be traded and these funds used to provide the cash necessary to the trade.

Unobligated Plan Balances

Any amount remaining in this plan in any of the budgeted items, after the costs of the proposed project or program has been met, shall be transferred to and become part of the tribe's general operating fund to be utilized in accordance with proper procedures by the tribal governing body.

None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the

payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 82-12719 Filed 5-10-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Preparation of Environmental Impact Statement for 1982 Amendments to the California Desert Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management, California Desert District, will prepare an environmental impact statement to assess the potential impacts of amendments proposed during the 1982 review of the California Desert Conservation Area Plan. The review is being conducted in accordance with the amendment procedures outlined in Chapter 7 of the Plan.

DATES: Amendments to the California Desert Plan are being accepted from the public until May 17, 1982 (see FR, Vol. 47, No. 38, p. 8250). Preparation of the Environmental Impact Statement will begin following final approval of amendments to be considered in the EIS, in June 1983. The Final EIS is scheduled to be filed with the Environmental Protection Agency in January 1982.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507. Telephone (714) 351-6388.

SUPPLEMENTARY INFORMATION: The California Desert Plan is the comprehensive land use management plan written pursuant to Section 601 of the Federal Land Policy and Management Act of 1976 (FLPMA, Pub. L. 94-579) for the California Desert Conservation Area (CDCA). The CDCA was designated a special management area by FLPMA due to the unique resource values to be found in this 25 million acre portion of southeastern California, a region in close proximity to the Los Angeles and San Diego Metropolitan areas.

Chapter 7 of the Plan provides a mechanism for amending the Plan. This process includes a provision stating that those amendments requiring preparation of an EIS (i.e., that could result in significant changes in the Plan or significant environmental impacts) will be considered annually. This 1982 review is the first of these annual processes which will require an EIS (an EA was prepared for the 1981 review). Amendments to be considered will include those submitted by the public and those proposed by BLM staff.

Opportunities for public input and comments will be announced through the media, the Desert Plan mailing list, and personal contact. The June meeting of the California Desert District Multiple Use Adivsory Council will serve as the public scoping meeting for this EIS. The meeting will be held from 8:30 to 5:00 on June 3 and 4 at the following location: Masonic Lodge Temple, 625 North Norma, Ridgecrest, California.

Dated: April 28, 1982.

Wesley Chambers,

Acting District Manager.

[FR Doc. 82-12758 Filed 5-10-82; 8:45 am]

BILLING CODE 4310-84-M

[INT DES 82-16]

Draft Environmental Impact Statement: Eugene-Medford 500 kV Electrical Transmission Line; DEIS Availability; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposal for Rights-of-Way to Construct a 500 kV Electrical Transmission Line Linking Medford and Eugene, Oregon.

SUMMARY: The proponent of this line, Pacific Power and Light Company (PP&L) has applied for basic rights-of-way across public lands administered by the Bureau of Land Management (approximately 15 percent of the 146.8 mile proposed project). BLM was designated as lead agency for the preparation of an environmental impact statement (EIS).

Under provision of Oregon law, PP&L has submitted a Site Certificate Application to the Oregon Energy Facility Siting Council which has State jurisdiction for projects of this nature. The Oregon Department of Energy is a cooperating agency for the EIS.

Bonneville Power Administration (BPA) would provide 500 kV service to the proposed line and became a cooperating agency for the EIS at the outset. If the preferred location is selected, BPA would build the initial 11.5 miles of the project beginning at their Lane Substation west of Eugene.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, a draft environmental impact statement (DEIS) on the proposal has been prepared and is now available for public review and comment. The DEIS analyzes impacts which would result from the proposed action, three alternatives, and 13 routing or construction options. Its purpose is to disclose probable effects on the natural, social and economic environment for consideration in the decisionmaking processes of the lead and cooperating agencies.

Public reading copies of the DEIS will be available for review in local libraries throughout the project area; PP&L offices: BLM State Office in Portland and District Offices in Medford, Roseburg and Eugene; and the BPA office in Eugene. A limited number of copies are available on request from the BLM State Office in Portland and District Offices in Eugene, Roseburg and Medford; the BPA office in Eugene; and PP&L offices in Medford, Roseburg, Myrtle Creek, Cottage Grove and Junction City.

Comments concerning the adequacy of analysis in this statement will be accepted until July 7, 1982. Written comments on the EIS may be addressed to: Bureau of Land Management, Planning and Environmental Coordination Staff (935), P.O. Box 2965, Portland, Oregon 97208.

In addition, public hearings for the purpose of receiving oral comments will be conducted at the following locations, places and times.

Medford City Hall, Council Chambers, 411 West 8th, Tuesday, June 15, 1982. 7:30 p.m.

Douglas County Courthouse, Room 216, 1036 SE Douglas, Wednesday, June 16, 1982. 7:30 p.m.

Eugene City Hall, Council Chambers, 777 Pearl St., Thursday, June 17, 1982. 7:30 p.m.

FOR FURTHER INFORMATION CONTACT: Roland D. Smith, Bureau of Land Management, Oregon State Office, P.IO. Box 2965 (825 N.E. Multnomah St.), Portland, Oregon 97208, Telephone: (503) 231-6951.

Dated: April 26, 1982.

Philip C. Hamilton,

Acting Chief, Division of Resources, Oregon State Office.

[FR Doc. 82-12705 Filed 5-10-82; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District (Utah) Grazing Advisory Board; Meeting

April 30, 1982.

AGENCY: Bureau of Land Management, Salt Lake District.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Salt Lake District Grazing Advisory Board will be held on June 8 and 9, 1982. The meeting will begin at 10:00 A.M. at the Bureau of Land Management Office at 2370 South 2300 West, Salt Lake City, Utah 84119.

The purpose of the meeting will be to:

1. Tour various allotments in Tooele County.

2. Give a status report and discuss the Board's involvement in Tooele Planning.

3. See example of allotments which have been placed in the M, I and C Management Categories.

Persons wishing to attend are requested to notify Frank Olsen by May 1, 1982.

Frank W. Snell,

District Manager.

[FR Doc. 82–12712 Filed 5–10–82; 8:45 am]

BILLING CODE 4310–84–M

Susanville District, Calif.; Revised Use Fees at Selected Campgrounds

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of use fees at North Eagle Lake Campgrounds, Susanville District, California.

SUMMARY: Use fees for camping at North Eagle Lake Campground are revised to $3.00/day/campsite.

DATES: The revised Susanville District Campground Fee Schedule will be effective May 15, 1982.

FOR FURTHER INFORMATION CONTACT: Larry Teeter, Susanville District Outdoor Recreation Planner, Susanville District Office, P.O. Box 1090, Susanville, CA 96130—Telephone (916) 257–5381.

SUPPLEMENTARY INFORMATION: The North Eagle Lake Campground is located 29 miles north of Susanville, California just off State Route 139.

For the purpose of this fee schedule, a "day" is defined as any 24 hour period or part thereof, beginning at 12:00 noon and ending on the following calendar day at 11:59 a.m. Fees for the area will be posted at the entrance.

Authority: Authority for this fee schedule revision is contained in CFR Title 36, Chapter 1, Part 66, Subpart 66.9

Dated: May 4, 1982.

C. Rex Cleary,

District Manager.

[FR Doc. 82–12711 Filed 5–10–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Sodium Leasing Land Classification Order California No. 2

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of classification of known leasing area (sodium) in California.

SUMMARY: Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C., 1451, note), 220 Departmental Manual 2, and Secretary's Orders Nos. 2948, and 3071, Federal lands within the State of California have been classified as subject to the competitive sodium leasing provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 262), as amended.

The name of the area and the effective date are as follows: Searles Lake (California) Known Leasing Areas (Sodium); September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald W. Michelson, Deputy Minerals Manager, Resource Evaluation, Minerals Management Service, Western Region, 345 Middlefield Rd., Mailstop 80A, Menlo Park, California 94025, Telephone (415) 323–8111, ext. 2053, FTS 467–2053.

SUPPLEMENTARY INFORMATION: A description and a diagram showing the boundaries of the area classified for competitive leasing have been filed with the appropriate land office of the Bureau of Land Management. The following described lands, insofar as title remains in the United States, are classified as follows:

Searles Lake Known Leasing Area (Sodium)

San Bernardino Meridian (California)

T. 25 S., R. 43 E.,
- Sec. 1, SW¼SW¼;
- Sec. 2, S½;
- Sec. 3, S½;
- Sec. 4, SE¼SE¼;
- Sec. 9, NE¼, SE¼NW¼, S½;
- Secs. 10 and 11;
- Sec. 12, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
- Secs. 13 to 16, inclusive;
- Sec. 17, lots 1, 4, and 5, SE¼SW¼; SE¼;
- Sec. 19, lots 8 and 15;
- Secs. 20 to 24, inclusive;
- Secs. 25 to 29, inclusive;
- Sec. 30, lots 1 and 8, E½SE¼;
- Sec. 31, E½E½;
- Secs. 32 to 36, inclusive.

T. 25 S., R. 44 E.,
- Sec. 18, lots 1 to 4, inclusive; E½SW¼;
- Sec. 19, W½NE¼, SE¼NE¼, W½, SE¼;
- Sec. 20, SW¼SW¼;
- Sec. 29, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼;
- Secs. 30 to 32, inclusive;
- Sec. 33, W½SW¼.

T. 26 S., R. 43 E.,
- Secs. 1 to 4, inclusive;
- Sec. 5, lots 1 to 4, inclusive, S½NE¼, S½NW¼, N½SW¼, SE¼SW¼, SE¼;
- Sec. 6, lot 1, SE¼NE¼, NE¼SE¼;
- Sec. 8, N½NE¼, SE¼NE¼;
- Sec. 9, N½, N½SW¼, SE¼SW¼ SE¼;
- Sec. 10 to 12, inclusive;
- Sec. 13 and 14;
- Sec. 15, N½, E½SE¼, SE¼;
- Sec. 16, E½, NE¼;
- Sec. 23, N½NE¼;
- Sec. 24, N½.

T. 26 S., R. 44 E.,
- Sec. 4, lot 4, SW¼NW¼, W½SW¼;
- Secs. 5 to 8, inclusive;
- Sec. 9, W½W½;
- Sec. 16, W½NW¼;
- Sec. 17, N½, SW¼, N½SE¼, SW¼SE¼;
- Sec. 18, all;
- Sec. 19, lots 1 and 2, N½NE¼, E½NW¼;
- Sec. 20, N½NW¼.

The areas described aggregate: 31,840 acres, more or less.

Dated: April 22, 1982.

William P. Pendley,

Director, Minerals Management Service.

[FR Doc. 82–12713 Filed 5–10–82; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 30, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 26, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

ALABAMA

Colbert County

Sheffield vicinity, *Tuscumbia Landing Site,* W of Sheffield

Madison County

Huntsville vicinity, *McCrary House,* NE of Huntsville

Huntsville vicinity, *Steger House (Dr. Howard Place)* 3141 Maysville Rd.

ALASKA

Anchorage Division

Anchorage, *Fourth Avenue Theatre (AHRS Site No. ANC–284) 630 W 4th Ave.*

Juneau Division

Juneau, *Davis, J. M., House* (AHRS Site No. JUN–078) 207 6th St.

Ketchikan Division

Ketchikan, *Burkhart-Dibrell House (AHRS Site No. KET-111)* 500 Main St.

CONNECTICUT

Fairfield County

Newtown, *New York Belting and Packing Company*, 45—71 and 79—89 Glen Rd.

New London County

New London, *Woodworth, Nathan A., House*, 28 Channing St.

INDIANA

Allen County

Fort Wayne, *Bass, John H., Mansion (Brookside)* 2701 Spring St.

Marion County

Indianapolis, *Lombard Building*, 22—28 E. Washington St.
Indianapolis, *Thompson, William N., House*, 4343 N. Meridian St.

IOWA

Buchanan County

Quasqueton, *Walter, Lowell E., House*, NW of Quasqueton off SR W35

Cerro Gordo County

Clear Lake, *Elks-Rogers Hotel*, 221 Main Ave.

Hamilton County

Webster City, *Webster City Post Office*, 801 Willson Ave.

Henry County

Salem, *Lewelling, Henderson, House*, W. Main St.

Howard County

Riceville, *Fellows, James C., House*, Main St.

Polk County

Des Moines, *Case, Larnerd, House*, 3111 Euston Blvd.
Des Moines, *Cummins, Albert Baird, House*, 2406 Forest Dr.

Story County

Ames, *Marston Water Tower*, Iowa State University campus

Woodbury County

Sioux City, *Franz, Margaretta, House*, 215 Kansas St.
Sioux City, *Spencer, Knapp, Warehouse*, 3rd and Nebraska Sts.

KENTUCKY

Boone County

Constance, *Anderson Ferry*, Off KY 8 (also in Hamilton County, OH),

Daviess County

Owensboro vicinity, *Willow Hill (Jesse Jones House)* Jones Rd.

MASSACHUSETTS

Barnstable County

Bourne, *Wing's Neck Light (Lighthouses of Massachusetts TR)* Wing's Neck Rd.
Bourne, *Cleveland Ledge Light Station (Lighthouses of Massachusetts TR)*
Chatham, *Chatham Light Station (Lighthouses of Massachusetts TR)* Main St.
Eastham, *Nauset Beach Light (Lighthouses of Massachusetts TR)* Nauset Beach
Eastham, *Three Sisters of Nauset (The Beacon) (Lighthouses of Massachusetts TR)* Nauset Beach
Provincetown, *Long Point Light Station (Lighthouses of Massachusetts TR)* Herring Cove Beach
Provincetown, *Race Point Light Station (Lighthouses of Massachusetts TR)* Race Point Beach
Provincetown, *Wood End Light Lookout Station (Lighthouses of Massachusetts TR)*
Truro, *Highland Light Station (Cape Cod Light) (Lighthouses of Massachusetts TR)* Off SR 6
Woods Hole, *Nobska Point Light Station (Lighthouses of Massachusetts TR)* Nobska Rd.
Eastham, *Three Sisters of Nauset (Twin Lights) (Lighthouses of Massachusetts TR)*

Bristol County

Bristol, *Borden Flats Light Station (Lighthouses of Massachusetts TR)* Taunton River
New Bedford, *Butler Flats Light Station (Lighthouses of Massachusetts TR)* New Bedford Channel

Dukes County

Edgartown, *Cape Poge (Pogue) Light (Lighthouses of Massachusetts TR)* Chappaquiddick Island
Edgartown, *Edgartown Harbor Light (Lighthouses of Massachusetts TR)*
Gay Head, *Gay Head Light (Lighthouses of Massachusetts TR)* Lighthouse Rd.
Gosnold, *Tarpaulin Cove Light (Lighthouses of Massachusetts TR)* Naushon Island
Oaks Bluff, *East Chop Light (Lighthouses of Massachusetts TR)* Lighthouse Rd.
Tisbury, *West Chop Light Station (Lighthouses of Massachusetts TR)* W. Chop Rd.

Essex County

Andover, *Abbot Tavern (Town of Andover MRA)* 70 Elm St.
Andover, *Abbot, J.T., House (Town of Andover MRA)* 34 Essex St.
Andover, *Abbot-Baker House (Town of Andover MRA)* 5 Argilla Rd.
Andover, *Abbot-Battles House (Town of Andover MRA)* 31 Lowell St.
Andover, *Abbott, Asa and Sylvester, House (Town of Andover MRA)* 15–17 Porter Rd.
Andover, *Academy Hill Historic District (Town of Andover MRA)* MA 28
Andover, *Andover National Bank (Town of Andover MRA)* 23 Main St.
Andover, *Andover Town Hall (Town of Andover MRA)* 20 Main St.
Andover, *Andover Village Industrial District (Town of Andover MRA)* MA 28
Andover, *Arden (Town of Andover MRA)* 278 N. Main St.
Andover, *Bailey, Timothy P., House (Town of Andover MRA)* 210 Chandler Rd.
Andover, *Ballardvale District (Town of Andover MRA)* Off I–93
Andover, *Barnard Block (Town of Andover MRA)* 10–16 Main St.
Andover, *Central Street District (Town of Andover MRA)* Irregular pattern along Central St.
Andover, *Chandler-Bigsby-Abbot House (Town of Andover MRA)* 88 Lowell St.
Andover, *Chandler-Hidden House (Town of Andover MRA)* 17 Hidden Rd.
Andover, *Chickering House (Town of Andover MRA)* 28 Essex St.
Andover, *Cochran, Jehial, House (Town of Andover MRA)* 69 Burnham Rd.
Andover, *Dascomb House (Town of Andover MRA)* 125 Dascomb Rd.
Andover, *Flint Farm (Town of Andover MRA)* 85 Osgood St.
Andover, *Follansbee House (Town of Andover MRA)* 459 Lowell St.
Andover, *Frye, Nathan, House (Town of Andover MRA)* 166 N. Main St.
Andover, *Gray, David, House (Town of Andover MRA)* 232 Salem St.
Andover, *Harding, Sarah H., House (Town of Andover MRA)* 6–8 Harding St.
Andover, *Harnden Farm (Town of Andover MRA)* 281 Salem St.
Andover, *Holt Farm (Town of Andover MRA)* 89 Prospect Rd.
Andover, *Holt-Cummings-Davis House (Town of Andover MRA)* 67 Salem St.
Andover, *Jenkins, Benjamin, House (Town of Andover MRA)* 362 Salem St.
Andover, *Lincolnshire, The (Town of Andover MRA)* 22 Hidden Rd. and 28 Hidden Way
Andover, *Main Street-Locke Street District (Town of Andover MRA)* MA 28
Andover, *Manning House (Town of Andover MRA)* 37 Porter Rd.
Andover, *Memorial Hall Library (Town of Andover MRA)* 2 N. Main St.
Andover, *Musgrove Block (Town of Andover MRA)* 2 Main St.
Andover, *Orlando (Town of Andover MRA)* 260 N. Main St.
Andover, *Osgood Farm (Town of Andover MRA)* 116 Osgood St.
Andover, *Pearson, Abiel, House (Town of Andover MRA)* 33 High St.
Andover, *Perrin, William, House (Town of Andover MRA)* 494 River Rd.
Andover, *Pillsbury-French House (Town of Andover MRA)* 103 Dascomb Rd.
Andover, *Punchard, Benjamin, House (Town of Andover MRA)* 8 High St.
Andover, *Rogers-Downing House of Andover MRA)* 269 Highland Rd.
Andover, *Russell House (Town of Andover MRA)* 28 Rocky Hill Rd.
Andover, *Third Railrood Station (Town of Andover MRA)* 100 School St.
Andover, *Ward, Richard, House (Town of Andover MRA)* 71 Lowell St.
Andover, *West Parish Center District (Town of Andover MRA)* MA 133
Andover, *Woodbridge House (Town of Andover MRA)* 293 Salem St.
Beverly, *Hospital Point Light Station (Front Range Light) (Lighthouses of Massachesetts TR)* Bayview Ave.
Gloucester, *Annisquam Harbor Light Station (Lighthouses of Massachusetts TR)* Wigwam Point.
Gloucester, *Eastern Point Light Station (Lighthouses of Massachusetts TR)* Eastern Point.

Marblehead, *Marblehead Light (Lighthouses of Massachusetts TR)* Marblehead Neck
Newburyport, *Newburyport Harbor Front Range Light (Lighthouses of Massachusetts TR)* Marrimac River Coast Guard Station
Newburyport *Newburyport Harbor Light (Lighthouses of Massachusetts TR)* Northern Blvd.
Rockport, *Straightsmouth Island Light (Lighthouses of Massachusetts TR)*
Salem, *Derby Wharf Light Station (Lighthouses of Massachusetts TR)* Derby Wharf

Hampshire County

Hatfield, *Old Mill Site Historic District,* 48 and 50 Prospect St.

Middlesex County

Weston, *Hobbs, Isaac, House,* 87 North Ave.

Nantucket County

Nantucket, *Brant Point Light Station (Lighthouses of Massachusetts TR)* Brant Point.
Nantucket, *Nantucket Light (Great Point Light or Sandy Point) (Lighthouses of Massachusetts TR)* Nantucket Island.
Siasconset, *Sankaty Head Light (Lighthouses of Massachusetts TR)* Sankaty Head

Norfolk County

Needham, *Tolman-Gay House,* 1196 Central Ave.

Plymouth County

Hull, *Graves Light Station (Lighthouses of Massachusetts TR)*
Marion, *Bird Island Light (Lighthouses of Massachusetts TR)* Sippican Harbor
Mattapoisett, Ned *Point Light (Lighthouses of Massachusetts TR)* Ned Point Rd.
Scituate, *Minot's Ledge Light (Lighthouses of Massachusetts TR)*
Scituate, *Scituate Light (Lighthouses of Massachusetts TR)* Cedar Point

Suffolk County

Boston, *Long Island Head Light (Lighthouses of Massachusetts TR)* Long Island.
Boston, *Adams-Nervine Asylum,* 990–1020 Centre St.
Boston, *Boston Light Station (Lighthouses of Massachusetts TR)* Boston Harbor

Worcester County

Upton, *Knowlton Hat Factory,* 134 Main St.
Boylston, *Barlin Acres,* 284 School St.
Grafton, *Willard House and Clock Museum,* 11 Willard St.
Holden, *Rogers House,* 28 Boyden Rd.
Sturbridge, *Wright, Oliver, House,* Main St.

MISSISSIPPI

Clay County

West Point, *West Point Central City Historic District,* MS 50

Warren County

Vicksburg, *Davis-Mitchell House,* 901 Crawford St.

NEW JERSEY

Essex County

East Orange, *Ambrose-Ward Mansion,* 132 S. Harrison St.

Hudson County

Jersey City, *Jersey City High School,* 2 Palisade Ave.

Union County

Plainfield, *Hillside Avenue Historic District,* Hillside Ave. from Watchung Ave. to Martine Ave.

NEW MEXICO

Bernalillo County

Albuquerque, *Saint Joseph 1930 Hospital,* 715 Grand NE.
Albuquerque, *Weiller, H. B. House,* 1228 Central Ave., SW.
Los Ranchos vicinity, *Los Poblanos Historic District,* NM 194

NORTH CAROLINA

Alamance County

Altamahaw, *Altamahaw Mill Office,* SR 1002 and SR 1567
Haw River, *Holt, Charles T., House,* 228 Holt St.

Buncombe County

Asheville, *Demens-Rumbough-Crawley House,* 31 Park Ave.

NORTH CAROLINA

Chatham County

Farrington vicinity, *Stone, Joseph B., House,* SR 1008

Cleveland County

Boiling Springs, *Hamrick, E.B., Hall,* Gardner-Webb College campus

Davidson County

High Point vicinity, *Spurgeon House,* W of High Point

Durham County

Durham, *Greystone,* 618 Morehead Ave.

Guilford County

Colfax vicinity, *Shaw-Cude House,* Off SR 2010

Hertford County

Winton, *Gray Gables,* Main St.

Mecklenburg County

Matthews, *Providence Presbyterian Church and Cemetery,* 10140 Providence Rd.

Moore County

Aberdeen vicinity, *Blue, Malcolm, Farm,* Bethesda Rd. and Ernest L. Ives Dr.

Nash County

Battleboro vicinity, *Bellamy-Phillips House,* SR 1522

Person County

Bethel Hill vicinity, *Holloway-Walker Dollarhite House,* SR 1514
Roxboro, *Roxboro Male Academy and Methodist Parsonage,* 315 N. Main St.

Rockingham County

Eden, *Bullard-Ray,* 650 Washington St.

Yadkin County

Huntsville, *White House,* Shallowford Rd.

OHIO

Allen County

Lima vicinity, *Allentown M.E. Church (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 4900 Poling Rd.
Lima vicinity, *Antioch Christian Union Church (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 7301 Ft. Amanda Rd.
Lima vicinity, *Helsel Chapel (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 4271 Spencerville Rd.
Lima vicinity, *Ridge U.B. Church/Marion Ridge (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 6875 Ridge Rd.
Lima vicinity, *Zion Church (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 9290 Zion Church Rd.
Converse, *Bethel Christian Union Church (Rural Chapels Along the War of 1812 Auglaize Trail TR)* 6770 Allentown Rd.

Belmont County

Barnesville vicinity, *Tower Site (33–B1–15)*

Clermont County

New Richmond, *Ross-Gowdy House,* 125 George St.

Cuyahoga County

Gates Mills, *Keyt, Gideon, House,* Chagrin River and Deerfield Rds.

Darke County

Versailles vicinity, *English, William, House,* 11291 OH 47

Hamilton County

Cincinnati, *Anderson Ferry,* Off U.S. 50 (also in Boone County, KY),
Cincinnati, *Broadwell, Charles, House,* 1424 Pleasant St.
Cincinnati, *Burdsal, Samuel, House,* 1342 Broadway St.
Cincinnati, *Endebrook, John H., House,* 1428 Pleasant St.
Cincinnati, *Goldsmith, Moses, Building,* 350 Bryant
Cincinnati, *Groesbeck, William, House,* 1407 Race St.
Cincinnati, *Meyer-Phillipp House,* 1410 Elm St.
Cincinnati, *Ratterman, Bernard, House,* 1349 Broadway
Cincinnati, *Sycamore—13th Street Grouping,* 12th, 13th, and Sycamore Sts.

Highland County

Hillsboro, *East Main Street Historic District,* E. Main and E. Walnut Sts.
Hillsboro, *Mother Thompson House,* 133 Willow St.

Jefferson County

Steubenville, *Steubenville YMCA Building,* 214 N. 4th St.

Lorain County

Elyria, *New York Central Freight House,* 412 E. River St.

Lucas County

Toledo, *Bush Street Historic District,* Bush and Erie Sts.

Waterville vicinity, *Isham, John, House,* 8460 S. River Rd.

Mahoning County

Campbell, *Youngstown Sheet and Tube Company Housing,* Jackson and Chambers St.

Medina County

Medina, *St. Paul's Episcopal Church,* 317 E. Liberty St.

Muskingum County

Zanesville, *Brighton-Dryden Historic District,* Dryden Rd., Brighton Blvd., Lexington and Stanberry Aves.
Zanesville, *Lind Arcade,* 46 N. 5th St.
Zanesville, *Smith, William R., House,* 920 Marietta St.

Pickaway County

Circleville vicinity, *Black, Joseph, Farmhouse,* 9862 Heffner Rd.

Putnam County

Ottoville vicinity, *Ottawa River Christian Church (Rural Chapels/War of 1812 Auglaize Trail TR)*

Richland County

Shelby vicinity, *Sacred Heart of Jesus Churches,* OH 61

Stark County

Canal Fulton, *Canal Fulton Historic District,* Ohio-Erie Canal, Market, Canal, Cherry and High Sts.
Canton, *Old McKinley High School,* 800 No. Market St.
Canton, *Ridgewood Historic District,* Roughly bounded by Market and Gibbs Ave., and 21st and 24th Sts.

Summit County

Akron, *Eagles Temple,* 131—137 E. Market St.

Van Wert County

Converse, *Converse Methodist Church (Rural Chapels Along the War of 1812 Auglaize Trail TR)* OH 81 and Elgin-Converse Rd.

Wayne County

Rittman vicinity, *Gish Farmhouses,* Gish Rd.

OREGON

Umatilla County

Pendleton, *Empire Block,* 21–37 SW. Emigrant Ave.
Pendleton, *Hamley and Company Leather Goods Store,* 30 SE. Court St.
Pendleton, *Hendricks Building (K. O. T. M. Temple)* 309 S. Main St.
Pendleton, *Masonic Temple,* 18 SW. Emigrant Ave.
Pendleton, *Matlock-Brownfield Building,* 413–425 S. Main St.

RHODE ISLAND

Newport County

Newport, *Bird's Nest, The,* 526 Broadway at One Mile Corner

Washington County

New Shoreham, *Champlin, Peleg, House,* Rodman Pond Lane

SOUTH CAROLINA

Beaufort County

Hilton Head vicinity, *Daufuskie Island Historic District,* SW. of Hilton Head

TEXAS

Cooke County

Gainesville, *Cloud-Stark House,* 327 S. Dixon St.

Galveston County

Galveston, *Hagemann, John, House,* 3301 Ave. L

Palo Pinto County

Mineral Wells, *Baker Hotel,* 200 E. Hubbard St.

Smith County

Tyler, *Whitaker-McClendon House,* 806 W. Houston St.

UTAH

Cache County

Smithfield, *Douglas General Mercantile,* 100 Main St.

Davis-County

Bountiful, *Townsend-Palmer House,* 515 S. 200 West St.

Sanpete County

Manti, *Cox-Shoemaker-Parry House,* 50 N. 100 West St.

Utah County

Provo, *Cluff, Harvey H., House,* 174 N. 100 East St.
Provo, *Davies, Charles E. House,* 388 W. 300 North St.
Provo, *Silver Row,* 621–645 W. 100 North St.

Washington County

Washington vicinity, *Southern Paiute Archeological District*

Weber County

Plain City, *Skeen, William D., House,*

WISCONSIN

Grant County

Platteville, *Evans, Jonathan H., House,* 440 W. Adams St.

Pepin County

Durand vicinity, *Dorwin's Mill,* E of Durand

Washington County

Hartford vicinity, *Ritger Wagonmaking and Blacksmith Shop,* 4928 WI 175

Winnebago County

Oshkosh, *Amos House,* 1157 High Ave.

SOUTH DAKOTA

Fall River County

Site No. 39 FA 94 (Rock Art in the Southern Black Hills Thematic Resources) (incorrectly published April 27, 1982 as Site No. 39 FA 44)

[FR Doc. 82-12720 Filed 5-10-82; 8:45 am]
BILLING CODE 4310-70-M

Camp Round Meadow, Catoctin Mountain Park; Availability of Record of Decision and Finding of No Significant Impact for the Development Concept Plan

The National Park Service has prepared the Record of Decision and FONSI for the Camp Round Meadow Development Concept Plan. This record documents the selected course of action for the management and use of the Camp Round Meadow area of Catoctin Mountain Park.

Written comments will be accepted for a period of 30 days following the publication of this notice and should be addressed to the Superintendent, Catoctin Mountain Park, Thurmont, Maryland 21788.

Copies are available from:

Catoctin Mountain Park, Thurmont, Maryland 21788
National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242

Dated: April 29, 1982.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 82-12727 Filed 5-10-82; 8:45 am]
BILLING CODE 4310-70-M

Santa Monica Mountains National Recreational Area, California, General Management Plan; Availability of the Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed General Management Plan for Santa Monica Mountains National Recreation Area, California.

The proposed action presents goals and objectives for management, a land classification system that indicates management emphasis for all lands within the boundary; concepts for management of resources and cooperation with agencies and landowners; programs for managing natural, scenic, and cultural resources; a related series of possible actions for activity sites, trails and camps, visitor programs and services, transportation, scenic roads, and management facilities; and strategies for future planning. The proposed action will result in the provision of a variety of educational and recreational opportunities for enjoyment by urban, suburban, and national visitors; the protection and enhancement of resource values; and the retention of existing land uses in conjunction with new uses of parklands.

An alternative was considered that would continue land acquisition, cooperative planning, and visitor use and resource management programs, but would not significantly increase recreational opportunities. A no action alternative was also considered, which would preclude any additional National Park Service involvement in the area.

A limited number of copies of the document are available on request from the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364 (213–888–3440) and Ron Replogle, 450 Golden Gate Avenue, San Francisco, California 94102 (415–556–5750). Public reading copies are available at the following locations: 450 Golden Gate Avenue, San Francisco; Interior Building, 18th and C Streets, N.W., Washington, D.C. and Park Headquarters, Woodland Hills, California.

Dated: April 29, 1982.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 82-12728 Filed 5-10-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

May 6, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

Northwest Agricultural Cooperative Association, Inc. (NACA, INC.), P.O. Box 1, Ontario, OR 97914, 920 Southeast Ninth Ave., Ontario, OR 97914

Ted Hoots, P.O. Box 1, Ontario, OR 97914

Pacific Mountain Express, Inc., 1841 Piner Rd., No. B, Box 11503, Santa Rosa, CA 95406, 1841 Piner Rd., No. B, Santa Rosa, CA 95406

David Robinson, 2228 W. Northern Ave., B201, Phoenix, AZ 85021

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12080 Filed 5-10-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We Find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It Is Ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements state in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79705. By decision of April 29, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to TRIANGLE TRUCKING CO., of Permit and Certificate Nos. MC–60014 and sub number proceedings (except Sub Numbers 192 and 210) issued to AERO TRUCKING, INC., authorizing the transportation (a) as a common carrier of numerous commodities, primarily machinery, metal articles, lumber and wood products, building materials, construction materials, contractors equipment and supplies, clay and refractory products, rubber and plastic products and commodities, the transportation of which because of size or weight requires the use of special equipment from and to points throughout Continental United States and (b) as a contract carrier of metal articles from and to numerous points in the Midwest under continuing contracts with named shippers subject to the following conditions: if any. Applicants' representative is: A. Charles Tell, Esq., 100 East Broad Street, Columbus, OH 43215.

MC–FC–79757. By decision of April 28, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 3 approved the transfer to William P. Dalton, d.b.a. Dalton Trucking, of Centerton, IN, of Certificate No. MC–147656 (Sub-No. 2)X issued November 17, 1981, to C. and V. Corporation of Indianapolis, IN, authorizing the transportation of food and related products between points in Marion County, IN, on the one hand, and, on the other, points in Ohio. Applicants' representative is: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240.

MC–FC–79803. Supplemental notice to correct the authority description in the notice published April 2, 1981, pp. 14231 and 14232. Review Board Number 3 approved the transfer to EXHIBITORS FILM SERVICE, INC. of Indianapolis, IN, of that portion of Certificate No. MC–71452 (Sub-No. 22)X issued to INDIANA TRANSIT SERVICE, INC., of Indianapolis, IN, authorizing the transportation over irregular routes generally, of *film, theatre equipment and supplies and printed matter* (a) between

points in IN, and (b) radially between points in OH, KY, IL and IN. Applicants' representative is: Mel P. Booker, P.O. Box 1281, Old Town Station, Alexandria, VA 22313. A TA lease is sought; transferee is not a carrier.

MC–FC–79764. By decision of April 28, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to John Hensal Trucking, Inc. of Certificate No. MC–14454 and MC–14454 (Sub-No. 4) issued to Kimbel Trucking Company authorizing the transportation of (1) *Machinery, equipment, materials and supplies* used in or in connection with, the discovery, developing, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products, and *machinery, materials, equipment and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking-up thereof, between points in OK, KS and TX; and (2) *oilfield equipment, materials and supplies,* from points in KS, OK and TX to points in AR, CO, LA and WY. Applicants' representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036.

Note.—(1) Transferee is a carrier, (2) application for temporary authority has been filed.

MC–FC–79768. By decision of April 28, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Reed H. Wilson and Curtis C. Morken, of Certificate No. MC–147607 (Sub-Nos. 2 and 3) issued to Offutt Trucking Co. authorizing the transportation of (1) *carpet,* from points in GA, to points in MN, ND, SD, and WI, and (2) *carpeting,* from points in GA, to points in IL, IA, NE. Applicants' representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108.

Note.—Transferee is a non-carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12662 Filed 5–10–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–90

Decided: April 30, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF–593, filed April 13, 1982. Applicant: FOODSOURCE, INC., 900 Larkspur Landing Circle, Larkspur, CA 94939. Representative: David F. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, 213–627–8471. *As a freight forwarder,* in connection with the transportation of *general commodities,* between points in the U.S. (except AK and HI). Condition: To the extent any permit issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 151173 (Sub-12), filed April 13, 1982. Applicant: HAR-BET, INC., 7209 Tara Blvd., Jonesboro, GA 30236. Representative: O. L. Godfrey, Jr. (same address as applicant), 404–478–4115. Transporting *foodstuffs,* between points in GA, on the one hand, and, on the other, points in ID, MI, OR, and WI.

MC 161322, filed April 1, 1982. Applicant: EUROPEAN TOURS, 2835 Colony Road, Charlotte, NC 28211. Representative: Dean Scoggin, (same as applicant) (704) 523–3478. As a *broker* at Charlotte, NC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in special and charter operations, beginning and ending at points in NC, and extending to points in the U.S.

MC 161462, filed April 12, 1982. Applicant: MIDLAND EXPRESS, INC., 29 S. LaSalle St., Suite 350, Chicago, IL 60603. Representative: Anthony E. Young (same address as applicant) 312–782–8880.Transporting *food and related products,* between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–159

Decided: May 4, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 48176 (Sub-3), filed April 28, 1982. Applicant: RICH–HIL TRANSPORTATION, INC., RD #5, Box 64, Flemington, NJ 08822. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048; (212) 466–0220.

Transporting *ores and minerals,* and *clay, concrete, glass or stone products,* between points in Chester and Montgomery Counties, PA, on the one hand, and, on the other, points in NJ.

MC 78786 (Sub-282), filed April 27, 1982. Applicant: PACIFIC MOTOR TRUCKING COMPANY, 1766 E. Camino Real, P.O Box 990, Burlingame, CA 94010. Representative: Lloyd M. Roach, 7600 South Central Expressway, P.O Box 226187, Dallas, TX 75266; (214) 376–4423. Transporting *hazardous materials,* between points in the U.S. (except AK and HI). Condition: To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue.

MC 129226 (Sub-12), filed April 28, 1982. Applicant: TO–JON TRUCKING, INC., 480 Brown Ct., Oceanside, NY 11572. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048–0640. Transporting *such commodities* as are dealt in or used by department stores and catalog showrooms, between points in the U.S. (excpet AK and HI), under continuing contract(s) with Ardan, Inc., of Des Moines, IA.

MC 145966 (Sub-13), filed April 27, 1982. Applicant: NELSEN BROS., INC., P.O Box 613, Nebraska City, NE 68501. Representative: Bradford E. Kistler, P.O Box 82028, Lincoln, NE 68501; (402) 475–6761 Transporting *food and related products,* between points in Benton County, AR, on the one hand, and, on the other, points in the U.S. (excpet AK and HI).

MC 149256 (Sub-3), filed April 27, 1982. Applicant: KEN-WAY TRUCKING, INC., 110 Brannan St., San Francisco, CA 94107. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211; (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 159296, filed April 27, 1982. Applicant: BLUE AND WHITE EXPRESS OF MICHIGAN, INC., P.O. Box 1753, 27906 Mound Rd., Warren, MI 48090. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684; (616) 941–5313. Transporting *such commodities* as are dealt in or used by drug and department stores, and grocery and food business houses, between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MN, MO, NJ, NY, OH, PA, SD, TN, VA, and WI.

MC 161706, filed April 28, 1982. Applicant: MONTY PETERSON d.b.a. PETERSEN TRUCKING, 3909 South 7th West, Missoula, MT 59801. Representative: William E. O'Leary, 4 G Arcade Bldg., Helena, MT 59601; (406) 443–4010. Transporting *heavy machinery,* between points in MT, WA, OR, ID, WY, ND, SD, UT, CO, AZ, NV, IL, WI, CA, and MN.

MC 161716, filed April 28, 1982. Applicant: JAYS HEAVY HAULING TRUCKING COMPANY, 117 North Blackwell St., Pasadena, TX 77506. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024; (713) 827–1407. Transporting *Mercer commodities,* between points in TX, on the one hand, and, on the other, points in AL, AR, GA, KS, LA, MS, NM, and OK.

Volume No. OP4–180

Decided: May 5, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 61396 (Sub-402), filed April 30, 1982. Applicant: HERMAN BROS, INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501; (402) 475–6761. Transporting *cement,* between points in St. Louis County, MN, on the one hand, and, on the other, points in WI, SD, ND, MI, and IA.

MC 134006 (Sub-5), filed April 30, 1982. Applicant: PARKER & SON TRUCKING, INC., 4520 Maywood Ave., Vernon, CA 90058. Representative: Richard Parker (same address as applicant) (213) 583–9993. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Maricopa and Pima Counties, AZ, on the one hand, and, on the other, points in CA.

MC 139666 (Sub-5), filed April 20, 1982. Applicant: AIRCRAG CORPORATION, 12312 SE Whitaker Way, Portland, OR 97230. Representative: Philip G. Skofstad, 529 SE Grand Ave., Portland, OR 97214, (503) 239–4157. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between points in Multnomah, Clackamas and Washington Counties, OR, on the one hand, and, on the other, points in Clark, Cowlitz, Lewis, Thurston, Pierce, King and Snohomish Counties, WA, (b) between points in King County, WA, on the one hand, and, on the other, points in Pierce, Cowlitz, and Clark Counties, WA, and (c) between points in Multnomah and Columbia County, OR.

MC 150056 (Sub-6), filed April 29, 1982. Applicant: FARM SERVICES & SUPPLIES, INC., P.O. Box 5351, Evansville, IN 47715. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. West, Bradenton, FL 33507, (813) 758–4153. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with MLB Marketing Services, Inc., of Crystal Lake, IL.

MC 156327 (Sub-20), filed April 28, 1982. Applicant: TRUCK ONE, INC., P.O. Box 433, Reynoldsburg, OH 43068. Representative: A. Charles Tell, 100 E Broad St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Ashtabula County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160596 (Sub-1), filed April 29, 1982. Applicant: NANCY BAER TRUCKING INC., 880 Conrad Ave., P.O. Box 958, Jasper, IN 47546. Representative: Barbara J. Geare, 2225 Highway 41, North, Evansville, IN 47711, (812) 423–0389. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in PA, AL, AZ, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, TN, TX, UT, VA, WA, WV, WI, and DC, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Nationwide Industrial Shippers Cooperative Association, Inc., of Libertyville, IL.

MC 161726, filed April 26, 1982. Applicant: WSSA TRANSPORTATION CO., INC., 7640 SW Lantana Court, Beaverton, OR 97005. Representative: Jerry R. Woods, 1600 One Main Pl., 101 SW Main St., Portland, OR 97204, (503) 224–5525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Western States Shippers Association, Inc., of Portland, OR.

MC 161766, filed April 30, 1982. Applicant: GEORGE COGER & SONS, INC., 383 Market St., Saddle Brook, NJ 07662. Representative: Edward F. Bowes, Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in the U.S. (except AK and HI), under

continuing contract(s) with Multi-Carrier Service, Inc., of Hackensack, NJ.

MC 161377 (Sub-1), filed April 29, 1982. Applicant: JAG TRUCKING, INC., 6250 NW 74th Ave., Miami, FL 33166. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., Suite 520, Atlanta, GA 30326; (404) 262–7855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in Cook County, IL, and Edison, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–102

Decided: May 5, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 99287 (Sub-5), filed April 27, 1982. Applicant: COLUMBIA MOTOR EXPRESS, INC., Rte. 8, Nashville Hwy., Columbia, TN 38401. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004; (202) 347–8662. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between Nashville and Columbia, TN, over U.S. Hwy 31.

Note.—The authority herein may be tacked with applicant's existing authority.

MC 106587 (Sub-35), filed April 28, 1982. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Ave. Colchester, CT. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005; (202) 783–3525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Boston and Springfield, MA, on the one hand, and, on the other, points in Cumberland Androscoggin, Oxford, Kennebec, Sagadahoc, Lincoln, Knox, Franklin, Waldo, and York Counties, ME, and points in VT.

MC 121667 (Sub-12), filed April 27, 1982. Applicant: SMALLEY TRANSPORTATION COMPANY, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601; (813) 223–2411. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between points in AL, GA, NC, SC, and TN, and (2) between points in FL, on the one hand, and, on the other, points in AL, GA, NC, SC, and TN. NOTE: Applicant intends to tack this authority with its existing authority in MC–121667 (Subs 9 and 10).

MC 147807 (Sub-15), filed April 27, 1982. Applicant: TERESI TRUCKING, INC., 900½ Victor Rd., P.O. Box 819, Lodi, CA 95240. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108; (415) 986–9696. Transporting *food and related products*, between points in AZ, CA, ID, NV, NM, OR, UT, and WA.

MC 150667 (Sub-2), filed April 27, 1982. Applicant: WILLIAM N. NICHOLSON d.b.a. PRESS EXPRESS, 2205 Lincoln Hwy, Chicago Heights, IL 60411. Representative: William H. Shawn, 1730 M St., N.W., Suite 501, Washington, DC 20036, (202) 296–2900. Transporting *those commodities* which, because of their size or weight, require the use of special handling or equipment, between points in the U.S., including AK but excluding HI.

MC 152897 (Sub-1), filed April 27, 1982. Applicant: J. E. WILLIAMS TRUCKING, INC., P.O. Box 30371, Billings, MT 59107. Representative: J. E. Williams (same address as applicant), (406) 248–7397. Transporting (1) *Food and related products*, between points in Fresno, Los Angeles, Orange, Riverside, San Bernardino, and Santa Clara Counties, CA, on the one hand, and, on the other, points in Peoria and Tazewell Counties, IL, and (2) *floor coverings and related products*, between points in Delaware County, PA, Mercer County, NJ, and Stark County, OH, on the one hand, and, on the other, points in MT.

MC 161627, filed April 22, 1982. Applicant: NATE'S TRUCKING, INC., 72 Pomona Ave., Newark, NJ 07112. Representative: Nathaniel Lawson (same address as applicant), (201) 923–3762. Transporting *copy and printing paper*, between points in the U.S., under continuing contract(s) with Heritage Paper Company, Inc., of Fairfield, NJ.

MC 161687, filed April 27, 1982. Applicant: MARGARET O. JONES d.b.a. A–1 TRAVEL CENTER, 3524 Inwood Rd., Suite 112, Dallas, TX 75209. Representative: Margaret O. Jones (same address as applicant), (214) 559–3640. To operate as *broker*, at Dallas, TX, in arranging for the transportation of *passengers and their baggage*, between points in the U.S.

Volume No. OP–96

Decided: April 30, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 35519 (Sub-2), filed April 22, 1982. Applicant: J. W. ATHEY, SR. & J. W. ATHEY, JR. d.b.a. ATHEY TRUCKING, Route 1, Box 364, Stephens City, VA 22655. Representative: Frank B. Hand, Jr., 523 South Cameron St., Winchester, VA 22601, (703) 662–0927. Transporting (a) *ores and minerals*, (b) *food and related products*, (c) *metal products*, (d) *chemicals and related products*, and (e) *transportation equipment*, between points in VA, MD, WV, NC, KY, MI, PA, NY, DE, NJ, IN, IL, TN, OH, FL, SC, GA, and DC.

MC 41096 (Sub-77), filed April 21, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006; (202) 833–8804. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Minnesota Mining and Manufacturing Company of St. Paul, MN.

MC 119606 (Sub-11), filed April 22, 1982. Applicant: DUBOIS TRUCKING, INC., P.O. Box 360, S. Barre, VT 05670. Representative: John P. Monte, P.O. Box 686, Barre, VT 05641; 802–476–6673. Transporting (1) *building materials*, and (2) *those commodities which because of their size or weight require the use of special handling or equipment*, between points in CT, MA, ME, NH, NJ, NY, PA, RI, VA, VT and WV.

MC 133189 (Sub-47), filed April 20, 1982. Applicant: VANT TRANSFER, INC., 1257 Osborne Rd., Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101; (612) 291–1215. Transportation *such commodities* as are dealth in or used by manufacturers and distributors of forest products, between points in the U.S. (except AK and HI), under continuing contract(s) with the Weyerhaeuser Company, of Tacoma, WA.

MC 133589 (Sub-4), filed April 21, 1982. Applicant: BCT, INC., P.O. Box 7219, Boise, ID 83707. Representative: James R. Daly (same address as applicant.) (208) 384–7230. Transporting (1) *gypsum and gypsum products* and (2) *building materials* (except those in (1) above), between points in Fergus County, MT, and Sevier County, UT, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, and NM, under continuing contract(s) with United States Gypsum Company of Chicago, IL.

MC 140149 (Sub-4), filed April 22, 1982. Applicant: M. C. BUNCH, INC., Route 1, Box 52, Lake City, AR 72437. Representative: James M. Duckett, 221 W. 2nd, Ste. 411, Little Rock, AR 72201; 501–375–3022. Transporting *steel tubing and automotive parts*, between points in Cook County, IL, on the one hand, and, on the other, points in AR, MS, LA, OK, KY, TN, and GA.

MC 140859 (Sub-17), filed April 21, 1982. Applicant: WESTERN KENTUCKY TRUCKING, INC., P.O. Box 1072, 1245 Center St., Henderson, KY 42420. Representative: George M. Catlett, Suite 700–702 McClure Bldg., Frankfort, KY 40601; (502) 227–7384. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Newman, KY and Owensboro, KY over U.S. Hwy 60, serving all intermediate points, and serving all other points in Daviess County, KY as off-route points.

MC 146319 (Sub-6), filed April 21, 1982 Applicant: ELLIOT LAKE FREIGHT LINE, LIMITED, Highway 17, P.O. Box 70, Spragge, Ontario, Canada POR 1KO. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202; 716–853–0200. Transporting *ores and minerals in foreign commerce*, between ports of entry on the international boundary line between the United States and Canada located in MI and NY, on the one hand, and, on the other, points in OK.

MC 151118 (Sub-21), filed April 22, 1982 Applicant: M.D.R. CARTAGE, INC., 516 West Johnson St., Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701; (601) 335–3576. Transporting *such commodities* as are dealt in or used by retail and wholesale grocery food and variety stores, between Indianapolis, IN, and points in Craighead, Greene, Jackson, Mississippi and Sharp Counties, AR, Butler and Dunklin Counties, MO, Shelby County, TN, and St. Martin Parish, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151428 (Sub-5), filed April 16, 1982 Applicant: J & H TRUCKING, INC., 12425 Telephone, Chino, CA 91710. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Ste. 315, Beverly Hills, CA 90212; 213–277–2323. Transporting *such commodities* as are dealt in by home improvement and department stores, between points in AZ, CA, CO, GA, MO, NJ, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI.

MC 152098 (Sub-2), filed April 20, 1982 Applicant: OAKHURST TRANSPORATION, INC., 175 Oakhurst St., Lockport, NY 14094. Representative: James E. Brown, 36 Brunswick Rd., Depew, NY 14043; 716–681–7190. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in NY, and points in Erie, Crawford, Warren, McKean, Potter, Tioga, Bradford, Susquehanna, Marcer, Venago, Elk, Cameron and Forest Counties, PA.

MC 157488 (Sub-1), filed April 16, 1982 Applicant: ROY WESSELS, d.b.a. D & K TRANSPORTATION, P.O. Box 818, Lewiston, ID 83501. Representative: Roy Wessels (same address as applicant) (509) 758–9838. Transporting *lumber and wood products, and forest products*, between points in Broadwater County, MT, Spokane County, WA, and points in ID, on the one hand, and, on the other, points in WA, ID, OR, CA, AZ, ND, SD, UT, CO, WY, NE, NV, MN, IA, KS, and MT.

MC 158129 (Sub-3), filed April 19, 1982 Applicant: REGAL TRANSPORTATION, INC., P.O. Box 310, Niles, OH 44446. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215; (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Winnebago County, IL and Summit County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12893 Filed 5–10–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 254]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 4, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 103926 (Sub-110)X, filed April 22, 1982. Applicant: W. T. MAYFIELD SONS TRUCKING CO., INC., P.O. Box 947, Mableton, GA 30059. Representative: Wm. H. Driskell (same as above). Sub 106F certificate: broaden from (A) part (1), machinery and equipment, machinery and equipment parts, implements, attachments and accessories and materials, supplies and equipment used in the manufacture, distribution or sale of such commodities to "machinery and equipment, machinery and equipment parts, implements, attachments and accessories and materials, supplies and equipment used in the manufacture, distribution or sale of such commodities; metal products and commodities, which because of size or weight require the use of special equipment or handling"; (B) part (3) tanks and materials, equipment and supplies, used in the manufacture, distribution or sale thereof, to "metal products; clay, concrete, glass or stone products and rubber and plastic products"; (C) part (4) poles and materials, accessories and supplies incidental thereto, to "metal products; clay, concrete, glass or stone products and lumber and wood products"; (D) part (6) pipe, pipe fittings, valves, hydrants, and castings and accessories and parts for same, to "metal products; clay, concrete, glass or stone products and rubber and plastic products"; (E) part (7) cooling towers and parts, accessories and supplies incidental thereto, to "clay, concrete, glass or stone products; metal products and machinery.

equipment and supplies"; (F) part (10) self-propelled articles (except automobiles) and parts, attachments and accessories for same, to "self-propelled articles and commodities, which because of size and weight require the use of special equipment or handling"; and (G) part (12), aircraft refueler units, to "transportation equipment."

MC 106194 (Sub-46)X, filed November 20, 1981, previously noticed in the **Federal Register** of January 8, 1982, republished as follows: Applicant: HORN TRANSPORTATION, INC., P.O. Box 1172, Pueblo, CO 81001. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. Sub-Nos. 4, 14, 20, 27, 28, 32, 33, 35F, and 38 certificates and Sub-Nos. E1 through E11 E-letter notices: (1) broaden commodity descriptions, as follows: (a) "petroleum, natural gas or their products; wood and lumber products; metal products; machinery; building materials, Mercer commodities; clay, concrete and glass; rubber and plastic products; waste and scrap materials," from pipe, pipe couplings and fittings therefor, iron and steel articles, machinery and agricultural implements and parts therefor, materials, equipment and supplies incidental or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, contractors' equipment, materials and supplies, and petroleum products, in Sub-Nos. 4 and 35F, (b) "farm products" from livestock, in Sub-No. 40; (c) "building materials, machinery, metal products, coal and coal products, lumber and wood products, and farm products," from building materials, farm machinery and parts, wire, coal, lumber and livestock, in Sub-No. 37(1); (d) "metal products, machinery, Mercer commodities, petroleum, natural gas or their products, contractors' equipment, materials and supplies," from iron and steel articles, agricultural machinery and parts therefor; the materials incidental to or used in the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum, contractor's equipment, materials and supplies and petroleum products, in Sub-No. 37(5); (e) "Mercer commodities, chemicals and related products, and coal products," from drilling mud, mud additives, cottonseed hulls, bentonite, lignite, coal, demulsifiers, inhibitors, corrosives, surfactants, oxygens, scavengers and anti-foliants, in Sub-No. 38; (2) broaden Pittsburg, KS, to Crawford County, KS.

MC 140219 (Sub-1)X, filed March 5, 1982, previously noticed in the **Federal Register** of April 16, 1982, and republished as corrected this issue. Applicant: MERRILL TRANSPORT OF VERMONT, INC., 356 Dorset Street, P.O. Box 2146, So. Burlington, VT 05403. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043 Lead. Correct and supplement county-wide (irregular routes) broadening as follows: Dracut to Middlesex County, MA; West Boyleston to Worcester County, MA; Fall River to Bristol County, MA and Manchester to Hillsborough County, NH. The purpose of this republication is to correct April 16, 1982 publication.

MC 146285 (Sub-6)X, filed April 27, 1982. Applicant: JIM CONNER d.b.a. JIM CONNER ENTERPRISES, INC., Rt. 37 South, Benton, IL 62812. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Sub 2 permit, broaden: (1) mobile work platforms, steel sheets and coils, scrap metals, lumber, and platform scissor lifts to "iron and steel articles, machinery, and lumber and wood products"; (2) to between points in the U.S. (except AK and HI) under continuing contract(s) with named shippers.

MC 147334 (Sub-3)X, filed April 29, 1982. Applicant: ROBERT J. SALZ, 3446 Longview Road, Erie, CO 80516. Representative: Steven K. Kuhlmann, 717 Seventeenth St., Suite 2600, Denver, CO 80202. Sub 2 certificate, broaden (1) to "food and related products," from malt beverages in containers; and (2) to radial authority .

MC 147325 (Sub-1)X, filed April 27, 1982. Applicant: ALBERT L. LYNCH d.b.a., LYNCH TRUCK SERVICE, 2624 Arrowhead Drive, Springfield, IL 62702. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180. Lead certificate (A) broaden general commodity authority by eliminating restrictions other than for classes A and B explosives, household goods and commodities in bulk, (B) broaden cities to county (1) from Oakbrook, IL to Cook County, IL, (2) Joliet, IL to Will County, IL, (3) Springfield, IL to Sangamon County, IL, and (4) St. Louis, MO to Monroe, Madison and St. Clair Counties, IL, St. Louis, St. Charles, and Jefferson Counties, MO, and St. Louis, MO.

MC 146127 (Sub-34)X, filed April 16, 1982. Applicant: LINEHAUL EXPRESS CORP., P.O. Box 5078, Manchester, NH 03108. Representative: Neal R. Michaud, Wilson Crossing Road, Auburn, NH 03032. Subs 2F, 3F, 4F, 18, and 23F certificates, (1) eliminate facility restrictions and broaden named points to countywide authority, as follows: Sub 2, Allegheny County, PA (facilities near Pittsburgh); Sub 3, Johnson and Muscatine Counties, IA (facilities near Muscatine and Iowa City), and St. Louis City, St. Charles, St. Louis and Jefferson Counties, MO, Monroe, Madison and St. Clair Counties, IL (St. Louis, MO); Sub 4, Ottawa and Allegan Counties, MI (facilities near Holland); Sub 18, Hamilton, Butler and Clermont Counties, OH, Boone, Kenton and Campbell Counties, KY (Cincinnati, OH); (2) change one-way authority to radial; (3) remove "originating at and destined to" restrictions in all certificates; and (4) remove shippers association facilities limitation at points in NY, NH, and VT (Sub 23).

[FR Doc 82-12891 Filed 5-10-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-127)]

Rail Carriers; Consolidated Rail Corp. Exemption for Contract Tariff ICC-CR-C-0084

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275-7656.

SUPPLEMENTARY INFORMATION: Consolidated Rail Corporation (Conrail) filed a petition on April 23, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner requests that we permit an amendment to contract tariff ICC-CR-C-0084 to become effective on one day's notice. The tariff was filed to become effective May 20, 1982. It provides for the transportation of coke from Youngstown, OH, to Indiana Harbor, IN.

Under 49 U.S.C. 10713(e), contracts and amendments must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Petitioner states that advancing the effective date is necessary because of a shutdown of the shipper's coke facility at Indiana Harbor. Moreover, it is emphasized that the contract provides the shipper with reduced rates. It is further argued that higher tariff rates would impose a severe financial penalty upon the shipper.

We find this to be the type of circumstances which warrants a provisional exemption. Advancement of the effective date will substantially benefit the shipper by enabling it to obtain its needed coke supply without interruption and at the reduced contract rate.

Petitioner's amended contract tariff ICC–CR–C–0084 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the amended contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human enviroment or conservation of energy resources.

Dated: May 4, 1982.

(49 U.S.C. 10505)

By the Commission, Division 1, Commissioners Sterrett, Gilliam, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12660 Filed 5–10–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-85)]

Rail Carriers; Illinois Central Gulf Railroad Co.; Abandonment Between Cisco and Green's Switch, IL; Findings

The Commission has found that the public convenience and necessity permit the Illinois Central Gulf Railroad Company to abandon a 13.41-mile line of railroad betwen milepost 14.22 at Cisco, IL, and milepost 27.63 at Green's Switch, IL. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10-day period.

Information and procedures regarding financial assistance for continued rail services are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12659 Filed 5–10–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. MC–43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: May 4, 1982.

S.R.T. Motor Freight, Inc. (Certificate No. MC–84450) and American Trans-Freight, Inc. (Certificate No. MC–140768) petition for waiver of Subpart B (§§ 1057.11 and 1057.12) and Paragraphs (a) and (d) of § 1057.31 of Subpart D of the *Lease and Interchange of Vehicles Regulations* (49 CFR Part 1057).

Findings

1. Petitioners are commonly controlled and jointly administer a common safety program.

2. Petitioners have acceptable fitness records.

3. Greater economy and efficiency would result if the requirements of Subpart B were waived in part.

4. Common carriers of property are not precluded from entering into master interchange agreements. (See *Administrative Ruling No. 126, Revised,* March 1, 1977 at page 21.)

5. Petitioners have presented no evidence warranting waiver of paragraphs (a) and (d) of § 1057.31.

It is Ordered

1. The petition of S.R.T. Motor Freight, Inc. (No. MC–84450) and American Trans-Freight, Inc. (No. MC–140768) for waiver of Subpart B (§§ 1057.11 and 1057.12) is granted, except for Paragraphs (b) and (c) of § 1057.11, with respect to equipment augmented between them, provided petitioners or their authorized representatives agree in writing that the lessee shall have control and responsibility for the operation of the equipment from the time possession is taken by the lessee and the receipt required under paragraph (b) of § 1057.11 is given to the lessor until the equipment is returned to the lessor and the receipt required under paragraph (b) of § 1057.11 is received by the lessee or the equipment is returned to the lessor or transferred to another authorized carrier in an interchange of equipment.

2. The waiver granted in this decision does not affect the application of the leasing regulations to a lease between an owner-operator and the lessor carrier.

3. The petition for waiver of paragraphs (a) and (d) of § 1057.31 is denied.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12667 Filed 5–10–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388]

State Intrastate Rail Rate Authority—Pub. L. 96–448

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission jurisdiction over intrastate rail transportation.

SUMMARY: By notice published in the **Federal Register** on February 8, 1982 (47 FR 5786), the Commission indicated that 14 States and the District of Columbia had not sought certification pursuant to 49 U.S.C. 11501(b) and that, as a consequence, they had lost all jurisdiction to regulate intrastate rail rates. We stated that these States should inform the Commission by March 10, 1982, if they wanted us to assume intrastate regulation. In the absence of such indication, we stated we would not assert jurisdiction.

Six States have asked us to assume jurisdiction: California, Connecticut, Delaware, Mississippi,[1] Nevada, and North Carolina. Consequently, the Commission shall assume jurisdiction over intrastate rail transportation in those States upon publication of this notice in the **Federal Register.** Rail carriers in these States shall comply

[1] Mississippi did not file until March 16, 1982, but their request shall be accepted.

with Commission regulations such as the filing of intrastate tariffs with us.

South Dakota specifically requested that we not assert jurisdiction over intrastate rail transportation. No response was received from the remaining States: Alaska, Arizona, the District of Columbia, Hawaii, Maine, Massachusetts, Rhode Island, and Vermont. Thus, we shall not assume intrastate rail rate regulation in these States.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Donald Shaw (202) 275–7656.

This decision does not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 11501)

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Dated: May 4, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12980 Filed 5-10-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 3-82]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records (Bankruptcy Case Files and Associated Records, JUSTICE/UST–001) maintained by the United States Trustees.

The United States Trustees' Bankruptcy Case Files and Associated Records system is a system of records for which public notice was published in Volume 46, Number 236 of the **Federal Register** on December 9, 1981, consistent with provisions of 5 U.S.C. 552a(e)(4). However, the system will be amended to include an automated case tracking system using data from existing case files. Summary data will be extracted from case files and stored on computer disks for the purpose of automatically tracking cases and reviewing their status. The following sections of the notice have been revised to reflect and incorporate this change: "Storage," "Retrievability," and "Safeguards." In addition, a minor revision has been made to the section of the notice entitled "System manager(s) and address." Changes have been italicized for the convenience of the public.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal the partially automate this system. Therefore, OMB, the Congress, and the public are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Justice Management Division, Department of Justice, Room 6239, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days from the date of publication of this notice, the proposed modification will be implemented without further notice in the **Federal Register**. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives.

Dated: April 15, 1982.

William D. Van Stavoren,

Acting Assistant Attorney General for Administration.

Justice/UST–001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

SYSTEM LOCATION:

Ten offices of the United States Trustees, and three offices of Assistant United States Trustees. In addition, the Executive Office for United States Trustees maintains duplicate copies of certain pleadings and materials relating to specific cases or entities. (See appendix identified as JUSTICE/UST–999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in bankruptcy proceedings (under Chapters 7, 11 and 13 of 11 U.S.C.) subsequent to September 30, 1979, including but not limited to debtors, creditors, bankruptcy trustees, agents representing debtors, creditors, and trustees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Petitions/orders for relief, (b) schedules of assets and liabilities of bankrupts, (c) lists of creditors, (d) statements of debtors' financial affairs, (e) docket cards (UST–001, 002, 003, and any alterations thereof), (f) alphabetical cross-reference index cards, (g) general correspondence regarding cases, (h) miscellaneous investigative records, (i) copies of certain petitions, pleadings or other papers filed with the court, including UST recommendations to court for appointment of trustee or examiner in Chapter 11, recommendations for dismissal or conversion, recommendations as to dischargeability, (j) appraisal reports, (k) names of approved depositories and amounts of funds deposited therein, (l) names of sureties and amounts of trustees' bonds, (m) tape or other recordings of creditors' meetings called pursuant to Section 341 of Title 11, U.S.C., for the purpose of examination of debtors by creditors, trustee and others, (n) plans filed under Chapters 11 or 13, (o) lists of persons serving as counsel, trustee, or other functionaries in bankruptcy cases, including compensation earned or sought by each, (p) lists of attorneys representing creditors in bankruptcy cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 28 U.S.C. 586 and 11 U.S.C., especially Chapter 15 thereof.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by personnel of the Executive office or the U.S. Trustee office where maintained, to determine the existence in the office of a case, to ascertain the status of actions with respect to that case, and to ensure that timely action is taken as appropriate, and to ascertain the involvement by agents or other representatives of parties in such cases.

As provided by 11 U.S.C. 107, a paper filed in a case and the dockets of the bankruptcy court are public records and open to examination except when the court moves to protect an entity with respect to a trade secret, confidental research, development, or commercial information, or to protect a person with respect to a scandalous or defamatory matter contained in a paper filed in a case. In this case, that portion of the record is only available upon the consent of the debtor. In addition, except when the Court has moved to protect an entity, the records will be released as follows.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 et seq., may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Service: A record from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

Release of information to law enforcement or regulatory agencies: Information obtained by the U.S. Trustees will be tranmitted to appropriate state, local, Federal or other law enforcement or regulatory agencies whenever a U.S. Trustee or the Director, Executive Office for U.S. Trustees or his designee believes that such transmittal in public interest, except to the extent that such transmittal would conflict with any immunity granted by a court of competent jurisdiction in accordance with the provisions of Title 11, U.S.C.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified below in this paragraph is recorded on basic paper/cardboard material and maintained within metal file boxes, file cabinets, electric file/card retrievers or safes. Certain information from the documents, forms, lists and reports described under "Categories of records in the system" will be entered into an automated information system and stored on magnetic disks for reproduction in report form at various times. This includes the case number, debtor's name, case status, type of case, assets of estate, dates of reports filed, trustee bonds, debtor's attorney's name and fees, calendar of meetings and hearings, creditor's committee status, plan and schedule due dates, and trustee/examiner names and dates appointed.

RETRIEVABILITY:

Printed information in field office case files is retrieved by bankruptcy court docket number, and is cross-referenced alphabetically by names of debtors. Information with respect to agents representing debtors, creditors and trustees, and with respect to depository banks, is maintained alphabetically. (Case files maintained in the Executive Office are assigned sequential file numbers and are cross referenced alphabetically by name of the debtor.) Automated information is retrieved by case number or report number.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing the handling of office records and computerized information. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustees. There is presently no authority to destroy any information within this system except those documents which are duplicates of records for which the bankruptcy courts maintain the official record copies.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the U.S. Trustee and in the Executive Office, the Chief, Management and Budget Section. (See appendix of addresses indentified as JUSTICE/UST–999.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case is pending, or was administered. (See appendix of addresses identified as JUSTICE/UST–999.)

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall ordinarily be made in person at the U.S. Trustee office in which the case is filed.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix of addresses identified as JUSTICE/UST–999), stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this record are generally limited to debtors, creditors, trustees, examiners, attorneys, and other agents participating in the administration of a case, judges of the bankruptcy courts and employees of the U.S. Trustee offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc 82-12737 Filed 5-10-82; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

DEPARTMENT OF THE TREASURY

Justice-Treasury State and Local Law Enforcement Training Program; Meeting

The Justice-Treasury State and Local Law Enforcement Training Program is duly chartered as required by the Federal Advisory Committee Act (Pub. L. 96–463, 86 Stat. 770–776, 5, U.S.C. App. I Supp. II) in timely relation to the Notice of Establishment which appeared in the **Federal Register**, Vol. 47, No. 57 on Wednesday, March 24, 1982. The Advisory Committee will meet from 10:00 a.m. until 4:30 p.m. on May 18, 1982 at the Cash Room, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C.

This will be the Advisory Committee's first meeting. The one day meeting will be devoted to introductory and organizational matters, and presentations by the Justice-Treasury Interagency Working Group. These presentations will explain the evolution of the program, the Justice-Treasury Agreement on State and Local Law Enforcement Training, the program work plan, the Federal Law Enforcement Training Center, and the role of the Advisory Committee.

At this first meeting and the three subsequent meetings, the Advisory Committee will focus on the identification of specific areas of advanced specialized training, recommendation for curriculum content, identification of available training material and instructors, and recommendations for marketing the training programs to state and local law enforcement agencies.

The meeting will be open to the public. Approximately 200 seats will be available for the public and media representatives on a first-come first-serve basis. We regret the exigencies of arranging this meeting precluded the normal 15-day notice period.

Persons interested in submitting written comments on the Advisory Committee's areas of focus may send their comments to the Committee Management Liaison Officer, Justice-Treasury State and Local Law Enforcement Training Office of the Associate Attorney General, U.S. Department of Justice, Room 4119, Washington, D.C. 20530. (Committee

Management Liaison Officer's telephone number 202/376–0805.)

George H. Bohlinger, III,

Executive Director, Justice-Treasury Advisory Committee.

[FR Doc 82-12885 Filed 5-10-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 21, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 30th day of April 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Rehers Zwirne, Ltd. (workers)	Shelby, N.C.	4/20/82	4/15/82	TA-W-13,424	Chenille yarn and novelty yarn.
Avon Service, Inc. (workers)	Mineral Point, MO	4/6/82	3/22/82	TA-W-13,425	Mine and separates raw barite.
Boston Digital Corp. (workers)	Hopkinton, MA	4/23/82	4/16/82	TA-W-13,426	Tools, machine—computers.
Brown Shoe Co. (UFCW)	Brookfield, MO	4/19/82	4/13/82	TA-W-13,427	Shoes—men's.
Cyclops Corp., Sawhill Tubular Div. (USWA)	Sharon, PA	4/23/82	4/19/82	TA-W-13,428	Nipple, pluming, fabricating.
Franklin Apparel Co. (ILGWU)	Franklin, NH	4/15/82	4/12/82	TA-W-13,429	Dresses—ladies.
Imco Services (workers)	Mineral Point, MO	4/6/82	3/22/82	TA-W-13,430	Office—administrative.
Mount Vernon Mills, Inc., Tallassee Div., Industrial Mill (company).	Tallassee, AL	4/19/82	4/14/82	TA-W-13,431	Fabrics—industrial.
Parker Majestic, Inc. (UAW)	Detroit, MI	4/19/82	4/14/82	TA-W-13,432	Machines (precision spindles), cutting—metal.
Phoenix Clothes (company)	Vineland, NJ	4/22/82	4/16/82	TA-W-13,433	Suits, sportcoats, blazers—men's and women.
Stackpole Machinery Co. (company)	Johnsonburg, PA	4/19/82	4/14/82	TA-W-13,434	Machines, labeling parts—replacement.
Tecumseh Products Co., Marion Div. (UAW)	Marion, OH	4/19/82	4/13/82	TA-W-13,435	Compressors—refrigeration.
Wells-Index Corp. (workers)	Three Rivers, MI	4/19/82	4/7/82	TA-W-13,436	Machines—milling.

[FR Doc. 82-12740 Filed 5-10-82; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 26, 1982–April 30, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,286; Imerman Industries, Inc., Detroit, MI
TA–W–12,546; H.W. Gossard Co., Batavia, IL
TA–W–12,574; H.W. Gossard Co., Poplar Bluff, MO
TA–W–12,692; H.W. Gossard Co., Piggott, AR
TA–W–12,639; I & S Shoe Co., Inc., Somersworth, NH
TA–W–12,190; FMC Corp., ASED Div., Culver City, CA
TA–W–12,505; Ex-Cello-O Corp., Workcenter Div., Howell, MI
TA–W–12,693; Prestolite Battery Div., Eltra Corp., Vencennes, IN
TA–W–11,773; Modine Manufacturing Co., LaPorte, IN
TA–W–12,218; Shelburne Shirt Co., Inc., Fall River, MA
TA–W–12,681; Boonton Molding Co., Boonton, NJ
TA–W–12,369; J.P. Stevens & Co., Inc., Taylors Plant #2, Taylor, SC
TA–W–12,255; U.S.M. Corp., Bailey Div., Seabrook, NH
TA–W–12,104; Continental Rubber Works, Erie, PA
TA–W–12,089; Opelika Manufacturing Corp., Miami, FL
TA–W–12,404; Clayburne Manufacturing Corp., Clayton, GA
TA–W–12,405; Clayburne Highlands Corp., Highland, NC
TA–W–12,406; Cashiers Manufacturing Corp., Cashiers, NC
TA–W–12,161; Standard Products Co., Inc., Reid Products Div., Cleveland, OH
TA–W–12,327; Page Plastics, Inc., Cincinnati, OH
TA–W–12,541; Locks Industries, Inc., Grand Rapids, MI

TA–W–11,999; Raycord Company, Inc., Spartanburg, SC
TA–W–12,000; Raycord Co., Inc., Chesnee, NC
TA–W–11,669; N.E.B. Jean & Sportswear Co., Inc., Cambridge, MD
TA–W–11,869; National Standard Co., Strandflex Div., Oriskany, NY
TA–W–11,600; Fly Manufacturing Co., Inc., Athens, AL
TA–W–12,432; Park Fashions, Inc., Hoboken, NJ
TA–W–12,238; Conca D'oro, Inc., Paterson, NJ
TA–W–11,685; Lawrence Manufacturing Co., Inc., Walnut Ridge, AR

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–12,595; Ford Aerospace & Communications Corp., Pretsa—U.S.A. Office, Lansdale, PA
TA–W–12,593; Colorguard Corp., Raritan, NJ
TA–W–12,248; A-One Knitting Mills, Inc., Brooklyn, NY

In the following cases the investigation revealed that criterion (3) has not been met, the reasons specified.

TA–W–12,645; United Merchants & Manufacturers, Inc., Old Fort Finishing Plant, Old Fort, NC

Imports did not increase as required for certification.

TA–W–11,965; R. Fox Ltd., Belleville, IL

Imports did not increase as required for certification.

Affirmative Determinations

TA–W–12,077; Petite Dreamwear, Inc., Brooklyn, NY

A certification was issued in response to a petition received on January 12, 1981 covering all workers separated on or after January 8, 1980 and before August 22, 1980.

TA–W–11,973; Metro Pants Div. Melville Corp., Harrisonburg, VA

A certification was issued in response to a petition received on December 17, 1980 covering all workers separated on or after November 1, 1980.

TA–W–11,972; Metro Pants Div., Melville Corp., Manufacturing Plant, Bridgewater, VA

A certification was issued in response to a petition received on December 17, 1980 covering all workers separated on or after November 1, 1980.

TA–W–12,032; Fedders Automotive Components Co., Buffalo, NY

A certification was issued in response to a petition received on November 24, 1980 covering all workers separated on or after April 1, 1980.

TA–W–11,971; Metro Pants Div., Melville Corp., Distribution Center, Bridgewater, VA

A certification was issued in response to a petition received on December 17, 1980 covering all workers separated on or after November 1, 1980.

TA–W–11,962; Metro Pants Div., Melville Corp., New York, NY

A certification was issued in response to a petition received on December 17, 1980 covering all workers separated on or after November 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period April 26, 1982—April 30, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 4, 1982.

Marvin. M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-12741 Filed 5-10-82; 8:45 am]
BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application Nos. D–3137, 3138 and 3139]

Proposed Exemption for Certain Transactions Involving the Bell System Trust Located in New York, N.Y.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, effective February 11, 1982, (1) transactions relating to the acquisition by Heitman Advisory Corporation (Heitman), as fiduciary for the Bell System Trust (the Trust), of a 50% interest in a limited partnership (the Partnership) which will hold certain improved parcels of real property (the Property); (2) the continued leasing of space in the Property by the Partnership to certain parties in interest with respect to the Trust; (3) the future leasing of space in the Property by the Partnership to certain parties in interest with respect to the Trust; and (4) other prohibited transactions as described herein affected or to be effected with regard to the Trust's investment in the Partnership. The proposed exemption, if granted, would effect Heitman, the Trust, the Partnership and any other persons participating in the transactions.

EFFECTIVE DATE: If granted, this exemption will be effective February 11, 1982.

DATE: Written comments and requests for a public hearing must be received by the Department on or before June 29, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D–3137, 3138 and 3139. The application for exemption and the comments received will be available for Public inspection in the public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Heitman, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Trust is a tax-exempt trust established pursuant to the Bell System Trust Agreement dated October 1, 1980 (the Trust Agreement). The Trust was established by American Telephone and Telegraph Company (AT&T) as a group trust to hold, manage and invest assets held by the trusts created under the Bell System Pension Plan and the Bell System Management Pension Plan (the Plans). As of December 31, 1980, the Plans covered approximately 1,100,000 participants.

2. Pursuant to section 4(a) of the Trust Agreement, AT&T has reserved power to hire investment managers to invest all or some of the funds held in the Trust. Heitman, an Illinois corporation with its principal office in Chicago, Illinois, is an investment advisor registered with the Securities and Exchange Commission and with the Securities Division of the Secretary of State of the State of Illinois. Heitman has entered into a management agreement with AT&T whereby Heitman has agreed to act as an investment manager for a portion of the Trust assets. Specifically, Heitman's duties are to invest allocated Trust funds, directly or indirectly, in parcels of real estate or real estate related investments. As an investment manager, Heitman has sole responsibility and discretion for the acquisition, management and disposition of each real estate related investment acquired by Heitman on behalf of the Trust. All amounts allocated to Heitman from the Trust are allocated through Harris Trust and Savings Bank (Harris Bank), one of the Trust's trustees. All such investments are purchased in the name of Harris Bank as trustee for the Trust, or such investments may be held by another nominee of the Trust, as may be designated to Heitman.

3. All investment decisions made by Heitman for the Trust are made by Heitman's investment committee. This committee consists of Messrs. Norman Perlmutter, Miles Berger, William Jenson, Herbert Kuehnle, Eric Mayer, and Stuart Isen. None of these individuals is an officer, director or employee of AT&T or any affiliate. None of the stock of Heitman or any affiliate is held by AT&T or any affiliate, nor does any officer, director, or employee of AT&T or any affiliate own any stock in Heitman or any affiliate. Heitman is one of over 100 investment advisors and managers of the Trust.

4. Heitman entered into a commitment (the Commitment) with Oxford Development Minnesota, Inc. (Oxford) on January 11, 1982, whereby Heitman, in its capacity as investment manager for Harris Bank, as trustee of the Trust, will contribute $100,000,000 in cash to the Partnership in exchange for a 50% limited partnership interest therein. Pursuant to the Commitment, Oxford will be the sole general partner in the Partnership and the Trust will be the sole limited partner. The primary asset of the Partnership is the Property and related leases and related personal property. The transaction was closed on February 11, 1982, and the Partnership agreement (the Partnership Agreement) reflecting the terms and conditions of the Commitment, was executed. The aggregate investment by the Trust of $100,000,000 represents less than three-tenths of one percent (.3%) of the Trust's total assets.

5. As its capital contribution to the Partnership, Oxford contributed the Property. The Property consists of 109,229 square feet of land located in Minneapolis, Minnesota. The Property contains a 55 story office building and an 8 story annex, the Marquette Hotel, an enclosed retail shopping mall and a parking garage and related facilities. The Property comprises one square city block and is known as the IDS Block. Oxford acquired the Property pursuant to a purchase agreement dated September 11, 1981, from Investors Diversified Services, Inc. (IDS). Under the Partnership Agreement, Oxford will have an initial capital account of $100,000,000 and a 50% interest in profits and losses, and the Trust will have an initial capital account of $100,000,000 and a 50% interest in profits and losses of the Partnership. Oxford is totally unrelated to Heitman or AT&T. IDS provides investment management and advisory services to the Trust which are unrelated to the Trust's investment in the Partnership.

6. Oxford contributed the Property to the Partnership subject to a first and second mortgage. The first mortgage, dated July 1, 1970, was originally executed by IDS Properties, Inc., a subsidiary of IDS, as mortgagor, and Northwestern National Bank of Minneapolis, as mortgagee. The first mortgage secures two notes (Note A and Note B) in the aggregate original principal amount of $75,000,000 which bear interest at the rate of 8.125% per annum. Note A is in the principal amount of $45,000,000 and was assigned to Metropolitan Life Insurance Company, an unrelated party with respect to the Trust, on June 27, 1973. Note B was assigned to Equitable Life Assurance Society of the United States (Equitable) on June 27, 1973. Equitable is a tenant in the Property and an investment manager of Trust assets not involved in this transaction.

The second mortgage is dated September 11, 1981, and was assigned by the mortgagee, IDS, to the Toronto Dominion Bank, Atlanta Agency (Toronto Bank), on January 4, 1982. Toronto Bank is an unrelated party with respect to the Trust. Pursuant to the Commitment, the Trust's initial contribution to the Partnership ($100,000,000) will pay in full the unpaid principal balance and accrued and unpaid interest of the second mortgage.

7. As of January, 1982, 98% of the Property's space was rented. Among the existing tenants in the Property are certain parties who are parties in interest with respect to the Trust. With one exception noted below, all of these parties maintain no relationship with Heitman and have not influenced in any manner the investment of Trust assets in the Partnership. Among these lessees are the Northwestern National Bank of Minneapolis, a trustee of the Trust; Wells Fargo Realty Advisers, a wholly-owned subsidiary of a trustee of the Trust; Northwestern Bell Telephone company (Northwestern Bell), a wholly-owned subsidiary of AT&T;[1] Equitable; Travelers Life Insurance Company, an investment adviser to the Trust; Stein, Row & Farnham, an investment adviser to the Trust; and IDS. With the exception of IDS's leases in the Property, the above parties in interest lease interest in the Property represent a small percentage of the leased space. IDS's leases represent approximately 20% of the total usable area in the Property.

One lessee in the Property, Heitman Financial Services, Ltd. (Heitman, Ltd.), is related to Heitman. Heitman, Ltd. owns 100% of the outstanding voting stock of Heitman.

8. Pursuant to the Partnership Agreement, the Trust will be provided with a guaranteed preferred return, payable quarterly, from the Partnership. Oxford will unconditionally guarantee to the Trust such preferred return to be secured by Oxford's interest in the Partnership. Oxford's failure to pay when due any payment of preferred return to the Trust pursuant to its guarantee will constitute an event of default under the Partnership Agreement, and Oxford's interest in the Partnership will automatically be assigned to the Trust or its nominee. The Partnership Agreement further provides that either partner in the Partnership, upon the occurence of certain specified

[1] Northwestern Bell leases 345 square feet of space on a month-to-month basis (.03% of the total usable area). The applicant is unable to conclude that the lease meets the requirements of section 408(e) of the Act.

events, may offer to purchase the other partner's interest in the Partnership at a negotiated price payable in cash. The Partnership Agreement provides that either partner has right of first refusal if the other partner attempts to sell or assign its interest to a bona fide third party.

Pursuant to the Partnership Agreement, Oxford will serve as the manager of the Property for a term of 20 years and will receive a management fee of 3.3% of certain annual gross rentals received. The Partnership Agreement provides that, upon the occurrence of certain events, the management agreement with Oxford will be terminated and an affilate of Heitman will serve as the manager of the Property for a fixed term of six years.

9. Heitman seeks an exemption, effective the date of closing of the transaction, February 11, 1982, for the investment by the Trust in the Partnership. Heitman represents that the Trust's investment in the Partnership may constitute various prohibited transactions as described in the Act. Such transactions involve (1) the Partnership's obligations to Equitable pursuant to the first mortgage on the Property; (2) the present lease of office space in the Property to certain parties in interest with respect to the Trust; (3) the guarantees by Oxford to the Trust under the Partnership Agreement and the provisions in the Partnership Agreement providing for the purchase of either partner's interest from the other upon the occurence of certain specified events; and (4) the provision in the Partnership Agreement for an affiliate of Heitman to serve as property manager upon the termination of Oxford's services as property manager.

10. As described herein Oxford will serve as the property manager with respect to the Property and receive a fee for its services. IDS and Oxford have entered into an agreement whereby IDS would manage the Marquette Hotel and all restaurants in the hotel. As well, IDS is a partner in a general partnership which sells chilled water and steam to major downtown Minneapolis property owners, including the IDS Block. The Department recognizes these service contracts and is not proposing an exemption for the provision of services beyond that which is provided by section 408(b)(2) of the Act.

11. Heitman represents that none of the parties to which this proposed exemption applies has in any way influenced Heitman's discretion as an investment manager to the Trust with respect to the investment by the Trust in the Partnership. Heitman represents that, with the exception of its relationship to Heitman, Ltd., neither Heitman nor its officers, directors, stockholders, or employees own 5% or more of the voting shares of AT&T, Oxford, or any of the party in interest tenants of the Property. Heitman represents that the investment in the Partnership is a high quality investment opportunity and allows for a diversification of real estate investments for the Trust.

12. Heitman represents that it was not aware of the opportunity to invest in the Partnership until October, 1981, and that all of the party in interest leases and service contracts described herein, including the lease to Heitman, Ltd., were negotiated prior to Heitman's learning of this investment opportunity. These leases were negotiated between the lessees and Oxford, or Oxford's predecessor in title, on an arm's-length basis. Heitman represents that the terms of the investment were negotiated on an arm's-length basis with Oxford without regard to any particular party in interest lease or service contract and, in Heitman's opinion, the leases and contracts did not impose any detriment to the economic evaluation of the investment. Heitman represents that the party in interest lessees are corporations with credit standings to whom any prudent manager of commercial real property would prefer to lease. With regard to the first mortgage interest presently held by Equitable, Heitman represents that neither it nor Oxford are affiliated or otherwise related to Equitable, and that Equitable has not in any manner influenced the exercise of Heitman's judgement in its fiduciary capacity with respect to the Trust.

13. With respect to the lease to Heitman, Ltd., Heitman represents that this lease, which represents only .16% of the total usable area in the Property, will not be renewed at the end of its scheduled lease term, November 30, 1982. Heitman, Ltd. paid in advance its February, 1982, rent and has deposited serially numbered checks with the bank handling deposits of rent from lessees to cover its remaining rent obligations under its lease. In addition, Heitman will enter into an agreement with Oxford whereby Oxford will notify AT&T within five (5) business days after learning of an event of default by Heitman, Ltd. under its present lease and will take such action as general partner in the Partnership as AT&T may direct to enforce the terms and conditions of such lease. Oxford may also at AT&T's direction assign to AT&T the Partnership's cause of action against Heitman, Ltd. resulting from a breach under the lease.

14. With respect to the provision in the Partnership Agreement providing for the appointment of an affiliate of Heitman to serve as property manager upon the removal of Oxford, Heitman represents that AT&T would have to approve any management fee paid to Heitman or its affiliate prior to such property management agreement taking effect. This action would be taken in accordance with the terms of Heitman's investment agreement with AT&T.

15. Heitman believes that other parties in interest with respect to the Trust may become lessees in the Property and thereby seeks an exemption for such future leases. Any future leases will be arranged on an arm's-length basis and approved by Oxford or a Trust fiduciary not related to or affiliated with the potential lessee. As long as Heitman remains as an investment manager for the Trust, Heitman will monitor all leasing arrangements in the Property.

16. Heitman has analyzed the fair market value of the Property based on its expertise in transactions involving commercial real estate. In analyzing this investment, including the determination of the fair market value of the Partnership interest acquired by the Trust, Heitman took into consideration the value of the Property, including the rentals to be received from the IDS Block (including the party in interest leases) and the projected expenses of the Partnership. Heitman repreeants that the transaction was closed prior to the granting of a final exemption by the Department because, pursuant to the Commitment, the second mortgage, as described herein, was to be paid off as soon as possible after the execution of the Commitment. Heitman represents that if the Trust had postponed its initial contribution to the Partnership to a date after the granting of a final exemption, Oxford would have sought another partner or investor thereby precluding the Trust from an attractive investment opportunity.

17. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the terms of the transaction were negotiated on an arm's-length basis on behalf of the Trust by an independent Trust fiduciary, Heitman; (b) Heitman represents that none of the parties to which the exemption applies, i.e., pre-existing lessees and the pre-existing mortgagee (Equitable), nor Oxford, has in any way influenced Heitman's discretion with respect to the investment; (c) Heitman represents that the investment is a high quality investment opportunity and

allows for diversification of real estate investments for the Trust; (d) the Trust's investment will represent less than .3% of the Trust's total assets; (e) all of the existing party in interest leases were negotiated by Oxford or its predecessor in title on an arm's-length basis prior to Heitman's awareness of the investment opportunity; and (f) all renewals of existing leases and future leases to parties in interest with respect to the Trust will be arranged on an arm's-length basis, approved by Oxford or a Trust fiduciary not related to or affiliated with the lessee, and will be monitored by Heitman or another independent Trust fiduciary.

Notice to Interested Persons

By May 25, 1982, notice of the proposed exemption will be posted on all appropriate bulletin boards of all employers whose employees are covered by the Plans. As well, notice will be provided within ten (10) business days to the three national unions representing participants in the Plans; the Communication Workers of America, the International Brotherhood of Electrical Workers and the Telecommunications International Union. Such notices will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a statement advising interested persons of their rights to comment and request a hearing on the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective February 11, 1982, to (1) the investment of $100,000,000 by the Trust in the Partnership, (2) the guarantees by Oxford to the Trust with regard to Oxford's obligations under the Partnership Agreement, and the purchase of the interest of either partner in the Partnership from the other pursuant to the specified conditions and events as stated in the Partnership Agreement; (3) the continued leasing to and renewal of existing leases to parties in interest with respect to the Trust, including expension of any leased space occupied by a party in interest tenant, and the future leasing of space to parties in interest; provided that (a) the terms of the leases remain as favorable to the Trust as leases offered to unrelated parties occupying similar space, and (b) such lease renewals or expansions, and future leases are approved and monitored on behalf of the Trust by Heitman or a Trust investment manager which is not affiliated or otherwise related to the lessee in any manner which would affect the exercise of such investment manager's judgement as a Trust fiduciary; and (4) the extension of credit between Equitable and the Trust pursuant to the first mortgage, provided that the Trust's rights and obligations under the mortgage are exercised by a Trust fiduciary who is not related to or affiliated with Equitable.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representatives contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Signed at Washington, D.C., this 4th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc 82-12886 Filed 5-10-82; 8:45 am]
BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on May 28, 1982, Room 1046 at 1717 H Street, NW., Washington, DC. The Subcommittee will discuss the Nuclear Regulatory Commission's Nuclear Plant Severe Accident Research Plan and related items. Notice of this meeting was published April 13.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that

appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, May 28, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will than hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber or Mr. Stuart Beal (Telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., DST.

Dated: May 5, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-12791 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-364]

Alabama Power Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. NPF-8 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit No. 2 (the facility) located in Houston County, Alabama. The amendment is effective as of the date of issuance.

The amendment contains changes necessary to assure idenitical requirements and editorial improvements as were recently reviewed and approved for Unit 1 in Amendment No. 28 dated March 1, 1982. The plant design and operation are the same for Unit 1 and Unit 2. This amendment minimizes the potential for confusion and Technical Specifications violations and allows a consistent set for operating, maintenance and surveillance procedures for the essentially identical units.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuane of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendments dated October 28 and November 16, 1981 and March 16, 1982, (2) Amendment No. 13 to License No. NPF-8, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 5th day of May 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch, No. 1, Division of Licensing.

[FR Doc. 82-12792 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., et al. (Beaver Valley Power Station, Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), are holders of Facility Operating License No. DPR-66 which authorizes operation of the Beaver Valley Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located in Beaver County, Pennsylvania.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) establishing the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subscriptions, lettered A through O), each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements of separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3.).

Section 50.48(c) required completion of all modification to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 18, 1981, as amended December 1, 1981, and January 20, 1982, Duquesne Light Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of section III.G of Appendix R as follows:

(1) That the date in paragraph (c)(5) for submitting plans and schedules for meeting the provisions of paragraphs (c)(2), (c)(3) and (c)(4) with respect to certain requirements of section III.G of Appendix R to Part 50 be extended to July 1, 1982.

(2) That the date in paragraph (c)(5) for submitting design descriptions of modifications needed to satisfy section III.G.3. of Appendix R be extended to July 1, 1982.

(3) That the implementation date in paragraph (c)(2) for installation of

modifications required by section III.G.2 of Appendix R, that do not require prior NRC approval or plant shutdown, be extended to nine months after July 1, 1982.

(4) That the implementation date in paragraph (c)(3) for the installation of modifications required by section III.G.2 of Appendix R, that do not require prior NRC approval, but require plant shutdown, be extended to the third scheduled refueling outage.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of section III.G. of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternate safe shutdown capability had to be designed as required by section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12 dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Beaver Valley Power Station, Unit No. 1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1) The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan usedfor the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued with Amendment 18 to Facility Operating License No. DPR-66. A few items remain unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of one of these items as documented in our letter dated December 23, 1980. By letter dated November 24, 1980, the staff position was documented relative to the specific requirements that must be satisfied in order to resolve the remaining open items and meet the requirements of Appendix R. The plant modifications specified in the FPSER have been completed. Therefore, Beaver Valley Power Station, Unit No. 1 has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of section III.G. to Appendix R of 10 CFR 50.

The licensee also stated in the request for exemption that all other requirements of the Fire Protection Rule would be met on the schedules required by 10 CFR 50.48. As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternate Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at Beaver Valley Power Station, Unit No 1. Nevertheless, this means that compliance with the remaining requirements of the Fire Protection Rule have been or will be completed on or before the implementation dates required by the Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Beaver Valley Power Station, Unit No. 1, in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is not undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licenses have not been complete; that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission Has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the requirements of section III.G. of Appendix R to 10 CFR 50:

(1) That the date in paragraph (c)(5) for submitting plans and schedules for meeting the provisions of paragraphs (c)(2), (c)(3) and (c)(4) with respect to certain requirements of section III.G of Appendix R to Part 50 be extended to July 1, 1982.

(2) That the date in paragraph (c)(5) for submitting design descriptions of modifications needed to satisfy section III.G.3 of Appendix R be extended to July 1, 1982.

(3) That the implementation date in paragraph (c)(2) for installation of modifications required by section III.G.2 of Appendix R, that do not require prior NRC approval of plant shutdown, be extended to nine months after July 1, 1982.

(4) That the implementation date in paragraph (c)(3) for the installation of modifications required by section III.G.2 of Appendix R, that do not require prior NRC approval, but require plant shutdown, be extended to the third refueling outage that is presently scheduled for April 1983.

Provided the following condition is met:

The design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3., as required by § 50.48(c)(5)

shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81-12 dated February 20, 1981 and to each item in Enclosure 2 to Generic Letter 81-12, dated February 20, 1981.

If the licensee does not meet the above condition, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the work-load associated with reviewing all of the submittals falling due near the same time, will relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Md., this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12783 Filed 5-10-82; 8:45 am]
BILLING CODE 7590-01-M

[DO-82-2; Docket Nos. 50-250, 50-251]

Florida Power & Light Co. (Turkey Point Power Plant, Unit Nos. 3 and 4); Director's Decision Under 10 CFR 2.206

By petition dated April 6, 1982, Mr. Joel Jaffer requested pursuant to 10 CFR 2.206 that the Nuclear Regulatory Commission suspend the license amendments previously granted to Florida Power & Light Co. for steam generator repair of Turkey Point Nuclear Units 3 & 4 until the Commission completes action on a rulemaking petition submitted by him. Mr. Jaffer asserts that the rule change he proposes "will determine a jurisdictional defect in the license amendments, as to the public hearing required under * * * section 189a of the Atomic Energy Act."

For the reasons set forth below, Mr. Jaffer's request for suspension of license amendments authorizing repair of the Turkey Point Units 3 & 4 steam generators is denied.

I

Background

The license amendments authorizing Florida Power & Light Company to repair the steam generators in its Turkey Point Nuclear Units 3 & 4 were issued by the Office of Nuclear Reactor Regulation (NRR) on June 24, 1981, following a decision by the Atomic Safety and Licensing Board (ASLB) authorizing their issuance. In a Memorandum and Order issued on May 28, 1981, LBP-81-14, 13 NRC 677, the ASLB granted summary disposition of all contentions involving the proposed repairs; on June 19, 1981, the Board issued a final order permanently cancelling the evidentiary hearing concerning the proposed amendments and authorizing the Director of NRR to issue the amendments. LBP-81-16, 13 NRC 1115. Mr. Jaffer was not a party to that proceeding.

Mr. Jaffer requested leave to file an *amicus curiae* brief before the Atomic Safety and Licensing Appeal Board in the appeal taken by Mark Oncavage, a party to the license amendment proceeding. Mr. Jaffer's request was denied on October 9, 1981, on the basis that the request was untimely and that he did not adequately show why it was not possible to have acted at an earlier date.

On November 30, 1981, the Appeal Board affirmed the decisions of the Licensing Board. ALAB-660, 14 NRC 967. That decision became final on February 18, 1982.

Mr. Jaffer also sought review of the ASLB decision in the U.S. Court of Appeals for the D.C. Circuit. The Court of Appeals denied his motion for leave to file a petition for review *in forma pauperis* and his motion for temporary restraining order and stay on the grounds that he was not a party to the administrative proceeding and therefore lacked standing to seek review. *Jaffer v. NRC*, No. 81-2035 (D.C. Cir., Oct. 2, 1981), *rehearing denied* (Dec. 7, 1981).

II

On February 12, 1982, Mr. Jaffer, pursuant to 10 CFR 2.802 of the Commission's regulations, filed a one-page petition for rulemaking with the Commission seeking the "promulgation of rules giving legal and binding effect to requests for information and authorized communications to appropriate employees of the Commission over WATS and business telephone lines which it supports and operates and public hearings in which the Commission and/or such employees are involved." Section 2.802(c) describes certain information which must be included in a petition for rulemaking in support of the action sought before a petition for rulemaking will be formally docketed for consideration.[1] On April 2, 1982, the Executive Director for Operations (EDO) of the NRC notified Mr. Jaffer that his petition was incomplete in that it did not meet the criteria established for petitions filed with the Commission. Specifically, the request did not clearly describe the problem to be corrected nor did it provide any proposed text of the amendment. In addition, the Executive Director stated, "It is not clear to us what you want the NRC to do, or how the NRC can amend its regulations to alleviate what you perceive to be a problem. In addition, your petition does not clearly and concisely state your interest in the action requested." [2]

Thus, Mr. Jaffer's petition for rulemaking is not currently before the Commission for consideration. Consequently, there is no action under consideration by the Commission which might have any impact on the effectiveness of the Turkey Point license amendments. Even if Mr. Jaffer's petition for rulemaking had been docketed, however, there is nothing in either the Commission's regulations or the apparent nature of the rule proposed by Mr. Jaffer which establishes a basis to suspend the license amendments granted to Turkey Point Units 3 and 4.

Section 2.802(d) of the Commission's regulations provides that a rulemaking petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition

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[1] The regulation states:

(c) Each petition filed under the section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's groudns for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relavent technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensone, deficient, or needs to be strengthened.

[2] In accordance with 2.802(f), Mr. Jaffer has 90 days from April 2, 1982 to submit additional data to complete his petition. If he does not submit the required additional information, his petition will be returned without prejudice to his right to file a new petition.

of the petition for rulemaking. That section has no application here for several reasons. Mr. Jaffer's petition for rulemaking is not currently before the Commission for action. Each if it were, no proceedings regarding the Turkey Point license amendments remain before any adjudicatory body in the Commission. Finally, as noted above, Mr. Jaffer was not a party to the license amendment proceeding and therefore would not be entitled to invoke § 2.802(d) in any event.

Mr. Jaffer's substantive argument appears to be that if his proposal were adopted, then "legal effect" would be given to telephone communications to "appropriate employees" of the Commission in public hearings in which such employees are involved. Mr. Jaffer apparently believes that adoption of such a proposal would then given "legal effect" to some communications made by him in the Turkey Point proceeding and thereby create a "jursidictional defect in the license amemdments" and presumably render them invalid. In neither his rulemaking nor his 2.206 petition is Mr. Jaffer clear as to the exact nature of the "legal effect" to be given to certain telephone calls or the jursidictional defect which might result. If, however, the jursidictional defect to which Mr. Jaffer refers is the failure to hold an evidentiary hearing at his request in the license amendment proceedings, that matter was, in effect, decided by the D.C. Circuit's October 2, 1981, decision, in *Jaffer v. NRC.* As the Commission noted in its Opposition to Petitioner's motion before the court, Mr. Jaffer never filed a petition to intervene in the license amendment proceeding; at most he filed a request to make a "limited appearance" statement pursuant to 10 CFR 2.715(a) if an evidentiary hearing were held. Despite Mr. Jaffer's apparent familarity with the NRC's rules of practice, he did not exercise any opportunity to petition to intervene as described in those regulations. The court concluded that Mr. Jaffer was not a party to the administrative proceeding. Given Mr. Jaffer's apparent familiarity with the Commission's regulations and the requirements for a petition to intervene at the time of the Turkey Point proceedings, he has offered no justification why his proposed rule, even if it were under consideration, should be applied retroactively to a completed licensing action. A potential party to agency proceedings must act affirmatively to protect his rights to participate; he may not await the outcome of a case and only then attempt to take part in the process. *Easton Utilities Commission v. Atomic Energy Commission,* 424 F.2d 847, 851–52 (D.C. Cir 1970) *(en banc).*

III

Mr. Jaffer has provided no adequate basis for suspension of the license amendments for Turkey Point Units 3 and 4 authorizing steam generator repair. Consequently, his request is *denied.*

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Md., this 5th day of May 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12784 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Co.; Renewal of Materials License for the Storage of Spent Fuel

The U.S. Nuclear Regulatory Commission (the Commission) has issued a license renewal, License No. SNM–2500, to the General Electric Company (licensee) authorizing the receipt, possession, storage and transfer of spent reactor fuel at its Morris Operation.

The Morris Operation is a spent fuel storage installation located at the licensee's site in Grundy County, Illinois about seven miles east of the city of Morris. The license is effective as of the date of issuance and the term of the license is 20 years.

The application for the renewal of the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the action involving the proposed renewal of the license was published in the **Federal Register** on April 25, 1979 (44 FR 24354).

The preparation of an environmental impact statement for this particular action has been found not to be warranted because the proposed action will not significantly affect the quality of the human environment nor will there be any significant impact resulting from the proposed action. A Negative Declaration and an Environmental Impact Appraisal (NUREG–0695, June 1980) have been prepared.

For further details with respect to this action, see (1) Materials License No. SNM–2500 complete with Technical Specifications; (2) the Commission's Safety Evaluation Report (NUREG–0709) dated July 1981; (3) the licensee's Consolidated Safety Analysis Report; (4) the Commission's Environmental Impact Appraisal (NUREG–0695) dated June 1980; and (5) the Commission's Negative Declaration dated May 4, 1982. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and the Local Public Document Room at the Morris Public Library, 604 Liberty Street, Morris, Illinois. A copy of Materials License No. SNM–2500 and the Safety Evaluation Report may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 82-12785 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Co. Morris Operation; Environmental Review and Evaluation; Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has completed its environmental review and evaluation for the renewal of Materials License No. SNM–2500. This license renewal was requested by the General Electric Company for the storage of spent nuclear fuel at the Morris Operation near Morris, Illinois. For administrative purposes, the license renewal has been designated License No. SNM–2500, Docket No. 72–1, replacing the previous designation of License No. SNM–1265, Docket No. 70–1308.

The Commission's Division of Fuel Cycle and Material Safety prepared an environmental appraisal based on its review. The document, "Environmental Impact Appraisal Related to the Renewal of Materials License SNM–1265 for the Receipt, Storage and Transfer of Spent Fuel," NUREG–0695, was issued in June 1980, and concluded that the proposed renewal will not significantly affect the quality of the human environment and that there will be no significant environmental impact from

the proposed renewal. Based on this appraisal, the Commissioon therefore concluded that an environmental impact statement for this particular license renewal was not warranted. The environmental impact appraisal has been available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, N.W., Washington, DC 20555, and at the Local Public Document Room established at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Silver Spring, Maryland this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 82-12780 Filed 5-10-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York (Indian Point Unit 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-64 which authorizes operation of the Indian Point Nuclear Generating Unit No. 3. This license provides, among other things, that the licensee is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of one pressurized water reactor at the licensee's site located in Buchanan, Westchester County, New York.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particulary aspect of the fire protection features at a nuclear power plant. Of the fifteen subsections, the subject of this exemption request is subsections III.G, III. and III.O. III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3). Section III.J specifies requirements for emergency lighting and section III.O specifies oil collection systems for reactor coolant pumps.

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion with a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as amended June 22, 1981, August 28, 1981, November 16, 1981, and March 19, 1982, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of sections III.G, III.J, and III.O of Appendix R as follows:

(1) Extend from March 19, 1981, to July 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to July 1, 1982, the date for filing additional exemptions from section III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to July 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, if such are necessary;

(4) Extend from February 17, 1981, to July 1, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated;

(5) Extend from March 19, 1981 until June 22, 1981 the date for submittal or plans and schedules to achieve compliance with III.J required by § 50.48(c)(5); and

(6) Extend from March 19, 1981 until November 16, 1981 the date for submittal of plans and schedules to achieve compliance with III.O required by § 50.48(c)(5).

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plants to determined whether they meet the requirements of section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be peformed to determine whether the existing configuration provided sufficient fire protection. If if did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, Indian Point Unit No. 3 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R, and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these

items as documented in two supplements to the FPSER. The FPSER and its supplements supported the issuance of an amendment to the operating license of Indian Point Unit #3 [1] which modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Interim technical specifications have been implemented and an updated version is being processed. Therefore, Indian Point Unit 3 has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Sections III.G, III.J, and III.O to Appendix R of 10 CFR 50. By completing the modifications described in the FPSER and its supplements, the licensee has completed all the other requirements of the Fire Protection Rule. By letter dated June 22, 1981, the licensee states he is in compliance with section III.J. By letter dated November 16, 1981, the licensee provided a schedule for compliance with section III.O.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Indian Point Unit No. 3 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassesment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted. The licensee now states he is in compliance with sections III.J and III.O.

IV

Accordingly, the Commission has determined that, purusant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance with section III.G.2 as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981 for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with sections III.G.3, as required by § 50.48(c)(5) is extended to July 1, 1982;

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) for section III.G are calculated, is extended to July 1, 1982;

(5) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance with section III.J as required by § 50.48(c)(5) is extended to June 22, 1981; and

(6) The date, March 19, 1981 for submittals of plans and schedules to achieve compliance with section III.O as required by § 50.48(c)(5) is extended to November 16, 1981;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design description of alternative or dedicated shutdown systems to comply with section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 5th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12787 Filed 5-10-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Indian Point Unit #3—Operating License DPR–64 Amendment 24 supported by FPSER issued March 6, 1979.

[Docket No. 50–272]

Public Service Electric and Gas Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 42 to Facility Operating License No. DPR–70, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modifies the Radiological Technical Specifications to permit examination of steam generator

channel heads by either visuals means or by television camera.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant evironmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 13, 1982, (2) Amendment No. 42 to License No. DPR–70, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem, Free Public Library, 112 West Broadway, Salem New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd of April 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82–12788 Filed 5–10–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–522 & STN 50–523]

Puget Sound Power and Light Co., et al.; Availability of Draft Environmental Statement for Skagit/Hanford Nuclear Project, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (NUREG–0894) prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction of the Skagit/Hanford Nuclear Project, Units 1 and 2, located in Benton County, Washington, is available for inspection by the public in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and in the Richland Public Library, Swift and Northgate Streets, Richland, Washington. The Draft Statement is also being made available at the Office of the Governor, Planning and Community Affairs Agency, 400 Capitol Center Building, Olympia, Washington, and at the Benton—Franklin Governmental Conference, P.O. Box 217, Richland, Washington. Requests for copies of the Draft Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The applicant's Environmental Report, as supplement, submitted by Puget Sound Power & Light Company is also available for public inspection at the above-designated locations. Notice of availability of the applicant's Environmental Report was published in **Federal Register** on December 20, 1974 (39 FR 44065) and January 28, 1982 (47 FR 4173).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the applicant's Environmental Report, as supplemented, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the applicant's Environmental Report and the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments are due by June 28, 1982. Comments by Federal, State and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C., and the Richland Public Library, Swift and Northgate Streets, Richland, Washington. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the **Federal Register**.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

William H. Regan, Jr.,

Chief, Siting Analysis Branch, Division of Engineering.

[FR Doc. 82–12789 Filed 5–10–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR–43, issued to Wisconsin Public Service Corporation, Wisconisn Power and Light Company, and Madison Gas and Electric Company (the licensees), which revised Technical Specifications for operation of the Kewaunee Nuclear Plant (the facility) located in Kewaunee, Wisconsin. The amendment is effective as of the date of issuance.

The amendment modified the Appendix B Environmental Technical Specifications to delete sections relating to the protection of the aquatic environment. The Commission will rely on the NPDES permitting system administered by the State of Wisconsin for regulation and protection of the aquatic environment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior notice of this amendment was not required since this amendment does not involve a significant hazards condideration.

The Commission has concluded that, since this is a ministerial action required as a matter of law, no environmental assessment need be prepared as a condition precedent to taking the action.

For further details with respect to this action, see (1) the application for amendment dated February 20, 1981, (2) Amendment No. 43 to License No. DPR–43 and (3) the Commission's related letter dated May 5, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 5th day of May, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactor Branch No. 1, Division of Licensing.

[FR Doc. 82-12790 Filed 5-10-82; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of Deadline for Acceptance of Petitions Requesting Modification of the List of Articles Eligible for Duty-Free Treatment Under the GSP

Notice is hereby given that all petitions to modify the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP), in order to be considered during the 1982 GSP product review, must be received no later than close of business, Tuesday, June 1, 1982. The GSP provides for the duty-free importation of qualifying eligible articles when imported from designated beneficiary developing countries. The GSP was established by Title V of the Trade Act of 1974 and was implemented by Executive Order 11888 of November 24, 1975.

Interested parties or foreign governments may submit petitions (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage.

Requests to modify GSP treatment should be submitted in English, in 20 copies, in conformance with regulations codified in 15 CFR, Chapter XX, especially Part 2007 (published in the September 8, 1977 **Federal Register**, 42 FR 45532), and addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 316, 600 Seventeenth Street, N.W., Washington, D.C. 20506. Further information may be obtained by calling the GSP Information Center at (202) 395-6971.

To expand GSP duty-free treatment for less advanced developing countries, a special effort will be made to include on the GSP eligible list products of particular export interest to low income beneficiary developing countries, including handicraft articles. In addition, limitation of GSP treatment for economically advanced developing countries will be considered in specific products where they have demonstrated international competitiveness. Three criteria will be taken into account in considering such requests: the economic development level of individual beneficiaries, their competitive position with respect to the product or products in question, and the overall economic interests of the United States. When requesting withdrawal, suspension or limitation or GSP treatment for an individual beneficiary developing country with respect to a particular product, a petitioner should submit information on the domestic industry as enumerated in part 2007.1(5) of the regulations cited above.

Limitation of GSP treatment for competitive beneficiaries also will be considered when new products are added to the GSP eligible list. For additional information on limitation of GSP duty-free treatment for competitive beneficiary countries in certain products, reference should be made to the Report to the Congress on the First Five Years' Operation of the U.S. Generalized System of Preferences (GSP), Transmitted by the President of the United States on April 17, 1980, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Notice of petitions accepted for review will be published in the **Federal Register** on or about Wednesday, July 14, 1982. Public hearings on accepted petitions will begin at 10:00 a.m., Monday, October 4th, in Room 2008 of the New Executive Office Building (entrance on 17th Street between Pennsylvania Avenue and H Streets, N.W.), Washington, D.C., and will continue on that and subsequent days until all witnesses wishing to appear have been heard. The U.S. International Trade Commission will hold public hearings the same week to determine the probable economic effect of modifying the list of articles eligible for duty-free treatment.

Fredrick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc 82-12888 Filed 5-10-82; 8:45 am]
BILLING CODE 3190-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act Notice; Announcement of an Administrative Change and a Proposed Survey and Addition of a New Subsystem to an Existing System

AGENCY: Office of Personnel Management.

ACTION: Notice; announcement of an administrative change and a proposed survey and addition of a new subsystem to an existing system.

SUMMARY: The purpose of this notice is to make an administrative change in the retention schedule of subsystem B, announce a proposed survey to be conducted utilizing records within a system of records, and to establish a new subsystem as part of the Office's OPM/CENTRAL-12, Survey Information Records system of records. This action will permit the Office to conduct a personnel management research study where it is both necessary to identify respondents and to maintain records about them along with their responses in a system of records. These records will be maintained only by OPM (or persons under contract to OPM) and, therefore, this action has no direct impact on agencies.

COMMENT DATE: Interested parties may submit written comments concerning the proposed new survey and subsystem. To be considered, comments must be received on or before June 10, 1982.

ADDRESS: Mail or deliver comments to: Assistant Director for Work Force Information, Office of Personnel Management (Room 6429), 1900 E Street, NW., Washington, D.C. 20415. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Cavanaugh, Employee Counseling Services, 202-523-4550.

SUPPLEMENTARY INFORMATION: The change in subsystem B's retention schedule is necessary to reflect the current expected completion of the survey described therein. With regard to the new survey being proposed, it will assist OPM in meeting an important oversight responsibility, i.e., to examine and review personnel management policies and practices relating to the operation of special personnel programs. OPM will also be able to determine the cost-effectiveness and the impact of this program on the Federal work force. This

function is generally performed by on-site evaluations and surveys of selected agencies' operations of the programs. These evaluations are necessary so that the Office may properly and effectively exercise its oversight role. These surveys use questionnaires that solicit opinions or factual responses from individuals and are generally conducted without retaining responses linked to individual respondents. Occasionally it is necessary to gather individually identifiable information from current and former participants in special programs, in order to determine the effectiveness of those programs. When such is the case, the individually identifiable data itself or the link to the respondent is disposed of at the end of the survey and no participant is ever identified in the final report.

The Office has negotiated a contract with Macro Systems, Inc., Silver Spring, Maryland, under the authority of 5 U.S.C. 4702, 42 U.S.C. 4561 et seq. and 21 U.S.C. 1180 et seq. for the purpose of surveying certain Federal employees. The purpose of the surveys is to conduct evaluative research which will assist Federal managers to make practical decisions regarding program planning and implementation of Federal employee counseling service programs. The objectives of the research are:

1. To evaluate organizational cost-effectiveness and loss or gain in productivity as a result of selected Federal employee counseling service programs.
2. To identify effects of those programs upon employees, supervisors and managers.
3. To define, identify, and analyze characteristics of successful programs.
4. To identify inhibitors to effective program implementation and operation.

In order to achieve these goals, the survey will require that a number of information collection efforts (e.g., on-site program reviews, interviews, questionnaires, etc.) be used which will provide data on the cost effectiveness of the Employee Counseling Service Programs in Federal agencies. This information will be collected from current and past clients of Employee Counseling Service Programs, current employees, supervisors, management officials and employee counseling service program administrators/coordinators at selected agencies and installations. Participation in the survey by counselees will be on a voluntary basis. Records on the counselee will be obtained in a manner so as not to divulge to record custodians the fact that they are/were in the program. The data collected during the survey and possible routine uses of the data are as stated in the system notice below.

Collection of data about individuals is scheduled to begin after the completion of the comment period. The entire project began November 1, 1981, and is expected to last no longer than 18 months. This report will not contain any individually identifiable information. When the report is completed, all individually identifiable data will be destroyed or returned to the originating agency and/or all links to identifiable responses will be severed. The final report will be available in OPM's, Workforce Effectiveness and Development Group (OPP-EHSP), 90 days after completion of the survey.

Since, to some extent, the survey involves an evaluation of how well OPM has performed its leadership role in developing and maintaining the programs and services question, it is believed that objectivity can be only achieved if OPM employees do not conduct the survey nor prepare the evaluation. Therefore, the survey will be conducted by a contractor. The contract has been negotiated under provisions that will insure protection of an individual's privacy and with the contractor's full recognition that individual records furnished by OPM and agencies, and information collected directly by interview or use of a questionnaire, are subject to the Privacy Act and are extremely sentitive in nature. The contract recognizes the Office's ownership and control over all individually identifiable records in the possession of the contractor. However, no OPM employee will have access to individually identifiable data unless necessary to resolve any Privacy Act issues. Further, the contractor agrees: (1) Not to use such records for any purpose other than to meet the terms of the contract; and (2) to safeguard such records while in the possession of the contractor by keeping them in locked cabinets or otherwise in a secure manner when not in use and by limiting disclosure of the records to only the contractor staff working directly on the contract. Upon issuance of the report by OPM, all individually identifiable records will be destroyed by shredding or burning. As previously announced when the OPM/Central-12 system was adopted (see 45 FR 67490 et seq.), although a survey periodically be added or deleted, the system remains relatively free of substantive changes. Therefore, addition of this survey and subsystem does not fall within the meaning of 5 U.S.C. 552a(o) regarding "Report of New Systems" and no such report will be made to Congress and OMB. None of the previous surveys identified as subsystems A through C have yet been completed.

The complete text of the OPM/CENTRAL-12, Survey Information Records, system including this proposed survey (Subsystem D), appears below. This proposed survey and subsystem will become part of this system one week after completion of the comment period, without further notice, unless comments received necessitate otherwise.

Office of Personnel Management.

Donald J. Devine,

Director.

OPM/Central—12

SYSTEM NAME:

Survey Information Records.

Subsystem A: Assessment of the Impact of the Civil Service Reform Act.

Subsystem B: Federal Employee Attitude Survey.

Subsystem C: Comparative Assessment of Upward Mobility Programs.

Subsystem D: Evaluation of Federal Employee Counseling Services Programs.

SYSTEM LOCATION:

Records in this system may be located at any of the Office of Personnel Management's central or regional offices or with private sector contractors participating in the conduct of the survey.

Subsystem A: Records are retained by the contractor, i.e., University of California at Irvine, University of Michigan, and Case Western Reserve University.

Subsystem B: Records are retained by the contractor, Westinghouse Learning Corporation Division, Iowa City, Iowa.

Subsystem C: Records are retained by the contractor, the Granville Corporation, Washington, D.C.

Subsystem D: Records are retained by the contractor, Macro Systems, Inc., Silver Spring, Md.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subsystem A: Current and former Federal employees and members of the public who are recipients of Federal services or products.

Subsystem B: Current Federal employees.

Subsystem C: Current and former Federal employees.

Subsystem D: Current and past clients of Employee Counseling Service Programs, current employees, supervisors, management officials and employee counseling services program administrators/coordinators at selected agencies and installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system, both manual and automated, includes:

a. Demographic data, e.g., including but not limited to names, home or business address, age, sex, employment and educational history data, description of present assignment and duties (current Federal employees), and a description of the nature of association with a Federal agency (non-Federal recipients of Federal services and products).

b. Responses to questionnaires that call for specific details regarding the implementation of agency programs and their impact on the respondent's duties, work environment, performance, or other work related issues (current Federal employees) or on the actual manner and method by which services or products are provided as well as any improvement or deterioration in these areas (recipients of services/products).

c. Responses that calk for opinions or judgments on the part of respondents concerning their perception on how programs and new procedures have affected agency performance, employee morale, mission accomplishment, and service to the public.

d. Self-identification as to race, sex, ethnicity, or handicap where appropriate.

Although it is not possible to foresee all information to be collected, these data elements would constitute what is sought for the majority of surveys conducted. Where the survey seeks significant additional data, the **Federal Register** notice for the survey will identify the specific information to be maintained beyond that identified here.

Subsystem A: This subsystem will contain no additional records beyond those listed in the "Categories of records" section.

Subsystem B: This subsystem will contain no additional records beyond those listed in the "Categories of records" section for Federal employees.

Subsystem C: This subsystem will contain no additional records beyond those listed in the "Categories of records" section for Federal employees.

Subsystem D: In addition to the records listed in the "Categories of records" section, this subsystem will contain records identifying participants of specific counseling programs, medical and quasi-medical records relating to participants, and records relating to medical situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Office of Personnel Management is authorized to regulate (and thus to survey the impact of those regulations) various aspects of the personnel management practices and policies of Federal agencies under various sections of title 5 of the United States Code, including sections 1104, 1302, 3136, 3502, 3595, 4118, 4315, 4702, 4706, 5115, 5338, 5405, 6311, 7504, 7514, 8347, 8716, and 8913 or other status or Executive orders. Additionally sections 7105, 7118, and 7132 provide for an Office role in the functions described therein.

Subsystem A: One or more of the authorities cited, above.

Subsystem B: 5 U.S.C. 4702.

Subsystem C: 5 U.S.C. 4702.

Subsystem D: 5 U.S.C. 4702, 42 U.S.C. 4561 et seq. and 21 U.S.C. 1180 et seq.

PURPOSE:

Information in this system will be used to develop statistical reports on agency personnel management practices and policies. Information will also be used to determine the impact of Office regulations in those areas, as well as the impact of changes in the Federal civil service mandated by statute or Executive order. Maintenance of a system of records as defined by the Privacy Act is necessary so that longitudinal surveys of Federal employees and non-Federal recipients of Federal services/products can be made.

Subsystem A: The purpose of this subsystem is to assess the impact of the Civil Service Reform Act on personnel management.

Subsystem B: The purpose of this subsystem is to assess the attitudes of supervisors/managers and senior level executives toward the recent reforms in the civil service system.

Subsystem C: The purpose of this subsystem is to determine and compare the effectiveness of Upward Mobility Programs and to ascertain the perceptions of the value of these programs by participants and their supervisors/managers.

Subsystem D: The purpose of this subsystem is to provide evaluative research which will assist Federal managers in making practical decisions regarding program planning and implementation of Federal employee counseling service programs.

The objectives of the research are as follows:

(1) To evaluate organizational cost-effectiveness and loss or gain in productivity as a result of selected Federal employee counseling services programs.

(2) To identify effects of those programs upon employees, supervisors and managers.

(3) To define, identify and analyze characteristics of successful programs.

(4) To identify inhibitors to effective program implementation and operation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

By the Office of Personnel Management or the contractor in the production of summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained, or related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

Subsystem A: None, other than as shown above.

Subsystem B: None, other than as shown above.

Subsystem C: None, other than as shown above.

Subsystem D: None, other than as shown above.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

For all subsystems, records will be stored as a manual, automated or hybrid system.

Manual records are maintained in file folders, on questionnaires, lists, and forms. Automated records in computer processible storage media.

Subsystem A: A hybrid system.

Subsystem B: A hybrid system.

Subsystem C: A hybrid system.

Subsystem D: A hybrid system.

SAFEGUARDS:

For all subsystems, records are to be stored in locked file cabinets or secured rooms. Access to manual or automated records is limited to specially designated OPM and contractor personnel.

Subsystem A: These survey records are available for review only by OPM and contractor personnel.

Subsystem B: These survey records are available for review only by contractor personnel.

Subsystem C: These survey records are available for review only by contractor personnel.

Subsystem D: These survey records are available for review only by contractor personnel.

RETENTION AND DISPOSAL:

In each subsystem, individually identifiable information may be destroyed in a relatively short period of

time, e.g., as soon as practicable after aggregate statistics are compiled or after any follow-up request for an individual's voluntary participation in the survey.

Computerized records and statistical reports based on the data collected with all identifiers removed may be retained indefinitely. Other records are retained up to one year after completion of the survey.

Manual records are burned or shredded while automated records are erased.

Subsystem A: This subsystem will continue for a period of 4 years and some records will last the duration of the survey.

Subsystem B: The records in this subsystem will be destroyed at the completion of each survey, the final being concluded 1985.

Subsystem C: The records in this subsystem will be destroyed by the contractor at the completion of the survey, approximately May 1983.

Subsystem D: Identifiable data will be retained until 6 months after completion of the project.

Note:—Where the Office, in conducting a survey, contracts with non-Federal parties, the contracts shall stipulate agreement to the above procedures on the part of the contractor.

SYSTEM MANAGER(S) AND ADDRESS:

For all subsystems, the system manager is (unless changed in the notice for the subsystem) the Chief, CSRA Evaluation Management Division, Office of Planning and Evaluation, Office of Personnel Management (Room 3305), 1900 E Street N.W., Washington, D.C. 20415.

Subsystem A: As shown above.

Subsystem B: As shown above.

Subsystem C: As shown above.

Subsystem D: Program Manager, Employee Counseling Services, Employee Health Services Branch, Office of Performance and Productivity Management, Work Force Effectiveness and Development, Office of Personnel Management (Room 9331), 1100 L St., N.W., Washington, D.C.

NOTIFICATION PROCEDURE:

For all subsystems, individuals wishing to inquire whether this system of records contains information about them should contact:

a. The OPM office conducting the survey, if known, or the system manager.

b. When the survey is being conducted by a non-Federal contractor, the specific contractor involved; or

c. The office specified in the **Federal Register** notice announcing the subsystem if different from "a" or "b" of this section.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Nature of participation (Federal employee or non-Federal employee).

c. Agency where employed (if appropriate) when the survey was conducted.

d. Any additional identifiers as shown in the **Federal Register** announcement of the subsystem.

RECORDS ACCESS PROCEDURES:

Unless otherwise specified in the **Federal Register** notice for the subsystem, any individuals wishing to request access to their records should contact the OPM sponsoring office, the system manager, or the contractor as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Nature of participation (Federal employee or non-Federal employee).

c. Agency where employed (if appropriate) when the survey was conducted.

d. Approximate date and nature of the survey.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS PROCEDURES:

Unless otherwise specified in the **Federal Register** notice for the subsystem, individuals wishing to request amendment to their records should contact the OPM sponsoring office conducting the survey, the system manager, or the contractor as appropriate. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Nature of participation (Federal employee or non-Federal employee).

c. Agency where employed (if appropriate) when the survey was conducted.

d. Approximate date and nature of the survey.

Individuals requesting amendment must comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORDS SOURCE CATEGORIES:

Unless specified in the **Federal Register** notice for the subsystem, all subsystems obtain information from individual participants of the survey from Office or agency personnel records, and from labor organizations.

[FR Doc. 82-12700 Filed 5-10-82; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-11635]

ACF Industries, Inc.; Application and Opportunity for Hearing

Notice is hereby given that ACF Industries, Incorporated (the "Applicant") has filed an application pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Citibank, N.A. ("Citibank") under the Applicant's Series D Equipment Trust Agreement and under a new indenture to be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the existing indenture and under the indenture to be qualified.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of providing, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. Applicant was incorporated in 1899, and is engaged, among other things, in the business of manufacturing and leasing various types of freight cars for use in the railroad industry. Since its organization, Applicant has issued

equipment trust certificates from time to time under a number of separate equipment trust agreements. Four of these equipment trust agreements (Series A, B, J, and L) required qualification and were qualified under the Act. The remainder of those now outstanding, being 12 in number, involved private placements of equipment trust certificates at various times from 1968 through 1980, and were exempt from qualification under the Act by reason of Section 304(b) thereof, since the equipment trust certificates issued thereunder were exempt from registration under the Securities Act of 1933 (the "1933 Act") by reason of Section 4(2) thereof. Trustees under the equipment trust agreements for the various series are major banks. Heretofore, each of the equipment trust agreements qualified under the Act has had trustees different from one another and different from any trustee serving as such under any equipment trust agreement not requiring qualification under the Act.

2. Applicant intends to file with the Commission a registration statement under the 1933 Act and Rule 415 thereunder in connection with the proposed future public offering of equipment trust certificates, to be issued pursuant to an equipment trust agreement or agreements to be qualified under the Act.

3. Applicant desires to appoint Citibank, a natural banking association, to act as trustee under the first series of such certificates to be issued under said equipment trust agreement.

4. Citibank presently is acting as trustee in connection with one of the aforementioned private placements of the Applicant's trust certificates, namely the equipment trust agreement dated as of February 15, 1975, Series D. Of the original aggregate of $35,000,000 principal amount issued thereunder, there remains issued and outstanding a total of $18,669,000. Copies of this Equipment Trust Agreement and of the proposed equipment trust agreement under which Citibank, N.A., is proposed to be qualified are attached as exhibits to the application.

5. The Series D equipment trust certificates are, and the proposed new certificates will be, secured by separate lots of specifically identified railroad cars. Thus, the existence of the two trusteeships should in no way inhibit or discourage the actions of Citibank as trustee under either of the trusts.

6. Applicant believes, in view of the specialized nature of an equipment trust, that holders of the equipment trust certificates and Applicant would benefit by having a trustee familiar with the operation of the Applicant's equipment trusts. The Applicant also believes that the Commission has granted similar applications with respect to trusteeships under equipment trust agreements for other railroad car lessors where the situations were similar factually to the matter which is the subject of this application.

7. None of Applicant's existing equipment trusts are in default.

Applicant has waived notice of hearing, hearing on the issues raised by this application, and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to such application, which is a public document on file in the office of the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than June 4, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley F. Hollis,

Assistant Secretary.

[FR Doc. 82-12756 Filed 5-10-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18702; File No. SR-NYSE-82-2]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.; Trading of Index Stock Group Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1982, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On February 5, 1982, the Exchange filed a proposed rule change respecting index stock group options, File No. SR-NYSE-82-2 (the "February index stock group option filing"). Amendment No. 1 changes the February index stock group option filing in order (i) to increase the minimum number of stocks in an underlying index stock group from 25 to 50 in the absence of specific Commission approval of an index stock group including a smaller number of stocks, (ii) to subject futures contracts on stock groups that are substantially identical to index stock groups underlying Exchange options to many of the reporting, record keeping, access to records and other requirements to which index stock group options are subject and (iii) to make minor technical corrections.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of Amendment No. 1 is to change the February index stock group option filing in order to incorporate as appropriate comments received from the Commission staff following its review of the February index stock group option filing and to make minor technical corrections. More specifically, the purposes of the principal changes are as follows:

Futures on Index Stock Groups Underlying Options—In order to detect and deter manipulation by means of concurrent activity in both an option on

an index stock group and a futures contract on an identical (or substantially identical) stock group, Amendment No. 1 amends the February index stock group option filing to expand the requirements as to options on an index stock group (no matter where traded) (1) for account identification, and transaction and order reporting, by specialists and Competitive Options Traders and (2) for members' making available books, records and other information to cover futures contracts on an identical (or substantially identical) stock group.

Composition of Index Stock Group—The February index stock group option filing proposed that an index stock group could contain as few as 25 stocks. Because of the theoretical possibility that an index based upon a group of less than 50 stocks might be subject to manipulation if constructed so as to include a few stocks whose prices dominated the index calculation, Amendment No. 1 proposes to increase the minimum number of stocks in an underlying index stock group from 25 to 50. However, it excepts any group of 25 through 49 stocks proposed as an underlying index stock group if the Commission specifically approves its composition.

(2) *Statutory Basis.* The additional changes to the February index stock group option filing proposed in Amendment No. 1 have the same statutory basis as the February index stock group option filing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the changes proposed to the February index stock group option filing will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, and that the changes will contribute to the competitive benefits noted in the February index stock group option filing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has considered the comments from the Commission staff on the February index stock group option filing. Amendment No. 1 incorporates those comments to the extent such incorporation seems appropriate to the Exchange. The Exchange has not solicited, and does not intend to solicit, comments regarding the amendment. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By June 15, 1982, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1982.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: April 30, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12764 Filed 5-10-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/522]

Shipping Coordinating Committee, Meeting Subcommittee on Safety of Life at Sea;

The Working Group on Ship Design and Equipment of SOLAS will conduct an open meeting on May 26, 1982 at 9:30 a.m. in Room 1303 at the Coast Guard Headquarters, 2100 2nd St., SW., Washington, D.C. 20593.

The purpose of the meeting will be to prepare for the Twenty-fifth Session of the Ship Design and Equipment Subcommittee of the Intergovernmental Maritime Consultative Organization (IMCO) which is scheduled for June 28–July 2, 1982 in London. The agenda includes the following topics:

—Requirements for machinery and electrical installation

—Safety measures for special purpose ships

—Maneuverability of ships

—Safety measures for diving systems

—Statistical data on failures of steering systems, propulsion plant and/or electrical plant and reliability and duplication of ship components

—Helicopter facilities for all types of ships.

Members of the public may attend up to the seating capacity of the room.

Further information may be obtained by contacting Capt. R. L. Brown, USCG (G-MMT/12), Washington, D.C., 20593, telephone (202) 426-2167.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

April 26, 1982.

[FR Doc. 82-12720 Filed 5-10-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM/8-520]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The U.S. SOLAS Working Group on Fire Protection will conduct an open meeting on May 27, 1982, at 9:30 a.m., in Room 1303 of the Coast Guard Headquarters Building, 2100 Second Street, SW, Washington, D.C.

The purpose of this meeting will be to:

—Review results of FP 27 (25–29) January 1982)

—Discuss plans for FP 28 (January 1983)

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Donald J. Kerlin, U.S. Coast Guard (G-MMT-4/13), Washington, D.C. 20593. Telephone (202) 426-2197.

Dated: April 27, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc 82-12721 Filed 5-10-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/523]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The U.S. SOLAS Working Group on the Carriage of Dangerous Goods will conduct an open meeting on June 3, 1982, at 9:30 a.m., in Room 3201 of the Coast Guard Headquarters Building, 2100 Second Street, SW, Washington, D.C.

The purpose of this meeting will be to discuss the following:

—Amendment 20 and 21 of the IMDG Code

—Decisions of the Maritime Safety Committee taken at their 46th Session

—Preparation for the 34th Session of the IMCO Subcommittee on the Carriage of Dangerous Goods

—IMCO activities of a continuing nature

Members of the public may attend up to the seating capacity of the room.

Requests for further information on the meeting should be directed to Lieutenant Kevin J. Eldridge, U.S. Coast Guard (G-MHM-2), 2100 Second Street, SW, Washington, D.C. 20593. Telephone (202) 426-1577.

Dated: April 23, 1982.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82-12722 Filed 5-10-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/521]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 26, 1982 at 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international study Group III and I meetings.

Members of the general public may attend the meeting and join in the discussion subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

Dated: April 27, 1982.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 82-12719 Filed 5-10-82; 8:45 am]

BILLING CODE 4710-07-M

SYNTHETIC FUELS PROJECTS

Clarification of Second Solicitation for Synthetic Fuels Projects

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Clarification of Second Solicitation for Synthetic Fuels Projects.

SUMMARY: On December 23, 1981, the United States Synthetic Fuels Corporation published notice of the issuance of a Second Solicitation for Synthetic Fuels Projects under the Energy Security Act of 1980, Pub. L. 96-294, (46 FR 62353). Notice is hereby given that the Synthetic Fuels Corporation has published a clarification of such solicitation which advises that due to the Memorial Day holiday on May 31, 1982, the deadline for submission of proposals shall be June 1, 1982.

EFFECTIVE DATE: May 5, 1982.

FOR FURTHER INFORMATION CONTACT: The Projects Office, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6444.

FOR COPIES OF THE CLARIFICATION CONTACT: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460.

Dated: May 5, 1982.

United States Synthetic Fuels Corporation.

Edward E. Noble,

Chairman of the Board.

[FR Doc. 82-12804 Filed 5-10-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974; Proposed New System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Proposed new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Bureau of Engraving and Printing gives notice of the following proposed system of records entitled: "Executive Profiles," (Treasury/BEP 00.015). The proposed system will contain personal information about key personnel who occupy sensitive positions in the Bureau. These employees could be targets for criminal extortion, kidnapping or other violence. A new system report was filed with the Office of Management and Budget, the Speaker of the House, and the President of the Senate.

DATES: Public comments must be received on or before July 12, 1982. If no public comments are received, this system of records will become effective July 12, 1982.

ADDRESS: Director, Bureau of Engraving and Printing, 14th & C Streets, SW, Washington, DC 20228.

FOR FURTHER INFORMATION CONTACT: Disclosure Officer, Office of Management and Systems, Bureau of Engraving and Printing, 14th & C Streets, SW, Washington, DC 20228, Phone: (202)-447-0161.

Cora P. Beebe,

Assistant Secretary (Administration).

Treasury/BEP 00.015

SYSTEM NAME:

Executive Profiles.

SYSTEM LOCATION:

Office of Security, Bureau of Engraving and Printing, 14th & C Streets, SW Washington, DC 20228

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains vital personal information about high-level Bureau executives and their families. These executives who occupy high-level and/or sensitive positions may be targets for criminal extortion, kidnapping or other violent acts.

The individuals to be covered by the system are designated by the Director, Bureau of Engraving and Printing, and are participating in the program voluntarily.

CATEGORY OF RECORDS IN THE SYSTEM:

The system contains personal information about key Bureau employees, their spouses, children or other persons in the household. The employees' neighbors or other persons who might have knowledge of family members' locations are listed with addresses and phone numbers. Also included are fingerprints, samples of

handwriting, and photographs of any residences and automobiles owned by the key employees and/or their families.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 11490 as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used exclusively by law enforcement officials during situations involving attempted extortion—such as kidnapping, the taking of hostages—or other similar emergencies, as a readily available source of background data.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folder in a sealed envelope.

RETRIEVABILITY:

By name or position of employee.

SAFEGUARDS:

Locked file cabinet, access Limited to Office of Security Staff for update purposes and law enforcement officials for emergency use.

RETENTION AND DISPOSAL:

Retained during employees' tenure with Bureau, then destroyed.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, 14th & C Streets, SW Washington, DC 20228.

NOTIFICATION PROCEDURE:

Disclosure Officer, Management and Systems Division, 14th & C Streets, SW Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See Notification Above.

CONTESTING RECORD PROCEDURES:

See Notification Above.

RECORD SOURCE CATEGORIES:

Designated key personnel on a voluntary basis.

[FR Doc. 82-12019 Filed 5-10-82; 8:45 am]
BILLING CODE 4840-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendments of Systems Notices Changes Other Than Routine Use

Notice is hereby given that the Veterans Administration is changing six statements that appear in a system of VA records. The system name, date and page number of the last publication in the **Federal Register** is as follows:

10VA31 Employee Reporting System for Project Administration and Control (Data Processing Centers) VA, December 2, 1977, p. 49732.

When this system was previously published, the system was limited to include only VA Data Processing Center employees in the system and technical assistance areas. The current changes expand the scope of the system to include all Office of Data Management and Telecommunications employees at both the Data Processing Centers and VA Central Office. In keeping with this change, and to update the system notice, references to the system name, the system location, the categories of individuals covered by the system, storage, retrievability, retention and disposal, the system manager, the notification procedure and the record access procedures have been amended accordingly.

These changes are administrative in nature and public comment is not required.

Dated: May 4, 1982.

Robert P. Nimmo,

Administrator.

Notice Of Systems of Records

In the system of records identified as 10VA31 "Employee Reporting System For Project Administration And Control (DATA PROCESSING CENTERS) VA", appearing at 42 FR 49732, the following statements are changed to read as follows:

SYSTEM NAME:

Employee Reporting System for Project Administration and Control (Office of Data Management and Telecommunications) VA

SYSTEM LOCATION:

Records are located at VA Central Office and at The VA Data Processing Centers (Address locations are listed in Appendix 1 at the end of this document).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system: all Office of Data Management and Telecommunications employees.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper documents, magnetic disc and tape.

RETRIEVABILITY:

Records are retrievable by a coded employee identifier.

* * * * *

RETENTION AND DISPOSAL:

Once the information on the source (paper) documents is stored on a magnetic disc or tape, and the information is verified for accuracy, the source documents are destroyed. Generally, source documents are destroyed within one week of verification. Magnetic disc and tape records are updated weekly and retained for various periods from 3 months up to 2 years after which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Project Management Division (313), Office of Data Management and Telecommunications, VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual seeking information concerning the existence and contents of a record pertaining to himself or herself should submit a written request or apply in person to the Director of the VA Data processing Center where either previously or current employed. VA Central Office personnel should submit a written request or apply in person to their Service or Staff Office Director where previously or currently employed. Inquiries should include the individual's full name and TRIMS identification, if known, and approximate dates of employment.

RECORD ACCESS PROCEDURES:

Individuals or their authorized representatives seeking information regarding access to and contesting of their TRIMS Record may contact the Director of the ODM&T Central Office, Service/Staff Office or VA Data Processing Center where the individual is (was) employed.

[FR Doc. 82-12738 Filed 5-10-82; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 91
Tuesday, May 11, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

[M–350, Amdt. 1]

CIVIL AERONAUTICS BOARD

Notice of deletion and additions and closure of items to the May 7, 1982 board meeting.

TIME AND DATE: 10:00 a.m., May 7, 1982.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C.

SUBJECT:

Addition: 2a. Delegation of authority to the Bureau of Domestic Aviation to make commuter fitness determinations. (Memo 1257, OGC, BDA)

Deletion: 19. Docket 40294, Final order in the *United States-Latin America All-Cargo Show Cause Proceeding.* (Memo 980–A, BIA)

Addition: 20. Report on Ongoing Negotiations with Canada. (BIA)

Addition: 21. Review of Brazilian Negotiations. (BIA)

Addition: 22. Review of Scandinavian Negotiations. (BIA)

Addition: 23. Review of ECAC Negotiations. (BIA)

STATUS: Open (Items 1–19), Closed (Items 20–23).

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

[S–695–82 Filed 5–7–82; 3:20 pm]

BILLING CODE 6320–01–M

2

[M–350, Amdt. 2]

CIVIL AERONAUTICS BOARD

Notice of Addition of Item to the May 7, 1982 Board Meeting.

TIME AND DATE: 10:00 a.m., May 7, 1982.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C.

STATUS: 14a. Applications of American Charter Enterprise Services, Inc. d.b.a. ACES, for an operating authorization as an Overseas Military Personnel Charter Operator, and for a waiver of Part 372 relating to tariff filing and financial security requirements. (Memo 1252, BDA)

SUBJECT: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

SUPPLEMENTARY INFORMATION: In order for the Board to discuss and act on the above-referenced application to make it possible for American Charter Enterprise Services, Inc. d.b.a. ACES, to take advantage of the summer travel season, Item 14a is being added to the May 7, 1982 meeting on less than seven days' notice. Accordingly, the following Members have voted that Item 14a should be added on less than seven days' notice and that no earlier announcement was possible: Chairman Dan McKinnon; vice Chairman Elizabeth E. Bailey; Member Gloria Schaffter; Member George A. Dalley; and Member James R. Smith.

[S–696–82 Filed 5–7–82; 3:20 pm]

BILLING CODE 6320–01–M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 12 Noon, Friday, May 7, 1982.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Walk-Behind Power Lawn Mowers*
   The Commission will consider Petition CP 82–2 from the Toro Company requesting an extension of the effective date of the Safety Standard for Walk-Behind Power Lawn Mowers. The Commission decided that agency business required the waiving of seven day advance notice in this matter.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–692–82 Filed 5–7–82; 2:01 pm]

BILLING CODE 6355–01–M

4

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 13, 1982.

LOCATION: Third Floor Hearing Room, 1111—18th Street, N.W., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Aluminum Wire Options*
   The staff will brief the Commission on the Status of the "old technology" aluminum wire project and will present options concerning the project.
2. *Physician Samples*
   The staff will brief the Commission on issues related to the Commission's policy regarding manufacturers responsibility for special packaging of prescription drugs distributed to physicians.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westboard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–693–82 Filed 5–7–82; 2:10 pm]

BILLING CODE 6355–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:35 p.m. on Wednesday, May 5, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Memorandum re: Employees' Health Plan.
Memorandum re: Revisions to the General Travel Regulations (GTR).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Executive Dining Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: May 6, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-901-82 Filed 5-7-82; 2:02 pm]

BILLING CODE 6714-01-M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 19, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 22-45 (Sugar)—briefing and vote.
6. Investigation 731-TA-91 [Preliminary] (Sodium Nitrate from Chile)—vote.
7. Investigation 337-TA-103 (Certain Stablized Hull Units and Components Thereof and Sonar Units Utilizing Said Stabilized Hull Units)—briefing and vote.

Portions closed to the public:

6. Investigation 731-TA-91 [Preliminary] (Sodium Nitrate from Chile)—briefing.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-894-82 Filed 5-7-82; 2:01 pm]

BILLING CODE 7020-02-M

7

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 18703, 4/30/82.

STATUS: Closed/Open meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 30, 1982.

CHANGES IN THE MEETING: Rescheduling/ additional items.

The following items were not considered at a closed meeting scheduled for Tuesday, May 4, 1982, at 10:00 a.m., but rescheduled for Thursday, May 6, 1982, following the 9:00 a.m. open meeting:

Litigation matters.

Institution of administrative proceeding of an enforcement nature.

The following additional items will be considered at a closed meeting scheduled for Tuesday, May 6, 1982, following the 9:00 a.m. open meeting:

Dismissal of injunctive action.
Institution of injunctive action.
Freedom of Information Act appeal.

The following item will be considered at an open meeting scheduled for Tuesday, May 11, 1982, at 10:00 a.m.:

Consideration of whether to adopt amendments (proposed for comment in January 1982) to its financial responsibility rules. The amendments, among other things, will increase the percentage deduction ("haircuts") for certain debt securities including Government and municipal securities, and will change the treatment or fail to deliver contracts and securities borrowing under the financial responsibility rules. For further information, please contact Michael A. Macchiaroli at (202) 272-2372.

The following additional item will be considered at a closed meeting scheduled for Tuesday, May 11, 1982, following the 10:00 a.m. open meeting:

Subpoena enforcement action.

The following additional item will be considered at an open meeting scheduled for Thursday, May 13, 1982, at 10:00 a.m.:

Consideration of whether to publish for comment proposed Rule 13d-8 under the Securities Exchange Act, which would provide that if a greater number of shares are deposited pursuant to a partial tender offer than the person making the tender offer is bound or willing to take up and purchase, the securities deposited must be taken up pro rata according to the number of securities deposited by each depositor during the period such offer remains open. For further information, please contact Arthur H. Miller at (202) 272-2589.

Chairman Shad and Commissioners Loomis, Evans, Thomas and Longstreth determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Richard Starr at (202) 272-2467.

May 6, 1982.

[S-900-82 Filed 5-7-82; 10:22 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
May 11, 1982

Part II

Department of Agriculture

Agricultural Marketing Service

Egg Research and Promotion Order; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. ERPA-2]

Egg Research and Promotion Order; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exception on the proposed amendments to the Egg Research and Promotion Order. The proposed amendments would increase the rate of assessment paid by egg producers and add two consumers to the 18-member American Egg Board. The intent of the proposed change is to maintain and improve a continuous coordinated program of research, consumer and producer education, and promotion for eggs, egg products, and spent fowl, and products of spent fowl.

DATE: Written exceptions to this recommended decision are due on or before July 12, 1982.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077 South Agriculture Building, Washington, D.C. 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Poultry Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 382–8132.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: Issued January 5, 1982, published January 8, 1982, (47 FR 1106). The notice contained proposals submitted by an egg industry study task force representing 18 egg and poultry associations. In addition, proposed conforming changes were proposed by the Poultry Division, Agricultural Marketing Service.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because any egg producer covered by the Order may receive a refund of his/her assessment upon demand to the American Egg Board. In addition, egg producers with 3,000 or fewer laying hens are exempt from paying assessments. Also exempt are producers whose flocks of breeding hens are producing eggs primarily for the hatching of baby chicks.

List of Subjects in 7 CFR Part 1250

Egg research, Egg promotion, Fowl.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the Egg Research and Promotion Order. Copies of this decision may be obtained from the Hearing Clerk. This notice is issued pursuant to the provisions of the Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) as amended, and the applicable rules of practice and procedure governing proceedings to formulate such an Order (7 CFR 1250.1–1250.19).

The proposed amendments set forth below are based on the record of a public hearing which was held at Washington, D.C., March 1; at St. Louis, Missouri, March 4; and at San Diego, California, March 23, 1982, as announced in the notice published January 8, 1982, (47 FR 1106). Testifying at the hearing were 16 witnesses in favor of the amendments and 3 witnessses in opposition. The statement presented by the Egg Industry Promotion Study Task Force at the hearing shows general nationwide support for the adoption of the amendments. Forty-nine State, regional, and national organizations endorsed the amendments to the Egg Research and Promotion Order.

Material Issues

The material issues of record are as follows:

(1) Two consumer members would be added to the 18-member board. Such members and their alternates would be representative of the consuming public and not associated with the egg industry. These consumer representatives and their alternates would be appointed by the Secretary of Agriculture from nominations submitted by producer organizations.

(2) The American Egg Board, with approval of the Secretary, would be authorized to increase the rate of assessment from 5 cents per 30-dozen case of eggs up to a maximum of 10 cents. The rate of assessment the first 12 months following issuance of regulations by the Board would not exceed 7½ cents per case. In subsequent years the Board would have the discretion to recommend additional increases in increments of no more than three-quarters of 1 cent per case annually up to the 10-cent maximum.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of hearing:

(1) The definition of consumer or consumer representative should be added to the Order as § 1250.317 and provision made for appropriate eligibility requirements. The record evidence suggests that the proposed amendments to the Order merely implement the amended Egg Research and Consumer Information Act (Pub. L. 96–276, section 8 (a) and (b)). The Act provides that a consumer or consumer representative must be an individual who is a representative of the consuming public and is not associated with the egg industry. Further, such person may be a member of a bona fide consumer organization, but such membership is not required.

Provision should be made in § 1250.326 for the addition of two consumer members and two consumer alternates to the 18-member Board. The record includes several statements which cite the importance of providing new and varied viewpoints to the Board through consumer representation.

Evidence further shows that consumers or consumer representatives are to be appointed from nominations submitted by producer organizations. However, the Secretary of Agriculture has the discretion to select other consumers or representatives of consumers if he determines that nominations submitted by producers do not represent consumers.

A new section should be added as § 1250.329 to specify procedures for nominating consumer members and alternates. The record evidence supports the inclusion of a nomination procedure for consumer representatives which parallels the procedure for nominating producer members. Therefore, consumer and producer members would be nominated through caucuses of eligible organizations representing egg producers.

(2) The Order should be amended in § 1250.347 to provide for an assessment rate not to exceed 10 cents per 30-dozen case of eggs. Provision should be made for the Board to set the rate of assessment, with approval of the

Secretary of Agriculture, at 7½ cents per case for the first 12 months following issuance of regulations. An additional provision should be included to give the Board discretion to recommend an increase in the rate of assessment by no more than three-quarters of 1 cent per case year thereafter up to the 10-cent maximum.

The evidence in support of the increase in assessment emphasized the benefits of and continued need for the various activities conducted by the Board. The detrimental impact of inflation on the effectiveness of these programs was also emphasized. The fact that inflation has had an impact on the Board's ability to conduct promotion and advertising, research, and education activities is illustrated by information published by the Department of Labor, Bureau of Labor Statistics. This information shows an increase of more than 60 percent in inflation since the program began in 1977, and was contained in an exhibit to the hearing record entitled "Economic Indicators, January 1982," prepared for the Joint Economic Committee by the Council of Economic Advisers.

The primary activities of the American Egg Board, as presented in testimony at the hearing, include the following:

(a) Promotion and advertising through television, radio, and national magazine advertising.

(b) Nutrition research through grants to investigate the role of eggs in human nutrition, with particular attention to their effect on serum lipids and lipoproteins.

(c) Procuct and market development research through grants to encourage new products and technology designed to increase the demand for processed products from eggs or spent fowl.

(d) support and assistance to State and regional egg promotion organizations through allocation of cooperative funds and furnishing of promotional and educational materials.

(e) Consumer education through a variety of means.

(f) Producer relations through various communication methods to report Board activities and other significant affairs to egg producers.

(g) Export development including exhibits at trade shows that attract potential foreign customers.

Testimony on behalf of the American Egg Board shows that the majority of egg producers recently surveyed believes promotion and advertising, particularly television advertising, are the most visible and effective means to enhance the image, acceptability, and/or desirability of eggs and egg products. Four separate studies conducted by Market Facts, Inc., Chicago, Illinois, were introduced as exhibits to the hearing record. The studies were funded by the Board and show the positive results of promotion and advertising. For example, a 1977 study of retail sales in four test markets where advertising was the heaviest showed that 3.4 percent more eggs were sold than in previous years. In four similar markets that received less advertising, sales had declined 0.4 percent. In addition, each year since 1977, Market Facts, Inc., has conducted studies tracking consumer attitudes about eggs and found that since advertising began, key attitudes have become more positive. For example, the 1980 study shows a positive turn in egg consumption and confirmation of the positive effects of advertising which emphasizes the good value eggs are for the money expended.

The Board's testimony further disclosed that because of inflation, the Board found it necessary to curtail television advertising during the past 2 years in favor of concentrated radio and magazine advertising. An illustration of the impact of inflation showed that since the inception of the program in 1977, media costs (television, radio, and national magazine advertising) have increased approximately 10 percent a year. The cumulative effect of this inflation has been a 61-percent increase in media costs. As a measure of comparison, it would take $5.3 million to duplicate the 1977 advertising program that cost $3.5 million at that time.

With only one exception, witnesses supported continued and strengthened funding for the nutrition research program. The witness for the Board testified that it had made grants of more than $2 million in the past 5 years to leading scientific investigators in the field of lipid research. Also, several studies financed by the Board have been published in scientific literature. Evidence demonstrates that this program has been successful in encouraging study and continuing dialogue about the effects of dietary cholesterol on heart disease. Witnesses expressed concern, however, that reduced purchasing power caused by inflation would severly limit the Board's ability to maintain this important program unless additional funds are made available.

Witnesses described the product and market development research program as having great potential for increasing the demand for eggs, egg products, spent fowl, and products of spent fowl. Grants given to universities over the years have resulted in the development of several further processed products form eggs and spent fowl. Testimony from the Board indicated that inflation had decreased planned resource outlays, necessitating reductions for this program.

Central to the consumer education and State and regional support programs is the development and distribution of booklets, brochures, educational materials and other promotional pieces, examples of which were admitted into evidence at the hearing. As explained in testimony, These materials are used extensively by State and regional egg promotion organizations, newspaper and national magazine food editors, extension home economists, teachers, and consumer educators. These programs, however, have been curtailed because of escalating development, printing, and mailing costs.

Proponents expressed the need for the increase despite over 2 years of severe economic losses for the industry. USDA statistics entered for the record on estimated costs and returns for market eggs show an estimated average net return of −3.7 cents per dozen in 1980 and −3.0 cents in the first three-quarters of 1981. Testimony, however, showed that support for the program in 1981 represented 70 percent of egg production—even with a 30–percent refund of assessments.

Witnesses testifying did not consider the provision for a gradual yearly increase of three-quarters of 1 cent to be excessive. Also there was consensus that the Board would be the appropriate decision-maker with respect to recommending the yearly increases.

The record reflects a sampling of States with egg promotion and education programs financed by producer assessments over and above the national assessment. California egg producers, for example, are assessed 5½ cents per case. Illinois—3 cents, Minnesota—4 cents, Missouri—6 cents, and North Carolina—2 cents. Witnesses stated that there would be no negative impact on State programs due to an increase in the national assessment. They pointed out that the programs, materials, and funds from the Board have been of vital assistance to State programs. In addition, the number and participation rate in State programs have increased since the national program was implemented.

Notice was taken at the hearing of the House report, 96–752, second session of the 96th Congress, "To amend the Egg Research and Consumer Information Act." That report states that the impact of the increase on the retail price of eggs would be minimal. If the total 5-cent increase per case were directly passed

on to consumers with no offsetting benefits, the increase in cost to consumers would be about one-tenth of a cent per dozen eggs.

Evidence was presented which highlighted the effectiveness of brand advertising, particularly at local markets. Statements from witnesses showed no indication, however, that the value of generic promotion on a national level would be diminished even with brand advertising.

It is concluded that a coordinated national advertising and research program is the most effective means available to the egg industry to compete for a share of the market. Therefore, in order to offset the detrimental impact of inflation and sustain an effective level of research, promotion, and education, the proposed amendments should be adopted. Further, the proposed amendments will not change the refunding process; i.e., producers may, under law, request a refund of all or a portion of their assessment. Proponents and opponents stated that there would be no additional paperwork burden on producers seeking refunds or on handlers collecting assessments.

Rulings on Proposed Findings and Conclusions

At the end of the hearing, the Administrative Law Judge fixed April 20, 1982, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence presented at the hearing. A brief was filed on behalf of the Egg Industry Promotion Study Task Force. Each point included in the brief was carefully considered, along with evidence in the record, to make the findings and reach the conclusions contained herein. To the extent that any suggested findings or conclusions contained in the brief or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of facts found and stated in connection with the recommended decision.

General Findings

(1) The findings hereinafter set forth are supplementary and in addition to the previous findings and determinations which were made in connection with the issuance of the Egg Research and Promotion Order. Except when such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The amendments to the Egg Research and Promotion Order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(3) All handling of eggs produced in the 48 contiguous States of the United States, as defined in the Order, is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in eggs, spent fowl, and their general products; and

(4) The following terms and conditions relaited to the amendments are recommended as the detailed means of carrying out the declared policy of the Act with respect to the establishment of an orderly procedure for the financing through adequate assessments on eggs produced in the 48 contiguous States of the United States for human consumption, and the carrying out of a program of research, development, advertising, consumer information, and promotion.

Recommended Amendments to the Egg Research and Promotion Order

The following amendments to the Egg Research and Promotion Order are recommended as the detailed means by which the foregoing conclusions may be carried out. Some of the amendatory actions require certain minor conforming changes as hereinafter set forth and as published January 8, 1982, (47 FR 1106).

PART 1250—EGG RESEARCH AND PROMOTION

1. Section 1250.317 is added as follows:

§ 1250.317 Consumer or consumer representative.

"Consumer" or "consumer representative" means an individual who is representative of the consuming public and is not associated with the egg industry; such person may be a member of a bona fide consumer organization, but such membership is not required.

2. Section 1250.326 is revised to read as follows:

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the "Board," composed of 18 producers or representatives of producers, 2 consumers or representatives of consumers, and 20 specific alternates. The Board members and alternates shall be appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328 and § 1250.329. If the Secretary determines that the nominees to the Board as consumers or consumer representatives are not members of a bona fide consumer organization or do not represent consumers, the Secretary may appoint such consumers or representatives of consumers as deemed necessary to properly represent the interest of consumers.

3. The section heading for § 1250.328 and the first sentence in that section are revised as follows:

§ 1250.328 Nominations of producers.

All nominations of producers and representatives of producers authorized under § 1250.326 shall be made in the following manner:

* * * * *

4. Sections 1250.329 through 1250.336 are redesignated as §§ 1250.330 through 1250.337, and a new § 1250.329 is added to read as follows:

§ 1250.329 Nominations of consumer representatives.

Eligible organizations certified by the Secretary pursuant to § 1250.356 within each geographic area designated pursuant to § 1250.328 of this Order may caucus for the purpose of jointly nominating consumer representatives to the Board for each consumer member and alternate to be appointed. If joint agreement is not reached with respect to the nominations or no caucus is held, each eligible organization may submit names. Such nominations shall be submitted to the Secretary within 60 days of the approval of this amendment to the Order in referendum. After the appointment of the initial consumer representatives and alternates to the Board, the nominations for subsequent consumer representatives to the Board and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed.

5. Section 1250.347 is revised to read as follows:

§ 1250.347 Assessments.

(a) Each handler designated in § 1250.348 and pursuant to regulations issued by the Board shall collect an assessment from each producer and shall pay that assessment to the Board at such times and in such manner as prescribed by the regulations issued by the Board; *Provided,* That the following shall be exempt from the provisions of this section: (1) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has

not exceeded 3,000 laying hens, and (2) any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(b) The Board with the approval of the Secretary shall set the amount of assessment, not to exceed 10 cents per 30-dozen case of eggs, or the equivalent thereof, as provided in paragraph (c) of this section to cover such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

(c) The rate of assessment for the first 12 months following issuance of regulations by the Board shall not exceed 7½ cents per case and shall not be increased by more than three-quarters of 1 cent per case during each fiscal year thereafter.

Signed at Washington, D.C., on May 5, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-12639 Filed 5-10-82; 8:45 am]

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Tuesday
May 11, 1982

Part III

Office of Personnel Management

Appointment Authority for Professional and Administrative Career Positions

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 752

Schedule B Appointment Authority for Professional and Administrative Career Positions.

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations establish a new appointing authority which agencies may use during a period when the Office of Personnel Management does not have a register of eligibles for use in filling professional and administrative career positions subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. This new authority is applicable only when agencies must utilize external recruiting and hiring procedures to fill such positions. The proposed regulations also contain an amendment to extend adverse action protections to individuals appojnted under the new authority.

DATE: Comments must be received on or before June 10, 1982.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Part 213: William Bohling—(202) 632–6000. Part 752: Cynthia Field—(202) 254–5517.

SUPPLEMENTARY INFORMATION: On November 19, 1981, the United States District Court for the District of Columbia entered a decree in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. Defendants in that lawsuit included the Director of the United States Office of Personnel Management (OPM) and the heads of 45 other Federal departments, agencies, and establishments in the Legislative and Executive Branches of the United States Government. Pursuant to that decree, OPM has eliminated the use of the Professional and Administrative Career Examination (PACE) and cancelled registers of eligibles derived therefrom. At the present time, OPM has no equivalent register of eligible applicants for entry-level professional and career positions and, pending further notice, will not establish such a register.

Because of substantial reductions in Federal governmental operations and spending, most agencies will not engage in significant outside hiring for the probable life of the decree. Instead, agencies generally will fill many vacancies that arise either by internal placement; by reinstatement of individuals with career status; or by interagency transfer to accommodate Federal employees who have been displaced by reduction in force, abolition of function, reorganization, or some other agency action taken either to achieve compliance with budgetary or personnel ceiling limitations or to accomplish desirable program changes. In filling vacancies, agencies will give precedence to individuals with priority placement rights and will make maximum use of available applicant sources such as (a) OPM Displaced Employee and VIPP lists and (b) agency repromotion and reemployment priority lists.

OPM recognizes, however, that agencies may on occasion experience vacancies in positions that were covered by the PACE on the effective date of the consent decree and that can be filled only through external hiring at the GS–5 and GS–7 entry levels. In the absence of OPM registers of eligible applicants for such positions, and in the event that agencies need to make external appointments to such positions, the agencies must have a special authority to do so. Thus, OPM, pursuant to its authority under Civil Service Rule VI, has determined, that such entry-level professional and administrative career positions at the GS–5 and GS–7 grades should be excepted from the competitive service on a case-by-case, position-by-position basis when it is necessary to fill those positions through external hiring. Excepting these positions from the competitive service and placing them in Schedule B is appropriate because, given the elimination of PACE and the unavailability of alternative written tests and other merit selection procedures, it is impracticable to hold competitive examinations for the positions.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

List of Subjects in 5 CFR Part 752

Administrative practice and procedures, Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

(1) 5 CFR 213.3202 is amended by adding paragraph (l) to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, and which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and when no qualified applicant already in the competitive service is available for appointment thereto, and the agency has made maximum use of priority placement sources, then the agency may apply to OPM for authority to make a new appointment under this paragraph. Such appointments shall be made pursuant to such Schedule B authorities for PAC positions as shall be prescribed in the Federal Personnel Manual. An incumbent of a Schedule B PAC position may be appointed to a competitive postion upon a demonstration by the agency that the employee has met qualifications on the basis of an

examination. Terms of service under this appointment authority shall be established by a delegation agreement to be executed for each individual position excepted from the competitive service pursuant to this authority.

PART 752—ADVERSE ACTIONS

(2) 5 CFR 752.401(b) is amended by adding paragraph (4) to read as follows:

§ 752.401 Coverage.

(b) *Employees covered.* The following employees are covered by this subpart:

* * * * *

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this title, provided that the employee has completed a trial period of one year after initial appointment in such a position.

Authority: 5 U.S.C. §§ 3301, 3302; E.O. 10577.

[FR Doc. 82-12972 Filed 5-10-82; 11:35 am]
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Tuesday
May 11, 1982

Part IV

Office of Personnel Management

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to issue regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations, under authority of new Executive Order 12353, Charitable Fund-Raising, March 23, 1982. These regulations provide a system for administering the annual solicitation campaigns and establish requirements for organization participation.

DATES: Comments must be received on or before June 11, 1982.

ADDRESS: Send or deliver comments to: U.S. Office of Personnel Management, 1900 E Street, N.W., Room 5532, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Joseph L. Patti, (202) 632–5544.

SUPPLEMENTARY INFORMATION: There always has been a legitimate Federal Government interest in cooperating with and assisting voluntary agencies in soliciting funds for worthy causes from Federal personnel. At one time, the increasing number of fund drives created an administrative burden for Federal officials. They were besieged by a multitude of agencies seeking endorsements and the privilege of soliciting employees on the job. In addition, employees were confused by the large number of appeals—as many as 10 to 20 a year in some departments. After extensive study of the situation, a uniform program was established in 1956 to limit the number of campaigns and to ensure true voluntary giving by Federal personnel. The purpose of the fund-raising program within the Federal service is to establish appropriate policies and procedures governing the solicitation of Federal civilian and uniformed services employees for contributions to private charitable agencies so as to protect the interests of the Government and the rights of employees. The program was originally monitored by the President's Committee on Fund-Raising Within the Federal Service. When the committee was abolished, its responsibilities were assigned to the Chairman of the U.S. Civil Service Commission (now, Director, Office of Personnel Management) by Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961. In order to express a renewed commitment to voluntary charity, and to set the basis for more precise standards, President Reagan revoked the outdated Order and replaced it with Executive Order 12353 under which authority this Part is issued.

Scope

This Part governs all fund-raising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States. Thus it is applicable to civilian and uniformed personnel in all executive departments and agencies throughout the world.

The Director finds that good cause exists for reducing the comment period on this proposed rulemaking from 60 to 30 days. The comment period is reduced in order to allow sufficient time for the private voluntary agencies to make applications to OPM and for OPM to properly carry out its responsibilities in granting solicitation privileges in advance of the 1982 Combined Federal Campaign. The period for submitting applications for admittance to the campaign is extended until 10 days after publication of the final rules.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulations, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The nominal costs to voluntary agencies, which are primarily associated with developing the initial application, are essentially the same as under current procedures.

List of Subjects in 5 CFR Part 950

Government employees, Charitable contributions.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR by adding new Part 950 to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICES PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—Administration and General Provisions

Sec.
950.101 Definitions.
950.103 Summary description of the program.
950.105 Federal policy on civil activity.
950.107 Preventing coercive activity.

Subpart B—Organization and Functional Responsibilities

950.201 Development of policy and procedures.
950.203 Program administration.
950.205 Program coordination.
950.207 Local voluntary agency representatives.
950.209 Local Federal agency heads.
950.211 Local Federal coordinating committees.
950.213 Avoidance of conflicts of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

950.301 Types of voluntary agencies.
950.303 Types of fund-raising methods.
950.305 Considerations in making Federal arrangements.
950.307 Definition of terms used in Federal arrangements.
950.309 Federated and overseas campaigns.
950.311 Off-the-job solicitation at places of employment.

Subpart D—Eligibility Requirements for National Voluntary Agencies

950.401 Purpose.
950.403 General requirements for national agencies.
950.405 Specific requirements.
950.407 Application requirements.
950.409 Public announcement of recognized agencies and assigned periods.
Appendix A—Source of Funds and Costs Report.

Subpart E—The Local Combined Federal Campaign

950.501 Authorized local voluntary agencies.
950.503 Participation in Federal campaigns by local independent agencies.
950.505 Responsibility of local Federal coordinating committees.
950.507 Local CFC plan.

Sec.
950.509 Organizing the local campaign: The Principal Combined Fund Organization.
950.511 Basic local CFC ground rules.
950.513 Contributions.
950.515 Dollar goals.
950.517 Suggested giving guides and voluntary giving.
950.519 Central receipt and accounting for contributions.
950.521 Campaign and publicity materials.
950.523 Payroll withholding.
950.525 National coordination and reporting.
Appendix A—Sample of CSC Form 804–1981 and Privacy Act Notice.

Authority: E.O. 12353.

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

For purposes of this Part:

(a) The term "national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate" means national agencies that:

(1) Meet all eligibility requirements established in this Part;

(2) Are not "action" organizations within the meaning of 26 CFR 1.501(c)(3)–1(c)(3); and are eligible to receive tax deductible contributions under 26 U.S.C. 170; and

(3) Provide or substantially support one or more of the following services:

(i) Relief of needy, poor or indigent children and of orphans, including adoption services;

(ii) Relief of needy, poor or indigent adults; and the elderly;

(iii) Delivery of health care to the needy, poor, indigent, ill or infirm;

(iv) Education and training of personnel for the delivery of health care to the needy, poor and indigent;

(v) Health research;

(vi) Education, training, care and relief of physically and mentally handicapped persons;

(vii) Delivery of legal services to the poor and indigent, and defense of human and civil rights secured by law;

(viii) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes;

(ix) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(x) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(xi) Protection of families in short or long-term need of family and child care services, child and marriage counseling, foster care, and management and maintenance of the home;

(xii) Neighborhood and community-wide services which assist the needy as part of the whole community, including emergency relief and shelter, recreation, safety, preparation or delivery of meals, and transportation;

(xiii) Information and counseling with respect to the obtaining of any of the foregoing services; or

(xiv) Lessening the burdens of government with respect to the provision of any of the foregoing services.

(b) Campaign terms:

"Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order 12353, and any subsidiary units of such program;

"Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

"Direct Contributions" shall mean gifts, in cash or in donated material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

"Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

"Employee" shall mean any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services;

"Indirect Contributions" shall mean gifts, in cash or in donated material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations.

(c) The term "Principal Combined Fund Organization" means the organization in a local Combined Federal Campaign that has been selected and so prescribed in § 950.509 of this Part to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal officials and the Director.

(d) The term "local volunteer evaluation and allocation committee" means a committee of volunteers of the Principal Combined Fund Organization that is broadly representative of the area where a Combined Federal Campaign is conducted and that regularly carries out a process of program development and review of the delivery of the services specified in § 950.101(a) of this Part for the purpose of determining how funds designated or distributed to the Organization of which the committee is a part should be allocated in support of voluntary agencies providing health and welfare services within the area.

§ 950.103 Summary description of the program.

(a) *Eligibility of National Voluntary Agencies.* National voluntary agencies apply to the Director each year for on-the-job solicitation privileges in the Federal Government. Early each calendar year, he issues a list of agencies that have met the prescribed standards as to program objective, eligibility, administrative integrity, and financial responsibility.

(b) *Assigned Campaign Periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is limited to six weeks.

(c) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509 of this Part, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for individual agency recognition, description of each agency's services, and allocation of contributions in accordance with specific designations by donors.

(d) *Decentralized Operations.* Following designation of a Principal Combined Fund Organization, representatives of that Organization initiate campaigns in their assigned periods by direct contact with the heads of Federal offices and installations in the local communities. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(e) *Solicitation Methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing the gift or keeping it confidential.

(f) *Off-the-Job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(g) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Campaign, merely because such agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not give, or to publicize their gifts or keep them confidential, are contrary to Federal fund-raising policy. The following activities are not in accord with the intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in Federal fundraising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100% participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of Policy and Procedures.

(a) *Director, U.S. Office of Personnel Management.* Under Executive Order 12353, Charitable Fund-Raising, the Director is responsible for establishing fund-raising policies and procedures in the executive branch. With the advice of appropriate interested persons and organizations and of the executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program.

(b) *Eligibility Committees.* A National Eligibility Committee shall consist of a chairman and such other members selected by the Director as he deems necessary, who shall serve at the pleasure of the Director. Local elibility shall be determined by the local Federal Coordinating Committees. The National Eligibility Committee is responsible for recommending to the Director:

(1) Eligibility determinations on national voluntary agencies;

(2) Modification of eligibility standards and requirements as needed; and

(3) Any other matters as requested by the Director.

§ 950.203 Program Administration.

(a) *Federal Agency Heads.* The head of each executive department and agency is responsible for:

(1) Seeing that voluntary fund-raising within the department or agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program within the agency;

(3) Assuring full participation and cooperation from his installations in local fund-raising campaigns;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Agencies shall provide procedures and assign responsibilities for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper orgnization channels for pursuing such complaints.

(b) *Fund-Raising Program Coordinators.* The responsibilities of agency Fund-raising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liasion with the Office of the Director in the Administration of the program;

(3) Publicize program requirements throughout the department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fund-raising program requirements within the agency.

§ 950.205 Program coordination.

The Director coordinates the agencies' administration of the fund-raising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their State and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fund-raising regulations. The local agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization and with the local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations; and

(d) Ensuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal coordinating committees.

(a) When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fund-raising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized Local Federal Coordinating Committee.* Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee

(3) Fund-Raising Program Coordinating Committees. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fund-raising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fund-raising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee (i) names a high-level chairman for the authorized Federal campaigns, (ii) provides lists of Federal activities and their personnel strength, (iii) cooperates on interagency briefing sessions and kick-off meetings, and (iv) supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fund-raising program.

(3) Develop understanding of campaign program policies, procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating program, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund organization. The Principal Combined Fund Organization will raise money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and Resolution Procedures Through the Director, Office of Personnel Management.* Each local Federal agency head will receive fund-raising directions through his agency channels and will raise questions that pertain to fund-raising activities within his agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fund-raising questions or problems that are common to seveal Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Group for information about the local fund-raising situation.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fund-raising program coordinator must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through State or local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising will be either federated or independent. A national *federated* group must meet the same eligibility criteria as a national agency, and have at least 10 local agencies in at least 200 local combined campaigns. In federated campaigns, local voluntary agencies join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group will be considered and supported as a single agency. Local chapters or affiliates of national agencies can form local federations or be admitted as additional participating members of national federated groups.

(b) An *independent* campaign is one conducted by a local or national voluntary agency through its own fund-raising organization. National agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) *On-the-Job-Solicitation.* In order to have only *one-the-job solicitation*, i.e., a Combined Federal Campaign, independent appeals must be combined into a single joint campaign of eligible health and welfare organizations in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign

arrangements are established by the Director. Local Federal agency heads are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this Part.

(c) *Number of Solicitations.* Not more than one solicitation on the job will be made at any location annually on behalf of voluntary health, welfare, or international service agencies, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible Conduct.* In the event a national voluntary agency fails to adhere to the eligibility requirements or to the policies and procedures of the Federal program, solicitation privileges may be withdrawn by the Director at any time after due notice to the agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic Area.* The 50 United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

(b) *Overseas Area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Recognized National Voluntary Agency.* An agency that has been declared eligible by the Director for participation in campaigns in the Federal establishment.

(d) *National Voluntary Agency "Supported Primarily through United Ways, United Funds, and Community Chests."* An agency that generally solicits within the Federal establishment as a participating member of United Ways, united funds, community chests, or other local federated groups that are members in good standing or, or are recognized by, United Way of America.

(e) *Federated Community.* A federated community is a geographical location within the domestic area where a federated fund-raising program exists. In a federated community, recognized national voluntary agencies can join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Way, united funds, and community chests" are authorized to solicit on-the-job in a federated community only as participating members of the local United Way, fund, or chest.

§ 950.308 Federated and overseas campaigns.

(a) *Authorized Federated Groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the eligibility requirements in these regulations is authorized on-the-job solicitation privileges in its local campaign area on behalf of any of its member agencies that also meet these requirements. Certifications as to the eligibility requirements on behalf of local United Ways, united funds, and community chests and each member agency will be made by United Way of America to the Director.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies and such other groups which shall meet the eligibility standards under this Part, as determined by the Director, shall be authorized on-the-job solicitation privileges on behalf of their member agencies that also meet all requirements of this Part. Certification for each subunit that they meet such requirements will be made to the Director.

(3) If a member agency does not meet the eligibility requirements, it shall not be permitted to solicit contributions from Federal personnel in the local area. Failure by a member agency to meet the requirements will disqualify the federated group from soliciting contributions, unless after notice to the group of intent to cancel, corrective action is taken to the satisfaction of the Director. If appropriate corrective action is not taken, the Director may disqualify the federated group.

(b) *Local Federated Agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local agency. The review must be conducted by a committee or group within the federated organization that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant agency. Where a local chapter or affiliate of a national agency, precluded from independent participation in the Federal fund-raising program because the agency is not approved for participation, such chapter or affiliate may request the Director, after securing a report by the Federated group, to determine that the reasons for its non-approval are not "arbitrary and capricious."

(c) *"Causes" Not Federated.* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is not authorized. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of Federated Area.* The recognition of a local Federal Coordinating Committee by the Director designates that community as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas Campaign.*—(1) *DoD Overseas Combined Federal Campaign.*

(i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Agencies that may participate in the Overseas Combined Federal Campaign will consist of: The American Red Cross; the United States Organization; those national health agencies recognized for campaigns in the domestic area (the Federal Service Campaign for the National Health Agencies); and those international service agencies recognized for campaigns in the domestic area, plus any national or federated agency recognized for overseas campaigns; any of which is eligible to be Principal Combined Fund Organization.

(ii) Contributors to the DoD Overseas Combined Federal Campaign are required to designate their gifts to one or more of the eligible agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated agencies, less the processing fee, if any, approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local Voluntary Agency Campaigns.* The heads of overseas offices and installations may, at their discretion, permit the solicitation of their military and civilian personnel for local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DoD Overseas Combined Federal

Campaign period. The eligibility standards in Subpart D will be used as guidelines in determining the eligibility of local voluntary agencies. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of U.S. personnel in the campaign area.

(3) *Optional Participation by Certain Civilian Agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies that are not recognized for the on-the-job program may be authorized off-the-job solicitation privileges at places of Federal employment under the conditions specified. Dual solicitation is not authorized, so this privilege cannot be made available to any voluntary agency that is included in the on-the-job program.

(a) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at similiar on-post family public quarters in unrestricted areas of military installations at the discretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public Entrances of Federal Buildings and Installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other smiliar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. The heads of the Federal agencies occupying the building or installation may authorize this privilege for no more than two (2) business days, if he believes this will not disrupt the functioning of the agency and if this also is approved by the building manager, if not an agency employee, regarding the functioning of the building. The agreement with the local representatives of the voluntary agency will specify the authorized locations, the number of solicitors that may be used, and any other necessary arrangements.

Subpart D—Eligibility Requirements for National Voluntary Agencies

§ 950.401 Purpose

These eligibility requirements are established to ensure that:

(a) Only responsible and worthy voluntary agencies are permitted to solicit on the job in Federal installations;

(b) The funds contributed by Federal personnel will be used effectively and for the announced purposes of the soliciting agencies; and

(c) All recognized national voluntary agencies meet requirements of Executive Order 12353 of March 23, 1982.

§ 950.403 General requirements for National agencies.

(a) *Type of Agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial services to persons for health and welfare and other appropriate national voluntary services, are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of Operations.* Only voluntary agencies having a high degree of integrity and responsibility in the conduct of their affairs will be approved. Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the agency.

(c) *National Scope.* The voluntary agency must demonstrate that:

(1) It is organized on a national scale with a national association that is representative of its constituent parts and that, through its board of directors, exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates.

(2) It has earned good will and acceptability throughout the United States, particularly in cities or communities within which or nearby are Federal offices or installations with large numbers of personnel.

(3) National scope, that is, scale, goodwill, and acceptability, must be demonstrated by:

(i) When a voluntary agency provides a service in all or most of the States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) When contributor support comes from all or most parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors;

(iv) By the national character of any public campaign, which may be shown by a large number (c. 75) of local chapters or affiliates or representatives which promote such a campaign;

(v) By the reputation of the organization nationally; and

(vi) By the proportionate effect of the organization's participation in CFC on total income.

(d) *Type of Campaign.* Approval will be granted only for fund-raising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements.

(a) *Eligibility.* To be eligible for approval by the Director for participation in the Combined Federal Campaign, the national agency must meet the specific requirements that it be one:

(1) That is either a health or welfare, or other appropriate voluntary agency, as defined in section 950.101 of this Part;

(2) That is voluntary and broadly supported by the public, meaning (i) that it is organized as a not-for-profit corporation or association under the laws of the United States, a State, a territory, or the District of Columbia; (ii) that it is classified as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and, (iii) that with the exception of agencies whose revenues are affected by unusual or emergency circumstances, as determined by the director, it has received at least 50 percent of its revenues from nongovernmental sources or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign (recently founded organizations participating in the CFC before this Part became effective will have three (3) years to comply with the 50 percent/20 percent requirement);

(3) That is directed by an active board of directors, a majority of whose members serve without compensation; that adopts and employs the *Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;* that prepares and makes available to the general public an annual financial report prepared in accordance with the *Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certified by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(4) That can demonstrate to the director, if its fund-raising and administrative expense is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(5) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts; and

(6) That has a direct and substantial presence in the local campaign community, which presence shall be demonstrated to the Director or local Federal Coordinating Committee documenting that the services are known to and accessible to Federal employees in the local community; examples of direct and substantial services are: providing local services, personal counseling (if by telephone with a local phone number), local disease prevention programs or inoculations, screening for detection of problems or need for services or referrals, treatments (of illnesses, poverty, and handicaps), and local educational or informational services; as a general rule employees in the solicitation area, or their families, should be able to receive services from a particular voluntary agency, within a reasonable distance from the employment stations; however, international organizations that provide health and welfare services overseas, which meet the eligibility criteria except for the direct and substantial present criterion, shall be eligible to solicit funds from Federal personnel.

(b) *Fund-Raising Practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of agency contributor's lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising; and must permit no general telephone solicitation of the public.

(c) *Reports.*— (1) *Annual Report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined Reports.* Organizations which represent more than one subunit must prepare a combined annual financial report to the general public in accordance with the *Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.* The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(3) *Source of Funds and Costs Report.* The voluntary agency must file a special report with the Director that discloses on a consolidated basis the agency's (including chapters and affiliates) sources of funds, fund-raising expense, and use of net funds in its most recent fiscal year.

§ 950.407 Application requirements.

(a) *Federated Groups.* Federated Groups, i.e., the American Red Cross, United Ways and local community chests or united funds that are members in good standing of or are recognized by United Way of America, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federations which shall be recognized under Subpart C, do not need to apply separately as National Agencies. For purposes of this Part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the *Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification to this effect by local chapters is not required.

(b) *National Agencies.* In order to be considered for solicitation privileges in domestic or overseas campaigns in the Federal service, each national voluntary agency must file an application annually. National voluntary agencies that have already been approved for fund-raising privileges in the Federal service are not required to submit the information requested in paragraphs (f)(1), (2), (3), (4), and (8) of this section, except where there has been a substantial or significant change in these items; for example, a change in purpose of the organization or a decline in chapter coverage or activity. They are required to furnish information in paragraphs (f)(5), (6), (7), (9), (10), (11), and (12) of this section.

(c) *Time and Place of Filing.* Applications must be filed with the Office of the Director, U.S. Office of Personnel Management, Washington, DC 20415. Applicants are urged to file as early as possible in each calendar year.

(d) *National Eligibility.* The Director, with the assistance of a National Eligibility Committee of government officials, employee organization leaders and private citizens, uses the information filed with the agency's application and derived from other responsible sources to make his decision on an agency's eligibility. The National Eligibility Committee shall consider the applications fairly, hold meetings and hearings as appropriate, and make recommendations to the Director. National eligibility shall only give a presumption of local eligibility, which must also meet the requirements of § 950.501. Where a local chapter of an eligible national agency is denied participation in a local campaign, it may appeal to the Director, whose decision shall be final.

(e) *Notice of Decision.* Applicants for national eligibility are to be notified of the decisions as soon as possible after filing. If dissatisfied with the Director's decision, the applicants may requres a review of the decision by the Director. The second decision will be final, subject to appropriate judicial review or legislative action.

(f) *Form and Content of Application.* Applications shall be filed in the following form and will include the information documents, and data specified:

(1) Corporate name and fiscal year;

(2) Origin, purpose, and structure of organization, including information to show that the voluntary agency meet the general and specific requirements of this Subpart;

(3) A list of chapters, affiliates, or representatives in alphabetical order by State; and under the State, a list of cities with chapter, affilitate, or representative by names and addresses;

(4) Demonstration of the good will and acceptability of the organization throughout the United States;

(5) Outline of the program, particularly the nature of the direct services to persons provided by the agency and under what paragraph (a)(3) of § 950.101 the application is made. Furnish written assurance of compliance with all requirements of § 950.101(a)(2) and §§ 950.403 through 950.405;

(6) Description of board of directors' administrative activity in past year and list current board members' names, addresses, and businesses or professions;

(7) Certification by an independent certified public accountant of compliance with an acceptable financial system and adoption of the Uniform Standards;

(8) Statement of compliance with all factors in the section on fund-raising practice.

(9) Copy of latest annual report;

(10) Copy of latest financial report prepared in accordance with the *Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and provide certification by an independent certified public accountant that the

report was prepared in conformity with the Standards;

(11) Copy of latest external audit by an independent certified public accountant; and

(12) A special report to the Director, consistent with the reporting requirements of the Standards. The report must include the agency's sources of funds, expenditures by program service, and supporting services with fund-raising and other expenditures listed separately. The report must cover the most recent fiscal year and represent a consolidated statement of national and affiliate income and expenditures.

The amount of contributions received from United Ways, united funds or community chests, from Federal service campaigns, and the total from all other sources, especially transfers, dues, or other funds from affiliated organizations, must be separately identified and shown. All entries must be reported in dollar and percent of total contribution. The report must be furnished in accordance with the format shown in the appendix to this Subpart.

(g) The Director shall be authorized to investigate facts and circumstances on issues relating to eligibility raised under this Part.

§ 950.409 Public announcement of recognized agencies and assigned periods.

Early in the calendar year the Director will announce the names of all national voluntary agencies eligible for participation in the Federal fund-raising program for the ensuing campaign year.

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APPENDIX A TO SUBPART D

(Agency)

SOURCE OF FUNDS AND COSTS REPORT

(for the year ending . . . . .)

Support from the Public:	Amount	Percent of Income
Received Directly:	$	
Contributions		
Special Events (less related expenses of $____)	$	
Subtotal		
Received Indirectly:		
United Ways, Funds and/or Community Chests		
Federal Service Campaigns		
Other Contributions		
Subtotal		
Total Support from the Public		
Miscellaneous Revenue:		
Government Grants (including grants-in-kind)		
Service Fees, Literature Sales, etc.		
Gain from the Sale of Products		
Memberships		
Investment Income		
Other Income		
Total Miscellaneous Revenue		
TOTAL SUPPORT AND REVENUE		100

Expenditures:	Amount	Percent of expenditure
Program Services:		
(Category)		
(Category)		
(Category)		
(Category)		
Subtotal		
Supporting Services:		
Management and General		
Fund Raising		
Subtotal		
TOTAL EXPENDITURES		100
EXCESS OF REVENUE OVER EXPENDITURES	$	

BILLING CODE 6325-01-C

[illegible] Social Security Administration, Department of Health and Human Services.

[illegible] Proposed rule.

[illegible] This proposed rule would amend the regulations governing the Supplemental Security Income (SSI) program to provide that the Secretary of Health and Human Services may enter into agreements with State agencies to perform certain functions relating to the determination of blindness and disability under the SSI program. The proposed rule would also provide that the Secretary may enter into agreements with State agencies to perform certain functions relating to the determination of blindness and disability under the Social Security disability insurance program. The proposed rule would

Subpart E—The Local Combined Federal Campaign

§ 950.501 Authorized local voluntary agencies.

A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope, but shall be evaluated under these criteria by the local Federal Coordinating Committee recognized by the Director for that Community. After one year from the effective date of this Part, only local groups affiliated with a federated or other eligible national voluntary agency, as determined by the local Federal Coordinating Committee or the Director, upon appeal, are eligible to participate in the local campaign.

§ 950.503 Participation in Federal campaigns by local independent agencies.

(a) Arrangements will be established by each local Federal Coordinating Committee to evaluate local voluntary agencies which seek to solicit separately from the local federated group. These procedures will require eligible local voluntary agencies to preregister with the local Federal Coordinating Committee to participate in that year's Combined Federal Campaign. Arrangements will be made by the Central Receipt and Accounting Point to distribute contributions to authorized agencies after appropriate adjustments are made for "shrinkage" and approved administrative costs.

(b) *Application procedures.* In order to be eligible for participation in the Combined Federal Campaign, local agenices must submit an application for registration in the CFC to the local Federal Coordinating Committee. Applications may be submitted jointly for member agencies in federated groups. The Federal Coordinating Committee is responsible for reviewing and taking action on the applications based on eligibility requirements in this Part, especially those of Subpart D. The Local Federal Coordinating Committee may request a qualified screening organization to assist in the processing and review of applications against the eligibility requirements and in recommending approval or denial of the application, but the local Federal Coordinating Committee must make the actual decisions. If the Federal Coordinating Committee determines that eligibility requirements are not met, reasons for that determination will be provided to the agency within 60 days of the receipt of the application.

§ 950.505 Responsibility of local Federal Coordinating Committees.

Each Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of executive departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFC as Uniform Fund-Raising Method.* The Combined Federal Campaign is the only authorized fund-raising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fund-raising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-Participation.* In the event that any agency does not follow these regulations for participation in a local CFC, fund-raising privileges in local Federal establishments are forfeited during that fiscal year. Voluntary withdrawal will not prejudice eligibility for the next year's Campaign.

(c) *Red Cross Participation.* In local communities where the Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in CFC rests with the local chapter board of directors. As with the other national organizations, in the event local Red Cross chapters choose not to participate in CFC, they are not authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in Areas of Less than 200 Federal Employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved.

§ 950.509 Organizing the local campaign: The principal combined fund organization.

The Local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this Part. From among the federations approved for participation in the local CFC, the Federal Coordinating Committee shall select a Principal Combined Fund Organization to conduct the campaign and to serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depend on public subscriptions for support; and that, in the judgement of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for a successful Campaign.

(a) In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable agencies; and

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(b) An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval. All such

applicants must pledge to fairly and equitably manage the campaign; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a Federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization, if in his discretion, he finds these pledges are not fulfilled.

(c) Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations approved for participation and listing in the local CFC (minus only the approved fee for administrative cost reimbursement and approved "shrinkage" factor);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable eligibility requirements specifed in this Part for participation in the CFC;

(7) Fee proposed to be charged by the applicant organization for reimbursement for fund-raising and administrative costs;

(8) Statement that the applicant organization does, or does not, regularly maintain as an intregral part of its charitable activities a local volunteer evaluation and allocation committee; and

(9) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(d) Member agencies of federations and other agencies certified for listing and receipt of designations through the approved local or national admission process, shall be eligible to receive designations.

(e) The Principal Combined Fund Organization shall provide a form for the employee to indicate any amounts he may wish to designate to affiliated and non-affiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses and a "shrinkage" factor approved by the local Federal Coordinating Committee and established on the basis of "shrinkage" experience in the local CFC.

(f) The fee charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) All contributions not designated to specific agencies or specific federated agencies shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly stated on the face of each pledge card in red ink.

(h) The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee within a reasonable time following the campaign indicating the following information:

(1) Dollars raised,

(2) Number of contributors,

(3) Amounts designated to affiliated and non-affiliated agencies,

(4) Amount designated to the Principal Combined Fund Organization, and

(5) Costs of administering the campaign, including the Central Receipt and Accounting Point.

Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an independent certified audit must be performed. Copies of the audits will be submitted to the appropriate local Federal officials and made available for inspection by participating agencies if desired.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action Steps by the Local Federal Coordinating Committee Chairman.* The Chairman of the local Federal Coordinating Committee is authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization, when necessary, to assemble necessary information and data, plan the detailed campaign arrangements, identify policy issues, and prepare campaign materials. The work group should have a Federal chairman, other management and employee representatives as deemed advisable, and representatives from the Principal Combined Fund Organization. But all decisions are to be reported to the local Federal Coordinating Committee for formal approval.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC ground rules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic ground rules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this Subpart. However, any modification of ground rules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) *Campaign Name.* The name will be the Combined Federal Campaign. The title should include the year for which contributions are solicited and identification of the locality, as for example, 1981 San Antonio Area Combined Federal Campaign.

(2) *Campaign Period.* The solicitation period may be any period not in excess of six consecutive weeks between September 1 and November 30.

(3) *Campaign Area.* The exact geographical area to be covered by the combined campaign will be determined nationally, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this Part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific agency, the Principal Combined Fund Organization will remit such funds as collected, minus approved administrative costs, directly to that agency as collected; when the object of the gift is the Volunteer Evaluation and Allocation Committee, the gift is pooled by the Principal Combined Fund Organization with the gifts of others and allocated by that Organization, after local study, to meet the needs of that community. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will go to the Principal Combined Fund Organization for distribution.

(b) Several boxes will be provided on the pledge form so that the donor may indicate his choice, if any, of one or more of the agencies listed to receive all or part of his gift. A minimum of five boxes for such purposes will be shown on the face of and on all copies of the pledge card itself. Separate designation slips are not authorized under any circumstances. The pledge card must be so arranged that each Federal employee receives the pertinent CFC and agency information and the pledge card as a single package (e.g. inserted in a slot or pocket in the contributor's information leaflet).

(c) If contributions are designated to organizations not participating in the local CFC, they will not be accepted.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each agency shares responsibility in the team effort and has a mark with which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goas are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for individual contributions are authorized for local construction. Guides for cash giving or direct-payment pledges may be included, in terms of percent of annual income, number of hours' pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. It will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the privilege of making his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Central Receipt and Accounting Point, or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the Principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The central accounting point will first tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The Central Point will use the final audited totals of these two categories of contributions to determine the ratio for allocation of aggregate "shrinkage." Thereafter, the shrinkage factor (percentage) will be applied by the Principal Combined Fund Organization to the distribution of funds to the voluntary agencies concerned together with the approved percentage for reimbursement of administrative costs.

Illustration:

		Percent
Dollar total of pledges received	$100,000.00	
(Designated to specific agencies	90,000.00)	(90)
(Designated to the Principal Combined Fund Organization	10,000.00)	(10)
Dollar total of pledges actually paid	95,000.00	(95)
(Shrinkage	[1] 5,000.00)	

[1] Shrinkage factor equals 5 percent (5,000 divided by 100,000 equals .5).

Under the above example, the distribution of funds designated by donors to specific agencies would be the amount pledged less the shrinkage factor (5%) and the approved percentage for reimbursement of administrative costs to the Principal Combined Fund Organization. Thus, of the $95,000 actually received by the Central Receipt and Accounting Point in payment of pledges, $85,500 would be payable to the agencies designated by donors; and $9,500, representing funds designated to the Principal Combined Fund Organization, would be payable to that Organization. The amounts payable to the specified voluntary agencies are subject to deduction of the approved percentage for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an independent audit must be performed. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether

or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is not authorized.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to follow this Part or other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide educational material of the voluntary agencies or provisions of other services to employees at Federal establishments must be handled through the agency occupational health units, and not the CFC coordinators. While there is no intent to restrict the normal educational or service activities that voluntary agencies provide in Federal agencies, no special distribution of materials or services should be planned during the campaign or promotional efforts made to attract designations that would have the effect of giving undue publicity to a particular agency or category of agencies during the campaign period. Violation of this requirement by any voluntary agency may be grounds for the local Federal Coordinating Committee to disqualify the agency from further participation in the local CFC for that year after due notice and consultation with the agency concerned.

(c) A single Contributor's Information Leaflet, a one-part alphabetical list of participating agencies, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter two to be placed in an insert slot in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice, and will provide full information about the agencies and the Volunteer Evaluation and Allocation Committee process. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they must choose.

(d) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying contributions, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials:

(1) Contributor's Leaflet.

(i) This will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by § 950.513 of this Part. The leaflet will be constructed to contain a pocket or a slot to hold the CFC pledge card.

(ii) The leaflet will provide instructions as to how an employee may obtain more specific information about agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fund-raising activities. The leaflet will advise civilian employees to consult with their personnel office and military personnel with their commanding officers to identify the organization handling such complaints in the agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(2) Separate list of participating agencies.

(i) This brochure will list alphabetically each agency approved by the appropriate Federal officials for participation in the CFC with a brief statement of about 25 words on its programs. Opposite the name of each agency a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice or agency or agencies to whom they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge card.

(ii) The alphabetical listing of agencies will also include therein the following generic titles reflecting the categories of approved federated organizations: International Service Agencies, National Health Agencies, National Service Agencies, and the name of the local United Way, united fund, or community chest or other federated group participating in the CFC. These will be printed in heavier type than other listings so that contributors desiring to direct their gifts to one or more categories of federated agencies (rather than to an individual agency or agencies) may do so by inserting the category number or numbers in the designation boxes provided for that purpose on the pledge card.

(iii) Following the listing of the participating agencies a similar box for, and description of the functions of, the local Volunteer Evaluation and Allocation Committee will be provided. An illustration of the prescribed format is shown below:

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101 - (Name of agency)
(description in 25 words
or less of agency's programs)

102 - (Name of agency)
(description of programs)

103 - (Name of agency)
(description of programs)

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123 - International Service Agencies
(description of functions)

124 - (Name of agency)
(description of programs)

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155 - National Health Agencies
(description of functions)

156 - (Name of agency)
(description of programs)

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170 - National Service Agencies
(description of functions)

171 - (Name of agency)
(description of programs)

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195 - (United Way of _____)
(description of functions)

196 - (Name of agency)
(description of programs)

197 - (Name of agency)
(description of programs)

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210 - Local Volunteer Evaluation and Allocation Committee
(description in 25 words or less of Committee's functions)

(3) Pledge Form and Payroll Withholding Authorization.

(i) When completed, this working form will go to the Central Receipt and Accounting Point for the local area. The format for the pledge card is set by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Central Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, 1981 San Antonio Area Combined Federal Campaign.

(iv) The box entitled "Identification No." will be used for the contributor's Social Security Number, except in the case of agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) Other campaign materials that are authorized, include:

(1) *Chairman's Guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's Guide.* Instructions for keyworkers about CFC arrangements, solicitation methods and forwarding procedures;

(3) *Keyworker's Report Envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous Campaign Items.* Contributor's receipts, window stickers, posters, progress charts, awards, etc.;

(5) *Publicity Items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of agencies for CFC accomplishments is not permitted.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management regulations in 5 CFR Part 550, Pay Administration.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and contributions are solicited.

(3) Completed authorization forms should be transmitted to the payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24, or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment which is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be 50 cents biweekly or semi-montly, $1.00 monthly, with no restriction on size of increment above the minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations to the Central Receipt Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of alloters inlcuded or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one-year withholding period;

(ii) On death, retirement, or separation of allotter from the Federal service.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* When an allotter moves to another organizational unit served by a different payroll office, whether in the same or a different department or agency, his allotment authorization will be transferred to the new payroll office, unless expressly revoked by the individual. If there is a delay in receiving the transferred authorization in the new payroll office, the allotter should be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of

individual allotment accounts, deductions each period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions, as designated by Federal employees, to charitable organizations approved for particpation and lisitng in the local CFC (minus only the shrinkage factor and approved fee for administrative cost reimbursement) and for an independent audit when the CFC receipts exceed $100,000.

(3) Federated and national agencies, or their designated agents, will accept responsibilities for: (i) The accuracy of distribution among the agencies in the category covered of remittances from the Principal Combined Fund Organization representing contributions designated by contributors to such agencies; and (ii) arrangements for independent audit agreed upon by the participating agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFC arrangements.

(b) Newly established field coordinating committees are required to notify the Office for Regional Operations to report their campaign areas, their chairman's name and address, and the address of their Central Receipt and Accounting Point.

(c) All chairmen of field coordinating committees are required to furnish reports of campaign results to the Office of Regional Operations by January 15 of each year. A reporting format will be furnished to CFC locations prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors, total receipts, per capita gift);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Amount of undesignated receipts received by Principal Combined Fund Organization; and

(5) Narrative summary evaluation of CFC arrangement based upon campaign experience. A copy of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and a copy will be made available for inspection by other participating voluntary agencies.

(d) All local activities will be coordinated with the national campaign under procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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5-12-82
Vol. 47 No. 92
Pages 20285-20542

federal register

Wednesday
May 12, 1982

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Rules and Regulations

Federal Register
Vol. 47, No. 92
Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Peach Reg. 1, Amdt. 1]

Fresh Peaches Grown in Georgia; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment of interim rule and extension of the period for comments.

SUMMARY: This amendment lowers the minimum grade regulation on Georgia peaches by requiring that the peaches be at least 75 percent U.S. No. 1 quality. The current regulation requires these peaches to be at least 85 percent U.S. No. 1 quality. This action recognizes the effects of recent cold weather on the development of the Georgia peach crop. This amendment is necessary to assure shipment of adequate supplies of peaches.

DATES: This amendment of the interim rule is effective May 6, 1982, through July 5, 1982, and extends the period for comments through June 10, 1982. Any comments which are received will be considered prior to issuance of a final rule to become effective July 6, 1982. The final rule would require that Georgia peaches be at least 85 percent U.S. No. 1.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

This amendment is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on information submitted by the Industry Committee, established under the order, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on April 30, 1982, to consider supply and market conditions and other factors affecting the need for amendment of the current regulation. It recommends lowering the grade requirement for shipments of fresh peaches grown in Georgia from 85 percent U.S. No. 1 to 75 percent U.S. No. 1 grade. The committee reports recent cold weather and excessive rainfall has reduced the quality of the crop, particularly the early maturing varieties. This action is necessary to assure shipment of adequate supplies of Georgia peaches consistent with the quality of the crop and current and prospective demand. It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amended regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time. This amendment relieves regulations on the handling of peaches.

List of Subjects in 7 CFR Part 918

Marketing agreement and orders, Peaches, Georgia.

PART 918—FRESH PEACHES GROWN IN GEORGIA

Therefore, the provisions of paragraph (a)(1) in § 918.324 Peach Regulation 1 (47 FR 18571) are revised to read as follows: (§ 918.324 expires July 5, 1982, and will not be published in the annual Code of Federal Regulations).

§ 918.324 Peach Regulation 1.

(a) * * *

(1) During the period May 6, 1982, through July 5, 1982, do not grade at least 75 percent U.S. No. 1 quality: *Provided,* That peaches with well-healed hail marks or split pits not scored as serious damage, or peaches with not more than 1 percent decay, may be shipped if they otherwise meet the requirements of this subparagraph.

* * * * *

Dated: May 6, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-12574 Filed 5-11-82; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1046

[Milk Order No. 46; Docket No. AO–123–A45]

Milk in the Louisville-Lexington-Evansville Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts on an emergency basis an amendment to the Louisville-Lexington-Evansville order. The change will provide handlers with limited transportation credits from the marketwide pool for certain Class II and Class III milk transferred or diverted to unusually distant outlets for surplus disposal. The change, which will apply only through June 30, 1982, was considered at a public hearing held on March 16–17, 1982, in East Point, Georgia. The order change was proposed by a cooperative association that represents dairy farmers who supply milk to the market.

The change is necessary to reflect current marketing conditions and to insure that all producers in the market share more equitably in the cost of disposing of unusually large supplies of surplus milk that are expected this spring. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and the opportunity to file exceptions thereto were omitted. Cooperative associations representing more than two-thirds of the producers in the market have approved the issuance of the amended order.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447-4829).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 4, 1982; published March 10, 1982 (47 FR 10230).

Emergency Final Decision: Issued April 19, 1982; published April 23, 1982 (47 FR 17530).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication in the **Federal Register**. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued April 19, 1982 (47 FR 17530). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1046

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.60, paragraph (g) is added to read as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II or Class III milk pursuant to § 1046.42(b)(3) or § 1046.42(d)(2) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 250 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Louisville, Kentucky; the city hall in Lexington, Kentucky; the city hall in Evansville, Indiana; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: May 12, 1982.

Signed at Washington, D.C., on May 6, 1982.

John E. Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-12906 Filed 5-11-82; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6399, 34-18700, 35-22483, 39-718, IC-12412, IA-802, FOIA-63]

Delegation of Authority to the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority and requests for information to delegate authority to the General Counsel to consider appeals from decisions of the Freedom of Information Act Officer.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Ann Stansbury, Esq., Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2427.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) ("FOIA") provides that any person who requests records thereunder shall be notified of the right to appeal to the head of the agency an initial adverse determination with respect to the release of such records. The Commission's rules pertaining to information and requests, Subpart D of 17 CFR Part 200, provide that the Commission's FOIA Officer will make the initial determination whether or not to release records and, where it is determined not to comply with the request, notify the requestor of the determination, the reasons therefor, and the right to appeal to the Commission. (17 CFR 200.80(d)(5)). The requestor who has been so notified, or who has not received a response within the allowed time period, may apply for an order of the Commission directing that the record be made available. If on appeal the Commission upholds the decision of the FOIA Officer, the Commission will so advise the requestor and is required to notify the requestor of the names and positions of the members of the Commission responsible for the denial, as well as of the provisions in the FOIA for judicial review. (17 CFR 200.80(d)(6))

Denials of requests for a waiver of fees may also be appealed to the Commission. (17 CFR 200.80(e)(4))

The Commission also has published its procedures for considering requests for confidential treatment of records that are the subject of FOIA requests. (17 CFR 200.83). In general, the FOIA Officer makes a determination as to confidential treatment whenever the Officer receives a request for information that is the subject of a previously filed request for such treatment. If the FOIA Officer determines that confidential treatment is not warranted, based on consideration of the request and any additional information submitted to substantiate a finding of confidentiality, the confidential treatment requestor may appeal that determination to the Commission.

Under the current procedures, when an FOIA or confidential treatment appeal is pending before the Commission, the Office of the General Counsel reviews the matter and presents its recommendation to the Commission as to whether the FOIA Officer's decision should be upheld or reversed. The Commission now finds that, due to the large number of FOIA appeals and the time necessary to bring such appeals before the Commission, it is in the interest of the public and of the Commission to delegate the authority to decide FOIA and confidential treatment appeals to the General Counsel.

The Commission believes that the process of administrative review could be carried out more expeditiously if delegated to the Office of the General Counsel. The process of scheduling appeals for consideration by the Commission, including publication of notice in fulfillment of the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) often makes it difficult to meet the twenty-day limit that the FOIA sets for consideration of appeals. If appeals were considered pursuant to delegated authority, it appears that administrative review could be carried out more swiftly.

The Commission believes it appropriate to delegate its FOIA review function to the General Counsel because the General Counsel in most cases is not involved in the initial decision to grant or deny requests for records and confidentiality. Although the Commission considers each FOIA appeal separately, it has found that in routine cases it generally approves the recommendations of the Office of General Counsel, which are based on the application of case law and other authoritative interpretations of the FOIA to the facts of each particular case. In addition, the General Counsel defends the Commission in suits brought to compel or prohibit disclosure of information, and may be expected to decide FOIA appeals in a thorough and impartial manner.

Nevertheless, in appropriate cases involving difficult or important issues, the General Counsel would be expected to bring the matter to the Commission for decision.

Accordingly, the Commission hereby amends §§ 200.21(a)(17 CFR 200.21(a)) and 200.30-14 (17 CFR 200.30-14) of the Commission's rules relating to general organization to delegate to the General Counsel the authority to make determinations with respect to appeals from decisions of the Commission's Freedom of Information Act Officer. The Commission also amends Subpart D of 17 CFR, Part 200, §§ 200.80 and 200.83 (17 CFR 200.80 and 200.83), its regulation concerning information and requests, to set forth the procedure by which the General Counsel will consider and act on Freedom of Information Act and confidential treatment appeals.

Statutory authority: In amending §§ 200.21(a) (17 CFR 200.21(a)) and 200.30-14 (17 CFR 200.30-14) with respect to delegated authority, the Commission is acting pursuant to the Act of August 20, 1962, Pub. L. No 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 163 (June 4, 1975). The Commission's regulation concerning information and requests, Subpart D of 17 CFR Part 200, which is hereby amended, is issued under the Freedom of Information Act, 80 Stat. 383, as amended, 31 Stat. 54; section 19 of the Securities Act of 1933, 48 Stat. 85 as amended; section 23 of the Securities Exchange Act of 1934, 48 Stat. 901, as amended; section 20 of the Public Utility Holding Company Act of 1935, 49 Stat. 833; section 319 of the Trust Indenture Act of 1939, 53 Stat. 1173; section 38 of the Investment Company Act of 1940, 54 Stat. 841; and section 211 of the Investment Advisers Act of 1940, 54 Stat. 855 (5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11).

The Commission finds, in accordance with 5 U.S.C. 553(b) (A) of the Administrative Procedure Act, that the foregoing regulation relates solely to agency organization, procedure, or practice and that notice and public procedure in accordance with 5 U.S.C. 553 are not necessary, pursuant to subsection (b) thereof. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

List of Subjects in 17 CFR Part 200

Freedom of information.

Text of Amendments

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. In § 200.21 paragraph (a) is revised to read as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution and for the review of requests by domestic and foreign governmental authorities and self-regulatory organizations for access to materials contained in Commission files concerning a non-public investigatory proceeding in which a formal order of investigation has been entered. In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for reviewing and advising the Commission upon the legal aspects and policy implications of pre-argument memorandums and draft Commission opinions prepared by the Office of Opinions and Review; for the conduct of administrative proceedings relating to the disqualification of professional persons from practice before the Commission; for the preparation of Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission and is responsible for investigating any claims of staff improprieties. Additionally, he or she has responsibility with the Office of Opinions and Review for dealing with general problems arising under the Administrative Procedure Act, including (with the Office of Opinions and Review) the revision or adoption of rules of practice. He or she is responsible (with the Director of Personnel) for administering and interpreting the Commission's Conduct Regulation. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Personnel Management and the Department of Justice. The General Counsel also is responsible for coordinating and reviewing the interpretative positions of the various divisions and offices. In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act appeals pursuant to the authority delegated in § 200.30–14, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

* * * * *

2. Section 200.30–14 is revised to read as follows:

§ 200.30–14 Delegation of Authority to the General Counsel.

Pursuant to the provisions of Pub. L. 94–29, 89 Stat. 163, Pub. L. 87–592, 76 Stat. 395, 15 U.S.C. 78d–1, 78d–2, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the General Counsel of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) Grant waivers of imputed disqualification requested pursuant to 17 CFR 200.735–8(d);

(b) Determine whether the Commission will submit, after consultation with any Division or Office of the Commission designated by the Commission, and amicus curiae brief in private litigation on issues previously considered and designated by the Commission as appropriate for the exercise of delegated authority. A list of the issues designated by the Commission as subject to this delegated authority and, where determined by the Commission, the position to be taken on each such issue, may be obtained on request addressed to Securities and Exchange Commission, Washington, D.C. 20549; and

(c) Determine the appropriate disposition of all Freedom of Information Act and confidential treatment appeals in accordance with §§ 200.80(d)(6), 200.80(e)(4), 200.83(e), 200.83(f), and 200.83(h).

3. In § 200.80 paragraphs (d)(5) and (6) and (e)(4) are revised to read as follows:

§ 200.80 Commission records and information.

* * * * *

(d) * * *

(5) *Initial determinations, denials.* With respect to any record that is generally considered nonpublic as described in paragraph (b) of this section, the Freedom of Information Act Officer of the Commission will determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of a request for inspection of the record or for a copy (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) whether to comply with such request, and shall immediately notify the person making such request of such determination and, where it is determined not to comply, the reasons therefor, and of the right of such person to appeal to the General Counsel any adverse determination: *Provided,* That a Director of a staff Division of the Commission or Office head whose zone of responsibility relates to the record requested (See 17 CFR 200.13, et seq.) may make a determination that the record or copy is not lawfully required to be made available and should not be made available, in which case he, and not the Freedom of Information Act Officer, shall make the required notification. The notification of denial of any request for records shall set forth the name and title or position of each person responsible for the denial.

(6) *Administrative review.* Any person who has been notified pursuant to paragraph (d)(5) of this section that his request for inspection of a record or for a copy has been denied, or who has received no response to a request for a record or copy within ten days (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) after his request was received by the Commission's staff, may appeal to the General Counsel the adverse determination or the failure to respond.

(i) The appeal shall be in writing, shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by a legend such as "Freedom of Information Act Appeal,"

and shall identify the record in the form in which it was originally requested.

(ii) The appeal should be delivered to the General Counsel, with a copy to the Office of the Freedom of Information Act Officer, or sent by mail to the Freedom of Information Act Officer.

(iii) The appeal may include such facts and cite such legal or other authorities as the person submitting the appeal may consider appropriate.

(iv) The General Counsel shall have the authority to grant or deny all appeals, in whole or in part, and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In appropriate cases he or she may, in his or her sole and unfettered discretion, refer appeals to the Commission for determination.

(v) A determination with respect to any appeal shall be made within twenty days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section.

(vi) A denial of an appeal in whole or in part shall set forth the basis for the denial, and shall advise the requester that judicial review of the decision is available in accordance with 5 U.S.C. 552(a)(4).

* * * * *

(e) * * *

(4) *Waiver or reduction of fees.* Requested records shall be furnished without charge or at reduced charge whenever it shall be determined by the Director of the Office of Consumer Affairs and Information Services that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Requests for waiver or reduction of fees for searching and/or copying may be submitted with the original request for records and may state such facts as the requester may consider appropriate. Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

4. In § 200.83 paragraphs (e), (f), and (h) are revised to read as follows:

§ 200.83 Confidential treatment procedures under the Freedom of Information Act.

* * * * *

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is not warranted with respect to all or part of the information in question, the person requesting access to the information under the Freedom of Information Act and the person requesting confidential treatment will be so notified by telephone, telegram or express mail. The person requesting confidential treatment will also be informed that any appeal of such decision must be taken to the Commission's General Counsel within ten calendar days of the date of the notice. Information which is determined not to be entitled to confidential treatment may be released under the Freedom of Information Act ten calendar days after notice to the person requesting confidential treatment. If within that ten calendar day period the General Counsel has actually received an appeal from the person requesting confidential treatment, the person requesting access to the information under the Freedom of Information Act will be informed of the pending appeal and that no disclosure of the information will be made until the appeal is resolved.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by the legend "FOIA Confidential Treatment Appeal." The appeal should be delivered or sent by mail to the General Counsel, with a copy to the Freedom of Information Act Officer. The person requesting confidential treatment may supply additional substantiation of the request for confidential treatment in connection with the appeal to the General Counsel.

(3) The General Counsel shall have the authority to consider all appeals from decisions of the Freedom of Information Act Officer with respect to confidential treatment. All appeals taken under this section will be considered by the General Counsel as expeditiously as circumstances permit. Although other procedures may be employed, to the extent possible, the General Counsel will decide the matter on the basis of the affidavits and other documentary evidence submitted by the interested persons and such other information as is brought to the attention of the General Counsel in accordance with the provisions of § 201.28 of this Chapter. The General Counsel shall also have the authority to enter and vacate stays under the circumstances set forth in paragraph (e)(5) of this section. In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer appeals and questions concerning stays under paragraph (e)(5) of this section to the Commission for decision.

(4) If it is determined that confidential treatment is not warranted with respect to all or any part of the information in question, the person requesting confidential treatment will be so informed by telephone, if possible, with a telegram or express mail letter directed to the person's last known address. Disclosure of the information under the Freedom of Information Act will occur ten calendar days after notice to the person requesting confidential treatment, subject to any stay entered pursuant to paragraph (e) (5) of this section.

(5) If within that ten calendar day period the General Counsel has been notified that the person requesting confidential treatment has commenced an action in a federal court concerning the determination to make such information publicly available, the General Counsel will stay making the public disclosure of the information pending final judicial resolution of the matter. The General Counsel may vacate a stay under this section either on his or her own motion or at the request of a person seeking access to the information under the Freedom of Information Act. If the stay is vacated, the information will be released under the Freedom of Information Act ten calendar days after the person requesting confidential treatment is notified of this action by telephone, if possible, with a telegram or express mail letter sent to the person's last known address, unless the court orders otherwise.

(f) *Initial determination that confidential treatment is warranted.* If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is warranted, the person submitting the information and the person requesting access to the information under the Freedom of Information Act will be so informed by mail. The person requesting access, pursuant to the Freedom of Information Act, will also be informed of the right to appeal the determination to the General Counsel. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. *See* 17 CFR 200.80(d)(6).

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(h) *Extensions of time limits.* Any time limit under this section may be extended, in the discretion of the Commission, the Commission's General Counsel, or the Commission's Freedom of Information Act Officer, for good cause shown.

By the Commission.
George A. Fitzsimmons,
Secretary.
April 30, 1982.
[FR Doc. 82-12267 Filed 5-11-82; 8:45 am]
BILLING CODE 8010-01-M

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17 CFR Parts 200, 230, and 239

[Release No. 33-6401, IC-12423, File No. S7-909]

Automatic Effectiveness of Registration Statements Filed by Certain Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and amendments to rule and form.

SUMMARY: The Commission today is adopting a rule which will permit most registration statements filed by unit investment trust series to become effective automatically on a date and at a time designated by the registrant, if certain conditions are met. In response to public comment, the Commission has made certain changes in the rule that should result in more series being eligible for automatic effectiveness under the rule. The Commission also is adopting certain related amendments to its Rules of Organization and Program Management and to the registration statement form for securities offered by unit investment trusts. Under the new rule, automatic effectiveness generally will be available for a registration statement filed with respect to the securities of a new series of a trust, if the registrant represents that the disclosures in the registration statement being filed do not differ in any material respect from those contained in the registration statements of one or more specifically identified previous series of the trust, except to the extent such differences are necessary to identify the specific portfolio securities of, and to provide essential financial information for, the series being registered. The amendment to the Rules of Organization and Program Management delegates to the staff the authority to suspend the operation of the automatic effectiveness provisions of the rule under circumstances specified in the rule. The amendments to the registration statement form provide a format for registrants to make the designation and the representations required for effectiveness under the rule. The Commission is taking these actions to eliminate review of registration statements of unit investment trust series that differ from one another only with respect to the specific composition of the portfolio, and thus do not present disclosure issues that require staff review and comment prior to the effectiveness of the registration statement.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel, (202) 272-2115, or Sandra M. Molley, Law Clerk, (202) 272-2033, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of rule 487 (17 CFR 230.487) under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a *et seq.*) and related amendments to Form S-6 under the 1933 Act (17 CFR 239.16) and rule 30-5 of the Commission's Rules of Organization and Program Management (17 CFR 200.30-5). Under the new rule, certain 1933 Act registration statements relating to securities issued by unit investment trusts will become effective automatically, without affirmative action by the Commission or its staff. Specifically, eligible unit investment trusts that issue securities in series will be permitted to designate the date and time of effectiveness of a 1933 Act registration statement filed with respect to a series of such trust, if the registrant complies with certain conditions and makes certain representations. In order for a registration statement to be eligible for automatic effectiveness, the registrant will have to identify at least one previous series of the trust for which the effective date of the registration statement has been determined by the Commission or its staff, and represent: (a) That the securities deposited in the series being registered do not differ materially in type or quality from those deposited in such previous series; and (b) that the registration statement of the new series does not contain disclosures that differ in any material respect from those of such previous series, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the new series. The registrant will also have to represent that it has complied with rule 460 (17 CFR 230.460) under the 1933 Act, relating to circulation of preliminary prospectuses. In addition, if the registration statement of the new series or any pre-effective amendment thereto was prepared or reviewed by counsel, such counsel will have to represent that the registration statement or pre-effective amendment does not contain disclosures that will render it ineligible for automatic effectiveness. The amendments to Form S-6 provide formats for registrants to make the designation and representations required for effectiveness under the rule.

Where the Commission finds that a registration statement filed under the rule is incomplete or inaccurate in any material respect or that the registrant has not complied the provisions of the rule, the rule provides that the ability of a unit investment trust to designate the date and time of automatic effectiveness with respect to any registration statement that has been filed but has not yet become effective, as well as with respect to any future registration statement, may be suspended upon written notice to the registrant. Any suspension will apply only to the registrant's ability to designate the date and time of effectiveness pursuant to the rule and will not otherwise affect any registration statement. The amendment to the Commission's Rules of Organization and Program Management (17 CFR 200.1 *et seq.*) delegates to the staff the authority to suspend the operation of the automatic effectiveness provisions of the rule under the circumstances described above.

When proposed, the new rule was designated 475b.[1] However, during the interim between the rule's proposal and adoption, Regulation C under the 1933 Act, of which the rule is a part, was revised.[2] As a result of this revision, the designation of the rule has been changed to 487.

Background

Series unit investment trusts differ in several significant respects, in both form and operation, from management investment companies that issue redeemable securities. Such trusts do not issue interests in a managed portfolio of securities, but instead, issue interests (called "units") in a portfolio of securities that is fixed at inception. Each trust may issue several series of units and each new series of units has a different portfolio. A purchaser of units in a particular series looks only to that series for his investment return. The trust (and not each series of units) is registered under the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1 *et seq.*). However, a separate registration statement must be filed under the 1933 Act for each series issued by the trust. Under current practice, such registration statements

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[1] Securities Act Release No. 6336 (October 22, 1981) (46 FR 52378, October 27, 1981).

[2] Securities Act Release No. 6383 (March 3, 1982) (47 FR 11819, March 19, 1982).

are reviewed by the Commission staff and become effective pursuant to section 8(a) of the 1933 Act (15 U.S.C. 77h(a)). Although a unit investment trust may issue several different types of series, which vary from one another in terms of the types of portfolio securities, the frequency and type of distributions to unitholders, and the duration of the series, most new series invest in securities that are comparable in type and quality to those invested in by at least one previous series.[3] The primary difference between follow-on series and previously effective ones is in the specific composition of the portfolio and the essential financial information provided about the series.

Because of the similarities among the series issued by a unit investment trust, the process of reviewing registration statements of follow-on series is generally routine. Nevertheless, the overall process of reviewing these registration statements has become burdensome to the staff, both because of the large number of these filings and the fact that, in most instances, sponsors bring new series to market on short notice. Moreover, in some cases the review process may complicate the planning of sponsors of unit investment trusts, and, to the extent that this is true, that burden would appear unjustified, since substantive issues usually do not arise in the course of such review. For these reasons, it seemed to the Commission that in certain circumstances registration statements of unit investment trust series should be permitted to become effective without prior staff review and, therefore, in October 1981, the Commission proposed rule 487 and related amendments to Form S-6.[4] Rule 487 was intended to eliminate review of filings which, because of their repetitive nature, do not need review, and to permit registrants to assume greater responsibility for compliance with the disclosure requirements of the 1933 and 1940 Acts. The Commission today adopts rule 487 and the related form amendments with the revisions described below.

Public Comments and Modifications to Proposed Rule 487

The comments received concerning the proposed rule unanimously favored the proposal, although most commentators suggested modifications. All comments received have been considered and the main points raised by the commentators are addressed below.

Relationship to State Registration Procedures

Paragraph (a) of the proposed rule provided that certain registration statements filed under the 1933 Act in connection with the offering of series issued by registered unit investment trusts could become effective automatically, at the date and time designated by the registrant if the conditions specified in paragraph (b) of the proposed rule were met. The Wisconsin Commissioner of Securities suggested that the proposed rule be changed to provide that a registrant could not specify an effective date earlier than ten days from the date that an application for registration was filed in any state requiring such applications. Specifically, the commentator stated that under the "coordination" procedure of registration permitted by the Wisconsin Uniform Securities Law, registration in that state of securities issued by unit investment trusts is effected simultaneously with the effectiveness of the registrant's 1933 Act registration statement, so long as the required application for registration has been on file in the state for ten days prior to the effective date and no administrative action to deny effectiveness is pending. The commentator stated that applications for registration by unit investment trusts are always filed in Wisconsin by "coordination" and asserted that, because proposed rule 487 would allow a registration statement filed by a unit investment trust to become effective as early as the date of filing with the Commission, the proposed rule could have a negative impact on the ability of state regulators to process and review filings. The commentator further asserted that the proposed rule could foreclose the use of the coordination registration procedure permitted by Wisconsin law[5] unless the rule were revised to provide for a mandatory delay between the filing and effective dates of registration statements.

Under the terms of rule 487 as proposed, automatic effectiveness would be available to registrants only if they complied with the conditions set forth in paragraph (b). Paragraph (b)(4) of the proposed rule provided that the registrant would be required to represent that it had complied with rule 460 under the 1933 Act (17 CFR 230.460). Rule 460 provides, *inter alia*, that, pursuant to the statutory requirements of section 8(a) of the 1933 Act, in ruling upon requests for the acceleration of the effective date of registration statements, the Commission will consider whether issuers have taken reasonable steps to make the information contained in the registration statement conveniently available to those whom it is anticipated will participate in the distribution of the security. Rule 460 further provides that, at a minimum, each dealer and underwriter should receive, a reasonable time in advance of the anticipated effective date of the registration statement, a sufficient number of copies of the preliminary prospectus permitted by rule 430 under the 1933 Act (17 CFR 230.430) to assure adequate distribution of the preliminary prospectus.

Although no specific time periods are prescribed in rule 460, under current practice unit investment trusts usually file registration statements between ten and forty-five days before the filing of the pricing amendment. In most instances, the registration statement for a follow-on series of the trust contains the definitive prospectus of a preceding series, marked to show any changes. This "stickered" prospectus of a preceding series is used as the preliminary prospectus of the new series and is distributed to underwriters and dealers in accordance with rule 460. The pricing amendment, which is the first document in which the specific portfolio listing and other related information about the new series appears, is filed on the date that the trust sponsors request that the registration statement be declared effective.[6]

The purpose of the requirement in paragraph (b)(4) of the proposed rule was to ensure that, should rule 487 be adopted, the procedures described above would not be changed. Therefore, compliance with the terms of the rule will necessarily involve some period of delay between the filing of the registration statement and the filing of the pricing amendment to allow for circulation of the preliminary prospectus in accordance with rule 460.

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[3] Subsequent series within each particular type—*i.e.*, those that differ from previous series only in their specific portfolio securities—will be referred to in this release as "follow-on" series

[4] Note 1, *supra*.

[5] Wisconsin law also permits registration by "qualification." Under this method, a registration application does not become effective until an Order of Registration is issued by the state.

[6] The sponsor of a series trust assembles the portfolio of a particular series and deposits it with a trustee. Generally, the sponsor acts as underwriter for the series and "takes down" the units of the series from the trustee. Since the public offering price of the units will vary in accordance with the market value of the portfolio securities, the sponsor-underwriter is at the risk of the market during the period between the deposit of the portfolio securities with the trustee and the completion of the offering. It is in order to minimize this exposure that sponsors want pricing amendments to become effective promptly.

Nevertheless, it is true that, under the rule, a registration statement could become effective within fewer than ten days after filing. However, the Commission believes that rule 487 would not accomplish its objectives unless registrants were afforded the flexibility to designate the date and time of effectiveness in accordance with their marketing needs. Accordingly, paragraph (a) of rule 487 has been adopted as proposed. Where compliance with applicable provisions of state law requires a specific period of delay between the filing and effective dates of a registration statement filed with the Commission pursuant to rule 487, it is the registrant's responsibility to ensure that the state requirement has been met. Rule 487 will not impede such compliance. Moreover, to the extent that the problems described by the commentator could exist under rule 487, they also could exist under the procedures which have heretofore been applicable to the processing of registration statements of unit investment trust series.

Eligible Trust Securities

As proposed, rule 487 was intended to apply only to follow-on series issued by unit investment trust bond funds. The term "unit investment trust bond fund" is not defined in the 1940 Act or the rules thereunder, but it is commonly used to refer to unit investment trusts that invest generally in municipal and corporate debt obligations. Paragraph (b)(1) of the proposed rule provided that a registrant seeking automatic effectiveness of a registration statement in accordance with paragraph (a), must be engaged exclusively in the business of investing in "eligible trust securities" as defined in rule 14a–3 under the 1940 Act (17 CFR 270.14a–3).[7] Rule 14a–3 is one of a group of "start-up" exemptions adopted in 1979 to facilitate the organization and operation of unit investment trust,[8] and the types of instruments included as eligible trust securities under the rule reflected administrative experience up to that time. However, several commentators suggested that the definition provided in rule 14a–3 is overly restrictive. One commentator explained that many unit investment trusts were organized prior to 1979, when the start-up exemptions were adopted. Those unit investment trusts, at the time of their organization, obtained exemptive orders, comparable to the start-up exemptions, through applications under section 6(c) of the 1940 Act (15 U.S.C. 80a–6(c)). Such exemptive orders contain no restrictions relating to "eligible trust securities" and, accordingly, the portfolios of any trust series, where the trust relies upon an exemptive order rather than rule 14a–3, may not qualify under the rule as proposed. Two commentators noted that variable or floating rate securities, which are increasingly popular investments in the current economic climate of rapidly changing interest rates, are excluded from the definition of eligible trust securities and suggested that the rule should be revised to permit series that make such investments to use the rule.

Pursuant to paragraph (b)(3) of the proposed rule, registrants would be required to represent that the portfolio securities deposited in the new or "follow-on" series did "not differ materially in type or quality from those deposited" in a specifically identified previous series of the trust which had been reviewed by the staff. One commentator pointed out that, because of this requirement, no securities, whether they were eligible trust securities or not, could be included in the portfolio of a follow-on series without the staff having had an opportunity, in connection with its review of the specifically identified previous series, to consider any policy or disclosure issues presented by that particular type of security. The commentator contended that there is, therefore, no compelling need for the "eligible trust security" requirement in the context of rule 487 and recommended that paragraph (b)(1) be elimtnated from the rule, or at least modified.

In response to these comments, the Commission has concluded that restricting the use of rule 487 to those registrants engaged exclusively in the business of investing in "eligible trust securities" as defined in rule 14a–3 is not necessary and might unduly limit use of the rule. Paragraph (b)(1) has been amended accordingly. However, to make it clear that rule 487 does not apply to registration statements filed by unit investment trusts of the type that invest in securities issued by open-end management investment companies, paragraph (b)(1) retains a restriction relating to such investments.

Reference to Previous Series

Paragraph (b)(3) of the proposed rule would require registrants to identify a previous series of the trust and to make certain representations comparing the previous series with the series being registered. Two commentators expressed the opinion that, because paragraph (b)(3) would permit the registrant to identify only one previous series of the trust for purposes of making the representations specified in paragraphs (b)(3) (i) and (ii), the proposed rule would have unduly limited applicability. In particular, the commentators were concerned about risk disclosures relating to concentrations within a trust's portfolio. In general, any concentration [9] in the portfolio of a series of a unit investment trust is described in the prospectus relating to that series in terms of the investment risks associated with any underlying source of payment. The concentration paragraphs in the prospectus relating to a given series are dependent upon the specific composition of the portfolio of that series and, since different series may contain a number of different types of portfolio securities, not all of the prospectuses relating to series of a particular trust contain the same concentration paragraphs. One of the commentators explained that, because of the possible differences in composition of the portfolios of successive series of the trust, a sponsor often would not be able to refer to a single specific series containing identical concentrations. Both commentators recommended that rule 487 be amended either to permit reference to a number of previous series or to permit automatic effectiveness in spite of differences in concentration disclosure, provided that the staff had previously reviewed the concentration and other variable disclosure language in connection with other series issued by the trust. In response to these comments, paragraph (b)(3) has been revised to permit reference to more than one previous series.

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[7] As defined in rule 14a–3 the term "eligible trust securities" includes the following: (1) Securities, other than convertible securities, that are issued by a corporation and that have their interest or dividend rate fixed at the time they are issued; (2) interest-bearing obligations issued by a state or by any agency, instrumentality, authority or political subdivision thereof; (3) government securities; and (4) under the circumstances set forth in paragraph (b)(4)(i)(vi) of rule 14a–3, units of a previously issued series of the trust.

[8] *See* Investment Company Act Release No. 10000 (May 15, 1979) (44 FR 29644, May 22, 1979).

[9] Although the term "concentration" is not defined in the Investment Company Act or the rules thereunder, the Commission's Division of Investment Management has previously expressed the view that the term applies to the investment of more than 25% of the value of the registrant's assets in any one industry or, with respect to investment companies investing in tax-exempt bonds, in securities of issuers which are located in the same state, or the interest on which is paid from revenues of similar type projects. *See* Investment Company Act Release No. 9785 (May 31, 1977) (42 FR 29130, June 7, 1977).

Risk Disclosure

Under current practice, registration statements filed by unit investment trusts are reviewed by the staff and declared effective pursuant to section 8(a) of the 1933 Act. One of the premises of proposed rule 487 is that the new rule would result in the elimination of staff review of, and comment on, certain registration statements which are routine and thereby permit registrants to assume greater responsibility for their compliance with the disclosure requirements of the federal securities laws. One commentator contended that it is not uncommon during the review process for the staff to suggest additional risk disclosure relating to a particular concentration or type of security from one series to the next, even where no new legal or market developments have occurred. The commentator suggested that the proposed rule should be modified to permit post-effective adjustment, retroactive to the time of effectiveness, of risk disclosure in response to staff comment. The commentator appeared to assume that otherwise the staff would use its delegated authority under paragraph (c) of the rule to suspend the registrant's ability to use the rule.

Under the circumstances posited by the commentator, paragraph (c) would not be applicable, because the power to suspend would only exist where a registration statement was incomplete or inaccurate in a material respect. Accordingly, if the staff wishes to suggest "additional risk disclosure" in the situation described by the commentator (that is, where the particular disclosure does not differ materially from that contained in an earlier registration statement declared effective by the staff and where circumstances have not rendered that disclosure materially incomplete or inaccurate), that suggestion will be made prospectively only and not in the form of a comment on a registration statement filed under the rule. In this regard, it should be clear to registrants that the staff will not normally review and comment on such registration statements either before or after effectiveness but will perform spot check to monitor compliance with the rule.

Representation of Counsel

Paragraph (b)(6) of the proposed rule requires any counsel who prepared or reviewed a registration statement or pre-effective amendment filed pursuant to rule 487 to furnish to the Commission a written representation that such registration statement does not contain disclosures which would render it ineligible to become effective pursuant to the rule. One commentator opposed this provision, arguing that it is justified neither by the securities statutes nor by policy considerations. The commentator contended that the registrant's full responsibility for all representations made under the proposed rule is the "proper safeguard against misrepresentations." The commentator characterized the requirements of paragraph (b)(6) as the " 'conscription' of lawyers as policemen for their clients' securities disclosure," and asserted that the Commission lacked authority to impose such a requirement.[10]

The Commission believes that the requirement as to representations of counsel is well justified on policy grounds and is an appropriate exercise of the Commission's broad authority under the 1933 Act to adopt "such rules and regulations as may be necessary to carry out the provisions" of that Act.[11] The Commission has previously adopted rule 485 [12] (formerly rule 485 [13]) under the 1933 Act providing for the automatic effectiveness of post-effective amendments to the registration statements of open-end investment companies and unit investment trusts other than insurance company separate accounts, and has recently proposed a similar rule covering such separate accounts.[14] Both rule 485 and the proposed rule for separate accounts contain provisions as to representations of counsel similar to the one in rule 487. These automatic effectiveness rules represent a significant departure from traditional practice in that rules of general applicability replace individual determinations by the staff or the Commission as to whether the statutory criteria for effectiveness have been met.[15] Accordingly, it is important that the automatic effectiveness rules contain provisions designed to provide reasonable assurance that the applicable statutory standards are satisfied. The Commission believes that, where a registration statement filed pursuant to rule 487 was prepared by counsel, a specific statement by counsel that the registration statement meets the rule's requirements for effectiveness without staff review will serve as an important safeguard against the improper filing of amendments pursuant to the rule. The Commission's experience to date with rule 485(b), which has been in effect since October, 1980, confirms that the requirement of a representation of counsel is both useful and workable.

At the same time, it is important to note the the Commission does not agree with the argument that the requirement of a representation of counsel constitutes a "conscription" of counsel. First, counsel may refrain from making the representation without substantially prejudicing its clients' interests. A decision by counsel not to make the representation does not imply that the client is failing to make proper disclosure or is otherwise violating the law. The only effect of the absence of the representation, where the filing was prepared or reviewed by counsel, will be to cause the registration statement to be processed in what heretofore has been the usual manner, as if rule 487 did not exist. If counsel cannot be confident that the requirements of rule 487 have been met in the case of a particular filing, it would seem both reasonable and in the best interest of the registrant not to apply the rule with respect to that filing. In addition to the foregoing, the scope of the representation counsel is required to make is relatively limited. Counsel is not held responsible under the rule for the accuracy or completeness of the facts contained in the registration statement; nor is an opinion of counsel required. All that is called for is representation to the Commission, based on the four corners of the document, that there are no disclosures that render the registration statement ineligible for filing under the rule.

Filing Procedures Under Rule 487

The adoption of rule 487 represents a significant departure from the

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[10] The commentator referred to certain language in *SEC* v. *Arthur Young & Co.*, 590 F.2d 785 (9th Cir. 1979), a Commission enforcement proceeding. However, the commentator did not contend that the holding in that case is controlling here, and the relevance of that case to the Commission's rulemaking authority is not apparent.

[11] Under section 19(a) of the 1933 Act (15 U.S.C. 77s(a)) the Commission is authorized to "make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers * * * [and] * * * to prescribe the form or forms in which required information shall be set forth."

[12] Rule 485 was adopted in Securities Act Release No. 6229 (August 25, 1980) (45 FR 57702, August 29, 1980).

[13] *See* Securities Act Release No. 6383, note 2, *supra*.

[14] Securities Act Release No. 6578 (January 11, 1961) (47 FR 3130, January 22, 1961). The proposed automatic effectiveness rule for separate accounts is designated 486 but, if adopted, will be redesignated in light of the recent amendments to Regulation C under the 1933 Act.

[15] Section 8(a) of the 1933 Act sets forth certain standards that must be met before the effectiveness of an initial 1933 Act registration statement may be accelerated, and section 8(c) of the 1933 Act establishes criteria for when a post-effective amendment may be declared effective.

procedures which heretofore have been applicable to the review and processing of registration statements filed by unit investment trust registrants, and the Commission wishes to bring certain matters to the attention of registrants.

First, under rule 487, the staff will no longer prepare notifications of effectiveness for registration statements that become effective automatically under the rule. Registrants must take into account whatever time might be required for the registration statement or pre-effective amendment to be delivered to the Commission, and take care that the date and time specified for effectiveness is no earlier than the date and time of filing. Rule 456 under the 1933 Act (17 CFR 230.456) states that the date on which any papers are actually received by the Commission shall be the date of filing. Of course, notwithstanding any designation by the registrant, a registration statement may not become effective until the date and time that it is filed with the Commission.

Second, to facilitate implementation of the rule, the Commission is amending the facing sheet and signature page of Form S–6, the registration statement form under the 1933 Act for securities of unit investment trusts. The facing sheet is amended to provide a format for registrants to make the designation required by paragraph (a)(1) of rule 487 which is a condition to effectiveness under the rule. Similarly, the signature page is being amended to provide a format for registrants to make the representations required by paragraphs (b)(3) and (b)(4) of the proposed rule.

Registrants are reminded that, under rule 487, the statutory burden of full disclosure is on the issuer, its affiliates, its underwriter, its accountants, and others responsible for the filing. As a matter of law, this burden cannot be shifted to the Commission or its staff. To monitor compliance with these statutory responsibilities, the Commission staff will undertake a program of spot-checking registration statements and pre-effective amendments filed under the rule.

Delegation of Authority

As stated in the release proposing rule 487, the Commission is adopting an amendment to rule 30–5 of its Rules of Organization and Program Management (17 CFR 200.30–5), delegating to the Director of the Division of Investment Management the authority to suspend the operation of paragraph (a) of rule 487 under the circumstances set forth in paragraph (c) of the rule.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 230 and 239

Reporting requirements, Securities.

Text of Rule 487, Amendments to Form S–6, and Amendment to Rule 30–5

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 230.487 to read as follows:

§ 230.487 Effectiveness of registration statements filed by certain unit investment trusts.

(a)(1) A unit investment trust registered under the Investment Company Act of 1940 that files a registration statement pursuant to the Act in connection with the offering of the securities of a series of the unit investment trust, except the first series of such trust, may designate a date and time for such registration statement to become effective. If the registrant complies with the conditions set forth in paragraph (b) of this section, the registration statement shall become effective in accordance with such designation.

(2) The registrant may designate the date and time of effectiveness in the registration statement or in any pre-effective amendment thereto. A pre-effective amendment to a registration statement with respect to which such a designation is properly made shall be deemed to have been filed with the consent of the Commission and shall accordingly be treated as part of the registration statement.

(b) Availability of effectiveness of a registration statement in accordance with paragraph (a) of this section is conditioned upon compliance with the following:

(1) The registrant is not engaged in the business of investing in securities issued by one or more open-end management investment companies;

(2) The designation provided for in paragraph (a) of this section is set forth on the facing sheet of such registration statement or a pre-effective amendment thereto;

(3) The registrant identifies one or more previous series of the trust for which the effective date of the registration statement was determined by the Commission or its staff, and makes the following representations:

(i) That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in such previous series identified by the registrant; and

(ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment thereto is being filed, the registration statement or pre-effective amendment thereto does not contain disclosures that differ in any material respect from those contained in the registration statement of such previous series identified by the registrant;

(4) The registrant represents that it has complied with rule 460 under the Act (17 CFR 230.460);

(5) The identification and representations provided for in paragraphs (b)(3) and (b)(4) of this section are made on the signature page of the registration statement or a pre-effective amendment thereto; and

(6) If counsel prepared or reviewed such registration statement or a pre-effective amendment thereto, such counsel shall furnish to the Commission at the time the registration statement or pre-effective amendment thereto is filed a written representation that such registration statement or pre-effective amendment does not contain disclosures which would render such registration statement ineligible to become effective pursuant to paragraph (a) of this section.

(c)(1) The Commission may, in the manner and under the circumstances set forth in paragraph (c)(2) of this section, suspend the ability of a unit investment trust to designate the date and time of effectiveness of series of such trust, and such suspension shall remain in effect until the Commission furnishes written notice to the sponsor of the unit investment trust that the suspension has been terminated. Any suspension, so long as it is in effect, shall apply to any registration statement that has been filed but has not, at the time of such suspension, become effective, and to any registration statement with respect to any series of such trust that may be filed after such suspension. Any such suspension shall apply only to the ability to designate the date and time of effectiveness pursuant to paragraph (a) hereof and shall not otherwise affect any registration statement.

(2) Any suspension pursuant to paragraph (c)(1) of this section shall become effective at such time as the Commission furnishes written notice thereof to the sponsor of the unit investment trust. The Commission may

issue such a suspension if it appears to the Commission that any registration statement containing a designation pursuant to this section is incomplete or inaccurate in any material respect, whether or not such registration statement has become effective, or that the registrant has not complied with the conditions of this section. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

II. Part 239 of Chapter II of Title 17 of the Code of Federal Regulations is amended by:

1. Amending the facing sheet of Form S–6; and

2. Amending the signature page of Form S–6 as follows:

§ 239.16 Form S–6, for unit investment trusts registered on Form N–8B–2.

* * * * *

1. Amendment to facing sheet. Insert the following after "Approximate date of proposed public offering":

☐ Check box if it is proposed that this filing will become effective on (date) at (time) pursuant to Rule 487.

2. Amendment to signature page. Insert the following after the first textual paragraph under "SIGNATURES":

Alternative Form of Signature for Filings Under Rule 487

The registrant, * * *, hereby identifies series (number(s) and type) of the trust for purposes of the representations required by rule 487 and represents the following:

(1) That the portfolio securities deposited in the series as to the securities of which this registration statement is being filed do not differ materially in type or quality from those deposited in such previous series;

(2) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to the securities of which this registration statement is being filed, this registration statement does not contain disclosures that differ in any material respect from those contained in the registration statement(s) for such previous series as to which the effective date was determined by the Commission or the staff; and

(3) That it has complied with rule 460 under the Securities Act of 1933.

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of . and State of . on the day of . 19 .

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

III. Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By amending § 200.30–5 by adding paragraph (b–3) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b–3) With respect to registration statements filed pursuant to paragraph (a) of rule 487 under the Act (17 CFR 230.487(a)):

(1) To suspend the operation of said paragraph (a) and to issue written notices to registrants of such suspensions.

Statutory Authority, Effective Date

The Commission hereby adopts rule 487 and amendments to Form S–6 pursuant to the provisions of 7, 8 and 19(a) of the Securities Act of 1933 (15 U.S.C. 77g, 77h and 77s(a)). It finds that any changes in the rule from the proposal published in Securities Act Release No. 6356 have already been generally subject to comment and pertain to matters of form or are less burdensome than those proposed. Further notice and rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) are, therefore, unnecessary. Further, the Commission hereby amends rule 30–5 pursuant to authority contained in the Act of August 30, 1962, Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2) and Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–37) These actions are effective immediately pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(1)).

By the Commission.

George A. Fitzsimmons,

Secretary.

May 7, 1982.

[FR Doc. 82-12888 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM81-7]

18 CFR Part 4

Exemption From the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or less; Correction

Issued: May 4, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: On January 19, 1982, the Federal Energy Regulatory Commission issued a Final Rule and Additional Notice of Finding of No Significant Impacts in Docket No. RM81–7 implementing "Exemption from the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or less." (47 FR 4232, January 29, 1982).

This document corrects an unintentional omission.

FOR FURTHER INFORMATION CONTACT: James Hoecker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

§§ 4.112, 4.113 [Corrected]

In §§ 4.112(b)(2) and 4.113(b)(2), shown at 47 FR 4245 and 4246 respectively, following "U.S. Fish and Wildlife Service", insert ", National Marine Fisheries Service,".

In §§ 4.112(c)(5)(ii) and 4.113(c)(5)(ii) shown at 47 FR 4245 and 4246 respectively, following the phrase "[identify which office]", insert ", National Marine Fisheries Service,".

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12889 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 294

[Docket No. RM79-52-000]

Interim Procedures for Shortages of Electric Energy and Capacity Under Section 206 of the Public Utility Regulatory Policies Act of 1978 Extension of Interim Rule

Issued: May 5, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Extension of interim rule.

SUMMARY: The Federal Energy Regulatory Commission amends its rules to extend, through a period ending April 30, 1983, the interim rule implementing reporting procedures for shortages of electric energy and capacity, under section 206 of the Public Utility Regulatory Policies Act of 1978. Under the rule, each public utility now serving firm power wholesale customers must report to the Commission, the utility's customers, and appropriate State authorities, any shortages of electric energy or capacity anticipated to occur prior to April 30, 1983. Also, the rule requires each public utility to report any modifications of its plans for accommodating shortages which may occur before April 30, 1983.

EFFECTIVE DATE: May 5, 1982.

FOR FURTHER INFORMATION CONTACT:

Bernard B. Chew, Office of Electric Power Regulation, 825 North Capitol Street, NE., Room 504RB, Washington, D.C. 20426 (202), 357-8264;

Kenneth J. Malloy, Rulemaking and Legislative Analysis Section, Office of General Counsel, 825 North Capitol Street, NE., Room 8602-A, Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

The Federal Energy Regulatory Commission (Commission) is amending § 294.101 of its regulations (18 CFR 294.101), an interim rule which requires electric utilities to report to the Commission anticipated shortages of electric energy and capacity as required by section 206 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The amendment extends the effectiveness of the rule through April 30, 1983.

I. Discussion

Section 206 of PURPA amended the Federal Power Act by adding a new subsection (g) to section 202, under which the Commission is, by rule, to require that each public utility (1) provide prompt notice to the Commission and the appropriate state regulatory authority of any anticipated shortages of electric energy or capacity which would affect the utility's capability of serving its wholesale customers, (2) prepare and submit to the Commission and to any appropriate state regulatory authority contingency plans that would outline what circumstances might give rise to such shortages, and (3) accommodate such shortages while giving due consideration to the public health, safety, and welfare, and assuring that all persons served directly and indirectly are treated without undue prejudice or disadvantage.

On June 15, 1979, the Commission issued, on an interim basis, 18 CFR 294.101 to implement section 206 of PURPA.[1] The Commission also issued a Notice of Inquiry requesting comments on various issues relating to the implementation of section 206 of PURPA.[2]

The interim rule requires, in paragraph (b), that each public utility serving firm power wholesale customers to submit by July 23, 1979, "a brief statement indicating how it would accommodate any shortages of electric energy or capacity affecting its firm power customers, if such shortages were to occur prior to September 30, 1979." [3]

Paragraph (c) of the interim rule requires each utility to report immediately any shortage of electric energy or capacity which the utility anticipates will occur. In that report the utility must provide the Commission with certain information, including information regarding any procedures for accommodating a particular shortage, if they differ from the procedures set out in the utility's statement submitted pursuant to paragraph (b) of the interim rule.

II. Revision to Interim Rule

Prior to this amendment, paragraph (a) defined "anticipated shortages of electric capacity or energy" as those situations which would result in shortages "anticipated to occur prior to April 30, 1982." [4] This amendment will extend the definition to cover shortages anticipated to occur prior to April 30, 1983, so that the Commission will be advised of any anticipated shortages which may occur during the coming year. Accordingly, the Commission is amending the interim rule.

Additionally, the interim rule is amended to extend to April 30, 1983, the requirement of paragraph (c) that a utility file a supplemental statement setting forth changes in the contingency plan on file with the Commission. A utility need not file a statement of its plan to accommodate shortages prior to April 30, 1983, if that plan does not vary from that set out in the statement already filed pursuant to paragraph (b).

III. Effective Date

Since the Commission is required by statute to have rules in effect regarding the continuance of electric service, good cause exists to make this amendment effective immediately and to do so without prior notice and comment under 5 U.S.C. 553(b).

List of Subjects in 18 CFR Part 294

Electric utilities, Reporting requirements.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 (1978); Federal Power Act (16 U.S.C. 792-828c))

In consideration of the foregoing, Part 294 of Chapter I, Title 18 of the Code of Federal Regulations, is amended as set forth below, May 5, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 294—INTERIM PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY AND CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

§ 294.101 [Amended]

1. Section 294.101 is amended in paragraphs (a)(1), (a)(2), and (b)(4) to remove the date "1982" each time it appears and to insert in lieu thereof the date "1983".

2. Section 294.101 is further amended by adding parenthetically immediately

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[1] Interim Regulations, 18 CFR 294.101 (1979), Docket No. RM79-52 (issued June 15, 1979).

[2] Inquiry Implementing Section 206 of the Public Utility Regulatory Policies Act of 1978, Continuance of Service, Docket No. RM79-52, (issued April 22, 1980), 45 FR 28,162 (April 28, 1980). The Commission staff is reviewing the comments received in order to determine whether there are additional appropriate means of implementing section 206 of PURPA.

[3] This language was adopted by an Amendment to Interim Regulations, Docket No. RM79-52 (issued August 1, 1979), 44 FR 46,455 (August 8, 1979), in order to make clear the Commission's intent that all public utilities serving firm customers must submit statements concerning the methods by which they accommodate possible shortages. Before this amendment, the language appeared to suggest that only those utilities which anticipated shortages prior to September 30, 1979, were obliged to file accommodation reports under section 206(a) of PURPA.

[4] This date was initially September 30, 1979, but was extended to April 30, 1980, by Interim Regulations, Docket No. RM79-52 (issued Oct. 23, 1979), 44 FR 61,963 (Oct. 29, 1979). It was extended to April 30, 1981, by Amendment to Extend Interim Regulations, Docket No. RM79-52 (issued April 1, 1980), 45 FR 23,684 (April 8, 1980), and to April 30, 1982, by Amendment to Extend Interim Regulations, Docket No. RM79-52 (issued April 23, 1981), 46 FR 24,550 (May 1, 1981).

following the text of the section the following statement:

(The reporting requirements contained in this section are not subject to OMB approval under section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.)

[FR Doc. 82–12971 Filed 5–11–82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 1H5289/T83; PH FRL 2120–5]

Methamidophos; Tolerances for Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit residues of the insecticide methamidophos in or on safflower meal resulting from its use in a proposed experimental program involving application of the insecticide on the growing crop safflower. This regulation, to permit the marketing of the commodity while further data on methamidophos are being collected, was requested by Chevron Chemical Co.

EFFECTIVE DATE: May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of April 22, 1981 (46 FR 22983) which announced that Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, had submitted a feed additive petition (FAP 1H5289) proposing that 21 CFR Part 561 be amended by the establishment of a regulation permitting the residues of the insecticide methamidophos (*O,S*-dimethyl phosphoramidothioate) in or on the feed commodity safflower meal at 0.6 part per million (ppm) resulting from its use in a proposed experimental program involving application of the insecticide to the growing crop safflower.

There were no comments received in response to this notice of filing.

The scientific data submitted and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being concurrently issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

The toxicology data considered in support of the regulation were acute oral LD_{50} studies on the rat and mouse; an acute dermal LD_{50} study on the rabbit; an acute inhalation LC_{50} and cholinesterase activity study on the rat; a primary eye irritation study on the rabbit; 90-day rat and dog feeding studies; a teratology study (rabbit); an acute delayed neurotoxicity (hen) study; and an interim report of an oncogenic study (mouse).

Desirable data that are currently lacking and the projected dates of completion of these studies are as follows: a chronic feeding/oncogenic study (rat)—August 1984; the final report of the oncogenic study (mouse)—January 1983; a teratology study (rat)—October 1982; a reproduction study (rat)—June 1984; and mutagenic study (dominant lethal)—November 1982.

Although there are significant data gaps for the chemical, the available toxicity data are adequate to support the proposed temporary tolerance because the proposed experimental use will not significantly increase the current theoretical maximum residue contribution (TMRC) to the human diet. The TMRC from this use would be less than 0.003 percent (0.0000045 milligram (mg) per day). No detectable residues (less than 0.01 ppm) were found in the refined safflower oil. A related document establishing a temporary tolerance for residues of the insecticide in or on safflower seed at 0.3 ppm appears elsewhere in this issue of the Federal Register.

The currently established tolerances for the combined residues of acephate and methamidophos in meat, milk, poultry, and eggs are adequate to cover any secondary residues of methamidophos in meat, milk, poultry, and eggs resulting from the proposed experimental use on safflower.

The metabolism of the insecticide is adequately understood and an adequate analytical method (gas chromatography equipped with a cesium bromide therminoic detector) is available for enforcement purposes. There are presently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA, as amended, (86 Stat. 973; 89 Stat 751; U.S.C. 136(a) *et seq.)*. Therefore, 21 CFR Part 561 is amended as set forth below.

Any person adversely affected by this regulation may, on or before June 11, 1982, file written objections with the Hearing Clerk (A–101), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

Effective on: May 12, 1982.

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: April 27, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTRATED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by adding a new § 561.277 to read as follows:

§ 561.277 Methamidophos.

(a) A feed additive regulation is established for residues of the insecticide methamidophos (*O,S*-dimethyl phosphoramidothioate) to read as follows:

Feed	Parts per million	Company	Expiration date
Safflower meal	0.6	Chevron Chemical	Aug. 31, 1982

(b) Residues not in excess of the tolerance limitation indicated above resulting from the use of the insecticide remaining after the expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and feed additive tolerance.

(c) The company shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 82-12530 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 120

[Docket No. R-82-959]

Community Housing Resource Board Program; Disbursement of Funds

AGENCY: Office of the Assistant Secretary of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on March 25, 1982 (47 FR 12926) which governed the disbursement of funds to Community Housing Resource Boards to carry out activities that would enhance the effectiveness of the Voluntary Affirmative Marketing Agreements Program. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published March 25, 1982, 47 FR 12926, is May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 6, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-12730 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-101; Ref: Notice No. 369]

Edna Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Luis Obispo County, California, to be named "Edna Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Edna Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic characteristics. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Edna Valley Vineyard, Paragon Vineyard Co., Inc., Chamisal Vineyard, Lawrence Winery, and MacGregor Vineyards petitioned ATF to establish a viticultural area in San Luis Obispo County, California, to be named "Edna Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 369, in the **Federal Register** on April 9, 1981 (46 FR 21195), proposing the establishment of the Edna Valley viticultural area.

Comments

Ten comments were received during the comment period. Six of the comments were from wineries and vineyards located in Edna Valley. The remaining four comments were from a wine consumer, a farm advisor at the University of California, a consulting enologist in the state of California, and a Chairman of the Board of a vineyard located outside of Edna Valley. All ten comments were in full support of the petition. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Edna Valley, was well documented in the petition. The valley derives its name from the small community of Edna founded about 1883. The name "Edna" was first used in a recorded lease document in 1899. Over the ensuing years the valley became locally known as Edna Valley. After evaluating the petition and the comments received, ATF believes that the Edna Valley viticultural area has a unique historical identity and that the name "Edna Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents show that Edna Valley is a natural, elongated valley consisting of approximately 35 square miles. It is oriented along a northwest-southeast axis and is well defined by the Santa Lucia Mountains on the northeast side; by a low, hilly complex on the southeast; and by the San Luis Range on

the southwest. The upper end or northwest border merges into the Los Osos Valley just beyond the city of San Luis Obispo. The inland areas of San Luis Obispo County generally experience substantially higher summer temperatures and substantially lower winter temperatures than Edna Valley. This is because of the mountain barrier which runs along the San Luis Obispo County coastline, shielding the inland areas from the moderating ocean influences. In Edna Valley, killing frosts are rare which is not the case in other inland areas of the county that are denied the benefits of the ocean influence by the mountain barrier.

There is a gap in this mountain barrier where the Los Osos Valley meets the ocean in the Morro Bay area, 15 miles to the northwest of Edna Valley. Los Osos Valley serves as a wide mouthed funnel, providing an unobstructed sweep from the ocean into Edna Valley, bringing frequent morning fog during the summer months and winds in the afternoon. The pocket of hills and mountains surrounding Edna Valley captures the marine air, tempered by distance from the coastline, flowing in from Morro Bay through the Los Osos Valley, creating climatic conditions which differentiate Edna Valley from the surrounding areas. Although Los Osos Valley to the northwest is also a distinguishable valley, its proximity to the ocean causes its climate to be colder with more fog and wind than Edna Valley.

The floor of Edna Valley is approximately 120 to 300 feet above sea level. The viticultural area projects into the surrounding uplands to the 600-foot contour line of the Santa Lucia Mountains and to the 400-foot contour line of the San Luis Range on the west. The elevations of the surrounding mountainous areas generally range between 1000 to 2400 feet to the northwest, 600 to 1800 feet to the southeast, and 400 to 900 feet to the south and west. Major soils within the Edna Valley viticultural area are generally sandy clay loam, clay loam or clay. They are mostly hard, firm, sticky and plastic. They are also generally neutral to moderately alkaline. Most soils are calcareous at some level of the surface soil or subsoil. Soils in the surrounding mountainous areas above the 400 to 600-foot contour levels are shallower than in the valley and are of poor soil capability. Soils in Los Osos Valley are similar to those in Edna Valley but are generally heavier and of better capability.

After evaluating the petition and comments, ATF has determined that due to the topographic and climatic features of Edna Valley, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. The boundaries for the viticultural area are essentially the same as those for Edna Valley except that the viticultural area boundaries omit the hilly and mountainous areas (above the 400-foot contour line on the southwest side of the valley and above the 600-foot contour line on the northeast side) where slopes are too steep and soil capabilities are not suitable for grape-growing.

Miscellaneous

ATF does not wish to give the impression by approving the Edna Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantages gained can only come from consumer acceptance of Edna Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and the comments received is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure; 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Part 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.35. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.35 Edna Valley.

* * * * *

Part 2. Subpart C is amended by adding § 9.35. As amended, Subpart C reads as follows:

Subpart C-Approved American Viticultural Areas

* * * * *

§ 9.35 Edna Valley.

(a) *Name.* The name of the viticultural area described in this section is "Edna Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Edna Valley viticultural area for four U.S.G.S. maps. They are titled:

(1) "San Luis Obispo Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;

(2) "Lopez Mtn. Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;

(3) "Pismo Beach Quadrangle, California—San Luis Obispo Co.," minute series; and

(4) "Arroyo Grande NE Quadrangle, California—San Luis Obispo Co.", 7.5 minute series.

(c) *Boundaries.* The Edna Valley viticultural area is located in San Luis Obispo County, California. The beginning point is Cuesta Canyon County Park, located on U.S.G.S. map "San Luis Obispo Quadrangle" at the north end of Section 25, Township 30 South, Range 12 East.

(1) From the beginning point, the boundary runs southwesterly along San Luis Obispo Creek to a point .7 mile southerly of the confluence with Davenport Creek;

(2) Thence due east to the intersection with the 400-foot contour line of the northeastern flank of the San Luis Range;

(3) Thence in a generally easterly and then a southeasterly direction along this 400-foot contour line of the northeastern flank of the San Luis Range, which forms the southwestern rim of Edna Valley, to the township line identified as "T31S/T32S" on the U.S.G.S. map;

(4) Thence east along township line "T31S/T32S", across Price Canyon to Tiber;

(5) Thence in a generally easterly direction along the 400-foot contour line of Tiber Canyon and the southern rim of Canada Verde, crossing Corbit Canyon Road and continuing along the 400-foot contour line to longitude line 120°32'30";

(6) Thence north along longitude line 120°32'30" to the 600-foot contour line of the southwestern flank of the Santa Lucia Mountain Range;

(7) Thence in a generally northwesterly direction along the 600-foot contour line of the southwestern flank of the Santa Lucia Range to Cuesta Canyon County Park, the beginning point.

Signed: March 25, 1982.

G. R. Dickerson,

Director.

Approved: April 12, 1982.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12802 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-102; Ref: Notice No. 361]

Lancaster Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area in Lancaster and Chester Counties, Pennsylvania, to be named "Lancaster Valley." This final rule is the result of a petition submitted by Mr. R. Martin Keen, proprietor of Conestoga Vineyards in Lancaster, Pennsylvania. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Lancaster Valley as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape growing region as an American viticultural area.

ATF was petitioned to establish a viticultural area in eastern Pennsylvania to be named "Lancaster Valley." In response to this petition, ATF published a Notice of Proposed Rulemaking, No. 361, in the **Federal Register** on August 28, 1981, (46 FR 43466), proposing the establishment of the "Lancaster Valley" viticultural area.

Comments

Only one comment was received in response to the notice of proposed rulemaking. The petitioner, R. Martin Keen of Conestoga Vineyards, submitted a comment in support of the notice of proposed rulemaking. The petitioner also suggested minor clarifications in the boundaries of the proposed viticultural area.

Historical and Current Evidence of the Name

The name Lancaster Valley was documented in the petition as being long associated with the proposed area in eastern Pennsylvania. The viticultural area is located almost entirely within Lancaster County, and Lancaster is the largest and most important city within the area. Lancaster Valley is the name used by the Pennsylvania and United States Geologic Surveys to describe the region in the viticultural area.

Although Lancaster County was one area in which wine grapes were cultivated in the early part of the 19th Century, the area has not been known as a wine producing area until quite recently. Since the early 1970s, two wineries have been bonded within the Lancaster Valley and there are now approximately 41.5 acres of wine grapes in cultivation. ATF, therefore, believes that the historical and current evidence supports the viticultural area as a distinct grape-growing area.

Geographic Evidence

The petition established the Lancaster Valley viticultural area as a distinctive grape-growing region distinguished from surrounding areas on the basis of soil, topography and geology.

Lancaster Valley is located in the Lancaster-Frederic Lowland. Its topography is a nearly level valley, averaging 400 feet in elevation and decreasing in elevation from an average of 500 feet at its eastern edge to 300 feet at its western edge along the Susquehanna River. The valley is over 30 miles long, 12 miles wide and encompasses approximately 225,000 acres. Lancaster Valley is bounded on the north, east and south by areas of higher elevation ranging from 100 to 600 feet above the valley floor, and on the west by the Susquehanna River.

Soils found within the Lancaster Valley are typical of those derived from limestone, and include Conestoga, Beekmantown, Conococheague and Elbrook Limestones, and Ledger and Vintage dolomites. These soils are deep, well drained, hold moisture well, and are highly productive. They contrast sharply with soils found in the hills and upland areas surrounding the Lancaster Valley. Generally, the surrounding soils are composed of harder rocks (quartzite, schist, gneiss, etc.) which are more resistant to erosion and less fertile than the limestone soils found within the Lancaster Valley. The deep fertile soils of the valley were formed from the insoluble and weathered products left from the decay of the parent limestones.

Climate is not a factor in differentiating the Lancaster Valley viticultural area from surrounding areas.

Based on the information contained in the petition pertaining to the geographical features, ATF has determined that this area is distinguishable from the surrounding area.

Boundaries

The boundaries, as proposed, consist of a combination of natural and man-made features. As proposed, the Lancaster Valley would consist of that area delineated on the east by the 500 foot contour line and the Welsh Mountains. The southern boundary includes the 500 foot contour line extending along Mine Ridge to the 76° 07' 30" line of longitude. From there the boundary passes in approximately a straight line south of Strasburg and Willow Street to the confluence of Stehman Run and the Conestoga River. The boundary continues along Indian Run and Wisslers Run to the 300 foot contour line. The western boundary consists of the 300 foot contour line above the Susquehanna River, Pennsylvania Highway 441 between Marietta and Bainbridge, but excludes the Manor Hills, Chestnut Hills, Chestnut Ridge, and the Chickies Ridge. The northern boundary is an irregular line extending from Bainbridge to Rheems, which then passes north of Mount Joy and south of Manheim, Lititz, Akron, Ephrata and Terre Hill to the intersection with Berks County at Pennsylvania Highway 23.

The petitioner supported the proposed boundaries but suggested minor clarifications in two of them. The petitioner suggested that proposed §§ 9.41(c) (25) and (26) be combined in one paragraph to read "then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23." This language appears as § 9.41(c)(25). The second suggestion was to combine proposed §§ 9.41(c) (31), (32), and (33) into two paragraphs to read "then east in a straight line for approximately 3.8 miles to the Erismans Church," and "then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View." Combining these paragraphs also allows deletion of the reference in proposed §§ 9.41(c) (31) and (32) to the intersection of Pennsylvania Highways 283 and 141. Highway 141 does not extend east of Mt. Joy to intersect with Highway 283. Therefore, the petitioner's recommended changes are adopted since the two new paragraphs, §§ 9.41(c) (30) and (31) are clearer and more accurate. Neither of these changes materially affects the boundaries of the viticultural area.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Lancaster Valley wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Wine, Viticultural areas.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.41. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural areas

Sec.

* * * * *

9.41 Lancaster Valley.

* * * * *

Paragraph 2. Subpart C is amended by adding § 9.41. As added, § 9.41 reads as follows:

§ 9.41 Lancaster Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lancaster Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lancaster Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Lancaster County, Pennsylvania", scaled 1:50,000, edition of 1977; and

(2) "Honey Brook Quadrangle", 7.5 minute series, edition of 1955, photorevised 1969 and 1974.

(c) *Boundaries.* The Lancaster Valley viticultural area is located in Lancaster County and Chester County, Pennsylvania. The beginning point is where Pennsylvania Highway 23 crosses the Lancaster and Berks County boundary.

(1) Then in a southeasterly direction following the Lancaster County boundary for approximately 0.9 mile to the 500 foot contour line immediately south of the Conestoga River.

(2) Then following the 500 foot contour in a southwesterly direction to the Caernarvon-East Earl Township boundary.

(3) Then south approximately 0.1 mile following the Caernarvon-East Earl Township boundary to U.S. Highway 322.

(4) Then west following U.S. Highway 322 for approximately 1.7 miles to the electric transmission line between Fetterville and Cedar Grove School.

(5) Then southwest in a straight line for approximately 5.2 miles to the intersection of Earl, Upper Leacock, and Leacock Townships at the Mill Creek.

(6) Then southeast following the boundary between Earl Township and Leacock Township to the point where Earl, East Earl, Salisbury, and Leacock Townships intersect.

(7) Then east in a straight line for approximately 4.8 miles to the point where the 500 foot contour line intersects Pequea Creek northwest of Mt. Pleasant School.

(8) Then following the 500 foot contour line past Cole Hill through the town of Gap and along Mine Ridge to the 76° 07' 30" west longitude line in Paradise Township.

(9) Then southwest in a straight line for approximately 7.7 miles to the Boehm Church south of Willow Street.

(10) The northwest in a straight line for approximately 1.2 miles to the township school in West Willow.

(11) Then west in a straight line for 4.2 miles to the confluence of Stehman Run and the Conestoga River.

(12) Then northwest in a straight line for approximately 0.5 mile to the confluence of Indian Run and Little Conestoga Creek.

(13) Then west following Indian Run for approximately 3.6 miles to the source of the more northerly branch.

(14) Then northwest in a straight line for approximately 0.25 mile to the source of Wisslers Run.

(15) Then west following Wisslers Run downstream for approximately 0.7 mile to the 300 foot contour line.

(16) Then north following the 300 foot contour line to its intersection with Pennsylvania Highway 999 in Washington Boro.

(17) Then east following Pennsylvania Highway 999 to the school in Central Manor.

(18) Then northeast in a straight line for approximately 2.7 miles to the point where the West Branch of the Little Conestoga Creek intersects with Pennsylvania Highway 462.

(19) Then west following Pennsylvania Highway 462 for approximately 1.5 miles to Strickler Run.

(20) Then following Strickler Run southwest to the Columbia municipal boundary.

(21) Then north following the eastern boundary of Columbia to Shawnee Run.

(22) Then northeast in a straight line for approximately 5.8 miles to the intersection of Pennsylvania Highway 23 and Running Pump Road [unnamed on map] at elevation check point 436 near Centerville.

(23) Then east following Pennsylvania Highway 23 for approximately 0.5 mile to the 400 foot contour line.

(24) Then following the 400 foot contour line north around Chestnut Ridge, past Millers Run and continuing until the 400 foot contour line intersects an unnamed stream.

(25) Then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23.

(26) Then west following Pennsylvania Highway 23 to the intersection with Pennsylvania Highway 441 at Marietta.

(27) Then west following Pennsylvania Highway 441 to Pennsylvania Highway 241 near Bainbridge.

(28) Then northwest in a straight line for approximately 5.5 miles to the point where the Consolidated Railroad Corporation crosses the West Donegal-Mount Joy Township boundary in Rheems.

(29) Then east in a straight line for approximately 3.3 miles to the Mt. Pleasant Church.

(30) Then east in a straight line for approximately 3.8 miles to the Erismans Church.

(31) Then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View.

(32) Then following the 400 foot contour line east to Pennsylvania Highway 501.

(33) Then east in a straight line for approximately 2.9 miles to the Union Meetinghouse.

(34) Then southeast in a straight line for approximately 1.0 miles to the point where Pennsylvania Highway 272 (indicated as U.S. Highway 222 on the map) crosses Cocalico Creek (which forms the boundary between West Earl and Warwick Townships).

(35) Then northwest following the West Earl Township boundary to its intersection with U.S. Highway 322 southeast of Ephrata.

(36) Then east in a straight line for approximately 3.4 miles to the Lincoln Independence School.

(37) Then southeast in a straight line for approximately 1.7 miles to the West Terre Hill School.

(38) Then east in a straight line for approximately 8.5 miles to the beginning point.

Signed: April 1, 1982.

G. R. Dickerson,

Director.

Approved: April 21, 1982.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12809 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Parts 240 and 252

[T.D. ATF-100 re: T.D. ATF-88]

Transfer of Wine, Without Payment of Tax, to Customs Bonded Warehouses for Embassy Removals and Other Purposes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Treasury Department is adopting as a final rule, a temporary rule which established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law. The temporary rule was published on August 5, 1981. No adverse comments were received, therefore this Treasury decision adopts without change, the temporary rule as a final (permanent) rule.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF-88, published on August 5, 1981, (46 FR 39812) promulgated temporary regulations to implement section 2 of Pub. L. 96-601 (Tax Administrative Provisions Revisions). The regulations established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law. Concurrently with publication of the temporary rule, public comment was solicited by Notice No. 377 (46 FR 39853, Aug. 5, 1981).

Public Comments

Two public comments were received pertaining to the temporary rule. One of them advocated that foreign governments make it easier for American wine to be sold in their countries. The other was a general statement of support for and approval of the temporary rule.

Executive Order 12291

It has been determined that these regulations are not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because they will not have an annual effect on the economy of $100 million or more; they will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this rule because the regulations will not have a

significant economic impact on a substantial number of small entities. Any economic impact flows directly from Pub. L. 96-601 and not the implementing regulations. The rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities.

Accordingly, the Secretary of the Treasury has certified under the provisions of section 3 of Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulations will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal drafter of this document is Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 240.

Administrative practice and procedure, Claims, Electronic funds transfer, Excise taxes, Exports, Fruit juices, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine, Vinegar.

27 CFR Part 252.

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

This document is issued under the authority contained in 26 U.S.C. 7805. Accordingly, the amendments to 27 CFR Parts 240 and 252 published on August 5, 1981, (46 FR 39812) are hereby established as a final rule without change.

Signed: March 18, 1982.

Stephen E. Higgins,

Acting Director.

Approved: April 16, 1982.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12801 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Disclosure of Listings of Employees at Postal Facilities

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In accordance with a recent Federal court decision, the Postal Service announces the amendment of its regulations relating to the release of information to provide for disclosure, upon written request, of lists of employees working at particular postal facilities.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: A. Scott Hamel, (202) 245-4142.

SUPPLEMENTARY INFORMATION: In August of 1980 in an action brought pursuant to 5 U.S.C. 552, the Freedom of Information Act (FOIA), the United States District Court for the Northern District of Texas held that the FOIA requires the disclosure of listings of employees working at particular postal facilities. "National Western Life Insurance Co. v. United States," 512 F.Supp. 454. During the intervening period the Postal Service has developed procedures which permit compliance with such requests in an orderly manner while minimizing the risk of disruption to the operations of facilities at which such requests are made. This final rule amends postal regulations to reflect these procedures and to state that the Postal Service will, to the extent required by law, upon written request, provide a listing of postal employees working at a particular postal facility. The listing will contain the names of employees at a particular facility, but not their home addresses. The request must, of course, comply with the requirements of the FOIA and implementing Postal Service regulations. 39 CFR Part 265.

This rule adds new 39 CFR 265.6(a)(5), which states the basic policy of providing employee listings. Inasmuch as provision of these listings has been held to be required by the FOIA, their disclosure is not dependent upon the adoption of this regulation. It seems appropriate nonetheless to state the policy expressly in postal regulations since it represents a substantial change in a previous practice.

We wish particularly to invite attention to the use of the phrase "to the extent required by law" as a qualification on the duty assumed by the Postal Service in § 265.6(a)(5). This phrase is intended to indicate that the regulation does no more than state the obligation which the court in "National Western Life" has held is imposed on the Postal Service by the Freedom of Information Act. The regulation does not reflect the Postal Service's voluntary assumption of any duty to disclose employee listings which would itself require such disclosure, apart from any externally imposed obligation.

Section 265.6(e)(1) of 39 CFR is also amended specifically to except listings of postal employees as provided by § 265.6(a)(5) from the statutory prohibition, found at 39 U.S.C. 412 and implemented by that section, against release by postal officers and employees of mailing or other lists of the names or addresses of "postal patrons or other perons." The opinion in "National Western Life" held that prohibition inapplicable to such employee listings. We regard this amendment as necessary to make it as clear as possible which lists are available to the public and which are not.

Finally, § 265.7(a)(2) of 39 CFR, the provision designating the officials to whom requests for records shall be submitted generally, is amended to state specifically that the Records Officer at Postal Service Headquarters will be deemed custodian whenever requests for employee lists are received. The Postal Service has concluded that the responsibility for responding to these requests should be centralized at Headquarters rather than remaining with the heads of particular facilities. This conclusion is based in part on the perceived need for relieving managers in the field of the burden of distinguishing between mandatory and prohibited lists, in part on the fact that comprehensive listings of postal employees in a form normally requested by the public are not routinely maintained at post offices and so will normally be compiled from computerized records at Headquarters, and in part on the need to ensure that all persons requesting a listing receive a uniform response.

Also, centralization of responses will provide the greatest measure of assurance that requesters will be made aware of the Postal Services's long-standing policy of refusing to accept or distribute personal communications to employees at postal facilities, before the requesters elect to incur the cost of obtaining listings of such employees. Dissemination of notice of this policy in all cases is of great concern to the Postal Service, since our experience teaches that these listings are most often requested by insurance companies, as was true in the "National Western Life" case itself, and since we think it

reasonable to infer from this that they are being sought for purposes of commercial solicitation.

Although 39 U.S.C. 410(a) exempts the Postal Service from the notice and comment requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service ordinarily invites public comment on proposed changes to its regulations. Since, however, this regulation does no more than incorporate what has been held to be required by law, notice and an opportunity for the submission of comments in this case are deemed unnecessary. 5 U.S.C. 553(b)(B).

In view of the above considerations, the Postal Service hereby adopts the following amendments of Title 39, Code of Federal Regulations:

List of Subjects in 39 CFR Part 265

Freedom of information, Postal Service

PART 265—RELEASE OF INFORMATION

1. In § 265.6, paragraph (a)(5) is added and paragraph (e)(1) is revised to read as follows:

§ 265.6 Availability of records.

(a) * * *

(5) *Listings of Employees' Names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

(e) *Information not available for public disclosure.* (1) Except as provided by paragraph (a)(5) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past of present) or postal patrons or other persons.

2. In § 265.7, paragraph (a)(2) is amended by adding a sentence at the end thereof as follows:

§ 265.7 Procedure for inspection and copying of records.

(a) * * *

(1) * * *

(2) * * * The USPS Records Officer is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See § 265.6(a)(5).

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-13047 Filed 5-11-82; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2107-1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing approval of State implementation plan (SIP) revisions submitted by the Tennessee Department of Public Health on September 30, 1981. The submittals deal with: the control of asbestos; installation of in-stack continuous monitors on sulfuric acid plants and liquid sulfur dioxide plants; adoption of current New Source Performance Standards; changes in the State's definition of Volatile Organic Compounds (VOC); and VOC Alternative Emission Standard (Bubble) provisions.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Denise W. Pack of EPA Region IV's Air Program Branch (See EPA IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365;

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005;

Tennessee Department of Public Health, 150 9th Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Denise W. Pack, EPA Region IV, Air Programs Branch, at the above listed address and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: EPA is today approving Amendments of Tennessee Department of Public Health, Bureau of Environmental Health Services, Division of Air Pollution Control which became effective on October 5, 13, 18, and 19, 1981, and were submitted to EPA for approval as SIP revision on September 30, 1981.

The following is a discussion of the various provisions.

Rule 1200-3-11-.02(2)(1)5.(ii) is amended by adding a requirement for the covering of asbestos-containing waste material with at least 60 centimeters of compacted non-asbestos-containing material. Affected sites shall be maintained to prevent exposure of the asbestos-containing waste.

Rule 1200-3-12-.04(2)(c) pertaining to large existing fuel burning installations is replaced with a requirement for all sulfuric acid plants and liquid sulfur dioxide plants located in Class I Counties and existing on January 1, 1979, to install and operate a continuous in-stack sulfur dioxide monitor. Monitor types and locations are subject to approval by the Technical Secretary, and the instrument is subject to the provisions of paragraph 1200-3-10-.02-(1) of the Tennessee regulations.

Rule 1200-3-18-.02(1)(ii) is revised to read: Volatile organic compound (VOC) means any compound of carbon that has a vapor pressure greater than 0.1 millimeters of mercury at standard conditions excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate. The following compounds will not be considered volatile organic compounds: methane, ethane, 1,1,1-trichloroethane (methyl chloroform) and trichlorotrifluoroethane. In no case shall this definition be construed to be more restrictive than the results obtained from the use of the applicable test method for a source as specified in Rule 1200-3-18-.44,-.45, and -.46 and other referenced methods.

Rule 1200-3-18-.04, "Alternate Emission Standard," (Bubble) is a new regulation allowing facilities with process emissions of VOC regulated by specific rules of Chapter 1200-3-18 to apply for a certificate of alternate control. The Technical Secretary may grant this request if the facility meets the conditions specified in the regulation. The alternate control scheme shall be submitted to and approved by EPA as a SIP revision.

In Rule 1200-3-18-.42(3) dealing with Individual Compliance Schedules, the phrase "these regulations" is replaced with "the State Implementation Plan."

EPA has reviewed these amendments to the Tennessee regulations and is approving them as submitted. This action is being taken without prior proposal because the Tennessee regulatory changes are noncontroversial and EPA anticipates no comments on

them. The public should be advised that this action will be effective July 12, 1982.

However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit on or before July 12, 1982. This action may not be challenged later in proceedings to enforce its requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

Section 52.2220 is amended by adding paragraph (c)(41) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(41) Revisions involving the following regulations—

Rule 1200–3–11–.02(2)(1)5.(ii): Asbestos;
Rule 1200–3–12–.04(2)(c): Large Existing Fuel Burning Installations;
Rule 1200–3–18–.02(1)(ii): Definitions: Volatile Organic Compounds;
Rule 1200–3–18–.04: Alternative Emission Standard; and
Rule 1200–3–18–.42(3): Individual Compliance Schedules—submitted on September 30, 1981, by the Tennessee Department of Public Health.

[FR Doc. 82–12886 Filed 5–11–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[A–10–FRL–2119–7]

New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants; Subdelegation of Authority to an Oregon Local Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule.

SUMMARY: EPA is today approving a request dated March 11, 1982 from the State of Oregon Department of Environmental Quality for subdelegation to enforce certain New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants to the Lane Regional Air Pollution Authority.

DATE: April 23, 1982.

ADDRESSES: The related material in support of this subdelegation may be examined during normal business hours at the following locations:

Central Docket Section (10A–82–4), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 S.W. Fifth Avenue, Portland, Oregon 97207.

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1949, FTS: 399–1949

SUPPLEMENTARY INFORMATION: Pursuant to section 111(c)(1) and 112(d) of the Clean Air Act, as amended, the Regional Administrator of Region 10, Environmental Protection Agency (EPA), delegated to the State of Oregon on November 10, 1975, and December 3, 1981, the authority to implement and enforce the program for New Source Performance (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). The delegation was announced in the Federal Register on February 20, 1976 and December 22, 1981 (41 FR 7749 and 46 FR 62066), respectively.

On March 11, 1982, the State of Oregon Department of Environmental Quality requested EPA's concurrence in the State's subdelegation of the NSPS and NESHAPS program to the Lane Regional Air Pollution Authority. After reviewing the State's request, the Regional Administrator determined that the subdelegation met all the requirements outlined in EPA's delegations. Therefore, the Regional Administrator on April 23, 1982, concurred in the subdelegation to the local agency listed below with the stipulation that all the conditions placed on the original delegation to the State shall also apply to the subdelegation to the local agency. EPA is today amending 40 CFR 60.4 and 61.4 to reflect the State's subdelegation.

This rulemaking is effective April 23, 1982 and is issued under the authority of section 111(c)(1) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 1857c-7).

Dated: April 23, 1982.

John R. Spencer,

Regional Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 60.4, is amended by adding paragraph (b)(MM)(ix):

§ 60.4 Address.

* * * * *

(b) * * *

(MM) * * *

(ix) Lane Regional Air Pollution Authority, 1244 Walnut Street, Eugene, Oregon 97403.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 61.4 is amended by adding paragraph (b)(MM)(viii):

§ 61.04 Address.

* * * * *

(b) * * *

(MM) * * *

(viii) Lane Regional Air Pollution Authority, 1244 Walnut Street, Eugene, Oregon 97403.

[FR Doc. 82–12881 Filed 5–11–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A-5-FRL-2107-5]

Designation of Areas for Air Quality Planning Purposes: Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: This rulemaking changes the air quality attainment designation relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS) for the Cities of East Grand Forks and Silver Bay, Minnesota from secondary nonattainment to attainment. This change is based on monitoring data for 1980 and 1981 that show no violations of the appropriate NAAQS. EPA has determined that this is quality assured, representative data and satisfies requirements for an attainment redesignation.

DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Minnesota Pollution Control Agency, 1935 West County Road B–2, Roseville, Minnesota 55113.

Written comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the EPA, Region V, address above or call (312) 886–6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) of the Clean Air Act (the Act). This section directed each State to submit to the Administrator of EPA a list of the NAAQS attainment status for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficent data become available to warrant a redesignation.

On March 3, 1978 and October 5, 1978 (43 FR 9005, 43 FR 46010), EPA designated the Cities of East Grand Forks and Silver Bay as nonattainment for the secondary NAAQS for TSP. These designations were based on monitored violations of the secondary standard.

On February 24, 1982, the Minnesota Pollution Control Agency (MPCA) requested that the Cities of East Grand Forks and Silver Bay be redesignated from secondary nonattainment to attainment. To support their requests, the MPCA submitted monitored data for 1980 and 1981.

EPA may redesignate an area to attainment if eight consecutive quarters may, of the most recent quality assured, representative ambient air quality data, show no violation of the appropriate NAAQS. EPA has reviewed the monitored data submitted by the MPCA for 1980 and 1981 for the 5th Avenue and 3rd Street site in East Grand Forks and the Campton and Kelley School sites in Silver Bay. No violations of the TSP NAAQS were recorded at these sites. EPA has determined that this is quality assured, representative data and satisfies the requirements for an attainment redesignation. Therefore, EPA is redesignating the Cities of East Grand Forks and Silver Bay as attainment for TSP.

Since EPA views this action as a noncontroversial rulemaking, it is today changing the section 107 attainment designation of the Cities of East Grand Forks and Silver Bay from secondary nonattainment to attainment for TSP without prior proposal. This action will be effective July 12, 1982. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, then this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Section 81.324 of Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended. In the table for "Minnesota—TSP" the entries for City of East Grand Forks and City of Silver Bay should be revised to read as follows:

§ 81.324 Minnesota.

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Minnesota—TSP				
City of East Grand Forks				X
City of Silver Bay				X

[FR Doc. 82-12860 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2625/R427; PH-FRL 2120-8]

Allethrin (Allyl Homolog of Cinerin I); Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for the insecticide allethrin (allyl homolog of cinerin I) when used before harvest in or on certain raw agricultural commodities. This regulation to eliminate the need to establish a maximum permissible level for residues of the insecticide in or on these raw agricultural commodities was requested by Webb Wright Corp.

EFFECTIVE DATE: Effective on May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of February 24, 1982 (47 FR 8087) which announced that Webb Wright Corp., Box 1572, Fort Myers, FL 33902, had filed pesticide petition 2F2625 with the EPA requesting that an exemption from the requirement of a tolerance be established for allethrin (allyl homolog of cinerin I) when used before harvest in the production of artichokes (Jerusalem), beets, sugar beets, carrots, celery, Chinese cabbage, chickory, corn, endive, escarole, garlic, leeks, onions, parsley, parsnips, potatoes, salsify, shallots, sorghum (milo), sorghum grain, spinach, and sweet potatoes.

No comments were received in response to this notice of filing.

Considerations to exempt allethrin (allyl homolog of Cinerin I) were based on its prior exemption from tolerance requirements in or on roots and leafy vegetables (§ 180.1002).

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide.

The pesticide is considered useful for the purposes for which the exemption is sought, and it is concluded that establishment of the exemption will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, by June 11, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are suported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 12, 1982.

List Of Subjects In 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: April 26, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1002 is revised to read as follows:

§ 180.1002 Allethrin (allyl homolog of cinerin I); exemption from the requirement of a tolerance.

The insecticide allethrin is exempted from the requirement of a tolerance for residues when used before harvest in the production of the following commodities:

Commodities

Apples
Artichokes (Jerusalem)
Beans
Beets
Beets, sugar
Broccoli
Brussels sprouts
Cabbage
Carrots
Cauliflower
Celery
Chickory
Chinese cabbage
Citrus
Collards
Corn
Endive
Escarole
Garlic
Horseradish
Kale
Kohlrabi
Leeks
Lettuce
Mushrooms
Mustard greens
Onions
Parsley
Parsnips
Peaches
Pears
Peppers
Potatoes
Radishes
Rutabagas
Salsify
Shallots
Sorghum (milo)
Sorghum, grain
Spinach
Sweet potatoes
Tomatoes
Turnips

[FR Doc. 82-12829 Filed 5-11-82; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2579/R433; PH-FRL 2122-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Trifluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerences for residues of the herbicide and plant growth regulator trifluralin in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of trifluralin in or on these

commodities was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on: May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 16, 1981 (46 FR 61327) which announced that Elanco Products Co., a Division of Eli Lilly and Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (PP 1F2579 to the EPA. The petition proposed that 40 CFR 180.207 be amended by establishing tolerances for residue of the herbicide and plant growth regulator trifluralin (alpha, alpha,alpha-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) in or on the raw agricultural commodities flax at 0.05 ppm. This petition was subsequently amended to include flaxseed straw at 0.05 ppm. The proposed tolerance for "flax" is established in terms of "flaxseed".

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances included a 2-year rat feeding study with a systemic no-observed-effect level (NOEL) of 2,000 ppm (highest dose tested); a 2-year rat feeding study with a systemic lowest-effect-level (LEL) of 20,000 ppm (highest dose tested); a 2-year rat feeding study with an increase in urinary tract tumors in male rats observed at all doses tested (813 ppm, 3,250 ppm, and 6,500 ppm) and in female rats observed at 3,250 ppm and 6,500 ppm, and thyroid tumors in male rats; two 2-year dog feeding studies with systemic NOEL's of 10 milligrams (mg)/kilogram (kg) (highest dose tested) and 25 mg/kg (highest dose tested); a 3-year dog feeding study with a systemic NOEL of 10 mg/kg and a systemic LEL of 25 mg/kg (highest dose tested); a 2-year mouse feeding study negative for oncogenicity in both sexes; a dog reproduction study with a reproductive NOEL of 25 mg/kg (highest dose tested); a supplementary rabbit teratology study; and a supplementary rat reproduction study.

Data currently lacking and considered desirable are teratology studies in two species, mutagenicity studies (multi-test evidence), and a rat reproduction study.

Oncogenicity tests conducted by the National Cancer Institute (NCI) with trifluralin technical chemical in rats and mice indicated the chemical is not oncogenic in rats nor in male mice under the terms of the bioassay. Hepatocellular carcinomas and alveolar/bronchiolar adenomas were observed in female mice at a statistically significant incidence when compared to controls.

The agency concludes that the total dietary cancer risk from exposure to residence of trifluralin is less than six incidences in 10,000,000.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 10 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0417 mg/day; the current action will contribute only 2×10^{-5} mg/day. Published tolerances utilize 0.70 percent of the ADI; the current action will utilize less than 0.01 percent of the ADI.

The nature of the residues is adequately understood and adequate analytical method (gas chromatography with an electron capture detector and thin layer chromatography) is available for enforcement purposes.

Flaxseed and straw are minor animal feed items. Based on this fact, the metabolism studies and residue levels involved, there is no expectation of residues in meat, milk, poultry, or eggs.

EPA published in the **Federal Register** of August 30, 1979 (44 FR 50911) a notice of determination and availability of a position document concerning trifluralin. After extensive review, the Agency determined that the benefits outweighed the risks for all uses if the technical and formulated products contained less than 1 ppm of NDPA.

The formulations for the accompanying use contain trifluralin with less than 1 ppm of NDPA. Nitrosamines in these formulations are not expected to cause residue problems. The Agency will reevaluate all the existing tolerances for trifluralin when the final report and validation audit of the laboratory records on all the chronic toxicity/oncogenicity studies are available.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR Part 180 would protect the public health. In light of the chronic toxicity oncogenicity studies, the Agency considers the risk for dietary exposure of trifluralin-treated flaxseed and straw to be insignificant since flax is used mainly to produce linseed oil, and the ADI and the TMRC are not affected. Therefore, there will not be an increased risk to humans.

The pesticide is considered useful for the purpose for which the tolerances are sought and it is concluded that establishment of the tolerance will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before June 11, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 12, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: May 3, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.207 is amended by adding and alphabetically inserting the raw agricultural commodities flaxseed and flaxseed straw to read as follows:

§ 180.207 Trifluralin; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Flax, seed	0.05
Flax, straw	0.05
* * * * *	

[FR Doc. 82-12894 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Availability of Information to the Public Under the Freedom of Information Act; Redelegation of Authority

AGENCY: Office of the Secretary, HHS.

ACTION: Final regulation.

SUMMARY: The Department of Health and Human Services hereby amends its regulation implementing the Freedom of Information Act. This revision designates officials who shall have responsibilities for determining whether records must be withheld from disclosure, or released, under provisions of the Act (5 U.S.C. 552).

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Russell M. Roberts, Freedom of Information Officer, U.S. Department of Health and Human Services, Room 118-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, telephone 202/472-7453.

SUPPLEMENTARY INFORMATION: Because this is an internal redelegation of duties, the Secretary has determined that public comment is unnecessary.

This revision does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory analysis statement is required.

No environmental impact statement is needed under 45 U.S.C. 4321 et seq.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally the Department lists in its announcements the number and title of affected individual programs for the guidance of the public. Requests that persons make of the Department for records under the Freedom of Information Act affect every HHS program, and it has been determined that it is not cost effective nor in the public interest to list all of them. In lieu of the individual program listing, the Department invites readers to direct questions to the above address on whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

The Secretary certifies that this amendment will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because this revision merely redelegates authority within the Department.

Neither these nor other sections in 45 CFR Part 5 require the use of a form. Persons who request records under authority of the FOIA may continue to do so by letter, or in person, and therefore there is no change of burden or imposition of a new burden on the public as defined by the Paperwork Reduction Act of 1980, Pub. L. 95-511.

List of Subjects in 45 CFR Part 5

Freedom of information.

Dated: May 6, 1982.

Richard S. Schweiker,

Secretary.

Accordingly, 45 CFR Part 5 is amended to read as follows:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUBLIC LAW 90-23

1. Revise the heading and text of § 5.32 to read as follows:

§ 5.32 Freedom of Information Officers.

(a) Only Freedom of Information Officers as listed below have the authority to release or deny records in response to Freedom of Information Act requests.

(1) *HHS Freedom of Information Officer.* If the records you seek are addressed to or from an official or office of the Office of the Secretary, including OS Staff Divisions, or if the records you seek are the records of any organizational unit of the Department not specifically identified below, or if the records you seek involve more than one Operating Division of the Department, only the HHS Freedom of Information Officer or his or her designee, may determine whether to release or deny the records.

(2) *Regional Freedom of Information Officer.* If the records you seek are addressed to or from an official or office of the Office of the Regional Director (i.e., Office of the Secretary, including OS Staff Divisions, in regional Offices), or if the records you seek involve more than one Operating Division in the region, only the Regional Public Affairs Director, who also is the Regional Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(3) *OHDS Freedom of Information Officer.* If the records you seek are exclusively records of the Office of Human Development Services, including its records in the regions, only the Director, Office of Public Affairs, OHDS, who also is the OHDS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(4) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service, or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Director, Office of Public Affairs, PHS, who also is the PHS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records except as follows:

(i) *CDC Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control, only the Director, Office of Public Affairs, CDC, who also is the CDC Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Assistant Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who

also is the NIH Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(5) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Information, SSA, who also is the SSA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(6) *HCFA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(b) The Assistant Secretary for Public Affairs must concur in any designations and in any further delegations of these authorities.

2. Revise the heading and text of § 5.53 to read as follows:

§ 5.53 Release and Denial of Records.

Determinations to release or deny records in response to Freedom of Information Act requests will be made only by those officials listed in § 5.32 of this Part, or as otherwise provided by regulation. Determinations to release or deny records will be in writing, signed by the appropriate Freedom of Information Officer. Discloseable records will be provided promptly and in accordance with the policies, schedule, and procedures contained in Subpart E of this Part. If records or portions of records are denied, the written response will contain the reasons for the denial including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion. The notice will also provide the requester with appropriate information on how to exercise the right of appeal under Subpart G of this Part. Such notification shall also set forth the names or titles and positions of each person responsible for the denial of such request if such person is other than the appropriate Freedom of Information Officer.

3. Revise the text of § 5.82 to read as follows:

§ 5.82 By Whom Review is Made.

(a) The following officials will represent the Secretary in considering appeals of denials of records and refusals to waive or reduce fees:

(1) Assistant Secretary for Human Development Services or his or her designee—appeals of decisions of the OHDS Freedom of Information Officer.

(2) Assistant Secretary for Health or his or her designee—appeals of decisions of the PHS Freedom of Information Officer, the CDC Freedom of Information Officer, the FDA Freedom of Information Officer, or the NIH Freedom of Information Officer.

(3) Commissioner of Social Security or his or her designee—appeals of decisions of the SSA Freedom of Information Officer.

(4) Administrator, Health Care Financing Administration or his or her designee—appeals of decisions of the HCFA Freedom of Information Officer.

(5) Assistant Secretary for Management and Budget or his or her designee—appeals concerning all other records of the Department.

(b) Officials designated to decide appeals may not be the same officials to whom authority under § 5.32 of this Part to release or deny records is delegated. The Assistant Secretary for Public Affairs must concur in designations of authority to decide appeals.

(c) All decisions concerning appeals may be made only after consultation with the Office of General Counsel. Decisions on appeal also require the concurrence of the Assistant Secretary for Public Affairs or his or her designee.

(d) When one of the designated officials responds to an appeal, that decision will constitute final agency action on the Freedom of Information Act request.

(5 U.S.C. 552)

[FR Doc. 82-12980 Filed 5-11-82; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Plan amendment.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved an amendment to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This amendment provides procedures for modifying the boundaries of closed areas identified as the Tortugas Shrimp Sanctuary and the Texas closure. Regulations to implement this FMP amendment are not proposed at this time.

DATE: The amendment was effective April 6, 1982.

FOR FURTHER INFORMATION CONTACT:
Mr. Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was approved May 29, 1980, under the authority of the Magnuson Fishery Conservation and Management Act. Final regulations implementing the FMP were published in the **Federal Register** on May 20, 1981, at 46 FR 27489.

The Gulf of Mexico Fishery Management Council (Council) prepared and submitted for approval an FMP amendment. This amendment was initially approved on December 1, 1981. A notice of availability of the amendment inviting public comments appeared in the **Federal Register** (47 FR 4104) on January 28, 1982, as prescribed by section 305(a) of the Magnuson Fishery Conservation and Management Act. The public comment period ended March 15, 1982, with no comments received. The Assistant Administrator for Fisheries, NOAA, gave final approval to the amendment on April 6, 1982. Regulations will not be proposed at this time; instead, whenever an action under the amendment is needed, it will be implemented by regulatory amendment published in the **Federal Register.**

The FMP amendment provides a mechanism for modification of the boundaries of the closed areas identified as the Tortugas Shrimp Sanctuary and the Texas closure in 50 CFR 658.22 and 658.24. The amendment requires that an annual analysis of the effect of the closures be prepared by the National Marine Fisheries Service (NMFS) and submitted to the Council. The Secretary of Commerce will review the findings and, after consultation with the Council, may modify the geographic scope of the closures through an amendment to the regulations implementing the FMP.

Dated: May 6, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-12982 Filed 5-11-82; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 92
Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking; review of existing regulations.

SUMMARY: This document proposes to revise and consolidate the regulations regarding registrations, rates, brand inspection and stockyard posting. The document also proposes to remove two regulations concerning packer ownership of custom feedlots and the private enforcement of exchange, association or organization rules or by-laws and one policy statement regarding self-regulation by stockyard owners. Also, a new policy statement with respect to packers which engage in the business of operating a custom feedlot is proposed. These proposals will reduce the existing reporting requirements for industry participants and will clarify existing regulations.

DATE: Comments must be filed on or before July 12, 1982.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Comments received may be inspected during normal business hours in the Office of the Administrator

FOR FURTHER INFORMATION CONTACT: John A. Sands, Jr., Director, Livestock Marketing Division, phone (202) 447–6951 or Kenneth Stricklin, Chief Livestock Procurement Branch, phone (202) 447–7363.

SUPPLEMENTARY INFORMATION: This is the third group of regulations proposed for review in accordance with the revised plan of review published by the Packers and Stockyards Administration July 8, 1981 (46 FR 35279).

Consideration of the comments filed in response to three earlier pbulications in the **Federal Register** (44 FR 71802; 45 FR 21168; 45 FR 87002), which outlined the agency's plan for review, the recommendations of an internal agency task force, and the comments received from industry groups and others in response to the task force report has resulted in the following proposed amendments to the regulations and policy statements.

The following proposal would remove regulations 201.4, 201.7, 201.13, and 201.70a (9 CFR 201.4, 201.7, 201.13, 201.70a) and policy statement 203.8 (9 CFR 203.8). Changes are proposed to regulations 201.6, 201.10, 201.11, 201.12, 201.17, 201.19 through 201. 26, and 201.86 through 201.93 (9 CFR 201.6, 201.10, 201.11, 201.12, 201.17, 201.19–201.26, and 201.86–201.93). Policy statement 203.17 would be clarified and a new policy statement 203.18 is proposed regarding packers which engage in custom feeding of livestock. No changes are proposed in regulaitons 201.3 and 201.5 (9 CFR 201.3 and 201.5) and policy statement 203.12 (9 CFR 203.12)

Industry Rules

Regulation 201.4 currently provides that any valid by-law, rule and regulation of a livestock exchange, association or organization which is not inconsistent or in conflict with the Act and regulations may be enforced. Although the statue does not specifically address the authority of livestock exchanges to adopt and enforce rules and regulations, it does authorize stockyard owners and market agencies to make such rules. Such livestock exchanges are made up of market agencies operating at stockyards, and their authority to make reasonable and non-discriminatory rules and regulations governing their operations is inherent. (Cf. *Western Iowa Farms, et al. v. Sioux City Stock Yards*, 629 F.2d 502 (8th Cir. 1980); involving the authority of stockyard owners to establish rules pursuant to section 307 of the Act (7 U.S.C. 208)). Accordingly, it is the opinion of the Administration that the regulation is no longer necessary, and it is proposed for removal.

Posting Stockyards

Regulations 201.5 and 201.6 define the procedural requirements for public notice of the posting of a stockyard subject to the provisions of the Act.

No changes are proposed in regulation 201.5 which currently requires the assignment of a numerical designation to any stockyard subject to the Act and the public display of such designation or posting notice in three conspicuous places at the stockyard. This regulation is necessary to implement the requirements of section 302(b) of the Act (7 U.S.C. 202(b)).

An amendment to regulation 201.6 is proposed to eliminate the requirement that copies of the deposting notice be displayed in three conspicuous places at the stockyard. Under current practice, stockyards are deposted only when business on the stockyard has ceased and evidence indicates that operations will not resume. Often the physical facilities have been destroyed or converted to other uses and the placing of public notices at the location serves no useful purpose. The regulation, however, will continue to require publication of the deposting in the **Federal Register** and notice to the stockyard owner at the last known address.

Regulation 201.7 is proposed for removal. The rule now requires stock yard owners to provide written notice of any change in name, address, management or ownership of the stockyard to the Administrator within 10 days of the occurrence. As this information is generally available from other sources, including annual and special reports, state agencies, and day-to-day agency operations, removal of this regulation would reduce the existing reporting requirements on the industry without lessening the agency's ability to enforce the provisions of the Act.

Registration

Regulations 201.10 through 201.13 set forth the registration requirements for persons operating or seeking to operate as market agencies and dealers. The Administration proposes to amend regulation 201.10, consolidate regulations 201.11 and 201.12 and remove regulation 201.13.

Regulation 201.10 would be amended to eliminate the requirement that a current financial statement accompany the application for registration. The applicant would be required to certify that its financial condition meets the requirements of the Act. Such certification would appear on the application form approved by the

Administrator or as an attachment thereto.

It is anticipated that this proposal will eliminate the industry cost associated with the preparation of the financial statement and the considerable agency expense previoulsy incurred in the acquisition and review of acceptable financial data. This action should not adversely affect the Administration's ability to assure an applicant's fitness under the Act.

Additionally, the regulation would be amended to remove the requirement that the application for registration, once filed with a regional office of the Packers and Stockyards Administration, must then be forwarded to Washington. This relates to matters of internal agency procedure and is unnecessary in the regulation.

Paragraph 201.10(b), which defines the conditions under which the Administrator may institute a "show cause" proceeding to deny an application for registration, would also be clarified. The Administrator is authorized to institute a "show cause" proceeding if the Administrator has reason to believe the applicant is unfit to engage in business subject to the Act and to deny the application for registration if the applicant is found, after hearing, to be unfit. However, as currently written, the regulation may be interpreted to preclude the Administrator from denying an application for registration on the basis of prior unlawful conduct solely because the applicant has been the subject of a formal administrative proceeding under the Act resulting in the imposition of a cease and desist order. Such was not the intent of the regulation. The Administration occasionally brings formal administrative actions against unregistered dealers or market agencies who have engaged in serious violations involving fraud or deceit and which would otherwise warrant the imposition of a suspension of registration. If the current regulations were interpreted restrictively, the Administration could be required to register such persons solely because those individuals had been ordered to cease and desist from such violations. The proposed clarification is designed to cure this ambiguity.

Paragraph 201.10(d) would also be modified to allow a market agency selling on commission to register as a market agency to provide clearing services for market agencies buying on commission and dealers. This recommendation would relieve selling agencies of a substantial restriction on their business activities.

Regulations 201.11 and 201.12 are proposed for consolidation. The Administration has determined these regulations to be necessary to its enforcement of the Act and recommends consolidation for simplification of the current regulations.

The proposed removal of regulation 201.13, which presently requires registrants to report any change in name, address, management or control, would ease current industry reporting requirements. This information can be obtained from annual reports, state agencies and from other industry sources, and the removal of this regulation will not adversely affect the agency's ability to enforce the Act.

Rates and Charges

The existing regulations 201.17 and 201.19–201.26 set forth the requirements for the filing of rate schedules, the placement and design of such schedules, the procedures for amendments to such schedules and joint schedules.

It is proposed that all the existing regulations pertaining to schedules of rates and charges by stockyard owners and market agencies operating at a stockyard be removed and that a single regulation containing the simplified tariff requirements be issued.

The Act sets forth the requirements pertaining to rates and charges and it is the opinion of the agency that restatement of these provisions is unnecessary. The regulations as to the appropriate style and form of rate schedules do not materially assist the agency in the enforcement of the rate provisions of the Act.

Section 201.24, which deals with the application of prescribed rates, is proposed for removal. This regulation is unnecessary in light of the Administration's current policy with respect to rate regulation as set forth in § 203.17 of the statements of general policy, pursuant to which the Administration no longer prescribes rates or investigates or reviews for reasonableness the level or rates and charges assessed at a stockyard except under compelling circumstances.

Policy statement § 203.17 is proposed for revision to conform to the proposed consolidation of the regulations pertaining to rates and charges set forth above by deleting subsections (c) and (f) of the existing policy statement.

Packer Ownership of Custom Feedlots

The regulation concerning packer/custom feedlots, regulation 201.70a, became effective on July 1, 1974. Prior to its adoption, extensive public hearings were held and numerous written comments were received and considered. In promulgating regulation 201.70a, the Administration sought to address and remedy two potential problems associated with packer/custom feedlot relationships resulting from the packer's conflicting roles as both a potential buyer of livestock from the custom feedlot and an agent to the feedlot customers with responsibility to market their fed livestock to their best advantage. The other major problem was the potential for restriction of competition resulting from packer control of an increasingly significant livestock marketing channel.

Since the promulgation of regulations 201.70a, the Administration has reviewed or investigated numerous joint ownership situations, including a major investigation of the marketing of fed cattle in the High Plains region, and has approved joint ownership arrangements where it appeared that conflicts of interest did not exist or had been removed and where the arrangement was considered beneficial to competition. As a result of these reviews and investigations, the Administration has redefined its policy concerning packer/custom feedlot arrangements. Accordingly, the Administration proposes to delete regulation 201.70a and to issue a new policy statement 203.18 to advise interested persons of the current policy of the Administration concerning such relationships. That statement reflects the Administration's long standing position that the Act should be administered to prevent injury resulting from conflicts of interest or from arrangements which tend to restrict competition.

Brand Inspection

Regulations 201.88 through 201.93 pertain to the authorized inspection of livestock for brands, marks or other identifying characteristics to determine ownership. The Administration proposes to consolidate these regulations and issue a single revised regulation. The proposed regulation conforms with the statutory provisions by continuing to require specific application for authorization to conduct brand inspections, registration and the filing of fee schedules for such inspections. The existing provisions for reciprocal agreements between authorized brand inspection agencies and maintenance of consignment identities (201.91 and 201.92) will remain.

Regulations 201.89, 201.90 and 201.93 would be removed, easing the recordkeeping requirements imposed on authorized brand inspection agencies. Further, the inspection contracts to

which regulation 201.93 applied have terminated and no new contracts may be so filed.

Policy Statements

Policy statement 203.8 is proposed for removal. This policy statement was first issued in 1965 at a time when several stockyard owners sought to convert their method of selling livestock from private treaty to auction and were reluctant to do so because of uncertainty as to the requirements of the Packers and Stockyards Act. The statement therefore reiterates the requirements of sections 304 and 307 of the Act that stockyard services be furnished in a reasonable and non-discriminatory manner and further indicates that the Administration has not favored method of marketing but rather encourages innovation and self-regulation by stockyard owners to meet competition. Additionally, the statement recommends consultation on market rules between stockyard owners and market agencies doing business on the stockyard and advocates tolerance by stockyard owners toward such market agencies occasionally operating off-market. The market conditions which created the need for this policy statement have stabilized and the usefulness of the statement has ended. Removal of this statement should cause no disruption to the industry or to the enforcement efforts of the agency.

No changes are proposed in policy statement 203.12. The statement defines discrimination in the furnishing of stockyard services or facilities or in the establishment of stockyard rules or regulations because of race, religion, color or national origin of those persons using the stockyard services or facilities to be a violation of the Act. This statement was issued in 1968 and continues to reflect the position of the Department.

The proposed change in policy statement 203.17 is sought, as previously stated, to conform the policy statement to the proposed rate regulation 201.17, and clarify the Administration's enforcement position with respect to the reasonableness of rates.

Policy statement 203.18 is proposed for the reasons previously stated in the discussion of the removal of regulation 201.70a.

Executive Order

It has been determined that the proposals to amend and remove regulations relating to the posting of stockyards, the registration of market agencies and dealers, rates and charges, packer ownership of custom feedlots and brand inspection are not "major" rules as defined by section 1(b) of E.O. 12291.

The proposed rules will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B. H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that these proposals will not have a significant economic impact on a substantial number of small entities.

These proposals will reduce the cost of doing business for market agencies and dealers, by eliminating the costs associated with the requirements for preparing and filing financial statements with applications for registration and the filing of name and ownership changes by registrants and stockyard owners. Similarly, paperwork costs to the agency will be reduced.

List of Subjects in

9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards, Trade practices.

(7 U.S.C. 203, 207 and 228(a))

Done at Washington, D.C. May 6, 1982.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

§§ 201.4, 201.7, 201.12, 201.13, 201.19–201.26, 201.70a, 201.87–201.93 and 203.8 [Removed]

1. It is proposed to remove §§ 201.4, 201.7, 201.12, 201.13, 201.19, 201.20, 201.21, 201.22, 201.23, 201.24, 201.25, 201.26, 201.70a, 201.87, 201.88, 201.89, 201.90, 201.91, 201.92, 201.93 and 203.8.

2. It is proposed to revise §§ 201.6, 201.10, 201.11, 201.17, 201.86 and 203.17 (9 CFR 201.6, 201.10, 201.11, 201.17, 201.86, 203.17) to read as set forth below.

§ 201.6 Depositing of stockyards; notice.

When a stockyard is found to no longer come within the definition of that term as contained in the Act, the stockyard shall be deposited by (a) publication of the determination in the **Federal Register** and (b) mailing notice to the stockyard owner at the last known address.

§ 201.10 Requirements and procedures.

(a) Every person operating or desiring to operate as a market agency or dealer as defined in 301 of the Act shall apply for registration under Act. To apply for registration, such persons shall file a properly executed application for registration, on forms furnished by the agency, and the bond as required in §§ 201.27 through 201.34.

(b) Each application for registration shall be filed with the regional supervisor for the region in which the applicant proposes to operate. If the Administrator has reason to believe that the applicant is unfit to engage in the activity for which application has been made, a proceeding shall be promptly instituted in which the applicant will be afforded opportunity for full hearing in accordance with the rules of practice governing such proceedings, for the purpose of showing cause why the application for registration should not be denied. In the event it is determined that the application should be denied, the applicant shall not be precluded, as soon as conditions warrant, from again applying for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer shall be subject to the registration requirements of the Act and the regulations. Such person shall be registered as a dealer to purchase livestock for slaughter.

(d) Every person clearing or desiring to clear the buying operations of other registrants shall apply for registration as a market agency providing clearing services by filing a properly executed application, on forms furnished by the agency, and the bond as required in §§ 201.27 through 201.34.

§ 201.11 Suspended registrants; officers, agents, and employees.

Any person whose registration has been suspended or any person employed by or otherwise associated with such registrant who was responsible for or participated in the violation on which the order of suspension was based, may not register in his own name or in any

other manner within the period during which the order of suspension is in effect, and no partnership, firm or corporation in which any such person has a substantial financial interest may be registered during such period.

§ 201.17 Requirements for filing tariffs.

(a) *Schedules of rates and charges for stockyard services.* Each stockyard owner and market agency operating at a posted stockyard shall file with the regional supervisor, for the region in which they operate, a signed copy of all schedules of rates and charges and amendments thereto. The tariffs and amendments must be filed with the regional supervisor at least 10 days before their effective dates, except as provided in paragraphs (b) and (c) of this section. Each tariff and supplement shall set forth the effective date of the schedule, a description of the stockyard services rendered, the stockyard at which the schedule applies, the name and address of the stockyard owner or market agency, the kind of livestock covered by the schedule, and any rules or regulations which affect any rate or charge. Each schedule of rates and charges filed shall be designated by successive numbers. Each amendment to such schedule shall be numbered and shall designate the number of the schedule which it amends.

(b) *Feed charges.* When the basic tariff schedule provides for feed charges to be based on an average cost plus a specified margin, the filing and notice provisions contained in section 308(c) of the Act are waived. A schedule of the current feed charges based on average feed cost and showing the effective date shall be conspicuously posted at the stockyard at all times. Changes in feed charges may become effective two days after the change is posted at the stockyard.

(c) *Professional veterinary services.* The filing and notice provisions contained in section 308(a) of the Act are waived for a schedule of charges for professional veterinary services. A schedule of rates and charges for professional veterinary services rendered by a veterinarian at a posted stockyard shall be conspicuously posted by the stockyard owner or market agency at the stockyard at all times. The rates and charges and any changes thereto may become effective two days after the new schedule or amendment is posted at the stockyard.

(d) *Joint schedules.* If the same schedule is to be observed by more than one market agency operating at any one stockyard, one schedule will suffice for such market agencies. The name and business addresses of those market agencies adhering to such schedule must appear on such schedule.

§ 201.68 Brand inspection: application for authorization, registration and filing of schedules, reciprocal arrangements, and maintenance of identity of consignments.

(a) *Application for authorization.* Any department or agency or duly organized livestock association of any State in which branding or marking of livestock as a means of establishing ownership prevails by custom or statute, which desires to obtain an authorization to charge and collect a fee for the inspection of brands, marks, and other identifying characteristics of livestock, as provided in section 317 of the Act, shall file with the Administrator an application in writing for such authorization. In case two or more applications for authorization to collect a fee for the inspection of brands, marks, and other identifying characteristics of livestock are received from the same State, a hearing will be held to determine which applicant is best qualified.

(b) *Registration and filing of schedules.* Upon the issuance of an authorization to an agency or an association, said agency or association shall register as a market agency in accordance with the provisions of § 201.10, except that no bond need be filed or maintained, and shall file a schedule of its rates and charges for performing the service in the manner and form prescibed by § 201.17.

(c) *Reciprocal arrangements.* Any authorized agency or association may make arrangements with an association or associations in the same or in another State, where branding or marking livestock prevails by custom or statute, to perform inspection service at stockyards on such terms and conditions as may be approved by the Administrator: Provided, that such arrangements will tend to further the purpose of the Act and will not result in duplication of charges or services.

(d) *Maintenance of identity of consignments.* All persons having custody at the stockyard of livestock subject to inspection shall preserve the identity of the consignment until inspection has been completed by the authorized inspection agency. Agencies authorized to conduct such inspection shall perform the work as soon after receipt of the livestock as practicable and as rapidly as is reasonably possible in order to prevent delay in marketing, shrinkage in weight, or other avoidable losses.

§ 203.17 Statement of general policy with respect to rates and charges at posted stockyards.

(a) Requests have been received from stockyard operators, market agencies, and livestock producers urging a reduction of rate regulation at posted stockyards. Their requests are based on the belief that competition among markets will set a level of rates and charges fair to both the market operator and to the livestock producer. Packers and Stockyards Administration will accept for filing tariffs containing any level of charges after ten (10) days notice to the public and to the Secretary as required by the Act.

(b) Packers and Stockyards Administration will not investigate the level of rates and charges established by stockyard owners and market agencies for reasonableness except upon receipt of a valid complaint or under compelling circumstances warranting such an investigation. Stockyard owners and market agencies will have substantial flexibility in setting their own rates and charges.

(c) Complaints filed about the reasonableness of rates and charges will be investigated to determine the validity of such complaints and appropriate action taken if warranted.

(d) Packers and Stockyards Administration will continue to insure that the schedules of rates and charges filed with the Department are applied uniformly and in a nondiscriminatory manner.

3. It is proposed to add a new statement of general policy § 203.18 to read as set forth below.

§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

In its administration of the Packers and Stockyards Act, The Packers and Stockyards Administration has sought to promote and maintain open and fair competition in the livestock and packing industries, and to prevent unfair or anti-competitive practices when they are found to exist. It is the opinion of the Administration that the ownership or operation of custom feedlots by packers presents problems which may, under some circumstances, result in violations of the Packers and Stockyards Act.

Packers contemplating entering into such arrangements with custom feedlots are encouraged to consult with the Administration prior to the commencement of such activities. Custom feedlots are not only places of production, but are also important marketing centers, and in connection with the operation of a custom feedlot, it

is customary for the feedlot operator to assume responsibility for marketing fed livestock for the accounts of feedlot customers. When a custom feedlot is owned or operated by a packer, and when such packer purchases fed cattle from that feedlot, this method of operation potentially gives rise to a conflict of interest. In such situations, the packer's interest in the fed livestock as a buyer is in conflict with its obligations to feedlot customers to market their livestock to the customer's best advantage. Under these circumstances, the packer should take appropriate measures to eliminate any conflict of interest. At a minimum, such measures should insure: (1) That feedlot customers are fully advised of the common ties between the feedlot and the packer, and of their rights and options with respect to the marketing of their livestock; (2) That all feedlot customers are treated equally by the packer/custom feedlot in connection with the marketing of fed livestock; and (3) That marketing decisions rest solely with the feedlot customer unless otherwise expressly agreed.

Packer ownership or operation of custom feedlots may also give rise to competitive problems in some situations. Packers contemplating or engaging in the business of operating a custom feedlot should carefully review their operations to assure that no restriction of competition exists or is likely to occur.

The Packers and Stockyards Administration does not consider the existence of packer/custom feedlot relationships, by itself, to constitute a violation of the Act. In the event it appears that a packer/custom feedlot arrangement gives rise to a violation of the Act, an investigation will be made on a case-by-case basis, and, where warranted, appropriate action will be taken.

[FR Doc. 82-12866 Filed 5-11-82; 8:45 am]
BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[Rev. 9, Amt. 19]

Disaster Loans: Change in Policy

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises SBA's present home disaster loan regulations to prohibit the guarantee of loans which exceed SBA's administrative limits.

The above change is contemplated as a result of the serious adverse impact upon the nation's credit markets of Federal and federally-assisted borrowing. These borrowings have contributed to extremely high interest rates, the retarding of economic growth and disruption of financial markets.

DATE: Comments are to be received on or before June 11, 1982.

ADDRESS: Written comments are to be submitted in duplicate to the Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal may be directed to Bernard Kulik, telephone (202) 653-6879.

SUPPLEMENTARY INFORMATION: It is the responsibility of all homeowners to insure their homes, household contents and other personal property against all insurable hazards likely to occur in their locations. It is also prudent for each homeowner to periodically review existing hazard insurance policies and increase coverage whenever the cost to replace the insured property exceeds policy limits.

Direct home loans of up to $50,000 are available to restore a homeowner's primary residence. Direct loans to repair or replace household goods and personal items are limited to $10,000. A direct loan which combines the above purposes is limited to $55,000.

In addition, up to $50,000 may be available for refinancing of existing liens. A homeowner may qualify for direct loan assistance totaling $105,000.

It is SBA's belief that direct loan assistance currently available to supplement a homeowner's hazard insurance proceeds is adequate to permit restoration in full of disaster inflicted damage.

It is contemplated that the gross amount of disaster loan funds which will be made unavailable to homeowner disaster victims will contribute toward a reduction in interest rates, and/or such funds may be utilized in other areas of the economy. The $5,000 loan cancellation feature for disasters occurring between January 1, 1972 and April 20, 1973 has been deleted because it is obsolete.

Business loan regulations are also revised to incorporate both the $500,000 statutory limit on total disaster loan assistance to any one business for any one disaster, and the exemption from this limit provided for a business which constituted a major source of employment in an area suffering a disaster.

For the purposes of Executive Order 12291, SBA hereby determines that this rule will not constitute a major rule.

In addition, it is hereby certified pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that this rule will not have a significant economic impact on a substantial number of small entities. In this regard this rule affects only the applications of homeowners for SBA guaranteed disaster loan assistance, and, it merely sets forth statutory language with respect to businesses. Therefore, it does not have any economic impact upon small entities as defined in Section 601 of that Act, 5 U.S.C. 601.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

PART 123—DISASTER LOANS

§ 123.5 [Amended]

Accordingly, notice is given that, pursuant to the authority of Section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634(b)(5), § 123.5(a) of Chapter I of Title 13 of the Code of Federal Regulations is revised by removing subparagraph (4) in its entirety and revising subparagraphs (1) and (3) to read as follows:

(a) * * *

(1) SBA's share in a direct, immediate participation or guaranteed loan to any homeowner, including all members of the household, shall not exceed $50,000 for repair or replacement of the land or building, and shall not exceed $10,000 to repair or replace household goods and personal items: *Provided, however,* That SBA's share of any such loan or loans to repair or replace a home and household goods for any homeowner shall not exceed $55,000 in the aggregate for any one disaster, excluding eligible refinancing in an amount not to exceed the lesser of the physical damage to the real property or the amount of loan made to repair such property. Persons living in a damaged home who are not dependents of the homeowner may also apply for disaster assistance for personal property loss, up to $10,000.

(2) * * *

(3) The total of SBA's direct loans plus SBA's share of immediate participation and guaranteed loans to any one business concern for any one disaster may not exceed the statutory limit ($500,000). In the case of a major source of employment in an area suffering a disaster, the Administration may waive the $500,000 limitation. Applicants applying for such waiver shall be required to demonstrate to SBA's

satisfaction that applicant has used all funds from its own resources and from non-Federal credit available at reasonable interest rates and terms to alleviate the physical damage and/or economic injury sustained, plus eligible refinancing.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59008 (Physical Disaster Loans))

Dated: April 27, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-12970 Filed 5-11-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 17a

Centers for Industrial Technology

AGENCY: Office of Productivity, Technology and Innovation, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: This document announces the intention of the Department of Commerce to substitute new procedures for the Cooperative Generic Technology Program under Pub. L. 96-480 (the Stevenson-Wydler Act) and the Administration's curtailment of grant funds for that Program. Like its predecessor, this new activity will assist the private sector in establishing cooperative activities, which will include the development of needed generic technologies—those that underlie a broad range of industries in instances where it is inappropriate for individual firms, acting alone, to do so. While these procedures provide for technical support by the Department of Commerce to the private sector in forming Centers for Industrial Technology, the initiative, management, and funding for these Centers is solely the responsibility of the private sector. No grant money will be available from the Department of Commerce.

DATES: Comments must be received on or before June 11, 1982.

ADDRESSES: Comments should be directed to: The Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Egils Milbergs, Director, Office of Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-1561.

List of Subjects in 15 CFR Part 17a

Business and industry, Science and technology.

Dated: May 6, 1982.

Robert B. Ellert,

Acting Assistant Secretary for Productivity, Technology and Innovation.

Title 15 of the Code of Federal Regulations is hereby amended by revising Part 17a to read as follows:

PART 17a—CENTERS FOR INDUSTRIAL TECHNOLOGY

Sec.

17a.1 Purpose.
17a.2 Overview.
17a.3 Establishment of Centers.
17a.4 Workshops.
17a.5 Coordination/Cooperation with other Federal Agencies.
17a.6 Antitrust considerations.
17a.7 Submission of requests for assistance.
17a.8 Proprietary data.
17a.9 Advice in preparing requests for assistance.
17a.10 Amendment of procedures.

Authority: 15 U.S.C. 1512; sec. 2, 31 stat. 1449, as amended; sec. 1, 64 stat. 371 (15 U.S.C. 272); Reorg. Plan No. 3 of 1946, Part VI; Reorg. Plan No. 5 of 1950; Pub. L. 96-48, sec. 6.

§ 17a.1 Purpose.

The purpose of this part is to establish procedures under which the Department of Commerce will provide assistance for the establishment of Centers for Industrial Technology.

§ 17a.2 Overview.

(a) Section 6 of the Stevenson-Wydler Technology Innovation Act of 1980 authorizes the Secretary of Commerce to provide staff assistance for the establishment of Centers for Industrial Technology ("Centers"). Upon the request of an industry group or university wishing to establish such a Center, the Department of Commerce is authorized to provide staff advice and technical assistance. No funds are available from the Department of Commerce for the establishment of Centers.

(b) Among the activities which may be conducted by Centers are the following:

(1) Research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) Assistance to individuals and small businesses in the generation, evaluation, and development of technological ideas supportive of industrial innovation and new business ventures;

(3) Technical assistance and advisory services to industry, particularly small businesses; and

(4) Curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

§ 17a.3 Establishment of Centers.

Prior to providing staff assistance for the establishment of the private sector of a Center, the Secretary or his designate shall find that:

(a) Consideration has been given by the Center to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(b) A high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(c) The host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(d) Consideration has been given to any effects upon competition of the activities proposed under the Center.

§ 17a.4 Workshops.

Upon request, the Secretary may hold workshops with representatives from the private sector in order to further the objectives of this part. Notice of such workshops shall be published in the **Federal Register** and Commerce Business Daily, within a reasonable time before the workshop is to be held. Such notice shall state that the workshop is open to the public, and shall give its time and location.

§ 17a.5 Coordination/Cooperation with Other Federal Agencies.

While the Secretary is considering a request to provide staff assistance to establish a specific Center, it may become apparent that the request covers subjects that are of primary interest of another Federal agency(ies). In such a case, the Secretary will coordinate the request with the other agency or agencies. The Secretary also may seek cooperation from relevant Federal laboratories and agency programs that may be of assistance to Centers.

§ 17a.6 Antitrust Considerations.

(a) The Department of Commerce will offer no opinion on the antitrust merits of the formation of any Center. In those instances where a proposed Center meets the requirements stated in § 17a.3,

the Secretary may seek the Attorney General's opinion as to whether the proposed joint research activities of a Center would violate any of the antitrust laws.

(b) The *Antitrust Guide Concerning Research Joint Ventures*, published by the Department of Justice in November 1980 and for sale by the Superintendent of Documents, identifies certain behavior which could be construed as anticompetitive in the formation of joint research ventures, including:

(1) Collateral restraints:

(i) Restrictions upon members' operational use of technical information or patents developed by the Center;

(ii) Restrictions upon independent research conducted by individual members; and

(iii) Restrictions upon the use, by individual members, of technology developed outside the Center.

(2) Limitations upon access to the joint research venture or its results.

§ 17a.7 Submission of requests for assistance.

(a) Requests for staff assistance to be provided under this part should be directed to: Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230.

(b) Requests for assistance under paragraph (a), above, should provide sufficient documentary evidence for the Secretary to make the required finding under § 17a.3.

§ 17a.8 Proprietary data.

All persons making a request under Section 17a.7 are cautioned that data submitted to the Department may be vulnerable to dissemination under the Freedom of Information Act. The Department would, however, withhold any information it deemed proprietary, on the basis of the provision of 5 U.S.C. 552(b)(4). The Department will consult with the submitter of any data requested under the Freedom of Information Act prior to the release of such information.

§ 17a.9 Advice in preparing requests for assistance.

Any person may request assistance from the Department in preparing a request under § 17a.7. If appropriate, the Department may hold a workshop, as provided for in § 17a.4, to facilitate this process.

§ 17a.10 Amendment of procedures.

(a) The Secretary may amend these procedures by publishing in the **Federal Register** a notice of proposed amendment. A thirty (30) day period will be allowed from the date of publication for written comment by the public on the proposed amendment. Any amendment adopted shall be published in the **Federal Register.**

(b) If the Secretary finds for good cause that an amendment must be made in a shorter time period than required by this section, he may publish an interim amendment in the **Federal Register**, and at the same time, request comments as provided in paragraph (a) of § 17a.10.

[FR Doc. 82-12860 Filed 5-11-82; 8:40 am]
BILLING CODE 3510-18-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM82-23-000]

Revision of Report by Natural Gas Pipeline Companies on Service Interruptions Occurring on the Pipeline System

Issued: May 5, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 6, 1982, the Commission issued a notice of proposed rulemaking (47 FR 16644, April 19, 1982) which would revise its regulations relating to the reporting by natural gas companies of emergencies affecting companies' service or facilities. The revisions will improve the Commission's ability to perform its responsibilities with respect to assuring the adequacy and continuity of service of the companies that it regulates. At the request of the American Gas Association, Additional time is being granted for the filing of comments.

DATE: Comments are due May 18, 1982.

ADDRESS: Comments on this Notice should be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM82-23-000.

FOR FURTHER INFORMATION CONTACT: Mark A. Greenwald, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Room 6300-O, Washington, D.C. 20426, (202) 357-5789.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12833 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. R-82-934]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 24 CFR Part 115 which provides for recognition by the Department of those State and local fair housing laws which provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. The purpose of this proposed rule is to add additional jurisdictions to an existing list of recognized State and local agencies which the Department has found to be substantially equivalent.

DATE: Comment Due Date: June 11, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. The rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, (202) 426-3500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This Department is proposing to grant recognition to the fair housing laws of additional jurisdictions, pursuant to section 810(c) of Title VIII of the Civil Rights Act of 1968, as amended. The evaluation of the laws of these jurisdictions was conducted in accordance with the provisions of 24 CFR Part 115, with particular focus on §§ 115.2(a), 115.3 and 115.8. Those sections are set forth to give appropriate information to all parties with an interest in HUD's proposed action.

Section 115.2 Procedures for Recognition provides in (a): Recognition

under this part shall be based on a consideration of the following materials and information: (1) The text of the jurisdiction's fair housing law and any regulations or directives issued thereunder; (2) the organization of the agency responsible for administering and enforcing such law; (3) the amount of funds and personnel made available to such agency for fair housing purposes during the current operating year; (4) when considering agencies which have been in operation for 1 year or more, any available indicia of the agency's ability to satisfactorily administer its law consonant with the performance standards delineated in § 115.8; and (5) any additional documents which the agency may wish to have considered.

Section 115.3 Criteria provides: In order for a determination to be made that a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the law or ordinance must: (a) Provide for an administrative enforcement body to receive and process complaints; (b) Delegate to the administrative enforcement body comprehensive authority to investigate the allegations of complaints, and power to concililate complaint matters; (c) Not place any excessive burdens on the complainant which might discourage the filing of complaints; (d) Not contain exemptions which substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act which provides coverage with respect to all dwellings except, under certain circumstances, single-family homes sold or rented by the owner, and units in owner occupied dwellings containing living quarters for no more than four families; and (e) Be sufficiently comprehensive in its prohibitions so as to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., the prohibition of the following acts if they are based on discrimination because of race, color, religion, sex, or national origin:

(1) Refusal to sell or rent.

(2) Refusal to negotiate for a sale or rental.

(3) Making a dwelling unavailable.

(4) Discriminating in terms, conditions, or privileges of sale or rental, or in the provisions of services or facilities.

(5) Advertising in a discriminatory manner.

(6) Falsely representing that a dwelling is not available for inspection, sale or rental.

(7) Blockbusting.

(8) Discrimination in financing.

(9) Denying a person access to or membership or participation in multiple listing services, real estate brokers' organizations, or other services.

Provided, that a law may be determined substantially equivalent if it meets all of the criteria set forth in this section but does not contain adequate prohibitions with respect to one or more of the acts based on discrimination because of sex, or with respect to one or more of the cases described in paragraphs (e) (7), (8), and (9) of this section. (f) In addition to the factors described in paragraphs (a), (b), (c), (d), and (e) of this section, consideration will be given to the provisions of the law affording judicial protection and enforcement of the rights embodied in the law. However, a law may be determined substantially equivalent even though it does not contain express provision for access to State or local courts.

Section 115.8 Performance Standards provides: (a) The initial and continued recognition by the Secretary that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon, where applicable, an assessment of the State or local agency's administration of its fair housing law to insure that the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making such assessment. (b) A state or local agency must: (1) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law; (2) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices; (3) Establish a mechanism for monitoring compliance with any agreements or orders entered into with or issued by the State or local agency to resolve discriminatory housing practices; (4) Engage in comprehensive and thorough investigative activities; and, (5) Commence and complete the administrative processing of a complaint in a timely manner, i.e., the average complaint should, under ordinary circumstances, be investigated and, where applicable, set for conciliation within 30–45 days.

The Department is limiting the public comment period to 30 days. This is necessary in order to expedite the equivalency recognition process, so that the listed agencies may be recognized in time to be eligible to receive Fair Housing Assistance Program funding. Interested persons and organizations may on or before June 11, 1982, file written comments on the proposal. If after evaluating any comments so received, the Assistant Secretary for Fair Housing and Equal Opportunity is still of the opinion that recognition is appropriate, the Assistant Secretary shall grant such recognition by amending 24 CFR 115.11.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5128, 451 7th Street, SW., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act) the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was listed as item D) 3 (FH&EO 5–81) under the Office of FH&EO in the Department's Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act, August 17, 1981 (46 FR 41732).

The Catalog of Federal Domestic Assistance Program number is 14.400.

List of Subjects in 24 CFR Part 115

Fair housing, Intergovernmental relations.

PART 115—RECOGNITION OF SUBSTANTIALLY EQUIVALENT LAWS

Accordingly, it is proposed to amend 24 CFR 115.11 by adding the following jurisdictions:

§ 115.11 Jurisdictions with Substantially Equivalent Laws.

* * * * *

States

* * * * *

Montana

* * * * *

Localities

* * * * *

New Haven, Connecticut	Prince George's County, Maryland
Jacksonville, Florida	Kansas City, Missouri
St. Petersburg, Florida	Mecklenburg County, North Carolina
Bloomington, Illinois	New Hanover County, North Carolina
Evanston, Illinois	Knoxville, Tennessee
Springfield, Illinois	Beckley, West Virginia
Columbus, Indiana	Huntington, West Virginia
Gary, Indiana	Beloit, Wisconsin
South Bend, Indiana	
Iowa City, Iowa	
Salina, Kansas	
Wichita, Kansas	
Howard County, Maryland	

(Sec. 810(c) of the Civil Rights Act of 1968, 42 U.S.C. 3610; Sec. 234 of the Housing and Community Development Amendments of 1978)

Dated: April 19, 1982.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 82-12866 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-28-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 207, 213, 220, 221 and 232

[Docket No. R-82-977]

Issue Date of Debentures

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: In view of the fact that numerous mortgagees are unable to effect an assignment within the requisite 30 day period under existing regulations, the additional period provided in this proposal bestows an additional benefit upon such mortgagees. These proposed amendments provide for a change in the issue date of debentures which are issued in connection with the settlement of coinsurance, conveyed property, and assigned mortgage claims. A change in the definition of the date of a covenant default is also provided. The proposal would apply only to debentures issued on or after the effective date of the final rule.

DATE: Comment Due Date: July 12, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. The Proposed Rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Shirley A. Evans, Acting Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2202, Washington, D.C. 20410, (202) 755-6310. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The proposed amendments to the single family regulations require that debentures issued under the provisions of 24 CFR 203.410(a) (conveyed properties) be dated as of the later of: The date of default or the first day of the month next following the date on which an allowance for mortgage interest terminates under 24 CFR 203.402a; that debentures issued under the provisions of 24 CFR 204.351 be dated as of the first day of the month next following the date on which payment of insurance benefits occurred; and that debentures issued under the provisions of 24 CFR 203.410(b) and 203.486 (assigned mortgages) be dated as of the first day of the month next following the date of assignment and mature 20 years thereafter. In addition, in the above single family conveyance, assignment and coinsurance cases, there would be included a cash payment made to the lender in an amount equivalent to the debenture intertest which would have been earned from the date on which an allowance for mortgage interest was terminated under § 203.402a (conveyance cases); from the date the mortgage was assigned (assignment cases) and from the date on which payment of insurance benefits occurred (coinsurance cases) to the date of the debenture. This is in addition to the cash adjustment otherwise provided in § 203.411 (amended and redesignated herein as § 203.411(a)) of this chapter.

The proposed amendments to the multifamily regulations require that assignments under 24 CFR 207.258(b), 213.270(c), 220.821, 232.880 and 221.255(d) (a single family regulation) take place the first day of the first or second month (or the first of such later month as may be approved by the Commissioner in writing) following the date of the filing of the notice of intention to exercise the assignment option. Multifamily regulations which are not specifically cited herein are covered by these provisions through incorporation by reference.

In view of the fact that numerous mortgagees are unable to effect an assignment within the requisite 30 day period under existing regulations, the additional period provided in this proposal bestows an additional benefit upon such mortgagees. The proposal would apply only to debentures issued on or after the effective date of the final rule.

Under existing multifamily regulations, debentures issued in payment of a claim are dated as of the date of default (which, in monetary default cases, is always the first of the month); however, debentures issued in cases involving a covenant default (which could occur any day of the month) must be dated as of the date of default. The provisions of 24 CFR 207.255(d) have been amended to provide that the date of a covenant default be the first day of the month next following the date of the first uncorrected failure to perform a covenant or obligation. The net effect of these proposed amendments is to reduce the number of issue and maturity dates from a possible 365 to 12 annually.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item C) 14.(H-24-81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.115, 14.117, 14.118, 14.119, 14.121, 14.122, 14.127, 14.129, 14.134, 14.135, 14.137, 14.139, and 14.161.

List of Subjects:

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvements, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, Chapter II is proposed to be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart B—Contract Rights and Obligations

1. Section 203.410 would be revised to read as follows:

§ 203.410 Issue date of debentures.

(a) *Conveyed properties.* Where the property is conveyed to the Commissioner, debentures shall be dated and issued as of the later of:

(1) The Date of default as defined in this part or

(2) The first day of the month next following the date on which an allowance for mortgage interest terminates under § 203.402a.

(b) *Assigned mortgages.* Where the mortgage is assigned to the Commissioner, debentures shall be dated and issued as of the first day of the month next following the date of the assignment.

2. Section 203.411 would be revised to read as follows:

§ 203.411 Cash adjustment.

A check shall be issued to the mortgagee in payment of:

(a) Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim as approved by the Commissioner.

(b) An amount equivalent to the debenture interest from the date on which an allowance for mortgage interest terminates under § 203.402a to the date of the debentures.

(c) An amount equivalent to the debenture interest from the date of assignment of the mortgage to the date of the debentures.

3. Section 203.486 would be revised to read as follows:

§ 203.486 Issue date of debentures.

The debentures shall be dated and issued as of the first day of the month next following the date of the assignment of the loan.

4. Section 203.487 would be revised to read as follows:

§ 203.487 Cash adjustment.

A check shall be issued to the mortgagee in payment of:

(a) Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner.

(b) An amount equivalent to the debenture interest from the date on which an allowance for mortgage interest terminates under § 203.402a to the date of the debentures.

(c) An amount equivalent to the debenture interest from the date of assignment of the mortgage to the date of the debentures.

PART 204—COINSURANCE

Subpart B—Contract Rights and Obligations

5. Section 204.350 would be revised to read as follows:

§ 204.350 Debentures.

All of the provisions of §§ 203.405 through 203.409 and § 203.411(a) of this chapter shall apply to mortgages insured under this subpart, except that the debentures shall bear interest at the rate in effect on the effective date of the Mortgage Insurance Certificate.

6. Section 204.351 would be revised to read as follows:

§ 204.351 Issue date of debentures.

The debentures shall be dated and issued as of the first day of the month next following the date on which payment of insurance benefits occurs. A check shall be issued to the mortgagee in payment of an amount equivalent to the debenture interest from the date on which payment of insurance benefits occurs to the date of the debentures.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations

7. Section 207.255 paragraph (d) (1) would be revised to read as follows:

§ 207.255 Defaults.

* * * * *

(d) * * *

(1) The first day of the month next following the date of the first uncorrected failure to perform a covenant or obligation; or

* * * * *

8. The introductory text of § 207.258 (b) would be revised to read as follows:

§ 207.258 Insurance claim requirements.

* * * * *

(a) * * *

(b) Assignment of mortgage to Commissioner. If the mortgage elects to assign the mortgage to the Commissioner, it shall, on the first day of the first or second month following the date of the notice of such election, or on the first of such later month as may be approved by the Commissioner in writing, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. For purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. In addition, the following requirements shall be met:

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations—Projects

9. The introductory text of § 213.270 (c) would be revised to read as follows:

§ 213.270 Supplementary loans; election of action; claims; debentures.

* * * * *

(c) Items to be filed on submitting claim. For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the

first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first of such later month as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart D—Contract Rights and Obligations—Projects

10. The introductory text of § 220.821 would be revised to read as follows:

§ 220.821 Items to be filed on submitting claim.

For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first of such later month as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations—Low Cost Homes

11. Section 221.255 paragraph (d) would be revised to read as follows:

§ 221.255 Assignment option.

* * * * *

(d) The debentures issued pursuant to the exercise of an assignment option shall be dated and issued as of the date the mortgage is assigned to the Commissioner which shall be the first day of the first or second month (or the first of such later month as may be approved by the Commissioner in writing) following the date of the filing of the notice of intention to exercise the assignment option. For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. The debentures shall mature 10 years after the date of issuance.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart D—Contract Rights and Obligations

12. The introductory text of § 232.880 would be revised to read as follows:

§ 232.880 Items to be delivered on submitting claim.

For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first day of such later month as may be agreed upon by the Commissioner in writing, the lender shall deliver to the Commissioner:

* * * * *

(Sec. 211 of the National Housing Act (12 U.S.C. 1701 et seq.); Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)))

Dated: April 5, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12884 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 411]

Chalk Hill Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Sonoma County, California, approximately eight miles north of Santa Rosa, to be known as "Chalk Hill." This proposal is based upon a petition submitted by seven industry members in the area. Although the petitioners propose that the area be known as "Sonoma Chalk Hill," ATF is proposing the alternate appellation, "Chalk Hill." The establishment of viticultural areas and their subsequent use as appellations of origin in wine labeling and advertising will allow wineries to better designate the specific grape-growing areas where their wines come from and will enable consumers to better identify the wines they purchase.

DATES: Written comments must be received by July 12, 1982.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, [Notice No. 411].

Copies of the petition, the proposed regulations, the appropriate maps, and the wirtten comments will be available for public inspection during normal business hours at the ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jim Whitley, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations provide for the establishment of definite American viticultural areas and allow for their use as appellations of origin on wine labels and in wine advertisements. The American viticultural areas are listed in 27 CFR Part 9.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be

found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area of approximately 27 square miles, located in Sonoma County eight miles north of Santa Rosa, as a viticultural area requested by the petitioners to be known as "Sonoma Chalk Hill." Currently, there are more than 1,000 acres of producing vineyards and two producing wineries in the proposed area.

The petitioners claim that the proposed viticultural area is distinguished from surrounding areas by historical reference, climate, soil type, geographical and physical features. The petitioners base these claims on the following:

a. Use of the county name "Sonoma" as part of the viticultural area name will help consumers identify the wine from the petitioned area as being from Sonoma County and not from another political sub-division also known for wine production. The wine and grape-growing history of the proposed area follows closely that of Sonoma County.

b. Sonoma County has historically been known for its wine production. By the 1880's, Sonoma wines were receiving awards at expositions in the U.S. and abroad.

c. The area within the boundaries of the proposed viticultural area is known locally as "Chalk Hill" and takes its name from the hill of the same name located within the proposed areas.

d. Cultivation of grapes in Sonoma County began with the founding of Sonoma Mission in 1824. By 1855, grapes were being cultivated at Windsor, the principal town closest to the proposed area. By the mid 1890's, there were a half dozen wineries located in the Windsor area and 43 vineyardists farming 1,038 acres of grapes.

e. Reference in the *Historical Atlas Map of Sonoma County* (1877) documents vineyards at seven different locations of the Chalk Hill area.

f. References are made by long time residents in the Chalk Hill area to a Chisholm winery located on Chalk Hill Road which operated long before Prohibition. This winery operated at least until World War II since it is listed in the 1937 *Directory of American Wineries.*

g. References are also made to the Tarwater Winery in the southeast of the Chalk Hill area. The Tarwater Farm is shown on the 1877 *Atlas Map of Sonoma County.*

h. The proposed area is distinguished by a micro-climate with a marine influence. Based on the University of California heat summation scale, temperatures range from Region I, less than 2,500 degree days, to Region II, 2,501 to 3,000 degree days. Most of the area's vineyards lie within a zone comprised of thermal belts which protect them from damaging spring frost.

i. The climate of the proposed area is influenced by the location of Mount St. Helena in relation to the mouth of the Russian River and San Pablo Bay. The atmospheric conditions created by the relationship of these physical features results in a "September" vineyard area. This means that the harvests are usually completed by the end of September even for late-ripening grape varieties which are not normally harvested until October in surrounding areas. The proposed area is warmer than the greater Russian Valley and cooler than Alexander Valley and Dry Creek Valley.

j. The proposed Chalk Hill area is different from the surrounding areas of Alexander Valley, Dry Creek Valley and the Russian River Valley. Surveyors advise that public and professional perception of a valley is the valley floor itself. The vineyards of the Chalk Hill area are planted on lands which are gently rolling to steep and can be described as bench-lands, table-lands and hills. Many vineyards planted on the steeper slopes are contoured and terraced. Therefore, it is not correct to label a wine as being from a "valley" viticultural area unless the grapes are grown at the lower tillable elevation. A wine from grapes produced in one area will have some of the qualities of wine made from the same type of grape from each of the other areas, but it will also have qualities which are different.

k. The average annual rainfall in the proposed area is approximately 36 inches, almost all of which occurs between November 1 and March 31.

l. The proposed area is distinguished by "white" soil. The soils range from sandy to silt loam, clay and guartzite and are high in volcanic ash ("white" soil) deposited as a result of the volcanic activity of Mount St. Helena. The vineyards in the area are planted in deep soils but ones which are lower in fertility. This soil contributes to the high quality of the fruit produced by those vineyards.

m. The elevation of over 95% of the land in the proposed area ranges from 200 feet to about 1,330 feet compared with elevations on the floor off the Russian River Valley of about 100 feet. The predominant vineyard plantings in the area are at elevations ranging from 200 feet to 800 feet.

The boundaries of the proposed Chalk Hill viticultural area may be found on two U.S.G.S. 7.5 minute quadrangle maps, (Mark West Springs Quadrangle California and Healdsburg Quadrangle California).

The boundaries, as proposed by the petitioners, are described in proposed § 9.52.

Executive Order 12291

It has been determined that this notice of proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million dollars or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Chalk Hill viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Viticultural Area Name

ATF has reservations regarding the use of the county name, "Sonoma", in the appellation "Sonoma Chalk Hill" as the petitioners propose. While the petition documents the wine and grape-growing history of Sonoma County and states that the history of the "Chalk Hill" area closely follows that of the county, it does not sufficiently establish that the proposed area is known either locally or nationally as "Sonoma Chalk Hill." The petitioners have indicated

that their purpose for including the name of the county in the viticultural area is to inform the consumers that the Chalk Hill area is in Sonoma County. This identification could be achieved by placing "Sonoma County" on the label. In addition, ATF is concerned that consumers will confuse the "Sonoma Chalk Hill" appellation with the "Sonoma Valley" appellation, another proposed viticultural area in the county.

ATF, therefore, proposes that this viticultural area be known as "Chalk Hill." The petition supports this appellation. The Chalk Hill, located on the north boundary line, and the Chalk Hill Road, which runs north and south through the center of the proposed area, can be seen on the U.S.G.S. 7.5 minute map, Healdsburg Quadrangle California. The petitioners also state that the area is known locally as "Chalk Hill."

Viticultural Area Boundaries

ATF has noted that the proposed boundary lines for the Chalk Hill viticultural area depicted in § 9.52(a) (9) and (10) overlap into the proposed Alexander Valley viticultural area by a triangular strip of land, 550 feet at its widest point. In addition, the proposed Russian River Valley viticultural area includes all of the proposed Chalk Hill area except for that area which overlaps into the Alexander Valley viticultural area.

Public Participation—Written Comments

ATF requests interested persons to submit comments regarding this proposed viticultural area. Although this notice proposes possible boundaries for the Chalk Hill viticultural area, comments concerning other possible boundaries for this viticultural area will be considered as well. ATF is also particularly interested in comments regarding the viticultural area name and comments regarding the overlapping boundaries.

Since the petitioner has included in this petition an area that would overlap into the proposed Alexander Valley viticultural area and since the proposed Chalk Hill viticultural area would be totally within the proposed Russian River Valley viticultural area, ATF is particularly interested in receiving historical or current evidence that would substantiate that the subject overlapping areas have been historically or are currently known by both the other proposed viticultural area names. How should the boundaries be modified to eliminate the overlapping areas in absence of sufficient historical or current evidence?

All pertinent comments will be considered prior to the proposal of final regulations. Comments are not considered confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should make a request, in writing, to the Director within the 60-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine whether a public hearing will be held.

Drafting Information

The principal author of this document is Joan Deerwester, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau also participated in preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), ATF proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.52 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.52 Chalk Hill

Para. 2. Subpart C is amended by adding § 9.52 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.52 Chalk Hill.

(a) *Name.* The name of the viticultural area described in this section is "Chalk Hill".

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Chalk Hill viticultural area are the U.S.G.S. maps titled:

"Mark West Springs Quadrangle, California", 7.5 minute series, 1958; and

"Healdsburg Quadrangle, California", 7.5 minute series, 1955 (Photorevised 1980).

(c) *Boundaries.* The Chalk Hill viticultural area is located near the town of Windsor in Sonoma County, California.

(1) Beginning at the far southwestern corner of the area, on the "Healdsburg" quadrangle map, at the intersection of the county road, Arata Lane, with old U.S. Highway 101; thence running east along the south line of Section 2, Section 1 and Section 6 to the point of intersection with the Pacific Gas and Electric power line;

(2) Thence following the power line southeasterly to its intersection with Pool Creek; thence following Pool Creek south downstream to its intersection with the west line of Section 17; thence south along the section line to its meeting with the south line of Section 17;

(3) Thence following the south line of Section 17 east to its meeting the east line of Section 17;

(4) Thence continuing north on the east section line through Section 17 and into Section 8 to its intersection with Leslie Road;

(5) Thence following Leslie Road northeast to its intersection with the common section line between Sections 9 and 10;

(6) Thence southeast in a straight line crossing Section 10 and continuing to the junction of a drainage (running North) with the major creek known as Mark West Creek in the southwest corner of Section 11; thence 600 feet northeast in a straight line to its intersection with the Porter Creek Road, the point of intersection lies 600 feet north of the south line of Section 11 and 950 feet east of the west line of Section 11;

(7) Thence northeasterly along Porter Creek Road to its junction with Franz Valley Road; thence northeasterly, northerly, and northwesterly following Franz Valley Road to its intersection with Franz Creek (this intersection bears from the Northeast corner of Section 25, approximately west 2,030 feet and north 1,150 feet from this section corner); thence following Franz Creek downstream in a northwesterly direction to its intersection with the common line of Sections 21 and 22;

(8) Thence south along the section line to the southeast corner of Section 21;

(9) Thence west following the south line of Section 21 and continuing west as the south line of Section 20 and along a

straight line to its intersection with Chalk Hill Road;

(10) Thence southwest along this road 550 feet;

(11) Thence northwesterly in a straight line intersecting the top of Chalk Hill and extending in a straight line 2,850 feet to its intersection with the Russian River; thence westerly and northwesterly along the Russian River 5,200 feet, to the point on the west bank of the northerly terminus of an unnamed road (known locally as Grant School Road);

(12) Thence following this road southeasterly and southwesterly to its intersection with the Pacific Gas and Electric power line;

(13) Thence continuing southwest from this point in a straight line to the point of beginning.

Signed: March 9, 1982.

G. R. Dickerson,

Director.

Approved: April 6, 1982.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12801 Filed 5-11-82; 8:45 am]

BILLING CODE 4510-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-022]

Hazard Communication; Public Hearings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking; modification of hearing notice.

SUMMARY: On March 19, 1982, OSHA Published a notice of proposed rulemaking (NPRM) on hazard communication in the **Federal Register** (47 FR 12092). A notice announcing dates and locations for public hearings on the NPRM was published on April 16, 1982 (47 FR 16348).

The locations announced for the hearings were Washington, D.C., Houston, San Diego and Detroit. The selection of these sites was based primarily on geographical considerations. Interested parties have since suggested that participation on the West Coast could be significantly increased by moving the hearing site there from San Diego to Los Angeles. OSHA has agreed to this suggestion and is hereby announcing that the hearing originally scheduled for San Diego on July 20, 1982, will take place instead in Los Angeles at the address indicated below. The other hearings will take place on the dates and at the locations announced in the April 16th notice at 47 FR 16348. The hearings will be conducted in accordance with the procedures specified in the March 19th NPRM at 47 FR 12119.

In order to allow interested parties more opportunity to decide to participate in the regional hearings, OSHA is also hereby extending the time for submission of notices of intention to appear and statements for these regional hearings. Notices and statements for participants in the Washington, D.C. hearing are still due May 18, 1982, and June 1, 1982, respectively.

DATES: Notices of intention to appear at the regional hearings must be received on or before June 15, 1982. Statements and any documentary evidence to be presented at these hearings must be submitted by July 1, 1982.

The date each hearing will begin and the cities in which they will be held are as follows:

Date hearing begins	City
1. June 15, 1982	Washington, D.C.
2. July 13, 1982	Houston, Texas.
3. July 20, 1982	Los Angeles, California.
4. July 27, 1982	Detroit, Michigan.

ADDRESSES: Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitutuion Avenue, N.W., Room N3635, Washington, D.C. 20210, (202) 523-8024.

The address for the hearing on July 20, 1982 is:

Santa Barbara (A) Room, Western Bonaventure Los Angeles Hotel, Fifth and Figueroa Streets, Los Angeles, California.

Notices of intention to appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying in the Docket Office. Docket H-022, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room S6212, Washington, D.C. 20210; (202) 523-7894.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3635, Washington, D.C. 20210; (202) 523-8024.

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3663, Washington, D.C. 20210; (202) 523-7166.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 82-12875 Filed 5-10-82; 12:03 pm]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 221 and 231

Oil and Gas Operating Regulations Operating Regulations for Exploration, Development, and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing operating regulations for both oil and gas and exploration, development, and production of solid minerals other than coal, to facilitate operations for tar sand development under the Combined Hydrocarbon Leasing Act of 1981. The objective is to provide procedures for a wide variety of operational methods with the least regulatory burden.

DATES: Comments on this proposed rulemaking must be received by June 11, 1982.

ADDRESS: Comments may be mailed to: Mr. Andrew V. Bailey, Acting Chief, Minerals Management, Minerals Management Service, National Center, Mail Stop 656, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535, Mr. James J. Travis, (703) 860-7506, (FTS) 928-7506, or Mr. Stephen H. Spector, (703) 860-6259, (FTS) 928-6259.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. Gerald R. Daniels, Chief, Branch of Fluid Minerals Management; Mr. James W. Hager,

Office of the Deputy Minerals Manager—Oil Shale, Grand Junction, Colorado; and Mr. Stephen H. Spector, Branch of Onshore Rules and Procedures, assisted by the Office of the Solicitor.

The Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070) (Act) amends the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) by redefining oil to include all nongaseous hydrocarbons except coal, oil shale, and gilsonite (including all vein-type solid hydrocarbons), and by establishing a competitive leasing system for combined hydrocarbon leases in designated areas. Some such areas were designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077). The Act allows holders of Federal oil and gas leases existing as of November 16, 1981, and valid mining claims to any hydrocarbon resources leasable under section 17 of the Mineral Lands Leasing Act which were filed prior to January 21, 1926, in these Special Tar Sand Areas, to convert those leases or mining claims to combined hydrocarbon leases. The Act requires that the Secretary of the Interior promulgate regulations governing such conversions within 6 months of the Act's effective date of November 16, 1981. These proposed regulations provide cross references to both the new authority and the conversion regulations that will be administered by the Bureau of Land Management (BLM), and revise the definition of oil so that proposed plans of operation and actual exploration and development may be regulated under the rules administered by the Minerals Management Service (MMS).

Under the regulations proposed by the BLM and the previously established division of responsibilities within the Department of the Interior, the MMS will have specific responsibility to approve operating plans prior to the conversion of existing leases and/or valid mining claims to combined hydrocarbon leases, and to supervise operation on such newly issued leases. This rulemaking is designed to provide regulatory authority for both requirements with the least actual regulatory burden by utilizing existing rules for both mining and oil field operations.

The proposed conversion regulations which would be administered by the BLM (43 CFR Part 3140) provide for the approval of a plan of operations by the MMS prior to conversion. The content of these plans is already governed by the regulation in 30 CFR Part 231. In addition, through cross reference, those proposals for in situ operations involving drilling similar to conventional oil field exploration and production are referred to 30 CFR Part 221. By this means, an applicant wishing to propose an operation which would be basically borehole drilling, would be referred to the drilling regulations for the type of information needed in a plan. Plans currently submitted under Part 231 vary greatly depending on the specific mineral being developed, the geology of the site, as well as geographic and special surface conditions. Plans submitted for approval under 30 CFR Part 231 currently cover minerals as different as oil shale on public lands or silica sand or uranium on acquired or Indian lands. The amount of specificity and documentation to render all plans acceptable varies greatly under the regulation now in use.

The Mining Supervisor shall advise the applicant and the BLM as to the initial completeness of the operating plan and the nature of any required additional information. Following review and ultimate determination of acceptability of the plan, the Supervisor shall notify the authorized officer of the BLM and forward any specific stipulations which should be included in the lease. Since this process is similar to established practice, it has not been deemed necessary to establish a separate part within the regulations to govern operations for tar sand exploration and development. Specific comments are requested concerning this decision not to promulgate a new part for tar sand operations and development.

Parts 221 and 231 already contain comprehensive information collection and recordkeeping requirements. These existing requirements will simply be applied to mining and/or drilling operations for tar sand recovery. Requests for approval of existing information collection and recordkeeping requirements have been prepared to obtain Office of Management and Budget approval under the Paperwork Reduction Act of 1980. It should not be necessary to obtain separate approval for this rulemaking since no expansion is contemplated of the basic provisions requiring infomation from lessees.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. The Department has also certified that this rulemaking will not have a significant economic impact on a substantial number of small entitites; thus, a small entity flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96–354) is not required.

List of Subjects:

30 CFR Part 221

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 231

Environmental protection, Government contracts, Mineral royalties, Public lands-mineral resources, Mines, Reporting and recordkeeping requirements.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189), and the Act of November 16, 1981, Pub. L. 97–78 (95 Stat. 1070), it is proposed to amend Parts 221 and 231, Chapter II, Title 30 of the Code of Federal Regulations as set forth below:

PART 221—OIL AND GAS OPERATING REGULATIONS

1. Part 221 is amended by amending the Authority citation to include the following additional citation:

Authority: * * *; and the Combined Hydrocarbon Leasing Act of November 16, 1981 (Pub. L. 97–78, 95 Stat. 1070).

2. Section 221.2 is amended by revising paragraph (p) to read as follows:

§ 221.2 Definitions.

* * * * *

(p) *Oil.* Any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand. Hydrocarbon extraction from tar sand is also governed by the regulation at 30 CFR Part 231.

PART 231—OPERATING REGULATIONS FOR EXPLORATION, DEVELOPMENT, AND PRODUCTION

3. Part 231 is amended by amending the Authority citation to include the following additional citation:

* * * * *

Authority: * * *; and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070).

4. Section 231.1 is amended by revising paragraph (a) and the cross reference at the end of the section to read as follows:

§ 231.1 Scope and purpose.

(a) The regulations in this part shall govern operations for the discovery, testing, development, mining, and processing of all minerals under leases or permits issued for Federal lands pursuant to the regulations in 43 CFR Group 3500 or Part 3140 and of all minerals (except coal, oil, and gas) on tribal and allotted Indian lands leased pursuant to the regulations in 25 CFR Parts 171, 172, 173, 174, and 176. For operations involving the extraction of hydrocarbon from tar sand or oil shale by in situ methods utilizing boreholes or wells the regulations in 30 CFR Part 221 also apply.

* * * * *

Cross Reference: See Part 211 of this chapter for regulations governing operations under coal permits and leases. See Part 221 of this chapter for regulations governing operations under oil and gas, or combined hydrocarbon leases and operations for the extraction of hydrocarbon from tar sand and oil shale by in situ or other methods utilizing boreholes or wells.

Dated: April 8, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

[FR Doc. 82–12892 Filed 5–11–82; 8:45 am]

BILLING CODE 4310–MR–M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property Solicitations to Postal Employees by Mail or Telephone

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Existing postal regulations prohibit soliciting, electioneering, advertising and similar activity on postal premises. The Postal Service believes the prohibition applies whether or not the person engaging in the activity is physically present on those premises. However, we propose to amend the regulations to make it unambiguously clear that the prohibition includes such activity when carried out by telephone or by mail directed to postal employees on postal premises.

DATE: Comments must be received on or before June 11, 1982.

ADDRESS: Written comments should be addressed or delivered to Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Room 9012, Washington, DC 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m. at the same location.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 245–4584.

SUPPLEMENTARY INFORMATION: Existing Postal Service regulations which govern conduct on postal property generally prohibit soliciting, electioneering and similar activity on postal premises. Section 232.1 paragraph (h) of 39 CFR provides in pertinent part:

Soliciting, Electioneering, Collecting Debts, Vending, and Advertising. Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial soliciting and vending, and displaying or distributing commercial advertising on postal premises are prohibited

* * *

The Postal Service considers that § 232.1(h), as properly interpreted, applies to soliciting, electioneering and the other listed activities when conducted on postal property by means of mail or telephone calls directed to postal employees working on that property, even though the person engaging in the prohibited acts is not physically present. The language of § 232.1(h), however, does not provide unambiguous notice of this interpretation. It is proposed to amend Part 232 to add a new subparagraph which will make it clear that paragraph (h) applies to these activities.

We think it particularly appropriate to propose this provision at this time since, by notice of rulemaking published elsewhere in this issue, the Postal Service is adopting amendments to its regulations on the release of information to reflect the procedures developed to implement the decision of the U.S. District Court for the Northern District of Texas that the Freedom of Information Act requires the disclosure of lists of employees working at particular postal facilities. *National Western Life Insurance Co.* v. *United States*, 512 F.Supp. 454 (N.D. Tex. (1980)).

The requests we have received for lists of this nature have been submitted almost exclusively by insurance companies, and we think it reasonable to infer that they are in many instances being sought for use in commercial solicitation. The proposed amendment would guard against the attempted conduct of such activity on postal property and in so doing would complement the long-standing Postal Service policy against the receipt by its employees of personal mail at their work locations. For the general information of the public, we reprint here a statement of that policy as it currently appears in section 424.14 of the Postal Operations Manual, an administrative manual governing the internal operations of mail-handling facilities.

424.14 Handling of Employees' Personal Mail Addressed to Their Work Location.

.141 *Policy.* Postal employees must not receive personal mail at their place of employment. Mail addressed to an employee at any postal facility's address is generally considered to be addressed to and intended for the Postal Service rather than the employee.

.142 *Personal Mail to Employee.* Any item of mail addressed to an employee at a postal facility's address, which is known or appears to be intended for the employee personally, may be refused, but must not be opened. (See 424.144.)

.143 *Mail to Employee in an Official Capacity.* Any item of mail addressed to an employee at a postal facility's address, which is known or appears to be intended for the Postal Service or for the employee in his or her official capacity, may be opened by the Postal Service, without the employee's knowledge or consent, after it is delivered to that facility. (See 424.144.)

.144 *Exceptions.*

a. Official USPS mail or circulars and other mail or circulars that appear to relate to postal employment (such as mail or circulars from the employee unions or from postal uniform vendors) and are intended for individual employees, must be delivered without being opened.

b. In the case of an apparent emergency, the Postal Service must accept delivery of personal mail addressed to an employee, and the head of the facility must attempt to deliver the mail to the employee.

The Postal Service wishes to emphasize that the proposed rule would not apply to mail directed to postal employees who receive mail through post office boxes.

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—CONDUCT ON POSTAL PROPERTY

In § 232.1(h), the unnumbered first paragraph is designated as paragraph (h)(1) and present paragraphs (1), (2), and (3) are redesignated as (i), (ii), and (iii). In addition, paragraph (h)(2) is added making the section read as follows:

§ 232.1 Conduct on Postal Property.

(h) * * *

(1) * * *

* * * * *

(2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-12897 Filed 5-11-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2090-7]

Approval and Promulgation of Implementation Plans; Florida; Variance for FP&L

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On February 29, 1980 (45 FR 13455), EPA approved a Florida implementation plan revision which gave certain units of Florida Power and Light Company (FP&L) a two-year variance from the plan's limitations on particulate, sulfur dioxide, visible, and excess emissions. EPA disapproved the revision for the Turkey Point and Port Everglades plants, however. On October 15, 1980 (45 FR 68405), EPA proposed to disapprove a request by Florida that the two-year term of the variance be extended indefinitely. The U.S. Court of Appeals for the Fifth Circuit later ruled that EPA's partial disapproval of the original variance was made on an improper basis and that the two-year limitation was void. Accordingly, the Agency today proposes action on the revision for these two plants that accords with the court's decision. EPA proposes again, but on the basis ordered by the court, to disapprove the variance for the Turkey Point and Port Everglades plants. EPA also proposes to remove the two-year limitation on the variance for the other plants. The public is invited to submit written comments on the proposed actions.

DATE: EPA will consider written comments received on or before June 11, 1982.

ADDRESSES: Send written comments to Archie Lee of the EPA Region IV Air Programs Branch at the Atlanta address below. Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M St SW., Washington, D.C. 20460

Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, EPA Region IV, at the above Atlanta address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On August 28, 1979, the Florida Department of Environmental Regulation (DER) issued an order granting FP&L a variance from certain limitations of the State implementation plan on particulate, sulfur dioxide, visible, and excess emissions from seventeen of the company's units. These units are at the company's Cape Canaveral, Fort Myers, Manatee, Riviera, Sanford, Turkey Point, and Port Everglades plants. A Final Supplemental Order issued by DER on October 18, 1979, limited the variance to a period of two years. On February 29, 1980 (45 FR 13455), EPA approved the FP&L variance for all the units except those of the Turkey Point and Port Everglades plants, for which it disapproved the variance. This partial disapproval was based on EPA's finding that the relaxation of emission limits for these two plants would cause violation of the Class I sulfur dioxide increments of 40 CFR 52.21, Prevention of significant deterioration (PSD), in the Everglades National Park. This determination was made using the PSD baseline date (August 7, 1977) specified in the PSD regulations then in effect.

On June 23, 1980, DER requested that EPA withdraw the two-year time limit on the variance. EPA proposed on October 15, 1980 (45 FR 68405), to disapprove the State's request.

Following suit brought by the company against EPA, the United States Court of Appeals for the Fifth Circuit ruled on June 29, 1981, in *Florida Power & Light Co.* v. *Costle* (No. 80-5314), that EPA had erred in using the August 7, 1977, baseline date to calculate consumption of the Class I PSD increment for sulfur dioxide in Everglades National Park. On this basis, the court set aside EPA's disapproval of the variance for the Turkey Point and Port Everglades plants. The court ruled that EPA's present definition of "baseline date" should be used to determine PSD increment consumption—that is, the baseline should be reckoned as the air quality on the date of the first application (after August 7, 1977) for a PSD permit in the area. EPA has recalculated the increment consumption in accordance with the court's directive. Using the current baseline definition, the Agency still finds that the relaxed limits for Turkey Point and Port Everglades will cause violation of the Class I sulfur dioxide increments in the Everglades National Park. Accordingly, EPA proposes again to disapprove the variance for these two plants.

The court also voided the two-year limit on the variance. Accordingly, EPA proposes to withdraw this feature of the revision in keeping with the State's request. This means that the relaxed emission limits will be in effect until revised by the State.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified this proposed rule will not, if promulgated, have a significant impact on a substantial number of small entities. The indefinite extension of the variance will have no adverse economic effect on the units concerned. In any case, the proposed disapproval action only applies to two large plants.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 103 of the Clean Air Act (42 U.S.C. 7410 and 7473))

Dated: March 31, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-12866 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 00000/P230; PH FRL 2122-6]

F. D. & C. Blue No. 1; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish an exemption from the requirement of a tolerance for F. D. & C. Blue No. 1 when used as an aquatic plant control agent. This proposed regulation to eliminate the need to establish permissible level for residues of the chemical was requested by Aquashade Inc.

DATE: Written comments must be received on or before June 11, 1982.

ADDRESS: Written comments to: Peter Gray, Registration Division (TS-767C), Process Coordination Branch, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Peter Gray, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Aquashade, Inc., PO Box 198, Eldred, NY 12732, the Administrator proposes to amend 40 CFR Part 180, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, by establishing an exemption from the requirement of a tolerance for residues of F. D. & C. Blue No. 1 when used as an aquatic plant control agent.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of active ingredient	Name and address of requestor	Basis for approval
F. D. & C. Blue No. 1	Aquashade, Inc., P.O. Box 198, Eldred, NY 12732.	21 CFR 74.101 permits use of F. D. & C. Blue No. 1 for coloring foods. 21 CFR 74.1101 permits use of F. D. & C. Blue No. 1 for coloring ingested drugs.

Based on the above information, and a review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to the environment. It is concluded therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains this inert ingredient may request, on or before June 11, 1982, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear notation indicating both the subject and the petition/document control number "[OPP-300056]". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767C), Rm. 716D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514, 21 U.S.C. 346(e))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 4, 1982.

Douglas C. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR Part 180 be amended by establishing a new § 180.1074 to read as follows:

§ 180.1074 F. D. & C. Blue No. 1; exemption from the requirement of a tolerance.

F. D. & C. Blue No. 1 is exempted from the requirement of a tolerance when used as an aquatic plant control agent.

[FR Doc. 82-12865 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Semi-Annual Agenda of Significant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Publication of Semi-Annual Agenda.

SUMMARY: The Commission publishes a Semi-Annual Agenda to provide the public with adequate notice of significant proceedings under development or review, as prescribed in Executive Order 12291 (17 February 1981). This edition of the agenda, in compliance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) includes notations on the applicability of the Regulatory Flexibility Act to each item. This fulfills the requirement that all agencies publish Regulatory Flexibility Agenda in April and October of each year.

EFFECTIVE DATE: April 30, 1982.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudette Pride, Office of the Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Semi-Annual Agenda of Significant Proceedings

The Commission wants to encourage greater public participation in the FCC rule making process. To help keep the public informed of significant rule making proceedings, the Commission has prepared an agenda of important proceedings now in progress. The

Commission expects to publish an agenda of significant proceedings in the **Federal Register** every six months.

The following terms may be helpful in understanding the status of the proceedings included in this report:

A Docket Number is assigned to a proceeding if the Commission has issued either a Notice of Proposed Rule Making or a Notice of Inquiry in regard to the matter under consideration. Since January 1, 1978, the Commission has used docket numbers which consist of the last two digits of the calendar year in which the docket was established plus a sequential number which begins at 1 with the first docket initiated during a calendar year (e.g. Docket 78–1 or Docket 79–1). The abbreviation for the responsible Bureau usually precedes the docket number, as in "BC Docket 79–164." When a docket number consists of only five digits (e.g. Docket 29622), this indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI)—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rule Making (NPRM)—issued by the Commission when it is proposing a specific change to the FCC Rules and Regulations. Before any changes are actually made, interested parties may submit written comments on the proposals.

Memorandum Opinion and Order (MO&O)—issued by the Commission to deny a petition for rule making, conclude an inquiry, modify a decision, or deny a petition for reconsideration of a decision.

Report and Order (R&O)—issued by the Commission to state a new or amended rule or state that the FCC Rules will not be changed.

Rule making (RM) Number—assigned to a proceeding after the appropriate Bureau/Office has reviewed a petition for rule making, but before the Commission has taken action on the petition.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
			Broadcast		
20418	New VHF Channel Assignments; Roger Holberg, 632-7792.	Yes No X	Study of possibility of assigning new VHF channels in the Top-100 markets, specifically at this time in Charleston, West Virginia, Johnstown or Altoona, Pennsylvania, Knoxville, Tennessee, and Salt Lake City, Utah.	(1) R&O on Petitions for reconsideration being drafted; (2) R&O on Rule Making being drafted. (See also entry for BC 80-719, below.).	(1) 3rd quarter; (2) 4th quarter, fiscal year 1982.
21049	Commercial Television Network Practices; Israel Tetelbaum, 632-7792.	Yes X No	Inquiry into practices and policies of the three major television networks regarding the acquisition and distribution of television programming.	Network inquiry special staff has made final report to Commission. B/cast Bureau is preparing staff summary and recommended actions concerning special staff report.	3rd quarter, fiscal year 1982.
21310	FM Quadraphonic Broadcasting; Greg DePriest, 632-9660.	Yes No X	Inquiry into whether Commission should authorize a quadraphonic FM broadcasting system.	Notice of Proposed Rule Making (NPRM) adopted July 17, 1980. Reply comments closed on February 1981. R&O being drafted.	3rd quarter, fiscal year 1982.
21313	AM Stereo; Gregory DePriest, 632-9660.	Yes No X	The Commission must decide what, if any, standards should be established for the transmission of stereophonic program material by AM broadcast stations.	R&O adopted Mar. 4, 1982	
21474	Equal Employment Opportunity in the Broadcast Industry; Steve Bookshester, 632-7792.	Yes No X	Revision of FCC Form 395, the annual employment form filed by broadcasters, to make it more useful in monitoring the broadcasters' commitment to equal employment opportunity.	Additional NPRM to explore modifications of EEO rules being drafted.	
21502	Subscription (Psy) TV Operations; Freda Thyden, 632-7792.	Yes X No	Inquiry to determine whether current rules governing pay TV operation are necessary or desirable.	A further NPRM proposing further deregulation of STV service adopted Sept. 30, 1981. Report and Order to be drafted.	3rd quarter, fiscal year 1982.
BC 78-239	Voting Trusts; Steve Bookshester, 632-7792.	Yes No X	Inquiry to determine what types of ownership interests are cognizable for purposes of the FCC's ownership rules.	NOI/NPRM adopted July 1978; comment period closed December 1978.	3rd quarter, fiscal year 1982.
BC 78-253	Inquiry Into the Proper Role of Television Translators and Low-Power TV Broadcasting; Molly Pauker, 632-7792.	Yes X No	Inquiry into uses of television translators, especially in rural areas, to determine if rules concerning translators should be changed to permit program origination and/or subscription service.	Report and order adopted Mar. 4, 1982	
BC 79-184	Reduction of AM Bandwidth to 9 kHz; Larry Olson, 254-3394.	Yes No X	Inquiry into reduction of spacing between AM channels from 10 kHz to 9 kHz.	Final resolution is awaiting results of Region 2 conference on AM broadcasting, to be held in November 1981.	2nd session of Reg. 2 Conf. did not adopt 9 kHz spacing.
BC 79-269	New Jersey UHF-TV Assignments; Gordon Godfrey, 632-9660.	Yes No X	Study to assign 6 UHF-TV frequencies to various New Jersey communities.	NPRM adopted Oct. 18, 1979. Record closed August 1980. R&O being developed.	4th quarter, fiscal year 1982.
BC 79-270	New Jersey UHF-TV Financial Viability; Martin Blumenthal, 632-7792.	Yes No X	Study of means by which the New Jersey UHF-TV stations created in BC Docket 79-269 (above) might best become financially viable.	NPRM adopted Oct. 18, 1979 in conjunction with BC Docket 79-269; record closed August 1980.	Final action projected for same time as BC Docket 79-269, above.
BC 80-90	Use of FM Frequencies; Kathryn Hosford, 632-9660.	Yes No X	Study of means for increasing the use of FM frequencies.	NPRM issued on Feb. 28, 1980; reply comments closed on Mar. 2, 1981. R&O being drafted.	3rd quarter.
BC 80-130	Processing of FM Rule Making Petitions; Mark Lipp, 632-7792.	Yes No X	Study of possible modifications to the procedures for processing FM petitions.	R&O being drafted in conjunction w/BC 80-90 (see above).	3rd quarter.
BC 80-180	Reduction of Financial Reporting Requirements; Brian Fontes, 632-7792.	Yes X No	Proposal to eliminate or substantially reduce amount of financial data to be reported to the Commission.	R&O adopted Mar. 11, 1982	
BC 80-719	Reassignment of VHF-TV Frequency to New Jersey; Mark Lipp, 632-7792.	Yes No X	Study of possibility of reassigning the Channel 9 VHF-TV frequency from New York City to a New Jersey community.	NPRM adopted Nov. 6, 1980. Matter being held in abeyance pending resolution of RKO appeal by Federal court. Oral argument held October 1981.	
81-741	Teletext Authorization; Alan Stillwell, 632,6302.	Yes X No	Proposal to set non-interference, non-degradation of main signal quality parameters for teletext transmission by broadcasters.	NPRM adopted Oct. 22, 1981. Comments and reply comments due 90 days after issuance.	4th quarter, fiscal year 1982.
81-486	Elimination of Some Requirements for Public Broadcasters; John Kamp, 632-6302.	Yes X No	Proposal to eliminate or modify rules pertaining to programming, ascertainment and program logs for public broadcasters.	NPRM adopted July 30, 1981. Comments and reply comments due by Dec. 18, 1981.	4th quarter, fiscal year 1982.
			Office of Plans and Policy		
80-603	Direct Broadcast Satellites; Florence Setzer, 653-5940.	Yes X No	Proposed policies for regulation of direct broadcast satellites (DBS).	NOI issued in October, 1980. NPRM issued in June 1981. 14 applications received; 9 accepted for filing. Petitions for reconsideration of applications denied.	Report and Order, second quarter 1982.
			Office of Science and Technology		
RM-3524	Air to Ground Telephone Service at 900 MHz; Mel Murray, 653-8186.	Yes No X	This proposed system is designed to serve passengers on commercially scheduled airlines in the contiguous United States. Airfone, the petitioner, plans to use single sideband modulation, proposes the use of a total of 4 MHz of spectrum to provide 310 two-way voice channels which will be interconnected to the public telephone network.	The feasibility of the technical approach proposed by Airfone is presently being evaluated by Commission staff. Airfone is conducting hardware and operational testing under a Part 5 developmental license. Upon completion of testing and evaluation, a decision will be made as to whether or not to proceed with rulemaking.	

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
RM-3747	Utilities Telecommunications Council	Yes	The Petitioner seeks improved regulatory recognition	NPRM adopted Jan. 13, 1982	

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
RM-3747	Utilities Telecommunications Council Power Line Carrier Petition; Sam Tropea, 653-8164.	Yes No X	The Petitioner seeks improved regulatory recognition and protection for electric utility powerline carrier systems in the 10-490 kHz band.	NPRM adopted Jan. 13, 1982	
Gen. Docket 81-413	Spread Spectrum Communications Technology; Michael Kennedy, 632-7073.	Yes No X	Inquiry into possible civil applications of spread spectrum communications technology and possible rule marking needed to permit its use (it is implicitly forbidden under present rules).	Comments have been received and are under review. Deadline for reply comments is June 30, 1982.	
Gen. Docket 80-366	Broadcasting-Satellite Planning Conference; Edward Jacobs, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1983 ITU Region 2 Conference to plan the use of 12 GHz broadcasting-satellites in the Western Hemisphere.	Second NOI was adopted March 25, 1982	
Gen. Docket 80-184	Mobile Services Conference; Lawrence Palmer, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1982 ITU World Conference on the Mobile Radio Services.	Fourth NOI has been adopted	The Report and order is scheduled for the third quarter fiscal year 1982.
Gen. Docket 80-739	WARC-79 Implementation; Fred Thomas, 653-8171.	Yes No X	The requirements of the Final Acts of WARC-79 necessitate an overhaul of Section 2.106—Table of Frequency Allocations. The changes proposed make use of a draft table developed within IRAC Ad Hoc 172.	The Fifth NOI is expected to appear on the Commission Agenda in June 1982.	
Gen. Docket 80-741	Space Services Planning Conference (Space WARC); Thomas S. Tycz, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1984/1985 (2nd session) ITU WARC on Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It.	The second NOI is expected to be on the Commission agenda in the third quarter, fiscal year 1982.	
Gen. Docket 78-369	Radio Frequency Interference to Electronic Equipment; Mike Kennedy, 632-7073.	Yes No X	Inquiry to determine extent of radio frequency interference to electronic equipment and need for government regulation to lessen such interference.	Comments have been received and are being reviewed. Options are actively being considered by the staff.	
21371	Description of Test Measurement Facilities; Syd Bradfield, 653-8247.	Yes X No	Amendment of Part 2 of the Rules establishing criterion to determine the suitability of a test site for making measurements to determine compliance of equipment subject to the Commission's authorization program.	An Order terminating the proceeding is expected to be completed in the third quarter, fiscal year 1982.	3rd quarter, fiscal year 1982.
20980	Remote Control and Security Devices; George Harenberg, 653-8288.	Yes X No	Amendment of Part 15 of the Rules to provide for the operation of low power communications devices used in remote control and security applications.	A Report and Order was adopted and released. A petition for reconsideration has been received. A Memorandum Opinion and Order dealing with this petition is being prepared.	3rd quarter, fiscal year 1982.
Not assigned	NTIA 900 MHz Request	Yes No X	NTIA has requested that the Commission make provisions for the U.S. Government to access approximately 6 MHz of spectrum in the 800-900 MHz area. This spectrum is to be in two 3 MHz bands separated by 4 to 5 MHz for low-capacity 6-12 channel fixed systems.	An NPRM has been drafted and is being internally coordinated.	
Not assigned	Spectrum Utilization Policy for use of Spectrum between 17.7 and 40.9 GHz.	Yes No X	Establishment of a Spectrum Utilization Policy for the Fixed and Land Mobile Services use of spectrum between 17.7 and 40.0 GHz.	Final draft of the NOI is near completion	
Gen. Docket 82-165	HF Broadcasting Conference	Yes No X	Preparation of U.S. proposals for an ITU World Administrative Radio Conference for the High Frequency Broadcasting Services.	First NOI was adopted on March 25, 1982	
Not assigned	Notification Procedures	Yes X No	Notification procedures to replace certain type acceptance type approval, or certification requirements. This would require manufacturers to submit a statement stating that the equipment complies with FCC Regulations.	NPRM is being drafted and is expected to be completed by July 1982.	
Private Radio Bureau					
79-191	Release, Allocation and Criteria for Use of the 250 Remaining Channels in the 800 MHz bands; Eugene Bowler, 634-2443.	Yes X No	Proceeding to develop rules to make the 250 reserve channels that remain in the 806-821/851-866 MHz bans available for use by private land mobile radio users.	A Report and Order is being prepared by the staff	July 1982
GEN 80-183	Allocation of Spectrum for One-way Paging Stations in the 900 MHz Band; Charles Turner, 632-6497.	Yes X No	Allocation of spectrum and establishment of policies, rules and procedures for one-way paging stations in the Private Land Mobile Radio Service.	Further NPRM adopted Mar. 18, 1982. Comments due May 7, 1982; reply comments due May 24, 1982.	R&O September 1982.
82-121	Allocation of Frequencies in the 72-76 MHz Band for Use by Operational-Fixed Stations in the Automobile Emergency, Manufacturers, Telephone Maintenance and Taxicab Radio Services; Eugene Thompson, 632-6497.	Yes X No	Proposal to allow the use of operational-fixed radio links in the 72-76 MHz band to control multiple base stations.	NPRM adopted Feb. 25, 1982. Comments due Apr. 19, 1982; reply commepts due May 4, 1982.	R&O December 1982.
82-193	Amendment of Part 90 To Eliminate the Need for a Separate Authorization To Operate Speed Detection Devices in the Police and Local Government Radio Services; Charles Turner, 632-6497.	Yes X No	Proposal to authorize Police and Local Government police licensees of stations, as part of their authorization, to operate any number of radar units without prior specific Commission approval.	NPRM adopted Apr. 1, 1982. Comments due May 10, 1982; reply comments due May 25, 1982.	R&O December 1982.

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Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
RM-4030	Temporary Licensing of Add-On Users of Community Repeaters in the Special Industrial Radio Service; John Borkowski/Stephanie Spernak, 632-6497.	Yes X No	Request amendment of Parts 1, 2, and 90 to implement a system of temporary licensing for Add-On Users of multiple-licensed mobile relay systems operating in the Special Industrial Radio Service.	Petition filed Jan.7, 1982. Staff will be drafting NPRM for this proceeding.	October 1982.
			Cable TV		
19991 and 20423	Cable TV Systems: Multiple Ownership and Cross-Ownership; Robert Ratcliffe, 632-6466.	Yes No X	Inquiry to determine if FCC should limit size of cable systems, multiple ownership and cross-ownership.	Additional R&Os are forthcoming in these dockets. Office of Plans and Policy has completed a study of these issues. Study includes telephone cross-ownership issues also.	May 1982.
21002	Cable TV Local Franchise Fees; Judith Friedman, 632-6466.	Yes No X	Proposal to eliminate rule (§76.31) that limits the ability of local authorities to collect franchise fees in excess of 3% of a cable system's gross revenues.	Draft of final R&O is in progress. Additional analysis of economic study (NERA study) submitted in comments may be required.	Third quarter, 1982.
			Common Carrier		
CC 78-196	Uniform System of Accounts for Telephone Companies; Steve Duffy, 634-1861.	Yes No X	Rulemaking to develop a system of accounts which can readily provide cost information by both jurisdiction and individual service categories.	Two assembly and three Steering Committee meetings held. MO&O released Mar. 24,1982 on delegated authority to appoint alternatives/replacements.	
CC 79-35	INMARSAT Interconnection—Implementation of Sec. 503(g) of INMARSAT Act; Glen deChabert, 632-4047.	Yes No X	Rulemaking regarding operational arangements for maritime satellite service, interconnection with earth stations, and regulating safeguards against cross-subsidization of costs.	Staff working on two major issues—earth station ownership and COMSAT/INMARSAT losses.	June/July 1982.
CC 79-105	Deregulation of Inside Wiring; Alan Wareshaw, 634-1861.	Yes X No	Inquiry into the complete deregulation of the business of furnishing inside telephone wiring.	Notice of Proposed rulemaking	July/August 1982.
CC 79-167	AT&T Earnings on Interstate and Foreign Services in 1978; Claudia Pabo, 632-6342.	Yes No X	Inquiry to determine if AT&T's rate of return during 1978 exceeded the limits specified by the Commission in Docket 20376.	Draft Order under revision	June 1982.
CC 78-72	MTS—WATS Market Structure Inquiry; Carl Lawson, 632-9342.	Yes No X	Inquiry to determine whether public interest requires interstate Message Telecommunications Service and/or WATS or their functional equivalents, to be provided on a sole source basis.	Report and 3rd Suppl. notice issued Aug. 19, 1980. Staff preparing further orders on Alaska entry policy and access policy.	April 1982.
CC 80-634	Communications Satellite Corporation Structure; Jim Ball, 632-7265.	Yes X No	An inquiry into changes in the corporate structure and operations of Communications Satellite Corporation.	Recommended decision prepared, undergoing minor changes.	3rd quarter fiscal year 1982.
CC 81-412	AT&T 1981 General Rate Increase; Kent Nakamura, 623-6917.	Yes No X	AT&T tariff filing (TR. No. 13703-13708) for a general rate increase.	Tariffs suspended and set for investigation. Staff is now reviewing support data.	September 1982.
CC 80-286	Jurisdictional separation: Federal/State Joint Board to Amend Part 67/FCC Rules; J. McConneughey, 632-9342.	Yes No X	Joint Board established to recommend changes, where appropriate, to Separations Manual regarding exchange plant allocations, access and deregulation of customer premises equipment.	Joint Board Orders on CPE deregulation and subscriber plant factor (SPF) "freeze" adopted by Commission on Feb. 24, 1982. J.B. Order on early sale of CPE adopted by Commission on Mar. 25, 1982 as Second Notice of Proposed Rulemaking. Eleven regional hearings set for April/May 1982.	March 1983.
CC 80-57	Revision of Rules Part 22; M. Manlua, 632-6450.	Yes X No	Comprehensive rewrite of Part 22 which governs licensing of common carrier mobile services.	Notice of Inquiry released Feb. 20, 1980. Staff preparing draft Notice of Proposed Rulemaking.	June 1982.
CC 80-554	Alaska Bush Satellite Service; Robert Mazer, 632-6930.	Yes X No	Inquiry into ownership questions related to Alaska Bush Earth Stations.	Comments have been received and are being reviewed	December 1982.
CC 81-704	Licensing of Space Stations in Domestic Fixed Satellite Service; Ron Lepkowski, 632-6930.	Yes X No	Inquiry into adopting a revised orbital deployment plan employing reduced spacing.	Comments have been received and reply comments are due Apr. 26, 1982.	December 1982.
CC 82-45	Domestic Fixed-Satellite Transponder Sales; Bob Mazer, 632-6930.	Yes X No	Inquiry into whether domestic satellite licensees may engage in the sale of transponders.	Initial comments have been received and are being reviewed.	July 1982.
RM 3628	Amendment of Annual Report Forms "O" and "R"; Gary Oddi, 634-1861.	Yes No X	This proposed Petition for Rulemaking proposes to revise certain schedules and delete others on Forms "O" and "R.".	Notice of Proposed Rulemaking completed. Recalled by Bureau on Apr. 15, 1982.	
CC 82-155	Amendment of the USOA to Revise Sections 31.2-21(e) and 31.100: 4(c)(3); Tom Petrus, 634-1861.	Yes No X	This NPRM proposes to raise dollar criteria from $100,000 and $10,000 to $1,000,000 and $100,000 for journal entries on acquisition of telephone plant.	Commission approved the Notice of Proposed Rulemaking on Apr. 1, 1982.	September 1982.
RM 4064	Proposed Amendments to USOA, Part 31, for Telephone Carriers; Gary Oddi, 634-1861.	Yes No X	Proposed Amendment of the USOA, Part 31, to provide for changing the accounting treatment for certain telephone plant.	Public Notice issued Apr. 5, 1982. Interested persons may file statements within 30 days.	September 1982.
CC 78-346	AT&T Rate Structure Rulemaking; Leonard Kennedy, 632-6917.	Yes No X	Inquiry into AT&T private line tariff and rate structures and volume discount policies.	Staff preparing a First Report and Order and Further NPRM.	July 1982.
CC 78-310	Cellular Mobile Communications; Thomas Gutierrez, 632-6450.	Yes No X	Inquiry into implementation of cellular mobile communications systems.	Order on reconsideration released Mar. 3, 1982	
CC 80-172	Authorized User; Jim Ball, 632-7265, John Copes, 632-4047, Ken Stanley, 632-7413.	Yes No X	NPRM on whether to authorize non-carrier entities to obtain service entities to obtain service directly from Comsat for provision of international communications.	Report and Order in preparation	End fiscal year 1982.

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action

	John Copes, 632-4047, Ken Stanley, 632-7413.	No X	obtain service entities to obtain service directly from Comsat for provision of international communications.		

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
CC 80-632	Oversees Communication Service; Stuart Chiron, 632-7265.	Yes No X	The Commission has tentatively concluded that voice/record dichotomy in international services no longer serves the public interest. This NPRM proposes to permit the IRCs to provide international voice services and AT&T to provide international record services.	Notice of Proposed Rulemaking adopted Oct. 9, 1980. All pleadings have been filed.	End fiscal year 1982.
CC 81-893	Procedures for Implementing the Detariffing of CPE and Enhanced Services; William Reece, 632-4715.	Yes No X	An inquiry into procedures for implementation of detariffing of embedded CPE and enhanced services.	Notice of Inquiry adopted Dec. 17, 1981; release Apr. 13, 1982.	1st quarter, 1983.
			Office of General Counsel		
78-167	*Ex Parte* Communications During Informal Rulemaking Proceedings; Susan Steiman, 632-6990.	Yes No X	Petitions for reconsideration of Report and Order regarding *exparte* rules applicable to informal rulemaking proceedings.	Draft memorandum opinion and order being reviewed	End fiscal year 1982.
Gen. 79-163	Comparative Renewal Policy Statement; David Silberman, 632-7112.	Yes No X	Inquiry to determine whether FCC can define "meritorious service" and legitimate renewal expectancy for purpose of comparing incumbent broadcast licensee with competing applicant for the frequency.	Comments filed Jan. 15, 1982; reply comments filed Feb. 12, 1982. Draft report being prepared.	1st quarter, fiscal year 1983.
Gen. 81-600	Policy regarding character qualifications in broadcast licensing; David Senzel, 632-9054.	Yes No X	Inquiry into appropriate policy regarding the character qualifications of broadcast licensees.	Draft Report and Order being reviewed	End fiscal year 1982.
Gen. 81-768	Use of random selection rather than comparative hearings to select among mutually exclusive applicants; Randy W. Thomas, 632-6990.	Yes X No	Petitions for reconsideration of FCC decision refusing to adopt random selection system.	Draft memorandum opinion and order being prepared	End fiscal year 1982.

[FR Doc. 82-1275 Filed 5-1-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 92
Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting To Consider Proposed Enlargement of the McKinley Mine in New Mexico

Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Council will meet in special session on the afternoon of May 25, 1982, to consider the proposed enlargement of the McKinley Mine, a surface coal mine on Navajo Indian lands in New Mexico. It has been determined that this undertaking, regulated by the Office of Surface Mining, Department of the Interior, will adversely affect properties eligible for the National Register of Historic Places.

Pursuant to § 800.6(d)(2) of the Council's regulations, the Chairman of the Council decided on May 6, 1982, that the Council should consider this project in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470(f)).

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listing in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretary of the Interior, the Architect of the Capitol, the Secretary of Agriculture, and the heads of four Federal agencies appointed by the President, one Governor and one Mayor appointed by the President, the President of the National Conference of State Historic Preservation Officers, the Chairman of the National Trust for Historic Preservation, and seven private citizens appointed by the President. The Council is chaired by Mr. Alexander Aldrich of Saratoga Springs, New York. The Council will meet in Room EF-100, United States Capitol, Washington, D.C.

The Council will consider written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by May 19, 1982. Persons wishing to make oral statements should notify the Executive Director by May 21, 1982. Additional Information concerning the meeting or the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, Attention: Dr. Thomas F. King, 1522 K Street NW., Washington, D.C. 20005 (202-254-3974).

Dated: May 7, 1982.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 82-12927 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 7, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

New

• Forest Service
Supplemental Qualifications Statement, Forestry Aid/Technician Positions, GS-2/7
On occasion
Individuals or households: 9,000 responses; 9,000 hours; not applicable under 3504(h)
Barbara Carter (703) 235-2044

• Agricultural Stabilization and Conservation Service
Application for Handler to Handler Transfer of Contract Additional Peanuts
CCC-1006
With each change of ownership
Farms, businesses or other institutions: 90,000 responses; 9,000 hours; not applicable under 3504(h)
Bob Ray (202) 382-9106

• Human Nutrition Information Service
Pilot Study of Measures of Individual Food Intakes of the Low-Income Population
(RFP)
Quarterly
Individuals or households: 15,760 responses; 15,760 hours; not applicable under 3504(h)
Robert B. Reese (301) 436-8484

• Food and Nutrition Service
Claim for Reimbursement
FNS-806
Monthly
Businesses or other institutions: 15,000 responses; 21,900 hours; not applicable under 3504(h)
Rose T. Buskey (703) 756-3864

• Agricultural Stabilization and Conservation Service Report on Performance in Labor Surplus Areas
CCC-263
On occasion
Businesses or other institutions: 200 responses; 50 hours; not applicable under 3504(h)
Carl Graham (202) 447-4253

Revised

• Foreign Agricultural Service
Application for Clearance of Labels to Export Food Products
FAS-633
On occasion

Businesses or other institutions: 400 responses; 66 hours; not applicable under 3504(h)
William L. Scholz (202) 447–6343
• Agricultural Cooperative Service
Phase IV Growth of Cooperatives and Proprietary Firms
Nonrecurring
Businesses or other institutions: 170 responses; 42 hours; not applicable under 3504(h)
Charles A. Kraenzle (202) 447–8411

Extension

• Extension Service
Evaluation of Expanded Food and Nutrition Education Program
Family Record A and B
Semiannually
Individuals or households: 213,050 responses, 35,507 hours; not applicable under 3504(h)
Nancy B. Leidenfrost (202) 426–6230

Reinstatement

• Agricultural Stabilization and Conservation Service
Supplier's Agreements
CCC–308
On occasion
Businesses or other institutions: 1,000 responses; 166 hours; not applicable under 3504(h)
Beverly Pritts (202) 447–8374

Richard J. Schrimper,

Statistical Clearance Officer.

[FR Doc. 82–12866 Filed 5–11–82; 8:45 am]

BILLING CODE 3410–01–M

CIVIL AERONAUTICS BOARD

[Order 82–5–28; Docket No. 40603]

Application of Air Niagara, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Determination of Air Niagara, Inc., 82–5–28, Docket 40603.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Air Niagara, Inc.

DATES: Persons wishing to file petitions to intervene in the Air Niagara Fitness Investigation shall file their petitions in Docket 40603 by May 21, 1982, and serve such filings on all persons listed below.

ADDRESSES: Petitions to intervene should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 40603, Application of Air Niagara, Inc. for a certificate of public convenience and necessity. In addition, copies of such filings should be served on: Air Niagara, Inc.; the Mayors of Niagara, NY, Buffalo, NY, New York, NY, and Newark, NJ; the managers of these cities' airports; the State Departments of Transportation or Aeronautics Commissions of New York and New Jersey; and the Federal Aviation Administration.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–5–28 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request.

By the Civil Aeronautics Board: May 7, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–12930 Filed 5–11–82; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 40534; Order 82–4–113]

Braniff-Pan American Route Transfer Case; Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of April 1982.

Introduction

On March 17, 1982, Braniff Airways, Inc., and Pan American World Airways, Inc., applied to us for approval, pursuant to section 412 of the Federal Aviation Act, as amended, of an "Interim Operating and Joint Service Agreement" reached by them on the same day.[1] Under the terms of the agreement, Braniff is required to suspend its South American service, except for Venezuela, for a period of four years, and to lease the routes and certain of its personnel and facilities in South America to Pan American, in exchange for approximately $30 million to be paid by Pan America. The carriers request that we grant the transactions contemplated by the agreement antitrust immunity, pursuant to section 414 of the Act, and that we grant Pan American exemption authority, pursuant to section 416 of the Act, to the extent necessary to enable it to provide substitute service for Braniff. Alternatively, the applicants ask for an immediate grant of interim authority to permit operations on a temporary basis if we decide that an oral hearing is necessary.

Upon the signing of the agreement, Pan American paid Braniff a non-refundable payment of $7 million. Pan American would pay Braniff another $13 million upon approval of the agreement by us, according to a prorated schedule based on the grant of operating authority by each foreign government. In addition, Braniff would receive another $10 million that will be paid in monthly installments beginning in February, 1983, and further payments computed from Pan Am's net profits commencing in 1984. The agreement defines the Braniff personnel and facilities that will be used by Pan American on the South American network; establishes the method of payment and conveyance of certain inventories and leaseholds from Braniff to Pan American; sets the contractual requirements for Braniff to recoup certain leaseholds and properties at the end of the operating period; and establishes the requirements for Braniff's resumption of service. The parties provide for the termination of the agreement if our approval includes conditions either party deems materially adverse to its interests. In addition, paragraph four of the agreement states that Braniff will not "directly or indirectly, assign or otherwise transfer or attempt to assign or transfer its authority in the Affected Area during the term of the Agreement."

In support of their request for approval of the agreement, the applicants state that Braniff is in a severe financial crisis which threatens the viability of its entire system, both domestic and international; that the interim operating and joint service agreement represents the only means to rescue it; that Braniff can no longer profitably operate the valuable South American network; that Pan American is the only U.S.-flag carrier that can realistically provide the substitute service required to maintain Braniff's network intact; and that approval of the agreements would aid Pan American, preserve U.S. route rights in South America, maintain the employment of Braniff's ground staff in South America, and protect the travel plans of those already holding Braniff reservations.

Comments, answers,and responses to the agreement were filed by the Departments of State and Transportation, members of the New York Congressional Delegation,[2] Senator

[1] Contemporaneously with the agreement, Braniff and Pan American entered into separate agreements under which Pan American paid Braniff $3 million for the assignment of certain terminal facilities at Houston International Airport. The applicants do not seek approval of these agreements.

[2] Senators Alfonse M. D'Amato and Daniel Patrick Moynihan; Congressmen Samuel S. Stratton,

Howard W. Cannon, numerous labor groups,[3] civic and other parties [4] and air carriers.[5] The applicants filed a reply.

In brief, DOT urges approval of the agreement because it believes that the agreement is the most readily available means of assuring that there will be no service disruptions to/from South America and that the existing network of U.S. carrier service throughout the region will be maintained. The Department of State takes no position on the merits of the application at this time, but it urges us to establish an expedited schedule to process the agreement, and states that it is essential the President be afforded section 801 review rights because of the important foreign relations considerations. The New York Congressional Delegation and most of the civic parties support the agreement. Senator Cannon supports interim approval. Generally speaking, those labor groups representing Pan American employees support the agreement unconditionally, while those representing Braniff employees state that if we approve the agreement we should either impose labor protective provisions or other conditions designed to allow Braniff employees to follow the transfer of Braniff's South American routes.

The air carriers are unanimous in their opposition to the agreement. They contend that the proposal is tantamount to a sale or an exchange of a significant portion of Braniff's properties, and that an oral evidentiary hearing is required under section 408, especially where, as in this case, there are material issues of fact in dispute. The carriers argue that the agreement does not meet the standards of sections 408 or 412, that it will reduce competition, and that it is inconsistent with the pro-competitive standards of the Act and our international pro-competitive philosophy. Furthermore, they maintain that the applicants have not proved that there is an overriding transportation need that requires Pan American's immediate replacement of Braniff in South America and that there are no less anticompetitive alternatives within the meaning of the Act to the agreement. Lastly, they question whether the sale will provide public benefits to either Braniff or Pan American and especially whether the payment to Braniff will mean the difference between Braniff's survival or collapse.

Statement of Board Action

The integrated package that the applicants have asked us to approve raises many serious factual, policy and legal issues about air service competition in South America which require more information and consideration before we can reach a final decision on the agreement. The issue of the competitive impact of the Braniff-Pan Am agreement on U.S.-South America service, in particular, is complex, far-reaching and strongly contested and raises fundamental international aviation and competitive concerns. The agreement would reduce actual competition in certain South American markets and would essentially leave Pan American as the sole U.S.-flag carrier in South America, thus reversing the United States' policy for 30 years of assuring that at least two U.S. carriers maintain a substantial presence in South America. For these reasons, we also cannot now consider approving the agreement on an interim basis before completing an oral evidentiary hearing. We shall, however, grant the two airlines' alternative request for an expeditious hearing. We will set the issue of the approval of the Braniff-Pan American route agreement down for an extremely expedited oral evidentiary hearing under sections 401, 408, and 412 before an administrative law judge, with direct certification of the record to the Board. This will enable us to issue a tentative decision by the end of July, 1982.

We are sensitive, however, to the need to avoid a premature breakup of the Braniff South American route network that could cause an interruption in service in the area. A break in U.S.-flag service could cause substantial passenger inconveniences, and possible problems in our international aviation relations with South American countries. We are also sensitive to Braniff's financial situation and to its claim that a route transfer is a necessary method of obtaining immediate financial relief. We are willing, therefore, to consider alternative agreements reached by Braniff for the transfer or use of its assets, including this route authority, for money.[6] In particular, we are prepared to consider expeditiously any other arrangements, whether interim, long-term, or both, that do not raise the broad competitive issues presented by this application and that provide for a continuation of service over Braniff's South American route system.[7]

To negotiate with other potential bidders, Braniff must be free of any contractual obligation that would bar such negotiations. Paragraph 4 of the agreement, which provides that Braniff will not "directly or indirectly, assign or otherwise transfer or attempt to assign or transfer its authority in the Affected Area during the term of the Agreement," would appear to prohibit Braniff from discussing alternative arrangements with other airlines. To remove this hindrance and to facilitate the development of other proposals, we will disapprove, as not being in the public interest, paragraph 4 of the agreement.

Statutory Framework

The applicants request us to give approval under section 412 and to grant antitrust immunity under section 414 to a four year lease of Braniff's South American route rights and certain personnel and grounds facilities. We find that section 408 of the Act is also involved. Section 408 requires Board approval of a purchase, lease or contract to operate a substantial portion of a carriers properties. The long-term transfer of all of Braniff's South American routes except Venezeula, plus ground equipment and facilities, is clearly "substantial" by the standards of section 408. Under both sections 408 and 412, we must examine a transaction to determine whether it is in the public interest. We cannot approve a transaction under either section that would substantially reduce competition unless we find that there are serious transportation needs or important public benefits that cannot be achieved through reasonably available less anticompetitive means.

Joseph P. Addabbo, Henry J. Nowak, Fred W. Richmond, Charles B. Rangel, Benjamin A. Gilman, Frank Horton, Geraldine A. Ferraro, William Green, Donald L. Mitchell, Stephen J. Solarz and Norman F. Lent.

[3] Transport Workers Union of America, AFL–CIO; Pan American Master Executive Council; Braniff Pilots Master Executive Council; National Air Lines Flight Engineers International Association; Allied Pilots Association; Pan American Chapter, Flight Engineers International Association, AFL–CIO; Air Line Pilots Association; and the International Association or Machinists and Aerospace Workers.

[4] The City of Houston, the City of Wichita and the Wichita Area Chamber of Commerce, the Cities and Chambers of Commerce of Dallas and Ft. Worth, the North Texas Commission, the Dallas-Ft. Worth Regional Airport, Mr. Arthur Viksne and Golden Holiday Tours, Inc.

[5] Air Florida, American, Capitol, Eastern, Transamerica, TWA, Western and a new entrant, Earth Space Transport Systems, Corp., which wants to provide only first-class service to South America. Various carriers filed exemption applications to operate many of Braniff's South American routes. We shall handle these applications separately.

[6] Applicants seeking to provide interim service should recognize the limitations imposed on us by the decision in "Kodiak Airways, Inc. v. CAB", 447 F. 2d 341 (D.C. Cir. 1971).

[7] We will consider interim proposals that provide service by more than one carrier. However, in order to avoid undue complications in the process of substituting a carrier for Braniff, we will limit our consideration of interim proposals to those which do not involve the provision of services by more than one operating entity at each South American point now served by Braniff.

We also find that this case involves sections 401 (d) and (h) of the Act. Section 401(h) provides that no certificate may be transferred unless the transfer is approved by us as being consistent with the public interest. Although the applicants have cast their transaction in the form of a four year lease, we find that, in all material aspects, what we are being asked to approve is a transfer of Braniff's South American certificate authority along with other assets to Pan American.[8] As we and the courts[9] have repeatedly emphasized, section 401 remains the primary method of conferring route authority, and we have traditionally considered the transfer of route authority to require Board approval under section 401(h).[10] In addition, we shall place section 401(d) of the Act in issue because we have not yet decided what type of certificate authority we would issue to Pan American if we approved the agreement. It has been our policy to issue temporary, five-year, experimental authority for service in limited entry international routes. Since most of the South American routes at issue are entry-restricted, we must consider whether temporary authority should be issued under section 401(d).

Scope of the hearing

The purpose of our decision to investigate the Braniff/Pan American route agreement is to develop an evidentiary record so that competitive and public interest findings can be made about the agreement. In particular, we request that the Judge and the parties explore the issues discussed below.

We wish to examine the impact in terms of actual or potential competition of the route transfer in any relevant geographic market. We wish to explore to what extent there is structural competition between services to different countries or between services to the east and west coasts of South America from the U.S. In addition, we wish to examine whether international aviation policy considerations would warrant disapproval of the route transfer even if it were not found to be anticompetitive under section 408 or 412.

The Judge and the parties should also develop evidence on whether there are transportation needs and benefits that may outweigh any significant anticompetitive effects that may be shown to exist. In particular, we want to explore the argument that preservation of Braniff's network and the United States' Fifth Freedom rights outweigh any anticompetitive effects. The Judge and the parties should develop evidence on the extent to which service to Braniff's markets depends upon an integrated network and the extent to which its existing network can be divided into vialable operating patterns among separate carriers. We also wish to determine whether there are international aviation policy or other public interest factors that would warrant approval, including financial assistance to Braniff.

Another important issue which requires factual development, if the agreement is shown to be substantially anticompetitive, is the reasonable availability of less anticompetitive alternatives that would achieve or preserve important transportation objectives. Assuming that the preservation of Braniff's network is desirable, we want the Judge and the parties to develop a factual record on whether a proposal by another carrier, carriers, or a combination of proposals by more than one carrier, would be a more reasonable means of achieving this goal. Because of the tight time constraints we are faced with, we will not consider competing certificate, exemption, or route transfer proposals in this proceeding.[11] However, we invite carriers to introduce evidence in their exhibits of other certificate, exemption or route transfer proposals to demonstrate the existence of reasonably available, less anticompetitive alternatives.

The parties also should focus on whether the imposition of labor protective provisions as a condition of Board approval of the agreement would satisfy important public benefits such as the avoidance of labor strife. In addition, the parties should discuss whether any transfer of Braniff's certificate authority pursuant to section 401(h) should be in the form of a temporary experimental certificate rather than a permanent certificate. In this context, the proceeding should consider whether we should, as a condition of approval of the agreement, alter, amend, modify, or suspend Braniff's permanent South American authority.[12] We also want to explore whether any approval could or should be conditioned upon the disallowance of the route acquisition and related costs from the cost adjustments to the Standard Foreign Fare Level for South America.[13]

As indicated earlier, our intention is to process this investigation on an extremely expedited basis. While we would prefer to have a recommended decision by the Judge, we realize that the tight time constraints that we are under in this case require us to dispense with a recommended decision. We urge the Judge to aim for completion of the hearing and certification of the record to us by June 15, 1982. We expect the parties to cooperate fully with the Judge in the attainment of this goal, and we authorize him to eliminate customary procedural steps, such as the prehearing conference, in the interests of expedition. Briefs to the Board are due June 28, 1982. The date for oral arguments, if any, will be decided upon later. We plan to issue a tentative decision by July 30, 1982. In line with the requirements of the Act, we will transmit any decision on a transfer of certificate authority to the President for review under section 801 of the Act.

Accordingly,

1. We institute the Braniff-Pan American Route Transfer Case in Docket 40534 to consider the application of Braniff Airways, Inc. and Pan American World Airways, Inc. to lease Braniff's South American routes, except for Venezuela, and certain Braniff personnel and facilities to Pan American for four years;

2. This investigation shall consider whether the application should be approved under sections 401, 408, 412, and, if so, what conditions should be imposed, if any, and whether antitrust immunity should be granted under section 414 of the Act;

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[8] Under the agreement Pan American will operate the routes for its own account for four years. In addition, Braniff will "assign away and transfer" to Pan Am all of its interests in leases in South America for real or personal property, including ground equipment (Par. 6A), and Pan Am will pay all taxes and ownership costs for its use of Braniff's owned assets during the four years. (Par. 6C). At the end of four years if Braniff does not resume service, it must "execute deeds, bills of sale, assignments and any other documents as Pan Am may reasonably request, evidencing the sale, transfer and conveyance of all assets transferred under Subsections 6A and 6C hereunder to Pan American." (Par. 15).

[9] Northwest Airlines, Inc., et al. v. Civil Aeronautics Board, 535 F. 2d 745 (D.C. Cir. 1970).

[10] E.g., TWA-Southern Route Exchange, 66 CAB 662 (Order 75-9-6); Eastern-Ozark Route Transfer, 68 CAB 567 (Order 75-9-5); Zantop-Coastal Certificate Transfer, 38 CAB 130; South Pacific-Pan American Agreements, 39 CAB 840.

[11] The Board has traditionally considered route transfer proposals without consolidating competing route applications. See, e.g., American-Airwest Route Exchange, 66 CAB 92 (Order 76-6-43); Eastern-Ozark Route Transfer, 37 CAB 749 (Order E-19055). The courts have held that the Board has discretion to order its hearing priorities and to limit the scope of its proceedings. See, Frontier Air Lines v. CAB, 349 F.2d 567 (10th Cir. 1965); National Airlines v. CAB, 243 F.2d 607 (D.C. Cir. 1956). As indicated earlier, we will consider alternative certificate, exemption, or route transfer proposals expeditiously in separate proceedings.

[12] To the extent that we find that such action would be in the public interest, section 401(g) is also involved in this investigation.

[13] See section 1002(j)(9) of the Act.

3. We set the case for an oral evidentiary hearing before an administrative law judge of the Board;

4. We deny Braniff and Pan American's request for interim relief pending our decision in the case instituted in paragraph 1;

5. We direct the administrative law judge in this case to certify the record to us by June 15, 1982;

6. Briefs to the Board are due on June 28, 1982;

7. We find that paragraph 4 of the agreement between Braniff and Pan American filed in this docket is adverse to the public interest and we disapprove the agreement to the extent that it prevents Braniff from negotiating or agreeing to transfer its certificate authority in South America to another carrier or carriers;

8. We make the Bureau of International Aviation a party to this case;

9. Petitions for reconsideration of this order and intervention shall be filed on April 27, 1982, and replies shall be filed on May 4, 1982; and

10. We shall serve this order on the United States Departments of Justice, Transportation, and State, and on all parties that have filed pleadings in Docket 40534.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[14]

Secretary.

Smith, Member, Dissenting:

Braniff, by its own admission, is not willing and able to continue to serve its South American routes. The Board, should, therefore, immediately institute a proceeding to select a carrier or carriers to replace Braniff upon its suspension of service.

Since such a proceeding would take up to a year, in order to allow for proper consideration of the issues, the route transfer from Braniff to Pan American should be allowed in the interim under exemption authority. Pan American is in the best position to provide the service under exemption authority considering its resources and willingness to take over existing stations, personnel and equipment and its presence in 4 of the 9 countries involved. Such service, under the terms of the temporary authority, should not prejudice the ultimate carrier selection in the ongoing proceeding.

In this way, Braniff would receive a measure of the financial relief it requires, U.S. flag carrier service would continue uninterrupted in South America and the Board could give proper regard to the public convenience and necessity parameters of fares, service, and competition maintenance in a full carrier selection process.

James R. Smith.

[14] All Members concurred except Member Smith who dissented and filed the attached dissenting statement.

[FR Doc. 82-12921 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination; Patterson Aircraft Co. et al.

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-4-153	Patterson Aircraft Company	May 18, 1982.
82-5-2	Burlington Aeroplane Company.	May 21, 1982.
82-5-7	Gerlinee, Inc.	May 21, 1982.
82-5-8	Colonial Airlines, Inc.	May 21, 1982.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Order 82-4-153 and 82-5-2, -7, and -8 with the Special Authorities Division, Room 915; 1825 Connecticut Avenue, NW., Washington D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT: For Order 82-4-153: Ms. Patti Szrom, (202) 673-5068, for Orders 82-5-2 and -8: Ms. Anne Stockvis, (202) 673-5198; and for Order 82-5-7: Mr. J. Kevin Kennedy, (202) 673-5918, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428.

By the Civil Aeronautics Board, May 6, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-12919 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40627]

Houston-Acapulco Route Proceeding; Rescheduling of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on June 3, 1982 (47 FR 16159, April 28, 1982), is hereby rescheduled for June 2, 1982, at 10:00 a.m. (local time) in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., May 7, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12922 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40379]

Northeastern International Airways, Inc., Fitness Investigation; Postponement of Prehearing Conference

On May 7, 1982, the applicant requested a postponement of the prehearing conference until June 9, 1982. The Bureau of Domestic Aviation has no objection to this request.

Accordingly, notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on May 10, 1982 (47 FR 17603, April 23, 1982), is hereby postponed until June 9, 1982, at 10:00 a.m. (local time) in Room 1012 in the Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., May 7, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12923 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Orders 82-5-3, 80-12-153; Docket Nos. 40516, etc.]

Order Concerning Mail Rates for Tyee Airlines, Inc. et al.

Order 82-5-36, May 7, 1982, Dockets 40516, 40517 and 40519, establishes temporary intra-Alaska service mail rates for Tyee Airlines, Inc., L.A.B. Flying Service, Inc. and Channel Flying, Inc. at the same level as authorized for Alaska Airlines, Inc. by Order 80-12-153.

Copies of the order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington Metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-12924 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3-82]

Foreign-Trade Zone 49; Newark/Elizabeth, N.J.; Extension of Comments Period

The period for comments on the above case involving the proposed expansion of Foreign-Trade Zone 49 to include the entire Port Newark/Elizabeth Port Authority Marine Terminal (47 FR 2896, 1-20-82 and 47 FR 9259, 3-4-82), is further extended to June 16, 1982. Submissions are limited to rebuttal comments on the record as of this date.

Submission shall include 12 copies. Material submitted for the record to-date will be available at the places where the application has been available to the public.

U.S. Department of Commerce, District Office, Capitol Plaza, 8th Floor, 240 West State Street, Trenton, New Jersey 08608;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3721, 14th and Constitution, NW., Washington, D.C. 20230.

Dated: May 7, 1982.

John J. De Ponte, Jr.,
Executive Secretary.

[FR Doc. 82-12828 Filed 5-11-82; 8:45 am]
BILLING CODE 3510-25-M

International Trade Administration

Arizona State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulation issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00126. Applicant: Arizona State University, Tempe, Arizona 85281. Article: ER 200-D10/12 Electron Paramagnetic Resonance Spectrometer with Accessories. Manufacturer: Bruker-Physik, West Germany. Intended Use of Article: See Notice on page 20584 in the **Federal Register** of April 6, 1981.

Comments: Comments postmarked April 23, 1981 have been received from Varian, 611 Hansen Way, Palo Alto, California 94303. Varian states it believes that these comments clearly indicate that an electron paramagnetic resonance (EPR) spectrometer of equivalent scientific value for the purposes for which the article is intended to be used was available in the United States (at the time the foreign article was ordered). Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (October 10, 1980). Reasons: The applicant requires the highest temperature capability available for studying the behavior of solids at elevated temperatures. The foreign article provides a high-temperature resonator made from high purity quartz that allows electron paramagnetic resonance (EPR) work up to 1300° kelvin (K) or 1030° C. The most closely comparable domestic instrument is either the model E-109 or E-112 of Varian's E-line Century series. Varian claims in its comments that either of two instruments from its E-line Century Series, the Model E-109 or the Model E-112, could meet the applicant's needs. Varian also states that the applicant "fails to identify any pertinent characteristics for the foreign article which (are) unavailable in comparable domestic instruments." But Varian did not specifically address the pertinency of the 1300° K operating capability even though the applicant clearly claimed that feature to be pertinent in response to question 8. Further, the brochure that Varian enclosed with its comments indicates that the variable temperature controller for its E-109 or E-112 is not intended for work beyond 570° K (300° C). The Department of Health and Human Services (DHHS) advises in its memorandum dated October 10, 1981 that (1) the temperature feature of the foreign article described above is pertinent to the purposes for which the foreign article is intended to be used and (2) it knows of no domestic instrument that had this capability at the time the article was ordered. We therefore find that neither the Varian E-109 nor the E-112 was of equivalent scientific value to the foreign article for such purposes as the article was intended to be used at the time the foreign article was ordered.

The Department knows of no other instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intend to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,
Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12829 Filed 5-11-82; 8:45 am]
BILLING CODE 3510-25-M

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 82-00006. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Powder Diffraction Diffractometer with Accompanying Accessories. Manufacturer: Robert Huber Diffraktionstechnik, West Germany. Intended Use of Article: See Notice on page 50634 in the **Federal Register** of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides vertical scattering and triple axis geometry. The National Bureau of Standards advises in its memorandum dated March 26, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12930 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00076. Applicant: The University of New Mexico, Purchasing Department, 600 Buena Vista NE., Albuquerque, N.M., 8731. Article: Electron Microscope, Model H-600-2 and Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the **Federal Register** of Feburary 16, 1982. Article Ordered: September 15, 1981.

Docket No. 82-00078. applicant: Washington State University, College of Veterinary Medicine, Department of Veterinary and Comparative Anatomy, Pharmocology and Physiology, Wegner Hall, Pullman, WA 99164. Article: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the **Federal Register** of February 16, 1982. Article Ordered: March 27, 1981.

Docket No. 82-00081. Applicant: University of Kentucky Medical Center, Department of Pathology, Lexington, Kentucky 40536. Article: Electron Microscope, Model JEM 100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the **Federal Register** of February 16, 1982. Article Ordered: September 17, 1981.

Docket No. 82-00092. Applicant: McGuire VA Medical Center, Broad Rock Rd. and Belt Blvd., Richmond, VA 23249. Article: Electron Microscope, Model EM10 CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use Of Article: See Notice on page 13394 in the **Federal Register** of March 30, 1982. Article Ordered: December 30, 1981.

Docket No. 82-00098. Applicant: Saint Margaret Hospital, Clinical Laboratory, 5454 Hohman, Hammond, IN 46320. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use of Article: See Notice on page 13394 in the **Federal Register** of March 30, 1982. Article Ordered: January 10, 1980.

Docket No. 82-00099. Applicant: Wm Beaumont Army Medical Center, P.O. Box 70003, El Paso, TX 79920. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use of Article: See Notice on page 13394 in the **Federal Register** of March 30, 1982. Article Ordered: July 15, 1981.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12933 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Rice University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00394. Applicant: Rice University, Chemistry Department, 6100 S. Main Street, P.O. Box 1892, Houston, TX 77005. Article: Excimer Laser, TE-861-T with Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended Use of Article: See Notice on page 56632 in the **Federal Register** of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an average power of 18 watts (KrF). The National Bureau of Standards advises in its memorandum dated March 16, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered (April 14, 1981).

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12931 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81–00399. Applicant: University of Minnesota, Department of Chemical Engineering and Materials Science, 421 Washington Avenue, SE., Minneapolis, MN 55455. Article: Vibrating Flow Densimeter with Accessories. Manufacturer: Sodev, Inc., Canada. Intended Use of Article: See Notice on page 56033 in the Federal Register of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a sensitivity of one part per million over an extended temperature range. The National Bureau of Standards advises in its memorandum dated March 3, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12832 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

New Orleans World's Fair, 1984; Availability of Final Environmental Impact Statement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The International Trade Administration (ITA) announces the availability of the Final Environmental Impact Statement (FEIS) regarding the proposed 1984 International Exposition in New Orleans, Louisiana.

COMMENT PERIOD: The 30-day public review and comment period on this FEIS is scheduled to close on June 14, 1982. Written comments on the FEIS should be forwarded to Mr. Ed Wilczynski, U.S. Department of Commerce, Room 6710, 14th St. & Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508), the International Expositions Staff of the U.S. Department of Commerce has prepared a Final Environmental Impact Statement (FEIS) for the proposed 1984 Louisiana World Exposition to be held in New Orleans, Louisiana.

This FEIS is being transmitted for review to Federal, state and local governmental agencies having jurisdiction by law or expertise with respect to any environmental impact involved and to appropriate Federal, state or local agencies authorized to develop and enforce environmental standards, and to groups, organizations and individuals known to have an interest in the project.

The FEIS contains all comments received on the Draft Environmental Impact Statement (DEIS), which was circulated December 4, 1981, and the responses to those comments. The FEIS also addresses the comments and questions raised at the public hearing on the DEIS held January 6, 1982, in New Orleans.

FOR FURTHER INFORMATION CONTACT: Mr. Wilczynski at the above address or at (202) 377–2938.

Copies of the Final Environmental Impact Statement are available for review at the following locations:

1. City Planning Commission, Room 9W, City Hall, 1300 Perdido Street, New Orleans, LA 70130
2. New Orleans Central Library, 219 Loyola Avenue, New Orleans, LA 70112
3. Algiers Regional Library, 3014 Holiday Drive, New Orleans, LA 70114
4. East New Orleans Regional Library, 5641 Read Boulevard, New Orleans, LA 70127
5. Gentilly Branch Library, 3000 Foy Street, New Orleans, LA 70122
6. Milton Latter Branch Library, 5120 St. Charles Avenue, New Orleans, LA 70115
7. Broadmoor Branch Library, 3841 Washington Avenue, New Orleans, LA 70125
8. Nix Branch Library, 1401 So. Carrollton Avenue, New Orleans, LA 70118
9. Special Collections, Earl K. Long Library, University of New Orleans Lakefront, New Orleans, LA 70122
10. Louisiana Exposition Authority, 1575 Riverside North, Suite 230, Baton Rouge, LA 70802
11. Jefferson Parish Library, Library Headquarters, Metarie, LA 70017
12. St. Bernard Parish Library, 1125 E. St. Bernard Hwy., Chalmette, LA 70043
13. St. Tammany Parish Library, 402 S. Jefferson Avenue, Covington, LA 70433
14. U.S. Department of Commerce, International Expositions Staff—Room 2128, 14th St. & Constitution Avenue, NW., Washington, D.C. 20230

Donald V. Earnshaw,

Acting Assistant Secretary for Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 82-12830 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Award; Salt Lake City, Utah

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications for a cooperative agreement under its Business Development Center (BDC) program to operate a pilot project for a twelve (12) month period.

Applicants will be required to contribute at least 10% to the total program costs through non-federal funds. Cost sharing contributions can be in the form of cash contributions, fees for services or in-kind contributions.

The estimated cost of this project includes the maximum federal participation and the minimum amount

required for non-federal participation as included in the following description of this project.

CLOSING DATE: June 14, 1982—Closing date for submitting applications.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Williams at (214) 767–8001.

(1) A cooperative agreement for BDC services to operate in the Salt Lake City, Utah (SMSA) counties of Davis, Salt Lake, Tooele and Weber. The total cost will not exceed $170,000 including a maximum of $153,000 in federal funds and a minimum non-federal participation of $17,000. The anticipated start date of the project is August 1, 1982 and the Project I.D. number is 08–10–82017–01.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of buisnesses. The BDC program is specifically designed to assist those minority buisnesses that have the highest potential for success. In order to accomplish this, MBDA offers a Cooperative Agreement that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit—through which and from which information and assistance to and about minority businesses are funneled. Legal services are excluded.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an MBDA review panel.

D. Evaluation Criteria for Business Development Center Application

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff.* Provide information that demonstrates the organization's capabilities and prior experience in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experience in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)
—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.
—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local public and private entities—that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experiences. Provide resumes for all professional staff personnel.
—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint ventures.
—Provide organization chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.
—If any contractors are to be utilized; identify and indicate areas and level of expeience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A–110 or A–102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objective of the project. This section should be developed by using the outline of the Work Requirements and the BDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; developing and maintaining the profile inventory of minority business; and brokering of new business ownership, market and capital opportunities. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost sharing requirement to include a fee for services for assistance provided clients. The fee for services will be 10% for firms with gross sales of $500,000 or less and 25% for firms with gross sales of over $500,000.

Cost sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order of priority: 1. cash contributions; 2. fee for services; and 3. in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, by other non-federal, public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—are charges to the client for assistance provided by BDC.

C. *In-Kind contribution*—represent the value of non-cash contributions provided by the recipient and non-federal parties. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with

Federal funds will not be considered as the recipient's in-kind contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs invovled for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost sharing plan information in terms of methodology and format for billing the cost of management and technical assistance to clients.

Total project costs will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and

—The extent to which the applicant can leverage federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of BDC operations should be included in Part Two. Part Two will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement award.

A detailed justification of all proposed costs is required for Part Four and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and consequently, dropped from competition.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grants Officer. Organizations whose proposals are unsuccessful will be advised by the Regional Director.

F. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants. The program is subject ot OMB Circular A–95 requirements.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: May 7, 1982.

Richard H. Sewing,

Regional Director.

[FR Doc. 82-12933 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Notice of meeting cancellation.

SUMMARY: The scheduled public meeting of the New England Fishery Management Council, on May 24–25, 1982, as published in the Federal Register on May 4, 1982 (47 FR 19198), has been cancelled.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231–0422.

Dated: May 7, 1982.

E. Craig Felbor,

Chief, Management Services Staff, National Marine Fisheries Service.

[FR Doc. 82-12911 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Title I, Elementary and Secondary Education Act; Intent To Repay the Milwaukee Public Schools, Milwaukee, Wisconsin, Funds Recovered as a Result of a Final Decision of the Former U.S. Commissioner of Education

AGENCY: Education Department.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act, the Secretary intends to repay under a grantback arrangement to the Milwaukee Public Schools, Milwaukee, Wisconsin, an amount equal to 75 percent of funds recovered by the Department of Education as a result of a February, 1980 final decision by the former U.S. Commissioner of Education. This notice describes the LEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All comments must be received on or before June 11, 1982.

ADDRESS: All written comments should be submitted to Wilbert Cheatham, Acting Director, Division of Program Review, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3642–E, ROB–3), Washington, D.C. 20202–3305.

FOR FURTHER INFORMATION CONTACT: Wilbert Cheatham, telephone (202) 245–2506.

SUPPLEMENTARY INFORMATION:

A. Background

The United States Department of Health, Education, and Welfare Audit Agency conducted an audit of the Title I program of the State of Wisconsin Department of Public Instruction (SEA) for the period of September 1, 1967 through August 31, 1972 (A.C.N. 05–40070). The final audit report, dated June 24, 1974, found that the Milwaukee Public Schools (LEA) supplanted State and local funds with Title I funds for summer school programs in Title I project areas, in violation of 20 U.S.C. 241e(a)(1) of the Title I statute and 45 CFR 116.17(h) of the Title I regulations. In addition, the audit report found that the LEA had expended Title I funds for field trips and an instructional lab which served the general student population, in violation of 20 U.S.C. 241e(a)(3) of the Title I statute and 45 CFR 116.17(g) of the Title I regulations.

In a final determination letter dated December 16, 1975, the Deputy Commissioner for School Systems (now the Assistant Secretary for Elementary and Secondary Education) of the U.S. Office of Education (now the U.S. Department of Education (ED)) sustained the auditors' findings and ordered the SEA to refund $3,919,989, of which $120,266 represents the amount of improperly expended Title I funds by the Milwaukee LEA in Fiscal Years 1971 and 1982.

On April 16, 1976, the SEA filed an application for review of the Deputy Commissioner's final determinations with the Title I Audit Hearing Board (now the Education Appeal Board). In a decision dated December 4, 1979 (Docket No. 8–(23)–76), a three member panel of the Education Appeal Board upheld the Deputy Commissioner's final determinations ordering the SEA to refund $120,266 of improperly expended Title I funds to ED. In February of 1980 the decision of the Education Appeal Board became the final decision of the former U.S. Commissioner of Education. In May of 1980, the SEA refunded to ED the entire amount of the claim.

B. Authority for Awarding a Grantback

Section 456(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e, provides that whenever the Commissioner (now Secretary) has recovered funds following a final audit

determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that (1) the practices and procedures of the LEA that resulted in the audit determination have been corrected, and that the LEA is in all other respects in compliance with the requirements of the applicable program; (2) the LEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and (3) the use of the funds to be awarded under the grantback arrangement in accordance with the LEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

In a document dated October 21, 1981, the SEA formally requested that repayment of $90,199 under a grantback arrangement be made to the LEA. The SEA included in its request a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement. In a letter dated December 3, 1981, the SEA provided an assurance that the practices and procedures of the LEA that resulted in the audit determination have been corrected. The SEA also agreed in that letter to maintain separate accounting records documenting its expenditures of funds awarded under the grantback arrangement. The SEA has also assured, in a letter dated January 28, 1982, that the LEA is in all other respects in compliance with the requirements of the Title I program.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, the SEA, in its October 21, 1981 request, submitted a plan on behalf of the LEA explaining the LEA's intent to use the funds for which it sought the grantback. The plan demonstrates that the LEA conducted a needs assessment for school year 1981–1982 of its Title I students in grades one through eight and determined that reading and language skills were the areas of highest educational priority. The LEA proposes to expend the grantback funds during the current school year for an existing Title I reading project. This project provides supplemental services for its Title I participants in grades one through six, through small group and in-class instruction in reading and language skills. It is scheduled to end earlier than anticipated, due to reductions in the LEA's Title I budget. The LEA intends to use the grantback funds to extend the reading project for an additional five to six days.

The SEA recognizes that, generally, funds awarded under a grantback arrangement are to be used to establish a separate project designed to benefit, to the extent possible, the population that was affected by the misexpenditures that resulted in the audit exception. However, the SEA suggests that, in this case, the use of grantback funds to establish a separate project is not practical for several reasons. First, there are, most likely, no children currently enrolled in the LEA who could have been affected by the original misexpenditures, since those misexpenditures occurred over a decade ago. Therefore, the LEA is precluded from setting up a project designed to benefit the children who were affected by the original misexpenditures. Secondly, the amount of the grantback award, $90,199, is a relatively small sum for an LEA the size of the Milwaukee Public Schools Systems, which has in excess of 12,000 participants in its Title I program and an annual budget in excess of $9.5 million. Thus, any new project that the LEA could establish would necessarily be a small scale project serving a very limited number of children.

Based on the above reasons, the SEA concludes that a better use of the grantback funds would be to postpone the early end of an already existing project that benefits a large number of Title I students in the LEA. Specifically, the LEA proposes to expend $87,640 on salaries and fringe benefits for 129 staff members, including supervisory personnel, teachers, paraprofessionals, and a part-time secretary; and $2,559 on indirect costs.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request on behalf of the LEA for the repayment of funds under § 456 of GEPA, including the SEA's assurances described in Part C above and the LEA's plan and budget, the Secretary makes the following determinations:

(1) The practices and procedures of the LEA that resulted in the audit determination have been corrected, and the LEA is in all other respects in compliance with the requirements of the Title I program;

(2) The LEA has submitted a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the Title I program; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the LEA's plan would serve to achieve the purposes of the Title I program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payments will be made.

In accordance with the above requirement, notice is given that the Secretary intends to make funds available under a grantback arrangement to the LEA in the amount of $90,199, which represents 75 percent) the maximum percentage authorized by the statute—of the amount of funds recovered by ED as a result of the Commissioner's final decision. The Secretary bases his intention to award the maximum amount possible of grantback funds under section 456 of GEPA on the following factors: The Secretary's determinations outlined in Section E of this notice; the timely payment by the SEA of all funds owned to ED as a result of the Commissioner's final decision; and the cooperative efforts of both the SEA and LEA to bring this matter to a satisfactory resolution.

G. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions which the Secretary deems necessary to accomplish the purposes of the affected programs,

including the submission of periodic reports on the use of the repaid funds, and evidence that the SEA or LEA has consulted with parents or representatives of the population that will benefit from the grantback award.

The SEA and the LEA agree to comply with the following terms and conditions under which payments under a grantback rrangement will be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted in conjunction with the October 21, 1981 request, and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan.

(2) Pursuant to section 456(c) of GEPA, all funds received under a grantback arrangement must be obligated not later than September 30, 1983, which is three fiscal years following the fiscal year in which the Commissioner's final decision was made.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1984, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been spent;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with parents or representatives of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on the notice of intent to award funds under a grantback arrangement to the Milwaukee Public Schools. Interested persons may send written comments to Wilbert Cheatham at the address at the beginning of this notice. All comments must be received on or before June 11, 1982.

Dated: April 20, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-11440 Filed 5-11-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Era Docket No. 82-03-NG]

Natural Gas Imports; Flormex Energy Corp.; Application for Authorization to Import Natural Gas from Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the application of Flormex Energy Corporation (Flormex) to import natural gas from Petroleos Mexicanos (Pemex), the Mexican state petroleum company. Flormex proposes to import and resell to domestic gas suppliers up to 150,000 Mcf per day of natual gas for an initial contract term of six years.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATE: Protests or petitions to intervene are to be filed no later than 4:30 p.m. June 11, 1982.

FOR FURTHER INFORMATION CONTACT:

John W. Glynn (Oil and Gas Imports Division), Economic Regulatory Administration, 12th & Pennsylvania Avenue, NW., Federal Building, Room 6144, RG–631, Washington, D.C. 20461, (202) 633–8296

Sue D. Sheridan (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue, SW., Forrestal Building, Room 6E–042, Washington, D.C. 20585, (202) 252–6667

SUPPLEMENTATY INFORMATION:

On March 22, 1982, Flormex filed with the ERA an application to import natural gas from Mexico. On April 15, 1982, Flormex amended its March 22 application with respect to the proposed volumes to be imported. Under its present proposal, Flormex would purchase a daily quantity of 150,000 Mcf of natural gas for sale to as yet unidentified domestic gas suppliers for ultimate resale to U.S. customers.

Flormex states in its import application that Pemex will not enter into a formal written agreement for the sale of natural gas until Flormex has obtained the necessary approvals to import gas from the U.S. regulatory authorities. However, the application states further that Pemex will "enter into formalization of negotiations" with Flormex once the company has filed with the ERA, and that Pemex is ready to enter into binding agreements once U.S. regulatory approval is obtained. Additionally, Flormex indicates that Pemex will provide contract documentation if required by the ERA.

The import application states that Flormex and Pemex have agreed that any contract between the two parties would contain the following general provisions. First, the primary term of the natural gas purchase contract would be for six years, with an option for Flormex to renew for an additional six-year period. Second, the initial contract price would be U.S. $4.94 per MMBtu, which would be subject to quarterly adjustments, the mechanism for which is not clearly explained in the application.

Flormex states that it does not intend to own or operate any facilities necessary for the transportation of the gas and that proposed importation would utilize only existing domestic facilities. The natural gas will come from new gas fields in Tamaulipas, Mexico, and be transported by Pemex to three proposed points of interconnection on the international border near Eagle Pass, Texas, Laredo, Texas, and Reynosa, Texas. In support of its application, Flormex states that many forecasts project a continuing decline in the U.S. gas reserves, and that there is a "clear" need for the gas and the proposal therefore is not inconsistent with the public interest. Futhermore, Flormex contends that the gas supply made available by this proposed import would "enhance the ability to meet winter peak day and seasonal demands of the consumer" while lessening the country's dependence on imported fuel oil.

Other Information

Any person wishing to become a party to the proceeding, and thus to participate in any conference or hearing which might be convened, must file a petition to intervene. Any person may file a protest with respect to this application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements specified in 18 CFR 1.8 and 1.10, respectively. They should be filed with the Natural Gas Branch, Oil and Gas Imports Division, Economic Regulatory Administration, Room 6144, RG–631, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461. All protests and

petitions to intervene must be filed no later than 4:30 p.m. June 11, 1982.

A hearing will not be held unless a motion for a hearing is made by a party or person seeking intervention and granted by ERA, or if ERA on its own motion believes that a hearing is necessary or required. A person filing a motion for a hearing should demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Flormex's application is available for inspection and copying in the Natural Gas Branch Docket room, Room 6144, 12th & Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 5, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12914 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-014; FC Case No. 55119-9197-01-12]

General Motors Corp.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition from General Motors Corporation for exemption and availability of certification.

SUMMARY: On April 2, 1982, General motors Corporation (GM) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new Major Fuel Burning Installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. GM requested a permanent exemption for certain fuel mixtures containing natural gas or petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

The new MFBI for which the petition is filed is a field-erected boiler (designated as Boiler No. 4) which has been installed at GM's Delco Products Division plant in Kettering, Ohio and is designed to burn coal, natural gas or oil.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rule.

A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available for inspection upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register.**

DATE: Written comments on GM's petition are due on or before June 28, 1982. A request for public hearing must also be made within the 45-day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585

Docket No. ERA-FC-82-014 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-037, 1000 Independence Avenue, SW, Washington, D.C. 20585,Telephone (202) 252-1730

Douglas Mitchell, Esquire, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-2967

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 12th and Pennsylvania Avenue, Room 7120, Federal Building, Washington, D.C. 20461, Telephone (202) 633-8755

SUPPLEMENTARY INFORMATION: The Powerplant and Industrial Fuel Use Act of 1978 prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption from the prohibitions in Title II has been granted by ERA. The unit which is the subject of this exemption petition is a field erected boiler, identified as Boiler No. 4, installed by GM at its Delco plant as part of an expansion of operations which occurred over the past two years. Boiler No. 4 produces 120,000 pounds of steam per hour, has a designed heat input rate of 144 million Btu's per hour, and is capable of burning coal, natural gas or oil. GM states that the steam generated by the unit will be used for process equipment, for auxiliary powerhouse steam and for building heating and air conditioning, as well as for light steam demand periods. GM further states that the unit will be using a coal-natural gas mixture as a primary energy source (with oil as a backup to natural gas). The coal will be used alternately with natural gas. GM is, therefore, requesting a permanent fuel mixtures exemption for Boiler No. 4 to permit it to burn petroleum or natural gas in amounts up to 25% of the total annual Btu heat input of the installation as the primary energy source.

Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. In accordance with 10 CFR 503.38(d) of the final rule, GM has provided the following:

(1) A duly executed certification stating that the amount of petroleum or natural gas proposed to be used as a primary energy source in the mixture will not exceed twenty-five (25) percent of the total annual Btu heat input of the installation; and

(2) The environmental certifications as required under § 503.13(b) of the final rule.

Pursuant to 10 CFR 501.3, ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from GM at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4) of the final rule, the acceptance of the petition by ERA does not constitute a determination that GM is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE Guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc 82-12915 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

Getty Oil Co.; Proposed Consent Order

AGENCY: Economic Regulator Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Getty Oil Company ("Getty"). The Consent Order resolves all issues not resolved by previous Consent Orders, except for those matters explicitly excluded, relating to Getty's compliance with the DOE Petroleum Price and Allocation Regulations for the period January 1, 1973 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executvie Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Getty has agreed to make payments totalling $3,050,000 to the U.S. Treasury.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on the thirtieth day following publication of this notice, June 11, 1982.

ADDRESS COMMENTS TO: Getty Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 5109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3115, Washington, D.C. 20461, Phone: (202) 633-9165.

Copies of the Consent Order may be received free of charge by written request to: Getty Consent Order Request, Office of Special Counsel, Department of Energy, Room 5109, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E-190, Washington, D.C.

SUPPLEMENTARY INFORMATION: Getty is a major refiner subject to the audit jurisdiction of the OSC to determine compliance with DOE Petroleum Price and Allocation Regulations (Regulations). Getty engages in, among other things, the importation, production, refining and marketing of crude oil and refined petroleum products. An audit conducted by OSC of Getty included a review of Getty's records relating to compliance with the Regulations during the period January 1, 1973 through January 27, 1981 (the audit period). During the audit, questions and issues were raised. This Consent Order resolves all administrative and civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the audit period, except that this Consent Order does not cover matters specifically excluded in the Consent Order.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Getty's compliance with the applicable Regulations. OSC's audit reviewed Getty's pricing and allocation policies and procedures and the manner in which Getty applied the Regulations with respect to, among other things, its production, refining, processing, importation and marketing of crude oil and coverd products.

At the conclusion of the audit, OSC raised certain issues with respect to Getty's compliance with the Regulations. Notwithstanding DOE's position, Getty maintains that it has correctly construed and applied the Regulations. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Getty audit, and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Getty has agreed to the following:

1. Within fifteen (15) days after the effective date of this Consent Order, Getty shall remit $3,050,000 to the United States Treasury to be deposited as miscellaneous receipts.

2. The Consent Order settles all matters arising from Getty's sales of covered products during the settlement period with certain exceptions relating to "Getty Oil Company v. DOE," Civ. No. 77-434 (D. Del.) and Getty's obligations under DOE's Entitlements Program.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties for any newly discovered regulatory violations committed by Getty, but only on the ground that Getty knowingly concealed such violations.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Getty has waived its right to administrative or judicial review. The Consent Order does not constitute an admission by Getty nor a finding by OSC of a violation of any Federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining

whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comments. After consideration of public comments by DOE, the Consent Order will be made final and effective by actual notice to that effect to Getty. Pursuant to 10 CFR 205.199J(c), DOE will promptly publish in the Federal Register notice of any action taken on this Consent Order and an appropriate explanation of the action.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C. May 3, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc 82-12940 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-011; OFC Case No. 65033-9218-01-12]

Northwestern University; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition from Northwestern University for exemption and availability of certification.

SUMMARY: On April 6, 1982, Northwestern University (Northwestern) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent site limitations exemption for a new major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBI's. Final rules for petitioning for an exemption from the prohibitions of FUA were published in the Federal Register at 46 FR 59980 (December 7, 1981).

The MFBI for which the petition is filed is a gas-fired high pressure steam boiler (identified as unit #4) to be installed at Northwestern's campus Central Utility Plant located at Evanston, Illinois. Unit #4 has a design heat input rate of 172,580,114 BTU's per hour..

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules and hereby accepts the petition for the permanent exemption as adequate for filing.

ERA retains the right to request additional relevant information from Northwestern at any time during the pendency of these proceedings where circumstances of procedural requirements may so require. A review of the petition is provided in the SUPPLEMENTAL INFORMATION section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding are available for inspection upon request through DOE, Freedom of Information Reading Room, 1000 Independence Ave., SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 AM—4:00 PM.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the Federal Register.

DATE: Written comments are due on or before June 28, 1982. A request for public hearing must also be made within the same 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to: Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-82-011 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue, SW, Room GA-073B, Washington, D.C. 20585, Telephone (202) 252-2993

Douglas F. Mitchell, Assistant General Counsel for Coal Regulations, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-2967

Jack Vandenberg, Office of Public Information, Department of Energy, 12th and Pennsylvania Avenue, Room 7120, Washington, D.C. 20461, Telephone (202) 633-8755

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption from this prohibition has been granted by ERA.

Northwestern proposes to install a high pressure steam boiler of 150,000 lbs/hr. capacity at its campus Central Utility Plant (CUP) located in Evanston, Illinois. Unit #4 has a design heat input rate on gas of 172,580,114 Btu/hr.

CUP currently has three 100,000 lbs/hr. boilers which supply all required steam, heating water and chilled water to 101 buildings now connected to the underground distribution systems which extend ½ mile in three directions. The fourth boiler is needed to provide enough plant capacity to hold one boiler in reserve during periods of high heating loads.

Section 212(a)(1)(B) of the Act provides for a permanent exemption due to site limitations. In accordance with 10 CFR 503.33(a), Northwestern has certified the following:

(1) That the physical limitations listed in the exemption request do exist and that despite good faith efforts they cannot reasonably be expected to be overcome within five years after the commencement of operations;

(2) The use of mixtures in the proposed new MFBI is not feasible as required under 10 CFR 503.9.

As provided in 10 CFR 301.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Northwestern is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*, and DOE Guidelines implementing those regulations (45 FR 20694, March 26, 1980). NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an environmental assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is determined to be required, ERA will

publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12917 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

Secor Petroleum Co., Inc., 6COX00297; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Secor Petroleum Company, Inc. (Secor), 333 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. This Proposed Remedial Order charges Secor with layering violations and charging prices in excess of its permissible average markup in connection with its resales of crude oil during the period November 1979 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

On or before May 27, 1982, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 23rd day of April 1982.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82-12941 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-010; FC Case No. 55172-9221-20-24]

Kimberly-Clark Corp.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition from Kimberly-Clark Corporation for exemption and availability of certification.

SUMMARY: On April 1, 1982, Kimberly-Clark Corporation (K–C) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new powerplants and (2) prhibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

K–C proposes to install a 20.1 megawatt gas-fired combustion turbine, with oil backup, and a 3.5 MW steam turbine with heat recovery steam generator to produce electricity for sale to Southern California Edison Company and steam for the company's production process.

ERA has determined that the petition and certification of the requested exemption is complete in accordance with the final rule.

A review of the petition is provided in the **SUPPLEMENTAL INFORMATION** section below.

As provided for in Section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E –190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the **Federal Register.**

DATE: Written comments are due on or before June 28, 1982. A request for a public hearing must also be made within the same 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to: Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA–093, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA–FC–82–010 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Joseph R. DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–6002

Henry Garson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B–187, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–2967

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, Room 7120, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Telephone (202) 633–8755

SUPPLEMENTARY INFORMATION: K–C plans to install a 23.6 MW gas-fired (with oil back-up) cogeneration powerplant to produce electricity and steam at its Fullerton, California mill. The cogeneration facility will consist of a 20.1 MW General Electric LM 2500 gas turbine generator connected to a 3.5 MW steam turbine and a heat recovery steam generator. The gas turbine has a design heat input rate of 197.7 MMBTU's per hour. The heat recovery steam boiler will receive no supplemental firing. All the electricity produced by the gas turbine will be sold to the Southern California Edison Company.

K–C will also purchase approximately 12 MW of electricity from Southern California Edison Company in most years. This electricity, along with the heat exhaust from the turbin, will be utilized to provide power and steam to K–C's mill. K–C estimates that the cogeneration facility will consume up to 1,708,128 MMBTU's of natural gas per year. Section 212(c) of the Act provides for a permanent exemption for cogeneration. In accordance with 10 CFR 503.37(a)(1) of the final rule, K–C certified that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility; and

2. The use of a mixture of oil and gas and an alternate fuel in the cogeneration facility is not feasible.

In accordance with the evidentiary requirements of 10 CFR 503.37(c), K–C has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13 of the final rule, including a description of the facility and its proposed operations and fuel capability, a description of the existing environment, direct and indirect environmental impacts of the proposed action, and a description of Federal, State and local requirements for air, water, noise and solid waste disposal which must be met for the proposed facility.

Pursuant to 10 CFR 501.3, ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from K–C at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4) of the final rule, the acceptance of the petition by ERA does not constitute a determination that K–C is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*, and DOE Guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an environmental impact statement (EIS); (2) an environmental assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12910 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission
[Volume 644]

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-AMERADA HESS CORPORATION			RECEIVED:	04/16/82		JA: LA			
8227786	81-2878	1708120360	102-4			CHARLES BEACH JR #1	ALPHA	365.0	UNITED GAS PIPE L
-AMINOIL OF LOUISIANA INC			RECEIVED:	04/16/82		JA: LA			
8227785	81-2050	1707522711	102-4	103		S/L 2028 #17	LAKE WASHINGTON	500.0	SOUTHERN NATURAL
8227784	81-1998	1707522711	102-4	103		S/L 2028 #17D	LAKE WASHINGTON	1000.0	SOUTHERN NATURAL
-HILLIARD OIL & GAS INC			RECEIVED:	04/16/82		JA: LA			
8227781	81-1399	1707522813	102-4			ADEMA REALTY #1	POINTE A LA HACHE	730.0	
-MOSAN EXPLORATION INC			RECEIVED:	04/16/82		JA: LA			
8227783	81-1648	1702120753	102-4			R L FONE #1	SOUTH GRAYSON	60.0	LOUISIANA INTRAST
8227782	81-1647	1702120753	102-4			VUA M J RICHARDSON #1	SOUTH GRAYSON	40.0	LOUISIANA INTRAST
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-MILLER BROTHERS			RECEIVED:	04/12/82		JA: MI			
8227773		2110533494	102-4			MILLER BROTHERS FUGERE #8-13	FUGERE #8-13	108.0	DOW CHEMICAL CO
8227774		2116534245	102-4			MILLER BROTHERS MCPHILLIPS #3-20	MCPHILLIPS #3-20	365.0	CONSUMERS POWER C
-SOUTHERN MICHIGAN PRODUCTION CO			RECEIVED:	04/12/82		JA: MI			
8227775		2102500000	102-4			MGU 1-24	LEE-24	250.0	MICHIGAN GAS UTIL
-SUN OIL COMPANY (DELAWARE)			RECEIVED:	04/12/82		JA: MI			
8227777		2108933810	103			RICH FIELD UNIT TRACT 13 #5	RICH	23.0	SOUTHEASTERN MICH
8227780		2108734152	103			RICH FIELD UNIT TRACT 18 #2	RICH	11.0	SOUTHEASTERN MICH
8227779		2108734151	103			RICH FIELD UNIT TRACT 33 #2	RICH	12.0	SOUTHEASTERN MICH
8227778		2108734117	103			RICH FIELD UNIT TRACT 42 #2	RICH	24.0	SOUTHEASTERN MICH
8227776		2108733730	103			RICHFIELD UNIT TRACT 5 #1	RICH	18.0	SOUTHEASTERN MICH
OKLAHOMA CORPORATION COMMISSION									
-ANADARKO PRODUCTION COMPANY			RECEIVED:	04/15/82		JA: OK			
8227806	13521	3500320867	103			PAGE A-2	S E LAMBERT	110.0	PIONEER GAS PRODU
8227807	13520	3500320864	103			ROZELL A-2	S E LAMBERT	110.0	PIONEER GAS PRODU
8227808	13519	3500320890	103			SCHALLNER A-2	S E LAMBERT	110.0	PIONEER GAS PRODU
-BOBBY J DARNELL			RECEIVED:	04/16/82		JA: OK			
8227847	13563	3508320911	103			FIELDS CHEATAM #2	NE RUSSELL	0.7	EASON OIL CO.
-BROCK HYDROCARBONS INC			RECEIVED:	04/16/82		JA: OK			
8227831	08276	3507720206	102-4			BILLY HICKMAN #1-34	WILBURTON	6.0	ARKANSAS LOUISIAN
8227833	8275	3507720206	103			BILLY HICKMAN #1-34	WILBURTON	0.0	ARKANSAS LOUISIAN
-CHASE EXPLORATION CORP			RECEIVED:	04/16/82		JA: OK			
8227826	12461	3507121047	108			KUCERD #1-14	UNNAMED	0.4	CITIES SERVICE GA
-CIMARRON PETROLEUM CORPORATION			RECEIVED:	04/15/82		JA: OK			
8227811	13419	3505921075	103			HINTHER CPC #95-4		547.5	MICHIGAN-WISCONSI
-CONTINENTAL RESOURCES CORP			RECEIVED:	04/15/82		JA: OK			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227809	13518	3501100000		103		BERNHARDT #1	WATONGA-CHICKASHA TRE	8.0	DELHI GAS PIPELIN
-CROUCH PETROLEUM COMPANY				RECEIVED:	04/16/82	JA: OK			
8227825	12638	3513900000		108		GREEN "B" #1 139-42149	CARTHAGE	16.0	PHILLIPS PETROLEU
-OLB ENERGY CORP				RECEIVED:	04/16/82	JA: OK			
8227829	11492	3501721883		103		SNYDER #1	NORTHEAST OF PIEDMONT	5.0	CONOCO INC
-DOUBLE EAGLE OIL & GAS CO INC				RECEIVED:	04/16/82	JA: OK			
8227842	13655	3511900000		103		FERN COLLIER #1		8.0	AMINOIL USA INC
-EASON OIL COMPANY				RECEIVED:	04/15/82	JA: OK			
8227805	13525	3504921591		103		SETH FREEMAN #1-1	LAKE ANTIOCH	3.2	WARREN PETROLEUM
-ENERGY RESERVES GROUP INC				RECEIVED:	04/16/82	JA: OK			
8227837	13713	3505300000		108		EMMA KOEHLER #1	N W WAKITA	12.4	SUN GAS CO
8227838	13712	3505300000		108		WAKITA RED FORK UNIT TRACT 3 #1	WAKITA TREND	7.6	SUN GAS CO
8227856	13714	3505300000		108		WAKITA RED FORK UNIT TRACT 4 #1	WAKITA TREND	1.1	SUN GAS CO
8227855	13715	3505300000		108		WAKITA RED FORK UNIT TRACT 5 #1	WAKITA TREND	1.2	SUN GAS CO
8227854	13716	3505300000		108		WAKITA RED FORK UNIT TRACT 5 #2	WAKITA TREND	2.5	SUN GAS CO
-FUNK EXPLORATION INC				RECEIVED:	04/16/82	JA: OK			
8227828	11591	3505900000		102-4		ROBERT ROBERTS #1	BUFFALO N	0.0	TRANSWESTERN PIPE
-GADSCO INC				RECEIVED:	04/16/82	JA: OK			
8227834	6880	3503920341		102-4		GADSCO WILSON #2	NORTH CUSTER CITY	8.0	DELHI GAS PIPELIN
-GEORGE RODMAN INC				RECEIVED:	04/16/82	JA: OK			
8227848	13656	3500720522		103		SHOBERT NO 1-23	PAYNE	0.0	SUN GAS CO
-IREX CORP				RECEIVED:	04/16/82	JA: OK			
8227824	13068	3515321193		102-2		SOONER STATE 1-24	SAND CREEK C/SE NW SE	46.0	DELHI GAS PIPELIN
-JICO EXPLORATION INC				RECEIVED:	04/16/82	JA: OK			
8227845	13538	3507323073		103		JICO-JOHNSON #1	SOONER TREND	91.3	PHILLIPS PETROLEU
-JOE H HARPER				RECEIVED:	04/15/82	JA: OK			
8227797	12810	3513100000		108		WENDLAND-CALFEE 13166812	NORTH TALALA	5.5	DIAMOND "S" GAS S
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	04/16/82	JA: OK			
8227836	13458	3501521133		102-4	103	DILLARD #1	WATONGA TREND	400.0	
-L & WILLIAMS OIL COMPANY INC				RECEIVED:	04/16/82	JA: OK			
8227830	08827	3501721423		103		CANADIAN HEIGHTS #29-1	NW YUKON	0.0	PHILLIPS PETROLEU
8227832	08826	3501721502		103		CANADIAN HEIGHTS #29-2	NW YUKON	0.0	PHILLIPS PETROLEU
-LADD PETROLEUM CORPORATION				RECEIVED:	04/15/82	JA: OK			
8227798	00598	3504700000		108-ER		SHAKLEE #1	ENID NE	0.0	CHAMPLIN PETROLEU
-MATOMAS NORTH AMERICA INC				RECEIVED:	04/15/82	JA: OK			
8227795	17739	3500920454		107-OP		SUMMERS #1-24	UNDESIGNATED (SEC 24	600.0	EL PASO NATURAL G
-PETRO-ENERGY EXPLORATION INC				RECEIVED:	04/16/82	JA: OK			
8227850	13536	3505320692		103		CONRAD #1-34	EAST LAMONT	100.0	CRA INC
-PETROLEUM TECHNOLOGY INC				RECEIVED:	04/15/82	JA: OK			
8227796	12306	3510120975		103		PAYTON #1-5	BALD HILL	547.5	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/15/82	JA: OK			
8227803	13685	3505135182		108		DAHL #1	CHICKASHA	28.0	ARKANSAS LOUISIAN
8227799	13692	3508735842		108		DEAN "B" #1	N WASHINGTON	2.7	
8227800	13691	3501721026		108		GRIFFIN D #1	NORTH YUKON	19.0	PANHANDLE EASTERN
8227804	13516	3504721289		108-ER		SLOUP "A" #1	SOONER TREND	11.8	TRANSOK PIPELINE
8227802	13686	3504720952		108		SPENCER "B" #1	N W HUNTER	8.7	ARKANSAS LOUISIAN
8227801	13688	3501721312		108		WIEWEL "B" #1	N CONCHO	15.0	PANHANDLE EASTERN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/16/82	JA: OK			
8227851	13322	3504700000		108		MAXEY "A" #1	SOONER TREND	15.8	TRANSOK PIPELINE
-PORTS OF CALL OIL CO				RECEIVED:	04/16/82	JA: OK			
8227849	13539	3501722639		103		MCKINNEY HEIGHTS #29-1	YUKON PROSPECT	135.0	PHILLIPS PETROLEU
8227848	13540	3501700000		103		TRAILRIDGE #28-1	YUKON	135.8	PHILLIPS PETROLEU
-POST PETROLEUM COMPANY INC				RECEIVED:	04/16/82	JA: OK			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227827	11605	3504321226		102-4		OAKES #1	PUTNAM	0.0	
8227843	13572	3504722623		103		TOEWS #1	SW KREMLIN	60.0	
-RED EAGLE OIL CO				RECEIVED:	04/16/82	JA: OK			
8227844	13541	3509322155		103		DIXIE #1	RINGWOOD	54.0	PIONEER GAS PRODU
-REM INDUSTRIES				RECEIVED:	04/15/82	JA: OK			
8227790	14315	3510524609		102-2		COOK #1		9.0	CITIES SERVICE GA
8227787	14314	3510524610		102-2		COOK #2		8.0	CITIES SERVICE GA
8227791	14312	3510524611		102-2		GREENFIELD #1		8.0	CITIES SERVICE GA
8227792	14311	3510524674		102-2		LYNN #3		7.0	CITIES SERVICE GA
8227788	14315	3510524422		102-2		MILLIGAN #2		22.0	CITIES SERVICE GA
8227789	14316	3510524421		102-2		MILLIGAN #3		20.0	CITIES SERVICE GA
8227794	14309	3510524422		102-2		WATTENBARGER #1		7.0	CITIES SERVICE GA
8227793	14310	3510524869		102-2		WATTENBARGER #2		8.0	CITIES SERVICE GA
-RICKS EXPLORATION CO				RECEIVED:	04/16/82	JA: OK			
8227835	5756	3501120990		102-4		JONES #1	E FAYE	100.0	MICHIGAN WISCON&I
-SHELL OIL CO				RECEIVED:	04/16/82	JA: OK			
8227841	13649	3507300080		108		TAGGART NO 3	HENNESSEY EAST	18.1	EXXON CO USA
-SOUTHLAND ROYALTY CO				RECEIVED:	04/15/82	JA: OK			
8227810	13518	3515121109		103		MALLORY 2-6	N W AVARD	470.0	PANHANDLE EASTERN
-SOUTHLAND ROYALTY CO				RECEIVED:	04/16/82	JA: OK			
8227846	13564	3515321083		103		RORING #2-29	FREEDOM 76	128.0	PANHANDLE EASTERN
-SUNDANCE ENERGY CORP				RECEIVED:	04/15/82	JA: OK			
8227812	13488	3504722415		103		WALTA #1	SOONER TREND	31.0	ONG WESTERN INC
-TENNECO OIL COMPANY				RECEIVED:	04/16/82	JA: OK			
8227852	13534	3507323231		103		GRAVITT #1-30	OKARCHE NORTH	0.0	DELHI GAS PIPELIN
8227853	13535	3509322063		103		WRIGHT #1-33	RINGWOOD	25.0	
-TEXACO INC				RECEIVED:	04/15/82	JA: OK			
8227813	13517	3507323260		103		E F REHERMAN NO 1	OKARCHE NORTH POOL	250.0	CONOCO INC
-TRICE DRILLING COMPANY INC				RECEIVED:	04/16/82	JA: OK			
8227839	13676	3512920376		108		TAYLOR #1		18.0	EL PASO NAT'L GAS
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WEST VIRGINIA DEPARTMENT OF MINES									
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-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED:	04/19/82	JA: WV			
8227882		4703301106		108		A - 672	SARDIS DISTRICT	0.0	CONSOLIDATED GAS
8227879		4701701891		108		A - 746	SOUTHWEST DISTRICT	0.0	CONSOLIDATED GAS
8227883		4709100166		108		A - 756	KNOTTSVILLE DISTRICT	0.0	CONSOLIDATED GAS
8227884		4709701877		108		A - 779	UNION DISTRICT	0.0	CONSOLIDATED GAS
8227885		4709702002		108		A - 850	WASHINGTON DISTRICT	0.0	CONSOLIDATED GAS
8227880		4701702526		108		A - 855	MCCLELLAN DISTRICT	0.0	CONSOLIDATED GAS
8227881		4701702549		108		A - 861	SOUTHWEST DISTRICT	0.0	CONSOLIDATED GAS
8227876		4709702029		108		A - 865	WASHINGTON DISTRICT	0.0	CONSOLIDATED GAS
8227877		4709702053		108		A - 881	WASHINGTON DISTRICT	0.0	CONSOLIDATED GAS
-CABOT OIL & GAS CORP				RECEIVED:	04/19/82	JA: WV			
8227893		4703903725		107-DV		BERRY HILLS #4	JEFFERSON	19.0	TENNESSEE GAS PIP
8227892		4703903749		107-DV		ELLIS #2	WASHINGTON	26.0	TENNESSEE GAS PIP
8227898		4707901880		107-DV		J L MCLEAN A-32	UNION	6.0	TENNESSEE GAS PIP
8227891		4707900991		107-DV		J L MCLEAN A-45	UNION	13.0	TENNESSEE GAS PIP
8227894		4703501526		107-DV		J L MCLEAN A-55	RIPLEY	8.0	TENNESSEE GAS PIP
8227887		4703903674		107-DV		KIRK & MILLER #2	JEFFERSON	45.0	TENNESSEE GAS PIP
8227888		4710900853		103		POCAHONTAS LAND CORP I-32	BARKERS RIDGE	33.0	CONSOLIDATED GAS
8227889		4703903682		107-DV		SILER COAL & LAND A-16	WASHINGTON	30.0	TENNESSEE GAS PIP
8227886		4703903751		107-DV		TROWBRIDGE #2	WASHINGTON	38.0	TENNESSEE GAS PIP

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CARBONIT EXPLORATION INC				RECEIVED:	04/19/82	JA: WV			
8227896		4707301288		107-DV		HARRY G BRADFIELD #2	UNION DISTRICT ST MAR	0.0	COLUMBIA GAS TRAN
-CARSON PETROLEUM CORP				RECEIVED:	04/19/82	JA: WV			
8227857		4702103787	D	103		C C MICK #1	INDIAN FORK	25.0	CONSOLIDATED GAS
8227908		4701702957		103		SCHULTE #3	ST CLAIR	15.0	COLUMBIA GAS TRAN
-EASTERN AMERICAN ENERGY CORPORATION				RECEIVED:	04/19/82	JA: WV			
8227876		4704103866		107-DV		BAILEY #1	GLENVILLE NORTH	50.0	
8227866		4702103806		107-DV		FRYATT #1	GLENVILLE NORTH	10.0	
8227864		4702103750		107-DV		HARDMAN #2	GLENVILLE NORTH	60.0	CONSOLIDATED GAS
8227871		4704100000		107-DV		MCLAUGHLIN #1	ASPINALL-FINSTER	18.0	
8227869		4704100000		107-DV		MULLOOLY #1	ASPINALL-FINSTER	20.0	
8227872		4704100000		103		MULLOOLY #1	ASPINALL-FINSTER	20.0	
8227873		4704103863		107-DV		MULLOOLY #2	GLENVILLE NORTH	20.0	
8227875		4704103063		103		MULLOOLY #2	GLENVILLE NORTH	20.0	
8227870		4704100000		107-DV		RAMSBURG #1	ASPINALL-FINSTER	21.0	
8227862		4704100000		107-DV		ST PATRICK'S #1	GLENVILLE NORTH	17.0	CONSOLIDATED GAS
8227867		4704100000		103		ST PATRICK'S #1	GLENVILLE NORTH	17.0	CONSOLIDATED GAS
8227865		4702103757		107-DV		STEINMETZ #1	GLENVILLE NORTH	45.0	COLUMBIA GAS TRAN
8227874		4702103757		103		STEINMETZ #1	GLENVILLE NORTH	45.0	COLUMBIA GAS TRAN
8227863		4704100000		107-DV		TANEY #2	GLENVILLE NORTH	20.0	CONSOLIDATED GAS
8227868		4704100000		103		TANEY #2	GLENVILLE	20.0	CONSOLIDATED GAS
-FOX DRILLING CO INC				RECEIVED:	04/19/82	JA: WV			
8227860		4700101538		103		SHOCKEY #2	BELINGTON	10.0	COLUMBIA GAS TRAN
-INDUSTRIAL GAS ASSOCIATES				RECEIVED:	04/19/82	JA: WV			
8227895		4701702359		108		HAMMER #1 DOD-2359	CENTRAL DISTRICT	9.0	CARNEGIE NATURAL
-JAMES F SCOTT				RECEIVED:	04/19/82	JA: WV			
8227861		4701702967		103		ROBERT HOLLAND S-330	GREENBRIER	44.0	CONSOLIDATED GAS
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	04/19/82	JA: WV			
8227898		4706700569		103		FEDERAL COAL #43	TWENTY MILE CREEK	55.0	CABOT CORP
8227897		4706700579		103		FEDERAL COAL #47	TWENTY MILE CREEK	29.0	CABOT CORP
-TWI OIL CO				RECEIVED:	04/19/82	JA: WV			
8227899		4701303335		103		ELVA THOMAS	ANNAMORIAH	0.0	COLUMBIA GAS TRAN
-UNITED OPERATING CO				RECEIVED:	04/19/82	JA: WV			
8227859		4708505146		103		FLORA OVERFIELD #1	ELLIOTTS RUN	0.0	CONSOLIDATED GAS
-WARREN K HAUGHT AGENT				RECEIVED:	04/19/82	JA: WV			
8227858		4707301196	D	107-DV		BEN CUNNINGHAM H-1210	MCKIM DISTRICT	22.0	COLUMBIA GAS TRAN
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO									
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-ALTA ENERGY CORP				RECEIVED:	04/13/82	JA: CO 1			
8227770	CD0016-82	0507708408		107-TF		FEDERAL #32-1	SHIRE GULCH	300.0	NORTHWEST PIPELIN
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	04/13/82	JA: CO 1			
8227767	CD0041-82	0510308719		102-3		FEDERAL #4-1-1S-102	RANGELY SOUTH	438.0	SOUTHWEST GAS COR
-CSG EXPLORATION COMPANY				RECEIVED:	04/13/82	JA: CO 1			
8227765	CD0032-82	0510308528		102-2		GOVERNMENT 397-8-4	WILDCAT	244.0	CITIES SERVICE GA
-DONALD C SLAWSON				RECEIVED:	04/13/82	JA: CO 1			
8227769	CD0055-82	0510308648		103	107-TF	FEDERAL 35-1	CATHEDRAL	15.0	SOUTHWEST GAS COR
-ENERGY RESERVES GROUP INC				RECEIVED:	04/16/82	JA: CO 1			
8227814	CD0038-82	0508106493		103		USA PTASYNSKI #5	POWDER WASH	124.2	MOUNTAIN FUEL SUP
-LADD PETROLEUM CORPORATION				RECEIVED:	04/16/82	JA: CO 1			
8227815	CD0030-82	0506706538		103		SOUTHERN UTE #2-10	IGNACIO - BLANCO	738.6	PEOPLE'S NATURAL
8227817	CD0036-82-B	0506706513		103		SOUTHERN UTE #3-25	IGNACIO - BLANCO	746.8	NORTHWEST PIPE LI
8227822	CD0036-82A	0506706513		103		SOUTHERN UTE #3-25	IGNACIO - BLANCO	382.4	NORTHWEST PIPE LI

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8227816	CD0031-82-A	0506206496		103		TRAIL CANYON #1-7
8227820	CD0031-82-B	0506706496		103		TRAIL CANYON #1-7
8227818	CD0029-82	0506206402		103		TRAIL CANYON #3-3
8227821	CD0037-82	0506706402		103		TRAIL CANYON #3-3
-MITCHELL ENERGY CORPORATION				RECEIVED:	04/13/82	JA: CO 1
8227772	CD0043-82	0510308665		102-3		FEDERAL G-2-2-1045
-NORTHWEST EXPLORATION COMPANY				RECEIVED:	04/16/82	JA: CO 1
8227819	CD0051-82	0504506380		107-TF		CLOUGH 19
-SUPERIOR OIL CO				RECEIVED:	04/13/82	JA: CO 1
8227768	CD0540-81	0504505187		108		FEDERAL #28-95
-SUPERIOR OIL CO				RECEIVED:	04/16/82	JA: CO 1
8227823	CD0541-81	0504505206		108		FEDERAL #3-94
-TENNECO OIL COMPANY				RECEIVED:	04/13/82	JA: CO 1
8227766	CD0034-82	0510308733		103	107-TF	GOVERNMENT 4-26-4-102
-TWIN ARROW INC				RECEIVED:	04/13/82	JA: CO 1
8227763	CD0470-81	0510308108		108		CONTINENTAL 1-17
8227752	CD0199-81	0510308215		103		CONTINENTAL 3-29
8227751	CD0273-81	0510308423		103		COORS 3-10
8227750	CD0197-81	0510308641		103		TERRA 1-26
-TXO PRODUCTION CORP				RECEIVED:	04/13/82	JA: CO 1
8227753	CD0021-82	0510308776		103		TEXAS MOUNTAIN FEDERAL #1
-ARI-MEX OIL & EXPLORATION INC				RECEIVED:	04/13/82	JA: UT 1
8227771	UD0454-81	4301930801		103		CLAYTON #2
-DELCO PETROLEUM CORPORATION				RECEIVED:	04/13/82	JA: UT 1
8227762	UD0528-81	4304730476		102-4		DUCK CREEK 3-16 GR 30476
8227761	UD0519-81	4304730523		102-4		DUCK CREEK 5-16 GR 30523
8227757	UD0518-81	4304730540		102-4		DUCK CREEK 6-16 GR 30540
8227759	UD0521-81	4304730541		102-4		DUCK CREEK 7-16 GR
8227760	UD0523-81	4304730555		102-4		NATURAL DUCK 2-15GR 30555
8227756	UD0517-81	4304730556		102-4		NATURAL DUCK 3-15 GR 30556
8227755	UD0522-81	4304730557		102-4		NATURAL DUCK 4-21 GR
-COTTON PETROLEUM CORPORATION				RECEIVED:	04/13/82	JA: UT 1
8227764	UD0514-81	4304731026		102-2		HILL FEDERAL 1-10
-UEXPRO CO				RECEIVED:	04/13/82	JA: UT 1
8227748	UD0046-82	4303730684		102-3		BUG #9
8227749	UD0048-82	4303730391		102-3		PATTERSON CANYON #3
-TXO PRODUCTION CORP				RECEIVED:	04/13/82	JA: UT 1
8227758	UD0022-82	4301930841		103		BAUMGARTNER FEDERAL #2
8227754	UD0023-82	4301930824		103		CREDO FEDERAL "A" #2

FIELD NAME	PROD	PURCHASER
IGNACIO - BLANCO	81.5	
IGNACIO - BLANCO	535.5	
IGNACIO - BLANCO	252.7	
IGNACIO - BLANCO	1343.8	NORTHWEST PIPE LI
WILDCAT	52.0	
RULISON MESAVERDE	150.0	NORTHWEST PIPELIN
RULISON	0.0	WESTERN SLOPE & G
RULISON	0.0	WESTERN SLOPE GAS
EVACUATION CREEK	80.0	NORTHWEST PIPELIN
CATHEDRAL	16.7	IGC PRODUCTION CO
CATHEDRAL	0.0	NORTHWEST PIPELIN
CATHEDRAL	0.0	NORTHWEST PIPELIN
CATHEDRAL	0.0	NORTHWEST PIPELIN
TEXAS MOUNTAIN	252.8	
GREATER CISCO-DANISH	275.0	NORTHWEST PIPELIN
DUCK CREEK	0.0	NORTHWEST PIPELIN
DUCK CREEK	0.0	NORTHWEST PIPELIN
DUCK CREEK	0.0	NORTHWEST PIPELIN
DUCK CREEK	0.0	NORTHWEST PIPELIN
NATURAL DUCK	0.0	NORTHWEST PIPELIN
NATURAL DUCK	0.0	NORTHWEST PIPELIN
NATURAL DUCK	0.0	COLORADO INTERSTA
NATURAL BUTTES	0.0	NATURAL GAS CORP
BUG	215.0	MOUNTAIN FUEL RES
PATTERSON CANYON	75.0	MOUNTAIN FUEL RES
BRYSON CANYON	193.0	NORTHWEST PIPELIN
SAN ARROYO	72.0	

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12827 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-C

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
		OHIO DEPARTMENT OF NATURAL RESOURCES							
-ALTHEIRS OIL INC				RECEIVED:	04/19/82	JA: OH			
8227901		3412725510		103		SAFFELL/WHEATCRAFT #4	PIKE	15.0	
-AMERICAN WELL MANAGEMENT COMPANY				RECEIVED:	04/19/82	JA: OH			
8227903		3411925881		103	107-TF	HOMER WISEMAN #1	NEWTON	18.0	
8227902		3411925677		103	107-TF	JOHN KRICHBAUM #1	CASS	18.0	
-APPALACHIAN ENERGY INC				RECEIVED:	04/19/82	JA: OH			
8227904		3401320342		103		C WARREN #1 A-E-184	PULTNEY	25.0	COLUMBIA GAS TRAN
8227905		3401320412		103		JOE BURDYN #1 A-E-223	PULTNEY	25.0	COLUMBIA GAS TRAN
-ATWOOD RESOURCES INC				RECEIVED:	04/19/82	JA: OH			
8227906		3415723697		103	107-TF	SPECHT #1	JEFFERSON	15.0	
-BANDS COMPANY INC				RECEIVED:	04/19/82	JA: OH			
8227910		3407523689		107-TF		JOHN MILLER #3	MILLERSBURG	1.5	COLUMBIA GAS TRAN
8227909		3407522928		107-TF		L YODER #1	HARDY	1.7	COLUMBIA GAS TRAN
8227908		3407526299		107-TF		YOST MILLER #1	MECHANIC	1.5	COLUMBIA GAS TRAN
-BB ENERGY CORP				RECEIVED:	04/19/82	JA: OH			
8227907		3412122646		107-DV		ULLMAN #1	ELK	12.0	COLUMBIA GAS TRAN
-BELDEN & BLAKE & CO #79				RECEIVED:	04/19/82	JA: OH			
8227911		3401921428		103		W & S FINLEY 1-341069	ROSE	36.5	
-BELDEN & BLAKE AND CO L P NO 71				RECEIVED:	04/19/82	JA: OH			
8227913		3415123029		103	107-RT	H & M MYERS-1-892	SUGAR CREEK	36.5	
8227912		3415123028		103	107-RT	W & P AMES COMM-1-891	SUGAR CREEK	36.5	
-BEREA OIL AND GAS CORPORATION				RECEIVED:	04/19/82	JA: OH			
8227914		3405923163		103	107-TF	V FERGUSON #2	WESTLAND	0.0	COLUMBIA GAS TRAN
-BLAUSER WELL SERVICE INC				RECEIVED:	04/19/82	JA: OH			
8227921		3410522166		107-DV		EDGAR BREWER #1-149	LEBANON	9.7	COLUMBIA GAS TRAN
-BUCKEYE OIL PRODUCING CO				RECEIVED:	04/19/82	JA: OH			
8227922		3416923007		103	107-TF	L & L HENSHBERGER #1	SUGAR CREEK	12.0	COLUMBIA GAS TRAN
-CA D* ORA INC				RECEIVED:	04/19/82	JA: OH			
8227923		3416727018		107-DV		HART #2	DUNHAM	8.0	
-CAMERON BROS				RECEIVED:	04/19/82	JA: OH			
8227924		3411925984		108		R WILSON ET AL 768R		5.0	NATIONAL GAS & OI
-CHANSE PETROLEUM CORPORATION				RECEIVED:	04/19/82	JA: OH			
8227925		3400721901		107-TF		SUMMER-CLOSE #1	NEW LYME	3.1	
-CLEARFORK OIL CO				RECEIVED:	04/19/82	JAI OH			
8227927		3411122549	D	107-DV		C WECKBACHER #1	WASHINGTON	18.0	COLUMBIA GAS TRAN
-CLINTON OIL CO				RECEIVED:	04/19/82	JA: OH			
8227928		3411926867		103	107-TF	D AND J MERKER #5-659	DRESDEN	10.0	
-COASTAL PETROLEUM CORP				RECEIVED:	04/19/82	JA: OH			
8227931		3410322883		107-TF		BROOKSIDE DEV C #3	SEVILLE	9.0	COLUMBIA GAS TRAN
8227929		3410322876		107-TF		BROOKSIDE DEV CO #1	SEVILLE	9.0	COLUMBIA GAS TRAN
8227930		3410322882		107-TF		BROOKSIDE DEV CO #2	SEVILLE	9.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227932		3410322937		107-TF		WESTERN RESERVE #3	WADSWORTH	9.0	COLUMBIA GAS TRAN
-COLLINS-MCGREGOR OPERATING COMPANY		RECEIVED: 04/19/82		JA: OH					
8227936		3416726643		107-DV		ARMSTRONG #2	LUDLOW	5.8	WASHINGTON ENERGY
8227937		3416726644		107-DV		BARBER RIGGS #2	INDEPENDENCE	8.0	COLUMBIA GAS TRAN
8227935		3411122538		107-DV		BRIGGS #1	WASHINGTON	7.3	COLUMBIA GAS TRAN
8227939		3416727024		107-DV		HARRY ARMSTRONG #1	LUDLOW	3.5	COLUMBIA GAS TRAN.
8227938		3416726765		107-DV		HAZEL HANLON #1	GRANDVIEW	5.0	COLUMBIA GAS TRAN
8227933A		3408924249		103		HOSKINSON #2	HOPEWELL	2.8	NEWZANE GAS CO
8227933B		3408924249	D	107-TF		HOSKINSON #2	HOPEWELL	2.0	NEWZANE GAS CO
8227934A		3408924317		103		O'DONNELL #2	HOPEWELL	2.0	NEWZANE GAS CO
8227934B		3408924317	D	107-TF		O'DONNELL #2	HOPEWELL	2.0	NEWZANE GAS CO
-CUYAHOGA EXPLORATION & DEVELOPMENT		RECEIVED: 04/19/82		JA: OH					
8227941		3411122587		103	107-DV	CURTIS BENNETT #2	RINARD MILLS	18.3	
-CYCLOPS CORP		RECEIVED: 04/19/82		JA: OH					
8227942		3403124593		103	107-TF	J HARMON #1	BETHLEHEM	20.0	
-DAVID A WALDRON DBA CLAY COUNTY PRO		RECEIVED: 04/19/82		JA: OH					
8228091		3405922699		107-TF		MCMULLEN #2	CAMBRIDGE	20.0	COLUMBIA GAS TRAN
8228092		3405922804		107-TF		MCMULLEN #3	CAMBRIDGE	15.0	COLUMBIA GAS TRAN
-DELRAY DRILLING INC		RECEIVED: 04/19/82		JA: OH					
8227943		3411925894		103	107-TF	WALKER #1	WALKER	125.0	COLUMBIA GAS TRAN
-DOMESTIC OIL & GAS CO		RECEIVED: 04/19/82		JA: OH					
8227944		3407523187		107-DV		SCHLAUCH #1-3187	RICHLAND	6.0	
-DORAN & ASSOCIATES INC		RECEIVED: 04/19/82		JA: OH					
8227946A		3412724685		103		DONALD STOLTZ #1A	JACKSON	12.0	COLUMBIA GAS TRAN
8227946B		3412724685	D	107-TF		DONALD STOLTZ #1A	JACKSON	12.0	COLUMBIA GAS TRAN
8227945A		3412724984		103		PAUL MUSSER #1	JACKSON	12.0	COLUMBIA GAS TRAN
8227945B		3412724984	D	107-TF		PAUL MUSSER #1	JACKSON	12.0	COLUMBIA GAS TRAN
-EAGLE MOUNTAIN ENERGY CORP		RECEIVED: 04/19/82		JA: OH					
8227947		3411522579		103	107-TF	LAWRENCE #1	MCCONNELSVILLE	20.0	COLUMBIA GAS TRAN
-EDCO DRILLING & PRODUCING INC		RECEIVED: 04/19/82		JA: OH					
8227948		3403124635		103	107-TF	POWELL WB-3A	TRINWAY	18.0	
-ENERGY PRODUCTION INC		RECEIVED: 04/19/82		JA: OH					
8227951		3412122713		103	107-TF	BURLINGAME #1	CALDWELL	50.0	TEXAS EASTERN TRA
8227949		3409921412		103	107-TF	SCHULTHEIS #1	CANFIELD	50.0	EAST OHIO GAS CO
8227950		3409921435		103	107-TF	TENZEK UNIT #1	GOSHEN TWP	30.0	COLUMBIA GAS TRAN
-ENERGY UNLIMITED INC		RECEIVED: 04/19/82		JA: OH					
8227953		3411122444		107-DV		COCHRAN #1	BENTON TOWNSHIP	0.0	
8227952		3411122159		107-DV		LEATHERMAN #1	BENTON TOWNSHIP	6.0	
-GEO ENERGY INC		RECEIVED: 04/19/82		JA: OH					
8227956		3416923218		107-TF		FANKHAUSER WOODROW #9-1	MILTON	15.0	COLUMBIA GAS TRAN
-GILBERT OIL CO		RECEIVED: 04/19/82		JA: OH					
8227958		3413322795		103	107-TF	HARPUR-KOHLER #1	SHALERSVILLE TOWNSHIP	0.0	AMERICAN ENERGY S
8227957		3413322778		103	107-TF	OCHWAT #1	NELSON TOWNSHIP	0.0	AMERICAN ENERGY S
-GNC ENERGY CORP		RECEIVED: 04/19/82		JA: OH					
8227954		3411522424		103		MCCONKEY JAMES JANICE & MARY #1	RINGGOLD	15.0	TENNESSEE GAS PIP
8227955		3411522434		103		SCOTT HERBERT & GLORIA #3	RINGGOLD	15.0	TENNESSEE GAS PIP
-HOPEWELL OIL AND GAS DEVELOPMENT CO		RECEIVED: 04/19/82		JA: OH					
8227961		3411925637		103	107-TF	GLENN SHAW #1	NORWICH	0.0	NATIONAL GAS & OI
8227960		3411122269		107-DV		J STIMPERT #1	WAYNE TWP	15.0	COLUMBIA GAS TRAN
8227959		3411122249		107-DV		K O MYERS #1	GRAYSVILLE	10.0	COLUMBIA GAS TRAN
-J D DRILLING CO		RECEIVED: 04/19/82		JA: OH					
8227962		3410522214		107-DV		ARNOLD & IONA HUPP #1	LEBANON	10.0	COLUMBIA GAS TRAN
8227963		3410522230		107-DV		GARNET ERVINE ETAL #1	LEBANON	9.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-JAMES P NOLL				RECEIVED:	04/19/82	JA: OH			
8227998		3412724611		107-TF		EDWARD-WILSON #2	READING	6960.0	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC				RECEIVED:	04/19/82	JA: OH			
8227964		3415320902		103	107-TF	CUMMINGS #1	NORTHAMPTON	0.0	
8227967		3415320975		103	107-TF	GILLESPIE #1	NORTHAMPTON	0.0	
8227964		3413322310		103	107-TF	MAUR UNIT #1	FREEDOM	0.0	REPUBLIC STEEL CO
8227965		3415320874		103	107-TF	REDER-STALKER UNIT #1	NORTHAMPTON	0.0	
-KENOIL				RECEIVED:	04/19/82	JA: OH			
8227978		3416922729		107-TF		KENNETH BROWN #2	CANAAN	12.0	COLUMBIA GAS TRAN
8227969		3416922545		107-TF		VIRGIL AND DAN BASSER #2	CANAAN	16.0	COLUMBIA GAS TRAN
8227968		3416922330		107-TF		WINSTON WYCKOFF #1	CANAAN	18.0	COLUMBIA GAS TRAN
-LANDPROVEST INC				RECEIVED:	04/19/82	JA: OH			
8227971		3411959550		107-TF		W DERRY #1	NEW CONCORD	25.0	
-LEADER EQUITIES INC				RECEIVED:	04/19/82	JA: OH			
8227972		3411924922		107-TF		ROADRUCK #1A	MONROE	15.0	
-LOMAK PETROLEUM INC				RECEIVED:	04/19/82	JA: OH			
8227973		3411925875		103		N MOORE #7	MUSKINGUM	12.0	ROVI RESOURCES CO
-M B OPERATING CO INC				RECEIVED:	04/19/82	JA: OH			
8227975		3415123507		103		ARCHIVAL #1	BETHLEHEM	27.4	REPUBLIC STEEL CO
8227978		3415123567		103		CARPER FARMS #2	NIMISHILLEN	9.9	REPUBLIC STEEL CO
8227981		3415123602		103		DAVIS UNIT #1	NIMISHILLEN	23.7	REPUBLIC STEEL CO
8227974		3415123413		103		DUSKEY UNIT #2	STARK	65.7	REPUBLIC STEEL CO
8227980		3415123601		103		FLINTKOTE CO #23	MARLBORO	7.3	REPUBLIC STEEL CO
8227976		3415123548		103		FLINTKOTE CO #24	MARLBORO	7.7	REPUBLIC STEEL CO
8227977		3415123546		103		INDORF UNIT #1	PERRY	49.3	REPUBLIC STEEL CO
8227982		3415123605		103		MALAVITE #3	PIKE	34.7	REPUBLIC STEEL CO
8227979		3415123598		103		MANN UNIT #1	NIMISHILLEN	9.1	REPUBLIC STEEL CO
-MORGAN-PENNINGTON INC				RECEIVED:	04/19/82	JA: OH			
8227984		3407523616		103		ALLISON #1	MONROE	18.3	COLUMBIA GAS TRAN
8227983		3403124437		107-TF		M & L HERSHBERGER #1	CRAWFORD	12.0	EAST OHIO GAS CO
-NATIONAL PETROLEUM CORP				RECEIVED:	04/19/82	JA: OH			
8227986		3400720760		107-TF		OHIO LAND & TIMBER #1	LENOX	15.0	OHIO GAS CO
8227985		3400720959		107-TF		OHIO LAND & TIMBER #3	LENOX	15.0	OHIO GAS CO
8227987		3400721410		107-TF		ZORMAN-HENERY-PORT #1	LENOX	15.0	OHIO GAS CO
-NEW FRONTIER EXPLORATION INC				RECEIVED:	04/19/82	JA: OH			
8227988		3402920873		103	107-TF	ARMSTRONG UNIT #1	WEST	18.0	COLUMBIA GAS TRAN
8227992		3406720505		103	107-TF	BETTS-ROVER UNIT #1	MONROE	16.0	
8227990		3405923033		103	107-TF	FORREST WAGNER #1	CENTER	8.0	
8227995		3410322578		103	107-TF	JAMES KOCSIS #1	WADSWORTH	18.0	AMERICAN ENERGY S
8227991		3405923255		103	107-TF	L C HOTHEM #1	MONROE	20.0	
8227989		3402920887		103	107-TF	MERLE BARRICK #1	WEST	18.0	COLUMBIA GAS TRAN
8227993		3406720513		103	107-TF	SAMUEL BETTS #1	MONROE	16.0	
8227994		3406720514		103	107-TF	SAMUEL BETTS #2	MONROE	16.0	
-NICOFIBERS INC				RECEIVED:	04/19/82	JA: OH			
8227996		3412725258		103	107-TF	NICOFIBER/CLAYCRAFT #4	SALT LICK TWP	6.0	
-NOBLE OIL CORP				RECEIVED:	04/19/82	JA: OH			
8227997		3413322750		107-TF		BRUMBAUGH #1	PALMYRA	28.0	GENERAL ELECTRIC
-OHIO NATURAL FUEL CO				RECEIVED:	04/19/82	JA: OH			
8227999		3416922784		107-TF		G & D SMITH #1	CANAAN (TWP)	18.0	COLUMBIA GAS TRAN
-OHIO PURE OIL CORP				RECEIVED:	04/19/82	JA: OH			
8228000		3413122577		107-DV		STEVE ZELENAK #1	ELK	30.0	
-OPEX INC				RECEIVED:	04/19/82	JA: OH			
8228002A		3412725513		103		KISSICK #2	FULTONHAM	0.6	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228002B		3412725513	D	107-TF		KISSICK #2	FULTONHAM	0.6	
8228001		3400922276		103		TRI-COUNTY #12	STEWART	1.0	COLUMBIA GAS TRAN
-ORION ENERGY CORP				RECEIVED:	04/19/82	JA: OH			
8228003		3411522515		107-DV		A DAVIS #3	WINDSOR	12.0	
-OXFORD OIL CO				RECEIVED:	04/19/82	JA: OH			
8228004		3411122760		107-DV		EDNA ROBINSON #1	STAFFORD	10.0	
8228005		3411925659		103	107-TF	MARY PARKINSON #1	BLUE ROCK	11.0	
-PAGE P BLAKEMORE				RECEIVED:	04/19/82	JA: OH			
8227916		3416724689		107-DV		ALLOWAY HEIRS #1	SHEETS RUN	0.4	COLUMBIA GAS TRAN
8227917		3416724694		107-DV		CISLER #1	GRANDVIEW	0.6	
8227919		3416725573		107-DV		CRAWFORD #1	GRANDVIEW	1.1	
8227920		3416725766		107-DV		DANA #1	GRANDVIEW	3.6	
8227915		3416724365	D	107-DV		PUGH #1	GRANDVIEW	2.1	COLUMBIA GAS TRAN
8227918		3416724858		107-DV		SCHWARTZ #1	LIBERTY	8.4	
-PETRO EVALUATION SERVICES INC				RECEIVED:	04/19/82	JA: OH			
8228023A		3407523385		103		STITZLEIN #1	RICHLAND	10.0	COLUMBIA GAS TRAN
8228024A		3407523586		103		STITZLEIN #2	RICHLAND	10.0	COLUMBIA GAS TRAN
8228024B		3407523586	D	107-TF		STITZLEIN #2	RICHLAND	10.0	COLUMBIA GAS TRAN
8228023B		3407523385	D	107-TF		STITZLEN #1	RICHLAND	10.0	COLUMBIA GAS TRAN
-PIONEER OIL COMPANY INC				RECEIVED:	04/19/82	JA: OH			
8228025		3408924314		103		M MCCOY #3	HOPEWELL	20.0	NEWZANE GAS CO
-POI ENERGY INC				RECEIVED:	04/19/82	JA: OH			
8228009		3400721772		103	107-TF	BOGGS #1	ANDOVER	16.0	
8228016		3413325470		103	107-TF	DEFER #1	STREETSBORO	27.0	
8228017		3413322549		103	107-TF	DEFER #3	STREETSBORO	20.0	
8228018		3413322581		103	107-TF	DILLEY ET AL #1	STREETSBORO	17.0	
8228019		3413322582		103	107-TF	DILLEY ET AL #2	STREETSBORO	19.0	
8228006		3400720519		103	107-RT	HAYES #1	RICHMOND	15.0	
8228010		3400721848		103	107-TF	HRABAL #4	ANDOVER	38.0	
8228008		3400721585		103	107-TF	KENNEDY #1	WINDSOR	4.0	
8228021		3415521842		107-RT		MC GARRY #1	BRACEVILLE	8.0	COLUMBIA GAS TRAN
8228022		3415521794		103	107-TF	RESTEMEIRE #1	MECCA	25.0	
8228026		3413322593		103	107-TF	S & H INVESTMENTS #2	STREETSBORO	12.0	
8228012A		3407523124		103		VOGEL #1	RICHLAND	18.0	COLUMBIA GAS TRAN
8228012B		3407523124	D	107-TF		VOGEL #1	RICHLAND	10.0	COLUMBIA GAS TRAN
8228007		3400725670		103	107-RT	W C SMITH #1	ANDOVER	15.0	
8228014A		3407523346		103		WATTS #6	RICHLAND	6.0	COLUMBIA GAS TRAN
8228014B		3407523346	D	107-TF		WATTS #6	RICHLAND	6.0	COLUMBIA GAS TRAN
8228015A		3407523347		103		WATTS #7	RICHLAND	9.0	COLUMBIA GAS TRAN
8228015B		3407523347	D	107-TF		WATTS #7	RICHLAND	9.0	COLUMBIA GAS TRAN
8228013A		3407523308		103		WATTS THOMPSON #1	RICHLAND	35.0	COLUMBIA GAS TRAN
8228013B		3407523308	D	107-TF		WATTS THOMPSON #1	RICHLAND	35.0	COLUMBIA GAS TRAN
8228011		3405520335		103	107-TF	YMCA #4	AURORA	45.0	
-POWER RESOURCES INC				RECEIVED:	04/19/82	JA: OH			
8228026		3401921553	D	107-TF		CONOTTON LAND #7	DELLROY	0.0	M B OPERATING CO
8228029		3415521142		107-TF		KONDOLEON-BENNETT #1	FARMINGTON	0.0	EAST OHIO GAS CO
8228028		3415521132		107-TF		MCCARTNEY #1	FARMINGTON	0.0	COLUMBIA GAS TRAN
8228031		3415522048		107-TF		MCCARTNEY #2	FARMINGTON	0.0	COLUMBIA GAS TRAN
8228030		3415521144		107-TF		MCINTOSH #2	FARMINGTON	0.0	EAST OHIO GAS CO
8228027		3401921554	D	107-TF		POWER-PUSKARICH #1	DELLROY	0.0	M B OPERATING CO
-PYRAMID OIL & GAS CO				RECEIVED:	04/19/82	JA: OH			
8228038		3415521336		107-TF		MATEI UNIT #2	SOUTHINGTON	10.0	COLUMBIA GAS TRAN
-PYRAMID OIL & GAS COMPANY				RECEIVED:	04/19/82	JA: OH			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228032		3410322179		107-TF		CLEVELAND #1	LAFAYETTE	15.0	COLUMBIA GAS TRAN
8228033		3415521091		107-TF		CRAFT UNIT #1	SOUTHINGTON	10.0	COLUMBIA GAS TRAN
8228034		3415521092		107-TF		MATEI UNIT #1	SOUTHINGTON	10.0	COLUMBIA GAS TRAN
8228037		3415521329		107-TF		STASZKO #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
8228035		3415521226		107-TF		STUCZYNSKI #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
8228036		3415521300		107-TF		TEMPLETON #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
-QUAKER STATE OIL REFINING CORP				RECEIVED:	04/19/82	JA: OH			
8228039		3407322527		103	107-TF	SUNDAY CREEK COAL CO #20	NEW STRAITSVILLE	7.5	COLUMBIA GAS TRAN
-REPUBLIC MINERAL CORP				RECEIVED:	04/19/82	JA: OH			
8228048		3416726857		107-DV		SCHWENDEMAN #3	SIMMONS	5035.0	COLUMBIA GAS OF O
-RINCO OPERATING INC				RECEIVED:	04/19/82	JA: OH			
8228041		3416922412		103	107-TF	KOPPES #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228042		3416922641		103	107-TF	KOPPES #2	CHESTER	12.0	COLUMBIA GAS TRAN
8228043		3416923128		103	107-TF	PETERSON #2	WEST SALEM	12.0	COLUMBIA GAS TRAN
8228044		3416923129		103	107-TF	PETERSON #3	WEST SALEM	12.0	COLUMBIA GAS TRAN
8228045		3416923357		103	107-TF	SHEAFFER #1	MOHICAN	12.0	COLUMBIA GAS TRAN
-ROBERT D CHARLEBOIS				RECEIVED:	04/19/82	JA: OH			
8227926		3410322867		103	107-TF	FENSTENMAKER - #1	LODI	1.0	COLUMBIA GAS TRAN
-ROBERT L CRAIG SR				RECEIVED:	04/19/82	JA: OH			
8227948		3400721972		103	107-TF	JACKSON UNIT #1	CONNEAUT	72.0	EAST OHIO GAS CO
-SHADCO INC				RECEIVED:	04/19/82	JA: OH			
8228046		3410322790		103	107-TF	SHADE #2	GRANGER	20.0	
-SIGLER PETROLEUM CORP				RECEIVED:	04/19/82	JA: OH			
8228049		3411924899		107-TF		GRAHAM & TAYLOR #1	UNION	10.0	COLUMBIA GAS TRAN
8228048		3411924898		107-TF		GRAHAM & TAYLOR #2	UNION	10.0	COLUMBIA GAS TRAN
8228047		3411924897		107-TF		GRAHAM & TAYLOR #3	UNION	10.0	COLUMBIA GAS TRAN
-SKY PETROLEUM CORP				RECEIVED:	04/19/82	JA: OH			
8228051		3403123823		107-TF		MURRAY #1	CLARK	8.0	COLUMBIA GAS TRAN
8228050		3403122453		107-TF		YODER #1	MECHANIC	6.0	COLUMBIA GAS TRAN
-STRATA PETROLEUM CO				RECEIVED:	04/19/82	JA: OH			
8228053		3411122729		107-DV		A B YESTER #1	BENTON	25.0	
8228052		3411122639		107-DV		A M BROWN #1	GRAYSVILLE	25.0	
-SUPERIOR PETROLEUM INC				RECEIVED:	04/19/82	JA: OH			
8228054		3401320381	D	107-DV		JEFFERIES #2	SOMERSET	25.0	TEXAS EASTERN TRA
8228055		3411122059	D	107-DV		WARD #1	MALAGA	25.0	TEXAS EASTERN TRA
-TEMPLE OIL & GAS CO				RECEIVED:	04/19/82	JA: OH			
8228056		3411522626		103		CRUDE OIL CO-E DALZELL #1	PHILO	10.0	
-TIGER OIL INC				RECEIVED:	04/19/82	JA: OH			
8228057		3412122448		107-DV		EMILENE SCHRAMM #3	ELK	0.0	COLUMBIA GAS TRAN
-TITAN ENERGY CORP				RECEIVED:	04/19/82	JA: OH			
8228059		3415521922		103	107-TF	BROOKFIELD CONSERVATION CLUB #2	BROOKFIELD	20.0	COLUMBIA GAS TRAN
8228058		3415521675		103	107-TF	MABEL MOYER #1	ORANGEVILLE	20.0	COLUMBIA GAS TRAN
-TOWNER PETROLEUM CO				RECEIVED:	04/19/82	JA: OH			
8228075		3405923235		103	107-TF	BSA/BURNS #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228077		3405923254		103	107-TF	C PULLEY/E SHELLENBERGER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228074		3405923218		103	107-TF	C PULLEY/W BALES #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228061		3405923037		103	107-TF	D MINER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228060		3405922590		103	107-TF	D MULLINEX #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228072		3405923280		103	107-TF	E TOTH #4	GUERNSEY	0.0	TENNESSEE GAS PIP
8228064		3405923079		103	107-TF	EMERSON MALONE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228067		3405923133		103	107-TF	EMERSON W MALONE #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228068		3405923134		103	107-TF	FRED & EVELYN SHEPARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228070		3405923178		103	107-TF	H CORBETT #2	GUERNSEY	0.0	TENNESSEE GAS PIP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228076		3405923236		103	107-TF	BSA/BURNS #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228078		3405923255		103	107-TF	C PULLEY/E SHELLENBERGER #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228073		3405923219		103	107-TF	C PULLEY/W BALES #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228062		3405923038		103	107-TF	D MINER #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228063		3405922591		103	107-TF	D MULLINEX #3	GUERNSEY	0.0	TENNESSEE GAS PIP
8228071		3405923279		103	107-TF	E TOTH #3	GUERNSEY	0.0	TENNESSEE GAS PIP
8228065		3405923080		103	107-TF	EMERSON MALONE #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228066		3405923132		103	107-TF	EMERSON W MALONE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228069		3405923135		103	107-TF	FRED & EVELYN SHEPARD #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228081		3405923177		103	107-TF	H CORBETT #1	GUERNSEY	0.0	TENNESSEE GAS PIP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228062		3405923052		103	107-TF	HOUSE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228063		3405923063		103	107-TF	HOWELL #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228066		3405923098		103	107-TF	J CRISLIP #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228078		3405923255		103	107-TF	MARKEE/WARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228073		3405923208		103	107-TF	R BOND #4	GUERNSEY	0.0	TENNESSEE GAS PIP
8228065		3405923089		103	107-TF	R BOND/F SHEPARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228071		3405923179		103	107-TF	R KEIFFER #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228076		3405923253		103	107-TF	R SUNTHIMER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228069		3405923169		103	107-TF	W BALES #1	GUERNSEY	0.0	TENNESSEE GAS PIP
-VIKING RESOURCES CORP				RECEIVED: 04/19/82		JA: OH			
8228098A		3415123661		103		A & A ACKERMAN #2 (ADLER UNIT #2)	OSNABURG	30.0	
82280988		3415123661	D	107-TF		A & A ACKERMAN #2 (ADLER UNIT #2)	OSNABURG	30.0	
8228089		3415123660		103	107-TF	D ADLER ET AL #1 (ADLER UNIT #1)	OSNABURG	30.0	
8228088		3413321197		103		GRIFFIN UNIT #1	ATWATER	7.0	AMERICAN ENERGY S
8228083		3413320987		103		P & W KARAS #1	ATWATER	10.0	AMERICAN ENERGY S
8228085		3413320998		103		P & W KARAS #10	ATWATER	4.0	AMERICAN ENERGY S
8228084		3413320997		103		P & W KARAS #12	ATWATER	4.0	AMERICAN ENERGY S
8228079		3413320952		103		P & W KARAS #14	ATWATER	4.0	AMERICAN ENERGY S
8228080		3413320973		103		P & W KARAS #2	ATWATER	10.0	AMERICAN ENERGY S
8228081		3413320974		103		P & W KARAS #4	ATWATER	10.0	AMERICAN ENERGY S
8228082		3413320986		103		P & W KARAS #5	ATWATER	10.0	AMERICAN ENERGY S
8228086		3413320999		103		P & W KARAS #9	ATWATER	4.0	AMERICAN ENERGY S
8228087		3413321196		103		VERNON CLAPP #1	ATWATER	5.0	AMERICAN ENERGY S
-WHITACRE OIL CO				RECEIVED: 04/19/82		JA: OH			
8228094		3411122364		107-DV		C CLINE #1	WASHINGTON	5.0	COLUMBIA GAS TRAN
8228095		3411122608		107-DV		C PIATT #1	GRAYSVILLE	8.0	COLUMBIA GAS TRAN
8228093		3411122085		107-DV		M MELLOTT #1	WASHINGTON	8.0	COLUMBIA GAS TRAN
-WORTHINGTON OIL COMPANY INC				RECEIVED: 04/19/82		JA: OH			
8228096		3411522513		103 -DV	107-TF	MERRILL WILSON #2	BRISTOL	0.0	COLUMBIA GAS TRAN

BILLING CODE 8717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 273.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before May 27, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1,000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

[FR Doc. 82–12828 Filed 5–11–82; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. G–7156–001, et al.]

Natural Gas Companies; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

May 6, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 24, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirments of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[2]	Pressure base
G–7156–001, G–13445–000, D, Apr. 8, 1982.	Warren Petroleum Company, A Division of Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77001.	El Paso Natural Gas Company, Waddell Gas Processing Plant, Crane County, Texas.	[3]	
G–9765–001, D, Apr. 19, 1982	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Natural Gas Pipeline Company of America, Camrick Field, Texas County, Oklahoma.	[3]	
CI161–1032–000, D Apr. 26, 1982	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company; Laverne Area, Woodward County, Oklahoma.	[3]	
CI82–246–000 (CI67–654), B, Apr. 23, 1982.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza; Suite 2700, Houston, Texas 77046.	Trunkline Gas Company, Lakemiere Field, Cameron Parish, Louisiana.	[4]	
CI78–66–002, C, Apr. 19, 1982	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Natural Gas Pipeline Company of America, High Island Blocks A–337, A–342, and A–343, Offshore Texas.	[5]	14.73
CI78–67–002, C, Apr. 19, 1982	do	Columbia Gas Transmission Corporation, High Island Blocks A–337, A–342, and A–343, Offshore Texas.	[6]	14.73
CI78–68–002, C, Apr. 19, 1982	do	Trunkline Gas Company, High Island Blocks A–337, A–342, and A–343, Offshore Texas.	[5]	14.73
CI78–1129–001, C, Apr. 19, 1982	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, Texas 77380.	Northwest Pipeline Corporation, Basin Dakota, Rio Arriba County, New Mexico.	[6]	14.73
CI80–499–001, Apr. 21, 1982	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	El Paso Natural Gas Company, Matagorda Island Area Field, Offshore Texas.		14.73
CI81–47–001, Mar. 29, 1982	Amoco Production Company, P.O. Box 59679, New Orleans, Louisiana 70150.	Trunkline Gas Company and Florida Gas Transmission Company, Section 26, T6S–R7W, Calcasieu Parish, Louisiana.		15.025
CI82–231–000, A, Apr. 16, 1982	Pennzoil Oil & Gas Inc., P.O. Box 2967, Houston, Texas 77001.	United Gas Pipe Line Company, High Island Block A–499, South Addition, Offshore Texas.	[9]	14.73
CI82–232–000, A, Apr. 19, 1982	Champlin Petroleum Company, Two Allen Center, Suite 1900, 1200 Smith Street, Houston, Texas 77002.	Arkansas Louisiana Gas Company, North Drummond Area, Garfield & Major Counties, Oklahoma.	[10]	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI82-233-000; A, Apr. 19, 1982	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	United Gas Pipe Line Company, High Island Blocks A-351 and A-388 Field, Offshore Texas.	[9]	14.73
CI82-234-000, A, Apr. 19, 1982	Amoco Production Company, P.O. Box 50879, New Orleans, Louisiana 70150.	Sea Robin Pipeline Company, East Cameron 231 Field (Blocks 282 and 258), Offshore Louisiana.	[11]	15.025
G-19370-000, D, Apr. 19, 1982	Terra Resources Inc., P.O. Box 2329, Tulsa, Oklahoma 74101.	Northern Natural Gas Co., Hugoton Field, Finney County, Kansas.	[12]	
CI82-236-000, A, Apr. 19, 1982	Natresco Incorporated, P.O. Box 1521 Houston, Texas 77001.	United Gas Pipe Line Company, High Island Blocks A-351 and A-388 Field, Offshore Texas.	[9]	14.73
CI82-237-000, A, Apr. 21, 1982 [2]	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	Michigan Wisconsin Pipe Line Company, South Marsh Island Block 128 ("S" Platform), Offshore Louisiana.	[10]	15.025
CI82-238-000 (CI71-668), B, Apr. 22, 1982.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, Tuttle Field, Comanche County, Kansas.	[14]	
CI82-239-000, A, Apr. 23, 1982	ANR Production Company, 5075 Westheimer, Suite 1166, Galleria Towers West, Houston, Texas 77056.	Transcontinental Gas Pipe Line Corporation, Blocks 501 and 504, Brazos Area, Offshore Texas, Federal Domain.	[15]	14.73

[1] The last well on Gulf Oil Corporation's E. B. Jones Lease has been plugged and abandoned and the lease expired by its own terms in July 1967.
[2] Acreage in Section 2, T-1-N, R-19-ECM, Texas County, Oklahoma has ben released and the Campbell-Sillers No. 1 well has been plugged and abandoned.
[3] ARCO no longer holds an interest in the properties which were released to landowner on August 20, 1962.
[4] The last well was plugged and abondoned in August, 1961, and the lease surrendered on August 27, 1961.
[5] Applicant agrees to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the Natural Gas Policy Act of 1978 and the Commission's Regulations under Said Act.
[6] Applicant is filing under Gas Purchase Contract dated July 19, 1978, amended by amendment dated December 17, 1980, requesting to increase the depth limitations.
[7] Applicant is filing under Gas Sales Contract dated July 11, 1980, amended by amendatory agreement dated March 24, 1982.
[8] Applicant requests that the present certificate in this docket be further amended now to provide authority to operate compression for delivery of gas to Florida Power and Light Company if and when the Commission should act to remove restrictions on transportation of OCS gas to Florida Power and Light Company from the certificates currently held by Trunkline in Docket Nos. CP79-504 and CP77-597.
[9] Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.
[10] Applicant is filing under Gas Purchase Contract dated July 2, 1962, for the continuation of service previously authorized under Harper Oil Company (Operator), *et al*, FERC GRS No. 32, Docket No. CI63-1139, at one time certified as a Small Producer.
[11] Applicant is filing under Gas Purchase Contract dated February 10, 1982.
[12] Terra Resources, Inc. assigned its interest in two leases comprising the Gingrich Gas Unit to John B. Hawley, Jr. Trust #1; Conveyance and Assignment effective March 1, 1973.
[13] Applicant is filing under Gas Purchase Contract dated March 19, 1982.
[14] ARCO assigned all of its interest in this property to Earl M. Knighton effective July 1, 1972.
[15] Applicant is filing under Gas Sales Contract dated May 11, 1981.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 82-12983 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-481-000]

Arizona Public Service Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Arizona public Service Company (Arizona) on April 29, 1982 tendered for filing proposed changes in its FERC Electric Service Rate Schedules:

12—Electrical District No. 3
13—Electrical District No. 7
14—Maricopa County Municipal Water Conservation District No. 1
15—Roosevelt Irrigation District
16—Buckeye Water Conservation & Drainage District
35—Electrical District No. 6
50—Citizens Utilities Company
52—Papago Tribal Utility Authority
57—Arizona Electric Power Cooperative, Inc.
58—Wellton-Mohawk Irrigation & Drainage District
59—Arizona Power Authority
65—Colorado River Indian Irrigation Project
66—San Carlos Indian Irrigation Project
68—Electrical District No. 1
74—Town of Wickenberg
83—Plains Electric Generation and Transmission Cooperative, Inc.
84—Washington Water Power Company

The proposed changes would increase revenues from jurisdictional sales and service by $25,200,617 based on the estimated 12-month test period ending March 31, 1983.

Arizona states that the proposed changes are necessary to offset the rapidly escalating costs involved in rendering service under these schedules, and to provide a reasonable return.

Copies of the filing were served upon resale customers affected by the filing and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8, and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12984 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER81-577-005]

Arkansas Power & Light Co.; Order Denying Motion for Acceptance of Late-Filed Application for Rehearing

Issued: May 5, 1982

On April 5, 1982, the Cities of Campbell and Thayer, Missouri (Missouri Cities) filed a motion requesting the Commission to accept a late-filed petition for rehearing of the Commission's order in this docket issued on March 3, 1982, 18 FERC ¶ 61,210. That order, among other things, denied the Missouri Cities' motion to reject Arkansas Power & Light Company's (AP&L) rate filing on *Mobile-Sierra* grounds.[1] For the reasons stated below, the Commission will deny Missouri Cities' motion and dismiss its application for rehearing.

Pursuant to section 313 (a) of the Federal Power Act [16 U.S.C. 825/(a)], the Missouri Cities had thirty days after the issuance to the Commission's order of March 3, 1982 (*i.e.*, until April 2, 1982) in which to file an application for rehearing. Missouri Cities state that due to the breakdown of a word processor at 4:15 p.m. on April 2, 1982, they were unable to tender their application for rehearing until after the close of business (5:00 p.m.)[2] on April 2, 1982.

[1] *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).
[2] 18 CFR 375.101(c).

The application was not accepted inasmuch as it was untimely tendered on April 2,1982, but is was filed with the Commission on the next business day, April 5, 1982.

The Missouri Cities request that the Commission (1) deem its filing accepted as of April 2, 1982, or in the alternative, (2) grant a one-day extension of time for the filing of its application for rehearing, or in the alternative, (3) deem its filing a motion for reconsideration of the Commission's order or March 3, 1982, and (4) grant a stay of the Commission's order of March 3, 1982, pending a hearing on the issue of the parties' intent with respect to the *Mobile-Sierra* contract claim.

On April 16, 1982, AP&L submitted an answer requesting denial of Missouri Cities' motion. In its answer, AP&L states (1) that the present circumstances do not warrant an exception to the normal 5:00 p.m. close of business rule, (2) that the Commission is without authority to waive the thirty day filing requirement for applications for rehearing under section 313 of the Federal Power Act, (3) that Missouri Cities' motion was not verified or served in accordance with Commission regulations, and, (4) that Missouri Cities present no grounds warranting reconsideration of the Commission's prior order.

Discussion

The time period within which a party may file an application for rehearing of a Commission order is statutorily established at thirty days by section 313(a) of the Federal Power Act (16 U.S.C. § 825*l*(a)). As we have previously stated, the Commission has neither the authority to waive the statutory requirement nor any inclination to employ a legal artifice to circumvent it. (*Southern California Edison Company*, Docket No. ER76–205, 18 FERC ¶ 61,024, issued January 13, 1982). The Missouri Cities should have been well aware of the statutory deadline for filing their application for rehearing, which we note should not have required extensive time for preparation.[3] By waiting until 4:15 p.m. on the statutory due date to complete their application for rehearing, the Missouri Cities assumed the risk that unanticipated circumstances might impair their ability to make a timely filing.[4]

Further, Missouri Cities have not presented any new facts, circumstances, or arguments which would warrant reconsideration of our order of March 3, 1982. For the foregoing reasons, Missouri Cities' motion will be denied and their application for rehearing dismissed as untimely.

The Commission orders:

(A) Missouri Cities' motion for acceptance of their late-filed application for rehearing is hereby denied, and their application is dismissed as untimely filed.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12829 Filed 5–11–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF82–120–000]

Cleek Dairy Farm; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7, 1982.

On April 23, 1982, Cleek Dairy Farm, Route #1, Kingsport, Tennessee 37660, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The small power production facility will be located in Kingsport, Sullivan County, Tennessee. The primary energy source of the facility will be biomass in the form of biogas produced from cow manure in an on-site biodigester plant. The electric power production capacity of the facility will be 25 kilowatts. There are no other small power production facilities using biogas and owned by the Applicant located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12806 Filed 5–12–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–482–000]

Commonwealth Edison Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Commonwealth Edison Company (CE) on April 29, 1982, tendered for filing a Letter Agreement dated January 29, 1982 which cancels Appendix "C" to the Interconnection Agreement dated as of November 1, 1964 between CE and Central Illinois Public Service Company.

Appendix "C" provides for a normally open 34 Kv point of interconnection between the Companies and the interconnection is no longer required by either party.

Copies of the filing were sent to Central Illinois Public Service Company and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–12809 Filed 5–11–82; 8:45 am]

BILLING CODE 6717–01–M

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[3] The Cities' pleading consists of five pages explaining their delay and requesting procedural relief, and only two pages addressing their substantive contentions.

[4] We note that in their motion, the Missouri Cities state that "(d)espite the twenty minute delay in reconstruction of the pages, Missouri Cities' filing left the attorney's office in time to meet the Commission's 5:00 p.m. deadline." Thus, it is not clear whether the malfunction of the word processor or some other unexplained event was the direct cause of petitioners failure to make a timely filing.

[Docket No. ER82-480-000]

Connecticut Light & Power Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 29, 1982, the Connecticut Light and Power Company (CP&L) tendered for filing as an initial rate schedule of an exchange agreement (the Agreement) between CL&P and the Hartford Electric Light Company (HELCO) (the NU Companies), and Burlington Electric Department (Burlington). The Agreement, dated as of November 1, 1980, provides for the NU Companies to exchange capacity from Middletown Unit No. 4 and/or Montville Unit No. 6, both oil-fired, intermediate-type electric generating units, for gas turbine capacity from the Burlington GT-1 Unit, a gas turbine type electric generating unit.

The Agreement provides that the parties will determine daily and/or weekly during the term of the Agreement whether it is economically advantageous to the parties that an exchange shall take place.

Burlington will pay an hourly capacity charge to the NU Companies in an amount equal to the kilowatts of capacity exchanged times $0.00274. Burlington will purchase energy from Middletown Unit No. 4 and/or Montville Unit No. 6 at the average cost of providing such energy. Burlington will pay a station service energy charge to the NU Companies for Middletown Unit No. 4 and/or Montville Unit No 6 at the average cost of providing such energy from the Northeast Utilities System when such units are not operating during an exchange. The NU Companies will purchase energy from the GT-1 Unit at the average cost of providing such energy.

CL&P requests that the Commission waive its notice requirements to allow the Agreement to become effective on November 24, 1980.

According to CL&P copies of this filing has been sent to the NU Companies and Burlington.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12807 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-53-000]

El Paso Electric Co.; Application

May 3, 1982.

Take notice that on April 29, 1982, El Paso Electric Company (Applicant) filed an application with the Federal Enery Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue Notes and Commercial Paper not to exceed in the aggregate $200,000,000 face value at any one time outstanding.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before May 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12821 filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI61-1319-000]

El Paso Exploration Co.; Application

May 3, 1982.

Take notice that on March 28, 1982, El Paso Exploration Company, ("Applicant") of Post Office Box 1492, El Paso, Texas 79978, filed an application for certificates of public convenience and necessity in Docket Nos. CI61-1319-000, *et al* authorizing Applicant to continue to render service previously authorized under certificate of public convenience and necessity heretofore issued to Odessa Natural Corporation ("Odessa"). Applicant is also requesting redesignation of Odessa's rate schedules ("Odessa") as the rate schedule of El Paso Exploration Company.

By Articles of Amendment to the Articles of Incorporation of Odessa Natural Corporation, dated December 19, 1980, the name of Odessa was changed to El Paso Exploration Company, effective January 1, 1981.

The properties of Odessa subject to the instant certificates were conveyed to Applicant by instruments of assignments executed on various dates in 1981, all to be effective January 1, 1981.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdication conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene in timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12822 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-119-001]

Energenics Systems Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7, 1982

On April 23, 1982, Energenics Systems Inc., 1717 K Street, N.W., Suite 706, Washington, DC 20006, filed with the Federal Energy Regulatory Commission (Commission) an application for

certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The hydroelectric facility will be located in Collbran, Mesa County, Colorado. The electric power production capacity of the facility will be 3,950 kilowatts. There are not other small power production facilities located within one mile of the site which use the same energy source and are owned by the Applicant. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12809 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-479-000]

Florida Power & Light Co., Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on April 29, 1982, tendered for filing documents entitled Amendment Number Eight and Amendment Number Nine to Agreement to Provide Specified Transmission Service Between FPL and City of Homestead.

FPL states that under Amendment Number Eight FPL will transmit power and energy for the City of Homestead (Homestead) as is required by Homestead in the implementation of its interchange agreement with the City of Tallahassee.

Amendment Number Nine updates the rates for transmission service provided by FPL, bringing them in accord with the increased rates filed by the Commission on July 1, in Florida Power & Light Company, Docket No. ER81-568.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendments be made effective immediately.

FPL states that copies of the filing were served on the City of Homestead.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12808 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-85-000]

Geo Energy; Application for Commission Certification of Qualifying Status of a Congeneration Facility

May 6, 1982.

On March 22, 1982, Geo Energy, Inc., 530 Oakgrove Avenue, Suite 201, Menlo Park, California 94025 filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located in Martell, California. The primary energy source of the facility will be natural gas. The electric power production capacity of the facility will be 41,055 kilowatts with 16.237 million Btu/hour useful thermal energy output or 54,564 kilowatts with 18.218 million Btu/hour useful thermal energy output. Installation of the facility will begin in June 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commissoin and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12810 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA 82-20-000]

ICG Vista Petroleums, Inc.; Filing of Petition for Review

May 6, 1982.

Take notice that ICG Vista Petroleums, Inc. on April 29, 1982 filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before May 20, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before May 20, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are

available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12811 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-114-000]

Long Lake Energy Corp., Dolgeville; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7, 1982.

On April 19, 1982, Long Lake Energy Corporation, 330 Madison Avenue, New York, New York 10017, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The applicant seeks Commission certification of qualifying status for the Dolgeville facility, a 5,000 kilowatt water power project located at the Dolgeville dam on East Canada Creek in the Village of Dolgeville, Herkimer County, New York. The Dolgeville facility will utilize an existing stone masonry dam rehabilitated to meet New York State dam safety standards and with reconstructed headworks and intake passageway, a 710 foot long, 10 foot diameter reinforced fiberglass penstock, a new reinforced concrete powerhouse containing one 2200 mm horizontal S-type Kaplan turbine with electronically governed (by headwater level controller) wickett gates and adjustable blades. Long Lake Energy Corp. owns no other small power production facilities using the same energy source that are located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12812 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-115-000]

Long Lake Energy Corp., Diana; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7,1982.

On April 19, 1982, Long Lake Energy Corporation, 330 Madison Avenue, New York, New York 10017, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The applicant seeks Commission certification of qualifying status for the Diana facility, a 2,500 kilowatt waterpower project located at the Harrisville dam on the West Branch of the Oswegatchie River in the Town of Diana, Lewis County, New York. The Diana facility will utilize an existing concrete gravity dam rehabilitated to meet New York State dam safety standards and with a repaired headworks and intake passageway, a 122 foot long, 10 foot diameter reinforced fiberglass penstock, and a new reinforced concrete powerhouse containing one 1900mm horizontal S-type Kaplan turbine. Long Lake Energy Corp. owns no other small power production facilities using the same energy source that are located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12813 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI77-145-002 et al.]

McMoRan-Freeport Oil Co. et al.; Merger and Name Change

May 3, 1982.

Take notice that on June 2, 1981, McMoRan-Freeport Oil Company of Post Office Box 6800, Metairie, Louisiana 70009, filed a notice of merger and name change. Applicant is requesting redesignation of Freeport Oil Company's rate schedules on file with the Commission as the rate schedules of McMoRan-Freeport Oil Company as shown on Exhibit "A").

Effective April 21, 1981, Freeport Oil Company changed its name to McMoRan-Freeport Oil Company. The change was made subsequent to the merger of its parent company with McMoRan on April 8, 1981.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission of its own review of the matter believes that a grant of the certificates of the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal

hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Gas number schedule No.	Docket No.	Field
1	CI77-145-002	Vermilion Block 22.
2	CI77-148-002	Vermilion Block 22.
3	(1)	(1)
4	CI78-245-001	East Cameron Block 269.
5	CI78-311-001	Vermilion Block 25.
6	CI80-235-001	Vermilion Block 310.
7	CI81-86-001	West Cameron Block 65.
8	CI81-86-001	West Cameron Block 65.

[1] No record of this rate schedule.

Field for which certificates and rate schedule have been requested but not yet assigned include:

High Island Block A-492
West Delta Block 34

[FR Doc. 82-12823 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-34-000]

Michigan Gas Storage Co.; Change in Tariff

May 5, 1982.

Take notice that on April 26, 1982, Michigan Gas Storage Company (Storage Company) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventh Revised Sheet No. 4
Seventh Revised Sheet No. 5
First Revised Sheet No. 24E

An effective date of April 27, 1982, is proposed.

Storage Company states that this submittal implements a settlement agreement also submitted in the same filing, under which Storage Company and the Commission Staff have resolved all issues concerning the changes reflected in the tariff sheets submitted.

Storage Company states that copies of its filings have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to comment or to protest said filing should file a comment, petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8, 1.10 and 1.16 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10, 1.16). All such comments, petitions or protests should be filed on or before 10 days after issuance of this notice. Any reply comments should be filed on or before 15 days after the issuance of this notice. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12814 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-1-002]

Public Service Co. of New Mexico; Order Granting Motion To Collect Proposed Settlement Rates in Part

May 3, 1982.

On March 25, 1982, Public Service Company of New Mexico (PNM) filed a motion requesting permission to collect proposed settlement rates in lieu of the rates originally filed in this docket. PNM requests that it be allowed to collect the settlement rates beginning May 1, 1982, when the filed rates are to become effective, subject to refund. In the event that the Commission later rejects the proposed settlement, PNM also seeks permission to reinstate its originally filed rates and to recover any difference between the settlement rates and the filed rates by means of a surcharge. For the reasons stated below, we shall grant the motion, except insofar as it would reserve the right to impose a surcharge.

On October 1, 1981, PNM submitted proposed rates for firm power service to four partial requirements customers [1] and one full requirements customer, the City of Gallup (Gallup). By order issued November 30, 1981, the Commission accepted the rates for filing and suspended them for five months to become effective, subject to refund, on May 1, 1982. On March 25, 1982, PNM filed a proposed settlement agreement which purports to resolve outstanding issues concerning the customer, demand, and energy charges for the four partial requirements customers in this docket. None of the affected customers has filed a response objecting to the motion.

Discussion

The settlement rates agreed to by PNM and its partial requirements customers are approximately $6.4 million lower than the filed rates. PNM states that it desires to collect the settlement rates in order to give its customers the benefit of the lower rates immediately, while reducing its potential refund liability. As noted, however, PNM also asserts that if the Commission ultimately rejects the settlement, PNM should be permitted to immediately collect the higher filed rates and to recover any difference between the settlement rates and the filed rates in billings after May 1, 1982, through a surcharge.

In light of the facts surrounding PNM's request, we shall authorize the company to collect the lower settlement rates pending disposition of the settlement agreement. However, based on the pleadings before us, we shall deny PNM's request for approval of a surcharge contingency. Although the affected customers have not filed responses in opposition to PNM's motion, the motion itself does not indicate customer concurrence. The Commission has perviously permitted such surcharge provisions in conjunction with interim rates only upon express agreement among all effected parties. In all other instances, we have indicated that upon disapproval of a proposed settlement, the originally filed rates could become effective prospectively only. We are not prepared to construe the absence of objection as express consent and, accordingly, the proposed surcharge will not be allowed to operate.

Pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, we find that good cause exists to permit the collection of PNM's proposed interim rates as of May 1, 1982, subject to refund, until such time as we may act on the settlement agreement filed by PNM. In the event that the settlement is not approved, the originally filed rates may become effective prospectively only and subject to refund from the date of a Commission order rejecting the settlement proposal. This order shall be without prejedice to our subsequent determination on the merits of the proposed settlement.

The Commission Orders

(A) The motion filed on March 25, 1982, by PNM for approval to collect interim rates in lieu of the rates originally filed in this docket is hereby granted in part and denied in part.

(B) Good cause having been shown, PNM is hereby authorized, pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, to collect, subject to refund, the proposed rates

[1] City of Farmington, New Mexico; Department of Energy, Los Alamos; Plains Electric Generation and Transmission Cooperative, Inc.; and Texas-New Mexico Power Company.

reflected in the motion and settlement from May 1, 1982, until the Commission acts on the settlement. In the event that the settlement is not approved, the originally filed rates may become effective prospectively only and subject to refund from the date of a Commission order rejecting the settlement proposal.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12834 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-445-000]

San Diego Gas & Electric Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 5, 1982, San Diego Gas & electric comany (SDG&E) tendered for filing a notice of cancellation that effective the 30th of April 1982, Rate Schedule FERC Electric Tariff original Volume No. 1, effective July 1, 1981, is to be cancelled.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Enery Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12815 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF82-116-000]

Scott Paper Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 6, 1982.

On April 16, 1982, Scott Paper Company, Scott Plaza, Philadelphia, Pennsylvania 19113, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The facility will be located at the S.D. Warren pulp and paper mill in Skowhegan, Maine. The facility commenced operation as a cogeneration facility in March, 1977. The primary energy source will be biomass (dry black liquor solids, wood wastes and plant sludge), supplemented by No. 6 fuel oil. The peak power production capacity will be approximately 45.49 megawatts. The annual useful thermal energy output will be in the form of steam at a rate of 200,000 lbs/hr, at 165 psig and 410,000 lbs/hr, at 65 psig. No electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12816 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-475-000]

Southern California Edison Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 26, 1982, Southern California Edison Company (SCE) tendered for filing as supplements to the Rate Schedules listed below, letter agreements which have been executed by SCE and each entity listed, providing for the assignment to Edison of the entity's interest and obligations for firm transmission service between Palo Verde Nuclear Generating Station and an entity's Point of Interconnection with Edison.

Entity	FERC No.	Effective date
1. City of Burbank (Burbank).	135	Mar. 25, 1982.
2. City of Glendale (Glendale).	136	Mar. 25, 1982.
3. City of Pasadena (Pasadena).	137	Mar. 25, 1982.
4. Imperial Irrigation District (IID).	138	Jan. 15, 1982.

Copies of this filing were served upon the California cities of Burbank, Glendale, and Pasadena, IID, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on fil with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12817 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EF81-5121-000]

Western Area Power Administration; Central Valley Project—Pacific Gas & Electric Co.; Contract Order Rejecting Filing and Denying Interventions

Issued: May 4, 1982.

Under Article 32 of Contract No. 14-06-200-2948A (Contract) between the Western Area Power Administration (WAPA) and Pacific Gas and Electric Company (PG&E), the Assistant Secretary for Conservation and Renewable Energy (AS/CE) of the Department of Energy filed a request on June 24, 1981, on behalf of WAPA, for approval of a revised "passthrough" rate methodology. The rates apply to the resale by WAPA's Central Valley Project (CVP) to PG&E of capacity and energy obtained by CVP from the Centralia power plant as well as energy from other Pacific Northwest sources. Article 32 of the contract provides that implementation of revised rates requires the concurrence of both parties. In the absence of mutual agreement, Article 32

contemplates submission of the matter to the Commission for resolution.[1]

PG&E did not agree to the proposed rates; thus, the AS/CE approved the new methodology by Rate Order No. WAPA–8 (June 18, 1981), but did not place the revised rates into effect on an interim basis. Instead the AS/CE has requested that this Commission arbitrate the impasse between the parties.[2] The AS/CE has further requested that the Commission allow the rates to become effective retroactively as of April 1, 1981, subject to refund with interest, pending a final Commission determination as to whether or not the rates are appropriate. By letter agreement dated January 27, 1981, WAPA indicated that the parties have agreed that the rate methodology approved by the Commission may become effective for Centralia power sales from April 1, 1981, through December 31, 1981, the end of WAPA's contract to purchase power from Centralia, and for other Northwest energy sales from April 1, 1981, through March 31, 1986.

Background

The power resources of the CVP consist of hydroelectric plants with an aggregate installed capacity of 1,709 megawatts which are currently supplemented by the import of 400 megawatts of capacity and associated energy from the Northwest. Most of the power imported from the Northwest is obtained from the Centralia powerplant located 85 miles south of Seattle, Washington. The Centralia facility is a coal-fired thermal generating plant consisting of two units with nameplate ratings of 650 megawatts each. Participants in the thermal project are Pacific Power & Light Company and the Washington Water Power Company. The Bureau of Reclamation, now WAPA, contracted to purchase 426.9 megawatts of firm power from the project for its initial ten years of operation. For this power, WAPA pays a portion of the participants' fixed and operating costs based on the percentage of the project output that it receives. By letter dated September 17, 1971, the Federal Power Commission (FPC) accepted the Centralia sales contract as a rate schedule. WAPA's power is wheeled by the Bonneville Power Administration (BPA) over BPA's transmission facilities to the southern Oregon border where BPA's system interconnects with a CVP feature, the Pacific Northwest-Pacific Southwest Intertie.

Under the terms of the PG&E/WAPA contract, the output from CVP hydroelectric powerplants, plus the 400 megawatts of capacity and associated energy imported from the Northwest, are first used to serve CVP preference customer loads. Capacity and energy in excess of that needed to meet the CVP's obligations to its preference customers are sold to PG&E for credit under a banking arrangement. These amounts can be repurchased as needed in future years to meet the CVP's load requirements. This contract was filed by PG&E and accepted for filing by the FPC.[3]

Northwest imports began in 1968 with the purchase of power from the Bonneville Power Administration. Regular imports from the Centralia powerplant began in 1972, and were delivered pursuant to the terms of the PG&E/WAPA contract.

In setting its rates initially, CVP did not attempt to distinguish between power received from the Northwest and power generated at its own projects but simply billed PG&E at CVP's general system rates, consisting of a capacity charge of 75 cents per kilowatt-month and energy block charges of 4, 3, and 2 mills per kilowatt-hour.

The first opportunity to review and adjust the Centralia rate was on April 1, 1971.[4] However, the rate was not adjusted at that time because the Centralia plant was not then in operation and its costs were not known. When the first unit was placed in service in the fall of 1971, the associated costs were greater than those which had originally been estimated. Principally because of the higher cost of Centralia power, the CVP began falling behind in its Federal repayment obligation.

In conjunction with the review of its proposed general rate increase in 1974 and 1975, CVP considered the possibility of adjusting the Centralia rates at the next opportunity, April 1978. This resulted in the existing method for setting Centralia rates which is embodied in a December 14, 1978 Department of Interior document entitled "Final Position on and Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy," also known as the Frizzell Decision. Under the Frizzell Decision, PG&E is charged the flowthrough or actual cost for energy received from the Northwest, and the flowthrough capacity charge for that portion of the capacity associated with energy at a 60 percent capacity factor. The balance of the Northwest capacity delivered to PG&E is charged at CVP'S general rate for firm capacity. This approach resulted in a "split rate" for capacity charges to PG&E. The formula excluded the costs of the Pacific Northwest-Pacific Southwest Intertie from Malin, Oregon, to Tracy, California, which is used to transmit capacity and energy from the Pacific Northwest to the interconnected transmission system of PG&E and CVP in Northwest California. PG&E accepted the rate methodology established in the Frizzell Decision. This methodology was not filed with the FPC, since at that time, the Commission had no authority over CVP rates and the methodology was not contested under the terms of the PG&E/WAPA contract.[5]

In the instant filing, WAPA has proposed a "passthrough" rate methodology intended to recover all costs incurred by WAPA for the Northwest capacity and energy that are sold to PG&E.[6] The proposed rates for

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[1] Article 32 of the Contract provides in part that: *Rates and charges under this contract shall be fair and equitable* and shall * * * *be jointly reviewed and adjusted* as appropriate *on April 1, 1971, and every 5 years thereafter* * * *. Such review shall take into account substantial savings accruing to either party and applicable costs of construction and production, including changes therein and appropriate service charges, during the preceding 5 years. If the parties are unable to agree on a change of any rate or charge, the matter shall be submitted to the Federal Power Commission for final decision.* (Emphasis added)

[2] Pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation, under the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Central Valley Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications (AS/RA) the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The Secretary delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove the rates developed by the AS/RA. Effective February 24, 1981, the Secretary abolished the Office of AS/RA and transferred DOE's power marketing responsibilities to the Office of the Assistant Secretary for Conservation and Renewable Energy.

[3] Docket No. E-7486, Order Accepting Rate Schedule for Filing and Denying Requests for Suspension and Hearing, (November 6, 1968).

[4] *See* contract language at footnote 1, *supra*.

[5] As noted in footnote 2, *supra*, the Commission's "confirmation and approval" authority over rates charged by WAPA was established by DOE Secretarial Delegation Order No. 0204–33, effective January 1, 1979.

[6] WAPA estimates that, based on a declared project dependable capacity (PDC) of 513 megawatts, the Centralia passthrough rate will increase CVP revenues by $2,888,000 over the current split-rate method from April 1, 1981, to December 31, 1981, the end of WAPA's contract to purchase from the Centralia powerplant.

Centralia capacity and energy are estimated at $5.07 per kilowatt-month and 16.758 mills per kilowatt-hour, respectively. These rates are based on estimated costs and contemplate adjustment as necessary to reflect actual costs. The capacity rate includes a charge to PG&E of $3.35 per kilowatt-year for use of the Pacific Northwest-Pacific Southwest Intertie. This charge is not included in the current rate. The proposed energy rates are also based on actual costs, but do not include a charge for use of the Intertie. Since PG&E does not concur with the proposed methodology, the parties have requested that this Commission resolve the rate methodology under Article 32 of the contract.

Comments

Notice of the filing was published in the Federal Register on July 9, 1981, with comments due on or before July 24, 1981. Timely petitions to intervene were filed by PG&E and jointly by the Northern California Power Agency (NCPA) and the Sacramento Municipal Utility District (SMUD). PG&E also filed a motion to reject the filing. The People of the State of California and the Public Utilities Commission of the State of California filed a timely notice of intervention.

In its motion to reject WAPA's filing, PG&E contends that WAPA has not provided sufficient material for the Commission to determine whether the proposed rates are just and reasonable, whether the proposed rates are cost-based, or how the costs of Centralia power are allocated among WAPA's various customers. PG&E further maintains that WAPA has not justified the intertie charge to PG&E which is included in the proposed rates, and that the filing does not meet the minimum requirements set forth in Part 35 of the Commission's regulations governing the filing of rate schedules. PG&E requests that the filing be rejected or, alternatively, set for hearing.

NCPA and SMUD also request a hearing, contending that the proposed rates are too low. These intervenors claim that the rates established under the Frizzell Decision resulted in a $70 million loss to CVP prior to April 1, 1981, which will have to be recovered from either PG&E or CVP's preference customers. Thus, it is their position that PG&E should be charged a rate in excess of a cost of service rate. They also assert that the intertie charges should be allocated to non-firm energy rates, that the filing is deficient, that the appropriate level of project dependable capacity should be established at hearing, and that the proposed rates are arbitrary, capricious, unlawful, and in violation of the contract.

Discussion

As noted, Article 32 of the PG&E/WAPA contract provides that when the parties are unable to agree on a change in rates, the matter will be submitted to the Commission for a final determination. While the contract was accepted by the FPC as a filed PG&E rate schedule, we do not believe that this Commission is obligated to act in the role of an arbitrator in this matter. The Commission has not undertaken an obligation to arbitrate this contract and the mere fact that the parties have so agreed does not bind this Commission. Clearly, we have no obligation to accept the requested role. Further, we note that the role requested of this Commission in this proceeding differs from that exercised strictly in accordance with our confirmation and approval authority; the PG&E/WAPA contract appears to contemplate the situation in which the Commission may set rates at levels other than the filed rates whereas in the confirmation and approval context, the Commission has authority only to approve, reject, or remand rates as filed.[7] Unlike the FPC, whose authority over PMA rates derived from statute, this Commission's authority stems exclusively from Secretarial Delegation Order No. 0204-33. The delegated role applies to project rates, is narrowly circumscribed, and does not appear to contemplate direct involvement in the PMA ratemaking process. Because WAPA is not a jurisdictional public utility, the Federal Power Act provides no additional authority to review WAPA's rates from services provided from non-project sources. Accordingly, we shall reject the AS/CE's request on behalf of WAPA for the reasons discussed above.

The Commission Orders

(A) The AS/CE's request is hereby denied.

(B) WAPA's submittal in this docket is hereby rejected.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12865 Filed 5-11-82; 8:45 am]

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[7] *E.g.*, "Order Remanding Rates Without Prejudice," Bonneville Power Administration, 13 FERC ¶ 61,157 Docket No. EF80-2011-000 (November 21, 1980).

[Docket No. EF80-5011-000]

Western Area Power Administration; Order Disapproving Rate Schedules

May 4, 1982.

By letter filed on October 4, 1979, the Assistant Secretary for Resource Applications (AS/RA) of the Department of Energy, on behalf of the Western Area Power Administration (WAPA), submitted a request for final confirmation and approval of new rate schedules CV-F4 and CV-P3 for a four year period ending October 31, 1983.[1] The rate schedules,[2] applicable to power generated from the Central Valley Project (CVP), are expected to increase revenues from $35,696,000 to $79,048,000. The average cost of wholesale firm power would increase from 4.3 mills per kilowatt-hour to 9.76 mills per kilowatt-hour. The rate schedules consist of a single rate structure ($2.00 per kilowatt-month for capacity, and 5.11 mills per kilowatt-hour for energy) applicable to all customers of CVP.

Notice of the submittal was published in the Federal Register on October 26, 1979, with comments due on or before November 13, 1979. Timely petitions to intervene were filed by Eleven Irrigation Districts (Districts), Northern California Power Agency (NCPA), Sacramento Municipal Utility District (SMUD) and the City of Santa Clara, California (Santa Clara). Untimely petitions to

[1] Pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation, under the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Central Valley Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the AS/RA the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The Secretary delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove the rates developed by the AS/RA. Pursuant to the delegation to the AS/RA and the rate adjustment procedures at 43 FR 12070 (March 23, 1978) as amended at 44 FR 7796 (February 7, 1979), the AS/RA placed the proposed rate schedules CV-F4 and CV-P3 into effect on an interim basis. Effective February 24, 1981, the Secretary abolished the Office of AS/RA and transferred DOE's power marketing responsibilities to the Office of the Assistant Secretary for Conservation and Renewable Energy.

[2] Rate Schedule CV-F4 is available to preference customers with allocations for wholesale firm power service. Rate Schedule CV-P3 applies to commercial irrigation customers for irrigation or drainage pumping use or other related incidental uses. For rate schedule designations, see Attachment A.

intervene were filed by Pacific Gas and Electric Company (PG&E) and the Cities of Palo Alto, Roseville, Redding, Briggs and Gridley, California, and Plumas-Sierra Rural Electric Cooperative (collectively called Cities).[3] The petitions generally protested the AS/RA's decision in Rate Order No. WAPA–2, raising numerous issues.[4]

Background

Located in central and southern central California, the CVP consists of seven power plants, two pumping generating stations, and approximately 1300 miles of transmission lines which are interconnected with the PG&E transmission system.[5] Although approximately $217 million of the $270 million existing investment had been repaid as of the date of the filing, an additional $84 million in investments was projected to be in service during the cost evaluation period [6] as a result of the New Melones Dam, reservoir, and power plant becoming operational as part of the CVP system. Further, additional revenues were expected to be needed to repay (1) $352,690,000 in aid to irrigation and waterfowl conservation, and (2) $48,202,000 for payment of deferred costs.[7]

The power from the CVP system is dedicated first to providing energy for project irrigation pumping, with the remaining capability used to provide commercial power to preference customers in northern California.[8] Because CVP's system facilities are designed to provide peaking power and to meet the seasonal demands for pumping irrigation water use, the capacity of the CVP system (approximately 480 megawatts) is insufficient to meet its commercial load. In order to supplement its capacity, CVP in 1967 entered into a contract with PG&E for the purchase, sale, and interchange of power and energy.[9]

History of Rate Relief

On September 12, 1977, the Department of the Interior in accordance with its then existing procedures announced a tentative rate change for power marketed from CVP. Following the establishment of DOE, new procedures were proposed to permit the setting of interim rates while consideration continued on the proposed tentative rate change. On January 4, 1978, in anticipation of the amended procedures,[10] the AS/RA proposed an interim two-step rate increase for CVP. The first step (Phase I) of the increase consisted of a $2.00 per kilowatt-month demand charge and a 4.2 mills per kilowatt-hour energy charge which would become effective sixty days after approval for the period ending March 31, 1979. The second step (Phase II), which was scheduled to become effective after March 31, 1979, contained a $2.00 per kilowatt-month demand charge and a dual energy charge (5.75 mills per kilowatt-hour for non-load growth customers and 9.75 mills per kilowatt-hour for load growth customers).

On March 20, 1978, ERA approved only the Phase I interim rates.[11] The Phase I interim rates were later extended by order of the AS/RA for the period ending on October 31, 1979 (*See,* Notice of Extension, 44 FR 22804, issued on April 17, 1979).

On June 28, 1979, the AS/RA issued a notice of a proposed rate order (44 FR 40118, issued on July 9, 1979). On October 2, 1979, the AS/RA issued a rate order confirming and approving rates to be placed in effect on an interim basis.[12]

Discussion

The Secretary of Energy, in Delegation Order No. 0204–33, delegated to this Commission the authority to confirm and approve on a final basis, or to disapprove federal power marketing agency rates. In prior orders,[13] the Commission has stated that it must insure that such rates satisfy the standards established under the federal power marketing statutes. Those statutes (including Section 9(c) of the Reclamation Act of 1939) require, *inter alia*, that rates be set at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time.

Our authority under the power marketing legislation does not include the power to modify rates.[14] The responsibility for developing rates rests initially with the Administrator of WAPA. The designated Assistant Secretary is authorized to review those

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[3] In its petition to intervene and request for hearing, Santa Clara requested, *inter alia*, that the Commission (1) limit the application of the unauthorized overrun provision included within Schedule CV–F4, (2) allocate 117 megawatts of firm power to Santa Clara or, in the alternative, remand this proceeding to WAPA for the initiation of a rulemaking with respect to power allocation. We do not believe that initiation of a rulemaking or hearing is appropriate in this proceeding.

On December 3, 1979, the Cities filed comments in opposition to Santa Clara's pleading. Santa Clara filed a response to the Cities' comments on January 15, 1980. We note that Santa Clara and the Cities, pursuant to a settlement agreement (between Cities, Santa Clara, PG&E and WAPA), have agreed to withdraw their pleadings in this proceeding. (*See, City of Santa Clara* v. *Charles Duncan, et al.*, Order No. C–75–1574 SC, Order of Dismissal issued October 3, 1980). As of this date, however, no request for withdrawal has been filed with the Commission.

[4] These issues include (1) the reasonableness of PG&E's wheeling rate, (2) WAPA's wheeling rate to its direct service customers, (3) the single rather than dual demand and energy rate design, (4) PG&E's banking arrangement (*see* footnote 9, *infra*), (5) the assumed levels of project dependable capacity, (6) the split-rate charge to PG&E under the Frizzel Decision for power transmitted over the Pacific Northwest-Southwest Intertie, and (7) SMUD's claim that contract provisions prevent the filed rate from being placed into effect prior to May 25, 1983. In addition, the petitioners have challenged the failure of the Assistant Secretary to approve a special irrigation rate, an allegedly impermissible congressional interference with the Assistant Secretary's decision to approve the single rate design, the extension of interim rates, and the lack of environmental and price stability compliance.

[5] The seven power plants are Judge F. Carr, Folson, Keswick, Nimbus, Shasta, Spring Creek, and Trinity. The two pumping generating plants are O'Neill and San Luis.

[6] Cost evaluation period is a period of time during which estimates of future costs and revenues may be modified to reflect changing conditions in the power repayment study and is normally 5 years as provided for in the regulations adopted by the AS/RA (Order RA 6120.2 dated September 20, 1979).

[7] The deferred excess capacity costs of the Folsom-South and the Tehama-Colusa Canal (amounting to $2,425,000 and $45,777,000, respectively) reflect the investment costs associated with canal and conveyance system expansion.

[8] CVP's preference customers are as follows: (1) military and other Federal installations, irrigation and reclamation districts, (2) cooperatives and utility districts, (3) municipalities, and (4) educational and penal institutions of the State of California.

[9] Contract No. 14–06–200–2948A. Essentially, the contract provides for the firming up of CVP's generation to meet the preference customers' load of 1,050 megawatts by means of purchases from PG&E and for the sale to PG&E of excess energy and capacity generated by the CVP system, along with any excess power imported from the Northwest over the Pacific Northwest–Southwest Intertie. CVP retains the right to purchase an equivalent amount of capacity and energy from PG&E at times and in amounts required when CVP power supply is insufficient to meet its customer load.

[10] On March 20, 1978 (43 FR 12076, issued on March 23, 1978), procedures were amended and issued to permit the Administrator of the Economic Regulatory Administration to establish interim rates.

[11] (43 FR 12361, issued on March 24, 1978). ERA stated that it did not approve the Phase II rate increase because "the procedures do not provide interim rate approval in excess of one year and because ERA does not wish to prejudge the important issues suggested by the two tier rate structure." (*Id.*)

[12] In rate Order No. WAPA–2, the AS/RA, *inter alia*, (1) approved a single rate structure (5.11 mills per kilowatt-hour for energy and $2.00 per kilowatt-month for capacity) for all CVP customers, (2) affirmed a 10% increase in rates above the short-term rate approved by ERA, and (3) directed that the new rates become effective as of November 1, 1979, on an interim basis.

[13] *E.g., Bonneville Power Administration*, Docket No. EF80–2011, order issued November 21, 1980; *Southwestern Power Administration*, Docket No. EF79–4011, order issued June 3, 1981.

[14] *See, e.g., Southeastern Power Administration*, Docket No. EF79–3021, order issued February 27, 1981; *Bonneville Power Administration*, Docket No. EF80–2011, order issued November 21, 1980; and *Southwestern Power Administration*, Docket No. EF79–4011, order issued June 3, 1981.

rates for confirmation and approval on an interim basis. Finally, the interim rates and supporting record are reviewed by this Commission for final confirmation and approval, disapproval, or remand.

Initially, we find that participation in this proceeding by the Districts, NCPA, SMUD, and Santa Clara is in the public interest and that good cause exists to permit PG&E and the Cities to intervene out of time. Consequently, we shall grant the petitions to intervene.

Upon review of WAPA's proposed rates, the supporting materials provided through the Assistant Secretary, and the comments of interested parties, the Commission concludes that the statutory requirements have not been satisfied and that major deficiencies in WAPA's filing compel our disapproval of the rates submitted in this docket. As is evident below, we do not find it necessary or appropriate to second-guess the Assistant Secretary on each matter raised by the intervenors. Nonetheless, we can conclude that the rates which have been submitted for approval would fail to provide revenues to the federal treasury adequate to properly recover the government's capital investments.

SMUD has argued that the extension of interim rates by the Assistant Secretary is invalid "(a) because it did not conform to the (p)rocedures previously established by the Assistant Secretary and published in the Federal Register on February 7, 1979, at 44 Fed. Reg. 7797, and (b) because it exceeded the authority delegated in the Assistant Secretary by the Secretary by an (o)rder published in the Federal Register on December 28, 1978, at 43 Fed. Reg. 60638." The Commission, however, is not disposed to inquire into the legal authority of the Assistant Secretary to extend the effective date of interim rate orders, inasmuch as such procedural questions are beyond the scope of our rate approval authority. (*Cf., U.S. Secretary of Energy, Bonneville Power Administrator*, Docket No. EF80-2011, Order Remanding Rates Without Prejudice, issued November 21, 1980, at p. 15).

Concerning the project dependable capacity (PDC) issue,[15] a brief explanation of its history is in order. Originally, the PDC was set contractually at 675 megawatts subject to a redetermination based on certain operation and efficiency tests (Article 11). Since the filing of the contract in 1967, the PDC level was first increased to 925 megawatts through 1974. As a result of efficiency and operational studies, the Bureau of Reclamation and PG&E in January 1975 agreed that PDC should be reduced to 880 megawatts in 1975, 851 megawatts in 1976, 840 megawatts in 1977, 844 megawatts in 1978, and 828 megawatts in 1979.

The CVP hydro projects were able to operate at their planned capacity until a 1976–1977 drought. As a result of the drought conditions, on July 1, 1977, the bureau and PG&E agreed to reduce the designated PDC level to 554 megawatts. When winter rains of 1977–1978 later filled CVP's reservoirs to above-normal storage levels, WAPA considered the 1976–1977 drought to have been an aberration and unilaterally increased the PDC level to 827 megawatts (effective from July 1, 1978, through the end of that year) and to 812 megawatts for 1979. PG&E refused to make payments to CVP based on the 1978 and 1979 revised PDC levels, contending that, under the PG&E contract, the post-drought PDC level of 554 megawatts could not be increased for a five year period unless otherwise agreed.[16] The Commission estimates that the revenue loss caused by PG&E's refusal to pay will be approximately $8.8 million annually (PDC valued at project rates).

SMUD and NCPA opposed PG&E's position. They contended that the power repayment study should assume a PDC level of at least 925 megawatts, since each change in the PDC level (which has not been filed with the Commission) below 925 megawatts constitutes an illegal change in rate in violation of section 205(c) of the Federal Power Act. With respect to PG&E's violation of contract argument, the Assistant Secretary ruled that PG&E's argument "is unreasonable, when in fact 827 megawatts was made available from July 1 to December 31, 1978, and 812 megawatts is currently being made available." (WAPA Order No. 2, *supra*, at 15.) Regarding the illegal change in rate argument propounded by SMUD and NCPA, the Assistant Secretary held:

Both the FERC staff [Docket No. E-7777 (Phase II), (December 6, 1978) and the FERC itself (Docket Nos. E-7786 and E-7777 (Phase II), (44 FR 1762) (January 8, 1979)] support the position that PDC is a rate which must be filed with FERC.[17] We believe that NCPA's and SMUD's arguments have merit. However, in view of the facts that neither the FERC nor a court has ruled on the issue of what PDC should be, the matter is in dispute between WAPA and PG&E, and that CVP has been making water available to PG&E for generation on the assumption that PDC is in accordance with WAPA's declaration, we believe the assumption in the Revised Power Repayment Study is appropriate. Making this assumption in the study does not limit the ability of NCPA, SMUD or the Department to make an effective argument that PDC is a rate which PG&E cannot change without filing a new rate schedule with the FERC. The assumption can be changed in the next Power Repayment Study if there is a change in the status of the controversy. (footnote added) (WAPA Order No. 2, *supra*, at 16).

In their petitions to intervene before this Commission, SMUD and NCPA have challenged the Assistant Secretary's decision which established the PDC at levels less than 925 megawatts, raising essentially the same arguments as those discussed above.[18]

In its comments filed on January 4, 1980, PG&E averred, among other things, that "(SMUD and NCPA) conveniently overlook(ed) the fact that the initial increase in PDC from 825 megawatts to 925 megawatts was not filed * * *" Moreover, PG&E states that "it was

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[15] As defined in Article 9 of the PG&E contract, PDC is:

(t)he lowest electric capacity available for use within Contractor's Service Area, estimated in accordance with the methods used in Reclamation Study, which could be available with energy support from Project Plants in any month during the most adverse period of stream-flow conditions of record (as set forth and applied in Reclamation Study), after deducting the estimated capacity required from Project Plants for Project Load during Contractor's Peak Load Period.

The PDC is important because it determines the amount of capacity and payments for capacity and energy purchased and sold between PG&E and CVP. (*See* Articles 11, 21 & 22).

[16] Although negotiations between WAPA and PG&E are underway, PG&E is currently making payments based on the 554 megawatt PDC level. Article 11 of the PG&E contract provides that:

At the request of either party made not more often than once a year, Project Dependable Capacity shall be reviewed and, if necessary, shall be redetermined. Any such redetermined Project Dependable Capacity shall become effective four years from the date of such request, or at such other time as the parties may agree upon * * *

By letter dated January 18, 1968 to Mr. John P. Bonner (Senior V. President of PG&E) from E. F. Sullivan (Assistant Regional Director, Mid-Pacific Region, Bureau of Reclamation), a change from the four year notice period of Article 11 to the current 5 year notice requirement was approved by the Department of the Interior.

[17] In the E-7777 proceeding, the presiding judge ruled that the PDC question was beyond the Commission's jurisdiction [Tr. CH-21289] and stated that he would issue a written order on the PDC question. On May 8, 1980, the staff filed a motion with the Commission which, *inter alia*, requested reconsideration of the presiding judge's ruling on the PDC issue. The Commission deferred ruling on the PDC issue until the issuance of the presiding judge's written order. (*See, Pacific Gas & Electric Company, Pacific Power & Light Company*, Docket Nos. E-7777 (Phase II) and E-7786, Order Denying Motions For Extraordinary Relief, issued August 22, 1980). To date, the presiding judge has not issued a written order on the PDC issue.

[18] SMUD also argues that PDC should be reevaluated and raised to a figure greater than 925 megawatts.

physically impossible for WAPA to support a PDC of 925 [megawatt] with the water available to the CVP during the drought." PG&E further argues that there is no legal requirement for changes in the PDC to be filed with the Commission because: 1) the PDC is not subject to the Commission's jurisdiction; 2) a change in PDC is not a change in rate which is required to be filed with the Commission; and 3) even if a change in PDC is required to be filed with the Commission, the failure by a party to comply with the filing requirement would not excuse either party from compliance with the terms of the contract.

Regarding the filed rate and violation of contract questions, we believe it prudent to continue to defer ruling on all issues pertaining to the PDC until after the presiding judge issues the anticipated order in the E–7777 proceeding. (*See* note 17 *supra.*) It is clear, however, that WAPA is not now collecting the revenues from PG&E which the rates are designed to produce. Even assuming, *arguendo*, the validity of the Assistant Secretary's assumptions, we note that if WAPA or the Assistant Secretary take no affirmative action to challenge PG&E's refusal to pay the rate anticipated to be collected by the repayment study, a substantial shortfall in revenues will result.

SMUD has also raised an additional contract issue. SMUD objects to the proposed rate increase, pointing to a contractual provision with WAPA that prohibits more than one rate increase to SMUD within a five year period.[19] SMUD states that it had originally agreed not to raise this contractual provision as a defense to the rate increase proposed in this proceeding. According to SMUD, it agreed to the stipulation on the condition that the Phase II rates would become legally effective on or before May 25, 1978. Since the Phase II rates were never approved, SMUD argues that it is no longer bound by its stipulation. We are not able to determine from the filing[20] or SMUD's pleading whether SMUD's argument has merit. In any event, the Commission's view is that this is a matter best resolved by the Assistant Secretary in reviewing rates for preliminary implementation, or by an appropriate reviewing court.

[19] SMUD contends that because there was a rate change on May 25, 1978, the proposed rate increase to SMUD cannot become effective prior to May 25, 1983.

[20] SMUD has not filed the subject contract with this Commission. Nor has the Assistant Secretary submitted a copy of the contract with this filing for our review.

Our review of the project cost data reveals improper treatment of several interest-related expenditures. First, the filing does not include approximately $27 million of interest during construction (IDC) associated with projects included in the CVP system that were placed in service between 1944 and 1968. The omission of IDC in the calculation of project costs is contrary to the practices and procedures recommended in (1) both the May, 1950, and May, 1958 Reports to the Federal Inter-Agency River Basin Committee on Proposed Practices of Economic Analysis of River Basin Projects, (2) the U.S. Army Corps of Engineers' Manual for Cost Allocations for Multiple Purpose Projects, EM1160–2–101, and (3) Circular No. A–47 from the Executive Office of the President, Bureau of the Budget dated December 31, 1952, to the heads of executive departments and establishments. It appears that additional annual revenues of approximately $2.9 million would be needed to repay the excluded IDC.

In addition, WAPA failed to assess approximately $100,000 of interest expenses associated with new project replacements and additions for the year in which they commenced service. The generally accepted procedure required by DOE regulations is to apply one-half of the applicable interest rate on the investment during the year it is made. (*See* Department of Interior Manual adopted by DOE Order RA6120.2, issued September 1979).

WAPA has also followed the practice of repaying selected high-interest investments ahead of the required repayment date while repayment of low-interest investment is postponed beyond the required repayment date. We believe that this repayment methodology results in an unauthorized adjustment in an amortization schedule which will result in diminished interest income on government investments. It appears that the use of compound interest amortization would increase stated revenue requirements by about $1.7 million.

We further note that WAPA's filing assumes that the cost of wheeling service provided to CVP by PG&E will be at the rate of 1.2 mills per kilowatt hour. However, since March 1, 1978, CVP has been paying a much higher cost (increase estimated at approximately $1.5 million annually) for wheeling, subject to refund.[21]

[21] In Docket No. ER78–532, PG&E filed with the FPC a proposed increase in rates for wheeling CVP's power over PG&E's transmission lines. By order issued March 20, 1978, the Commission accepted the filing, suspended the rates for one day, and set the case for hearing. An Initial Decision was issued in that proceeding on June 17, 1981. While we have no intention of prejudging the outcome of that proceeding, we note that the Initial Decision approved a substantial portion of the rate increase.

Our review of the instant filing also reveals that the 1978 Adjusted Cost Allocation Report for CVP lacks detailed data related to the allocation of the Corps' New Melones Project. Further, we note that the cost allocation study will not be finalized until the construction of all parts of the New Melones project are completed. As a result, we are unable to substantiate the precise amount of project investment costs which are to be repaid from power revenues.[22] It does not appear that likely changes in the allocation would have a significant impact on the filed rates, and we have no basis on which to conclude that the tentative allocation of costs in the instant filing is unreasonable. However, we reserve final judgment as to the appropriateness of the allocation procedure pending receipt of a definitive report on project investment costs.

Conclusion

As stated before, the Commission has an obligation to insure that the rates submitted to us for our approval satisfy the standards established under the Federal power marketing statutes. Those statutes (including Section 9(c) of the Reclamation Act of 1939) require, among other things, that the rates be set at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time. The rates presently before us do not satisfy these standards. We find that WAPA has under-estimated its costs by failing to reflect costs associated with interest during construction on a number of projects, not assessing a half-year's interest during the year in which replacements are expected to be made, and under-estimating its costs of wheeling by PG&E. The total effect of these three items is to underestimate annual costs and associated revenue requirements by about $4.5 million or 5.7 percent of total revenue. In addition to the long-term revenue deficiencies, it appears that the issue of project dependable capacity, and PG&E's refusal to pay the amount charged by WAPA, may result in a short-term revenue deficiency for four years, amounting to about $6.6 million annually and resulting in a widening of the disparity between costs and revenues for this period by 8.4 percent.

In light of the above deficiencies, we shall disapprove the proposed rates and

[22] The Commission expects to receive a final report on project investment costs in a future filing.

forewarn the Assistant Secretary that the Commission, in the future, will not look favorably upon any federal rate filing which, *inter alia*, does not establish rates at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time. Consistent with Delegation Order No. 0204-33, the Assistant Secretary shall have 120 days to submit substitute rates for our approval which will recover the deficiencies noted in this order.[28]

The Commission orders

(A) The rates and charges placed in effect on an interim basis by the Assistant Secretary and submitted in this docket, are hereby disapproved and rejected. Within 120 days from the issuance of this order, WAPA and the Assistant Secretary shall submit substitute rates for our approval on a final basis which will recover the deficiencies noted in the order.

(B) The petitions to intervene filed by the Districts, NCPA, SMUD, Santa Clara, Cities and PG&E are hereby granted subject to the rules of the Commission, *provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *provided, further,* that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(C) The Secretary shall promptly publish this Order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12926 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy and Peaceful Uses of Atomic Energy; Between United States and European Atomic Energy Community (EURATOM)

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Spain Concerning Civil Uses of Atomic Energy, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer:

RTD/EU (SP)-15, from the Jose Cabrera Nuclear Power Station in Spain to British Nuclear Fuels Ltd., in the United Kingdom, four irradiated fuel elements for reprocessing and storage of the recovered nuclear material. The fuel elements contain 5.573 kilograms of uranium enriched to 1.06% in U-235, and 50.5 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than May 27, 1982.

Dated: May 6, 1982.

For the Department of Energy.

Harold D. Bengelsdorf,

Director, Office of International, Nuclear and Non-Proliferation Policy.

[FR Doc. 82-12913 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed; Week of April 12 through April 16, 1982

During the week of April 12 through April 16, 1982, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

May 3, 1982.

Southern Terminal and Transport Co., Tallahassee, Fla.; HRO-0042 No. 6 residual fuel oil

On April 10, 1982, Southern Terminal and Transport Co. (ST&T), 122 Appleyard Drive, Tallahassee, Florida 32302, filed a Notice of Objection to a Proposed Remedial Order which the Southeast District Office of Enforcement of the Economic Regulatory Administration (ERA) issued to the firm on March 17, 1982. In the PRO, the ERA found that ST&T sold No. 6 residual fuel oil during the period November 1, 1973 through April 30, 1974 at prices in excess of those permitted under 6 CFR 150.359 and 10 CFR Part 212, Subpart F of the Mandatory Petroleum Price Regulations. The PRO alleges that ST&T's actions resulted in overcharges of $4,275,298. The PRO directs ST&T to refund this amount, plus interest, to the Department of Energy for deposit into the Treasury of the United States.

Vermont Morgan Corp., Shoreham, VT; HRO-0041 motor gasoline

On April 13, 1982, Vermont Morgan Corp., Main Route-Box 170, Shoreham, Vermont 05770, filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on February 8, 1982. In the PRO the Northeast District found that during the period April 1, 1979 through June 30, 1979, the firm charged its customers prices in excess of those permitted under 10 CFR 212.93 of the Mandatory Petroleum Price Regulations. According to the PRO the Vermont Morgan Corp. violation resulted in $350,134 of overcharges.

[FR Doc. 82-12918 Filed 5-11-82; 8:45 a.m.]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2470/T342; PN FRL 2120-4]

Metamidophos; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the insecticide methamidophos, *O,S*-dimethyl phosphoramidothioate, in or on the raw agricultural commodity safflower seed. This temporary tolerance was requested by Chevron Chemical Company.

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[28] If contractual prohibitions preclude recovery of costs from certain customers, it may be necessary to reallocate such costs so that the government is assured of recovering its investment as required by statute.

DATE: This temporary tolerance expires August 31, 1982.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, has requested the establishment of a temporary tolerance for residues of the insecticide metamidophos, in or on the raw agricultural commodity safflower seed at 0.3 part per million (ppm). A related document establishing a feed additive regulation permitting residues of metamidophos in or on safflower meal appears elsewhere in this issue of the Federal Register.

This temporary tolerance will permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 239–EUP–98 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires August 31, 1982. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore do not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted temporary tolerances from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 27, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12531 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP 35000/4; PH FRL 2122–5]

Completion of Pre-RPAR Review; Five Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has concluded its pre-RPAR review of five chemicals: cacodylic acid and salts, piperonyl butoxide, S,S,S-tributyl phosphorotrithioate (DEF), tributyl phosphorotrithioite (Merphos), and terbutryn. Available data indicate that these chemicals do not present risks of unreasonable adverse effects to man or the environment. The Agency has determined that Rebuttable Presumption Against Registration (RPAR) reviews are not warranted for these chemicals at this time and has removed them from its list of suspect chemicals. A copy of each decision document summarizing the Agency's review of these chemicals and the rationale for its conclusions is available for public viewing at the address below.

ADDRESS: The decision documents are available for viewing from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, from: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–107, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Laurence Chloupek, Special Pesticide Review Division (TS–791), Office of Pesticide Programs, Environmental Protection Agency, Room 726, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–8193).

SUPPLEMENTARY INFORMATION: Pre-RPAR review is the initial phase of EPA's process to determine whether a chemical poses unreasonable risks to man or the environment. During this phase, the Office of Pesticide Programs (OPP) conducts an intensive review of available information on a pesticide to determine whether such information indicates that a pesticide may pose a risk of unreasonable adverse effects. If the Agency concludes that a criterion for initiating an RPAR review has been met or exceeded, OPP will commence such a review. The review includes an analysis balancing the risks posed by the pesticide against the benefits of its use. However, if none of the risk criteria are met, the Agency will not initiate an RPAR review.

Based on a review of relevant information regarding potential risks, the Agency has concluded that an RPAR review is not warranted at this time for the following chemicals. Each of the chemicals is currently registered by EPA for use as a pesticide.

Chemical. Cacodylic Acid and Salts.

Reasons for referral. Possible oncogenicity, mutagenicity, teratogenicity, fetotoxicity, reproductive effect.

Reasons for not initiating RPAR review. Available data do not support a determination that the chemical meets or exceeds any of the criteria for risk set forth in the Regulations. A dermal absorption study is being voluntarily run by the registrant and is near completion. It will help the Agency to determine the rate of dermal absorption of the chemical and the associated risks of exposure. After obtaining the results of the study, the Agency may request additional fetotoxicity and teratogenicity studies pursuant to section 3(c)(2)(B) of FIFRA to support continued registration of the pesticide. Voluntary label modifications are being negotiated with the industry which would require the use of respirators or masks for knapsack/hand sprayer applications and home uses for weed control or lawn renovations.

Chemical. Piperonyl butoxide.

Reasons for referral. Possible co-carcinogenicity, carcinogenicity.

Reasons for not initiating RPAR review. Adequate data are lacking to enable the Agency to determine whether the chemical meets or exceeds any of the criteria for risk set forth in the Regulations. Pursuant to section 3(c)(2)(B) of FIFRA, the Agency plans to request data pertaining to oncogenicity, mutagenicity, reproduction and metabolism. Data on product chemistry will also be requested to determine whether safrole or dihydrosafrole (known carcinogens) are present as possible contaminants in the final technical product.

Chemical. S,S,S-tributyl phosphorotrithioate.

Reason for referral. Possible neurotoxicity.

Reasons for not initiating RPAR review. Based on available data, and in light of forthcoming labeling restrictions, the Agency believes that an adequate margin of safety exists. Labeling restrictions pertaining to the use of protective clothing will be voluntarily added to labels by registrants and are expected to reduce risk to applicators to acceptable levels.

Chemical. Tributyl phosphorotrithioite.

Reason for referral. Possible neurotoxicity.

Reasons for not initiating RPAR review. Based on available data, and in light of forthcoming labeling restrictions, the Agency believes that an adequate margin of safety exists. Labeling restrictions pertaining to the use of protective clothing will be voluntarily added to labels by registrants and are expected to reduce risk to applicators to acceptable levels.

Chemical. Terbutryn.

Reason for referral. Carcinogenicity.

Reasons for not initiating RPAR review. Agency will require that all pesticide applicators wear protective clothing and equipment while mixing and loading pesticide products containing terbutryn. Consequently, there will be no risks of unreasonable adverse effects to applicators. In addition, the Agency has determined that there are no risks of unreasonable adverse effects to the general population from consuming terbutryn treated crops.

Dated: May 3, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-12878 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30217; PH FRL-2122-7]

Applications To Register Pesticide Products Containing New Active Ingredients; Rhone-Poulenc Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by June 11, 1982.

ADDRESS: Written comments, identified by the document control number (OPP-30217) and the file or registration number, should be submitted to:

Henry Jacoby, Product Manager (PM-21), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 359-TNL.

Applicant: Rhone-Poulenc Inc., Agrochemical Division, P.O. Box 125, Monmouth Junction, NJ 08852.

Product name: Fosetyl-AL Technical. Fungicide.

Active ingredient: Aluminum tris (*O*-ethyl phosphonate) 95%.

Proposed classification/Use: General. For formulation of fungicides only.

Type registration: Conditional.

2. File Symbol: 359-TNA.

Applicant: Rhone-Poulenc Inc.

Product name: Aliette Fungicide.

Active ingredient: Aluminum tris (*O*-ethyl phosphonate) 80.0%.

Proposed classification/Use: General. Controls phytophthora root rot on ornamentals.

Type registration: Conditional.

Notice of approval or denial of an application to register a pesticde product will be announced in the **Federal Register.** Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended).

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12879 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-38-M

[OPP-66092; PH FRL 2122-1]

Certain Pesticide Products; Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: June 11, 1982.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E. 401, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 706, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7406).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
168-20	Wasco Brand Formaldehyde Solution U.S.P	Great Western Chemical Co., 808 Southwest 15th Ave., Portland, OR 97205	Sept. 11, 1950.
168-306	Wasaclor Tablets	do	Apr. 1, 1966.
168-399	Wasco Chlorine Tablets for Swimming Pools	do	Aug. 7, 1967.
168-400	Wasco Swimming Pool Algicide and Surface Sanitizer	do	Oct. 3, 1967.
201-184	Shell Aldrin Emulsifiable Concentrate No. 2	Shell Chemical Co., Suite 900, 1025 Connecticut Ave. NW., Washington, DC 20036.	Sept. 6, 1966.
201-187	Aldrin 4 OS No. 1	do	Sept. 15, 1966.
201-245	Aldrin 4 Emulsible Concentrate for Professional Use	do	Nov. 6, 1968.
201-316	Shellchlor 8 Emulsible Concentrate Insecticide	do	Nov. 22, 1971.
239-1522	Ortho Lawn Disease Control	Chevron Chemical Co., Ortho Division, 940 Hensley St., Richmond, CA 94501.	July 8, 1960.
239-2073	Orthocide Soil Treater X-W	do	Mar. 10, 1965.
239-2162	Ortho PCNB 80 Dust Concentrate	do	Jan. 17, 1966.
239-2213	Soil Treater 9 X	do	May 5, 1967.
802-494	Miller's Terraclor 20 D	Charles H. Lilly Co., 7737 NE. Killingsworth, Portland, OR 97218	Nov. 16, 1972.
802-495	Miller's Mosquitocide A-4	do	Mar. 8, 1973.
802-496	Miller's Mosquitocide A-2G	do	Feb. 21, 1973.
1544-4	Curran Scented Moth Cakes & Deodorants	Frank J. Curran Company, 6101 South Lemont Rd., Downers Grove, IL 60515.	July 1, 1948.
1544-10	Curran Naphthalene Moth Balls	do	Aug. 25, 1948.
1544-19	Curran Zorex for Moth Protection	do	Aug. 7, 1950.
1544-38	Curran Naphthalene Moth Flake Crystals	do	Apr. 13, 1965.
8340-1	Brassicol 20	American Hoechst Corp., 202-206 Highway, Somerville, NJ 08876	Feb. 19, 1965.
46946-84	Terraclor 10% Granular	TH Agriculture and Nutrition Co., Crop Protection Division, 5220 Speaker Rd., Kansas City, KS 66106.	Dec. 8, 1967.
46946-87	Terraclor captan 10-10	do	Jan. 10, 1968.
46946-153	20% Terraclor Dust	do	Aug. 1, 1963.
46946-176	10% Terraclor Dust	do	Apr. 1, 1966.

The Agency has agreed that such cancellation shall be effective June 11, 1982 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "(OPP-66092)" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. (751, 7 U.S.C. 136))

Dated: April 23, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-12878 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[180606; PH-FRL-2122-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Also listed below are four crisis exemptions initiated by California.

DATES: See each exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of benomyl on wheat to control powdery mildew in Alabama, effective from February 17, 1982, to May 30, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing benomyl. (Jack E. Housenger, Rm. 714A, CM#2).

2. Arkansas State Plant Board for the use of butachlor and propanil on dry-seeded rice to control aquatic weeds, broadleaf weeds, and grasses in Arkansas, effective from March 17, 1982, to August 31, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

3. Arkansas State Plant Board for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Arkansas, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

4. California Department of Food and Agriculture for the use of triadimefon on grapes to control powdery mildew in California, effective from February 26, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

5. Connecticut Department of Environmental Protection for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Connecticut, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

6. Delaware Department of Agriculture for the use of azinphosmethyl on carrots for processing, to control carrot weevils in Delaware, effective from February 17,

1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

7. Georgia Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Georgia, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

8. Idaho Department of Agriculture for the use of dinoseb on lentils to control broadleaf weeds in the northern counties of Idaho, effective from March 17, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

9. Idaho Department of Agriculture for the use of metalaxyl on hops to control downy mildew in Idaho, effective from April 1, 1982 to May 31, 1982. (Libby Welch, Rm. 714A, CM#2).

10. Indiana Office of State Chemist and Seed Commissioner for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Indiana, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

11. Louisiana Department of Agriculture for the use of butachlor and propanil on dry-seeded rice to control the aquatic weed complex, barnyardgrass, and sprangletop in Louisiana, effective from March 17, 1982, to September 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

12. Maryland Department of Agriculture for the use of azinphosmethyl on carrots for processing, to control carrot weevils in Maryland, effective from February 17, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

13. Maryland Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Maryland, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

14. Mississippi Department of Agriculture and Commerce for the use of benomyl on wheat to control powdery mildew in Mississippi, effective from February 17, 1982 to May 30, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing benomyl. (Jack E. Housenger, Rm. 714A, CM#2).

15. Mississippi Department of Agriculture and Commerce for the use of butachlor and propanil on dry-seeded rice to control aquatic weeds and sprangletop in Mississippi, effective from March 2, 1982, to July 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

16. New York Department of Environmental Conservation for the use of triadimefon on grapes for processing, excluding raisins, to control powdery mildew in New York, effective from February 26, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

17. Oregon Department of Agriculture for the use of triadimefon on apples and winter pears to control powdery mildew in Oregon, effective from February 26, 1982, to June 30, 1982. (Libby Welch, Rm. 714A, CM#2).

18. Clemson University, South Carolina for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in South Carolina, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

19. Texas Department of Agriculture for the use of butachlor and propanil on dry-seeded rice to control grasses and broadleaf weeds in Texas, effective from March 2, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

20. Utah Department of Agriculture for the use of triadimefon on apples to control powdery mildew in Utah, effective from February 26, 1982, to July 31, 1982. (Libby Welch, Rm. 714A, CM#2).

21. Virginia Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Virginia, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

22. Washington Department of Agriculture for the use of dinoseb on lentils to control broadleaf weeds in Spokane and Whitman Counties, Washington, effective from March 17, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

23. West Virginia Department of Agriculture for the use of fenamiphos in bearing apple orchards to control nematodes in West Virginia, effective from March 5, 1982, to April 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

24. Washington Department of Agriculture for the use of fenamiphos on raspberries to control root lesion nematodes in Washington, effective from February 17, 1982, to April 1, 1982. (Libby Welch, Rm. 714A, CM#2).

25. Washington Department of Agriculture for the use of triadimefon on apples and pears to control powdery mildew in Washington, effective from February 26, 1982, to June 30, 1982. (Libby Welch, Rm. 714A, CM#2).

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on March 12, 1982, for the use of *Bacillus thuringiensis* in urban areas to control gypsy moths. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until March 9, 1983. (Libby Welch, Rm. 714A, CM#2).

2. California Department of Food and Agriculture on March 5, 1982, for the use of metalaxyl on hops to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until May 31, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

3. California Department of Food and Agriculture on March 10, 1982, for the use of methiocarb on tomatoes to control bird depredation. Since it was anticipated that this program would be needed for more than 15 days, the California Department of Food and Agriculture has requested a specific exemption to continue it. The need for this program is expected to last until June 15, 1982. (Libby Welch, Rm. 714A, CM#2).

4. California Department of Food and Agriculture on February 26, 1982, for the use of paraquat on kiwi fruit to control annual weeds and grasses. Since it was anticipated that this program would be needed for more than 15 days, the California Department of Food and Agriculture has requested a specific exemption to continue it. (Libby Welch, Rm. 714A, CM#2).

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: April 23, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-12877 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-272; PH-FRL-2122-2]

Pesticide Petitions; Rhone-Polenc Chemical Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Rhone-Polenc Chemical Co., has amended three pesticide petitions by revising tolerance levels and to reflect the combined residues of the herbicide asulam and its metabolites.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23,

Registration Division, Office of Pesticide Programs (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "(PF-272)" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM-23, Richard Mountfort, (703-558-1830).

SUPPLEMENTARY INFORMATION: Rhone-Polenc Chemical Co., (Formerly Rhodia, Inc.), Monmouth, NJ 08852, submitted the following pesticide petitions (PP) proposing to amend 40 CFR 180.360 by establishing tolerances for residues of the herbicide asulam in or on certain agricultural and meat commodities as follows:

PP 6F1716 (41 FR 4359, January 29, 1976)—alfalfa forage at 45 parts per million (ppm), meat and meat byproducts at 0.1 ppm, and milk at 0.05 ppm.

PP 6F1717 (41 FR 4359, January 29, 1976)—grass pasture and grass rangeland at 45 ppm, meat and meat byproducts at 0.1 ppm, and milk at 0.05 ppm.

PP 6F1766 (41 FR 18140, April 30, 1976)—flax seed and flax straw at 2.0 ppm.

Rhone-Polenc Co. has amended the above petitions to reflect the combined residues of the herbicide asulam (methyl-4-sulfanilylcarbamate) and its metabolites containing sulfanilamide moiety (N^4-acetylasulam) and (N^4-acetylsulfanilamide) as asulam equivalents, following conversion of the total residue to the common moiety N^4-acetylsulfanilamide, in or on the agricultural and meat commodities fresh alfalfa, clover, and grass at 35 ppm; hay of alfalfa, clover, grass at 130 ppm; flax straw, flax seed and its fractions, meal, oilseed cake, refined oil, and soapstock at 3 ppm; meat, fat, and meat byproducts of cattle, hogs, horses, and sheep at 1.0 ppm; meat, fat, and meat byproducts of poultry at 0.2 ppm; milk at 0.3 ppm; and eggs at 0.03 ppm.

(Sec. 408(d)(1), 68 Stat. 512. (7 U.S.C. 136))

Dated: May 3, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12875 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 82-25]

Sun Chemical Export Corp. v. Lykes Brothers Steamship Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sun Chemical Export Corporation against Lykes Brothers Steamship Company was served May 4, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation.

This proceeding has been assigned to Administrative Law Judge William Beasley Harris. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82-12825 Filed 5-11-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dixie Bancshares Corporation; Acquisition of Bank

Dixie Bancshares Corporation, New Madrid, Missouri, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Hunter Farms, Inc., New Madrid, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Dixie Bancshares Corporation, New Madrid, Missouri, is also engaged in the following nonbank activities: servicing of certain existing notes receivable. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 4, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 5, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12830 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

Dixie Bancshares Corp.; Proposed Retention of Financing Activities

Dixie Bancshares Corporation, New Madrid, Missouri, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue servicing its existing notes receivable.

These activities would be performed from offices of Applicant in New Madrid, Missouri, and the geographic areas served are New Madrid and Sikeston, Missouri. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 5, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12829 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Harry W. Huning, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Prestonsburg Bancshares, Inc.*, Prestonsburg, Kentucky, to become a bank holding company by acquiring 83.3 percent of the voting shares of First Commonwealth Bank of Prestonsburg, Prestonsburg, Kentucky. Comments on this application must be received not later than June 4, 1982.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern BancShares (N.C.), Inc.*, Mount Olive, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Southern Bank and Trust Company, Mount Olive, North Carolina. Comments on this application must be received not later than June 4, 1982.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Early Bankshares, Inc.*, Early, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Early Savings Bank, Early, Iowa. Comments on this application must be received not later than June 4, 1982.

2. *Malden Bancorp, Inc.*, Malden, Illinois; to become a bank holding company by acquiring 50 percent or more of the voting shares of The Farmers and Traders State Bank of Malden, Malden, Illinois. Comments on this application must be received not later than June 4, 1982.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Larue Bancshares, Inc.*, Hodgenville, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples State Bank, Hodgenville, Kentucky. Comments on this application must be received not later than June 4, 1982.

2. *Southeastern Indiana Bancorp.*, Vevay, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of Vevay Deposit Bank, Vevay, Indiana. Comments on this application must be received not later than June 1, 1982.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado River Bancorp*, Clifton, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Clifton, Clifton, Colorado. Comments on this application must be received not later than June 4, 1982.

2. *First Security of Beaver, Inc.*, Beaver, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of The First Security Bank, Beaver, Oklahoma. Comments on this application must be received not later than June 4, 1982.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Caprock Bancshares, Inc.*, Shallowater, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Eagle Bancshares, Inc., and, thereby acquire indirect control of its subsidiary, First State Bank of Shallowater, both of Shallowater, Texas. Comments on this application must be received not later than May 27, 1982.

2. *First Alamogordo Bancorp, Inc.*, Alamogordo, New Mexico; to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank in Alamogordo, Alamogordo, New Mexico. Comments on this application must be received not later than June 6, 1982.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

1. *Transcorp*, Beverly Hills, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Beverly Hills, Beverly Hills, California. Comments on this application must be received not later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 6, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12831 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of establishment of a new Privacy Act system of records, 09-25-0151, "Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research," HHS/NIH/OD.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records, 09-25-0151, "Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research," HHS/NIH/OD. We are also proposing routine uses for this system.

The National Institutes of Health (NIH) will use this sytem to make informed decisions on appropriate actions regarding awards of research funds to individuals who are or have been subjects of investigations or determinations of misconduct.

PHS invites interested persons to submit comments on the proposed routine uses on or before June 11, 1982.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget on April 30, 1982. The system of records will be effective 60 days from the date submitted to OMB unless PHS received comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act

Coordinator at the address listed below. Comments received will be available for inspection Monday through Friday, between 9 a.m. and 3 p.m., in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205, or call 301–496–4606.

SUPPLEMENTARY INFORMATION: In fulfilling its legislated mission, NIH awards grants-in-aid and contracts to universities, hospitals, laboratories and other public or private institutions and to individuals for biomedical research projects, for biomedical research centers, for communication and dissemination of information generated in biomedical research, and for training of researchers. Spending public funds in the form of such grants and contracts entails a responsibility to ensure that these funds are well spent and that the conduct of projects carried out under such awards conforms to the requirements of applicable laws and regulations and meets acceptable standards of scientific method and ethical practice. In general, HHS carries out this responsibility by requiring those who receive grants and contracts to submit progress reports and to maintain adequate records to permit a complete audit of the expenditure of the funds received. The Department also conducts and authorizes audits of these grants and contracts. In the case of research contracts, the agency oversees work done under the contract. Research involving human subjects also requires review of the research plans and procedures for obtaining informed consent from research subjects by local Institutional Review Boards.

In some special cases, individuals who are recipients of, or candidates for, awards may be subjects of investigations or determinations of misconduct. Such misconduct might consist of falsification of scientific data, misuse of public funds, or fraud. It might involve other violations or infractions of laws, regulations, or ethical standards, indicating that the individual does not fulfill the responsibilities and qualifications expected in the conduct of biomedical research or the expenditure of public funds. In such cases, NIH needs to consider whether it is appropriate to make or to continue awards of grants or contracts. Responsible officials need to consider the nature of allegations against such individuals, the strength of evidence, the status or outcome of investigations and the relevance of findings to the support of projects involving such individuals. NIH will establish this system of records in order to meet this need.

This system will not be used in the conduct of any investigations. Rather, its purpose is to record information on the existence or results of investigations when this information is relevant to decisions on the award of funds to subject individuals. NIH may actively seek information from Executive Branch organizations responsible for conduct of investigations when it learns of such activities from other sources such as the media or third parties. Alternatively, other organizations, such as the HHS Office of the Inspector General, may on their own initiative inform NIH of investigations or determinations.

NIH will implement rigorous safeguards to prevent unauthorized disclosure. The records will be kept in locked file cabinets in secure offices. The system manager will disclose information on a regular basis only to senior officials responsible for grants and contracts, and only when they are considering whether to make or renew an award to a subject individual. These officials will decide in each case whether and how the information should be used in review of the actual or possible award. Thus operation of this system will balance individuals' rights to privacy with NIH's responsibility to protect the public interest.

The first two proposed routine uses derive directly from the purpose of the system. The first proposed routine use allows NIH to disclose factual information resulting from investigations to experts who review applications for grants or proposals for contracts. NIH will disclose information to such experts only when it bears directly on the scientific merit of the application or proposal, or when an unbiased review requires disclosing objective information in cases where allegations or other information concerning possible midconduct by a subject individual has become available from other sources such as the press.

The second routine use would allow NIH to disclose relevant information to other Federal agencies, such as the National Science Foundation, for purposes essentially the same as that of NIH, that is, in connection with award of a grant, contract or other benefit.

The third proposed routine use, allowing disclosure to the Department of Justice in response to Freedom of Informaion Act requests, will assist the agency to make an equitable decision in difficult cases where the public's right to know must be balanced against the individual's right to privacy.

The last proposed routine use permits disclosure to a congressional office. Disclosure to a congressional office would not violate the privacy of any individual because such disclosure would be made only pursuant to a request from the individual.

Dated: May 5, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09–25–0151

SYSTEM NAME:

Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Management Survey and Review, Building 31, and Office of Extramural Research and Training, Building 1, National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients or possible recipients of research funding who are subjects of investigations or determinations of misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of information related to investigations or determinations of misconduct.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the legislation which authorizes NIH to award grants and contracts for biomedical research and from NIH's concomitant responsibility to assure that funds disbursed for grants and contracts are spent for authorized purposes and that recipients of such funds conform to all appropriate laws and regulations. (Public Health Service Act, 42 U.S.C. 241, 242, *l*, 275 et seq., 281 et seq.)

PURPOSE(S):

NIH maintains this system in order to make informed decisions on appropriate actions regarding awards of research funds to individuals who are or have been subjects of investigations or determinations of misconduct. The records may be used as follows:

1. The Associate Director for Extramural Research and Training, NIH, the Directors of bureaus, institutes or divisions of NIH, or the designees of these officials may use information from this system when considering whether it is appropriate to fund research by a subject individual.

2. These officials may disclose information, when appropriate, to members of the National Advisory Council or Board of the bureau, institute or division, when the Board or Council considers actual or proposed funding of research by such an individual.

3. Members of technical merit review groups may receive disclosures of factual information (a) if the disclosure bears directly on the scientific merit of an application or proposal under review, or (b) if disclosure is necessary to ensure an unbiased review when information concerning the conduct in question has been disclosed by other sources, such as coverage in the press.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Records are available only to the system manager or the Associate Director for Extramural Research and Training, NIH, to the Director of the bureau, institute or division of NIH which has funded or is considering funding research by a subject individual, or to the designee(s) of these officials. These officials may disclose information to members of National Advisory Councils, Boards, or technical merit review groups only when such disclosure is relevant and necessary to review of research funding. Any disclosure to other individuals must be authorized by the system manager.

2. *Procedural Safeguards:* Access to records is strictly controlled by the system manager and the officials specified under "Authorized Users." Individuals who receive disclosures from this system are informed that the information is confidential. They are instructed to address all questions and inquiries either to the system manager, the Associate Director for Extramural Research and Training, NIH, or to the Director of the bureau, institute or division for reply.

3. *Physical Safeguards:* Records are kept in locked file cabinets in offices which are locked when not attended.

These measures follow the standards established in chapter 45–13 of the HHS General Administration Manual and supplementary chapter PHS hf: 45–13.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Management Survey and Review, National Institutes of Health, Building 31, Room 4C02, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above; provide your full name and state that the inquiry concerns Privacy Act system of records number 09–25–0151.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a 5,000 dollar fine.

RECORD ACCESS PROCEDURES:

Write to the system manager at the address above and provide the same information as required for notification. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Write to the system manager and reasonably identify the record, specify the information being contested and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from organizations responsible for investigations, from third parties who voluntarily submit unsolicited information, and from the media.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12881 Filed 5-11-82; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Uinta-Southwestern Utah Regional Coal Leasing Notice of Regional Coal Team Meeting, Announcement of and Request for Comment on the Ranking Subfactors, Intent To Rank Tracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for public comment on the ranking subfactors and the potential lease tracts and notice of Regional Coal Team meeting.

SUMMARY: This notice is to advise the public that the Regional Coal Team (RCT) for the Uinta-Southwestern Utah Federal Coal Production Region will meet to: (1) Review and discuss public comments on ranking of coal leasing tracts for Round II of leasing in the region; (2) review and discuss the tract profile data on these tracts; (3) rank the potential lease tracts; (4) select preliminary coal lease tracts; (5) select alternatives to be considered in preparation of a draft environmental impact statement for coal leasing in the Uinta-Southwestern Utah Coal Production Region; and (6) consider potential public body set-aside tracts.

Comments on the tracts and the factors that may be considered by the Regional Coal Team in the tract ranking process are requested. The proposed tract ranking subfactors are listed below.

DATES: Written comments on the tracts and ranking subfactors will be received by the Regional Coal Team Chairman until June 7, 1982. The Regional Coal Team will meet on June 10–11, 1982, starting at 9:00 a.m.

ADDRESSES: Comments on the potential lease tracts and the ranking factors should be addressed to Edward F. Spang, Chairman, Regional Coal Team, Nevada State Director, Bureau of Land

Management, Federal Building, 300 Booth Street, Reno, Nevada 89509.

The Regional Coal Team meeting will be in the Salt Palace, Room 127, 100 South West Temple, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Coal Project Manager, Uinta-Southwest Utah Region, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah, telephone (801) 524-5326.

SUPPLEMENTARY INFORMATION: The Regional Coal Team will meet on June 10 and 11, 1982, at 9:00 a.m. in the Salt Palace, Room 127, 100 South West Temple, Salt Lake City, Utah. The Regional Coal Team will discuss, rank, and select the coal lease tracts that will be considered for Round II of potential leasing in the Uinta-Southwestern Utah Coal Production Region. The potential lease tracts identified below have been delineated and will potentially be analyzed on a site-specific basis by the meeting. The tracts on which adequate work is completed will be ranked and considered for possible leasing in December 1983 or later. All acreages and tonnages are preliminary and subject to change. The tract description identifies only the general location of the potential lease tracts. A preliminary legal description is available at the Bureau of Land Management Public Room, Utah State Office, University Club Building (14th floor), 136 East South Temple, Salt Lake City, Utah 84111.

The tracts that are being considered for ranking include:

Tract name	General location	Approximate acreage	Estimated in-place reserves (million tons)
Soldier Creek	14 mi. NE. of Price, UT, T. 12 and 13 S., R. 11 and 12 E.	2,168.02	22
Coal Creek	11 mi. NE. of Price, UT, T. 12 and 13 S., R. 11 E.	4,196.09	114.4
Graves	10 mi. generally north of Price, UT, T. 13 S., R. 10 E.	550.16	12.6
Hoffman Creek	10 mi. NE. of Price, UT, T. 13 S., R. 11 E.	120	1.9
Whitmore Park	15 mi. NE. of Price, UT, T. 12 S., R. 12 E.	160	6.3
Alkali Creek	12 mi. NE. of Price, UT, T. 13 S., R. 11 E.	2,096.30	33.8
Dugout-Pace	18 mi. NE. of Price, UT, T. 13 S., R. 12 and 13 E.	3,149.62	106.7
Boardinghouse Canyon	2 mi. NW. of Clear Creek, UT, T. 13 S., R. 7 E.	40	.9
Blue Trail Canyon	10 mi. S. of Emery, UT, T. 23 S., R. 6 E.	320	1
Emery North	3 mi. E. of Emery, UT, T. 22 S., R. 6 E.	2,001	44
Emery Central	6 mi. S. of Emery, UT, T. 22 and 23 S., R. 6 E.	2,967.85	42
Emery South	12 mi. S. of Emery, UT, T. 24 S., R. 6 E.	748.49	12.1
Walker Flat	7 mi. SW. of Emery, UT, T. 23 S., R. 5 E.	1,520.43	71.6
Ivie	15 mi. SW. of Emery, UT, T. 23 S., R. 4 E.	1,040	10.1
Skumpah	18 mi. E. of Salina, UT, T. 22 S., R. 3 E.	200.80	4.5
Acord	20 mi. E. of Salina, UT, T. 22 S., R. 4 E.	120	3.35
Muddy Area (multiple tracts)	5 mi. NW. of Emery, UT, T. 21 and 22 S., R. 4-6 E.	19,000	440
North Horn II	10 mi. W. of Orangeville, UT, T. 18 S., R. 6 E.	9,500	65
South Horn Mountain	12 mi. W. of Castle Dale, UT, T. 19 S., R. 6 and 7 E.	12,000	140
Trail Mtn	10 mi. NE. of Orangeville, UT, T. 17 and 18 S., R. 6 and 7 E.	9,000	80
Ferron Canyon	13 mi. NW. of Ferron, UT, T. 18 and 19 S., R. 5 E.	8,500	95
Candland Mtn	23 mi. W. of Price, UT, T. 14 and 15 S., R. 6 E.	1,600	60
Castle Valley Ridge	16 mi. SW. of Price, UT, T. 14 and 15 S., R. 7 E.	3,442	73
North Trough Springs	3 mi. SW. of Clear Creek, UT, T. 14 S., R. 6 and 7 E.	3,195	30
Mud Creek	3 mi. S. of Clear Creek, UT, T. 14 S., R. 7 E.	1,200	27
Alton Amphitheater	N. and E. of Alton, UT, T. 39 S., R. 5 and 6 W.	2,781.15	74.8
Flax Lakes	NE. of Glendale, UT, T. 39 and 40 S., R. 6 W.	5,469.65	112.7
Ford Pasture	11 mi. E. of Glendale, UT, T. 40 S, R. 5 W.	1,500	39.4
Fisher Canyon	6 mi. SE. of Alton, UT, T. 39 and 40 S., R. 5 W.	5,724.91	134
Mill Creek Canyon	10 mi. SE. of Alton, UT, T. 39 and 40 S., R. 4½ and 5 W.	6,562.48	204
Cederedge	6 mi. W. of Cederedge, CO, T. 13 S., R. 10 W.	1,847.20	45.42
Paonia	4 mi. NW. of Paonia, CO, T. 13 S., R. 8 and 7 W.	4,853.34	149.80
Gooseberry	9 mi. E. of Fairview, UT, T. 13 S., R. 6 E.	920	43.3

The Regional Coal Team will rank the available tracts on the basis of high, medium, and low desirability for leasing, utilizing the subfactors indicated below and any additional identified at the RCT meeting. The subfactors are:

1. *Coal economics:* production rate, estimated mine life, total coal reserves, recoverable reserves, coal quality (sulfur content and BTU value), surface ownership, type of mine (surface versus undeground), coal transportation needs, and coal access;

2. *Impacts on the natural environment:* air quality, soils hydrology, surface and underground water resources, vegetation, endangered and threatened species, reclamation potential, wildlife, cultural and historical values, recreation values, visual resources, and noise;

3. *Socio-economic impact:* effect on local population, infrastructure, social services, public safety, culture and well being, and agriculture; and,

4. *Unsuitability criteria:* rights-of-ways and easements; land use for scientific studies, historic lands and sites, Federally listed endangered and threatened species, eagle nests, state resident fish and wildlife, floodplains, and municipal watersheds.

Upon completion of the ranking process, the Regional Coal Team will select tracts and alternatives that will be considered in the EIS for possible Federal lease sale beginning in December 1983 in the Uinta-Southwestern Utah Coal Region. Tacts will be selected and considered in alternatives to meet or exceed the Federal coal leasing target for the region that will be decided by the Secretary of the Interior. Generally, the tracts selected for possible competitive sale will be chosen from those tracts that are in a high desirability range, followed by those that are in the medium desirability range. Tracts in the low desirability range will be the tracts least likely to be selected. However, special conditions or factors may exist that would warrant

the selection of a tract that falls in the medium or low desirability range.

Material concerning the potential lease tracts will be available for public review at the Bureau of Land Management's Utah State Office Public Room (Room 1400), University Club Building, 136 East South Temple, Salt Lake City, Utah.

Dated: May 5, 1982.

Dean E. Stepanek,

Associate State Director.

[FR Doc. 82-12883 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget's Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 9:00 a.m. to 4:00 p.m. on May 27, 1982, and from 8:00 a.m. to 4:00 p.m. (or completion of business) on May 28, 1982, in Room 1042, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

The meeting will deal with the following subjects:

1. Welcome of New Committee Members
2. Review of Minutes of Meeting of January 21 and 22, 1982
3. Current Status of Program
4. Review of Recommendations for Centers of Generic Mineral Technology
5. New Business

The meeting of this committee is open to the public. Approximately 25 visitors can be accommodated on a first come first served basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than May 21, 1982, to Dr. Ronald Munson, Acting Chief, Office of Mineral Institutes, Bureau of Mines, Room 1030A, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 21241, phone (202) 634-1332.

James F. McAvoy,

Deputy Director.

[FR Doc. 82-12838 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Contract Negotiations with the East and Quincy Columbia Basin Irrigation Districts; Availability of the Proposed Supplement No. 1 to Master Water Service Contract and the Proposed Two-Party Interruptible Water Service Contract for Public Review and Comment

The Department of the Interior, through the Bureau of Reclamation, is in the final stages of negotiating a supplement to the Master Water Service Contract and an interruptible water service contract form with the East Columbia Basin Irrigation District of Othello, Washington and Quincy Columbia Basin Irrigation District of Quincy, Washington. The proposed contracts will provide for limited non-Federal development of irrigable lands from existing facilities within each district pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), as amended, the Columbia Basin Project Act (57 Stat. 14), the Master Water Service Contract, and the repayment contract presently in effect with each district.

The development of irrigable lands under the proposed supplement will not exceed 10,000 acres in each district. Areas with potential for development under this program have been reviewed and analyzed to determine impacts from irrigation development. Only lands irrigable under Bureau of Reclamation land classification criteria, with insignificant drainage impacts on existing project lands and facilities, will be eligible to receive water.

Land available for irrigation development in the Quincy Columbia Basin Irrigation District consists of privately owned irrigable land from deferred and bypassed lands in Planning Blocks 90, 91, 742, 791, 821, 831, 891, and north of 80. In the East Columbia Basin Irrigation District, eligible lands lie in a band immediately east of the East Low Canal.

Water would be made available to individual landowners on an interruptible basis under terms of a two-party water service contract between a district and a water user. The contract would specify water quantities, charges, and other terms and conditions in compliance with Reclamation law and policy. The landowners would be responsible for construction of distribution and drainage facilities. The Federal Government would *not* be responsible for drainage of lands irrigated under the two-party contracts. The terms and conditions of the proposed contracts are ultimately dependent upon the Secretary of Interior's approval of the contract forms.

The proposed draft contracts are now available for public review. Written comments from the public will be received until May 31, 1982. All written correspondence concerning the proposed contracts will be made available to the public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 383), as amended. Requests for copies of the contracts and written comments on the contracts should be addressed to the Project Manager, Bureau of Reclamation, Division Avenue and C Streets, NW., P.O. Box 815, Ephrata, Washington 98823.

A public meeting will be announced in the local news media to allow the public an opportunity to be briefed and to comment on the proposed contracts and environmental assessment of the program.

For further information, please contact Ms. Carol Prochaska, Public Affairs Officer, at the above address or telephone (509) 754-4611, Ext. 258.

Dated: May 7, 1982.

Eugene Hinds,

Assistant Commissioner of Reclamation.

[FR Doc. 82-12800 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Kerr-McGee Corporation, Unit Operator of the Ship Shoal Block 28 Federal Unit Agreement No. 14-08-001-2942, submitted on April 28, 1982, a proposed supplemental plan of exploration describing the activities it proposes to conduct on the Ship Shoal Block 28 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 4, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12804 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

Correction

In FR. Doc. 82–8901, pubished at page 14231, on Friday, April 2, 1982, on page 14232, in the second column, in the first paragraph, "MC–FC–79652", in the twelfth line "points in and Nye" should be corrected to read "points in Clark and Nye".

BILLING CODE 1505-01-M

Motor Carriers; Finance Applications; Decision Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's rules of practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oval hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying application shall stand denied.

Dated: May 6, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC–F–14839, filed April 12, 1982. D & F TRANSIT, INC. (D & F) (192 E. Main Street, Fredonia, NY 14063)—PURCHASE (PORTION)—GREYHOUND LINES, INC. (Greyhound) (Greyhound Tower, Phoenix, AZ 85077). Representatives: Donald C. Brandt, 2 W. Main Street, Fredonia, NY 14063 and Anthony P. Carr, Greyhound Tower, Phoenix, AZ 85077. D & F seeks authority to purchase a portion of the interstate operating rights of Greyhound. John L. Swanson, sole stockholder of D & F, seeks authority to control said operating rights. The operating rights to be purchased are contained in Certificate No. MC–1501 (Sub-No. 121) (renumbered MC–1515 (Sub-No. 8) but not yet reissued) and MC–1515 (Sub-No. 261). D & F is purchasing a portion of a route between Fairmount, NY, and Buffalo, NY, in MC–1501 (Sub-No. 121) which authorizes the transportation as a motor common carrier, over regular routes, of *passengers and their baggage, express and news papers* in the same vehicle with passengers, between Rochester, NY, and Buffalo, NY, serving all intermediate points; from Rochester over NY Hwy 31 via Medina, Gasport and Lockport, NY, to junction U.S. Hwy 78 to Millersport, NY, then over NY Hwy 263 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Buffalo, NY, and return over the same route. Greyhound will retain authority to transport *passengers and their baggage, express and newspapers* in the same vehicle with passengers, between Fairmont, NY, and Buffalo, NY, serving all intermediate points except Rochester, Gasport, from Fairmount over unnumbered hwy via Amboy and Ionia Corners, NY, to Jordan, NY, then over NY Hwy 31 to junction NY Hwy 250, then over NY Hwy 250 to Fairport, NY, then over NY Hwy 31F to junction NY Hwy 31, then over NY Hwy 31 via Lockport, NY to junction NY Hwy 320, then over NY Hwy 320 to junction U.S. Hwy 62, and then over U.S. 62 to Buffalo. D & F is purchasing that portion of Certificate No. MC–1515 (Sub-No. 261F) authorizing the transportation of passengers, baggers, express and newspapers and the junction of NY Hwy 78 and NY Hwy 5, over NY Hwy 78. Greyhound will retain authority (1) between Buffalo, NY, and junction NY Hwy 78 and NY Hwy 5; from Buffalo over NY Hwy 33 to junction Genesse St., then over Genesse St. to junction NY Hwy 78, then over NY Hwy 78 to junction NY Hwy 5, and return over the same route, serving all intermediate points, and (2) between Millersport, NY, and junction NY Hwy

78 and NY Hwy 324, over NY Hwy 78, serving all intermediate points. D & F is a motor carrier of passengers and their baggage pursuant to certificates issued in MC–116068 and sub-numbers thereunder.

Note.—D & F filed an application in conjunction with MC–F–14839. The application was docketed No. MC–116068 (Sub-No. 7) published in the same Federal Register.

MC–F–14842, filed April 15, 1982. SHELTON TRUCKING SERVICE, INC. (Shelton) (Route 1, Box 230, Altha, FL)—MERGER—ARGO TRUCKING COMPANY, INC. (Argo) (Louer Heard Street, Elberton, GA 30635). Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Shelton seeks authority to merge the Interstate operating rights and property of Argo into Shelton for ownership, management and operation. Randall Shelton, the sole stockholder of Shelton, seeks authority to continue in control of the merged rights and property through this transaction. Randall Shelton controls Seminole Truck Lines, Inc., a non-carrier, which, in turn, controls Argo. Common control was approved in MC–F–14272. Shelton is a motor carrier operating under MC–124887. Argo's authority consisting of Certificate Nos. MC–110678 (Sub-Nos. 27, 39, 48, 49, and 50X), authorizes the transportation of (1) *clay, glass, concrete or stone products,* (2) *building materials,* (3) *machinery,* (4) *ores and minerals,* (5) *food and related products,* (6) *chemicals and related products,* (7) *metal products,* (8) *pulp, paper, and related products,* (9) *iron and steel scrap,* and (10) *granite and marble,* between specified points throughout the U.S.

MC–F–14845, filed April 20, 1982. GOLD STAR, INC. (Gold Star) (130 Davidson Avenue, Somerset, NJ 08873)—PURCHASE (PORTION)—GROSS & HECHT TRUCKING, INC. (Gross & Hecht) (35 Brunswick Avenue, Edison, NJ 08817). Representative: A. David Millner, P.O. Box Y, 7 Becker Farm Road, Roseland, NJ 07068. Gold Star seeks authority to purchase a portion of the interstate operating rights of Gross & Hecht. Arthur M. Goldberg, the majority stockholder of Gold Star, seeks authority to continue in control of said rights through this transaction. Mr. Goldberg controls Transco Group, Inc., a non-carrier which controls the transferor, Gross & Hecht. He also controls East Alpine Corp., a non-carrier which controls Mountainside Transport, Inc., a motor contract carrier operating under MC–13287 and sub-numbers thereunder. Gold Star holds authority under MC–148560, to operate as a contract carrier. Common control of Mountainside and Gross & Hecht was approved in MC–F–12833. Common control of Gold Star with the other two carriers is pending in MC–F–14810. Gold Star is seeking authority to purchase that portion of Permit No. MC–59806 (Sub-No. 24)X which authorizes the transportation of *flavoring syrup,* in bulk, in tank vehicles, from Long Island City, NY, to Newark, New Brunswick, Teterboro and Asbury Park, NJ, and Philadelphia, PA, under continuing contract(s) with unnamed shippers.

MC–F–14846, filed April 22, 1982. TRI-LINE EXPRESSWAYS, LTD. (Tri-Line) (9559 40th Street, SE, Calgary, Alberta, Canada T2H 2J1)—purchase—LESTER SMITH TRUCKING, INC. (Lester) (6035 East 56th St., Commerce City, CO 80022) and —purchase (portion)—MITCHELL BROS. TRUCK LINES (Mitchell) (3841 No. Columbia Blvd., Portland, OR 97217). Representatives: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264 and David Lister, P.O. Box 17039, Portland, OR 97217. Tri-Line seeks to purchase the operating rights and property of Lester and a portion of the operating rights of Mitchell. James W. Cooper, Lloyd W. Cooper, Alexander D. Smith, Robert V. McCormack, and Gordon W. Hawley, who together control 65.97% of Tri-Line through stock ownership, seek authority to acquire control of the operating rights and property through this transaction. The operating rights sought to be transferred from Lester are contained in certificate No. MC–57697 and sub-numbers thereunder, which authorize the transportion of *general and specified commodities* such as *farm products, building and construction materials, machinery, transportation equipment, food and related products, metal products, size and weight commodities, self-propelled construction articles, pipe, household goods, mercer commodities rubber and plastic products, lumber and wood products, clay, concrete, glass or stone products, ores and minerals chemicals and related products, instruments and photographic goods, furniture and fixtures, telephone and powerline materials, coal and coal products and prefabricated buildings,* between various points in AL, AR, AZ, CA, CO, IA, ID, IL, IN, KY, KS, LA, MI, MN, MO, MT, NE, ND, NM, NV, OK, OR, PA, SD, TN, TX, UT, WA, WI, and WY. The operating rights sought to be transferred from Mitchell are the following: the entire certificates are being transferred in MC–32882 (Sub-Nos. 62, 63, 71, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, E23, E24, E25), and only a portion of the operating rights are being transferred from certificate No. MC–32882 and (Sub-Nos. 61, 65, 68, 70, 72, 74, 84, 94, 199, 107, 108, 124, 151, 154, 155, 156X, 157X, 158X, 159X, 160X, 161X, 162X, 163X, 164X, 165X, 166X, 167X, 168X, and E1). These certificates authorize the transportation of *general* and *specified commodities* such as *forest products, wood products, lumber and lumber products, paper and paper products, pipe, iron and steel articles, commodities which by reason size or weight require special handling or the use of special equipment, commodities which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling or the use of special equipment, self-propelled articles, weighing 15,000 pounds or more, iron or steel articles, pipe and pipe fittings, construction material, engineered kiln stickers, blades, edges and accessories therefor; signs, and materials, equipment and supplies used in the manufacture and erection of signs, fireplace logs, lift trucks and hydraulic platforms, iron and steel scaffolding, metal products, rubber and plastic products, empty containers, machinery and building materials, clay, concrete, glass or stone products, ores and minerals and coal and coal products, transportation equipment, such commodities as are dealt in or used by machinery, logging and logging equipment distributors, materials, equipment and supplies used in the construction, manufacturing and erection of pollution control and environment control commodities, and such commodities as are dealt in or used by dealers and manufactures of agricultural equipment, and lawn care and leisure products,* between points in the United States (including AK, excluding HI).

Notes.—(1) An application for temporary authority has been filed.

(2) A directly related gateway elimination application has been filed, MC–129480 Sub-No. 55), published in the same Federal Register.

Tri-Line is a motor common carrier pursuant to certificates issued in MC–129480 and sub-number thereunder.

MC–F–14847, filed April 28, 1982. CARAVAN MOTOR CARGO, INC. (Caravan) (605 S. Loop 12, Irving, TX 75060)—purchase (portion)—TRANS-CONTINENTAL EXPRESS, INC. (Trans-Continental) (Highway 82 East, Clarksville, TX 75426). Representative: Ralph W. Pulley, Jr., 102 Metropolitan

Savings Tower, 5944 Luther Lane, Dallas, TX 75225. Caravan seeks authority to purchase a portion of the interstate operating rights of Trans-Continental. James T. Moore, the majority stockholder of Caravan, seeks authority to acquire control of said rights through the transaction. Caravan is purchasing all of the authority held by Trans-Continental in MC 150425 (Sub-Nos. 1, 2, 3, 4, and 5), which authorize the transportation of (1) *zinc dust, dross and skimmings,* between the facilities of Southern Zinc Company, in Fulton County, GA, on the one hand, and, on the other, points in AL, MS, LA, TX, OK, AR, MO, TN, OH, NC, SC, VA, PA, NJ, FL, and RI; (2) *paper, paper products, and plastic articles,* and *materials and supplies* used in the manufacture and distribution of said commodities, between those points in the U.S. in and east of WI, IA, MO, KS, OK, and TX; (3) *cleaning compounds, textile softeners, foodstuffs, and toilet preparations,* between the facilities of Lever Brothers Co., at or near St. Louis, MO, on the one hand, and, on the other, points in TX, LA, MS, GA, TN, AR, NC, NY, NJ, MI, OH, and CA; (4) (a) *malt beverages* and *materials, supplies and equipment* used in the production and distribution of malt beverages, between Fort Worth, TX, New Orleans, LA, and Belleville, IL, on the one hand, and, on the other, points in AR and LA; (b) *alcoholic beverages* and *materials, supplies and equipment* used in the production and distribution of alcoholic beverages, between Chicago, IL, and Westfield, NY, on the one hand, and, on the other, points in Mobile County, AL; and (c) *alcoholic liquors, materials, supplies and equipment* used in the manufacture, distribution, and sale of alcoholic liquors (i) between points in IL, on the one hand, and, on the other, those points in the U.S. in and west of WI, IN, KY, AR, and LA, (ii) between Ft. Smith, AR, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, IA, and IL, and (iii) between New Orleans, LA, on the one hand, and, on the other, points in IL, MO, AR, TN, TX, OK, MS, AL, GA, and FL; and (5) *such commodities* as are dealt in by the agricultural, water treatment, food processing, wholesale grocery and institutional supply industries, between Iberia Parish, LA, and points in Van Zandt County, TX, on the one hand, and, on the other, points in AR, OK, TX, MO, LA, MS, AL, GA, SC, NC, TN, KY, and OH. NOTES: TA has been filed. Transferee is not a carrier but is the sole stockholder of Caravan Refrigerated Cargo, Inc., a motor carrier operating under MC 119789 and sub-numbers thereunder.

MC-F-14843, filed April 15, 1982. SUNDERMAN TRANSFER, INC. (Sunderman) (Box 63, Windom, MN 56101)—purchase (portion)—T.F.S., Inc. (T.F.S.) (So. Highway 281, RR #2, Box 126, Grand Island, NE 68801). Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001. Sunderman seeks to purchase a portion of the operating rights of T.F.S. in Certificate No. MC 145743 (Sub. 28) which authorizes the transportation of (1) glassware (a) from Columbus, OH, to points in AR, FL, LA (except New Orleans commercial zone); and (b) from Jeanette, PA, to points in AL, AR, AZ, CA, CO, FL, GA, ID, KS, LA, MS, MO, MT, OK, NV, NM, ND, OR, SD, TX, UT, WA, and WY; (2) plasticware, from Lake City and Girard, PA, to points in AL, AZ, CA, CO, FL, GA, ID, KS, MO, MS, MT, ND, NV, NM, OK, OR, SD, TX, UT, WA, and WY; and (3) chinaware and stoneware, from Sebring and Bedford Heights, OH, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY; and (4) chinaware, porcelain ware, and stoneware, from Sebring and Bedford Heights, OH, to points in AL, GA, MS, OK, TX, KS, MO, ND, SD, and FL. Sunderman is a carrier pursuant to authority issued in MC 145842 (Common) and MC 125103 (Contract). Eugene Sunderman, who controls transferee through stock ownership, seeks to acquire control of said operating rights through the purchase. No TA application has been filed.

Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any applicaiton, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment of applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: May 6, 1982.

By the Commission, Review Board Number 3, Member Krock, Joyce and Dowell.

MC 129480 (Sub-55), filed April 22, 1982. Applicant: TRI–LINE EXPRESSWAYS, LTD.—Gateway Elimination, 9559 40th Street SE., Calgary, Alberta, Canada T2H 2J1. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. To operate as a *common carrier*, over irregular routes, transporting (1) *commodities* which because of size or weight require the use of special equipment and *metal products*, between points in AR, LA, OK, and TX, on the one hand, and, on the other points in WA, OR, ID, UT, MT, NV, AZ and NM, (2) *machinery*, between points in OR, WA, CA, ID, NV, AZ, MT, WY, UT, NM and CO, on the one hand, and on the other, those points in the United States in and east of MI, OH, KY, TN and MS, (3) *ores, minerals and coal, and coal products*, between points, in MT, WY, ND, and SD, on the one hand, and, on the other, points in the United States, and (4) *metal products*, (a) between those points in the United States in, west and north of WI, IL, IN, MO, KS, CO and NM, on the one hand, and, on the other, those points in the United States in and east of MI, OH, KY, TN, and MS, and (b) between points in TX, OK, AR and LA, on the one hand, and, on the other, points in ND, SD, NE, KS, NM, IA, MO, WI, IL, and IN.

Note.— The purpose of this application is to eliminate various gateways to enable Tri-Line Expressways, Ltd. to provide a through service. This application is directly related to MC–F–14846 published in this same Federal Register issue.

MC 116068 (Sub-7), filed April 12, 1982. Applicant: D & F TRANSIT, INC., 192 E. Main Street, Fredonia, NY 14063. Representative: Donald C. Brandt, 2 W. Main Street, Fredonia, NY 14063. To operate as a common carrier, by motor vehicle, over regular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, between the junction of NY Hwy 78 and NY Hwy 5 and Buffalo, NY, serving all intermediate points; from Junction NY Hwy 78 and NY Hwy 5 over NY Hwy 78 to junction Genesee Street, then over Genesee Street to junction of NY Hwy 33 to Buffalo, NY, and return over the same route. Condition: We find this application not to be directly related MC–F–14639 and therefore require a $350 filing fee to be filed prior to the issuance of an Effective Notice.

Note.—This application was filed in conjunction with MC–F–14839, published in this same Federal Register.

Agatha L. Mergenovich,

Secretary.

FR Doc. 82-12962 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 254]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 7, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 14125 (Sub-13)X, filed April 29, 1982. Applicant: PIQUA TRANSFER & STORAGE COMPANY, 524 Young St., Piqua, OH 45356. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. Sub-No. 12F certificate: remove the household goods restriction from its general commodities authority.

MC 56799 (Sub-10)X, filed April 26, 1982. Applicant: CLAXON TRUCK LINE, INC., P.O. Box 678, Frankfort, KY 40602. Representative: George M. Catlett, Suite 700–702, McClure Bldg., Frankfort, KY 40601. Subs 2, 3F, 7F, and 8F: (1) allow service at all intermediate points, Subs 2, 3F, and 7F, and (2) remove the facilities limitations and the originating at and destined to restriction, Sub 8F.

MC 78842 (Sub-8)X, filed April 30, 1982. Applicant: DALEY & WANZER, INC., 821 Nantasket Avenue, Hull, MA 02045. Representative: Thomas R. Kingsley, 10614 Amherst Avenue, Silver Spring, MD 20902. Lead and Subs 1, 2 and 3 certificates and MC–127272 and Sub 1 permits: (1) broaden commodity description (a) in lead certificate to "general commodities (except classes A and B explosives and commodities in bulk)" from general commodities with the usual exceptions, (b) in lead and Subs 1, 2 and 3 certificates to "household goods, furniture and fixtures, and materials, equipment and supplies used in the manufacture, sale and distribution of furniture and fixtures," from household goods, and (c) in lead and Sub 1 permit to "such commodities as are dealt in or used by department stores," from "damaged retail department store merchandise, when moving loose or uncrated"; and, (21) expand territorial descriptions (a) in lead certificate to Plymouth County, MA, from off-route point of Hull, MA, and to Norfolk, Middlesex, Plymouth and Suffolk Counties, MA, from Hull and Brookline, MA, (b) in Sub 1 certificate to Norfolk, Plymouth and Suffolk Counties, MA, from Quincy, MA, (c) in Sub 2 certificate to Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties, MA, from Boston, MA, and (d) in lead and Sub 1 permits to between points in the United States under continuing contract(s), with a named shipper.

MC 88380 (Sub-44)X, filed April 26, 1982. Applicant: REB TRANSPORTATION, INC., P.O. Box 4309, Fort Worth, TX 76106. Representative: Clint Odlham, 623 South

Henderson, Fort Worth, TX 76104. Lead, and Sub-Nos. 11, 15, 19, 20, 24, 25, 27, 28, 29, 31F, 32F, 33F, 34F and 35F broaden, (1) bituminized fiber pipe, Subs 11 and 29 to "pipe"; iron and steel articles scrap iron and scrap steel, Sub 15, iron and steel articles Subs 19, 20, 24, 25, 27, 31, 34 and 35; aluminum articles, iron and steel tanks, aluminum tanks and parts and attachments and accessories, Sub 19, iron, steel, zinc, lead and articles or products thereof (except in bulk), and springs, Sub 28 to "metal products", (2) Lead, remove (a) exception to pipe used in connection with the stringing or dismantling of main or truck pipelines (b) restriction against interchange at points in KS and OK, and (c) restriction against tacking authority for purpose of performing a through service, (3) remove "originating at destined to" restrictions, facilities limitation, except in bulk, foreign commerce, and in tank vehicles restriction in various subs, (4) Sub 20, remove restrictions against (a) commodities which because of size or weight require special equipment, (b) Mercer commodities, (c) commodities used in, or in connection with the drilling of water wells and sulphur industry, (d) commodities used in, or in connection with earth drilling and (e) scrap metals, (5) remove "in bulk" restriction from construction materials authority in Sub 28, (6) Sherman, TX to Grayson County; Hope, AR to Hempstead County; Midlothian, TX to Ellis County; Plum, TX to Fayette County and (7) to radial authority.

MC 119399 (Sub-154)X, filed April 23, 1982. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, Joplin, MO 64802. Representative: Keith R. McCay, (same as applicant). Subs 97F, 117F, 134F, 149X, and 141F: (1) Broaden commodity description from (a) petroleum, petroleum products, vehicle body sealer, sound deadener compound, and filters to "petroleum, natural gas and their products" in Sub 97F; (b) empty drums used in the transportation of petroleum products to "containers" in Sub 117F; and (c) lighting fixtures and parts and accessories for lighting fixtures to "machinery and materials, equipment, and supplies used in the manufacture and distribution of machinery" in Sub 134F; (2) remove facility limitations in Subs 117F and 134F; (3) remove facility interlining restriction and change territory to between named facilities at points in the US (except AK and HI); on the one hand, and, on the other, points in the US (except AK and HI) in Sub 141F; (4) change Dayton to Liberty County, TX in Sub 117F, and Carthage to Jasper County, MO in Sub 134F; and (5) change one-way to radial authority in Subs 97F, 117F and 134F.

MC 143870 (Sub-2)X, filed April 27, 1982. Applicant: BRANTLEY BROTHERS MOVING & STORAGE CO., INC., 17 Frelinghuysen Avenue, Newark, NJ 07114. Representative: Malachia Brantley (same as applicant). Lead certificate: (1) Broaden commodity description from household goods to "household goods, furniture and fixtures, materials, equipment and supplies used in the manufacture, distribution, and sales of furniture and fixtures"; and (2) remove the restrictions to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and against pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization.

MC 144977 (Sub-3)X, filed May 3, 1982. Applicant: SERVICE TRUCKING COMPANY, INC., P.O. Box 368, Charleston, TN 37310. Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340. Sub-No. 2F, (1) general commodities (with the usual exceptions) to "general commodities (except classes A and B explosives, household goods and commodities in bulk)"; (2) delete the plantsite restriction; (3) broaden to county-wide authority in Bradley and Hamilton Counties, TN; from Charleston and Chattanooga, TN: (4) remove originating at and/or destined to restriction.

MC 151027 (Sub-3)X, filed May 3, 1982. Applicant: GRADY J. MITCHELL, d.b.a. MITCHELL TRUCKING COMPANY, P.O. Box 616, Dobson, NC 27017. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., N.W., Washington, D.C. 20005. Sub 2 certificate: remove the "originating at or destined to facilities of a shipping association and its members" restriction in general commodity authority radially between Ohio and points in the United States.

[FR Doc. 82-12844 Filed 5-11-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decison-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP4–161

Decided: May 5, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161638 (Sub-1), filed April 29, 1982. Applicant: DOUGLAS C. ROYCRAFT, d.b.a. ROYCRAFT TRANSIT & STORAGE, 1800 Vernon St., Eau Clair, WI 54710. Representative: Robert S. Lee, 1600 TCF Tower, 121 S 6th St., Minneapolis, MN 55402. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161657, filed April 26, 1982. Applicant: FRED L. ROBINSON and RICHARD W. ROBINSON, d.b.a. ROBINSON EXPRESS, 5851 Thori Croft Dr., Valley Springs, CA 95252. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207, (209) 957–6128. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161677, filed April 26, 1982. Applicant: BOB OLDHAM TRUCKING, 60 Stephanie St., #102C, Salinas, CA 93901. Representative: Robert F. Oldham (same address as applicant), (408) 422–0282. Transporting *food and such other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161727, filed April 28, 1982. Applicant: MEDICAL DELIVERY SERVICE, INC., 441 Carnation Ave., Floral Park, NY 11001. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601; (312) 263–1600. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161737, filed April 28, 1982. Applicant: Q.D.S. MESSENGER SERVICE, Division of MARLA ENTERPRISES, INC., 2 Ogden Ave., Harrison, NJ 07029. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP4–164

Decided: May 6, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161777, filed April 30, 1982. Applicant: MARVIN KELLER TRUCKING, 315 South St. John, Bethany, IL 61914. Representative: Marvin Keller, (same address as applicant), (217) 665–3430. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 161588, filed April 20, 1982. Applicant: UNITED FREIGHT LINES, INC., 1215 Bixby Ave., City of Industry, CA 91745. Representative: Frederick J. Coffman, P.O. Box 1455, Upland, CA 91786, 714–981–0981. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161639, filed April 23, 1982. Applicant: RAMONA B. KLINNER, d.b.a. SHELBY PROPERTY BROKERS, P.O. Box 1409, Shelby, AL 35143. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Pkwy., Birmingham, AL 35209–4786, 205–942–9116. As a *broker of general commodities* (except household goods), between points in the U.S. (expect AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12845 Filed 5–11–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80100.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly note problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in

interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contact".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP4–163

Decided: May 6, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 65697 (Sub-63), filed April 29, 1982. Applicant: TSC EXPRESS CO., P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith (same address as applicant), (404) 521–0730. Transporting *cleaning compounds, food preparations, and printed matter,* between points in Fulton County, GA. on the one hand, and, on the other, points in AL, MS and TN.

MC 144197 (Sub-4), filed April 26, 1982. Applicant: KEYBOARD CARRIAGE, INC., 1212 Lexington Drive, New Albany, IN 47150. Representative: John Robert Ellnor III (same address as applicant), (812) 944–5037. Transporting *general commodities* (except classes A and B explosives and commodities in bulk) between points in the U.S. (except AK and HI).

MC 144197 (Sub-4), filed April 26, 1982. Applicant: KEYBOARD CARRIAGE, INC., 1212 Lexington Drive, New Albany, IN 47150. Representative: John Robert Ellnor III (same address as applicant), (812) 944–5037. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), in specialized equipment, between points in the U.S. (except AK and HI).

MC 145987 (Sub-3), filed April 29, 1982. Applicant: INTER-CITY EXPRESS, LTD., 2655 Dollarton Bwy., N. Vancouver, B.C. Canada V7H 1B1. Representative: Jim Pitzer, 15 S. Grady Way, suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *chemicals and related products* between ports of entry on the International Boundary line between the U.S. and Canada and points in the U.S. (except AK and HI).

MC 146947 (Sub-4), filed April 29, 1982. Applicant: HUNTER TRANSPORT CO., INC., 1603 Long St., Chattanooga, TN 37408. Representative: Ann K. Merriman (same address as applicant), (615) 265–8494. Transporting *paper, pulp and cotton linters,* between Chattanooga, TN, on the one hand, and, on the other, points in AR, CT, LA, MA, MI, MS, NH, NJ, NY, OH, PA, VA, WI, and WV, under continuing contract(s) with Southern Cellulose Division of Knowlton Brothers, of Chattanooga, TN.

MC 150687 (Sub-3), filed April 30, 1982. Applicant: MITCHELL & SONS MOVING AND STORAGE, INC., 755 N. Baney Rd., Ashland, OH 44805. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *household goods, furniture, fixtures and electronic equipment,* between points in the U.S. (except AK and HI).

MC 152517 (Sub-2), filed April 29, 1982. Applicant: RO–MAR TERMINAL & WAREHOUSE CO., INC., 3356 So. Ashland Ave., Chicago, IL 60608. Representative: Ronald N. Cobert, 1730 M St., NW., Suite 501, Washington, D.C. 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Freight Train, Inc., of Chicago, IL.

MC 160347 (Sub-1), filed April 29, 1982. Applicant: TRUCK LOAD SERVICE, INC., 1313 Hooksett Ave., Hooksett, NH 03106. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207) 773–5651. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME and NH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161757, filed April 30, 1982. Applicant: BEALL CONCRETE, INC., Box 591, Roanoke, TX 76262. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 N. Classen Blvd., Oklahoma City, OK 73118, (405) 848–7946. Transporting *commodities* in bulk, between points in AR, OK, and TX.

Volume No. OP4–165

Decided: May 6, 1982.

By the commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 61396 (Sub-401), filed April 29, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *cement,* between points in Forsyth and Durham Counties, NC, on the one hand, and, on the other, points in VA, TN, and WV.

MC 99676 (Sub-3), filed April 29, 1982. Applicant: F. KIRCHNER & SON CO., INC., 421 Industrial Dr., P.O. Box 325, Harrison, OH 45030. Representative: Norbert B. Flick, 2250 Beechmont Ave., P.O. Box 30–L, Cincinnati, OH 45230, (513) 231–4831. Transporting *machinery and machinery parts,* and *iron and steel articles,* between Cincinnati, OH, on the one hand, and, on the other, points in IL, IN, and MI.

MC 102616 (Sub-1036), filed April 29, 1982. Applicant: COASTAL TANK LINES, INC., 250 Cleveland Massillon Rd., Akron, OH 44319. Representative: Fred H. Daly, 2550 M St., N.W., Suite 475, Washington, DC 20037, (202) 293–3204. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK), under continuing contract(s) with Standard Oil Company (Ohio), of Cleveland, OH.

ME 139326 (Sub-2), filed April 29, 1982. Applicant: W.A. WAGNER, INC., P.O. BOX 27, Garden Prairie, IL 61038. Representative: Leonard R. Kofkin, 140 South Dearborn St., Suite 1515, Chicago, IL 60603. Transporting *those commodities, which because of their size or weight, require the use of special handling or equipment,* between points in IL and WI, on the one hand, and, on the other, points in ND, NE, OK, TX, AR, LA, MS, AL, GA, and FL.

MC 146846 Sub-4, filed April 20, 1982. Applicant: LOUIS LANE, INC., 1025 S. 3rd Ave., Wausau, WI 54401. Representative: Nancy J. Johnson, 103 E. Washington St., Box 218, Crandon, WI 54520, (715) 478–3341. Transporting *paper and related products,* between points in Winnebago and Brown counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151566 (Sub-22), filed April 30, 1982. Applicant: PERRY TRANSPORT, INC., 14375–172nd Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant), (616) 842–3550. Transporting *household cleaning machines and compounds,* between Grand Rapids, MI, on the one hand, and, on the other, points in the U.S (except AK and HI)

MC 158286 (Sub-9), filed April 29, 1982. Applicant: M.T. TRUCK LINE, INC., 4947 W. 173rd St., Country Club Hills, Ill 60477. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL and Valparaiso, IN: From Chicago, over U.S. Hwy 41 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Valparaiso, and return over the same route, serving all intermediate points and points in Lake and Porter Counties, IN as off-route points.

Note. Applicant may tack the authority herein with its existing authority.

MC 161756, filed April 30, 1982. Applicant: LEMUEL R. WASHBURN & HELEN M. WASHBURN, d.b.a. SENIOR TRANSPORT, Umpqua Rt. Box 28, Oakland, OR 97462. Representative: Lemuel R. Washburn (same address as applicant), (503) 363–6053. Transporting *such commodities* as are dealt in or use by manufactures and distributors of building materials, between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and Wy.

MC 161776, filed April 30, 1982. Applicant: ARIZONA FUELS CORP., P. O. Box 217, Kanab, UT 84741. Representative: Marvin Button (same address as applicant), (602) 643–5857. Transporting *petroleum and petroleum products*, between points in AZ, CA, CO, ID, NV, NM, UT, and WY.

Volume No. OP5–89

Decided: May 4, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 119619 (Sub-153), filed April 26, 1982. Applicant: DISTRIBUTORS SERVICE CO., 2000 W. 43rd St., Chicago, Il 60609. Representative: Kenneth M. Piken, 95–25 Queens Blvd., Rego Park, NY 11374, 212–275–1000. Transporting *such commodities* as are dealt in or used by grocery, and food business houses, drugstores, retail department stores and discount houses, between points in Oakland and Wayne Counties, MI on the one hand, and, on the other, points in CO, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC.

MC 136679 (Sub-3), filed April 26, 1982. Applicant: TUKWILA KENT TRUCKING/BECKER TRANSFER, INC., 12877 E. Marginal Way S., Seattle, WA 98168. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228–3807. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, NV, NM, CO, UT, WY, MT, ID, and AK.

MC 146508, filed April 23, 1982. Applicant: LANG TRANSPORTATION, INC., Red Gate Lane, Meredith, NH 03253. Representative: Raymond P. D'Amante, P.O. Box 494, 246 Loudon Rd., Concord, NH 03301, 606–224–6777. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, OH, IL, TN, and VA.

MC 146519 (Sub-11), filed April 23, 1982. Applicant: MORRIS TRUCKING CORPORATION, 3201 Canal Rd., Terre Haute, IN 47802. Representative: John F. Wickes, Jr., 1301 Merchants PLaza, Indianapolis, IN 46204, (317) 638–1301. Transporting *petroleum, natural gas, and their products*, between St. Louis, MO, and points in IL, IN, KY, MI, and OH.

MC 150008 (Sub-4), Filed April 23, 1982. Applicant: KUELLA, INC., Route 2, King City, MO 64463. Representative: Michael A. Knepper, 310 Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105, 816–842–8874. Transporting *paper products and toilet articles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Riegel Textile Corporation of Greenville, SC.

MC 151419 (Sub-4), filed April 26, 1982. Applicant: GORDON JOHNSON, P.O. Box 252; Route #2, Fredericktown, OH 43019. Representative: Lewis S. Witherspoon, 2455 North Star Rd., Columbus, OH 43221, 614–486–044.8 Transporting (1) *games, toys, and athletic equipment*, between points in Ashland County, OH, on the one hand, and, on the other, points in CT, MA, NJ, NY, PA, and RI, (2) *lawn and garden tools, and farm implements*, between points in Herkimer County, NY, on the one hand, and, on the other, points in IN and IL, (3) *containers, container closures and components, glassware, packaging products and scrap materials*, between points in Gloucester and Cumberland Counties, NJ, on the one hand, and, on the other, points in OH, IN, and MI, and (4) *gas and electrical appliances*, between points in Marion County, OH, on the one hand, and, on the other, points in MA, NJ, and NY.

MC 155449, filed April 21, 1982. Applicant: CHARLES LITTLE, d.b.a. CALIFORNIA FREIGHT LINES, 12424 Ore and Day Rd., Norwalk, CA 90650. Representative: Charles A. Little (same address as applicant), 213–868–1746. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 159239, filed April 23, 1982. Applicant: ROYAL CHARTERS, LTD., 1810 Tray Lane, Kalamazoo, MI 49007. Representative: Karl L. Gotting, 1200 Bank of Lansing, MI 48933, 517–482–2400. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, beginning and ending in Kalamazoo, MI and extending to points in the U.S. (except AK and HI).

MC 156059, (Sub-1), filed April 19, 1982. Applicant: LINDERHOLM TRUCKING, INC., 5232 Hanson Ct., Crystal, MN 55429. Representative: Thomas R. Parnell (same address as applicant), (612) 533–0014. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with North Central Freight Association, of Minneapolis, MN.

MC 159529, filed April 13, 1982. Applicant: FOREST GROVE BUS CORP., P.O. Box 364, Forest Grove, PA. Representative: John Demcisak, 1000 N. Easton Rd., Willow Grove, PA 19090, 215–659–4700. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, between points in PA and NJ, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 161349, filed April 26, 1982. Applicant: W. B. L. TRUCKING CO., INC., 5822 Cromo Dr., Ste 235, El Paso, TX 79912. Representative: Bill D. Long (same address as applicant), 915–594–0049. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in El Paso County, TX, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MO, MS, NC, NM, NV, OH, OK, OR, SC, TN, TX, UT, WA, WI, and WY, and (2) *building materials*, between Dallas, San Antonio, and points in Tom Green County, TX, on the one hand, and, on the other, points in AR, AZ, CA, CO, FL, GA, KY, LA, MS, NC, NM, OH, OK, SC, TN, TX, and WY.

MC 161628, filed April 21, 1982. Applicant: RAM OFFICE TRANSPORT CORP., RD 3 Box 224, Delta, PA 17314. Representative: Melvin Bouman (same address as applicant), 717–456–7395. Transporting (1) *mobile office trailers and modular buildings*, and (2) *those commodities which because of their size and weight require the use of special handling or equipment*, between points in York and Lancaster Counties, PA on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, SC, VA, VT, WV and DC.

MC 161638, filed April 23, 1982. Applicant: BLAKLEY AND SONS, INC., 3031 Isleta Blvd, S.W., Albuquerque, NM 87105. Representative: Larry D. Lucas, 500 Oak St, N.E., Albuquerque, NM 87108, 505–243–9744. Transporting *ores and minerals*, between points in the U.S. under continuing contract(s) with General Pumice Corporation of Santa Fe, NM.

MC 161648, filed April 23, 1982. Applicant: NARROWS CARRIERS,

INC., Jurnee Mill Rd., P.O. Box 110, Sayreville, NJ 08072. Representative: Edward F. Bowes, Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting (1) *chemicals and related products* under continuing contract(s) with Solvents Recovery Service of New Jersey, Inc., of Linden, NJ, and (2) *petroleum products,* under continuing contract(s) with Amerada-Hess Corp., of Woodbridge, NJ, between points in the U.S.

MC 161678, filed April 26, 1982. Applicant: CAPE TRANSIT CORP., 5501 Ocean Ave., Wildwood Crest, NJ 082d60. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522–0900. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Cape May County, NJ, and extending to points in the U.S., including AK but excluding HI.

MC 161679, filed April 26, 1982. Applicant: ROBERT L. HINES, d.b.a. HINES TRUCKING, Route 1, Martell, NE 68404. Representative: Max H. Johnson, P.O. Box 6597, Lincoln, NE 68506, (402) 488–4841. Transporting (1) *self-propelled vehicles,* (2) *lawn, turf, and garden equipment,* and (3) *parts* for (1) and (2) above, between points in Lancaster County, NE, on the one hand, and, on the other, points in IA, IL, and WI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12948 Filed 5-10-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-5-101]

Motor Carriers Permanent Authority, Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of petition for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice addressing specifically the issue(s) indicated as the purpose for republication.

Agatha L. Mergenovich,

Secretary.

MC 117878 (Sub-21) (republication), filed November 30, 1981, published in the **Federal Register** issue of December 21, 1981, and republished this issue. Applicant: DWIGHT CHEEK TRUCKING CO., INC., 4631 E. 28th St., P.O. Box 31536, Amarillo, TX 79120. Representative: Steven R. Swicegood (same address as applicant), (806) 374–5217. A decision of the Commission, Review Board 3, decided February 23, 1982, and served March 10, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a *common carrier,* by motor vehicle, over irregular routes, transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* between Amarillo, TX, on the one hand, and, on the other, points in Colorado, Mississippi, Utah, Nevada, Oregon, Washington, Idaho, Montana, Wyoming, Kansas, Texas, and Oklahoma, and (2) *the commodities described in (1) above,* and *cheese and cheese products,* between points in Wisconsin, Iowa, Nebraska, Kansas, Illinois, Missouri, Oklahoma, Texas, Colorado, Arkansas, Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Georgia, North Carolina, South Carolina, and Florida, that applicant is fit, willing, and able properly to perform such service and conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

[FR Doc. 82-12943 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-111 (Sub-2)]

Detroit, Toledo and Ironton Railroad Company—Abandonment—In Ross and Pike Counties, OH; Findings

The Commission has issued a certificate authorizing Detroit, Toledo and Ironton Railroad Company to abandon its line between Thrifton (near milepost 249.2) and Waverly (near milepost 281) OH, a distance of 32.4 miles in Ross and Pike Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 4517, Interstate Commerce Commission, Washington, DC 20423, not later than 10 days from publication of thisNotice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12947 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-111 (Sub-3)]

Detroit, Toledo and Ironton Railroad Company—Abandonment in Scioto and Lawrence Counties, OH; Findings

The Commission has issued a certificate authorizing the Detroit, Toledo and Ironton Railroad Company to abandon its mile rail line near Bloom Junction, OH (milepost 330.17) to the end of its line at Ironton, OH (milepost 359.52) in Scioto and Lawrence Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12949 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket 29874]

Union Pacific Railroad Company and Oregon Short Line Railroad Company—Abandonment Exemption—2.54 Miles of Track in Ogden, UT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by Oregon Short Line Railroad Company and discontinuance of service by Union Pacific Railroad Company over 2.54 miles of track in Ogden, Weber County.

UT subject to conditions for the protection of employees.

DATE: Exemption is effective on June 11, 1982. Petitions for reconsideration must be filed by June 1, 1982. Petitions for stay must be filed by May 21, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423.

(2) Petitioner's Representative: Mark A. Kalafut, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 86179.

Pleadings should refer to Finance Docket No. 29874.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact T. S. Infosystems, Inc., Room 2227, 12th & Constitution Avenue, Washington, D.C. 20423, or by calling: (202) 289–4357—D.C. Metropolitan Area or (800) 424–5403—toll free for outside the D.C. area.

Dated: May 5, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12848 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–94 (Preliminary)]

Bicycle Tires and Tubes From Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–94 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of bicycle tires and tubes, provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States (TSUS)(1982), which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Supervisory Investigator, U.S. International Trade Commission; telephone 202–523–0439.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by counsel for Carlisle Tire and Rubber Company, Carlisle, Pa. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by June 14, 1982 (19 CFR 207.17). This investigation will be subject to the provisions of part 207 of the Commission's Rules and Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly subpart B thereof. A copy of the petition filed in this case is available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202/523–0448.

Written Submissions

Any person may submit to the Commission on or before May 28, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on May 27, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the Supervisory Investigator for the investigation, Mr. John MacHatton, telephone 202–523–0439, not later than May 25, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201). Further information concerning the conduct of the conference will be provided by Mr. John MacHatton.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 6, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12846 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–101]

Certain Hot Air Corn Poppers and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation No. 337–TA–101 as the result of the dismissal of all remaining party respondents.

SUMMARY: Notice is hereby given that the Commission has granted Motions Nos. 101–41 to dismiss three respondents remaining in the investigation as parties on the basis of settlement agreements which the complainant has entered into with each of the respondents concerned. Prior to the Commission's action on those motions, the Commission issued orders terminating the investigation as to each of the other party respondents. Consequently, upon the granting of Motions Nos. 101–41, the investigation has been terminated in its entirety.

AUTHORITY: The investigation was conducted pursuant to 19 U.S.C. 1337(b)(1). The Commission's authority to terminate the proceedings on the basis of settlement agreements is contained in § 210.51(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(c)).

SUPPLEMENTARY INFORMATION: The investigation was conducted in order to determine whether there was a violation of section 337 of the Tariff Act of 1930 in the importation of certain hot air corn poppers and components thereof into the United States, or in the sale of such articles, which were alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843, the effect or tendency of which was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These proceedings were initiated on the basis of a complaint filed on behalf of Wear-Ever Aluminum, Inc., a wholly owned subsidiary of the Aluminum Company of America and the assignee of the patent in question.

On January 5, 1982, the complainant and respondents Yamada Electric Industries, Ltd., Sunbeam Corp., and Maxim Associates Corp. filed joint motions to terminate the investigation with respect to those respondents. Supplements to the motions were filed on January 12, 1982. Termination was sought on the basis of settlement agreements which the complainant had entered into with each of the respondents concerned. The motions were supported by the Commission investigative attorney. On January 19, 1982, the presiding officer issued an order recommending that the Commission accept the settlement agreements and that Motions Nos. 101–41 be granted.

Before taking final action on this matter, the Commission published notice of the motions along with nonconfidential summaries of the agreements in the **Federal Register** and solicited written comments on the proposed termination from the public and other Federal agencies. (47 FR 17348, Feb. 18, 1982) No comments adverse to termination were received.

On April 27, 1982, the Commission voted to grant Motions Nos. 101–41 and to issue an order dismissing Yamada, Sunbeam, and Maxim as respondents in these proceedings. Prior to the granting of those motions, the Commission had issued orders dismissing each of the other party respondents. Consequently, upon the granting of Motions Nos. 101–41, no respondents remained in the proceedings. Thus, the investigation was terminated in its entirety.

Copies of the motions, the settlement agreements (except for the confidential business information contained therein), the Commission's Action and Order, and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT:

P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202–523–0350.

Issued: May 4, 1982.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12948 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-3]

Doxycycline; Denial of Motion To Modify Exclusion Order

AGENCY: International Trade Commission.

ACTION: Denial of motion to modify exclusion order.

SUPPLEMENTARY INFORMATION: On April 12, 1979, the Commission issued an order prohibition the importation into the United States of doxycycline falling within claim 10 of U.S. Letters Patent 3,200,149 for the remaining term of the patent except under license. That order is now in force.

On November 5, 1981, Danbury Pharmacal, Inc., filed a motion with the Commission seeking modification of the doxycycline exclusion order to permit the importation of small quantities of doxycycline to be used for the purpose of obtaining Food and Drug Administration certification under 21 U.S.C. 357, and not for sale to the consumeing public.

On May 4, 1982, the Commission denied the Danbury motion as moot in light of a Federal court decision enjoining Danbury from seeking modification of the Commission's exclusion order.

FOR FURTHER INFORMATION CONTACT:

Lairold M. Street, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0124.

Issued: May 5, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-12949 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[332-73]

Extension of Period for Public Comment on Explanatory Notes to Certain Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

AGENCY: International Trade Commission.

ACTION: Extension of period for public comment, pursuant to Commission Investigation No. 332–73, on volumes 3, 4, and 5f Explanatory Notes to sixteen provisionally adopted chapters of the Harmonized Commodity Description and Coding System (Harmonized System), as described in the Commission's public notice of April 14, 1982 (47 FR 17135, April 21, 1982).

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by filing them with the Secretary of the Commission at his office, 701 E Street, NW., Washington, DC 20436, no later than the close of business on June 15, 1982. Copies of the Explanatory Notes are available for public inspection at that office or may be sent upon request. Previously, the deadline for submission of written comments was April 30, 1982.

FOR FURTHER INFORMATION CONTACT:

Eugene A. Rosengarden, Director, or Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone (202) 523–0370 or 0362.

Issued: May 5, 1982.

By order of the Commission.

Kenneth Mason,

Secretary.

[FR Doc. 82-12944 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-93 (Preliminary)]

Frozen French Fried Potatoes From Canada

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection therewith.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–93 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially

injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of frozen french fried potatoes, provided for in item 141.86 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Bill Schechter, Office of Investigations, U.S. International Trade Commission, telephone 202/523-0300.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by counsel for McCain Inc., Washburn, Maine. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by June 14, 1982 (19 CFR 207.17). This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly subpart B thereof. A nonconfidential copy of the petition is available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, Telephone 202/523-0448.

Written Submissions

Any person may submit to the Commission on or before May 28, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., on May 25, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, John Mac Hatton, telephone 202/523-0439, not later than May 20, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation rules and general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201), 47 FR 6182, February 10, 1982. Further information concerning the conduct of the conference will be provided by Mr. MacHatton.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 5, 1982.

By order of the Commission.

Kenneth P. Mason,

Secretary.

[FR Doc. 82-12947 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel (Challenge); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge) to the National Council on the Arts to be held on June 23, 1982, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 5, 1982.

[FR Doc. 82-12966 Filed 5-11-82; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel (Policy); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Policy) to the National Council on the Arts will be held on June 8-9, 1982, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E. Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 8, 1982, from 9:00 a.m.-5:30 p.m. to discuss policy and future directions.

The remaining sessions of this meeting on June 9, 1982, from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 5, 1982.

[FR Doc. 82-12967 Filed 5-11-82; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Challenge) Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge) to the National Council on the Arts to be held

on June 7, 1982, from 9:00 a.m.–5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endownment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 5, 1982.

[FR Doc. 82–12988 Filed 5–11–82; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel (Intermediate Companies); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Intermediate Companies) to the National Council on the Arts to be held on June 7–8, 1982, from 9:00 a.m.–5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endownent for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowmment for the Arts.

May 5, 1982.

[FR Doc. 82–12989 Filed 5–11–82; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor; Meeting Cancellation

The ACRS Subcommittee on Advanced Reactors scheduled for May 17 and 18, 1982, at the Argonne National Laboratory, Building 208, Room C–234, Argonne, IL has been cancelled indefinitely. Notice of this meeting was published May 4, 1982 (47 FR 19255).

Dated: May 7, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–12990 Filed 5–11–82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Exemption

I

The Boston Edison Company (the licensee) is the holder of Facility Operating License No. DPR–35 which authorizes operation of the Pilgrim Nuclear Power Station. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.,G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternatives safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, Section 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 9, 1981, as amended October 29, 1981, and March 11, 1982, Boston Edison Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other

acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon other extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Pilgrim Nuclear Power Station had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to reslove the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in supplements to the FPSER. The FPSER and its supplements supported the issuance of an amendment to the operating license of the Pilgim Station [1] which required modifications to be made to plant physical features, systems and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Pilgrim Nuclear Power Station has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G of Appendix R to 10 CFR 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative and Dedicated Safe Shutdown Capability and thus affects the final reassessment and redesign, if necessary, of this feature at the Pilgrim Station. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Pilgrim in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a conditions to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to June 20, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the

[1] Pilgim—Operating License DPR–35. Amendment 35 supported by FPSER issued December 21, 1979.

exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12050 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant Units 1 and 2); Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two boiling water reactors at the licensee's site located in Brunswick County, North Carolina.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 6, 1981, as amended September 14, 1981, and January 18, 1982, Carolina Power & Light Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Brunswick Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in two supplements to the FPSER. The FPSER and its supplements supported the issuance of amendments to the operating licenses of the Brunswick Units[1] which required

[1] Brunswick Unit 1—Operating License DPR-71: Amendment 11 supported by FPSER issued

modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Brunswick Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences betweeen what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at the Brunswick Units in confoemance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plan and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated, is extended to June 30, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.c., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not believe the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12961 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

November 22, 1977. Amendment 23 supported by Supplement 1 to FPSER issued April 6, 1979. Amendment 36 supported by Supplement 2 to FPSER issued June 11, 1980.

Brunswick Unit 2—Operating License DPR-62: Amendment 37 supported by FPSER issued November 22, 1977. Amendment 47 supported by FPSER issued April 6, 1979. Amendment 51 supported by Supplement to FPSER issued June 11, 1980.

[Docket Nos. 50–498A, 50–499A and 50–445A, 50–446A]

Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2) and Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Memorandum and Order Approving Settlement Agreements and Proposed License Conditions and Dismissing Proceeding

May 6, 1982.

Jurisdiction and Procedural History

On December 12, 1974, the Commission issued a construction permit for Comanche Peak Steam Electric Station, Units 1 and 2 (hereinafter "Comanche Peak"). On January 14, 1976, the Commission issued a construction permit for South Texas Project, Units 1 and 2 (hereinafter "South Texas"). In both cases the Attorney General advised the Commission that there was no need for an antitrust hearing. Thereafter, on June 4, 1976, Central Power and Light Company, one of the applicants in South Texas, filed a request for hearing on antitrust issues in that matter. On June 15, 1977, the Commission found "changed circumstances" in South Texas and requested further antitrust advice from the Attorney General. On February 21, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in South Texas. On June 28, 1978, the Commission again found "changed circumstances" in Comanche Peak and requested further antitrust advice from the Attorney General. On August 1, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in Comanche Peak. In both cases, the Commission ordered antitrust proceedings to be commenced.

Numerous cities, utilities, and electric cooperatives intervened in these two proceedings. The Department of Justice (hereinafter "Justice") and the Nuclear Regulatory Commission Staff (hereinafter "Staff") participated in both proceedings. The two proceedings were consolidated for discovery in 1978 and for hearing in 1980. Discovery took place in 1979 and 1980. On September 14, 1980, all of the applicants in both proceedings, Justice and the Staff, submitted two sets of proposed license conditions representing a settlement of these matters acceptable to the applicants, Justice, and Staff. The only intervenor which opposed the settlement and proposed license conditions was the Public Utilities Board of the City of Brownsville, Texas (hereinafter "Brownsville"). Thereafter, on December 24, 1980, Conformed Settlement License Conditions were filed.

A Conference of Counsel was held on April 13, 1982. Again, all parties to both of these matters, except Brownsville, reiterated their support for the settlement or, in any event, their lack of opposition to it. Brownsville was directed to respond to four specific questions concerning its opposition to the settlement. On April 22, 1982, Brownsville responded that it no longer opposed the proposed settlement and did not want the settlement to be rejected. Thus, there is no opposition to the proposed settlement and Conformed License Conditions.

Test for Settlement Approval

The Commission's Rules of Practice encourage settlement of contested proceedings as follows:

"The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding. Therefore, to the extent that is it not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose." 10 CFR 2.759.

As noted in the preceding section, this consolidated proceeding has a long and arduous history punctuated by adversary relationships of competent counsel. Justice, which initially recommended that a hearing be held on antitrust issues in both matters, is now in accord with the settlement. Interested parties have been afforded the opportunity to intervene. All intervenors were given the opportunity to object to the settlement and proposed license conditions. None did so. Since no party to this consolidated proceeding opposes the settlement or proposed license conditions, it would not be fruitful or in the public interest to dissect the settlement agreement in search of an antitrust issue for hearing. Hence, I find that based upon the foregoing, the proposed settlement and license conditions are fair and reasonable and are in the public interest. Accordingly, the settlement is approved and the conditions shall be attached to the operating licenses. Since no further relief is requested by any party to this consolidated proceeding, this action is dismissed.

Wherefore, it is ordered this 6th day of May, 1982, that the settlement agreements are hereby approved.

It is further ordered that the Conformed License Conditions for Comanche Peak attached hereto and incorporated herein, marked as "Appendix A-Comanche Peak" shall be immediately effective and shall be attached to the operating license of Comanche Peak.

It is further ordered that the Conformed License Conditions for South Texas, attached hereto and incorporated herein, marked as "Appendix B-South Texas" shall be immediately effective and shall be attached to the operating license of South Texas.

It is further ordered that this consolidated proceeding is dismissed.

James A. Laurenson,

Administrative Law Judge.

Appendix A—Comanche Peak; License Conditions for Comanche Peak Steam Electric Station Units 1 and 2

Conformed, December 1980.

D. (1) The following definitions apply to paragraph 3.D.(2):

(a) "Applicants" means severally and jointly Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Company and each other subsidiary, affiliate or successor company now or hereafter engaged in the generation, transmission and/or the distrubition of electric power in the State of Texas.

(b) "North Texas Area" means the following Texas Counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Bordon, Bosque, Brown, Burnet, Charokee, Clay, Coke, Collin, Comanche, Cooke, Coryell, Crane, Culberson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Faher, Freestone, Gaines, Glasscock, Grayson, Henderson, Hill, Hood, Hipkins, Houston, Howard, Hunt, Jack, Johnson, Kaufman, Kent, Lamar, Lampasas, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mitchell, Montague, Nacogdoches, Navaro, Nolan, Palo Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Rockwall, Rusk, Scurry, Schackelford, Smith, Somervell, Stephens, Sterling, Tarrant, Terry, Tom Green, Travis, Upton, Van Zandt, Ward, Wichita, Walbarger, Williamson, Winkler, Wise, Wood, and Young.

(c) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning, operating or contractually controlling, or proposing in good faith to own, operate or contractually control, facilities for generation of electric power and energy; provided, however, that as used in paragraphs 3.D.(2)(a), 3.D.(2)(b), 3.D.(2)(g), 3.D.(2)(i), 3.D.(2)(j)(a) and (b), 3.D.(2)(k), 3.D.(2)(l) and 3.D.(2)(m), "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating, or proposing in good faith to own or operate, facilities for generation, transmission and/or distribution of electric power and energy.

(d) "Entity in the North Texas Area" means an Entity which owns or operates facilities for the generation, transmission and/or distribution of electric power in any area within the North Texas Area.

(e) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(f) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(g) The terms "connection" and "interconnection" are used interchangeably.

The Applicants defined in Paragraph 3.D.(1)(a) are subject to the following antitrust conditions:

The Applicants shall afford an opportunity to participate in the Comanche Peak Steam Electric Station, Units 1 and 2, for the term of the instant license, or any extension or renewal thereof, to any Entity(ies) in the North Texas Area making a timely request therefor, through a reasonable ownership interest in such unit(s) on reasonable terms and conditions and on a basis that will fully compensate Applicants for their costs. It is understood that any request received prior to December 1, 1973, shall be deemed to be timely. In connection with such participation, the Applicants also will interconnect with and offer transmission service as may be required for delivery of such power to such Entity(ies) at a point or points on the Applicants' system on a basis that will fully compensate the Applicants for their costs including a reasonable return on investment. Not withstanding the December 1, 1973 date appearing hereinabove, the Applicants' offer of participation in Comanche Peak, Units 1 and 2, to Tex-La Electric Cooperative of Texas, Inc. shall not obligate the Applicants, by virtue of such offer, to offer an opportunity to participate in Comanche Peak, Units 1 and 2, to any other Entity.

(b) The Applicants, as long as they are members of the Texas Interconnected System (TIS), shall support reasonable requests by Entities in the North Texas Area having generating capacity for membership in TIS. The Applicants shall also propose and actively support, as long as they are members

thereof, the creation of one or more additional classifications of TIS membership based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the North Texas area who desire membership. The Applicants shall also support requests by qualified Entities in the North Texas Area for membership in any other electric utility planning or operating organization or of which the Applicants are members (other than one involving only the Applicants). The Applicants shall share information with other Entities with respect to, and shall, with other such entities through any electric utility planning organizations (other than one involving only the Applicants) of which the Applicants are members, conduct and/or participate in joint studies and planning of future generation, transmission and related facilities; provided, however, this condition shall not obligate the Applicants to conduct or participate in such joint studies or joint planning unless (1) the studies or planning are requested and conducted in good faith and are based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(c) The Applicants will connect with, coordinate reserves, and sell, purchase or exchange emergency and/or scheduled maintenance bulk power with any Entity(ies) in the North Texas Area on terms that will provide for the Applicants' costs, including a reasonable return on investment, in connection therewith and allow such Entity(ies) full access to the benefits of such reserve coordination.

(d) Emergency service and/or scheduled maintenance service to be provided by each party shall be furnish to the fullest extent available from the supplying party and desired by the party in need. If requested, Applicants shall exchange maintenance schedules with any Entity in the North Texas Area. The Applicants and each such Entity(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available to the extent they can do so without unreasonably impairing service to their customers including other electric systems to whom they have firm commitments. Any curtailment or refusal to provide such emergency and/or scheduled maintenance service shall be on a non-discriminatory basis.

(e) The Applicants and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties in accordance with good industry practice as developed in the area. Unless otherwise agreed upon, minimum reserve requirements shall be calculated as a percentage of each party's estimated net peak load demand (taking into account firm sales and firm purchases). No party to the arrangement shall be required to maintain greater reserves than the percentage which results from the aforesaid calculation. The reliability of power delivered into TIS–ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS–ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants the same as losses of generation within TIS–ERCOT. The Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(f) The parties to such a reserve sharing arrangement shall provide such amounts of spinning reserves as may be equitable and adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the normal contingencies of operating its (their) system(s). However, in no circumstances shall such reserve requirement exceed the installed reserve requirement.

(g) Interconnections with any Entity will not be limited to low voltages when higher voltages are requested and are available from the Applicants' installed facilities in the area where a connection is desired, when the proposed arrangement is found to be technically and economically feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.

(h) Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.

(i) The Applicants shall participate in and facilitate the exchange of bulk power by transmission over the Applicants' transmission facilities between or among two or more Entities in the North Texas Area with which the Applicants are connected, and between any such Entity(ies) and and Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines and other transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given Applicants reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate the Applicants for their costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to any regulatory agency(ies) having jurisdiction thereof. The Applicants shall not refuse to provide such transmission service merely because the rates to be charged therefor are the subject of dispute with such Entity. The Applicants shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded, other transmission may be for emergency use and operated either unloaded or partially loaded. (The foregoing applies to any Entity(ies) to which the Applicants may be connected in the future as well as those to which they are not connected).

(j)(a) The Applicants shall include in their planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraphs (i) and (k), provided any Entity(ies) in the North Texas Area gives the Applicants sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates the Applicants for their costs including a reasonable return on investment. The Applicants shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of their obligations above, the Applicants shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition. An such contribution made in aid of construction or ownership interest shall be properly credited in determining any wheeling charges. If the Applicants engage in joint ownership of transmission lines with any other Entity, they shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting the Applicants' obligations above.

(j)(b) Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own, on terms and conditions comparable to the provisions of paragraph D.2(i) hereof, and subparagraph (a) of this paragraph.

(k) The Applicants shall, upon reasonable advance notice, sell full and partial requirements bulk power to requesting Entities in the North Texas Area having, on the date of this license, non-aggregated generating capacity of less than 200 MW (including no generating capacity) under reasonable terms and conditions which shall provide for recovery of Applicants' costs, including a reasonable return on investment. The Applicants shall not be required to make any such sale if they do not have available sufficient bulk power or adequate transmission to provide the requested service or if the sale would impair their ability to render adequate and reliable service to their own customers or their ability to discharge prior commitments.

(1)(a) In connection with the performance of their obligations herein and subject to the provisions of this paragraph, the Applicants, will not disconnect from or refuse to connect their then-existing or proposed facilities with the facilities of any Entity, used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and the Applicants will not prevent any Entity with which they maintain connection from establishing, maintaining, modifying, or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to paragraph 1(b) and 1(d) below), any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of the Applicants under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the Federal Energy Regulatory Commission, applicable to the Applicants under Section 210, 211, and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an Application pursuant to this subparagraph, the Applicants agree that they will not unreasonably oppose any such application. In the event such application is denied by a valid order of the Federal Energy Regulatory Commission, any continuing refusal by the Applicants to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the Applicants in such NRC proceeding.

(b) Applicants shall not enter into or maintain any agreement or understanding with any other Entity(ies) to refuse to deal with another Entity(ies) with the purpose of maintaining a nonjurisdictional status under the Federal Power Act, and in the event that Applicants refuse to make an interconnection with or choose to disconnect from any Entity(ies), such decision and/or action by the Applicants will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after Applicants decide to undertake such action, they may notify any affected Entity.

(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act, Applicants agree to pay such Entity's reasonable expenses in connection with such application and the ensuing proceeding,[1] provided, however, that Applicants shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by Applicants at FERC, and provided further, that Applicants shall not be required to pay for any expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act.

(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connections with any Entity(ies), provided, that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.

(m) Applicants agree to use their best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs 3.D.(2)(1)(a) and (b) above.

(n) The Applicants will, in accordance with applicable law, allow ownership participation in future nuclear generating facilities which they may construct, own, and operate in the State of Texas on conditions similar to these License Conditions.

(o) Applicants shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among Applicants, Central & South West Corporation, Houston Lighting & Power Company and the FERC Staff dated September 11, 1980; Applicants shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including FERC Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.

(p) The foregoing conditions shall be implemented i) in a manner consistent with applicable Federal, state and local statutes and regulations and ii) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

Appendix B—South Texas; License Conditions for South Texas Project Units Nos. 1 and 2

Conformed, December 1980.

I. A. The following definitions apply to paragraph I.B:

(1) "Applicants" means severally and jointly Houston Lighting and Power Company (HLP), Central Power and Light Company (CPL), City Public Service Board of San Antonio (CPSB), and the City of Austin Electric Utility Department (COA) and any of their respective successors, assignees, or subsidiaries engaged in the generation, transmission or the distribution of electric power. Where a license condition is directed to a specific Applicant, that Applicant is identified.

(2) "South Texas Area" means (a) those counties in which Applicant's serve electric customers at wholesale or retail, and (b) those other areas, if any, surrounded by the areas in (a) above.

(3) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association of any of the foregoing owning, operating, or contractually controlling, or proposing in good faith to own, operate, or contractually control facilities for generation, transmission or distribution of electric power and energy for the purpose of providing electric utility service.

(4) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(5) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(6) The terms "connection" and "interconnection" are used interchangeably.

B. The Applicants defined in Paragraph I.A.(1) are subject to the following antitrust conditions:

(1)(a) CPL shall afford to the Public Utilities Board of the City of Brownsville an opportunity to participate in the South Texas Project, Units 1 and 2, on reasonable terms and conditions and in accordance with the South Texas Project Participation Agreement and on a basis that will fully compensate CPL for its actual costs, provided that Brownsville must enter into a firm commitment to acquire the ownership interest made available to it by the terms of this paragaph no later than January 1, 1983. The ownership interest which CPL shall make available to Brownsville shall be computed by multiplying CPL's Generation Entitlement Share in STP Units 1 and 2 by the ratio of Brownsville's peak demand for 1980 to CPL's peak demand for 1980. In the event Brownsville obtains an ownership interest from any Applicant other than CPL, the ownership interest which CPL must make available to Brownsville hereunder shall be reduced by one megawatt for each megawatt in excess of 12 megawatts that Brownsville acquires from other Applicants. Applicants shall not exercise any rights of first refusal over Brownsville's efforts to participate in the South Texas Project to the extent of the first 50 MW of such ownership share.

(b) CPL shall afford Brownsville reasonable transmission services to enable it to obtain delivery of power from the STP, provided that CPL is fully compensated for its costs of such transmission services plus a reasonable return on investment, and provided further that in the event transmission capacity is not

[1] This obligation shall not apply to the expenses of the Central & South West Corporation or Houston Industries or any of their respective subsidiaries, including, but not limited to, the expenses of Central & South West Corporation and any of its subsidiaries incurred in FERC Docket No. EL79-8.

available to provide such transmission services, the provisions of Paragraph I.B.(4) hereof define the extent of the obligation which CPL has with respect to the construction of additional transmission facilities necessary to provide such transmission service.

(c) CPL will also afford all reasonable coordination services (including but not limited to reserve sharing, backup power, maintenance power and emergency power) necessary for Brownsville to have effective access to power from STP obtained from CPL, provided that CPL is fully compensated for its costs of providing such coordination services plus a reasonable return on investment.

(d) Each Applicant shall facilitate where necessary Brownsville's obtaining the participation interests and services specified in paragraphs 1(a), 1(b) and 1(c) above.

(2) The Applicants, as long as they are members of the Texas Interconnected Systems (TIS) or any other organization which considers the planning for or operations of ERCOT–TIS electric utilities, shall support reasonable requests by Entities in the South Texas Area having generation capacity for membership in TIS or such other organizations. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership, based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the South Texas Area who desire membership. The Applicants shall share information with other Entities with respect to, and shall conduct with other such Entities through any electric utility planning organizations of which the Applicants are members, joint studies and planning of future generation, transmission and related facilities; provided, however, that this condition shall not obligate the Applicants to conduct such joint studies or joint planning unless (1) the studies or planning are requested and carried out in good faith and based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(3) Each Applicant shall participate in and facilitate the exchange of bulk power by transmission over its own transmission facilities between or among two or more Entities in the South Texas Area with which the Applicant is connected; and between any such Entity(ies) and any Entity(ies) outside the South Texas Area between whose facilities the Applicant's transmission lines and other transmission lines, including direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate an Applicant for its costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to the jurisdiction of the appropriate regulatory agency(ies). Where the rates to be charged are subject to the jurisdiction of an appropriate regulatory authority, the Applicants shall not refuse to provide such transmission services merely because the rate(s) to be charged therefor are the subject of dispute with such Entity(ies). An Applicant shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded other transmission may be for emergency use and operated either unloaded or partially loaded.

(4) Each Applicant shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraph I.B.(3) (and I.B.(5) for CPL), provided any Entity(ies) in the South Texas Area gives an Applicant sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates an Applicant for its costs including a reasonable return on investment.[1] An Applicant shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of the obligations above, an Applicant shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition. Any such contribution made in aid of construction or ownership interest shall also be properly credited in determining any wheeling charges. If an Applicant engages in joint ownership of tranmission lines with any other Entity(ies), it shall not refuse to engage in similar transaction in comparable circumstances with other Entities, subject to the provisions limiting an Applicant's obligations above.

(5) CPL shall, upon reasonable advance notice, enter into arrangements for the sale of full and partial requirements bulk power pursuant to a filed tariff to any requesting Entity having a non-aggregated generating capacity of 200 megawatts or less under reasonable terms and conditions which shall include a provision for CPL to recover its costs of providing such service plus a reasonable return on investment. Such tariff shall not require CPL to enter into any arrangement for such sale(s) if (a) it does not have available sufficient bulk power or adequate transmission to provide the requested service; or (b) the sale would impair CPL's ability to render adequate and reliable service to its own customers or its ability to discharge prior commitments. It is expressly recognized, and such tariff may reflect, that the determination whether sufficient bulk power or adequate transmission is available to accommodate a request for full or partial requirements bulk power will consider and recognize that (1) CPL will be engaging in centralized economic dispatch with its affiliates in accordance with, and pursuant to the requirements of, the Public Utility Holding Company Act of 1935, (2) pursuant to such requirements CPL may first utilize its generating and transmission capacity to accomplish such centralized economic dispatch before its generating and transmission capacity is made available for full or partial requirements bulk power sales under the tariff, and (3) if other CSW system capacity becomes available by reason of CPL's participation in such centralized economic dispatch, then such other CSW system capacity will, at the option of CSW, be made available in lieu of CPL's obligation to provide such capacity. Any curtailment of CPL's full or partial requirements sales shall be on a reasonable and non-discriminatory (where possible) basis.

(6)(a) In connection with the performance of its obligations herein and subject to the provisions of this paragraph, HLP shall not disconnect from or refuse to connect its then-existing or proposed facilities with the facilities of any Entity used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and HLP will not prevent any Entity with which it maintains connections from establishing, maintaining, modifying or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to subparagraphs 6(b) and 6(d) below) any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of HLP under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the FERC, applicablee to HLP under Sections 210, 211 and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an application pursuant to this subparagraph, HLP agrees that it will not unreasonably oppose any such application. In the event such application is denied by a valid order of the FERC, any continuing refusal by HLP to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such

[1] Nothing in this paragraph shall require CPSB or COA to undertake any action(s) which may be contrary to any state constitutional provision.

Act; provided that all factural determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the HLP in such NRC proceeding.

(b) HLP shall not enter into or maintain any agreement or understanding with any other Entity(ies) or Applicant to refuse to deal with another Entity(ies) or Applicant(s) with the purpose of maintaining a non-jurisdictional status under the Federal Power Act and in the event that HLP refuses to make an interconnection with or chooses to disconnect from any Entity(ies), such decision and/or action by HLP will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however that after HLP decides to undertake such action, it may notify any affected Entity of its decision.

(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of HLP's desire to maintain its non-jurisdictional status under the Federal Power Act, HLP agrees to pay such Entity's reasonable expenses in connection with such application and the ensuing proceeding,[2] provided, however, that HLP shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by HLP at FERC, and provided further, that HLP shall not be required to pay for any costs or expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of HlP's desire to maintain its non-jurisdictional status under the Federal Power Act.

(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.

(7) HLP agrees to use its best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs (6)(a) and (6)(b) hereof.

(8) If Applicants participate in any future nuclear units other than those which are now under construction or for which an application for a construction permit has been filed, they will afford similar participation to Entities in the South Texas Area on a reasonable basis.

(9) Applicants agree that the reliability of power delivered into TIS–ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS–ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants in the same way as losses of generation within TIS–ERCOT. Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(10) HLP and CPL shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79–8 to include each of the undertakings set forth in the letter agreement among HLP, Central and South West Corporation, Texas Utilities Company and the FERC staff, dated September 11, 1980. HLP and CPL shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including Docket No. EL79–8, and from presenting such arguments and evidence that it deems appropriate.

(11) The foregoing conditions shall be implemented (1) in a manner consistent with applicable Federal, state and local statutes and regulations, and (2) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

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[2] This obligation shall not apply to the expenses of Central and South West Corporation or Texas Utilities Company or any of their respective subsidiaries, including but not limited to the expenses of CSW and any of its subsidiaries incurred in FERC Docket No. EL79–8.

[Docket No. 50–298]

Nebraska Public Power District (Cooper Nuclear Station); Exemption

I

The Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46 which authorizes operation of the Cooper Nuclear Station. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facitity is a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

On November 19, 1980, the Commission on published a revised § 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 18, 1981, as amended October 30, 1981, and January 29, 1982, Nebraska Public Power District requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with Section III.G.2 of Appendix R required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated. Although this was not specifically requested, implicit in your request for

exemption is a similar extension in the completion date for the modifications resulting from the reanalysis and redesign.

When this Fire Protection Rule was approved by the Commission, it was understood that the time for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Cooper Nuclear Station had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present revised form constitutes the section of the Standard Review Plant used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in a supplement to the FPSER. The FPSER and its supplement supported the issuance of amendments to the operating licensee of Cooper Nuclear Station[1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Cooper Nuclear Station has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time to quantify, in detail, the differences between what was recently and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Cooper Nuclear Station in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved in continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

[1] Cooper—Operating License DPR–46, Amendment 56 supported by FPSER Issued May 22, 1979, Amendment 66 supported by Supplement 1 to FPSER Issued November 21, 1980.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated, is extended to June 30, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c)

even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12963 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co, (Monticello Nuclear Generating Plant); Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License No. DPR-22 which authorizes operation of the Monticello Nuclear Generating Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of a boiling water reactor at the licensee's site located in Wright County, Minnesota.

II

On November 19, 1980, the Commission published a revised § 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the sechedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 13, 1981, as amended December 3, 1981, and February 15, 1982, Northern States Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G. of Appendix R as follows:

(1) Extend from March 19, 1981, to July 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to July 1, 1982, the date for filing additional exemptions from III.G. pursuant to § 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to July 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary; and

(4) Extend from February 17, 1981, to June 1, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants was not provided. Therefore, additional time is being used to complete those submittals.

III

Prior to the issuance of Appendix R, the Monticello Nuclear Generating Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in one supplement

to the FPSER. The FPSER and its supplement supported the issuance of amendments to the operating license of the Monticello Plant [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Monticello Nuclear Generating Plant has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative and Dedicated Safe Shutdown Capability and thus affects the final reassessment and redesign, if necessary, of this feature of the Monticello Plant. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Monticello in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete, that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated is extended to June 1, 1982.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in enclosure 2 to generic letter 81–12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12284 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Monticello—Operating License DPR–22. Amendment 41 supported by FPSER issued August 29, 1979 to Provisional Operating License No. DPR–22. Amendment 1 supported by Supplement 1 to FPSER issued February 12, 1981 to Facility Operating License No. DPR–22.

Nuclear Facilities or Materials; Applications for Licenses To Export

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before June 11, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or

utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 5th day of May, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.
James V. Zimmerman,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (EXPORT)

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsui & Co., Apr. 26, 1982, Apr. 29, 1982, XSNM01955	3.95% enriched uranium	17,414	625	Reload fuel for Hamaoka, Unit 2	Japan.

[FR Doc. 82-12966 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

Availability of Subscription Service for the "NRC Public Document Room (PDR) Daily Accessions List"

In support of the U.S. Government's policy of cost recovery for publications produced by Federal Agencies, the U.S. Nuclear Regulatory Commission (NRC) became a consigned Sales Agent for the U.S. Government Printing Office in August 1979. Since that time, several NRC scheduled publications have become part of the Sales Program. Notice is hereby given that the "NRC Public Document Room (PDR) Daily Accessions List" will become part of the Sales Program effective June 1, 1982. The list announces and describes all NRC documents issued for public availability and placed in the PDR except engineering drawings and reference materials.

The intent of this effort is not to discourage public interest in the "NRC Public Document Room (PDR) Daily Accessions List," but to assure that the lists are being utilized in a manner that is both efficient and cost effective.

Copies of the "NRC Public Document Room (PDR) Daily Accessions List" will continue to be placed in the NRC Public Document Room, 1717 H Street NW, Washington, D.C. 20555 for inspection and for copying at a fee.

The paid subscription service for the "NRC Public Document Room (PDR) Daily Accessions List" in hard copy with consist of 260 issues and will cost $730.00.

Current subscribers to the free service who wish to continue receiving the "NRC Public Document Room (PDR) Daily Accessions List" in hard copy without interruption in service should submit their requests, with payment, to the Superintendent of Documents, U.S. Government Printing Office, ATTN: NRC Subscriptions, Washington, D.C. 20402. GPO Deposit Account holders or persons wishing to charge Master or VISA accounts may order the subscription service by calling the NRC/GPO Sales Office at (301) 492-9530.

The "NRC Public Document Room (PDR) Daily Accessions List" will also be available on a paid subscription basis in 24X microfiche form. Interested persons should contact the NRC Sales Manager at (301) 492-9530 for details on pricing and availability.

Any questions concerning this subscription service may be directed to R. Stephen Scott, Chief, Document Management Branch, Division of Technical Information and Document Control, Washington, D.C. 20555 at (301) 492-8585.

Dated at Bethesda, Maryland, this 5th day of May, 1982.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Acting Director, Office of Administration.

[FR Doc. 82-12984 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-454 OL, 50-455 OL]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Order

May 6, 1982.

Oral argument on the appeal of intervenor The Rockford League of Women Voters from the October 27, 1981 and January 27, 1982 orders of the Licensing Board has been rescheduled from 2:00 P.M. on Wednesday, May 26, 1982 to *10:00 A.M. on Thursday, May 13* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Each side is allotted a total of 50 minutes.

Each party is to notify the Secretary to this Board, in writing, to be received no later than *Tuesday, May 11, 1982,* of the name of the person who will present argument on its behalf.

It is so ordered.

For the Appeal Board.
C. Jean Shoemaker,
Secretary to the Appeal Board.

[FR Doc. 82-12987 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-329 CP 50-330 CP]

Consumers Power Co. (Midland Plant, Units 1 and 2); Order

May 6, 1982.

Because counsel for intervenor Saginaw Valley Nuclear Study Group has other commitments on May 26, oral argument in this case remains scheduled for *2:00 p.m., Thursday, May 13, 1982,* in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

It is so ordered.

For the Appeal Board.
C. Jean Shoemaker,
Secretary to the Appeal Board.

[FR Doc. 82-12986 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of the Services Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish the Services Policy Advisory Committee. This Committee will be rechartered pursuant to section 135(c)(1) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); Section 4(d) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 12188.

The Services Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and the Secretary of Agriculture, the Secretary of Commerce,

and the Secretary of Labor on policy issues related to trade in services.

The Committee will meet at irregular intervals at the call of the U.S. Trade Representative. The frequency of committee meetings will be approximately three or four times per year, depending upon the needs of the U.S. Trade Representative.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: the United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Room 121, Washington, D.C. 20506, (202) 395–6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 82-12982 Filed 5-11-82; 8:45 am]

BILLING CODE 3190-01-M

Trade Restrictions—Receipt of Petition Regarding Machine Tools from Japan

On May 3, 1982 the Office of the United States Trade Representative (USTR) received a petition filed pursuant to Section 103 of the Revenue Act of 1971 (26 U.S.C. 48(a)(7)(D)) by Houdaille Industries, Inc. of Ft. Lauderdale, Florida.

Section 103 of the Revenue Act of 1971 authorizes the President to deny the application of the investment tax credit on any article or class of articles manufactured or produced in a foreign country upon making a determination that such country maintains non-tariff trade restrictions which substantially burden U.S. commerce in a manner inconsistent with provisions of trade agreements or engages in discriminatory or other acts (including the tolerance of international cartels) or policies unjustificably restricting U.S. commerce.

The petition alleges that the Government of Japan instigated the formation of a machine tool cartel and continues to shield the cartel members from competition by sanctioning market allocation and other anticompetitive agreements and practices. It is further alleged that the Government of Japan has promoted the development of the cartel by providing it with tax advantages, concessionary loans, research grants and other direct and indirect subsidies. The petitioner claims that U.S. commerce has been unjustifiably restricted as a result of these practices.

The petitioner has requested that the President exercise his authority under Section 103 by immediately suspending for an indefinite period the investment tax credit for Japanese-made numerically-controlled machining centers and numerically-controlled punching machines. The petitioner further requests that the President provide for a review of the circumstances giving rise to the Presidential action at the end of five years from the date on which the adtion becomes effective.

Copies of the petition are available for purchase at a cost of $15 per copy payable by check only to the U.S. Treasurer or for viewing by interested parties in the Office of the General Counsel, Room 223, Office of the United States Trade Representative, 600 17th St., NW., Washington, D.C. 20506.

The Office of the USTR will coordinate an interagency review of the petition so that the United States Trade Representative may make a recommendation to the President, with the advice of the Trade Policy Committee, on what action, if any, the President should take with respect to the petition. In order to assist in this process interested parties are invited to submit their comments in writing on any issue raised in the petition. Submissions should be legibly typed, printed or duplicated and by filed, together with 20 copies, no later than June 30, 1982. The Office of the USTR will accord business confidential treatment, upon request, in the manner provided for in 15 CFR 2006.15. Submissions should be directed to Jeanne S. Archibald, Assistant General Counsel, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, D.C. 20506.

Donald E. deKieffer,

General Counsel.

[FR Doc. 82-12980 Filed 5-11-82; 8:45 am]

BILLING CODE 3190-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer who Contributes to a Multiemployer Plan: Almac Plastics, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Almac Plastics, Inc. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, in connection with its purchase of assets of Camla, Inc. A notice of the request for exemption from the requirement was published on March 4, 1982 (47 FR 9310). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006, (202) 254–4862.

SUPPLEMENTARY INFORMATION:

Background

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96–364, 94 Stat. 1208 (the "Multiemployer Act") became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"). As a result of the Multiemployer Act, an employer that withdraws or partially withdraws from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. Section 4204(a)(1) of ERISA, 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets, (46 FR 46127, September 17, 1981), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with

the least practicable intrusion into normal business transactions.

Section 4204(c) requires the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On March 4, 1982 (47 FR 9310), the PBGC published a notice of the pendency of a request from Almac Plastics, Inc. ("New Almac") to waive the bond/escrow requirement of section 4204(a)(1)(B) of ERISA, in connection with the purchase by New Almac on August 13, 1981 of the operating assets of Camla, Inc. ("Camla"). No comments were received in response to the notice.

Camla contributed to the Union Mutual Fund Pension Plan (the "Plan"). According to New Almac's request for an exemption, New Almac has agreed to contribute to the Plan for substantially the same number of contribution base units for which Camla had an obligation to contribute.

Prior to the sale, Camla's potential withdrawal liability to the Plan had been calculated to be $131,000. The amount of the bond or escrow required under section 4204(a)(1)(B) is $115,957 (the contributions required to be made for the plan year ending December 31, 1980).

New Almac is a wholly-owned subsidiary of Laird, Inc., which is, in turn, a wholly-owned subsidiary of Laird Group, Ltd., a foreign corporation. Prior to the sale, Laird Inc. had two subsidiaries located within the United States. The book value of net current assets and dates of those figures for each of the subsidiaries is as follows:

	Net current assets (book value)
N.Y. Twist Drill Corp.	12,175,089 (6/80)
Amesbury, Inc.	2,060,806 (3/81)

Thus, prior to the sale, the U.S. subsidiaries had total combined net current assets of approximately $14 million. In addition, New Almac (the new subsidiary of Laird Inc.) purchased the operating assets of Camla, which prior to the sale had a net current book value of approximately $10.9 million.

Based on these facts, PBGC has determined that an exemption from the bond/escrow requirement would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, PBGC has granted New Almac's request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, D.C., on this 6th day of May 1982.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12894 Filed 5-11-82; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Flushing Shirt Manufacturing Company, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Flushing Shirt Manufacturing Company, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act in connection with that company's purchase of the assets of Flushing Shirt Manufacturing Company, Inc. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before June 28, 1982.

ADDRESSES: All written comments (at least three copies) should be addressed to: Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4862. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, 94 Stat. 1208 (the "Multiemployer Act") became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001 *et seq.* As a result of the Multiemployer Act, an employer that withdraws, or partially withdraws, from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. The withdrawal liability rules generally apply to withdrawals occurring after April 28, 1980.

Section 4204 of ERISA, 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or

fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the sale-contract requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) or (C) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets, (46 FR 46127, September 17, 1981), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the purchaser, Flushing Shirt Manufacturing Company, Inc. ("New Flushing"), for an exemption from the requirement of section 4204(a)(1)(B) of ERISA. In the request, New Flushing represents, among other things, that:

1. On November 30, 1981, New Flushing purchased the assets of Flushing Shirt Manufacturing Company, Inc., now known as FSMC Uniform Manufacturing, Inc. (FSMC). The agreement of sale was effective as of November 1, 1981.

2. New Flushing has assumed FSMC's responsibilities under a collective bargaining agreement with the Amalgamated Cotton Garment & Textile Workers Union, which obligated FSMC to contribute to the Amalgamated Cotton Garment & Allied Industries Fund (the "Fund"). The agreement of sale provides that, if New Flushing withdraws from the Fund within the first five plan years beginning after the sale and fails to pay any of its liability to the Fund, FSMC shall be secondarily liable for the liability it (FSMC) would have had but for section 4204. According to the Fund, FSMC's potential withdrawal liability to the Fund had been calculated to be $503,048.20.

3. The amount of the bond or escrow required under section 4204(a)(1)(B) is $154,482.08 (the amount of FSMC's required annual contribution to the Fund for plan year 1980).

4. New Flushing is a member of a controlled group of corporations known as TFB Holding Corporation ("TFB"). TFB was formed on January 30, 1981. TFB's audited consolidated financial statement for calendar year 1981 shows net income of approximately $2.1 million and net tangible assets as of December 31, 1981 of approximately $1.7 million.

5. FSMC has indicated its intention that section 4204 should apply to the sale.

6. A complete copy of this request has been sent to the Fund and the collective bargaining representative of the seller's former employees by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, on or before June 28, 1982. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 6th day of May 1982.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc 82-12835 Filed 5-11-82; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18713; File No. 4-208]

Intermarket Trading System

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final amendments to national market system plan.

SUMMARY: The Commission is adopting amendments to the plan governing the operation of the Intermarket Trading System ("ITS") that are necessary to include the National Association of Securities Dealers, Inc. ("NASD") as an ITS participant to allow for implementation of the automated interface between the ITS and the NASD previously ordered by the Commission.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Simon, (202) 272-2889, or Robert Colby, (202) 272-2888, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting final amendments to the "Plan for the purpose of creating and operating an Intermarket Communication Linkage" filed with and approved by the Commission ("ITS Plan"), that would provide for the inclusion of the NASD in ITS.[1] These amendments, which were published for comment by the Commission on its own initiative pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), are a prerequisite to implementation of the automated interface previously ordered by the Commission.

I. Introduction

On April 21, 1981, the Commission issued an order ("linkage order")[2] requiring the current participants in the ITS and the NASD, among other things, (i) to implement, by March 1, 1982, an automated interface between the ITS and the NASD's NASDAQ system, as enhanced to include, among other things, an order routing and automatic execution capability;[3] and (ii) to submit to the Commission, on or before November 1, 1981, proposed amendments to the ITS Plan reflecting the inclusion of the NASD as an ITS participant. The Commission indicated in the linkage order that it considers the immediate implementation of an automated interface between over-the-counter ("OTC") and exchange markets in listed securities to be a critical event in the development of the national market system. In particular, the Commission indicated that this

[1] The ITS is an intermarket routing system operated jointly by certain national securities exchanges, and authorized by the Commission, on a provisional basis, as a national market system facility pursuant to 11A(a)(3)(B) of the Securities Exchange Act of 1934. The current participants in ITS are the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Midwest Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[2] Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23656.

[3] The NASD's enhanced NASDAQ system is referred to as the Computer Assisted Execution System, or "CAES."

interface, which will provide for the first time an efficient means of routing orders between exchange and OTC markets, is essential to the full development of the Commission's experiment in trading securities in an environment free from off-board trading restrictions, pursuant to Rule 19c–3 under the Act, which permits exchange members to make off-board markets in most securities listed on an exchange since April 1979.[4]

On March 4, 1982, the Commission issued an order deferring the implementation date of the interface from March 1, 1982 to May 1, 1982 for two reasons.[5] First, while technical preparations for the interface generally had proceeded smoothly, it appeared that approximately two more months of testing would be necessary before the interface could be implemented. Second, the ITS participants and the NASD had failed to submit to the Commission amendments to the ITS Plan to provide for the inclusion of the NASD in the ITS. In order to encourage the parties to reach agreement on the ITS Plan amendments, and as a necessary step to allow the Commission to adopt the Plan amendments by the May 1, 1982, implementation date on its own in the event the parties were unable to reach agreement, the Commission published for public comment proposed amendments to the ITS Plan to provide for the NASD's inclusion in ITS ("proposal release").[6]

The ITS Plan amendments proposed by the Commission generally reflected the ITS draft plan amendments prepared by the ITS participants and the NASD wherever the parties had reached agreement. In addition, the Commission included provisions reflecting the ITS participant's and NASD's agreement to defer resolution of a number of issues until after the initial six month pilot phase of the interface. Finally, the Commission proposed its own resolution to the few remaining issues where the parties were unable to agree on either a resolution or deferral of the issue. In response to the Commission's request for comment on the proposed ITS Plan amendments, the Commission received letters from the NASD,[7] the ITS participants,[8] one broker-dealer,[9] and one industry organization.[10]

Discussion

Since the time the Commission published its proposed ITS Plan Amendments for public comment, the ITS Participants and the NASD have continued their discussions in an attempt to reach agreement on the outstanding issues.[11] Unfortunately, however, the parties have not been completely successful and, therefore, have not submitted their own amendments to the Commission. Accordingly, in order to allow the interface to be implemented at the earliest possible date, the Commission is adopting its proposed amendments to the ITS Plan in substantially the same form as proposed for comment.[12] As discussed, the majority of the amendments are non-controversial and have been agreed upon by the parties or reflect the parties' decision to defer resolution of certain issues until after the pilot phase of the interface.[13] The

[4] Specifically, Rule 19c–3 (17 CFR 240.19c–3) removed exchange off-board trading restrictions which prohibited exchange member firms from making markets in securities listed on the exchange other than on exchange premises, with respect to any security reported in the consilidated transaction system ("consolidated system"): (1) Which was not traded on an exchange prior to April 26, 1979, or (2) which was traded on an exchange on April 26, 1979 but which ceased to be traded on an exchange for any period of time thereafter ("Rule 19c–3 Security"). *See* Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41124 ("Rule 19c–3 Adoption Release"). A more complete discussion of the Commission's previous statements regarding the need for an efficient linkage between the exchange and the OTC markets is contained in Securities Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379.

[5] Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10662.

[6] Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10658.

[7] Letter dated March 30, 1982, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

[8] Letter dated April 5, 1982, from Kenneth I. Rosenblum, Chairman, ITS Operating Committee, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission. The Commission also received a separate letter from the New York Stock Exchange ("NYSE") which articulates that exchange's concerns regarding internalization. *See* letter dated April 5, 1982, from William M. Batten, Chairman and Chief Executive Officer, NYSE, to the Commission.

[9] Letter dated March 31, 1982, from H. C. Piper, President, and Kenneth J. Wessels, Senior Vice President, Piper Jaffray and Hopwood, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

[10] Letter dated March 24, 1982, from Jeremiah A. Mullins, Chairman, and Morton N. Weiss, President, National Security Traders Association, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

[11] In addition to the negotiations concerning the ITS Plan amendments, parallel discussions regarding the possible promulgation of a rule concerning the internalization of customer order flow by exchange member firms have been continuing. (For a further discussion of internalization and these deliberations see the proposal release, 47 FR at 10660–1). Although these negotiations have not yet resulted in the submission of a rule to the Commission which has total industry backing, significant progress has been made. First, a special committee established by the Securities Industry Association ("SIA") to study the internalization area has reached an understanding on principles which it believes should govern rules addressing internalization in all markets, if it is determined that such rules are necessary. Second, outside counsel retained by the NYSE have prepared a draft rule addressing internalization. As the Commission has stated in the past (*see e.g.*, the proposal release, 47 FR at 10660–1), while this issue is not one on which agreement must be reached prior to implementation of the interface, it supports industry efforts to address internalization concerns. As part of its support for industry efforts in this area, the Commission has instructed its staff to prepare a release (i) detailing the status of the discussions on internalization, (ii) requesting further comment on whether there should be any internalization rule at all and (iii) proposing alternative Commission rules based on the NYSE draft rule and variations on the SIA committee principles. The Commission expects that this release, which it will consider the week of May 10, 1982, will help focus industry attention on these significant steps taken to address the internalization area and will foster continued discussions on the subject. The Commission has also instructed its staff to make every effort to actively facilitate industry consideration of a mechanism which will enhance inter-market order exposure in the context of the Rule 19c–3 experiment.

The Commission also notes that in the recent submission by the NYSE further articulating concerns regarding internalization (note 8, *supra*), the NYSE appears to present the argument that both the Commission and Congress historically have placed internalization at the forefront of national market system concerns and believed that such concerns should be addressed before removing exchange restrictions on off-board principal transactions. The Commission believes that it is important to emphasize that, while the Commission and Congress indeed have recognized the potential internalization concerns that may be attendant to lifting restrictions on off-board principal transactions, both consistently recognized the concerns raised by the anti-competitive effects of those restrictions. For this reason, the Commission has recognized consistently that potential internalization concerns are only one factor which must be considered when the Commission exercises its statutory authority to facilitate the development of a national market system. As a result, the Commission must balance any benefits obtained by increased order exposure against any resulting adverse effects on efficient executions of transactions and competition among brokers and dealers, exchange markets and markets other than exchanges. The Commission repeatedly has determined that, on balance, the increased potential for competition in market making that will result from the lessening of off-board trading restrictions outweigh the speculative concerns over internalization in the limited context of the Rule 19c–3 experiment and the subject market linkage. *See, e.g.*, the Rule 19c–3 Adoption Release, 45 FR at 41129; Linkage Order 46 FR at 23660; and the Proposal Release, 47 FR at 10660–1.

[12] The Commission has made a number of changes to its draft amendments to reflect all the amendments agreed upon by the ITS participants and the NASD. These areas generally are technical and include the addition of two new definitions, various changes to the ITS pre-opening application and the financial aspects of the interface. With respect to one of the definitions, the "NASD Commencement Date," rather than specifying a particular date as suggested by the parties, the amendments, as adopted, refer to the date established by the linkage order, as amended.

[13] In the ITS participants' comment letter (note 8, *supra*), they emphasize the continued importance to them of one of the deferred issues. Specifically, the ITS participants believe it is necessary that the NASD eventually agree to require market makers to report trades to the consolidated tape at the same price they confirm transactions to their customers. The ITS participants apparently believe that such a requirement, through customer monitoring of trade

areas where the parties have not reached agreement, and where the Commission has resolved the outstanding issues, are discussed below.

1. *ITS Order Entry Procedures.* As discussed in the proposal release, the ITS participants proposed including a provision in the ITS Plan which would specify the manner in which orders can be entered into the ITS system by CAES market makers, reflecting the manual order entry process presently planned for use by CAES when the interface becomes operational. The ITS participants are concerned that, unless access to ITS is strictly limited to CAES market makers, other broker-dealers may use the ITS as an alternative to exchange membership by routing substantial numbers of agency orders through the CAES–ITS interface to the exchange floors of ITS participants, thus avoiding exchange transaction fees and the costs of exchange membership. The ITS participants did, however, propose language in the plan which would commit them to continue discussions with the NASD during the six-month pilot period of whether the ITS Plan should limit the manner in which commitments to trade are originated in the CAES markets.

On the other hand, the NASD has objected to so limiting the manner of entering CAES orders into ITS. Although the NASD has not indicated any immediate plans to alter the CAES–ITS order entry process, the NASD is concerned that describing the initial order entry process used by CAES in the ITS Plan will make amendment of the Plan necessary before it can enhance this manual entry process in the future.

In proposing its amendments for comment, the Commission, while proposing the limiting language suggested by the ITS participants, also recognized that for CAES to operate at maximum efficiency, its manual ITS order entry process must be enhanced so that CAES orders are automatically entered into ITS, without the intervention of a CAES market maker, when an ITS market displays a quotation superior to that available in CAES. Indeed, the Commission stated that an automated order entry procedure would be an efficient method of preventing CAES trade-throughs of superior ITS quotations,[14] and may be essential in order for CAES to draw the order flow necessary to attact OTC market making interest, and to compete effectively with exchange markets in listed securities. In light of these concerns the Commission also proposed the possibilities of (i) limiting the order entry restrictions to the pilot phase of the interface; and (ii) adding language to the plan allowing the NASD to enhance CAES only to the extent necessary to allow the system to provide an automated order entry process which would redirect orders entered into CAES to a superior quotation in another ITS market.

The NASD, in its comment letter, stated that the language proposed by the Commission to allow the NASD to develop an automated order entry process is "entirely acceptable." The ITS participants, on the other hand, continue to believe that (i) the ITS Plan only should detail exactly how the plan's applications currently operate and that (ii) an automated interface might be used as an order-routing mechanism by users of CAES enabling those users to avoid floor brokerage and transaction fees and the need for exchange membership. While the ITS participants believe that it may indeed be possible to devise plan language that both would allow ITS/CAES market makers to avoid trade-throughs efficiently and would be reponsive to their access concerns, they urge the Commission to allow the parties to pursue this issue during the pilot phase of the interface rather than have the Commission adopt its own plan amendments on this issue now.

The Commission has determined that while it continues to believe that it is important for the NASD to develop an automated order entry system that would avoid trade-throughs as soon as possible, it will not take any action on specific ways to address this issue now. Rather, in adopting the final amendments to the ITS Plan, the Commission has limited the manual order entry restrictions to the pilot phase of the interface and has stated that the manner in which ITS/CAES market makers can input orders into ITS after the pilot phase remains unresolved and will be the subject of continued discussions. The Commission emphasizes, however, that it continues to believe that this order entry procedure can be made more efficient, and that it intends to address such enhancements at the end of the pilot phase in the event the parties are unable to reach agreement on the issue.

2. *Trade-through rules.* All ITS participating exchanges have rules to help ensure that members of their exchanges do not trade-through other participating ITS markets. The NASD and the ITS participants generally have agreed that similar trade-through principles should be applicable to the CAES market in securities traded through the interface. Furthermore, in the proposal release the Commission emphasized that it expected the NASD to adopt a trade-through rule that contained the basic protection provided by the exchanges' rules. The Commission's proposed amendments to the ITS Plan contained the requirement that the NASD's trade-through rule apply the concepts of the prototype exchange rules "in an appropriate fashion" to trades of ITS/CAES market makers. Subsequently, the ITS participants proposed language that would have included in the plan more specific requirements concerning the NASD's rule.

While the Commission recognizes the need for consistency regarding the various markets' trade-through rules, the Commission does not believe that it is necessary or appropriate for it to adopt plan amendments which would detail the provisions of the NASD's rules with the specificity suggested by the ITS participants. Instead, the Commission believes that the proposed language requiring the NASD's rules to apply the trade-through concepts "in an

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confirmations, will impose a discipline on market makers to ensure that they report trades at the true wholesale price. While, as discussed in the proposal release (pp. 19–24), the Commission encourages further discussion of this issue during the pilot phase of the interface, the Commission continues to believe that concerns about accurate trade reporting—of either block or retail-sized transactions—can effectively be addressed through surveillance. The NASD, as part of its monitoring of Rule 19c–3 trading, already has instituted a surveillance program which the Commission believes carefully monitors the reporting of OTC retail transactions in Rule 19c–3 transactions. (*See* A Monitoring Report on the Operation and Effects of Rule 19c–3 Under the Securities Exchange Act of 1934, Securities Exchange Act Release No. 18062 (August 25, 1981) at 33–36, which indicated that 19c–3 market makers were reporting retail-sized 19c–3 transactions accurately in substantially all instances.) The Commission also believes that the NASD also could provide effective surveillance with respect to block transactions, and the NASD has agreed to institute such a program. The Commission expects that this inspection effort will entail examining a large percentage of block trades to determine if they have been reported accurately at the wholesale price. At a minimum, this examination should compare the difference between the reported price of the block and the net price confirmed to the customer to determine if the reported price was adjusted to avoid the trade-through rule. The Commission believes that such surveillance efforts may prove more effective in policing trade reports than the notion that retail customers and institutions will focus on the reported price and markup rather than primarily on the net price received. Moreover, to the extent that there was agreement between the institution and the market maker over the reported price, NASD surveillance would appear to be the only useful detection tool available.

[14] A "trade-through" occurs when a trade is executed in one market center at a price inferior to that available in another market center. For a further discussion of this issue, see the proposal release, 47 FR at 10661–2.

appropriate fashion" provides a sufficient assurance of consistency.

In this connection, the Commission notes that on May 4, 1982, the NASD submitted to the Commission its proposed trade-through rule. That rule provides the same general protections of the exchange participants' rules by providing assurance that, in the event of a trade-through complaint, the complaining market maker will be assured that his quotation will be satisfied in full or that the transaction will be broken. The only difference between the rules concerns the methods which should be available to two ITS/CAES market makers dealing as principal to correct trade-throughs.[15] Specifically, the exchange trade-through rules require two members dealing as principal to break a trade-through if a timely complaint is received, while the NASD's trade-through rule, as submitted to the Commission, would provide two ITS/CAES market makers dealing as principal generally the same alternative remedies available with respect to agency transactions, *i.e.*, (i) to break the trade; (ii) to adjust the trade to price which would not constitute a trade-through; or (iii) to take out the quotation traded through, if a timely complaint of a trade-through is received.

The Commission understands that the ITS participants have raised concerns that giving two ITS/CAES market makers the latter two options decreases the incentives to avoid trading through in the first instance.[16] While the Commission recognizes that concern, the Commission believes that the NASD's trade-through rule both is in conformity with the requirements of the Act, and as required by the ITS Plan, applies "in an appropriate fashion" the concepts of the prototype exchange rules contained in the exhibits to the ITS Plan. The Commission believes that the NASD's rule provides all the basic protections afforded by the exchange participants' rules and that the one difference between the rules can be justified by the automatic execution capability in CAES. Specifically, on an exchange, both parties to a trade always should be aware of superior prices available in other markets before executing a transaction, and it thus seems appropriate to require a trade-through by two members acting as principal; to be broken. On the other hand, in CAES a trade-through may occur through no fault of a market maker, who, for valid business reasons, often may be disseminating a quotation inferior to the best ITS quote, with a trade-through resulting only when a CAES order entry firm executes against that quotation. In such a situation, it does not seem inappropriate to give the parties additional methods to remedy the trade-through.

In light of the foregoing, the Commission today is both publishing and approving on an accelerated basis a temporary NASD trade-through rule for six months.[17] During those six months the Commission will monitor the effects of the NASD's trade-through rule to determine if the rule should be approved on a permanent basis in its current form, or whether amendments to the rule are necessary.

3. *Short Sale Commitments.* As discussed in the proposal release,[18] CAES presently does not have the capability to send or receive orders designated "short." The NASD is committed to remedy this problem as soon as possible and anticipates that by the end of the pilot phase it will enhance CAES not only to accept commitments designated "short," but also to allow the system to check those commitments against the last sale to determine if valid executions in conformity with the short sale rule would result. The Commission believes that such a system enhancement is the best method to address this problem.

During the pilot phase of the interface, before the NASD enhances CAES to accept short commitments, the parties originally proposed to prohibit the sending of short commitments through the interface. The Commission, in proposed ITS Plan Amendments, however, would have provided an exception from the short designation requirements of the ITS plan with respect to commitments to sell short sent through the ITS–CAES interface. Consistent with that approach, the Commission indicated that it would instruct its staff to provide the ITS participants and the NASD with interpretive relief from the designation requirement of Rule 10a–1 and from any inadvertent short sale violations resulting from a market change occurring after the commitment had been sent. The Commission indicated that it believed that permitting unmarked short orders to be routed through the interface from an exchange to CAES or from CAES to an exchange did not raise the potential manipulative concerns which Rule 10a–1 was intended to address. In particular the Commission suggested that the ability to obtain either an automatic execution (through CAES) or a timely execution (through ITS) at the prevailing quotation of the destination market allows brokers to determine, before sending an order, whether the execution they will receive will violate the short sale provisions of Rule 10a–1, except in the rare instance where the receiving market center changes its quotation between the time the order is entered and the time it is executed. Finally, the Commission indicated its understanding that this exception will be eliminated once the NASD made the technical changes necessary to permit CAES to receive ITS commitments marked short.

Based on the Commission's commitment to take a no-action position on inadvertent short sale violations, the ITS participants and the NASD both supported in their comments an exception to the plan's commitment designation requirement for short orders entered into the interface as long as the execution in the receiving market, as measured by the last sale information available in the original market, would not violate (a) Rule 10a–1, or (b) in the case of a member on the floor of the American Stock Exchange ("AMEX") or the NYSE, the short sale rule as in effect on that exchange.[19] Accordingly, the ITS

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[15] An additional issue concerns whether the quotations of all ITS/CAES market makers should be protected when a block transaction is executed in an ITS exchange market at a price inferior to such quotations. The current trade-through rules, and block applications of those rules, would protect only the inside market in CAES. While the NASD feels strongly that each ITS/CAES market maker is a separate market center and should be protected, it has determined not to pursue this issue at the current time. The Commission is sympathetic to the NASD's concerns and emphasizes its longstanding position that the ITS participants, now including the NASD, resolve the larger issue of protection of away-from-the-market interest against block transactions as quickly as possible. By taking action in this area, the ITS participants would address not only the NASD's concerns, but the wider concerns of the industry, the Commission and Congress regarding public limit order protection. The Commission would expect the parties to work to resolve this issue during the pilot phase of the interface.

[16] In their comment letter, note 8, *supra*, the ITS participants also proposed amendments to the ITS Plan to provide explicit procedures to address intermarket trade-throughs. While the Commission encourages the ITS participants to formalize these procedures both in the ITS Plan and in their rules, the Commission does not believe that it is appropriate to approve these new substantive amendments at this point in the proceedings, without first publishing them for comment. Thus, while the Commission has not adopted these amendments at the current time, it encourages the ITS participants to resubmit these amendments at a later date.

[17] Securities Exchange Act Release No. 18714 (May 6, 1982).

[18] Proposal Release, 47 FR at 10003.

[19] The special provisions of the exception applicable to the NYSE and AMEX are necessary due to the lack of readily accessible information on those exchanges concerning the "tick" in the consolidated system. While, in its comment letter, the NASD indicated that a similar provision should be included for CAES market makers, the

Plan amendments, as adopted, continue to provide for an exception from the short designation requirements of the ITS Plan commitments sent through the ITS–CAES interface. The Commission also has instructed its staff to take a no-action position with respect to inadvertent violations of the short sale rule (i) involving unmarked ITS commitments to trade routed to CAES from an ITS exchange which would not have violated Rule 10a–1 if executed on that exchange at the time sent to CAES, and (ii) involving unmarked orders entered into the ITS–CAES interface by a CAES market maker, as long as the short sale would have been proper in the destination exchange at the time the order was entered into the interface. In addition, the Commission has instructed the staff to provide interpretive relief for the ITS participants and the NASD with respect to the Rule 10a–1(c) requirement that short orders directed through the ITS–CAES interface be identified as short.

Conclusion

The Commission has determined to adopt final amendments to the ITS Plan to provide for NASD's inclusion as a participant in the ITS in substantially the same form as those amendments were published for comment. The Commission finds that the final amendments are consistent with the Act, particularly Section 11A thereunder, and are necessary to permit the effectuation of the Commission's previous order mandating a linkage between the ITS and CAES.[30]

Effects on Competition

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. In issuing the linkage order, the Commission found that implementation of the automated interface would enhance market making competition by permitting OTC market makers, through the dissemination of superior quotations, to attract orders initially routed to exchange specialists. Similarly, the interface will provide an opportunity for exchange specialists to attract orders held by OTC market makers which, without an efficient linkage, may be internalized by that market maker. Because the amendments will help lead to the implementation of the automated interface between the ITS participants and the NASD, the Commission believes that the amendments will foster competition between exchange and over-the-counter markets. In the event that any provisions of the plan do have anticompetitive effects, the Commission believes that such effects are outweighed by the benefits resulting from the linkage.

Text of ITS Plan Amendments

Pursuant to its authority under section 11A(a)(3)(B) of the Act and Rule 11Aa3–2 thereunder,[31] the Securities and Exchange Commission hereby adopts amendments to the ITS Plan to provide for the inclusion of the NASD as a participant in the ITS as those amendments were set forth in Securities Exchange Act Release No. 18536 (March 4, 1982), [47 FR 10658, March 11, 1982] with the following changes:

1. Add new paragraph 1(3) to provide as follows:

(3) "Block trade" means a trade in a Participant Market that (a) involves not less than 10,000 shares of a System security or a quantity of any such security having a market value of $200,000 or more and (b) is effected at a single "clean-up" price.

2. Renumber paragraphs 1(3) through 1(23) as paragraphs 1(4) through 1(24), respectively.

3. Add new paragraph 1(25) to provide as follows:

(25) "NASD Commencement Date" means the date upon which the Securities and Exchange Commission has ordered the initial implementation of the ITS/CAES Interface, on a pilot basis, as provided in Securities Exchange Act Release No. 17744 (April 21, 1981), as that order has been amended.

4. Renumber paragraphs 1(24) through 1(35) as paragraphs 1(26) through 1(37), respectively.

5. Amend newly-numbered paragraph 1(26) to provide as follows:

(26) "19c–3 security" means an Eligible Security that is not a "covered security" as that term is defined in SEC Rule 19c–3 as in effect on May 1, 1982.

6. Amend newly-numbered paragraph 1(29) to provide as follows:

(29) "NYSE UFDC" means the NYSE's "Universal Floor Device Control System," a computerized system that when fully implemented will, to some extent, replace the original ITS stations on the NYSE floor. The NYSE UFDC is not part of the System, but accommodates the routing of communications between the System and the NWSE floor and permits the entry and receipt of System communications by means of card readers and their associated printers ("NYSE UFDC stations").

7. Amend paragraph 4(a) to provide as follows:

4. *Administration of ITS Plan.* (a) *Operating Committee: Composition, Voting.* Each Participant shall select from its staff one individual to represent such Participant as a member of the Operating Committee under the ITS Plan, together with a substitute for such individual. * * *

8. Amend paragraph 5(a)(ii) to provide as follows:

(ii) *Control Center.* The System also includes a control center, which monitors and controls communications within the System, including the

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Commission believes that CAES market makers are able efficiently to obtain consolidated and primary market last sale information from vendor display devices on their premises.

[30] Linkage Order, 46 FR at 23662.

[31] Section 11A(a)(3)(B) of the Act specifically authorizes the Commission, by rule or order, to authorize self-regulatory organizations to act jointly with respect to national market system matters. Rule 11Aa3–2 (the "Plan Rule") implements that section by, among other things, establishing procedures for initiating or approving amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) of the Plan Rule states that the Commission may propose amendments to an effective national market system plan by publishing the text thereof together with a statement of the purpose of the amendments. Paragraph (c)(1) requires the Commission to publish notice of any amendments initiated by the Commission and provide interested persons an opportunity to submit written comments. Paragraph (c)(2) requires the Commission to approve such amendments within specified time frames if the Commission makes the required statutory findings; paragraph (c)(2) also requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule.

The ITS Participants, in their comment letter, imply that the Commission should follow the procedures in section 19(c) of the Act in promulgating these ITS Plan amendments. Section 19(c) of the Act establishes certain procedures, including the requirement of an oral hearing, if the Commission on its own initiative seeks to amend the rules of a self-regulatory organization. The Commission, of course, has not followed the section 19(c) procedures in this proceeding because those procedures are inapposite. Section 19(c) applies only to rules of a self-regulatory organization ("SRO") and not to national market system plans, such as the ITS Plan, adopted under section 11A(a)(3)(B) of the Act and which are not SRO rules. In adopting the Plan Rule, the Commission and commentators addressed the interrelationship between sections 11A(a)(3)(B) and 19(c) of the Act. While no commentator questioned the ability of the Commission to amend effective national market system plans apart from section 19(c), a number of commentators argued that the Plan Rule procedures should be analogous to the procedures contained in section 19(c). The Commission responded that there was no legal requirement that the procedures under Section 11A(a)(3)(B) be the same as the section 19(c) procedures, and, moreover, as a policy matter, it did not believe oral hearings were desirable for Commission-initiated plan amendments in light of Congress' desire to give the Commission "maximum flexibility" in facilitating the development of a national market system. For a further discussion of these issues, see Securities Exchange Act Release No. 17580 (February 20, 1981), 46 FR 15666 at 15668–9.

processing of error conditions. The control center staff is able to display and, when authorized by any Participant, to modify the security and market records of that Participant's Market as such records relate to the System. * * *

9. Amend paragraph 6(a)(i)(A) to provide as follows:

(A) *Receipt of Quotations.* * * * Similarly, the NASD agrees that, for each ITS/CAES security in which an ITS/CAES Market Maker is registered as such with the NASD for the purposes of the Applications, there shall be available at each location on the premises of such ITS/CAES Market Maker at which ITS/CAES stations are located a quotation service that disseminates the bid price and the offer price then being furnished by or on behalf of each other Participant. * * *

10. Amend paragraph 6(a)(i)(B) to provide as follows:

(B) *Furnishing of Quotations.* As to each System security that is traded on its floor, each Exchange Participant other than the CSE shall furnish, or cause to be furnished, to each "receiving Participant Market" as defined below, or to a person acting therefor, the current bid-asked quotation emanating from its trading floor. As to each System security that is assigned to one or more Designated Dealers, the CSE shall furnish, or cause to be furnished, to each receiving Participant Market, or to a person acting therefor, the current bid-asked quotation that the CSE would be required to make available by SEC Rule 11Acl–1 if it were in effect in the form that it existed on March 1, 1982 as applied to the CSE in securities that are assigned to one or more Designated Dealers. * * *

Each Participant shall to the best of its ability assure that accurate and timely quotations are furnished to receiving Participant Markets or a person acting therefor as provided in this section 6(a)(i)(B), and that each such quotation is accompanied by size as required by Rule 11Acl–1 as in effect on March 1, 1982. * * *

11. Amend paragraph 6(b)(i) to provide as follows:

(b) *Technical Matters.* (i) *Commitment Information, Expiration.* * * *

(G) Designate the commitment "short" or "short exempt" whenever it is a commitment to sell short; this will permit the short sale rule as in effect in the destination Participation Market to apply, and * * *

Until the NASD causes CAES to be modified to permit compliance with SEC Rule 10a–1 in accordance with its undertaking in section 8(f)(vi), section 6(b)(i)(G) shall not apply to commitments to sell short sent to or from the ITS/CAES Third Market. Prior to such modification, a member shall send such a commitment to sell short if, at the time he sends the commitment and as measured by the last sale information then available in the originating Participant Market, an execution of the commitment within the destination Participant Market would not violate (A) said short sale rule or (B) in the case of a member on the floor of the AMEX or the NYSE, the short sale rule as in effect on the AMEX or the NYSE, respectively.

* * * * *

12. Amend paragraph 6(b)(iii) to provide as follows:

(iii) *Commitment Pricing, Acceptance.* * * * Such rules shall require that the price specified in the commitment (or if, from the standpoint of the sender of the commitment, a better price is received, then such better price) shall be the price reported to the CTA Plan Processor and, when an agency transaction, shall also be the price of the transaction as confirmed to the customer. The rules of each Participant shall provide that a commitment to trade received in such Participant's Market shall be executed in whole or, if not possible, in part as soon as it reaches the member(s) having the acceptance obligation described above in this paragraph and any portion not so executed shall be cancelled; provided, however, that the commitment shall remain irrevocable for the time period chosen by the sender of the commitment as discussed in section 6(b)(i).

* * * * *

13. Amend paragraph 7(a) to provide as follows:

7. *Pre-Opening Application.* (a) *Description of Pre-Opening Application.* * * *

The Pre-Opening Application operates as follows: whenever a market maker in any Participant Market, in arranging an opening transaction in his market in a System stock, determines that the opening transaction will be at a price which is more than ¼ of a point away from the last price at which a transaction in that stock was reported by the CTA Plan Processor on the last previous day on which transactions in such stock were reported by the CTA Plan Processor (the "previous day's closing price"), the rules of the Participant governing such market maker (the "inquiring market maker") will require the inquiring market maker to notify market makers in that stock in the other Participant Markets of such situation by sending a security broadcast administrative message, called a "pre-opening notification," through the System. Thereafter, the inquiring market maker is prohibited from opening the stock in question in his market until not less than five minutes after his transmission of the preopening notification.

The pre-opening notification is designated as such, identifies the stock and states the side of the market in which the order imbalance exists, the amount of the imbalance (if any) and the amount paired off (if any). For example, assume the inquiring market maker in XYZ stock holds the following orders:

Buy	Sell
7,000 at market	1,000 at market.
200 at 40	
300 at 40⅛	500 at 40⅛.
1,500 at 40⅛	500 at 40⅛.
	1,000 at 40⅛.
	500 at 40⅛.
2,000 at 41	

Assume also that the previous day's closing price in XYZ was 40 and that the inquiring market maker, on the basis of the orders he than has, contemplates opening XYZ in his market at a price that is more than ¼ of a point away from the previous day's closing price.* * *

14. Amend the footnote to the fourth sentence of the fourth paragraph of section 7(a) to provide as follows:

A pre-opening response from the ITS/CAES Third Market will aggregate the ITS/CAES Third Market interests to buy, separately identifying the aggregate interests to buy as agent and the aggregate interests to buy as principal, and will also aggregate the ITS/CAES Third Market interests to sell, separately identifying the aggregate interests to sell as agent and the aggregate interests to sell as principal.

15. Amend paragraph 7(c) to provide as follows:

(c) *Subsequent Notifications.* If the order situation in the inquiring market maker's market changes significantly because of new orders received from broker-dealers in the Participant Market in which he is located or because of the pre-opening responses he has received, such Participant's rules will require such inquiring market maker to issue an additional pre-opening notification. These order situations are described below. Except in the case of a "second look" notification made as provided in section 7(c)(iv), the additional pre-opening notification will be a security broadcast administrative message.

(i) *Reversal of Imbalances.* Where a pre-opening notification identifies an

imbalance on one side of an inquiring market maker's market and, prior to his opening of the stock in question, the imbalance in his market has reversed so that an imbalance exists on the other side of the market, each Participant's rules will require such inquiring market maker to issue a replacement pre-opening notification (a "reversal" notification) before opening his market in the stock if he contemplates opening the stock at more than ¼ of a point away from the previous day's closing price. Thereafter, under such rules, the inquiring market maker will be prohibited from opening the stock in question in his market until not less than five minutes after his transmission of the reversal notification. A reversal notification contains the same kind of information as is required in the original pre-opening notification.

(ii) *Increase or Decrease in Imbalance.* Where (A) the total number of shares (the amount of the imbalance plus the stock paired off) indicated in a pre-opening notification increase or decrease by 50 percent or more prior to the opening of the stock and (B) the opening transaction is thereupon expected to be for 5000 shares or more, each Participant's rules will require the inquiring market maker to issue a replacement pre-opening notification (an "additional" notification) before opening his market in the stock. Thereafter, under such rules, the inquiring market maker will be required to wait either (A) one minute or (B) until the balance of the original five-minute waiting period expires, whichever is longer, before opening his market (*i.e.*, if more than one minute of the five-minute waiting period has not yet expired at the time the additional notification is sent, the inquiring market maker must wait for the rest of the period to pass before opening his market). An additional notification contains the same kind of information as is required in an original pre-opening notification.

(iii) *Shift to within Price Parameter.* Each Particpant's rules will also require the inquiring market maker to notify the receiving market maker(s) prior to opening the stock in question if the imbalance indicated in the pre-opening notification has been reduced, eliminated or reversed so as to indicate an opening price not more than ¼ of a point away from the previous day's closing price. Such a notice (an "altered" notification) will state: "XYZ PRE-OPENING NOTIFICATION ALTERED." Thereafter, under such rules, the inquiring market maker will be required to wait either (A) one minute or (B) until the balance of the original five-minute waiting period expires, whichever is longer, before opening his market.

(iv) *Participation as Principal Precluded ("Second Look").* The Operating Committee may authorize a "second look" procedure whereby, if a responding market maker who has indicated in his pre-opening response interest as principal at a price better than the contemplated opening price would be precluded from participation as principal in the opening transaction, the rules of each Participant would require the inquiring market maker (A) to send a single destination administrative message notifying such responding market maker of the price and size at which he could participate as principal (a "second look" notification) and (B) thereafter wait either (1) one minute or (2) until the balance of the original five-minute waiting period expires, whichever is longer, before opening his market. The Operating Committee may generally except, or may permit each participant to except as to its market, specified securities or circumstances from the second look notification requirement. Action may be taken pursuant to this section 7(c)(iv) by the Operating Committee only pursuant to written agreement signed by all members of the Committee.

16. Amend paragraph 7(d) to provide as follows:

(d) *Sole means of Pre-Opening Routing.* * * * However, prior to the opening of trading in a security in any Participant Market (or prior to the resumption of trading in a security in any Participant Market following the initiation of a Regulatory Halt in such security as referred to in section X of the CTA Plan), no obligation to trade, commitment to trade or order in such security (as either principal or agent) shall be sent through the System to such Participant Market until a pre-opening notification in such security has been issued from such Participant market.

17. Amend paragraph 7(g) to provide as follows:

(g) *Reports of Participation.* Promptly following the opening in any stock as to which an inquiring market maker issued a pre-opening notification, the inquiring market maker shall report to each responding market maker (or if, as described in section 7(f), a pre-opening response contained the aggregate interests of more than one responding market maker, to the Participant responsible for the market in which the responding market makers are located) (i) the amount of stock purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof or (ii) if the responding market maker(s)'s response included principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate. * * *

18. Amend paragraph 7(h) to provide as follows:

(h) *Applicability following Regulatory Halts.* The Pre-Opening Application shall apply prior to any resumption of trading, or of the dissemination of quotations in the third market, following the initiation of a Regulatory Halt by any Exchange Participant, as referred to in section X of the CTA Plan, if trading has been halted in all Exchange Markets and, when the affected security is an ITS/CAES security, if the NASD has suspended quotations in the affected security. * * * The Pre-Opening Application shall not apply when trading in any Participant Market is resumed following (i) the initiation of a Regulatory Halt if trading has not been halted in all exchange markets and, * * *.

19. Amend paragraph 8(a) to provide as follows:

8. *Participants' Implementation Obligations.* (a) *System Access.* * * * During the NASD Pilot Phase, no commitment to trade any security shall originate in the ITS/CAES Third Market otherwise than as a consequence of an ITS/CAES Market Maker registered as such in the security with the NASD for the purposes of the Applications (or his employee) entering the commitment into the ITS/CAES station located on his premises. Any commitment so originating shall be routed directly to the system through the CAES Switch. The manner in which commitments to trade should originate in the ITS/CAES Third Market and be routed through the CAES Switch after the NASD Pilot Phase has not yet been determined and will be considered by the Exchange Participants and the NASD pursuant to the provisions of section 10(d). * * *

20. Amend paragraph 8(b) to provide as follows:

(b) *Participant Trading Rules.* Except as provided in section 6(b)(i) as to commitments to sell short sent through the CAES switch prior to its modifications as referred to in that section, the trading rules applicable in destination Participant Markets shall apply to commitments to trade received in such market and executions of commitments therein. * * *

21. Amend paragraph 8(d)(i) to provide as follows:

(d) *Order Protection.*—(i) *Trade-Throughs: Locked Markets.* Absent

reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not purchase any security that he is permitted to trade through the System at a price that is higher than the price at which that security, at the time of such purchase, is offered in one or more other Participant's Markets that trade the security through ITS as reflected by the offer from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by, such member or available in the quotation service used by an ITS/CAES Market Maker. Similarly, absent reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not sell any such security at a price that is lower than the price at which that security, at the time of such sale, is bid for in one or more other Participant's Markets that trade the security through ITS as reflected by the bid from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by such member or available in the quotation service used by an ITS/CAES Market-Maker. The Participants also agree that "locked markets" in System securities should be avoided.

22. Amend paragraphs 8(d) (ii) and (iii) to provide as follows:

(ii) *Adoption of Trade-Through Rules.* In order to implement the intent of section 8(d)(i), each Exchange Participant has adopted, and obtained SEC approval, of a "trade-through rule" substantially the same as the rule attached as Exhibit A. In order to implement the trade-through rule as so adopted, each Exchange Participant that furnishes to other Participants bid-asked quotations that are generated by an automated quotation tracking system (such as the Autoquote system or the Centramart system currently employed by certain Participants) agrees that no such quotation shall be for more than 100 shares except that the PSE agrees that no such quotation from either of its two trading floors shall be for more than 100 shares.

(iii) *Block Trade Policy.* The trade-through rules adopted by the Participants shall not apply to transactions that are, or are part of, a block trade. Each Exchange Participant has adopted, and agrees to keep in effect, a "block trade policy" as to such trades substantially the same as the policy attached as Exhibit B. The Participants agree to continue their efforts to define and develop an additional application that will address the trading of blocks of System securities so as to further enhance protection of public limit orders. Pending the implementation of such an additional Application, the block trade policy of each Exchange Participant shall require any member located in such Exchange Participant's Market who executes in such Exchange Participant's Market a block trade in any security that he is permitted to trade through the System at a clean-up price inferior to the quotation for such security then being furnished from any other Participant Market pursuant to section 8(a)(i)(B), upon executing the block trade, to send to each other Participant Market furnishing hereunder a bid or offer (as the case may be) superior to the clean-up price a commitment to trade at the clean-up to satisfy the number of shares included in such other Participant Market's bid or offer. A party in an Exchange Market, or an ITS/CAES Market Maker, whose bid or offer was not satisfied in violation of another Participant Market's block trade policy may report the violation through the System by sending a complaint with respect thereto promptly following the block trade and, in any event, within five minutes from the time the report of the block trade disseminated over the hight speed line of the consolidated last sale reporting system.

23. Amend paragraph 8(f)(i) to provide as follows:

(f) *NASD Implementation Obligations.*—(i) *NASD Identification of Market Makers.* Prior to the NASD Commencement Date, the NASD shall identify to each Exchange Participant in writing (A) each ITS/CAES Market Maker and the one or more ITS/CAES securities in which it has registered as such for the purpose of the Applications and (B) the clearing corporation through which each ITS/CAES Market Maker shall settle System trades, or, if such ITS/CAES Market Maker elects to settle System trades through another clearing member, the identity of such clearing member and the clearing corporation through which such clearing member shall settle System trades on behalf of such ITS/CAES Market Maker. Thereafter, the NASD shall promptly so notify each Exchange Participant of each change therein or addition thereto.

24. Amend paragraph 8(f)(ii) to provide as follows:

(ii) *NASD ITS/CAES Market Maker Agreements.* The NASD shall require each ITS/CAES Market Maker to execute an agreement with the NASD (copies of the form of which have been furnished to the Exchange Participants) by which he (A) explicitly undertakes to comply with the ITS Plan and the NASD requirements described in section 8(f)(iii), (B) explicitly agrees to accept and to settle on the regularly scheduled settlement date, or to cause the clearing member acting on his behalf to accept and to settle on the regularly scheduled settlement date, each side of a System trade that the System identifies as constituted by him or by such clearing member (as the case may be), and (C) explicitly recognizes that he may be subject to censure, fine, suspension or any other fitting penalty, and his registration as an ITS/CAES Market Maker may be subject to suspension or revocation, for any failure to comply with the provisions of the ITS Plan or of the agreement required by this section 8(f)(ii). If such ITS/CAES Market Maker elects to settle all his System trades through another clearing member, such other clearing member shall also execute an agreement by which such clearing member explicitly agrees to accept and to settle on the regularly scheduled settlement date each side of a System trade that the System identifies as constituted by such clearing member.

25. Amend paragraph 8(f)(iii) to provide as follows:

(iii) *NASD Implementation Requirements.* Prior to the NASD Commencement Date, the NASD shall specify requirements:

* * * * *

(B) Providing that as a condition of registration and reregistration and of continued registration of each ITS/CAES Market Maker that he:

* * * * *

(C) Applying to the trades of ITS/CAES Market Makers in an appropriate fashion the concepts of the trade-through rule and block trade policy attached as Exhibits A and B.

26. Amend paragraph 8(f)(v) to provide as follows:

(v) *MSI Clearing Corporation Arrangement.* In order to enable the NASD to perform its settlement obligations as provided in section 9 (d), MSI shall enter into an arrangement with a registered clearing corporation meeting the criteria of section 5(b)(i) that provides that such clearing corporation shall book to an account of MSI each side of System trade that (A) is identified as attributable to the ITS/CAES Third Market but (B) is not identified as constituted by one or more ITS/CAES Market Makers or clearing members acting on his or their behalf.

27. Add the following heading to 8(f)(vi):

(vi) *CAES Modifications for Short Commitments.*

28. Amend paragraph 8(f)(vii) to provide as follows:

(vii) *MSI Representation.* The NASD represents that MSI, the operator of CAES, is a wholly-owned subsidiary of the NASD. The NASD shall cause MSI to operate CAES in a manner consistent with the ITS Plan and to fulfill MSI's obligations under the ITS Plan.

29. Amend paragraph 9(b)(ii) to provide as follows:

(ii) Either (A) the originating Exchange Participant and clearing member(s) or (B) the NASD, the ITS/CAES Market Maker(s) or clearing member(s) acting on his (their) behalf identified by the System as originating the trade, and the clearing corporation(s) through which such market maker(s) or clearing member(s) shall settle the trade.

30. Amend paragraph 10(b) to provide as follows:

(b) *Closed Markets; Trading Halts and Suspension* * * * Similarly, whenever the third market is closed as to a particular security due to a halt in or suspension of trading in that security or whenever the NASD has suspended third market quotations in that security,. no commitment to trade through ITS with respect to that security may be transmitted through the CAES switch. * * *

31. Amend paragraph 10(d) to provide as follows:

(d) *NASD Pilot Phase.* The Participants agree that the ITS/CAES Market Makers shall commence their use of the System through the CAES Switch with a pilot phase (the "NASD Pilot Phase"), during which commitments to trade, responses thereto and pre-opening notifications and responses may be sent through the CAES Switch from or to ITS/CAES Market Makers only with respect to those System securities that are among the 30 19c–3 securities meeting the definition of an "ITS/CAES security" for the purposes of the NASD Pilot Phase as provided in section 1(17). The NASD shall identify those 30 securities to the Exchange Participants prior to the NASD Commencement Date.

It is contemplated that the NASD Pilot Phase shall continue until the first day of a calendar month that is, or is the first such day after, the 180th day following the NASD Commencement Date. * * * Among the issues to be addressed in completing the fair competition task are: (i) The price at which over-the-counter principal trades should be reported to the consolidated tapes so as to preserve the integrity of the ITS order protection rules and policies adopted pursuant to sections 8(d) and 8(f)(iii) and (ii) the appropriateness of additional registration requirements for ITS/CAES Market Makers. In addition, the Exchange Participants and the NASD will also reconsider the question of how the ITS Plan should permit commitments to trade to originate in the ITS/CAES Third Market and be routed through the CAES Switch. * * *

32. Amend paragraph 11(a)(i) to provide as follows:

(i) *Cost Definitions.*

(A) "Average line cost" as used with reference to any Participant means (1) the total line costs identifiable to the formula lines and associated modems linking such participant (or, in the case of the NASD, the CAES Switch and the CAES Supervisory Center) with the System's control center and facilities manager divided by (2) the total standardized number of such lines.

* * *

(f) "Line costs" mean the total of monthly rentals paid to common carriers for lines and associated modems employed in the System's communication network (which links the Exchange Markets, the CAES Supervisory Center and the CAES Switch with the System's control center and facilities manager), other than (1) "back-up" lines and associated modems (the costs of which are borne by the Participant whose market is linked thereby) and (2) "hot lines" permitting conversations among broker-dealers and staff in different Participant Markets and with the System's control center (the costs of which are included in production costs), plus any federal, state or local taxes applicable to such rentals, and excludes all costs with respect of lines and associated modems (1) linking multiple floors to any Participant, (2) linking the CSE floor with CSE members or (3) linking CASES, the CAES Supervisory Center and ITS/CAES Market Makers with one another. Lines, the costs of which are included in "line costs," are referred to in this section 11 as "formula lines."

* * * * *

33. Amend paragraph 11(a)(i)(M) to provide as follows: * * * The AMEX's "share of the transaction base" as computed for any calendar quarter during some or all of which the AMEX was a participant means a fraction, the numerator of which is the transactions figure reported by the AMEX as required by clause (2) of section 11(a)(i)(0) and the denominator of which is the transactions base for the calendar quarter. * * *

34. Amend paragraph 11(a)(iii)(E) to provide as follows:

(E) *CAES Interface Costs.* Enabling the System to accommodate participation by ITS/CAES Market Makers requires incurring development costs that benefit initially only the NASD and ITS/CAES Market Makers (the "ITS/CAES development costs"). These costs include the costs incurred by the System's facilities manager of (1) creating the automated interface ($262,480), (2) adding function designators to administrative messages ($48,762), (3) System programming to accommodate the NASD Supervisory Center (estimated at $13,000), (4) testing performed before March 1, 1982 attributable to the delayed NASD development effort ($40,603) and (5) testing performed after March 1, 1982, (estimated at $45,000–$50,000 per month). The NASD shall pay the difference between the total of the ITS/CAES development costs as finally calculated and $28,091. The subtraction of $28,091 (which is the amount of the development costs incurred in connection with the commencement of the participation of the CSE) reflects the fact that if the NASD's participation was otherwise than by an automated interface, development costs incurred in connection therewith would have been borne by all Participants pursuant to clause (2) of section 11(a)(iii)(B). The $28,091 shall be shared by all Participants (including the NASD) in accordance with said clause (2).

If any Participant in addition to the NASD shall subsequently participate through the automated interface, such Participant shall pay to the NASD a portion of $283,151, which is the difference between (1) the $311,242 in sharable ITS/CAES development costs (identified in clauses (1) and (2) of the preceding paragraph) and (2) $28,091. Such Participant's portion shall equal its share of the transactions base.

35. Amend paragraph 11(a)(v)(A) to provide as follows:

(A) *Shared Line Costs.* Such Participants shall share 100 percent of the product, as calculated for each Participant, of (1) the average line cost incurred during such month for such Participant and (2) the smaller of either 3 or the standardized number of formula lines linking such Participant (or, in the case of the NASD, the CAES Switch and the CAES Supervisory Center) with the System's control center and facilities manager. Such Participants shall also share 50 percent of the product, as calculated for each Participant, of (1) the average line cost incurred during such month for such Participant and (2) the smaller of either 4 or the standardized number of such formula lines in excess of 3. * * *

36. Amend the heading of Section 12 to provide as follows:

12. *Withdrawal from ITS Plan.*

37. Amend paragraph 13 to provide as follows:

13. *Effective date; Transition.* The ITS Plan shall be effective on the NASD Commencement Date. Prior to the effective date of the ITS Plan, * * *

Effective Date of the Amendments

Pursuant to the Administrative Procedure Act,[33] the Commission finds good cause for making the amendments to the ITS Plan effective prior to 30 days following publication of the final rule. As discussed above, the Commission considers the immediate implementation of an automated interface to be a critical event in the development of the national market system. Although originally scheduled to be implemented on March 1, 1982, the Commission deferred the implementation date to May 1, 1982, due (i) to delays in technical preparations for the interface and (ii) to allow for public comment on the proposed ITS Plan amendments. Technical preparations for the interface now are complete and the parties have had ample time to prepare for the May 1, 1982 implementation date specified in the Commission's amended linkage order. The Commission now is taking the final action necessary to allow for implementation by approving the final ITS Plan amendments to allow for the NASD's inclusion in the ITS. These amendments are relatively noncontroversial, have been published for comment and are being adopted in substantially the form agreed upon by the parties. Therefore, to allow for the implementation of the automated interface at the earliest possible date and to allow the parties to receive notice of these final ITS Plan amendments,[33] the Commission has determined that the amendments should become effective on May 17, 1982.[34]

By the Commission.

George A. Fitzsimmons,

Secretary.

May 6, 1982

[FR Doc. 82-12943 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[33] 5 U.S.C. 553(d)(3).

[33] As well as publishing this release, the Commission will give actual notice of the adoption of the final amendment to the ITS Plan to each of the ITS participants, the NASD and the other parties who commented on the proposed amendment.

[34] The Commission today also is amending its Linkage Order to defer the implementation of the automated interface for two weeks, to May 17, 1982. Securities Exchange Act Release No. 18712 (May 6, 1982).

[Release No. 12422; 812-5120]

Calvert Municipal Management Co. et al.; Filing of Application for Exemption

May 6, 1982.

In the matter of Calvert Municipal Management Company, Government Securities Management Company, Inc., Calvert Tax-Free Reserves, First Variable Rate Fund For Government Income, Inc., 1700 Pennsylvania Avenue, NW., Washington, D.C. 20006, Scott D. Paseltiner, 4314 Westover Place, NW., Washington, D.C. 20016.

Notice is hereby given that Calvert Tax-Free Reserves ("CTFR"), First Variable Rate Fund for Government Income, Inc. ("FVRF") (together referred to as "Funds"), both registered under the Investment Company Act of 1940 ("Act") as diversified, open-end, management investment companies; Calvert Municipal Management Company ("CMMC"), investment adviser to CFTR; Government Securities Management Company, Inc. (GSMC"), investment GSMC; and Scott D. Paseltiner (collectively referred to as "Applicants"), filed an application on February 19, 1982, pursuant to Section 6(c) of the Act, for an order of the Commission declaring that Mr. Paseltiner shall not be deemed an "interested person" of the Funds, CMMC, GSMC, or of any investment company for which either CMMC or GSMC may in the future act as investment adviser by reason of his status as a general partner of Capital Investments, Ltd. ("CIL"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that CTFR, a Massachusetts business trust organized on October 20, 1980, consists of two separate and distinct portfolios, each of which invests primarily in a diversified portfolio of municipal obligations with the objective of obtaining the highest level of interest income exempt from federal income taxes as is consistent with prudent investment management. It is stated further that CMMC, the investment adviser to CTFR, has acted in such capacity since the inception of CTFR in 1980. Applicants represent that CMMC does not serve as investment manager, advisor, or as an underwriter for any other investment company.

Applicants state the FVRF, organized under the laws of the State of Maryland on February 24, 1976, is a money market fund which invests in U.S. Government-backed obligations. It is stated that the investment objective of FVRF is to achieve the highest level of current income consistent with safety and stability of principal by investing only in U.S. Government-backed obligations, repurchase agreements secured by such obligations, and commitments to acquire such obligations. Applicants further state that GSMC, a Delaware corporation, has served as investment adviser for FVRF since its inception in 1976, and that GSMC does not manage, advise, or underwrite any other investment company. It is represented that GSMC and CMMC are under common control.

Applicants state that Mr. Paseltiner is a trustee of CTFR, and a director of FVRF. It is stated that he is also a general partner of CIL, a limited partnership formed in April, 1980, for the purpose of trading its own options account in order to produce profits in a proprietary fashion. Applicants represent that CIL became a registered broker-dealer pursuant to Section 15(b) of the Exchange Act on June 18, 1980, and a member of the Chicago Board Options Exchange ("CBOE") on June 19, 1980. It is stated that CIL remained inactive from June 1980 until February 1981. In February, 1981, it is stated, CIL appointed a nominee to trade its account on the CBOE. Applicants state that Mr. Paseltiner replaced the nominee in April, 1982, and actively trades the CIL account as an approved market-maker floor nominee for CIL. Applicants further state that CIL presently executes and clears transactions solely on behalf of its own account and engages in no public business as a broker or dealer.

Section 2(a)(19) of the Act, in pertinent part, defines an "interested person" of an investment company, and of any investment adviser of or principal underwriter for an investment company to include, *inter alia,* any partner of such other person. Applicants state that Mr. Paseltiner, as a result of his status as a general partner of CIL, would be considered an affiliated person of CIL and thus, an interested person of the Funds, CMMC and GSMC.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

Applicants represent that the fundamental investment policies of FVRF provide that FVRF may not write, or purchase, put or call options. It further represented that the fundamental investment policy of CTFR provides that it may not write put or call options, but that CTFR may purchase municipal securities and at the same time acquire the right to sell the securities back to the seller at an agreed-upon price at any time during a stated period or on a certain date. (Such a right, Applicants state, is generally known as a "put" or a "put option.") Applicants state that the foregoing fundamental investment policies may not be changed without shareholder approval. Applicants thereby indicate that the nature of the portfolio investment made by the Funds could not involve or relate to the activities of CIL, or to Mr. Paseltiner in his capacity as a principal of CIL.

Applicants further state because that investment activities of CIL are restricted to the trading of its own accounts, it is not organized to engage in any business or provide services that would be used by either CTFR or FVRF. Applicants represent that CIL has no direct or indirect business relationship with FVRF, CTFR, CMMC, or GSMC. Moreover, Applicants undertake, as a condition to the granting of the order for which they have applied, that neither CTFR, FVRF, nor any other investment company for which CMMC or GSMC may in the future act as investment adviser, will engage in any transaction with CIL as long as Mr. Paseltiner is an affiliated person of CIL, and a director, or a trustee, of any such investment company.

As additional support for the order requested, Applicants assert that Mr. Paseltiner is a man of recognized integrity, intelligence, judgment, independence and standing who has been a valuable member of the boards of both FVRF and CTFR. It is also stated that Mr. Paseltiner has served as chairman of the audit committee of the board of directors of FVRF, and is currently a member of the audit committee and the nomination committee of the board of directors of FVRF. Applicants state, as well, that security-holders of the Funds, or of any investment companies which either CMMC or GSMC may manage in the future, may be confused if Mr. Paseltiner were to be deemed an interested director of any such companies, since to do so would be indicative of the existence of an actual or potential conflict of interest which, Applicants assert, does not, in fact, exist. Applicants conclude that, on the basis of Mr. Paseltiner's personal stature and the absence of any possibility that either the Funds, CMMC, GSMC, or any investment companies for which CMMC or GSMC may in the future serve as investment adviser, Mr. Paseltiner is in a position to act independently on behalf of any of such investment companies and their shareholders. Applicants state, therefore, that it is in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to declare that Mr. Paseltiner is not an "interested person" of CTFR, FVRF, CMMC, or GSMC, or of any investment companies for which either CMMC or GSMC may in the future act as investment adviser, solely by reason of his status as an affiliated person of CIL.

Notice is further given that any person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the adddress stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by the Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12804 Filed 5–11–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12418; 812–5137]

Daily Cash Government Fund; Filing of an Application for an Order Exempting Applicant

May 5, 1982.

Notice is hereby given that Daily Cash Government Fund ("Applicant"), 3600 South Yosemite Street, Denver, Colorado 80237, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application for an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by Applicant will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC–9786"). All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants states that it registered as an investment company on January 26, 1982 but that its Registration Statement has not yet been declared effective. It is a "money-market" fund organized as an unincorporated business trust under the laws of the State of Massachusetts. Applicant further states that its objective is to seek maximum current income that is consistent with low capital risk and the maintenance of liquidity. Applicants states that in addition to offering its shares to the general public, it is expected that it will be used as an investment vehicle for investors with temporary cash balances in securities accounts at certain brokerage firms.

Applicant states that its portfolio may, as a matter of fundamental investment policy, be invested in obligations issued by the United States Government or its agencies or instrumentalities maturing in twelve months or less from the date of purchase. Applicant may also purchase such obligations that mature in more than twelve months, if they are purchased subject to repurchase agreements calling for delivery in twelve months or less, or having been called for redemption, have a redemption date within twelve months or less.

Applicant states that the maintenance of a constant net asset value per share is expected to be a crucial factor in the purchase and holding of Applicant's

shares. Applicant asserts that by meeting the conditions set forth below and by valuing its shares to the nearest one cent on a share value of one dollar, it can maintain a constant value for its shareholders along with full liquidity and a satisfactory yield. In addition, Applicant states that its adherence to the conditions set forth below will substantially reduce the likelihood of significant variation from a constant share price and the likelihood of any dilution of the assets and returns of incoming or outgoing shareholders.

Rule 22c–1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In IC–9786 the Commission issued an interpretation of Rule 2a–4 expressing its view that it was inconsistent with Rule 2a–4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a–4.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order, upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the issuance of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that shareholders who purchase its shares with the expectation of receiving maximum current income consistent with stability of principal would be unfairly treated should there be a deviation below $1.00 per share, because redeeming shareholders could lose not only all or part of the divided income which they have earned but even part of their principal, particularly if a redemption takes place relatively soon after a purchase.

Applicant represents that, to the extent necessary, the Applicant's Trustees will consider the advisibility of temporarily suspending the payment of dividends, or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a $1.00 price per share, if the net asset value per share declines to a value below $0.997 or rises to a value above $1.003, respectively. Applicant also represents that in order to attempt to assure the stability of its net asset value per share it will adhere to the following conditions:

1. Applicant's Trustees, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from one dollar.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. Applicant will not purchase a portfolio security unless it matures in twelve months or less from the date of purchase, or is subject to a repurchase agreement so maturing or has been called for redemption within twelve months; not will it maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant will limit its portfolio investments, including repurchase agreements and securities called for redemption, to those instruments which are denominated in United States dollars and which the Trustees of Applicant determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12935 Filed 5–11–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12421; 812–5138]

Franklin Money Fund, et al. Filing of an Application for an Order Amending a Prior Order Approving Certain Offers of Exchange and Granting an Exemption

May 6, 1982.

In the matter of Franklin Money Fund, Research Capital Fund, Inc., Research Equity Fund, Inc., Franklin Custodian Fund, Inc., Franklin Option Fund, Inc., Franklin Tax-Free Income Fund, Inc., Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Cash Management Fund, Age High Income Fund, Inc., and Franklin Distributors, Inc., 155 Bovet Road, San Mateo, California 94402.

Notice is hereby given that Franklin Money Fund ("Franklin Money") (formerly named "Franklin Resources Liquid Assets Fund"), Research Capital Fund, Inc. ("Capital"), Research Equity Fund, Inc. ("Equity"), Franklin Custodian Funds, Inc. ("Custodian"), Franklin Option Fund, Inc. ("Option"), Franklin Tax-Free Income Fund, Inc. ("Tax-Free"), Franklin Federal Money Fund ("Federal"), Franklin Tax-Exempt Money Fund ("Tax-Exempt"), Franklin Cash Management Fund ("Cash"), and AGE High Income Fund, Inc. ("AGE"), all registered under the Investment Company Act of 1940 ("Act"), as open-end, diversified, management investment companies (collectively referred to herein as the "Funds"), and their principal underwriter and distributor, Franklin Distributors, Inc. ("Franklin") (collectively with the Funds referred to as the "Applicants"), filed an application on March 18, 1982, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated February 26, 1976 (Investment Company Act Release No. 9177). The previous order of the Commission (1) pursuant to Section 11(a) of the Act permitted the shareholders of Franklin Money to exchange their shares for those of Capital, Equity and Custodian on a basis other than their relative net asset values; and (2) pursuant to Section 6(c) of the Act exempted from the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder the exchange offer. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below

Franklin is the principal underwriter for Capital, Equity, Custodian, and Option, which maintain a continuous public offering of their shares at their respective net asset values, with the addition of a sales charge based upon a percentage of the public offering price, as follows:

Franklin Money and Federal are money market funds whose shares are offered on a continuous basis without any sales charge. Applicants state that Tax-Exempt and Cash are also money market funds, the shares of which are intended to be offered to the public at net asset value with no sales charge, upon effectiveness of their pending registration statements under the Securities Act of 1933.

Applicants state that at the present time shareholders of Capital, Equity, Option, Tax-Free, AGE and any of the series of Custodian may exchange their shares for shares of any of the other such funds on the basis of their relative net asset value per share without any sales load. Applicants further state that shareholders of Frankling Money may exchange their shares for shares of Capital, Equity or Custodian pursuant to the order of the Commission dated February 26, 1976, on the basis of their relative net asset values at the time of the exchange plus (in the case of shares of Franklin Money acquired other than pursuant to a previous exchange from shares of Capital, Equity or Custodian) the applicable sales charge described in the current prospectus of the exchanging fund. Option, Tax-Free and AGE propose to offer to shareholders of Franklin Money, Federal, Tax-Exempt or Cash the right to exchange their shares for shares of Option, Tax-Free and AGE on the basis of relative net asset value at the time of the exchange plus (in the case of shares of Franklin Money, Federal, Tax-Exempt or Cash acquired other than pursuant to a previous exchange from shares of Option, Tax-Free or AGE) the applicable sales charge described in the prospectus of the exchanging fund. In addition, Applicants propose that the offer of exchange approved by Commission order, dated February 26, 1976, between Capital, Equity and Custodian with Franklin Money be extended on the same basis to include Federal, Tax-Exempt and Cash.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to an approved by the Commission.

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus.

Applicants state that the Funds have differing investment objectives, and that the proposed exchange offers will permit a shareholder of any of the Funds who changes his investment objective to change his investment to different Fund. Applicants further state that shareholders would be informed of their right to exchange shares of one Fund for shares of any of the other Funds.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors an the puposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12536 Filed 5–11–82; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 12417; 812–5121]

HIG Fund, Inc.; Filing of Application for an order Exempting Applicant From Provisions

May 4, 1982.

Notice is hereby given, that HIG Fund, Inc. ("Applicant"), Hartford Plaza,

Hartford, CN 06115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 25, 1982, and an amendment thereto on March 22, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 under the Act, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of the State of Maryland on February 3, 1982. It filed a registration statement under the Securities Act of 1933 and it will be engaged in the continuous public offering of its shares at a constant public offering price at the net asset value of $1.00 per share. Applicant's investment objective is to achieve a high level of current income consistent with the preservation of capital and maintenance of liquidity by investing in a portfolio of money market instruments consisting of obligations of the United States Government, its agencies or instrumentalities, bank certificates of deposit, bankers' acceptances, corporate commercial paper, finance company commercial paper, repurchase agreements and bank fixed-term deposits, and corporate bonds, notes and other debt instruments.

Applicant seeks an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant's assets to be valued according to the amortized cost valuation method.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors of the investment company. Rule 22c–1 under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant agrees to adhere to the following conditions to any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, the board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stablize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using valuation procedures consistent with Section 2(a)(41) of the Act and Rule 2a–4 thereunder from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the directors will promptly consider what action, if any, should be initiated.

(c) Where the directors believe the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: Redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will include in the

[1] To fulfill this condition, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, among others, (i) quotations or estimates of market value reflecting current market conditions, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less, as soon as reasonably practicable.

minutes of its board of directors' meeting and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

The application represents that Applicant's board of directors has determined that in light of the characteristics of the Applicant as described in the application and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant.

Applicant asserts that the exemption requested is appropriate in the public interest to give shareholders the conveniences and advantages of the stable purchase and redemption price of $1.00 per share and to bring the Applicant's valuation practices into alignment with the valuation practices of the major money market funds. Applicant further asserts that the requested exemption is consistent with investor protection and the purposes intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than May 31, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12937 Filed 5–11–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12416; 812–5076]

IDS Government Securities Money Funds, Inc.; Filing of Application for Order Exempting Applicant From Provisions

May 4, 1982.

Notice is hereby given that IDS Government Securities Money Fund, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55402, a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 8, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio securities on an amortized cost basis. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment policy is to provide maximum current income consistent with safety of capital and liquidity. Applicant states that its portfolio will be invested in short-term debt obligations consisting of securities issued or guaranteed as to principal by the Government of the United States or by agencies or instrumentalities thereof, in repurchase agreements secured by such securities, and in commitments to acquire such securities. Applicant states that securities issued and guaranteed by the Government include a variety of U.S. Treasury bills, notes and bonds which are direct obligations of the U.S. Government and vary only in their maturities interest rates and times of issuance. Applicant asserts that securities issued or guaranteed by U.S agencies or instrumentalities include, but are not limited to, debt obligations of Federal Home Loan Banks, Federal Farm Credit Banks, Federal National Mortgage Association, and banks and savings and loan associations where the principal amount of the obligation is fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Applicant submits that some of the securities that it will purchase are backed by the full faith and credit of the U.S. Government and that other securities are backed by the credit of the instrumentality or by the right of the issuer to borrow from the U.S. Treasury. Applicant states that while its assets will consist of securities with one year or less maturity and the dollar-weighted average maturity will be 120 days or less, the underlying security in a repurchase agreement may have a maturity of more than one year. Applicant maintains that these underlying securities will always be issued or guaranteed by the U.S. Government, its agencies or instrumentalities.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevent, that the "current net asset value" of a redeemable security issued by a registered investment company used in

computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculation made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. The Commission has expressed its view that, among other things, (1) Rule 2a–4 under the Act requires portfolio instruments of "money market" funds which have more than 60 days remaining to maturity be valued with reference to market factors, and (2) it would be inconsistent with the provisions of Rule 2a–4 for a "money-market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because it will enable Applicant to maintain, under ordinary circumstances, the constant net asset value per share as well as the steady flow of investment income which investors want in a money market fund investment. The manager of Applicant believes, based on its experience in managing portfolios of money markets securities, that with respect to money market securities maturing in 120 or less there is normally a negligible discrepancy between market value and the amortized cost of such securties and thus Applicant believes that the valuation of its portfolio securities on the amortized cost basis will enable it to more effectively maintain its $1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures where its daily dividend would be adjusted by all realized and unrealized gains and losses. In addition, investors would have the advantage of being able to determine the value of their investment simply by knowing the number of shares they own. Applicant agrees, in order to attempt to assure the stability of its price per share, that the following conditions may be imposed in the order it seeks:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purposes of distribution, redemption and repurchase at $1.00 per share.

(2) Included with the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amorized cost price per share, and maintenance of records of such review. Applicant states that to fulfull this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: Redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; suspending dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share: *Provided, however,* That Applicant will not (a) purchase any instrument with a remaining maturity of greater than twelve months, or (b) maintain a dollar-weighted average portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Director's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Directors determines present minimal credit risks and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2 (c) was taken during the preceding fiscal

quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

The application states that Applicant's Directors have determined in good faith that in light of the characteristics of Applicant as described in the application and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant and reflects fair value of such securities. It is the Directors' understanding that permission to calculate per share net asset value to the nearest one cent on a share value of $1.00 in the event of realized gains or losses is implied in the foregoing conditions.

Notice is further given that any interested person may, not later than May 29, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of cource following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12936 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18690A; File No. SR-MSE-82-2]

Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc.

May 5, 1982.

On April 28, 1982, Securities Exchange Act Release No. 18690 was issued providing notice and announcing immediate effectiveness of a proposed rule change submitted by the Midwest Stock Exchange, Inc. The Release misidentified the rule change as File No. SR–MSE–82–4; the correct file number is SR–MSE–82–2.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12941 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18714; SR-NASD-82-5]

National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

May 6, 1982.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on May 4, 1982, copies of a proposed temporary rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder.[1]

The proposed rule change seeks Commission approval of certain rules of practice and procedure governing trading through the Intermarket Trading System ("ITS") and Computer Assisted Execution System ("CAES") interface. These rules are necessary to provide for the NASD's participation in the ITS pursuant to the Commission's order requiring an automated interface between the ITS and CAES.[2] The rules also will allow the NASD to meet certain requirements imposed by the plan governing the operation of the ITS, as that plan recently has been amended by the Commission ("ITS Plan").[3]

The proposed rules include requirements for registration of ITS/CAES market makers, procedures for handling the withdrawal, suspension or revocation of an ITS/CAES market maker's registration, operating procedures for execution of transactions within the ITS/CAES System, procedures to obtain interest from other market centers in ITS/CAES securities prior to the opening of the System, procedures for responding to inquiries received from other market centers, procedures for the handling of "trade-throughs" (executing an order at a time when another ITS market center or CAES market maker is displaying a superior quotation), requirements regarding the execution of block transactions in ITS/CAES securities, requirements which prohibit the entering of a quotation for an ITS/CAES security which locks or crosses the market of another ITS/CAES market maker of ITS participant exchange and requirements for the clearance and settlement of transactions identified by the ITS/CAES System as having been executed by a particular ITS/CAES market maker.

The NASD notes that these rules, in almost all respects, are substantively identical to current rules adopted by the ITS exchange participants. The NASD also notes, however, that its procedures concerning trade-throughs incorporate a number of differences from that of the exchange rules on this matter.[4] Specifically, the exchange trade-through rules require that where a timely complaint is received regarding a trade-through effected by two members dealing as principal, that transaction must be cancelled, while the NASD's

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[1] Pursuant to Article VII, Section 1 of the NASD's by-laws, the NASD's Board of Governors, without the vote of its membership, has adopted these rules which become effective, upon Commission approval, for a period of up to six months. The NASD indicates that during the pendency of these rules, proposals for permanent rules will be submitted to its membership for comment and vote, and if approved, these rules will be filed with the Commission for approval.

[2] Securities Exchange Act Release No. 17444 (April 21, 1981), 46 FR 23650; Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10662; Securities Exchange Act Release No. 18712 (May 6, 1982).

[3] Securities Exchange Act Release No. 18713 (May 6, 1982).

[4] The NASD also notes its "deep concern" over the issue of whether the quotations of all ITS/CAES market makers should be protected when a block transaction is executed in an ITS exchange market at a price inferior to such quotation. (The current ITS participant's trade-through rules, and block applications of those rules, only would protect the inside market in CAES.) The NASD states that it is filing this proposal at the current time only because of the urgency posed by the impending implementation of the ITS/CAES interface, and requests that the Commission and the ITS participants address this issue during the pilot phase of the interface. The NASD also expressly reserves its right to argue in the future that this limitation imposes burdens on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission is sympathetic to the NASD's concerns and emphasizes its longstanding position that the ITS participants, now including the NASD, resolve the larger issue of protection of away-from-the-market orders during the pilot as soon as possible, thus addressing not only the NASD's concerns, but the wider concerns in this area.

rule would permit two ITS/CAES market makers dealing as principal the additional options of adjusting the trade to a price which would not constitute a trade-through or sending a commitment for the full size of the bid or offer (as the case may be) traded through. The NASD states that these differences are necessitated by the fact that the proposed rule imposes corrective obligations on the ITS/CAES market maker irrespective of whether he initiated the transaction. Moreover, the automatic execution feature of CAES can cause trade-throughs in situations where an ITS/CAES market maker's quotation is hit without that market maker having any opportunity to refuse the trade because another ITS market center is displaying a superior quotation. The NASD believes that because the CAES market maker is responsible for correcting the trade-through and since the trade-through was not proximately caused by him, the various options provide a fair mechanism in which the CAES market maker may correct the trade.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change on or before June 2, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-82-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities association and in particular, the requirements of Sections 11A and 15A and the rules and regulations thereunder. Specifically, the Commission finds that the additional trade-through remedies proposed by the NASD for principal transactions are appropriate for CAES market makers because the automatic execution feature of CAES is capable of creating trade-throughs which are not the fault of the CAES market maker but still are attributable to his CAES quotations. The Commission also believes that the NASD's rules meet the requirements imposed by the ITS Plan.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that these rules govern the operation of trading through the ITS/CAES interface which becomes operational on May 17, 1982.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12942 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12420; 812-5132]

R. C. Brown Money Market Fund; Filing of Application for an Order of Commission Exempting Applicant From Provisions

May 5, 1982.

Notice is hereby given that R. C. Brown Money Market Fund ("Applicant"), 601 Montgomery Street, San Francisco, California 94111, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 10, 1982, and an amendment thereto on April 5, 1982 requesting an order of the Commission pursuant to Section 6(c) of the Act to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a corporation organized under the laws of the State of California, and that on March 3, 1982, it filed with the Commission a Notification of Registration under the Act on Form N-8A and a Form N-1 Registration Statement under the Act and the Securities Act of 1933. Applicant states that its Registration Statement under the Securities Act has not yet been declared effective.

Applicant further states that as a "money market" fund, its investment objectives are to seek current income while preserving capital and liquidity by investing in a diversified portfolio of short-term money market instruments. It is stated that the money market instruments in which Applicant invests will consist of United States Government securities, government agency securities, bank money instruments (principally certificates of deposit, time deposits and bankers' acceptances), corporate debt securities, including commercial paper and variable amount master demand notes, and repurchase and reverse repurchase agreements. Applicant states that it will invest only in instruments having remaining maturities of one year or less, and that the dollar-weighted average maturity of its portfolio will be 120 days or less.

Applicant further represents that its investment policies authorize it to invest in variable rate certificates of deposit. With respect to variable rate certificates of deposit maturing in 180 days or less from the time of purchase with interest rates adjusted on a monthly cycle, Applicant states that it may use the period remaining until the next rate adjustment date for purposes of determining the average weighted maturity of its portfolio. Applicant agrees that until such time as the Commission has determined otherwise, Applicant will use the remaining period to maturity of all other variable rate instruments for purposes of determining the average weighted maturity of its portfolio.

Applicant states that its investment policies also provide authority to invest in time deposits and repurchase agreements maturing in more than seven days. Applicant represents that, as a condition to the issuance of the order requested herein, Applicant will not invest more than 10 percent of its total assets (taken at market value) in illiquid securities, including securities for which no readily available market exists, such as repurchase agreements maturing in more than seven days and time deposits. In addition, Applicant represents that to the extent that Applicant enters into reverse repurchase agreements and other arrangements described in Investment Company Act Release No. 10666 (April 18, 1979), it will do so in compliance with the conditions

specified therein and with any subsequent interpretations of the Commission.

Applicant further states that it will invest only in United States dollar-denominated debt obligations issued or guaranteed by the federal government, federal government agencies, or certain banks, savings and loan associations, and corporations. Bank money instruments must be issued by commercial and savings banks and savings and loan associations with total assets of at least $1 billion, based upon latest published reports, except that Applicant may invest up to 10 percent of the value of its total assets (taken at market value at the time of such investment) in obligations of banks and savings and loan associations with assets of less than one billion dollars if the principal amount of such security is fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. It is stated that the savings banks and savings and loan associations must be organized and operating in the United States. Applicant states that the obligations of commercial banks may be issued by United States banks, foreign branches of United States banks ("Eurodollar" obligations) or United States branches of foreign banks ("Yankeedollar" obligations). Applicant's commercial paper investments at the time of purchase, it is stated, will be rated "A-1" by Standard and Poor's Corporation or "Prime-1" by Moody's Investors Service, Inc., or, if not rated, will be of comparable quality as determined by Applicant's board of directors ("Board of Directors").

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that it seeks the exemptive order requested herein to use the amortized cost valuation method because it believes that many of its potential investors will require an investment vehicle that offers a constant net asset value per share and a relatively smooth stream of investment income, while providing a yield which is otherwise not available with a portfolio having an average maturity of a shorter duration. Applicant asserts that many such investors will seek other investment alternatives, including other money market funds using the amortized cost method, if such investors cannot be reasonably assured that shares of Applicant will be priced at a constant net asset value per share. Applicant further asserts that the use of the amortized cost valuation method, in conjunction with its policies of investing only in money market securities maturing in one year or less from the date of purchase and maintaining a dollar-weighted average portfolio maturity of 120 days or less, will greatly facilitate the maintenance by Applicant of a constant net asset value per share.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving management of Applicant's portfolio to Applicant's investment adviser, the Board of Directors undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes that the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemptions of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; selling portfolio instruments prior to maturity; withholding dividends; or utilizing a net

[1] To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any security with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the act.

5. Applicant will limit its portfolio investments, including repurchase and reverse repurchase agreements, to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporanously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–12939 Filed 5–11–82; 8:45 am]

BILLING CODE 8010–01–M

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12419; 812–5115]

Sunmont West Fund, Inc.; Filing of Application for an Order Exempting Applicant From Provisions

May 5, 1982.

Notice is hereby given, that Sunmont West Fund, Inc. ("Applicant"), Suite 102, 650 S. Cherry Street, Denver, Colorado 80222, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 16, 1982, and an amendment thereto on April 2, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the Applicant to value its assets using the amortized cost-method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized under the laws of the State of Maryland in 1982. It is a series investment company which intends to offer two classes of shares, each class representing interests in one of two separate investment portfolios—the Discretionary Portfolio and the Non-discretionary Portfolio. The investment objective of each Portfolio is to seek current income and stability of principal by investing in high quality "money-market" instruments, including obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; certificates of deposit; bankers' acceptances; and commercial paper. Securities held in each Portfolio may be subject to repurchase agreements. Any such agreements entered into with a broker/dealer will be fully collateralized. Applicant states that it will not seek profits through short-term trading and will usually hold its portfolio securities to maturity.

Applicant states that shares of each Portfolio will be sold exclusively to customer accounts of The First National Bank of Denver, Denver, Colorado ("First of Denver"), and its affiliated and correspondent banks. These sales will take place pursuant to a "sweeping" arrangement authorized by participating bank customers, under which each such customer's bank account is "swept" automatically, not less frequently than weekly, and amounts in excess of a minimum balance agreed to by the bank and the customer are invested by Shearson/American Express, which is responsible for sales of the Applicant's shares, in shares of one or both of the Applicant's Portfolios. Such customer accounts may include the accounts of trust department clients and other kinds of accounts maintained by individuals, corporations, partnerships and businesses at First of Denver or one of its affiliated or correspondent banks. Further, shares in the Discretionary Portfolio will be sold only to customer accounts for which First of Denver or one of its affilated or correspondent banks exercises substantial investment discretion; sales of shares in the Non-Discretionary Portfolio will be limited to other types of customer accounts. Applicant represents that it does not intend to purchase or otherwise acquire certificates of deposit or other securities of First of Denver or any of its affiliates. Applicant has obtained an opinion of counsel to First of Denver stating that the proposed activities of First of Denver will not violate any federal banking laws or regulations, and of counsel to Provident Institutional Management Corporation and Provident National Bank stating that the respective advisory and custodial services to be performed by these

companies will not violate any federal banking laws or regulations.

Applicant is requesting an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the assets in each of Applicant's Portfolios to be valued according to the amortized cost method. Under the amortized cost method of valuation, portfolio securities are valued at cost on the date of purchase and the difference between cost and the face amount of each instrument is amoritzed at a constant rate over the maturity of the instrument. For example, if an instrument is acquired at a discount from its face value, the discount would be amortized to maturity, resulting in the realization of income in a steady flow of equal increments. By valuing the securities in each of Applicant's Portfolios at amortized cost and declaring dividends daily, the net asset value per share of each Portfolio is expected to remain constant in the absence of unusual market conditions.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio inustruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that it believes that its shareholders would be unfairly treated if Applicant were forced to price its portfolio instruments in a manner which would produce artificial price or yield volatility for instruments which Applicant expects to hold until maturity. Applicant believes potential shareholders are not concerned with the theoretical differences which might occur between the yield achieved through market pricing and the yield computed on the basis of amortized cost as described above. On the other hand, Applicant states that it believes that such potential shareholders are vitally concerned that (1) the net asset value of their shares remains stable; and (2) the daily net income declared on their investments be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis.

By maintaining Portfolios of high quality money-market instruments of short maturities, Applicant believes that it will be possible to provide the required stability to individuals and institutional investors. Applicant has determined that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of Applicant's investors by reducing the risk of significant volatility in the value of portfolio instruments and at the same time producing a yield commensurate with those available in the market in which each of Applicant's Portfolios in investing. In addition, Applicant represents that prior to adopting the amortized cost method of valuation, Applicant's board of directors will determine in good faith that in light of characteristics described in the application, including the conditions described below, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include:

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators or value which may include, *inter alia*, (1) quotatons or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

Redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-12960 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1981 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds; Merchants Bonding Company (Mutual); Change of Name

Merchants Mutual Bonding Company, an Iowa corporation, has formally changed its name to Merchants Bonding Company (Mutual), effective June 1, 1981. The company was last listed as an acceptable surety on Federal bonds at 46 FR 33970, June 30, 1981.

A certificate of authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Merchants Bonding Company (Mutual), Des Moines, Iowa. This new certificate replaces the certificate of authority issued to the company under its former name, Merchants Mutual Bonding Company. The underwriting limitation of $244,00 established for the company as of June 30, 1981 remains unchanged.

Certificates of authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1981 Revision, at page 33970 to reflect this change. Copies of the circular, when issued, may be obtained from Audit Staff, Bureau of government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: May 6, 1982.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 82-12976 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

[Suppl. to Dept. Circ.—Public Debt Series—No. 11-82]

Series M–1985; Interest Rate

May 5, 1982.

The Secretary announced on May 4, 1982, that the interest rate on the notes designated Series M–1985, described in Department Circular—Public Debt Series—No. 11–82 dated April 29, 1982, will be 14⅛ percent. Interest on the

notes will be payable at the rate of 14⅛ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12837 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-40-M

[Supp. to Dept. Circ.—Public Debt Series—No. 12-82]

Series B-1992; Interest Rate

May 6, 1982.

The Secretary announced on May 5, 1982, that the interest rate on the notes designated Series B-1992, described in Department Circular—Public Debt Series—No. 12-82 dated April 29, 1982, will be 13¾ percent. Interest on the notes will be payable at the rate of 13¾ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 82-12836 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 92
Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19266, Tuesday, May 4, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 11, 1982.

CHANGES IN THE MEETING: Delete Portfolio Stock Indexes application by the Chicago Board of Trade

[S–698–82 Filed 5–10–82; 9:58 am]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3 p.m., Thursday, May 13, 1982.

PLACE: 2033 K Street, NW., Washington, D.C. fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation as a contract market in Stock Market Index Portfolio Futures.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–699–82 Filed 5–10–82; 9:58 am]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., May 18, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed Contact Market Designation of Gulf Coast Heating Oil/Chicago Board of Trade

Minimum Financial Rules/Final Rules

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–700–82 Filed 5–10–82; 2:40 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., May 18, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Two Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–707–82 Filed 5–10–82; 2:40 pm]

BILLING CODE 6351–01–M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITIATION OF PREVIOUS ANNOUNCEMENT: S–675–82.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: (9:30 a.m. (eastern time), Tuesday, May 11, 1982.

CHANGE IN THE MEETING: The meeting originally scheduled for May 11, 1982 has been cancelled. The next Commission Meeting will be held Tuesday, May 18, 1982 at 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634–6748.

This Notice Issued May 7, 1982.

[S–704–82 Filed 5–10–82; 2:27 pm]

BILLING CODE 6570–06–M

6

FEDERAL COMMUNICATIONS COMMISSION

Deletion and Change in Time for Oral Argument Scheduled for May 12, 1982.

Oral Argument in the case of City of New York Municipal Broadcasting System (WNYC), Docket Nos. 11227, 17588 and 19403 has been postponed at the request of the Office of General Counsel and the previously scheduled time for Oral Argument in the case of Radio Station WABZ, Inc. and Victor Broadcasting, Inc., Docket Nos. 78–63 and 78–64 has been changed to 9:30 a.m., Wednesday, May 12, 1982, in Room 856, at 1919 M Street, N.W., Washington, D.C.

Issued: May 6, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–702–82 Filed 5–10–82; 12:07 pm]

BILLING CODE 6712–01–M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 17, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Liberty Bank, a proposed new bank, to be located at 4482 West Peoria Avenue, Glendale, Arizona.

Application for consent to merge and establish a branch:

Sun Bank of Volusia County, Daytona Beach, Florida, for consent to merge, under its charter and title, with Coronado Beach Bank, New Smyrna Beach, Florida, and to establish the sole office of Coronado Beach Bank as a branch of the resultant bank.

Application for consent to merge, establish twelve branches, and interchange main office designation:

Marine Bank, Meadville, Pennsylvania, for consent to merge, under its charter and title, with The Warren National Bank, Warren, Pennsylvania, to establish the twelve offices of The Warren National Bank as branches of the resultant bank, and to designate the main office of The Warren National Bank as the main office of the resultant bank.

Application for consent to consolidate and establish three branches:

Gorton Savings Bank, Mystic, Connecticut, for consent to consolidate, under its charter and with the title "The Chelsea Groton Savings Bank," with The Chelsea Savings Bank, Norwich, Connecticut, and to establish the three offices of The Chelsea Savings Bank as branches of the resultant bank.

Request for modification of a condition imposed in granting Federal deposit insurance:

Bank of Stamford (In Organization), Stamford, Connecticut.

Requests for exemptions pursuant to section 348.4(b)(3) of the Corporation's rules and regulations entitled "Management Official Interlocks":

Peterson Bank, Chicago, Illinois.
First American Bank of Virginia, McLean, Virginia.

Request for exemption pursuant to section 348.6(a)(2) of the Corporation's rules and regulations entitled "Management Official Interlocks":

Clearwater Beach Bank, Clearwater, Florida.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,196–L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee
Case No. 45, 198–L—American National Bank, Houston, Texas
Case No. 45,202–L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Recommendation with respect to payment for level services rendered and expenses incurred in connection with receivership and liquidation activities:

Sidley & Austin, Chicago, Illinois, in connection with the liquidation of South Side Bank, Chicago, Illinois.

Memorandum and Resolution re: Proposed amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would (1) delegate to the Corporation's General Counsel the authority to act on appeals from initial denials or partial denials of requests for records pursuant to the Freedom of Information Act; (2) delegate to the Corporation's Executive Secretary the authority to act on requests for a reduction or waiver of fees chargeable for making records available under the Freedom of Information Act; and (3) revise the schedule of fees for making records available.

Memorandum and Resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would permit banks to disclosed copies of FDIC examination reports directly to their parent holding companies and majority shareholders without prior FDIC approval if certain conditions are met.

Memorandum and Resolution re: Final amendments to Part 348 of the Corporation's rules and regulations, entitled "Management Official Interlocks," which would clarify the applicability of one of the exceptions to the regulation's general prohibitions when one of the interlocked depository institutions involved is not supervised by a Federal regulator.

Reports of committees and officers:

Minutes of the actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Director, Division of Accounting and Corporate Services: Investment Management Report, as of March 31, 1982.
Reports of the Director, Office of Corporate Audits:
Audit Report re: 960 Acre Almond Grove, United States National Bank Liquidation, dated January 12, 1982.
Audit Report re: Franklin National Bank, New York, New York—AP–231, dated January 22, 1982.

Discussion Agenda: Memorandum and Resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, and Notices of Acquisition of Control," and other provisions of the Corporation's rules and regulations, which would (1) amend the procedures relating to applications by insured nonmember banks for the Corporation's consent to establish branches (including remote service facilities), to relocate existing branches or facilities, and to establish and operate foreign branches; (2) expand the authority already delegated to the Corporation's various Regional Directors to approve requests for deviations from conditions previously imposed by the Corporation in connection with various bank applications; (3) amend the recent delegations of authority to the Division of Bank Supervision to approve applications for Federal deposit insurance; and (4) eliminate certain procedural requirements relating to bank applications.

Memorandum and Resolution re: Proposed new Part 350 of the Corporation's rules and regulations, to be entitled "Special Reporting Basis for Insured Savings Banks," which would improve the quality of financial data reported to the FDIC by insured savings banks by (1) requiring all insured savings banks to report all financial assets and liabilities acquired or funded on or after January 1, 1983 on a fair value basis for purposes of preparing their Reports of Condition and Income that are filed with the FDIC, and (2) permitting insured savings banks to restate all financial assets and liabilities and bank premises existing on January 1, 1983, to their fair value.

Memorandum re: Proposed delegation of authority to the Director of the Division of Bank Supervision to approve applications for the Corporation's consent to merge, consolidate, purchase assets and assume deposit liabilities, or similar type applications if certain criteria are met.

Memorandum re: Proposal to co-sponsor a series of meetings on banking regulatory reform.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 10, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–710–82 Filed 5–10–82; 3:48 p.m.]

BILLING CODE 6714–01–M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, May 17, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8),

(c)(9)(A)(ii), (c)(9)(B) and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish two branches:

Coastal Savings Bank, Portland, Maine, for consent to merge, under its charter and title, with Deering Savings and Loan Association, Portland, Maine, and to establish the two offices of Deering Savings and Loan Association as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,197—Central Savings Bank, New York, New York
Case No. 45,205—The Greenwich Savings Bank, New York, New York

Petition of the Investment Company Institute seeking certain relief in connection with the creation and operation by The Boston Five Cents Savings Bank, Boston, Massachusetts, of The Boston Five Mutual Fund, The Boston Five Money Market Fund, The Boston Five Fund Distributor, Inc., and The Boston Five Fund Adviser, Inc.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 10, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–711–82 Filed 5–10–82; 3:47 pm]

BILLING CODE 6714–01–M

9

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19507, May 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. May 7, 1982.

CHANGE IN THE MEETING: The closed meeting has been cancelled.

Kenneth F. Plumb,

Secretary.

[S–700–82 Filed 5–10–82; 9:56 am]

BILLING CODE 6717–01–M

10

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19844, Friday, May 7, 1982.

PLACE: Board room, Sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Wednesday, May 12, 1982 has been cancelled.

[No. 32, May 10, 1982]

[S–705–82 Filed 5–10–82; 2:27 pm]

BILLING CODE 6720–01–M

11

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 4, 1982.

TIME AND DATE: 10 a.m., Tuesday, May 11, 1982.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Medicine Bow Coal Company, Docket Nos. WEST 81–163 and WEST 81–164. (Issues include whether the judge properly refused to dismiss two cases where the Secretary filed his proposals for penalty more than 45 days after receipt of the notice of contest.)
2. Puerto Rican Cement Company, Docket No. SE 81–25–M. (Issues include whether the judge properly determined that the operator violated 30 CFR 56.4–27, which deals with the provision of fire extinguishers for self-propelled mobile equipment.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–708–82 Filed 5–10–82; 3:10 pm]

BILLING CODE 6735–01–M

12

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS

TIME AND DATE: 10 a.m., Monday, May 17, 1982.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Board's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 7,1982.

James McAfee,

Associate Secretary of the Board.

[S–697–82 Filed 5–7–82; 4:14 pm]

BILLING CODE 6210–01–M

13

NATIONAL COMMISSION ON LIBRARIES AND INFORMATON SCIENCE

TIME: 9 a.m. to 5 p.m.

DATE: Thursday, June 3, and Friday, June 4, 1982.

PLACE: Capitol Hill Hotel, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

(Thursday)

Opening Comments, Chairman
Introduction of Commissioners-Designate
Approval of Minutes
Update on Funding for 1983 and Constitutional Hearing, April 27, 1982
Public/Private Sector Task Force Report

LSCA Oversight hearings—Report and Next Steps
Legislative/Public Awareness Committee Report
Progress Reports on:
—Task Force on Community Information and Referral Services
—Task Force on Library and Information Services to Cultural Minorities
(Friday)
Task Force on the Role of the Special Library in Nationwide Networks and Cooperative Programs
Budget/Finance Committee Report on Fiscal Year 1982 to Date
Discussion of Issue Papers
Planning /Futures Committee Discussion
Executive Director's Report
Commissioner's Comments
Old Business
New Business

CONTACT PERSON FOR MORE INFORMATION: Toni Carbo Bearman, Executive Director, NCLIS (202) 653-6252.

May 6, 1982.

[S-700-82 Filed 5-10-82; 3:13 pm]

BILLING CODE 7527-01-M

14

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

May 20, 1982, 9 a.m., Closed Session
May 21, 1982, 8:30 a.m., Closed Session
May 21, 1982, 9:30 a.m., Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS: *Friday, May 21, 9:30 a.m:*

1. Minutes—Open Session—March 1982 Meeting.
2. Chairman's Items.
3. Director's Report.
4. Grants, Contracts, and Programs.
5. Annual Business.
a. Annual Report of Executive Committee.
b. Report from Board Chairman.
c. Meeting Schedule for Calendar Year 1983.
d. Annual Consideration of National Science Board Committees.
e. Biennial Review of Delegations of Authority to Director and/or Executive Committee.
6. Principles Related to NSF-Supported Research Instrumentation and Facilities.
7. Board Representation at Site Visits, Annual Reviews, and Advisory Meetings.
8. Reports on Meetings of Board Committees.
9. Other Business.
10. Next Meetings.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION: *Thursday, May 20, 9:00 a.m.:*

A. Minutes—Closed Session—March 1982 Meeting.
B. Annual Elections.
1. Chairman and Vice Chairman (for two-year terms expiring May 1984).
2. Two Members of Executive Committee (for two-year terms expiring May 1984.)
C. NSB and NSF Staff Nominees.

Friday, May 21, 8:30 a.m.:

D. Grants, Contracts, and Programs.

CONTACT PERSON FOR MORE INFORMATION: Ms. Margaret L. Windus, Executive Officer, NSB, 202/357-9582.

[S-701-82 Filed 5-10-82; 12:00 pm]

BILLING CODE 7505-01-M

15

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 10 a.m., May 22, 1982.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridges Road, Bethesda, Maryland 20814.

STATUS: Open.

MATTERS TO BE CONSIDERED:

10:00: Meeting—Board of Regents
(1) Approval of Minutes, 12 March 1982; (2) Faculty Appointments; (3) Report—Admissions; (4) Report—Associate Dean for Operations—(a) Status of Funding, (b) Program Objective Memoradum (POM), and (c) Facilities Construction; (5) Report—Chairman, Board of Regents; (6) Report—President, USUHS—(a) Faculty Compensation, (b) Appointments, Promotions and Tensure Policy, (c) Changes in General Procedures and Delegations, (d) Continuing Medical Education Program, (e) Graduate Medical Education Program, and (f) USUHS Awards
New Business
Scheduled Meetings: October 14, 1982

CONTACT PERSON FOR MORE INFORMATION: Frank Reynolds, Executive Secretary of the Board 202/295-3025.

M. S. Healy,
OSD Federal Register Liasion Officer, Washington Headquarters Services, Department of Defense.

May 7, 1982.

[S-703-82 Filed 5-10-82; 12:07 pm]

BILLING CODE 3810-01-M

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federal register

Wednesday
May 12, 1982

Part II

Environmental Protection Agency

Grants for Construction of Treatment Works; Interim and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2073-6a]

Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: This document changes the regulation governing grants for construction of treatment works. The regulation includes only those items called for by the Clean Water Act including the Municipal Wastewater Treatment Construction Grant Amendments of 1981 and the minimum requirements necessary for effective program management. The changes clarify and simplify the regulation and thereby reduce project costs.

DATES: This interim final regulation is effective May 12, 1982. See also the section in the preamble on "Effective Date." Comments on the interim final regulation must be received on or before June 11, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section [A130], Attention: Docket No. G-81-5, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the comments received on this interim final rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., between 8 a.m. and 4:30 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Jane Magee, Office of Water Program Operations (WH-546), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-8253.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation, EPA has undertaken a comprehensive review of the construction grants regulation. Based on that review, revisions to the regulation were proposed in the November 6, 1981 **Federal Register**. The proposal reflected extensive experience with the program and comments received over the years from a broad spectrum of the program's constituents. In developing this regulation, the Agency consulted with a wide variety of organizations representing various participants in the program.

On December 29, 1981, the Municipal Wastewater Treatment Construction Grant Amendments of 1981 Pub. L. 97-117 (1981 Amendments) were signed into law, making several basic modifications to the grants program. This interim final regulation, which is built on the Administration's commitment to reduce regulatory burdens to a minimum while maintaining the program's environmental and financial integrity, incorporates the November 6 proposal (revised in response to comments), and provisions to implement the 1981 amendments.

This regulation includes items required by statute—free of detailed procedures to be followed in carrying out the process—and those additional minimum requirements that EPA considers necessary for effective program management.

In conjunction with this effort to reduce regulatory requirements to a minimum, EPA will issue appropriate guidance documents. These guidance documents will not be regulations in disguise. The regulatory requirements are repeated in the guidance solely for continuity and clarity. If there appears to be a difference between the regulations and the guidance, the regulations govern. The guidance materials will contain information which is helpful to States and grantees in managing and carrying out the construction grants program. Use of the information in the guidance documents is to be discretionary. That is, other procedures adopted by the State or grantee, as appropriate, which are sufficient to meet the requirements of this regulation will be acceptable.

The first major guidance document, *Facilities Planning 81 (FP 81)*, was published last year. Its successor, *Construction Grants 82* (CG 82), will reflect this new emphasis on increased flexibility and will include guidance for planning, design, and building. Other guidance publications in the areas of innovative and alternative technology, operation and maintenance, financial planning and development of user charge systems are being developed. By linking these two efforts—reducing mandatory requirements and providing guidance—it is hoped that the greatest possible flexibility is provided to States and local governments to effectively carry out the construction grants program.

Although this subpart is the primary regulation governing the construction grants program, it is not the only one. Others that apply include EPA's procurement regulation (Part 33), the general grant regulation (Part 30), NEPA regulation (Part 6), public participation regulation (Part 25) and pretreatment regulation (Part 403). Rather than repeat verbatim selected portions of these Parts in the construction grant regulation, this regulation will rely on the others and, where appropriate, those requirements are indicated by a simple cross reference. It is felt that this is a simpler approach and, more helpful to the States and grantees. Requirements of these other parts of regulation still apply to the construction grants program.

Following is a table showing the relationship of Subpart I to Subpart E:

Construction Grant Regulation

40 CFR Part 35

Subpart I		Subpart E
35.2000	Purpose and policy	35.900, .901., .903 and .912.
35.2005	Definitions	35.905.
35.2010	Allotment; reallotment	35.910 et seq.
35.2015	State priority system and project priority list.	35.915.
35.2020	Reserves	35.915-1.
35.2023	Water quality management planning.	1981 Amendment.
35.2024	Combined sewer overflows	1981 Amendment.
35.2025	Allowance and advance of allowance.	1981 Amendment.
35.2030	Facilities planning	35.917 et seq.
35.2032	Innovative alternative technologies.	35.908.
35.2034	Privately owned individual systems.	35.918
35.2040	Grant application	35.920 et seq.
35.2042	Review of grant applications	1981 Amendment.
35.2050	Effect of approval or certification of documents.	35.935-1.
35.2100	Limitations on award	35.925.
35.2101	Advanced treatment	New section.
35.2102	Water quality management plans.	35.925-2.
35.2103	Priority determination	35.925-3.
35.2104	Funding and other considerations.	35.925-5.
35.2105	Debarment and suspension	New section.
35.2106	Plan of operation	35.925-12.
35.2107	Intermunicipal service agreements.	35.920-3.
35.2108	Segmented treatment works	New section.
35.2109	Step 2+3	35.905.
35.2110	Access to individual systems	35.918-1.
35.2111	Revised water quality standards.	1981 Amendment.
35.2112	Marine waiver discharge applicants.	1981 Amendment.
35.2113	Environmental review	35.925-8.
35.2114	Value engineering	1981 Amendment.
35.2116	Collection system	35.925-13.
35.2118	Preaward costs	35.925-18.
35.2120	Infiltration/inflow	35.927 et seq.
35.2122	Approval of user charge system and proposed sewer use ordinance.	35.929-1, .935-13 and .927-4.
35.2123	Reserve capacity	1981 Amendment.
35.2125	Treatment of compatible industrial waste.	35.925-15.

Construction Grant Regulation—Continued

40 CFR Part 35

Subpart I		Subpart E
35.2130	Sewer use ordinance	35.927-4
35.2140	User charge system	35.929-1
35.2152	Federal share	35.930-4.
35.2200	Grant conditions	35.935 et seq.
35.2202	Step 2+3 projects	35.935-4.
35.2204	Project changes	35.935-11.
35.2206	Operation and maintenance	35.935-12.
35.2208	Adoption of sewer use ordinance and user charge system.	35.935-4.
35.2210	Land acquisition cost approval	New section.
35.2212	Project initiation and completion.	35.935-9.
35.2214	Project performance	1981 Amendment.
35.2216	Notice of building completion and final inspection.	35.935-14.
35.2250	Determination of allowable costs.	35.940.
35.2260	Advance purchase of eligible land.	New section.
35.2262	Funding of field testing	1981 Amendment.
35.2300	Grant payments	35.945.
35.2350	Subagreement enforcement	35.970.
Appendix A	Determination of allowable costs.	35.940 et seq.

Description of Major Issues Related to the 1981 Amendments

Effective Date

This interim final regulation includes changes in response to comments on the proposed regulation of November 6, 1981 and revisions to implement the 1981 amendments to the Clean Water Act. The regulation is effective for all grants awarded on or after May 12, 1982. Facilities plans and design initiated under 40 CFR Subpart E continue to be subject to the requirements in Subpart E. Work done under Subpart E will be accepted for grant award under this subpart. Unless required by the 1981 amendments, no revisions to the facilities plan or design will be required.

The decision to publish this regulation as an interim final rule was based on several factors. First, revisions to the existing construction grants regulation, proposed in November 1981, were scheduled to be made final following a 60-day comment period. Second, EPA has had the benefit of substantial public comment as a result of the November proposal and the request for comments on a draft circulated in February containing recommended changes in the November draft to implement the 1981 amendments. Third, most major provisions of the 1981 amendments gave the Agency limited flexibility for implementation. Finally, a comprehensive regulation to implement the revised construction grants program is needed as early as possible to ensure the ongoing effectiveness of the program. Thus it was felt that publication of this regulation as interim final was the most appropriate choice.

Elsewhere in this issue of the **Federal Register**, EPA is publishing a proposed Appendix B to be incorporated in this regulation when it becomes final. The appendix contains the procedures for determining allowances for planning and design work.

Allowance

One of the most significant changes in the program resulting from the 1981 amendments is the elimination of grants for planning (Step 1) and design (Step 2). In the future, an allowance will be provided to grantees for necessary facilities planning and design. EPA's proposal for an appendix to this regulation on determining allowances appears elsewhere in this issue of the **Federal Register.**

Under the allowance provision in the Act, non-Federal funds are used to pay for planning and design work at the time it is done. Therefore the laws and regulations governing grantees' conduct do not apply to this work undertaken prior to grant application. For example, EPA has determined that the new Part 33 regulation on procurement under assistance agreements will not apply to work for which an allowance is awarded. EPA is concerned, however, that improper activities by grantees or contractors not occur at this stage of the process and so has added a new provision to the regulation requiring applicants for grant assistance to certify that there has been no violation, during pre-application work, of any Federal, State or local law pertaining to fraudulent, unlawful or corrupt practices.

Advances

The 1981 amendments require States to reserve a portion up to 10 percent of their allotments to provide advances of the allowance to small communities which would otherwise be unable to undertake planning and design activities. Although the amendments do not prescribe a minimum amount, the Agency believes the Congress intended that a reasonable reserve be established. Designation of eligible applicants to receive an advance will be done entirely by the States.

Upon application by a State, a grant will be awarded to the State for advance of allowances to small communities. A State may request that the right to receive payments under the grant be assigned to specified potential grant applicants. Any community that has received an advance will have any later allowance reduced by an amount equal to the advance.

Water Quality Emphasis

The 1981 amendments stress the importance of establishing priority for projects that address water quality management considerations. States, of course, continue to have full responsibility for determining project priorities. The regulation incorporates the concept of "priority water quality areas," which States will identify and use in setting priorities for projects. Revised regulations for water quality management planning (40 CFR Part 130) and water quality standards (40 CFR Part 131), and guidance for State preparation of section 305(b) reports will also use the concept of priority water quality areas for scheduling revisions to water quality standards, total daily maximum loads, and major permits, as well as focusing monitoring, enforcement and reporting efforts on critical water quality problems. Priority water quality areas will generally be water quality limited segments, *i.e.*, segments where applicable water quality standards are not attainable with application of technology-based effluent limitations to point sources.

Although this term has not been used in the regulations before, the concept is not new. For the purposes of construction grant funding and this regulation, priority water quality areas are specific stream segments or bodies of water where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from the municipal discharges will substantially restore surface or groundwater uses.

Within this context for setting priorities, the regulation requires an annual priority list with two sections, the fundable portion, consisting of those projects anticipated to be funded from the current allotment; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments. Although EPA's November 6 proposal did not require a planning portion, the 1981 amendments require long-range planning and tracking. States may use existing 1981 or 1982 priority lists through September 30, 1982 by which time they must have accepted lists that reflect the 1981 amendments in order to fund additional projects.

The 1981 amendments also require that States reserve not less than $100,000 nor more than one percent of their annual allotment for water quality management planning. The regulation

provides an exception to the $100,000 minimum for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas because of the small size of their allotments.

The 1 percent ceiling is interpreted as an optional maximum limit rather than as a required amount because the language of the amendments specifically indicates that the reserve is "not to exceed" one percent, and not that it shall be one percent. Also, the "not to exceed" language is identical to the language of the 205(g) reserve for State administration which provides for an optional maximum percentage rather than a required percentage. 40 CFR Part 130, currently being revised, will govern the use of those funds. Copies of the draft may be obtained from Carl Myers (WH554) USEPA, 401 M St. S.W., Washington, D.C. 20460.

NEPA Compliance

For NEPA compliance to be most effective, environmental issues must be addressed in conjunction with planning the project, and traditionally that has been done during Step 1. The elimination of Step 1 and Step 2 grants postpones official Federal involvement in the project until after planning and design are complete. To avoid the design of environmentally unsound alternatives, the regulation encourages applicants to confer with review agencies very early in the process and request, in writing, that necessary NEPA determinations be made. In this way, NEPA responsibilities can be met at the appropriate time, avoiding delay and added expense that could result from postponement.

Grantees currently in the facilities planning process with Step 1 grant assistance are bound by existing regulations and grant agreements to complete their environmental documents as planned and obtain a formal determination in accordance with Part 6 of this chapter.

Financial Capability

The 1981 amendments stress the importance of grantee's financial capability and their ability to finance adequate operations, maintenance and replacement of facilities through their user charge systems. Three of the "limitations on awards" (conditions that must be met before a grant can be awarded) are designed to ensure adequate financial capability and management of Federally funded treatment works. The applicant is required to demonstrate that it has the legal, institutional, managerial, and financial capability to ensure adequate building and operation, maintenance and replacement of the treatment works. Further, the draft plan of operation, required at the time of application, must include "an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration." And finally, before awarding grant assistance, the Regional Administrator must approve a user charge system that will "produce adequate revenues required for the operation, maintenance and replacement of the system," and that contains an "adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation, maintenance and replacement of the treatment system." These requirements, in combination, are designed to ensure that Federally funded facilities will be financed and managed adequately to meet the requirements of the Clean Water Act.

Phased Segmented Projects

Completing treatment works in order to receive the benefits of improved water quality is a high priority of the program. The regulation encourages States to give priority to completion of phased/segmented projects that are already underway. It also sets criteria designed to ensure completion of waste treatment systems before segmenting or phasing a new project.

Project Performance

The purpose of EPA assistance is to build treatment works that have been planned and designed to meet the enforceable requirements of the Act. By executing a grant agreement, the grantee is obligated to build the project according to its approved design specifications and operate and maintain the project during its useful life to meet the enforceable requirements of the Act.

This regulation requires the grantee to reach this performance goal within a year after the project has been put into use for its intended purpose. The costs of architectural, engineering, legal, technical and other services necessary to assure that the project is built according to its design drawings and specifications are allowable project costs.

The date of initiation of operation is determined by the grantee, in consultation with the design engineer and included in the project schedule. To assist in operating the project during the first full year, the grantee shall procure the services of the engineer principally responsible for providing design services or the engineer principally responsible for providing project management services. The grantee is not prohibited from requiring, at least through the end of the first year of operation, sufficient assurances, guarantees or indemnity or other contractural requirements to achieve this goal.

At the end of the first year of operation, the grantee must certify to the Regional Administrator whether the project is capable of meeting its design specifications and the enforceable requirements of the Act. If the project is not affirmatively certified, the grantee must provide a corrective action report. The ultimate cost of bringing the project into compliance is the responsibility of the grantee except, as provided in this regulation, for the modification or replacement of innovative or alternative technology projects.

If, at the end of the first year, the grantee is unable to affirmatively certify the project, the grantee must also commit itself to a reasonable date on which an affirmative certification to the Regional Administrator can be made. If the grantee does not bring the project into compliance with the design specifications and enforceable requirements of the Act, EPA will take appropriate and prompt remedial action.

Step 2+3

The 1981 amendments raise the limit on total project cost for projects eligible for a Step 2+3 grant to $8 million. Although the 1981 Amendments prohibit the award of grants solely for facilities planning or design, they allow EPA to continue to award combined design and building grants (Step 2+3 grants). The amendments do not require changes in the current Step 2+3 process, but based on Congress' intent to reduce EPA involvement in grantees' design activities, the Agency determined it would be appropriate to use the allowance system for the design segment of the step 2+3 project. The amount of the allowance will be based on the estimated Step 3 building cost in the Step 2+3 grant application. To assure adequate funds are available for design, the Agency has determined that it is appropriate to pay 30 percent of the Federal share of the allowances as soon as requested after the Step 2+3 grant award. EPA will pay an additional 30 percent when the design is 50 percent complete. The final portion of the allowance will be paid after the grantee awards the prime subagreement for building the project (see proposed Appendix B elsewhere in this issue of the Federal Register).

Combined Sewer Overflow

The regulation incorporates two provisions of the 1981 amendments directly related to funding the correction of combined sewer overflow problems:

(1) Section 35.2024 deals with the use after September 30, 1982, of funds to be appropriated under section 201(n)(2) of the Act for addressing impaired uses in marine bays and estuaries or public health risks resulting from combined sewer overflows.

(2) Section 35.2024 also states that after September 30, 1984 (when correction of combined sewer overflows is no longer an eligible category), the governor may elect to use the regular State allotment to address impaired uses in priority water quality areas due to the impacts of combined sewer overflows.

The regulation reflects the language of the conference committee report on H.R. 4503, placing restrictions on the funding of combined sewer overflow correction. Directed at both provisions for funding of combined sewer overflow projects, this language requires States to demonstrate to EPA the necessity for the project and the specific benefits to be achieved.

Innovative and Alternative (I/A) Technology

The 1981 amendments continue and expand the innovative and alternative program by providing increased grants for I/A projects and the I/A set-aside. The regulation includes a flexible set-aside which ranges from a minimum of 4 percent up to 7½ percent at the discretion of the Governor; provisions to make grants for innovative and alternative technologies, in amounts up to 20 percent more than the Federal share for grants for conventional technologies as long as the Federal share totals no more than 85 percent; and provisions to include field testing for verification of design parameters for higher risk technologies as an eligible preaward cost. EPA is incorporating the innovative and alternative technology guidelines from Appendix E of the existing regulation into a comprehensive guidance document.

State Certification

The 1981 amendments allow States with delegated program authority to certify that grant applications comply with all applicable Federal requirements. The certification must be supported by documentation specified in the delegation agreement, and the Regional Administrator shall accept the certification unless he determines the State has failed to adequately establish grounds for the certification or that an applicable requirement has not been met. The amendments mandate that EPA accept or reject in writing a fully certified application within 45 days of receipt or the application is automatically approved.

Collection Systems

One commenter objected to the requirement in § 35.2216 that new collection systems can only be funded where the municipality was in existence on October 18, 1972 and the bulk of the expected flow is from population in existence on October 18, 1972. This provision is a revision of the current § 35.925–13 which contains the same 1972 population requirement. The commenter suggests that the 1981 amendments extended the base data for new collection systems to December 29, 1981. We found no support for this suggestion in the amendments or the legislative history. To the contrary, the legislative history indicates that any collection systems funded before their eligibility expires on September 30, 1984, will be constructed to serve existing needs for a community in existence in 1972 and not for future growth.

Description of Other Major Issues

Infiltration/Inflow

To simplify the process of determining whether the treatment works will be subject to excessive infiltration or inflow, the regulation incorporates baseline figures for amounts of infiltration and inflow that are considered non-excessive.

For infiltration, if the treatment plant flow chart or a single point flow monitoring at the plant shows that the average daily flow during peak groundwater period is less than 120 gallons per capita per day, (gpcd), the system does not have excessive infiltration and further analysis for infiltration is not required. (The nonexcessive infiltration rate includes two flow components: A national average domestic wastewater flow of 70 gpcd and a nonexcessive infiltration of 50 gpcd.) For inflow, if the railfall-induced peak flow does not exceed 2.5 times the average design flow for the treatment plant, the system does not have excessive inflow and further analysis for inflow is not required. (It should be noted that 2.5 times the average design flow is approximately equivalent to the peak diurnal flow generally used for treatment plant design.)

When the criteria are exceeded, the grantee may either proceed with further study of the sewer system and determine the level of nonexcessive infiltration and inflow based on a cost-effectiveness analysis; or, may proceed with treatment plant design without any further analysis of the sewer system.

Under the first option, the municipality may select any cost effective methods for evaluating the sewer system under the study. Upon completion, the municipality will propose a sewer rehabilitation program and specify the quantity of excessive infiltration and inflow to be removed from the system. The results of this rehabilitation program will be part of the grantee's certification of project performance at the end of the first year's operation of the facility. The grantee will be responsible for taking corrective action to resolve any problems which may result from an ineffective sewer rehabilitation program.

Under the second option, if the grantee chooses to build a project to treat flows in excess of the baseline amounts, grant assistance will be awarded only for the baseline capacity of 120 gpcd. The grantee must demonstrate that the complete waste treatment system is cost-effective, that funds for building the treatment works to treat the additional capacity will be available, and that an adequate user charge system will be implemented.

Compatible Industrial Wastewater

Section 35.2125(a) sets a test which stipulates that grants will be provided for treatment works capacity to transport or treat compatible industrial wastewater only if the treatment works would be eligible for grant assistance in the absence of the proposed industrial capacity. If the treatment works is justified by the need to treat domestic wastewater, then its scope may be expanded to accommodate compatible industrial wastewater. If, on the other hand, the treatment works would not be needed but for the presence of industrial sources, EPA will not award a grant.

While this provision is not explicit in the statute, it reflects EPA's traditional policy, which is derived from the legislative history of the Clean Water Act. It is also a reasonable and necessary management provision, given the need to limit Federal funds to support projects with the greatest potential for public benefit.

Reconstruction Costs

EPA's policy of not providing Federal funds a second time for a failed project is included in this regulation as an unallowable cost in Appendix A. This does not represent a new policy, but it was included in the regulation for the first time in the November 6, 1981

proposal. In response to the comments received on the proposed regulation, this section has been revised to incorporate more flexibility.

Advanced Treatment Reviews

EPA Headquarters reviews of advanced treatment projects were initiated at the direction of Congress in March 1979. The 1978 oversight and appropriations hearings had focused attention on the high costs and often marginal benefits of advanced treatment projects. In action approving the FY 1979 appropriation for the construction grants program, the House and Senate Appropriations Conference Committee agreed "that grant funds may be used for construction of new facilities providing treatment greater than secondary only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements." The incremental dollar limit for Headquarters review was raised from $1 million to $3 million in FY 1980. The FY 1981 appropriations legislation continued the Headquarters review requirements.

Review procedures were set forth in EPA policy issued in June 1979. EPA agreed to revise the procedures in May 1980, and published a revised draft in June 1980. A final draft is nearing publication.

The regulation states, as a limitation on award, the requirement of the appropriations legislation that, prior to the award of grant assistance, there be a special review under the advanced treatment policy of any project requiring advanced treatment. EPA recomends that the proposed advanced treatment projects be submitted for review upon completion of facility planning. Since the Congress has expressly restricted EPA from delegating the Headquarters review of projects with incremental advanced treatment costs more than $3 million, such reviews are not subject to the 45-day review period provided for states with certification authority under § 35.2042.

Public Participation

Several commenters expressed concern that, with the exception of the requirement for public hearings in conjunction with developing State priority systems and project priority lists, the proposed regulation relies on Part 25 to supply all further requirements necessary to fully involve the public in decisions relating to the construction grants program. EPA is fully committed to public participation in all its programs and believes that Part 25 affords every opportunity necessary and available under the Clean Water Act for public participation in the construction grants program. In addition, the Agency intends to propose revisions to Part 25 which will both simplify and strengthen the regulation, thereby reinforcing EPA's commitment to public participation.

However, because the elimination of Step 1 and 2 grants effectively prohibits Federal involvement in facilities planning and design, neither provisions of this subpart nor of Part 25 apply to activities of a potential grantee prior to submission of the Step 3 grant application. Grantees who request an early determination of NEPA compliance can take advantage of involving the public in Steps 1 and 2 through application of public participation requirements of Part 6. Furthermore, this regulation requires the State to certify at the time of application that there has been adequate public participation in accordance with State and local laws.

Grantee Certification

A section of the proposed regulation would have permitted major grantees, if approved as such by the State and Regional Administrator, to certify compliance with various EPA requirements after approval of their facilities plans. Neither EPA nor the States would review documents certified by those grantees.

That provision has not been included in this interim final regulation. The statutory prohibition of Federal grant assistance for Step 1 and Step 2 will reduce the delays grantee certification was designed to eliminate.

Delegation

For the sake of simplicity, the regulation refers to the role of the Regional Administrators. Delegation to State agencies remains an integral part of construction grants program management. As stated in § 35.2000(c), to the extent that the Regional Administrator delegates responsibility to a State agency under a delegation agreement, the term "Regional Administrator" is to be read "State agency."

Project Schedule

The regulation requires that a timetable of key project events be included in the grant application. The advice of the grantee's design engineer should be sought when developing the schedule. The schedule should include important dates regarding procurement actions, building schedule and operation of the project. If the grantee has multiple projects, he must coordinate each project's schedule with the others and with the State's project priority list. Any change in the project schedule will require a formal grant amendment. This requirement is necessary to insure the continued coordination of project completion with permit and compliance schedules, court orders and State administrative orders.

Work by Debarred or Suspended Persons

EPA recently published a notice of proposed rulemaking establishing procedures for debarments and suspensions under EPA assistance programs, 40 CFR Part 32 (47 FR 7194, February 17, 1982). Those proposed regulations state that it is EPA's policy to do business only with persons who properly use Federal assistance.

The purpose of § 35.2105 is to inform EPA whether the applicant awarded a contract for planning or design work to a debarred, suspended, or excluded individual, organization, or unit of government. If the applicant certifies that it has made such an award, EPA shall closely examine the facilities plans, and design drawings and specifications to determine whether to award a Step 3 grant or take other appropriate action.

Project, Treatment Works and Complete Waste Treatment System

The terms project, treatment works and complete waste treatment system have specific meanings in this regulation and should not be used interchangeably. This reflects a consistency with the Act and EPA's general regulations for assistance programs (40 CFR Part 30).

Project refers only to the activities or tasks identified in the grant agreement.

The definition of treatment works is essentially the same as that contained in section 212 of the act. In the context of the Clean Water Act, this is a broad definition, including "any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes."

A complete waste treatment system is the total of all elements necessary for the transport, treatment and ultimate disposal of treated wastewater and residuals.

Building

The term "building" has been used throughout this regulation to describe the principal activity to be undertaken in the grants program. That is, the program provides assistance for the

erection, acquisition, alteration, remodeling, improvement or extension of facilities to transport and treat wastewater. The term "building" is used in this regulation rather than "construction" (the term used in the past) because "construction" is defined in the Act to include facilities planning and design. EPA can no longer award grant assistance solely for those activities.

Appendix A: Allowable Costs

Appendix A has been developed to consolidate all information on allowable and unallowable costs. Although the Appendix contains primarily existing Agency policy found in 40 CFR Part 35, the Handbook of Procedures and Program Requirement Memoranda, it also reflects new policies designed to reduce allowability necessitated by limited program funds. To simplify use of Appendix A it has been organized by type of cost, i.e., travel, subagreement costs, facilities planning, small systems, equipment, etc.

Regulation Development Process

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Applicants must comply with all applicable requirements of the Office of Management and Budget (OMB) Circular A–95.

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing some of these changes to implement Pub. L. 96–483, the October 21, 1980, amendments to the Clean Water Act, others to reduce the complexity of the regulation, and others to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117). I have determined this regulation is not a major regulation, and thus it is not subject to the impact analysis requirements of Executive Order 12291. Under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* the information provisions in this rule have been (or will be) submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the Federal Register.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: May 4, 1982.

John W. Hernandez, Jr.

Acting Administrator.

PART 35—STATE AND LOCAL ASSISTANCE

For the reasons outlined in the preamble, Part 35 of Title 40, Code of Federal Regulations, is amended as set forth below.

40 CFR Part 35 is amended by adding a new Subpart I, to read as follows:

* * * * *

Subpart I—Grants for Construction of Treatment Works

Sec.

35.2000 Purpose and policy.
35.2005 Definitions.
35.2010 Allotment; reallotment.
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35.2020 Reserves.
35.2023 Water quality management planning.
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35.2210 Land acquisition cost approval.
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35.2250 Determination of allowable costs.
35.2260 Advance purchase of eligible land.
35.2262 Funding of field testing.
35.2300 Grant payments.
35.2350 Subagreement enforcement.
Appendix A Determination of allowable costs.

Authority: Sections 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 502, 511 and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Subpart I—Grants for Construction of Treatment Works

§ 35.2000 Purpose and policy.

(a) The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

(b) This subpart supplements EPA's general grant regulation (Part 30 of this subchapter), its public participation regulation (Part 25 of this subchapter), its procurement regulation (Part 33 of this chapter), its debarment regulation (Part 32 of this subchapter) and its NEPA regulation (Part 6 of this chapter), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. EPA may also find it necessary to publish other requirements applicable to the construction grants program in response to Congressional action and execute orders.

(c) EPA's policy is to delegate determinations on individual projects to State agencies to the maximum extent possible (see Subpart F). Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates responsibility for determining compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in Subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95–224) EPA will, when substantial Federal involvement is

anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 401 M St. SW, Room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500–21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH–547) or from any Regional Office of EPA.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) *"Act."* The Clean Water Act (33 U.S.C. 1251 et seq., as amended).

(2) *"Ad valorem tax."* A tax based upon the value of real property.

(3) *"Alternative technology."* Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productivity recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and on-site systems.

(4) *"Alternative to conventional treatment works for a small community."* For purposes of §§ 35.2020 and 35.2032 a treatment works in a small community using innovative or alternative technology.

(5) *"Architectural or engineering services."* Consultation, investigation, reporting and design services offered within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(6) *"Best Practicable Waste Treatment Technology (BPWTT)."* The cost-effective technology that can treat wastewater, combined sewer overflows, nonexcessive infiltration and inflow and residuals in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

(i) 40 CFR Part 133—secondary treatment of wastewater;

(ii) 40 CFR Part 125, Subpart G—marine discharge waivers;

(iii) 40 CFR 122.62(d)—more stringent water quality standards and State standards; or

(iv) 41 **Federal Register** 6190—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(7) *"Building."* The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(8) *"Collector sewer."* The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(i) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost-effective than parallel sewers; and

(ii) Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost-effective and are owned and maintained by the grantee.

(iii) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.

(9) *"Combined sewer."* A sewer that is designed as a sanitary sewer and a storm sewer.

(10) *"Compatible industrial wastewater."* Wastewater that is produced by an industrial user, has a pollutant strength and other characteristics similar to those of domestic wastewater, and can be efficiently and effectively transported and treated with domestic wastewater. This definition includes wastewater from sanitary conveniences at an industrial user's facility.

(11) *"Complete waste treatment system."* A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(12) *"Construction."* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(13) *"Conventional technology."* Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

(14) *"Domestic wastewater."* Wastewater of the type commonly introduced into a treatment works by residential users.

(15) *"Enforceable requirements of the Act."* Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology (BPWTT) to meet applicable criteria.

(16) *"Excessive infiltration/inflow."* In accordance with §§ 35.2005(b)(27) and (28), and § 35.2120, the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(17) *"Field testing."* Practical and generally small-scale testing of

innovative or alternative technologies directed to verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties which prevent the funding of a promising improvement in innovative or alternative treatment technology.

(18) *"Individual systems."* Privately owned alternative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(19) *"Industrial user."* Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
Division I. Services

(20) *"Infiltration."* Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(21) *"Inflow."* Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(22) *"Initiation of operation."* The date specified by the grantee on which use of the project begins for the purposes that it was planned, designed, and built.

(23) *"Innovative technology."* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.

(24) *"Interceptor sewer."* A sewer which is designed for one or more of the following purposes:

(i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(ii) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *"Interstate agency."* An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(26) *"Municipality."* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(27) *"Nonexcessive infiltration."* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(28) *"Nonexcessive inflow."* The rainfall induced peak inflow rate which is less than the average design flow by 2.5 times (approximately equivalent to the normal peak hydraulic design for diurnal flow) and which results in chronic operational problems during storm events. These problems may include surcharging backups, bypasses, and overflows.

(29) *"Operation and Maintenance."* Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance:* Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

(ii) *Operation:* Control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(30) *"Principal residence."* For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(31) *"Project performance standards."* The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications which the project is planned and designed to meet.

(32) *"Priority water quality areas."* For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from

such discharges will substantially restore surface or groundwater uses.

(33) *"Project schedule."* A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of building, initiation of operation and completion of the project.

(34) *"Replacement."* Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(35) *"Sanitary sewer."* A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(36) *"Services."* A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents which may result from the contractor's labor, time or efforts. This term shall not include employment agreements or collective bargaining agreements.

(37) *"Small commercial establishments."* For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(38) *"Small community."* For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less, or highly dispersed sections of large municipalities, as determined by the Regional Administrator.

(39) *State."* A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(40) *"State agency."* The State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of water pollution.

(41) *"Storm sewer."* A sewer designed to carry only storm waters, surface run-off, street wash waters, and drainage.

(42) *"Treatment works."* Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alternations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(43) *"Treatment works phase or segment."* A treatment works phase or segment may be any cost-effective portion of a complete waste treatment system described in a facilities plan under § 35.2030, which can be identified as a contract or discrete subitem or subcontract. Completion of building of a treatment works phase or segment may, but need not in and of itself, result in an operable treatment works.

(44) *"Useful life."* The period during which a treatment works is planned and designed to be operated.

(45) *"User charge."* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

(46) *"Value engineering."* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

§ 35.2010 Allotment; reallotment.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year. The allotment for each State and the availability period shall be announced each fiscal year in the Federal Register.

(b) Unless otherwise provided by Congress, all sums allotted to a State under Section 205 of the Act shall remain available for obligation until the end of one year after the close of the fiscal year for which the sums were authorized. Except as provided in § 35.2020(a), sums not obligated at the end of that period shall be immediately reallotted on the basis of the same ratio as applicable to sums allotted for the then-current fiscal year, but none of the funds reallotted shall be made available to any State which failed to obligate any of the fiscal year funds being reallotted. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallotted funds shall be treated in the same manner as the most recent allotment.

(c) Sums which are deobligated before the reallotment date for those funds shall be reissued to the same State and in the same manner as the allotment from which such funds were derived. The date funds are deobligated is the date they are reissued to the Regional Administrator.

(d) Sums which are deobligated after the reallotment date for those funds shall be reissued to the same State and treated in the same manner as the most recent allotment before the deobligation. The date funds are deobligated is the date they are reissued to the Regional Administrator.

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a state project priority list, except training facilities funded under section 109(b) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The

priority system includes at least the following elements:

(1) *Criteria.* (i) The priority system shall include at least the following criteria for ranking projects:

(A) The impairment of classified water uses resulting from existing municipal pollutant discharges;

(B) The extent of surface or ground water use restoration or public health improvement resulting from the reduction in pollution.

(ii) The State may also include in its priority system for ranking projects other criteria, such as the use of innovative or alternative technology; the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded, and; the category of need and the existing population affected.

(2) *Categories of need.* All projects must fit into at least one of the categories of need described in this paragraph to be eligible for funding, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section. States will have sole authority to determine the priority for each category of need.

(i) Before October 1, 1984, these categories of need shall include at least the following:

(A) Secondary treatment (category I);

(B) Treatment more stringent than secondary (category II);

(C) Infiltration/inflow correction (category IIIA)/

(D) Major sewer system rehabilitation (category IIIB);

(E) New collector sewers and appurtenances (category IVA);

(F) New interceptors and appurtenances (category IVB);

(G) Correction of combined sewer overflows (category V).

(ii) Except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, after September 30, 1984, these categories of need shall include only the following:

(A) Secondary treatment or any cost-effective alternative;

(B) Treatment more stringent than secondary or any cost-effective alternative;

(C) New interceptors and appurtenances; and

(D) Infiltration/inflow correction.

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of treatment works other than those listed in paragraph (b)(2)(ii) above.

(iv) After September 30, 1984, notwithstanding paragraph (b)(2)(ii) of this section, the Governor may include in the priority system a category for projects needed to correct combined sewer overflows which result in impaired uses in priority water quality areas. Only projects which comply with the requirements of § 35.2024(a) may be included in this category.

(c) *Project priority list.* The State's annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from the current allotment; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments.

(1) The State shall develop the project priority list consistent with the criteria established in the approved priority system. In ranking projects, the State must also consider total funds available, needs and priorities set forth in areawide water quality management plans, and any other factors contained in the State priority system.

(2) The list shall include an estimate of the eligible cost of each project on it.

(d) *Public participation.* (1) In addition to any requirements in 40 CFR Part 25, the State shall hold public hearings as follows:

(i) Before submitting its priority system to the Regional Administrator for approval and before adopting any significant change to an approved priority system; and

(ii) Before submitting its annual project priority list to the Regional Administrator for acceptance and before revising its priority list unless the State agency and the Regional Administrator determine that the revision is not significant.

(2) Public hearings may be conducted as directed in the State's continuing planning process document or may be held in conjunction with any regular public meeting of the State agency.

(e) *Regional Administrator review.* The State must submit its priority system, project priority list and revisions of the priority system or priority list to the Regional Administrator for review.

(1) States must revise their priority systems to conform to the requirements of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117. Each State must submit its revised priority system and project priority list developed in accordance with its system by September 1, 1982. No project will be funded after September 30, 1982, unless it is contained in a priority list reflecting Pub. L. 97-117 which has been accepted by the Regional Administrator.

(2) After submission and approval of the initial priority system and submission and acceptance of the project priority lists under paragraph (c) of this section, the State may revise its priority system and list from time to time as necessary.

(3) The Regional Administrator shall review the State priority system and any revisions to insure that they are designed to obtain compliance with the enforcement requirements of the Act as defined in § 35.2005(b)(10). The Regional Administrator shall complete review of the priority system within 30 days of receipt of the system from the State and will notify the State in writing of approval or disapproval of the priority system, stating any reasons for disapproval.

(4) The Regional Administrator will review the project priority list to insure compliance with the State's approved priority system. The Regional Administrator will complete review of the project priority list within 30 days of receipt from the State and will notify the State in writing of acceptance or rejection, stating the reasons for the rejection. Any project which is not contained on an accepted priority list will not receive funding.

(f) *Compliance with the enforceable requirements of the Act.* (1) Except as limited under paragraph (f)(2) of this section, the Regional Administrator, after a public hearing, shall require the removal of a specific project or portion thereof from the State project priority list based on a determination that it will not contribute to compliance with the enforceable requirements of the Act.

(2) The Regional Administrator shall not require removal of projects in categories under paragraphs (b)(2)(i)(D) through (b)(2)(i)(G) of this section which do not meet the enforceable requirements of the Act unless the total Federal share of such projects would exceed 25 percent of the State's annual allotment.

§ 35.2020 Reserves.

In developing its priority list the State shall provide for the establishment of reserves required or authorized under this section. The amount of each mandatory reserve shall be based on the allotment to each State from the annual appropriation under § 35.2010. The State may also establish other reserves which it determines appropriate. States may request the Regional Administrator to release funds in optional reserves or optional portions of required reserves under paragraphs (a), (b), (c), (d) and (e) of this section for funding projects at any time before the reallotment date.

Except for the reserve under paragraph (a) of this section, if optional reserves are not obligated or released before the reallotment date, they shall be subject to reallotment.

(a) *Reserve for State management assistance grants.* Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or $400,000, whichever is greater, for State management assistance grants under Subpart F of this part. Grants may be made from these funds to cover the costs of administering activities delegated or scheduled to be delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by population estimates of the Bureau of Census) shall reserve 4 percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 4 percent of that State's allotment for the same purpose. In States where the reserve is mandatory, these funds shall be reallotted if not obligated during the allotment period.

(c) *Reserve for innovative and alternative.* Each State shall reserve not less than 4 percent nor more than 7½ percent from its annual allotment to increase the Federal share of grant awards under § 35.2032 for projects which use innovative or alternative wastewater treatment processes and techniques. Of this amount not less than one-half of one percent of the State's allotment shall be set aside to increase the Federal grant share for projects using innovative processes and techniques. The mandatory 4 percent reserve shall be reallotted if not used for this purpose during the allotment period.

(d) *Reserve for water quality management.* Each State shall reserve not less than $100,000 nor more than 1 percent from its FY 1982 and subsequent annual allotments, to carry out water quality management planning under § 35.2023, except that in the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, a reasonable amount shall be reserved for this purpose. Funds reserved for this purpose shall be reallotted if not used for this purpose during the allotment period.

(e) *Reserve for Advances of Allowance.* Each State shall reserve a reasonable portion of its annual allotment not to exceed 10 percent for advances of allowance under § 35.2025. Funds reserved for this purpose shall be reallotted if not used for this purpose during the allotment period.

§ 35.2023 Water Quality Management Planning.

(a) From funds reserved under § 35.2020(d) the Regional Administrator shall make grants to the States to carry out water quality management planning including but not limited to:

(1) Identifying most cost-effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(2) Developing an implementation plan to obtain state and local financial and regulatory commitments to implement measures developed under paragraph (a)(1);

(3) Determining the nature, extent and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(4) Determining those publicly owned treatment works which should be constructed, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction and implementing section 303(e) of the Act.

(b) In carrying out planning with grants made under paragraph (a), a State shall develop jointly with local, regional and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this section.

§ 35.2024 Combined sewer overflows.

(a) *Grant assistance from State allotment.* As provided in § 35.2015(b)(2)(iii), after September 30, 1984, upon request from a State, the Administrator may award a grant from the State allotment for correction of combined sewer overflows provided that the project is on the project priority list and it addresses impaired uses in priority water quality areas which are due to the impacts of the combined sewer overflows. The State must demonstrate to the Administrator that the water quality goals of the Act will not be achieved without the correction of the combined overflows. The demonstration shall at a minimum prove that significant usage of the water for fishing and swimming will not be possible without the proposed project, and that the project will result in substantial restoration of an existing impaired use.

(b) *Separate fund for combined sewer overflows in marine waters.* (1) After September 30, 1982, the Administrator may award grants from funds appropriated under section 201(n)(2) of the Act for addressing impaired uses or public health risks in priority water quality areas in marine bays and estuaries due to the impacts of combined sewer overflows. The Administrator may award such grants provided that the water quality benefits of the proposed project have been demonstrated by the State. The demonstration shall at a minimum prove that significant usage of the water for shellfishing and swimming will not be possible without the proposed project for correction of combined sewer overflows, and the proposed project will result in substantial restoration of an existing impaired use.

(2) The Administrator shall establish priorities for projects with demonstrated water quality benefits based upon the following criteria:

(i) National or regional significance;

(ii) Extent of water quality benefits that would result;

(iii) Relationship of water quality improvements to project costs.

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project to be determined in accordance with Appendix B of this subpart.

(b) *Advance of allowance to potential grant applicant.* (1) After application by the State (see § 35.2040(d)), the Regional Administrator will award a grant to the State in the amount of the reserve under § 35.2020(e) to advance allowances to potential grant applicants for facilities planning and project design.

(2) The State may request that the right to receive payments under the grant be assigned to specified potential grant applicants.

(3) The State may provide advances of allowance only to small communities, as defined by the State, which would otherwise be unable to complete an application for a grant under § 35.2040 in the judgment of the State.

(4) The advance shall not exceed the federal share of the estimate of the

allowance for such costs which a grantee would receive under paragraph (a) of this section.

(5) In the event a Step 2+3 or Step 3 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When a State recovers such advances they shall be added to its most recent grant for advances of allowance.

§ 35.2030 Facilities planning.

(a) *General.* (1) Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology under § 35.2032, the selected alternative is cost-effective, (i.e., is the most economical means of meeting the applicable Federal, State and local effluent and water quality or public health requirements over the useful life of the facility while recognizing environmental and other non-monetary considerations). For sewered communities with a population of 10,000 or less, consideration must be given to at least one of the following: facultative ponds, trickling filters, or overland flow land treatment; and for unsewered communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(2) Grant assistance may be awarded before certification of the facilities plan if:

(i) The Regional Administrator determines that applicable statutory and regulatory requirements (including Part 6) have been met; that the facilities planning related to the project has been substantially completed; and that the project for which grant assistance is awarded will not be significantly affected by the completion of the facilities plan and will be a component part of the complete waste treatment system; and

(ii) The applicant agrees to complete the facilities plan on a schedule the State accepts and such schedule is inserted as a special condition of the grant agreement.

(b) *Facilities plan contents.* A completed facilities plan must include:

(1) A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

(2) A description of the Best Practicable Wastewater Treatment Technology (BPWTT). (See § 35.2005 (b)(6).)

(3) A cost effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable Federal, State and local effluent, water quality and public health requirements. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation, maintenance and replacement costs. The current interest rate established by the Water Resources Council shall be used as the discount rate in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with current State projections and with those used in the most recently completed Needs Survey. A cost-effectiveness analysis must include:

(i) An evaluation of alternative flow reduction methods. (If the grant applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Regional Administrator determines the area has an effective existing flow reduction program, additional flow reduction evaluation is not required.)

(ii) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational;

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(iv) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.

(v) A consideration of systems with revenue generating applications;

(vi) An evaluation of opportunities to reduce use of, or recover energy;

(vii) Cost information on total capital costs, and annual operation, maintenance and replacement costs, as well as estimated annual or monthly costs to residential and industrial users.

(4) A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system.

(5) An analysis of the potential open space and recreation opportunities associated with the project.

(6) An adequate evaluation of the environmental impacts of alternatives under Part 6 of this chapter.

(7) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(i) Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

(ii) Estimated cost of future expansion and long term needs for reconstruction of facilities following their useful life;

(iii) Cost impacts on wastewater system users; and

(iv) Institutional and management arrangements necessary for successful implementation.

(c) *Submission and review of facilities plan.* Each facilities plan must be submitted to the State agency for review. EPA recommends that potential grant applicants confer with State reviewers early in the facilities planning process. In addition, a potential grant applicant may request in writing from the State and EPA an early determination under Part 6 of this chapter of the appropriateness of a categorical exclusion, the scope of the environmental information document or the early preparation of an environmental impact statement.

§ 35.2032 Innovative and alternative technologies.

(a) *Funding for innovative and alternative technologies.* Projects or portions of projects using unit processes or techniques which the Regional Administrator determines to be innovative or alternative technology shall receive increased grants under § 35.2152.

(1) Only funds from the reserve in § 35.2020(c) shall be used to increase these grants.

(2) If the project is an alternative to conventional treatment works for a small community, funds from the reserve in § 35.2020(b) may be used for the 75 percent portion, or any lower Federal share of the grant as determined under § 35.2152.

(b) *Cost-effectiveness preference.* The Regional Administrator may award grant assistance for a treatment works or portion of a treatment works using innovative or alternative technologies if the total present worth cost of the treatment works for which the grant is to be made does not exceed the total present worth cost of the most cost-

effective conventional alternative by more than 15 percent.

(1) Privately-owned individual systems (§ 35.2034) are not eligible for this preference.

(2) Only the innovative or alternative portions of such works shall receive increased grants under § 35.2152.

(3) If the present worth costs of the conventional unit processes are more than 50 percent of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the nonconventional components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is part; or requires significant additional capital expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in § 35.2100 through § 35.2125 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2040 Grant application.

Applicants for Step 2+3 or Step 3 assistance shall submit applications to the State agency. In addition to the information required in Part 30, Subpart B of this subchapter, applicants shall provide the following information:

(a) *Step 2+3: Combined design and building of a treatment works.* An application (EPA form 5700–32) for Step 2+3 grant assistance shall include:

(1) A facilities plan in accordance with §35.2030 except as provided under §35.2030(a)(2);

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A–95, as revised (see §30.305 of this subchapter); and

(3) Certification from the State that there has been adequate public participation based on State and local statutes;

(4) Notification of any advance received under § 35.2025(b);

(5) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2125).

(b) *Step 3: Building of a treatment works.* An application (EPA form 5700–32) for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with § 35.2030, except as provided under § 35.2030(a)(2);

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A–95, as revised (see § 30.305 of this subchapter);

(3) Certification from the State that there has been adequate public participation based on State and local statutes;

(4) Notification of any advance received under § 35.2025(b);

(5) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2125);

(6) Final design drawings and specifications;

(7) The project schedule; and

(8) In the case of an application for Step 3 assistance that includes the acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage systems, and an explanation of the intended method of acquiring the real property (see 40 CFR Part 4).

(c) *Training facility project.* An application for a grant for construction and support of a training facility, facilities or training programs under section 109(a) of the Act shall include:

(1) A written commitment from the State agency to carry out at such facility a program of training;

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A–95, as revised (see § 30.305 of this subchapter); and

(3) If a facility is to be built, an engineering report including facility design data and cost estimates for design and building.

(d) *Grants to States for advance of allowances.* State applications for advance of allowances to small communities shall be on EPA form 5700–31, Application for Federal Assistance (short form).

§ 35.2042 Review of grant applications.

(a) All States shall review grant applications to ensure that they are complete. When the State determines the proposed project is entitled to priority it shall forward the State priority certification and, except where application review is delegated, the complete application to the Regional Administrator for review.

(b)(1) All States delegated authority to manage the construction grants program under section 205(g) of the Act and Subpart F of this part shall furnish a written certification to the Regional Administrator, on a project-by-project basis, stating that the applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement and will be made available to the Regional Administrator upon request. The Regional Administrator shall accept the certification unless he determines the State has failed to adequately establish grounds for the certification or that an applicable requirement has not been met.

(2) When EPA receives a certification covering all applicable Federal requirements, the Regional Administrator shall approve or disapprove the grant within 45 calendar days of receipt of the certification. The Regional Administrator shall state in writing the reasons for any disapproval, and he shall have an additional 45 days to review any subsequent revised submissions.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the

Act and § 35.2025 will be reviewed in accordance with 40 CFR 30 Subpart B.

§ 35.2050 Effect of approval or certification of documents.

Review or approval of facilities plans, design drawings and specifications or other documents by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate, and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good management practices. EPA is not responsible for increased building costs resulting from defects in the plans, design drawings and specifications or other subagreement documents, except as provided in Appendix A.

§ 35.2100 Limitations on award.

Before awarding grant assistance for any project the Regional Administrator shall determine that the applicant and the applicant's project have met all of the applicable requirements of § 35.2040 and §§ 35.2100 through 35.2125.

§ 35.2101 Advanced treatment.

As required by the provisions in EPA appropriations legislation, projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced treatment review policy. EPA recommends that potential grant applicants obtain this review prior to initiation of design.

§ 35.2102 Water quality management plans.

The project shall be consistent with the approved element of any applicable water quality management (WQM) plan approved under section 208 or section 303(e) of the Act; and the applicant shall be the wastewater management agency designated in any WQM plan certified by the Governor and approved by the Regional Administrator.

§ 35.2103 Priority determination.

The project shall be entitled to priority in accordance with § 35.2015, and the award of grant assistance for the project shall not jeopardize the funding of any treatment works of higher priority under the approved priority system.

§ 35.2104 Funding and other considerations.

The applicant shall:

(a) Agree to pay the non-Federal project costs;

(b) Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building and operation, maintenance and replacement of the treatment works throughout the applicant's jurisdiction including the ability to comply with § 30.340–2 of this subchapter; and

(c) Certify that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 40 CFR § 32.400. If the applicant indicates it has used the services of a debarred individual or firm EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under § 30.340–2 of this subchapter or be the subject of possible debarment or suspension under Part 32 of this subchapter.

§ 35.2106 Plan of operation.

The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual; an emergency operating program; personnel training; an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. This requirement may be waived provided the applicant can demonstrate:

(a) That such an agreement is already in place; or

(b) Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements; or

(c) That the financial strength of the supplier agency is adequate to continue the project, even if one of the proposed customer agencies fails to participate.

§ 35.2108 Segmented treatments works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

(a) The applicant agrees to complete the treatment works of which the phase or segment is a part according to a schedule specified in the grant agreement regardless of whether or not grant funding is available for the remaining phases or segments; and

(b) One or more of the following conditions exist:

(1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major portion of the State's annual allotment;

(2) The period to complete the building of the treatment works will cover three years or more; or

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order.

§ 35.2109 Step 2+3.

The Regional Administrator may award a Step 2+3 grant which will provide the Federal share of an allowance under Appendix B and the estimated allowable cost of building the project only if:

(a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;

(b) The total Step 3 building cost is estimated to be $8 million or less; and

(c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant assistance can be awarded in a State which has failed to review and revise as appropriate its water quality standards or adopt new standards under section 303(c) of Act, unless the State has in good faith submitted such water quality standards and the Regional

Administrator has failed to act on them within 120 days of receipt.

§ 35.2112 Marine waiver discharge applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by Part 6 of this Chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to ascertain the appropriateness of a categorical exclusion, a finding of no significant impact, or an environmental impact statement.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under Part 6 of this chapter.

§ 35.2114 Value engineering.

The applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than $10 million. The value engineering recommendations shall be implemented to the maximum extent feasible.

§ 35.2116 Collection system.

If the project involves collection system work, such work:

(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not built with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system serving the municipality; or

(b) Shall be for a new cost-effective collection system in a municipality in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in §35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2+3 and Step 3 work performed before award of grant assistance for that project, unless permitted under paragraph (b) of this section.

(b)(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary Step 3 work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land or of an option for the purchase of eligible land, or advance building of minor portions of treatment works), after completion of the environmental review a required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk. Any procurement is subject to the requirements of 40 CFR Part 33.

§ 35.2120 Infiltration/inflow.

(a) The applicant shall demonstrate to the Regional Administrator's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow.

(b) If flow rates exceed 120 gallons per capita per day during high ground water period or 2.5 times the average design flow during a rain storm the applicant may select either to:

(1) Request the Regional Administrator to determine that he may proceed without further flow analysis, in which case the Federal share of the project cost will be limited to that portion of the project having a capacity of up to 120 gallons per capita per day; or

(2) Perform a study of the sewer system to determine the quantity of excessive infiltration/inflow and to propose a sewer rehabilitation program to eliminate the portion of infiltration and inflow that is excessive, in which case Step 3 work, such as the cost for sewer rehabilitation based on the elimination of infiltration and inflow, is eligible for grant assistance and the eligible treatment plant size will be based on the quantity of infiltration and inflow determined by the sewer system study to be non-excessive.

§ 35.2122 Approval of user charge system and proposed sewer use ordinance.

If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the applicant must obtain the Regional Administrator's approval of its user charge system (§ 35.2140) and proposed (or existing) sewer use ordinance (§ 35.2130). If the applicant has a sewer use ordinance or user charge system in effect, the applicant shall demonstrate to the Regional Administrator's satisfaction that they are adequate and being enforced.

§ 35.2123 Reserve capacity.

EPA will limit grant assistance for reserve capacity as follows:

(a) An interceptor that received a Step 3 grant on a segment before December 29, 1981, may receive grants for the remaining interceptor segments included in the facilities plan for reserve capacity as planned, up to 40 years.

(b) A primary, secondary or advanced treatment facility, or its interceptors included in the facilities plan may receive a Step 3 grant with 20 years' reserve capacity if the grant is received after December 28, 1981, but before October 1, 1984.

(c) Except as provided in paragraph (a) of this section, a primary, secondary, or advanced treatment facility or its interceptors included in the facilities plan, that received a Step 3 grant on a segment before October 1, 1984, may receive grants with 20 years' reserve capacity for the remaining segments.

(d) Except as provided in paragraph (c) of this section, after September 30, 1984, no grant shall be made to provide reserve capacity for a project for secondary treatment or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs (including existing needs of residential, commercial, industrial, and other users) as determined on the date of the approval of the Step 3 grant, but in no case greater than existing needs on October 1, 1990;

(e) All incremental costs for any reserve capacity in excess of that provided by this section shall be paid solely by the applicant. Incremental costs includes all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) through (c) of this section.

§ 35.2125 Transport and treatment of compatible industrial wastewater.

(a) Grant assistance shall be provided for treatment works capacity to transport or treat compatible industrial wastewater, only if the treatment works (including each collector, interceptor, pumping station, plant component, and other system component) would be eligible for grant assistance in the absence of the industrial capacity. No grant assistance shall be provided to convert non-compatible industrial wastewater to compatible industrial wastewater, or otherwise to transport or treat non-compatible industrial wastewater.

(b) Grant assistance shall not be provided for costs allocable to the transport or treatment of wastewater produced by a facility that is owned and operated by the Federal Government and contributes in excess of 250,000 gallons per day or five percent of the design flow of the complete waste treatment system, whichever is less.

§ 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works does not contain toxics or other pollutants in amount or concentration that endanger public safety and physical integrity of the treatment works; or cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

§ 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for the operation, maintenance, and replacement of the system. It shall provide that each user which discharges pollutants to the system that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section or ad valorem taxes under paragraph (b) of this section.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small nonresidential user class (including nonresidential commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more that 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the users;

(iii) Number of hookups or discharges of the users;

(iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with section 204(b)(1)(A) of the Act and this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(g) *Inconsistent agreements.* The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204 (b)(1)(A) of the Act and this section.

§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) 75 percent for grant assistance awarded after September 30, 1984, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in the facilities plan; and

(ii) The Step 3 grant for the initial phase or segment is awarded prior to October 1, 1984.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the amount of any grant assistance shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater

than 85 percent for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology. These grants depend on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) *Uniform lower Federal share.* (1) Except as provided in § 35.2032(c) and paragraph (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The uniform lower Federal share must apply to all needs categories (see § 35.2015(b)(2)).

(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase for that project.

(d) *Training facilities.* The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallotment available to a State under § 35.2010 for payment of 100 percent of the cost of treatment works required to train and upgrade waste treatment works operations and maintenance personnel and for the costs of other operator training programs.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities or programs shall not exceed $500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to $500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (Part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2214.

§ 35.2202 Step 2+3 projects.

Prior to initiating procurement action for the building of the project, a Step 2+3 grantee shall submit to the Regional Administrator for approval the information required under §§ 35.2040(b)(4) through (b)(6), 35.2107 and 35.2140.

§ 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, if such changes increase the costs of the project, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) In addition to the requirements of Part 30 of this subchapter, the grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:

(1) Alter the project performance standards;

(2) Alter the type of wastewater treatment provided by the project;

(3) Delay or accelerate the project schedule; or

(4) Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

§ 35.2206 Operation and maintenance.

(a) The grantee must make provision satisfactory to the Regional Administrator for assuring economical and effective operation and maintenance (including replacement) of the treatment works in accordance with a plan of operation approved by the State or as appropriate, the interstate agency.

(b) Except as provided in paragraphs (c)(1) and (2) of this section, the Regional Administrator shall not pay more than 50 percent of the Federal share of any project unless the grantee has furnished a satisfactory final plan of operation, and shall not pay more than 90 percent of the Federal share of any project unless the grantee has furnished a satisfactory operation and maintenance manual.

(c)(1) In projects where segmenting of a treatment works has occurred, the Regional Administrator shall not pay more than 90 percent of the Federal share of the total allowable costs of the treatment works until the grantee has furnished a satisfactory operation and maintenance manual.

(2) In projects where a component is placed in operation before completion of the entire project, the Regional Administrator shall not make any additional payment on that project until a final operation and maintenance manual for the operating component is furnished.

§ 35.2208 Adoption of sewer use ordinance and user charge system.

The grantee shall adopt its sewer use ordinance and implement its user charge system developed under §§ 35.2130 and 35.2140 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

§ 35.2210 Land acquisition cost approval.

The grantee shall not make any offer to acquire real property determined allowable for grant assistance under Appendix A, until the Regional Administrator approves the price the grantee will offer the property owner (see 40 CFR Part 4).

§ 35.2212 Project initiation and completion.

(a) The grantee shall expeditiously initiate and complete the project, in accordance with the project schedule contained in the grant application and agreement. Failure to promptly initiate and complete a project may result in annulment or termination of the grant.

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or after the Regional Administrator has approved the information required under §§ 35.2040(b)(4) and (b)(5), 35.2107, 35.2140, under a Step 2+3 grant. Public notice of proposed procurement action should be made promptly after Step 3 award or final approvals for a Step 2+3 grant under § 35.2202. The Regional Administrator shall annul or terminate the grant if the grantee has not awarded the subagreements and issued a notice to proceed, where one is required, for building all significant elements of the project within nine months of the Step 3 award or final Step 2+3 approvals. However, the Regional Administrator may defer (in writing) the annulment or termination for not more than three additional months if there is good cause for delay.

(c) The grantee shall notify the Regional Administrator immediately upon award of the subagreement for building all significant elements of the project.

§ 35.2214 Grantee responsibility for project performance.

(a) The grantee shall complete the project in accordance with the grant agreement including: the facilities plan that establishes the need for the project; the design drawings and specifications;

the plan of operation under § 35.2106 that identifies the basis to determine annual operating costs; the financial management system under § 35.2140(d) that adequately accounts for revenues and expenditures; the user charge system under § 35.2140 that will generate sufficient revenue to operate and maintain the treatment works; the project schedule; and all applicable regulations. The grantee shall maintain and operate the project to meet project performance standards including the enforceable requirements of the Act for the useful life for which the project is designed. Nothing in this section affects EPA's right to take remedial action against a grantee that fails to carry out these obligations.

(b) The grantee shall provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph (a) of this section.

(c) Subject to the provisions of 40 CFR Part 33. The grantee shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

(1) Direct the operation of the project and revise the operation and maintenance manual for the project as necessary to accommodate actual operating experience;

(2) Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

(3) Advise the grantee whether the project is capable of meeting the project performance standards.

(d) On the date one year after the initiation of operation of the project the grantee shall certify to the Regional Administrator whether the project is capable of meeting the project performance standards. If the project does not meet the project performance standards the grantee shall submit the following:

(1) A corrective action report which includes an analysis of the cause of the project's inability to meet the performance standards including infiltration/inflow reduction, and estimates of the nature, scope and cost of the corrective action necessary to bring the project into compliance.

(2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(3) The scheduled date for certifying to the Regional Administrator that the project is capable of meeting the project performance standards.

(e) Except as provided in § 35.2032(c) corrective action necessary to bring a project into compliance with the project performance standards shall be undertaken by the grantee at other than Federal expense.

(f) Nothing in this section shall be construed to prohibit a grantee from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work.

§ 35.2216 Notice of building completion and final inspection.

The grantee shall notify the Regional Administrator when the building of the project is complete. Final inspection shall be made by the Regional Administrator within 60 days of the receipt of the notice of building completion.

§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, § 30.705 of this subchapter, and Appendix A of this subpart.

§ 35.2260 Advance purchase of eligible land.

In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing Step 3 assistance for the building of facilities: §§35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2262 Funding of field testing.

In the case of grant assistance for field testing, the following provisions are deferred until the results of the field testing are used to complete the requirements of §35.2040 and the award of assistance for building the approved facilities: §§ 35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2300 Grant payments.

The Regional Administrator shall pay the Federal share of the allowance under §35.2025 and the allowable project costs incurred to date and currently due and payable by the grantee, as certified in the grantee's most recent payment request.

(a) *Adjustment.* In addition to adjustments as a result of final settlement under § 30.615 of this subchapter, the Regional Administrator may review or audit requests for payment. Based on such review or audit, any payment request may be revised as appropriate.

(b) *Refunds, rebates and credits.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the grantee securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(c) *Release.* By its acceptance of final payment, the grantee releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Regional Administrator and the grantee.

(d) *Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Notwithstanding the provisions of paragraph (a) of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award for the Federal share of the eligible cost of any payment of relocation assistance under § 4.502(c) of this chapter by the grantee. The requirements in Part 30 of this subchapter apply to any advances of funds for assistance payments.

§ 35.2350 Subagreement enforcement.

(a) *Regional Administrator authority.* At the grantee's request the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which an EPA grant was made and to intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.

(c) *Privity of contract.* The Regional Administrator's technical or legal involvement in any subagreement dispute will not make EPA a party to any subagreement entered into by the grantee.

Appendix A—Determination of Allowable Costs

(a) *Purpose.* The information in this Appendix represents Agency policies and

procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles under § 30.710 of this subchapter and reasonableness. This appendix supplements the requirements contained in § 30.705 of this subchapter.

(b) *Applicability.* This cost information applies to grant assistance awarded on or after the effective date of this regulation. Project cost determinations under this subpart are not limited to the items listed in this appendix. Additional cost determinations based on applicable law and regulations, must of course, be made on a project-by-project basis.

Costs Related to Subagreements

1. Allowable costs related to subagreements include:

a. The costs of subagreements for building the project;

b. The costs of complying with the procurement requirements of Part 33 of this subchapter other than the costs of self-certification under § 33.110;

c. The costs for establishing or using minority and women's business liaison services;

d. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;

e. The costs (including legal, technical, and administrative costs) of assessing and defending against a contractor claim for increased costs under a subagreement provided:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred; and

(3) The costs are not incurred to:

(i) Prepare documentation that should be prepared by the contractor to support his claim; or

(ii) Defend against claims that should be settled reasonably without arbitration or litigation;

f. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(1) Change orders and the costs of meritorious contractor claims provided the costs are:

(i) Within the scope of the project;

(ii) Not caused by the grantee's mismanagement; and

(iii) Not caused by the grantee's vicarious liability for the improper actions of others;

(2) Provided the requirements of paragraph f(1) are met, the following are examples of allowable change order and contractor claim costs:

(i) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects;

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under § 33.1030 of this Subchapter;

(3) Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant award official and shall be allowable only to the extent that they meet the requirements of paragraph f(1), are reasonable, and do not attempt to pass on to EPA the cost of events that were the responsibility of the grantee, the contractor, or others.

g. The costs of the services of the prime engineer required by § 35.2214 during the first year following initiation of operation of the project.

2. Unallowable costs related to subagreements include:

a. The costs of architectural or engineering services incurred in preparing a facilities plan and the design drawings and specifications for a project;

b. Except as provided in 1.f. above, architectural or engineering services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents; and

c. Bonus payments, not legally required, for completion of building before a contractual completion date.

Mitigation

1. Allowable costs include:

a. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works.

b. The costs of site screening necessary to comply with NEPA related studies and facilities plans, or necessary to screen adjacent properties.

c. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

Privately or Publicly Owned Small and On-Site Systems

1. Allowable costs for small and on-site systems serving residences and small commercial establishments inhabited on or before December 27, 1977 include:

a. The cost of major rehabilitation, upgrading, enlarging and installing small and on-site systems serving principal residences;

b. Conveyance pipes from property line to off-site treatment unit which serves a cluster of buildings;

c. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;

d. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

2. Unallowable costs for small and on-site systems include:

a. Modification to physical structure of homes or commercial establishments;

b. Conveyance pipes from the house to the treatment unit located on user's property;

c. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

Real Property

1. Allowable costs for land and rights-of-way include:

a. The cost (including associated legal, administrative and engineering costs) of land acquired or by lease or easement under grants awarded after October 17, 1972, that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Regional Administrator approves it in the grant agreement, including:

(1) The cost of a reasonable amount of land considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land for sludge disposal with application at the maximum rate possible (generally five dry tons per acres per year or more);

(3) The cost of land acquired for soil absorption system for a group of two or more homes;

(4) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

(5) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 et seq., 4651 et seq.), under Part 4 of this chapter;

c. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services.

d. The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(1) The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;

(2) The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the grantee is legally obligated to pay under state or local law;

(3) The cost of restoring streets, rights-of-way and individual system building sites to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench;

e. The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

(1) The acquisition provides new pollution control benefits;

(2) The facility was not built with previous Federal or State financial assistance;

(3) The primary purpose of the acquisition is *not* the reduction, elimination, or redistribution of public or private debt; and

(4) The acquisition is not being used as a means to circumvent the requirements of the Act, these regulations, or other Federal, State or local requirements.

2. Unallowable costs for land and rights-of-way include:

a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraph 1.a. of this section.

b. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

Equipment, Materials and Supplies

1. Allowable costs of equipment, materials and supplies include:

a. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

b. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

c. Cost of shop equipment installed at the treatment works necessary to the operation of the works;

d. The costs of necessary safety equipment, provided the equipment meets applicable Federal, State, local or industry safety requirements;

e. A portion of the costs of collection system maintenance equipment. The cost of the equipment shall be based on: (1) the portion of the total collection system paid for by the grant, (2) a demonstrable frequency of need, and (3) the need for the equipment to preclude the discharge or bypassing of raw sewage.

f. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment; these items include:

(1) Portable stand-by generators;

(2) Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

(3) Sludge or septage tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site;

2. Unallowable costs of equipment, materials and supplies include:

a. The costs of equipment or material procured in violation of the procurement requirements of 40 CFR Part 33.

b. The cost of furnishings including draperies, furniture and office equipment;

c. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

d. The cost of vehicles for the transportation of the grantee's employees.

e. The cost of process equipment such as trickling filters and comminutors that use mercury seals.

Industrial and Federal Users

1. Allowable costs for industrial and Federal facilities include development of a municipal pretreatment program approvable under Part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

2. Unallowable costs for industrial and Federal facilities include:

a. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under Part 403 of this chapter;

b. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;

c. All incremental costs for sludge management incurred as a result of the grantee providing removal credits to industrial users under 40 CFR 403.7 beyond those sludge mangement costs that would otherwise be incurred in the absense of such removal credits.

Miscellaneous Costs

1. Allowable costs include:

a. The costs of salaries, benefits and expendable materials the grantee incurs for the project;

b. Unless otherwise specified in this regulation, the costs of meeting specific Federal statutory requirements;

c. Costs for necessary travel directly related to accomplishment of project objectives. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement;

d. Cost of royalties for the use of or rights in a patented process or product with the prior approval of the Regional Administrator;

e. Costs allocable to the water pollution control purpose of multiple purpose projects as determined by applying the Alternative Justifiable Expenditure (AJE) method described in *CG82*. Multiple purpose projects that combine wastewater treatment with recreation do not need to use the AJE method, but can be funded at the level of the most cost-effective single-purpose alternative;

f. The costs of preparing a corrective action report required by § 35.2214(d) provided a formal grant amendment is executed specifically covering the costs before they are incurred;

g. Costs of grantee employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Regional Administrator;

2. Unallowable costs include:

a. Ordinary operating expenses of the grantee including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

b. Preparation of applications and permits required by Federal, State or local regulations or procedures;

c. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

d. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them;

e. Except as provided in § 35.2025(c) the cost of replacing, through reconstruction or substitution, treatment works: (1) that were built with Federal assistance awarded under the Federal Water Pollution Control Act as amended; or (2) that fail prior to initiation of operation or fail to meet project performance standards. A treatment works that fails at the end of its design life is not covered by this provision;

f. Personal injury compensation or damages arising out of the project;

g. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures;

h. Costs outside the scope of the approved project;

i. Costs for which grant payment has been or will be received from another Federal agency unless specifically authorized by statute;

j. Costs of treatment works for control of pollutant discharges from a separate storm sewer system; and

k. The cost of treatment works that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains.

[FR Doc. 82-12858 Filed 5-11-82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2073-8(b)]

Grants for Construction of Treatments Works; Proposed Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This document contains the procedures to determine an allowance for facilities planning or design activities. Formerly Step 1 and 2 grants were awarded for these activities. The Municipal Wastewater Treatment Construction Grant Amendments of 1981 abolished grants for planning and design and required the development of allowances.

DATE: Comments on the proposed regulation must be received on or before June 11, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section (A-130), Attention: Docket No. G-81-5, Environmental Protection Agency, Washington, D.C. 20428.

The public may inspect the comments received on this proposed rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., between 8 a.m. and 4:30 p.m. business days.

FOR FURTHER INFORMATION CONTACT: Jane Magee, Office of Water Program Operations (WH-546), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-8253.

SUPPLEMENTARY INFORMATION: One of the most significant changes in the construction grants program resulting from the 1981 Amendments is the elimination of grants for planning (Step 1) and design (Step 2). In the future, an allowance will be provided to grantees for necessary facilities planning and design. Grantees that currently have a Step 1 or Step 2 grant will be able to complete the work included in their original scope of work using the present system of grant payments. However, the 1981 Amendments prohibit making new grants exclusively for facilities planning or design. Those activities will be completed by potential grantees before they apply for a grant to build their projects. Future grants will include an allowance for facilities planning and design. The Congress, in enacting this mechanism, sought to achieve system-wide efficiency. In so doing, the Congress acknowledged and choose to tolerate the minor inequity likely in any given project. The device in the law is not a cost reimbursement, but an allowance.

EPA understands that, in practice, any savings realized from the allowance will be available to each community for general public purposes. The Agency expects that these funds will be used to defray unreimbursed expenses associated with plan construction. Due to the unrestricted nature of the allowance, however, EPA will not audit the use of these funds.

The allowances shown in Appendix B are based on the proposed percentage of building costs that have historically been attributable to facilities planning and design. The allowances incorporate all activities that have been included in Step 1 and Step 2 grants, but costs for individual activities are not segregated and cannot be considered as a basis for reimbursement in addition to the allowance. The allowance for a project is a single sum based on the actual total allowable building cost. Allowances are not auditable and the activities they cover are not subject to EPA requirements for procurement under assistance agreements (40 CFR Part 33). This proposed rule shall be used to estimate allowances and advances pending promulgation of a final rule, which may require adjustments.

The allowance applies to all of the work performed during the facilities planning and design of the project, and not just architectural or engineering services. Accordingly, the historical data used to develop the allowances included all the allowable cost of the Step 1 and Step 2 work.

The data analysis for development of the allowances took the form of using one parameter as the sole predictor of a second parameter. The method employed was bivariate analysis using a linear regression technique, a convenient, widely accepted way of analyzing both large and small data sets for relationships. The least-squares method was used for the linear regression analysis. This method yields an equation which expresses one variable in terms of another. The allowances for planning and design are based on such a regression equation. The allowance for design, however, was developed by subtracting the regression equation for facilities planning from the regression equation for combined facilities planning and design. This mathematical procedure was necessary because many of the early Step 2 projects that were included in the historical analyses contained reimbursements for facilities planning costs in Step 2 awards.

There are many variables other than building cost that influence facilities planning and design cost (e.g., level of effort, scope and complexity of the project, State and local requirements). For this reason the actual fee for planning and design has historically been negotiated for each project. Accordingly it is not surprising that our analysis shows that building cost is not a good predictor of facility planning and design cost for any one specific project. Rather, the allowance tables represent the best fit relationship of widely scattered historical data.

EPA decided to establish an allowance based on the variance of facilities planning and design cost (expressed as a percentage of building cost) with building cost for the following reasons:

1. The 1981 Amendments require an allowance expressed as percentage of cost based on historical experience.

2. Lease-square curve fitting. The allowance tables do, in fact, represent the best bivariate relationship for the historical data that was analyzed.

3. Consistency with construction program experience. It has been the experience of other governmental and private organizations that smaller projects generate higher facilities planning and design cost, as a percentage of cost, than larger projects.

4. The EPA approach provides municipalities with a reasonable and equitable allowance for planning and design.

Note.—The EPA allowance does not reimburse for costs incurred. Application of the EPA allowance as a contract price is a misuse of the data.

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Applicants must comply with all applicable requirements of the Office of Management and Budget (OMB) Circular A-95.

Regulation Development Process

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing this regulation to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117). I have determined this regulation is not a major regulation, and thus is not subject to the impact analysis requirements of Executive Order 12291.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The reporting or recordkeeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

List of Subject in 40 CFR Part 35

Air pollution control, grant programs—environmental protection, Indians, Pesticides and Pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 4, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

For the reasons outlined in the preamble, a new Appendix B to Part 35 of Title 40, Code of Federal Regulations, is proposed as set forth below.

40 CFR Part 35 Subpart I is proposed to be amended by adding Appendix B to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart I—Grants for Construction of Treatment Works

Appendix B—Allowance for Facilities Planning and Design

1. This Appendix provides the method by which EPA will determine both the estimated and the final allowance under § 35.2025 for facilities planning and design. The Step 2+3 and Step 3 grant agreement will include an estimate of the Federal share of the allowance. The final allowance will be contained in a formal grant amendment executed after the initial award of all the prime subagreements for building the project.

2. The Federal share of the allowance is determined by applying the applicable grant percentage to the allowance.

3. The allowance is not intended to reimburse the grantee for costs actually incurred for facilities planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e., reimbursement on a dollar-for-dollar basis) will not be appropriate.

4. The estimated and final allowance will be determined in accordance with this Appendix and Tables 1 and 2. Tables 1 and 2 are based on an analysis of the historical data for the cost of facilities planning and design in the construction grants program.

5. The allowance as a percentage of the building cost is obtained from Table 1. Table 2 is to be used in the event that the grantee received a grant for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the building cost.

6. The estimated allowance is to be based on an estimate of the allowable building cost. The building cost and final allowance is to be based on the allowable cost of the initial award of all subagreements for building the project.

7. The final allowance will be determined one time only, based on allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

8. For a Step 3 project, the Federal share of the final allowance will be included in the first payment following the grantee's award of all prime subagreements for building the project upon which the allowance is based.

9. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawing, reviewing change orders, making periodic visits to job site, etc. Architect or engineering services during the building of the project will be paid on a cost reimbursement basis subject to these regulations and 40 CFR Part 33.

10. If the grantee awards a subagreement for building the project more than one year after substantial completion of the design drawings and specifications, the allowance will be based on the total allowable building cost adjusted to reflect the building cost one year after substantial completion of design drawings and specifications. This adjustment will be made by applying the construction cost index in the Engineering News Record to the allowable cost of the initial award of the subagreements for building the project.

11. The allowance for segmented waste treatment systems will be based on the total allowable building cost of the waste treatment system. The allowance for an individual segment will be based on the cumulative allowable building cost to date minus any previous allowances.

12. The allowance for a phased funded waste treatment system will be based on the total allowable building cost of the waste treatment system. The allowance for all of the phases will be based on the allowable cost of the initial award of the subagreement for building the phases. The allowance for all of the phases will be included in the grant for the first phase for building the waste treatment system.

13. For a Step 2+3 project, if the grantee has not received a grant or advance for facilities planning, EPA will pay 30 percent of the Federal share of the estimated allowance upon grant award. Half of the remaining estimated allowance will be paid when design of the project is 50 percent complete. If the grantee has received a grant or advance for facilities planning, EPA will pay half of the Federal share of the estimated design allowance when design of the project is 50 percent complete. Final payment of the Federal share of the allowance will be included in the first payment following the grantee's award of a subagreement for building the project.

14. The State will determine the amount of any advance under § 35.2025(b) not to exceed the Federal share of the estimated allowance. The State will also determine when the advance is given.

15. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee received under § 35.2025(b).

Table 1.—Allowance for Facilities Planning and Design

Building cost	Allowance as a percentage of building cost
$100,000	12.971
125,000	12.686
150,000	12.350
175,000	12.122
200,000	11.926
250,000	11.610
300,000	11.357
350,000	11.147
400,000	10.968
500,000	10.678
600,000	10.443
700,000	10.250
800,000	10.086
900,000	9.943
1,000,000	9.817
1,200,000	9.608
1,500,000	9.347
1,750,000	9.174
2,000,000	9.027
2,500,000	8.787
3,000,000	8.595
3,500,000	8.436
4,000,000	8.301
5,000,000	8.080
6,000,000	7.903
7,000,000	7.757
8,000,000	7.633
9,000,000	7.525
10,000,000	7.430
12,000,000	7.268
15,000,000	7.074
17,500,000	6.943
20,000,000	6.832
25,000,000	6.650
30,000,000	6.505
35,000,000	6.386
40,000,000	6.282
50,000,000	6.115
60,000,000	5.982
70,000,000	5.871
80,000,000	5.777
90,000,000	5.695
100,000,000	5.623

Table 2.—Allowance for Design only

Building cost	Allowance as a percentage of building cost
$100,000	7.253
125,000	7.156
150,000	7.065

Table 2.—Allowance for Design only—
Continued

Building cost	Allowance as a percentage of building cost
175,000	6.997
200,000	6.937
250,000	6.839
300,000	6.759
350,000	6.692
400,000	6.635
500,000	6.541
600,000	6.465
700,000	6.401
800,000	6.347
900,000	6.299
1,000,000	6.257
1,200,000	6.184
1,500,000	6.096
1,750,000	6.036
2,000,000	5.984
2,500,000	5.899
3,000,000	5.831
3,500,000	5.773
4,000,000	5.724
5,000,000	5.643
6,000,000	5.577
7,000,000	5.522
8,000,000	5.475
9,000,000	5.434
10,000,000	5.397
12,000,000	5.335
15,000,000	5.259
17,500,000	5.207
20,000,000	5.163
25,000,000	5.088
30,000,000	5.030
35,000,000	4.981
40,000,000	4.938
50,000,000	4.868
60,000,000	4.811
70,000,000	4.764
80,000,000	4.725
90,000,000	4.686
100,000,000	4.658

NOTE.—Interpolate between values.

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Part III

Environmental Protection Agency

Procurement Under Assistance Agreements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 33

[OA-FRL 2102-81]

Procurement Under Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Interim-final rule.

SUMMARY: This document establishes interim-final rules for procurement actions taken by assistance recipients under EPA's program for the "Grants for Construction of Treatment Works" program (40 CFR Part 35, Subpart I, CFDA 66.418). It is designed to eliminate the procedural requirements formerly applying to that program and to rely to the maximum extent on recipient procurement systems, in accordance with Attachment O to OMB Circular A-102.

DATE: For the "Grants for Construction of Treatment Works" program, this regulation is effective for awards made after May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0860.

SUPPLEMENTARY INFORMATION: On March 2, 1982, EPA published a proposed regulation governing procurement under all assistance programs (47 FR 8960). At that time, we indicated that we planned to make the regulation effective for grants for construction of treatment works when the program regulation becomes effective in April, 1982. This regulation implements that statement. The program regulation is also being published today elsewhere in this issue of the **Federal Register.**

Description of Major Issues

The preamble to the March 2, 1982 proposed regulation discussed in detail a number of issues which arose in the drafting of the Part 33 regulations. Since EPA's position has not changed, we have not repeated those discussions here. Our discussion of issues here is limited to areas on which a significant number of comments were received and to those on which we have made changes in the regulation. The remainder of the comments received and those received too late to be considered in drafting this interim-final regulation will be addressed when Part 33 is published in final.

Applicability of Procurement Requirements to Facilities Planning and Design Services

The Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117), enacted December 29, 1981, prohibit EPA grants exclusively for facilities planning or design services. Instead, EPA will make an allowance in its grant assistance for non-Federal funds expended by the recipient for facilities planning and design services. Therefore, services for facilities planning and project design will not be subject to EPA procurement requirements in order for the allowance to be awarded. However, if the recipient chooses to use the architect or engineer who provided facilities planning and design services for services during construction, it must follow some of the requirements in this Part. (See § 33.715.)

Applicability of the Revised Procurement Regulation to Active Grants in the Construction Grant Program

The new Part 33 procurement regulations are effective for all subagreements under construction grants awarded after May 12, 1982. EPA has received several requests from recipients who have active construction grants that they also be allowed to voluntarily follow the new Part 33 procurement requirements. EPA believes that recipients should be given this opportunity. Therefore, EPA will allow any construction grant recipient who has a current grant to choose to follow the new Part 33 procurement procedures for any procurement action, including change orders, which the recipient executes after the date the recipient self-certifies its procurement system with EPA or the delegated State. However, the procurement requirements in effect when EPA awarded the grant (i.e., 40 CFR 35.936 through 35.939) will still apply to those actions executed before the date that a recipient with a current grant self-certifies.

Procedural Requirements for Recipients Who Do Not Certify Their Procurement Systems, and for Recipients Who Have Their Procurement Certification Revoked by EPA

We have received several questions concerning the procedural requirements that EPA will require of recipients who do not certify their procurement systems, or for recipients who have their procurement certification revoked by the award official. To make these procedural requirements known and to have all of EPA's procurement requirements in one place, we have added Appendix A, "Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA," to Part 33. Appendix A contains the additional procedural requirements which are not contained in the body of Part 33, but which EPA will review when EPA conducts a pre-award review and approval (see § 33.115, "Procurement system review"). Recipients are not required to follow these additional procedural requirements if they have a certified procurement system.

Specifications

We received several comments on the language in the preamble to the March 2, 1982 proposed regulation which implied that a single material specification restricts competition, and which required that the recipient's procurement official justify the use of a specification which limits competition before the recipient issues the specification.

OMB Circular A-102, Attachment O, requires that all procurement transactions be conducted in a manner that provides maximum free and open competition. Any specification which has the effect of limiting competition is restrictive in the sense that it prevents a bidder from offering a product or a service which could meet the project's requirements.

Because a specification limits competition, however, does not mean it is improper. A specification is restrictive only when the restricted features are unnecessary, and therefore unduly restrict competition. (See Nash and Cibinic, *Federal Procurement Law,* Volume I, (3rd. edition, 1977) page 236.) Recipients may use restrictive specifications if the specifications reflect the recipient's minimum essential needs. (See Shnitzer, *Government Contract Bidding,* (1976) page 179.) Whether a specification represents the minimum essential needs of the recipient or unduly restricts competition depends on the facts in each procurement action. Consequently, the recipient's procurement officials must justify the use of a specification which does not provide for maximum free and open competition and must document their procurement file to this effect. The documentation should ordinarily be done before the recipient issues the specification to avoid the appearance of *post hoc* rationalization, and the recipient should justify adequately in writing the rational basis for the specification. In the event of a protest,

the protestor has the burden of showing that the specification, as written or as applied by the recipient, excludes the protestor from competition.

Minority and Women's Businesses

We received several comments on EPA's changes to the minority and women's businesses policy (MBE/WBE). As stated in the March 2, 1982 proposed regulation, EPA is in the process of developing a new minority business and women's business policy. Therefore, the comments we received concerning this issue will be used during the development of that policy. Also, our March 2, 1982 proposed regulation reserved the definition of a minority business and a women's business. We will define these terms in the new policy. Therefore, until EPA writes a definition for these terms in its new policy, the recipient should define these terms. However, any requirements or definitions which a recipient chooses to include in the contract specifications with regard to minority and women's business requirements will be mandatory for bidders and offerors.

Use of the Same Architect or Engineer During Construction

The new Part 33 procurement requirements allow recipients the option of using the same individual or firm who provided the facilities planning or design services for the project for architectural or engineering services during Step 3 construction of the project (see § 33.715 "Use of the same architect or engineer during construction"). In order to used this option, the recipient must ensure that the subagreements for the facility planning or design services meet the requirements in § 33.715. Those subagreements are subject only to the requirements listed in § 33.715.

However, when the recipient receives a Step 3 construction grant from EPA, the recipient must ensure that any subagreement, including any subagreement awarded to the firm or individual who will provide the services during construction, must meet all of the procurement requirements in Part 33. This may mean that the recipient will have to amend or renegotiate the individual's or firm's existing subagreement.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq* (the Act), the reporting or recordkeeping provisions that are included in this interim-final rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Act.

List of Subjects in 40 CFR Part 33

Advertising, Conflict of interest, Environmental protection, Grant programs—environmental protection.

This regulation was submitted to OMB for review as required by Executive Order 12291.

Dated: May 4, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PROCUREMENT SYSTEM CERTIFICATION FORM FOR APPLICANTS FOR EPA ASSISTANCE

Form approved OMB No. ——

Section I.—Instructions

This form must accompany each application for EPA assistance. If the applicant has certified its procurement system to EPA within the past two years and the system has not been substantially revised, check block *a* in Section II, then sign and date the form. If the system has not been certified within the past two years, part *b* of Section II must be completed.

Section II.—Certification

☐ a. I affirm that the applicant has within the past two years certified its procurement system to EPA as complying with 40 CFR Part 33 and that the system has not been substantially revised. The date of the applicant's latest certification is (month, year).

b. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: (Check one of the following)

☐ 1. *Certify* that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 including the attached subparts before undertaking any procurement action with EPA assistance/funds.

Please furnish citations to applicable state or local ordinances and regulations. Citations

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☐ 2. *Do not certify.* The applicant will follow the requirements of 40 CFR Part 33 with EPA review and pre-award approval of proposed procurement actions that will use EPA assistance/funds.

Typed name and title of Chief Executive Officer

Signature ——

Date ——

EPA form 5700-48.

Below is a list of subparts and sections of 40 CFR Part 33 which contain some but not all of the requirements for procurements under EPA assistance. The purpose of this list is to assist in the evaluation of the applicant's procurement system to determine if it is certifiable as meeting the basic Federal procurement principles as articulated in Part 33. As such, this section highlights certain aspects of the regulations which the recipient shall use in its evaluation process and is not intended to replace a detailed reading of the Part 33 requirements themselves.

Part 33 reference	Section title—summary of requirements
33.210	*Subagreement Administration*—system must ensure that contractors perform in accordance with all applicable contract requirements.
33.220	*Limitation on recipient award*—system must consider listed factors in determining contractor responsibility.
33.230	*Competition*—system must have procurement transaction procedures that provide maximum open and free competition.
33.235	*Profits*—system procedures must allow only fair and reasonable profits to contractors.
33.240	*Small, minority, women's and labor surplus area businesses*—system must provide for use of these businesses as specified in this section.
33.250	*Documentation*—system must require that procurement records and files for purchases over $10,000 include items specified in this section.
33.255	*Specifications*—system procedures for establishing specifications for products or services to be procured must meet requirements of this section.
33.265	*Bonding and insurance*—system procedures and requirements related to bonding and insurance must meet requirements of this section.
33.270	*Code of conduct*—system must have a written code of standards of conduct meeting the requirements of this section.
33.275	*Federal cost principles*—system procedures for determining allowable costs must comply with the cost principles specified in this section.
33.280	*Prohibited types of contracts*—system may not allow use of cost-plus-percentage-of-cost (multiplier) or percentage-of-construction-cost types of contracts.
33.290	*Cost and price considerations*—system procedures must allow for consideration of cost and price as required in this section.
33.295	*Lower tier subagreements*—system must provide that subagreements below the first tier comply with all provisions of 40 CFR specified in this section.
33.305–310	*Small purchase*—system small purchase procedure must meet requirements of these sections.
33.405–435	*Formal advertising*—system procedures related to formal advertising, including those for bidding documents and contract awards, must meet the requirements of these sections.
33.505–535	*Competitive negotiation*—system procedures for competitive negotiation must meet the requirements of these sections.
33.605	*Noncompetitive negotiation*—systems procedures for noncompetitive negotiation must meet the requirements of this section.

Subparts C-G	System must comply with requirements in these subparts—
C	*Clean Water Act Requirements*—subpart applies to procurement under assistance agreements for construction of treatment works under the Clean Water Act.
D	*Requirements for Institutions of Higher Education and Other Non-profit Organizations*—subpart describes the procurement requirements for nonprofit organizations.
E	*Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980*—subpart describes the procurement method requirements for recipients of these cooperative agreements.
F	*Subagreement Provisions*—subagreements for procurement under EPA assistance must contain the appropriate clauses, or their equivalent, specified in this subpart.
G	*Protests*—subpart applies to all applicants for EPA assistance except for nonprofit organizations.

Accordingly, Title 40 Chapter I is amended by revising Part 33 to read as follows:

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Sec.

33.001 Applicability and scope of this Part.
33.005 Definitions.

Subpart A—Procurement System Evaluation

33.105 Applicability and scope of this subpart.
33.110 Applicant and recipient certification.
33.115 Procurement system review.

Subpart B—Procurement Requirements

33.205 Applicability and scope of this subpart.
33.210 Recipient responsibility.
33.215 EPA responsibility.
33.220 Limitation on subagreement award.
33.225 Violations.
33.230 Competition.
33.235 Profits.
33.240 Small, minority, women's, and labor surplus area businesses.
33.245 Privity of subagreement.
33.250 Documentation.
33.255 Specifications.
33.260 Intergovernmental agreements.
33.265 Bonding and insurance.
33.270 Code of Conduct.
33.275 Federal cost principles.
33.280 Payment to consultants.
33.285 Prohibited types of subagreements.
33.290 Cost and price considerations.
33.295 Lower tier subagreements.

Small Purchases

33.305 Small purchase procurement method.
33.310 Small purchase procedures.
33.315 Requirements for competition.

Formal Advertising

33.405 Formal advertising procurement method.
33.410 Public notice and solicitation of bids.
33.415 Time for preparing bids.
33.420 Adequate bidding documents.
33.425 Public opening of bids.
33.430 Award to lowest, responsive, responsible bidder.

Competitive Negotiation

33.505 Competitive negotiation procurement method.
33.510 Public notice.
33.515 Evaluation of proposals.
33.520 Negotiation and award of subagreement.
33.525 Optional procedure for negotiation and award of subagreement for architectural and engineering services.

Noncompetitive Negotiation

33.605 Noncompetitive negotiation procurement method.

Subpart C—Clean Water Act Requirements

33.705 Applicability and scope of this subpart.
33.710 Buy American.
33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

33.805 Applicability and scope of this subpart.
33.810 Nonapplicable subagreement clauses.
33.815 Nonapplicable procurement provisions.
33.820 Additional procurement requirements.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

33.905 Applicability and scope of this subpart.
33.910 Preference for formal advertising.
33.915 Award official approval.

Subpart F—Subagreement Provisions

33.1005 Applicability and scope of this subpart.
33.1010 Requirements for subagreement clauses.
33.1015 Subagreement provisions clause.
33.1016 Equal employment opportunity clauses.
33.1019 Anti-kickback clause.
33.1020 Minimum wage clause.
33.1021 Work hours and safety standards clause.
33.1022 Patents, data and copyrights clause.
33.1023 Violating facilities clause.
33.1024 Energy efficiency clause.
33.1030 Model subagreement clause.

Subpart G—Protests

33.1105 Applicability and scope of this subpart.
33.1110 Limitations on protest appeals.
33.1115 General requirements.
33.1120 Filing requirements for protest appeals.
33.1125 Protest appeal documents.
33.1130 Deferral of procurement action.
33.1135 Award official's review.

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j–1, 300j–2, 300j–3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.001 Applicability and scope of this part.

(a) This Part applies to all assistance agreements awarded after the effective date of this Part. For assistance agreements awarded before the effective date, this Part will apply only to those procurement actions conducted by the recipient after the date the recipient's self-certification request under § 33.110 of this Part is accepted by the award official.

(b) This Part:

(1) Describes EPA's procurement system evaluation process.

(2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.

(3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I.

(4) Identifies the procurement standards that institutions of higher education and other nonprofit organizations must follow.

(5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.

(6) Describes the procedures that EPA will use to handle appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This Part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This Part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This Part supplements the requirements in (1) 40 CFR Part 30 "General Assistance Regulations," and (2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this Part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I must follow the requirements in all of the subparts except Subpart D.

(2) All other State and local government recipients must follow the requirements in all subparts in this Part except Subparts C and D.

(3) Institutions of higher education, hospitals, and other nonprofit

organizations must follow the requirements in all Subparts of this Part except as stated in Subpart D.

(4) Recipients of cooperative agreements under the Comprehensive Response, Compensation, and Liability Act of 1980, must follow the requirements in all subparts except Subparts C and D.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This Part uses the term award official. To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this Part (except for Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term award official may be read State agency.

§ 33.005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and 40 CFR Part 35.

(b) As used in this Part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations, and reports, and services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, acquisition, alteration, remodeling, improvement, extension, modification, replacement, or correction of buildings, structures or other property. Construction also includes remedial actions in response to a release or a threat of a release at an uncontrolled hazardous waste facility as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability, and allowability.

Minority Business. [Reserved]

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this defintion of profit is based on Federal procurement principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, e.g., reports, design drawings, specifications. This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, equipment, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Women's Business. [Reserved]

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the standards set forth in this Part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the requirements in this Part.

(b) After evaluating its procurement system, the applicant or recipient will complete the Procurement System Certification Form For Applicants For EPA Assistance (EPA Form 5700–48). The applicant or recipient will certify that:

(1) Its system will meet the intent of all the requirements in this Part before any procurement action with EPA assistance is undertaken.

(2) Its current system does not meet the intent of the requirements of this Part, and instead, the applicant will follow the requirements of 40 CFR Part 33 and will allow EPA review and approval of proposed procurement actions that will use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this Part.

(c) The applicant must submit the signed certification form to the award official with the assistance application.

(d) The certification will be valid for two years or the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system, or the award official determines that the recipient is not following the requirements in this Part, see § 33.115(b). If the recipient substantially revises its procurement system, the recipient must evaluate its revised system to ensure that the system still meets the requirements in this Part.

§ 33.115 Procurement review.

(a) EPA reserves the right to review a recipient's procurement system or procurement action:

(1) To determine if the recipient is following the procurement requirement in this part; or

(2) When there is sufficient reason to do so based on the following sources of information:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; and

(vi) Information from contractors or prospective contractors.

(b) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Apply the sanctions in 40 CFR Part 30; or

(2) Require that the recipient follow the procurement requirements in this Part, including the procedural requirements in Appendix A, for future procurement actions.

(c) The recipient may re-certify its procurement system if it shows the

award official that it has corrected the procurement deficiencies noted by the award official.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities; and

(b) The minimum procurement standards for each recipient's procurement system.

§ 33.210 Recipient's procurement responsibilities.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes, and other related procurement matters.

(b) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this Part. The award official's assistance does not relieve the recipient from its responsibilities identified in this Part.

(c) The recipient shall maintain a subagreement administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their subagreements.

(d) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(e) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(f) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurements actions.

(g) A recipient of a remedial action cooperative agreement awarded under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, must obtain the EPA award official's approval to use a procurement method other than the formal advertising method (see Subpart E).

(h) Innovative procurement methods or procedures may be used by recipients with the prior written approval of the award official.

§ 33.215 EPA responsibility.

(a) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(b) If the recipient has not certified its procurement system under § 33.110 and if the procurement action or change order is expected to exceed $100,000, EPA may review the recipient's proposed subagreements and related procurement documents (see Appendix A), and approve the recipient's compliance with the requirements of this Part.

§ 33.220 Limitation on subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement.

(b) Contractors shall meet the requirements of § 30.340–2(a) through (d) and (g) of this subchapter.

(c) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 or to contractors on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

Violations of law are to be referred to the local, State, or Federal authority having the proper jurisdiction.

§ 33.230 Competition.

(a) All procurement transactions, without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

(1) Noncompetitive practices between firms;

(2) Organizational conflicts of interest;

(3) Unnecessary experience and bonding requirements;

(4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; and

(5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification system if it:

(i) Updates the prequalified list at least every six months;

(ii) Reviews and acts on each request for prequalification, if the request is made more than 30 days before the closing date for receipt of proposals or bid opening, as appropriate; and

(iii) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in §§ 33.415 or 33.510, as appropriate.

(iv) If the recipient uses a prequalified list for persons or firms doing business with the recipient, it must follow the requirements in (c) (i) through (iii) of this section, but a prequalified list of persons or firms may not be used unless that procedure enhances competition. However, this restriction does not apply to § 33.525 "Optional procedures for negotiation and award of a subagreement for architectural and engineering services."

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) For each subagreement in which there is no price competition and where price is based on cost analysis, any profit shall be negotiated as a separate element of price.

(c) Profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Commercially available products sold to the general public shall not be covered by this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists.

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources.

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses.

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses.

(5) Using the services and assistance of the Small Business Administration

and the Office of Minority Business Enterprise of the U.S. Department of Commerce.

(6) Requiring each party to a subagreement to take the affirmative steps in paragraphs (a)(1) through (a)(5) of this section.

(b) [Reserved]

(c) Recipients are encouraged to procure goods and services from labor surplus area firms.

§ 33.245 Privity of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Written justification for selection of the procurement method;

(3) Written justification for use of any specification which does not provide for maximum free and open competition;

(4) Selection of type of subagreement; and

(5) Basis for award cost or price, including a copy of the cost of price analysis made under § 33.290 and documentation of negotiations.

(b) The reasons for rejecting any or all bids and the justification for procurements on noncompetitively negotiated basis shall be available for public inspection.

§ 33.255 Specifications.

Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated. (An additional specification requirement for the construction of treatment works under 40 CFR Part 35, Subpart E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

(a) To foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for common procurement or use of goods and services.

(b) All procurements under an intergovernmental agreement must follow the procurement requirements in this Part except for procurements that are:

(1) Incidental to the purpose of the assistance agreement, and

(2) Made through a central public procurement unit.

§ 33.265 Bonding and insurance.

(a) These requirements apply to subagreements for construction only.

(b) The recipient shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction subagreement exceeds $100,000.

(c) For those subagreements exceeding $100,000, the award official may accept the recipient's bonding policy and requirements provided that the Government's interest is adequately protected. Otherwise the minimum bonding requirements are:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the subagreement price. A "performance bond" is one executed in connection with a subagreement to secure fulfillment of all the contractor's obligations under such subagreement.

(3) A payment bond on the part of the contractor for 100 percent of the subagreement price. A "payment bond" is one executed in connection with a subagreement to assure payment as required by law to all persons supplying labor and material in the execution of the work provided for in the subagreement.

(d) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

(e) The flood hazard area requirements of the Flood Disaster Protection Act of 1973 contained in Part 30 apply.

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee,officer, or agent of the recipient shall participate in selection, or in the award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

(b) Such a conflict would arise when:

(1) Any employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have a financial or other interest in the firm selected for award; or when

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ any person under paragraph(b)(1) of this section.

(c) The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the code of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of the code by the recipient's officers, employees, or agents, or by contractors or their agents.

§ 33.275 Federal cost principles.

The following are the cost principles applicable to assistance arguments and subagreements:

(a) State and local governments must comply with OMB Circular A–87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A–21 to determine allowable costs and with OMB Circular A–88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A–122 to determine allowable costs.

(d) All other recipients, contractors, and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1–15.2 and, if appropriate, 1–15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, the maximum daily rate paid to individual consultants retained by recipients, or a recipient's contractors or subcontractor will not exceed the maximum daily rate for a GS–18. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices.

(b) Subagreements for services which are awarded using the procurement requirements in this Part are not affected by this limitation.

§33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed $10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed $10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit to the recipient cost or pricing data in support of their proposals.

§ 33.295 Lower tier subagreements.

All subagreements below the first tier must comply with the following provisions:

(a) Section 33.285 (Prohibited types of subagreements);

(b) Section 33.240 (Small, minority, women's, and labor surplus area businesses);

(c) Section 33.290 (Cost and price considerations);

(d) Applicable subagreement clauses contained in Subpart F;

(e) Section 33.275 (Federal cost principles);

(f) 40 CFR Part 32 (Debarment and Suspension) and the prohibition in Part 30 against fraud and other unlawful or corrupt practices; and

(g) Subpart C (Clean Water Act Requirement), if applicable.

Small Purchases

§ 33.305 Small purchase procurement method.

If the aggregate amount involved in any one procurement transaction does not exceed $10,000, including all estimated handling and freight charges, overhead, and profit, the recipient may use small purchase procedures.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies, or other property costing in the aggregate not more than $10,000.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Formal Advertising

§ 33.405 Formal advertising procurement method.

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of $10,000. Formal advertising means the public solicitation of sealed bids and subagreement award based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate, and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) The selection of the successful bidder made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained and examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Bidding documents.

Bidding documents shall include:

(a) A complete statement of work to be performed, including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including, where appropriate, payment, delivery schedules, point of delivery, and acceptance criteria;

(c) A clear explanation of the method of biding and the method of evaluating bid prices, and the basis and method for awarding the subagreement;

(d) The responsibility requirements or criteria which will be employed in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subpart F and Subpart G.

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date, and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining the low bid. Payment discounts may be used to determine low bid only when prior experience of the recipient indicates that such discounts are generally taken.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA assistance is awarded (see § 33.250 "Documentation").

Competitive Negotiation

§ 33.505 Competitive negotiation procurement method.

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of $10,000.

(b) Competitive negotiation may be used only if conditions are not appropriate for the use of the formal advertising method of procurement.

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals shall invite proposals and state the method by which associated documents may be obtained and examined and the basis upon which the award will be made.

(c) Requests for proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal.

(d) Offerors must be informed of all evaluation criteria, and of the relative importance attached to each criterion.

(e) Requests for proposals must clearly state the deadline and place to submit proposals.

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determination of best qualified and qualified offerors solely on the evaluation criteria sated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) If the recipient does not base its award of the subagreement on initial proposals, the recipient may conduct negotiations with all of the best qualified offerors to clarify that the offerors fully understand, and conform to, the solicitation requirements. All of the best qualified offerors shall be given the same opportunities to negotiate or revise their proposals as to price and other evaluation criteria. Before the recipient makes the award, the recipient may permit revisions for the purpose of obtaining best and final offers. During negotiations, the recipient shall not disclose the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

(b) The recipient shall award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price and other evaluation criteria set forth in the request for proposal.

(c) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

§ 33.525 Optional procedure for negotiation and award of a subagreement for architectural and engineering services.

(a) This optional procedure for negotiating and awarding a subagreement for architectural and engineering services may be used if price is not an evaluation criterion set forth in the request for proposals.

(b) The recipient may negotiate and award a subagreement for architectural or engineering services with an offeror on a prequalified list.

(c) The recipient shall negotiate fair and reasonable compensation with the best qualified offeror. If the recipient and the best qualified offeror cannot agree on the amount of compensation, the recipient shall formally terminate negotiations with the selected offeror. The recipient shall then negotiate with other qualified offerors, in the order of their respective qualification, until compensation can be agreed upon.

(d) The recipient shall award the subagreement to the offeror whose proposal is determined in writing to be the best qualified based upon the evaluation criteria set forth in the request for proposals, and after the negotiation of fair and reasonable compensation.

(e) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

Noncompetitive Negotiation

§ 33.605 Noncompetitive negotiation procurement method.

(a) Noncompetitive negotiation may be used only when the award of a subagreement is not feasible under small purchase, formal advertising, or competitive negotiation procedures.

(b) The recipient may award a noncompetitively negotiated subagreement only under the following circumstances:

(1) When the item is available only from a single source;

(2) When a public exigency or emergency exists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(3) When, after solicitation from a number of sources, competition is determined to be inadequate; or

(4) When the EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—Clean Water Act Requirements

§ 33.705 Applicability and scope of this subpart.

Recipients of an assistance agreement awarded under 40 CFR Part 35, Subparts E and I must comply with the following requirements.

§ 33.710 Buy American.

Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of the treatment works for which EPA awards assistance.

(a) Domestic construction material must be used in preference to nondomestic materials if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic materials including all costs of delivery to the construction site, and any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

(b) The award official may waive the Buy American provision based upon those factors that the award official considers relevant, including:

(1) Such use is not in the public interest;

(2) The cost is unreasonable;

(3) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(4) The articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured and not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(5) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(c) Notwithstanding any other provision of this Part, bidding documents and subagreements shall contain the "Buy American" provision in § 33.1030.

§ 33.715 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided facilities planning or design services for the project and wishes to retain that firm or individual to provide architectural or engineering services during construction of the project, it may do so without further public notice and evaluation of qualifications provided:

(1) EPA awarded the recipient a facilities planning (Step 1) and a design grant (Step 2), or only a design grant (Step 2), and the recipient procured the architect or engineer using the EPA procurement regulations in effect when EPA awarded the grant;

(2) The award official's approval for noncompetitive procurement under § 33.605(b)(4) is based on justification other than the use of the same individual or firm for architectural or engineering services during construction that provided facilities planning or design services for the project; or

(3) The initial request for proposals clearly stated that there is a possibility that the firm or individual who is selected may be awarded a subagreement for services during construction; and

(4) The recipient attests that the firm or individual was selected for facilities planning or design services in accordance with procedures in:

(i) Section 33.230 "Competition," and

(ii) Section 33.250(a) (1), (2) and (3), and (b) "Documentation," and

(iii) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees, or agents solicited nor accepted gratuities, favors, or anything of monetary value from contractors, or other parties to subagreements, and

(v) Sections 33.305 through 33.315 "Small Purchase," or

(vi) Sections 33.405 through 33.430 "Formal Advertising," or

(vii) Sections 33.505 through 33.525 "Competitive Negotiation."

(b) If the recipient uses the same individual or firm which provided the facilities planning or design services to provide architectural or engineering services during construction, subagreements funded with EPA grant funds (i.e. Step 3) must meet all of the procurement provisions in this part.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" are not subject to all of the requirements in this Part.

§ 33.810 Nonapplicable subagreement provisions.

The following clauses in Subpart F of this Part do not apply to institutions of higher education and other nonprofit organizations:

(a) Energy efficiency (§ 33.1024);

(b) Changes (§ 33.1030,3);

(c) Differing site conditions (§ 33.1030,4); and

(d) Price reduction for defective cost or pricing data (§ 33.1030,8).

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher education and other nonprofit organizations:

(a) Sections 33.405 through 33.430 "Formal advertising;"

(b) Sections 33.505 through 33.525 "Competitive negotiation;"

(c) Section 33.805 "Noncompetitive negotiations" (see §33.820(b));

(d) The requirement in 33.270(a) "Code of conduct" to have a written code of conduct;

(e) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:

(1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;

(2) Require the specific affirmative action steps in § 33.240(a) (1) through (6). However, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services.

(f) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals must be excluded from competing for awards from institutions of higher education and other nonprofit organizations resulting from the prior effort.

(b) For all proposed sole source contracts and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the contract if the aggregate expenditure is expected to exceed $10,000.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

§ 33.905 Applicability and scope of this subpart.

(a) The requirements in this subpart apply only to remedial actions which EPA funds as a part of a cooperative agreement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. Activities under CERCLA other than remedial action activities are subject to the requirements in Subparts A, B, F and G.

(b) Studies, investigations, or engineering activities which precede a remedial action activity are not subject to the requirements in this subpart.

§ 33.910 Preference for formal advertising.

If a recipient wants to use a procurement method other than formal advertising, it must determine in writing that formal advertising is not appropriate and must receive the EPA award official's concurrence with the determination.

§ 33.915 Award official approval.

The award official shall approve the recipient's use of a procurement method other than formal advertising only after the recipient has completed remedial planning activities and selected a cost-effective alternative.

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart shall be construed to prohibit a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1024, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

(a) Nature, scope, and extent of work to be performed;

(b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1018 Equal employment opportunity clause.

All subagreements awarded in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

§ 33.1019 Anti-kickback clause.

All subagreements for construction (as defined by the Secretary of Labor) or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of

Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to EPA.

§ 33.1020 Minimum wage clause.

When required by the EPA assistance program legislation, all construction (as defined by the Secretary of Labor) subagreements in excess of $2,000 awarded by recipients and any lower tier shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subagreement shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to EPA.

§ 33.1021 Work hours and safety standards clause.

All subagreements in excess of $2,000 for construction contracts (as defined by the Secretary of Labor) and in excess of $2,500 for other subagreements which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 33.1022 Patents, data, and copyrights clause.

Subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such subagreement and of EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1023 Violating facilities clause.

Subagreements in excess of $100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the awarding of nonexempt Federal contracts, grants, or loans to facilities included on the EPA List of Violating Facilities. The provision shall require contractors to report violations to the EPA.

§ 33.1024 Energy efficiency clause.

Subagreements shall follow mandatory standards and policies on energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

§ 33.1030 Model subagreement clauses.

(a) Recipients must include, when appropriate, the following fourteen clauses or their equivalent in each subagreement.

(b) Recipients may substitute other terms for "recipient" and "contractor" in their subagreements.

1. Supersession

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 or their equivalent apply to the EPA grant-eligible work to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. Privity of Subagreement

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is to be subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. Changes

(a) This clause in paragraph (a) applies only to subagreements for construction.

(1) The recipient may, at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the time, method, or manner of performance of the work;

(iii) In the recipient-furnished facilities, equipment, materials, services, or site; or

(iv) Directing acceleration in the performance of the work.

(2) A change order shall also be any other written or oral order (including direction, instruction, interpretation or determination) from the recipient, which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement, or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the subagreement modified in writing and, except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (1) of this change clause or the furnishing of a written notice under paragraph (2) of this clause, submit to the recipient a written statement setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The statement of claim may be included in the notice under paragraph (2) of this change clause.

(6) No claim by the Contractor for an equitable adjustment shall be allowed if

made after final payment under this subagreement.

(b) The clause in this paragraph applies only to subagreements for services.

(1) The recipient may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change unless the recipient grants additional time before the date of final payment.

(2) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the recipient.

(c) This clause in paragraph (c) applies only to subagreements for supplies.

(1) The recipient may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this subagreement, in any one or more of the following:

(i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the recipient;

(ii) method of shipment or packing; and

(iii) place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, an equitable adjustment shall be made in the subagreement price or delivery schedule, or both, and the subagreement shall be modified in writing. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. Differing Site Conditions

(This clause is applicable only to construction subagreements.)

(a) The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

(1) subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or

(2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement. The recipient shall promptly investigate the conditions, and if it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the subagreement modified in writing.

(b) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(c) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. Suspension of Work

(This clause is applicable only to construction subagreements.)

(a) The recipient may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act or failure to act involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the subagreement.

6. Termination

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party of subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the price provided for in this subagreement shall be made as provided in paragraph (c) of this clause.

7. Remedies

Except as may be otherwise provided in this subagreement, all claims, counter-claims, disputes, and other matters in question between the recipient and the contractor arising out of or relating to this subagreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. Price Reduction for Defective Cost or Pricing Data

Note.—*This clause is applicable to (1) any subagreement negotiated between the recipient and its contractor in excess of $500,000; (2) negotiated subagreement amendments or change orders in excess of $500,000 or 10 percent of the subagreement*

whichever is less, affecting the price of a formally advertised, competitively awarded, fixed price subagreement; or (3) any lower tier subagreement or purchase order in excess of $500,000 or 10 percent of the assistance agreement, whichever is less, under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause is not applicable for subagreements to the extent that they are awarded on the basis of effective price competition.

The contractor and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements, and change orders is based on current, accurate, and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and the subagreement shall be modified in writing to reflect such action.

Note.—*Since the subagreement is subject to reducton under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier contractors.*

9. Audit; Access to Records

(a) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on EPA grant work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30, in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to include paragraphs (a) through (f) of this clause in all his subagreements in excess of $10,000 and all lower tier subagreements in excess of $10,000 and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause, to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above, shall be maintained and made available during performance on EPA assisted work under this subagreement and until three years from the date of final EPA payment for the project. In addition, those records which relate to any controversy arising under an EPA assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim, or exception.

(f) This right of access clause (with respect to financial records) applies to:

(1) Negotiated prime subagreements,

(2) Negotiated change orders or subagreement amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price subagreement, and

(3) Subagreements or purchase orders under any subagreement other than a formally advertised, competitively awarded, fixed price subagreement. However, this right of access does not apply to a prime subagreement, lower tier subagreement, or purchase order awarded after effective price competition, except:

(i) With respect to records pertaining directly to subagreement performance, (excluding any financial records of the contractor,)

(ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved or

(iii) If the subagreement is terminated for default or for convenience.

10. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

11. Gratuities

(a) If the recipient finds after a notice and hearing that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the recipient, the State, or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the recipient may, by written notice to the contractor, terminate this agreement. The recipient may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.

(b) In the event this subagreement is terminated as provided in paragraph (a) the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and (2) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. Buy American

(This clause applies to subagreements awarded under 40 CFR Part 35, Subparts E and I.)

In accordance with section 215 of the Clean Water Act (33 USC 1251 et. seq.) and implementing EPA regulations and guidelines, the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen, and suppliers in the performance of this subagreement.

13. Responsibility of the Contractor

(a) This clause in paragraph (a) applies to all subagreements for services.

(1) The contractor is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the

contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(4) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data, or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

(b) The clause in paragraph (b) applies only to subagreements for construction.

(1) The contractor agrees to perform all work under this agreement in accordance with this agreement's designs, drawings, and specifications.

(2) The contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials, equipment or workmanship; and the contractor shall promptly make whatever adjustments or corrections necessary to cure such defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall give notice to the contractor of observed defects with reasonable promptness. In the event that the contractor fails to make adjustments, repairs, corrections or other work that may be made necessary by such defect, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

14. Final Payment

Upon satisfactory completion of the work performed under this agreement, as a condition before final payment under this agreement, or as a termination settlement under this agreement, the contractor shall execute and deliver to the owner a release of all claims against the owner arising under or by virtue of this agreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this agreement or applicable performance and payment bonds.

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

(a) This subpart sets forth the administrative process that EPA will use for the rapid resolution of protest appeals filed with the award official.

(b) A protest is a written complaint concerning the award of a recipient's subagreement filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action.

(c) A protest appeal is a complaint filed with the award official regarding the recipient's determination of protest.

§ 33.1110 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal from a recipient's determination of protest until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal may only be filed with the award official for:

(1) Issues arising under the procurement provisions of this Part;

(2) Alleged violations of State or local law or ordinances and when the award official determines that there is a contravening Federal requirement;

(3) Provisions of Federal regulations applicable to direct Federal contracts, if such provisions are explicitly referred to or incorporated in this Part;

(4) Basic project design determinations which clearly relate to questions of source selection or application of restrictive specifications; or

(5) Award of lower tier subagreements;

(i) If the recipient mandated the award to a particular entity; or

(ii) If it were based on a violation of the requirements in § 33.295 "Lower tier subagreements."

§ 33.1115 General requirements.

(a) Any party with an adversely affected direct financial interest may file a written protest appeal with the award official in accordance with this subpart.

(b) The recipient is responsible for the prompt initial determination of the protest.

(c) The award official may summarily dismiss an appeal without proceedings under this subpart, if the protest or appeal is untimely or entirely addresses issues which are beyond the scope of this subpart, or the protester fails to comply with the intent of the procedural requirements of this subpart.

(d) The award official may summarily deny a protest appeal, without proceedings under this subpart, if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

§ 33.1120 Filing requirements for protest appeals.

(a) A protest appeal to the award official must be in writing and must adequately state the basis for the protest appeal. Appeals must be received by the award official within one week after the complaining party has received the recipient's determination of protest. If the last day falls on a Saturday, Sunday or holiday, the last day to submit a request shall be the next working day. A copy of the recipient's determination of protest and other documentation in support of the appeal shall be transmitted with the appeal.

(b) The award official will dismiss as untimely any protest appeals based upon alleged improprieties in the solicitation which were apparent before bid opening or the closing date for receipt of initial proposals if the initial protest was not received by the recipient before bid opening or the closing date for receipt of proposals respectively. In the case of negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient not later than the next closing date for receipt of proposals.

(c) In cases not based upon alleged improprieties in soliciation, the award official will dismiss as untimely any appeals if the initial protest was not received by the recipient within one week after the basis for the protest was known or should have been known, whichever is earlier.

(d) The protester may notify the award official of a protest or appeal by brief telegraphic notice but the protester must provide the award official with a more detailed statement of the basis for the protest appeal within seven days after the date on the telegraphic notice.

(e) The award official will not consider oral protest appeals.

§ 33.1125 Appeal documents.

(a) The protest appeal document must state the legal and factual grounds for the appeal and request a determination under this subpart.

(b) Upon filing of a protest or appeal with the award official the protester

must concurrently transmit a copy of the documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest. Also, a party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

§ 33.1130 Deferral of procurement action.

(a) The recipient should review each protest filed with it to determine whether it is appropriate to defer the protested procurement action.

(b) When the award official receives a protest appeal, the award official must promptly request that the recipient defer the protested procurement action, if it has not already done so, until the award official notifies the recipient of the formal or informal resolution of the appeal. Such deferral of the procurement action shall be limited to the award of the subagreement, or subitem which is the basis of the protest.

(c) If the recipient does not defer the procurement action it bears the risk that the award official will disallow the cost of the protested procurement action if the protest appeal is upheld.

(d) If the protester does not agree to the recipient's request for a reasonable extension of the bid and bid bond period, the recipient or award official can summarily dismiss the protest appeal.

§ 33.1135 Award official's review.

(a) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(b) The award official shall review the record considerd by the recipient, and any other documents or arguments presented by the parties, to determine whether the recipient has complied with the procurement requirements of this Part and has a rational basis for its determination of protest.

(c) After the award official's announced date for receipt of written arguments, the record shall be closed.

(d) The award official's determination shall constitute final EPA action, from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(e) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(f) Noncompliance with the award official's determination of protest shall be cause for enforcement action under 40 CFR Parts 30 and 32.

(g) If an appeal involves legal issues not explicitly addressed by this Part or State or local law, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this Part.

Appendix A—Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this Part, or

(2) Have their procurement certification revoked by the award official as stated in § 33.115(b).

(b) Those recipients must comply with the requirements in this Part, plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data of EPA Form 5700–41 "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or on a form which contains information similar to that required by the EPA Form 5700–41.

(3) To comply with § 33.420, "Time for preparing bids," the recipient must generally allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.415, "Public notice and solicitation of bids," when the estimated cost of construction is expected to exceed $10 million, the recipient must generally publish the notice in trade journals of nationwide distribution for a least 30 days.

(5) To comply with § 33.510, "Adequate public notice," the recipient must generally publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

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Wednesday
May 12, 1982

Part IV

Environmental Protection Agency

Approval of Arkansas and Louisiana Air Quality Implementation Plans

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-6-FRL 2078-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arkansas Plan for Controlling Sulfuric Acid Mist From Existing Sulfuric Acid Production Facilities and Fluoride Emissions From Phosphate Fertilizer Plants; Louisiana Plan for Controlling Fluoride Emissions From Phosphate Fertilizer Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA approves the Arkansas plan for controlling sulfuric acid mist emissions from existing sulfuric acid production plants and fluoride emissions from existing phosphate fertilizer plants. The plan was submitted to fulfill the requirements of section 111(d) of the Clean Air Act, as amended in 1977 (the Act), and regulations promulgated thereunder. The plan was submitted as a part of the section 8.1 of the Regulations of the Arkansas Plan of Implementation for Air Pollution Control, entitled, "Designated Facilities." Also included in this final rulemaking, EPA approves the Louisiana plan for controlling fluoride emissions from the existing phosphate fertilizer plants. This plan was submitted as section 29 of the Louisiana Air Quality Control Regulations, entitled, "Fluoride Emission Standards for Phosphate Fertilizer Plants."

EFFECTIVE DATE: This action will be effective on July 12, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the States' submittals and incorporation by reference materials are available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Rm 8401, Washington, D.C.

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street SW., Rm 2922, Washington, D.C.

Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas

FOR FURTHER INFORMATION CONTACT: Estela S. Wackerbarth, Chief, Implementation Plan Section, Air Program Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

A. Arkansas Plan

On July 11, 1979 the State of Arkansas, pursuant to Section 111(d) of the Act, submitted a plan identifying existing sulfuric acd production facilities and establishing standards for sulfuric acid mist emissions from those facilities. This plan also identified the existing phosphate fertilizer plant and established emission limits to control fluoride emissions from that plant. The plan was adopted by the Arkansas Commission on Pollution Control and Ecology on May 25, 1979, after public hearing on March 16, 1979.

EPA has reviewed these portions of the State's plan and found that they satisfy the criteria of 40 CFR Part 60, except that the plan does not indicate that alternative emission test methods and procedures must be approved by EPA, nor does it make provision for public availability of emission data. By letter dated August 6, 1981, the State has agreed that alternative test methods and procedures will be submitted for EPA approval. In its previous approval of the State's plan submitted under the provisions of section 110 (40 CFR 52.178) EPA provided for making emission data associated with that plan available to the public (40 FR 55328, Nov. 28, 1975). Since this is a similar action, and the State had adopted this 111(d) plan as part of its general State Implementation Plan, the method which EPA provided under section 110 applies here. The Agency is therefore clarifying that 40 CFR 52.178 (b) applies to the Arkansas section 111(d) plan. EPA approves the plan, as supplemented, in this action. A detailed analysis of the State's plan is contained in EPA's evaluation report.[1] General comments are included in Section C, below.

B. Louisiana Plan

(1) On July 18, 1978, the State of Louisiana, pursuant to section 111(d) of the Act, submitted a plan identifying the existing phosphate fertilizer plants and establishing emission limits to control fluoride emissions from those facilities. The plan was adopted by the Louisiana Air Control Commission on November 30, 1977, after a public hearing on October 31, 1977. EPA has reviewed this portion of the State's section 111(d) plan and found that it satisfies the criteria of 40 CFR Part 60 except that it does not: (1) Provide for correlation of emission inventory data with the emission limits, (2) Make provision for public availability of emission data, or (3) Require EPA approval of alternative methods approved by the State's Technical Secretary. By letter dated February 16, 1982, the State shows that it requires EPA approval of alternative test methods. In its previous approval of the section 111(d) plan for control of sulfuric acid mist emissions (40 CFR 62.4622), EPA provided for correlation of inventory data with emission limits, and for making emission data available to the public (44 FR 54053, September 18, 1979). That provision applies by its terms to the entire plan, including the portion considered here. EPA approves the plan, as supplemented, in this action. A detailed analysis of the State's plan is contained in EPA's evaluation report.[2] General comments are in Section C, below.

(2) The effective date for this portion of the Louisiana plan is simultaneous with the effective date of this approval (July 12, 1982), unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

C. General

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of May 12, 1982. Under section 307(b)(2) of the Clean Air Act the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The Office of Management and Budget has exempted this rule from the

[1] Evaluation Report for Arkansas 111(d) Plan for Control of Sulfuric Acid Mist Emissions from Sulfuric Acid Plants and Fluoride Emissions from Phosphate Fertilizer Plants, October, 1981; available for public inspection at times and places noted above.

[2] Evaluation Report of Louisiana 111(d) Plan for Control of Fluoride Emissions from Phosphate Fertilizer Plants, September, 1981; available for public inspection at times and places noted above.

requirements of Section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act, as amended)

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. Part 62 is amended by adding a new Subpart E to read as follows:

Subpart E—Arkansas

Plan for the Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

Sec.

62.850 Identification of plan.
62.852 Emission inventories, source surveillance, reports.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

62.854 Identification of sources.

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

62.855 Identification of sources.

Authority: Sec. 111(d), Clean Air Act, as amended, 42 U.S.C. 7413 and 7601.

Subpart E—Arkansas

Plan for the Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

§ 62.850 Identification of plan.

(a) Identification of plan: Arkansas Plan for the Control of Designated Pollutants from Existing Plants [Section 111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from sulfuric acid plants, and fluoride emissions from phosphate fertilizer plants, submitted on July 11, 1979, having been adopted by the State on May 25, 1979, and letter dated August 6, 1981.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric Acid Plants.

(2) Phosphate Fertilizer Plants.

§ 62.852 Emission inventories, source surveillance, reports.

(a) For purposes of this subpart, the terms "the applicable plan" and "the plan" in 40 CFR 52.178(b), which provides for public availability of emission data, include this plan.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.854 Identification of sources.

The plan applies to existing facilities at the following existing phosphate fertilizer plant:

(1) Allied Chemical Company at Helena, Arkansas.

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.855 Identification of sources.

(a) The plan applies to existing facilities at the following existing sulfuric acid plants:

(1) Olin Corporation in North Little Rock, Arkansas.

(2) The Monsanto Company in Eldorado, Arkansas.

§§ 62.856–62.869 [Reserved]

Subpart T—Louisiana

§ 62.4620 [Redesignated as § 62.4624]

2. In Subpart T—Louisiana, § 62.4620(c) in its entirety is redesignated as § 62.4624 and entitled "Identification of sources."

3. In Subpart T—Louisiana, the center heading that appears above § 62.4620 are revised to read as follows:

Plan for Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

§ 62.4620 Identification of plan.

(a) Identification of plan: Louisiana Plan for Control of Designated Pollutants from Existing Facilities [111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from sulfuric acid plants, and fluoride emissions from existing facilities at phosphate fertilizer plants, submitted on July 18, 1978, having been adopted by the State November 30, 1977, and letter dated February 16, 1982.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric Acid Plants.

(2) Phosphate Fertilizer Plants.

4. In Subpart T—Louisiana, a new center heading is added above § 62.4624 and new §§ 62.4625 and 62.4626 are added to read as follows:

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

* * * * *

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.4625 Identification of sources.

(a) The Plan applies to existing facilities at the following phosphate fertilizer plants:

(1) Agrico Chemical Company at Donaldsville, Louisiana.

(2) Allied Chemical Corporation at Geismar, Louisiana.

(3) Beker Industries at Taft, Louisiana.

(4) Freeport Chemical at Uncle Sam, Louisiana.

(5) Monsanto at Luling, Louisiana.

§ 62.4626 Effective date.

(a) The effective date of the portion of the plan applicable to phosphate fertilizer plants is July 12, 1982.

[FR Doc. 82-12980 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-25-M

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40 CFR Part 62

[A-6-FRL-2092-8]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Louisiana Plan for Controlling Fluoride Emissions From Primary Aluminum Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA approves the Louisiana plan for controlling fluoride emissions from existing primary aluminum plants. The plan substantially fulfills the requirements of section 111(d) of the Clean Air Act, as amended in 1977 (the Act), and regulations promulgated thereunder. This plan entitled, "The Louisiana State Implementation Plan for Fluorides From Existing Primary Aluminum Plants," includes regulations adopted as section 28 of the Louisiana Air Quality Control Regulations and when approved allows the State to control emissions from existing sources.

EFFECTIVE DATE: This approval will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State's submittals and incorporation by

reference materials are available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Washington, D.C., Rm. 8401

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C., Rm. 2922.

FOR FURTHER INFORMATION CONTACT:

Estela S. Wackerbarth, Chief, Implementation Plan Section, Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION:

A. Louisiana Plan

(1) On January 12, 1981, the State of Louisiana, pursuant to Section 111(d) of the Act, submitted a plan identifying the existing primary aluminum plants and establishing standards to control fluoride emissions from those facilities. The plan was adopted by the Louisiana Environmental Control Commission on December 11, 1980, after a public hearing. The State submitted additional information in its letter of January 18, 1982. EPA has reviewed this portion of the State's plan and found that it satisfies the criteria of 40 CFR Part 60 except that it does not: (1) Provide for correlation of emission inventory data with the emission limits, (2) make provision for public availability of emission data, (3) establish an effective data and (4) provide for EPA approval of alternative test methods and procedures. In a previous approval of the Section 111(d) plan for sulfuric acid mist emissions (40 CFR 62.4622), EPA has provided for correlation of inventory data with emission limits, and for making emission data available to the public (44 FR 54053, September 18, 1979). That provision applies by its terms to the entire plan, including the portion considered here. The state did not submit compliance schedules, but, as required by 40 CFR 60.2(e) will develop and submit them after EPA approval of this plan. The State's plan refers to the EPA date of approval as the beginning of those compliance schedules. In this notice, EPA establishes as the effective date of the plan the effective date of this approval. That letter clarifying the portion of the plan applicable to phosphate fertilizer plants, already approved by EPA, provides for the State's submittal of alternative test methods and procedures to EPA for approval. The clarification applied by its terms to the portion of the plan considered here. EPA approves the plan, as supplemented, in this notice.

A detailed analysis of the State's plan is contained in EPA's evaluation report.[1]

(2) The effective date for this portion of the Louisiana plan is simultaneous with the effective date of this approval (July 12, 1982), unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

B. General

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from this date). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Act, as amended)

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

[1] Evaluation Report of Louisiana 111(d) Plan for Control of Fluoride Emissions From Primary Aluminum Plants, January, 1982; available for public inspection at times and places noted above.

Subpart T—Louisiana

1. In Subpart T—Louisiana, § 62.4620 (b)(2) and (c)(3) are added to read as follows:

§ 62.4620 Identification of plan.

* * * * * *

(b)(2) Control of fluoride emissions from existing facilities at primary aluminum plants, submitted on January 12, 1981, having been adopted by the State on December 11, 1980.

* * * * *

(c)(3) Primary Aluminum Plants.

* * * * *

2. In Subpart T—Louisiana, a new center heading and §§ 62.4627 and 62.4628 are added to read:

* * * * *

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.4627 Identification of sources.

The plan applies to existing facilities at the following primary aluminum plants:

(1) The Kaiser Plant at Chalmette, Louisiana.

(2) The CONALCO Plant at Lake Charles, Louisiana.

§ 62.4628 Effective date.

The effective date of this portion of the State's plan is July 12, 1982.

[FR Doc. 82-12870 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 62

[A-6-FRL-2098-5]

Approval and Promulgation of the Louisiana State Plan for a Designated Facility and Pollutant; Louisiana Plan for Controlling Total Reduced Sulfur Emissions From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Louisiana's Plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. Louisiana's plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act, as amended. The plan satisfies, with clarification, EPA's requirement for adoption and submittal of a plan to control TRS.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone

wishes to submit adverse or critical comments.

ADDRESS: Written comments should be addressed to Estela Wackerbarth, Chief, SIP Section, Region 6, Air Program Branch (address below). Copies of the materials submitted by Louisiana may be examined during normal business hours at the following locations:

Public Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 "M" Street SW., Washington, D.C. 20460

Air Program Branch, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Estela Wackerbarth at the EPA Region 6 address above of call (214) 767–1518 (FTS 729–1518).

SUPPLEMENTARY INFORMATION: On December 10, 1979, the Governor of Louisiana, after adequate notice and public hearing, submitted the State's plan for controlling total reduced sulfur emissions from existing kraft pulp mills. This plan was adopted by the Louisiana Air Control Commission on November 27, 1979. The State has adopted this plan to establish emission limitation for TRS from the pulp paper industry. The limitations are included in revisions to their Regulation 23.0 Control of Emissions from the Chemical Wood Pulping Industry for Control of Total Reduced Sulfur Emissions and submitted part of the overall plan.

EPA has reviewed this plan and after correspondence and discussion with the State finds it approvable. A detailed analysis of this plan is contained in EPA's evaluation report. A copy of the evaluation report is available for inspection at the above addresses.

As submitted, the plan did not adequately demonstrate that the State had the requisite authority to disclose emission data to the public upon the public's request. However, EPA approved Louisiana's original 111(d) plan at 40 CFR 62.4622(c) thereby assuring public disclosure. This provision is appropriate for use in disclosing emission data from sources covered by this TRS plan.

The Plan does not establish compliance schedules. However, the plan assures that public hearings will be held in accordance with the requirements of 40 CFR 60.24(e)(2) if a compliance schedule becomes necessary.

Since EPA views this plan as noncontroversial and routine, EPA is today approving the Louisiana plan for control of TRS from kraft pulp mills. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act, as amended, 42 U.S.C. 7411(d))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

1. In Subpart T—Louisiana, § 62.4620 (b)(3) and (c)(4) are added to read as follows:

§ 62.4620 Identification of plan.

* * * * *

(b)(3) Control of total reduced sulfur from existing facilities at kraft pulp mill plants, submitted in December 1979, having been adopted November 27, 1979, and letter dated February 16, 1982.

* * * * *

(c)(4) Kraft Pulp Mills.

* * * * *

2. In Subpart T—Louisiana, a new center head and § 62.4629 and § 62.4630 are added to read:

* * * * *

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.4629 Identification of sources.

The plan applies to existing facilities at the following kraft pulp mill plants:

(1) Boise at DeRidder, La.
(2) Boise at Elizabeth, La.
(3) Continental at Hodge, La.
(4) Crown-Zellerbach at Bogalusa, La.
(5) Crown-Zellerbach at St. Francisville, La.
(6) Georgia-Pacific at Port Hudson, La.
(7) International Paper at Bastrop, La.
(8) Olinkraft at West Monroe, La.
(9) Pineville Kraft at Pineville, La.
(10) Western Kraft at Compte, La.

§ 62.4630 Effective date.

The effective date of the portion of the plan applicable to kraft pulp mills is July 12, 1982.

[FR Doc. 82–12871 Filed 5–11–82; 8:45 am]
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Wednesday
May 12, 1982

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Transfer of Marine Mammal Management Authority to States; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmoshpheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals; Transfer of Marine Mammal Management Authority to States

AGENCY: National Oceanic and Atmoshpheric Administration, National Marine Fisheries Service, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing a rule to implement recent amendments to the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* The proposed regulations establish procedures for the transfer of marine mammal management authority back to the states, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return to the NMFS of management authority once transferred to the states.

DATE: Comments on this proposal must be submitted on or before July 12, 1982.

ADDRESS: Interested persons or organizations are requested to submit comments to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7461.

SUPPLEMENTARY INFORMATION: On October 9, 1981, the President approved Pub. L. 97–58 amending various provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the return of marine mammal management to the states under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, states were required to request the National Marine Fisheries Service to return management of the species. If a state sought authority to allow taking of the marine mammals under its management, the state was required to request the NMFS to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an Administrative Law Judge concerning the status of the requested species, and the permissible number of animals to be taken, as well as consideration of the state's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process entailed in the return of management authority to states had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem, Congress established a simplified procedure under which a state could resume management of marine mamal species. This procedure entails a three step process. First, the state must submit a request to the NMFS for return of management authority for a given species or a number of speciies of marine mammals. This request and its supporting documentation is reviewed by the NMFS to determine if the state has developed and will implement a program for the conservation of the species which meets certain requirements set forth in the Act. Second, if the NMFS finds that the state program meets this initial requirement, the state must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species which is consistent with maintaining the species at OSP. Third, these determinations must be implemented through state laws and regulations and, if the range of the species extends beyond the territorial water of the state, the state and Federal governments must agree on a process for allocating the take of the species between areas under respective state and Federal jurisdictions. Once this "cooperative allocation agreement" has been signed and implemented and the OSP and maximum allowable take determinations are final and implemented under state law, the state will have exclusive authority to manage marine mammals within the state, including its territorial waters. The only exceptions to this assumption of exclusive jurisdiction would be for takings regulated by the Federal government and takings by non-state personnel for scientific and display purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

The regulations proposed herein will implement the statutory procedures for return of marine mammal management authority to the states. These regulations apply to the species of marine mammals currently managed by the NMFS, under the authority of the MMPA. These species include the seals, sea lions, porpoises and whales. Other species of marine mammals, including the polar bear, sea otter, walrus, dugong, manatee and marine otter are managed by the Fish and Wildlife Service of the Department of the Interior which is proposing corresponding regulations concurrent with this proposal. Specific provisions of the NMFS proposed regulations are discussed below.

Section 216.101

Paragraph (a) of this section establishes the purpose of the regulations as explained above and defines the scope of the proposed regulations. Section 216.102 is definitional. The form and minimum requirements of a state application for transfer of management authority are set forth in §§ 216.103 and 216.104. The relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority is defined in §§ 216.103(h), 216.105, and 216.106. The revocation and return of management authority is governed by § 216.107. In addition, § 216.108 will list species for which management authority has been returned.

Paragraph (b) of this section excludes certain aspects of marine mammal management authority from that affected by the proposed regulations. Taking of marine mammals by Federal, state and local government officials in the course of their duties is governed by § 216.22 of this Part and, therefore, the notification requirements of that section remain in effect. Section 216.22 relates to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health and welfare. In addition, since the Act does not regulate disposition of marine mammals taken before its effective date, December 21, 1972, these regulations reflect that exception. (Section 216.14 of this part does impose certain notification requirements pertaining to marine mammals taken before December 21, 1972). Accordingly, a state may adopt and enforce any state law relating to any marine mammal taken before that date without requesting a return of management authority under these regulations.

Section 216.102

This section provides definitions for several terms used primarily in this subpart. These regulations, however, apply to the entire Part 216. "Optimum Sustainable Population" or "OSP" is defined in 50 CFR 216.3. Congress has specifically found that this definition accurately reflects the meaning of the term and the intent of Congress in passing the Act. H.R. Rep. No. 97–228, 97th Cong., 1st Sess., p. 16 (1981). It is important to note that OSP is any population level within a range of population levels. The upper bound of the range is the largest average supportable level within the ecosystem (carrying capacity). The lower bound of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "state management program." The state management program consists of the legal framework under which the state will manage marine mammals. Components of this framework which are specifically required to be submitted in the state's request for return of management authority are set forth in paragraphs (b) and (c) of § 216.103 of the proposed regulations. Paragraph (d) of § 216.103 lists additional components required only in the state of Alaska's management program.

Section 216.103

This section defines the form and minimum requirements of a state request for return of management authority. Any state requesting management authority from both the NMFS and the Fish and Wildlife Service may combine the request in a single document and send copies to both agencies. The request must contain two elements: Certain aspects of the proposed state management program and supplemental information pertaining to the state management program. The request must include the text of relevant laws, regulations, policies and other authorities of state law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act.

It is important to note that although the state management program is defined broadly by § 216.102, the request for transfer of management authority need not include all aspects of the state management program. Therefore, the state need not provide specific laws or regulations pertaining to the manner, times or amount of take, unless specifically required by § 216.103. Thus, the state need not submit as part of its request regulations pertaining to such aspects of take as bag limits, seasons, or the minimum rifles caliber that can be used in taking the species. However, the request must include, for example, a law or regulation that requires taking to be humane (see § 216.103(b)(2)(i), even though this is a restriction on the manner of taking, since it is specifically required by the Act.

If any necessary aspect of state law has yet to be enacted, proposed language or a commitment of intention to introduce legislation or adopt regulations must be submitted by the governor. The Act requires the Assistant Administrator for Fisheries to find that the State "has developed and will implement" a program for the conservation of the species before management authority can be transferred. This finding can be made for some aspects of the state management program (e.g., those required to be provided by § 216.103(b)(2)(v), (b)(3), (b)(5), (b)(6)(ii) and (d)(2)) even though only proposed language or a commitment of intention is submitted. Thus, submittal of these aspects of the state management program in pre-adoption form will not preclude review and approval of the state management program. However, the failure to enact a provision substantially as proposed can be grounds for revocation of management authority pursuant to § 216.107.

It should also be noted that if a state has been transferred management authority and that authority has been returned to, or revoked by, the Assistant Administrator for Fisheries pursuant to § 216.107 of the proposed regulations, the state may, at a later date, request the transfer of management authority by complying with § 216.103 of the proposed regulations.

Paragraph (b) of this section lists those components of the state management program which must be submitted in the request for a return of management authority. In the case of Alaska, only, paragraph (d) lists additional mandatory components relating to subsistence uses of marine mammals. These requirements are considered to be the minimum necessary to enable the Assistant Administrator for Fisheries to make the determination, required by section 109(b)(1)(A) of the Act, on whether the state program "is consistent with the purpose, policies and goals of (the) Act and with international treaty obligations."

Section 216.103(b)(1) requires the state to list the scientific and common names and estimated range of the species of marine mammals for which it seeks management authority. A state may request the transfer of management for more than one species. If this is the case, those components of the state management program that apply to more than one species do not need to be repeated for each species. Rather, the state should list the species and the components of the state management program that apply to some or all of the species. Those components of the state management program that apply to individual species should be so designated. The state should discuss which components apply generally and which apply specifically in the narrative discussion required by § 216.103(a)(2).

Paragraphs (b)(2)(i) through (b)(2)(v) and paragraph (d)(1) of this section are taken directly from section 109 of the Act and therefore require little additional explanation. A few points should, however, be noted.

First, a state to which management authority has been transferred for a given species is required to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence taking may be allowed even if the species is below its OSP, as long as the amount of subsistence take will nevertheless permit the species to increase toward its OSP. Paragraphs (b)(2)(iii) and (d)(1) of this section reflect this distinction.

Second, in accordance with the Act, paragraph (b)(2)(iv) requires the state to prohibit, with the exceptions noted below, take for scientific and display purposes. With the exception of take for scientific and display purposes done by or on behalf of the state, management of this take is retained by the NMFS. However, Federal regulation of take for scientific and display purposes will be consistent with state management as provided by § 216.105(c) of the proposed regulations.

Third, paragraph (b)(2)(v) requires the state to regulate the incidental taking of the species in a manner consistent with the Act and any Federal regulation of incidental taking. While the state regulations need to be consistent with the Federal regulations, they need not be identical.

Paragraph (b)(3) of this section requires that the state program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. This review need not comply with § 216.104 procedures pertaining to determining OSP and the maximum allowable take of the species. However, if the review, which should be done at least annually, discloses that OSP and maximum

allowable take determinations may need to be adjusted, the state must use those procedures required by § 216.104 in making these adjustments.

Paragraph (b)(6) of this section lists certain aspects of the state management program which must be considered by the Assistant Administrator for Fisheries in making a determination as to whether the state's program is consistent with the Act.

The description of the organization of state offices involved in the administration and enforcement of the state management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful.

Paragraph (b)(6)(ii) relates to permits involving marine mammals. The state should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications.

The state should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies.

The state should discuss, pursuant to paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public comment requirements, ex parte rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to state laws on specific aspects of marine nammal management, copies of these laws do not need to be included with those provided pursuant to § 216.103(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Paragraph 216.103(c) requires the state to submit in its request for the tranfer of management authority certain supplementary information pertaining to the state management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the state, yet will provide the Assistant Administrator for Fisheries a baseline from which to evaluate the subsequent administration of marine mammal management by the state.

Section 109(f)(1)(B) of the Act requires Alaska to provide economic opportunities to resident subsistence users of rural coastal village in the event non-subsistence consumptive uses of marine mammals will be allowed. Section 216.103(d)(2) of the proposed regulations require Alaska to describe the types of economic opportunities to be provided in this event. Alaska need not specify which types of economic opportunities would be available in specific cases. Instead, the state should describe the procedures to be used in deciding (a) when these opportunities will be made available, (b) the extent to which they will be made available, and (c) to whom they will be made available. Section 216.03(d) applies to the state of Alaska, only, and may be disregarded by other state applicants.

Paragraphs (e) through (h) of § 216.103 provide procedures for the Assistant Administrator's review of a request for return of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the state's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the state management program before final enactment and submission. Furthermore, pursuant to section 109(b)(2) of the Act, 16 U.S.C. 1379(b)(2), the state may not manage marine mammals even though the Assistant Administrator for Fisheries has approved its management program, until the events listed in § 216.103(h) of these regulations have occurred. When the Assistant Administrator for Fisheries finds that the state's OSP and maximum allowable take determinations are final and implemented under state law, and a cooperative allocation agreement, if necessary, has been implemented, a notice will be published in the Federal Register formally transferring management authority. The state can begin management at that time.

Section 216.104

This section describes procedures which the state must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c)(2) of the Act, 16 U.S.C. 1379(c)(2).

The OSP and maximum allowable take determination process is composed of three steps. First, pursuant to paragraph (c) of this section, the state must make an initial determination regarding OSP and maximum allowable take. Second, pursuant to paragraph (d), the state must provide public notice of its initial determinations. The state must make copies of its initial determinations and supporting documentation available for public inspection and must provide a reasonable time in which a request for a public hearing can be made.

The third step is finalization of the determinations. If no request for a public hearing is made within the prescribed time period, the initial determinations become final. If, on the other hand, a request for a public hearing is made, the determinations do not become final until the state has complied with the procedures of paragraphs (e) through (g) of this section.

Paragraph (e) requires public notice of the state hearing. This notice must include certain information including the State's initial determinations, the date(s), location(s) and purpose of the hearing, the name(s) of person(s) who will preside at the hearing and information on how interested persons can participate in the hearing. The state must also make available a description of the documentation and the witnesses upon which it will rely in the hearing. This information must be made available sufficiently in advance of the hearing to allow preparation by interested parties of supporting or rebuttal testimony.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the Act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to ensure that any taking will be consistent with the maintenance of OSP. *See Committee for Humane Legislation V. Richardson*, 44 F. Sup. 297 (D.D.C. 1976), *aff'd* 540 F. 2d. 1141 (D.C. Cir. 1976). In the case of Alaska when the species is below OSP, maintenance of OSP includes the amount of subsistence take which will allow the species to increase toward OSP. In the recent amendments to the MMPA, Congress specifically overruled the decision of the U.S. District Court in *People of Togiak V. United States*, 470 F. Supp. 423 (D.D.C. 1979), which had exempted Alaska natives from state management. Amended section 101(b) now allows state management of subsistence taken by Alaska natives under Section 109. Moreover, 101(b) now restricts the Alaska native definition to those natives who reside in Alaska. Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of

the presiding officer(s) in accordance with state law.

Paragraph (g) implements the Act's procedures for review of the hearing record. The state may employ any one of three methods for reviewing the record and making the final determinations based on that record. Independent of which method is used, the final determinations must be based only on information contained in the record of the public hearing. Once the final determinations are made, the state must develop a supporting decision document. This document must contain a statement of these determinations including findings and conclusions on all material issues and the reasons and basis therefor. This decision documentation must be made available to the Assistant Administrator for Fisheries and the public.

Finally, paragraph (h) of this section prescribes the parameters for judicial review of the final OSP and maximum take determinations.

The procedures required by § 216.104 apply only to OSP and maximum allowable take determinations. However, in the case of Alaska when the species is below OSP, the Act provides that subsistance take may be allowed only to the extent that the take will nevertheless allow the species to increase toward OSP. Since the maximum extent of subsistence take is subject to and must be based upon the OSP determination, the maximum allowable extent of subsistence take must also be determined in the same process. However, the extent of subsistence take that will actually be permitted within the maximum amount need not be determined through § 216.104 procedures.

If the species is at or above OSP, the state need not employ § 216.104 procedures to determine such regulatory controls on take as bag limits and quotas within the maximum biologically allowable take. Correspondingly, changes in bag limits, quotas and other similar regulatory controls on take can be made at any time through applicable state rulemaking procedures as long as the amount of take does not exceed the maximum allowable level of take as determined throught § 216.104 procedures.

Section 216.105

This section describes federal and state responsibilities after transfer of management authority. Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial water of the state, this agreement is actually a prerequisite to the transfer of management authority. Once implemented, it describes the jurisdictional relationship between the Federal and state government after transfer. The purpose of the agreement is to provide procedures to allocate between the Fishery Conservation Zone (FCZ) under Federal jurisdiction and lands and waters under state jurisdiction the maximum allowable take which the state has determined pursuant to § 216.104. It is anticipated that after the state has made its determination as to maximum allowable take, the NMFS will provide its judgment as to the number of animals, if any, that will be taken in the FCZ. The state will compare this number to its determination of maximum take, and, in the case of Alaska, that necessary for subsistence use. The state and the NMFS will then agree, employing the procedures required by § 216.103(b)(4), if necessary, on allocation of the species for these purposes.

Pursuant to paragraph (b) of this section, once a state has management authority returned, it can request the Assistant Administrator for Fisheries to regulate hunting and subsistence take of the species within the FCZ in a manner consistent with state regulations of such take. The Assistant Administrator for Fisheries shall adopt, after notice and comment procedures, those state regulatory provisions that are found to be consistent with the administration of section 101(a) of the Act, 16 U.S.C. 1371(a), within the FCZ. This process was established by section 109(d)(2) of the Act as a mechanism for the Federal adoption of state regulations in areas beyond state territorial waters. H.R. Rep. No. 97–228, 97th Cong., 1st Sess., p. 26 (1981).

In accordance with the terms of the Act, the NMFS remains responsible for regulating the take of marine mammals for scientific and public display purposes despite transfer of management authority to the state. Pursuant to the Act, and paragraph (C) of § 216.105 of the proposed regulations, the state is granted the opportunity to review applications for such take for consistency with the state's management of the species. Under the provisions of this subsection, the Assistant Administrator for Fisheries will notify the state upon receipt of an application to remove live animals from the wild within the state for scientific research or public display purposes. The state has 30 days in which to review the application. If the state finds that the permit would not be consistent with its management of the species and so notifies the Assistant Administrator for Fisheries, the Assistant Administrator would not issue the permit. However, the Assistant Administrator will provide to the state and the applicant an opportunity, through consultations or other appropriate mechanisms, to adjust the permit application so that it is consistent with the state's management program.

Paragraph (d) of § 216.105 encourages the state and the NMFS to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. This may include cooperation in research, enforcement and other aspects of marine mammal management. It is believed that such cooperative activities can provide the optimum utilization of the resources, personnel, expertise, knowledge and experience of both state and Federal wildlife agencies.

Section 216.106

This section provides procedures for the monitoring and review of the state management program. Under section 109(e) of the the Act, 16 U.S.C. 1379(e), the Assistant Administrator for Fisheries has responsibility, after management authority has been returned to the state, to monitor the state's implementation of its program. To facilitate this review process, the state is required to submit an annual report pursuant to paragraph (b) on its management of the species, and report pursuant to paragraph (c) whenever either of the two events listed in that subsection occur.

Paragraph (b) defines the components of the annual report. Any changes in the state laws of regulations provided in the original request pursuant to § 216.103(b) and, in the case of Alaska, § 216.103(d) must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures § 216.103(b)(6)(iv) will require less attention than a change in laws originally provided, pursuant to § 216.103(b)(2), concerning the take of the species.

Other than paragraph (b)(1), all other categories of information are limited by qualifiers such as "pertinent" and "significant" or simply seek information in summary form. Thus, the information provided need not be exhaustive, but should be sufficiently detailed and complete to provide the Assistant Administrator for Fisheries with a fair assessment of the administration of the state management program.

Paragraph (c) of this section requires the state to report the occurrence of eigher of two specified events. These events concern either the very foundation of the state management program or the status of the species involved and, therefore, require immediate review by the Assistant Administrator for Fisheries.

The report should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the state management program or the species. For example, a change in regulatory procedures for acquiring and evaluating data relating to OSP (§ 216.103(b)(3)) would in most cases require less discussion than a statutory or regulatory amendment allowing take in excess of the maximum allowable take determined pursuant to § 216.104 (§ 216.103(b)(2)(iii)).

Paragraph (d) of § 216.106 provides that all components of the state management program as well as annual reports submitted pursuant to § 216.106(b) and any reports submitted pursuant to § 216.106(c) will be available for inspection and copying at the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

Section 216.107

This section provides procedures and standards for the Assistant Administrator's review of state management of a species of marine mammals. In addition, this section provides procedures for the voluntary return of management to the Assistant Administrator by the state.

The Assistant Administrator's direct review of state management begins upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented inconsistent with the Act, the regulations of this subpart or the state's request for return of management authority.

Upon receipt of any such information, the Assistant Administrator for Fisheries will make a determination on whether or not the state has continued to comply with the Act, the regulations of Subpart H of Part 216 and the state's request for return of management authority. If the Assistant Administrator determines that the state is no longer in compliance, the state will be informed of the Assistant Administrator's intent to revoke management authority and the basis for this determination. The Assistant Administrator will also publish in the **Federal Register** a notice of the intent to revoke management authority. A public hearing will be held if requested by the state or otherwise determined by the Assistant Administrator to be necessary. The state will be provided an opportunity to consult on the deficiencies in state management which caused the Assistant Administrator's determination and the necessary remedial measures. If the state fails to take the necessary remedial measures within 90 days of the notice of intent to revoke provided by the Assistant Administrator, the Assistant Administrator shall revoke management. The Assistant Administrator will then manage the concerned species in accordance with the Act and the regulations of Part 216.

Paragraph (b) of this section provides procedures for the voluntary return of management authority to the Assistant Administrator for Fisheries by the State. The state need only notify the Assistant Administrator of its intent to return management. Unless the Assistant Administrator determines that an emergency exists which requires immediate assumption of management authority, the Assistant Administrator will publish a Notice in the **Federal Register** between 30 and 60 days after receiving notice from the state. This notice will act as the formal assumption of management authority by the Assistant Administrator. As with the revocation of management authority, the Assistant Administrator will then manage the concerned species of marine mammals pursuant to the Act and the regulations of Part 216.

Paragraph (b)(2) of this section provides procedures to be followed in the event that the implementation of any aspect of the state management program is enjoined by court order. Within 30 days of the injunction, the state is to evaluate the effect of the injunction on state management of the species and notify the Assistant Administrator. If the state determines that the injunction precludes effective conservation of the species under the management program, the notice is treated as a notice of intent to return management pursuant to § 216.107(b)(1). If the state determines that the injunction does not preclude effective conservation of the species, the notice is treated as a report submitted pursuant to § 216.106 (c)(1) and reviewed pursuant to § 216.107(a).

Section 216.108

This section provides notification of the states to which management have been returned. Accordingly, it will be updated from time to time when management has been returned to a new state or for a new species.

Applicability to Other Laws, Regulations and Requirements

An environmental assessment has been prepared in conjunction with these proposed regulations. It is available from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235. Based on the environmental assessment, the Assistant Administrator for Fisheries has determined that the proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c).

The proposed rulemaking is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The NMFS has determined, therefore, that the proposed regulations will not constitute a major rule and require no regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce has certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexbility analysis is not required.

Since the number of applicants for a return of marine mammal management authority, under the proposed regulations, is expected to be less than ten, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 50 CFR Part 216

Endangered and threatened wildlife, Imports, Marine mammals, Penalties.

Proposal of Regulation

Accordingly, it is hereby proposed to amend 50 CFR Part 216, by revising Subpart H to read as follows:

* * * * *

Subpart H—Transfer of Management Authority to States

Sec.

216.101 Purpose and scope of regulations.
216.102 Definitions.
216.103 Review and approval of State request for management authority.
216.104 Determinations and hearings under Section 109 (c)(2).

Sec.
216.105 State and Federal responsibilities after transfer of management authority.
216.106 Monitoring and review of State management program.
216.107 Revocation and return of State management.
216.108 List of States to which management has been transferred.

* * * * *

Subpart H—Transfer of Management Authority to States

§ 216.101 Purpose and scope of regulations.

The regulations contained in this subpart implement section 109 of the Act which provides for the transfer of marine mammal management authority to the States.

(a) The regulations of this subpart apply to the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority back to the States.

(b) Nothing in this subpart shall prevent (1) the taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with § 216.22 of this part, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

§ 216.102 Definitions.

The following definitions apply to this part.

(a) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(b) "State management program" means existing and proposed state laws, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(c) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

§ 216.103 Review and approval of State request for management authority.

(a) Any state may request the transfer of marine mammal management authority for a species of marine mammals by submitting a written request to the Assistant Administrator for Fisheries. The request must include:

(1) Copies of existing and proposed laws, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d)(1) of this section;

(2) A narrative discussion of the laws, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this subpart; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions concerning the take of marine mammals that

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Prohibit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 216.104 of this subpart, has determined that the species is at its Optimum Sustainable Population (OSP) and the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 216.105(a) of this subpart, is implemented;

(iii) Prohibit take in excess of the maximum number of animals that may be taken as determined pursuant to § 216.104 of this subpart; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d)(1)(iv) of this section;

(iv) Prohibit take that is for scientific or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under § 216.31 of this part; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act and Federal regulation, if any.

(3) Procedures for acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if required on the basis of such evaluation, for amending determinations as to OSP and maximum take and restricting take accordingly.

(4) Procedures for the resolution of differences between the state and the NMFS that might arise during the development of a cooperative allocation agreement pursuant to § 216.105(a) of this subpart.

(5) Procedures for the submission of an annual report meeting the requirements of § 216.100(b) of this subpart to the NMFS regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws and procedures relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws and procedures relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticpated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Director may request or which the state may deem necessary

or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following:

(1) Provisions concerning the take of marine mammals that provide for subsistence use of the species as defined in section 109(f)(2) of the Act by rural Alaska residents in the following manner:

(i) Subsistence uses are to be the priority consumptive use of the species;

(ii) Non-subsistence consumptive uses are to be authorized only if the appropriate state agency finds, on the basis of the administrative record for the rule authorizing non-subsistence consumptive use, that such non-subsistence consumptive use will have no significant adverse impact upon subsistence uses of the species and the regulation of non-subsistence consumptive use will, to the maximum extent practicable, provide economic opportunities for the resident subsistence users of the rural coastal villages in Alaska;

(iii) Subsistence use is to be accomplished in a non-wasteful manner;

(iv) If the species is below OSP, subsistence use is to be allowed at a level of take, if any, which will permit the species to increase toward OSP; and

(v) If restriction of subsistence uses is required, restriction is to be based upon the customary and direct dependence upon the species as a mainstay of livelihood, local residency, and the availability of alternative resources.

(2) A description of the types of economic opportunites to be provided to resident subsistence users pursuant to section 109(f)(2)(B)(ii) of the Act and the procedures to be used in providing these economic opportunities.

(e) To assist states in preparing the state management program for submission, the Assistant Administrator will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Assistant Administrator. Nothwithstanding preliminary review by the Assistant Administrator, once any proposed aspects of the state management program have been prepared and submitted in final form, they shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f) Upon receipt of a request submitted in accordance with paragraph (a) of this section, the Assistant Administrator will publish in the **Federal Register** a notice stating that the state management program under review will be available for inspection at the locations stated in the notice and providing information on how copies may be obtained. The notice will also provide that written data, views, comments, or requests for an informal public hearing on the state management program may be submitted to the Assistant Administrator within the time specified in the notice.

(g) The Assistant Administrator shall approve the request for transfer of management if, after consideration of the materials provided pursuant to this section and public comment received on such material, he determines that the state has developed and will implement a program for the conservation of species that is consistent with the provisions, purposes, policies and goals of the Act, international treaty obligations and the regulations of this part.

(h) Notwithstanding the provisions of paragraph (g) of this section, the state may not exercise management authority, which is retained by the Assistant Administrator, until such time as the determinations required by § 216.104 of this part are final and implemented under state law, and, if a cooperative allocation agreement for the species is required under § 216.105(a) of this part, such agreement is implemented. At such time of final implementation, the Assistant Administrator shall publish in the **Federal Register** a notice transferring management of the species to the state.

§ 216.104 Determinations and hearings under section 109(c)(2).

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with Section 109(c)(2) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from species it manages. The state process must be completed before the state may exercise any management authority over the subject marine mammals and it must include the elements set forth below.

(b) *Basis, Purpose, and Scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take as determined in accordance with this process that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial Determination by the State.* The state agency with management authority for the species shall make initial determinations on the basis of the best scientific evidence available of (1) whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and Review of Initial Determinations and Request for Hearing.* The state agency shall provide notice of its initial determinations to the Assistant Administrator and the public and shall provide access to or copies of the documentation supporting its determinations to the Assistant Administrator and the public. The state agency shall indicate in the Notice of its initial determinations the location(s) and hours during which such documentation may be inspected and the costs, if any, of copies of such documentation. The state agency shall also indicate in the Notice that any interested person may request a hearing regarding the initial determinations and the state shall provide a reasonable time for the request of not less than 30 days, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of Hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Assistant Administrator and the public not less than 30 days in advance of the scheduled date(s). The notice shall

include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and a description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the Hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses of other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument an/or written briefs at the end of the hearing.

(5) Final determinations on the uses specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the Hearing Record and Final Determinations.* (1) The state agency may provide for either (i) review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determination to the decision-maker(s) in the state agency; or (ii) review and evaluation of the hearing record, and final determinations by the presiding officer(s); or (iii) review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency and/or the presiding officer(s) must be made solely on the basis of the record developed at the hearing. The state agency may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Assistant Administrator and the public of its final determinations and shall provide access to or copies of its decision document.

(h) *Judicial Review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judical review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

§ 216.105 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by § 216.104 of this subpart have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative agreement with the Secretary allocating the maximum allowable take has been signed and implemented. The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 216.104 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Assistant Administrator to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Assistant Administrator shall adopt and enforce within such zone, such of the state's regulatory provisions as the Assistant Administrator considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been returned to a state pursuant to this subpart, the Assistant Administrator shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species, the state.

(1) Shall so inform the Assistant Administrator within 30 days of its receipt of the application and the Assistant Administrator shall not issue the permit; and

(2) The Assistant Administrator shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been returned to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 216.106 Monitoring and review of State management program.

(a) The Assistant Administrator has responsibility to monitor and review all state management programs approved pursuant to this subpart.

(b) In order to facilitate such review, each state to which management authority has been returned shall submit an annual report, not later than 120 days after the close of such state's first full

fiscal or calendar year following the effective date of the Assistant Administrator's approval of the state management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the state laws or regulations which comprise those aspects of the state management program submitted pursuant ot §216.103(b), and in the case of Alaska, §216.103(d), or this subpart;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of present budget and staffing for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Assistant Administrator may request, or which the state deems necessary or advisable to facilitate review by the Assistant Administrator of state management of the species.

(c) Each state having an approved management program shall file a report whenever any of the following occurs:

(1) Any change in a relevant state law or regulation (amendments, repealers, or new legislation or regulations) as submitted pursuant to paragraphs (b)(2) through (b)(5) of § 216.103 of this subpart that may impair the state's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrent reconsideration of the determinations made pursuant to § 216.104 of this subpart.

(d) All components of the state request for return of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

§ 216.107 Revocation and return of State management.

(a) *Revocation of management.* The Assistant Administrator shall have responsibility to review management of a species returned to a state under this subpart and to determine whether or not the state management program continues to comply with the requirements of the Act, this subpart and the state's request for returning management authority as submitted pursuant to § 216.103 of this subpart.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistant with the Act, this subpart, or the state's request for return of management authority, the Assistant Administrator shall, as soon as practicable, determine whether or not the state continues to comply with the requirements of the Act, this subpart and the state's request for return of management authority.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Assistant Administrator determines, that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this subpart or the state's request for return of management authority, he shall provide written notice to the state of his intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Assistant Administrator shall publish notice of such intent to revoke in the **Federal Register** and shall conduct an informal public hearing on the matter if requested by the state or if the Assistant Administrator otherwise determines it to be necessary. The Assistant Administrator shall provide to the state an opportunity for consultation between the Assistant Administrator and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Assistant Administrator to bring the state management program into compliance with the provision of the Act, this subpart and the state's request for return of management authority, the Assistant Administrator shall revoke the transfer of management authority by written notice to the state and publication in the **Federal Register.**

(b) Voluntary return of management authority to the Assistant Administrator.

(1) If a state desires to return management of a species of marine mammals to the Assistant Administrator, it shall provide to the Assistant Administrator notice of intent to return management. The Assistant Administrator, shall accept the return of management, and such return shall become effective, upon publication of a notice in the **Federal Register** to this effect no sooner than 30 days (except in an emergency as determined by the Assistant Administrator) nor longer than 60 days after the state has provided notice of its intent to return management.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Assistant Administrator of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation of the species under the terms of the state management program, it shall so notify the Assistant Administrator and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation of marine mammals under the terms of the state management program, it shall so notify the Assistant Administrator together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 216.106(c)(1) of this part. In either case, the state shall provide notice to the Assistant Administrator as soon as practicable but not more than 30 days after issuance of the injunction.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Assistant Administrator shall resume such management authority and regulate the taking and provide for the conservation of the species within the state in accordance with the provisions of the Act and the regulations of this part.

§ 216.108 List of States to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed: [Reserved]

(16 U.S.C. 1361, et seq., as amended by Pub. L. 97-98)

Dated: April 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-12872 Filed 5-11-82; 8:45 am]

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Wednesday
May 12, 1982

Part VI

Department of the Interior

Fish and Wildlife Service

Transfer of Marine Mammal Management Authority to States

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Procedures for Transfer of Marine Mammal Management Authority to States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service is proposing a rule to implement recent amendments to the Marine Mammal Protection Act. The proposed regulations establish procedures for the transfer of marine mammal management authority back to the States, the form and minimum requirements of a State application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority and the revocation and return to the Fish and Wildlife Service of management authority once transferred to the States.

DATE: Comments on this proposal must be submitted on or before July 12, 1982.

ADDRESS: Interested persons or organizations are requested to submit comments to the Chief, Division of Wildlife Management, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. James Gillett, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 632–2202.

SUPPLEMENTARY INFORMATION:

On October 9, 1981, the President approved Pub. L. 97–58 amending various provisions of the Marine Mammal Protection Act ("Act"), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the return of marine mammal management to the States under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, States were required to request the Fish and Wildlife Service ("Service") to return management of the species to the State. If a State sought authority to allow taking of the marine mammal species under its management, the State was required to request the Fish and Wildlife Service to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an administrative law judge concerning the status of the requested species, and the permissible number of animals to be taken, as well as consideration of the State's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process entailed in the return of management authority to States had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem the Amendments establish a simplified procedure under which a State could resume management of marine mammal species. This procedure entails a three step process. First, the State must submit a request to the Service for return of management authority for a given species or a number of species of marine mammals. This request and its supporting documentation are reviewed by the Service to determine if the State has developed and will implement a program for the conservation of the species which meets certain requirements set forth in the Act. Second, if the Service finds that the State program meets this initial requirement, the State must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species which is consistent with maintaining the species at OSP. Third, these determinations must be implemented through State laws and regulations and, if the range of the species extends beyond the territorial waters of the State, the State and Federal governments must agree on a process for allocating the take of the species between areas under respective State and Federal jurisdictions. Once this "cooperative allocation agreement" has been signed and implemented and the OSP and maximum allowable take determinations are final and implemented under State law, the State will have exclusive authority to manage marine mammals within the State, including its territorial waters. The only exceptions to this assumption of exclusive jurisdiction would be for takings regulated by the Federal government and takings by non-State personnel for scientific and display purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

The regulations proposed herein will implement the statutory procedures for return of marine mammal management authority to the States. These regulations apply to the species of marine mammals currently managed by the Service. These species are the polar bear, sea otter, walrus, dugong, manatee and marine otter. Other species of marine mammals are managed by the National Marine Fisheries Service which is proposing corresponding regulations concurrent with this proposal. Section 18.52 is definitional. The form and mimimum requirements of a State application for transfer of management authority are set forth in §§ 18.53 and 18.54. The relationship between Federal and State wildlife agencies both prior and subsequent to the transfer of management authority is defined in §§ 18.53(h), 18.55, and 18.56. The revocation and return of management authority is governed by § 18.57. In addition, § 18.58 will list States to which management authority has been returned. Specific provisions of the Service's proposed regulations are discussed below.

Section 18.51

Paragraph (a) of this section establishes the purpose of the regulations as explained above and defines the scope of the proposed regulations.

Paragraph (b) of this section excludes certain aspects of marine mammal management authority from that affected by the proposed regulations. Taking off marine mammals by Federal and local government officials in the course of their duties is governed by § 18.22 of this part and therefore the requirements of that section remain in effect. Section 18.22 relates to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health or welfare. In addition, since the Act does not regulate disposition of marine mammals taken before its effective date, December 21, 1972, these regulations reflect that exception. (Section 18.14 of this part does impose certain notification requirements pertaining to marine mammals taken before December 1, 1972). Accordingly, a State may adopt and enforce any State law relating to any marine mammal taken before that date without requesting a return of management authority under these regulations.

Section 18.52

This section provides definitions for several terms used primarily in this subpart. These regulations, however, apply to the entire Part 18. "Optimum Sustainable Population" or "OSP" is defined consistent with the existing

National Marine Fisheries Service definition, found at 50 CFR 216.3. Congress has specifically found that this definition accurately reflects the meaning of the term and the intent of Congress in passing the Act (H.R. Rep. No. 97–228, 97th Cong., 1st Sess., p. 10 (1981)). It is important to note that OSP is a range of population levels. The upper limit of the range is the largest average supportable level within the ecosystem (carrying capacity) The lower limit of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "State management program." The State management program consists of the legal framework under which the State will manage marine mammals. Components of this framework which are specifically required to be submitted in the State's request for return of management authority are set forth in paragraphs (b), (c) and, in the case of Alaska, (d) of § 18.53 of the proposed regulations.

Section 18.53

This section defines the form and minimum requirements of a State request for return of management authority. If a State is requesting management authority from the National Marine Fisheries Service as well as the Fish and Wildlife Service, the State may combine the request information in a single document and send copies to both agencies. The request must contain two elements: Certain aspects of the proposed State management program and supplemental information pertaining to the State management program. The request must include the text of laws, regulations, policies and other authorities of State law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act.

It is important to note that although the State management program is defined broadly by § 18.52, the request for transfer of management authority need not include all aspects of the State management program. Therefore, the State need not provide specific laws or regulations pertaining to the manner, times or amount of take, unless specifically required by § 18.53. Thus, the State need not submit as part of its request regulations pertaining to such aspects of take as bag limits, seasons, or the mimimum rifle caliber that can be used in taking the species. However, the request must include, for example, a law or regulation that requires taking to be humane (see § 18.53(b)(2)(i)) even though this is a retriction on the manner of taking, since it is part of the overall framework for management and specifically required by the Act and, as a result, the regulations.

If any necessary aspect of State law has yet to be enacted, proposed language or a commitment of intention to introduce legislation or adopt regulations must be submitted by the Governor. The Act requires the Director of the Service to find that the State "has developed and will implement" a program for the conservation of the species before management authority can be transferred. This finding can be made for some aspects of the State management program (e.g., those required to be provided by § 18.53(b)(2)(v), (b)(3), (b)(5), (b)(6)(ii) and (d)(2)) even though only proposed language or a commitment of intention is submitted. Thus, submittal of these aspects of the State management program in pre-adoption form will not preclude review and approval of the State management program. However, the failure to enact a provision substantially as proposed can be grounds for revocation of management authority pursuant to § 18.57

It should also be noted that if a State has been transferred management authority and that authority has been returned to, or revoked by, the Director pursuant to § 18.57 of the proposed regulations, the State may, at a later date, once again request the transfer of management authority by complying with § 18.53 of the proposed regulations.

Paragraph (b) of this section lists those components of the State management program which must be submitted in the request for return of management authority. However, section 109 of the Act requires Alaska's management program to contain additional components relating to regulating subsistence take by rural Alaska residents (both Natives and non-Natives). These requirements are set out in paragraph (d) of this section. The requirements of paragraph (b) and, in the case of Alaska, paragraphs (b) and (d), are considered to be the minimum amount necessary to enable the Director to make the determination, required by section 109(b)(1)(A) of the Act, of whether the State program "is consistent with the purpose, policies and goals of (the) Act and with international treaty obligations."

Section 18.53(b)(1) requires the State to list the scientific and common names and estimated range of the species of marine mammals for which it seeks management authority. A state may request the transfer of management for more than one species. If this is the case, those components of the State management program that apply to more than one species do not need to be repeated for each species. Rather, the State should list the species and the components of the State management program that apply to some or all of the species. Those components of the State management program that apply to individual species should be so designated. The State should discuss which components apply generally and which apply specifically in the narrative discussion required by § 18.53(a)(2).

Paragraphs (b)(2)(i) through (b)(2)(v) and paragraph (d)(1) of this section are taken directly from section 109 of the Act and therefore require little additional explanation. A few points should, however, be noted.

First, a State to which management authority has been transferred for a given species is required to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence may be allowed even if the species is below its OSP, as long is the amount of subsistence take will nevertheless permit the species to increase toward its OSP. Paragraphs (b)(2)(ii) and (d)(1)(iv) of this section reflect this distinction.

Second, in accordance with the Act, paragraph (b)(2)(iv) requires the State to prohibit take for scientific and display purposes, with the exception of take for such purposes done by or on behalf of the State (management of this take is retained by the Fish and Wildlife Service). However, the Federal regulation of take for scientific and display purposes will be consistent with State management as provided by § 18.55(c) of the proposed regulations.

Third, paragraph (b)(2)(v) requires the State to regulate the incidental taking of the species in a manner consistent with the Act and any Federal regulation of incidental taking. While the State regulations need to be consistent with the Federal regulations, they need not be identical.

Paragraph (b)(3) of this section requires that the State program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. This review need not comply with § 18.54 procedures pertaining to *determining* OSP and the maximum allowable take of the species. However, if the review, which should be done at least annually, discloses that OSP and maximum allowable take determinations may need to be adjusted, the State must use those procedures required by § 18.54 in making these adjustments.

Paragraph (b)(6) of this section lists certain aspects of the State management program which must be considered by the Director in making a determination as to whether the State's program is consistent with the Act.

The description of the organization of State offices involved in the administration and enforcement of the State management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful.

Paragraph (b)(6)(ii) relates to permits involving marine mammals. The State should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications.

The State should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies.

The State should also discuss, under paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public comment requirements, *ex parte* rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to State laws on specific aspects of marine mammal management, copies of these laws do not need to be included with those provided pursuant to § 18.53(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Section 18.53(c) requires the State to submit in its request for the transfer of management authority supplemental information pertaining to the State management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the State, yet will provide the Director with a baseline from which to evaluate the subsequent administration of marine mammal management by the State.

Section 109(f)(1)(B) of the Act requires Alaska to provide economic opportunities to resident subsistence users of rural coastal village in the event non-subsistence consumptive uses of marine mammals will be allowed. Section 18.53(d)(2) of the proposed regulations requires Alaska to describe the types of economic opportunities to be provided in this event. Alaska need not specify which types of economic opportunities would be available in specific cases. Instead, the State should describe, in addition to which general types of economic opportunities will be made available, the procedures to be used in deciding (a) when these opportunities will be made available, (b) the extent to which they will be made available, and (c) to whom they will be made available.

Paragraphs (e) through (h) of § 18.53 provide procedures for the Director's review of a request for return of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the State's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the State management program before final enactment and submission. Furthermore, pursuant to section 109(b)(2) of the Act, 16 U.S.C. 1379(b)(2), the State may not manage marine mammals, even though the Director has approved its management program, until the events listed in § 18.53(h) of these regulations have occurred. When the Director finds that the State's OSP and maximum allowable take determinations are final and implemented under State law, and a cooperative allocation agreement, if necessary, has been implemented, a notice will be published in the **Federal Register** formally transferring management authority. The State can begin management at that time.

Section 18.54

This section describes procedures which the State must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c)(2) of the Act, 16 U.S.C. 1379(c)(2).

The OSP and maximum allowable take determination process is composed of three steps. First, pursuant to paragraph (c) of this section, the State must make initial determinations regarding OSP and maximum allowable take. Second, under paragraph (d), the State must provide public notice of its initial determinations. The State must make copies of its initial determinations and supporting documentation available for public inspection and must provide a reasonable time in which a request for a public hearing can be made.

The third step is finalization of the determinations. If no request for a public hearing is made within the prescribed time period, the initial determinations become final. If, on the other hand, a request for public hearing is made, the determinations do not become final until the State has complied with the procedures of paragraphs (e) through (g) of this section.

Paragraph (e) requires public notice of the State hearing. This notice must include certain information including the State's initial determinations, the date(s), location(s) and purpose of the hearing, the name(s) of person(s) who will preside at the hearing and information on how interested persons can participate in the hearing. The State must also make available a description of the documentation and the witnesses upon which it will rely in the hearing. This information must be made available sufficiently in advance of the hearing to allow preparation by interested parties of supporting or rebuttal testimony.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to insure that any taking will be consistent with the maintenance of OSP. *See, Committee for Humane Legislation v. Richardson*, 414 F. Supp. 297 (D.D.C. 1976), *aff'd* 540 F.2d. 1141 (D.C. Cir. 1976). In the case of Alaska when the species is below OSP, maintenance of OSP includes the amount of subsistence take which will allow the species to increase toward OSP. In the recent amendments to the Act, Congress specifically overruled the decision of the United States District Court in *People of Iogiak v. United States*, 470 F. Supp. 423 (D.D.C. 1979), which had exempted take of marine mammals by Alsaka natives from State management. Amended section 101(b) now allows State management of subsistence take by Alaska natives under section 109. Moreover, section 101(b) now restricts the definition of Alaska natives to those natives who reside in Alaska.

Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of the presiding officer(s) in accordance with State law.

Paragraph (g) implements the Act's procedures for review of the hearing record. The State may employ any one of three methods for reviewing the record and making the final

determinations based on that record. Independent of which method is used, the final determinations must be based only on information contained in the record of the public hearing. Once the final determinations are made, the State must develop a supporting decision document. This document must contain a statement of these determinations including findings and conclusions on all material issues and the reasons and basis therefor. This decision documentation must be made available to the Director and the public.

Finally, paragraph (h) of this section prescribes the parameters for judicial review of the final OSP and maximum take determinations.

The procedures required by § 18.54 apply only to OSP and maximum allowable take determinations. However, in the case of Alaska when the species is below OSP, the Act provides that subsistence take may be allowed only to the extent that the take will nevertheless allow the species to increase toward OSP. Since the maximum extent of subsistence take is subject to and must be based upon the OSP determination, the maximum allowable extent of subsistence take must also be determined in the same process. However, the extent of subsistence take that will actually be permitted within the maximum amount need not be determined through § 18.54 procedures.

If the species is at or above OSP, the State need not employ § 18.54 procedures to determine such regulatory controls on take as bag limits and quotas within the maximum biologically allowable take. Correspondingly, changes in bag limits, quotas and other similar regulatory controls on take can be made at any time through applicable State rulemaking procedures as long as the amount of take does not exceed the maximum allowable level of take as determined through § 18.54 procedures.

Section 18.55

This section describes Federal and State responsibilities after transfer of management authority. Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial waters of a State, this agreement is actually a prerequisite to the transfer of management authority. Once implemented, it describes a jurisdictional relationship between the Federal and State government after transfer. The purpose of the agreement is to provide procedures to allocate between the Fishery Conservation Zone (FCZ) under Federal jurisdiction and lands and waters under State jurisdiction the maximum allowable take which the State has determined pursuant to § 18.54. This instrument was designed by Congress to ensure that the State does not preempt all available take so as to impinge upon federal incidental take determinations in the FCZ, and to ensure that the Secretary does not make unjustifiable claims respecting numbers of animals purported to be needed to carry out his responsibilities under section 101 of the Act. *See* H.R. Rep. No. 97-228, 97th Cong., 1st Sess. p. 26 (1981).

Pursuant to paragraph (b) of this section, once a State has management authority returned, it can request the Director to regulate hunting and subsistence take of the species within the FCZ in a manner consistent with State regulation of such take. The Director shall adopt, after notice and comment procedures, those State regulatory provisions that he finds to be consistent with his administration of section 101(a) of the Act, 16 U.S.C. 1371(a), within the FCZ. This process was established by section 109(d)(2) of the Act as a mechanism for the Federal adoption of State regulations in areas beyond State territorial waters. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 26 (1981).

In accordance with the terms of the Act, the Service remains responsible for regulating the take of marine mammals for scientific and public display purposes despite transfer of management authority to the State. Pursuant to the Act, and paragraph (c) of § 18.55 of the proposed regulations, the State is granted the opportunity to review applications for such take for consistency with the State's management of the species. Under the provisions of this subsection, the Director will notify the State upon receipt of an application to remove live animals from the wild within the State for scientific research or public display purposes. The State has 30 days in which to review the application. If the State finds that the permit would not be consistent with its management of the species and so notifies the Director, the Director would not issue the permit. However, the Director will provide to the State and the applicant an opportunity, through consultations or other appropriate mechanisms, to adjust the permit application so that it is consistent with the State's management program.

Paragraph (d) of § 18.55 encourages the State and the Service to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. This may include cooperation in research, enforcement and other aspects of marine mammal management. It is believed that such cooperative activities can provide the optimum utilization of the resources, personnel, expertise, knowledge and experience of both State and Federal wildlife agencies.

Section 18.56

This section provides procedures for the monitoring and review of the State management program. Under section 109(e) of the Act, 16 U.S.C. 1379(e), the Director has the responsibility, after management authority has been returned to the State, to monitor the State's implementation of its program. To facilitate this review process, the State is required to submit an annual report on its management of the species, and shall make a report pursuant to paragraph (c) of this section whenever either of the two events listed in that subsection occur.

Paragraph (b) defines the components of the annual report. Any substantive changes in the State laws or regulations provided in the original request pursuant to § 18.53(b) and, in the case of Alaska, § 18.53(d), must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures [§ 18.53(b)(6)(iv)] will require less attention than a change in laws originally provided, pursuant to § 18.53(b)(2), concerning the take of the species.

Other than paragraph (b)(1), all other categories of information are limited by qualifiers such as "pertinent" and "significant" or simply seek information in summary form. Thus, the information provided need not be exhaustive, but should be sufficiently detailed and complete to provide the Director with a fair assessment of the administration of the State management program.

Paragraph (c) of this section requires the State to file a report when either of two specified events occurs. These events concern either the very foundation of the State management program or the status of the species itself and therefore require immediate review by the Director.

A report submitted pursuant to paragraph (c) should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the State management program or the status of the species. For example, a change in regulatory procedures for acquiring and

evaluating data relating to OSP (§ 18.53(b)(3)) would in most cases require less discussion than a statutory or regulatory amendment allowing take in excess of the maximum allowable take determined pursuant to § 18.54 (§ 18.53(b)(2)(iii)).

Paragraph (d) of § 18.56 provides that all components of the State management program as well as annual reports submitted pursuant to § 18.56(b) and reports submitted pursuant to § 18.56(c) will be available for inspection and copying at the Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C.

Section 18.57

This section provides procedures and standards for the Director's review of state management of a species of marine mammals. In addition, this section provides procedures for the voluntary return of management to the Director by the state.

The Director's direct review of state management begins upon receipt of any substantial factual information suggesting that the State management program is not being implemented or is being implemented inconsistent with the Act, the regulations of this subpart or the State's request for return of management authority.

Upon receipt of any such information, the Director will make a determination of whether or not the State has continued to comply with the Act, the regulations of subpart F of Part 18 and the State's request for return of management authority. If the Director's determination is that the State is no longer in compliance, the State will be informed of the Service's intent to revoke management authority and the bases for the determination. The Director will also publish in the **Federal Register** a notice of intent to revoke management authority. A public hearing will be held if requested by the State or otherwise determined by the Director to be necessary. The State will be provided an opportunity to consult on the deficiencies in State management which caused the Director's detemination and the necessary remedial measures. If the State fails to take the necessary remedial measures within 90 days of the notice of intent to revoke provided by the Director, the Director shall revoke management. The Director will then manage the concerned species in accordance with the Act and the regulations of Part 18.

Paragraph (b) of this section provides procedures for the voluntary return of management authority to the Director by the State. The State need only notify the Director of its intent to return management. Unless the Director determines that an emergency exists which requires immediate assumption of management authority, the Director will publish a Notice in the **Federal Register** between 30 and 60 days after receiving notice from the State. This Notice will act as the formal assumption of management authority by the Director. As with the revocation of management authority, the Director will then manage the concerned species of marine mammals pursuant to the Act and the regulations of Part 18.

Paragraph (b)(2) of this section provides procedures to be followed in the event that the implementation of any aspect of the State management program is enjoined by court order. Within 30 days of the injunction the State is to evaluate the effect of the injunction on State management of the species and notify the Director. If the State determines that the injunction precludes effective conservation of the species under the management program, the notice is treated as a notice of intent to return management pursuant to § 18.57(b)(1). If the State determines that the injunction does not preclude effective conservation of the species, the notice is treated as a report submitted pursuant to § 18.56(c)(1) and reviewed pursuant to § 18.57(a).

Section 18.58

This section provides notification of the States to which management have been returned. Accordingly, it will be updated from time to time when management has been returned to a new State or for a new species.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Division of Wildlife Management, Room 506, Matomic Building, 1717 H Street, NW, Washington, D.C. 20240, and may be examined by appointment during regular business hours. Based on the draft environmental assessment, the Director has determined that the proposed rules would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C). A determination will be made at the time of final rulemaking as to whether the final regulation is a major Federal Action significantly affecting the quality of the human environment within the meaning of that section.

Primary Author

The primary author of this proposal is Frank J. Ruswick, Jr., Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291.

The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. These determinations are discussed in more detail in a Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service.

The information collections contained in this proposed regulation are not subject to Office of Management and Budget clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) since there are fewer than ten respondents annually. The regulation applies only to the States of Alaska, Florida, California, Oregon, and Washington.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Intergovernmental Relations, Export, Imports, Transportation, and Marine mammals.

Proposal of Regulation

PART 18—MARINE MAMMALS

Accordingly, it is hereby proposed to amend 50 CFR Part 18, by:

Subpart F is revised as follows:

Subpart F—Transfer of Management Authority to the States

Sec.

18.51 Purpose and scope of regulations.
18.52 Definitions.
18.53 Review and approval of State request for return of management authority.
18.54 Determinations and hearings under Section 109(c)(2).
18.55 State and Federal responsibilities after transfer of management authority.
18.56 Monitoring and review of state management program.
18.57 Revocation and return of state management.
18.58 List of states to which management has been returned.

Subpart F—Transfer of Management Authority to States

Note.—The information collections contained in this Subpart F are not subject to Office of Management and Budget clearance under 44 U.S.C. 3507 since there are fewer than ten respondents annually.

§ 18.51 Purpose and scope of regulations.

The regulations contained in this subpart implement section 109 of the Act which provides for the transfer of marine mammal management authority to the States.

(a) The regulations of this subpart set forth the procedures for the transfer of marine mammal management authority to a State, the form and minimum

requirements of a State application for the transfer of management authority, the relationship between Federal and State wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority back to the States.

(b) Nothing in this subpart shall prevent (1) the taking of a marine mammal by or on behalf of a Federal, State or local government official, in accordance with § 18.22 of this part, or (2) the adoption or enforcement of any State law or regulation relating to any marine mammal taken before December 21, 1972.

§ 18.52 Definitions.

The following definitions apply to this part.

(a) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(b) "State management program" means existing and proposed State laws, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(c) "State regulation" means the whole or part of a State agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a State agency and which is duly promulgated in accordance with established procedure.

§ 18.53 Review and approval of State request for management authority.

(a) Any State may request the transfer of marine mammal management authority for a species of marine mammals by submitting a written request to the Director, U.S. Fish and Wildlife Service. The request must include:

(1) Copies of existing and proposed laws, regulations, policies and other authorities of State law which comprise those aspects of the State management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d)(1) of this section;

(2) A narrative discussion of the laws, regulations, policies and other authorities which comprise those aspects of the State management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this subpart; and

(3) Supplemental information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the State management program.

(2) Provisions concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Prohibit the taking of marine mammals until the following have occurred:

(A) The State, pursuant to the requirements of § 18.54 of this subpart, has determined that the species is at its Optimum Sustainable Population (OSP) and the maximum number of animals that may be taken without reducing the species below its OSP and, in the case of Alaska, the maximum number that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under State law;

(C) And a cooperative allocation agreement, if required under § 18.55(a) of this subpart, is implemented;

(iii) Prohibit take in excess of the maximum number of animals that may be taken as determined pursuant to § 18.54 of this subpart; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d)(1)(i) of this section;

(iv) Prohibit take that is for scientific or public display purposes except such take by or on behalf of the State, or pursuant to a Federal permit issued under § 18.31 of this part; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act and Federal regulation, if any.

(3) Procedures for acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if required on the basis of such evaluation, for amending determinations as to OSP and maximum take and restricting take accordingly.

(4) Procedures for the resolution of differences between the State and the Service that might arise during the development of a cooperative allocation agreement pursuant to § 18.55(a) of this subpart.

(5) Procedures for the submission of an annual report meeting the requirements of § 18.56(b) of this subpart to the Service regarding the administration of the State management program during the reporting period.

(6) A description of:

(i) The organization of State offices involved in the administration and enforcement of the State management program;

(ii) Any permit system relating to marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws and procedures relating to judicial review of administrative decisions as they relate to the State management program;

(iv) State laws and procedures relating to administrative rulemaking as they relate to the State management program;

(c) In addition to the aspects of the State management program required to be submitted by paragraph (b) of this section, the State shall submit information, in summary form, relating to:

(1) The anticipated staffing and funding of State offices involved in the administration and enforcement of the State management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other material and information as the Director may request or which the State may deem necessary or advisable to demonstrate the compatibility of the State management program with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following:

(1) Provisions concerning the take of marine mammals that provide for subsistence use of the species as defined in section 109(f)(2) of the Act by rural Alaska residents in the following manner:

(i) Subsistence uses are to be the priority consumptive use of the species;

(ii) Non-subsistence consumptive uses are to be authorized only if the appropriate State agency finds, on the basis of the administrative record for

the rule authorizing non-subsistence consumptive use, that such non-subsistence consumptive use will have no significant adverse impact upon subsistence uses of the species and the regulation of non-subsistence consumptive use will, to the maximum extent practicable, provide economic opportunities for the resident subsistence users of the rural coastal villages in Alaska;

(iii) Subsistence use is to be accomplished in a non-wasteful manner;

(iv) If the species is below OSP, subsistence use may be allowed only to the extent of the maximum level of take, if any, which will permit the species to increase toward OSP; and

(v) If restriction of subsistence uses is required, restriction is to be based upon the customary and direct dependence upon the species as a mainstay of livelihood, local residency, and the availability of alternative resources.

(2) A description of the types of economic opportunities to be provided to resident subsistence users of rural coastal villages in the event non-subsistence consumptive uses of marine mammals will be allowed, and the procedures to be used in providing these economic opportunities.

(e) To assist States in preparing the State management program for submission, the Director will, at the written request of any State, make a preliminary review of any aspects of the State management program. This review will be advisory in nature and shall not be binding upon the Director. Notwithstanding preliminary review by the Director, once any proposed aspects of the State management program have been prepared and submitted in final form, they shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f) Upon receipt of a request submitted in accordance with paragraph (a) of this section, the Director will publish in the **Federal Register** a notice stating that the State management program under review will be available for inspection at the locations stated in the notice, and providing information on how copies may be obtained. The notice will also provide that written data, views, comments, or requests for an informal public hearing on the State management program may be submitted to the Director within the time specified in the notice.

(g) The Director shall approve the request for transfer of the management if, after consideration of the materials provided pursuant to this section and public comment received on such material, he determines that the State has developed and will implement a program for the conservation of the species that is consistent with the provisions, purposes, policies and goals of the Act, international treaty obligations and the regulations of this part.

(h) Notwithstanding the provisions of paragraph (g) of this section, the State may not exercise management authority, which is retained by the Director, until such time as the determinations required by § 18.54 of this part are final and implemented under State law, and, if a cooperative allocation agreement for the species is required under § 18.55(a) of this part, such agreement is implemented. At such time of final implementation, the Director shall publish in the **Federal Register** a notice transferring management of the species to the State.

§ 18.54 Determinations and hearings under Section 109(c)(2).

(a) *Introduction.* In order to gain approval of its marine mammal management program the State must provide for a process, consistent with Section 109(c)(2) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from species it manages. The State process must be completed before the State may exercise any management authority over the subject marine mammals and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determinations of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The State need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The State may set and change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the State proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determinations by the State.* The State agency with management authority for the species of marine mammals shall make initial determinations on the basis of the best scientific evidence available of: (1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The State agency shall provide notice of its initial determinations to the Director and the public and shall provide access to or copies of the documentation supporting its determinations to the Director and the public. The State agency shall indicate in the notice of its initial determinations the location(s) and hours during which such documentation may be inspected and the costs, if any, of copies of such documentation. The State agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations and shall provide a reasonable time to request the hearing of not less than 30 days after the notice, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the State agency shall provide notice of the hearing to the Director and the public not less than 30 days in advance of the scheduled date(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the State agency or presiding officer(s) of their desire to participate in the hearing. The State shall also make available and distribute upon request a list of witnesses and a description of the documentation and other evidence that will be relied upon by the State's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The State shall sponsor all written documentation in support of its initial

determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the State agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the State agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining witnesses of other parties with respect to matters relevant to the State's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The State agency may provide for either: (i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the State agency; or (ii) review, and evaluation, of the hearing record, and final determinations by the presiding officer(s); or (iii) review and evaluation of the hearing record and final determinations by the State agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the State agency and/or the presiding officer(s) must be made solely on the basis of the record developed at the hearing. The State agency may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the State agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The State agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The State agency shall advise the Director and the public of its final determinations and shall provide access to or copies of its decision document.

(h) *Judicial review.* The State agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the State agency's final determinations must be available under State law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706 (2) (A) through (E).

§ 18.55 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by § 18.54 of this subpart have been made in respect to a species whose range extends beyond the territorial waters of the State, the State shall not exercise management authority until a cooperative agreement with the Secretary has been signed and implemented. The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the State pursuant to § 18.54 of this subpart. Such allocation shall give first priority to incidental take within the zone described in section 3(14) (B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the State may request the Director to regulate the taking of the species within the zone described in section 3(14) (B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the State of such taking within the State. If such a request is made, the Director shall adopt and enforce within such zone, such of the State's regulatory provisions as the Director considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been returned to a State pursuant to this subpart, the Director shall provide to the State an opportunity to review all requests for permits to remove live animals from habitat within the State for scientific research or public display purposes. If the State finds that issuance of the permit would not be consistent with its management program for the species:

(1) The State shall so inform the Director within 30 days of its receipt of the application and the Director shall not issue the permit; and

(2) The Director shall provide to the permit applicant and the State an opportunity to adjust the permit application or otherwise reconcile it with the State management program for the species.

(d) After management of a species has been returned to the State, State and Federal authorities shall cooperate to the maximum extent practiable in conserving the species of marine mammals.

§ 18.56 Monitoring and review of State management program.

(a) The Director has responsibility to monitor and review all State management programs approved pursuant to this subpart.

(b) In order to facilitate such review, each State to which management authority has been returned shall submit an annual report not later than 120 days after the close of such State's first full fiscal or calendar year following the effective date of the Director's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the State laws or regulations which comprise those aspects of the State management program submitted pursuant to § 18.53(b), and, in the case of Alaska, § 18.53(d), of this subpart;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the State management program;

(4) A summary of State actions to protect the species' habitat;

(5) A summary of all State research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of all enforcement activity;

(8) A summary of present budget and staffing for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Director may request, or which the State deems necessary or advisable to facilitate review by the Director of State management of the species.

(c) Each State having an approved management program shall file a report whenever any of the following occurs:

(1) Any change in a relevant State law or regulation (amendments, repealers, or new legislation or regulations) as submitted pursuant to paragraphs (b)(2) through (b)(5), and, in the case of Alaska, paragraph (d)(1), of § 18.53 of this subpart that may impair the State's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 18.54 of this subpart.

(d) All components of the State request for return of management authority, as well as annual reports submitted under paragraph (b) of this section and reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

§ 18.57 Revocation and return of State management.

(a) Revocation of management. The Director has the responsibility to review management of a species returned to a State under this subpart and to determine whether or not the State management program continues to comply with the requirements of the Act, this subpart and the State's request for return of management authority as submitted pursuant to § 18.53 of this subpart.

(1) Upon receipt of any substantial factual information suggesting that the State management program is not being implemented or is being implemented in a manner inconsistent with the Act, this subpart, or the State's request for return of management authority, the Director shall, as soon as practicable, determine whether or not the State continues to comply with the requirements of the Act, this subpart and the State's request for return of management authority.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Director determines, that any substantial aspect of the State management program is not in compliance with the requirements of the Act, this subpart or the State's request for return of management authority, he shall provide written notice to the State of his intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Director shall publish notice of such intent to revoke in the **Federal Register** and shall conduct an informal public hearing on the matter if requested by the State or if he otherwise determines it to be necessary, and he shall provide to the State an opportunity for consultation between him and the State concerning such actions or failures and necessary remedial actions to be taken by the State.

(3) If within 90 days after notice is provided under subparagraph (a)(2) of this section, the State has not taken such remedial measures as are necessary, in the judgment of the Director, to bring the State management program into compliance with the provisions of the Act, this subpart and the State's request for return of management authority, the Director shall revoke the transfer of management authority by written notice to the State and publication in the **Federal Register.**

(b) Voluntary return of management authority to the Director.

(1) If a State desires to return management of a species of marine mammals to the Director it shall provide to the Director notice of intent to return managment. The Director shall accept the return of mangement, and such return shall become effective, upon publication of a notice in the **Federal Register** to this effect no sooner than 30 days (except in an emergency as determined by the Director) nor longer than 60 days after the State has provided notice of intent to return managment.

(2) If implementation of any aspect of the State management program is enjoined by court order, the State shall advise the Director of such injunction and its effect on the State management program. If the State determines that the effect of the injunction is to preclude effective conservation of the species under the terms of the State management program, it shall so notify the Director and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the State determines that the injunction does not preclude effective conservation of marine mammals under the terms of the State management program, it shall so notify the Director together with the bases for the State's determination and such notice will be treated as a report submitted pursuant to the terms of § 18.56(c)(1) of this part. In either case, the State shall provide notice to the Director as soon as practicable but not more than 30 days after issuance of the injunction.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a State returns management pursuant to paragraph (b) of this section, the Director shall resume such management authority and regulate the taking and provide for the conservation of the species within the State in accordance with the provisions of the Act and the regulations of this part.

§ 18.58 List of States to which management has been transferred.

The following States have received management authority pursuant to this part for the species listed: [Reserved].

(16 U.S.C. 1361 et seq., as amended by Pub. L. 97–58)

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82–12873 Filed 5–11–82; 8:45 am]

BILLING CODE 4310–55–M

federal register

Wednesday
May 12, 1982

Part VII

Department of the Interior

Bureau of Land Management

Outer Continental Shelf, Southern California; Oil and Gas Lease Sale No. 68; Notice of Leasing Systems, Sale No. 68

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4310-84

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf
Southern California

Oil and Gas Lease Sale No. 68

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., June 10, 1982; or by personal delivery to the Los Angeles Convention Center, 1201 S. Figueroa St., Room 217, Los Angeles, California 90015 between the hours of 8:30 a.m., p.s.t. and 9:30 a.m., p.s.t., June 11, 1982. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., June 11, 1982. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published at 47 FR 14785; April 6, 1982.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., p.s.t., June 11, 1982," must be submitted for each tract. A suggested form appears in 43 CFR Part 3300, Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to no more than five decimal places after the decimal point, e.g., 50.12345 percent, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental payment and a minimum annual royalty of $8 per hectare or $3 per acre, or fraction thereof. The following systems will be utilized:

(a) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on tracts 68-9, 68-10, 68-13, 68-17, 68-23, 68-24, 68-57, 68-58, 68-59, 68-60, 68-61, 68-68, 68-70, 68-74, 68-78, 68-79, 68-80, 68-81, 68-82, 68-83, 68-84, 68-85, 68-90, 68-91, 68-92, 68-93, 68-94, 68-95, 68-96, 68-101, 68-124, 68-131, 68-139, 68-140, 68-148, 68-149, 68-150, 68-153, 68-154, 68-155, 68-156, 68-157, 68-158, 68-164, 68-165,

8. Withdrawal of Tracts. The United States reserves the right to

68-150, 68-153, 68-154, 68-155, 68-156, 68-157, 68-158, 68-164, 68-165, 68-168, 68-169, 68-170, 68-171, 68-173, 68-174, 68-175, 68-199, 68-200, and 68-201 must be submitted on cash bonus basis with a fixed royalty of 16-2/3 percent.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., p.s.t., June 11, 1982, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971). See Item 14, "Information to Lessees."

6. Bid Opening. Bids will be opened on June 11, 1982, beginning at 10:00 a.m., p.s.t., at the second address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received and no bids will be accepted or rejected at that time. If the Department is prohibited fnr any reason from opening any bid before midnight, June 11, 1982, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts submitted with a bid may be deposited in a suspense account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bi for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has bmen determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof or $62 or more per hectare or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFI 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following leasing maps or official protraction diagrams which are available from the Manager, Pacific Ou Continental Shelf Office at the first address stated in paragraph 2:

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(a) Outer Continental Shelf Leasing Maps, Channel Islands Area. Maps 6A, 6B and 6D sell for $1.00 each; Map 6C sells for $2.00.

(b) Outer Continental Shelf Official Protraction Diagram NI 11-10, San Clemente. This map sells for $2.00.

12. Tract Descriptions. The tracts offered for bid are as follows:

Note: There may be gaps in the numbers of the tracts listed.

TRACT LIST OCS SALE #68

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6A (REVISED JULY 24, 1967)

Tract	Block No.	Description	Acres
68-001	55N 89W	All	4632.80
68-002	55N 88W	All	4542.04
68-003	55N 87W	All	4451.17
68-004	55N 86W	All	4360.19
68-005	54N 89W	All	5760
68-006	54N 88W	All	5760
68-007	54N 87W	All	5760
68-008	54N 86W	All	5760
68-009	54N 82W	1/	3795.99
68-010	54N 76W	1/	1080.51
68-011	53N 87W	All	5760
68-012	53N 86W	All	5760
68-013	53N 72W	1/	3374.56
68-014	52N 86W	All	5760
68-015	52N 85W	All	5760
68-016	52N 84W	All	5760
68-017	52N 82W	All	5760
68-018	52N 73W	All	5760
68-019	52N 72W	All	5760
68-020	51N 87W	All	5760
68-021	51N 86W	All	5760
68-022	51N 85W	All	5760
68-023	51N 80W	All	5760
68-024	51N 79W	All	5760
68-025	51N 77W	All	5760
68-026	51N 76W	All	5760
68-027	51N 75W	All	5760
68-028	51N 74W	All	5760
68-029	51N 73W	All	5760
68-030	51N 72W	All	5760
68-031	50N 86W	All	5760
68-032	50N 85W	All	5760
68-033	50N 84W	All	5760
68-034	50N 82W	All	5760
68-035	50N 81W	All	5760
68-036	50N 78W	All	5760
68-037	50N 77W	All	5760
68-038	50N 75W	All	5760
68-039	50N 74W	All	5760
68-040	49N 85W	All	5760
68-041	49N 84W	2/	5754.03
68-042	49N 83W	2/	4378.54
68-043	49N 82W	2/	2983.98
68-044	49N 81W	2/	4235.62
68-045	49N 80W	2/	3376.41
68-046	49N 79W	2/	3950.41

TRACT LIST OCS SALE #68

TRACT LIST OCS SALE #58

LEASE MAP NO. 6A (Continued)

Tract	Block No.	Description	Acres
68-047	49N 74W	All	5760
68-048	48N 85W	All	5760
68-049	48N 84W	2/	4118.04
68-052	48N 73W	All	5760
68-053	48N 72W	2/	5602.12
68-054	47N 84W	2/	1406.43
68-057	40N 73W	2/	975.14
68-058	40N 72W	2/	3410.96
68-059	37N 73W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6B (REVISED JULY 24, 1967)

68-060	53N 71W	1/	965.76
68-061	52N 71W	1/	5753.33
68-068	51N 62W, 50N 62W	1/ $N\frac{1}{2}NE\frac{1}{4}$, 1/	2350.91
68-070	50N 68W	All	5760
68-074	50N 61W, 50N 60W	1/ 1/	2657.45
68-078	49N 67W	All	5760
68-079	49N 66W	All	5760
68-080	49N 65W	All	5760
68-081	49N 64W	All	5760
68-082	49N 63W	All	5760
68-083	49N 62W	All	5760
68-084	49N 61W	All	5760
68-085	49N 60W, 49N 59W	1/ 1/	4464.47
68-087	48N 71W	2/	3671.80
68-088	48N 70W	2/	3690.13
68-089	48N 69W	2/	4673.60
68-090	48N 68W	2/	5742.67
68-091	48N 67W	All	5760
68-092	48N 66W	All	5760
68-093	48N 65W	All	5760
68-094	48N 64W	All	5760
68-095	48N 63W	All	5760
68-096	47N 59W, 47N 58W	1/ 1/	5069
68-101	45N 58W	2/	2688.86
68-105	44N 58W	2/	994.97
68-112	43N 58W	2/	2005.77

TRACT LIST OCS SALE #58

LEASE MAP NO. 6B (Continued)

Tract	Block No.	Description	Acres
68-115	42N 62W	2/	243.34
68-122	42N 54W	All	5760
68-123	42N 53W	All	5760
68-124	41N 71W, 40N 71W	2/ 2/	5091.15
68-125	41N 60W	2/	4864.51
68-128	41N 51W	All	5760
68-129	41N 50W	All	5760
68-131	40N 70W	All	5760
68-132	40N 69W	All	5760
68-136	40N 51W	All	5760
68-137	40N 50W	All	5760
68-138	40N 49W	All	5760
68-139	39N 71W	All	5760
68-140	39N 70W	All	5760
68-141	39N 69W	All	5760
68-145	39N 50W	All	5760
68-146	39N 49W	All	5760
68-147	39N 47W	All	5760
68-148	38N 71W	All	5760
68-149	38N 70W	All	5760
68-150	38N 69W	All	5760
68-151	38N 47W	All	5760
68-152	38N 46W	All	5760
68-153	37N 71W	All	5760
68-154	37N 70W	All	5760
68-155	37N 69W	All	5760
68-156	36N 71W	All	5760
68-157	36N 70W	All	5760
68-158	36N 69W	All	5760
68-159	34N 41W	All	5760
68-160	34N 40W	All	5760
68-161	33N 41W	All	5760
68-162	33N 40W	All	5760
68-163	32N 40W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6C (REVISED APRIL 25, 1977)

68-164	35N 37W, 35N 36W	$NE\frac{1}{4}NE\frac{1}{4}$ 1/	4224.52
68-165	35N 38W	1/	5010.92
68-168	34N 39W	All	5760
68-169	34N 36W	All	5760
68-170	33N 39W	All	5760
68-171	33N 38W	All	5760
68-172	32N 39W	All	5760
68-173	32N 37W	All	5760
68-174	32N 35W	All	5760

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TRACT LIST OCS SALE #68

LEASE MAP NO. 6C (Continued)

Tract	Block No.	Description	Acres
68-175	32N 34W	All	5760
68-176	32N 33W	1/	5758.28
68-177	32N 32W	1/	3893.85
68-178	32N 31W,	1/	5147.22
	31N 31W	1/	
68-179	31N 39W	All	5760
68-180	31N 38W	All	5760
68-181	31N 37W	All	5760
68-182	31N 34W	All	5760
68-183	31N 33W	All	5760
68-184	31N 32W	All	5760
68-186	30N 37W	All	5760
68-187	30N 32W	All	5760
68-188	30N 31W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6D (APPROVED AUGUST 8, 1966)

Tract	Block No.	Description	Acres
68-195	20N 66W	All	5760
68-196	20N 65W	All	5760
68-197	20N 64W	All	5760
68-198	19N 66W	All	5760
68-199	19N 63W	All	5760
68-200	19N 62W	All	5760
68-201	19N 61W	All	5760
68-202	13N 54W	All	5760
68-203	13N 53W	All	5760
68-204	13N 52W	All	5760
68-205	12N 54W	All	5760
68-206	12N 52W	All	5760
68-207	12N 51W	All	5760
68-208	11N 53W	All	5760
68-209	11N 52W	All	5760
68-210	11N 51W	All	5760
68-211	10N 50W	All	5760
68-212	10N 49W	All	5760
68-213	10N 48W	All	5760

TRACT LIST OCS SALE #68

OCS OFFICIAL PROTRACTION DIAGRAM, NI 11-10, SAN CLEMENTE (APPROVED SEPTEMBER 27, 1977)

Tract	Block No.	Description	Hectares
68-214	N751 E66 (426)	All	325.60
68-215	N751 E67 (427)	All	342.99
68-216	N751 E68 (428)	All	360.34
68-217	N750 E66 (470)	All	2304
68-218	N750 E67 (471)	All	2304
68-219	N750 E68 (472)	All	2304
68-220	N749 E67 (515)	All	2304
68-221	N749 E68 (516)	All	2304

1/ That portion seaward of the Three Geographical Mile Line.
2/ Seaward of straight lines defined by coordinates based on the California (Lambert Plane Coordinate System, Zone 6, with X origin = 2,000,000 at 116° 15', and Y origin = 0.00 at 32° 10'; as follows:

	X	Y
1.	1 083 116.775	659 028.110
2.	1 090 706.145	668 411.986
3.	1 095 458.081	689 505.297
4.	1 089 764.637	706 897.326
5.	1 079 496.859	717 556.263
6.	1 067 952.171	722 765.464
7.	1 049 567.015	723 635.502
8.	1 046 245.123	723 092.415
9.	1 038 155.138	724 350.732
10.	1 032 254.837	724 355.602
11.	1 022 654.512	730 932.219
12.	1 019 326.153	732 622.546
13.	1 013 397.117	736 301.031
14.	989 692.237	739 534.295
15.	983 015.566	738 568.150
16.	968 383.353	732 739.562
17.	957 170.832	737 567.743
18.	936 446.824	743 185.260
19.	933 072.704	743 002.280
20.	928 459.797	743 236.506
21.	925 409.789	744 379.354
22.	915 538.620	747 443.255
23.	910 748.956	748 718.057
24.	899 713.001	750 272.216
25.	886 261.357	751 086.957

	X	Y

13. Lease Terms and Stipulations.

	X	Y
26.	878 730.328	749 810.080
27.	859 696.145	736 934.674
28.	852 938.315	737 775.497
29.	839 611.004	735 696.449
30.	831 912.313	734 113.427
31.	816 880.230	734 813.082
32.	801 204.129	729 901.097
33.	796 632.417	730 515.155
34.	789 160.912	739 918.764
35.	779 318.761	746 523.282
36.	777 402.971	750 484.062
37.	771 877.911	757 339.723
38.	767 915.796	760 722.078
39.	760 382.615	765 047.179
40.	740 272.507	767 604.303
41.	737 046.583	767 054.160
42.	727 246.513	762 837.874
43.	713 276.546	768 088.489
44.	703 420.467	768 297.318
45.	684 780.675	760 677.050
46.	670 966.876	732 206.934
47.	671 599.869	724 689.151
48.	674 371.152	716 183.286
49.	686 779.840	701 481.035
50.	690 029.831	699 142.297
51.	692 298.780	689 391.058
52.	701 747.522	675 677.421
53.	723 069.990	666 264.467
54.	735 049.054	665 081.067
55.	748 789.017	660 536.666
56.	764 228.804	661 054.023
57.	769 122.179	658 108.385
58.	772 836.313	650 753.300
59.	779 449.843	633 994.492
60.	792 078.702	628 782.802
61.	799 909.378	623 445.039
62.	804 520.649	620 503.974
63.	820 422.101	614 161.279
64.	830 174.377	613 631.191
65.	840 007.314	615 467.730
66.	848 179.204	619 149.401
67.	851 849.836	620 378.195
68.	872 385.591	629 382.180
69.	885 199.943	631 622.818
70.	897 823.727	639 091.019
71.	901 394.249	638 113.359
72.	925 712.146	634 751.562
73.	931 467.929	635 433.826
74.	939 736.895	633 861.638
75.	956 778.905	634 162.461
76.	966 857.459	637 824.916
77.	975 764.663	642 187.773
78.	985 465.332	642 167.877
79.	988 953.297	648 497.139
80.	999 386.345	644 365.129
81.	1 008 333.302	646 451.071
82.	1 019 643.123	651 576.513
83.	1 026 037.610	649 650.043
84.	1 037 229.744	646 868.729
85.	1 042 340.607	645 566.294
86.	1 049 479.392	645 430.853
87.	1 055 695.598	646 218.407
88.	1 058 718.100	646 989.213
89.	1 065 052.124	649 236.492
90.	1 068 364.568	651 053.089

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale for tracts 68-132, 68-195, 68-198, 68-204, 68-206, 68-207, 68-208, 68-209, 68-210, 68-218, 68-219, 68-220 and 68-221 will be for an initial term of ten years. All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the first address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations, the term DMMOFO refers to the Regional Deputy Minerals Manager, Offshore Field Operations, Minerals Management Service, formerly Deputy Conservation Manager, Field Operations, U.S. Geological Survey, and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

(a) If the DMMOFO has reason to believe that biological populations or habitats exist and require protection, he shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DMMOFO and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones.

(2) A species of limited regional distribution that may be adversely affected by any lease operations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; or (2) establish to the satisfaction of the DMMOFO, on the basis of the site specific survey,

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either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DMMOFO will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DMMOFO has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DMMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DMMOFO has given the lessee directions with respect to its protection.

Stipulation No. 2

If the DMMOFO has reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, and gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indicators are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DMMOFO and the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DMMOFO, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DMMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DMMOFO and the Manager for their review. Should the DMMOFO determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DMMOFO has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DMMOFO and make every reasonable effort to preserve and protect the cultural resource from damage until the DMMOFO has given directions as to its preservation.

Stipulation No. 3

(To be included in any lease resulting from this sale for tracts: 68-6, 68-7, 68-8, 68-9, 68-11, 68-12, 68-13, 68-14, 68-18, 68-19, 68-21, 68-25, 68-26, 68-27, 68-28, 68-29, 68-30, 68-34, 68-35, 68-36, 68-37, 68-38, 68-39, 68-44, 68-45, 68-52, 68-53, 68-59, 68-60, 68-61, 68-68, 68-82, 68-83, 68-84, 68-85, 68-101, 68-105, 68-123, 68-128, 68-129, 68-137, 68-147, 68-159, 68-160, 68-162, 68-163, 68-168, 68-170, 68-171, 68-172, 68-173, 68-174, 68-175, 68-176, 68-177, 68-178, 68-182, 68-183, 68-184, 68-187, 68-188, 68-199, 68-205, 68-208, 68-209, 68-220, and 68-221.)

All or portions of this tract may contain mass transport deposits, steep slopes, or active faulting. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DMMOFO's satisfaction that mass transport of sediments or faulting is unlikely, or that exploratory drilling operations, structures (platforms), casing, wellheads, and pipelines can be safely designed to protect the environment in case such mass transport or faulting occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of instability, either within or outside of this lease block.

If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for faulting and mass transport of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all active faults or mass transport deposits in the lease block must be mapped. The DMMOFO may also require soil testing before exploration and production operations are allowed.

Stipulation No. 4

(This stipulation applies to the following tracts located in military operating areas: 68-1 through 68-39, 68-57, 68-58, 68-59, 68-101, 68-105, 68-112, 68-125, 68-128 through 68-132, 68-136 through 68-141, 68-145 through 68-188, and 68-195 through 68-221.) The military facilities listed below are located as follows: the Western Space and Missile Center (WSMC), Vandenberg AFB, Lompoc, California; the Pacific Missile Test Center (PMTC), Pt. Mugu, California; and the Fleet Area Control and Surveillance Facility (FACSFAC), San Diego, California. Another contact is the Long Beach Naval Shipyard, Long Beach, California, which applies to

Stipulation No. 5

and Surveillance Facility (FACSFAC), San Diego, California. Another contact is the Long Beach Naval Shipyard, Long Beach, California, which applies to tracts 68-164 and 68-169.

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the DMMOFO, after consultation with the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed 72 hours; however, any such suspension may be extended by order of the DMMOFO. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with Department of Defense flight, testing or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

Stipulation No. 5

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center (WSMC), the Pacific Missile Test Center (PMTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 6

(To be included only in leases resulting from this sale for tracts 68-101, 68-105, 68-112, 68-125, 68-164, 68-169, 68-204, 68-207, 68-212 and 68-213.)

No structures or drilling rigs will be allowed within the portions of the tracts described below because of Department of Defense activities.

Tract No.	Restricted Portion
68-101	S1/2NE1/4, SE1/4
68-105	E1/2NE1/4
68-112	South and East of a diagonal line from NE corner to SW corner
68-125	South and East of a diagonal line from NE corner to SW corner

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68-164 (35N36W only)	W1/2E1/2E1/2, W1/2E1/2, E1/2E1/2W1/2 (Federal portions only)
68-169	W1/2E1/2NE1/4, W1/2NE1/4, E1/2NW1/4
68-204	NE1/4
68-207	E1/2
68-212	N1/2
68-213	N1/2

Stipulation No. 7

(a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

(b) Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the DMMOPO.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (33 U.S.C. 1221 et seq.)

Stipulation No. 8

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structure without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the DMMOPO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 9

This stipulation shall be effective for each tract in which it applies only if the Secretary of the Interior and the Governor of the State of California, prior to the approval of a development and production plan for that tract by the Department of the Interior, enter into an agreement pursuant to section 8(g) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. section 1337(g). If such agreement has been entered into, this stipulation is to be applied to leases resulting from this sale for the following tracts: 68-9, 68-10, 68-13, 68-17, 68-18, 68-19, 68-60, 68-61, 68-68, 68-74, 68-83, 68-84, 68-85, 68-122, 68-123, 68-128, 68-129, 68-159, 68-160, 68-163, 68-164, 68-165, 68-168, 68-169, 68-174, 68-175, 68-176, 68-177, 68-178, 68-179, 68-183, 68-184, 68-187, and 68-188.

(1) No producing well may be drilled where the well bore in the producing intervals is closer to the seaward boundary of the State of California than the distance agreed to between the State and the Department based on analysis of pertinent site-specific data, except that in no event shall the agreed distance be further than 750 feet from the seaward boundary of the State. In the absence of an agreed distance, no well shall be drilled closer than 500 feet to the seaward boundary of the State.

(2) The constraint in paragraph (1) shall not apply:

(a) If oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of California are included in a production unit entered into by the relevant lessees and approved by the lessors, or in a production unit entered into by the Federal lessee and the State of California when it is a carried, non-operating owner.

(b) If, in the absence of a production unit as described in (a) above, the State of California permits production from State lands from a point closer than 750 feet from the Federal-State boundary. In the event that such production from State lands does occur, the Federal lessee shall be allowed to produce from offset wells equally close to the boundary in the area of Federal jurisdiction.

14. Information to Lessees.

(a) The Department of the Interior will seek the advice of the State of California and other Federal agencies to identify areas of special biological or cultural resources.

(b) Operations on some of the tracts offered for lease may be

the anomaly. This may necessitate that all exploration for and

(b) Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq).

(c) Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

(d) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(e) Notice is hereby given that portions of tracts 68-3, 68-4, 68-7, 68-8, 68-15, 68-32, 68-34, 68-35, 68-36, 68-70, 68-112, 68-128, 68-129, 68-137, 68-138, 68-146, 68-151, 68-159, 68-163, 68-168, 68-170, 68-171, 68-172, 68-175, 68-180, 68-181, 68-182, 68-186, 68-202, 68-206, 68-207, 68-209, and 68-213 may contain a shallow "bright spot" seismic amplitude anomaly which may be indicative of a shallow gas deposit. Surface occupancy above this anomaly and drilling through the anomaly will not be allowed unless or until the lessee has demonstrated to the DMMOFO's satisfaction that a potentially hazardous accumulation of shallow gas does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be placed or drilling plans designed to assure safe operations in the area above the anomaly. This may necessitate that all exploration for and development of oil and gas be performed from locations outside the area of concern, either within or outside this lease block.

(f) Lessees are encouraged to include a fisheries training program in their exploration and development plans. This training program should be designed to familiarize platform and shore-based supervisors and persons involved in vessel operations with the value of the commercial fishing industry, the methods of offshore fishing operations, and the potential hazards, conflicts, and impacts resulting from offshore oil and gas activities. This program should be formulated and implemented by qualified and experienced instructors in fishing activities, methods of communication, and navigational safety.

(g) For those tracts listed in paragraph 13 above providing for leases with an initial period of more than 5 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to Minerals Management Service either an exploration plan or a general statement of exploration intentions prior to the end of the ninth lease year.

(h) Bidders are advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate.

(i) Revisions of Department of Labor regulations on Affirmative Action requirements for Government Contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register

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of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, Section 18 of the lease form, Form 3300-1 (September 1978), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action Forms described in paragraph 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

(j) Pending the issuance of revised versions of Forms 1140-7 and 1140-8 by the Bureau of Land Management, submission of Form 1140-7 (December 1971) and Form 1140-8 (November 1973) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action Forms.

(k) Lessees are directed to consult with the Coast Guard prior to any activity on Tract 68-185 in order to insure navigational safety and compatibility with OCS operations. Any lease that is issued will prohibit a lessee from surface occupancy or other activities which would, in the opinion of the Coast Guard, create a hazard to vessel traffic.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

Robert F. Burford
Director, Bureau of Land Management

Approved: MAY 7 1982

Acting Secretary of the Interior

[FR Doc. 82-12906 Filed 5-11-82; 8:45 am]
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before initial production, in comparison to shallow water tracts. DOI

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UNITED STATES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf

Southern California

Notice of Leasing Systems, Sale No. 68

Sec. 8(a)(8) (43 U.S.C. 1337 (a)(8)) of the Outer Continental Shelf (OCS) Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

(A) identifying the bidding systems to be used and the reasons for such use; and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

A. Bidding systems to be used. In OCS Sale No. 68, tracts will be offered under the following two bidding systems as authorized by Sec. 8(a)(1) (43 U.S.C. 1337 (a)(1)): (1) Bonus bidding with a fixed 16-2/3 percent royalty on 55 tracts, and (2) bonus bidding with a fixed 12-1/2 percent royalty on 109 tracts.

(1) Bonus Bidding with a 16-2/3 Percent Royalty. This system is authorized by Sec. (8)(a)(1)(A) of the OCS Lands Act, as amended. This system has been used extensively since the passage of the OCS Lands Act in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end payments required may encourage rapid exploration.

(2) Bonus Bidding with a 12-1/2 Percent Royalty. This system is authorized by Sec. (8)(a)(1)(A) of the OCS Lands Act, as amended. This system has been chosen for certain deep water tracts proposed for Sale 68 because these tracts are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water tracts. DOI analyses indicate that the minimum economically developable discovery on a tract in such deepwater areas under a fixed 12-1/2 percent royalty system would be less than for the same tracts under a 16-2/3 percent royalty system. As a result, more tracts may be explored and developed. In addition, the lower royalty rate system is expected to yield more rapid production rates and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary restraints to competition.

B. Designation of Tracts. The selection of tracts to be offered under the two systems was based on the following factors:

(1) Lease terms on adjacent tracts were considered in order to reduce administrative costs and barriers to unitization, and to enhance orderly development of each field.

(2) All tracts in water depths of 400 meters or greater were selected for 1/8 royalty based on the favorable performance of this system in these high cost areas.

The specific tracts to be offered under each system are as follows:

(a) Bonus Bidding with a 16-2/3 Percent Royalty--Tracts 68-9 and 68-10, 68-13, 68-17, 68-23 and 68-24, 68-57 through 68-61, 68-68, 68-70, 68-74, 68-78 through 68-85, 68-90 through 68-96, 68-101, 68-124, 68-131, 68-139 and 68-140, 68-148 through 68-150, 68-153 through 68-158, 68-164 and 68-165, 68-168 through 68-171, 68-173 through 68-175, and 68-199 through 68-201.

(b) Bonus Bidding with a 12-1/2 Percent Royalty--All remaining tracts.

Robert F. Burford

Director, Bureau of Land Management

Approved: MAY 7 1982

Donald Paul Hodel

Acting Secretary of the Interior

[FR Doc. 82-12906 Filed 5-11-82; 8:45 am]

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Wednesday
May 12, 1982

Part VIII

General Services Administration

ADP Services Contracting; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-1, 1-4, and 1-7

[FPR Amendment 220]

ADP Services Contracting

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This Amendment adds a new Subpart 1-4.12, Procurement and Contracting Government-wide for Automatic Data Processing Services. The purpose is to provide uniform provisions for agency acquisition of ADP services. The intended effect is to enhance economy, efficiency, and competition in these acquisition actions.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Federal Procurement Regulations Directorate, Office of Acquisition Policy, 703-557-8947.

SUPPLEMENTARY INFORMATION: (a) A proposed addition of Subpart 1-4.12 was circulated to all Federal agencies and other interested parties on January 28, 1981. A notice of the availability of the proposal was published (46 FR 10921, February 5, 1981). The closing of the comment period was March 28, 1981. All comments received have been considered and accommodated to the extent considered appropriate.

(b) The primary change from the proposal is to redefine "ADP related services" as "ADP support services", as they relate to the exclusive procurement authority of GSA. Modifications were also made from the proposal to make it clear that management of resources, including sharing, are not changed. Likewise, contracting arrangements such as the TSP (Teleprocessing Services Program) continue to include the ADP support services area.

(c) A new Subpart 1-4.12 is added. A section-by-section explanation follows:

(1) Section 1-4.1200 indicates that Subpart 1-4.12 provides for Government-wide coverage of ADP services and ADP support services. Telecommunications is now covered by FPR Temporary Regulation 51 with provisions identified in the 1-4.12 series. Proposed codification (Subpart 1-4.13) of the temporary regulation will involve changing those sections identifying numbers as well.

(2) Section 1-4.1200-1 provides guidance identifying FPMR provisions applicable to ADP services.

(3) Section 1-4.1200-2 cites the statutory authority for the procurement provisions of the subpart, the fiscal and policy control roles of the Office of Management and Budget, and the relationship to Government Printing and Binding Regulations.

(4) Section 1-4.1200.3 recognizes the special statutory concern for privacy of individuals as it relates to ADP services.

(5) Section 1-4.1200-4 provides that individual (as well as class) deviation authority for the subpart is retained by the Administrator of General Services or his GSA delegate(s) (not other agencies). Section 1-1.009-3 is revised accordingly. Section 1-4.1100-3 is amended to be consistent with this § 1-4.1200-4.

(6)Section 1-4.1201 sets forth applicability provisions including the special circumstances when ADPE or software items under ADP services contracting are subject to FPR provisions.

(7) Section 1-4.1202 contains definitions of terms used in the subpart.

(8) Section 1-4.1203 contains agency contracting authorization provisions, including reference to sharing requirements and to specific or specialized sources of supply. The blanket authority thresholds established in FPMR Temporary Regulation F-495 for ADP services are continued. A new provision states that agencies do not require GSA approval to procure commerical ADP support services.

(9) Section 1-4.1203-1 sets forth agency procurement request (APR) provisions. There is no requirement to use the GSA Form 2068 for this purpose. It should be noted that the trial period still continues for the alternative APR submission procedure as reflected in GSA Bulletin FPMR F-126 dated November 4, 1980 (45 FR 64151, December 22, 1980).

(10) Section 1-4.1204 describes the regulatory framework for ADP services contracting including the relationship of the subpart to other procurement regulations.

(11) Section 1-4.1205 provides a reference to acquisition alternatives for purchases under $10,000.

(12) Section 1-4.1206 establishes a general policy regarding the continuing requirement for competition. It recognizes a direct linkage of responsibility between agency ADP managers and contracting personnel.

(13) Section 1-4.1206-1 establishes the requirement for agency planning of future requirements in the light of existing contract expirations.

(14) Section 1-4.1206-2 establishes a requirement that agencies conduct software conversion studies (supersedes FPMR Temp. Reg. F-496 requirements). Section 1-4.1109-13 is revised accordingly.

(15) Section 1-4.1206-3 establishes solicitation requirements when dedicated ADPE and software alternatives are to be considered.

(16) Section 1-4.1206-4 establishes requirements regarding the use in solicitations of compatibility limited requirements.

(17) Section 1-4.1206-5 sets forth noncompetitive requirement documentation provisions.

(18) Section 1-4.1206-6 establishes requirement for an agency evaluation before exercising renewal options.

(19) Section 1-4.1206-7 sets forth provisions regarding remote terminal emulation, replacing FPR Temp. Reg. 49 and Supp. 1 thereto.

(20) Section 1-4.1206-8 contains provisions regarding small business and labor surplus area concerns.

(21) Section 1-4.1206-9 establishes computer security requirements.

(22) Section 1-4.1206-10 provides for implementation of standards.

(23) Section 1-4.1208 provides Privacy Act provisions supplemental to general coverage appearing at § 1-1.327. Sections 1-4.1208-1 and 1-4.1208-2 contain required contract clauses regarding privacy. Section 1-7.103-30 is revised accordingly. Section 1-1.327-1 is revised to provide a reference to this section.

(24) Section 1-4.1209 describes GSA's Teleprocessing Service Program (TSP), and requires agency use of the program. (Supersedes FPMR Temporary Regulation E-47 requirements).

(25) Section 1-4.1209-1 sets forth the applicability of the TSP.

(26) Section 1-4.1209-2 sets forth the scope of the TSP.

(27) Section 1-4.1209-3 provides procedures for acquiring TSP services including description and authorization, evaluation and source selection, low cost procurement, and exceptions.

(28) Section 1-4.1209-4 provides for GSA review of selections under the TSP.

(29) Section 1-4.1210 provides for agency use of GSA regional contracts.

(30) Section 1-4.1211 sets forth provisions regarding the Federal Conversion Support Center (FCSC).

(31) Section 1-4.1212 sets forth provisions regarding the Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

(32) Section 1-4.1213 sets forth provisions regarding the Federal Compiler Testing Center (FCTC).

(d) This amendment cancels FPR Temporary Regulation 49, April 4, 1979, and Supplement 1 to Temp. Reg. 49, February 21, 1980. This amendment supersedes the following FPMR provisions that will be canceled by

concurrent regulatory action: FPMR §§ 101–35.1705 and 101–35.1706; FPMR § 101–36.203–2 as changed by FPMR Temporary Regulation F–495; FPMR Temporary Regulation E–47 and Supplements 6 and 7 thereto; and FPMR Temporary Regulation F–496, December 2, 1980. (FPMR Temporary Regulation F–492, October 18, 1979, was canceled by F–496.) FPMR § 101–36.203–1 as amended by FPMR Temporary Regulation F–495 remains in effect. The TSP Handbook edition announced by GSA Bulletin FPR 39 will be revised to reflect the provisions of this amendment and will be announced by a superseding GSA FPR bulletin.

List of Subjects in 41 CFR Part 1–4

Government procurement, ADP services.

PART 1–1—GENERAL

Subpart 1–1.0—Regulation System

Section 1–1.009–3 is revised to recognize the addition of Subpart 1–4.12 as follows:

§ 1–1.009–3 Limitation on deviations.

Section 1–1.009–2, above, does not apply to the provisions of Subpart 1–4.11, Procurement and Contracting for Government-wide Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies and Subpart 1–4.12, Procurement and Contracting Government-wide for Automatic Data Processing Services. Pursuant to 40 U.S.C. 759 (Section 111 of the Federal Property and Administrative Services Act of 1949, as amended; Pub. L. 89–306) the Administrator of General Services is authorized to coordinate and provide for the purchase, lease, and maintenance of automatic data processing equipment by Federal agencies as well as other matters relating to automated data management services. The exercise of the authority to procure and deviations from regulatory requirements shall be accomplished as specified in Subparts 1–4.11 and 1–4.12.

Subpart 1–1.3—General Policies

Subpart 1–1.327–1 is revised to provide a reference to supplemental provisions contained in § 1–4.1208 as follows:

§ 1–1.327–1 General.

This section implements the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974, 5 U.S.C. 552a) and OMB Circular No. A–108, July 9, 1975. In enacting this legislation, Congress stated that "the right to privacy is a personal and fundamental right protected by the Constitution of the United States." The Privacy Act concerns rights of a citizen or a resident alien under the Act and does not extend to the rights of proprietorships in their business capacity, partnerships, businesses, or corporations. Section 1–4.1208 supplements the provisions of this § 1–1.327 in regard to commercial automatic data processing services.

PART 1–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

The table of contents for Part 1–4 is amended by adding the title and contents of Subpart 1–4.12 as follows:

* * * * *

Subpart 1–4.12 Procurement and Contracting Government-Wide for Automatic Data Processing Services

Sec.
1–4.1200 Scope of subpart.
1–4.1200–1 Relationship to the Federal Property Management Regulations (FPMR).
1–4.1200–2 Relationship to other procurement authority.
1–4.1200–3 Relationship to protection of the privacy of individuals.
1–4.1200–4 Deviations.
1–4.1201 Applicability.
1–4.1202 Definitions.
1–4.1202–1 ADP services.
1–4.1202–2 ADP support services.
1–4.1202–3 Commercial ADP services and commercial ADP support services.
1–4.1202–4 Commercial ADP services and support services subject to the Privacy Act.
1–4.1202–5 Threats and hazards—Privacy Act.
1–4.1202–6 Safeguards—Privacy Act.
1–4.1202–7 Dedicated teleprocessing system.
1–4.1203 Authorization for commercial ADP services contracting.
1–4.1203–1 Agency Procurement Request (APR) submissions.
1–4.1204 Procurement-related directives.
1–4.1205 Small purchases.
1–4.1206 Competition in procurement actions.
1–4.1206–1 Competition for follow-on ADP services requirements.
1–4.1206–2 Software conversion studies.
1–4.1206–3 Dedicated ADPE or software alternatives.
1–4.1206–4 Compatibility limited requirements.
1–4.1206–5 Noncompetitive (sole source) requirements.
1–4.1206–6 Exercising renewal options.
1–4.1206–7 Use of remote terminal emulation for ADP services procurements.
1–4.1206–8 Small business and labor surplus area concerns.
1–4.1206–9 Computer security requirements.
1–4.1206–10 Implementation of standards.
1–4.1207 [Reserved]
1–4.1208 Procurement requirements relating to the Privacy Act.
1–4.1208–1 Rights in privacy safeguards.
1–4.1208–2 Access to contractor facilities and records—privacy safeguards inspection.
1–4.1209 The Teleprocessing Services Program (TSP).
1–4.1209–1 Applicability of the TSP.
1–4.1209–2 Scope of the TSP.
1–4.1209–3 Procedures for acquiring TSP services.
1–4.1209–4 GSA review of selections under the TSP.
1–4.1210 Agency use of GSA regional contracts.
1–4.1211 Federal Conversion Support Center (FCSC).
1–4.1212 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).
1–4.1213 Federal Compiler Testing Center (FCTC).

Subpart 1–4.11—Procurement and Contracting Government-Wide for Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies

§ 1–4.1100–3 [Amended]

1. Section 1–4.1100–3 is amended to be consistent with § 1–4.1200–4 by removing paragraph (c).

2. Section 1–4.1103–1 is revised to broaden the general policy on competition to include subsequent procurement as follows:

§ 1–4.1103–1 Competition.

(a) Full and open competition is a basic procurement objective of the Government. The maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see FPMR Subpart 101–35.2).

(b) Agency ADP managers and contracting officers share the responsibility for ensuring that the basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

3. Section 1–4.1109–13 is amended to make paragraph (c)(1)(ii) consistent with new § 1–4.1206 and add paragraph (c)(4) as follows:

§ 1–4.1109–13 Software Conversion Studies.

* * * * *

(c)(1) * * *
(i) * * *

(ii) The cost of conversion is to be used as the primary justification for a compatibility limited requirement when

the estimated value of the procurement exceeds $300,000.

(2) * * *

(4) A comprehensive software conversion study means an analysis of a conversion requirement that as a minimum includes the following: (i) Problem definition; (ii) inventory of system components for the current system; (iii) description of the operating system environment; (iv) inventory of application programs and data files to be converted; (v) alternative procurement approaches (including compatible and noncompatible, as appropriate) with schedules for both the procurement and conversion effort; (vi) general description of the target environment (including hardware and system software, performance requirements, and constraints or limitations, dictated by the user needs, on the functional definition of the requirement); (vii) recommended approach to accomplish the conversion tasks (including analyses of alternative approaches with an economic and benefit analysis for each approach); and (viii) specific agency actions to be taken to reduce the cost and risk of future conversions.

4. Section 1–4.1109–14 is amended to remove an unintended reference to CODASYL specifications in paragraph (a)(2) as follows:

§ 1–4.1109–14 Determination of conversion costs.

(a) * * *

(1) * * *

(2) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

* * * * *

Subpart 1–4.12 is added as follows:

Subpart 1–4.12—Procurement and Contracting Government-Wide for Automatic Data Processing Services

§ 1–4.1200 Scope of subpart.

This subpart sets forth policies and procedures governing the procurement of commercially available automatic data processing (ADP) services and support services by Federal agencies (see § 1–4.1102–16 for definition) and by Government contractors as directed by agencies.[1] [2]

[1] Subparts 1–4.11 and 1–4.12 contain provisions regarding established GSA sources of supply.

[2] Subparts 1–4.11 sets forth policies and procedures governing the procurement of automatic data processing equipment (ADPE), commercially available software, maintenance services, and related supplies by Federal agencies.

§ 1–4.1200–1 Relationship to the Federal Property Management Regulations (FPMR).

(a) Part 101–35 of the FPMR (41 CFR Part 101–35) sets forth policies and procedures relating to the management of ADP resources including ADP services and support services by Federal agencies. Provisions covering privacy and security are included in Subparts 101–35.17 and 101–35.3, respectively.

(b) Part 101–36 of the FPMR provides detailed policies, procedures, and guidelines pertaining to Government-wide management of ADP equipment, software, and services, including the revolving fund, resources utilization including sharing, reutilization of equipment, multiuser data processing centers, and application of Federal standards. Federal agencies shall not select and acquire ADP services and ADP support services from commercial sources unless those agencies first determine that the required ADP capability cannot be met satisfactorily by using existing Federal ADP resources or established mandatory contractual resources (see also FPMR Subpart 101–36.2).

(c) The provisions of Part 101–37 of the FPMR are applicable to telecommunications associated with ADP services or equipment systems.

(d) Collectively Subparts 101–35, 101–36 and 101–37 comprise Subchapter F of the FPMR.

§ 1–4.1200–2 Relationship to other procurement authority.

(a) Under section 111 of the Federal Property and Administrative Services Act of 1949, 79 Stat. 1127, as amended, (40 U.S.C. 759), the Administrator of General Services has authority to coordinate and provide for the purchase, lease, and maintenance of automatic data processing equipment by Federal agencies as well as other matters relating to the management of Federal ADP. This authority applies to the procurement of commercially available ADP services for a Federal agency as specified in this subpart.

(b) Section 111(g) of the Property Act (40 U.S.C. 759, Pub. L. 89–306) provides that the Administrator's authority is subject to the fiscal and policy control of the Office of Management and Budget (OMB). When an agency submits matters to the OMB for review and decision and the matters relate to the procurement and contracting for commercially available ADP services, the agency shall provide GSA with copies of related documents as provided in FPMR § 101–36.001.

(c) The procurement of printing services, including those services utilizing computer technology, is subject to the provisions of 44 U.S.C. 502 and the Government Printing and Binding Regulations prescribed by the Joint Committee on Printing (JCP) rather than this regulation. The procurement of certain ADPE is subject to both Subpart 1–4.11 and JCP regulations.

§ 1–4.1200–3 Relationship to protection of the privacy of individuals.

(a) Section 1–1.327 (or, if applicable, DAR 1–327) sets forth procurement and contracting provisions that are required when an executive agency contracts for the design, development, operation, or maintenance of a system of records on individuals to accomplish an agency function. Definition, statutory requirements applicability, and procedures, including contract clauses, are provided.

(b) Paragraph 5c(7) of OMB Circular A–108 (40 FR 28948, July 9, 1975) provides that the Administrator of General Services is responsible for issuing procurement regulations that require executive agencies to review all proposed ADP equipment and ADP services procurements to assure compliance with applicable provisions of the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974; 5 U.S.C. 552a). Procurement regulations applicable to ADP services and ADP support services are set forth in this Subpart 1–4.12.

§ 1–4.1200–4 Deviations.

Deviations (see requirements in § 1–1.009–1) from this subpart shall be kept to a minimum and controlled as follows:

(a) The head of each agency conducting a procurement action authorized under this subpart shall prescribe a formal agency procedure for the control of requests for deviations from this subpart. A copy of this procedure shall be provided upon request to the General Services Administration (CPE), Washington, DC 20405.

(b) Individual deviations may be authorized only by the Administrator of General Services or the officers designated by the Administrator for this purpose. Class deviations may be authorized only by the Administrator. In each instance the request shall disclose the nature of and the reasons for the deviation. Requests for deviations shall be forwarded to the General Services Administration (CPS), Wasnington, DC 20405.

§ 1–4.1201 Applicability.

(a) The policies and procedures set forth in this subpart apply to all procurements by Federal agencies that have as their very subject matter the

supplying of commercial ADP services or support services to a Federal agency. However, agencies do not require GSA approval (see § 1–4.1203(c)) to procure commercial ADP support services (but see §§ 1–4.1211, Federal Conversion Support Center (FCSC), 1–4.1212, Federal Computer Performance Evaluation and Simulation Center (FEDSIM), and Federal Compiler Testing Center (FCTC)).

(b) This subpart does not apply to procurements that have as their very subject matter the delivery of items or the performance of services other than ADP services or ADP support services to a Federal agency, even though ADP services or ADP support services are involved in contractor performance. However, if is is operationally feasible to sever the ADP services or ADP support services requirements from the overall requirement, these requirements shall be severed and procured in accordance with this subpart if this action will promote economy, efficiency, and maximum practicable competition.

(c) The provisions of this subpart are not applicable to contractor acquisition of ADP services or ADP support services for its own account in the performance of a Government contract. Procedures for acquisition of ADPE or commercially available software by contractors providing ADP services are contained in § 1–4.1101(b).

(d) The provisions of this subpart are not applicable to employment of experts and consultants pursuant to 5 U.S.C. 3109 or "personal services" contracting.

(e) Regarding the use of GSA sources by grantees, see the prohibition in § 1–5.900.

§ 1–4.1202 Definitions.

The terms used in this subpart have the following meanings.

§ 1–4.1202–1 ADP services.

"ADP services" means the computation or manipulation of data by computers in support of administrative, financial, communicative, scientific, and other similar Federal agency data processing applications. This term includes teleprocessing (including remote batch) and local batch processing.

§ 1–4.1202–2 ADP support services.

"ADP support services" means services, except maintenance services (see § 1–4.1102–4), that are adjunct and essential to agency ADP activities but do not involve the actual computation or manipulation of data by a computer. This term includes source data entry, computer output microfilming, conversion, training, studies, facilities management of Government furnished ADP equipment, systems analysis and design, programming, equipment operation, and computer performance evaluation.

§ 1–4.1202–3 Commercial ADP services and commercial ADP support services.

(a) "Commercial ADP services" means the performance of ADP services by contractors.

(b) "Commercial ADP support services" means the performance of ADP support services on a nonpersonal services basis.

§ 1–4.1202–4 Commercial ADP services and support services subject to the Privacy Act.

"Commercial ADP services and support services subject to the Privacy Act" means those ADP services and ADP support services performed by Government contractors in connection with the operation by or on behalf of any executive agency of a system of records on individuals to accomplish an agency function from which information is retrieved by the name of an individual or some identifying number, symbol, or other identifying particular assigned to the individual. Therefore, the requirement is subject to the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974: 5 U.S.C. 552a) (see also OMB Circular No. A–108, July 9, 1975, policies and guidelines).

§ 1–4.1202–5 Threats and hazards—Privacy Act.

"Threats and hazards" means man-made or natural events, the occurrence of which may result in the loss, alteration, or unauthorized access to data in a system of records on individuals to accomplish an executive agency function subject to the Privacy Act.

§ 1–4.1202–6 Safeguards—Privacy Act.

"Safeguards" means those procedures, methods, and devices that have as their specific function the prevention or mitigation of the effects of threats and hazards to a system of records on individuals to accomplish an executive agency function subject to the Privacy Act.

§ 1–4.1202–7 Dedicated teleprocessing system.

"Dedicated teleprocessing system" means the totality of an ADP resource system, or specified ADP resource subsystems thereof, of a teleprocessing system that is specifically reserved and priced on the basis of exclusive use by a single Government user or group of users. The term includes the ADPE configuration, operating system, supporting software, application library and supporting communications interface(s), but normally excludes the data communication network that may be shared.

§ 1–4.1203 Authorization for commercial ADP services contracting.

(a) Federal agencies are required to comply with the provisions of the Government-wide ADP sharing program before contracting for commercial ADP services or support services (see FPMR Subpart 101–36.2). Each GSA region operates an ADP sharing exchange to provide information and referrals. Information is likewise available concerning (1) prison-made and products of the blind and other severely handicapped (see Subparts 1–5.4 and 1–5.8) and (2) GSA-sponsored Federal Data Processing Centers (FDPC) offering specific or specialized ADP services or support services, some of which must be used by Federal agencies for certain requirements (see also §§ 1–4.1211 and 1–4.1212).

(b) GSA enters into commercial ADP services and support services contract arrangements that are available for Federal agency use. The major nationwide program for certain commercial ADP services including related support services is the Teleprocessing Services Program (TSP). Section 1–4.1209 describes the scope of the TSP, including requirements for agency use. GSA has also established ADP support services contracts that are available for use by agencies only within specified geographic regions and require the prior establishment of agency/GSA regional memorandums of understanding concerning use. Information concerning these contracts is available from GSA/ADTS regional offices.

(c) Agencies do not require GSA approval to procure commercial ADP support services. However, agencies shall comply with requirements regarding the sharing or use of existing Federal ADP resources or sources of supply.

(d) Agencies may procure commercial ADP services without prior approval of GSA provided:

(1) The requirements regarding the sharing or use of existing Federal ADP resources or sources of supply are complied with, and

(2) The value of the procurement does not exceed (i) $300,000 per year for a competitive procurement or (ii) $50,000 per year for a sole source procurement. Requirements shall not be fragmented to avoid these dollar thresholds.

(e)(1) When the value of the procurement exceeds the thresholds set forth in paragraph (d) of this section including instances when a value previously estimated below the thresholds subsequently exceeds them, the agency shall submit an agency procurement request (APR) in accordance with § 1–4.1203–1.

(2) Based on the APR submission for ADP services, GSA will:

(i) Conduct the procurement for the agency and the division of responsibility between the requesting agency and GSA as set forth in §§ 1–4.1106–1 and 1–4.1106–2, or

(ii) Authorize the agency to proceed with the procurement. In consummating the procurement, agencies shall comply with applicable regulatory provisions and, in particular, §§ 1–1.301–1 and 1–1.302–1 or, if applicable, Defense Acquisition Regulation (DAR) 1–300.1 and 1–302.2 relating to competition.

(3) GSA will act within 20-workdays after receiving full information from an agency submitting an APR or supplemental APR data. To establish a common understanding of the 20-workday period, GSA will provide within this period written verification that identifies the date of receipt of an APR or supplemental APR data to the agency concerned. When the 20-workday period (plus 5 calendar days for mail lag) has expired, the agency concerned may proceed with the procurement as though it had, in fact, received an authorization.

(4) If GSA finds, after review, that the APR does not contain the information required or that unusual circumstances surrounding the procurement dictate that a longer appraisal period will be required, GSA will provide within the 20-workday period written notice to that effect including an estimate of the time required to complete the review. Under these circumstances the automatic authorization rule as set forth in paragraph (e)(3) of this section shall not apply.

(5) Agency APR submissions to GSA are not required when an agency intends to exercise a renewal option within the system life of a previous authorization.

(f) The authorization to proceed may be used under the following conditions to provide for changes to requirements (including equipment and software specifications) to meet increased data processing requirements, increase economy or efficiency, improve performance, or save energy. The changes shall be within the scope of a changes provision in the contracting arrangement (including the TSP purchase order under the MAS or contract using the BA). Any changes shall be within the system life of the requirement as specified in the APR. Increased requirements beyond 25 percent of those specified in the contract (including contractually specified options) shall be deemed requirements outside the scope of this paragraph and shall require a new APR submission. The agency shall be responsible for determining the need for and the nature of benchmark changes or reruns necessary to evaluate and price the proposed actions.

§ 1–4.1203–1 Agency procurement request (APR) submissions.

If an agency determines that the conditions of a contemplated procurement are not covered by paragraph (d) of § 1–4.1203, or if the conditions of the contemplated procurement change during the procurement process in such a manner as to remove it from those provisions, two copies of the Agency Procurement Request (APR) and other applicable documents shall be forwarded to the General Services Administration (CPS), Washington, DC 20405. The APR shall include, as applicable:

(a) *Agency information.* Agency name, address, names and telephone numbers of appropriate technical and contracting officials including the agency official assigned to conduct the procurement.

(b) *Project title and description.* (1) Name or designation of agency ADP resource system.

(2) Description of the requirement that is to be procured. Indicate whether this is a new requirement or an addition to or a modification of a current ADP service system.

(3) Estimated system life (see § 1–4.1102–11).

(4) Estimated system life cost (see § 1–4.1102–10).

(5) Location(s) (city and state) which require user access to the system.

(6) Fiscal year and quarter during which the solicitation or requirements package is expected to be released to the private sector for procurement action.

(7) Expected contract performance commencement date.

(c) *Procurement planning.* (1) Budgeted value of the procurement in the agency's request to OMB, indicating whether implicitly or explicitly described, including fiscal year(s) involved.

(2) Summary description of the alternatives considered to meet the requirement, the related costs and the bases for the alternatives selected with reference to the agency's requirements analysis and comparative cost analysis (see FPMR §§ 101–35.207 and 101–35.209, respectively).

(3) If within TSP scope (see § 1–4.1209–2), indicate contracting arrangement contemplated (MAS, B/A, or exception) and type (full, interactive, or remote batch). If exception to TSP see paragraph (e), below.

(4) Conclusions of performance evaluation for the currently installed or used ADP resource system, when applicable (see FPMR Subpart 101–36.14).

(5) A statement that available ADP resources have been screened and none is available to satisfy the requirement (see FPMR Subparts 101–36.2 and 101–36.3).

(6) Documentation regarding telecommunications when applicable (see FPMR Subpart 101–36.11).

(7) Conclusions of software conversion study, when applicable (see § 1–4.1206–2).

(d) *Procurement strategy* (1) Description of conversion management planning actions (see FPMR § 101–35.206–1).

(2) Type of specification or purchase description (see FPMR § 101–35.205).

(3) The basis and documentation to support the use of compatibility limited requirements, when applicable (see § 1–4.1206–4).

(4) The basis and documentation to support a contemplated noncompetitive (sole source) procurement, when applicable (see § 1–4.1206–5). Specifically, the justification must address:

(i) The critical service or unique features or mandatory requirements, dictated by the intended use, that limits the procurement to a sole source (The overriding necessity of these competition limiting requirements shall be clearly identified.);

(ii) The steps taken which led to the conclusion that no other known or probable source of supply exists for the required services; and

(iii) The practical factors which preclude the development of specifications or the determination of the requirement in a form suitable for competition.

(5) The documentation to support a dedicated teleprocessing system strategy, when applicable (see § 1–4.1209(b)(2)).

(6) If within TSP scope (§ 1–4.1209–2), source selection information, as follows:

(i) List of ADP service requirements (mandatory and evaluated optional features, if any);

(ii) Other requirement elements to be evaluated;

(iii) Summary description of the benchmark and the method for developing cost information from the benchmark results or a description of how cost information will be determined if a benchmark is not used; and

(iv) The method to be used for combining all cost elements to determine the lowest overall system life cost evaluation of the services contract portion.

(7) If use of remote terminal emulation is to be a mandatory requirement, provide justification as set forth in § 1–4.1206–7.

(e) *Exceptions or deviations.* Provide a statement that the agency has reviewed and complied with all applicable regulations. List those sections of Subparts 1–4.11 and 1–4.12, current temporary regulations, Subchapter F of the FPMR, and the use of standards that apply to this procurement that cannot or will not be met by the agency. Identify and justify deviations to the listed regulations that the agency desires or requires. If the exception is within the TSP scope, provide documentation required by § 1–4.1209–3(d)(2).

(f) *Agency remarks.* Provide additional information concerning any of the above items or other special conditions associated with the procurement deemed necessary for understanding of the APR.

(g) *Agency references.* Provide references to relevant past GSA authorizations, meetings, telephone discussions, etc.

(h) *Agency signature.* The APR shall be signed by an official who has been assigned to initiate the acquisition action and shall specify the title of the official who has been assigned to be responsible for the conduct of the procurement (see § 1–4.1104(a)). GSA will process only those submissions signed by authorized officials. Other submissions will be returned without action to the submitting office for resubmission by an authorized agency official.

(i) *Supplemental submissions.* If prior to award the requirement or any of the procurement planning or strategy elements of an APR change materially from data submitted in the APR, irrespective of whether before or after authorization is received from GSA to proceed, the agency shall promptly provide a supplementary APR submission to GSA containing pertinent information.

§ 1–4.1204 Procurement-related directives.

Procurement actions shall conform with the following:

(a) Direction by the President and fiscal and policy controls exercised by OMB;

(b) The FPMR, particularly Subchapter F;

(c) Federal information processing standards (FIPS), Federal telecommunications standards (FED–STD), and joint standards (FIPS/FED–STD); and

(d) Except as otherwise provided by this Subpart 1–4.12, applicable procurement regulations (i.e., other provisions in the Federal Procurement Regulations (41 CFR Chapter 1), agency regulations implementing and supplementing the FPR, or, if applicable, the Defense Acquisition Regulation (DAR)).

§ 1–4.1205 Small purchases.

The provisions of Subpart 1–3.6, (or, if applicable DAR Part 3–6) Small Purchases, apply when the aggregate amount over the system life of any requirement for commercial ADP services does not exceed $10,000. In addition, for services that are available on multiple award schedules (MAS) under the TSP, agencies may use the simplified MAS procedure (see § 1–4.1209–3(c)).

§ 1–4.1206 Competition in procurement actions.

(a) Full and open competition is a basic procurement objective of the Government. Maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see FPMR Subpart 101–35.2).

(b) Agency ADP managers and contracting officers share the responsibility for ensuring that the basic procurement objective is met. The responsibility extends to fostering competitive conditions for subsequent procurements.

§ 1–4.1206–1 Competition for follow-on ADP services requirements.

Agencies must keep their commercial ADP services contract expiration dates in mind when planning for future ADP requirements activities (see FPMR § 101–35.204). Agency plans for follow-on procurement should allow sufficient time for the acquisition process, including conversion of data files and programs, if required. A competition for the follow-on period shall be started and should be completed before the expiration of the existing contract.

§ 1–4.1206–2 Software conversion studies.

(a) Software conversion (see § 1–4.1102–2(f) for definition) studies shall be performed for all procurements to ensure that the user's needs are met at the lowest overall cost, price and other factors considered, including costs and other factors associated with conversion activities. However, a software conversion study is not required for an initial acquisition where no software exists. The provisions of § 1–4.1109–14 apply.

(b) Studies for procurements below the thresholds stated in paragraph (c) of this section shall be based on Government estimates determined in accordance with agency procedures. The procurement file shall be documented to record the estimates and the method of computation. The extent of the study will be based on the circumstances of the particular situation as determined by the agency.

(c)(1) A comprehensive software conversion study shall be made for each ADP services acquisition when either one of the two following conditions exists:

(i) The estimated system life cost (see §§ 1–4.1102–10 and 1–4.1102–11 for definitions) is expected to exceed $2.5 million; or

(ii) The cost of conversion is to be used as the primary justification for a compatibility limited requirement when the estimated value of the procurement exceeds $300,000.

(2) A comprehensive software conversion study means an analysis of a conversion requirement that as a minimum includes the following: (i) Problem definition; (ii) inventory of system components for the current system; (iii) description of the operating system environment; (iv) inventory of application programs and data files to be converted; (v) alternative procurement approaches (including compatible and noncompatible, as appropriate) with schedules for both the procurement and conversion effort; (vi) general description of the target environment (including hardware and system software, performance requirements, and constraints or limitations, dictated by the user needs, on the functional definition of the requirement); (vii) recommended approach to accomplish the conversion tasks (including analyses of alternative approaches with an economic and benefit analysis for each approach); and (viii) specific agency actions to be taken

to reduce the cost and risk of future conversions.

(3) An agency may elect to conduct its own comprehensive software conversion study, use contractual resources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(d) All software conversion studies shall be maintained in agency files and be available for GSA review at the time the agency submits an agency procurement request (APR) to GSA.

§ 1–4.1206–3 Dedicated ADPE or software alternatives.

When a solicitation requires or allows an offeror to propose the dedicated use of ADPE or software in the performance of ADP services, the offeror shall be required to (a) price the use of the dedicated equipment or software on a separate line item basis and (b) specify the interface requirements between the offeror's system and the dedicated items. The Government shall reserve the right to furnish the dedicated items to the successful offeror for use in the performance of the contract. The location of the dedicated items is immaterial, except that all ADPE or software located at Government-owned or -controlled sites and operated by the Government or Government contract employees shall be considered dedicated-use ADPE or software, requiring the separate pricing and interface definition.

§ 1–4.1206–4 Compatibility limited requirements.

(a) Compatibility limited requirements tend to restrict competition and, therefore, shall not be made mandatory requirements solely for reasons of economy or efficiency. When conversion costs are to be evaluated, the solicitation shall provide for the submission and evaluation of acceptable noncompatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered.

(b) A statement of requirements for ADP services to augment or replace existing ADP services (see FPMR § 101–35.209) that is limited to ADP services compatible with the existing operating system and ADPE shall be:

(1) Supported by a software conversion study (see § 1–4.1206–2);

(2) Justified on the basis of agency mission-essential data processing requirements, and economy and efficiency; and

(3) Meet the requirements of this § 1–4.1206–4.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the augmentation or replacement acquisition.

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs. For example, the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition (see § 1–3.101(d) (or, if applicable, DAR 3–101(d)) and FPMR § 101–35.206).

(5) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADP resource system.

(6) The extent of essential parallel operations, i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(7) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a competitive solicitation which couples the conversion effort and ADP services in a single contract, including consideration of the basis for and calculation of liquidated damages provisions for conversion performance failure.

(d) The findings that support the use of compatibility limited specifications shall be submitted with each Agency Procurement Request (APR) (see § 1–4.1203–1) for augmentation or replacement acquisition when the use of these specifications is contemplated.

§ 1–4.1206–5 Noncompetitive (sole source) requirements.

(a) When only one contractor can meet the selecting agency's requirements, the agency shall document its files with the basis and justification for the source selection and retain the documentation to manage and plan for the subsequent procurement. Agency ADP managers and contracting officers share responsibility for management and planning actions necessary to foster competitive conditions for subsequent procurements. An acquisition plan showing the major milestones for completing a follow-on competitive selection shall be prepared. When the estimated cost of particular requirements exceeds the sole source procurement threshold set forth in paragraph (d) of § 1–4.1203, the additional documentation required by § 1–4.1203–1(d)(4) shall be submitted with the APR.

(b) The system life duration for an anticipated sole source procurement should be held to the minimum practicable life.

§ 1–4.1206–6 Exercising renewal options.

Before exercising any renewal options, including those on a TSP BA contract or MAS system life selection, the agency shall conduct an analysis to determine whether exercising the renewal option is the most advantageous method of fulfilling the Government need, price and other factors considered. Agency procurement files shall be documented with the results of the evaluation.

§ 1–4.1206–7 Use of remote terminal emulation for ADP services procurement.

(a) Agencies shall not require the mandatory use of remote terminal emulation [3] in ADP services procurements except for:

(1) Dedicated teleprocessing requirements, and

(2) Unusually large and complex shared teleprocessing requirements.

(b) Agencies desiring to make the use of remote terminal emulation mandatory in the procurement of ADP services shall identify and justify to GSA the need for the use of the contemplated remote terminal emulation. This information will be provided along with the submission of the APR, when applicable. An agency should study the GSA Handbook, Use and Specifications of Remote Terminal Emulation in ADP System Acquisitions,[4] before making its determination.

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[3] See § 1–4.1102–6 for definitions of terms.

[4] The GSA Handbook, Use and Specifications of Remote, Terminal Emulation in ADP System Acquisitions, has been prepared to provide guidance to Federal agencies in designing and conducting remote terminal emulation benchmark tests. The Handbook summarizes introductory concepts and terminology of benchmarking and remote terminal emulation, describes when and how agencies should use remote terminal emulation, and specifies the remote terminal emulation capabilities that an agency may require offerors to

Continued

(c) Any agency desiring to deviate from the policy expressed in paragraph (a) of this section shall request authority from GSA under § 1–4.1200–4, before the issuance of the solicitation document.

§ 1–4.1206–8 Small business and labor surplus area concerns.

Commercial ADP services may be set aside for award to small businesses, the Small Business Administration (in accordance with Section 8(a) of the Small Business Act), or labor surplus area concerns. The provisions of Subparts 1–1.7 and 1–1.8 and the implementing agency policy and procedures (or, if applicable, DAR Parts 1–7 and 1–8) apply.

§ 1–4.1206–9 Computer security requirements.

When applicable, the provisions of § 1–4.1109–20 shall be applied to commercial ADP services and ADP support services, procurements (see also FPMR Subpart 101–35.3).

§ 1–4.1206–10 Implementation of standards.

When applicable, the provisions of § 1–4.1109–25 shall be applied to commercial ADP services and ADP support services procurements (see also FMR Subpart 101–36.13).

§ 1–4.1207 [Reserved]

§ 1–4.1208 Procurement requirements relating to the Privacy Act.

Executive agencies (see § 1–1.327–2(a) for definition) shall comply with § 1–1.327 (or, if applicable, DAR 1–327 and APP.P) when they procure commercial ADP services and support services subject to the Privacy Act [5] and shall include in their solicitations and resultant contracts:

(a) Agency rules of conduct that a contractor and his employees shall be required to follow;

(b) A list of the anticipated threats and hazards inherent in the contemplated procurement against which the contractor must safeguard;

(c) A description of the safeguards that the agency requires the contractor to provide;

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards; and

(e) Standard contract clauses entitled "Rights in Privacy Safeguards" (see § 1–4.1208–1) and "Access to Contractor Facilities and Records—Privacy Safeguards Inspection" (see § 1–4.1208–2).

§ 1–4.1208–1 Rights in privacy safeguards.

Contracts for commercial ADP services subject to the Privacy Act shall contain the following clause:

Rights in Privacy Safeguards

(a) The details of any and all safeguards that the contractor may design or develop under this contract shall become and remain the property of the Government and shall not be published or disclosed in any manner without the express written consent of the Government.

(b) The details of any and all safeguards that may be revealed to the contractor by the Government in the course of performing under this contract shall not be published or disclosed in any manner without the express written consent of the Government.

(End of Clause)

§ 1–4.1208–2 Access to contractor facilities and records—privacy safeguards inspection.

Contracts for commercial ADP services subject to the Privacy Act shall contain the following clause:

Access to Contractor Facilities and Records—Privacy Safeguards Inspection

(a) The Government shall, following presentation of advance written notice of ——— days be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(b) In the event that new or unanticipated threats or hazards are discovered by either the Government or the contractor, or that existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The cost of such changes or corrections shall be a matter of negotiation. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of Clause)

§ 1–4.1209 The Teleprocessing Services Program (TSP).

The TSP is a centrally managed GSA program that provides agencies with effective and efficient means of acquiring certain commercial ADP services including related ADP support services. Agencies shall use the TSP in accordance with this Subpart 1–4.12. The TSP includes two methods for acquiring commercial ADP services. Neither of these methods allows cost-reimbursement contracting. Agencies may use either method, as appropriate.

(a) *The multiple award schedule (MAS).* GSA periodically establishes a multiple award schedule under which GSA negotiated offerings, including firm rates for services, of the participating firms are made available for efficient agency acquisition. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Government-wide. The MAS defines the terms and conditions under which a purchase order placed by the agency will be performed by the agency selected participating contractor. The MAS terms and conditions can be modified only by GSA. Under the provisions of the schedule, a participating firm may modify its service offerings through a MAS amendment procedure. The MAS may be used for justified sole source requirements. Agencies shall initiate the procedure described in the handbook by notifying TSP MAS firms of their requirements and planned source selection and by publicizing the planned procurement, notwithstanding the exemption in § 1–1.1003–2(a)(5) (or, if applicable, DAR 1–1003.1(c)(v)). For procurements under the established thresholds (see 1–4.1203(d)), an agency has the option of not allocating time for receipt, processing, and distribution of amendments and price reductions; provided it has determined that at least two firms can satisfy the requirement and provided the CBD notice and letter of inquiry so states. The agency shall make the source selection in accordance with the terms of the MAS and shall evaluate, select a source, and issue a line item, time and resources-used, ceiling-price purchase order. The MAS shall not be used for a dedicated teleprocessing system [6] (see § 1–4.1202–7

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provide for testing ADP systems during acquisition. Copies of the GSA Handbook are available upon written request to General Services Administration (CDPX), Washington, DC 20405.

[5] ADP management provisions regarding the Privacy Act are in FPMR Subpart 101–35.17. Related provisions regarding security of Federal ADP and telecommunications systems are in FPMR Subpart 101–35.1.

[6] Dedicated system alternatives should not be confused with dedicated-use ADPE or software as provided in § 1–4.1206–3 where the Government reserves the right to furnish certain ADP items for use in the performance of teleprocessing services.

for definition) requirement; however, portions of a system such as on-line storage and communications ports may be reserved for exclusive use by a single user or groups of users.

(b) *The basic agreement (BA).* (1) GSA periodically establishes a BA under which GSA negotiated terms and conditions are made available for agency use in soliciting proposals and awarding contracts for TSP services. The BA terms and conditions can be modified only by GSA. Properly justified sole source procurements may be conducted under the BA when a requirement within the TSP scope cannot be satisfied under the MAS. Unless a sole source is justified, agencies shall notify firms that have entered into the BA of their requirements and planned source selection. Additionally, agencies are responsible for synopsizing BA requirements in the "Commerce Business Daily" in accordance with applicable procurement regulations (see Subpart 1–1.10 (or, if applicable DAR Part 1–10)). Firms that have not entered into a BA with GSA shall be considered for contract award provided the firm agrees in its offer to all terms and conditions of the BA.

(2) Dedicated teleprocessing systems requirements may be included in a BA solicitation under the TSP provided:

(i) The agency procurement request includes appropriate documentation to support a system requirement configuration, or a specific part thereof, which is to be solicited on only a dedicated system basis. This provision does not apply when an agency expresses willingness to evaluate a dedicated system alternative proposal to a proposal priced on a resources used (unit rates) basis.

(ii) The solicitation document provides for the submission and evaluation of dedicated system proposals, on either a required or alternate basis. Offers for a dedicated system shall be considered only on a fixed-price, regardless-of-usage basis for the specified requirement.

(iii) When dedicated system proposals are to be solicited and evaluated as an alternative to resources used type proposals, evaluation criteria shall be sufficient to adequately compare a dedicated system pricing offer with resources used (unit rates) offers to determine lowest overall cost. The solicitation document shall provide that an offeror submitting a dedicated system proposal must also submit a resources used proposal, otherwise the dedicated system alternative shall be eliminated from consideration. Contract awards made on a system life basis shall provide for an annual Government review of workload and usage and reserve the right to select on a prospective basis the more favorable of the contractor's dedicated system or resources used pricing mode.

(c) *Other contracting arrangements.* If an agency determines that a particular requirement within the scope of the TSP (see § 1–4.1209–1) cannot be satisfied by any firm currently participating in the TSP, either MAS or BA, or by any firm willing to enter into a contract under the TSP BA, the agency may acquire such services as an exception to the TSP, subject to the provisions set forth in paragraph (d) of § 1–4.1209–3.

(d) *TSP guidance.* (1) Guidance concerning the TSP may be obtained from the General Services Administration (CDR), Washington, DC 20405 or from any GSA/ADTS regional office.

(2) The Teleprocessing Services Program (TSP) Handbook provides procedures to be followed by Federal agencies in acquiring commercial ADP services within the TSP scope. The handbook is not a regulation. However, it reflects regulatory requirements of the FPR and FPMR. A limited number of copies of the handbook are available without charge to all Federal agencies by written request to any of the offices identified in paragraph (d)(1), above. Major revisions or new editions of the handbook are announced in FPR bulletins.

§ 1–4.1209–1 Applicability of the TSP.

(a) When a Federal agency requirement analysis (see FPMR § 101–35.203–4) indicates that commercial ADP services should be considered (see FPMR § 101–35.209) to satisfy an ADP requirement and it is within the scope (see § 1–4.1209–2) of the GSA managed TSP, and agency shall use the TSP (but see §§ 1–4.1205 and 1–4.1209–3(d)).

(b) Government contractors who require ADP teleprocessing services in the performance of work under cost-reimbursement type contracts or subcontracts may use the TSP pursuant to Subpart 1–5.9 (or, if applicable, DAR Part 5–9).

§ 1–4.1209–2 Scope of the TSP.

(a) *Covered TSP services.* Types of ADP services covered include interactive, remote batch processing, and a combination of these (full services), as well as related ADP support services incidental to the teleprocessing performed by commercial firms.

(b) *Excluded TSP services.* Predominantly or exclusively local batch processing services are excluded. (See also § 1–4.1201(b).)

(c) *Covered TSP support services.* Types of related ADP support services covered include:

(1) Training services that are limited to the unique features of a particular teleprocessing service;

(2) Technical assistance/analyst services (TA/AS) specifically related to the TSP firm's providing teleprocessing services under the TSP as limited in paragraph (d) of this section. Such services are limited to assisting users on network operations, special features that may influence application system design, communication interfaces with contractor networks, or other ADP application oriented areas incidental to the use of the TSP firm's econometric, engineering, or other software packages;

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement as limited in paragraph (d);

(4) Use of the TSP firm's data bases related to a teleprocessing requirement;

(5) Furnishing network documentation;

(6) Conversion of Government-controlled files and application programs when initiating performance or changing firms under a TSP contracting arrangement as provided in paragraph (e); or

(7) Software redesign or programming as limited in paragraph (f).

(d) *Limitations on TA/AS and premium software packages.* Technical assistance/analyst services (TA/AS) and use of premium software packages (paragraph (c) (2) and (3) above of this section) have TSP acquisition dollar limitations that are reflected in both the MAS and BA. Procurement of these types of services that exceed the established limitations should be on a maximum practicable competition basis (see also § 1–4.1210). The dollar limitations for each teleprocessing requirement are 10% of the total value of the requirement per fiscal year, not to exceed $100,000 per year for TA/AS and $25,000 per year per premium software package. The requiring agency shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under the MAS or awarding a contract under the BA that includes requirements that are estimated to exceed the above limitations.

(e) *Conversion under TSP.* ADP support services associated with conversion of files and application programs ((c)(6), above) may be included in a MAS purchase order or BA

contract at the option of the using agency, provided:

(1) A determination is made, when a TSP conversion requirement is estimated to exceed $75,000, that more extensive competition is not practicable.

(2) The conversion is consistent with the management and planning action provisions set forth in FPMR § 101–35.206–1.

(3) Each participating firm, when the MAS method is selected and the teleprocessing requirement includes conversion services, is required to propose the conversion portion of the requirement or be eliminated from consideration for that teleprocessing requirement.

(4) The description of an individual TSP conversion requirement identifies, as a minimum, the number of programs to be converted, the source computer system, the number of lines of code to be converted by language, the number of files to be converted by organizational type (e.g., index sequential , sequential, random, DBMS), a description of the complexity and level of documentation of the files and programs, redocumentation requirements, training requirements, and specific testing and acceptance criteria for the converted programs and files.

(5) Offerors are provided an opportunity to inspect, for proposal purposes, the available documentation of all programs and files pertinent to the conversion effort, subject to necessary limitations for the protection of personal, proprietary, or other sensitive data.

(6) Offers for conversion services [1] are solicited and awarded on a separate line item, firm fixed-price basis.

(7) Order placements or contract awards, when teleprocessing requirements include conversion services, are based on lowest overall cost, price and other factors considered. Cost of conversion shall be included as an element of overall teleprocessing services costs.

(f) *Limitations on software redesign or programming.* Software redesign or programming are excluded, except programming of linkage or bridge routines between multiple software packages under $5000 per year per requirement, provided the MAS or BA so provides. Other limited application programming can be included only in a TSP BA contract provided the agency requests and receives specific authorization by the GSA BA contracting officer (see also § 1–4.1210).

(g) *Excluded facilities management.* Facilities management of Government furnished ADP equipment is excluded.

(h) *Excluded ADPE.* The lease or purchase of ADPE including terminals is excluded.

§ 1–4.1209–3 Procedures for acquiring TSP services.

(a) *Description and authorization.* Agency ADP managers shall document their teleprocessing service requirements so TSP procedures can be economically and efficiently applied by the procurement activity. When the value of the procurement exceeds the blanket dollar thresholds for GSA authorization to proceed with a commercial ADP services procurement (see § 1–4.1203(d)(2)), the agency is required to submit an APR to GSA (see § 1–4.1203–1).

(b) *Evaluation and source selection.* Selection of a specific source shall be based on a technical and a system life cost evaluation appropriate to the procurement method selected (see also § 1–4.1206–6).

(1) Technical requirement evaluation factors shall be limited to mandatory service requirements and those evaluated optional service features that are assigned relative values (expressed in dollars, points, or any other reasonable indicators). Evaluated optional service features should not exceed 20% weighting value in the total evaluation. Other technical evaluation factors may be appropriate (see § 1–4.1109–15).

(2) The lowest overall cost, as defined in § 1–4.1102–10, shall be used in evaluation and source selection. Conversion costs shall be included in system life evaluations as provided in § 1–4.1109–14. Technically acceptable contractor price quotations instead of Government estimates for specific contractor conversion efforts shall be used in the Government's overall estimate of conversion cost in computing the system life costs.

(3) For requirements over $300,000 annually, ADP service costs shall be based on benchmark results from all technically qualified firms. The agency's benchmark package shall be available to offerors at least 45 calendar days before benchmark performance. The use of benchmarks should be considered in selections under the threshold because different amounts of connect, I/O, and CPU time, for example, will be required by different contractor systems to accomplish the same workload. The selection of the benchmark workload is critical to the source selection because it will exercise the contractor's billing algorithm, a significant factor in cost determination. If a benchmark is not used, the ADP service costs shall be derived by a cost factor calculation of the various categories of the workload estimate or other adequate techniques. FEDSIM has developed a synthetic benchmark for remote batch applications called the "Resource Driver Program" which can be considered (see § 1–4.1212).

(4) For selections under the MAS, prices, rates and discounts applied in the calculation of system life cost shall conform to the terms of the schedule agreement and shall be based on the most recent rates and discounts known as being achieved at a cut-off date common to all firms being evaluated. Rates and discounts can be obtained by contacting any GSA/ADTS regional office. Related ADP support service costs for selections under the MAS shall be derived directly from the pricelists.

(5) Benchmark materials to be used for selection under the MAS shall be available on the "Release date" of the requirements under MAS procedures. For selections under the BA, benchmark materials shall be available at the time solicitations are released. Benchmark materials shall be furnished to all firms who indicate an intent to enter into the competition. Under either the MAS or B/A, a copy of the benchmark used for cost evaluation purposes in the selection process shall be retained for periodic performance evaluation purposes over the system life of the requirement.

(6) The technically acceptable offer evaluated as the lowest overall cost, price and other factors considered, shall be selected.

(7) Agencies are responsible for ensuring that contractor services received and invoices submitted are consistent with the terms, conditions, and prices of the schedule or contract. The benchmark used for source selection, which exercises the contractor's billing algorithm, should be periodically rerun throughout the contract life to provide this verification. Agencies should contact GSA's Contract Programs Division (CDR), Washington, DC 20405, for assistance in invoice verification, auditing, and use of billing algorithms.

(c) *Low cost procurement.* When the system life estimated cost does not exceed $10,000, the MAS method provides a simplified procedure that agencies may use for selecting teleprocessing services. Requirements shall not be fragmented in order to circumvent normal TSP procedures.

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[1] Under the MAS method, participating firms do not quote conversion services rates in their schedule pricelist; rather a firm offer is made for each particular requirement.

(d) *Exceptions.* (1) Agencies shall attempt to satisfy their commercial ADP service requirements which are within the scope of the TSP through use of the MAS or B/A methods. When it appears likely that neither method can satisfy the requirement, the agency shall conduct and document a market survey to determine the availability of the required services from participating TSP firms and from other sources that would negotiate under the TSP B/A. When the results of the survey are negative, an exception exists.

(2) When a TSP exception exists and when the value of the procurement exceeds the applicable threshold (see § 1–4.1203(d)(2)), the agency APR submission shall include the following:

(i) Documentation of the survey;

(ii) Documentation describing the method of procurement contemplated because of the survey results; and

(iii) If sole source, documentation as set forth in § 1–4.1203–1(d)(4).

§ 1–4.1209–4 GSA review of selections under the TSP.

GSA reserves the right to review any agency TSP selection action under the MAS or BA or as an exception to the TSP, either before or after award. Consequently, contractor selection and procurement documentation shall be retained in agency files for a period of two years after selection.

§ 1–4.1210 Agency use of GSA regional contracts.

GSA establishes and makes available for the use of other agencies a variety of regional ADP support services contracts. These contracts may include such areas as software development and programming, production of computer-output microfilm, and data entry. Agencies should consult with their GSA/ADTS regional office to determine the scope and availability of these contracts. These sources of supply should be used if the agency determines they will meet the user's need at the lowest overall cost, price and other factors considered. The following information is generally descriptive of these contracts.

(a) These regional requirements contracts are mandatory on the GSA and on the contractor. They are optional for use by agencies whose requirements fall within the scope of these contracts.

(b) Agencies who wish to use these contracts develop jointly with GSA regional personnel a statement of their work and deliverables. The GSA regional personnel serve as contract administrators on the contracts.

(c) Task orders are negotiated by GSA and the agency with vendors based upon services and deliverables specified by the requesting agency. GSA contract administrators ensure that contract provisions are met and services are delivered as negotiated.

(d) Agencies reimburse GSA through the ADP fund for services received under the requirements contracts.

§ 1–4.1211 Federal Conversion Support Center (FCSC).

FCSC is the primary resource for software conversion technology within the Federal Government. It is operated by GSA to provide Federal agencies with specialized technical and contracting expertise, techniques, and tools to plan conversion studies and accomplish software conversions. It provides these services to Federal activities on a reimbursable basis. Agencies should contact the FCSC for further information (703–756–6156).

§ 1–4.1212 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

FEDSIM provides technical assistance, support, and services on a reimbursable basis throughout the Federal government for simulation, analysis, and performance evaluation of automatic data processing systems. It is the primary source of supply for these services. See FPMR Subpart 101–36.14—Computer Performance Evaluation and ADP Simulation. Agencies should contact the FEDSIM for further information (703–274–8065).

§ 1–4.1213 Federal Compiler Testing Center (FCTC).

FCTC, operated by the General Services Administration, validates compilers which are acquired by or are utilized in the performance of ADP services in the Federal Government. The validation tests determine whether the compiler being tested implements the elements of the Federal processing standard language to which the compiler relates. See § 101–36.1305 of the FPMR for standard terminology to be used in solicitation documents. Agencies should contact the FCTC for further information (703–756–6153).

PART 1–7—CONTRACT CLAUSES

The table of contents for Part 1–7 is amended by revising the entry for § 1–7.103–30 as follows:

Sec.

1–7.103–30 Clauses for solicitations and contracts for automatic data processing (ADP) resources.

Subpart 1–7.1—Fixed-Price Supply Contracts

Section 1–7.103–30 is amended to revise the title and text to recognize clauses in Subpart 1–4.12 as follows:

§ 1–7.103–30 Clause for solicitations and contracts for automatic data processing (ADP) resources.

(a) The clauses in § 1–4.1110 shall be inserted in solicitations and contracts for ADP equipment, software, maintenance services, and supplies under the conditions specified in § 1–4.1110. The clauses are:

(1) Warranty Exclusion and Limitation of Damages.

(2) Contractor Representation.

(3) Fixed-Priced Options Provision (Option to Extend the Term of the Contract, Option for Increased Quantity).

(4) Discontinuance Repricing Provision (Discontinuance of Rental and Repricing).

(b) The clauses in § 1–4.1208 shall be inserted in solicitations and contracts for ADP services and ADP support services under the conditions specified in § 1–4.1208. The clauses are:

(1) Rights in Privacy Safeguards.

(2) Access to Contractor Facilities and Records—Privacy Safeguards Inspection.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 28, 1981.

Ray Kline,

Acting Administrator of General Services.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 7, 1982

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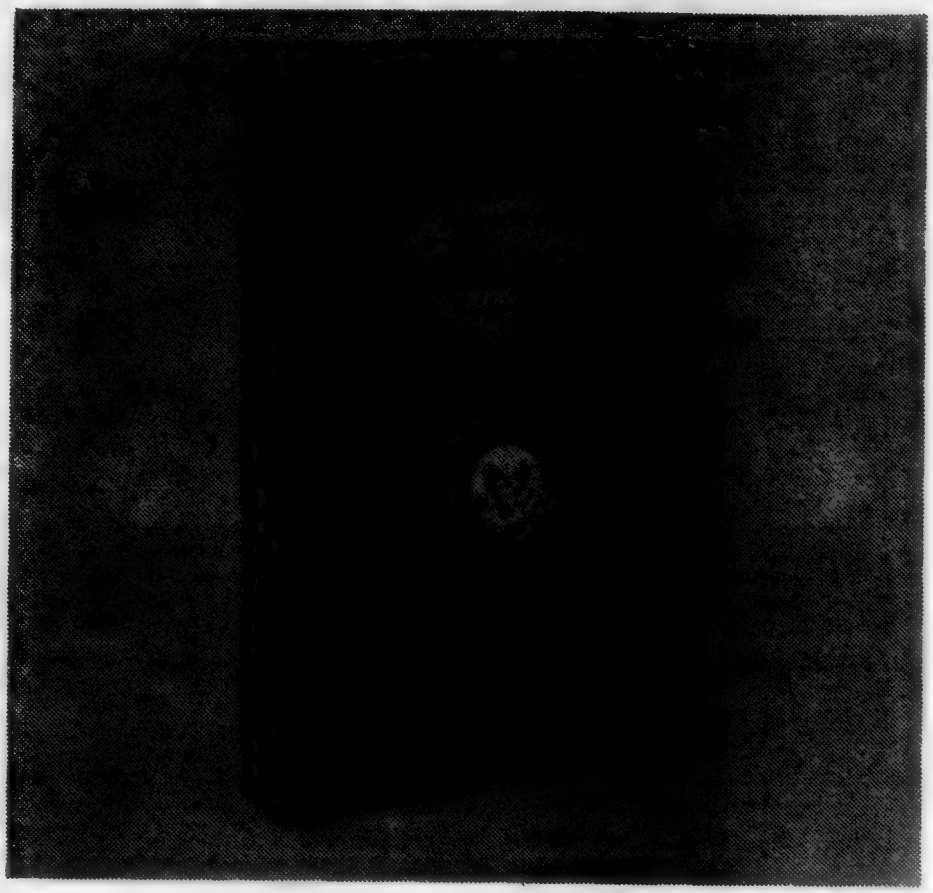

For those of you who must keep informed about Presidential proclamations and Executive orders, there is a convenient reference source that will make researching these documents much easier.

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Vol. 47 No. 93
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Thursday
May 13, 1982

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 4942 of May 10, 1982

United States-Korea Centennial

By the President of the United States of America

A Proclamation

On May 22, 1882, representatives of the United States of America and the Kingdom of Korea concluded a Treaty of Peace, Amity, Commerce, and Navigation providing for the opening of diplomatic relations and the establishment of permanent resident missions in each capital. This Treaty marked a new chapter in the history of northeast Asia and was the auspicious beginning of an enduring partnership between the United States and Korea.

The intervening century has witnessed enormous change and progress in our two nations. Our relationship began when both of our nations were largely isolated from the main currents of world life. A century later, Korea and the United States are heavily engaged in all aspects of international endeavor. We have undergone remarkable social and economic transformations as well—from largely rural agricultural societies 100 years ago to the urban industrial economies of today. And, in the process, we have come to enjoy unprecedented levels of prosperity.

Americans are proud of the role they have played in Korean history, especially during these last 100 years. In 1945, American soldiers were crucial to the restoration of this ancient land's independence. Just five years later, Americans fought side-by-side with Korean soldiers in the struggle against the Communist invasion of 1950. Korea, in turn, made a major contribution to the United States' efforts to defeat Communist aggression in Vietnam.

Throughout this period, Americans and Koreans have enriched each other's cultures through the exchange of teachers, scholars and missionaries, and each other's economies through trade and scientific and technological cooperation. The United States applauds and welcomes the valuable contributions that citizens and residents of Korean ancestry have made and continue to make to our society.

Today Americans share many common values with the people of Korea. We believe that only in an atmosphere of freedom can full human potential be realized. We both have set high standards for education and achievement. We believe that an environment of free enterprise encourages initiative and innovation. And we both believe that hard work and diligence will lead to a better life and a better world for our children.

As we enter this second century of our relationship, we can look with satisfaction on our past accomplishments and with anticipation to the future. We will stand by our friends in Korea. In so doing we reaffirm our dedication to the principles of freedom and democracy as the basis of our continued strength and friendship. It is fitting then, that we now reflect upon our relations with this great nation and its people.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 16 through May 22 as a week of national observance of the centennial of the establishment of diplomatic relations between the United States and Korea and of the ties of friendship that bind our two peoples.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-13199
Filed 5-11-82; 4:16 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Revision of the United States Standards for Beans

Correction

On Wednesday, May 5, 1982, revised U.S. standards for beans were published (FR Doc. 82-11854, page 19309). Beginning on page 19310 and ending on page 19313 are a series of tables. Formating problems made the tables difficult to use and understand for the convenience of the readers, the tables are reprinted below.

BILLING CODE 1505-01-M

GRADES, GRADE REQUIREMENTS, GRADE DESIGNATIONS, SPECIAL GRADES AND SPECIAL GRADE REQUIREMENTS

§68.133 Grades, Grade Requirements, Special Grades and Special Grade Requirements for the Class PEA BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF — MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (includes Stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
U.S. Choice Handpicked	SHALL NOT GRADE OFF-COLOR	18.0	1.5	0.3	0.01	0.01	0.01	2.0
U.S. Prime Handpicked		18.0	3.0	0.3	0.01	0.01	0.01	2.0
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER THE REMOVAL OF TOTAL DEFECTS	18.0	2.0	2.0	0.4	0.2	0.5	4.0
U.S. No. 2		18.0	3.0	3.0	0.8	0.4	1.0	4.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

UMI 2 8 3 1 Y M 3 9 1 7 4 V

§68.134 Grades and Grade Requirements for the Class BLACKEYE BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGED	CLEAN CUT WEEVIL BORED 2./	FOREIGN MATERIAL		CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
						TOTAL (includes Stones)	STONES		
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	4.0	2.0	0.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	6.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	8.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered or weevily; which have any commercially objectionable odor; which contain insect webbing, or filth, animal filth, or any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

§68.135 Grades and Grade Requirements for the Classes YELLOWEYE BEANS and CRANBERRY BEANS.

§68.135 Grades and Grade Requirements for the Classes YELLOWEYE BEANS and CRANBERRY BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGE	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./	IN ADDITION TO CLASSES THAT BLEND, WHITE BEANS SIMILAR IN SIZE AND SHAPE IN THE CLASS YELLOWEYE BEANS
					TOTAL (Includes Stones)	STONES			
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	4.0	2.0	0.5	0.2	0.5	5.0	5.0
U.S. No. 2		18.0	6.0	4.0	1.0	0.4	1.0	10.0	5.0
U.S. No. 3		18.0	8.0	6.0	1.5	0.6	2.0	15.0	---
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3, or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

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§68.136 Grades and Grade Requirements for the Class PINTO BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material Contrasting classes, Splits)	TOTAL DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (includes Stones)	STONES		
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	3.0	3.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	5.0	5.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	7.0	7.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 and U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

§68.137 Grades and Grade Requirements for the Classes

§68.137 Grades and Grade Requirements for the Classes MARROW, GREAT NORTHERN, SMALL WHITE, FLAT SMALL WHITE, WHITE KIDNEY, LIGHT RED KIDNEY, DARK RED KIDNEY, SMALL RED, PINK, BLACK TURTLE SOUP, and MISCELLANEOUS BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (includes Stones)	STONES		
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	2.0	2.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

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§68.138 Grades and Grade Requirements for the Class MUNG BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGED	CLEAN-CUT WEEVIL BORED 2./	FOREIGN MATERIAL		CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
						TOTAL (includes Stones)	STONES		
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	2.0	2.0	0.1	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the grade requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments or are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

§68.139 Grades and Grade Requirements for the Class LARGE LIMA BEANS.

§68.139 Grades and Grade Requirements for the Class LARGE LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF --- MOISTURE 1./	TOTAL BLISTERED WRINKLED AND DEFECTS (Blistered, wrinkled, Total damage, Total foreign material, Contrasting classes, Splits)	DAMAGED BEANS: TOTAL	DAMAGED BEANS: BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (includes Stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	SPLITS	BROKENS	CLASSES THAT BLEND 3./	BEANS THROUGH A SIEVE: 28/64"	BEANS THROUGH A SIEVE: 24/64"
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	6.0	2.0	0.5	0.5	0.2	0.5	3.0	5.0	5.0	25	5
U.S. No. 2		18.0	9.0	3.0	1.0	1.0	0.3	1.0	5.0	5.0	10.0	40	5
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.										
U.S. Sample Grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.										

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

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§68.140 Grades and Grade Requirements for the Classes BABY LIMA and MISCELLANEOUS LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---								
		MOISTURE 1./	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	BLISTERED WRINKLED AND/OR BROKEN	SPLITS	CLASSES THAT BLEND 3./
					TOTAL (includes Stones)	STONES				
U.S. No. 1	THE SPECIAL GRADE OFF-COLOR MAY BE APPLIED AFTER REMOVAL OF TOTAL DEFECTS	18.0	2.0	1.0	0.5	0.2	0.5	1.0	3.0	5.0
U.S. No. 2		18.0	3.0	1.5	1.0	0.3	1.0	5.0	5.0	10.0
U.S. No. 3		18.0	5.0	2.0	1.5	0.6	2.0	8.0	8.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 and U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.							
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.							

1./ Beans with more than 18.0 percent moisture are graded High moisture.
2./ Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are graded Mixed beans.

BILLING CODE 1505-01-C

Agricultural Marketing Service

7 CFR Part 907

[Valencia Orange Reg. 339]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation limits the quantity of Valencia oranges grown in Arizona and designated part of California which may be handled during the period May 14 through May 20, 1982. Such action is needed to provide for an orderly flow of the fruit to market during this period of heavy shipments. This action is intended to stabilize the supply of fruit during the specified week.

DATES: Effective May 14, 1982.

SUPPLEMENTARY INFORMATION: This action is issued pursuant to the marketing agreement and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the act.

The Valencia Orange Administrative Committee, established under the marketing order, is responsible for local administration of the order. The committee has met and recommended a limitation of handling for the period May 14 through May 20, 1982. The committee's recommendation was formulated after consideration of all relevant matters presented at a public meeting held May 11, 1982, in Phoenix, Arizona. The committee's meeting was held to consider recommendations for regulation for the week May 14 through May 20, 1982. The committee reports that the market for Valencia oranges is steady.

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 690; Valencia Orange Reg. 689, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 14–20, 1982, and increases the quantity of such oranges that may be so shipped during the period May 7–13, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective May 14, 1982, and the amendment is effective for the period May 7–13, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1, and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on May 11, 1982, at Lindsay, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. Section 908.990 is added as follows:

§ 908.990 Valencia Orange Regulation 690.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 14, 1982, through May 20, 1982, are established as follows:

(1) District 1: 459,000 cartons;

(2) District 2: 441,000 cartons;

(3) District 3: Unlimited cartons.

2. Section 908.989 Valencia Orange Regulation 689 (47 FR 19511), is hereby amended to read:

§ 908.989 Valencia Orange Regulation 689.

* * * * *

(1) District 1: 564,000 cartons

(2) District 2: 586,000 cartons

(3) District 3: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: May 12, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-13283 Filed 5-12-82; 11:27 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Reg. M; CL-1]

Consumer Leasing; Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: In accordance with 12 CFR 213.1(d), the Board's staff is publishing a final official staff commentary to Regulation M (Consumer Leasing). The commentary applies and interprets the requirements of the regulation and is intended to replace individual Board and staff interpretations. Good faith compliance affords lessors protection from civil liability under section 130(f) of the Truth in Lending Act.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus or Steve Zeisel, Staff Attorneys (202–452–3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Introduction.* The Board adopted Regulation M (46 FR 20848, April 7, 1981), effective April 1, 1981, to implement the consumer leasing provisions of the Truth in Lending Act. The leasing rules were formerly contained in Regulation Z, 12 CFR Part 226. Compliance with the new regulation becomes mandatory on October 1, 1982 (Pub. L. 97–110, Dec. 26, 1981). Until that time, lessors may comply with either Regulation M or the previous version of Regulation Z.

The Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221) made extensive revisions to the credit provisions of Truth in Lending, but it affected consumer leasing only slightly. When Regulation Z was revised in 1981, the leasing rules were removed and consolidated as Regulation M. Apart from a few minor changes warranted by the amendments to the act, Regulation M adopted almost verbatim the leasing rules of Regulation Z.

The commentary modifies the staff's approach to providing interpretations of the leasing provisions formerly in Regulation Z. Under the previous regulation, individual staff opinions were issued in response to inquiries about specific fact situations and were

normally limited to those facts. While this commentary provides specific guidance and examples, it employs language that is of more general application for use by the widest possible audience. The commentary attempts to provide sufficient guidance without overburdening the industry with excessive detail and multiple research sources. As the vehicle for additional staff interpretations, it will be revised periodically to address new questions.

The final commentary adopts the substance of most of the individual leasing interpretations issued under previous Regulation Z. However, interpretations have not been incorporated if they repeat information found elsewhere, if they have been rendered valueless by the passage of time, or if they deal with facts that are unique or too particular to warrant treatment in the commentary. Previous staff opinion letters, whether official or unofficial, can provide no certain guidance in complying with Regulation M. They were issued as interpretations of previous Regulation Z only and are entirely superseded by this commentary for purposes of interpreting Regulation M. Of course, they may still be utilized by courts and administrative agencies in determining liability for violations of the previous Regulation Z leasing provisions.

A proposed version of the commentary was published in Federal Register on October 13, 1981 (46 FR 50380) and elicited 22 responses from lessors, trade associations and one Reserve Bank. Numerous changes to the substance of the proposal were requested; many have been adopted in the final commentary. Several comments reflected confusion about the meaning of certain provisions. Those provisions have been revised and clarified. In addition, many minor editorial and structural changes suggested by commenters have been incorporated.

To accommodate substantive and editorial changes, some sections of the commentary were restructured, and comments were added or deleted as necessary. As a result, the location of a comment may differ from its original location in the proposal. In general, the staff has attempted to place comments in the single most appropriate and useful place, providing cross-references where necessary.

Some of the provisions in the commentary that were changed substantively from the proposal are listed below. The list is not exhaustive; it is merely intended to give examples of the types of changes that have been made.

Section 213.2—Definitions and Rules of Construction

- Comment 2(a)(8)–1 discusses when an assignee may be considered a lessor.
- Comment 2(a)(15)–2 identifies disclosable security interests.
- Comment 2(a)(17)–3 clarifies the components of the periodic payments which are used to calculate the total lease obligation.

Section 213.4—Disclosures

- Comments 4(a)–1 through –5 describe the basis of disclosures, minor variations, form of disclosures, number of transactions and treatment of rebates in lease transactions.
- Comment 4(a)(2)–3 explains who makes disclosures in multiple lessor transactions and who receives disclosures in multiple lessee transactions.
- Comment 4(g)(15)–3 discusses when taxes are included in the total lease obligation.
- Comments 4(h)–1 through –10 explain the relationship between renegotiations and extensions and clarify how the lessor determines when there is either a renegotiation or an extension.

Commenters suggested some modifications to the commentary that are incorporated at this time. The modifications concerned issues such as calculating the total contractual obligation for purposes of the consumer lease definition in § 213.2(a)(6), and changes to the definition of "consummation." These changes were not anticipated in the proposal and did not receive adequate comment. However, they may be the subject of clarification or adjustment in a future commentary revision.

Other suggested changes were not made because they were contrary to requirements in both the regulation and statute. The staff is currently studying the Consumer Leasing Act to assist the Board in determining whether to recommend statutory amendments to Congress.

List of Subjects in 12 CFR Part 213

Advertising; Banks, banking; Consumer protection; Federal Reserve System; Leasing; Penalties; Truth in lending.

Authority. 15 U.S.C. 1640(f).

Part 213 is amended by adding Supplement I to read as follows:

SUPPLEMENT I—CL–1—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M, effective April 1, 1981. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under section 213.1(d) of the regulation, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with Regulation M becomes mandatory on October 1, 1982, the Board and staff interpretations of the previous Regulation Z leasing provisions will be entirely superseded by Regulation M and this commentary, except with regard to liability under the previous regulation.

4. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary and regulation, reference to the regulation should be construed to refer to Regulation M, unless the context indicates that a reference to previous Regulation Z (12 CFR Part 226) is also intended.

(c) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

5. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to section 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)–1 and comment 4(a)(1)–2. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–6. The appendices may be cited as comments app. C–1 and app. C–2.

6. *Cross-references.* The following cross-references to related material appear at the end of each section of the commentary: (a) "Statute"—those sections of the Truth in Lending Act on which the regulatory provision is based; (b) "Other sections"—other provisions in the regulation necessary to understand that section; (c) "Previous regulation"—parallel provisions in previous Regulation Z; and (d) "1981 changes"—a brief description of the major regulatory changes made when the leasing rules were moved from previous Regulation Z to Regulation M.

Section 213.1—General Provisions

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a)(16). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

2. *Issuance of staff interpretations.* This commentary is the method by which the staff provides interpretations that afford formal protection under section 130(f) of the act. This commentary may be amended periodically.

References:

Statute: §§ 102(b), 105, and 130(f).
Previous regulation: § 226.1.
1981 changes: None.

Section 213.2—Definitions and Rules of Construction

2(a) Definitions.
2(a)(2) "Advertisement"

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The list of examples in the definition is not exhaustive; telephone solicitations and letters sent to customers as part of an organized solicitation of business, for example, are also advertisements. The term does *not* include the following:

- Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.
- Informational material distributed only to businesses.
- Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.
- News articles, the use of which is controlled by the news medium.
- Market research or educational materials that do not solicit business.

2. *Persons covered.* See the commentary to § 213.5(a).

2(a)(4) "Arrange for lease of personal property"

1. *General.* The definition of lessor in § 213.2(a)(8) includes one who, in the ordinary course of business, regularly arranges for the leasing of personal property. For example:

- An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.
- An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Multiple lessors.* See the commentary to § 213.4(c).

3. *Consideration.* The term "other consideration" refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, that may flow from the relationship between the parties.

2(a)(6) "Consumer lease".

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation and a subsequent change in primary usage is governed by § 213.4(e).

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than 4 months. Thus, a lease of personal property for 4 months, 3 months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond 4 months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for cancelling during the first 4 months is considered to have a term of more than 4 months. A month-to-month or week-to-week extension of a lease that was originally for 4 months or less is not a consumer lease, even if the extension actually lasts for more than 4 months. For example, a 3-month lease extended on a month-to-month basis and terminated after 1 year does not require consumer lease disclosures.

3. *Organization.* A consumer lease does not include a lease made to an organization, as defined in § 213.2(a)(9). A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

4. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement."

5. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

6. *Leases of personal property incidental to a service.* The following leases of personal property that are incidental to services are not consumer leases subject to the requirements of the regulation:

- Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.
- Burglar alarm systems requiring the installation of leased equipment that

triggers a telephone call when a home is burglarized.

2(a)(7) "Lessee".

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(8) "Lessor".

1. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in "Ford Motor Credit Co. v. Cenance," 452 U.S. 155, 101 S.Ct. 2239 (1981). In that case, the Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

2(a)(9) "Organization".

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(12) "Personal property".

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(14) "Realized value".

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the 3 methods for calculating the realized value in determining the lessee's liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.4(g)(5). Disposition charges may be estimated in accordance with § 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that the offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.4(g)(14); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(15) "Security interest".

1. *Coverage.* The list of security interests in the definition is not exhaustive. Other than those listed, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

2. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

3. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(17) "Total lease obligation".

1. *Disclosure.* The total lease obligation is disclosed under § 213.4(g)(15)(i). It is relevant only to so-called open-end leases in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

2. *Periodic payments: disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.4(g)(3).

3. *Periodic payments: inclusions and exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

- Any portion of the periodic payments attributable to depreciation, cost of money, and profit.
- Taxes in some cases. See the commentary to § 213.4(g)(15).
- The capitalized cost of mechanical breakdown protection contracts.

The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does *not* include the following:

- Any amount not paid periodically.
- Any portion or periodic payments attributable to official fees, registration, certificate of title, or license fees.
- Taxes in some cases. See the commentary to § 213.4(g)(15).

At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

4. *Initial payments.* The following amounts are *not* included among the payments at consummation when calculating the total lease obligation:

- Refundable security deposits.
- Official fees and charges disclosable under § 213.4(g)(4).
- "Other charges" disclosable under § 213.4(g)(5).
- The cost of a mechanical breakdown protection contract purchased at consummation.

5. *Estimated value.* See the commentary to § 213.4(d) regarding the use of estimates and § 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(18) "Value at consummation".

1. *Disclosure.* The value at consummation is relevant only to so-called open-end leases and is disclosed and subtracted from the total lease obligation under § 213.4(g)(15)(i).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. See the commentary to § 213.4(g)(15).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. See the commentary to § 213.4(g)(6). The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

2(b) Rules of construction.

1. *Footnotes.* Material that appears in a footnote has the same legal weight as material in the body of the regulation.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other

applicable law; the regulation does not make that determination.
Consummation does not occur merely because the lessee has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

References

Statute: Sections 103(g) and 181.
Previous regulation: § 226.2.
1981 changes: "Agricultural purpose" has been slightly revised to conform to the amended act.

Section 213.3—Exempted Transactions

References

Statute: § 105(a).
Previous regulation: § 226.3(f).
1981 changes: None.

Section 213.4—Disclosures

4(a) General requirements.

1. *Basis of disclosures.* The regulation assumes that parties will perform fully according to the lease terms. For example:

• In a 3-year lease with a 1-year minimum term after which there is no penalty for termination, disclosures should be based on the full 3-year term of the lease. The 1-year minimum term is only relevent to the early termination provisions of § 213.4(g) (12), (13), and (14).

2. *Minor variations.* The lessor may disregard the effects of the following in making calculations and disclosures:

• That payments must be collected in whole cents.

• That dates of scheduled payments may be changed because the scheduled date is not a business day.

• That months have different numbers of days.

3. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed elsewhere in the lease disclosure statement. In addition, when a required disclosure consists of a single charge, lessors do not have to repeat the charge as an itemization and a total amount. See the commentary to § 213.4(g) (5) and (15).

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

• When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

• When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and credit sale transaction.

5. *Rebates.* In a lease transaction, a seller's or manufacturer's rebate may be offered to prospective lessees. At the lessor's option, these rebates may be either reflected in or disregarded in the lease disclosures required under the regulation. If the lessor chooses to reflect the rebate in the leasing disclosures, it may be taken into account in any manner as part of those disclosures.

Paragraph 4(a)(1).

1. *Clearly, conspicuously and in meaningful sequence.* This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no particular mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix C contains model forms that meet this standard, although lessors are not required to use these forms. The requirement that disclosures be made clearly and conspicuously does not mean that they must be more conspicuous than other terms in a combined contract-disclosure statement, nor does it preclude the use of a multi-purpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction. See the commentary to Appendix C.

2. *Type size.* The term "point" in the phrase "10-point type" is a printing term that refers to the size of the body of the type, as distinguished from the size of the type face which may vary among different print manufacturers.

Paragraph 4(a)(2).

1. *Consummation.* See the commentary to § 213.2(b).

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, it is not necessary to use the words "lessor" or "lessee" when identifying those parties.

3. *Mutiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, § 213.4(c) permits a single lessor to make all the disclosures to a single lessee.

4. *Integrated lease/disclosure forms.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together on a single page (which may include both sides) and above the place for the lessee's signature. Generally, other terms and disclosures may precede, follow, or be intermingled with the regulation's disclosures within the limits of § 213.4(b) governing the use of additional information and the clear, conspicuous, and meaningful sequence disclosure standard in § 213.4(a)(1).

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosures but, if disclosures are combined with contract terms, the lessor may require the lessee's signature for contract or evidentiary purposes. In such a case, the disclosures must be made above the place for the lessee's signature. When disclosures and contract terms appear on both sides of a page, the consumer's signature usually appears on the bottom of the second side. For purposes of the regulation, the consumer's signature may appear on the bottom of the first side if all the disclosures appear on that side.

Paragraph 4(a)(4).

1. *Permissible uses.* If the lessor chooses to provide foreign-language translations of the disclosures or is required to do so by state, federal, or local law, the translations are not inconsistent per se with disclosures under the regulation and may be provided as additional information under § 213.4(b).

2. *Advertisements in Puerto Rico.* The requirement for providing English disclosures upon request does not apply to advertisements subject to § 213.5 of the regulation.

4(b) Additional information.

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.7, the lessor may make those disclosures in accordance with the first sentence of this paragraph. If state law disclosures are inconsistent under § 213.7 and the lessor elects to make them, it must do so in accordance with the second sentence of this paragraph.

4(c) Multiple lessors; multiple lessees.

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the disclosing lessor would not otherwise have been obligated to make a particular disclosure.

4(d) Unknown-information estimate.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

• Section 213.4(g)(4) requires the lessor to disclose the total amount payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.4(g)(15)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to derive the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

- An automobile lessor offering a 3-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimated value a wholesale value derived from a credible trade publication listing current wholesale values, if the trade publication is the best information available.
- Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that such values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of the leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the particular disclosure for which the exact information is unknown is labelled as an estimate. However, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

6. *Understating the estimated value.* In non-purchase-option leases, the lessor may not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under § 213.4(g)(15).

4(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- A change from a monthly to a weekly payment schedule.
- The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.
- An increase in official fees or taxes. See the commentary to § 213.4(d).
- An increase in insurance premium or coverage caused by a change in law.
- Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.4(h).

4(g) Specific disclosure requirements.

1. *Inapplicable disclosures.* The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example, if the lessor does not take a security interest, no disclosure is required under § 213.4(g)(9). See the commentary to Appendix C.

2. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(2). The lessor need only be identified by name; no address is required.

Paragraph 4(g)(1).

1. *Multiple-item lease.* In a multiple-item lease, the property may be described in separate statements as provided in § 213.4(a)(3).

Paragraph 4(g)(2).

1. *Itemization not required.* The lessor must disclose one total initial payment amount and identify the components of this one amount (for example, capitalized cost reduction, mechanical breakdown protection, registration fees). The lessor may, but need not, disclose the dollar amount of each component.

2. *Consummation.* See the commentary to § 213.2(b).

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example:

- The lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, some time after consummation. None of these charges is an initial payment under § 213.4(g)(2) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 213.4(g)(4), and the delivery charge is disclosed as an "other charge" under § 213.4(g)(5).

Paragraph 4(g)(3).

1. *Itemization not required.* Section 213.4(g)(3) does not require the lessor to itemize the components of the periodic payments. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of such periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in § 213.2(a)(17). See the commentary to § 213.2(a)(17).

Paragraph 4(g)(4).

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(18).

Paragraph 4(g)(5).

1. *Coverage.* Section 213.4(g)(5) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. It does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

- Late payment.
- Default.
- Early termination.
- Deferral of payments.
- Extension of the lease.

2. *Form of disclosure.* Although the disclosure of an other charge or the total

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of all other charges must be clear and conspicuous, the lessor need not use the specific terminology "other charge." Moreover, the regulation does not impose a location requirement for the disclosure of other charges. For example:

• A lessor has a single other charge, which is a disposition fee of $100. The lessor may disclose the disposition fee with related disclosures about early or scheduled termination. It may but need not repeat the charge as a total with the label of "other charge" or show a total of other charges.

3. *Relationship to other provisions.* The other charges mentioned in § 213.4(g)(5) are charges that are not required to be disclosed under another provision of § 213.4(g). For example:

• A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.4(g)(2), not as an "other charge."

• Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.4(g)(3), in which case it is not disclosed as an "other charge". In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.4(g)(6), not as an "other charge." See the commentary to § 213.4(g)(6).

4. *Lessee liabilties at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed include, but are not limited to, disposition and "pick-up" charges.

Paragraph 4(g)(6).

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(g)(6) even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.4(g)(6) disclosures. The lessor may, however, disclose the § 213.4(g)(6) information in such cases in accordance with the additional information provision in § 213.4(b).

Paragraph 4(g)(7).

1. *Brief identification.* The statement identifying warranties may be brief. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other applicable law.

Paragraph 4(g)(8).

1. *Standards for wear and use.* The lessor is permitted, but not required, to set standards for wear and use (such as excess mileage). The disclosure may be omitted by lessors that do not set such standards. See the commentary to § 213.4(g)(15).

Paragraph 4(g)(9).

1. *Disclosable security interests.* See § 213.2(a)(15) and accompanying commentary to determine what security interests must be disclosed.

Paragraph 4(g)(10).

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(g)(10). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(12). The § 213.4(g)(10) and (12) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in Appendix C.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(g)(10).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(g)(10).

5. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(11).

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(g)(11) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under § 213.4(g)(5) as an other charge.

Paragraph 4(g)(12).

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this paragraph. See the commentary to § 213.4(g)(10).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized capitalized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable. Section 183(b) of the act sets forth the standards for determining a reasonable penalty or charge.

Paragraph 4(g)(14).

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but *not* for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

• The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the

end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in § 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(g)(14).

3. *Time restriction on appraisal.* Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. The regulation does not define what is a "reasonable time."

Paragraph 4(g)(15).

1. *Coverage.* The disclosure under Paragraph 4(g)(15) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the 3 components in the definition of total lease obligation in § 213.2(a)(17) with their corresponding amounts. The lessor may cross-reference the individual components disclosed elsewhere in the lease disclosure statement, as done in Appendix C–1.

3. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. See the commentary to § 213.2(a)(18).

4. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.2(g)(15) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" is based on the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(17).

6. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

- Disposition charges.
- Excess mileage charges.
- Late payment and default charges.
- Amounts by which the unamortized capitalized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

4(h) Renegotiations or extensions.

1. *General coverage.* Section 213.4(h) applies only to existing leases that were covered by the requirements of the regulation or previous Regulation Z. It therefore does not apply to the renegotiation or extension of leases with an initial term of 4 months or less, because such leases are not covered by the definition of consumer lease in § 213.2(a)(6).

2. *Renegotiation defined.* A renegotiation occurs when an existing consumer lease is satisfied and replaced by a new lease undertaken by the same lessee. A renegotiation is a new lease requiring new disclosures. Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

3. *Renegotiation exceptions.* The following events are not renegotiations even if they are accomplished by satisfying and replacing an existing lease:

- A substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent.
- A reduction in the lease charge.
- A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed.

4. *Extension defined.* An extension is any continuation of an existing consumer lease beyond the originally scheduled termination date, but only if the continuation is not the result of a renegotiation. The continuation must be agreed to by both the lessor and the lessee. An extension that exceeds 6 months is a new lease requiring new disclosures.

5. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than 6 months, new disclosures are required at the time the extension is agreed to. If the lease is extended on a month-to-month basis and exceeds 6 months, new disclosures are required at the commencement of the seventh month. If a consumer lease is extended for several terms, one of which will exceed 6 months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed 6 months beyond the originally scheduled termination date.

6. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

- If the term for which extension disclosures are given is 1 month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.
- If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

7. *Court proceedings.* No disclosures are required if a renegotiation or extension results from an agreement involving a court proceeding.

8. *Deferrals.* No disclosures are required if one or more payments are deferred whether or not a fee is charged.

9. *Assumptions.* No disclosures are required when a consumer lease is assumed by another person, whether or not an assumption fee is charged.

References

Statute: Sections 102(b), 121, 122, 124, 182, and 183.

Other sections: §§ 213.2, 213.5, and 213.7 and Appendix C.

Previous regulation: §§ 226.6 and 226.15.

1981 changes: Although reorganized, the disclosure requirements are substantially the same as the previous requirements. The sole amendment implements § 121 of the Truth in Lending Act pertaining to multiple lessors and lessees.

Section 213.5—Advertising

5(a) General rule.

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of lessor in § 213.2(a)(8). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. The owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 184(b) of the act.

2. *"Usually and customarily."* Section 213.5(a) is not intended to prohibit the advertising of a single item or the promotion of new leasing programs, but to bar the advertising of terms that are not and will not be available. Thus, an advertisment may state terms that will be offered for only a limited period or terms that will become available at a future date.

5(b) Catalogs and multipage advertisements.

1. *General rule.* The multiple-page advertisements to which §213.5(b) refers are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.5(c) (1) through (5). If one of the triggering terms listed in § 213.5(c) appears on another page of the catalog or multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

5(c) Terms that require additional information.

1. *Clear and conspicuous standard.* Section 213.5(c) prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Triggering terms.* Whenever certain triggering terms appear in lease advertisements, the additional terms enumerated in § 213.5(c) (1) through (5) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a 5-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

5(d) Multiple-item leases; merchandise tags.

1. *Merchandise tags.* Section 213.5(d) provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

References

Statute: Sections 105(a) and 184.
Other sections: § 213.2(a) (2) and (6).
Previous regulation: § 226.10 (a), (b), (g), and (h).
1981 changes: None.

Section 213.6—Preservation and Inspection of Evidence of Compliance

1. *Preservation methods.* Lessors must retain evidence that they performed required actions as well as made required disclosures. Adequate evidence of compliance does not require actual paper copies of disclosure statements or other business records. The evidence may be retained on microfilm, microfiche, or by any other method designed to reproduce records accurately (including computer programs). The lessor need retain only enough information to reconstruct the required disclosures or other records.

References

Statute: Section 105(a)
Previous regulation: § 226.6(i)
1981 changes: A uniform 2-year record-retention rule replaces the previous requirement that records be retained through at least one compliance examination.

Section 213.7—Inconsistent State Requirements

1. *Procedures.* Only states (through their authorized officials) may request and receive determinations on inconsistency. The procedures for requesting a Board determination on inconsistency are contained in Appendix B.

2. *Inconsistent state disclosures.* A lessor that chooses to make inconsistent state disclosures must do so in the manner prescribed by § 213.4(b).

References

Statute: Sections 111(a)(1) and 186(a).
Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix B.
Previous regulation: § 226.6(b)(3).
1981 changes: None.

Section 213.8—Exemption of Certain State-Regulated Transactions

1. *Classes eligible.* The state determines the classes of transactions for its exemption and makes its application for those classes. Classes might be, for example, all automobile leases or all leases in which the lessor is a bank.

2. *Substantial similarity.* The "substantially similar" standard requires that state statutory or regulatory provisions and state interpretations of those provisions must be generally the same as the federal act and the regulation. A state will be eligible for an exemption even if its law covers classes of transactions not covered by the federal law. For example, if a state's law covers leases for agricultural purposes, this will not prevent the Board from granting an exemption for consumer leases, even though leases for agricultural purposes are not covered by the federal law.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials are authorized to enforce the state law through procedures and sanctions comparable to those available to federal enforcement agencies.

References

Statute: Sections 111(a)(2) and 186(b).
Other sections: §§ 213.2(a)(16) and 213.4(b) and Appendix A.
Previous regulation: § 226.6(b)(3).
1981 changes: None.

Appendix A—Procedures and Criteria for State Exemptions

References

Statute: Section 186(b).
Other sections: § 213.8.
Previous regulation: § 226.80 (Supplement VI, Section I).
1981 changes: None.

Appendix B—Procedures and Criteria for Board Determination Regarding Preemption

References:

Statute: Section 186(a).
Other sections: § 213.7.
Previous regulation: § 226.80 (Supplement VI, Section II).
1981 changes: None.

Appendix C—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms. Examples of acceptable changes include:

- Using the first person, instead of the second person, in referring to the lessee.
- Using "lessee," "lessor," or names instead of pronouns.
- Rearranging the sequence of the disclosures.
- Incorporating certain state "plain English" requirements.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "O," crossing out, leaving blanks, checking a box for applicable items, or circling applicable

items. (This should permit use of multi-purpose standard forms.)

• Adding language or symbols to indicate estimates.

2. *Model open-end or finance vehicle lease disclosures.* Model C–1 is designed for an open-end or finance lease of a vehicle. An open-end or finance lease is one in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value. Section 213.4(g)(15)(i) requires disclosure of an itemized total lease obligation for such leases. To facilitate this disclosure, Model C–1 divides the initial charges (item 3) into two categories: Those that are included in the total lease obligation and those that are not. The amount of the monthly payment (item 4) is similarly divided. This format permits the components of the total lease obligation (item 11) to be disclosed simply by cross-reference to the previous items. See the commentary to § 213.2(a)(17). The inclusion of taxes in the basic monthly payment disclosure (mentioned in the instructions to item 4(a)) is not mandatory in all cases. See the commentary to § 213.4(g)(15).

3. *Model closed-end or net vehicle lease disclosures.* Model C–2 is designed for a closed-end or net lease of a vehicle. A closed-end or net lease is one in which the lessee's liability at the end of the lease term is *not* based on the difference between the estimated value of the leased property and its realized value. Item 13(c) is included for those closed-end vehicle leases in which the lessee's liability at early termination is based on the vehicle's estimated value. See § 213.4(g)(14).

4. *Model furniture lease disclosures.* Model C–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.4(g)(14) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. The disclosure may be added, if it is applicable, without loss of the form's protection from civil liability.

References

Statute: §§ 105, 130, and 185.

Previous regulation: §§ 226.1501, 226.1502, and 226.1503.

1981 changes: References in the instructions to the previous regulations have been deleted.

Appendix D—Federal Enforcement Agencies

References

Statute: § 108.

Previous regulation: Appendix E.

1981 changes: None.

Board of Governors of the Federal Reserve System, May 6, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-12977 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-ANE-10; Amdt. 39-4382]

Garrett Turbine Engine Co. Engine Models TSE331-3 and TPE331-1, -2, -3, -5, and -6 Series Engines; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comment.

SUMMARY: This amendment supersedes a currently effective airworthiness directive (AD) which revised turbine wheel life limits. The previous AD was issued to reduce the possibility of rapid destruction of the engine turbine resulting from separation of a portion of the turbine wheel rim. This superseding AD is required because third stage turbine wheel assembly failures have occurred subsequent to the issuance of the previous AD at less than the cyclic life limits established by that AD.

DATES: Effective May 13, 1982. Comments must be received on or before June 13, 1982. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 267–3011.

A copy of the service information is contained in the FAA Rules Docket, Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Docket No. 82–ANE–10, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bill Moring, Aerospace Engineer, ANM–174W, Western Aircraft Certification Field Office, Northwest Mountain Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009; telephone (213) 536–6391.

SUPPLEMENTARY INFORMATION: AD No. 82–03–01, Amendment 39–4304, made effective on February 11, 1982, reduced the cyclic life limit of TSE 331–3 and TPE331–1, –2, –3, –5, and –6 series engine third stage turbine wheels. This action was required because failures occurred at less than the published cyclic life limits. Since issuance of AD 82–03–01 additional third turbine wheel failures have occurred by LCF mechanism at cyclic lives less than those published in the AD. Further engineering investigation of these failures indicates that third stage wheel lives are significantly influenced by two additional factors: manufacturing of wheels with rivet hole locations beyond blueprint limits; and design tolerances of third turbine wheel rivet hole locations. It has also been determined that there should be no cyclic life distinction between Part Number (P/N) 868630–1, –2, –3, –4, and –7 wheels installed in TPE/TSE331–3 series engines and those installed in TPE331–1, –2, –5, and –6 series engines since it now has been determined that a difference in operating characteristics by engine model is not a factor.

Based on the foregoing, existing AD 82–03–01, Amendment 39–4304, is revoked and superseded by this AD to provide for the following:

a. Introduce a new retirement life schedule for third turbine wheels, P/N 868630–1, –2, –3, –4, and –7 which are now suspected to contain manufacturing errors and are identified by serial number.

b. Combine compliance requirements of paragraphs (a) and (b) applicable to the remaining population of P/N 868630–1, –2, –3, –4, and –7 third turbine wheels. The retirement schedule of paragraph (a) is retained since all turbine wheels of this P/N are equally affected regardless of engine installation.

c. Introduce an inspection procedure for P/N 868630–1, –2, –3, –4, and –7 third turbine wheels to permit those wheels to be operated to 3600 cycles.

d. Introduce requirement for curvic coupling gasket replacement at the next shop opportunity when the third turbine wheel is next removed (paragraph (f)).

The remaining compliance requirements of AD 82–03–01, Amendment 39–4304 are retained in this amendment.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together, with other available information to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new AD:

Garrett Turbine Engine Company (formerly AiResearch Manufacturing Company of Arizona): Applies to Garrett Engine Models TSE331–3 and TPE331–1, –2, –3, –5, and –6 series engines.

Compliance required as indicated, unless already accomplished.

To reduce the possibility of rapid destruction of the engine turbine, accomplish the following:

(a) P/N 868630–1, –2, –3, –4, and –7 third stage turbine wheels identified by serial number (S/N) below must be removed from service according to the following schedule:

Wheel total cycles [1]	Remove [1]
Less than 1,300	Before accumulation of 1,500 cycles.
1,300 or more and less than 2,500.	Before accumulation of 2,600 cycles of within the next 200 cycles, whichever occurs first.
2,550 or more	Within the next 50 cycles.

[1] No wheel listed below may exceed 1,500 cycles after December 1, 1982, except as provided in paragraph (c) of this AD.

S/N	S/N	S/N
0-01345-419	0-01345-1314	0-01345-2374
420	1315	2375
421	1316	2376
422	1317	2377
423	1318	2378
424	1319	2379
425	1320	2380
426	1321	2381
428	1322	2382
430	1323	2383
431	1324	2384
432	1325	2385
433	1326	2386
435	1328	2387
436	1329	2388
437	1330	2529
438	1331	3106
439	1332	3107
440	1335	3109
441	1336	3110
442	1338	3111
443	2336	3112
444	2337	3113
446	2338	3114
447	2339	3115
448	2340	3119
449	2341	3121
450	2342	3122
451	2343	3123
452	2344	3124
453	2345	3125
454	2346	3126
455	2347	3127
456	2348	3128
458	2349	3129
459	2350	3130
461	2351	3131
463	2352	3132
1296	2353	3133
1298	2354	3134
1299	2355	3135
1301	2356	3136
1302	2357	3140
1304	2358	3141
1305	2359	3145
1306	2364	3146
1307	2365	3147
1308	2366	3149
1309	2367	3150
1311	2368	3152
1312	2371	3153
1313	2372	3737
0-10345-15426	18250	18311
15427	18260	18316
15428	18262	18317
15429	18263	18318
15432	18264	18320
15433	18265	18321
18246	18266	18323
18247	18286	18324
18248	18287	18325
18250	18288	18326
18251	18289	18328
18252	18302	18329
18253	18304	18330
18256	18306	18414
18258	18310	18415

(b) P/N 868630–1, –2, –3, –4, and –7 third stage turbine wheels introduced into service after March 24, 1978, and not listed by serial number in paragraph (a) of this AD must be removed from service according to the following schedule:

Wheel total cycles [1]	Remove [1]
Less than 1,500	Before accumulation of 2,600 cycles.
1,500 or more and less than 2,500.	Before accumulation of 2,900 cycles or within the next 1,100 cycles after February 11, 1982, whichever occurs first.
2,500 or more and less than 4,000.	Before accumulation of 4,300 cycles or within next 400 cycles after February 11, 1982, whichever occurs first.
4,000 or more and less than 5,200.	Before accumulation of 5,250 cycles or within the next 300 cycles after February 11, 1982, whichever occurs first.
5,200 or more	Within the next 50 cycles after February 11, 1982.

[1] No wheel may exceed 2,600 cycles after December 1, 1982, except as provided in paragraph (c) of this AD.

(c) Notwithstanding paragraphs (a) and (b), P/N 868630–1, –2, –3, –4, or –7 third stage turbine wheels which comply with paragraph 2 of Garrett Service Bulletin No. TPE/TSE331–72–0351, dated April 14, 1982, or later FAA approved revisions, may be operated to the cyclic life limits provided in paragraph (d) of this AD.

Note.—Turbine wheels which comply with paragraph 2 of Garrett Service Bulletin No. TPE/TSE331–72–0351 or later FAA approved revisions have the service bulletin annotated on the life limited parts log card which either is located with the third stage wheel assembly or with the engine log book.

(d) This AD establishes the service life limits in cycles of new (zero-time) turbine wheels introduced into service after March 24, 1978. As of the effective date of this AD turbine wheels specified below may not be operated in service in excess of these service life limits except as provided in paragraph (a) or (b) of this AD, as applicable:

Wheel stage	Part No.	Cycle life
First	867589–1, –7	4,900
Second	868272–1, –2, –3, –4	4,900
Third	895539–1, –2, –3, –4	3,400
Third	868630–1, –2, –3, –4, –7	3,600

Note.—For purposes of this AD, an operating cycle is defined as any operating sequence involving an engine start, aircraft takeoff and landing, followed by engine shutdown and one cycle shall be counted for each such operational sequence.

(e) Turbine wheels P/N's 867589–1, –7; 868272–1, –2, –3, and –4; 895539–1, –2, –3, and –4; and 868630–1, –2, –3, –4, and –7, which have operated in service prior to March 24, 1978, may be continued in service to the life limit of 4250 operating hours (reference Garrett (AiResearch) Service Bulletin TPE/TSE331–72–0019, Revision 4, dated December 6, 1976) provided they are inspected for cracks by procedures contained in the existing FAA approved maintenance manual for the applicable TPE/TSE331 engine before accumulating 1800 operating hours in service since new and at intervals not to exceed 1800 operating hours in service thereafter. All wheels found to have crack indications by the procedures specified above must be replaced. As an alternative, the above turbine wheels may be continued in service to the operating cycle life limit established by paragraph (d) of this AD, provided the number of operating cycles for that turbine wheel can be determined from the aircraft and/or engine log books based on the operating cycle definition in paragraph (d) of this AD.

Note.—If the total number of cycles cannot be determined from the log books, those operating hours for which cycles are unknown may be converted to cycles on the basis of 1.5 cycles per hour.

(f) Prior to accumulating an additional 1800 operating hours on all affected engines after February 11, 1982, or upon next removal of the third stage turbine wheel, after the effective date of this AD, whichever occurs earlier, either:

(1) Remove curvic coupling gasket, P/N 868892–2, located forward of third stage turbine wheel and replace it with a

serviceable P/N 868892-9 curvic coupling gasket as prescribed in paragraph 2 of Garrett Service Bulletin TPE331-72-0300, dated September 9, 1981, or later FAA approved revisions, or;

(2) Replace the P/N 868630-1, -2, -3, or -4 third stage turbine wheel with a P/N 868630-7 third stage turbine wheel.

Note.—The P/N's 868630-1, -2, -3, or -4 turbine wheel may be modified to the P/N 868630-7 third stage turbine wheel design by compliance with instructions provided in Garrett Service Bulletins TPE331-72-0327, dated December 14, 1981, or later FAA approved revisions.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate aircraft to a base for the accomplishment of inspections or modifications required by this AD.

(h) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Western Aircraft Certification Field Office, FAA Northwest Mountain Region.

This AD supersedes AD 82-03-01, Amendment 39-4304.

This amendment becomes effective May 13, 1982.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421 and 1423; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is a final order of the Administrator. Under Section 1008(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the Courts of Appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Note.—Service Bulletins are filed with the original document.

Issued in Burlington, Mass., on April 30, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-12863 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-19]

Alteration of Control Zone: Alexandria, LA (England A.F.B.)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the control zone at Alexandria, LA (England A.F.B.). This amendment will discontinue the provision of part-timing the control zone by use of Notice to Airmen (NOTAM). The amendment is necessary since the control zone has been a continuous control zone for the past several months. This amendment will eliminate the necessity for the Air Force to publish a NOTAM to advertise the hours of the control zone.

DATES: Effective Date—July 8, 1982. Comments on the rule must be received before May 15, 1982.

ADDRESSES: Send comments on the action in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 82-ASW-19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F § 71.171, as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the description of the control zone at Alexandria, LA (England A.F.B.), will necessitate an amendment to this subpart.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of the Alexandria, LA (England A.F.B.) control zone. Because this action is administrative in nature, I find that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901, G.m.t., July 8, 1982, by deleting:

Alexandria, LA (England A.F.B.) [Amended]

This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11/61(c).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on May 3, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-12864 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AAL-2]

Extension of Federal Airway From Nome, AK, to Gambell, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends Green Federal Airway No. 7 (G-7) from Nome, AK, (Fort Davis nondirectional radio beacon (NDB)) to Gambell, AK, NDB. Extension of the airway allows air traffic control services for aircraft operating between Nome, AK, and Gambell, AK. This action enhances air safety in that area.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 22, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend G-7 from Nome, AK, to Gambell, AK (47 FR 12191). The airway extension provides controlled airspace in that area thereby enhancing aviation safety. This action aids flight planning. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.103 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations extends G-7 from Nome, AK, (Fort Davis NDB) to Gambell, AK, NDB. Extension of the airway provides air traffic control service for aircraft operating in that area.

List of Subjects in 14 CFR Part 71

Aviation safety, Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.103 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 8, 1982, as follows:

G-7 [Revised]

By revising the description of G-7 to read as follows:

"G-7 From Gambell, AK, NDB; Fort Davis, AK, NDB; Norton Bay, AK, NDB; 46 miles, 57 miles 55 MSL, Bishop, AK, NDB; INT Bishop 089° and Chena, AK, NDB 269° bearings; to Chena NDB."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, DC, on May 4, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-12855 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 81-ACE-19]

Alteration of Transition Area—Kaiser, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Kaiser, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Camdenton, Missouri, Municipal Airport, utilizing the Sunshine, Missouri, VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3406.

SUPPLEMENTARY INFORMATION: A new instrument approach procedure to the Camdenton, Missouri, Municipal Airport is being established utilizing the Sunshine, Missouri, VOR as a navigational aid. The establishment of an instrument approach procedure, based on this approach aid, entails the alteration of the transition area at Kaiser, Missouri, at or above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 10593 and 10594 of the **Federal Register** dated March 11, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Kaiser, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received as result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.171 and/or § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 8, 1982, by altering the following transition area:

Kaiser, Missouri

That airspace extending from 700 feet above the surface within a 5-mile radius of the Camdenton Memorial Airport (Latitude 37°58'29"N, Longitude 92°41'30"W) within a 7-mile radius of Linn Creek-Grand Glaize Memorial Airport (Latitude 38°06'38"N, Longitude 92°40'50"W), within a 9-mile radius of the Lee C. Fine Memorial Airport (Latitude 38°05'44"N, Longitude 92°32'56"W), and within 4.5 miles each side of the 133° radial of the Sunshine VOR extending from the 7-mile radius area to 9 miles southeast of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 3, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-12962 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AWA-15]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes two alternate VOR Federal Airways and renumbers certain other alternate airway segments in the central part of the U.S. This action reduces chart clutter and supports our agreement with the International Civil Aviation Organization (ICAO) to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstruction Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On February 25, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke segments of alternate VOR Federal Airways V-14S and V-15E and renumber segments of V-14S, V-14N, and V-17W in the central part of the U.S. (47 FR 8206). The revocation of these airway segments, which are no longer needed for air navigation, will reduce chart clutter. Other alternate airway segments are renumbered to eliminate the use of alternate airway descriptions in accordance with the ICAO agreement. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendement is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Avaition Regulations was republished in advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes segments of V-14S and V-15E and renumbers segments of V-14S, V-14N, and V-17W. There is no change in the amount of designated controlled airspace as a result of this action. This action is in accordance with the ICAO agreement to phase out alternate airway descriptions from the National Airspace System.

List of Subjects in 14 CFR Part 71

Aviation safety, Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (46 FR 24170, and 46 FR 48128), is further amended, effective 0901 G.m.t., July 8, 1982, as follows:

1. V-14 [Amended]

By deleting the words ", including a N alternate and also a S alternate via INT Tulsa 087° and Neosho 223° radials" and "., including a S alternate via INT Neosho 074° and Springfield 210° radials" and between the words Vichy, MO, and Foristell, ", including a N alternate"

2. V-506 [New]

By adding "V-506 From Tulsa, OK, INT Tulas 044° and Neosho, MO, 255° radials; Neosho; INT Neosho 074°, and Springfield, MO, 210° radial; Springfield; INT Springfield 043° and Vichy, MO, 242° radials; Vichy."

3. V-15 [Amended]

By deleting the words between Sioux Falls and Huron, SD ", including an E alternate"

4. V-17 [Amended]

By deleting the words after Garden City, KS"., including a W alternate from Gage to Garden City via Liberal, KS"

5. V-507 [New]

By adding "V-507 From Gage, OK, via Liberal, KS, to Garden City, KS."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 4, 1982.

John W. Baier,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-12901 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 81-ACE-16]

Designation of Transition Area—Clay Center, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Clay Center, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Clay Center, Kansas, Municipal Airport, utilizing the Clay Center Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Don A. Peterson, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Clay Center, Kansas, Municipal Airport is being established utilizing the Clay Center NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Clay Center, Kansas, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operations and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft

operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On pages 9860 and 9861 of the Federal Register dated March 8, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Clay Center, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. July 8, 1982, by designating the following transition area:

Clay Center, Kansas

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Clay Center Municipal Airport (Latitude 39°23'11"N, Longitude 97°09'25"W), and within 8 miles each side of the 167° bearing from the Clay Center NDB (Latitude 39°22'50"N, Longitude 97°09'40"W), extending from the 5-mile radius area to 8 miles southeast of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 3, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-12902 Filed 5-12-82; 8:45 am]

BILLING CODE 6310-13-M

14 CFR Part 71

[Airspace Docket No. 82-ACE-01]

Designation of Transition Area—Vinton, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Vinton, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Vinton, Iowa, Veterans Memorial Airport, utilizing the Vinton Non-Directional Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Vinton, Iowa, Veterans Memorial Airport is being established utilizing the Vinton NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Vinton, Iowa, at or above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On page 9224 of the Federal Register dated March 4, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Vinton, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. July 8, 1982, by designating the following transition area:

Vinton, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Vinton Veterans Memorial Airpark (Latitude 42°13'00"N, Longitude 92°01'00"W) within 2½ miles each side of the Vinton NDB 319° bearing extending from the 5-mile radius area to 7 miles northwest of the airport.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 3, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-12903 Filed 5-12-82; 8:45 am]

BILLING CODE 6310-13-M

14 CFR Part 71

[Airspace Docket No. 81-ACE-15]

Designation of Transition Area—Hugoton, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Hugoton, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Hugoton, Kansas, Municipal Airport, utilizing the Hugoton Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect

of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Don A. Peterson, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Hugoton, Kansas, Municipal Airport is being established utilizing the Hugoton NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Hugoton, Kansas, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On pages 10594 and 10595 of the **Federal Register** dated March 11, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Hugoton, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. July 8, 1982, by designating the following transition area:

Hugoton, Kansas

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Hugoton Municipal Airport (Latitude 37°10'15"N, Longitude 101°22'29"W), and within 3 miles each side of the 200° bearing from the Hugoton NDB (Latitude 37°09'40"N, Longitude 101°22'25"W), extending from the 5.5-mile radius area to 8 miles south of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 3, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-12906 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-AWP-1]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes VOR Federal Airway V-190N alternate between Phoenix, AZ, and St. Johns, AZ, and establishes a new bypass airway north of V-190 to avoid the newly relocated Williams 4 Military Operations Area (MOA). This amendment meets operational needs of the Phoenix terminal area and supports our agreement with the International Civil Aviation Organization (ICAO) to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On February 11, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter V-190 by revoking the N alternate between Phoenix, AZ, and St. Johns, AZ, and redefine V-190 to avoid the newly relocated Williams 4 MOA (47 FR 6284). However, to meet operational needs of the Phoenix terminal area, the FAA has decided to retain V-190 between Phoenix, AZ, and St. Johns, AZ, and assign a new airway designation for the redefined route north of the relocated Williams 4 MOA. No additional airspace will be affected by this revision. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and except as specifically discussed above, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes Federal Airway V-190N alternate between Phoenix, AZ, and St. Johns, AZ, and establishes new VOR Federal Airway V-528 from Phoenix, AZ, via INT Phoenix 043° and the St. Johns, AZ, 269° radials to St. Johns. This action provides a bypass airway between Phoenix, AZ, and St. Johns, AZ, to avoid the newly relocated Williams 4 MOA to meet operational needs of the Phoenix terminal area.

List of Subjects in 14 CFR Part 71

Aviation safety, Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, July 8, 1982, as follows:

V-190 [Amended]

By deleting the words ", including a north alternate via INT Phoenix 051° and St. Johns 263° radials".

V-528 [New]

By adding "V-528 From Phoenix, AZ; INT Phoenix 043° and St. Johns, AZ, 269° radials; St. Johns."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 5, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-13054 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AWA-13]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Proposed Renumbering of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment renumbers certain alternate VOR Federal Airways in the central part of the U.S. This action eliminates the assignment of alternate airway segments for the affected airways and is in accordance with International Civil Aviation Organization (ICAO) agreement to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On February 1, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V-4S, V-4N, and V-6S in the central part of the U.S. (47 FR 4528). Minor errors were found in the notice describing the amendments to these airways and a Supplemental Notice was published on March 22, 1982, correcting those errors (47 FR 12192). The alternate airway segments are renumbered to eliminate the use of alternate airway descriptions in accordance with the ICAO agreement. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations renumbers V-4S, V-4N, and V-6S. There is no change in the amount of designated controlled airspace as a result of this action. The renumbering of the alternate airways eliminates alternate airway assignments for the affected airways and supports our agreement with ICAO to phase out alternate airway descriptions from the National Airspace System.

List of Subjects in 14 CFR Part 71

Aviation safety, Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (47 FR 12155) is further amended, effective 0901 GMT, July 8, 1982, as follows:

1. *V-4 [Amended]*

By deleting the words ", including a S alternate via Hays, KS" and ", including a N alternate from the INT of Salina 080° and Manhattan, KS, 213° radials to Topeka via Manhattan and the INT of Manhattan 078° and Topeka, 293° radials" and ", including a S alternate via INT Topeka 099° and Kansas City 231° radials."

2. *V-508 [New]*

By adding "V-508 From Hill City, KS; Hays, KS; Salina, KS; INT Salina 080° and Manhattan, KS, 213° radials; Manhattan; INT Manhattan 078° and Topeka, KS, 293° radials; Topeka; INT Topeka 099° and Kansas City, MO, 231° radials; Kansas City."

3. *V-6 [Amended]*

By deleting the words "; Des Moines, IA; Iowa City, IA, including a S alternate via INT Des Moines 112° and Iowa City 252° radials;" and substituting for them the words "; Des Moines, IA; Iowa City, IA;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 5, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-13055 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 82-AAL-1]

Establishment of Alaskan High Altitude Routes and Reporting Point

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment alters the description of several Alaskan High Altitude Routes and establishes an Alaskan high altitude reporting point. These actions improve air traffic control efficiency by providing an orderly transition to and from newly established International Civil Aviation Organization (ICAO) North Pacific (NOPAC) composite routes.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 4, 1982, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to amend the descriptions of Jet Routes Nos. 120 and 127, establish a new high altitude reporting point, and establish three area high routes (47 FR 9222). The area high altitude routes (RNAV) as described in the Notice of

Proposed Rulemaking have been withdrawn because the NOPAC routes are being revised; these routes were designed to interface and complement each other and become effective simultaneously. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the notice were received. Except for editorial changes and the deletion of the RNAV routes discussed above, these amendments are the same as those proposed in the notice. Sections 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

These amendments to §§ 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) amend the descriptions of Jet Routes Nos. 120 and 127 in Alaska and establish a new high altitude compulsory reporting point. These changes enhance traffic flow in the King Salmon, AK, area.

List of Subjects

14 CFR Part 71

Aviation safety, Reporting points.

14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.213 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, effective 0901 G.m.t., July 8, 1982, as follows:

§ 71.213 [Amended]

By adding a new reporting point, as follows:

AUGIN: Lat. 57°45'00"N., long. 160°00'00"W. (King Salmon 241° radial 118.6 DME)

§ 75.100

1. Jet Route No. 120 [Amended]—By deleting the words "From the INT of the Anchorage Oceanic CTA/FIR boundary and the Bethel, AK, 234° radial via Bethel;" and substituting for them the words "From Saint Paul Island, AK, NDB via Bethel, AK;"

2. Jet Route No. 127 [Amended]— By deleting the words "From Cape Newenham, AK, NDB" and substituting for them the words "From AUGIN, AK, DME INT (King Salmon, AK, 241° radial 118.6 DME)"

(Secs. 307(a), 313(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 4, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-12900 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 82-AAL-3]

Special Use Airspace; Alteration of Restricted Area R-2205, Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the times of designation for Restricted Area R-2205, Yukon, AK. A review of utilization reports for R-2205 indicates that the area is required by the using agency, 172D Infantry Brigade, Fort Richardson, AK, continuous year around rather than continuous from April 1, to November 30, and at other times by NOTAM. This action is necessary for the safe and efficient use of the airspace by prohibiting unauthorized aircraft from use of the airspace during its time of use.

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 18, 1982, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to amend the times of designation of Restricted Area R-2205, Yukon, AK, from continuous April 1 through November 30, other times as activitated by NOTAM issued at least 24 hours in advance, to continuous on a year-round basis (47 FR 11700). Usage factors and a review of utilization reports indicate that the area is required by the military all year many times on a 24-hour basis, thus necessitating frequent NOTAM's providing advance notification which reduces flexibility of the using agency. Civilian air traffic in the area is light and no adverse effect on civilian traffic is anticipated. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.22 of Part 73 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations extends the times of designation of R-2205, Yukon, AK, from continuous April 1 through November 30, and at other times by NOTAM, to continuous year around. This action is necessary to meet usage requirements of the using agency and provide for the safe and efficient use of the airspace.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.22 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, effective 0901 GMT, July 8, 1982, as follows:

R-2205 Yukon, AK [Amended]

By amending the times of designation as follows:

Under times of designation, by deleting the words "Continuous from April 1 through November 30; other times as activated by NOTAM issued by the using agency at least 24 hours in advance." and substituting for them the word "Continuous."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 5, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-13083 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1201

Statement of Organization and General Information

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is revising its Statement of Organization and General Information to reflect its reorganization of December 1981. This revision also reflects the merger of Ames Research Center and Dryden Flight Research Center, and Goddard Space Flight Center and Wallops Flight Center. This merger reduces the number of field installations from 10 to 8. As a result of the reorganization the Directors of the NASA Field Installations will report to the appropriate Institutional Associate Administrator. Since this action is administrative and editorial in nature, notice and public procedures are not required.

DATE: Effective May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202-755-3140.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 1201

Organization and functions (Government agencies).

14 CFR Part 1201 is revised to read as set forth below:

PART 1201—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart 1—Introduction

Sec.
1201.100 Creation and authority.
1201.101 Purpose.
1201.102 Functions.
1201.103 Administration.

Subpart 2—Organization

1201.200 General.

Subpart 3—Boards and Committees

1201.300 Boards and committees.

Subpart 4—General Information

1201.400 NASA Procurement Program.
1201.401 Special Document Depositories.
1201.402 NASA Industrial Applications Centers.

Authority: 5 U.S.C. 552, as amended.

Subpart 1—Introduction

§ 1201.100 Creation and authority.

The National Aeronautics and Space Administration was established by the National Aeronautics and Space Act of 1958 (72 Stat. 426, 42 U.S.C. 2451 et seq.), as amended (hereafter called the "Act").

§ 1201.101 Purpose.

It is the purpose of the National Aeronautics and Space Administration under the Act to carry out the declared policy of the United States that aeronautical and space activities sponsored by the United States shall be the responsibility of, shall be directed by, and shall be under the control of a civilian agency, except to the extent that aeronautical and space activities are determined by the President to be peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States, which activities shall be the responsibility of the Department of Defense.

§ 1201.102 Functions.

In order to carry out the purpose of the Act, NASA is authorized to conduct research into the problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; and to perform such other activities as may be required for the exploration of space. The term "aeronautical and space vehicles" means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts.

§ 1201.103 Administration.

(a) NASA is headed by an Administrator, who is appointed from civilian life by the President by and with the consent of the Senate. The Administrator is responsible, under the supervision and direction of the President, for exercising all powers and discharging all duties of NASA.

(b) The Deputy Administrator of NASA is also appointed by the President from civilian life by and with the consent of the Senate. The Deputy Administrator acts with or for the Administrator within the full scope of the Administrator's responsibilities. In the Administrator's absence, the Deputy Administrator serves as Acting Administrator.

Subpart 2—Organization

§ 1201.200 General.

(a) Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters, located in Washington, DC. NASA Headquarters is comprised of:

(1) 5 Program Offices which are responsible for planning and directing agencywide research and development programs, and management and administrative processes;

(2) 7 Staff Offices which provide agencywide leadership in certain administrative and specialized areas;

(3) the Office of the Associate Deputy Administrator; and

(4) the Office of the Chief Engineer.

All of these offices report directly to the Administrator. Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. Certain types of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians. NASA's basic organization consists of the Headquarters, 8 field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to heads of field installations. NASA's 8 field installations have different and broad capabilities. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices. (NASA Management Instruction 1132.2.)

(b) The NASA field installations are as follows:

(1) Ames Research Center, Moffett Field, CA 94035.

(2) Goddard Space Flight Center, Greenbelt, MD 20771.

(3) John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(4) Langley Research Center, Langley Station, Hampton, VA 23665.

(5) Lewis Research Center, Cleveland, OH 44135.

(6) Lyndon B. Johnson Space Center, Houston, TX 77058.

(7) George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.

(8) National Space Technology Laboratories, NSTL Station, MS 39520.

For more detailed description of the organization and functions of the Headquarters and field installations, see the "U.S. Government Manual."

Subpart 3—Boards and Committees

§ 1201.300 Boards and committees.

Various boards and committees have been established as part of the permanent organization structure of NASA. These include:

(a) *Board of Contract Appeals.* (1) The Board is established in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The function of the Board is to decide any appeal from a decision of a contracting officer relating to a contract made by NASA.

(2) The charter of the Board is set forth in Subpart 1 of Part 1209 of this Chapter. The Board's rules of procedure are set forth in 14 CFR Part 1241.

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board at NASA Headquarters, Washington, DC. Decisions and orders issued after July 4, 1967, are available for inspection and for purchase at NASA Information Centers. An Index/Digest of Decisions is issued periodically with supplements published as appropriate. These are available for inspection or purchase at the NASA Information Centers (see Subpart 4 of Part 1206 of this chapter) and from the Recorder of the NASA Board of Contract Appeals.

(b) *Contract Adjustment Board.* (1) The function of the Board is to consider and dispose of requests by NASA contractors for extraordinary contractual adjustments pursuant to Pub. L. 85–804 (50 U.S.C. 1431–35) and Executive Order 10789 dated November 14, 1958 (23 FR 8397).

(2) The charter of the Board is set forth at Subpart 3 of Part 1209 of this chapter. The Board's rules of procedure are set forth at 41 CFR Chapter 18, Part 17.

(3) Indexes of and texts of decisions of the Board are available for inspection and for purchase from the Chairperson of the Board, National Aeronautics and Space Administration, Washington, DC 20546, and from the NASA Information Centers.

(c) *Inventions and Contributions Board.* (1) The function of the Board is to consider and recommend to the Administrator the action to be taken with respect to:

(i) Petitions for waiver of rights to any invention or class of inventions made during the performance of NASA contracts, and

(ii) Applications for award for scientific and technical contributions determined to have significant value in the conduct of aeronautical and space activities, pursuant to the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457 (f) and (g), 2458), and the Government Employees Incentive Awards Act (5 U.S.C. 2121–23), respectively.

(2) The charter of the Board is set forth at Subpart 4 of Part 1209 of this chapter. The Board's rules of procedure are set forth at 14 CFR Parts 1240 and 1245.

(3) The texts of key decisions and an index of all decisions of the Board on requests for waiver are published in Petitions for Patent Waiver (NASA Handbook 5500.1) and are hereby incorporated by reference. These are available for inspection and for purchase at NASA Information Centers.

Subpart 4—General Information

§ 1201.400 NASA procurement program.

(a) The Office of Procurement, headed by the Assistant Administrator for Procurement, serves as a central point of control and contact for NASA procurements. Although the procurements may be made by the field installations, selected contracts and contracts of special types are required to be approved by the Assistant Administrator for Procurement prior to their execution. The Office of Procurement is also responsible for formulation of NASA procurement policies and provides overall assistance and guidance to NASA field installations to achieve uniformity in NASA procurement processes.

(b) The NASA procurement program is carried out principally at the NASA field installations listed in the "U.S. Government Organization Manual," and in Subpart 2 of this part. The Headquarters Contracts and Grants Division is responsible for contracts with foreign governments and foreign commercial organizations, grants and cooperative agreements, and the procurement of materials and services required by Headquarters offices except for minor office supplies and services procured locally.

(c) All procurements are made in accordance with the NASA Procurement Regulation (41 CFR Ch. 18). With minor exceptions, every proposed procurement in excess of $10,000 is publicized promptly in The Commerce Business Daily. Copies of this publication are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

§ 1201.401 Special document depositories.

NASA distributes its technical documents and bibliographic tools in 10 special regional libraries located in the organizations listed below. Each library is prepared to furnish the public such services as reference assistance, interlibrary loans, photocopy service, and assistance in obtaining copies of NASA documents for retention.

(a) California: University of California Library, Berkeley.

(b) Colorado: University of Colorado Libraries, Boulder.

(c) District of Columbia: Library of Congress.

(d) Georgia: Georgia Institute of Technology, Atlanta.

(e) Illinois: The John Crerar Library, Chicago.

(f) Massachusetts: Massachusetts Institute of Technology, Cambridge.

(g) Missouri: Linda Hall Library, Kansas City.

(h) New York: Columbia University, New York.

(i) Pennsylvania: Carnegie Library of Pittsburgh.

(j) Washington: University of Washington Library, Seattle.

NASA provides the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161, with copies of NASA or NASA-sponsored unclassified unlimited documents to provide availability to the public. These documents may be reproduced by NTIS and sold at prices established by NTIS.

§ 1201.402 NASA industrial applications centers.

As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee-paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests and

assist in interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(a) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 1201 East 38th Street, Indianapolis, IN 46205.

(b) Florida Technology Application Center, State University System, Tallahassee, FL 32304.

(c) Kentucky Technology Applications Program, University of Kentucky, Lexington, KY 40506.

(d) NASA Industrial Applications Center at the University of Pittsburgh, Pittsburgh, PA 15260.

(e) New England Research Applications Center (NERAC), Mansfield Professional Park, Storrs, CT 06268.

(f) North Carolina Science and Technology Research Center (NC/STRC), P.O. Box 12235, Research Triangle Park, NC 27709.

(g) Technology Applications Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(h) Kerr Industrial Applications Center (KIAC), Southeastern Oklahoma State University, Durant, OK 74701.

(i) NASA Industrial Applications Center at the University of Southern California, University Park, Los Angeles, CA 90007.

Dated: April 27, 1982.

James M. Beggs,

Administrator.

[FR Doc. 82-13012 Filed 5-12-82; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-000 (Ohio—2); Order No. 226]

High-Cost Gas Produced from Tight Formations, Ohio; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This final order adopts the recommendation of the Ohio Department of Natural Resources that the Berea Sandstone and the "Second Berea" zone of the Bedford Shale be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or John Roy Johnson, (202) 357-8731.

Issued: May 7, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Berea Sandstone and the "Second Berea" zone of the Bedford Shale as a designated tight formation eligible for incentive pricing under § 271.703. This amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 4, 1982 (47 FR 6028, February 10, 1982) based on a recommendation by the Ohio Department of Natural Resources, Division of Oil and Gas (Ohio) in accordance with § 271.703(c) that the Berea Sandstone and the "Second Berea" zone of the Bedford Shale be designated as a tight formation.

Two comments were received in response to the Notice of Proposed Rulemaking. One party, Mitchell Energy Corporation, filed its comments supporting Ohio's recommendation. The second party, the Citizen/Labor Energy Coalition (Energy Action) filed a comment in opposition to the recommendation. Although Energy Action states that it is opposed to the designation of the Berea Sandstone and the "Second Berea " as a tight formation, its comments do not address whether the formation meets the guidelines in § 271.703(c)(2) which are requisite for qualification as a tight formation. Energy Action states that it takes no position on whether the formation meets the Commission's geological definition of a tight formation. Instead, Energy Action opposes the designation of the recommended formation because, as it states:

> No evidence has been presented that the designation of the gas produced from this location as tight formation gas will not circumvent the maximum lawful price ceilings of the NGPA (1) by permitting a price to be charged which exceeds the market clearing price level for natural gas and (2) by diverting exploration and production activities away from gas which qualifies for the lower section 102 and 103 maximum lawful price ceilings established by Congress and toward the gas which the Commission is permitting to obtain artificially high prices above the market clearing level.

Energy Action further alleges that the instant designation does not comply with Order No. 99's standards, because the Commission has not considered whether perverse incentives would result by allowing producers of the gas to collect 200% of the section 103 price.

The Commission finds that the recommended formation meets the geological and production requirements found in § 271.703(c). The standards by which Energy Action would have the recommendation reviewed have no applicability in this subdocket. The Notice of Proposed Rulemaking in this case was issued to determine if Ohio's recommendation should be adopted under § 271.703 of the Commission's regulations. This limits the scope of the rulemaking to whether the recommendation meets the guidelines contained in that section of the Commission's regulations. Comments which address the advisability of the guidelines that are found in § 271.703 or the underlying premises upon which those guidelines are based are not within the scope of the inquiry which the Commission is undertaking in this docket under § 271.703(c)(2). Section 271.703(c)(2) requires that the Commission designate as a tight formation any formation which meets the guidelines found in § 271.703(c)(2).

Energy Action's comments are a collateral attack on the assumptions on which Order No. 99 is based, and the proper time to have raised these arguments would have been at the time that Order No. 99 was being considered by the Commission. Order No. 99 was issued on August 22, 1980. The Commission will not use this tight formation recommendation as a vehicle to reopen Order No. 99.

The proper way to seek review of Order No. 99 is to request that the Commission institute a rulemaking pursuant to § 1.7 of the Commission's Rules of Practice and Procedure. Since Energy Action also requested that the Commission undertake a general rulemaking to announce that no further formations be designated as tight formations under § 271.703 and that no gas produced from a formation already designated under § 271.703 be sold at a price above "the market clearing price level of high sulphur No. 6 fuel oil, less transportation and distribution costs," Energy Action's comments in this docket will be treated as such a request for rulemaking.

The Commission finds that the evidence submitted by Ohio supports the assertion that the Berea Sandstone

and the "Second Berea" zone of the Bedford Shale meet the guidelines contained in § 271.703(c)(2). The Commission adopts the Ohio recommendation.

This amendment shall become effective immediately. The Commission finds that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 7, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding a new subparagraph (84) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(84) *Berea Sandstone and "Second Berea" zone of the Bedford Shale in Ohio.* RM79–76 (Ohio–2).

(i) *Delineation of formation.* The Berea Sandstone and the "Second Berea" zone of the Bedford Shale are found in the following townships:

Athens County: Alexander, Ames, Athens, Bern, Canaan, Carthage (Sections 25, 26, 29 through 36, Fractions 24, 32 through 35), Dover, Lodi, Rome.

Gallia County: Addison, Cheshire, Gallipolis, Springfield (Sections 1 through 12).

Meigs County: Bedford (All sections except 1 through 4), Rutland, Salem, Salisbury, Scipio.

Morgan County: Bloom, Bristol, Deerfield, Homer, Malta, Marion, Morgan, Penn, Union, York.

Muskingum County: Blue Rock, Meigs, Rich Hill, Salt Creek, Wayne (Sections 29 and 32).

Perry County: Bearfield (Sections 1, 2, 3, 10 through 15, 22 through 27).

The formation occurs within the Lower Mississippian System.

The Berea Sandstone (also called the "First Berea") lies above the Bedford Shale, which includes the "Second Berea" zone near its base.

(ii) *Depth.* The vertical limits of the designated interval are defined by the base of the Sunbury Shale (also called the "Coffee Shale") above and the top of the Upper Devonian Ohio Shale below. The average depth to the top of the designated interval is 1,600 feet. The Berea Sandstone ranges from 10 to 54 feet in thickness, and the "Second Berea" zone of the Bedford Shale has a maximum thickness of 36 feet.

[FR Doc. 82-13017 Filed 5-12-82; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-000 (Wyoming-9); Order No. 227]

High-Cost Gas Produced From Tight Formations, Wyoming; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Wyoming Oil and Gas Conservation Commission that the Frontier Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 257–8616.

Issued: May 7, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Frontier Formation in Sweetwater County, Wyoming, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 11, 1982 (47 FR 6883, February 17, 1982) [1] based on a recommendation by the Wyoming Oil and Gas Conservation Commission (Wyoming) in accordance with § 271.703(c) that the Frontier Formation be designated as a tight formation.

Evidence submitted by Wyoming supports the assertion that the Frontier Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Wyoming recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101–3442; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 7, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding a new subparagraph (77) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(77) *Frontier Formation in Wyoming. RM79–76 (Wyoming–9).*

(i) *Delineation of formation.* The Frontier Formation is found in Sweetwater County, Wyoming, in Townships 23, 24 and 25 North, Ranges 101 and 102 West; Townships 24, 25 and 26 North, Range 103 West; and Townships 24 and 25 North, Range 104 West.

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[1] Comments were invited and two favorable comments were received. No party requested a public hearing and no hearing was held.

(ii) *Depth.* The Frontier Formation is defined as being between the base of the Baxter Formation and the top of the Mowry Formation. The average depth to the top of the Frontier Formation is 9,500 feet.

[FR Doc. 82-13013 Filed 5-12-82; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-000 (Wyoming-10); Order No. 228]

High-Cost Gas Produced from Tight Formations; Wyoming; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Wyoming Oil and Gas Conservation Commission that the Frontier Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or Victor Zabel, (202) 257-8616.

Issued: May 7, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Frontier Formation in Sweetwater and Lincoln Counties, Wyoming, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 11, 1982 (47 F.R. 6884, February 17, 1982) [1] based on a recommendation by the Wyoming Oil and Gas Conservation Commission (Wyoming) in accordance with § 271.703(c) that the Frontier Formation be designated as a tight formation.

Evidence submitted by Wyoming supports the assertion that the Frontier Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Wyoming recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101-3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 7, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding a new subparagraph (78) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(78) *Frontier Formation in Wyoming. RM79-76 (Wyoming-10).*

(i) *Delineation of formation.* The Frontier Formation is found in Sweetwater and Lincoln Counties, Wyoming, and encompasses Township 24 North, Range 114 West, Sections 1 and 12; Township 25 North, Ranges 112 and 113 West; Townships 26 North, Range 112 West, Sections 4, 9, 16 and 19-36; and Township 26 North, Range 113 West, Sections 25-36.

(ii) *Depth.* The vertical limits of the Frontier Formation are defined by the Baxter Shale above and the Mowry Shale below. The gross thickness of the formation averages between 200 and 250 feet, and the average depth to the top of the Frontier Formation is 8,500 feet.

[FR Doc. 13013 Filed 5-12-82; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-000 (Wyoming-11); Order No. 229]

High-Cost Gas Produced From Tight Formations, Wyoming; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Wyoming Oil and Gas Conservation Commission that the Lewis Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

Issued: May 7, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Lewis Formation in Carbon and Sweetwater Counties, Wyoming, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 12, 1982 (47 FR 7453, February 19, 1982) [1] based on a recommendation by the Wyoming Oil and Gas Conservation Commission (Wyoming) in accordance with § 271.703(c) that the Lewis Formation be designated as a tight formation.

[1] Comments were invited and two favorable comments were received. No party requested a public hearing and no hearing was held.

[1] Comments were invited and one comment supporting the recommendation was received. No party requested a hearing in this docket and no hearing was held.

Evidence submitted by Wyoming supports the assertion that the Lewis Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Wyoming recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 7, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (79) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(79) *The Lewis Formation in Wyoming.* RM79–76 (Wyoming–11).

(i) *Delineation of formation.* The Lewis Formation is found in Carbon and Sweetwater Counties, Wyoming, encompassing all or parts of:

Townships 21 and 22 North, Range 89 West
Townships 19 through 25 North, Range 90 West
Townships 13, 14, 18 through 21, and 23 through 25 North, Range 91 West
Townships 13 through 21 and 23 through 25 North, Range 92 West
Townships 13 through 25 North, Range 93 West
Townships 12 through 25 North, Range 94 West
Townships 12 through 25 North, Range 95 West
Townships 12 through 26 North, Range 96 West
Townships 12 through 26 North, Range 97 West
Townships 12 through 17 and 22 through 26 North, Range 98 West
Townships 12 through 16 and 22 through 26 North, Range 99 West
Townships 14 through 16 and 23 through 26 North, Range 100 West

(ii) *Depth.* The Lewis Formation's vertical limits are defined by the Fox Hills Formation above, or in the case where the Fox Hills Formation is not present, the Lance Formation above, and the Mesa Verde Formation below. The average depth to the top of the Lewis Formation is 7,800 feet.

[FR Doc. 82-13014 Filed 5-12-82; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79–76–000 (Wyoming–12); Order No. 230]

High-Cost Gas Produced From Tight Formations, Wyoming; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the Wyoming Oil and Gas Conservation Commission that the Nugget Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 257–8618.

Issued: May 7, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Nugget Formation in Carbon County, Wyoming, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 12, 1982 (47 FR 7454, February 19, 1982)[1] based on a recommendation by the Wyoming Oil and Gas Conservation Commission (Wyoming) in accordance with § 271.703(c) that the Nugget Formation be designated as a tight formation.

Evidence submitted by Wyoming supports the assertion that the Nugget Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Wyoming recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight Formation.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3101–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 7, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding a new subparagraph (80) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(80) *Nugget Formation in Wyoming. RM79–76 (Wyoming–12).*

(i) *Delineation of formation.* The Nugget Formation is found in Carbon County, Wyoming, in Township 21 North, Range 79 West, Sections 3 through 10, and 15 through 18; and Township 22 North, Range 79 West, Sections 31 through 34.

(ii) *Depth.* The vertical limits of the Nugget Formation are the Basal Sundance Formation above and the Chugwater Formation below. The

[1] Comments were invited and one comment in support of the recommendation was received. No party requested a public hearing and no hearing was held.

average depth to the top of the Nugget Formation is 11,690 feet.

[FR Doc. 82-13015 Filed 5-12-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 81

[CGD 77-136]

72 COLREGS Certificates of Alternative Compliance

AGENCY: Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: This document corrects the final rule on the Certificates of Alternative Compliance for the 72 COLREGS which appeared in the Federal Register of Thursday, April 1, 1982 (47 FR 13798). The Final Rule removed Appendices B and C. As there is no Appendix C, the correct action is to remove only Appendix B.

FOR FURTHER INFORMATION CONTACT: LCDR Kent Kirkpatrick, Office of Navigation, Room 1606, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593, (202) 245-0108.

List of Subjects in 33 CFR Part 81

Navigation (water).

PART 81—72 COLREGS: IMPLEMENTING RULES

Appendix B [Removed]

Accordingly, Part 81 of Title 33 of the Code of Federal Regulations is amended by removing Appendix B.

(Sec. 8, 91 Stat. 310 (33 U.S.C. 1607); 49 CFR 1.46(n)(11))

Dated: May 4, 1982.

R. A. Bauman,

Rear Admiral, Coast Guard, Chief, Office of Navigation.

[FR Doc. 82-12752 Filed 5-12-82; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 110

[CGD77-212A]

Anchorage Grounds; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is enlarging Anchorage A (Big Stone Anchorage), used for tanker lightering, off the entrance to the Mispillion River in Delaware Bay, southwest of the Brandywine Channel. The enlargement is needed to accommodate the number and sizes of vessels using the anchorage.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Commander A. D. Utara, the Executive Secretary, Marine Safety Council (G-CMC-24), U.S. Coast Guard, Room 4402, 2100 Second Street, SW., Washington, D.C. 20593, Tel: 202-426-1477.

SUPPLEMENTARY INFORMATION: On January 26, 1978, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register for these regulations (43 FR 3595). Interested persons were requested to submit comments and eight comments were received prior to the expiration of the comment period. Subsequent to the initial close of the comment period, additional comments were received. By Federal Register notice of April 16, 1981 (46 FR 22206-07) the comment period was reopened. Five comments were received before the expiration of the reopened comment period and the comments received after the close of the initial comment period are now included in the docket of the proposal.

By this latter Federal Register notice (April 16, 1981), the availability of an Environmental Assessment and the scheduling of a public hearing on the proposed action was announced. This public hearing was held at 7:30 p.m. on May 19, 1981 at the Cape Henlopen High School, Kings Highway, Lewes, Delaware. Eight persons made oral statements at the hearing and three of them also submitted written statements there. A total of 35 persons attended the public hearing.

Drafting Information

The principal persons involved in drafting this rule are: Mr. D. W. Ziegfeld, Project Manager, Office of Marine Environment and Systems; Lieutenant Commander Michael S. Macie, Project Officer, Port Safety Branch, Third Coast Guard District; Mr. Jay Silberman, Environmental Specialist, Planning Office, Third Coast Guard District; and Lieutenant Collin Lau, Project Attorney, Office of the Chief Counsel, United States Coast Guard.

Discussion of Comments

A total of 21 written comments on the proposed action were received, three of which were submitted in conjunction with oral testimony at the public hearing. A few of the written comments were restatements from persons who had written earlier in response to the NPRM of January 26, 1978. Of the total, eight parties favored the expansion, nine commented without overt approval or disapproval, and two disapproved. Eight persons offered oral testimony at the public hearing. Three were in favor of the expansion, three were opposed and two did not express approval or disapproval. Several of the commenters represent organizations covering a wide range of interest, from shipping and port development concerns to environmental and citizen groups.

Many issues were raised by the written and oral comments. The question of projected vessel use levels in the anchorage was a primary issue. The Coast Guard has stated throughout that this change is needed to accommodate existing use levels, not in anticipation of or to entice any greater activity in the lower Delaware Bay. This conclusion is based on a thorough analysis of the number and sizes of vessels and lightering operations occurring in the Lower Bay over the past ten years and the capacity of the Bay fed oil industry in the Wilmington-Philadelphia area. Also, the number of lightering barge movements and, because of vessel and barge scheduling conflicts or the temporary lack of mooring space at offloading points upriver at refineries and storage facilities, congestion in the anchorage has posed a problem in the past several years. This problem is one of vessels being forced to move into and then out of the anchorage, because their barges were unavailable, and then back in when the barges become available. The point is that the various movements into and out of the anchorage and the movements of lightering barges through the anchorage amongst the anchored vessels pose a hazard due to the small area of the anchorage and the number of such movements. A larger designated lightering anchorage area will eliminate most of the vessel movements and offer more safe maneuvering area for vessels and lightering barges. Presently due to the above stated reasons and also for general cargo vessels awaiting a favorable tide or for berthing space upbay or upriver, the Coast Guard assigns anchorage space to the southeast of Anchorage A. This is done on almost a continual basis and is a matter of concern because the area used is not shown on charts as being an anchorage. Expansions would display on charts the extent and limits of the anchorage, thus alerting vessels transiting the Bay.

Another issue raised is the possible use of the anchorage for the bulk loading of coal for export. Anchorage A is presently designated for oil lightering. This expansion, as proposed does not include authorization for the bulk loading of any other cargoes. A change

in the designated use of this anchorage, other than for simple anchoring awaiting a tide or a berth, would constitute a substantial departure from the proposal and would require a new notice of proposed rulemaking and public comment period, and possibly a public hearing. The amendment being presented here does not include the bulk loading of coal at Anchorage A.

One of the commenters has recommended that either the existing or the expanded anchorage include separately delineated anchorages within the broader anchorage boundaries. These separate anchorages would essentially constitute liberally designed vessel swing circles, the purpose being to anchor vessels well away from the overall anchorage boundaries, and thus shoaling areas, and also to better control the density and spacing of tankers within the anchorage. This, it is suggested, would create the spacing needed to ensure safe barge and vessel movements and would also provide a margin of safety in the eventuality a vessel drags anchor or loses power while underway. Essentially, present use of the anchorage employs such an approach, although separate swing circles are not laid out on the chart depiction of the anchorage. The vessel is directed by the Captain of the Port Philadelphia to the anchorage. A position for anchoring is chosen by the vessel's pilot based on considerations similar to the above. The vessel's position within the anchorage is then reported to the Captain of the Port. The problem with the proposed delineated sub-anchorages is the proposal's inherent rigidity. Better use of the space due to changing conditions or the various sizes of vessel would be difficult, if not impossible, in the face of separate anchorages, depicted as circles, shown within the broader anchorage area drawn on charts. The desired end, a safely managed anchorage, can be attained using presently available and practised control measures, and without the unnecessary rigidity posed by the recommendation.

Another commenter pointed to the "proximity" of the expanded anchorage to the main ship channel (Brandywine Channel). This proximity is more apparent than real. While the actual distance between the channel and the anchorage does decrease from about 5,400 yards to 4,000 yards (two nautical miles), the more important consideration is position. The expanded anchorage is parallel to the Brandywine Channel and the lower part of the anchorage is westerly of Brown Shoal. This channel entrance is basically straight on an inbound course to the northnorthwest from the entrance to the Bay. For an upbound vessel to wander into the anchorage would require a significant error to the west, the kind of piloting error that is highly unlikely. The downbound vessel is even more constrained by shoals to the right (southwest) of the channel between the anchorage and the channel. At the channel entrance a significant course error of almost 90 degrees would be required to mistakenly enter the southeasterly corner of the anchorage.

Other commenters expressed the position that the total number of vessels in the existing anchorage and within the Delaware Bay and River should be strictly limited and controlled. This would include the scheduling of vessels so that congestion did not occur. Vessels arrive at the Delaware Bay from practically every major seaport nation in the world. Bulk oil is only one of the many commodities moved through the ports along the Delaware River. Millions of tons of dry and general cargo, from containerized to dry bulk (grain, coal, etc.), pass through the area each year. Moreover, Delaware Bay and the Chesapeake-Delaware Canal are part of the Intracoastal Waterway, a major protected route for thousands of barges, small commercial coastal vessels and recreational craft each year. Scheduling the Delaware Bay and River and all the associated port facilities of Pennsylvania, New Jersey, Delaware (and even some of Maryland and Virginia) would be a monumental task. Of course, free enterprise would be drastically affected and some businesses would eventually suffer from vessel entry, lay-over, lay-up, intra-harbor movement and exit decisions having far reaching economic impacts throughout the port and inland service areas. There are lesser measures, such as controlling vessel movements at the entrance to the Bay and even within the Bay and River. This would be a Vessel Traffic Service (VTS). The need for such a VTS has been studied by the Coast Guard at least three times since 1973, including a public hearing held in Philadelphia in 1977. The conclusion arrived at subsequent to these studies has been that other measures, such as changes or improvements to aids to navigation, were effective and less costly than a VTS. Some of these changes and improvements have already been implemented.

One commenter stated that the Coast Guard should not proceed with enlarging the anchorage, but should instead develop a better alternative. The issue of not enlarging the anchorage ("No Action") was addressed in the Environmental Assessment (EA), which concluded that the present risk of a collision, ramming or grounding with resultant spill was unacceptable when the option of expanding the anchorage was available. Several other alternatives, including a ban on lightering, were examined and were found to be either less cost effective, potentially more damaging to the environment, and/or infeasible at this time.

A question was asked concerning why the safety ("mitigating") measures discussed in the EA (increased monitoring of lightering, improved aids to navigation in Delaware Bay, additional spill containment/cleanup equipment) have not been implemented. Improved aids to navigation are being implemented in the Delaware Bay. Additional Coast Guard owned containment/cleanup equipment and increased monitoring activity will not be funded in the near future due to budget constraints.

A request was also made for the Coast Guard to take a more active role in supervising the lightering operation. The 25 year history of lightering in Delaware Bay has shown the lightering crews to be very competent and not in need of outside supervision. The Coast Guard feels that the present level of monitoring is adequate; if spill rates increase to unacceptable levels, increased monitoring or supervision would be reconsidered at that time.

Another person expressed the fear that the anchorage enlargement would lead to an increase in refinery capacity in the Wilmington-Philadelphia area, which would bring about more oil traffic and spills. The Coast Guard EA determined that the growth of lightering is dependent on an increase in refinery activity and not vice versa, and that any significant expansion of refinery capacity in this area is very unlikely due to strong economic and environmental disincentives.

The question was raised as to why an Environmental Impact Statement (EIS) was not prepared for the project. The reason given in the EA was that there was a very low probability of significant environmental impacts from the proposed anchorage enlargement. This conclusion was based on the lightering operations excellent safety record, a sharp decrease in lightering activity for the foreseeable future, improved tanker and navigational safety features, and

the development of oil spill contingency plans by the oil companies and the Coast Guard.

Summary of Final Evaluation

The regulations have been evaluated under E.O. 12291 and the Department of Transportation Order 2100.5. "Policies and Procedures for Simplification, Analysis and Review of Regulations," dated May 22, 1980, and have been determined not to be major and to be nonsignificant. The expansion of an anchorage does not involve impacts on competition, businesses, State or local government, or the regulations of other programs and agencies. Because of this, no evaluation has been prepared.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—ANCHORAGE REGULATIONS

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by revising § 110.157(a)(1) to read as follows:

§ 110.157 Delaware Bay and River.

(a) *The anchorage grounds.* (1) Anchorage A (tanker lightering) off the entrance to Mispillion River. In Delaware Bay southwest of Brandywine Channel beginning at latitude 38°53'57" N., longitude 75°08'00" W., thence northwesterly to latitude 39°01'22" N., longitude 75°13'25" W., thence southwesterly to latitude 39°00'49" N., longitude 75°14'57" W., thence southeasterly to latitude 38°53'22" N., longitude 75°09'26" W., thence northeasterly to the point of beginning. This anchorage is for the specific purpose of allowing deep draft tankers to anchor and lighter their cargo before proceeding up the Delaware River. Supervision over the anchoring of vessels and over cargo transfer operations in Anchorage A is exercised by the Captain of the Port, Philadelphia. The regulations in paragraphs (b)(1) and (b)(2) of this section do not apply to this anchorage.

* * * * *

(Sec. 7, 38 Stat. 1053 as amended (33 U.S.C. 471); sec. 6(g)(1), 80 Stat. 940 (49 U.S.C. 1655(g)(1)) 49 CFR 1.20(c)(1))

Dated: April 30, 1982.

J. S. Gracey,

Commander, Third Coast Guard District.

[FR Doc. 82-12730 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2 82-01]

Drawbridge Operations Regulations; Muskingum River, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the owner, the Coast Guard is changing the regulations governing the Consolidated Railroad (Conrail) Drawbridge over the Zanesville Canal at Mile 77.06, Muskingum River. The change will require advance notice for opening the draw. The effect of the action is to relieve the bridge owner from having a person constantly available to open the draw while providing for the reasonable needs of navigation.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: S. W. Thoroughman, Chief, Bridge Branch, Room 400, 1430 Olive Street, St. Louis, MO 63103 (314-425-4607).

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: S. W. Thoroughman, Project Manager, and Lieutenant Commander R. A. Knee, U.S. Coast Guard, Project Attorney, c/o Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri.

SUPPLEMENTARY INFORMATION: On June 19, 1981 the Second Coast Guard District published a Local Notice to Mariners initiating a 60-day trial period on July 1, 1981 to test the proposed regulations. On November 16, 1981 the Coast Guard published a Notice of Proposed Rulemaking (46 FR 56208) concerning this amendment. The proposed rule included a requirement that the owner of the drawbridge maintain operating machinery in a serviceable condition and open and close the draw at frequent intervals to insure satisfactory operation. Upon review, this provision has been stricken from the final rule as unnecessary because the duty to maintain the draw in an operable condition is implicit in the statute and regulations governing the operation of drawbridges and the permit authorizing the existence of this drawbridge. In addition subparagraphs (ii) and (iii) have been reversed in order to place these in a more logical order.

Discussion of Comments

No comments were received in response to the Notice of Proposed Rulemaking. One comment was received in response to the Local Notice to Mariners. The District Engineer, U.S. Army Corps of Engineers, Huntington District, suggested that the regulation provide for the emergency opening of the draw. A requirement that, in case of emergency, the draw shall be opened promptly upon notification was included in the proposed rule.

This final regulation has previously been determined to be non-major under Executive Order 12291, and also to be nonsignificant under the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The final regulation has previously been certified under Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) at 46 FR 56208 (November 16, 1981). No information has been received which changes those determinations and certification. The bridge has been opened on an average of once per year. There are no known plans for development of the waterway capacity which would increase commercial usage or otherwise require additional openings. Presently § 117.560(g)(5) of Title 23, Code of Federal Regulations is reserved. This regulation will amend that section.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.560(g)(5) to read as follows:

§ 117.560 Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

* * * * *

(g) * * *

(5) Muskingum River, Ohio; Conrail Bridge across the Zanesville Canal. The draw shall open on signal Tuesday through Friday if the Conrail office is notified by 12:01 p.m. on day preceding the day and time the opening is required. For openings Saturday through Monday, the Conrail office shall be notified by 12:01 p.m. on Friday specifying which day and time the opening is required. In case of emergency, the draw shall be open as soon as possible.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: April 29, 1982.

T. H. Ruttledge,

Admiral, U.S. Coast Guard, Acting District Commander.

[FR Doc. 82-12730 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Parts 166 and 209

[CGD 81-040]

Shipping Safety Fairways, Adoption of Corps of Engineers' Designations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule adopts certain shipping safety fairway regulations which were originally promulgated by the U.S. Army Corps of Engineers (COE) in 33 CFR 209.135 and moves them to new 33 CFR Part 166. There will be no changes to the fairway arrangements by this adoption.

Fairways were established in the Gulf of Mexico by the COE to preserve areas for safe navigation. Fairways are areas where no permits for off-shore structures were issued. In 1978, the Ports and Waterways Safety Act (PWSA) was amended to delegate authority for designating fairways to the Department of Transportation and the Coast Guard. This administrative action merely moves the existing COE Gulf fairways in 33 CFR 209.135 to new 33 CFR Part 166.

EFFECTIVE DATE: These rules are effective May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Christopher Young, Office of Navigation (G-NSR), Room 1402, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202-426-4958).

SUPPLEMENTARY INFORMATION: The Coast Guard has determined for good cause that a notice of proposed rulemaking (NPRM) is unnecessary and that these rules shall be effective upon publication as per 5 U.S.C. 553(b)(3)(B) and (d)(3).

These rules merely adopt rules currently in effect in 33 CFR 209.135 and places them in new 33 CFR Part 166. There have been no changes to the existing fairway arrangement. This action was made necessary by the Ports and Waterways Safety Act (PWSA) which delegates the authority for the establishment of fairways to the Department of Transportation and the Coast Guard.

Drafting Information

The principal persons involved in drafting this rulemaking are: Mr. Christopher Young, Project Manager, Office of Navigation, and Lieutenant Michael Tagg, Project Attorney, Office of Chief Counsel.

Discussion of Regulations

Background

A shipping safety fairway is a designated area of a waterway where no fixed structures are permitted to be erected. It increases navigation safety by insuring that an obstruction-free route is available to vessel traffic transiting the vicinity.

The existing shipping safety fairways in the Gulf of Mexico are described in 33 CFR 209.135. They were established by the U.S. Army Corps of Engineers under authority granted by the Outer Continental Shelf Lands Act (67 Stat. 463; 43 U.S.C. 1333(e)) to issue permits for structures on the OCS. In the interests of safe navigation, the Corps promulgated regulations to designate specific areas in which no permits would be issued.

In the Gulf of Mexico, there are over 800 miles of 2-mile wide fairways, some of which are over 100 miles out into the Gulf. They were established by the Corps between 1948 and 1968 (with a few subsequent amendments) to reduce the risk of collision between vessels and the growing number of off-shore drilling structures. Many interests, including oil companies, maritime associations, shipping companies, and government agencies, participated in the development of the fairway system.

In 1978, the Ports and Waterways Safety Act (PWSA) (Pub. L. 95-474; 92 Stat. 1473; 33 U.S.C. 1223(c)) was amended to delegate authority to the Department of Transportation and the Coast Guard to establish vessel routing measures, including fairways and fairway anchorages. The PWSA authority to establish vessel routing measures is only to be exercised after a study into the need for designated safe access routes due to traffic density and use conflict.

The mandated study was initiated by notice on April 16, 1979 (44 FR 22543), and modified on January 31, 1980 (45 FR 7027). Study results for the ports along the coast of the Gulf of Mexico were published in the **Federal Register** on October 6, 1981 (46 FR 49989). The study for that region found strong public approval of the current system of fairways in the Gulf of Mexico and recommended that the existing Corps of Engineers fairways be adopted under PWSA authority. No major widening or lengthening of the fairways was proposed. The study report said, in part: "Experience with these fairways over the last fifteen years has shown them to be an effective routing measure in reducing the risk of vessel/structure collisions" (46 FR 49990). However, some minor modifications and additions are expected in future proposals based on the study.

In order to implement the PWSA, and the Port Access Route study recommendations, the Coast Guard has worked with the Corps of Engineers to coordinate the transfer of authority over shipping safety fairways in the Gulf of Mexico. Although it will be the responsibility of the Coast Guard to designate fairways, it will continue to be the responsibility of the Corps to enforce the regulation by denying permits for structures in the defined areas.

The Coast Guard is publishing these regulations as new Part 166 of Title 33, Code of Federal Regulations. All responsibilities in 33 CFR 209.135 which are not included under Coast Guard authority granted by PWSA and adopted in this action (i.e., permit-issuing procedures) will remain with the Corps of Engineers. Those regulations which remain in 33 CFR 209.135 and are duplicative of the Coast Guard fairway designations are expected to be deleted by the Corps of Engineers.

The following changes have been made in the text of the COE regulations in this adoption to reflect the changes in administration of these rules:

1. Section 209.135 has been moved to § 166.200.

2. In paragraph (b)(1) a cross reference to COE permit requirements has been added, and the words "Department of the Army" have been deleted.

3. In paragraph (b)(2) the words "Department of the Army may permit" have been deleted.

4. In paragraph (b)(2)(i) the words "district engineer" are changed to read "Corps of Engineers."

5. In paragraph (b)(2)(ii) the words "at least 500 feet from" are changed to "outside of."

6. Old subparagraph (iv) is deleted, following subparagraphs are re-numbered.

7. Old paragraph (b)(2)(v) is deleted; following subparagraphs are re-numbered.

8. In paragraph (b)(3) the words "Department of the Army" are deleted.

9. In paragraph (c) the words following "interested parties" are changed to read "in accordance with 92 Stat. 1473, 33 U.S.C. 1223(c)."

Regulatory Analysis

These regulations have been evaluated under E.O. 12291 and D.O.T. Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated May 22, 1980, and have been determined to be neither significant nor major.

The Corps of Engineers originally developed these fairways under its permit-issuing authority to control structures on the waterways and promote navigation safety. The Ports and Waterways Safety Act (PWSA) specifically delegates fairways

designation authority to the Department in which the Coast Guard is operating. The present action will merely adopt the existing fairways in the Gulf of Mexico.

Use of fairways is not mandatory. However, vessel operators may choose fairways as a more efficient and safe way of navigating through an area congested with platforms and artificial islands.

The presence of fairways can interfere with "direct drilling" of wells for oil and gas. In many cases, "slant" or "directional" drilling can be reasonably substituted for "direct drilling," though at a higher cost. The marginal cost of substitution can only be reasonably calculated on an ad hoc basis. This marginal cost depends heavily on: (1) Geological survey data; (2) estimated natural resource quantities; and (3) resource location. The cost of directional drilling can range from 40% to 50% over the cost of a direct, vertical drilling operation.

By comparison, the damage to a vessel caused by a vessel/structure casualty can range from $10,000 to $10,000,000. In addition, there may be injuries or loss of life, and environmental damage due to pollution. While the likelihood of such incidents cannot be established, fairways aid in reducing the risk of such incidents by providing efficient and safe routes for navigating through an area congested with platforms and artificial islands.

In a situation where the marginal cost of "slant drilling" outweighs benefits of having fairways at a specific site, changes to specific segments of a fairway can be made where necessary. The current fairway system as adopted is not now a controversial means of maintaining safe navigation, as concluded by the Port Access Route Study Report published on October 8, 1981, in 46 FR 49989.

Regulatory Flexibility Analysis

These rules are exempted from the requirements as set forth in the Regulatory Flexibility Act (sec. 603, Pub. L. 96-354; 5 U.S.C. 603(a)) because an NPRM is not required under 5 U.S.C. 553. This administrative action merely adopts existing regulations in 33 CFR 209.135 and places them in new part 33 CFR Part 166 without substantive change.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Navigation (water).

In consideration of the foregoing, the Coast Guard proposes to amend Subchapter P, chapter I of Title 33 of the Code of Federal Regulations is amended as follows:

1. A new Part 166 is added to read as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

Sec.
166.100 [Reserved]
166.200 Shipping safety fairways and anchorages, Gulf of Mexico.

Authority: Sec. 4(c), Pub. L. 95-474, 92 Stat. 1473 (33 U.S.C. 1223); 49 CFR 1.46(n)(4).

§ 166.100 [Reserved]

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

(a) *Purpose.* Fairways and anchorage areas as described in this section are established to control the erection of structures therein to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast.

(b) *Permits.* (1) Department of the Army Permits are required pursuant to law (30 Stat. 1151; 33 U.S.C. 403 and 92 Stat. 635; 43 U.S.C. 1333(e)) for work or structures in the Gulf of Mexico in coastal waters and the waters covering the Outer Continental Shelf. Permit requirements are described in Corps of Engineers regulations, 33 CFR Parts 320-330. The erection of structures will not be permitted in the areas designated as fairways since structures located therein would constitute obstructions to navigation, except that the temporary placement of anchors may be allowed by these regulations.

(2) Temporary anchors and attendant cables or chains for floating or semisubmersible drilling rigs may be placed within a fairway provided the following conditions are met:

(i) The installation of anchors within fairways to stabilize semisubmersible drilling rigs must be temporary and shall be allowed to remain only 120 days. This period may be extended by the Corps of Engineers provided reasonable cause for such extension can be shown and the extension is otherwise justified.

(ii) Drilling rigs must be outside of any fairway boundary to whatever distance is necessary to insure that minimum clearance over an anchor line within a fairway will be 125 feet.

(iii) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of 125 feet from the surface, within a fairway.

(iv) Navigation aids or danger markings must be installed as required by the U.S. Coast Guard.

(3) Permits for the erection of structures within an area designated as an anchorage area may be granted, but the number of structures will be limited by spacing, as follows: The center of a structure to be erected shall be not less than two (2) nautical miles from the center of any existing structure. In a drilling or production complex, associated structures shall be as close together as practicable having due consideration for the safety factors involved. A complex of associated structures, when connected by walkways, shall be considered one structure for the purposes of spacing. A vessel fixed in place by moorings and used in conjunction with the associated structures of a drilling or production complex, shall be considered an attendant vessel and its extent shall include its moorings. When a drilling or production complex includes an attendant vessel and the complex extends more than five hundred (500) yards from the center of the complex, a structure to be erected shall be not closer than two (2) nautical miles from the near outer limit of the complex. An underwater completion installation in an anchorage area shall be considered a structure and shall be marked with a lighted buoy as approved by the United States Coast Guard.

(c) *Modification of the areas.* The fairways and anchorage areas are subject to modification but only after due notification and consideration of the views of interested parties, in accordance with 92 Stat. 1473; 33 U.S.C. 1223(c).

PART 209—ADMINISTRATIVE PROCEDURE

§ 209.135 [Amended]

2. New Part 166 is further amended by redesignating § 209.135(d) as § 166.200(d).

Dated: April 5, 1982.

R. A. Bauman,
Rear Admiral, Coast Guard, Chief, Office of Navigation.

[FR Doc. 82-12805 Filed 5-11-82; 8:45 am]
BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Penalties—Violations of Seaway Regulations and Assessment, Mitigation or Remission of Penalties

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation is amending

Subpart B—Penalties—Violations of Seaway Regulations, and Subpart C—Assessment, Mitigation or Remission of Penalties, to reflect changes necessitated by the enactment of the Port and Tanker Safety Act of 1978 and the subsequent delegation of authority to the Administrator of the Saint Lawrence Seaway Development Corporation.

EFFECTIVE DATE: May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315 764–3245).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1982, the Seaway Corporation published in the **Federal Register** (47 FR 11039) proposed amendments to Subparts B and Subpart C for the reasons set forth in the summary.

No comments were submitted in response to the notice of proposed rulemaking.

On October 17, 1978, the Port and Tanker Safety Act of 1978 was enacted, amending the Ports and Waterways Safety Act of 1972. On July 21, 1980, a Delegation of Authority to the Administrator of the Saint Lawrence Seaway Development Corporation from the Secretary of Transportation was published in the **Federal Register** (45 FR 48630). This delegated certain procedural functions vested in the Secretary of Transportation by the Port and Tanker Safety Act of 1978, and related to the power to issue and enforce regulations and conduct investigations under the Act with respect to the Saint Lawrence Seaway. As a result, § 401.101, Criminal Penalty, and § 401.102, Civil Penalty of Subpart B, are amended to reflect that a fine of not less than $5,000 is eliminated as a criminal penalty for violation of a Seaway Regulation. Provision is also made for penalties for any person who uses a dangerous weapon or engages in conduct that causes or threatens bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder. The civil penalty for violation of a Seaway Regulation is increased from $10,000 to $25,000. Also, § 401.201(a) and § 401.202 of Subpart C are amended to reflect the new delegation of authority under the Port and Tanker Safety Act.

The Saint Lawrence Seaway Development Corporation certifies that, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354) this final rule will not have a significant impact on a substantial number of small entities. The Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels. On the other hand, the economic benefits derived from a safe and efficiently operated St. Lawrence Seaway are considerable. Finally, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore an environmental impact statement is not required. Furthermore, it is not a major rule under Executive Order 12291, as noted in the DOT Semi-Annual Regulations Agenda and Review List published in the **Federal Register** October 1, 1981, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending Title 33 of the Code of Federal Regulations as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart B—Penalties—Violations of Seaway Regulations

1. Section 401.101 is amended by revising paragraph (a) to read as follows:

§ 401.101 Criminal penalty.

(a) A person who willfully and knowingly violates a regulation shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both, and any person who, in the willful and knowing violation of this Act or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in this paragraph be fined not more than $100,000 or imprisoned for not more than ten years, or both.

* * * * *

2. Section 401.102 is amended by revising paragraph (a) to read as follows:

§401.102 Civil penalty.

(a) A person, as described in § 401.101(b), who violates a regulation is liable to a civil penalty of not more than $25,000.

* * * * *

Subpart C—Assessment, Mitigation or Remission of Penalties.

3. Section 401.201 is amended by revising paragraph (a) to read as follows:

§401.201 Delegation of authority.

(a) The Secretary of Transportation, by 49 CFR 1.52(a) has delegated to the Administrator of the Saint Lawrence Seaway Development Corporation the authority vested in him under sections 4, 5, 6, 7, 8, 12 and 13 of SEC. 2 of the Port and Tanker Safety Act of 1978, Pub. L. 95–474 (92 Stat. 1471), as it pertains to the operation of the Saint Lawrence Seaway.

* * * * *

4. Section 401.202 is revised to read as follows:

§ 401.202 Statute providing for assessment, mitigation or remission of civil penalties.

Section 13 of SEC. 2 of the Port and Tanker Safety Act of 1978 authorizes the assessment and collection of a civil penalty of not more than $25,000 from anyone who violates a regulation issued under that section.

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended; and secs. 12 and 13 of SEC. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C. on May 7, 1982.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 82–13075 Filed 5–12–82; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF EDUCATION

34 CFR Parts 655, 656, 657, 658, and 660

International Education Programs; Correction

AGENCY: Education Department.

ACTION: Final rule; Correction.

SUMMARY: On April 1, 1982 final regulations were published for the International Education Programs (47 FR 14114–14126). Several technical errors were made in the Summary of Comments and Responses section of the preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Richard T. Thompson, 202–245–2356.

The errors are corrected to read as follows:

1. On page 14114, second column, first paragraph of the Summary of Comments and Responses, the last sentence is changed to read, "The old section numbers are followed by the new section numbers in parentheses."

2. On page 14115, first column, sixth paragraph, second line, the section number § 657.33(c) is changed to read § 657.40(b).

3. On page 14115, first column, last paragraph, last line, the section number § 656.10(a)(3) is changed to read § 656.10(a)(2).

4. On page 14115, third column, the fourth paragraph is changed to read as follows: *Response.* Section 658.36 is deleted. The duration of a project is covered by Direct Grant Programs, 34 CFR 75.250.

(Catalog of Federal Domestic Assistance Number 84.015, International Studies Centers and Foreign Language and Area Studies Fellowships; 84.016, International Studies Program and 84.017, Foreign Language and Area Studies Research)

Dated: May 3, 1982.

Daniel Oliver,

General Counsel.

[FR Doc. 82-12979 Filed 5-12-82; 8:45 am]

BILLING CODE 4000-01-M

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2072-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA today is approving a revision to the Vigo County, Indiana sulfur dioxide (SO_2) State Implementation Plan (SIP). Indiana submitted this revision in response to Part D of the Clean Air Act (CAA). EPA proposed approval of this revision on September 1, 1981 (46 FR 43855), received comments from six groups, and is responding to their comments in today's notice.

EFFECTIVE DATE: This final rulemaking becomes effective on May 13, 1982.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller at (312) 886-6031 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Air Pollution Control, Vigo County Health Department, 120 S. Seventh Street, Terre Haute, Indiana 47807

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the CAA, EPA designated certain areas in each Region V State as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), SO_2, carbon monoxide, ozone, and nitrogen dioxide.

Part D of the CAA requires each State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary SO_2, NAAQS by December 31, 1982.

These SIP revisions must also demonstrate attainment of the secondary NAAQS as expeditiously as practicable. The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

In response to Part D of the CAA, on June 26, 1979, the State of Indiana submitted revised SO_2 control strategies and Air Pollution Control Regulation 13 (APC-13) to EPA. This submittal included a control strategy for Vigo County that was developed by the Indiana Air Pollution Control Division and regulations which were promulgated by the State on June 19, 1979.

While the State developed its SO_2 plan for the County, an industrial task force developed its own control strategy. The Wabash Valley Environmental Association (WVEA), an organization of 20 local firms, submitted its county-wide plan to the Indiana Air Pollution Control Board (IAPCB) in September 1979. After reviewing the WVEA plan, the State agreed to substitute the WVEA plan for the State plan in APC-13. Consequently, on October 4, 1979, the IAPCB officially withdrew its control strategy for Vigo County, including the portion of APC-13 pertaining to Vigo County. On January 7, 1980, the State promulgated the WVEA SO_2 plan for Vigo County, including a revised APC-13 which incorporated the new Vigo County emission limitations.

On February 11, 1980, the State submitted to EPA its newly promulgated SO_2 control strategy for Vigo County. Technical support materials were submitted in September 1979, on December 10, 1979 and on May 30, 1980. The September 1979 submittal included the technical rationale for the new control strategy for SO_2 in Vigo County. The later submittals provided additional analyses to correct technical deficiencies in the initial submittal. The State recodified its SO_2 regulation APC-13 as 325 IAC Article 7 and submitted it to EPA on October 6, 1980. EPA proposed to approve the Vigo County SO_2 strategy on September 1, 1981 (46 FR 43855).

The Vigo County strategy consists of a general, statewide regulation, 325 IAC Article 7, and an appendix to the regulation (325 IAC 7-1-8) which establishes specific emission limitations for certain Vigo County sources, as well as for sources in other counties. On March 27, 1980, EPA proposed to approve, in part, the general, statewide SO_2 regulation, APC-13 (45 FR 20743). EPA proposed no action at that time on the Vigo County portion of APC-13. EPA has recently approved the recodified regulation, 325 IAC Article 7, with certain exceptions: it took no action on either the Vigo County strategy or the 30-day compliance method contained in the general regulation.

Today, EPA is approving the Vigo County portion of the SO_2 strategy. As with EPA's action on the general regulation, however, and as discussed more fully below, EPA will presently take no action on the 30-day averaging provision in the Vigo County strategy. EPA's detailed analysis of the Vigo County strategy is contained in an EPA technical memorandum and in the September 1, 1981 notice of proposed rulemaking. Both of these are available for review at the above addresses.

Public Comments

In response to its Notice of Proposed Rulemaking, EPA received comments from Indiana, three other States, Vigo County, and a local utility. Following is a summary of the significant comments and EPA's responses to each:

Comment: One commentor raised the following questions concerning the 10% derating of the Public Service Indiana (PSI) Wabash River power plant: a) is the derating enforceable; b) will the derating involve any physical changes; and c) can the load reduction be offset by increasing hours of operation?

Response: The 10% derating of the Wabash River power plant is contained in the State regulation and will become part of the federally approved SIP for Vigo County. EPA and the State maintain that the 10% derating in the capacity of the plant is properly enforceable, even though no physical changes to the plant are required, because compliance can be determined by reviewing charts, logs, and records kept by PSI. Because the plant was modeled assuming 24-hour continuous operations to determine its air quality impacts, any possible increase in the hours of operation will not affect attainment of the SO_2 standards.

Comment: PSI notified EPA that the new stack at its Wabash River plant will not be completed until July 1984. 325 IAC 7-1-6 requires compliance with the new regulations by December 1981, but allows the State to extend this deadline up to December 1982 under certain circumstances. The State has extended the compliance schedule for this plant until December 31, 1982. In PSI's comments, it requested an EPA extension of the compliance deadline or an exemption until July 1984.

Response: 325 IAC 7-1-6 requires that compliance be achieved by no later than December 31, 1981, except as noted above. EPA has no authority in the context of this rulemaking to extend the compliance date beyond that allowed by 325 IAC 7-1-6 or to exempt the Wabash River power plant from the compliance deadline. Any such request would have to be initiated by the State and would have to be the subject of separate rulemaking. Furthermore, EPA's Continuity Policy, as discussed in more detail below, does not normally allow a source additional time to come into compliance with a new, less stringent emission limitation.

The SIP relaxation to a 4.04 lbs/MMBTU emission limit for the Wabash River plant is based upon a new, taller stack. If the attainment demonstration had been based on the existing stacks, a different, probably more stringent, emission limit would be required for this plant. Therefore, EPA cannot approve the 4.04 lbs/MMBTU emission limit without also requiring that the new stack be in place. EPA is today approving the 4.04 lbs/MMBTU emission limitation for the Wabash River power plant, to be effective when the new stack is in place. Until that time, the existing SIP emission limit of 1.2 lbs/MMBTU remains applicable.

Comment: Several commentors urged EPA to approve the 30-day averaging provision in 325 IAC 7-1-3.

Response: EPA recognizes the problem of sulfur variability. Consequently, on February 14, 1980, EPA published a **Federal Register** Notice notifying the public that EPA had begun a review of its policies and procedures for regulating large coal-fired boilers. Among the issues under review are: a) compliance test methods; b) sulfur variability; c) modeling guidelines; and d) averaging periods for emission limitations. This review will address 30-day averaging, appropriate methods for evaluating 30-day averages, and protection of the NAAQS. Based on its review, EPA will make any necessary modifications in its policies. Until this review is complete, EPA will not rulemake on 30-day averaging in Vigo County. EPA has also announced its intention to proceed under an interim enforcement policy for Indiana, which will be used to establish the Agency's enforcement priorities (December 31, 1981, 46 FR 63270).

Comment: One commentor questioned the application of the RAM-urban model to Vigo County. The commentor claimed that this model is inappropriate because it does not consider terrain effects and because there was no analysis of the urban/rural status of the area. The commentor also asked if the model was calibrated.

Response: Prior to the modeling analysis, EPA classified the area as urban based on the general characteristics of the City of Terre Haute (i.e., city size, source density, and land use), where the majority of the sources are located. This procedure was consistent with the EPA urban/rural policy at the time the modeling began. Furthermore, since the terrain in the area is gently rolling (i.e., no significant terrain differences), EPA additionally determined that the reference model for Vigo County at that time should be RAM-urban. No calibration of the short-term RAM-urban model was attempted. This is appropriate because calibration of short-term models requires much more data than that which is available for most areas, including Vigo County. Uncertainties in Vigo County source and meteorological data restrict the ability to estimate the measured concentration at an exact location during a specific increment of time. These uncertainties prevent the calibration of short-term models, such as RAM-urban.

Comment: One commentor claimed that the modeling analysis was deficient because it used only one year of meteorological data, not five years as required by EPA guidelines.

Response: EPA has reviewed the issue of meteorological data and has determined that because EPA's policy required only one year of meteorological data for the Part D SIPs which were to be submitted by January 1, 1979, EPA is not requiring the State to remodel using 5 years of meteorological data. However, 5 years of appropriate meteorological data are currently available, and all future Vigo County modeling must use 5 years of data.

Comment: One commentor objected to the absence of area sources in the modeled emission inventory. The commentor maintained that the inclusion of area sources should increase the predicted annual concentrations enough to cause violations of the annual standard.

Response: Area sources were not modeled because an inventory was not available. Area sources are not expected to have a significant impact on Vigo County. All point sources in the County were considered, however, the impact from area sources was still included indirectly in the analysis through calculations of the background concentration. The derived background accounted for the impacts due to distant SO_2 sources, nearby area and small point sources, and natural sources. Consequently, inclusion of an area source inventory would be double-counting these source impacts and is, therefore, unnecessary.

Comment: One commentor claimed that the modeled concentrations should be running averages, not block averages.

Response: EPA modeling guidelines state that block averaging times should continue to be used for modeling purposes. Thus, modeled running averages are not required.

Comment: The States of New York and Connecticut raised a number of issues related to the potential interstate impacts of EPA's approval of the Vigo County plan. These States expressed a general concern that the Vigo County emissions, in combination with the SO_2 emissions from other midwest sources, will have a serious, detrimental impact on interstate air pollution levels. They also made the following additional, specific comments: 1) Approval of the

Vigo County strategy will result in increased SO_2 and TSP emissions. This will adversely affect the pollution levels in other states and thus an EPA approval would violate sections 110(a)(2)(E) and 126 of the CAA. 2) EPA and Indiana inappropriately utilized only short-range air pollution dispersion models, which are incapable of assessing long-range pollutant transport. 3) EPA should have modeled the SO_2 emissions for their effect on the particulate matter levels in other States. 4) Approval of the Vigo County plan will result in increased downwind sulfate concentrations. 5) If EPA does not disapprove the Vigo County plan, it must defer its decision until the completion of certain proceedings now pending under Section 126 of the CAA.

Response: EPA's review and approval of the Indiana SO_2 SIP revision will not result in increased SO_2 and TSP levels, and thus is consistent with Sections 110(a)(2)(E) and 126 for several reasons. Because the emission limitations for Vigo County generally reflect status quo emissions or restrictions, no significant increase in SO_2 or TSP emissions and, consequently, no increase in net impact is expected. In addition, the J.I. Case and Anaconda Aluminum stack height changes are only minor increases up to 30 meters (m). EPA has determined that stack heights of up to 65 m may automatically be credited to most significant sources of SO_2 without violating section 123 of the CAA (February 8, 1982, 47 FR 5864). These two increases are well below EPA's de minimis stack height of 65 m. Further, because the PSI stack height change is accompanied by a derating requirement and a reduction from maximum status quo emissions, the expected net effect of today's rulemaking is to reduce PSI's actual impacts.

With regard to comments on the use of EPA reference models, EPA has not yet established any techniques which evaluate impacts beyond 50 kilometers (km) from a source. Consequently, contrary to the commentor's claim, there are no EPA-approved regulatory tools currently available to assess long-range impacts.

Pursuant to Section 110(a)(2)(E), EPA has reviewed this action for potential interstate impacts to the extent that EPA's modeling allows. The only State within 50 km of Vigo County is Illinois. There are no SO_2 nonattainment areas in Illinois within 50 km. There is only one county in Illinois within 50 km where the baseline date has been triggered. As discussed below, there are no problems concerning PSD increment consumption or violations of the NAAQS in Illinois.

The largest SO_2 source in Vigo County is the PSI Wabash River Plant, located about 13.5 km east of the Illinois State line. Modeling predicts the highest SO_2 concentrations to occur in the vicinity of the Wabash River Plant. The highest, second high 24-hour modeled concentration was 362 $\mu g/m^3$ and occurred at a receptor located 3 km east of the Plant. West of the Plant (towards Illinois), the high, second high impact was 323 $\mu g/m^3$, located 1.5 km WNW of the Plant and 12.5 km east of the State line. The predicted concentrations west of this receptor decrease to approximately 200 $\mu g/m^3$ within 10 km of the State line. Furthermore, a conservative screening analysis demonstrated that maximum concentrations in Illinois due to Vigo County sources are less than 90 $\mu g/m^3$. Because the concentrations are decreasing away from Vigo County in Illinois and concentrations due to Vigo County sources in Illinois are well below the NAAQS, no violations due to Vigo County sources are expected to occur in Illinois.

The closest major source in Illinois to the Indiana Border is outside the modeling range of 50 km. Consequently, EPA was unable to consider possible source interaction in Illinois. However, beyond 50 km the Illinois sources would almost certainly contribute far more than Indiana sources to ambient SO_2 concentrations.

EPA has also considered under section 110(a)(2)(E) whether revision of the emission limits for the named sources interferes with measures "required to be included in the applicable implementation plan for any other State under Part C to prevent significant deterioration of air quality * * *" A conservative screening analysis demonstrated that the net effect of the Vigo County plan would be to reduce PSI's actual impact on the Illinois PSD area. Therefore, EPA has concluded that the revised SIP will not interfere with Illinois' ability to prevent significant deterioration of its air quality.

With respect to Connecticut's claim that EPA should have modeled the SO_2 emissions for their effect on the particulate matter levels in other States, EPA's currently approved models are not capable of such an analysis. EPA models estimate ground-level SO_2 concentrations caused by a plant's SO_2 emissions. Similarly, EPA models estimate ground-level particulate concentrations caused by a source's particulate matter emissions. Although models capable of estimating the impact of SO_2 emissions on ground-level particulate matter concentrations have been developed by researchers, EPA is still evaluating their predictive accuracy as part of an overall revision to its Modeling Guidelines. Application of these models at this time, therefore, is premature. For the purposes of section 110(a)(2)(E), EPA notes that the commentor has not submitted any information which demonstrates that the SO_2 emissions from the Vigo County sources contribute or impact particulate pollution in other States.

The sulfate question raised by the commentors is a complex one. To date, EPA has not established a national ambient air quality standard for sulfates. However, the sulfate issue is being evaluated as part of EPA's current review, under section 109(d)(1) of the CAA, 42 U.S.C. 7409(d)(1), of the criteria and national standards for sulfur oxides and particulate matter (see "Second External Review Draft Air Quality Criteria for Particulate Matter and Sulfur Oxides," and notice announcing comment period on draft, 46 FR 15569 (March 6, 1981)). At present, in the absence of a national standard for sulfates, EPA need not consider the impact of the Indiana SO_2 plan on sulfate levels.

On June 18 and 19, 1981, as a result of petitions filed by the States of New York and Pennsylvania under section 126 of the CAA, EPA held a hearing in Washington, D.C. to consider the possible interstate impact of a number of proposed and final SO_2 revisions for sources located in Indiana, Tennessee, Ohio, and West Virginia. (Docket No. A–81–9) To the extent that New York and Connecticut's comments to the Vigo County proposal relate to the same aggregate air quality impact issues as in the section 126 action, they will be addressed in the Agency's Section 126 determination. EPA is not required to delay a plan revision until it reaches a decision on a Section 126 petition. *Connecticut* vs *EPA*, 902 F 2d 656 (2d Cir. 1981). In light of the congressional mandate to act expeditiously under Part D of the Act, EPA does not believe that it would be appropriate to withhold the Vigo County rulemaking until EPA acts on the Section 126 petitions. At the time the Agency makes such a determination and to the extent necessary, EPA can and will reevaluate the adequacy of the Vigo County plan.

Based on its review, EPA approves, in part, the revised Vigo County SO_2 strategy as a revision to the SIP. The compliance dates contained in the current federally approved APC–13

(May 14, 1973) will continue to apply to those sources for which the revised SO_2 strategy contains less stringent emission limitations. In those cases where the revised SO_2 strategy requires more stringent emission limitations, the compliance timetables listed in Section 6 of 325 IAC Article 7 are approved in Vigo County. Section 6 requires final compliance by December 31, 1981. Sources subject to the plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements until such time as they come into compliance with the new Part D plan requirements.

EPA is presently taking no action on 30-day averaging. This will not affect approvability of the Vigo County strategy as a whole, because 325 IAC Article 7 contains an approvable compliance method, stack testing in accordance with 40 CFR Part 60, Appendix A Method 6. Article 7 also permits the Indiana Air Pollution Control Board to approve alternate compliance methods. Any such methods approved by the Board must be submitted to EPA for its action.

EPA has determined that good cause exists for making these revisions immediately effective and deviating from the requirement of 5 U.S.C. 553(d) (the Administrative Procedures Act) that substantive rules be published thirty days before their effective date. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in Section 110(a)(2)(I) of the Clean Air Act will be lifted from the State of Indiana. These restrictions are imposed for failure to have a SIP which meets the requirements of Part D after the final date for SIP approval specified in the Act. EPA has determined that the Vigo County SO_2 SIP on the whole, meets the requirements of Part D. Therefore, it would be contrary to the public interest to continue the restrictions on industrial growth for thirty days after the publication of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It will impose no new requirements.

This regulation was exempted from review by the Office of Management and Budget under Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172, Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, Subpart P—Indiana is amended as follows:

1. Section 52.770(c) is amended by adding subparagraph (31) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(31) On February 11, 1980, Indiana submitted a revised sulfur dioxide strategy for Vigo County. Technical information was submitted on December 10, 1979 and on May 30, 1980. On October 6, 1980, the State submitted a recodified version of the Vigo County Regulations, 325 IAC Article 7, which was promulgated by the State on August 27, 1980. EPA is not taking action on the 30-day averaging compliance method contained in 325 IAC 7-1-3 as it applies to Vigo County.

2. Section 52.773 is amended by revising paragraph (b) as follows:

§ 52.773 Approval status.

* * * * *

(b) The Administrator finds that the SO_2 strategies for Lake, LaPorte, Marion and Vigo Counties satisfy all requirements of Part D, Title I of the Clean Air Act as amended in 1977, except as noted below.

* * * * *

[FR Doc. 82-13052 Filed 5-12-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81

[A-5-FRL-2063-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving the State of Ohio's sulfur dioxide (SO_2) emission limitations for portions of the following counties: Athens County: Columbus and Southern Ohio Electric (C&SOE)—Poston, Hamilton County: DuPont—Fort Hill, Montgomery County: Dayton Power and Light-Tait and Hutchings, Pike County: Southern Wood Piedmont, Seneca County: Union Carbide Fostoria Plant, and Wayne County: Orrville Municipal Power Plant. Additionally, EPA is redefining the SO_2 attainment area for Hamilton County into two distinct attainment areas. These revisions are based on the request and the supporting data submitted by the State of Ohio.

EFFECTIVE DATE: This final rulemaking becomes effective on June 14, 1982.

ADDRESSES: Copies of the Docket #5A-80-3 are on file for copying and inspection during normal business hours at the following address. (It is recommended that you telephone the contact person given below before visiting the Region V office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, 11th Floor, Chicago, Illinois 60604

Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460

Copies of the Ohio Administrative Code (OAC) Rules for this SIP revision are available for inspection in the Docket #5A-80-3 cited above and at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control Division of Authorization and Compliance, 361 East Broad Street, 6th Floor, Columbus, Ohio 43215

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio at 886-6088.

SUPPLEMENTARY INFORMATION: On November 13, 1981 (46 FR 55994), EPA proposed to approve the State of Ohio's sulfur dioxide emission limitations for the following sources: Athens County: Columbus and Southern Ohio Electric (C&SOE)—Poston, Hamilton County:

DuPont—Fort Hill, Montgomery County: Dayton Power and Light—Tait and Hutchings, Pike County: Southern Wood Piedmont, Seneca County: Union Carbide Fostoria Plant, and Wayne County: Orrville Municipal Power Plant. Additionally, EPA proposed to redefine the SO_2 attainment area for Hamilton County into two distinct attainment areas. The purpose of the redefinition is to restrict the size of the area that is affected by a previously established baseline date, pursuant to the Prevention of Significant Deterioration (PSD) Regulations (45 FR 52676) and section 107(d)(5) of the Clean Air Act.

Public Comment

EPA received three letters containing comments from the State of New York, the State of Connecticut and one affected industry.

Comment: EPA has failed to apply the best available modeling tools to assess the interstate impact of the Poston Power Plant.

Response: There are no models or modeling techniques approved by EPA that are currently available to assess long range impacts for regulatory purposes. EPA reference models, which are only valid to 50 kilometers (km) from the source, were used to evaluate the Poston plant.

Comment: EPA has failed to comply with section 110(a)(2)(E) and 126 of the Clean Air Act (CAA) in approving the Poston SIP revision.

Response: Pursuant to Sections 110(a)(2)(E) and 126 of the CAA, the EPA has reviewed its action for potential interstate impacts. The only state within 50 km of Poston is West Virginia. There are no SO_2 Non-attainment areas in West Virginia within 50 km of Poston. The Poston revision also causes no problem with PSD increment consumption since the baseline date has not been triggered in Athens County, Ohio or any other nearby attainment counties in which Poston may have a significant annual impact.

Specifically, the Poston Plant is 45 km from West Virginia in the southeastern modeling quadrant. The emission modeling data predict a 3-hour concentration of 400 ug/m^3 at a distance of 12.5 km. The 3-hour concentrations decrease rapidly and are already well below the ambient standard 32.5 km from the West Virginia border. Consequently, no violations due to the Poston Plant are expected to occur in West Virginia.

In addition to Poston, EPA also reviewed the other six sources included in this rulemaking notice for potential interstate impacts. For Southern Wood Piedmont, Union Carbide, Dayton Power & Light—Tait, and the Orrville Municipal Power Plant, the Ohio regulations represent either no change or a reduction in current allowable SO_2 emissions. Accordingly, the interstate impact from these four sources will not increase as a result of this revision.

For Dayton Power and Light—Hutchings, the Ohio regulations represent a net increase in allowable emissions. Indiana is the only State within 50 km of Hutchings. There are no Indiana PSD areas within 50 km. There is one Indiana SO_2 nonattainment area located 45 km away. An EPA reference screening analysis demonstrated, however, that the revision will not significantly increase Hutchings' impact in the Indiana nonattainment area.

For DuPont-Fort Hill, the Ohio regulations represent an increase in allowable emissions. Indiana and Kentucky are the only States within 50 km of DuPont. There are no Indiana PSD areas but there are some Kentucky PSD areas within 50 km. The revision will not consume any increment in Kentucky, however, since the Ohio SIP limit reflects DuPont's actual emissions during the Kentucky baseline year.

The DuPont revision will also not threaten the ambient standards in either Indiana or Kentucky. There are no SO_2 nonattainment areas in these two states within 50 km of DuPont. Furthermore, the Ohio EPA SIP modeling demonstrated that DuPont (and other southwest Hamilton County sources) will not cause any violations in Indiana or Kentucky. Therefore, EPA has determined the Ohio actions are consistent with section 110(a)(2)(E) and section 126.

Comment: The tall stack provisions of the Clean Air Act, as amended in 1977, were not properly applied to the Poston Power Plant.

Response: EPA maintains that the modeled stack height credits for the Poston stacks were appropriate. Review confirms the credits were based on the formula specified by current regulation (proposed Jan. 12, 1979 (44 FR 2610) and October 7, 1981 (46 FR 49814); finalized February 8, 1982 (47 FR 5864)). EPA maintains that the formula for determining the modeled stack height credit is consistent with section 123 of the Clean Air Act.

Comment: The EPA should have modeled the Poston SO_2 emissions for their effect on particulate matter levels in other states.

Response: EPA's current approved models are not capable of analyzing the effect of SO_2 emissions on particulate levels. These actions only affect SO_2 emission limits and the modeling results only characterize ground level SO_2 concentrations. Models capable of analyzing particulate impacts on SO_2 emissions are being developed, but their predictive accuracy is still under evaluation. Application of these models at the time would therefore be premature.

Comment: EPA actions are wrongfully increasing sulfate concentrations in downwind states.

Response: At the present time, there are no national standards for sulfates that EPA is authorized to consider in evaluating the impact of the Ohio SO_2 plan. However, sulfates are being evaluated as a part of EPA's review for sulfur oxides and particulate matter, pursuant to section 109(d)(1) of the CAA. Reference can be made to EPA's proposed criteria notice published March 6, 1981 at 46 FR 15569.

Comment: EPA has failed to develop a record on the interstate impacts or respond to earlier comments by various states.

Response: As set forth above, EPA has developed an adequate record on interstate impacts. EPA has also considered the previous comments submitted by various states in its development of this final action. Hearings on the specific topic of aggregate impact of midwestern SO_2 sources on acid rain and interstate transport have been held June 18–19, 1981 in Washington, D.C., pursuant to a section 126 petition filed by New York and Pennsylvania (No. A–10–09). EPA will, if necessary, reevaluate the adequacy of this SIP revision when the findings on New York's section 126 petition become available.

Comment: Is the redefinition of Hamilton County attainment areas being done to avoid analysis of PSD increment consumption?

Response: The redefinition of the Hamilton County attainment areas is appropriate and fully approvable. The redefinition of the areas obviated the need for PSD analysis and was authorized to more accurately reflect the true extent of the baseline area consistent with the current PSD regulations.

Comment: Why do the urban model dispersion rates produce higher concentrations in Montgomery County than the rural ones?

Response: There are several differences between EPA's urban and rural models, but one of the most significant is different dispersion coefficients. With the urban model there is both more horizontal and vertical dispersion. The difference between the

urban and rural vertical dispersion rates is greater than the difference between the two horizontal dispersion rates. This leads to greater maximum impacts with the urban model since the plume is predicted to reach the ground more quickly.

Comment: One commentor asked for further explanation of the status quo emission limit for Union Carbide.

Response: As discussed in the Technical Support Document for the Union Carbide SIP revision (July 31, 1981), OEPA intended to set a status quo limit for Union Carbide. Due to erroneous information, however, a much tighter limit was incorrectly set. Upon receipt of corrected data, OEPA performed a reference modeling analysis to demonstrate that the true status quo emission level would protect the NAAQS. Based on this attainment demonstration, EPA proposed to approve the revised emission limit for Union Carbide.

Comment: One commentor expressed displeasure with the lack of detail in EPA's Notice of Proposed Rulemaking.

Response: EPA maintains that the **Federal Register** notice provided an adequate summary of the proposed rulemaking actions and their technical bases. In addition, more detailed technical information relating to EPA rulemaking action was found in associated technical support documents which were available to the public, as mentioned in the November 13, 1981 notice. Furthermore, a contact person is provided in each notice in order to provide any additional information or answer any questions the public may have.

Final Determination

Based on EPA's review of the technical support data and the public comments received, EPA has determined that approval of the State of Ohio's emission limitations for the counties listed below will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide nor violate Section 110(a)(2)(E) of the Act. Therefore, EPA today takes final action to approve the emission limitations for the following portions of the Ohio SO_2 plan: Athens County (Columbus and Southern Ohio Electric (C&SOE)—Poston), Hamilton County (DuPont—Fort Hill), Montgomery County (Dayton Power and Light—Tait and Hutchings), Pike County (Southern Wood Piedmont), Seneca County (Union Carbide Fostoria Plant). Additionally, EPA approves the redefinition of the SO_2 attainment area for Hamilton County into two distinct attainment areas.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new regulations or if it chooses, challenging the new regulations. In some instances, the present emission control regulations contained in the federally-approved SIP are different from the regulations currently being enforced by the State. In these situations, the present federally-approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally-approved regulations. Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new regulations. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemption granted will be reviewed and acted on by EPA.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It will impose no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation if promulgated is not Major because it merely approves regulations which are already effective in the State of Ohio.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172, Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

List of Subjects

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Title 40 of the Code of Federal Regulations Chapter I, Part 52, and Part 81 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. Section 52.1870(c) is amended by revising subparagraph (25) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(25) The following information was submitted to USEPA regarding the Ohio Sulfur Dioxide Standards

(i) On February 12, 1980 the Director of the Ohio EPA submitted the Ohio Administrative Code (OAC) Rules 3745–18–01 to 3745–18–94, Sulfur Dioxide Standards adopted on November 14, 1979 effective December 28, 1979.

(ii) Ohio EPA sent technical support for the Ohio Sulfur Dioxide Standards on September 12, 1979, October 23, 1979, May 16, 1980, March 27, 1981, May 5, 1981, July 15, 1981 and September 24, 1981.

(iii) The following regulations were withdrawn by the Governor of Ohio on May 16, 1980; OAC Rules 3745–18–08(H), 3745–18–15(B), 3745–18–53(E), 3745–18–63(K), 3745–18–77(B) and 3745–18–90(C). These rules are applicable to the following plants: Cairo Chemical Corporation in Allen County, Crystal Tissue Company in Butler County, U.S. Steel Corporation, Lorain—Cuyahoga Works in Lorain County, Bergstrom

Paper Company in Montgomery County, Mead Corporation in Ross County and Shell Chemical Company in Washington, County.

(iv) The following regulations were withdrawn by the Governor of Ohio on December 19, 1980 only as it applies to the B.F. Goodrich Company, Avon Lake Chemical Plant in Lorain County; OAC 3745–18–53(A). These regulations are still applicable to other facilities in Lorain County.

(v) The following regulations were withdrawn by the Governor of Ohio on February 13, 1981; OAC Rules 3745–18–49(J) which is applicable to the Ohio Rubber Company in Lake County and 3745–18–80(D) which is applicable to the Union Carbide Corporation in Seneca County.

(vi) The Governor of Ohio submitted a revised OAC Rule 3745–18–80(D) which is applicable to the Union Carbide Corporation in Seneca County on April 30, 1981.

2. Section 52.1881(a) (4) and (8) is amended as follows:

§ 52.1881 Control strategy: Sulfur dioxide (sulfur dioxide).

(a) * * *

(4) Approval—USEPA approves the sulfur dioxide emission limits for the following counties: * * * Athens County, Auglaize County, * * * Hamilton County, Hancock County * * * Montgomery County (except Bergstrom Paper and Miami Paper), * * * Pike County (except Portsmouth Gaseous Diffusion Plant), Wayne County, Williams County * * *

(8) No Action—USEPA is neither approving nor disapproving the emission limitations for the following counties on sources pending further review: * * * Allen County (Cairo Chemical), Butler County, * * * Gallia County (Ohio Valley Electric Company—Kyger Creek, and Ohio Power—Gavin), Lake County * * * Montgomery County (Bergstrom Paper and Miami Paper), * * * Pike County (Portsmouth Gaseous Diffusion Plant), * * * Washington County (Shell Chemical Company and Ohio Power—Muskingum River), and Wood County * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. Section 81.336 is amended by adding reference to Hamilton County as follows:

§ 81.336 Ohio.

OHIO—SULFUR DIOXIDE

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Hamilton:				
The City of Cincinnati bounded on the west by I75 and U.S. Route 127, and on the south by the Ohio and Little Miami Rivers; the Cities of Norwood, Fairfax Silverton, Golf Manor, Amberly, Deer Park, Arlington Heights, Elwood Place, and St. Bernard.			*	
The remainder of Hamilton County			*	
* * *	*	*	*	*

[FR Doc. 82–13061 Filed 5–12–82; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. E–79]

Adjustments; Shipping-Type Discrepancies in GSA or DOD Shipments

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation raises the minimum line item dollar values required for shipping-type discrepancies in GSA or DOD shipments to $50 for reporting and $100 for billing adjustments. This change is necessary because the costs associated with processing discrepancies have increased significantly.

DATES: Effective date: May 13, 1982.

Expiration date: April 22, 1983.

Comments due on or before: October 29, 1982.

ADDRESS: Comments should be addressed to: General Services Administration (FSR), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Jeremiah, Director, Office of Requisition Processing and Control (703–557–0400).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

General Services Administration,
Washington, D.C. 20405, April 14, 1982.

Federal Property Management Regulations; Temporary Regulation E–79

To: Heads of Federal agencies.

Subject: Adjustments.

1. *Purpose.* This temporary regulation raises the minimum line item dollar values required for reporting shipping-type discrepancies in General Services Administration (GSA) or Department of Defense (DOD) shipments and for the processing of billing adjustments.

2. *Effective date.* This regulations is effective upon publication in the **Federal Register.**

3. *Expiration date.* This regulation expires April 22, 1983 unless sooner revised or superseded.

4. *Applicability.* The provisions of this regulation apply to all civilian agencies authorized to requisition from GSA and DOD sources.

5. *Background.* The costs associated with reporting and processing discrepancies have increased significantly since $25 was established as the cutoff point for reporting shipping and transportation-type discrepancies. In addition, DOD has raised the reporting requirement for shipping-type (item) and packaging discrepancies to values of more than $50, and set the minimum for billing adjustments at $100. Since these dollar criteria apply to net gains as well as net losses, the impact on agencies should be minimal in terms of overall adjustment dollars, but significant in terms of staff hour savings. Accordingly, a decision has been made to increase minimum line item dollar values in Subpart 101–26.8. Reporting requirements are set lower than adjustment levels to allow supply sources to accumulate quality of service records and to take remedial action as appropriate.

6. *Action required.* a. FPMR 101–26.803–2, Adjustments, is amended to read:

GSA and DOD will adjust billings whenever the difference involved, resulting from over or under charges or discrepancies or deficiencies in shipments or material, exceeds $100 per line item on a bill submitted in accordance with the provisions of this Subpart 101–26.8 and the GSA Handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings.

b. GSA Handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings (FPMR 101–26.8) is changed to read:

(1) Chapter 3–5a(1): When the value of the discrepant material exceeds $50 per requisition line item when:

(2) Chapter 5–10a(1) and (2): (1) When discrepancy reports (SF 361, 363, 364, or 368) are involved, the DOD billing office will review and investigate the reported discrepancy and forward a response to the reporting activity and/or ultimate consignee indicating whether a billing adjustment will or will not be authorized. Adjustments will not be processed when the loss or gain involved is $100 or less per line item billed (detail billing card). Billed offices shall withhold submission of requests for billing adjustments (FAE cards) until 60 calendar days after receipt of the reply to the discrepancy report advising that a billing adjustment is being processed. Losses or gains of $100 or less shall be absorbed by the billed activity. (The dollar limitation in requesting or obtaining billing adjustments does not alter the requirement for the preparation and submission of a discrepancy report as prescribed in chapters 2, 3, or 4.)

(2) When discrepancy reports are not involved, e.g., billing errors, request should not be submitted when the amount of the over or under billing is $100 or less on a line item billed except for advice codes 019, 034, and 041. (Losses or gains shall be absorbed by the billed activity.) For advice code 034 (material received but billing not received), a request for billing should not be submitted prior to 60 calendar days after receipt of the material or a billing.

(3) Chapter 5–22a: a. *General.* Adjustments in billings should not be requested and will not be made whenever the amount involved is over and under charges or the value of the discrepancy or deficiency involved represents an amount of $100 or less on any line item on a bill. This is not to be construed to eliminate billings and payments for requisitioned items of $100 or less.

7. *Agency comments.* Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to the General Services Administration (FSR), Washington, DC 20406, no later than March 31, 1982, for consideration and possible incorporation into a permanent regulation.

8. *Effect on other directives.* This temporary regulation amends FPMR 101–26.803–2 by increasing the minimum value required for a billing adjustment from $25 to $100.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82–13076 Filed 5–12–82; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6242

[OR–20220]

Oregon; Partial Revocation of Public Water Reserve No. 48

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order creating Public Water Reserve No. 48. This action will restore 40 acres to full operation of the public land laws generally, including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of February 27, 1917, which withdrew certain lands for public water reserve purposes, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 37 S., R. 11 E.,
Sec. 27, NE¼SW¼.
The area described contains 40 acres in Klamath County.

2. At 10 a.m. on June 11, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 11, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 11, 1982, the land will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and will remain open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 6, 1982.

[FR Doc. 82–13079 Filed 5–12–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6243

[C–13275]

Colorado; Public Land Order No. 6103, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct a typographical error in a land description contained in Public Land Order No. 6103 of January 28, 1982.

EFFECTIVE DATE: May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The description of a parcel of land in Public Land Order No. 6103 of January 28, 1982, as published in FR Doc. 82–3064 appearing on page 5417 in the issue of Friday, February 5, 1982, in the first column under T. 19 S., R. 71 W., line 2 reads "sec. 2, S¼." It is hereby corrected to read "sec. 2, S½."

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 6, 1982.

[FR Doc. 82–13105 Filed 5–12–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6244

[A–023002]

Alaska; Withdrawal of Lands for the Department of the Army

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,340 acres of public land from operation of the surface land and mining laws. The land has been and will remain open for mineral leasing. The Department of the Army will continue to use the land at Fort Richardson, Alaska for cold weather survival and infantry tactical training purposes for a period of twenty years.

EFFECTIVE DATE: May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Beau McClure, Washington, D.C. Office, 202–343–6511 or Robert E. Sorenson, Bureau of Land Management, 701 C. Street, Box 13, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described Lands are withdrawn from settlement, sale, location, entry selection, or other disposal under the public land laws, including the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, the Alaska Statehood Act, 72 Stat. 339, and the mining laws, 30 U.S.C. Ch. 2, but not the mineral leasing laws, and are reserved for use by the Department of the Army for the Fort Richardson-Davis Range:

Seward Meridian

T. 12 N., R. 1 W.,
Sec. 6, W½;
Sec. 7, W½;
Sec. 18, N½NW¼, N½S½NW¼.
T. 12 N., R. 2 W.,
Secs. 1 and 2;
Sec. 3, N½NE¼, SE¼NE¼;
Sec. 11, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 12;
Sec. 13, N½N½, N½S½NE¼, N½SE¼ NW¼.

The area described aggregates approximately 3,340 acres near Anchorage, Alaska.

2. The Department of the Army shall control and manage off road vehicle use to minimize and prevent disturbance to fragile slopes and soils.

3. The Department of the Army shall not allow further unexploded ordance contamination. Prior to returning the lands to public land status, the lands shall be made safe for nonmilitary use.

4. The Department of the Army has the authority and responsibility for management of lands under their jurisdiction for other than military uses. This authority will be used in carrying out all surface management activities. The authority and responsibility for mineral leasing shall be retained by the Department of the Interior. Any mineral leasing shall be subject to concurrence of the Secretary of the Army or his designee.

5. This withdrawal will not affect or alter any existing agreements, memorandum of understanding or other cooperative agreements relating to existing land use, management plans, or cooperative projects.

6. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
May 6, 1982.

[FR Doc. 82-13079 Filed 5-12-82; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–176; Amdt. Nos. 173–152]

Specification and Usage Requirements for 3AL Seamless, Aluminum Cylinders; Correction

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects final rule (46 FR 62452, December 24, 1981) and correction document (47 FR 13816) relating to new aluminum cylinders which are designated DOT specification 3AL. This action is necessary to correct editorial and typographical errors contained in § 173.23(c).

EFFECTIVE DATE: July 2, 1982. However, shipments may be prepared, offered for transportation, and transported in accordance with these amendments beginning April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur Mallen, Chief, Technical Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202–755–4906).

In consideration of the foregoing, the following corrections are made in FR Docket No. 82–8405 appearing at page 13816 in the issue of April 1, 1982.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. On page 13817, § 173.23(c), the fourth and fifth lines are corrected to read as follows:

§ 173.23 Previously authorized packaging.

(c) * * * DOT exemption E6498, E7042, E7446, E7477, E8107, E8364, or E8422, * * *

(49 U.S.C. 1803, 1804, 1806; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document (a) will not result in a "major rule" under the terms of Executive Order 12291; (b) is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034); and (c) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and an environmental assessment are available for review in the docket.

Issued in Washington, D.C., on May 6, 1982.

L. D. Santman,
Director, Materials Transportation Bureau.

[FR Doc. 82-13013 Filed 5-12-82; 8:45 am]
BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 10)]

Rail General Exemption Authority—Hops

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission exercises its authority under 49 U.S.C. 10505 to exempt hops (STCC No. 01–192) from regulation. The exemption will permit rail carriers to compete more effectively with motor carriers for this traffic. The exemption was requested by the Union Pacific Railroad Company and the Burlington Northern Railroad Company.

EFFECTIVE DATE: The rule adopted here will become effective on June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Donald Shaw (202) 275–7656.

SUPPLEMENTARY INFORMATION: In the notice instituting this proceeding, served February 8, 1982 (47 FR 5912, February 9, 1982), we proposed, under authority of 49 U.S.C. 10505 as amended by section 213 of the Staggers Rail Act of 1980, Pub. L. 96–448, to exempt hops (STCC No. 01–192) from regulation. The proposed exemption was requested by the Union Pacific Railroad Company (UP) and the Burlington Northern Railroad Company (BN).

The Miller Brewing Company, Pabst Brewing Company, Pfizer, Inc., and the United States Brewers Association, Inc. (USBA) [1] have filed comments supporting the exemption. There is no opposition to it. The UP and BN have submitted a joint letter stating that they have no additional comments to add to the facts stated in their petition

[1] USBA also requests that "hops pellets (STCC–01–192–10)" be specifically exempted in this proceeding. For interpretation of this exemption, STCC–01–192 includes hops pellets.

initiating the proceeding, and that those facts, as supplemented by the observations made in our prior notice, amply justify the exemption of hops. We think the evidence presented in the railroads' petition and the other parties' comments indicate that exemption is warranted.

49 U.S.C. 10505 authorizes the Commission to exempt certain traffic from regulation when: (1) Regulation is not necessary to carry out the transportation policy stated in 49 U.S.C. 10101a and (2) either the service is of limited scope or abuses of market power are unlikely to occur. All of these criteria are met.

Important parts of the transportation policy stated in section 10101a are the policies to allow, to the maximum extent possible, competition to establish reasonable rates for rail transportation, to minimize the need for Federal regulatory control over the rail transportation system, and to ensure and promote effective competition between rail carriers and other modes (section 10101a (1), (2), (4), and (5)). The comments have not only demonstrated that regulation is unnecessary to carry out the transportation policy, but that regulation may hamper the furtherance of this policy. The UP and BN have explained that hop transportation by motor vehicle is unregulated. The railroads have maintained that they do not have the flexibility under regulation to adjust rates to compete effectively with unregulated motor carriers. All the other parties' comments indicate that the railroads' statement is correct. The parties agree that the timing of a rate publication is very important. They state that, although railroads are responsive to requests for competitive rate adjustments, rate regulation prevents them from adjusting rates to meet their unregulated motor carrier competition in a timely manner. The exemption will alleviate this problem, permitting rail carriers to respond to market forces as quickly as motor carriers, and enhancing intermodal competition. Thus, the exemption will further the transportation policy of section 10101a.

The railroads' submission demonstrates that the service is of limited scope. The tonnages are low (37,726 tons in 1980), and the production area is limited (4 states: Oregon, Idaho, Washington, and California).

In addition, abuses of market power are very unlikely to occur. As stated in our prior notice, the rail market share has been declining (from 38 percent in 1971 to 28 percent in 1980), and hops appear easily divertable to motor carriage, since they are moved in 1-car lots (an average of 25.5 tons). The parties' comments also support the view that hops are easily divertable to motor carriage. Miller Brewing Company, for example, states that, although it once received 100 percent of its hops by rail, it presently receives 100 percent of its hops by exempt truck. Pabst Brewing Company maintains that many motor carriers are using hops as a backhaul and are willing to be very competitive in order to obtain this traffic.

PART 1039—CONTRACTS AND EXEMPTIONS

§ 1039.11 [Amended]

Accordingly, 49 CFR 1039.11 is amended by adding the following to the list of exempt commodities between

01	143...Peanuts and
01	194...Potatoes, sweet:
*	* * * * *
01	192.....Hops.
*	* * * * *

This action does not significantly affect either the quality of the human environment, conservation of energy resources.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

(49 U.S.C. 10505, 5 U.S.C. 553)

Dated: May 6, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13107 Filed 5-12-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 93
Thursday, May 13, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AO F&V 932-A4]

Olives Grown in California; Recommended Decision and Opportunity to File Written Exceptions to Proposed Further Amendment of the Marketing Agreement and Marketing Order (Partial)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on the proposed amendment of the olive marketing agreement and order program. The proposed amendment would: Modify grade and size regulations under the order; change the definitions of crop year and fiscal year; change the name, add a public member to, and modify other procedures of the Olive Administrative Committee; and make minor changes in the operation of the marketing order. The intent of the proposed changes is to improve the effectiveness of the program.

DATE: Written exceptions to this recommended decision must be filed by May 28, 1982.

ADDRESSES: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, Fruit and Vegetable Division, Agriculture Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding Notice of Hearing, issued November 13, 1981, and published in the November 18, 1981 issue of the **Federal Register** (46 FR 56620).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is not subject to the requirements of Executive Order 12291.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated handlers.

It has been determined that a comment period of less than 60 days if warranted. The proposed amendment, if adopted, should be effective no later than August 1, 1982. That date would represent the first day of the crop year as proposed to be revised herein, and procedures and handlers need to know of any changes as soon as possible so they can plan their operations accordingly.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed further amendment of the marketing agreement and Order No. 932, regulating the handling of olives grown in California, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from the Hearing Clerk or Richard P. VanDiest, AMS, F&V, 1130 "O" Street, Room 3114, Fresno, California 93721, Telephone (209) 487-5175.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

This proposed amendment was formulated on the record of a public hearing held in Fresno, California, on December 8 and 9, 1981. The hearing notice was published in the November 18, 1981 issue of the **Federal Register** (46 FR 56620). That notice contained proposals submitted by the Olive Administrative Committee and the Fruit and Vegetable Division, AMS.

Material Issues: The material issues of record are as follows:

(1) Change the name of the administrative agency to California Olive Committee.

(2) Change the crop year to the 12-month period ending on July 31 of each year and the fiscal year to the 12-Month period ending on December 31 of each year.

(3) Include "segmented (wedged)" as a style of limited use olives.

(4) Provide for addition of a public member to the committee.

(5) Clarify nomination procedures for persons to fill producer member positions on the committee, including authority to conduct nominations by mail.

(6) Broaden the authority for alternate members' attendance at meetings and authorize payment of expenses incurred by alternate members of the committee under specified circumstances.

(7) Authorize changes in committee voting requirements when voting is by mail.

(8) Authorize interest and late payment charges on overdue assessments.

(9) Change reporting procedures on research projects.

(10) Base minimum size requirements for natural condition olives and grade and size requirements for canned olives on the current U.S. Standards for Grades of Canned Ripe Olives as may be amended or modified.

(11) Provide a procedure for certifying olives as to size at the incoming level to meet outgoing regulation requirements.

(12) Make conforming changes.

This is a partial recommended decision. The issue of authorizing handler assessment credit for brand advertising will be dealt with in a subsequent decision.

Findings and Conclusions: The following findings and conclusions on the material issues are based on the record of the hearing:

(1) The definition of "committee" in § 932.16 should be amended to change the name of the agency which locally administers the order from the Olive Administrative Committee to California Olive Committee. All of the olives regulated under the order , and for practical purposes, all of the olives

grown in the United States, are grown in the State of California. It is appropriate that this fact be reflected in the name of the committee. The name of California Olive Committee would more clearly identify the agency and the growing or regulated area. This should be helpful in committee activities related to advertising and public relations work.

(2) The order defines the terms crop year and fiscal year as that period beginning September 1 of any given year and ending August 31 of the following year. At the time the order was promulgated, this definition of crop year and fiscal year identified the period of time in which most of a season's olive crop was harvested and marketed. Harvesting began during September and continued through November of each year. Most olives were canned and marketed from December to August of the same crop year in which they were harvested.

Subsequent changes in cultural practices and the introduction of massive irrigation projects into the southwestern San Joaquin Valley of California have resulted in a substantial increase in acreage of olive trees in that more southerly area. Prior to the development of the irrigation projects, most olives were grown in the eastern portion of the San Joaquin Valley. Due to different climatic and soil conditions in the southwestern San Joaquin Valley, olive harvesting now begins in August. In view of this, the definition of crop year should be changed to that period beginning August 1 of a given year and ending July 31 of the following year. However, it may be desirable in the future to establish a different crop year should harvesting, marketing or other practices for olives materially change. Therefore, authority should be included in § 932.19 to provide for such establishment subject to recommendation by the committee and approval by the Secretary.

The committee currently meets in August of each year, prior to harvest, to approve and recommend to the Secretary of Agriculture a budget and assessment rate for the subsequent fiscal year. Inasmuch as the assessment rate is applied to the regulated volume handled, substantial variation in assessment revenue may occur when the actual crop size varies significantly from the pre-harvest estimate. This complicates budgetary planning and implementation of the committee's market development program because the level of assessment income is uncertain at the time the budget is planned. In order to have the most accurate crop data available and to more closely correlate assessment revenue with expenses, the definition of fiscal year should be changed to that period beginning January 1 of a given year and ending December 31 of the same year, thus allowing recommendations for budget and assessment rates to be based on a known quantity of olives handled.

However, it may develop that for convenience of management, or for other good and sufficient reasons not now apparent, it may be desirable to establish a fiscal period other than the one ending December 31. Therefore, authority should be included in § 932.19(b) to provide for such establishment subject to approval by the Secretary pursuant to recommendation of the committee. Hence, it is concluded that fiscal period should be defined as hereinafter set forth to provide this flexibility.

As conforming changes, "crop year" should be changed to "fiscal year" in §§ 932.35(g), 932.35(h), 932.39(b), 932.40(a) and 932.45(d). "Fiscal year" should be changed to "crop year" in § 932.39. References to August 15 in §§ 932.35(g), 932.50 and 932.68(c) should be changed in accordance with the change in the definitions of crop year and fiscal year. Accordingly, in § 932.35(g) the phrase "not later than August 15" should be changed to "not later than December 15." This refers to the date by which the committee must submit to the Secretary its recommended budget of anticipated expenses and the proposed assessment rate for the fiscal year beginning January 1. In § 932.50 the phrase "not later than August 15 of each crop year" which sets the date by which the committee must hold its annual meeting for the purpose of formulating a marketing policy for the oncoming crop year, should be changed to "at least 14 days prior to the start of each crop year." In § 932.68(c) the reference to the date by which the Secretary must announce termination of the order, for such termination to be effective in the current crop year, should be changed from August 15 to July 15. Such dates and periods of time are comparable to those currently required in the order for such action to be taken.

(3) The order should be amended to include segmented (wedged) olives and to delete quartered and minced olives from the styles of limited use olives included in § 932.23a. Segmented olives are defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52, 46 FR 39563) as olives that are pitted and then cut lengthwise into three or more approximately equal parts. Thus, segmented style also includes olives cut into four equal parts, or quartered. The industry refers to segmented olives as wedged style olives and they are used primarily by the foodservice industry as pizza toppings and salad garnishes. This style of olive was introduced in 1972 and there has been increased acceptance and usage each year.

The order now authorizes the committee, with approval of the Secretary, to specify additional styles of limited use olives and establish requirements applicable to such styles. Under this authority, an administrative rule (§ 932.110) was promulgated specifying quartered and segmented olives as additional styles which could be produced from limited use size and larger olives. The proposed revision of § 932.23a makes no substantive change but merely includes the segmented (wedged) style in the basic provisions of the order among the other limited use styles. Since segmented style means the olive has been pitted and cut into three or more approximately equal parts, the term "quartered" is superfluous and is therefore not included in the recommended amendment. Section 932.23a currently lists chopped and minced styles among the styles for limited use. The U.S. Standard was amended to delete the term "minced", and minced and chopped styles were combined into one style of olives, identified as "chopped". Therefore, the term "minced" should be deleted from § 932.23a.

(4) The order should be amended, as hereinafter set forth in § 932.25, to provide that a public member and alternate public member may be added to the committee. Relative thereto, provision should be made for appropriate eligibility requirements and procedures for nominating persons to fill the public member position under the order. Provision should also be made in § 932.36 to increase by one the committee quorum requirement and to increase by one the number of votes required to decide on grade and size regulations to reflect the addition of a public member to the committee.

Such public member could be helpful in bringing the viewpoint of the general public into the committee's deliberations. Such a viewpoint could be valuable in planning, implementing, and evaluating the committee's market development plans. A public member should serve in the same capacity as any other member and thus would be able to initiate proposals to be considered by the committee, and vote on all committee actions. The public

member should not be a paid position such as a public consultant, but the public member should be reimbursed for expenses incurred in the performance of committee duties. A public member should not be engaged in the commercial production, marketing, buying, grading or processing of olives, nor should such member be an officer, director, member or employee of any firm engaged in those activities. This is not meant to preclude from the position someone who might have a few olive trees in their yard

Since all meetings of the committee are held in California, the public member should be a resident of that State to minimize travel and related expenses. In the event that the public member moves from the State of California or becomes financially involved in the olive industry, such member would become ineligible to serve and a replacement would be selected and nominated, as soon as possible, for the Secretary's approval and appointment. The terms of office of the public member and public member alternate, insofar as possible, should coincide with those of producer and handler members, that is, a two-year term beginning June 1 and ending on May 31 of odd numbered years.

Section 932.36 prescribes voting requirements and, among other things, requires at least five handler members and five producer members to be present to obtain a quorum. It also requires at least five affirmative votes by producer members and five affirmative votes by handler members to approve any recommendation to the Secretary relative to grade or size regulations. Since the public member is neither a producer nor a handler, the public member's vote should not be categorized into either group under § 932.36.

Hence, the requirements of that section with respect to quorum and voting requirements should continue to relate to grower and handler members as specified. However, when a public member is added to the committee, the quorum and voting requirements should increase by one to reflect the additional member. Therefore, in that event, the quorum requirement should be at least 11 members of whom at least 5 should be producer members and at least 5 should be handler members; and committee recommendations as to grade and size should require an affirmative vote of 11 members of whom at least 5 should be producer members and at least 5 should be handler members.

If the order is amended as proposed, the committee should, as soon as practicable, recommend appropriate rules and regulations which would define the procedures for nominating persons for the position of public member and alternate public member. Several methods were proposed at the hearing to identify and select potential candidates and determine their qualifications to serve in the position. For example, one method would involve a subcommittee interviewing prospective nominees and choosing several of the best qualified candidates. After reviewing the candidates' qualifications and the subcommittee's recommendations, the committee could present to the Secretary its recommendation for the public member and alternate public member. Other methods of identifying, selecting, and nominating candidates should also be considered by the committee. The committee should develop such rules and regulations as soon as possible after amendment proceedings are completed, with the objective of nominating a public member for the next term which begins June 1, 1983. In order to allow time for the Secretary to make such selection, the committee should submit the names of nominees for public member and alternate member prior to April 16 of any year in which nominations are made.

(5) The order requires that nominees to fill grower member positions on the committee shall be nominated at meetings of growers in each of the representative districts. At such meetings each grower entity may cast one vote for each member and alternate member nominee to be nominated from that district. Proponents expressed dissatisfaction concerning the lack of grower participation in nomination meetings and proposed that such participation could be encouraged if growers were permitted a vote by mail. It was contended that requiring growers to attend in person in some instances causes a hardship in that some growers must travel relatively long distances at their own expense. It was indicated that if suitable procedures could be worked out for obtaining the names of prospective grower nominees in each district, and presenting such to growers on a ballot to be returned by mail, one growers would participate. Proponents testified that grower meetings should be held in all districts. At these meetings, growers could propose candidates for the nomination recess. Other methods of proposing candidates could also be developed by the committee and recommended to the Secretary for adoption as an administrative rule. Allowing such a procedure to be developed as an administrative rule would permit necessary clarification and development of a workable procedure and also allow for further modification if deemed necessary by the committee.

For similar reasons, the committee would develop, also for adoption as an administrative rule, mail balloting procedures for nomination of producer and alternate producer members. One procedure could involve mailing ballots to all growers in a district. The names of all candidates for nomination would be on the ballot and producers would choose candidates for both the member and alternate member positions. Candidates, in order to be nominated, would have to receive a majority of the votes cast. If no candidates received such a majority the balloting procedure would have to be repeated. If for some reason such procedures for the development of a list of candidates for nomination and for mail balloting do not prove successful or desirable, the committee should have the option of holding nomination meetings for the purpose of obtaining producer member and alternate member nominees. It is therefore concluded that § 932.29 should be amended to authorize mail balloting by producers to secure nominees for producer member positions in the committee.

(6) Sections 932.30 and 932.37 should be amended to permit the committee, by majority vote, or the committee chairman to request one or more alternate members to attend any or all committee meetings, even though the respective member or members are in attendance at the same meeting, and to authorize the committee to pay expenses incurred by any or all alternate members in attending committee meetings or performing other committee duties when such is so requested.

The order does not now specifically provide for reimbursement of an alternate member's expenses incurred in attending committee meetings when the member for whom that person is an alternate attends the same meeting. This could prevent an alternate for providing valuable information to the committee. For example, alternates serve on subcommittees and, when the committee is considering a recommendation of the subcommittee, attendance by the alternate members who participated in formulating the recommendation would be desirable. Provision for reimbursement of expenses should include expenses incurred by members or alternates in attending or participating in conferences and similar industry related activities as authorized by the committee.

The authority to request attendance of alternate members at committee meetings should not be construed to mean that all alternate members should regularly be reimbursed for expenses related to attending all committee meetings. The payment of expenses of alternate members for attending meetings or performing service should be limited to those incurred when the attendance or performance of services has been requested by the committee or its' chairman. Of course, this does not preclude the attendance by any alternate at any or all meetings at such alternate's own expense.

(7) Section 932.36 currently provides that the committee may vote on issues by mail or telegram upon due notice to all members, provided that at least ten affirmative votes, of which five shall be producer member and five shall be handler member votes, shall be necessary for a vote to carry. One dissenting vote, however, prevents adoption of any proposition when voting by such method.

Assembled meetings of the committee are not held according to a set schedule. They are called when a proposition to be considered by the committee is such that discussion of the issues is deemed to be necessary. However, minor matters, or matters which have previously been discussed by the committee but for which an additional meeting would cause an undue burden on the committee's finances and the committee members' time, can be disposed of through a telegram or mail ballot. For example, the committee members could be asked to approve a budget item for which the actual amount was not known at the time of the committee meeting, but which was discussed in terms of approving up to a specific amount of money, with notice that the exact amount would be stated in a mail ballot. This procedure, which was intended to expedite decisions on generally minor matters, has been hampered by the use of the one dissenting votes were subsequently passed by the committee at an assembled meeting.

The use of mail balloting by the committee is desirable but the one vote veto has proved impractical. Therefore, § 932.36 should be amended to require at least 14 affirmative votes (15 when a public member is seated on the committee), seven of which must be producer votes and seven of which must be handler votes, for adoption of any proposition submitted to a telegraphic or mail ballot, and the one vote veto provision should be deleted. However, since there are only eight producer members, eight handler members, and an additional one public member, the 14 affirmative vote requirement (15 if a public member is seated) could prove to be more restrictive than the current requirement, i.e. five producer votes and five handler votes, with no dissenting votes. In such an event, the use of mail balloting, with its attendant savings in committee meeting costs would be frustrated. Therefore, it is concluded that the amendment should also provide that if the committee finds the 14 (or 15) affirmative vote requirement too stringent, it may recommend and the Secretary may approve changes in the number of affirmative votes required for a proposition submitted by mail balloting to carry, with the limitation that the number shall not be less than ten affirmative votes (11 if a public member is added to the committee), of which five shall be producer member votes and five shall be handler member votes, with the further limitation that any reduction in the number of affirmative votes required to pass such a proposal shall maintain the requirement of an equal number of producer and handler votes required for approval. It is therfore concluded that the order should be amended consistent with the foregoing.

(8) Section 932.39(c) should be amended to provide that the committee may levy interest of late payment charges, or both, on unpaid assessments. Such charges should be at a rate recommended by the committee and approved by the Secretary. In some instances handlers have not paid assessments on a timely basis. Such handlers have the use of funds, without interest, due the committee. This is unfair to handlers who pay their assessments promptly and thus, are carrying a disproportionate share of the financial costs of the program for periods of time. Also, the committee incurs additional expenses when required to collect late assessments due to the increased correspondence generated and the time spent by management and staff to secure payment.

Currently, the committee bills the handlers on a quarterly basis, with the first 35 percent on December 1, with a due date of December 15; the next 20 percent billed on February 1, with a due date of February 15; the next 20 percent billed on April 1 with a due date of April 15; and the last 25 percent billed on June 1, with a due date of June 15. These dates and percentages are fixed, administratively, by the committee and may be adjusted from time to time. Any interest or late payment charge levied by the committee should become effective from the day after the due date of such assessment.

The establishment of an interest rate or late payment charge, or a combination of the two, should be subject to a recommendation by the committee and approval by the Secretary. An interest or late payment charge at levels approximating commercial rates in the area should discourage delinquencies. Any such rate or charge established should continue in effect until such time as the committee recommends and the Secretary approves a change.

(9) The order currently requires the committee, after the close of each crop year, to prepare and mail reports on production research and marketing research and development projects to the Secretary. In practice the committee prepares and submits such reports to the Secretary on a current and timely basis, as soon as such research activities are completed. It is desirable that all current production research and marketing research and development project reports be prepared and submitted to the Secretary as soon as the committee has the necessary material to compile the reports, and § 932.45(e) should be amended to so provide.

(10) Section 932.51 of the order provides that no handler shall process any lot of natural condition olives for use in the production of packaged olives which have not first been size-graded, either by sample or by lot and classified into separate size designations in accordance with the size designations specified in the U.S. Standards for Grades of Canned Ripe Olives, or such sizes as may be recommended by the committee and established by the Secretary. The size designations are related to the value of the olives. Generally, within each given variety group, the larger the olives, the greater the value per ton.

The size designations currently specified in the order are based on the U.S. Standards for Grades of Canned Ripe Olives which were in effect in 1971. The U.S. Standards for Grades of Canned Ripe Olives were revised in 1977 and again in 1981. In the latter revision the number of single size designations was set at 7, and now conforms with prevailing industry practices. Hence, it is concluded that the size designations in the order should be in accordance with the current U.S. Grade Standards or such modifications as may be recommended by the committee and established by the Secretary.

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Section 932.51 now provides that for purposes of the order, two additional size designations, petite and subpetite, shall be considered to be included in the designations set forth in the U.S. Grade standards. These designations are used in the industry to describe two sizes of olives smaller than the minimum size which may be used in the production of whole or pitted canned ripe olives. The order should be amended to include two other size designations: Extra Large Sevillano "L" and Extra Large Sevillano "C" and to specify the approximate count per pound and average count ranges for such additional size designations. The size designations in the current U.S. Grade standards combine the categories "Mammoth" (65 to 75 olives per pound) and "Extra Large" (76 to 88 olives per pound) into the redesignated category "Extra Large" (65 to 88 olives per pound). This designation does not afford a basis for the separation of olives of the Sevillano variety into sizes authorized, under the order, for limited use styles and whole styles. In order to effectuate this separation of styles, olives of the Sevillano variety with an average count range of 76 to 88 olives per pound and and approximate count of 82 olives per pound should be identified as Extra Large Sevillano "L" and such olives, when limited use sizes are authorized for use, may be used in limited use styles. Olives of the Sevillano variety with an average count range of 65 to 75 olives per pound and an approximate count of 70 olives per pound should be identified as Extra Large Sevillano "C" and such olives should be used in canned whole, whole pitted, or limited use styles. These average count ranges and approximate counts correspond with limited use sizes and sizes for canned whole or whole pitted styles for olives in variety Group 1, except the Ascolano, Barouni and St. Agostino varieties. The Sevillano is the only commercially grown variety in Group 1 and these requirements apply only to Sevillano olives.

The order currently authorizes adjustments in size designations for natural condition olives as appear to be warranted by the prevailing circumstances. In addition, the order should provide authority to change the names and the approximate counts and average count ranges for these four additional size designations (petite, subpetite, Extra Large Sevillano "L", and Extra Large Sevillano "C") based on a recommendation of the committee and approval by the Secretary.

Section 932.52 should be amended to base grade and size requirements for canned ripe olives on the current U.S. Grade Standards or subsequent amendments thereto. Currently, such requirements are based on the U.S. Grade Standards which became effective in 1971 (September 1, 1971). The record indicates that the current standards provide a practical basis for inspection and certification of canned ripe olives. However, should the current standards be subsequently amended, grade and size specifications in the order should be based on such amended standards. This is necessary so that the order requirements conform with any subsequent amendments to the U.S. grade standards. The order currently authorizes variations from grade standards for canned ripe olives for marketing order purposes by recommendation of the committee and approval of the Secretary. The order should also authorize, as hereinafter provided, modification of size designations for canned ripe olives for marketing order purposes by recommendation of the committee and approval by the Secretary. This would allow the committee to recommend adjustments in size designations as may be necessary to reflect changes in production and marketing of olives. As discussed further in material issue (11) this authority would also allow establishment of marketing order size designations to implement size certification for canned whole and whole pitted olives.

Testimony was given at the hearing suggesting that both incoming and outgoing regulations in the order should be based on the U.S. Grade Standards as revised in 1981. However, this proposal does not allow the necessary flexibility to permit order requirements to change with future revisions of such standards. The fact that the order currently bases grade and size designations in terms of the 1971 U.S. grade standards necessitated the request for this formal rulemaking proceeding to consider adopting the 1981 U.S. Grade Standards. If order requirements are tied to the 1981 U.S. Grade Standards, future revisions of such standards may require a subsequent amendment of the order. Formal rulemaking is time-consuming and costly both to the committee and the government. Therefore, it is concluded that grade and size requirements in the order should be in accordance with the current U.S. Grade Standards and any subsequent amendments thereto with provision for modification of such requirements as may be recommended by the committee and approved by the Secretary.

Amendment of the order to adopt the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) requires conforming changes to be made in § 932.52. Section 932.52(a)(1) should be amended to reference the most recently amended U.S. Standards for Grades of Canned Ripe Olives.

Sections 932.52(a)(2) and 932.52(a)(6) now reference size designations designated in the 1971 U.S. Standards for Grades of Canned Ripe Olives. Changes in the descriptive terms used to designate olive sizes in the recently amended U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) make such terms obsolete. Therefore, such descriptive terms should be deleted. It is concluded that the order should be amended to provide that the size designations under the order should be those contained in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) as amended, or appropriate modifications thereof, as recommended by the committee and approved by the Secretary.

(11) The record indicates that natural condition olives may be inspected and certified as meeting incoming size requirements for processing as limited use styles of olives, but during storage and processing may lose weight to the extent that the fruit may not meet the outgoing requirements for such styles. Similarly, storage and processing shrinkage may occur so that natural condition olives initially meeting a specific size requirement for processing as whole style olives may ultimately packout as a smaller size fruit. In both cases, producers may have been paid the higher prevailing price for one size fruit which is ultimately sold as another size. Such a situation is inequitable to handlers who have paid a higher price for olives eligible, at the outset, for use in outlets for a size of fruit, which is ultimately disposed of as a different size of fruit. To the extent that prices for different sizes of fruit vary, handlers and producers may gain or lose.

The proposed amendment would provide a method of certification of single sizes of natural condition olives for compliance with both incoming and outgoing regulations under the order. Under the proposal, olives meeting the specified conditions of size would be eligible for use in outlets for such size even though weight loss may occur during storage and processing. Outgoing size requirements are set in terms of the weight of individual olives in particular varietal groups.

The order should provide that when the use of limited use size olives is authorized during any crop year, any lot

of such olives may be used in the production of limited use styles without an outgoing inspection for size if the average counts per pound at the incoming level, are within the following: Variety Group 1 (except the Ascolano, Barouni, and St. Agostino varieties): 76–88, inclusive; Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties: 89–140, inclusive; Variety Group 2 olives (except the Obliza variety): 141–180, inclusive; and Variety Group 2 olives of the Obliza variety: 128–140, inclusive. Such average counts include sizes between minimum canning and limited use for each respective varietal group and are therefore an appropriate basis for certification at the incoming level. However, provision should be made in the order for changing, by recommendation of the committee and approval of the Secretary, the varietal grouping or average counts or a combination thereof to recognize changes in sizing characteristics for a particular variety or varietal group and for other reasons. It may be desirable to establish additional inspection and size certification procedures. The industry has been using, on an informal basis, certification procedures, including establishment of approximate counts (midpoints) and acceptable count ranges within the average count range, to maintain size uniformity. The committee should consider these and other recommendations for approval by the Secretary.

As indicated, size certification of limited use size olives at the incoming level would obviate the need for inspection and certification at the outgoing level if specified conditions are met. One condition specified in the hearing record is that any lot of limited use size olives remain intact. This is necessary to prevent olives which have been inspected and certified as meeting size requirements from being commingled with other olives which have not been so inspected and certified. It is essential to assure compliance with order requirements that any olives certified as to size remain under surveillance of the inspection service. The order should provide authority for the committee to recommend to the Secretary additional procedures and safeguards to assure compliance with regulations. Of course, any olives which are certified as to size, but which do not remain intact or otherwise fail to conform with established procedures and safeguards, should be subject to outgoing regulations the same as any other lot not so certified.

The order should provide that when limited use size olives are not authorized for limited use styles during any crop year, any lot of the minimum canning size olives of each variety may be used in the production of packaged olives for limited use styles without an outgoing inspection for size if the varietal groups are within certain average counts per pound at the incoming level. Such groups and average counts per pound are as follows: Variety Group 1 (except the Ascolano, Barouni, and St. Agostino varieties): 65–75, inclusive; Variety Group 1 olives of the Ascolano, Barouni and St. Agostino varieties: 65–88, inclusive; Variety Group 2 olives (except the Obliza variety): 128–140, inclusive; and Variety Group 2 olives of the Obliza variety: 106–121, inclusive. Such average count ranges are comparable to the minimum canning size for each respective variety group and are therefore an appropriate basis for certification at the incoming level. However, provision should be made in the order for changing by recommendation of the committee and approval of the Secretary the varietal groupings or average count ranges or a combination thereof to recognize changes in sizing characteristics for a particular variety or varietal group and for other reasons. The industry has adopted standard inspection procedures to assure size uniformity of olives including approximate counts (midpoints) and acceptable count ranges within the average count range. The order should authorize the committee to recommend for approval by the Secretary approximate counts, acceptable count ranges, and such other procedures as may be necessary to assure proper sizing of olives at the incoming level.

Furthermore, it is necessary that any lot of olives certified as to size remain intact and not be commingled with olives not certified as to size. As further experience is gained in size certification, it may be desirable to establish additional procedures and safeguards to assure compliance with such regulations and the order should so provide.

It was also proposed that a provision be included in the order that would permit size certification of minimum canning size for use in the production of pitted style olives. However, the order requires that with respect to size, canned whole pitted olives shall conform to the size designations set forth in the U.S. Grade Standards. The inspection service may not certify canned pitted olives as meeting the size requirements in the U.S. Grade Standards on the basis of olives having met the size requirements for natural condition olives at the incoming level. Outgoing inspection must be performed on such olives to determine compliance with the U.S. Grade Standards.

As proposed to be amended, the order would provide that size desigations for canned whole and canned pitted olives may be modified by the committee with the approval of the Secretary. This would permit establishment of olive size designations for marketing order purposes in lieu of size designations in the U.S. Grade Standards. The record indicates that is may be practical to use marketing order size designations as a basis for size certification of olives for use in whole or pitted olives styles. It is not known at this time whether sizes, other than minimum canning sizes, should be included in size certification. In order to allow for changes in industry olive usage and to facilitate inspection and certification of olives the order should provide that, if marketing order sizes are adopted, size certification for canned whole or whole pitted styles should apply to any or all sizes as recommended by the committee and approved by the Secretary.

To assure proper size uniformity the order should provide for establishment of average count ranges, acceptable count ranges and approximate counts for each variety or varietal group as recommended by the Committee and approved by the Secretary. Therefore, the order should authorize the committee to recommend, subject to approval by the Secretary, size certification procedures for olives used in the production of canned whole or pitted styles of olives.

A brief was filed by the Olive Administrative Committee on the size certification proposal. The brief objected to the Department's view during the hearing that size certification cannot be made applicable to the canned pitted style of olives when size requirements for such style are expressed in terms of the U.S. Grade Standards. The order currently provides that canned whole or pitted styles of olives conform to the size designation set forth in the U.S. Grade Standards. The proposed amendment would provide for modification of these size designations by recommendation of the committee and approval of the Secretary. As indicated, size certification for canned whole or pitted styles may be implemented by establishment of marketing order size designations for such styles. Thus, a means to effect size certification procedures is available to the committee.

(12) Some of the proposed amendatory actions herein would require certain changes, as hereinafter set forth, in the provisions of the order, so that the order, as proposed to be amended, will be in conformity with those actions. Such changes are discussed herein with the issues to which pertinent. All such changes should be incorporated herein.

Rulings on Briefs of Interested Persons: At the end of the hearing, the Administrative Law Judge fixed January 25, 1982, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence presented at the hearing. Briefs were filed by the Olive Administrative Committee and the Olive Growers Council of California.

Each point included in the briefs was carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. However, those portions of the briefs which concern handler assessment credit for brand advertising will be covered in a subsequent recommended decision. To the extent that any suggested findings or conclusions contained in any of the briefs or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of facts found and stated in connection with the recommended decision.

General Findings: Upon the basis of the record, it is found that: (1) The findings hereinafter set forth are supplementary, and in addition to, the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except when such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of olives in production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carring out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of olives produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of olives produced in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

PART 932—OLIVES GROWN IN CALIFORNIA

Recommended Amendment of the Marketing Agreement and Order: The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. Section 932.18 is revised to read:

§ 932.18 Committee.

"Committee" means the California Olive Committee established pursuant to § 932.25.

2. Section 932.19 is revised to read:

§ 932.19 Crop year and fiscal year.

(a) "Crop year" means the 12-month period beginning on August 1 of each year and ending on July 31 of the following year or such other period that may be recommended by the committee and approved by the Secretary.

(b) "Fiscal year" means the 12-month period beginning on January 1 and ending on December 31 of each year or such other period that may be recommended by the committee and approved by the Secretary.

§ 932.23 [Amended]

3. Section 932.23 is revised by removing "932.51(a)(2)" and substituting "932.51(a)(3)" in lieu thereof.

4. Section 932.23a is revised to read:

§ 932.23a Limited use.

"Limited use" means the use of processed olives in the production of packaged olives of the halved, segmented (wedged), sliced, or chopped styles, as defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, including modifications of the requirements for such styles pursuant to this part, and such additional styles (and the requirements applicable thereto) as may be specified pursuant to § 932.52(a)(7).

5. Section 932.25 is revised to read:

§ 932.25 Establishment and membership.

A California Olive Committee consisting of 16 members, is hereby established to administer the terms and provisions of this part. Each member shall have an alternate who meets the same qualifications as the member. Eight of the members and their alternates shall be producers or officers or employees of producers, and eight of the members and their alternates shall be handlers or directors, officers, or employees of handlers. The eight members of the committee who are producers or officers or employees of producers are referred to in this subpart as "producer members" of the committee; and the eight members of the committee who are handlers or directors, officers, or employees of handlers are referred to in this subpart as "handler members" of the committee.

The committee may be increased by one public member who shall not be a producer or handler of olives nor an officer or employee or director of any producer or handler of olives. District representation of the producer members shall be two from District 1, four from District 2, and two from District 3. Allocation of the handler members shall be four members to represent cooperative marketing organizations, herein referred to as "cooperative handlers", and four members to represent handlers who are not cooperative marketing organizations, herein referred to as "independent handlers": *Provided,* That whenever during the crop year in which nominations are made and in the preceding crop year, the cooperative handlers or the independent handlers handled as first handler 65 percent or more of the total quantity of olives so handled by all handlers, allocation shall be five members to represent the group which so handled 65 percent or more of such olives and three members to represent the group which handled 35 percent or less. The public member and alternate public member shall be selected from any place within the area. The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be

necessary to assure equitable representation.

6. Section 932.28 is revised to read:

§ 932.28 Eligibility.

Each producer member of the committee shall, at the time of selection and during the member's term of office, be a producer in the district for which selected, and except for producers who are members of cooperative handlers shall not be engaged in the handling of olives either in a proprietary capacity, or as a director, officer, or employee. Each handler member of the committee shall, at the time of selection and during the member's term of office, be a handler in the group that the member represents or a director, officer, or employee of such handler. The public member and alternate public member of the committee shall not at the time of selection and during the term of office be engaged in or have a financial interest in the commercial production, marketing, buying, grading, or processing of olives, nor shall such member or alternate be an officer, director, member, or employee of any firm engaged in such activities.

7. Section 932.29 is amended by revising paragraph (a) and adding a new paragraph (c) to read:

§ 932.29 Nominations.

(a) *Producer members.* (1) Nominations for producer members of the committee, and their respective alternates, may be conducted according to the following procedures, or other procedures recommended by the committee and approved by the Secretary:

(i) Meetings shall be held in each producer district for the purpose of selecting candidates for the member and alternate member nominations;

(ii) Those candidates selected at the producer meetings shall be nominated by mail balloting of producers in that district;

(iii) The committee shall adopt, with approval of the Secretary, appropriate procedures to be observed for conducting producer nominations by mail: *Provided,* That the names of nominees shall be submitted to the Secretary prior to April 16 of the year in which nominations are made.

(2) Only producers, including duly authorized officers or employees of producers, shall participate in the nomination of producer members and alternate members. Each producer shall be entitled to cast only one vote for each nominee to be selected in the district in which the producer produces olives. No producer shall participate in the selection of nominees in more than one district. If a producer produces olives in more than one district, such producer shall select the district in which such producer will so participate and notify the committee of such choice.

* * * * *

(c) *Public member.* Nominations for the public member and alternate public member of the committee shall be submitted to the Secretary prior to April 16 of the year in which nominations are made. The committee shall prescribe procedures for the selection and voting for each candidate.

8. Section 932.30 is revised to read:

§ 932.30 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during such member's absence, and (b) in the event of such member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart, the provisions of this part applicable to members also apply to alternate members. The committee or the chairman of the committee may request one or more alternates to attend any or all meetings notwithstanding the expected or actual attendance of the respective member or members.

9. Section 932.35 is amended by revising paragraphs (g) and (h) to read:

§ 932.35 Duties.

The committee shall have, among others, the following duties:

* * * * *

(g) To submit to the Secretary, prior to the beginning of each fiscal year and not later than December 15, a budget of the anticipated expenses of the committee and the proposed assessment rate for such fiscal year, together with a report thereon.

(h) To cause the books of the committee to be audited by one or more certified public accountants at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request. The report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit report shall be submitted to the Secretary.

* * * * *

10. Section 932.36 is revised to read:

§ 932.36 Procedure.

Decisions of the committee shall be by majority vote of the members present and voting, and a quorum must be present: *Provided,* That decisions requiring a recommendation to the Secretary on matters pertaining to grade and size regulations shall require at least 10 affirmative votes, at least 5 of which must be from producer members and at least 5 of which must be from handler members and, if the committee is increased by the addition of a public member, at least 11 affirmative votes shall be required, at least 5 of which must be from producer members and at least 5 of which must be from handler members. A quorum shall consist of at least 10 members of whom at least 5 shall be producer members and at least 5 shall be handler members and, if the committee is increased by the addition of a public member, a quorum shall consist of at least 11 members of which at least 5 shall be producer members and at least 5 shall be handler members. Except in case of an emergency, a minimum of 5 days' advance notice shall be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When voted on by such method, at least 14 affirmative votes, of which 7 shall be producer member votes and 7 shall be handler member votes, shall be required for adoption and, if the committee is increased by the addition of a public member, votes by mail or telegram shall require at least 15 affirmative votes, of which at least 7 shall be producer member votes and at least 7 shall be handler member votes. The committee may recommend for the Secretary's approval changes in the number of affirmative votes required for adoption of any proposition voted upon by means of a mail or telegram ballot: *Provided,* That the number of affirmative votes required for adoption shall not be less than 10, and in any case an equal number of producer member and handler member votes shall be required for adoption and, if the committee is increased by the addition of a public member, the number of affirmative votes required for adoption shall be increased by one.

11. Section 932.37 is revised to read:

§ 932.37 Compensation and expenses.

The members of the committee and alternates when acting as members or at the request of the committee or its chairman shall serve without

compensation, but shall be reimbursed for necessary expenses, as approved by the committee, incurred by them in the performance of their duties under this part.

12. Section 932.39 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read:

§ 932.39 Assessments.

(a) As the handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year, each handler who first handles olives during the current crop year shall pay to the committee, upon demand, assessments on all olives to be used in the production of packaged olives, including olives to be used in canned ripe olives of the tree-ripened" type or green olives when such are regulated as packaged olives pursuant to § 932.52. The payment of assessments for maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such handler during a fiscal year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all olives handled during the applicable crop year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

13. Section 932.40 is amended by revising paragraph (a) to read:

§ 932.40 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve as provided in paragraph (a)(2) of this section, the committee shall refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments such handler has paid in excess of such handler's pro rata share of the actual net expenses of the committee for such fiscal year. Excess funds may be used temporarily by the committee to defray expenses of the subsequent fiscal year: *Provided,* That each handler's share of such excess shall be made available to the handler by the committee within five months after the end of the fiscal year.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal year's expenses. Such reserve funds may be used for any expenses authorized pursuant to § 932.38 and for necessary expenses of liquidation in the event of termination of this part, Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropiate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

14. Section 932.45 is amended by revising paragraphs (d) and (e) to read:

§ 932.45 Production research and marketing research and development projects.

* * * * *

(d) If the committee should conclude that a program of production research, marketing research, or development should be undertaken or continued pursuant to this section in any fiscal year, it shall submit the following for the approval of the Secretary:

* * * * *

(e) The committee shall, as soon as practicable, prepare and mail reports on current production research and marketing research and development projects to the Secretary and make a copy of such reports available at the committee office for examination by producers, handlers, or other interested parties.

15. Section 932.50 is amended by revising the first sentence to read:

§ 932.50 Report of marketing policy.

At least 14 days prior to the start of each crop year (except that this period may be shortened by the committee not more than 5 days if warranted), the committee shall hold a meeting for the purpose of formulating a marketing policy for the coming crop year: *Provided,* That with respect to the 1982–83 crop year the committee shall hold a meeting for such purpose as soon as practicable. * * *

16. Section 932.51 is amended by revising paragraph (a)(1)(ii); redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), respectively, adding a new paragraph (a)(2); and amending redesignated paragraphs (a)(4) and (a)(5) as follows:

§ 932.51 Incoming regulations.

(a) Minimum standards for natural condition olives.

(1) * * *

(ii) Size-graded, either by sample or by lot, under the supervision of any such inspection service and classified into separate size designations and a certification issued with respect thereto by such inspection service. Such size designations shall be in accordance with those set forth in the U.S. Standards for Grades of Canned Ripe Olives [7 CFR Part 52) or subsequent amendments thereto, or such sizes as may be recommended by the committee and established by the Secretary: *Provided,* That, for the purpose of this part, the size designations in said standards shall be deemed to include the following additional size designations.

Designation(s)	Approximate count (per pound)	Average count range (per pound)
Subpetite		181 and up.
Petite	160	141–180, inclusive.
Extra Large Sevillano "L".	82	76–88, inclusive.
Extra Large Sevillano "C".	70	65–75, inclusive.

Provided Further, That the additional size designations may be renamed and/or modified as recommended by the committee and approved by the Secretary. Such certification shall show, in addition to the quantities by weight of the olives in the lot that are classified as being in each size or size designation the quantity of olives classified as culls by the handler: *Provided,* That when the Secretary, upon the recommendation of the committee, issues a definition of and classification for "culls", the aforesaid

quantity of culls shall be determined on the basis of such definition and in accordance with such classification.

(2) Each handler may satisfy the incoming and outgoing size requirements for any lot of olives under the conditions set forth in subdivisions (i), (ii), and (iii) of this paragraph: *Provided,* That any such lot shall be kept intact under surveillance by the inspection services:

(i) When the Secretary authorizes use of limited size olives for limited use styles during any crop year, any lot of limited use size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection if such olives are within the following average count range for that variety group, and meet such further size requirements as recommended by the committee with the approval of the Secretary:

Variety	Average count range (per pound) inclusive
Group 1, except Ascolano, Barouni, and St. Agostino	76–96
Group 1, Ascolano, Barouni and St. Agostino	89–140
Group 2, except Obliza	141–160
Group 2, Obliza	125–140

Provided, That the varietal groupings and/or average count ranges may be changed, and additional size certification procedures and requirements may be established as recommended by the committee and approved by the Secretary;

(ii) When limited use size olives are not authorized for limited use styles during any crop year, any lot of the minimum canning size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection for size if such olives are within the following average count range for that variety group, and meet such further size requirements as recommended by the committee with approval of the Secretary:

Variety	Average count range (per pound) inclusive
Group 1, except Ascolano, Barouni, and St. Agostino	65–75
Group 1, Ascolano, Barouni and St. Agostino	65–88
Group 2, except Obliza	126–140
Group 2, Obliza	106–121

Provided, That for whole and whole pitted styles of olives an additional size grading is required after processing, prior to canning, and those olives that fail to meet the requirements in § 932.52 may be used in limited use styles. *Provided Further,* That the varietal groupings, average count ranges, and/or other size requirements may be changed or modified as recommended by the committee and approved by the Secretary;

(iii) The committee may recommend, subject to approval by the Secretary, size certification procedures for olives used in the production of canned whole or pitted styles of olives: *Provided,* That if size certification for canned whole or pitted styles is implemented, marketing order sizes shall be adopted and size requirements in the U.S. Grade Standards shall not apply. Size certification of such styles shall be applicable to any or all sizes of olives recommended by the committee and approved by the Secretary pursuant to § 932.52(a)(2). Size certification procedures recommended to the Secretary may include but are not limited to the establishment of average count ranges, acceptable count ranges, and approximate counts (midpoints) for each variety or variety group.

(3) Each handler shall, under the supervision of any such inspection service, dispose of into noncanning use an aggregate quantity of olives, comparable in size and characteristics and equal to the quantities shown on the certification for each lot to be:

(i) Variety Group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, of a size which individually weigh less than 1/90 pound;

(ii) Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties of a size which individually weigh less than 1/140 pound;

(iii) Variety Group 2 olives, except the Obliza variety, of a size which individually weigh less than 1/180 pound;

(iv) Variety Group 2 olives of the Obliza variety of a size which individually weigh less than 1/140 pound;

(v) Such other sizes for the foregoing variety groups as are not authorized for limited use pursuant to § 932.52; and

(vi) Olives classified as culls.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, a handler may (i) meet any deficit in such handler's undersize obligation in one variety by disposing of, under supervision of the inspection service, as other than canned ripe olives, an equal quantity of undersize olives, of any other variety, or by so disposing of an equal quantity of olives of that or any other variety of sizes larger than undersize of a quality better than culls, and (ii) meet any deficit in such handler's cull obligation in one variety by so disposing of an equal quantity of cull olives of any other variety, or by so disposing of an equal quantity of olives of any variety of sizes larger than undersize of a quality better than culls.

(5) Each handler shall hold at all times a quantity of olives equal to the quantities required in paragraph (a)(3) of this section, less any quantity previously disposed of as specified in such subparagraph.

* * * * *

17. Section 932.52 is amended by revising paragraphs (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(6), and paragraphs (b)(1) and (b)(2) to read:

§ 932.52 Outgoing regulations.

(a) Minimum standards for packaged olives. * * *

(1) Canned ripe olives, other than those of the "tree-ripened" type, shall grade at least U.S. Grade C as such grade is defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with approval of the Secretary, for purposes of this part.

(2) Except as provided in § 932.51(a)(1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the single size designations set forth in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with the approval of the Secretary, and shall be of a size not smaller than the following applicable size requirements, tolerances and percentages: *Provided,* That the Secretary, on the basis of a recommendation of the committee or other available information, may change such sizes, tolerances or percentages:

(i) With respect to variety group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh not less than 1/7 pound, except that (a) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/7 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/8 pound each; and (b) for olives of any designation except the extra large size, not more than 5 percent, by count, of such olives may weigh less than 1/7 pound each;

(ii) with respect to variety group 1 olives of the Ascolano, Barouni and St. Agostno varieties, the individual fruits shall each weigh not less than 1/8 pound

except that (a) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than ⅛₀ pound each including not more than 10 percent, by count, of such olives that weigh less than ⅛₀ pound each, and (b) for olives of any size designation, except the extra large size, not more than 5 percent, by count, of such olives may weigh less than ⅛₀ pound each;

(iii) With respect to variety group 2 olives, except the Obliza variety, the individual fruits shall each weigh not less than 1/140 pound except that (a) for olives of the small size designation, not more than 35 percent, by count, of such olives may weigh less than 1/140 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/140 pound each; and (b) for olives of any size designation, except the small size, not more than 5 percent, by count, of such olives may weigh less than 1/140 pound each; and

(iv) * * *

(3) Subject to the provisions set forth in paragraph (a)(4) of this section and § 932.51(a)(1) and (2), processed olives to be used in the production of canned pitted ripe olives, other than those of the "tree-ripened" type, shall meet the same requirements as prescribed pursuant to paragraph (a)(2) of this section: *Provided,* That olives smaller than those so prescribed, as recommended annually by the committee and approved by the Secretary, may be authorized for limited use but any such limited use size olives so used shall be not smaller than the following applicable minimum size: *Provided further,* That each such minimum size may also include a size tolerance (specified as a percent) as recommended by the committee and approved by the Secretary. * * *

* * * * * *

(6) The size designations used in this section mean the size designations described in (a)(1)(ii) of § 932.51.

(7) * * *

(b) Disposition requirements for limited use size olives.

(1) The requirements of this paragraph are in addition to and not in substitution of the requirements of § 932.51(a)(5).

(2) Each handler shall, under the supervision of the Processed Products Branch, USDA, or the Federal or Federal-State Inspection Service, dispose of limited use size olives into limited use or into noncanning use: *Provided,* That whenever a handler's use of limited use size olives is restricted pursuant to § 932.52(a)(4), such handler shall dispose of into noncanning use that quantity of such limited use size olives which is in excess of the quantity permitted for limited use.

* * * * * *

18. Section 932.53 is amended by revising paragraph (a) to read:

§ 932.53 Inspection and certification.

(a) Each handler shall have the olives such handler handles inspected and certified as for conformance with all applicable requirements pursuant to §§ 932.51 and 932.52 with respect to such handling. Inspection and certification for conformance with the requirements of § 932.51 shall be by the Federal or Federal-State Inspection Service, including certification as to size, and inspection for conformance with the requirements of § 932.52 shall be by the Processed Products Branch, USDA, except that the disposition of olives, other than as canned ripe olives, in accordance with the requirements of § 932.51(a)(3) may be under the supervision of any of such inspection services. A copy of each certification by the said inspection services, pursuant to the provisions of this section, shall be furnished to the committee.

* * * * * *

§ 932.54 [Amended]

19. Section 932.54 is revised by removing "932.51(a)(2)" and substituting "932.51(a)(3)" in lieu thereof.

20. Section 932.68 is amended by revising paragraph (c) and removing paragraph (d) to read:

§ 932.68 Termination.

* * * * * *

(c) The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever the Secretary finds that such termination is favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the area in the production of olives for market as packaged olives: *Provided* That such majority have during such representative period produced for market more than 50 percent of the volume of such olives produced for market, but such termination shall be effective only if announced on or before July 15 of the then current crop year.

Signed at Washington, D.C., on May 7, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-12909 Filed 5-12-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with Appendix C to 12 CFR Part 226, the staff of the Federal Reserve Board is publishing for comment a proposed update to the official staff commentary to Regulation Z (Truth in Lending), as revised effective April 1, 1981. The commentary applies and interprets the requirements of the revised Regulaton Z to open-end and closed-end consumer credit and is intended to substitute for individual Board and staff interpretations of the regulations.

DATE: Comments must be received on or before June 28, 1982.

ADDRESS: Comments should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW, Washington, D.C. between 8:45 a.m. and 5:15 p.m. To aid in their consideration, comments should include a reference to TIL-1, and discussion of each section should begin on a separate page. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or (202) 452-3867:

Subpart A—Gerald Hurst, Rugenia Silver.

Subpart B and Appendices—Ruth Amberg, Jesse Filkins, Lynn Goldfaden, Gerald Hurst, John Wood.

Subpart C and Appendices—Clarence Cain, Rugenia Silver, Susan Werthan, Claudia Yarus, Steven Zeisel.

SUPPLEMENTARY INFORMATION: (1) *General.* Effective October 13, 1981, an official staff commentary was published (46 FR 50288, Oct. 9, 1981) to interpret Regulation Z, as revised effective April 1, 1981. Creditors now have the option of complying with revised Regulation Z and the commentary, but compliance does not become mandatory until October 1, 1982 (Pub. L. 97-110, December 26, 1981). The commentary is

designed to provide general guidance to creditors in applying the regulation to specific transactions. Although each unique credit plan cannot be individually addressed in the commentary, periodic updates will provide the vehicle for additional staff interpretations that may be necessary as new questions arise.

In revising the commentary, an attempt is being made to avoid revisions that would require modifications to forms that have been prepared based on the existing regulation and commentary. The types of changes being proposed generally give creditors more flexibility in making disclosures, while preserving basic consumer protections. Changes generally will be made only when necessary to respond to significant questions that have arisen since the commentary's issuance or to clarify ambiguous language. Purely editorial changes are being avoided. However, because this is the first update to the commentary, some technical and editorial changes have been necessary in order to expedite adjustment to the commentary's new material and format. Although in most cases the location of comments has not been affected, some have been renumbered as a result of the deletion or addition of material.

Certain conventions have been used to highlight the revised language in the commentary. New language is highlighted by bold-faced arrows, while language that has been deleted is set off with brackets. Although the inclusion of existing commentary language adds to the length of this document, this format seems to be the most helpful way of pointing out proposed changes.

Comments must be received by June 28, 1982. In order to expedite analysis of the comments, commenters are requested to identify comments by section and paragraph numbers and to begin discussion of each section on a separate page. If comments are received on issues not raised by the proposed revisions, these comments would most likely be considered for possible inclusion in the next commentary update.

Final revisions will be published in the Federal Register; it is anticipated that final publication will be no later than the beginning of September. Although creditors will be able to rely on the revisions at that time, the applicability of the revisions will be optional until April 1, 1983, which will be specified in the final rule document. The later date will be provided to minimize any difficulties that creditors may experience in adjusting to the revisions.

(2) *Proposed Revisions.* Following is a brief description of the revisions contained in the commentary update.

Introduction

Comment I–3 would be amended to reference the regulation's effective date of October 1, 1982, in accordance with Pub. L. 97–110 (December 28, 1981).

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(3) "Arranger of Credit"

Comment 2(a)(3)–6 would be added to explain the Board's recent amendment to § 226.2(a)(3) of the regulation (47 FR 7391, Feb. 19, 1982) dealing with real estate brokers.

2(a)(13) "Consummation"

Comment 2(a)(13)–1 would be revised to show that consummation may occur when the parties enter a commitment agreement that binds them to specific credit terms if under state law a contractual relationship is created. This revision should also ensure that consummation will occur no later than the time a note or contract is signed.

2(a)(23) "Prepaid Finance Charge"

Comment 2(a)(23)–2 would be revised to make clear that any portion of the finance charge paid at closing or settlement is considered a prepaid finance charge.

2(a)(24) "Residential Mortgage Transaction"

Comment 2(a)(24)–1 would be revised to add § 226.20(b) to the list of provisions using the term "residential mortgage transaction." Its omission was inadvertent.

2(a)(25) "Security Interest"

Comment 2(a)(25) would be revised to permit creditors at their option to disclose certain interests as security interests when uncertainty exists as to whether a particular interest is one of the excluded interests.

Section 226.4—Finance Charge

4(b) Examples of Finance Charge

Comment 4(b)(9)–3 would be added to explain the "regular price" definition in amended section 103(x) of the act and its relationship to cash discounts offered under section 167(b) of the act. The comment specifically discusses the displaying of prices for motor vehicle fuel.

4(c) Charges Excluded from the Finance Charge

Comment 4(c)(7)–1 would be revised to state that a charge for a lawyer's attendance at the closing is not a finance charge if the attorney attends to complete the documents.

4(d) Insurance

Comment 4(d)–11 would be added to clarify the concept of initial term of insurance coverage and to permit the initial term to be considered one year if the creditor is uncertain of the term.

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Comment 5(a)(2)–1 would be revised to include additional examples of the application of the "more conspicuous" rule. These examples would clarify the rule; no substantive changes are intended.

5(b) Time of disclosures

Comment 5(b)(1)–1 would be revised to explain more clearly when initial disclosures are timely if the plan involves an initial fee that is paid before the initial disclosures are given, or if the plan involves an advance made at the time that the consumer is given the initial disclosures.

5(c) Legal Obligation

Comment 5(c)–1 would be revised to clarify the meaning of the term "legal obligation." Comment 17(c)(1)–1, which contains a discussion of legal obligation for closed-end credit transactions, would add a sentence to show the effect of certain previous court decisions on disclosures. This issue arises in part because of the requirement that closed-end disclosures be segregated from other information, a requirement that does not exist for open-end credit. The staff solicits comment on whether a companion provision for open-end credit should be added.

5(d) Multiple Creditors; Multiple Consumers

Material that was inappropriate for commentary treatment would be deleted from comment 5(d)–1.

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge

Comment 6(a)(2)–2 would be revised in its description of the types of open-end credit programs for which the creditor's initial disclosure of planned rate changes excuses the creditor from

the general requirement to give notices when the rate increases according to the disclosed plan. The current commentary provides that creditors may avoid these notices after giving appropriate disclosures in plans in which the rates follow an index that is "readily verifiable by the borrower and beyond the control of the lender."

A number of questions have arisen as to the interpretation and purpose of the current commentary language. In particular, some creditors have raised concerns about programs that would use certain internal rates as the index and therefore not meet the criterion that the index be beyond the lender's control. These creditors have noted that tying the rate to their commercial lending rate or to rates paid on savings instruments is a customary practice. The proposal reflects these concerns, while at the same time continuing to provide guidance on the types of rate increases for which additional disclosures may be needed.

6(b) Other Charges

Language would be added to comment 6(b)–2 to provide that a charge for submitting as payment a check that is later returned unpaid would not be another charge.

Section 226.7—Periodic Statements

7(b) Identification of Transactions

Comment 7(b)–1 would be revised to clarify that the listed ways for a creditor to identify transactions for multifeatured plans are merely examples of acceptable arrangements.

7(c) Credits

Comment 7(c)–3 would be revised to clarify when additional identification of dates is needed, and also that no specific terminology would be required for these date identifications.

7(e) Balance on Which Finance Charge Computed

Comment 7(e)–2 would be revised by indicating that the exception permitting the creditor to disclose one combined balance when split rates (or "break rates") are applied does not extend to the case in which split rates are applied to each day's balance. This change would return to the position under previous Regulation Z, and correct the inadvertent reference in current comment 7(e)–4. That reference permitted a combined balance, which would not allow verification of the finance charge attributable to periodic rates.

The last sentence of current comment 7(e)–4 would be deleted, and incorporated in comment 7(e)–2.

Comments 7(e)–4, 5, 6, and 7 of the current commentary would be redesignated as comments 7(e)–5, 6, 7, and 8, and current comment 7(e)–8, which deals with the disclosure of the periodic rate balance amount in multifeatured plans, would be redesignated as comment 7(e)–4.

Comment 7(e)–4 (current comment 7(e)–8) would be revised to give more complete guidance on when separate balances must be disclosed when a plan involves different features.

Comment 7(e)–9 would be added to clarify that the creditor could explain its balance computation method only once, even if it chooses to disclose more than one balance computed by that same method.

7(g) Annual Percentage Rate

Comment 7(g)–2 would be expanded to clarify that, in multifeatured plans, the creditor may give separate annual percentage rate disclosures for each feature or may give a composite actual annual percentage rate for the entire plan.

Section 226.8—Identification of Transactions

8(a) Sale Credit

In the last sentence of comment 8(a)(3)–2, the inadvertent reference to "creditor's stores would be changed to "seller's" stores.

Comment 8(a)(3)–4 would be added to reflect the position under previous Regulation Z that the debiting date may be considered the transaction date for foreign transactions.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)–1 would be revised to correspond to the revisions to comment 6(a)(2)–2.

Section 226.13—Billing-error Resolution

13(d) Rules Pending Resolution

Comment 13(d)(1)–2 would be revised to clarify that, for purposes of § 226.13(d)(1), the creditor need only disclose that payment of "any disputed amount" is not required pending resolution, as was the case under the previous Regulation Z.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

An editorial change would be made to comment 14(c)–8 to correct the inadvertent use of the term "fees" instead of "finance charges." The change would indicate that the optional annual percentage rate formula in § 226.14(c)(4) may be used when small finance charges, not fees, of 50 cents or less are involved.

Comment 14(c)–9 would be added merely to cross-reference comment 14(d)–2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

14(d) Calculations Where Daily Periodic Rate Applied

Comment 14(d)–2 would be revised to provide alternative annual percentage rate calculation methods when the finance charge results from the application of both daily periodic rates and specific transaction charges. The comment would allow creditors to use either the method in § 226.14(c)(3) or the method in §226.14(d)(2); comment is specifically solicited on whether the option to use the method in § 226.14(d)(2) is needed.

The §226.14(c)(3) method includes the rules in Appendix F; the appendix gives examples for determining the denominator of the fraction in this formula. Footnote 1 to the appendix instructs creditors that apply both a daily periodic rate and a specific transaction charge to use the average of daily balances instead of the sum of the balances.

If the §226.14(d)(2) method is used, the creditor should apply the rule that balances not be duplicated (set forth in §226.14(c)(3) and explained in comment 14(c)–5), as well as the rule that the annual prcentage rate must not be less than the largest corresponding annual percentage rate for that cycle (set forth in §226.14(c)(3)).

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

Two changes are proposed for comment 15(a)–2. First, the dates in the comment, which refer to the three-year trial period in section 125(e) of the act, would be changed from March 31, 1985 to September 30, 1985 to reflect the change in the mandatory effective date of the act from April 1, 1982 to October 1, 1982. Second, a sentence would be added to clarify that the limited rescission option is available for programs whether or not they existed on the effective date of the act.

Section 226.16—Advertising

16(b) Advertisement of Terms that Require Additional Disclosures

Comment 16(b)(1)–6 would be added to make clear that charges excluded from the finance charge under §226.4 are not required disclosures when a triggering term is used in an advertisement.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Comment 17(a)(1)–5 would add four examples of "directly related" information. The first example relating to § 226.18(k)(1) would clarify the applicability of the § 226.18(k)(1) disclosure. For purposes of this disclosure, a minimum finance charge is considered a penalty. Some state laws prohibit creditors from charging to a penalty in the event of prepayment while permitting the creditor to charge a minimum charge. In this instance the creditor may state that a minimum finance charge will be imposed. The second example relating to § 226.18(k) would enable creditors to identify which finance charge triggered the § 226.18(k)(2) prepayment disclosure.

The example relating to § 226.18(f) responds to inquiries about disclosing the fact that a variable rate feature may produce negative amortization. It permits rate creditors to disclose this fact when making the other required variable rate disclosures. The last example would permit the inclusion of a title for the disclosure statement.

17(c) Basis of Disclosures and Use of Estimates

Comment 17(c)(1)–1 would be revised to clarify the meaning of the term "legal obligations." A sentence would be added to show the effect of certain previous court decisions on disclosure of the legal obligation, and the sentence discussing contracts later deemed unenforceable by a court would be modified to include situations in which an individual term, rather than an entire contract, is deemed unenforceable. Portions of comments 17(c)(1)–1 and 2 would be restructured for added clarity.

Comment 17(c)(1)–4 would be revised to clarify the treatment of certain buydown plans, including the Federal National Mortgage Association's Buydown Program, as revised for commitments issued on or after February 10, 1982.

A new comment 17(c)(1)–8 would be added to clarify the treatment of adjustable rate mortgages that contain a graduated payment feature or an initial payment amount resulting in negative amortization. This comment applies to mortgages such as the graduated payment adjustable mortgage loan authorized by the Federal Home Loan Bank Board (12 CFR 545.6–4b).

New comments 17(c)(3)–2 and 17(c)(4)–2 would be added to clarify that a creditor may ignore minor variations in calculating some disclosures without being required to ignore those variations in computing all of the disclosures.

17(d) Multiple Creditors; Multiple Consumers

Material that was inappropriate for commentary treatment would be deleted from comment 17(d)–1.

17(h) Series of Sales—Delay in Disclosures

Comment 17(h)–2 would be added to address the content of disclosures for transactions under § 226.17(h).

17(i) Interim Student Credit Extensions

Comment 17(i)–1 would be amended to clarify the applicability of this provision. No substantive change would be made.

Comment 17(i)–2 would be revised to provide further guidance on the basis for interim student credit disclosures.

Comment 17(i)–5 would be added as a cross-reference to Appendix H, regarding approved disclosure forms.

Section 226.18—Content of Disclosures

18(f) Variable Rate

Comment 18(f)–2 would be amended to clarify that the disclosures in a variable-rate transaction are not considered estimates and should not be labelled as such.

Comment 18(f)–2 would be added to discuss the treatment of growth equity mortgages.

Comment 18(f)(3)–1 would be revised to include a cross-reference to comment 17(a)(1)–5, which permits the inclusion of a brief reference to negative amortization in the variable-rate disclosures.

A sentence would be added to comment 18(f)(4)–1 to clarify that the example may reflect an immediate increase only when the contract terms permit an immediate increase in the rate.

Comment 18(f)(4)–2 would contain additional examples of transactions that need not make the hypothetical disclosure required in most transactions by § 226.18(f)(4).

18(g) Payment Schedule

Comment 18(g)–1 would be revised to clarify that prepaid finance charges are not reflected in the payment schedule.

Comment 18(g)(2)–1 would be revised to clarify that the abbreviated disclosures may be employed when mortgage insurance premium payments gradually increase over a portion of the loan term. This will occur if the accrual rate exceeds the payment rate for a period and negative amortization causes the unpaid principal balance to increase. During this period, the amount of each premium payment will increase to insure the increasing principal balance. When negative amortization ends, the premiums will decrease in a traditional manner. The proposed language would permit the creditor to disclose the lowest and highest payments in the increasing series (with a reference to the variation in payments) followed by the highest and lowest payments in the decreasing series (with a reference to the variation in payments).

18(i) Demand Feature

Comment 18(i)–2 would be revised to clarify that a due-on-sale clause is not considered a demand feature requiring disclosure.

18(k) Prepayment

Comment 18(k)(1)–1 would be changed by the addition of the word "scheduled" to the first sentence. The change is to clarify that this disclosure applies not only to interest calculations made daily, but to calculations that are made other than daily while taking into account reductions in principal. A cross-reference to comment 17(a)(1)–5 would be added to point out the permitted reference to a minimum finance charge in the penalty disclosure.

Comment 18(k)(2)–1 would be revised to include a cross-reference to comment 17(a)(1)–5, which permits creditors to describe in the disclosure statement the type of finance charge subject to a rebate.

18(r) Required Deposit

A new comment 18(r)–2 would be added to address pledged account or FLIP mortgages, allowing creditors two options in disclosing those types of transactions.

Section 226.19—Certain Residential Mortgage Transactions

19(a) Time of Disclosure

Comment 19(a)–2 would be revised to conform with comment 17(a)(1)–5, regarding explanation of the basis for estimates.

Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings

The amendment to comment 20(a)–3 would clarify the current commentary position that the addition of a variable-rate feature to a previously fixed rate transaction requires new disclosures regardless of the manner in which the change is made. The remainder of comment 20(a)–3 discusses a variable-rate transaction for which no variable-rate disclosures were ever provided.

New comment 20(a)–5 would clarify the coverage of § 226.20(a). "Refinancing," as the term is used here, refers only to a new transaction undertaken with the original creditor (or a holder or service of the original obligation) to replace the original obligation. The term "refinancing" is sometimes used to refer to a loan, the proceeds of which are used in whole or in part to satisfy an obligation to a different creditor. Under the regulation, that is not a refinancing but a new transaction subject to the general coverage rules and disclosure requirements of the regulation.

20(b) Assumptions

The revisions to comments 20(b)–1 and 6 would clarify the coverage of § 226.20(b). The following elements must all be present before an assumption under this section requires new disclosures:

- The original obligation must have been a consumer credit obligation that was not originally exempt.
- The assumption must be accompanied by no significant change in terms (as described in comment 20(b)–6).
- The creditor must expressly agree to the new consumer as a primary obligor.
- The agreement must be in writing.
- The transaction must be a "residential mortgage transaction" as to the new consumer.

All of the above elements must be present in order to require assumption disclosures under § 226.20(b). An apparent assumption that has the first two elements but does not have all the remaining three requires no disclosures at all. However, an apparent assumption that fails to have one or both of the first two elements listed above is not subject to § 226.20(b). To determine if disclosures are required in that case, the creditor must analyze the transaction under §§ 226.2 and 226.3.

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

A sentence would be added to comment 22(a)(1)–4 to provide an example of a composite annual percentage rate for a step-rate transaction.

Section 226.24—Advertising

24(b) Advertisement of Rate of Finance Charge

Comment 24(b)–2 would be added to clarify that stating the effective simple annual payment rate for any portion of the repayment period constitutes a statement of a rate of finance charge under that section, requiring that the annual percentage rate also be stated.

Appendix D—Multiple-Advance Construction Loans

Comment D–2 would be added to clarify that disclosure of a variable-rate hypothetical is not required for multiple-advance construction loans disclosed pursuant to Appendix D, part I. (See commment 18(f)(4)–2).

Comment D–3 would be added to clarify that the total of payments disclosure under Appendix D may be calculated as either the sum of the payments or as the amount financed plus the finance charge.

Comment D–4 would be added to make it clear that under Appendix D creditors may disclose an estimated APR computed under either the actuarial method or the Volume I method.

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

Comment F–1 would be added to cross-reference comment 14(d)–2. The latter comment discusses the annual percentage rate calculation methods for plans involving both daily periodic rates and specific transaction charges.

Appendix H—Closed-End Model Forms and Clauses

Comments H–17 and 18 would be added to reflect the approval under section 113 of the act of two student loan disclosure forms issued by the Department of Education in conjunction with the PLUS program.

List of Subjects in 12 CFR Part 226

Advertising; Banks, banking; Consumer protection; Federal Reserve System; Finance; Truth in lending; Penalties.

(3) *Text of proposal.* The proposed amendments to the Staff Interpretations in Supplement I read as follows: (New language is highlighted by boldfaced arrows, and language that is being deleted in highlighted by boldfaced brackets).

Supplement I—Official Staff Interpretations

Introduction * * *

3. *Status of previous interpretations.* All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until [April 1,] ►October 1,◄ 1982 only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes mandatory on [April 1,] ►October 1,◄ 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.
* * *

Subpart A—General * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions * * *

2(a)(3) "Arranger of Credit" * * *

►6. *Real estate brokers.* The general definition does not include a person (such as a real estate broker or salesperson) when arranging for the seller of real property or a dwelling to finance its purchase in whole or in part, even if the obligation by its terms is simultaneously assigned by the seller to another person. However, a broker or salesperson is not exempt from coverage in all transactions. For example, a real estate broker may be a creditor in the following situations:

- The broker acts as a loan broker to arrange for someone other than the seller to extend credit, provided that the extender of credit (the person to whom the obligation is initially payable does not meet the "creditor" definition.
- The broker extends credit itself, provided that the broker otherwise meets the "creditor" definitions.◄
* * *

2(a)(13) "Consummation"

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. ►Consummation occurs when, under state law, the consumer becomes contractually obligated to accept specific credit terms. A

contractual commitment agreement, for example, that binds the parties to specific credit terms would be consummation.◄ Consummation ►, however,◄ does not occur merely because the consumer had made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise. * * *

2(a)(23) "Prepaid Finance Charge" * * *

2. *Examples.* Common examples of prepaid finance charges include:

- Buyer's points.
- Service fees.
- Loan fees.
- Finder's fees.
- Loan guarantee insurance.
- Credit investigation fees.

However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. ►Prepaid finance charges include any portion of the finance charge paid at closing or settlement.◄ * * *

2(a)(24) "Residential Mortgage Transaction"

1. *Relation to other sections.* This term is important in [five] ►six◄ provisions in the regulation:

- Section 226.4(c)(7)—exclusions from the finance charge.
- Section 226.15(f)—exemption from the right of rescission.
- Section 226.18(q)—whether or not the obligation is assumable.
- Section 226.19—special timing rules.
- ►• Section 226.20(b)—disclosure requirements for assumptions.◄
- Section 226.23(f)—exemption from the right of rescission. * * *

2(a)(25) "Security Interest" * * *

2. *Exclusions.* The general definition of security interest excludes three groups of interests: Incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under § 226.18, but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. ►If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for Truth in Lending purposes.◄ * * *

Section 226.4—Finance Charge * * *

4(b) Examples of Finance Charges * * *

Paragraph 4(b)(9) * * *

►3. *Determination of the regular price.* The "regular price" is critical in determining whether the difference between the price charged to cash customers and credit customers is a "discount" or a "surcharge," as these terms are defined in amended section 103 of the act. The "regular price" is generally the price displayed on the merchandise being sold. In the sale of motor vehicle fuel, for example, the regular price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.◄ * * *

4(c) Charges Excluded from the Finance Charge * * *

Paragraph 4(c)(7)

1. *Real estate or residential mortgage transaction charges.* The list of charges in § 226.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, credit report fees include not only the cost of the report itself, but also the cost of verifying information in the report. In all cases, the charges must be bona fide and reasonable. If a lump sum is charged for several services and includes a charge that is not excludable [(for example, a charge for a lawyer's attending the closing)], a portion of the total should be allocated to that service and included in the finance charge. ►A charge for a lawyer's attendance at the closing to insure that documents are completed and executed properly is excluded from the finance charge.◄

4(d) Insurance * * *

►11. *Initial term.* The initial term of insurance coverage determines the period for which a premium amount must be disclosed. In some cases the initial term is clear, for example, a property insurance policy on an automobile written for one year (even though the term of the credit transaction is four years) or a credit life insurance policy for the term of the credit transaction purchased by paying or financing a single premium. In other cases, however, it may not be clear what the initial term of the insurance is. If the creditor is unsure of the initial term of insurance coverage, the premium disclosed may be the premium for one year of insurance coverage. The premium must be clearly labeled as being for one year.◄

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures * * *

Paragraph 5(a)(2)

1. *When disclosures must be "more conspicous."* The terms "finance charge" and "annual percentage rate" ►, when required to be used with a number,◄ must be disclosed more conspicuously ►than other required disclosures,◄ [when required to be used with a number.] ►except in two cases as provided in footnote 9. First, the corresponding annual percentage rate under section 226.7(d) may be less conspicuous than disclosure of the actual annual percentage rate under § 226.7(g). Second, neither term need be more conspicuous than other required disclosures under § 226.16 in advertisements.◄ [For example, on the initial disclosure statement, the annual percentage rate disclosure under § 226.6(a)(2) must be "more conspicuous." The following apply to the "more conspicuous" rule:] ►At the creditor's option, "finance charge" and "annual percentage rate" may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

- On the initial disclosure statement, the disclosure for the annual percentage rate that corresponds to each periodic rate, required by § 226.6(a)(2), must be "more conspicuous" than other required disclosures
- If the plan involves a minimum finance charge, it must be disclosed on the initial disclosure statement more conspicuously than other required disclosures when accompanied by the amount of the finance charge.
- On the periodic statement, the disclosure of the amount of the finance charge, required by § 226.7(f), must be "more conspicuous" than other required disclosures.
- Although neither◄ [Neither term] ►"finance charge" nor "annual percentage rate"◄ need be emphasized when used as part of general informational material or in textual descriptions of other terms,► [although] emphasis is permissible in such cases. For example, when the

terms appear as part of the explanations required under § 226.6(a)(3) and (4), they may be [as] ►equally◄ conspicuous as the disclosures required under §§ 226.6(a)(2) and 226.7(g).

[• The corresponding annual percentage rate under § 226.7(d) may be less conspicuous than the disclosure of the actual annual percentage rate (historical rate) under § 226.7(g) when the two rates differ. This is permitted by footnote 9 to § 226.5(a)(2), which excepts § 226.7(d) disclosures from the "more conspicuous" requirement.] * * *

5(b) Time of Disclosures

5(b)(1) Initial Disclosures

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan (for example, before the consumer makes the first purchase, receives the first advance, or pays a fee under the plan). [Delivery of the initial disclosure statement is timely even if a membership fee, advance, or purchase already has been posted to the consumer's account, so long as the consumer may, after receiving the disclosures, reject the plan and have no further obligation beyond returning a credit card or any money or goods.]

►• If the consumer pays a membership fee before receiving the Truth in Lending disclosures, or the consumer agrees to the imposition of a membership fee at the time of application and the Truth in Lending disclosure statement is not given at that time, disclosures are timely as long as the consumer, after receiving the disclosures, can reject the plan. The creditor must refund the membership fee, if it has been paid, or if it has been debited to the consumer's account, the creditor must clear the account.

If the consumer receives a cash advance check at the same time the Truth in Lending disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

Initial disclosures need not be given before the imposition of an application fee under § 226.4(c)(1).

If the consumer uses the account, pays a fee, or negotiates a cash advance check after receiving the disclosures, the creditor may consider the account not rejected for purposes of this section.◄ * * *

5(c) Basis of Disclosures and Use of Estimates

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

- The legal obligation is [normally] determined by applicable state or other law.
- The fact that a ►term or◄ contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that ►term or◄ contract did not reflect the legal obligation.
- The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

* * *

5(d) Multiple Creditors; Multiple Consumers

1. *Multiple creditors.* Under § 226.5(d):

- Creditors must choose which of them will make the disclosures.
- A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

[• Each creditor in the plan is legally responsible for seeing that the disclosures are provided.]

All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

- In some open-end credit programs involving multiple creditors, the consumer has the option (for example, at the end of a billing cycle) to pay creditor A directly or to transfer to creditor B all or part of the amount owing. If the consumer elects the latter option, the consumer no longer is obligated to creditor A for the specific amount(s) transferred. In such a case, creditor A and creditor B may send separate periodic statements that reflect the separate obligations owed to each. * * *

Section 226.6—Initial Disclosure Statement * * *

Paragraph 6(a)(2) * * *

[2. *Variable-rate plan defined.* A variable-rate plan contemplates a series of rate changes in accordance with an index that is readily verifiable by the borrower and beyond the control of the lender (for example, the Treasury bill rate). A contract right to increase the rate upon any other contingency, or at the creditor's discretion, would not be a variable-rate plan. For example, an open-end credit plan in which the employee receives a lower rate contingent upon employment, with the rate to be increased upon termination of employment, would not be a variable-rate plan. Similarly, an open-end credit plan that provides for rate increases voted by the board of directors of a financial institution would not be a variable-rate plan.]

►2. *Variable-rate disclosures—coverage.* This section covers open-end credit plans under which rate changes are part of the plan and are tied to an index or formula. A creditor would use variable-rate disclosures (and thus be excused from the requirement of giving a change-in-terms notice when rate increases occur as disclosed) for plans involving rate changes such as the following:

- Rate changes that are tied to the rate the creditor pays on its 6-month money market certificates.
- Rate changes that are tied to treasury bill rates.
- Rate changes that are tied to changes in the creditor's commercial lending rate.

In contrast, the creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates) would not be considered a variable-rate plan for Truth in Lending disclosure purposes. Moreover, an open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.◄ * * *

6(b) Other Charges * * *

2. *Exclusions.* The following are examples of charges that are not "other charges":

- Fees charged for documentary evidence of transactions for income tax purposes.
- Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.
- Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.
- Application fees under § 226.4(c)(1).

• A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

►• Charges for submitting as payment a check that is later returned unpaid. (See comment 4(c)(2)–2.)◄ • • •

Section 226.7—Periodic Statement • • •

7(b) Identification of Transactions

1. *Multifeatured plans.* In identifying transactions under § 226.7(b) [, transactions may be grouped by feature (such as by disclosing sale transactions separately from cash advance transactions) or may be arranged by date.] ► for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.◄

7(c) Credits • • •

3. *Date.* [The crediting date need not be identified as "crediting date," unless two or more dates are disclosed for a single entry (for example, the posting date and the crediting date).] ► If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given. ◄ • • •

7(e) Balance on which Finance Charge Computed • • •

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5 percent applied to the first $500, and a monthly periodic rate of 1 percent to the remainder. ► This does not apply when the finance charge is computed by applying the split rates to each day's balance. In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(e)–5).◄

Comment 7(e)–8 is redesignated as 7(e)–4.

[8. *Multifeatured plans.* In a multifeatured plan, the balance on which the finance charge was computed must be disclosed for each feature to which a period rate was applied. A total balance for the entire plan is optional.]

► 4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a "free-ride" period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comment 7(e)–5. ◄ • • •

Comment 7(e)–4 is redesignated as 7(e)–5.

5. *Daily rate on daily balance.* If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

• If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:
—A balance for each day in the billing cycle
—A balance for each day in the billing cycle on which the balance in the account changes
—The sum of the daily balances during the billing cycle.
—The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

• If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:
—A balance for each day in the billing cycle
—A balance for each day in the billing cycle on which the balance in the account changes
—Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle, (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) mutiplying each of the results by the applicable daily periodic rate, and (3) adding these products together. [If the different rates are due to disclosed ranges of balances (see comment 7(e)–2), the creditor need give only one average daily balance together with the additional information required by this paragraph.]

Comments 7(e)–5, 6, and 7 are redesignated as 7(e)–6, 7, and 8 respectively.

Comment 7(e)–8 is redesignated as 7(e)–4.

►9. *Use of one balance computation method explanation when multiple balances disclosed. Sometimes the creditor will disclose more than one balance to which a periodic rate was applied even though each balance was computed using the same balance computation method. In these cases, one explanation of the balance computation method is sufficient.*◄ • • •

7(g) Annual Percentage Rate • • •

2. *Multifeatured plans.* In a multifeatured plan, the actual annual percentage rate that reflects the finance charge imposed during the cycle may be separately stated for each feature [.] ►, or may be described as a composite for the whole plan.◄ If separate rates are given, a composite annual percentage rate for the entire plan is optional.* • •

Section 226.8—Identification of Transactions. • • •

8(a) Sale Credit • • •

8(a)(3) Copy of Credit Document Not Provided—Creditor and Seller Not Same or Related Person(s) • • •

2. *Location of transaction.* The disclosure of the location where the transaction took place generally requires an indication of both the city, and the state or foreign country. If the [creditor] ►seller◄ has multiple stores or branches within that city, the creditor need not identify the specific branch at which the sale occurred. • • •

►4. *Date of transaction—foreign transactions.* In a foreign transaction, the debiting date may be considered the transaction date.◄ • • •

Section 226.9—Subsequent Disclosure Requirements • • •

9(c) Change in Terms

1. *"Changes" initially disclosed.* No notice of a change in terms need be

given if the specific change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. In contrast, notice must be given if the contract allows the creditor to increase the rate at its discretion but does not include specific terms for an increase (for example, when an increase may occur [by vote of the board of directors].] ► under the creditor's contract reservation right to increase the periodic rates.)◄ * * *

Section 226.13—Billing Error Resolution
* * *

13(d) Rules Pending Resolution * * *

13(d)(1) Consumer's Right To Withhold Disputed Amount; Collection Action Prohibited * * *

2. *Right to withhold payment.* ►If the creditor is required to make the disclosure under footnote 30, the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to disputed amount would, of course, in no way affect the consumer's right under § 226.13(d)(1) to withhold related finance and other charges.◄ The disclosure [that payment of any disputed amount is not required pending error-resolution[under footnote 30◄ need not appear in any specific place on the periodic statement ►.◄ [and it] need not state the specific amount that the consumer may withhold [. The creditor] ►and◄ may ►be reprinted◄ [preprint] on [its] ►the◄ periodic statement ►.◄ [forms a statement that payment of any disputed amount is not required pending resolution.] * * *

Section 226.14—Determination of Annual Percentage Rate * * *

14(c) Annual Percentage Rate for Periodic Statements * * *

8. *Small finance charges.* Section 226.14(c)(4) gives the creditor an alternative to § 226.14(c)(2) and (c)(3) if small [(50 cents or less) minimum or fixed fees are involved.] ►finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents.◄ For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in § 226.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1½ percent per month. This option is consistent with the provision in footnote 11 to §§ 226.6 and 226.7 permitting the creditor to disregard the effect of minimum charges in disclosing the ranges of balances to which periodic rates apply.

►9. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)–2 for guidance on the appropriate calculation methods.◄ * * *

14(d) Calculations Where Daily Periodic Rate Applied * * *

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, the calculation method in ►§ 226.14(c)(3)◄ [§ 226.14(d)(2)] should be used. ►This requires a creditor to follow the rules in Appendix F in calculating the annual percentage rate, especially footnote 1 to Appendix F which addresses the daily rate/transaction charge situation by providing that the "average of daily balances" shall be used instead of the "sum of the balances."

Alternatively, the calculation method in § 226.14(d)(2) may be used. If this method is used, the creditor must also

- Apply the "without duplication" rule. (See comment 14(c)–5.)
- Disclose an annual percentage rate not less than the largest rate determined by multiplying each periodic rate imposed during the cycle by the number of periods in a year.◄ * * *

Section 226.15—Right of Rescission
* * *

15(a) Consumer's Right To Rescind

Paragraph 15(a)(1) * * *

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: until [March 31, 1985,] ►September 30, 1985◄ the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. ►This limited rescission option is available whether or not the plan existed prior to the effective date of the act.◄ The consumer will have the right to rescind each extension made after [March 31, 1985] ►September 30, 1985◄ under such a secured open-end credit plan, whether that plan was established before or after that date. * * *

Section 226.16—Advertising * * *

16(b) Advertisement of Terms That Require Additional Disclosures * * *

►6. *Minimum, fixed, transaction, activity or similar charge.* The charges to be disclosed under § 226.16(b)(1) are those that are considered finance charges under § 226.4.◄ * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1) * * *

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

- A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under § 226.18(l) may state that a late charge will apply to "any payment received more than 15 days after the due date."
- A statement that the transaction is not secured. For example, the creditor may add a category labelled "unsecured" or "not secured" to the security interest disclosures given under § 226.18(m).
- The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.
- The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.
- When a variable rate feature is disclosed on other documents under footnote 43 to § 226.18(f), a reference to the variable rate feature and/or to other documents on which the variable rate disclosures are made.
- An explanation of the use of pronouns or other references to the parties to the transaction. For example, the

disclosures may state, " 'You' refers to the customer and 'we' refers to the creditor."
- Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, "Check box if applicable."
- ►A statement that the borrower will pay a minimum finance charge upon prepayment. For example, when state law prohibits penalties for prepayment, the creditor may make the § 226.18(k)(1) disclosure by stating "You will be charged a minimum finance charge."
- Identification of the finance charge that is subject to a rebate. For example, the disclosure given under § 226.18(k)(2) may state that the borrower "will not be entitled to a refund of the prepaid finance charge."
- A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as "Unpaid interest will be added to principal."
- A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as "Federal Truth in Lending Disclosures" or a descriptive title such as "Real Estate Loan Disclosures."◄

* * *

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the outset of the transaction.► The legal obligation is determined by applicable state law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 226.17(c).)◄

[• The legal obligation is normally determined by applicable state or other law, but certain transactions are specifically addressed in this commentary. (See, for example, the discussion of buydown transactions elsewhere in the commentary to § 226.17(c).)]

►• It is not a violation of the regulation for a creditor, in disclosing the legal obligation, to omit the disclosure of a term that a court with jurisdiction over the creditor has previously deemed unenforceable on the basis of equity or other grounds.◄
- The fact that a [credit] ►term or◄ contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that ►term or◄ contract did not reflect the legal obligation.

[• The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract.]

2. *Modification of obligation.* ►The legal obligation normally is presumed to be contained in the note or contract that evidences the agreement. But this presumption is rebutted if another agreement between the parties legally modifies that note or contract.◄ If the parties informally agree to a modification of the legal obligation, the modification should not be reflected in the disclosures unless it rises to the level of a change in the terms of the legal obligation. For example:
- If the creditor-employer offers a preferential employee rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to § 226.18(f) for ►an example of a preferred-rate employee transaction that is a variable-rate transaction.)◄ [a discussion of whether employee transactions are variable-rate transactions.)]
- If the contract provides for a certain monthly payment schedule but payments are made on a voluntary payroll deduction plan or an informal principal-reduction agreement, the disclosures should reflect the schedule in the contract.
- If the contract provides for regular monthly payments but the creditor informally permits the consumer to defer paymens from time to time, for instance, to take account of holiday seasons or seasonal employment, the disclosures should reflect the regular monthly payments.

* * *

4. *Consumer buydowns.* In certain transactions, the consumer may pay an amount to the creditor to reduce the paymens of [buy down the] ►obtain a lower◄ interest rate on the transaction. Consumer buydowns must be reflected in the disclosures given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay [four points] ►an amount◄ to the creditor at consummation in return for a reduction in the interest rate to 12 percent for a portion of the mortgage term. ►The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer.◄ In the disclosures given for the mortgage, the creditor must reflect the terms of the buydown agreement. For example:
- The [four points are] ►amount paid by the consumer is a◄ prepaid finance charge[s] (even if deposited in an escrow account).
- A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charges.
- The payment schedule must reflect the multiple payment levels resulting from the buydown.

* * *

►8. *Graduated payment adjustable rate mortgages.* These mortgages involve both a variable interest rate and scheduled variations in payment amounts during the loan term. Under these plans, a series of graduated payments may be scheduled before rate adjustments affect payment amounts, or the initial scheduled payment may remain constant for a set period before rate adjustments affect the payment amount. In either case, however, the initial payment amount is insufficient to cover the scheduled interest, causing negative amortization from the outset of the transaction. In these transactions, the disclosures are as follows:
- The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.
- The amount financed does not include the amount of negative amortization, but includes only the amount of funds advanced to the consumer at the beginning of the loan term.
- As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.
- The schedule of payments discloses the amount of any scheduled initial payments followed by an adjusted level of payments based on the initial interest rate. Since some mortgage plans contain limits on the amount of the payment adjustment, the payment schedule may need to contain several different levels of payments, even with the assumption that the original interest rate does not increase.◄

* * *

Comments 17(c)(1)–8 and 9 are redesignated 17(c)(1)–9 and 10, respectively.

Paragraph 17(c)(3) * * *

►2. *Use of special rules.* A creditor may utilize the special rules in §226.17(c)(3) for purposes of calculating and making all disclosures for a transaction or may, at its option, use the special rules for some disclosures and not others.◄

Paragraph 17(c)(4) * * *

►2. *Use of special rule.* A creditor may take advantage of this special rule for purposes of calculating and making some disclosures but may elect not to do so for all of the disclosures. For example, the variations may be ignored in calculating and disclosing the annual percentage rate but taken into account in calculating and disclosing the finance charge and payment schedule.◄ * * *

17(d) Multiple Creditors; Multiple Consumers

1. *Multiple creditors.* If a credit transaction involves more than one creditor:

- The creditors must choose which of them will make the disclosures.
- A single,complete set of disclosures must be provided, rather than partial disclosures from several creditors.

[• Each creditor in the transaction is legally responsible for seeing that the disclosures are provided.]

- All disclosures for the transaction must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure. For example, if one of the creditors is the seller, the total sale price disclosure under §226.18(j) must be made, even though the disclosing creditor is not the seller.* * *

17(h) Series of Sales—Delay in Disclosures * * *

►2. *Basis of disclosures.* Creditors have flexibility in structuring disclosures for a series of sales under §226.17(h). For example, the total sale price may be computed as the cash price for the sale plus that portion of the finance charge and other charges applicable to that sale.◄

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. ►These plans include, for example, loans made under the Guaranteed Student Loan program, the PLUS program or any other student credit plan where the repayment period does not begin immediately.◄ Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under §226.18.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. ►The disclosures should not be labelled as estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate.◄ Interest subsidies, such as payments made by either a state or the federal government on an interim loan, must be excluded in computing the annual eprcentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. [A loan guarantee fee that is paid separately by the student at the outset or withheld from the proceeds of the loan is a prepaid finance charge.] ►Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee.◄ [That sum] ►The sum of the prepaid finance charges◄ is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.* * *

►5. *Approved student credit forms.* See the commentary to Appendix H regarding disclosure forms approved for use in certain student credit programs.◄ * * *

Section 226.18—Content of Disclosures * * *

18(f) Variable Rate * * *

2. *Basis for disclosures.* For transactions subject to the requirements of § 226.18(f), the disclosures must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. ►The disclosures, although subject to change, are not estimates and should not be labelled as such.◄ However, in a variable-rate transaction with either a seller buydown that is reflected in the credit contract or a consumer buydown, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the lower rate for the buydown period and the rate that is the basis of the variable rate feature for the remainder of the term. (See the commentary to § 226.17(c) for a discussion of buydown transactions.) * * *

►6. *Growth equity mortgages.* Also referred to as payment escalated mortgages, these mortgage plans involve scheduled payment increases, rather than interest rate increases. The initial payment amount is determined for a long-term loan with a fixed interest rate. The rate remains constant, but payment increases are scheduled annually, based on a percentage of a given index. Because the interest rate remains constant and additional amounts are not required to pay off increased interest, the larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either estimate the amount of payment increases, based on the best information reasonably available, or may disclose by analogy to the variable rate disclosures. Using the latter option, creditors would indicate that the payments are subject to increase, describe the circumstances under which the payments would increase, together with limitations on the increase, and provide an example of the increase. (This discussion does not apply to growth equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, as for graduated payment mortgages, disclosures should reflect the scheduled increases in payments.)◄ * * *

Paragraph 18(f)(3)

1. *Effects.* Disclosure of the effect of an increase refers to an increase in the number or amount of payments or an increase in the final payment. ►In addition, the creditor may make a brief reference to negative amortization that may result from a rate increase. (See comment 17(a)(1)–5 regarding directly related information.)◄ If the effect cannot be determined, the creditor must provide a statement of the possible effects. For example, if the exercise of the variable-rate feature may result in either more or larger payments, both possibilities must be noted.

Paragraph 18(f)(4)

1. *Hypothetical example.* The example may, at the creditor's option, appear apart from the other disclosures. The

creditor may provide either a standard example that represents the general type of credit offered by that creditor or an example that directly reflects the terms and conditions of the particular transaction. ►(The example, whether general or specific, should not reflect an immediate increase if the contract does not permit an immediante increase.)◄

[2. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor need not provide a hypothetical example.]

►2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable rate feature:

- Demand obligations with no alternate maturity date.
- Interim student credit extensions.
- Multiple advance construction loans disclosed pursuant to Appendix D, Part I.◄

18(g) Payment Schedule

1. *Amounts included in repayment schedule.* The repayment schedule should reflect all components of the finance charge, not merely the portion attributable to interest. ►Prepaid finance charges, however, should not be shown in the repayment schedule.◄ The payments may include amounts beyond the amount financed and finance charge. For example, the disclosed payments may, at the creditor's option, reflect certain insurance premiums where the premiums are not part of either the amount financed or the finance charge, as well as real estate escrow amounts such as taxes added to the payment in mortgage transactions. * * *

Paragraph 18(g)(2)

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease ►or increase◄ in the premium due. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments. * * *

18(i) Demand Feature * * *

2. *Covered demand features.* The type of demand feature triggering the disclosures required by § 226.18(i) includes only those demand features contemplated by the parties as part of the legal obligation. For example, this provision does not apply to transactions that convert to a demand status as a result of the consumer's default. ►A due-on-sale clause is not considered a demand feature.◄ * * *

18(k) Prepayment * * *

Paragraph 18(k)(1)

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of each ►scheduled◄ reduction in principal. The term "penalty" as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are not penalties include, for example:

- Prepaid finance charges collected at the outset of the transaction, such as points in a mortgage loan.
- Loan guarantee fees.
- Interim interest on a student loan.

However, a minimum finance charge is a penalty in a simple-interest transaction. ►(See comment 17(a)(1)–5 regarding the disclosure of a minimum finance charge as directly related information.)◄

Paragraph 18(k)(2)

1. *Rebate of finance charge.* This applies to any finance charges that do not take account of each reduction in the principal balance of an obligation. This category includes, for example:

- Precomputed finance charges such as add-on charges.
- Charges that take account of some but not all reductions in principal, such as mortgage guarantee insurance assessed on the basis of an annual declining balance, when the principal is reduced on a monthly basis.
- Prepaid finance charges, such as points or loan fees collected at the outset of the transaction.

►The creditor may identify the finance charge that is subject to a rebate. (See comment 17(a)(1)–5 regarding directly related information.)◄ No description of the method of computing earned or unearned finance charges,◄, however,◄ is required or permitted as part of the segregated disclosures under this section, although such information may be provided elsewhere in the contract. * * *

18(r) Required Deposit * * *

►2. *Pledged account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from this account to supplement the consumer's monthly payments. Creditors may treat these pledged accounts as required deposits (unless the accounts are excepted under footnote 45) or they may treat them as consumer buydowns in accordance with comment 17(c)(1)–4.◄ * * *

Comments 18(r)–2, 3, 4, and 5 are redesignated 18(r)–3, 4, 5, and 6, respectively.

Section 226.19—Certain Residential Mortgage Transactions

19(a) Time of Disclosure * * *

2. *Timing and use of estimates.* Truth in Lending disclosures must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The three-day period for disclosing credit terms coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimated, the creditor may include a statement to that effect (such as "all numerical disclosures except the late-payment disclosure are estimates") instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (See the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms [, either on a separate document or on the same document (but separate from the required disclosures).] ►in accordance with comment 17(a)(1)–5.◄ * * *

Section 226.20—Subsequent Disclosure Requirements

20(a) Refinancings * * *

3. *Variable rate.* ►Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, the addition of a variable-rate feature to an obligation is a new transaction requiring new disclosures.◄ If a variable-rate feature was properly disclosed under the regulation, a rate change in accord with those disclosures is not a refinancing. For example, a renegotiable rate mortgage that was

disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked. However, if the variable-rate feature was not previously disclosed, a later change in the rate results in a new transaction subject to new disclosures. * * *

►5. *Coverage.* Section 226.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original obligation. A "refinancing" by any other person is a new transaction under the regulation, not a refinancing under this section.◄ * * *

20(b) Assumptions

1. *General definition.* An assumption as defined in § 226.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

- A residential mortgage transaction.
- An express acceptance of the subsequent consumer by the creditor.
- A written agreement.

►The assumption of a non-exempt consumer credit obligation with no change in terms requires no disclosures unless all three elements are present.◄ * * *

6. *Change in terms.* [A change in terms destroys the existing obligation and the transaction is treated as a new transaction under the regulation, not as an assumption. A change in terms includes, for example:] ►In order to be covered or excluded by § 226.20(b), the assumption must involve no significant change in the terms of the existing obligation. If the adoption of the obligation by a new obligor is accompanied by a significant change in terms, whether and when disclosures must be given are governed by the general requirements for a new transaction, not by § 226.20(b). Significant changes in terms include, for example:◄

- A change in the contract interest rate unless the change is in accordance with a variable-rate feature that was properly disclosed in the existing obligation.
- A change in the length of the term.
- The addition of points.

►Insignificant changes in terms◄ [Minor changes that do not destroy the existing obligation] include, for example,

- Assumption fees for processing loan documents.
- Insurance fees.
- Credit report fees. * * *

Section 226.22—Determination of the Annual Percentage Rate

22(a) Accuracy of the Annual Percentage Rate

Paragraph 22(a)(1) * * *

4. *Basis for calculations.* When a transaction involves "step rates" or "split rates"—that is, different rates applied at different times or to different portions of the principal balance—a single composite annual percentage rate must be calculated and disclosed for the entire transaction. ►Assume, for example, a $10,000 loan repayable in 5 years at 10 percent interest for the first 2 years, 12 percent for years 3 and 4, and 14 percent for year 5. The monthly payments are $210.71 during the first 2 years of the term, $220.25 for years 3 and 4, and $222.59 for year 5. The composite annual percentage rate, using a calculator with a "discounted cash flow analysis" or "internal rate of return" function, is 10.75 percent.◄ * * *

Section 226.24—Advertising * * *

24(b) Advertisement of Rate of Finance Charge * * *

►2. *Rate of finance charge.* An advertisement may not state an effective rate or payment rate applicable to only a portion of the term of the transaction unless the annual percentage rate is also stated. For example, an advertisement that states "qualify at 10½%" or "an effective first year interest rate of 10½%" generally shows only a portion of the rate of finance charge that actually accrues during the early years of the term; the advertised annual percentage rate that must accompany this rate must take into account the interest that will accrue but not be paid during this period. On the other hand, since an advertisement that states "financing available at 3½% below prime" does not state a specific rate or portion of the finance charge, § 226.24(b) does not apply and the annual percentage rate is not a required disclosure.◄ * * *

Comments 24(b)–2 and 3 are redesignated 24(b)–3 and 4, respectively.

* * * * *

Appendix D—Multiple-Advance Construction Loans * * *

►2. *Varriable-rate construction loans.* The hypothetical disclosure required in most variable-rate transactions by § 226.18(f)(4) is not required for multiple-advance construction loans disclosed pursuant to Appendix D, Part I.

3. *Calculation of the total of payments.* When disclosures are made pursuant to Appendix D, the total of payments may reflect either the sum of the payments or the sum of the amount financed and the finance charge.

4. *Annual percentage rate.* Appendix D does not require the use of Volume I of the Board's Annual Percentage Rate Tables for calculation of the annual percentage rate. Creditors utilizing Appendix D in making calculations and disclosures may use other computation tools to determine the estimated annual percentage rate, based on the finance charge and payment schedule obtained by use of the appendix.◄ * * *

Appendix F—Annual Percentage Rate Computations for Certain Open-End Credit Plans

►1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(d)–2 for guidance on the appropriate calculation methods.◄ * * *

Appendix H—Closed-End Model Forms and Clauses * * *

►17. *ED–876 1/82.* Pursuant to section 113(a) of the amended Truth in Lending Act, Form ED–876 1/82, issued by the U.S. Department of Education for certain student loans, has been aproved. The form may be used for all PLUS loans when there is no deferment before the borrower begins repayment of both principal and interest. The form may also be used for PLUS loans when the borrower qualifies for a deferment of principal payments and the annual percentage rate to be disclosed is calculated taking account of the irregular payment schedule. The form may also be used for consolidation of previous PLUS loans, whether or not the borrower had a deferment of principal payments under the earlier loans. The following changes may be made to the form:

- Reducing the size of the form.
- Adding lines to the payment schedule disclosure.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, or circling applicable items.

18. *ED–876A 4/82.* Pursuant to section 113(a) of the amended Truth in Lending Act, Form ED–876A 4/82, issued by the U.S. Department of Education for certain student loans, has been approved. This form may be used for all PLUS loans where the borrower qualifies for an immediate deferment of principal payments under the terms of the note. (See the commentary to § 226.17(i) for the basis of disclosures.) The following changes may be made to the form:

- Reducing the size of the form.
- Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, or circling applicable items.◀ * * *

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Board of Governors of the Federal Reserve System, May 6, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-12978 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 82-324]

Amendments Relating to Change in Control

May 6, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") proposes to amend its regulations concerning changes in the control of savings and loan stock institutions and savings and loan institution holding companies. Several revisions are proposed. First, the presumption of control would be limited to transactions where a person would acquire the power to vote 10 percent or more of any class of voting securities of an insured institution which has voting securities that are registered under the Securities Exchange Act of 1934 (the "1934 Act") and that are actively traded. Second, notification of a subject institution of the filing of a notice of a proposed change in control ("Notice"), or of the filing of a rebuttal to the presumption of control, would be eliminated. Third, a Notice would not be disclosed to the public, except upon the consent of the acquiring person, consummation of the transaction, disapproval of the proposed acquisition, or when the Notice otherwise becomes public. Fourth, except with respect to disapproval of a Notice, the Director of the Office of Examinations and Supervision with the concurrence of the General Counsel, or their designees, would have delegated authority to take action under the regulations with regard to any institution or holding company which has a class of voting securities registered under the 1934 Act, and the Principal Supervisory Agent would have delegated authority with regard to any institution or holding company which does not have a class of voting securities registered under the 1934 Act. Fifth, provisions regarding the period of review and any additional information required to be filed with a Notice would be clarified. The proposed amendments are intended to lessen the regulatory burden on acquiring persons and to facilitate more efficient review procedures.

DATE: Comments must be received by: July 6, 1982.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Attorney, Office of General Counsel, (202) 377-6415, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Change in Savings and Loan Control Act of 1978 ("Control Act"), Title VII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, effective March 10, 1979, amended Section 407 of the National Housing Act (12 U.S.C. 1730(q)) to require persons who intend to acquire control of a savings and loan stock institution, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), or a savings and loan institution holding company, as defined in Section 408 of the National Housing Act (12 U.S.C. 1730a), (each referred to as an "insured institution" or "institution"), to give the FSLIC at least 60 days' prior written Notice. The FSLIC is authorized by the Control Act to disapprove any such proposed acquisition on certain specified grounds. To implement the Control Act, temporary regulations substantially similar to those adopted by the bank regulatory agencies under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) were adopted by the Board, as the operating head of the FSLIC, on February 7, 1979 (44 FR 10500, February 12, 1979). After considering public comments and other information, the Board adopted permanent regulations on August 15, 1980 (45 FR 55693, August 21, 1980). After having had over three years' experience in administering the Control Act, the Board has determined to propose certain revisions to its regulations relating to changes in the control of stock institutions (12 CFR 563.18-2).

Presumption of Control

The Control Act requires 60 days' prior written Notice to the FSLIC whenever a person proposes to acquire control of an insured institution through the purchase, assignment, transfer pledge or other disposition of the institution's voting stock. Control is defined in the Control Act as "the power, directly or indirectly, to direct the management or policies of an insured institution or to vote 25 per centum or more of any class of voting securities of an insured institution."

Under § 563.18-2(c)(2) of the Board's current regulations, a rebuttable presumption or the power to direct the management or policies of an insured institution is raised whenever a person would acquire the power to vote 10 percent or more of any class of voting securities and (1) the institution has at least $250 million in assets and any class of voting securities held of record by 1200 or more persons, or (2) the person, after the acquisition, would hold the largest portion, or an amount equal to the largest shareholder's portion, of any class of voting stock.

The Board proposes that the first criterion of the presumption be revised to limit its application to those situations where a Notice can currently be justified. The Board believes that the nature and extent of the actual trading market activity in an insured institution's voting securities provides a better criterion than the current one of asset size and number of shareholders for determining when a 10-percent acquisition should raise a presumption of a change in control. The proposed amendment would limit the 10-percent presumption to those insured institutions which have voting securities that are registered under the 1934 Act and that are actively traded. The term "actively traded" is defined in the proposed amendments as securities that are traded either on a securities exchange or over-the-counter and quoted on NASDAQ. The term "NASDAQ" is defined as the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Security Dealers, Inc.

The Board also proposes to delete the second criterion of the presumption, *i.e.*, where the person proposing to acquire 10 percent or more of an insured institution's voting securities would become the largest holder, or equal to the largest holder, of any class of voting stock. Again, the Board believes that when there is no active public trading market for an insured institution's securities, the statutory 25-percent definition of control provides an adequate basis for determining when a Notice should be filed. Absent a raised presumption, the proposed amendments

would provide that transactions resulting in a person's control of less than 25 percent of a class of voting securities of an insured institution would not result in control for purposes of the Control Act.

Rebuttal of Presumption

The Board's regulations provide in § 563.18–2(c)(3) that any acquiring person may request the opportunity to rebut the presumption of control by presenting his views in writing or orally before the FSLIC's designated representatives either at an "informal conference discussion" or an "informal presentation of evidence". However, experience has indicated that a written submission is the most equitable and efficient procedure for considering a rebuttal and for making a record of the issues raised. Therefore, the proposed amendments provide that any rebuttal by an acquiring person must be submitted in writing and that an additional oral presentation would be considered when appropriate. References to an "informal conference discussion" and to an "informal presentation of evidence" are deleted in the proposed regulations. It is also proposed that the acquring person be notified in writing regarding the FSLIC's determination of whether the presumption has been rebutted. While it is the current practice to issue a written decision, the present regulation only requires that notice of a decision be released.

Transactions Exempt From Notice

The Board proposes to clarify the present exemption for pro rata stock dividends resulting in the power to vote 25 percent of a class of voting securities. To avoid any ambiguity for a resulting 10-percent holder of an actively traded security, all pro rata stock dividends are exempted under the proposed amendments. Also, an additional exemption is proposed for customary one-time proxy solicitations. Both of these revisions are proposed to be made in § 563.18–2(d)(1).

Notification to Insured Institutions

The Board's current regulations require the FSLIC to notify the subject insured institution of the filing of a rebuttal of the presumption of control or the filing of a materially complete Notice, and provide that the institution may submit written comments to the Board. In adopting these regulations, the Board accepted the rationale that notification of the insured institution was necessary since (1) the institution is charged with the responsibility of informing its stockholders and the marketplace of important events which may affect its operations, and (2) the institution could provide information about an acquiring person not available from other sources. However, the Board's experience has indicated that notification of insured institutions is not necessary and that in certain situations it may have an adverse effect on the stockholders.

While an insured institution has a responsibility to inform its stockholders and the marketplace of a transaction which may have a material effect on its financial condition or operations, that obligation generally is triggered by the occurrence of the transaction and not by the intention to enter into it. Therefore, the mere filing of a Notice by an acquiring person would generally not create any obligation on behalf of the subject insured institution. The Board notes, however, that when a Notice relates to a proposed tender offer, the filing of the Notice may subject the acquiring person to certain additional requirements under the 1934 Act if the Notice were made public.

Although notification allows an insured institution to provide additional information to the Board in connection with its review of a rebuttal or a Notice, the Board believes that this benefit may be outweighed by its potential to inhibit acquisitions. The receipt of a Notice by the subject insured institution could cause management to initiate action which could effectively bar or significantly increase the expense of an acquisition which may be in the interest of the institution's shareholders. Moreover, the release of information regarding the proposed acquisition of an insured institution's securities could materially affect the public trading price of the securities prior to Board review of the proposed transaction.

These results were not intended under the Control Act. Therefore, the proposed amendments delete all provisions relating to notification by the FSLIC of a subject insured institution and to an institution's opportunity to comment on a proposed acquisition. Because of these revisions, the Board also proposes to delete the current § 563.18–2(*l*) supervisory case exception to any such right to notification and comment.

Disclosure

The proposed amendments would delete the current provision in § 563.18–2(e)(4) that non-confidential information in a Notice shall be available for public viewing upon filing. The Control Act does not impose a requirement that a Notice be made public upon filing. Because the public disclosure of a Notice may prematurely and materially affect the public trading market in the stock of the subject insured institution, and inhibit proposed acquisitions, neither of which consequences were intended by the Control Act, the Board believes that a Notice should be confidential until such time as definitive action has been taken with respect to the Notice. Therefore, the Board proposes that no portion of a Notice would be made public except in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and the Board's regulations adopted thereunder (12 CFR Parts 505 and 505a).

The proposed regulations specifically provide in § 563.18–2(f) that a Notice is for the information of the FSLIC and any appropriate State supervisory agency and is not available to the public except under certain conditions. Public disclosure may be made of any portion of a Notice, other than a portion which is exempt from disclosure under 12 CFR 505.5, in the following circumstances: (1) The consent of the acquiring person; (2) the consummation or disapproval of the proposed acquisition; or (3) the Notice otherwise becomes public. Generally, any of these conditions operate to remove the basis for an exemption from public disclosure.

When a Notice is disclosed to the public, access will be limited to those portions of the Notice which contain information directly related to the proposed acquisition (Form A). Those portions of the Notice which contain personal biographical and financial information (Form B) will not be disclosed, unless disclosure is otherwise required.

Failure to Disapprove

The proposed amendments would revise § 563.18–2(h) to clarify that where there is a failure to disapprove a proposed acquisition, such acquisition may take place, provided that it is consummated within one year and that there is no material change in circumstances prior to the acquisition. This revision conforms with § 563.18–2(g)(2) which currently indicates the effects of a written notice by the FSLIC of its intention not to disapprove a proposed acquisition.

Filing Procedures

In addition to the filings which must be made at the Board, the current regulations require in § 563.18–2(j) that two copies of a Notice be filed with the Principal Supervisory Agent with respect to a savings and loan institution and that two copies be filed with the

Supervisory Agent with respect to a savings and loan institution holding company. Since the present cross-reference to the definition of Supervisory Agent is incorrect, and since there does not appear to be a need to distinguish between the Principal Supervisory Agent and Supervisory Agent for the purpose of Control Act filings, the Board proposes to require filings only with the Board and the Principal Supervisory Agent.

Delegation of Authority

The proposed regulations provide in § 563.18–2(*l*)(1) that the Director of the Office of Examinations and Supervision with the concurrence of the General Counsel, or their designees, shall have delegated authority to take certain actions under the Control Act and the regulations regarding a Notice filed with respect to an insured institution which has a class of voting securities registered under the 1934 Act. The provisions describing those determinations that are delegated have been revised to conform to the other changes which are porposed.

In order to facilitate a more efficient review, it is proposed in § 563.18–2(*l*)(2) that the appropriate Principal Supervisory Agent shall have delegated authority regarding a Notice filed with respect to an insured institution which does not have a class of securities registered under the 1934 Act. However, the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel, or their designees, is required for (1) a grant, but not a denial, of a waiver, and (2) a recommendation to the Board either to disapprove a proposed acquisition or to issue a notice of intent not to disapprove a proposed acquisition whenever a State supervisory agency recommends disapproval in writing for any grounds specified in the Control Act.

Period for Review and Filing of Additional Information

The Board proposes to clarify the applicable time period for review by providing in § 563.18–2(e) that the 60-day review period commences again in its entirety upon receipt by the FSLIC of additional information filed with respect to a Notice. In addition, the Board proposes to clarify its authoirty to require the filing of additional information if it determines that the information is necessary in connection with its review of the Notice. The proposed revision under § 563.18–2(e)(2) clarifies that any requested waiver of information required in a Notice should be in writing.

Regulatory Flexibility Act Certification

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980), the Board certifies that the proposed amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D— FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Revise § 563.18–2 to read as follows:

§ 563.18–2 Changes in control of stock institutions including savings and loan holding companies.

(a) *Scope.* This section applies only to changes of control under section 407(q) of the National Housing Act, as amended (12 U.S.C. 1730(q)) ("Control Act").

(b) *Definitions.* As used in this section:

(1) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unicorporated organization, or any other form of entity not specifically listed herein;

(2) "Control" means the power, directly or indirectly, to direct the management or policies of an insured institution or to vote 25 percent or more of any class of voting securities of an insured institution;

(3) "Stock" means such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto;

(4) "Insured institution" or "institution" shall include any savings and loan holding company, as that term is defined in section 408 of the National Housing Act, which has control of any insured institution;

(5) "Actively traded" means securities that are traded either on a securities exchange or over-the-counter and quoted on NASDAQ; and

(6) "NASDAQ" means the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(c) *Acquisitions requiring prior written notice*— (1) *General.* Unless a transaction is exempted under paragraph (d) of this section, 60 days' prior written notice to the Corporation is required whenever any person or persons acting in concert, through a purchase, assignment, transfer, pledge, or other disposition of voting stock, will acquire the power, directly or indirectly:

(i) To direct the management or policies of an insured institution; or

(ii) To vote 25 percent or more of any class of voting securities of an insured institution.

(2) *Transactions presumptively requiring notice.* For purposes of this section, a person shall be presumed to acquire power to direct the management and policies of an insured institution whenever the person will acquire power to vote 10 percent or more of any class of voting securities of the institution and the institution has a class of voting securities which is registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) and is actively traded. Transactions resulting in a person's control of less than 25 percent of a class of voting securities of an institution whose stock is not actively traded does not result in control for purposes of the Control Act.

(3) *Rebuttal of presumption.* Upon request, the Corporation will afford any acquiring person an opportunity to rebut the paragraph (c)(2) of this section presumption in writing and, when appropriate, orally. The Corporation shall have 20 days from the receipt of a materially complete written rebuttal within which to determine whether the presumption has been rebutted. The decision of the Corporation will be provided in writing to the acquiring person.

(4) *Presumption to apply prospectively.* Any person who is deemed to have had the power to direct the management or policies of an insured institution continously since March 9, 1979, solely on the basis of the presumption contained in paragraph (c)(2) of this section, must either give prior written notice as prescribed by this section or seek a determination by the Corporation that the person has had such power, before acquiring additional voting securities in the institution.

(d) *Transactions exempt from notice*—(1) *Transaction entirely exempt.* Notice is not required for:

(i) Transactions subject to section 408 of the National Housing Act (12 U.S.C. 1730a), whether or not prior Corporation approval is required by that section;

(ii) Transactions subject to approval under Part 546 of this chapter or § 563.22 of this subchapter;

(iii) Acquisition of additional shares of any class of voting securities in an insured institution by a person who:

(*a*) Has held power to vote 25 percent or more of any class of voting securities in such institution continuously since March 9, 1979; or

(*b*) Has maintained control of the institution continuously since acquisition of control in compliance with this section and the Control Act;

(iv) A customary one-time proxy solicitation; or

(v) Receipt of pro rata stock dividends.

(2) *Transactions exempt from prior notice.* If a person would obtain control as a result of acquisition of voting securities in an insured institution:

(i) In satisfaction of a debt previously contracted in good faith; or

(ii) Through testate or intestate succession or bona fide gift;

the acquiring party need not provide advance notice but must advise the Corporation in writing within 30 days of the acquisition and provide such information as the Corporation may request.

(e) *Notice*—(1) *Form and contents.* A notice required under paragraph (2) of the Control Act shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Corporation, and any additional relevant information as the Corporation may require by specific request in connection with any particular notice.

(2) *Waiver.* Upon a written request, the Corporation may waive any required information which is deemed unnecessary.

(3) *Receipt of notice; effect.* The period for Corporation review of any proposed acquisition will commence upon receipt by the Corporation of a notice substantially complying with the provisions of paragraph (e)(1) of this section. The Corporation will send a letter of acknowledgement to an acquiring person indicating the date of receipt of a notice deemed sufficient or specifying the reasons why a notice is insufficient. After the Corporation notifies the acquiring person that the notice is sufficient, the Corporation may subsequently make a determination that additional information is required for its review of the notice, and it shall notify the acquiring person that the notice is insufficient. In such case the period for Corporation review will be deemed to commence again in its entirety upon the receipt of the additional information.

(f) *Disclosure.* Any notice filed pursuant to this section shall be for the information of the Corporation and any appropriate State supervisory agency and shall not be available to the public except under certain conditions. No portion of a notice will be disclosed except in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Parts 505 and 505a of this chapter. Public disclosure of any portion of a notice, other than a portion exempt from disclosure under § 505.5 of this chapter, may be made under any of the following conditions:

(1) Consent of the acquiring person;

(2) Consummation or disapproval of the proposed acquisition; or

(3) A notice otherwise becomes public.

(g) *Action by Corporation.* Prior to expiration of the 60-day review period or any extension thereof, the Corporation may notify the acquiring person in writing of:

(1) Its disapproval of the proposed acquisition on any of the grounds listed in paragraph (7) of the Control Act and its advice that the acquiring party may request an administrative hearing under paragraph (4) of the Control Act; or

(2) Its intent not to disapprove the proposed acquisition, provided that it is consummated within one year and that there is no material change in circumstances prior to the acquisition.

(h) *Failure to disapprove.* If, upon expiration of the 60-day review period or any extension thereof, the Corporation has failed to disapprove a proposed acquisition, such acquisition may take place, provided that it is consummated within one year and that there is no material change in circumstances prior to the acquisition.

(i) *Extensions of review period.* The 60-day period may be extended by the Corporation for up to 30 days for any reason.

(j) *Filing procedures.* Any notice or other submission required or provided for in the Control Act or this section shall be filed as follows:

(1) The original and two copies shall be filed with the Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552; and

(2) Two copies shall be filed with the Principal Supervisory Agent, as defined in § 561.35 of this subchapter.

(k) *Sole authority in Corporation.* The Corporation alone shall exercise the authority to:

(1) Disapprove a proposed acquisition; or

(2) Issue a notice of its intent not to disapprove a proposed acquisition whenever the appropriate State savings and loan supervisory agency recommends disapproval in writing on any of the grounds specified in paragaraph (7) of the Control Act.

(l) *Delegations of authority.* (1) The Director of the Office of Examinations and Supervision with the concurrence of the General Counsel, or their designees, is authorized, with regard to institutions having a class of voting securities registered, under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), to:

(i) Decide whether a presumption of control has been rebutted under paragraph (c)(3) of this section;

(ii) Determine the existence of control prior to the effective date of the Control Act under paragraph (c)(4) of this section;

(iii) Require information from an acquiring party exempt from the prior-notice requirement under paragraph (d)(4) of this section;

(iv) Require additional information under paragraph (e)(1) of this section;

(v) Grant or deny a waiver of any required information under paragraph (e)(2) of this section;

(vi) Determine sufficiency of a notice for the purpose of commencing or recommencing the review period under paragraph (e)(3) of this section;

(vii) In the absence of a recommendation by the appropriate State savings and loan supervisory agency for disapproval, issue notices of intent not to disapprove proposed acquisitions under paragraph (g)(2) of this section;

(viii) Extend the review period under paragraph (i); (ix) Act on behalf of the Corporation with respect to the exercise of any authority not expressly reserved to the Corporation under paragraph (k) of this section.

(2) The Principal Supervisory Agent is authorized, with regard to institutions not having a class of voting securities registered under Section 12 of the Securities Exchange Act of 1934 (12 U.S.C. 78*l*), to make the determinations under subparagraphs (1) (ii) through (ix) of this paragraph. However, the concurrence of the Director of the Office of Examinations and Supervision and the General Counsel, or their designee, is required for:

(i) a grant, but not a denial, of a waiver referred to under subparagraph (1)(v) of this paragraph; and

(ii) a recommendation either to disapprove a proposed acquisition under paragraph (k)(1) of this section or to issue a notice of intent not to disapprove under paragrah (k)(2) of this section where a State supervisory agency recommends disapproval.

(Title VII, Financial Institutions Regulatory and Interest Rate Control Act of 1978, sec. 407, 48 Stat. 1260, as amended, 12 U.S.C. 1730(q); Reorg. Plan No. 3 of 1947, 12 FR 4981, 2 CFR 1943–48 Comp., 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-13110 Filed 5-12-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 82-ANM-3]

Proposed Designation of Restricted Area—Saylor Creek, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate Restricted Area R–3202D, Saylor Creek, ID, located approximately 50 miles south of Boise, ID. The proposed restricted airspace would provide a safe environment for launching Pershing II missiles.

DATE: Comments must be received on or before June 14, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Northwest Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 82–ANM–3, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, WA 98108.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations and Obstructions Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82–ANM–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 73.32 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate new Restricted Area R–3202D, Saylor Creek, ID, which is located approximately 50 miles south of Boise, ID. The U.S. Air Force has certified R–3202D has been environmentally assessed in accordance with the guidelines set forth by the National Environmental Protection Agency (NEPA). The lead agency for environmental consideration is the U.S. Air Force, White Sands Missile Range, NM 88002. R–3202D would provide restricted airspace for launching Pershing II missiles. This new launch location is requested to complete test requirements and test objectives. Although the missile test program will continue for several years, R–3202D would be activated only when needed and restricted only for the period of time required to complete each firing operation. Section 73.32 of Part 73 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982.

List of Subjects in 14 CFR Part 73

Restricted areas, Airspace.

Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.32 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

R–3202D Saylor Creek, ID [New]

Boundaries. Beginning at lat. 42°56'00" N., long. 116°13'20" W.; lat. 42°12'30" N., long 115°10'40" W.; lat. 42°00'00" N., long. 115°30'30" W.; lat. 42°51'15" N., long. 116°21'00" W.; to point of beginning.

Designated altitudes. Surface to unlimited.

Times of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. Federal Aviation Administration, Salt Lake City ARTC Center.

Using agency. Deputy for Air Force, Armament Division, White Sands Missile Range, NM.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 3, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-12981 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 375, and 381

[Docket No. RM82-25-000]

Fees Applicable to Producer Matters Under the Natural Gas Act

May 6, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to establish fees for services and benefits provided by the Commission under its jurisdictional statutes. The Commission is authorized by the Independent Offices Appropriations Act of 1952 (IOAA) to establish fees for services and benefits it provides. The fees are being proposed in a series of proposed rules, each rule relating to a different type of regulated entity or jurisdictional subject area.

This proposed rule would establish fees for services and benefits provided to natural gas producers under the Natural Gas Act in Part 381 of the Commission's regulations. The rule would require the payment of a fee upon the filing of (1) an application for a blanket small producer certificate under section 7(c) of the NGA, (2) an application for a producer certificate of public convenience and necessity under section 7(c) of the NGA, and (3) a producer rate schedule supplement or producer rate change under section 4 of the NGA.

DATE: Comments must be submitted to the Secretary of the Commission by July 5, 1982.

ADDRESS: Send comments to Federal Energy Regulatory Commission, Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Room 9310, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to establish fees for services and benefits provided by the Commission under its jurisdictional statutes. The fees are being proposed in a series of proposed rules, each rule relating to a different type of regulated entity or jurisdictional subject area. By proposing fees in a series of individual rulemakings, the Commission intends to identify clearly each category of fees and to focus public comments. Nevertheless, the proposals are the product of a comprehensive examination of potential fees associated with all the different functions and services performed by the Commission. The Commission will consider issuing a consolidated final rule establishing fees for all services and benefits.

This proposed rule would establish fees for services and benefits provided to natural gas producers under the Natural Gas Act (NGA)[1] in Part 381 of the Commission's regulations. The rule would require the payment of a fee upon the filing of (1) an application for a blanket small producer certificate under section 7(c) of the NGA, (2) an application for a large producer certificate of public convenience and necessity under section 7(c) of the NGA, and (3) a producer rate schedule supplement or producer rate change under section 4 of the NGA.

The Commission is authorized by the Independent Offices Appropriations Act of 1952 (IOAA)[2] to establish fees for services and benefits it provides. The IOAA provides in pertinent part:

> [A]ny work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation * * * to prescribe therefore such fee, charge, or price, if any, which he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration the direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amounts so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts * * *

The principal agency interpretation of the IOAA is Bureau of the Budget Circular A-25 [3] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which such recipient derives a special benefit.[4]

In accordance with the IOAA and authoritative interpretations of that statute, the Commission, in establishing any fee, must: [5]

A. Identify the service for which the fee is to be assessed;

B. Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

C. Base the fee on as small a category of service as practical; and

D. Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered the beneficiary.

II. Discussion

The Commission believes that the fees set forth in this proposed rule would meet the four requirements outlined above.

A. Identification of Services

The categories of services and benefits provided to producers under the NGA for which the Commission would propose a fee are the following:

1. Review of applications for blanket small producer certificates under section 7(c) of the NGA, filed in accordance with § 157.40(b);

2. Review of applications by large producers for certificates of public convenience and necessity under section 7(c) of the NGA, filed in accordance with Part 157; and

3. Review of producer rate schedule supplements or rate changes under section 4 of the NGA, filed in accordance with § 154.94.

In this proposed rulemaking, the Commission is not proposing to charge fees for other actions it takes to implement its responsibilities relating to

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[1] 15 U.S.C. 717-717w.

[2] 31 U.S.C. 483a.

[3] Bureau of the Budget Circular A-25 (September 23, 1959). This interpretation has been quoted by the U.S. Supreme Court as "the proper construction of the act," in FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

[4] Budget Circular A-25 at 1-2:

General Policy. A reasonable charge . . . should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit. . . . For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

a. Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (*e.g.*, receiving a patent, crop insurance, or a license to carry on a specific business); or

b. Provides business stability or assures public confidence in the business activity of the beneficiary (*e.g.*, certificates of necessity and convenience for airline routes, or safety inspections of craft). . . .

[5] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light v. NRC, 601 F.2d 223 (5th Cir. 1979); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

gas producers under the NGA. These actions are discussed in Subsection B of this discussion.

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[6] In addition, the circular indicates that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values * * * than those which accrue to the general public."[7] Any fee charged under the IOAA is not rendered invalid because the public may also enjoy incidental benefits which flow from the service provided the recipient by the agency.[8] However, an agency may not charge for its services "when the identification of the ultimate beneficiary is obscure and the service can be considered as benefitting broadly the general public."[9]

The proposed rule complies with these requirements in that the services for which fees would be charged under this rule provide special benefits to the applicants who invoke the Commission's procedures. A blanket small producer certificate under section 7(c) of the NGA benefits the applicant by exempting the applicant from certain otherwise applicable filing requirements.

A certificate of public convenience and necessity under section 7(c) benefits the applicant by allowing the applicant to engage in the business of sale for resale of natural gas. Without a certificate, a producer would be precluded by section 7(c) of the NGA from selling natural gas for resale in the interstate market.

The Commission, under section 4, reviews rate schedule supplements and producer rate changes filed by producers which establish a new, higher base rate. In reviewing these rate schedules, the Commission makes an affirmative determination that the new base rate is proper, allowing it to go into effect. In addition, once a rate schedule is filed, the producer benefits by being allowed under the blanket affidavit program, to escalate the base rate to reflect the monthly inflation adjustment allowed by the Natural Gas Policy Act, without additional filings.

In these cases, the Commission believes that each identifiable applicant for these kinds of Commission services derive more substantial benefits than those benefits accruing to the general public. They are therefore the recipients of special benefits from the Commission. Therefore, this notice proposes to assess against any individual or entity seeking these services or authorizations a fee designed to recover the costs associated with providing that service.

As mentioned above, the Commission is not proposing in this rulemaking to charge fees for other actions it takes relating to gas producers under the NGA. These actions include preliminary and formal enforcement investigations, settlement and administrative litigation, news releases, litigation in the courts, and rulemakings. Generally, the recipients of these services are not readily identifiable.[10]

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit of category of service or benefit practical. In remanding fees established by the Federal Communications Commission, the Court of Appeals for the D.C. Circuit set forth the general rule:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is *practical*. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.
> * * * * *
> Many of the expenses will no doubt separate naturally among classes of carriers and services. . . . (emphasis added).[11]

The Commission recognizes that there may be significant differences in the costs incurred for individual filings or applications which are submitted for approval or review. Some filings are more complex or controversial than others or may require more time to process. the Commission is proposing to establish fees based on the narrowest categories of activities sharing common characteristics. Fee categories are generally delineated according to the nature of the service or benefit provided. For example, applications for blanket small producer certificates are not grouped with other applications for certificates of public convenience and necessity filed by producers, or with filings of producer rate schedule supplements or producer rate changes.

A fundamental consideration in developing a fee structure under the IOAA is the administrative practicality of establishing fees which relate, nor just to categories of services, but also to subcategories of services or even individual agency services. This problem relates to the accessibility of cost data and the expense incurred in collecting the data. The Commission believes it has the authority to establish separate fees for any filing that initiates a proceeding and any filing that requires the Commission to undertake additional steps in that proceeding, such as requests for rehearing, intervention, or appeals. However, because the time spent in subsequent stages of a proceeding is not separately recorded by the Commission, the Commission does not have data at this time which is detailed enough to permit it to establish a separate fee for each stage of a proceeding. As a result, the Commission is proposing to establish only one fee for any proceeding or application process because the Commission believes that the entire process is the smallest unit practical on which to base a fee. It nevertheless requests comments on whether fee categories should be established for smaller classes of applicants, or separate stages of a proceeding and the nature of the data which would be necessary to support such fee categories.

D. Basis of Cost Recovery

1. *Direct and indirect costs included.* The fee schedule proposed by the Commission is designed to account for all types of recoverable costs associated with the processing of the specified applications and filings under the NGA. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. As the Fifth Circuit observed, in *Mississippi Power & Light* v. *NRC*, employees "must be supplied with working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on

[6] Budget Circular A–25 at 1–2.

[7] *Id.* at 2.

[8] *See* Mississippi Power & Light v. NRC, 601 F.2d 223, 227–28 (5th Cir. 1979); Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[9] Budget Circular A–25 at 2; quoted with approval in FPC v. New England Power Co., 415 U.S. 345, 350 (1974).

[10] The Commission is considering, in other rulemakings, fees for declaratory orders under all of its jurisdictional statutes and recovery of the costs of certain rulemakings. In those cases where a fee is proposed, the Commission believes that there are special benefits provided to identifiable recipients.

[11] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116–17 (D.C. Cir. 1976).

a regular basis and provided specialized training courses. Those and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application."[12] The following descriptions indicate what actual costs are incurred when the Commission supplies the services and benefits to producers under the NGA.

Applications for producer certificates are processed by the Office of Pipeline and Producer Regulation (OPPR). The application is noticed in the **Federal Register** and is reviewed for conformance with the Commission's regulation. A draft order is prepared and reviewed by the Office of General Counsel for legal sufficiency. In most cases, the Director of OPPR conducts a statutory hearing under 18 CFR 1.32 and issues a certificate under delegated authority. In addition, when a producer is unable to continue service, the producer files for abandonment authorization under Section 7(b) of the Natural Gas Act. Notice of these applications is published and orders are prepared after a review of the factual basis for the abandonment. The applicable rate schedules are also identified and cancelled.

Large producers file contract amendments or changes to their rate schedules under the Natural Gas Act, which are reviewed and analysed by the rate filing branch OPPR for conformity with statutes, Commission regulations or orders, and contractual entitlement. This review and analysis assures that the rate changes are in the public interest and are just and reasonable. Once this analysis is complete, a staff memorandum is prepared and submitted to the Office of the General Counsel for review. Then, the Director of OPPR reviews the staff memorandum and issues a letter of acceptance or rejection.

2. *Methodolgy.* The Commission's calculation of the costs incurred to provide each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of these services. The proposed rule relies on information obtained through the Commission's management information system (MIS), which provides the amount of time spent on all the Commission functions. This data is recorded on a periodic basis. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, oil pipeline regulation, hydropower regulation, and electric power regulation.

The supervisor in each organizational unit reports to the MIS the amount of time spent by staff on each function, in terms of "work-months". A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. With respect to each function, the supervisor records the number of projects initiated (receipts) and completed (completions) in a particular time period, insofar as the nature of the function involves the initiation and completion of projects. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docket activities".

Other "support" functions regularly undertaken, with respect to any program, may not be measured in terms of receipts and completions and are not docketed. The nature of these functions makes impractical any measurements in terms of receipts and completions, but staff time is nevertheless spent performing these functions. This time is also allotted and reported by unit supervisors.

These support functions will be referred to as "support activities" and can be divided into three categories. First, there are activities that involve general supervision, personnel management, and routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave.

Second, support staff responds to requests for information that does not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies.

Third, support staff establishes or reviews certain Commission operations and procedures. These activities include work on the FERC budget, management information systems, and program development functions such as special studies or briefings not identified with a docketed activity.

The Commission uses the following method to determine the cost of providing any service or benefit. First, the work-months (WM's) reported for a specific "docketed" activity are added to a pro-rata share of the work-months reported for the relevant "support" activities.[13] This figure, representing the total number of work-months dedicated to a given function for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete each activity.

Second, the Commission used the following figures provided by the Office of Program Management to derive the average cost of a work-month, based on the Commission's FY 1982 budget.

Average annual salaries and fringe benefits (including the overhead for retirement and benefit insurance)	$37,518
Administrative overhead for one year per employee (including printing, communication, office space, rent, etc.)	6,466
Contracts for overhead services for one year per employee (microfilm, etc.)	2,409
Estimated average cost per employee for fiscal year 1982	46,392

The total is divided by 12 to yield an average work-month cost of $4,032.67.

Third, in order to determine the cost of the activity, the Commission multiplies the average cost per work-month by the average number of work-months required to complete the activity.

The Commission proposes to update the fees each year to reflect Commission costs. An updated fee schedule would be published in the **Federal Register** each year. the updated fee would be the product derived by multiplying each fee that is effective for the current fiscal year by the ratio of the average budgeted costs per employee for the next fiscal year to the average budgeted costs per employee for the current fiscal year. An applicant would be obliged to pay either the updated fee or, if the updated fee is not yet effective, the fee that is currently effective at the time of filing.

E. Exceptions to Full-Cost-Recovery

As a general policy, the Commission intends to establish fees which include all the recoverable costs associated with a particular benefit or service provided by the Commission. The Commission recognizes, however, that there may be instances in which a fee has an undesired effect on an applicant or other person requesting a service or benefit or otherwise proves infeasible. In such cases, the Commission may exercise discretion to reduce the fee for a category of service. Generally speaking, the Commission does not expect this issue to arise with regard to any service

[12] 601 F.2d at 232.

[13] The Commission excluded from its cost calculations the work-months associated with the second category of support activities, because those functions did not constitute part of the cost of providing a special benefit.

that is necessary for participation in a regulated business and continues to consider the possibility of full-cost-recovery for each category of service for which it proposes fees. The Commission specifically requests comments on this fundamental approach.

The primary concern presented by the establishment of fees is to ensure that the benefits and services provided by the Commission under its jurisdictional statutes remain reasonably available to interested persons. Any consideration of whether to establish a less than full-cost-recovery fee under new Part 381 for a category of service would initially depend on a threshold determination that a full-cost-recovery fee may discourage use of the service for which the fee is assessed. If it appears to the Commission that a full-cost-recovery fee would discourage filings or use of Commission services, it would then consider a reduction in the relevant fee. The determination of how far to reduce a fee would depend on four specific factors.

1. *Disproportionate economic burden.* The Commission may reduce the fee by a factor of forty to sixty-five percent, if it is shown that the individuals or entities the Commission expects to predominate in the potential class of payers are of the type on which the full-cost-recovery fee could be expected to impose a disproportionate economic burden. If the Commission service does not pertain to small entities or involve any particular economic hardship, but would nevertheless impose a full-cost-recovery fee that would discourage use of that service, the Commission would be inclined to reduce the fee by a small amount, not to exceed fifty percent of the full cost of the service, depending upon other considerations which may arise.

2. *Encouraging use of a service.* The Commission may reduce the fee by twenty percent, if the service or procedure involved is of a type that the Commission wishes to encourage or if the Commission prefers that service or procedure to be used more often than others which would provide essentially the same benefit.

3. *Use of Commission time.* Related to the consideration of encouraging one service over another is a consideration of whose time and effort is required to provide the particular service. Commission time is more valuable and limited than staff time, so a reduction of five percent may be made if a service requires only staff time.

4. *Reduction of processing time.* There may be some services the Commission provides with which the Commission has had little experience. As the Commission becomes more familiar with the processing or review of such an application or filing, it may become more efficient, thereby reducing the amount of time required to provide the service. To reflect this possibility, the Commission may reduce the fee by five percent if the service requested is one with which the Commission has had little experience.

III. Fees Proposed

The following table summarizes the average number of work-months (WMs) and average costs incurred in rendering the services for which the Commission proposes fees in this rulemaking:[14]

Service	Total WM's	Total completions	Average number WMs per completion	Average cost per completion
Review of applications for blanket small producer certificates	75.4	188	.401	$1,613.00
Review of applications for producer certificates of public convenience and necessity	376.92	715	.527	2,137.00
Review of producer rate schedule filings	320.1	2,846	.063	322.51

The following fees are therefore proposed: [15]

Service	Fee
Blanket small producer certificates	$1,600.00
Producer certificates of public convenience and necessity	2,100.00
Producer rate schedule filings	300.00

These fees are essentially full-cost-recovery fees. They are not reduced according to the factors discussed above because these fees do not exhibit characteristics which warrent fee reductions. However, the Commission is proposing procedures whereby the Commission may waive or reduce the fees prescribed by this proposal. These procedures would give the Commission the discretion to waive or reduce the fees in order to avoid undue economic burden in particular cases.

IV. Procedures for Paying Fees

In order to be consistent with the assessment of fees relating to producer matters under the NGA, the Commission proposes to amend its current regulations regarding the procedures applicable to each of the filings and applications covered by the proposed fee schedule. The amended procedures would require that a certified check for the appropriate amount, made payable to the United States Treasury, be included with each filing and application.

In addition, the proposal provides that any application or filing which is not accompanied by the appropriate fee would be considered deficient and would not be processed by the Commission.

Furthermore, in the areas where the Commission presently charges fees, it follows a policy of no refunds, with minor exceptions. The Commission expects to apply this no refund policy to all fees proposed under the IOAA in this series of rulemakings, as well.

V. Direct Billing Alternative

As discussed above, the methodology that would be used to establish the proposed fees is based on the average cost of processing the average filing. The Commission occasionally receives filings which are not representative of these average filings. These filings may be so extensive in scope and present issues of such complexity or difficulty that the Commission must devote an extraordinary amount of time and effort to processing them. The standard fees would bear no reasonable relationship to the actual cost of processing these extraordinary filings. Moreover, if the costs of processing these extraordinary filings were included in the average costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. Therefore, the Commission is proposing that in the case of an extraordinary filing, it would order a direct billing procedure.

Under this direct billing procedure, the Commission would periodically bill the person who submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing. The filing would then be processed like other filings, but the manpower devoted to processing the filing would be separately recorded and

[14] The Commission is placing in the public file in this docket more detailed data relating to the costs incurred by the Commission which form the basis of the proposed fees.

[15] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

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would not be averaged with the time devoted to processing the average filing.

VI. Summary of Proposed Rule

This proposed rule establishes fees for services and benefits provided by the Commission to producers under the NGA in proposed Part 381 of Chapter 1 of Title 18 of the Code of Federal Regulations.

Proposed § 381.103 provides that each filing must be accompanied by the proper fee or the filing will be considered deficient, which could result in rejection of the filing. Section 381.103 also provides that if a filing for one service or benefit may be considered as falling within two or more fee categories, the higher or highest of the applicable fees must be paid.

Proposed § 381.104 requires the publication of an updated fee schedule each year to reflect an increase or decrease in costs.

Proposed § 381.106 provides that the Commission may waive or reduce fees if to do so is necessary to prevent an undue economic burden.

Proposed § 381.107 provides that the Commission may order any filing, the processing of which requires an extraordinary amount of time and staff resources, to be assessed fees under a direct billing procedure. Any fees paid under Part 381 upon submission of the filing would be credited against the direct bill.

Proposed § 381.401 establishes a $1,600 fee payable upon the submission of an application for a blanket small producer certificate under section 7(c) of the NGA.

Proposed § 381.402 establishes a $2,100 fee payable upon submission of an application for a producer certificate of public convenience and necessity under section 7(c) of the NGA.

Proposed § 381.403 establishes a $300 fee payable upon the filing of producer rate schedule supplement or rate change under section 4 of the NGA.

In addition, this proposed rule amends the Commission's regulations, relating to the above-mentioned categories of service to require each producer to file the proper fee with the application or rate schedule filing.

VII. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) to prepare and make available for public comment an initial regulatory flexibility analysis. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small business and small government entities, and to encourage cost-benefit analyses of these rules as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities.

In this preamble the Commission presents its reasons for this agency action, its objective, and the legal basis for this rulemaking. As discussed, the proposed rule would establish a schedule of fees to be paid to the Commission for certain benefits it provides. The proposed rule would not impose any reporting, recordkeeping or compliance requirements.

This rule would affect natural gas producers. There are approximately 10,000 natural gas producers in the United States.

The Small Business Administration's (SBA) regulations do not establish size standards for producers. (*See* 13 CFR Part 121). However, a significant proportion would probably be classified as small businesses. Therefore, this rule may have a significant economic impact on a number of small producers.

Where a proposal may have significant economic impact on a substantial number of small entities, section 603(c) of the Regulatory Flexibility Act requires the Commission to discuss significant alternatives to the proposal. The Commission has already attempted to minimize any disproportionate burden the proposal would have on small businesses. The proposal contains a provision for waiver or reduction of those fees to protect any producers subject to the fees from an undue economic burden. The Commission could, of course, consider reducing the fees, or even eliminating the fees, with respect to small businesses. However, in proposing the fees, the Commission is also attempting to satisfy the statutory directive of the IOAA to be "self-sustaining to the full extent possible." The Commission believes the rule, as proposed, represents a fair balance which will satisfy the purposes of both the IOAA and the Regulatory Flexibility Act.

VIII. Written Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, not later than July 5, 1982. Each person submitting a comment should indicate that the comments are being submitted in Docket No. RM82–25–000, and should give reasons, including any supporting data, for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies of each comment should be filed with the Commission. All comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

(Department of Energy Organization Act, 42 U.S.C. 7101–7; E.O. 12009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a).

List of Subjects

18 CFR Parts 154 and 157

Natural gas.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, General fees.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 *Code of Federal Regulations* as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. Chapter 1 is amended in its table of contents by adding in the appropriate numerical order, a new part and heading, to read as follows:

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

* * * * *

SUBCHAPTER W—REVISED GENERAL RULES

Part

* * * * *

381 Fees.

* * * * *

PART 154—RATE SCHEDULES AND TARIFFS

2. Section 154.94 is amended in paragraph (a) by adding a new sentence at the end thereof, to read as follows:

§ 154.94 Changes in rate schedules.

(a) * * * Each change in rate schedule filing must be accompanied by the

appropriate fees prescribed in § 381.403 of this chapter.

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. Section 157.24 is amended by adding a new paragraph (c) at the end thereof, to read as follows:

§ 157.24 Contents of application.

* * * * *

(c) Each application for a certificate of public convenience and necessity required under § 157.23 must be accompanied by the appropriate fee prescribed in § 381.402 of this chapter.

4. Section 157.40 is amended by adding a new paragraph (b)(7), to read as follows:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(b) *Procedure for securing blanket small producer certificate.* * * *

(7) Each application for a blanket small producer certificate must be accompanied by the appropriate fee prescribed in § 381.401 of this chapter.

PART 375—THE COMMISSION

5. Section 375.307 is amended by adding a new paragraph (u) at the end thereof, to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(u) Waive or reduce the fees prescribed in §§ 381.401, 381.402, and 381.403 of this chapter, in accordance with § 381.106 of this chapter.

6. Subchapter W is amended by adding a new Part 381 to read as follows:

SUBCHAPTER W—REVISED GENERAL RULES

* * * * *

PART 381—FEES

Subpart A—General Provisions

Sec.
381.101 Purpose.
381.102 Definitions.
381.103 Filings.
381.104 Annual adjustment of fees.
381.105 Method of payment.
381.106 Reductions and waivers.
381.107 Direct billing.

Subpart B—Fees Applicable to General Functions [Reserved]

381.201 Declaratory orders. [Reserved]
381.202 Interpretations by the Office of the Chief Accountant. [Reserved]
381.203 Review of DOE denials of adjustment. [Reserved]
381.204 Review of DOE remedial orders. [Reserved]

Subpart C—Fees Applicable to the Natural Gas Policy Act of 1978 [Reserved]

381.301 Adjustments. [Reserved]
381.302 Well-category determinations. [Reserved]
381.303 Initial reports for Title III transactions. [Reserved]
381.304 Extension reports for Title III transactions. [Reserved]
381.305 Interpretations by the Office of the General Counsel. [Reserved]

Subpart D—Fees Applicable to the Natural Gas Act and Related Authorities [Reserved]

381.401 Blanket small producer certificates. [Reserved]
381.402 Producer certificates of public convenience and necessity. [Reserved]
381.403 Producer rate schedule filings. [Reserved]

Subpart E—Fees Applicable to the Federal Power Act [Reserved]

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

Authority: Department of Energy Organization Act (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 442 (1978); Independent Offices Appropriations Act (31 U.S.C. 483a).

Subpart A—General Provisions

§ 381.101 Purpose.

The purpose of this part is to set forth the fees charged by the Commission for services and benefits provided by the Commission.

§ 381.102 Definitions.

For purposes of this part, the following definitions apply.

(a) "Person" means any person, group, association, organization, partnership, corporation, or business, except those engaged in the transaction of official business of the Government.

(b) "Work year cost" means the ratio of the Commission's budgeted expenses during any given fiscal year to the authorized staff level for that fiscal year.

(c) "Filing" means any application, petition, request, or motion submitted to the Commission in connection with any of the services or benefits for which a fee is established in this part.

§ 381.103 Filings.

(a) *Submittal of fees.* Except as provided in § 381.106, a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

(b) *Deficiencies.* (1) Any filing that is not accompanied by either the fee established for that filing or a request for reduction or waiver in accordance with § 381.106 is deficient.

(2) The Secretary will inform any person submitting a deficient filing that:

(i) Such filing will be rejected unless the appropriate fee is submitted within a specified time;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing is the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Choice of two fees.* If a filing for one service or benefit may be considered as falling within two or more categories of service for which a fee is established, that filing must be accompanied by the higher or highest of the applicable fees.

§ 381.104 Annual adjustment of fees.

(a) *Update and Publication.* Beginning in fiscal year 1983, fees established in this part are updated annually, in accordance with this section. Updated fees are published in the **Federal Register** and as an appendix to this part.

(b) *Payment of updated fees.* Any person who, after fiscal year 1982, submits a filing for which a fee is established in this part must pay the updated fee under this section or, if the fee has not been updated at the time of filing, the currently effective fee.

(c) *Formula.* The fee applicable to a fee category in each fiscal year is the fee for the previous fiscal year for that category, multiplied by the ratio of the work year cost for the fiscal year for which the fee is determined to the work

year cost for the previous fiscal year. The fee is rounded down to the nearest five dollar increment.

(d) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the Federal Register of the revised appendices to this part, or the first day of the fiscal year for which the fee is updated, whichever is later.

§ 381.105 Method of payment.

Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

§ 381.106 Reductions and Waivers.

(a) *When to request.* At the time that a filing is submitted to the Commission the applicant may request a waiver or reduction of the fee prescribed in this part.

(b) *Basis.* The applicant must show that waiver or reduction of the fee is necessary to prevent an undue economic burden on the applicant.

(c) *Commission action.* The Commission or its delegatee shall notify the applicant within 21 days of the decision to grant or deny the request for waiver or reduction. The filing shall be held in abeyance pending disposition of the waiver request.

§ 381.107 Direct billing.

(a) *Applicability.* If a filing presents issues of fact or law, procedural difficulty, or technical complexity, which require an extraordinary amount of Commission time and effort to be devoted to processing that filing, the Commission will institute a direct billing procedure for that filing. Fees assessed by a direct billing procedure in accordance with this section will supersede the fees established in this part for the appropriate category of service.

(b) *Procedures.* (1) If the Commission determines that a filing meets the standards prescribed in paragraph (a) of this section, the Commission may order that the full cost of processing the filing be recovered under a direct billing procedure. The Commission will make a direct billing determination under this paragraph not later than one year after the filing is accepted for filing by the Commission.

(2) Direct billing will not be instituted with respect to any filing until the person who submitted the filing is notified that direct billing will be applied to the filing in lieu of the fees established under this part.

(3) Any fee submitted with the filing will be applied, as a credit, to the amount billed directly for processing costs. The Secretary will thereafter periodically bill the person who submitted the filing for the actual direct and indirect costs of processing the filing incurred after the Commission orders the direct billing procedure instituted.

Subpart B—Fees Applicable to General Functions [Reserved]

§ 381.201 Declaratory orders. [Reserved]

§ 381.202 Interpretations by the Office of the Chief Accountant. [Reserved]

§ 381.203 Review of DOE denials of adjustment. [Reserved]

§ 381.204 Review of DOE remedial orders. [Reserved]

Subpart C—Fees Applicable to the Natural Gas Policy Act of 1978 [Reserved]

§ 381.301 Adjustments. [Reserved]

§ 381.302 Well-category determinations. [Reserved]

§ 381.303 Initial reports for Title III transactions. [Reserved]

§ 381.304 Extension reports for Title III transactions. [Reserved]

§ 381.305 Interpretations by the Office of the General Counsel. [Reserved]

Subpart D—Fees Applicable to the Natural Gas Act and Related Authorities

§ 381.401 Blanket small producer certificates.

The fee for blanket small producer certificates is $1,600.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. Such fee must be submitted in accordance with Subpart A of this part and § 157.40(b).

§ 381.402 Producer certificates of public convenience and necessity.

The fee for producer certificates of public convenience and necessity is $2,100.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. Such fee must be submitted in accordance with Subpart A of this part and § 157.24.

§ 381.403 Producer rate schedules.

The fee established for producer rate schedule filings is $300.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. Such fee must be submitted in accordance with Subpart A of this part and § 154.94.

Subpart E—Fees Applicable to the Federal Power Act [Reserved]

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

[FR Doc. 82-13104 Filed 5-12-82; 9:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

Admission Into Foreign-Trade Zone of Merchandise From Customs Bonded Warehouse

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow imported merchandise withdrawn from a Customs bonded warehouse to be admitted into a foreign-trade zone without restriction for use in manufacturing operations. At present, that merchandise is restricted and must be exported from the United States, destroyed, or merely stored in a foreign-trade zone.

The proposed amendment would remove a restriction on commerce and allow greater utilization of foreign-trade zones by increasing manufacturing operations in the zones.

DATE: Comments must be received on or before July 12, 1982.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2428, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Russell A. Berger, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Foreign-trade zones ("zones") are established under the Foreign-Trade Zones Act of 1934, as amended (FTZA) (19 U.S.C. 81a–81u) and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. Part 146, Customs

Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; manipulation, manufacture, or exhibition of merchandise in a zone; exportation of merchandise from a zone; and transfer of merchandise from a zone into the customs territory of the United States ("customs territory").

Foreign or domestic merchandise may be admitted into a zone for, among other things, manipulation, manufacture, assembly, or other processing, or for storage or exhibition, provided these operations are not otherwise prohibited by law. Normal customs entry procedures and payment of duty are not required for merchandise located in a zone unless and until the merchandise is removed from a zone and entered into the customs territory.

As presently written, § 146.25(d), Customs Regulations, specifies that merchandise entered for warehousing under section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), and thereafter transferred to a zone shall have the status of "zone-restricted merchandise". This means that the merchandise may be taken into the zone only for the purpose of exportation, storage, or destruction. Consequently, such merchandise may not be used in the zone in manufacturing operations. Customs believes that § 146.25(d) is unduly restrictive basically because the underlying statutory authority, 19 U.S.C. 1557(a), does not make specific provision for the transfer of warehoused merchandise to a zone.

In 1938, when 19 U.S.C. 1557(a) was amended to provide that warehoused merchandise might be withdrawn "for transportation and rewarehousing at another port or elsewhere," there were only one or two zones in existence pursuant to the authority of the FTZA. Under these circumstances, it appears that the Congress did not specifically consider the transfer of warehoused merchandise to a zone when it amended 19 U.S.C. 1557(a). Hence, while the Congress did not specifically include zones in 19 U.S.C. 1557(a), neither did it intend to exclude them from that section.

Customs believes that the meaning of 19 U.S.C. 1557(a) is open to reasonable interpretation. The lack of a specific provision for zones in 19 U.S.C. 1557(a) should not be construed to restrict any otherwise permissible use of the merchandise while in the zone. In this regard, manufacturing operations have been permitted in zones since amendment of the FTZA in 1950.

Under present § 146.25(d), as noted above, merchandise withdrawn from a warehouse and transferred to a zone may not be used in manufacturing. However, merchandise placed directly in a zone may be so used. Customs believes this unequal treatment unnecessarily restricts commerce and results in decreased utilization of manufacturing capabilities in zones.

Therefore, in light of current commercial realities—the existence of over 60 zones, a number of which are engaged in extensive manufacturing operations—Customs has determined that § 146.25(d) should be amended as indicated below to remove the zone-restricted status of foreign merchandise withdrawn from a bonded warehouse and transferred to a zone.

If this proposed amendment is adopted, it is anticipated that merchandise to be admitted with nonprivileged or privileged foreign status would be withdrawn from a bonded warehouse under an entry for immediate transportation ("I.T. entry") and transported in-bond to a zone. Upon admission to the zone, the original warehouse entry would be liquidated, and the documentation from the I.T. entry would be attached to the required zone documentation to provide sufficient information for Customs and other purposes. Present procedures applicable to merchandise admitted with zone-restricted status would not be changed.

Likewise, adoption of the proposal would modify all prior Headquarters decisions, whether published or unpublished, including Customs Service Decisions (C.S.D.) 79–204 and 81–88, to the extent that they are inconsistent with the proposal. C.S.D. 79–204 and 81–88 held that merchandise in a Customs bonded warehouse may be withdrawn from that warehouse and admitted into a zone only with zone-restricted status.

Comments

Before adopting this proposal, consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

The proposed regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Customs Office of Economic Analysis has concluded that, contrary to having any adverse economic impact on small entities, the proposal would facilitate commerce and have an overall bneficial economic impact. The proposal is not expected to have a significant secondary or incidental effect on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from entities through comments, either formal or informal.

Accordingly, the Secretary of the Treasury hereby certifies under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Foreign trade zones, Imports, Exports.

Authority

This document is issued under authority of R.S. 251, as amended, section 3, 48 Stat. 999, as amended, section 6, 48 Stat. 1000, section 624, 46 Stat. 759 (19 U.S.C. 66, 81c, 81h, 1624).

Proposed Amendment

PART 146—FOREIGN-TRADE ZONES

It is proposed to amend Part 146, Customs Regulations (19 CFR Part 146), as set forth below:

It is proposed to amend § 146.25 by revising paragraph (d) to read as follows:

§ 146.25 Zones-restricted merchandise.

* * * * *

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than

temporarily for manipulation and return to customs territory as provided for in section 148.13, may be admitted to a zone in zone-restricted, nonprivileged foreign, or privileged foreign status. The warehouse entry shall be liquidated when the merchandise is admitted into the zone.

William von Raab,
Commissioner of Customs.

Approved: April 16, 1982.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 82-13077 Filed 5-12-82; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 53

[EE-153-81]

Private Foundation Distributions; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to private foundation distribution requirements. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981.

The regulations would provide the public with the guidance needed to comply with that Act and would affect all private foundations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 12, 1982. The amendments are proposed to be effective for taxable years beginning after December 31, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T: EE-153-81, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, Attention: CC:LR:T: EE-153-81 (202-566-3422) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Foundations and Similar Excise Taxes (26 CFR Part 53) under section 4942(d) and section 4942(j)(3)(A) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 823 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 351) (ERTA). These regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

In General

Section 4942(a) imposes an excise tax on private foundations that fail to distribute their income for charitable purposes. To avoid liability, a private foundation must make "qualifying distributions" each year equal to the foundation's "distributable amount." Certain foundations defined as "operating foundations" are not subject to this distribution requirement. For taxable years beginning after December 31, 1981, section 823 of ERTA amends the statutory definitions of the terms "distributable amount" and "operating foundation."

Distributable Amount

Under prior law, a foundation's distributable amount was equal to the greater of the foundation's adjusted net income or its minimum investment return (generally 5% of the value of the foundation's investment assets). Under the amendment, a foundation's distributable amount is equal to its minimum investment return.

Definition of Operating Foundation

For purposes of section 4942, an operating foundation is defined as any foundation which, among other requirements, makes qualifying distributions directly for the active conduct of the activities constituing the purpose or function for which it is organized and operated.

Under prior law, an operating foundation was required to make qualifying distributions equal to substantially all of its adjusted net income. Under the amendment, an operating foundation is required to make qualifying distributions equal to substantially all of the lesser of the foundation's adjusted net income or its minimum investment return.

The amendment also provides that if a foundation makes qualifying distributions in excess of its minimum investment return but fails to distribute substantially all of such qualifying distributions directly for the active conduct of activities constituting its charitable purpose, the foundation does not satisfy the definition of an operating foundation unless it makes such distributions in an amount equal to substantially all of its adjusted net income.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations.

Proposed amendments to the regulations

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

The proposed amendments to 26 CFR Part 53 are as follows:

1. Paragraph (b)(1) of § 53.4942(a)-2 is revised to read as follows:

§ 53.4942(a)-2 Computation of undistributed income.

* * * * *

(b) Distributable amount—(1) In general. For purposes of paragraph (a) of this section, the term "distributable amount" means—

(i) For taxable years beginning before January 1, 1982, an amount equal to the

greater of the minimum investment return (as defined in paragraph (c) of this section) or the adjusted net income (as defined in paragraph (d) of this section); and

(ii) For taxable years beginning after December 31, 1981, an amount equal to the minimum investment return (as defined in paragraph (c) of this section), reduced by the sum of the taxes imposed on such private foundation for such taxable year under subtitle A of the Code and section 4940, and increased by the amounts received from trusts described in subparagraph (2) of this paragraph.

* * * * *

2. Paragraph (a)(1) of § 53.4942(b)–1 is revised to read as follows:

§ 53.4942(b)–1 Operating foundations.

(a) Operating foundation defined— (1) In general. For purposes of section 4942 and the regulations thereunder, the term "operating foundation" means any private foundation which, in addition to satisfying the assets test, the endowment test or the support test set forth in § 53.4942(b)–2 (a), (b) and (c), makes qualifying distributions (within the meaning of § 53.4942(a)–3(a)(2)) directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose equal in value to—

(i) For taxable years beginning before January 1, 1982, substantially all of the foundation's adjusted net income (as defined in § 53.4942(a)–2(d)); and

(ii) For taxable years beginning after December 31, 1981, substantially all of the lesser of the foundation's adjusted net income (as defined in § 53.4942(a)–2(d)) or minimum investment return (as defined in § 53.4942(a)–2(c)). If the foundation's qualifying distributions exceed its minimum investment return (but are less than the foundation's adjusted net income) substantially all of such qualifying distributions must be made directly for the active conduct of activities constituting its charitable, educational or other similar exempt purpose. However, if the foundation's minimum investment return is less than its adjusted net income and the foundation's qualifying distributions equal or exceed such adjusted net income, only that portion of the qualifying distributions equal to substantially all of the foundation's adjusted net income must be made directly for the active conduct of activities constituting its charitable, educational or other similar exempt purpose.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 82-13106 Filed 5-12-82; 8:45 am]
BILLING CODE 4830-01-m

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Records and Reports; Elementary and Secondary Schools; Staff Information Report (EEO–5)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission is proposing an amendment to its reporting regulations that cover unlawful employment practices elementary and secondary schools. The proposed amendments would reduce the filing requirement from once a year to once every two years for these employers. This change is proposed after consultation with the Office of Management and Budget and is intended to reduce the reporting burden on elementary and secondary schools as required under the Paperwork Reduction Act.

DATE: Written comments must be received on or before July 12, 1982. The Commission proposes to consider the submissions for a period of at least 10 days and thereafter to adopt final regulations.

ADDRESSES: Interested persons are invited to submit written comments regarding the revisions to Treva McCall, Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506. Copies of the comments submitted by the public will be available for review at the Social Sciences Library, Room 2003, EEOC, 2401 E Street, NW., Washington, D.C. 20506, between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Chief, Survey Branch, phone: (708) 756–6020.

SUPPLEMENTARY INFORMATION: Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Equal Employment Opportunity Commission. Accordingly, the Commission has issued regulations which set forth the reporting requirements for various kinds of employers. Elementary-secondary schools, in their capacity as employers have been required to submit annual reports to the EEOC. The change to biennial reporting is proposed as a result of consultation with the Office of Management and Budget and is intended to reduce the reporting burden on elementary-secondary schools as required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* If this proposal is implemented, the Commission would require affected schools to file only on even years when they are also required to file staffing reports with the Office of Civil Rights, Department of Education, thus substantially reducing the reporting burden. Note, however, that the recordkeeping requirements of § 1602.39 remain unchanged.

Some question has arisen whether the Commission must hold a public hearing prior to amending its reporting requirements because of the language of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–8(c), which provides in relevant part that:

> Every employer * * * subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed . . . and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, *after public hearing*, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. (emphasis added).

Despite that language, the Commission has concluded that the proposed modifications can be made without a public hearing. Since the decreased reporting requirement will not prejudice but will benefit school employers, the Commission concludes that a formal public hearing is not necessary.

Subsection (b) of § 1602.41 is deleted because it is superfluous, in that it provides reporting instructions for the year 1973.

This regulation has been reviewed in accordance with Executive Order 12291. It does not require regulatory impact analysis under Section 3 of that Order.

In compliance with Executive Order 12067 (43 FR 28967, July 5, 1978), The Commission has consulted with the representatives of the necessary federal departments and agencies on the revision of its Reporting Regulations.

List of Subjects in 29 CFR Part 1602

Equal Employment Opportunity, Reporting requirements, Recordkeeping requirements.

OMB Control Number: 3046-0003

The proposed regulation appears below.

PART 1602—RECORDS AND REPORTS

Section 1602.41 is revised to read as follows:

§ 1602.41 Requirement for filing and preserving copy of report.

On or before Nov. 30, 1982, and biennially thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, and individual schools within such systems or district shall file with the Commission or its delegate executed copies of Elementary-Secondary Staff Information Report EEO–5 in conformity with the directions set forth in the form and accompanying instructions. The elementary and secondary school systems and districts covered are: (a) every one of those which have 100 or more employees, and (b) every one of those others which have 15 or more employees from whom the Commission request the filing of reports. Every such elementary or secondary school system or district shall retain at all times, for a period of 3 years, a copy of the most recently filed report EEO–5 at the central office of the school system or district, or the individual school which is the subject of the report, where more convenient, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of Title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

By virtue of the authority vested in the Commission under section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–8(c), the Equal Employment Opportunity Commission hereby publishes the following proposed amendment to its regulations on Recordkeeping and Reports.

Signed at Washington, D.C. this 6th day of April 1982.

For the Commission.

Cathie A. Shattuck,

Acting Chairman.

[FR Doc. 82-13071 Filed 5-12-82; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 715, 717, 784, 785, 816, 817, 818, 819, 823, 824, 826, 843, and 850

Permanent Regulatory Program: Auger Mining, Blaster Certification, Experimental Practices, Prime Farmlands, Stream Buffer Zones and Fish and Wildlife, Postmining Land Use and Variances from Approximate Original Contour, Revegetation, Roads, Subsidence, and Topsoil; Notice to Extend or Reopen the Public Comment Periods.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of extension or reopening of public comment periods.

SUMMARY: The Office of Surface Mining (OSM) has published several proposed rules for public comment which would amend OSM's permanent regulatory program. OSM is preparing a supplemental Environmental Impact Statement (EIS) on some of these rules and therefore is extending or reopening the comment period for those rules to be covered by the EIS until the comment period on the draft EIS is closed. Notice announcing the date when the comment periods close will be published at a later date.

DATE: The comment periods on the proposed rules listed in this notice are extended or reopened until further notice.

FOR FURTHER INFORMATION CONTACT: Frank Anderson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, 202–343–5854.

SUPPLEMENTARY INFORMATION: OSM has proposed rules and requested comments as indicated in the list of rulemakings set forth below. OSM is preparing a supplement to the Final Environmental Impact Statement on the Permanent Regulatory Program (OSM–EIS–1, January 1979) which will consider, among other things, the proposed rules on that list. To allow comments on the rulemakings to reflect the contents of the draft supplemental EIS, OSM is extending comment periods on proposed rules for which the comment periods have not yet closed and reopening comment periods which already have closed. Affected proposed rules, and dates of issuance, are indicated below. OSM encourages all interested parties to comment.

The comment periods will run until further notice and remain open at least until the comment period ends on the draft supplemental EIS. At least sixty days will be given concurrently for comment on the supplemental EIS and the proposed rules. Notice of availability of the draft supplemental EIS will be published at a later date.

The comment period for the following proposed rules are extended or reopened:

Rule	Federal Register citation	Date published
"Sedimentation Ponds".	46 FR 34764	July 2, 1981.
"Topsoil"	47 FR 10742	Mar. 11, 1982.
"Experimental Practices".	47 FR 12082	Mar. 19, 1982.
"Auger Mining"	47 FR 12098	Mar. 19, 1982.
"Revegetation"	47 FR 12596	Mar. 23, 1982.
"Blaster Certification	47 FR 12779	Mar. 24, 1982.
"Fish & Wildlife"	47 FR 13406	Mar. 30, 1982.
"Postmining Land Use & Variances from Approximate Original Contour".	47 FR 16152	Apr. 14, 1982.
"Roads"	47 FR 16592	Apr. 16, 1982.
"Subsidence & Concurrent Surface & Underground Mining".	47 FR 16604	Apr. 16, 1982.
"Prime Farmlands"	47 FR 19075	May 3, 1982.

OSM also has proposed changes to its rules governing inspection and enforcement (46 FR 58464, December 1, 1981). Rules with regard to OSM's authority to take enforcement action in oversight were included within that proposal. See proposed 30 CFR 843.12(a)(2). OSM will soon issue final rules pursuant to that proposal. (*See* Notice of Intent, April 21, 1982, 47 FR 17289). However, a final rule governing OSM's authority to take enforcement action in oversight will be deferred pending its inclusion within the supplemental EIS. Thus, the comment period on that portion of the December 1, 1981, proposal also is reopened until further notice.

Dated: May 5, 1982.

J. Steven Griles,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-13085 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 901

Public Disclosure of Comments Received From Federal Agencies on the Alabama Proposed Program

AGENCY: Surface Mining Reclamation and Enforcement Office (OSM), Interior.

ACTION: Disclosure of comments on the Alabama Proposed Program from Federal Agencies.

SUMMARY: Before the Director, OSM, may approve state regulatory programs submitted under section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Director has solicited comments from these agencies on the Alabama program, and is today announcing their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 971–5104

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, D.C. 20240, Telephone: (202) 343–7896

Alabama Surface Mining Commission, Central Bank Building, Second Floor, 811 Second Avenue, Jasper, Alabama 35501, Telephone: (205) 221–4130

FOR FURTHER INFORMATION CONTACT: John T. Davis, Assistant Regional Director, Region II, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 971–5103.

SUPPLEMENTARY INFORMATION: The Director, OSM, is evaluating the proposed regulatory program resubmitted by Alabama for his review on January 11, 1982. See the January 15, 1982, Federal Register (47 FR 2338–2340). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), Alabama's program may not be approved until the Director has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment as proposed. In this regard, the following Federal agencies were invited to comment on the Alabama program:

Department of Agriculture:
- Soil Conservation Service
- Forest Service
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation

Department of Labor:
- Mine Safety and Health Administration

Environmental Protection Agency

Water Resources Council

Department of Energy

Department of the Interior:
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Reclamation
- Fish and Wildlife Service
- Mineral Management Service
- National Park Service
- Geological Survey

U.S. Army Corps of Engineers

Tennessee Valley Authority

Of those agencies invited to comment, OSM received comments from the following offices:

Environmental Protection Agency

Department of the Interior:
- Fish and Wildlife Service
- Mineral Management Service
- Tennessee Valley Authority

These comments are available for review and copying during business hours, at the locations listed above under "Addresses."

Dated: May 10, 1982.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-13002 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Privacy Act of 1974; Personal Privacy and Rights of Individuals Regarding Personal Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of proposed rule making—Privacy Act.

SUMMARY: The Army proposes to add an exemption rule for proposed system of records A0404.02DAJA, entitled: "Courts-Martial Files."

DATE: Written comments may be submitted to Headquarters, Department of the Army, the Judge Advocate General's Office, The Pentagon, Washington, D.C. 20310 on or before June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of the Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, Va., telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, if this exemption is adopted § 505.9 of Title 32 of the Code of Federal Regulations will be amended by adding the following:

§ 505.9 Exemption rules for Army systems of records.

* * * * *

Exempted Record Systems

ID—A0404.02DAJA.

SYSNAME—Courts-Martial Files.

Exemption—All portions of this system which fall under Title 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. 552a: (d)(2), (d)(3), (d)(4), (e)(2), (e)(3), (e)(4)(H), and (g).

Authority: Title 5 U.S.C. 552a(j)(2).

Reasons—Courts-martial files are exempt because a large body of existing criminal law governs trials by court-martial to the exclusion of the Privacy Act. The Congress recognized the judicial nature of court-martial proceedings and exempted them from the Administrative Procedures Act by specifically excluding them from the definition of the term "agency" (Title 5 U.S.C. 551(1)(F)). This definition is applicable to the Privacy Act (Title 5 U.S.C. 552a(1)). Substantive and procedural law applicable in trials by court-martial is set forth in the Constitution, the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial, United States, 1969 (Revised edition), and the decisions of the U.S. Court of Military Appeals and Courts of Military Review. The right of the accused not to be compelled to be a witness against himself and the need to obtain accurate and reliable information with regard to criminal misconduct necessitate the collection of information from sources other than the individual accused. Advising the accused or any other witness of the authority for collection of the information, the purpose for which it is to be used, whether disclosure is voluntary or mandatory, and the effects on the individual of not providing the information would unnecessarily disrupt and confuse court-martial proceedings. It is the responsibility of the investigating officer or military judge to determine what information will be considered as evidence. In making the determination, the individual's rights are weighed against the accused's right to a fair trial. The determination is final for the moment and the witness' failure to comply with the decision would delay the proceeding and may result in prosecution of the witness for wrongful refusal to testify.

In a trial by court-martial, the accused has a unique opportunity to assure that his record is accurate, relevant, timely, and complete as it is made. He has the right to be present at the trial, to be represented by counsel at general and special courts-martial, and to consult with counsel in summary courts-martial, to review and challenge all information before it is introduced into evidence, to cross-examine all witnesses against him, to present evidence in his behalf, and in general and special courts-martial, to review and comment upon the record of trial before it is authenticated. Procedures for correction of the record are controlled by

paragraphs 82, 88, and 95, Manual for Courts-Martial, 1969 (Revised edition). After completion of appellate review, the record may not be amended. Article 76 of the Uniform Code of Military Justice (10 U.S.C. 876) provides that the proceedings, findings, and sentences of courts-martial as approved, reviewed or affirmed are final and conclusive and binding upon all departments, courts, agencies, and officers of the United States subject only to action upon a petition for new trial [Article 73, UCMJ], action by the Secretary concerned [Article 74, UCMJ], and the authority of the President.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 7, 1982.

[FR Doc. 82-12992 Filed 5-12-82; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 09-82-04]

Establishment of Special Anchorage Area Fish Creek Harbor, Fish Creek, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Town Board of Gibraltar, Wisconsin, the Coast Guard is proposing to establish a special anchorage in Fish Creek Harbor, Fish Creek, Wisconsin. The establishment of the special anchorage is needed to accommodate vessels now anchoring for extended periods of time within the harbor. The proposal would enhance navigational safety by alerting, through depiction on appropriate nautical charts, transiting vessels that unlighted vessels or vessels not sounding fog signals may be present in the anchorage.

DATE: Comments must be received on or before June 14, 1982.

ADDRESSES: Comments should be mailed to Commander, Marine Port Safety, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments and other materials referenced in this notice will be available for inspection or copying at Marine Port Safety Office, room 2019, 1240 East 9th Street, Cleveland, OH 44199. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign Steven J. Boyle, Marine Port Safety Office, 1240 East 9th Street, Cleveland, OH 44199 or phone (216) 522-3918.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD 9-82-04, and the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are Ensign Steven J. Boyle, Project Officer, Ninth Coast Guard District Marine Port Safety Office, and Lieutenant M. Eric Reeves, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Rule

The proposed special anchorage area lies in Fish Creek Harbor located on the Western shore of the Door County peninsula approximately 22 miles northeast of the City of Sturgeon Bay, Wisconsin. It has a moderate concentration of recreational boating activity and the area is now being used as a small boat anchorage. Establishment of the Special Anchorage Area would rearrange existing buoys so as to reduce present crowded mooring conditions, thereby encouraging safer boating in the harbor of Fish Creek. Regulated mooring in the Special Anchorage Area should also improve the flow of vessel traffic in the harbor.

As provided by rule 9 of the Great Lakes Rules of the Road (33 U.S.C. 258), this proposed rule would allow anchoring of vessels of not more than 65 feet in length without displaying anchor lights. Moreover, barges, canal boats, scows and other nondescript craft may display only one anchor light where two would otherwise be required. Depiction of the proposed special anchorage on appropriate nautical charts will enhance navigational safety by alerting vessels to the presence of vessels anchored without lights.

An environmental review of the proposal has been performed by the Ninth Coast Guard District Planning Staff who determined that the proposed action will have no significant impact. Preparation of an environmental assessment was not required since the action was found to be catergorically excluded in accordance with Section 2-B(3)(g) of COMDTINST M16475.1A.

This proposed regulation is considered to be nonsignificant in accordance with guidelines set out in the "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 of May 22, 1980). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal. The establishment of such special anchorage is not a matter on which there is substantial public interest of controversy, nor does it involve impacts on competition business, State and local government, or the regulations of other programs and agencies. Moreover, this proposal is not a major rule as defined by Executive Order 12291 of February 17, 1981. This proposal once enacted, will not affect the economy to any measurable degree, result in any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or result in any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign enterprises in domestic or export markets.

Likewise it is hereby certified that this proposal will not, if promulgated have any significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act (Pub. L. 96-3545, U.S.C. 601, et seq.). This certification is made in accordance with section 605 of Title 5 of the United States Code. The sole effects of this proposal, as described above, are: Enabling users of the special anchorage to anchor without using lights, depiction of the special anchorage on appropriate nautical charts, and the subsequent provision of an added margin of safety for the area.

List of Subjects in 33 CFR Part 110

Anchorage ground.

PART 110—ANCHORAGE REGULATIONS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by adding § 110.78c to read as follows:

§ 110.79c Fish Creek Harbor, Fish Creek, WI.

The area of Fish Creek Harbor North of the public swimming beach within the following boundary:

Beginning at latitude 87°14'05" and longitude 45°07'44"; thence 270°10'60'; thence 230°30', 200.00 feet; 315°50' 290.00 feet; thence 30°40'; 330.00 feet; thence 326°00', 330.00 feet; 52°10', 620.00 feet; thence 160°30, 610.00 feet; thence 139°10', 185 feet; thence 226°10' 436.81 feet, 270°10', 65.12 feet to the point of beginning.

(33 U.S.C. 180, 258, 322, 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46(c); 33 CFR 1.05-1(g))

Dated: April 13, 1982.

Henry H. Bell,

District Commander, Ninth Coast Guard.

[FR Doc. 82-12731 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CCGD8-82-10]

Safety Zone; Calcasieu Channel, Industrial Canal, Calcasieu River, Lake Charles, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On 2 March 1981, Trunkline LNG Company submitted an application to the USCG Captain of the Port, Marine Safety Office, Port Arthur, Texas, requesting a safety zone be established around their waterfront facility. The Trunkline LNG facility is located in the Industrial Canal, Calcasieu River, Lake Charles, LA. A permanent safety zone would be established around the facility, and a moving safety zone would be established around a non-gas free LNG vessel while transiting to and from the Trunkline facility. The safety zone would be established to insure the safety of the port and security of the facility. The proposed rule would require permission from the Captain of the Port or the District Commander to enter the safety zone.

DATE: Comments on this proposal will be received until June 28, 1982.

ADDRESS: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, Federal Building—Customhouse, Port Arthur, TX 77640. The comments will be available for inspection or copying at the above address. Normal office hours are between 8:00 a.m. to 4:30 p.m. Monday through Friday except holidays. Comments may be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR P. D. Mankovich, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, Federal Bldg.—Customhouse, Port Arthur, Texas, 77640, Tel: (713) 983-8238.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD8-82-10), the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

These rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal person involved in the drafting of the rulemaking and Project Officer is LCDR P. D. Mankovich, Chief of Operations, Marine Safety Office, Port Arthur, Federal Bldg.—Customhouse, Port Arthur, Texas 77640, Tel: (713) 983-8238. The project attorney is LT J. C. Helfrich. c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Tel: (504) 589-6188.

Discussion of Proposed Rule

On 2 March 1981, Trunkline LNG Company submitted an application to the USCG Captain of the Port, Marine Safety Office, Port Arthur, Texas requesting that a safety zone be permanently established around the Trunkline LNG waterfront facility. The Trunkline facility, a 170.46 acre tract of land, is located on the north shore of the Lake Charles Harbor and Terminal District Canal Turning Basin. The shoreline of the facility is marked throughout its length with chain link fence which runs parallel to the waterfront and extends out to the water at each end of the property line. The shoreline bank of the facility contrasts in color and construction to that of neighboring property, thus readily discernable to a mariner. Warning signs are posted along the waterfront describing the safety zone. Permanent private aids to navigation (flashing green lights, 2.5 seconds period; flash length .5 second) are fixed to each of four mooring dolphins adjacent to the shoreline of the facility. The entire perimeter of the Trunkline Terminal is well illuminated by lights to an intensity level of 2.5 foot candles during hours of darkness. The west corner of the facility at the waterfront is 260 feet west, 19 feet north of Mooring Dolphin No. 1 light. The east corner is 1410 feet east, 360 feet north of Mooring Dolphin No. 7 light.

The facility has been built to offload liquified natural gas tankships to large storage tanks on land. A ship is tentatively scheduled to be offloaded every five days. LNG will be continuously circulated through pipelines on the unloading platform even when a ship is not in port. The unloading platform and mooring structures extend out over the water of the Industrial Canal. The safety zone was requested to insure the safety and security of the waterfront terminal by minimizing access to both the shore and related structures. It was suggested that the zone be comparable to the beam of an LNG vessel or approximately 150 feet from the bank adjacent to Trunkline LNG Company's waterfront property.

On 9 April 1981, the USCG Captain of the Port (COTP) met with Trunkline LNG Company, the Lake Charles Pilots, the local Port Authority, and industrial users of the canal to discuss the proposed safety zone. As a result of that meeting, the USCG Captain of the Port decided that the initial proposal should be modified. The COTP proposes that the safety zone encompass an area extending 150 feet out into the Industrial Canal from the shoreline contiguous to the Trunkline LNG Company's waterfront property, to include an area 50 feet out from any permanent structures along that same property, and to include an area 50 feet out from any LNG ships while moored to the Trunkline LNG facility. This proposal would at all times allow for a minimum of 400 feet of usable, navigable channel in the Industrial Canal.

Due to the restricted maneuverability of LNG vessels and the hazardous nature of their cargo, the safety zone would also encompass an area around a non-gas free LNG vessel while it was transiting both to and from the facility. This portion of the safety zone will extend 2 miles ahead, 1 mile astern, and to either side of an LNG vessel to the width of the ship channel while transiting between the sea buoy and the facility. Meeting, crossing or overtaking situations would not be allowed within the safety zone unless specifically authorized by the COTP. Advance notice will be provided via Local Notice to Mariners and/or Broadcast Notice to Mariners for each LNG vessel transit.

The USCG Captain of the Port has determined that in the interests of public safety, a safety zone should be established in the Industrial Canal Calcasieu River, adjacent to the Trunkline LNG Company property. This safety zone is considered justified by reason of the hazardous circumstances and conditions involved in the transfer and storage of liquified natural gas. No person would be allowed to enter the safety zone unless authorized by the COTP or the Commander, Eighth Coast Guard District. No person would be allowed to bring or cause to be brought into the safety zone any vehicle, vessel, or object unless authorized by the COTP or the Commander, Eighth Coast Guard District. No person would be allowed to remain in the safety zone or allow any vehicle, vessel, or object to remain in the safety zone unless authorized by the COTP or Commander, Eighth Coast Guard District. Each person in the safety zone who had notice of a lawful order or direction would have to obey the order or direction of the COTP or Commander, Eighth Coast Guard District, or his authorized representative issued to carry out the order.

The proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, the proposed regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (Dot Order 2100.5 of 5–22–80). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal. No vessels, other than LNG vessels, would have reason to be at the facility and transiting vessels will make up only a small percentage of the total traffic. In accordance with #605 (b) of the Regulatory Flexibility Act (94 Stat. 1164) it is also certified that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

Proposed Regulations

In consideration of the above, it is proposed that Part 165 of Title 33 of the Code of Federal Regulations be amended by adding § 165.803, to read as follows:

§ 165.803 Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA.

(a) The waters within the following boundaries are a safety zone: The area extending 150 feet out into the Industrial Canal, Calcasieu River, Lake Charles, LA, along the shoreline of the Trunkline LNG Company's waterfront property, from position 30°08'31.8" N., 93°18'22.8" W. to the end of the turning basin and to include an area 50 feet out from any LNG ships while moored to the Trunkline LNG facility.

(b) The waters within the following boundaries are a safety zone while a non-gas free LNG vessel is transiting within the Calcasieu River ship channel and between buoy "CC" and the Trunkline LNG facility: The area 2 miles ahead, 1 mile astern, and to either side of an LNG vessel to the width of the ship channel. Meeting, crossing, or overtaking situations are not permitted within the safety zone unless specifically authorized by the USCG Captain of the Port.

(c) Notice of transiting LNG vessels will be provided by Broadcast and/or Local Notice to Mariners.

(92 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); 49 CFR 1.46 (n))

Dated: April 26, 1982.

J. J. Wicks,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur, Texas.

[FR Doc. 82–13074 Filed 5–12–82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP 260043]

Crop Grouping; Proposed Amendment to Tests on the Amount of Residue Remaining in Minor Crops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This amendment proposes a revision pursuant to provisions of the Federal Food, Drug and Cosmetic Act (FFDCA) of the Crop Group Regulations contained in 40 CFR 180.34(f) to allow for more extensive use of group tolerances for related crops. This amendment is proposed on the grounds that such changes will allow for regulatory relief by minimizing the burden of establishing tolerances for pesticide residues in/on minor crops. The proposed rule sets forth the definitions of the crop groups involved and the procedures relevant to establishment of group tolerances.

DATE: Comments must be received on or before July 12, 1982.

ADDRESS: Written comments should bear the document control number [OPP–280043] and should be submitted to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Rm. E–401, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

The public record supporting this action, including comments, will be available for public inspection in Rm. E–107 at the above address from 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles L. Trichilo, Hazard Evaluation Division (TS–769), Office of Pesticide Programs, Environmental Protection Agency, Rm. 810, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7324).

SUPPLEMENTARY INFORMATION: This amendment is being proposed under section 408(e) of the FFDCA and revises 40 CFR 180.34(e). It is being proposed as part of EPA's policy for implementing the provisions of the Minor Use Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act of 1978, (FIFRA) section 3(c)(2), and as part of the EPA's efforts on regulatory relief.

Background

The concept of utilizing crop grouping to estimate maximum pesticide residues on each commodity within a group of related commodities has been used at least since December 6, 1962 (27 FR 12100). These crop groupings were significantly modified when tolerances for negligible residues were initiated in the Federal Register of April 5, 1967 (32 FR 6059) and periodically updated to include new crops. There are presently 14 groups listed in 40 CFR 180.34(f).

On October 13, 1972, the Agency initiated a project (EPA Contract No. 68–01–0774) to explore the possibility of further expanding the concept of crop grouping. The major recommendations from this effort were received in a final report to the Agency on May 30, 1973. Those recommendations were as follows:

1. To announce the concept of group tolerances in the Federal Register as a statement of policy.

2. To request agricultural chemical firms to (a) review the multiple tolerance level crops and (b) examine all pesticide chemicals by groups to determine existing group tolerances.

3. To consider developing criteria for minor uses and minor crops.

4. To assume a leadership role in developing international pesticide residue tolerances.

5. To begin recodification of pesticide tolerance regulations.

A study of a crop grouping system which followed the general concepts used in the report submitted to the Agency was prepared for the Food and Agriculture Organization of the United Nations (ESN 0107–75–06). This crop grouping system was included in the Guide to Codex Maximum Limits for Pesticide Residues, as published by the Food and Agriculture Organization, Rome, 1978.

In December of 1975, the Agency requested the Environmental Health Advisory Committee of the Agency's Science Advisory Board (SAB) to provide advice on some aspects of the Agency's Tolerance Setting System. One aspect addressed was the issue of expanding the practice of crop grouping. The SAB replied in part that if certain conditions are met, the concept of crop grouping has merit. The conditions specified by the SAB were that crops be grouped on the basis of similar features such as surface to weight ratio, plant metabolism, cultural practice, climate and geography. Moreover, the pesticide use should be substantially similar for all crops in the grouping. The SAB also indicated that information on whether crops can be grouped should include (1) an explanation of the formulas used in extrapolating from observed pesticide residue data on one crop to estimated residue on another crop, (2) a description of the data base supporting the use of particular extrapolation formulas, (3) a description of the minimum amount of data required on crops within a group and (4) the rationale for the data base. The Agency has not chosen to develop formulas to be used in extrapolating data from one crop to another, since the crop grouping concept leads to an estimate of the maximum level of residue that could occur on any crop within the group. Thus with the group concept there is no estimation of residue levels on indivudual crops within the group. The minimum data base required for a group tolerance consists of residue data on all of the representative commodities for a group. The representative commodities were chosen based on two criteria: (1) The likelihood of a crop having the highest residue of any crop in the group and (2) the most economically important crops in the group. For example, in the group citrus, the representative commodity lemon, because of its high surface to weight ratio, meets the first criterion for a crop likely to have the highest residue within the citrus group, while sweet orange and grapefruit meet the second criterion for economically important crops.

Many miscellaneous or unique crops were not included in this crop grouping scheme, since these crops are not similar to other crops in growth habit, cultural characteristics, or botanical relationships. In addition, if these crops were not excluded, they would have to be included in the list of representative crops for their respective group. By increasing the number of representative crops, the utility of a group is decreased because residue data on more crops will be needed before a group tolerance can be granted. Thus it is more appropriate to establish individual rather than group tolerances for commodities such as the following: Asparagus, avocado, banana, figs, globe artichoke, hops, kiwi fruit, mango, mushroooms, okra, papaya, pawpaw, peanuts, persimmon, pineapples, watercress and water chestnut.

Retroactive implementation of this new crop grouping scheme could create tolerances for crops not currently included in existing § 180.34(f) groups, and revoke tolerances for crops included in the existing § 180.34(f) groups but not in the proposed groups. To avoid adverse impacts on affected parties and to achieve a systematic changeover from the existing groups to the proposed groups, all group tolerances currently in effect will remain unchanged. These existing group tolerances will remain in effect for those crops included in the crop groups definitions prior to publication of this notice. These existing group tolerances will be changed to group tolerances under the proposed groupings, when finalized, as part of the Agency's tolerance reassessment phase of the Registration Standards Program. Under the Agency's Registration Standards Program, all existing tolerances for pesticides used on food or feed crops are examined to determine if they are still appropriate in light of new scientific data and after extensions of use granted since the tolerance was established.

A "Report of the Task Group for Pesticide Tolerance Grouping" submitted to the Agency on October 17, 1978, also endorsed the concept of crop grouping. This report was authored by a special task force formed at the request of the Working Group on Registration/Classification of the State-Federal FIFRA Implementation Advisory Committee.

In addition, the Agency issued a Minor Use Policy Statement and request for information in the **Federal Register** of March 5, 1979, (44 FR 12097) in response to the Minor Use Amendments to the Federal Insecticide, Fungicide, and Rodenticide Act of 1978 (7 U.S.C. 136 et. seq.; Pub. L. 95–396; 92 Stat. 842). As part of this policy statement the Agency indicated that the system of crop grouping would be expanded in an effort to minimize the minor use registration and tolerance data requirements.

Thus the Agency is taking the initiative in further expanding the crop grouping system to allow for establishing finite tolerances for similar crops within a group when tolerances have been established or proposed for certain representative crops of the group. The Agency will expand to group tolerances, as part of the development of a Registration Standard. The implementation of this amendment to the regulations will provide for regulatory relief by reducing the amount of data that must be generated by industry. It will also reduce the paperwork burden on industry and EPA by reducing the number of petitions for tolerance.

Classification Review Status

Under Executive order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not classified as a major regulation because it will not cause an annual effect of $100 million or more on the economy; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign based enterprises.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection at the address given previously for inspection of public comments.

Certification Under Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (Pub. L. 96–543, 94 Stat. 1164, 5 U.S.C. 601–612), all "notice-and-comment" rulemaking which is proposed after January 1, 1981, must be accompanied by a regulatory flexibility analysis, or by a certification by the Administrator that no such analysis is necessary because the proposed amendment will not have a significant

economic impact on a substantial number of small entities.

Under secs. 408 and 409 of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 346A, 348), the Agency is authorized to establish tolerance levels, exemptions from the requirements for a tolerance, or food additive levels, for pesticides whose use results in residues on food or feed. The establishment of a tolerance or an exemption or an additive level allows a pesticide product to be registered for a particular use resulting in residues on food or feed. This generally has some beneficial economic impact on the producer, distributor, and professional applicator of the pesticide, as well as on the ultimate user of the pesticide, usually a grower or food processor, who would otherwise not be able to sell crops containing residues of the pesticide. Tolerances are currently established primarily on a crop-by-crop basis. This amendment would reduce the burden on industry, user groups or other Federal agencies attempting to establish tolerances for minor crops by allowing for administrative establishment of tolerances on minor crops. This amendment would revise the existing crop group definitions and allow for expanded use of the crop group tolerance concept.

Accordingly, I hereby certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: April 23, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR Part 180 be amended by revising § 180.34 (f) to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f)(1) Each of the groups included in the following table lists raw agricultural commodities that are considered to be related for the purposes of this paragraph. When there is an established or proposed tolerance for all of the representative commodities for a specific group of related commodities, a tolerance may be established for all commodities in the group. The representative crops are given as an indication of the minimum residue chemistry data base acceptable to the Agency for the purposes of establishing a group tolerance. The Agency will take a flexible approach to allow for group tolerances when data on suitable substitutes for the representative crops are available (e.g., limes instead of lemons).

(2) This group tolerance may be estabished as a result of:

(i) A petition from a person who has submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act.

(ii) On the initiative of the Administrator.

(iii) At the request of an interested person.

(3) Since a group tolerance reflects maximum residues likely to occur on all individual crops within a group, the proposed or registered patterns of use for all crops in the group must be similar before a group tolerance is established. The pattern of use consists of the amount of pesticide applied, the number of times applied, the timing of the first application, the interval between applications, and the interval between the last application and harvest. The pattern of use will also include the type and method of application; for example, soil or foliar application, or application by ground or aerial equipment.

(4) When the crop grouping contains commodities or byproducts that are utilized for animal feed, a tolerance of exemption from tolerance for the pesticide in meat, milk, poultry and/or eggs must be established before a tolerance will be granted for the group as a whole if the pesticide transfers to meat, milk, poultry and/or eggs. In this case the representative crops include all crops in the group that could be processed such that residues may concentrate in processed food and/or feed. Processing data will be required prior to establishment of a group tolerance, and food additive tolerances will not be granted on a group basis.

(5) If maximum residues (tolerances) for the representative crops vary by more than a factor of 5 from the maximum value observed for any crop in the group, a group tolerance will ordinarily not be established. In this case individual crop tolerances, rather than group tolerances, will normally be established. By keeping the range of residues small, the Agency intends not to alter the environmental or health benefits of the present program.

(6) Alternatively, a commodity with a residue level significantly higher or lower than the other commodities in the group may be excluded from the group tolerance (e.g., cereal grains, except corn). In this case an individual tolerance at the appropriate level for the unique commodity would be established if necessary. Residue data from crops additional to those representative crops in a grouping may be required for systemic pesticides.

(7) Commodities not listed are not considered as included in the groups for the purposes of this paragraph. Miscellaneous commodities intentionally not included in any group include asparagus, avocado, banana, figs, globe artichoke, hops, kiwi fruit, mango, mushrooms, okra, papaya, pawpaw, peanuts, persimmon, pineapples, water chestnut, watercress. The commodities included in these groups will be updated periodically either at the initiative of the Agency or at the request of an interested party. Persons interested in updating this section of the CFR should contact the Minor Uses Officer of the Registration Division of the Office of Pesticide Programs.

(8) Establishment of a tolerance does not substitute for the additional need to register the pesticide under a companion law, the Federal Insecticide, Fungicide and Rodenticide Act. The Registration Division of the Office of Pesticide Programs should be contacted concerning procedures for registration of new uses of a pesticide.

Root and Tuber Vegetables Group

Commodities. Beet (*Beta vulgaris*); burdock, edible (*Arctium lappa*); carrot (*Daucus carota*); cassave, bitter or sweet, (*Manihot spp.*); Celeriac (*Apium graveolens*); chayote (*Sechium edule*); chervil, turnip-rooted (*Chaerophyllum bulbosum*); chicory (*Chichorium intybus*); dasheen (taro) (*Colocasia esculenta*); ginger (*Zingiber officinale*); ginseng (*Panax quinquefolius*); goa bean (*Psophocarpus tetragonolobus*); horseradish (*Armoracia rusticana*); Japanese artichoke (*Stachys affinis*); Jerusalem artichoke (*Helianthus tuberosus*); parsnip (*Pastinaca sativa*); potato (*Solanum tuberosum*); radish (*Raphanus sativus*); rutabaga (*Brassica campestris var. napobrassica*); salsify, black (*Scorzonera hispanica*); salsify, Spanish (*Scolymus hispanica*); sugar beet (*Beta vulgaris*); sweet potato (*Ipomoea batatas*) turnip (*Brassica rapa*); yam (*Dioscorea spp.*); yam bean (*Pachyrhizus erosus*).

Representative commodities. Carrot, potato, radish and sugar beet.

Leaves of Root and Tuber Vegetables (Human Foods or Animal Feeds) Group

Commodities. Beet (*Beta vulgaris*); burdock, edible (*Arctium lappa*); carrot (*daucus carrota*); celeriac (*Apium graveolens*); chervil, turnip-rooted (*Chaerophyllum bulbosum*); chicory (*Cichorium intybus*); dasheen (taro) (*Colocasia esculenta*); parsnip (*Pastinaca sativa*); radish (*Raphanus sativus*); rutabaga (*Brassica campestris var. napobrassica*); salsify, black (*Scorzonera hispanica*); sugar beet (*Beta vulgaris*); turnip (*Brassica rapa*).

Representative commodities. Turnip and sugar beet.

Bulb Vegetables (Allium SSP.) Group

Commodities. Garlic (*Allium ampeloprasum, A. sativum*); leek (*Allium ampeloprasum, A. porrum, A. tricoccum*); onion (*Allium cepa, A. fistulosum*); shallot (*Allium ascalonicum*).

Representative commodities. Onion (green and bulb) and one other commodity.

Leafy Vegetables (Except Brassica Vegetables) Group

Commodities. Amaranthus, leafy (*Amaranthus giganticus*); celery (*Apium graveolens*); celtuce (*Lactuca sativa*); chervil (*Anthriscus cerefolium*); corn salad (*Valerianella oliteria*); chrysanthemum, edible-leaved (*Chrysanthemum coronarium*); chrysanthemum, garland (*Chrysanthemum spatiosum*); dandelion (*Taraxacum officinale*); dock (*sorrel*) (*Rumex spp.*); endive (*escarole*) (*Cichorium endivia*); garden cress (*Lepidium sativum*); lettuce (*Lactuca sativa*); parsley (*Petroselinum crispum*); rhubarb (*Rheum rhaponticum*); spinach (*Spinacia oleracea*); spinach, Chinese (*Amaranthus tricolor*); spinach, Malabar (*Basella rubra*); spinach, New Zealand (*Tetragonia tetragonoides, T. expansa*); Swiss chard (*Beta vulgaris var. cicla*); upland cress (yellow rocket, winter cress) (*Barbarea vulgaris*).

Representative commodities. Lettuce (head and leaf), celery and spinach (*Spinacia oleracea*).

Brassica (Cole) Leafy Vegetables Group

Commodities. Broccoli (*B. oleracea var. italica, B. oleracea var. botrytis*); broccoli, Chinese (*B. oleracea var. alboglabra*); broccoli raab (*B. campestris*); Brussels sprouts (*B. oleracea var. gemmifera*); cabbage (*B. oleracea var. capitata*); cabbage, Chinese (*B. pekinensis, B. chinensis*); cabbage, Savoy (*B. oleracea*); cauliflower (*B. oleracea var. botrytis*); collard (*B. oleracea var. acephala*); kale (*B. oleracea var. acephala*); kohlrabi (*B. olearacea var. gongylodes*); mustard greens (*B. juncea*); rape greens (*B. napus*).

Representative commodities. Broccoli, cabbage and mustard greens.

Legume Vegetables (Succulent or Dried) Group

Commodities. Beans (*Phaseolus spp.*) (includes adzuki beans, field beans, French beans, kidney beans, lima beans, moth beans, mung beans, navy beans, pinto beans, rice beans, runner beans, snap beans, urd beans, wax beans); broad beans (fava beans) (*Vicia faba*); chickpeas (garbanzo) (*Cicer arietinum*); Chinese longbean (asparagus bean) (*Vigna unguiculata subsp. sesquipedalis*); lentils (*Lens esculenta*); peas (*Pisum spp.*); (includes garden peas, field peas, sugar peas); peas, southern (*Vigna spp.*); (includes black-eyed peas, Crowder peas, cowpeas, catjang); soybeans (*Glycine max*).

Representative commodities. Beans (*Phaseolus spp.*); one succulent variety and one dried variety), lima beans, peas (*Pisum spp.*; one succulent variety and one dried variety), and soybeans.

Foliage of Legume Vegetables Group

Commodities. Plant parts of any legume vegetable included in the group legume vegetables that will be used as animal feed.

Representative commodities. Any variety of beans (*Phaseolus vulgaris*), field peas (*Pisum sativum*) and soybeans (*Glycine max*).

Fruiting Vegetables (Except Cucurbits) Group

Commodities. Eggplant (*Solanum melongena*); ground cherry (*Physalis sp.*); pepinos (*Solanum muricatum*); pepper (*Capsicum annum, C. frutescens*) (includes chili peppers, sweet peppers, bell peppers, pimentos); tomatillo (*Physalis ixocarpa*); tomatoes (*Lycopersicum esculentum*).

Representative commodities. Tomatoes and peppers.

Fruiting Vegetables (Cucurbits) Group

Commodities. Balsam pear (bitter melon) (*Momordica charantia, M. balsamina*); Chinese waxgourd (*Benicasa hispida*); citron melon (*Citrullus lanatus*); cucumber (*Cucumis sativus*); gherkin (*Cucumis anguria*); edible gourds (*Luffa acutangula, L. cylindrica, Lagenaria spp.*); melons, including hybrids (*Cucumis melo*) (includes cantaloupe, casaba, crenshaw, honeydew melons, honey balls, mango melon, muskmelon, Persian melon); pumpkin (*Cucurbita spp., C. pepo*); squash, summer (*Cucurbita pepo var. melopepo*); squash, winter (*Cucurbita moschata, C. maxima*); watermelon, including hybrids (*Citrullus lunatus*).

Representative commodities. Cucumbers, melons (cantaloupes or muskmelon), and summer squash.

Citrus Fruits (Citrus Spp., Fortunella Spp.) Group

Commodities. Calamondin (*C. mitis*); citrus citron (*C. medica*); citrus hybrids (*Citrus spp.*); grapefruit (*C. paradisi*); kumquats (*Fortunella spp.*); lemon (*C. limon, C. jambhiri*); limes (*C. aurantifolia*); mandarin (tangerine) (*C. reticulata*); orange, sweet (*C. sinensis*); orange, sour (*C. aurantium*); pummelo (*C. maxima, C. grandis*); Satsuma mandarin (*C. unshiu*).

Representative commodities. Sweet orange, lemon and grapefruit.

Pome Fruits Group

Commodities. Apple (*Malus sylvestris*); crabapple (*Malus spp.*); loquat (*Eriobotrya japonica*); pear (*Pyrus communis*); pear, oriental (*Pyrus pyrifolia*); quince (*Cydonia oblonga*).

Representative commodities. Apple, crabapple and pear.

Stone Fruits Group

Commodities. Apricot (*Prunus armeniaca*); cherry, sour (*Prunus cerasus*); cherry, sweet (*Prunus avium*); nectarine (*Prunus persica*); peach (*Prunus persica*); plum and prune (*Prunus domestica spp.*); plum, Chickasaw (*Prunus angustifolia*); plum, Damson (*Prunus insititia*); plum, Japanese (*Prunus salicina*).

Representative commodities. Apricot, sour cherry, peach and plums (*Prunus domestica spp.*); fresh prunes.

Small Fruits and Berries Group

Commodities. Blackberry (*Rubus spp.*); blueberry (*Vaccinium spp.*); boysenberry (*Rubus spp.*); cranberry (*Vaccinium macrocarpon*); cranberry, highbush (*Viburnum trilobum*); currant (*Ribes spp.*); dewberry (*Rubus spp.*); Elderberry (*Sambuca spp.*); gooseberry (*Ribes spp.*); grape (*Vitis spp.*); huckleberry (*Gaylussacia spp.*); loganberry (*Rubus loganobaccus*); mulberry (*Morus spp.*); Raspberry, black and red (*Rubus occidentalis, Rubus strigosus*); Strawberry (*Fragaria spp.*); youngberry (*Rubus cassius*).

Representative commodities. Blackberry or other Rubus spp., blueberry, cranberry (*Vaccinium*), grape and strawberry.

Cereal Grains Group

Commodities. Barley (*Hordeum spp.*); buckwheat (*Fagopyrum esculentum*); corn (*Zea mays*); millet, proso (*Panicum miliaceum*); oats (*Avena spp.*); millet, pearl (*Pennisetum glaucum*); popcorn (*Zea mays var. everta*); rice (*Oryza sativa*); rye (*Secale cereale*); sorghum (milo) (*Sorghum spp.*); teosinte (*Enchlaena spp.*); triticale (*Triticum-Seacale hybrids*); wheat (*Triticum spp.*); wild rice (*Zizania aquatica*).

Representative commodities. Barley, corn (fresh sweet corn and dried field corn), rice, sorghum and wheat.

Forage, Fodder and Straw of Cereal Grains Group

Commodities. Forage, fodder and straw of all commodities included in the group cereal grains.

Representative commodities. Barley, corn, sorghum and wheat.

Grass Forage, Fodder, and Hay Group

Commodities. Any grass, Gramineae Family, (either green or cured) except those included in the group cereal grains, that will be fed to or grazed by livestock, all pasture and range grasses and grasses grown for hay or silage.

Representative commodities. Bermuda grass, blue grass and bromegrass or fescue.

Non-Grass Animal Feeds (Forage, Fodder, Straw and Hay) Group

Commodities. Alfalfa (*Medicago spp.*); clover (*Trifolium spp., Melilotus spp.*); lespedeza (*Lespedeza spp.*); Lupine (*Lupinus spp.*); sainfoin (*Onobrychis viciaefolia*); trefoil (*Lotus spp.*); vetch (*Vicia spp.*); vetch, crown (*Coronilla varia*); vetch, milk (*Astragulus spp.*).

Representative commodities. Alfalfa and clover (*Trifolium spp.*)

Tree Nuts Group

Commodities. Almond (*Prunus amygdalus*); beech nut (*Fagus spp.*); Brazil nut (*Bertholletia excelsa*); butter nut (*Juglans cinerea*); cashew (*Anacardium occidentale*); chestnut (*Castanea spp.*); chinquapin (*Castanea pumila*); filbert (*hazelnut*) (*Corylus spp.*); hickory nut (*Carya spp.*); Japanese horsechestnut (*Aesculis turbinata*); Macadamia nut (bush nut) (*Macadamia spp.*); pecan (*Carya illinoensis*); walnut, black, English (Persian) (*Juglans spp.*).

Representative commodities. Almond, pecan and English walnut.

Herbs and Spices Group

Commodities. Anise (*Pimpinella anisum*); balm (*Melissa officinalis*); basil (*Ocimum basilicum*); borage (*Borago officinalis*); burnet (*Sanquisorba minor*); camomile (*Anthemis nobilis*); caraway (*Carum carvi*); catnip (*Nepeta cataria*); chives (*Allium schoenoprasum*); clary (*Salvia sclarea*); coriander (*Coriander sativum*); costmary (*Chrysanthemum balsamita*); curry (*Murraya koenigii*); dill (*Anethum graveolens*); fennel (*Foeniculum vulgare*); fenugreek (*Trigonella foenum-graecum*); horehound (*Marrubium vulgare*); hyssop (*Hyssopus officinalis*); marigold (*Calendula officinalis*); majoram, sweet (Oregano) (*Origanum majorana*); majoram, wild (*Origanum vulgare*); nasturtium (*Tropaeolum majus*); pennyroyal (*Mentha pulegium*); rosemary (*Rosmarinus officinalis*); rue (*Ruta graveolens*); sage (*Salvia officinalis*); savory, summer and winter (*Satureja spp.*); sweet bay (*Laurus nobilis*); tansy (*Tanacetum vulgare*); tarragon (*Artemesia draculunculus*); thyme (*Thymus spp.*); wintergreen (*Gaultheria procumbens*); woodruff (*Galium odoreta*); wormwood (*Artemesia absinthium*).

Representative commodities. Basil, chives, dill, marjoram and sage.

[FR Doc. 82-12994 Filed 5-12-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 228

[WH-FRL-2095-5]

Ocean Dumping; Proposed Designation of Site

Correction

In FR Doc. 82-11524, appearing at page 18155, in the issue of Wednesday, April 28, 1982, make the following change:

On page 18157, in the first column, after the "Dated" line, add the following signature:

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 82-01; Notice 1]

Passenger Automobile Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule.

SUMMARY: This notice is being issued in response to petitions by Aston Martin Lagonda, Ltd. (Aston Martin), Avanti Motor Corporation (Avanti), Checker Motors Corporation (Checker), Excalibur Automobile Corporation (Excalibur), and Rolls-Royce Motors, Ltd. (Rolls-Royce), requesting that they be exempted from the generally applicable average fuel economy standards for model year 1981–1985 cars, and that lower alternative standards be established for these companies. The Motor Vehicle Information and Cost Savings Act provides for exemptions under certain conditions for low volume manufacturers of passenger automobiles. This notice proposes that the exemptions be granted and that alternative standards be established.

DATE: Comments on this notice must be received on or before June 28, 1982.

ADDRESS: Comments on this notice must refer to the docket and notice number and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Richard L. Strombotne, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2817).

SUPPLEMENTARY INFORMATION: Section 502(a)(1) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) specified average fuel economy standards which must be met by *all* manufacturers of passenger cars. These average fuel economy standards are 18.0 mpg in the 1978 model year, 19.0 mpg in the 1979 model year, 20.0 mpg in the 1980 model year, and 27.5 mpg in the 1985 model year and thereafter. There is no indication in the Act's legislative history that Congress ever considered the particular situation and limited capabilities of the small manufacturers when it established those generally applicable standards. The Act also directed this agency to establish generally applicable standards for model year 1981–1984 cars. The agency responded to that direction in 1977 when it established standards of 22 mpg (model year 1981), 24 mpg (model year 1982), 26 mpg (model year 1983), and 27.0 mpg (model year 1984). Like Congress, the agency did not consider the capabilities of the low volume manufacturers in setting the generally applicable standards.

To avoid the inequity of subjecting the small manufacturers to these standards and making them subject to substantial civil penalties for noncompliance, Congress included a provision in the Act

permitting NHTSA to exempt the small manufacturers from the generally applicable standard. To that end, section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for a particular model year if that standard is more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at a level representing its maximum feasible average fuel economy for that model year.

Under the Act, a low volume manufacturer is one which manufactures less than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and which manufactured less than 10,000 passenger automobiles in the second model year before the affected model year. The production of each petitioner is well below that maximum. In fact, the combined annual production of all low volume manufacturers is less than 10,000 passenger automobiles. Further, the fuel consumed by these vehicles is only about one-tenth of one percent of the national daily fuel consumption of all automobiles.

In exemption proceedings for previous model years, some commenters questioned whether Congress intended the agency to use its section 502(c) authority to exempt luxury cars and sports cars. This question was resolved in *Center for Auto Safety* v. *Claybrook*, 627 F. 2d 346 (D.C. Cir. 1980). The Court held that section 502(c) gave the agency discretion to exempt any low volume manufacturer, including the manufacturer of luxury or sports cars, if the manufacturer adequately demonstrated its inability to meet the generally applicable standards. Nevertheless, the Court suggested that Congress reexamine the exemption provision. In its May 1980 report on the Auto Fuel Efficiency Act of 1980, the House Interstate and Foreign Commerce Committee declined the Court's suggestion, noting that:

> The Court, of course, did not recognize the fact that under various trade agreements, Congress probably could not provide an exemption for a domestic manufacturer, while failing to provide the same opportunity for a foreign manufacturer.

In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Section 502(c) of the Act gives NHTSA wide latitude in deciding how to structure alternative standards. The Act expressly mentions three ways of establishing those standards: (1) By setting a separate standard for each individual exempted manufacturer; (2) By dividing the automobiles of the exempted manufacturers into classes, and establishing a standard for each class; or (3) By following the example of Congress in setting the generally applicable standards and setting a single standard for all exempted manufacturers.

To implement its exemption authority under section 502(c), NHTSA issued 49 CFR Part 525, *Exemptions From Average Fuel Economy Standards*, in July 1977. That Part specifies that manufacturers can petition for an exemption for three model years and specifies the contents of the exemption petitions. In setting alternative standards for each of model years 1978–1980, NHTSA chose to issue a separate alternative standard for each manufacturer. As a result of establishing separate standards for each manufacturer by means of issuing separate proposals and final rules for each manufacturer, the process of exempting these manufacturers became very burdensome. The 17 alternative standards established for model years 1978–1980 (5 for 1978, 6 for 1979 and 6 for 1980) were established by means of 11 notices of proposed rulemaking and 11 final rules.

As a result of its experience with this disproportionate amount of time and effort involved in exempting these manufacturers, NHTSA asked Congress in 1980 to adopt an amendment altogether exempting low volume manufacturers from the average fuel economy standards. While Congress declined to exempt the low volume manufacturers entirely, it did amend the Act to include provisions for simplifying the exemption process and reducing the burden of compliance with the alternative standards. These amendments, as well as other amendments to the Act, were adopted in the Automobile Fuel Efficiency Act of 1980 (the 1980 Act). (Pub. L. 96–425, 94 Stat. 1821)

Since the amendments have not previously been applied to the agency's fuel economy exemption proceedings, the agency believes it is useful to discuss the effects of those amendments by reviewing them and their legislative history briefly. The Senate accepted the agency's legislative proposal and adopted an amendment giving the low volume manufacturers a total exemption from all fuel economy standards. The House did not go so far. It simply provided that a manufacturer could elect to consolidate applications for, and administrative determinations regarding exemptions and alternative standards for two or more of model years 1982–1984.

The conferees struck a compromise between the Senate and House approaches. The 1980 Act not only incorporates the House provision, but also contains several other provisions. First, it provides that the agency "may grant an exemption and set an alternative standard or standards for all model years covered by" an exemption application. With respect to this provision, the conference report states:

> The conferees emphasize that in establishing alternate fuel economy standards, the Secretary of Transportation may establish a single standard for the duration of the exemption.

As explained by the conference committee, the agency understands this provision as authorizing the agency to adopt the same level of standard for each of model years 1981–1985. Under this approach, the agency would be required by section 502(c) to set the standards at a level which is feasible for the exempted manufacturer in each of the five years. To satisfy the requirement, the level of the standards would have to be equal to the manufacturer's lowest annual average fuel economy during the five year period (e.g., if the manufacturer's maximum feasible average fuel economy for 1981–1985 were 20 mpg, 21 mpg, 22 mpg, 23 mpg and 24 mpg, respectively, the standard for each year must be set at 20 mgp). As explained near the end of the preamble in the section entitled "Selection of the type and level of the alternative standards," the agency has tentatively decided not to exercise the discretionary authority provided by this provision.

Second, the 1980 Act also addresses the question of the extent of information required for applications covering the 1981–1985 period. It indicates that less information is required regarding model years 1982–1985 than is required regarding model year 1981. The policy is appropriate given the limited information possessed by low volume manufacturers at any time concerning events more than one year in the future. Specifically, the 1980 Act provides:

> (a)ny application filed for model year 1981 under section 502(c) * * * before the effective date of this Act may be amended by

the applicant to make the election * * * (of consolidating the applications and proceedings for two or more model years) * * * and have such application apply for the model years covered by the election. Additional information shall not be required in connection with such application for the years covered by the election except information which the Secretary of Transportation may specifically request.

Low volume manufactuers in general. The largest of these manufacturers is Checker whose annual production is projected to be between 5,000–7,000 cars. The next largest is Rolls-Royce whose projected annual U.S. sales are between 1,300–1,600 cars. The other three petitioners will produce about 300 cars each for sale in the United States each year. With annual sales of new cars dipping to 8.5 million in 1981, the total sales of these manufacturers still represents less than 1/12 of 1 percent of the new car market.

As a result of the small size of these manufacturers' operations and the engineering staffs and the limited available capital, few fuel economy improvements can be made. Additionally, these manufacturers order many of their parts from a supplier. When they do so, they must order a three to five years' supply of the parts to reach the minimum volume which must be ordered from a particular supplier or to qualify for the volume discounts offered by the suppliers. This inventory of parts prevents a low volume manufacturer from making any quick fuel economy gains by ordering different parts. Further, the tooling investments by these companies for a model change represent a far higher percentage of their earnings than tooling investments do for larger manufacturers. Thus, the low volume manufacturers need longer model runs to amortize their investments than do the larger manufacturers.

The low volume manufacturers can be divided into two groups. One consists of those which buy their engines and driveline components from larger manufacturers such as General Motors and simply add that engine and drive train to their vehicles. The other consists of those who design and build their own engines and drive trains. Those manufacturers in the former group include Avanti, Checker, and Excalibur, while the latter group consists of Aston Martin and Rolls-Royce. The fuel economy of the former group is higher than that of the latter partially because the former group gains the advantage of the substantial technical expertise of General Motors for achieving fuel economy improvements through the use of improved engines and drive trains.

Methodology used in determining maximum feasible fuel economy levels. The methodology used in this proposal represents a combination of the two methodologies used in past rulemaking proceedings for setting alternative fuel economy standards. All of the vehicles for model year 1981 have already been produced and many of those for the current model year have already been produced. EPA fuel economy test data are available to show the exact measured fuel economy of the 1981 models of each of these manufacturers. For this model year, NHTSA can simply use the EPA fuel economy values as a baseline for its analysis, to show the actual fuel economy benefits resulting from applying the technology used by the manufacturer. To this baseline, NHTSA must add the projected fuel economy benefits for any technology which the manufacturers could have included in their vehicles, but did not do so.

For the 1982–1985 model years, the agency used regression relations to make projections of potential fuel economy from the baseline of MY 1981 fuel economy ratings. In making these projections, NHTSA used the 1981 model year vehicles as a baseline, since EPA fuel economy data exist for all of the manufacturers for that model year. The agency then considered whether there are any technological or other improvements that would be feasible for the manufacturers, whether or not the manufacturers actually plan to incorporate those technologies in the vehicles.

In discussing the levels of fuel economy feasible for each manufacturer, the agency has not included the effects of emission standards on fuel economy. Those effects are taken into consideration in a separate section later in the preamble.

The information used in making the tentative determinations about maximum feasible average fuel economy was derived from the petitions of the five low volume manufacturers for model years 1981–1985 and from their petitions and associated rulemaking notices relating to previous model years.

Technological feasibility and economic practicability. In considering whether the petitioners could improve the average fuel economy of their vehicles for the 1981–1985 model years, NHTSA examined the same methods for improving average fuel economy that it examined in establishing average fuel economy standards for 1981–1984 passenger automobiles (42 FR 33534; June 30, 1977) and alternative standards for low volume manufacturers for model years 1978–1980. These methods were weight reduction, aerodynamic improvements, engine improvements, transmission improvements, drive line improvements, reduced rolling resistance, and mix shifts.

For the purposes of this analysis, the agency has defined "economic practicability" to mean the financial capability of a manufacturer to improve its average fuel economy by developing or purchasing components for its vehicles which offer improved fuel economy for those vehicles within the time available to make such changes. The tentative results of this analysis are shown below for each of the five petitioning manufacturers.

Avanti

Avanti automobiles use the body designed by Raymond Loewy for the Studebaker Avanti in the early 1960's. The Avanti of today is a precise external replica of that now-classic sports car. Avanti considers its image to be that of a "family sports car", and uses the same engine and drive train used by General Motors on the Chevrolet Corvette. The axle ratio for these cars is also identical to that of the Corvette.

All Avanti vehicles are represented by a single vehicle configuration. Thus, Avanti needs to test only one vehicle to determine its corporate average fuel economy since that value equals the fuel economy of the single configuration. While this simplifies the fuel economy and emissions testing for the company, it also means that the single configuration must be certified to comply with the more stringent California emissions standards in each model year, as well as the 49-state emissions standards.

In its petition for exemption for the 1981–1985 model years, Avanti indicated that it was unable to obtain a firm commitment from its main supplier, General Motors, regarding the exact specifications or availability of engines and drive train components for model years 1983–1985. Avanti therefore requested that an alternative standard be established for it at 17.0 mpg for the period. Avanti indicated that it could not make major changes in its vehicles primarily because of its current financial position. The company's net worth is about $460,000 with a current outstanding debt of $422,000. Avanti stated in its petition that it would be unable to finance any engineering, design, and tooling costs to improve further the fuel economy of its vehicles during this period, and that any improvements would be as a result of

improvements made by General Motors in components purchased by Avanti.

Avanti did indicate that there would be some significant differences between the vehicles it would produce during this period and those that it sold in the 1980 model year. The engine size was reduced from a 350 CID V–8 to a 305 CID V–8, a 3-way catalyst was substituted for a single oxidation catalyst, and the axle ratio was reduced from 3.07 to 2.72. Additionally, the 1981–1985 Avantis will use a 4-speed automatic transmission with a lockup clutch, instead of the 3-speed automatic transmission on the 1980 models. The combined effect of these changes is estimated by NHTSA to result in an estimated fuel economy of 18.2 mpg for these vehicles in the affected period. This fuel economy level will be used as a baseline to determine Avanti's maximum feasible average fuel economy for the 1981–1985 period.

Weight reduction. In determining whether Avanti could have made weight reductions to improve fuel economy in this period, the agency has considered two options, i.e., downsizing and materials substitution. The goal of downsizing is to reduce the exterior dimensions of the automobile without significantly reducing the passenger and luggage volume of the automobile. Avanti is severely limited in its ability to make design changes that would modify the vehicle's general shape and appearance since one of its biggest selling points is that it is an exact replica of a now-classic sports car. Any changes in this appearance could significantly decrease the market for these automobiles. Further, the Avanti has a fairly heavy frame to provide crash protection performance. Accordingly, the agency has tentatively concluded that achieving weight reduction by making design changes would not be practicable for Avanti during the 1981–1985 model years. (Wherever the agency states throughout this notice it has tentatively concluded that a particular change would not be economically practicable or technologically feasible, the agency means that the change would not have been practicable or feasible for vehicles already produced and would not be practicable or feasible for vehicles yet to be produced.)

"Materials substitution", the other weight reduction option indicated above, refers to the replacement of currently used materials by lighter materials, such as aluminum, plastics, and high strength, low alloy steels. Avanti currently uses a fiberglass body, which is a very lightweight material. Further, the 4-seat Avanti has the same equivalent test weight as the 2-seat Chevrolet Corvette. Avanti purchases its engines and drive trains from General Motors, so the weight of these components is beyond the control of Avanti. After a consideration of these factors, NHTSA has tentatively concluded that it would not be technologically feasible and economically practicable for Avanti to reduce the weight of its 1981–1985 automobiles.

Aerodynamic improvements. The EPA has established fuel economy test procedures that take into account the aerodynamics of the test vehicle. Under these procedures, each test vehicle is assigned a dynamometer road load setting which reflects the vehicle's aerodynamic drag and its test weight. The value is usually assigned by use of an EPA formula which results in what is commonly referred to as the "book value". When calculated in this manner, the road load increases to the extent that the vehicle's frontal area is greater than average and to the extent that the combined area of all equipment protruding from the front view of the vehicle (e.g., exterior rear view mirrors, radio antennas, etc.) exceeds established reference values. Test vehicles are also given a higher road load setting if they do not use radial tires which are more fuel efficient than bias ply tires.

The EPA also permits a manufacturer, at its option, to use an alternative procedure to calculate the road load setting for the test vehicle. The alternative procedure, commonly referred to as "coastdown", measures the aerodynamic drag of the entire vehicle. This alternative procedure generally yields a lower road load setting than the book value for vehicles with lower than average frontal area for their particular weight class.

The Avanti's design gives it a very low drag coefficient which the company exploited by using the coastdown procedure in the 1979–1980 model years. Since the Avanti's fuel economy is measured by General Motors along with the Corvette, it is reasonable to assume that General Motors will continue to use the coastdown procedure when measuring 1981–1985 fuel economy. Additionally, all Avanti automobiles will have radial tires as standard equipment in each of these model years, so its road load setting will not be increased. Hence, the only way in which Avanti might improve its fuel economy by reducing aerodynamic drag and rolling resistance would be through design changes to the automobiles.

As explained above in the section titled *Weight reduction,* one consequence of Avanti's building copies of the famous Studebaker sports car is that the company's ability to modify the vehicle's general shape and appearance is quite limited. Since the frontal area of the car is already well below average for its test weight class, any changes to improve the aerodynamic drag necessarily involve modifying the car's shape and appearance. Small improvements to the body such as front air dams and low drag mirrors might conceivably be made. However, the benefits of those changes would have to be verified through conducting costly wind tunnel testing. Accordingly, NHTSA tentatively concludes that it would not be economically practicable for Avanti to improve the fuel economy of its 1981–1985 models by means of aerodynamic improvements.

Engine improvements. This agency has also considered whether Avanti could further improve the fuel economy of its 1981–1985 automobiles by using a smaller engine or an alternative emission control system. As noted above, Avanti purchases its engines from General Motors and does not have the engineering or production capabilities to design and build its own engine. Therefore, its choice of engine is limited by the types that are available from other manufacturers. Avanti has used the same engine as the Corvette since the mid-60's and currently uses the 305 CID V–8 engine used in the Corvette.

Conceivably, Avanti could use a smaller General Motors engine. However, there are two reasons it does not plan to do so. First, Avanti believes that its automobiles must be fairly high performance automobiles in order to maintain its image as a sports car. It is therefore reluctant to use a smaller engine than the Corvette. Since the Avantis have the same curb weight as the Corvette, the use of a smaller engine would almost certainly give the Avantis lower performance than the Corvette, and possibly reduce the demand for its vehicles.

Second, Avanti's automobiles are tested for emissions and fuel economy by General Motors along with the Corvette. If Avanti uses a different engine than the Corvette engine, this testing would not be possible, and Avanti would have to conduct the tests itself. Since EPA certification has been previously estimated by NHTSA to cost between $60,000 and $85,000, Avanti would be under a substantial financial strain if it did its own testing. After considering these factors, NHTSA has tentatively determined that it would not

be economically practicable for Avanti to use a smaller engine on its 1981–1985 automobiles.

As regards the emission control system, Avanti has indicated that it will use a 3-way catalyst on its 1981–1985 automobiles. This system represents the current state of the art with respect to controlling emissions with a minimal sacrifice of potential fuel economy. Accordingly, NHTSA has tentatively concluded that it would not be technologically feasible for Avanti to improve its fuel economy in the 1981–1985 model years by using an alternate emission control system.

Transmission improvements. Avanti purchases its transmission from General Motors, and will receive a 4-speed automatic transmission with a lock-up clutch in the torque converter during the 1981–1985 model years. In the final rule establishing generally applicable average fuel economy standards for 1981–1984 model year passenger cars, NHTSA Noted that the use of this type of transmission could improve fuel economy as much as 10 percent over the levels obtained by using a standard 3-speed automatic transmission. Since Avanti is using the most efficient type of automatic transmission currently available, NHTSA has tentatively concluded that it would not be technologically feasible for Avanti to improve its fuel economy as a result of transmission improvements.

Reduction of rear axle ratio. In setting fuel economy standards in the past, the agency has noted that a reduction of the rear axle ration will generally result not only in fuel economy improvements, but also in a decline in the vehicle's performance. The agency has also noted that when these fuel economy gains can be realized by reducing the rear axle ratio, they can be implemented very economically.

As noted above, the rear axle ratio to be used on Avanti's 1981–1985 automobiles will be 2.72:1, a reduction from the 1980 ratio of 3.07:1. Avanti's current ratio is comparable to or less than that used for other high performance cars. In NHTSA's technical judgment, it would not be feasible for Avanti to further reduce its rear axle ratio and maintain a sports car image. As already noted, maintaining that image is deemed a significant factor for Avanti's sales. Because of this, NHTSA tentatively concludes that it would not be economically practicable for Avanti to further improve the fuel economy of its 1981–1985 models be reducing the rear axle ratio.

Mix shifts. The term "mix shifts" as used in prior NHTSA fuel economy rulemaking, refers to a manufacturer's decreasing its sales of its lower fuel economy models and increasing the sales of its higher fuel economy models. Since Avanti markets only one model, it is unable to increase its average fuel economy through the use of mix shifts.

After a consideration of the above factors, NHTSA has tentatively determined that a fuel economy level of 18.2 mpg is the highest fuel economy level that would be technologically feasible and economically practicable for Avanti in each of model years 1981–1985.

Checker

According to Checker, its automobiles are designed to serve as taxicabs, which requires those automobiles to have a large passenger carrying area and large luggage capacity. Thus, the automobiles have, in Checker's words, "a flat floor in the rear compartment, chair-height seats, larger interior volume with ample headroom, and large door openings for ease of entry and exit." The Checker automobiles have either six, eight, or nine designated seating positions.

In addition to a large passenger and cargo carrying capacity, Checker asserts that its automobiles are also designed for maximum durability and ease of maintenance. As examples of its efforts to ensure low maintenance costs, Checker cites its use of bolt-on front and rear fenders, interchangeble aluminum bumpers on the front and rear, and the same vehicle design since 1956. This constancy of design has permitted taxicab fleet owners to use parts from scrapped vehicles as replacement parts for newer Checkers.

Checker will sell four different vehicle configurations during the 1981–1985 model years. All models will be certified to the more stringent California emissions standards, as well as the 49-state emission standards, so that they can be sold in any of the 50 states, according to the demand. The first configuration is the Checker 229 CID V–6. This model will represent the bulk of Checker's sales for the 1981 model year (about 3100 of Checker's total sales of 3800), but production of this model will decline, so that in 1985 it will represent only 500 units in Checker's projected total sales of 6900.

The second model will be the 267 CID V–8. Production of this model will also decline from 565 units in 1981 to 200 in 1985. The third model has a 350 CID diesel V–8. Production of this model will increase from 105 units in 1981 to 200 units in 1985. One problem with increasing production of this model is that Checker cannot get many diesel engines from General Motors since that company gives priority to its own divisions.

The fourth model will be an all new, downsized Checker to be introduced in the 1983 model year. This model will be powered by a new General Motors engine, a 173 CID V–6. It is expected to represent most of Checker's sales by 1985 (6000 out of 6900). Based on its projections of the sales of each of these models, Checker estimated its average fuel economy as follows:

	Miles per gallon
1981	16.3
1982	16.4
1983	19.5
1984	21.0
1985	21.5

NHTSA will use these projections as a baseline to determine the highest fuel economy level that is technologically feasible and economically practicable for Checker.

Weight reduction. As noted above, Checker will make a significant weight reduction to its best selling model through its introduction of the new model in the 1983 model year. This weight reduction will employ both downsizing and materials substitution, resulting in a weight reduction of 750 pounds. In the face of this significant weight reduction, the major question to be resolved is whether this weight reduction could be accomplished earlier than the 1983 model year.

Checker explained that its limited resources and the risks inherent in changing its basic model would not permit it to advance its timetable for introduction of the new model. Further, the substantial investment of money and manpower in developing the new model would not leave it any unused resources with which to reduce the weight of the current models prior to the introduction of the new model. In any case, the money invested in reducing the weight of the current model would be ill-spent, according to Checker, because it expects to phase the now-current model out of production in the mid to late 80's. Given the significant investments being made by Checker to reduce its vehicle weight, NHTSA has tentatively concluded that any further weight reduction by Checker would not be economically practicable for the 1981–1985 model years.

Aerodynamic improvements. Checker presumably used the book value to determine the road load setting for its MY 1981–82 cars and will continue to use it for its current model cars in MY 1983–85 since the frontal area of these

vehicles is larger than average. The only way to reduce the aerodynamic drag of these vehicles would be to redesign their bodies. For the same reasons explained above (i.e., the investment by Checker in its 1983 downsizing program), the agency has tentatively concluded that fuel economy gains for the 1981 and 1982 Checker automobiles by means of aerodynamic improvements would not be economically practicable.

Checker plans to use the coastdown test to determine the road load setting for the new model to be introduced in model year 1983 because its frontal area will be below average for its weight class. As a result of the improved aerodynamic shape, and the use of the coastdown procedure, Checker estimates that its road load setting will decrease from the 14.6 used for its current basic model to 7.3. This 50 percent reduction in road load setting will occur partly as a result of the weight reduction and partly as a result of the improved aerodynamics of the vehicle. Further, all Checker models will be equipped with radial tires for the 1981–1985 model years, rather than the bias tires used prior to the 1981 model year. This means that no increment will be added to the road load setting for not using radial tires.

After considering all of these factors, NHTSA has tentatively concluded that no further fuel economy gains as a result of aerodynamic improvements would be technologically feasible and economically practicable for Checker for the 1981–1985 model years.

Engine improvements. NHTSA has considered whether Checker could have made further fuel economy gains by using a smaller engine or an alternative emission control system on its 1981–1985 models. As regards the basic Checker model for the 1981–1982 model years, the 229 CID V–6, it would not be feasible, in this agency's technical judgment, to use a smaller V–6 engine in vehicles with the current weight (4,000 pounds). If a smaller engine were used, the increased loading on the engine would almost certainly force Checker to use less than optimal timing to control the emissions, thereby negating any potential fuel economy gain. Additionally, the acceleration capabilities of a smaller engine in a car that is the size of a Checker and that is used as a taxi would almost certainly prove unsatisfactory to potential purchasers.

The 267 CID V–8 engine used by Checker in its 8-cylinder model is the smallest 8-cylinder engine made by General Motors, the engine supplier for Checker. The 350 CID diesel V–8 is not the smallest diesel engine manufactured by General Motors. It is, however, the only size diesel engine which General Motors makes available to Checker, and, therefore, no change is possible for Checker.

Finally, the 173 CID V–6 engine which Checker will use on its new basic model beginning in 1983 represents a significantly smaller engine than Checker has ever used on its automobiles. Given the stated desire of Checker for durability and the need for its vehicles to carry heavy loads, the agency cannot say that a four-cylinder engine could be used to further improve the fuel economy of these vehicles. An overloaded engine in a Checker could actually decrease fuel economy and shorten the engine's life. After considering each of these engine sizes, NHTSA has tentatively concluded that it would not be technologically feasible and economically practicable for Checker to use a smaller engine on its 1981–1985 vehicles.

Regarding the emission control system, Checker will use a 3-way catalyst on its 1981–1985 vehicles. Since this represents the current state of the art, NHTSA has tentatively concluded that no fuel economy improvements would be possible for Checker by using a more efficient emission control system.

Transmission improvements. As previously noted, Checker purchases its transmissions from General Motors. Checker plans to continue to use the GM THM–400 automatic transmission on its current, larger models. This is a heavy duty transmission with three speeds, and is not available with a lock-up clutch. This is not the most fuel-efficient transmission which could be used by Checker.

However, Checker stated that it will not switch to a more fuel-efficient transmission for their current, larger cars because of their concern about the durability of the available, smaller transmissions. Checker stated that durability is one of the most important features of its vehicles for marketing purposes. Use of a lighter duty transmission in a heavy vehicle such as the large body Checker could adversely affect the durability of the vehicle. Further, General Motors has no plans to add a lockup clutch to the THM–400 transmission since the company will not use this transmission in its downsized cars of the future. Given the particular duty cycle of the transmission of a car being used in taxi service, NHTSA has tentatively concluded that it would not be economically practicable for Checker to improve the fuel economy of its larger 1981–1985 vehicles by using a more fuel-efficient transmission. The downsized Checker model to be introduced in MY 1983 will use a 4-speed transmission with a lockup clutch. Since this is the most fuel-efficient type of automatic transmission, NHTSA tentatively concludes that it would not be technologically feasible for Checker to improve the fuel economy of that new model by using a more efficient transmission.

Reduction of rear axle ratio. Checker's current models use a rear axle ratio of 2.72:1. The use of a lower ratio does not appear feasible for these vehicles since the inertia weight is high and the engine displacement is relatively low. A lower axle ratio would give the vehicles lower acceleration capabilities and probably increase exhaust gas emissions because of higher engine loading. Additionally, Checker purchases the axle gear assembly from Dana Corporation, who manufactures the assembly for Ford Motor Company. By purchasing an assembly also purchased by Ford, Checker pays less for the assembly than it would pay if it had a special assembly manufactured for it. Based on these factors, NHTSA has tentatively concluded that it would not be technologically feasible and economically practicable for Checker to improve its 1981–1985 fuel economy by using a lower rear axle ratio for its larger models.

Checker will use an axle ratio of 2.84 on its downsized model. This axle ratio was selected in conjunction with the new engine and drivetrain, and the fuel economy of this model is substantially higher than the fuel economy of the larger models. The agency will not second-guess a low volume manufacturer on its choices of individual components because the agency does not have all of the economic data considered by the manufacturer. This policy seems especially prudent when the net effect is a substantial fuel economy improvement over existing models. Accordingly, NHTSA tentatively concludes that it would not be technologically feasible and economically practicable for Checker to improve the fuel economy of its downsized model by using a lower axle ratio.

Mix shifts. For 1983–1985, Checker will be selling a high percentage of its most fuel-efficient model, the new downsized model. It will be attempting to shift as many purchasers to this model as it can, so further mix shifts are tentatively judged to be infeasible for Checker during this period.

For 1981–1982, the question is whether the market would permit Checker to shift its V–8 model customers to its V–6 or its diesel models. Checker's 6-

cylinder models are generally ordered by taxicab fleet owners along with all the 6-cylinder automobiles those fleet owners need. The 8-cylinder models are larger inside and are frequently used as limousines. These models also offer the higher horsepower to weight ratios typically needed in cars used as taxis. Thus, there is reason to believe that these fleet owners would not order more 6-cylinder Checker automobiles if Checker restricted the availability of its 8-cylinder models. Instead, the fleet owners would likely look elsewhere for automobiles to be used as limousines. Checker could not shift these owners to a purchase of its diesel model because it is already using all the diesel engines General Motors will make available to it. Thus, restricting the availability of its 8-cylinder gasoline models might cause Checker to lose a significant percentage of its sales. These considerations have caused the agency to tentatively conclude that such mix shifts would not be economically practicable for Checker during this period.

After considering these factors, NHTSA has tentatively concluded that Checker's highest fuel economy levels which are technologically feasible and economically practicable are as follows:

	Miles per gallon
1981	18.3
1982	18.4
1983	20.6
1984	22.6
1985	23.0

The figures shown above for the 1983–1985 model years are somewhat larger than requested by Checker, and are based on NHTSA's independent projections of the fuel economy achievable by Checker using the same technology on which that company based its projections.

Excalibur

This company markets two styles of passenger cars, the Phaeton and the Roadster. They are styled after Mercedes-Benz sports cars of the mid-30's. These cars have running boards, swooping fenders covering the wheels, and all of the other styling features of that period.

Although Excalibur produces two styles, a coupe and a convertible, both have similar specifications and are treated as a single vehicle configuration. Thus, Excalibur need test only one vehicle to measure its fuel economy and the resulting fuel economy figure equals the company's corporate average fuel economy for that model year. Excalibur, like Avanti and Checker, designs all of its vehicles to comply with the more stringent California emissions standards as well as the 49-state standards, so that they can be sold wherever there is a demand for them.

In its petition for exemption for the 1981–1985 model years, Excalibur requested an alternate standard set at either 13.0 or 16.0 mpg, depending on EPA's action on Excalibur's waiver request for relief from the 1981 CO emission standard. Excalibur's request was granted so NHTSA will treat Excalibur's request as one for an alternative standard of 16.0 mpg. Excalibur, like Avanti, indicated that it was unable to obtain a firm commitment from General Motors as to the components that will be provided for its MY 1983–85 models. Hence, the company did not project any fuel economy improvements for that period.

Excalibur stated in its petition that it had sustained operating losses in excess of $2 million from October 1979 through September 1980, primarily as a result of the retooling of their 1980 models to produce the Series V Excalibur, a model which the company intends to produce through the 1985 model year. A loss of this size is particularly severe for a company the size of Excalibur.

Excalibur did note that there were some significant differences between the model year 1979 and 1980 models. These changes would increase the fuel economy of the automobiles to be produced from 1981 to 1985. The most significant of these changes include using a smaller engine, switching from a 454 CID V–8 in 1979 to a 305 CID V–8 in 1980, and using a catalytic converter on its 1980 models. Additionally, Excalibur will switch from using a 3-speed automatic transmission without a lockup clutch in 1980 to a 4-speed automatic transmission with a lockup clutch for its 1981–1985 models. Excalibur's 1980 fuel economy was 16.2 mpg. By calculating the fuel economy improvements which are projected to result from the use of a more efficient transmission for the 1981–1985 model years, NHTSA projects that Excalibur's fuel economy for the 1981–1985 period will be 17.9 mpg. This figure will be used as a baseline to determine the company's maximum feasible average fuel economy.

Weight reduction. Excalibur is hampered in its ability to downsize its automobiles because any modifications of the vehicle's general shape and appearance would eliminate the vehicle's most important attribute, i.e., its resemblance to a mid-30's sports car. Thus, the only form of downsizing available to Excalibur is reducing the overall dimensions of its vehicles. The length of the vehicle now is comparable to a current model Chevrolet Corvette. Excalibur has stated that it does not have the financial resources to further reduce the size. In addition, it appears that marketing considerations would prevent the company from ever being able to reduce the vehicle size. After considering the expenditures made by Excalibur in producing its Series V vehicles, NHTSA has tentatively concluded that downsizing by Excalibur would not be economically practicable.

Excalibur currently uses over 200 pounds of aluminum in the body panels of its automobiles. This represents a very significant use of light materials. The weight of the engine, drive train, emissions control equipment, and exhaust system are beyond the control of Excalibur since these are all purchased from outside sources. After considering these factors, the agency has tentatively concluded that it would not be economically practicable for Excalibur to use materials substitution to reduce further the weight of its 1981–1985 vehicles.

Aerodynamic improvements. All Excalibur automobiles will use radial tires during the 1981–1985 model years. Accordingly, the road load setting for fuel economy testing purposes will not be increased as it would be for cars with bias ply tires. Excalibur will use the coastdown method to determine its road load setting to take advantage of the fact that the frontal area of its vehicle is well below average for their inertia weight class. Hence, the only way in which Excalibur could improve its fuel economy would be to make design changes to the automobiles.

In addition to the vehicle shape, which could be modified to produce a lower drag coefficient, Excaliburs also have a significant amount of equipment mounted on the outside of the body, such as the headlights, horns, side windows, and spare tires. Making this equipment an integral part of the body or mounting it inside the vehicle would undoubtedly lower the drag coefficient. However, since the company is manufacturing vehicles designed to be evocative of mid-30's sports cars, taking these steps would conflict with the company's major selling point for its automobiles. In fact, swooping fenders, running boards, and exterior horns were distinctive features of the automobiles produced in that era. Based on these factors, NHTSA tentatively concludes that such a redesign to improve the aerodynamics of the Excalibur would not be economically practicable for the company.

Engine improvements. As noted at the outset of this discussion, all Excalibur automobiles produced in the 1981–1985 model years will use a 305 CID V–8 engine manufactured by General Motors. Excalibur could perhaps use a smaller engine, although the weight of its vehicles would almost certainly preclude the use of any 4-cylinder engines. However, Excalibur aims to produce automobiles which are evocative of classic sports cars. While its performance is not intended to equal that of sports cars like Ferraris, it is definitely intended to outperform the average car. In view of these design parameters which are so closely related to the market appeal of the Excalibur, NHTSA tentatively concludes that it would not be economically practicable for Excalibur to use a smaller engine.

As noted above, Excalibur will use a 3-way catalyst and closed loop, feed back control on all of its cars produced during the 1981–1985 period. Since this is the most advanced emission control system available, NHTSA tentatively concludes that use of a more efficient emission control system to improve fuel economy would not be technologically feasible for Excalibur.

Transmission improvements. Excalibur purchases its transmission from General Motors, and will use a 4-speed automatic transmission with a lock-up clutch for its 1981–1985 models. Since this is the most fuel-efficient type of automatic transmission currently available to Excalibur, NHTSA tentatively concludes that it would not be technologically feasible for Excalibur to improve its fuel economy by means of transmission improvements.

Reduction of rear axle ratio. The rear axle ratio used on Excalibur's 1981–1985 vehicles will be 2.72:1, identical to that used by Avanti and Checker, and purchased from the same supplier. As stated in the discussion of Avanti, NHTSA does not believe that it would be practicable to maintain a sports car image if Excalibur were to reduce this rear axle ratio. For this reason, NHTSA tentatively concludes that it would not be economically practicable for Excalibur to improve its fuel economy by reducing its rear axle ratio.

Mix shifts. Since Excalibur markets only one vehicle configuration, it is unable to use mix shifts to improve its fuel economy.

After considering all of these factors, NHTSA tentatively concludes that a fuel economy level of 17.9 mpg is the highest fuel economy level that is technologically feasible and economically practicable for Excalibur in each of model years 1981–1985.

Aston Martin

Aston Martin's automobiles are, in the words of one of the company's advertising brochures, "designed and constructed to carry its occupants as far and as fast as they may care to travel, in elegance, luxury, and safety." The car bodies are substantially built by hand, with no assembly lines in the plant. To illustrate the high performance nature of these vehicles, they have demonstrated in tests their ability to accelerate from 0–100 miles per hour (mph) and to brake back to 0 mph in 25 seconds. The luxury of the automobiles is exemplified by the use of leather seats, wool carpet, power windows and door locks, and the like. The automobiles sell for about $100,000 each.

However, Aston Martin has previously argued that it has made changes in its automobiles to improve their fuel economy. These include radial tires, aluminum body, wheels, and fuel tank, a body developed in a wind tunnel to achieve a very low aerodynamic drag, a lockup clutch on the automatic transmission models, and optimized engine settings. For the 1981–1985 model years, Aston Martin will sell its Saloon, Vantage, and Volante models with either a 3-speed automatic transmission or a 5-speed manual transmission. Since these three models have similar specifications, they are treated by the EPA as only two different vehicle configurations, one for each type of transmission. Additionally, Aston Martin will market a new model in the U.S., the Lagonda, which will be available only with an automatic transmission.

Like the other low volume manufacturers, Aston Martin certifies all of its vehicles to comply with the more stringent fuel economy standards of California, as well as the 49-state emission standards. The company follows this practice to avoid additional costly certification tests and to enable it to sell its vehicles in any State. In its petition for exemption from the 1981–1985 model years, Aston Martin stated that it could not meet the 1983–1985 California NO_x standard of 0.4 grams per mile, but ignored this in projecting its fuel economy, on the stated assumption that the law would have to be changed. Aston Martin reported that its average fuel economy for 1981–1985 would be 12.1 mpg for all model years. Agency calculations based on the most recent EPA fuel economy data show that the 1981 average fuel economy is 12.2 mpg. Using a regression equation to calculate the fuel economy for Aston Martin for the 1982–1985 model years, since no data are available on the fuel economy of the new Lagonda model, the agency found that the value of 12.2 mpg would apply for the entire period. Therefore, the value of 12.2 mpg will be used as a baseline from which to determine the maximum fuel economy level which is technologically feasible and economically practicable for Aston Martin.

Weight reduction. In a discussion of downsizing and materials substitution by Aston Martin, it is important to note its recent financial history. Aston Martin's corporate predecessor was liquidated in bankruptcy proceedings in December 1974. The current manufacturer was organized with the remaining assets. It began selling cars again in the United States in the 1979 model year, and is still not in strong financial condition. Downsizing a model involves a complete re-engineering of the vehicle, and requires a large investment of the engineering staff's time and corporate money. Given the difficulty of this task and the limited financial resources available to the company, NHTSA tentatively concludes that weight reduction by downsizing its vehicles would not be economically practicable for Aston Martin during the 1981–1985 model years.

As noted in the general discussion of this company at the outset of this analysis, Aston Martin already uses a lightweight material (aluminum) for all of its body, the block and head of the engine, and the wheels. For the same reasons noted in the Excalibur discussion, Aston Martin does not use lightweight materials in the frame of its vehicles. Given the need to protect the occupants in the event of a crash, and the total use of lightweight materials in the body panels, it would not seem feasible to reduce significantly the weight of the frame by substituting lighter materials.

Aston Martin's automobiles also include a heavy layer of sound-deadening materials around the passenger compartment, some of which could be removed to reduce weight, as well as hide leather seats and a roll bar, which could be replaced by lighter materials. However, such substitutions would require Aston Martin to change its basic concept of its automobiles. Since it began issuing these exemptions, the agency has stated that it will not require a change in the basic concept of a low volume manufacturer's automobile. For these reasons, the agency tentatively concludes that it would not be economically practicable for Aston Martin to improve its fuel economy for the 1981–1985 model years by means of materials substitution.

Aerodynamic improvements. To achieve aerodynamic improvements to its cars, Aston Martin would have to redesign the body. As explained above the section entitled "Weight reduction," Aston Martin does not appear to have either the engineering staff or corporate finances to undertake a significant redesign at this time. All Aston Martin automobiles use radial tires, so the road load setting is not increased as it would be if bias ply tires were used. NHTSA tentatively concludes that it would be technologically feasible and economically practicable for Aston Martin to improve the fuel economy of its 1981–1985 automobiles by improving aerodynamics.

Engine improvements. Aston Martin will use its 326 CID V–8 engine in all of its models for all model years. This engine was designed and assembled by Aston Martin completely by itself. Aston Martin has stated that it believes that it is the smallest automobile manufacturer in the world which has designed and built its own engine. Any significant improvements in the operating efficiency of this engine would be much more difficult for Aston Martin than for most other manufacturers, given Aston Martin's size and intention to produce a high performance vehicle. Any redesign would presumably retain the high performance capabilities of the current engine, while improving the potential fuel economy. Such a redesign would prove extremely difficult for a company with the small engineering staff and financial status of Aston Martin. After considering these factors, NHTSA tentatively concludes that use of a smaller engine by Aston Martin would not be economically practicable during the 1981–1985 model years.

Since Aston Martin will use a 3-way catalyst on all of its models during this period, NHTSA tentatively concludes that improving fuel economy by using a more advanced emission control system would not be technologically feasible.

Transmission improvements. As noted previously, Aston Martin's automobiles may be purchased with either a 3-speed automatic transmission incorporating a lockup clutch or a 5-speed manual transmission. Aston Martin purchases its automatic transmissions from Chrysler Corporation. A 4-speed automatic transmission with a lockup clutch would probably offer some slight fuel economy improvement. However, Chrysler does not manufacture this type of transmission at present. When choosing a supplier for its transmissions, Aston Martin tested the various transmissions on its engines and determined that the Chrysler transmission was the most suitable. The agency has no information to indicate that this choice was not correct, and can not second-guess Aston Martin on this. Accordingly, since Aston Martin is currently using the most fuel efficient type of automatic transmission which is offered by its supplier and is compatible with its vehicle, the agency tentatively concludes that it would not be technologically feasible and economically practicable for Aston Martin to improve its 1981–1985 fuel economy by using a more efficient type of automatic transmission.

With respect to the 5-speed manual transmission, this transmission already includes an overdrive as a fifth gear, which serves to improve fuel economy in highway driving. This fact, coupled with the inherent efficiency of a manual transmission, leads NHTSA to the tentative conclusion that it would not be technologically feasible for Aston Martin to improve the fuel economy of its 1981–1985 vehicles by means of manual transmission improvements.

Reduction of rear axle ratio. The rear axle ratios to be used by Aston Martin for the 1981–1985 model years are 3.07 on the automatic transmission models and 3.54 on the standard transmission models. These ratios are comparable to the ratios used on similar types of vehicles. For example, the axle ratio on the Chevrolet Corvette is 3.07. Further, Aston Martin argued that a reduction of the axle ratio would increase the load on the engine, thereby raising the emissions of oxides of nitrogen. In this agency's judgment, it would not be feasible for Aston Martin to lower its axle ratio while maintaining its image of being a high performance luxury sports car. Maintaining that image is deemed a significant factor for Aston Martin's sales. As a part of the concept of economic practicability, NHTSA does not consider it practicable for low volume manufacturers to change the basic concept of their automobiles. Accordingly, NHTSA requires the manufacturers to improve fuel economy to the maximum feasible level for that type of automobile. In this case, Aston Martin uses an axle ratio comparable to that used on other sports cars. A further reduction might have adversely affected Aston Martin competitively and would probably have required it to sacrifice more of its performance in order to comply with the emission requirements. Accordingly, this agency has tentatively concluded that it would not be economically practicable for Aston Martin to reduce its rear axle ratio on its 1981–1985 automobiles.

Mix shifts. Aston Martin will produce three different vehicle configurations during the affected model years. Its 5-speed manual transmission models will have a combined fuel economy rating of 11.6, while its automatic models will have a combined fuel economy rating of 12.4. Its new model, the Lagonda, will have a combined fuel economy rating of 12.2. By the 1985 model year, Aston Martin has indicated that all 50 of its sales in the U.S. will be the Lagonda.

Thus, a shift from its manual transmission models to its automatic transmission models would show some fuel economy benefits, as would a shift from its Lagonda model to its currently-offered automatic transmission models. Aston Martin has been steadily increasing the percentage of its automobiles sold in the direction of its more fuel-efficient automatic transmission models. For example, in 1979, 69 percent of its models were automatic transmission models, in 1980, 75 percent were automatic transmission models, and in 1981, 82 percent were equipped with an automatic transmission. Aston Martin has indicated that the sales of its higher performance standard transmission models are necessary to maintain the company's performance image. Given the steady trend toward sales of its more efficient models, and the company's financial state, NHTSA tentatively concludes that greater mix shifts from the company's standard transmission models to its automatic transmission models would not be practicable.

By the 1984 model year, Aston Martin projects that 63 percent of its total U.S. sales will be its Lagonda model, and that this will be the only model it sells in the U.S. in 1985. This marketing move was said to be necessary because the company had not introduced a new model to the U.S. market since the mid-60's. The decision to make the Lagonda the only model is an economic move on the company's part, to reduce its costs. Obviously, it costs less to make just one model than it does to make four different models. Given the company's financial position, and its perceived need to introduce a new model in the U.S., NHTSA tentatively concludes that it would not be economically practicable for the company to continue sales of its existing models.

A consideration of these factors has led NHTSA to the tentative determination that a fuel economy level of 12.2 mpg is the highest fuel economy level technologically feasible and economically practicable for Aston

Martin in each of model years 1981–1985.

Rolls-Royce

The Rolls-Royce is a highly luxurious and expensive car. To illustrate this point, the agency notes that these cars have the walnut covering for the instrument panel and hide leather seats as standard equipment. The least expensive model of the Rolls-Royce costs $110,000.

When designing its automobiles, Rolls-Royce ensures comfort and luxury and vehicle longevity first (over 50 percent of all Rolls-Royces built since 1903 are still in service), and then tries to get maximum fuel economy out of that vehicle. Like the other low volume manufacturers, Rolls-Royce certifies each of its vehicles as complying with the more stringent California emissions standards, as well as the 49-state standards.

For the model years in question, Rolls-Royce will produce four different models. These include the Silver Spirit/Silver Spur which will account for about ⅔ of all Rolls-Royce's sales, with a combined fuel economy of 11.0 mpg for the 1981 model year, and the Corniche Coupe and Convertible, which together with the Camargue model, all have a 1981 fuel economy of 10.1 mpg. In its petition, Rolls-Royce requested the following alternate standards:

1981	10.7 mpg.
1982	10.6 mpg.
1983	9.9 mpg.
1984	10.1 mpg.
1985	10.0 mpg.

Rolls-Royce explained the decrease in its fuel economy as resulting from the more stringent California emission standards beginning in the 1983 model year. At this point in the notice, NHTSA is not considering the effects of other motor vehicle standards on achievable fuel economy (this is done in the following section entitled *Effects of other Federal motor vehicle standards on achievable fuel economy).* For the purposes of determining here what is technologically feasible and economically practicable for Rolls-Royce, NHTSA is excluding those effects and projects that Rolls-Royce's fuel economy as follows:

1981	10.7 mpg.
1982	10.6 mpg.
1983	10.6 mpg.
1984	10.7 mpg.
1985	10.7 mpg.

The decrease in the 1982 and 1983 fuel economy levels results from changes in the sales projections of the various models and is not the result of any technical changes to the vehicles. For purposes of the following analysis, NHTSA will use the figures it has projected as a baseline to determine the highest fuel economy level technologically feasible and economically practicable for Rolls-Royce during this period.

Weight reduction. With regard to the possibility of downsizing, Rolls-Royce stated in its petition that its market research has shown that any significant downsizing of its cars would meet with customer resistance. Additionally, considering the engineering staff and finances required for a downsizing program, the company believes that it would be more prudent to concentrate its weight reduction efforts on materials substitution. After considering these two factors, NHTSA tentatively concludes that it would not be economically practicable for Rolls-Royce to reduce the weight of its vehicles by downsizing in these model years.

Concerning materials substitution, Rolls-Royce currently uses aluminum for its engine crankcase and cylinder heads, transmission and axle casings, doors, hood, and trunk. The company has stated that it intends to reduce its vehicles' weight by about 250 pounds for the 1984 and subsequent model years by making further use of aluminum. The company stated that it would not use fiberglass or plastics in components because of concerns about their durability. This weight reduction will allow the company to show a two percent fuel economy gain for its model year 1984 automobiles when compared to model year 1983. Rolls-Royce also stated that it has several projects currently underway testing smaller engines in a downsized Rolls-Royce, and that these smaller engines would further reduce vehicle weight. Forcing the company to accelerate the introduction of these weight reduction measures would not be economically practicable for Rolls-Royce, because one of its strongest selling points is the high quality and durability of its vehicles. Hence, the agency tentatively concludes that it would not be economically practicable for Rolls-Royce to use materials substitution to reduce the weight of its vehicles earlier than the 1984 model year, or to a greater extent than already planned.

It should be noted that the fuel economy levels being used as a baseline for this calculation of maximum feasible average fuel economy include an increase of 250 pounds in test weight class for the EPA fuel economy tests for some models of 1982–1985 Rolls-Royce automobiles as a result of its projection in early 1981 that it would install air bags for the two front seating positions. Rolls-Royce has not modified its petition since the October 1981 rescission of the automatic restraint requirements (46 FR 54319; October 29, 1981). If Rolls-Royce does not install these air bags, the projected weight of the vehicles will be reduced in the final decision on that company's petition.

Aerodynamic improvements. The Rolls-Royce, being a large car and having its distinctive grille design for product identification purposes, has a large frontal area. The company stated that it will not use the coastdown test in the 1981–1985 period because the frontal area of the Rolls-Royce automobiles is larger than that of the average car. These automobiles therefore do not have less than the average amount of aerodynamic drag for their test weight. In these circumstances, use of the coastdown test could only increase the road load setting for the vehicles.

Any fuel economy gains from aerodynamics could only come from design changes to lower the aerodynamic drag of these vehicles. All Rolls-Royce models will be equipped with radial tires so that the road load setting will not be increased as it would if bias ply tires were used. Rolls-Royce must have longer model runs than larger manufacturers to amortize its tooling costs. This, together with the need to retain the grille design and hood ornament, leads the agency to conclude tentatively that it would not be economically practicable for Rolls-Royce to use aerodynamic improvements to make fuel economy gains in the 1981–1985 model years.

Engine improvements. It would be extremely difficult for Rolls-Royce to use a smaller engine than its current 412 V–8 on automobiles of this weight. Rolls-Royce designs and builds its own engines, so a project to reduce the engine size would require a significant investment of time and money by the company. The ratio of horsepower to inertia weight of these vehicles is 0.309. This figure is lower than the horsepower to weight ratio for domestic luxury cars. Generally, a vehicle with a horsepower to weight ratio of 0.3 can be accelerated from rest to 60 miles per hour in about 15 seconds. In the final rule establishing generally applicable standards for the 1981–1984 model years, NHTSA stated that a 0–60 mile per hour average acceleration performance would be a limiting factor in establishing the upper bounds of fuel economy benefits to be gained from performance reduction. Using the same bounds here, the agency has tentatively determined that it would not be technologically feasible and economically practicable for Rolls-

Royce to improve its fuel economy by using a small engine in the 1981–1985 model years without reducing the vehicle weight.

With respect to the emission control system, Rolls-Royce will use a 3-way catalyst on all its vehicles. Since that is the most advanced type of control system, the agency tentatively concludes that it would not be technologically feasible for Rolls-Royce to improve its fuel economy by using a more advanced emission control system.

Transmission improvements. Rolls-Royce purchases its transmissions from General Motors and uses the same heavy duty model ordered by Checker on its 1981 and 1982 models. As noted for Checker, this model is available with three, not four, forward speeds, and does not include a lockup clutch. Rolls-Royce stated that it needs this transmission because of the size of its engine and the need for durability. Since this transmission model is not offered with technological advances and because of legitimate concerns with using a smaller and lighter-duty transmission on these vehicles, NHTSA tentatively concludes that it would not be technologically feasible and economically practicable for Rolls-Royce to improve its fuel economy by using different transmissions.

Reduction of rear axle ratio. Rolls-Royce will use an axle ratio of 3.08:1 on all of its cars for the 1981–1985 period. Rolls-Royce submitted data showing that it had conducted tests on its vehicles using a lower axle ratio (2.69:1) and that the data showed a fuel economy improvement of up to 5 percent at highway speeds on its vehicles. However, the use of the lower axle ratio actually lowered fuel economy at lower speeds because of the increased amount of slip in the automatic transmission's torque converter. After considering this test result, NHTSA tentatively concludes that it would not be technologically feasible and economically practicable for Rolls-Royce to use a lower rear axle ratio in the 1981–1985 model years.

Mix shifts. Rolls-Royce will produce vehicles with two different levels of fuel economy for these model years. The models with the higher fuel economy are the less expensive models (about $110,000) while the models with the lower fuel economy are the more expensive models (up to $155,000 for the Camargue). The company's profits are obviously greater on the more expensive models. A shift toward selling more of the less expensive, higher fuel economy models, then, would reduce Rolls-Royce's profits. The company's profits fell 50 percent in 1980 from the 1979 levels. Further reductions in profits to achieve what would be minimal fuel economy gains are not judged by this agency to be economically practicable at this time. Accordingly, NHTSA has tentatively determined that it would not be economically practicable for Rolls-Royce to improve its average fuel economy for the 1981–1985 model years by means of mix shifts.

After a consideration of the above factors, NHTSA tentatively concludes that the following are the highest fuel economy levels which are technologically feasible and economically practicable for Rolls-Royce in the specified model years:

Model year	Miles per [illegible]
1981	10.7
1982	10.6
1983	10.6
1984	10.7
1985	10.7

Effect of other Federal motor vehicle standards on achievable fuel economy. The agency has examined the effects which Federal standards for safety, crashworthiness, emissions and noise standards will have on potential fuel economy during 1981–1985 model years. The petitioning manufacturers claimed that only two of these four types of standards would significantly affect achievable fuel economy. Rolls-Royce claimed that the need to put air bags in its automobiles manufactured after September 1981 would add about 250 pounds in weight to those vehicles. However, a determination of how much weight would be added and what effect that extra weight would have on the fuel economy of the five petitioners' vehicles is unnecessary, because this agency has rescinded the automatic restraint requirements. The agency assumes that since there is no longer a requirement for automatic restraints, no weight will be added for air bags.

Two of the petitioners (Aston Martin and Rolls-Royce) stated that the 1983 and thereafter emission standards for oxides of nitrogen (NO_x) applicable in California would impose a significant fuel economy penalty. Several of the larger manufacturers, including General Motors and Ford, have petitioned the California Air Resources Board (CARB) to reconsider the adopted level of 0.4 grams per mile for NO_x emissions. The Federal standard for 1983 and subsequent model years is 1.0 grams per mile for NO_x. The petitions state that the manufacturers will be unable to certify one or more of the engine families they produce at the 0.4 NO_x emissions level, primarily because of technical problems.

In response to these petitions, the CARB asked all affected manufacturers to participate in a technological reassessment of the 0.4 NO_x emissions standard. General Motors completed 50,000 miles of durability testing on two research vehicles designed to achieve the 0.4 NO_x emissions. They reported that the vehicles suffered a fuel economy penalty of about 7 percent with the driveability of the vehicles rated as noncommercial and borderline commercial. Based on these data and other information submitted by the manufacturers, the CARB prepared a report dealing with the NO_x emission standard for 1983 and subsequent model years.

In this report, the CARB recommended that the manufacturers be given an option to certify their vehicles for 75,000 miles at the level of the 1981/1982 California emissions standards, including 0.7 NO_x. The report states that this option was needed because most domestic manufacturers have not yet incorporated fuel injection systems. These systems would be best able to provide good fuel economy and driveability at the 0.4 NO_x emission level. If this standard were enforced as presently written, the report stated that California consumers would suffer from reduced model availability, driveability, and fuel economy. It further stated that emission control system durability would be poor. As of this writing, the action recommended in the report has not yet been adopted. Accordingly, the manufacturers must still meet the 0.4 NO_x emission standard.

As noted above in the analyses of the five petitioning manufacturers, all of these low volume manufacturers certify their entire production for compliance with the California emissions standards, as well as the 49-state emissions standards. There are two major reasons for this. One is that it costs more to produce two different types of vehicles, each certified to different emissions standards. The other is that a manufacturer which does produce two different types of vehicles can only sell as many cars in California as it certifies to those emissions standards. These low volume manufacturers need the marketing flexibility to make sales whenever and wherever there is a demand for their vehicles. Hence, each of their vehicles may be sold in any of the 50 states. The result of this dual certification is that any fuel economy penalty imposed by one or the other of the two sets of emissions standards will be imposed on all of the low volume manufacturer's vehicles.

After a consideration of the above information, the agency has tentatively determined that the 1983–1985 California emission standard for oxides of nitrogen will impose a fuel economy penalty. The

only hard data available to this agency concerning the amount of the penalty are the General Motors tests which showed approximately a 7 percent reduction in fuel economy. Accordingly, for this tentative determination of the maximum feasible average fuel economy for these manufacturers, the agency will reduce the level by 7 percent from what has been tentatively determined to be technologically feasible and economically practicable for each petitioner for the 1983–1985 model years.

NHTSA specifically requests public comment on this tentative determination. Any further information to show that the penalty would be less or greater, or that it need not occur, would be particularly useful to the agency in determining how to proceed with its final determination. The agency would also be interested in any comments on the methodology used to make this tentative determination.

The need of the Nation to conserve energy. As stated in the above analyses for the individual manufacturers, it is not technologically and economically possible for these manufacturers to achieve higher fuel economy than the stated levels. Granting exemptions to these manufacturers and setting alternative standards at those levels will not, therefore, result in any additional fuel consumption or affect the need of the Nation to conserve energy.

Listing of tentative determinations of maximum feasible average fuel economy levels achievable by the petitioners. After factoring in the 7 percent penalty for all vehicles for the 1983–1985 model years, resulting from the California emissions standards, the maximum feasible average fuel economy levels for the five petitioning manufacturers are set forth below. Commenters should note that these levels are based on fuel economy data for MY 1981 cars. If new data are obtained after the issuance of this notice, it is possible that these levels could change.

		Miles per gallon
(1) Avanti	1981	18.2
	1982	18.2
	1983	16.9
	1984	16.9
	1985	16.9
(2) Checker	1981	18.3
	1982	18.4
	1983	19.2
	1984	21.2
	1985	22.0
(3) Excalibur	1981	17.9
	1982	17.9
	1983	16.6
	1984	16.6
	1985	16.6
(4) Aston Martin	1981	12.2
	1982	12.2
	1983	11.3
	1984	11.3
	1985	11.4
(5) Rolls-Royce	1981	10.7
	1982	10.6
	1983	9.9
	1984	10.0
	1985	10.0

Selection of the type and level of the alternative standards. For each of model years 1981-1985, the agency has decided to propose establishing a single standard for each exempted manufacturer instead of setting class standards or a single standard for all exempted manufacturers. This approach permits the agency to tailor the alternative standards most closely to the individual capabilities of the different manufacturers, thus providing maximum assurance that those manufacturers will fully utilize their capabilities.

The agency considered two other approaches to setting the alternatives standards for individual petitioners. Those approaches were mentioned early in the notice during the discussion of the 1980 Act. The first of those approaches was setting an alternative standard for a manufacturer for each of the five model years at the level of the lowest of the manufacturer's annual maximum feasible average fuel economy levels for the 1981–1985 period. This approach would create the possibility that an exempted manufacturer might not achieve its maximum feasible average fuel economy in the years in which that maximum was greater than the alternative standard. The other approach is to determine is to determine a manufacturer's maximum feasible average fuel economy for the five year period and set a standard at that level for each of the five model years. Such a standard would necessarily be higher than the manufacturer's maximum feasible average fuel economy for some model years, and lower than the maximum feasible level in others. In those former years, the standard would have been inconsistent with the requirement in section 502(c) that the alternative standards be set at the level of the manufacturer's maximum feasible average fuel economy.

Proposed alternative standards. Based on its tentative conclusions that the maximum feasible fuel economies for each of the petitioner during the 1981–1985 period would be as shown above, that other Federal automobile standards would not affect achievable fuel economy beyond the extent considered in these analyses, and that the national effort to conserve energy will not be affected by the granting of these requested exemptions, NHTSA proposes to exempt the above listed manufacturers from the generally applicable 1981-1985 passenger automobile average fuel economy standards and to establish alternative standards for each of the petitioning manufacturers at the level shown above.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended by revising § 531.5(b) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) Avanti Motor Corporation.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
1978	16.1
1979	14.5
1980	15.8
1981	18.2
1982	18.2
1983	16.9
1984	16.9
1985	16.9

(2) Rolls-Royce Motors, Inc.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
1978	10.7
1979	10.6
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0

(3) Checker Motors Corporation.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
1978	17.6
1979	16.5
1980	18.5
1981	18.3
1982	18.4
1983	19.2
1984	21.0
1985	22.0

(4) Aston Martin Lagonda, Inc.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
1979	11.5
1980	12.1
1981	12.2
1982	12.7
1983	11.3
1984	11.3
1985	11.4

(5) Excalibur Automobile Corporation.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
1978	11.5
1979	11.5
1980	10.2
1981	17.9
1982	17.9
1983	18.6
1984	10.6
1985	10.6

* * * * *

NHTSA has analyzed this proposal, and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal does not constitute a "rule", which term is defined as "an agency statement of general applicability and future effect". These exemptions are not generally applicable, but apply only to individual manufacturers. If those orders were applicable, the agency would have determined that these exemptions were neither major nor significant. The principal impacts of this proposal would be that the petitioning manufacturers would not be required to pay civil penalties, assuming they actually achieve their projected maximum feasible average fuel economy levels in each model year, and the purchasers of these automobiles would not have to bear the burden of the civil penalties in the form of higher prices for the automobiles. Additionally, since this proposal sets alternative standards at the levels determined to be the maximum feasible for each manufacturer, no fuel would be saved by setting higher standards. The impacts have been tentatively determined to be minimal for the public at large. Notwithstanding the inapplicability of the DOT policies and procedures, a preliminary regulatory evaluation regarding these impacts has been prepared and placed in the docket for this action. Copies of this evaluation may be obtained by writing the Docket Section or calling it at (202) 426–2768.

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that this rule will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by these exemptions and alternative standards. Further, since these vehicles cannot obtain greater fuel economy than is proposed herein, granting these exemptions will not affect the amount of oil available.

Since the Regulatory Flexibility Act may apply to a notice exempting a manufacturer from a generally applicable standard, the agency certifies that each of the exemptions that would be granted by this notice would not have a significant economic impact on a substantial number of small entities. This proposal would not impose any additional burdens on any exempted manufacturer. While denial of any of the exemptions would subject the affected manufacturer to civil penalties for noncompliance with the generally applicable standards for cars, only a single small business would be affected. Small organizations and small governmental jurisdictions are believed not to be purchasers of these cars. In any event, since the prices of the automobiles of these manufacturers would not be increased by the adoption of this proposal, their purchasers would not be affected. Alternatively, denial of any petition request would result in civil penalties being imposed on the petitioner and in purchasers paying a higher price for the petitioner's automobiles. No regulatory impact analysis has been prepared.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted. All comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commentor wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential information should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information had been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement showing that the information falls within 5 U.S.C. 552(b)(4), and that a disclosure of the information would result in significant competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter, or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is, in fact, confidential within the meaning of section 552(b)(4) and that diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination and copying in the docket at the above address both before and after that date. To the extent possible, comments filed after the comment closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the comment closing date and too late for consideration in this action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material in the docket as it becomes available after the comment closing date, and interested persons are advised to continue to check the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. When the comments are received, the docket supervisor will return the postcard by mail.

(Sec. 9, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 5, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-12974 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 47, No. 93
Thursday, May 13, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Delaware Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Adivosry Committe to the Commission will convene at 4:00 p.m. and will end at 8:00 p.m. on June 11, 1982, at the Townsend Building, Capitol Square and Federal Street, in the Governor's Conference Room, Dover, Delaware, 19901. The purpose of this meeting will be to discuss the preparation of a public forum to be held to determine the effect of block grants proposals on migrant workers in Delaware.

Persons desiring additional information should contact the Chairperson, Louise T. Conner, 1214 Faun Road, Graylyn Crest, Wilmington, Delaware, 19803, (302) 738–8154 or the Mid-Atlantic Regional Office, 2120 L Street, NW., Suite 510, Washington, D.C. 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. May 7, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-12983 Filed 5-12-82; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:00 p.m. on June 24, 1982, at the Gelman Building, 2120 L Street, North West, in the Lower Level Conference Room, Washington, D.C. 20037. The purpose of this meeting will be to discuss project plans and a report of final follow-up activities on the police-community relations study.

Persons desiring additional information should contact the Chairperson, Walter E. Washington, 408 T Street, North West, Washington, D.C. 20001, (202) 659–3300 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Suite 510, Washington, D.C. 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 12984 Filed 5-12-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Prestressed Concrete Steel Wire Strand From Brazil; Postponement of Countervailing Duty Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of Countervailing Duty Preliminary Determination.

SUMMARY: The countervailing duty preliminary determination involving prestressed concrete steel wire strand ("PC strand") from Brazil is being postponed because we have determined the investigation to be extraordinary complicated. We intend to issue the countervailing duty preliminary determination not later than August 2, 1982.

EFFECTIVE DATE: May 13, 1982.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 (202) 377–1273.

SUPPLEMENTARY INFORMATION: On March 24, 1982, we announced our initiation of the countervailing duty investigation to determine whether producers, manufacturers, or exporters of PC strand from Brazil receive any benefits that are subsidies within the meaning of the countervailing duty law (47 F.R. 13396). The notice stated that we would issue a preliminary determination by May 28, 1982.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges that the government of Brazil provides various programs which constitute subsidies to producers, manufacturers, or exporters of PC strand. The alleged subsidy practices are numerous and raise complex issues. Moreover, it is difficult to determine the extent of utilization of the programs by the manufacturers, producers, or exporters. We have determined that the government of Brazil and the other parties concerned are cooperating and that additional time is necessary to make the countervailing duty preliminary determination. For these reasons we determine that this case is extraordinary complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and we intend to issue a countervailing duty preliminary determination not later than August 2, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 10, 1982.

[FR Doc. 82-13001 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application—CFDA 11.800; San Francisco, Dallas, Atlanta

SUMMARY: The Minority Business Development Agency announces that it is soliciting applications for its Rural Assistance Program for the San Francisco, Dallas and Atlanta regions. The purpose of the program is to provide such management and technical services as financial management, accounting, management analysis, personnel, production and engineering controls to minority-owned businesses and individuals in rural areas not served by MBDA Business Develppment Centers. OMB Circular A–95 applies to this solicitation.

Three cooperative agreements not exceeding $200,000 each will be

awarded for twelve-month periods—one in each region.

Application kits may be requested as follows:

Awards for the *San Francisco* region will provide services in the rural areas of the state of *California*.

Minority Business Development Agency, Federal Building—Room 15043, 450 Golden Gate Avenue, San Francisco, California 94102, Attn: Mikel Cook (415) 556–6733

Awards for the *Dallas* region will provide service in the rural areas of *Louisiana, New Mexico, Texas* and *Arkansas*.

Minority Business Development Agency, 1100 Commerce Street—Room 7E23, Dallas, Texas 75242 Attn: Cathy Bowman (214) 767–8001

Awards for the Atlanta region will provide services in the rural areas of Alabama, Georgia, Mississippi, North Carolina and South Carolina.

Minority Business Development Agency, 1371 Peachtree Street, NE.—Suite 505, Atlanta, Georgia 30309, Attn: Carlton Eccles (404) 881–4091

The closing date for submission of ALL applications is May 21, 1982.

Dated: May 4, 1982.

Luis Encinias,

Acting Assistant Director for Enterprise Development.

[FR Doc. 82-13023 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; Washington Region

AGENCY: Department of Commerce, Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is cancelling a Grant under the Washington Region's City Minority Business Program to assist minority businesses in the selected city for a 12 month period beginning August 1, 1982.

This grant was opened to all *incorporated cities* (i.e., city governments only) with populations of 100,000 or more and located in the Washington Region (Delaware, Maryland, Pennsylvania, Virginia, West Virgina and the District of Columbia).

Dated: May 6, 1982.

John F. Iglehart,

Acting Regional Director.

[FR Doc. 82-13034 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Issuance of Permit

March 10, 1982, Notice was published in the **Federal Register** (47 FR 10270) that an application had been filed with the National Marine Fisheries Service by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, to take up to one hundred fifty (150) California sea lions (*Zalophus californianus*) and up to one hundred fifty (150) harbor seals (*Phoca vitulina*) for the purpose of scientific research.

Notice is hereby given that on May 7, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Southwest Fisheries Center, subject to certain conditions set forth therein.

The Permit and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 7, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-13083 Filed 15-12-82; 8:45 am]

BILLING CODE 3510-22-M

Modification of Permits

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 2 issued to Sea Life Park, Makapuu Point, Waimanalo, Hawaii 96795 on February 8, 1974 (39 FR 7477), as modified on March 3, 1975 (40 FR 8846), December 31, 1975 (40 FR 60105), October 18, 1977 (42 FR 55631), December 2, 1977 (42 FR 61298) and November 15, 1979 (44 FR 65805); and Permit No. 197 issued on August 9, 1977 (42 FR 41466) as modified on October 18, 1977 (42 FR 55031), and November 15, 1979 (44 FR 65805) are further modified by extending the period of validity for the authorized takings until December 31, 1984.

These modifications become effective May 13, 1982. The Permits as modified and documentation pertaining to the modifications are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 7, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals & Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-13082 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton Apparel Products From India

May 7, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the consultation levels for cotton nightwear in Category 351 from 13,462 to 19,231 dozen and other apparel in Category 359, from 152,174 to 434,783 pounds, produced or manufactured in India and exported during the agreement year which began on January 1, 1982.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53508), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48983), October 27, 1981 (46 FR 52409), and February 9, 1982 (47 FR 5926).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, the consultation levels established for cotton apparel products in Category 351 and 359 are being increased at the request of the Government of India to 19,231 dozen and 434,783 pounds, respectively, for the agreement year which began on January 1, 1982 and extends through December 31, 1982.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61685) a letter dated December 15, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, including Categories 351 and 359, produced or manufactured in India, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the twelve-month levels previously established for Category 351 and 359 to the designated amounts.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

May 7, 1982.

Committee for the Implemenation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 15, 1981 by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in India.

Effective on May 10, 1982, paragraph 1 of the directive of December 15, 1981 is amended to increase the levels of restraint for cotton textile products in Categories 351 and 359 to the following:

Category	Amended 12-month level of restraint [1]
351	19,251 dozen.
359	434,783 pounds.

[1] The levels of restraint have not been adjusted to reflect any import after December 31, 1981.

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-13085 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-25-M

Changes to the Textile Category System

May 7, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes to the Textile Category System.

SUMMARY: The Correlation: Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated provides for placement of Tariff Schedule of the United States, Annotated (T.S.U.S.A.) numbers in the Textile Category System. Amendments to Schedules 3 and 7 of the T.S.U.S.A. as a result of certain administrative changes require amendments to the Correlation. These changes are cited on the list which follows this notice.

EFFECTIVE DATE: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

April 1, 1982 Changes to the Correlation

Category and Type of Change

335 Change 383.3455 to 383.3448, 383.3450 and 383.3452

337 Change 383.5050 to 383.5047 and 383.5049

359 Add 383.0635

465 Change 360.4615 to 360.4215, 360.4625 to 360.4225

665 Change 360.4630 to 360.4330, 360.4635 to 360.4325

669 [1] Change 706.2045 to 706.3400, 706.2700 to 706.3900, 706.2840 to 706.4140, and 706.2850 to 706.4150

[FR Doc. 82-13084 Filed 5-12-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Proposed notice for a system of records.

SUMMARY: This notice publishes a system notice for a Department of the Army proposed system of records identified as A0404.02DAJA, entitled: "Courts-Martial Files."

DATE: This system will be effective June 14, 1982.

ADDRESSES: Submit any written comments to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of the Adjutant General (DAAG–AMR–R), Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331; telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION: This system of records was not published in the **Federal Register** previously because the Department of the Army considered courts-martial files to be exempt from the Privacy Act by virtue of the definition of the term "agency" in 5 U.S.C. 552a(a)(1) which adopts the definition of 5 U.S.C. 551(1)(F). However, as a matter of policy and to preclude any misunderstanding, a system notice for this system of records is published at this time.

It is proposed to exempt portions of this system from certain provisions of the Privacy Act under the provisions of Title 5, U.S.C 552a(j)(2). A proposed exemption rule for the system will published in the **Federal Register.**

The Army's inventory of system notices for records subject to the Privacy Act of 1974, Title 5, U.S.C. 552a (Pub. L. 93–579; 44 Stat. 1896, et seq.) have appeared in the **Federal Register** at:

FR Doc. 79–37052 (44 FR 73729), December 17, 1979

FR Doc. 81–897 (46 FR 6460), January 21, 1981

FR Doc. 82–674 (47 FR 2544), January 18, 1982

FR Doc. 82–5277 (47 FR 8610), March 1, 1982

FR Doc. 82–11002 (47 FR 17324), April 22, 1982

A Report of a New System as required by 5 U.S.C. 552a(o) was submitted on 7 April 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 7, 1982.

A0404.02DAJA

SYSTEM NAME:

Courts-Martial Files

SYSTEM LOCATION:

U.S. Army Legal Services Agency, Falls Church, VA., 22041; Washington National Records Center, Suitland, MD., 20409; National Personnel Records Center, St. Louis, MO., 63132; and office of Staff Judge Advocates, Judge Advocates, and Legal Counsel of subordinate commands and installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals tried by courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

General and special (BCD) courts-martial records of trial include a verbatim transcript of the trial and all allied papers relating to the charged offenses and legal review of the case. Special (non-BCD) and summary court-martial records of trial include a summarized transcript of the trial and all allied papers relating to the charged offenses, but ordinarily do not include all records of review pursuant to Articles 69 and/or 73, Uniform Code of Military Justice (UCMJ). (See "Retention and disposal" below.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C. 801–940 (Uniform Code of Military Justice).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Courts-martial records are transcribed and used to provide an accurate account of the proceedings for legal review. As such records reflect criminal proceedings ordinarily open to the public, they are normally releasable to the public pursuant to the Freedom of Informaton Act. They are also used to formulate responses to inquiries from members of Congress, the White House Staff, the individual concerned, or other agencies or individuals interested in the case.

Courts-martial records may be transferred within the Department of Defense, to the Department of Justice, the Veterans Administration, and Federal, state, and local law enforcement agencies for determination of rights and entitlements of the individuals concerned or use in the enforcement of criminal or civil law. If a conviction results, portions of the record in every case are transmitted to Army personnel authorities for use in evaluating the individual's overall performance and for inclusion in his military personnel records. A record of a conviction may be introduced at a subsequent courts-martial involving the same individual, or in any other case in which it is relevant. Statistical data obtained from records of trial are used in determining jurisdictional and Army-wide trends of disciplinary infractions in the Armed Forces, and serve as a guide for officials responsible for making policy decisions regarding military justice activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders; index cards, computer diskpacks, and courts-martial coding sheets.

RETRIEVABILITY:

Records are retrieved by reference to the name and social security number of the individual and through the court-martial number assigned to the case.

SAFEGUARDS:

Those portions of the system maintained by the US Army Legal Services Agency and the National Personnel Records Center are contained in file cabinets and are safeguarded by systems of personnel screening and hand receipts. During non-duty hours, guards assure that the areas where records are located are accessible only to authorized personnel. Decentralized segments of the system are maintained in locked file cabinets and/or locked offices in buildings employing security guards and/or located on military installations with military police or contract guard patrols and protection.

RETENTION AND DISPOSAL:

With respect to each courts-martial, there is an orignial record and between one and four copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows: All records of trial by general courts-martial and those special courts-martial records in which a bad conduct discharge (BCD) was approved are retained in the Office of the Clerk of Court, US Army Judiciary, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, Suitland, MD., 20409 for permanent storage. Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for one year after completion of supervisory review and thereafter for two years in the records holding area or overseas records center. Records are then sent to the National Personnel Records Center (Military Records), 9700 Page Boulevard, St Louis, MO., 63132 where they are retained for seven years. Thereafter, the records are destroyed and the remaining evidence of conviction are the special (non-BCD) and summary courts-martial promulgating orders maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Article(s) 69 and/or 73, UCMJ. The original review of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ, are maintained for three years in the office of the Chief, Examination and New Trials, US Army Judiciary, Falls Church, VA., 22041. They are retained an additional seven years at the Washington National Records Center, Suitland, MD., 20409, and destroyed. Statistical data obtained from general and special (BCD) courts-martial records are maintained permanently on master index cards which serve as a means of listing records of trial sent to storage.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Requests from individuals as to whether there are any general or special (BCD) courts-martial records in the system pertaining to them should be addressed to the Clerk of Court (JALS–CC), US Army Judiciary, Nassif Building, Falls Church, VA., 22041. Requests for information as to special (non-BCD) and summary courts-martial records should be addressed to the staff judge advocate of the command where the record was reviewed or, if no longer there, to the National Personnel Records Center (Military Records), 9700 Page Boulevard, St Louis, MO., 63132. Official mailing address of subordinate commands and installations is in the DOD Directory in the appendix to the Army's inventory of system notices.

Requests for information concerning reviews pursuant to Articles 69 or 73, UCMJ, should be addressed to the Chief,

Examination and New Trials, US Army Judiciary, Nassif Building, Falls Church, VA., 22041. Written requests for information should include the full name of the individual, social security number (SSN), the record file number if available, and any other personal information which would assist in locating the records.

Personal visits may be made to the office of the Clerk of Court or Chief, Examination and New Trials, during normal business hours. The individual should provide identification such as a valid driver's license, or verbal information sufficient to permit locating the record.

RECORD ACCESS PROCEDURES:

Requests for access should be submitted as specified under "Notification procedure" above. Requests should be directed to the Clerk of Court (JALS–CC), US Army Judiciary, Nassif Building, Falls Church, VA., 22041 if the type of courts-martial or reviewing command is unknown.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Information from almost any source may be included in the record if it is relevant and material to courts-martial proceedings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (d)(2), (d)(3), (d)(4), (e)(2), (e)(3), (e)(4)(H), and (g). The rules exempting this system are set forth in 32 CFR Part 505.

[FR Doc. 82–12983 Filed 5–12–82; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on June 10, 1982 at the Headquarters Military Traffic Management Command, 5611 Columbia Pike, Room 714, Falls Church, Virginia, and will convene at 0900 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34–R), and the handling of other matters of mutual interest relating to claims actions concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1600 hours. Topics to be discussed should be received on or before May 24, 1982.

Dated: May 3, 1982.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 82–13148 Filed 5–12–82; 8:45 am]

BILLING CODE 3710–08–M

Defense Nuclear Agency

The Scientific Advisory Group on Effects (SAGE); Meeting

Scientific Advisory Group on Effects (SAGE) will meet in closed session June 15 to June 18, 1982, at the HQ US Army Training & Doctrine Command, Ft. Monroe, Virginia.

Agenda: June 15 to 17 (0830–1700) and June 18, (0830–1200): Presentations, Discussions and Executive Sessions on Issues Related to the Integrated Battlefield.

The presentations and discussions in the above cited agenda will focus on current and planned RDT&E programs sponsored by the Defense Nuclear Agency (DNA). Executive sessions will be held for the primary purpose of advising the Director, DNA as to the adequacy of ongoing and planned programs. All planned presentations, discussions, and executive sessions will include classified defense information; therefore, under the provisions of Sections 552b(c)(1) and (3), Title 5, U.S.C., this meeting is closed to the public. Any additional information concerning the meeting may be obtained from: LTCOL Robert E. Case, USAF, Scientific Secretary, SAGE, Headquarters, Defense Nuclear Agency, ATTN: DDST, Washington, D.C. 20305.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 7, 1982.

[FR Doc. 12982 Filed 5–12–82; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session June 23, 1982, at the National Bureau of Standards, 325 Broadway, Boulder, CO 80303.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, section 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1982.

[FR Doc. 82–12981 Filed 5–12–82; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session June 24, 1982, at the NCR Corporation, 20001 Danfield Court, Ft. Collins, CO 80525.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This special device area

includes such programs as infrared and night sensors. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, section 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 10, 1982.

[FR Doc. 82-12900 Filed 5-12-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Impact Aid Payments Formula and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed impact aid payments formula and opportunities for public review and comment.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Regional Act) provides that BPA may establish a regionwide uniform formula for providing impact aid assistance to local governments, allowing payment of their actual cost of services provided on behalf of a BPA major transmission facility located within the government's boundaries. This proposed formula interprets the Regional Act provision (section 7(m) and prescribes procedures to be followed by local governments to apply for impact aid assistance.

DATES: BPA will receive public comment on the proposed formula in accordance with section 7(i) procedures of the Regional Act, which are described in the public review and comment portion of this Notice. BPA will hold hearings in five regional locations. Registration for the hearings will begin at 7 p.m. and the hearings will start at 7:30 p.m. Dates and locations are: May 24, Grizzly Den, Holiday Inn, Highway 10 West and East Mullan Road, Missoula, Montana; May 25, 4–H Building, West of Superior High School on 5th Street, Superior, Montana; May 26, Boulder Grade School Auditorium, 205 South Washington, Boulder, Montana; May 27, Community Center, Corner of Cottonwood and 5th Street, Deer Lodge, Montana; June 1, BPA Auditorium, 1002 NE. Holladay Street, Portland, Oregon. Written comments are also encouraged and will become part of the record. They must be received on or before July 12, 1982. In addition, BPA will endeavor to meet with interested persons who may have questions regarding the proposed formula. To request such a meeting, interested persons should contact the Area or District Manager in their locality or the office of the Public Involvement Coordinator.

ADDRESS: Written comments not submitted at the hearings should be submitted to the Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048.

Mr. George Gwinnutt, Area Manager, Suite 288, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Gordon H. Brandenburger, District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.

Mr. Ronald K. Rodewald, District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Thomas M. Noguchi, Acting Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–422–4130.

Mr. Roy Nishi, Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. Public Review and Comment.
II. Summary of Impact Aid Formula.
III. Discussion of Significant Concepts in the Formula.

I. Public Review and Comment

The Regional Act allows BPA to develop a regionwide uniform formula for making annual impact aid payments to appropriate local governments in accordance with the procedures for public notification and hearings as described in section 7(i) of the Regional Act.

The hearings will be held by the Hearing Officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to the proposed formula. At the hearings, any person will be provided an adequate opportunity to offer refutation or rebuttal of any material submitted by any other person or the BPA staff, and the Hearing Officer, in his/her discretion, will allow a reasonable opportunity for cross-examination, which, as determined by the Hearing Officer, is not dilatory, in order to develop information and material relevant to the proposed formula. The Hearing Officer may announce procedural rules necessary for the conduct of orderly an expeditious hearings, and may apply the Federal Rules of Evidence and the Federal Rules of Civil Procedure as deemed appropriate.

In addition to the opportunity to submit oral and written material at the hearings, any written views, data, question, and arguments submitted prior to or before the close of hearings will be made a part of the record.

After such a hearing, the Administrator may develop a revised proposal, publish such revised proposal in the **Federal Register**, and conduct additional hearings in accordance with the same procedures provided for the initial hearing; or, in the alternative, the Administrator shall make a final decision establishing a uniform regionwide formula. Such final proposed formula shall be based on the record which shall include the hearing transcript together with exhibits and such other materials and information as may have been submitted to, or developed by, the Administrator.

In consideration of public comments, the record, and other information developed by the Administrator, the final formula may differ from the proposed formula as set forth in this notice.

The formula will become effective upon approval by the Federal Energy Regulatory Commission, after it has considered the formula's effects on BPA rates that have been established.

II. Summary of Impact Aid Formula

The attached proposed formula represents BPA's desire to pay the full measure of impact aid to affected local governments, within the limitations contained in the congressional authorization. The proposed formula allows payment of a qualifying local government's actual cost of services

provided on behalf of a BPA major transmission facility located within the government's boundaries. That facility must have been completed, or a modification of it undertaken, subsequent to passage of the Regional Act, and it must result in a substantial impact on the local government. The latter threshold is met where the governing entity has spent more than $1,000 on services on behalf of the facility during the fiscal year for which impact aid is requested. If it has, then all otherwise qualified service costs will be paid. Service categories include fire protection, police protection, facility planning services, emergency services, and possibly others still to be identified. The services provided must be necessary and reasonable, and the costs must not be payable by other means. As stipulated in the Regional Act, the formula must be reviewed and approved by the Federal Energy Regulatory Commission (FERC), and does not become effective until the first full fiscal year after approval of a regional plan by the Pacific Northwest Electric Power and Conservation Planning Council (Regional Planning Council) (probably fiscal year 1984). At that time, a qualifying local government may request payment for services provided since December 5, 1980. Thereafter, payments would be requested on an annual basis.

III. Discussion of Significant Concepts in the Formula

A. Payment of Service Costs

It was determined that the "costs" which could be paid under impact aid could only be *service* costs, and not any other costs or reimbursement of lost taxes. In section 7(m)(2), it is stated:

> In developing such [impact aid] formula, the Administrator shall identify, and take into account, the local governmental services provided to the Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.

There is some question whether the words "associated costs" refer to the "facilities" or to "services." If the former, then the costs would be any that the local government incurred on behalf of the facilities; it the latter, then the costs would be limited to those of services provided. Any uncertainty on this or the tax issue is put to rest by the legislative history. In 126 Cong. Rec. 10,685 (daily ed. Nov. 17, 1980), Representative Dingell, in his summary of the new section states:

> The intent is to make these payments reflect the *services provided* by the governments and not any taxes that may have been lost or estimated to have been lost by the communities. This is not a payment-in-lieu-of-taxes provision. (Emphasis added.)

Hence, only service costs are being compensated for under this formula.

B. Formula Based on Actual Costs

In developing this formula, BPA was guided by the requirements of subsection 7(m) of the Regional Act, particularly subsection 7(m)(2), which states:

> Payments made under this subsection for any fiscal year shall be determined by the Administrator pursuant to a regionwide, uniform formula to be established by rule in accordance with the procedures set forth in subsection (i) of this section.

A primary result of BPA deliberations was the proposal to pay actual costs of services incurred by the local governments. This result is considered within the definition of a "regionwide uniform formula," as required by subsection 7(m). Although not a mathematical formula, (as would be, for example, a payment of so many dollars per mile of line) it is still considered a general formula within conventional definitions. Lack of any historical data on service costs borne by local governments on BPA's behalf, and the resultant inability to relate any other formula to service costs, mandated this actual cost approach (i.e., where the actual costs are not known, it is not possible to develop a mathematical formula which will approximate them). However, it is possible that the data gathered under this method may allow the development of some simpler formula in the future, at which time it could be amended. Even if that does not become the case, the proposed formula is considered meritorious in that it makes each entity "whole" regarding service costs provided.

C. Major Transmission Facility

The Regional Act, section 7(m), states that major transmission facilities shall be as defined in section 3(c) of the Federal Columbia River Transmission System Act (FCRTSA). The definition in section 3(c) provides that:

> The term "major transmission facilities" means transmission facilities intended to be used to provide services not previously provided by the Bonneville Power Administration with its own facilities.

Through the annual budgetary process, BPA identifies those facilities which are determined to be major transmission facilities. Those which have been so identified, and will be completed after passage of the Regional Act are: WNP Nos. 3 and 5 Integrating Transmission; Western Montana Transmission; Southwest Oregon Service; Surprise Valley Area Service; and Boundary Integration and Colville Valley Support.

Additionally, BPA proposes to include facilities that were not identified under the FCRTSA definition, but were completed after the FCRSTSA's effective dae, and would have been identified as major had they been considered. This is because such facilities are considered to have been within the contemplation of Congress as "major facilities" at the time of the FCRTSA's passage. The facilities covered are: the Ashe-Willamette Valley service; the Bell-Hot Springs service; the Grand Coulee-Hanford service; the Trojan-Allston service; and the WNP No. 2 Integrating Transmission service. The Salmon River-Lost River service is not included because it was completed prior to passage of the Regional Act. However, it may qualify under the modification section, if work is performed on it at a later date. It should also be noted that some "modifications" to older lines may be so substantial that they would be identified as new "major transmission facilities;" and would therefore qualify for impact aid.

D. Substantial Impact Requirement

The Administrator is not authorized to provide impact aid assistance under section 7(m) unless he finds that the local government is substantially impacted, as distinguished from being merely impacted, as a result of the qualifying facility. As set forth in the formula, it is possible for a local government to show it has been substantially impacted where the local government can show an annual expenditure of at least $1,000 in services on behalf of the transmission facility. If the test is met, all directly related and otherwise qualified service costs will be paid. Any proposed test would necessarily be a somewhat arbitrary one, as "substantial" is not a defined or specific term in section 7(m); however, the proposed test is recommended based on its reasonableness and ease of application. It avoids the administrative burdens of minimal claims, while allowing almost all local governments an opportunity to qualify.

Proposed Formula

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Section 8 *Penalties*
Section 9 *Modification of Formula*

(Authority: Sec. 7(m), Pub. L. 96-501, and 5 U.S.C. 552)

Section 1 *Purpose.* The purpose of the proposed formula is to set forth a recommended procedure for the orderly and timely processing of applications for annual impact aid assistance from qualifying local governments as allowed by section 7(m) of the Regional Act. The formula proposed sets forth procedures for notice, submission, review, and payment to qualifying local governments for actual cost of services provided to BPA related to major transmission facilities located within the jurisdictional boundaries of such governments. The Administrator proposes to provide impact aid assistance that pays local governments for cost of services provided to BPA in its capacity as a legal entity entitled to receive local government services, but yet, as a tax-exempt Federal entity, one not generally authorized to pay for these services. The essential purpose is to make qualifying local governments "whole" respecting the cost of services they provide, to provide impact aid on a uniform regionwide basis, and, to the extent practical, to provide as equitable and as simple a means possible for providing impact aid while giving proper regard to considerations of financial integrity, viability, and administrative costs and burdens in the implementation of section 7(m) of the Regional Act.

Section 2 *Formula.* Impact aid assistance may be provided on an annual basis to qualifying local governments which have been substantially impacted by the presence of major transmission facilities within their jurisdictions for the total and actual costs of local governmental services provided to the Administrator as the result of such facilities. The local government will be notified of a qualifying facility located or to be located within its boundaries, and upon applying for and supplying supporting documentation regarding qualification and services provided to the facility during the cost-of-service period, BPA will reimburse the entity's appropriate service costs. Details on application of the formula are set forth in the sections which follow.

Section 3 *Definitions.* As used in subsection 7(m) of the Regional Act, and in applying this formula, the term:

(a) "Completed facility" means one that is permanently completed in accordance with final design standards to provide the intended transmission service.

(b) "Cost-of-service period" means the period immediately preceding the fiscal year in which the local government can apply for and receive payments under this formula. The first cost-of-service period will be from December 5, 1980, through September 30, 1984 (assuming the Regional Planning Council's regional plan is adopted prior to September 30, 1983). Thereafter, the cost-of-service period will be the BPA fiscal year immediately preceding the fiscal years during which local governments can receive impact aid payments under this formula.

(c) "Facility planning services" means services rendered by a local government to assist BPA in meeting its responsibilities to coordinate its activities respecting a qualifying facility with local government's plans to the extent feasible. These services are provided in reviewing BPA's plans and in consulting with BPA.

(d) "Facility to be located" means a major transmission facility for which BPA has filed a notice of Record of Decision in the Federal Register, but for which construction has not yet been initiated.

(e) "Initiation of construction" means when physical construction activity first begins within the jurisdiction of the local government which activity is directly related to the clearing for and the construction of the facilities. Illustration: Survey work, appraisal, or negotiations do not constitute construction activities nor does mere storage or materials and supplies within the jurisdiction constitute the initiation of construction.

(f) "Local governments" means, exclusively: (1) Counties; (2) cities; (3) towns; (4) local service districts; and (5) Indian tribes, to the extent they provide services in their capacity as recognized local governments within Indian reservations.

(g) "Located" means the initiaiton of construction of a qualifying facility within the boundaries of a local government.

(h) "Major transmission facility" (as defined in section 3(c) of the FCRTSA) means a transmission facility completed after the effective date of the FCRTSA that has been or would have been identified for inclusion in BPA's budget as a major transmission facility requiring specific congressional approval.

(i) "Major transmission facilities having a substantial impact on local governments" means a qualifying facility within a local jurisdiction where the local government's annual cost of services provided to BPA directly related to such qualifying facilities is at least $1,000 during the cost-of-service period immediately preceding the fiscal year for which impact aid may be received under this formula.

(j) "Qualifying facility" means a major transmission facility completed or modified after the effective date of the Regional Act.

(k) "Qualifying local government" means a local government within which is located a major transmission facility having substantial impact.

(l) "Record of Decision" means the formal decision of BPA filed pursuant to the regulations of the Council on Environmental Quality (CEQ) with the Environmental Protection Agency (EPA) that incorporates BPA's final route selection for a "qualifying facility." The official date of the entry of the Record of Decision will be the date that the notice of filing with EPA is filed in the Federal Register.

(m) "Regional plan" means the Regional Electric Power and Conservation plan developed by the Regional Planning Council and adopted pursuant to the Regional Act. The regional plan must be adopted by April 1983, and will establish a general scheme for implementing conservation measures and developing resources to reduce or dimish the Administrator's obligations.

(n) "Services" means reasonable and necessary expenditures incurred by a qualifying local government that the Administrator determines are of a direct benefit to BPA. Services include those provided even prior to the location of the facilities within the boundaries of the local government provided, however, these services will not quality for impact aid if, as a result of a change in the proposal, the facilities are not located within the boundaries of the jurisdiction of a local government. Examples of the type of services covered include, but are not limited to, police protection, fire protection, emergency services, and facility planning services.

(o) "Substantial modification of an existing facility" means a 100-percent increase in the power-carrying capacity of an existing transmission facility that BPA had previously determined to include, or now determines would have been included in BPA's budget as a major transmission facility under the definition stated in the FCRTSA.

Section 4 *Notice and Submittal.*

(a) Within 90 days aftet the effective date of this formula (this formula is not effective until approved by FERC, see section 7(m)(2) of the Regional Act), notices will be issued identifying the location of qualifying facilities. Thereafter, within 90 days after the notice of a Record of Decision on a

major transmission facility has been filed in the **Federal Register**, notices will be issued identifying the facility.

(b) Notice shall consist of **Federal Register** notices, letters to known affected local governments, and news releases and legal notices in local newspapers of general circulation within the territory within which the qualifying facilities are to be located. The notice shall state that a major transmission facility has been or is to be located within the boundaries of the jurisdiction. When applicable, a statement of the current status of, or proposed start of, construction shall be provided. The letter notice shall also contain a copy of section 7(m) of the Regional Act, excerpts of statutory sections referred to in section 7(m), and a copy of this formula; these items will be incorporated by reference in the **Federal Register** and newspaper notices.

Section 5 *Application for Payment—Annual Payment Requirement.* (a) Impact aid based on payment for cost of services will not be made until the BPA fiscal year (fiscal year as now established is October 1 though September 30) beginning after facilities have been located within the boundaries of a qualifying local government. During BPA's first fiscal year for which impact aid can be provided (first fiscal year after adoption of the regional plan) qualifying local governments will be eligible for payment for cost of services incurred anytime between December 5, 1980, and the beginning date of the first fiscal year. Thereafter, impact aid can be provided to qualifying local governments for the cost of services incurred during the period of October 1 through September 30 preceding the BPA fiscal year for which application for payment is made. Illustrations: Assuming the regional plan by Regional Planning Council is adopted in May 1983 (current estimated date), then:

(1) First fiscal year payment can be provided = FY 1984, October 1, 1983, through September 30, 1984.

(2) Expenses paid for by BPA during FY 1984 = those incurred from December 5, 1980, through September 30, 1983. Application for payment to be made by January 1, 1984.

(3) Expenses paid for by BPA during FY 1985, October 1, 1984, through September 30, 1985 = those incurred from October 1, 1983, through September 30, 1984. Application for payment to be made by January 1, 1985.

(b) Application for annual impact aid assistance by local governments shall be made by January 1st of the fiscal year for which the local government qualifies to receive impact aid payments.

(c) Applications for payment will be sent to BPA, through the appropriate area offices as designated in the notices to be submitted. The application for payment shall identify each service, detailing the costs incurred and how they were derived. The application will also indicate other compensation available or received. (See sections 7(c) and 7(d) of this formula.) Illustration: In the case of police protection, for example, the local jurisdiction is to keep records of the actual time devoted to patrol, protection of the qualifying facility, investigations relating to protecting the facilities and to the apprehension of those that have jeopardized or threaten to jeopardize the qualifying facility. Administrative overhead costs can also be charged for each unit of time used in directly providing police protection as a result of the qualifying facility. This figure would be based on the established percentage of fixed overhead costs to direct costs as used in the local jurisdiction's accounting procedures. BPA shall review the overhead percentage used and will pay on the basis of the figure submitted if it is found to fairly reflect overhead costs for each unit of direct service. Capital expenditures may not be charged.

(d) To the extent practical, the type and level of service will be determind before the actual service is provided, with the local government giving notice and receiving BPA assent thereto. The provisions is section 7 of this formula will still be applicable. The lack of an agreement will not exclude the local government from receiving impact aid payments.

Section 6 *BPA Review.* BPA, or its designee, may conduct such audits, examinations, or inspections of the local government's records and procedures, as BPA deems appropriate. Any audit will be performed in accordance with audit standards established by the Comptroller General of the United States. The number, timing, and extent of such audits will be at the discretion of BPA or its designee. BPA will make all reasonable efforts to schedule payment or indicate disagreement within 90 days of receipt of the submittal. Payment schedules may be quarterly or annually for annual impact aid payments, as BPA determines to be fiscally appropriate. The impact aid payments will be subject to audit for a 3-year period subsequent to the date of payment.

Section 7 *Limitations.* (a) Impact aid payments are subject to the availability of funds from revenues.

(b) Impact aid payments cover only those expenditures directly, reasonably, and necessarily incurred for the benefit of BPA as a result of the qualifying facilities.

(c) To the extent service costs have been compensated or agreement has been made for compensation by BPA under some authorization other than section 7(m) of the Regional Act or to the extent that the service cost is or can be compensated for by some other Federal source (e.g., firefighting costs under Pub. L. 93–498, implemented in 44 CFR Part 151), that cost will not qualify for impact aid under this rule.

(d) Service costs will not be paid to the exent that the local government is otherwise directly compensated for its additional costs by increased taxes or revenues resulting directly from activities of BPA's employees or contractors in respect to the qualifying facilities.

(e) There will be no payment of interest under this impact aid formula.

Secion 8 *Penalties.* Officials or others who provide information or documentation under this formula are subject to, among other laws, the criminal penalties of Title 18 of the United States Code. Sections 287 and 1001, which punish the submission of false, fictitious, or fraudulent claims and the making of false, fictitious, or fraudulent statements and which provide for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both. For such a violation, the person is likewise subject to the civil penalties of 31 U.S.C. 231. Section 231 provides that the person liable "shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

Section 9 *Modification of Formula.* This formula is subject to modifications where determined necessary by the BPA Administrator. The formula shall not be modified more often than once a year, and any modification will be subject to the procedural requirements of section 7(i) of the Regional Act, including approval by FERC.

Issued in Portland, Oregon, May 5, 1982.

Peter T. Johnson,

Administrator.

[FR Doc. 82-13088 Filed 5-12-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-CERT-008]

Public Service Electric and Gas Co; Application for Certification of Use of Natural Gas To Displace Fuel Oil

Public Service Electric and Gas Company (Public Service), 80 Park Plaza, T5E, Newark, New Jersey 07101, filed an application on April 22, 1982, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at eight of its electric generating stations located in New Jersey: Bergen in Ridgefield; Essex in Newark; Hudson in Jersey City; Kearny in Kearny; Linden in Linden; Sewaren in Sewaren; Edison in Edison; and Mercer in Trenton, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6144, RG-631, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Public Service states that the volume of natural gas for which it requests certification is approximately three billion cubic feet. This volume is estimated to displace the use of approximately 438,000 barrels of No. 6 fuel oil (0.3 percent sulfur) and approximately 12,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year.

The quantities at each location are subject to considerable variation with changes in demand and availability of the various generating units, but estimated gas usage and resulting oil displacement volumes are listed below:

Location	Estimated volume (MMCF)[1]	Estimated oil displacement (1,000 barrels)	
		0.3 pct sulfur No. 6 oil	0.2 pct sulfur No. 2 oil or 0.1 pct sulfur kerosene
1. Bergen Generating Station, Ridgefield, NJ	1,332	202	
2. Essex Generating Station, Newark, NJ	38		6
3. Hudson Generating Station, Jersey City, NJ	1,158	172	
4. Kearny Generating Station, Kearny, NJ			
5. Linden Generating Station, Linden, NJ			
6. Sewaren Generating Station, Sewaren, NJ	434	64	
7. Edison Generating Station, Edison, NJ	38		6
8. Mercer Generating Station, Trenton, NJ			
Total	3,000	438	12

[1] MMCF is million cubic feet.

The eligible seller is the Alabama-Tennessee Natural Gas Company, P.O. Box 918, Florence, Alabama 35637. The gas will be transported by the Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001; and the North Alabama Gas District, 1100 Woodward Avenue, Muscle Shoals, Alabama 35660.

Public Service has in effect certifications by the ERA which authorize purchases of natural gas from various eligible sellers for use at the electric generating stations named in this certification as follows:

ERA docket No.	Amount (billion cubic feet per year)	Remarks
81-CERT-006	7.3	Effective June 24, 1981.
81-CERT-009	10.7	Do.
81-CERT-013	5.0	Effective July 21, 1981.
81-CERT-015	7.0	Effective July 25, 1981.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 6144, RG-631, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the Federal Register.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposal oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Public Service and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C., on May 5, 1982.

F. Scott Bush,

Director, Oil and Gas Imports Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12870 Filed 5-12-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of March 26 Through April 2, 1982

During the week of March 26 through April 2, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 5, 1982.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF THE HEARINGS AND APPEALS, WEEK OF MARCH 28 THROUGH APRIL 2, 1982

Date	Name and location of applicant	Case No.	Type of submission
Mar. 28, 1982	Marathon Oil Company/Growmark, Inc., Findlay, Ohio	HRJ-0013	Motion for Protective Order If granted: Marathon Oil Company would enter into Protective Order with Growmark, Inc. regarding the release of proprietary information to Marathon Oil Company in connection with Proposed Remedial Orders issued to Marathon Oil Company (Case Nos. HRO-0084, HRO-0625, HRO-0626).
Mar. 29, 1982	A. Johnson & Company, Inc., New York, New York	HEE-0020	Exception to the Reporting Requirements. If granted: A. Johnson & Company, Inc. would not be required to file forms EIA-14, EIA-87, EIA-88 and EIA-177.
Mar. 29, 1982	Leonard E. Belcher, Inc., Washington, D.C.	HEG-0013	Petition for Special Redress. If granted: The Office of Hearings and Appeals would rescind the requirement that Leonard E. Belcher, Inc. maintain a letter of credit.
Mar. 29, 1982	Pacific Northwest Resources Center, Eugene, Oregon	HFA-0049	Appeal of an Information Request Denial. If granted: The Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Pacific Northwest Resources, Inc. would receive access to certain DOE information.
Mar. 30, 1982	Thriftyway Company, Washington, D.C.	HYX-0019	Supplemental Order. If granted: The DOE would review the entitlement exception relief granted to Thriftway Company during the period January 1, 1981 to January 27, 1981 to determine whether the level of relief accorded the firm was appropriate.
Mar. 31, 1982	Office of Special Counsel/Atlantic Richfield Company, Washington, D.C.	HRJ-0012	Motion for Protective Order. If granted: Atlantic Richfield Company (ARCO) would enter into a Protective Order with the Office of Special Counsel (OSC) limiting the dissemination and use of certain documents provided to ARCO by OSC.
Mar. 31, 1982	Office of Special Counsel/Gulf Oil Corporation, Washington, D.C.	HRJ-0013	Motion for Protection Order. If granted: Gulf Oil Corporation would enter into a Protective Order with the Office of Special Counsel (OSC) limiting the dissemination and use of certain documents provided to Gulf by OSC.
Mar. 31, 1982	Office of Special Counsel/Marathon Oil Company, Washington, D.C.	HRJ-0014	Motion for Protective Order. If granted: Marathon Oil Company would enter into a Protective Order with the Office of Special Counsel (OSC) limiting the dissemination and use of certain documents provided to Marathon by OSC.
Mar. 31, 1982	AOffice of Special Counsel/Standard Oil Company of Ohio, Washington, D.C.	HRJ-0015	Motion for Protective Order. If granted: Standard Oil Company of Ohio (SOHIO) would enter into a Protective Order with the Office of Special Counsel (OSC) limiting the dissemination and use of certain documents provided to Sohio by OSC.
Mar. 31, 1982	Offide of Special Counsel/Texaco, Inc., Washington, D.C.	HRJ-0016	Motion of Protective Order. If granted: Texaco, Inc. would enter into a Protective Order with the Office of Special Counsel (OSC) limiting the dissemination and use of certain documents provided to Texaco by OSC.
Apr. 1, 1982	Barberis Shell Service, San Francisco, California	HRX-0018	Supplemental Order. If granted: The Office of Hearings and Appeals' March 29, 1982, Remedial Order issued to Barberis Shell Service would be rescinded.
Apr. 1, 1982	Camden Fuel Oil Company, Kingsland, Georgia	HEE-0021	Exception to the Reporting Requirements. If granted: Camden Fuel Oil Company would not be required to file Form EIA-9A.
Apr. 1, 1982	Charles Gorsey, Reston, Virginia	HFA-0050	Appeal of an Information Request Denial. If granted: The April 1, 1982, Information Request Denial issued by the Office of FOIA and Privacy Act Activities would be rescinded, and Charles Dorsey would receive access to a copy of a memorandum from the Executive Service Board.
Apr. 1, 1982	Vickers Petroleum Company/K-S Oil Corporation et al., Hampton, Iowa.	HFX-0017	Supplemental Order. If granted: The Office of Hearings and Appeals would issue a Decision and Order directing disbursement of refunds to applicants regarding Vickers Petroleum Company's Consent Order.

[FR Doc. 82-13069 Filed 5-12-82; 8:45 am]
BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of March 29, Through April 2, 1982

During the week of March 29 through April 2, 1982, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before June 2, 1982. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 7, 1982.

Anchor Distributors Inc., Miami, Florida, HRO-0036

On March 31, 1982, Anchor Distributors, Inc., 7950 Northwest 58th St., Miami Florida 33166 filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on February 24, 1982. In the PRO the Southeast District found that during the period January 1, 1980 to March 31, 1980, Anchor Distributors, a reseller-retailer, sold motor gasoline at prices in excess of those permitted under 10 CFR 212.93.

According to the PRO, the Anchor Distributors violation resulted in $164,845.01 of overcharges.

Appalachian Flying Service, Blountville, Tennessee, HRO-0038

On April 2, 1982, Appalachian Flying Service, P.O. Box 1077, Tri-City Airport Station, Blountville, Tennessee 37617, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on March 1, 1982. In the PRO, the Southeast District found that during the period November 1, 1973 to April 30, 1977, Appalachian Flying Service sold aviation gasoline and aviation jet fuel at prices in excess of the maximum lawful selling prices permitted under 10 CFR 212.93. According to the PRO, the Appalachian Flying Service violation resulted in $153,569.79 of overcharges.

Metropolitan Petroleum Co., Miami, Florida, HRO-0037, Motor Gasoline

On March 31, 1982, Metropolitan Petroleum Company, 3675 N.W. 58th Street, Miami, Florida 33142, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on February 24, 1982. In the PRO the Southeast District found that during the period March 1, 1979 through July 31, 1979, Metropolitan sold motor gasoline at prices in excess of the maximum lawful selling prices permitted by the DOE Mandatory Petroleum Price Regulations. According to the PRO, the Metropolitan violation resulted in $173,259.09 of overcharges.

Whitaker Oil Company, Atlanta, Georgia, HRO-0035

On March 30, 1982, Whitaker Oil Company, 1557 Marietta Road, N.W., Atlanta, Georgia 30318, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southeast District Office of Enforcement issued to the firm on February 24, 1982. In the PRO, the Southeast District found that during the period from November 1, 1973 to March 31, 1974, Whitaker, a reseller-retailer, sold petroleum products at prices in excess of maximum lawful selling prices permitted under 6 CFR 150.359 and 10 CFR Part 212, Subpart F of the Mandatory Petroleum Price Regulations.

According to the PRO, the Whitaker Oil Co. violation resulted in $1,012,138.60 of overcharges.

[FR Doc. 82-13070 Filed 5-12-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 81007; TSH-FRL-2123-3]

TSCA Chemical Substances Inventory; Intent To Remove Certain Incorrectly Reported Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA, in reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substances Inventory, has concluded that certain chemical substances were incorrectly reported and listed. The Agency intends to remove twenty-seven incorrectly listed substances from the Inventory, and solicits public comments on the appropriateness of that removal.

DATE: Comments must be received by EPA on or before July 12, 1982.

ADDRESSES: Three copies of the written comments should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 401, 401 M St., SW., Washington, D.C., 20460.

Comments should bear the identifying notation OPTS 81007. The administrative record supporting this action is available for public inspection in the OPTS Reading Room, E-107, at the above address, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (554-1404), outside the U.S.A. (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469, requires the Administrator of the EPA to identify, compile and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710) which appeared in the Federal Register of December 23, 1977 (42 FR 64572). These Regulations provided the basis for the initial compilation of the TSCA Chemical Substances Inventory which identifies the chemical substances in U.S. commerce.

The Inventory informs the public which chemical substances are being manufactured, imported, or processed in the United States for commercial purposes. The Inventory also has a regulatory purpose. It defines what is a "new" chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included on the Inventory, it is considered a "new" substance and a premanufacture notification (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its functions, it must be continuously and accurately updated as new information becomes available. Updated information includes identities of new chemical substances which are being introduced into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the Federal Register of July 29, 1980 (45 FR 50544), that it would continue to accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29 Federal Register notice relate primarily to chemical identity.

Since the publication of the Initial Inventory in June 1979 and the Revised Inventory in July 1980, the Agency has received numerous requests from companies to correct certain previously submitted Inventory reports. In reviewing these correction requests and the corresponding reports originally submitted for the Inventory, EPA has concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of Inventory submissions, it was discovered that most of the incorrectly listed substances were reported by only one submitter, i.e., the person who subsequently requested that EPA correct the chemical identity.

There are obviously different reasons why a chemical substance was incorrectly reported for the Inventory. First, the mistake could have been typographical or transcriptional and was not known to the submitter at the time when the original report was submitted. Secondly, improved analytical equipment and methods may allow for a more accurate description of a previously reported substance. Thirdly, EPA may identify reporting errors and request corrections. Regardless of the source of error, the end result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will suffer and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish.

The Inventory Reporting Regulations specify that any substance reported for the Inventory must have been manufactured, imported, or processed for commercial purposes in the United States since January 1, 1975. A chemical substance incorrectly reported for the Inventory might not have satisfied this requirement.

To date, EPA has officially removed from the TSCA Inventory only the chemical substance known as 2-naphthalenamine, Chemical Abstracts Service Registry Number 91-59-8. (46 FR 11356 and 46 FR 30563.) In this notice, the Agency proposes to remove twenty-seven additional chemical substances from the TSCA Inventory. Based on EPA's review of these substances and the body of Inventory submissions, these substances were found to be incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the twenty-seven substances is

further identified by its corresponding CA Index Name.

Each of the twenty-seven substances proposed for removal was reported for the Inventory. Subsequently, the person who reported the substance informed EPA that the chemical identity originally reported to EPA and included on the Inventory was incorrect. The corrected identity for each of the twenty-seven substances has been added to the Agency's Master Inventory File. EPA checked each of the twenty-seven substances in question, as originally reported, to determine whether any other person had also reported the same substance for the Inventory. If someone else had correctly reported the substance, it would have been retained for the Inventory. As to the twenty-seven substances, however, no other person had reported them. Accordingly, they do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the TSCA Inventory any of the twenty-seven chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed chemical substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported or processed for commercial purposes by anyone during the period January 1, 1975 through the publication date of this notice. The Agency is also interested to know whether any person can show that any of the chemical substances listed below could have been properly reported for either the Initial or the Revised Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. All such comments must be submitted to EPA within the 60-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the Federal Register. If the Agency determines that any of the chemical substances listed should not be removed from the Inventory, an eligible manufacturer, importer, or processor of that substance would then be invited to submit an Inventory report to EPA to replace the one that was incorrectly submitted. The substance could then remain on the Inventory. On the other hand, if the Agency concludes that a substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any manufacture or importation of the substance from the date of removal on.

With the publication of this notice, any on-going manufacture, importation, or processing of any of the twenty-seven chemical substances listed below begun prior to the publication date of this notice may continue until publication of the final notice of disposition. EPA will not, however, consider any request to retain any of the listed substances on the Inventory based solely on manufacture, importation or processing of that substance which begins after the first publication date of this notice.

65086-37-5 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with ethenylbenzene, 2-hydroxyethyl 2-propenoate, 1,3-isobenzofurandione and methyl 2-methyl-2-propenoate.

65121-76-8 Phenol, 2-methyl-4,6-dinitro-, lead (2+) salt.

65122-05-6 Diazene, [(1,3-dihydro-1,1,3-trimethyl-2H-iden-2-ylidene)methyl] (2-methoxyphenyl)-.

65151-55-5 Docosanoic acid, 1,3,5,-triazine-2,4,6-triyltris[(methoxymethyl)imino]methylene ester.

65530-61-6 Poly(difluoromethylene), α-(2,2-dichloro-1,1,2-trifluoroethyl)-W-hydro-.

65717-13-7 4-Primidinecarboxylic acid, 1,2,3,6-tetrahydro-5-nitro-2,6-dioxo-, monopotassium salt.

67892-76-6 Nonanoic acid, 2,2,-dimethyl-,-oxiranylmethyl ester, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate and 2-propenoic acid.

67892-78-8 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid.

68110-21-4 Zincate(1-), trichloro-, hydrogen, compd. with N,N-diethyl-4-[(1-methyl-1H-1,2,4-triazol-5-yl)azo] benzenamine. (1:1)

68213-43-4 Fatty acids, tall-oil, polymers with bisphenol A, bisphenol A diglycidyl ether, Bu acrylate, 2-(dimethyl)amino)ethyl methacrylate, 2-[(1,1-dimethyl) amino]ethyl melhacrylate, glycidyl 2,2-dimethylnonanoate, hydroxyethyl methacrylate and Me methacrylate.

71002-23-8 1,1'-Bi-1*H*-imidazole, 2,2',5,5'-tetrakis(2-chlorophenyl)-4,4'-bis(3,4-dimethoxyphenyl)-.

71735-70-1 B-Alanine, N-[3-(nonyloxy)propyl]-.

71799-76-3 9,11-Octadecadienoic acid, (*Z,Z*)-, polymer with 2-hydroxyethyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, (*Z,Z*)-9,12-octadecadienoic acid and oxiranylmethyl 2,2-dimethylnononoate.

74398-77-9 Benzenediazonium, 2-methoxy-5-methyl-4-[(3-sulfophenyl)azo]-, chloride.

74642-98-1 Cuprate(2-), [bis(aminosulfonyl)-29H,31H-phthalocyaninedisulfonato(4-)-N^{29},N^{30},N^{31},N^{32}]-, lithium sodium.

Dated: April 27, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-13008 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

[OLCE-FRL-2117-2]

Guidelines for Using the Imminent Hazard, Enforcement and Emergency Response Authorities of Superfund and Other Statutes

AGENCY: Environmental Protection Agency.

ACTION: Policy statement.

SUMMARY: These guidelines are published pursuant to Section 106(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 (CERCLA or Superfund). They are intended to provide Federal, State, local and private parties with a general description of how response actions undertaken pursuant to Section 104 of CERCLA will be coordinated with the use of enforcement authorities available to the Environmental Protection Agency (EPA or the Agency) and the Department of Justice (DOJ).

Applicability of Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation or rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that these guidelines do not constitute a major rule or regulation because they are designed simply to describe how authority under CERCLA is to be coordinated with other existing statutory and regulatory authority and are not a significant change in the

Agency's approach to implementing that authority.

These guidelines were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any response from EPA to those comments are available for public inspection in the Office of Enforcement Counsel, (WH–527–F), Fairchild Building, 499 South Capitol Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard A. Smith, Office of Enforcement Counsel (WH–527–F), Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, S.W., Washington, D.C. 20460, phone (202) 382–2550.

SUPPLEMENTARY INFORMATION:

Introduction

These guidelines are published pursuant to Section 106(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510 (CERCLA). They are intended to provide Federal, State, local and private parties with a general description of how response actions undertaken pursuant to Section 104 of CERCLA will be coordinated with the use of enforcement authorities available to the Environmental Protection Agency (EPA or the Agency) and the Department of Justice (DOJ). These include the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers.

Consistent with proposed revisions to the National Contingency Plan (NCP), FR Vol. 47, No. 49, page 10472, March 12, 1982, it is EPA policy to continue to pursue enforcement actions as an alternative to or complementary with Fund-financed response activities. This policy is necessary to ensure that the limited Superfund resources are utilized to the maximum extent possible where there is no solvent responsible party and therefore no alternative to Government response. Further, it is Agency policy to seek, whenever possible, cleanup by responsible parties prior to recourse to either the Fund or litigation. To this end EPA may, whenever possible, provide notice to potentially responsible parties and an opportunity to confer with the Agency in an effort to develop a satisfactory cleanup agreement.

While hazardous substance problems are widespread, their resolution is inherently site specific and requires developing response and/or enforcement actions at each site which are tailored to individual circumstances. Thus, an enforcement program to solve these problems must retain sufficient flexibility to be adaptable to a wide range of situations. Within the broad policy framework established by the proposed revisions to the NCP, selection of the appropriate enforcement tools to achieve the statutory goals must, of necessity, be based on case-by-case determinations.

The Administrator of EPA has consulted with the Attorney General in the preparation of these guidelines.

Available Federal Legal Authorities

Federal legal authorities available to compel responsible parties to address threats created by hazardous substances including both administrative and judicial actions. These authorities exist not only under CERCLA but are found in a variety of other statutes including the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Clean Air Act (CAA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA) and common law. The range of potential actions which may be ordered or sought covers all phases of hazardous substances problems from initial information gathering needed to determine the existence and location of a potential problem, to complete elimination of the problem. Which particular authority or authorities will be used and whether to precede court action with administrative action will be determined on a case-by-case basis depending upon the most effective approach for achieving the desired goal of site cleanup.

The statutory authorities listed above provide EPA with several categories of enforcement tools designed to facilitate enforcement of the relevent statutes, including:

1. Authority to obtain existing data regarding a possibly hazardous condition:

a. Section 3007, 3013, 7003 RCRA—right of entry; obligation to furnish information.

b. Section 104(b), 104(e) and 106(a) CERCLA—right of entry; obligation to furnish information.

c. Section 8 and 11 TSCA—subpoena; regulations to maintain or submit information.

d. Section 308 CWA—right of entry; obligation to furnish information.

e. Section 114 CAA—right of entry; obligation to furnish information.

f. Section 1445 SDWA—right of entry; obligation to furnish information.

2. Authority to require responsible parties to collect data:

a. Sections 3007(a), 3013 and 7003 RCRA—administrative orders, penalties and court action.

b. Section 103(d) CERCLA—regulations to maintain records.

c. Sections 106 (a) and (b) CERCLA—administrative orders, penalties and/or court actions.

d. Section 8 TSCA—regulations to maintain or submit records.

e. Section 308(a) CWA—recordkeeping, sampling and monitoring.

f. Section 114 CAA—recordkeeping, sampling and monitoring.

g. Section 321 CAA—subpoena.

h. Section 1445 SDWA—regulations to maintain records.

3. Authority to compel responsible parties to cleanup hazardous conditions:

a. Sections 3008 and 7003 RCRA—administrative orders, penalties and court action.

b. Sections 106 (a) and (b) CERCLA—administrative orders, penalties and court action.

c. Section 504 CWA—court action.

d. Section 1431 SDWA—administrative orders, penalties and court action.

e. Sections 6 and 7 TSCA—court action.

f. Sections 113 and 303 CAA—court action.

4. Authority to recover money expended by the government to investigate and cleanup a hazardous condition:

a. Sections 107(a) and 112(c)(3) CERCLA—court action.

b. Section 311(f) CWA—court action.

c. Sections 3013 (d) and (e) RCRA—administrative orders and court action.

5. Penalties for failure to comply with administrative orders, regulations or permit conditions:

a. Sections 3008, 3013 and 7003 RCRA—civil penalties, fines and imprisonment.

b. Sections 103(d) and 106(b) CERCLA—fines and imprisonment.

c. Section 107(c)(3) CERCLA—punitive damages.

d. Sections 1431 and 1435 SDWA—fines.

e. Sections 311(b) (5) and (6) CWA—civil penalties, fines and imprisonment.

f. Sections 309 (c) and (d) CWA—civil penalties, fines and imprisonment.

g. Section 16 TSCA—civil penalties, fines and imprisonment.

h. Section 17 TSCA—specific enforcement and seizure.

i. Section 113 CAA—civil penalties, fines and imprisonment.

In addition to these statutory authorities CERCLA specifically preserves the Federal and/or State common law, as an available legal tool.

Under the general doctrine of public nuisance the United States can seek to compel a responsible party to investigate the nature and extent of a hazardous condition, take remedial action to correct that condition, and pay the costs incurred by the government in investigating the problem and taking any remedial action.

There are obviously differences inherent in the statutory provisions that are applicable to the utilization of these authorities. These differences will influence decisions on the choice of legal authorities and legal approaches for any case.

The meaning and reach of these statutory authorities is a matter under continuous review by Federal courts. The EPA and Department of Justice view of what these provisions mean is expressed in the public documents filed in these cases. The Court decisions provide the interpretation and guidance, and the meaning ascribed to the statutory provisions obviously evolves as new cases produce new decisions. These decisions in turn shape EPA and DOJ decisions concerning which statutes to employ.

Coordination of Enforcement With Response Activities

A. *General.* Agency policy as reflected in the preamble to the proposed revisions to the NCP, is that enforcement is to be used as an alternative to or complementary with the use of Superfund monies.

Early involvement of State and Federal personnel in the site identification and priority setting process is contemplated by the proposed revisions to the NCP. Before Superfund money is authorized for expenditure at any site where EPA is the lead Agency, it will be determined, based on the exigencies of the hazard presented and input from the legal and program personnel involved, whether enforcement, Fund use, or some combination of the two is appropriate.

This is emphasized by numerous references throughout Subpart F of the proposed revisions to the NCP pertaining to the need to undertake efforts to identify non-Federal potentially responsible parties simultaneously with the technical investigation of a release or threatened release. See, for example, §§ 300.63(a)(3), 300.65(b) and (e).

Further, § 300.65(d) of the proposed revisions to the NCP describes the Hazard Ranking System (HRS) that will be applied to sites to allow a comparison of risk or danger in widely varying situations. The criteria in the HRS are applicable to any site, regardless of the existence of potentially responsible parties.

It is the responsibility of the Office of Solid Waste and Emergency Response through its Regional program personnel, with the assistance of Agency legal personnel, the Department of Justice, and State legal personnel where appropriate, to undertake the necessary investigations to determine the existence of potentially responsible parties for releases or threatened releases where EPA is the lead Agency under the proposed revisions to the NCP.

Prior to the initiation of either Fund-financed response activity or enforcement action, the Agency will attempt to provide oral or written notice, where appropriate considering the exigencies of the situation, to identifiable potentially responsible parties (individual, corporate or public) who may be partially or wholly responsible for the hazard at a particular site. This notice is intended to provide potentially liable responsible parties with an opportunity to undertake required cleanup in lieu of Government response and to advise these parties of their potential liability should the Government undertake the cleanup of the release or threatened release. This notice is not, however, a condition precedent to undertaking a response action or an action to recover money spent during such a response.

Where these efforts prove unsuccessful in leading to a satisfactory cleanup agreement, the Agency will determine whether to employ the Fund for site cleanup or to use one or more of the various administrative and/or judicial tools described in these guidelines in lieu of or in combination with Fund use. These decisions will be made jointly by the Office of Legal and Enforcement Counsel and the Office of Solid Waste and Emergency Response with input as appropriate from the On Scene Coordinator (OSC), the Regional Response Team (RRT) or National Response Team (NRT), when activated, and the Department of Justice.

When the decision is made to employ the Fund for site cleanup, every effort will be made by the Office of Legal and Enforcement Counsel to recover the Government funds expended, including referral to the Department of Justice for collection action where necessary.

The Agency will necessarily employ a significant percentage of its enforcement resources at those hazardous waste sites on the Interim and Final National Priorities List for which responsible parties can be identified. However, sites not in the priority ranking system described in the proposed revisions to the NCP may also be the subject of enforcement actions where appropriate.

B. *Extent of Remedy.* As stated in the preamble to the proposed revisions to the NCP, the Agency has, on a case-by-case basis, historically made a combined legal and scientific judgment in enforcement actions as to the appropriate extent of remedy, by consideration of a variety of generic and case specific factors. This has resulted in settlements and initial court decisions calling for remedial activity in individual circumstances ranging from complete elimination or removal of contaminants to nondetectable levels, to installation of containment and/or treatment alternatives in addition to or in lieu of rehabilitation of the contaminated environment.

This case-by-case determination of the appropriate extent of remedy will continue for responsible party cleanup at Superfund sites. The Agency will seek, through voluntary agreement or administrative or judicial processes, to have those persons responsible for the release cleanup in a manner that effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, and the environment. EPA will evaluate the adequacy of cleanup proposal submitted by responsible parties or determine the level of cleanup to be sought through enforcement efforts, by consideration of the factors described in §§ 300.67 (e) through (j) of Subpart F of the proposed revisions to the NCP. The Agency will not, however, apply the cost balancing considerations discussed in section 104(c)(4) of the Act and § 300.67(k) of Subpart F of the proposed revisions to the NCP to determine the appropriate extent of remedy for responsible party cleanup. These cost balancing considerations are applicable only to Fund-financed activities.

C. *Coordination With States.* It is the intent of these guidelines to encourage those States that are willing and able to do so, to take the lead in bringing enforcement actions to address hazardous waste problems.

Coordination of Fedeal actions with State actions will be primarily accomplished through the use of cooperative agreements as provided in section 104(d) of CERCLA.

On a case-by-case basis, State and Federal legal officials will decide whether State or Federal or a combined enforcement action is appropriate. Where the State is taking the enforcement lead, EPA and DOJ may provide legal assistance as appropriate, including access to expert witnesses, sample analysis capability, and training.

Suits to recover Superfund money whether expended directly by the Federal officials or spent by State officials following allocation of funds from the Federal government will remain the responsibility of Federal officials. Section 300.68 of Subpart F of the proposed revisions to the NCP requires that all documentation of activities at a site shall be collected and maintained to form the basis for cost recovery. For this reason there will be a continuing close relationship between State and Federal officials with respect to actions where the State is taking the enforcement lead.

Conclusion

As the preceeding discussion clearly shows, enforcement and Fund use decisions are closely linked from the early stages of hazardous waste site identification and assessment. The intent is that identification of responsible parties proceed contemporaneously with site hazard ranking to encourage maximum non-Federally financed cleanup, and to insure timely enforcement action should it become necessary. Should enforcement prove necessary the Agency and DOJ will encourage and support maximum use of State authorities and personnel. If Federal enforcement authorities are utilized, the Agency will issue administrative orders, and/or undertake judicial actions in cooperation with DOJ, that seek to impose reasonable, cost-effective remedies that achieve levels of cleanup that effectively mitigate and minimize damage to and provide adequate protection to public health, welfare and the environment, consistent with the proposed revisions to the NCP.

Dated: May 11, 1982.

John E. Daniel,

Acting Administrator.

[FR Doc. 82-13133 Filed 5-12-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10427; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, Chicago, Illinois, and San Juan, Puerto Rico. Interested parties may submit comments on the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 24, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

Agreement No. T-4044.

Filing party: Mr. Douglas J. Sealy, Goldman, Sachs and Co., 55 Broad Street, New York, New York 10004.

Summary: Agreement No. T-4044 is a terminal lease agreement for dock facilities between South Lousiana Port Commission as lessor (Port) and Rogers Terminal and Shipping Corporation, as lessee (Rogers). The purpose of the agreement is to facilitate the issuance of industrial revenue bonds in the amount of $15,375,000 which are to finance the cost of construction of Rogers' dock and wharf facility to be moored in the Parish of St. James, Louisiana. The bond issuance procedure requires the transfer of said facilities to the Port, who will, in turn, lease the facilities back to Rogers. Rental under the agreement will be used to fund repayment of the bond, and at the end of the 20-year bond period (also the term of the agreement) the facilities will be transferred by the Port back to Rogers. The facilities will be used as a floating bulk cargo transfer facility. The project will be operated and maintained throughout the lease term as part of the public port of the lessor, and lessor shall have the exclusive right to and shall assess and collect dockage fees for all vessels berthing at the project and to issue an appropriate tariff covering such charges and their application. Further provision is made for apportionment of such revenues.

By order of the Federal Maritime Commission.

Dated: May 10, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13027 Filed 5-12-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of facts that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to acquire 90 percent or more of the voting shares or assets of The First National Bank of Piedmont, Piedmont, Alabama. Comments on this application must be received not later than June 5, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado National Bankshares, Inc.,* Denver, Colorado; to acquire 80 percent or more of the voting shares or assets of Republic National Bank of Englewood, Englewood, Colorado. Comments on this application must be received not later than June 4, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *North Texas Bancshares, Inc.,* North Richland Hills, Texas; to acquire 100 percent of the voting shares or assets of the successor by merger to Arlington State Bank, Arlington, Texas.

Comments on this application must be received not later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12988 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) and of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 4, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp,* New York, New York (export finance company activities; worldwide): To engage through a *de novo* subsidiary, Citicorp Export Credit Corporation ("CECC"), in the making of loans to United States-domiciled exporters to finance purchases of goods and services of United States manufacture or origin and/or costs incidental thereto. Such loans would be made or acquired by CECC from an office located in New York, New York, and these activities would be offered and operated throughout the world.

2. *Peoples BanCorp,* Belleville, New Jersey (serving activities; New York, New Jersey, Connecticut): To engage through its subsidiary, Peoples Financial Services Corporation, in the servicing of third party automobile leases. Such service activities will include the safekeeping of documents, filing of registration and title documents, obtaining proof of insurance and the remitting of taxes. Such activities will be conducted in an office in Belleville, New Jersey serving New York, New Jersey, and Connecticut.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation,* Baltimore, Maryland (mortgage banking, consumer finance, leasing, servicing, and insurance sales; mail solicitation, nationally): Engaging generally in the business of a mortgage banker, mortgage broker and mortgage servicing firm, including but not limited to, second mortgage financing; originating, buying, selling and otherwise dealing in mortgage loans as principal or agent; servicing mortgage loans for affiliated or nonaffiliated entities; acting as adviser in mortgage loan and second mortgage loan transactions; making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a finance company or consumer finance company; making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a credit card company; engaging generally in the business of leasing personal property, including but not limited to, the leasing of various types of equipment, machinery, vehicles, transportation equipment and data processing equipment; originating, buying, selling or otherwise dealing in consumer finance paper, sales finance paper, credit card receivables and personal property leases as principal or agent; servicing consumer finance, sales finance and credit card receivables, and personal property leases for affiliated or nonaffiliated entities; and engaging in the sale as agent of credit life, credit disability, credit accident and health, loan redemption and loans cancellation insurance in connection with extensions of credit by bank and nonbank subsidiaries of the holding company. (Loan redemption and loan cancellation insurance will be limited to decreasing term policies and will not include level term policies.) Activities would be conducted by National Consumer Discount Company from an office in Newark, Delaware.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *BankAmerica Corporation,* San Francisco, California (financing, servicing, and insurance activities; expansion of geographic scope; California, Idaho, Montana, Nebraska, Oregon, Washington, and Wyoming): To continue to engage, through its three indirect subsidiaries, FinanceAmerica Corporation, and Oregon corporation, FinanceAmerica Corporation, an Idaho corporation and FinanceAmerica Corporation, a Wyoming corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance, credit-related accident and health insurance, and credit-related property insurance in each state except California, where credit-related property insurance will not be offered.

Such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit secured by real and personal property, and offering credit-related life, credit-related accident and health and credit-related property insurance, except where otherwise noted above, directly related to extensions of credit made or acquired by each of the three corporations.

These activities will be conducted from three existing offices located in Portland, Oregon, serving the entire States of Oregon, California and Washington; Boise, Idaho, serving the entire States of Idaho, Oregon and Montana; and Cheyenne, Wyoming, serving the entire States of Wyoming, Montana and Nebraska.

2. *Wells Fargo & Company,* San Francisco, California (finance activities; United States): To engage *de novo* through its subsidiary, Wells Fargo Realty Services, Inc., in making, acquiring and servicing real estate related loans and other extensions of credit for its own account or for the account of others to the extent permissable under applicable state law. These activities would be conducted from an office in Pasadena, California, serving the entire United States.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12987 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 29, 1982.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.,* Providence, Rhode Island (formerly Industrial National Corporation); (mortgage banking and insurance activities; Illinois); To engage, through its subsidiary, Mortgage Associates, Inc., in mortgage banking activities and insurance agency activities involving the sale of credit life and credit accident and health insurance directly related to an extension of credit. These activities would be conducted from an office located at Suite 1, 10046 South Western Avenue, Chicago, Illinois serving communities in the central portion of Cook County, Illinois.

2. *Industrial National Corporation,* Providence, Rhode Island (mortgage banking, servicing and insurance activities; Florida): To engage, through its subsidiary, Fleet Mortgage Brokers, Inc., in mortgage brokerage, origination and sale of mortgage loans, servicing of mortgage loans and acting as agent for the sale of credit life and credit accident and health insurance. These activities would be conducted from an existing office located at 4554 S. Orange Blossom Trail, Orlando, Florida, serving central and southwest Florida.

3. *Old Stone Corporation,* Providence, Rhode Island (mortgage banking and insurance agency activities; Georgia): To engage through a new office of its subsidiary, DAC Corporation of Georgia, in the origination, sale and servicing of first and second mortgage loans, the sale of credit life and credit health and accident insurance offered in connection with extensions of credit, which insurance would be reinsured by an affiliate, Motor Life Insurance Company, Jacksonville, Florida; and the sale of casualty insurance on property mortgaged in connection with extensions of credit. These activities would be conducted from a new office at Suite 127, 1895 Phoenix Boulevard, College Park, Georgia, serving the southwest metropolitan area of Atlanta and the Georgia counties of Clayton, Fulton, and DeKalb.

B. **Federal Reserve Bank of New York** (A. Marshal Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York (consumer lending, related lending and insurance brokerage activities and sale of travelers checks at retail; Arizona): To engage through its subsidiary, Chase Manhattan Financial Services, Inc., in the following activities: to make or acquire, for its own account and for the account of others, loans and other extensions of credit, both secured and unsecured, including but not limited to, consumer and business lines of credit, installment loans for personal, household and business purposes and mortgage loans for personal, household and business purposes and mortgage loans secured by real property; to service loans and other extensions of credit; to sell travelers checks at retail; to act as insurance agent or broker for credit life insurance and credit accident and health insurance directly related to such lending and servicing activities. These activities will be conducted from an office in Tucson, Arizona, which will serve the State of Arizona.

2. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Tennessee): To engage through its indirect subsidiary, Finance One of Tennessee, Inc. ("Finance One"), in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a previously existing Finance One office located in Memphis, Tennessee. The service area of the office would include the State of Tennessee.

3. *Manufacturers Hanover Corporation,* New York, New York (financing, servicing, and credit insurance activities; Tennessee): To expand the service area for previously approved activities of an office of its subsidiary, Finance One of Tennessee, Inc., located in Memphis, Tennessee. The previoulsy approved activities include arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single and joint credit life insurance directly related to such loans and extensions of credit. The office presently serves customers in the following counties: southern Lauderdale, western Haywood, western Hardeman, Fayette, Tipton, and Shelby. The service area would be expanded to include the entire State of Tennessee.

4. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Florida): To engage through its indirect subsidiary, Finance One Mortgage of Florida, Inc. ("Finance One"), in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a previously existing Finance One office located in Tampa, Florida.

5. *Manufacturers Hanover Corporation,* New York, New York (financing, servicing and insurance activities; Florida): To expand the service area for previously approved

activities of an office of its subsidiary, Finance One of Florida, Inc., located in Tampa, Florida. The previously approved activities include arranging, making, acquiring, or servicing, for its own account or for the account of others, loans and other extensions of credit secured by an equity interest in a home; acting as agent or borker for the sale of credit life and credit accident and health insurance; purchasing installment sales finance contracts; and acting as agent or broker for the sale of credit related life and accident and health insurance. The office presently serves customers in the following counties: Hernando, Pasco, Hillsborough, Pinellas, Manatee, western Polk, southwestern Sumter, and northwestern Hardee. The service area would be expanded to include the entire State of Florida.

6. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Alabama): To engage through its indirect subsidiary, Finance One of Alabama, Inc. ("Finance One"), in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a previously existing Finance One office located in Homewood, Alabama. The service area of the office would include the State of Alabama.

7. *Manufacturers Hanover Corporation,* New York, New York (financing, servicing, and credit insurance activities; Alabama): To expand the service area for previously approved activities of an office of its subsidiary, Finance One of Alabama, Inc., located in Homewood, Alabama. The previously approved activities include purchasing installment sales finance contracts, and acting as agent or broker for the sale of single credit life insurance and credit accident and health insurance which is directly related to such loans and extensions of credit; purchasing motor vehicle sales finance contracts, and the sale of credit life insurance directly related to such lending activity; arfanging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single credit life insurance which is directly related to such loans and extensions of credit. The office presently serves customers in the following counties: Cullman, Blount, easter Etowah, southeastern Winston, Walker, Jefferson, Saint Clair, eastern Fayette, eastern Tuscaloosa, Shelby, Talladega, southwestern Clay, northwestern Coosa, northern Chilton, Bibb, and western Calhoun. The service area would be expanded to include the entire State of Alabama.

8. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; New Jersey): To engage through its indirect subsidiary, Finance One of New Jersey, Inc. ("Finance One"), in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a previously existing Finance One office located in Linwood, New Jersey. The service area of the office would include the State of New Jersey.

9. *Manufacturers Hanover Corporation,* New York, New York (financing, servicing, and credit insurance activities; New Jersey): To expand the service area for previously approved activities of an office of its subsidiary, Finance One of New Jersey, Inc., located in Linwood, New Jersey. The previously approved activities include arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit; purchasing installment sales finance contracts, and acting as an agent or broker for the sale of single and joint credit life insurance and credit accident and health insurance which is directly related to such loans and extensions of credit. The office presently serves customers in the following counties: Gloucester, Cape May, Camden, Atlantic, Salem, Cumberland, Burlington, and Ocean. The service area would be expanded to include the entire State of New Jersey.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation,* Los Angeles, California (financing and credit-related insurance activities; Ohio): To engage through its subsidiaries Security Pacific Finance Corp. and Security Pacific Finance Credit Corp., in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer intallment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company and acting as broker or agent for the sale of credit-related property from offices of Security Pacific Finance Corp. and Security Pacific Finance Credit Corp., located in Beachwood, Ohio, serving the State of Ohio.

2. *U.S. Bancorp* ("Bancorp"), Portland, Oregon (real estate appraisal activities; Oregon): To engage in appraisals of commercial and residential real estate for its customers and outside clients in conformance with the provisions of Section 225.4(a)(14) of Regulation Y. These activities would be conducted from an office at 555 S.W. Oak Street, Portland, Oregon serving customers in the western United States, primarily in the State of Oregon.

3. *U.S. Bancorp* ("Bancorp"), Portland, Oregon (industrial banking activities; Colorado): To engage, through Grand Junction U.S. Industrial Bank ("Grand Junction Industrial"), a wholly-owned subsidiary of U.S. Bancorp Financial, Inc. ("Bancorp Financial"), a wholly-owned subsidiary of Bancorp in performing the activities of making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others, including, but not limited to, commercial, consumer loans; installment sales contracts and other forms of receivables; issuing passbook and investment certificates; making investments as permitted by Colorado Revised Statutes 11–22–101 to 11–22–517; and acting as insurance agent with regard to credit life and disability insurance solely in connection with extensions of credit by Grand Junction Industrial. Bancorp relies upon the relevant provision of § 225.4(a) of Regulation Y as follows: 225.4(a) (1), (2), (3), and (9)(i)(a). Bancorp also relies upon Section 4(c)(8) of the Act to conduct these activities. The proposed Industrial Bank will be located near the intersection of 24½ Road and U.S. Highway 6–50 in an unincorporated area of Mesa County near the western city limits of Grand Junction, Colorado. The site is directly across 24½ Road from the recently opened Mesa Mall, which is a 666,000 square foot shopping center

and is the only major shopping center in Mesa County. The geographic area to be served will be within a 3-mile radius of the office.

Board of Governors of the Federal Reserve System, May 6, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12989 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust International; Restructuring of U.S. Branches of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Bankers Trust International (Miami) Corporation, Miami, Florida; Bankers Trust International (Midwest) Corporation, Chicago, Illinois; Bankers Trust International (Pacific) Corporation, Los Angeles, California; and Bankers Trust International (Southwest) Corporation, Houston, Texas; all corporations organized under section 25(a) of the Federal Reserve Act ("Edge Corporations"), and their parent company, Bankers Trust Company, New York, New York have applied for the Board's approval under § 211.4 of the Board's Regulation K (12 CFR 211.4) to restructure the operations of the subject Edge Corporations as follows: to consolidate its Edge Corporations in Miami, Chicago, Los Angeles and Houston into one corporation, headquartered in Miami, Florida, and named Bankers Trust International; and to convert the Edge Corporation offices in Chicago, Los Angeles, and Houston, into branches of Bankers Trust International, Miami, Florida.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than June 6, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12986 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

Philadelphia International Bank; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Philadelphia International Bank, New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's regulation K (12 CFR 211.4(c)(1)), to establish branches in Philadelphia, Pennsylvania, and Los Angeles, California, and to redesignate the Philadelphia branch as its main office. Philadelphia International Bank, operates as a subsidiary of Philadelphia National Bank, Philadelphia, Pennsylvania.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than June 6, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12988 Filed 5-12-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of June 1982.

Basic Behavioral Processes Research Review Committee
June 3–4, 9:00 a.m.
The Shoreham Hotel
2500 Calvert Street, N.W.
Washington, D.C.

Open—June 3, 9:00–10:00 a.m.
Closed—Otherwise
Contact: Anita Lipkin, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The Basic Behavioral Processes Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and activities in the field of experimental and physiological psychology and comparative behavior, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9–10 a.m., June 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Alcohol Psychosocial Research Review Committee
June 9–11; 9:00 a.m.
Embassy Square Hotel, 2000 N Street, N.W.
Washington, D.C.

Open—June 9, 9:00 a.m.–1:30 p.m.
Closed—Otherwise
Contact: Jane A. Taylor, Ph.D., Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The Alcohol Psychosocial Reserch Review Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 a.m.–1:30 p.m., June 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the

public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Epidemiologic and Services Research Review Committee

June 14–17; 9:00 a.m.

Washington Marriott Hotel, Thomas Salon

1221 22nd Street, N.W.
Washington, D.C.

Open—June 14, 9:00–10:00 a.m.

Closed—Otherwise

Contact: Gloria Yockelson, Room 4–68, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5470

Purpose: The Epidemiologic and Services Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities in the fields of mental health epidemiology, mental health systems research, mental health services development, and evaluation methodology and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., June 14, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3887. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: May 7, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82–13009 Filed 5–12–82; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Work Group on Isolation Techniques Manual; Open Meeting

On June 1, 1982, the Centers for Disease Control will convene an open meeting of a work group to finalize the manual entitled, "Isolation Techniques for Use in Hospitals," so that the manual will contain appropriate isolation techniques to prevent disease transmission in hospitals. The meeting is open to the public, limited only by space available.

The meeting is scheduled to convene at 8:00 a.m. in Room SSB–19, Building 3, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

For further information, please contact: Bryan P. Simmons, M.D., Hospital Infections Branch, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia. Telephones: FTS: 236–3408, Commercial: 404/329–3408.

Dated: May 4, 1982.

J. Michael Lane,

Acting Director, Centers for Disease Control.

[FR Doc. 82–13028 Filed 5–12–82; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice to Lessees and Operators (NTL) on the Outer Continental Shelf (OCS) Concerning Royalty Payments on Oil and Gas Lost or Used on Leases or Units on OCS

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to Lessees and Operators (NTL) on the Outer Continental Shelf (OCS) concerning royalty payments on oil and gas lost or used on leases or units on the OCS.

SUMMARY: This Notice is being issued to conform to a recent court decision relating to royalty payments on oil or gas lost, vented, flared, or used in lease or unit operations.

DATE: This Notice shall become effective June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ronald Prehoda, Branch of Offshore Field Operations, Offshore Minerals Management Division, Minerals Management Service, Mail Stop 640, Reston, Virginia 22091, telephone (703) 860–7564.

PRINCIPAL AUTHOR: Ronald Prehoda, address and telephone number as above.

SUPPLEMENTARY INFORMATION: On December 11, 1980, an NTL was published in the **Federal Register** Vol. 45, No. 240, p. 81669) concerning royalty obligation on oil or gas lost or used on leases or units on the OCS. This NTL required royalty payment on oil or gas production avoidably lost and, for leases issued after July 1, 1974, on oil and gas used for purposes of production from and operations within or outside the lease or unit area.

A judgment issued November 25, 1981, by the U.S. District Court for the eastern district of Louisiana (Amoco Production Company v. Cecil D. Andrus, Civil No. 77–3351) has the effect of invalidating the Minerals Management Service's (MMS) authority to collect royalty payments on the aforementioned oil and gas.

Accordingly, this Notice is being issued to reflect the court's ruling in the matter.

Notice to Lessees and Operators of Federal Leases in the Outer Continental Shelf

Royalty Payments on Oil and Gas Lost and Used

This Notice supersedes the Notice to Lessees and Operators (NTL) published in the **Federal Register** on December 11, 1980, (Vol. 45, No. 240, p. 81669). This Notice reflects the ruling of November 25, 1981, by the U.S. District Court for the eastern district of Louisiana, Amoco Production Company v. Cecil D. Andrus, Civil No. 77–3351.

I. General

Effective June 1, 1974, royalty is not due on (1) any oil or gas that is leaked, spilled, vented, flared, or otherwise lost, or (2) on oil and gas used for purposes of production from and operations within or outside the lease or unit area. Gas and associated liquids used for reinjection in a reservoir within the same lease or unit will be subject to a royalty obligation at the time they are finally produced.

Royalty is due on all other oil and gas production.

II. Refunds

Lessees and operators who submitted royalty payments under provisions of prior NTL's, to the extent that those provisions are contrary to this NTL, may

apply for a refund of those payments. Applications for refunds shall be in the form of a letter signed by an authorized officer or agent of the lessee/operator and for each individual lease shall include:

1. The lease prefix code and lease number.

2. The specific month and year.

3. The product code (01, 02, 03, 04, 41, or 43) used in the reports and payments previously submitted.

4. The volume of exempt oil and/or gas previously reported and the amount of the refund requested.

5. The total amount of refund requested for each lease as a subtotal.

6. The total amount of the refund requested for all leases as a grand total.

Applications for refunds are subject to audit by the Minerals Management Service (MMS) prior to payment. Additional instructions in regard to the filing and contents of said applications may be obtained by contacting the Deputy Minerals Manager having jurisdiction over the lease or leases involved.

Dated: May 5, 1982.

James N. Parrish,

Acting Associate Chief, Offshore Minerals Management Division.

[FR Doc. 12912 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Land Management

Florida; Sanibel/Pine Island Sound Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Florida; Sanibel/Pine Island Sound Plan.

Pursuant to the responsibilities outlined in 43 CFR 1601.3(e), the Eastern States Office (ESO) of the Bureau of Land Management (BLM), U.S. Department of the Interior, announces that the draft *Sanibel/Pine Island Sound Plan* has been completed and is available for public comment. A public meeting on the plan is scheduled for May 28, 1982, in Fort Myers, Florida.

Geographic Area of the Plan

The plan considers, as a single planning unit, all public lands, islands, and Federal mineral ownership (FMO) under BLM jurisdiction in Lee, Charlotte, and Collier Counties, Florida. Included are sixty surface tracts, totalling approximately 875 acres of public domain land, and approximately 7,300 acres of FMO.

Background of the Plan

Preparation of BLM by a planning document for the three-county area was first announced in the October 22, 1980 **Federal Register.** At that time the document was entitled *Pine Island Sound/Sanibel Resource Management Plan* (RMP). The October 22, 1980 notice included a list of anticipated issues, a discussion of the interdisciplinary team that would prepare the plan, and an outline of the procedural steps to be followed pursuant to BLM's Resource Management Planning Process (43 CFR Part 1601). A public meeting on the plan was held in Fort Myers, Florida, on November 6, 1980.

By June 1981, each of the procedural steps, up to and including "Formulation of Alternatives," was completed, and the results made available for public comment. A second public meeting was held in Fort Myers on June 3, 1981. By October 1981, the steps entitled "Estimated Effects of Alternatives" and "Selection of a Preferred Alternative" were completed and ready for public review. By this time, however, a number of program and policy factors had come into play at ESO, leading to a decision to restructure the RMP, change its title to *Sanibel/Pine Island Sound Plan,* and complete the plan under newly-established streamlined procedures.

The factors that led to the decision included:

(1) The lack of significant issues within the planning area;

(2) The limited amount of surface/subsurface BLM ownership;

(3) The low to non-existent mineral potential;

(4) The willingness of other governmental entities to assume purposeful management;

(5) A very limited response by the affected publics to the plan's findings, issues and recommendations;

(6) Departmental and Bureau policy changes designed to streamline the planning process;

(7) Budget directives designed to eliminate the use of the RMP process where significant issues or concerns do not appear to exist, and the use of alternative analysis to provide management with a basis for decision-making;

(8) National, Departmental, and Bureau policy with respect to transfer and sale of BLM-administered resources;

(9) Development at ESO of a streamlined planning system (as part of its State Director Guidance, as authorized by 43 CFR 1601) designed to identify ESO resources and provide the basis upon which management decisions can be made regarding the allocation of resources to other entities via transfer/disposal or public sale.

Based on these factors, which are discussed at length in the draft plan, a decision was made, using the State Director Guidance, to review the status of the plan and, in March 1982, to complete the plan with an Environmental Analysis (EA). The EA would determine the necessity or lack of necessity for an environmental impact statement (EIS), based on whether the plan recommendations, if implemented, would have a significant impact upon the human environment.

The planning document that stemmed from this decision, the *Sanibel/Pine Island Sound Plan,* considers the same issues, and was assembled by the same interdisciplinary team, as outlined in the original **Federal Register** notice of October 22, 1980. The recommendations included in the current plan are the same ones developed by October 1981 under "Selection of Preferred Alternative" step of the RMP process. The primary differences between the new plan and the original RMP are an accelerated schedule for completion of the plan, and a reliance on an EA to determine whether or not to prepare an EIS.

Recommendations of the Plan, Including EA Findings

The following actions were recommended by the Manager of the Tuscaloosa Office and concurred with by the Acting Eastern States Director:

(1) Withdraw to the U.S. Fish and Wildlife Service approximately 29 island tracts (410 acres) in Pine Island Sound and Matlacha Pass (resolving withdrawal applications ES–17462 and BLM–049147);

(2) Transfer the Point Blanco Island tract (58 acres) to Lee County as a county park (resolving the conflict between R&PP application BLM–072113 and withdrawal application ES–14330);

(3) Transfer the Corkscrew Swamp area tract (30 acres) to Lee County if an application is received, or else offer for public sale;

(4) Transfer the three Rookery Bay area tracts (310 acres) to the State of Florida for inclusion in the Rookery Bay National Estuarine Sanctuary;

(5) Transfer the remaining tracts to the State of Florida for inclusion in the Charlotee Harbor Aquatic Preserve and Environmentally Endangered Lands (EEL) Preserve (four tracts, 1.29 acres); the Cape Romano-Ten Thousand Island Aquatic Preserve (seven tracts, 40 acres); the Estero Bay Aquatic Preserve (five tracts, 4 acres); and the Pine Island Sound and Matlacha Pass Aquatic

Preserves or the Cayo Costa EEL Preserve (five tracts, 20 acres); and

(6) Maintain management responsibility for FMO with potential for development, and transfer FMO found to be without value to the surface ower/administrator, after detailed geologic investigation.

Based on the analysis of the environmental impacts associated with the proposed action and alternatives, it was determined that the plan recommendations do not constitute a major Federal action significantly affecting the qualify of the human environment. Therefore, pursuant to Section 101(2)(c) of the National Environmental Policy Act, an environmental impact statement was not required, and a Finding of No Significant Impact (FONSI) was prepared.

Availability of the Summary and Planning Documents

A summary of the draft plan is being mailed to public officials, organizations, and interested members of the public who have received information in the past regarding BLM planning in the three-county area. The complete draft document, including plan map and technical appendices, is available for inspection at the Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama 35401. Telephone: (205) 758–5441. Copies of the summary are available from the same address.

Wilderness Review Decisions

Also available is a 3-page summary of the Wilderness Review announced in the October 22, 1980 **Federal Register** and performed simulaneously with the Sanibel/Pine Island Sound planning process. Recipients of the summary of the draft plan will also receive the summary of the Wilderness Review.

The Wilderness Review in the three-county area followed guidelines set forth in the **Wilderness Inventory Handbook**, in accordance with Section 603 of the Federal Land Policy and Management Act of 1976.

During initial wilderness inventory the public domain lands in the planning area were reviewed as 25 wilderness inventory units. Nine islands or groups of islands were recommended for intensive wilderness inventory. During intensive inventory, they were found to lack outstanding opportunities for solitude or for primitive or unconfined recreation. A decision, therefore, was made in April 1982, not to designate any of the islands as wilderness areas.

Copies of the 3-page summary of the Wilderness Review are available from the Tuscaloosa Office, at the address given above. Supporting documents are available for inspection at the same location.

Decisions Regarding Areas of Critical Environmental Concern

During the planning process, all public domain tracts in the three-county area, with the exception of the 30-acre tract in southeast Lee County, were nominated for designation as Areas of Critical Environmental Concern (ACECs). However, professional review of the tracts in light of the ACEC criteria led to the decision not to recommend them for designation. Also contributing to the decisions was the development of a management mode that will protect the areas without the necessity of ACEC designation.

45-Day Comment Period and Public Meeting

A 45-day public comment period on the draft *Sanibel/Pine Island Sound Plan* and the wilderness decisions begins today and closes June 28, 1982. Comments should be addressed to Robert Todd, Manager, Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama 35401.

Anyone wishing to comment upon or discuss any aspect of the draft plan is invited to a public meeting from 3:00 p.m. to 6:00 p.m., EDT, May 28, 1982, in the auditorium at the Edison Community College, College Parkway, Fort Myers, Florida.

For further details or clarification regarding the planning process in the three-county area, contact Ed Roberson, Planner, at the Tuscaloosa Office.

Denise P. Meridith,

Acting Eastern States Director.

[FR Doc. 82-13066 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial Number: A 17000–H (Partial)]

Arizona; Classification of Public Lands For State Indemnity Selection

1. The Arizona State Land Department has filed a petition for classification and application to acquire the lands described in Paragraph 5 below, under the provisions of the Act of June 20, 1910 (36 Stat. 557), as amended, in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. This application has been assigned the serial number A 17000–H (partial).

2. Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. Those lands found suitable for transfer will be held to be classified July 12, 1982. Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and Section 7 of the Act of June 28, 1934.

3. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the District Manager, Phoenix District Office, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, (602) 241–2854.

4. For a period of 60 days from the date of publication of this Notice in the **Federal Register**, all persons who wish to submit comments on the above classification may present their views in writing for consideration to the Phoenix District Manager, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. Any adverse comments will be evaluated by the Authorized Officer who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the Authorized Officer, this classification action will become the final determination to proceed with, modify, or cancel the action. In the absence of any action by the Authorized Officer, this classification action will become the final determination of the Department of Interior. As provided by Title 43 Code Federal Regulations Subpart 2450.4C a public hearing will be scheduled by the State Director if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

5. The lands included in this classification are located in Gila, Maricopa, and Pinal Counties, Arizona and are described as follows: (footnotes correspond to numbered authorized users or applicants listed in Paragraph 6).

Application A 17000–H (Partial)

Gila and Salt River Meridian, Arizona

T. 1 N., R. 6 E.
Sec. 14: NE¼; G21,2,3.
Total: Approximately 160.00 ± acres.
T. 1 N., R. 15½ E.
Sec. 23: NE¼NW¼; [13]
Sec. 24: SW¼NW¼; [4,3]
Sec. 25: NE¼NE¼, S½NW¼; [12,18,19,20]
Sec. 26: NW¼NE¼, S½NE¼; SE¼; [4,5,12,18,21,22]
Sec. 27: SE¼NE¼, NE¼SE¼; [4,13]
Sec. 35: E½, E½W½SE¼SW¼, E½SE¼SW¼; [4,5,6,21,24]
Total: Approximately 910.00 ± acres.
T. 1 N., R. 16 E.

Sec. 7: Lots 1, 2, NE¼, E½W½; [14]
Sec. 8: Lot 1; [14]
Sec. 18: Lot 1; [14]
Sec. 30: Lots 1–4 incl., NW¼, W½SW¼; [13,14,20,24,25]
Sec. 31: Lots 1–4 incl., W½W½; [13,20,24].
Total: Approximately 1073.46 ± acres.
T. 5 N., R. 1 E.
Sec. 28: E½; [7,8,9,16]
Sec. 33: N½NE¼; [7,8,9,16,27]
Sec. 34: S½NE¼, W½NW¼, SE¼NW¼, S½; [9,16,26,27].
Total: Approximately 920.00 ± acres.
T. 5 N., R. 3 E.
Sec. 1: SE¼NE¼, SE¼NW¼.
Total: Approximately 80.00 ± acres.
T. 5 N., R. 4 E.
Sec. 6: Lots 6, 7, SW¼NE¼, E½SW¼.
Sec. 7: Lot 1.[10]
Total: Approximately 199.89 ± acres.
T. 6 N., R. 3 E.
Sec. 35: Lots 5–13 incl., 30–36 incl., W½NE¼NW¼NE¼, NW¼NW¼NE¼, W½NE¼NE¼NW¼, E½NW¼NE¼NW¼, E½SE¼NE¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, E½SE¼SE¼NW¼; [13,17].
Total: Approximately 128.88 ± acres.
T. 6 N., R. 4 E.
Sec. 7: Lot 2, SE¼NW¼.
Total: Approximately 82.45 ± acres.
T. 11 N., R. 2 E.
Sec. 23: Lots 11, 12, 13, 20, 32; [13,15].
Total: Approximately 22.12 ± acres.
The total acreage described above for Application A 17000–H (partial) is approximately 3,576.80 acres.

6. The following listed corporations and individuals are holders of or applicants for leases, permits and/or rights-of-way on the public lands described in Paragraph 5 above:

Rights-of-Way

[1] Salt River Project, P.O. Box 1980, Phoenix, AZ 85001—A 13735; A 13888.
[2] Arizona Water Company, P.O. Box 5396, Phoenix, AZ 85010—A 14706.
[3] Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85232—A 17301 (R.S. 2477).
[4] Arizona Department of Transportation, 205 S. 17th Avenue, Phoenix, AZ 85007—PHX 084055; AR 07125; AR 07126; AR 015811; A 5436; A 9380.
[5] Thomas M. Thompson, Box 307, Globe, AZ 85501—A 9381.
[6] City of Globe, 150 W. Cedar, Globe, AZ 85501—AR 032105.
[7] Arizona Public Service, R/W Department, P.O. Box 21666, Phoenix, AZ 85036—AR 024000.
[8] El Paso Gas Company, P.O. Box 1492, El Paso, TX 79978—AR 010913.
[9] Maricopa County Municipal Water Conservation District No. 1, P.O. Box 730, Peoria, AZ 85345—PHX 066584.
[10] Maricopa County Board of Supervisors, 111 South 3rd Avenue, Phoenix, AZ 85003—A 16383.
[11] Mountain States Telephone, R/W Dept., 3033 N. 3rd Street, Room 806–A, Phoenix, AZ 85012—A 11516.
[12] Earnest Bensch, Jr., John Bensch, Paul R. and J. S. Riggs, c/o Lavour & Quail Law Offices, 843 Miller Valley Road, Prescott, AZ 86302—PHX 079030.

Grazing Lessees

[13] Donald H. Harrington, P.O. Drawer AB, Miami, AZ 85539.
[14] Geneva Mounce, P.O. Box 335, Globe, AZ 85501.
[15] Henry Cordes, Star Route, Mayer, AZ 85333.
[16] Sheep Springs Sheep Co., c/o Robert Carlock, 11 W. Jefferson, Room 203, Phoenix, AZ 85003.
[17] Willis E. Harper, 9137 Gregg Drive, Chandler, AZ 85224.

Range Improvements

[18] No. 4198; Fence; Donald Harrington.
[19] No. 4203; Pipeline; Donald Harrington.
[20] No. 4305; Fence; Donald Harrington.
[21] No. 4196; Fence; Donald Harrington.
[22] No. 4202; Pipeline; Donald Harrington.
[23] No. 4974; Reservoir; Donald Harrington.
[24] No. 4200; Pipeline; Donald Harrington.
[25] No. 1658; Tank; Donald Harrington.
[26] No. 0343; Fence; Sheep Springs Sheep Company.

Oil and Gas Leases

[27] American Quazar Petroleum, 1700 Broadway, Suite 707, Denver, CO 80290—A 12801; A 12803.

7. Rights-of-way granted by BLM will transfer with the land. Oil and gas leases will remain in effect under the terms and conditions of the lease. State Law and Land Department procedures (R 12–5–154 D Administrative Rules and Regulations, Arizona State Land Department) provide for the offering to holders of BLM grazing permits the first right to lease lands that are transferred to the State. This constitutes official notice to grazing lessees that their Bureau of Land Management leases will be terminated in part upon transfer of the land to the State of Arizona.

Dated: May 4, 1982.

Harold Ramsbacher,

Acting State Director.

[FR Doc. 82–13031 Filed 5–12–82; 8:45 am]
BILLING CODE 4310–84–M

[PHX–081765 etc.]

Arizona; Order Providing for Opening of Public Lands

1. In an exchange of lands made under the provisions of Section 8 of the Act of June 28, 1934 (48 Stat. 1272, as amended, 43 U.S.C. 315g), the following lands have been reconveyed to the United States under the serial numbers listed below:

PHX–081765: *T. 5 N., R. 3E.*, GSR Mer., Arizona Section 1, SE¼NE¼ and SE¼NW¼.

AR–07974: *T. 1 N., R. 15½ E.*, Section 35, W½NE¼.

The areas described aggregate 160 acres in Gila and Maricopa Counties.

2. All of the lands described in Paragraph 1 have been classified for State Selection purposes. Subject to valid existing rights and the provisions of applicable law, effective upon this publication, the lands described in Paragraph 1 are open to application for State Selection under Sections 2275 and 2276, Revised Statutes, as amended 43 U.S.C. 851 and 852. The mineral estate shall remain closed to location and entry under the mining laws (Ch. 2, Title 30 U.S.C.), but shall be open to mineral leasing.

3. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–3706).

Mildred C. Koxlow,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–13030 Filed 5–12–82; 8:45 am]
BILLING CODE 4310–84–M

[A–6451; AR–09229]

Arizona; Proposed Continuation of Withdrawals and Opportunity for Public Hearing; Correction

May 3 1982.

In FR Doc. 80–35406 appearing at page 75330 in the issue of November 14, 1980, make the following change:

Under Serial No. A–6451, 2nd column, insert the following legal description after the 12th line under T. 41 N., R. 14 W., "sec. 26, N½NE¼, NW¼."

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operation.

[FR Doc. 82–13033 Filed 5–12–82; 8:45 am]
BILLING CODE 4310–84–M

California; Wilderness Recommendations for Management Framework Plan Amendments in the Caliente, Folsom, and Hollister Resource Areas, Bakersfield District; Public Hearing

May 21, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with the Wilderness Act of 1964 (78 Stat. 891), notice is hereby given of a public hearing to gather information and

advice from the public on the wilderness suitability and nonsuitability recommendations for the Central California Wilderness Study Areas (WSAs).

SUMMARY: A Draft Environmental Impact Statement (DEIS) has been prepared on the wilderness suitability and nonsuitability recommendations for ten WSAs in the Caliente, Hollister, and Folsom Resource Areas, Bakersfield District. The ten WSAs include Merced River (CA-040-203), Panoche Hills North (CA-040-301A), Panoche Hills South (CA-040-301B), Pinnacles Wilderness Contiguous (CA-040-303), Ventana Wilderness Contiguous (CA-040-308), Caliente Mountain (CA-010-042), Sheep Ridge (CA-010-022), Milk Ranch/Case Mountain (CA-010-023), Owens Peak (CA-010-026), and Piute-Cypress (CA-010-046) WSAs, totalling 95,049 acres.

DATE: The hearing will be held on Tuesday, June 22, 1982, from 3:00 to 5:00 and from 7:00 to 9:00 p.m. in the State Building, State Auditorium, 2550 Mariposa Mall, Rm. 1036, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Garold W. Lamb, Acting District Manager, Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301.

SUPPLEMENTARY INFORMATION: Notice of this planning activity was given in **Federal Register** on February 19, 1982 (47 FR 7505). The DEIS has been published under the title, *Central California Study Area Draft Environmental Impact Statement*, and is available for review at the following locations:

Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301, (805) 861-4191
Caliente Resource Area, 1430 Truxtun Avenue, Room 456, Bakersfield, California 93301, (805) 861-4236
Folsom Resource Area, 63 Natoma, Folsom, California 95630, (916) 985-4474
Hollister Resource Area, 402 Hill Street, Hollister, California 95023, (408) 637-8183

Comments on the DEIS and wilderness suitability and nonsuitably recommendations must be received by July 22, 1982, in order to receive consideration in the Final EIS.

Chuck Hopson,

Acting District Manager.

[FR Doc. 82-13094 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

[C-2899, C-2901, C-2902, C-2904, C-2905, C-2906, C-10844, C-10845]

Colorado: Termination of Listed Classifications of Public Lands for Public Sale Under the Act of September 19, 1964, as Amended, and Exchange Under Sec. 8(b) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as Amended

1. Pursuant to the authority delegated by Bureau Order No. 701 dated July 23, 1964 (29 FR 10528), as amended, the Bureau of Land Management Classification of Public Lands for Disposal described in the **Federal Register** notices summarized as follows are hereby terminated.

C-2899, 34 FR 11428 (July 10, 1969), containing 77.80 acres in Sedgwick County
C-2901, 34 FR 11428 (July 10, 1969), containing 676 acres in Logan County
C-2902, 34 FR 11428 (July 10, 1969), containing 520 acres in Morgan County
C-2904, 33 FR 14980 (October 5, 1968), containing 2,417.27 acres in Larimer County
C-2905, 34 FR 11428 (July 10, 1969), containing 377.31 acres in Yuma County
C-2906, 34 FR 11428 (July 10, 1969), containing 243.45 acres in Washington County
C-10844, 35 FR 13316-13317 (August 20, 1970), 35 FR 14332 (September 12, 1970), containing 4,728.16 acres under the Public Sale Act and containing 10,580.03 acres under the Taylor Grazing Act in Routt County
C-10845, 35 FR (August 20, 1970), containing 280 acres in Mesa County.

2. All listed classification orders are hereby revoked as far as they pertain to public sale lands and exchange lands only.

3. At 10 a.m. on June 15, 1982, the listed public lands shall be open to operation of the public land laws subject to valid existing rights, provisions of existing withdrawals, and the requirements of applicable law. The lands have been and continue to be open to the United States mining laws and the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Lands and General Mining Law Section, Branch of Lands and Minerals Operations, Bureau of Land Management, 1037—20th Street, Denver, Colorado 80202.

George C. Francis,

State Director.

[FR Doc. 82-13093 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

[M 49690]

Montana; Conveyance

May 5, 1982.

Notice is hereby given that pursuant to Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716), and the regulations in 43 CFR 2200, the following described land in Blaine County was conveyed to Thomas M. Inman:

Principal Meridian, Montana.

T. 37 N., R. 23 E.,
Sec. 22, All.
T. 37 N., R. 28 E.,
Sec. 9, S½S½;
Sec. 10, W½SW¼ and E½SE¼; and
Sec. 11, W½SW¼.

Aggregating 1,040 acres.

A warranty deed issued to the United States for the following land which becomes public land subject to administration by the Bureau of Land Management, Montana State Office:

Principal Meridian, Montana.

T. 33 N., R. 21 E.,
Sec. 2, Lots 2, 3, and 4.
T. 34 N., R. 21 E.,
Sec. 34, E½ and SW¼; and
Sec. 35, W½.

Aggregating 916.59 acres.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13033 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

Socorro District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 94-579, that a meeting will be held on Thursday, June 3, 1982.

The meeting will begin at 9:00 a.m., in the Hospitality Room of the First State Bank at 103 Manzanares Avenue, NE., Socorro, New Mexico.

The agenda for the meeting will include:

(1) Review of minutes of February 9, 1982 meeting.

(2) Comments and recommendations on proposed Allotment Management plans.

(3) Proposed 1983 range improvement projects.

(4) Update on the West Socorro Environmental Impace Statement.

(5) Advisory Board elections.

(6) Future meetings, topics and schedules.

The meeting is open to the public. Interested persons may make oral statements to the board between 11:00

and 12:00 a.m., or file written statements for the board's consideration.

Edward C. Roberts,

Acting District Manager.

May 4, 1982.

[FR Doc 82-13035 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

[M-053809 (SD)]

South Dakota; Order Providing for Opening of Public Lands

May 4, 1982.

1. The official Notice of Filing of Plat of Survey for the following described land was published in the **Federal Register**, September 24, 1964; however, the land was never opened to the public land laws:

Fifth Principal Meridian

T. 122 N., R. 46 W.,
Sec. 31, Lot 5.
Containing 0.59 acres.

2. Pursuant to the authority contained in Bureau Order 701 of July 23, 1964, as amended, we propose to open this land for the State selection program and it will not be open to other appropriation under the public land laws.

3. Inquiries concerning the land should be addressed to the Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Edgar D. Stark,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc 82-13037 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

[W-74730]

Wyoming; Proposed Withdrawal—Amendment

On May 4, 1982, a petition was approved allowing the Bureau of Land Management to add the following described lands to their proposed withdrawal application W-74730, published in the **Federal Register**, May 14, 1981, Vol. 46, No. 93 on page 26704.

T. 58 N., R. 94 W.,
Sec. 20, lots 3, 4, 5, and 6;
Sec. 28, S½SE¼.
Containing 178.75 acres in Bighorn County, Wyoming.

The lands described in section 20 are an in addition to the proposed Horsethief Cave protective withdrawal, and the lands in section 28 are for the protection of the recreational, scientific and educational values of Natural Trap Cave.

For a period of two years from May 14, 1981, which was the date of the **Federal Register** publication of the proposed withdrawal, the above lands will be segregated from the operation of the general public land laws including the mining laws, but not the mineral leasing laws, subject to valid existing rights, unless the application is denied or cancelled, or the withdrawal is approved prior to that date.

No licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature will be allowed on the lands without the approval of an authorized officer of the Bureau of Land Management during the segregation period of the proposed withdrawal.

All communications in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands and Minerals Operations, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

F. William Eikenberry,

Associate State Director.

May 4, 1982.

[FR Doc. 82-13039 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

ACTION: Notice of availability of environmental documents prepared for OCS mineral exploration proposals on the Gulf of Mexico OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EAs) and findings of no significant impact (FONSIs), prepared by the MMS for the following oil and gas exploration activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which environmental documents were prepared by the Gulf of Mexico OCS Region in the 3-month period preceding this Notice.

Activity/Operator	Location	FONSI Date
Gulf Oil Exploration and Production Company, EA No. 502, Plan Control No. N-0860.	St. Petersburg Area, Block 753 (58 mi. southwest of Egmont Key, Florida).	Feb. 3, 1982.
Mobil Oil Exploration and Producing Southeast Inc., EA No. 503, Plan Control Nos. N-0865 and N-0866.	Pensacola Area, Blocks 971 and 974 (17 mi. from the Florida coast).	Feb. 5, 1982.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Deputy Minerals Manager, Offshore Operations Support, Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, Metairie, Louisiana 70010, 504/837-4720.

SUPPLEMENTARY INFORMATION: The Minerals Management Service prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS.

The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. EAs are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Sec. 102(2)(C). A FONSI is prepared in those instances where the MMS finds that apporoval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13040 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 016, Block 31, West Delta Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service

is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Date: May 6, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13041 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4424, Block 221, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Date: May 6, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13042 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Texaco U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Texaco U.S.A., Unit Operator of the Eugene Island Block 205 Federal Unit Agreement No. 14–08–0001–8654, submitted on May 3, 1982, a proposed annual plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 205 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 5, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13043 Filed 5-12-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10928, 10931, 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further

subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79754 By decision of April 28, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LARRY E. BAARTS, of Northrop, MN, of Permit Nos. MC–148797 (Sub-Nos. 3X and 4), issued to RICHARD L. WHITE, d/b/a RICHARD L. WHITE TRUCKING, of Fairmont, MN, which authorize the transportation of (1) *chemicals and related products,* between points in the U.S., under continuing contract(s) with Rosen Livestock, Inc., of Fairmont, MN, and (3) *food and related products,* between points in the U.S., under continuing contract(s) with Rosen Livestock, Inc., of Fairmont, MN, and (2) *food and related products,* between points in the U.S., under continuing contract(s) with Armour & Co., of Phoenix, AZ, and Fairmont Refrigerated Services Company, of Fairmont, MN. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108.

Notes.—TA has not been filed. Transferee is not a carrier.

MC–FC–79759. By decision of April 29, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to Lara Trucking, Inc., of Dover, DE of Certificate Nos. MC–141124 (Sub Nos. 36, 38, 51, 52, and 58X), issued, respectively, September 1, 1981, August 12, 1980, September 2, 1981, June 19, 1981, and November 2, 1981, (subsequently corrected), to Evangelist Commercial Corporation of Wilmington, DE, authorizing the transportation of (1) containers, container ends, and closures and commodities manufactured of distributed by manufacturers or distributors of containers, moving in mixed loads with containers, and materials, equipment and supplies between points in the United States, (2) zinc and zinc articles (except in bulk) from the facilities of St. Joe Zinc Company at or near Johnstown, PA to points in the United States and materials equipment, and supplies on return; (3) such commodities as are dealt in or used by manufacturers and converters of paper and paper products (except in bulk) between 10 points in 14 States, on the one hand, and, on the other, points in the United States; (4) commodities as are dealt in or used by retail department stores (except in bulk) (A) between points in Hudson County, NJ, and New York, NY, on the one hand, and, on the other, points in the United States, and (B) between 27 points in 20 States, on the one hand, and, on the other, points in the United States; and (5) paper and paper products and materials equipment and supplies used in their manufacture and distribution adhesives, floor mats, and runners, commodities dealt in or used by manufacturers or distributors of foodstuffs, paper and related products between specified points on the one hand, and, on the other, points in various northeastern states or in some instances in the United States. Representative is: James W. Muldoon, 50 West Broad Street, Columbus, Ohio 43215.

MC–FC.79746. By decision of April 28, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to JUNG TRUCH SERVICE, INC. of Mascoutah, IL of Certificate No. MC–38984 issued to LAQUET FREIGHT SERVICE, INC. of Mascoutah, IL authorizing: General commodities (with usual exceptions) over regulatories between St. Louis, MO, and St. Rose, New Badew and St. Libory, IL, serving named intermediate and off-route points.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-12995 Filed 5-12-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

Correction

In FR Doc. 82–9771, appearing at page 15658, in the issue of Monday, April 12, 1982, correct MC 152420 (Sub-1–3TA), on page 15659, first paragraph, line 6, by changing "AZ" to read "AL".

BILLING CODE 1505-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–83

Decided: May 3, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

MC–161611, filed April 21, 1982. Applicant: JUSTA TRUCK TRUCKING, c/o Kent Franzen, Route 2, Box 225, Lexington, NE 68850. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402)–397–9900. Transporting *food and other edible products and by-products* intended for human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditions* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161681, filed April 26, 1982. Applicant: GEO. S. BUSH & CO., INC., 520 NW Irving Street, Portland, OR 97209. Representative: Donald L. Patrick (same address as applicant), (503) 228–6501. As a broker of *general commodities* (except household goods), between points in OR, WA, ID, MT, WY, NV, and CA.

MC 161720, filed April 28, 1982. Applicant: MELVIN H. HILL AND CONRAD TORRES, d.b.a. NATIONWIDE DISTRIBUTION SYSTEMS, 8541 Mission Blvd., Riverside, CA 92509. Representative: Conrad Torres (same address as applicant), (714) 883–4349. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP1–85

Decided: May 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating in part.)

MC 146851, filed April 20, 1982. Applicant: AL–WAYS AIR FREIGHT, INC., 830 Supreme Drive, Bensenville, IL 60206. Representative: Daniel C. Sullivan, 180 N. Michigan, Suite 1700, Chicago, IL 6060, (312) 263–1600. As a *broker* of *general commodities* (except used household goods), between points in the U.S. (except AK and HI).

MC 147461 (Sub-8), filed April 23, 1982. Applicant: FEDERAL ARMORED EXPRESS, INC., 7675 Canton Center Drive, Baltimore, MD 21224. Representative: Eugene T. Liipfert, Suite 1100, 1660 L Street, NW., Washington, DC 20036, (202) 452–7422. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 152281 (Sub-5), filed April 30, 1982. Applicant: M. W. ETTINGER, INC., 2711 Fairview Ave., North, Roseville, MN. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting, for or on behalf of, the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 156680 (Sub-1), filed April 28, 1982. Applicant: HANKINS LUMBER SALES, INC., P.O. Box 1051, Grenada, MS 38901. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355–3543. Transporting for or behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161430 (A), filed April 8, 1982. Applicant: JAMES STEPHEN KEMP, d.b.a. JSK TRUCKING, 301 3rd St., Ballinger, TX 76821. Representative: Elliott J. Kemp, (Same address as applicant), (915) 365–3489. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161751, filed April 30, 1982. Applicant: PHIL SNYDER, d.b.a. RANCH TRANSPORTATION, Highway 169 South, Shakopee, MN 55379. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–103

Decided: May 5, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 140858 (Sub-3), filed April 26, 1982. Applicant: SOS TRANSPORT, INC., Lawrence St. and Pattison Ave., Philadelphia, PA 19148. Representative: Glenn M. Silverman, (Same address as applicant), (215) 336–6200. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 142059 (Sub-187), filed April 22, 1982. Applicant: CARDINAL TRANSPORT, INC., 1230 Northern Illinois Drive, Channahon, IL 60410. Representative: Jack Riley (Same address as applicant.), (815) 729–3808. Transporting *general commodities* (except household goods and commodities in bulk), between Blanche and Blue Pond, AL, Cartago, Coso, Inyokern, Little Lake, Lone Pine, Olancha, Pencilwood, and Swanston, CA, Dundee, Lake Hamilton, and Waverly, FL, Chelsea and Menlo, GA, Corral and Hill City, ID, Addison, Grand Tower, Mooseheart, and Sand Ridge, IL, LaOtto, IN, Orange City, IA, Viola and Wier, KS, Benton and Hardin, KY, Amesbury and Salisbury, MA, Alden, Bellaire, Bendon, Central Lake, Chief Lake, Ellsworth, Interlochen, Kaleva, Norwalk, and Rapid City, MI, Key West, MN, Fairfax and Tarkio, MO, Huntley and Ragan, NE, Pactolus, Stokes, and Whichard, NC, Dunseith, ND, Ehrhardt and Lodge, SC, and Ralston and Terrell, TN, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for completely abandoned rail service.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12906 Filed 5–12–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose and application must follow the rules under 49 CFR 110.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and

that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliace requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted nmay duplicate and applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–82

Decided: May 3, 1982.

By the Commission, Review Board No. 1, Members of Parker, Chandler, and Fortier.

MC 3581 (Sub-35), filed April 29, 1982. Applicant: THE MOTOR CONVOY, INC., Suite 107, 21755 Parklake Drive, N.E., Atlanta, GA 30345. Representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303 (404) 522–2322. Transportating *motor vehicles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Volvo of America Corporation, or Rockleigh, NJ.

MC 41951 (Sub-55), filed April 27, 1982. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, MD 21613. Representative: Daniel B. Johnson, 4304 East-West Highway, Bethesda, MD 20814, (301) 654–2240. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between those points in the U.S. in and east of ND, SD, NE, KS, OK, AND TX.

MC 68100 (Sub-50), filed April 29, 1982. Applicant: D. P. BONHAM TRANSFER, INC., P.O. Drawer G, Bartlesville, OK. Representative: Larry E. Gregg, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, (913)–234–0565. Transporting *Mecer commodities*, between points in AL, CO, LA, MS, NM, OK, and TX, on the one hand, and, on the other, points in AL, LA, and MS.

MC 108460, filed April 27, 1982. Applicant: PETROLEUM CARRIERS COMPANY, P.O. Box 762, Sioux Falls, SD 57101. Representative: Gary Mundhenke (same address as applicant), (605) 336–1980. Transporting *commodities in bulk*, between points in ND, SD, NE, IA, MN, MO, KS, WI, WY, CO, MT, IL, IN, OK, AR, OH, TX, LA, and NM.

MC 135861 (Sub-103) (Republication), filed March 18, 1982, previously noticed in the **Federal Register** issue of April 8, 1982. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Tarkett, Inc., of Parsippany, NJ, Anatec Image, Inc., and Ozalid Corporation, both of Binghampton, NY.

Note.—The purpose of this republication is to indicate the correct contracting shipper as Ozalid Corporation in lieu of Azalid Corporation.

MC 149581 (Sub-3), filed April 29, 1982. Applicant: LUJO TRUCKING CO., INC., 121 Braley Rd., East Freetown, MA 02717. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617)–742–3530. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, MA, and RI, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *textile mill products*, between points in NY and NC, on the one hand, and, on the other, points in AL, GA, MS, SC, and TN.

MC 151641 (Sub-5), filed April 12, 1982. Applicant: WILLIAM E. JOHNSON d.b.a. WILLIAM E. JOHNSON TRUCKING CO., 11211 Sherman Avenue, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, and department and variety stores, between points in TX, OK, AR, KS, NM, CO, CA, AZ, and UT.

MC 154501, filed April 29, 1982. Applicant: DREWS BROS. SHAVING & SAWDUST CO., 2014 W. Hubbard St., Chicago, IL 60612. Representative: Donald S. Mullins, 1033 Graceland Ave. Des Plaines, IL 60016, (312)–298–1094 Transporting *lumber and wood products*, between points in Marinette County, WI, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MO, and OH.

MC 156510 (Sub-1), filed April 29, 1982. Applicant: J LINE, INC., Gibson Hill Rd., P.O. Box 21, Greene, RI 02827. Representative: Charles E. Werchadlo, (same address as applicant), (401)–397–5037. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, MA, and RI.

MC 156900 (Sub-1), filed April 26, 1982. Applicant: ARCADIA TRANSPORTATION COMPANY, 350 Madison Street, Arcadia, WI 54612. Representative: Edward H. Instenes, 128½ Plaza East, Winona, MN 55987. Transporting *pulp, paper and related products, and waste or scrape materials* not identified by industry producing, between points in McCurtain County, OK, on the one hand, and, on the other, points in Linn County, IA.

MC 158381 (Sub-4), filed April 29, 1982. Applicant: YELLOW LAKE, INC., PO Box 1384, Auburndale, FL 33823. Representative: Elbert Brown, Jr., P.O. Box 1378, Altamonte Springs, FL 32701–1378, (305) 869–5936. Transporting *such commodities* as are dealt in or used in the manufacture, distribution and installation of air filtration products, between points in the U.S. (except AK and HI), under continuing contract(s) with Precisionaire, Inc., of St. Petersburg, FL.

MC 161550, filed April 16, 1982. Applicant: CAPREN PROPERTIES, INC., d.b.a. RICHARD TOURS, 809 Coronado, Lee's Summit, MO 64063. Representative: Richard E. Nieweg, (Same address as applicant), (816) 524–3962. As a broker at Lee's Summit, MO, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, between Kansas City, MO, and points in Jackson County, MO, and Johnson County, KS.

on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 161691, filed April 27, 1982. Applicant: HANNAH TOURS, INC. 852 Meade, PO Box 131, West Point, MS 39773. Representative: Charlie M. Hannah, (Same address as applicant), (601) 494–5038. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, between points in MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161731, filed April 29, 1982. Applicant: ANTHONY M. BRIDA, R.D. #1, Box 415, Glassboro, NJ 08028. Representative: Anthony M. Brida, (same address as applicant), (609)–881–1700. Transporting *forklifts*, between points in the U.S., under continuing contract(s) with T.C.M. America, Inc., of Bridgeport, NJ.

Volume No. OP1–84

Decided: May 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating in part.)

MC 16050 (Sub-6), filed April 21, 1982. Applicant: A & P SUPER MOVERS & STORAGE, INC., 25–56 31 St., Astoria, NY 11102. Representative: Thomas D. McCort, (same address as applicant), (212) 726–6222. Transporting *household goods and furniture and fixtures*, between points in the U.S.

MC 123980 (Sub-9), filed April 30, 1982. Applicant: MANDUS R. OLSON, 2148 Bunker Lake Boulevard N.W., Anoka, MN 55303. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102, (612) 227–7731. Transporting *metal products, leather and leather products, rubber and plastic products, and pulp, paper and related products*, between points in the U.S. (except AK and HI).

MC 136071 (Sub-3), filed May 3, 1982. Applicant: KISSNER TRANSPORT, LTD., 529 12th Ave. East, Regina, Saskatchewan, CN S4P 3A1. Representative: William L. Libby, 5200 Willson Rd., Suite 307, Edina, MN 55424, (612)–927–8855. Transporting *fertilizers*, between ports of entry on the international boundry line between the U.S. and Canada in MT, ND and MN, on the one hand, and, on the other, points in MT, MN, ND, SD, IA, NE and WI.

MC 139741 (Sub-3), filed April 29, 1982. Applicant: D & D DISPOSAL SERVICES LIMITED, Spring Creek Road & Thompson Ave., Smithville, Ontario, Canada LOR 2A0. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202, (716) 853–0200. Transporting *hazardous materials*, between points in the U.S., under continuing contract(s) with Chemical Waste Management Limited, of Smithville, Ontario, Canada.

MC 144630 (Sub-67), filed April 30, 1982. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317)–846–6855. Transporting *automobile parts and equipment*, between points in the U.S., under continuing contract(s) with General Motors Corporation, of Troy, MI.

MC 145481 (Sub-37), filed April 30, 1982. Applicant: HOOSIER TRANSPORTATION SYSTEM, INC., 501 Sam Ralston Road, Lebanon, IN 46052. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202, (303) 892–6700. Transporting *pulp, paper and related products, plastic products, and metal products*, between the facilities used by Continental Forest Industries, Inc., at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148560 (Sub-9), filed April 29, 1982. Applicant: GOLD STAR, INC., 130 Davidson Ave., Somerset, NJ 08873. Representative: A. David Millner, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bettinger West, Inc., of Denver, CO.

MC 151060 (Sub-3), filed April 30, 1982. Applicant: DIEHL LUMBER TRANSPORTATION CO., 1885 S. 900 W., Salt Lake City, UT 84104. Representative: Irene Warr, 311 S. State St. Ste. 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *mobile homes*, between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Homes, Inc., of North Salt Lake, UT.

MC 152730 (Sub-17), filed April 30, 1982. Applicant: DEPENDABLE TRANSIT, INC., P.O. Box 21, Hartford City, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6855. Transporting *plastic articles*, between the facilities of Amoco Container Company, at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159610 (Sub-1), filed April 30, 1982. Applicant: C. W. BOONE d.b.a. T. WOLF CO., Route 3, Dallas, GA 30132. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Fortune Manufacturing Corp., of Paramount, CA.

MC 160741, filed April 30, 1982. Applicant: ASA FREIGHT SYSTEMS, INC., 45 West 6th St., Oshkosh, WI 54901. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosives and household goods), between Chicago, IL, Milwaukee, WI, and points in Brown, Calumet, Dodge, Fond du Lac, Green Lake, Marinette, Oconto, Outagamie, Washington, Waupaca, Waushara, and Winnebago Counties, WI.

MC 160790, filed April 30, 1982. Applicant: C & M EXPRESS, INC., 766 W. Broadway, Gardner, MA. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019, (617) 966–2093. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Mead Corp., Inc., Mead Containers Div., of Gardner, MA.

MC 160820, filed May 3, 1982. Applicant: C. D. HAUGEN, Route #7, Box 358, Bemidji, MN 56601. Representative: Kip B. H. Erickson, 15 Broadway, Suite 502, Fargo, ND 58102, (701)–235–4487. Transporting *lumber and wood products*, between points in MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161170 (Sub-2), filed April 30, 1982. Applicant: TRAFCON SERVICES, INC., 2310 Orange Ave., N.E., Roanoke, VA 24012. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Grossman's Division of Evans Products, of Braintree, MA.

MC 161490 (B), filed April 8, 1982. Applicant: JAMES STEPHEN KEMP, d.b.a. JSK TRUCKING, 301 3rd St., Ballinger, TX 76821. Representative: Elliott J. Kemp, (same address as applicant) (915) 365–3469. Transporting (1) *textile mill products*, under continuing contract(s) with Kent Manufacturing Co.; (2) *building materials and metal products*, under continuing contract(s) with Mueller Supply Co.; and (3) *wool and mohair*,

under continuing contract(s) with Ballinger Wool and Mohair, all of Ballinger, TX, between points in the U.S. (except AK and HI).

MC 161591, filed April 28, 1982. Applicant: WILLIAM B. AKERS, d.b.a. B.A. HAULING, 653 Ramada Road, Vinton, VA 24179. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, (703) 629–2818. Transporting *chemicals and related products and machinery*, between Roanoke, VA, and points in Roanoke County, VA, on the one hand, and, on the other, points in AL, IL, IN, KY, OH, PA, TN, VA, and WV.

MC 161660, filed April 26, 1982. Applicant: DiRENZO & SONS COMPANY, 56 Rochester St., Westbrook, ME 04092. Representative: Medio DiRenzo, (same address as applicant), (207) 854–5562. Transporting (1) *machinery*, and (2) *machinery and aerial work platforms*, between points in Cumberland County, ME, on the one hand, and, on the other, points in CT, RI, MA, NH, and VT, under continuing contract(s) in (1) above with Aerial Lifts of N.E., Inc., of Portland, ME, and Metco, of South Portland, ME, and in (2) above with C. R. Wood Corp., of Westbrook, ME.

MC 161750, filed April 30, 1982. Applicant: DUPONT TRUCKING, INC., 624 South Roberts St., Quincy, FL 32351. Representative: Nátaniel Dupont, (same address as applicant), (904)–627–7283. Transporting *clay*, between points in Grady and Thomas Counties, GA, on the one hand, and, on the other, points in Gadsden County, FL, under continuing contract(s) with Floridin Company, of Quincy, FL.

MC 161770, filed April 30, 1982. Applicant: THE TRAVEL MARKET, INC., 6660 Doubletree Ave., Columbus, OH 43229. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. As a broker at Columbus, OH, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, between points in the U.S.

Volume No. OP5–102

Decided: May 5, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 43269 (Sub-76), filed April 23, 1982. Applicant: WELLS CARGO, INC., P.O. Box 1511, Reno, NV 89505. Representative: Royal F. Miller, (Same address as applicant.), (702) 329–0061. Transporting *chemicals and related products* between points in Elko County, NV, on the one hand, and, on the other, points in Valley, Lemhi, and Custer Counties, ID, and Deer Lodge, Madison, and Mineral Counties, MT.

MC 48958 (Sub-229), filed April 28, 1982. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Ave., Denver, CO 80216. Representative: Morris G. Cobb, P.O. Box 9050, Amarillo, TX 79189, (806) 374–1641. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with GTE, of San Carlos, CA.

MC 79658 (Sub-18), filed April 23, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills, (Same address as applicant), (812) 424–2222. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Cubic Corporation, of San Diego, CA.

MC 112989 (Sub-159), filed April 27, 1982. Applicant: WEST COAST TRUCK LINES, INC., 8547 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans, (Same address as applicant.). (503) 747–1283. Transporting *food and related products* between San Francisco, CA, and points in Maricopa County, AZ, and Weber County, UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 121608 (Sub-6), filed April 28, 1982. Applicant: ACME DELIVERY SERVICE, INC., 4250 Oneida St., Denver, CO 80216. Representative: Joseph F. Nigro, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264, (303) 861–4028. Transporting *duplicating equipment*, between points in the U.S., under continuing contract(s) with Xerox Corporation of Stamford, CT.

MC 138388 (Sub-14), filed April 28, 1982. Applicant: CHESTER CAINE, JR., d.b.a. CAINE TRANSFER, Box 376, Lowell, WI 53557. Representative: James A. Spiegel, Olde Town Office Bldg., 6333 Odana Rd., Madison, WI 53719 608–273–1003. Transporting *meat and packinghouse products*, between points in Jefferson County, WI, on the one hand, and, on the other, points in IL, IN, IA, ME, MI, MN, MO, NE, NH, NY, ND, OH, PA, SD, and VT.

MC 145359 (Sub-43), filed April 19, 1982. Applicant: THERMO TRANSPORT, INC., P.O. Box 41587, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317–864–6655. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (expect AK and HI), under continuing contract(s) with United Technologies, Inc., Essex Group of Fort Wayne, IN.

MC 145679 (Sub-24), filed April 28, 1982. Applicant: A & A TRANSPORT, INC., P. O. Box 569, Palmer, MA 01069. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397–7033. Transporting *food and related products*, between points in San Bernardino and San Mateo Counties, CA, Lenoir County, NC, Morris County, NJ, and Kent County, RI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146298 (Sub-5), filed April 27, 1982. Applicant: KESS TRANSPORTATION, INC., Box 5091, Cincinnati, OH 45205. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave. N.W., Washington, DC 20005, 202–347–9332. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Hamilton, Butler, Warren, and Clermont Counties, OH, Dearborn County, IN, and Boone, Campbell and Kenton Counties, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *air conditioning and heating equipment*, between points in Effingham County, IL, Middlesex County, NJ, and Frederick County, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150878 (Sub-3), filed April 27, 1982. Applicant: DON FRAME TRUCKING, INC., 5485 Route 5, Fredonia, NY 14063. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., NW, Suite 500, Washington, DC 20006, 202–828–5015. Transporting *dry commodities in bulk*, between points in Niagara, Erie, Chautauqua, and Chattaraugus Counties, NY, and Warren, Crawford, McKean, Erie and Elk Counties, PA.

MC 155078 (Sub-1), filed April 28, 1982. Applicant: WILLIAM E. JONES, d.b.a. RAWHIDE EXPRESS, INC., P.O. Box 9112, Albuquerque, NM 87119. Representative: Joseph Rocca, 3110 Monte Vista NE, Albuquerque, NM 87106, (505) 266–5533. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Albuquerque, NM, on the one hand, and, on the other, those points in NM on and north of Interstate Hwy 40.

MC 155409 (Sub-2), filed April 28, 1982. Applicant: MICHALETZ TRUCKING, INC., 3302 Park Dr.,

Owatonna, MN 55060. Representative: Stanley C. Olsen, Jr., 5200 Wilson Rd., Ste. 307, Edina, MN 55424, (612) 927–6855. Transporting *malt beverages,* between points in Shelby County, TN, on the one hand, and, on the other, points in IL and WI.

MC 156088 (Sub-3), filed April 26, 1982. Applicant: R & S TRUCK LEASING, INC., 1651 Walker Rd., Muskegon, MI 49442. Representative: D. Richard Black, Jr., 285 James St., P.O. Box 638C, Holland, MI 49423, (616) 399–3400. Transporting *rubber bands* between Alliance, OH on the one hand, and, on the other, points in AZ, NV, CA, NY, IL, NJ, FL, KS, TX, PA, VA, MA, WV, MI, and NH.

MC 158288 (Sub-1), filed April 26, 1982. Applicant: MONTANA CONSULTANTS, INC., d.b.a. TOMAHAWK TRANSPORTATION, INC., 5400 Laurel Rd., Billings, MT 59101. Representative: David A. Sutherland, 1150 Connecticut Ave., N.W., Suite 400, Washington, DC 20036, (202) 452–6800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Pennzoil Products Company a division of Pennzoil Company of Houston, TX.

MC 158288 (Sub-2), filed April 26, 1982. Applicant: MONTANA CONSULTANTS, INC., d.b.a. TOMAHAWK TRANSPORTATION, INC., 5400 Laurel Rd., Billings, MT 59101. Representative: David A. Sutherland, 1150 Connecticut Ave., NW, Ste. 400, Washington, DC 20036, (202) 452–6800. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with The Dow Chemical Company and its wholly owned subsidiary, Dowell, Inc. Western Area, Pittsburg, CA.

MC 159308 (Sub-1), filed April 27, 1982. Applicant: G. RADEN & SONS, INC., 18289 Olympic Avenue S., Seattle, WA 98188. Representative: Henry C. Winters, 12600 S.E. 38th St., Ste. 200, Bellevue, WA 98006, (206) 644–2100. Transporting *glass containers and accessories therefor,* between points in King County, WA, on the one hand, and, on the other, points in CA.

MC 159519, filed April 27, 1982. Applicant: R.W. JOYCE TRUCKING COMPANY, INC., P.O. Box 1201, 237 Starlite Rd., Mt. Airy, NC 27030. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., NW, Washington, DC 20005, 202–347–9332. Transporting *chemicals and related products* (except in bulk), between points in Surry County, NC on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161268, filed April 26, 1982. Applicant: LLOYD DAIBER, d.b.a. LLOYD DAIBER TRUCKING, 2226 Caldwell Rd., Bucyrus, OH 44820. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215 (614) 464–4103. Transporting *such commodities* as are dealt in or used by manufacturers, processors, or distributors of crushed glass, recycled aluminum, and recycled paper, between points in Marion County, OH, on the one hand, and, on the other, points in IL, IN, and WV.

MC 161368, filed April 27, 1982. Applicant: CAPCO TRANSPORT, INC., 1100 W. Industrial Rd., Cedar City, UT 84720. Representative: Dalid R. Altshuler, 2029 Century Park East, Suite 1700, Los Angeles, CA 90067 (213) 552–2010. Transporting *petroleum products* (1) between points in Iron County, UT on the one hand, and, on the other, points in AZ, CA, NV, and NM, and (2) between points in Coconino County, AZ, on the one hand, and, on the other, points in Iron County, UT, under continuing contract(s) with CAPCO Petroleum, Inc., of Cedar City, UT.

MC 161649, filed April 23, 1982. Applicant: SISBRO, INC., P.O. Box 3765, Quincy, IL 62301. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701 (217) 544–5468. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, IA, MO, and WI, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, KY, MI, MN, MO, OH, TN, and WI.

MC 161658, filed April 26, 1982. Applicant: KARRIERS, INC., Route 1, Box 143, P.O. Box 5157, Grand Forks, ND 58201. Representative: Thomas J. Van Osdel, 15 Broadway, Suite 502, Fargo, ND 58102 (701) 235–4487. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Becker, Beltrami, Big Stone, Cass, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Ottertail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena and Wilkin Counties, MN, and points in ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161669, filed April 26, 1982. Applicant: DIXIE DRAYAGE SERVICE, INC., 680 Industrial Parkway, Saraland, AL 36571. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203 (205) 251–5223. Transporting (1) *pulp, paper and related products,* and (2) *food and related products,* between points in AL, GA, FL, LA, MS, and TN.

MC 161689, filed April 27, 1982. Applicant: JERRY BIBBS TRUCKING, 1432 Belmont, Toledo, Ohio 43602. Representative: Jerry Bibbs (same address as applicant), (1–419) 243–7715. Transporting (1) *scrap metal,* and (2) *metal products,* between points in OH, IN, and MI, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Magnimet Corp., of Toledo, OH., and North Star Steel, of Monroe, MI.

MC 161698, filed April 27, 1982. Applicant: WILSON AND HAMILTON, INC., 12 Main St., Zanesville, OH 43701. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215, 614–224–3161. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OH.

MC 161708, filed April 28, 1982. Applicant: JUTTA UNIVERSAL SYSTEMS, INC., Crystal Brook Professional Bldg., State Highway 35, Eatontown, NJ 07724. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–6551. Transporting (1) *charcoal, chemicals, logs, and rock salt,* under continuing contract(s) with New Jersey Charcoal Co., of Fairfield, NJ, and (2) *food and related products,* under continuing contract(s) with Drake Bakeries, Div. Borden, Inc., of East Brunswick, NJ., S. B. Thomas, Inc., of Totowa, NJ, and Metroplex Distributors of Edison, NJ, between points in the U.S. (except AK and HI).

MC 161718, filed April 27, 1982. Applicant: LAMBERT TOURS, INC., P.O. Box 79647, Houston, TX 77279. Representative: Betty R. Lambert (same address as applicant), (713) 461–2055. To operate as a *broker* at Houston, TX, arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at Houston, TX, and extending to points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–12807 Filed 5–12–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–9315, published at page 14970, on Wednesday, April 7, 1982, on page 14974, in the first column, in the

first paragraph "MC 154772 (Sub-1)", in the twenty-ninth line "WI, ND" should be corrected to read "WI, IA, ND".

BILLING CODE 1505-01-M

[Finance Docket No. 29923, etc.]

Acquisition of a Rail Line of Chicago, Rock Island and Pacific Co., et al; Notice of Applications to Purchase Rail Line

AGENCY: Interstate Commerce Commission.

ACTION: Proceedings shceduled.

SUMMARY: The Commission is considerting applications involving the purchase of 630 miles of line owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee). The line runs from Salina, KS to Dallas, TX. Related petitions for exemption under 49 U.S.C. 10505 have also been filed and will be considered along with the purchase applications.

DATE: Comments and verified statements supporting or opposing the proposed transactions must be received at the Commission by May 19, 1982.

ADDRESSES: An original and 7 copies of all statememts should make reference to Finance Docket No. 29923 and should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245; or J. Carol Brooks (202) 275–7888

SUPPLEMENTARY INFORMATION:

In the matter of Finance Docket No. 29923, acquisition of a rail line of the Chicago, Rock Island & Pacific Railroad Co., debtor (William M. Gibbons, trustee)—between Fort Worth, TX and Dallas, TX; Finance Docket No. 29923 (Sub-1), Oklahoma Kansas & Texas Railroad Co.—operate (Portion)—Chicago, Rock Island & Pacific Railroad Co., debtor (William M. Gibbons, trustee) between Salina, KS and Dallas, TX—Exemption from 49 U.S.C. 10901; Finance Docket No. 29923 (Sub-2), acquisition of a rail line of the Chicago, Rock Island & Pacific Railroad Co., debtor (William M. Gibbons, trustee)—between Salina, KS and Fort Worth, TX; Finance Docket No. 29923 (Sub-3), Missouri-Kansas-Texas Railroad Co.—Control—Oklahoma, Kansas & Texas Railroad Co.—Exemption from 49 U.S.C. 11343; Finance Docket No. 29923 (Sub-4), application of Missouri-Kansas-Texas Railroad Co., to issue securities—Exemption from 49 U.S.C. 11301.

These proceedings involve the purchase of approximately 630 miles of line owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gobbons, Trustee) (Rock Island), between Salina, KS and Dallas, TX. The Oklahoma, Kansas and Texas Rail Users Association (Users Association) the State of Oklahoma, and the Missouri-Kansas-Texas Railroad Company (MKT) have reached a preliminary agreement with the Rock Island Trustee to purchase the involved lines. In turn, these entities will enter into agreements with the Oklahoma, Kansas and Texas Railroad Company (OKT), whereby OKT will perform all rail freight operations over the entire line.

The State of Oklahoma will acquire all portions of the subject Rock Island line within the State of Oklahoma, for $15 million. These lines include: (1) The Herington-Fort Worth line which extends from the Oklahoma-Kansas State line south through Grant, Garfield, Kingfisher, Canadian, Grady, Stephens and Jefferson Counties, to the Oklahoma-Texas State line, a distance of 223.8 miles; (2) the El Reno/Oklahoma City line which extends from El Reno through Canadian and Oklahoma Counties to Midwest City, a distance of 34.9 miles; and (3) the Lawton Branch line which runs from Chickasha, OK to Anadarko, OK, and then from milepost 460.5 to milepost 537.6 Waurika, OK, a total distance of 95.1 miles. The specific properties to be acquired by MKT and the Users Association are described below.

In Finance Docket No. 29923 (Sub-No. 2), the Users Association (a non-carrier shippers' association) proposes to acquire that portion of the Rock Island line which runs between Salina, KS and the Kansas-Oklahoma State line and from the Oklahoma-Texas State line to Fort Worth, TX, a distance of approximately 242 miles. The Users Association will pay $25 million for the properties. It is seeking to borrow this amount from the Federal Railroad Administration (FRA) under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210 (4R Act). After acquiring the property, it will enter into a lease-purchase or conditional sale agreement with OKT under which OKT will have the responsibility to operate the line and to repay the FRA loan.

In Finance Docket No. 29923, MKT proposes to acquire a perpetual exclusive rail freight easement over about 33.9 miles of Rock Island main line between Fort Worth and Dallas, TX. It will also purchase 1 mile of track extending from Tower 55 in Fort Worth to Dalwor Junction, about 0.6 mile of connecting trackage, and all yard, TOFC, and freight office facilities included in Cadiz Yard and Mockingbird or New Yard in Dallas, as well as Rock Island's interest in certain trackage rights agreements. The principal interchange points would be Fort Worth, Great Southwest Junction, Irving, and Dallas, TX. MKT will pay $15 million for these properties. To finance the transaction, MKT has requested funding from the FRA under section 511 of the 4R Act.

In connection with the FRA funding, MKT proposes to issue a note in an amount not to exceed $15 million payable to the Federal Financing Bank over a 20-year period. In Finance Docket No. 29923 (Sub-No. 4), MKT requests that the note issuance be exempted under 49 U.S.C. 10505 [1] from any requirements of 49 U.S.C. 11301 for prior approval of the transaction.

In Finance Docket No. 29923 (Sub-No. 1), OKT requests an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10901 for our prior approval of OKT's proposed operation of the entire line from Salina to Dallas. OKT is a wholly-owned subsidiary of the MKT. From May, 1980 to the end of 1981, OKT operated the involved lines pursuant to Service Orders No. 1473 and No. 1498. Upon consummation of the proposed purchases, OKT will institute rail freight service over the entire line which will be substantially the same as that provided under temporary authority. Based on OKT's operations under temporary authority, OKT projects gross revenues of $36,676,000 for the first year of operation, increasing to $49,464,000 in the fourth year.

In Finance Docket No. 29923 (Sub-No. 3), MKT seeks an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343–11344 for our prior approval of MKT's control of OKT. MKT, which is 98 percent owned by Katy Industries, Inc., will control OKT through ownership of 100 percent of OKT's outstanding capital stock. MKT presently operates as a rail freight carrier in Missouri, Kansas, Oklahoma, and Texas. Its main lines extend from Kansas City, (Missouri and Kansas) and St. Louis, MO, through Parsons, KS, Fort Worth and Dallas, TX to Houston, San Antonio, Texas City and Galveston, TX. Its lines generally run parallel to the line to be operated by OKT.

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[1] Under 49 U.S.C. 10505, we are authorized to exempt a transaction or service when we find that regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a and either the transaction is of limited scope or regulation is not needed to protect shippers from the abuse of market power.

Preliminary approval of the proposed transactions was obtained on May 3, 1982, from the court overseeing the reorganization of the Rock Island in *In the Matter of Chicago, Rock Island and Pacific Railroad Company, Debtor,* No. 75 B 2697 (U.S. Dist. Court, N.D. Ill.). The court has also directed the Commission to issue a decision on the proposed transaction on or before June 4, 1982. Parties wishing to comment on the proposals may do so no later than May 19, 1982.

A copy of the comments should be served upon the Attorney General of the United States and the United States Secretary of Transportation, and upon applicants' and petitioners' representative: Michael E. Roper, Missouri-Kansas-Texas Railroad Co., General Office, Katy Building, 701 Commerce Street, Dallas, TX, 75202.

Waiver Request

The Users Association and MKT request waiver of certain of our regulations. They request waiver of the requirement of 49 CFR 1111.25(b)(5)(v) for service of a copy of the application on all parties to the Bankruptcy Court proceedings. They assert that compliance with this requirement would be an undue burden and expense, and not possible because of the tight time constraints set by the Court. Instead, they proposed to send to all parties in the bankruptcy proceeding a one-page notice, identifying and summarizing the transactions. The notice will also state that a copy of the application will be furnished to any party upon request.

Second, MKT and the Users Association request waiver of the labor informational requirements of Exhibit 4 found in 49 CFR 1111.21(a)(3)(vii). Since neither entity will be operating the line and the pleadings filed by OKT contain the necessary information on railway labor impact, they contend that no purpose would be served by requiring this information from the non-operator applicants.

It is ordered:

1. The applications in Finance Docket No. 29923 and No. 29923 (Sub-No. 2) are accepted for consideration.

2. This decision is effective on the date served.

Dated: May 11, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13190 Filed 5-12-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 427]

Railcarriers; Joint Rate Study; Report to Congress

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Traffic Executive Association—Eastern Railroads, on behalf of itself and its members, has requested a sixty-day extension of the due date for filing comments in this proceeding.[1] The current comment date in this proceeding is May 17, 1982. The reply date is June 16, 1982. A sixty-day extension would not allow the Commission sufficient time to prepare and submit its report by the statutory due date of October 1, 1982. We will grant a thirty-day extension which we believe will allow all parties sufficient time to prepare and file comments.

DUE DATES: Comments are due June 16, 1982. Replies are due July 16, 1982.

ADDRESSES: An original and 12 copies of each statement, including certificate showing service upon all parties of record should be directed to: Office of Proceedings, Interstate Commerce Commission, Room 5340, 12th & Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Tyree (202) 275-0785.

Decided: By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: May 7, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-12998 Filed 5-12-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Bureau for Private Enterprise; Offer of Financing Participation With U.S. Financial Institutions Doing Business in Selected Developing Counties

The United States Agency for International Development (A.I.D.) Bureau for Private Enterprise (PRE) announces the establishment of a new program conducted pursuant to authorities contained in the Foreign Assistance Act of 1961, as amended in which A.I.D. will participate with private investors in financing selected projects in developing countries where A.I.D. now conducts assistance programs. Priority will be given to projects in: Indonesia, Sri Lanka, Thailand, Pakistan, Egypt, Ivory Coast, Zimbabwe, Kenya, Jamaica and Costa Rica.

U.S. financial institutions, particularly those with subsidiaries, branches, or affiliates in the above countries, are invited to contact A.I.D. to discuss ways in which available A.I.D./PRE funds may be combined with their own and local investor funds to carry out projects with significant development impact. Projects involving agribusiness or agricultural development will receive priority consideration.

A.I.D./PRE will participate in such investments as a minority investor only. Terms are flexible within the context of various forms of debt instruments. A.I.D./PRE is particularly interested in providing (for development project) financing that will help solve intermediate and longer-term capital market deficiences.

By this notice, A.I.D. is seeking proposed submissions from the U.S. financial community. A.I.D./PRE has recently implemented accelerated procedures for evaluation and review and will provide more detail upon request.

Inquiries and proposals should be directed to: Office of Policy and Investment, Bureau for Private Enterprise, Agency for International Development, 320 21st Street, NW., Room 5893, Washington, DC 20523, Telephone Number: (202) 632-8084 or (202) 632-5743.

Dated: May 4, 1982.

Edgar C. Harrell,

Deputy Assistant Administrator, Bureau for Private Enterprise.

[FR Doc. 82-13029 Filed 5-12-82; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 4-82]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, notice is hereby given that the Department of Justice proposes to add a new category of individuals to the United States Attorneys' Criminal Case Files system (JUSTICE/USA-007). The proposed amendment will include in the system the names of those individuals who are placed into a rehabilitative program known as "Pretrial Diversion." The program is a practical alternative to prosecution which seeks to divert certain offenders from traditional

[1] See 47 FR 11787, March 18, 1982.

criminal justice processing into a progam of supervision.

Section 552a(o) of Title 5, United States Code requires that advance notice of this amendment be provided to the Congress and the Office of Management and Budget (OMB). Therefore, a report has been filed with the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives.

OMB, which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal before it is implemented. A waiver of the 60-day requirement has been requested by the Department of Justice. If the waiver is granted, the proposed amendment will be effective as soon as OMB approval is received. If OMB denies the requested waiver, the amendment will be effective July 12, 1982. In either instance, upon OMB approval, the amendment will be implemented without further notice in the **Federal Register**. No oral hearings are contemplated.

Congress, OMB, and the public may address any comments to the Administrative Counsel, Justice Management Division, Department of Justice, Room 6239, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

Dated: May 5, 1982.

William D. VanStavoren,

Acting Assistant Attorney General for Administration.

JUSTICE/USA-007

SYSTEM NAME:

Criminal Case Files.

SYSTEM LOCATION:

Ninety-five United States Attorneys' Offices (See attached Appendix): Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, N.W.; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals charged with violations: (b) Individuals being investigated for violations; (c) Defense Counsel(s); (d) Information Sources; (e) Individuals relevant to development of Criminal Cases; (f) Individuals investigated, but prosecution declined; (g) Individuals referred to in potential or actual cases and matters of concern to a U.S. Attorney's Office; *(h) Individuals placed into the Department's Pretrial Diversion program.*

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) All case files (USA–33); (b) Docket Cards (USA–115); (c) Criminal Debtor Cards (USA–117a); (d) Criminal Case Activity Card (USA–163); (e) Criminal Debtor Activity Card (USA–164); (f) 3' x 5' Index Cards; (g) Caseload Printouts; (h) Attorney Assignment Sheets; (i) General Correspondence re: Criminal Cases; (j) Reading Files re: Criminal Cases; (k) Grand Jury Proceedings; (l) Miscellaneous Investigative Reports; (m) Information Source Files; (n) Parole Recommendations; (o) Immunity Requests; (p) Witness Protection Files; (q) Wiretap Authorizations; (r) Search Warrants; (s) Telephone records; (t) Criminal Complaints; (u) Sealed Indictment Records; (v) Files unique to a District; (w) Criminal Miscellaneous Correspondence File; (x) Prosecution Declined Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In the course of investigating the potential or actual violation of any law, criminal, civil, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a Federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person;

(h) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(i) A record may be disseminated to a Federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(j) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi,

provided that the record does not contain any information identifiable to a specific individual other than such modus operandi;

(l) A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return;

(m) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making provisions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60.

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within minila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case number, complaint number or court docket number. Information within this system of records may be accessed by various U.S. Attorneys' Offices and the Executive Office for United States Attorneys by means of catho-ray tube terminals (CRT's).

SAFEGUARDS:

Information in the system is both confidential and non-confidential and located in file cabinets in the United States Attorney offices. Some materials are located in locked file drawers and safes, and others in unlocked file drawers. Offices are locked during non-working hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards. Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department of Justice retention plans.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the Administrative Officer/Assistant, for the U.S. Attorney for each district (See attached Appendix).

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case or matter is pending (See attached Appendix).

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing., with the envelope and the letter clearly marked 'Privacy Access Request.' Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager (See attached Appendix).

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (See attached Appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include, but are not limited to investigative reports of federal, state and local law enforcement agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of Grand Jury and court proceedings; data, memoranda and reports from the Court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and

(e) and have been published in the **Federal Register.**

[FR Doc. 82-13028 Filed 5-12-82; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 82-26]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the forthcoming meeting of the NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee.

DATE AND TIME: June 3, 1982, 8:30 a.m. to 5:30 p.m. and June 4, 1982, 8:30 a.m. to 4:30 p.m.

ADDRESS: Director's Conference Room (3501), National Air and Space Museum, Washington, DC 20560.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Code EL-4, Washington, DC 20546 (202/755-3728).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc solar System Exploration committee was established under the NASA Advisory Council to translate the scientific strategy developed by the committee on Planetary Exploration (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration.

The committee will report its findings to the council and to NASA. The committee is chaired by Dr. Noel W. Hinners and is composed of four other members of the council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons, including committee members and invited meeting participants). Vistors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA:

June 3, 1982
- 8:30 a.m.—Introduction and Program Status
- 1:30 p.m.—Pioneer Study Status and Mariner Mark II Status
- 5:30 p.m.—Adjourn

June 4, 1982
- 8:30 a.m.—Business Carried Over from Previous Day
- 1:30 p.m.—SSEC Report and Action Items
- 4:30 p.m.—Adjourn

Dated: May 6, 1982.

Nathaniel B. Cohen,

Director, Management Support Office, Office of External Relations.

[FR Doc. 82-13010 Filed 5-12-82; 8:45 am]
BILLING CODE 7510-01-M

[Notice 82-25]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration anounces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Executive Subcommittee.

DATE AND TIME: June 8, 1982, 8:30 a.m. to 5 p.m.; June 9, 1982, 8:30 a.m. to 12 Noon.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Ave., SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Robert Nysmith, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/755-8550).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the space research and technology activities of the Space Systems and Technology Advisory Committee. The Subcommittee, chaired by Mr. Robert L. Johnson, is comprised of seven members.

The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

TYPE OF MEETING: Open.

AGENDA:

June 8, 1982
- 8:30 a.m.—Opening Remarks.
- 8:45 a.m.—Current Status of the NASA Office of Aeronautics and Space Technology Budget and Long Range Planning Activities.
- 10 a.m.—Subcommittee Chairperson's Reports.
- 3:15 p.m.—Discussion and Consolidation of Subcommittee Reports.
- 5 p.m.—Adjourn.

June 9, 1982
- 8:30 a.m.—Continuation—Discussion and Consolidation of Subcommittee Reports.
- 10:45 a.m.—Summary of Meeting Results to the Office of Aeronautics and Space Technology Management.
- 12 Noon—Adjourn.

Dated: May 6, 1982.

Nathaniel B. Cohen,

Director, Management Support Office, Office of External Relations.

[FR Doc. 82-13011 Filed 5-12-82; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Civil and Environmental Engineering Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Civil and Environmental Engineering (CEE) of the Advisory Committee for Engineering
Date and Time: June 3, 1982—9:30 a.m. to 5:00 p.m., June 4, 1982—9:00 a.m. to 12 noon
Place: Room 1242, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550
Type of meeting: 6/3/82—Open 6/4/82—Open
Contact person: Dr. William S. Butcher, Director, Division of Civil and Environmental Engineering, Room 1132, National Science Foundation Washington, D.C. 20550—Telephone (202) 357-9545
Summary minutes: May be obtained from the contact person

Agenda

Thursday, June 3, 1982—Open—9:30 a.m. to 5:00 p.m.

9:30—Opening and general report by Division Director
- (a) Status of FY 1983 budget request
- (b) Comparison of FY 1983 requests within Engineering
- (c) Relative funding of Engineering versus other directorates
- (d) Other

10:00—Impact of changes in other agency research support on NSF's programs in:
- (a) Geotechnical Engineering
- (b) Structural Mechanics
- (c) Water Resources Engineering
- (d) Environmental Engineering

11:00—Discussion of NSF's role in research on:
- (a) Building science
- (b) Transportation engineering
- (c) Construction engineering
- (d) Problem of hazardous waste disposal

(e) The Urban infrastructure problem
(f) Other
12:00—Lunch
1:30—Major Experimental Facilities
—Unmet needs in civil engineering
—Study of needs in earthquake engineering
—U.S. role in world community
3:00—A proposal for a comprehensive study of research needs in civil engineering as a whole
5:00—Adjourn

Friday, June 4, 1982—Open—9:00 a.m. to 12:00 noon

9:00—Discussion of budget priorities for FY 1984 and other division-wide concerns
12:00—Adjourn

M. Rebecca Winkler,
Committee Management Coordinator.
May 10, 1982.
[FR Doc. 82-13019 Filed 5-12-82; 8:45 am]
BILLING CODE 7555-01-M

Subpanel For Geography & Regional Science of the Advisory Panel for Social & Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel for Geography & Regional Science of the Advisory Panel for Social and Economic Science.
Date/time: June 3, 1982; 8:30 a.m. to 5.00 p.m.
Place: Room 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed
Contact person: Dr. James H. Blackman, Acting Program Director, Geography & Regional Science, Room 312, National Science Foundation, Washington, D.C. 20550; telephone (202) 357-7326.
Purpose of subpanel: To provide advice and recommendations concerning support for research in Geography and Regional Science.
Agenda: Closed portion: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietory or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.
May 10, 1982.
[FR Doc. 82-13020 Filed 5-12-82; 8:45 am]
BILLING CODE 7555-01-M

Docket No. 50-313

Arkansas Power & Light Co.; Arkansas Nuclear One, Unit 1; Exemption Operation While Irradiating Reactor Vessel Surveillance Specimens At Davis-Besse Unit No. 1 (Appendix H to 10 CFR 50)

The Nuclear Regulatory Commission (the Commission) has granted an Exemption to the Arkansas Power and Light Company (the licensee) for Arkansas Nuclear One, Unit No. 1 (located in Pope County, Arkansas), from the requirement for a continuing in-vessel material surveillance program as set forth in Appendix H to 10 CFR Part 50. The Exemption is effective for a period of five years from the date of issuance.

In granting this Exemption, the Commission determined that it is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission also determined that granting this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this action.

For further details, see (1) the licensee's request by letter dated April 2, 1982, and (2) the Commission's letter to the licensee dated April 30, 1982. These items can be reviewed at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Arkansas Tech University, Russellville, Arkansas.

A copy of item (1) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of April 1982.

For The Nuclear Regulatory Commission.
John F. Stolz,
Chief, Operating Reactors Branch No. 4, Division of Licensing.
[FR Doc. 82-13006 Filed 5-12-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-155 (Spent Fuel Pool Amdt.)]

Consumers Power Co. (Big Rock Point Plant)

Evidentiary Hearing June 7-15, 1982

May 7, 1982.

From June 7, 1982 to June 15, 1982 the Atomic Safety and Licensing Board will conduct an evidentiary hearing in this case at Boyne Mountain Lodge, Boyne Falls, Michigan 49713 (telephone: 616-549-2441). The general purpose of the hearing is to receive evidence on all issues that have been admitted to this hearing, concerning the appropriateness of licensing Consumers Power Company to modify Big Rock Point's spent fuel pool to accommodate more spent fuel; however, evidence will be excluded concerning whether or not there are anomalous soil conditions affecting the seismic analysis of the safety of the containment crane. That one safety issue will be considered only after the Nuclear Regulatory Commission's Staff completes its study of the issue.

Ordinary hours of hearing will be from 9 am to 5 pm, subject to periodic recesses and to extension of hours in order to complete the hearing during the scheduled time period. Saturday and evening sessions will be scheduled if necessary.

Members of the public who are not parties to the proceeding are invited to submit written limited appearance statements and to make brief oral presentations to the Board. The principal purpose of these statements is to inform the Board about safety and environmental issues which have been placed before it by the parties or about other issues of such importance that the Board may decide that it must consider them even though the parties have not raised them.

Although statements generally will be permitted regardless of their direct relevance to this proceeding, the Board's authority is limited; in particular, it is prohibited from reaching decisions contrary to the Commission's rules and regulations. Consequently, some public appeals may be more effective if addressed either to the Nuclear Regulatory Commission directly or to the Congress of the United States.

Limited appearance statements will become part of the record of the case. Generally, written statements are not limited in length. However, we expect that oral presentations will be limited to 5 minutes, subject to extension at the Board's discretion. Oral presentations should concisely summarize the key points made in written testimony and, if additional time may be needed, these

statements should indicate the specific subjects to be discussed if an extension of time is granted.

Persons wishing to appear will kindly notify the Board of their intention by writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Branch, Washington, D.C. 20555. Please refer to the Docket No. 50–155 and indicate which evenings during the week of June 7 through June 11 will not be convenient for you, so that we may schedule limited appearance statements beginning at 7:30 pm on one or more evenings convenient for the people wishing to participate. Also, include your address and telephone number so we can notify you of your time at the hearing. People unable to provide advance notice of their intention to particpate may schedule an oral appearance by notifying the Board of their intention, in writing, during the course of the proceeding, indicating dates of unavailability.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 82-13103 Filed 5-12-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al. (Crystal River Unit No. 3 Nuclear Generating Plant); Exemption

I

The Florida Power Corporation (the licensee) and eleven other co-owners are the holders of Facility Operating License No. DPR–72 which authorizes operation of the Crystal River Unit No. 3 Nuclear Generating Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission nor or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Citrus County, Florida.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Three of these 15 subsections, III.G, III.L and III.O are the subjects of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, is required (III.G.3 and III.L). Subsection III.O specifies the requirements for an oil collection system for the reactor coolant pumps.

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, Section 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as amended March 17, 1982, and by letter dated June 30, 1981, Florida Power Corporation requested the following exemptions:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of a final Appendix R Fire Study, including Sections III.G and III.L; and

(2) Extend the implementation schedule identified in 10 CFR 50.48(c)(3) for modifications required for conformance to Section III.O of Appendix R to as follows:

Any required modifications will be implemented before startup after the earliest of the following events commencing July 1, 1982:

(i) The first refueling outage, or

(ii) Another planned outage that lasts for at least 60 days; or

(iii) An unplanned outage that lasts for at least 120 days.

The NRC staff reviewed the licensee's request and interpret that the licensee requested exemption from 10 CFR 50.48(c) with respect to the requirements of Sections III.O, III.G and III.L as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G pursuant to § 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Sections III.G.3 and III.L, if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this fire protection rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Sections III.G.3 and III.L of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the fire protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, Crystal River Unit No. 3 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permit and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of the majority of these items. The FPSER supported the issuance of an amendment to the operating license of Crystal River Unit No. 3[1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications, including the modifications associated with the items resolved since issuance of the FPSER, have been completed. Therefore, the Crystal River Unit No. 3 has already been upgraded to a high degree of fire protection. The extensive reassessment involved in the request for additional time with regard to Section III.G and, if necessary, Section III.L to Appendix R of 10 CFR Part 50 is to quantify, in detail, the differences between what was recently approved and the specific requirements of these sections.

With regard to Section III.O to Appendix R of 10 CFR 50, the request for additional time is for the installation of any necessary modifications to the existing approved reactor coolant pump (RCP) oil collection system or, if necessary, the installation of a new RCP oil collection system required to meet the specific requirements of Section III.O of Appendix R to 10 CFR Part 50. No exemption from the technical requirements is requested.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Crystal River Unit No. 3. The licensee is applying significant effort to complete the reassessment of any remaining modifications and designs which might be necessary for strict conformance with Sections III.G, III.L and III.O. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982 and the installation of the revised designs after that date in accordance with the provisions of the Exemption. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis for conformance to Section III.G to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authoirzed by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Sections III.G, III.L and III.O of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Sections III.G.3 and III.L as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated, is extended to June 30, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the NRC staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the Exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the Exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82–13088 Filed 5–12–82; 8:45 am]

BILLING CODE 7590–01–M

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[1] Crystal River Unit No. 3—Operating License No. DPR–72: Amendment No. 23 Supported by FPSER issued July 27, 1979; SER Supplement dated October 14, 1980; SER Supplemenmt dated January 22, 1981.

[Dockets Nos. 50–321 and 50–366]

Georgia Power Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has

issued Amendments Nos. 88 and 27 to Facility Operating Licenses Nos. DPR–57 and NPF–5, issued to Georgia Power Company, Oglethorp Power Corporation, Muncipal Electric Authority of Georgia, and City of Dalton, Georgia, which revised Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2 (the facility) located in Appling County, Georgia. The amendments are effective as of the date of issuance.

The amendment modifies the TSs to provide limiting conditions of operation, surveillance and test requirements for facility modifications made at Hatch to protect against degraded grid voltage damaging safety related equipment.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate fundings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For futher details with respect to this action, see (1) the application for amendments dated July 22, 1977, as supplemented October 9, 1980, May 21, 1981, October 2, 1981, December 2, 1981, and January 26, 1982, (2) Amendments Nos. 88 and 27 to licenses Nos. DPR–57 and NPF–5, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day May 1982.

For The Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Brand No. 4, Division of Licensing.

[FR Doc 82–13089 Filed 5–12–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–366]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 28 to Facility Operating License No. NPF–5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, which revised Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (the facility) located in Appling County, Georgia. The amendment is effective as of the date of issuance.

This amendment revises the TSs to enable operation of the facility after the Cycle 3 Reload, at licensed power.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 11, 1982, (2) Amendment No. 28 to License No. NPF–5, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of May 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 82–13090 Filed 5–12–82; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–321 and 50–366]

Georgia Power Co., et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2); Exemption

I

The Georgia Power Company (the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR–57 and NPF–5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch or the facilities). These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3)

require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as amended March 3, 1982, Georgia Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to July 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to July 1, 1982, the date for filing additional exemptions from Section III.G pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to July 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary; and

(4) Extend from February 17, 1981, to July 1, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated.

When this fire protection rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the fire protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Hatch Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued dated October 4, 1978. The FPSER supported the required modifications to be made to the Hatch Units' physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, the Hatch Units have upgraded to a high degree of fire protection already and the extensive reassessment involved in the request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

Based on the above considerations we find that the licensee has completed a substantial part of the fire protection features at Hatch Units 1 and 2 in conformance with the requirements of the fire protection rule and it applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R, to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

Request for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the NRC staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) shall include a point-by-point response to

each item in Section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81-12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the Exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the Exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 3rd day of May 1982.

For The Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nualear Reactor Regulation.

[FR Doc 82-13091 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana & Michigan Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-58, and Amendment No. 40 to Facility Operating License No. DPR-74 issued to Indiana and Michigan Electric Company (the licensee), which revised Technical Specifications for operation of Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Berrien County, Michigan. The amendments are effective as of the date of issuance.

These amendments relocate the radiological environmental Technical Specifications into a separate section Appendix B Part I—Radiological and replace the non-radiological environmental Technical Specifications with Appendix B Part II—non-radiological, Environmental Protection Plan. Remaining requirements of Appendix B are now called Part III non Water Quality—Non Radiological.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 4, 1981, (2) Amendment Nos. 54 and 40 to License Nos. DPR-58 and DPR-74, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Maude Reston Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 6th day of May, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-13092 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-374]

Commonwealth Edison Co.; La Salle County Station, Unit No. 2; Order Extending Construction Completion Date

Commonwealth Edison Company is the holder of Construction Permit No. CPPR-100, issued by the Atomic Energy Commission [1] on September 10, 1973, for construction of La Salle County Station, Unit No. 2. This facility is presently under construction at the applicant's site in Brookfield Township, La Salle County, Illinois.

On March 2, 1982, the applicant requested an extension of the latest completion dates because construction has been delayed by the following events beyond its control:

1. Concentration of resources on completion of La Salle County Station, Unit 1 construction and testing.
2. Unforeseen new and/or replacement equipment delivery difficulties.
3. Accommodation of additional NRC criteria related to preoperational testing.
4. Uncertainty as to expansion of NRC requirements.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the requested extension is for a reasonable period. The staff's conclusions are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

It is hereby ordered that the latest date for Construction Permit No. CPPR-100 is extended from March 31, 1982 to September 30, 1983.

Date of Issuance: May 3, 1982.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13097 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

[Docket No. 50-416]

Mississippi Power & Light Co.; Middle South Energy, Inc.; South Mississippi Electric Power Association; Grand Gulf Nuclear Station, Unit No. 1; Order Extending Construction Completion Date

Mississippi Power and Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association are the holders of Construction Permit No. CPPR-118 issued by the Atomic Energy Commission [1] on September 4, 1974 and extended on October 30, 1979, for the construction of the Grand Gulf Nuclear Station, Unit No. 1, which is presently under construction at the Middle South Energy, Inc. site in Claiborne County, Mississippi. On January 8, 1982, Mississippi Power and Light Company, on behalf of itself and as agent for Middle South Energy, Inc. and South Mississippi Electric Power Association, requested an extension of the construction completion date for Grand Gulf, Unit No. 1 because construction has been delayed due to the following factors:

1. Problems with pre-operational testing.
2. Final inspection and quality assurance work.
3. Assuring that all applicable NRC requirements are met, including those resulting from the TMI-2 accident.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the requested extension is for a reasonable period. The staff's conclusions are set forth in the staff's evaluation of the request for extension.

The Commission has determined that this action will not result in any significant environmental impact and, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Hinds Jr. College, George M. McLendor Library, Raymond, Mississippi 39154.

It is hereby ordered that the latest completion date for CPPR-118 is extended from March 1, 1982 to November 1, 1982.

Date of Issuance: May 3, 1982.

[1] Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and Permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13080 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co. (Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2); Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-42 and DPR-60 which authorize operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Goodhue, Minnesota.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) establihsed the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these fifteen subsections, III.G. and III.J, are the subject of this exemption request. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, is required (III.G.3.).

Subsection III.J specifies detailed requirements for providing emergency lighting in all areas needed for operation of safe shutdown equipment.

Section 50.48(c) requires completion of all modificaitons to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

Section 50.48(c)(3) specifies the installation schedule of those fire protection features such as emergency lighting (III.J) that require a plant shutdown to complete the installation. The installation schedule in § 50.48(c)(3) requires the completion of the installation of such fire protection features during the first refueling outage commencing after 180 days from the effective date of Appendix R (February 17, 1981). Hence, Section 50.48(c)(3) requires the licensee to complete the installation of the emergency lighting (III.J) during the first refueling outage commencing after August 17, 1981 for each unit.

By letters dated March 13, March 19, November 16, and December 1, 1981, and February 5, 1982, Northern States Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Sections III.G and III.J of Appendix R as follows:

Extend the date in paragraph (c)(5) for submitting plans and schedules for meeting the provisions of paragraphs (c)(2), (c)(3), and (c)(4) with respect to the requirements of Section III.G of Appendix R, and for submitting design descriptions of modifications needed to satisfy Section III.G.3 of Appendix R, from March 19, 1981 to July 1, 1982.

(2) Extend the implementation date in paragraph (c)(2) for installation of modifications required by Appendix R, Section III.G.2, that do not require prior NRC approval or plant shutdown, from nine months after February 17, 1981 to nine months after June 1, 1982.

(3) Extend the implementation date in paragaph (c)(3) for installation of modifications required by Appendix R, Section III.G.2, that do not require prior NRC approval, but require plant shutdown, from before startup after the first refueling or extended outage commencing 180 days or more after February 17, 1981, to before startup after the first refueling or extended outage commencing 180 days or more after June 1, 1982.

(4) Extend the implementation date in paragraph (c)(3) for modification required by Apppendix R, subsection III.J, that do not require prior NRC approval but requires a plant shutdown, from the first refueling shutdown or extended outage commencing after 180 days from the effective date of Appendix R for each unit to the refueling outage scheduled for autumn of 1982 for Unit 1 and scheduled for spring of 1982 for Unit 2.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50, was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Prairie Island Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, and formed the nucleus of the criteria developed further in Appendix R. In its present revised form the BTP 9.5–1 constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultant and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of all of these items as documented in two supplements [1] to the FPSER except for the alternate shutdown capabilities which is the subject of this exemption. The FPSER supported the issuance of amendments to the operating licenses of the Prairie Island Units [2] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Prairie Island Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

By letter dated December 18, 1981, Northern States Power Company did submit for our review a Fire Protection Safe Shutdown Analysis giving plans and schedules for achieving compliance with Appendix R, Section III.G. However, after noting several information deficiencies in its submittal, the licensee requested an exemption from Section 50.48(c) to conduct a second level review of their analysis and prepare a supplement to the original submittal. The licensee also stated in the request for exemption that the additional time is needed to present a thorough and auditable process by which conformance with Section III.G of Appendix R is accomplished.

By letters dated November 16 and December 1, 1981, the licensee requested additional time for completing modifications to meet requirements of subsection III.J, emergency lighting. Subsection 50.48(c)(3) requires that these modifications be completed during the first refueling outage after August 17, 1981. The first refueling outage for Unit 1 occurred in September 1981 and for Unit 2 of the first refueling outage is planned for the spring of 1982. Therefore the exemption is requested for Unit 1 for the completion date of the emergency lighting to be during the second refueling outage after August 17, 1981. The licensee has committed to complete the modifications during the spring refueling outage for Unit 2 which is the first outage after August 17, 1981, and therefore an exemption from Subsection 50.48(c)(3) is not necessary for Unit 2. For Unit 1 a time restraint was created since the licensee is required by Subsection 50.48(c)(3) to perform the necessary engineering analysis, design, purchase and installation of necessary equipment within a period of seven months. We agree that the licensee in this instance applied a best effort and the time allowed turned out to be insufficient. In addition, portable lighting units are available for use by operators and the fire brigade members as an interim measure until completion. On this basis the staff has judged that the request for exemption for Unit 1 to allow additional time to complete the installation of emergency lighting at the refueling outage scheduled for autumn of 1982 should be granted.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Prairie Island Units 1 and 2 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Sections III.G and III.J. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and

[1] SER Supplements issued by letters dated April 21, and December 28, 1980.

[2] Prairie Island Unit 1—Operating License DPR–42, Amendment 39 supported by FPSER issued September 6, 1979.

Prairie Island Unit 2—Operating License DPR–60, Amendment 33 supported by FPSER issued September 6, 1979.

hereby grants the following exemptions with respect to the requirements of Section III.G and III.J of Appendix R to 10 CFR Part 50:

(1) Extend the date in paragraph (c)(5) for submitting plans and schedules for meeting the provisions of paragraphs (c)(2), (c)(3), and (c)(4) with respect to the requirements of Section III.G of Appendix R, and for submitting design descriptions of modifications needed to satisfy Section III.G.3 of Appendix R, from March 19, 1981 to July 1, 1982.

(2) Extend the implementation date in paragraph (c)(2) for installation of modifications required by Appendix R, Section III.G.2, that do not require prior NRC approval or plant shutdown, from nine months after February 17, 1981 to nine months after June 1, 1982.

(3) Extend the implementation date in paragraph (c)(3) for installation of modifications required by Appendix R, Section III.G.2, that do not require prior NRC approval, but require plant shutdown, from before startup after the first refueling or extended outage commencing 180 days or more after February 17, 1981, to before startup after the first refueling or extended outage commencing 180 days or more after June 1, 1982.

(4) The implementation date in paragraph (c)(3) for modifications required by Appendix R Subsection III.J is extended for Unit 1 from the first refueling outage after August 17, 1981 to the second refueling outage after August 17, 1981 or an extended outage as defined in 10 CFR 50.48(c)(3) commencing more than 180 days after the date of this exemption.

Provided the following condition is met:

The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, impostition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc 82-13094 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3); Exemption

I

The Philadelphia Electric Company (the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-44 and DPR-56 which authorize operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom or the facilities). These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in York County, Pennsylvania.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifcations to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 20, 1981, as amended February 18, 1982, Philadelphia Electric Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated.

When this fire protection rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where the fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The

Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the fire protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, where deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Peach Bottom Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued with License Amendments Nos. 53 dated May 23, 1979. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in four supplements [1] to the FPSER. The FPSER and its supplements supported the issuance of amendments to the operating licenses of the Peach Bottom Units which required modification to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Peach Bottom Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in the request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of section III.G to Appendix R of 10 CFR Part 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Peach Bottom Units 2 and 3 in conformance with the requirements of the fire protection rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to June 30, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the NRC staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the Exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the Exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13086 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Peach Bottom Units 2 and 3—FPSER Supplements:

No. 1—August 14, 1980.

No. 2—September 15, 1980.

No. 3—October 10, 1980.

No. 4—November 24, 1980.

[Docket No. 50-344]

Portland General Electric Co., the City of Eugene, Oreg., Pacific Power & Light Co. (Trojan Nuclear Plant); Exemption

I

Portland General Electric Company, the City of Eugene, Oregon and Pacific Power & Light Company (the licensees) are the holders of Facility Operating License No. NPF–1 which authorizes the operation of the Trojan Nuclear Plant (the facility) at reactor power levels not in excess of 3411 megawatts thermal (rated power). The facility consists of a Westinghouse Electric Corporation designed pressurized water reactor (PWR) located at the licensees' site in Columbia County, Oregon.

The license is subject to all rules and regulations of the Commission.

III

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.1 of Appendix E requires each licensee to conduct a full-scale emergency preparedness exercise annually, unless the State and local governments in the plume exposure pathway emergency planning zone have participated in a full-scale exercise during the annual period (such participation could be in conjunction with another nuclear power plant).

By letter dated January 13, 1982, Portland General Electric Company seeks, on its own behalf and at the request of the State of Washington, the State of Oregon, Cowlitz County, Washington, and Columbia County, Oregon, an exemption from the schedular requirements of Section IV.F.1 of Appendix E. The licensee requests that it be granted an exemption on a one-time basis to allow the next full-scale exercise to be held during the week of November 15–19, 1982.

The licensee states that the request comes as a result of financial cutbacks and manpower limitations in the state and local agencies, and that subsequent full-scale exercises would be conducted annually in the fall of each year.

In a letter dated February 1, 1982, the State of Washington endorsed the licensee's request, stating that Washington has been involved in two comprehensive tests of its Trojan emergency response plan and procedures in the previous calendar year. In addition, Washington will be preparing, during the spring and summer months, for the first major exercise of another nuclear plant's response plan. Therefore, Washington states that its overall response capability will be continuously upgraded during the proposed Trojan exercise extension.

The last full-scale exercise for Trojan was conducted on March 4, 1981. Two additional exercises were conducted on November 17 and 19, 1981. These exercises (not full-scale) tested the adequacy of the licensees' off-site interfaces at the Emergency Operations Facility (EOF) that included communications, dose assessment, and off-site monitoring. These drills were observed by the Federal Emergency Management Agency, and involved licensee, state and county emergency response personnel. In additon, the licensees have agreed to conduct an additional small-scale exercise (on-site only) within 30 days of resuming power operation (the Trojan plant is currently undergoing refueling and maintenance and is expected to resume operation in early July 1982). This on-site exercise will test all of the major on-site emergency preparedness functions, including off-site notifications and those EOF functions not tested during the November 1981 exercises.

In consideration of the special circumstances existing in the State of Washington, the fact that two additional Trojan exercises were conducted on November 17 and 19, 1981, and particularly considering the additional on site exercise agreed to by the licensees, we conclude that the licensees' request to defer the next full-scale exercise until the week of November 15–19, 1982 is reasonable and that the granting of the request will not significantly affect the state of emergency preparedness at Trojan. We conclude therefore that licensees' request for exemption should be granted, subject to the on-site small-scale exercise that licensees have agreed to conduct within 30 days of resumption of power operation after the current maintenance and refueling outage.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by licensees' letter of January 13, 1982, as discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The requested exemption is hereby granted, modified and conditioned as follows:

In order to allow for minor schedule changes, the next full-scale emergency preparedness exercise shall be conducted by not later than November 30, 1982.

The licensees shall conduct a small-scale exercise (on-site only) by not later than 30 days after resuming power operation following the spring 1982 refueling outage, as agreed to by licensees. This exercise shall test all of the major on-site emergency preparedness functions, including off-site notifications, and those EOF functions not tested during the November 1981 exercises.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 5th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Acting Director Division of Licensing.

[FR Doc. 82-13086 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2 and 3; Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 which authorize the operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3 at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of three boiling water reactors located at the licensee's site in Limestone County, Alabama. The licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen

subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protectin features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 18, 1981, as amended May 11, 1981, and April 22, 1982, Tennessee Valley Authority requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

The modifications made during the recovery from the March 22, 1975 fire were intended to provide protection against the loss of more than one division of safety equipment in the event of a fire. The modifications included physical moving of certain electrical conduits, the application of a fire resistant cable coating, and the addition of extensive fire protection systems. These changes and the plant's original separation criteria for Class IE circuits, as outlined in our Final Safety Analysis Report, are consistent with the philosophy outlined in Section III.G.1. However, the design was never intended to satisfy the stringent separation criteria outlined in Section III.G.2. This is not to suggest that the design is inadequate, only that the level of compliance with Section III.G.2. is unknown. We therefore, commit to performing an analysis to determine if further modifications would be needed in regard to separation of safe shutdown capabilities to comply with the requirements of Section III.G.2.

10 CFR 50.48(c)(5) requires that TVA submit plans and schedules for modifications dictated by Section III.G.3., if such are necessary. We request an extension until June 1, 1982 to allow us time to complete the analysis; and for any necessary modifications, to prepare plans and schedules that would not be detrimental to overall plant safety.

TVA's letter of April 22, 1982 requested a further extension to June 30, 1982.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficent fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

On March 22, 1975, a fire at the Browns Ferry Nuclear Plant caused a shutdown of Units 1 and 2. At the time, Unit 3 was still under construction and had not started operation. As a result of the fire, an NRC review program was developed to evaluate NRC policies, procedures and technical requirements with the objective of upgrading fire protection at all nuclear plants. This special review group recommended numerous changes to the design of the Browns Ferry Plant with respect to fire detection and suppression, fire protection systems, training programs, maintenance and operating procedures, etc. These recommendations were adopted at Browns Ferry as part of the restoration program. The plant modifications were intended to provide protection against the loss of more than one division of safety equipment in the event of a fire—which is also the intent of Section III.G of Appendix R. The modifications included physical moving of many electrical conduits, the application of a fire resistant coating to all cables and the addition of extensive fire detection and suppression systems.

While the restoration program at Browns Ferry was still underway, the lessons learned from the fire were developed into an extensive list of fire protection criteria, which in August 1976 were published as Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). Starting in 1977, all operating nuclear plants were evaluated with respect to these new fire protection criteria. The information and experience gained from this reevaluation—as well as the results from NRC research programs resulted in the development of the revised criteria in Appendix R.

As discussed in NUREG–0061 ("Safety Evaluation Report Related to Operation of Browns Ferry Units 1 and 2 Following the March 22, 1975 Fire"), issued March 1976, the modifications made at Browns Ferry brought this facility into full compliance with the staff's fire protection criteria at the time. Therefore, the Browns Ferry Nuclear Plant has been upgraded to a high degree of fire protection already. Since the revised criteria in Appendix R requires an extensive reassessment of the plant design, TVA's request for additional time to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50 is justified.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Browns Ferry in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the

completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982.

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to June 30, 1982; *Provided* the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 7th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13097 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Granting Relief From ASME Code Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to The Toledo Edison Company and The Cleveland Electric Illuminating Company, which revised the Inservice Inspection program for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. The ASME Code requirements are incorporated by reference into the Commission's Rules and Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing various Code required inspections of welds, components and bolting.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief and accompanying Safety Evaluation.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the letters from The Toledo Edison Company dated May 15, 1980, December 15, 1980, March 31, 1981, June 10, 1981, and February 16, 1982, (2) the letter to The Toledo Edison Company dated May 5, 1982, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the William Carlson Library, University of Toledo, 2801 Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 5th day of May 1982.

For The Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-13099 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric and Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power

Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the time required for the licensee to implement modifications specified in License Condition 2.C.(10) regarding secondary protection of containment electrical penetrations. The approved extension in time from the first refueling outage to the second refueling outage is due to the impact of numerous NRC required actions all required to be completed within the physical contraints of the electrical penetration area during the first refueling outage. The amendment also revises the facility technical specifications by specifying Limiting Conditions of Operation for certain deenergized power circuits when containment integrity is required during operating Modes 1, 2, 3 and 4.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated Feburary 19, 1982 and March 15, 1982; (2) Amendment No. 21 to Facility Operating License No. NPF–4; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of May, 1982.

For The Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-12909 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–339]

Virginia Electric & Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nulear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. NPF–7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the time required for the licensee to complete the revised and approved stipulation of Licensing Conditions 2.C.(15)(h)(2) and 2.C.(15)(h)(4) regarding diesel generator reliability. The approved extension in time from the first refueling outage to the October 1982 Fall maintenance outage is due to the impact of equipment delivery dates with the NA–2 scheduled restart date of May 14, 1982.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) The application for amendment dated February 17, 1982 as revised March 18, 1982, (2) Amendment No. 22 to Facility Operating License No. NPF–7, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 3rd day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-12100 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–339]

Virginia Electric and Power Co.; Issuance of Admendment Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility Operating License No. NPF–7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises License Condition 2.C.(4)(C) to require that narrow and wide range resistance temperature detectors be tested by the Loop Current Step Response method and be replaced at a given refueling outage only if unsatisfactory test results are observed. The revised condition further provides for an augmented preventative maintenance and surveillance control program for narrow and wide range resistance detectors until such time that long-term qualified resistance temperature detectors become available.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a signficant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant ot 10 CFR 51.5(d)(4) an environment impact statement or negative declaration and environmental impact appraisal need

not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated February 24, 1982 and March 30, 1982; (2) Amendment No. 23 to Facility Operating License No. NPF–7; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. 2055 and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-13101 Filed 5-12-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit Nos. 1 and 2); Exemption

I

The Wisconsin Electric Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27 which authorize operation of the Point Beach Nuclear Plant Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Maintowoc County, Wisconsin.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Four of these fifteen subsections, III.F, III.G, III.M and III.O, are the subjects of this exemption request. Section III.F required installation of automatic fire detection systems in all areas of the plant that contain or present an exposure fire hazard to safe shutdown or safety-related systems or components. These systems shall be capable of operating with or without offsite power. III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3). Section III.M required qualification of fire barrier seal penetrations by tests that are comparable to tests used to rate fire barriers. It provided specific acceptance criteria for the qualification tests and required that penetration seal designs only use noncombustible material. Section III.O provided requirements for the reactor coolant pump oil collection system if the containment is not inerted during normal operation. These requirements included design, installation and engineering such that failure would not lead to fire during normal or design basis accident conditions and that there would be reasonable assurance that the system would withstand the Safe Shutdown Earthquake.

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III,G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 18, 1981, as amended April 4, 1981, October 2, 1981 and January 29, 1982, Wisconsin Electric Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Sections III.F, III.G, III.M and III.O of Appendix R as follows:

1. That the date in Paragraph (c)(5) for submitting plans and schedules for meeting the provisions of (c)(2), (c)(3), and (c)(4), with respect to the requirements of Section III.G of Appendix R to Part 50, be extended to June 30, 1982 and, with respect to the requirements of Section III.O of Appendix R to Part 50, be extended to January 31, 1982.

2. That the date in Paragraph (c)(5) for submitting design descriptions of modifications needed to satisfy Section III.G.3 of Appendix R be extended to June 30, 1982.

3. That the implementation date in Paragraph (c)(2) for the installation of modifications that do not require prior NRC approval of plant shut-down be extended to nine months after June 30, 1982 for modifications required by Section III.G.

That the date for implementation of modifications required by Sections III.F and III.M of Appendix R to 10 CFR 50 be extended until June 30, 1982.

4. That the implementation date in Paragraph (c)(3) for the installation of modifications that do not require NRC approval, but require plant shut-down, be extended to before start-up after the earliest of the specified events commencing 180 days or more after June 30, 1982 for modifications required by Section III.G and to before start-up after the earliest of the specified events commencing 180 days or more after January 31, 1982 for modifications required by Section III.O.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. It it did, a basis had to be formulated for an exemption request. It it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate

relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Point Beach Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of most of these items as documented in three supplements to the FPSER. The remaining unresolved items were to be completed in accordance with Appendix R. The FPSER and its supplements supported the issuance of amendments to the operating licenses of the Point Beach Units [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. Essentially all of these modifications have been completed. Therefore, the Point Beach Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50 and to complete portions of the modifications required by Sections III.F, III.M and III.O to Appendix R of 10 CFR Part 50. III.F and III.M modifications are essentially complete.

The licensee has not requested an exemption for any other subsections of Appendix R and therefore should meet the schedules required by 10 CFR 50.48(c) for all other subsections except as noted below. As mentioned earlier, there are 11 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L, provides the criteria for Alternative Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at the Point Beach Units. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Point Beach Units 1 and 2 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G, and is essentially complete with the modifications required by III.F and III.M. The licensee has also completed his evalution of the modifications necessary to comply with Section III.O of Appendix R. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of the III.G reassessment by June 30, 1982, the III.F modifiations by June 30, 1982 and III.M Modifications by June 30, 1982, or in extending the time for completion of modifications required by Section III.O. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of the III.G reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G, III.F, III.M and III.O of Appendix R to 10 CFR Part 50:

1. That the date in Paragraph (c)(5) for submitting plans and schedules for meeting the provisions of (c)(2), (c)(3), and (c)(4), with respect to the requirements of Section III.G of Appendix R to Part 50, be extended to June 30, 1982 and, with respect to the requirements of Section III.O of Appendix R to Part 50, be extended to January 31, 1982.

2. That the date in Paragraph (c)(5) for submitting design descriptions of modifications needed to satisfy Section III.G.3 of Appendix R be extended to June 30, 1982.

3. That the implementation date in Paragraph (c)(2) for the installation of modifications that do not require prior NRC approval or plant shut-down be extended to nine months after June 30, 1982 for modifications required by Section III.G.

That the date for implementation of modifications required by Sections III.F and III.M of Appendix R to 10 CFR 50 be extended until June 30, 1982.

That the implementation date in Paragraph (c)(3) for the installation of modifications that do not require NRC approval, but require plant shut-down, be extended to before start-up after the earliest of the specified events commencing 180 days or more after June 30, 1982 for modifications required by Section III.G and to before start-up after the earliest of the specified events commencing 180 days or more after January 31, 1982 for modifications required by Section III.O.

Provided the following condition is met with regard to the outstanding III.G information:

The design descriptions of alternative or decidated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a

[1] Point Beach Unit 1—Operating License DPR–24: Amendment 39 supported by FPSER issued August 2, 1979; FPSER Supplement 1 issued March 5, 1980; FPSER Supplement 2 issued October 21, 1980; FPSER Supplement 3 issued January 22, 1981; Extension of Completion Dates issued February 13, 1981; Amendment 52 with SER issued August 20, 1981.

Point Beach Unit 2—Operating License DPR–27: Amendment 44 supported by FPSER issued August 2, 1979; FPSER Supplement 1 issued March 5, 1980; FPSER Supplement 2 issued October 21, 1980; FPSER Supplement 3 issued January 22, 1981; Extension of Completion Dates issued February 13, 1981; Amendment 56 with SER issued August 20, 1981.

violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13102 Filed 5-12-82; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1982, shall be at the rate of seventeen cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1982, 21.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 78.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d)of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 7, 1982.

By authority of the Board.

James T. Brown,

Chief Executive Officer.

[FR Doc. 82-13044 Filed 5-12-82; 8:45 am]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINISTRATION

Presidential Advisory Committee on Small and Minority Business Ownership; Cancellation of Public Meeting

This is to advise that the public meeting of the Presidential Advisory Committee on Small and Minority Business Ownership, originally scheduled for Monday, May 17, 1982, at the Everett McKinley Dirksen Building, Room 2541, 219 Sp. Dearborn, Chicago, Illinois 60604 has been canceled. The meeting was publicized in the **Federal Register**, Friday, April 30, 1982, page 18599.

Written statements which have already been received to be read before the Committee will be reserved for the next scheduled meeting, the date of which is to be announced.

Should further information be needed, contact Ms. Bettye Bolden, Office of the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, Room 317, 1441 L Street, NW., Washington, D.C. 20416, telephone (202) 653-6851.

Dated: May 6, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-13045 Filed 5-12-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82-047]

Qualification as a Citizen of the United States; Dundee Cement Co.

Notice is given that Dundee Cement Company, a Delaware corporation with offices at P.O. Box 122, Dundee, Michigan 48131, has filed an oath for qualification as a citizen of the United States under section 27A of the Merchant Marine Act, 1920, as added by the Act of September 2, 1958 (46 U.S.C. 883-1).

The Commandant has found this oath to be in compliance with the law and regulations and has issued a certificate of compliance to Dundee Cement Company. This certificate and any authorization granted under it will expire on March 15, 1985, unless there occurs a change requiring a report under 46 CFR 67.23-7.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

May 3, 1982.

[FR Doc. 12898 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

[CGD 82-049]

Qualification as a Citizen of the United States; Texasgulf, Inc.

Notice is given that Texasgulf, Inc., a Delaware corporation with offices at High Ridge Park, Stamford, Connecticut, 06904, has filed an oath for qualification as a citizen of the United States under section 27A of the Merchant Marine Act, 1920, as added by the Act of September 2, 1958 (46 U.S.C. 883-1).

The Commandant has found this oath to be in compliance with the law and regulations and has issued a certificate for compliance to Texasgulf, Inc. This certificate and any authorization granted under it will expire on March 17, 1985, unless there occurs a change requiring a report under 46 CFR 67.23-7.

Note.—On February 22, 1982, the Commandant issued a certificate of compliance to Texasgulf, Inc., a Texas corporation. This corporation was the subject of a merger. The surviving corporation is now Texasgulf, Inc., a Delaware corporation. As a result of this change in corporate status the certificate issued to Texasgulf, Inc., a Texas corporation, is no longer effective.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

May 4, 1982.

[FR Doc. 82-12897 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

[CGD 82-050]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Approval notice.

1. Certain laws and regulations (46 CFR Chapter 1) require that various items of lifesaving, firefighting and other equipment, as well as construction, and materials used on board vessels subject to Coast Guard inspection, on certain motorboats and other recreational vessels, and on the artificial islands and fixed structures on the Outer Continental Shelf be of the types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals and certifications have been granted of

modified as herein described during the period from 6 April 1981 to 11 January 1982 (List No. 1–82). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75–1 to 2.75–50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160 to 164.

3. The approvals listed in this document shall be in effect for a period of 5 years from the date of issuance, unless sooner cancelled or suspended by proper authority.

Incombustible Material

Approval No. 160.009/191/0 "Kaylo 10 AF" plan poured or filter press type asbestos-free calcium silicate incombustible material identical to that described in National Bureau of Standards Report No. 3919, manufactured by Owens-Corning Fiberglas Corp., Washington, D.C., Berlin, New Jersey, and Toledo, Ohio, Effective 5 August 1981 (Extension of Approval No. 160.009/191/0 dated 22 Sept 1976).

Self-Contained Breathing Apparatus

Approval No. 160.011/53/0 Dual purpose type breathing apparatus consisting of 30 minute self-contained breathing apparatus, manufactured by Mine Safety Appliance Co., Murrysville, PA., effective 23 August 1981.

Approval No. 160.011/54/0 Scott Air Pak 2.2 30 minute self-contained breathing apparatus, manufactured by Scott Aviation, Lancaster, NY., effective 18 November 1981.

Approval No. 160.011/55/0 Scott Air Pak 4.5 and Presur-Pak 4.5 30 minute self-contained breathing apparatus, manufactured by Scott Aviation, Lancaster, NY., effective 18 November 1981.

Approval No. 160.011/56/0 Scott Air Pak 4.5 and Presur-Pak 4.5 one hour self-contained breathing apparatus, manufactured by Scott Aviation, Lancaster, NY., effective 18 November 1981.

Lifeboat Winch

Approval No. 160.015/89/0 Type W–70–P lifeboat winch, approval limited to mechanical components only, manufactured by Carroll Engineering Company, Perth Amboy, NJ effective 5 August 1981, (Extension of Approval No. 160.015/89/0 dated 1 June 1976).

Approval No. 160.015/90/0 Type CW–14 lifeboat winch, approval is limited to mechanical components only, manufactured by Carroll Engineering Company, Perth Amboy NJ effective 5 August 1981, (Extension of Approval No. 160.015/90/0 dated 1 June 1976).

Approval No. 160.015/114/0 Type BE 9.1 winch; approval limited to mechanical components only, manufactured by Watercraft America, Inc., Edgewater, FL effective 1 December 1981 (Extension of Approval No. 160.015/114/0 dated 13 September 1976).

Approval No. 160.015/115/0 Type BE 6.0 winch; approval limited to mechanical components only, manufactured by Watercraft America, Inc., Edgewater FL effective 1 December 1981, (Extention of Approval No. 160.015/115/0 dated 3 August 1976).

Approval No. 160.015/121/3 Model W2800 survival capsule-launching winch; approval limited to mechanical components only, manufactured by Whittaker Corporation, La Mesa, CA effective 23 July 1981 (Supersedes Approval No. 160.015/121/2 dated 17 July 1980 to show revision and increased working load).

Approval No. 160.015/128/1 Type USW/5.52 lifeboat winch; approval limited to mechanical components only, manufactured by Watercraft America, Inc., Edgewater, FL effective 21 October 1981, (Supersedes Approval No. 160.015/128/0 dated 20 March 1980 to correct error of working load).

Approval No. 160.015/132/0 Type BE 7.9 winch; approval limited to mechanical components only, manufactured by Schat Davit Corporation, Newark, DE effective 9 September 1981.

Approval No. 160.015/133/0 Type BE 6.0 winch; approval limited to mechanical components only, manufactured by Schat Davit Corporation, Newark, DE effective 2 December 1981.

Ladder Embarkation-Debarkation (Type 1)

Approval No. 160.017/53/0 Type 1, embarkation-debarkation ladder, dacron-jacketed, orange polypropylene "safety core" rope suspension, manufactured by Coast Marine & Industrial Supply, Inc., San Francisco, CA effective 30 July 1981 (Supersedes Approval No. 160.017/53/0 dated 19 February 1981 to show additional assembly location).

Lifeboat Sea Anchor

Approval No. 160.019/15/0 Sea Anchor Model No. 929, manufactured by Cal-June Corporation, North Hollywood, CA effective 5 August 1981 (Extension of Approval No. 160.019/15/0 dated 1 June 1976).

Emergency Signaling Mirror

Approval No. 160.020/7/0 Model 35, emergency signaling mirror, 5" x 3" reflex type, manufactured by Libbey-Owens-Ford Glass Company, Brackenridge, PA effective 1 December 1981 (Extension of Approval No. 160.020/7/0 dated 8 September 1976).

Emergency Drinking Water (in Hermetically Sealed Containers)

Approval No. 160.026/41/2 Container for emergency drinking water, manufactured by F & L Packing Corporation, Belleville, NJ effective 27 August 1981 (Supersedes Approval No. 160.026/41/2 dated 19 March 1981 to discontinue pull-tab lids).

Emergency Provisions (Lifeboats)

Approval No. 160.026/52/0 Verkade survival ration for lifeboats-green pack, manufactured by Koninklijke Verkade Fabrieken B.V., Netherlands effective 18 August 1981.

Life Float

Approval No. 160.027/40/8 4.17' x 3.0' rectangular life float, manufactured by Plasti-Kraft Corporation, Ozona, FL effective 4 November 1981 (Supersedes Approval No. 160.027/40/7 dated 13 August 1980 to show revised method of rigging).

Approval No. 160.027/41/9 6.17' x 3.67' rectangular life float, manufactured by Plasti-Kraft Corporation, Ozona, FL effective 4 November 1981 (Supersedes Approval No. 160.027/41/9 dated 13 August 1980 to show revised method of rigging).

Approval No. 160.027/69/0 7.0 x 9.0 x 4" rectangular, laminated fabric-covered, unicellular plastic foam buoyant mat life float, manufactured by Salerco, Inc. New Orleans, LA effective 30 November 1981 (Extension of Approval No. 160.027/69/0 dated 5 January 1976).

Approval No. 160.027/84/0 90.00" x 48.00" life float, manufactured by Billy Pugh Co., Inc. Corpus Christi, TX effective 30 July 1981.

Approval No. 160.027/85/0 108.00" x 61.00 life float, manufactured by Billy Pugh Co., Inc. Corpus Christi, TX effective 30 July 1981.

Lifeboat Davit

Approval No. 160.032/150/4 Type B–47 mechanical davit straight boom with sheath screw, manufactured by Lake Shore, Inc., Iron Mountain MI effective 1 December 1981 (Extension of Approval No. 160.032/150/4 dated 17 December 1976).

Approval No. 160.032/169/0 Gravity davit, Type LG–13–2G, manufactured by Carroll Engineering Company, Perth Amboy, NJ effective 5 August 1981 (Extension of Approval No. 160.032/169/0 dated 1 June 1976).

Approval No. 160.032/172/0 Gravity davit, Type LG–125–1G, manufactured by Carroll Engineering Company Perth Amboy, NJ effective 5 August 1981 (Extension of Approval No. 160.032/172/0 dated 1 June 1976).

Approval No. 160.032/204/0 Type ORD/DHM fixed gravity davit, manufactured by Watercraft America, Inc. Edgewater, FL effective 4 August 1981 (Extension of Approval No. 160.032/204/0 dated 17 June 1976).

Approval No. 160.032/209/0 Type ORD/DHM fixed gravity davit, manufactured by Watercraft America, Inc. Edgewater, FL effective 1 December 1981 (Extension of Approval No. 160.032/209/0 dated 24 August 1976).

Mechanical Disengaging Apparatus (for lifeboats)

Approval No. 160.033/68/0 Approved for maximum working load of 19.167 pounds, used only as a single hook, manufactured by Whittaker Corporation, La Mesa, CA effective 10 September 1981 (Supersedes Approval No. 160.033/68/0 dated 16 June 1981 to show minor revisions).

Approval No. 160.033/68/1 Approved for maximum working load of 19.167 pounds when constructed with flame cut hook, manufactured by Whittaker Corporation, La Mesa, CA effective 26 October 1981 (Supersedes Approval No. 160.033/68/0 dated 10 September 1981 to show revised working load.)

Approval No. 160.033/70/0 Approved for maximum working load of 15,000 pounds, used only as a single hook, manufactured by Whittaker Corporation, La Mesa, CA effective 25 August 1981.

Approval No. 160.033/70/0 Approved for maximum working load of 15,000 pounds, used only as a single, hook manufactured by Whittaker Corporation, La Mesa, CA effective 4 November 1981 (Supersedes Approval No. 160.033/70/0 dated 25 August 1981 to show minor revisions).

Lifeboat

Approval No. 160.035/211/6 22.0′ x 7.5′ x 3.17′ steel, oar-propelled lifeboat, manufactured by Marine Safety Equipment Corporation, Farmingdale, NJ effective 18 August 1981 (Supersedes of Approval No. 160.035/211/5 dated to show alternate arrangement).

Approval No. 160.035/284/4 16.0′ x 5.5′ x 2.36′ aluminum, oar-propelled lifeboat, manufactured by Marine Safety Equipment Corporation Farmingdale, NJ effective 30 November 1981 (Extension of Approval No. 160.035/284/4 dated 18 August 1981).

Approval No. 160.035/334/1 26.0′ x 9.0′ x 3.83′ steel, motor-propelled lifeboat without radio cabin or searchlight, manufactured by Marine Safety Equipment Corporation, Farmingdale, NJ effective 4 August 1981 (Extension of Approval No. 160.035/334/1 dated 6 May 1976).

Approval No. 160.035/343/3 26.0′ x 7.88′ x 3.54′ aluminum, oar-propelled lifeboat, manufactured by Marine Safety Equipment Corporation, Farmingdale, NJ effective 30 November 1981 (Extension of Approval No. 160.035/343/3 dated 4 August 1975).

Approval No. 160.035/371/1 26.0′ x 9.0′ x 3.83′ steel, hand-propelled lifeboat, manufactured by Marine Safety Equipment Corporation, Farmingdale, NJ effective 4 August 1981 (Extension of Approval No. 160.035/371/1 dated 6 May 1976).

Approval No. 160.035/484/0 27.89′ x 9.74′ x 4.07′ fibrous glass reinforced plastic, totally enclosed motor-propelled lifeboat, manufactured by Watercraft America, Inc., Edgewater, FL effective 4 August 1981 (Extension of Approval No. 160.035/484/0 dated 8 October 1979).

Approval No. 160.035/500/0 Model CA 5400, 19.75′ x 14.0′ x 5.12′ fibrous glass reinforced plastic motor propelled lifeboat, manufactured by Whittaker Corporation La Mesa, CA effective 4 November 1981 (Supersedes Approval No. 160.035/500/0 dated 28 May 1981 to show minor changes).

Approval No. 160.035/501/1 Model CA 3600, 19.0′ x 12.5′ x 4.54′ fibrous glass reinforced plastic motor propelled lifeboat, manufactured by Whittaker Corporation, La Mesa, CA effective 30 July 1981 (Supersedes Approval No. 160.035/501/0 to show addition of model CA 3600).

First Aid Kit

Approval No. 160.041/12/0 Model No. 181 First Aid Kit, manufactured by Revere Supply Co., New, York, NY effective 3 December 1981.

Kapok Buoyant Cushion

Approval No. 160.048/144/0 Group approval for rectangular and trapezoidal kapok buoyant cushions, manufactured by Miltco Products Corporation, Brooklyn, NY effective 14 April 1981 (Extention of Approval No. 160.048/144/0 dated 15 April 1976).

Unicellular Plastic Ring Life Buoy

Approval No. 160.050/77/0 20-inch unicellular plastic foam ring life buoy, manufactured by Taylortec, Inc., Hammond, LA effective 4 November 1981 (Extension of Approval No. 160.050/77/0 dated 14 September 1976).

Approval No. 160.050/78/0 24-inch unicellular plastic foam ring life buoy, manufactured by Taylortec, Inc., Hammond, LA effective 4 November 1981 (Extension of Approval No. 160.050/78/0 dated 14 September 1976).

Approval No. 160.050/79/0 30-inch unicellular plastic foam ring life buoy, manufactured by Taylortec, Inc., Hammond, LA effective 4 November 1981 (Extension of Approval No. 160.050/79/0 dated 14 September 1976).

Approval No. 160.050/108/0 24-inch unicellular plastic foam ring life buoy, manufactured by Billy Pugh Company Inc., Corpus Christi, TX effective 1 July 1981.

Approval No. 160.050/109/0 30-inch unicellular plastic foam ring life buoy, manufactured by Billy Pugh Company, Inc., Corpus Christi, TX effective 1 July 1981.

Approval No. 160.050/116/0 30-inch unicellular plastic foam ringbuoy, "R" Series, manufactured by Cal-June Inc., North Hollywood, CA effective 8 October 1981.

Inflatable Life Raft

Approval No. 160.051/56/0 10-person inflatable life raft with conventional water pockets, manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/56/0 dated 17 September 1976).

Approval No. 160.051/57/0 15-person inflatable life raft, manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 17 September 1981 (Extension of Approval No. 160.051/57/0 dated 17 September 1976).

Approval No. 160.051/58/0 20-person inflatable life raft, manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/58/0 dated 17 September 1976).

Inflatable Life Raft (Oceans)

Approval No. 160.051/59/0 25-person inflatable life raft with "Ocean Service

Equipment", manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/59/0 dated 17 September 1976).

Approval No. 160.051/85/0 25-person inflatable life raft with "Ocean Service Equipment", manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/85/0 dated 17 September 1976).

Inflatable Life Raft (Limited Service)

Approval No. 160.051/61/0 25-person inflatable life raft with "Limited Service Equipment", manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/61/0 dated 17 September 1976).

Approval No. 160.051/86/0 25-person inflatable life raft with "Limited Service Equipment", manufactured by Switlik Parachute Company, Inc., Trenton NJ effective 1 December 1981 (Extension of Approval No. 160.051/86/0 dated 17 September 1976).

Unicellular Plastic Foam Buoyant Vest

Approval No. 160.052/387/0 Adult Model AP–2, non-standard unicellular plastic foam buoyant vest, manufactured by Mermatic, Inc., San Diego, CA effective 5 August 1981 (Extension of Approval No. 160.052/387/0 dated 7 August 1976).

Approval No. 160.052/388/0 Child medium, Model CPM, non-standard unicellular plastic foam buoyant vest, manufactured by Mermatic, Inc., San Diego, CA effective 5 August 1981 (Extension of Approval No. 160.052/388/0 dated 7 April 1976).

Approval No. 160.052/389/0 Child small, Model CPS, non-standard unicellular plastic foam buoyant vest, manufactured by Mermatic, Inc., San Diego, CA effective 5 August 1981 (Extension of Approval No. 160.052/389/0 dated 7 April 1976).

Work Vest Unicellular Plastic

Approval No. 160.053/38/1 Adult Small, Model No. 2175, manufactured by Mustang Sportswear Inc., Richmond B.C. Canada effective 8 January 1982.

Approval No. 160.053/39/1 Adult Medium, Model No. 2175, manufactured by Mustang Sportswear Inc., Richmond B.C. Canada effective 8 January 1982.

Approval No. 160.053/40/1 Adult Large, Model No. 2175, manufactured by Mustang Sportswear Inc., Richmond B.C. Canada effective 8 January 1982

Approval No. 160.053/41/1 Adult X-Large, Model No. 2175, manufactured by Mustang Sportswear Inc., Richmond B.C. Canada effective 8 January 1982.

Approval No. 160.053/42/1 Adult XX-Large, Model No. 2175, manufactured by Mustang Sportswear Inc., Richmond B.C. Canada effective 8 January 1982.

First Aid Kit for Inflatable Liferafts

Approval No. 160.054/9/0 Model No. 180 First Aid Kit, manufactured by Revere Supply Company, Inc. New York, NY effective 21 October 1981.

Unicellular Plastic Foam Life Preserver

Approval No. 160.055/115/0 Adult, Model No. 601, manufactured by Cal-June Corporation, North Hollywood, CA effective 5 August 1981 (Extension of Approval No. 160.055/115/0 dated 21 June 1976).

Approval No. 160.055/116/0 Child, Model No. 603, manufactured by Cal-June Corporation, North Hollywood, CA effective 5 August 1981 (Extension of Approval No. 160.055/116/0 dated 21 June 1976).

Hydraulic Release

Approval No. 160.062/1/1 Raftgo Model C hydraulic and manual release for lifesaving equipment, manufactured by C. J. Hendry Company, San Francisco, CA effective 23 November 1981 (Revision of Approval No. 160.062/1/1 dated April 1979 to show loads for annual submergence testing).

Approval No. 160.062/2/0 Model 404 hydraulic and manual release for lifesaving equipment, manufactured by Arrow Manufacturing, Inc., San Francisco, CA effective 23 November 1981 (Revision of Approval No. 160.062/2/0 dated 2 June 1977 to show loads for annual submergence testing).

Approval No. 160.062/3/0 Model S-800 hydraulic and manual release for lifesaving equipment, manufactured by Switlik Parachute Company, Inc., Trenton, NJ effective 24 November (Revision of Approval 160.062/3/0 dated 5 October 1976 to show loads for annual submergence testing).

Marine Buoyant Device

Approval No. 160.064/424/0 Adult small, Model 100DM, manufactured by Mermatic, Inc., San Diego, CA, effective 5 August 1981 (Extension of Approval No. 160.064/424/0 dated 7 April 1976).

Approval No. 160.064/425/0 Adult L/XL, Model 100FM, manufactured by Mermatic, Inc., San Diego, CA, effective 5 August 1981 (Extension of Approval No. 160.064/425/0 dated 7 April 1976).

Approval No. 160.064/426/0 Adult small, Model 200HM, manufactured by Mermatic, Inc., San Diego, CA effective 5 August 1981 (Extension of Approval 160.064/426/0 dated 7 April 1976).

Approval No. 160.064/1109/0 Child medium, Model 1200, manufactured by Bass Pro Shops, Springfield, Missouri, effective 5 August 1981 (Extension of Approval 160.064/1109/0 dated 14 May 1976).

Approval No. 160.064/1110/0 Adult Model No. 1200, manufactured by Bass Pro Shops, Springfield, Missouri, effective 5 August 1981 (Extension of Approval 160.064/1110/0 dated 14 May 1976).

Approval No. 160.064/1111/0 Adult Model No. 1200, manufactured by Bass Pro Ships, Springfield, Missouri, effective 5 August 1981 (Extension of Approval 160.064/1111/0 dated 14 May 1976).

Approval No. 160.064/1112/0 Adult Model No. 1200, manufactured by Bass Pro Shops, Springfield, Missouri, effective 5 August 1981 (Extension of Approval 160.064/1112/0 dated 14 May 1976).

Approval No. 160.064/1438/1 14½"×15×2½", Model No. 200, manufactured by Coated Marine Products Inc., Waukegan, IL, effective 4 January 1982 (Supersedes Approval No. 160.064/1438/0 dated 11 September 1977 to show change in Mfg. and Design).

Approval No. 160.064/1842/0 Adult Small, Model No. 380, manufactured by Gladding Corporation, Greenville, SC effective 11 December 1981.

Approval No. 160.064/1843/0 Adult Medium, Model No. 380, manufactured by Gladding Corporation, Greenville, SC effective 11 December 1981.

Approval No. 160.064/1844/0 Adult Large, Model No. 380, manufactured by Gladding Corporation, Greenville, SC effective 11 December 1981.

Approval No. 160.064/1845/0 Adult X-Large, Model No. 380, manufactured by Gladding Corporation, Greenville, SC effective 11 December 1981.

Approval No. 160.064/1855/0 Adult Universal, Model No. EA3, manufactured by Ero Industries, Inc., Chicago, IL effective 15 April 1981.

Approval No. 160.064/1856/0 Child Medium, Model No. ECM3, manufactured by Ero Industries, Inc., Chicago, IL effective 15 April 1981.

Approval No. 160.064/1857/0 Child Small, Model No. ECS3, manufactured by Ero Industries, Inc., Chicago, IL effective 15 April 1981.

Approval No. 160.064/1863/0 Adult Universal, Model No. BV–3, manufactured by Buddy Schoellkopf Product, Dallas, TX effective 29 December 1981.

Approval No. 160.064/1897/0 Adult Small, Model No. AV3S, manufactured by Ero Industries, Inc., Chicago, IL effective 6 August 1981.

Approval No. 160.064/1898/0 Adult Medium, Model No. AV3M,

manufactured by Ero Industries, Inc., Chicago, IL effective 6 August 1981.

Approval No. 160.064/1899/0 Adult Large Model No. AV3L, manufactured by Ero Industries, Inc., Chicago, IL effective 6 August 1981.

Approval No. 160.064/1907/0 Toddler, Model No. 909T, manufactured by America's Cup, Inc., City of Industry, CA effective 15 April 1981.

Approval No. 160.064/1924/0 Infant, Model No. Baby–1, manufactured by Ero Industries, Inc., Chicago, IL effective 15 April 1981.

Approval No. 160.064/1927/0 Adult X-Small, Model No. 101, manufactured by Almarin Canada Ltd., Windsor, Ontario effective 15 April 1981.

Approval No. 160.064/1952/0 Model No. H–1, manufactured by Forespar, Tustin, CA effective 29 December 1981.

Approval No. 160.064/1976/0 Adult Small, Model No. SKI–S, manufactured by Ero Industries, Inc., Chicago, IL effective 29 December 1981.

Approval No. 160.064/1977/0 Adult Medium, Model No. SKI–M, manufactured by Ero Industries, Inc., Chicago, IL effective 29 December 1981.

Approval No. 160.064/1978/0 Adult Large, Model No. SKI–L, manufactured by Ero Industries, Inc., Chicago, IL effective 29 December 1981.

Approval No. 160.064/1979/0 15-inch by 15-inch by 2½, Model No. 1288, manufactured by Crawford A Carisbrook Company, Richmond, VA effective 29 December 1981.

Approval No. 160.064/1980/0 Adult Small, Model No. CW–1, manufactured by Extrasport Inc., New York, NY effective 11 January 1982.

Approval No. 160.064/1981/0 Adult Medium, Model No. CW–2, manufactured by Extrasport Inc., New York, NY effective 11 January 1982.

Approval No. 160.064/1982/0 Adult Large, Model No. CW–3, manufactured by Extrasport Inc., New York, NY effective 11 January 1982.

Approval No. 160.064/1994/0 Adult Small/Medium, Model Nos. 1005, 1006, 1007, or 1008, manufactured by Medalist Leesburg, Leesburg, FL effective 29 December 1981.

Approval No. 160.064/1995/0 Adult Large/X-Large, Model Nos. 1005, 1006, 1007, or 1008, manufactured by Medalist Leesburg, Leesburg, FL effective 29 December 1981.

Approval No. 160.064/2002/0 Adult X-Large, Model No. 3002–1, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2003/0 Adult Large, Model No. 3002–2, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2004/0 Adult Medium, Model No. 3002–3, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2005/0 Adult Small, Model No. 3002–4, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2006/0 Adult X-.mall, Model No. 3002–5, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2007/0 Youth, Model No 3002–6, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2008/0 Child Small, Model No. 3002–7, manufactured by Commercial Fabric Mfg., Seattle, WA effective 29 December 1981.

Approval No. 160.064/2009/0 Infant, Model No. I2, manufactured by Ero Industries, Inc., Chicago, IL effective 8 January 1982.

Approval No. 160.064/2010/0 Child Small, Model No. S2, manufactured by Ero Industries, Inc., Chicago, IL effective 8 January 1982.

Approval No. 160.064/2011/0 Child Medium, Model No. M2, manufactured by Ero Industries, Inc., Chicago, IL effective 8 January 1982.

Approval No. 160.064/2020/0 Adult Small, Model No. SSV–750, manufactured by Stearns Mfg. Co., St. Cloud, MN effective 4 January 1982.

Approval No. 160.064/2021/0 Adult Medium, Model No. SSV–750, manufactured by Stearns Mfg. Co., St. Cloud, MN effective 4 January 1982.

Approval No. 160.064/2022/0 Adult Large, Model No. SSV–750, manufactured by Stearns Mfg. Co., St. Cloud, MN effective 4 January 1982.

Approval No. 160.064/2023/0 Adult X-Large, Model No. SSV–750, manufactured by Stearns Mfg. Co., St. Cloud, MN effective 4 January 1982.

Approval No. 160.064/2024/0 Child Medium, Model No. BV–3, manufactured by Buddy Schoellkopf Products, Inc., Dallas, TX effective 29 December 1981.

Approval No. 160.064/2025/0 Child Small, Model No. BV–3, manufactured by Buddy Schoellkopf Products, Inc., Dallas, TX effective 29 December 1981.

Protection Cover For Lifeboats

Approval No. 160.065/7/0 "MASECO", Type Mark II, protecting cover for the occupants of all types of aluminum lifeboats, manufactured by Marine Safety Equipment Corporation, Farmingdale, NJ effective 23 December 1981 (Extension of Approval No. 160.065/7/0 dated 2 November 1976).

Red Aerial Pyrotechnic Flare

Approval No. 160.066/13/0 Twin-Star, self-contained red meteor flare, manufactured by Kilgore Corporation, Toone TN effective 26 October 1981.

Automatic Disengaging Device for Liferafts

Approval No. 160.070/3/0 Type 5 RA 1134 automatic disengaging device for davit-launched life rafts, manufactured by B. F. Goodrich, Union, WV effective 23 December 1981.

Exposure Suit

Approval No. 160.071/1/1 Exposure Suit, Adult, Model No. 1408, manufactured by Imperial Manufacturing Co., Bremerton, WA effective 15 June 1981 (Supersedes Approval No. 160.071/1/1 dated 16 July 1979 to show documentation change).

Approval No. 160.071/2/2 Exposure suit, adult, identified as BayleySuit Model 7–01–00, manufactured by BayleySuit Inc., Fortuna, CA effective 23 July 1981 (Supersedes Approval No. 160.071/2/2 dated 9 May 1979 to show change in documentation).

Approval No. 160.071/6/0 Exposure suit, adult extra-large, identified as model 7–01–07, manufactured by BayleySuit, Inc., Fortuna, CA effective 23 July 1981.

Approval No. 160.071/8/0 Exposure suit, child or small adult, identified as model 7–01–04, manufactured by BayleySuit, Inc. Fortuna, CA effective 23 July 1981.

Sound-Powered Telephone Station

Approval No. 161.005/38/2 Desk type with internal ringer, selective ringing, common talking, manufactured by Henschel Corporation, Amesbury MA effective 3 August 1981 (Extension of Approval No. 161.005/38/2 dated 6 June 1974).

Sound Powered Telephone System

Approval No. 161.005/52/0 Selective ringing, common talking, 19 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 18 August 1981 (Extension of Approval No. 161.005/52/0 dated 24 September 1975

Approval No. 161.005/53/1 Selective ringing, common talking, 19 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 18 August 1981 (Extension of Approval No. 161.005/53/1 dated 24 September 1975).

Approval No. 161.005/63/0 Selective ringing, common talking, 19 stations maximum, manufactured by Hose-McCann Telephone Co., Inc.,

Englewood, NJ effective 18 August 1981 (Extension of Approval No. 161.005/63/0 dated 6 January 1976).

Approval No. 161.005/64/0 Selective ringing, common talking, 19 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 18 August 1981 (Extension of Approval No. 161.005/64/0 dated 14 April 1976).

Approval No. 161.005/65/0 Selective ringing, common talking, 19 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 18 August 1981 (Extension of Approval No. 161.005/65/0 dated 6 January 1976).

Approval No. 161.005/88/0 Selective ringing, common talking, 24 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 12 August 1981.

Approval No. 161.005/89/0 Selective ringing, common talking, 24 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 12 August 1981.

Approval No. 161.005/90/0 Selective ringing, common talking, 24 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 12 August 1981.

Approval No. 161.005/91/0 Selective ringing, common talking, 24 stations maximum, manufactured by Hose-McCann Telephone Co., Inc., Englewood, NJ effective 12 August 1981.

Floating Electric Water Light

Approval No. 161.010/4/1 Guest Man-Overboard Light, Model No. 326, manufactured by Guest Corporation, West Hartford, CN effective 6 April 1981 (Supersedes Approval No. 161.010/4/1 dated 11 August 1977 to show additional drawing number).

Personal Flotation Device Light

Approval No. 161.012/7/0 "Jim-Buoy" PFD light, identified by drawing for PFD Light No. 450, manufactured by Cal-June Incorporated, North Hollywood, CA effective 23 July 1981 (Supersedes Approval No. 161.012/7/0 dated 25 February 1980 to show additional identifying data).

Safety Value (Power Boilers)

Approval No. 162.001/221/0 Series VM–110, cast carbon steel body, spring loaded, nozzle type safety valve, manufactured by J. E. Lonergan Company, Philadelphia, PA effective 3 August 1981 (Extension of Approval No. 162.001/221/0 dated 29 March 1976).

Approval No. 162.001/222/0 Series VM–120, cast carbon steel body, spring loaded, nozzle type safety valve, manufactured by J. E. Lonergan Company, Philadelphia, PA effective 3 August 1981 (Extension of Approval No. 162.001/222/0 dated 29 March 1976).

Approval No. 162.001/223/0 Series VM–130, cast carbon steel body, spring loaded, nozzle type safety valve, manufactured by J. E. Lonergan Company, Philadelphia, PA effective 3 August 1981 (Extension of Approval No. 162.001/223/0 dated 29 March 1976).

Approval No. 162.001/263/1 Crosby Style HN–MS–55, nozzle type safety valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/263/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/264/1 Crosby style HN–MS–56, nozzle type safety valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/264/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/265/1 Crosby style HN–MS–65, nozzle type safety valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/265/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/266/1 Crosby style HN–MS–66, nozzle type safety valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/266/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/268/1 Crosby style HN–MS–66–9, nozzle type safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/268/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/269/1 Crosby style HN–MS–55–9, nozzle type safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/269/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/270/1 Crosby style HN–MS–56–9, nozzle type safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/270/0 dated 4 February 1976 to show new drawing numbers).

Approval No. 162.001/271/3 Crosby style HNB–MS–57, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/271/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/272/3 Crosby style HNB–MS–58, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/272/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/273/3 Crosby style HNB–MS–67, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/273/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/274/3 Crosby style HNB–MS–68, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/274/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/275/3 Crosby style HNB–MS 67–25, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/275/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/276/3 Crosby style HNB–MS–68–25, nozzle type, pilot actuated, safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA effective 10 August 1981 (Revision of Approval No. 162.001/276/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/277/3 Crosby style HNB–MS–57–9, nozzle type, pilot actuated safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA, effective 10 August 1981 (Revision to Approval No. 162.001/277/2 dated 7 May 1976 to show new drawing numbers).

Approval No. 162.001/278/3 Crosby style HNB–MS–58–9, nozzle type, pilot actuated safety relief valve, manufactured by Crosby Valve and Gage Company, Wrentham, MA, effective 10 August 1981 (Revision to Approval No. 162.001/278/2 dated 7 May 1976 to show new drawing numbers).

Flame Arrester (Tank Vessels)

Approval No. 162.016/38/1 Model 7618 flame arrester, stainless steel body and tube bank, manufactured by Groth Equipment Corporation, Houston, TX, effective 14 September 1981 (Supersedes Approval No. 162.016/38/0 dated 3 June 1981 to show new sizes and FM report).

Approval No. 162.016/39/0 Model 94306 flame arrester, constructed of cast iron, cast steel, stainless steel, or aluminum body, manufactured by GPE

Controls, Inc., Morton Grove, IL, effective 24 November 1981.

Pressure-Vacuum Relief Value

Approval No. 162.017/132/0 Pres-Vac type HS–M pressure-vacuum relief valve with cast iron, bronze, stainless steel, or nodular cast iron bodies, manufactured by PRES–VAC, S.A., Madrid, Spain, effective 17 December 1981.

Approval No. 162.017/63/0 Figue 153B pressure-vacuum relief valve, atmospheric pattern, weight-loaded pressure and vacuum poppets, manufactured by Morrison Brothers Company, Dubuque, Iowa, effective 5 August 1981 (Extension of Approval No. 162.017/63/0 17 June 1976).

Liquefied Compressed Gas Safety Relief Valve

Approval No. 162.018/31/1 Series W–100 and W–300, safety relief valves for liquefied petroleum gas and anhydrous amonia service, manufactured by J. E. Lonergan Company, Philadelphia, PA, effective 5 August 1981 (Extension of Approval No. 162.018/31/1 dated 29 March 1976).

Approval No. 162.018/70/1 2600 Series Safety Relief Valve, liquefied compressed gas service, full nozzle type, metal to metal seat, manufactured by Teledyne Farris Engineering Palisades Park, NJ, effective 11 September 1981 (Supersedes Approval No. 162.018/70/0 dated 9 May 1979 to show latest construction revisions).

Combination Solid Stream and Water Spray Fire Hose Nozzle

Approval No. 162.027/9/0 1½ inch combination solid stream and water spray fire hose nozzle, manufactured by Akron Brass Mfg. Company, Inc., Wooster, Ohio, effective 27 August 1981 (Revision of Approval No. 162.027/9/0 to show change in model designations).

Approval No. 162.027/10/0 2½ inch style 2046 combination solid stream and water spray fire hose nozzle ball, manufactured by Akron Brass Mfg. Company, Inc., Wooster, Ohio, effective 31 August 1981 (Revision of Approval No. 162.027/10/0 to show change in model designation).

Halon 1301 Fixed Fire Extinguishing System

Approval No. 162.029/7/0 Halex 1301 Model 8.5, pre-engineered Halon 1301 marine type extinguishing system, unit type, manufactured by Automatic Sprinkler Corporation of America, Cleveland, Ohio, effective 3 August 1981 (Extension of Approval No. 162.029/7/0 dated 13 May 1976).

Approval No. 162.029/8/0 Halex 1301 Model 17, pre-engineered Halon 1301 marine type extinguishing system, unit type, manufactured by Automatic Sprinkler Corporation of America, Cleveland, Ohio, effective 4 August 1981 (Extension of Approval No. 162.029/8/0 dated 13 May 1976).

Approval No. 162.029/9/0 Halex 1301 Model 25, pre-engineered Halon 1301 marine type extinguishing system, unit type, manufactured by Automatic Sprinkler Corporation of America, Cleveland, Ohio, effective 4 August 1981 (Extension of Approval No. 162.029/9/0 dated 13 May 1976).

Approval No. 162.029/10/0 Halex 1301 Model 33, pre-engineered Halon 1301 marine type extinguishing system, unit type, manufactured by Automatic Sprinkler Corporation of America, Cleveland, Ohio, effective 12 August 1981 (Extension of Approval No. 162.029/10/0 dated 13 May 1976).

Fixed Fire Extinguishing Systems

Approval No. 162.029/24/0 Model "150 CG" 151b. Halon 1301 fire extinguishing system, manufactured by Convenience Marine Products, Grand Rapids, MI, effective 11 September 1981 (Supersedes Approval No. 162.029/24/0 dated 29 June 1981).

Approval No. 162.029/25/0 Model "200 CG" 201b. Halon 1301 fire extinguishing system, manufactured by Convenience Marine Products, Grand Rapids, MI, effective 11 September 1981 (Supersedes Approval No. 162.029/25/0 dated 29 June 1981).

Foam Type Fire Extinguishing Systems

Approval No. 162.033/17/0 Model "AF–100" mobile hose reel station for helopad protection of offshore drilling platforms, manufactured by Angus Fire Armorur Corporation, Angier, NC, effective 9 September 1981.

Approval No. 162.033/18/0 Model SH–100–30 AFFF hose reel station for helopad protection of offshore oil platforms, manufactured by Safety & Health Associates, Inc., Lafayette, LA, effective 4 November 1981.

Approval No. 162.033/19/0 Model SH–100–60 AFFF hose reel station for helopad protection of offshore oil platforms, manufactured by Safety & Health Associates, Inc., Lafayette, LA, effective 4 November 1981.

Backfire Flame Arrester for Gasoline Engines

Approval No. 162.041/44/0 Volvo backfire flame arrester assembly without spacer flange, manufactured by Volvo-Penta of America, Inc., Chesapeake, VA, effective 14 September 1981 (Extension of Approval No. 162.041/44/0 dated 24 September 1976).

Approval No. 162.041/78/0 Air-Maze No. 2 Unimaze backfire flame arrester, manufactured by Air-Maze Incom International Inc., Cleveland, Ohio, effective 9 September 1981 (Extension of Approval No. 162.041/78/0 dated 22 February).

Approval No. 162.041/134/0 Volvo-Penta flame control device, stainless steel cover, brass elements 0.016 "Thick", manufactured by Volvo-Penta of America, Inc., Chesapeake, VA, effective 11 September 1981 (Extension of Approval No. 162.041/134/0 dated 24 September 1976).

Approval No. 162.041/190/6 Barbron all brass flame arrester, manufactured by Barbron Corporation, Detroit, MI, effective 12 August 1981 (Supersedes Approval No. 162.041/190/5 dated 17 March 1981 to show addition of model heights).

Approval No. 162.041/191/0 Barbron all brass flame arresters, manufactured by Barbron Corporation, Detroit, MI, effective 2 November 1981 (Extension of Approval No. 162.041/191/0 dated 2 November 1976).

Approval No. 162.041/192/0 6½ inch diameter types B175–55, and B175–62, aluminum body and arresting element, manufactured by FACET, Detroit, MI, effective 12 August 1981 (Extension of Approval No. 162.041/192/0 dated 20 February 1976).

Approval No. 162.041/193/0 Backfire flame arrester consisting of a leaf plate and leaf valve assembly which mounts between the carburetor outlet and the engine block, manufactured by Outboard Marine Corporation, Waukegan, IL, effective 19 July 1981 (Extension of Approval No. 162.041/193/0 dated 19 July 1976).

Approval No. 162.041/206/0 Kawasaki Model TCB 8101–01 backfire flame arrester, all aluminum construction, manufactured by Kawasaki Motors Corporation, Shakopee, MN, effective 21 July 1981.

Backfire Flame Control, Gasoline Engine Flame Arresters for Merchant Vessels and Motorboats

Approval No. 162.041/195/1 Aluminum or stainless steel and brass construction with rainshield style cover, manufactured by Facet Enterprises, Inc., Detroit, MI, effective 5 January 1982 (Supersedes Approval No. 162.041/195/0 dated 13 February 1981 to show additional model No.).

Oil-Water Separator

Approval No. 162.050/1051/0 Model SH2–12, consisting of two coalescers and associated piping and pump, manufactured by Sigma Treatment

Systems, Inc., Chester Springs, PA, effective 30 July 1981.

Approval No. 162.050/1052/0 Model SH2–20, consisting of two coalescers and associated piping and pump, manufactured by Sigma Treatment Systems, Inc., Chester Springs, PA, effective 30 July 1981.

Approval No. 162.050/1053/0 Model SH2–40, consisting of two coalescers and associated piping and pump, manufactured by Sigma Treatment Systems, Inc., Chester Springs, PA, effective 30 July 1981.

Oily Water Separators

Approval No. 162.050/1054/0 Sarex Model 25 GPM/VGS, consisting of 3 stages, manufactured by Separation and Recovery Systems and Affiliates, Irvine, CA, effective 23 September 1981.

Approval No. 162.050/1055/0 Sarex Model 50 GPM/VGS, consisting of 3 stages, manufactured by Separation and Recovery Systems and Affiliates, Irvine, CA, effective 23 September 1981.

Approval No. 162.050/1063/0 Stork Services Model Aquamarine GeDe 001, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands, effective 12 November 1981.

Approval No. 162.050/1064/0 Stork Services Model Aquamarine GeDe 0002.5, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands, effective 12 November 1981.

Approval No. 162.050/1065/0 Stork Services Model Aquamarine GeDe 0005, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands, effective 12 November 1981.

Approval No. 162.050/1066/0 Stork Services Model Aquamarine GeDe 0010, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands effective 12 November 1981.

Approval No. 162.050/1067/0 Stork Services Model Aquamarine MK II GeDe 250, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands effective 12 November 1981.

Approval No. 162.050/1068/0 Stork Services Model Aquamarine MK II GeDe 500, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands effective 12 November 1981.

Approval No. 162.050/1069/0 Stork Services Model Aquamarine MK II GeDe 1000, consisting of a cylindrical steel body, manufactured by Stork Services B.V., The Netherlands effective 12 November 1981.

Approval No. 162.050/1070/0 Facet Model OWS–0.5/2.2, consisting of an inclined plate separator, manufactured by Facet Enterprises, Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1071/0 Facet Model OWS–1/4.4, consisting of an inclined plate separator, manufactured by Facet Enterprises, Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1072/0 Facet Model OWS–2.3/10, consisting of an inclined plate separator, manufactured by Facet Enterprises, Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1073/0 Facet Model OWS–3/13.2, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1074/0 Facet Model OWS–5.7/25, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1075/0 Facet Model OWS–7.5/33, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1076/0 Facet Model OWS–10/44, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1077/0 Facet Model OWS–11.4/50, consisting of an inclined plate separator, manufactured by Facet Enterpriqes Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1078/0 Facet Model OWS–15/66, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1079/0 Facet Model OWS–17.5/55, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1080/0 Facet Model OWS–20/88, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Approval No. 162.050/1081/0 Facet Model OWS–22.7/100, consisting of an inclined plate separator, manufactured by Facet Enterprises Inc., Tulsa, OK effective 11 December 1981.

Cargo Oil Monitor

Approval No. 162.050/5008/0 Model DRUR 545D Cargo Oil Monitor, with recording device, alarm and sensor, manufactured by SERES, France, effective 8 December 1981 (Superseded Approval No. 162.050/9005/0).

Oil Content Monitor

Approval No. 162.050/9005/0 Model DRUR 545D Cargo Oil Monitor, with recording device, alarm and sensor, manufacttured by SERES, France, effective 8 December 1981 (TERMINATE Now approved under Approval No. 162.050/5008/0)

Deck Covering

Approval No. 164.006/47/0 FROANAFT #1 composite mastic and magnesite type deck covering, manufactured by Selby, Battersby and Co., Philadelphia, PA effective 26 August 1981 (Extension of Appr. No. 164.006/47/0 dated 5 January 1981).

Approval No. 164.007/40/0 "Thermafiber Felt" mineral wool type structural insulation, manufactured by United States Gypsum Company, Des Plaines, IL effective 12 August 1981 (Extension of Appr. No. 164.007/40/0 dated 27 May 1976).

Approval No. 164.007/46/0 "Thermafiber Felt" mineral wool type structural insulation, manufactured by United States Gypsum Company, Des Plaianes, IL effective 1 December 1981 (Extension of Appr. No. 164.007/46/0 dated 14 April 1976).

Approval No. 164.008/57/0 "Marine Board 60 P" bulkhead panels, manufactured by Nichias Corporation, Tokyo, Japan effective 8 October 1981 (Supersedes Approval No. 164.008/57/0 dated 6 October 1981 Formerly Nippon Asbestos Co.).

Approval No. 164.008/93/0 "Marine Board K–650" 19mm bulkhead panel system with "Omega" joint, manufactured by Nichias Corporation, Tokyo, Japan effective 6 October 1981 (Supersedes Approval No. dated 6 October 1981 Formerly Nippon Asbestos Co.).

Approval No. 164.009/200/0 "Marine Board K–900" mineral composition board, manufactured by Nichias Corporation, Tokyo, Japan effective 14 October 1981 (Supersedes Approval dated 14 October 1981 Formerly Nippon Asbestos Co.).

Noncombustible Material

Approval No. 164.009/54/0 "Thermafiber" rockwool insulation type noncombustible material, manufactured by United States Gypsum Company, Des Plaines, IL effective 14 August 1981 (Extension of Approval No. 164.009/54/0 dated 14 April 1976).

Approval No. 164.009/124/0 "Thermafiber" mineral wool panels, manufactured by United States Gypsum Company, Des Plaines, IL effective 6 August 1981 (Extension of Approval No. 164.009/124/0 dated 14 April 1976).

Approval No. 164.009/143/0 "CG Coating CP 61" composition type coating noncombustible material, manufactured by Childers Products Company, Bristol, PA effective 28 July 1981 (Reinstatement of Approval No. 164.009/143/0 dated 21 April 1976).

Approval No. 164.009/145/0 "CG Adhesive CP 92" noncombustible material, manufactured by Childers Products Company, Bristol, PA effective 28 July 1981 (Extension of Approval No. 164.009/145/0 dated 21 April 1976).

Approval No. 164.009/169/0 "Thermafiber Number 10 Granulated Wool", manufactured by United States Gypsum Company, effective 1 December 1981 (Extension of Approval No. 164.009/169/0 dated 14 April 1976).

Approval No. 164.009/192/0 Continuous molded pipe insulation, manufactured by Owens-Corning Fiberglas Corp., Washington D.C. effective 11 January 1982 (Extension of Approval No. 164.009/192/0 dated January 11, 1977).

Approval No. 164.009/193/0 Two-Place molded pipe insulation, manufactured by Owens-Corning Fiberglas Corp., Washington D.C. effective 11 January 1982 (Extension of Approval No. 164.009/193/0 dated January 11, 1977).

Approval No. 164.009/211/0 "Marine Board K-650", manufactured by Nichias Corporation, Tokyo, Japan effective 13 October 1981 (Supersedes Approval dated 18 January 1981 Formerly Nippon Asbestos Co.).

Approval No. 164.009/227/0 "MGB Felt" fiberglass insulation type noncombustible material, manufactured by Nichias Corporation, Tokyo, Japan effective 15 October 1981 (Supersedes Cert. dated June 15 1981 Formerly Nippon Asbestos Co.).

Approval No. 164.009/230/0 "MGB Felt" fiberglass insulation type noncombustible material, manufactured by Nichias Corporation, Tokyo, Japan effective 3 December 1981.

Approval No. 164.009/231/0 "Pelican CF" cloth-faced fiberglass hullboard, manufactured by Reilly-Benton Company, Inc., New Orleans, LA effective 15 October 1981.

Approval No. 164.009/232/0 "Pelican FF" aluminum foil-faced hullboard, manufactured by Reilly-Benton Company, Inc., New Orleans, LA effective 15 October 1981.

Approval No. 164.009/233/0 "Pelican FF" flexible insulation type noncombustible material, manufactured by Reilly-Benton Company, Inc., New Orleans, LA effective 15 October 1981.

Interior Finish

Approval No. 164.012/1/0 "Nevamar" laminated plastic interior finish, manufactured by Nevamar Corporation, Odenton, MD effective 10 August 1981 (Reinstate Approval No. 164.012/1/0).

Approval No. 164.012/50/0 "Tuffskin #1613" fiberglass reinforced finish, manufactured by Claremont Co., Inc., Meridian, CT effective 23 July 1981.

Approval No. 164.012/51/0 Glass cloth and aluminum foil facing, manufactured by Jamestown Fiber Glass, Inc., Norwood, NJ effective 23 July 1981.

Approval No. 164.012/52/0 Aluminum foil facing, manufactured by Jamestown Fiber Glass, Inc., Norwood, NJ effective 28 August 1981.

Clyde T. Luck, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

May 5, 1982.

[FR Doc. 82-13008 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of Applicants for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: May 28, 1982.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, D.C.

Application No.	Applicant	Renewal of exemption
1479-X	Allied Corporation, Morristown, NJ	1479
3004-X	U.S. Department of Defense, Washington, DC.	3004
3941-X	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	3941
4052-X	The Boeing Company, Seattle, WA	4052
4612-X	EM Science, Division of EM Industries, Inc., Cincinnati, OH.	4612
4850-X	Halliburton Services, Duncan, OK	4850
5038-X	Airco Industrial Gases, Murray Hill, NJ.	5038
5365-X	SunOlin Chemical Company, Claymont, DE.	5365
5372-X	Air Products and Chemicals, Inc., Allentown, PA.	5372
5454-X	Air Products and Chemicals, Inc., Allentown, PA.	5454
5701-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	5701
5792-X	Northern Petrochemical Company, Des Plaines, IL.	5792
6016-X	Guttman Supply Company, Belle Vernon, PA.	6016
6253-X	Eurotainer S.A., Paris, France	6253
6305-X	Ensign Bickford Company, Simsbury, CT.	6305
6325-X	Atlas Powder Company, Dallas, TX	6325
6392-X	Northern Petrochemical Company, Des Plaines, IL.	6392
6530-X	Air Products and Chemicals, Incorporated, Allentown, PA.	6530
6530-X	Union Carbide Corporation, Danbury, CT [1].	6530
6530-X	Airco Industrial Gases, Murray Hill, NJ.	6530
6563-X	Safety Medical Corporation, Sharon Hill, PA.	6563
6616-X	Fenwal Inc., Ashland, MA	6616
6763-X	Purex Corporation, Carson City, CA	6763
6825-X	Richmond Lox Equipment Company, Livermore, CA [2].	6825
6859-X	Pyronetics Devices, Incorporated, Denver, CO.	6859
6895-X	GTE Products Corporation, Danvers, MA.	6895
7032-X	Polaroid Corporation, Needham Heights, MA.	7032
7040-X	Polaroid Corporation, Needham Heights, MA.	7040
7042-X	Walter Kidde, Belleville, NJ	7042
7052-X	Jet Propulsion Laboratory, Pasadena, CA.	7052
7052-X	Rockwell International Corporation, Arlington, VA.	7052
7052-X	General Motors Corporation, Detroit, MI.	7052
7052-X	The Boeing Company, Seattle, WA	7052
7052-X	Electrochem Industries, Inc., Clarence, NY.	7052
7052-X	GTE Products Corporation, Waltham, MA.	7052
7052-X	Tadiran Israel Electronics Industries, Ltd., Rehovot, Israel.	7052

Application No.	Applicant	Renewal of exemption
7052-X	Sparton Corporation, Jackson, MI	7052
7052-X	Ocean Research Equipment, Inc., Falmouth, MA.	7052
7052-X	Hazeltine Corporation, Braintree, MA.	7052
7070-X	Technic, Inc., Cranston, RI	7070
7070-X	Lea-Ronal Incorporated, Freeport, NY.	7070
7070-X	Oxy Metal Industries Corporation, Nutley, NJ.	7070
7070-X	Engelhard Industries, Providence, RI.	7070
7070-X	Auric Corporation, Newark, NJ	7070
7070-X	American Chemical and Refining Company, Waterbury, CT.	7070
7498-X	Allied Corporation, Morristown, NJ	7498
7573-X	U.S. Department of Defense, Washington, DC.	7573
7586-X	Rockwell International Corporation, Downey, CA.	7586
7741-X	Bell Aerospace, Buffalo, NY	7741
7811-X	Burdick & Jackson Laboratories, Inc., Muskegon, MI.	7811
7835-X	Airco Industrial Gases, Murray Hill, NJ.	7835
7835-X	Synthatron Corporation, Parsippany, NJ[3].	7835
7921-X	Becton-Dickinson and Company, Paramus, NJ.	7921
7943-X	GPS Industries, City of Industry, CA	7943
7943-X	Hill Brothers Chemical Company, Tucson, AZ.	7943
8006-X	Wheaton Aerosols Co., Mays Landing, NJ.	8006
8009-X	Pressure Transport, Inc., Austin, TX[4].	8009
8206-X	Rexnord, Incorporated, Milwaukee, WI[5].	8206
8207-X	Rexnord, Inc., Milwaukee, WI[1]	8207
8285-X	Supelco, Inc., Bellefonte, PA	8285
8305-X	Eldorado Chemical Company, Incorporated, San Antonio, TX.	8305
8337-X	Industrial and Municipal Engineering, Galva, IL.	8337
8339-X	Eastern Steel Barrel Corporation, Piscataway, NJ.	8339
8353-X	Thiokol Corporation, Huntsville, AL	8353
8389-X	Container Corporation of America, Wilmington, DE.	8389
8391-X	Acurex Corporation, Mountain View, CA[7].	8391
8394-X	Whirlpool Corporation, La Porte, IN	8394
8396-X	Aztec Chemicals, Elyria, OH	8396
8410-X	EM Science, Division of EM Industries, Inc., Cincinnati, OH.	8410
8414-X	Fauvet-Girel, Paris, France	8414
8432-X	U.S. Deparment of Defense, Washington, DC.	8432
8441-X	Bunker Ramo Corporation, Westlake Village, CA.	8441
8441-X	Magnavox Electronics Systems Company, Fort Wayne, IN.	8441
8453-X	Atlas Powder Company, Dallas, TX	8453
8498-X	Hunter Drums Limited, Burlington, Ontario, Canada[8].	8498
8597-X	McDonnell Douglas Corporation, St. Louis, MO.	8597
8650-X	Ethyl Corporation, Baton Rouge, LA[9].	8650
8736-X	Pressure Transport, Inc., Austin, TX[10].	8736

[1] To renew and modify exemption to allow deviation from showing exemption number on shipping papers.
[2] To authorize liquefied ethane, flammable gas, as an additional commodity.
[3] To authorize various corrosive material and flammable liquids as additional commodities.
[4] To increase the service pressure range of 1,800 psi to 2,800 psi for cylinders covered by the exemption.
[5] To amend exemption to allow pails to be stretch-wrapped, banded or equivalent in groups of up to 48 pails per pallet.
[6] To amend exemption to allow pails to be stretch-wrapped, banded or equivalent in groups of up to 80 pails per pallet.
[7] To renew; authorize oxygen, nonflammable gas, as additional commodity; to increase water capacity; to add statement that rejection elastic expansion criteria does not apply and to add retest dates via label.
[8] To authorize a compound cleaning liquid containing hydrofluoric acid, corrosive material as an additional commodity.
[9] To authorize a new design portable tank identical to those presently authorized except for use of a single large capacity relief valve in combination with a rupture disc with no fusible device.
[10] To increase the service pressure range of 1,800 psi to 2,800 psi for cylinders covered by the exemption.

Application No.	Applicant	Parties to exemption
4453-P	Mt. State Bit Service, Inc., Morgantown, WV.	4453
6571-P	Utilities Board City of Trussville, Trussville, AL.	6571
6614-P	Rand Pool and Patio, Inc., Des Plaines, IL.	6614
6614-P	Ulehouse Products, Inc., Strongsville, OH.	6614
6614-P	F. I. M. Store, Alsip, IL	6614
6762-P	Industrial Water Chemicals, Chattanooga, TN.	6762
6984-P	East Kentucky Explosives, Inc., West Prestonsburg, KY.	6984
6984-P	International Minerals and Chemicals Corporation, Des Plaines, IL.	6984
6984-P	Atlas Powder Company, Dallas, TX	6984
7052-P	Kaman Aerospace Corporation, Bloomfield, CT.	7052
7052-P	Raytheon Company, Portsmouth, RI	7052
7774-P	Chem Cut Company, Fort Worth, TX.	7774
7774-P	Pengo Industries, Inc., Fort Worth, TX.	7774
7811-P	EM Science, Division of EM Industries, Inc., Cincinnati, OH.	7811
8129-P	Drew Chemical Corporation, Boonton, NJ.	8129
8129-P	Emergency Technical Services Corporation, Morris Plains, NJ.	8129
8129-P	Advanced Environmental Technology Corporation, Morris Plains, NJ.	8129
8129-P	Environmental Transfer Corporation, Cedar Knolls, NJ.	8129
8129-P	Bell Laboratories, Murray Hill, NJ	8129
8129-P	Florida State University, Tallahassee, FL.	8129
8344-P	Western-Hoagee Company, Glendale, CA.	8344
8565-P	Pennwalt Corporation, Philadelphia, PA.	8565
8699-P	Rexnord Inc., Commerce City, CO[1]	8699
8701-P	Rexnord Inc., Commerce City, CO[2]	8701
8732-P	Union Carbide Corporation, Danbury, CT.	8732
8747-P	Rexnord Inc., Commerce City, CO[3]	8747

[1] Request party status and to amend exemption to allow pails to be shipped individually or palletized in groups of up to 48 pails per pallet.
[2] Request party status and to amend exemption to allow pails to be shipped individually or palletized in groups of up to 80 pails per pallet.
[3] Request party status and to allow pails to be shipped individually or in palletized loads of up to 48 pails.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 6, 1982.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-13022 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 82-3W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Northern Border Pipeline Company petitioned the Materials Transportation Bureau (MTB) by letter dated March 19, 1982, for a waiver from compliance with 49 CFR 192.245 with respect to repair of girth weld defects in approximately 635 miles of its 42-inch diameter pipeline in the States of Montana, North Dakota, South Dakota, Minnesota, and Iowa constructed during 1981, and with respect to possible repair of defects in approximately 188 miles to be constructed in 1982. Weld defects to be repaired are those that have been discovered in a post-construction audit of X-ray film that had been interpreted initially by the radiographic contractors as conforming to weld acceptability standards in 49 CFR 192.241(c) which incorporate by reference the criteria in Section 6.0 of API Standard 1104. Pipe containing the nonconforming welds had, at the time of the audit, already been buried and the right-of-way restored.

Under the provisions of the waiver petition, Northern Border proposes to repair girth welds containing cracks and other nonconforming previously repaired welds that would otherwise, according to § 192.245, require removal of entire welds. Unless the referenced regulations are waived, all of the nonconforming welds (estimated to be approximately 570) would have to be removed and replaced by new welds. It is stated in the petition that removal and replacement of a weld would require excavation, cutting out of a pipe section containing the weld, rebevelling the in-place pipe ends, and placement, lining up, clamping, and welding in of a new short pipe length, requiring two new girth welds.

As a result of the petition, the MTB issued Notice 1 (47 FR 16248, April 15, 1982), requesting public comment on whether the waiver should be granted. The comments received are discussed hereafter.

Northern Border presented four reasons in the petition to support weld repair rather than replacement. These were discussed in Notice 1 and include the difficulties associated with cutting out and replacing welds; environmental impact; cost savings estimated to be $12,500,000.00 that will benefit the U.S. consumer if the weld repair procedures are utilized; and detrimental effect to the U.S. consumer if welds are required to be replaced and service through the Northern Border pipeline is delayed.

In further support, weld repair tests have been conducted by Northern Border to qualify repair procedures that Northern Border proposes to use in actual field repair welding. These procedures are stated by Northern Border to be in full compliance with API

Standard 1104, with supplemental Charpy impact toughness testing and weld and heat affected zone microhardness evaluation.

Based upon an initial review of the procedures and data submitted with the petition, the Office of Pipeline Safety Regulation (OPSR) described certain inadequacies in an April 2, 1982, letter to Northern Border and requested a clarifying response. The petition Notice 1, Docket No. 82–3W, enumerated 10 areas of concern of the MTB included in the OPSR letter of April 2, particularly relating to the 5 weld repair procedures that were proposed by Northern Border. Northern Border responded by letter dated April 20, 1982, addressing each area of concern listed in Notice 1 as follows:

1. Northern Border will comply with the applicable sections of the 15th edition of API Standard 1104 as required by Part 192, and will no longer list the 14th edition in their future construction and repair procedures documentation. As stated in Notice 1, the 14th edition has never been incorporated by reference in Part 192.

2. Northern Border stated that weld procedure qualification testing would be performed to conform to Section 2.0 of API Standard 1104, as requested, and in response to an OPSR telegraphic message of April 15, 1982. In that message, the OPSR advised that the welding procedures employed as a part of any weld repair procedure must meet the qualification requirements of § 192.225 and API Standard 1104.

3. Northern Border agreed to revise the Charpy impact requirements in their procedures to 30 ft-lb minimum average (of 3 tests) and 20 ft-lb minimum of any one test at the minimum design temperature of 25 degrees F to be consistent with the original welding procedure. The requirement contained in the procedures submitted with the petition was 25 ft-lb and 15 ft-lb respectively.

4. Northern Border provided pictorial locations of Charpy impact specimens, as requested, and an narrative description of all test results.

5. Northern Border advised that Procedure "C," a procedure which would have used no preheat nor radiography to confirm crack removal for the repair of cracks from the inside of the pipe in environmentally sensitive areas, would be withdrawn. It further advised that Procedure "A" for the removal of backweld cracks by grinding only, where confirmation of crack removal was by magnetic particle inspection only, would include confirmation of crack removal by radiography as requested.

6. Northern Border provided additional clarifying details as to the environmental and construction schedule impacts if the waiver were not granted, and itemized the projected cost savings to be achieved by repairing the questionable welds rather than replacing them.

7. Northern Border provided specification sheets containing required pipe properties, as requested, although abandoning reference to "pipe properties" other than tensile strength as a criterion for repaired weld properties in its revised Spec. No. 658. The required properties of the repaired welds relate to those required for the original qualified procedure.

8. The term "multiple repairs" as used in the Northern Border petition was clarified as meaning two repairs only, or only one repair of a previously repaired area.

9. Northern Border has clarified procedures, as requested, such that they are consistent with the regulations (except for 49 CFR 192.245) and with API Standard 1104.

10. Conditions under which the repair procedures will be applied in future construction were stated by Northern Border as "* * * only in the unlikely event that a defective weld has been buried."

Test data for the repair welding procedure qualification in accordance with Section 2.0 of API Standard 1104 requested in the OPSR telegraphic message of April 15 and revised procedures (Northern Border Spec. No. 658, Rev. 1) were transmitted to the OPSR by letter dated April 28, 1982. All test results were satisfactory, although a change in welding procedure was found necessary for Northern Border Repair Procedure "D." The procedures are summarized as follows (complete copies of the corrected weld repair procedures together with the Northern Border test data for the procedure qualification testing are in the docket):

Procedure "A": Short, transverse shrinkage cracks in back-welds are proposed to be removed by grinding only, and the complete removal to be verified by magnetic particle inspection. Northern Border has asked that this procedure be a part of the waiver petition because of the possibility that the crack may extend into the root bead, which condition was in fact encountered in the qualification trials. For this reason, MTB requested in its telegraphic message of April 15 and Northern Border has agreed, to also inspect using radiography in accordance with API Standard 1104, Section 7.3, to assure that the repaired weld meets the acceptability standards of § 192.241(c).

Procedure "B": Nonthrough wall (partial penetration) cracks are to be repaired by welding either from the inside or the outside of the pipe, using low hydrogen electrodes (AWS A 5.5–69 E8018–C3). A preheat of from 250° to 350°F is required, and the procedures shall conform with Section 7.0 of API Standard 1104. Acceptability shall be determined in accordance with § 192.241(c) and Section 6.0 of API Standard 1104 by radiography.

Procedure "C": Procedure "C," originally proposed in the petition for the repair of defects from the inside of the pipe in environmentally sensitive areas, has been withdrawn by Northern Border. Repair or removal of defective welds in these areas shall comply with the requirements of Part 192 or with weld repair procedures A, B, D, or E, as appropriate.

Procedure "D": Through wall cracks are to be repaired by grinding, drilling holes at the extremities of the crack, sawing through to form a new root bead opening, and grinding to the final repair groove contour. The new root bead and hot pass are to be deposited using E8010–G electrodes, which are to be followed by successive passes using the E8018–C3 low hydrogen electrodes. This procedure will also require preheating from 250° to 350°F and must conform to Section 7.0 of API Standard 1104. Acceptability of the repaired welds shall be determined in accordance with § 192.241(c) and Section 6.0 of API Standard 1104 using radiography.

Procedure "E": Northern Border states that this procedure is to be used in multiple repair, but limits the number of repairs to two. The written procedure (Northern Border Pipeline Company Spec. No. 658, Rev. 1) states: "If the defect has not been removed and/or the multiple repair area does not meet API 1104, the weld shall be cut out as a cyclinder and a replacement section installed." Other requirements of this procedure are the same as for Procedure "B," using only E8018–C3 electrodes and the same 250° to 350°F preheat.

All of the destructive tests performed as a part of qualification of the repair procedures submitted with the petition and in response to the telegraph of April 15 met the same requirements as for the original welding procedure with the exception of Charpy impact testing of a repair made in accordance with the original Procedure "D" submitted with the petition. An average of three specimens marginally failed to meet the specified minimum average impact toughness of 30 ft-lb (for full-size specimens) when tested at 25°F. Northern Border retested remaining

samples from the repair weld, and the retest results marginally met the requirement. Further impact testing of the revised weld repair procedure "D" in response to the telegraph of April 15 as reported on April 28 resulted in considerably higher toughness values, both for the original weld and for the repaired weld. The weld tested for the revised Procedure "D" was a weld made for the test rather than a field weld containing a crack as in the test results submitted with the petition. Charpy impact toughness was apparently increased as a result of the repair procedure modification (adding an E8010 hot pass). On this basis, MTB believes that favorable action on the petition is appropriate but should be conditional, as stated later in this notice.

After review and consideration of all of data submitted by Northern Border, MTB finds that a conditional waiver from the provisions of § 192.245 for the welds in question is appropriate and consistent with pipeline safety for the following reasons:

1. Experience gained in the granting of previous weld repair waivers supports the conclusion that it is feasible to make an acceptable repair to a crack in a weld or to make acceptable multiple repairs on a weld if qualified repair procedures are used to assure the integrity of the weld.

2. Adequate repair procedures have been developed and documented by the Northern Border Pipeline Company which will produce sound, ductile welds when the repairs are completed.

3. Comprehensive tests including destructive tests meeting § 192.225 have been performed to duplicate the actual repair conditions. The results of these tests demonstrate that the conditions under which the welds are repaired will provide welds having mechanical properties at least equal to the specified minimum mechanical properties required by the original welding procedure.

4. Field nondestructive testing of the repaired weld meeting the appropriate requirements of § 192.243 will confirm that the completed repair meets the acceptability requirements of § 192.241(c).

5. The Federal Inspector will monitor the repairs and enforce strict adherence to the documented procedures so as to assure sound, ductile weld repairs.

6. Removal of each weld containing the defect by cutout and replacing with a short section of pipe requiring two new girth welds to be made under difficult field conditions would not improve the quality of the weld integrity on the pipeline.

7. The cost of repairing the individual weld defects will be substantially less than the construction cost of replacing entire welds and that the savings will accrue to the consumer.

8. Delays in initiating service and environmental disruptions that would otherwise occur will be avoided.

9. Public safety will be best served by verificaiton that all injurious weld defects have been identified and have been satisfactorily repaired in accordance with the terms and conditions of any waiver issued.

Three comments were received in response to the invitation to comment in Notice 1. Comments from the American Petroleum Institute and the Northern Natural Gas Company both were supportive of the granting of the waiver and did not state further reservations or conditions. The comment from the Iowa State Commerce Commission was supportive of granting the waiver, but stated:

> A waiver of § 192.245 to the extent necessary to permit repair by grinding instead of replacement and to eliminate the inapplicable preheating requirement appears appropriate. However, the repaired area should be subjected to radiographic inspection to determine final acceptability and Northern Border should be required to modify its proposed Appendix A procedure to include this.

In response to a request by MTB, Northern Border has agreed to confirm removal of the weld defect in Procedure "A" by radiographic inspection, and this is part of the waiver. The Iowa Commission also expressed concern about Appendix C internal weld crack repair for environmentally sensitive areas. Following the concern expressed by MTB as noted earlier, Northern Border has withdrawn Appendix C procedures.

The Iowa Commission also discussed some of its problems about Appendix D Weld crack repair procedure for complete pipe wall penetration. However, apparently information it obtained in personal communications between its staff and Northern Border has alleviated those concerns. In addition, the waiver conditions MTB is imposing upon Appendix D procedures should further answer the Iowa Commission's questions about that procedure.

Northern Border's petition requested that relief be granted on an expedited basis pursuant to Section 9 of the Alaska Natural Gas Transportation Act (ANGTA) (15 U.S.C. 719g). As MTB discussed in Notice 1, it would expedite its actions under the Natural Gas Pipeline Safety Act (NGPSA) by shortening the normal 30-day period for public comment to 15 days in view of the need for expeditious construction and initial operation of the pipeline. MTB's actions are consistent with assurances to the public that the pipeline welds containing defects will meet the acceptability standards of Part 192 when repair is completed.

In accordance with Section 102(c) of Reorganization Plan No. 1 of 1979, 44 FR 33663 (June 12, 1979), and Executive Order 12142, 44 FR 36927 (June 25, 1979), the terms and conditions for any waiver granted would be enforced by the Federal Inspector. This is true also for enforcement of all of 49 CFR Part 192 on pipelines subject to ANGTA. Accordingly, on April 26, 1982, the MTB Director wrote Federal Inspector John T. Rhett, requesting a description of how the Federal Inspector's "field organization will enforce the terms and conditions of any waiver granted in this matter. This description should include the number of personnel involved with enforcement, the duties and responsibilities of these personnel, and a description of documentation which will be used to assure compliance." The Federal Inspector responded by a letter of April 30, 1982, to the MTB providing details of the enforcement procedures to be used to assure compliance with the terms and conditions of the waiver and the monitoring for compliance with Part 192 regulations. Copies of these letters are in the Docket.

Accordingly, effective immediately, the Northern Border Pipeline Company is hereby granted a waiver from compliance with 49 CFR 192.245 for the remedial weld program and the 1982 period of construction of the Northern Border pipeline subject to the following conditions.

1. Because of the wide difference in impact test results obtained in the first and second series of weld procedure qualification tests performed by Northern Border for Procedure "D," and because the effectiveness of the revised procedure (addition of a hot pass using the E8010–G electrode) has not been demonstrated in prior actual repair of cracks in X–70 grade pipe welds, MTB believes that additional precautionary nondestructive testing is necessary to assure that other unforeseen weld ductility problems will not occur when using this procedure. For this reason, additional verification through delayed radiography is made a condition of this waiver. In order to demonstrate the reliability of the procedure, each of the first 10 welds to be repaired by Procedure "D" shall be radiographically inspected in accordance with API Standard 1104 at least 24 hours after the

repair has been completed in addition to the radiographic examination specified by Northern Border in Spec. No. 658, Rev. 1. If no cracking is detected by the second radiographic examination of the first 10 repair welds utilizing Procedure "D," no further delayed radiography is required. If, however, any cracking is revealed in the delayed radiography of the first 10 repair welds, all repairs made thereafter using Procedure "D" must be nondestructively tested by delayed radiography to be performed at least 24 hours after the repair has been completed.

2. Because of the possible wide variation in electrode properties and the limited number of destructive tests which have been performed, the electrodes used in any repair welding procedure under this waiver shall be identical as far as is possible as to type, chemical composition, and mechanical properties requirements as the electrodes used in qualifying the repair welding procedure.

3. Northern Border has indicated in its April 20 letter that the repair procedures under this waiver would be used on 1982 construction only if a weld containing an unacceptable defect had been buried. Before any weld is repaired by one of the procedures herein, on a weld made during 1982 construction season, the Office of the Federal Inspector (OFI) must first be notified.

Copies of the Northern Border Pipeline Company Weld Repair Procedures "A," "B," "D," and "E" are contained in the docket file and have been provided to the OFI for surveillance and enforcement action.

(49 U.S.C. 1672; 49 CFR 1.53, Appendix A of Part 1)

Issued in Washington, D.C., on May 5, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-12665 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Solicitation of Proposals for Grants; Public Transportation Technology Introduction; and Innovative Techniques and Methds Programs.

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces that it is extending the due date for proposals for the Section 3(a)(1)(C) program, Technology Introduction, and the Section 4(i) program, Innovative Techniques and Methods in the Management and Operation of Public Transportation, for Fiscal Year 1983.

DATES: Proposals for the Section 3(a)(1)(C) program and the Section 4(i) program are due July 12, 1982 in the appropriate UMTA Regional Offices.

FOR FURTHER INFORMATION CONTACT: William Murray, telephone (202) 426-2896, for the Section 3(a)(1)(C) program. Joseph Goodman, telephone (202) 426-4984, for the Section 4(i) program. Both individuals are located at the Urban Mass Transportation Administration, 400 7th Street S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: UMTA intends to publish shortly formal circulars for the implementation of these programs. In the interim, proposals for the Section 3(a)(1)(C) program should follow procedures set forth in the January 19, 1981, **Federal Register** (46 FR 5832). Proposals for the Section 4(i) program should follow administrative procedures set forth in the December 1, 1980, **Federal Register** (45 FR 79670). A list of major categories of innovations that should be considered for the Section 4(i) program has been mailed to transit properties and is available at UMTA headquarters and regional offices. This solicitation was previously announced in a Notice published in the **Federal Register** on March 11, 1982 (47 FR 10701). In that Notice proposals were due on May 10, 1982. In this Notice, we are extending the due date until the date indicated under "DATES", above.

The Technology Introduction program was initiated to assist in financing the introduction into public transportation service of new innovative technology to span the gap that exists between the technical feasibility stage of research and development and the introduction of new proven equipment into revenue service.

The Innovative Techniques and Methods program was begun to further the national adoption of innovative techniques that will reduce the cost of transportation, increase transit system revenues, and increase opportunities for private sector involvement.

Arthur E. Teele, Jr.,

Administrator.

[FR Doc. 82-12680 Filed 5-12-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period April 30 through May 6, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of each entry.

Date Submitted: April 30, 1982.

Submitting Bureau: U.S. Customs Service.

OMB Number: N/A (new).

Form Number: CF 300.

Type of Submission: New.

Title: Bonded Warehouse Proprietor Submission.

Purpose: Will reflect all bonded merchandise entering, released and manipulated in the bonded warehouse, i.e., a complete reconciliation of beginning and ending inventory as well as all receipts/withdrawals and documentation of all breakage by entry number.

OMB Reviewer: Karen P. Sagett (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: May 4, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0626.

Form Number: SER 2333VT.

Type of Submission: Extension (no change).

Title: VITA/TCE Order for Training Material.

Purpose: Used by non-IRS VITA and TCE coordinators to request training materials for VITA and TCE classes.

OMB Reviewer: Karen P. Sagett (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82-12691 Filed 5-12-82; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Delegation Order 21; Docket No. 82-6]

Order of Succession To Act as Comptroller

By virue of the authority contained in 12 U.S.C. 4 and by Treasury Department Order No. 129 (Rev. No. 2) dated April 22, 1955, it is hereby ordered as follows:

A. The following officers in the Bureau of the Comptroller of the Currency, in the order of succession enumerated, shall possess the power and perform the duties attached by law to the Office of the Comptroller of the Currency as provided by 12 U.S.C. 4:

(1) Doyle L. Arnold, Senior Deputy Comptroller for Policy and Planning.

(2) H. Joe Selby, Senior Deputy Comptroller for National Operations.

(3) Paul M. Homan, Senior Deputy Comptroller for Bank Supervision.

(4) William A. Longbrake, Senior Deputy Comptroller for Resource Management.

B. In the event of any enemy attack on the continental United states, all regional administrators of national banks, including any acting regional administrators, are authorized in their respective regions to perform any function of the Comptroller of the Currency, or the Secretary of the Treasury, whether or not otherwise delegated, which is essential to the carrying out of responsibilities otherwise assigned to them. The respective officers will be notified when they are to cease exercising the authority delegated in this paragraph.

C. Delegation Order No. 20 is hereby repealed.

Dated: May 5, 1982.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 82-13050 Filed 5-12-82; 8:45 am]

BILLING CODE 4810-33-M

Customs Service

[067570]

Receipt of Domestic Interested Party Petition Concerning Classification of Chinaware

AGENCY: U.S Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: The Customs Service has received a petition from a trade association representing American manufacturers of hotel or restaurant chinaware. The petitioner contends that certain imported chinaware classified as "household ware" should be classified instead as "hotel or restaurant ware", subject to a higher rate of duty. This document invites comments with regard to the correctness of the classification.

DATES: Interested parties may comment on this petition, and comments (preferably in triplicate) must be received on or before July 12, 1982.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lindmeier, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5727).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the American Restaurant China Council, Inc., a trade association which represents American manufacturers of hotel or restaurant chinaware. The petitioner contends that certain imported chinaware which has been classified by Customs under the provision for household ware of bone chinaware, in item 533.54, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is actually used as hotel chinaware, and thus is properly classifiable under the provision for hotel or restaurant ware and other ware not household ware, in item 533.52, TSUS. The duty on chinaware for hotel or restaurant use is higher then the duty on chinaware for household use.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments on this petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 1, 1982.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 82-13067 Filed 5-12-82; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 93
Thursday, May 13, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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Federal Energy Regulatory Commission	3

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Monday, May 10, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, New York (Case No. 45,214–L (Amended)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that matter could be considered in a closed meeting pursuant ot subsection (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B)).

Dated: May 10, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–713–82 Filed 5–11–82; 12:57 pm]

BILLING CODE 6714–01–M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 18, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance, Litigation, Audits, Personnel.

* * * * *

DATE AND TIME: Thursday, May 20, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meeting correction and approval of minutes
Advisor opinions:
Draft AO 1982–31: Eric S. Koenig
Draft AO 1982–33: Bernard J. Mondi, Williams Project '76
Letter from Senator Mathias re Citizens' Research Foundation and Request From CFR re Waiver of Fees
Proposed Legislative Recommendations (continued from May 13, 1982, if necessary)
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Appropriations and budget: Budget Execution Report for April
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202–523–4065

Majorie W. Emmons,

Secreary of the Commission.

[S–714–82 Filed 5–11–82; 3:36 am]

BILLING CODE 6715–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION

TIME AND DATE: 10 a.m., May 17, 1982 (re-scheduled from May 7, 1982).

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Mid Louisiana Gas Company, et al.*, v. *FERC*, 5th Cir. Nos. 80–3804 and 80–4010.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[S–712–82 Filed 5–11–82; 2:08 pm]

BILLING CODE 6717–01–M

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federal register

Thursday
May 13, 1982

Part II

Department of Education

Pell Grant Program; Cost of Attendance; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Cost of Attendance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is giving notice that the regulations to be used in determining a student's cost of attendance under the Pell Grant Program for the 1982–83 award year will be the same cost of attendance regulations that were in effect for the 1981–82 award year. The Secretary makes two nonsubstantive changes to these regulations.

EFFECTIVE DATE: Unless the Congress take certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a later date the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations. When these regulations become effective, they will apply to Pell Grant awards made for the 1982–83 award year (beginning July 1, 1982).

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan or Ms. Andrea Foley, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., (Room 4318, Regional Office Building 3), Washington, D.C. 20202, Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: On December 15, 1981, the third continuing resolution for fiscal year 1982, Pub. L. 97–92, was enacted. As an effort to reduce Federal expenditures and curb inflation, this legislation authorizes the Secretary to establish cost of attendance provisions under the Pell Grant Program for the 1982–83 award year, thus overriding the cost of attendance liberalizations for that program that were included in the Education Amendments of 1980, Pub. L. 96–374. The provisions of Pub. L. 97–92 were extended to cover the entire 1982 fiscal year by the fourth continuing resolution for fiscal year 1982, Pub. L. 97–161.

The Secretary is adopting the cost of attendance provisions under the Pell Grant Program regulations, published in the **Federal Register** on July 22, 1981 (46 FR 37862–37864) that were in effect for the 1981–82 award year and for the 1982–83 award year (beginning July 1, 1982) except for the two non-substantive changes explained below. The changes are as follows:

1. The statutory citation at the end of each section of Subpart E—Costs of Attendance would be changed from Pub. L. 97–12 (applicable for the 1981–82 award year) to Pub. L. 97–161 (applicable for the 1982–83 award year) to reflect current legislation.

2. An error would be corrected in § 690.53 of the July 22, 1981 regulations concerning the proration of the board allowance when a student enters into a contract with the institution for board for less than seven days a week.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with the Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will only affect the determination of a student's cost of attendance and the amount of the Pell Grant award a student receives.

Assessment of Educational Impact

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Notice of Proposed Rulemaking

These regulations provide that the cost of attendance components to be used in determining a student's Pell Grant for the 1982–83 award year will be the same as those used in the 1981–82 award year which were published in the **Federal Register** on July 22, 1981. The 1982–83 award year begins on July 1, 1982. Thus, the Secretary finds that publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b), and is publishing these rules as final regulations.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.063, Pell Grant Program)

Dated: May 6, 1982.

T. H. Bell,

Secretary of Education.

PART 690—PELL GRANT PROGRAM

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as set forth below:

§§ 690.51 through 690.58 (Subpart E) [Amended]

1. In Subpart E, the statutory citation at the end of each section is revised to read: (Pub. L. 97–161)

2. In § 690.53, paragraph (c) is revised to read as follows:

§ 690.53 Room and board.

* * * * *

(c) If a student enters into a contract with the institution for board for less than seven (7) days a week, a daily rate will be computed based upon an allowance of $625 for board and used for those days of the academic year not covered by the contract. This amount will be added to the costs established under the applicable subparagraph (1) or (2) of paragraph (a) of this section.

(Pub. L. 97–161)

[FR Doc. 82–13048 Filed 5–12–82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
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DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing May 7, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 2373 / Pub. L. 97–175 To change the name of the landing strip at White Sands Missile Range in the State of New Mexico, to "White Sands Space Harbor". (May 11, 1982; 96 Stat. 77) Price: $1.75.

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Rules and Regulations

Federal Register
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Friday, May 14, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273 and 274

[Amdt. No. 215]

Food Stamp Program; Proration of Initial Month Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On September 4, 1981 the Department issued interim rules to implement several Food Stamp Program provisions contained in the 1981 Omnibus Budget Reconciliation Act. Among the interim final changes made, as required by the new law, was the proration of initial month's benefits so that a household's initial allotment of food stamps will reflect eligibility from the date it applied to participate in the program through the end of the month in which it applied. Comments were solicited on the interim rules through January 4, 1982. This final rulemaking addresses comments received on the proration of initial month's benefits and resolves any significant issues.

DATE: This final action is effective May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 708, 3101 Park Center Drive, Alexandria, Virginia 22302. Phone: Area Code 703–756–3429. Copies of the final Regulatory Impact Analysis, which is summarized in this preamble, are also available to the public from Mr. O'Connor.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department estimates that the rule will result in a savings of about $369 million in fiscal year 1982. It is classified as a "major" rule because the rule will have an annual effect on the economy, through significant program cost savings, of more than $100 million. However, the rule will not result in major increases in costs or prices, will not have a significant adverse effect on competition, employment, productivity, investment, or foreign trade, and will not require significant changes in the way State and local welfare agencies administer the Program. Further, this rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Moreover, pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and consistent with Congressional intent. Because this is major rule, the Department has prepared a final Regulatory Impact Analysis which is summarized below.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354). The Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. The action implements the provisions of the September 4, 1981 interim rules, relative to proration, which changed due to comments received, including administrative problems of the interim rules raised by State and local welfare agencies. The primary impact is on State and local welfare agencies and individual recipients.

Regulatory Impact Analysis

Need for Action

This action amends Title 7 of the Code of Federal Regulations to implement the daily proration of initial month benefits which was one of several Program changes mandated by Pub. L. 97–35, 95 Stat. 358, August 13, 1981, the Omnibus Budget Reconciliation Act of 1981. The purpose of this final rulemaking is to effectuate the mandate of Congress with regard to proration of initial month's benefits. These final rules amend portions of the interim rules that were published in the Federal Register on September 4, 1981 at 46 FR 44712. Because the Department believes certain of the comments received justify immediate amendments to the proration of initial month's benefits portion of the September 4, 1981 rules, that portion is being separated from the remainder of the September 4 rulemaking for treatment at this time. Comments on the remainder of the September 4 rulemaking are continuing to be analyzed and the Department expects to publish its final analysis and any resulting changes in those portions of the rules in the near future.

Issue Analysis

Although the September 4, 1981 rulemaking had the effect of final regulations, and had to be placed into operation by State welfare agencies, the Department encouraged interested parties to submit comments by January 4, 1982. Subsequently, 90 letters were received which addressed the proration provision of the interim rules. Generally, the commenters accepted the concept of proration of initial month's benefits and directed their comments to specific provisions in the rules. A full understanding of the basis and purpose of the provisions not addressed here may require reference to the September 4, 1981 Federal Register publication.

The Department did identify one issue for which alternatives needed to be considered as a result of comments received on the interim rules. This issue concerned the potential delay in receipt of subsequent benefits by migrant farmworker households due to the unusual time needed to obtain out-of-State verification postponed under expedited service.

Expedited Service Households and Proration of Initial Month's Benefits. A large number of comments were received on the special procedures in the interim rules for certifying expedited service households which apply after the 15th of a month and have postponed verification. These comments reflected two separate concerns. The first concern was that these procedures are too difficult to administer. However, while these procedures appear to be

burdensome they are not as complex as other options considered, such as the proposal set forth by Congress in this area. Also, the Department believes that such procedures are necessary to avoid a serious hardship situation for households which apply late in a month and are eligible for expedited services. As pointed out in the interim rules published September 4, 1981, Congress is concerned about these households and how proration affects them (House Report No. 97–106, 97th Congress, 1st Session, page 148).

The second concern, raised by a majority of the commenters, was that these special procedures do not relieve sufficiently the hardship which proration of initial month's benefits inflicts on households in need of expedited service, especially migrant households. It was pointed out that migrant workers often travel long distances from job to job and usually spend almost all of their money during the trip. The commenters pointed out that obtaining verification from out-of-State sources can be a lengthy process for migrant households. These commenters were concerned that the Department failed to provide migrants with a reasonable opportunity to obtain verification. In addition, the Department received direction from the Congress (Senate Report No. 97–290, 97th Congress, 1st Session, pages 220–221) to assure that destitute migrant households applying in the second half of the month be provided with a reasonable opportunity to obtain out-of-State verification without a loss or delay in benefits. This Report indicates that the interim rules do not adequately address this issue. To resolve this problem, the Department considered three alternatives.

The first alternative considered was to provide those eligible migrant households which are eligible for expedited service and which apply after the 15th of a month with 30 days worth of food stamps prospectively from the date of application. The household's benefits for the remainder of the second month would be prorated, unless the household was found to be ineligible for the second month. The effect of this alternative is to certify the destitute migrant household for part of the second month based on its circumstances in the initial month. However, if it turned out that the household was ineligible in the second month, the household would have received benefits to which it was not entitled. It would also require some State agencies to adapt their issuance systems to accommodate such households on a "rolling" month schedule during their initial months. This alternative was not adopted becaue it would make the expedited service procedures more complicated and the eligibility worker's task more difficult.

The second alternative was to maintain the special procedures contained in the interim rules but to provide for the issuance of an interim allotment at the beginning of the second month when verification from out-of-State sources has not yet arrived for destitute migrant households. The interim allotment would also be prorated so that, when taken together, the first and second allotments provided benefits which covered a period of 30 days. If the State agency was unable to continue issuing benefits to the household on a rolling month schedule after the first and second prorated allotments, it would have to issue another prorated allotment to cover the remainder of the second month. The Department decided against this alternative because it extends the proration concept beyond the initial month and, as a result, forces many State agencies to provide these households with a total of three prorated allotments. In addition, the State agency would have to establish a mechanism for triggering issuance of the second prorated allotment (the so-called interim allotment) if verification had not arrived by a date shortly before the end of the first month.

Instead, the Department chose a third alternative which also maintains the special procedures contained in the interim rules, but requires that migrants provide all necessary verification from within the State before being issued benefits for the second month and from out-of-State before being issued benefits for the third month. The effect of this alternative is to waive the remaining verification requirements only for a limited period of time (one month) and only to the extent that they pertain to sources outside of the State. This special procedure may only be used once each migrant season by each migrant household. Since the household would have the needed verification after receiving the special treatment once, there is no need to allow repeated postponements of out-of-State verification. While providing migrants a reasonable opportunity to obtain verification, this alternative does not further complicate the expedited service procedures for the majority of the caseload which are not migrant farmworkers.

Postponed Verification

Other commenters pointed out that some State agencies have systems that cannot issue the subsequent month's benefits to households with postponed verification without a new application. Consequently, the Department has included in the final regulations an option which would allow State agencies to request any household eligible for expedited service which applies after the 15th of a month to apply for benefits for subsequent months at the time the first application is made if the household's verification requirements are postponed.

The Department became aware that commenters were not clear on what to do when postponed verification is not completed within 30 days from the date of application. The Department would like to stress that, except for migrant households needing out-of-State verification, if postponed verification is not completed within 30 days then participation would be terminated.

When to Start Prorating

A question arose relative to proration and a recertification action which is delayed due to the household. The interim rules define initial month as either the first month for which an allotment is issued to a household or the first month for which an allotment is issued to a household following any period of more than a month during which the household was not certified for participation in the program. A suggestion was made that if an application for recertification is untimely (as defined in § 273.14(b)(4)), then benefits should be prorated. This suggestion was not adopted; the language in the interim rules follows closely the language in the legislation and consequently, has been retained in the final rules.

One commenter suggested that if the Department intends that benefits be prorated from the day an application is filed, regardless of the lack of opportunity to file on the first calendar day because the certification office is not open, this intent should be clarified. A household's intent to file on the first of a month, or any other non-working day had the opportunity existed would be difficult if not impossible for the State agency to determine. The final rules have not changed—proration will continue to be based on the day of the month the household actually applies for benefits.

Written Notice

One comment was received on the section of the interim rules which specifies that the written notice given to the household at certification advise the household that if verification results in

changes in the household's eligibility or level of benefits, the State agency shall act on these changes without a specific advance notice of adverse action. This commenter believes that households who apply after 15th day of the month, receive expedited service, and have verification postponed, are being denied due process of law by not having received a written notice of reduction or termination (based on the new verification received) specifically explaining the agency's action. They believe that households may not realize they have fair hearing rights unless they receive a written notice of reduction or termination. They also believe that there will be potential for the agency to have acted in error but there will be no means for the household to detect the error without a written notice.

The Department believes that the notice required to be given to the household at the time the household is certified for longer than one month notifies the household of what will happen if they do not provide required verfication, and if the verification provided results in a reduction or a termination of benefits. Moreover, households are advised, on the application form, of their right to a fair hearing if they disagree with an agency action and the Department believes that this is adequate notice. As a result, final rules have not been changed in this area.

Miscellaneous Comments

The Department received a comment relative to proration of the $10 minimum allotment for one and two person households. This commenter believes that without an amendment to section 8(a) of the Food Stamp Act, the Department lacks the authority to prorate this minimum benefit in the month of application. The Act specifies that one and two person households receive a minimum allotment of $10 *per month*. Since the $10 is a monthly amount the Department sees no bar to prorating that amount when an application is made after the first of the month. Moreover, Congress did not exempt one and two person households from the proration provision and consequently the proration of initial month's benefits policy should be applied to all households without exception. The Department has not modified the final rules in this area.

Another commenter recommended that the formula for prorating benefits be amended to provide that actual full month's benefits of $1, $3 and $5 be subjected to prorating rather than inserting the rounded amount used for issuance purposes into the formula. This would avoid a double rounding. The Department agreed and added language to the final rules to ensure that the amount used in the full month's benefits part of the formula does not reflect a rounded amount.

Finally, paragraph (h) of § 274.2 was relettered as paragraph (i) by a subsequent final rule. However, regulatory references within the paragraph were not revised to coincide with the newly designated paragraph lettering. Therefore, § 274.2(i) is revised by this final action to correct this oversight.

Implementation

State agencies shall implement the provisions of this rule upon publication. The Department of Agriculture has also determined, in accordance with 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective earlier than thirty days after publication. The seasonal movement of migrant workers is about to begin. The rule allows the participation in the program of certain migrant households in the month following the month of application even if they are unable to obtain verification from out-of-State sources prior to the beginning of that month.

Note.—The following paragraphs in 7 CFR which had been amended or revised in accordance with the September 4 interim rules have not changed from the interim rules and are adopted final as set forth in the interim rules: 7 CFR 272.8(h); 273.10 (a)(1)(i), (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(1)(iii)(A), (a)(1)(iii)(B), (a)(1)(iii)(C), (a)(3), and (a)(4).

These unchanged paragraphs are set out below along with paragraphs that are being amended or revised by this final action for the convenience of the reader.

List of Subjects 7 CFR

Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Therefore, Parts 272, 273 and 274 are amended as follows:

PART 272—REQUIREMENTS OF PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (41) is added to paragraph (g). The addition reads as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(41) State agencies shall implement the provisions of Amendment No. 215 upon publication.

* * * * *

2. In § 272.8, paragraph (h) is revised to read as follows:

§ 272.8 Procedures for program administration in Alaska.

* * * * *

(h) *Determining household eligibility and benefit level.* If a household in a rural area that is serviced by a fee agent first submits its application to the fee agent, the household shall, if determined eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household in a rural area that is serviced by a fee agent submits its signed application directly to a State agency office, the household shall, if determined eligible, receive benefits retrospective to the date the application is received by the State agency.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, paragraph (i)(4)(iii) is revised to read as follows:

§ 273.2 Application processing.

* * * * *

(i) *Expedited Service.* * * *

(4) *Special procedures for expediting service.* * * *

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month to submit a second application (at the time of the initial

certification) if the household's verification is postponed.

(A) When certified only for the month of application, households must reapply and complete the verification which was postponed, unless they have been certified under normal processing standards since the last expedited certification.

(B) Except with regard to migrant households applying after the 15th of a month, when a certification period of longer than one month is assigned, the State agency shall notify the household in writing that no further benefits will be issued until the postponed verification is completed. Migrant households eligible for expedited service and applying after the 15th of a month and which are assigned certification periods of longer than one month, shall be notified in writing that they shall provide postponed verification from sources within the State before a second month's benefits are issued and shall provide all verification from out-of-State sources before being issued benefits for the third month. The notice shall also advise the household that if verification results in changes in the household's eligibility or level of benefits, the State agency shall act on those changes without advance notice of adverse action. Migrants shall be entitled to postpone out-of-State verification only once each season. If a migrant household requesting expedited service has already received this exception during the current season, the State agency shall grant a postponement of out-of-State verification only for the initial month's issuance and not for the second month's issuance. When households which applied for benefits after the 15th of the month provide the required postponed verification, the State agency shall issue the second month's benefits within five working days from receipt of the verification or the first of the second month, whichever is later. It the State agency chooses to exercise the option to require a second application in accordance with § 273.2(i)(4)(iii), it shall issue the second month's benefits within five working days from receipt of the necessary verification. Except for migrant households needing out-of-State verification, when the postponed verification is not completed within 30 days of the date of application, the State agency shall terminate the household's participation and shall issue no further benefits.

* * * * *

4. In § 273.10, paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) are revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application.*

(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State agency determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program.

(ii) A household's benefit level for the initial month of certification shall be based on the day of the month it applies for benefits. A household shall receive benefits prorated from the day of application to the end of the month. As used in this subsection, the term initial month means either the first month for which an allotment is issued to a household or the first month for which an allotment is issued to a household following any period of more than a month during which the household was not certified for participation in the Food Stamp Program. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate. When using either formula, the State agency shall use, for the full month's benefits, the actual amount of $1, $3 or $5 benefits instead of the rounded amount of $2, $4 and $6:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$\text{full month's benefits} \times \frac{(31 - \text{date of application})}{30} = \text{allotment}$$

(B) For State agencies which use the exact number of days in a month, the formula is:

$$\text{full month's benefits} \times \frac{(\text{number of days in month} + 1 - \text{date of application})}{\text{number of days in month}} = \text{allotment}$$

(C) After using the appropriate formula to determine the allotment, the State agency shall round the product down if it ends in 1 through 49 cents and up if it ends in 50 through 99 cents. If the computation results in an allotment of $1, $3, or $5, the allotment shall be rounded up to $2, $4, or $6, respectively.

(iv) Those households which are entitled to expedited service as defined in § 273.2(i)(1), and which apply for benefits after the 15th of the month, shall be assigned certification periods in accordance with § 273.2(i)(4)(iii). However, the benefits for the month following the month of application shall not be issued until all necessary verification not already provided has been provided to the State agency. Migrant households eligible for expedited service and applying after the 15th of a month shall be certified in accordance with § 273.2(i)(4)(iii)(B). The State agency shall issue the second month's benefits in accordance with § 273.2(i)(4)(iii)(B).

(2) *Application for recertification.* Eligibility and the level of benefits for recertifications shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. If an application for recertification is received later than one month from the date the household's certification period has expired, then that application shall be considered an initial application and benefits for that month prorated in accordance with paragraph (a)(1)(ii)of this section.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated

changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

5. In § 274.2, paragraph (i) is revised as follows:

§ 274.2 Issuance systems.

* * * * *

(i) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provided by FNS, except as provided in paragraphs (i)(1), (i)(2), and (i)(3) of this section. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books.

(1) The State agency may deviate from the table if the specified coupon books are unavailable.

(2) Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination.

(3) If a household is eligible for an allotment of $1, $3, or $5, the State agency shall adjust those allotments to $2, $4, and $6, respectively.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: May 10, 1982.

Mary Jarratt,

Assistant Secretary.

[FR Doc. 82–13157 Filed 5–13–82; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 359]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period May 16–22, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: The regulation becomes effective May 16, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on May 11, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.659 is added as follows:

§ 910.659 Lemon regulation 359.

The quantity of lemons grown in California and Arizona which may be handled during the period May 16, 1982, through May 22, 1982, is established at 300,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674)

Dated: May 13, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82–13362 Filed 5–13–82; 11:29 am]

BILLING CODE 3410–02–M

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7 CFR Part 1011

[Milk Order No. 11; Docket No. AO–251–A22]

Milk in the Tennessee Valley Marketing Area; Order Amending Order

Correction

In FR Doc. 82–12536 appearing on page 19667 in the issue of Friday, May 7, 1982, make the following corrections.

1. On page 19670, paragraph (e)(6) of § 1011.13, seventh line, the word "and" should be omitted.

2. On page 19670, second column, the third line of paragraph "8." inadvertently omitted the "(b)." As corrected that line should read: "is changed to "1011.9 (a), (b), (c), and (d)".".

BILLING CODE 1505–01–M

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing the Loan and Purchase Program for 1982 and Subsequent Crops Barley

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to revise the regulations governing the loan and purchase program for 1982 and subsequent crops of barley (1) to remove all references to normal crop acreage and set-aside requirements currently appearing at § 1421.51 (normal crop acreage and set-aside requirements are no longer effective); (2) to incorporate availability and maturity dates; and (3) to remove all references to the annual crop supplements that are no longer being codified.

DATE: This final rule shall become effective May 14, 1982.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: H. E. Maynard, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447-8460.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Secretary's Memorandum 1512-1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases, Number 10.051 as filed in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

The purpose of this rule is to revise the regulations governing the loan and purchase program for 1982 and subsequent crops of barley to include eligibility requirements, availability dates, and maturity dates for making loans and purchases and to remove references to the annual crop supplements for barley that are no longer being codified.

A separate Regulatory Impact Analysis was not prepared. The effects of this final rule are primarily administrative. Significant impacts to the private sector would be the result of annual program determinations. There will be modest savings to the Government, as the result of decodification. Review of 7 CFR 1421.50 through 1421.59 indicates no further changes are necessary at this time.

Since compliance with normal crop acreage limitations is no longer necessary for price support loan eligibility, references to that requirement have been deleted. The loan availability dates and maturity dates which have previously been published in the **Federal Register** as an annual crop supplement are no longer being codified. Therefore, this continuing regulation is being revised to set forth these dates.

The availability date establishes the period during which the producer may request a price support loan or sign a purchase agreement. The maturity date defines the length of the price support loan and establishes the final date that loans on the commodity mature for that crop year. Since this final rule makes no substantive changes in the regulations but merely deletes certain obsolete references and generally incorporates and republishes certain existing provisions into a single continuing regulation, it has been determined that no further public rulemaking is required. Accordingly, this rule shall become effective upon date of filing with the Director, Office of the Federal Register.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Accordingly, the general regulations governing price support for 1978 and subsequent crops of barley as set forth at 7 CFR 1421.50 through 1421.59 and the title of the subpart are revised as stated herein for the 1982 and subsequent crops of barley. The material previously appearing in this subpart remains in full force and effect as to the crops to which it was applicable.

PART 1421—GRANTS AND SIMILARLY HANDLED COMMODITIES

Final Rule

Title 7 of the CFR is amended by revising §§ 1421.50 through 1421.59:

Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Barley

Sec.

1421.50 Purpose.
1421.51 Eligible barley.
1421.52 Determination of quality.
1421.53 Determination of quantity.
1421.54 Warehouse receipts.
1421.55 Fees and charges.
1421.56 Warehouse charges.
1421.57 Availability.
1421.58 Maturity of loans.
1421.59 Support rates.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 105 B, 401, 95 Stat. 1227, 63 Stat. 1051, as amended (7 U.S.C. 1444d, 1421).

§ 1421.50 Purpose.

This subpart contains program provisions which, together with (a) the General Regulations Governing Price Support for the 1978 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price support for the 1982 and subsequent crops of barley.

§ 1421.51 Eligible barley.

(a) *General.* (1) In order to be eligible for a price support loan or purchase agreement, the barley must be merchantable for food, feed, or for other uses, as determined by the Commodity Credit Corporation (CCC), and must not contain mercurial compounds, toxin-producing molds, or other substances poisonous to humans or animals.

(2) The barley must have been produced by a producer who has complied with the program eligibility requirements prescribed in Parts 713, 718, 730, and 791 of this title and any amendments thereto.

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the barley must also meet the following requirements:

(1) The barley must grade No. 5 or better, except that: (i) The barley may grade "Sample" on the factor of test

weight or total damage (except heat damage) and (ii) the barley may have the following special grade designations: "Garlicky" and, in the State of Alaska only, "Tough."

(2) The barley must not grade "Blighted," "Bleached," "Ergoty," "Smutty," or, if Western Barley, "Stained."

(3) The barley must not grade "Weevily" or have moisture over 14.5 percent unless the warehouse receipt representing the barley is accompanied by a supplemental certificate which provides that the warehouseman shall deliver barley which is not "Weevily," does not contain in excess of 14.5 percent moisture, and is otherwise of an eligible grade and quality. The grade, quality, and quantity shown on the supplemental certificate shall be as provided in § 1421.54(c)

§ 1421.52 Determination and quality.

The class, grade, grading factors, and all other quality factors shall be based on the Official Grain Standards of the United States for Barley, whether or not such determinations are made on the basis of an official inspection. The cost of official grade determinations when made shall not be for the account of CCC.

§1421.53 Determination of quantity.

When the quantity is determined by weight, a bushel shall be 48 pounds of barley free of dockage.

(a) *In warehouse.* The quantity of barley on which a warehouse-stored loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse shall be the net weight specified on the warehouse receipt or on the supplemental certificate, if applicable. If the barley has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate, if applicable, shall represent the quantity after drying or blending, and such quantity shall reflect a minimum shrink in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the barley, when received, and 14.5 percent.

(b) *On farm.* The quantity of barley eligible to be placed under a farm-stored loan shall be determined in accordance with § 1421.17. The quantity acquired by CCC from farm storage under a loan or purchase agreement shall be determined by weight of the barley at the time of delivery to CCC.

§ 1421.54 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a price support loan or purchase agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of barley.

(b) *Entries.* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (1) Gross weight and net bushels, (2) class, (3) grade (including special grades), (4) test weight, (5) moisture content if above 14.5 percent, (6) dockage, (7) any other grading factor(s) when such factor(s) and not test weight determine the grade, (8) whether the barley arrived by rail, truck, or barge, (9) the date the barley was received or deposited in the warehouse, and (10) the storage start date.

(c) *Where warehouse receipt shows "Weevily," excess moisture, or both.* If a warehouse receipt tendered as security for a loan indicates that the barley grades "Weevily" or contains over 14.5 percent moisture, or both, the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.51(b)(3) in order for the barley to be eligible for price support. The grade, grading factors, and quantity to be delivered must be shown on the supplemental certificate as follows:

(1) When the warehouse receipt shows "Weevily" and the barley has been conditioned to correct the "Weevily" condition, the supplemental certificate must show the same grade without the "Weevily" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2) When the warehouse receipt shows a moisture content of over 14.5 percent and the barley has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending the barley to a moisture of not over 14.5 percent which shall reflect a drying or blending shrink as specified in § 1421.53(a). The supplemental certificate must state that no lien for processing will be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt. In the case of conditions specified in paragraphs (c) (1) and (2) of this section, the grade, grading factors, and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipt.

(d) *Liens.* Warehouse receipts and the barley represented thereby stored in an approved warehouse operating under the Uniform Grain Storage Agreement (hereinafter called "UGSA") may be subject to liens for warehouse charges only to the extent indicated in § 1421.56. However, in no event shall a warehouseman be entitled to satisfy the lien by sale of the barley when CCC is holder of the warehouse receipt.

(e) *Freight certificate requirements.* Warehouse receipts representing barley which has been shipped by rail or by barge utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission (ICC), from a country shipping point to a normal trade channel market or to a storage point-and stored intransit to a normal trade channel market, must be accompanied by supplemental certificates. These certificates must be representative as to origin and date of movement of the barley and must reflect the rate of freight paid into the storage point and the amount of penalty, if any, for out-of-line haul. The form of the certificates will be prescribed by the Agricultural Stabilization and Conservation Service Kansas City Commodity Office (ASCS–KCCO) and shall be signed by the warehouseman.

§ 1421.55 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.56 Warehouse charges.

(a) The ASCS–KCCO approved list of handling and storage rates will provide the rates to be deducted from the amount of the loan or purchase price in the case of barley stored in an approved warehouse operated under the UGSA. Such deduction shall be based on entries shown on the warehouse receipts. No storage deductions shall be made if written evidence is submitted with the warehouse receipts that (1) storage charges through the loan maturity date have been prepaid, or (2) the producer has arranged with the warehouseman for the payment of storage charges through loan maturity and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt: "Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the barley represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt."

(b) The beginning date to be used for computing the storage deduction on barley stored in warehouses operating under the UGSA shall be the later of the

following: (1) The date the barley was received or deposited in the warehouse, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid.

§ 1421.57 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible barley which is not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC–614) indicating the approximate quantity of barley the producer will sell to CCC.

§ 1421.58 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan was disbursed.

(b) *Purchase Agreements.* Purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved.

§ 1421.59 Support rates.

Basic county support rates for barley and the schedule of discounts will be published in a notice in the **Federal Register** for the applicable crop each year. Farm-stored barley loans will be made at the applicable basic county support rate, adjusted only for the weed control discount where applicable. The support rate for warehouse-stored barley loans and for barley acquired by CCC through the purchase program or barley delivered in settlement of a farm-stored loan shall be the applicable basic support rate adjusted in accordance with the provisions of this section and the discounts published in the **Federal Register** for the applicable crop each year on the basis of quality factors on warehouse receipts or supplemental certificates in the case of barley stored in or delivered to an approved warehouse or on such other form as CCC may prescribe in the case of barley delivered to other than an approved warehouse. Settlement of loans and purchases shall be made in accordance with the provisions of § 1421.22. If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

(a) *Basic support rates for farm-stored barley.* The applicable basic support rate for farm-stored loans shall be the basic county support rate established for the county in which the barley is stored.

(b) *Basic support rates for warehouse-stored barley received by rail or utilizing combination barge-rail rates.* (1) *When shipped by rail.* The applicable basic support rate for warehouse-stored loans on barley which was received by rail and stored in an approved warehouse which is in line of normal commercial channels of trade shall be determined by adding to the basic support rate established for the county from which the barley was shipped the following: (i) The amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges in effect for the shipping warehouse. The freight rate which is paid to bring the barley to the storage point shall not exceed the lowest rate which will permit the storage in transit privilege and protect the lowest single car rate applying from origin through point of storage to a normal trade channel market that would be used in commercial channels of trade. If the barley is destined to a normal trade channel market that would be used in commercial channels of trade but such barley is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(2) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse-stored loans on barley which is stored in an approved warehouse and which was shipped utilizing combination barge-rail freight rates, published and on file with the ICC, shall be determined by adding to the basic support rate established for the county from which the barley was shipped the following: (i) the amount of freight charges per bushel actually paid in and (ii) an amount equal to the truck receiving and rail loading-out charges computed in accordance with the applicable rates of the UGSA in effect at the time the loan is made. The freight rate, which is paid to ship the barley to the storage point, shall be a rate which will permit the storage in transit privilege and protect the lowest single car or barge freight rate applying from origin through point of storage to a normal trade channel that would be used in commercial channels of trade. If the barley is destined to a normal trade channel market that would be used in commercial channels of trade but such barley is stored in an approved warehouse at a transit point thus resulting in additional costs because of out-of-line movement, such additional costs shall be deducted from the support rates as otherwise determined in this paragraph.

(c) *Basic support rates for warehouse-stored barley received by truck or nontariff barge.* (1) The basic support rate for barley delivered by truck by the producer to a warehouse at normal delivery point shall be the rate for the county where the barley is stored. (2) The basic support rate for barley delivered by truck by the producer to an in-line warehouse located 20 miles or more beyond the normal delivery point shall be the support rate for the county from which shipped plus the smaller of the actual freight charge or the following truck freight rate from the farm to the storing warehouse minus the distance from the farm to the producer's normal delivery point.

Map mileage	Allowance
0–19	[1] 0
20–50	[1] .06
51–100 add	[2] .0010
101 and over add	[2] .0004

[1] Per bushel.
[2] Per bushel per mile.

(3) The basic support rate for barley delivered to a warehouse and shipped by truck 20 miles or more to an in-line warehouse shall be the total of: (i) the support rate for the county in which the shipping warehouse is located; (ii) the amount of the truck freight from the schedule shown in subparagraph (c)(2); and (iii) the truck receiving and truck load-out charges for the shipping warehouse.

(4) The basic support rate for barley shipped by barge or truck-barge at a negotiated rate when map mileage from the origin warehouse is 20 miles or more to an in-line warehouse shall be the total of (i) the support rate for the county from where shipped; (ii) the amount of the truck freight from schedule shown in paragraph (c)(2); and (iii) the origin truck receiving and load-out charge.

(d) *Storing responsibilities.* With respect to barley received by rail or by combination barge-rail, the storing

warehouseman shall be responsible for determining the normal trade channel routes via the storing warehouse that will protect the lowest freight rate to the designated normal trade channel market that would be used in commercial channels of trade and for protecting such routes. The storing warehouseman shall also execute supplemental certificates showing: (1) The rate of freight paid into the storage point; (2) the amount of penalty, if any, for backhaul or out-of-line movement; (3) the applicable normal trade channel market that would be used in commercial channels of trade; and (4) any other information which may be prescribed by CCC. The warehouseman is responsible to CCC for the accuracy or omissions of information on the supplemental certificate. Warehouseman liability, if any, for the failure to comply with the provisions of this paragraph will be determined in accordance with the provisions of the UGSA after acquisition of the warehouse receipt by CCC.

Signed at Washington, D.C., on May 6, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-13114 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends Appendix A—REA Bulletins by revising REA Bulletin 44–7 (Electric) and 345–3 (Telephone), "Acceptance of Standards, Standard Specifications, Drawings, Materials and Equipment for the Electric and Telephone Programs." This revision establishes separate bulletins for the telephone and electric programs and as a result REA Bulletin 44–7 (Electric) is entitled "Acceptance of Standards, Specifications, Drawings, Materials and Equipment, and Timber Inspection Programs and Agencies."

This revision brings organizational references up-to-date and consolidates electric program requirements and procedures for REA acceptance of standards, specifications, drawings, materials and equipment for REA financial assistance for the electric program which are presently contained in REA Bulletin 44–7, REA Bulletin 44–1, "Specifications and Standards for Materials and Equipment," and REA Bulletin 43–6, "Selection and Inspection of Materials and Equipment." REA Bulletin 44–7 will also include provisions for acceptance and removal of timber products inspection agencies to provide a more equitable procedure and permit the use of technically acceptable foreign materials without REA review. In addition, the Bulletin provides guidelines and procedures for removing items from REA Bulletin 43–5, "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers."

This rule also amends Appendix A—REA Bulletins by removing Bulletins 44–1, "Specifications and Standards for Materials and Equipment" and 43–6, "Selection and Inspection of Materials and Equipment."

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. James Arnold, telephone (202) 382–9082. A Final Impact Statement has been prepared and is available from the Director, Engineering Standards Division, Rural Electrification Administration, Room 1270–S, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been issued in conformance with Executive Order 12291, Federal Regulation. Since no significant effect on the economy will occur; since no significant increase in costs for consumers, industries or Government will result; and since no significant impact on economic conditions will be caused, this action has been determined to be "not major."

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply to this action, therefore, a Regulatory Flexibility Analysis has not been prepared.

This final action is intended to bring the bulletin into line with present REA organization and consolidate electric program rules. The separation of telephone and electric procedures, and the general clarification of the bulletin should make the bulletin less confusing to all concerned.

A notice of Proposed Rulemaking was published in the **Federal Register** on September 15, 1981, Volume 46, Number 178, Page 45783. However, no public comments were received in response to the proposal.

(Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees).

Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends Appendix A—REA Bulletins by revising REA Bulletin 44–7 (Electric) and 345–3 (Telephone), "Acceptance of Standards, Standard Specifications, Drawings, Materials and Equipment for the Electric and Telephone Programs," resulting in separate bulletins for each program. As a result, REA Bulletin 44–7 (Electric), is entitled "Acceptance of Standards, Specifications, Drawings, Materials and Equipment, and Timber Inspection Programs and Agencies."

Bulletin 44–7 sets forth the requirements and procedures for the determination by the REA Technical Standards Committee of standards, standard specifications, drawings, materials and equipment acceptable for REA financial assistance for the electric program. The Bulletin also sets forth requirements and procedures for acceptable programs and inspection agencies in the procurement of timber products. Provisions are also provided for removing items for specified reasons from the REA approved list of materials acceptable for use on systems of REA borrowers.

Therefore, Appendix A—REA Bulletins is amended in accordance with the above.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Electric utilities, Loan programs—energy.

Dated: May 7, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-13156 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0404]

Regulation Q; Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and tornadoes in twelve counties in Arkansas.

EFFECTIVE DATE: April 23, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711) or Beverly A. Belcamino, Attorney (202/452–3623).

SUPPLEMENTARY INFORMATION: On April 23, 1982, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Arkansas counties of Ashley, Boone, Crittenden, Faulkner, Fulton, Hempstead, Howard, Little River, Lonoke, Monroe, Sevier and St. Francis major disaster areas. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas as a result of the severe storms and tornadoes beginning on or about April 2, 1982. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 23, 1982, and will remain in effect until 12 midnight, October 23, 1982.

List of Subjects in 12 CFR Part 217

Advertising; Banks, banking; Federal Reserve System; Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated counties of Arkansas directly affected by the severe storms and tornadoes, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, May 7, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82–13159 Filed 5–13–82; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 217

[Docket No. R–0403]

Regulation Q; Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by a fire in Orange County, California.

EFFECTIVE DATE: April 24, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711) or Beverly A. Belcamino, Attorney (202/452–3623).

SUPPLEMENTARY INFORMATION: On April 24, 1982, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated Orange County, California, a major disaster area. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the fire beginning on or about April 21, 1982. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 24, 1982, and will remain in effect until 12 midnight, October 24, 1982.

List of Subjects in 12 CFR Part 217

Advertising; Banks, banking; Federal Reserve System; Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in Orange County, California, directly affected by the fire, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, May 7, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82–13160 Filed 5–13–82; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 564

[No. 82–323]

FSLIC Insurance Coverage of Deferred Compensation Plans and IRA and Keogh Accounts

May 6, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board has determined to amend its regulations governing insurance of accounts to provide $100,000 insurance coverage for the interest of each participant in a deferred compensation plan, the funds of which are invested in an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The amendment is intended to clarify the extent of insurance coverage of interests in employee retirement plans.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Heffernan, Attorney (202–377–6435), or Kenneth F. Hall, Attorney (202–377–6466), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On March 5, 1982, the Board, as operating head of the Federal Savings and Loan Insurance Corporation, proposed to

amend Parts 561 and 564 of its regulations (12 CFR Parts 561 and 564 (1981)), governing insurance of accounts, to extend the maximum $100,000 coverage to the individual interests of participants in deferred compensation plans (FHLBB Res. No. 82–161; 47 FR 10858 (1982)). Based on the authority provided by sections 401(b) and 405(a) of the National Housing Act, the Board has determined to amend Parts 561 and 564 substantially as proposed. Section 401(b) of the National Housing Act ("Act") provides in relevant part that "funds held in fiduciary capacity * * * shall be insured in an amount not to exceed $100,000 for each trust estate * * *" (12 U.S.C. 1724(b)). Section 405(a) of the Act (12 U.S.C. 1728(a)) authorizes the Board, for purposes of defining the extent of insurance coverage, to define the terms used in section 401(b).

Summary of comments

The Board received a total of 514 comments on the proposal during the public comment period, which expired April 10, 1982. Of the total number of comments, 450 were from individuals, 23 were from federal savings and loan associations, 17 were from state-chartered savings and loans, 17 were from employers administering deferred compensation plans, 4 were from thrift industry trade associations, and one each were from a law firm, a mutual savings bank and a commercial bank. The comments expressed overwhelming support for the proposed amendments. Only one commenter, an individual, objected to the proposal, apparently on the mistaken belief that such action would require a large and immediate outlay of taxpayers' funds.

Discussion

Generally, under a deferred compensation plan, an employer and employee agree in advance that a specified amount of the employee's salary or other compensation shall be deferred over the course of the latter's employment. During the period of deferral, the deferred or a like amount of funds are invested, and typically may be invaded for the employee's benefit only where an emergency beyond the employee's control has occurred. Upon an employee's retirement or separation from employment, the benefits accumulated under the plan (deferred income, and gains, losses and income from investments) are distributed, normally in regular payments over a period of years. The great majority of deferred compensation plans are sponsored by state or local governmental units.

Currently, the interests of participants in non-trusteed deferred compensation plans are not separately insured. Sections 564.2(c) and 564.10 of the Board's regulations (12 CFR 564.2(c), 564.10 (1981)) provide insurance coverage to the interests of participants in employee benefit plans only if the plans are trusteed. However, for purposes of determining the extent of insurance coverage, the Board believes, and the comments support the conclusion that, there is no substantive difference between the interest of a participant in a deferred compensation plan and the interest of a beneficiary in a trusteed employee pension plan.

Both types of plans are intended to provide retirement income for participants. Although the funds in a deferred compensation plan typically remain the sole property of the employer, this is primarily to satisfy the provisions of sections 451 and 457 of the Internal Revenue Code (I.R.C. 451, 457) to ensure the postponement of taxes on deferred income until the year in which such income is paid to a plan participant. Retention of ownership by the employer does not alter the fact that the funds must be used for the participant's benefit (unless the employer becomes insolvent and the funds are thereby depleted).

Because of the similarities between deferred compensation plans and trusteed employee benefit plans, the Board has determined to extend insurance coverage to the interest of each participant in a deferred compensation plan by amending its definition of "trust estate" (12 CFR 561.4 (1981)) to include such interests. Section 561.4 currently defines "trust estate" to include only the interest of a beneficiary in an irrevocable express trust. Under the amendment, a deferred compensation plan will be considered a trust for purposes of applying § 564.10 governing insurance coverage of trust accounts. In addition, paragraph (c) of § 564.2 is amended to provide that the trust estate of each participant in a deferred compensation plan shall be evaluated as if the participant were a beneficiary of an irrevocable trust and the interest of the participant had fully vested as of the date of default of the insured institution. The Board notes that, under the amendments, insurance coverage would be extended to all deferred compensation plans (including, *e.g.*, non-trusteed IRA/Keogh plans), whether or not they comply with the various provisions of the Internal Revenue Code and regulations promulgated thereunder addressing the tax treatment of such plans.

IRA/Keogh accounts

The Board also takes this opportunity to clarify that the interests of an IRA beneficiary are insured to $100,000 separately from other trust interests (including those arising under a Keogh plan) of the beneficiary, and that the interests of the beneficiary in a Keogh plan also are separately insured to $100,000. Such an individual would receive separate insurance coverage even if the beneficiary's trust, IRA and Keogh plan interests were created by the same settlor (grantor).

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 13, 1980), the Board provides the following regulatory flexibility analysis:

1. *Reasons, objective and legal basis underlying the final rule.* These elements are incorporated above in the supplementary information regarding the amendments.

2. *Small entities to which the final rule would apply.* The final rule will apply equally to all institutions whose accounts are insured by the FSLIC, regardless of size.

3. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the amendments.

4. *Alternatives to the final rule.* There is no alternative method of insuring the individual interests of participants in deferred compensation plans.

Copies of this document may be obtained through the Public Information Officer, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

The Board finds that delay of the effective date of this regulatory action for 30 days after publication pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because it is in the public interest to clarify the extent of insurance coverage of interests in employee retirement plans.

List of Subjects

12 CFR Part 561

Savings and loan associations.

12 CFR Part 564

Savings and loan associations, Insurance.

Accordingly, the Board amends Parts 561 and 564 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, to read as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. Revise § 561.4, to read as follows:

§ 561.4 Trust estate.

The term "trust estate" means (a) the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statutes, but does not include any interest retained by the settlor, or (b) the interest of a participant in a deferred compensation plan, which plan shall be considered a trust for purposes of applying § 564.10 of this subchapter.

PART 564—SETTLEMENT OF INSURANCE

2. Amend § 564.2 by revising paragraph (c)(1) thereof, to read as follows:

§ 564.2 General principles applicable in determining insurance of accounts.

* * * * *

(c) *Valuation of trust interests.* (1) Trust estates (as defined in § 561.4 of this subchapter) in the same trust invested in the same account will be separately insured if the value of the trust estate is capable of determination, as of the date of default, without evaluation of contingencies except for those covered by the present-worth tables and rules of calculation for their use set forth in § 20.2031–10 of the Federal Estate Tax Regulations (26 CFR 20.2031–10): *Provided,* that (i) in connection with pension and other trusteed employee benefit funds (including those qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954), the trust estate of each participant shall be evaluated as if the trust were irrevocable and the interest of the participant had fully vested as of the date of default of the insured institution, and (ii) in connection with deferred compensation plans, the trust estate of each participant shall be evaluated as if the participant were the beneficiary of an irrevocable trust and the interest of the participant had fully vested as of the date of default of the insured institution.

* * * * *

3. Revise § 564.10, to read as follows:

§ 564.10 Trust accounts and IRA and Keogh accounts.

All trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or of the settlor or beneficiary of such trust arrangements, except that (a) all vested and ascertainable interests of the same beneficiary which qualify under Section 401(d) of the Internal Revenue Code of 1954 shall be added together and insured up to $100,000 separately from any trust interests of the beneficiary, (b) all vested and ascertainable interests of the same beneficiary which qualify under Section 408(a) of the Internal Revenue Code of 1954 shall be added together and separately insured up to an additional $100,000, and (c) all trust estates as defined in § 561.4(b) of this subchapter shall be added together and separately insured up to an additional $100,000.

(Secs. 401, 402, 403, 405; 48 Stat. 1255, 1256, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 82-13247 Filed 5-13-82; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 82-92]

Customs Regulations Amendments Relating to Aircraft Clearance

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends Customs clearance procedures applicable to aircraft departing the United States for foreign territory, to:

1. describe clearly the types of aircraft requiring clearance;
2. provide for telephonic clearance in certain circumstances;
3. clarify the time at which clearance documentation must be presented; and
4. modify the present requirement that an outward general declaration, as well as a cargo manifest, be filed for all outbound flights requiring clearance.

The amendments, which will assist aircraft operators and Customs to clear aircraft departing for foreign territory, are in furtherance of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division (202–566–5706); Thomas J. Hargrove, Cargo Processing Division (202–566–5354). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to title 49, United States Code, section 1509(c), (49 U.S.C. 1509(c)), the Secretary of the Treasury is authorized to provide by regulation for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels. Under this authority, Part 6, Customs Regulations (19 CFR Part 6), sets forth the entry and clearance requirements for civil aircraft.

Clearance Requirements

Section 6.3(c), Customs Regulations, provide, in part, that an aircraft departing the United States for foreign territory "carrying passengers for hire or merchandise, or to take aboard or discharge persons or merchandise anywhere outside the United States" shall be cleared by Customs before departure. The phrase "carrying passengers for hire or merchandise" has been found to be ambiguous with respect to whether merchandise as well as passengers must be carried "for hire" if clearance is to be required. The phrase "to take aboard or discharge persons or merchandise anywhere outside the United States" has similarly been subject to misinterpretation as to whether the persons or merchandise involved must be carried "for hire" and as to whether the "persons" referred to must be "passengers," if clearance is to be required.

To clarify these matters, § 6.3(c) is being amended by inserting "carrying, for hire, either passengers or merchandise, or taking aboard or discharging, for hire, either passengers or merchandise anywhere outside the United States" in place of "carrying passengers for hire or merchandise, or to take aboard or discharge persons or merchandise, anywhere outside the United States."

Under certain conditions, Customs has permitted aircraft departing the United States for Canada to be cleared by a telephone call to Customs. It has been determined that this procedure should not be limited to aircraft departing for Canada. It could be used for aircraft departing for any foreign territory, if certain requirements are met. Therefore, § 6.3(c) is being amended further to provide for telephonic clearance of aircraft departing for any

foreign territory if the aircraft is empty, or if it is carrying only passengers for hire or non-commercial cargo for which shipper's export declarations are not required. However, the request for telephonic clearance must be received by the Customs officer in charge at the airport with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo.

In addition, certain changes to § 6.3(c) are necessary in order to make references therein to other sections of the CFR accurate.

Documents For Clearance

Section 6.8(a), Customs Regulations, requires the aircraft commander or other authorized person to deliver an outward general declaration (Customs Form 7507), a cargo manifest (Customs Form 7509) and any required shipper's export declarations to the Customs officer in charge "at the time of departure" from any area from which clearance is required by § 6.3 or 6.5, Customs Regulations. For more than 10 years, Customs has authorized a procedure whereby aircraft proceeding to Canada, which file a cargo manifest containing a declaration as to the accuracy of the manifest, are not required to file the outward general declaration.

Customs has reviewed this procedure and determined that it should not be limited to flights to Canada. It could be applied to all outbound flights. Therefore, § 6.8(a) is being amended to provide, at the option of the carrier, that if the cargo manifest contains a declaraton as to the truth of the manifest, an outward general declaration will not be required.

Time for Filing

The requirement in § 6.8(a) that clearance documents be deposited "at the time of departure" is being modified to permit their deposit, with the approval of the Customs officer in charge, at any time before departure. This amendment is being made to remove time constraints imposed by the phrase "at the time of departure" which are unnecessary for efficient Customs control.

Conforming Changes to §§ 6.8(c) and 6.8(d)

Sections 6.8(c) and 6.8(d) are being amended to reflect the change of § 6.8(a) that an outward general declaration is not required for clearance when a cargo manifest with the appropriate statement is submitted.

Inapplicability of Public Notice Requirement

Because these are technical amendments in which the public does not have a particular interest, and because they liberalize existing requirements and impose no additional duty or burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary.

Executive Order 12291

Because this will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by section 3 of E.O. 12291 are not required.

Inapplicability of Regulatory Flexibility Act

This project is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act," because that Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participate in its development.

List of Subjects in 19 CFR Part 6

Air carriers, Aircraft, Airports, Customs duties and inspection, Imports, Freight.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below:

PART 6—AIR COMMERCE REGULATIONS

1. Section 6.3(c) is amended by revising the first sentence and by adding two new sentences between the first and second sentences, to read as follows:

§ 6.3 Entry and clearance.

* * * * *

(c) Aircraft departing for foreign territory: (1) Carrying, for hire, either passengers or merchandise; (2) Taking aboard or discharging, for hire, either passengers or merchandise anywhere outside the United States; or (3) Carrying residue cargo from one area to another, shall be cleared in the area from which departing. Clearance may be obtained from the Customs officer in charge by telephone if the aircraft is departing for foreign territory empty, or if it is carrying only passengers for hire or non-commercial cargo for which shipper's export declarations are not required. The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo. * * *

2. The present fourth sentence of § 6.3(c) is amended by substituting "International Trade Administration" for "Bureau of International Commerce," and by substituting "part 372, International Trade Administration Regulations (15 CFR 372)" for "§ 370.2 of the Export Control Regulations (15 CFR 370.2)."

3. The present fifth sentence of § 6.3(c) is amended by substituting "Category VIII" for "Category X."

4. Footnote 2 to § 6.3(c) is amended by removing the second sentence.

5. Section 6.8 is amended by revising the first sentence and by adding two new sentences between the first and second sentences of paragraph (a), by adding a new sentence at the end of paragraph (c), and by revising paragraph (d), to read as follows:

§ 6.8 Documents for clearance, or for certain departures.

(a) At the time of departure or, with Customs approval, if the cargo is available for inspection, at any time before departure, of any aircraft from any area from which clearance is required by §§ 6.3 or 6.5, the aircraft commander or an authorized person shall deliver to Customs an outward general declaration, a cargo manifest and any required shipper's export declarations for all cargo on the aircraft (and for aircraft itself, if it is being exported from the United States for foreign account). If cargo is on board the aircraft, an outward general declaration shall not be required if the following statement, signed by the aircraft commander or an authorized person, is on the cargo manifest:

I declare that to the best of my knowledge and belief this manifest contains an exact and true account of all cargo on board this aircraft.

Signed _____

(Aircraft Commander or Authorized Person)

If no cargo is on board, an outward general declaration shall not be required if the following statement, signed by the aircraft commander or an authorized person, is on the cargo manifest:

I declare that there is no cargo on board this aircraft.

Signed _____

(Aircraft Commander or Authorized Person)

* * * * *

(c) * * * However, if a cargo manifest is delivered in duplicate, with the appropriate statement as provided for in paragraph (a) of this section, the general declaration shall not be required.

(d) One copy of the general declaration for departure from the United States or one copy of the cargo manifest with the appropriate statement as provided for in paragraph (a) of this section, shall constitute a clearance certificate when endorsed by the Customs officer in charge to show that clearance is granted. When a scheduled aircraft obtains clearance at a port other than the port at or nearest the place of last takeoff, a copy of the cargo manifest shall be attached to and accompany the general declaration endorsed at such port for any necessary use at subsequent United States ports. In such a situation, if the cargo manifest contains the appropriate statement as provided for in paragraph (a) of this section, the general declaration shall not be required.

(R.S. 251, as amended; section 624, 46 Stat. 759; sections 904, 1109, 72 Stat. 787, 799 as amended; 80 Stat. 379 (19 U.S.C. 66, 1624; 49 U.S.C. 1474, 1509; 5 U.S.C. 301))

William T. Archey,

Acting Commissioner of Customs.

Approved: March 22, 1982.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-13228 Filed 5-13-82; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 10

[T.D. 82-91]

Supplies and Equipment for Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add the People's Republic of China to the list of countries whose aircraft are exempt from the payment of customs duties and internal-revenue taxes on supplies and equipment withdrawn from Customs or Internal Revenue custody for use by the aircraft in certain circumstances. In accordance with a request from the Department of State, Taiwan Desk, the designation for the People's Republic of China will appear as "China" and the present designation for the Republic of China will appear as "Taiwan."

It has been determined that the Government of the People's Republic of China allows substantially reciprocal privileges to United States-registered aircraft engaged in foreign trade. Based on this determination, a reciprocal exemption from duties and taxes has been granted to aircraft registered in the People's Republic of China.

EFFECTIVE DATE: September 17, 1980.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5778).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or Internal Revenue custody without the payment of customs duties and/or internal-revenue taxes, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States-registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Assistant Secretary of Commerce for International Economic Policy, to whom the authority was delegated by the Secretary of Commerce (45 FR 11862, February 22, 1980), has found and by letter dated May 13, 1981, has advised the Secretary of the Treasury, that effective September 17, 1980, the Government of the People's Republic of China allows privileges substantially reciprocal to those provided in 19 U.S.C. 1309 and 1317 to United States-registered aircraft engaged in foreign trade. Corresponding privileges accordingly are extended to aircraft registered in the People's Republic of China and engaged in foreign trade, effective as of September 17, 1980.

Therefore, § 10.59(f) is being amended to add the People's Republic of China to the list of countries contained therein (effective September 17, 1980). In accordance with a request from the Department of State, Taiwan Desk, the designation for the People's Republic of China will appear as "China" and the present designation for the Republic of China will appear as "Taiwan" at the end of the list of countries. Also, the listing of "China" is being asterisked, with a footnote referring the reader to the "Taiwan" listing.

List of Subjects in 19 CFR Part 10

Customs duties and inspection. Imports, Exports.

Amendments to the Regulations

Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended as set forth below:

1. By adding "China*" in the appropriate alphabetical order under the column headed "Country," and "82-91" under the column headed "Treasury Decisions(s)."

2. By removing "Republic of China" from the column headed "Country," "70-107(1)" from the column headed "Treasury Decisions(s)," and "Not applicable to ground equipment." from the column headed "Exceptions if any, as noted -."

3. By adding "Taiwan" two spaces below Yugoslavia under the column headed "Country," "70-107(1), 82-91" under the column headed "Treasury Decisions(s)," and "Not applicable to ground equipment," under the column headed "Exceptions if any, as noted -."

4. By placing "* See also Taiwan" one space below the line at the end of the table in § 10.59(f).

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are found to be unnecessary and pursuant to 5 U.S.C. 553(d)(1), a delayed effective date is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a "major" regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Robert J. Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of Commerce and State participated in its development.

Dated: March 26, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc 82-13131 Filed 5-13-82; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 19

[T.D. 82-90]

Customs Regulations Amendment Relating To Imported Smelted or Refined Products Containing Metal

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to simplify the reporting requirements relating to the amount of dutiable metal in imported smelted or refined products. Customs believes the revenue is amply protected without requiring that smelted or refined products containing dutiable metal be described in the warehouse withdrawal and delivery permit. Further, paperwork and reporting burden is reduced by the amendment.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5865).

SUPPLEMENTARY INFORMATION:

Background

Imported metal-bearing materials may be entered into a bonded smelting or refining warehouse in the United States without the payment of duties and smelted or refined, or both, together with other metal-bearing materials of domestic or foreign origin.

Upon the withdrawal for consumption of metal so smelted or refined, or both, duty is collected on the quantity of metal contained in the imported metal-bearing materials. In order to aid in determining the amount of duty to be paid, § 19.18(b), Customs Regulations (19 CFR 19.18(b)), provides that the warehouse withdrawal and delivery permit shall (1) describe the smelted or refined products to be withdrawn in terms of the condition in which they will be when released from Customs custody upon presentation of the delivery permit; (2) state the estimated amount of the dutiable metal contained in the products; and (3) the warehouse withdrawal shall specify the applicable wastage.

Customs has determined that the revenue is amply protected without requiring a description of the smelted or refined products containing dutiable metal in the warehouse withdrawal and delivery permit. The deletion of this requirement reduces paperwork and the reporting burden for those who must file the warehouse withdrawal and delivery permits and yet continues to provide adequate protection of the revenue. Accordingly, a notice of proposed rulemaking proposing to delete this requirement was published in the Federal Register on October 1, 1981 (46 FR 48238). Only one comment was received in response to the notice and this comment, while in favor of the proposal was non-substantive. Accordingly, after further review of this matter, the proposal is adopted as published in the notice of proposed rulemaking.

Inapplicability of Delayed Effective Date

Because the subject matter of this document does not constitute a departure from established policy, only slightly modifies an existing procedure, and confers a benefit on the public through a reduced reporting requirement, pursuant to 5 U.S.C. 553(d)(1) a delayed effective date is not required.

Executive Order 12291

This proposed amendment is not a "major" regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this regulation because publication of a notice of proposed rulemaking was not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other law.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, other Customs personnel participated in its development.

List of Subjects in 19 CFR Part 19

Customs duties and inspection, Imports, Exports, Surety bonds, Warehouses.

Amendment to the Regulations

Part 19, Customs Regulations (19 CFR Part 19), is amended as set forth below.

William T. Archey,

Deputy Commissioner of Customs.

Approved: April 12, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Section 19.18(b), Customs Regulations (19 CFR 19.18(b)), is amended by revising the fourth sentence of the section to read as follows:

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

* * * * *

(b) * * * The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage. * * * R.S. 251, as amended, sections 312, 624, 46 Stat. 692, as amended, 759 (19 U.S.C. 66, 1312, 1624).

[FR Doc. 82-13130 Filed 5-13-82 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 162

[T.D. 82-89]

Summary Forfeiture: Controlled Substances

AGENCY: Customs Service, Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations to provide that: (1) Certain seized controlled substances which are imported into the United States without the proper entry documentation may be declared as summarily forfeited to the United States; and (2) Such seized controlled substances may, upon the direction of the appropriate Customs officer, be immediately disposed of in a proper manner and pursuant to existing disposal procedures. These amendments are being made to alleviate the unnecessary and costly storage of large quantities of controlled substances for three weeks. Such substances have been illegally imported or attempted to be imported into the United States, and,

under present regulations, are required to be stored for three weeks, until public notice of their impending summary forfeiture is provided by Customs.

EFFECTIVE DATE: May 11, 1982.

Comments: These amendments are being published as interim regulations, effective on May 11, 1982. However, written comments received on or before June 14, 1982 will be considered in determining whether any changes to the regulations are required before permanent rules are published.

ADDRESS: Send comments to the U.S. Customs Service, 1301 Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Steven L. Basha, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202–566–2482); or

David Goldfarb, Assistant Regional Counsel, U.S. Customs Service, 99 S.E. 5th Street, Miami, Florida 33131, (305–350–4321).

SUPPLEMENTARY INFORMATION:

Background

During the last few years, Customs has found it increasingly difficult to adequately store and safeguard controlled substances that have been seized for violation of drug and/or customs laws. Under present § 162.45, Customs Regulations (19 CFR 162.45), Customs is required to retain seized drugs for at least three weeks, during which time notice of their impending summary forfeiture under the customs laws is given. This three week retention provision necessitates the storage of these items in secure areas because of their illicit value and often dangerous propensities. The problem of storage and security of seized drugs has become acute in Customs regions that have large scale drug smuggling activity. For example, the Miami, Florida, Customs Region (Region IV) alone seized over 3,400,000 pounds of marihuana in fiscal year 1981. The cost to the Government in providing secure storage for such large quantities of drugs has become excessive. Additionally, the storage of large quantities of these items often interferes with the efficient operation of other Customs business.

The Controlled Substances Act (21 U.S.C. 801, *et seq.*) and the Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*), deem illegally imported Schedule I drugs (as defined in 21 U.S.C. 802(6) and 812) to be contraband that is summarily forfeited to the United States (21 U.S.C. 881(f), 965). The Supreme Court has held that contraband is not required to be returned to the person from whom it is seized. *Trupiano* v. *United States*, 334 U.S. 699, 710 (1948); *United States* v. *Jeffers*, 342 U.S. 48, 53 (1951). Accordingly, because illegally imported Schedule I substances are summarily forfeited to the United States upon seizure, there is no purpose served in storing such substances, or notifying the public of Customs intention to dispose of such substances (pursuant to § 162.45). The public notice provision of § 162.45 is included in the regulations for the benefit of those parties who might have a legitimate interest in seized property, and who might wish to file a claim for such property pursuant to § 162.47, Customs Regulations (19 CFR 162.47). The fact that seized Schedule I drugs are deemed contraband (i.e., summarily forfeited to the Government) precludes any claim under § 162.47. To the best knowledge of Customs, no claim for property subject to summary forfeiture under § 162.47 has ever been filed with respect to seized Schedule I drugs.

Comments

Before adopting these regulations as permanent rules, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

An acute storage problem associated with large quantity seizures of controlled substances has arisen and poses security risks, is expensive, and interferes with normal Customs business. The problem is particularly acute in Customs Region IV (Miami, Florida) due to the continuous number of large quantity drug seizures effected there. Because of these factors, and because 21 U.S.C. 881(f), 965, deem illegally imported Schedule I, controlled substances to be contraband, which is summarily forfeited to the United States, it has been determined that pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Accordingly, pursuant to 5 U.S.C. 553(d)(3), good cause exists for dispensing with a delayed effective date.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rules will not have a significant economic impact on a substantial number of small entities. The amendments are not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from entities through comments, either formal or informal.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rules will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Robert J. Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Law enforcement, Penalties, Search warrants, Seizures and forfeitures, Imports, Customs duties and inspection.

Amendments to the Regulations

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The section heading and paragraph (b) of § 162.45, Customs Regulations (19 CFR 162.45(b)), are amended to read as follows:

§ 162.45 Summary forfeiture where value not over $10,000: Property other than Schedule I controlled substances. Notice of seizure and sale.

* * * * *

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person other than Schedule I controlled substances (as defined in 21 U.S.C. 802(6)) exceeds $250, the notice shall be published in a newspaper of general circulation in the Customs district and the judicial district in which the property was seized for at least three successive weeks.

(2) In all other cases, except for Schedule I controlled substances (see § 162.45a), the notice shall be published by posting in a conspicuous place accessible to the public in the customhouse nearest the place of seizure and in the customhouse at the headquarters port for the Customs district, with the date of posting noted thereon, and shall be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures shall be advertised as one unit.

* * * * *

2. Part 162, Customs Regulations (19 CFR Part 162), is amended by adding a new § 162.45a, to read as follows:

§ 162.45a Summary forfeiture of Schedule I controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801) provides that all controlled substances in Schedule I (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold, or offered for sale in violation of the Act shall be deemed contraband and seized and summarily forfeited to the United States (21 U.S.C. 881(f)). By reference, the Controlled Substances Import and Export Act (21 U.S.C. 951) incorporates this contraband forfeiture provision. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I controlled substances, the appropriate Regional Commissioner of Customs shall contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR 1312). If upon inquiry the Regional Commissioner or his designee is notified that no permit for lawful importation has been issued, he shall declare the seized substances contraband and forfeited pursuant to 21 U.S.C. 881(f). Inasmuch as such substances are deemed contraband, the notice procedures set forth in section 162.45 are inapplicable to the disposition of Schedule I substances.

3. Section 162.63, Customs Regulations (19 CFR 162.63), is amended to read as follows:

§ 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951), shall be handled in the same manner as other Customs arrests and seizures. However, Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law shall be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a.

(Sec. 511(d), 1010, 84 Stat. 1277, 1291; 21 U.S.C. 881(d), 966)

(R.S. 251, as amended, sec. 624, Stat. 722, as amended, 728, as amended, 750 (19 U.S.C. 66, 1624))

William von Raab,

Commissioner of Customs.

Approved: March 22, 1982.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

[FR Doc 82-13118 Filed 5-13-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 82N-0077]

Antibiotic Drugs; Cefamandole Sodium for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of a new antibiotic drug, cefamandole sodium for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective May 14, 1982; comments, notice of participation, and request for hearing by June 14, 1982; data, information, and analysis to justify a hearing by July 13, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, cefamandole sodium for injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Parts 436 and 442 (21 CFR Parts 436 and 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended:

a. In § 436.33(b) by alphabetically inserting a new item into the table as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	Diluent (diluent number as listed in § 436.31)	Test dose: Concentration in units or milligrams of activity per milliliter (milligrams)	Test dose: Volume in milliliters to be administered to each mouse	Route of administration as described in paragraph (c) of this section
* * * *	*	*	*	*
Cefamandole sodium	3	40	0.5	Intravenous.
* * * *	*	*	*	*

b. In § 436.324(d), by inserting a new sentence between the heading and the first sentence, to read as follows:

§ 436.324 Polarographic analysis of cefamandole.

* * * * *

(d) *Preparation of sample and working standard solutions.* Use the cefamandole lithium working standard.

* * *

* * * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

2. Part 442 is amended:

a. In Subpart A by adding new § 442.9a, to read as follows:

§ 442.9a Sterile cefamandole sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile cefamandole sodium is 5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 7-[(hydroxyphenylacetyl)amino]-3-[[(1-methyl-1*H*-tetrazol-5-yl)thio]methyl]-8-oxo-, monosodium salt [6*R*-[6α, 7β(R*)]]-. It is so purified and dried that:

(i) Its cefamandole content is not less than 860 micrograms and not more than 1,000 micrograms of cefamandole per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) Its moisture content is not more than 3.0 percent.

(vi) Its pH in an aqueous solution containing 100 milligrams per milliliter is not less than 3.5 and not more than 7.0.

(vii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefamandole content, sterility, pyrogens, safety, moisture, pH, and identity.

(ii) Samples required:

(*a*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*b*) For sterility testing: 20 packages, each containing equal portions of approximately 250 milligrams.

(b) *Tests and methods of assay*—(1) *Cefamandole content.* Proceed as directed in § 436.324 of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of cefamandole per milliliter.

(4) *Safety.* Proceed as directed in § 436.33 of this chapter.

(5) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(6) *pH* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using the mineral oil mull prepared as described in paragraph (b)(2) of that section.

b. In Subpart C by adding new § 442.209, to read as follows:

§ 442.209 Cefamandole sodium for injection.

(a) *Requirements for certification*—(1—*Standards of identity, strength, quality, and purity.* Cefamandole sodium for injection is a dry mixture of cefamandole sodium and one or more suitable and harmless buffering agents. Its cefamandole content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cefamandole that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its moisture content is not more than 3.0 percent. Its pH is not less than 6.0 and not more than 8.5. The cefamandole sodium used conforms to the standards prescribed by § 442.9a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefamandole sodium used in making the batch for cefamandole content, moisture, pH, and identity.

(*b*) The batch for cefamandole content, sterility, pyrogens, safety, moisture, and pH.

(ii) Samples required:

(*a*) The cefamandole sodium used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Cefamandole content.* Proceed as directed in § 436.324 of this chapter, preparing the sample solution and calculating the cefamandole content as follows:

(i) *Sample solution.* Reconstitute the sample as directed in the labeling. If it is represented as a single-dose container, remove all the withdrawable contents with a suitable hypodermic needle and syringe. If the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of this solution with distilled water to obtain a concentration of 2.0 milligrams of cefamandole per milliliter (estimated). Transfer 5 milliliters of this solution to a 50-milliliter volumetric flask, add 30 milliliters of pH 2.3 buffer, dilute to volume with distilled water, and mix.

(ii) *Calculations.* Calculate the cefamandole content as follows:

$$\text{Milligrams of cefamandole} = \frac{A \times \text{Milligrams of working standard} \times \text{Potency of working standard in micrograms per milligram} \times f}{B \times 50 \times 1{,}000}$$

where:

A = The peak height of the sample;

B = The peak height of the working standard;

f = The dilution factor of the sample.

(6) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act (21 U.S.C. 357), FDA permits the manufacturer to market this drug on a "release" status pending this regulation's effective date. Because this regulation is not controversial and because when effective it provides notice of accepted standards and

permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective May 14, 1982. However, interested persons may, on or before June 14, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch betweeen 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 14, 1982, a written notice of participation and request for hearing, and (2) on or before July 13, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective May 14, 1982

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)))

Dated: May 7, 1982.

James C. Morrison,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 82-13080 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor Number

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amended the animal drug regulations in the **Federal Register** of January 5, 1982 to reflect a change in sponsor. That document did not properly assign a sponsor number of a new animal drug application (NADA). This document corrects that error.

EFFECTIVE DATE: January 5, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Bureau of Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 146), FDA amended the animal drug regulations to reflect the change of sponsor of NADA 035–825 for naloxone hydrochloride injection. The sponsor was changed to Endo Pharmaceuticals, Inc., Manati, PR. Inadvertently, the drug labeler code for Endo, Inc., Manati, PR, was assigned to this firm. This document amends the regulations to provide for the correct labeler code.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. In Part 510, § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for Endo Pharmaceuticals, Inc., by changing the drug labeler code number "000060" to "000590" and in paragraph (c)(2) in the entry for 000060 by changing the drug labeling code number "000060" to "000590", and by numerically inserting the revised entry in the paragraph.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1462 [Amended]

2. In Part 522, § 522.1462 *Naloxone hydrochloride injection* is amended in paragraph (b) by removing the number "000060" and inserting in its place"000590".

Effective date. January 5, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)))

Dated: May 6, 1982.

Max L. Crandall,

Associate Director for Surveillance and Compliance.

[FR Doc. 82-13060 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Piperazine Monohydrochloride Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application filed by Ralston Purina Co. providing for safe and effective use of piperazine monohydrochloride liquid as an anthelmintic for removal of roundworms from dogs.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63188, filed an NADA (125–730) providing for safe and effective use of Purina Liquid Dog Wormer (piperazine monohydrochloride liquid) containing 4.77 percent piperazine monohydrochloride (equivalent 3.35 percent piperazine base) for use as an anthelmintic for dogs for the removal of roundworms *Toxocara canis* and *Toxascaris leonina*. The product is

administered at 20 to 30 milligrams of piperazine base per pound of body weight by mixing in the animal's daily ration, the dose to be consumed in one feeding. The product, at a different concentration but the same dosage, was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation published in the **Federal Register** of February 14, 1969 (34 FR 2213). The evaluation concluded, and FDA concurred, that the product is effective for use as labeled. Additional studies to demonstrate biological equivalence are not required. Based on the information submitted, the NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1806 to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.1806 Piperazine monohydrochloride liquid.

(a) *Specifications.* The product contains 4.77 percent piperazine monohydrochloride, equivalent to 3.35 percent piperazine base.

(b) *Sponsor.* See 017800 in § 510.600(c) of this chapter.

(c) *Conditions of Use*—(1) *Indications for use.* For dogs for the removal of roundworms (*Toxocara canis* and *Toxascaris leonina*).

(2) *Dosage.* Administer 20 to 30 milligrams of piperazine base per pound of body weight as a single dose.

(3) *Limitations.* Administer by mixing into the animal's ration to be consumed at one feeding. For animals in heavily contaminated areas, reworm at monthly intervals. Not for use in unweaned pups or animals less than three weeks of age. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Effective date. This regulation shall become effective May 14, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 5, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc 82-13059 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 529

Certain Other Dosage Form New Animal Drugs not Subject to Certification; Nifurpirinol Capsules; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) providing for a change of sponsor for nifurpirinol capsules from Zoecon Industries to Abbott Laboratories.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Zoecon Industries, Inc., 12200 Denton Dr., Dallas, TX 75234, filed supplemental NADA 99-566 providing for a change of sponsor to Abbott Laboratories, North Chicago, IL 60064. The supplement is approved and the regulations are amended to reflect the change.

This action, the change of sponsor of an NADA, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I approval which did not require reevaluation of the safety and effectiveness data in the parent application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 529

Animal drugs.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 529.1526 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 529 is amended in § 529.1526 *Nifurpirinol capsules* in paragraph (b) by removing drug sponsor code "011536" and inserting in its place "043731".

Effective date. May 14, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 5, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-12856 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for International Nutrition, Inc. The supplemental application provides labeling revisions for a 10-gram-per-pound tylosin premix that expands its use to manufacture of cattle and poultry

feeds in addition to manufacture of swine feeds.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 "L" St., Omaha, NE 68117, is sponsor of NADA 95–551 providing for safe and effective use of a 10-gram-per-pound tylosin premix in manufacturing complete swine feeds. The feeds are used for increased rate of weight gain and improved feed efficiency. On behalf of International Nutrition, Elanco Products Co. filed a supplement to the NADA that expands use of the premix to manufacture of complete cattle and poultry feeds. The cattle feeds are indicated for reduction of incidence of liver abscesses in beef cattle. The poultry feeds are indicated for increased rate of weight gain and improved feed efficiency in chickens and improved feed efficiency in laying chickens. The supplement also provides for certain additional uses of swine feeds derived from the 10-gram-per-pound premix.

International Nutrition, Inc., has existing approval for use of a premix containing 4 grams of tylosin per pound for manufacture of swine feeds used solely for increased rate of weight gain and improved feed efficiency. The supplemental NADA, adding the additional claims and species for the 10-gram-per-pound premix, is approved and 21 CFR 558.625 is amended to reflect the approval.

Approval of this application is based on safety and effectiveness data contained in Elanco's approved NADA 12–491. Use of the data in NADA 12–491 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977) this is a Category II change. The approval of this supplemental NADA does not require reevaluation of the safety and effectiveness data in NADA 12–491.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(3) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(3) To 043733: 4 grams per pound, paragraph (f)(1)(vi) (*a*) of this section; 10 grams per pound, paragraph (f)(1)(i), (iii), (iv), and (vi)(*a*), (*b*), (*c*), and (*d*) of this section.

* * * * *

Effective date. This amendment is effective May 14, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 5, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–12857 Filed 5–13–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FEA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for I.M.S., Inc., providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworm, nodular worm, and whipworm infections; and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: I.M.S., Inc., 13619 Industrial Rd. Omaha, NE 68137, is the sponsor of NADA 129–395 providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworm, nodular worm, and whipworm infections. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. This NADA was filed by Elanco Products Co. for the sponsor I.M.S. Elanco authorized use of the safety and effectiveness data contained in their approved NADA's 10–918 and 11–948 to support this application. This approval does not change the approved use of the drug. Consequently, approval of the NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 129–395 does not require reevaluation of the safety and effectiveness data in NADA's 10–918 and 11–948. NADA 129–395 is approved, and the regulations are amended to reflect the approval. Satisfactory chemistry, manufacturing, and control information were also submitted.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR

25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug labeler code "050639" to paragraph (a)(4) and to the "sponsor" column in paragraph (e)(1)(i) and (ii).

Effective date: May 14, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 5, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-13058 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Custom Feed Services Corp. providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Custom Feed Services Corp., 2100 N. 13th St., Norfolk, NE 68701, is the sponsor of NADA 129-159 submitted on its behalf by Elanco Products Co. This NADA provides for use of a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibrionic), and control swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA's 12-491 and 41-275. Use of the data in NADA's 12-491 and 41-275 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplemental NADA and does not require reevaluation of the safety and effectiveness data in NADA 12-491 or NADA 41-275.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine* by adding, in numerical sequence, drug sponsor code "017473" to paragraph (b)(9).

Effective date. May 14, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 5, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-13057 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 255

[Docket No. R-82-953]

Coinsurance for Private Mortgage Lenders

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on March 31, 1982 (47 FR 13517) which broadened eligibility for participation in the Section 223(f) program to any FHA-approved mortgagee which could meet the special eligibility requirements of Part 255. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published March 31, 1982, at 47 FR 13517, is May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410, Telephone No. (202) 755–6207. This is not a toll-free number.

Dated: May 10, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc 82–13113 Filed 5–13–82; 8:45 am]

BILLING CODE 4210–27–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning June 1, 1982. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, (the "Act").

The valuation of plan benefits is necessary because under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all guaranteed benefits provided under the plan. If the assets are insufficient, the PBGC will pay the guaranteed benefits under the plan termination insurance program established under Title IV.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1982, and enables the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until PBGC publishes an amendment revising them.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202–254–3010.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the Pension Benefit Guaranty Corporation (the "PBGC") issued a final regulation (46 FR 9492 *et seq.*) establishing the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96–364, 94 Stat. 1208 (the "Act"). That regulation, 29 CFR Part 2610, was recodified as 29 CFR Part 2619 on June 24, 1981, effective June 29, 1981 (46 FR 32574). That regulation contains a number of formulas for valuing different types of benefits. In addition, appendix B to the regulation sets forth the various interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

When first published, Appendix B contained interest rates and factors to be used to value benefits in plans that terminated on or after September 2, 1974, but before October 1, 1975. Subsequently, the PBGC adopted additonal rates and factors for valuing benefits in plans that terminated on or after October 1, 1975, but before February 1, 1982. (29 CFR 2619 (1981), 46 FR 36893, 46 FR 45761, 46 FR 50788, 46 FR 55958, 46 FR 61084, 47 FR 2313).

On February 12, 1982, the PBGC last published rates for plans that terminate on or after March 1, 1982 (47 FR 6426). At this time, changes in the financial and annuity markets have necessitated a decrease in the rates used by the PBGC to value benefits. Accordingly, this amendment changes the rates in Appendix B to add a set of interest rates and factors for plans that terminate on or after June 1, 1982. These rates and factors will remain in effect until such time as PBGC publishes another amendment which changes the rates.

As a rule, the rates will be in effect for at least one month. If the rates are to be changed, PBGC will publish an amendment in the **Federal Register**, normally by the 15th of the month prior to the month for which the new rates will be effective. If no change is to be made, no amendment will be published, and the current rates will remain in effect until further notice.

Because the Multiemployer Pension Plan Amendments Act of 1980 established a new insurance program for multiemployer plans, we note that the rates and factors contained in Appendix B to Part 2619 are applicable to non-multiemployer plans only.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly, so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination. Moreover, because of the need to provide immediate guidance for the valuation of benefits under plans that will terminate on or after June 1, 1982, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation or competition.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—VALUATION OF PLAN BENEFITS IN NONMULTIEMPLOYER PLANS

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 is as follows:

Authority.—Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025–27, 1029, (1974) as amended by secs. 403(1), 403(d) and 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299, (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 33 of Appendix B is revised and Rate Set 34 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_x" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1 and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•	•	•
33	5-1-82	6-1-82	11.00	1.1025	1.0000	1.0400	7	8
34	6-1-82		10.75	1.1000	1.0875	1.0400	7	8

Edwin M. Jones,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-13080 Filed 5-13-82; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 221

[NTL-7]

Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases; Removal of Crude Oil by Means Other Than An Approved Lease Automatic Custody Transfer System

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice.

SUMMARY: This notice reinforces and supplements the requirements of the regulations of 30 CFR Part 221, which are applicable to the handling and removal of crude oil by means other than an approved Lease Automatic Custody Transfer System (LACTS) from Federal and Indian oil and gas leases under the jurisdiction of the MMS. It also clarifies for the lessees and operators of such leases the requirements of the MMS in that regard.

EFFECTIVE DATE: This notice supersedes the interim NTL-7 and is effective on June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, Chief, Branch of Fluid Minerals Management, (703) 860-7535 or (FTS) 928-7335..

SUPPLEMENTARY INFORMATION: Because of numerous reports alleging the unauthorized removal of crude from jurisdictional Federal and Indian leases, an interim NTL-7 was published in the Federal Register on September 14, 1981 (46 FR 45695), with an effective date of October 1, 1981. The interim notice reinforced the regulations applicable to the handling and removal of crude oil from jurisdictional Federal and Indian leases and provided further clarification as to the requirements of the MMS in that respect.

A 30-day comment period ending on October 14, 1981, was provided. Over 100 comments were received from Members of Congress, oil and gas industry associations, numerous companies and individuals involved in various aspects of the petroleum industry, an Indian Tribe, and members of the general public. The written comments ranged from single paragraph letters generally protesting the issuance of the notice to a paragraph by paragraph analysis thereof, with proposed alternatives. The majority of the adverse comments focused on the items discussed below:

1. Most commentors objected to the lessee/operator and purchaser/transporter both having to sign the run ticket before the crude oil could be removed from the lease or other approved sales point.

2. Many commentors objected to the requirement that, where multiple truck loads of oil are required to remove oil from a single sales point, a fully and properly completed run ticket was to be completed for each truckload of oil.

3. Some commentors requested that oil run by pipeline via tank measurements be specifically exempted from NTL-7, since it would be difficult, in many instances, to obtain the required signatures by the lessee/operator representative before the oil was removed from the lease.

4. Some commentors objected to the requirement that, where oil was to be removed by transport truck from pits, spill sites, or other facilities, the top and bottom gauge of the truck tank and the capacity thereof be recorded on the run ticket.

Many of the comments received were, in review, found to have merit in recommending less burdensome ways for accomplishing the desired result. Accordingly, the final NTL has been modified to assure that the handling and removal of crude oil from jurisdictional Federal and Indian leases will be appropriately documented, but to eliminate any requirements in that regard which are considered unnecessary and burdensome.

The following changes have been made to the notice as published September 14, 1981:

—The minimum required content of the run ticket has been modified;

—The time at which the lessee/operator must sign the run ticket has been modified;

—A run ticket retention provision has been added,

—For clarity, a provision stating the lessee's/operator's responsibility for putting crude oil in marketable condition has been added.

Approved copies of the final NTL-7 and related CFR provisions will be sent to lessees and operators in accordance with established practice. Additional copies will be available on request from all MMS regional offices. This notice will be reissued as an Onshore Oil and Gas Order following the effective date of the revision to 30 CFR Part 221 which was proposed on November 17, 1982 (46 FR 56564).

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189) and 30 CFR 221.5, the final notice to lessees and operators (NTL-7) is set forth below.

Dated: May 11, 1982.

Andrew V. Bailey,
Acting Deputy Director for Minerals Management.

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Minerals Management Service

Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases

[NTL-7]

Removal of Crude Oil from Federal and Indian Oil and Gas Leases by Means Other Than An Approved Lease Automatic Custody Transfer System

In accordance with the pertinent provisions of onshore oil and gas operating regulations (30 CFR 221) and the terms of the various oil and gas leases issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-287), the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359), the Department of Interior FY 1981 Appropriation Act, (94 Stat. 2964), the Allotted Indian Land Leasing Act of March 3, 1909, as amended (25 U.S.C. 396), and the

Unallotted Indian Lands Leasing Act of May 11, 1938, as amended (25 U.S.C. 396d), the Deputy Minerals Manager for Oil and Gas or for Onshore Minerals (DMM), Minerals Management Service (MMS), has the authority to prescribe the means by which crude oil produced from jurisdictional lands is to be handled, stored, measured (both the quantity and quality), removed, and reported. Jurisdictional lands include all onshore Federal and Indian oil and gas leases (including fractional interest leases), except those on the Osage Indian Reservation, Oklahoma.

This notice is to reinforce the regulations and to clarify for lessees/operators the requirements of the MMS with respect to the handling of crude oil on jurisdictional lands and the removal of crude oil from jurisdictional lands by means other than an approved Lease Automatic Custody Transfer System (LACTS).

Lessees/operators are to make every reasonable effort to place all produced oil in marketable condition and ensure that its sale or removal from leases or other approved sales points by means other than a LACTS is in accordance with this Notice.

All crude oil produced from jurisdictional lands is to be handled, stored, removed, measured, and reported in accordance with the requirements of 30 CFR 221.31, 30 CFR 221.33 and 30 CFR 221.43.

The removal of crude oil from storage tanks or from other points on jurisdictional leases by means other than an approved LACTS requires, without exception, the timely and proper completion of a run ticket. Run tickets may be printed in a number of acceptable formats. Those used for the removal of crude oil from Federal and Indian Leases must, as a minimum, provide space for recording the following:

1. Date of removal and a unique run ticket number;
2. Location: ¼ ¼, Section, Township, Range, and Meridian (where applicable);
3. County and State;
4. Federal or Indian lease number or, as appropriate, the communitization agreement or unit agreement name and unit participating area name;
5. Lessee/operator lease name, if different from No. 4 and desired by the lessee/operator;
6. Tank number or other unique identification for the tank;
7. Tank size (Note: Size is not the true capacity of the tank, but that which is used to indicate the approximate capacity. The exact capacity is that determined from the actual strapping table for the tank);
8. Top and bottom gauges;
9. Bottom sediment depth measurement;
10. Quality measurements, i.e., BS&W content and observed temperature and gravity (°API) of the crude oil;
11. Seal numbers (opening and closing);
12. Lessee/operator name;
13. Lessee/operator witness' name, date, time and signature;
14. Transporter or purchaser name, as appropriate;
15. As appropriate, the transporter or purchaser witness' name, date, time, and signature.

When the lessee/operator determines that a tank of oil is ready for sale, the lessee/operator must, as a minimum seal the valve nearest the tank on all lines connected to the tank to ensure that oil can not be removed from the tank unless a seal is broken. The seal numbers must be recorded by the lessee/operator.

The lessee/operator is responsible for assuring that all volume measurements and quality tests are properly conducted and accurately recorded on the run ticket. The lessee/operator may do this either by conducting independent measurements and quality tests or by physically witnessing those measurements and tests which are performed by the transporter/purchaser. Before any crude oil is removed from a lease, the lessee/operator will require that its transporter/purchaser complete the run ticket to the maximum extent then possible.

After the sale is finalized, a fully completed run ticket (except for the signature by the lessee/operator) is to be left at the facility or delivered in person to the representative of the lessee/operator by the transporter/purchaser.

If the crude oil is trucked, the driver must retain a copy of the run ticket while transporting the oil. When multiple truck loads are hauled from a single sales point, only the driver of the last truckload need have a completed run ticket in his possession; however, the drivers of the earlier loads must have appropriate documentation in the form of a trip log or manifest in their possession. Once the sale is completed, the lessee/operator will require the transporter/purchaser to (1) replace all seals broken during the sale of the oil with new seals, (2) document the reasons for each seal or intermediate seal (on multiple truckload hauls) broken and replaced, and (3) record the old and new seal numbers, and (4) sign and date the run ticket. The lessee/operator shall sign and date the run ticket within 48 hours after the related sale is completed.

The lessee/operator must maintain all run tickets for a period of 6 years. After collecting the seventh year of run tickets, the lessee/operator may dispose of the first year run tickets. This will ensure a minimum run ticket history of 6 years for each storage tank.

Lessees/operators are reminded that while MMS will, under the appropriate circumstances, approve pits for temporary or emergency use or for water disposal purposes, it does not approve pits for the storage of crude oil, regardless of its condition. Thus, lessees/operators are expected to keep their approved pits reasonably free of crude oil accumulations at all times through the use of appropriately sized equipment and good operating practices.

It is recognized, despite the exercise of due care and diligence by the lessees/operators, that events will occur which result in crude oil accumulations on approved pits or at spill sites. In those circumstances, lessee/operators are expected to make every reasonable effort to recover the crude oil, place it in a marketable condition, and return it to appropriate storage tank(s) for sale. If the crude oil is not treatable using existing or portable facilities and chemicals, the lessee/operator will be expected to arrange for its sale by other means and to pay an appropriate royalty based on the sales price. Lessees/operators must notify and obtain the approval of the appropriate District Oil and Gas Supervisor, MMS, prior to any such sale from a pit or spill site. Such notification is to be given in sufficient time to permit an MMS representative to witness the sale; however, the sale may proceed at the appointed date and time whether an MMS representative is present or not.

Any oil which is removed from a jurisdictional lease, communitized tract, or unit participating area in violation of these requirements will (1) be considered as having been illegally removed, (2) result in the issuance of an incident of noncompliance, and (3) the initiation of further appropriate action.

[FR Doc. 82-13282 Filed 5-13-82; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 6

Final Regulations Implementing the Equal Access to Justice Act

AGENCY: Treasury Department.

ACTION: Final rule.

SUMMARY: The Equal Access to Justice Act (Pub. L. No. 96-481, October 21, 1980) provides for the award of attorney's fees and other expenses against the United States in certain specified situations. The Act directs each agency, after consultation with the Chairman of the Administrative Conference of the United States, to "establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses." (5 U.S.C. 504(c)(1)).

These final regulations, based on model regulations issued by the Administrative Conference on June 18, 1981, identify the Treasury Department proceedings to which the Act applies and establish uniform procedures among the affected Treasury Department agencies for submission and consideration of applications for awards.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: James R. Alliston, Office of the Assistant General Counsel (Enforcement and Operations), Room 2308, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, D.C. 20220 (202/566-8261) or Stephanie J. Dick, Office of the Assistant General Counsel (Enforcement and Operations), Room 2000, Main Treasury Building, 1500

Pennsylvania Ave., NW., Washington, D.C. 20220 (202/566-9947).

SUPPLEMENTARY INFORMATION:

Background

Section 202(c)(1) of the Equal Access to Justice Act states that its purpose is "to diminish the deterrent effect of seeking review of, or defending against governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States * * *" Accordingly, whenever an agency conducts an adversary adjudication under 5 U.S.C. 554 (unless specifically excluded by the Act), it may be liable to the prevailing party for the payment of attorney fees and other expenses unless the agency's position is found to have been substantially justified or special circumstances would make an award unjust.

The Act directs each agency, after consultation with the Chairman of the Administrative Conference of the United States, to "establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses." (5 U.S.C. 504(c)(1)).

In addition to identifyng the proceedings of Treasury agencies which are governed by 5 U.S.C. 554, and to which the Act therefore applies, the final regulations include a description of types of applicants who are eligible for awards, standards for awards, the kind of fees and expenses which are allowable, and a description of the information which must be contained in applications for awards under the Act.

The Treasury Department's regulations implementing the Equal Access to Justice Act were published in the **Federal Register** on October 28, 1981 (46 FR 53025) as a temporary rule with request for comments. Interested parties were given until November 27, 1981 to submit comments. Two comments were received, and although both were received after November 27, 1981, they were considered and a discussion appears below. In addition, further review took place within the Department based upon guidelines issued by the Justice Department, "Award of Attorney Fees and Other Expenses in Judicial Proceedings Under the Equal Access to Justice Act," and recommendations made by the Office of Management and Budget. After review of the comments, the Justice Department guidelines, and the OMB recommendations, the Treasury Department is adopting a modified version of the regulations published on October 28, 1981.

Discussion of Comments

The Treasury Department received two comments on its temporary regulations implementing the Equal Access to Justice Act. Both commentors objected to § 6.5(a) of the proposed regulation, which stated that "(n)o presumption arises that the agency's position was not substantially justified simply because the agency did not prevail," and one commentor also objected to § 6.8(a), which stated that the prevailing party's "application shall state the basis for the applicant's belief that the agency position was not substantially justified." The commentors argued that these provisions might be read as an attempt to place on the applicant the burden of showing that the agency position was not substantially justified. The Treasury Department believes that whether an agency position is "substantially justified" in a specific case must be decided in the context of each case and be based upon all the circumstances of that case. The regulation does not attempt to deal with the burden of persuasion issue or have the effect of imposing such burden on an applicant prevailing party. The fact that no presumption arises based on the agency's failure to prevail does not relieve the agency of the necessity to show that its position was substantially justified. In addition, the statement that no presumption arises based on the agency's failure to prevail is fully supported in the legislative history, S. Rept. No. 96-253 (July 20, 1979), p. 7; H. Rept. No. 96-1418 (Sept. 26, 1980), p. 11. The requirement that the applicant state the basis for its belief that the agency's position was not substantially justified helps to frame the issues for decision; it does not alter or even address the question of the burden of persuasion as between the parties.

Both commentors objected to § 6.6(a) of the proposed regulation because it merely repeated the Act's ceiling of $75 per hour for attorney or agent fees, without providing for exceptions to such rates. Both commentors also objected to the documentation requirements on fees and expenses, one specifically mentioning separate billing as required by § 6.6(a) and the other mentioning daily time sheets.

The Treasury Department believes that the $75 ceiling should be left intact because it accurately reflects Congress' decision in section 203 of the Act; because Congress can review the ceiling if warranted, particularly during the course of considering the Act for renewal in 1984; and because at this time there is no basis for believing that $75 per hour is not an appropriate ceiling amount. The Treasury Department will of course consider the ceiling question at such time as it may appear that "an increase in the cost of living or special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved," justify a higher fee in particular classes of cases. However, we note that in response to recommendations from the Office of Management and Budget, §§ 6.6 and 6.10 have been replaced with language identical to that contained in corresponding sections of the final regulations published by the Justice Department on April 13, 1982 (47 FR 15774).

One commentor suggested that the regulation should specifically recognize the right of an eligible party prevailing on some, but not all, issues to recover attorney fees on these issues. Whether a party has prevailed in a particular proceeding will depend upon the facts and circumstances of that proceeding. Developing case law will perhaps provide some guidance. However, we note that the definition of "prevailing party" is primarily a substantive issue. Treasury's regulations are intended to be procedural in nature, in accordance with the Act's directive that each agency establish "uniform procedures" for the consideration of applications for awards. Therefore, the Treasury Department does not believe it is necessary, desirable or practicable to attempt to codify in its regulation a description of "prevailing party" that goes beyond the express terms of the Act.

One commentor suggested that the regulation ought to contain a deadline for payment of an award. The Treasury Department does not believe such a deadline is necessary or appropriate in the regulation, which is primarily designed to establish the ground rules and procedures for applications and adjudications leading to an award. Congress could have legislated a deadline if it had believed that agencies would not act in good faith in particular cases of awards.

In its guidelines on the Equal Access to Justice Act, the Justice Department included a discussion on specific issues in determining eligibility of applicants for awards and concluded that governmental bodies cannot be eligible parties under the Act. Based on the Treasury Department's analysis of the legislative history cited in support of this conclusion, it has been determined that the final rule should be revised to remove any reference to proceedings conducted by the Office of Revenue

Sharing as being covered by the Act. Since the ony applicants for awards under the Act in proceedings conducted by the Office of Revenue Sharing would be state governments or units of local government, it would be misleading to retain reference to those proceedings and create the false impression that these governmental entities could be considered as eligible applicants. Accordingly, § 6.3(c) of the temporary regulations has been omitted from the final rule, and amendments have been made to §§ 6.7 and 6.9 to remove references to the Director of the Office of Revenue Sharing and to state governments and units of local government.

Finally, minor editorial changes have been made in §§ 6.3 and 6.5 to conform more closely to the statutory language.

Authority

These regulations are promulgated under the authority of Section 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Executive Order 12291

It has been determined that this final rule does not meet the criteria for "major rules", set forth in Executive Order 12291 (February 17, 1981) in that it will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the regulations will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, the Secretary of the Treasury has certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the regulations will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author or this document was Stephanie J. Dick, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

List of Subjects in 31 CFR Part 6

Equal access to justice, Claims, Lawyers.

Promulgation of Regulations

Part 6, Treasury Regulations (31 CFR Part 6) is promulgated as set forth below.

Dated: May 4, 1982.

Peter J. Wallison,

General Counsel.

PART 6—APPLICATIONS FOR AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

6.1 Purpose of these rules.
6.2 When the act applies.
6.3 Proceedings covered.
6.4 Eligibility of applicants.
6.5 Standards for awards.
6.6 Allowable fees and expenses.
6.7 Delegations of authority.

Subpart B—Information Required From Applicants

6.8 Contents of application.
6.9 Net worth exhibit.
6.10 Documentation of fees and expenses.
6.11 When an application may be filed.

Subpart C—Procedures for Considering Applications

6.12 Filing and service of documents.
6.13 Answer to application.
6.14 Decision.
6.15 Agency review.
6.16 Judicial review.
6.17 Payment of award.

Authority: Sec. 203(a)(1). Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 6.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before agencies of the Government of the United States. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Treasury Department will use to make them.

§ 6.2 When the act applies.

The Act applies to any adversary adjudication pending before an agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

§ 6.3 Proceedings covered.

The Act applies to adversary adjudications required to be conducted by the Treasury Department under 5 U.S.C. 554. Within the Treasury Department, these proceedings are:

(a) Bureau of Alcohol, Tobacco and Firearms: (1) Permit proceedings under the Federal Alcohol Administration Act (27 U.S.C. 204); (2) Permit proceedings under the Internal Revenue Code of 1954 (26 U.S.C. 5171, 5271, 5713); (3) License and permit proceedings under the Federal Explosives Laws (18 U.S.C. 843).

(b) Comptroller of the Currency:

All proceedings conducted under 12 CFR Part 19, Subpart A.

§ 6.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and has complied with the requirements in Subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C.

1141(a)) with not more than 500 employees, or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the matter in controversy is primarily related to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls in any manner the election of a majority of that business's board of directors, trustees, or other persons exercising similar functions, will be considered an affiliate of that business for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the afffiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 6.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with the *final* disposition of a proceeding, unless (1) the position of the agency was substantially justified, or (2) special circumstances make the award unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 6.6 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the agency finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees.

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that

(1) Compensation for an expert witness will not exceed the highest rate paid by the agency for expert witnesses; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

§ 6.7 Delegations of authority.

The Director, Bureau of Alcohol, Tobacco and Firearms and the Comptroller of the Currency are authorized to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in proceedings listed in § 6.3 under the respective bureau or office. The Secretary of the Treasury may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials.

Subpart B—Information Required From Applicants

§ 6.8 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. The application shall state the basis for the applicant's belief that the position was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall itemize the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 6.9 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 6.4(f)) when the proceeding was initiated. In the case of national banking associations, "net worth" shall be considered to be the total capital and surplus as reported, in conformity with the applicable instructions and guidelines, on the bank's last Consolidated Report of Condition filed before the initiation of the underlying proceeding.

(b) The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

§ 6.10 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If not hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 6.11 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding but in no case later than 30 days after the agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an appplicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 6.12 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 6.13 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought shall file an answer to the application.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 60 days and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer supporting affidavits.

§ 6.14 Decision.

The adjudicative officer shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 6.15 Agency review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the agency may decide to review the decision on its own initiative. If neither the applicant nor agency counsel seeks a review and the agncy does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency 30 days after it is issued. Whether to review a decision is a matter within the discretion of the agency. If review is taken, the agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 6.16 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 6.17 Payment of award.

An applicant seeking payment of an award shall submit to the agency a copy of the agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. An applicant shall be paid the amount awarded unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[FR Doc. 82-13129 Filed 5-13-82; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 3

Increase in Pension Rates and Income Limitations

AGENCY: Veterans Administration.

ACTION: Final regulation changes.

SUMMARY: The Veterans Administration has amended its regulations setting forth the annual rates of improved pension and parents' dependency and indemnity compensation (DIC), the annual income limitations applicable to receipt of section 306 pension, old-law pension and parents' DIC, and the annual amount of a spouse's income that is excludable from a veteran's annual income under the section 306 pension program. The need for this action results from the forthcoming social security cost-of-living increase. The effect of this action is to increase the rates and income limitations by the same percentage that social security will be changed.

DATES: These regulation changes are effective June 1, 1982, the effective date of the social security cost-of-living increase.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202-389-3005)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 3112 the Veterans Administration is required to increase the rates of improved pension and parent's dependency and indemnity compensation (DIC), the income limitations applicable to section 306 pension, old-law pension and parents' DIC, and the amount of a spouse's income that is excludable from the amount of a veteran's annual income under the section 306 pension program whenever there is a social security cost-of-living increase. The benefits are to be increased by the same percentage as social security benefits are increased and at the same time.

The Social Security Administration reports that there will be a cost-of-living increase of 7.4 percent in social security benefits effective June 1, 1982. Accordingly, we are amending 38 CFR 3.23, 3.24, 3.25, 3.26 and 3.262(b)(2) to implement this increase.

Pursuant to 38 CFR 1.12(b) the Veterans Administration finds that prior publication of these changes for public

notice and comment is unnecessary, contrary to public interest and pointless. The Veterans Administration has no discretion in this matter. The statute requires that we increase our benefits by the percentage amount determined by the Social Security Administration and at the same time as the social security increase is effective. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since they do not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulation changes are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

List of subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.105, and 64.110)

Approved: May 10, 1982.

By direction of the Administrator.

Charles T. Hagel,

Deputy Administrator.

PART 3—ADJUDICATION

Part 3 of Title 38 CFR is amended as follows:

1. In § 3.23, paragraphs (a) and (c) are revised to read as follows:

§ 3.23 Improved pension rates.

(a) *Maximum annual rates of improved pension—(1) Veterans permanently and totally disabled (38 U.S.C. 521).*

(i) Veteran with no dependents, $5,328.

(ii) Veteran with one dependent, $6,980.

(iii) For each additional dependent, $903.

(2) *Veterans in need of aid and attendance.*

(i) Veteran with no dependents, $8,524.

(ii) Veteran with one dependent, $10,176.

(iii) For each additional dependent, $903.

(3) *Veterans who are housebound.*

(i) Veteran with no dependents, $6,513.

(ii) Veteran with one dependent, $8,165.

(iii) For each additional dependent, $903.

(4) *Two veterans married to one another; combined rates.*

(i) Neither veteran in need of aid and attendance or housebound, $6,980.

(ii) Either veteran in need of aid and attendance, $10,176.

(iii) Both veterans in need of aid and attendance, $13,371.

(iv) Either veteran housebound, $8,165.

(v) Both veterans housebound, $9,350.

(vi) One veteran housebound and one veteran in need of aid and attendance, $11,360.

(vii) For each dependent child, $903.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).*

(i) Surviving spouse alone, $3,570.

(ii) Surviving spouse and one child in his or her custody, $4,677.

(iii) For each additional child in his or her custody, $903.

(6) *Surviving spouses in need of aid and attendance.*

(i) Surviving spouse alone, $5,712.

(ii) Surviving spouse with one child in his or her custody, $6,817.

(iii) For each additional child in his or her custody, $903.

(7) *Surviving spouses who are housebound.*

(i) Surviving spouse alone, $4,365.

(ii) Surviving spouse and one child in his or her custody, $5,469.

(iii) For each additional child in his or her custody, $903.

(See § 3.24 for entitlement criteria and rate applicable to a child of a deceased veteran not in custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24)

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by $1,202. (38 U.S.C. 521(g))

* * * * *

2. In § 3.24, paragraphs (b) and (c) are revised to read as follows:

§ 3.24 Improved pension rates; surviving children.

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate of $903 reduced by the amount of the child's countable annual income.

(c) *Child in the custody of person legally responsible for support—*(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5)(ii), and the sum of the annual income of such child and the annual income of such person. The amount payable, however, may not exceed the amount by which $903 exceeds the child's countable annual income.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than $903) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than $903). The combined amount payable, however, may not exceed the amount by which $903 times the number of eligible children exceeds the sum of the children's countable annual income. (38 U.S.C. 542)

3. In § 3.25, paragraphs (a), (c), (d) and (e) are revised to read as follows:

§ 3.25 Parents' dependency and indemnity compensation rates.

Dependency and indemnity compensation (DIC) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent the monthly rate of DIC paid to such parent shall be $248 reduced on the basis of the parent's annual income according to the following formula:

FOR EACH $1 OF ANNUAL INCOME

The $248 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$5	$300
.05	800	800
.07	900	1,000
.05	1,000	5,000

No DIC is payable under this paragraph if annual income exceeds $6,060.

* * * * *

(c) *Two parents not living together.* The rates in this paragraph apply to (1) two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $176, reduced on the basis of each parent's annual income, according to the following formula:

FOR EACH $1 OF ANNUAL INCOME OF EACH PARENT

The $176 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.03	800	900
.04	900	1,000
.06	1,000	1,000
.07	1,100	1,300
.08	1,300	6,060

No DIC is payable under this paragraph if annual income exceeds $6,060.

(d) *Two parents living together or remarried parents living with spouses.* (1) The rates in this paragraph apply to: (i) Each parent living with another parent; and (ii) Each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $166, reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

FOR EACH $1 OF COMBINED ANNUAL INCOME

The $154 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$1,000
.02	1,000	1,300
.03	1,300	1,900
.04	1,900	2,400
.05	2,400	2,900
.06	2,900	3,400
.07	3,400	4,000
.08	4,000	8,149

No DIC is payable under this paragraph if combined annual income exceeds $8,149.

(2) The rates in this paragraph are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in paragraph (a) of this section for one parent.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by $130 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

* * * * *

4. Section 3.26 is revised to read as follows:

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) *Section 306 pension income limitations.*

(1) Veteran or surviving spouse with no dependents, $6,060.

(2) Veteran with no dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $6,560.

(3) Veteran or surviving spouse with one or more dependents, $8,149.

(4) Veteran with one or more dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $8,649.

(5) Child (no entitled veteran or surviving spouse), $4,952.

(b) *Old-law pension income limitations.*

(1) Veteran or surviving spouse without dependents or an entitled child, $5,304.

(2) Veteran or surviving spouse with one or more dependents, $7,651.

5. In § 3.262, paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant.

* * * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, $1,930 ($1,797 after May 31, 1981 and before June 1, 1982) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); Sec. 306(a)(2)(B) of Pub. L. 95–588 (92 Stat. 2497)

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[FR Doc. 82-13226 Filed 5-13-82; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-2094-3]

Approval and Promulgation of Implementation Plans; Schedules of Compliance for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing certain conditions previously specified for the Texas Plan for nonattainment areas. The conditions being removed pertain to Subchapters 131.07.00.102 (now 115.192) and 131.07.62 (now 115.212) of Texas Regulation V. On March 25, 1980 (45 FR 19231) EPA conditionally approved the Texas Plan for attaining the ozone standard, to require, among other things, that the State submit compliance schedules for can coating sources which had requested extensions of the final compliance date to December 31, 1985, and for those sources previously exempt from the requirements of Regulation V. The compliance schedules were submitted to EPA but they failed to meet certain procedural requirements. Since Subchapters 131.07.60.102 (now 115.192) and 131.07.62 (now 115.212) already contain approvable final compliance dates for all sources, EPA is withdrawing the condition on its approval of these subchapters.

DATE: This action is effective on July 13, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action may be submitted to the following address: Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, 1201 Elm Street, Dallas, Texas 75270, ATTN: Estela Wackerbarth.

The State's submittal is available for inspection during normal business hours at the following locations: Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, SW., Washington, D.C. 20460, and the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington,

D.C., and at the EPA Region 6 Office, address above.

FOR FURTHER INFORMATION CONTACT: Estela Wackerbarth, Implementation Plan Section, Environmental Protection Agency, Region 6 Office, (214) 767–1518.

SUPPLEMENTARY INFORMATION: On March 25, 1980 (45 FR 19231), EPA conditionally approved certain portions of the Texas SIP, including Subchapters 131.07.60.102 (now 115.192) and 131.07.62 (now 115.212) of Texas Air Control Board (TACB) Regulation V which limits volatile organic compound emissions. The conditions pertaining to these rules required the State to submit certain compliance schedules for sources affected by these Subchapters.

The State submitted schedules in compliance with the deadlines in the conditions of approval. EPA has determined that the schedules are substantively approvable. However, since the State failed to meet certain procedural requirements in the Clean Air Act concerning notice and hearing,[1] EPA cannot approve the schedules.

EPA has decided to remove the two conditions which required submittal of the schedules and take no action on the schedules themselves. EPA finds that this action will have no adverse impact on air quality because subchapters 131.07.06.102 (now 115.192) and 131.07.62 (now 115.212) already contain final compliance dates which the affected sources must meet. Therefore, EPA is withdrawing the two conditions, which required the submittal of interim dates, and is approving these two subchapters in full. EPA notes that the interim dates remain effective under State law for all sources subject to these rules.

The public should be advised that this action will be effective July 13, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

[1] EPA Evaluation Report on Texas Compliance Schedules; February, 1982.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (sixty days from this date). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This notice of rulemaking is issued under the authority of sections 110 and 172 of the Clean Air Act as amended.

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

List of Susjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

§ 52.2275 [Amended]

1. Section 52.2275 is amended by removing paragraphs (a)(1) and (a)(2) and redesignating paragraphs (b), (c), and (d), as (a), (b), and (c) respectively.

[FR Doc. 82-12100 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2106-6]

Ohio: Revision: ARCO Pipeline Company Variance: Pipeline Working Tank, Clinton, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On August 27, 1981, the State of Ohio submitted a revision of its ozone State Implementation Plan (SIP) to the U.S. Environmental Protection Agency (EPA). The SIP revision is a variance for the Pipeline Working (SLOP) Tank, a fixed roof storage tank, located at the ARCO Pipeline Refinery in Summit County, Ohio, a primary nonattainment area for ozone. EPA has reviewed this variance and has determined that the affected county will attain the National Ambient Air Quality Standards (NAAQS) by December 31, 1982 and that reasonable further progress (RFP) is also demonstrated. Therefore, EPA approves this variance and announces final rulemaking today on this revision.

DATE: This action is effective July 13, 1982 unless notice is received by 30 days from date of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of additional information are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, Library Systems Branch, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

State of Ohio, Environmental Protection Agency, Box 1049, 361 East Broad Street, Columbus, Ohio 43216.

Request for comments on this final proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–0300.

SUPPLEMENTARY INFORMATION: On August 27, 1981, the State of Ohio submitted a revision to its ozone SIP. The SIP revision is for the Pipeline Working (SLOP) Tank, a fixed roof storage tank, located at the ARCO Pipeline Company in Summit County (Akron Urban Area), Ohio, a primary nonattainment area for ozone. The variance is to operate the fixed roof storage tank without controls.

Ohio's ozone SIP for this county was approved on October 31, 1980 (45 FR 72122). According to the ozone SIP, Summit County will attain the ozone NAAQS by December 31, 1982.

The August 27, 1981 SIP revision is in the form of a variance from Ohio Rule (3745–21–09(L)) Storage of Petroleum Liquids in Fixed Roof Tanks. This rule requires the installation of an internal floating roof or equivalent control.

ARCO, however requests this variance to operate at status quo emission levels, without controls, on the basis that compliance with the control requirements is economically unreasonable. ARCO estimates that the annual uncontrolled rate of emissions from this source is 1.00 ton per year and with an internal floating roof the controlled rate of emission would be 0.14 tons/year. As a result, the cost effectiveness of installing reasonably

available control technology (RACT) would be $2250/ton of VOC removed. The State believes that the installation of an internal floating roof is economically unreasonable, since the emission reductions would be small, and the control costs would be relatively high. Because of this, the State has concluded that for this specific source, RACT is no controls.

EPA has reviewed this variance, and the State's documentation concerning RACT for this source and concurs with the State's conclusion. In addition, EPA has reviewed the existing ozone SIP for Summit County and determined that it contains a growth margin of over 19000 tons and that RFP towards attainment by December 31, 1982 is demonstrated. Based on this information, EPA approves this variance.

This is being done without prior proposal because the revision affects only one source and will not affect attainment of the standard. The public should be advised that this action will be effective July 13, 1982. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, a subsequent notice will withdraw this final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate curcuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

(Section 110 and 172 of the Act as amended (42 U.S.C. 7410 and 7502))

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

Subpart KK—Ohio

1. Section 52.1870(c) is amended by adding paragraph (35) as follows:

§ 52.1870 Identification of the plan.

* * * * *

(c) * * *

* * * * *

(35) On August 27, 1981, the State of Ohio submitted a variance for the Pipeline Working Tank at the ARCO Pipeline Refinery in Summit County, Ohio.

* * * * *

[FR Doc. 82-12201 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL-2114-5]

Approval and Promulgation of Revisions to Oklahoma State Implementation Plan Regarding Intergovernmental Consultation, Interstate Pollution Abatement, Public Notification, and Composition of State Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking

SUMMARY: The purpose of this notice is to approve various minor revisions to the Oklahoma State Implementation Plan (SIP) that were submitted by the Governor on April 2, 1979, in fulfillment of the Clean Air Act Amendments of 1977. The Environmental Protection Agency (EPA) conditionally approved plan revisions on February 13, 1980, that were submitted to meet the requirements of Part D (Plan Requirements for Nonattainment Areas) of the Act. The revisions being acted on today are specific new non Part D requirements and relate to intergovernmental consultation, interstate pollution abatement, public notification, and composition of the State Board of Health. In reviewing the State's submittal, EPA assessed the ability of the revisions to meet the new requirements of the 1977 amendments.

EFFECTIVE DATE: This action is effective on July 13, 1982 unless notice is received by 30 days from date of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State submittals and incorporation by reference materials are available for review during normal business hours at the following locations:

Environmental Protection Agency, Air Branch, Region 6, 1201 Elm Street, Dallas, Texas 75270

Environmental Protection Agency, Public Information Reference Unit (PM-213), EPA Library, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NE., Room 8401, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Programs Section, Air Branch, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270. Phone (214) 767-2742.

SUPPLEMENTARY INFORMATION: On April 2, 1979, the Governor of Oklahoma submitted minor revisions to the Oklahoma SIP in fulfillment of the Federal Clean Air Act Amendments of 1977. These revisions relate to non Part D requirements for intergovernmental consultation, interstate pollution abatement, public notification, and composition of the State Board of Health. EPA has reviewed the State's submittals and developed an Evaluation Report [1] which describes the new 1977 requirements and evaluates the State's efforts to satisfy those requirements. This evaluation report is available for review during normal business hours at the addresses listed above.

The Oklahoma State Department of Health (OSDH) has revised the Oklahoma State Implementation Plan to include the following requirements:

Intergovernmental Consultation

Section 121 of the Clean Air Act requires intergovernmental consultation and coordination among State and local officials in the achievement of national air quality planning and management. As the lead agency responsible for statewide air pollution control and abatement, the OSDH has developed and implemented a State process for consultation and planning with relevant local governmental organizations having responsibility for any SIP revision process. The OSDH has entered into

[1] Evaluation Report for Revisions to the Oklahoma State Implementation Plan as Required by the 1977 Clean Air Act Amendments, March 1982.

formal agreements with designated metropolitan planning organizations for air quality planning in their respective areas of the State.

Interstate Pollution Abatement

Section 126(a)(1) requires each major proposed *new* or modified stationary source to provide written notice to all States in which the air pollution level will be adversely affected by such source. Section 126(a)(2) requires the State to identify all major *existing* stationary sources which may adversely affect the air pollution level in neighboring States, and to provide the identity of these sources to all affected States. The Air Quality Service (AQS) of the OSDH has agreed to conduct the *new* major stationary source notification required by Section 126(a)(1) in a letter of commitment dated March 31, 1982, from the Acting Chief of the AQS to EPA. The State has also identified those *existing* major stationary sources under Section 126(a)(2) which may have an impact upon the air quality of another State, and has provided the identity of those sources to the affected States and EPA in letters dated November 9, 1977 from the Chief of the AQS.

Public Notification

Section 127 requires the States to notify the public of: exceedances of any national primary ambient air quality standard, the health hazards associated with such pollution, measures which can be taken to prevent such exceedances, and ways for participation in regulatory processes to improve air quality. The OSDH has developed and implemented formal procedures for public notification. These procedures are described in a Public Notification Workplan submitted to EPA in January 1980.

State Boards

Section 128(a)(1) requires that any board, body, or entity which approves permits or enforcement orders must contain a majority of members who represent the public interest, and do not derive any significant portion of their income from persons or businesses subject to the board, body, or entity's permits of enforcement orders. Section 128(a)(2) requires the members of such board, body, or entity to adequately disclose any potential conflicts of interest.

Permits and enforcement orders within Oklahoma are issued by the Oklahoma Commissioner of Health; therefore, these public interest requirements apply only to the Commissioner of Health. Section 1402 of the Oklahoma Code of Ethics for State Officials and Employees [Okla. Stat. Ann. title 74, § 1401 *et seq.* (West)] declares it is the policy of the State of Oklahoma that no officer or employee shall have any interest, financial or otherwise, or engage in any business or transaction of any nature, which is in substantial conflict with the proper discharge of his/her public duties or with the public interest. This provision satisfies the "public interest" requirement in the *first* part of Section 128(a)(1). Section 1401 of the Oklahoma Code of Ethics is an absolute prohibition against any State officer or employee: (1) Soliciting or accepting any compensation which could influence such employee in the proper discharge of the public duties, (2) using an official position to secure special privileges or exemptions not generally available to others, (3) receiving any compensation that would impair efficiency or independence of judgement, or (4) accepting other employment which would impair efficiency or independence of judgement in the performance of public duties. These prohibitions satisfy the "significant portion of their income" requirement in the *second* part of Section 128(a)(1). Also, these prohibitions are interpreted by the Oklahoma State Department of Health as requiring the disclosure of potential conflicts of interest. This satisfies the "disclosure" requirements in Section 128(a)(2)

The revisions included in this approval notice are considered minor in nature and noncontroversial. EPA is approving them without prior proposal. This action is effective July 13, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. Section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1981. This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons.

Dated: May 7, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart LL—Oklahoma

1. In § 52.1920, paragraph (c) is amended by adding paragraph (17) as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(17) Revisions to the plan for intergovernmental consultation, interstate pollution abatement, public notification, and the State Board were submitted by the Governor on April 2, 1979; a letter of commitment for new source notification was submitted by the Acting Chief of the Oklahoma Air Quality Service on March 31, 1982; a Public Notification Workplan was submitted by the Chief of the Oklahoma Air Quality Service on January 14, 1980; the Oklahoma Code of Ethics for State Officials and Employees, with a clarification letter, was submitted by the Oklahoma Commissioner of Health on March 9, 1982; and a clarification letter was submitted by the Acting Chief of the Oklahoma Air Quality Service on February 23, 1982.

[FR Doc. 82-13207 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-9-FRL-2117-3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designation; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action revises the sulfur oxides (SO_x) attainment status designation for portions of the Steptoe Valley Hydrographic Region in Nevada. As requested by the Governor of Nevada and being consistent with requirements of the Clean Air Act, the SO_x designation is changed from nonattainment to unclassifiable for all of Steptoe Valley except the central portion. The designation for the central portion of the Valley, including the cities of Ely and McGill, remains nonattainment for SO_x.

DATE: This action is effective June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Air Programs Branch (A–2–3), Air Management Division, EPA Region 9, 215 Fremont Street, San Francisco, CA 94105, Tele: (415) 974–8061.

SUPPLEMENTARY INFORMATION: On March 3, 1978, under Paragraph 107(d)(2) of the Clean Air Act, as amended, EPA promulgated attainment status designations for all states (43 FR 8962). The Steptoe Valley Hydrographic Region of Nevada was designated nonattainment for SO_x due to measured ambient air quality violations. Under Paragraph 107(d)(5) of the Clean Air Act, a state may revise its designations of attainment status and submit them to EPA for consideration and promulgation.

A study entitled, "Technical Support Document—Redesignation of Steptoe Valley, Nevada," was prepared for the State by the consulting firm of Dames and Moore. The study used dispersion modeling and showed that the nonattainment area for SO_x should be smaller than the entire Steptoe Valley. As a result, the Nevada Division of Environmental Protection (NDEP) held a public hearing to consider revising the SO_x designation from nonattainment to unclassifiable for the northern and southern portions of the Valley.

In the interest of shortening the Federal review period, EPA proposed to redesignate these portions of Nevada prior to receiving a formal request from the State. The proposal, which was published on March 10, 1982 (47 FR 10243) provided a 30-day public comment period. No comments were received.

On March 30, 1982, the Governor of Nevada formally requested the redesignation of these portions of Steptoe Valley for SO_x. Since EPA's March 10 proposal is consistent with the Governor's request and since no comments were received on that action, today's notice takes final action to redesignate the northern and southern portions of the Steptoe Valley from nonattainment to unclassifiable for SO_x. The central portion of the Valley remains designated nonattainment for SO_x.

As a result of this redesignation, the State of Nevada is no longer subject to the requirements of Title I, Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act, as amended, for SO_x in the northern and southern portions of the Steptoe Valley Hydrographic Region.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Secs. 107(d) and 301(a), Clean Air Act, as amended (42 U.S.C. 7407(d) and 7601(a)))

Dated: May 7, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

In § 81.329—*Nevada, the Steptoe Valley* is divided into three areas; the SO_2 designation (published March 3, 1978, 43 FR 9012) is amended by revising "Steptoe Valley" to read:

§ 81.329 Nevada.

* * * * *

NEVADA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Steptoe Valley (179) (10–29N, 61–67E):				
Central	X			
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley).			X	
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley).			X	
* * *	*	*	*	*

[FR Doc. 82–13208 Filed 5–13–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 123

[SW–7–FRL 2124–7]

Hazardous Waste Management Program: Phase I Interim Authorization for Nebraska

AGENCY: Environmental Protection Agency, Region VII.

ACTION: Phase I interim authorization.

SUMMARY: The State of Nebraska has applied for interim authorization of its hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act and EPA guidelines for the approval of State hazardous waste programs (40 CFR Part 123). EPA has determined that the State's program meets all applicable statutory and regulatory requirements and is granting Phase I interim authorization to Nebraska to operate in its jurisdiction a hazardous waste program in lieu of Phase I of the Federal hazardous waste program.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Waste Management Branch, U.S. EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106 (Telephone 816/374–6531).

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires EPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a Federal program is established, EPA is authorized under 3006 of RCRA to approve State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approvals are authorized under RCRA. The first,

"final authorization", is a permanent approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal program and provide adequate enforcement. The second, "interim authorization", is a temporary approval for States which might not meet the requirements of final authorization but whose programs are "substantially equivalent" to the Federal program. RCRA contemplates that States receiving interim authorization will use the interim authorization period to make the changes in their regulations and statutes necessary to qualify for final authorization.

On May 19, 1980, EPA published the first phase of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and guidelines for authorizing State hazardous waste programs under Section 3006 of RCRA (40 CFR Part 123). These guidelines set forth the requirements for interim authorization and the procedures which EPA will follow in acting on State applications for interim authorization. They also provide that EPA will grant interim authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program.

The State of Nebraska submitted a draft application for Phase I interim authorization on April 9, 1981. After detailed review, EPA transmitted comments to the State for consideration on June 25, 1981. Most of these comments were addressed in the final application submitted to EPA on January 12, 1982, which was determined to be complete. A February 11, 1982 **Federal Register** notice (47 FR 6297) announced the availability of the Nebraska interim authorization application for public review and gave notice of a March 16, 1982, public hearing.

After detailed review of the final Nebraska Phase I application, EPA transmitted comments to the State on February 17, 1982. The State responded to those comments in a February 26, 1982, letter. A copy of the EPA comments and the State's response may be obtained from the Regional Office upon request. Clarifications and/or amendments were obtained regarding several areas of which the following were of primary concern.

1. Nebraska Hazardous Waste Rule 34 allows existing hazardous waste management facilities to continue operation in Nebraska for a period of time prior to State compliance inspections provided that each facility complies with all "agreements, orders and understandings" between the facility and the State or EPA. If necessary, compliance schedules will be issued to facilities after a State inspection. In letters dated February 26, 1982, and March 10, 1982, the State clarified that Rule 34 does require existing hazardous waste management facilities to continue to comply with Federal interim status standards (40 CFR Part 265) in order to operate in Nebraska. This was further confirmed by the Nebraska Attorney General's Office on March 17, 1982.

2. Rule 16, which addresses State requirements for permits and licenses, originally was to become effective after the State received Phase II authorization. Since several other Nebraska Rules reference Rule 16, a regulatory amendment was obtained to make Rule 16 effective.

3. Nebraska Hazardous Waste Rule 5(1)(a) inadvertently excludes a mixture of domestic sewage and other wastes when treated in a privately-owned treatment works. As stated in the February 26, 1982, letter from the State and clarified at the March 16, 1982, public hearing, the State's intent is to exclude a mixture of domestic sewage and other wastes only when treated at a publicly owned treatment works. Although a State regulatory amendment is being pursued, the present impact is minimal since known privately-owned treatment works in Nebraska apparently handle only domestic sewage.

4. State regulatory amendments shall be pursued to clarify Nebraska requirements governing international shipments, waste accumulation in tanks and facilities which transport hazardous waste off-site.

5. The Nebraska Attorney General's Office has certified that the authorization plan, if carried out, would provide Nebraska with legal authority to meet the requirements for final Phase I authorization, rather than interim Phase I authorization.

II. Response to Public Comments

On February 11, 1982, a notice was published in the **Federal Register** (47 FR 6297) inviting the public to comment on the Nebraska application for Phase I interim authorization until March 31, 1982. EPA also held a public hearing in Lincoln, Nebraska on March 16, 1982. One person offered general comments at the public hearing which supported stringent management of hazardous waste, State authorization of the hazardous waste program and opportunities for public participation such as hearings. No further comments were received prior to the close of the public comment period.

III. Decision

EPA has reviewed the State of Nebraska's complete application for Phase I interim authorization and determined that the State program is "substantially equivalent", as defined in 40 CFR Part 123 Subpart F, to the Phase I Federal program. In accordance with Section 3006(c) of RCRA, the State of Nebraska is hereby granted interim authorization to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of existing hazardous waste management facilities in Nebraska will be subject to the State of Nebraska hazardous waste program in lieu of the Federal hazardous waste program (40 CFR parts 260–263 and 265) and will not again be subject to Phase I of the Federal program unless (1) the State fails to obtain final authorization by the deadline specified in Section 3006(c) of RCRA and implementing regulations, or (2) authorization is withdrawn by EPA for cause, including failure to obtain State regulatory amendments as discussed above within 12 months of authorization.

IV. Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

V. Compliance with Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VI. Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and

disposal, Waste pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: April 29, 1982.

John J. Franke, Jr.,

Regional Administrator.

[FR Doc. 82-13200 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6245

Alaska; Public Land Order No. 6199, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This document will correct two errors in a land description contained in Public Land Order No. 6199 of March 8, 1982, which corrected Public Land Order No. 6098 of December 14, 1981.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Beaumont C. McClure, Washington, D.C., (202) 343-6511.

By virtue of the authority contained in Subsection 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(a), and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1616(d)(1), it is ordered as follows:

PUBLIC LAND ORDER 6199— [CORRECTED]

The description of two parcels of land in Public Land Order No. 6199 of March 8, 1982 (which corrected Public Land Order No. 6098 of December 14, 1981), as published in FR Doc. 82-7157 appearing at pages 11517 and 11518 in the issue of Wednesday, March 17, 1982, is corrected as follows:

On page 11517, in the third column under T. 17 S., R. 23 E., the second line reads "Secs. 20 to 23 inclusive." It is hereby corrected to read "Secs. 20 to 29, inclusive."

On page 11518, in the first column under T. 17 S., R. 23 E., the fourth line reads, "Secs. 24 to 36, inclusive." It is hereby corrected to read "Secs. 23 to 36, inclusive."

Dated: May 6, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-13212 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[PR Docket No. 79-336]

General Exemption From the Radiotelegraph Requirements; for U.S. Cargo Ships of 1,600 Gross Tons and Upward Navigated Solely on Domestic Voyages Along the East, West or Gulf Coasts of the Contiguous 48 States; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission is inserting text inadvertently omitted from its Report and Order granting a general exemption from the radiotelegraph requirements of the Communications Act to certain U.S. cargo ships. The insertion provides for a reserve source of energy.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Erratum

Released: April 30, 1982.

In the matter of amendment of Part 83 to grant a general exemption from the radiotelegraph requirements of Title III, Part II of the Communications Act to United States cargo ships of 1,600 gross tons and upward navigated solely on domestic voyages along the east, west or Gulf coasts of the contiguous 48 states, PR Docket No. 79-336.

In the Report and Order in the above-captioned matter, FCC 82-75, released February 24, 1982, published in the **Federal Register** March 10, 1982, 47 FR 10220, the following was inadvertently omitted from paragraph 40.

* * * signal generator. Finally, all of the above installations would be required to have an emergency and reserve source of energy.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-13117 Filed 5-13-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing, Northwest Atlantic Squid Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of squid reserves and joint venture amounts.

SUMMARY: Reserve amounts of Atlantic squid are reinstated at the beginning of each squid fishing year, as required by the fishery management plan for the squid fishery of the northwest Atlantic Ocean. In addition, the Assistant Administrator for Fisheries, NOAA, has determined that there are 800 mt each of *Illex* and *Loligo* squid that will not be used by domestic processors; this amount is available for joint ventures. This notice amends the total allowable level of foreign fishing, "TALFF Table" in the Code of Federal Regulations to reflect these adjustments.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, State Fish Pier, Gloucester, MA, 617-281-3600.

List of Subjects in 50 CFR Part 611

Fisheries.

Dated: May 11, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.20, Appendix I is amended by revising entry 1-D to read as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

APPENDIX I—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NONPROCESSED FISH (DNP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF); ALL IN METRIC TONS.

Species	Species code	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
I. Northwest Atlantic fisheries:								
D. Squid Fisheries								
Squid, *Loligo*	502	44,000	7,000	[1] 7,000	[1] 0		19,000	16,000
Squid, *Illex*	504	30,000	7,000	[1] 5,000	[1] 0		13,000	12,000

[1] The Assistant Administrator for Fisheries has determined that 800 mt each for *Illex* and *Loligo* will not be utilized by domestic processors and is available for joint ventures.

[FR Doc. 82-13248 Filed 5-13-82; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule, request for comments, and notice of approval and availability of fishery management plan.

SUMMARY: NOAA issues an emergency interim rule to implement the Fishery Management Plan for Atlantic Sea Scallops (FMP). The Assistant Administrator for Fisheries has approved the FMP, which specifies management measures intended to allow the fishery to attain optimum yield. Emergency implementation of the rule is required to address the urgent need to protect important incoming recruitment to the fishery. NOAA requests the public to comment on this rulemaking to assist in preparation of final rules.

DATES: These regulations will be effective from May 15, 1982, through June 28, 1982. Comments must be received by June 28, 1982.

ADDRESS: Comments on the FMP, the regulations, or supporting documents should be sent to Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930–3097. Mark the outside of the envelope "Comments on Sea Scallop Plan." Copies of the FMP and the initial Regulatory Impact Review/Regulatory Flexibility Analysis are available from Mr. Peterson on written request.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Scallop Management Coordinator, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Sea Scallops (FMP) was prepared by the New England Fishery Management Council (Council), in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries, NOAA, on April 26, 1982. The FMP establishes a management program for Atlantic sea scallops which: (1) Restricts the minimum size-at-harvest as a conservation measure; (2) Requires vessels fishing for Atlantic sea scallops to obtain a permit; and (3) Utilizes the provisions of the voluntary Three-Tier Fisheries Information Collection System to obtain management information about the fishery. An additional aspect of the FMP is that the Regional Director may, based on established criteria, alter the minimum size-at-harvest within the range from 40 to 25 meats to the pound, by as many as 5 meats to the pound per alteration. This procedure can only be exercised under limited circumstances and after the public has an opportunity to comment on the Regional Director's recommendation.

The FMP relies on a single basic conservation and management measure, size-at-harvest, to achieve optimum yield and protect the resource against overfishing. Achievement of the management objectives of the FMP, through utilization of this single measure, can be accomplished only if compliance with the measure and effective enforcement are assured. The FMP provides for enforcement of the minimum size-at-harvest through a comprehensive prohibition on the possession of non-conforming Atlantic sea scallops "up to and including the point of first transaction in the United States." Sea scallops are frequently mixed, sorted, or processed. Such operations could result in processed products that appear to be non-conforming even if scallops were harvested in compliance with these regulations. To provide for consistent application of the possession prohibition, in accordance with the intent of the FMP, all Atlantic sea scallops will be subject to inspection and enforcement up to and including the time and place of the first transaction in the United States. Scallops will be required to meet the specified minimum shell height or maximum meat count standards, unless such scallops are certified to have been taken under a management system that is found to be substantially consistent with these regulations and the conservation objectives of the FMP. The Regional Director is authorized to establish procedures for certification, and to make the finding as to substantial consistency required for certification.

For one year from the effective date of these regulations, Atlantic sea scallops may be retained only if they conform to a standard of 40 meats to a pound (40 meat count), or a shell height of 3¼ inches (83 mm). Thereafter, the meat count standard will be 30 meats to a pound, with a corresponding shell height standard of 3⅛ inches (89 mm), unless the Regional Director exercises his authority to alter these standards.

The Council originally intended that the FMP would establish and maintain a 30 meat count. However, after a public review period, during which industry representatives expressed a need for temporary measures to reduce the potential adverse effects of an immediate 30 meat standard, the Council chose to delay imposition of a 30 meat count, and provide for opportunity to alter the standard. The Council, therefore, adopted the 40 meat count standard for one year. A tolerance of ten percent (by number) for scallops landed in the shell by commercial operators also has been provided.

The Regional Director will review the status of the resource, the fishery, and the industry on a continuing basis. The minimum size-at-harvest standard may be temporarily altered if the Regional Director, after reviewing current information, determines that the size composition of the scallop population has changed significantly, or that domestic and foreign management

measures differ to the extent that the operations of domestic fishermen are placed at a demonstrable disadvantage. The specification of the standards will only be altered if it is determined that modification will better serve the objectives of the FMP. The Regional Director may alter the standard for the meat count by up to five meats to the pound (with equivalent alteration of shell size standard) within a range from 40 to 25 meats to the pound. There is no limit on the number of adjustments which may be made; however, action to alter the standard will be subject to full public review, and comments will be considered before any adjustment action is completed.

These regulations provide that fishermen who harvest scallops in quantities greater than five bushels or 25 pounds per trip must apply for a fishery permit, and keep the permit on board their vessels. Permit applications can be obtained from the Regional Director. The permit requirement does not establish standards of eligibility or limit entry into the Atlantic sea scallop fishery. Information provided in the permit application will enable the Regional Director to notify scallop fishermen, by direct mail, of any adjustments of the meat count and shell height standards.

The FMP provides for use of the voluntary Three-Tier Fisheries Information Collection System (Three-Tier System) for the sea scallop fishery. The first two tiers of that system—dealer and processor data, and vessel landing data—are in place and have been used to collect fishery information for some time.

The remaining tier of the Three-Tier System, which seeks to establish cooperative arrangements with vessel owners to collect additional specific tow-by-tow information from a rotating sub-sample of vessels, has not yet been implemented. Full implementation of the Three-Tier System for the sea scallop and other Atlantic fisheries is a separate action presently under review. Forms and the collection of information required for the permit procedure and for the applicable parts of the Three-Tier System have been approved by the Office of Management and Budget (OMB).

Implementation of the FMP is time critical. In the spring of 1981, a very large year-class of scallops (a large number of maturing juveniles) became available for harvest on Georges Bank, the center of sea scallop production. At that time, the scallops were extremely small, averaging 50 to 60 meats to the pound. Many scallops were taken that spring, by fishermen from both the United States and Canada, before they had an opportunity either to spawn or to grow to a size at which their meat yield approached its potential. Another large year-class is expected to be available this spring on the portion of Georges Bank which currently sustains the bulk of the fishery. Without implementation of the FMP, these immature scallops will be harvested this spring. These regulations are being implemented on an emergency basis under the powers granted the Secretary of Commerce by Section 305(e) of the Magnuson Fishery Conservation and Management Act to protect these scallops immediately, to allow them to grow to a size at which their yield can contribute to the fishery, and to enable them to enhance the fishery by spawning before being harvested. The emergency regulations will be in effect for 45 days, and may be extended for an additional 45-day period if necessary.

Public review and comment on the FMP and these regulations is invited. Any comments received will be considered by NOAA in preparing the final rulemaking.

Classification

The Council prepared a draft Environmental Impact Statement (EIS) which was filed with the Environmental Protection Agency (EPA) and made available to the public from April 3, 1981, to May 17, 1981 (46 FR 27147). Public hearings on the draft were conducted in: Wildwood Crest, New Jersey, on May 5, 1981; Norfolk, Virginia, on May 6, 1981; Manteo, North Carolina, on May 7, 1981; Ellsworth, Maine, on May 18, 1981; Portland, Maine, on May 19, 1981; and in New Bedford, Massachusetts, on May 21, 1981. The public comment period was extended through June 11, 1981 (46 FR 27147), and two additional public hearings were held in Manteo, North Carolina, on June 4, 1981, and Morehead City, North Carolina, on June 5, 1981. The final EIS incorporating written comments and statements from the public hearings was filed with EPA on May 7, 1982.

The Council prepared a Regulatory Impact Review (RIR) which is integrated with the EIS. The RIR supported a finding by the Administrator that this action is not a major rule under Executive Order 12291.

The Administrator has determined that these regulations will have a significant economic impact on a substantial number of small entities, and that therefore they are signficant under the Regulatory Flexibility Act. Implementation of these regulations will promote more effective conservation and efficient use of scallop resources resulting in substantial long-term economic benefits to the scallop fishery. An initial Regulatory Flexibility Analysis has been prepared (as part of the RIR and draft EIS) and is Except for applications for permits, the federal paperwork burden, as defined by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not increased at this time for any level of business. Information collection required for vessel permit application was considered and is approved under OMB 0648–0097. Information collection associated with tiers one and two of the voluntary Three-Tier System will utilize NOAA form 88–30, which is approved under OBM 0648–0013. Section 650.5, *Recordkeeping and Reporting Requirements,* has been reserved pending the full implementation of the provisions of the Three-Tier System to be utilized under this FMP.

List of Subjects in 50 CFR Part 650:

Fish, fisheries.

Dated: May 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR is amended by adding a new Part 650 to read as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

650.1 Purpose and scope.
650.2 Definitions.
650.3 Relation to other laws.
650.4 Vessel permits.
650.5 Recordkeeping requirements. [Reserved]
650.6 Vessel identification.
650.7 Prohibitions.
650.8 Enforcement.
650.9 Penalties.

Subpart B—Management Measures

650.20 Meat-count and shell-height standards.
650.21 Compliance and sampling procedures.
650.22 Review of resource status; temporary modification of standards.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 650.1 Purpose and scope.

The purpose of this Part is to implement the Fishery Management Plan for Atlantic Sea Scallops, prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and

South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA). These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic Ocean over which the United States exercises fishery management authority.

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this Part have the following meanings:

Area of custody means any vessel, building, vehicle, pier, or dock facility where Atlantic sea scallops may be found.

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph 9(a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Council includes the New England, Mid-Atlantic, and South Atlantic Fishery Management Councils.

First transaction in the U.S. means the time and place at which Atlantic sea scallops:.

(a) After being landed in the U.S. in the shell, are shucked;

(b) After being landed in the U.S. shucked, are mixed, sorted, or processed in any way; or

(c) Are certified, through a procedure specified by the Regional Director, not to be "non-conforming" as defined by these regulations.

Fish includes Atlantic sea scallops (*Placopecten magellanicus*).

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops, and any amendments thereto.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin off loading fish, to off load fish, or to arrive in port with the intention of off loading fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Meat means the retained part of the scallop adductor muscle.

Meat count means the number of scallop meats required to make one pound of meats. A meat count of thirty means that one pound of scallops contains thirty meats. As the average scallop size increases, the meat count declines.

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, *unless* such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971 or the Vessel Documentation Act (46 U.S.C. 65).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for Atlantic sea scallops for any use except sale, trade or barter.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Shell height is a straight line measurement from the umbo on the hinge, or anterior wing of the shell, to the outermost part of the curve of the leading edge.

Shucking or *to shuck* means opening scallops and separating the meat from the shell.

Trip is the period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

U.S. harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under U.S. law; or

(b) Any vessel under five net tons, which is registered under the laws of any State.

§ 650.3 Relation to other laws.

All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924, in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 650.4 Vessel permits.

(a) *General.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than five bushels or 25 pounds per trip shall have a permit

required by this Part on board the vessel.

(b) *Application.* An application for a fishing vessel permit under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director and shall contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel in pounds of meats or shellstock, as appropriate;

(7) The type, quantity and size of fishing gear used by the vessel, including a statement as to whether all scallops harvested will be shucked at sea, or a portion of the catch will be landed as shellstock; and

(8) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application must be considered abandoned.

(d) *Expiration.* A permit expires when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under 50 CFR Part 621.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this Part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit must be prominantly displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(j) *Sanctions.* Subpart D of 50 CFR Part 621 governs the imposition of sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this Part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any permit under this Part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear configuration, must be reported to the Regional Director within 15 days of the change.

§ 650.5 Recordkeeping requirements. [Reserved]

§ 650.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this Part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this Part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this Part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

(b) To use any vessel for taking, catching, harvesting, or landing of any Atlantic sea scallops unless the vessel has a valid permit issued under this Part, and the permit is on board the vessel;

(c) To make any false statement in connection with an application under § 650.4; or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(d) To make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops;

(e) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any Atlantic sea scallops in violation of the Magnuson Act, this Part, or any other regulation under the Magnuson Act.

(f) To fail to affix and maintain permanent markings as required by § 650.6;

(g) To refuse to permit an Authorized Officer to board a fishing vessel, or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation or permit under the Magnuson Act;

(h) To forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) To resist a lawful arrest for any act prohibited by this Part;

(j) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this Part;

(k) [Reserved]

(l) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(m) To fail to comply immediately with enforcement and boarding procedures specified in § 650.8;

(n) To transfer directly or indirectly, or attempt to so transfer, any U.S. harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of U.S. harvested fish of the species concerned;

(o) To violate any other provision of this Part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 650.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized

Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" means "You should stop your vessel instantly,"

(2) "SQ3" means "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by § 650.6(a).

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and the boarding party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and the boarding party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as the Authorized Officer deems necessary to ensure the safety of the Authorized Officer and the boarding party and to facilitate the boarding.

§ 650.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable Federal law.

Subpart B—Management Measures

§ 650.20 Meat count and shell height standards.

(a) For one year from the effective date of these regulations, the average meat count for shucked Atlantic sea scallops shall not exceed 40 meats per pound; the corresponding minimum shell height for Atlantic sea scallops landed in the shell is 3¼ inches (83 mm). Thereafter, except as provided in paragraph (b) of this section, the average meat count for shucked Atlantic sea scallops shall not exceed 30 meats per pound; the corresponding minimum shell height for Atlantic sea scallops landed in the shell is 3⅓ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22.

§ 650.21 Compliance and sampling procedures.

Compliance with the specified meat count and shell height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer shall take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the total number of meats in any three one pound samples exceeds the standard, or if the averaged meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer shall take samples of forty scallops each at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.22 Review of resource status; temporary modification of standards.

(a) *Review of resource status.* The Regional Director shall review the status of the Atlantic sea scallop resource on a continuing basis, and shall, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the management program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary modification of standards.* (1) The Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d), of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound (with appropriate and consistent shell height adjustment), and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommendation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record the Regional Director may adjust the standards contained in § 650.20, and shall publish in the **Federal Register** notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 605.22 (c).

(c) *Criteria.* The Regional Director may adjust the standards specified in section 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5% from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50% of the harvestable sea scallop biomass is at sizes smaller than

those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director shall consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director shall also consider: reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 82-13284 Filed 5-13-82; 1:30 pm]
BILLING CODE 3510-22-M

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50 CFR Part 651

Atlantic Groundfish (Cod, Haddock and Yellowtail Flounder)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of emergency interim rule.

SUMMARY: An emergency interim rule is in effect through May 14, 1982, implementing the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). NOAA extends this emergency interim rule from May 15, 1982, through June 28, 1982. This extension will continue the management provided by the Interim Plan, to protect the resource while providing greater flexibility and fishing opportunity.

DATES: Emergency interim rule effective from May 15, 1982 through June 28, 1982.

FOR FURTHER INFORMATION CONTACT: Frank Grice, Chief, Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930–3097, telephone 617–281–3600.

SUPPLEMENTARY INFORMATION: The Interim Plan was approved by the Assistant Administrator for Fisheries, NOAA, and a proposed rule with request for public comment was published on March 11, 1982 (47 FR 10605). The proposed rulemaking included a discussion of the reasons for the development of the Interim Plan and of its provisions. The comment period closed on April 26, 1982. After publication of the proposed rule, the Secretary of Commerce determined that implementing regulations should be effective as soon as practicable under authority of Section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Accordingly, the emergency interim rules were published March 30, 1982, effective March 31, 1982 (47 FR 13357). As stated in the emergency interim rule, these regulations are effective for 45 days, through May 14, 1982, and may be repromulgated for an additional 45 days period as provided in Section 305(e) of the Magnuson Act. This action extends emergency interim regulations through June 28, 1982. Public comments received on the proposed rules will be considered in preparation of the final rulemaking.

The NOAA Administrator determined on March 11, 1982 (47 FR 10605), that these regulations are non-major under Executive Order 12291 (E.O. 12291); and on March 30, 1982 (47 FR 13357) that the emergency provisions of Section 8 of E.O. 12291 apply to this rulemaking.

List of Subjects in 50 CFR Part 651

Fish, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: May 11, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-13283 Filed 5-13-82; 1:31 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 94
Friday, May 14, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

[Bulletin 345-83]

Public Information; Appendix A—REA Bulletins PE-80, REA Specification for Gas Tube Surge Arresters

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins by issuing an addendum to the REA Telephone Bulletin 345–83, REA Specification for Gas Tube Surge Arresters, PE–80. A minor relaxation of the impulse transverse voltage requirements applied to three-electrode gas tube surge arresters to permit the use of less costly devices without significantly reducing the level of protection provided is the purpose of this change.

DATE: Public comments must be received by REA no later than July 13, 1982.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–8667. The draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A by issuing an addendum to Bulletin 345–83. This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A–95 review is not applicable to this action.

While tubes are available which meet the existing requirement, they are significantly more costly than several newer designs with slightly inferior performance with respect to impulse transverse voltage. As experience in the field has not substantiated the need for the higher level of performance, the specification will be relaxed to permit use of the lower cost devices.

If the existing specification was withdrawn rather than revised there would be no REA specification which manufacturers would be required to meet. Unacceptable equipment could be sold to REA borrowers which would result in the loss of telephone system effectiveness, a hazard to human safety, and a threat to REA loan security. As a result, revision of the document along the proposed lines was considered to be in the best interest of the program.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Loan programs—communications, Telecommunications, Telephone.

Dated: April 30, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-13049 Filed 5-13-82; 8:45 am]
BILLING CODE 3410-15-M

7 CFR Part 1701

Proposed Addendum to PE-29, REA Specification for Voice Frequency Repeater Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A by issuing Addendum 1 to Bulletin 345–69, REA Specification for Two-Wire Voice Frequency Repeater Equipment, PE–29. The proposed addendum relaxes the stability and return loss requirements on PE–29. This action, without reducing performance quality, increases the variety of voice frequency repeaters available to REA telephone borrowers and produces a more competitive market place.

DATE: Public comments must be received by REA no later than July 13, 1982.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: C. F. Buster, Jr., Chief, Transmission Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1367, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–8665. The draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue Addendum 1 to Bulletin 345–69, REA Specification for Two-Wire Voice Frequency Repeater Equipment, PE–29. 7 CFR Part 1701, Appendix A—REA Bulletins, will be amended to include the proposed Addendum to REA Bulletin 345–69 upon its issuance as a final rule. This proposed action has been issued in conformance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action is not subject to the Regulatory Flexibility Act or to OMB Circular A–95

review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

The amendment is necessary to provide relief from unduly severe stability and return loss requirements. Such harsh requirements were warranted by chronic problems resulting from moisture in cables during the late 60s and early 70s. Moisture in cables causes drastic changes in their transmission characteristics and may cause repeater instability. The advent of filled cable greatly reduced the moisture problem. Therefore such severe operating requirements are no longer necessary.

Copies of the draft Addendum are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Lists of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Loan programs—communications, Telecommunications, Telephone.

Dated: May 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-12949 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Regulatory Agenda

Correction

In FR Doc. 82-11597 appearing at page 18508 in the issue of Thursday, April 29, 1982, on page 18517, middle column, eighth line from bottom of page, "not" should be changed to read "now".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-18710; File No. S7-709]

Minimum Qualification Requirements for Registered Nonmember Brokers and Dealers and Their Associated Persons

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: In June 1977, the Commission proposed to adopt a rule establishing minimum qualification requirements for all registered brokers and dealers and their associated persons. Based in part on the comments received in response to the proposed rule, the Commission is now publishing a revised proposed rule for further comment. Unlike the 1977 proposal, the proposed rule would provide qualification requirements only for registered brokers and dealers which are not members of a registered national securities association and their associated persons.

DATE: Comments must be received on or before July 1, 1982.

ADDRESSES: All communications on the proposed rule should refer to File No. S7-709 and should be sent with six copies to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathleen McGann, Esq., (202) 272-2855, Senior Special Counsel, Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 27, 1977, the Commission published for public comment proposed Rule 15b7-1 (17 CFR 240.15b7-1) (the "1977 Proposal") under the Securities Exchange Act of 1934 (the "Act"), as amended, which would have established minimum qualification requirements for all registered brokers and dealers and their associated persons.[1] In addition, the 1977 Proposal would have established general and specialized categories of qualification for principals and representatives. In response to the proposed rule, the Commission received 18 letters of comment from interested persons. Based in part on the comments received in response to the proposed rule, the Commission has revised proposed Rule 15b7-1, and is republishing the proposed rule, as revised, for further public comment.[2]

[1] *See* Securities Exchange Act Release No. 13679 (June 27, 1977), 42 FR 34328 (July 5, 1977) the ("June 1977 Release").

[2] The Commission plans, if the revised rule is adopted, to rescind the present Rule 15b7-1 and Rule 15b8-1 (17 CFR 240.15b7-1 and 240.15b8-1). Present Rule 15b7-1 contains procedural requirements to be followed by the Commission in administrative proceedings against broker-dealers. The rule, which applies only to proceedings instituted prior to August 20, 1964 unless the Commission otherwise directs, was adopted prior to 1964, when the Commission was not authorized to bring administrative proceedings directly against persons associated with broker-dealers.

I. Background

In enacting the Securities Acts Amendments of 1975 (the "1975 Amendments"),[3] the Congress, among other things, reexamined the standards for securities industry qualification examinations. Concerned that qualification examinations were not standardized and did not cover certain essential topics, the Congress amended Section 15(b)(7) to authorize the Commission to establish standards of training, experience, competence and other qualifications for all broker-dealers and their associated persons, thereby enabling the Commission "to prescribe uniform examinations for persons in the securities industry."[4] Prior to the enactment of the 1975 Amendments, the Act authorized the Commission to prescribe qualification standards only for SECO broker-dealers.[5]

The impetus for the amendments to Section 15(b)(7) was the findings of the Commission and several Congressional committees that the qualification standards for persons entering the brokerage industry should be strengthened and improved.[6] In particular, one Congressional study following the failure of brokerage firms in the paperwork crisis of the late 1960's found that many firms had failed due to inexperience, lack of knowledge of rules and regulations, and a lack of crucial skills, such as bookkeeping, on the part of the firms' associated persons. It also found that the examinations then given to principals and registered representatives by the NASD and the Commission were relatively simple and did not test adequately a comprehensive knowledge of the securities industry. The Demise Study stated, "We further believe that the shortcomings of these examinations were directly related to the causes of failures of a number of brokerage firms."[7]

[3] Pub. L. No. 94-29 (June 4, 1975).

[4] H. Rep. No. 94-123, 94th Cong., 1st Sess. at 76 (1975).

[5] The term SECO broker-dealers refers to registered brokers and dealers which are not members of a national securities association.

[6] Securities and Exchange Commission, Report of the Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963) ("Special Study"); Review of SEC Records of the Demise of Selected Broker-Dealers, Staff Study of the Special Subcommittee on Investigations, 92nd Cong., 1st Sess. (July, 1971) ("Demise Study"); Securities Industry Study, House Report of the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, H. Rep. 92-1519, 92nd Cong., 2d Sess. 22 (1972).

[7] Demise Study at 22.

Rule 15b7–1 was proposed by the Commission to implement the Congressional directive in the 1975 Amendments. The rule, as originally proposed: *Provided,* That no registered broker or dealer could engage in any securities transactions, except transactions in exempted securities, commercial paper, bankers' acceptances, commercial bills or municipal securities, unless the broker-dealer and its associated persons were qualified under the rule. The proposal, however, contained a complete exemption for NASD members who were in compliance with the NASD's qualification rules. The 1977 Proposal would have required a broker-dealer to have minimum number of principals and, with certain exceptions, a Financial and Operations Principal. That proposal also would have established general and specialized categories of qualification for principals and representatives, and required persons acting in a specialized category to be designated by the broker-dealer and to be qualified by passing an examination. The proposal also contained several grace periods, exemptions, and "grandfather" clauses. The examinations prescribed for each category were to be administered by the NASD.[8]

Commentators on the 1977 Proposal generally did not object to the creation of specialized categories of qualification, and several expressed approval of Commission action to upgrade and make uniform qualification examinations.[9] While some commentators objected to the inclusion of certain persons in some of the categories, only technical questions were raised with respect to most of the various grace periods, exemptive provisions, and filing requirements included in the proposed rule. The New York Stock Exchange, however, objected to the disparate treatment in the proposed rule between NASD member firms in compliance with NASD rules, which were completely exempted and exchange member firms, all of which were not exempted. Commentators also objected to the proposed selection of the NASD to administer the examinations prescribed by the rule.

In addition to considering the comments received on the 1977 Proposal, the Commission has considered other developments initiated by the Commission and by the self-regulatory organizations ("SROs") in the past years. The SROs have, for the most part, updated their qualification standards and examinations to meet new developments and securities products in the industry.[10] The SROs have also taken the initiative in working together to develop new examinations to remove duplicative qualification requirements.[11] The Commission is satisfied with those qualification standards, and has determined not to include most broker-dealers that are members of SROs within the scope of the revised rule. The revised rule, for the most part, would provide qualification standards parallel to those of the NASD.

In addition, since publication of the June 1977 Release, the Commission has given extensive attention to exchange-traded options. It has also considered the Report of the Special Study of the Options Market (the "Options Study"),[12] which contains several recommendations concerning the qualification of options principals and representatives. Based on the comments received on proposed Rule 15b7–1 and other developments since it was originally publishing for comment, the Commission has revised the proposed rule (the "revised rule") and is publishing it for further public comment.

II. Description of the Revised Rule

The revised rule, for the most part, maintains the general structure of the original proposal, but is limited in application to SECO broker-dealers.[13] As noted above, the Commission has determined not to include broker-dealers that are members of the NASD and most exchange members within the scope of the revised rule. The revised rule would not exempt exchange members who are not members of the NASD and who carry customer accounts or receive an annual gross income from securities transactions effected otherwise than on the exchange of which the broker-dealer is a member exceeding $1000, since such activities would not necessarily be covered by exchange regulations. This exemption is the same as that currently in Rule 15b8–1.[14]

The revised rule would differ from Rule 15b8–1, the current SECO qualification rule, in that it establishes specialized categories of qualification for persons who limit their securities activities to certain securities products. In addition, the revised rule would alter the kinds of securities activities which require an associated person to pass a qualification examination. For example, non-supervisory persons engaged in research, advertising and public relations would no longer be required to pass an examination. Similarly, supervisory and non-supervisory associated persons engaged in hiring and recruiting would not be required to qualify. The revised rule would maintain the current filing requirement for associated persons, but would add a new filing requirement upon the termination of an associated person's employment. In addition, the revised rule, unlike Rule 15b8–1, would require a SECO broker-dealer to have a minimum number of principals and would codify certain staff interpretations.

As in the 1977 Proposal, the revised rule would establish general qualification standards for principals and representatives, as well as specialized qualifications standards. The revised rule would permit persons who limit their securities activities to specialized securities (investment company as variable contracts products or direct participation programs) to qualify in a specialized category by

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[8] The 1977 Proposal also contained proposed amendments to Rule 15b10–4 which would require a SECO broker-dealer to designate, in its written supervisory procedures, which principal has the specific responsibility to supervise all firm personnel involved in research, advertising and public relations and to approve, prior to use, all research material and advertising. No comments were received on the proposed amendments, and the Commission will consider their adoption in connection with the comments received on this revised proposal.

[9] *See* Comment letters of the American Stock Exchange, Inc., (the "Amex") (January 16, 1978) and Mr. Charles Cullen (August 4, 1977).

[10] *See, e.g.,* Securities Exchange Act Release No. 15883 (May 30, 1979), 44 FR 33208 (June 8, 1979); Securities Exchange Act Release No. 16936 (June 6, 1980), 45 FR 45441 (July 3, 1979); Securities Exchange Act Release No. 16940 (June 27, 1980), 45 FR 45990 (July 8, 1980); and Securities Exchange Act Release No. 18069 (August 28, 1981), 46 FR 5833 (December 1, 1981).

[11] The SORs have recognized that branch office managers are subject to duplicative and sometimes unnecessary regulation. Since the rule was originally proposed, various self-regulatory organizations became concerned that branch office managers associated with firms that were members of more than one self-regulatory organization were required to take more than one qualification examination. Consequently, the self-regulatory organizations developed a qualification examination for branch office managers and other intermediate level supervisors, which was approved by the Commission on December 7, 1981. Securities Exchange Act Release No. 18316 (December 7, 1981) (46 FR 60694, December 11, 1981). The revised rule would create this category for SECO broker-dealers.

[12] H. Comm. Print No. 96–IFC3, 96th Cong., 1st Sess. (December 1978).

[13] For a general outline of the principal requirements of the revised rule, the 1977 Proposal and Rule 15b8–1, *see* chart at the end of this release.

[14] In response to the Special Study, the Act was amended to authorize the Commission to impose qualification examinations on SECO broker-dealers and their associated persons. Pub. L. No. 88–467 (August 20, 1964). Pursuant to this authority the Commission adopted Rule 15b8–1, which requires every associated person of a SECO broker-dealer to pass a general securities examination. Securities Exchange Act Release No. 7697 (Sept. 7, 1965), 30 FR 11075 (Sept. 9, 1965).

passing an examination specifically tailored to their securities activities. These categories of qualification are: Limited Principal for Investment Company and Variable Contracts Products, Limited Principal for Direct Participation Programs, Investment Company and Variable Contracts Representative and Direct Participation Programs Representative. The creation of these specialized examinations may ease barriers to entry into the securities industry since persons engaged in these limited activities will not be required to demonstrate a more generalized knowledge of the securities business. Such examinations may provide greater investor protection by helping to ensure better qualified principals and representatives, since they enable applicants to take an examination designed to test in greater depth the aspects of business with which they should be most familiar.

The revised rule, unlike the 1977 Proposal, establishes a category of principal qualification, General Securities Sales Supervisor, for persons whose supervisory responsibilities are limited to certain sales or research activities. Persons qualifying as General Securities Sales Supervisors would generally be intermediate level supervisors or branch office managers. In two other categories, the revised rule would require specialized qualification.[15] Principals who supervise options transactions would be required to qualify as Registered Options Principals. The 1977 Proposal did not contain this category. In accordance with the recommendations of the Options Study and consistent with NASD and exchange requirements, these persons will be required to demonstrate a detailed knowledge of options by passing a specialized options examination. The revised rule would also contain a requirement for most firms to have a separately qualified Financial and Operations Principal to supervise the preparation of a broker-dealer's financial statements and books and records. The creation of this category responds, in large part, to the recommendations of the Congress that broker-dealers have principals who are qualified to supervise the financial operations of the firm and who have passed an examination containing questions on bookkeeping and the maintenance of records.

The provisions of the revised rule are described in more detail below.

A. Qualification Requirements for Principals

1. Definition of Principal. In the 1977 Proposal, the term "principal" was definexd to include any associated person engaged, directly or indirectly, in the management, direction or supervision of the securities business of the broker or dealer. Some commentators suggested that this definition would impose unjustified burdens on firms by requiring principal qualification for nominal officers and other officers and directors not responsible for, or actively engaged in, matters related to securities business of such firms.[16] In response to these comments, the rule has been revised specifically to exempt persons who are nominal corporate officers or who are officers or partners solely to provide capital for the firm and also to exempt persons not actively engaged in the investment banking or securities business.

In addition, the Commission received a number of comments suggesting that the proposed rule would require the principal qualification of persons engaged only in some "occasional, minor or technical supervisory role."[17] Those commentators maintained that the proposed rule represented a substantial departure from historical industry standards, which they stated require only persons responsible for the overall supervision of a particular aspect of a firm's securities business to qualify as principals.[18] In this connection, commentators stated that the Congress, in adopting Section 15(b)(7) of the Act, did not intend that the categories of persons to which particular qualification standards applied be broadened, but instead focused on the inadequacy of existing examinations.[19] It was asserted that the proposed rule would prove "acutely burdensome" to the individuals and firms affected,[20] lead to internal compliance problems, and cloud otherwise clearly defined lines of authority.[21]

Since the 1977 Proposal may have contained certain ambiguities with regard to the scope of the principal examination and qualification requirements, the definition of "principal" in the revised rule has been changed to include only associated persons engaged in a management or supervisory role on a "regular or continuous basis." While certain intermediate level supervisors who are not currently principal-qualified would be required to qualify as principals under the proposal,[22] this result is consistent with Congressional intent. There is no indication in the legislative history of the 1975 Amendments that the Congress intended to limit the classes of persons that could be subject to examination standards,[23] and the specific language of the statute authorizes the Commission to establish qualification standards for partners, officers, and supervisory employees, including branch managers, engaged in the management of the broker-dealer, and to require such persons to pass examinations that include questions on the management of the firm.[24] Since the legislative history of Section 15(b)(7) strongly supports the upgrading of industry qualification standards, especially for principals of firms,[25] the Commission believes that qualification requirements for persons who exercise regular or continual supervision of other associated persons are appropriate and necessary to ensure that such persons are able to demonstrate knowledge of the securities laws and of supervisory procedures.

2. Intermediate Level Supervisors. Several commentators sought clarification of whether the term "principal" would include branch office managers, because of their concern that principal qualification requirements might be inappropriately imposed on firms with a large number of branch offices each containing only a few

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[15] The Commission requests public comment on whether a person who effects transactions in direct participation programs should be required, as opposed to permitted, to qualify as Limited Principal for Direct Participation Programs or as Direct Participation Program Representative. The Commission notes that the general securities examinations for principals and representatives do not contain many questions on this area. Because of the nature and complexity of direct participation programs, and the concomitant potential for abusive sales practices, it may be necessary to require persons to qualify in this area for the same reasons as principals are required to qualify in the options area.

[16] *See* comment letters of the NASD at 6–8 (August 10, 1977); and the American Council of Life Insurance ("ACLI") at 2–6 (August 9, 1977). *Cf.* comment letter of the NYSE at 7 (August 22, 1977).

[17] *See* comment letter of the ACLI at 5 (August 9, 1977). *See generally* comment letters of the NASD at 6 (August 10, 1977); and the NYSE at 7, 10–11 (August 22, 1977).

[18] *See* comment letters of the ACLI at 3 (August 9, 1977) and the NASD at 6 (August 10, 1977).

[19] *See* comment letter of the ACLI at 3–4 (August 9, 1977). *See generally* comment letter of the NASD at 6 (August 10, 1977).

[20] *See* comment letter of the ACLI at 5 (August 9, 1977).

[21] *Id.*

[22] *See* discussion, *infra*, on qualification as General Securities Sales supervisor for persons acting as intermediate level supervisors.

[23] *See* H. Rep. No. 123, 94th Cong., 1st Sess. at 70 (1975); H. Rep. No. 229, 94th Cong., 1st Sess. at 105 (1975).

[24] Section 15(b)(7)(B) of the Act.

[25] *See, e.g.*, Demise Study at 23.

employees.[26] In addition, the NASD requested clarification concerning whether an individual who operates out of his home must qualify as a principal.[27]

The Commission has carefully considered the comments and suggestions with respect to this provision, and has sought to balance the Congressional directive that branch office managers be included within the definition of supervisory employees with the possible hardships that such an approach might impose on broker-dealers. In particular, the Commission has carefully reviewed the possible impact of the proposed rule on firms with large numbers of offices staffed by just a few persons. The Commission believes that, while supervisory persons should be required to qualify as principals, the present principal qualification examinations contain many questions that may be irrelevant to intermediate level supervisors' securities activities.[28] Therefore, the Commission has created in the revised rule a category of specialized principal qualification, General Securities Sales Supervisor. Any principal whose supervisory responsibilities are limited to sales activities, the training of sales and supervisory personnel, and the maintenance of certain records, would be permitted to qualify as a General Securities Sales Supervisor. Generally, persons performing such functions would be branch office managers or other intermediate level supervisors.

3. Minimum Principal Requirements. The revised rule would require each SECO firm to have at least one person qualified to act as a principal in each area of the firm's securities activities, such as investment company and variable contracts products, direct participation programs, and options. In addition, at least two persons would be required to be qualified to act as principals in any area in which more than ten associated persons engage in securities transactions for the firm. If a firm's securities activities are not limited to investment company and variable contracts products, direct participation programs, or options, at least one person would be required to qualify as a General Securities Principal. If the firm has more than ten associated persons who engage in securities activities other than in the limited areas, at least two persons would be required to be designated and qualified as General Securities Principals. This provision is similar to the provisions in the 1977 Proposal.

Only one commentator, the NYSE, objected to this requirement, on the ground that it would interpose "organizational specifics upon the self-structuring of a firm."[29] The revised rule would not mandate any particular organizational structure for the firm, and the Commission does not believe that the requirement is unnecessarily burdensome. In fact, the NASD requires all its members, except for sole proprietors, to have two principals. The purpose of this proposed requirement is to ensure that firms of a particular size have more than one person qualified to function in a principal capacity, regardless of the internal structure of such firms, in order to ensure continued supervision of other associated persons in the event one of their principals leaves or is temporarily absent.

The revised rule also would contain a definition of "branch office" as an office in which certain specified securities activities are carried out. This functional definition includes those significant securities activities which should be under the supervision of a principal heading the office. The revised rule would provide that each branch office shall have at least one principal qualified to supervise the securities activities of the branch. In some cases, a General Securities Sales Supervisor could supervise the activities of a branch office. In addition, if the securities activities of the branch office were limited to the specialized types of securities, a limited principal qualified in one of those areas could supervise the activities of the branch office.

4. Limited Principles with General Securities Firms. Under the 1977 Proposal, only principals associated with broker-dealers that limited their securities activities to either investment company and variable contracts products or direct participation programs were permitted to be qualified as limited principals. The 1977 Proposals, however, provided a different treatment for representatives. Representatives qualified in the specialized categories would have been permitted under the 1977 Proposal to become associated with general securities firms.

The NASD objected to the approach taken in the 1977 Proposal, pointing out that many full service firms have specialized departments in which a limited principal can function while still under the supervision of the firm's General Securities Principal. After careful review, the Commission believes that it may be appropriate to modify the rule in the manner suggested by the NASD. Consequently, under the revised rule, it would no longer be necessary for all the securities activities of a SECO broker-dealer to be limited to certain areas before principals are eligible for "limited" qualification. Under the revised rule, persons qualified as limited principals associated with SECO general securities firms would be permitted to function in the limited areas for which they were designated and qualified.

B. Qualification of Representatives

1. Definition of Representative. The term "representative" would be defined in the revised rule as any associated person, other than a principal, who is engaged in sales, trading, underwriting or private placements, or who is engaged in training persons associated with a member for any such activities. This definition would mark a change from the 1977 Proposal, in which the term representative was not defined, and conforms with a recommendation by the NASD that the term be defined. The proposed definition in the revised rule would not include persons engaged in hiring or recruiting or non-supervisory persons engaged in advertising, public relations or research.

One category of representative qualification contained in the 1977 Proposal, the Securities Trader Representative, has been deleted. This category would have permitted a person whose activities are limited solely to exercising discretionary authority in trading securities or to effecting market making securities transactions otherwise than on a national securities exchange to qualify by passing a specialized qualification examination. At present such a category does not appear to be necessary, and none of the SROs have developed a specialized examination for this category. If, however, there are a substantial number of persons in the SECO Program who would benefit from such a limited category, the Commission may reconsider this deletion.

2. General Securities Transactions by Limited Representatives. The revised rule would retain the provisions in the 1977 Proposal permitting limited representatives to effect securities transactions only in the limited area in which they are qualified. Two commentators suggested that certain representatives be allowed to effect

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[26] *See* comment letters of the NASD at 7–8 (August 10, 1977), Edward D. Jones & Co. at 1–2 (July 29, 1977). *Accord* Goldstein Shames Hyde Wirth Bezahler & Cahill at 4 (October 31, 1977). Section 15(b)(7)(B) of the Act employs the term "branch manager" without providing a definition.

[27] *See* comment letter of the NASD at 8 (August 10, 1977).

[28] *See* note 11, *supra.*

[29] *See* comment letter of the NYSE at 4–5 (August 22, 1977).

"occasional, unsolicited" general securities transactions.[30] These commentators argued that limited representatives need such flexibility in order to accommodate customers, particularly in rural areas, who may need the proceeds from sales of other types of securities in order to purchase investment company and variable contracts products. The NASD argued that the potential for abuse of the limited exception would exist whether or not limited representatives were expressly permitted to engage in occasional or unsolicited general securities transactions.

The revised rule has not been modified in this manner for several reasons. It is imperative, if representatives are to be allowed to qualify by passing examinations restricted to specified limited areas, that those representatives understand that they are only qualified to do business in, and make investment recommendations concerning, securities in those limited areas. If these representatives were permitted to accept purchase or sale orders for securities other than mutual fund shares or variable contracts they might be inclined to offer, and their clients might expect, advice with respect to other types of securities, even though those representatives would not be qualified to give such advice. An "occasional and unsolicited" transaction or similar standard would also appear to be difficult to monitor and interpret.

C. Qualification of Associated Persons Engaged in Specialized Areas

1. Qualification of Options Personnel. The revised rule would establish a category of qualification for options principals that was not included in the original proposal. Unlike other specialized categories, where qualification is permissive, qualification as an options principal would be mandatory for persons supervising transactions in options. A person acting in a supervisory capacity in a branch office or in an intermediate level supervisory position could qualify as a General Securities Sales Supervisor and, as such, would be qualified to supervise options activities, provided such person passed an examination containing a separately graded portion concerning options.[31]

The creation of this category responds in part to the recommendations of the Options Study that only principals who pass an options qualifying examination that tests a thorough knowledge of options and applicable options rules be permitted to supervise options transactions.[32] The proposed options principal requirements approximate those already in effect at the NASD, the NYSE and the options exchanges, with one major difference. The Commission understands that the options exchanges have interpreted their options principal examination rules so as not to require options principals to be qualified as general securities representatives unless they perform sales functions in addition to supervisory activities. The revised rule would require that options principals successfully complete the examination requirements for general securities representatives and, if their supervisory responsibilities were not limited to options activites, for general securities principals as well.

2. Municipal Securities Professionals. The revised rule requires SECO broker-dealers whose business is limited solely to municipal securities or SECO broker-dealers who act as municipal securities broker-dealers to file and keep current form U–4s on all persons engaged in municipal securities transactions. Such associated persons are not, however, otherwise subject to the examination and reporting requirements of the rule. These provisions are the same as those currently applicable in Rule 15b8–1 to broker-dealers engaged in municipal securities activities.

A comprehensive program for examination of Municipal Securities Principals and Municipal Securities Representatives is already in place under the rules of the Municipal Securities Rulemaking Board ("MSRB").[33] The MSRB's rules require Municipal Securities Representatives, Municipal Securities Principals, and Financial and Operations Principals to pass specialized examinations, but provide exemptions for representatives or Financial and Operations Principals who have qualified in a general securities capacity with the Commission, the NASD or a national securities exchange. Accordingly, it does not appear necessary or appropriate at this time to subject persons whose securities activities are limited solely to municipal securities transactions who are associated with SECO firms to the proposed qualification examination requirements.

The revised rule would not, however, exempt SECO broker-dealers from the Form U–4 filing requirement for associated persons engaged solely in municipal securities activities. MSRB rule G–7(b) requires municipal securities brokers and municipal securities dealers to obtain several items of information from their associated persons. It provides that a completed Form U–4 satisfies that requirement, but provides that that information need only be filed with the Commission (in the case of SECO broker-dealers) if the Commission by rule imposes such a filing requirement. Rule 15b8–1(d) currently requires SECO broker-dealers to file and keep current Form U–4s on municipal securities professionals associated with them. The revised rule is designed to maintain that requirement.

3. Qualification Requirements for Research Personnel. The 1977 Proposal would have imposed qualification requirements on supervisory research personnel, but not on non-supervisory research personnel. In addition, the June 1977 Release solicited comments on the form a qualification examination for research personnel should take.

Currently, all research personnel associated with SECO broker-dealers are subject to the qualification examination requirements of Rule 15b8–1. The research personnel of municipal securities brokers and municipal securities dealers are also subject to the MSRB's examination requirements.[34] The Commission understands, however, that neither the NASD nor the exchanges interpret their rules to require the qualification of non-supervisory research personnel of their member firms.[35]

In commenting on the 1977 Proposal, the NASD indicated that a broker-dealer's research and investment advisory functions should be under the overall supervision of a qualified principal, but it expressed serious reservations regarding the imposition of specialized examination requirements on other research personnel.[36] Other commentators, most of whom opposed the imposition of specialized examination requirements for research

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[30] *See* comment letter of the NASD at 3 (August 10, 1977); and American General Capital Planning, Inc. (August 10, 1977). The NASD also urged that Securities Trader Representatives, who would have been permitted by the 1977 Proposal only to exercise investment discretion in securities transactions or to act in a market making capacity, be allowed to effect occasional, unsolicited securities transactions with the public.

[31] The General Securities Sales Supervisor examination given by the NASD is graded so that an applicant must obtain a passing score both on the options and the non-options portions of the examination.

[32] Options Study, *supra*, at 296–301.

[33] *See* MSRB rule G–3, MSRB Manual (CCH) ¶3511 (1981).

[34] *See* MSRB rule G–8(a)(iii).

[35] *See e.g.*, comment letters of the NASD at 13 (August 10, 1977), and the NYSE at 10 (August 22, 1977).

[36] *See* comment letter of the NASD at 13 (August 10, 1977).

personnel, generally did not distinguish between supervisory and non-supervisory personnel.[37]

Several commentators contended that the Commission had demonstrated no need for the imposition of a specialized examination requirement, given the research industry's competitiveness,[38] its overall level of education and experience,[39] the voluntary examination program of the ICFA,[40] and the lack of an express statutory mandate.[41] Some commentators also suggested that imposing specialized examination requirements for research personnel would result in unequal regulation, since most persons engaged in securities research and advisory activities are not associated with broker-dealers.[42] In addition, it was asserted that such Commission requirements would undermine the voluntary examination program of the ICFA.[43]

While the Commission does not necessarily find the reasons advanced by commentators to be persuasive, it has determined not to propose at this time the imposition of specialized examination requirements for SECO broker-Dealer research personnel. At the same time, the Commission does not believe that it would be appropriate to exempt all SECO broker-dealer research personnel from the rule as noted in the June 1977 Release, research personnel may have "a substantial influence on investors and the securities markets, even though they have no direct contact with the public customers."[44] Accordingly, the Commission has determined to retain the requirement in the 1977 Proposal that persons who supervise the research and investment advisory activities of a firm must qualify as principals, but has determined not to continue to impose an examination on non-supervisory persons. Supervisory persons in the research and investment advisory area could qualify as a General Securities Sales Supervisor or in the General Securities Principal categories. Principals who supervise research activities in one of the specialized areas could also qualify in that area, and in the options area would be required to so qualify. This requirement will not result in the imposition of new obligations on SECO broker-dealer research personnel, who are already required to pass a qualification examination by Rule 15b–8.[45] The revised rule would delete the examination requirement for non-supervisory SECO research associated persons, and would make the proposed rule parallel to the requirements of all of the SROs, except the MSRB, which requires the qualification of all associated persons engaged in research activities.

4. Persons Engaged in Hiring, Recruiting and Training. Under the 1977 Proposal, associated persons, whether supervisory or non-supervisory, engaged in hiring, recruiting, and training activities on behalf of a broker-dealer would have been subject to qualification requirements. That approach was consistent with Rule 15b8–1 under the Act, which requires qualification of associated persons of SECO broker-dealers engaged in hiring, recruiting, and training activities. The rules of the NASD apparently require supervisory and non-supervisory persons engaged in securities related training activities to become qualified, although its registration requirements do not cover persons engaged in hiring or recruitment.[46] The rules of the exchanges do not require the qualification of personnel performing any of these functions.

In response to a specific request for comments on the imposition of qualification requirements on persons engaged exclusively in hiring, recruiting or training of securities salespeople, only one commentator supported the imposition of any qualification examination requirements. The NASD suggested that persons engaged in training that is related to sales functions be under the supervision of a qualified principal, although, as noted above, its rules currently appear to contemplate the qualification of both supervisory and non-supervisory training personnel.[47] The NYSE opposed any examination requirements in this area, especially at the non-supervisory level. It asserted that the examination for representatives, the "Series 7 examination", was particularly inappropriate, and perhaps illegal, for the testing of hiring, recruiting and training personnel, since the examination is a "precise instrument" aimed solely at determining if a candidate possesses the minimum amount of knowledge needed to be a registered representative.[48]

The Commission agrees with the commentators who assert that qualification of persons engaged in hiring or recruiting of sales personnel or persons who supervise such hiring and recruiting is unnecessary. Accordingly, the proposal has been revised so that such persons would not be covered by the rule.

The Commission continues to believe, however, that persons engaged in training of principals or representatives, and the persons who supervise such training, should be qualified by passing a general securities examination. The revised rule would require associated persons engaged in training representatives to be qualified as representatives, and associated persons who are engaged in training principals or who supervise training activities to be qualified as principals. Since training programs may involve emphasis on selling techniques regulated by Commission rules, the Commission believes that trainers and supervisors of trainers should be able to demonstrate a comprehensive knowledge of the securities laws and Commission rules. In addition, since training programs usually emphasize the characteristics of different kinds of securities, the Commission believes that it is essential

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[37] The Institute of Chartered Financial Analysis ("ICFA") distinguished between supervisory and non-supervisory research personnel, and suggested that, if the Commission chose to mandate specialized examinations, distinct examination standards which would be equivalent to alternate counterparts in ICFA's current voluntary examination program should be imposed on supervisory and non-supervisory research personnel. *See* comment letter of the ICFA at 6–7 (August 5, 1977). Two other commentators supported some form of Commission mandated minimum qualification examination requirements for broker-dealers' research personnel. *See* comment letters of Mr. Charles Cullen (August 4, 1977); and Mr. David Bell of Herzfeld & Stern (August 10, 1977).

[38] *See* comment letters of the NASD at 14 (August 10, 1977); the Financial Analysts Federation ("FAF") (August 9, 1977); and the New York Society of Security Analysts ("NYSSA") at 1 (October 13, 1977).

[39] *Id.* In a survey of research personnel conducted in 1978 on behalf of the FAF, 98% of those responding held college degrees, 60% advanced degrees. Almost 90% of those surveyed had at least 5 years experience. *See* comment letter of the FAF, Attachment at 7 (September 29, 1978).

[40] *See* comment letters of the ICFA (August 5, 1977); the NASD at 14 (August 10, 1977); and the NYSSA at 2 (August 19, 1977).

[41] *See* comment letters of the FAF (August 9, 1977); and ACLI at 10 (August 9, 1977).

[42] The NASD estimated that only about 30% of the persons engaged in securities research activities are associated with broker-dealers, a figure supported by an ICFA survey of its membership. *See* comment letters of the NASD at 13 (August 10, 1977); and the ICFA at 5 (August 5, 1977).

[43] *See* comment letters of the NYSSA at 2 (August 19, 1977); and the FAF (August 9, 1977).

[44] June 1977 Release, 42 FR at 34331.

[45] According to one commentator, most research personnel in the securities industry have passed one or more qualification examinations. Approximately 82% of the research personnel responding to the September 1978 FAF survey stated they had passed either principal or representative qualification examinations. *See* comment letter of the FAF (September 29, 1978).

[46] *See* Parts I and II of Article I Schedule C of the NASD By-Laws, NASD Manual (CCH) ¶ 1102A (1981).

[47] *See* comment letter of the NASD at 6–7 (August 10, 1977).

[48] *See* comment letter of the NYSE at 9 (August 22, 1977).

that persons involved in training be able to demonstrate a comprehensive knowledge of securities products.[49] For this reason, the Commission disagrees with the assertion that the skills required of a trainer are totally dissimilar to those required of a securities salesman. However, since the revised rule would apply only to associated persons engaged in training activities, persons who are not employees of the firm, but merely guest lecturers, or persons whose functions are solely clerical or ministerial [50] would not be covered by the revised rule.

5. Advertising and Public Relations Personnel. The revised rule, with technical modifications, would retain the requirement that associated persons engaged in the supervision of a firm's advertising and public relations activities be qualified as principals. Non-supervisory personnel engaged in advertising and public relations activities would not be required to be qualified under the rule. This approach does not depart substantially from current requirements of the self-regulatory organizations, although it liberalizes the current qualifications for SECO broker-dealers. Rule 15b8–1 under the Act currently requires the qualification of all securities-related advertising and public relations personnel of SECO broker-dealers. The NASD requires these activities to be under the overall supervision of a firm principal.[51]

Commentators generally did not object to the imposition of qualification examination requirements on supervisory personnel in this area, although several commentators urged that these requirements not be extended to non-supervisory personnel, particularly in light of the absence of any similar requirements for advertising and public relations personnel not associated with broker-dealers.[52] The Commission has, for the time being, determined that the supervision by qualified principals of all advertising and related activities by SECO broker-dealers should provide sufficient public protection.

D. Grace Periods and Exemptions

The revised proposal would include grace period and exemptive provisions similar to the 1977 Proposal. Among these would be 90-day grace periods for SECO firms to replace terminated principals and for persons seeking to qualify as a principal in a new category, in order to allow a person promoted to a principal position adequate time to take a principal examination.

As in the 1977 Proposal, the revised rule would exempt SECO broker-dealers who are exchange members if they carry no customer accounts and do not have an annual gross income exceeding $1,000 derived from securities transactions effected otherwise than on a national securities exchange of which such broker-dealer is a member, not including securities transactions effected with of through another broker or dealer. Simiarly, an associated person whose securities activities are confined to areas without the jurisdiction of the United States and who does not deal with or act for any United States resident or national would be exempt from the requirements of the revised rule, except for the requirement to file Form SECO–2F and Form U–4. The revised rule also would exempt any associated person not engaged in the investment banking or securities business or whose functions are related solely and exclusively to the SECO broker's or dealer's need for nominal corporate officers or for capital participation. Thus, limited partners whose sole function is to provide capital or directors who serve in that role solely for state law requirements would not be required to be qualified under the revised rule.

E. "Grandfather" Provisions

Paragraph (g) of the revised rule would permit, with one exception, persons who are already functioning in a principal or representative category to continue to function in the categories of Investment Company and Variable Contracts Products or Direct Participation Programs without further examination.[53] Supervisory persons associated with SECO firms would be qualified in the these limited categories of principal qualification; non-supervisory associated persons would be qualified in the categories of representative qualification. The one exception involves persons associated with SECO firms transacting a general securities business. Since these persons are experienced in most kinds of securities products, the Commission believes that they should be grandfathered in the general securities categories, and as Registered Options Principals, if they have acted as principals for options transactions. The "grandfather" provisions would apply to all persons who were functioning as of the effective date of the rule, with the exception of persons qualified as, or who performed the function of, a Financial and Operations Principal. These persons would be grandfathered as Financial and Operations Principals only if they were qualified as, or performed the functions of, a Financial and Operations Principal on the date the revised rule is proposed.[54]

F. Experience and Training Requirements

The revised rule would not establish any experience or training requirements. In the June 1977 Release, the Commission requested public comment on what further objective standards would be appropriate in connection with the imposition of experience or training requirements as qualification standards.[55]

All three commentators who responded to this question either objected to the imposition of any training or experience requirements or opposed the establishment of objective standards to evaluate training or experience. The NASD noted that, while it had previously included an experience requirement in its 1975 filing of proposed amendments to Schedule C of its By-Laws containing the NASD's qualification criteria,[56] these requirements were reconsidered and subsequently deleted from the proposal by the Board of Governors at its May 1979 meeting. The NASD stated that the Board had determined that the quality of experience acquired by candidates could not be measured adequately by fixed time periods, particularly in an industry as diverse as the securities business. The NASD also expressed the same view towards the establishment of training standards, whether framed in

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[49] If a person's training activities are limited to one of the specialized areas, such person could qualify as a limited principal or representative.

[50] Persons whose functions are solely clerical or ministerial are excluded from the definition of "associated person" and, consequently, would not be required to qualify under the revised rule.

[51] *See* comment letter of the NASD at 13 (August 10, 1977).

[52] *See* comment letters of the NASD at 14 (August 10, 1977); the NYSE at 10 (August 22, 1977).

[53] The vast majority of persons associated with SECO firms restrict their securities activities to one of these kinds of securities products.

[54] This grandfather clause would apply as of the date the rule is proposed, rather than the date it becomes effective, in order to prevent a firm from changing the duties of an associated person before the effective date of the rule so as to qualify him or her as a Financial and Operations Principal without passing an examination

[55] The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., as well as the NYSE currently impose some form of undefined training or experience requirements. *See* Amex Rule 341, CBOE Rule 93, and NYSE Rule 342. In addition, the Commission approved the MSRB's Rule G–3(h) which specified a 90-day "apprenticeship" period requirement for candidates seeking to become associated with municipal securities brokers or dealers.

[56] Notice of the filing given in Securities Exchange Act Release No. 11889 (December 1, 1975), 40 FR 57533 (December 10, 1975). File No. SR–NASD–75–8.

terms of fixed time periods or specified training materials. In the NASD's view, establishing a fixed training period as a qualification requirement would not allow the Commission to take into consideration differences in candidates' learning abilities or educational backgrounds. In addition, the NASD asserted that imposition of such requirements could have severe economic consequences for small broker-dealers, which do not have the financial resources necessary to maintain formal training programs internally.

Finally, The NASD stated that involvement of the NASD or the Commission in accrediting training programs and/or training materials might prove too costly in light of the benefits to be derived. The NASD suggested that a more workable approach would be to ensure the continued validity of the examination programs themselves. In the NASD 's view, this alone would provide the most economical and objective measure of the quality of training received by candidates.

The NYSE stated that it continues to believe that qualification standards should encompass requirements consisting of a training period ending in satisfactory completion of an examination. However, the NYSE objected to the Commission's making judgments on the merits of particular training programs. The NYSE specifically opposed the establishment of objective standard to evaluate the effectiveness of firm training programs for the following reasons: (1) The employing firm itself is the best judge of what training a candidate should receive, whether it be an in-house program, an outside program, on-the-job training, or a combination thereof; (2) the only objective measure of effectiveness of a training program is the number of candidates who pass the examination, and any other method would be sujective and would increase regulatory costs; and (3) unlike in-house broker-dealer training programs, private training schools would not be subject to regulation by any self-regulatory organization.

Mr. Buehler, who at the time of his comment letter was serving on certain NYSE examination committees, and had served on the NASD 's Qualification Committee, maintained that the time frames for training periods (*e.g.*, 90 days for sales representatives under the MSRB rules and 4 months under the NYSE rules) are arbitrary and serve no meaningful purpose.[57] He stated that a well-constructed, vigorously-graded examination that competently measures a predetermined knowledge level, such as the "Series 7 examination", is a preferable qualification standard. He noted that such examinations are sufficiently comprehensive and difficult to pass as to require at least several months of study time on the part of candidates. Mr. Buehler also noted that certain studies conducted by industry groups in consultation with the Educational Testing Service seemed to indicate that the Series 7 examination has accomplished the purposes it was designed to serve.

The Commission has considered these comments and believes that it is not appropriate at the present time to impose objective training or experience requirements as part of a qualification rule. Nevertheless, the Commission strongly supports training programs, whether required by the rules of a self-regulatory organization or administered by broker-dealer firms for their own personnel. Given the strong Congressional support for training and experience requirements as part of the qualification of broker-dealer personnel, the Commission urges broker-dealers to continue to provide adequate training programs for their associated persons.[58]

G. Commission Selection of Qualification Examinations

The 1977 Proposal would have delegated to the NASD, subject to Commission oversight and review, the responsibility for developing and administering all examinations under the Rule. The Commission proposed this delegation since the examinations were expected to be relatively specialized and the NASD was then in the process of developing new examinations for some of the categories of principals and representatives included in that proposal. Many of the commentators reviewing the proposal criticized this approach. Several commentators suggested that such delegation might conflict with the intent of Congress, citing the language of section 15(b)(7) and the legislative history of the 1975 Amendments.[59]

The revised rule does not specify the procedures to be used by the Commission in selecting qualification examinations for each of the categories. As envisioned in Section 15(b)(7) of the Act, the Commission plans to work with the SROs in devising and selecting the examinations, which it anticipates will be administered by SROs.

Examinations for each category of qualification would be selected by the Commission and identified in an appendix to the rule.[60] The Commission contemplates that, in designating an examination for a category of qualification, it would use the summary rulemaking procedures specified in the Administrative Procedure Act (5 U.S.C. 553) and would not solicit public comments on the selection.

H. Filing of Forms U–4 and U–5

The revised rule would contain requirements for the filing of Forms U–4s and U–5s with the Commission for SECO broker-dealers. These provisions are substantially unchanged from the 1977 Proposal. A broker-dealer would be required to file a Form U–4 for each associated person engaged in securities activities and to designate on the form the categories for which the associated person is qualified. If that associated person's association with the broker or dealer is terminated, the broker-dealer must file a Form U–5 no later than 30 days after the termination.

The Form U–5, the "Uniform Termination Notice for Securities Industry Registration," was developed by the NASD and the NYSE, in cooperation with the North American State Securities Administrators' Association, and is currently being utilized by the NASD, the various national securities exchanges, and most of the states. The general concerns which motivated the development of the Form U–4, *i.e.*, the desire to devise uniform forms for the registration of broker-dealers and their agents in order to alleviate a particularly burdensome duplication of reports submitted by firms registering with more than one governmental agency or self-regulatory organization, are the same as those which led to the implementation of the Form U–5 by the self-regulatory organizations and the states. Also, like the Form U–4, the Form U–5 information would assist the Commission in discharging its regulatory and investigative responsibilities.

The Form U–5 would contain 14 items designed to elicit much of the same information sought on the Form U–4, such as the terminated individual's involvement, if any, in investigations,

[57] Mr. Buehler, of Blyth, Eastman, Dillon and Co., submitted his comments in an individual capacity, and not on behalf of his firm (August 10, 1977).

[58] Demise Study, *supra*, at 20; Securities Industry Study, *supra*, at 22–23.

[59] *See* Amex comment letter at 2 (January 18, 1978); NYSE comment letter at 2–4 (August 22, 1977).

[60] If the revised rule is adopted, the Commission would no longer recognize state qualification examinations as a satisfactory examination for qualification for SECO personnel.

disciplinary proceedings, or court actions, including those resulting in his conviction for any felony or misdemeanor, during his employment with the reporting firm. However, the Form U–5 would also require disclosure of the reason for the termination, including full details if the individual was "permitted to resign," "discharged", or terminated for reasons other than his voluntary resignation or death. Thus, proposed Rule 15b7–1 would require a Form U–5 to be filed with the Commission whenever a person associated with a SECO firm is terminated for any reason.

The proposed adoption of Form U–5 under Rule 15b7–1 would make this filing requirement applicable for the first time to SECO broker-dealers.[61] Unlike present Rule 15b8–1, proposed Rule 15b7–1 would specify that the Form U–5 be filed promptly after the termination of an associated person or employee becomes effective, but in no event later than 30 days thereafter. In effect, therefore, SECO broker-dealers would have to file more detailed information on the Form U–5 and on a more current basis than is presently the case under Rule 15b8–1.

III. Conclusion

The Commission does not believe that proposed Rule 15b7–1 and proposed Form U–5 impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. By establishing specialized categories of qualification and examinations, the Commission believes that the proposed rule may remove burdens on competition and make it easier for many persons to become associated with SECO firms. Persons who limit their securities activities to certain specialized areas would also be subject to a lesser regulatory burden in that they may choose to be tested on that area of their business and would not be required to demonstrate a detailed knowledge of other areas.

While the revised rule would upgrade the qualification requirements applicable to SECO broker-dealers, this result is necessary to help ensure that persons associated with SECO broker-dealers are qualified to enter the securities industry and that SECO broker-dealers and NASD members are subject to comparable regulation. In addition, the revised rule would clarify and, in some cases, reduce the number of associated persons required to qualify by passing examinations. For the reasons discussed above, the Commission finds that this is necessary for the protection of investors. The Commission also believes that proposed Form U–5 would not impose an unnecessary or inappropriate burden on competition since it revises the current filing requirement for SECO broker-dealers in Rule 15b8–1. While Form U–5 will be required to be filed in a more timely fashion and would require more detailed information, the Commission does not believe that this would constitute an inappropriate burden on SECO broker-dealers.

BASIC SECO QUALIFICATION STANDARDS

Qualification standards for SECO broker-Dealers	1982 Proposal	1977 Proposal	Rule 15b8–1
A. Broker-dealer requirements:			
1. Financial and operations principal (FINOP)	All firms must have a FINOP, unless firm is exempt from Rule 15c3–1 pursuant to paragraph (b)(2), or meets requirements of Rule 15c3–1(a)(2) or (a)(3).	Same as 1982 Proposal	No such requirement.
2. Minimum number of principals:			
(a) General securities firms	If firm has 10 or fewer associated persons, it must have 1 General Securities Principal; if more than 10 associated persons, it must have 2 General Securities Principals.	do	Do.
(b) Firm which limits its activities to either investment company/variable contracts products or direct participation programs.	Firm must have 1 principal qualified to supervise each area with 10 or fewer associated persons; firm must have 2 principals qualified to supervise each area with more than 10 associated persons.	do	Do.
3. Supervision of branch offices	Firm must have 1 principal qualified to supervise branch office.	No such requirement	Do.
B. Associated person requirements:			
1. Persons engaged in sales, trading, underwriting, private placements or training.	If engaged directly in regular or continual management, direction or supervision must qualify as principal all others must qualify as representative.	Same as 1982 proposal except not limited to apply only to regular or continuous management, direction or supervision.	Persons engaged in these activities must pass qualification examination. The terms principal and representative not defined.
2. Persons engaged in hiring or recruiting	Not required to qualify	Principals and representatives required to qualify.	Both supervisory and non-supervisory persons required to qualify.
3. Persons engaged in research or investment advice.	Only principals required to qualify	Same as 1982 Proposal	Do.
4. Persons engaged in advertising or public relations.	do	do	Do.
5. Persons engaged in options transactions	Only principals required to take separate examination.	No such requirement	No such requirement.
C. Filing requirements:			
1. Form U–4	Must file Form U–4 for each principal and representative.	Same as 1982 Proposal	Same as 1982 Proposal.
2. Form U–5	Must file Form U–5 no later than 30 days after termination of each principal and representative.	do	Required to file list annually, but not on a specific form.

IV. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603.

(1) *Reasons for Proposed Action.* The Commission is reproposing for comment Rule 15b7–1 under the Securities Exchange Act of 1934 (the "Act"). The proposed rule is intended to revise the qualification standards applicable to broker-dealers that are not members of a national securities association,[62] also known as "SECO broker-dealers." SECO broker-dealers are currently

[61] Present Rule 15b8–1 requires every SECO broker-dealer to file with the Commission on or before July 31 of each year a list of associated persons with respect to whom a Form U–4 has been filed with the Commission and who have been terminated during the preceding year ending June 30. However, up to now the Commission has not specified the use of a standard form for purposes of satisfying this reporting requirement.

[62] The National Association of Securities Dealers, Inc. ("NASD") is the only national securities association.

subject to Rule 15b0–1 under the Act, which requires associated persons of the broker-dealer to pass qualification examinations and requires the SECO broker-dealer to file a Form U–4 for each associated person and to file a list once annually of the persons who have ceased to be associated persons during the preceding year.

The purpose of the proposed rule is to upgrade the qualification standards applicable to SECO broker-dealers and to make those standards parallel to those of the NASD. SECO broker-dealers are currently subject to less rigorous qualification requirements than broker-dealers that are members of the NASD, in spite of the Congressional directive that regulation by the Commission of SECO broker-dealers should be comparable to that by the NASD of its members.[60] If the Commission does not take any action in the area of improving SECO qualification requirements, SECO qualification requirements will continue to diverge from those of the NASD, which may result in lessened investor protection for their customers.

(2) *Objectives.* The proposed rule would set forth minimum standards for SECO broker-dealers, which are comparable to those required by the exchanges and the NASD. The proposed rule would require all SECO broker-dealers and their associated persons to meet these minimum requirements before entering the securities business in an effort to ensure the competence and qualifications of newcomers to the securities business.

(3) *Legal Basis.* The Commission is reproposing for public comment Rule 15b7–1 pursuant to Sections 15(b), 17 and 23 of the Act.

(4) *Small Entities Subject to the Rule.* Proposed Rule 15b7–1, as revised, would apply to all SECO broker-dealers and their associated persons.[61] As such, it would necessarily cover all SECO broker-dealers from the largest full service firms to the smallest sole proprietor. A number of requirements will be imposed on firms which may be considered as "small businesses" for the purposes of the initial regulatory flexibility analysis ("IRFA").

In concluding that the proposed rule may affect a "small business" for the purposes of the IRFA, the Commission is using its own definitions of "small business".[62] With respect to broker-dealers, the Commission has defined in 17 CFR 240.0–10 the term "small business" or "small organization" as a broker or dealer which (1) had total capital of less than $500,000 on the date in the preceding fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d) or, if not required to file such statements, on the last business day of its preceding year; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in that rule.

Specifically, the proposed rule would require that all SECO broker-dealers, unless otherwise exempt, have one person qualified as a Financial and Operations Principal. While under the Commission's definitions some small entities would be required to have a Financial and Operations Principal, SECO firms exempt from the net capital rule or which meet certain exceptions from the net capital rule would not be required to have a Financial and Operations Principal. The rule would also provide that firms having 10 or fewer associated persons must have at least one person qualified as a principal for each area in which the firm does business; firms with more than 10 associated persons would be required to have at least two persons qualified as principals for each area in which more than ten associated persons effect transactions for the firm. The proposed rule would also require all principals and representatives to pass qualifications examinations, but will "grandfather" into specialized categories of qualification persons who have previously qualified. Therefore, most persons currently associated with small entities would be grandfathered under the proposed rule and would not be required to take further qualifications examinations.

(5) *Reporting, Recordkeeping and Other Compliance Requirements.* The proposed rule would amend a reporting requirement currently in Rule 15b8–1. The proposed rule would change a procedural requirement with regard to the time a registered broker-dealer has to give notice to the Commission of any termination of the association between the broker-dealer and an associated person. Previously, the Commission has allowed such broker-dealers up to one year to give notice to the Commission of such termination. The proposed rule would require that the broker-dealer give notice to the Commission on Form U–5 within 30 days after the termination. Form U–5 is a one page form which will not require any professional skills to complete.

(6) *Overlapping or Conflicting Federal Laws.* The proposed rule would not duplicate, overlap or conflict with any existing federal rules. The rule would, to some extent, duplicate state law with respect to qualification requirements for broker-dealers and their associated persons.

(7) *Significant Alternatives.* (i) The Commission has attempted to consider the resources available to small businesses in proposing the rule. specifically, most of the provisions of the proposed rule, as explained below, will be inapplicable to small businesses already registered as SECO broker-dealers on the date the rule is proposed. The associated persons of such broker-dealers will continue to be qualified to effect transactions in investment company and variable contracts products and direct participation programs without being required to pass a new examination. Associated persons who have transacted a general securities business will be grandfathered into general categories of qualification without being required to take a new qualification examination. Persons who have acted as Financial and Operations Principals since the date this rule is proposed, will also be "grandfathered" in that category.

(ii) The alternative of clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities is inapplicable to the proposed Rule;

(iii) The proposed rule incorporates performance standards rather than design standards since it would require associated persons of SECO broker-dealers to pass qualification examinations and does not impose any experience or training requirements on such persons.

(iv) The alternative of an exemption from coverage of the rule or any part thereof for small entities is inconsistent with the stated objectives of the proposed rule and the statutory objectives the proposed rule is designed to accomplish.

(8) *Solicitation of Comments.* The Commission always encourages the submission of public comments with respect to any aspect of a proposed rule. In addition, the Commission would like to encourage the submission of comments with respect to any aspect of the IRFA. Any comments received will be considered in the preparation of the Final Regulatory Flexibility Analysis when the proposed rule is adopted. Any public comments received by the

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[60] (1964) U.S. Code Cong. and Ad. News 3013, 3024–3025.

[61] As of the end of fiscal year 1981, 381 SECO broker-dealers had filed a Form SECO–1–81.

[62] Securities Exchange Act Release No. 18458 (January 28, 1982), 47 FR 5215 (February 4, 1982).

Commission will be placed in the same public file as that of the proposed rule.

V. Statutory Basis

Proposed Rule 15b7–1 and Form U–5 would be adopted under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 15, 17, and 23(a), 15 U.S.C. 780, 78q and 78w(a).

List of Subjects in 17 CFR Parts 240 and 249

Reporting requirements, Securities.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES AND EXCHANGE ACT OF 1934

On the basis of the above discussion and analysis, the Commission is proposing to amend Parts 240 and 249 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

1. By revising § 240.15b7–1 to read as follows:

§ 240.15b7–1 Minimum qualification standards for nonmember brokers and dealers and associated persons.

(a) *Definitions.* For purposes of this section:

(1) The term "nonmember broker or dealer" means a registered broker or dealer not a member of a registered national securities association.

(2) The terms "associated person" and "person associated with a broker or dealer" have the same meaning as in Section 3(a)(18) of the Act, as that section applies to Section 15(b) of the Act, except that those terms shall include only natural persons.

(3) The term "principal" means any person associated with a nonmember broker or dealer engaged, directly or indirectly, (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker or dealer of the following securities activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance or books and records, or financial operations; or (ii) in the training of persons associated with such broker or dealer for the management, direction or supervision, on a regular or continuous basis of such activity.

(4) The term "branch office" means each office in which one or more of the following activities, on behalf of a nonmember broker or dealer, are carried on:

(i) Order execution or market making commitments;

(ii) Structuring of underwritings;

(iii) Custody of firm customers' funds or securities;

(iv) Supervisory responsibility for the acceptance of new accounts;

(v) Supervisory responsibility for the review and approval of customers' orders;

(vi) Supervisory responsibility for approving advertising or sales literature, including the authorization of the use of such material developed by an organization other than the nonmember broker-dealer;

(vii) Supervisory responsibility for the review and endorsement of all correspondence of associated persons pertaining to the solicitation or execution of any securities transaction; or

(viii) Maintenance of records of orginal entry or ledger accounts.

(5) The term "Financial and Operations Principal" means a principal whose responsibilities on behalf of a nonmember broker or dealer include:

(i) Final approval and responsibility for preparation of the broker's or dealer's financial statements, supporting schedules, computations concerning net capital and the maintenance of basic reserves with respect to cash held for or owed to customers of such broker or dealer, the determination of securities required to be in the possession or control of such broker or dealer, and the maintenance of books and records related to the foregoing;

(ii) Supervision of persons who assist in the preparation of such reports;

(iii) Supervision of persons who are involved in the actual maintenance of the books and records from which such reports and determinations are derived;

(iv) Supervision of persons who are involved in the administration and maintenance of the safekeeping functions of such broker of dealer;

(v) Supervision of persons who are involved in the administration and maintenance of the processing and clearing functions of such broker or dealer; or

(vi) Supervision of any other financial operations.

(6) The term "General Securities Sales Supervisor" means any principal whose supervisory activities are limited to securities sales activities of a nonmember broker or dealer, including the training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of such broker or dealer required to be maintained by the Act and rules thereunder, but whose securities activities do not include:

(i) Supervision of the origination and structuring of underwritings;

(ii) Supervision of market making commitments;

(iii) Final approval of advertisements;

(iv) Supervision of the custody of firm or customer funds and/or securities for purposes of 17 CFR 240.15c3–3; or

(v) Supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Act.

(7) The term "representative" means any associated person other than a principal who is engaged in any of the following securities activities: sales, trading, underwriting, or private placements, or who is engaged in training of persons associated with such broker or dealer for any such activities.

(8) The term "options contract" means a put or call issued by a registered clearing agency and traded on a national securities exchange.

(9) The term "variable contract" means a contract providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company.

(10) The term "direct participation program" means a program which provides flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution and regardless of the industry represented by the program, including, but not limited to, oil and gas programs, real estate syndications, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, or any combination thereof. The term does not include real estate investment trusts, tax qualified pension and profit sharing plans under Sections 401 and 403(a) of the Internal Revenue Code, (26 U.S.C. 401, 403(a)(1976)), individual retirement plans pursuant to Section 408 of that Code, tax sheltered annuities pursuant to Section 403(b) of that Code and any company, including separate accounts, registered under the Investment Company Act of 1940 (15 U.S.C. 80a et seq. (1975)).

(b) *General Requirement.* No nonmember broker or dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, banker's acceptances or commercial bills) unless such broker or dealer meets the minimum qualification standards set forth in this section, and all principals and representatives associated with such broker or dealer are appropriately designated pursuant to paragraph (j)(1) of this section and qualified, except as set forth in paragraphs (f), (g), and (h) of this section, by passing an appropriate

examination selected by the Commission.

(c) *Minimum Number of Principals.* (1) Unless its securities activities are limited to the areas specified in paragraphs (d)(3) or (d)(4) of this section, each nonmember broker or dealer having ten or fewer associated persons shall have at least one General Securities Principal and each nonmember broker or dealer having more than ten associated persons shall have at least two General Securities Principals. If the securities activities of a broker or dealer are limited to the areas specified in paragraph (d)(3) or (d)(4), of this section, such broker or dealer shall have at least one person qualified to act as a principal in each of the areas in which ten or fewer associated persons effect securities transactions for the firm and at least two persons qualified to act as principals in each of the areas in which more than ten associated persons effect securities transactions for the firm.

(2) Each nonmember broker or dealer, except one which is exempt from § 240.15c3–1 [17 CFR 240.15c3–1] pursuant to paragraph (b)(2) thereof, or which meets the requirements of paragraph (a)(2) or (a)(3) thereof, shall have least one principal qualified as a Financial and Operations Principal.

(3) Each branch office of a nonmember broker or dealer shall have at least one principal qualified to supervise the securities activities of the branch office.

(d) *Qualification of principals.* (1) Each principal, except a principal qualified pursuant paragraphs (d)(2) through (d)(5) of this section, shall qualify as a General Securities Principal and as a General Securities Representative.

(2) Each Financial and Operations Principal shall qualify as such.

(3) Each person who acts as a principal with respect to the purchase or sale of options contracts shall qualify as a Registered Options Principal and as a General Securities Representative, unless qualified pursuant to paragraph (d)(5) of this section.

(4) Each person who acts as a principal solely with respect to the securities activities enumerated below may qualify as follows:

(i) A principal whose activities involve securities registered pursuant to the Investment Company Act of 1940 or variable contracts and insurance premium funding programs registered pursuant to the Securities Act of 1933 may qualify as a Limited Principal for Investment Company and Variable Contracts Products and as an Investment Company and Variable Contracts Products Representative.

(ii) A principal whose activities involve direct participation programs may qualify as a Limited Principal for Direct Participation Programs and as a Direct Participation Program Representative.

(5) Each General Securities Sales Supervisor of a nonmember broker or dealer may qualify as such and as a General Securities Representative.

(e) *Qualification of representatives.* (1) Each representative, except a representative qualified pursuant to paragraph (e)(2) of this section, shall qualify as a General Securities Representative.

(2) Each representative whose activities are limited solely to the securities activities enumerated below may qualify as follows:

(i) A representative whose activities involve securities registered pursuant to the Investment Company Act of 1940 or variable contracts products and insurance premium funding programs registered pursuant to the Securities Act of 1933 may qualify as an Investment Company and Variable Contracts Products Representative.

(ii) A representative whose activities involve direct participation programs may qualify as a Direct Participation Programs Representative.

(f) *Grace periods.* (1) A nonmember broker or dealer that no longer meets the requirements of paragraph (c) of this section because of the termination of a principal shall not be required to comply with that paragraph for 90 days: *Provided, however,* That at all times such broker or dealer shall have associated with it at least one person qualified as a principal in each of the areas in which the firm effects securities transactions, or induces or attempts to induce the purchase or sale of securities.

(2) Any representative whose duties are changed so as to require qualification as a principal, including qualification as a Financial and Operations Principal, and any principal whose change of duties requires qualification in any other principal category shall not be required to comply with the qualification requirements of paragraph (d) of this section for a period of 90 days following the change in such person's duties. The provisions of this paragraph shall not be used to extend the grace periods contained in paragraph (f)(1) of this section. Any principal who does not pass the required examination within the 90 day period specified in paragraph (f)(1) of this section may no longer function in such capacity without having first passed such examination.

(g) *Waiver of examinations.* (1) Unless the associated person's most recent association has been terminated for a period of more than two years, (i) any associated person who performed the functions of a principal on or before (the effective date of this rule) shall be deemed to be qualified pursuant to paragraph (d)(4) only hereof; (ii) any associate person qualified as or who, on or before (the date this revised rule was proposed), performed the functions of a Financial and Operations Principal shall be deemed to be qualified as a Financial and Operations Principal; and (iii) any associated person who performed the functions of a representative on or before (the effective date of this rule) shall be deemed to be qualified pursuant to paragraph (e)(2) only hereof; *Provided, however,* That any person who is associated with a nonmember who transacted a securities business outside the areas of investment company and variable contracts products or direct participation programs shall be deemed to be qualified pursuant to paragraph (d)(1) of this section if such person acted in a principal capacity, or paragraph (e)(1) of this section if such person acted in a representative capacity. Such person shall be qualified pursuant to paragraph (d)(3) of this section only if such person acted in a principal capacity with a nonmember broker or dealer which transacted a business in options.

(2) Any person previously qualified under paragraphs (d) of (e) of this section, whose most recent association has not been terminated for a period of more than two years, shall be exempt from the qualification examination or examinations prescribed by the Commission for the category or categories for which such person is designated.

(h) *Exemptions.* (1) Any nonmember broker or dealer which is a member of a national securities exchange shall be exempt from this section if such broker of dealer (i) carries no customer accounts and (ii) does not have an gross income exceeding $1,000 derived from securities transactions effected otherwise than on a national securities exchange of which such broker or dealer is a member, not including securities transactions effected for its own account through another registered broker or dealer.

(2) Any associated person not engaged in the investment banking or securities business or whose functions are related solely and exclusively to the broker or dealer's need for nominal corporate officers or for capital

participation shall be exempt from this section.

(3) Any associated person whose securities activities are confined to areas without the jurisdiction of the United States and who does not deal with or act for any United States resident or national shall be exempt from all provisions of this section except paragraph (j)(2) of this section.

(4)(i) Except as provided in paragraph (h)(4)(ii) of this section, the provisions of this section shall not apply to any person who is required to register as a broker or dealer solely by reason of acting as a municipal securities broker or municipal securities dealer, or to any other broker or dealer insofar as such broker or dealer acts as a municipal securities broker or municipal securities dealer.

(ii) No nonmember broker or dealer who is required to register as a broker or dealer solely by reason of acting as a municipal securities or municipal securities dealer, and no other nonmember broker of dealer, insofar as such broker or dealer acts as a municipal securities broker or municipal securities dealer, shall effect any transaction in, or induce the purchase or sale of, any municipal security unless such nonmember broker or dealer meets all the following conditions:

(A) Such a nonmember broker or dealer shall have filed with the Commission a Form U–4 with respect to each principal and representative engaged directly or indirectly in municipal securities activities, before such person engages in any such activities on behalf of such nonmember broker or dealer;

(B) Such nonmember broker or dealer shall file promptly information making accurate or complete a Form U–4 on behalf of any principal and representative whenever the information filed previously on behalf of such person is or becomes inaccurate or incomplete for any reason; and

(C) Such nonmember broker or dealer shall have filed with the Commission a Form U–5 no later than 30 days after the termination of any associated person with respect to whom a Form U–4 has been filed with the Commission.

(5) The Commission may exempt a nonmember broker or dealer from any provision of this section, upon written application, in exceptional cases and where good cause is shown. Such a determination shall be based on all the facts concerning both the individual and the type of business of such broker of dealer and may include factors such as a physical infirmity or extensive experience in a field closely related to the investment banking and securities business, although neither of these factors standing alone would necessarily justify an exemption.

(i) *Commission selection of qualification examinations.* The appropriate qualification examination for each category shall be designated by the Commission and identified in an appendix to this section.

(j) *Completion of Form U–4 and Form U–5.* (1) A nonmember broker or dealer shall file Form U–4 with the Commission for each principal and representative engaged directly or indirectly in securities activities on behalf of such broker or dealer, before such person engages in any such activities, and shall designate on Form U–4 the category for which the principal or representative is seeking qualification. The principal or representative may be designated in every category for which such person is seeking qualification.

(2) A nonmember broker or dealer shall file an accompanying Form SECO–2F with Form U–4 for each associated person whose activities are confined to areas without the jurisdiction of the United States and who does not deal with or act for any United States resident or national.

(3) Each nonmember broker or dealer required to file Form U–4 information with the Commission pursuant to paragraph (j)(1) hereof shall file promptly with the Commission information making accurate or complete a Form U–4 filed after October 1, 1975, on behalf of any associated person whenever information filed previously on behalf of such associated person is, or becomes, inaccurate or incomplete for any reason. A broker or dealer who, before October 1, 1975, filed a Form SECO–2 on behalf of any associated person shall file promptly a completed Form U–4 for such associated person when the information contained in the Form SECO–2 is or becomes inaccurate or incomplete for any reason.

(4) Each nonmember broker or dealer required to file Form U–4 information with the Commission pursuant to paragraph (j)(1) of this section shall file with the Commission a Form U–5 no later than 30 days after the termination of association between such broker or dealer and any associated person.

(5) Information supplied to the Commission on Form U–4 and Form U–5 shall be non-public but will be made available as required by law or to any person to whom the Commission authorizes disclosure in the public interest.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. By adding § 249.511 to Subpart F as follows:

Subpart F—Forms for Registration of Brokers or Dealers Transacting Business on Over-the-Counter Markets

* * * * *

§ 249.511 Form U–5, uniform termination notice for securities industry registration.

BILLING CODE 8010-01-M

UNIFORM TERMINATION NOTICE FOR SECURITIES INDUSTRY REGISTRATION

① INDIVIDUAL'S NAME (0110) LAST NAME | FIRST NAME | FULL MIDDLE OR MAIDEN NAME (SPECIFY IF NONE) | ② REGISTERED OR APPROVED CAPACITY (1000)

③ SOCIAL SECURITY NO. (0200) | ④ FIRM NAME (0110) | ⑤ FIRM I.D. NO. (0120)

⑥ FIRM MAIN ADDRESS (0170) STREET | CITY | STATE | ZIP

⑦ OFFICE OF EMPLOYMENT ADDRESS (0180) STREET | CITY | STATE | ZIP

⑧ TO BE TERMINATED WITH THE FOLLOWING

EXCHANGES

☐ ABS 0370	☐ ACE 0375	☐ BSE 0380	☐ CBOE 0390	☐ CSE 0400	☐ MSE 0410	☐ NASD 0850	☐ NYFE 0355	☐ NYSE 0420	☐ PHLX 0440	☐ PSE 0430	☐ SECO 0360	OTHER (SPECIFY) ☐ _____ 0448 ☐ _____ 0449

JURISDICTIONS

☐ AL 0460	☐ CA 0490	☐ DC 0530	☐ ID 0570	☐ KS 0610	☐ MD 0650	☐ ME 0690	☐ NV 0730	☐ NY 0770	☐ OK 0810	☐ SC 0850	☐ UT 0890	☐ WV 0930
☐ AK 0480	☐ CO 0500	☐ FL 0540	☐ IL 0580	☐ KY 0620	☐ MA 0660	☐ MO 0700	☐ NH 0740	☐ NC 0780	☐ OR 0820	☐ SD 0860	☐ VT 0900	☐ WI 0940
☐ AZ 0470	☐ CT 0510	☐ GA 0550	☐ IN 0590	☐ LA 0630	☐ MI 0670	☐ MT 0710	☐ NJ 0750	☐ ND 0790	☐ PA 0830	☐ TN 0870	☐ VA 0910	☐ WY 0950
☐ AR 0490	☐ DE 0520	☐ HI 0560	☐ IA 0600	☐ ME 0640	☐ MN 0680	☐ NE 0720	☐ NM 0760	☐ OH 0800	☐ RI 0840	☐ TX 0880	☐ WA 0920	☐ PR 0960

⑨ DATE TERMINATED 4500: _____

⑩ REASON FOR TERMINATION CHECK ONE

☐ VOLUNTARY 4510 ☐ PERMITTED TO RESIGN* 4520 ☐ DECEASED 4530 ☐ DISCHARGED* 4540 ☐ OTHER * 4550

*FURNISH FULL DETAILS ON REVERSE SIDE FOR ANY ANSWER WHICH IS MARKED BY AN ASTERISK.

⑪ WHILE EMPLOYED BY OR ASSOCIATED WITH YOUR FIRM, WAS THE INDIVIDUAL THE SUBJECT OF

		YES	NO	
A.	any investigation or proceeding conducted by any governmental agency or self-regulatory body which has jurisdiction over the securities, insurance, banking, real estate or commodities industry?	☐	☐	4560
B.	a refusal of registration, censure, suspension, expulsion, fine or any disciplinary action by any governmental agency or self-regulatory body, having jurisdiction over the securities, insurance, banking, real estate or commodities industry?	☐	☐	4570
C.	any major complaint or any legal proceeding by a customer of your firm?	☐	☐	4580
D.	any conviction of a felony or misdemeanor (other than minor traffic violations)?	☐	☐	4590

⑫ Is there reason to believe that the individual while employed by or associated with your firm, may have violated any provision of any securities law or regulation or any agreement with or rule of any governmental agency or self-regulatory body, or engaged in conduct which may be inconsistent with just and equitable principles of trade? YES ☐ NO ☐ 4600

FURNISH FULL DETAILS, ON REVERSE SIDE, FOR ANY 'YES' ANSWER.

_____ DATE | _____ TYPE NAME OF APPROPRIATE SIGNATORY | _____ SIGNATURE OF APPROPRIATE SIGNATORY

PERSON TO CONTACT FOR FURTHER INFORMATION: _____

TELEPHONE NUMBER: ( ) _____

SUPPLEMENTAL STATE REQUIREMENTS

A. AGENT'S LICENSE, CARD OR CERTIFICATE ENCLOSED _____
Required by: AL, AK, AR, CO, FL, GA, HI, ID, IN, KS, KY, LA, MN, MT, NH, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WV

B. SIGNATURE OF AGENT TO BE TERMINATED _____ DATE _____
Required by: AL, AK, CT, DE, DC, IN, LA, MO, NE, OK, TN, VA, WY

Rev. Form U-5 11/80

BILLING CODE 8010-01-C

By the Commission.
George A. Fitzsimmons,
Secretary.
May 4, 1982.
[FR Doc. 82-12866 Filed 5-13-82; 8:45 am]
BILLING CODE 8010-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 260

Requests for Reconsideration and Appeals Within the Board From Decisions Issued by the Bureau of Retirement Claims and the Bureau of Data Processing and Accounts

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to revise Part 260 of its regulations which establishes the procedures for appeals within the agency from decisions issued by the Bureau of Retirement Claims and the Bureau of Data Processing and Accounts. The proposed regulation provides for a three-stage review and appeals process within the agency and shortens the amount of time currently allowed within which requests for reconsideration and appeal may be filed. In addition, the proposed regulation sets forth time periods within which reconsideration requests and appeals should be handled by the agency. These proposed changes are intended to expedite the review and appeals process.

DATES: Comments must be received on or before July 13, 1982.

ADDRESS: Comments may be mailed to: Mr. James E. Lanter, Director of Hearings and Appeals, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Lanter, Director of Hearings and Appeals, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4791 (FTS 387-4791).

SUPPLEMENTARY INFORMATION: The Board's regulations as currently in effect do not provide any time limits or guidelines concerning the time within which reviews and appeals must be handled. In addition, the regulations currently provide that an appeal to the Bureau of Hearings and Appeals from an initial decision may be filed up to one year after the initial decision. The lack of time guidelines for handling cases and the long appeal period have sometimes resulted in an unacceptable lengthy period for handling administrative reviews and appeals. This has caused problems for the Board in handling appeals especially in disability cases since in such cases a claimant's condition could very well have deteriorated during the duration of the appeal rendering him disabled where he would not have been disabled at the time of the initial decision on his claim.

The proposed revision to Part 260 is primarily directed toward resolving the delays in handling appeals. To this end, the proposed revision provides that a request for reconsideration of an initial decision other than an erroneous payment decision must be filed within 60 days from the date the decision was mailed to the claimaint. An appeal from an adverse decision on reconsideration may be taken to the Bureau of Hearings and Appeals by filing an appeal form within 60 days from the date on which the decision was mailed. A further appeal to the Board is provided if the appropriate appeal form is filed within 60 days after the decision of the Bureau of Hearings and Appeals is mailed. In addition, the proposed revision would impose guidelines on the various decision-making bodies concerning the time periods within which cases should be handled. The procedures for erroneous payment decisions are not changed by the proposed revision.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Moreover, the amendment impose no additional reporting burden on the public and the forms contemplated by the proposed regulation have been approved by the Office of Management and Budget.

List of Subject in 20 CFR Part 260

Administrative practice and procedure, Claims, Railroad retirement.

Title 20 CFR Chapter II, is proposed to be revised as follows:

1. The table of contents for Title 20, Chapter II, Railroad Retirement Board, Subchapter B, is proposed to be revised by changing the title of Part 260 from "Appeals within the Board from decisions issued by the Bureau of Retirement Claims and the Bureau of Data Processing and Accounts" to "Requests for Reconsideration and Appeals Within the Board From Decisions Issued by the Bureau of Retirement Claims and the Bureau of Data Processing and Accounts".

2. Part 260 is proposed to be revised as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF RETIREMENT CLAIMS AND THE BUREAU OF DATA PROCESSING AND ACCOUNTS

Sec.
260.1 Initial decisions by the Bureau of Retirement Claims.
260.2 Initial decisions by the Bureau of Data Processing and Accounts.
260.3 Request for reconsideration of initial decision of the Bureau of Retirement Claims or Bureau of Data Processing and Account.
260.4 Request for waiver of recovery of an erroneous payment and/or for reconsideration of an initial erroneous payment decision of the Bureau of Retirement Claims.
260.5 Appeal from a reconsideration decision of the Bureau of Retirement Claims or the Bureau of Data Processing and Accounts.
260.6 Time limit for issuing a hearing decision.
260.7 Time limits for issuing a decision when a hearing is not held.
260.8 Pre-hearing case review.
260.9 Final appeal from a decision of the referee.
260.10 Determination of date of filing of appeal.

Authority: Sec. 7(b)(5) Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)); Sec. 8 Pub. L. 93-445, 88 Stat. 1341 (45 U.S.C. 231g); Sec. 5(f) Pub. L. 75-722, 52 Stat. 1100 (45 U.S.C. 355(f)).

§ 260.1 Initial decisions by the Bureau of Retirement Claims.

(a) *General.* Claims shall be adjudicated and initial decisions made by the Bureau of Retirement Claims concerning:

(1) Applications for benefits under the Railroad Retirement Act;

(2) The withdrawal of an application;

(3) A change in an annuity beginning date;

(4) The termination of an annuity;

(5) The modification of the amount of an annuity or lump-sum benefit;

(6) The reinstatement of an annuity which had been terminated or modified;

(7) The existence of an erroneous payment;

(8) The recovery of the amount of an erroneous payment;

(9) The eligibility of an individual for a supplemental annuity or the amount of such supplmental annuity;

(10) Whether representative payment shall serve the best interest of an annuitant as a result of that individual's incapacity to manage his annuity payments; and

(11) Who shall be designated or continued as representative payee on behalf of an annuitant.

(b) *Adjudication of claim and the issuance of initial decision.* Adjudication of a claim and the issuance of an initial decision shall be in accordance with instructions issued by the Director of Retirement Claims and shall be made upon the basis of evidence submitted by the claimant and evidence otherwise available.

(c) *Recovery of erroneous payment.* A decision to recover the amount of an erroneous payment under § 260.1(a)(8) by suspension or reduction of a monthly benefit payable by the Board shall not be made prior to a date 30 calendar days after the date on which notice of the erroneous payment decision is sent to the beneficiary or payee of the benefit as provided in § 260.1(d)(6).

(d) *Notice of initial decision.* (1) In all cases except those described in §§ 260.1(d)(2)–(4) and § 260.1(d)(6), written notice of an initial decision shall be mailed by the Bureau of Retirement Claims to the claimant, annuitant or payee of an annuity at the individual's last known address within 30 calendar days after such decision is made. Such notice shall inform the claimant, annuitant or payee of an annuity of the reason(s) for the decision and such individual's right to reconsideration of such initial decision as provided in § 260.3.

(2) No notice of an initial decision by the Bureau of Retirement Claims shall be required when the death of an annuitant causes the entitlement to an annuity to cease.

(3) When an initial decision is made that an annuitant's entitlement to a disability annuity has ended because the annuitant has recovered from such annuitant's disability, written notice of that decision shall be mailed to the annuitant or payee of an anniuty at such annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the date on which the recovery from disability is found to have occurred;

(ii) Of the reason(s) supporting such a finding of recovery;

(iii) That entitlement to the annuity ends on the last day of the second month after the month in which recovery from disability is found to have occurred;

(iv) That payment of the disability annuity will cease effective on the last day of the second month following the month in which recovery from disability is found to have occurred or on the 30th calendar day after the day the notice provided by this paragraph is sent by the Board, whichever date is later;

(v) That any annuity payments received after entitlement has ended will have to be repaid unless waiver of recovery is appropriate;

(vi) That prior to the termination date of the annuity the annuitant or payee of an annuity may submit to the Board any information in writing which the annuitant or payee desires to be considered by the Board in its review;

(vii) That if no information in writing is received by the Board before the termination date the annuity will be terminated as scheduled on that date; and

(viii) That the annuitant or payee has the right to reconsideration of such decision as provided in § 260.3.

(4) When an initial decision would result in the termination of an annuity for which there are competing claims or as a result of the receipt by the Board of information from a source other than the annuitant or payee of an annuity, written notice of the proposed decision shall be mailed to the annuitant or payee of an annuity at such annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

(i) Of the reason(s) for the annuity termination;

(ii) That the annuitant or payee has 30 calendar days from the date of the notice to submit to the Board any information in writing which such annuitant or payee desires to be considered by the Board in its review;

(iii) That payment of the annuity will either cease or a decision to continue payment of such annuity shall be made after the Board has considered any information in writing which may be submitted to the Board within 30 calendar days from the date of the notice;

(iv) That if no information in writing is received within 30 calendar days from the date of the notice, payment of the annuity will cease at the end of the 30-day period; and

(v) That the annuitant or payee has the right to reconsideration of such decision as provided in § 260.3.

(5) Whenever the Board receives any significant information in writing from an annuitant or payee of an annuity as a result of mailing the notice described in § 260.1(d)(4), the Board shall forward a copy of such information to each of the individuals who have filed a competing claim for such annuity informing them that:

(i) The annuity will either be terminated at the specified time or a decision to continue payment of the annuity will be made by the Board; and

(ii) They may respond to such information and their response will be considered by the Board provided that it is received by the Board within a reasonable time. When the Board decision in such case is to continue payment of the annuity, the Board shall send notice of such initial decision to each of the competing claimants in accordance with § 260.1(d)(1).

(6) When an initial decision that an erroneous payment has been made to a beneficiary is made under § 260.1(a)(7), written notice of that decision shall be mailed to the beneficiary or payee of the benefit at such beneficiary's or payee's last known address within 30 calendar days after such decision is made. Such notice shall inform the beneficiary or payee:

(i) Of the reason(s) for the decision;

(ii) Of the methods by which recovery may be made;

(iii) Of the possibility of waiver of recovery of the erroneous payment;

(iv) Of the conditions which must be met before waiver of recovery could be granted;

(v) That the beneficiary may request waiver of recovery of the erroneous payment and/or reconsideration of the erroneous payment decision as provided in § 260.4; and

(vi) Of the possibility of an oral hearing with respect to the issues of waiver of recovery and reconsideration of the erroneous payment decision.

§ 260.2 Initial decisions by the Bureau of Data Processing and Accounts.

Within 30 days after receipt of a timely request by an employee for an amendment with respect to the amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Director of Data Processing and Accounts shall appoint a qualified Board employee to make a determination with respect to such matter. The Board employee appointed by the director shall promptly render a decision. Written notice of such decision shall be communicated by the Director of Data Processing and Accounts to the employee within 30 days after such decision is made. Such notice shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the return of compensation was required to be made to the Board by the employee's employer. For purposes of this section, a timely request to amend an employee's record of compensation maintained under the Railroad

Unemployment Insurance Act shall be filed within 18 months after the date on which the last return of compensation was required to be made covering any portion of the calendar year which includes the period during which the challenged payment was made.

§ 260.3 Request for reconsideration of initial decision of the Bureau of Retirement Claims or Bureau of Data Processing and Accounts.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision of the Bureau of Retirement Claims described in § 260.1(a) or an initial decision of the Bureau of Data Processing and Accounts described in § 260.2. *Provided, however,* that:

(1) An individual under age 18 shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the finding that he or she is, in fact, under age 18;

(2) An individual who has been adjudged legally incompetent shall not have the right to reconsideration of a finding of incapacity to manage his or her annuity payments, but shall have the right to contest the fact of his or her having been adjudged legally incompetent; and

(3) An individual shall not have the right to reconsideration of a denial of his or her application to serve as representative payee on behalf of an annuitant. Such request for reconsideration shall be filed and disposed of in the manner prescribed in this section, except that a request for reconsideration of an initial erroneous payment decision under § 260.1(a)(7) shall be filed and disposed of in the manner prescribed in § 260.4.

(b) *Written request for reconsideration.* A written request for reconsideration must be filed with the appropriate bureau within 60 days from the date upon which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided by the bureau conducting the reconsideration.

(c) *Right to further review of initial decision.* The right to further review of an initial decision of the Bureau of Retirement Claims or Bureau of Data Processing and Accounts shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner.

(e) *Impartial review.* The reconsideration of the initial decision shall be conducted by a person who shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision which has been requested to be reconsidered and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Timely review.* The director of the bureau to whom a request for reconsideration is directed shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the request for reconsideration is filed.

(g) *Right to appeal adverse decision.* If the reconsideration decision is adverse to the claimant, annuitant or payee, he or she shall be notified of his or her right to appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5.

§ 260.4 Request for waiver of recovery of an erroneous payment and/or for reconsideration of an initial erroneous payment decision of the Bureau of Retirement Claims.

(a) *General.* A beneficiary who has been determined to have received an eroneous payment under § 260.1(a)(7) shall have the right, upon the filing of a timely request in accordance with the requirements of this section, to request waiver of recovery of the erroneous payment and/or reconsideration of the erroneous payment decision. The beneficiary shall have the right to an informal oral hearing on the issue of waiver of recovery and/or reconsideration of the erroneous payment decision, before an employee of the Board designated to conduct such a hearing, prior to commencement of recovery by suspension or reduction of a monthly benefit.

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for an oral hearing.* A request for waiver of recovery and/or reconsideration of an erroneous payment decision and for an oral hearing under this section shall be in writing and addressed to the district office of the Board set forth in the initial decision letter or to the Director of Retirement Claims. The request must be received by either the appropriate district office or the Director of Retirement Claims within 30 calendar days from the date on which notice of the erroneous payment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have an oral hearing. If the beneficiary does not elect to have an oral hearing with respect to his or her request for waiver of recovery or for reconsideration of the erroneous payment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial erroneous payment decision.* The right to further review of an initial erroneous payment decision of the Bureau of Retirement Claims shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the beneficiary for failing to file a timely request for reconsideration. Good cause for failure to file a timely request shall be determined by the Director of Retirement Claims in the manner prescribed in § 260.3(d).

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Director of Retirement Claims shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for an oral hearing under this section, the Director of Retirement Claims or his or her delegee shall

promptly arrange for the selection of a Board employee to conduct a hearing in the case. The employee designated to conduct a hearing under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the hearing in a fair and impartial manner. The employee designated to conduct a hearing under this section shall promptly schedule a time and place for the hearing and promptly notify the beneficiary of such.

(f) *Oral hearing.* The beneficiary shall upon request have the opportunity to review, prior to the hearing, his or her claim folder and all documents pertinent to the issues raised. A hearing conducted under this section shall be informal. At the hearing the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witnesses or documents;

(2) To cross-examine adverse witnesses who appear at the hearing; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the hearing, the employee who conducts the hearing shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision. The summary of the case shall then be submitted to the Director of Retirement Claims.

(h) *Timely review.* The Director of Retirements Claims shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and shall notify the beneficiary of that decision within 60 days of the date that the request for reconsideration is filed or the date that the summary of the case is received from the employee who conducts the hearing, whichever is later.

(i) *Right to appeal adverse decision.* If the Director of Retirement Claims renders a decision adverse to the beneficiary, he or she shall further notify the beneficiary of the basis for such determination and that the beneficiary may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5.

(j) *Repayment is not a bar to requesting waiver and/or reconsideration.* The fact that a beneficiary may have notified the Board with respect to the method by which he or she could choose to have the recovery made, or the fact that such beneficiary may have actually tendered to the Board a portion or all of the amount of the erroneous payment, shall in no way operate to prejudice his or her right to request reconsideration of the initial erroneous payment determinations or to request waiver of recovery.

§ 260.5 Appeal from a reconsideration decision of the Bureau of Retirement Claims or the Bureau of Data Processing and Accounts.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision of the Bureau of Retirement Claims or the Bureau of Data Processing and Accounts by which he or she claims to be aggrieved.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision of the Bureau of Retirement Claims or the Bureau of Data Processing and Accounts shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision of the Bureau of Retirement Claims or the Bureau of Data Processing and Accounts shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal before the Bureau of Hearings and Appeals within the time prescribed in this section, the referee may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a referee in the manner described in § 260.3(d).

(d) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a referee to act on the appeal. The Director of Hearings and Appeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a referee assigned to the Bureau of Hearings and Appeals to act as referee with respect to a case. Such referee shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(e) *Power of referee to conduct hearings.* In the development of appeals, the referee shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in Part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(f) *Evidence presented in support of appeal.* The appellant, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal. If, in the judgment of the referee, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the referee may obtain such evidence upon his or her own initiative. If new evidence is obtained subsequent to an oral hearing, other than evidence submitted by the appellant or his or her representative, the referee shall notify the appellant or his or her representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the referee may grant the motion upon a showing of good cause. The referee shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(g) *Submission of written argument in lieu of oral hearing.* Where the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(h) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be held pursuant to the provisions of this section, the referee shall schedule a time and place for the conduct of the hearing. The referee shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The referee shall make every effort to hold the hearing within

150 days after the date the appeal is filed.

(2) A party to the proceeding may object to the time and place of the hearing or as to the stated issues to be resolved by filing a written notice of objection with the referee. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(3) The referee shall rule on any objection timely filed by a party under this subsection and shall notify the party of his or her ruling thereon. The referee may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The referee also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the referee a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the referee a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(5) If the referee finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the referee shall reschedule the hearing. If the referee finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(i) *Preservation of evidence presented.* All evidence presented by the appellant and all evidence developed by the referee shall be preserved. Such evidence, together with a record of the arguments, oral or written and the file previously created in the adjudication of the claim, shall constitute the record on appeal. After an appeal is filed, the compilation of the record shall be initiated by the inclusion therein of the file created in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record shall be available for examination by the appellant or his or her representative at any time during the pendency of the appeal.

(j) *Extension of time to submit evidence.* Except where the referee has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may move for an extension of time to submit evidence and the referee may grant the motion upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

§ 260.6 Time limit for issuing a hearing decision.

(a) *General.* The referee shall make every effort to issue a decision within 45 days after the hearing is held.

(b) *Submission of additional evidence.* If the referee requests additional evidence, he or she shall do so within 30 days after the hearing is held and he or she shall make every effort to issue the hearing decision within 45 days after the additional evidence is received and the period for comment has ended. If the claimant wishes to submit additional evidence or written statements of fact or law, the referee shall make every effort to issue the hearing decision within 45 days after the written statements are received or the additional evidence is received and the period for comment has ended.

(c) *Supplemental hearing.* If on the basis of additional evidence the referee decides a supplemental hearing is necessary, the supplemental hearing will be held within 30 days after the receipt of the additional evidence and the referee shall make every effort to issue a decision within 30 days after the supplemental hearing is held.

(d) *Reassignment of case to another referee.* If, after a hearing has been held, it is necessary to reassign a case to another referee due to the unavailability of the original referee (e.g., resignation, retirement, illness), the case will be promptly reassigned. The new referee shall make every effort to issue a hearing decision within 30 days after the reassignment.

§ 260.7 Time limits for issuing a decision when a hearing is not held.

If a claimant waives his or her right to appear at a hearing and the referee does not schedule the case for hearing, or the evidence in the record supports a favorable decision without a hearing, or a hearing is not required pursuant to § 260.5(g), the referee shall make every effort to issue a decision within 90 days from the date the appeal is filed: *Provided, however,* that if the referee requests additional evidence it shall be requested within 45 days of the filing of the appeal and the referee shall make every effort to issue a decision within 30 days after the additional evidence is received and the appellant comments on the evidence, or if no comment is received after the close of the comment period.

§ 260.8 Pre-hearing case review.

(a) *General.* The referee assigned to a case may, prior to an oral hearing, upon his or her own motion, refer the case back to the bureau of the Board which issued the initial decision for the purpose of reconsideration of that decision, where the referee finds that:

(1) Additional evidence pertinent to the resolution of the issues on appeal was submitted by the appellant at the time the appeal was filed, or subsequent thereto; or

(2) Additional evidence pertinent to the resolution of the issues on appeal is available and should be procured; or

(3) There is some other indication in the record that the initial decision may be revised in a manner favorable to the appellant.

(b) *Referral of case for further review by initial adjudicating unit.* Where the referee finds that referral of a case back to the bureau which issued the initial decision for the purpose of reconsideration of that decision would be warranted, the referee shall give that bureau the reason for such referral, together with specific directions as to the handling of the case of reconsideration.

(c) *Reconsideration of case by initial adjudicating unit.* The bureau to which a case is referred shall promptly undertake any additional development required, and shall make a determination as to whether the initial determination may be revised in whole or in part in a manner favorable to the appellant. Upon issuance of its determination, the bureau in question shall return the case along with a copy of its decision to the referee.

(d) *Revision of initial decision in whole or in part.* Where the bureau to which a case is referred determines to revise its initial decision in whole or in part, that bureau shall notify the appellant of such determination. If the revised determination is wholly

favorable to the appellant, he or she shall be notified that the appeal to the Bureau of Hearings and Appeals will be dismissed by the referee assigned to the case. If the revised decision is partially favorable to the appellant, the notice shall inform the appellant that the referee will proceed with the portion of the appellant's case not revised in his or her favor, unless the appellant should request dismissal of the appeal.

(c) *Timely conduct of oral hearing.* The fact that a case on appeal has been referred back to the bureau which issued the initial decision in the case shall not delay the conduct of a hearing scheduled with respect to the appeal, unless the appellant agrees to a delay. If it appears that the bureau to which a case has been referred will not have completed its reconsideration of the case prior to the date of a scheduled hearing on an appeal and the appellant has not agreed to a delay in the conduct of the hearing, the referee shall proceed with the hearing and the handling of the case as though the case had not been referred back to the bureau.

§ 260.9 Final appeal from a decision of the referee.

(a) *General.* Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of a referee by which he or she claims to be aggrieved.

(b) *Appeal from decision of referee.* Final appeal from a decision of a referee shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the referee is mailed to the appellant at the last address furnished by him or her.

(c) *Timely filing.* The right to further review of a decision of a referee shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b).

(d) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence: *Provided, however,* that if upon final appeal to the Board the Board finds that new or better evidence is available, the Board may obtain such evidence in which event the appellant shall be advised with respect to such evidence and given an opportunity to submit rebuttal evidence and argument: *Provided further,* that in the event that pursuant to the preceding proviso, material evidence is developed which tends to show facts contrary to those found by the referee, or in the event that the appellant shows that he is ready to present further material evidence, which for good reason he was not able to present to the referee, the claim may be referred back to the referee. Thereupon, the referee shall develop additional evidence for inclusion in the record, review the entire case, and shall:

(1) Issue his or her decision on remand or

(2) Transmit the entire record to the Board together with his or her recommendation to the Board for final decision. All remand decisions are final intermediate level administrative decisions which dispose of the appeal before the Board and if an appellant is dissatisfied with a remand decision he or she must appeal that decision to the Board in the manner described in § 260.9(b).

(e) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence and argument which has been made in the handling of the case before final appeal to the Board, with such additions as may be made pursuant to this section. Further argument will not be permitted except upon a showing by the appellant that he or she has argument to present which for valid reasons he or she was unable to present at an earlier stage or in cases in which the Board requests further elaboration of the appellant's arguments. In such cases, the further argument shall be submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as to form, subject matter, length and time as the Board may indicate to the appellant.

(f) *Issuance of decision.* The Board shall make every effort to issue a decision with 90 days after the later of:

(1) The date the final appeal is filed;

(2) The date new or better evidence is obtained in accordance with § 260.9(d) and the appellant has commented on it;

(3) The date new or better evidence is obtained in accordance with § 260.9(d) and after the close of the comment period;

(4) The date further argument submitted in accordance with § 260.9(e) is received; or

(5) The date the record is returned to the Board following referral back to the referee.

(g) *Review of decisions rendered prior to appeal to Board.* The Board may, on its own motion, review or cause to be reviewed any decision issued by a subordinate official or employee under this part.

§ 260.10 Determination of date of filing of appeal.

In determining whether an appeal has been made in accordance with the regulations in this part, the date of filing a duly executed appeal form prescribed by the Board shall be the date of its receipt at an office of the Board or the date of delivery for the purpose of transmission to the Board's main office in Chicago, Illinois, to any field agent specifically authorized by a regional director to receive custody thereof in the district where delivery is made, whichever date is earlier.

Dated: April 23, 1982.

By authority of the Board.

James T. Brown,

Chief Executive Officer, Railroad Retirement Board.

[FR Doc. 82-13218 Filed 5-13-82; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-83-80]

Partial Exclusion of Dividends and Interest; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the partial exclusion of dividends and interest from gross income.

DATES: The public hearing will be held on June 22, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by June 8, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LRT (LR-83-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 116, 854, 857, and 1232 of the Internal Revenue Code of 1954, the proposed regulations

appeared in the **Federal Register** for Tuesday, February 9, 1982 (47 FR 5902).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by June 8, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 82-13217 Filed 5-13-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-022]

Hazard Communication; Public Hearings

Note.—This document originally appeared in the **Federal Register** for Wednesday, May 12, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Department of Labor.

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking; modification of hearing notice.

SUMMARY: On March 19, 1982, OSHA Published a notice of proposed rulemaking (NPRM) on hazard communication in the **Federal Register** (47 FR 12092). A notice announcing dates and locations for public hearings on the NPRM was published on April 16, 1982 (47 FR 16348).

The locations announced for the hearings were Washington, D.C., Houston, San Diego and Detroit. The selection of these sites was based primarily on geographical considerations. Interested parties have since suggested that participation on the West Coast could be significantly increased by moving the hearing site there from San Diego to Los Angeles. OSHA has agreed to this suggestion and is hereby announcing that the hearing originally scheduled for San Diego on July 20, 1982, will take place instead in Los Angeles at the address indicated below. The other hearings will take place on the dates and at the locations announced in the April 16th notice at 47 FR 16348. The hearings will be conducted in accordance with the procedures specified in the March 19th NPRM at 47 FR 12119.

In order to allow interested parties more opportunity to decide to participate in the regional hearings, OSHA is also hereby extending the time for submission of notices of intention to appear and statements for these regional hearings. Notices and statements for participants in the Washington, D.C. hearing are still due May 18, 1982, and June 1, 1982, respectively.

DATES: Notices of intention to appear at the regional hearings must be received on or before June 15, 1982. Statements and any documentary evidence to be presented at these hearings must be submitted by July 1, 1982.

The date each hearing will begin and the cities in which they will be held are as follows:

Date hearing begins	City
1. June 15, 1982	Washington, D.C.
2. July 13, 1982	Houston, Texas.
3. July 20, 1982	Los Angeles, California.
4. July 27, 1982	Detroit, Michigan.

ADDRESSES: Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitutuion Avenue, N.W., Room N3635, Washington, D.C. 20210, (202) 523-8024.

The address for the hearing on July 20, 1982 is:

Santa Barbara (A) Room, Western Bonaventure Los Angeles Hotel, Fifth and Figueroa Streets, Los Angeles, California.

Notices of intention to appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying in the Docket Office. Docket H-022, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room S6212, Washington, D.C. 20210; (202) 523-7894.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3635, Washington, D.C. 20210; (202) 523-8024.

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3663, Washington, D.C. 20210; (202) 523-7166.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 82-12975 Filed 5-10-82; 12:00 pm]

BILLING CODE 4510-26-M

29 CFR Parts 1910, 1915-1918, and 1926

[Docket No. H-049]

Respiratory Protection

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice requests data, views, and arguments concerning possible revisions to OSHA standards on respiratory protection in 29 CFR 1910.134, 29 CFR 1915.82, 29 CFR 1916.82, 29 CFR 1917.82, 29 CFR 1918.102, and 29 CFR 1926.103 including the need to regulate, relevant alternatives, and economic impact.

DATES: Data, views and arguments should be submitted by September 13, 1982.

ADDRESSES: Written submissions in response to this notice should be submitted to the Docket Officer, Docket

No. H–049, Room S6212, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone 202–523–7894. All written submissions and documents mentioned in this notice will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Rm. N–3637, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone 202–523–8151,

SUPPLEMENTARY INFORMATION: Many thousands of employees are exposed to potentially hazardous concentrations of toxic materials in the workplace and must wear respirators to protect their health. The current regulations governing the use of respirators have been in effect since 1971. The general industry standard, 29 CFR 1910.134, was adopted in May 1971 from a national consensus standard (American National Standard Z88.2–1969, Practices for Respiratory Protection). The construction industry standard, 29 CFR 1926.103, was promulgated in April 1971. On February 9, 1979, 29 CFR 1910.134 was formally recognized as applicable to the construction industry (44 FR 8577). The maritime standards were originally promulgated in the nineteen sixties under a different codification in the CFR by agencies which preceded OSHA. The present code designations and their promulgation dates are, as follows: 29 CFR 1915.82, Feb. 20, 1960 (25 FR 1543); 29 CFR 1916.82, January 22, 1963 (28 FR 547); 29 CFR 1917.82, March 27, 1964 (29 FR 4052); and 29 CFR 1918.102, Feb. 20, 1960 (25 FR 1565).

Section 1910.134, which most clearly sets forth the requirements of a respiratory protection program, states that the employer shall provide the proper, approved respirator for the circumstance and is responsible for carrying out a respiratory protection program. The program is to contain written procedures and provide for proper cleaning, disinfection, storage, inspection and maintenance of the respirators. General provisions are set forth on fitting and training. Requirements are included for quality of breathing air, and practices to ensure that it is not contaminated. Provisons for emergencies and for communication and rescue in atmospheres immediately dangerous to life or health are specified. A color code for gas mask canisters is detailed and other provisions are included. The respiratory protection provisions in the other affected standards are more general.

Since the promulgation of these regulations, the field of industrial respiratory protection has advanced significantly. Newer, improved methods of qualitative fit testing are now available. Qualitative fit testing has been used for many years and checks the adequacy of fit of a respirator by relying on the subjective response of the wearer in detecting an odor or irritation from an airborne chemical introduced into the air near the respirator. Another method of respirator fit testing, called quantitative fit testing (QNFT), has been developed and made easily available. Quantitiative testing measures the efficacy of fit of a respirator by actually measuring and comparing the contaminant level inside and outside a respirator facepiece. In addition, the concept of assigned protection factors, a numerical indication of the effectiveness of a respirator, has become firmly established. Finally, the consensus of industry concerning what constitutes a reasonable, effective respirator program has changed, as demonstrated by the recent issuance of a revised edition of ANSI Z88.2.

The ANSI Z88.2–1980 standard, entitled "Practices For Respiratory Protection," is a revision of the 1969 ANSI standard. It is available from the American National Standards Institute, 1430 Broadway, New York, New York 10018, and is also available for inspection at the Docket Office. The new edition is an extensive revision of the previous edition, incorporating the following changes:

- Oxygen deficiency is more thoroughly discussed.
- Quantitative fit testing is now included and described.
- Qualitative testing is more fully described.
- The concept of protection factors is introduced.
- Higher protection factors are assigned when quantitative fit testing is used.
- The section on respirator selection is expanded and now includes fit testing.
- The special problems section now includes a discussion of use in confined spaces.

Besides these developments, the demands on respiratory protection have also increased substantially since 1971. Levels of airborne contaminants allowed by recent OSHA health standards, such as arsenic, lead and cotton dust, are substanitally lower than previous standards. Levels of contaminants considered acceptable by non-regulatory authorities, such as the American Conference of Governmental Industrial Hygienists (ACGIH), have been lowered significantly for a great many substances. Providing respiratory protection against known or suspected carcinogens has become much more difficult and complex as more substances have been identified as carcinogens and as the degree of protection expected has increased.

Recent OSHA health standards have imposed respiratory related requirements not found in 29 CFR 1910.134. (See § 1910.1018(h), arsenic; § 1910.1025(f), lead; § 1910.1029(g), coke oven emissions; and § 1910.1043(f), cotton dust). These requirements include:

- Quantitative fit tests have been required both annually and semiannually.
- Employees have been given the privilege of using powered air purifying respirators (PAPR) upon request.
- Employees have been allowed to change the filter elements of a respirator whenever an increase in breathing resistance is detected.
- Employees have been allowed to wash their faces and respirator facepieces to prevent skin irritation associated with using respirators.
- Employers have been required to provide respirators that exhibit minimum facepiece leakage.
- Referral of an employee to a physician trained in pulmonary medicine has been required for an employee who exhibits difficuly breathing either at fit testing or during routine respirator use.

In addition, developments in microprocessor and other new technologies have made it possible to develop respirators with warning devices to indicate whether the respirator is providing appropriate protection while in use, and communication equipment so that employees can warn each other of safety hazards and coordinate their work activities in a safe manner. Improvements in cartridge technology may permit development of respirators for protection from chemicals for which there are not now any approved respirators. Further developments in powered air purifying respirators may permit their broader use to reduce fatigue factors, skin irritation problems, and breathing resistance difficulties sometimes created by negative pressure respirators. These possible improvements when taken together would make it possible to have a more effective respirator program.

Since current respiriator standards are based on older technologies,

respirator suppliers have claimed to be inhibited from developing improved respirators which do not fit into existing categories or which provide protection from chemicals not included in present approval criteria because of the time involved from respirator development to ultimate approval. Suggestions on regulatory or other changes to further encourage the development of improved respirators and to permit their approval are requested.

It has become evident to OSHA that there is a good deal of confusion among respirator users over the distinction between the "fit factor" as determined by QNFT and the true, effective "protection factor" which is the actual protection afforded by a respirator when in use. The manufacturers of quantitative fit test equipment have correctly emphasized that their equipment does not take account of the normal filter leakage and measures only the leakage around the face/sealing area of the mask plus any contribution from exhalation valve leakage.

In addition, it has become apparent that the laboratory type testing of QNFT may tend to overestimate how well a respirator fits when an employee wearing it is working at his job. Therefore there is uncertainty now about how high an apparent protection factor (actually fit factor) must be demonstrated by QNFT to insure that employees are properly protected on the job.

OSHA has also been evaluating the appropriateness of improved methods of qualitative fit testing as an alternative to the quantitative fit testing required by the lead standard (29 CFR 1910.1025). Although that issue is being dealt with in a separate rulemaking proceeding (see 46 FR 27358, May 19, 1981), the arguments and information involved are also relevant to this advance notice. Therefore the record of that rulemaking (docket no. H–049A) will also be placed in the record of this proceeding. One of the major questions involved in that rulemaking is whether qualitative fit testing (QLFT) can be so arranged and conducted as to properly determine whether a respirator is in fact adequate for a specific application.

Another important question is whether di-2-ethylhexyl phthalate (DEHP), the most widely used challenge agent for QNFT, should continue to be used for QNFT in view of the recent finding by the National Toxicology Program that DEHP caused cancer in rats and mice in a two year feeding study. This study is reported in "NTP Technical Report on the Carcinogenesis Bioassay of Di-2-ethylhexyl phthalate—CAS 117–81–7," DHHS Publn. No. NIH–81–1773, which is available in draft form (dated Oct. 15, 1980) in the OSHA docket office (Docket file H–049A, exhibit 12). There are several substitute challenge agents that can be used to conduct QNFT, thereby considerably reducing the importance of DEHP. Examples include corn oil and di-2-ethylhexyl sebacate.

All of these factors indicate to OSHA that existing standards related to respiratory protection should be reexamined in light of current knowledge and accepted industrial hygiene practice. If OSHA does not respond to this situation, many employees may be needlessly overexposed to a variety of airborne toxic materials because of inappropriate respirator programs. Such exposure could result in severe illness and disability. Alternatively, obsolete regulation may unnecessarily limit an employer's options in providing respiratory protection, or restrict innovation in respiratory protection devices. Inadequate regulations may also impose unnecessary costs.

Consequently, OSHA is interested in receiving data and views from all interested parties on a wide variety of issues related to the revision of OSHA's respiratory protection standards. These issues are presented in the form of questions to assist interested persons in developing their responses. These questions represent issues that have already been brought to the Agency's attention. Some are of general nature and others address specialized technical issues which may be principally of interest only to the technical community. Interested persons, of course, may wish to submit information and views on issues that are not addressed by the questions or to respond only to some of the questions of special interest to themselves.

Paragraph (a)(1) of § 1910.134 requires that engineering controls be used to reduce excessive employees exposures to airborne contaminants and permits the use of respirators only while feasible engineering controls are being installed or when such controls are not feasible. This requirement is the subject of continuing controversy in those situations where respiratory protection programs are thought to be more cost effective than engineering controls. This rulemaking on respiratory protection standards is a necessary prerequisite in addressing this policy. Although the agency is inviting comment on this subject (see question 30), OSHA regards the evaluation of the technical aspects of respirator adequacy and effectiveness, as well as respirator program requirements, to be an imporant and crucial first step in reexamining the broad policy of the priority of engineering controls over respirators. Rational decisions concerning when it is appropriate to use respirators must be based on prior knowledge of the effectiveness of respirators and respiratory protection programs. The factors that determine the performance levels of respirator programs are independent of decisions to employ respiratory protection in some particular situation. In a like manner, judgements as to cost effectiveness must also be based on prior knowledge of the costs associated with respiratory protection programs. Thus, OSHA will address the technical aspects of respiratory protection in this rulemaking before addressing the larger subject of the relationship between engineering controls and personal protective equipment. General policy with respect to engineering controls is a controversial standards policy important enough to be treated separately from the technical aspects of respirators and respiratory protection programs. Therefore OSHA will in the near future publish a separate notice discussing in detail this subject of the hierarchy of controls and requesting comment separately on issues relevant to it.

In order to assist the public and the Agency in evaluating these issues, OSHA has compiled the following background information and reports.

Los Alamos National Laboratory (LANL) of the University of California at Los Alamos, New Mexico, has done considerable work on respiratory protection. Their report LA–6084–MS, issued January 1976, entitled "Respirator Protection Factors," is the basic source for the protection factors now commonly applied to various respirators. This report also discusses quantitative fit testing. Other LANL reports that may be of interest include LA–5488, issued March 1974, "Selection of Respirator Test Panels Representative of U.S. Adult Facial Sizes"; LA–6722–PR, issued February 1977, "Respirator Studies for the National Institute for Occupational Safety and Health: July, 1975—Dec. 31, 1976," which discusses various aspects of quantitative fit testing and respirator evaluation; and LA–7317–PR, issued June 1978, "Respirator Studies for the National Institute for Occupational Safety and Health: Jan. 1–Dec. 31, 1977," which discusses the testing of powered air purifying respirators, interlaboratory comparison of data for dust-fume-mist filters, and fit testing for gas and vapor respirators. The LANL work has also resulted in reports in the literature, including "Effect of Facial Hair on

Respirator Performance" by E. C. Hyatt, et. al., that appeared on pp. 135–142 of the American Industrial Hygiene Association Journal of April 1973, and "The Physiological Consequences of wearing Industrial Respirators; a Review" by Peter B. Raven, et. al., that appeared on pp. 517–534 in the June 1979 issue of the same journal.

As part of a joint OSHA–NIOSH project called the standards completion project, the two agencies developed a document called the Respirator Decision Logic. This document is an attempt to set forth in a clear, logical, concise form the factors that must be considered and the choices that must be made in selecting a suitable respirator for any application. Although the document was not published, the last revision, dated February 1, 1978, is available from the OSHA docket office at the address shown below (cite docket number H–049 and exhibit 9).

Several documents submitted to OSHA for the standards completion project, docket no. SCP–1, are also relevant here. The "Industrial Safety Equipment Association Analysis of Supporting Test Data" submitted by Mr. Frank Wilcher of ISEA takes issue with the LANL determinations of protection factors, (see exhibit 45–9). Two papers from that file address aspects of respirator comfort: "Respirator Comfort: Subjective Response to Force Applied to the Face" by S. H. Snook, et. al., A.I.H.A. Journal, March–April 1966, p. 93–97, (exhibit 18F); and "Performance and Acceptance of Respirator Facial Seals" by W. A. Burgess and W. C. Hinds, Ergonomics, 1970, vol. 13, no. 4, p. 455–464, (exhibit 18G). "Effectiveness of Dust Respirators in Underground Coal Mines" by H. E. Harris, et. al., Transactions of the Society of Mining Engineers, AIME, vol. 256, June 1974, p. 153–161 (exhibit 18D) discusses the actual protection afforded by respirators on the job and factors that account for variations.

In addition, quantitative fit testing has been studied by Mr. William H. Revoir then with the Norton Co. for the ANSI committee on respirator practices, and reported in two Norton technical reports, no's R–115 and R–116, (docket H049A, exhibits 13 and 14, respectively). Report R–115 deals with a comparison of test results between a qualitative test using isoamyl acetate and a quantitative test using DEHP. Report R–116 discusses the impact on test results of performing head and neck movements during testing.

All of these studies and reports provide further background information relevant to the questions asked in this advance notice. These studies and other documents referred to in this notice have been placed in the docket and are available for inspection and copying at the docket office.

In addition to specific responses to the questions posed in this notice and in accordance with the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)) and Executive Order No. 12291, OSHA also requests information regarding the economic impact which the contemplated changes discussed below might have on affected industries in general and, in particular, on small businesses and other small entities. (See question 32). Information regarding environmental impacts is also requested. Since this notice is an advance notice of proposed rulemaking, and no specific proposal or alternatives are presented, firm, detailed cost and impact data may not be available. However, whatever data that are available or can be estimated should be submitted to assist the Agency in the development of a proposal and alternatives.

Commentors responding to this notice should note that § 1910.134 is applicable to workplaces in general. It also applies to the construction and maritime industries to the extent that § 1910.134's provisions are not covered by the provisions on respirators in the construction and maritime standards. Also, where a more specific standard, such as a single-substance health standard, contains respirator provisions, those provisions take precedence over the more general provisions of § 1910.134. The provisions on respirators in the construction standards and in the maritime standards apply only to their respective industries.

Issues for comment: Data, views, and arguments are solicited on all of the issues described below and on other relevant issues.

Since this notice addresses a wide variety of industries, each commentor should include the following information so that his (her) other remarks may be usefully grouped and compared: What conditions or circumstances are you using as a basis for your comments, in terms of,

a. Job(s), operation(s), process(es);

b. Toxic material(s);

c. Level of exposure without regard to respirators;

d. Frequency and duration of exposure;

e. Type and amount of work or physical labor, including frequency and duration;

f. Medical screening or surveillance already practiced;

g. Applicable environmental conditions: high or low temperature, high humidity, skin irritants present, etc.;

h. Work schedule, including breaks and rest periods;

i. Size of facility physically and in terms of employment; and

j. Age and health of affected employees?

1. Should current standards be revised? What alternatives to regulation are available?

2.a. Should all or part of the new ANSI Z88.2–1980 standard be adopted as an OSHA standard?

b. If so, which parts and why?

c. Which, if any, advisory provisions of the ANSI standard should be made mandatory for OSHA purposes?

3.a. Should a protection factor of 100 for full facepiece respirators be made generally applicable in the regulations or should 50, as recommended by Los Alamos National Laboratories, be retained?

b. Should the protection factors (other than for full facepiece respirators) recommended by Los Alamos National Laboratories be made generally applicable in the regulations?

c. What other values, if any, should be specified for protection factors?

d. In what manner, if any, should OSHA allow QNFT to be used by an employer to assign a higher protection factor to a respirator for an individual or a group?

e. In what way should a distinction be made between *fit* factors determined by QNFT and true *protection* factors, that include filter leakage?

f. What methods or protocols are available to determine the true protection factor an employee achieves while in the actual workplace?

4.a. Should there be a distinction in the regulations between disposable respirators and other half-mask respirators?

b. In particular, should the protection factors for the disposable respirators be the same as for other half-mask respirators?

5.a. What protocol(s), if any, for qualitative fit testing (QLFT) should be specified in any new OSHA standards as acceptable testing method(s)?

b. Are there different protocols appropriate for different uses of QLFT such as selection and fitting, periodic fit checking, or checking the fit at each donning?

c. How often should QLFT be repeated?

d. What exercises should be performed by the test subject during QLFT?

e. Should it be allowable to use substances identified as potential carcinogens as fit test challenge agents? If so, what basis should be used to determine that the probable dose is acceptable or unacceptable?

f. What basis should OSHA use to determine the acceptability of suggested QLFT protocols?

g. With the use of nonirritating test agents, does test subject bias significantly affect the usefulness of qualitative testing, or affect the test results a significant amount of the time?

h. Should increased testing or more frequent testing be required for respirators with facepieces that need adjustment other than strap tension to fit properly?

i. Under what circumstances and using what testing protocol would QLFT be sufficient to ensure that an employee's respirator fits sufficiently well?

6.a. What protocol(s), if any, for quantitative fit testing (QNFT) should be specified as acceptable testing method(s) in any new OSHA standards?

b. To be an adequate test, should QNFT be able to distinguish the respirator efficiency for each test exercise performed by the test subject?

c. To be an adequate test, should QNFT be able to demonstrate the variation of contaminant concentration behind the respirator during the breathing cycle?

d. What exercises should be performed by the test subject during QNFT, and for how long?

e. What test agents are suitable for QNFT, and what are the essential characteristics of an appropriate aerosol for solid and liquid agents?

f. What algorithm should be used to calculate the protection factor from QNFT?

g. What situations require QNFT?

h. What is an acceptable accuracy for a QNFT test?

i. Should it be allowable to use substances identified as suspect carcinogens as test agents? If so, what basis should be used to determine that the probable dose is acceptable or unacceptable?

j. Should increased testing (i.e. repetitions) be required for respirators with facepieces that need adjustment other than strap tension to fit properly?

k. For each required protection factor, how high a fit factor, determined by QNFT, should be required to ensure proper employee protection?

l. How will the fit factor determined vary with different testing equipment, challenge agents, procedures, and test conditions?

7. Which respirator related provisions, if any, of the more recent OSHA health standards (e.g. § 1910.1018(h)—arsenic, § 1910.1029(g)—coke oven emissions, § 1910.1043(f)—cotton dust, etc.) should be made generally applicable by incorporation into § 1910.134, Parts 1915–1918, or § 1926.103?

8.a. What type and level of training and retraining should be provided to all respirator users (c.f. § 1910.134(b)(2), (e)(5), (e)(5)(i), § 1915.82(a)(4), § 1926.103(c)(1))?

b. In such training, what topics should be covered and how thoroughly?

c. In which cases should more specialized or comprehensive training be required?

d. How should required training and retraining be specified?

9. What specifications should be made concerning the content of standard operating procedures presently required in § 1910.134(b)(1) and (e)(3)?

10.a. What medical screening, if any, of potential users of respirators should be required?

b. For those employees who use respirators, is it safe to require medical examinations only in those cases where there is some complaint by the employee or a problem is noticed by the fit testing technician?

c. Should the regulations limit an employer's choice of type, class or specialty of health care provider in obtaining these medical examinations?

d. Could a questionnaire be used to select those few individuals who should be medically examined?

e. What medical conditions, if any, of an employee should preclude the wearing of a respirator? Explain.

f. What medical conditions, if any, could be aggravated by wearing a respirator?

g. Could the wearing of a respirator medically endanger an employee? If so, with what respirator, and as a result of what medical condition?

11. The respirator testing criteria used by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) (30 CFR Part 11) have been acknowledged by NIOSH to be in need of extensive revision.

a. Should OSHA independently address the adequacy and application of some or all types or models of respirators? If yes, specify in detail.

b. Should OSHA always accept the adequacy of MSHA/NIOSH approved respirators without additional requirements (e.g. higher performance requirements for use against certain substances)?

c. Under what circumstances, if any, should OSHA allow the use of respirators not approved by MSHA/NIOSH under 30 CFR Part 11?

d. Should OSHA automatically reject any modification to approved respirators?

e. Should OSHA allow the interchange of parts between different makes or types of respirators?

f. Should OSHA recognize other organizations' (other than NIOSH) testing and certification of respirators?

g. Are there changes in regulations or procedures that would encourage more rapid development and utilization of respirators to provide protection from chemicals for which there are no currently approved respirators?

h. Are there changes in regulations or procedures which would encourage more rapid development and utilization of respirators which would provide immediate warning of over exposure; improved communication capabilities; reduced skin irritation, breathing resistance or heat stress; or other improvements?

i. In order for negative pressure air purifying respirators to be permitted for protection from a gaseous chemical, should that chemical always present adequate warning properties?

j. How, if at all, should OSHA address physical aspects of respirator performance and suitability such as abrasion resistance, tear strength, withstanding temperature extremes, corrosion resistance, and field of vision?

12. Should OSHA continue to accept as adequate all manufacturers' instructions for fit checking (§ 1910.134 (e)(5)(i))?

13. When, if at all, should OSHA limit the amount of time in a single shift that employers may require their employees to wear respirators? (The lead standard (29 CFR 1910.1025 (f)(1)(i) imposes a limit of 4.4 hours in some cases.)

14. In determining compliance with exposure standards for those employees wearing respirators, should OSHA assume that an employee's exposure has been reduced by a factor equal to the assigned protection factor of the respirator? Such an assumption is already part of the enforcement policy for the cotton dust standard. (See 46 FR 85736, Dec. 30, 1980.) It allows an employee to wear a respirator for only part of the work shift when respirators are relied upon to achieve compliance with permissible exposure levels.

15.a. What degree of surviellance of work area conditions and degree of employee exposure and stress are adequate to ensure safe use of respirators (cf § 1910.134 (b)(8))?

b. What costs are associated with this surveillance?

c. For situations that require the use of respirators for extended periods, what limitations should be placed on and employee's schedule of use of that respirator in order to make adequate allowance for:

1. Degree of exertion required by the work activity?

2. Physiological burden imposed by different respirator types?

3. Physiological burden imposed by the ambient temperature and humidity or by radiant heat?

16.a. How frequently should the carbon monoxide concentration be measured from an air compressor without a carbon monoxide alarm?

b. Is there any reason not to require a carbon monoxide alarm on all oil-lubricated compressors used to provide breathing air?

17. Should acceptable respirator breathing air continue to be specified as Grade D from Compressed Gas Association Commodity Specification G7.1–1966 (§ 1910.134(d)(1)) or should some alternate specification, such as grade E, be used?

18. It has been claimed that some powered air purifying respirators (PAPR's) have been shown to induce inward leakage.

a. In view of this, what protection factor is appropriate and how should proper fit be ascertained?

b. Should PAPR's have alarms to indicate low air flow?

c. Under what circumstances would PAPR's be made available to employees?

19. a. What recordkeeping should be required to ensure an effective respirator program? Possible items for documentation include breathing air chemical analysis, fit testing, medical evaluations, respirator inspection, etc.

b. What costs are associated with these items?

20. What type and level of training and education should be considered the minimum required to permit a person to train others in respiratory protection?

21. Under what circumstances, if any, should men with beards be permitted to wear each type or style of respirator?

22. To what extent, if any, should the OSHA/NIOSH Respirator Decision Logic be incorporated into revised OSHA standards?

23. What level(s) of oxygen deficiency should impose a restriction on the types of respirators that may be worn?

24. How should "immediately dangerous to life or health" (IDLH) be defined with respect to limiting respirator use for oxygen deficiency or for the presence of toxic materials?

25. How and to what extent should respirator regulations for the maritime and/or construction industries differ from those for general industry?

26. Should regulations be established for permissible shelf life for filters, cartridges and canisters?

27. Using either sanitary, durability, or service life considerations, how long should "disposable" respirators be permitted to be used?

28. For work in atmospheres immediately dangerous to life or health, are there respiratory devices other than self-contained breathing apparatus that are suitable for use by standby persons? (See § 1910.134(e)(3)(iii)).

29. Respirator filters and sorbents have a limited service life.

a. What limits, if any, should be placed on particulate filters?

b. In what manner should allowance be made for the degradation of some filters due to humidity?

c. What scheme should be used to specify service lives for organic vapor cartridges and canisters for various organic vapors. What use can be made in this regard of published breakthrough times for various organic vapors? (See, for example, Nelson and Correia, *American Industrial Hygiene Association Journal*, September, 1976, p. 514; and others.)

d. Should sorbent cartridges be restricted to a single day's use on account of the desorption that may occur during overnight storage and exposure to humidity?

30.a. Should the respirator standards continue to address the relative priority of engineering controls and respirators? (See § 1910.134(a)(1).)

b. Do feasible engineering controls always provide better protection or greater assurance of protection of employee health than the use of respirators?

31. Are there any other issues or problems relevant to respiratory protection programs in general industry, maritime, or construction which OSHA should address in revising current standards?

32.a. What would be the economic impact on affected industries and on small business and other small entities of the possible changes to OSHA regulations described above or suggested by you or other commentors?

b. Which, if any, of these changes would result in major increases or decreases in costs or prices for individual industries, small business, other small entities, or consumers?

c. Would these changes have a significant economic impact on a substantial number of small businesses or other small entities?

d. Would these changes, taken individually or as a whole, result in significant adverse or beneficial effects on domestic or foreign competition, investment, productivity, or innovation?

33. There have been claims that the use of respirators results in productivity losses.

a. What factors may contribute to productivity losses?

b. What are the costs of each of these factors?

c. What is the aggregate cost, if any, of productivity losses induced by the use of respirators?

d. What provisions of current respirator standards affect productivity?

e. What effective alternatives are available that could reduce these productivity losses?

34. Respirator program costs can vary widely depending on the conditions which necessitate respirator use.

a. How much time during a typical shift are respirators actually work? Please be as specific as possible about tyupe of industry and classification of employee concerned.

b. How many employees and what portion of the employer's workforce use respirators?

c. What are typical maintenance and replacement costs for each type of respirator used?

d. What are the total costs and per employee costs for a quantitative fit testing program? Where known, separately state the costs of program staff training, equipment purchase, equipment rental, consultant fees, employee time, program staff time, and the number of tests performed per employee.

e. What are the total costs and per employee costs for a quantitative fit testing program? Where known separately state the costs of program staff training, equipment purchase, equipment rental, consultant fees, employee time, program staff time, and the number of tests performed per employee.

All comments submtted in response to these questions and this notice generally will become part of the record of any resulting rulemaking and will be carefully considered in the development of any proposed regulation on these matters. All comments in response to this notice should be submitted by September 13, 1982 to the Docket Officer, Docket No. H–049, Room S6212, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W.,

Washington, D.C. 20210; telephone 202–523–7894.

This document was prepared under the direction of Thorne Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

List of Subjects in 29 CFR Parts 1910, 1915–1918, 1926

Occupational safety and health, Respiratory protection.

(Sec. 6, Pub. L. 91–596, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; 40 U.S.C. 333; 33 U.S.C. 941; 41 U.S.C. 35, 38; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne Auchter,

Assistant Secretary of Labor.

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DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitle A and Chs. I–IV, VI and VII

Department of Education Semiannual Regulations Agenda and Review List

AGENCY: Office of the Secretary, Ed.

ACTION: Publication of the semiannual agenda of regulations.

SUMMARY: The Secretary of Education publishes a semiannual agenda of regulations as required by the Regulatory Flexibility Act and Executive Order 12291 ("Federal Regulations"). This agenda provides a brief description of regulations being developed or reviewed by the Department of Education. The purpose of the agenda is to encourage more effective public participation in the regulatory process by giving the public early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the contact person listed for that set of regulations. Questions or comments on the overall agenda should be directed to A. Neal Shedd, Director, Division of Regulations Management, Office of the General Counsel, Department of Education, Room 2129 FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245–7091.

SUPPLEMENTARY INFORMATION: Executive Order 12291, dated February 17, 1981, and the Regulatory Flexibility Act, Pub. L. 96–354, enacted September 19, 1980, require the Department of Education to publish, in October and April of each year, an agenda of regulations that the Department expects to issue and currently effective regulations that are under review. The agenda includes both notices of proposed rulemaking (NPRMs) currently being drafted and pending final regulations (FR) for which NPRMS have been published.

For each set of proposed or final regulations listed, the agenda provides a: (1) Title, (2) summary, (3) contact person, and (4) decision date (expected month of publication of the final regulations (FR) or (MPRM).

The summary of each set of regulations includes: (1) A brief description of the proposed or final regulations; (2) notice whether a regulatory impact analysis is required by Executive order 12291; (3) notice whether a regulatory flexibility analysis is required by the Regulatory Flexibility Act; (4) a brief statement of the Department's objectives in issuing or reviewing the regulations; (5) the legal basis for the regulations; and (6) the Code of Federal Regulations part number assigned to the regulations.

The Department is required by Executive Order 12291 to prepare a regulatory impact analysis for any set of regulations that is a "major rule" as defined by the order, and that is not exempted from the requirements in the order. This semiannual agenda specifies whether or not a regulatory impact analysis will be prepared for each set of regulations listed.

The Regulatory Flexibility Act requires that Federal agencies take into account the impact of their regulations on "small entities," including small businesses, small governmental jurisdictions, and other small organizations. The Department must prepare an initial regulatory flexibility analysis for any proposed regulations for which a notice of proposed rulemaking is issued on or after January 1, 1981 if the proposed regulations will have a significant economic impact on a substantial number of small entities. The Department's plan for review of regulations under the Regulatory Flexibility Act was published on August 5, 1981 at 46 FR 39682. A reference has been included in this agenda to indicate whether a regulatory flexibility analysis is required.

This publication in the **Federal Register** does not impose any binding obligation on the Department with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

Dated: May 7, 1982.

T. H. Bell,

Secretary of Education.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST

Title	Summary	Contact	Earliest expected decision date
Privacy Act Regulations—Amendment	A. *Description:* The amendment would exempt from certain access and notice provisions of the Privacy Act investigatory materials compiled for law enforcement purposes and contained in the complaint file and log system of records of the Office for Civil Rights. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The amendment would enhance the ability of the Department to acquire information pertinent to the compliance status of recipients and to achieve compliance by voluntary means. E. *Legal basis:* Section 3 of the Privacy Act of 1974 (5 U.S.C. 552a(k)) F. *Citation:* 34 CFR Part 5b	Antonio J. Califa, (202) 245–2154.	NPRM May 1982.
Education Department General Administrative Regulations (EDGAR)—Grant Programs without Specific Regulations—Parts 75 and 78.	A. *Description:* The regulations under review establish procedures for grant awards under a program that does not have program-specific regulations. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not applicable D. *Objectives:* Amendments, if any, to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 414, of the Department of Education Organization Act (20 U.S.C. 3474). F. *Citation:* 34 CFR Parts 75 and 78	Chester Glod, (202) 245–7810.	NPRM May 1982.
Indian Fellowship Program	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to Indian students applying for and receiving fellowships for study in six specified fields.	Alice Ford, (202) 245–7525.	NPRM May 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 423, Part B of the Indian Education Act of 1972, as amended by Section 1152 of Pub. L. 95-561 (20 U.S.C. 3385b). F. *Citation:* 34 CFR Part 263		
Part B of the Education of the Handicapped Act	A. *Description:* The regulations under review govern a program of Federal entitlement grants to assist State educational agencies in the education of handicapped children. B. *Regulatory impact analysis:* Required C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142 (20 U.S.C. 1411-1420). F. *Citation:* 34 CFR Part 300	Shirley Jones, (202) 245-9661.	NPRM May 1982.
Incentive Grants—Early Childhood	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects that provide special education and related services to handicapped children ages three through five. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 619, Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142 (20 U.S.C. 1419). F. *Citation:* 34 CFR Part 301	Shirley Jones, (202) 245-9661.	NPRM May 1982.
Centers and Services for Deaf-Blind Children	A. *Description:* The regulations under review govern a program of Federal grants to a limited number of model centers that specialize in intensive educational and personal adjustment services for deaf-blind children. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 622, Part C of the Education of the Handicapped Act (20 U.S.C. 1422). F. *Citation:* 34 CFR Part 307	Jane C. Williams, (202) 472-2595.	NPRM May 1982.
Early Education for Handicapped Children	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to develop and carry out experimental preschool and early education programs for handicapped children. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423). F. *Citation:* 34 CFR Part 309	Richard Champion, (202) 245-9722.	NPRM May 1982.
Training Personnel for the Education of the Handicapped.	A. *Description:* The regulations under review govern a program of Federal financial assistance to State educational agencies, institutions of higher education, and other nonprofit agencies to increase the quantity and improve the quality of personnel to educate handicapped children. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 631, 632, and 634, of the Education of the Handicapped Act (20 U.S.C. 1431, 1432 and 1434). F. *Citation:* 34 CFR Part 318	Edward R. Moore, (202) 245-9491.	NPRM May 1982.
Captioned Films Loan Service for the Deaf Program.	A. *Description:* The regulations under review govern a program that loans captioned films for use by or for deaf persons. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 651-652 of the Education of the Handicapped Act, as amended by Pub. L. 93-380 (20 U.S.C. 1451-1452). F. *Citation:* 34 CFR Part 330	Malcolm Norwood, Jack Tringo, (202) 472-4840.	NPRM May 1982.
Educational Media—Loan Service for the Handicapped Program.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to make educational media available for nonprofit purposes to handicapped persons and others directly involved in activities for handicapped persons. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 661-662 of the Education of the Handicapped Act, as amended by Pub. L. 93-380 (20 U.S.C. 1461-1462). F. *Citation:* 34 CFR Part 331	Malcolm Norwood, Jack Tringo, (202) 472-4840.	NPRM May 1982.
Educational Media—Research, Production, Distribution, and Training.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to carry out research, production, distribution, and training related to the use of educational media for the handicapped. B. *Regulatory impact analysis:* Not required	Malcolm Norwood, Jack Tringo, (202) 472-4840.	NPRM May 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 651–652 of the Education of the Handicapped Act, as amended by Pub. L. 93–380 (20 U.S.C. 1461–1452). F. *Citation:* 34 CFR Part 332		
Centers for Educational Media and Materials for the Handicapped Program.	A. *Description:* The regulations under review govern a program of Federal financial assistance for the establishment and operation of centers for educational media and materials for the handicapped. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 653 of the Education of the Handicapped Act, as amended by Pub. L. 94–142 (20 U.S.C. 1453). F. *Citation:* 34 CFR Part 333	Malcolm Norwood, Jack Tringo, (202) 472–4540.	NPRM May 1982.
State Vocational Rehabilitation Services Program	A. *Description:* The regulations under review govern a formula grant program to States for the purpose of assisting physically and mentally handicapped individuals to become gainfully employed. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 720, *et seq.*). F. *Citation:* 34 CFR Part 361	Charles Smolkin, (202) 472–3796.	NPRM May 1982.
Centers for Independent Living	A. *Description:* The regulations under review govern a program of Federal financial assistance for planning, establishing, and improving centers designed to promote the independence, productivity, and quality of life for severely handicapped individuals. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 711 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 711(c) and 796(c)). F. *Citation:* 34 CFR Part 366	Charles Smolkin, (202) 472–3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects	A. *Description:* The regulations under review contain general requirements governing eight programs of Federal financial assistance for projects designed to provide vocational rehabilitation and related services to handicapped individuals and other persons. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c), 112, 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 777(a)(3), 777(b), 777f, and 795g). F. *Citation:* 34 CFR Part 369	Charles Smolkin, (202) 472–3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Client Assistance Projects.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects that make counselors available to assist clients and client applicants (1) in their relationships with the projects, programs, and facilities providing services under the Rehabilitation Act of 1973, and (2) in pursuing legal, administrative and other appropriate remedies to ensure protection of their rights under the Act. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 112 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 732). F. *Citation:* 34 CFR Part 370	Charles Smolkin, (202) 472–3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Handicapped American Indian Vocational Rehabilitation Service Projects.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 130 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 (29 U.S.C. 750). F. *Citation:* 34 CFR Part 371	Charles Smolkin,(202) 472–3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Comprehensive Rehabilitation Centers.	A. *Description:* The regulations under review govern a program of Federal financial assistance for the establishment and operation of comprehensive rehabilitation centers. These are centers designed primarily for the development delivery, and coordination of vocational rehabilitation and other services needed by handicapped persons in the community. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness.	Charles Smolkin, (202) 472–3796.	NPRM May 1982

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	E. *Legal basis:* Section 306 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 775). F. *Citation:* 34 CFR Part 372		
Vocational Rehabilitation Service Projects—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals. B. *Regulatory impact analysis:* Not Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 311 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 777(a)). F. *Citation:* 34 CFR Part 373	Charles Smolkin, (202) 472-3796.	NPRM May 1982
Vocational Rehabilitation Service Projects—Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed (1) to demonstrate methods of making recreational activities fully accessible to handicapped individuals, and (2) where appropriate, to renovate and construct facilities to demonstrate those types of methods. B. *Regulatory impact analysis:* Not Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 311(a)(3) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 777A(a)). F *Citation:* 34 CFR Part 374	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects that provide or purchase vocational rehabilitation services for handicapped migratory agricultural workers or handicapped seasonal farmworkers. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 321 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 777(b)). F. *Citation:* 34 CFR Part 375	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Projects for Initiating Special Recreation Programs for Handicapped Individuals.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects providing handicapped individuals with recreational activities that aid their mobility and socialization. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 316 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 777(f)). F. *Citation:* 34 CFR Part 376	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Vocational Rehabilitation Service Projects—Projects with Industry.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects that provide handicapped individuals with training, employment, supportive services, and assistance to prepare them for competitive employment and permit them to maintain their employment. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 621 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 759g). F. *Citation:* 34 CFR Part 379	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Rehabilitation Training	A. *Description:* The regulations under review contain general requirements governing five programs of Federal financial assistance designed to (1) increase the supply of trained rehabilitation personnel, and (2) maintain and upgrade the skills of personnel employed as providers of rehabilitation services. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c), 304, and 306 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c), 744, and 776). F. *Citation:* 34 CFR Part 386	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Rehabilitation Training—Rehabilitation Long-Term Training.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to provide a balanced program of academic and non-academic training activities in a variety of fields of therapy and rehabilitation. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 774). F. *Citation:* 34 CFR Part 386	Charles Smolkin, (202) 472-3796..	NPRM May 1982.
Rehabilitation Training—Experimental and Innovative Training.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to (1) develop new types of rehabilitation personnel, (2) demonstrate the effectiveness of these personnel in providing rehabilitation services to the severely handicapped, and (3) develop new and improved methods of training personnel.	Charles Smolkin, (202) 472-3796.	NPRM May 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 774). F. *Citation:* 34 CFR Part 367		
Rehabilitation Training—State Vocational Rehabilitation Unit In-Service Training Program.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to train personnel in (1) effective management of services or (2) skill areas that improve their ability to provide rehabilitation services to the severely handicapped. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 774). F. *Citation:* 34 CFR Part 368	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Rehabilitation Training—Rehabilitation Continuing Education Programs.	A. *Description:* The regulations under review govern a program of Federal financial assistance for training centers that (1) serve a Federal region or another geographical area, and (2) focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 774). F. *Citation:* 34 CFR Part 369	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Rehabilitation Training—Rehabilitation Short-Term Training.	A. *Description:* The regulations under review govern a program of Federal financial assistance for special seminars, institutes, workshops, and other short-term courses in technical matters related to the delivery of vocational, medical, social, and psychological rehabilitation services. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(c) and 774). F. *Citation:* 34 CFR Part 390	Charles Smolkin, (202) 472-3796.	NPRM May 1982.
Adult Education State Programs—General	A. *Description:* The regulations under review contain general requirements common to three programs. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Secs. 301-318 of Pub L. 91-230, as amended by Title XIII of Pub. L. 95-561 (20 U.S.C. 1201-1211c). F. *Citation:* 34 CFR Part 425	Paul V. Delker, (202) 245-2278.	NPRM May 1982.
State-Administered Adult Education Program	A. *Description:* The regulations under review govern a program of Federal financial assistance to help States in the development of their State plans for adult education. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 301-318 of Pub L. 91-230, as amended by Title XIII of Pub. L. 95-561 (20 U.S.C. 1201-1211c). F. *Citation:* 34 CFR Part 426	Paul V. Delker, (202) 245-2278.	NPRM May 1982.
National Adult Education Development and Dissemination Program and Planning Grants.	A. *Description:* The regulations under review govern a program of Federal financial assistance (1) to States for planning the expansion of adult education services and (2) to public and nonprofit private agencies, institutions, and organizations for development, demonstration, and dissemination projects for the improvement of adult education. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Secs. 301-318 of Pub L. 91-230, as amended by Title XIII of Pub. L. 95-561 (20 U.S.C. 1201-1211c). F. *Citation:* 34 CFR Part 431	Paul V. Delker, (202) 245-2278.	NPRM May 1982.
Adult Education Programs for Immigrants and Indochina Refugees.	A. *Description:* The regulations under review govern a program of Federal financial assistance to help potential applicants in applying for Federal assistance to operate special adult education projects for immigrants and Indochinese refugees. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 301-318 of Pub. L. 91-230, as amended by Title XIII of Pub. L. 95-561 (20 U.S.C. 1201-1211c). F. *Citation:* 34 CFR Part 432	Paul V. Delker, (202) 245-2278.	NPRM May 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Student Assistance General Provisions and Pell Grant Program—Amendments.	A. *Description:* The proposed regulations would amend certain provisions that apply to post-secondary educational institutions participating in Title IV student assistance programs. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The proposed amendments would (1) set standards of satisfactory academic progress for students receiving aid under Title IV student assistance programs, (2) simplify adversarila proceedings against postsecondary educational institutions alleged to have misued Federal funds under these programs, and (3) increase the responsibilities of institutions participating under the Alternate Disbursement System of the Pell Grant Program. (NOTE: The proposed amendments would be incorporated into the respective final regulations for the Student Assistance General Provisions (34 CFR Part 668) and the Pell Grant Program (34 CFR Part 690)). E. *Legal basis:* Part F of Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1088-1097).. F. *Citation:* 34 CFR Parts 668 and 690	Andrea Foley, (202) 472-4300.	NPRM May 1982.
Guaranteed Student Loan Program: 1983-84 Family Contribution Schedules.	A. *Description:* The proposed regulations would establish levels of expected family contributions under the Guaranteed Student Loan Program for the 1983-84 award year. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The levels established by the regulations would be used in calculating the eligibility of student borrowers under this program. E. *Legal basis:* Part B of Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374, Pub. L. 97-12, Pub. L. 97-35, and Pub. L. 97-92 (20 U.S.C. 1070-1087-3a). F. *Citation:* 34 CFR Part 682	Ralph Madden, (202) 245-2475.	NPRM May 1982. FR June 1982.
Education Department General Administrative Regulations (EDGAR)—Annual Funding Priorities—Part 75.	A. *Description:* The regulations under review (1) list the techniques that the Secretary may use to establish annual funding priorities for discretionary grant programs, and (2) codify the Department's position on publication of priorities for public comment. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not applicable D. *Objectives:* Amendments, if any, to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 414 of the Department of Education Organization Act (20 U.S.C. 3474). F. *Citation:* 34 CFR Part 75	Chester Glod, (202) 245-7610.	FR May 1982.
Eligibility of Foreign Medical Schools under the Guaranteed Student Loan Program.	A. *Description:* The regulations would govern the eligibility of foreign medical schools to participate in the Guaranteed Student Loan Program. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would establish (1) procedures by which foreign medical schools may apply for participation in the program, and (2) criteria the Secretary uses in determining eligibility for participation. E. *Legal basis:* Sections 432 and 435(a) of the Higher Education Act of 1965, as amended by Pub. L. 96-329 (20 U.S.C. 1082 and 1085).. F. *Citation:* 34 CFR Part 603, Subpart E	Richard J. Rowe, (202) 245-9673.	FR May 1982.
College Housing Program	A. *Description:* The regulations would revise existing regulations implementing a program that provides long-term, low-interest loans to colleges and universities. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The revised regulations would reflect changes resulting from public comments on the current regulations. E. *Legal basis:* Section 401 *et seq* of the Housing Act of 1950, as amended (12 U.S.C. 1749); and Section 306 of the Department of Education Organization Act (20 U.S.C. 3446). F. *Citation:* 34 CFR Part 614	Charles Griffith, (202) 245-8514.	FR May 1982.
Prior Experience for Special Programs for Students from Disadvantaged Backgrounds.	A. *Description:* The regulations—which would amend the regulations governing five programs—state additional criteria for evaluating certain applications. The amendment would affect the following programs: Special Services for Disadvantaged Students, Staff Development, Talent Search, Upward Bound, and Educational Opportunity Centers. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would implement criteria the Secretary uses to evaluate past performance of applicants that have conducted projects under the Special programs within the previous three years. E. *Legal basis:* Section 417A, Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1070d). F. *Citation:* 34 CFR Parts 642, 643, 644, 645, and 646	Mary K. Smith, (202) 245-8211.	FR May 1982.
National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs.	A. *Description:* The regulations would (1) amend the formula used to distribute to institutions funds under the campus-based programs and (2) amend the appeals process. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would implement provisions related to funding and appeals procedures. E. *Legal basis:* Sections 413A-413D (Title IV-A-2), sections 441-448 (Title IV-C), and sections 461-469 (Title IV-E) of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1070). F. *Citation:* 34 CFR Parts 674, 675, and 676	John McGonigal, (202) 245-9720.	FR May 1982.
National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grants Programs—Amendments.	A. *Description:* Amendments to the regulations would establish the 1982-1983 funding procedures and revise appeal procedures for the three campus-based programs. B. *Regulatory impact analysis:* Not required C. Regulatory flexibility analysis: Not required	John McGonigle, (202) 245-9720.	FR May 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	D. *Objectives:* The amendments would (1) establish the formula by which institutions of postsecondary education might receive funds under the campus-based programs during the 1982–83 award year, and (2) establish revised appeal procedures. E. *Legal basis:* Subpart 2 of Part A, Part C, and Part E of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070b–1070b–3, 42 U.S.C. 2751–2756b, and 20 U.S.C. 1087aa–1087ii). F. *Citation:* 34 CFR Part 674, 675, and 676.		
National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Program—Technical Amendments.	A. *Description:* The regulations would amend certain provisions of the existing regulations, published on January 19, 1981, for the administration of the campus-based programs. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The amendments would (1) correct technical and typographical errors in the regulations, (2) change certain other provisions, and (3) provide legal clarifications. E. *Legal basis:* Subpart 2 of Part A, Part C, and Part E of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070b–1070b–3, 42 U.S.C. 2751–2756b, and 20 U.S.C. 1070aa–1078ii). F. *Citation:* 34 CFR Parts 674, 675, and 676.	Margaret Henry, (202) 245–9720.	FR May 1982.
Organizational Conflicts of Interest	A. *Description:* The proposed regulations would establish the Department's policy to avoid award of a contract or to permit termination of a contract when (1) an offeror's judgment may be biased because of any past, present, or currently planned interest—financial or otherwise—it may have related to the work to be performed; or (2) an offeror's performance of work under a previous contract has provided it with an unfair competitive advantage on subsequent procurements. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The proposed regulations would assure that, to the maximum possible extent, (1) contracts are freely and competitively awarded and (2) even the appearance of organizational conflicts of interest in the award process is avoided. E. *Legal basis:* Department of Education Organization Act (20 U.S.C. 3401 *et. seq.*; 5 U.S.C. 301; and 40 U.S.C. 486(c)). F. *Citation:* 41 CFR Part 34.	Peggy Saunders, (202) 245–1766.	NPRM June 1982.
Education Department General Administrative Regulations (EDGAR)—Selection Criteria—Part 75.	A. *Description:* These regulations under review establish general criteria the Secretary uses, together with specific program criteria, to evaluate applications for funding under discretionary grant programs. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not applicable. D. *Objectives:* Amendments, if any, to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 414 of the Department of Education Organization Act (20 U.S.C. 3474). F. *Citation:* 34 CFR Parts 75, 211, 215, 305, 307, 309, 315, 318, 324, 336, 406, 525–527, 624, 643–646, 726, and 740.	Chester Glod, (202) 472-7810.	NPRM June 1982.
Guidance and Counseling Program	A. *Description:* The regulations under review govern a program of Federal financial assistance to States to implement programs, projects and leadership activities that expand and strengthen counseling. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 341–344, Pub L. 94–482 (20 U.S.C. 2531–2534). F. *Citation:* 34 CFR Part 211.	Edward Batista, (202) 245–8242.	NPRM June 1982.
Follow Through Program	A. *Description:* The proposed regulations would incorporate statutory requirements and provide for phaseout of the program. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objective:* The revised regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Subtitle A of Title VI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9861–68). F. *Citation:* 34 CFR Part 215.	Louis McGuinness, (202) 245–9646.	NPRM June 1982.
Auxiliary Activities Program	A. *Description:* The regulations under review govern a program of a Federal financial assistance for research, development, training, and dissemination activities concerning the education of handicapped children. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objective:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424). F. *Citation:* 34 CFR Part 315.	R. Paul Thompson, (202) 472–2525.	NPRM June 1982.
Recruitment of Personnel and Dissemination of Information.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects desinged to (1) encourage students and professional personel to work in various fields of education of handicapped children and youth (2) disseminate information about programs, services, and resources for the education of handicapped children, and (3) provide referral services to persons interested in the handicapped. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433). F. *Citation:* 34 CFR Part 320.	Norm Howe, (202) 245–9736.	NPRM June 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Research in Education of the Handicapped	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to conduct research, surveys, model programs, and demonstrations related to the education of handicapped children. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 641 and 642 of the Education of the Handicapped Act, as amended by Pub. L. 98-380 and Pub. L. 96-48 (20 U.S.C. 1414-1444). F. *Citation:* 34 CFR Part 324.	Max Mueller, (202) 245-2275.	NPRM June 1982.
State Vocational Education Programs	A. *Description:* The regulations under review govern a program of Federal financial assistance to States for improved planning in the use of all resources available for vocational education and manpower training. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 101-195 of Title I of the Vocational Education Act of 1963, as amended by Pub. L. 98-46 (20 U.S.C. 2301-2461). F. *Citation:* 34 CFR Part 460.	Tom Johns, (202) 472-6244.	NPRM June 1982.
Expected Family Contributions, 1983-84	A. *Description:* The proposed regulations would provide a common need analysis formula to be used for need-based student aid programs under Title IV of the Higher Education Act. The programs affected are: Pell Grant, National Direct Student Loan, Supplemental Educational Opportunity Grant, and College Work-Study. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The proposed regulations would establish the expected family contributions based on the need analysis provisions common to the operation of the affected student aid programs. E. *Legal basis:* Section 482(a)(2), Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374 and Pub. L. 97-35 (20 U.S.C. 1089). F. *Citation:* 34 CFR Part 668.	John McGonigal, (202) 245-9720.	NPRM June 1982.
National Institute of Education—Educational Research Grants Program.	A. *Description:* The proposed regulations would revise and consolidate regulations governing the award grants by the National Institute of Education for a variety of projects in educational research and development and dissemination of information. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* The revised regulations would be designed to (1) enhance the Institute's ability to respond to changing needs in educational research and development and (2) consolidate several sets of existing regulations, thereby eliminating duplicative paperwork requirements. E. *Legal basis:* Section 405 of the General Education Provisions Act, as amended by Pub. L. 96-374 (20 U.S.C. 1221e). F. *Citation:* 34 CFR Part 700.	Fritz Mulhauser, (202) 254-7930.	NPRM June 1982. FR September 1982.
Government in the Sunshine Act	A. *Description:* The regulations under review govern the grounds for closing meetings of the National Council on Education Research. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief and clarify certain provisions. E. *Legal basis:* Government in the Sunshine Act (5 U.S.C. 552b). F. *Citation:* 34 CFR Part 706.	Peter Gerber, (202) 254-7000.	NPRM June 1982. FR September 1982.
Women's Educational Equity Act Program	A. *Description:* The regulations under review implement a program of Federal financial assistance for model projects to promote educational equity for women. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part C of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S.C. 3341-3348). F. *Citation:* 34 CFR Part 745.	D. Jean Benish, (202) 245-8630.	NPRM June 1982.
National Diffusion Network Program	A. *Description:* The regulations under review govern a grant program that promotes the widespread adoption of exemplary educational programs. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* The regulations under review effect regulatory relief, and clarify other provisions. E. *Legal basis:* Section 583, Subchapter D (Secretary's Discretionary Fund) of Chapter 2, Education Improvement and Consolidation Act of 1981 (20 U.S.C. 3041). F. *Citation:* 34 CFR Part 796.	Bob Mulligan, (202) 653-7000.	NPRM June 1982. FR September 1982.
Equal Access to Justice	A. *Description:* The regulations would provide procedures for the awarding of reasonable attorney fees and other fees and expenses to qualified parties that prevail over the Department in certain administrative proceedings. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The regulations would diminish the deterrent effect on certain entities of seeking review of, or defending against, unreasonable action by the Federal Government. E. *Legal basis:* Equal Access to Justice Act, Title II of Pub. L. 96-481 (5 U.S.C. 504). F. *Citation:* 34 CFR Part 21.	Carlos Chavez, (202) 245-8195.	FR June 1982.
Awards to Former Department Employers or to their Employers.	A. *Description:* The regulations would specify conditions under which a former Department of Education employee or an organization using the services of a former Department employee can be precluded from receiving a contract from the Department. B. *Regulatory impact analysis:* Not required.	Peggy Saunders, (202) 245-1766.	FR June 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would help eliminate any appearance of the Department's giving an unfair competitive advantage to an offeror. E. *Legal basis:* Department of Education Organization Act (20 U.S.C. 3401 *et seq.*; 5 U.S.C. 301; and 40 U.S.C. 486(c)). F. *Citation:* 41 CFR Part 34		
Educational Department General Administrative Regulations (EDGAR)—Amendments—Part 74.	A. *Description:* Amendments to the regulations would implement an attachment to OMB audit standards for recipients of Federal grants and subgants. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The amended regulations would incorporate by reference into EDGAR attachment P of Office of Management and Budget (OMB) Circular A-102. E. *Legal basis:* Section 414 of the Department of Education Organization Act (20 U.S.C. 3474). F. *Citation:* 34 CFR Part 74	Chester Glod, (202) 245-7810.	FR June 1982.
Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance.	*Description:* The amendment would revoke and existing regulatory provision prohibiting discrimination in the application of codes of personal appearance. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The amendment would reduce paperwork, eliminate unnecessarily burdensome regulations, and permit resolution of appearance code issues at the most appropriate local level. E. *Legal basis:* Sections 901 and 902 of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, 1682). F. *Citation:* 34 CFR Part 106	Antonio J. Califa, (202) 245-2184.	FR June 1982.
School Assistance in Federally Affected Areas (SAFA)—School Construction.	A. *Description:* The regulations would implement statutory amendments concerning basis of eligibility, hearings, and payments; establish and order of funding priority, describe criteria for waivers, and describe special rules for federally operated schools. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* The regulations would implement amendments to the law and clarify existing requirements. E. *Legal basis:* Pub. L. 81-815, as amended by Pub. L. 95-561 (20 U.S.C. 631-647). F. *Citation:* 34 CFR Part 221	Margaret Howe, (202) 245-0696.	FR June 1982.
School Assistance in Federally Affected Areas (SAFA)—Maintenance and Operation.	A. *Description:* The regulations would (1) implement statutory amendments concerning eligibility, hearings, entitlements, and payments; and (2) describe special arrangements for the provision of free public education. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would implement amendments to the law and clarify existing requirements. E. *Legal basis:* Pub. L. 81-874 (20 U.S.C. 236-244) as amended by Pub. L. 95-561. F. *Citation:* 34 CFR Part 222	Margaret Howe, (202) 245-0695.	FR June 1982.
Special Impact Aid Provisions for Local Educational Agencies that Claim Entitlements Based on the Number of Children Residing on Indian Lands.	A. *Description:* The regulations would establish requirements for local educational agencies claiming entitlements based on the number of children residing on Indian lands. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would implement amendments to the law and clarify certain regulatory provisions. E. *Legal basis:* Section 5(b)(3) of Title I of Pub. L. 81-874, as amended by Pub. L. 95-561 (20 U.S.C. 240(b)(3)). F. *Citation:* 34 CFR Part 223	Robert Farnham, (202) 245-8171.	FR June 1982.
Training Programs for Teachers of Handicapped Children in Areas with a Shortage—Technical Amendments.	A. *Description:* The regulations under review govern a program of Federal financial assistance for projects designed to increase the number of persons qualified to teach handicapped children in areas that have a shortage of those teachers. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Technical amendments to the regulations would (1) include one missing citation and (2) correct one incorrect citation. E. *Legal basis:* Title V-C of the Higher Education Act of 1965, as amended (20 U.S.C. 1119b-1119b-5). F. *Citation:* 34 CFR Part 322	William Wolfe, (202) 245-9951.	FR June 1982.
Student Assistance General Provisions	A. *Description:* The regulations under review revise general rules that apply to postsecondary educational institutional participating or wishing to participate in Title IV student assistance programs. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would (1) set standards of satisfactory academic progress for students receiving aid under Title IV student assistance programs, and (2) simplify adversarial proceedings against postsecondary educational institutions alleged to have misused funds under these programs. Amendments to the regulations would also be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part F of Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1088-1097 and 1141(a)). F. *Citation:* 34 CFR Part 668	Andrea Foley, (202) 472-4300.	FR June 1982.
Guaranteed Student Loan Program—Amendment	A. *Description:* The regulations would amend the existing regulations, published on September 17, 1979, regarding general rules for the administration of the Guaranteed Student Loan Program by institutions, lenders, and State agencies. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* The regulations would incorporate changes made by Pub. L. 96-374, Pub. L. 97-12, and Pub. L. 97-35. E. *Legal basis:* Part B of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1071-1078-3a). F. *Citation:* 34 CFR Part 682	Sue Bierman, (202) 245-2475.	FR June 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Pell Grant Program	A. *Description:* The regulations under review govern the administrative and technical operation of the Pell Grant Program by participating institutions of higher education. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would establish procedures by which a participating institution of higher education would determine the amount and duration of an undergraduate student's annual grant under this program, including new procedures for implementing the Alternate Disbursement System. Amendments to the regulations would also be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Subpart 1, Part A of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a). F. *Citation:* 34 CFR Part 690	Brian Kerrigan, (202) 472-4300.	FR June 1982.
Pell Grant Program—Cost of Attendance—Amendments	A. *Description:* The regulations establish the procedures by which participating institutions of postsecondary education determine a student's cost of attendance under the Pell Grant Program for the 1982-83 award year. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would (1) alter the room and board provisions of the current regulations and (2) correct certain legal citations. E. *Legal basis:* Subpart 1, Part A of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a). F. *Citation:* 34 CFR Part 690	Andrea Foley, (202) 472-4300.	FR June 1982.
Availability of Information to the Public under the "Freedom of Information Act".	A. *Description:* The regulations under review (1) inform the public as to what records of the Department of Education are generally available for inspection and copying, and (2) establish restrictions on the Department's denial of access to records. B. *Regulatory impact analysis:* Not applicable C. *Regulatory flexibility analysis:* Not applicable D. *Objectives:* Amendments would update and clarify the regulations, which establish a policy of disclosure limited only by obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure, records of the Department are available for inspection and copying. E. *Legal basis:* Freedom of Information Act (5 U.S.C. 552), as amended by Pub. L. 93-502. F. *Citation:* 34 CFR Part 5	Jack L. Billings, (202) 245-8601.	NPRM July 1982.
Privacy Act	A. *Description:* The regulations under review contain general rules under which the Department of Education collects, maintains, uses, and disseminates information about individuals. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Proposed amendments would add to the regulations provisions pertaining to (1) procedures for notifying individuals about the existence of and access to their medical records, and (2) an appeals procedure for individuals denied access to any records about themselves that are maintained in systems of records of the Department. Other amendments to the regulations would be designed to effect regulatory relief. E. *Legal basis:* Privacy Act of 1974 (5 U.S.C. 552a) F. *Citation:* 34 CFR Part 5b	Jack L. Billings, (202) 245-8601.	NPRM July 1982.
Federal Financial Assistance—Nondiscrimination on the Basis of Race, Color, National Origin, Sex, or Handicap.	A. *Description:* The regulations implement Title VI of the Civil Right Act of 1964 (nondiscrimination on the basis of race, color, or national origin); Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of handicap); and Title IX of the Education Amendments of 1972 (nondiscrimination on the basis of sex). The provisions under review require an applicant for or recipient of Federal financial assistance to complete and submit forms that assure compliance with the regulations. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* The proposed amendments would (1) revoke the requirement that an applicant for or recipient of Federal financial assistance sign and submit forms that assure compliance with these three regulations, and (2) make editorial changes solely for purposes of clarity and consistency. E. *Legal basis:* Sections 601 and 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and sections 901 and 902 of the Education Amendments of 1972, as amended by Pub. L. 95-568 (20 U.S.C. 1681 and 1682). F. *Citation:* 34 CFR Parts 100, 104, and 106	Antonio J. Califa, (202) 245-2184.	NPRM July 1982.
Federal Financial Assistance—Nondiscrimination on the Basis of Race, Color, National Origin, Sex, or Handicap.	A. *Description:* The regulations implement Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, or national origin); Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of handicap); and Title IX of the Education Amendments of 1972 (nondiscrimination on the basis of sex). The provisions under review concern applicability of the regulations and the definition of the term "Federal financial assistance". B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The proposed amendments would exclude from coverage under the regulations implementing these statutes contracts of insurance or guaranty, including loans made under the Guaranteed Student Loan Program and the Auxiliary Loans to Assist Students Program (PLUS Program). The amendments would also make the definition of the term "Federal Financial Assistance" consistent in the three regulations. E. *Legal basis:* Sections 601 and 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and sections 901 and 902 of the Education Amendments of 1972, as amended by Pub. L. 95-568 (20 U.S.C. 1681 and 1682). F. *Citation:* 34 CFR Parts 100, 104, and 106	Antonio J. Califa, (202) 245-2184.	NPRM July 1982.
Indian Education Act—General Provisions	A. *Description:* The regulations under review contain general rules that apply to all programs conducted under the Indian Education Act, except the Indian Fellowship Program. B. *Regulatory impact analysis:* Not determined	Norman Hearn, (202) 245-8236.	NPRM July 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Title IV of the Indian Education Act of 1972, as amended (20 U.S.C. 241aa–241ff, 1211a, 1221h, 3385, and 3385a). F. *Citation:* 34 CFR Part 250.		
Indian Education Act—Entitlement Grants—Local Educational Agencies and Tribal Schools.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to local educational agencies operating elementary and secondary school projects meeting the special educational and culturally related needs of Indian children. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part A of the Indian Education Act of 1972, as amended (20 U.S.C. 241aa–241ff). F. *Citation:* 34 CFR Part 254.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Indian-Controlled Schools—Establishment.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act that apply to Indian tribes, Indian organizations, and local educational agencies operating projects to plan for and establish Indian-controlled schools. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part A of the Indian Education Act of 1972, as amended (20 U.S.C. 241bb(3)). F. *Citation:* 34 CFR Part 252.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Indian-Controlled Schools—Enrichment Projects.	A. *Description:* The regulations under review implement those provisions of Part A of the Indian Education Act of 1972 that apply to Indian tribes, Indian organizations, and local educational agencies operating enrichment projects in Indian-controlled elementary and secondary schools. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part A of the Indian Education Act of 1972, as amended (20 U.S.C. 241bb(b)). F. *Citation:* 34 CFR Part 259.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Demonstration Projects—Local Educational Agencies.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to local educational agencies operating demonstration projects designed to improve educational opportunities for Indian children. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part A of the Indian Education Act of 1972, as amended (20 U.S.C. 241bb(c)). F. *Citation:* 34 CFR Part 254.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Educational Services for Indian Children.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to Indian tribes, organizations, and institutions, and to State and local educational agencies operating projects that provide to Indian children educational services not otherwise available. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of the Indian Education Act of 1972, as amended (20 U.S.C. 3385(a) and (c)). F. *Citation:* 34 CFR Part 255.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Planning, Pilot, and Demonstration Projects for Indian Children.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to State and local educational agencies and Indian tribes and organizations operating planning, pilot, and demonstration projects designed to improve educational opportunities for Indian children. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of the Indian Education Act of 1972, as amended (20 U.S.C. 3385(a) and (c)). F. *Citation:* 34 CFR Part 256.	Norman Hearn, (202) 245–8236.	NPRM July 1982.
Indian Education Act—Educational Personnel Development.	A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to institutions of higher education, State and local educational agencies, and Indian tribes and organizations operating projects that prepare persons to serve Indians through the educational professions. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of the Indian Education Act of 1972, as amended (20 U.S.C. 3385); and Section 482 of the Indian Education Act, as amended (20 U.S.C. 3385a).	Norman Hearn, (202) 245–8236.	NPRM July 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Indian Education Act—Educational Services for Indian Adults.	F. *Citation:* 34 CFR Part 257 A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to Indian tribes, organizations, and institutions operating educational service projects designed to improve educational opportunities for Indian adults. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part C of the Indian Education Act of 1972, as amended (20 U.S.C. 1211a).	Norman Hearn, (202) 245-8236.	NPRM July 1982.
Indian Education Act—Planning, Pilot, and Demonstration Projects for Indian Adults.	F. *Citation:* 34 CFR Part 258 A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to State and local educational agencies and Indian tribes and organizations operating planning, pilot, and demonstration projects designed to improve employment and educational opportunities for Indian adults. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part C of the Indian Education Act of 1972, as amended (20 U.S.C. 1211a).	Norman Hearn, (202) 245-8236.	NPRM July 1982.
Indian Education Act—Adult Education Research and Development Projects.	F. *Citation:* 34 CFR Part 259 A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to State and local educational agencies and Indian tribes and organizations operating research and development projects for Indian adult education. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part C of the Indian Education Act of 1972, as amended (20 U.S.C. 1211a).	Norman Hearn, (202) 245-8236.	NPRM July 1982.
Indian Education Act—Adult Education Surveys	F. *Citation:* 34 CFR Part 260 A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to State and local educational agencies and Indian tribes and organizations operating projects to survey the extent of illiteracy and lack of high school completion among Indian adults. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part C of the Indian Education Act of 1972, as amended (20 U.S.C. 1211a).	Norman Hearn, (202) 245-8236.	NPRM July 1982.
Indian Education Act—Adult Education Dissemination and Evaluation Projects.	F. *Citation:* 34 CFR Part 261 A. *Description:* The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to State and local educational agencies and Indian tribes and organizations operating projects to disseminate information about or to evaluate adult education programs for Indians. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E *Legal basis:* Part C of the Indian Education Act of 1972, as amended (20 U.S.C. 1211a).	Norman Hearn, (202) 245-8236.	NPRM July 1982.
Regional Resource Centers	F. *Citation:* 34 CFR Part 262 A. *Description:* The regulations under review govern a program of Federal financial assistance for the establishment and operation of regional centers designed to (1) develop and apply the best methods of appraising the special educational needs of handicapped children referred to them, and (2) provide other services to assist in meeting those needs. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Nancy Safer, (202) 472-4650.	NPRM July 1982.
Regional Education Programs for Handicapped Persons.	F. *Citation:* 34 CFR Part 305 A. *Description:* The regulations under review govern a program of Federal financial assistance for the operation and development of specially designed or modified programs of vocational, technical, postsecondary, or adult education for deaf or other handicapped persons. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 625 of the Education of the Handicapped Act, as amended by Pub. L. 93-380 (20 U.S.C. 1424a)..	Joseph Rosenstein, (202) 245-9722.	NPRM July 1982.
Rehabilitation Technical Assistance Program	F. *Citation:* 34 CFR Part 339 A. *Description:* The regulations under review govern a program of technical assistance in matters related to (1) the management of rehabilitation facilities and (2) the removal of architectural, transportation, or communication barriers to the handicapped.	Charles Smollen, (202) 472-3796.	NPRM July 1982. FR September 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 12(a) and 508 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 711(a) and 794(b)). F. *Citation:* 34 CFR Part 393.		
The Helen Keller National Center for Deaf-Blind Youth and Adults.	A. *Description:* The regulations under review govern a program of assistance to a center designed for the vocational rehabilitation of deaf-blind individuals. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 343 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (29 U.S.C. 777c). F. *Citation:* 34 CFR Part 394.	Charles Smoklin, (202) 472-3796.	NPRM July 1982. FR September 1982.
Vending Facility Programs for the Blind on Federal and Other Property.	A. *Description:* The regulations under review govern a program designed to provide a priority for blind persons in the location and operation of vending facilities on Federal property. The regulations also establish for State licensing agencies certain responsibilities for the effective management of the vending facility program for the blind in each State. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 2 of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 (20 U.S.C. 107a). F. *Citation:* 34 CFR Part 395.	Charles Smoklin, (202) 472-3796.	NPRM July 1982. FR September 1982.
College Housing Program	A. *Description:* The proposed regulations contain administrative requirements that would govern outstanding loans under the College Housing Program. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The proposed regulations would specify actions the Secretary is authorized to initiate against defaulted borrowers. They regulations would also establish procedures governing obligations of borrowers. E. *Legal basis:* Section 401 *et seq.* of the Housing Act of 1950, as amended (12 U.S.C. 1749) and Section 308 of the Department of Education Organization Act (20 U.S.C. 3448). F. *Citation:* 34 CFR Part 614.	Edward Brantley, (202) 755-1254.	NPRM July 1982.
National Direct Student Loan Program—Amendments.	A. *Description:* The proposed amendments to the regulations would revise (1) due diligence standards for loan collections and (2) guidelines for the assignment of loans to the Department of Education for collection. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* The proposed amendments to the regulations would aid institutions in establishing proper collection procedures and, therefore, help reduce the number of defaulted loans. E. *Legal basis:* Part E of Title IV of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1087cc). F. *Citation:* 34 CFR Part 674, Subpart C.	Gwen Dockett, (202) 245-9720.	NPRM July 1982.
Library Services, Public Library Construction, and Interlibrary Cooperative Program.	A. *Description:* The regulations under review govern a State-administered program that assists in establishing, extending, and improving public library services wherever needed in a State. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 2 of the Library Services and Construction Act; as amended (20 U.S.C. 351). F. *Citation:* 34 CFR Part 770.	Kathy Ball, (202) 245-8801.	NPRM July 1982.
Territorial Teacher Training Assistance Program	A. *Description:* The regulations under review govern an assistance program for the training of teachers in schools in Guam, American Samoa, the Northern Mariana Islands, the trust Territory of the Pacific Islands, and the Virgin Islands. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost-effectiveness. E. *Legal basis:* Section 1565, Part C of Title XV of the Education Amendments of 1978; Pub. L. 95-561. F. *Citation:* 34 CFR Part 787.	Andrew Lebby, (202) 653-5808.	NPRM July 1982.
Education Consolidation and Improvemen Act of 1981—Chapter 1.	A. Description: The regulations would implement Chapter 1 of the Education Consolidation and Improvement Act of 1987, under which Federal financial assistance is provided to States for special educational needs of disadvantaged children. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* The regulations would simplify requirements imposed on State and local educational agencies in administering Federal funds for programs for educationally deprived children and for programs that meet special needs of disadvantaged children. E. *Legal basis:* Sections 101-195 of the Elementary and Secondary Education Act of 1965, as amended by Chapter 1 of Pub. L. 97-35 (20 U.S.C. 3801-3807 and 3871-3876). F. *Citation:* 34 CFR Part 200.	John Staehle, (202) 245-3081.	FR July 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Financial Assistance to State Applicant Agencies to Meet Special Educational Needs of Institutionalized Neglected or Delinquent Children Including Children in Adult Correctional Institutions—Chapter 1, ECIA.	A. Description: The regulations would implement those provisions in Chapter 1 of the Education Consolidation and Improvement Act of 1981 that apply to State agencies operating educational projects for neglected or delinquent children in institutions. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would implement statutory requirements and provide other necessary information to applicants. E. *Legal basis:* Sections 552–556, 558, and 591–596 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801–3805, 3807, and 3871–3876). F. *Citation:* 34 CFR Part 203	John F. Staehle, (202) 245–3081.	FR July 1982.
Financial Assistance to State Educational Agencies to Meet the Special Educational Needs of Migratory Children—Chapter 1, ECIA.	A. Description: The regulations would implement a program of Federal financial assistance to State educational agencies (SEAs) to establish or improve State programs or local projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would provide guidance to SEAs in the administration and operation of their migrant education programs. The regulations would (1) promote continuity of educational experience for migratory children by encouraging coordination of services, and (2) assure that migratory children are provided access to quality and coordinated programs of instructional and supporting services. E. *Legal basis:* Section 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 and 3871–3876). F. *Citation:* 34 CFR Part 204	Melissa Murray, (202) 472–5960.	FR July 1982.
Financial Assistance to State Educational Agencies to improve the Interstate and Intrastate Coordination of Migrant Education Activities—Chapter 1, ECIA.	A. *Description:* The regulations would implement a program of Federal financial assistance to improve interstate and intrastate coordination of migrant education activities among State educational agencies (SEAs) and local educational agencies. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would establish requirements for interstate and intrastate coordination activities in migrant education. They would also enable the Secretary to establish, in consultation with SEAs, priority areas for program funding and to establish appropriate criteria that would ensure the selection of quality proposals in areas of national need. E. *Legal basis:* Section 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803(a)). F. *Citation:* 34 CFR Part 205	Melissa Murray, (202) 245–2584.	FR July 1982.
Education Consolidation and Improvement Act of 1981—Chapter 2.	A. *Description:* The regulations would implement the consolidation of Federal programs under Chapter 2 of the Act. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* The regulations would simplify funding requirements under the Department's "block grant" program for elementary and secondary education. E. *Legal basis:* Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3811–3876). F. *Citation:* 34 CFR Part 298	Allen King, (202) 245–8293.	FR July 1982.
State-Operated Programs for Handicapped Children	A. *Description:* The regulations would implement a program of Federal financial assistance to meet the special educational needs of handicapped children in State-operated and State-supported schools for handicapped children. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The regulations would provide guidance to State educational agencies in the administration and operation of handicapped education programs. E. *Legal basis:* Sections 552–556, Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801–3805, 3807, and 3871–3876). F. *Citation:* 34 CFR Part 302	Shirley Jones, (202) 245–9661.	FR July 1982.
Strengthening Research Library Resources Program	A. *Description:* The regulations would revise existing regulations governing a grant program that assists the Nation's major research libraries in maintaining and strengthening their collections and in making collections available to users of other libraries. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The revised regulations are designed to (1) implement statutory changes, (2) reduce program requirements and (3) clarify other provisions. E. *Legal basis:* Part C of Title II of the Higher Education Act of 1965, as amended by Pub. L. 96–374 (20 U.S.C. 1021 *et seq.*). F. *Citation:* 34 CFR Part 778	Frank Stevens, (202) 245–9530.	FR July 1982.
Education Department General Administrative Regulations (EDGAR)—Amendments—Part 76.	A. *Description:* The regulations under review provide requirements for participation in State-administered programs by children enrolled in private schools. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives* :Amendments to the regulations would be designed to simplify requirements for participation by eligible children enrolled in private schools. E. *Legal basis* :Section 414 of the Department of Education Organization Act (20 U.S.C. 3474). F. *Citation* :34 CFR Part 76	Philip Rosenfelt, (202) 472–5303.	NPRM August 1982.
Federal Financial Assistance—Nondiscrimination on the Basis of Sex—College Athletics Policy.	A. *Description:* The document under review is the 1979 policy interpretation of the inter-collegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulations. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives* :Any proposed revisions to the policy interpretation would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis* :Sections 901 and 902 of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, 1682). F. *Citation* :44 FR 71413, Tuesday, December 11, 1979	Antonio J. Califa, (202) 245–2184.	NPRM August 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
Nondiscrimination on the Basis of Handicap—Program Accessibility.	A. *Description:* The regulatory provisions under review sets a compliance deadline for alteration of existing buildings to ensure accessibility by handicapped persons. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives* :The review is designed generally to consider opportunities for effecting regulatory relief through the reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis* :Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) F. *Citation* :34 CFR Part 104	Antonio J. Califa, (202) 245-2184.	NPRM August 1982.
Nondiscrimination on the Basis of Handicap—Employment.	A. *Description:* The regulatory provision under review prohibits discrimination in employment on the basis of handicap. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives* :Any proposed amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis* :Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) F. *Citation* :34 CFR Part 104	Antonio J. Califa, (202) 245-2184.	NPRM August 1982.
Nondiscrimination on the Basis of Handicap—Exhaustion of Administrative Remedies.	A. *Description:* The portion of the regulations being considered concerns the requirement that recipients of Federal financial assistance establish local administrative remedies for parents. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Any proposed amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) F. *Citation:* 34 CFR Part 104	Antonio J. Califa, (202) 245-2184.	NPRM August 1982.
Nondiscrimination on the Basis of Handicap—elementary and secondary education.	A. *Description:* The regulatory requirements under review concern the provision of services to handicapped students in elementary and secondary educational programs and activities that receive Federal financial assistance. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* The review is designed generally to consider opportunities for effecting regulatory relief through the reduction of paperwork and compliance burdens. E. *Legal basis:* Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794) F. *Citation:* 34 CFR Part 104	Antonio J. Califa, (202) 245-2184.	NPRM September 1982.
Nondiscrimination on the Basis of Sex—Newspaper Publication of Notice of Nondiscrimination.	A. *Description:* The regulatory provision under review requires a recipient of Federal financial assistance to give notice through newspaper publication of its policy that it does not discriminate on the basis of sex in its educational programs or activities. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Any proposed amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 901 and 902 of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 and 1682). F. *Citation:* 34 CFR Part 106	Antonio J. Califa, (202) 245-2184.	NPRM September 1982.
Desegregation of Public Elementary and Secondary Education.	A. *Description:* The regulations under review govern a program of Federal financial assistance to help State and local educational agencies and public nonprofit private organizations solve desegregation problems in public elementary and secondary schools. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Sections 403–405, Title IV of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000c–2000c–5). F. *Citation:* 34 CFR Part 270	Jack Simms, (202) 245-8481.	NPRM September 1982.
National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs.	A. *Description:* The regulations under review establish general rules that apply to institutions of postsecondary education participating in the campus-based programs. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not determined D. *Objectives:* Amendments to the regulations would be designed to (1) clarify and simplify the requirements governing the three campus-based programs, and (2) effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Subpart 2 of Part A, Part C, and Part E of the Higher Education Act of 1965, as amended (20 U.S.C. 1070b–1070b–3, 42 U.S.C. 2751–2756b, and 20 U.S.C. 1087aa–1087ii).. F. *Citation:* 34 CFR Parts 674, 675, and 676	Margaret Henry, (202) 472-4300.	NPRM September 1982.
National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs—Amendment.	A. *Description:* The proposed amendment to the regulations would establish the 1983–84 funding procedures for the three campus-based programs. B. *Regulatory impact analysis:* Not required C. *Regulatory flexibility analysis:* Not required D. *Objectives:* The proposed amendment would establish the formula by which institutions of postsecondary education might receive funds under the campus-based programs during the 1983–84 year.. E. *Legal basis:* Subpart 2 of Part A, Part C, and Part E of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070b–1070b–3, 42 U.S.C. 2751–2756b, and 20 U.S.C. 1087aa–1087ii).. F. *Citation:* 34 CFR Parts 674, 675, and 676	John McGonigle, (202) 245-9720.	NPRM September 1982.
Guaranteed Student Loan Program	A. *Description:* The regulations under review would establish the administrative and technical procedures under which institutions, lenders, and State guarantee agencies operate the Guaranteed Student Loan Program. B. *Regulatory impact analysis:* Not determined C. *Regulatory flexibility analysis:* Not determined	Larry Oxendine, (202) 245-2475.	NPRM September 1982.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact	Earliest expected decision date
	D. *Objectives:* Amendments to the regulations would be designed to (1) clarify and simplify the requirements under the program, and (2) effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–3a). F. *Citation:* 34 CFR Part 682.		
Auxiliary Loans to Assist Students Program (formerly PLUS).	A. *Description:* The regulations under review would establish the administrative and technical procedures under which lenders and State guarantee agencies operate the Auxiliary Loans to Assist Students Program for parents and certain students. B. *Regulatory impact analysis:* Not determined. C. *Regulatory flexibility analysis:* Not determined. D. *Objectives:* Amendments to the regulations would be designed to (1) clarify and simplify the requirements governing the program, and (2) effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. *Legal basis:* Part B of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–3a). F. *Citation:* 34 CFR Part 683.	Larry Oxendine, (202) 245–2475.	NPRM September 1982
Disposal and Utilization of Surplus Real Property for Education Purposes.	A. *Description:* The regulations under review govern surplus real property that is appropriated for assignment to, or that has been assigned to, the Department of Education for transfer for educational purposes. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The regulations are designed to foster and assure maximum use of surplus real property for educational purposes, including research. E. *Legal basis:* Section 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). F. *Citation:* 34 CFR Part 12.	Gill Sailer, (202) 426–0960.	FR September 1982.
Relocation Assistance and Real Property Acquisition Policies.	A. *Description:* The regulations under review govern the treatment of owners and tenants of real property (1) who are displaced by Federal or federally assisted programs or projects or (2) whose real property or interests in real property are taken for—or as a result of—these types of programs or projects. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The regulations are designed to provide a uniform policy for the fair and equitable treatment of owners and tenants of real property who are affected by the Federal or federally assisted activities described above. E. *Legal basis:* Section 213 of the Uniform Relocation Act (42 U.S.C. 4638). F. *Citation:* 34 CFR Part 15.	Gene Tutterrow, (202) 245–2525.	FR September 1982.
Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.	A. *Description:* The regulations would implement provisions of the Age Discrimination Act. B. *Regulatory impact analysis:* Not required. C. *Regulatory flexibility analysis:* Not required. D. *Objectives:* The regulations would implement the Age Discrimination Act of 1975, as amended, with consideration given to effecting regulatory relief through reducing paperwork and compliance burdens under the regulations. E. *Legal basis:* Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq*). F. *Citation:* 34 CFR Part 110.	Antonio J. Califa, (202) 245–2184.	FR September 1982

[FR Doc. 82–12888 Filed 5–13–82; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2058–3]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA proposed to conditionally approve a revision to the Indiana State Implementation Plan (SIP) to attain the National Ambient Air Quality Standards (NAAQS) for ozone (O_3). The plan revision was submitted to the EPA in response to the requirements of Part D of the Clean Air Act (Act). The revision consists of rules to control volatile organic compound (VOC) emissions from stationary industrial sources addressed in the EPA's Group II Control Technique Guidelines (CTG). The proposed conditional approval pertains to regulations limiting VOC emissions from the following source categories: External Floating Roof Petroleum Storage Tanks, Packaging Rotogravure and Flexographic Printing Processes and to the VOC Test Methods for CTG source categories.

The EPA further proposes to approve the State's rules for the testing of VOC leaks from Tank Trucks and Vapor Collection Systems and for Rubber Tire Manufacturing facilities with the understanding that the State will provide corrections to the typographical errors contained in the rules. The EPA also proposes to take no action on the rule controlling emissions from Dry Cleaning establishments because the rule contains an exemption for establishments using less than 1500 gallons for percholoroethylene per year. It is the Agency's understanding that the State will provide technical documentation which supports their determination that the rule fulfills the requirements of the Act as RACT.

The Agency is also specifically soliciting public comments on the State's test methods for transfer efficiency improvements as a means of compliance. If, after considering these comments, the EPA determines that the State's rule adequately addresses transfer efficiency, the EPA will take final action to approve this rule. The EPA further proposes to approve all other rules which address the Group II CTG source categories and are not specifically discussed herein.

DATE: June 14, 1982.

ADDRESSES: Copies of the SIP revision, supporting data submitted by the State of Indiana and EPA's evaluation are available for public inspection during normal business hours at the following location: Air Programs Branch, Region V, Air Management Division, U.S. Environmental Protection Agency, 230

South Dearborn Street, Chicago, Illinois 60604.

Copies of the materials submitted by the State of Indiana may also be examined during normal business hours at the following location: Air Pollution Control Division, State of Indiana Air Pollution Control Board, 1330 W. Michigan Street, Indianapolis, Indiana 46206.

Comments should be submitted in triplicate, if possible, to Gary Gulezian, Chief of the Regulatory Analysis Section at the EPA Region V office at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, Air Programs Branch, Region V, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Act, the EPA designated certain areas in Indiana as not attaining the NAAQS for O_3. Part D of the Act requires States to revise their SIP for areas that have not attained the NAAQS. For States with O_3 nonattainment areas, these SIP revisions must demonstrate attainment of the primary NAAQS by December 31, 1982.

An adequate SIP for O_3 is one which provides for sufficient control of VOC for stationary and mobile sources to provide for attainment of the standard. For stationary sources, the plan must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) requirements for sources of VOC emissions for which EPA has published a CTG by January of the preceding year. In general, where the State regulations are not supported by the information in the CTG, the State must provide an adequate demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs. The Part D requirements for an approvable SIP are described in the April 4, 1979 **Federal Register** (44 FR 20370) as supplemented at 44 FR 38583 (July 2, 1979) 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979) and 44 FR 67182 (November 23, 1979).

Adoption and submittal of additional RACT regulations for sources addressed in a CTG published between January 1978 and January 1979 (Group II CTGs) were due July 1, 1980 (44 FR 50371, August 28, 1979). Because State regulatory processes are taking longer than anticipated and in most cases States are making good faith efforts to adopt the necessary regulations, EPA revised the July 1, 1980 deadline to January 1, 1981 (45 FR 78121, November 25, 1980).

Summary of Indiana's Actions

The State of Indiana recodified the existing VOC regulations from APC 15 to 325 Indiana Administrative Code (325 IAC) Article 8 and amended Article 8 to include regulations to control VOC emissions from Group II CTG source categories. On November 25, 1980, Indiana submitted the amendments to the EPA as a SIP revision.

The SIP revision consists of the following regulations:

INDIANA ADMINISTRATIVE CODE

General Provisions	325 IAC 8-1.
Factory Surface Coating of Flatwood Paneling.	325 IAC 8-2(11).
Surface Coating of Miscellaneous Metal Parts and Products.	325 IAC 8-2(10).
Petroleum Liquid Storage: External Floating Roof Tanks.	325 IAC 8-4(3)(c).
Petroleum Refinery Fugitive Emissions (Leaks).	325 IAC 8-4(8).
Transport and Vapor System Leaks.	325 IAC 8-4(9).
Pharmaceutical Manufacture	325 IAC 8-5(3).
Rubber Tire Manufacture	325 IAC 8-5(4).
Graphic Arts (Printing)	325 IAC 8-5(5).
Dry Cleaning (Perchloroethylene).	325 IAC 8-5(6).

The EPA has reviewed the SIP revision and prepared an evaluation report. This report is available for review at the EPA Region V office at the above address. The conclusions of that report are summarized in this notice. The EPA believes that the rules represent RACT and proposes to approve all sections of the revised Article addressing Group II source categories in the O_3 nonattainment areas in Indiana covered by the revised Article except as noted below.

Summary of EPA's Review

Part 1.

Based on the results of our review, the EPA proposes to approve the following rules with the understanding that the State commits during the comment period to furnish the following minor corrections.

a. Rule 325 IAC 8-4, Section 9 Leaks From Tank Trucks and Vapor Collection Systems. Section 9(b), which pertains to the test for leaks from transports, contains a typographic error in the mathematical conversion from inches to pascals. This section should be revised to reflect the correct pressurized guage pressure of 4,500 pascals.

b. Rule 325 IAC 8-5, Section 4 Pneumatic Rubber Manufacturing. Section 4(b)(2)(B)(i) contains a typographical error which requires the owner or operator of green tire spraying operation to achieve maximum reasonable "capture of the VOC emitted by a control device." This section should be revised to read "capture of the VOC emitted by the spraying operation".

Part 2.

a. Rule 325 IAC 8-5, Section 6 Perchloroethylene Dry Cleaning Systems. Section 6(c)(1) exempts dry cleaning sources using less than 1500 gallons perchloroethylene per year from an emission limitation and a major control device. EPA information indicates that an exemption of this size will exempt most commercial cleaners. The State submittal does not contain adequate support that the adopted rule represents RACT. The EPA has discussed this exemption with Indiana and the State will provide a determination that the effect of emission levels with the adopted rule are essentially equivalent to the levels with the control recommended by the EPA or revise the regulation. At this time, the Agency is proposing to take no action on this rule but will review the study and take appropriate action in a subsequent **Federal Register.**

Part 3.

Based on the results of the EPA review, we believe the regulations pertaining to External Floating Roof Tanks, Packaging Rotogravure and Flexographic Printing Processes, and the reguation containing VOC Test Methods vary significantly from our recommendations in the CTGs. These recommendations, which the EPA calls the "presumptive norms" for RACT, are based on the Agency's current evaluation of the VOC control capabilities and problems general to these industries. In addition, other States in the Region have adopted regulations for these categories consistent with EPA's recommended requirements. For these reasons, the EPA considers this portion of the SIP revision conditionally approvable. The State has assured the Agency that it has a willingness to resolve the differences and revise the regulation, as appropriate, to reflect the application of RACT. The following is a discussion of the differences between the State's regulation and EPA's recommendation.

a. Rule 325 IAC 8-1.1, Section 4 Test Methods and Procedures. Section 4 contains test methods for the determination of coating parameters. However, the rule does not contain test methods for VOC emissions from the categories of external floating roof tanks, synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing and graphic arts systems. The appropriate test methods and

documents citing the test methods are described in the EPA policy memorandum, "VOC Test Methods or Procedures for Group I and Group II CTGs" (Tuerk, April 6, 1981). The State should include the appropriate test methods in the regulation.

b. Rule 325 IAC 8–4, Section 3 Petroleum Liquid Storage. Section 3(c) pertains to petroleum liquid storage in external floating roof tanks. This rule omits record keeping requirements and periodic inspections of the tank seals and gaps. The rule also specified an allowable gap length equal to two-thirds of the tank diameter where the gap width between the seal and tank exceeds one-eighth inch. The maximum gap width is limited to one-half inch for welded tanks and one inch for riveted tanks. Where the gap width exceeds one-eighth inch, the EPA criteria limits gap area to one square inch for each foot of tank diameter. Although the State adopted a rule which allows easier measurement, it can allow, at worst case condition, up to a 4 times larger gap area than is required by other States in the Region and nationally who have adopted floating roof tank regulations. The State should include record keeping requirements, periodic inspections and the EPA gap area criteria in the regulation.

c. Rule 325 IAC 8–5, Section 5 Graphic Arts Systems. Section 5(c) requires that a capture system design and operation be consistent with good engineering practice and designed to achieve maximum reasonable capture. The capture system efficiencies required by Indiana for packaging rotogravure (65%) and flexographic printing processes (60%) result in overall emissions reductions of only 58.5% and 54%, respectively.

Information provided by the graphic arts industry to the EPA indicate that overall emission reductions of 65% for packaging rotogravure and 60% for flexographic printing can be achieved. Indiana should provide technical support that the adopted rule represents RACT for these source catagories or amend the rule to reflect 65% emissions reductions for packaging rotogravure and 60% reductions for flexographic printing.

Part 4.

The EPA is specifically soliciting public comment on the following rules. Any comments received will be addressed in the notice of final rulemaking.

a. Rule 325 IAC 8–1.1, Section 2 Methods of Compliance. Section 2 (a)(1)(E) pertains to transfer efficiency improvements as a means of compliance. The State has submitted five test methods for transfer efficiency determinations. Because there is no universally accepted test method available to measure transfer efficiency, the EPA is soliciting public comments regarding the applicability and validity of the tests methods. If, after considering these comments, the EPA determines that the State's methods adequately address transfer efficiency, the EPA will take final action to approve this rule as RACT. Copies of these methods are available for inspection by interested parties during normal business hours at the EPA Region V office and at the State of Indiana Air Pollution Control Board office at the addresses listed above.

Other Issues

Applicability

Article 8 excludes existing sources in the O_3 nonattainment counties of Allen, Elkhart and St. Joseph from compliance with the RACT requirements. On February 5, 1982, the EPA proposed rulemaking revising the attainment status of Allen County to attainment/unclassifiable. Final approval of the rule will remove the RACT requirements for sources in this county. The EPA will propose rulemaking on the attainment status and control strategies for Elkhart and St. Joseph Counties in a subsequent Federal Register.

SIP Continuity Requirements

The current Federally enforceable SIP requiring VOC controls on existing sources doing surface coating of miscellaneous metal parts and flatwood paneling was approved by the EPA on May 14, 1973 (38 FR 12968). Compliance with these regulations was intended to be achieved with add-on control devices such as carbon adsorption, chemical oxidation, incineration and refrigeration.

However, for the surface coating categories of miscellaneous metal parts and flatwood paneling in Indiana, strict adherence to this requirement would make it impractical for source to comply with the old requirements while moving toward compliance with the new regulations. That is, continued compliance with the current SIP would require surface coating operations to install and operate add-on control devices rather than the potentially more economic and energy efficient control alternatives required in the revised Article 8 such as coating reformulation or process modification. Therefore, the EPA is proposing that Rule 8–2, Section 10 and 11, replace the current enforceable SIP requirements for surface coating miscellaneous metal parts and flatwood paneling.

Source Size Exemption

For the surface coating of miscellaneous metal parts, Indiana exempts those sources located in Clark, Floyd, Lake, Marion and Porter counties from the requirements of Rule 2(10) for sources that have a potential to emit less than 100 tons of VOC per year. Indiana justifies this exemption by stating that there are no sources emitting between 25 and 100 tons per year and therefore believes and their exemption is reasonable. The EPA is proposing approval of this size exemption cutoff.

Proposed Action

The EPA proposes approval of Rule 325 IAC 8–4, Section 9; and Rule 8–5, Section 4 with the understanding that the State will commit to making the corrections noted above during the public comment period. The EPA proposes to take no action on Rule 8–5, Section 6. The State will provide a determination that emission levels with this rule are essentially equivalent to the levels with the control recommended by the EPA or revise the regulation. EPA will take appropriate action on this rule in a subsequent Federal Register. The EPA further proposes that sections 10 and 11 of Rule 8–2 replace the current Federally enforceable SIP requirements for surface coating miscellaneous metal parts and flatwood paneling. For all other existing VOC emission sources, the requirements of the current SIP will remain in effect and Federally enforceable until compliance with the revised Regulation 325 IAC 8 requirements is achieved.

The EPA proposes conditional approval of Rule 8–1.1 Section 4; Rule 8–4, Section 3; and Rule 8–5, Section 5, as described in Part 2 of this notice, provided that the State commits during the comment period to correct the deficiencies by a specified date. Finally, the Agency further solicits comments from all interested parties on the test methods for transfer efficiency, Rule 8–1, Section 2. Persons in States adjoining Indiana are encouraged to comment on any interstate air quality issues involved in the rules. The EPA proposes to approve the test methods for transfer efficiency unless comments submitted give adequate reason for disapproval.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals and revisions under Sections 110 and 172 of the Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709). This rule, if promulgated,

constitutes a SIP revision within the terms of the certification.

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirements of a regulatory impact analysis. This rule is not major because it approves requirements already adopted as State law and imposes no new requirements. This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

(Secs. 110, 172, and 301, Clean Air Act, as amended)

Dated: February 12, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-13203 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-701; RM-3883]

Radio Broadcast Services; FM Broadcast Station in Bozeman, Montana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action dismisses a proposal to assign UHF television Channel 22 to Bozeman, Montana, in response to a petition filed by Garryowen Corporation. The rule making is dismissed at the request of the petitioner.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: April 29, 1982.

Released: May 5, 1982.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Boxeman, Montana); BC Docket 81-701, RM-3883; report and order (Proceeding Terminated).

1. Before the Commission is a Notice of Proposed Rule Making, 46 FR 50571, published October 14, 1981, proposing the assignment of television UHF Channel 22 to Bozeman, Montana, in response to a petition filed by Garryowen Corporation. Supporting comments were filed by the petitioner.

2. On March 16, 1982, petitioner advised the Commission that it is no longer interested in pursuing the petition, and requested termination of the proceeding. No other interest in the channel assignment has been expressed.

3. In view of the foregoing, it is ordered, That the petition of Garryowen Corporation, requesting the assignment of UHF television Channel 22 to Bozeman, Montana, is hereby dismissed.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-13119 Filed 5-13-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-714; RM-3930]

Radio Broadcast Services; FM Broadcast Stations in Williams, Arizona; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Dismissal of proposed rule; (Final Order).

SUMMARY: This action dismisses a proposal to assign Channel 224A to Williams, Arizona, in response to a petition filed by Soho Broadcasting. The rule making is dismissed due to lack of interest by the petitioner or other interested parties.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: April 29, 1982.

Released: May 5, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Williams, Arizona); BC Docket No. 81-714, RM-3930; report and order (Proceeding Terminated).

1. Before the Commission is the Notice of Proposed Rule Making, 46 FR 50989, published October 16, 1981, proposing the assignment of Channel 244A to Williams, Arizona, in response to a petition filed by Soho Broadcasting.

2. The Commission did not receive comments from the petitioner (or any other interested parties), and consistent with our policy and procedures set forth in the Appendix to the Notice, we have dismissed the request for lack of continuing interest.

3. In view of the foregoing, it is ordered, That the petition of Soho Broadcasting, proposing the assignment of Channel 244A to Williams, Arizona, is hereby dismissed.

4. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-13120 Filed 5-13-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-236; RM-4050]

FM Broadcast Station in Kaneohe, Hawaii; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 277 to Kaneohe, Hawaii, in response to a petition filed by Kaneohe Broadcasting Company. The request assignment could provide a first FM service to Kaneohe.

DATE: Comments must be filed on or before June 14, 1982, and reply comments must be filed on or before June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Adopted: April 23, 1982.

Released: May 3, 1982.

In matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Kaneohe, Hawaii); BC Docket No. 82–236, RM–4050; notice of proposed rule making.

1. A petition for rule making was filed on January 29, 1982, by Kaneohe Broadcasting Company ("petitioner"), requesting the assignment of Channel 277[1] to Kaneohe, Hawaii. Petitioner states that it will apply the channel, if assigned. The assignment can be made consistent with the minimum distance separation requirements. The proposal must also conform with the technical requirements of § 73.1030(c) (1)–(5) of the Rules regarding protection for the Commission's monitoring station at Waipahu, Oahu, Hawaii.

2. Kaneohe (population was not listed in the 1980 U.S. Census),[2] in Honolulu County (population 762,874),[3] is located approximately 13 kilometers (8 miles) north of Honolulu. It has no local broadcast service.

3. Petitioner states that Kaneohe is the home of the University of Hawaii marine lab, and other military and educational institutions. The nearest broadcast station is said to be located in Honolulu, some 30 miles away. Petitioner claims that Kaneohe's population and lack of service warrant a first FM assignment.

4. Since the proposed assignment could provide Kaneohe with an opportunity for its first local broadcast station, the Commission believes that the proposal should be considered in a rule making proceeding.

5. Comments are invited on the proposal to amend the FM Table of Assignments (§ 73.202(b) of the Rules) with regard to the following city:

City	Channel No.	
	Present	Proposed
Kaneohe, Hawaii		277

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 14, 1982, and reply comments on or before June 29, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82–13111 Filed 5–13–82; 8:45 am]

BILLING CODE 6712–01–M

[1] Petition requested the assignment of Channel 26 to Kaneohe. That channel would have required a site restriction of 11.8 miles north to avoid short spacing to Station KTUN (Channel 212A), Honolulu. It appears that site availability may be a problem of which petitioner did not appear to be aware. Thus we have substituted Channel 277 for consideration herein since no site restriction would be necessary.

[2] The 1970 Census reported a population of 29,902.

[3] Population figure was taken from the 1980 U.S. Census.

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47 CFR Part 73

[BC Docket No. 82–247; RM–4072]

TV Broadcast Station In Magee, Mississippi; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 34 to Magee, Mississippi, as its first television channel, in response to a petition filed by Magee Broadcasting Company.

DATES: Comments must be filed on or before June 21, 1982, and reply comments on or before July 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR part 73

Television.

Adopted: April 29, 1982.

Released: May 6, 1982.

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Magee, Mississippi); BC Docket No. 82-247, RM-4072; notice of proposed rule making.

1. The Commission herein considers a petition for rule making filed March 11, 1982, by Magee Broadcasting Company ("petitioner"), which seeks the assignment of UHF Television Channel 34 to Magee, Mississippi. Petitioner expressed an interest in applying for the channel, if assigned.

2. Magee (population 3,497),[1] in Simpson County (population 23,441), is located approximately 61 kilometers (38 miles) southeast of Jackson, Mississippi. It has no local television service.

3. According to petitioner, Magee's economy would support a first television assignment. It is the largest city in Simpson County and has such economic assets as poultry production, wood harvesting, lumber, electrical products and garment manufacturing. Also, petitioner states that Magee is ideally located for industrial and commercial growth in that it is serviced by a U.S. highway, a state highway and a railroad. Petitioner asserts that there is a need for a local television facility with programming directed toward the needs of the community and coverage of local events. This assignment would provide the city of Magee, and other communities in Simpson County, with a first local television service.

4. In view of the foregoing, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the city of Magee, as follows:

City	Channel No.	
	Present	Proposed
Magee, Mississippi		34+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before June 21, 1982, and reply comments on or before July 6, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

[1] Population figures are derived from the 1980 U.S. Census, Advance Report.

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-13112 Filed 5-13-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

High Seas Salmon Fishery off Alaska; Harvest Limit and Proposed Closure

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of salmon harvest limit and proposed closure.

SUMMARY: The Secretary of Commerce proposes to close the Southeast Alaska salmon fishery in the fishery conservation zone for ten days, beginning at 12:01 A.M., June 7 local time and continuing through 11:59 P.M., June 16, 1982. The proposed closure is necessary to conserve chinook salmon stocks that contribute to the Alaska, Oregon, and Washington salmon fisheries, and to coordinate with a similar closure in the Canadian fishery zone. The 1982 Southeast Alaska chinook salmon harvest guideline is 255,500 chinook salmon.

DATE: Comments on the proposed closure must be submitted on or before May 21, 1982.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery (FMP), which was developed by the North Pacific Fishery Management Council (Council) and implemented by NOAA through regulations appearing at 50 CFR Part 674 (46 FR 57299, November 23, 1981). Section 674.23 describes procedures to adjust seasons and areas through field orders. The Council, the State of Alaska Board of Fisheries (Board), NOAA, and the Alaska Department of Fish and Game (ADF&G) attempt to manage the southeast Alaska commercial ocean salmon fishery as a single unit throughout the State's territorial waters and the FCZ.

Serious conservation action to protect chinook salmon began in southeast Alaska in the mid-1970s. Directed net fisheries for chinook were eliminated in 1976. A 28-inch minimum size limit for chinook salmon was imposed in the Alaskan troll fishery in 1978, matching the size limits in Oregon and Washington. The southeast Alaskan chinook salmon catch was brought under a quota which has been steadily reduced each year since 1980. The 1980 quota was 320,000 chinook, representing an 18 and 13 percent reduction from the 1978 and 1979 harvests of 392,000 and 366,000 chinook, respectively. The 1981 harvest was reduced to 268,000 chinook, a 16 percent reduction from the 1980 quota and a 32 percent reduction from the 1978 harvest. The recommended 1982 harvest guideline of 255,500 chinook is a five percent reduction from the 1981 harvest, a 20 percent reduction from the original 1980 quota and a 35 percent reduction from the 1978 harvest.

Despite these significant conservation actions already taken in the Alaskan fisheries, chinook salmon spawning escapements into Canadian rivers and the Columbia River have not improved, and in some cases have continued to decline.

The Council and Board recognized the need for further conservation actions in the Alaskan fishery at this time, but were concerned about the impacts of such actions on Alaskan salmon fishermen. Many Alaskan salmon fishermen who reside in rural communities in southeastern Alaska are heavily dependent on the troll fishery for their economic well being; they lack alternative sources of income. Past, present, and immediate future sacrifices by these fishermen may be justified if their sacrifices result in higher escapements of major stocks that later contribute to the Alaskan fisheries. Their sacrifices cannot be justified if chinook salmon saved in Alaska are transferred to fisheries outside the United States or to unexplained interdam losses.

Before recommending the 1982 chinook salmon harvest level, the Council and Board reviewed extensive reports on the coastwide status of chinook salmon stocks and the fisheries that harvest these stocks. Public testimony from fishing groups, processors, and individuals was received by the Council and Board at their January and March joint meetings. A draft supplemental environmental impact statement (DSEIS), describing and analyzing various alternative 1982 management strategies for the southeast Alaska salmon fisheries, was adopted by the Council at the January meeting and was published on February 19, 1982; comments were received through March 22, 1982.

The Council and the Board met March 23-24, 1982, and jointly recommended that (1) the chinook salmon optimum yield (OY) range for 1982 should remain at 243,000-272,000 fish for the Alaskan commercial salmon fisheries east of Cape Suckling; (2) the 1982 southeast Alaska salmon fisheries should be managed for a harvest of 255,500 chinook salmon; (3) inseason closures necessary to achieve the 255,500 fish harvest guideline should be coordinated with an expected closure in the Canadian fishery zone to maximize the transfer of chinook to Canadian spawning streams and to Pacific northwest streams, including the Columbia River; and (4) the chinook salmon harvest guideline for the 1983 southeast Alaska commercial fisheries will be further reduced to the lower end of the OY range, or 243,000 fish, (a) if significant actions are taken by the Canadian Government to conserve chinook in Canadian fisheries and to pass southward the Alaskan savings of chinook, and (b) if Columbia River resource agencies demonstrate satisfactory progress to identify and to correct the unacceptably high inter-dam losses of adult "bright" fall chinook that occurred in 1980 and 1981.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) concurs with the recommendation of the Council and Board and intends to manage the 1982 southeast Alaska salmon fishery in the FCZ by means of inseason closures to achieve a total chinook salmon harvest of 255,500 fish. The Assistant Administrator intends to coordinate this inseason closure with the State of Alaska and Canada. To implement this policy, the Alaska Regional Director, National Marine Fisheries Service (Regional Director), in consultation with ADF&G, has determined on behalf of the Secretary that a 10-day closure of the southeast Alaska ocean salmon fishery (all species) in the FCZ from June 7 through June 16 is a necessary initial step to limit the total season harvest to 255,500 chinook salmon, to complement an inseason closure of State of Alaska waters during the same time period (June 7-June 16) and to coordinate with a two-week closure of the northern British Columbia salmon troll fishery

(June 10–June 23). In making this determination, the Regional Director accepts the findings of the Council and Board that the condition of chinook salmon resource is worse than anticipated when the FMP was implemented, and that this condition requires this closure.

This closure will not be effective until publication of a final notice of closure, according to the procedure specified at 50 CFR 674.23. Public comments concerning the need for the proposed closure may be submitted to the Regional Director at the address stated above through May 21, 1982. For the reasons set forth above and because the dates of the Canadian closure were not announced until April 23, 1982, the Regional Director finds good cause to waive part of the 30-day comment period specified at 50 CFR 674.23.

Because the 1982 harvest goal of 255,500 chinook salmon falls within the OY range of 243,000–272,000 chinook salmon stated in the current FMP, a 1982 amendment to the FMP is not necessary.

The DSEIS, published February 19, 1982 (47 FR 7488), analyzing various alternative 1982 management strategies, was prepared primarily in the event that the Council recommended a 1982 harvest guideline outside the OY range, which would have required an FMP amendment. Since the Council did not recommend a 1982 amendment, a Final Supplement Environmental Impact Statement (FSEIS) will not be prepared. An FSEIS for Amendment 2 to the FMP, which established the current OY range, was filed with the environmental Protection Agency (EPA) on May 1, 1981.

This action is taken under the authority of regulations specified at 50 CFR 674.23, and is taken in compliance with Executive Order 12291. It is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 674

Fisheries.

Dated: May 10, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-13245 Filed 5-13-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 94
Friday, May 14, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing in Wilderness and Primitive Areas, Proposed Wildernesses and Congressionally Designated Study Areas Northern Region, Montana, and North Dakota; Intent To Prepare Two Environmental Impact Statements

This Notice of Intent revises two previous Notices of Intent to prepare Environmental Impact Statements for oil and gas leasing in National Forest Wildernesses, proposed Wildernesses and Wilderness study areas in Montana and North Dakota.

Based on Agency concerns, public comment and other recent developments, the scope and timing of these two Environmental Impact Statements are being revised.

Several hundred oil and gas leases applications have been received for these areas. The Regional Forester of the Forest Service Northern Region must recommend to the Secretary of Interior through the Bureau of Land Management whether these leases should be granted, and if so, under what circumstances.

There is no clearly definable proposed development. The scale of an "oil field" development cannot be predicted until enough wells are drilled to prove the existence of the necessary geologic structures and that those structures do indeed contain economically recoverable quantities of oil and gas. If development is permitted, its extent will depend on not only these geologic unknowns but also on the costs of restoration and the limitations imposed by the terms of the lease. Therefore, these EIS's will examine a range of alternatives which display the effects of various levels of oil and gas development that might occur under existing Forest Service direction.

Two Environmental Impact Statements will be prepared with proposed schedule and content as follows:

Environmental Impact Statement I

Draft—November 1982
Final—April 1983

Absaroka-Beartooth Complex

1. Absaroka-Beartooth Wilderness
2. Taylor-Hilgard Wilderness Study Area*
3. Lionhead Proposed Wilderness
4. Spanish Peaks Primitive Area
5. Hyalite-Porcupine-Buffalo Horn
6. North Absaroka Wilderness additions

Anaconda-Pintler Complex

7. Anaconda-Pintler Wilderness & additions
8. Welcome Creek Wilderness
9. Slide Rock Proposed Wilderness
10. Sapphire Wilderness Study Area
11. Big Hole Proposed Wilderness
12. Torrey Peak Proposed Wilderness

Gates of the Mountains Wilderness

13. Gates of the Mountains Wilderness and proposed addition

Environmental Impact Statement II

Draft—February 1983
Final—July 1983

Bob Marshall Complex

1. Bob Marshall Wilderness
2. Great Bear Wilderness
3. Scapegoat Wilderness
4. Ten Lakes Wilderness Study Area
5. Mission Mountains Wilderness
6. Rattlesnake Wilderness and NRA
7. Bob Marshall Wilderness addition (Grizzly Basin)
8. Bob Marshall Wilderness addition (Clearwater-Monture)
9. Bob Marshall Wilderness addition (Renshaw-Packbridge-Leavitt)
10. Scapegoat Wilderness addition (Silver King-Falls Creek)

Area priority for study was based on the following criteria:

—Intensity of interest in oil and gas leasing
—Amount of analysis work already completed
—Urgency of decision (e.g., statutory withdrawal from mineral leasing December 31, 1983, provided in Wilderness Act).

Other previously included areas will be covered in respective Forest Plans or future environmental analyses as required.

Appropriate agencies and others with jurisdiction or expertise will be consulted by the study team during the analysis to obtain information as needed and to invite their participation in the study process.

Due to the overlapping jurisdictions and keen interest in the decisions reached by these analyses, the Bureau of Land Management and the State of Montana have been invited to participate as cooperating agencies in these enviromental analyses.

The scoping process of these Environmental Impact Statements have taken into consideration the recent public response already on record for similiar proposals. This includes the recent seismic applications for the Bob Marshall, Great Bear and Scapegoat Wildernesses.

A mailing list was prepared by the study team. The list included interested and affected groups/individuals and agencies identified by the involved Forests and Staff Units. Comments were requested from the public during January 1982. The scoping process has also included contacts by the study team with groups and agencies interested and/or affected by the recommendations. A newsletter summarizing the results of the scoping process and a map of the study areas is available upon request. The time and location of future public meetings will be announced through the local news media later this year.

The responsible official is Tom Coston, Regional Forester of the Forest Service Northern Region.

Requests for a copy of the newsletter or questions about the proposed action and environmental impact statement should be directed to E. Bruce Pewitt, Minerals Impact Evaluation Group Leader, Minerals and Geology, P.O. Box 7669, Missoula, MT 59807, phone: 406–329–3516.

Dated: May 6, 1982.

Tom Coston,

Regional Forester.

[FR Doc. 82–13147 Filed 5–13–82; 8:45 am]
BILLING CODE 3410–11–M

*Portion recommended for nonwilderness not included.

Decision and Finding of No Significant Impact, Comprehensive Management Plan for the Pacific Crest National Scenic Trail

An environmental assessment of the proposed Comprehensive Management Plan for the Pacific Crest National Scenic Trail (PCNST), as required by Pub. L. 95–625, has been completed.

Based on the analysis and evaluation described in the environmental assessment, it is my decision to adopt a modified Alternative C as the plan for management of the PCNST. Alternative C retains primitive recreation opportunities in National Parks and wilderness. On other Federal lands it emphasizes recreation opportunities consistent with semi-primitive and rural settings and opportunities to view resource management. On private land recreation opportunities are confined to use of the trail and viewing management or cultural activities. Alternative C has been modified with respect to acquisition of rights-of-way across private lands. Here, rights-of-way will be limited to the width necessary to construct and maintain a pathway, including space for campsites and access to water. This alternative best integrates the recreation objectives for the trail with the objectives for management of adjacent lands. Recreation opportunities range from those associated with a primitive environment to those associated with rural and urban environments. Consideration is given to minimizing adverse impacts on adjacent lands.

Three additional alternatives considered were: (A) Continue present management with no change; (B) emphasize primitive recreation opportunities and retention of the scenic and natural environments on all adjacent public and private lands; and (D) emphasize rural and urban recreation opportunities and commodity outputs from adjacent lands other than wilderness and national parks.

Public involvement centered on issues which were initially determined through a scoping process involving the PCNST Advisory Council, State, Governments, Heritage Conservation and Recreation Service and managing agencies. After review by the public, these issues were used along with the basic requirements of the National Trails System Act and management concerns of various agencies to develop the following criteria for evaluating the plan alternatives:

1. Trail Character
2. Impacts of management on adjacent public lands
3. Cost
4. Impact on private land
5. Levels and Type of use
6. Long term visual quality
7. Physical/biological
8. Socio-economic

With regard to trail character, Alternative B has the highest proportion of trail in the primitive recreation opportunity class, while Alternative D has the highest proportion of trail in roaded natural and urban classes. Alternatives A and C are in the middle of the spectrum with Alternative C having a more balanced proportion of the trail in all recreation opportunity classes.

Alternative B has the highest impact on commodity outputs and other activities and uses of public lands. Alternatives A, C & D follow in descending order with regard to their impacts on public lands.

Cost of right-of-way acquisition is highest for Alternative B, lower for Alternative C and lowest for Alternatives A and D. Cost of construction and maintenance is high for Alternative D, average for Alternatives A and C and lower for Alternative B.

Impact on private lands is highest for Alternative B, low for Alternatives A and C and lowest for Alternative D.

Highest total use is anticipated in Alternative D with Alternatives C, A and B having progressively lower use levels. Alternatives C and A would encourage a mix of user types. Alternative D would favor day use and short trips, while Alternative B would favor a higher level of long distance use.

Long term visual quality would be highest in Alternative B, high in Alternative A and lowest in Alternative D. Visual quality would vary in Alternative C where it would remain high in areas of outstanding scenic quality and moderate to low in areas of lesser scenic quality.

Effects on the physical/biological elements of the environment are generally minimal for all alternatives. There may be local adverse effects from use which can be mitigated by management.

Alternative D would have the least adverse impact on local economics. Alternative A would have moderate impacts and C moderate impacts in some areas. Alternative D would least impact local economics.

Considering all criteria, Alternative C, as modified, minimizes adverse effects. Where adverse effects cannot be avoided mitigation measures are provided as a part of the selected alternative.

I have determined, based on the environmental analysis, that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination was based on the following factors: (a) Individual agencies will go through the environmental analysis process when constructing trail related facilities, new trial and relocated trail segments; (b) trial use levels and resultant impacts on the physical, biological, social and economic environments will be determined through the environmental analysis process during the development of local land and resource management plans; (c) implementaton of the Plan will result in no irreversible resource commitment or irretrievable loss of timber or other resources on lands adjacent to the trail; (d) the Plan meets the requirements of Pub. L. 95–625 and other relevant legislation; (e) there are no apparent adverse or cumulative secondary effects; and (f) implementation of the Plan will have no effects on wetlands or flood plains.

The environmental assessment is available for review during regular working hours in the following Forest Service Offices:

USDA, Forest Service, Recreation Management, Rm 620, 319 SW Pine St., Portland, OR 97208
USDA, Forest Service, Recreation Management, Rm 529, 630 Sansome St., San Francisco, CA 94111
USDA, Forest Service, Recreation Management, Rm 4240, 12th and Independence Ave., SW, P.O. Box 2417, Washington, DC 20013

Implementation of this decision may take place immediately.

This decision is subject to administrative review pursuant to 36 CFR 211.19.

Dated: April 15, 1982.

Douglas R. Leisz,

Associate Chief.

[FR Doc. 82-13305 Filed 5-13-82; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Alburg School Land Drainage RC&D Measure, Vermont; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil

Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Alburg School Land Drainage RC&D Measure, Grand Isle County, Vermont.

FOR FURTHER INFORMATION CONTACT:
John Titchner, State Conservationist, Soil Conservation Service, One Burlington Square, Suite 205, Burlington, Vermont 05401, telephone 802–951–6795.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John Titchner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the drainage of a recreation field adjacent to the Alburg School. The planned works of improvement include the installation of a system of underground drains in conjunction with a system of surface drains.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John Titchner, State Conservationist.

No administrative action on implementation of the proposal will be taken until June 14, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 4, 1982.

John Titchner,

State Conservationist.

[FR Doc. 82–12964 Filed 5–13–82; 8:45 am]

BILLING CODE 3410–16–M

Grand Isle Elementary School Land Drainage RC&D Measure, Vermont; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grand Isle Elementary School Land Drainage RC&D Measure, Grand Isle County, Vermont.

FOR FURTHER INFORMATION CONTACT:
John Titchner, State Conservationist, Soil Conservation Service, One Burlington Square, Suite 205, Burlington, Vermont 05401, telephone 802–951–6795.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John Titchner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the drainage of a recreation field adjacent to the Grand Isle Elementary School. The planned works of improvement include the installation of a system of underground drains in conjunction with a system of surface drains.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John Titchner, State Conservationist.

No administrative action on implementation of the proposal will be taken until June 14, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

John Titchner,

State Conservationist.

[FR Doc. 82–12965 Filed 5–13–82; 8:45 am]

BILLING CODE 3410–16–M

Haskell County Critical Area Treatment No. 1, Oklahoma; Finding of no Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Roland R. Willis, State Conservationist, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone number (405) 624–4360.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Haskell County Critical Area Treatment No. 1 RC&D project, Haskell County.

The environmental assessment of this federally assisted action indicates that the action will not cause significant impacts to the human environment. As a result of these findings, Mr. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The project objectives are to install structural, mechanical and vegetative measures to control serious roadside erosion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Roland R. Willis. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until June 14, 1982.

(Catalog of Federal Domestic Assistance Program No. 10–901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and Local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 30, 1982.

Billy R. Littlefield,

Assistant State Conservationist (Programs).

[FR Doc. 82–13116 Filed 5–13–82; 8:45 am]

BILLING CODE 3410–16–M

Mudline Road Critical Area Treatment, Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Roland R. Willis, State Conservationist, Agricultural Center Building, Stillwater, Oklahoma 74074, telephone number (405) 624–4360.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mudline Road Critical Area Treatment RC&D project, McCurtain County, Oklahoma.

The environmental assessment of this federally assisted action indicates that the action will not cause significant impacts to the human environment. As a result of these findings, Mr. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this action.

The project objectives are to reduce erosion, stablizing rights-of-way, reducing sediment inflow to streams and improving the appearance of the county read rights-of-way.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Roland R. Willis. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until June 14, 1982.

(Catalog of Federal Domestic Assistance Program No. 10–901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and Local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 27, 1982.

Billy R. Littlefield,

Assistant State Conservationist (Programs).

[FR Doc. 82-13115 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-16-M

Ontonagon Township Park RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, given notice that an environmental impact statement is not being prepared for the Ontonagon Township Park RC&D Measure, Ontonagon County, Michigan.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment and public water-based recreation. Critical area treatment measures will include: land shaping, adding and spreading topsoil, planting beachgrass, fertilizing, seeding, mulching and installing vehicle barriers. Recreation facilities and measures include: hiking and nature trails, two parking lots, playground, picnic area, restrooms, sanitary disposal station and vegetative cover re-establishment. Total construction cost is estimated to be $268,600; $135,750 RC&D funds and $132,850 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until June 14, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: April 28, 1982.

Homer R. Hilner,

State Conservationist.

[FR Doc 82-13046 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-16-M

Devil's Backbone RC&D Measure, Grand Tower, Illinois

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Devil's Backbone RC&D Measure, Grand Tower, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph, Champaign, Illinois, 61820, telephone 217–398–5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measure.

The measure concerns a plan for water-based recreation facilities. The planned works of improvement include facilities for camping, picnicking, and nature walks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John J. Eckes.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

John J. Eckes,

State Conservationist.

May 5, 1982.

[FR Doc. 82-13133 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-16-M

Lake McLeansboro, Heard's Pond RC&D Measure, McLeansboro, Illinois

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake McLeansboro, Heard's Pond RC&D Measure, McLeansboro, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph, Champaign, Illinois, 61820, telephone 217-398-5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this measue.

The measure concerns a plan for water-based recreation facilities. The planned works of improvement include facilities for picnicking, fishing, and boating.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John J. Eckes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

John J. Eckes,

State Conservationist.

May 5, 1982.

[FR Doc. 82-13134 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-16-M

Norton Point Critical Area Treatment RC&D Measure Plan, Mass.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Norton Point Critical Area Treatment RC&D Measure Plan, Dukes County Massachusetts.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts 01002, telephone 413-256-0441.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Sherman L. Lewis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for erosion control of the dunes of Norton Point and reduction of sedimentation of Katama Bay. The planned works of improvement include sand fencing, planting of beach grass and shrubs, and control of pedestrian and vehicular traffic in the project area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. An environmental assessment has been prepared and sent to various Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Sherman L. Lewis. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until **June 14, 1982.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: April 30, 1982.

Sherman L. Lewis,

State Conservationist.

[FR Doc. 82-13214 Filed 5-13-82; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, by June 3, 1982.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00095. Applicant: University of California, San Francisco, 3rd and Parnassus, San Francisco, CA 94143. Article: PMV Cryo-Microtome, Type 160. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to cut

sections of brain, lung, and bone from frozen tissues of man and animals (sheep, rodents). The sections subsequently will be processed and reacted with a radioactive probe that binds specifically to a virus e.g., measles virus. Experiments will be conducted to determine in the most sensitive way possible whether viruses from childhood infections persist in tissues, and if so whether they might bear some relationship to diseases like multiple sclerosis. Application received by Commissioner of Customs: March 9, 1982.

Docket No. 82–00140. Applicant: The Regents of the University of California, Material Management Department, Riverside, California 92521. Article: High Throughput "Jet" Spore Sampler. Manufacturer: Burkard Manufacturing Co. Ltd., United Kingdom. Intended use of article: The article is intended to be used to efficiently sample populations of spores of *Penicillium digitatum* and *Penicillium italicum* in citrus groves and in fruit packinghouses. In order to determine the level of fungicide resistance in the population, spores will be collected from a known volume of air and then sub-samples of the collected spores will be plated into (1) a culture medium that is selective for these species of *Penicillium* and (2) the same culture medium amended with the fungicide of interest. The objective of these investigations is to be determine the percentage of fungicide resistant spores in the population. Application received by Commissioner of Customs: March 23, 1982.

Docket No. 82–00146. Applicant: Temple University, School of Dentistry, 3223 N. Broad Street, Philadelphia, PA 19140. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for an investigation on the formation of enamel. The specific material to be examined consists of incisor teeth of rats, more specifically, the cells on the surface of the developing enamel. Experiments will be conducted to establish the characteristics of cells engaged in entry of calcium into the enamel and characteristics of cells which restrict the entry of calcium. Application received by Commissioner of Customs: March 26, 1982.

Docket No. 82–00147. Applicant: Children's Hospital of Los Angeles, 4650 Sunset Boulevard, Los Angeles, CA 90054. Article: 6 MeV Linear Accelerator, G280F and Accessories. Manufacturer: Atomic Energy of Canada, Canada. Intended use of article: The article is intended to be used to study the treatment of cancer in the pediatric age group. Various randomized and non-randomized clinical trials will be conducted utilizing the article for evaluating the efficacy of various radiation therapy dose schemes in research programs both intramurally and under the auspices of the multi-institutional Children's Cancer Study Group. The article will also be used for the training of students of radiation therapy technology. Application received by Commissioner of Customs: March 26, 1982.

Docket No. 82–00148. Applicant: U.S. Army Natick Res. & Dev. Labs., Directorate for Procurement, Attn: DRNA–PB, Kansas St., Natick, MA 01760. Article: Analytical Electron Microscope, Model H–600–1 and Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article is intended to be used for studies of (a) ultrastructure of meat—effects of aging; storage and tenderization of myofibrillar and connective tissue components; (b) ultrastructure of cytoprotection in plants; (c) diffraction of crystals or particles; (d) extension of shelf life or development of methods of preserving fresh vegetables for salads; and (e) changes in food due to microbiological effects. Application received by Commissioner of Customs: March 26, 1982.

Docket No. 82–00149. Applicant: University of Colorado, Joint Institute of Laboratory Astrophysics, Boulder, Colorado 80309. Article: Excimer Laser, Model EMG 101. Manufacturer: Lambda Physik GmbH, West Germany. Intended use of article: The article is intended to be used in two ways to study the reaction chemistry, energy transfer and spectroscopy of gaseous free radicals. First the article will be used to photolyze gases, creating large quantities of free radicals with known energies. Infrared emission from these radicals and their reaction products is analyzed to determine the desired properties. In other experiments, the article will be used to pump a dye laser. The continuously tunable light from this dye laser will be used to induce flourescence from free radicals to interrogate their energies and state distributions. One postdoctoral student and one graduate student will use the laser on a daily basis for their research. They will learn fundamental techniques of laser applications in chemical and physical research while using it. Application received by Commissioner of Customs: March 26, 1982.

Docket No. 82–00150. Applicant: Michigan Technological University, Business Office, Houghton, MI 49931. Article: Magnetotelluric Exploration System (Geophysical Apparatus). Manufacturer: Phoenix Geophysics, Canada. Intended use of article: The article is intended to be used for studies of geologic structures to determine earth electrical structure to depths of 20 miles or more. Application received by Commissioner of Customs: March 26, 1982.

Docket No. 82–00151. Applicant: Duke University Medical Center, Department of Physiology, Box 3709, Durham, NC 27710. Article: Multichannel Cytomic Analyzer. Manufacturer: Max-Planck-Institute for Biochemie, West Germany. Intended use of article: The article is intended to be used for studies of biological (mammalian) cells to determine factors of cellular steady state control. Application received by Commissioner of Customs: March 26, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82–13227 Filed 5–13–82; 8:45 am]

BILLING CODE 3510–25–M

University of Florida; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00407. Applicant: University of Florida, Soil Science Department, 106 Newall Hall, Gainesville, FL 32611. Article: Isotope Ratio Mass Spectrometer, Model 602E. Manufacturer: VG Micromass, United Kingdom. Intended use of article: See Notice on page 66830 in the Federal Register of October 8, 1980.

Comments: No comments have been received with respect to this application. Decision: Application denied. Reasons: An instrument or apparatus of

equivalent scientific value to the foreign article for such purposes as this article is intended to be used, is being manufactured in the United States.
Discussion: The National Bureau of Standards (NBS) advises, in its memorandum dated February 20, 1981, that available Nuclide instruments are scientifically equivalent to the foreign article for the applicant's intended purposes. We concur with this finding. The applicant does not contend that the domestic manufacturer (Nuclide) did not bid an instrument of equivalent scientific value to the foreign article for its intended use, but questions the delivery and performance quoted by that firm on the basis of a self-conducted mass spectrometer (MS) users survey. An applicant's view of an instrument manufacturer's past performance, while it may legitimately influence an institution's purchasing decisions, is generally an untenable basis for duty-free entry. Even an authenticated history of poor performance (which we are not persuaded is true in this case) is not necessarily indicative of current capability. Further, risk of purchase (including any maintenance problems) is a matter of cost or convenience which under Subsection 301.2(n) of the regulations may not be considered in making duty-free entry decisions under Pub. L. 89-651. Buyers routinely employ contractual or other legal means of protection from inflated claims. We note the following facts:

1. Nuclide bid many capabilities exceeding basic RMS requirements in response to the applicant's RFQ. The applicant did not buy these extra capabilities with the foreign article.

2. The applicant refers to the Nuclide "6-60." This term does not describe a complete mass spectrometer but merely relates to the dimensions of one component, the analyzer. A 6-60 analyzer has a six inch radius and a 60° sector angle. Nuclide offers such analyzers in several standard instruments. For example, it offers the 6-60-G for general analysis and the 6-60-SGA for analysis of small quantities of gases. Its 6-60-RMS (Ratio Mass Spectrometer) is the standard instrument comparable to the foreign article. Nuclide manufactured its first 6-60-RMS in 1956. It was the first commercial instrument for measuring differences in isotope ratios of gaseous samples. Its foreign counterpart was developed much later. Like the manufacturer of the foreign article, Nuclide continuously improves its RMS instrument and provides standard accessories or options to meet the particular needs of an investigator.

3. In response to the RFQ, Nuclide also offered a 12-90 analyzer which has greater capability than a 6-60 analyzer and is available in a standard RMS configuration.

4. To illustrate techniques and procedures to be used in its research, the applicant attached a 1976 study entitled, "Use of Tracers for Soil and Fertilizer Nitrogen Research." Among other things, the study concluded that the Nuclide 3-60-RMS permits "remarkably accurate and precise determination of 15_N." (p. 232) and that advances in instrumentation "leave little doubt that manufacturers of mass spectrometers could design relatively low-cost, easy to maintain instruments suitable for routine nitrogen isotope-ratio anlysis" (p. 261).

In view of the foregoing, the Department finds that Nuclide was capable of providing a standard instrument meeting the applicant's needs.

(Catalog of Federal Domestic Assistance Programs No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13228 Filed 5-13-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Proposed Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on March 19, 1979 (44 FR 16466), the National Bureau of Standards (NBS) announced the establishment of exclusion criteria and procedures for developing and maintaining an exclusion list pertaining to Federal Information Processing Standards Publication 60 (which has since been redesignated as 60-1), Input/Output (I/O) Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The approval of the Secretary of Commerce (Secretary) of those three Federal Information Processing Standards was previously announced in the **Federal Register** on February 16, 1979 (44 FR 10098-10101). The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the **Federal Register** on August 27, 1979 (44 FR 50078).

The March 19, 1979, notice stated that once the exclusion list was established, interested parties could obtain a copy of that list and would be invited to submit to the Director, Institute for Computer Sciences and Technology (ICST), comments or recommendations regarding additions to or removals from that list. The notice also advised that information regarding any proposed changes in the exclusion list would be published in the **Federal Register.**

Announcement of the establishment of the initial exclusion list and its availability from NBS upon request appeared in the **Federal Register** on June 29, 1979 (44 FR 37968). Numerous changes to that exclusion list have since been made and announced in the **Federal Register.**

Comments from interested parties specifically identifying candidate systems which should be added to or removed from the exclusion list have been and continue to be especially encouraged.

As a result of a review and analysis of comments and recommendations received recently, NBS is proposing the following additions to the exclusion list:

Manufacturer	Model
Burroughs	B2910.
WICAT Systems	System 110.

Interested parties will be allowed until June 28, 1982 to submit written comments regarding the proposed changes. Such written comments should be submitted to the Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Following review of comments received in response to this notice, NBS will make a determination on the proposed changes and will announce that determination in a subsequent notice published in the **Federal Register.**

NBS maintains a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments in response to this notice.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: May 11, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-13121 Filed 5-13-82; 8:45 am]

BILLING CODE 3510-CH-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

American Petrofina, Inc.; Action on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Adoption of proposed consent order as final.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with American Petrofina, Inc. ("Fina"), executed on March 2, 1982 and published for comment in 47 FR 9905 on March 8, 1982 as a final order of DOE. The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations for the period January 1, 1973 through January 27, 1981. To remedy any violations that may have occurred during the period, Fina has agreed to make payments totalling $14,010,000 in cash remedies.

As required by the regulation cited above, DOE received comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. Eleven comments were received by April 7, 1982, the thirtieth day following publication of the notice of the proposed Consent Order. An additional comment was received after that deadline. DOE has considered all comments, including that which was filed late and determined that the Consent Order should be made final without modification. The Consent Order became effective as a Final Order of the DOE on May 6, 1982, upon actual notice to Fina.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue NW., Room 3115, Washington, D.C. 20461, Phone: (202) 633-9165.

Copies of the Consent Order may be received free of charge by written request to: Fina Consent Order Request, Office of Special Counsel, Department of Energy, Room 5109, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C.

SUPPLEMENTARY INFORMATION:

The Consent Order

On March 8, 1982, DOE published notice in the **Federal Register** at page 9905, announcing the execution of a proposed Consent Order between Fina and DOE. In compliance with DOE Regulations, that Notice, and a Press Release issued in March 1982, summarized the Consent Order and the facts behind it. The Notice and Press Release also gave instructions for obtaining copies of the Consent Order.

The proposed Consent Order can be summarized as follows:

1. The Consent Order marks the conclusion of the Office of Special Counsel's (OSC) audit of Fina's compliance with the Mandatory Petroleum Price and Allocation Regulations, including the Entitlements and Mandatory Oil Import Programs, for the period January 1, 1973 through January 27, 1981 (the audit period). The Consent Order resolves all administrative and civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the audit period.

2. Fina is to make available $14,000,000 to virtually all of its motor gasoline customers (or their successors in interest) who purchased product from Fina's refining and marketing subsidiary in 1974. The **Federal Register** Notice of March 8, 1982 set forth the procedures by which these motor gasoline purchasers could acquire a share of the $14,000,000. Specifically, the **Federal Register** Notice of March 8, 1982 summarized the Consent Order which provided that qualifying customers who purchased motor gasoline in 1974 and in December 1981 would be offered a share of the $14,000,000, as would 1974 purchasers who were not customers of Fina as of December 1981, but who had complied with the provisions of the Consent Order as stated in the **Federal Register** Notice. The **Federal Register** Notice of March 8, 1982 required these latter customers to submit a Statement of Intent to Participate to Fina within a thirty (30) day period after publication of the Notice in order to become eligible for a share. This period expired on April 7, 1982. All share payments have now been approved by DOE.

3. Within thirty (30) days after the effective date of the Consent Order, Fina shall pay ten thousand dollars ($10,000) to the United States Treasury as a compromise in lieu of civil penalties, in full settlement of any such penalties for which Fina may be or may have been liable.

4. The Consent Order also provides details concerning the conclusion of the audit procedures concerning enforcement of the provisions of the Consent Order. These matters include Fina's obligation under DOE recordkeeping regulations and DOE's obligation to maintain the confidentiality required by law of proprietary data received from Fina. The Consent Order also provides that Fina has waived its right to an administrative or judicial appeal of the Consent Order. The Consent Order does not constitute an admission by Fina nor a finding by DOE of a violation of any federal petroleum price and allocation statutes or regulations.

Comments Received

As noted above, DOE received numerous comments on the proposed Fina Consent Order. Comments were submitted by the Sates of Vermont, Florida, Oregon and Connecticut, a consulting group assisting unidentified potential claimants, two law firms representing former Fina jobbers, the National Council of Farmer Cooperatives, the Transportation Group, the National Consumer Law Center, the Atlantic Richfield Company (ARCO) and an independent jobber. DOE has considered all comments and determined that the Consent Order should be made final without modification. The significant points raised by the comments are discussed below.

The States of Vermont, Oregon and Connecticut, along with the National Consumer Law Center (NCLC), a non-profit legal organization representing low-income individuals, all favored the implementation of an alternative distribution plan similar to the one set forth in the Chevron Consent Order, 46 FR 52221, October 26, 1981, which, in part, provided for payments to the States based on the volume of products sales by Chevron in those states.

One of OSC's primary goals in structuring remedies is to achieve some form of restitution. In its enforcement actions, OSC attempts to identify individual purchasers who may have been overcharged, and to implement restitutionary remedies directed at such purchasers. In this case, specific motor gasoline purchasers who may have been

overcharged by Fina in 1974 have been identified. Therefore, OSC has concluded that the most appropriate remedy is to distribute shares of the $14,000,000 to these purchasers, based upon the amount of motor gasoline they purchased from Fina in 1974.

Referencing the decision of the Temporary Emergency Court of Appeal in *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F. 2d 717 (Temp. Emer. Ct. App., 1982), several comments oppose the provision of the Consent Order which provides that undistributed shares from the claims fund be placed in the United States Treasury.

In that case, the court found that where there were adjudicated overcharges to identifiable purchasers, the government was under an obligation to provide restitution through any monies obtained from the enforcement action. Although the case did not concern a Consent Order where there is no such adjudication or admission of overcharge, the commentors' concern with the restitutionary character of the settlement is an area of legitimate inquiry. In this case, the negotiated remedy is fully consistent with the preferences of the *Citronelle* court which favors the implementation of remedies designed to compensate identifiable parties directly injured to the overcharges disclose in the proceedings. To the extent that monies remain after implementation of the remedy, an appropriate disposition is the United States Treasury.

Comments have also expressed concern that qualifying purchasers who are resellers may have passed through these alleged overcharges to their customers, thereby recovering their costs, and are now receiving a windfall through the remedy. The comments conclude that the effect of the remedy is to deny restitution to the actual overcharged parties.

A review of available market data indicates that Fina motor gasoline resellers would have absorbed any overcharges that may have occurred in 1974. As a result, DOE has concluded that refunds to Fina's reseller customers is an appropriate remedy.

One Fina jobber alleged that the settlement entered into with Fina was inadequate. The Consent Order provides an option to those who believe they may have been overcharged to settle their claims with the company. Claimants who do not believe that the settlement offered adequately satisfies their claims need not accept the offer and are free to pursue their claims in a private action against the company.

DOE was urged in another comment to extend the period in which purchasers could submit Statements to Participate to Fina. DOE believes that the existence of the settlement has been adequately publicized. The publication of the Notice of the Proposed Consent Order in the Federal Register as well as the subsequent response by the public to the Notice indicates widespread knowledge of the settlement. In addition, Fina's independent attempts to notify all of its 1974 jobbers by mailing copies of the Federal Register Notice to the address of the jobber last known to Fina provided clear and sufficient notice.

Another comment requested that the Consent Order be modified so as to not require jobbers to release Fina from section 210 allocation claims should they choose to participate in the distribution plan.

The Consent Order entered into between DOE and Fina resolves all administrative and civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the audit period. DOE's extensive audit addressed all aspects of Fina's compliance with the applicable regulations, and the DOE believes that the remedies set forth in the Consent Order adequately resolves issues of Fina's compliance with the allocation and price regulations. Therefore, the funds generated by the Consent Order must be considered in settlement of all claims. This position is fully consistent with the scope of the Consent Order. Moreover, as discussed above, Claimants may reject the offer contained in the Consent Order and pursue their own private right of action.

In addition, the comment opposed the release of Fina from recordkeeping requirements under paragraph 601 of the Consent Order asserting that "(d)estruction of these compliance records will be detrimental to the public interest because it will directly frustrate the dual enforcement mechanism intended by Congress when it authorized private causes of actions under Section 210 of the Economic Stabilization Act." In paragraph 601, which relieves Fina of its duty to comply with recordkeeping requirements of 10 CFR 210.92 for the period covered by the Consent Order, OSC has exercised the authority conferred by 10 CFR 210.92(d)(2)(B) to remove a requirement, the need for which no longer exists. With the completion of OSC's audit and the settlement of all disputes and claims for the period covered by the Consent Order, the records which were maintained by the company to demonstrate to DOE its compliance with the pricing and allocation regulations are no longer needed. Moreover, as the court in *U.S. Oil Company, Inc. v. Department of Energy*, 510 F. Supp. 910, (E.D. Wisc. 1981) noted, "[t]he recordkeeping provisions established by DOE were never intended to assist private litigants. They were designed and created to assist the DOE in determining whether the * * *major oil refiners and producers were complying with the price regulations."

Finally, a number of comments supported the Consent Order in whole or in part.

Having considered all comments submitted DOE has determined that the proposed Consent Order with Fina should be made final without modification. This was accomplished by providing actual notice to Fina of this decision on May 6, 1982.

Issued in Washington, D.C., May 6, 1982.

Milton C. Lorenz,

Special Counsel.

[FR Doc. 82-13124 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board

Date and time: Thursday, June 3, 1982—9:00 am to 5:00 pm; Friday, June 4, 1982—9:00 am to 5:00 pm

Place: U.S. Department of Energy, Room A-410, Germantown, MD

Contact: Gloria Decker, Information Management Systems Branch, U.S. Department of Energy, Forrestal Building—Room 4D-024, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-252-6290

Purpose of the board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda: Briefings and discussions of:

—Utility industry study

—Acid rain and CO_2 Research

—Federal role in energy R&D

—Future study agenda

—Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The

Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avene, SW., Washington, DC, between 8:30 a.m. and 4 p.m. Monday through Friday, Except Federal holidays.

Issued at Washington, DC, on May 11, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82-13191 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA82-2-31-000]

Arkansas Louisiana Gas Co.; Proposed Change in FERC Gas Tariff

May 10, 1982.

Take notice that on April 26, 1982, Arkansas Louisiana Gas Company (Arkla) submitted for filing a schedule detailing the exchange gas transactions, included in its March 1, 1982 PGA rate increase filing, by net volume—Mcf and associated net value. Moreover, these transactions have been analyzed and noted as to the normal duration of operational balancing.

Arkla also states that on March 1, 1982, Arkla filed PGA rate increases to its Rate Schedules G-2 and X-26 to become effective April 1, 1982. On March 31, 1982, the Commission issued an order accepting Arklar's March 1, 1982 filing and suspending the same to become effective April 1, 1982, subject to refund and subject to Arkla filing within 30 days from the date of said order revised tariffs to reflect: (1) The elimination from its proposed surcharge adjustment all unpaid accruals other than those attributable to normal billing and payment lag and (2) Additional data to support the exchange gas adjustment.

However, Arkla's filing of March 1, 1982, does not contain any unpaid accruals other than those attributable to normal billing and payment lag in its surcharge adjustment. The elimination of such accruals was made in Exhibit B of said filing on Schedule No. 1, Pages 1 through 3 and are identified as "accrual adjustment" and "NGPA adjustments".

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13161 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-292-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

May 7, 1982.

Take notice that on April 19, 1982, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP82-292-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of taps on certain jurisdictional gas pipelines and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following taps on the following jurisdiction lines:

Line	Customer
CM-2	O. M. Rachal, Queen City, Texas.
632	William Ray Fulkerson, Ada, Oklahoma.
2	Norman Bryan, Sayre, Oklahoma.
9-7	Harper Oil Company, Anadarko, Oklahoma.
O	Wilburn V. Metcalf, Wilburton, Oklahoma.
R	Darrell Jans, Shreveport, Louisiana.

It is asserted that gas supply for these customers would be from Applicant's general system supply. It is further asserted that the cost of a typical tap and related facilities is estimated to be less than $1,000 which would be financed out of funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13162 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-75-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Proposed Change in Rates

May 10, 1982

Take notice that Arkansas Lousiana Gas Company, a division of Arkla, Inc. (Arkla), on April 30, 1982, tendered for filing a proposed change in its FERC Gas Rate Schedule No. X-26, under which gas is sold to only one customer, namely, Cities Service Gas Company, at a point of delivery near Jane, Missouri. Arkla states that the change will reduce the rate presently being collected subject to refund resulting in a decrease in annual revenues under this rate schedule of approximately $72,600 based on the 12 month period ending December 31, 1981, as adjusted. Arkla requests an effective date of June 1, 1982, for the proposed rate change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13170 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-76-000]

Arkansas Louisiana Gas Co., a Divison of Arkla, Inc.; Proposed Change in Rates

May 10, 1982.

Take notice that Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), on April 30, 1982, tendered for filing a proposed change in its FERC Gas Rate Schedule No. G–2, under which gas is sold to several town border customers in Oklahoma and Kansas. Arkla states that the change will reduce the rate presently being collected subject to refund resulting in a decrease in annual revenues under this rate schedule of approximately $2,831 based on the 12 month period ending December 31, 1981, as adjusted. Arkla requests an effective date of June 1, 1982, for the proposed rate change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13177 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-86-000]

El Paso Natural Gas Co.; Tariff Filing

May 7, 1982.

Take notice that on April 30, 1982, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Ninth Revised Sheet No. 67
Sixth Revised Sheet No. 67–A
Seventh Revised Sheet No. 67–B
Sixth Revised Sheet No. 67–C
Ninth Revised Sheet No. 67–D
Third Revised Sheet No. 67–D.1

El Paso states that the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will modify the Purchased Gas Cost Adjustment Provision ("PGCA") contained in Original Volume No. 1 of its FERC Gas Tariff to (i) provide for utilization of volumes estimated to be purchased and volumes estimated to be sold by El Paso during the Adjustment Period in determining it gas cost adjustment so as to facilitate more timely recovery of the cost of purchased gas and thereby reduce the amounts collected by El Paso from its customers on a deferred basis; (ii) delete the language pertaining to Rhodes Storage which is no longer applicable to the PGAC inasmuch as such facility has been abandoned; and (iii) specify El Paso's use of separate subaccounts in Account 191 for its surcharge computations, as required by Part 201 of the Uniform System of Accounts of the Commission's Regulations, Account 191(D).

El Paso requested that the tendered revised tariff sheets be accepted for filing and permitted to become effective on June 2, 1982.

El Paso further states that copies of the instant filing have been served upon all of its interstate transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before May 14, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10) Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13163 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-131-001]

El Paso Natural Gas Co.; Report of Refunds

May 7, 1982

Take notice that on April 30, 1982, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (C) of the Commission's order issued September 30, 1981 at Docket Nos. RM78–23 and RM81–37, its Report of Refunds with respect to the accrual and amortization of the Louisiana First-Use Tax ("LFUT") refunds in a separate subaccount of El Paso's Account 191.

El Paso states that, as of April 30, 1982, the total jurisdictional refund amount of $1,319,036 has been accrued in its subaccount of Account 191 in accordance with said September 30, 1981 order. Such refund amount is comprised of the jurisdictional portion of LFUT refund amounts received by El Paso from the State of Louisiana and Northern Natural Gas Company, Division of InterNorth, Inc.

In accordance with said order issued September 30, 1981, El Paso has accrued, including the carrying charges, as of December 31, 1981, a total jurisdictional LFUT refund amount of $1,315,524 to be amortized as of April, 1982. El Paso also states that amortization on the balance in the subaccount of Account 191 as of December 31, 1981 commenced in April, 1982 as reflected in El Paso's Purchased Gas Cost Adjustment filing made effective April 1, 1982 by the Commission's order issued March 31, 1982 at Docket No. TA82–2–33–000, as revised by El Paso's compliance filing to be made on Arpil 30, 1982. The jurisdictional amount of the LFUT refunds as of April 30, 1982 in the subaccount of Account 191 including carrying charges and still remaining to be amortized, is $133,425.

El Paso further states that copies of the Report of Refunds were served upon all of El Paso's interstate transmission

system customers and interested state regulatory commissions.

Any person desiring to be heard or to to make any protest with reference to said filing should, on or before May 14, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13104 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-6-035]

El Paso Natural Gas Co.; Proposed Change of Stipulation and Agreement

May 10, 1982.

Take notice that on April 27, 1982, El Paso Natural Gas Company (El Paso) tendered for filing an amendment (Amendment II) of the Stipulation and Agreement previously approved by the Commission in Docket Nos. RP72-6, *et al.*

By order issued March 26, 1981, at Docket Nos. RP72-6, *et al.*, the Commission approved the "Stipulation and Agreement Settling Proceedings and Prescribing Permanent Allocation Plan" (herein referred to as Stipulation and Agreement) which El Paso had submitted on December 29, 1980. The Stipulation and Agreement embodied a comprehensive negotiated settlement of numerous interrelated Commission proceedings and court cases, including the complaint proceeding then pending before the Commission at *Arizona Electric Power Cooperative, Inc. and the City of Willcox, Arizona v. El Paso Natural Gas Co.*, Docket No. RP76-38. The specific terms and conditions upon which Docket No. RP76-38 was settled are set forth at Article XI of the Stipulation and Agreement.

El Paso states that as presently written, subsection 11.9(b) of the Stipulation and Agreement, by implication, effective bars El Paso from even proposing arrangements for the direct sale of relinquished volumes to persons who are not among the limited group identified in that subsection. The language which poses this bar is found in the first two sentences on page 41 of the Stipulation and Agreement:

> Customers qualified to purchase relinquished volumes of Refund Gas under this Article XI include, and are limited to, (a) Direct Customers presently connected to El Paso's system; (b) future Direct Customers of El Paso, if any; and (c) Customers served indirectly by El Paso in its east-of-California market who are or may be able to purchase relinquished volumes of Refund Gas on a basis other than a resale basis. Said Customers executing said Letter Agreements are herein referred to as "Direct Purchasers of Relinquished Volumes."

Consequently, El Paso seeks approval of a modification of subsection 11.9(b) to, in effect, remove the bar and, in the process, to make clear that future proposals to deliver and sell relinquished volumes to direct purchasers who are not among the limited group are not absolutely precluded by the Stipulation and Agreement so long as the proposal sale is fully interruptible. Under the modified subsection 11.9(b), El Paso will be required to interrupt such sale on any day when (i) it is itself purchasing "best efforts" gas (other than in a "first sale" within the meaning of the Natural Gas Policy Act of 1978) on an "emergency" or other short-term basis, and (ii) it is not otherwise able to fully satisfy the requirements of its existing customers, including Southern California Gas Company, and of those Direct Purchasers of Relinquished Volumes who are specifically named in said subsection. Unless both conditions are met, no "off-system" sale of relinquished Refund Gas can take place.

El Paso emphasizes that Commission acceptance of the offered modification of subsection 11.9(b) will not involve any sort of advance of "blanket" Commission approval of proposals concerning relinquished gas. In this regard, the language in subsection 11.9(b) is specific in stating that the authorizations previously granted by the Commission pursuant to Section 11.11 of the Stipulation and Agreement shall not apply to the delivery and direct sale of relinquished volumes to purchasers other than those in the original limited group. Rather, if and when a definitive proposal is in hand for the direct sale of relinquished gas to a new purchaser, those who would be responsible for the transportation and ultimate delivery of the gas would be required to come again before the Commission as necessary to secure such approvals, if any, as are prerequisite to their ability to lawfully render such service. The Commission at that time could approve or disagree such proposal on its merits; the only change would be that, so long as the proposed sale was fully interruptible by El Paso, the requested authorizations could not be denied solely on the basis that the proposal is barred by the Stipulation and Agreement.

In addition, El Paso states that all parties to the Stipulation and Agreement either agree to or do not oppose Amendment II; moreover, El Paso is not aware of any opposition to Amendment II by any other person.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13178 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-72-000]

Hampshire Gas Co.; Proposed Change in FERC Gas Tariff

May 10, 1982.

Take notice that Hampshire Gas Company (Hampshire) on April 28, 1982, tendered for filing a proposed change in its FERC Gas Tariff, Original Volume No. 1. The proposed changes will increase Hampshire's revenues from storage service sales by $720,482 for the 12 month period ending December 31, 1981, as adjusted. Copies of the filing were served upon Hampshire's sole customer, Washington Gas Light Company (Washington) the parent company of Hampshire, as well as the State Corporation Commission of Virginia, the State of Maryland Public Service Commission and the Public Service Commission of the District of Columbia.

Hampshire states that the increased revenues to be derived will be due to an increase in rate of return from 9.75 percent to 14.31 percent. Hampshire states the increased rate of return is

necessary to attract funds of capital for its operations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13165 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT82-27-001]

Kansas-Nebraska Natural Gas Company, Inc.; Proposed Change in FERC Gas Tariff

May 10, 1982.

Take notice that on April 22, 1982, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) tendered for filing Substitute Second Revised Sheet No. 32 to take the place of the previously filed Second Revised Sheet No. 32.

By a letter of transmittal dated April 1, 1982, Kansas-Nebraska transmitted for filing in this proceeding Second Revised Sheet No. 32 to Kansas-Nebraska's FERC Gas Tariff, Third Revised Volume No. 1, by which it was proposed to revise the Index of Purchasers to delete all reference there from to the City of Albert, Kansas and to change the designation of "Central Kansas Power Company, Inc." to "Midwest Energy, Inc." This filing was a result of the change of name by Central Kansas Power Company, Inc., and of the Commission's Order dated March 2, 1982, in docket No. CP 82-97-000 which authorized the abandonment by Kansas-Nebraska of the sale for resale of natural gas to the City of Albert.

Kansas-Nebraska states that this substitute sheet differs from the earlier filed sheet due to an addition of a notation that Midwest Energy, Inc., was formerly Central Kansas Power Company, Inc. This revision eliminates any potential confusion as to the reason for the change in designation.

Copies of this filing were mailed to the purchasers and public bodies named in the list of parties served.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13179 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1967-000]

Margery Somers Foster; Order Finding Interlock Jurisdictional and Granting Application To Hold Interlock

Issued: May 7, 1982.

On July 13, 1981, Margery Somers Foster filed a petition seeking an order that an interlock between Public Service Electric and Gas Company (PSEGCO) and Prudential Insurance Company of American (Prudential) is not within the scope of section 305(b) of the Federal Power Act because Prudential is not a firm authorized by law to underwrite or participate in the marketing of securities of a public utility within the meaning of that section. In the alternative, Foster has filed an application under Part 45 of our regulations for authorization to hold the interlock. PSEGCO is, by admission, a public utility for purposes of section 305(b). Prudential, a mutual insurance company, has a wholly-owned subsidiary, PRUCO, Inc., which, in turn, has a wholly-owned subsidiary, the Bache Group, Inc.[1] Bache has a wholly-owned subsidiary, Bache Halsey Stuart Shields Incorporated, which underwrites and participates in the marketing of public utility securities.

Notice of Foster's petition was issued on July 21, 1981, with responses due on or before August 12, 1981. No responses have been filed.

[1] PRUCO acquired Bache by merging Bache with another wholly-owned subsidiary, Pruholdings, Inc. Two of Prudential's officers now sit on Bache's board of directors.

Discussion

Section 305(b) prohibits persons from holding the position of officer or director of a public utility and the position of officer or director of another public utility, of a bank, trust company, banking association, or firm that is authorized to underwrite or participate in the marketing of public utility securities; or of a supplier of electrical equipment to that public utility, unless the holding of such positions has been affirmatively authorized by the Commission upon a showing by the applicant that neither public nor private interests will be adversely affected.[2]

Although Prudential is not itself authorized to underwrite or to participate in the marketing of public utility securities, it has a substantial, controlling interest in subsidiaries which are authorized to do so.[3] Indeed, its subsidiaries all are wholly-owned by their respective parents. Imputing the activities of a subsidiary to a parent in such instances is necessary to ensure that persons otherwise required to seek Commission authorization to hold proscribed interlocks do not evade this obligation through the fiction of separate corporate identities. The requirements of section 305(b) could be circumvented easily if the conduct of a subsidiary in a situation such as this could not be attributed to a parent.

Foster assets that Prudential does not intend to exercise any control over its subsidiaries and that these subsidiaries will be allowed to operate independently. The potential exercise of corporate authority, however, may be unavoidable. Prudential controls 100% of the voting stock in Bache.[4] Prudential has both the right and the ability with this kind of voting power to influence the actions of its subsidiaries and such influence may be exerted either explicitly through direct control or implicitly through the subtle pressure, both intentional and unintentional, that it can bring to bear on Bache's management. Furthermore intentions

[2] 16 U.S.C. 825d(b) (1976). *See George F. Brewer,* Docket No. ID-1618 (April 6, 1981). *Accord, Leian F. Sillin, Jr.,* 33 F.P.C. 1006, 1007 (1965); *John Edward Aldred,* 2 F.P.C. 247, 2149, 260-65 (1940).

[3] In a recent proceeding, we found that a company which has a wholly-owned subsidiary that is an underwriter or dealer in securities would itself be considered an underwriter or dealer in securities. *See Edwin I. Hatch,* Docket No. ID-1424 (February 18, 1977). *Accord, Edwin I. Hatch,* Opinion No. 67, Docket No., ID-1424 (November 6, 1979), *reh. denied, Edwin I. Hatch,* Opinion No. 67-A, Docket No. ID-1424 (May 7, 1980), *aff'd in part and rev'd and remanded in part,* 654, F.2d 825 (D.C. Cir. 1981), *order on remand, Edwin I. Hatch,* Docket No. ID-1424 (February 18, 1982).

[4] In addition, Prudential currently maintains two of its officers on Bache's board of directors.

may always change and assurances, as a result, only partially mitigate the dangers that may be presented by such interlocks.[5]

Accordingly, we find that the interlock at issue here is within the purview of section 305(b) and does require Commission authorization.

In the alternative Foster has applied for authorization to hold the interlock in question. Traditionally, we have looked with disfavor upon interlocks between public utilities and firms authorized to underwrite or participate in the marketing of public utility securities.[6] Notwithstanding this general view, the Commission has adopted a policy of examining each application on its individual merits.[7]

From the pleadings before the Commission, it appears that Foster is a distinguished, independent professional whose expertise and background in economics would make her participation on the boards of directors of PSEGCO and Prudential valuable to both companies.[8] In addition, she will serve as an outside director on the boards of both companies and, as such, she neither has been nor is expected to be intimately involved in the day-to-day affairs of either company or the subsidiaries.[9] She also will hold the only interlock between the two companies. Individually, these factors would not be dispositive. However, when taken together, they lead us to conclude that there will be little opportunity for failures in arm's-length bargaining between the two companies and their subsidiaries and that the other potential dangers presented by such interlocks are not likely to occur. Moreover, it appears unlikely that she, as a single outside director, might substantially influence company policies in such a manner as to jeopardize the interests of either company, their investors, their consumers, or the general public. Altogether, the potential dangers associated with interlocking directorates appear to be sufficiently unlikely so as to justify our granting her application and authorizing the holding of the interlock at issue. Accordingly, we find that neither public nor private interests will be adversely affected by authorizing Foster's holding of the interlock described herein.

However, in order to ensure that market manipulation and a lack of arm's-length dealings do not occur, we shall allow Foster to hold the interlock in question only so long as Prudential and its subsidiaries do not underwrite or otherwise participate in the distribution and marketing of the securities of PSEGCO or its subsidiaries.[10]

The Commission orders:

(A) Margery Somers Foster's petition for an order finding that an interlock between Public Service Electric and Gas Company and Prudential Insurance Company of America is not within the scope of section 305(b) is hereby denied.

(B) Until further order of the Commission, Margery Somers Foster's application to hold the interlock described herein is hereby granted subject to the condition, as noted in the body of this order, that the authorization granted herein shall terminate if Prudential Insurance Company of America and its subsidiaries underwrite or participate in the marketing of securities of Public Service Electric and Gas Company or its subsidiaries.

(C) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlock authorized by this order.

(D) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13106 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

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[5] *Edward O. Boshell,* Docket No. ID-1107 (August 8, 1955), *reh. denied;* 14 F.P.C. 1088 (1955); *John P. Wagner,* Docket No. ID-1282 (August 8, 1955), *reh. denied John P. Wagner,* Docket No. ID-1282 (September 26, 1955). *Accord, Edwin I. Hatch,* Docket No. ID-1424 (February 18, 1977).

[6] *See, e.g., George F. Brewer,* Docket No. ID-1018 (April 6, 1961); *Edwin I. Hatch,* Docket No. ID-1424 (February 18, 1977); *Harold P. Woodcock,* 16 F.P.C. 1320 (1956); *Edward O. Boshell,* Docket No. ID-1107 (August 8, 1955); *reh. denied,* 14 F.P.C. 1088 (1955); *John P. Wagner,* Docket No. ID-1282 (August 8, 1955), *reh. denied, John P. Wagner,* Docket No. ID-1282 (September 26, 1955).

[7] *George F. Brewer,* Docket No. ID-1018 (April 6, 1961). *See Edwin I. Hatch,* Docket No. ID-1424 (February 18, 1982); *David S. Soliday,* 2 F.P.C. 743 (1940).—

[8] Foster is an Emeritus Professor of Economics at Rutgers University and a consultant on economics and on higher education. She has, in the past, served as a professor of economics and a dean at various universities.

[9] She holds no positions with either company other than that of director.

[10] We do not, however, intend to bar Foster from holding this interlock if Prudential and its subsidiaries simply buy or sell securities in the so-called secondary securities markets solely on behalf of investors who desire to buy or sell PSEGCO's securities or the securities of PSEGCO's subsidiaries.

[Docket No. RP82-14-001]

Mountain Fuel Resources, Inc.; Proposed Change in FERC Gas Tariff

May 10, 1982.

Take notice that on May 3, 1982, Mountain Fuel Resources, Inc. (Resources) tendered for filing a proposed change to the Purchased Gas Cost Adjustment Procedure of its FERC Gas Tariff applicable to service rendered under tate Schedule No. 1. Resources filed third Revised Sheet Nos. 24 and 25 as part of its FERC Gas Tariff, Original Volume No. 1.

Resources asserts that the proposed tariff revision will enable it to more accurately reflect the cost of gas in its rates and to more suitably track and recover changes in the cost of purchased gas in a manner consistent with other interstate pipeline companies' PGCA procedures approved by this Commission.

Resources states that it has served the instant filing on its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13107 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-55-000 (PGA 82-2)]

Mountain Fuel Resources, Inc.; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provision

May 10, 1982.

Take notice that on May 3, 1982, Mountain Fuel Resources, Inc. (Resources) tendered for filing a proposed change in rates applicable to service rendered under Rate Schedule No. 1 affected by and subject to Resources' *Purchased Gas Cost Adjustment Provision* contained in its FERC Gas Tariff, Original Volume No. 1. Resources filed Substitute Sixteenth Revised Sheet No. 7, "alternate" Substitute Sixteenth Revised Sheet No. 7 and Fifth Revised Sheet No. 7-A of its FERC Gas Tariff, Original Volume No. 1.

The current adjustment to Resources' rates results in an increase of $0.4831 per Mcf over the rate proposed in Resources' rate proceeding in Docket No. RP82-14-000 to be effective June 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13168 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-287-000]

Mountain Fuel Supply Co.; Application

May 7, 1982.

Take notice that on April 15, 1982,[1] Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP82-287-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain acreage from a transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that by order issued February 11, 1976, in Docket No. CP74-64 Applicant was authorized to transport, sell and exchange natural gas pursuant to a gas purchase and exchange agreement with Colorado Interstate Gas Company (CIG) dated July 5, 1973. Under the terms of such agreement and a related transportation agreement between CIG and McCulloch Interstate Gas Corporation (McCulloch), it is stated, Applicant was to deliver gas to McCulloch for CIG's account, whereupon, McCulloch would transport such gas and deliver it to CIG at a point of interconnection with CIG's system. CIG retained the portion of such gas to be purchased from Applicant and delivered the balance of such gas, in turn, to Applicant at a point of interconnection with Applicant's system.

Applicant asserts that it did not own a 100 percent interest in all of the production from the acreage identified on Exhibit A to the purchase and exchange agreement with CIG, but rather, on certain portions of such acreage held a very minor interest in the production to purchasers other than Applicant or CIG. Applicant further asserts that in order to gather its minor interest in such gas it would have had to construct certain separate gathering lines and production and measuring facilities and in its view, the investment cost required for separate facilities was not warranted by the volume of production attributable to such minor interests.

It is submitted that Paragraph 2 of the purchase and exchange agreement between Applicant and CIG which governs delivery of gas to McCulloch for CIG's account provides that "the volume to be so delivered shall be that volume which Applicant has available from time to time from production from said Exhibit 'A' acreage and which Applicant is able to deliver into McCulloch's pipeline * * *" Taking into consideration its practical inabililty, on economic grounds, to gather its *de minimis* interest in the gas from the acreage in question, Applicant states that it interpreted the above language to place that interest outside the terms of the agreement and, hence, outside the scope of the certificate, and allowed its interest in the production from the acreage to be sold by the unit or well operator under "failure to take in kind" provisions of the unit or well operating agreements. Applicant further states that, in addition, on October 4, 1978, it entered into an amendatory agreement with CIG which deleted the following specific acreage from the area described on amended Exhibit A to the purchase and exchange agreement: All of Applicant's interest in the Powell II Unit in and about Township 40 North, Range 74 West, Converse County, Wyoming, and all of Section 1, Township 39 North, Range 74 West, Converse County, Wyoming. Applicant asserts that in keeping with the above interpretation of the agreement and the certificate Applicant did not file an application for permission and approval to abandon this acreage.

It is submitted that on April 27, 1979, McCulloch filed a complaint in Docket No. CP74-62 (Rate Schedule X-3) arguing, *inter alia,* that the acreage described above was dedicated to a sale and service subject to the Commission's jurisdiction and that deletion of the acreage from the purchase and exchange agreement constituted an unauthorized abandonment of such sale and service in violation of Section 7(b) of the Natural Gas Act.

Applicant asserts that in order to settle the dispute it agreed to file an application for permission and approval to abandon the acreage in question by deleting such acreage from the purchase and exchange agreement with CIG. Applicant therefore specifically proposes to abandon acreage in Townships 39 and 40 North, Range 74 West, 6th p.m., Converse County, Wyoming.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commision, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13169 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

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[1] The application was initially tendered for filing on April 15, 1982; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 16, 1982; thus, filing was not completed until the latter date.

[Docket No. CP82-299-000]

Northwest Pipeline Corp.; Application

May 7, 1982.

Take notice that on April 26, 1982, Northwest Pipeline Corporation (Applicant), 315 East 200 South, Salt Lake City, Utah 84111, filed in docket No. CP82-299-000 an application pursuant to Section 7(c) of the natural Gas Act for a certificate of public convenience and necessity authorizing the reallocation of natural gas service to Cascade Natural Gas Corporation (Cascade) and the construction and operation of an additional delivery point to Cascade, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a metering and regulating station with appurtenances and to replace an existing 2-inch tap with a 4-inch tap on Applicant's 10 ¾-inch O.D. Wenatchee lateral all in Yakima County, Washington, in order to enable Cascade to provide firm natural gas service to residential customers and several essential agricultural users located near Moxee City, Washington. Applicant asserts it would designate this the Moxee City meter station and would provide gas to the Moxee City meter station by reallocating a portion of Cascade's firm service under Applicant's Rate Schedule ODL-1. It is explained that if no additional ODL-1 volumes are available Applicant would provide at its discretion the additional requested volumes pursuant to its Rate Schedule IOS-1.

Applicant submits that it would reallocate 1,000 therms of gas from the Yakima, Union Gap delivery point to the Moxee City meter station leaving Yakima, Union Gap with a maximum daily delivery obligation of 174,000 therms.

Applicant estimates the cost of the proposed facilities to be $146,350 which would be reimbursed by Cascade.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13170 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5677-000]

Swanson Mining Corp. and Walter M. Gleason; Approval by Operation of Law

May 11, 1982.

Take notice that the Deputy Director, Office of Electric Power Regulation, the Commission's Delegee on this matter, pursuant to § 375.308 of the Commission's regulations, took no action on the application for an exemption from licensing of a small hydroelectric project of 5 Megawatts or less for the Swanson Project No 5677, filed on November 24, 1981, by the Swanson Mining Corporation and Walter M. Gleason. The project is described in the public notice below.

Accordingly, the exemption is deemed granted by operation of law on April 20, 1982, under § 4.105(b) (4) of the Commission's regulations, (18 CFR 4.105(b) (4)), subject to the standard terms and conditions set forth in § 4.106 of the Commission's regulations (18 CFR 4.106).

Standard Article 2 included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the applicant in conjunction with this exemption.

Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms and conditions are outside the scope of Article 2.

Robert E. Cackowski,

Deputy Director, Office of Electric Power Regulation.

[Project No. 5677-000]

Swanson Mining Corporation and Walter M. Gleason; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

January 4, 1982.

Take notice that on November 24, 1981, Swanson Mining Corporation and Walter M. Gleason (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project, Project No. 5677 would be located on Madden Creek, near Willow Creek, in Humboldt County, California. Correspondence with the Applicant should be directed to: Walter M. Gleason, Harst Building, Suite 1200, Third and Market Streets, San Francisco, Calfornia 94103.

Project Description—The proposed project would consist of: (1) An existing 7-foot high, 32-foot long concrete and steel diversion dam; (2) a short 42-inch diameter pipe; (3) an existing 1,065-foot long earthen canal; (4) an 800-foot long steel syphon; (50) an existing 7,200-foot long canal; (6) a 5,400-foot long penstock; (7) a powerhouse containing one generating unit rated at 2,000 kW; and (8) a 1,000-foot long transmission line. The average annual energy generation is 7.9 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Purpose of Project—The power output from the project would be sold to the Pacific Gas and Electric Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before February 19, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 C.F.R. § 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest or petitions to intervene must be received on or before February 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all captial letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commissions, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13180 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-276-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

May 7, 1982.

Take notice that on April 19, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-276-001 a petition to amend the order issued September 8, 1975,[1] in Docket No. CP75-276 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for the account of Public Service Electric & Gas Company (Public Service) from an additional point of receipt, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued September 8, 1975, as amended, it was authorized to transport up to 15,000 Mcf of natural gas per day for Public Service which gas is received from Texas Gas Transmission Corporation (Texas Gas) for transportation and delivery to Public Service at the tailgate of the Shell Oil Company Gasoline Plant near Chalkley, Cameron Parish, Louisiana.

Pursuant to an agreement dated March 24, 1982, Petitioner proposes to receive gas from Texas Gas for the account of Public Service from an additional point of receipt at the northern terminus of the western section of the Blue Water System near Egan, Acadia Parish, Louisiana. It is asserted that the addition of the exchange point would not change the maximum daily quantity of 15,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13171 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-295-000]

Texas Eastern Transmission Corp; Application

May 7, 1982.

Take notice that on April 22, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP82-295-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated December 7, 1981, Applicant proposes to transport up to 20,000 dekatherms (dt) equivalent of natural gas per day for Texas Gas. It is asserted that Texas Gas has purchased quantities of natural gas from Union Texas Petroleum Corporation's production in the East Sour Lake Field area of Hardin and Jefferson Counties,

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Texas, and the Red Bluff Lake Field in Loving County, Texas, which gas would be delivered to Houston Pipe Line Company (HPL). It is submitted that HPL would deliver the gas to Applicant at an existing interconnection in Chambers County, Texas, or other mutually agreeable existing points of interconnenction.

Applicant states it would deliver the subject gas, less 2.0 percent for shrinkage, to Texas Gas at an existing point of interconnection in Jefferson Davis Parish, Louisiana. Applicant further proposes to redeliver the gas to Texas Gas at two alternative secondary points located at the interconnection between the pipeline systems of Texas Gas and Applicant located near Eunice, Evangeline Parish, Louisiana or the interconnection between the pipeline systems of Texas Gas and Applicant located near Lisbon, Clairborne Parish, Louisiana.

Texas Gas, it is stated, would pay Applicant for the proposed Service pursuant to Applicant's Rate Schedule TS–1 which rate is presently 22.61 cents per dt equivalent.

It is asserted that the proposed service would provide Texas Gas with a cost-efficient method of securing the quantities of natural gas which it has purchased remote from its system.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13172 Filed 5–13–82; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP82–74–000]

Texas Gas Transmission Corp.; Proposed Changes in Ferc Gas Tariff

May 10, 1982.

Take notice that on April 30, 1982, Texas Gas Transmission Corporation (Texas Gas) tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase revenues from jurisdictional sales and services by approximately $102,967,000 based on the 12 month period ended January 31, 1982, as adjusted, compared with the rates effective on February 1, 1982.

Texas Gas states that the increased costs are attributable to (1) increases in operating expenses; (2) increase in rate base and related costs; and (3) increase in rate of return and related taxes.

Texas Gas requests an effective date of June 1, 1982, for the proposed Revised Sheets. Texas Gas further states that it served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 17, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13173 Filed 5–13–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–300–000]

United Gas Pipe Line Co. and Texas Eastern Transmission Corp.; Application

May 7, 1982.

Take notice that on April 26, 1982, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP82–300–000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas between the parties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an exchange agreement dated March 21, 1982, United and Texas Eastern propose to transport and exchange on a firm basis up to 5,000 Mcf of natural gas per day. It is stated that Texas Eastern would deliver or cause the delivery of natural gas to United at delivery points in Panola and Bee Counties, Texas, and DeSoto and Lincoln Parishes, Louisiana. United, it is asserted, would deliver or cause the delivery of gas to Texas Eastern in Cass, Jackson, Bee, and Panola Counties, Texas. It is submitted that the subject exchange service commenced April 1, 1980, pursuant to Part 284 of the Commission's Regulations.

Applicants assert that the proposed exchange of natural gas would be substantially equal and mutually beneficial; therefore, no charge to either party would be necessary.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13174 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-294-000]

United Gas Pipe Line Co.; Application

May 7, 1982.

Take notice that on April 20, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP82-294-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap in Perry County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a 2-inch tap on its existing Jackson to Mobile 16-inch line in Perry County to serve the Willmut Gas and Oil Company (Willmut). It is asserted that the proposed tap would provide gas service to a proposed new subdivision in Perry County.

Applicant asserts that due to a substantial loss of industrial load experienced by Willmut in recent years the proposed tap would not necessitate an increase in Willmut's present maximum daily quantity allocation. It is asserted that the cost of the proposed tap is estimated to be $1,440 which would be reimbursed by Willmut.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to inervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13175 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of April 16 Through April 23, 1982

During the week of April 16, through April 23, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 7, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 16, through Apr. 23, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 19, 1982	Exxon Company U.S.A., Washington, D.C.	HFA-0062	Appeal of Information Request Denial. If granted: The March 16, 1982 Information Request Denial issued by the Office of Special Counsel would be rescinded, and Exxon Company U.S.A. would receive access to documents relating to the firm's audit.
Apr. 19, 1982	Vickers Energy Corp./Riese Ford Sales Co., et al., Washington, D.C.	HFX-0023	Supplemental Order. If granted: The applications for refund filed by Riese Ford Sales Co., et al. requesting a portion of the escrow fund provided by Vickers Energy Corporation would be granted.
Apr. 19, 1982	Vickers Energy Corp./State of Kansas and Wisconsin, Washington, D.C.	HFX-0022	Supplemental Order. If granted: The applications for refund filed by the State of Kansas and the State of Wisconsin requesting a portion of the escrow fund provided by Vickers Energy Corporation would be granted.
Apr. 19, 1982	Commonwealth Oil & Refining Company, Washington, D.C.	HEF-0025	Exception to the Entitlements Program. If granted: Commonwealth Oil & Refining Company, Inc., would receive an exception from the provisions of 10 CFR 211.67, the Puerto Rico Naptha Entitlements Program which would modify its entitlements purchase obligations.

[FR Doc. 82-13135 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of April 23 Through April 30, 1982

During the week of April 23 through April 30, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Officer of Hearings and Appeals.

May 7, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 23 Through Apr. 30, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 26, 1982	Monsanto Company, Houston, Texas	HED-0048	Motion for Discovery. If granted: Discovery would be granted to Monsanto Company in connection with the Statement of Objections submitted in response to the March 25, 1982 Proposed Decision and Order issued to the firm (Case No. BEE-1618).
Apr. 26, 1982	Atlantic Richfield Company, Washington, D.C	HRZ-0056	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents filed March 8, 1982.
Apr. 27, 1982	Gulf Oil Corporation, Washington, D.C.	HRZ-0057	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents, filed March 9, 1982.
Apr. 27, 1982	Kern Oil & Refining Company, Los Angeles, California	HEE-0026 and HEL-0008	Exception from the Entitlements Program. If granted: Kern Oil & Refining Company would receive an exception to the provisions of 10 CFR 211.67, regarding its entitlement purchase obligations. The firm would receive a temporary exception pending a final determination on its application for exception.
Apr. 27, 1982	Louisiana Land and Exploration Company, Washington, D.C.	HRZ-0021	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents, filed March 8, 1982.
Apr. 27, 1982	Marathon Oil Company, Washington, D.C	HRZ-0059	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents, filed March 8, 1982.
Apr. 27, 1982	Standard Oil Company of Ohio, Cleveland, Ohio	HRZ-0058	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents, filed March 9, 1982.
Apr. 27, 1982	State of New York, Albany, New York	HRX-0024	Supplemental Order. If granted: The State of New York would be allowed to participate fully in the Remedial Order proceedings against Shell Oil Company (Case No. HRO-0021).
Apr. 27, 1982	Texaco Inc., Washington, D.C	HRZ-0060	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to release to the petitioner documents identified in its second index of privileged documents, filed March 9, 1982.
Apr. 27, 1982	The Denver Post, Denver, Colorado	HFA-0053	Appeal of an Information Request Denial. If granted: The April 8, 1982, Information Request Denial issued by the Freedom of Information Center would be rescinded and the Denver Post would receive access to all reports of audits performed within the past three years by the Defense Contract Audit Agency on all contracts with Fenix and Scisson Inc. of Tulsa, Oklahoma.
Apr. 28, 1982	Hughes, Hubbard & Reed, New York, New York	HFA-0054	Appeal of an Information Request Denial. If granted: The March 12, 1982, Information Request Denial issued by Deputy General Counsel for Enforcement and Litigation would be rescinded and Hughes, Hubbard & Reed would receive access to certain DOE information.
Apr. 29, 1982	Ashland Oil Inc./Tosco Corp., Washington, D.C	HEJ-0019	Protective Order. If granted: Tosco Corp. would enter into a Protective Order with Ashland Oil Inc. regarding the release of proprietary information to Tosco in connection with Ashland Oil Inc.'s application for Exception (Case No. BEE-1676).
Apr. 29, 1982	State of Delaware, Dover, Delaware	HEE-0027	Exception to the Institutional Conservation Program. If granted: The State of Delaware would receive an exception from the provisions of 10 CFR Part 455, regarding administrative grant expenses for the fourth cycle of grants (Cycle IV).
Apr. 30, 1982	Vinson & Elkins, Houston, Texas	HEX-0025	Supplemental Order. If granted: The Office of Hearings and Appeals would confirm the order issued to Vinson and Elkins on April 6, 1982 (Case No. HFA-0029).

[FR Doc. 82-13126 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Proposed Subsequent Arrangements; Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the following sales:

Contract Number S–AU–114, to the South Australia Health Commission, Adelaide, South Australia, 25 grams of natural uranium, for use as standard reference material.

Contract Number S–JA–302, to the Japan Atomic Energy Research Institute, 4 grams of uranium enriched to 93.336% in U–235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended,

it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 10, 1982.

Harold D. Bengelsdorf,

Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-13192 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement, Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S-CA-325, to Atomic Energy of Canada, Ltd., 49 milligrams of thorium-230, for use in mass spectrometric analysis of fuels from CANDU and research reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: May 10, 1982.

Harold D. Benegelsdorf,

Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-13193 Filed 5-13-82; 8:45 am]

BILLING CODE 6717-01-M

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S-JA-306, to the Power Reactor and Nuclear Fuel Development Corporation, Japan, 1 gram of plutonium-242, and 10 grams of uranium-233, to be used for density analysis of plutonium and uranium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 10, 1982.

Harold D. Bengelsdorf,

Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-13194 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided of a meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA). The meeting will be held on May 21, 1982, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:30 a.m.

This meeting is being held in order to permit representatives of some of the members of Subcomittee A to participate in a meeting of a Joint Government/Industry Design Group that has been established by the IEA for the preparation of the Fourth IEA Allocation Systems Test.

The agenda for the meeting is:

1. Testing of pricing principles.
2. Work program.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., May 11, 1982.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 82-13304 Filed 5-13-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51413; PN-FRL-2124-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of eighteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 82-322, July 29, 1982.

PMN 82-323, 82-324, 82-325 and 82-326, August 1, 1982.

PMN 82-327, 82-328 and 82-329, August 2, 1982.

PMN 82-330, 83-331, 82-332 and 82-333, August 3, 1982.

PMN 82-334, 82-335, 82-336 and 82-337, 82-338 and 82-339, August 4, 1982.

Written comments by:

PMN 82-322, June 29, 1982.

PMN 82-323, 82-324, 82-325 and 82-326, July 2, 1982.

PMN 82-327, 82-328 and 82-329, July 3, 1982.

PMN 82-330, 82-331, 82-332 and 82-333, July 4, 1982.

PMN 82-334, 82-335, 82-336, 82-337, 82-338 and 82-339, July 5, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51413]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82–322

Manufacturer. S. C. Johnson and Son, Inc.

Chemical. (G) Styrene acrylate copolymer.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82–323

Manufacturer. Witco Chemical Corporation.

Chemical. (G) t-alkyl peroxyester.

Use/Production. (S) Initiator of vinyl monomers. Prod. range: 5,000–75,000 lbs/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: accidental.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

PMN 82–324

Manufacturer. Confidential.

Chemical. (G) Phenoxy ester resin.

Use/Production. (S) Industrial resin for low VOC and conventional coating. Prod. range: 2,500–50,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, inhalation and eye, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10–100 kg/yr released to air up to 17 hrs/da, up to 250 da/yr, less than 10–100 kg/yr to water and 10–10,000 kg/yr to land. Disposal by incineration and approved landfill.

PMN 82–325

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: 12 workers, within 20 hrs.

Environmental Release/Disposal. Disposal by reprocessing or incineration.

PMN 82–326

Manufacturer. Confidential.

Chemical. (G) Substituted pyridine.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Moderately toxic; Acute dermal: 280 mg/kg; Eye: Very slight irritation.

Exposure. Manufacture and use: dermal and inhalation, 8–12 workers, 1–2 hrs/da, 100–150 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–327

Importers. Confidential.

Chemical. (G) Hydroxy, amine-substituted anthraquinone.

Use/Import. (S) Industrial dye for textile fibers and fabrics. Import range: 200–5,000 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Skin: Slight irritant; Eye: Non-irritant.

Exposure. Processing, use and disposal: dermal, a total of 60 workers, up to 5 hrs/da, up to 120 da/yr.

Environmental Release/Disposal. 100–1,000 kg/yr released to water 2 hrs/da, 120 da/yr. Disposal by POTW and incineration.

PMN 82–328

Manufacturer. American Cyanimid Company.

Chemical. (G) Modified amine.

Use/Production. (G) Resin curing agent. Prod. range: Confidential.

Toxicity Data. Acute oral: 3.7 g/kg; Acute dermal: >2 g/kg; Skin: Moderate irritant; Eye: Moderate irritant.

Exposure. Manufacture: dermal and inhalation, a total of 38 workers, up to 16 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Minimal release to water and land. Disposal by POTW.

PMN 82–329

Manufacturer. Confidential.

Chemical. (G) Poly [(aminoalkylamino) alkylene oxide].

Use/Production. (G) Component of water processing equipment. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: 1 workers, 1 hr/mo.

Environmental Release/Disposal. No release. Disposal by permitted disposal facilities.

PMN 82–330

Manufacturer. National Starch and Chemical.

Chemical. (G) Poly (vinyl acrylate).

Use/Production. (S) Pressure sensitive adhesive. Prod. range: 500–20,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 50 workers, up to 8 hrs/wk.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–331

Manufacturer. Confidential.

Chemical. (G) Nitrophenyl amide.

Use/Production. (S) Site-limited intermediate. Prod. range: 15,000–100,000 kg/yr.

Toxicity Data. Acute oral: 6.4 g/kg; Acute dermal: >2.0 g/kg; Skin: Minimal irritant; Eye: Mild irritant.

Exposure. Minimal: dermal, a total of 24 workers, up to 390 hrs/hr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and National Pollution Discharge Elimination System (NPDES).

PMN 82–332

Manufacturer. Confidential.

Chemical. (G) Aminophenyl amide.

Use/Production. (S) Site-limited intermediate. Prod. range: 10,000–80,000 kg/yr.

Toxicity Data. Acute oral: 0.92 g/kg; Acute dermal: >2.0 g/kg; Skin: Non-irritant; Eye: Moderate irritant.

Exposure. Minimal: dermal, a total of 21 workers, up to 221 hrs/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and NPDES.

PMN 82–333

Manufacturer. Reliance Universal Inc.

Chemical. (G) Polyacrylate.

Use/Production. (S) Polymer for industrial business machines. Prod. range: 300,000–2,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 9 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill or Resource Conservation and Recovery Act (RCRA).

PMN 82–334

Manufacturer. Confidential.

Chemical. (G) 5-chloro-4-nitro-2-substituted aryloxydimethylaniline.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 4 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air 2 hrs/da, 15 da/yr. Disposal by incineration and approved landfill.

PMN 82–335

Manufacturer. Confidential.

Chemical. (G) 5-chloro-2-substituted aryloxyaniline.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 4 workers, up to 1 hr/da, up to 93 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air 1 hr/da, 93 da/yr. Disposal by incineration and approved landfill.

PMN 82-336

Manufacturer. Confidential.

Chemical. (G) 2-chloro-4(N,N-dimethylamino)-5-substituted aryloxydiazonium tetrafluoroborate.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, use and disposal: dermal and inhalation, a total of 8 workers, up to 1 hr/da, up to 40 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air 1 hr/da, 24 da/yr. Disposal by incineration and approved landfill.

PMN 82-337

Manufacturer. Confidential.

Chemical. (G) 5-chloro-2-substituted aryloxydimethylaniline.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 4 workers, up to 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air 8 hrs/da, 10 da/yr. Disposal by incineration and approved landfill.

PMN 82-338

Manufacturer. Confidential.

Chemical. (G) Disubstituted triazolidine.

Use/Production. (S) Company-limited chemical intermediate. Prod. range: 75-150 kg/yr.

Toxicity Data. Acute oral: 800-1,600 mg/kg; Acute dermal: 1,000 mg/kg; Skin: Slight; Acute intraperitoneal: 50-100 mg/kg.

Exposure. Manufacture and use: dermal and inhalation, a total of 40 workers, up to 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 82-339

Manufacturer. Confidential.

Chemical. (G) Disubstituted triazolidine salt.

Use/Production. (G) A constituent of an article for commercial and consumer use. Prod. range: 200-350 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 55 workers, up to 1 hr/da, up to 20 da/yr.

Environmental Release/Disposal. No release to water and land with minimal to air. Disposal by incineration.

Dated: May 10, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-13007 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2126-1]

Availability of Environmental Impact Statements Filed May 3 Through May 7, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson, (202) 245-3006.

Corps of Engineers:
- EIS# 820258, Draft, COE, OH, Maumee Bay State Park Shoreline Protection, Lucas County, Due: June 28, 1982
- EIS# 820259, Final, COE, AL, Lower Mobile Bay Natural Gas Production Permit, Mobile and Baldwin Co., Due: June 14, 1982
- EIS# 820257, Final, COE, SEV, IA, MN, Upper Mississippi River Resoure Management Plan, Due: June 14, 1982
- EIS# 820256, Final, COE, IL, Chicago Area Disposal Facility/Maintenance Dredging, Cook County, Due: June 14, 1982
- EIS# 820278, Final, COE, LA, Mississippi River Flood Control, Tensas Basin, Bushley Bayou, Due: June 14, 1982
- EIS# 820263, Final, COE, SEV, MO, KS, Brush Creek and Tributaries Flood Control Plan, Due: June 14, 1982
- EIS# 820267, DSuppl, COE, TN, West Tennessee Tributaries Flood Control, Obion-Forked Deer R. Basin, Due: June 28, 1982
- EIS# 820266, FSuppl, COE, CO, Glenwood Canyon I-70 Project, Permit, Garfield County, Due: June 14, 1982

Department of Commerce:
- EIS# 820276, Final, DOC, LA, Louisiana International World Exposition 1984, Jefferson Parish, Due: June 14, 1982
- EIS# 820274, Final, NOA, SEV, REG, ATL, Atlantic Sea Scallop Fishery, Fishery Management Plan, Due: June 14, 1982

Department of Interior:
- EIS# 820269, Draft, BLM, OR, Eugene-Medford 500 KV Transmission Line, Rights-of-Way, Due: July 7, 1982
- EIS# 820279, Final, NPS, CA, Santa Monica Mountains National Recreation Area, Due: June 14, 1982
- EIS# 820273, Final, SFW, MN, Minnesota Valley National Wildlife Refuge Land Use Plan, Due: June 14, 1982

Department of Transportation:
- EIS# 820272, Final, FAA, CT, Brainard Airport Directional Aid Approach Facility, Hartford County, Due: June 14, 1982
- EIS# 820271, Final, FHW, CA, CA-101 Improvement, Redwood Valley Area, Mendocino County, Due: June 14, 1982
- EIS# 820277, Final, FHW, CA, CA-36 Reconstruction and Bridge Replacement, Humboldt County, Due: June 14, 1982
- EIS# 820268, DSuppl, FHW, MI, I-69 Construction, Charlotte to I-69, Eaton County, Due: June 28, 1982

Environmental Protection Agency:
- EIS# 820270, Draft, EPA, FL, Jacksonville Harbor Disposal Site, Designation, Duval County, Due: June 28, 1982
- EIS# 820262, Draft, EPA, SC, Hilton Head Island Wastewater Treatment Facilities Grant, Beaufort Co., Due: July 9, 1982
- EIS# 820280, Final, EPA, SEV, REG, Phosphate Rock Plants, Promulgated Standards, Due: June 14, 1982

Department of Housing and Urban Development:
- EIS# 820260, Draft, HUD, MD, Foxcraft, Farmbrook and Timberline Subdivisions, Mortgage Insurance, Due: June 28, 1982
- EIS# 820275, Draft, CDB, NY, Union Station Conversion, UDAG, City and County of Albany, Due: June 28, 1982
- EIS# 820281, DSuppl, CDB, CA, National City Downtown Redevelopment Project, CDBG, San Diego County, Due: June 28, 1982

Nuclear Regulatory Commission:
- EIS# 820265, Draft, NRC, WA, Skagit/Hanford Nuclear Plant, Units 1 and 2, Permits, Benton County, Due: June 28, 1982

Department of Agriculture:
- EIS# 820261, Draft, AFS, CO, Rifle Ski Area Development, White River National Forest, Permit, Due: June 28, 1982

Veterans Administration:
- EIS# 820264, DSuppl, VAD, AL, Fort Mitchell National VA Cemetery, Russell County, Due: June 28, 1982

Amended Notices:
- EIS# 820168, Draft, FHW, SEV, WV, OH, Appalachian Corridor D Construction, I-77 to Ohio River, Published [1] FR 4-9-82—Review Extended, Due: June [1] 30, 1982
- EIS# 820240, Draft, AFS, MT, Beaverhead National Forest Land Management Plan, Published [1] FR 5-7-82—Review Extended, Due: Aug. [1] 2, 1982
- EIS# 820234, Final, BLM, SEV, Offshore North Atlantic States 1982 OCS Oil and Gas Lease Sale No. 52, Due: June [1] 14, 1982

Dated: May 11, 1982.

Louis J. Cordia,

Acting Director, Office of Federal Activities.

[FR Doc. 82-13280 Filed 5-13-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Advisory Committee Schedules Resumed Sessions

The Advisory Committee on Radio Broadcasting, having considered the matters on the Agenda of its May 4, 1982 meeting, recessed the meeting for resumption as follows, at Room A-106, 1229 20th Street, NW., Washington, D.C.:

Monday, May 10, 1982 at 2:00 pm:

Resumed consideration by the Committee's Subgroup on Technical

[1] Published FR 4-30-82—Review period reestablished due to noncompletion of distribution.

Matters, of technical preparations for U.S.-Canada discussions of revised agreement on AM broadcasting.

Tuesday, May 11, 1982 at 9:00 am: Consideration, by the Technical Subgroup, of technical data on receiver characteristics, their relationship to the proposals in Docket 80–90, and their impact on the future of FM broadcasting.

Tuesday, May 11, 1982 at 1:30 pm: Consideration by the Committee's Allocations Subgroup of the allocations implications of FM (1) new station demand and viability; (2) service losses and gains from pending proposals; (3) allocation priorities and acceptance criteria.

Wednesday, July 7, 1982 at 9:30 am: Consideration by the full Committee of reports by its Technical and Allocations Subgroups on work accomplished and recommend future action concerning:

—FM allocations and

—Implementation of the Final Acts, Rio de Janeiro, 1981, including the development of post-Rio agreements with U.S. neighbors concerning mutual protection of each others' AM services.

—Other business.

In the likely event that it will not be possible to conclude the consideration of the foregoing agenda matters at the above-scheduled sessions, they will be recessed for resumption at such times and places as will be there decided. If it should become necessary to hold the July 7, 1982 meeting at a different location, that will be separately announced.

All interested persons are invited to participate at these sessions, which will be open to the public. For further information contact Louis C. Stephens, Committee Chairman, at FCC Headquarters, (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–13123 Filed 5–13–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 82–26]

Rascator Maritime S.A. v. Cargill, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Rascator Maritime S.A. against Cargill, Incorporated was served May 5, 1982. Complainant alleges that respondent, pursuant to its terminal tariff provisions, unlawfully has passed vessels out of turn in violation of section 17 of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82–13123 Filed 5–13–82; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82M–0068]

Allergan Pharmaceuticals, Inc., Premarket Approval of Softears ™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of Softears ™ for polymacon hydrophilic contact lenses sponsored by Allergan Pharmaceuticals, Inc., Irvine, CA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by June 14, 1982.

ADDRESS: Request for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On December 2, 1980, Allergan Pharmaceuticals, Inc., Irvine, CA, submitted to FDA an application for premarket approval of Softears ™ for polymacon hydrophilic contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and FDA advisory committee, which recommended approval of the application. On February 12, 1982, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lens solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of Softears ™ states that the solution is designed to improve the comfort of lens wear by lubricating and rewetting daily wear polymacon contact leases. Sponsors of daily wear polymacon contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution, at the next printing or at such other time as

FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 14, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-12886 Filed 5-13-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 80N-0085; DESI 6290]

Diphenhydramine Hydrochloride for Oral Use; Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice sets forth the conditions for marketing the oral form of diphenhydramine hydrochloride for the indications for which it continues to be regarded as effective, offers an opportunity for a hearing concerning indications regarded as lacking substantial evidence of effectiveness, and terminates an exemption applicable to the drug.

DATES: Hearing requests due on or before June 14, 1982; supplements to approved NDA's due on or before July 13, 1982.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 6290, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements (identify with NDA number): Division of Surgical-Dental Drug Products (HFD–160), Rm. 18B–06, Bureau of Drugs.

Abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for labeling guidelines: Division of Surgical-Dental Drug Products (HFD–160), Bureau of Drugs.

Requests for hearing (identify with Docket Number appearing in the heading of this notice): Dockets Management Branch, Food and Drug Administration (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: John H. Hazard, Jr., Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 6290; Docket No. FDC–D–324 (now Docket No. 80N–0085)) published in the Federal Register of June 18, 1971 (36 FR 11758), the Food and Drug Administration (FDA) announced its conclusions that diphenhyrdramine hydrochloride for oral use as a prescription drug is effective in the treatment of motion sickness, parkinsonism, and allergic reactions. The drug was also classified as less than effective (probably effective, possibly effective, and lacking substantial evidence of effectiveness) for certain other indications. The products evaluated were the following:

NDA 5–845; Benadryl Syrup, Kapseals, Elixir, Emplets (enteric coated tablets), and Powder for Prescription Compounding (this product never received approval from FDA), all containing diphenhydramine hydrochloride; Parke, Davis & Co., Division of Warner Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.

This notice does not pertain to the indications stated in the June 18, 1971 notice to lack substantial evidence of effectiveness. No person requested a hearing concerning them, and those indications are no longer allowable in labeling. Any such product labeled for those indications is subject to regulatory action.

A notice published in the Federal Register of December 14, 1973 (38 FR 34481) granted a temporary exemption from the time limit established for completing certain phases of the Drug Efficacy Study (DESI) program for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms. The exemption was intended to permit continued marketing of diphenhydramine hydrochloride with respect to certain cough, cold, allergy, and related indications that were not among those classified as effective, while studies intended to demonstrate effectiveness for these indications were being conducted. The exemption was granted because of the close relationship between, and the similarities in, drugs sold over-the-counter (OTC) and thus subject to evaluation in the ongoing OTC drug review (21 CFR Part 330), and prescription drugs containing the same active ingredients and offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC advisory review panel in addition to any evidence submitted in response to various DESI notices. Those recommendations and an advance notice of proposed rulemaking for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the

Federal Register of September 9, 1976 (41 FR 38312).

The agency's position regarding the conversion of some of the present prescription indications for diphenhydramine hydrochloride to OTC status is being considered in the OTC drug review process. Those conclusions will be addressed in future Federal Register publications that include diphenhydramine hydrochloride as the active ingredient in OTC drug products.

Revocation of Exemption

Because the less-than-effective indications for the prescription drug products are now being reclassified, the temporary exemption granted by the December 14, 1973 notice, as it pertains to oral diphenhydramine hydrochloride, is hereby revoked.

Less-Than-Effective Indications

Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Conditions. Diphenhydramine hydrochloride, previously recommended for prescription use in a variety of conditions related to cough, cold, allergy, and similar symptoms, was classified in the June 18, 1971 notice as effective for some of those indications and less than effective (probably or possibly effective) for others. Because no person has submitted data to support the less-than-effective indications, they are reclassified to lacking substantial evidence of effectiveness. These evaluations are not inconsistent with the recommendations of the OTC advisory review panel for CCABA drugs.

This notice does not address the use of diphenhydramine as an antitussive. That use was evaluated in the DESI program in a separate proceeding (Docket No. 79N–0324, 44 FR 57497, October 5, 1979), as well as in the OTC drug review. Future notices in the Federal Register will address that indication.

Insomnia. In response to the June 18, 1971 notice, Parke Davis submitted the following seven studies in support of the probably effective indication "for intractable insomnia and insomnia predominant in certain medical disorders." (This indication was not covered by the exempting notice of December 14, 1973.)

1. Goldstein, L., H. B. Murphree, and C. C. Pfeiffer, "Comparative Study of EEG Effects of Antihistamines in Normal Volunteers," *Journal of Clinical Pharmacology*, 42–53, 1966.

2. Friedlander, W. J., "The Use of Benadryl for Sleep EEG's," *Electroencephalography and Clinical Neurophysiology*, 13:285–286, 1961.

3. Jick, H., D. Slone, S. Shapiro, and G. P. Lewis, "Clinical Effects of Hypnotics. I. A Controlled Trial," *Journal of the American Medical Association*, 209:2013–2015, 1969.

4. Millichap, J. G. "A Clinical Trial of Benadryl as a Bedtime Sedative for Children," Parke, Davis & Co. Clinical Trial, Protocol #184–29, 1974.

5. Russo, R., "A Clinical Trial of Benadryl as a Bedtime Sedative for Children," Parke, Davis & Co., Protocol #184–31, 1973.

6. Teutsch, G., et al., "Hypnotic Efficacy of Diphenhydramine, Methapyrilene, and Pentobarbital," *Clinical Pharmacology and Therapeutics*, 17:195–201, 1975. (This was Study II contained in the "Report of the Veterans Administration Cooperative Analgesic Study," W. H. Forrest, Jr. and C. R. Brown, 1972.)

7. Vogel, G. W., E. N. Schultz and G. W. Swenson, OTC Volume 050041.

None of these studies provide the specific diagnostic criteria characterized by the conditions described in the indication—particularly, the terms "intractable" and "predominant in certain medical disorders." Thus it is impossible to adaquately determine whether the patient population that was studied could in fact be diagnosed as having a condition for which the drug was offered, that is, either "intractable insomnia" or a medical disorder in which insomnia is predominant. 21 CFR 314.111(a)(5)(*a*)(*2*)(*i*).

However, a number of other studies were submitted, as part of the OTC drug review (Docket No. 75N–0244), to support the use of diphenhydramine hydrochloride as a sleep-aid.

After reviewing the following studies, the agency concludes that 50 mg diphenhydramine hydrochloride is effective for use as a nighttime sleep-aid (See Federal Register of April 23, 1982 (47 FR 17740)). This indication is included in the labeling conditions below.

1. Finnerty, R., and H. Goldberg, "Double-Blind, Controlled Evaluation of Diphenhydramine and Palcebo In Insomniac General Practice Patients," Unpublished Study, Comment Nos. C0030, SUP004, and SUP005.

. Glassman, S., and E. W. Packman, "Subjective Evaluation of the Incidence of Side Effects Produced By 50 mg and 100 mg Doses of Diphenhydramine HCL Versus Placebo," Unpublished Study No. S–2519, . Comment No. SUP002.

3. Holder, A., and K. J. Kohlhof, "Assessment of the Sleep Prolongation Properties of Two Analgesic/Sedative Tablets Versus Placebo In Healthy Adults," Unpublished Study No. S–2593, Comment Nos. C0032 and C0035.

4. Rickels, K., "Double-Blind, Controlled Evaluation of Diphenhydramine and Placebo In Insomniac General Practice Patients," Unpublished Study, Comment Nos. C0030, SUP004, and SUP005.

5. Smith, P. H., "Pain/Sedative Study," Unpublished Study No. S–2512, Comment Nos. SUP003 and C0035.

6. Sunshine, A., and E. Laska, "A Comparative Study of Diphenhydramine 50 mg and Placebo," Unpublished Study No. S–2162A, Comment Nos. 0B0018, SUP002, and C0035.

7. Sunshine, A., and E. Laska, "A Comparative Study of Diphenhydramine 50 mg and Placebo," Unpublished Study No. S–2162B, Comment Nos. 0B0018, SUP002, and C0035.

8. Sunshine, A., I. Zighelboim, and E. Laska, "Hypnotic Activity of Diphenyhydramine, Methapyrilene, and Placebo," Unpublished Study No. W–2080, Comment Nos. 0B0018, SUP002, and C0035.

Other Indications. As no data were submitted in support of the remaining indications that were classified as probably or possibly effective in the June 18, 1971 notice, they are reclassified to lacking substantial evidence of effectiveness.

Amendment

Accordingly, the June 18, 1971 notice is amended, insofar as it pertains to diphenhydramine hydrochloride products, to read as follows:

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing diphenhydramine as a prescription drug product.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a previously approved product that is named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective for the indications in the labeling conditions below and lack substantial evidence of effectiveness for all other indications previously classified as probably effective or possibly effective.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve

abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in capsule, enteric coated tablet, elixir, or syrup form suitable for oral administration.

2. *Labeling conditions.* a. As a prescription product, the label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

Indications

Perennial and seasonal allergic rhinitis.
Vasomotor rhinitis.
Allergic conjunctivitis due to inhalant allergens and foods.
Mild, uncomplicated allergic skin manifestations of urticaria and angioedema.
Amelioration of allergic reactions to blood or plasma in patients with a known history of such reactions.
Dermatographism.
As therapy for anaphylactic reactions *adjunctive* to epinephrine and other standard measures after the acute manifestations have been controlled.
Parkinsonism (including drug-induced) in the elderly unable to tolerate more potent agents.
Mild cases of parkinsonism (including drug-induced) in other age groups.
In other cases of parkinsonism (including drug-induced) in combination with centrally acting anticholinergic agents.
Active and prophylactic treatment of motion sickness.
Nighttime sleep-aid.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before July 13, 1982, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in paragraph B.2.b. above, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. Under 21 CFR 320.21, the application must include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement, unless such evidence is already waived under 21 CFR 320.22(c). The waiver in that provision does not apply to enteric coated tablets. Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adquate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), demonstrating the effectiveness of the drug(s) for the indications lacking substantial evidence of effectiveness referred to in paragraph A above.

Notice is given to the holder of the new drug application, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application and all amendments and supplements thereto providing for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the application, shows there is a lack of substantial evidence that the drug products will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application supplemented, in accord with this notice, to delete the claims lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, contained in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related or similar drug products.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 14, 1982, a written notice of appearance and request for hearing, and (2) on or before July 13, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other persons subject to this notice under 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product labeled for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of

the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which pecludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quadruplet. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)) and under the authority delegated to the Director of the Bureau of drugs (21 CFR 5.82).

Dated: April 30, 1982.

J. Richard Crout,

Director Bureau of Drugs.

[FR Doc. 82-12852 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 3 and 4, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 3, 9 a.m. to 10 a.m., open committee discussion, June 3, 10 a.m. to 5 p.m., June 4, 9 a.m. to 5 p.m.; Joan Standaert, Bureau of Drugs (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss metoprolol: Lopressor (NDA 18–704), Ciba Geigy Corp., for use in post-myocardial infarction; propranolol: Inderal (NDA 16–418/S–047), Ayerst Laboratories (IND 14–160), National Heart, Lung, and Blood Institute, NIH, Beta Heart Attack Trial; Captopril: (NDA 18–343), Squibb and Sons, Inc., for congestive failure; Anti-anginal guidelines: proposed revisions.

Arthritis Advisory Committee

Date, time, and place. June 3 and 4, 9 a.m., Conference Rms. G and H; Parklawn Building, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 3, 9 a.m. to 10 a.m., open committee discussion, June 3, 10 a.m. to 4 p.m., June 4, 9 a.m. to 4 p.m.; Dotti Moore, Bureau of Drugs (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–443–4250.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for arthritis.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss subcommittee activities on general indications for nonsteroidal anti-inflammatory drugs (NSAID's); liver toxicity in NSAID's; and "orphan drugs."

Psychopharmacologic Drugs Advisory Committee

Date, time, and place: June 10 and 11, 9 a.m., Conference Rms. D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD.

The of meeting and contact person: Open public hearing, June 10, 9 a.m. to 10 a.m.; open committee discussion, June 10, 10 a.m. to 5 p.m., June 11, 9 a.m. to 5 p.m.; Frederick J. Abramek, Bureau of Drugs (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3800.

General function of the committee: The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the practice of psychiatry and related fields.

Agenda—Open public hearing: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion: The committee will discuss the following:

1. Xanax ® (Alprazolam)—An evaluation for use as an antidepressant.
2. Wellbutrin ® (Bupropin hydrochloride)—An evaluation for safety and efficacy of a new antidepressant.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time and place: June 24, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person: Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m., A. T. Gregoire, Ph.D., Bureau of Drugs (HFD–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1969.

General function of the committee: The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in treating endocrine and metabolic disorders.

Agenda—Open public hearing: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to present information should contact the executive secretary.

Open committee discussion: The committee will discuss (1) FDA Action Report, (2) Protocol for the study of aldose reductase inhibitors in diabetic retinopathy (IND 14,024), (3) Trilostane capsules for treatment of Conn's and Cushing's disease (NDA 18–719).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions

for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: May 7, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 82-12980 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. June 3 and 4, 8:30 a.m., Rm. 115, Bureau of Biologics, Building 29, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 3, 8:30 a.m. to 9:30 a.m.; open committee discussion, June 3, 9:30 a.m. to 5 p.m., June 4, 8:30 a.m. to 3 p.m.; closed committee deliberations June 4, 3 p.m. to 5 p.m.; Clay Sisk, Bureau of Biologics (HFB–5), Food and Drug Administration, Building 29, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will consider the blood product regulations in 21 CFR Part 600 to identify those provisions which may be changed as part of the regulatory review announced in the **Federal Register** of July 14, 1981 (46 FR 36332). The committee will focus on those scientific issues relating to assuring the continued safety, purity, and potency of licensed blood products such as hepatitis requirements, processing requirements, and labeling requirements for reagent red blood cells.

Closed committee deliberations. The committee will review data on manufacturing procedures and trade practices for several biological products derived from source plasma. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel

Date, time, and place. June 18, 8 a.m., Rm. 1813, 200 C St., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 11 a.m.; closed presentation of data, 12 m. to 1 p.m.; open committee discussion, 1 p.m. to 4 p.m.; Dr. David S. Shindell, Bureau of Medical Devices (HFK–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7228.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before June 2, 1982, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) P820019 and P820025 for transcutaneous carbon dioxide monitors and P820011 for a transconjunctival oxygen monitor.

Closed presentation of data. The committtee will discuss data presented by the sponsor of PMA P820011 for a transconjunctival oxygen monitor. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Gastroenterology and Urology Device Section of the General Medical Devices Panel

Date, time, and place. June 21, 9 a.m., Rm. 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4 p.m.; Dr. Norman T. Welford, Bureau of Medical Devices (HFK–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify Dr.

Norman T. Welford before June 7, 1982, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a crossflow plasmapheresis filter and control system.

Closed presentation of date. The company will present data on a premarket approval application for a crossflow plasmapheresis filter and control system. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Opthalmic Device Section of the Opthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place. June 21 and 22; 9 a.m.; Auditorium, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 21, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, June 22, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; Dr. George C. Murray, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before June 7, 1982, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 21 the committee will discuss premarket approval applications (PMA's) for intraocular lenses (IOL's) and may discuss PMA's for other ophthalmic products. If discussion of all pertinent IOL issues is not completed, discussion will be continued the following day. On June 22, the committtee may discuss PMA's or general issues relating to contact lens products.

Closed committee deliberations. On June 21 and 22, the committee will conduct reviews of PMA's for IOL applications. On June 22, the committee may also discuss PMA's for contact lens products. These portions of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximately time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to siginificantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commerical or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative

sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: May 7, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-13128 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0158]

Reye's Syndrome-Salicylates Workshop; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a public meeting sponsored by the FDA, the Centers for Disease Control (CDC), and the National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health, will be held to give the sponsoring agencies and interested persons an opportunity to discuss, in an open workshop, current information concerning a possible relationship between salicylates and Reye's Syndrome, including FDA's preliminary analysis of the data.

DATE: May 24, 1982.

ADDRESS: The meeting will be held in Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Ms. Janine Noble, Bureau of Drugs (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6410.

SUPPLEMENTARY INFORMATION: Reye's Syndrome is a rare, often fatal, disease of children which is characterized by sudden vomiting, violent headache, and bizarre mental and physical behavior in children who appear to be recovering from often mild cases of influenza or chicken pox. Aspirin, antiemetics, and acetaminophen have been previously suspected to be associated with the disease, but no clear causal relationship has been demonstrated.

The Centers for Disease Control (CDC) published an article on Reye's Syndrome in the February 12, 1982 issue of *Morbidity and Mortality Weekly Report*. A copy of this article is on public display in the Dockets Management Branch, FDA, Rm. 4-62, 5600 Fishers Lane, Rockville, MD, and may be seen between 9 a.m. and 4 p.m., Monday through Friday. The article stated that studies indicate salicylates (especially aspirin products) may be a factor in the pathogenesis of Reye's Syndrome, although observed epidemiologic association does not prove causality. The CDC recommended that until definitive information is available, physicians and parents should be advised of the possible increased risk of Reye's Syndrome with the use of salicylates in children with viral illnesses, particularly chicken pox and influenza-like illnesses.

In response to this reported association between aspirin and Reye's Syndrome, FDA formed a task group to review the available data to determine the quality and strength of the association. Copies of records and data reviewed by this task group are on public display in the Dockets Management Branch, FDA, at the address noted above. In addition, the task group used a data computer tape provided by the Ohio Department of Public Health on its Reye's Syndrome investigation. This data tape is also available to interested persons.

FDA, in conjunction with CDC and NIAID, will hold a public meeting to present its preliminary analysis of these studies. Interested persons will be given an opportunity to discuss these studies and other current information on Reye's Syndrome. Following this meeting, and a complete analysis of the data presented, FDA will determine what, if any, further action is appropriate.

The meeting will be held from 8:30 a.m. to 5 p.m., May 24, 1982, in Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Persons wishing to make a presentation should contact Ms. Janine Noble at 301-443-6410, by close of business on May 20, 1982. The agency may require joint presentations by persons with common interests.

Formal written statements, extension of remarks, or comments on the meeting may be submitted on the day of the workshop. Two copies of prepared presentations, comments, or data are to be submitted. Submissions are to be identified with Docket No. 82N-0158. Submissions may be seen in FDA's Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday, beginning May 26.

Dated: May 11, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13127 Filed 5-11-82; 12:52 pm]

BILLING CODE 4160-01-M

Health Professional Organization Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming meeting with health professional organizations to be chaired by Arthur Hull Hayes, Jr., M.D., Commissioner of Food and Drugs.

DATE: The meeting will be held at 2 p.m., Tuesday, May 25, 1982.

ADDRESS: The meeting will be held at the Department of Health and Human Services North Building, Rm. 5051 (Snow Room), 300 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Audrey L. Wood, Office of Health Affairs (HFY-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5470.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs meets periodically with executives of the health professional organizations to share mutual concerns and help disseminate FDA proposals and decisions affecting the country's health care. The agenda items for discussion at the meeting include "orphan" drugs, patient education activities, and the use of human beings in demonstrations of sonographic equipment.

Dated: May 11, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 82-13280 Filed 5-13-82; 8:45 am]

BILLING CODE 4160-01-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 7.

Public Health Service

Food and Drug Administration

Subject: Drug Investigation—Statement of Investigator—*Revision*

Respondents: Drug Manufacturers

Subject: Drug Investigation—Statement of Investigator (Clinical Pharmacology)—*Revision*

Respondents: Drug manufacturers/physicians

Subject: Survey Report Form for Determining Expenditures, Programs and Services Administered by State Food and Drug Regulatory Agencies—*Revision*

Respondents: State food and drug agencies
Health Services Administration
Subject: Health Professions Student Loan and Nursing Student Loan Programs Administrative Forms—*New*
Respondents: Student borrowers/educational institutions
Health Resources Administration
Subject: Study of Functioning and Location of U.S. Citizen Foreign Medical Graduates Within the U.S. Medical Delivery System—*New*
Respondents: Individuals
National Institutes of Health
Subject: Evaluation of the Hyperlipoproteinemia Dietary Manual and Physician Handbook—*New*
Respondents: Physicians/dietitians/other health professionals/individuals
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Representative Payee Report (Individual) SSA-623-C2 (4-77)—*Extension*
Respondents: Individuals or households
Subject: Representative Payee Report (Institution) SSA-624 (1-70)—*Extension*
Respondents: Businesses or other institutions
Subject: Recipient Fraud in Public Assistance Programs—SSA-4110 (4-81)—*New*
Respondents: State or local governments
Subject: Claimants Work Background—HA 4633 (6-81)—*New*
Respondents: Individuals or households
OMB Desk Officer: Richard Eisinger

Office of the Secretary

Subject: Utilization of Products Disseminated by the National Diabetes Information Clearinghouse
Respondents: Health care providers/individuals
OMB Desk Officer: Gwendolyn Pla

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524.F, Washington, D.C. 20201

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: May 7, 1982.

Robert F. Sermier,

Acting Assistant Secretary for Management and Budget.

[FR Doc. 82-13003 Filed 5-13-82; 8:45 am]
BILLING CODE 4110-04-M

Social Security Benefit Increases; Cost-of-Living Increase in Benefits Under Titles II and XVI of the Social Security Act and in Income Limitations for Beneficiaries Under the Supplemental Security Income Program

I hereby determine and announce a cost-of-living increase of 7.4 percent in benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 7.4 percent beginning with the June 1982 benefits which are payable on July 2, 1982. This increase is based on the authority contained in section 215(i) of the Social Security Act (42 U.S.C. 415i), as amended by section 201 of Pub. L. 95-216 enacted December 20, 1977.

Under title XVI, supplemental security income payment levels will increase by 7.4 percent effective for payments made on July 1, 1982. This is based on the authority contained in section 1617 of the Social Security Act (42 U.S.C. 1382f).

Title II Benefits

Title II benefits are payable under the Federal old-age, survivors, and disability insurance program. Individuals entitled under this program include insured workers, wives, husbands, children, widows, widowers, mothers, fathers, and parents.

In accordance with section 215(i)(4) of the Social Security Act (the Act), the primary insurance amounts and the maximum family benefits shown in columns IV and V of the revised benefit table (table 1) set forth below were obtained by increasing by 7.4 percent the corresponding amounts established by: (1) The last cost-of-living increase; and (2) the extension of the benefit table made under section 215(i)(4) and published on October 30, 1981 at 46 FR 53791. The table applies only to those persons who attained age 62, became disabled or died before January 1979 and is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who reach age 62, become disabled, or die after 1978; their benefits will generally be determined by a new benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216). For persons first eligible for benefits in the period 1979-1982, the 7.4 percent increase will apply beginning June 1982; but the 7.4 percent increase will not apply for persons first becoming eligible for benefits after 1982.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines a cost-of-living increase in Social Security benefits, the Secretary shall publish in the Federal Register a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i)(II). These benefits are referred to as "special minimum benefits" and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i)(II), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 7.4 percent benefit increase.

Section 227 of the Act provides limited benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his wife or widow. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amounts of $117.00 for an individual and $58.70 for a wife established under sections 227 and 228 of the Act are increased by 7.4 percent to obtain the new amounts of $125.60 and $63.00, respectively.

Title XVI Benefits

Section 1617 of the Act provides that whenever title II benefits are increased under section 215(i), the amounts in sections 1611(a)(1)(A), 1611(a)(2)(A), 1611(b)(1) and 1611(b)(2) of the Act and in section 211 (a)(1)(A) of Pub. L. 93-66 shall be increased. The new amounts are effective for months after the month in which the title II increase is effective. The percentage increase is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $1.20, to the next higher multiple of $1.20.

In accordance with section 1617, Federal Supplemental Security Income (SSI) guarantees for the aged, blind, and disabled are increased effective with July 1982 by 7.4 percent. The current yearly Federal SSI guarantees of $3,176.40 for an eligible individual and $4,764.00 for an eligible individual with an eligible spouse are thereby increased to $3,411.60 and $5,116.80 respectively. The monthly payment is determined by dividing the yearly guarantee by 12 and then subtracting the monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses. The amount by which the Federal SSI guarantee amount is increased because of the presence of an essential person in the home, currently $1,591.20 per year for each essential person under section 211(a)(1)(A) of Pub. L. 93-66, is also

increased by 7.4 percent to obtain a new amount of $1,710.00.

Automatic Benefit Increase Determination

Section 215(i) of the Act requires that when certain conditions are met in the first calendar quarter of a year, the Secretary shall determine that a cost-of-living increase in benefits is due. Section 215(i) of the Act also specifies the formula for determining the amount of any cost-of-living increase in benefits. This formula utilizes the Consumer Price Index for urban wage earners and clerical workers reported by the Department of Labor.

Section 215(i)(2)(A) of the Act requires the Secretary to determine each year whether there is a cost-of-living computation quarter in that year. If the Secretary so determines, the Secretary shall, effective with June of that year, increase benefits for individuals entitled under section 227 or 228 of the Act, shall increase the primary insurance amounts of all other individuals entitled under title II of the Act, and shall also increase the maximum benefits payable to a family. Section 1617 of the Act requires that SSI benefits be increased by the same percentage increase as title II benefits, whenever title II benefits are increased under section 215(i). The percentage increase is equal to the percentage increase in the Consumer Price Index for the cost-of-living computation quarter over the index for the most recent cost-of-living computation quarter.

Section 215(i)(1) of the Act defines a base quarter as a calendar quarter ending on March 31 in each year after 1974, or any other calendar quarter in which occurs the effective month of a general benefit increase. Section 215(i)(1) also defines a cost-of-living computation quarter as a base quarter in which the Consumer Price Index prepared by the Department of Labor exceeds by not less than 3 percent the index in the later of (1) the last prior cost-of-living computation quarter or (2) the most recent calendar quarter in which a general benefit increase was effective. However, there shall be no cost-of-living computation quarter in any calendar year if in the prior year a general benefit increase was enacted or became effective. Section 215(i)(1) of the Act also provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter.

The Department of Labor's revised Consumer Price Index for urban wage earners and clerical workers for each month in the quarter ending March 31, 1981, was: For January 1981, 260.7; for February 1981, 263.5; and for March 1981, 265.2. The arithmetical mean for this calendar quarter is 263.1. The corresponding Consumer Price Index for each month in the quarter ending March 31, 1982, was: For January 1982, 282.1; February 1982, 282.9; and for March 1982, 282.5. The arithmetical mean for this calendar quarter is 282.5. The increase for the calendar quarter ending March 31, 1982, is 7.4 percent. Thus, since the percentage of increase in the Consumer Price Index from the calendar quarter ending March 31, 1981, to the calendar quarter ending March 31, 1982, is not less than 3 percent, the quarter ending March 31, 1982, is a cost-of-living computation quarter. Consequently, a cost-of-living benefit increase of 7.4 percent is effective for benefits under title II of the Act beginning June 1982.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–5, and 13.807 Social Security Programs)

Dated: May 10, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

BILLING CODE 4190-11-M

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING JUNE 1982

TABLE 1

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING JUNE 1982

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
	16.20	170.30		76	182.90	274.40
16.21	16.84	173.00	77	78	185.80	278.70
16.85	17.60	177.10	79	80	190.20	285.30
17.61	18.40	180.20	81	81	193.50	290.50
18.41	19.24	183.40	82	83	196.90	295.50
19.25	20.00	187.30	84	85	201.10	301.90
20.01	20.64	190.90	86	87	205.00	307.50
20.65	21.28	193.80	88	89	208.10	312.20
21.29	21.88	197.70	90	90	212.30	318.50
21.89	22.28	201.10	91	92	215.90	324.00
22.29	22.68	204.30	93	94	219.40	329.10
22.69	23.08	207.70	95	96	223.00	334.60
23.09	23.44	211.40	97	97	227.00	340.60
23.45	23.76	214.90	98	99	230.80	346.20
23.77	24.20	219.10	100	101	235.30	353.00
24.21	24.60	222.10	102	102	238.50	357.90
24.61	25.00	225.80	103	104	242.50	363.70
25.01	25.48	230.00	105	106	247.00	370.60
25.49	25.92	233.80	107	107	251.10	376.70
25.93	26.40	237.40	108	109	254.90	382.40
26.41	26.94	241.10	110	113	258.90	388.40
26.95	27.46	244.50	114	118	262.50	393.90
27.47	28.00	248.20	119	122	266.50	399.80
28.01	28.68	252.10	123	127	270.70	406.10
28.69	29.25	255.80	128	132	274.70	412.00
29.26	29.68	259.30	133	136	278.40	417.70
29.69	30.36	262.80	137	141	282.20	423.40
30.37	30.92	266.60	142	146	286.30	429.40
30.93	31.36	270.60	147	150	290.60	435.90
31.37	32.00	273.70	151	155	293.90	440.90
32.01	32.60	277.70	156	160	298.20	447.40
32.61	33.20	281.40	161	164	302.20	453.30
33.21	33.88	284.90	165	169	306.90	459.00
33.89	34.50	288.80	170	174	310.10	465.30

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
34.51	35.00	292.30	175	178	313.90	470.90
35.01	35.80	296.20	179	183	318.10	477.10
35.81	36.40	299.70	184	188	321.80	482.80
36.41	37.08	303.60	189	193	326.00	489.20
37.09	37.60	307.30	194	197	330.00	495.10
37.61	38.20	310.90	198	202	333.90	500.90
38.21	39.12	315.00	203	207	338.30	507.40
39.13	39.68	318.60	208	211	342.10	513.30
39.69	40.33	321.50	212	216	345.20	517.90
40.34	41.12	325.60	217	221	349.60	524.50
41.13	41.76	329.30	222	225	353.60	530.50
41.77	42.44	333.30	226	230	357.90	537.00
42.45	43.20	336.90	231	235	361.80	542.90
43.21	43.76	341.00	236	239	366.20	549.40
43.77	44.44	344.20	240	244	369.60	554.90
44.45	44.88	347.50	245	249	373.20	560.50
44.89	45.60	351.90	250	253	377.90	567.70
		355.30	254	258	381.50	572.90
		358.40	259	263	384.90	600.10
		362.90	264	267	389.70	609.20
		366.20	268	272	393.20	620.80
		370.20	273	277	397.50	631.90
		373.70	278	281	401.30	641.00
		377.40	282	286	405.30	652.50
		381.40	287	291	409.60	664.10
		384.50	292	295	412.90	673.00
		388.70	296	300	417.40	684.30
		392.30	301	305	421.30	696.00
		395.70	306	309	424.90	706.00
		399.70	310	314	429.20	716.30
		402.90	315	319	432.70	727.90
		406.70	320	323	436.70	736.90
		410.50	324	328	440.80	745.20
		413.90	329	333	444.50	759.00
		418.30	334	337	449.20	769.00
		421.20	338	342	452.30	780.10
		425.20	343	347	456.60	791.00
		429.20	348	351	460.90	800.00
		432.40	352	356	464.30	812.00
		436.60	357	361	468.90	823.50
		440.00	362	365	472.50	832.00
		443.40	366	370	476.20	844.00
		447.40	371	375	480.50	855.10
		451.20	376	379	484.50	864.00
		455.00	380	384	488.60	876.10
		458.30	385	389	492.20	887.30
		461.90	390	393	496.00	896.30
		466.00	394	398	500.40	906.00
		469.50	399	403	504.20	919.30
		473.50	404	407	508.50	928.20
		476.70	408	412	511.90	939.80
		480.00	413	417	515.50	951.00
		483.40	418	421	519.10	960.10
		487.30	422	426	523.30	971.60
		490.60	427	431	526.90	982.90
		493.60	432	436	530.10	994.40
		497.70	437	440	534.50	998.90

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I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		300.80	441	445	537.80	1004.90
		304.20	446	450	541.50	1010.40
		307.90	451	454	545.40	1014.70
		311.30	455	459	549.10	1020.40
		314.90	460	464	552.80	1025.90
		317.80	465	469	556.10	1030.90
		321.90	469	473	560.50	1036.40
		324.80	474	478	563.80	1042.20
		328.20	479	482	567.20	1046.80
		331.90	483	487	571.20	1052.70
		335.40	488	492	575.00	1058.40
		338.90	493	496	578.40	1062.90
		342.50	497	501	582.60	1068.40
		345.60	502	506	585.90	1074.00
		348.90	507	510	589.50	1078.70
		352.40	511	515	593.20	1084.40
		356.20	516	520	597.30	1090.40
		359.40	521	524	600.70	1094.60
		362.60	525	529	604.20	1100.40
		366.70	530	534	608.60	1106.00
		369.60	535	538	611.70	1110.60
		373.20	539	543	615.60	1116.40
		376.70	544	548	619.30	1122.10
		380.30	549	553	623.20	1127.80
		383.50	554	556	626.60	1131.10
		386.30	557	560	629.60	1135.70
		389.50	561	563	633.10	1139.20
		392.50	564	567	636.30	1143.80
		396.00	568	570	640.10	1147.00
		398.80	571	574	643.10	1151.50
		401.80	575	577	646.30	1155.30
		404.60	578	581	649.30	1159.50
		407.90	582	584	652.70	1163.10
		410.40	585	588	655.50	1167.70
		414.10	589	591	659.50	1171.00
		417.10	592	595	662.70	1175.60
		420.10	596	598	665.90	1178.70
		423.10	599	602	669.20	1183.70
		426.10	603	605	672.40	1187.00
		429.10	606	609	675.60	1191.30
		432.40	610	612	679.10	1195.00
		435.30	613	616	682.30	1199.50
		438.30	617	620	685.50	1204.10
		441.50	621	623	688.90	1207.40
		444.30	624	627	691.90	1212.10
		447.50	628	630	695.40	1216.40
		450.50	631	634	698.60	1222.40
		453.70	635	637	702.00	1228.10
		456.80	638	641	705.40	1234.00
		459.70	642	644	708.50	1239.50
		462.80	645	648	711.80	1245.40
		465.70	649	652	714.90	1250.90
		467.70	653	656	717.10	1254.50
		469.60	657	660	719.10	1257.90
		471.90	661	665	721.60	1262.70
		474.30	666	670	724.10	1267.20
		476.80	671	675	726.80	1271.40

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		679.30	676	680	729.50	1276.00
		681.50	681	685	731.90	1280.50
		684.20	686	690	734.80	1284.80
		686.40	691	695	737.10	1289.80
		688.60	696	700	739.50	1294.10
		691.20	701	705	742.30	1298.60
		693.60	706	710	744.90	1303.20
		696.20	711	715	747.70	1307.50
		698.50	716	720	750.10	1312.20
		700.90	721	725	752.70	1316.70
		703.40	726	730	755.40	1321.40
		705.70	731	735	757.90	1325.90
		708.20	736	740	760.60	1330.30
		710.50	741	745	763.00	1335.10
		712.60	746	750	765.30	1339.20
		715.00	751	755	767.90	1343.40
		717.10	756	760	770.10	1347.00
		719.10	761	765	772.30	1350.90
		720.80	766	770	774.10	1354.80
		723.00	771	775	776.50	1358.30
		725.00	776	780	778.60	1362.10
		727.10	781	785	780.90	1365.90
		728.90	786	790	782.80	1369.60
		730.90	791	795	784.90	1373.40
		733.00	796	800	787.20	1377.20
		735.10	801	805	789.40	1381.10
		737.10	806	810	791.60	1384.80
		739.10	811	815	793.70	1388.70
		741.10	816	820	795.90	1392.30
		743.10	821	825	798.00	1396.30
		745.10	826	830	800.20	1399.90
		747.10	831	835	802.30	1403.90
		749.00	836	840	804.40	1407.40
		751.10	841	845	806.60	1411.50
		752.90	846	850	808.60	1414.80
		755.20	851	855	811.00	1418.90
		757.10	856	860	813.10	1422.60
		759.10	861	865	815.20	1426.40
		761.20	866	870	817.50	1430.20
		763.20	871	875	819.60	1434.00
		765.10	876	880	821.70	1437.60
		767.20	881	885	823.90	1441.60
		769.00	886	890	825.90	1445.10
		771.10	891	895	828.10	1449.40
		773.10	896	900	830.30	1452.70
		775.30	901	905	832.60	1456.70
		777.20	906	910	834.70	1460.50
		779.30	911	915	836.90	1464.30
		781.50	916	920	839.30	1467.80
		783.20	921	925	841.10	1471.90
		785.10	926	930	843.10	1475.40
		787.10	931	935	845.30	1479.30
		789.20	936	940	847.60	1483.00
		791.20	941	945	849.70	1486.90
		793.20	946	950	851.80	1490.60
		795.40	951	955	854.20	1494.50
		797.60	956	960	856.60	1498.30

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE--
AT LEAST--	BUT NOT MORE THAN--		AT LEAST	BUT NOT MORE THAN--		
		799.60	961	965	858.70	1501.80
		801.10	966	970	860.30	1505.80
		803.20	971	975	862.60	1509.70
		805.20	976	980	864.70	1513.20
		807.50	981	985	867.20	1517.00
		809.30	986	990	869.10	1520.80
		811.30	991	995	871.30	1524.70
		813.50	996	1000	873.60	1528.30
		815.30	1001	1005	875.60	1531.50
		816.70	1006	1010	877.10	1535.10
		818.80	1011	1015	879.30	1538.30
		820.70	1016	1020	881.40	1542.10
		822.40	1021	1025	883.20	1545.20
		823.90	1026	1030	884.80	1548.70
		826.00	1031	1035	887.10	1552.10
		827.70	1036	1040	888.90	1555.40
		829.60	1041	1045	890.90	1559.10
		831.60	1046	1050	893.10	1562.30
		833.00	1051	1055	894.60	1565.30
		834.90	1056	1060	896.60	1569.20
		836.90	1061	1065	898.80	1572.40
		838.70	1066	1070	900.70	1575.90
		840.50	1071	1075	902.60	1579.40
		842.20	1076	1080	904.50	1582.70
		844.20	1081	1085	906.60	1586.00
		845.80	1086	1090	908.30	1589.40
		847.70	1091	1095	910.40	1592.90
		849.70	1096	1100	912.50	1596.50
		851.20	1101	1105	914.10	1599.60
		853.10	1106	1110	916.20	1603.10
		855.00	1111	1115	918.20	1606.30
		856.70	1116	1120	920.00	1610.00
		858.60	1121	1125	922.10	1613.20
		860.30	1126	1130	923.90	1616.70
		862.10	1131	1135	925.80	1619.90
		864.00	1136	1140	927.90	1623.60
		866.00	1141	1145	930.00	1627.00
		867.70	1146	1150	931.90	1630.30
		869.20	1151	1155	933.50	1633.50
		871.30	1156	1160	935.70	1637.00
		873.10	1161	1165	937.70	1640.50
		874.90	1166	1170	939.60	1644.00
		876.80	1171	1175	941.60	1647.40
		878.40	1176	1180	943.40	1650.80
		880.00	1181	1185	945.10	1653.70
		881.80	1186	1190	947.00	1656.80
		883.30	1191	1195	948.60	1660.10
		885.10	1196	1200	950.50	1663.30
		886.80	1201	1205	952.40	1666.30
		888.50	1206	1210	954.20	1669.70
		890.10	1211	1215	955.90	1672.70
		891.80	1216	1220	957.70	1675.80
		893.50	1221	1225	959.60	1678.80
		895.30	1226	1230	961.50	1682.20
		896.80	1231	1235	963.10	1685.20
		898.40	1236	1240	964.80	1688.50
		900.20	1241	1245	966.80	1691.70

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE--
AT LEAST--	BUT NOT MORE THAN--		AT LEAST	BUT NOT MORE THAN--		
		901.90	1246	1250	968.60	1694.80
		903.50	1251	1255	970.30	1697.80
		905.20	1256	1260	972.10	1701.10
		907.00	1261	1265	974.10	1704.30
		908.60	1266	1270	975.80	1707.40
		910.10	1271	1275	977.40	1710.30
		911.90	1276	1280	979.30	1713.70
		913.30	1281	1285	980.80	1716.50
		915.00	1286	1290	982.70	1719.50
		916.70	1291	1295	984.50	1722.40
		918.10	1296	1300	986.00	1725.40
		919.70	1301	1305	987.70	1728.30
		921.20	1306	1310	989.30	1731.30
		922.90	1311	1315	991.10	1734.20
		924.60	1316	1320	993.00	1737.30
		926.00	1321	1325	994.50	1740.00
		927.70	1326	1330	996.30	1743.30
		929.10	1331	1335	997.80	1746.20
		930.80	1336	1340	999.60	1749.20
		932.40	1341	1345	1001.30	1752.10
		933.80	1346	1350	1002.90	1755.00
		935.50	1351	1355	1004.70	1757.90
		937.00	1356	1360	1006.30	1760.90
		938.80	1361	1365	1008.20	1763.80
		940.10	1366	1370	1009.60	1766.80
		941.80	1371	1375	1011.40	1769.70
		943.40	1376	1380	1013.20	1772.70
		944.70	1381	1385	1014.60	1775.40
		946.30	1386	1390	1016.30	1778.30
		947.70	1391	1395	1017.80	1781.10
		949.10	1396	1400	1019.30	1783.90
		950.70	1401	1405	1021.00	1786.50
		952.10	1406	1410	1022.50	1789.40
		953.60	1411	1415	1024.10	1792.20
		955.10	1416	1420	1025.70	1795.10
		956.60	1421	1425	1027.30	1797.90
		958.00	1426	1430	1028.80	1800.70
		959.70	1431	1435	1030.70	1803.40
		961.20	1436	1440	1032.30	1806.20
		962.60	1441	1445	1033.80	1808.90
		964.20	1446	1450	1035.50	1812.00
		965.60	1451	1455	1037.00	1814.60
		967.00	1456	1460	1038.50	1817.50
		968.60	1461	1465	1040.20	1820.20
		970.00	1466	1470	1041.70	1823.00
		971.50	1471	1475	1043.30	1825.80
		972.90	1476	1480	1044.80	1828.40
		974.40	1481	1485	1046.50	1831.20
		975.70	1486	1490	1047.90	1833.60
		977.20	1491	1495	1049.50	1836.40
		978.50	1496	1500	1050.90	1839.00
		979.90	1501	1505	1052.40	1841.80
		981.30	1506	1510	1053.90	1844.10
		982.70	1511	1515	1055.40	1846.80
		984.20	1516	1520	1057.00	1849.50
		985.50	1521	1525	1058.40	1852.30
		986.90	1526	1530	1059.90	1854.60

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I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		958.30	1531	1535	1061.40	1857.30
		959.70	1536	1540	1062.90	1860.00
		961.10	1541	1545	1064.40	1862.70
		962.50	1546	1550	1065.90	1865.20
		964.00	1551	1555	1067.50	1867.90
		965.30	1556	1560	1068.90	1870.50
		966.70	1561	1565	1070.40	1873.20
		968.10	1566	1570	1071.90	1875.60
		969.50	1571	1575	1073.40	1878.40
		1000.80	1576	1580	1074.80	1881.00
		1002.30	1581	1585	1076.40	1883.60
		1003.70	1586	1590	1077.90	1886.10
		1005.10	1591	1595	1079.40	1888.90
		1006.50	1596	1600	1080.90	1891.50
		1007.90	1601	1605	1082.40	1894.20
		1009.30	1606	1610	1083.90	1896.80
		1010.60	1611	1615	1085.30	1899.40
		1012.10	1616	1620	1086.90	1902.00
		1013.50	1621	1625	1088.40	1904.70
		1014.90	1626	1630	1090.00	1907.20
		1016.30	1631	1635	1091.50	1910.00
		1017.60	1636	1640	1092.90	1912.40
		1019.10	1641	1645	1094.50	1915.20
		1020.50	1646	1650	1096.00	1917.70
		1021.90	1651	1655	1097.50	1920.40
		1023.30	1656	1660	1099.00	1922.90
		1024.60	1661	1665	1100.40	1925.60
		1026.10	1666	1670	1102.00	1928.20
		1027.40	1671	1675	1103.40	1930.90
		1028.90	1676	1680	1105.00	1933.50
		1030.30	1681	1685	1106.50	1936.20
		1031.70	1686	1690	1108.00	1938.70
		1033.10	1691	1695	1109.50	1941.40
		1034.30	1696	1700	1110.80	1944.00
		1035.80	1701	1705	1112.40	1946.70
		1037.10	1706	1710	1113.80	1949.20
		1038.50	1711	1715	1115.30	1951.80
		1039.90	1716	1720	1116.80	1954.40
		1041.30	1721	1725	1118.20	1957.30
		1042.80	1726	1730	1119.90	1959.70
		1044.10	1731	1735	1121.30	1962.40
		1045.60	1736	1740	1122.90	1964.90
		1046.90	1741	1745	1124.30	1967.70
		1048.30	1746	1750	1125.80	1970.20
		1049.70	1751	1755	1127.30	1972.90
		1051.10	1756	1760	1128.80	1975.50
		1052.60	1761	1765	1130.40	1978.30
		1053.90	1766	1770	1131.80	1980.80
		1055.30	1771	1775	1133.30	1983.30
		1056.70	1776	1780	1134.80	1986.00
		1058.10	1781	1785	1136.30	1988.80
		1059.50	1786	1790	1137.90	1991.10
		1060.90	1791	1795	1139.40	1993.80
		1062.30	1796	1800	1140.90	1996.50
		1063.70	1801	1805	1142.40	1999.20
		1065.10	1806	1810	1143.90	2001.70
		1066.50	1811	1815	1145.40	2004.40

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		1067.90	1816	1820	1146.90	2007.00
		1069.20	1821	1825	1148.30	2009.70
		1070.70	1826	1830	1149.90	2012.10
		1072.10	1831	1835	1151.40	2014.90
		1073.50	1836	1840	1152.90	2017.60
		1074.90	1841	1845	1154.40	2020.30
		1076.20	1846	1850	1155.80	2022.60
		1077.70	1851	1855	1157.40	2025.40
		1079.00	1856	1860	1158.80	2028.00
		1080.50	1861	1865	1160.40	2030.70
		1081.90	1866	1870	1161.90	2033.10
		1083.20	1871	1875	1163.30	2035.90
		1084.70	1876	1880	1164.90	2038.50
		1086.00	1881	1885	1166.30	2041.20
		1087.50	1886	1890	1167.90	2043.70
		1088.80	1891	1895	1169.30	2046.50
		1090.30	1896	1900	1170.90	2049.00
		1091.70	1901	1905	1172.40	2051.70
		1093.00	1906	1910	1173.80	2054.20
		1094.40	1911	1915	1175.30	2056.70
		1095.80	1916	1920	1176.80	2059.20
		1096.80	1921	1925	1177.90	2061.50
		1098.10	1926	1930	1179.30	2064.00
		1099.40	1931	1935	1180.70	2066.20
		1100.70	1936	1940	1182.10	2068.80
		1101.90	1941	1945	1183.40	2071.10
		1103.30	1946	1950	1184.90	2073.50
		1104.50	1951	1955	1186.20	2075.80
		1105.70	1956	1960	1187.50	2078.40
		1107.00	1961	1965	1188.90	2080.60
		1108.30	1966	1970	1190.30	2083.10
		1109.60	1971	1975	1191.70	2085.30
		1110.80	1976	1980	1192.90	2087.80
		1112.20	1981	1985	1194.50	2090.20
		1113.40	1986	1990	1195.70	2092.60
		1114.60	1991	1995	1197.00	2094.90
		1115.90	1996	2000	1198.40	2097.40
		1117.20	2001	2005	1199.80	2099.70
		1118.50	2006	2010	1201.20	2102.20
		1119.70	2011	2015	1202.50	2104.50
		1121.10	2016	2020	1204.00	2106.90
		1122.30	2021	2025	1205.30	2109.30
		1123.50	2026	2030	1206.60	2111.60
		1124.80	2031	2035	1208.00	2114.00
		1126.10	2036	2040	1209.40	2116.50
		1127.40	2041	2045	1210.80	2118.70
		1128.60	2046	2050	1212.10	2121.30
		1130.00	2051	2055	1213.60	2123.60
		1131.20	2056	2060	1214.90	2126.00
		1132.40	2061	2065	1216.10	2128.30
		1133.70	2066	2070	1217.50	2130.90
		1135.00	2071	2075	1218.90	2133.10
		1136.30	2076	2080	1220.30	2135.60
		1137.50	2081	2085	1221.60	2137.90
		1138.80	2086	2090	1223.00	2140.40
		1140.10	2091	2095	1224.40	2142.70
		1141.30	2096	2100	1225.70	2145.20

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE--
AT LEAST--	BUT NOT MORE THAN--		AT LEAST	BUT NOT MORE THAN--		
		1142.60	2101	2105	1227.10	2147.40
		1143.90	2106	2110	1228.50	2150.00
		1145.20	2111	2115	1229.90	2152.20
		1146.40	2116	2120	1231.20	2154.70
		1147.70	2121	2125	1232.60	2157.00
		1149.00	2126	2130	1234.00	2159.50
		1150.30	2131	2135	1235.40	2161.80
		1151.50	2136	2140	1236.70	2164.30
		1152.70	2141	2145	1237.90	2166.50
		1154.10	2146	2150	1239.50	2169.10
		1155.30	2151	2155	1240.70	2171.40
		1156.60	2156	2160	1242.10	2173.80
		1157.80	2161	2165	1243.40	2176.00
		1158.90	2166	2170	1244.60	2178.00
		1160.00	2171	2175	1245.80	2180.20
		1161.10	2176	2180	1247.00	2182.20
		1162.20	2181	2185	1248.20	2184.40
		1163.30	2186	2190	1249.30	2186.40
		1164.40	2191	2195	1250.50	2188.50
		1165.50	2196	2200	1251.70	2190.60
		1166.60	2201	2205	1252.90	2192.70
		1167.80	2206	2210	1254.20	2194.80
		1168.90	2211	2215	1255.30	2196.90
		1170.00	2216	2220	1256.50	2199.00
		1171.10	2221	2225	1257.70	2201.10
		1172.20	2226	2230	1258.90	2203.20
		1173.30	2231	2235	1260.10	2205.30
		1174.40	2236	2240	1261.30	2207.20
		1175.50	2241	2245	1262.40	2209.40
		1176.70	2246	2250	1263.70	2211.40
		1177.80	2251	2255	1264.90	2213.60
		1178.90	2256	2260	1266.10	2215.60
		1180.00	2261	2265	1267.30	2217.80
		1181.10	2266	2270	1268.50	2219.80
		1182.20	2271	2275	1269.60	2221.90
		1183.30	2276	2280	1270.80	2224.00
		1184.40	2281	2285	1272.00	2226.10
		1185.60	2286	2290	1273.30	2228.20
		1186.70	2291	2295	1274.50	2230.30
		1187.80	2296	2300	1275.60	2232.40
		1188.90	2301	2305	1276.80	2234.50
		1190.00	2306	2310	1278.00	2236.60
		1191.10	2311	2315	1279.20	2238.70
		1192.30	2316	2320	1280.40	2240.70
		1193.30	2321	2325	1281.60	2242.90
		1194.40	2326	2330	1282.70	2244.90
		1195.60	2331	2335	1284.00	2247.10
		1196.70	2336	2340	1285.20	2249.10
		1197.80	2341	2345	1286.40	2251.30
		1198.90	2346	2350	1287.60	2253.30
		1200.00	2351	2355	1288.80	2255.50
		1201.10	2356	2360	1289.90	2257.50
		1202.20	2361	2365	1291.10	2259.60
		1203.30	2366	2370	1292.30	2261.60
		1204.50	2371	2375	1293.60	2263.70
		1205.60	2376	2380	1294.80	2265.80
		1206.70	2381	2385	1295.90	2267.90

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (D)) IS--		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS--	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS--		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SUBSECTION SHALL BE--	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE--
AT LEAST--	BUT NOT MORE THAN--		AT LEAST	BUT NOT MORE THAN--		
		1207.80	2386	2390	1297.10	2270.00
		1208.90	2391	2395	1298.30	2272.10
		1210.00	2396	2400	1299.50	2274.10
		1211.10	2401	2405	1300.70	2276.30
		1212.20	2406	2410	1301.90	2278.30
		1213.40	2411	2415	1303.10	2280.50
		1214.50	2416	2420	1304.30	2282.50
		1215.60	2421	2425	1305.50	2284.70
		1216.70	2426	2430	1306.70	2286.70
		1217.80	2431	2435	1307.90	2288.90
		1218.90	2436	2440	1309.00	2290.90
		1220.00	2441	2445	1310.20	2293.00
		1221.10	2446	2450	1311.40	2295.10
		1222.20	2451	2455	1312.60	2297.20
		1223.40	2456	2460	1313.90	2299.30
		1224.50	2461	2465	1315.10	2301.40
		1225.60	2466	2470	1316.20	2303.50
		1226.70	2471	2475	1317.40	2305.60
		1227.70	2476	2480	1318.50	2307.40
		1228.70	2481	2485	1319.60	2309.40
		1229.70	2486	2490	1320.60	2311.20
		1230.70	2491	2495	1321.70	2313.10
		1231.70	2496	2500	1322.80	2315.00
		1232.70	2501	2505	1323.90	2316.90
		1233.70	2506	2510	1324.90	2318.70
		1234.70	2511	2515	1326.00	2320.60
		1235.70	2516	2520	1327.10	2322.50
		1236.70	2521	2525	1328.20	2324.40
		1237.70	2526	2530	1329.20	2326.20
		1238.70	2531	2535	1330.30	2328.20
		1239.70	2536	2540	1331.40	2330.00
		1240.70	2541	2545	1332.50	2331.90
		1241.70	2546	2550	1333.50	2333.80
		1242.70	2551	2555	1334.60	2335.70
		1243.70	2556	2560	1335.70	2337.50
		1244.70	2561	2565	1336.80	2339.40
		1245.70	2566	2570	1337.80	2341.30
		1246.70	2571	2575	1338.90	2343.20
		1247.70	2576	2580	1340.00	2345.00
		1248.70	2581	2585	1341.10	2347.00
		1249.70	2586	2590	1342.10	2348.80
		1250.70	2591	2595	1343.20	2350.70
		1251.70	2596	2600	1344.30	2352.50
		1252.70	2601	2605	1345.30	2354.50
		1253.70	2606	2610	1346.40	2356.30
		1254.70	2611	2615	1347.50	2358.20
		1255.70	2616	2620	1348.60	2360.10
		1256.70	2621	2625	1349.80	2362.00
		1257.70	2626	2630	1350.70	2363.80
		1258.70	2631	2635	1351.80	2365.80
		1259.70	2636	2640	1352.90	2367.60
		1260.70	2641	2645	1353.90	2369.50
		1261.70	2646	2650	1355.00	2371.30
		1262.70	2651	2655	1356.10	2373.30
		1263.70	2656	2660	1357.20	2375.10
		1264.70	2661	2665	1358.20	2377.00
		1265.70	2666	2670	1359.30	2378.90

I (PRIMARY INSURANCE BENEFIT UNDER 1939 ACT, AS MODIFIED)		II (PRIMARY INSURANCE AMOUNT EFFECTIVE FOR JUNE 1980)	III (AVERAGE MONTHLY WAGE)		IV (PRIMARY INSURANCE AMOUNT)	V (MAXIMUM FAMILY BENEFITS)
IF AN INDIVIDUAL'S PRIMARY INSURANCE BENEFIT (AS DETERMINED UNDER SUBSEC. (B)) IS—		OR HIS PRIMARY INSURANCE AMOUNT (AS DETERMINED UNDER SUBSEC. (C)) IS—	OR HIS AVERAGE MONTHLY WAGE (AS DETERMINED UNDER SUBSEC. (B)) IS—		THE AMOUNT REFERRED TO IN THE PRECEDING PARAGRAPH OF THIS SUBSECTION SHALL BE—	AND THE MAXIMUM AMOUNT OF BENEFITS PAYABLE (AS PROVIDED IN SEC. 203(A)) ON THE BASIS OF HIS WAGES AND SELF-EMPLOYMENT INCOME SHALL BE—
AT LEAST—	BUT NOT MORE THAN—		AT LEAST	BUT NOT MORE THAN—		
		1266.70	2671	2675	1360.40	2380.80
		1267.70	2676	2680	1361.50	2382.60
		1268.70	2681	2685	1362.50	2384.60
		1269.70	2686	2690	1363.60	2386.40
		1270.70	2691	2695	1364.70	2388.30
		1271.70	2696	2700	1365.80	2390.10

TABLE 2

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS UNDER SUBPARAGRAPH (C)(i)(II) OF SUBSECTION 215(a)(1)

BEGINNING JUNE 1982

I (Years of coverage)	II (Primary insurance amount)	III (Maximum family benefits)
If an individual's years of coverage (as determined under sec. 215(a)(1)(C)(ii) are—	The amount referred to in sec. 215(a)(1)(C)(i)(II) shall be—	And the maximum amount of benefits payable (as provided in sec. 215(1)(2)(D)) on the basis of his or her wages and self-employment income shall be—
11	17.80	36.30
12	34.60	52.00
13	51.90	76.00
14	69.10	103.80
15	86.30	129.60
16	103.70	155.60
17	120.90	181.30
18	138.20	207.30
19	155.40	233.10
20	172.80	259.00
21	189.90	285.00
22	207.10	310.80
23	224.50	336.90
24	241.70	362.60
25	258.90	388.40
26	276.30	414.50
27	293.50	440.30
28	310.70	466.10
29	327.90	491.90
30	348.10	517.70

[FR Doc. 82-13190 Filed 5-13-82; 8:45 am]
BILLING CODE 4190-11-C

INTERSTATE COMMERCE COMMISSION

Freight Forwarders: Released Rate Applications

AGENCY: Interstate Commerce Commission.

ACTION: Notice: Released Rates Application No. 1526.

SUMMARY: Bekin Van Lines Co. seeks authority to establish and maintain a new Released Rates Rule to be published in its own tariff which is to be similar to R. R. O. MC–484 presently published in tariffs issued by Household Goods Carriers' Bureau, Agent.

The applicant requests this authority in order to extend the application of RRO 484 to commodities other than those specifically identified in MC–484 and amendments.

ADDRESS: Anyone seeking copies of this application should contact: Mr. Clifford C. Knowles, Vice President-Operations, High Technologies Division, Bekins Van Lines Co., P.O. Box 109, La Grange, IL 60525, telephone (312) 547–3481.

FOR FURTHER INFORMATION CONTACT: Howard J. Rooney, Jr., Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423, telephone (202) 275–7390.

SUPPLEMENTARY INFORMATION: Relief is sought from 49 U.S.C. 10730.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–13143 Filed 5–13–82; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. 6]

Motor Carriers; Applications, Alternate Route Deviations, and Intrastate Applications

Motor Carrier Intrastate Application(s) Notice

The following applications(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Iowa Docket No. MC –94, filed October 10, 1981. Applicant: ARNIE'S MOTOR FREIGHT, INC., 701 1st Avenue North, Altoona, IA 50009. Representative: Russell H. Wilson, 4400 Merle Hay Road, Des Moines, IA 50310. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *general commodities:* between Duncombe, Fort Dodge, Jefferson, Monroe, Prairie City and Webster City, Iowa, and points and places which Applicant presently holds under Iowa Certificate No. C—130F, and Certificate of Registration MC–99532. Intrastate, interstate and foreign commerce authority sought, Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the Iowa Dept. of Transportation, 507 10th St., Des Moines, Iowa 50319, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T–10011, filed April 9, 1982. Applicant: GERALD L. GRIFFIN d.b.a. CANALTOWN RECORDS & INNOVATIVE PRODUCTS, 239 E. Main Street, Palmyra, NY 14522. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General Commodities:* Between the territory comprised of Monroe, Wayne, Ontario and Seneca Counties. Intrastate, interstate and foreign commerce authority sought. Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

By the Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–13144 Filed 5–13–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C 10524(b).

1. Parent corporation and address of principal office: Abbott Laboratories, Abbott Park, North Chicago, IL 60064.

2. Wholly-owned subsidiaries which will participate in the operations are as follows:

Abbott Chemicals, Inc.
Abbott Energy, Inc.
Abbott Export Co.
Abbott Hospitals, Inc.
Abbott International Ltd.
Abbott Laboratories International Co.
Abbott Laboratories Pacific Ltd.
Abbott Laboratories Services Crop.
Abbott Laboratories Utilities Corp.
Abbott Pharmaceuticals, Inc.
Abbott Universal Ltd.
AHI Holding Co.
The Murine Company, Inc.
M & R Dietetic Laboratories, Inc.
Ross Laboratories, Inc.
Sorenson Research Co., Inc.
Swan-Myers, Incorporated
Tobal Products Incorporated
CMM Transportation, Inc.

All of the above subsidiaries are located at Abbott Park, North Chicago, IL 60064, except Sorenson Research Co., Inc., whose address is 4455 Atherton Drive, Taylorsville, UT 84107.

1. Dana Corporation, 4500 Dorr Street, Toledo, Ohio, 43615 is the parent corporation.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation are as follows:

i. Wix Corporation, a Delaware corporation;

ii. Tyrone Hydraulics, Inc., a Delaware corporation

iii. Boston Industrial Products, Inc., a Delaware corporation;

iv. Dana Distribution, Inc., a Delaware corporation;

v. DTF Trucking, Inc., a Delaware corporation.

1. Parent corporation and address of principal office: General Signal Corporation, High Ridge Park, Stamford, Connecticut 06904.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(a) Sola Basic Industries, Inc. (Wisconsin).

(b) OZ/Gedney Company (Connecticut).

(c) Edwards Company, Inc. (Connecticut).

(d) General Signal Mfg. Corp. (Delaware).

(e) General Signal Industries, Inc. (Delaware).

(f) Electroglas, Inc. (California).

(g) Tapco International, Inc. (Delaware).

(h) Telecommunications Technology, Inc. (Delaware).

(i) Xynetics, Inc. (Delaware).

(j) Blue M Electric Company (Delaware).
(k) Micro Automation, Inc. (Delaware).
(l) General Signal Appliance Corporation (Delaware).
(m) Kinney Vacuum Company (Delaware).
(n) Leeds & Northrup Company (Delaware).
(o) Mixing Equipment Company, Inc. (Delaware).
(p) General Signal Controls, Inc. (Delaware).

1. Parent Corporation—Household International, Inc., 2700 Sanders Road, Prospect Heights, Illinois 60070.

2. Wholly-owned subsidiaries of Household International, Inc., which will participate in the operations, and the addresses of their respective principal offices:

A. Household Finance Corporation, 2700 Sanders Road, Prospect Heights, Illinois 60070.

B. Household Merchandising, Inc., 1700 South Wolf Road, Des Plaines, Illinois 60018.

C. Coast-to-Coast Stores (Central Organization) Inc., 10801 Red Circle Drive, Minnetonka, Minnesota 55343.

D. Huffman-Koos Co., Route 4 at Main Street, North Hackensack, New Jersey 07661.

E. T.D.S. Transportation, Inc., 1700 South Wolf Road, Des Plaines, Illinois 60018.

F. T.G. & Y. Stores Co., 3815 North Santa Fe, Oklahoma City, Oklahoma 73125.

G. Vons Grocery Co., 10150 Lower Azusa Road, El Monte, California 91731.

H. White Stores, Inc., 3910 Call Field Road, Wichita Falls, Texas 76308.

I. Wallace Murray Corporation, 299 Park Avenue, New York, New York 10017.

J. Hydrometals, Inc., 299 Park Avenue, New York, New York 10017.

K. Thorsen Tool Co., 299 Park Avenue, New York, New York 10017.

L. Cameron Manufacturing Co., 299 Park Avenue, New York, New York 10017.

M. Peru Mining Co., 299 Park Avenue, New York, New York 10017.

N. Shannon Mining Co., 299 Park Avenue, New York, New York 10017.

O. United States Brass Corporation, 299 Park Avenue, New York, New York 10017.

P. King-Seeley Thermos Co., 2700 Sanders Road, Prospect Heights, Illinois 60070.

Q. National Car Rental Systems, Inc., 7700 France Avenue, South, Minneapolis, Minnesota 55437.

1. Parent corporation and address of principal office: Kaman Corporation, Blue Hills Avenue, Bloomfield, Connecticut 06002.

2. Wholly-owned subsidiaries which will participate in the operations, and States(s) of incorporation:

(i) Kaman Aerospace Corporation, Delaware.
(ii) Kaman Sciences Corporation, Delaware.
(iii) Kaman Instrumentation Corporation, Connecticut.
(iv) Kaman Aircraft Bearing Corporation, Connecticut.
(v) Kamatics Corporation, Connecticut.
(vi) Kaman Bearing and Supply-East, Connecticut.
(vii) Kaman Bearing and Supply-Midwest, Connecticut.
(viii) Kaman Bearing and Supply-Intermountain, Nevada.
(ix) Kaman Bearing and Supply-California, California.
(x) Kaman Bearing and Supply-Northwest, Idaho.
(xi) AirKaman, Incorporated, Connecticut.
(xii) AirKaman of Jacksonville, Inc., Connecticut.
(xiii) AirKaman of Omaha, Inc., Connecticut.
(xiv) AirKaman of Westover, Inc., Connecticut.
(xv) Ovation Instruments, Inc., Connecticut.
(xvi) Kaman Musical String Corporation, New Jersey.
(xvii) Kaman Music International Corporation, Connecticut.
(xviii) Currier Piano Company, Inc., North Carolina.
(xix) Coast Wholesale Music Co. of Los Angeles, California.
(xx) Coast Wholesale Music Co. of San Francisco, California.
(xxi) C. Bruno & Son, Inc., Connecticut.
(xxii) General Sales Western, Inc., Washington.

1. Parent corporation and address of principal office: Newell Enterprises, Inc., 726 Probandt Street, San Antonio, Texas 78204.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

Newell Enterprises of Kansas City, Inc	Texas.
Southwest Recycling, Inc	Do.
Newell Products, Inc	Do.
Newell Products of Houston, Inc	Do.
Newell Products of Kansas City, Inc	Do.

1. Parent corporation and address: Syracuse Tank & Manufacturing Co., Inc., 723 Hiawatha Blvd. West, Syracuse, NY 13201.

2. Wholly-owned subsidiaries and State of Incorporation:

Alabama Metal Forming Co., Inc., 201–16th Street South, Pell City, Alabama 35125; Alabama.

American Tank & Culvert Co., Inc., 7435 Allentown Blvd., PO Box 6145, Harrisburg, Pa. 17112; Pennsylvania.

Augusta Tank & Culvert Co., Inc., Central Street, Box 345, Hallowell, Maine 04347; Maine.

Eastern Culvert Co., Inc., 239 Litchield Street, P.O. Box 266, Leominister, Massachusetts 01453; Massachusetts.

Palm Beach Tank & Culvert Co., Inc., 4735 Dyer Blvd., West Palm Beach, Florida, Mailing address: PO Box 9996, Riviera Beach, Florida 33404; Florida.

Palm Beach Tank & Culvert Co., Inc., 301 Ivy Lane, Rt #7 Box 569B, Orlando, Florida 32805; Florida.

Southern Tank & Culvert Co., Inc., P.O. Box 370, Cowpens, So. Carolina 29330; South Carolina.

Southwest Culvert Co., Inc., P.O. Box 6636, 5145 West Madison, Phoenix, Arizona 85005; Arizona.

Syracuse Steel Systems, Inc., 723 Hiawatha Blvd., West, Syracuse, N.Y. 13204; New York.

Georgia Culvert Co., Inc., P.O. Box 4996, Syracuse, N.Y. 13221; Georgia.

1. Parent corporation and address of principal office: Wheelabrator-Frye Inc., a Delaware corporation, Liberty Lane, Hampton, NH 03842.

Communications concerning this notice should be sent to the following address: Trailmobile Inc., ATTN: Manager, Fleet Operations, 723 North Fifth St., Charleston, IL 61920.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

The M. W. Kellogg Company, A Delaware Corporation, 200 South Michigan Avenue, Chicago, IL 60604.

Trailmobile Canada Limited, A Canadian Corporation, 100 Shaver Street, Brantford, Ontario, CANADA.

Garden City Fan & Blower Co., A Delaware Corporation, 1701 Terminal Road, Niles, MI 49120.

Transport Systems, Inc., A Texas Corporation, P.O. Box 1886, Denton, Texas 76201.

Whiting Corporation, An Illinois Corporation, 15700 Lathrop Avenue, Harvey, IL 60426.

Frye Copysystems, Inc., A Delaware Corporation, P.O. Box 4947, 7445 University Avenue, Des Moines, IA 50311.

Sinclair & Valentine Company, Inc., A Delaware Corporation, 7600 University Avenue, Des Moines, IA 50311.

Trailmobile Inc., A Delaware Corporation, 200 East Randolph Drive, Chicago, IL 60601.
Wheelabrator Corporation of Canada Limited, A Canadian Corporation, 401 Wheelabrator Way, Milton, Ontario, Canada.
Neptune International Corporation, A Delaware Corporation, 30 Perimeter Park, Atlanta, GA 40431.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13140 Filed 5-13-82; 8:45 am]
BILLING CODE 7535-01-M

[Volume No. OP3-073]

Motor Carriers; Permanent Authority Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this **Federal Register** notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 (renumbered 1100.251) addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 (renumbered 251) was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Agatha L. Mergenovich,
Secretary.

MC 13845 (Sub-9) (Republication) filed September 4, 1981, previously published in **Federal Register** issue of September 22, 1981. Applicant: WILLIAM CARL & JAMES FRANKLIN RUSSELL d.b.a. FRANK RUSSELL & SON, 401 S. Ida Street, West Frankfort, IL 62896. Representative: William C. Russell (same address as applicant). A Decision by the Commission, Review Board 3, decided February 2, 1982, and served February 22, 1982, finds that the performance by applicant of service described herein to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, *mining equipment, mining materials and mining supplies,* between points in Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania, Virginia, and West Virginia, on the one hand, and on the other, points in the United States; that the applicant is fit, willing and able to properly perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect the applicant's actual grant of authority.

MC 148105 (Sub-3) (Republication) filed January 18, 1982, previously published in **Federal Register** issue of February 10, 1982. Applicant: OVERLAND EXPRESS, P.O. Box 12332, Houston, TX 77017. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459. A Decision by the Commission, Review Board 1, decided April 28, 1982, and served May 7, 1982, finds that the performance by applicant of service described herein to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, (1) *Mercer commodities,* between points in Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas, on the one hand, and, on the other, points in the United States (except Hawaii), (2) *machinery and earth drilling commodities,* between points in Alabama, Arkansas, California, Georgia, Florida, Louisiana, Texas, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the United States, and (3) *iron and steel articles,* between points in Texas, Missouri, New Mexico, Oklahoma, and Louisiana; that the applicant is fit, willing and able to properly perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect the applicant's actual grant of authority.

MC 148554 (Sub-3) (Republication) filed January 18, 1982, previously published in **Federal Register** issue of February 10, 1982. Applicant: WALD TRANSFER & STORAGE CO. a Corporation, P.O. Box 344, Houston, TX 77001. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459. A Decision by the Commission, Review Board 1, decided April 27, 1982, and served May 10, 1982, finds that the performance by applicant of service described herein to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, (1) *Mercer commodities,* between points in Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas, on the one hand, and, on the other, points in the United States (except Hawaii), (2) *machinery and earth drilling commodities,* between points in Alabama, Arkansas, California, Georgia, Florida, Louisiana, Texas, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the United States, and (3) *iron and steel articles,* between points in Texas, Missouri, New Mexico, Oklahoma, and Louisiana; that the applicant is fit, willing and able to properly perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect the applicant's actual grant of authority.

[FR Doc. 82-13141 Filed 5-13-82; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 255]

Motor Carriers; Permanent Authority Decisions Restriction Removals Decision-Notice

Decided: May 7, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 37918 (Sub-15)X, filed August 19, 1981, previously noticed in the **Federal Register** of September 11, 1981, republished as corrected this issue. Applicant: DIRECT WINTERS TRANSPORT LIMITED, 2 Tippet Road, Downsview, Ontario, Canada M3H 5X3. Representative: William J. Hirsch P.C., 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. Applicant seeks to expand points within 8 miles of Detroit, MI in the lead to "Wayne, Oakland, Macomb, Monroe, and Washtenaw Counties, MI". The purpose of this republication is to include Monroe and Washtenaw Counties, MI as two of the five counties within 8 miles of Detroit.

MC 116400 (Sub-9)X, filed August 26, 1981, previously noticed in the **Federal Register** of April 6, 1982, republished as corrected this issue. Applicant: LAWRENCE TRANSFER & STORAGE CORPORATION, 2727 Hollins Road, NE, P.O. Box 13025, Roanoke, VA 24030. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4G and 7F certificates to (1) broaden the commodity description from household goods to "household goods and furniture and fixtures" between points in 35 states and DC. The purpose of this republication is to correct errors of omission of the lead and Sub-No. 4G and 10 states plus DC in the original **Federal Register** publication of April 6, 1982.

MC 120171 (Sub-5)X, filed April 27, 1982. Applicant: FAIRSIDE TRUCKING, INC., 7 Chilton Road, Brockton, MA 02401. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043. Subs 1, 2 and 3. Broaden: In Sub 1, such commodities as heavy machinery and other articles requiring specialized handling or rigging because of size or weight, and when transported therewith, to "such commodities which because of size or weight require the use of special equipment"; in Sub 2, such salvage and scrap materials as are removed from telephone lines or plants to "waste or scrap materials not identified by industry producing"; wood piling and telephone and power line poles and cables to "lumber and wood products and metal products"; cross arms for telephone and power line poles to "lumber and wood products and metal products" and equipment, materials and supplies used in the construction or maintenance of telephone lines or plants to "such commodities which because of size or weight require the use of special equipment"; and in Sub 3, wooden poles and wooden piling to "poles and piling; remove restriction to storage areas/construction or repair sites in ME, MA, NH, RI and VT; and restriction involving Brockton service to delivery/receipt of interchange traffic originating at/destined to points beyond Brockton in Sub 2; broaden from "points in Vermont, New Hampshire and Maine, south of a line extending in an easterly direction from Charlotte, VT to Augusta, ME, and west of a line extending in a southerly direction from Augusta, ME, passing through Gardiner and Bath, ME to the Atlantic Coast, including the points specified" to "points in Chittenden, Addison, Washington, Caldonia and Orange Counties, VT, Grafton, Coos and Carroll Counties, NH; and Oxford, Androscoggin, Cumberland, Kennebec and Sagadahoc Counties, ME", in Sub 1; to radial authority in Subs 2 and 3.

MC 143373 (Sub-5)X, filed May 3, 1982. Applicant: WEILAND TRUCKING CO., INC., Rt. 2, P.O. Box 268, Wautoma, WI 54982. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madision, WI 53719. Sub 4F permit: (1) broaden malt beverages to "food and related products"; and (2) broaden the territorial authority to between points in the U.S. (except AK and HI), under continuing contract(s) with a named shipper.

MC 145708 (Sub-4)X, filed April 29, 1982. Applicant: WILLIAM A. LONG, INC., Bealeton, VA 22712. Representative: Daniel B. Johnson, 4304 East-West Highway, Bethesda, MD 20814. Subs 1 and 2 certificates, and No. MC–134129 Subs 2 and 11 permits, (1) Broaden: (a) Concrete highway barriers to "clay, concrete, glass or stone products" in Sub 1; (b) reinforcing mesh, wire and nails to "metal products" in Sub 2 certificate; (c) culvert pipe, culvert sectional plate and couplings and coatings for culvert pipe and sections, culvert banding and coupling material, coating and steel plates used in the manufacture thereof and steel coil to "chemicals and related products, petroleum or coal products, rubber or plastic products, clay, concrete, glass or stone products and metal products", and plastic articles to "rubber or plastic products" in Sub 2 permit; (d) fence, fence fittings and fence accessories to "lumber and wood products, rubber and plastic products, clay, concrete, glass or stone products and metal products", Sub-11, (e) remove restriction against transportation of commodities in bulk, in tank or hopper-type vehicles, in Sub-2 permit; (2) change to between points in the U.S. (except AK and HI), under a continuing contract(s) with named shippers, in both permits.

[FR Doc 82-13142 Filed 5-13-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-3-070]

Motor Carriers; Permanent Authority Decisions, Decision-Notice

May 6, 1982.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicant with regulated operations (except those with duly noted problems) and will remain in full

effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams (Member Fisher not participating).

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

FF-594, filed April 26, 1982. Applicant: SUNSHINE FORWARDING, INC., 726 Spruce Trail, Frazier Park, CA 93225. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632-2300. As a *freight forwarder,* transporting *used household goods, unaccompanied baggage and used automobiles,* between points in the U.S.

MC 2934 (Sub-120), filed April 26, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 No. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875-1142. Transporting *electronic diagnostic equipment,* between points in the U.S. (except AK and HI), under continuing contract(s) with Adac Laboratories of Sunnyvale, CA.

MC 16334 (Sub-20), filed April 28, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888-3386. Transporting *food and related products,* between points in Marshall County, MS, Ontario County, NY; and San Bernardino County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 59855 (Sub-46), filed April 19, 1982. Applicant: SHEEHAN CARRIERS, INC., P.O. Box 57, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435-7140. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 105424 (Sub-2), filed April 28, 1982. Applicant: PLAGGE TRUCK LINE, INC., 251 18th St., S.E., Mason City, IA 50401. Representative: Steven C. Schoenebaum, 1200 Register and Tribune Bldg., Des Moines, IA 50309, (515) 283-2076. Transporting *building materials, supplies, and products,* between points in the U.S., under continuing contract(s) with Key Wholesale Building Products, Inc. of Mason City, IA.

MC 109064 (Sub-44), filed April 28, 1982. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC.: 3301 E. Loop 820 So., Ft. Worth, TX 76112. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255-6279. Transporting *such commodities* as are dealt in by manufacturers or distributors of rubber and plastic products, and *clay, concrete, glass or stone products,* between Ft. Worth, TX, Salt Lake City, UT and points in Fresno County, CA and Harrison County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 119864 (Sub-79), filed April 21, 1982. Applicant: CRAIG TRANSPORTATION CO., 26699 Eckel Rd., Perrysburg, OH 43551. Representative: Brian D. Craig (same address as applicant), (419) 874-7981. Transporting *such commodities* as are dealt in or used by grocery and food business houses, drug stores and department stores, between those points in the U.S. east of ND, SD, NE, CO and NM.

MC 129484 (Sub-11), filed April 28, 1982. Applicant: RAMDO TRANSPORT, INC., d.b.a. MELVIN WANG TRUCKING, 80-29th Ave., N. Fargo, ND 58102. Representative: Richard P. Anderson, P.O. Box 2581 Fargo, ND 58108, (701) 235-3300. Transporting *commodities in bulk,* between points in ND, SD, MN, MT, WI, IA, NE, and WY.

MC 145505 (Sub-5), filed April 20, 1982. Applicant: IRISH TRANSPORTATION, INC., 8007 South Meridian St., Indianapolis, IN 46227. Representative: Robert B. Hebert, 777 Chamber of Commerce Bldg. Indianapolis, IN 46204 (317) 639-4511. Transporting *motor vehicles,* between points in the U.S. (except AK and HI).

MC 145855 (Sub-9), filed April 27, 1982. Applicant: JOHN RAY TRUCKING CO., INC., P.O. Box 206, Eastaboga, AL 35260. Representative: John W. Cooper, P.O. Box 162, Mentone, AL 35984, (205) 634-4885. Transporting *chemicals,* between points in Calhoun and Etowah Counties, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Monsanto Company, of St. Louis, MO.

MC 146605 (Sub-10), filed April 27, 1982. Applicant: EVENSON BROS., INC., P.O. Box 328, Pelican Rapids, MN 56572. Representative: Thomas J. Van Osdel, 15 Broadway, Suite 502, Fargo, ND 58102 (701) 235-4487. Transporting *lumber and wood products,* between points in ID, MT, OR, and WA, on the one hand, and, on the other, points in IA, IL, and WI, and between points in IL, IA, MN, ND, SD, and WI.

MC 151325 (Sub-1), filed April 27, 1982. Applicant: H & R TRANSPORT, LTD., 3601 2nd Ave., N. Lethbridge, Alberta, Canada T1H 5K7. Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531-1300. Transporting *clay, concrete, glass or stone products,* between ports of entry on the International Boundary line between the United States and Canada, in ID and WA, on the one hand, and, on the other, points in WA, ID, and OR.

MC 151634 (Sub-6), filed April 26, 1982. Applicant: GOLDEN COACH, A.C., INC., Boston at Pacific, P.O. Box 1737, Atlantic City, NJ 08404. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022 (212) 838-0600. Transporting *passengers and their baggage,* in special operations, between points in CT, DE, MD, NJ, NY, PA, VA, and DC, on the one hand, and, on the other, Atlantic City, NJ.

MC 152395 (Sub-4), filed April 26, 1982. Applicant: KRUEGER TRUCKING, INC., 1330 Bellevue St., Green Bay, WI 54308. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting (1) *furniture and fixtures,* between points in the U.S. (Except AK and HI), under continuing contract(s) with Thomasville Furniture Industries, Inc. of Thomasville, NC and (2) *such commodities* as are dealt in or used by retail stores, discount and specialty stores, between points in the U.S. (except AK and HI), under continuing contract(s) with H. C. Prange Co. of Green Bay, WI.

MC 153174 (Sub-2), filed April 27, 1982. Applicant: AFFILIATED TRANSPORT SERVICES, INC., P.O. Box 158, Folcroft, PA 19032. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561-1030. Transporting *chemicals and related*

products, between New York, NY, and Philadelphia, PA.

MC 156254 (Sub-9), filed April 26, 1982. Applicant: CONTRACT TRUCKERS, INC., 530 Haunted Lane, Cornwells Heights, PA 19020. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403, (617) 580–1000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Kewaunee Scientific Equipment Corporation, of Adrian, MI.

MC 157884, filed April 26, 1982. Applicant: W. S. "RED" HANCOCK, INC., P.O. Box 207, Bentonia, MS 39040. Representative: Fred W. Jonson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355–3543. Transporting *Mercer commodities,* between points in AL, AR, FL, GA, LA, MS, OK, TN and TX.

MC 157925 (Sub-1), filed April 23, 1982. Applicant: DANNY GOUGE, d.b.a. GOUGE TRUCKING COMPANY, Route 1, Box 34, Greenmountain, NC 28740. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., N.W., Washington, D.C. 20005, (202) 347–9332. Transporting *olivine,* between points in Yancey County, NC, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND.

MC 158234 (Sub-4), filed April 27, 1982. Applicant: PACIFIC MOTOR TRANSPORT, INC., P.O. Box 759, Tenino, WA 98589. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101, (206) 624–7373. Transporting *classes A, B, and C explosives* and *blasting agents,* (1) between points in NJ, PA, IL, MN, MO, AR, AL, TX, OK, LA, NM, AZ, CO, UT, NV, CA, OR, WA, ID, MT, and WY, and (2) between points in WA.

Note.—The certificate granted in this proceeding shall expire 5 years from the date of issuance.

MC 160275, filed April 27, 1982. Applicant: TOM MILLLER TRUCKING COMPANY, INC., P.O. Box 99, Claremont, NC 28610. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615) 790–2510. Transporting *general commodities* (except classes A and B explosives and household goods), between points in NC, on the one hand, and, on the other, points in the U.S. on and east of a line beginning at the mouth of the Mississippi River to its junction with the eastern boundary of Itasca County, MN, then northward along the eastern boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada.

MC 161675, filed April 26, 1982. Applicant: HUCK ASSOCIATES, INC., P.O. Box 278, Brighton, CO 80601. Representative: Richard S. Mandelson, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264, (303) 861–4028. Transporting *Mercer commodities,* between points in CO, WY, KS, UT, NE, OK, TX, and NM.

MC 161685, filed April 26, 1982. Applicant: HENREDON TRANSPORTATION COMPANY, a Corporation, P.O. Box 70, Morganton, NC 28655. Representative: James M. Iseman, Jr., 1001 W. Fourth St., Winston-Salem, NC 27101, (919) 725–2351. Transporting (1) *such commodities* as are used in the manufacture of new furniture, between points in the U.S. (except AK and HI), under continuing contract(s) with Foothills, Inc., of Hickory, NC, and (2) *paper and paperboard,* between points in the U.S. (except AK and HI), under continuing contract(s) with ETTA Packaging, Inc., of Marion, NC.

MC 161694, filed April 26, 1988. Applicant: EZRA B. MARTIN, Rt. 6 Box 86, Hagertown, MD 21740. Representative: Ezra B. Martin, (same address as applicant), (301) 733–1506. Transporting *passengers and their baggage,* in charter operations, beginning and ending at points in Washington County, MD, and extending to points in PA, NJ, DE, WV, VA, and DC.

MC 161695, filed April 27, 1982. Applicant: DRUMMER AIR-LAND CARGO, INC., 19101 Snow Rd., P.O. Box 81363, Cleveland, OH 44181. Representative: Donald M. Rudy, 23203 Lorain Rd., North Olmsted, OH 44070, (216) 779–6330. Transporting *paint and paint solvents,* between points in Cuyahoga County, OH, on the one hand, and, on the other points in Oakland, Macomb, Genesse, Ingham, Eaton, Kent, and Wayne Counties, MI, Boone County, IL, Madison and Marion Counties, IN, Jefferson County, KY, Onongaga County, NY, and Rock County, WI.

MC 159075 (Sub-1), filed February 22, 1982, previously published in the **Federal Register** on March 10, 1982. Applicant: WILLIAM P. JONES, d.b.a. JONES BROS. TRUCKING, 2400 Old Fort Rd., Missoula, MT 59801. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *lumber,* between points in Stevens County, WA, on the one hand, and, on the other, points in IA, IL, MN, ND, SD, and WI.

Note.—This republication corrects the territorial description.

[FR Doc. 82-13213 Filed 5-12-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-114)]

Rail Carriers; Burlington Northern Railroad Co.—Abandonment—In Gage County, NE; and Washington, Republic, and Cloud Counties, KS; Findings

The Commission issued a certificate authorizing Burlington Northern Railroad Company to abandon its 70.73 mile rail line extending from milepost 1.41 near Odell Jct., NE to milepost 72.14 at the end of the line near Concordia, KS, in Gage County, NE and Washington, Republic and Cloud Counties, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13146 Filed 5-13-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29893]

Rail Carrier; Central of Georgia Railroad Co.—Exemption—Abandonment of Three Lines in Alabama, South Carolina, and Georgia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements for prior approval under 49 U.S.C. 10903 and 10904 the proposed abandonment of (1) a 39-mile line between Clayton and Ozark, AL, (2) a 25-mile line between Greenwood and Waters, SC, and (3) a 37-mile line between Midville and Gough and between Torbit and Hephzibah, GA.

DATES: Exemption is effective on June 14, 1982. Petitions to stay the effective date must be filed by May 24, 1982, and petitions for reconsideration must be filed by June 3, 1982.

ADDRESSES: Send pleadings to:
(1) Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Nancy S. Fleischman, P.O. Box 1808, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, DC 20423; (202) 289–4357 DC Metropolitan Area, (800) 424–5403 toll free for outside DC area.

Decided: May 7, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13145 Filed 5-13-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29905]

Rail Carrier; Enid Central Railway, Inc.—Acquisition and Operation—Chicago Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Kremlin and Ponca City, OK

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of Enid Central Railway, Inc., to acquire and operate a 70 mile line of railroad owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), bewteeen Enid and Kremlin, OK and between Enid and Ponca City, OK.

DATE: Verified statements supporting or opposing the application must be received at the Commission by June 1, 1982.

ADDRESS: An original and 5 copies of all statements should make reference to Finance Docket No. 29905 and should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423, Attention: Rock Island Acquisition.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Enid Central Railway, Inc. (ECR), a subsidiary of the Centrail Corporation, filed an application on April 19, 1982 under Section 17(b) of the Milwaukee Railroad Restructuring Act, (MRRA) 45 U.S.C. 915(b) and 49 CFR Part 1111, et seq., for authority to purchase certain properties of the Chicago, Rock Island, and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island) located in Oklahoma. A petition for waiver from certain information requirements of our regulations at 49 CFR Part 1111 was also filed.

The property involved consists of 70.03 miles of railroad between Enid and Kremlin, OK, and between Enid, and Ponca City, OK. ECR presently operates over the line under Service Order Number 1473. A sale and purchase agreement was signed by ECR and the Rock Island Trustee on March 29, 1982. No governmental assistance is involved in this proposal.

Because it is not clear from the application who is ECR's ultimate parent corporation, ECR is asked to explain this in its statement. We find that the application otherwise contains the information required. Accordingly, ECR's petition for waiver from certain of the information requirements of the Commission's regulations is dismissed as moot.

Comments on the proposal must be filed by June 1, 1982. A copy of comments should be served upon the Attorney General of the United States and the United States Secretary of Transportation, and upon Peter A. Greene, 1920 N Street N.W., Suite 700, Washington, D.C. 20036.

Preliminary approval of the proposed transaction by the Court overseeing the reorganization of the Rock Island *In the Matter of Chicago, Rock Island and Pacific Railroad Company, Debtor,* in No. 75 B 2697 (U.S. Dist. Court, N.D. Ill.), was obtained on April 8, 1982. The court has also directed the Commission to issue a final decision on this application on or before June 18, 1982.

Since this application involves a non-carrier applicant, we will evaluate it under 49 U.S.C. 10901 in order to certificate the applicant.

It is ordered:

1. The application in Finance Docket No. 29905 is accepted for consideration.
2. The petition for waiver is dismissed.
3. The parties shall comply with all provisions as stated above.
4. This decision is effective on May 14, 1982.

Dated: May 12, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13383 Filed 5-13-82; 11:22 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. American Consulting Engineers Council; Comments on Proposed Final Judgment

Pursuant to Subsection 16(b) and 16(a) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the Department publishes below two comments it received on the proposed Final Judgment in the case of *U.S. v. American Consulting Engineers Council,* Civil No. 80–2067 (D.D.C.). Also published is the Department's response to such comments.

Joseph H. Widmar,
Director of Operations.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *American Consulting Engineers Council,* Defendant.

Civil No. 80–2067.

Plaintiff's Response to Comments Regarding the Proposed Final Judgment

The plaintiff has received two comments regarding the proposed Final Judgment. Copies of these comments are attached. These letters and this response will be promptly published in the **Federal Register** as required by 15 U.S.C. § 16(d).

A. Response to Comments of Ferd E. Anderson, Jr.

By letter dated April 9, 1982, Ferd E. Anderson, Jr., a professional engineer, [1] objected to the Department challenging ACEC's ban on contingent arrangements. He was "absolutely amazed" that any lawyer could challenge ACEC's code provision on this subject. He requested the Department to provide him with "a single instance in which a consumer has been injured because an engineer member of ACEC has refused to accept a professional commission on a contingent basis under circumstances under which his professional judgment may be

[1] In the other comment received upon the proposed Final Judgment, infra, Mr. Raymond Alvine indicated that Mr. Anderson is a retired military officer who has not owned or been a principal in a consulting engineering firm which might either belong to ACEC or have been engaging in the activities involved in this litigation. The 1980–81 ACEC Director indicates, however, that Mr. Anderson apparently was Executive Director of the American Consulting Engineers Council of Nebraska until quite recently. (See also, Spiller Deposition Exhibit 1 at page 122 (1979–80 ACEC Directory)).

compromised." He also asked for "the details of the disciplinary action that ACEC took against the . . . engineer who created an injury to a consumer." He also requested the Department's recommendations "on changing federal procurement practices so that consumers who are federal agencies will be required to engage consulting engineers on a contingent basis where professional judgements may be compromised."

Mr. Anderson's comments are based upon misunderstanding of both the nature of the conspiracy and the terms and purpose of the proposed consent decree.

The government would have attempted to prove at trial that ACEC had a ban on all contingent arrangements. Although ACEC's code provision on this subject, Rule 5e of its former code of ethics, on its face purported to prohibit only those contingent arrangements involving a conflict of interest,[2] the government['s] would have offered evidence to show that, as interpreted and applied, this rule was designed to ban *all* contingent arrangements used to promote or secure a commission.

It was this interpretation of the conflict-of-interest language as a total ban on contingent arrangements which was the crux of ACEC's conspiracy with respect to contingent arrangements. The proposed final judgment is designed to prevent the recurrence or continuation of that conspiracy and consequently, given ACEC's past interpretation of former Rule 5e, enjoins ACEC from having any rule, provision or policy which specifically prohibits or discourages contingent arrangements. The government has not challenged ACEC's general conflict-of-interest code of ethics provisions, former Rule 4 (a) and (b) [3] and current Rule(a),[4] and ACEC remains free to discipline a member under those rules in those specific situations where it can demonstrate that a member has not complied with its conflict-of-interest rule. In a similar vein, it is not, as Mr. Anderson apparently would have it, the purpose of the proposed final judgment to dictate or suggest to federal agencies or any other consumers that they should or should not use contingent arrangements. The function of the decree is to insure that these decisions are made by participants in specific transactions free of the contraint of a supplier's agreement on the subject.

[2] Rule 5e provided that "Members shall not request, propose or accept professional commissions on a contingent basis under circumstances under which their professional judgments may be compromised.

[3] Former Rule 4a provided that "Members shall avoid all known conflicts of interest with their clients and shall promptly inform their clients of any business association, interests, or circumstances which could influence their judgment or the quality of their services."

Former Rule 4b provided that "Members shall not undertake any assignments which would create a potential conflict of interest between Members and their clients."

[4] Current Rule 4a provides that "Consulting engineers shall disclose all known or potential conflicts of interest to their clients by promptly informing them of any business association, interest, or other circumstances which could influence or appear to influence their judgment or the quality of their services."

B. Response to Comments of Raymond G. Alvine

By letter dated April 14, 1982, Raymond G. Alvine, a professional engineer and principal of a member firm of ACEC, objected in general to the bringing of this suit. His basic position was that this case in his view represents a waste of taxes for a variety of reasons, including that by bringing it the Department was crushing professional organizations, that the Department should be putting its resources to better use by going after "true criminals and true abuses" by prosecuting organized crime and corrupt officials, and that the "low dollar" should not govern the hiring of professional judgment.

This case and proposed consent decree involves what the Department believes is a clear-cut and serious violation of the federal antitrust laws. Requiring associations like ACEC to comply with those laws does not, in our view, involve the "crushing" of professional organizations nor the wasting of taxpayers' money, and Mr. Alvine offers no evidence (nor are we aware of any) that entry of this decree would crush ACEC or any other organization. Nor, as Mr. Alvine suggests, [is the case,] is it the purpose or probable effect of the proposed final judgment that the "low dollar" will automatically govern the hiring of professional judgment. Rather, the proposed decree is designed to insure that individual consumers of engineering services have the opportunity to decide whether or not to purchase the "low dollar" proposal in a market free of a suppliers' agreement concerning terms directly effecting the pricing of those services.

Conclusion

After reviewing these comments, the United States still submits that entry of the proposed judgment would be in the public interest.

Dated: ———.

Respectfully submitted,

Edward D. Eliasberg, Jr.,

Gail Kursh,

Attorneys, Department of Justice, Antitrust Division, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530, Telephone: (202) 633–2562.

Certificate of Service

I, Edward D. Eliasberg, Jr., attorney for Plaintiff United States of America, hereby certify that a copy of the attached Plaintiff's Response To Comments Regarding The Proposed Final Judgment has been served this —th day of May, 1982 by first class mail, postage prepaid, upon Lewis A. Rivlin, Esquire, attorney for Defendant, Twelfth Floor, Connecticut Building, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Edward D. Eliasberg, Jr.,

Attorney, Department of Justice, 10th & Pa. Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633–2562.

April 9, 1982.

Mr. John W. Poole Jr.,
Chief, Special Litigation Section, Antitrust Division, U.S. Department of Justice, 10th Street & Pennsylvania Avenue, N.W., Washington, D.C.

Dear Mr. Poole: I have recently received a copy of the Final Judgment of the USA vs. ACEC, Civil No. 80–2067. I note that a 60 day comment period was provided in the discussion of the Judgment and that this comment will fall within the 60 day period.

I ask that you provide to me as soon as possible the answers to several questions I am asking in this letter.

I am intrigued by this whole affair because of the enormous amount of time (18 months) dollars and talent expended by both the Department of Justice and ACEC to reach the Final Judgment. DOJ states that ACEC "conspired to restrain competition" by promulgating a code of ethics which stated "Members shall not request, propose or accept professional commissions on a contingent basis under circumstances under which their professional judgments may be compromised."

I have read that statement several times and I am absolutely amazed that any lawyer could challenge it as conspiritorial. Obviously the statement is designed to protect any client or consumer from biased or warped engineering judgments.

I am led to believe that the DOJ pursues law suits because it believes that someone has been injured, not on a far-fetched, extreme, hypothetical supposition that somewhere, someone might be injured. Therefore my first request to you is to provide me a single instance in which a consumer has been injured because an engineer member of ACEC has refused to accept a professional commission on a contingent basis under circumstances under which his professional judgments may be compromised.

My second request is that you furnish to me the details of the disciplinary action that ACEC took against the above mentioned engineer who created an injury to a consumer.

My third request to you is to provide me your recommendations on changing federal procurement practices so that consumers who are federal agencies will be required to engage consulting engineers on a contingent basis where professional judgment may be compromised. Obviously you believe that an engineer should offer services under circumstances that compromise his judgment.

Having again read the Final Judgment and explanation of the DOJ, I arrive at the conclusion that the most frightening aspect of this case is that you folks really believe that you have accomplished something.

Sincerely,

Fred E. Anderson, Jr., P.E.,

905 South 20th Street, Lincoln, NE 68510.

Alvine Associates,
April 14, 1982.

Re *U.S.A. v. American Consulting Engineers Council*, Civil No. 80–2067.

Mr. John W. Poole, Jr.,
Chief, Special Litigation Section, Anti-Trust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C.

Dear Mr. Poole: I have just reviewed a letter to you written by Mr. Ferd E. Anderson, Jr., Professional Engineer. It may interest you to know that Mr. Anderson is a retired military officer and not a conspiring Professional Engineer as one of your bright-eyed lawyers who graduated in the late '60s might suspect. To my knowledge, Mr. Anderson has not owned or been a principle participant in a consulting engineering firm which might belong to the American Consulting Engineers Council and would have engaged in its activities that were so heroically banned by the Justice Department.

I can only say "Right on, Mr. Anderson!" In the past I also have written letters to the Department of Justice requesting an explanation, only to get a mindless, wandering answer that was the type of material that properly published could have emulated the success of Gulliver's Travels and Alice in Wonderland. It is indeed amazing how people such as Jimmy Hoffa, the Teamster's Union, organized crime and others can go around pursuing their vicious trades while the Justice Department is out literally crushing professional organizations that have served the nation so well. I guess easy victories are a real temptation to justify the size of your staff. You know best what they are qualified to do! I may not sound very kind in this letter, Sir, and I don't really intend to be. Through efforts such as the one recently completed by the Justice Department, the public will be served, but served less.

Enclosed find a copy of a cartoon you no doubt recently saw and it is, unfortunately, true. Man being an intelligent being saw the need for justice. To provide for justice, he came up with rules. Down through the centuries, rules became known as law. Lawyers long ago gave up the study of justice and took up the study of law and have become fascinated with "a rose is a rose is a rose is a rose" while the flower garden deteriorates.

If the legal profession were made to serve the public in the same fashion that they love to prescribe for other people, the legal profession would be in serious trouble and I do believe they're headed that way. You love to legislate and then adjudicate. It's tough to participate in a game where the opposition owns the umpires. I find it fascinating that in states such as Iowa, it's a state law that you have to belong to the Bar Association if you practice law. Is that conspiracy? If not, it is at least the best membership drive that any organization every conceived. I actually believe it is in the public interest.

Elsewhere, in the marble halls of wisdom of Washington, D.C., certain bureaucratic departments are suggesting that architects and engineers be required to bid on design projects. The low dollar should govern the hiring of professional judgment! Those within the government who are familiar with the process of designing buildings and sorting out the appropriate talents required have replied that they are appalled at such a concept. I can only hope those who promote the idea put their terminal illness out for bids to the cheapest doctor. I am certain the illness could not involve brain surgery. When you hire a professional service, you hire a person's judgements and abilities; you don't hire a person who is manufacturing a product.

Strangely, those who decide what we should do, do not understand what we do. They think, for instance, that architects and engineers build buildings. We do not. We use our professional training and experience to create a set of circumstances wherein an owner proposing to build a building will achieve essentially what he needs at a price he can afford. If this is accomplished, we are quite successful. This item, of course, is not germane to Case DOJ 80-2067 but is typical of what is happening along the Yellow Brick Road that wanders through Washington.

I find it most interesting that when I hear of a ludicrous proposition relative to professional services, you can usually trace it back to a legal mind that would not for a moment consider operating under the conditions that he proposes for other professionals.

I am waiting for your reply to Mr. Anderson's letter. I am certain it will be most entertaining. It probably will be entitled "Alice in Wonderland II".

Ordinarily, I do not engage in wasting my time in writing letters such as this. But I reflect, I believe, what many other people are saying. They are up to their ears in all the good things that Government does for us. We sort of wish that all of you would go home for a while and go back to your hobbies or at least spend the money going after true criminals and true abuses. Our Founding Fathers would be appalled to find that the bureaucrats have replaced George III!

The American public believes that the President of the United States passes laws. They fail to understand that Congress passes laws and that is a major cause of why we're in trouble today. What they also fail to realize is that the real culprit in many instances is the fact that Congress has to turn to the various bureaucratic branches of Government for their input and advice on programs and "legal" issues. Governments pass laws and bureaucrats pass rules. The rules subsequently turn out to be laws that bureaucrats pass through enabling legislation called such things as E.P.A., etc. Congress issues the hunting license and mindless bureaucrats go hunting. D.O.J. Case Civil No. 80-2067 is a landmark example.

Wouldn't you rather investigate a man who spent his entire life as a civil servant or in public employment and wound up a multi-millionaire? Or was Lyndon Johnson a bit big for D.O.J.?

I do not request an answer to this letter and doubt if you would waste you time answering. In fact, I doubt if anybody in your department has guts enought to show the boss the letter. This is usually what happens, I find, when the head of a Federal agency such as yours receives a diatribe from a person who is sick and tired of having a bureaucrat waste his hard earned money that is confiscated in the form of taxes for unworthy purposes. Department of Justice? Never! Department of Law? Maybe.

A fascinated taxpayer,

Raymond G. Alvine,

P. E., FAPEC, FASHRAE.

Note.— Enclosure filed as part of original document.

[FR Doc. 82-12221 Filed 5-13-82; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Notice of Solicitation

The National Institute of Justice plans to initiate a program of research to examine the impact of the exclusionary rule on police operations. The purpose of this effort is to explore whether or not the traditional and newly emerging interpretations of the exclusionary rule affect police efficiency and to examine whether or not there are more effective methods for obtaining criminal evidence while maintaining a balance between protecting society from the criminal and protecting citizens from police misconduct.

The solicitation, entitled "Regulating the Collection and Use of Criminal Evidence," asks for the submission of preliminary proposals rather than concept papers. The selection of the final applicant will be determined by a peer review panel process in accordance with the criteria set forth in the solicitation. In order to be considered, all papers must be postmarked no later than June 30, 1982. One grant of approximately $250,000 is expected to be funded. The time period for the research should be between 12–18 months in duration. To maximize competition for this award, both profit-making and non-profit organizations are eligible.

Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request, "Regulating the Collection and Use of Criminal Evidence", National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Further information regarding the solicitation can be obtained by contracting Shirley S. Melnicoe, Office of Research Programs, National Institute of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531 (202/724–2953).

Dated May 7, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-13181 Filed 5-13-82; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-81; Exemption Application No. D-2947]

Exemption From the Prohibitions for Certain Transactions Involving Alexander & Alexander Services, Inc.; Alexander & Alexander, Inc.; Located in New York, New York and Montag & Caldwell, Inc.; Located in Atlanta, Georgia

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the performance of services for employee benefit plans by Alexander & Alexander, Inc. (A & A), a wholly owned subsidiary of Alexander & Alexander Services, Inc., when those services may result in additional fees for Montag & Caldwell, Inc. (M & C), a wholly owned subsidiary of A & A. In addition to M & C, A & A has a number of other subsidiaries,. When reference is made in this exemption to A & A, all its subsidiaries except M & C are intended to be incorporated by reference.

FOR FURTHER INFORMATION CONTACT: Carol D. Gold of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5494) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) of the Code, for the provision of various services by A & A to employee benefit plans. The notice set forth a Sumamry of Facts and Representations (the Summary) contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. Counsel for the applicant has represented that a copy of the notice of the proposed exemption was sent by first class mail within 10 days of its publication to the plan administrator of each plan with respect to which either (1) both A & A and M & C currently provide services or (2) both A & A and M & C had provided services of the type described in the exemption since May 30, 1980. A letter accompanied the notice that explained the proposed exemption and specifically noted the right to comment or request a public hearing. No requests for a hearing were received by the Department.

One comment was received by the Department from counsel for the applicant. The comment noted a change from the factual representations of the proposal in that as of January 1, 1982 M & C has become a wholly-owned subsidiary of A & A raher than a wholly-owned subsidiary of Alexander & Alexander Services, Inc. The comment also requested clarification of the Department's position with respect to those services for which an exemption was requested but was not proposed as explained in paragraph 11 of the summary. The services in question are:

(1) The performace by A & A of actuarial services, including the determination by A & A of funding levels for a plan in accordance with Act section 302 and Code section 412;

(2) The evaluation by A & A of the investment performance of plans subject to the Act;

(3) The evaluation by A & A of the composition of the portfolios of plans subject to the Act and the recommendation of appropriate portfolio compositions by A & A to plans subject to the Act;

(4) The exercise of investment management services by M & C for plans subject to the Act. A remote consequence of the provision of the first three of these services, after action by an independent fiduciary in response to any determination or evaluation by A & A, could be the eventual retention of M & C to provide services to the plan. If the conditions of the statutory exemption for the provision of services as set forth in section 408(b)(2) of the Act and section 4975(b)(2) of the Code, as amplified by the regulations issued thereunder, are met the four types of service listed above will be exempt from the prohibitions of section 406(a) of the Act and 4975(c)(1) (A) through (D) of the Code. Furthermore, in the absence of any arrangement whereby the provision of these services is intended by A & A or M & C to result directly in additional compensation for either A & A or M & C, there is no violation of section 406(b)(1) or 406(b)(2) of the Act or 4975(c)(1)(E) of the Code. Nothing in the facts as represented to the Department indicates that the provision of these Services will result in a violation of section 406(b)(3) of the Act or 4975(c)(1)(F) of the Code. The comment also requested that the representation in paragraph 6 of the summary, that when an A & A management search results in the recommendation of M & C, at least two other managers, independent of both A & A and M & C, are also recommended, be added as an express condition to the exemption. The commenter acknowledged that although it is a general rule that an exemption is subject to the express condition that all material facts and representations in the application are true, the inclusion of this representation as a condition is requested to highlight the obligations and expectations of those who will rely on the exemption. The Department has added the representation as a condition for the reasons set forth above. The condition is not intended by the department to become a standard for similar transactions; rather, any similar transaction will be scrutinized, as was this case, on the basis of its particular facts and circumstances.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective december 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not releive a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is appliable from certain other provisions of the Act and the Code. These provisions include the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan

must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Section I. Covered Transactions.

Effective May 30, 1980, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to:

1. The evaluation by A & A of the performance of M & C as an investment manager retained by an employee benefit plan;

2. The evaluation by A & A of the allocation of plan assets among investment managers, including M & C, retained by employee benefit plans and the recommendation by A & A of an appropriate allocation of plan assets among such investment managers;

3. The selection and retention of M & C by employee benefit plans that follows the evaluation and recommendation of prospective investment managers, including M & C, by A & A to independent fiduciaries of those plans.

Section II. Conditions.

The exemption provided for transactions described in Section I is available only if each of the following conditions is met:

(1) In the case of any recommendation or evaluation by A & A described in Section I, the reasons, including the objective criteria forming the basis for such recommendation or evaluation, are provided by A & A to an independent fiduciary of the plan to which such recommendation or evaluation is provided.

(2) Any recommendation or evaluation by A & A described in Section I is not adopted or followed by the plan until acted upon by an independent fiduciary of the plan to which such recommendation or evaluation is provided.

(3) Any evaluation or recommendation of M & C by A & A described in Section I shall contain a simple statement notifying the recipient of their corporate affiliation in a manner that neither emphasizes nor minimizes that affiliation.

(4) Any recommendation of M & C by A & A shall include a recommendation of at least two other investment managers, independent of both A & A and M & C.

(5) Except as herein exempted, the provision of the services described in Section I to employee benefit plans meets the conditions of the general statutory exemption for services set forth in section 408(d)(2) of the Act and section 4975(d)(2) of the Code and regulations written thereunder.

The availability of this exemption is subject to the express condition that the materials facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 7th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services, Administration, Department of Labor.

[FR Doc. 82-13220 Filed 5-13-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D–3240]

Proposed Exemption for Certain Transactions Involving Plastic Surgery Associates, Ltd. Pension Plan Located in St. Paul, Minnesota

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of a certain parcel of real property (the Property) from the segregated investment account of Dr. Frank Pilney (the Account) in the Plastic Surgery Associates, Ltd. Pension Plan (the Plan) to Dr. Frank Pilney (Dr. Pilney), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, Dr. Pilney and any other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3240. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustee of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 FR of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file

with the Department for the complete representations of the applicant.

1. The Plan is a money purchase pension plan with four (4) participants. As of October 31, 1981, the Plan has total assets of $962,171, and the Account had total assets of $593,745. National City Bank of Minneapolis (the Bank) is the trustee of the Plan and invests Plan assets subject to the direction of Plastic Surgery Associates, Ltd., the sponsor of the Plan (the Employer). The Bank retains investment authority with respect to some of the Plan's assets.

2. The Employer is a medical practice engaged in plastic and reconstructive surgery. Dr. Pilney is the principal owner of the Employer.

3. On February 4, 1974, Dr. Pilney as a participant in the Plan directed the Bank, as trustee, to purchase the Property for his Account. The property was purchased from Big Sky, Montana, Inc., an unrelated party with respect to the Plan, for $13,500. The Property consists of 12,000 square feet of unimproved land, and is described as Lot 30, Block 4, Meadow Village, 2nd Filing, Big Sky, Montana. Since purchase the Property has remained unimproved and has not produced any income. Dr. Pilney's Account has incurred approximately $2,200 in expenses, consisting of taxes and water charges, since purchase.

4. The applicant seeks an exemption to sell the Property, at the Employee's direction, from the Account to Dr. Pilney at its appraised fair market value for cash. Mr. James F. Phennicie, an independent real estate broker for Hearth and Heather Real Estate, located in Bozeman, Monana, has determined that as of January, 1982, the Property had a market value of $14,000. Mr. Phennicie represents that he has personal knowledge of all properties in or around Big Sky and specializes in sales and appraisals in that area. The Plan will not incur any sales commission or other expenses with respect to the sale.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale of the Property will enable the Plan to dispose of a non-income producing asset; (b) the only assets of the Plan which will be affected by the proposed sale will be those in the Account and Dr. Pilney desires that the transaction be consummated; (c) the Property will be sold at its appraised market value as determined by a qualified, independent appraiser; (d) the sale will be a one-time transaction for cash and the Plan will not incur any sales commissions or other expenses with respect to the sale; and (e) the trustee of the Plan represents that the proposed transaction will be in the best interests of the Plan.

Notice to Interested Persons

Because Dr. Pilney's Account will be the only Plan assets involved in the proposed transaction it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of the Property from Dr. Pilney's Account to Dr. Pilney for $14,000 provided that this amount is not less than the fair market of the Property on the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 10th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–13240 Filed 5–13–82; 8:45 a.m.]

BILLING CODE 4510-29-M

[Application No. D–3044]

Proposed Exemption for Certain Transactions Involving the Reisman, Milberg, Abramson & Magro, P.C. Defined Benefit Pension Plan Located in New York, New York

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loans by the Reisman, Milberg, Abramson & Magro, P.C. Defined Benefit Pension Plan (the Plan) of funds not to exceed 25% of total Plan assets to Reisman, Milberg, Abramson & Magro, P.C. (the Employer) for a period of five years and the guarantee of the loans by the principal shareholders of the Employer. The proposed exemption, if granted, would affect the Employer, the Plan, and others participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 30, 1982.

TEMPORARY NATURE OF EXEMPTION: The exemption, if granted will be temporary in nature and will exire five years from the date of grant with respect to the making of loans by the Plan to the Employer. Subsequent to the expiration date of the exemption, the Plan may hold loans to the Employer provided such loans originated during the five year period.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3044. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Hamilton of the Department of Labor, telephone (202) 523–7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(l) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit pension plan with 15 participants and total assets of $216,200 as of September 30, 1981.

2. The Employer is a New York State Professional Corporation, incorporated in 1971, to conduct the practice of law.

3. An exemption is requested to allow the Plan, for a period of 5 years, to make loans (the Loans) on a recurring basis to the Employer. The proceeds of the Loans will be used by the Employer to purchase motor vehicles.

4. The total amount of the Loans will not exceed 25% of the dollar value of the total assets of the Plan.

5. Each of the Loans will be subject to the following conditions:

(a) Each Loan will be collateralized by a promissory note and a security agreement;

(b) Each Loan will have a first lien on the vehicle to be purchased and office equipment owned by the Employer such that at all times the Loans will be collateralized in an amount equal to 150% of the outstanding balance of the Loans. The fair market value of the office equipment has been established at $82,550 by Mr. Joseph L. Danuano of Lanier Business Products, an independent appraiser;

(c) Each vehicle purchased will be a new vehicle;

(d) No Loan will exceed 85% of the purchase price of the vehicle financed, excluding the sales tax, title and license costs;

(e) The maximum length of any Loan will be 48 months;

(f) The interest rate on each Loan will be fixed at a rate ½% above the prevailing rate set by the Citibank, N.A for new automobile loans in effect on the date of each Loan transaction;

(g) Each Loan will be personally guaranteed by the majority shareholders of the Employer; and

(h) Prior to the Plan entering into the Loan, each Loan will be certified by an independent fiduciary as an appropriate investment for the Plan.

6. The majority shareholders who will personally guarantee the Loans are Charles Reisman, Jack Abramson and Michael V. Magro. Reisman represents that he has a net worth of more than $800,000. Abramson represents that he has a net worth of more than $500,000 and Magro represents that his net worth exceeds $500,000.

7. Messrs. Lawrence and Harry Kramer, d.b.a. Lawrence J. Kramer Co. (Kramer), will serve as independent fiduciaries for the Loan transactions. Kramer is a partnership of certified public accountants with offices in New York. Kramer is unrelated to the Employer. Kramer will certify that each Loan would be an appropriate investment for the Plan and that the terms of such Loan are equal to or better than those obtainable in an arm's-length transaction with an unrelated party. The independent fiduciary will also be responsible for monitoring the payments on the Loans and for monitoring the fair market value of the collateral used in securing the Loans. Kramer will assure that the Plan will release money to fund a Loan only upon the Plan's receipt of (1) a promissory note and security agreement in proper form personally guaranteed by Reisman, Abramson and Magro, (2) an application for a certificate of title to the vehicle, a certified check of the Employer, payable to the seller of the vehicle covering the balance of the vehicle purchase price including sales tax, and (3) the written approval of Kramer.

8. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because:

(1) The Loans would substantially increase the rate of return on the Plan's investments;

(2) The Loans would be secured at all times by personal property valued at 150% of the outstanding balance of the Loans;

(3) The Loans will be personally guaranteed by the majority stockholders of the Employer; and

(4) An independent trustee has determined that the Loans would be in the interest of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons

All Plan participants and beneficiaries will be given a copy of the Notice of Pendency as published in the **Federal Register** within 15 days after its publication by personal delivery. In addition, they will be given a statement informing them of their right to comment and/or request a hearing concerning the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of thhe Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not aply to the Loans by the Plan to the Employer of funds not to exceed 25% of the total assets of the Plan, for a period of 5 years, and the guarantee of the Loans by the principal shareholders of the Employer, so long as the terms of the Loans are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 10th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Program Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-13241 Filed 5-13-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3011]

Proposed Exemption for Certain Transactions Involving the Shearson/American Express, Inc. Keogh Plan Located in Longmeadow, Massachusetts

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the sale to the Shearson/American Express, Inc. Keogh Plan for the account of Dr. George Franklin (the Plan) of a one-half interest in a parcel of real property by the Bar Realty Trust (the Realty Trust); and (2) the assumption by the Plan of the Realty Trust's obligations pursuant to a mortgage on the property. Because Dr. Franklin is the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. The proposed exemption, if granted, would affect the Plan, the Realty Trust, and any other persons participating in the proposed transactions.

DATES: Written comments and requests for public hearing must be received by the Department on or before June 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3011. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Dr. Franklin, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a retirement plan for self-employed individuals sponsored by Shearson/American Express, Inc. (Shearson). Pursuant to the Plan documents the complete authority to control and manage the operation and

administration of the Plan is placed with the individual properietorship or partnership adopting the Plan. Shearson acts as custodian with respect to the assets in the Plan.

2. Dr. Franklin adopted the Plan on March 2, 1981, when funds maintained for his account in a retirement plan for self-employed individuals sponsored by Freedom Federal Savings and Loan Association (the Freedom Plan), were transferred to the Plan. As of December 31, 1971, Dr. Franklin's account in the Plan had a market value of $32,542. The Freedom Plan is presently frozen as Dr. Franklin discontinued his sole proprietorship in 1978 and thereafter incorporated his business. Two employees of Dr. Franklin currently maintain accounts in the Freedom Plan.

3. The Realty Trust was declared on June 22, 1971, by Dr. Franklin and Ms. Pearl Wallace, an attorney in Longmeadow, Massachusetts. Dr. Franklin was appointed the trustee of the Trust, and pursuant to the Trust document maintains power, authority and discretion to invest the Trust's assets. The Realty Trust was formed in order to purchase and hold a one-half interest in a parcel of real property (the Property) located at 407 Memorial Drive, Chicopee Falls, Massachusetts. The Realty Trust has no other assets other than the Property and cash. The other one-half interest in the Property is owned by the Barmark Realty Trust, an unrelated party.

4. On June 29, 1971, the Property was leased by the Trusts to Harold Butler Enterprises, a Delaware corporation, for a twenty five year term on an "absolute net" basis (the Lease). In accordance with the terms of the Lease an improvement, a Denny's Restaurant, was constructed, at the lessor's expense, on the Property in 1972. The Lease provides that the lessee may extend the term of the Lease for an additional ten years on the same terms and conditions except for an adjustment in the rental amounts based on the consumer price index. At the termination of the Lease term the lessor and lessee may renegotiate a new lease or the lessor may seek a new tenant.

5. Mr. Paul Akerman, an MRA appraiser located in Springfield, Massachusetts, determined, as of October 1, 1981, that the Property had a market value of $210,000. The applicant requests an exemption for the Plan to purchase the Realty Trust's one-half interest in the Property for $105,000, one-half of its appraised value.

6. It is proposed that the Plan will assume the Realty Trust's obligations pursuant to a first mortgage dated March 3, 1972 from the Provident Institution for Savings in the Town of Boston. The mortgage was for a principal sum of $260,000 and bears interest at the rate of 9½%. As of January, 1982, the outstanding one-half principal balance of the mortgage was approximately $75,175. The Plan will pay the remaining purchase price in cash. The mortgage requires monthly payments of $2,678 and will be completely amortized by 1987. The monthly rental income received from the lessee is $2,940. The applicant represents that the Plan will have a substantial equity in the Property after the mortgage is completely amortized.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code because (a) the only participant in the Plan who will be affected by the proposed transaction will be Dr. Franklin and he desires that the transaction be consummated; and (b) the Plan will be purchasing the one-half interest in the Property at its appraised value.

Notice to Interested Persons

Because Dr. Franklin is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and benficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale to the Plan by the Realty Trust of its one-half interest in the Property and the assumption by the Plan of the Realty Trust's obligations pursuant to the mortgage on the Property, provided that the sale price of the one-half interest in the Property is not in excess of its fair market value at the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 10th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-13243 Filed 5-13-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-3271]

Proposed Exemption for Certain Transactions Involving the Robert B. Scheidt M.D., Pension Plan and Trust Located in Van Wert County, Ohio

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of certain art works (the Artworks) by the Robert B. Scheidt M.D., Penson Plan and Trust (the Plan) to Robert B. Scheidt (Scheidt), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect Scheidt, the participants and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before June 24, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Consitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-3271. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Scheidt, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan which as of February 23, 1982 had two participants and assets of $125,376. The Peoples Bank and Trust Company (the Bank) located in Van Wert, Ohio is the trustee of the Plan. As a part of its assets, the Plan owns the Artworks which consist of four paintings; Punch and Judy, Snow Vista, Tunisian Women and Summer Breeze. The Artworks were purchased by the Plan over a period of years at a cost of $64,500. The Artworks were appraised on October 16, 1980 by Elizabeth Campanile, an independent art appraiser, located in Chicago, Illinois. Campanile, who is a member of the Appraisers Association of America, Inc., represents that as of October 16, 1980 the Artworks had a fair market value of $74,500.

2. The applicant is requesting an exemption which will permit the Plan to sell the Artworks to Scheidt for $74,500. The applicant represents that the proposed sale will allow the Plan to eliminate a non income producing asset and will allow the Plan to diversify its investments. The Bank, as the trustee of the Plan, recommends the proposed sale.

3. The applicant represents that the proposed sale will satisfy the criteria of section 408(a) of the Act as follows: (1) the trustee of the Plan represents that it is in the best interests of the participants and beneficiaries of the Plan; (2) the price of the Artworks was determined by an independent party; and (3) the Plan will be able to eliminate a non income producing asset and will be able to diversify its investments.

Notice to Interested persons

Within ten days of its publication in the **Federal Register**, a copy of of the notice of pendency and a statement advising each interested person of their right to comment or request a hearing will be hand delivered or mailed by certified mail to each participant or beneficiary of the Plan.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of the Artworks by the Plan to Scheidt for $74,500 provided that this amount is at least the fair market value of the Artworks at the time of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 10th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-13263 Filed 5-13-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D–3030]

Proposed Exemption for Certain Transactions Involving the Wolverine Aluminum Corporation Profit Sharing Trust Located in Lincoln Park, Michigan

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohbited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, effective January 1, 1975, the extension of credit between the Wolverine Aluminum Corporation Profit Sharing Trust (the Plan) and Wolverine Aluminum Corporation, the sponsor of the Plan (the Employer). The transaction was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transitional rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, and any other persons participating in the proposed transaction.

EFFECTIVE DATE: If granted, the exemption will be effective from January 1, 1975 to March 15, 1982.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 28, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3030. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which, as of December 30, 1980, had 117 participants. The Plan is currently administered by three trustees, Messrs. Gregory C. Smith and Paul P. Baker and Ms. Annette D. Buchanan. The trustees are officers and/or directors of the employer. As of December 30, 1980, the Plan had total assets of $2,579,382.

2. The Employer is a manufacturer of aluminum and vinyl building products. As of September 30, 1981, the employer had a net worth of $18,389,000.

3. On August 15, 1974, the Plan, then known as the Wolverine-Pentronix, Inc. Salaried Employees' Profit Sharing Trust, sold a parcel of improved real property (the Property) to the Employer, then known as Wolverine-Pentronix, Inc. The Property contains 68,172 square feet of land and is improved by a building which constitutes a segment of the Employer's corporate office and main plant. The Property is located at 1650 Howard Street in Lincoln Park, Michigan. The Property had been leased to the Employer pursuant to leases dated January 15, 1964 and March 27, 1974. Messrs. Louis I. Flattery, MAI, and Mr. James E. Mawson of Reaume and Dodds, Incorporated, appraised the fair market value of the Property subject to the leases and, as of May 31, 1974, determined that the value of the leased fee interest was $624,000. The Property was subject to a first mortgage held by the Security Bank and Trust of Lincoln Park dated May 12, 1966. The first mortgage, as of August 1, 1974, had an outstanding principal balance of $254,851. On August 15, 1974, the Trustees of the Plan (the Trustees) were Mr. Baker, Ms. Buchanan and Mr. Norman H. Smith, an officer of the Employer.

4. Pursuant to the sale terms, the Employer purchased the property for its appraised value of $624,000. The Employer paid cash of $107,474, assumed the Plan's obligations under the first mortgage, surrendered a $20,000 security deposit on its leasehold, paid applicable state taxes, and was extended credit by the Plan in the amount of $240,000 (the Mortgage).

5. The Mortgage, dated August 15, 1974, was payable in 120 monthly amounts of $3,105 of principal and interest and bore an interest rate of 9½%. The first monthly payment was made on September 15, 1974 and all payments due since that date have been made on a timely basis. The Mortgage's remaining balance of $62,631 plus interest of $654 was repaid to the Plan on March 15, 1982.

6. The applicant represents that the sale of the Property was conducted on an arm's-length basis and consummated at fair market value. The applicant represents that the Mortgage was issued at the then prevailing market rate and was adequately secured. The applicant represents that there was sufficient equity in the Property to have enabled the Employer to obtain a second mortgage on the Property from a financial institution at the time of the transaction.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (1) the sale of the Property was consummated at its fair market value and the Mortgage was issued at the then prevailing market rate and terms; (b) the Mortgage was adequately secured by the Property; (c) all payments under the Mortgage were made on a timely basis; (d) the Mortgage was repaid in full on March 15, 1982; and (e) the Trustees have determined that the subject transaction was appropriate for the Plan and in the best interests of its participants and beneficiaries.

Finally, the applicant represents that the subject transaction was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the transaction had become prohibited the applicant submitted a good faith request for an exemption instead of terminating the transaction.

Notice to Interested Persons

Within ten days after its publication in the **Federal Register** notice of this proposed exemption will be conspicuously posted at locations of the Employer normally used for posting employee notices. Such notice will include a copy of this Notice of Proposed Exemption as published in the **Federal Register** together with a statement informing interested persons of their right to comment and/or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, from January 1, 1975 to March 15, 1982, to the Mortgage executed on August 15, 1974, as described herein, provided that the terms and conditions of the Mortgage were at least as favorable to the Plan as those which the Plan would have received from an unrelated party in a similar transaction.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 10th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13344 Filed 5-13-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Revision of statement of organization and functions.

SUMMARY: The National Labor Relations Board is revising its description of central organizations [1] of the Board to reflect a recent merger of functions of the Division of Information with those of the Office of the Executive Secretary. The sections and revised language of the organization and functions statement affected by this change are described under the heading "Supplementary Information," below.

EFFECTIVE DATE: April 12, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570, Telephone (202) 254–9430.

SUPPLEMENTARY INFORMATION: The National Relations Board has amended its description of central organization sections 201, 201.1, 201.1.1 and 201.1.4, to reflect a recent reorganization. Section 201.1.4 Division of Information is deleted in its entirety. Revised language for

[1] 32 FR 9588, as amended by 37 FR 15956, as amended by 44 FR 34215, as further amended by this document.

sections 201, 201.1 and 201.1.1 appears below.

Sec. 201 *The Board.* The Board, composed of five Members, has its central and principal office in Washington, D.C. Each of the Members is appointed by the President, with the approval of the Senate, for a term of 5 years. One Member is designated by the President to serve as Chairman of the Board. The Board is created by virtue of the provisions of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, and the Labor-Management Reporting and Disclosure Act, 1959, 73 Stat. 519.

The Board has two principal functions under the National Labor Relations Act, as amended: (1) The prevention of a statutorily defined unfair labor practices on the part of employers and labor organizations or the agents of either, and (2) the conduct of secret ballot elections among employees in appropriate collective-bargaining units to determine whether or not they desire to be represented by a labor organization.

The Board is further empowered by the Act:

To conduct secret ballot elections among employees who have been covered by a union-shop agreement, when requested by 30 percent of the employees, to determine whether or not they wish to revoke their union's authority to make such agreements.

To determine in cases involving jurisdictional disputes which of the competing groups of workers is to be assigned the work task involved.

To conduct secret ballot elections among employees in national emergency situations.

The Board exercises full and final authority over the Office of the Executive Secretary and the Office of the Solicitor. The Board appoints administrative law judges and, subject to the provisions of the Administrative Procedure Act and section 4(a) of the National Labor Relations Act, as amended, exercises authority over the Division of Judges. Each Board Member exercises full and final authority over a staff of legal counsel, each staff being under the immediate supervision of the chief counsel of the respective Board Member.

The Board, with the General Counsel, approves the budget, opens new offices as deemed necessary, and appoints Regional Directors and Officers-in-Charge.

The Board establishes and publishes the Agency's Rules and Regulations and Statements of Procedures.

Sec. 201.1 *The Board's staff.* The Board's staff consists (in addition to its chief counsel and legal counsel referred to in sec. 201, above) of the Office of the Executive Secretary, the Office of the Solicitor, and the Division of Judges.

Sec. 201.1.1 *Office of the Executive Secretary.* The Executive Secretary, as the chief administrative and judicial management officer of the Board, represents the Board in dealing with parties to cases, and communicates on behalf of the Board with labor organizations, employers, employees, Members of Congress, other agencies, and the public; receives, dockets, and acknowledges all formal documents filed with the Board; issues and serves on the parties to cases all Board Decisions and Orders; and certifies copies of all documents which are a part of the Board's files or records. The Information Branch of the Office of the Executive Secretary coordinates the Agency's information and public relations programs by conducting briefings and disseminating information of Agency activities through all news media and to companies, unions, law firms, academic groups and others; and arranges for distribution of decisions and summaries of decisions.

* * * * *

Dated, Washington, D.C., May 10, 1982.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 82-13229 Filed 5-13-82; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on June 1, 1982, Room 1167, 1717 H Street, NW., Washington, D.C. The Subcommittee will review the Nuclear Regulatory Commission's proposed FY 84–85 programs and budget and will develop specific comments on the NRC's Long-Range Research Plan as each relates to the area of Human Factors.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, June 1, 1982

1:00 p.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, David Fischer (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. d.s.t.

Dated: May 10, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-13186 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittees on Electrical Systems and Qualification Programs for Safety-Related Equipment; Meeting

The ACRS Combined Subcommittees on Electrical Systems and Qualification Programs for Safety-Related Equipment will hold a meeting on May 27, 1982 in Room 1046, 1717 H Street, NW., Washington, D.C. The Subcommittees will discuss the NRC-sponsored research programs, proposed research funding for FY 84–85, and those parts of the Long Range Research Plan which relate to the areas for which these Subcommittees are responsible.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its

consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 27, 1982—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., d.s.t.

Dated: May 10, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13187 Filed 5–13–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Programs; Meeting

The ACRS Subcommittee on the Safety Research Program will hold a meeting on June 2, 1982, in Room 1167 at 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the NRC Safety Research program and budget for FY 1984 and FY 1985 and gather information for use by the ACRS in its report to the Commission on the NRC FY 1984 and FY 1985 safety research program budget.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (45 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 2, 1982—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this matter.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., d.s.t.

Dated: May 11, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13188 Filed 5–13–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Clinch River Breeder Reactor; Meeting

The ACRS Subcommittee on Clinch River Breeder Reactor (CRBR) will hold a meeting on June 1 and 2, 1982, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee will discuss the seismicity and associated seismic design for the CRBR plant.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Tuesday, June 1, 1982—8:30 a.m. Until the Conclusion of Business

Wednesday, June 2, 1982—8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Project Management Corporation, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., d.s.t.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Industrial Security information. The authority for such closure in Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 11, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13189 Filed 5–13–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Arkansas Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 30 to Facility Operating License No. NPF–6 issued to Arkansas Power and Light Company (the licensee), which revised the Technical Specifications for operation of

Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas. The secondary water chemistry monitoring conditions become effective within thirty days from the date of issuance.

The amendment incorporates the requirements for a program to monitor seconday steam generator water chemistry conditions into the body of the license and deletes a requirement to specify secondary water chemistry limits from the Technical Specification.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 10, 1981, (2) Amendment No. 30 to Facility Operating License No. NPF-6, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and at the Arkansas Tech University, Russellville, Arkansas 72801. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-13101 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Co. (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant (facility) located in Middlesex County, CT. This amendment is effective as of its date of issuance.

The amendment approves changes to the Appendix A Technical Specifications which incorporate requirements of Appendix J to 10 CFR Part 50, Containment Leakage Testing.

The applications for amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated June 27, 1977 and September 2, 1979, (2) Amendment No. 49 to License No. DPR-61, and (3) the Commission's related Safety Evaluation. All of These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut 16457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of May, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-13102 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 72 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised the Technical Specifications for operation of the Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment allows the use of incore quarter-core flux maps for calibration of the excore axial flux offset detection system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 12, 1982, (2) Amendment No. 72 to License No. NPR-1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room located at the Multnomah County Library, Social Science and Science Department, 801 S.W. 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director of Licensing.

Dated at Bethesda, Maryland, this 6th day of May 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactor Branch No. 3, Division of Licensing.

[FR Doc. 82-13183 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Issuance of Amendments Facility Operating License Nos. DPR-77 and DPR-79

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. DPR-77 and Amendment No. 4 to Facility Operating License DPR-79, issued to Tennessee Valley Authority (licensee) for the Sequoyah Plant, Units 1 and 2 (the facilities) located in Hamilton County, Tennessee. These amendments change various sections of the Technical Specifications related to fire hose test pressure requirements, vital battery surveillance, ice bed temperature determination, isolation valve closing times, downscale failure alarms, visual inspection schedule on snubbers, maximum enrichment for reload fuel, quality assurance monitoring of plant effluents, land use census, and system flushing. The amendments are effective as of their dates of issuance.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) environmental impact statements, or negative declarations and environmental impact appraisals need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) Tennessee Valley Authority letters dated December 10, 1981 (two letters), March 1, March 9, and April 6, 1982, (2) Amendment No. 13 to Facility Operating License No. DPR-77 with Appendix A Technical Specification page changes; (3) Amendment No. 4 to Facility Operating License No. DPR-79 with Appendix A Technical Specification page changes; and (4) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of Amendment No. 13 and Amendment No. 4 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-13184 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric & Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 40 and No. 24 to Facility Operating License Nos. NPF-4 and NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and No. 2 (the facility) located in Louisa County, Virginia. The amendments are effective as of the date of issuance.

The amendments provide one-time relief from the facility Technical Specifications for the 18-month surveillance testing of large snubbers rated at greater than 50,000 inch-pounds. The one-time relief is applicable to the North Anna, Unit No. 1 Cycle 3 refueling outage and the North Anna, Unit No. 2 Cycle 1 refueling outage.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see the (1) application for amendments dated April 16, 1982, (2) Amendments No. 40 and No. 24 to Facility Operating License No. NPF-4 and NPF-7, respectively, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of item (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 6th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-13185 Filed 5-13-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12425; (812-5088)]

Bankers Security Variable Annuity Funds D, E, F, G, H, I, M, P and Bankers Security Life Insurance Society

Filing of Application for an Order Pursuant to Section 11 of the Investment Company Act of 1940 for Approval of Certain Offers of Exchange

May 7, 1982.

Notice is hereby given that Bankers Security Life Insurance Society ("Company"), 1701 Pennsylvania Avenue, N.W., Washington, D.C. 20006, a stock life insurance company organized under the laws of New York in 1917, and Bankers Security Variable Annuity Funds D, E, F, G, H, I, M and P (referred to individually as a "Separate Account" with its letter designation, or jointly as the "Separate Accounts"), separate accounts of the Company registered under the Investment Company Act of 1940 ("Act") as parts of unit investment trusts, filed an application on January 21, 1982, and an amendment thereto on April 1, 1982, for

an order pursuant to Section 11 of the Act, approving certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the assets of Separate Accounts D, E, F, G, H and I, separate accounts registered under the Act as a single unit investment trust, are each invested in securities of a different registered open-end investment company (all of which are part of the Oppenheimer family of mutual funds). Variable annuity contracts issued by Separate Accounts D, E, F, G, H and I are subject to front-end deductions for sales and administrative charges of 6% and 8.5% on single payment contracts and periodic payment contracts, respectively. On September 25, 1981, the Company ceased offering variable annuity contracts issued through these Separate Accounts and does not intend to offer them in the future.

Applicants also state that the assets of Separate Accounts M and P, separate accounts registered under the Act as a single unit investment trust, are invested in Daily Cash Accumulation Fund, Inc., and Centennial Cash Accumulation Fund, Inc., respectively. Shares of the latter fund are not sold directly or indirectly to the general public but are available only through the purchase of a contract issued by the Company. The Company does not deduct a sales charge from purchase payments for variable annuity contracts issued by Separate Account P, but rather a contingent deferred sales charge of 4.0% of the amount withdrawn will be imposed against withdrawals of purchase payments held in the separate account for fewer than 72 months. In addition, on each anniversary, the Company will deduct an annual Contract Maintenance Charge of $30 from the contract value of contracts issued by Separate Account P.

Section 11

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides, in pertinent part, that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer to exchange the securities of registered unit investment trusts for the securities of any other investment company.

Applicants propose to permit contractholders in Separate Accounts D, E, F, G, H and I to exchange their contracts for contracts issued by Separate Account P. Such contractholders will be permitted to make such an exchange without payment of a fee, transfer charge or sales load. They would also not be subject to the otherwise applicable contingent deferred sales charge imposed on withdrawal of amounts from Separate Account P or any Contract Maintenance Charge deducted from the contract value of contracts issued by Separate Account P. Periodic payment contractholders in Separate Accounts D, E, F, G, H and I who exchange to Separate Account P may continue to make periodic payments into their Separate Account P contract. Except for any applicable premium taxes, all of such periodic purchase payments will be allocated to Separate Account P and no other deductions or charges will be made. The same minimum periodic purchase payments applicable for Separate Accounts D, E, F, G, H and I will be applicable for Separate Account P—$50 per payment ($25 under automatic checking or payroll deduction plans), and a total of $200 annually. The transferred amounts as well as all additional periodic payments will not be subject to the otherwise applicable contingent deferred sales charge or any Contract Maintenance Charge.

Applicants are requesting an order pursuant to Section 11, to the extent necessary to permit the proposed offer of exchange described in the application.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following June 1, 1982, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13134 Filed 5-13-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12427; 812-5139]

Family Life Insurance Co. et al., Filing of Application for an Order Exempting Applicants to the Extent Requested From Provisions

In the matter of Family Life Insurance Company, Merrill Lynch Variable Annuity Account, Park Place, Seattle, WA 98101, and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, One Liberty Plaza, New York, N.Y. 10080.

May 10, 1982.

Notice is hereby given that Family Life Insurance Company ("FLIC"), a stock life and disability insurance company organized under the laws of Washington, Merrill Lynch Variable Annuity Account (the "Account"), a separate account of FLIC registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("MLPF&S"), the principal underwriter for the Account (hereinafter collectively referred to as "Applicants"), filed an application on March 18, 1982 and an amendment thereto on April 28, 1982 for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the State of Texas Revised Civil Statutes. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

FLIC is a wholly-owned subsidiary of Merrill Lynch & Co., Inc., a diversified financial services holding company. FLIC is also the depositor of the

Account. The Account was established for the purpose of funding certain variable annuity contracts to be issued by FLIC (the "Contracts"). The Contracts currently being issued by FLIC are individual deferred variable annuity contracts designed for use in connection with retirement plans meeting the requirements of Sections 401, 403, 404 or 408 of the Internal Revenue Code of 1954, as amended ("Code"), or plans not entitled to special income tax treatment under such or comparable provisions of the Code. Such Contracts are offered pursuant to a registration statement filed under the Securities Act of 1933.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make availabe to certain employees an Optional Retirement Program (the "Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. Effective September 1, 1981, Subchapter G of Chapter 51 was repealed and Title 110B of the Texas Revised Civil Statutes was enacted ("new ORP statute"). The new ORP statute allows as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. Prior to its repeal, the statutory definition of the Program contained in Section 51.352 of Subchapter G provided that the benefits of such annuities were to be available only upon termination of employment in Texas public institutions of higher education, retirement, death or total disability of the participant.

Because of uncertainty regarding the effect of the provision described above, the University of Texas System (the "System") requested an opinion of the Attorney General of Texas. In response, the Attorney General rendered an opinion which interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provided for making available the redemption value of the contract prior to the occurrence of one of the conditions specified in the statute, *i.e.*, termination of employment, retirement, death or total disability.

The new ORP statute contains language similar to that of Subchapter G of Chapter 51 interpreted in the above-mentioned Attorney General's opinion. Section 36.105 of the new ORP statute provides that the benefits of an annuity purchased under the Program are available only if the participant terminates participation in the Program by death, retirement or termination of employment in all institutions of higher education.

Exemptions Requested

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell and such certificate unless such certificate is a redeemable security Section 2(a)(32) of the Act defines "redeemable security" to mean any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants seek an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with the provisions of the new ORP statute as they pertain to redemption values of Contracts issued to participants in the Program. Applicants assert that absent the limited exemptions requested they will not be able to offer the Contracts to Program participants. Applicants further assert that the Commission should grant the requested exemptions because: (1) The limited restriction on redemption would be voluntarily assumed by participants, *i.e.*, eligible employees are not required to participate in the Program; (2) the restrictions were not formulated or suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the contributions of the State of Texas.

Applicants state that they will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them and that this disclosure will take the form of an appropriate reference in each prospectus in the restrictions on redemption of the Contracts, as well as requiring each participant, as a part of the determination that the sale of the Contract is suitable for that participant, to sign a statement indicating that he or she is aware that these restrictions will be placed on his or her Contract when it is issued. In addition, Applicants state that they will ensure that all sales literature that is to be used in conjunction with the sale of the Contracts will be reviewed for the existence of material representations that are inconsistent with the restrictions to be placed on the Contracts, and the salespeople involved in soliciting in this market will be instructed to bring this restriction specifically to the attention of the participants.

Section 6(c)

Section 6(c) authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 4, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses

stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following June 4, 1982, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hering, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13136 Filed 5–13–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22493; 70–6735]

Kentucky Power Co. and Indiana & Michigan Electric Co.; Proposed Sale of Electric Power Distribution Equipment to Nonassociate Industrial Customers

May 7, 1982.

In the matter of Kentucky Power Co., 1701 Central Avenue, P.O. Box 1428, Ashland, Kentucky 41101; Indiana & Michigan Electric Co., One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801.

Kentucky Power Company ("KPCo") and Indiana & Michigan Electric Company ("I&MECo") electric utility subsidiaries of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a declaration with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("ACT") and Rule 44 promulgated thereunder.

I&MECo proposes to sell to the Dana Corporation, a metal fabricator based in Fort Wayne, Indiana, its Salisbury Station, which consists of two 34.5 KV transformers and related equipment located on land now owned by Dana Corporation, for a total price of $320,521.00, which includes taxes and other expenses expected to be incurred by I&MECo in the sale. I&MECo also proposes to sell to General Electric Company, an electrical motor manufacturer in Fort Wayne, Indiana, its Taylor Street Station equipment, which consists of a 34.5 KV transformer and related equipment located on land now owned by General Electric Company, for a total price of $614,009.00, which includes taxes and expenses expected to be incurred by I&MECo in the sale. Each proposed sale of equipment is priced at the reproduction cost, less observed depreciation, for the equipment. The facilities involved in each proposed sale are installed at the purchasers' respective plant sites; are not now employed by I&MECo for providing service to any other customers other than the proposed purchasers; and are not adaptable, at those locations, for use in serving any customers other than the purchasers.

KPCo proposes to sell to Armco, Inc., a steel producer in Ashland, Kentucky, all of the transformation equipment and related facilities at KPCo's Bellefonte 34.5 KV switchyard, together with the switchyard site, consisting of approximately 2.3 acres of land with a two-story brick building thereon, for a total consideration of $1,008,608.50, which has been calculated on the basis of the present-day reproduction cost of the equipment, less observed depreciation, and the appraised value of the real estate and the structure thereon, and including taxes and other costs of the sale expected to be incurred by KPCo. This switching station, located adjacent to the Armco plant, is not used by KPCo, nor adaptable by KPCo at that site for use by KPCo, for any purpose other than for the purpose of continuing service to Armco.

The declaration states that the proposed sales will permit said industrial customers to realize a savings in the cost of retail electric service since they will be able to convert from service at a secondary voltage (i.e., current at a transformed voltage) to current at a primary voltage (i.e., current at a transmission or subtransmission voltage, typically 34.5 KV and above). The operating companies will benefit from such sales by recovering their investment in the transformation equipment and, more importantly, by shifting the costs of maintaining and servicing that equipment to the new owners.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 3, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13137 Filed 5–13–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18723; File No. SR–MSRB–82–7]

Municipal Securities Rulemaking Board; Filing of Proposed Rule Change

May 10, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Suite 507, Washington, D.C. 20036, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would make MSRB Rule G–33 effective on August 1, 1982, instead of June 7, 1982, as previously ordered by issuance of a Commission Release (Securities Exchange Act Release No. 18213, December 7, 1981), and by publication in the **Federal Register** (46 FR 60708, December 11, 1982). The MSRB has requested the additional delay in the effective date in order to give dealers adequate time to fully comply with two proposed amendments to MSRB Rule G–33 contained in companion filings SR–MSRB–82–5 and SR–MSRB–82–6.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before June 4, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–MSRB–82–7.

Copies of the submission, all subsequent amendments, all written

statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13139 Filed 5-13-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22490; 70-6729]

West Texas Utilities Co.; Proposed Issuance and Scale of Long-Term Debentures; Exception From Competitive Bidding

May 7, 1982.

West Texas Utilities Company ("WTU"), 301 Cypress, Abilene, Texas 79601, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application-declaration and an amendmant thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

WTU proposes to issue and sell not later than December 31, 1982, up to $30,000,000 in principal amount of long-term, unsecured debentures ("Debentures") with a final maturity of not greater than 30 years. WTU seeks an exception from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(5) to negotiate the sale of the securities to an underwriting group represented by several major investment banking firms.

WTU proposes to sell the Debentures because the earnings test of WTU's First Mortgage Bond Indenture, as amended, restricts the amount of first mortgage bonds WTU may issue to an amount below its requirements for 1982. Generally, additional bonds may not be authenticated under the Indenture unless the net earnings of WTU for a 12-month period ending within 90 days preceding such authentication is equal to at least twice the interest for one year on all bonds to be outstanding under the Indenture immediately after such authentication and on all other indebtedness of WTU then secured by a lien on WTU's property equal or prior to the lien of the Indenture. In computing WTU's net earnings for purposes of determining earnings coverage under the Indenture, a deduction for maintenance, repairs, and depreciation must be made in an amount equal to at least 15% of WTU's gross operating revenues, after deducting from such revenues the cost of electricity purchased for resale. Because WTU's fuel costs have increased so rapidly in the last decade, with a resulting increase in gross operating revenues through the fuel adjustment clause in WTU's rate schedules, the required deduction for maintenance, repairs and depreciation in calculating earnings coverage has begun to limit WTU'S ability to issue first mortgage bonds under the Indeture. The significant increase in interest rates has exacerbated the problem.

For the 12-month period ending on December 31, 1981, the earnings coverage provision of the Indenture would have prohibited WTU from issuing first mortgage bonds.

WTU asserts that the proposed exception from competitive bidding is justified because of WTU's earnings coverage problem, as well as the limited size and frequency of its Debenture offerings. WTU proposes, and is hereby authorized, forthwith, (a) to negotiate with and select one or more investment banking firms to act as underwriters for the securities and (b) to negotiate the price and other terms upon which the securities will be issued to the public.

The net proceeds from the sale of the securities will be used by WTU to repay short-term borrowings incurred or expected to be incurred to finance construction expenditures estimated to total $55,971,000 in 1982 and $78,528,000 in 1983.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 1, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13138 Filed 5-13-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22489; 70-6737]

Eastern Edison Co. and Montaup Electric Co.; Proposal To Issue and Sell First Mortgage Bonds and Debenture Bonds

May 7, 1982.

In the matter of Eastern Edison Company, 110 Mulberry Street, Brockton, Massachusetts 02403; Montaup Electric Company, P.O. Box 391, Fall River, Massachusetts 02722.

Eastern Edison Company ("Eastern"), a public utility subsidiary of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), a generating subsidiary of Eastern, have filed an application-declaration with this Commission pursuant to Sections 6(b), 9, 10, 12(c) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43, 45 and 50 thereunder.

Eastern proposes to issue and sell at competitive bidding, pursuant to Rule 50, not in excess of $25,000,000 principal amount of its first mortgage and collateral trust bonds, percent Series due 1992 ("New Bonds"). The proposed interest rate (which shall be a multiple of ⅛ of 1 percent) on and the price to be paid to Eastern (which shall be not less than 98 percent or more than 102¾ percent of the principal amount) for the New Bonds will be determined by competitive bidding. It is expected that the supplemental indenture relating to the New Bonds will contain a prohibition until June 1, 1987 against redemption of the New Bonds as part of or in anticipation of any refunding at a lower effective interest cost.

The net proceeds of the sale of the New Bonds will be applied to the purchase of not in excess of $25,000,000 of debenture bonds which Montaup proposes to issue and sell to Eastern. Eastern proposes to purchase from Montaup at their principal amount plus accrued interest, not in excess of $25,000,000 principal amount of percent Debenture Bonds due 2012 ("New Debenture Bonds"). The New

Debenture Bonds will be dated June 1, 1982, will mature June 1, 2012, and will bear interest (payable March 1, June 1, September 1 and December 1 in each year). The effective interest rate to Montaup will approximate the effective interest rate (including income tax effect) of the New Bonds. The New Debenture Bonds themselves will contain all of their terms and there will be no indenture or similar instrument governing them.

The proceeds to Montaup from the sale of the New Debenture Bonds are to be applied to reduce short-term bank indebtedness incurred for construction (including facilities owned or to be owned in common with other utilities) or incurred to repay earlier borrowings so incurred. It is expected that approximately $28,000,000 of bank borrowings of Montaup will be outstanding at the time the New Debenture Bonds are issued. Eastern will deposit and pledge the New Debenture Bonds under the indenture securing its outstanding first mortgage and collateral trust bonds, as required by the provisions of the indenture. Eastern proposes to open bids for the New Bonds on June 15, 1982. It is expected that the New Bonds and the New Debenture Bonds will be issued and sold on June 24, 1982.

Eastern considers it possible that market conditions at the time of the sale of the New Bonds may make it necessary to depart from the proposal that such sale be made in accordance with the competitive bidding requirements of Rule 50 and to endeavor instead to arrange a sale through a negotiated public offering or by private placement. In such event, Eastern may amend this application-declaration to request an exception from Rule 50 which would permit it to negotiate the tems of such a sale.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 1, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the cae of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13135 Filed 5-13-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 806]

Bureau of Oceans and International Environmental and Scientific Affairs

AGENCY: Department of State.

ACTION: Finding of no significant impact.

SUMMARY: The Department of State has prepared an environmental assessment on the ratification of the Convention for the Conservation of Salmon in the North Atlantic Ocean, to promote the conservation, management and restoration of salmon stocks in that area. Following its adoption at a Diplomatic Conference held in Reykjavik, Iceland in January 1982, this Convention was signed by the United States, Canada, Iceland, Norway, Denmark (for the Faroe Islands) and the European Community. It will enter into force following ratification by not less than four Contracting Parties of which one must be the United States.

Based upon the findings of the environmental assessment, the Department anticipates no signifcant adverse impacts will result from ratification of the Convention. No irreversible or irretrievable commitments of resources have been identified.

Copies of the environmental assessment may be obtained from Ms. Irene Friedrichs, OES/ENH, Room 7820, Department of State, Washington, D.C. 20520 (202-632-2311).

Dated: May 4, 1982.

Donald R. King,

Acting Deputy Assistant Secretary for Environment, Health and Natural Resources.

[FR Doc. 82-13132 Filed 5-13-82; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Butte District, Montana; Wilderness Suitability Recommendations Relating to Eight Wilderness Study Areas in Madison and Beaverhead Counties, Montana; Availability of Draft Wilderness Planning Amendment/ Environmental Impact Statement; Notice of Public Hearings, and Start of Public Comment Period

May 5, 1982.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a document containing both a draft environmental impact statement and a draft wilderness planning amendment for eight Wilderness Study Areas (WSAs) in the Butte District, Montana. The eight WSAs are the Ruby Mountains, Blacktail Mountains, Farlin Creek, East Fork of Blacktail Deer Creek, Hidden Pasture Creek, Bell-Limekiln Canyon, Henneberry Ridge and Axolotl Lakes. Portions of the three first-mentioned WSAs totalling 27,211 acres are recommended as suitable for wilderness designation; portions of the first three and all of the last five areas, a total of 67,198 acres, are recommended as not suitable for wilderness designation.

The formal public comment period on the draft document begins on May 17, 1982 and runs until July 26, 1982. Pursuant to Section 3(d) of the Wilderness Act of 1964, notice is also given that public hearings will be held on the recommendations.

DATES: Wilderness Act hearings will be held:

—June 22, 1982, 7–10 p.m., St. Rose Family Center, Dillon, Montana.

—June 24, 1982, 1–5 p.m. and 7–10 p.m., Jorgenson's Motel, Helena, Montana.

Comments on the draft document may be submitted to the Dillon Resource Area Office, 730 North Montana, P.O. Box 1048, Dillion, Montana 59725.

ADDITIONAL INFORMATION: Copies of the draft document may be obtained by writing either the Butte District Office, P.O. Box 3388, Butte, Montana 59702, or the Dillon Resource Area Office.

Dated: May 10, 1982.

Kannon Richards,

Acting State Director.

[FR Doc. 82-13136 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

Lewistown District, Montana; Wilderness Suitability Recommendations for 12 Wilderness Study Areas in the Lewistown and Miles City Districts, Montana; Availability of Draft Wilderness Planning Amendment/Environmental Impact Statement; Public Hearings; and Start of Public Comment Period

May 5, 1982.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a document containing both a draft environmental impact statement and a draft wilderness planning amendment for 12 wilderness study areas (WSAs) in the Lewistown and Miles City Districts, Montana. The 12 WSAs are Dog Creek South, Stafford, Ervin Ridge, Woodhawk, Cow Creek, Antelope Creek, and Burnt Lodge in the Lewistown District and Bridge Coulee, Musselshell Breaks, Billy Creek, Seven Blackfoot, and Terry Badlands in the Miles City District.

Burnt Lodge and portions of Cow Creek, Antelope Creek, Seven Blackfoot, and Terry Badlands containing a total of 79,770 acres are recommended as suitable for wilderness designation. Dog Creek South, Stafford, Ervin Ridge, Woodhawk, Bridge Coulee, Musselshell Breaks, Billy Creek, and portions of Cow Creek, Antelope Creek, Seven Blackfoot, and Terry Badlands containing a total of 90,430 acres are recommended as not suitable for wilderness designation.

The formal public comment period on the draft document begins on May 17, 1982, and runs until July 26, 1982. Pursuant to Section 3(d) of the Wilderness Act of 1964, notice is also given that public hearings will be held on the recommendations.

DATES: Wilderness Act hearings will be held:

Jordan, Montana; June 16, 1982; VFW Hall at 7:00 p.m.
Terry, Montana; June 17, 1982; Prairie County State Grazing District Office, 612 Laundre at 7:00 p.m.
Malta, Montana; June 22, 1982; G–N Motor Hotel at 7:30 p.m.
Winifred, Montana; June 23, 1982; Winifred High School at 7:30 p.m.
Helena, Montana; June 24, 1982; Jorgenson's Motel, 1714 11th Avenue at 1:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m.

Comments on the draft document may be submitted to the Lewistown District Office, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

ADDITIONAL INFORMATION: Copies of the draft document may be obtained by writing either the Lewistown District Office at the above address or the Miles City District Office, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: May 10, 1982.

Kannon Richards,

Acting State Director.

[FR Doc. 82-13156 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

[M 20575]

Montana; Partial Termination of Proposed Withdrawal and Reservation of Land

May 6, 1982.

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from operation of the public land laws, including location and entry under the mining laws. The Notice of Proposed Withdrawal was published as **Federal Register** Document No. 72–2168 on page 3195 of the issue of February 12, 1972; partially terminated in **Federal Register** Document No. 77–16316 on page 29566 of issue of June 9, 1977; and republished in **Federal Register** Document No. 77–16315 on page 29565 of issue of June 9, 1977. The applicant agency has cancelled its application in part as to the following:

Principal Meridian

Lewis and Clark National Forest, Dry Wolf Campground

T. 14 N., R. 9 E.,
Sec. 13, NE¼NE¼NE¼, S½NE¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, NW¼SW¼NE¼, and NW¼SE¼NE¼, excluding the private lands in HES No. 63.

The area described contains approximately 50.1 acres in Judith Basin County.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2–5(b)(1), at 8 a.m. on June 25, 1982, such lands will be relieved of the segregative effect of the above mentioned application.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13140 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

National Petroleum Reserve—Alaska; Oil and Gas Lease Sale No. 822; Deletion of Tracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Delection of tracts from the May 26, 1982 lease sale No. 822.

SUMMARY: The notice of sale published on April 9, 1982 (47 FR 15516), contains three tracts that are being deleted from Sale No. 822. Bids on tracts 31, 32, and 198 that appear in this Notice were rejected after the first sale, and appeals of the decision have been filed. While these appeals are pending tracts 31, 32, and 198 are not available for reoffer in the May 26, 1982 lease sale.

Dated: May 10, 1982.

James M. Parker,

Associate Director.

[FR Doc. 82-13215 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

National Petroleum Reserve—Alaska; Oil and Gas Lease Sale No. 822; Notice of Sale; Correction

In the FR Doc. 82–9716, Friday, April 9, 1982, the following corrected legal description is made on page 15521 to read:

UMIAT MERIDIAN

Tract No.	Township/range	Acreage
822-148	T. 3S., R. 6 W., Secs. 1 to 10, inclusive, Secs. 16 to 20, inclusive, Sec. 30, all.	9,504

On page 15524, approximate aggregate total should be changed to read 3,519,515 acres.

Dated: May 6, 1982.

James M. Parker,

Associate Director.

[FR Doc. 82-13216 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Proposed Land Exchange Between City of Albuquerque and Bureau of Land Management and USDA Forest Service

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) and the Region 3 Office of the U.S. Forest Service are proposing a land exchange with the City of Albuquerque, New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the public lands described below are suitable for exchange or for disposal from federal ownership under authority of section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) or Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869), as amended, respectively.

Tract Common name	Township	Range	Section (#) (all or portions)	Total acres per tract
			Bureau of Land Management Lands	
1. Placitas	13 N	4E	13:	
			Lot 6	26.89
			Lot 7	24.86
			Lot 8	22.84
			Lot 9	20.81
			S½	320.00
			14:	
			Lot 12	21.76
			Lot 13	31.58
			Lot 14	29.42
			Lot 15	39.70
			S½SE¼, NE¼SE¼	120.00
			15: Lot 10	3.96
			22:	
			Lot 6	29.05
			Lot 7	12.24
			Lot 8	29.66
			Lot 9	37.97
			Lot 10	29.22
			SE¼NE¼, NE¼SE¼	80.00
			23:	
			Lot 1	36.10
			N½, N½SW¼, SE¼SW¼, SE¼	600.00
			24:	640.00
			25: N½	320.00
			26:	
			Lot 1	18.20
			Lot 2	23.05
			Lot 3	48.26
			Lot 4	21.89
			Lot NE¼, NE¼NW¼, NE¼SE¼, S½SE¼	320.00
			Subtotal	2,985.44
	13 N	5 E	17:	
			Lot 1	38.51
			Lot 2	38.05
			Lot 3	34.78
			Lot 4	36.93
			S½S½	160.00
			18:	
			Lot 1	3.24
			Lot 2	3.65
			Lot 3	28.00
			Lot 4	40.00
			Lot 5	41.15
			Lot 6	39.05
			Lot 7	37.00
			SE¼SW¼, S½SE¼	120.00
			19:	
			Lot 1	38.93
			Lot 2	28.77
			Lot 3	38.63
			NE¼, E½NW¼	240.00
			20: NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, SE¼	480.00
			29:	
			Lot 1	14.88
			Lot 2	15.79
			Lot 3	16.71
			Lot 4	16.88
			30: SE¼	160.00
			31:	
			Lot 1	27.89
			Lot 3	19.89
			NE¼	160.00
			NE¼NW¼	40.00
			32: Lot 1	7.49
			Subtotal	1,855.92
			Total	4,789.36
2. Edgewood	9 N	7 E	5:	
			Lot 3	40.31
			N½ Lot 4 [1]	20.26
			S½NW¼	80.00
			6: N½ Lot 1 [1]	20.28
			SE¼NE¼	40.00
			8: W½NE¼, NW¼, NE¼SW¼, N½SE¼, SE¼SE¼	400.00
			9: S½S½NE¼	40.00
			S½N½S½NE¼	20.00
			17: NE¼NE¼	40.00
			25: SW¼SW¼	40.00
			26: SE¼NW¼, NW¼SE¼	80.00
			33:	
			Lot 1	26.27
			Lot 3	16.50
			Subtotal	865.62
	10 N	7 E	31:	
			Lot 7	43.66

Tract Common name	Township	Range	Section (s) (all or portions)	Total acres per tract
			Lot 9	21.87
			SE¼NE¼, NE¼SE¼, E½NW¼SE¼	100.00
			Subtotal	165.52
			Unit total	1,031.14
3. Cedar Crest	11 N.	6 E.	32: N½NW¼SW¼, NE¼SW¼NW¼SW¼, W½SW¼N a¼SW¼	37.50
			Unit total	37.50
4. Four Hills	10 N.	4 E.	33: SE¼SE¼	40.00
			Unit total	40.00
5. Aztec	9 N.	1 E.	18:	
			Lot 1	40.07
			Lot 2	42.61
			Lot 3	36.02
			Lot 4	36.02
			Lot 5	36.02
			Lot 6	40.55
			NE¼, E½NW¼	240.00
			Subtotal	471.29
	9 N.	1 W.	10:	
			Lot 1	40.24
			Lot 2	40.24
			Lot 3	49.82
			Lot 4	20.22
			S½SE¼	80.00
			12:	
			Lot 1	40.38
			Lot 2	40.27
			Lot 3	40.17
			Lot 4	40.05
			S½S½ 160.00	
			14:	
			Lot 1	38.50
			Lot 2	38.63
			Lot 3	38.75
			Lot 4	38.88
			N½	320.00
			Subtotal	1,026.16
	10 N.	1 W.	30: SE¼NE¼, SW¼SE¼	80.00
			32:	
			Lot 1	13.40
			Lot 2	17.75
			Lot 3	10.85
			Lot 4	36.75
			Lot 5	20.23
			W½W¼, SE¼SW¼	200.00
			Subtotal	378.98
			Unit total	1,876.43
6. Las Cruces—Urban Expansion	22 S.	2E.	17: SW¼	160.00
			18:	
			Lot 7	20.84
			Lot 8	3.91
			E½SE¼	80.00
			19:	
			Lot 5	39.12
			Lot 6	9.08
			20:	
			Lot 1	39.09
			Lot 2	11.25
			Lot 3	38.52
			Lot 4	13.57
			N½NW¼, SE¼NW¼	120.00
			27: W½	320.00
			28: N½	320.00
			SE¼	160.00
			E½NW¼	80.00
			Lot 1	39.91
			Lot 3	5.02
			Lot 4	10.06
			Lot 10	5.02
			29:	
			Lot 4	32.15
			Lot 5	40.11
			Lot 6	2.83
			Lot 7	8.20
			NE¼NE¼	40.00
			33:	
			Lot 2	35.84
			Lot 3	44.68
			Lot 4	8.19
			Lot 5	10.05
			Lot 30	10.06
			SE¼NW¼	40.00
			E½	320.00
			34: W½	320.00
			Subtotal	2,577.26

V 4 7 / 9 4 M Y 1 4 8 2 UMI

Tract Common name	Township	Range	Section (S) (all or portions)	Total acres per tract
	23 S.	2 E.	4:	
			Lot 8	40.06
			Lot 9	40.36
			Lot 10	21.15
			Lot 11	13.23
			Lot 12	40.35
			Lot 13	40.35
			Lot 14	39.88
			Lot 15	40.57
			Lot 16	19.89
			Lot 17	40.60
			9:	
			Lot 7	41.88
			Lot 8	8.92
			10:	
			Lot 1	40.32
			Lot 2	40.32
			Lot 3	40.27
			Lot 4	40.21
			Lot 5	38.54
			Lot 6	40.12
			Lot 7	40.26
			Lot 8	40.26
			Lot 9	40.36
			Lot 10	40.30
			Lot 11	40.12
			Lot 12	16.40
			Lot 16	40.38
			Lot 17	12.87
			Lot 18	2.51
			Lot 19	2.51
			Lot 20	2.51
			Lot 21	2.51
			Lot 22	2.65
			Lot 23	2.23
			Lot 24	2.52
			Lot 25	2.52
			Lot 26	2.52
			Lot 27	2.52
			Lot 28	2.52
			Lot 29	2.52
			Lot 30	2.52
			Lot 31	2.52
			Lot 32	1.70
			Lot 33	10.08
			Lot 34	10.06
			Lot 35	10.06
			Subtotal	864.94
			Unit total	*3,342.22
7. Las Cruces—Light Industrial Site	23 S.	1 W.	26: SE¼	160.00
			S½S½NE¼	40.00
			E½SW¼	80.00
			S½SE¼NW¼	20.00
			E½W½SW¼	40.00
			SE¼SW¼NW¼	10.00
			27: E½SW¼	80.00
			S½NW¼SW¼	20.00
			SW¼SW¼	40.00
			W½SE¼	80.00
			W½E½SE¼	40.00
			SW¼SE¼NE¼	10.00
			S½SW¼NE¼	20.00
			S½SE¼NW¼	20.00
			34: All	640.00
			35: N½	320.00
			SW¼	160.00
			SE¼	160.00
			Unit total	*1,940.00
8. Farmington—(Lands identified in Management Frame Work Plan Conveyance).	29 N.	11 W.	10: N½NW¼ (Except Patent #1221408)	75.00
			NW¼ SE¼NW¼	10.00
			N½ SW¼ SE¼NW¼	5.00
			S½NE¼ SE¼NW¼	5.00
			S½NW¼NE¼ SW¼	5.00
			SW¼NE¼ SW¼	10.00
			NE¼ SE¼ SW¼	10.00
			SW¼ SE¼ SW¼	10.00
			S½NW¼ SE¼ SW¼	5.00
			15: SW¼NE¼NW¼	10.00
			S½NW¼NE¼NW¼	5.00
			N½ SE¼NE¼NW¼	5.00
			Subtotal	155.00
	29 N.	12 W.	4: Lot 4	39.72
			5:	
			Lot 1	39.77

Tract Common name	Township	Range	Section (6) (all or portions)	Total acres per tract
			Lot 2	39.95
			Lot 3	40.16
			SE¼NW¼	40.00
			N½NE¼ SW¼	20.00
			SW¼NE¼ SW¼	10.00
			Subtotal	229.60
	29 N	13 W	5:	
			Lot 1	39.96
			Lot 2: NE¼ & S½	29.97
			SW¼ SW¼	40.00
			SE¼NW¼	40.00
			N½NE¼ SW¼	20.00
			SW¼NE¼ SW¼	10.00
			12: S½ S½ SE¼ SE¼	10.00
			N½NW¼ SE¼ SE¼	9.00
			S½ SW¼NW¼ SE¼	9.00
			Subtotal	199.95
	29 N	14 W	12: NE¼NE¼	40.00
			15: NW¼NE¼	40.00
			Subtotal	80.00
	30 N	12 W	17:	
			Lot 1	40.90
			Lot 2	40.73
			Lot 3	40.57
			Lot 4	40.40
			Lot 5	40.32
			Lot 6	40.49
			Lot 7	40.66
			Lot 8	40.83
			Lot 9	40.75
			Lot 10	40.59
			Lot 11	20.32
			Lot 12	40.25
			Lot 13	80.18
			Lot 14	40.35
			Lot 15	40.52
			Lot 16	40.88
			19:	
			Lot 1	38.04
			Lot 2	39.30
			N½NE¼	80.00
			N½ SW¼NE¼	20.00
			SE¼ SW¼NE¼	10.00
			SE¼NE¼	40.00
			E½NW¼	80.00
			Lot 3	39.26
			Lot 4	39.22
			NE¼ SW¼	40.00
			30:	
			Lot 1	39.55
			Lot 2	39.52
			Lot 3	39.34
			Lot 4	39.30
			Lot 5	39.19
			Lot 6	39.23
			Lot 7—N½ & SE¼	59.76
			Lot 8	39.69
			Lot 9	39.53
			Lot 10	39.68
			Lot 11	40.42
			31:	
			Lot 1	39.17
			Lot 2	39.24
			33:	
			Lot 1	39.80
			Lot 2	39.31
			Lot 3	39.44
			34:	
			Lot 1	37.61
			Lot 2	37.86
	30 N	12 W	34:	
			Lot 3	38.22
			Lot 4	37.96
			Lot 5	39.20
			35:	
			Lot 1	39.23
			Subtotal	1,917.98
	30 N	13 W	1:	
			SW¼NE¼NE¼NE¼	2.50
			SE¼NW¼NE¼NE¼	2.50
			W½NW¼NE¼NE¼	5.00
			SW¼ SE¼NE¼NE¼	3.50
			E½ SW¼NE¼NE¼	5.00
			SW¼ SW¼NE¼NE¼	2.50
			N½NE¼NW¼NE¼	5.00
			SE¼NE¼NW¼NE¼	2.50
			NW¼NW¼NE¼	10.00
			NW¼ SW¼NW¼NE¼	3.50

Tract Common name	Township	Range	Section (#) (all or portions)	Total acres per tract
			N½N½ SE¼NE¼	10.00
			SW¼NE¼ SE¼NE¼	2.50
			S½NW¼ SE¼NE¼	5.00
			NE¼ SW¼ SE¼NE¼	2.50
			N½NE¼NE¼NW¼	5.00
			SE¼NE¼NE¼NW¼	2.50
			N½ SW¼NE¼NW¼	5.00
			SE¼ SW¼NE¼NW¼	2.50
			NW¼ SE¼NE¼NW¼	2.50
			SE¼NE¼NW¼NW¼	2.50
			W½E½NW¼NW¼	10.00
			W½NW¼NW¼	20.00
			NE¼ SE¼NW¼NW¼	2.50
			N½N½ SW¼NW¼	10.00
			SW¼NW¼ SW¼NW¼	2.50
			W½ SW¼ SW¼NW¼	5.00
			N½NW¼ SE¼NW¼	5.00
			SE¼ SE¼ SE¼NW¼	2.50
			W½NE¼NW¼ SW¼	5.00
			NW¼NW¼ SW¼	10.00
			N½ SW¼NW¼ SW¼	5.00
			SW¼ SW¼NW¼ SW¼	2.50
			NE¼NE¼ SW¼ SW¼	2.50
			S½NE¼ SW¼ SW¼	5.00
			N½NW¼ SW¼ SW¼	5.00
			SW¼NW¼ SW¼ SW¼	2.50
			NW¼ SE¼ SW¼ SW¼	2.50
			SW¼ SW¼ SE¼ SW¼	2.50
			NW¼ SE¼ SE¼ SW¼	2.50
			N½NW¼NE¼ SE¼	5.00
	30 N	19 W	NE¼NE¼NW¼ SE¼	2.50
			26:	
			SE¼NW¼NE¼ SE¼	2.50
			S1/2 SW¼NW¼ SE¼	5.00
			SW¼ SE¼NW¼ SE¼	2.50
			NW¼NE¼ SW¼ SE¼	2.50
			E½NE¼ SW¼ SE¼	5.00
			NE¼ SE¼ SW¼ SE¼	2.50
			W1/2 SW¼ SW¼ SE¼	5.00
			SE¼ SW¼ SW¼ SE¼	2.50
			27:	
			SE¼ SE¼	40.00
			W½	320.00
			E1/2NW¼ SE¼	20.00
			SW¼NW¼ SE¼	10.00
			SW¼ SE¼	40.00
			NE¼ SE¼	40.00
			34:	
			NW¼NW¼	5.00
			Subtotal	711.50
			Subunit total	3,309.98
			Grand total public land	28,771.32

The U SDA Forest Service has determined that the following described Forest lands are suitable for exchange out of federal ownership under the authority of the General Exchange Act of March 20, 1922 (42 Stat. 465 as amended: 16 U. S.C. 485, 486) and the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U. S.C. 1716, 1717).

9. Sedillo (U SDA Forest Service, Cibola NF)	9 N	6 E	3:	
			Lot 5	29.31
			S½ S½NE¼	40.00
			NE¼ SE¼	40.00
			9:	
			SE¼ SW¼, W½ SW¼ SE¼, W½E½ SE¼, E½ SE¼ SW¼ SE¼, S½ SE¼ SE¼.	85.00
			15:	
			N½, N½ S½, SE¼ Sw¼, SW¼ SE¼	560.00
	9 N	6 E	16:	640.00
			21: NW¼	160.00
			Subtotal	1,566.31
	10 N	6 E	21: E½NW¼, N½NW¼NW¼, S½ SW¼NW¼, W½NW¼ SW¼NW¼, W½ SW¼, SE¼ SW¼, SE¼ SW¼NE¼ SW¼, SE¼NE¼ SW¼, N½NW¼NE¼ SW¼, SE¼.	422.50
			27: S½N½ SW¼NE¼	10.00
			S½ S½NE¼	40.00
			N½ S½	160.00
			N½ S½ SE¼	40.00
			S½NW¼	80.00
			S½N½NW¼	40.00
			S½ S½N½N½NW¼	10.00
			28:	640.00
			33: NE¼, N½NW¼, SW¼NW¼, N½ SE¼NW¼, SW¼ SE¼NW¼, NW¼ SW¼, W½NE¼ SW¼, N½ SW¼ SW¼, NW¼ SE¼ SW¼, SW¼ SE¼ SE¼, S½NW¼NW¼ SE¼ SE¼ SE¼, NW¼NW¼ SE¼ SE¼, NW¼ SE¼, N½NE¼ SE¼, N½ S½NE¼, N½ S½NE¼ SE¼, SE¼ SE¼NE¼ SE¼, SW¼ SW¼NE¼NE¼ SE¼.	492.50
			34: S½NE¼NE¼	20.00
			S½N½	160.00
			N½ S½	160.00
			SE¼ SW¼	40.00
			N½ SW¼ SE¼	20.00
			SE¼ SE¼	40.00
			Subtotal	2,575.00
			Grant total forest lands	3,931.31

[1] Will be redescribed upon completion of supplemental plats.
[2] Less and except the recreation and public purpose parcels identified by the City of Las Cruces (but not yet legally described), containing approximately 500 acres and shown as the map included as Exhibit E, page 4 of the Elena Gallegos Grant exchange Environmental Assessment.
[3] Less and except the recreation and public purpose parcels identified by the City of Las Cruces (but not yet legally described), containing approximately 40 acres

In addition, the following lands: T. 13 N., R. 4 E., NMPM, sec. 24, S½ (320.0 acres) and sec. 25, N½ (320.0 acres) containing an aggregate of 640.00 acres (and listed on page 1 of the preceding legal description) will be included in this exchange. These lands were acquired by the City of Albuquerque through a Recreation and Public Purpose Patent and will be conveyed by the city to the United States for use in this exchange.

The total acreage of public (BLM) lands (including the 640.0 acres from the city) is 16,356.63 acres. The total public lands (including the 3,930.31 acres of the Cibola National Forest) is 20,286.94 acres, more or less.

In exchange for these lands the United States will acquire a parcel of private land from the City of Albuquerque in Bernalillo County, New Mexico containing approximately 7,400 acres which is part of the following larger parcel:

Legal Description of the Elena Gallegos Grant (Part)

A tract of land containing that part of the land described in the Elena Gallegos Grant, lying east of a line described as beginning at the closing corner between secs. 34 and 36 of T. 11 N., R. 4 E., on the south boundary of said grant and extending north 2,700 feet;

Thence, north 00° 03' 45" west, approximately 16,808.65 feet to the closing corner between secs. 13 and 14 on the north boundary of said grant of said township; thence south 81° 30' east, 2,316.42 feet along the boundary of said grant to a point on the north boundary of said grant, which point lies north 81° 31' west, approximately 150 feet from the 7½-mile corner of said grant;

Containing 8,101.21 acres, more or less.

The fair market value of the land to be exchanged is approximatley equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest.

In accordance with 43 CFR 2201.1(b), this notice shall segregate the public (BLM) lands identified herein from further appropriation under all the public land laws, including the mining laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

The Forest Service lands were segregated from further appropriation when the public land records were noted on December 18, 1981, as set forth in 43 CFR 2201.1(b).

Rationale for Exchange

1. Since 1973 the Forest Service has tried to acquire portions of the Elena Gallegos Land Grant for its wildlife and recreational resource values adjacent to the City of Albuquerque. In 1978, Pub. L. 95–614 was enacted, authorizing the Forest Service to acquire 7,191.34 acres on the eastern edge of the Grant for inclusion into the Cibola National Forest. However, no federal funding was appropriated for the acquisition, and with the austere fiscal policy of the present administration, there are no Land and Water Conservation Funds available for purchase of this tract. Consequently, the only other feasible alternative for acquisition within the foreseeable future is through land exchange.

2. As part of the Secretary of the Interior's "Good Neighbor Policy" and the Bureau of Land Management's planning efforts, specific public lands have been identified and included in this exchange to provide for community expansion in the Las Cruces and Farmington areas.

3. The public lands proposed for disposal by exchange have only limited potential for public use as compared to the private lands to be acquired. One of their primary values is mineral development which can continue under a reservation of certain valuable minerals to the United States.

4. This exchange proposal is consistent with recommendation L–7.3 in the Rio Grande Management Framework Plan (MFP), recommendation L–1.1 and L–2.2 in the Southern Rio Grande MFP, and recommendations L–1.1 through L–1.5 in the San Juan MFP. All the recommendations identify specific lands that are included in this exchange as being suitable for disposal.

Terms and Conditions

The federal lands will pass from United States ownership subject to the following terms and conditions:

1. Authorized pipelines, powerlines, roads, highways, telephone lines, minerals, leases, use permits, communication sites, water wells, and a highway maintenance yard will be identified as prior existing rights.

2. The minerals that will be reserved to the United States are as follows:

Unit	USGS/MMS Report—Valuable for		
	Oil and gas	Coal (at least in part)	Geothermal
Placitas	X		
Ball Allotment	X	X	X
Edgewood	X		
Cedar Crest		X	
Four Hills	X		
Alrisco	X	X	
Las Cruces Urban	X		X
Las Cruces Industrial	X		X
Sedillo	[1] X		
Farmington	X	X	

[1] The Sedillo Unit may have potential value for oil and gas, however, discovery is improbable and the estate will be conveyed with the surface.

3. Grazing operators that will have their allotments affected by this exchange entitled to a 2-year adjustment period. However, a permittee or lessee may waive this 2-year notice.

4. Archeological clearance will be granted on all lands prior to conveyance of title.

5. Flood plain restrictions will be imposed on 175 acres of the Ball tract and on 110 acres of the Placitas properties. Intensive development will be precluded on these flood plain areas.

Detailed information concerning the exchange, including the environmental assessment, is available at the Albuquerque District Office, 3550 Pan American Freeway, NE, Albuquerque, New Mexico 87107.

On or before June 28 1982, interested parties may submit comments to the District Manager, Albuquerque District Office at the above address. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination.

Dated: May 5, 1982.

L. Paul Applegate,

District Manager, Bureau of Land Management.

[FR Doc 82-13030 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Department of Vertebrate Zoology, Natural History Museum, Smithsonian Institution, Washington, D.C. 20008; PRT 2–4749.

The applicant currently has a permit to import bones and keratin from all species of sea turtles (*Cheloniidae*) for an aging study. The applicant requests an amendment to salvage materials in

the United States and to allow export/reexport for scientific purposes. As with the current permit, all materials will be salvage and no turtles will be killed specifically for this project.

Applicants: Roosevelt Park Zoo, Minot, ND; PRT 2-9113.

The applicant requests a permit to purchase in interstate commerce one male and one female gibbon *(Hylobates lar)* for enhancement of propagation.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT 2-9111.

The applicant requests a permit to import one female captive-born Malayan tapir *(Tapirus indicus)* from the Metro Toronto Zoo, Canada for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications by June 14, 1982 by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: May 10, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-13208 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Southern Appalachian Coal Region, Alabama; Request for Public Comment on Maximum Economic Recovery and Fair Market Value

AGENCY: Minerals Management Service; Interior.

The Minerals Management Service has identified seven tracts as candidates for possible lease sale in the Southern Appalachian Coal Region in Alabama. The seven tracts are currently under consideration for leasing by the Southern Appalachian Regional Coal Team. A description of these tracts is contained in Table I. More complete geologic data on these tracts are available in the engineering section of the delineation reports prepared for each tract. These reports are available for public inspection at the Office of the Eastern Region Minerals Manager, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, and at the Bureau of Land Management, Tuscaloosa Office, 1315 McFarland Blvd., Tuscaloosa, Alabama 35405. Additional data on these tracts are available from the Final Environmental Impact Statement (FEIS). Copies of the FEIS are available from Bob Todd, EIS Team Leader, Bureau of Land Management, Tuscaloosa Office.

The public is invited to submit written comments on the fair market value of the listed tracts to the Minerals Management Service. Comments should address, but not be limited to, the following:

1. The quantity and quality of the coal resources for each tract by seam(s).

2. The mining method or methods which would achieve maximum economic recovery of the coal, including specification of seams to be mined on each tract and the most desirable timing and rate of production.

3. The demonstrated and inferred reserves of coal on each tract by seam(s).

4. Which of the tracts, if any, should be evaluated as part of a larger mining unit (i.e., those tracts which do not in themselves form a logical mining unit).

5. The configuration of the larger mining unit of which the tract may be a part.

6. Restrictions to mining which may affect coal recovery.

7. The price that the mined coal would bring in the marketplace.

8. The cost of producing the coal, including a discussion of mining and reclamation costs.

9. The percentage rate at which anticipated income would be discounted, either in the absence of inflation or including inflation, in which case the anticipated rate of inflation should be given.

10. Depreciation and other accounting considerations.

11. The value of the surface estate if privately held.

12. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.

If information submitted is considered to be proprietary, the information should be so labeled on the first page of the written comment(s). The Minerals Management Service will treat this information as confidential if authorized by the exemption provisions of the Freedom of Information Act. Comments should be sent to the Eastern Region Minerals Manager, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Comments should be received no later than 30 days after publication of this notice.

This request for comments should not be interpreted as a firm commitment by the Federal Government to lease any of the tracts listed in Table I. A decision to lease any or all tracts will be made not less than 30 days before the lease sale.

Departmental policy calls for release of all nonproprietary data which are used as input in the discounted cash flow evaluation model. Under this policy, we are releasing for public comment and review our initial estimates of: (1) The "coal selling price" which is an estimate of the range of current market prices and is based on the quality of the coal; (2) the "unit mining cost" which is an estimate of the range of all the operating costs used to produce the coal; and (3) the "nominal discount rate" which is the discount rate obtained from using a 10 or 12 percent real discount rate and a 9 percent inflation factor (see Table II).

These values may change as a result of comments received from the public and changes in the market conditions between now and when the final economic evaluations are completed.

Dated: May 11, 1982.

TABLE I.—DESCRIPTION OF POSSIBLE LEASE TRACTS IN THE SOUTHERN APPALACHIAN COAL REGION IN ALABAMA

Tract name	County; township and range, (Huntsville P.M.)	Tract acreage total/FMO [1]	Coal reserve base estimate (thousand tons) total/FMO [1]	Probable type of mine	BTU per pound	Sulfur content (percent)	Ash content (percent)
Little Tyro Creek	Fayette T16S, R9 & 10W, Tuscaloosa T17S, R10W	1080/560	704/438	Surface	12,120	2.7	8.2
Flatwoods	Fayette T16S, R9W	2000/520	2613/656	Surface	12,886	2.9	9.2
Brannon	Walker T14S, R9W, Fayette T14S, R10W	960.85/475.5	620/322	Surface	13,870	2.0	14.7
North Rock Springs Church	Tuscaloosa T17S, R9W	1200/400	1944/926	Surface	12,964	2.5	10.7
Dry Creek South	Tuscaloosa T18S, R9 & 10W	1120/400	184/54	Surface	13,300	2.0	8.0
Windham Springs	Tuscaloosa T18S, R9 & 10W	14120/7920	88756/44501	Underground	12,700	2.7	15.4

TABLE I.—DESCRIPTION OF POSSIBLE LEASE TRACTS IN THE SOUTHERN APPALACHIAN COAL REGION IN ALABAMA—Continued

Tract name	County, township and range, (Huntsville P.M.)	Tract acreage total/FMO [1]	Coal reserve base estimate (thousand tons) total/FMO [1]	Probable type of mine	BTU per pound	Sulfur content (percent)	Ash content (percent)
Wiley	Tuscaloosa T17 & 18S, R9 & 10W	7920/2040	54117/14325	Underground	12,460	2.5	13.2

[1] Federal Mineral Ownership.

TABLE II.—PRELIMINARY ESTIMATES OF ECONOMIC DATA TO BE USED IN DISCOUNTED CASH FLOW EVALUATION

	Underground	Surface
Mining Costs (dollar/ton)	22–27	21–27
Coal Selling Price (dollar/ton)	25–36	25–40
Discount rate (percent)	22.1	19.9

George F. Brown,

Minerals Manager, Eastern Region.

[FR Doc. 82-13200 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Big Thicket National Preserve, Texas; Availability of Plan of Operations and Environmental Analysis for the Purpose of Conducting Geophysical Exploration, GEO Seismic Services

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from GEO Seismic Services a plan of operations for the purpose of conducting geophysical exploration in the Lance Rosier Unit of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment until June 14, 1982 in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; the Jefferson County Courthouse, in Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87501. Copies of the document are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: May 5, 1982.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 82-13219 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park, Availability of Record of Decision and Finding of No Significant Impact for the Development Concept Plan

The National Park Service has prepared the Record of Decision and FONSI for the Cumberland/North Branch Maryland Development Plan. This record documents the selected course of action for the management and use of the Cumberland to Spring Gap area of the Chesapeake and Ohio Canal National Historical Park.

Written comments will be accepted until June 14, 1982 and should be addressed to the Superintendent, Chesapeake and Ohio Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Copies of the Record of Decision are available from:

Chesapeake and Ohio Canal NHP, P.O. Box 4, Sharpsburg, Maryland 21782

National Capital Region, 1100 Ohio Drive SW., Washington, D.C. 20242.

Dated: May 6, 1982.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 82-13221 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; Howard T. Rose, Co., Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that June 14, 1982, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Howard T. Rose Company, Inc., authorizing it to continue to provide marina facilities and services for the public at Fire Island National Seashore for a period of five (5) years from January 1, 1982, through December 31, 1986.

This contract renewal has been determined to be a categorical exclusion under the National Park Service regulations implementing the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under a prior contract which expired by limitation of time on December 31, 1981. It has continued to conduct satisfactory operations, at the request of the National Park Service, under the terms and conditions of this expired contract. Therefore, pursuant to the Act of October 9, 1965, as cited above, the foregoing concessioner is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect, grants Howard T. Rose Company, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Howard T. Rose Company, Inc. is substantially equal to others received. In the event a responsive proposal superior to that of Howard T. Rose Company, Inc. (as determined by the Secretary), is submitted, Howard T. Rose Company, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Howard T. Rose Company, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before June 14, 1982 to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, National Park Service, 15 State Street, Boston MA, 02109, for information as to the requirements of the proposed contract.

Dated: April 30, 1982.

Herbert S. Cables,

Regional Director, North Atlantic Region, National Park Service.

[FR Doc. 82-13225 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Katmai National Park and Reserve, Alaska; Intent To prepare General Management Plan and Environmental Assessment and To Conclude Public Workshops and Scoping Meetings

AGENCY: National Park Service, Interior.

ACTION: Prepare a general management plan and environmental assessment and conduct public workshops and scoping meetings for Katmai National Park and Preserve, Alaska.

Preliminary discussions will be held during the summer of 1982 to establish the major environmental issues to be addressed in the environmental assessment and to solicit ideas for the development of reasonable and practical alternatives. Public meetings will be held in the winter of 1983 following the official release of the draft general management plan and its environmental assessment. The time and place of these meetings will be announced in the **Federal Register** and in the regional news media.

SUMMARY: The National Park Service intends to prepare a general management plan for the conservation and management of Katmai National Park and Preserve. The plan will chart the strategies for solving the park and preserve's problems and meeting its management objective over the next 10–15 years for resources management and protection, visitor use and interpretation, and general development at a level of detail that will, in most cases, facilitate implementation. An environmental assessment will be prepared in concert with the plan to evaluate major environmental issues and to determine if the environmental consequences are significant enough to require the preparation of an environmental impact statement.

The planning effort will consider the alternatives of no action, or continuing existing conditions and trends (no action alternative); the minimum actions required to meet the purpose of the area under Pub. L. 96–487 (Alaska National Interest Lands Conservation Act of 1980); and those reasonable and practical strategies developed during public and other agency participation in the planning process. Other than the alternatives of no action, there is no reasonable and practical alternative to locating some actions within the 100-year floodplain to accommodate boat and floatplane access to the area.

The plan was directed by Pub. L. 96–487 (ANILCA) will contain a review of wilderness suitability for those lands not already so designated by Congress. Sport hunting, access, and other activities will continue as specified in the Alaska National Interest Lands Conservation Act and the Regulations of 36 CFR Part 13.

FOR FURTHER INFORMATION CONTACT: David Morris, Superintendent, Katmai National Park and Preserve, P.O. Box 7, King Salmon, Alaska 99613, (907) 246–3305. In the Lower-48 contact Betty Janes, Team Captain, National Park Service, Denver Service Center (TWE), P.O. Box 25287, Denver, Colorado 80225, (303) 234–4509.

Douglas G. Warnock,

Acting Regional Director, Alaska Region.

[FR Doc. 82-13224 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Martin Luther King, Jr. National Historic Site; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Martin Luther King, Jr. National Historic Site Advisory Commission will be held at 10 a.m. on Thursday, May 27, 1982, at the Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Administration Building, Room 103, 449 Auburn Avenue, Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr. National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr. National Historic Site. The agenda will include interim resource protection, Advisory Commission's planning responsibilities, interim visitor services and public-private partnerships.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. Randy C. Humphrey
Mrs. Willie Christine King Farris
Mr. Handy Johnson, Jr.
Mr. Howard H. Arnold, III
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex Officio Member
Director, National Park Service, Ex Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Janet C. Wolf, Superintendent, Martin Luther King, Jr. National Historic Site, 75 Spring Street, S.W., Atlanta, Georgia 30303, Telephone 404/221–5190. Minutes of the meeting will be available for public inspection at park headquarters approximately 4 weeks after the meeting.

Dated: May 3, 1982.

Robert M. Baker,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 82-13220 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 1:30 p.m. (EST), June 18, 1982, at the Sail Inn Restaurant, M–115 and M–31, in Benzonia, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Mr. Sidney Evans
Mr. Walter B. Hart
Mr. George T. Schilling
Mr. William B. Bolton
Mr. Lawrence J. Verdier
Dr. Michael Chubb
Ms. Evangeline J. Stanchik
Ms. Sylvia B. Kruger

The agenda for the meeting will include a report on the Benzie County Corridor Feasibility Study.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan 49635, telephone (616) 352–9611.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan.

Dated: May 6, 1982.

Hugh Beattie,

Acting Regional Director, Midwest Region.

[FR Doc. 82-13223 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 28, 1982, 7 p.m.

ADDRESS: Arlington Hotel, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159 (717/729-7135).

SUPPLEMENTARY INFORMATION: The Advisory council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include review of Draft Management Plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council, c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: May 5, 1982.

Donald Castleburg,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 82-13222 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf Advisory Board will meet during the period 8:30 a.m. to 5:30 p.m., June 17, 1982, and 9:00 a.m. to 12:00 p.m., June 18, at the Whitehall Hotel, Cullen Center, Houston, Texas (713/659-5000).

The meeting will cover the following principal subjects:

June 17

1. 5-Year OCS Program:
- Overview of proposed program and streamlining
- Analytic assumptions
- Fair market value

2. Revenue Sharing.

3. Hard Mineral Leasing.

4. Advisory Board, role and structure.

June 18

1. Ocean Ranger: Status Report.

2. Offshore Safety: The Ocean Ranger in Perspective.

3. New Concepts in Arctic Offshore Exploration Units.

The meeting is open to the public. Upon request, interested persons may make oral or written presentations to the Committee. Such requests should be made no later than June 3 to Alan D. Powers, Office of OCS Program Coordination, Department of the Interior, Room 5150, Washington, D.C. 20240 (202/343-9314).

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Office of OCS Program Coordination, Room 5150, Department of the Interior, 18th and C Streets, NW., Washington, D.C.

Dated: May 10, 1982.

Alan D. Powers,

Director, Office of OCS Program Coordination.

[FR Doc. 82-13160 Filed 5-13-82; 8:45 am]

BILLING CODE 4310-10-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 94
Friday, May 14, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From May 13th Open Meeting

The following item has been deleted at the request of the Broadcast Bureau from the list of agenda items scheduled for consideration at the May 13, 1982, Open Meeting and previously listed in the Commission's Notice of May 6, 1982.

Agenda, Item No., and Subject

Television—1—Applications of Charleston, S.C. VHF television stations WCBD, WCIV, WCSC, and WITV to make changes in their facilities; petitions to deny. *Summary:* The Commission will consider whether grant of the applications will have an impact on UHF stations in Columbia and Florence, S.C., which would adversely affect the public interest.

Issued: May 11, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–710–82 Filed 5–12–82; 1:10 pm]

BILLING CODE 6712–01–M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, May 20, 1982.

PLACE: Board Room sixth floor, 1700 G. Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

MATTERS TO BE CONSIDERED:

Request for Modify Board Resolution—American Savings and Loan Association, Salt Lake City, Utah

Service Corporation Application—Geogia Federal Savings and Loan Association, Atlanta, Georgia

Applications for Bank Membership and Insurance of Accounts—Malibu Savings and Loan Association, Malibu, California (In Organization)

Transfer and Repurchase of Government Securities

Perfecting of Security Interest in U.S. Government Securities Collateralizing Retail Repurchase Agreements.

[No. 33, May 20, 1982]

[S–715–82 Filed 5–13–82; 9:05 am]

BILLING CODE 6720–01–M

3

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, May 20, 1982.

PLACE: Faneuil Hall, Boston, Massachusetts.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Proposed Rule to Delete Part 742 of NCUA's Rules and Regulations Entitled "Liquidity Reserves."
3. Final Rule to amend Part 747 of NCUA's Rules and Regulations dealing with Administrative hearings in the case of involuntary liquidations due to insolvency.
4. Final Rule to remove the Accounting Manual and Data Processing Guidelines from incorporation by reference into NCUA's Rules and Regulations; Final Interpretive Ruling and Policy Statement on full and fair disclosure requirements of Part 702.3 of NCUA's Rules and Regulations.
5. Proposed Deregulation of Parts 701.1, 701.3 and 701.4 of NCUA's Rules and Regulations dealing with "Organizing a Federal Credit Union," "Standard form of Bylaws," and "Amendment of Bylaws and Charters."
6. Revised Examination Cycle.
7. Regional Directors' Reports.
8. Presentation of new charter.

* * * * *

TIME AND DATE: 7:15 a.m., Thursday, May 20, 1982.

PLACE: Parker House Hotel, Tremont and School Streets, Boston, MA.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Requests from federally insured credit unions for special assistance under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Requests for mergers with special assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Budget Amendment. Closed pursuant to exemptions (2) and (4).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).
5. Organizational Structure. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telehone (202) 357–1100.

[S–720–82 Filed 5–13–82; 3:01 pm]

BILLING CODE 7535–01–M

4

PAROLE COMMISSION

[2P0401]

Public Announcement

TIME AND DATE: 2 p.m., Thursday, May 20, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 5 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5967.

[S–710–82 Filed 5–12–82; 3:26 pm]

BILLING CODE 4410–01–M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19508, May 5, 1982.

STATUS: Open/closed meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 30, 1982.

CHANGES IN THE MEETING: Additional items: The following additional item will be considered at an open meeting scheduled for Thursday, May 13, 1982, at 10:00 a.m.

Consideration of what response to make to the Board of Governors of the Federal

Reserve System commenting on the proposed acquisition by BankAmerica Corporation of Charles Schwab & Co., Inc. For further information, please contact Catherine McGuire at (202) 272–2407.

The following additional items will be considered at a closed meeting scheduled for Thursday, May 13, 1982, following the 10:00 a.m. open meeting:

Settlement of administrative proceeding of an enforcement nature.
Freedom of Information Act appeal.
Litigation matters.
Access to investigative files by Federal, State, or Self-Regulatory authorities.

Chairman Shad and Commissioners Loomis, Evans and Longstreth determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Diane Klinke at (202) 272–2178.

May 12, 1982.

[S-717-82 Filed 5-12-82; 1:21 pm]

BILLING CODE 8010-01-M

6

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1289]

TIME AND DATE: 10:15 a.m. (EDT), Wednesday, May 19, 1982.

PLACE: Conference Room B–32, West Tower, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Action Items

C—Power Items

1. Bill of sale and quitclaim deed covering conveyance of City of Tullahoma, Tennessee, of a 1.57-mile section of TVA's North Tullahoma-Wartrace 46-kV Line.
2. Deed and bill of sale covering conveyance of a portion of TVA's Charleston 161-kV Substation property to Olin Corporation.
3. Deed conveying to Chickasaw Electric Cooperative TVA's Somerville 46-kV substation site located in Fayette County, Tennessee.
*4. Replacement power contract with the Department of the Air Force covering arrangements for 10-year power supply for the Arnold Engineering Development Center.
5. Renewal power contract with Wear Kentucky Rural Electric Cooperative Corporation.
6. Renewal power contract with City of Murray, Kentucky.
7. Renewal power contract with City of Hopkinsville, Kentucky.

D—Personnel Items

1. Revised pay plan and salary schedule for certain management employees and physicians.

E—Real Property Transactions

1. Grant of permanent industrial easement to Inland Ports, Inc., and abandonment of certain flowage easement rights affecting Watts Bar Reservoir lands near Harriman Industrial Park in Harriman, Tennessee—Tract Nos. XWBR–695IE, XWBR–693IE, and WBR–1259F.

F—Unclassified

1. Sale of surplus property (two Caterpillar pan scrapers) located at the Fabius, Alabama, mine.
2. Supplement to contract with the federal Highway Administration and the State of Tennessee covering arrangement for construction of a four-lane highway bridge over TVA's Chickamauga Dam in Chattanooga, Tennessee, and approach roads to the bridge.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: May 12, 1982.

[S-719-82 Filed 5-13-82; 9:39 am]

BILLING CODE 8120-01-M

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*Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Friday
May 14, 1982

Part II

Department of Health and Human Services

Public Health Service

National Toxicology Program; Fiscal Year 1982, Annual Plan

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program Fiscal Year 1982 Annual Plan

The Director of the National Toxicology Program (NTP) announces the availability of the NTP Annual Plan for Fiscal Year 1982 and the quarterly NTP Technical Bulletins, solicits comments on the Annual Plan and urges all interested persons to propose chemical(s) for testing by NTP.

Background

The National Toxicology Program develops scientific information about potentially toxic and hazardous chemicals which can be used for protecting the health of the American people and for the primary prevention of chemically-induced disease. The NTP centralizes and strenghtens the DHHS' activities in toxicology research, testing, and test development/validation efforts and provides the necessary toxicological information needed by research and regulatory agencies. Four specific goals are identified:

- To expand the toxicological profiles of the chemicals nominated, selected, and being tested;
- To increase the number and rate of chemical testing, within funding limits;
- To develop, coordinate, and validate a series of tests/protocols more appropriate for regulatory needs;
- To establish and use a coordinated communications network to collect, evaluate, and disseminate toxicologic information.

To accomplish these four major aims the NTP was formed by bringing together the relevant toxicological programs, people, and resources from the Public Health Service.

The four DHHS agencies whose relevant toxicology programs comprise the NTP are the National Cancer Institute, National Institutes of Health (NIH); National Institute of Environmental Health Sciences, NIH; National Center for Toxicological Research, Food and Drug Administration; and National Institute for Occupational Safety and Health, Centers for Disease Control.

The NTP Executive Committee provides linkage between DHHS research and regulatory agencies to ensure that the toxicology research, testing and test development carried out under the aegis of the NTP are responsive to the needs of those agencies to the needs of the public. This unique and important aspect of the NTP brings together the research agencies doing fundamental biomedical research and the regulatory agencies. The governmental agencies that comprise the NTP Executive Committee are listed in the 1982 Annual Plan.

The NTP Board of Scientific Counselors provides scientific oversight of the NTP. The NTP Board advises the NTP Director and the NTP Executive Committee on scientific content, philosophy, and policy and evaluates the merit and overall quality of the science conducted in the NTP components. The members (enumerated in the 1982 Annual Plan) are appointed by the Secretary of the Department of Health and Human Services.

The program segments of the NTP are grouped into two categories—toxicological research and testing, and coordinative management activities. Individual NTP scientists are identified as leaders of the major program segments and subprogram activities and serve as the focus or contact persons for their particular program activities. Program and Project Leaders are identified in the 1982 Annual Plan.

The development and approval of the NTP Annual Plan remain central to the effective planning, coordination, and operation of the National Toxicology Program. As NTP Director, Dr. David P. Rall (also the Director of the National Institute of Environmental Health Sciences) reports to the Assistant Secretary for Health.

The National Toxicology Program's fourth annual plan consists of two parts published separately: Part I, "NTP Annual Plan for Fiscal Year 1982" (NTP-81-84), describes current year research, testing and validation efforts, resources and past year program accomplishments. (Part I is printed in full following this announcement.) Part II, "Review of Current DHHS, DOE, and EPA Research Related to Toxicology" (NTP-82-040), lists chemicals being tested by DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology methods currently being developed by these agencies.

Written comments on the Fiscal Year 1982 Annual Plan are requested and welcome. These could be addressed to Dr. Larry Hart, Assistant to the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541-3971 or FTS 629-3971).

Regarding chemical nomination, NTP urges all those interested in proposing chemical(s) for testing to do so, and at a minimum to give the rationale for the nomination and to recommend the type test(s) to be considered. In addition, it would be desirable (but not essential) to supplement each nomination with the following information, if known.

I. Chemical identification.

II. Production, use, occurrence, and analysis.

III. Toxicology.

IV. Disposition and structure-activity-relations.

V. Ongoing toxicological and environmental studies in the government, industry, and academia.

To bridge the yearly gap between Annual Plans, NTP started a quarterly NTP Technical Bulletin in Fiscal Year 1980 to keep those persons or groups interested in the NTP informed about the NTP's most current and proposed activities. The NTP Technical Bulletins augment the Annual Plans by more timely and frequent announcements of the NTP research activities and specific actions.

To receive the NTP Annual Plan for Fiscal Year 1982; the Review of Current DHHS, DOE, and EPA Research Related to Toxicology; or the NTP Technical Bulletin, please indicate which publications you wish to receive and submit this information to: NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone: (919) 541-3991 or FTS 629-3991).

Dated: April 22, 1982.

David P. Rall,

Director, National Toxicology Program.

National Toxicology Program Annual Plan for Fiscal Year 1982

National Cancer Institute/National Institutes of Health, National Institute of Environmental Health Sciences/ National Institutes of Health.

National Center for Toxicological Research/Food and Drug Administration, National Institute for Occupational Safety and Health/ Centers for Disease Control.

NTP-81-84, March 1982.

Note.—All Fiscal Assumptions Are Based on the President's Proposed Fiscal Year 1982 Budget.

National Toxicology Program, Public Health Service, Department of Health and Human Services.

Department of Health and Human Services, National Toxicology Program

Annual Plan for Fiscal Year 1982

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NATIONAL TOXICOLOGY PROGRAM, ANNUAL PLAN FOR FISCAL YEAR 1982

Executive Summary [1]

The National Toxicology Program (NTP) begins its fourth year of operation and first year in permanent status in Fiscal Year (FY) 1982. The NTP was established in November 1978 as a Department of Health and Human Services (DHHS) cooperative effort to coordinate and provide information about potentially toxic chemicals to regulatory and research agencies and to strengthen the science base in toxicology.

The need for creation of such a program evolved from increasing scientific, regulatory and congressional concerns about the human health effects of chemical agents in the environment. It is now known that increases in certain human diseases can be traced directly or indirectly to chemical exposures. Limiting human exposure to hazardous chemicals can prevent some human disease and disability.

Under the broad objective of providing the necessary scientific information for prevention of human disease related to chemical exposure, the NTP emphasizes four principal goals: (1) broaden the toxicological characterization of chemicals that are tested; (2) increase the rate of chemical testing (as funding will permit); (3) develop protocols appropriate for regulatory needs; and (4) communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

Although chemical testing for toxicity, particularly for carcinogenicity and mutagenicity, remains an important Program focus, there has been an increasing emphasis over the first three years on short-term test methods development and validation. A second major emphasis continues to be the broadening of the testing protocols through addition of special studies to the prechronic phases of the long-term bioassay, and, to a lesser extent, to the chronic phase of the bioassay.

A major organizational action occurred in FY 1981. The transfer of the carcinogenesis bioassay program from the National Cancer Institute (NCI) to the National Institute of Environmental Health Sciences (NIEHS) was approved by the Secretary, DHHS, in the fourth quarter of FY 1981. This action provides for direct NTP management of the NIH components of the Program. A second major organizational action occurred at the beginning of FY 1982 when the Secretary granted permanent status to the Program.

Accomplishments of NTP programs during FY 1981 and program plans for FY 1982 are described in the following sections of this FY 1982 *Annual Plan.* For each scientific or management activity, the name of a key staff person is given. These persons may be contacted for further information about the particular activity. A complete listing of program leaders and contact persons, along with addresses and phone numbers, appears in the Appendix. For the first time, a bibliography of NTP-related publications (FY 1979–1981), arranged by program area, is included in the Plan.

The following are highlights of important accomplishments of the NTP in FY 1981:

- Used broadened protocols in the prechronic phases of the toxicology and carcinogenesis bioassay process to give a more comprehensive measure of the toxicology of chemicals selected for testing; all 52 chemical test starts in FY 1981 included special studies.
- Made the completion of the 90-day study a major decision point in the NTP; that is, prechronic data together with results from special studies, e.g., genetic toxicology, fertility/reproductive assessment, chemical disposition, allow a more informed decision as to whether the two-year study should be initiated.
- Incorporated fertility and reproductive assessments into all 90-day prechronic studies.

[1] Page numbers correspond to the bound version of the plan available from the NTP Public Information Office.

- Stabilized numbers of chemical test starts in the microbial *(Salmonella)* mutagenesis assay at about 300 test/year.
- Completed validation and began testing chemicals in two other genetic toxicology assays: *in vitro* mammalian cytogenetics and the fruit fly *Drosophila melanogaster.*
- Completed peer review and approval of the technical reports for 23 carcinogenesis bioassays.
- Expanded and improved the quality assessment for the pathology component of the bioassay program.
- Continued assessment of the carcinogenicity of chemicals and certain complex mixtures found in the occupational environment.
- Completed validation of a comprehensive neurobehavioral test battery.
- Continued interlaboratory testing of an immunotoxicology test battery.
- Continued an interagency coordinated effort on benzidine, two benzidine congeners, and 13 benzidine and congener-based dyes with regard to their chemical disposition and mutagenic and carcinogenic effects.
- Started a major initiative to develop short-term prescreens for presumptive teratogenic activity of chemicals.
- Began a collaborative interlaboratory behavioral teratology initiative.
- Introduced a new research and methods development initiative in cutaneous toxicology.
- Continued evaluation of pulmonary function indices as a complement to standard pathologic assessment of lung injury.
- Initiated field studies on the utility of the toxicology data management system (TDMS) for meeting experimental data capture/processing needs of the bioassay program.
- Continued research aimed at modifying the experimental design of the chronic bioassay to provide better data for low-dose toxicology evaluation, for more complete toxicology profiles, and for risk assessment.
- Adopted major statistical modifications in the analysis of data and results for the NTP technical reports.
- Modified the chemical nomination and selection process to enhance the peer review of nominations and increase opportunityu for public comment.
- Held the third annual NTP Open Meeting in conjunction with the Society of Toxicology annual meeting.

The NTP's ongoing and planned activities in toxicological research, testing, test methods development, and validation efforts as well as other key program activities are described in capsule form in the following pages and in more detail in the main body of the *Annual Plan.*

Cellular and Genetic Toxicology

(See pages 35 to 73)

Genetic toxicology continues to be an area of major testing emphasis. During FY 1981, 264 tests were completed in the initial testing phase for chemical mutagens, the *in vitro* microbial assay in *Salmonella.* In FY 1982, there will be 300 more chemical test starts in *Salmonella.*

Validation of the *in vitro* mammalian cytogenetic assay was completed. Seventy-six chemical tests will be done using this system in FY 1982. Testing for heritable genetic effects began in the *Drosophila melanogaster* mutagenesis system in FY 1981 and 72 test starts are scheduled for FY 1982.

There was a markedly increased effort in methods development and validation in FY 1981. This emphasis which will continue in FY 1982 is being placed on short-term tests for mutagenicity and aneuploidy in microbial systems and yeasts as well as on development of methods for measuring mutagenicity, cytogenetic damage and transformation in mammalian cells.

Carcinogenesis Testing

(See pages 74 to 100)

During FY 1981, 23 long-term bioassays were completed and the conclusions and data evaluation were approved by the external NTP peer review panel. There were 52 new chemical starts in the prechronic testing phase of the bioassay. The major thrust continued to involve a broadening of the protocols for the prechronic phase to provide information on toxic endpoints other than cancer—fertility and reproductive assessment, for example. All bioassay starts begun in FY 1981 had an expanded design including one or more special studies. There were a number of new or ongoing long-term carcinogenesis studies concerned with chemicals or mixtures of chemicals which humans may encounter in occupational settings. In FY 1982, the NTP plans to start 19 new toxicology and carcinogenesis bioassays, all with expanded protocols, and expects to complete 27 long-term bioassays.

Toxicologic Characterization

(See pages 101 to 104)

Major testing initiatives are acute, 14-day and 90-day experiments with chemicals originally selected for evaluation as to carcinogenic potential. The completion of the 90-day study was made a major decision point in the NTP. There were major revisions of protocols in FY 1980–1981 to include measurement of organ weights, broadened pathology in prechronic studies, hematology, selected organ function assessment, and chemical disposition. A new program in cutaneous toxicology was initiated. In FY 1982, major additions to the general toxicology screen will include development and evaluation of clinical chemistry procedures for organ function assessment, and measures of reproductive dysfunction at the end of the 90-day phase.

Immunological Toxicology

(See pages 113 to 116)

In FY 1981 continued focus was placed on refining and validating a panel of immunology and host resistance procedures to define immunotoxicity of chemicals and correlate changes in immune function with changes in host resistance. Several chemicals were investigated using this panel.

Neurobehavioral Toxicology

(See pages 117 to 121)

Standardization and validation of a neurobehavioral test battery was completed in FY 1981. Neurotoxic profiles generated by the battery are in accord with known neurotoxicity in animals for a series of toxicants. Indepth studies are continuing on the neurotoxicity of Kepone in adult rats and in rats exposed during the perinatal period. Human, both laboratory and worksite, studies as well as animal studies were carried out to measure the neurobehavioral effects of exposure to single chemicals and combinations of chemicals found in the workplace. In FY 1982, further development of automated procedures is planned to assess toxicity in animals using naturally occurring domiciliary (home cage) behaviors, such as spontaneous motor activity and ingestive behaviors.

Pulmonary Toxicology

(See pages 122 to 124)

Assess of pulmonary function indices continued as a complement to standard pathologic evaluation of lung injury. After chronic inhalation exposure of rats to ozone, acrolein, and chlorine, the function tests were shown to be more sensitive in detecting small airway damage than pathologic examination at the light microscopy level. Also, increased pulmonary resistance indicated alterations of the large airways not observed during pathologic

examination. An animal (monkey) model of human occupational asthma was further perfected.

Reproductive and Development Toxicology

(See pages 125 to 134)

In FY 1981, testing standard teratologic assays was completed on six chemicals and was in progress for nine other chemicals. Studies on 10 to 12 additional chemicals will be initiated in FY 1982. A standardized protocol was developed for use in a collaborative behavioral teratology study. Six behavioral tests will begin to be evaluated in six laboratories in FY 1982 for their sensitivity to the behavioral teratogens, d-amphetamine sulfate and methyl mercuric chloride. The effects of a few chemicals on male and female reproductive function as well as on postnatal development was examined indepth. A primary emphasis in FY 1982 will be on developing short-term prescreens in reproductive system toxicology and teratology, including both *in vivo* and *in vitro* teratologic test systems and a continuous breeding assay for fertility assessment.

Resources and Planning Assumptions

(See pages 13 to 15)

The estimated budget for FY 1982 provides for a funding level of $72.1 million compared with FY 1981 obligations of $70.5 million. Emphasis will be put on: (1) stabilizing the number of chemicals NTP places on test, particularly those on long-term studies, and (2) devoting a greater proportion of resources and attention to test methods development and validation. NTP will start 19 chemicals in the prechronic phases of the bioassay, all of which will have broadened protocols aimed at more complete characterization of the toxic profiles. Emphasis will be given to developing methodologies needed to study chemical mixtures, their intersections and potential toxic effects, and to improving experimental designs and deriving new tests to permit better species-to-species extrapolation.

Oversight and Review

(See pages 16 to 23)

The Executive Committee continues to provide primary oversight and coordination for the Program, while the Board of Scientific Counselors provides scientific surveillance. A standing Board subcommittee supplemented with other non-government experts provided peer review for the technical reports of the results of NTP bioassays. It reviewed 23 toxicology and carcinogenesis bioassay reports in FY 1981.

Two special external reviews of the Program were effected in FY 1981, one by the DHHS Office of Management and Budget, and a second by the House of Representatives Committee on Science and Technology, Subcommittee on Investigations and Oversight. Both reviews noted considerable progress by the NTP in moving towards meeting objectives and were supportive of the Program.

Coordination and Communication

(See pages 24 to 27)

Two special initiatives were undertaken in FY 1981 which exemplified NTP's developing role as a focus for information exchange and collaboration among groups concerned with current problems of chemicals toxicology. One was an interagency testing initiative by the National Center for Toxicologic Research (NCTR), the National Institutes of Health (NIH), and the National Institute for Occupational Safety and Health (NIOSH) involving integrated studies on benzidine, two benzidine congeners, and 13 benzidine- and congener-derived dyes for mutagenicity, chemical disposition, pharmacokinetics, and carcinogenicity. The initiative was conceived by these agencies in collaboration with the Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), and the Occupational Safety and Health Administration (OSHA) with cooperation from the dye industry.

For the second, the NTP and the Interagency Regulatory Liaison Group (IRLG) sponsored a joint conference on phthalate esters to survey the available information with respect to uses, exposures, potential substitutes, and known human health effects; to summarize Federal agency activities; to review animal toxicology and identify ongoing studies; and to assess additional testing and research needs. As a result the NTP was asked to serve as a central clearinghouse for data generated through ongoing studies and to coordinate future testing efforts, including its own testing initiative.

Organization

(See pages 28 to 29)

In July 1981, transfer of the carcinogenesis bioassay program from the NCI to the NIEHS was approved thereby completing the process begun in FY 1980 with assumption of administrative responsibilities for the bioassay program activities by NIEHS. The Toxicology Research and Testing Program, NIEHS, headed by the NTP Deputy Director, now combines under NIEHS management the broad-based chemical toxicity testing efforts transferred from NCI along with NIEHS testing and test development activities under the NTP.

Data Management and Analysis

(See pages 155 to 158)

A major effort was the continuing development, modification and initial implementation of the toxicology data management system (TDMS) to support the animal bioassay program. Attention in FY 1982 will be given to implementing the system in NTP contract laboratories and to coordinating use of the system. A chemical management and tracking system was initiated. Possible statistical modifications of the basic experimental design of the two-year bioassay are being investigated with an aim being to increase the usefulness of the bioassay for low-dose risk estimation and extrapolation. Several statistical modifications were introduced into the NTP technical reports.

Chemical Nomination Chemical Selection

(See pages 136 to 146)

During FY 1981, modifications were made in the chemical nomination and selection process intended to improve peer review of and increase public input on nominated chemicals. This includes the use of primary and secondary reviewers on the Chemical Evaluation Committee to more closely evaluate the available information and to recommend specific testing and external review by the Board of Scientific Counselors. Opportunity for public comment is provided through **Federal Register** announcements which list nominated chemicals and recommended testing.

Information General and Dissemination

(See pages 162 to 166)

The *Annual Plan* and the *NTP Technical Bulletin* continue to be the main communications media to keep interested persons and groups informed about the NTR's accomplishments and current proposed activities. The active mailing list now includes about 6500 entries. The third NTP Open Meeting was held March 1, 1981 in conjunction with the Annual Meeting of the Society of Toxicology.

Annual Report on Carcinogens

(See pages 167 to 170)

The *Second Annual Report on Carcinogens* will be published during

the first quarter of FY 1982, and includes entries on 88 substances, chemicals, or manufacturing processes which are either known to be carcinogenic or may reasonably be anticipated to be carcinogenic for humans and to which a significant number of persons residing in the United States are exposed. The Report summarizes the available information on human exposure data, evidence for carcinogenicity from human and animal studies, production and use data, and applicable Federal regulations.

Introduction

In October 1981, the National Toxicology Program (NTP) began its fourth year of operation and its first year in permanent status as a major cooperative component of the Department of Health and Human Services (DHHS). Although still a young organization, the NTP has nevertheless achieved a degree of maturity as evidenced by its accomplishments and by its establishment as a permanent program by the Secretary of HHS in October 1981.

The National Toxicology Program was established by the Secretary, Department of Health, Education, and Welfare (now DHHS), in November 1978 as a Department-wide effort to provide information about potentially toxic chemicals to regulatory and research agencies, and to strengthen the science base in toxicology.

The need for creating such a program evolved over the past two decades from the increasing scientific, regulatory, and congressional concerns about the human health effects of chemical agents in the environment. Increases in many human diseases can be traced directly or indirectly to chemical exposures. Thus, decreasing or eliminating human exposure to such chemicals will prevent some human disease and disability.

The following sections describe the recent history of Federal toxicology testing and methods development activities leading to the establishment of the NTP, and delineate the structure, objectives and current future direction of the Program.

Evolution of Federal Testing Programs—The earliest Federally mandated efforts to deal with problems of chemical toxicity took place in the pharmaceutical and food additive industries where extensive safety testing was required by the Federal Food, Drug, and Cosmetic Act of 1938. This testing, however, was primarily for acute toxic effects and did not address the consequences of long-term exposure to chemical agents. Then in the early 1960s the National Cancer Institute (NCI) began a program intended to determine whether particular substances could cause cancer in experimental animals as a result of long-term exposure. Later NCI contracted for a screening study of a number of pesticides to determine if they were carcinogenic. These early efforts were the antecedent of NCI's carcinogenesis bioassay program; the long-term administration of chemicals to laboratory animals remains the principal method for determining whether substances are carcinogenic. But while such laboratory testing contributed greatly to the development of the knowledge base regarding the carcinogenic potential of chemicals, it did not attempt to predict for toxic effects other than cancer.

Attention on Endpoints Other Than Cancer—Prior to the 1960s and continuing into the decade of the seventies, advances were being made in other areas of research that eventually would permit a more comprehensive approach to the problems of chemical toxicity. Information was developed that indicated many environmental chemical agents interfere with cell replication, and thus, might have an adverse effect on genetic inheritance. Moreover, information was developed that provided presumptive evidence that many compounds which are mutagenic also may be carcinogenic. Thus, the testing of compounds for mutagenic activity held some promise for decreasing the number of compounds that require testing in a complete cancer bioassay, thereby resulting in significant savings in time and resources.

These findings resulted in great energy and resources being invested in developing rapid and inexpensive means to establish the potential toxicity of chemical substances. Central to these efforts were programs within the NIEHS, NCTR and NIOSH that were developing tests for toxicologic endpoints other than cancer, such as mutagenesis. These had evolved from broad based toxicology research programs at these agencies which covered the spectrum from basic research to chemical testing. The NCI also was supporting an extensive validation effort in mutagenesis.

Interest of Congress and Regulatory Agencies—During the 1970s largely in response to increasing public awareness of environmental hazards, there was major congressional activity aimed at providing legislative tools for the regulatory agencies to reduce or prevent exposure to hazardous substances. This new legislation (especially the 1976 Toxic Substances Control Act, TSCA) greatly increased the need of the regulatory agencies to know more about the toxicity of environmental agents. In addition, as has been illustrated by the recent controversies surrounding saccharin and nitrates, the regulatory agencies have recognized they must interpret the results of laboratory and animal tests in terms of their relevance to humans and make those interpretive implications understandable to the public—thus, the increased activity in the area of risk assessment.

Identification of Testing Programs' Limitations—As a result of their specific regulatory or research needs, Federal agencies began to develop or intensify test programs in a variety of areas. Most of these test programs were limited in scope, and therefore did not take into account either exposure sources and amounts or toxicities other than the ones of specific interest to the sponsoring agency. In addition, the research and regulatory agencies often were looking at the same compounds, but for different reasons, thereby contributing to the appearance of overlap and duplication among their programs. In looking at the broad field of toxicology testing, it became apparent that the Federal testing capacity was not being used to best advantage, and would benefit from better coordination and program integration. Given that the Public Health Service of DHHS is responsible for safeguarding the public's health, and prevention of human exposure to toxic substances is integral to disease prevention, the establishment of the NTP was a logical outgrowth from the need for better coordination and program integration of Federal toxicology research and testing.

Program Structure—In structuring the new program, the Secretary wanted to meet two overriding needs: (1) integrate DHHS activities to permit the most effective use of the Department's resources and consolidate expertise in those areas of science required to determine the full toxicologic potential of selected chemicals, and (2) establish an effective dialogue between the research and regulatory agencies so that stronger links could be forged between toxicology research and the needs of the regulatory agencies.

The NTP was envisioned as a means of bringing together the Department's major toxicological research and testing activities—most of which had been developed to support different organizational mission—to mount a coordinated attack on the problems of toxic chemicals. Because there was no general agreement within the Department on how best to structure these activities, the Secretary, as an

interim measure, decided to establish a program supported through voluntary allocations of staff, space and resources from the relevant DHHS agencies that would be managed by a Program Director.

The NTP consists of the relevant toxicology activities of the National Cancer Institute (NIH/NCI) and the National Institute of Environmental Health Sciences (NIH/NIEHS); the Food and Drug Administration's National Center for Toxicological Research (FDA/NCTR); and the Centers for Disease Control's National Institute for Occupational Safety and Health (CDC/NIOSH). Resources for the program originate from the budgets of these agencies. The NTP activities to which these agencies allocate their resources are planned and carried out as a coordinated whole under the leadership of the Program Director, Dr. David P. Rall, who also is Director of the NIEHS. For purposes of the NTP, he reports to the Assistant Secretary for Health, DHHS.

Each year, when resources of the DHHS agencies are identified, memoranda of understanding are prepared and signed by the head of each agency and the NTP Director. These memoranda:

1. Specify those resources to be devoted to the Program.
2. Identify Program components by organizational title.
3. Identify project areas and projects to be devoted to the Program.
4. Identify supporting elements of the agencies, and their responsibilities.

The capabilities of the NTP are also augmented through an interagency agreement with the National Library of Medicine that provides the NTP with expertise in toxicology-related portions of its technical information services.

Incorporation of Regulatory Concerns—So that regulatory concerns would be joined with the Program, the Secretary asked the Occupational Safety and Health Administration (OSHA) of the Department of Labor, the Environmental Protective Agency (EPA), and the Consumer Product Safety Commission (CPSC) to participate in the NTP as active members of the Executive Committee.

The Executive Committee, the NTP's major advisory group, is made up of the heads of both the DHHS research agencies and the regulatory agencies. Also included are the Director of NIH and the Office of the Assistant Secretary for Health, DHHS. This unique NTP aggregation assures continuing input from the research and regulatory agencies into critical phases of the NTP operations including nomination, selection, and setting of priorities for chemicals to be placed on test; determination of priorities for test methods development and validation; and oversight of program planning and balance.

This organizational arrangement brings together the Department's expertise in toxicology and the regulatory agencies' experience and concerns to produce a more coordinated approach to toxicology research and testing of chemicals. In this way, information needed for controlling hazardous substances and for protecting the health of the American people can be developed.

Objectives of the Program—Within the framework of its charge to identify those chemicals potentially toxic to humans, the broad goal of the NTP is to coordinate and strengthen the activities of the Department of Health and Human Services in testing chemicals of public health concern, as well as to develop and validate new and better integrated test methods. Four specific goals are identified:

—To expand the toxicologic profiles of the chemicals nominated, selected, and being tested. In the carcinogenesis bioassay process, a variety of special studies were integrated into all prechronic and chronic experiments begun during FY 1981.

—To increase the number and rate of chemical testing, within the funding limits. For instance, the rate of chemical testing for mutagenic effects has increased each year.

—To develop, coordinate, and continue to validate a series of test protocols more appropriate for regulatory needs. The protocol for the two-year carcinogenesis bioassay has been broadened to include special studies aimed at detecting other types of toxicity during the acute and 90-day testing phases. Test batteries for the assessment of genetic, neurobehavioral, and immunological toxicology and effects on reproduction and fertility have been or are being developed and validated.

—To establish a coordinated communications network to collect, evaluate, and disseminate toxicology information generated by the Program: research and test results, methods development and validation, and other Program activities. As a quarterly complement to the *Annual Plan*, a *NTP Technical Bulletin* began publication in FY 1980.

Current and Future Directions—During the first three years, the NTP has made considerable progress toward its objectives. Much remains to be accomplished, however, and certain important shifts in organization and program emphasis are noted:

Two major organizational actions occurred, one late in FY 1981 and the other early in FY 1982. The Program, which had existed under an experimental status since its inception, was granted permanent status by the Secretary of HHS in October 1981. Presumably, this recognition of the continuing need for the Program will enable better long-range planning and enhance recruiting efforts for key staff positions. Secondly, the transfer of the NCI carcinogenesis bioassay program, including its peronnel and resources, to the NIEHS was approved by the Secretary in the fourth quarter of FY 1981. Administrative responsibilities for the activities of the bioassay program had been transferred in FY 1980. This action has already enhanced the overall integration, coordination, and management of the NIH component of the NTP.

Changes in program direction over the first three years are marked in two areas, one being an increasing emphasis on short-term test methods development and validation coupled with a decreased emphasis on standard testing, particularly in the long-term bioassay. For example, a major initiative was started in FY 1981 to develop short-term prescreens for teratogenesis. A second major shift in program emphasis has been to broaden the protocols through addition of various special studies for the prechronic phases of the long-term bioassay and thereby establish the prechronic-chronic interface as a major decision point. This serves both to better set priorities for the fewer numbers of compounds committed to chronic tests and to provide more information on toxic endpoints other than cancer. An important area, just began in FY 1981, was the effort to improve the experimental design of the long-term bioassay to enhance the value of the information obtained for possible use in risk estimation. The ultimate value of data derived from toxicologic studies lies in how well the findings predict for humans.

The following chapters discuss Program resources, oversight and review, coordination and communication, organizational structure, and describe in detail the NTP's ongoing and planned efforts in toxicology research, testing, and test methods development and validation as well as other key program activities such as chemical nomination and selection, information generation and dissemination, and data management and analysis.

Resources and Planning Assumptions

The NTP is not funded by separate appropriations: instead NTP relies on voluntary contributions from the member DHHS agencies. The amount of resources allocated to the NTP is specified in memoranda of understanding drawn after the agencies receive their funding through the Congressional appropriations process. The NTP's FY 1981 obligations were $70.5 million. Using the member agencies' current NTP allocations, the estimated budget for FY 1982, compared with the actual obligations for FYs 1979, 1980, and 1981, is shown in Figure 1.

Personnel ceiling increases provided the NTP have been in the carcinogenicity testing area. These increases were required to meet the commitment to shift from use of a prime contractor to government managment of many of the NCI testing contracts. This significant change reflects NTP's adherence to a strong recommendation made in a study by the Government Accounting Office.

Original program goals were based on the assumption that NTP's resources would increase annually to a greater degree than has occurred. Thus early projections for the number of chemicals that could be started on test in the pre-chronic and chronic bioassays and in special studies and for a broad range of test methods that could be developed and validated, have been modified as a result of subsequent budgetary constraints. Therefore, NTP's ability to increase the scope of test development and validation activities was delayed because of long-range obligations that had to be met with the available resources. For example, the carcinogenesis bioassay program, originally under NCI and now under NIEHS—which continues to receive the largest amount of funds for NTP—had a major commitment to long-term carcinogenesis testing. Congress specified that additional funds allocated to NTP were to be used primarily for long-term carcinogenicity testing. From chemical selection for the two-year bioassay through the issuance of the technical report takes about 64 months. It is only now—in its third year of operation—that NTP's impact on program balance is clearly evident. Recent improvements in the chemical selection process and in the experimental design of the pre-chronic testing phase have enabled the NTP to reduce the number of chemicals requiring two-year toxicology and carcinogenesis bioassays. This reduction allows increased allocation of resources to short-term test methods development and validation activities.

With future budget projections and the state-of-the-art for toxicology as the basis for planning, the NTP has determined that it must concentrate on: (1) Stabilizing the number of compounds placed on test in each particular program area, particularly in long-term testing, and (2) Focusing its test methods development and validation efforts in those areas closest to fruition as well as in those areas most urgently needed.

While NTP will be shifting from a relatively large testing program to a more focused one, an attempt will also be made to improve and increase the information to be gleaned from the integrated testing activities. This will be accomplished through the continued improvements in experimental test designs expected as a result on NTP's investigation of optimum dose levels and experimental animal model parameters and adaption of test protocols to specific chemicals. Through this means, NTP will be able to develop data more useful for low-dose toxicity extrapolation, while preserving the detection potential of the current carcinogenesis bioassay protocols.

In the area of methods development and validation, NTP will concentrate on: (1) completing validation of test methods now under development; (2) developing the sophisticated research tools and knowledge needed to study the urgent problem of chemical mixtures, their interactions, and their toxic effects; and (3) developing methodologies needed to permit low-dose extrapolation from test species to other species, including humans (as an example, NTP already has initiated a program evaluating DNA repair to complement its mutagenicity screening so that such testing will approximate more closely the human situation).

In the coming years, the NTP expects to devote more of its resources and attention to the critical task of test methods development and validation. This has been cited repeatedly by the regulatory agencies, and by the private and industrial sector, as the area to which NTP should devote a major effort.

Oversight and Review

Because of the complex scientific tasks assigned to the NTP, and the need to integrate the programmatic activities of a variety of agencies, the NTP considered it necessary to establish more than a single mechanism for oversight and review of the Program. These mechanisms, which include the Executive Committee and the Board of Scientific Counselors, also have helped ensure integration of NTP efforts and coordination of activities among the health research and health regulatory agencies, as well as with industry. Through these mechanisms, the NTP is assured that:

- Program planning and balance are designed with input from the health research and health regulatory agencies, as well as from the public, industry, and other non-government groups;
- testing and test methods development and validation activities are responsive to the needs of the other agencies, are coordinated with those activities to be carried out by the other agencies and industry, and are complementary to efforts undertaken elsewhere;
- research and testing efforts receive extensive peer review for scientific adequacy, merit, and relevance;
- applied research needs are identified and can be targeted;
- chemicals selected for testing are evaluated thoroughly; and
- planning and decision-making processes are open, with opportunity provided for public input and comment.

The non-DHHS agencies associated with the Program also profit from these NTP oversight and review mechanisms. They are assured:

- participation in the nomination, evaluation, and selection of chemicals for testing;
- involvement in developing test protocols pertinent to their needs;
- input into science policy issues that impact on their programs and activities;
- a role in overseeing test progress;
- early access to test results to aid in health and regulatory policy analysis;
- timely information exchange, not only with the other research and regulatory agencies but with industry as well; and
- a primary source within government to serve as the repository for information on testing and test methods development and validation, as well as a source for consultation on issues related to chemical toxicology.

NTP Executive Committee: Primary oversight for the National Toxicology Program is provided by the Executive Committee, composed of the heads of the research and regulatory agencies, which serves as NTP's major advisory group and meets about six times a year. The Committee is responsible for advising the Director on research and testing needs and for selecting and setting priorities for the specific chemicals to be tested. It also serves as a forum for discussion of science policy issues and provides for timely information exchange among the various agencies as well as with industry and

other interested groups. One of the key tasks for the Executive Committee is review and approval of the NTP *Annual Plan.*

Current members of the Executive Committee are:

Mr. Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health Administration, Department of Labor

Dr. Edward N. Brandt, Jr., Assistant Secretary for Health, Department of Health and Human Services (non-voting)

Dr. Vincent T. DeVita, Jr., Director, National Cancer Institute

Mrs. Anne Gorsuch, Administrator, Environmental Protection Agency

Dr. Arthur H. Hayes, Jr., Commissioner, Food and Drug Administration (Chairperson)

Dr. Thomas E. Malone, Acting Director, National Institutes of Health

Dr. J. Donald Millar, Director, National Institute for Occupational Safety and Health

Dr. David .P Rall, Director, National Institute of Environmental Health Sciences

Mrs. Nancy Steorts, Chairman, Consumer Product Safety Commission.

The Chairperson is elected by the Committee and serves a one-year term.

Through this mechanism, the NTP is assured of continuing interface with the health research and health regulatory agencies and receiving input into critical phases of NTP operation, including oversight of program planning and balance. Likewise, through participation in the Executive Committee, health research and health regulatory agencies are assured participation in the nomination, evaluation, and selection of chemicals for testing; a role in developing test protocols pertinent to their needs; involvement in overseeing test results; and early access to results to aid in health and regulatory policy analysis and to permit prompt response to potential problems within their jurisdictions.

Board of Scientific Counselors—The National Toxicology Program Board of Scientific Counselors provides scientific oversight. The Board, composed of eight non-governmental scientists appointed by the Secretary of DHHS, is responsible for reviewing the Program for scientific adequacy and merit and for identifying program needs. The Board meets an average of three times a year in open session. Additionally, scientists with expertise in particular scientific areas are chosen on an *ad hoc* basis to supplement the Board for review of specialized segments of the Program.

Current members of the Board are:

Margaret Hitchcock, Ph.D., Assistant Professor of Pharmacology, Yale University Medical School;

Majorie G. Horning, Ph.D., Professor of chemistry, Baylor University College of Medicine;

Mortimer L. Mendelsohn, M.D., Ph.D., Director, Biomedical Sciences Division, Lawrence Livermore Laboratory, University of California;

Norton Nelson, Ph.D., Professor of Environmental Medicine, New York University School of Medicine (Chairperson);

Alice S. Whittemore, Ph.D., Adjunct Professor of Family, Community and Preventive Medicine, Stanford University.

Three members retired from the Board during the fiscal year. They were:

- Joseph C. Dunbar, Ph.D., Associate Professor of Physiology, Wayne State University School of Medicine;
- Curtis Harper, Ph.D., Associate Professor of Pharmacology, University of North Carolina School of Medicine;
- Thomas H. Shephard, M.D., Professor of Pediatrics and Head of Central Laboratory for Human Embryology, University of Washington School of Medicine.

Replacements have been chosen and their nominations have been submitted to the Secretary for approval.

The Board of Scientific Counselors held three open meetings during FY 1981. These meetings are summarized as follows:

October 16–17, 1980 Meeting, Bethesda, MD

Further changes in the NTP chemical nomination and selection process were discussed and approved. These included the solicitation of public advice and the role of the Board as a public advisory group. A Board working group was formed to study and make recommendations to NTP on appropriate hazard statements based on toxicology test results. There was discussion of proposed changes in experimental design for tests and statistical analyses of carcinogenesis bioassays. Pathology quality assessment procedures were reviewed. Toxicology testing and test development activities were reviewed, as were activities in cellular and genetic toxicology testing and test methods development.

January 15–16, 1981 Meeting, Research Triangle Park, NC

A progress report was given on the implementation of changes in the chemical nomination and selection process. A Board working group presented recommendations that NTP adopt definitions, with modification, used by the International Agency for Research on Cancer (IARC) for categorizing animal bioassay results as to strength of evidence for carcinogenicity in experimental animals. The report on the review of the toxicology data management system (TDMS) was presented by a team of three experts to the Board and NTP staff. Their recommendation was to use TDMS for meeting the automated data processing needs of the animal bioassay programs. The NTP Animal Bioassay Program received concept review and approval by the Board. All new contracts and interagency agreements proposed by NIH/NTP are reviewed for concept by the Board. This review precedes technical review and focuses on the feasibility and appropriateness of a proposed concept. Six contract initiatives dealing with test development and validation in cellular and genetic toxicology were reviewed for concept by the Board; five were approved. Three concept proposals in reproductive and developmental toxicology were reviewed and approved by the Board.

May 27–28, 1981 Meeting, Research Triangle Park, NC

The Board peer reviewed NIH/NTP programs in chemical disposition and immunotoxicology. A status report was given on the NTP interagency benzidine congener and derived dye initiative. An overview was given of current NIH/NTP programs, staffing, available or projected resources, and ongoing or projected initiatives in the major areas of mutagenesis, *in vivo* carcinogenesis, toxicologic characterization, and reproductive assessment and development toxicology. Three contract initiatives were reviewed and approved for concept. Further discussions were held on the issue of categorizing animal bioassay results as to strength of evidence for carcinogenicity. The Board peer reviewed 17 nominated chemicals and made recommendations on testing of these chemicals. The recommendations were to be incorporated in the executive summaries for these chemicals and sent to the Executive Committee for action.

Peer Review: Peer review of NTP projects is a multi-level process involving review of project concepts, project proposals, and completed technical bioassay reports. Internally, the NTP Steering Committee (see Coordination and Communication Section, pp. 25 to 26) performs an initial review of the NIH/NTP research and testing proposals to determine if the proposals should be developed further.

The Board of Scientific Counselors performs external concept peer review for the Program; and it reviews all NTP proposals to be carried out by contract to determine their relevance, need, and priority.

Once grant applications or contract proposals for projects are submitted to the NIH/NTP, they are evaluated for scientific merit by the Environmental Health Sciences Review Committee (ESRC). The ESRC, which was established recently as part of the NIH-wide peer review process, is composed of 21 members selected from authorities in such fields as pharmacology, toxicology, pathology, biochemistry, mutagenesis, and clinical disciplines.

When projects are completed and technical bioassay reports on the results are prepared, the Technical Reports Review Subcommittee of the Board of Scientific Counselors, supplemented by an *ad hoc* panel of expert reviewers, evaluates the reports for technical and scientific merit. Through this extensive review, the NTP is assured that its program efforts are of high quality and relevance. During FY 1981, the Subcommittee and panel met in open session in October, February and June and completed peer review on 23 carcinogenesis or toxicology and carcinogenesis bioassay reports from the NTP bioassay program. (See Table 9 in Carcinogenesis Testing Section, pp. 82 to 87.) The first meeting of this peer review group in FY 1982 will be on December 16, 1981, in Bethesda, Maryland at which time six technical reports of bioassays will be evaluated.

The members of the Subcommittee and panel of experts during FY 1981 were as follows:

Subcommittee Members

- Dr. Margaret Hitchcock (Chairperson)
- Dr. Curtis Harper
- Dr. Thomas Shepard
- Dr. Alice Whittemore

Panel Members

- Dr. Norma Breslow, Professor of Biostatistics, School of Biostatistics, University of Washington;
- Dr. Joseph H. Highland, Environmental Defense Fund;
- Dr. Charles Irving, Veterans Administration Hospital, Memphis;
- Dr. Frank Mirer, Assistant Director, Social Security Department, International Union, United Auto Workers;
- Dr. Sheldon D. Murphy, Professor of Toxicology, Department of Pharmacology, Medical School at Houston, University of Texas;
- Dr. Svend Neilsen, Professor of Pathology, College of Agriculture and Natural Resources, The University of Connecticut;
- Dr. Bernard A. Schwetz, Director, Toxicology Research Laboratory, Dow Chemical Company;
- Dr. Roy Shore, New York University Medical Center;
- Dr. James Swenberg, Chief of Pathology, Chemical Industry Institute of Toxicology;
- Dr. Gary M. Williams, Chief, Division of Experimental Pathology, Naylor Dana Institute for Disease Prevention, American Health Foundation.

Operations Management System—The Secretary, DHHS, established this management tracking system in FY 1980 for the purpose of holding DHHS agency and program heads accountable for specific, major operational achievements. The Operations Management System (OMS) monitors progress and effectiveness of selected program initiatives by measuring actual monthly and quarterly achievements against projected goals set at the beginning of the fiscal year. The carcinogenesis bioassay and mutagenesis testing programs of the NTP, as well as the development of the Annual Report on Carcinogens, continued to be monitored in FY 1981.

In FY 1982, the NTP proposes to divide its current OMS carcinogenesis testing initiative into two distinct categories: general toxicologic characterization and two-year bioassays, since these more accurately reflect current testing. NTP also proposes to initiate tracking of appropriate programs in methods development and validation.

In addition to regular and continuing oversight and review of the NTP, there were special Departmental and Congressional reviews of the Program in FY 1981:

DHHS Management Review—Because the NTP represents a new way of coordinating research throughout the Department, the Secretary asked that the Office of Management and Budget (OMB), DHHS, conduct a review of the Program in 1981. The OMB study team found indications of initial success by the NTP in moving toward each of its goals. Specifically, the study team reported progress in expanding the number of tests, especially in the short-term testing area; in broadening the scope of the tests, particularly in the long-term test area; and developing agreement on protocol design. The study team also indicated that the long-term nature of the goals of the Program, and the newness of the NTP, made it impossible to evaluate definitively the NTP on the basis of end results achieved during the short period of its existence.

For this reason, the MB study team turned to an identification and assessment of process goals to gauge the potential of the present organization to meet its mission. The study team selected three broad process goals to assess the performance of the NTP: consensus building, guidance issuance, and operational responsiveness. In terms of tangible end results, the study team found that the special set of organizational arrangements known as the NTP has resulted in progress being made in the management of toxicologic activities. Three indicators of this progress are: (1) development by NTP of a list of chemicals that have been reviewed thoroughly and selected for testing, (2) prevention of unnecessary duplicative testing of chemicals by DHHS and other governmental agencies through the interaction encouraged by the NTP, and (3) establishment of a single organization within DHHS to serve as the repository for chemical testing information, as well as a source of consultation on issues relating to chemical toxicology.

Based on its findings, the MB study team recommended that NTP be established as the permanent mechanism for coordinating DHHS toxicologic research and testing. The study team expressed its belief that, because some form of coordinative mechanism must be used, the NTP offers the highest probability for success because of the experience it has gained and the relationships it has developed.

Congressional Oversight Hearings: On July 15, 1981, the House Committee on Science and Technology, Subcommittee on Investigations and Oversight (chaired by Rep. Albert Gore, D–TN) held the first oversight hearings on the NTP to evaluate the progress made during its first three years. The hearings were preceded by an extensive fact findings exercise by the Subcommittee staff and the General Accounting Office. The Subcommittee focused on the following questions:

1. How effective has the organization of the National Toxicology Program been in bringing together the far-flung testing functions of the government?

2. How successful has the Program been in identifying critical problems of research design in toxicology that have inhibited the usefulness of toxicology for regulatory purposes?

3. What is the record of the Program in turning toxicology away from routine, and perhaps over-simplified bioassays

to more sophisticated and perhaps more predictive tests?

4. To what extent can the experience of the National Toxicology Program be used as a model for other Federal scientific programs, and particularly for the diverse basic research toxicology programs in other agencies of government?

5. Can we depend in the future on the National Toxicology Program to do more of the scientific work necessary before regulatory programs go forward?

6. To what extent should government toxicology programs like the NTP be used as a supplement, rather than a substitute, for the private testing that is required under a number of Federal regulatory statutes?

Testimony was given by Dr. Gilbert S. Omenn, University of Washington; Dr. Edward O. Brandt, Assistant Secretary for Health, DHHS; Dr. David P. Rall, Director, National Toxicology Program, and Director, National Institute of Environmental Health Sciencies; Dr. Vincent T. DeVita, Jr., Director, National Cancer Institute; Dr. Ronald W. Hart, Director, National Center for Toxicological Research; and Dr. J. Donald Millar, Director, National Institute for Occupational Safety and Health. Following the testimony and questioning by members of the Subcommittee, the Subcommittee commended the DHHS and the NTP for progress to date.

Coordination and Communication

Communication to Program activities and results of chemical testing and test development efforts, and coordination of related scientific programs among different agencies represent two key elements essential to Program success.

NTP Annual Plan—Central to both elements is the development and approval of the *Annual Plan* to which the DHHS member agencies (NIH, NCTR and NIOSH) contribute. The *Annual Plan* is the principal instrument for describing the coordination of toxicology research, test development and chemical testing among the relevant health research and regulatory agencies. This annual document represents NTP's strategy for testing, test methods development and validation, and contains an annual report detailing the NTP's accomplishments in the preceding year. The *Annual Plan* is distributed widely and is also published in the **Federal Register**. Published separately is the *Review of Current DHHS, DOE and EPA Research Related to Toxicology.* To foster greater awareness regarding toxicology research both inside and outside of the government, it is hoped that information about chemical toxicology activities in other Federal agencies will be included in future volumes. The *NTP Technical Bulletin*, published three to four times a year, serves as the Program's major vehicle for more frequent communication of NTP's past, current, and upcoming activities.

Annual Open Meeting—The NTP Annual Open Meeting is one of the ways NTP gives the public the opportunity to provide comment on and receive information about the Program. Specifically, the Open Meeting (1) gives the NTP staff a public forum to provide information on current and planned research, test development and testing activities, (2) allows public comment on these activities and on the *Annual Plan*, and (3) encourages nominations of chemicals for testing.

The third annual Open Meeting was held in San Diego, California in conjunction with the annual Society of Toxicology meeting on March 1, 1981. The change in site from previous meetings was aimed at reaching a larger segment of the national toxicology community, an objective which was realized. Dr. John Moore, NTP Deputy Director, gave a detailed overview of the background, objectives and components of the NTP. Dr. Raymond Tennant, Program Leader for Cellular and Genetic Toxicology, described the activities in cellular and genetic toxicology of the NIH component including short-term testing and test development and validation. Dr. Carole Kimmel, NTP Acting Program Leader for Reproductive and Developmental Toxicology, described the coordinated research, testing and test development activities in reproductive and developmental toxicology at NTP components in NCTR, NIEHS and NIOSH.

Interogency Coordination—Benzidine-Based Dyes—A good illustration of NTP's success in integrating efforts related to toxicologic research and testing and in expanding the test protocols is the NTP special initiative on benzidine and benzidine congener dyes. Prior to the creation of NTP, research was ongoing on this class of dyes. Prior to the creation of NTP, research was ongoing on this class of dyes at NCI, NCTR, and NIOSH. Following the NTP establishment, the results from the NCI 90-day studies on three benzidine-based dyes were reported at an Executive Committee meeting where they stimulated interest by the participating research and regulatory agencies in these classes of dyes. As a result, the NTP held a science-policy briefing for its members on the benzidine dyes in June 1980, during which the state of knowledge and the regulatory agencies' data needs were summarized. Afterwards, CPSC, EPA, and OSHA jointly submitted a test proposal to the NTP Executive Committee; and scientists from CPSC, EPA, NCTR, NIOSH, NCI, NIEHS, NTP, and OSHA joined together to develop a special testing initiative involving integrated testing of benzidine, two benzidine congeners, and 13 benzidine- and congener-based dyes for mutagenicity, carcinogenicity, and chemical disposition. (Table 1). This testing is expected to provide results that may be applicable to other dyes in the benzidine and benzidine congener classes. Industry, through the Dyes Environmental Toxicology Organization (DETO), cooperates in this effort. (Contact Person: Dr. J. Mennear, NIEHS)

Interagency Coordination—Phthalates—The NTP and the Interagency Regulatory Liaison Group (IRLG*) sponsored a joint conference in FY 1981 on phthalates to survey available information with respect to uses, exposure, potential substitutes, and known health effects; to identify ongoing studies; and to assess additional testing needs. The Chemical Manufacturers Association (CMA) was a participating member of the conference's organizing committee. At the three-day conference, attended by approximately 500 participants from private and public sectors, the NTP was asked to serve as a central clearinghouse for data generated through the ongoing studies and to coordinate future testing efforts. The NTP has developed a testing initiative on the phthalate esters. The Program will exchange information with the CMA on its testing protocols to ensure that the separate testing programs of the NTP and CMA are complementary, rather than overlapping. (Contact Person: Dr. W. Kluwe, NIEHS)

Thus, with the benzidine and phthalate initiatives, the NTP is developing into an active center for information exchange and collaboration for those groups concerned with current problems of chemical toxicology.

Interagency Liaison—The NTP continues liaison with foreign agency counterparts. For instance, contacts have been established with the World Health Organization's International Program on Chemical Safety, with the International Agency for Research on Cancer, with the International Registry

*The IRLG consists of representatives from EPA, CPSC, FDA, OSHA, and the U.S. Department's of Agriculture Federal Safety Inspection Service (FSIS).

of Potentially Toxic Chemicals, and others.

NTP staff also participate in interagency liaison groups, including the DHHS Committee to Coordinate Environmental and Related Programs, the Task Force on Environmental Cancer and Heart and Lung Disease, and the Interagency Collaborative Group on Carcinogenesis.

NTP Steering Committee—The Steering Committee was formed in July 1980 to increase coordination and information exchange and promote interagency working relationships within the Program. Composed of the NTP director and the operating heads of the DHHS agencies (NIEHS/NIH, NCTR/FDA and NIOSH/CDC), along with key support staff, the Committee meets approximately bimonthly. The group plans agendas for upcoming NTP meetings, reviews ongoing programs and projects as well as proposed programs, resolves interagency problems, and makes agency allocations for chemicals approved for testing by the Executive Committee.

Science Seminar—A two-day seminar aimed at enhancing coordination of scientific programs within the NTP was held at NIEHS in late FY 1981. Scientific and administrative staff from the three DHHS agencies, CDC, FDA, NCI, OSHA and NLM participated.

Organization

The NTP is a confederacy of independent agencies within the Public Health Service which are linked by common goals. These goals are to strengthen the science base in chemical toxicology, develop and validate new or improved toxicological test methods, and evaluate substances or classes of substances that might pose threats to the public health, while eliminating or at least minimizing duplication of effort.

As the NTP has developed as a program, essentially two components have emerged. The first is the NIH component, which represents the majority of the NTP budget. This commitment to central NTP control is reflected in the NIH transfer of the cancer carcinogenesis testing program from NCI to NIEHS, formalizing this direct management. The CDC and FDA components have developed into much more loosely coordinated programs. Both agencies have fully participated in overall NTP activities. However, CDC and FDA coordination has been accomplished through key agency staff, not by central NTP management.

Since its establishment in 1978, the NTP has made significant progress in integrating the DHHS activities in toxicology research and testing and in developing stronger links between toxicology research and the needs of the regulatory agencies. The formation of the NTP Steering Committee (see Coordination and Communication section, pp. 25 to 28) in FY 1980 has helped to strengthen coordination and promote interagency working relationships within the Program.

The program segments of the NTP can be grouped broadly into two categories—toxicologic research and testing, and coordinative management activities.

Toxicologic Research and Testing—These activities include research, test methods development, and testing of chemicals, ranging from the design of experiments to evaluation of the data and writing the reports or manuscripts. Program areas include cellular and genetic toxicology, carcinogenesis, toxicologic characterization, chemical disposition, cutaneous toxicology, immunological toxicology, neurobehavioral toxicology, pulmonary toxicology, and reproductive and developmental toxicology.

Coordinative Management—The NTP coordinative management activities facilitate and support the research and testing activities and provide information on program plans and progress. They include chemical nomination and selection, chemical test management, collaborative services, planning and coordination, quality assurance-good laboratory practices, chemical and pathology repositories, data management and analysis, laboratory animal medicine and quality control, laboratory health and safety, and information generation and dissemination. Through these activities the NTP ensures a coordinated communications network to collect, evaluate, and disseminate toxicologic information concerning data compilation, test results, methods development and validation, and other NTP activities.

Program Leaders—Within the agencies, individual NTP professional staff members are identified as leaders of the major scientific and program support segments, and serve as the focus or contact persons for their particular program activities. In the following sections of the *Annual Plan*, program leaders or project officers are identified for individuals or groups of scientific or coordinative management activities. A listing of NTP professional staff along with their agency addresses and phone numbers is given in Appendix A.

Consolidation of the NIH Components—In July 1981, the transfer of the carcinogenesis bioassay program from the NCI to the NIEHS was approved by the Secretary, DHHS, completing the process which had begun with assumption by NIEHS in FY 1980 of administrative responsibilities for the activities of the bioassay program. The Toxicology Research and Testing Program (TRTP) headed by the NTP Deputy Director Dr. J. A. Moore, combines under NIEHS management the chemical toxicity testing efforts transferred from NCI with NIEHS testing and test development activities. The TRTP is responsible for all NIH/NTP operations and is composed of six branches: Program Operations, Program Resources, Carcinogenesis and Toxicology Evaluation, Systemic Toxicology, Cellular and Genetic Toxicology, and Chemical Pathology. The heads of these branches along with the head ofthe Data Management and Analysis group (from the NIEHS Biometry and Risk Assessment Program) form the core membership of the NIH/NTP Implementation Committee. The Committee was established originally to ensure coordination and communcation among the NIH components. This committee, which meets at least monthly, is responsible for planning and implementation of NIH/NTP activities.

Toxicology Research and Testing Overview

Toxicology research and testing activities within the NTP are broadly encompassed by four major program areas: Mutagenesis (cellular and genetic toxicology); carcinogenesis; toxicologic characterization; and fertility and reproduction (reproductive and developmental toxicology). Through increasing coordination and integration of the activities of the member agencies (NIH, NCTR, NIOSH), the NTP is developing the capabilities in toxicologic research and testing necessary not only to improve testing of chemicals by means of a comprehensive approach to evaluating chemical toxicity, but also to put greater emphasis on development and validation of new assay methods, as well as on providing better information for risk estimation.

Testing under the NTP's toxicologic research and testing activities has been expanded to include a more comprehensive approach involving mutagenesis, chemical disposition, immunotoxicology, clinical chemistry and urinalysis, and reproductive and developmental toxicology screening, in addition to the prechronic and long-term carcinogenesis bioassays. Chemicals no longer are tested only for their carcinogenic potential, but also for other toxicologic effects such as damage to

genes and chromosomes and to critical targets such as the lungs, liver, and immune and nervous systems. These composite toxicologic data are then used to better design the long-term studies or to conclude that further studies may not be necessary. This has resulted in major improvements in the government testing efforts, related mainly to the fact that a more complete toxicologic potential of chemicals now may be studied. This should lead to better dose-effect extrapolation from laboratory animals to humans and make test results more applicable to human exposures. This integrated approach to testing permits the most effective use of the government's testing resources.

The NTP's most significant long-term objective is the development and validation of better, more specific test methodologies. In the development of new short-term test systems, the NTP wants to ensure that the test is adequately sensitive, minimizes false positives and false negatives, can be standardized, and produces results that are reproducible from laboratory to laboratory and that are more meaningful in terms of human health. Priority areas are determined by research that has identified "new" means by which chemicals may exert a toxic effect or where current tests are inadequate, or predict innovative approaches which may supplement existing methods and provide toxicologic results in a faster or more definitive manner. With regard to new test methods, NTP started a major initiative in FY 1981 developing short-term prescreens for teratogenesis and completed validation of the neurobehavioral test battery. NTP expects to complete validation of fertility and reproductive assessment assays in about two years. It has begun an interlaboratory testing study of the immunotoxicology battery of tests. Major emphasis in cellular and genetic toxicology has been placed on development and validation of both *in vitro* and *in vivo* systems for measuring somatic mutations and cellular transformation, and for measuring heritable mutations.

Although the Program's emphasis is changing, major resources are still focused on chemical testing primarily reflecting the relatively high costs of the two-year animal bioassay. However, dollar outlays for testing have increased only slightly from FY 1980 to 1982, while funding for test methods development and validation has increased about 10% over this same time period (Figure 2). Figure 3 depicts the costs in FY 1981 for testing, methods development and test validation for the four major program areas. The continuing large numbers of dollars for testing reflect, in large part, the "one year" costs for bioassay starts initiated prior to NTP involvement. This investment will gradually scale down starting in FY 1983 with fewer bioassay starts and more funds being devoted to tests as alternatives to the bioassay. Beginning in FY 1982, NTP will keep the level of bioassay starts at 20 to 25 per year including model or class compounds, such as benzidine. Thus, because a full testing profile takes nearly five years, 100 to 125 chemicals would be in various testing phases at any one time.

The major research and testing initiatives for FY 1981 and FY 1982 are briefly summarized below (descriptions of specific program activities are detailed starting on p. 35).

Mutagenesis—Test starts in the short-term genetic toxicology screen using the *Salmonella typhimurium* assay are stabilized now at a level of about 300 tests per year, which in FY 1982 an average level of 50 chemical starts per year each will be reached in cultured mammalian cells and in the *Drosophila melanogaster* system. There was also a marked increase in cellular and genetic toxicology methods development and validation in FY 1981. This emphasis, which will continue in FY 1982, is placed on short-term tests for mutagenicity and aneuploidy in microbial systems and yeasts, as well as on tests for mutagenicity, cytogenetic damage, and transformation in mammalian cells. Evaluation of *in vivo* tests for heritable genetic effects in mice, the heritable translocation assay, and the morphological specific locus test, will begin or continue in FY 1982. Research on the mechanisms of DNA damage and repair is being pursued in FYs 1981–1982.

Carcinogenesis—During FY 1981, 23 bioassays were completed and the reports on the findings approved after peer review by the Board of Scientific Counselors. There will be 19 new chemical starts in FY 1982. The two-year carcinogenesis bioassay is still the standard and most definitive method for detecting chemical carcinogens in animals. The major thrust beginning in FY 1980 and continuing thereafter has been to broaden and improve the protocols for the prechronic phases to provide information on toxic endpoints other than cancer. All bioassay starts begun in FY 1981 had an expanded design including one or more special studies. There were a number of long-term carcinogenesis studies, not formally part of the bioassay program, initiated or in progress in FY 1981 which were concerned with chemicals or mixtures of chemicals especially encountered by humans in occupational settings. Validation of the mouse lung adenoma test system will be completed in FY 1982.

Toxicologic Characterization—Major testing initiatives are acute, 14-day, and 90-day experiments with chemicals originally nominated and selected to evaluate carcinogenic potential in experimental animals. Continuing emphasis is on improving the test protocols to give information on a variety of toxic endpoints as well as enable better experimental designs of chronic bioassays. The completion of the 90-day study has been made a major decision point in the NTP. Another principal area of activity is the development and validation of methodology for the toxicologic characterization of the renal, immune, neurobehavioral and pulmonary systems. Validation of a comprehensive neurobehavioral test battery was completed in FY 1981. The immunological toxicology program continued to focus on refining and validating a panel of immunology and host resistance procedures to define immunotoxicity of chemicals and correlate changes in immune function with alterations in host resistance. The pulmonary toxicology effort continues to assess the value of pulmonary function indices as a complement to standard pathologic evaluation of lung injury.

Fertility and Reproduction—Primary emphasis has been on developing short-term tests in both reproductive toxicology and teratology, including both *in vitro* and *in vivo* teratologic test systems and continuous breeding assay for fertility assessment. A collaborative interlaboratory behavioral teratology study continues in FY 1982. In FY 1981, testing by standard teratologic methods was completed on six chemicals and was in progress on nine other chemicals. Studies on 10 to 12 additional chemicals will be initiated in FY 1982.

Cellular and Genetic Toxicology

The aims of NTP cellular and genetic toxicology efforts are to provide an integrated testing and research program using short-term test systems to evaluate the genetic activity of selected chemicals. The program is also aimed at understanding mechanisms of cellular and genetic toxicity to provide a basis for further tests system development and interpretation of test results. Emphasis is presently placed on short-term tests that measure mutagenicity and aneuploidy in microbial cells, as well as mutagenicity, cytogenetic

damage, and transformation in mammalian cells. Test data are used to set priorities for further testing and in the design and interpretation of long-term animal carcinogenicity, mutagenicity and toxicity studies.

Goals of the short-term test effort are to establish a scheme of short-term testing that can be used to predict chemical carcinogenicity and mutagenicity and thereby reduce the need for *in vivo* assays and to assist in setting testing priorities for long-term bioassays. For short-term test results to be predictive several criteria must be fulfilled. These criteria include a knowledge of both the reproducibility of individual test results and the relationship of the endpoint measured to carcinogenicity, mutagenicity or other toxic effects *in vivo*. The application of a battery of complementary tests which meet these criteria should ultimately result in an effective system for screening chemicals. An important part of the program is to produce sufficient short-term test data, particularly across speciess and chemical classes, to relate short-term test results to known carcinogenicity in animals. Even with the appropriate use of available test systems, some potential carcinogens (or co-carcinogens) may not be identified, particularly those which do not induce damage leading to observable gene mutations or chromosomal changes. It is, therefore, important to develop new assays capable of detecting those carcinogens not identified by assays currently in use and to remain responsive to basic research developments with potential application.

Mutation studies can be divided into two categories: measurement of mutation in somatic cells and measurement in germinal (gonadal) cells. The major difference between the two is that mutations arising in germinal cells can be transmitted via the sperm or ova to the next generation, while somatic mutations can only be expressed in the exposed individual. Mutagenicity testing systems can be designed to measure either somatic or germinal mutations. *In vitro* test systems are considered relevant for somatic mutation because they measure mutagenicity in mitotically dividing cells. However the information gained from tests using *in vitro* systems has implications for heritable mutation risk determination because a chemical that is mutagenic *in vitro* has the potential to be mutagenic in gonadal cells *in vivo*. Other assay systems have been designed to strictly measure induction of heritable mutations *in vivo*.

The major portion of the programs concerned with test development, validation, and screening of chemicals are performed through extramural contracts and interagency agreements. Research efforts into basic mechanisms, new test systems and data management and analysis activities are usually performed intramurally.

FY 1981 Accomplishments

Somatic Mutation and Cellular Transformation

• *In vitro* Microbial and Fungal Test Systems

Salmonella/Microsome Test System I—The primary goals of this project are to evaluate and validate microbial mutagenicity assays for their reproducibility and predictive value in assessing the carcinogenic potential of chemicals through cooperative studies in four laboratories. Coded chemicals have been systematically tested using a standardized protocol consisting of five strains of *Salmonella typhimurium* (TA1535, TA1537, TA1538, TA98, and TA100) in the presence and absence of metabolic activation. The 9000 x g (S–9) preparations used for metabolic activation were derived from the livers of non-induced and Aroclor 1254-induced mice, rats, and hamsters. Testing has been completed on approximately 130 coded compounds (some coded compounds being the same chemical under different codes). Of these, approximately 90 have been decoded. Partial results have shown excellent qualitative agreement with results reported in the literature. The few exceptions seem to be chemicals whose mutagenic dose, as reported in the literature, was above the maximum dose specified in the standard protocol. The assay has been found to be reproducible within a laboratory as indicated by responses for chemicals tested at different times under the same code. A good qualitative correlation among the four participating laboratories has also been observed. (Contact Person: Dr. E. Zeiger, NIEHS)

Salmonella/Microsome Test System II—Interim results from study I contributed to the design of the test protocols in study II. The purpose of this project is to test a total of 1125 samples for mutagenicity in *Salmonella* strains TA98, TA100, TA1535 and TA1537 using a preincubation modification of the *Salmonella* assay. All chemicals are incubated with the tester strains in suspension prior to the addition of soft agar and plating for detection of induced mutants. Exogenous metabolic activation is provided by liver S–9 preparations from Aroclor 1254-induced rats and hamsters. Coded chemicals are tested at five doses, in triplicate, in each strain, and are retested at least one week later. Results were received in FY 1981 on 264 test samples, representing 199 different chemicals (Table 2). It was anticipated that a total of approximately 300 tests would be completed and the results made available by the end of the fiscal year and that 300 samples will be tested per year in future years. Based upon results from these tests, chemicals may be selected for further testing in *Drosophila melanogaster* (mutagenicity and aneuploidy), mammalian cells (cystogenetics, transformation) and other toxicity tests. (Contact Person: Dr. E. Zeiger, NIEHS)

Development of New Tester Strains of Neurospora and Salmonella—A major activity addresses the improvement of short-term mutagenesis assay systems. New tester strains (N23 uvs-2 and N24 uvs-2) for the adenine-3 reverse mutation assay system of *Neurospora crassa* have been constructed by incorporation of a uv-sensitive genetic marker. For the arabinose resistant forward mutation assay system of *Salmonella typhimurium*, a new strain, SV–50, contains a R factor plasmid. Comparative dose response mutagenesis studies have shown that the new tester strains are more sensitive to mutation induction by chemicals than the original tester strains. Therefore, these new tester strains, especially SV–50 of *Salmonella typhimurium*, could be extremely useful for the detection of the mutagenic activity of industrial chemicals and environmental mixtures. It was also found that the bacterial fluctuation test is a very sensitive mutagenesis assay system for several industrial chemicals and mixtures. An *in vitro* mutagenesis testing contract was awarded during FY 1981. (Contact Person: Dr. T. Ong, NIOSH)

Salmonella—Research and Development Studies—An intramural research program with *Salmonella typhirmurium* has been directed toward three major efforts:

1. Characterization of the *Salmonella* mutagenicity tests in order to better understand the kinetics and dynamics of the *in vitro* metabolic activation systems used in the tests and to improve the methodology. A simple scheme has been developed which will permit the rapid confirmation of genetic markers in microbial strains at the time of each test. Also, in collaboration with the Biometry and Risk Assessment Program, NIEHS, a statistical method has been developed for evaluation of *Salmonella* plate test data. Two studies on metabolic activation systems have just been

completed. The first demonstrates that the *Salmonella* plate test can be used to identify the specific cytochromes responsible for activation of certain chemicals and that this mutagenicity test can be a useful adjunct for *in vitro* chemical metabolism studies. The second study has demonstrated the ability of prostaglandin synthetase, a non-cytochrome-dependent metabolic activation system present in many body tissues, to metabolize polycyclic aromatic hydrocarbon derivatives to mutagenic products.

2. Performance of mutagenicity tests on chemicals of interest in order to elucidate structure-activity relationships as they relate to the mutagenicity of the chemicals and to their carcinogenicity. The mutagenicity of a series of dimethylaminoazobenzene (butter yellow) derivatives has been examined and these results will be related to the chemical structures and the carcinogenic activity of the chemicals, where known. Also a series of the metabolites of the flame retardant tris(1,3-dibromo-2-propyl) phosphate (Tris-BP) have been tested in an attempt to identify the ultimate mutagen(s). This study showed that none of the metabolites studied was the ultimate mutagen but the relative mutagenic activity of these compounds and structurally related chemicals pointed to the dibromopropyl side chain moiety as the ultimate mutagen.

3. Development and characterization of an intrasanguinous host mediated assay protocol which will allow the detection of mutagenic metabolites formed *in vivo* in specific organs of the mouse or rat. A procedure has been developed which allows the injected *Salmonella* cells to colonize and proliferate in the organs of interest (liver, lungs, kidneys, testes). (Contact Person: Dr. E. Zeiger, NIEHS)

• *In Vitro* Mammalian Test Systems

In Vitro Cytogenetics—Mammalian cells in culture allow the detection of chromosomal aberrations and sister chromatid exchanges which are endpoints not detectable with bacterial cells. A protocol has been standardized for the simultaneous detection of chromosome aberrations and sister chromatid exchanges in cultured Chinese hamster ovary (CHO) cells. In the presence and absence of a rat liver S-9 activation system, a total of approximately 200 chemicals will be tested in two laboratories over the four-year duration of the study. The results for the first thirteen chemicals are presented in Table 3. (Contact Person: Dr. E. Zeiger, NIEHS)

In Vitro Mammalian Cell Mutagenesis—The purpose of this study is to evaluate the reproducibility and usefulness of L5178Y mouse lymphoma cells (TK+/−) as an *in vitro* mutagenesis assay system. The project is being run as a collaborative study between two laboratories and has proceeded in two phases; the first phase was concerned with protocol standardization and the second phase with the validation of the protocol using coded chemicals. Results on 23 of these chemicals are shown in Table 4. (Contact Person: Dr. W. Caspary, NIEHS)

In Vitro Transformation—This project was designed to develop, standardize and evaluate a protocol for performing *in vitro* transformation assays with the BALB/c-3T3 cell line. This assay is used to measure the ability of chemical agents to induce alterations in a population of cells (derived from mouse embryo fibroblasts) from a pattern of controlled monolayer growth to one exhibiting clonal foci of disoriented cells against a background monolayer. Addition of mouse liver S-9 fractions and other methods of exogenous metabolic activation are being evaluated. The testing and evaluation of 70 coded samples are presently underway. (Contact Person: Dr. W. Caspary, NIEHS)

• Speical Applications—*In Vitro* Microbial and Mammalian Testing

Mutagens Formed from the Cooking of Food—The objectives of this study are: (1) to determine the nature and mechanism of formation of mutagens that arise during the routine cooking of foods and devise strategies to prevent or limit their formation; (2) to indentify and confirm the chemical structure of the mutagens formed; (3) to assess the spectrum of genetic toxicity of the mutagens, both purified and as they occur in the food, using short-term microbial and mammalian bioassays; and (4) to estimate the risk to the human population posed by the ingestion of these mutagens in the diet. To date, this study has determined the kinetics of mutagen formation during the grilling of hamburger and boiling of beef stock. Procedures for the extraction of hamburger mutagens have been greatly improved, and the sensitivity of the various *Salmonella* strains and *in vitro* metabolic activation systems for the detection of hamburger mutagens have been characterized. Known pure food mutagens have been, or are being synthesized, and studies are underway to determine whether the mutagenicity of hamburger and boiled beef extract can be accounted for by these chemicals or whether additional mutagenic substances are also present. Other cooked proteinaceous foods are being examined for mutagenicity. (Contact Person: Dr. E. Zeiger, NIEHS)

Mutagenic Monitoring for Coal Conversion Workers—A contract concerned with mutagenic monitoring for coal conversion workers was awarded. The experimental protocol calls for analysis of the urine for mutagenic activity using the *Salmonella* assay, and measurements of sister chromatid exchange and chromosome aberrations in lymphocytes from the workers and a matched control population. In addition, samples of ambient air particulates will be collected and analyzed for mutagenicity. The study will commence in FY 1982 and be completed in FY 1984. (Contact Person: Dr. T. Ong, NIOSH)

Germ Cell Mutation

• Heritable Effects—Nonmammalian Assays

Drosophila Mutagenesis—The *Drosophila* mutagenesis effort centers on testing chemicals for heritable effects. The induction of sex-linked recessive lethal (SLRL) mutations is determined from male flies treated by feeding the test chemical. If no induced mutants are detected, the chemical is retested by injection. A chemical positive in the sex-linked recessive lethal test is also tested for its ability to induce reciprocal translocations; a chemical giving a negative result is not tested in the translocation test.

Three contract laboratories capable of studing a total of 210 coded samples (70/laboratory) are participating in this four-year effort. Validation activities whereby randomly selected coded chemicals are tested in more than one laboratory are superimposed on the testing sequence. Results of chemicals tested are presented in Table 5. (Contact Person: Dr. J. Mason, NIEHS)

Aneuploidy Assays—Assays for the detection of chemically induced aneuploidy, a genetic event not identified by other mutagenesis test systems, will be developed for large-scale testing programs. Aneuploidy assays would, when used in addition to other short-term tests, allow a more comprehensive evaluation of the spectrum of genetic damage induced by a chemical. Use of insect *(Drosophila)* and yeast *Saccharomyces)* systems will allow interspecies comparisons as well as tests for aneuploidy in both mitotic and meiotic (germinal) cells. The three (one *Drosophila*, two yeast) contracts are primarily developmental in this

initial year. (Contact Person: Drs. M. Resnick and J. Mason, NIEHS)

• Heritable Effects—Mammalian Assays

Mouse Morphological Specific Locus Study—A major health concern arising from human exposure to mutagenic chemicals is the induction of mutations in germ cells and the subsequent transmission of such mutations to future generations. The risk of such health effects must presently be approached through whole-mammal assays since tests involving lower organisms or mammalian cells *in vitro* have the disadvantages of not addressing heritability of induced mutations, germ cell stage specificity, and special metabolic and physiological transport factors that might exist during the reproductive cell cycle.

The morphological specific-locus method is at present the most practical and reliable means available in mammals for detecting those genetic changes thought to be of greatest potential significance to the health of future human generations, namely, heritable point mutations. Work has been initiated to further investigate the chemical induction of heritable mutations in mouse germ cells. The two basic objectives of this project are: (1) to conduct an in-depth study of chemically induced mutation processes in mammalian germ cells using N-ethyl-N-nitro-sourea (ENU) as a model mutagen; and (2) to test five environmentally significant chemicals for mutagenicity. (Contact Person: Dr. M. Shelby, NIEHS)

Heritable Translocation Assay—The heritable translocation assay (HTA) is an *in vivo* test which measures a specific type of chromosome aberration that is known to contribute to the human disease burden. It can also be subjected to rigorous statistical scrutiny. The objectives of the HTA study are to develop a standardized protocol for performing HTA evaluations on NTP compounds, and, at the same time, identify critical factors which may be used to improve its precision. During FY 1981, a comparative evaluation of five mouse strains used in the HTA was completed. From this effort a standardized fertility test protocol was developed, and validation of the HTA was initiated with a positive control study using triethylenemelamine (TEM). A modified Meridith procedure for preparing mouse meiotic chromosomes, and a modified Triman *et al* technique for preparing mitotic chromosomes from stimulated mouse peripheral blood lymphocytes are being used in this study. The animal mis-classification error (false positive and/or negative error rates) was being evaluated. (Contact Person: Dr. J. Bishop, NCTR)

Collaborative Activities

Workshop on Statistical Analysis of In Vitro Tests for Mutagenicity—A workshop on analysis of *in vitro* mutagenicity data, organized through the Cellular and Genetic Toxicology Branch of the NIH/NTP, and the Office of the Associate Director for Genetics, National Institute of Environmental Health Sciences, was held April 21 and 22, 1981, in Chapel Hill, NC. A variety of statistical approaches to data analysis in three *in vitro* mutagenicity assays were presented and discussed. The assays were the *Salmonella*/Microsome assay, the Chinese Hamster Ovary Cell/HGPRT assay, and the Mouse Lymphoma L5178Y TK+/-locus assay. The workshop was attended by nearly 50 scientists from the United States and Europe and provided one of the first opportunity for equal numbers of statisticians and biologists to present and discuss in detail their test protocols, data, and methods of analysis. No consensus was reached on the most appropriate biological protocol or statistical method. However, the interest and cooperation demonstrated by the participants, together with the pressing need for consistent, objective methods of data interpretation, are certain to lead toward improved methodologies for evaluation of mutagenic effects based on *in vitro* test results. A report on the workshop for publication in the open literature is presently being written by a committee of statisticians and biologists. (Contact Person: Dr. M. Shelby, NIEHS)

Support Activities

Three resource activities exist which are utilized throughout cellular and genetic toxicology programs. They are:

Chemical Repository—The chemical repository purchases, analyzes, stores, and distributes all chemicals selected for testing. For a more complete description see the Chemical Repositories section, pp. 152 to 153.

Data Management—A computerized data base management system has been developed to assist in the collection, handling and storage of the data derived from mutagenicity tests. The Environmental Mutagenesis Information System (EMIS) was developed on PROPHET, a data-handling system developed and run for the NIH Division of Research Resources by Bolt, Beranek and Newman, Inc. Three *Salmonella* contract laboratories are collecting test data on laboratory-based data entry terminals. The data are then sent by telephone line to the main computer where it is arranged into a format that can be reviewed by NTP staff prior to its inclusion in the permanent data file. Procedures are being developed for handling and storage of *Drosophila* and cultured mammalian cell data. Data from some contracts are also being collected on the NCI-developed In Vitro Information System (IVIS). Data in this system will be transferred to EMIS as soon as practicable. The data stored in these systems can readily be recalled by NTP personnel, and statistical and graphic procedures can be added to the system as needed. (Contact Person: Mr. M. Rowley, NIEHS)

Environmental Mutagen Information Center—The Environmental Mutagen Information Center (EMIC) is a computerized information service located at the Oak Ridge National Laboratory that processes all published information on the genetic effects of environmental agents. Articles for inclusion in the EMIC data base are identified through the screening of large bibliographic data bases such as Chemical Abstracts and Biological Abstracts and by the manual screening of more than 40 journals which regularly publish articles on chemical mutagenesis and related topics. Copies of all articles are obtained prior to indexing and entry onto the master computer file. For each article, this file contains bibliographic information plus key terms on the assay system employed and the names and CAS registry numbers of chemicals studied. The data base presently contains approximately 35,000 articles. The EMIC file is available on-line through the Department of Energy-supported RECON system and through the National Library of Medicine's TOXLINE system as well as by direct queries to the Center. This specialized information center provides the National Toxicology Program with rapid and thorough access to the world's literature on chemical mutagenicity and short-term carcinogenicity testing. (Contact Person: Dr. J. Huff, NIEHS)

FY 1982 Program Plans

Somatic Mutation and Cellular Transformation

• *In Vitro* Microbial and Fungal Test Systems

Salmonella/Microsome Test System I—This cooperative study, aimed at evaluating and validating microbial mutagenicity assays for their reproducibility and predictive value in assessing carcinogenic potential of chemicals, will be completed in FY 1982. An overall evaluation will be compiled on intralaboratory variation, variation

among the four laboratories, comparison of activation systems, and comparison with *in vivo* and microbial test results. (Contact Person: Dr. E. Zeiger, NIEHS)

Salmonella/Microsome Test System II—It is estimated that 300 samples will be tested in FY 1982. Table 6 presents chemicals selected and available for testing. (Contact Person: Dr. E. Zeiger, NIEHS)

In Vitro Mutagenesis Monitoring Studies—The two main research efforts of this project in FY 1982 are: (1) evaluation of the body fluid mutagenic assay system and (2) validation of the *Salmonella* arabinose resistant assay system. Both systems have potential usefulness for mutagenic monitoring. Under the *in vitro* mutagenesis testing contract, 40 samples (industrial chemicals and/or complex mixtures) will be tested for mutagenicity with the *Salmonella*/microsome assay system. Fifteen of the 40 samples will be further tested with *Saccharomyces cerevisiae* (for gene conversion and mitotic recombination), Chinese hamster ovary cells (for sister chromatid exchange) and mouse lymphoma L5178Y cells (for gene mutation) assay systems. (Contact Person: Dr. T. Ong, NIOSH)

Salmonella—Research and Development Studies—

1. Studies will continue with prostaglandin synthetase to determine whether there are other classes of chemicals, besides polycylic aromatic hydrocarbons, which can be metabolized to mutagens by this enzyme system.

2. Studies will continue with the newly developed host mediated assay protocol using selected mutagens and carcinogens to evaluate the sensitivity of the system and whether or not organ-specific mutagenicity can be detected. (Contact Person: Dr. E. Zeiger, NIEHS)

Salmonella Mutagenesis under Anaerobic Conditions—The purpose of this effort is the development of *Salmonella* test protocols for detection of chemicals requiring metabolism under an anaerobic condition for expression of mutagenic activity. The standard protocols using *in vitro* metabolic activation for mutagenesis studies are based on the assumption that the substances to be tested require only aerobic metabolism for their activation. However, many substances such as azo-containing dyes may require a reductive step in their activation. Reductive metabolism can occur in the mammalian liver *in situ* and in the mammalian gut through the action of gut flora. Therefore, some chemicals which may be activated to mutagens *in vivo* may appear to be non-mutagenic when tested using the standard *in vitro* metabolic activation protocols.

One contract will be awarded for the development of acceptable protocols for reductive metabolic activation and for the testing of a series of chemicals known or suspected to require reductive metabolism as a step in their conversion to biologically-active substances. The protocols developed will be used by the cellular and genetic toxicology component of the NTP Benzidine Congener Dye initiative. (Contact Person: Dr. E. Zeiger, NIEHS)

• *In Vitro* Mammalian Test Systems

In Vitro Cytogenetics—Seventy-six chemicals have been selected for possible testing in FY 1982 in Chinese hamster ovary (CHO) cells for detection of chromosome aberrations and sister chromatid exchanges (Table 7). (Contact Person: Dr. E. Zeiger, NIEHS)

In Vitro Mammalian Cell Mutagenesis—Validation of the protocol for use of L5178Y mouse lymphoma cells (TK+/−) as an *in vitro* mutagenesis assay system will continue. The remainder of the 40 coded compounds will be reported on in FY 1982. These data will be analyzed to determine the extent of interlaboratory reproducibility and qualitative correlation with carcinogenicity. (Contact Person: Dr. W. Caspary, NIEHS).

In Vitro Transformation—A variety of independent studies have shown a high correlation between the ability of chemicals to induce tumors *in vivo* and the ability to induce neoplastic transformation in certain mammalian cell culture systems. Thus, the NTP plans to implement studies with some of these systems which will result in the application of standardized protocols giving a high degree of interlaboratory reproducibility and defining the test limitations of the respective systems. A testing program will be initiated based upon the results. Several distinct systems, either primary cultures, continuous lines, or virus-infected cells, are being used as assay systems. The Balb/c 3T3 cell line is currently undergoing evaluation by the NTP; the C3H 10T½ cell line is being evaluated by the Division of Cancer Cause and Prevention of the NCI; and the BHK cell line is being studied in Europe.

In FY 1982, evaluation will be initiated for three additional mammalian cell systems. A primary cell culture system derived from Syrian hamster embryos (SHE) will be evaluated in two laboratories using coded compounds and characterized frozen SHE cell stocks. A second assay which detects enhancement of DNA virus transformation by chemical carcinogens using SHE cells infected with Simian adenovirus (SA–7) will be evaluated. A large number of chemicals, representing several diverse classes, have been shown to enhance the transformation of hamster cells by SA–7 virus, and the transformation has shown a high correlation with the known mutagenic or carcinogenic activity of the chemicals. The test demonstrates other potentially important features which include a more discrete morphology of the transformed cells, shorter total test time, higher sensitivity to weak carcinogens, and ability to manipulate chemical exposure. The third cell system, retrovirus(type C, RNA tumor virus)-infected rat cells, has been shown to detect transforming ability of several chemicals representing different chemical classes. Normal rat cells are refractory to transformation by many of the chemicals tested, while cells infected with the retrovirus demonstrate relatively high sensitivity to transformation by chemicals.

The initial phase in the evaluation of all three systems will be protocol development, identification and storage of suitable cell stocks and reagents, response to known carcinogens and noncarcinogens, demonstrated repeatability of results within and between laboratories, and demonstrated tumorigenicity of representative cells identified as morphologically transformed. Additional effort will be directed at tests of exogenous metabolic activation systems. (Contact Person: Dr. R. Tennant, NIEHS)

Mammalian Cell Culture Assay for Multiple Genetic Endpoints—Two major effects of concern in genetic toxicology are gene mutations and chromosome damage because both can produce human genetic disease. Genotoxic chemicals usually induce both types of effects but the proportion of chemically induced gene mutations or chromosome mutations are difficult to determine at this time. The induction of gene mutations are usually detected in a number of different mammalian cell lines and the induction of chromosome mutations are detected using the same or different cell lines and activation systems. It is often difficult to determine the relative frequencies induced and the effective doses. Yet, in evaluating the genetic effects of a chemical to determine potential health risks, an understanding of the spectrum of damage induced by the chemical is needed. A comparison between gene and chromosome mutations is also needed as a reference when moving from results obtained with cells in culture to predicted effects in treated animals. Such an extrapolation is

necessary when only one type of mutagenic effect can be measured *in vivo* but it is important to take both effects into consideration. The NTP proposes to fund a project beginning in FY 1982 which will have the following objectives: (1) develop and test a protocol that can be used to determine the frequencies of gene mutations and chromosome damage in a single cell line; (2) determine the feasibility of detecting other endpoints such as sister chromatid exchange, aneuploidy, and DNA damage or repair in the same cell line; and (3) test a series of chemicals using the protocol developed. (Contact Person: Dr. R. Zeiger, NIEHS)

• *In Vivo* Mammalian Test Systems

Rodent Bone Marrow Cytogenetics—In the assessment of genotoxic effects of chemicals for the purposes of human health concerns, it is desirable to obtain test data from intact mammals. Such data are more readily extrapolated to human test data and health effects than data from *in vitro* systems. *In vivo* rodent assays for chromosome aberrations (CA) and sister chromatid exchanges (SCE) represent two test systems in which the methodology is widely available. However, these assays have been used to a limited extent in the systematic evaluation of potentially genotoxic agents using currently accepted methodology. While the mechanisms of CA and SCE induction are not clearly understood, it is clear that they represent discreet endpoints which are indicative of genotoxicity. It is only through a systematic evaluation of the techniques, and a comparison with data obtained from other systems, that the value of mammalian *in vivo* cytogenetic screening systems can be determined.

The NTP will award contracts in FY 1982 to two laboratories to pursue the following objectives: (1) to develop and validate a testing protocol for the simultaneous determination of chemically induced CA and SCE (based on the general recommendations of the EPA Gene-Tox working groups on SCE and cytogenetics); (2) to determine the utility and reproducibility of the protocol developed for detecting mutagens by testing up to 50 coded chemicals; and (3) to compare the relative sensitivities of CA and SCE endpoints and to compare test results with those obtained in other *in vitro* and *in vivo* assays. (Contact Person: Dr. M. Shelby, NIEHS)

• Special Applications—Human Genetic Monitoring

Cytogenetic Monitoring of Human Populations—Monitoring peripheral lymphocyte samples for cytogenetic endpoints offers a practical means of detecting exposures of individuals or populations to genotoxic agents. The technique has been used to detect ionizing radiation exposures for many years, and has become widely accepted. It has been applied to a lesser extent in connection with exposures to chemical agents. The protocols for the cytogenetic studies that have been performed on persons exposed to chemical agents (usually occupationally) have been varied, precluding cross comparison. They have also often been flawed in one respect or another so that definite conclusions could not be made. Thus, it has become apparent that the development of a standard protocol for cytogenetic monitoring is needed and that background information on the frequencies of chromosome aberrations and sister chromatid exchange (SCE's), their variability, and the causes of this variability are lacking. Such information is required before one can properly design or interpret cytogenetic studies of populations exposed to potential chromosome damaging agents.

A project is planned in which two laboratories will collaborate: (1) to develop and standardize a protocol by which the frequencies of chromosome aberrations and SCEs in human lymphocytes can be accurately and reproducibly determined; and (2) to identify the major sources of variation of these frequencies as affected by the protocol and, to the extent possible, by the circumstances of the individuals from whom blood samples are obtained. (Contact Person: Dr. M. Shelby, NIEHS)

Mutagenic Monitoring for Coal Conversion Workers—A contract was initiated in FY 1981, air sampling (including mutagenesis assays) will begin in FY 1982, and the selection of worker and control populations will be completed before the end of FY 1984. (Contact Person: Dr. T. Ong, NIOSH)

Germ Cell Mutation

• Heritable Effects—Nonmammalian Assays

Drosophila Mutagenesis—Chemicals scheduled for testing on *Drosophila* in FY 1982 are listed in Table 8. (Contact Person: Dr. J. Mason, NIEHS)

Aneuploidy Assays—Validation and testing of 50 to 80 chemicals will commence in FY 1982, the second year of a three-year effort. (Contact Person: Drs. Resnick and J. Mason, NIEHS)

• Heritable Effects—Mammalian Assays

Mouse Morphological Specific Locus Study—Studies will continue in FY 1982 examining germ cell mutation induction with N-ethyl-N-nitrosourea (ENU) as a model mutagen. Up to five environmentally significant chemicals will be examined for mutation induction during the period of FY 1982–1984. (Contact Person: Dr. M. Shelby, NIEHS)

Mouse Electrophoretic Germinal Mutation Test Development—To further understand mammalian germ cell mutagenesis, develop assays to detecting and quantifying chemically-induced heritable mutations, and provide test data for human genetic risk estimation, NTP will support studies using an electrophoretic approach to mutation detection in addition to the morphological specific locus approach. An assay has been developed in which tissue preparations from the offspring of treated mice are analyzed by electrophoresis for the presence of variant proteins presumed to be mutants. The heritability of these variants is confirmed by breeding tests. The mouse electrophoretic germinal mutation assay offers two advantages in evaluating chemicals for mutagenicity. Firstly, the assay detects changes in specific enzymes and offers the opportunity to relate chemically-induced mutations to changes in enzyme structure and function and ultimately to effects on health or fitness. Secondly, the potential availability of a large number of loci for analysis means that fewer animals can be used.

Based on the results of recent studies, it is reasonable to expect this assay to make a unique contribution to our understanding of chemically-induced mutagenesis in mammalian germ cells and to enhance our capability to derive estimates of human genetic risk from experimental data. To further evaluate the utility of this assay, the NTP in FY 1982 will award one three-year contract to: (1) conduct an in-depth study of the mouse electrophoretic germinal mutation test using N-ethyl-N-nitrosourea as a model mutagen and to compare results with those obtained in the morphological specific locus test; (2) test three environmentally significant chemicals for mutagenic activity; and (3) establish the spontaneous rates of mutation at the loci under study. (Contact Person: Dr. M. Shelby, NIEHS)

Heritable Translocation Assay—Additional experimental studies will be identified to further elucidate potential mechanisms for stock differences and interactive effects associated with chemically-induced fetal death rates detected in the dominant lethal test and to determine if such studies can be used reliably to identify appropriate mouse stocks for use in the parental

generations of the HTA. The positive control study with the model mutagen, triethylenemelamine (TEM), will be completed and the data analyzed. If resources can be identified for cytogenetic analysis of F_1 males, a second positive control study will be initiated and completed in FY 1982. (Contact Person: Dr. J. Bishop, NCTR)

Rapid in Vitro Test Capability

A variety of short-term tests and combinations of tests have been proposed to predict the potential carcinogenicity of chemicals. However, current data are not sufficient, particularly across chemical classes, to correlate short-term test results with known carcinogenicity so that the limits of predictability can be accurately judged. A primary emphasis of the cellular and genetic toxicology program is to develop, evaluate, and validate test systems which contribute to the development of a data base that will permit clear decisions about the relative value of a proposed test. The majority of the contract efforts of NTP cellular and genetic toxicology programs are related to the above goal. However, to serve the NTP's immediate decision-making needs short-term test information is needed to set the priorities for chemicals to be entered into long-term carcinogenicity bioassays and for use by NTP experimental design groups. NTP plans to organize and develop a rapid test capability comprising the following five types of *in vitro* short-term tests:

1. gene mutations in bacteria.
2. gene mutations in mammalian cells.
3. chromosome damage in mammalian cells.
4. a mammalian cell transformation assay.
5. a measure of DNA damage or repair.

This group of tests chosen because: (a) the basic categories of genotoxic effects are addressed; (b) the tests are generally available; and (c) protocols are generally available which have received some form of evaluation or validation. However, since at present there is inadequate evidence to select or justify any specific assay or group of assays as a prescreen for carcinogens or mutagens, the use of this group should not be interpreted as endorsement by the NTP of a specific battery of biologically-based tests. It is intended only that the results from this group of assays provide a reasonable profile of the *in vitro* genotoxic activity of a chemical. About 25 chemicals per year will require such a rapid test response. This effort will be reevaluated for its effectiveness and need over a three-year period. (Contact Person: Dr. R. Tennant, NIEHS)

Research on the Role of DNA Repair During Meiosis and Mitotic Growth in Yeast and Drosophila—FY 1981–1982

Meiosis is a fundamental developmental stage which occurs in nearly all eukaryotic organisms. Although there is considerable information on the genetic and morphological changes that take place, relatively little is known about DNA metabolic events, DNA repair, or mechanisms of mutation. Since DNA metabolism and recombination in meiotic cells are different from those processes in mitotic cells, the repair capabilities might be expected to differ from those in mitotically growing cells. For example, there may be repair mechanisms that are unique to meiosis or there may be unique levels of repair capabilities. There have been no integrated attempts to examine repair mechanisms in a well-characterized meiotic system at both the molecular and genetic level. Systems other than yeast have allowed the examination of molecular or genetic events in meiotic cells, but not both, NTP is developing or, in some cases, has at hand the capability to relate the genetic and the molecular aspects of DNA repair in meiosis. These studies with yeast will aid in understanding the relevance of various repair mechanisms in dealing with exogenous insults during meiosis as well as the process of meiosis itself. (Contact Person: Dr. M. Resnick, NIEHS)

Repair Functions During Meiosis—Mitotically identified DNA repair systems during normal meiosis in the yeast *Saccharomyces cerevisiae* are being examined. Mutants in repair and mutational pathways are being used. The initiation of meiotic DNA synthesis is normal in the mutants and excision repair mutants are like wild type cells for the other aspects of meiosis. In *rad6* (mutational repair) and *rad52* (X-ray repair) mutants, recombination is abolished and for *rad52* the spore products are inviable. The *rad52* mutant accumulates DNA single-strand interruptions (SSIs) during meiotic DNA synthesis in both the parental and newly synthesized strands. The timing corresponds to the beginning of lethality: lethality and SSIs are prevented by inhibitors of DNA synthesis. The frequency of SSIs approximates the number of genetic recombinational events. We have concluded that the *rad52* gene product, previously identified as being involved in the repair of radiation-incduced DNA double-strand breaks, is involved with recombination and the SSIs may be intermediates in this process. Thus, it appears that the *rad52* gene product is essential in normal meiosis and in protection from ionizing radiation damage; the mechanism of action involves recombination. This work is being expanded to examine the nature of the intermediates that are associated with loss or recombination and/or lethality. In addition an extensive study is underway to determine the proteins associated with various repair defects. Preliminary results to date have indicated protein changes in *rad52* as compared to wild type cells. We also plan to examine the appearance of unique proteins following mutagen treatment and by genetic analysis determine their role in repair and mutagenesis. (Contact person: Dr. M. Resnick, NIEHS)

Excision Repair and Postreplication Repair—Sucrose gradient techniques have been developed for the examination of repair events in mitotically growing cells and meiotically developing cells after low doses of ultraviolet light, ionizing radiation and various mutagens. Using these techniques we are determining the role of mitotically identified repair functions on damage occurring during meiosis. Wild type cells were shown to efficiently excise UV-induced pyrimidine dimers during mitotic growth or meiotic development. Excision was blocked in an excision-defective *rad1* strain throughout meiosis suggesting that there are no additional excision repair systems during meiosis. As found for mitotic growth, DNA synthesis proceeds past UV-induced pyrimidine dimers during meiosis indicating a general ability to bypass lesions in the DNA. The bypass mechanism does not appear to involve recombination. In fact, the presence of damage appears to inhibit the meiotic round of genetic recombination whereas it stimulates recombination in mitotically growing cells. (Contact Person: Dr. M. Resnick, NIEHS)

Studies in Drosophila—Three approaches are being used to characterize the relationship between DNA repair and mutagenesis in *Drosophila melanogaster*. In the first a number of *X*-linked mutagen-sensitive mutants were isolated and characterized. A number of these mutants were defective in some form of DNA repair. We have shown recently that two mutants at the *mus 101* locus decreased the spontaneous mutation frequency, although mutants at nine other loci had no effect on the spontaneous frequency of mutation. We are presently constructing a fine

structure map of the *mei 41* locus in order to ascertain the size and complexity of this locus.

In the second approach, a number of mutants known to be defective in DNA repair have been combined with transposable elements to ask whether any of the cell's DNA repair capacity was used during transposition. In the presence of the DNA repair-defective mutants the frequencies of mutation and recombination induced by the transposable elements were not affected. However, the transmission of the chromosomes bearing the transposable elements was greatly reduced.

In the third approach, a mutant is being characterized which appears to be defective in repair of double strand breaks. In the presence of the mutant, X-ray induced mutations at the *y* locus were increased more than 10 fold. The vast majority of the mutations appeared to be terminal deficiencies. If this is the case the wild-type function of this locus may be required during the formation of chromosomal rearrangements. (Contact Person: Dr. J. Mason, NIEHS)

Collaborative Activities

Proposed International Study on Short-Term In Vitro Tests for Detecting Chemical Carcinogens—The NTP is represented on the International Program on Chemical Safety (WHO) *Ad Hoc* Working Group on the Application of Short-Term Tests To Predict Mutagenic and Carcinogenic Potential, and will participate in a proposed international study on short-term *in vitro* tests.

The objective of the proposed study is to identify and select one or more *in vitro* tests in eukaryotes which, in a battery testing approach, will complement bacterial gene mutation assays by reliably detecting chemical carcinogens which are not readily detected with bacterial systems. This is to be accomplished through the testing of eight elected carcinogens and three chemicals for which there is good evidence of noncarcinogenicity. It is recognized that such complementary assays cannot be selected strictly on the basis of the proposed study. Therefore utilization of other major sources of data such as the International Program for the Evaluation of Short-Term Tests for Carcinogens (IPESTTC) and the EPA Gene-Tox Program is anticipated. Since much of the groundwork for the proposed study has been covered in the IPESTTC, and to keep the study to a manageable size, the specific assays will be selected from those (1) which were conducted in the IPESTTC, and (2) with additional endpoints which have a demonstrated or anticipated likelihood of detecting the carcinogens under test. (Contact Person: Dr. M. Shelby, NIEHS)

Carcinogenesis Testing

The two-year carcinogenesis bioassay, the standard and most definitive method for detecting chemical carcinogens in animals, typically uses two sexes and two species, usually Fischer 344 rats and $B6C3F_1$ mice, and administration of multiple dose levels of a chemical, beginning at weaning and ending after two years. Under the conditions of these tests positive results demonstrate that the test chemical is carcinogenic for experimental animals and indicates that exposure to the chemical poses a potential hazard to humans. However, negative results, those in which the test animals do not have a greater incidence of cancer than control animals, do not mean necessarily that a test chemical is not a carcinogen inasmuch as the experiments are conducted under a limited set of conditions.

The results of the bioassay also serve as the reference base for the validation of short-term carcinogenesis assays. Two additional objectives have been identified as priority items: (1) to expand the bioassay experimental protocols to extend and better characterize the toxicologic profile of chemicals, and (2) to investigate, develop, and validate accurate, less costly, and more rapid methods for detecting carcinogenic potential.

Several genetic toxicology and cellular transformation *in vitro* assays being used and/or developed and validated are described under the Cellular and Genetic Toxicology section (pp. 35 to 73). Two short-term *in vivo carcinogenesis assays, one in a validation phase, and one to begin development in FY 1982, are described in this section.*

Under the NTP, the cancer bioassay process has been changed to meet the objective of a broadened toxicologic characterization of chemicals. Prior to NTP involvement, the pre-chronic phases of the bioassay, which include single dose (acute), 14-day repeated dose, and 90- and 120-day repeated dose studies, were conducted to determine gross toxicity and general target organ effects at different dose levels as a basis for setting appropriate doses for the two-year bioassay studies. Now, the NTP has begun to gather routinely other information related to target organ effect. Chemical disposition, fertility and reproduction, urinalysis and hematology also are obtained from the pre-chronic studies—especially the 90-day study; certain special studies as applicable are included in the two-year study as well. Once those parameters that may be altered through exposure to the tested chemicals are identified, then suspect chemicals are referred to specific organ system groups for more detailed study of the functional, biochemical, and structural effects of the test compounds. Also, wider analysis of the quantitative and comparative absorption, distribution, metabolism, and excretion patterns may be desired. About 70 percent of the 40 chemical starts in FY 1980 included special toxicology studies in the pre-chronic testing phase. All chemicals started on test in FY 1981 had an expanded design including special studies. The goal is to ensure that all major toxic effects will be identified for each chemical being considered for long-term bioassays.

Thus, while the lifetime animal bioassay remains the best procedure to determine the carcinogenic potential of chemicals, NTP does not ordinarily use a standardized design for the bioassay. Rather the design is adapted to the special testing needs identified for the particular chemical. The NTP tailors its testing protocols to the particular chemicals, based on the results from the pre-chronic testing phases and on structure-activity relationships. These new protocols permit better, more specific information to be generated for the tested compounds, which increases the effectiveness of the tests for potential human risk estimations. Such protocols also will be useful as guidelines for testing undertaken by other agencies and by industry.

FY 1981 Accomplishments

Testing—Two-Year Bioassays

During the year, 23 bioassays were completed and the report of the findings approved by the *ad hoc* scientific peer review panel associated with the NTP Board of Scientific Counselors (Table 9). Under the conditions of these carcinogenesis bioassays, 12 (52%) were considered negative, 10 (44%) positive, and 1 (4%) equivocal. One, polybrominated biphenyl mixture (PBB), was conducted using a broadened experimental protocol aimed at providing a better dose-response determination (through use of six doses) and at giving more data on toxicologic endpoints other than induction of cancer. Non-tumor toxicities of PBB included porphyrogenic effects, decreases in serum thyroid hormones, hematotoxicity, enzyme alterations, and hepatotoxicity. Table 9 also includes similar information on the nine bioassays completed and peer reviewed

by the review panel at their first meeting in June 1980.

There were 54 new chemical starts in the prechronic phases of the bioassay process in FY 1981 (Table 10). All include one or more special toxicology studies in the prechronic testing phase. Forty-eight bioassays are in the histopathology phase; on these the chronic testing was completed during FY 1981 (Table 11). Including the new chemical starts, there were 206 bioassays in either the prechronic or the chronic bioassay testing phases at the end of FY 1981 (Table 12).

As in FY 1980, all new bioassays are under NTP management while testing activities initiated prior to FY 1980 continue to proceed through the prime contract mechanism. Direct management and supervision of each chemical test was initiated to enable better monitoring and quality control of the testing program, especially with the inclusion of the various special studies. The process is described in the Chemical Management section (p. 147). In conjunction with the NTP initiation of direct arrangements with testing laboratories, a number of scientific support contracts awarded in FY 1980 continue in FY 1981 and FY 1982. These include pathology support, health and safety activities, chemical repositories, chemical analytical services, animal production and literature support.

To do the expanded toxicologic characterization studies, the NTP continues a contracting mechanism (a basic ordering agreement) under which laboratories and their personnel are qualified for standard bioassays and in each of the various special study areas. (Contact Person: Dr. J. Douglas, NIEHS)

Testing—Long-Term Studies With Emphasis on Occupational Carcinogenesis

The following NTP programs and projects emphasize the study of the etiology of cancer in the occupational environment and include: (1) the assessment of the carcinogenic potential of complex mixtures encountered by workers; (2) modification of carcinogenesis by known and potential promoters and cocarcinogens such as dusts, irritants, heat, and sunlight that may be part of the work environment; and (3) other factors which influence the carcinogenicity of workplace chemicals such as work practices, medications, and personal habits. This combination of applied and basic research is intended to identify needs for epidemiological studies and to elucidate the etiology of the carcinogenic process in various workplace environments.

A number of long-term carcinogenesis studies, not formally part of the bioassay program, were initiated or in progress during FY 1981. Studied were materials ranging from single chemicals to mixtures administered by various routes analogous to likely routes of human exposure in the workplace. Studies included: (1) synthetic machine oils, (2) pyrolysis effluents from different foundry mold binders, (3) various substitutes for silica sand in foundry molds, (4) interaction of either ethanol or disulfiram with 1, 2, dichloroethane, (5) fibrogenicity and pulmonary carcinogenesis, (6) individual chemicals—ethylene oxide, propylene oxide, N,N'-dimethylformamide, and (7) mixtures—diesel exhaust, coal dust, fibrous glass, short asbestos fibers, a new postal ink formulation, and two azo dyes (Acid Black 52 and Disperse Yellow 3). (Contact Person: Dr. B. Johnson, NIOSH)

Inhalation or Intratracheal Studies—A long-term inhalation study to determine the carcinogenic and general toxicologic effects of short fiber chrysotile asbestos in rats and monkeys was completed in FY 1981. Animals were exposed for 18 months. Rats were sacrificed at the completion of exposure while in monkeys lung biopsies were performed at 10 months post-exposure to determine the extent of fiber deposition and pulmonary fibrosis. Histologic evaluation in monkeys showed asbestos bodies near the main bronchi but not in alveolar regions. No significant pathological alterations, i.e., no fibrosis, inflammation or tumors, were found. (Contact Person: Dr. D. Groth, NIOSH)

A study continued in FY 1981 on the toxicity of mineral substitutes. This study examines the concept wherein substitution is made of less hazardous substances for those commonly or historically used for certain industrial operations, processes or work practices. Coal and copper slags have been investigated; these are being used increasingly as replacement materials for sand in abrasive blasting operations. A study in rats using the intratracheal injection route for copper slags and a form of silica, novaculite (used as an abrasive in metal polishing), has progressed through 12 months. A six-month interim sacrifice with gross pathology findings indicates lung deposition and retention of the injected particulates with minimal tissue response. A 12-month serial sacrifice has taken place and gross pathology examination is underway. (Contact Person: Dr. L. Stettler, NIOSH)

Inhalation bioassays for carcinogenicity, like those by other routes, usually involve a two-year duration of exposure. Because the specialized facilities required for inhalation studies are expensive and commit scarce technical manpower for extended time periods, studies with mice, rats and hamsters were undertaken that used a study design to determine effects of the ages of animals exposed and the duration of inhalation exposure. Rats, hamsters, and two strains of mice ($B6C3F_1$ and Swiss) were exposed to vinyl chloride for six-12-or 18 months; or for six and 12 month exposures following a six- or 12-month holding period; or, in rats and hamsters, exposures extended to 24 months. The highest tumor incidence occurred when exposure began early in life; that is, tumor incidences were lower in animals held for six or 12 months prior to exposure. Second, 12-month exposures were as effective as 18- or 24-month exposures in production of tumors. Thus, for vinyl chloride, valuable inhalation chamber space may need be utilized for only 12 months. Third, an unexpected finding was the appearance of nasolacrimal duct carcinomas in vinyl chloride exposed rats. This finding reinforces the importance of examining routinely the nasal turbinates in inhalation exposure studies. (Contact Person: Dr. G. Boorman, NIEHS)

Inhalation exposure studies with chrysotile "B" (short and intermediate fiber length chrysotile) and glass wool (JM 100) have been completed. Increased incidences of pulmonary tumors were found in all thrysotile groups but not in the synthetic fiber group. Pulmonary tumors are being classified and compared with tumors induced in a comparison study in Wales. All lung tissues have been stained for collagen and the degree of pulmonary fibrosis is being scored. (Contact Person: Dr. E. McConnell, NIEHS)

Topical or Skin Painting Studies—Results reported following sixteen months' topical application of asphalt and coal tar pitch fume condensates indicate that both materials are carcinogenic when exposure samples are collected at their recommended industrial application temperature or higher. Mouse strain differences were also observed in this study: the C_3H/HeJ strain was more sensitive than the CD–1 strain. Exposure to simulated sunlight did not enhance the tumorigenic response. (Contact Person: Dr. R. Niemeier, NIOSH)

In a skin painting bioassay of synthetic machine oils one oil caused premature deaths in both male and

female C_3HeJ mice. Follow-up studies indicated that these deaths could be attributed to the formation of high levels of methemoglobin resulting from dermal penetration of the oil. (Contact Person: Dr. R. Niemeier, NIOSH)

Other Studies—Carcinogenicity testing traditionally begins with young animals (typically six-week-old rodents). However, human chemical exposures may include the *in utero* developmental period and infancy. The adequacy of standard chronic bioassay tests as contrasted with methods that include prenatal and neonatal exposures continued to be evaluated. Three chemicals are being evaluated in prechronic phases of the bioassay: a polybrominated biphenyl (Firemaster FF1), phenytoin (diphenylhydantoin), and ethylene thiourea, using *in utero* and neonatal exposure. The prechronic studies have been completed and the results are being evaluated. (Contact Person: Dr. R. Chhabra, NIEHS).

In long-term bioassays, compound volatility or reactivity to the carrier vehicle, (usually feed or water) can result in errors in exposure dosage. The feasibility of microencapsulation of volatile or reactive substance (such as 1,8-cineole, cinnamaldehyde, and trimellitic anhydride) is being investigated. Repeated dose studies will be conducted comparing results when these compounds are encapsulated and when given without encapsulation. (Contact Person: Dr. H. Schumacher, NCTR).

Test Methods Development and Validation

Animal Bioassay Methodology—The bioassay design is being freshly examined to determine if certain modifications might maked the results more amenable to low-dose extrapolation, while preserving the detection potential of the current protocol. Possible statistical modifications of the basic experimental design are described in the Data Management and Analysis section (p. 156).

Efforts are being supported to construct a large-scale computerized data file based on relevant carcinogenesis information being abstracted from the NCI and NTP Cancer Bioassay Program and from related studies in the published literature. This data base will be used to address a number of issues that orient directly on the general question of species-to-species extrapolation in carcinogenesis. A related effort involves historical control information on the development of spontaneous or background tumors in F344 rats and $B6C3F_1$ mice. Understanding such effects can permit more efficient use of data resulting from the carcinogenesis bioassay. (Contact Person: Dr. J. Haseman, NIEHS)

The ideal animal model should give results that closely resemble the real or presumptive response in humans. To do this, more basic research must be done on the comparative biology, metabolism, and toxicology of specific classes of chemicals. To accomplish this, NTP is studying various dose levels and animal models in the search for the best carcinogenesis bioassay design.

A study was initiated in FY 1981 which is examining the use of controlled genetic variation among the test animals in prechronic and chronic bioassays for comparison with the standard $B6C3F_1$ hybrid mouse. This study will attempt to answer two important questions: (1) Does the use of three different F_1 hybrid genomes as subgroups in prechronic and chronic toxicity assays provide greater statistical power, without increasing the number of animals needed, than the use of only the standard $B6C3F_1$ hybrid? (2) Does the range of risk estimates at low doses obtained from four different genotypes of three different F_1 hybrid genomes provide a more comprehensive risk assessment by demonstrating the variability of risk estimates among the four genotypes than a risk estimate based on the standard $B6C3F_1$ hybrid?

A 90-day toxicity study with 2-acetylaminofluorene (2–AAF) has been performed to determine the dose levels to be used in the subsequent chronic toxicity study. The F_1 hybrid mice used were: C57BL/6N x C3H/Hen–MTV–, BALB/cNctr x VY/Nctr (two genotypes: Agouti *(A/a)*, yellow *(Avy/a)*), and AE/Nctr x YS/Nctr. Five dose levels of 2–AAF and one control group were used to determine the estimated maximum tolerated dose for each sex. Complete necropsy and histopathological analyses will identify critical target organs and tissues in each F_1 hybrid. Completion of this prechronic toxicity study awaits the results of the histopathological analyses. (Contact Person: Dr. G. Wolff, NCTR)

Short-Term Carcinogenesis Assays—Studies aimed at validating the applicability of the lung adenoma test in Strain A mice as a short-term *in vivo* carcinogenesis assay continued during FY 1981. Completed results were received from one contract laboratory (University of California at San Diego) and partial data have been received from a second laboratory (Oak Ridge National Laboratory); these are being evaluated to determine the correlatibility of the short-term lung adenoma test results to findings from the two-year bioassays. These studies involved testing of 60 coded chemicals divided between these two laboratories. The data are being evaluated (1) to determine interlaboratory reproducibility and (2) to validate the system by comparing results with those from the long-term bioassays. (Contact Person: Dr. R. Maronpot, NIEHS)

A comprehensive literature review was completed on the available *in vitro* short-term tests for detecting promoter/cocarcinogenic activity. Contract studies were designed using the most promising techniques to validate their responses with structurally related chemicals reported to give positive or negative results. (Contact Person: Dr. R. Niemeier, NIOSH)

FY 1982 Program Plans

Testing—Two-Year Bioassays

Testing priorities for selecting chemicals to be studied using the two-year bioassays will be determined in FY 1982 based on results of a general toxicology profile (primarily 90-day experiments including selected special studies) and a battery of genetic toxicology tests—a *Salmonella* plate assay, *in vitro* mammalian cytogenetics, an *in vitro* mammalian point mutation assay, and a DNA damage/repair assay.

During FY 1982, the NTP plans to start 19 chemicals in the prechronic phases of the bioassay process (Table 13). It is expected that 27 two-year bioassays will be completed and the resultant draft reports will be peer reviewed in FY 1982 (Table 14). All new bioassays will include broadened protocols with various special studies integrated into the experimental design. (Contact Person: Dr. J. Douglas, NIEHS)

Testing—Other Long-Term Studies

Three long-term carcinogenesis studies, not formally, included in the bioassay program, will be initiated in FY 1982 to examine: (1) the cause of increased risk of buccal and pharyngeal cancer experienced by newsprint pressroom workers, (2) the effects of fluoride on the fibrogenicity and carcinogenicity of chrysotile asbestos, and (3) the effect of aging on susceptibility to known carcinogens. Other long-term studies ongoing or initiated in FY 1981 will continue. (Contact Person: Dr. D. Groth, NIOSH)

The chronic testing phase of a study evaluating the toxicity and potential carcinogenicity of mineral substitutes given by intratracheal injection will be completed in FY 1982. This concludes an 18-month interim as well as a 24-month terminal sacrifice followed by complete

histological evaluation of all tissues. (Contact Person: Dr. L. Stettler, NIOSH)

Standard two-year bioassays with six-week-old animals will be initiated in FY 1982 concurrently with three bioassays where exposure begins *in utero* and continues during the neonatal period using a polybrominated biphenyl mixture (Firemaster FF1), phenytoin, and ethylene thiourea. The objective is to determine whether extending long-term chemical exposure of animals to the gestational and neonatal periods will result in altered sensitivity to the induction of carcinogenesis and/or other types of toxic effects. (Contact Person: Dr. R. Chhabra, NIEHS)

Test Methods Developments and Validation

Animal Bioassay Methodology—Two studies will be initiated in FY 1982, one focusing on the possible influence of the Sendai virus on chemically-induced carcinogenesis in mice, and other aimed at evaluating strains other than the $B6C3F_1$ mouse for carcinogenesis bioassays.

Because Sendai virus occurs with persistent frequency among mouse colonies, and because the NTP devotes considerable resources to the long-term carcinogenisis bioassay method for detecting animal carcinogens, the influence of endogenous Sendai virus on the chemically-induced oncogenesis process will be investigated using the Strain A mouse lung adenoma model and the $B6C3F_1$ mouse. Subsequent studies will involve determining whether Sendai virus alters the biochemical, cytologic, or immune competence of mice. (Contact Person: Dr. J. McCoy, NIEHS)

The carcinogenesis bioassay program uses the $B6C3F_1$ mouse (and the Fischer 344 rat) to study the carcinogenic potential of chemicals. Since the $B6C3F_1$ mouse exhibits a high "natural" tumor incidence rate in certain organs (liver in males), which often compromises interpretation, the NTP plans to investigate and compare other strains for possible use in the bioassay program. This project will document the natural tumor types and rates in $C3B6F_1$ hybrid mice and in parental C57BL/6 mice and will determine the sensitivity of these mice to known carcinogens. (Contact Person: Dr. J. McCoy, NIEHS)

A study begun in FY 1981 to evaluate the utilization of three different F_1 hybirds to obtain greater statistical power in carcinogenicity assays without increasing the number of animals per assay and to assess the variability of risk estimates will continue. Four dose levels of 2-AAF, chosen on the basis of the results of the 90-day toxicity study, and one control group are being used in the chronic toxicity study. Both sexes of each of the four genotypes will be treated. The study will be terminated when only 20% of the mice in the longest surviving genotype remain alive. (Contact Person: Dr. G. Wolff, NCTR)

Short-Term Carcinogenisis Assays—Evaluation of test data received using the Strain A mouse lung adenoma test will be completed during FY 1982. These results should help to determine the feasibility of using this short-term assay in carcinogenicity testing of chemicals. (Contact Person: Dr. R. Maronpot, NIEHS)

A program to assess the utility of rat liver tumor assays for carcinogenic effects via promotion/initiation will begin in FY 1982. The standard bioassay design concentrates on single chemicals. Available evidence suggests that many chemicals induce tumors by a corcarinogenic mechanism, one involving either initiation of the process by a chemical and later manifested through the action of a different chemical or promotion of the carcinogenesis process already. The NTP plans to develop these areas (cocarcinogenesis, initiation, promotion) for potential utilization in the program to better understand the tumorigenic process as well as to determine more broadly the carcinogenic potential of chemicals. (Contact Person: Dr. R. Maronpot, NIEHS)

Toxicologic Characterization

Most chemicals selected for testing by NTP are chosen because the potential exists for human exposure and too little is known about their toxicologic profile. In the toxicologic characterization program two principal areas of activity are defined: (1) general toxicology which identifies the toxicity of a chemical by species, sex, dose, and essential organ function; and (2) characterization of specific toxicologic effects—immunological, neurobehavioral, pulmonary, fertility and reproductive, and others.

The NTP toxicologic characterization program is composed primarily of acute, intermediate-term (14-day), and subchronic (90–180 day) experiments. All chemicals selected for testing in the two-year bioassay undergo mutagenicity testing to determine any gene mutations, chromosome damage, and the germ cell sensitivity as well as dose-response information. Also, all are studied to delineate their absorption, metabolism, distribution, and excretion patterns to improve the reliability and precision of dose setting for chronic studies.

FY 1981 Accomplishments

General Toxicology—In FY 1980 and 1981 protocols were expanded and enhanced to include measurement of organ weights, broadened pathology in acute and subchronic experiments, hematology, selected organ function assessment (including liver, kidney, immunologic, fertility, and neuro-behavioral effects), and chemical disposition. Efforts are being implemented to develop toxicity principles of chemical classes, especially psoralens, chlorinated dibenzofurans, benzidine derivatives, and phthalates. A new program in cutaneous toxicology was initiated (see pp. 111 to 112).

The completion and evaluation of the 90-day study results have been made a major decision point in the NTP; in the past, no comparable decision point existed for chemicals selected for carcinogenesis testing. At this point, results from the acute, 14-day and 90-day studies may indicate that the standard experimental bioassay design should be modified or that detailed special studies (e.g., reproductive toxicology), which would be done separately, are necessary to validate a presumptive toxic effect and to better characterize the toxic potential of the particular chemical. Some select areas that could be included in special studies are metabolism, clinical chemistry (hematology and urinalysis), pharmacokinetics, behavioral toxicology, organ function, immunology, and endocrinology (these special studies may be integrated into the prechronic or chronic testing phases, or both). The purpose of the special studies varies. These may, for example, focus on target organ toxicity, perhaps unrelated to carcinogenicity, or on problems of comparative toxicology, metabolism, pathology, and physiology which would strengthen an evaluation of the animal model selected for the carcinogenesis bioassay. (Contact Person: Dr. J. Moore, NIEHS)

Toxicity data on both aliphatic and aromatic amines is sparse. Studies were completed and a manuscript prepared on the comparative toxicity in rats of four isomeric aliphatic amines: n-butylamine, sec-butylamine, isobutylamine and tert-butylamine. Results from the acute oral LD_{50} study showed that the acute LD_{50} decreased (became more toxic) in the following order: n-butylamine>isobutylamine>sec-butylamine>tert-butylamine. Preliminarily, these data imply that the more complex (branched) structural configuration of these butylamines, the

more toxic the particular derivative. There were no sex differences in toxicity. (Contact Person: Dr. T. Lewis, NIOSH)

The acute toxic effects of 1,2-dibromo-3-chloropropane (DBCP) on the kidney, liver, testis, and epididymis were characterized and the mechanism of action of this toxicant was studied. In brief, DBCP appears to be activated metabolically to an electrophilic intermediate that reacts with, and eventually depletes, hepatic glutathione. A threshold for DBCP toxicity may exist, therefore, coincident with depletion of hepatic glutathione below a critical level. In addition, a temporary period of infertility has been produced almost immediately after DBCP exposure, as well as permanent infertility several weeks post-exposure, suggesting toxic effects on both epididymal sperm and testicular germ cells. (Contact Person: Dr. W. Kluwe, NIEHS)

Pathology Quality Assessment—During FY 1981 the quality assessment (QA) for the pathology portion of the chronic bioassay program was expanded and modified. Currently, following the initial complete pathology examination by the performing laboratory, all the pathology summary tables, the hematoxylin and eosin stained microscopic slides, original individual animal data records (IADRs), and preliminary individual animal pathology tables (IAPTs) are sent to an independent QA pathology laboratory for assessment and validation.

Individual animal data records are compared with IAPTs and all changes noted. All tissues are counted and any discrepancies are noted. In addition, the slides are evaluated for histotechnique quality. Using the pathology summary tables, target tissues are identified by a QA pathologist and verified by NTP pathologists. Then all tumor diagnoses and target tissues are reviewed by a rodent pathologist. A second slide set is made for the NTP Pathology Working Group (PWG) which includes all target tissues and any discrepancies in tumor diagnoses between the original and reviewing pathologists. For each study, a NTP pathologist serves as PWG chairperson, who reviews the QA report, PWG slide set, IADRs, and tumor summary tables. A PWG consisting of four to five pathologists reviews and reaches a consensus of all diagnostic discrepancies. A third slide set consisting only of diagnostic discrepancies between the original and PWG pathologists is returned to the original pathologist along with the PWG comments. These are reviewed and the IADRs updated as appropriate. Where significant differences of opinion remain between the PWG and original pathologist, both data sets are included in the final report. In rare cases where numerous significant differences exist that may impact on the interpretation of the study, the entire study may be reread by independent pathologists.

The QA and PWG procedures as they exist for the 2-year bioassays are currently being redrafted for use in the 90-day subchronic studies. This will assure more uniformity throughout the program both for tumor and non-tumor diagnoses. In addition, an effort is being made to better correlate the subchronic and chronic pathology findings in the final report. (Contact Person: Dr. E. McConnell, NIEHS

Renal Toxicology—In test methods develoment, particular emphasis was placed on evaluating the general applicabilities of several tests of renal function in repeated-dose rodent toxicology screens. Using a variety of nephrotoxicants (heavy metals, organic solvents, non-solvent organics), the most appropriate tests were found to be those that measured functional capacities, such as urinary concentrating ability or organic ion transport *in vitro*. Most of the useful tests required quantitative urine collection. Standard tests such as serum urea nitrogen or sodium concentrations were shown to be quite insensitive. Quantitative enzymuria was an effective diagnostic procedure only when significant epithelial cell necrosis occurred, leading to the conclusion that urinary enzyme measurements are no more sensitive than histopathology as indicators of kidney injury. Urinalyses, however, have the obvious advantage of non-invasive techniques. Many of the common analytical procedures (urinary protein and glucose concentrations, several urinary enzyme activities) were automated, obviating the use of subjective or semiquantitative analytical techniques.

The effect of mercury ($HgCl_2$) exposure on susceptibility of the kidney to other nephrotoxicants has been studied to assess the toxicologic potential of chemical mixtures of multiple chemical exposures. To date, potentiating or protective effects have not been observed.

The transient nature of enzymuria during continued treatment with nephrotoxicants has been monitored. Elevation of urinary enzyme activity occurs coincident with active tubular cell necrosis; enzymuria falls below control levels during active cellular regeneration, probably reflecting a decrease in the normal rate of cellular exfoliation into the tubular lumen. These results are consistent with the previously stated conclusion that quantitative enzymuria is an adequate, non-invasive measure of renal tubular cell injury. (Contact Person: Dr. W. Kluwe, NIEHS)

Biochemical Toxicology—One project is investigating the structure-activity requirements for induction on hepatic mixed-function oxidases (using polychlorinated biphenyls and other halogenated aromatic hydrocarbons) and identifying any biochemical changes resulting when rats are exposed to these chemicals. Another project explores the effects of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) on prostaglandin synthesis. (Contact Person: Dr. J. Goldstein, NIEHS)

Another project concerned with *in vivo* effects metals on lung lipid peroxidation will be completed in September 1981. The following are the accomplishments for this project during the previous three years: (1) the lipid peroxidation process in the lung was characterized so that it can be manipulated experimentally; (2) the relationship between lipid peroxidation and metabolism of foreign compounds was defined; (3) ascorbic acid protects against the harmful effects of lipid peroxidation; and (4) iron and combinations of iron with either cadmium or zinc stimulate the process of lipid peroxidation in the lung. (Contact Person: Dr. K. Weber, NIOSH)

Other studies in process are designed to elucidate the biochemical mechanisms underlying the teratogenic and reproductive effects of glycol ethers. (Contact Person: Dr. B. Hardin, NIOSH)

FY 1982 Program Plans

General Toxicology—Additions to the general toxicology screen will include efforts to develop and evaluate clinical chemistry procedures for organ function assessment. Also added will be measures of reproductive dysfunction at the end of the 90-day subchronic phase—testicular pathology, epididymal weights, sperm counts in males; and vaginal cytology in female animals. Additionally, plasma will be stored for future determinations of sex hormones. A mating protocol also has been defined as a special study. (Contact Person: Dr. J. Lamb, NIEHS)

A six-month, seven hours/day, five days/week inhalation study of isopropylamine, tertiary butylamine, and benzylamine will be performed. The acute toxicity of each amine by inhalation (LC_{50}) will be determined prior to the initiation of a subchronic inhalation toxcology study. (Contact Person: Dr. T. Lewis, NIOSH)

The pharmacokinetics (distribution, disposition, metabolism, and excretion) and toxic effects of DBCP at the subcellular level will continue to be studied and the mechanisms of action more clearly defined. Goals of the DBCP project are to assess the toxicological risk at various exposure levels and to predict whether chemicals with similar structures would have the same toxic effects. (Contact Person: Dr. W. Kluwe, NIEHS)

Renal Toxicology—In-depth studies will continue on the nephrotoxicology of halogenated aliphatic compounds with the purpose of defining a common cellular or subcellular mechanism of action. (Contact Person: Dr. W. Kluwe, NIEHS)

Chemical Disposition

Knowledge of chemical disposition—the rate and degree of absorption, tissue distribution, metabolism and excretion of chemicals by intact animals—is fundamental to determination of the mechanisms by which exposure to various chemicals induces toxicity. The major objectives of the chemical disposition program orient towards (a) gathering and interpreting chemical disposition data to better predict doses for compounds scheduled for long-term bioassays, (b) developing and expanding generic information on chemical structure-activity relationships, and (c) providing basic data to facilitate more accurate extrapolation from laboratory results to forecast human responses.

Studies of chemical disposition are usually two-phase studies. The initial or preliminary study of chemical disposition determines the rates and routes of excretion and a dose range in which chemical absorption, metabolism, and distribution is linear. The low dose used in the preliminary study stems from the limits of accurate detection or the anticipated human exposure, whichever is higher. The high dose is determined by the lower limits of acute toxicity ($0.1 \times LD_{50}$) or the highest dose which can be accurately administered, whichever is lower. If absorption, metabolism and clearance are apparently unaffected by dose, the disposition of the chemical is studied at a relatively non-toxic dose which usually does not exceed anticipated human exposure by greater than 10-fold. If either absorptioin, metabolism, or clearance is affected by dose, the initial studies are repeated with intermediate doses to determine the saturating dose for the biological mechanism involved.

The second phase of a chemical disposition study, a detailed investigation of tissue distribution and excretion, determines major target tissue concentrations, quantitates relative amounts of parent versus metabolites in tissues and excreta at various time points, and provides data which will permit the calculation of kinetic parameters such as tissue and whole body half-lives, relative tissue affinities, and tissue/blood ratios.

An additional specific objective provides support to the NTP benzidine congener dye initiative. The three NTP agencies are conducting pharmacokinetic and metabolism studies on selected dyes for this interagency activity.

FY 1981 Accomplishments

The chemical disposition program involves laboratories at each NTP agency. New and ongoing activities for the most part fall into one of three general categories: (1) chemicals and closely related chemicals chosen for toxicology and/or carcinogenesis bioassays which provide an opportunity for a study of structure-activity relationship; (2) chemicals which are benzidine congeners and derived dyes, part of the NTP initiative; and (3) chemicals to which industrial workers are exposed, including some benzidine congeners and derived dyes.

Chemicals Chosen for Long-Term Bioassays and Structurally Related Chemicals

These and some of the benzidine congener and derived dye studies were conducted principally by intramural programs and through four contracts. Two of these contracts were awarded in the fourth quarter of FY 1981, raising the program capacity from 10–15 studies per year to 20–25 studies per year. Major projects are described as follows:

1. 2,3,7,8-Tetrachlorodibenzofuran (TCDF), an extremely toxic halogenated hydrocarbon, is readily absorbed from the gastrointestinal tract of both rats and guinea pigs. Independent of the route of administration, TCDF concentrates initially in the liver of mice, rats, guinea pigs, and monkeys. That portion of the dose which is not rapaidly metabolized is redistributed to tissue where it is stored. Metabolites are excreted via the bile into the feces. In the rat, in contrast to the monkey, the biliary metabolites may be further metabolized in the intestine. Biliary metabolites from rats have been analyzed for hydrolytic sensitivities and studies are underway to isolate and characterize the major biliary metabolite. At least one metabolite from monkey feces has been isolated. No metabolism of TCDF can be detected in guinea pigs, which apparently store TCDF in the fat until intoxication occurs; then the fat is mobilized as an energy source causing redistribution of the TCDF back to the liver. Upon repeated exposure to low levels of TCDF, no TCDF intoxication occurs until a critical body burden is reached. When this occurs, guinea pigs suffer extensive weight loss and then death.

2. Chlorendic acid was readily absorbed from the gastrointestinal tract, rapidly distributed to all tissues, most concentrated in liver, and rapidly excreted, primarily in feces, with a half-life of less than one day. Structurally similar and equally chlorinated as the persistent insecticides aldrin and dieldrin, chlorendic acid is considerably more polar than these insecticides because of two carboxylic acid groups. These results indicate that lipid solubility and resistance to metabolism to polar compounds contributes to persistence and bioaccumulation more than does simple halogenation.

3. p-Nitroaniline was readily absorbed from the gastrointestinal tract distributed to all the tissues, and was rapidly excreted in urine as metabolites. The half-life for clearance from most tissues was less than 12 hours and little p-nitroaniline-derived radioactivity remained in the body after 24 hours. Trace levels of p-nitroaniline were most persistent in blood, possibly due to a reaction with hemoglobin. Metabolites of p-nitroaniline are being identified by co-chromatography with known standards.

4. 1,3-Diphenyl guanidine was readily absorbed from the gastrointestinal tract and distributed throughout the major tissues. Thus, considerable potential exists for tissue exposure, but this compound does not appear to bioaccumulate in any particular tissue. Whole body half-life for 1,3-diphenyl guanidine is approximately 12 to 16 hours in the rat. Excretion was divided equally between urine and feces.

5. Following oral or intravenous (iv) administration, acrylamide was rapidly distributed to all tissues. Clearance of acrylamide-derived radioactivity from most tissues follows a biphasic, first-order exponential decay with an initial half-life of approximately five hours and a much longer terminal half-life of approximately eight days. The terminal half-life of acrylamide in spinal cord was exceptionally long, approximately 24 days, and may be related to the neurotoxic effects of this compound. The major route for acrylamide excretion was urine and most of the material excretted was in the form of metabolites. The major metabolite detected in urine was an N-acetyl-cysteine conjugate.

6. Chlorpheniramine maleate was readily absorbed, rapidly metabolized, and excreted primarily as metabolites. Chlorpheniramine maleate was distributed to all tissues with peak concentrations in liver, with the largest percent of the total dose residing in muscle. Excretion occurred primarily in urine and was relatively rapid, greater than 80% of the dose excreted within two days. These results indicate that if the human is able to clear chlorpheniramine maleate as rapidly as the rat, therapeutic doses should cause little bioaccumulation.

7. p-Chloroaniline disposition in the rat showed no dose-related effects on metabolism and disposition for the dose range studies (0.3 to 30 mg/kg). At all doses p-chloroaniline was readily absorbed, rapidly metabolized, and excreted primarily in urine. p-Chloroaniline was most persistent in blood, due to binding to hemoglobin in red blood cells; at seven days post exposure most of the p-chloroaniline retained in the body was bound to red blood cells.

8. Comparative studies of *in vitro* versus *in vivo* metabolism of three polychlorinated biphenyls (PCBs) have been conducted in three species and in enzyme preparations from each species. Both *in vivo* and *in vitro* metabolism of PCBs are determined by the degree and position of chlorination. An effort is being made to more accurately predict *in vivo* metabolism from results obtained *in vitro* with hepatic microsomal preparations or isolated hepatocytes. The goal is to refine techniques which will permit an *in vitro* to *in vivio* extrapolation for laboratory animals and therefore facilitate the extrapolation of laboratory data to humans. (Contact Person: Dr. H. B. Matthews, NIEHS)

9. Comparative chemical disposition studies were conducted on hexamethyl-p-rosaniline chloride (gentian violet) and sulfamethazine. Separate *in vitro* liver microsomal incubations of gentian violet were done using tissues from mice, rats, and guinea pigs. Mono- and di-demethylation occurred. *In vivo* studies in mice and rats were also conducted, and tissue residue and metabolite analyses initiated. *In vivo* metabolism studies with the chicken are underway. Work has begun on the metabolism of sulfamethazine in swine and in rodents. (Contact Person: Dr. J. McDonald, NCTR)

Chemicals Chosen as Part of the NTP Benzidine Congener Initiative

Methodology—Analytical methodology was developed for metabolism studies with Direct Red 2 and Direct Blue 15. More work is required to develop methodology for 3,3'-dihydroxybenzidine, a chemically unstable compound and a possible metabolite of certain copper chelated azo dyes, such as Direct Blue 218.

Methodology for o-tolidine, o-dianisidine, and their mono- and diacetylated derivatives was completed for assay of rat, hamster or human urine by electron-capture gas chromatography (EC-GC) and by high pressure liquid chromatography (HPLC). (Contact Person: Mr. M. Bowman, NCTR)

Direct Blue 6, a bis-azo-biphenyl dye, has been synthesized with ^{14}C label in the benzidine nucleus. The radiochemical purity as determined by HPLC was greater than 95%. Direct Blue 6 will be used to study the fate of benzidine when administered in the form of a derived dye. (Contact Person: Dr. H. B. Matthews, NIEHS)

Chemical Disposition—Studies were done to determine the metabolism and to elucidate structure-activity relationships of selected azo dyes in the Fischer 344 rat. Nine dyes—four o-tolidine-based (Direct Red 39, Direct Blue 14, Direct Blue 53, Direct Orange 6), four o-dianisidine-based (Direct Blue 6, Direct Black 114, Direct Blue 10, Direct Violet 32), and one dichlorobenzidine-based dye (Direct Red 46)—were given by gavage to rats. Results indicate that (1) dyes are generally less than 50% pure as received, (2) characterization and purification of dyes are essential, and (3) Direct Red 39, Direct Blue 6, and Direct Blue 14 are metabolized in the rat. Data on the remaining dyes are expected at monthly intervals. (Contact Person: Mr. M. Bowman, NCTR)

Detailed metabolism, distribution and excretion studies with ^{14}C-benzidine and ^{14}C-3,3'-dimethoxybenzidine have been completed in the rat. A major portion (up to 75%) of the orally or intravenously administered radiolabel was excreted in the feces three days after dosing. Substantially higher concentrations of radiolabel locate in the liver than in other tissues at all times (0.5, 1, 2, 4, 8, 24 and 72 hr.) studied. Urinary and biliary metabolites of benzidine and 3,3'-dimethoxybenzidine have been identified by gas-chromatography mass spectrometry. The major radiolabeled components in urine and bile are polar materials, several of which are glucuronide conjugates. (Contact Person: Dr. H. B. Matthews, NIEHS)

Chemicals Chosen With Known or Potential Exposure of Industrial Workers

This research activity applies toxicokinetics, i.e., absorption, distribution, metabolism, and excretion of industrial chemicals to: (1) assess the potential hazards (e.g. target organ) from worker exposure; (2) select substitute chemicals with a greater margin of safety; and (3) develop methods for evaluating individual worker exposure. A major thrust of this research is the study of classes of chemicals through use of toxicokinetic principles and structure-activity relationships.

The absorption and tissue distribution study of azo dyes in the rat has concentrated on the development of methods for the separation of suspected dye metabolites, the purification of the dyes, the potential for *in vivo* cleavage of the dyes to potentially carcinogenic aromatic amines, and the application of methods developed for biological monitoring of urine samples collected from workers exposed to such dyes. Preliminary studies have been completed on two azo dyes: Direct Red 2 and Direct Blue 15. Methodology developed includes dye purification, stability and recovery studies, and methods to quantitate unchanged dyes in feces and dye metabolites in urine. (Contact Persons: Dr. L. Lowry, NIOSH or Mr. M. Bowman, NCTR)

A study currently in progress involves the determination of fetal and maternal distribution of diethylstilbestrol (DES), a human carcinogen known to distribute across the placenta, and Bisphenol A, an industrially important compound with structural similarity to DES and known estrogenic activity. (Contact Person: Dr. H. Plotnick, NIOSH)

FY 1982 Program Plans

Chemicals Chosen for Long-Term Bioassays and Structurally Related Chemicals

A continuing objective is to provide chemical disposition data for as many chemicals as possible to assist in the design of NTP bioassays for chronic toxicity testing of chemicals. In the course of the coming year, the work on *in vitro* versus *in vivo* metabolism and extrapolation will be continued. The metabolism of 1,2,3,-trichloropropane, p-nitrotolune, and o-nitroanisole will be studied in the rat, and a comparative study of the metabolism and disposition of triortho-, trimeta- and triparacresylphosphate will be done in the rat and at least one species sensitive to the neurotoxicity of triorthocresyl phosphate. The metabolism and disposition of at least three more aromatic amines (4-chloro-2-nitroaniline, 2,3-dinitroaniline, and 2-bromo-4,6-dinitroaniline) will be studied in the rat. In these studies special efforts will be placed on isolating and identifying

metabolites which are known carcinogens. Additional goals of these studies will be to observe the effects of halogenation, nitro groups, and polarity on metabolism, disposition, and bioaccumulation. Further work on aromatic amines will be planned according to the results of these studies. (Contact Person: Dr. H. B. Matthews, NIEHS)

The primary *in vivo* metabolic pathways for hexamethyl-p-rosaniline choloride (gentian violet) will be examined in chickens, rats, and mice. Biliary and urinary excretion of the unchanged dye, metabolites, and conjugated products will be measured. Possible involvement of intestinal microflora in the metabolism of gentian violet will be investigated. *In vitro* studies on the formation and reactivity of gentian violet and metabolites include measurement of covalent binding to DNA, interaction of the dye with glutathione, and anaerobic incubations to determine whether there is arylamine formation. (Contact Person: Dr. J. McDonald, NCTR)

Comparative *in vivo* metabolism studies on sulfamethazine will be done in several rodent species. The possible N-hydroxylation of sulfamethazine to a reactive intermediate will be investigated both *in vitro* and *in vivo*. (Contact Person: Dr. J. McDonald, NCTR)

Additional compounds or classes of compounds will be studied in support of the NTP as time, resources, and needs dictate.

Chemicals Chosen as Part of the NTP Benzidine Congener Initiative

Data from these ongoing studies will be used to calculate the kinetic parameters for the disposition of these compounds, and an effort will be made to extrapolate these animal data to humans, to better assess the hazard posed by human exposure to dyes synthesized from these carcinogenic precursors. Pharmacokinetic profiles will be completed in FY 1982 for the parent amines (benzidine, 3,3'-dimethlybenzidine, 3,3'-dimethoxybenzidine) and the selected derivatives, Direct Blue 6, Acid Red 114, Direct Blue 15, and Direct Red 2. (Contact Persons: Dr. H. B. Matthews, NIEHS, and Mr. M. Bowman, NCTR)

Urine samples from rats administered each of eight dyes are being stored and quantitative analysis of free amines, acetylated metabolites, and alkaline hydrolyzable conjugates will be completed. (Contact Person: Mr. M. Bowman, NCTR)

Chemicals Chosen With Known or Potential Exposure of Industrial Workers

Efforts in FY 1982 will continue to address the toxicokinetic analyses of classes of compounds. The biotransformation, excretion, and tissue distribution profiles of 2-ethoxyethanol and 2-methoxyethanol will be completed. (Contact Person: Dr. T. Lewis, NIOSH)

Cutaneous Toxicology

The skin, being the largest and most accessible organ of the body, is a common target of occupational injury and disease. Skin also provides a portal of entry into the body for toxic chemicals present in work and other environments. Three principal aspects of cutaneous hazards are being investigated. The first deals with the effects of repeated mechanical trauma to the skin. Chronic trauma is associated with the development of skin cancer, disfigurement, and breakdown in the barrier function of the skin. From a toxicologic sense, such trauma may influence the entry of toxic chemicals through the skin. The second concerns the development and evaluation of noninvasive objective parameters to assess *in vivo* phototoxic effects of chemicals. Most current methods rely upon subjective parameters to evaluate skin irritation; development of objective indices will provide more sensitive means to measure phototoxic effects of chemicals. Thirdly, this new program addresses the issue of percutaneous absorption of chemicals as it relates to total body burden and systemic intoxication. Emphasis is placed on methodologies to study the kinetics of penetration and uptake of gases and vapors present in the workplace environment.

FY 1981 Accomplishments

The cutaneous hazards and disease research initiative was planned and implementation begun during FY 1981. Protocols for each of the interest areas were developed and approved. Since little is known regarding the health hazards resulting from repeated mechanical insults to the skin, a contract was awarded which will provide for identification of relevant information and data, a comprehensive critical review and definition of the problem, and the establishment of a small international workshop to discuss the overall topic. The workshop is scheduled for Spring 1983.

Studies employing the indices of skin temperature, skin pH, and ear thickness were initiated to quantitate skin irritation following exposure to phototoxic chemicals. A body-only exposure chamber was designed and constructed for small laboratory animals for the purpose of testing the percutaneous absorption of gases and vapors. Results will be available in FY 1982. (Contact Person: Dr. A. Susten, NIOSH)

FY 1982 Program Plans

The validation of the current protocols and development of new methods will continue. Quantifiable indices of dermal responses to select chemical and physical agents will include skin reflectance and light transparency of the ear. Dermal penetration of benzene and carbon disulfide vapors will be evaluated in the body-only exposure system, a system that permits no exposure by inhalation. (Contact Person: Dr. A. Susten, NIOSH)

The NTP is studying the toxicologic properties of the psoralens with and without ultraviolet light. The FDA has recommended the study of psoralens because psoralen plus ultraviolet light (320–360 nm), commonly referred to as PUVA therapy, is a widely used treatment for psoriasis in clinical studies conducted under a FDA IND, and systematic animal toxicology has not been performed. It is estimated that 1–3% of the world's population suffers from psoriasis, and in 1978 an estimated 35,000 Americans received this treatment in the U.S.

The NTP program is investigating a variety of psoralens with different chemical formulas including the most widely used psoralen, 8-methoxy-psoralen. These studies include mutagenicity, pharmacokinetics and metabolism, long-term bioassays, and effects of treatment on skin enzyme levels. As part of the psoralen program, the NTP will sponsor a conference on the "Toxicology of Psoralens" on March 1–3, 1982 at NIEHS, Research Triangle Park, NC. (Contact Person: Dr. J. Dunnick)

Immunological Toxicology

The immune system imparts host defenses, maintenance of homeostasis and surveillance. Interactions of environmental chemicals or drugs with the immune system may result in undesirable effects of three types: (1) those determined by immune deficiency or suppression; (2) those determined by alterations of host defense mechanisms; and (3) those determined by allergy or hypersentivity. There is increasing evidence that chronic, subclinical exposure to certain chemicals may depress immune responsiveness and

increase susceptibility to infectious agents.

The primary objectives of the immunological toxicology program are to select, refine, and validate a panel of immunology and host resistance procedures, to define immunotoxicity of chemicals, and to correlate changes in immune function with changes in host resistance. The comprehensive assay panel which has been developed evaluates; (1) host resistance to bacterial and tumor cell challenge; (2) cell-mediated immune function as measure by lymphoproliferative responses to mitogens; (3) development of delayed hypersensitivity to a T-cell dependent antigen; (4) assessment of antibody plaque forming cell responses; (5) quantitation of immunoglobulin levels; and (6) bone marrow progenitor cell function.

FY 1981 Accomplishments

During FY 1981 several chemicals were examined for immunotoxicity in NTP intramural laboratories using our comprehensive panel of immunology and host resistance assays. B6$3F_1$ mice were exposed *in utero*, postnatally, or as adults to three dose levels of chemical over a 14-day or longer period. Routine hematology, serum chemistry, and pathology/histology were within normal limits unless indicated and no signs of overt toxicity were observed. Data from these in-house studies are summarized in Table 15. The polycyclic aromatic animal carcinogen benzo(a)pyrene was studied along with its noncarcinogenic congener benzo(e)pyrene to examine structure/activity relationship by adult and *in utero* exposure. The carcinogenic form B(a)P, but not the noncarcinogenic form B(e)P, produced marked (up to 83%) suppression of antibody production to both T-dependent and independent antigens, with some suppression of lymphoproliferative responses to T-cell and B-cell mitogens, but not alloantigens in the mixed lymphocyte culture (MLC). Delayed hypersensitive response (DHR), macrophage (M0) function, and host resistance to tumor, bacteria, or parasite challenge were unaltered following B(a)P exposure. This confirms the T-cell dependence of our challenge models and suggests that B-cell defects are induced by both adult or *in utero* B(a)P exposure. Transplacental exposure to B(a)P produced a more pronounced B-cell suppression that was still manifest as late as 12 weeks following exposure.

Phorbol myristate acetate (PMA), an animal tumor promoter, was studied by adult or postnatal exposure as a class representative and was found to markedly suppress thymus weight and most T-cell functions including natural killer cell activity, the latter believed responsible for immune surveillance against tumors. Host resistance to challange with transplantable tumors and the parasite *Trichinella spiralis* was also depressed. Early postnatal exposure produced similar T-cell depression.

The congeners ethyl carbamate (urethan), a known animal carcinogen, and methyl carbamate (noncarcinogenic) were studied by adult exposure for structure/activity relationships. Similar to effects seen with the polycyclic aromatic hydrocarbon compounds benzo(a,e)pyrene, only the carcinogen ethyl carbamate produced immune alterations of the B-cell type. Profound suppression of bone marrow progenitor cells was produced by ethyl, but not methyl carbamate. The class representative antihistamine, promethazine, was studied for immunotoxicity following its nomination to NTP by the Food and Drug Administration. Immune dysfuction was not observed at any of the three promethazine dosage levels examined. (Contact Person: Dr. J. Dean, NIEHS)

A few procedures in the comprehensive assay panel have been selected for interlaboratory validation with suspect immunotoxic chemicals in contract laboratories during FY 1981–82. This abbreviated assay panel (screening tier) was implemented in the prechronic testing phase of NTP's chemical bioassay program to evaluate the immunotoxicity of certain suspect chemicals and drugs. These procedures will only be performed in those bioassay contract laboratories which have demonstrated competence by the performance criteria specified in the immune assessment protocol and which have approval of the immunological toxicology program.

During FY 1981 two research and development contracts were awarded to assist with host resistance model development, interlaboratory assay validation, and chemical immunotoxicity evaluation. Contracts were initiated in February 1981 at the Medical College of Virginia (MCV) and the Illinois Institute of Technology Research Institute (IITRI).

A collaborative agreement on immunotoxicology methods development and validation has been initiated between the immunotoxicology program and cell biology programs in NTP cooperative agencies. During the past year one laboratory (NCTR) has been involved actively in the application of flowcytometry to macrophage phagocytosis and killing, immune profiling, and characterization of tumor cell models. Another laboratory (FDA) has been involved particularly in the quantitation of lymphokines, such as Interferon, and the measurement of lymphoproliferative responses following *in vivo* challenge with bacteria antigens for assessment of immunotoxicity. Studies at a third laboratory (NIEHS) ahve focused on the development of challenge models using bacteria,, parasites, and transplantable tumor cells, and their correlation with changes in immune function assays. (Contact Person: Dr. J. Dean, NIEHS)

FY 1982 Program Plans

During the coming year, emphasis in the NTP immunotoxicology program will continue on methods development and validation, correlations between changes in immune function parameters and altered host resistance, development of virus challenge models, and examining the mechanisms of immunotoxicity and projects described. NTP contract laboratories will continue the interlaboratory immunology methods validation effort started in 1981. (Contact Person: Dr. J. Dean, NIEHS)

Neurobehavioral Toxicology

The central nervous system has evolved as a highly specialized organ designed to accept signals from the internal and external environment and to initiate metabolic and behavioral responses of the total organism appropriate to its survival. The complex structure and function of the brain, and the need to be simultaneously protected from and responsive to the environment make this organ uniquely susceptible to environmental insults. Behavioral and neurologic alterations in response to environmental pollutants often represent the earliest manifestations of toxicity in animals. Thus, neurobehavioral test systems must be developed further and chemicals must be tested for neurobehavioral effects.

The NTP neurobehavioral program involves the formation of a strategy for the development, standardization, and validation of neurobehavioral screening tests. Such a test battery would provide a general indication of the presence of neurotoxicity and would possibly indicate the type or nature of neurotoxicity in terms of neurobehavioral function that may be affected. Known representative neurotoxicants are studied using the test battery to determine the level of sensitivity and selectivity of each component test. This battery with continuing refinements is used as part of

the general toxicology screen and in the prechronic phase of the two-year toxicology and caracinogenesis bioassay.

An additional objective is the development of a test capability for more extensive in-depth toxicological characterization of selected chemicals either identified in preliminary neurobehavioral screening or which are of public health concern.

FY 1981 Accomplishment

Human Studies—During FY 1981, one NTP laboratory conducted a variety of research projects using neurobehavioral research methods. Worksite studies of humans exposed to spray paints were completed in two companies (office furniture manufacturing and auto body painting) using a variety of cognitive tests. In the laboratory, human subjects were tested for changes in performance of complex mental tasks and monitoring/alertness functions during exposure to methyl ethyl ketone, toluene, and methyl ethyl ketone combined with toluene. Measures were developed and applied in human testing to demonstrate the usefulness of reflex response lacking in toxic assessment. (Contact Person: Dr. K. Anger, NIOSH)

Animal Studies—Neurophysiological test methods including nerve conduction velocity and evoked potential were used in studies of animals exposed to methyl bromide, ethylene oxide, and propylene oxide. Behavioral tests of performance, neuromuscular control, and sensory integrity were also carried out in animals exposed to lithium carbonate, lithium stearate, lithium chloride, and ethoxyethanol combined with ethanol. Behavioral, neurophysiological, and nueropathological changes were evoked in rabbits exposed for one month to 75 ppm methyl bromide, but not in rats; rats exposed for eight months to 50 ppm methyl bromide showed no effects. There were no effects in rabbits exposed for 25 ppm methyl bromide for one month. Neurochemical and behavioral changes in offspring of pregnant rats exposed to combinations of ethoxyethanol and ethanol suggested complex interactive effects, raising the general problem that pregnant women who are exposed to industrial chemicals may be placing themselves at added risk if they also consume alcohol, a known teratogen. Measures were developed and applied in animal testing to demonstrate the usefulness of reflex response lacking in toxic assessments.

Manuscripts published in the scientific literature during FY 1981 reporting research from previous projects dealt with: behavioral effects of acute human exposures to methyl chloride separately and in combination with diazepam, caffeine, and alcohol; acute animal exposures to carbaryl; and chronic animal exposures to cyanogen and methyl bromide. (Contact Person: Dr. K. Anger, NIOSH)

Neurobehavioral Test Battery—The other NTP laboratory completed research on the standardization and validation of behavioral tests to be used to assess toxicity (Table 16). The results of this research, which will be published in a monograph, indicate that the battery of tests is capable of quantifying neurological deficits following exposure of neurotoxicants. The neurotoxic profiles generated by the battery of tests are in accord with the relative neurotoxicity known to exist in the rat: tetraethyl tin>kepone>acrylamide>triethyl lead>methyl mercury>lead acetate>arsenic trioxide>monosodium glutamate. Although the primary test battery appears sensitive to motor deficits produced by toxicants, there are deficiencies in terms of detecting sensory deficits in rodents. Methods development in the area of sensory evaluation is clearly needed.

Experiments on the neurogenic effects of 2,4-dichlorophenoxyacetic acid (2,4-D) were completed in FY 1981. Rats exposed to various doses of 2,4-D over a 5-week period were found to have alterations in neurological function as measured in a battery of screening tests. Additional testing after cessation of dosing with 2,4-D indicated that the efffects were reversible. (Contact Person: Dr. H. Tilson, NIEHS)

Neurobehavioral Effects—Mature Animals—Considerable research was initiated in response to the State of Virginia's concerns about the neurotoxicity of Kepone. Work done in FY 1980 concerned the effects of Kepone in adult rats and was continued in FY 1981. Dose response-time duration curves have been demonstrated for startle and tremor produced by acute or repeated administration of Kepone. Hyperirritability and tremor are two prevalent neurotoxic signs of Kepone exposure in humans, and it was thought to be important to quantify these effects in an animal model. Data obtained from these studies have led to current investigations on the possible mechanism by which Kepone affects nervous system function. Information obtained from these studies may be useful in developing strategies to treat the signs of neurotoxicity produced by Kepone and structurally related environmentally prevalent agents (i.e., Mirex, DDT). (Contact Person: Dr. H. Tilson, NIEHS)

Neurobehavioral Effect—Developmental Period—Research in FY 1981 also emphasized the effects of Kepone when given during the developmental period. Rats exposed to Kepone during gestation and lactation were evaluated for behavioral deficits at various ages. Few neurological effects were observed at 30 and 100 days of age, but alterations in responsiveness to a pharmacological challenge (apomorphine) were observed in Kepone-exposed males, suggesting a possible alteration of catecholaminerigic function. Subsequent research has revealed subtle alterations in the ability of Kepone-exposed animals to adapt to certain kinds of stressful situations. These experiments demonstrate that exposure to environmentally relevant levels of Kepone (1–6 ppm) via the diet can have long lasting functional effects that may be important to the long-term adaptability or survival of a mammalian species.

Recent experiments have also focused on the consequences of exposing animals to a single dose of Kepone on day four postnatally. This period of development is highly significant in the rat, which has a great deal of neuronal development postnatally; comparable periods of neuronal development occur in the human just prior to birth. By using the postnatal animal model, it was hoped to determine more precisely the potential long-term neural consequences of exposure to Kepone. These studies have demonstrated that postnatal exposure to Kepone can alter the performance of preweaning rats in certain types of learning tasks. Adult rats exposed neonatally to Kepone were also found to perform differentially in behavioral tasks possibly involving cognitive or associate abilities. (Contact Person: Dr. H. Tilson, NIEHS)

The status and program plans for an interlaboratory collaborative study to identify and develop screening methods for measuring effects of prenatal exposure to chemicals on behavior during animal development is described in the section on Reproductive and Developmental Toxicology (pp. 127 and 129).

FY 1982 Program Plans

Research planned or proposed in FY 1982 by one NTP laboratory includes laboratory neurobehavioral evaluations of glycol ethers, substituted straight chain hexacarbons, and lithium compounds in animal subjects, and ketones in human subjects. Worksite investigations of fumigators will also be conducted. In the area of new methods development, cooperative work with EPA and NCTR will be carried out in designing screening and more focal test

procedures for human neurotoxic assessments, and in validating behavioral teratology test methods used with rats. (Contact Person: Dr. K. Anger, NIOSH)

Research at the other NTP laboratory will continue to emphasize Kepone. Additional studies concerning the type of neurological deficit produced by developmental exposure will be performed. In addition, more studies on the possible involvement of monoaminergic systems in the manifestation of Kepone-induced tremor and hyperirritability will be conducted.

Work has been initiated to develop automated procedures to assess toxicity in animals using naturally occurring domiciliary behaviors, such as spontaneous motor activity and ingestive related behaviors. One of the first signs of toxicity is loss of body weight and alterations in locomotor movements, and it is predicted that alterations in the diurnal cycle or pattern of home cage behaviors may precede overt signs of toxicity. Over the next three years, plans are to develop a monitoring system and evaluate six chemicals (acrylamide, arsenic, Kepone, methyl mercury, tetraethyl tin, and triethyl lead) in a chronic repeated dosing paradigm. (Contact Person: Dr. H. Tilson, NIEHS)

Pulmonary Toxicology

Although many substances are assessed toxicologically by the inhalation route of exposure, pulmonary function testing is often neglected. The lung is frequently a prime target organ in addition to being a means of entry for systemic intoxication. Techniques now exist which measure indices of pulmonary function in animal species—tests of mechanical properties, gaseous distribution, static and dynamic lung volumes, distribution of inspired air, and more recently, ventilatory performance. A key issue in the decision to perform pulmonary function testing for detection of toxicity to the lung from inhaled substances is whether such tests provide toxicologic information beyond the pathologic evaluation of lung injury. Pulmonary function tests must be reproducible, sensitive, specific, and capable of large-scale utilization if they are to be used effectively in the diagnosis of early and subtle pulmonary lesions in experimental animal models for chemically-induced pulmonary disease in humans.

FY 1981 Accomplishments

Effects of Chemicals on Pulmonary Function—In FY 1981 pathologic findings observed in rats following exposure to ozone, acrolein, or chlorine were compared with the results of a series of pulmonary function tests. Fischer 344 male rats were exposed six hours/day, five days/week to filtered air and at 0.2, 0.8, or 2.0 ppm ozone for 62 days. Pathologically, inhalation of 2.0 ppm resulted in multifocal alveolar edema which alternated with areas of normal alveoli. Terminal bronchiolar epithelial necrosis with sloughing was apparent and sloughed cells and macrophages were observed around terminal airways and alveoli. Exposure at 0.2 or 0.8 ppm ozone did not result in the typical lesion oberved in the 2.0 ppm ozone exposed rats.

Changes in pulmonary function were detectable at all exposure concentrations. Dynamic measurements included in the respiratory physiology testing regimen appeared to be more sensitive indicators of ozone-induced damage than static indices. The pulmonary change(s) in the 2.0 ppm group appeared to be diagnostic of obstructive airway disease, suggesting bronchitis/bronchiolitis. A dose-related increase in pulmonary resistance indicated a change in the caliber of the large airways or an accumulation of fluid along the air-ways. The maximum expiratory flow-volume (MEFV) maneuver demonstrated air flow obstruction at low lung volumes in all ozone exposure groups. Multibreath nitrogen washout suggested abnormalities in lung ventilation/distribution at all exposure levels. The rats receiving 2.0 ppm ozone also demonstrated greater amounts of trapped air than the controls. In summary, the pulmonary function tests were more sensitive in detection small airway damage than pathologic examination at the light microscopy level. Also, increased pulmonary resistance indicated large airway alterations not observed during pathologic examinations.

Data from studies in which rats were exposed intermittently at 0, 0.4, 1.4, and 4.0 ppm acrolein or at 0, 0.5, 1.5, and 5.0 ppm chlorine are being compiled and analyzed. Preliminary examination of these data supports the conclusions from the ozone study that the pulmonary function data provide unique relevant toxicologic information not provided by pathologic evaluation.

A series of extensive studies have been completed by the EPA to characterize the resulting health effects of chronic exposure to diesel exhaust. An NTP agencies' animal cardiopulmonary group assisted in this effort by performing comprehensive pulmonary function studies. Clearly defined responses were observed in male cats exposed to diesel particulate airborne concentrations of 6 mg/m^3 in year one and in 12 mg/m^3 in year two. Reductions in inspiratory capacity, vital capacity, and total lung capacity with normal values for ventilatory function (mechanics of breathing) indicate that a lesion is present which restricts breathing but does not cause airway obstructor or loss of elasticity. This restrictive disease is compatible with a diagnosis of pulmonary fibrosis of the interstitial or intraalveolar type. Concurrent status may include chronic inflammation, interstitial edema, or vascular engorgement. Additional support for the diagnosis of interstitial disease is the finding of impaired diffusing capacity. Distribution of the disease appears nonuniform as indicated by the significantly elevated nitrogen washout values for cats inhaling the diesel exhaust. Another pulmonary function evaluation following six months of breathing filtered, conditioned air is underway to assess the reversibility of this significant finding.

Animal Model—During FY 1981 a monkey model of human occupational asthma, first developed in 1980, was further perfected. Efforts included an evaluation of the dose-response relationships of exposure and the significance of coasthmagenic irritant exposures to the development of asthma. Immunochemical methods were developed to analyze serum for specific IgE and IgG (RAST and ELISA tests). Airway status was analyzed both pre- and post-exposure utilizing the parasympathomimetic drug, acetyl-b-methyl choline chloride, to determine the hyperactive status of the airways prior to challenge with the asthmogen. Interest in the asthma animal model produced three invited papers: two in England at the British Society for Chemical Allergy and Immunology and

at the Brompton Hospital, Department of Occupational Medicine, and a third at the Gordon Research Conference's special symposium on "Animal Models of Immediate Hypersensitivity." A fourth paper was presented before the Federation of American Societies for Experimental Biology describing the immunologic and physiologic reactions of monkeys to inhaled platinum salts. (Contact Person: Dr. T. Lewis, NIOSH)

FY 1982 Program Plans

Effects of Chemicals on Pulmonary Function—Experiments to assess the relative sensitivities and specificities of pulmonary pathology and pulmonary physiology will be continued in FY 1982. Fischer 344 male rats will be exposed to (1) crystsalline quartz (Min-U-Sil) for 64 and 124 days, six hours/day, five days/week at 0, 2.0, 10.0, and 20.0 mg/m^3; a third group will be exposed at the same concentrations and held for a six-months recovery period prior to evaluation; (2) cadmium chloride; and (3) tungsten carbide, with and without concomitant inhaled cobalt exposures.

There will be further evaluation of pulmonary function in rats and monkeys exposed to diesel exhaust, coal dust, and combined diesel exhaust/coal dust at airborne concentrations of 2 mg/m^3 respirable dust. A prospective epidemiological and environmental study of coal miners exposed to diesel emissions is also being conducted. These studies, coupled with industrial hygiene surveys of coal mines utilizing diesel equipment, will provide a comprehensive and integrated assessment of health hazards posed by diesel exhaust emissions.

Animal Model—There will be further assessment of the allergic aspects of occupational lung disease. Concomitant exposures of platinum salts and irritant gas (chlorine) will be used to simulate the refinery environment. Plans include verifying the animal model using other potential occupational allergens. Persons related to this effort will work closely with epidemiologists and clinicians lending immunochemical, analytical, and consultative expertise to worksite situations. (Contact Person: Dr. T. Lewis, NIOSH)

Reproductive and Developmental Toxicology

The evaluation of chemicals for effects on reproductive function and development is an important aspect of the NIP effort to predict the risk to humans of chemical exposure. The testing procedures available for assessing reproductive and developmental effects are few in number and generally give crude indicators of effects. Currently, program efforts are being directed toward developing shorter-term, less costly systems for determining the potential reproductive and developmental toxicity of chemicals. These testing systems will be used in the preliminary testing of toxicity. In this way, chemicals can be given priority for further testing. In addition, more sensitive test procedures are being developed and validated to use for subsequent in-depth study of particular chemicals. This plan should allow targeting of future resources for more specific identification of reproductive and developmental toxicants and begin to address questions about mechanisms of action. Only in this way can adequate data be accumulated for valid extrapolation of risk to man.

FY 1981 Accomplishments

A coordinating group was formed made up of representatives from each of the three NTP participating Federal research agencies, NCTR, NIEHS, and NIOSH. The coordinating group met quarterly to review activities within the individual groups regarding reproductive and developmental toxicity, to establish a process for report and manuscript review, and to plan research approaches which would better address the needs in this program area. In January, the reproductive and developmental toxicology program was reviewed by the NIP Board of Scientific Counselors and three research concepts were approved: Fertility Assessment Using Continuous Breeding, an *In vivo* Teratology Screening System, and Research and Development of *In Vitro* Teratology Systems. The program also was highlighted at the NIP Open Meeting on March 1, 1981, in San Diego, CA.

Short-Term Test Development—The primary emphasis in FY 1981 has been to develop shorter-term testing approaches in both reproductive toxicology and teratology; these will provide information faster for setting priorities to select chemicals for more in-depth evaluations. All of these procedures are now in either the methods development or validation phase.

The following chart indicates the approaches currently under development and how they are integrated with more standard testing approaches.

Fertility Assessment Using Continuous Breeding—The use of continuous breeding will be evaluated under a contract to be awarded in early FY 1982.

Short-Term In Vivo Teratology Assay—The short-term *in vivo* teratology assay will be evaluated under four contracts which were awarded in FY 1981. These procedures involve the treatment of pregnant mice during organogenesis and subsequent evaluation of the litters postnatally (modeled after the method developed by Chernoff and Kavlock, *Teratalogy*, 21(2):33A, 1980). Reduced litter size or birthweight and impaired neonatal growth or survival are evidence of an adverse reproductive effect. (Contact Person: Mr. B. Hardin, NIOSH)

In Vitro Teratology Test Development—The use of *In vitro* approaches for asserting teratogenic potential is being evaluated in several ways. Initial efforts were made to contact a large number of investigators in this area and to develop a "consensus" workshop to address specific questions concerning validation and application of *in vitro* test systems. The workshop, sponsored by NCTR, IRLG and EPA with additional support from the March of Dimes Birth Defects Foundation, was held in early August, 1981. Specific questions were addressed and the discussion focused on validation criteria and the need for standaridized approaches to validation in the future. there was general agreement that a list of compounds to be used in validation studies be devised and a repository for such chemicals be established for investigators who are interested in validating their test systems. (Contact Person: Dr. G. Kimmel, NCTR)

As part of the NTP effort in developing *in vitro* approaches, an investigation was begun by NIOSH into the feasibility of using fruit flies *Drosophila melanogaster*) as an *in vitro*

teratogenesis test system. Preliminary studies showed that a number of morphologic defects were detected in adult flies that had been exposed as larvae to chemicals incorporated into the culture medium (Contact Person: Mr. R. Schuler, NIOSH)

Conventional Teratology Testing—In addition to the newer efforts mentioned above, the evaluation of chemicals by routine teratologic methods has continued in FY 1981 and a number of studies were completed or are still in progress on contracts. Testing is in progress on 10 chemicals, evaluations were completed on six chemicals, and final reports were received on three of these six (Table 17). A slight increase in malformations at relatively high doses was noted in mice following diphenhydramine hydrochloride treatment throughout gestation. Further studies using shorter-term dosing are in progress. No significant teratogenic effects were noted in rats following diphenhydramine hydrochloride treatment. (Contact Person: Dr. C. Kimmel, NCTR)

Ethyl benzene inhalation exposure during gestation had no embryotoxic or teratogenic effects in rats or rabbits under the conditions of the study (Table 17). On the other hand, inhalation exposure to 2-ethoxyethanol (2-EE) was strongly embryotoxic at the higher exposure levels (total resorption of all litters at 756 ppm in rats and 615 ppm in rabbits), and teratogenic at the lower exposure levels (200 ppm in rats and 160 ppm in rabbits). Maternal toxicity at the lower exposure levels was slight, consisting of reduced food consumption and increased liver weight in rabbits, and increased liver, kidney, and spleen weights in rats. The Federal occupational exposure limit for 2-EE is 200 ppm, a level found to be teratogenic in both rats and rabbits. An inhalation teratology study of bisphenol A was cancelled due to decreases in staff. (Contact Person: Mr. B. Hardin, NIOSH)

Collaborative Behavioral Teratology Study—Methods for the behavioral assessment of postnatal animals following prenatal chemical exposure are being evaluated. A standardized protocol was developed for use in the collaborative behavioral teratology study. The six behavioral tests in the protocol will be evaluated for reliability within six separate laboratories (two academic, two private, two government); the test's sensitivity to two known behavioral teratogens (d-amphetamine sulfate and methyl mercuric chloride) will be studied. Four contracts and two interagency agreements were established, and the laboratories were set up with testing equipment in FY 1981. In addition, the intramural pilot study has begun and will remain approximately six months ahead of the participating laboratories. (Contact person: Dr. C. Kimmel, NCTR)

Effects of Chemicals on Postnatal Development—A project investigating the effects of maternal lead exposure on offspring exposed in *utero* and during lactation was completed in FY 1981. Lead acetate was administered in the diet to female rats for eight weeks before cohabitation. Maternal blood lead levels averaged 60 mg/dl. In functional status of the renal and erythropoietic systems was evaluated in progeny. Preliminary data analysis indicated a significant impairment of erythropoietic function in offspring exposed to lead prenatally.

Previous research demonstrated that the industrial solvent 2-ethoxyethanol induces behavioral and neurochemical alterations in the offspring of rats exposed during gestation to currently permissible levels of this solvent. Because of their similar metabolic pathways, 2-ethoxyethanol and ethanol were evaluated for interactive effects during gestation. Ethanol early in gestation *decreased* the behavioral and neurochemical effects of 2-ethoxyethanol, but ethanol later in gestation *enhanced* the effects of 2-ethoxyethanol. (Contact person: Mr. B. Nelson, NIOSH)

Reliability of Animal Studies for Predicting Human Developmental Hazards—Preliminary results of a study to evaluate the reliability of animal studies for predicting the hazards of developmental defects in humans were presented at the Toxicology Forum in FY 1981. Several manuscripts from this project and another project on dose-response relationships and low-dose extrapolation in teratology are in preparation. (Contact person: Dr. C. Kimmel, NCTR)

Effects of Chemicals on Male and Female Reproduction Function—In-house research activities include evaluation of the reproductive toxicity of environmental and industrial chemicals. The objective of the studies on male reproduction is to enhance our understanding of the toxic potential of environmental and industrial chemicals and, further, to elucidate the mechanism of action of chemicals found to be toxic. Chemicals which are active as chemosterilants in males, such as dibromochloropropane, are used as model agents in various tests systems. These studies provide valuable information on the correlation between effects in humans and those observed in laboratory animals. Endpoints of toxicity include the assessment of spermatogenesis, sperm morphology, hormone levels, and specialized chromosomal or genetic assays. Studies also have involved the assessment of progeny survival and development of treated males. These studies are expected to yield valuable data on chemical toxicity in males, as well as improve the sensitivity and accuracy of future testing systems.

The objective of the studies in females is to evaluate the potential of environmental chemicals to affect female reproductive function. As a model compound for these experiments, studies are going on the effects of Kepone which, like other environmental compounds, may be mediated through estrogenic or other hormonal activity. A number of criteria which measure hormone activity have been established. Uterine, ovarian, and pituitary function are studied in morphological and endocrinological studies following Kepone exposure. Fertility and reproduction are also evaluated in treated females and in offspring exposed perinatally to Kepone. Morphological studies include light and scanning electron miscroscopy, hormone radioimmunoassay, and hormone receptor assays. These studies should help establish the mechanism of reproductive toxicity of compounds such as Kepone. (Contact person: Dr. J. Lamb, NIEHS)

Reproductive Effects—Testing—Testing was completed on 20 priority chemicals (Table 18) being screened for potential reproductive effects using *in vivo* and *in vitro* test systems: *Drosophila* sex-linked recessive lethal (SRL), rat dominant lethal (DL) mouse sperm head morphology (SHM) rat bone marrow cytogentics (BMC), and unscheduled DNA synthesis (UDS) in

cultured human fibroblasts. (Contact person: Dr. R. Niemeier, NIOSH)

FY 1982 Program Plans

The coordinating group will continue to meet quarterly to evaluated the various aspects of the program and to intergrate efforts to most efficiently utilize the limited resources available. The group will also plan the continuing NTP efforts in this area and will attempt to keep abreast of the latest developments which may be applied to chemical evaluation for reproductive and development toxicity.

Short-Term In Vivo Teratology Assay—These tests will be evaluated with two previously tested compounds (one positive—sodium selenite, and one negative—ethylenethiourea), 15 glycol ethers, and 13 other NTP chemicals to determine which, if any, should be more thoroughly investigated in conventional test systems (Table 19).

A second series of contracts will be developed to continue application of the short-term *in vivo* mouse teratology screening test. Approximately 36 chemicals will be evaluated in these contracts. Chemicals will be selected from NIOSH and NTP priority lists, and recommendations from other Federal agencies. Inhalation teratology contracts will be developed to evaluate three glycol ethers selected for further testing based upon the results of the FY 1981 screening study. (Contact person: Mr. B. Hardin, NIOSH)

In Vitro Teratology Test Development—For *in vitro* teratolgy testing, three areas of activity will be pursued: (1) publication of the workshop proceedings; (2) initial validation studies of various systems depending on availability of research support; and (3) establishment of a literature review system for maintaining an update of advances in *in vitro* teratogenesis testing. As part of the second effort, a group will be established to devise a list of agents that can be used in a standardized validation approach and initial, efforts, will be made to establish a repository for the agents chosen. (Contact Person: Dr. G. Kimmel, NCTR)

Feasibility, methods development, and validation studies will continue on the potential of *Drosophila* to serve in an *in vitro* teratogenesis screening system. Promising results obtained in FY 1981 will be extended and confirmed, methods will be standardized, and known mammalian teratogens will be tested. (Contact Person: Mr. R. Schuler, NIOSH)

Conventional Teratology Testing—A number of ongoing conventional teratology studies will be completed (Table 17), and 10 to 12 additional studies will be undertaken on contract. Some of the chemicals to be evaluated are listed in table 20 and postnatal evaluations may be included for some of the chemicals. Other chemicals may be selected for teratological evaluation by inhalation exposure via contracts. (Contact Person: Dr. C. Kimmel, NCTR)

Collaborative Behavioral Teratology Study—The first year of the Collaborative Behavioral Teratology study with d-amphetamine will be completed in FY 1982. The study of methyl mercuric chloride will begin at the end of FY 1982 and will be completed in FY 1983. (Contact Person: Dr. C. Kimmel, NCTR)

Fertility Assessment Using Continuous Breeding—Expected to start in early FY 1982 is the validation of a test system for assessment of fertility and reproductive toxicity in mice. This system will employ an extended chemical exposure and a protocol which includes the mating of continuously-exposed males and females. Mating pairs will be housed together for up to 120 days and offspring will be counted to determine an index of cumulative fertility. The system then allows for the further study of the treated males and females after mating with control animals. The study of perinatally-exposed offspring may also be undertaken. Teratogensis may then be studied in affected animals. This test system allow the evaluation of effects after long-term exposure, and the relationship of infertility to various target organ response such as change in sperm number or morphology, altered vaginal cytology, or abormal hormone patterns. (Contact Person: Dr. J. Lamb, NIEHS)

Effects of Chemicals on Postnatal Development—Range-finding studies are being done in-house on four solvents similar in chemical structure to 2-ethoxyethanol (2-methoxyethanol, 2-ethoxyethyl acetate, 2-butoxyethanol and 2-(2-ethoxyethoxy) ethanol). During FY 1982, one of these four will be selected and evaluated for behavioral and neurochemical effects to determine if the class of glycol ethers poses a general risk to reproduction. (Contact Person: Mr. B. Nelson, NIOSH)

Effects of Chemicals on Male and Female Reproductive Function—Major efforts have been initiated to expand fertility testing by the NTP. A three-part series of special studies has been designed for incorporation into the toxicology and carcinogenesis bioassay program. These involve the study of spermatogenic function in males and reproductive cyclicity in females. These endpoints were chosen as ones which are obvious prerequisites to successful mating. The third part, which would be initiated if indicated by results in either of the first two parts or by a suggestion of reproductive toxicity found in data in the scientific literature, would be a mating trial of treated males to treated females. These studies will be performed on a number of chemicals already selected for testing by the NTP; the first two parts will make use of animals in the 90-day study. The evaluation of both sperm morphology and vaginal cytology slides will be evaluated by a single contract laboratory in an effort to standardize observations across studies. Each testing laboratory, however, will be instructed on how to prepare the slides. These studies are anticipated to start in early FY 1982 and approximately 40 compounds will be tested over an 18-month period. These studies should serve as valuable aids in setting priorities on chemicals for in-depth study. (Contact Person: Dr. J. Lamb, NIEHS)

Reproductive Effects—Testing—A total of 15 glycol ethers plus other NIOSH and NTP priority chemicals will be tested for reproductive effects in males using sex-linked recessive lethal assays in *Drosophila*, and dominant lethal, and sperm head morphology assays in mice. A broad spectrum of glycol ethers will be tested so that results can be used to develop structure-activity relationships for predicting the reproductive toxicity of other members of this chemical class. Other chemicals will be selected in response to testing needs and priority rankings. (Contact Person: Dr. R. Niemeier, NIOSH)

Coordinative Management Activities—Chemical Nomination and Chemical Selection

The chemical nomination and chemical selection process remains integral to the effective long-term operation of the NTP with respect to both the testing of chemicals using current methodologies and the validation of new methodologies.

The process has evolved steadily since the inception of the NTP in November, 1978. The NTP Board of Scientific Counselors, in January 1980, formed a subcommittee on chemical nomination and selection to evaluate the process and make recommendations for improvement. This subcommittee met with representatives from member agencies of the NTP, industry, labor, and a public interest group and discussed various schemes for setting priorities for selecting chemicals to test. At its October, 1980 meeting, the Board made recommendations for modifying the

process, which included provisions for public input and review of the nominated chemicals. The recommendations of the Board are being implemented.

The following discussion briefly summarizes the current NTP chemical nomination and chemical selection process. The process is shown schematically in Figure 4. (Contact Person: Dr. D. Canter, NIEHS)

NTP Chemical Nomination—Member agencies of the National Toxicology Program and other sources (other Federal agencies, the public, labor, industry) submit to the NTP nominations of chemicals for various types of toxicologic testing. The nominating source should submit the name of the chemical and the particular toxicologic tests desired; the rationale for the nomination; and the available background data on production, use, exposure, environmental occurrence, and extent of toxicologic characterization in a supporting summary document (Table 21). However, all nominations are considered regardless of the depth of the information submitted. Nominations should be addressed to: Chemical Nominations, National Toxicology Program, Room 2B–55, Building 31, National Institutes of Health, Bethesda, Maryland 20205.

All nominated chemicals are first reviewed to determine which chemicals have been tested, are already on test or scheduled for test, or have been previously considered and rejected for testing by the NTP or its predecessors. This involves preliminary examination of the nominations with minimal searches of existing on-line data bases and reference books. The nominations and background information are then forwarded to the Chemical Review staff at the National Center for Toxicological Research (NCTR) who examine the available literature, assess the relevant data, and prepare draft Executive Summaries of this information. (Executive Summaries are not prepared for chemicals nominated solely for mutagenicity testing.) Included in each Executive Summary are these sections: Chemical Identification, Surveillance Index (production, use, occurrence, analysis), Human Exposure and Health Effects, Research Hypothesis to be Tested, Categories of Study, and Source of and Reason for Nomination. (Contact Person: Dr. L. Fishbein, NCTR)

Evaluation of Nominated Chemicals—The Chemical Review staff sends the draft Executive Summaries to the Chemical Evaluation Committee (CEC), composed of representatives from the Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Occupational Safety and Health Administration (OSHA), National Cancer Institute (NCI), National Institute of Environmental Health Sciences (NIEHS), National Institute for Occupational Safety and Health (NIOSH), National Center for Toxicological Research (NCTR), and National Toxicology Program (NTP). The CEC evaluates the draft Executive Summaries and recommends the types of testing to be performed. Primary and secondary reviewers are assigned to each chemical after consideration of the nature of exposure so that, to the extent possible, appropriate regulatory concerns will be addressed. Members are requested to search data bases unique to their agency for further information on the nominated chemicals (and structurally related compounds) to improve the evaluation process.

At the CEC meeting the primary reviewer for each chemical summarizes the data on that chemical and makes recommendations for testing. The secondary reviewer presents additional information, where available, and also discusses the merits of testing the compound. Following a general discussion, the Committee votes on the recommended types of testing and assigns priorities for types of testing. The recommendations are based upon whether the chemical satisfies one or more of the eight NTP chemical selection principles (Table 22). The Chemical Review Staff revises the Executive Summaries as needed.

Public Comment—A Federal Register notice is published which lists the chemicals reviewed by the CEC and the recommended types of testing. Also, the notice solicits comments from interested parties as well as information on completed, ongoing, and planned testing in the private sector. Responses are requested within 30 days of the date of publication. The list of chemicals is also published in the *NTP Technical Bulletin* along with a request for comments. These steps are taken to enable other individuals and groups to provide data useful to the NTP nomination, selection, and chemical evaluation process.

Peer Review—The revised Executive Summaries and public comments on the nominated chemicals are then forwarded to the Board of Scientific Counselors for review. The Board subsequently meets to evaluate these data and to priority rank the chemicals for testing.

Chemical Selection—The Chemical Review Staff then incorporates both the Board's rating and comments and pertinent public input into final Executive Summaries which are submitted to the Executive Committee. The Committee decides whether to test, defer, or delete each of the nominated chemicals for the various types of testing. Executive Committee decisions are published in the *NTP Technical Bulletin*. The Committee also recommends priorities for testing and test development/validation to the NTP.

Following Executive Committee action, the NTP Steering Committee (see pp. 25 to 26) meets to refer the chemicals to one or more of the three organizational units participating in the NTP: NIEHS, NIOSH, and NCTR. At this point certain approved chemicals may be identified as not being appropriate candidates for testing as a result of technical or budgetary reasons. Also in some cases, public input describing adequate outside testing may only have been submitted following Executive Committee decision. Such chemicals are then returned to the Executive Committee with the rationale for reconsideration.

All chemicals selected in this process are then tested as time and resources permit.

FY 1981 Accomplishments

NTP Chemical Nomination—During FY 1981, Executive Summaries for 81 nominated chemicals were prepared. Additionally, mini-monographs on scopolamine, sulfamethazine, salicylazosulfapyridine, sulfathiazole, sulfamethazole, sulfanilamide, doxylamine, pyrilamine, tripelennamine and thenyldiamine were published or were in final preparatory stages.

Evaluation of Nominated Chemicals—The Chemical Evaluation Committee (CEC) held three meetings and examined 46 nominations in FY 1981: on January 21, the CEC evaluated 20 chemicals; on April 8, 13 chemicals; on May 19, 13 chemicals. Of the 46 chemicals reviewed for a variety of toxicologic testing endpoints, 28 chemicals were recommended for mutagenicity testing. An additional 193 chemicals considered only for mutagenicity testing at the April and May meetings were selected for such testing. The Board of Scientific Counselors also selected on chemical for mutagenicity testing at its meeting on May 28, bringing the total to 222 new chemicals selected by the CEC on FY 1981. Since chemicals recommended for mutagenicity testing only do not need to be approved by the Executive Committee, all were entered directly into the NTP mutagenesis testing program.

The CEC also makes supplemental recommendations for other types of testing where appropriate. A total of 19 chemicals were recommended for carcinogenicity testing, 12 chemicals for reproductive testing, and nine chemicals for chemical disposition studies (Table 23).

Public Comment—To solicit public input into the chemical selection process, **Federal Register** notices were published on the chemicals evaluated for in-depth toxicologic testing at the January, April, and May CEC meetings. These notices requested both comments and the submission of relevant data.

As a result of the **Federal Register** notice covering the January 21 meeting, production information and/or toxicology data were submitted by manufacturers for four chemicals: C.I. Vat Blue I; 1,3-dichloro-5,5-dimethylhydantoin; dodecenylsuccinic anhydride; and piperidine. Addenda to the Executive Summaries were prepared on these compounds for use by the Board of Scientific Counselors at its review of the 20 compounds on May 28.

Peer Review—Table 24 contains the testing recommendations made by the NTP Board on May 28, 1981. The data summarized in the addenda, the revised Executive Summaries, and the CEC and Board recommendations on the chemicals will be reviewed by the Executive Committee prior to making testing decisions.

FY 1982 Program Plans

Evaluation of Nominated Chemicals—The Chemical Evaluation Committee (CEC) expects to review approximately 50 compounds nominated for toxicologic testing during FY 1982 and to select up to 300 compounds for mutagenicity testing.

Peer Review—In October 1981 the Board of Scientific Counselors will review the 26 chemicals evaluated by the CEC at the April 8 and May 19 meetings. (Table 23). Data received as a result in the **Federal Register** notices on these chemicals will again be utilized by the Board in making recommendations.

Chemical Selection—In the first half FY 1982, the Executive Committee is expected to make testing decisions on the 46 chemicals reviewed by the CEC in FY 1981 (Table 23).

Testing Needs Study—To provide the NTP with decision-making guidelines by which to orient its chemical testing activities, the National Academy of Sciences (NAS) was awarded a contract to conduct an extensive testing needs study. This three-year study, begun in FY 1981, consists of two major objectives: (1) estimate the number of chemicals in the universe of compounds with the potential for public health implications for which toxicity data are needed, and (2) develop workable criteria with which NTP can establish priorities for those compounds requiring toxicity testing.

The study is being conducted by a Steering Committee, chaired by Dr. James Whittenberger, Harvard School of Public Health, and three additional committees: the Toxicity Data Elements Committee, chaired by Dr. John Doull, University of Kansas Medical School; the Sampling Strategies Committee, chaired by Dr. John Bailar, Harvard School of Public Health; and the Priority Mechanisms Committee, chaired by Dr. Arthur Upton, New York University Institute of Environmental Medicine. The Sampling Strategies Committee has evaluated sampling strategies and selected one appropriate for determining the compounds to be examined in this project. The Committee on Toxicity Data Elements is responsible for evaluating the toxicity data on the compounds in the sample. The Committee on Priority Mechanisms is developing the means for estimating the relative degree of concern to public health for those chemicals to be studied by the NTP.

Although the main goal of the NAS Study is to determine the scope of the problem to untested chemicals, one important byproduct will be the development and testing of a priority-setting scheme which may be used in the ranking of chemicals submitted for NTP consideration for testing (Contact Person: Dr. R. Shapiro, NIEHS)

Chemical Test Management

Once a chemical has been selected for extensive testing and referred to the particular program area, a Chemical Manager is assigned to ensure that the chemical receives a complete scientific evaluation. The Chemical Manager follows the progress of the chemical through each of the various testing phases and has the responsibility to: (1) know and understand the relevant scientific literature; (2) present draft protocol designs to the Toxicology Design Committee to ensure that testing is designed to measure relevant endpoints; (3) keep up-to-date on the experiment's progress and maintain current awareness; (4) provide liaison with groups doing special studies on the chemical; (5) assist in data evaluation; (6) draft the technical bioassay reports; (7) be available to present test results at the Technical Reports Review Subcommittee meetings; (8) prepare the final technical report and journal manuscripts; and (9) respond to requests for information on the chemical after obtaining clearance from the agency which regulates the chemical. The Chemical Manager also maintains liaison with the party (government, public, industry) who nominated the chemical and with the industry that manufactures or uses the chemical.

As an adjunct, the Pathology Working Group, the Data Analysis Group, and the Quality Assurance-Good Laboratory Practices Section perform quality control functions. These groups ensure that an independent pathology laboratory examines all target organ slides and 10 percent of all others, that studies are designed properly with regard to statistical requirements, and that the bioassay reports accurately reflect the data found.

Laboratory Monitors are responsible for monitoring the overall operations of the commercial laboratories performing prechronic and long-term studies for the Program and for ensuring that good laboratory practices are being followed. These scientists initiate: (1) annual program reviews by peer groups of scientists, (2) quarterly site visits, (3) *ad hoc* visits by experts in various scientific disciplines as needed, and (4) communication with the laboratory and principal investigator through periodic reports and telephone calls. Unfortunately, the NTP may have to decrease the amount of direct contract and laboratory monitoring due to the current and anticipated travel restrictions.

Chemistry Resources

The chemistry program serves as a central resource for testing and research activities of the NTP. Maintained to assure chemical quality and to minimize testing results variability due to external sources, the chemistry needs are facilitated via integrated contract mechanisms and cooperation and interaction with other NTP operations. The chemistry capabilities provide for procurement, chemical analysis, analytical methods development, purification, and synthesis of test chemicals. In addition, a chemical repository resource exists for the receipt, handling, long-term storage, shipment, and preparation of chemical safety data and handling information for approximately 3,000 chemicals (see pp. 152 to 153).

Analytical capabilities are provided for bulk chemicals; chemicals in test vehicles; methods development for quality assurance, including purity, stability (both bulk chemical and chemical/vehicle mixtures), and concentration determinations; chemical residue analysis for body tissues and fluids; and special handling for residual

and reprocured chemicals. In addition, capabilities exist for purification, derivatization and synthesis of test chemicals. Trace level analysis for potential contaminants are available, when required, as well as provisions for percent level purity, stability, and recovery analyses. Trace level chemical analyses are necessary when known toxic impurities are suspected to be present. Further, analysis for trace contaminants may be required when toxicity tests of chemical mixtures or impure chemicals are positive and specific components should be identified that may be associated with the observed toxic effect.

FY 1981 Accomplishments

The analytical services support contract established in FY 1980 continues to support NTP programs. The majority supports the toxicology and carcinogenesis bioassay program. Thirty-nine of the 52 chemicals which started carcinogenesis bioassays in FY 1981 were procured, analyzed and shipped to the respective bioassay laboratories for testing. Exceptions are chemicals on test or to be tested at NCTR. One chemical (Curcumin) still remains to be procured for study. In addition, the 19 chemicals anticipated to start in the prechronic phase of the bioassay in FY 1982 were procured and the appropriate analyses are in progress.

The chemistry performed at the bioassay laboratories is monitored via the monthly reports received from the laboratories and by annual chemistry discipline site visits to all bioassay laboratories. In some instances, a laboratory may need more than the regular annual visit to address chemistry-related problems associated with the bioassay studies. During FY 1981 no major chemistry-related problems were evidenced at any of the bioassay laboratories.

The chemistry resources have been used also to support the NTP teratology program. During FY 1981, 10 chemicals were obtained for teratology studies (Table 25). These chemicals were procured and analyzed in a manner similar to that for the carcinogenesis program, including complete purity and identity assays and methods development for bulk chemical stability, chemical/vehicle mixing, stability, and concentration assay methods. This information was provided to the acting teratology program leader and the contract laboratory. In addition, technical input on chemistry was provided to the teratology program by means of site visits to the teratology contract laboratories.

Another major initiative accomplished in FY 1981 was the temporary assumption of the routine chemical services performed in support of the NTP studies at the NCTR. This activity was undertaken to fully utilize the expertise of NCTR chemists in the NCTR's Benzidine/Benzidine Congener Dye Initiative. The services include surveillance of incoming supplies for experimental animals such as: feed, potable water, bedding and cardboard feeder boxes, and certification that the dosed feed for the studies on sulfamethazine and hexamethyl-p-rosaniline (gentian violet) contained the correct concentrations.

The chemistry resources provided support to several NTP investigators in the area of tissue residue, bulk chemical, and dosage mixture analyses (Table 26).

The chemistry program supplies repository support to the genetic toxicology and carcinogenesis testing programs. The repositories operate under similar standard operating procedures and have fulfilled a number of joint projects. Throughout FY 1981, several hundred test and control chemicals were given to investigators. (See section on Chemical Repositories, pp. 152 to 153). Contact Person: Dr. C. Jameson, NIEHS)

FY 1982 Program Plans

During FY 1982, the chemistry resource will continue to support the carcinogenesis testing program (procuring and analyzing all new bioassay chemicals), the teratology program, and the reproductive toxicology contract effort, expected to be instituted in FY 1982. Continued collaboration with in-house investigators will be maintained, especially in the areas of immunology and reproductive toxicology. The interim support of the NCTR chemical services is expected to continue to mid-1982. New contract initiatives to services is expected to continue to mid-1982. New contract initiatives to support the associated chemical services for in-house NTP studies will be pursued. The chemical repositories will continue to provide support to the NTP, especially in the area of genetic toxicology and as a reference resource for chemicals tested by the NTP. (Contact Person: Dr. C. Jameson, NIEHS)

Chemical Repositories

The NTP chemical repositories provide a centralized management system for test and control chemicals. Major activities include locating and acquiring chemicals and their safe storage, handling, packaging and shipping as well as the preparation of chemical safety data sheets for approximately 1,000 chemicals with a final capacity of about 3,000 chemicals. Tracking and monitoring of repository functions are accomplished by a data base management system that allows multi-tier access into a hierarchical system of data retrieval and file security.

FY 1981 Accomplishments

The chemical repository program provides primary repository assistance to the carcinogenesis bioassy and cellular and genetic toxicology programs (Table 27), and to other NTP programs. Chemicals are divided into three groups, quantities permitting: testing batch, archive sample, and public allotment. Two repositories have been established which operate under similar standard operating procedures: numerous joint projects have been undertaken. All chemicals are shipped and tested under code with the code file maintained at the repository and the codes deciphered only at the written request of the NTP project officer.

Throughout FY 1981, several hundred test and control chemicals were provided to investigators. Appropriate quantities for testing newly selected chemicals, in required purity, were provided. In addition, those chemicals selected for mutagenesis testing after the *Salmonella* experiments were analyzed to ensure they were the substances required. The chemical repository holdings and activities are summarized in Table 27. Construction of a necessary addition to the hazardous materials laboratory housing the repository was completed in FY 1981 and resulted in a tripling of available space. Included in repository functions were final archiving and a waste disposal mechanism for surplus carcinogenesis bioassy chemicals as well as other NTP waste chemicals.

Efforts have been completed to obtain all chemicals tested or on test in the carcinogenesis bioassay program for testing and evaluation in the cellular and genetic toxicology program. (Contact Person: Dr. D. Walters, NIEHS)

FY 1982 Program Plans

Future plans include combining the two present repositories (toxicology and carcinogenesis bioassay and cellular and genetic toxicology) into one NTP repository. In addition, chemistry functions would be administered separately from repository functions.

Refined procedures for stability, solubility, and flash point determinations will be effected. In addition, a focus will be directed on

increasing suitability of safe handling documents to meet NTP needs. Plans will be finalized for the yearly publications of these documents in the forms of research chemical safety data sheets. (Contact Person: Dr. D. Walters, NIEHS)

Pathology Repository and Archives

The NTP maintains a centralized repository of histopathology materials collected during the bioassay studies. This is done in accordance with Good Laboratory Practice procedures and to provide a complete history of the pathology findings. Storage facilities are provided for wet tissues, paraffin blocks, microscopic slides, and printouts of the data that appear in the technical reports. User facilities complete with microscopes are provided for investigators to view the materials. For more information or scheduling of user facilities, contact Dr. E. E. McConnell, Chief, Chemical Pathology Program, National Toxicology Program, P.O. Box 12233. Research Triangle Park, NC 27709; or 910–541–3440 (commercial), 629–3440 (FTS).

Data Management and Analysis

NTP programs generate a large volume of complex data that must be acquired, validated, and stored so that these are easily and quickly retrievable, eventually at multiple locations. Thus, a continuing priority commitment is to develop efficient automatic data processing systems to capture various types of management and experimental data, and to make this information available for periodic examination, updating, summarization and statistical analysis. Furthermore, the complexity of the system requirements demands that systems for NTP not be developed as isolated units but rather that there be centralized coordination and management of the systems so that services are distributed according to established priorities and resources are used most efficiently and without duplication of effort.

Statistical research efforts include investigating possible modifications of the basic experimental design of the two-year carcinogenesis bioassay. The purpose of these modifications will be to provide the low dose information needed for extrapolation methods without adversely affecting the power of the bioassay for detecting carcinogenic effects. The problem of incorporating historical control information into the statisical analysis of bioassay data is being studied. Statistical methodology is being developed that will take into account extrabinomial variability due to differences in test laboratory, animals sources, and other factors.

FY 1981 Accomplishments

Data Processing Systems—The complex toxicology data management system (TDMS) being developed to support the animal bioassay program continued toward implementation. Specially designed microprocessors were delivered and are in use in TDMs field tests at Southern Research Institute (SRI) and NIEHS and for live support of experiments at NCTR. These pilot tests have shown the animal room data collection modules to be effective. Another component of the system being tested is for collection of micropathology information. As the field tests proceed, in-depth evaluation of the existing system modules and development of reporting requirements for NTP are ongoing. (Contact persons: For Systems—Mr. A. Konvicka, NCTR; for toxicology—Dr. M. Dieter, NIEHS)

In support of the Cellular and Genetic Toxicology program, a laboratory data management system was developed. Data are entered into the system which allows easy validation of data for each laboratory and periodically updates a data base which is used for data analyses, quality control, and report generation. Efficient data structures and an automatic archiving system allow the data to be stored at a fraction of the usual cost. The system was installed and is operating in *Salmonella* test laboratories at SRI International, Case Western Reserve University, and EG&G/Mason Research Institute. (Contact persons: Dr. E. Zeiger and Mr. M. Rowley, NIEHS)

The development of a chemical management and tracking system (CHEMTRACK) that will provide information on NTP chemical nomination, selection, test status, and summary results has proceeded along two lines. An interim system was developed which has provided NTP with quick response to a limited set of queries needed to manage the NTP chemical testing program. Meanwhile, design of a more extensive permanent system has proceeded. Work has been completed on defining the requirements and system specifications. The Model 204 Data Base System has been selected for the permanent system and the data base fields and their relationships have been defined and developed in Model 204 terms. (Contact persons: Mr. M. Rowley and Ms. F. Jordan, NIEHS; Dr. P. Craig and Mr. J. Edge, NLM)

The system that has been supporting the animal bioassay program, the carcinogenesis bioassay data system (CBDS), continued to collect animal weight and pathology information for chronic studies. The system routinely produced the reports and basic statistics required for the program. In addition, systems were maintained to collect and report data for *in vitro* studies and for the Strain A mouse pulmonary adenoma studies. To aid in program management several systems which collect and report fiscal and experimental status were utilized. (Contact persons: Mr. M. Rowley and Mr. J. Washington, NIEHS)

During FY 1981 a contract was awarded for the primary purpose of providing capture, storage, statistical analysis, and summarization of data from prechronic and "special" (e.g., hematology, clinical chemistry) NTP bioassay studies. Analyses of data from the chronic study will also be included in this effort; however, a mechanism is currently in place (CBDS) to process much of these data. This new contract will not involve a major systems development effort; rather, the data will be maintained in an orderly fashion so that this information can ultimately be transferred to a toxicology data management system in some standard format. The statistical analysis support provided by this contract should greatly aid NTP in its interpretation of results from the bioassay studies. (Contact Person: Dr. J. Haseman, NIEHS)

Microbial mutagenicity experiments continued to receive substantial statistical research attention in FY 1981; results to date are summarized in two publications which have been accepted by *Proc. Natl. Acad. Sci.* (Margolin *et al.*, Statistical Analysis of the Ames *Salmonella* Microsome test) and by *Biometrics* (Collings *et al.*, Analyses for binomial data, with application to the fluctuation test for mutagenicity). Research also focused on the adequacy of a family of models to fit *Salmonella* test data sets obtained in the NTP mutagenesis testing program. Analyses of the large *Salmonella*/microsome assay data base were started. In addition, statistical methods to detect non-Poisson sampling behavior in count data derived from genetic toxicological experiments were investigated. (Contact Person: Dr. B. Margolin, NIEHS)

FY 1982 Program Plans

Data Processing Systems—The CBDS will continue to operate and the capability to collect and report animal weights for subchronic studies will be added. Plans will be made for the phase-out of this system over the next several years as the new system (TDMS) completes testing and implementation. (Contact Persons: Mr. M. Rowley and Mr. J. Washington, NIEHS)

Additional components of TDMS will be tested in FY 1982. The most important of these are the gross pathology system and the query language processor. As these major components are completed, more attention will be directed toward implementing the system in NTP contract laboratories and coordinating NTP use of the system. Particular attention will be given to identifying the special needs of NTP users and to adapting the system to meet these needs. (Contact Person: For systems—Mr. A. Konvicka, NCTR: for toxicology—Dr. M. Dieter, NIEHS)

The laboratory data management system supporting cellular and genetic toxicology programs will be expanded to support the NTP/NCI transformation and mouse lymphoma studies. There will be further test laboratory automation to minimize the manual involvement in processing data and a statistical support module will be added based on research to determine the mutagenicity versus toxicity response. (Contact Person: Mr. M. Rowley, NIEHS)

Based on review of specifications, the tasks required to complete CHEMTRACK will be defined in detail. The development process will include preparation of data dictionaries, data collection forms, and field validation checks. Relevant information from other data bases will be transferred to the data base by computer programs written for the purpose. Reports and query modules will be designed and implemented. The development phase will be followed by a user training and testing phase during which the system will be fine tuned. (Contact Persons: Mr. M. Rowley and Ms. F. Jordan, NIEHS; Mr. J. Edge, NLM)

Statistical Studies—Statistical research will continue concerning possible modifications of the chronic bioassay design. Time-to-tumor models and the effect of pharmacokinetic considerations will be examined.

Historical control tumor incidence rates frequently show considerable interlaboratory variation. Even within a given laboratory, there is often more variability from study to study than would be expected under a simple binomial model. Statistical methodology is being developed that will take this extra-binomial variability into account and will allow the incorporation of historical control data into a formal significance test.

There will be a continuation of ongoing efforts in the development of new statistical methodology for prechronic and special studies that will generate increasing volumes of data for NTP. Statistical procedures currently used in the analysis of chronic bioassay data will also be examined, and it is anticipated that there be may additional statistical modifications in the NTP technical reports. (Contact Person: Dr. J. Haseman, NIEHS)

Analyses of the *Salmonella* test data base of the mutagenesis testing effort will be pursued, and assay reproducibility will be studied quantitatively. Research focus is expected to broaden and will include mammalian cell mutagenicity assays. (Contact Person: Dr. B. Margolin, NIEHS)

Laboratory Animal and Quality Control

The laboratory animal program provides quality animals for the bioassay program, monitors these animals for disease before they enter the bioassay laboratories, and assures that the animals are maintained behind barriers and kept free of disease for the duration of the assay.

FY 1981 Accomplishments

Three laboratories are under contract to provide B6C3F$_1$ mice and Fischer 344 rats for the NTP bioassay program. In addition rodents are being supplied by the Division of Cancer Treatment at Frederick Cancer Research Center. Keeping several laboratories in production will assure a continuous supply of laboratory animals for the bioassay program even when one or more laboratories may have to stop production, due for instance to a disease outbreak.

Disease monitoring is being met by two diagnostic laboratories, one under contract to NTP and one under contract to NCI. Several other laboratories perform diagnostic services such as serology and pathology for the bioassay program. Maintaining multiple laboratories allows crosschecks for quality control as well as divides work load during periods of peak demands.

FY 1982 Program Plans

The animal care program has developed several policies that will be initiated for more effective quality control. For example, detergents containing essential oils must not be used in the immediate animal rooms. Higher standards of monitoring the animal feed will be implemented to check for contaminants in the diet. Mycoplasma and mouse hepatitis diagnoses will be performed using the Elisa technique. Data from the sentinel program is being computerized in oder to research a possible Sendai virus-tumor connection.

Currently much of the bioassay program monitoring is under the prime contractor. In the near future this function will be assumed entirely by the NTP personnel. (Contact Person: Dr. G. Boorman, NEIHS)

Chemical Health and Safety

The scope of activities in the NTP is necessarily broad and involves research and testing of wide ranges of potentially hazardous materials. The safety program guards against excessive exposure of laboratory personnel and the surrounding environment to the test materials, metabolites, and degradation products.

Each contract laboratory develops and implements their own safety and environmental protection programs. The NTP chemical health and safety program sets standards, establishes guidelines and recommendations and ensures that pertinent local, state, and Federal regulations are followed. In addition, the chemical health and safety program has responsibility for monitoring and evaluating the effectiveness of individual laboratories' compliance to established standards, and renders advice in the event of emergency situations. The evaluation and review of safety and toxicity packages for all NTP test chemicals also constitutes a significant part of the program's functions.

NTP chemical health and safety concerns differ from those of academic or production facilities and require basic understanding and experience in chemistry, industrial hygiene, engineering control, non-routine specialized analytical chemistry, biological monitoring and medical surveillance, human factors and ergonomics, personal protective equipment evaluation and development, sampling strategies, and biological testing procedures.

FY 1981 Accomplishments

Annual health and safety program reviews and site visits have occurred at each of the carcinogen bioassay contract laboratories. An evaluation as well as a description of action items were submitted to each laboratory. Six laboratories were monitored for specific test chemicals and for industrial hygiene including measurements of formaldehyde levels involved in necropsy and tissue trimming techniques.

A high temperature incineration system has been instituted for the timely disposal of surplus chemicals from the carcinogenesis bioassay program. In the few instances where this technique is not suitable (e.g., non-combustible inorganics), materials will be buried in approved and monitored land fills.

Disposal methods and sites have been evaluated by NTP health and safety personnel and found to be suitable for proper disposal of the materials with regard to environmental effects, completeness of destruction, and compliance with regulatory requirements.

A review of medical surveillance programs under the carcinogenesis bioassay laboratories has been completed with accompanying recommendations for improvement where necessary. Preliminary development studies have been undertaken for chemical-specific biologic monitoring to assist personnel medical surveillance of carcinogenesis bioassay laboratories. The objective is to explore potential preventive biological screening techniques for a limited number of test chemicals.

A majority of the cellular and genetic toxicology contract laboratories have been site visited and evaluated with respect to health and safety concerns. The remaining laboratories will be evaluated in FY 1982. Plans have been instituted for evaluation and inspection of new laboratories as they join the program as well as periodic reinspection of current contractors. Guidelines and recommendations are being implemented for the individual groups within the cellular and genetic toxicology program.

The health and safety aspects of the chemical repository were reviewed and evaluated with a resulting change in the content and format of the safety and handling documents which accompany all NTP chemicals. The result is a document which better describes safety handling procedures for hazardous research chemicals, commensurate with the NTP and the NIH Guidelines for Laboratory Use of Chemical Carcinogens. Copies of the NIH Guidelines have been issued to all NTP project officers for issuance to their contractor's principal investigators and safety officers.

Mechanisms have been instituted for the health and safety evaluation and on-site inspection of most other NTP laboratories handling potentially hazardous materials as well as evaluation of new laboratories being considered for possible NTP contracts.

In addition, approximately 50 safety and toxicity profiles have been prepared, reviewed, and evaluated for new chemicals proposed for NTP testing. (Contact Person: Dr. D. Walters, NIEHS)

FY 1982 Program Plans

The evaluation, program review, site visit, inspection and other programs described as FY 1981 accomplishments will be continued. Health and safety evaluations and on-site inspections of all NTP contract laboratories are planned. Safety and toxicity packages for new NTP test chemicals will be prepared and reviewed as necessary in addition to evaluation and inspection of new NTP contract laboratories. Efforts for improved guidelines and recommendations for chemical-specific medical surveillance and biological screening of personnel will continue. Waste management procedures will be finalized for surplus NTP chemicals to ensure that all potentially hazardous waste products are disposed of properly. Studies will be instituted on program specific human factor and ergonomics evaluations at particular laboratories in seeking ways to improve worker safety coupled with worker effectiveness. A joint symposium with the NTP chemistry program on Chemistry and Safety of Toxicity Testing of Environmental Chemicals is planned for March, 1982. (Contact Person: Dr. D. Walters, NIEHS)

Information Generation and Dissemination

Scientific information and communication about toxic and potentially toxic chemicals remains a critical aspect for program success. Information must be disseminated to other scientists so that the peer review process continues to assure scientific quality. And information must be disseminated not only to the regulators responsible for protecting the public against unnecessary risks, but also to those exposed to the risks. Thus, the NTP has established a coordinated communications network to collect and disseminate toxicologic information.

The value of information produced by NTP depends in part upon the quality and timeliness of information the Program receives. The NTP therefore actively seeks information from many sources: Federal, state and local governments; trade associations; industry; labor; academia; professional societies and public interest groups; the press; individuals; other countries; and other interested parties. This includes nominations of chemicals to be tested; critiques and questions about scientific procedures, policies, priorities, and resource allocations; suggestions for program improvement; and most importantly, information about planned, ongoing, and recently completed studies on chemicals being considered or being tested by the NTP.

Scientific Coordination and Information Dissemination—To encourage public participation in the Program, the NTP holds an annual public meeting to introduce the current year's program plans and to solicit comments and advice. The third NTP Open Meeting took place on March 1, 1981, immediately preceding the Society of Toxicology Annual Meeting held in San Diego, California. The fourth NTP Open Meeting is in the planning stage and further information will be published in the *NTP Technical Bulletin*. Additionally, the NTP Board of Scientific Counselors convenes three to four times a year in open forum, as does the Board's Technical Reports Review Subcommittee and its *ad hoc* Panel of Experts to conduct peer review of technical reports on toxicology and carcinogenesis bioassays.

NTP must be aware of scientific procedures and results produced by other laboratories. The *Review of Current DHHS, DOE and EPA Research Related to Toxicology* is a major contribution towards this goal, providing overviews of research programs as well as extensive tabular information on chemical testing and test methods development and validation activities in the various agencies. Active efforts to learn about work in progress and to establish better communication links among investigators worldwide are being pursued with various national and international organizations.

Fundamental to current awareness is the provision to scientists and administrators of comprehensive searches and reviews of the world's scientific and technical literature on a given compound, in advance of decisions about priorities and experimental test designs. This is of special importance for the carcinogenesis bioassay program, where each test represents a major commitment of time, labor, materials and funds for up to a five-year period.

Toxicologic research and testing require a high degree of scientific coordination for information generation and dissemination. To better utilize the tools of information science, the NTP has a cooperative agreement with the National Library of Medicine (NLM). The on-line services available from the NLM are particularly valuable: CHEMLINE, TOXLINE, RESEARCH PROJECTS, MEDLINE, CANCERLINE, TOXICOLOGY DATA BANK, RTECS (Registry of Toxic Effects of Chemical Substances), and others. These and other sources are used to prepare dossiers on chemicals nominated for test and to design test protocols. Also, new information services will need to be located or developed for toxicology specialties not yet covered adequately in existing systems—for example,

neurotoxicology, chemical immunotoxicology, and chemical-chemical interactions. Major advances and future trends in toxicology information transfer was the theme of a recent symposium convened by the NLM and the DHHS Committee to Coordinate Environmental and Related Programs on September 16 and 17, 1981 in Washington, DC. (Contact Person: Dr. P. Craig, NLM)

The Environmental Mutagen Information Center (EMIC), supported by the NTP, collects, organizes, and disseminates primarily published information on chemicals tested for mutagenicity. Located since inception in 1969 at the Oak Ridge National Laboratory (ORNL), the EMIC computerized data file contains 35,613 records on 11,167 unique chemicals, 34,030 of which are available on line from TOXLINE (at the National Library of Medicine) and from RECON (at the ORNL). Each record contains bibliographic information, assay systems, and keywords defining agents tested and organisms studied. (Contact Persons: Dr. J. Huff, NIEHS, and Dr. P. Craig, NLM)

The Environmental Teratology Information Center (ETIC) established in 1975 at ORNL, also supported by the NTP, maintains a computerized collection of published information on 4,940 chemicals tested for or known to induce teratogenic effects. The ETIC file contains reference to 22,499 literature citations; 21,800 records are available from TOXLINE and RECON. (Contact Persons: Ms. F. Jordan, NIEHS, and Dr. P. Craig, NLM)

The NTP, and in particular technical information specialists in cooperation with the various agencies' libraries, supplies information to Congress, scientists, the public, regulatory agencies, consumer advocates, labor, legal organizations, industry, and others. During FY 1981, for instance, the NTP responded to more than 3,000 requests for technical information and details about ongoing studies.

Technical Report Preparation and Dissemination—The NTP Toxicology Information and Scientific Evaluation Group has the major responsibility of providing the Program's chemical managers (toxicologists) with the most relevant information necessary to design the experimental protocol and to oversee the progress of a compound from selection through carcinogenesis testing to final report preparation and distribution. Preparation of the technical report begins with selection of a chemical for testing and the appointment of a chemical manager. Each manager is responsible for recommending and designing the appropriate experiment, for records management throughout the test/research period, and for preparation of the draft toxicology and carcinogenesis bioassay reports. While experiments are in progress, the chemical manager interacts with other Government agencies and serves as resource person for scientific inquiries concerning the chemical and its possible adverse effects. Lists of chemicals nominated and scheduled for testing, those on test, and those already completed are published routinely in the **Federal Register**, the *NTP Annual Plan*, and the *NTP Technical Bulletin* as well as being distributed to a variety of newsletters and scientific magazines.

An important activity within the Program centers on preparation, interpretation, and evaluation of the toxicology and carcinogenesis technical reports. In essence, draft reports are prepared by staff and are reviewed critically by a multidisciplinary group of NTP scientists prior to being examined by an *ad hoc* panel of experts in a public meeting. Subsequently reports are revised (as necessary), printed, and made available for distribution and sale by the National Technical Information Service (NTIS). (Contact Person: Mr. S. d'Arazien, NIEHS)

Further, NTP uses various toxicologic information resources for extensive literature searching and acquisition of scientific papers. Included are a number of information organizations in the private sector which extend the capability of the NTP, and these organizations are available on short notice through interagency or basic ordering agreements. Comprehensive literature searches and quarterly updates to those searches were performed for the chemical managers by the Toxicology Information Response Center (TIRC). From these, the most important references were selected for inclusion in an experimental design package sent to reviewers for generating the protocols for carcinogenesis bioassay testing. (Contact Persons: Ms. J. Chase and Ms. F. Jordan, NIEHS)

Tracking of Chemicals and Test Statuses—The Toxicology Information and Scientific Evaluation Group also updates the computerized status file for chemicals in various stages of carcinogenicity testing, producing a computerized listing on all chemicals. These lists are distributed quarterly on an individual basis to those who have a need to know about progression of chemicals through the Program.

Records from the carcinogenesis bioassay data system including protocols for the various bioassays and individual animal pathology tables may be obtained as these are verified and entered into the system, often before the final report has been released. (Contact Persons: Ms. J. Chase and Ms. L. Juodeika, NIEHS)

A chemical management and tracking system (CHEMTRACK) has been developed that will provide information on NTP chemical nomination, selection, test status and summary results. This is described further in the Data Management and Analysis section (pp. 156 and 158).

Among the activities of the NLM/NTP Information group related to chemical tracking and test statuses were the following:

The assignment of NTP numbers reached 1,100 in FY 1981, an increase of some 200 from the number assigned in FY 1980. The data concerning test assignments were computerized and merged with the NTP numbers and Chemical Abstracts Service (CAS) Registry Numbers to generate the tables contained in the FY 1981 and FY 1982 NTP *Annual Plans*. The first edition of the *NTP Chemical Registry Handbook* was completed and distributed to senior NTP personnel in FY 1981. The *Handbook*, contains for each NTP chemical and CAS registry number, structure, molecular formula, tests being conducted, and synonyms. It will become available to the public early in FY 1982. Copies have been placed at the National Technical Information Service (NTIS) for sale and distribution (NTIS, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, 703/487-4150).

The tables and indexes to the FY 1981 *Annual Review of DHHS, DOE and EPA Research Related to Toxicology* were prepared by the NLM/NTP group, which also began work on a "Master List of Chemicals of Concern as Possible Carcinogens" for NTP. This will list chemicals which are regulated by U.S. agencies as carcinogens or are under consideration for possible regulation. (Contact Person: Dr. P. Craig, NLM)

International Coordination—In partnership with the international community, the NTP is striving to formulate a universally-based communication network of toxicologic information. Concomitantly, the NTP is seeking active participation from toxicologists throughout the world. The NTP will continue to explore and develop liaison with foreign agency counterparts. For instance, contacts have been established with the World Health Organization (WHO), with the International Program on Chemical Safety (IPCS), with the International

Agency for Research on Cancer (IARC), with International Registry of Potentially Toxic Chemicals (IRPTC), with the United Nations Environment Program (UNEP), with the European Chemical Industry Ecology and Toxicology Center (ECETOX), and with governments and individual scientists throughout the world. As an example, in July 1981 an agreement was entered into with the IARC to establish and maintain an international registry of persons exposed to phenoxy herbicides and contaminants, particularly the chlorinated dibenzodioxins and dibenzofurans. This registry file will complement the national effort being initiated by NIOSH.

An interagency effort has been initiated to establish a worldwide clearinghouse on phthalate research activities. Development plans are underway. A decision has been made to collect information primarily about ongoing research and testing efforts, to assemble an international registry of scientists engaged in phthalates research, and in certain voluntary instances to receive and make available preliminary or recently completed research and testing results. (Contact Person: Ms. J. Chase, NIEHS)

Public Awareness and Inquiry Responses—Public awareness of the NTP increased considerably during FY 1981. The Program's mailing list expanded to 6,500, certain activities received regular coverage in the trade press, some activities (such as the Board of Scientific Counselor's review of a PBB bioassay) received national attention, and the Investigations and Oversight Subcommittee of the House Science and Technology Committee gave the NTP a favorable Congressional review in July.

Working together, the public and toxicology information groups are responsible for answering public inquiries and for conducting an active outreach program to assure that the results of testing and test methods development programs reach those involved in toxicology and public health.

The Public Information Office prepares press releases and articles for publication and responds to inquiries from the public and the press. The toxicology information group, in addition to their major in-house information collection role, maintained a computerized mailing list, distributed NTP publications, as well as answered technical inquiries. Publications include the NTP *Annual Plan,* and the NTP *Annual Report on Carcinogens.* This group also prepares the *NTP Technical Bulletin.* The NTP mailing list and reports distribution are now handled by Public Information Office.

The NTP *Annual Plan* is the primary resource for information on research and testing efforts, emphasizing future plans and including results of past activities. The *NTP Technical Bulletin* keeps those interested in Program activities informed about current and future activities on a more frequent basis. The *Bulletin,* published quarterly as new information becomes available, contains the latest information on chemical nomination and selection, test protocols, research results, recent and upcoming meetings, and other items of interest. Five issues have been published: November 1979, April 1980, November 1980, April 1981, and August 1981. The *Annual Report on Carcinogens* (see pp. 167 to 170), prepared by the staff of the NTP and its member agencies, contains information on substances which are or are strongly suspected of being carcinogenic in humans and animals, human exposures, and appropriate regulations. Approximately 3,000 copies of the *First Annual Report* were distributed upon request. (Contact Persons: Mr. S. d'Arazien and Ms. J. Chase, NIEHS)

The Public Information Office has also prepared a 20-page pamphlet explaining the NTP for the general public. As resources become available, it is hoped that other general interest publications about environmental health and the risk-benefit question can be produced, and other outreach activities can be undrrtaken to make program results and information known to a broader audience. (Contact Person: Mr. S. d'Arazien, NIEHS)

The NTP maintains a computerized mailing list of those with an ongoing interst in the Program. This list is divided into broad categories: industry; health care; law firms; Federal, state and local governments; labor; environmental or public interest organizations; educational groups; research or consulting organizations; and trade or professional organizations. Names are added upon request to the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (919/541–3991 or (FTS) 629–3991).

Annual Report on Carcinogens

The *Second NTP Annual Report on Carcinogens* is scheduled to be published in December 1981. The Report was prepared by the NTP staff and that of member agencies pursuant to a 1978 amendment (Section 301(b)(4) to the Public Health Service Act) which requires that the Secretary of the Department of Health and Human Services publish annually a list of "all substances which are either known to be carcinogens [in humans] or which may reasonably be anticipated to be carcinogens and to which a significant number of persons residing in the United States are exposed * * *." Each *Annual Report* also contains, to the extent available, information on the nature and degree of exposure to such carcinogens and on the extent to which Federal regulations are effective in reducing the risk to public health.

The *Second Annual Report* includes 88 entries on substances, chemicals, or manufacturing processes (Table 28). Included is information of 25 entries in last year's *First Annual Report* and 63 others. These entries are included because the International Agency for Research on Cancer (IARC) has determined that there is "sufficient evidence of carcinogenicity in experimental animals" to classify them as animal carcinogens, because they are regulated by the Federal government as carcinogens, because they have been found to cause cancer in bioassays conducted by the National Cancer Institute or the NPT, or because their inclusion was suggested by the agencies involved in preparing the *Annual Report.*

Among the 88 are naturally-occurring substances, additives to food or cosmetics, pesticides, pharmaceuticals and a large number which are either associated with industrial production or are byproducts of manufacture. IARC has evaluated 39 chemicals, groups of chemicals, industrial processes, or occupations as being associated with cancer induction in humans. Nearly all of these are in the *Annual Report.*

The fact that a substance is not included in the Report does not mean that the agent is not a confirmed or suspected carcinogen. There are additional substances which represent potential health hazards to the population. The available data are being examined and these agents will be added to future reports.

Each of the 88 entries includes information primarily on the human and animal evidence for carcinogenicity, on production and occurrence and use, and on what is known about the route and amount of human exposure. The specific regulations promulgated by various Federal agencies are included as well.

The *Annual Report* also contains an extensive list of the common synonyms in use for the chemicals included. Appended to the Report are a glossary of terms and acronyms and a list of requests to the Department of Health and Human Services about chemical carcinogens, as required by law.

The information provided in the *Second Annual Report on Carcinogens*

was developed by the following Federal regulatory and research agencies: the Centers for Disease Control/National Institute for Occupational Safety and Health; the Consumer Product Safety Commission; the Environmental Protection Agency; the Food and Drug Administration; the National Cancer Institute; the National Institute of Environmental Health Sciences; the National Library of Medicine; and the Department of Labor/Occupational Safety and Health Administration. (Contact Person: Dr. R. Shapiro, NIEHS)

Copies of the *Second Annual Report on Carcinogens* are available by contacting: Public Information Office, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709; (919–541–3991; FTS 629–3991).

Tables

To conserve space and minimize cost, results are not given in the tables. Results are available in the bound version of the NTP Fiscal Year 1982 Annual Plan which may be ordered from: NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709; (919) 541–3991 or (FTS) 629–3991.

Questions or Additional Information

Questions or requests for information about the Annual Plan and the National Toxicology Program should be addressed to: Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709; (919–541–3971; FTS 629–3971).

If readers of the Annual Plan are aware of planned or ongoing studies on chemicals mentioned in the Plan, they are encouraged to make such information known to the NTP, so that unnecessary duplicative studies can be avoided or minimized.

Errors or Omissions

Although every effort, is made to ensure that the Annual Plan is error free, mistakes may occur. Any errors or omissions noted by the reader in the body of the Annual Plan, or the index, should be called to the attention of Dr. Larry Hart (see above for address).

Index

Numbers in the index refer to the number of the table in which the chemical is listed *except* where prefixed with a P. These entries are found in the text and P refers to the page number in the bound version of the Plan.

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TABLE 1

SUMMARY OF THE NTP BENZIDINE CONGENER INITIATIVE

Acid Red 114
Benzidine
3,3'-Dimethoxybenzidine
3,3'-Dimethylbenzidine
Direct Black 114
Direct Blue 6
Direct Blue 8
Direct Blue 14
Direct Blue 15
Direct Blue 25
Direct Blue 53
Direct Blue 218
Direct Orange 6
Direct Red 2
Direct Red 39
Direct Violet 32

TABLE 2

CHEMICALS TESTED FOR WHICH RESULTS ARE AVAILABLE FROM NTP FOR MUTAGENICITY IN SALMONELLA ASSAYS IN FY 1981

Acetin
P-Acetophenetidide
Acrolein
Allyl glycidyl ether
Allyl isothiocyanate
Amiben
3-Amino-4-ethoxyacetanilide
M-Anisidine
O-Anisidine
Benzoin
P-Benzoquinone dioxime
Benzyl alcohol
2-Biphenylamine
Bis(2-chloro-1-methylethyl) ether
Boric acid
2-Bromobiphenyl
3-Bromobiphenyl
4-Bromobiphenyl
Bromoform
Butylated Hydroxytoluene
Butyl benzyl phthalate
N-Butyl chloride
Tert-Butyl hydroperoxide
Beta-Cadinene
Cadmium chloride
Caffeine
Calcium cyanamide
Carbromal
D-Carvone
Chlorendic acid
Chloroacetic acid
P-Chloroaniline
Chlorobenzilate
2-Chloro-1,3-butadiene
Chlorodibromomethane
2-Chloronitrobenzene
3-Chloronitrobenzene
4-Chloro-o-phenylenediamine
2-Chloro-p-phenylenediamine sulfate
Chlorothalonil
4-Chloro-o-toluidine hydrochloride
Chlorowax 40
Chlorowax 500C
Chlorpromazine hydrochloride
Chlorpropamide
Choline chloride
Cinnamaldehyde
Coumarin
Croton oil
Cytoxal alcohol
O,P'-DDD
Diacetone acrylamide
2,4-Diaminotoluene
Dibenzofuran
Diborane
1,3-Dichloro-5,5-dimethylhydantoin
Dichlorodiphenylethylene
1,1-Dichloroethylene
Cis & Trans-1,2-Dichloroethylene
1,2-Dichloroethylene
Dichloromethotrexate
2,3-Dichloronitrobenzene
2,4-Dichlorophenoxyacetic acid
Dieldrin
7-Diethylamino-4-methylcoumarin
Diethylene glycol dimethyl ether
Diethyl ethylphosphonate
Di(2-ethylhexyl) phthalate
Diethyl phthalate
3,4-Dihydrocoumarin
5,7-Dihydroxy-4-methylcoumarin
Diisobutylketone
Dimethoate
Dimethoxane
3,3'-Dimethoxybenzidine-4,4'-diisocyanate
N,N-Dimethyl-p-nitrosoaniline
2,4-Dimethylphenol
1,3-Dioxane
1,4-Dioxane
Diphenhydramine hydrochloride
Direct Black 38
Direct Blue 6
Direct Brown 95
DMA 4
Dulcin
Endrin
1,2-Epoxybutane
1,2-Epoxypropane
2-Ethoxyethanol
Ethyl bromide
Ethylene chlorohydrin
Ethylenediamine
Ethyl-3-methyl-3-phenylglycidate
Ethyl tellurac
Fenthion
Ferrocene
Formaldehyde
Furan
Glutaraldehyde
Glycol (Polysorbate 80)
Guanazole
Hexabromobenzene
Hexamethylmelamine
Hydrazine sulfate
Hydroxyurea
Iodoform
Isoproterenol hydrochloride
Lasiocarpine
D-Limonene
Lindane
Maleic anhydride
Mannitol
O-Methoxyphenol
N-Methyl-p-aminophenol sulfate
Methyl coumarin
4,4'-Methylenebis(2-chloroaniline)
Methylhydrazine
2-Methyl-1-nitroanthraquinone
Cis-Methyl oleate
Methyl salicylate
N-(1-Naphthyl)ethylenediamine dihydrochloride
Navy fuels JP-5
5-Nitroacenaphthene
3-Nitro-p-acetophenetidide
5-Nitro-o-anisidine
Nitrobenzene
5(6)-Nitrobenzimidazole
1-Nitrobutane
Nitroethane
Nitrofurantoin
Nitrofurazone
1-Nitrohexane
Nitromethane
1-Nitronaphthalene
P-Nitrophenol
1-Nitropropane
2-Nitropropane
N-Nitrosodimethylamine
N-Nitrosopiperidine
M-Nitrotoluene
O-Nitrotoluene
P-Nitrotoluene
Oxytetracycline hydrochloride
Palladium chloride (2+)
Parathion
Pentaerythritol tetranitrate
Phenazopyridine hydrochloride
Phenol
Phenylbutazone
Phenylmercuric acetate
Phosphamidon
1(2H)-Phthalazinone
Phthalic anhydride
Piperonyl butoxide
Piperonyl sulfoxide
Potassium chloride
Prednisone
Probenecid
Pyrazinamide
Pyrimethamine
Sodium aluminosilicate
Sodium dehydroacetate
Sodium dichloroisocyanurate
Sodium lignosulfonate
Sodium ricinoleate
Sodium thioglycolate
Sodium xylenesulfonate
Streptomycin sulfate
Sulfacetamide
Sulfallate
Sulfanilamide
3-Sulfolene
4,4'-Sulfonyldianiline
2,3,7,8-Tetrachlorodibenzo-p-dioxin
1,2,3,4-Tetrachloronaphthalene
2,3,4,5-Tetrachloronitrobenzene
2,3,5,6-Tetrachloronitrobenzene
Tetrachlorophthalic anhydride
Tetraethyllead
Tetrahydrofuran
Tetrakis(hydroxymethyl)phosphonium
Tetramethyllead

TABLE 2

CHEMICALS TESTED FOR WHICH RESULTS ARE AVAILABLE FROM NTP FOR MUTAGENICITY IN SALMONELLA ASSAYS IN FY 1981 (CONT.)

Tetranitromethane
Titanium ferrocene
Tolbutamide
O-Toluidine hydrochloride
1,1,1-Trichloroethane
2,4,5-Trichlorophenoxyacetic acid
1,2,3-Trichloropropane
Trifluralin
Trihydroxybutyrophenone
2,4,5-Trimethylaniline
Tris(2-chloroethyl) phosphate
Tris(2-chloroethyl)phosphite
Tris(2-ethylhexyl) phosphite
Vitamin D3
2,6-Xylidine
Zearalenone

TABLE 3

CHEMICALS TESTED FOR WHICH RESULTS ARE AVAILABLE FROM NTP FOR CYTOGENETIC EFFECTS IN CHINESE HAMSTER OVARY CELLS IN FY 1981

AF-2
Azobenzene
Choline chloride
3,3'-Dimethoxybenzidine
Dimethylcarbamoyl chloride
Hexabromobiphenyl
Maleic hydrazide
3-Methylcholanthrene
4,4'-Methylenebis(2-chloroaniline)
N-Nitrosodimethylamine
Propiolactone
Quinoline
Trimethoprim

TABLE 4

CHEMICALS TESTED FOR WHICH RESULTS ARE AVAILABLE FROM NTP FOR MUTAGENICITY IN L5178Y MOUSE LYMPHOMA CELLS IN FY 1981

2-Acetylaminofluorene
4-Acetylaminofluorene
4-Amino-2-nitrophenol
2-Amino-5-nitrothiazole
3-Aminotriazole
Benz(a)anthracene
Benzo(a)pyrene
4,4'-Bis(Dimethylamino)benzophenone
7-Bromomethyl-12-methylbenz(a)anthracene
Calcium chromate
Cyclophosphamide
2,4-Diaminoanisole sulfate
1,2:3,4-Diepoxybutane
7,12-Dimethylbenz(a)anthracene
1,2-Epoxybutane
Ethylene dibromide
4-Hydroxyaminoquinoline-1-oxide
Methoxychlor
4,4'-Methylenebis(2-chloroaniline)
4-Nitro-o-phenylenediamine
3-Nitropropionic acid
4-Nitroquinoline-N-oxide
Procarbazine hydrochloride

TABLE 5

CHEMICALS TESTED FOR WHICH RESULTS ARE AVAILABLE FROM NTP FOR HERITABLE GENETIC EFFECTS IN DROSOPHILA IN FY 1981

4-Biphenylamine
4-Chloronitrobenzene
2,4-Dichlorophenoxyacetic acid
2,4-Dinitrotoluene
1,3-Dioxane
Ethylenediamine
Hexachlorocyclopentadiene
Nitrofurantoin
P-Nitrophenol
2-Nitropropane
N-Nitrosodimethylamine
Picric acid
Propiolactone
Quinoline
2,3,7,8-Tetrachlorodibenzo-p-dioxin
Thiocarbanilide
1,3,5-Trichlorobenzene
2,4,5-Trichlorophenoxyacetic acid

TABLE 6

CHEMICALS SCHEDULED FOR MUTAGENICITY TESTING IN SALMONELLA IN FY 1982

Acetonitrile
1-Acetyl-2-picolinoyl hydrazine
Acetyl-o-toluidine
Acid Red 114
Adipamide
Allyl isovalerate
9-Aminoacridine hydrochloride
1-Amino-2,4-dibromoanthraquinone
2-Amino-4-nitrophenol
2-Amino-5-nitrophenol
11-Aminoundecanoic acid
Ampicillin trihydrate
Anthracene
Benzidine
Benzyl acetate
2,2-Bis(Bromomethyl)-1,3-propanediol
Brucine
1,4-Butanediol diglycidyl ether
2-Butanone peroxide
Tert-Butyl alcohol
Butyl 2,4-dichlorophenoxyacetate
N-Butyl 2,4,5-trichlorophenoxyacetate
Butyric acid
Butyrolactone
Cadmium oxide
Chlordane
Chlordecone
Chlordecone alcohol
Chloroacetonitrile
2-Chloroethyltrimethylammonium chloride
3-Chloro-2-methylpropene
2-Chloromethylpyridine hydrochloride
3-Chloromethylpyridine hydrochloride
4-Chloro-2-nitroaniline
3-Chloro-p-toluidine
5-Chloro-o-toluidine

TABLE 6

CHEMICALS SCHEDULED FOR MUTAGENICITY TESTING IN SALMONELLA IN FY 1982 (CONT.)

Chlorpheniramine maleate
Cineol
Colchicine
Curcumin
Cyclohexane
Decarbazine
Decabromodiphenyl oxide
Diallyl phthalate
4,4'-Diamino-2,2'-stilbenedisulfonic
Dibromoacetonitrile
Dibromodulcitol
Dibromomannitol
Dibutyl phthalate
Dibutyltin diacetate
Dichloroacetonitrile
3,3'-Dichlorobenzidine dihydrochloride
2,6-Dichloro-p-phenylenediamine
1,3-Dichloropropene
Dicofol
Dicyclopentadiene
Diesel fuel marine
Diethylamine
Diethyldichlorosilane
Diethylene glycol
Di(2-ethylhexyl)sebacate
Di(p-ethylphenyl)dichloroethane
N,N'-Diethylthiourea
Diglycidyl resorcinol ether
1,8-Dihydroxy-4,5-dinitroanthraquinone
Diisobutyl phthalate
Diisodecyl phthalate
Dimenhydrinate
3,3'-Dimethylbenzidine
Dimethyl hydrogenphosphite
Dimethyl methylphosphonate
Dimethyl phthalate
Dimethyl sulfoxide
Dimethyl terephthalate
Dimethylvinyl chloride
2,4-Dinitroaniline
Dioctyl phthalate
Dioxathion
4,4'-Diphenylmethane diisocyanate
Direct Blue 1
Direct Blue 15
Direct Blue 53
Direct Blue 218
Direct Red 2
2,5-Dithiobiurea
Ditridecyl phthalate
Dodecenylsuccinic anhydride
Endosulfan
1,2-Epoxyhexadecane
1,2-Epoxy-3,3,3-trichloropropane
Erythromycin stearate
Ethyl acrylate
2-Ethylhexanol
Ethyl methanesulfonate
Fluorescein, sodium
4-Fluoro-dl-phenylalanine
5-Fluorouracil
Furfuryl alcohol
Furosemide
Geranyl acetate
Gibberellic acid
Halothane
HC Yellow 4
Heptachlor
Hexamethyl-p-rosaniline chloride
Hexanamide
N-Hexane
1,6-Hexanediamine
Hexylresorcinol
Hydrochlorothiazide
L-5-Hydroxytryptophan
Indomethacin
Isoamyl nitrite
Isobutyl 2,4,5-trichlorophenoxyacetate
Isophorone
Isopropyl glycidyl ether
Lead dimethyldithiocarbamate
Lead dioxide
Linoleic acid
Malathion
Maleic hydrazide
Maleic hydrazide diethanolamine
Malonaldehyde
Melamine
Mercaptobenzothiazole
Mercuric chloride
Methoxychlor
Alpha-Methylbenzyl alcohol
O-Methylhydroxylamine hydrochloride
Methyl isocyanate
Methyl mercuric chloride
Methyl methacrylate
Methyl methanesulfonate
N-Methylolacrylamide
Methyl parathion
Mirex
Monoethanolamine
Monuron
Myleran
Naphthalene
1,4-Naphthalenediamine
Nithiazide
O-Nitroacetophenone
P-Nitroaniline
O-Nitroanisole
4-Nitroanthranilic acid
P-Nitrobenzoyl chloride
O-Nitrobenzyl chloride
P-Nitrobenzyl chloride
O-Nitrophenethyl acetate
O-Nitrophenol
4-Nitro-o-phenylenediamine
P-Nitrosodiphenylamine
Oleic acid
Penicillin VK
Pentachloroethane
Pheniramine maleate
D-Phenylalanine
N-Phenylhydroxylamine
1-Phenyl-3-methyl-5-pyrazolone
O-Phenylphenol
N-Phenyl-p-phenylenediamine
1-Phenyl-2-thiourea
Photodieldrin
Pigment Red 3
Pigment Red 23
Pyrilamine
Resorcine Blue
Rotenone
Saccharin
Sodium cyanurate
Sodium diethyldithiocarbamate
Sodium dodecyl sulfate
Sodium (2-ethylhexyl)alcohol sulfate
Succinic acid 2,2-dimethylhydrazide
Sulfamethazine
1,2,4,5-Tetrachlorobenzene
Tetrachlorodiphenylethane
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetracycline hydrochloride
Tetraethylthiuram disulfide
Thiazole
4,4-Thiobis(6-tert-butyl-m-cresol)
Thonzylamine hydrochloride
2,4-Toluene diisocyanate
P-Tolylurea
Toxaphene
Trichloroacetonitrile
Trichlorofluoromethane
Tri-m-cresyl phosphate
Triethylamine
Triethyllead chloride
Trimellitic anhydride
Trimethoprim
Trimethylamine
Trimethyloxonium hexachloroantimonate
Trimethylthiourea
2,4,6-Trinitrotoluene
Triphenyl phosphate
Tris(2-ethylhexyl) phosphate
Trixylenyl phosphate mixed isomers
Urea
Vat Yellow 4
4-Vinylcyclohexene
Vinyl cyclohexene dioxide
Vitamin D
Witch hazel
Wollastonite calcium silicates
Ziram
Zirconium oxychloride

TABLE 7

CHEMICALS SCHEDULED TO BE TESTED FOR CYTOGENETIC EFFECTS IN CHINESE HAMSTER OVARY CELLS IN FY 1982

Acetonitrile
Acid Red 114
Acrolein
11-Aminoundecanoic acid
Benzaldehyde
Benzidine
Benzo(a)pyrene
Benzoyl chloride
O-Benzyl-p-chlorophenol
Bromobenzene
Bromoform
Butyl benzyl phthalate
Chlordecone
Chloroacetic acid
4-Chloro-2-nitroaniline
3-Chloronitrobenzene
4-Chloronitrobenzene
Cinnamaldehyde
Crotonaldehyde
Croton oil
Cyclophosphamide
2,4-Diaminophenol dihydrochloride
Dibenzofuran
1,3-Dichloro-5,5-dimethylhydantoin
Cis & Trans-1,2-Dichloroethylene
2,4-Dichlorophenoxyacetic acid
1,2-Dichloropropane
Di(2-ethylhexyl)adipate
Di(2-ethylhexyl) phthalate
Diethyl phthalate
3,3'-Dimethylbenzidine
1,3-Dioxane
1,4-Dioxane
Diphenylhydantoin
Direct Blue 6
Direct Blue 15

TABLE 7

CHEMICALS SCHEDULED TO BE TESTED FOR CYTOGENETIC EFFECTS IN CHINESE HAMSTER OVARY CELLS IN FY 1982 (CONT.)

Direct Blue 218
Direct Brown 95
2-Ethylhexanol
Ferrocene
Formaldehyde
Glutaraldehyde
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hydrazobenzene
Hydroquinone
Isoproterenol hydrochloride
Manganese sulfate
Methdilazine
Methylphenidate
P-Nitroaniline
O-Nitroanisole
2-Nitropropane
M-Nitrotoluene
O-Nitrotoluene
P-Nitrotoluene
Pentachlorophenol
Phthalic anhydride
Piperonyl butoxide
Promethazine
Propantheline bromide
Seneciphylline
Sulfacetamide
2,3,7,8-Tetrachlorodibenzo-p-dioxin
Tetrachloroethylene
2,3,5,6-Tetrachloronitrobenzene
Tetrachlorophthalic anhydride
Tetrahydrofuran
Triamterene
2,4,6-Trichlorophenol
2,4,5-Trichlorophenoxyacetic acid
1,2,3-Trichloropropane
Tricresyl phosphate
Triethanolamine
Trifluralin

TABLE 8

CHEMICALS SCHEDULED TO BE TESTED FOR HERITABLE GENETIC EFFECTS IN DROSOPHILA IN FY 1982

Acetin
Acetonitrile
Acrolein
Allyl glycidyl ether
9-Aminoacridine hydrochloride
O-Aminophenol
1-Aziridineethanol
Azobenzene
Azodicarbonamide
Benomyl
P-Benzoquinone dioxime
2-Biphenylamine
Tert-Butyl hydroperoxide
Cadmium chloride
Calcium chromate
Calcium cyanamide
Carbendazim
Chloral hydrate
4-Chloro-2-nitroaniline
2-Chloronitrobenzene
Chloropicrin
Coumarin
Crotonaldehyde
Croton oil
2,4-Diaminophenol dihydrochloride
2,3-Dibromo-1-propanol
1,3-Dichloro-5,5-dimethylhydantoin
2,3-Dichloronitrobenzene
2,4-Dichloronitrobenzene
3,4-Dichloronitrobenzene
Di(2-ethylhexyl) phthalate
Dimethoxane
3,3'-Dimethoxybenzidine
Dimethylcarbamoyl chloride
Dimethylformamide
2,6-Dimethyl morpholine
Direct Blue 6
Direct Blue 15
Direct Brown 95
1,2-Epoxypropane
Ethylene chlorohydrin
Ferrocene
2-Fluorobenzoyl chloride
1-Fluoro-2,4-dinitrobenzene
4-Fluoro-dl-phenylalanine
5-Fluorouracil
Formaldehyde
Glutaraldehyde
Hydrazine sulfate
Hydroxyurea
Isoproterenol hydrochloride
Lasiocarpine
3-Methylcholanthrene
2-Methyl-4-dimethylaminoazobenzene
2-Methyl-1-nitroanthraquinone
5-Nitroacenaphthene
3-Nitro-p-acetophenetidide
5-Nitro-o-anisidine
1-Nitronaphthalene
Sodium azide
Streptomycin sulfate
Sulfacetamide
Sulfanilamide
2,3,5,6-Tetrachloronitrobenzene
Tetrachlorophthalic anhydride
Tetranitromethane
Titanium ferrocene
1,2,3-Trichloropropane
Triethanolamine
Triethyllead chloride
Trifluralin
Trimethoprim

TABLE 9

CHEMICALS FOR WHICH CARCINOGENESIS BIOASSAYS WERE COMPLETED IN FY 1981 RESULTS ARE AVAILABLE FROM NTP

Agar agar
Allyl isothiocyanate
11-Aminoundecanoic acid
Asbestos, amosite
Asbestos, chrysotile SR
2-Biphenylamine hydrochloride
Bisphenol A
1,2-Dibromo-3-chloropropane
Butyl benzyl phthalate
Caprolactam
Cytembena
2,6-Dichloro-p-phenylenediamine
1,2-Dibromoethane
Di(2-ethylhexyl)adipate
Di(2-ethylhexyl) phthalate
Disperse Yellow 3
Eugenol
Guar gum
Gum arabic
Gum tara
Locust bean gum
Orange 10
Pentachloroethane
Polybrominated biphenyl (Firemaster FF 1)
D & C Red 9
Red 14
Stannous chloride
TCDD/DMBA
2,3,7,8-Tetrachlorodibenzo-p-dioxin
Vinylidene chloride
Sunset Yellow FCF 6
Yellow 14

TABLE 10

CHEMICALS STARTED IN THE PRECHRONIC PHASE OF THE BIOASSAY IN FY 1981

1-Amino-2,4-dibromoanthraquinone
Amphetamine sulfate
Azodicarbonamide
Benzaldehyde
Beta-Cadinene
Caffeine
D-Carvone
Chloramphenicol
Chloroacetic acid
P-Chloroaniline
Chlorothen
Chlorpromazine hydrochloride
Cineol
Cinnamaldehyde
Coumarin
Curcumin
2,4-Diaminophenol dihydrochloride
4,4'-Diamino-2,2'-stilbenedisulfonic acid
Diethyl phthalate
3,4-Dihydrocoumarin
Dimethoxane
Dimethyloldihydroxyethyleneurea
Doxylamine
Ethylenediamine
Ethylene glycol
Glycol (Polysorbate 80)
HC Yellow 4
Hexachloroethane
4-Hydroxyacetanilide
Isobutyl nitrite
Isoproterenol hydrochloride
Mercuric chloride
Methapyrilene
Methyl coumarin
N-Methylolacrylamide
Nitrobenzene
Ochratoxin A
Palladium chloride (2+)
Pigment Red 3
Pigment Red 23
Probenecid
Pyrilamine
Quercetin
Resorcinol
Sodium azide
Thenyldiamine
Titanium ferrocene
Toluene
Trimellitic anhydride
Tripelennamine
Tris(2-chloroethyl) phosphate
Vinyl cyclohexene dioxide

TABLE 11

CHEMICALS FOR WHICH CHRONIC TESTING WAS COMPLETED IN FY 1981

Agaritine
Allyl isovalerate
Asbestos, amosite
Asbestos, chrysotile IR
Asbestos, chrysotile SR
Asbestos, crocidolite
Ascorbic acid
Benzyl acetate
Bis(2-chloro-1-methylethyl) ether
Chlorobenzene
Cyclohexanone
1,2-Dichlorobenzene
1,2-Dichloropropane
1,3-Dichloropropene
Diglycidyl resorcinol ether
1,2-Dimethylhydrazine and asbestos,chrysotile
DMBA/TPA
DMBA/TPA
Dodecyl alcohol, ethoxylated
1,2-Epoxypropane
Ethyl acrylate
Fluorescein, sodium
Geranyl acetate
Gilsonite
HC Blue 1
Mannitol
Melamine
Methylene chloride
4,4'-Methylenedianiline dihydro
Mirex
Monuron
N-Nitrosodiethanolamine
Propyl gallate
Sodium dodecyl sulfate
Sodium (2-ethylhexyl)alcohol sulfate
1,1,1,2-Tetrachloroethane
Tetrachloroethylene
Tetrachloroethylene
Tetrachloroethylene
Tetrachloroethylene
2,4-Toluene diisocyanate
Tremolite
1,1,1-Trichloroethane
Trichloroethylene
Trichloroethylene
Trichloroethylene
Zearalenone
Ziram

TABLE 12

CHEMICALS IN PRECHRONIC TESTING PHASES OF THE BIOASSAY AT THE END OF 1981

Allyl glycidyl ether
1-Amino-2,4-dibromoanthraquinone
2-Amino-4-nitrophenol
2-Amino-5-nitrophenol
Amphetamine sulfate
Ampicillin trihydrate
Antimony oxide
Azodicarbonamide
Azodicarbonamide
Benzaldehyde
Benzene
Benzofuran
Benzyl alcohol
Benzyl chloride
2,2-Bis(Bromomethyl)-1,3-propanediol
2,2-Bis(Bromomethyl)-1,3-propanediol
Blue 15B
Boric acid
Bromobenzene
Bromodichloromethane
Bromoform
1,3-Butadiene
2-Butanone peroxide
Tert-Butyl alcohol
N-Butyl chloride
Butyrolactone
Beta-Cadinene
Caffeine
Carbon disulfide
D-Carvone
Castor oil
Catechol
Chloramine
Chloramphenicol
Chlorendic acid
Chlorinated trisodium phosphate
Chloroacetic acid
Chloroacetophenone
P-Chloroaniline
2-Chlorobenzalmalononitrile
Chlorodibromomethane
3-Chloro-2-methylpropene
Chlorothen
Chlorowax 40
Chlorowax 500C
Chlorpheniramine maleate
Chlorpromazine hydrochloride
C.I. Acid Orange 3
Cineol
Cinnamaldehyde
Coconut diethanolamide
Coumarin
Curcumin
Decabromodiphenyl oxide
Diallyl phthalate
2,4-Diaminophenol dihydrochloride
4,4'-Diamino-2,2'-stilbenedisulfonic acid
2,3-Dibromo-1-propanol
2,3-Dibromo-1-propanol
1,4-Dichlorobenzene
2,4-Dichlorophenol
Dichlorvos
Diesel fuel marine
Diethanolamine
Diethyl phthalate
3,4-Dihydrocoumarin
Dimethoxane
N,N-Dimethylaniline
Dimethyl hydrogenphosphite
Dimethyl methylphosphonate

TABLE 12

CHEMICALS IN PRECHRONIC TESTING PHASES OF THE BIOASSAY AT THE END OF 1981 (CONT.)

Dimethyl morpholinophosphonate
Dimethyloldihydroxyethyleneurea
Dimethyloldihydroxyethyleneurea
Dimethylvinyl chloride
Diphenhydramine hydrochloride
Diphenylhydantoin
4,4'-Diphenylmethane diisocyanate
Disperse Blue 1
Doxylamine
Ephedrine sulfate
Epinephrine hydrochloride
1,2-Epoxybutane
1,2-Epoxyhexadecane
Erythromycin stearate
2-Ethoxyethanol
Ethylbenzene
Ethyl bromide
Ethyl chloride
Ethylene chlorohydrin
Ethylenediamine
Ethylene glycol
Ethylene oxide
Ethylene thiourea
Formaldehyde
Furan
Furfural
Furfuryl alcohol
Furosemide
Gibberellic acid
Glutaraldehyde
Glycidol
Glycol (Polysorbate 80)
HC Blue 2
HC Red 3
HC Yellow 4
Hematoxylin
Hexachlorocyclopentadiene
Hexachloroethane
Hexamethyl-p-rosaniline chloride
Hexylresorcinol
Hydrochlorothiazide
Hydroquinone
4-Hydroxyacetanilide
8-Hydroxyquinoline
5-Hydroxytryptophan
Iodinated glycerol
Isobutyl nitrite
Isophorone
Isoproterenol hydrochloride
Lauric acid diethanolamine
D-Limonene
Maleic hydrazide diethanolamine
Malonaldehyde
Mercaptobenzothiazole
Mercuric chloride
Methapyrilene
8-Methoxypsoralen
Alpha-Methylbenzyl alcohol
Methyl carbamate
Methyl coumarin
Methyldopa
Methylene chloride
Methyl methacrylate
N-Methylolacrylamide
Nalidixic acid
Naphthalene
Navy fuels JP-5
Nitrobenzene
Nitrobenzene
Nitrofurantoin
Nitrofurazone
P-Nitrophenol
Ochratoxin A
Oleic acid diethanolamine
Oxalic acid
Oxytetracycline hydrochloride
Palladium chloride (2+)
Penicillin VK
Pentachloroanisole
Pentachloronitrobenzene
Pentachlorophenol
Pentachlorophenol
Pentachlorophenol
Pentachlorophenol
Pentaerythritol tetranitrate
Phenolphthalein
Phenylbutazone
Phenylephrine hydrochloride
N-Phenyl-2-naphthylamine
O-Phenylphenol
Phthalocyanine green
Pigment Red 3
Pigment Red 23
Probenecid
Propylene
Pyridine
Pyrilamine
Quercetin
P-Quinone
Resorcinol
Rhodamine 6G
P-Rosaniline hydrochloride
Rotenone
Rotenone
Roxarsone
Sodium aluminosilicate
Sodium azide
Sodium cyanurate
Sodium fluoride
Sodium xylenesulfonate
Styrene oxide
Succinic anhydride
Sulfamethazine
Tetrachloroethylene
Tetracycline hydrochloride
Tetrakis(hydroxymethyl)phosphonium chloride
Tetranitromethane
Thenyldiamine
THPS
Titanium ferrocene
Toluene
Toluene
Trichlorfon
Trichloroethylene
Trimellitic anhydride
Tripelennamine
Tris(2-chloroethyl) phosphate
Tris(2-ethylhexyl) phosphate
4-Vinylcyclohexene
Vinyl cyclohexene dioxide
Vinyl cyclohexene dioxide
Vinyl toluene
Witch hazel
Wollastonite calcium silicates
Xylenes, commercial mixture
2,6-Xylidine

TABLE 13

CHEMICALS SCHEDULED TO START IN THE PRECHRONIC PHASES OF THE BIOASSAY IN FY 1982

Acetonitrile
Acid Red 114
O-Benzyl-p-chlorophenol
3,3'-Dimethoxybenzidine dihydrochloride
3,3'-Dimethylbenzidine dihydrochloride
Direct Blue 15
Direct Blue 218
Manganese sulfate
Methdilazine
Methylphenidate
P-Nitroaniline
O-Nitroanisole
Promethazine
Propantheline bromide
Riddelliine
Tetrahydrofuran
Triamterene
1,2,3-Trichloropropane
Tricresyl phosphate

TABLE 14

CHEMICALS FOR WHICH CARCINOGENESIS BIOASSAYS WILL BE COMPLETED IN FY 1982

Allyl isovalerate
Ascorbic acid
Benzyl acetate
Bis(2-chloro-1-methylethyl) ether
Chlorobenzene
Diallyl phthalate
1,2-Dichlorobenzene
Ethyl acrylate
Geranyl acetate
Mannitol
Melamine
Methylene chloride
4,4'-Methylenedianiline dihydrochloride
Propyl gallate
1,1,1,2-Tetrachloroethane
Tetrachloroethylene
Tetrachloroethylene
Tetrachloroethylene
Tetrachloroethylene
Tetrachloroethylene
2,4-Toluene diisocyanate
Trichloroethylene
Trichloroethylene
Trichloroethylene
Trichloroethylene
Zearalenone
Ziram

TABLE 15

CHEMICALS STUDIED FOR IMMUNOTOXICITY DURING FY 1981
FOR WHICH RESULTS ARE AVAILABLE FROM NTP

Benzo(a)pyrene
Benzo(a)pyrene
Benzo(e)pyrene
Ethyl carbamate
Methyl carbamate
Phorbol myristate acetate
Phorbol myristate acetate
Promethazine

TABLE 16

PRIMARY NEUROBEHAVIORAL TEST BATTERY FOR RATS

Function	Test
Motor	Forelimb Grip Strength
	Hindlimb Grip Strength
Sensory	Multisensory Conditioned Avoidance
	Tail Flick or Hot Plate
Arousal/Reactivity	Startle - Acoustic
	- Air Puff
	Motor Activity
Health Meausres	Body Weights
	Rectal Temperature

TABLE 17

TERATOLOGY STUDIES COMPLETED OR IN PROGRESS IN FY 1981
FOR WHICH RESULTS ARE AVAILABLE FROM NTP

N-Butyl acetate
Carbon disulfide
Diphenhydramine hydrochloride
Diphenhydramine hydrochloride
1,2-Epoxypropane
2-Ethoxyethanol
Ethylbenzene
Ethylene chlorohydrin
Ethylene oxide
Ethylene oxide
Hexamethyl-p-rosaniline chloride
5-Hydroxytryptophan
Isoproterenol hydrochloride
Oxytetracycline hydrochloride
Phenol
Sulfamethazine

TABLE 18

REPRODUCTIVE AND FERTILITY ASSAYS COMPLETED IN FY 1981
FOR WHICH RESULTS ARE AVAILABLE FROM NTP

Acrolein
Allyl chloride
N-Butyl acetate
Cyclohexanone
Diethylene glycol dimethyl ether
N,N-Dimethylacetamide
Dimethylformamide
1,2-Epoxybutane
1,2-Epoxypropane
Ethylbenzene
Ethylene oxide
2-Ethoxyethanol
Hexachlorobutadiene
Methyl bromide
N-Methyl dicyclohexylamine
2-Methoxyethanol
2-Nitropropane
Styrene oxide
1,1,2,2-Tetrachloroethane
Vinyl toluene

TABLE 19

CHEMICALS TO BE TESTED IN THE SHORT-TERM IN VIVO TERATOLOGY SCREENING SYSTEM IN FY 1982

Aniline
Benzyl alcohol
2-Butanone peroxide
2,4-Diaminotoluene
Diethylene glycol diethyl ether
Diethylene glycol
Diethylene glycol dibutyl ether
Diethylene glycol dimethyl ether
Diethylene glycol monobutyl ether
Diethylene glycol monoethyl ether
Diethylene glycol monomethyl ether
N,N-Dimethylaniline
2,4-Dinitrotoluene
2-Ethoxyethanol
Ethylenediamine
Ethylene glycol
Ethylene glycol diethyl ether
Ethylene glycol dimethyl ether
Ethylene glycol monobutyl ether
Ethylene thiourea
2-Methoxyethanol
Naphthalene
P-Nitroaniline
Nitrofurazone
P-Nitrophenol
Sodium selenite
Toluene
Triethylene glycol
Triethylene glycol dimethyl ether
Trimellitic anhydride

TABLE 20

CHEMICALS SELECTED FOR TERATOLOGY AND POSTNATAL STUDIES IN FY 1982

Carbon disulfide
Chlorpromazine hydrochloride
Di(2-ethylhexyl) phthalate
Diphenhydramine hydrochloride
Isoproterenol hydrochloride
Sulfamethazine

TABLE 21

NTP CHEMICAL NOMINATION ELEMENTS

I. Chemical Identification

- a. Chemical Abstracts Service (CAS) preferred name
- b. Common or generic name and synonyms
- c. CAS Registry Number
- d. Chemical class and related compounds
- e. Physical and chemical properties
  - i. Physical description
  - ii. Structural and molecular formula and molecular weight
  - iii. Melting and boiling points
  - iv. Solubility
  - v. Stability and reactivity
  - vi. Other relevant information
- f. Commercial product(s) composition
- g. References

II. Production, Use, Occurrences, and Analysis

- a. Production
  - i. Source and synthesis, year and pathway of first production
  - ii. Current production and pathway
- b. Uses
- c. Occurrence in the Environment
  - i. Naturally occurring
  - ii. Air, water, and soil
  - iii. Occupational
- d. Analysis
- e. References

III. Toxicology

- a. Human data, case reports, and epidemiological studies
- b. Experimental animal information
- c. In vitro and other short-term tests
- d. Other relevant information
- e. References

IV. Disposition and structure-activity-relations

- a. Absorption, distribution, metabolism, and excretion
- b. Structure-activity correlations and considerations
- c. References

V. Ongoing toxicological and environmental studies in the government, industry, and academia

VI. Rationale for Recommendation and Suggested Studies

TABLE 22

NTP CHEMICAL SELECTION PRINCIPLES

The NTP Executive Committee operates under the principle that industry will test chemicals for health and environmental effects as intended and NTP, acting under its chemical selection principles, will test:

1. Chemicals found in the environment that are not closely associated with commercial activities;

2. Desirable substitutes for existing chemicals, particularly therapeutic agents, that might not be developed or tested without Federal involvement;

3. Chemicals that should be tested to improve scientific understanding of structure-activity relationships and thereby assist in defining groups of commercial chemicals that should be tested by industry;

4. Certain chemicals tested by industry, or by others, the additional testing of which by the Federal government is justified to verify the results;

5. Previously tested chemicals for which other testing is desirable to crosš-compare testing methods;

6. "Old chemicals" with the potential for significant human exposure which are of social importance but which generate too little revenue to support an adequate testing program (some of these may be "grandfathered" under FDA laws);

7. Two or more chemicals together, when combined human exposure occurs (such testing probably cannot be required of industry if the products of different companies are involved); and

8. In special situations, as determined by the Executive Committee, marketed chemicals which have potential for large-scale and/or intense human exposure, even if it may be possible to require industry to perform the testing.

The selection of a chemical by the Executive Committee does not automatically commit the NTP to testing the chemical. The NTP is committed to ascertain the specific toxicologic and regulatory concerns; evaluate the adequacy of existing data or current efforts in government, academic, or private laboratories; aand then propose and conduct specific tests that are needed. Occasionally new information is obtained that answers the questions posed in the nomination and selection process. Sometimes testing is not done because chemicals are withdrawn by the nominator, because others are or will be testing the chemical, or because the chemical is not available, or no longer produced.

TABLE 23

CHEMICALS REVIEWED BY THE CEC IN FY 1981

Acetic anhydride
Benzethonium chloride
Benzotrichloride
Benzoyl chloride
Brucine
Tert-Butyl perbenzoate
Butyric anhydride
M-Chloroaniline
Codeine
Curcumin
Cyclohexane
1,3-Dichloro-5,5-dimethylhydantoin
Direct Black 19
Direct Blue 15
Direct Red 2
Direct Red 39
Dodecenylsuccinic anhydride
Ergonovine
Ergotamine
Gallium arsenide
Mercuric oxide
Mathiodal sodium
Methyl bromide
Methyl fluorosulfonate
Methyl isocyanate
N-Methyl-N-nitroso-p-toluenesulfonamide
Methyltrifluoromethanesulfonate
Nickel oxide
Ninhydrin
Noscapine
O-Phenanthroline
Piperidine
Salicylazosulfapyridine
Scopolamine
Sodium chromate
Sulfamethizole
Sulfanilamide
Sulfathiazole
Tetrachlorophthalic anhydride
Tetrafluoroethylene
Theophylline
4,4-Thiobis(6-tert-butyl-m-cresol)
Triethanolamine
2,4,5-Trimethoxybenzaldehyde
Trimethyloxonium hexachloroantimonate
Vat Blue 1

TABLE 24

TWENTY CHEMICALS REVIEWED BY THE BOARD OF SCIENTIFIC COUNSELORS ON MAY 28, 1981

Acetic anhydride
Brucine
Cyclohexane
1,3-Dichloro-5,5-dimethylhydantoin
Direct Black 19
Direct Blue 15
Direct Red 2
Direct Red 39
Dodecenylsuccinic anhydride
Ergonovine
Ergotamine
Methyl bromide
Methyl fluorosulfonate
Methyl isocyanate
Noscapine
Piperidine
Tetrafluoroethylene
4,4-Thiobis(6-tert-butyl-m-cresol)
Trimethyloxonium hexachloroantimonate
Vat Blue 1

TABLE 25

CHEMICALS PROCURED FOR TERATOLOGY STUDIES

Carbon disulfide
Cinnamaldehyde
Dimethylformamide
Hexamethyl-p-rosaniline chloride
5-Hydroxytryptophan
N-Isopropyl-N'-phenyl-p-phenylenediamine
Isoproterenol hydrochloride
P-Nitroaniline
Oxytetracycline hydrochloride
Sulfamethazine

TABLE 26

CHEMISTRY RESOURCES SUPPORT FOR IN-HOUSE NTP STUDIES

Agent Orange
Benzidine
Benzo(a)pyrene
Benzo(e)pyrene
Chlordecone
Direct Blue 6
Mercuric chloride

TABLE 27

NTP CHEMICAL REPOSITORY HOLDINGS AND ACTIVITIES IN FY 1981

	Cellular and Genetic Toxicology Repository	Toxicology and Carcinogenesis Bioassay Repository
1. Control chemicals in inventory	17	--
2. Test chemicals in inventory	640	361
3. Archival allotments	169	164
4. Testing allotments	640	391
5. Public allotments	164	130
6. Test chemicals shipped for Salmonella testing in FY 1981	312	--
7. Test chemicals shipped for Drosophila testing in FY 1981	63	--
8. Test chemicals shipped for cytogenetics testing in FY 1981	83	--
9. Test chemicals shipped for aneuploidy testing in FY 1981	40	--
10. Aliquots shipped to date	1108	--
11. Chemicals on order or backorder	53	--
12. Chemicals synthesized	3	--
13. Chemicals scheduled for purity analysis	98	--
14. Purity analyses completed	98	--
15. Aliquots transferred to Cellular and Genetic Toxicology Repository	--	179
16. Aliquots shipped from Toxicology and Carcinogenesis Bioassay Repository	--	160
17. Chemicals selected for FY 1981 cellular and genetic toxicology testing	546	--
18. Chemicals selected for FY 1981 testing	211	--

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TABLE 28

CHEMICALS, SUBSTANCES AND MANUFACTURING PROCESSES
INCLUDED IN THE SECOND ANNUAL REPORT ON CARCINOGENS

1. 2-Acetylaminofluorene
2. Acrylonitrile
3. Aflatoxins
4. 4-Aminobiphenyl
5. Amitrole
6. Aramite
7. Arsenic and Compounds
8. Asbestos
9. Auramine, Manufacture of
10. Benz(a)anthracene
11. Benzene
12. Benzidine
13. Benzo(b)fluoranthene and Benzo(j)fluoranthene
14. Benzo(a)pyrene
15. Beryllium and Compounds
16. N,N-Bis(2-chloroethyl)-2-naphthylamine
17. Bis(chloromethyl ether and Chloromethyl Methyl ether
18. Cadmium and Certain Compounds
19. Cabon Tetrachloride
20. Chlorambucil
21. Chloroform
22. Chromium and Compounds
23. Coke Oven Emissions
24. p-Cresidine
25. Cycasin
26. Cyclophosphamide
27. 2,4-Diamintoluene
28. Dibenz(a,h)acridine
29. Dibenz(a,j)acridine
30. Dibenz(a,h)acridine
31. 7H-Dibenzo(c,g)carbazole
32. Dibenzo(a,h)pyrene
33. Dibenzo(a,i)pyrene
34. 1,2-Dibromo-3-chloropropane
35. 1,2-Dibromoethane
36. Dichlorobenzidine
37. 1,2-Dichloroethane
38. Diethylstilbestrol
39. 4-Dimethylaminoazobenzene
40. Dimethyl Carbamoyl Chloride
41. Dimethyl Sulfate
42. 1,4-Dioxane
43. Formaldehyde
44. Hematit underground mining
45. Hydrazobenzene
46. Indeno(1,2,3-cd)pyrene
47. Iron Dextran
48. Isopropyl Alcohol manufacture using strong acid process
49. Kepone
50. Lead Acetate and Lead Phosphate
51. Lindane and Other Hexachlorocyclohexane Isomers
52. Melphalan
53. Mirex
54. Mustard Gas
55. 2-Naphthylamine
56. Nickel refining and Certain Compounds
57. N-Nitrosodi-N-butylamine
58. N-Nitrosodiethanolamine
59. N-Nitrosodiethylamine
60. N-Nitrosodimethylamine
61. N-Nitrosodi-N-propylamine
62. N-Nitroso-N-ethylurea
63. N-Nitroso-N-methylurea
64. N-Nitrosomethyl Vinylamine
65. N-Nitrosomorpholine
66. N-Nitrosonornicotine
67. N-Nitrosopiperidine
68. N-Nitrosopyrrolidine
69. N-Nitrososarcosine
70. Oxymethalone
71. Phenacetin
72. Phenazopyridine Hydrochloride
73. Phenytoin
74. Polychlorinated Biphenyls
75. Procarbazine and Procarbazine Hydrochloride
76. beta- Propiolactone
77. Reserpine
78. Saccharin
79. Safrole
80. Soots, Tars and Oils
81. Streptozotocin
82. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
83. Thorium Dioxide
84. o-Toluidine Hydrochloride
85. Toxaphene
86. Tris(aziridinyl)-phosphine Sulfide
87. Tris(2,3-dibromopropyl)phosphate
98. Vinyl Chloride

FIGURE 1

NATIONAL TOXICOLOGY PROGRAM

Agency origin and amounts of funding (millions)

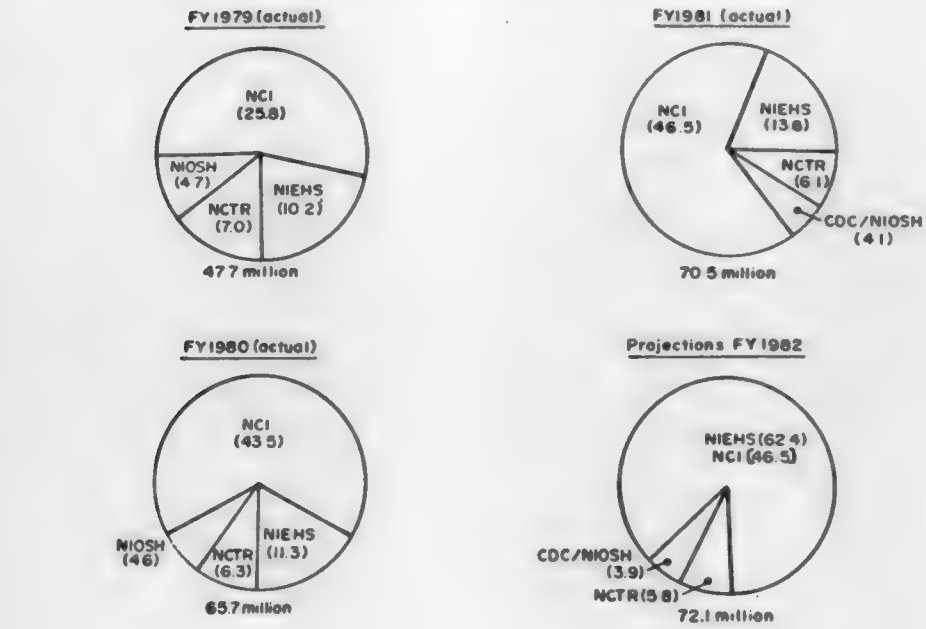

FIGURE 2

NATIONAL TOXICOLOGY PROGRAM (millions)

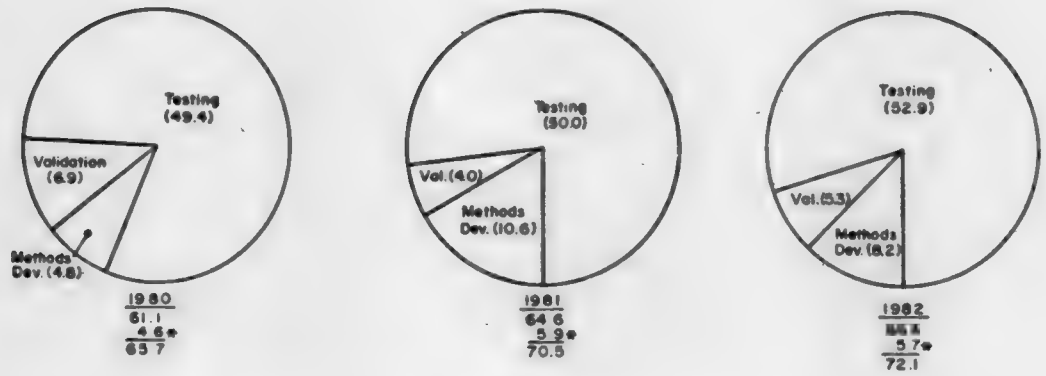

*Other activities such as grants, WHO Cooperative Center, dioxin registry, core staff, indirect operational support, etc.

FIGURE 3

NATIONAL TOXICOLOGY PROGRAM (millions)

1981

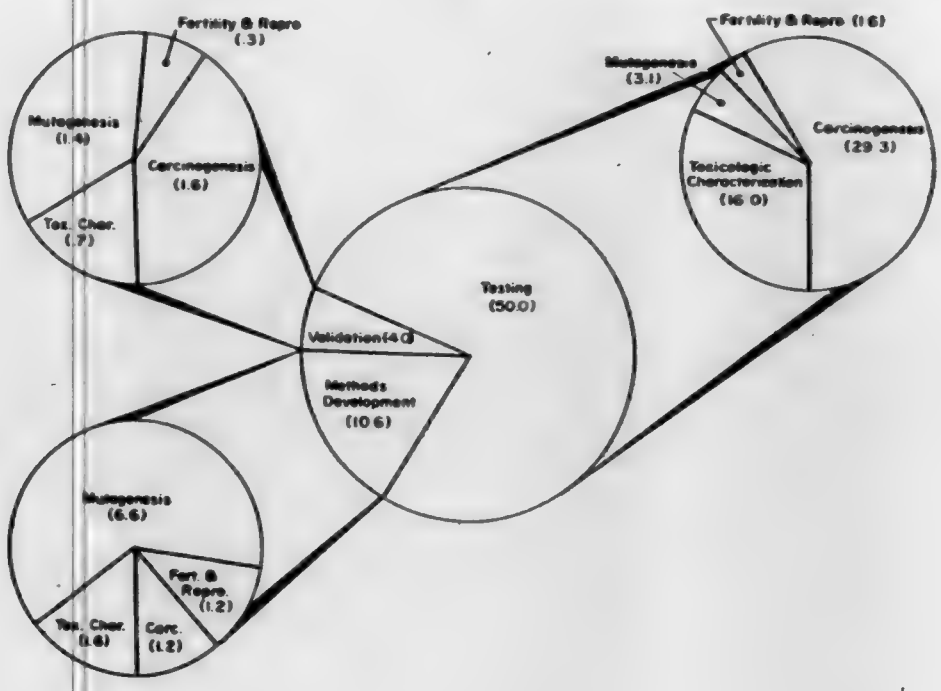

FIGURE 4

NTP CHEMICAL NOMINATION AND CHEMICAL SELECTION PROCESS

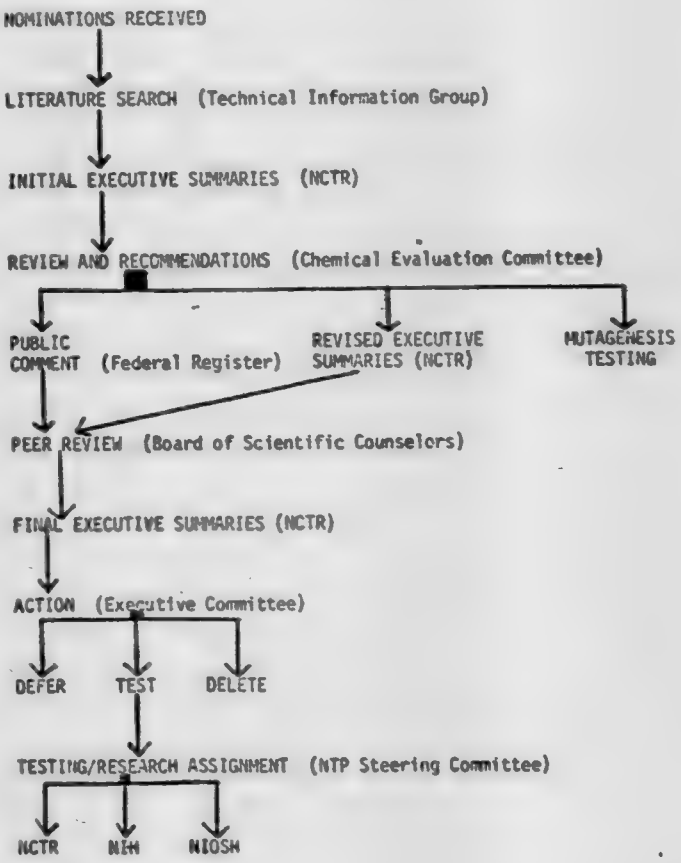

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Acetic anhydride	24
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Acetonitrile	6
Acetonitrile	7
Acetonitrile	8
Acetonitrile	13
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P-Acetophenetidide	2
2-Acetylaminofluorene	4
2-Acetylaminofluorene	28
2-Acetylaminofluorene	P 79
2-Acetylaminofluorene	P 81
4-Acetylaminofluorene	4
1-Acetyl-2-picolinoyl hydrazine	6
Acetyl-o-toluidine	6
Acid Black 52	P 76
Acid Red 114	1
Acid Red 114	6
Acid Red 114	7
Acid Red 114	13
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Acrolein	7
Acrolein	8
Acrolein	16
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Acrylamide	P 120
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Adipamide	6
Aflatoxin	28
Aflatoxin-B1	26
Aflatoxin-B2	26
Aflatoxin-G1	26
Aflatoxin-G2	26
AF-2	3
Agar agar	9
Agaritine	11
Agent Orange	26
Allyl chloride	10
Allyl glycidyl ether	8
Allyl glycidyl ether	12
Allyl glycidyl ether	P
Allyl isothiocyanate	2
Allyl isothiocyanate	9
Allyl isovalerate	6
Allyl isovalerate	11
Allyl isovalerate	14
Amiben	2
9-Aminoacridine hydrochloride	6
9-Aminoacridine hydrochloride	8
1-Amino-2,4-dibromoanthraquinone	6
1-Amino-2,4-dibromoanthraquinone	10
1-Amino-2,4-dibromoanthraquinone	12
3-Amino-4-ethoxyacetanilide	2
2-Amino-4-nitrophenol	6
2-Amino-4-nitrophenol	12
2-Amino-5-nitrophenol	12
4-Amino-2-nitrophenol	4
2-Amino-5-nitrothiazole	4
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1-Aziridineethanol	8
Azobenzene	3
Azobenzene	8
Azodicarbonamide	6
Azodicarbonamide	10
Azodicarbonamide	12
Azodicarbonamide	12
Benomyl	8
Benzaldehyde	7
Benzaldehyde	10
Benzaldehyde	12
Benz(a)anthracene	4
Benz(a)anthracene	28
Benzene	12
Benzene	28
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Benzidine	1
Benzidine	6
Benzidine	7
Benzidine	26
Benzidine	28
Benzo(a)pyrene	4
Benzo(a)pyrene	7
Benzo(a)pyrene	15
Benzo(a)pyrene	15
Benzo(a)pyrene	26
Benzo(a)pyrene	28
Benzo(e)pyrene	15
Benzo(e)pyrene	26
Benzo(b)fluoranthene	28
Benzo(j)fluoranthene	28
Benzofuran	12
Benzoin	2

P = page number of original report, which may be obtained from the Public Information Office, National Toxicology Program, P.O.Box 12233, Research Triangle Park, NC 27709.

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Benzo(a)pyrene	P 113
Benzo(e)pyrene	P 113
P-Benzoquinone dioxime	2
P-Benzoquinone dioxime	8
Benzotrichloride	23
Benzoyl chloride	7
Benzoyl chloride	23
Benzyl acetate	6
Benzyl acetate	11
Benzyl acetate	14
Benzyl alcohol	2
Benzyl alcohol	12
Benzyl alcohol	19
Benzylamine	P 104
Benzyl chloride	12
O-Benzyl-p-chlorophenol	7
O-Benzyl-p-chlorophenol	13
Beryl	28
Beryllium and compounds	28
Beryllium carbide phosphate	28
Beryllium fluoride	28
Beryllium oxide	28
Beryllium silicate	28
Beryllium sulfate	28
2-Biphenylamine	2
2-Biphenylamine	8
4-Biphenylamine	5
4-Biphenylamine	28
2-Biphenylamine hydrochloride	9
2,2-Bis(Bromomethyl)-1,3-propanediol	6
2,2-Bis(Bromomethyl)-1,3-propanediol	12
2,2-Bis(Bromomethyl)-1,3-propanediol	12
N,N-Bis(2-chloroethyl)-2-naphthylamine	28
Bis(2-chloro-1-methylethyl) ether	11
Bis(chloromethyl) ether	28
Bis(2-chloro-1-methylethyl) ether	2
Bis(2-chloro-1-methylethyl) ether	14
4,4'-Bis(Dimethylamino)benzophenone	4
Bisphenol A	9
Bisphenol A	P 109
Bisphenol A	P 127
Blue 158	12
Boric acid	2
Boric acid	12
Bromobenzene	7
Bromobenzene	12
2-Bromobiphenyl	2
3-Bromobiphenyl	2
4-Bromobiphenyl	2
1,2-Bromo-3-chloropropane	9
Bromodichloromethane	12
2-Bromo-4,6-dinitroaniline	P 109
Bromoform	2
Bromoform	7
Bromoform	12
7-Bromomethyl-12-methylbenz(a)anthracene	4
Brucine	6
Brucine	23
Brucine	24
1,3-Butadiene	12
1,4-Butanediol diglycidyl ether	6
2-Butanone peroxide	12
2-Butanone peroxide	6
2-Butanone peroxide	19
2-Butoxyethanol	P 129
N-Butyl acetate	17
N-Butyl acetate	18
Tert-Butyl alcohol	6
Tert-Butyl alcohol	12
n-Butylamine	P 102
sec-Butylamine	P 102
tert-Butylamine	P 102
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Butyl benzyl phthalate	2
Butyl benzyl phthalate	9
Butyl benzyl phthalate	7
N-Butyl chloride	2
N-Butyl chloride	12
Butyl 2,4-dichlorophenoxyacetate	6
Tert-Butyl hydroperoxide	2
Tert-Butyl hydroperoxide	8
Tert-Butyl perbenzoate	23
N-Butyl 2,4,5-trichlorophenoxyacetate	6
Butyric acid	6
Butyric anhydride	23
Butyrolactone	6
Butyrolactone	12
Beta-Cadinene	2
Beta-Cadinene	10
Beta-Cadinene	12
Cadmium	28
Cadmium	P 104
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Cadmium chloride	2
Cadmium chloride	8
Cadmium chloride	28
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Cadmium fluoroborate	28
Cadmium nitrate	28
Cadmium oxide	6
Cadmium oxide	28
Cadmium sulfate	28
Cadmium sulfide	28
Caffeine	2
Caffeine	10
Caffeine	12
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Calcium chromate	4
Calcium chromate	8
Calcium chromate	28
Calcium cyanamide	2
Calcium cyanamide	8
Caprolactam	9
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Carbon disulfide	12
Carbon disulfide	17
Carbon disulfide	20
Carbon disulfide	25
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Carbon tetrachloride	28
Carbromal	2
D-Carvone	10
D-Carvone	12
D-Carvone	2
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Catechol	12
Chloral hydrate	8
Chlorambucil	28
Chloramine	12
Chloramphenicol	10
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Chlordecone	26
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Chloroacetic acid	2
Chloroacetic acid	10
Chloroacetic acid	12
Chloroacetic acid	7
Chloroacetonitrile	6
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M-Chloroaniline	23
P-Chloroaniline	2
P-Chloroaniline	10
P-Chloroaniline	12
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2-Chlorobenzalmalononitrile	12
Chlorobenzene	11
Chlorobenzene	14
Chlorobenzilate	2
2-Chloro-1,3-butadiene	2
Chlorodibromomethane	2
Chlorodibromomethane	12
2-Chloroethyltrimethylammonium chloride	6
Chloroform	28
Chloromethyl methyl ether	28
3-Chloro-2-methylpropene	6
3-Chloro-2-methylpropene	12
2-Chloromethylpyridine hydrochloride	6
3-Chloromethylpyridine hydrochloride	6
4-Chloro-2-nitroaniline	6
4-Chloro-2-nitroaniline	7
4-Chloro-2-nitroaniline	8
4-Chloro-2-nitroaniline	P 109
2-Chloronitrobenzene	2
2-Chloronitrobenzene	8
3-Chloronitrobenzene	2
3-Chloronitrobenzene	7
4-Chloronitrobenzene	5
4-Chloronitrobenzene	7
4-Chloro-o-phenylenediamine	2
2-Chloro-p-phenylenediamine sulfate	2
Chloropicrin	8
Chlorothalonil	2
Chlorothen	10
Chlorothen	12
3-Chloro-p-toluidine	6
5-Chloro-o-toluidine	6
4-Chloro-o-toluidine hydrochloride	2
Chlorowax 40	12
Chlorowax 40	2
Chlorowax 500C	2
Chlorowax 500C	12
Chlorpheniramine maleate	6
Chlorpheniramine maleate	12
Chlorpheniramine maleate	P 107
Chlorpromazine hydrochloride	2
Chlorpromazine hydrochloride	10
Chlorpromazine hydrochloride	12
Chlorpromazine hydrochloride	20
Chlorpropamide	2
Choline chloride	2
Choline chloride	3
Chromic oxide	28
Chromium	28
Chromium trioxide	28
Acid Orange 3	12
Cineol	6
Cineol	10
Cineol	12
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Cinnamaldehyde	10
Cinnamaldehyde	12
Cinnamaldehyde	25
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Coumarin	8
Coumarin	10
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Croton oil	7
Croton oil	8
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Curcumin	10
Curcumin	12
Curcumin	23
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Cyclohexane	6
Cyclohexane	23
Cyclohexane	24
Cyclohexanone	11
Cyclohexanone	18
Cyclophosphamide	4
Cyclophosphamide	7
Cyclophosphamide	28
Cytembena	9
Cytoxal alcohol	2
Dacarbazine	6
O,P'-DDD	2
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Decabromodiphenyl oxide	6
Decabromodiphenyl oxide	12
Diacetone acrylamide	2
Diallyl phthalate	6
Diallyl phthalate	12
Diallyl phthalate	14
2,6-Dichloro-p-phenylenediamine	9
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2,4-Diaminophenol dihydrochloride	12
2,4-Diaminophenol dihydrochloride	8

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4,4'-Diamino-2,2'-stilbenedisulfonic acid	10
4,4'-Diamino-2,2'-stilbenedisulfonic acid	12
2,4-Diaminotoluene	2
2,4-Diaminotoluene	19
2,4-Diaminotoluene	20
Diazepam	P 118
Dibenz(a,h)acridine	28
Dibenz(a,j)acridine	28
Dibenz(a,h)anthracene	28
7H-Dibenzo(c,g)carbazole	28
Dibenzofuran	2
Dibenzofuran	7
Dibenzo(a,h)pyrene	28
Dibenzo(a,i)pyrene	28
Diborane	2
Dibromoacetonitrile	5
1,2-Dibromo-3-chloropropane	28
1,2-Dibromo-3-chloropropane	P 102
1,2-Dibromo-3-chloropropane	P 104
Dibromodulcitol	6
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2,3-Dibromo-1-propanol	12
2,3-Dibromo-1-propanol	5
2,3-Dibromo-1-propanol	12
Dibutyl phthalate	5
Dibutyltin diacetate	6
Dichloroacetonitrile	5
1,2-Dichlorobenzene	11
1,2-Dichlorobenzene	14
1,4-Dichlorobenzene	12
Dichlorobenzidine	28
3,3'-Dichlorobenzidine dihydrochloride	28
3,3'-Dichlorobenzidine dihydrochloride	5
1,3-Dichloro-5,5-dimethylhydantoin	2
1,3-Dichloro-5,5-dimethylhydantoin	7
1,3-Dichloro-5,5-dimethylhydantoin	8
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1,1-Dichloroethylene	7
Cis & Trans-1,2-Dichloroethylene	2
Cis & Trans-1,2-Dichloroethylene	7
1,2-Dichloroethylene	2
Dichloromethotrexate	2
2,3-Dichloronitrobenzene	2
2,3-Dichloronitrobenzene	8
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3,4-Dichloronitrobenzene	8
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1,2-Dichloropropane	11
1,3-Dichloropropene	5
1,3-Dichloropropene	11
Dichlorvos	12
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Dicyclopentadiene	6
Dieldrin	2
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Diethylene glycol	6
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Di(2-ethylhexyl)adipate	9
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Di(2-ethylhexyl) phthalate	2
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Di(2-ethylhexyl) phthalate	9
Di(2-ethylhexyl)sebacate	6
Di(p-ethylphenyl)dichloroethane	6
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Diethyl phthalate	7
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3,4-Dihydrocoumarin	12
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5,7-Dihydroxy-4-methylcoumarin	2
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Diisodecyl phthalate	6
Dimenhydrinate	6
Dimethoate	2
Dimethoxane	2
Dimethoxane	8
Dimethoxane	10
Dimethoxane	12
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3,3'-Dimethylbenzidine	4
3,3'-Dimethylbenzidine	7
3,3'-Dimethylbenzidine dihydrochloride	13
Dimethylcarbamoyl chloride	28
Dimethylcarbamoyl chloride	3
Dimethylcarbamoyl chloride	8
Dimethylformamide	18
Dimethylformamide	8
Dimethylformamide	25
1,2-Dimethylhydrazine and asbestos,chrysoti	11
Dimethyl hydrogenphosphite	6
Dimethyl hydrogenphosphite	12
Dimethyl methylphosphonate	6
Dimethyl methylphosphonate	12
2,6-Dimethyl morpholine	8
Dimethyl morpholinophosphonate	12
N,N-Dimethyl-p-nitrosoaniline	2
Dimethyloldihydroxyethyleneurea	10
Dimethyloldihydroxyethyleneurea	12
Dimethyloldihydroxyethyleneurea	12
2,4-Dimethylphenol	2
Dimethyl phthalate	4
Dimethyl sulfate	28
Dimethyl sulfoxide	6
Dimethyl terephthalate	8
Dimethylvinyl chloride	4
Dimethylvinyl chloride	12
2,4-Dinitroaniline	5
2,4-Dinitroaniline	P 109
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2,4-Dinitrotoluene	5
Dioctyl phthalate	6
1,3-Dioxane	2
1,3-Dioxane	5
1,3-Dioxane	7
1,4-Dioxane	2
1,4-Dioxane	7
1,4-Dioxane	28
Dioxathion	6
Diphenhydramine hydrochloride	2
Diphenhydramine hydrochloride	12
Diphenhydramine hydrochloride	17
Diphenhydramine hydrochloride	17
Diphenhydramine hydrochloride	20
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Diphenylhydantoin	7
Diphenylhydantoin	12
Diphenylhydantoin	26
Diphenylhydantoin	P 80
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4,4'-Diphenylmethane diisocyanate	12
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Direct Black 19	24
Direct Black 38	2
Direct Black 114	1
Direct Blue 1	6
Direct Blue 6	1
Direct Blue 6	2
Direct Blue 6	8
Direct Blue 6	26
Direct Blue 6	7
Direct Blue 8	1
Direct Blue 14	1
Direct Blue 15	1
Direct Blue 15	6
Direct Blue 15	7
Direct Blue 15	8
Direct Blue 15	13
Direct Blue 15	23
Direct Blue 15	24
Direct Blue 25	1
Direct Blue 53	1
Direct Blue 53	6
Direct Blue 218	1
Direct Blue 218	6
Direct Blue 218	7
Direct Blue 218	13
Direct Brown 95	2
Direct Brown 95	7
Direct Brown 95	8
Direct Orange 6	1
Direct Red 2	1
Direct Red 2	6
Direct Red 2	23
Direct Red 2	24
Direct Red 39	1
Direct Red 39	23
Direct Red 39	24
Direct Violet 32	1
Disperse Yellow 3	9
Disperse Yellow 3	P 76
Disperse Blue 1	12
Disulfiram	P 76
2,5-Dithiobiurea	6
Ditridecyl phthalate	8
DMA 4	2
DMBA/TPA	11
DMBA/TPA	11
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Dodecenylsuccinic anhydride	23
Dodecenylsuccinic anhydride	24
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4-Hydroxyacetanilide	10
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4-Hydroxyaminoquinoline-1-oxide	4
8-Hydroxyquinoline	12
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O-Nitroacetophenone	6
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P-Nitroaniline	7
P-Nitroaniline	13
P-Nitroaniline	19
P-Nitroaniline	25
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Nitrofurantoin	5
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Nitrofurazone	19
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Trichloroethylene	11
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Trichloroethylene	14
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Vinyl chloride	28
Vinyl chloride	P 77
4-Vinylcyclohexene	6
4-Vinylcyclohexene	12
Vinyl cyclohexene dioxide	6
Vinyl cyclohexene dioxide	10
Vinyl cyclohexene dioxide	12
Vinyl cyclohexene dioxide	12
Vinylidene chloride	9
Vinyl toluene	12
Vinyl toluene	18
Vitamin D	6
Vitamin D3	2
Witch hazel	6
Witch hazel	12
Wollastonite calcium silicates	6
Wollastonite calcium silicates	12
Xylenes, commercial mixture	12
2,6-Xylidine	2
2,6-Xylidine	12
Sunset Yellow FCF 6	9
Yellow 14	9
Zearalenone	2
Zearalenone	11
Zearalenone	14
Zinc	P 104
Ziram	6
Ziram	11
Ziram	14
Zirconium oxychloride	6

[FR Doc. 82-12564 Filed 5-13-82; 8:45 am]

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federal register

Friday
May 14, 1982

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications To General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado:	
CO81-5149	Sept. 4, 1981.
CO82-5104	Feb. 26, 1982.
Kansas:	
KS82-4013	Apr. 16, 1982.
KS82-4015	Do.
KS82-4016	Do.
KS82-4017	Do.
New Jersey: NJ81-3063	Dec. 28, 1981.
Pennsylvania:	
PA81-3058	Aug. 28, 1981.
PA82-3008	Feb. 26, 1981.
PA79-3020	July 20, 1979.
Vermont: VT82-3003	Jan. 22, 1982.
Maryland: MD81-3074	Oct. 9, 1981.

Supersedeas Decisions To General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama: AL81-1125 (AL82-1026)	Dec. 30, 1980.
Illinois: IL81-2027 (IL82-2033)	June 19, 1981.
Indiana: IN80-2058 (IN82-2030)	July 25, 1980.
West Virginia: WV80-3016 (WV82-3003)	May 30, 1980.
Pennsylvania: PA80-3075 (PA82-3016)	Dec. 5, 1980.

Please note that we are changing the format for **Federal Register** wage decisions to coincide with the provisions of All Agency Memorandum No. 132 dated January 29, 1980, which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedures will be phased in gradually.

Signed at Washington, D.C., this 7th day of May, 1982.

Dorothy P. Comse,

Assistant Administrator, Wage and Hour Division.

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Modification Page 1

DECISION NO. CO81-5149 - Mod. #3
(46 FR 44620 - September 4, 1981)
Statewide, Colorado

Change:	Basic Hourly Rates	Fringe Benefits
Line Construction:		
Cable Splicers	$17.29	.95+ 3-3/4%
Journeyman Lineman	16.15	.95+ 3-3/4%
Line Equipment Maintenance Man	13.66	.95+ 3-3/4%
Line Equipment Operator, Class 1: Crawler Equipment, Wire Equipment, Pullers, Tensioners, Cranes, Heavy Pole Trucks (such as diesel, twin screws), All Bucket Trucks, Backhoes, All Trenchers, Bobcats, All trucks over 15,000 lbs. empty weight	13.66	.95+ 3-3/4%
Line Equipment Operator, Class 2: Trucks, under 3 tons C.T.M. classification	12.20	.95+ 3-3/4%
Groundman	11.23	.95+ 3-3/4%

DECISION NO. CO82-5104 - Mod. #3
(47 FR 8497 - February 26, 1982)
El Paso County, Colorado

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Stonemasons	$15.65	$1.96

DECISION NO. KS82-4013 - Mod. #2 (47 FR 16519 - April 16, 1982)
Leavenworth Co., Kansas

Change:	Basic Hourly Rates	Fringe Benefits
Ironworkers	$15.15	3.75
Painters:		
Brush,Roller-Tapers	15.04	1.40
Spray	16.04	1.40
Paperhangers	15.54	1.40

DECISION NO. KS82-4015 - Mod. #2 (47 FR 16525 - April 16, 1982)
Douglas, Jefferson, Leavenworth, Miami & Shawnee Cos., Kansas

Change:	Basic Hourly Rates	Fringe Benefits
Ironworkers	15.15	3.75

DECISION NO. KS82-4016 - Mod. #1 (47 FR 16528 - April 16, 1982)
Shawnee County, Kansas

Change:	Basic Hourly Rates	Fringe Benefits
Ironworkers	15.15	1.75

DECISION NO. KS82-4017 - Mod. #1 (47 FR 16530 - April 16, 1982)
Shawnee County, Kansas

Change:	Basic Hourly Rates	Fringe Benefits
Ironworkers	15.15	3.75

Modification Page 2

DECISION NO. NJ81-3063 - MOD. #7 (46 FR 62746 - December 28, 1981) ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER, MERCER, MONMOUTH, OCEAN AND SALEM COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS, STONEMASONS, MARBLE MASON, CEMENT MASONS, PLASTERERS, TILE LAYERS & TERRAZZO WORKERS:		
ZONE 1		
Bricklayers, stonemasons, Marble Masons & Plasterers	14.40	3.29
ZONE 2		
Bricklayers, Stonemasons, Marble Masons, Tile Layers & Terrazzo Workers	14.76	3.17
ZONE 4	15.55	2.08
ZONE 5	14.71	2.90
CARPENTERS, MILLWRIGHTS INSULATORS:		
ZONE 2		
Carpenters & Insulators	16.05	15-5/10%
Millwrights	16.30	"
ZONE 4		
Carpenters & Insulators	16.05	"
Millwrights	16.30	"
ZONE 5		
Carpenters & Insulators	16.05	"
Millwrights	16.30	"
ZONE 6		
Carpenters & Insulators	14.75	"
Millwrights	15.00	"
DRYWALL TAPERS & FINISHERS:		
ZONE 2	13.03	4.19
ELECTRICIANS & CABLE SPLICERS:	16.16	10%+ 1.14
LABORERS, BUILDING CONSTRUCTION:		
ZONE 6		
Laborers	11.40	1.50
Hod Carriers	11.50	1.50

LINE CONSTRUCTION (EXCLUDING RAILROAD CONSTRUCTION):	Basic Hourly Rates	Fringe Benefits
ZONE 4		
Linemen	16.16	10 3/4% +1.10
Line Digger, Truck Drivers	11.69	"
Groundmen	12.84	"
PAINTERS:		
ZONE 1		
New Construction & Major Alterations	13.20	2.38
Repaint-New Construction & Major Alterations	12.30	2.38
Repaint - Spray Exterior over 3 stories & Steel	12.90	2.38
Repaint - Steel	13.45	2.38
Bridges, TV Towers	12.45	2.38
	13.90	2.38

Modification Page 3

Modification Page 4

Modification Page 3

DECISION NO. PA81-3058 - MOD. #8 (46 FR 43596 - August 28, 1981)	Basic Hourly Rates	Fringe Benefits
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania		
CHANGE:		
CARPENTERS/PILEDRIVERMEN	11.47	1.90
LABORERS:		
Asphalts, tampers, concrete pitman, puddlers & rubbers, Highway guard rail, right of way and property line fence, Highway slab reinforcing placers, laborers, landscape, planters, seeders and arborists, magazine tenders, railroad trackmen & signalmen, leaser beam men (pipe laying, paving machine)	10.31	1.15
Pneumatic and electric tool op. jackhammers, paving breakers, concrete saws, whacker vibrators, sheet hammers, steward chain saws, pipelayers, asphalt rake, lute or screed men, concrete block layers	10.51	1.15
Caisson-open air-below 8 feet, cofferdam open air-below 8 feet where excavations for circular caissons and cofferdams 8 feet and below level of natural grade adjacent to starting point, form setters (road) wagon drill diamond point drill, gunite nozzle operators	10.85	1.15
Blasters	11.09	1.15
Reinforcing steel placers, bonding, aligning and securing and burning and welding in conjunction with reinforcing steel	11.15	1.15
Concrete surfaces	11.53	1.15
Free Air Tunnels and Shafts		
Outside laborers in conjunction tunnels & rock shafts	10.95	1.15
Chuck tenders, muckers, nippers, miner, & drillers helpers, inside laborers	11.24	1.15
Miners, drillers, blasters, pneumatic shield operators lining, spotting & timers workmen, reinforcing steel placer placers, bonding, aligning and securing and concrete surfacers	11.72	1.15
POWER EQUIPMENT OPERATORS: (HEAVY CONSTRUCTION)		
ZONE I		
GROUP 1	15.14	22.6%+ a
GROUP 2	14.85	"
GROUP 3	13.97	"
GROUP 4	13.20	"
GROUP 5	12.72	"

Modification Page 4

DECISION NO. PA81-3058 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (CONT'D)		
GROUP 6	11.80	22.6%+ a
GROUP 7	15.39	"
GROUP 7-A	15.64	"
GROUP 7-B	15.89	"
ZONE II		
GROUP 1	14.85	25.6%+ a
GROUP 2	14.56	"
GROUP 3	13.69	"
GROUP 4	12.92	"
GROUP 5	12.45	"
GROUP 6	11.54	"
GROUP 7	15.10	"
GROUP 7-A	15.35	"
GROUP 7-B	15.59	"
POWER EQUIPMENT OPERATORS (HIGHWAY CONSTRUCTION AND WATER LINES CONSTRUCTION (OFF PLANT SITE)		
GROUP 1	13.25	25.6%
GROUP 2	12.41	25.6%
GROUP 3	11.90	25.6%
GROUP 4	11.46	25.6%
GROUP 5	10.91	25.6%
GROUP 6	13.50	25.6%
GROUP 6-A	13.75	25.6%
GROUP 6-B	14.00	25.6%
TRUCK DRIVERS:		
CLASS 1	11.82	
CLASS 2	11.89	
CLASS 3	12.38	
DECISION NO. PA82-3008 - MOD. #2 (47 FR 8487 - February 26, 1982) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
CARPENTERS	13.97	4.41
CEMENT MASONS	12.00	5.54
ELECTRICIANS		
Philadelphia (Only)	17.14	2.40
IRONWORKERS:		
Structural & Ornamental Philadelphia (Only)	15.00	4.05
LABORERS:		
Group 1	12.30	2.30
Group 2	12.10	2.30
Group 3	12.00	2.30
Group 4	12.15	2.30
Group 5	11.90	2.30
Group 6	12.55	2.30
Group 7	12.40	2.30
Group 8	12.25	2.30
LINE CONSTRUCTION		
Journeyman Lineman	17.60	.60+3 3/8%
Winch Truck Operator	12.32	"
Groundman	10.56	"
MILLWRIGHTS		
Philadelphia (Only)	14.02	4.41
POWER EQUIPMENT OPERATORS:		
Heavy Construction		
Wage Group 1	15.16	25.6%+ d
Wage Group 2	14.90	"
Wage Group 3	14.03	"
Wage Group 4	13.82	"
Wage Group 5	13.51	"
Wage Group 6	13.34	"
Wage Group 7	12.83	"
Wage Group 8	12.09	"
POWER EQUIPMENT OPERATORS:		
Highway Construction, and Water Lines Construction (Off Plant Site)		
Wage Group 1	14.91	25.6%+ d
Wage Group 2	14.68	"
Wage Group 3	14.07	"
Wage Group 4	13.55	"
Wage Group 5	13.18	"
Wage Group 6	12.83	"
Wage Group 7	12.09	"
TRUCK DRIVERS:		
Heavy & Highway Truck Drivers: Including Site Preparation, Paving & Utilities on Building Construction:		
Class 1	11.20	2.5425
Class 2	12.30	"
Class 3	12.50	"

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DECISION NO. PA79-1020 - MOD. #7 (44 FR 42880 - July 20, 1979) Carbon, Monroe County, including Tobyhanna Army Depot, and Pike County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	11.83	1.71
BOILERMAKERS	16.67	2.295
BRICKLAYERS & STONEMASONS		
ZONE 1	13.45	3.01
ZONE 2	14.25	2.00
ZONE 3	13.25	1.91
ZONE 4	14.71	1.65
CARPENTERS		
ZONE 1	12.72	1.65
ZONE 2	14.01	2.35
ZONE 3	14.01	2.35
ZONE 4	14.37	1.75
CEMENT MASONS		
ZONE 1	13.50	
ZONE 2	12.55	
ZONE 3	14.71	1.65
ELECTRICIANS:		
Carbon County: Towamensing Lower Towamensing, East Penn Township and the Borough of Parryville in their entirety	14.55	1.64+3%
Carbon County: That portion of Kidder Twp., including Eastside Borough, north of State Highway 940 from that Borough to Monroe County:		
Zone A- From 20 - 1/10 miles to 30 miles from Public Square	15.39	2.13+3%
Zone B- All distance from 30- 1/10 miles & over	15.69	2.13+3%
Carbon County: Penn Forest, Lehigh, Lausane, Banks, Packer, Mauch Chunk, Franklin, Mahoning Townships and East Side Borough in their entirety and that portion of Kidder Township south of State Highway 940, but excluding Perryville Borough	11.27	1.70+3% +a
FOOTNOTE:		
a. Paid Holidays: Independence Day and Labor Day.		
ELECTRICIANS:		
Monroe County: That portion of Tobyhanna and Tunkhannock Townships west of State Highway 115.		
Zone A- From 10- 1/10 miles to 30 miles from Public Square	15.39	2.13+3%
Zone B- All distance from 30- 1/10 miles & over	15.69	2.13+3%
Monroe County: Polk, Eldred, Chestnut Hill, Ross, Hamilton, Jackson, Pocono, Stroud, Smithfield and Middle Smithfield Townships	11.00	1.07+3%
Monroe County: Barrett, Coolbaugh, Pardise and Price Townships, and that portion of Tobyhanna and Tunkhannock Townships east of State Highway 115.		
Zone A- From 20 to 30 miles from Zero milestone marker	11.20	2.60+3%
Zone B- All distance beyond 30 miles	13.70	2.60+3%

DECISION NO. PA79-3020 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
Pike County: Porter, Delaware and Lehman Townships in their entirety;	15.00	3.07+3%
Remainder of County:		
Zone A- From 20 to 30 miles from Zero milestone marker	13.20	2.60+3%
Zone B- All distances beyond 30 miles from Zero marker	13.70	2.60+3%
ELEVATOR CONSTRUCTORS	13.10	2.465+c +d
ELEVATOR CONSTRUCTORS HELPERS	9.17	"
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	6.55	
GLAZIERS		
ZONE 1	11.54	1.465
ZONE 2	11.85	1.95
IRONWORKERS:		
ZONE 1	15.20	2.85
ZONE 2		
Structural	14.75	3.05
Reinforcing	14.65	3.05
LATHERS		
ZONE 1	12.04	.11
ZONE 2	12.71	1.65
MARBLE SETTERS		
ZONE 1	11.60	2.60
ZONE 2	12.10	1.30
ZONE 3	13.70	1.65
LABORERS		
ZONE 1		
CLASS 1	11.80	2.32
CLASS 2	11.95	2.32
CLASS 3	12.20	2.32
ZONE 2		
CLASS 1	10.04	1.21
CLASS 2	10.29	1.21
CLASS 3	10.54	1.21
CLASS 4	11.06	1.21
CLASS 5	10.79	1.21

	Basic Hourly Rates	Fringe Benefits
MILLWRIGHTS:		
ZONE 1	14.37	1.75
ZONE 2	14.41	2.35
ZONE 3	14.42	1.65
PAINTERS:		
ZONE 1		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
ZONE 2		
Brush & Roller	11.35	1.20
Structural Steel	12.35	1.20
Spray	12.85	1.20
ZONE 3		
Brush	13.00	2.10
Spray	14.00	2.10
Steel	14.50	2.10
PILEDRIVERMEN	12.97	4.66+g
PLASTERERS:		
ZONE 2	14.25	2.00
ZONE 3	13.45	3.01
ZONE 4	12.63	
ZONE 5	14.50	1.65
PLUMBERS:		
ZONE 1	13.59	2.80
ZONE 2	13.33	2.64
POWER EQUIPMENT OPERATORS:		
ZONE 1		
GROUP 1	15.14	22.6% +a
GROUP 2	14.85	"
GROUP 3	13.97	"
GROUP 4	13.20	"
GROUP 5	12.72	"
GROUP 6	11.80	"
GROUP 7	15.39	"
GROUP 7-A	15.64	"
GROUP 7-B	15.89	"
ZONE II		
GROUP 1	14.85	24.1%+ a
GROUP 2	14.56	"
GROUP 3	13.69	"
GROUP 4	12.92	"
GROUP 5	12.45	"
GROUP 6	11.54	"
GROUP 7	15.10	"
GROUP 7-A	15.35	"
GROUP 7-B	15.59	"

STATE: ALABAMA

DECISION NO. PA79-3020 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
ROOFERS		
ZONE 2		
Composition & Kettleman	13.30	2.10
ZONE 3		
Composition & Kettleman	12.07	2.13
SHEET METAL WORKERS	14.62	1.85
SOFT FLOOR LAYERS:		
ZONE 1	11.69	1.90
ZONE 2	14.37	1.75
ZONE 3	12.05	2.79
SPRINKLER FITTERS	16.92	2.83
TERRAZZO WORKERS:		
ZONE 1	13.75	3.00
TILE SETTERS:		
ZONE 1	12.50	3.00
ZONE 2	12.10	1.30
ZONE 3	13.83	1.65
TRUCK DRIVERS:		
CLASS 1	11.82	
CLASS 2	11.89	
CLASS 3	12.38	

DECISION NO. VT82 - 3003 - MOD. #1 (47 FR 3275 - January 22, 1982) STATEWIDE VERMONT	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Mechanic:		
Windsor Co.	7.76	
Remaindor of Counties	7.75	.80+b

DECISION NO. MD81-3074 - Mod. #5 (46 FR 50238 - Oct. 9, 1981) Anna Arundel (excluding the D.C. Training School), Baltimore and Baltimore City, Maryland and for Heavy Construction Projects in Harford & Howard Counties, Maryland	Basic Hourly Rates	Fringe Benefits
CHANGE		
Cement Masons	$13.94	2.12
Ironworkers:		
Ironworkers, finishers, rodmen, pre-cast and pre-stress erectors	13.99	3.83
Fence Erectors	13.64	3.83
Wheeters	14.24	3.83
Sheetmetal Workers	13.84	2.59
Steamfitters	16.68	3.01
Power Equipment Operators: (Building & Heavy Construction):		
Group I	15.08	2.55
Group II	13.78	2.55
Group III	13.07	2.55
Group IV	12.40	2.55
Group V	11.05	2.55
Electricians	15.10	2.40 +3.5%

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: BARBOUR, COFFEE, COVINGTON, DALE, GENEVA, HENRY, & HOUSTON

DECISION NO: AL82-1028

DATE: DATE OF PUBLICATION

Supersedes Decision No.: AL81-1135, December 30, 1980, 45 FR 86185.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$6.75	
BRICKLAYERS	8.00	
CARPENTERS	5.16	
CEMENT MASONS	5.29	
DRYWALL FINISHERS	6.00	
DRYWALL HANGERS	6.00	
ELECTRICIANS	6.12	
LABORERS	4.00	
PAINTERS, Brush	5.88	
PLUMBERS & PIPEFITTERS	5.58	
POWER EQUIPMENT OPERATORS:		
Backhoe	4.90	
Bulldozers	6.43	
Forklift	5.00	
Loader	5.00	
ROOFERS	4.25	
SHEET METAL WORKERS	5.65	
SOFT FLOOR LAYERS	5.60	
TILE SETTERS	7.00	
TRUCK DRIVERS	4.00	
WELDERS - Rate for Craft		

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: Illinois
DECISION NO: IL82-2033
Supersedes Decision No.: IL81-2027, dated June 19, 1981 in 46 FR 32184
DESCRIPTION OF WORK: Building Construction Projects (Including Residential Construction Projects)
*DuPage, Grundy, Kane, Kendall, Lake, McHenry & Will

Counties: *See Below
Date: Date of publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.00	1.85
BOILERMAKERS	16.80	4.37
BRICKLAYERS; Stonemasons:		
DuPage & McHenry Cos.	15.61	2.46
Grundy & Will Cos.	15.83	2.24
Kane, Kendall & Lake Cos.	15.61	2.46
CARPENTERS; Millwrights; Piledrivermen; & Soft Floor Layers:		
DuPage & Lake Cos.:	15.50	2.61
Grundy Co.:		
Commercial:		
Carpenters;Piledrivermen; & Soft Floor Layers	14.78	2.18
Millwrights	15.03	2.18
Residential	13.43	2.18
Kane,Kendall & McHenry Cos.:		
Carpenters;Soft Floor Layers; Millwrights; Piledrivermen	14.80	2.24
Will Co.:		
Commercial	15.80	2.35
Residential	13.71	
CEMENT MASONS:		
DuPage Co.	15.40	2.92
Grundy & Will Cos.	15.55	3.11
Kane(S.Part) & Kendall Cos.	15.75	1.66
Kane(N.Part) & McHenry Cos.	15.45	1.86
Lake Co.	15.00	3.30
ELECTRICIANS:		
DuPage Co.	17.65	3.68
Grundy & Will Cos.:		
Commercial	17.68	2.72
Residential	13.20	2.06
Kane (N ½) & McHenry Cos.	18.10	1.63
Kane (S ½) & Kendall Cos.	17.95	3.50
Lake Co.	16.75	3.85
ELEVATOR CONSTRUCTORS:		
DuPage, Lake & Will Cos.:		
Elevator Constructors	17.36	2.33+a&b
Helpers	70%JR	"
Helpers (Prob.)	50%JR	
GLAZIERS:		
DuPage,Kane,Kendall(Eastern part),Lake & Will Cos.	15.78	2.27
Grundy & Kendall (Western part) Cos.	$15.00	0.90+c
McHenry Co.	10.93	1.49
IRONWORKERS:		
DuPage(Argonne & Vic.), Grundy,Kendall(S.part), & Will Cos.	14.77	4.955
DuPage(Rem.of Co.),Kane, Kendall(N.part),& McHenry (SE ¼) Cos.	18.48	1.755
Lake & McHenry (Hebron, Woodstock & E.thereof) Cos.:		
Reinforcing & Structural	16.80	3.71
Ornamental	15.50	2.45+d
Metal Fence Erectors:		
Black Book	16.20	2.69+d
Red Book	11.57	2.69+d
McHenry (NW ¼) Co.	15.85	2.775
LATHERS:		
DuPage & Lake Cos.	13.82	1.29
McHenry (W ½) Co.	13.26	3.23
LINE CONSTRUCTION:		
DuPage,Kane,Kendall,Lake & McHenry Cos.:		
Linemen;Digger Op.& Crane Op.(15 Ton & above)	16.30	1.84+e
Equipment Op.;Semi Truck Drivers	13.84	1.63+e
Groundmen Truck Drivers	11.03	1.39+e
Groundmen	10.67	1.36+e
Grundy & Will Cos.:		
Linemen;Equipment Ops.	17.05	2.86
Groundmen	12.10	2.03
MARBLE SETTERS:		
DuPage,Lake & Will Cos.	15.86	0.90
MARBLE SETTERS'FINISHERS:		
DuPage & Lake Cos.	12.45	1.65
PAINTERS:		
DuPage,Kane,Kendall & McHenry Cos.:		
Brush;Drywall Tapers; Sandblasters & Spray	13.55	1.91
Grundy & Will Cos.:		
Brush;Drywall Taping; Paperhanging;& Sign Painting	14.05	1.85
Spray	14.80	1.85

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	Basic Hourly Rates	Fringe Benefits
Painters (Cont'd):		
Lake Co.:		
Brush;Decorators;Paperhangers; Tapers	$14.00	1.475
PLASTERERS:		
DuPage Co.	14.96	2.35
Grundy & Will Cos.	14.395	2.14
Kane(S.part)& Kendall Cos.	15.75	2.56
Kane(N.part)& McHenry Cos.	16.45	1.86
Lake Co.	13.97	2.30
PLUMBERS;Pipefitters; & Steamfitters:		
DuPage(Naperville & S.)Co.	15.93	2.87
DuPage(Excl.Naperville & S),Grundy(W.of Rt.47), Lake,McHenry, & Will(Except city limits of Joliet) Cos.:		
Pipefitters & Steamfitters	17.00	2.82
DuPage(Excl.Naperville & S.) Co.: Plumbers	16.35	2.45
Grundy(W.of Rt.47) Co.: Plumbers	16.72	1.50
Grundy(E.of Rt. 47) & Will (Joliet & Vic.) Cos.	17.00	1.85
Kane (Elgin & Vic.) Co.	16.36	2.43
Kane(Aurora & Vic.) & Kendall (Exclu. Yorkville) Cos.	16.36	2.24
Kendall (Yorkville) Co.	16.72	1.50
Lake Co.	15.80	3.70
Will (Except City limits of Joliet) Co.:		
Pipefitters & Steamfitters	17.00	2.82
Plumbers	16.30	2.47
ROOFERS:		
DuPage & Lake Cos.	15.80	2.75
Grundy & Will Cos.	18.85	2.51
Kane,Kendall & McHenry (S. part incl.cities of McHenry,Woodstock & Crystal Lake) Cos.	16.03	2.35
McHenry (Rem.of Co.) Co.	16.17	0.93
SHEET METAL WORKERS:		
DuPage Co.	15.22	2.19
Grundy & Will Cos.	16.43	2.76
Kane, Kendall & McHenry Cos.	15.35	3.41
Lake Co.	12.95	2.20
SPRINKLER FITTERS:		
DuPage & Lake(within 30 mi.radius of Chicago City Hall) Cos.	17.00	2.85
Grundy,Kane,Kendall,Lake (Rem.of Co.),McHenry & Will Cos.	15.31	2.43
TILE SETTERS:		
DuPage,Grundy,Lake, & Will Cos.	$14.66	2.32
TILE SETTERS'FINISHERS:		
DuPage,Lake & Will Cos.	12.80	1.53
TRUCK DRIVERS:		
2-3 Axles	12.25	62.00f
4 Axles	12.40	"
5 Axles	12.60	"
6 Axles	12.80	"
LANDSCAPE WORK: DuPage, Kane, Lake, McHenry & Will Cos.:		
Plantsmen	8.18	g&h
Truck Driver - Tractor Trailer(3 axle or more) & Equipment Opr.	8.66	g&h
Truck Driver - 2 Axle	8.24	g&h
LABORERS:		
DuPage,Grundy & Will Cos:		
Common;Plasterer Tenders; Pumps for Dewatering & other unclassified Laborers	12.40	1.92
Cement Gun Laborers	12.475	1.92
Scaffold Laborers & Chimney Laborers over 40 ft.	12.50	1.92
Windlass & Cement Gun Nozzle Laborers-Gunnite	12.55	1.92
Stone Handlers & Derrickmen	12.60	1.92
Jackhammermen	12.625	1.92
Concrete Vibrator;Plumbers'Tenders; & Chain Saw Oprs.	12.65	1.92
Firebrick & Boiler Setters' Tenders	12.725	1.92
Chimney Tenders on Firebrick;Caisson Diggers & Well Point System Men	12.75	1.92
Boiler Setter Plastic Tenders	12.85	1.92
Jackhammer on Firebrick Only	12.975	1.92
LABORERS -Kane,Kendall & McHenry Counties:		
Class 1 - Laborers	12.25	1.92
Class 2 - Power Vibrator	12.35	1.92
Class 3 - Mortar Men, Torchmen(on Demolition Only)	12.40	1.92
Class 4 - Power Tampers	12.45	1.92
Class 5 - Chain Saw Man, Swinging Stage & Boatswain Chairs,Cement Gun Nozzlemen,Hod Carriers		

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	Basic Hourly Rates	Fringe Benefits
LABORERS - Kane, Kendall & McHenry Counties (Cont'd):		
Class 5 (Cont'd):		
Plasterers Tenders, Tunnelmen, Tree Surgeons (Toppers)	$12.50	1.92
Class 6 - Tile Layers & Bottom Man	12.60	1.92
Class 7 - Caisson Laborers & Dynamiters	12.75	1.92
LABORERS - Lake County:		
Class 1 - Building & Plasters Laborers; General Laborers (Wrecking & Demolition), Fireproofing & Fire Shop Laborers	12.40	1.92
Class 2 - Cement Gun Laborers & Hose	12.475	1.92
Class 3 - Chimney Laborers (over 40'); Scaffold Laborers; Wall Men or Wreckers	12.50	1.92
Class 4 - Stone Derrickmen & Handlers	12.60	1.92
Class 5 - Jackhammer Men (Tampers & Vibrators); Power Driven Concrete Saws	$12.625	1.92
Class 6 - Firebrick & Boiler Laborers Setters	12.725	1.92
Class 7 - Cement Gun Nozzle, Laborers (Gunnite)	12.55	1.92
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental		
POWER EQUIPMENT OPERATORS:		
CLASS I	15.80	3.70
CLASS II	14.50	3.70
CLASS III	13.05	3.70
CLASS IV	11.60	3.70

PAID HOLIDAYS (Where Applicable):

A. New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving Day; and G-Christmas Day

FOOTNOTES

a. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 5% of regular rate to vacation pay credit for employee who has worked in business less than 5 years.

b. 7 Paid Holidays: A through G

c. 7 Paid Holidays: A through G

d. 7 Paid Holidays: A through G

e. 4 Paid Holidays: B, C, D, & E

f. Per Week Per Employee.

g. 6 Paid Holidays: A, B, C, D, E & G.

h. 1 years service - 1 week paid vacation; 3 or more years - 2 weeks paid vacation

POWER EQUIPMENT OPERATOR CLASSIFICATIONS:

CLASS I: Asphalt Plant, Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler and Throttle Valve; Caisson Rigs; Central Redi-mix Plant; Combination Back Hoe Front End Loader Machine; Compressor and Throttle Valve; Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver; Concrete Placer; Concrete Pump (truck mounted); Concrete Tower; Cranes; Creter Crane; Crusher, stone; Derricks; Derricks, Traveling; Formless Curb and Gutter Machine; Crader, elevating; Grouting Machines; Highlift Shovels or Front End Loader, 2¼ yards and over; Hoists, elevators (outside type rack and pinion and similar machines); Hoists, one, two and three drum; Hoists, two tugger one floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotives; Mechanic; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-stress Machine; Pump Cretes Dual Ram; Pump Cretes: Squeeze Cretes - screw type pumps, Gypsum Bulker and Pump; Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck mounted); Roto Mill Grinder; Scoops, tractor drawn, Slip Form Paver; Straddle Buggies; Tournapull; Tractor with boom, and side boom; Trenching Machines

CLASS II: Bobcat (over 3/4 cu. yd.); Boilers; Brick Forklift; Broom, all power propelled; Bulldozers; Concrete Mixer (two bag and over); Conveyor, Portable; Forklift Trucks; Greaser Engineer; Highlift Shovels or Front Endloaders, under 2¼ yds.; Hoists, automatic; Hoists, inside freight elevators; Hoists, sewer dragging machine; Hoists, tugger single drum; Rollers; Steam Generators; Tractors; Tractor drawn Vibratory Roller (receives an additional $0.50 per hour); Winch Trucks with "A" Frame

CLASS III: Air Compressor; Combination, small equipment Operator; Generators; Heaters, mechanical; Hoists, inside elevators (Rheostat manual controlled and push button with automatic doors); Hydraulic Power Units (File Driving and extracting); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 small electric Drill Winches; Bobcat (up to and including 3/4 cu. yd.); Brick Forklift

CLASS IV: Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

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SUPERSEDEAS DECISION

STATE: Indiana
DECISION NUMBER: IN82-2030
COUNTIES: *Below
DATE: Date of Publication
Supersedes Decision No. IN80-2058 dated July 25, 1980, 45 FR 49803
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

*Adams, Allen, Bartholomew, Benton, Blackford, Boone, Cass, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Noble, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White, & Whitley

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Adams, Allen, Blackford, Clinton, DeKalb, Grant, Huntington, Jay, Miami, Noble, Steuben, Wabash, & Wells Counties	$13.90	2.05
Cass, Fulton, & White Cos.	16.96	2.57
Remaining Counties	15.90	2.30
BOILERMAKERS	17.70	3.005
BRICKLAYERS: Caulkers; Cleaners; Pointers; & Stonemasons:		
Adams, Allen, Dekalb, Huntington, Noble, Steuben, Wells, & Whitley Counties	14.41	1.62
Bartholomew & Monroe Cos.	14.38	1.37
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Counties	14.27	1.62
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Counties	13.45	2.56
Boone, Hancock, Hendricks, Johnson, Marion, Montgomery, Morgan, & Shelby Counties	15.39	1.68
Cass & Fulton Counties	14.57	2.77
Grant & Wabash Counties	13.66	2.02
Howard & Miami Cos.	13.53	2.35
CARPENTERS: Millwrights; Piledrivermen & Soft Floor Layers:		
Adams, Cass, Fulton, Grant, Howard, Huntington, Miami, Tipton, Wabash, & Wells Cos.		
Carpenters; Soft Floor Layers	13.23	1.75
Millwrights	13.98	1.75
Piledrivermen	13.43	1.75
Allen, Dekalb, Noble, Steuben, & Whitley Counties:		
Carpenters; Soft Floor Layers	13.40	.72+6%
Millwrights; Piledrivermen	13.80	.72+6%
Bartholomew (Camp Atterbury), Boone, Fountain, Hamilton, Hancock, Hendricks, Johnson (excl. Edinburgh), Marion, Montgomery, (Morgan excl. Twp. of Washington & Baker), Shelby (Camp Atterbury Area, Moral, & Van Buren Twps.), & Warren Counties		
Carpenters; Millwrights	13.95	1.78
Bartholomew (Rem. of Co.) Johnson (Edinburgh), & Shelby (Rem. of Co.) Counties:		
Carpenters; Soft Floor Layers	13.09	1.79
Millwrights	13.59	1.79
Piledrivermen; Burners & Welders	13.34	1.79
Benton, Clinton, Tippecanoe, & White Counties		
Carpenters; Soft Floor Layers	14.16	1.57
Millwrights; Piledrivermen	14.51	1.57
Blackford, Delaware, Jay, & Madison Counties:		
Carpenters; Soft Floor Layers	13.33	1.65
Millwrights	13.63	1.65
Piledrivermen	13.53	1.65
Monroe, Morgan (Twps. of Washington & Baker) Counties:		

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	Basic Hourly Rates	Fringe Benefits
Carpenters; Soft Floor Layers	14.35	1.84
Piledrivermen	14.60	1.84
Millwrights	15.10	1.84
CEMENT MASONS:		
Adams, Allen, DeKalb, Noble, Steuben, & Whitley Cos.	12.85	1.57
Bartholomew & Shelby Cos.	13.00	
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Warren, & White Cos.	13.40	1.90
Blackford, Delaware, Grant, Huntington, Jay, Wabash & Wells Counties	13.70	1.85
Boone, Hamilton (S. ¼ of Cos., N. to New Rte. Indiana Hwy. #32 incl. Noblesville), Hancock (Southern & Western part of Co. N. to but not incl. Town of Wilkinson, & E. to, but not incl. Town of Fortville), Hendricks, Johnson, Marion, Morgan, (N½), & Shelby (ending at Pleasant View) Counties	12.80	1.69
Fulton County	14.43	2.09
Hamilton (N½), Hancock (E½), Madison, Tipton Counties	13.76	1.23
ELECTRICIANS:		
Adams, Allen, DeKlab, Huntington, Noble, Steuben, Wells, & Whitley Counties	16.55	1.76
Bartholomew, Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Montgomery, Morgan, & Shelby Cos.	16.55	2.57
Benton, Cass, Fulton, Tippecanoe, & White Cos.	15.70	1.63
Blackford, Delaware, & Jay Counties	15.65	1.70
Clinton, Grant, Howard, Miami, Tipton, & Wabash	15.55	1.65
Fountain & Warren Cos.	15.97	1.67
Monroe County	15.90	2.54
ELEVATOR CONSTRUCTORS:		
Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, Noble, Steuben, Wabash, wells, & Whitley Cos.	14.15	2.154+a+b
Cass & Fulton counties	14.61	2.33+a+b
Remaining Counties	15.39	2.33+a+b
GLAZIERS:		
ADAMS, Allen, Blackford, Cass, DeKalb, Grant, Huntington, Jay, Miami, Noble, steuben, Wabash, Wells, & Whitley Cos.	14.34	.95+a
Benton (E. of Rte. #41, S. to Gravel Hill), & White (NW of Rte. #39) Cos.	14.75	1.45
Remaining counties	15.09	
IRONWORKERS:		
Adams, allen, Blackford, DeKalb, Delaware (Northeastern 1/3 of Co.), Grant (excl. Southwestern portion) Huntington, Jay, Noble, Steuben, Wabash, Wells, & Whitley Counties	14.20	3.89
Bartholomew, Boone (excluding (NW ¼), Clinton (E½), Delaware (S 2/3 of Co.), Grant (SW portion) Hamilton, Hancock, Hendricks, Howard, Johnson, Madison, Monroe, Morgan, Shelby, & Tipton (exsl. NW ¼) Counties	14.30	3.40
Benton, Boone (NW¼), Cass, Clinton (Rem. of Co.), Fountain, Miami, Montgomery, Tippecanoe, Tipton, (NW ¼) Warren & White Counties	14.14	3.07
Fulton county	14.40	3.71
Marion County	14.15	3.40

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	Basic Hourly Rates	Fringe Benefits
Marble Setters	14.41	1.62
Terrazzo Workers & Tile Setters	13.35	
Bartholomew & Monroe Cos.	14.30	1.37
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Counties	14.27	1.62
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Counties:		
Tile Setters	13.20	2.56
Boone, Hancock, Hendricks, Johnson, Marion Montgomery, & Morgan Counties:		
Marble Setters; Tile Setters	15.91	1.39
Terrazzo Workers	15.66	1.63
Cass & Fulton Counties	12.15	2.72
Grant & Wabash Counties	13.66	2.02
Howard & Miami counties	13.53	2.35
PAINTERS:		
Adams, Allen, DeKalb, Grant, Huntington, Noble, Steuben, wabash, Wells to & incl. Bluffton) & Whitley Counties		
Brush; Roller; Paperhangers' & Tapers	11.70	1.97
Spray; Sandblasters; Steamcleaning & Presure Water Blsting	12.70	1.97
Bartholomew County:		
Brush; Drywall Taping & Finishing; & Rollers	13.90	
Sandblasting; Spray; Swing Stage	14.90	
Benton, Clinton, Fountain, Montgomery, Tippecanoe, & Warren Counties:		
Brush; Drywall Tapers, & Finishers; Roller; Wall Covering Applicators	13.65	.70
Structural Steel	13.90	.70
Sandblasting	14.65	.70
Spray	16.92	.70
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (to the So. City Limits of Bluffton) Cos.		
Brush; Taping	11.65	.90
Pressure Cleaning Equipment; Sandblasting; Spray	12.65	.90
Boone, Hamilton, Hancock, Hendrick, Johnson, Marion, Morgan (N ½), & Shelby Counties:		
Brush; Rollers; Drywall Tapers & Finishers	13.30	1.40
Monroe, Morgan (to the Northern Limits of Martinsville) Counties:		
Brush; Drywall; Vinyl; Paperhanging; & Roller	11.67	
Structural Steel; Stage & Hazardous Work; Scaffold	12.42	
Sandblasters; Spray & Epoxy Brush	12.67	
Spray Epoxy	13.67	
White County:		
Brush	13.70	2.04
Sandblasting; Spray	14.45	2.04
Drywall Taping	13.70	2.04
Vinyl Paperhanging	13.95	2.04
PLASTERERS:		
Adams, Allen, DeKalb, Noble, Steuben, & Whitley Counties	13.48	1.40
Bartholomew & Shelby Cos.	13.00	
Benton (Eastern 2/3 West to & incl. Boswell, Earl Parke, & Raub), Cass, Clinton, Fountain (W. to and incl. Attica, in the North & West to, but not incl. Veeders-burg in the South), Howard, Miami, Montgomery, Tippecanoe, Warren (E½ West to but not incl. Judyville, So. to & incl. Kramer), & White Cos.	13.32	.75

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	Basic Hourly Rates	Fringe Benefits
Blackford, Delaware, Grant, Huntington, Jay, Wabash, & Wells Cos.	13.40	.86
Boone, Hamilton (So. ¼ No. to Indiana Rte. #32), Hancock (S. & Western Part No. to State Rd. #234 & E. to Co. Rd. #300 - W), Hendricks, Johnson, Marion, Morgan (N½), & Shelby Cos.	14.93	.82
Monroe County	13.20	1.12
Hamilton (No. ¼), Hancock, (No. part), Madison, & Tipton cos.	12.88	1.36
PLUMBERS; Steamfitters:		
Adams, Allen, DeKalb Huntington, Noble, Steuben, Wells, & Whitley Counties	16.48	2.72
Bartholomew (exclu. Camp Atterbury) Co..	16.91	1.25
Bartholomew (Camp Atterbury), Boone, Hamilton, Hancock, Hendricks, Howard, Johnson, Marion, Miami, (So. of Rte #218), Morgan, Shelby, & Tipton Cos.	16.35	1.74
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Counties	16.80	1.90
Blackford, Grant, & Wabash Counties	15.82	2.30
Cass, Fulton, Miami (No. of Hwy. #218), Counties Delaware, Jay, & Madison Cos.	16.03	2.05
ROOFERS:	16.60	2.00
Adams, Allen, DeKalb, Noble, Steuben, Wells, & Whitley Counties	13.90	.50
Bartholomew, Boone, Hancock, Hendricks, Johnson, Marion, Monroe, Morgan, & Shelby Counties:		
Composition & Waterproof Slate, Tile, Asbestos & Precast slab	13.75	1.25
Benton, Cass, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Counties:		
Composition, Damp & Waterproof	14.20	1.53
Slate, Tile & Asbestos	14.45	1.53
Blackford, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Maimi, Tiptmn, & Wabash Counties:		
Slate, Tile, & Asbestos; Composition Damp & Waterproof	13.60	1.35
Fulton County:		
Composition, Damp & Waterproof	13.60	1.58
Slate, Tile & Asbestos	14.10	1.58
SHEET METAL WORKERS:		
Adams, Allen, Blackford, Cass, DeKalb, Grant Howard, Huntington, Jay, Miami, Noble, Steuben, Wabash, Wells, & Whitley Counties	15.87	3.65
Bartholomew, Boone, Delaware, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, Shelby, & Tipton Counties	15.63	2.76
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	15.71	1.90+a
Fulton County	15.76	2.06
SPRINKLER FITTERS	15.31	2.43

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	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Benton, Boone, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Tipton, & White Counties:		
Group I	10.00	1.84
Group II	10.20	1.84
Group III	10.30	1.84
Group IV	11.00	1.84
Bartholomew, Fountain, Henricks, Johnson, Monroe, Morgan, & Warren Counties:		
Group I	10.15	1.84
Group II	10.35	1.84
Group III	10.45	1.84
Group IV	11.15	1.84
Blackford, Delaware, Grant, Hamilton, Hancock, Jay & Madison Counties:		
Group I	9.75	1.84
Group II	9.95	1.84
Group III	10.05	1.84
Group IV	10.75	1.84
Marion & Shelby Counties:		
Group I	10.35	1.84
Group II	10.55	1.84
Group III	10.65	1.84
Group IV	11.35	1.84
LABORERS: Adams, Allen, DeKalb, Hunting, Noble, Steuben, Wabash, Wells, & Whitley Counties:		
Group I	10.00	1.84
Group II	10.20	1.84
Group III	10.30	1.84
Group IV	11.00	1.84
POWER EQUIPMENT OPERATORS:		
Boone, Fountain, Hendricks, Monroe, Montgomery, Morgan, & Warren Cos.		
Group I	13.70	1.58
Group II	13.60	1.58
Group III	13.40	1.58
Group IV	8.75	1.58
POWER EQUIPMENT OPERATORS		
Adams, Allen, Benton, Blackford, Cass, Clinton, DeKalb, Delaware, Grant, Hamilton, Hancock, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Wells, White, & Whitley Counties		
Group 1	15.50	1.85
Group 2	14.55	1.85
Group 3	11.80	1.85
Group 4	10.45	1.85

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CLASSIFICATION DEFINITIONS FOR LABORERS:

Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wabash, Wells, & Whitley, Counties

GROUP I - Building & Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; civil Engineer Tender & Surveyor Tenders; Rodmen & Chainmen, Window Washers & Cleaners; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); Cement Finisher Tenders; Carpenter Tenders; Tenders of All other Crafts not listed; Mason Tenders; All Portable Water Pumps with Discharge Up to 3 inches

GROUP II - Waterproofing; Handling of Creosote Lumber of Like Treated Material (excluding railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operators; Vibrators; Chipping Hammer Operators and All Pneumatic Tool Operators; Jackmen & Sheet men Working Ditches Deeper than 6 ft. in depth; Laborers Working Ditches 6 ft. in depth or Deeper; Assembly of Unicrete Pump; Chain Saw & Demolition Saw Operators; Tile Layers (sewer or field) & Sewer Pipe Layers (metallic or non-metallic); Motor Driven Wheelbarrows & Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Conveyor Assemblers; Core Drill Operator; Cement, Lime or Silica Clay Handlers (bulk or bag); Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operators; Water Main & Cable Ducking (metallic non-metallic); Screed Man or Screw Op. On Asphalt Paver

GROUP III - Plasterers' Tenders; Mortar Mixers; Welders (acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when working for Plasterers

GROUP IV - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

CLASSIFICATION DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

Adams, Allen, Benton, Blackford, Cass, Clinton, DeKalb, Delaware, Grant, Hamilton, Hancock, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Shelby, Steuben, Tippecanoe, Tipton, Wabash, wells, White, & Whitley Cos.

GROUP 1 - Air Conpressor (pressurizing shafts, tunnels and divers); Air Tugger; Auto Patrol; Backfiller; Backhoe; Boom Cat; Boring Machine; Bulldozer; Caisson Drilling Machine; Cherry Picker; Compactor (w/dozer blade); Concrete Pump; Crane w/all attachments; Crane-Electric Overhead; Derrick; Ditching Machine (18" and over); Dredge; Elevator (when hoisting material or tool); Forklift Machinery); Formless Paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicopter Winch Operator; Highlift-Front End Loader; Hoist; Locomotive; Machine (C.M.I. or similar tower crane); Mechanic on Job Site; Mucking Machine; Panel Board, Concrete Plant Piledriver; Push Cat; Scoop and Tractor; Scraper-rubber-tired; Spreader-Tractor Mounted; Straddle Carrier-Ross Type; Sub Base Finish; Tractor w/Backhoe (over ¼ yd.); Welder

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CLASSIFICATIONS FOR POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 2 - A-Frame Truck; Batcher Plant (automatic dry batch); Bending Machine-Power Driven; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Boatman; Bullfloat; Compactor or Tamper-Self-propelled; Concrete Mixer (21 cu. ft. or over); Concrete Spreader-Power Driven; Dinkey Engine; Ditching Machine (less than 18"); Drilling Machine finish Machine and Bullfloat; Finishing Machine; Piledriving and Boilers; Forklift-Masonry and Material; Gunnite Machine; Head Greaser; Mesh Depresser-Mesh Placer' P.C.C. Concrete Belt Placer; Roller-Asphalt Stone and Sub-Base; Sheepstone Roller Self-Propelled; Spreader or Base Paver-Self-Propelled; Subgrader; Throttle Valve w/air Compressor or Boiler; Tractor w/Backhoe (¾ yard and under); Tractor-High Lift-Farm-Type; Tractor-Industrial Type; Tractor W/winch; Well Points; Winch Truck

GROUP 3 - Air Compressor (210 cu. ft. and over); Bituminous Distributor; Chair Cart; Concrete Curing Machine; Concrete Saw; Dope Pot-Power Agitated; Flexplane; Form Grader; Hydro-hammer; Jacks-Hydraulic-Power Driven; Minor Equipment Operator; Paving Joint Machine; Post Hole Digger; Roller-Earth; Throttle Valve; Track Jack-Power Driven; Tractor-Farm Type; Truck Crane Driver.

GROUP 4 - Air Compressor (less than 210 cu. ft.); Concrete Mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical Heater; Oiler; Power Broom Pump Tenders; & Welding Machines

CLASSIFICATIONS DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

Boone, Fountain, Hendricks, Monroe, Montgomery, Morgan, & Warren Cos.

GROUP I - Master Mechanics
GROUP II - Utility Operator
GROUP III - Power Cranes; Draglines; Derricks; Electric Overhead Cranes; Shovels; Gradall; Mechanics; Repair and Maintenance of all Equipment Tractor Highlift; Fork Lifts; Tournadozer; Mixer over 14S Capacity; Tournamixer; Two Drum Machine or Two Cage Hoists; Cableways; Tower Machines; Motor Patrol; Boom Tractor; Boom or Winch Truck Crane; Tournapull; Tractor Operating Scoops; Bulldozer; Push Tractor; Finishing Machine on Asphalt Larger Rollers & Roller on Asphalt; Gravel; Macadam and Brick Surface; Ross Carrier or Similar Machine; Gravel Processing Machine; Asphalt Plant Engineer or Pug Mill; Two Air Compressors; Hetherington Paver Operator; Farm Tractor with Half Yard Bucket and/or Backhoe Attachments; Trench Machines cutting 24"; Dredging Equipment; Central Mix Plant Engineers; CMI or Similar Type Machine; Concrete Spreader; Cherry Picker; Standard or Dinkey Locomotives; Scoopmobiles; Euclid Loader; Soil Cement Machines; Back Filler; Elevating Machine; Power Blade; Asphalt Plant Engineer; Well Drilling Machines; Plant Machine; Pipe Cleaning Machines; Pipe Wrapping Machines; Pipe Bending Machine; Apsco Paver; Boring Machine; Tractor without; Head Equipment Greasers; Barber Green Loaders; Formless Paver; Well Point System Hydra Ax; Resco Concrete Saw; Marine Scoopes; Brush Mulcher; Brush Burner; Mesh Placer; Tree Mover; Helicopter Crew; (3); Pile

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CLASSIFICATION DEFINITIONS FOR POWER EQUIPMENT OPERATORS (CONT'D)

Driver Skid or Crawler; Stump Remover; Root Rake; Tug Boat Operator; Refrigerating Machine Freezing Operator Chair cart-Self Propelled; Hydra Seeder; Straw Blower; Concrete Mixer with Skip; All one Drum Hoists with Tower or Boom; Dredge Engineer; Dredge Operator; Rock Spreader; Truck or Skid Mounted Tower Crane; Engine or Rock Crusher Plant; Boiler Operator; Concrete Plant Engineer Loaders; Hydra Crane Caissons; Shaft or any similar Type Drilling Machine; Concrete Curb Machine Self Propelled Winch or Dyraulic Boom Truck

GROUP IV - Mixers 14S Capacity or less; Trench Machine Cutting 24" and Under Farm Tractor with less than Half Yard Bucket and other Attachments Except Back Hoe; Truck Crane Oiler; Power Subgrader; Bull Float; Form Grader; Finishing Machine; Pavement Breaker; Rock Crushers; One Drum Machine; One Air Compressor; Concrete Pump; Gunnite Machine; Air Tuggers; Truck Crane Drivers; House Elevator when used for Hoisting Material; Two to Four Generators or Welding Machine; Mechanized Heaters Irrespective of Motor Power when used for Temporary Heat; Small Rollers on Earth; Engine Tenders; Firemen; Wagon Drill; Flexplane; Conveyor two to Four Water Pumps; Siphon and Pulsometer; Distributor Operator on Trucks; Tampers; Power Broom; Post Hole Digger; Self-propelled Concrete Saw; Stripping Machine (Motor Driven); Form Tamper; Beaman Tiller; Bulk Cement Plant Equipment Greaser; Track Jack; Mud Jack; Concrete Buggies Motor Driven Oilers; Barrel Type Mixer; One Welding Machine or One Water Pump; Air Valves or Steam Valves from Plant; Concrete Mixer without Skip; Curing Machine; Concrete & Blacktop Curb Machine; Deck Hands

Cranes with Booms from 14g ft. to 199 ft. Including jib Receive additional $.75 Per Hour
Cranes with Boom over 199 ft. including jib receive additional $1.25 per hour

PAID HOLIDAYS
a-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. 7 Paid Holidays: A through F, & Day after Thanksgivng Day
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years, and 6% for employee who has worked in business less than 5 years.
c. 6 Paid Holidays: A through F, provided such employees work the last scheduled day prior to and the next scheduled work day after the holiday unless permission for not working on such day is granted by the employer.
d. 6 Paid Holiday: A through F
e. 2 Paid Holidays: C.and D
f. 3% of gross earnings to SASMI
g. Per week per employee
h. One week's paid vacation after one year's employment; two weeks' paid vacation after three years' employment; three weeks' paid vacation after ten years employment

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SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Northampton
DECISION NO.: PA82-3016 DATE: Date of Publication
Supersedes Decision No. PA80-3075, dated December 5, 1980, in 45 FR 80638.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories). Excluding Sewage and Water Treatment Plant Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	14.01	1.12	.90		.02
BOILERMAKERS	16.67	1.275	1.00		.02
BRICKLAYERS & STONEMASONS	14.50	1.10	.75		.01
CARPENTERS	14.01	1.15	1.15		.05
CEMENT MASONS	14.40	1.10	.75		.01
ELECTRICIANS:					
Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem	14.55	.80	3%+1.00		.04
Remainder of County	15.00	1.05	3%+1.00		.02
GLAZIERS	11.54	.75	.70		.015
IRONWORKERS	15.20	1.49	1.46		
LABORERS:					
Laborers & Window Cleaners	10.04	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for the same and cofferdams (below 10')	10.29	.62	.59		
Wagon drills and men handling burning torches in the wrecking of buildings	10.79	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all materials to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and molded-D and sandblaster helpers, power buggies, all floor hardner and "cure" application					

DECISION NO. PA82-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS CONT'D					
shall be the work of the mason tender. All pump such as the concrete, plasterer, mortar and water, installing plastic or other non-solid re-factory materials in connection with the boiler work	10.54	.62	.59		
Barko Tamper Operator	11.06	.62	.59		
LATHERS	11.61	.65	.35		.01
LEAD BURNERS	10.75	.40	.25	b	.01
LINE CONSTRUCTION:					
Linemen	15.44	.60	3%		3/8 of 1%
Cable Splicer	15.44	.60	3%		3/8 of 1%
Groundmen	9.26	.60	3%		3/8 of 1%
Winch truck operator	10.81	.60	3%		3/8 of 1%
MILLWRIGHTS	14.41	1.15	1.15		.05
PAINTERS (Bethlehem):					
Brush	13.00	1.28	.80		.10
Structural Steel	14.50	1.28	.80		.10
Spray	14.00	1.28	.80		.10
PAINTERS, REMAINDER OF CO.:					
Brush	9.30	1.00	.60		
Structural Steel	10.05	1.00	.60		
Spray.	11.01	1.00	.60		
PILEDRIVERMEN	12.97	3.13	1.40	a	.13
PLASTERERS	14.29	1.10	.75		.01
PLUMBERS	18.33	1.10	1.40		.14
ROOFERS, COMPOSITION, SLATE & TILE	12.28		1.55		
ROOFERS, HELPERS	7.21		1.55		
SHEET METAL WORKERS	13.51	1.17	2.17		.23
SOFT FLOOR LAYERS	12.05	1.07	1.07	.65	
SPRINKLER FITTERS	16.92	1.15	1.60		.08
STEAMFITTERS	17.86	.95	2.05		.11
TERRAZZO WORKERS	13.40	1.10	.75		.01

DECISION NO. PA82-3016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Class I					
Helper, Stake Body Truck (single axle), Dumpster	$11.82				
Class II					
Dump Trucks, Tandem & Batch Trucks, Semi-Trailers, Agitator Mixer Trucks, Ready Mix and Dumpcrete Type Vehicles Asphalt Distributors, Farm Tractor when used for transportation, Stake Body Truck (Tandem)	11.89				
Class III					
Euclid Type, Off-Highway Equipment - Back or Belly Dump Trucks and Double Hitched Equipment Straddle (Ross) Carrier, Low-Bed Trailers	12.38				

Welder - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS (Where Applicable)

A-New Year;s Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day and Christmas Day.

b. 9 paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday, and is available for work the days preceeding and following the holiday.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

DECISION NO. PA82-3016

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$14.85	13.5%	10.3%	a	1.8%
GROUP 2	14.56	13.5%	10.3%	a	1.8%
GROUP 3	13.69	13.5%	10.3%	a	1.8%
GROUP 4	12.92	13.5%	10.3%	a	1.8%
GROUP 5	12.45	13.5%	10.3%	a	1.8%
GROUP 6	11.54	13.5%	10.3%	a	1.8%
GROUP 7	15.10	13.5%	10.3%	a	1.8%
GROUP 7-A	15.35	13.5%	10.3%	a	1.8%
GROUP 7-B	15.59	13.5%	10.3%	a	1.8%

CLASSIFICATIONS DEFINITIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist wirh two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type bachoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt paint engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc): 100 ft. and over

GROUP 7-A: 150 ft. and over
GROUP 7-B: 200 ft. and over

FOOTNOTES:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

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SUPERSEDEAS DECISION

STATE: West Virginia COUNTY: Statewide
DECISION NO.: WV82-3003 DATE: Date of Publication
Supersedes Decision No. WV80-3016, dated May 30, 1980, in 46 FR 36771
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS & STONEMASONS:					
AREA 1	15.11	.65	1.00		.02
AREA 2	14.51	.55	.50		.05
AREA 3	14.13	.80	1.05		.02
AREA 4	15.23	.65			.03
AREA 5	15.94	.75	.40		
AREA 6	14.35	.90			
AREA 7	12.29	.80	1.00		
AREA 8	13.20		.50		

AREAS COVERED BY BRICKLAYERS & STONEMASONS

AREA 1 - Boone, Braxton, Clay, Fayette, Greenbrier, Kanawha, Putnam, Raleigh & Summers Counties.
AREA 2 - Barbour, Doddridge, Gilmer, Grant, Hardy, Harrison, Lewis, Marion, Monongalia, Pendleton, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur & Webster Counties.
AREA 3 - Marshall, Ohio, Tyler & Wetzel Counties.
AREA 4 - Brooke & Hancock Counties.
AREA 5 - Cabell, Lincoln, Mason, Mingo & Wayne Counties.
AREA 6 - Calhoun, Jackson, Pleasants, Ritchie, Roane, Wirt & Wood Counties.
AREA 7 - Berkeley, Hampshire, Jefferson, Mineral & Morgan Counties.
AREA 8 - McDowell, Mercer, Monroe & Wyoming Counties.

CARPENTERS:					
Heavy Construction	12.08	1.15	1.00		.05
Highway Construction	11.85	1.15	1.00		.05
CEMENT MASONS:					
Heavy Construction	12.20	.50			.02
Highway Construction	11.98	.50			.02

DECISION NO. WV82-3003

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
AREA 1					
Wiremen	16.86	.50	8%		.04
Cable splicers	18.55	.50	8%		.04
AREA 2					
Contracts $15,000 or less:					
Wiremen	12.32	.50	3%+.67	.77	.06
Cable splicers	12.62	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	15.22	.50	3%+.67	.77	.06
Cable splicers	15.52	.50	3%+.67	.77	.06
Area 3					
Wiremen	13.35	.50	3%+1.25	2.00	.05
Cable splicers	14.69	.50	3%+1.25	2.00	.05
AREA 4					
Wiremen	14.66	.50	3%+1.25	1.50	.04
Cable splicers	14.91	.50	3%+1.25	1.50	.04
AREA 5					
Wiremen	17.05	8%	17%		4 of 1%
AREA 6					
Contracts under $50,000:					
Wiremen	9.20	.50	3%+1.25	1.75	.04
Contracts $50,000 or more:					
Wiremen	13.65	.50	3%+1.50	2.00	.04
Cable splicers	13.80	.50	3%+1.50	2.00	.04
AREA 7					
Wiremen	14.15	.50	3%+1.75	2.00	.06
Cable splicers	14.40	.50	3%+1.75	2.00	.06
AREA 8					
Wiremen	15.721	.50	3%+1.00	1.00	.04
Cable splicers	16.51	.50	3%+1.00	1.00	.04
AREA 9					
Wiremen	16.22	.50	3%+1.00	1.00	.04
Cable splicers	17.03	.50	3%+1.00	1.00	.04
AREA 10					
Wiremen	16.22	.50	3%+1.00	1.00	.04
Cable splicers	17.03	.50	3%+1.00	1.00	.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D):					
AREA 11					
Wiremen	13.70	.90	3%+.70		3/4%
AREA 12					
Wiremen	13.70	.90	3%+.70		3/4%
AREA 13					
Wiremen	14.70	.90	3%+.70		3/4%
AREA 14					
Wiremen	10.86	.30	3%		½ of 1%
Cable splicers	11.26	.30	3%		½ of 1%
AREA 15					
Contracts $15,000 or less:					
Wiremen	12.62	.50	3%+.67	.77	.06
Cable splicers	12.92	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	15.52	.50	3%+.67	.77	.06
Cable splicers	15.82	.50	3%+.67	.77	.06
AREA 16					
Contracts $15,000 or less:					
Wiremen	12.82	.50	3%+.67	.77	.06
Cable splicers	13.12	.50	3%+.67	.77	.06
Contracts over $15,000:					
Wiremen	15.72	.50	3%+.67	.77	.06
Cable splicers	16.02	.50	3%+.67	.77	.06
AREA 17					
Contracts under $30,000:					
Wiremen	6.95	.50	3%		3/4 of1%
Contracts $30,000 or more:					
Wiremen	10.95	.50	3%		3/4 of1%
AREA 18					
Wiremen	13.30	8%	6½%	8%	1%
Cable splicers	13.70	8%	6½%	8%	1%
AREA 19					
Putnam County					
Wireman	17.61	.50	8%		.04
Cable Splicer	19.37	.50	8%		.04

DECISION NO. WV82-3003

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 20					
Roane, Clay, Fayette, Raleigh, Boone County & Montgomery Township					
Wireman	17.86	.50	8%		.04
Cable Splicer	19.65	.50	8%		.04
AREA 21					
Calhoun, Gilmer, Braxton, Webster & Nicholas Counties					
Wiremen	18.86	.50	8%		.04
Cable Splicer	20.75	.50	8%		.04

AREAS COVERED BY ELECTRICIANS

AREA 1 - Kanawha County (not including Montgomery Township)
AREA 2 - Raleigh (remainder of county) County.
AREA 3 - Barbour, Doddridge, Harrison, Lewis, Randolph & Upshur Counties.
AREA 4 - Brooke (Buffalo Twp Only), Marshall, Ohio & Wetzel Counties
AREA 5 - Brooke (except Buffalo Twp) & Hancock (except Grant Twp.) Counties.
AREA 6 - Marion, Monongalia, Preston, Taylor & Tucker Counties.
AREA 7 - Jackson, Pleasants, Ritchie, Tyler, Wirt & Wood Counties.
AREA 8 - Cabell & Wayne Counties.
AREA 9 - Logan, Mason & Mingo Counties.
AREA 10 - Lincoln County.
AREA 11 - Mineral County.
AREA 12 - Berkeley, Hampshire & Morgan Counties.
AREA 13 - Grant County.
AREA 14 - Greenbrier, McDowell, Mercer, Monroe & Pocahontas Counties.
AREA 15 - Fayette (remainder of county) County.
AREA 16 - Summers & Wyoming Counties.
AREA 17 - Hardy, Jefferson & Pendleton Counties.
AREA 18 - Hancock County - Grant Twp. only
AREA 19 - Putnam County
AREA 20 - Roane, Clay, Fayette, Raleigh & Boone County and Montgomery Township
Area 21 - Calhoun, Gilmer, Braxton, Webster & Nicholas Counties

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DECISION NO. WV82-3003

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
AREA 1	14.46	1.00	1.80		.09
AREA 2	13.22	1.05	2.55		.05
AREA 3	13.85	1.00	1.85		.03
AREA 4					
Zone 1 - 10 miles from Union Hall	12.07	.90	1.05		.01
Zone 2 - 10 to 15 miles from Union Hall	12.22	.90	1.05		.01
Zone 3 - 15 to 20 miles from Union Hall	12.32	.90	1.05		.01
Zone 4 - over 20 miles from Union Hall	12.42	.90	1.05		.01
AREA 5	13.61	.80	1.55		.03
AREA 6	12.05	.80	.85		

AREAS COVERED BY IRONWORKERS

AREA 1 - Boone, Braxton, Clay, Fayette, Kanawha, Lincoln, Logan, McDowell, Nicholas, Putnam, Raleigh, Webster & Wyoming Counties.
AREA 2 - Barbour, Brooke, Hancock, Harrison, Marion, Marshall, Monongalia, Ohio, Taylor, Tyler & Wetzel Counties.
AREA 3 - Calhoun, Doddridge, Gilmer, Jackson, Lewis, Mason, Pleasants, Ritchie, Roane, Upshur, Wirt & Wood Counties.
AREA 4 - Cabell, Mingo & Wayne Counties.
AREA 5 - Berkeley, Grant, Hampshire, Hardy, Mineral, Morgan, Pendleton, Preston, Randolph & Tucker Counties.
AREA 6 - Greenbrier, Mercer, Monroe, Pocahontas & Summers Counties.

LABORERS:					
Heavy Construction:					
Group 1	10.57	.70	.70		.05
Group 2	10.15	.70	.70		.05
Group 3	9.85	.70	.70		.05
Group 4	9.52	.70	.70		.05
Group 5	9.28	.70	.70		.05
Group 6	8.78	.70	.70		.05
Highway Construction:					
Group 1	10.37	.70	.70		.05
Group 2	9.96	.70	.70		.05
Group 3	9.64	.70	.70		.05
Group 4	9.32	.70	.70		.05
Group 5	9.02	.70	.70		.05
Group 6	8.56	.70	.70		.05

All classifications who are required to work in open vertical ditches and manholes that are 6' or more in depth shall receive 15¢ per hour above their regular rate of pay.

DECISION NO. WV82-3003

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Blacksmith, Tunnel Driller, Tunnel Miner and Powderman.
GROUP 2 - Mucker-Chucker.
GROUP 3 - Caison bottom man, Pipe Layer (including Laser Beam Set-up), Form setter (road), Drill Operator and Inside Laborer.
GROUP 4 - Airtool Operator, Vibrator Man, Whacker, Chainsaw Operator, Mortarman, Mason Tender, Blacksmith Helper, Cement Finisher Helper, Drill Helper, Powderman Helper, Waterproofer, Sheeter and Shorer, Pipelayers Helper, Bullfloat Man, Pavement Reinforcing Placer, Handyman, Signal Man, Asphalt Raker, Greencutter, Georgia Power Buggie, Burner, Grade Checker, Concrete Blower Man.
GROUP 5 - Laborer, Deckhand, Mulcher and Seeder (hand or machine), Trees Trimmer, Flagman.
GROUP 6 - Watchman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
AREA 1					
Linemen	13.68	.60	3%+.50	.90	1/2%
Cable Splicer and Linemen Welder	15.05	.60	3%+.50	.90	1/2%
Mechanized Equipment Operaters	10.94	.60	3%+.50	.90	1/2%
Groundman	8.89	.60	3%+.50	.90	1/2%
AREA 2					
Linemen and operators (all mechanized equipment)	11.97	.70	3%+.67	.77	1/2%
Cable Splicers	12.27	.70	3%+.67	.77	1/2%
Groundmen	9.58	.70	3%+.67	.77	1/2%
AREA 3					
Linemen and Equipment Operators	11.65	.60	3%+1.25	1.50	1/2%
Cable Splicers	12.82	.60	3%+1.25	1.50	1/2%
Groundmen	9.32	.60	3%+1.25	1.50	1/2%
AREA 4					
Linemen and Equipment Operators	10.95	.50	3%+.50	2.00	1/2%
Cable Splicers	12.045	.50	3%+.50	2.00	1/2%
Groundmen and Truck Drivers	8.76	.50	3%+.50	2.00	1/2%

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LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 5					
Linemen & operators (all mechanized equipment)	12.50	.50	3%+.35	1.00	½ of 1%
Cable splicers	12.85	.50	3%+.35	1.00	½ of 1%
Groundmen	10.08	.50	3%+.35	1.00	½ of 1%
AREA 6					
Linemen & operators (all mechanized equipment)	13.50	7%	10%	10%	
Cable splicers	14.00	7%	10%	10%	
Groundmen	8.78	7%	10%	10%	
AREA 7					
Linemen & operators (all mechanized equipment)	13.65	.50	3%+1.50	2.00	½ of 1%
Cable splicers	15.02	.50	3%+1.50	2.00	½ of 1%
Groundmen & Truck Drivers	10.92	.50	3%+1.50	2.00	½ of 1%
AREA 8					
Linemen	10.15	.50	3%+.25		½ of 1%
Equipment operators	9.64	.50	3%+.25		½ of 1%
Truck drivers & groundmen	6.60	.50	3%+.25		½ of 1%
AREA 9					
Linemen	10.35	.50	3%+.25		½ of 1%
Equipment operators	9.84	.50	3%+.25		½ of 1%
Truck drivers & groundmen	6.80	.50	3%+.25		½ of 1%
AREA 10					
Linemen	10.55	.50	3%+.25		½ of 1%
Equipment operators	10.04	.50	3%+.25		½ of 1%
Truck drivers & groundmen	7.00	.50	3%+.25		½ of 1%
AREA 11					
Linemen, cable splicers & equipment operators	12.11	.45	3%		½ of 1%
Truck with winch, pole or steel handling	7.43	.45	3%		½ of 1%
Groundmen	7.17	.45	3%		½ of 1%
AREA 12					
Linemen and operators (all mechanized equipment)	12.27	.70	3%+.67	.77	1/2%
Cable Splicers	12.57	.70	3%+.67	.77	1/2%
Groundman	9.82	.70	3%+.67	.77	1/2%

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LINE CONSTRUCTION (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 13					
Linemen and operators (all mechanized equipment)	12.47	.70	3%+.67	.77	1/2%
Cable Splicers	12.77	.70	3%+.67	.77	1/2%
Groundmen	9.98	.70	3%+.67	.77	1/2%
AREA 14					
Linemen	8.66	.35	3%		½ of 1%
Cable splicers	9.06	.35	3%		½ of 1%
Equipment operators	7.45	.35	3%		½ of 1%
Trucks with earth boring auger	6.06	.35	3%		½ of 1%
Trucks with winch, groundmen	4.76	.35	3%		½ of 1%
AREA 15					
Linemen & Equipment Operators	10.26	8%	6½%	8%	1%
Cable splicers	10.66	8%	6½%	8%	1%
Truck drivers & Groundmen	9.36	8%	6½%	8%	1%

AREAS COVERED BY LINE CONSTRUCTION

AREA 1 - Boone, Braxton, Cabell, Calhoun, Clay, Fayette (Falls and Kanawha Twps.), Gilmer, Kanawha, Lincoln, Logan, Mason, Mingo, Nicholas, Putnam, Raleigh (Clear Fork and Marsh Fork Twps.), Roane, Wayne & Webster Counties.
AREA 2 - Raleigh County (excluding Clear Fork and Marsh Fork Twps.)
AREA 3 - Jackson, Pleasants, Ritchie, Tyler, Wirt & Wood Counties.
AREA 4 - Barbour, Doddridge, Harrison, Lewis, Randolph & Upshur Counties.
AREA 5 - Brooke (Buffalo Twp. only), Marshall, Ohio & Wetzel Counties.
AREA 6 - Brooke (except Buffalo Twp.) & Hancock (except Grant Twp.) Counties.
AREA 7 - Marion, Monongalia, Preston, Taylor & Tucker Counties.
AREA 8 - Mineral County.
AREA 9 - Berkeley, Hampshire & Morgan Counties.
AREA 10 - Grant County.
AREA 11 - Hardy, Jefferson & Pendleton Counties.
AREA 12 - Fayette County (excluding Falls and Kanawha Twps.)

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AREAS COVERED BY LINE CONSTRUCTION (CONT'D)

AREA 13 - Summers & Wyoming Counties
AREA 14 - Greenbrier, McDowell, Mercer, Monroe & Pocahontas Counties.
AREA 15 - Hancock County - Grant Twp. only.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
AREA 1					
Painters					
An area within 50 miles of Huntington, W.V.	11.40	.45	.35		.02
An area 50 miles and beyond of Huntington, W.V.	12.95	.45	.35		.02
Bridge & Hazardous Work (includes towers, smoke stacks, flag poles & tanks)					
An area within 50 miles of Huntington, W.V.	12.77	.45	.35		.02
An area 50 miles and beyond of Huntington, W.V.	14.23	.45	.35		.02
AREA 2					
Brush, roller, and spray	9.35	.30			
Industrial structural steel	12.65	.30			
Power cleaning tools and lining machine work - 50¢ over appropriate scale					
Material emitting toxic vapors-$1.00 over appropriate scale					
Height clause - additional $1.00 per hour per 100'					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 3					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		
AREA 4					
New Construction:					
Brush	10.76		.30		.01
Roller	11.02		.30		.01
Spray & Blast, Pot-Men	11.78		.30		.01
Repaint Work					
Brush	9.34		.30		.01
Roller	9.62		.30		.01
Spray & Pot-Men	11.78		.30		.01
Bridge					
Brush	11.46		.30		.01
Roller	11.71		.30		.01
Spray, Blast, glove	12.46		.30		.01
Open structural steel	11.11		.30		.01
Stacks, vent pipes, flag poles, electrical, radio & T.V. towers & tanks over 30 feet high	11.71		.30		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 5					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		
AREA 6					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		
AREA 7					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 8					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		
AREA 9					
Painters	11.66		.20		
Structural steel after erection	12.57		.20		
Bridge painting	12.47		.20		
Spray painters	13.16		.20		
Towers, tanks & stacks	13.00		.20		
Repaint industrial & structural steel	11.77		.20		
Sand blasters	13.64		.20		

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DECISION NO. WV82-3008	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):						
AREA 5						
Brush	10.36	11.38	.55			
Air Compressor Operator	10.36	11.38	.55			
Roller, Spray, Dipping & Mitten Work	10.80	11.83	.55			
Water blasters, Steam jenny nozzle men, swinging scaffold & Boatswain chair, window belt & window jack work	11.73	12.42	.55			
Brush painters on bridges needle beam, cable work, power tool work, brush & flame cleaning	12.26	12.88	.55			
Sand blaster	12.66	13.27	.55			
All stacks, vent pipes, flag poles in excess of 30' high, all towers, elevated tanks, electrical switch yards, transformer banks, television towers	13.92	14.45	.55			
Spray painter or sandblaster on bridges needle beam cable work	12.57	13.27	.55			

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DECISION NO. WV82-3003	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
AREA 6:					
Brush & roller	9.87	.65	.50		.02
Glove	10.12	.65	.50		.02
Spray, sandblast & steam-cleaning	10.87	.65	.50		.02
Height over 40' - Brush	10.37	.65	.50		.02
Locks and Dams - Brush	10.95	.65	.50		.02
Towers - Brush	12.19	.65	.50		.02
Elevated Tanks over 35' - Brush and Roller	12.19	.65	.50		.02
Standpipe tanks over 35'-Brush and Roller, Power-line towers-Brush, Flag-poles over 40'-Brush, and Substations-Brush	12.19	.65	.50		.02
Railroad and Highway Bridges:					
Spray and Sandblast	12.19	.65	.50		.02
Brush	11.19	.65	.50		.02
Glove and Roller	11.44	.65	.50		.02
AREA 7					
Brush & roller	6.20	.50	.40		
Spray	7.20	.50	.40		
AREA 8					
Light Work					
Brush, rollers, sign painting	10.35		.50		
Brush & roller (toxic materials)	10.85		.50		
Spray, sandblasting & use of flame burning & power tools	11.35		.50		
Spray (toxic materials)	11.85		.50		
Heavy & Hazardous Work:					
Brush & sign painting	11.35		.50		
Brush (toxic materials)	11.85		.50		
Spray, rollers, sandblasting, & use of flame burning & power tools	12.35		.50		
Spray & roller (toxic materials)	12.85		.50		

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AREAS COVERED BY PAINTERS

AREA 1 - Cabell, Lincoln, Logan, Mason, Mingo & Wayne Counties.
AREA 2 - Monongalia & Preston Counties.
AREA 3 - Barbour, Doddridge, Gilmer, Harrison, Lewis, Marion, Randolph, Taylor, Tucker, Upshur & Webster Counties.
AREA 4 - Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler, Wirt & Wood Counties.
AREA 5 - Boone, Braxton, Clay, Fayette, Greenbrier, Kanawha, McDowell, Mercer, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Summers & Wyoming Counties.
AREA 6 - Brooke (south of Buffalo Creek), Marshall, Ohio & Wetzel Counties.
AREA 7 - Brooke (remainder of county), & Hancock Counties.
AREA 8 - Grant, Hampshire, Hardy, Mineral, Morgan & Pendleton Counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN - HEAVY CONSTRUCTION:					
AREA 1	10.60	5%	10%		1%
AREA 2	12.46	1.15	1.00		.05

AREAS COVERED BY PILEDRIVERMEN HEAVY CONSTRUCTION

AREA 1 - Brooke, Hancock, Marshall, Monongalia, Ohio, and Wetzel Counties.
AREA 2 - All remaining Counties.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PILEDRIVERMEN - HIGHWAY CONSTRUCTION:					
AREA 1	10.60	5%	10%		1%
AREA 2	12.21	1.15	1.00		.05

AREAS COVERED BY PILEDRIVERMEN HIGHWAY CONSTRUCTION

AREA 1 - Brooke, Hancock, Marshall, Monongalia, Ohio, & Wetzel Counties.
AREA 2 - All remaining counties

PLUMBERS AND PIPEFITTERS:					
AREA 1 Harrison, Marion, and Monongolia Counties	11.57	.65	1.00	1.157	.04
AREA 2 Barbour, Doddridge, Lewis, Preston, Taylor, and Upshur Counties	11.82	.65	1.00	1.182	.04
AREA 3 Braxton, Gilmer, Randolph, and Tucker Counties	12.07	.65	1.00	1.207	.04
AREA 4 Grant, Hampshire, Hardy, Mineral, and Pendleton Counties	12.32	.65	1.00	1.232	.04
AREA 5 Brooke (south of Buffalo Creek), Marshall, Ohio, and Wetzel Counties	11.79	.75	1.06	1.18	.05
AREA 6 Brooke (remainder of County) and Hancock Counties	12.61	.50	8%	8%	.12
AREA 7 Calhoun, Jackson, Pleasants, Ritchie, Tyler, Wirt, and Wood Counties	12.63	.50	.80		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS AND PIPEFITTERS: (CONT'D):					
AREA 8					
Cabell, Lincoln, Logan, Mason, Mingo, and Wayne Counties:					
Zone 1 - Within 8 mile radius of Cabell County Courthouse	10.88	.60	1.40		.02
Zone 2 - 8 to 15 miles from the Courthouse	11.00	.60	1.40		.02
Zone 3 - 15 to 25 miles from the Courthouse	11.28	.60	1.40		.02
Zone 4 - Over 25 miles from the Courthouse	11.53	.60	1.40		.02
AREA 9					
McDowell, Mercer, Monroe, Raleigh, Summers, and Wyoming Counties:					
Contracts $75,000 or less	8.55	.55	.60		.09
Contracts over $75,000	12.33	.55	.60		.09
AREA 10					
Boone, Clay, Fayette, Greenbrier, Kanawha, Nicholas, Pocohontas, Putnam, Roane and Webster Counties	12.95	.65	.80		.05
AREA 11					
Berkeley, Jefferson, and Morgan Counties	7.82	.60	.80	a	
POWER EQUIPMENT OPERATORS:					
Heavy Construction:					
Group 1	12.01	1.10	.60		.12
Group 2	11.21	1.10	.60		.12
Group 3	10.47	1.10	.60		.12
Group 4	10.23	1.10	.60		.12
Group 5	9.90	1.10	.60		.12
Group 6	9.58	1.10	.60		.12
Group 7	10.79	1.10	.60		.12

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Highway Construction:					
Group 1	11.84	1.10	.60		.12
Group 2	11.01	1.10	.60		.12
Group 3	10.27	1.10	.60		.12
Group 4	10.03	1.10	.60		.12
Group 5	9.70	1.10	.60		.12
Group 6	9.38	1.10	.60		.12
Group 7	10.60	1.10	.60		.12

All classifications performing tunneling and underground work shall receive an additional 25¢ per hour.

CLASSIFICATION DEFINITION FOR POWER EQUIPMENT OPERATORS ON HEAVY AND HIGHWAY CONSTRUCTION

Group 1 - Cranes, derricks, tower cranes, all shovels, draglines, clamshells, backhoes, cableways, derricks (2 drums or more), dredge, sideboom tractors and similar equipment having a reach from the top of the boom to the ground of 150 feet, or a capacity of 3 cubic yards and/or a lift capacity of 50 tons. Endloaders and concrete mixing plants of 4 cubic yards capacity or over. Hoist with 18,000 pound line pull or over, tug, tow or work boat above 25 horsepower engine. Transloader. Capacities to be based on manufacturer's specifications. Master Mechanic.

Group 2 - Crane, derrick boat, dragline, grade-all, hoist (two drums or more), mechanic (heavy), mixer plant (two or more mixers including batch control), paver (dual drums), pile driver, shovel, coredrill operator, trencher (20" or over), truck crane, backhoe, hi-lift (1-1/2 cubic yards or over), dozer with ripper (when dozer is D-8 class or larger), double hitched equipment, bulldozer with roller, standard gauge locomotive, concrete pump, controlled fine grade machine, slip form paver operator, dozer with sloper and log loader.

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CLASSIFICATION DEFINITION FOR POWER EQUIPMENT OPERATORS ON HEAVY AND HIGHWAY CONSTRUCTION (CONT'D)

Group 3 - Fork lift, self-propelled concrete spreader, concrete finishing machine, Bulldozer, derrick (single drum), hi-lift (under 1-1/2 cubic yards), hoist (single drum), single drum paver, trencher (under 20"), motor grader, air tugger, rubbertired scraper, self-loading tractor pan, Ross Carrier, "A" Frame, multiple concrete saw, asphalt paver, hydraulic post driver, base paver, rotary drill, lead greaser on grease truck or service island, snake or push tractor, horizontal road boring machine, conductor of locomotive, tie distributor, track lining machine ballast tamper, anchor application machine, ribbon rail puller, ballast regulator, auto sled, turn table.

Group 4 - Concrete mixer (single drum) one cubic yard or over, tireman, asphalt batch plant, concrete batch plant, crushing plant, screening and washing plant, form subgrader, power form handling equipment, burlap and curing machine, form grader, bull float, portable concrete saw roller and compactor, bar and joint installing machine and power broom.

Group 5 - High pressure fireman.

Group 6 - Air compressor, concrete mixer (under one cubic yard), conveyor-belt or bucket, light plant, narrow gauge locomotive, welding machine, low pressure fireman, mechanic's helper, oiler, deckhand, screed man, spreader box man, farm tractor, joint sealer and pump, steam jenny and brakeman of locomotive.

Group 7 - Group 6 operators when operating on (1) or more 600 CFM compressors or one (1) or more pumps 4" or larger, or more than one (1) air compressor, conveyor-belt or bucket, light plant, welding machine, and pumps.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Heavy Construction					
Area 1: All counties except Grant, Hampshire, Hardy, Mineral, Morgan and Pendleton					
Group 1	9.72	b	c		
Group 2	9.89	b	c		
Group 3	10.13	b	c		
Group 4	10.47	b	c		
Group 5	10.55	b	c		
Group 6	10.73	b	c		
Group 7	10.93	b	c		
Group 8	10.76	b	c		
Area 2: Grant, Hardy, Hampshire, Mineral, Morgan, and Pendleton Counties:					
Group 1	9.72	1.00	.87		
Group 2	9.89	1.00	.87		
Group 3	10.13	1.00	.87		
Group 4	10.47	1.00	.87		
Group 5	10.55	1.00	.87		
Group 6	10.73	1.00	.87		
Group 7	10.93	1.00	.87		
Group 8	10.76	1.00	.87		
TRUCK DRIVERS:					
Highway Construction:					
Area 1: All counties except Grant, Hampshire, Hardy, Mineral, Morgan, & Pendleton					
Group 1	9.52	b	c		
Group 2	9.68	b	c		
Group 3	9.92	b	c		
Group 4	10.28	b	c		
Group 5	10.34	b	c		
Group 6	10.52	b	c		
Group 7	10.67	b	c		
Group 8	10.76	b	c		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: (CONT'D)					
Area 2: Grant, Hampshire, Hardy, Mineral, Morgan & Pendleton Counties:					
Group 1	9.52	1.00	.87		
Group 2	9.68	1.00	.87		
Group 3	9.92	1.00	.87		
Group 4	10.28	1.00	.87		
Group 5	10.34	1.00	.87		
Group 6	10.52	1.00	.87		
Group 7	10.67	1.00	.87		
Group 8	10.76	1.00	.87		

All truck driver classifications performing tunneling and underground work shall receivean additional 25¢ per hour

CLASSIFICATION DEFINITIONS FOR TRUCK DRIVERS ON HIGHWAY & HEAVY CONSTRUCTION

Group 1 - Warehouse, yardmen, truck helper, pick-ups, station wagons, panel trucks, team 2-up

Group 2 - Single axle trucks used as dump, supply, fuel, water, van, flatbody, monorail, distributor, (Other than bituminous distributors) and including towed single units - material checkers, material receivers, team 4-up, greasers, tiremen and mechanic helpers (trucks).

Group 3 - Tandem axle trucks used as dump, supply, fuel, water, van, flatbody, monorail and including towed single units, truck tractors used in combination with dump, van, tank, flatbed, low platform, or pole trailers, bituminous distributors, agitator or mixer trucks (up to and including 5 c.y.).

Group 4 - Agitator or mixer trucks over 5 c.y. and less than 12 c.y., rubbertired tractors (towing or pushing), drag drivers, and tag alongs.

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CLASSIFICATION DEFINITIONS FOR TRUCK DRIVERS ON HIGHWAY & HEAVY CONSTSUCTION CON'T

Group 5 - Tri-axle trucks used as dump, supply, fuel, water, van, flatbed, monorail and including towed single units, agitator or mixer trucks (over 12 c.y. to 20 c.y.)

Group 6 - Mobile metered mixer, agitator or mixer trucks (over 20 c.y.), off highway rear dump trucks to 75 tons.

Group 7 - "A" frame operator

Group 8 - Off highway rear dump - over 75 tons.

FOOTNOTES:

a. Holiday: Christmas Day

b. Employer contributes $110.00 per month per employee

c. Employer contributes $95.33 per month per employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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Friday, May 14, 1982

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523-5240 (not a toll free number).

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EFFEC

Rules and Regulations

Federal Register
Vol. 47, No. 95
Monday, May 17, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VIII

Interpretive Ruling and Policy Statement; Payout Priorities of An Involuntarily Liquidating Federal Credit Union

Correction

In FR Doc. 82-11526 appearing on page 18122 in the issue of Wednesday, April 28, 1982, make the following correction:

On page 18123, center column, seven lines from the botton of the page, "the Board will not treat" should have read "the Board will now treat".

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Banks for Cooperatives

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit board, adopts and publishes an amendment to its regulation concerning the banks for cooperatives of the Farm Credit System. This amendment, which implements new authorities conferred on institutions of the Farm Credit System by the Farm Credit Act Amendments of 1980 (Pub. L. 96-592), authorizes banks for cooperatives to finance leasing transactions involving noncooperative lessors where the lessee is a stockholder of the bank and the equipment or facilities leased are to be utilized by the stockholder in its operations in the United States.

EFFECTIVE DATE: June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578; (202-755-2181).

SUPPLEMENTARY INFORMATION: On December 17, 1981, the Farm Credit Administration proposed for public comment an amendment to 12 CFR 614.4120—Banks for Cooperatives (46 FR 61485 and 61486). The Federal Farm Credit Board considered each of the comments received and adopted the final regulation in the course of its April 5-7, 1982 meeting.

A total of five comments were received, all of which favored the amended regulation. A technical correction was made to the third sentence to clarify that it is intended to apply to both loans and financial assistance authorities granted in the first sentence.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Credit, Rural areas.

For the reasons set out in the preamble, Part 614 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as shown.

PART 614—LOAN POLICIES AND OPERATIONS

Section 614.4120 is amended by designating the present text as paragraph (a) and adding a new paragraph (b) to read as follows:

Subpart C—Lending Authorities

* * * * *

§ 614.4120 Banks for cooperatives.

(a) * * *

(b) The banks may make or participate in loans and commitments to finance and extend technical and financial assistance to domestic noncooperative lessors for the purpose of providing leased assets to eligible cooperative borrowers. The terms of the contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease. The term of such a loan or financial assistance shall not be longer than the total period of the lease. The lessee must be a stockholder of the bank for cooperatives, and the leased equipment and facilities may only be for use in its operations in the United States

* * * * *

(Sec. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246, 2252))

Donald E. Wilkinson,
Governor.

[FR Doc. 82-13287 Filed 5-14-82; 8:45 am]
BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-ASW-21; Amdt. 39-4381]

Airworthiness Directives; Hiller Aviation Model UH-12 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new Airworthiness Directive (AD) that would require replacement of the fasteners of the main transmission mounted mercury clutch on Hiller Aviation Model UH-12 series helicopters. This AD is needed to prevent fatigue failure of the fasteners which could result in power loss to the main and tail rotors.

DATE: Effective May 17, 1982. Compliance required within 50 hours' additional time in service from the effective date of AD.

ADDRESSES: The applicable service information may be obtained from: Hiller Aviation, 2075 W. Scranton Avenue, Porterville, California 93257.

A copy of each applicable service document is contained in the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591, or at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Harold Ferris, Aerospace Engineer, Propulsion Section, ANM-174W, Western Aircraft Certification Field Office, Federal Aviation Administration, P.O. Box 9200, Worldway Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6381, or Sam Brodie, Helicopter Policy and

Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624–4911, extension 502.

SUPPLEMENTARY INFORMATION: There have been reports of loss of power to the main and tail rotor blades on Hiller Model UH–12 series helicopters which resulted in forced landings. The loss of power is attributed to the deformation of the washers under the bolt head. The resultant loss of torque results in the fatigue failure of the four bolts attaching the mercury clutch to the torsional coupling. Since this condition is likely to exist or develop in other helicopters of the same type design, the AD would require replacement of the four attach bolts with new bolts and replacement of the related washers with washers of a different design which will relieve the fatigue problem on Hiller Aviation Model UH–12 series helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Hiller Aviation

Applies to Model UH–12D, UH–12E, UH–12E4, UH–12E–L, UH–12L, UH–12L4, and military OH–23D, OH–23F, and OH–23G series helicopters, certified in all categories, through serial number 5187.

Compliance required as indicated, unless already accomplished.

To prevent loss of power to the main and tail rotors accomplish the following:

Within 50 hours' additional time in service after the effective date of this AD, remove the four P/N 21041 bolts and four AN 960–716L washers which attach the mercury clutch to the torsional coupling and replace with new P/N 21041 bolts and P/N 21074–3 washers in accordance with Part 2, Accomplishment Instructions, of Hiller Aviation Service Bulletin No. 21–1 dated January 20, 1982, or FAA approved equivalent. The four P/N 21041 bolts removed per this action must be considered unairworthy and marked accordingly.

Note.—Hiller Model UH–12 series helicopters converted to turbine power by Supplemental Type Certificate (STC) SH176WE or SH177WE do not incorporate the subject parts and therefore are not affected by this AD unless restored to the original configuration.

Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the FAR to operate rotorcraft to a base for the accomplishment of inspections or modifications required by this AD.

Note.—Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Western Aircraft Certification Field Office, FAA Northwest Mountain Region.

This amendment becomes effective May 17, 1982.

(Sections 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedues (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Note.—This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on April 29, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82–13234 Filed 5–14–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Airworthiness Docket No. 82–ASW–20; Amdt. 39–4374]

Airworthiness Directives; Robinson Helicopter Company Model R–22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires repetitive inspections for cracks and replacement, if necessary, of the steel tubular framework supporting the tail boom on certain Robinson Helicopter Company Model R–22 series helicopters. The AD is needed to detect cracks which could result in frame failure and loss of control of the helicopter.

DATE: Effective May 21, 1982. Initial compliance required within 10 hours additional time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505.

These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, or Rules Docket in Room 916, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marshall Burquest, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Field Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone (213) 536–6359.

SUPPLEMENTARY INFORMATION: There have been reports of fatigue cracks in the tubular framework which supports the tail boom on two Robinson Helicopter Company Model R–22 helicopters. These cracks, if uncorrected, could result in structural failure and loss of the helicopter.

In one case, the crack was found at 1,422 hours' time in service and another at 359 hours. These cracks were found by a routine visual examination of the parts. The cracks were discovered in the same element of the A020–2 upper steel tube frame. The tube with 1,422 hours' time in service was completely severed and the tube with 359 hours' time in service was cracked halfway through. No accidents were attributable to these fractures.

The manufacturer has incorporated a tube of greater wall thickness effective at assembly of Serial No. 0288, which will eliminate the potential cracking problem.

Since this condition is likely to exist or develop on other helicopters of the same type design, an Airworthiness Directive is being issued which requires repetitive inspections for cracks and replacement, if necessary, of the steel tubular framework supporting the tail

boom on Robinson Helicopter Company Model R–22 series helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Robinson Helicopter Company

Applies to Model R–22 series helicopters certificated in all categories incorporating upper steel tube frame P/N A020–2, Serial No.'s 0002 through 0287.

Compliance required as indicated, unless already accomplished.

To prevent failure of the A020–2 framework which could result in loss of the helicopter, accomplish the following:

(a) Within 10 hours' additional time in service after the effective date of this AD, visually inspect for cracks in the A020–2 upper steel tube frame per Inspection Procedure No. 1 of Robinson Helicopter Company Service Bulletin No. 18, dated February 15, 1982, or FAA approved equivalent and repeat this inspection thereafter at intervals not to exceed 50 hours' time in service since the last such inspection.

(b) During the daily preflight, visually check for cracks in the area noted in Figure 1 of Robinson Helicopter Company Service Bulletin No. 18, dated February 15, 1982.

Note 1.—The preflight checks required by paragraph (b) of this AD may be performed by the pilot.

Note 2.—For the requirements regarding the listing of compliance and method of compliance with this AD in the airplane's permanent maintenance record, see FAR 91.173.

(c) If cracks are found, replace P/N A020–2 frame with like serviceable part prior to further flight.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate rotorcraft to a base for the accomplishment of inspections required by this AD.

(e) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Chief, Western Aircraft Certification Field Office, Northwest Mountain Region.

This amendment becomes effective May 21, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Note.—This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on April 26, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 82–13233 Filed 5–14–82; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Number 81–ACE–7]

Alteration of Transition Area—Maryville, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Maryville, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Maryville, Missouri, Memorial Airport, utilizing a Non-Directional Radio Beacon (NDB) installed on the airport as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Airspace and Procedures Section, Operations and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Maryville, Missouri, Memorial Airport is being established utilizing the NDB installed on the airport as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of a transition area at Maryville, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 8206 of the **Federal Register** dated February 25, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Maryville, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, Section 71.171 and/or § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, July 8, 1982, by altering the following transition area:

Maryville, Mo.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Maryville, Missouri, Airport (Latitude 40°21'00" N and Longitude 94°54'45" W), and 3 miles either side of the 333° bearing from the Maryville, Missouri NDB (Latitude 40°20'54" N and Longitude 94°54'55" W) from the 5-mile radius to 8.5 miles northwest of the NDB excluding that airspace within a 1.25-mile radius of Rankin Airport (Latitude 40°20'00" N and Longitude 94°50'00" W).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 4, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-13236 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-ARM-13]

Revision of Transition Area, Greeley, Colo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the 700-foot transition area at Greeley, Colorado to provide controlled airspace for aircraft executing the new RNAV Standard Instrument Approach Procedure developed for Weld County Airport, Greeley, Colorado.

EFFECTIVE DATE: 0901 G.m.t., July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace Specialist (ANM-534), Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Northwest Mountain Region, FAA Building, Boeing Field, Seattle, Washington 98108; telephone (206) 767-2610.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 25, 1982, the FAA published for comment a proposal to revise the 700-foot transition area at Greeley, Colorado (47 FR 3370). No comments were received on the proposal.

Rule

This amendment to subpart G of Part 71 of the Federal Aviation Regulations (FARs) revises the 700-foot transition area at Greeley, Colorado. This amendment is necessary to provide controlled airspace for aircraft executing the new RNAV Standard Instrument Approach Procedure developed for Weld County Airport, Greeley, Colorado.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., July 8, 1982, by adding the following to § 71.181:

Greeley, Colo.

That airspace extending upward from 700' above the surface bounded by a line beginning at latitude 40°38'00" N, longitude 104°53'00" W; to latitude 40°41'00" N, longitude 104°27'00" W; to latitude 40°21'30" N, longitude 104°24'00" W; to latitude 40°19'00" N, longitude 104°50'00" W; thence to point of beginning; and that airspace extending upward from 1,200' above the surface within 10 miles northwest and 7 miles southeast of the Gill VOR 038° and 218° radials, extending from 20 miles northeast to 13 miles southwest of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) is certified that at promulgation it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Seattle, Washington, April 8, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-13394 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 82-ACE-02]

Alteration of Transition Area—Ava, Mo.

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Ava, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Bill Martin Memorial Airport, Ava, Missouri, utilizing a Non-Directional Radio Beacon (NDB) installed on the airport as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Airspace and Procedures Section, Operations and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Bill Martin Memorial Airport, Ava, Missouri, is being established utilizing the NDB installed on the airport as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of a transition area at Ava, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 10593 of the **Federal Register** dated March 1, 1982, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Ava, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.171 and/or § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 8, 1982, by altering the following transition area:

Ava, Mo.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Bill Martin Memorial Airport (Latitude 36°58'19" N, Longitude 92°40'52" W) and within 2 miles each side of the 107° radial of the Dogwood, Missouri VORTAC, extending from the 5-mile radius area to the VORTAC, within 2.5 miles each side of the 133° bearing from the airport extending from the 5-mile radius area to 6 miles southeast and within 3 miles each side of the 142° bearing from the Ava, Missouri NDB (Latitude 36°58'11" N, Longitude 92°40'38" W) extending from the 5-mile radius area to 8.5 miles southeast of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 6, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-13335 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23039; Amdt. No. 1216]

Standard Instrument Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA–430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO–730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Index

List of Subjects in 14 CFR Part 97

Aviation safety, Standard instrument approaches.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By amending § 97.23 VOR–VOR/DME SIAPs identified as follows:

** * * Effective July 8, 1982*

Martha's Vineyard, MA—Martha's Vineyard, VOR Rwy 6, Amdt. 3
Martha's Vineyard, MA—Martha's Vineyard, VOR Rwy 24, Amdt. 10
Bedford, PA—Bedford, VOR/DME–A, Original
Shamokin, PA—Northumberland County, VOR Rwy 6, Amdt. 1

** * * Effective June 24, 1982*

Pompano Beach, FL—Pompano Beach Airpark, VOR Rwy 14, Amdt. 6
West Palm Beach, FL—Palm Beach International, VOR Rwy 9L, Amdt. 11
Urbana, IL—Illini, VOR–A, Amdt. 10
Urbana, IL—Illini, VOR/DME–B, Amdt. 4
Liberal, KS—Liberal Muni, VOR Rwy 3, Amdt. 1

Liberal, KS—Liberal Muni, VOR Rwy 17, Amdt. 6
Liberal, KS—Liberal Muni, VOR/DME Rwy 17, Amdt. 2
Liberal, KS—Liberal Muni, VOR Rwy 35, Amdt. 10
Liberal, KS—Liberal Muni, VOR/DME Rwy 35, Amdt. 2
Hawesville, KY—Hancock Airfield, VOR Rwy 15, Amdt. 2
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 6, Amdt. 10
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 24, Amdt. 9
Three Rivers, MI—Three Rivers Municipal-Dr. Haines, VOR-A, Amdt. 6
Laurel, MS—Hesler-Noble Field, VOR Rwy 13, Amdt. 11
Rutherfordton, NC—Rutherford County, VOR Rwy 36, Amdt. 1
Lancaster, OH—Fairfield County, VOR-A, Amdt. 3
Wilmington, OH—Airborne Airpark, VOR Rwy 4, Amdt. 1
Wilmington, OH—Airborne Airpark, VOR Rwy 22, Amdt. 1
Wilmington, OH—Airborne Airpark, VOR/DME Rwy 22, Amdt. 1

** * * Effective May 4, 1982*

St. Louis, MO—Weiss, VOR-A, Amdt. 2

** * * Effective April 27, 1982*

Pawtucket, RI—North Central State, VOR-A, Amdt. 4
Pawtucket, RI—North Central State, VOR-B, Amdt. 2

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective June 24, 1982*

Waycross, GA—Waycross-Ware County, LOC Rwy 18, Original.
Lancaster, OH—Fairfield County, SDF Rwy 28, Amdt. 1
Oklahoma City, OK—Will Rogers World, LOC BC Rwy 35L, Amdt. 8

** * * Effective June 10, 1982*

Joplin, MO—Joplin Muni, LOC BC Rwy 31, Amdt. 17
Charlotte, NC—Douglas Muni, LOC Rwy 36R, Original

** * * Effective April 27, 1982*

Pawtucket, RI—North Central State, LOC Rwy 5, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective July 8, 1982*

Vinton, IA—Vinton Veterans Meml Arpk, NDB Rwy 16, Original
Gardner, KS—Gardner Muni, NDB-D, Original
Sturgis, MI—Kirsch Muni, NDB Rwy 18, Amdt. 2
Sturgis, MI—Kirsch Muni, NDB Rwy 24, Amdt. 6
Windom, MN—Windom Muni, NDB Rwy 17, Amdt. 4
Lehighton, PA—Jake Arner Memorial, NDB Rwy 8, Original
Lehighton, PA—Jake Arner Memorial, NDB Rwy 26, Amdt. 1

** * * Effective June 24, 1982*

Ft. Lauderdale, FL—Ft. Lauderdale Executive, NDB Rwy 8, Amdt. 5
Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, NDB Rwy 13, Amdt. 13
Panama City, FL—Panama City-Bay County, NDB Rwy 14, Amdt. 2
French Lick, IN—French Lick Muni, NDB Rwy 26, Amdt. 5
Liberal, KS—Liberal Muni, NDB Rwy 35, Amdt. 2
Three Rivers, MI—Three Rivers Municipal Dr. Haines, NDB Rwy 27, Amdt. 4
Laurel, MS—Hesler-Noble Field, NDB Rwy 13, Amdt. 4
Rutherfordton, NC—Rutherford County, NDB Rwy 36, Amdt. 2
Lancaster, OH—Fairfield County, NDB Rwy 28, Amdt. 1
Middletown, OH—Hook Field Muni, NDB Rwy 23, Amdt. 6
Oklahoma City, OK—Will Rogers World, NDB Rwy 35L, Amdt. 2
Big Lake, TX—Reagan County, NDB Rwy 16, Original

** * * Effective June 10, 1982*

Joplin, MO—Joplin Muni, NDB Rwy 13, Amdt. 22

** * * Effective April 30, 1982*

Madison, WI—Dane County Regional/Truax Field, NDB Rwy 36, Amdt. 24
Milwaukee, WI—General Mitchell Field, NDB Rwy 7R, Amdt. 8

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective July 8, 1982*

Martha's Vineyard, MA—Martha's Vineyard, ILS Rwy 24, Amdt. 6
Williamsport, PA—Williamsport-Lycoming County, ILS Rwy 27, Amdt. 13

** * * Effective June 24, 1982*

Ft. Lauderdale, FL—Ft. Lauderdale Executive, ILS Rwy 8, Amdt. 1
Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, ILS Rwy 9L, Amdt. 11
Panama City, FL—Panama City-Bay County, ILS Rwy 14, Amdt. 12
West Palm Beach, FL—Palm Beach International, ILS Rwy 9L, Amdt. 19
Liberal, KS—Liberal Muni, ILS Rwy 35, Amdt. 2
Fargo, ND—Hector Field, ILS Rwy 35, Amdt. 28
Oklahoma City, OK—Will Rogers World, ILS Rwy 35R, Amdt. 5
Seattle, WA—Seattle-Tacoma Intl, ILS Rwy 16R, Amdt. 7

** * * Effective June 10, 1982*

Portland, ME—Portland Intl Jetport, ILS Rwy 29, Amdt. 1
Joplin, MO—Joplin Muni, ILS Rwy 13, Amdt. 20

** * * Effective April 30, 1982*

Milwaukee, WI—General Mitchell Field, ILS Rwy 7R, Amdt. 11
Milwaukee, WI—General Mitchell Field, ILS Rwy 19R, Amdt. 6

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective July 8, 1982*

Philadelphia, PA—Philadelphia Intl, RADAR-1, Amdt. 15

** * * Effective June 24, 1982*

Greer, SC—Greenville-Spartanburg, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective June 24, 1982*

Gainesville, GA—Lee Gilmer Memorial, RNAV Rwy 4, Original, cancelled
LaPorte, IN—LaPorte Muni, RNAV Rwy 20, Original
Liberal, KS—Liberal Muni, RNAV Rwy 12, Amdt. 3
Ann Arbor, MI—Ann Arbor Muni, RNAV Rwy 24, Amdt. 2
Cadillac, MI—Wexford County, RNAV Rwy 7, Amdt. 2
Lancaster, OH—Fairfield County, RNAV Rwy 10, Amdt. 2
Greer, SC—Greenville-Spartanburg, RNAV Rwy 21, Amdt. 3

** * * Effective June 10, 1982*

Joplin, MO—Joplin Muni, RNAV Rwy 31, Amdt. 4

** * * Effective April 27, 1982*

Pawtucket, RI—North Central State, RNAV Rwy 5, Amdt. 4
Pawtucket, RI—North Central State, RNAV Rwy 23, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on May 7, 1982.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1981.

John M. Howard,

Acting Chief, Aircraft Programs Division.

[FR Doc 82-13333 Filed 5-14-82; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Part 923, 927, 928, and 931

Improving Coastal Management in the United States

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: Pub. L. 96–464, the Coastal Zone Management Improvement Act of 1980 (the Act), which amended the Coastal Zone Management Act of 1972 (CZMA), requires the Secretary of Commerce to issue regulations for improving the administration of the national coastal zone management program established by the CZMA. This notice sets out final rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives; (2) allocating Federal financial assistance among eligible states to administer approved state coastal management programs; (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities; and (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs.

EFFECTIVE DATE: The final rules will become effective unless, within 60 calendar days of continuous session after submission to the Congress for review, both Houses of Congress adopt a concurrent resolution disapproving the final rules. Notification of the effective date will be published in the **Federal Register**. Until these regulations become effective, they shall provide guidance to federal agencies and state governments for implementing the CZMA.

FOR FURTHER INFORMATION CONTACT: JoAnn Chandler, Director, Vickie Allin or Nancy Carter, Office of Policy, Evaluation and External Relations (202) 634–4245.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under authority of Sections 306 and 317 of the CZMA and Sections 5, 7, and 9 of the Act.

II. Regulatory Issues

A. General Background

The CZMA was enacted to encourage and assist states in developing and implementing management programs to preserve, protect, develop, and when possible, to restore or enhance the resources of our nation's coast. The primary purpose of the 1980 amendments is to reaffirm the nation's commitment to the wise use and management of our coastal resources through the coastal zone management program. To this end, key provisions of the CZMA were strengthened to encourage states to significantly improve their coastal management programs.

On December 30, 1980, NOAA issued an advance notice of proposed rulemaking (ANPR) to solicit public comment on rules to implement the amendments to the CZMA. Specifically, the ANPR solicited comments on rules for: (1) Encouraging states to achieve significant improvements in meeting certain national coastal management objectives (Sections 303 and 306(a)); (2) Allocating Federal financial assistance among eligible states to administer approved state coastal management programs (Section 306(b)); (3) awarding Federal financial assistance to eligible states to mitigate adverse coastal impacts caused by coal and alternative ocean energy activities (Section 308(c)(3)); (4) reviewing and evaluating the performance of approved state coastal zone management programs and coastal energy impact programs (Section 312); (5) enhancing the protection of nationally significant coastal resources (Section 306(i)); (6) awarding grants to eligible coastal states for preserving specific coastal areas, redeveloping urban waterfronts and ports, and providing access to public beaches and coastal waters (Section 306A); and, (7) awarding grants to assist eligible states in preserving islands (Section 315). NOAA received 38 comments before the close of the comment period on January 31, 1981. In February 1981, NOAA distributed issue papers to approximately 400 interested parties on a mailing list established for this rulemaking. Sixty-six comments were received.

Based on comments on the ANPR and the issue papers, NOAA prepared proposed rules. Because of budgetary constraints and the need to eliminate unnecessary regulations, only those regulations that were statutorily mandated and necessary to the operation of the coastal management programs were proposed. Therefore, the NPR did not include regulations implementing Sections 306(i), 306A and 315.

A Notice of Proposed Rulemaking was published on pages 51393-51402 of the **Federal Register** of October 20, 1981, inviting comments for 30 days ending November 20, 1981. Comments were received from 32 sources including federal and state government agencies, regional organizations and interest groups.

B. Legislative Amendments and Issues Resolved Through Rulemaking

1. *Improving Coastal Zone Management—Sections 303/306.* The provisions of the CZMA paraphrased below relate to improving coastal management, and Section 5(b) of the Act requires the Secretary to issue regulations for their implementation.

Section 303 clarifies national coastal policy by describing specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 306(a) encourages more effective coastal management by requiring states with approved programs to expend an increasing proportion of administrative grants (up to a maximum of 30 percent unless a state agrees to a higher percentage) on activities that will result in significant improvement in achieving the national coastal objectives specified in Section 303.

The final rules implementing sections 303 and 306(a) broadly define "significant improvements" to include state accomplishments that add elements to current management programs or strengthen existing program elements. They provide that selection of management activities designed to result in significant improvements will be negotiated between OCZM and individual states, require states to expend in the second year of funding at least 20 percent of their Federal section 306 financial assistance award on significant improvement activities and increase expenditures by one percent in each succeeding year. They also provide that a state failing to agree to pursue significant improvements may not receive any financial assistance under Section 306 to implement its program.

Generally, the final significant improvement regulations provide for a flexible and cooperative approach so that coastal states and NOAA can effectively deal with the phase down of Federal funding. These final regulations are published as Subpart K of 15 CFR Part 923—the existing Coastal Zone Management Program Development and Approval Regulations.

2. *Allocating Administrative Grants—Section 306(b).* Section 306(b) requires that administrative grants under section 306 be allocated among coastal states with approved programs in accordance with rules and regulations that take into account "the extent" of the shoreline covered by the plan, "the population" of the area covered by the plan, and other relevant factors.

The allocation formula in the final regulations is simple, straightforward, and easy to administer and will minimize the disruption in state funding from current levels. The formula is based on (1) an established minimum share allocated to each state and (2) a proportionate share of the remainder to be allocated 60 percent on the length of shoreline, which provides a reasonable approximation of the magnitude of the resource to be managed, and 40 percent on coastal county population which provides a reasonable approximation of the pressures for use of coastal resources. These factors provide continuity with past practice, since they have been used in the allocation process since the inception of the program and will produce the least disruption to the existing funding pattern. Other factors such as nature of the shoreline and need for management funds were considered but not selected because they were too subjective and difficult to quantify. The final allocation regulations supersede the expired allocation regulations published at 15 CFR Part 927.

3. *Coal and Alternative Ocean Energy Impact Grants—Section 308(c)(3).* New section 308(c)(3) authorizes the Secretary to make grants under the Coastal Energy Impact Program (CEIP) to eligible coastal states for preventing or mitigating unavoidable environmental and recreational losses in the coastal zone resulting from the "transportation, transfer or storage of coal or from alternative ocean energy activities." Funds must be allocated among eligible states in accordance with "rules and regulations * * * which shall take into account the number of coal or alternative ocean energy facilities, the nature of their impacts, and other relevant factors * * *" (Section 308(c)(3)(B)).

The final regulations implementing section 308(c)(3) have been combined with existing regulations implementing sections 308(c) (1) and (2) and revise Subpart D (Planning for the Consequences of Energy Facilities) and Subpart L (OCS State Participation Grants) of 15 CFR Part 931—the Coastal Energy Impact Program regulations. The final regulations, therefore, govern the award of all grants under section 308(c). Consolidation of the three categories of "c" grants under one subpart (new subpart D) will greatly simplify the regulations for administering the CEIP.

Under this consolidated approach, states will receive one allotment under section 308(c) that they will then apportion at their discretion among the allowable uses of subsections (c)(1), (c)(2), and (c)(3). To assure the timely expenditure of section 308(c) funds, the final regulations require states to submit applications before the end of the fiscal year for which allotments were made; funds not applied for by then can be reallotted among other eligible states during the next fiscal year.

The final regulations also set forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses, describe procedures for allotting section 308(c) funds among eligible coastal states and for applying for assistance under section 308(c). In addition, the final rules broadly define coal to include the waste products of its combustion (ash and sludge), "coal facility" as any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, and "alternative ocean energy facility" to include solar facilities.

The final rules consolidating the financial assistance provisions under section 308(c) are published as Subpart D of 15 CFR Part 931—the Coastal Energy Impact Program regulations—and replace the existing Subpart D and Subpart L.

The consolidation of section 308(c) regulations necessitates some minor conforming changes to Subpart G, which deals with formula grants. These changes are necessary because Subpart D, which is being revised, contained provisions that are required for administering the formula grants provisions of the CEIP regulations.

4. *Review of Performance (Evaluation)—Section 312.* Section 312 of the CZMA requires a "continuing review of the performance of coastal states with respect to coastal management" and Section 9(b) of the Act requires the promulgation of rules to implement section 312. This review must include a written evaluation that assesses the extent to which the state has: (1) Implemented and enforced its approved program; (2) addressed the coastal management needs identified in Section 303(2)(A)–(I) of the CZMA; and (3) adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Section 312 further requires that a public meeting be conducted as part of each evaluation and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance. The Secretary is directed to reduce financial assistance under Section 306 of the CZMA by up to 30 percent if it is determined that a state is not making significant improvement in achieving the coastal management objectives identified in section 303(2)(A)–(I), and to withdraw program approval and financial assistance if it is found that a state is failing to adhere to, or is unjustifiably deviating from, its approved program or the terms of any grant or cooperative agreement and refuses to remedy the deviation. The statute outlines procedural safeguards (such as notice to the state and an opportunity for a public hearing) that must be observed if the Secretary finds that program approval and financial assistance should be withdrawn.

The basic requirements for continuing review are set forth in the regulations. They provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared. The Office of Coastal Zone Management expects that the evaluation of a state's approved coastal zone management program and coastal energy impact program will occur at the same time.

The final evaluation regulations are published as 15 CFR Part 928, replacing the regulations that governed a one-time-only allocation of supplemental funds appropriated for FY 1975. These regulations are no longer necessary for program administration.

The promulgation of regulations implementing section 312 (c), (d) and (e) necessitates some minor changes to 15 CFR 923.82(b)(3), which deals with sanctions for state implementation of unapproved amendments. The changes are necessary because this section references § 923.85, "Termination and Withdrawal of Administrative Funding," which is being replaced by § 928.5(b), "Withdrawal of Program Approval and Financial Assistance."

III. Summary of Significant Comments on NPR and NOAA's Responses

NOAA received comments from 32 sources on the composite rulemaking for Parts 923, 927, 928 and 931. Commentators included: 1 Federal agency (the U.S. Department of the Interior) 19 coastal states and territories (South Carolina, New Hampshire, New York, Maryland, Michigan, California, Alaska, Louisiana, Oregon, Alabama, Massachusetts, Pennsylvania, Ohio, Florida, Wisconsin, New Jersey,

Connecticut, Government of the Virgin Islands, and the Commonwealth of Puerto Rico); 8 interest groups (Conoco, Inc., Sierra Club, International Association of Drilling Contractors, Coastal States Organization, Texas Eastern Transmission Corp., Edison Electric Institute, Natural Resources Defense Council, and the United Mobile Sportsfisherman, Inc.); and one member of the Coastal Zone Management Advisory Committee. Not all commentators submitted comments on all sections of the regulations. All comments received are on file at the Office of Coastal Zone Management and are available at that office for review upon request. Each of the major issues raised by commentators has been summarized and NOAA's responses provided under the relevant subheading in this section.

A. Part 923, Subpart K—Improving Coastal Zone Management

General. (1) Rather than promulgating regulations, NOAA should concentrate on developing effective phase-down policy. Publication of regulations should be delayed until various proposals for continued funding of coastal management activities are considered.

Response: NOAA is promulgating only those regulations that are statutorily mandated and necessary to the operation of the national coastal management program. Therefore, regulations implementing sections 306(i), 306A, and 315 were not proposed. In addition, the process of promulgating these final rules provided a forum for discussing in detail phase-down issues. The promulgation of these final rules has, therefore, contributed to the development of flexible and effective phase-down policies, which are embodied in these regulations.

(2) NOAA must recognize that achievement of significant improvements are often beyond the control of the coastal management agency. State agencies should not be penalized because, for example, the state legislature failed to enact a statute. State agencies should be judged only on whether they have taken reasonable steps to achieve a significant improvement.

Response: NOAA does not agree that the achievement of significant improvements should be based solely on the performance of the management agency. The national coastal management program is designed to encourage "states" not coastal agencies to exercise their management authorities over coastal resources. The ultimate goal of the significant improvement provisions is to encourage states to adopt and effectively implement better coastal management policies and procedures. However, not all significant improvements are dependent on approval by forces outside the coastal agency's control. For example, streamlining internal administrative procedures that decrease permit processing time could qualify as a significant improvement. In addition, NOAA may give significant improvement credit on a case-by-case basis for tasks aimed at achieving an improvement that is successfully carried out by the coastal agency even if the complete achievement of the improvement proves to be beyond the control of the coastal agency.

§ 923.102 Significant improvement defined.

(1) Section 923.102(b)(3) appears to encourage states to expand into new geographic areas beyond their defined coastal zones. It is improper to require states to expand their coastal programs beyond boundaries approved by the Secretary of Commerce and imprudent in light of reduced funding levels for management activities.

Response: NOAA does not require or intend to encourage states to expand their coastal zones beyond the boundaries approved by the Secretary of Commerce. However if the state chooses to expand its coastal zone and extend its enforceable program authorities to the expanded area, in response to changed circumstances, the expansion could qualify as a significant improvement. As proposed, § 923.102(b)(3) also applies to geographic areas located entirely within the existing coastal zone, e.g., the incremental expansion of an enforceable policy into a new geographic area within the coastal zone. Therefore NOAA will leave that provision intact since it allows for the expansion of the coastal boundary but does not require it.

(2) Significant improvement should be defined as an activity that makes a "measurable or clearly perceptible improvement in the achievement of any of the national interest objectives in section 303(2)(A)–(I)." Such activities should include the following provided they clearly serve the national interest objectives:

Development of natural resource information critical to making informed coastal management decisions;

Development and implementation of state and local strategies; projects, and management programs for coastal resources and uses;

Legal work to clarify or protect the public interest in coastal resources.

Response: The suggested definition provides no baseline from which significant improvements are measured. NOAA has determined that Congress intended states to improve their "approved" programs. Improvements, if they are to be "significant," must go beyond what is expected of an approved program. NOAA will include the first and second suggested example in its list of significant improvements with the qualification that these activities must exceed what is expected of the approve program. The third example is not accepted because it constitutes a basic function of an approved management program.

(3) Section 923.102(b) (1) and (2) should be amended to delete the words "beyond what is required by the approved program" from the definition of significant improvement.

Response: NOAA disagrees. The suggested deletion would remove an essential characteristic of a significant improvement—i.e., that it exceed what is required of an approved management program.

(4) The definition of significant improvement should not be restricted to program amendments or routine program implementation.

Response: Significant improvements are not limited to programs amendments and routine program implementation. Other accomplishments that meet the criteria of § 923.102(a) may also qualify as significant improvements.

(5) The definition of significant improvement encourages states to expand authorities rather than improving existing program elements at a time when Federal financial assistance is being phased out.

Response: The definition of significant improvement allows both the expansion of program scope and the improvement of existing program elements. Therefore, the definition is sufficiently broad to allow states the flexibility to pursue significant improvements that best meet their needs.

(6) In § 923.102(b) delete and word "significant" because the list of examples in that section constitutes accomplishments whose significance must still be determined by testing whether they substantially expand the scope of the program or substantially strengthen the ability of the state to implement or enforce the approved program.

Response: NOAA disagrees. The suggested change would serve to make the definition of significant improvement too vague—i.e., it would leave the decision as to what constituted a significant improvement entirely to the

discretion of the Assistant Administrator. NOAA has clarified the concept of significant improvement by providing specific examples of accomplishments that fit the definition.

(7) The regulations should provide greater detail on what constitutes the national interest as defined in section 303(2)(A)–(I).

Response: Section 303(2)(A)–(I) provides a very broad statement of the national goals that states with approved management programs should be pursuing. Specifying requirements for the national interest under each of the nine national goals in detailed regulations would be difficult because approved programs and conditions vary from state to state. The generic examples of significant improvements provided should give sufficient guidance to NOAA and the states to negotiate significant improvement activities that meet both national and state needs.

(8) Significant improvement should be defined to include "the adoption of a schedule for consultation and coordination with and the giving of adequate consideration to the views of affected federal agencies."

Response: NOAA may accept as a significant improvement any accomplishment aimed at the goal of improving inter-government coordination if it meets the requirements of § 931.102. However, the suggested language is not accepted because it does not specify with sufficient clarity what is required.

(9) There are no specific standards to determine whether a state has achieved a significant improvement. Significant improvement is defined merely as compliance with the existing state program.

Response: Significant improvements and activities leading to significant improvements are broadly defined to allow NOAA and the states considerable flexibility to address a variety of issues in the face of reduced Federal assistance. However, states must describe in detail the activities and expected products associated with each significant improvement before the Assistant Administrator will approve them. Since all significant improvement activities must be aimed at substantially expanding or strengthening the approved program, the statement that merely implementing the program will result in significant improvements is not accurate.

(10) Significant improvement should include adoption of plan amendments such as those applying to the San Francisco Bay Plan.

Response: The adoption of plan amendments, such as those applying to the San Francisco Bay Plan, will be considered significant improvements if they meet the requirements of § 923.102.

(11) Is "approved program" in § 923.102(a) the same as "approved management program" in § 923.2(d).

Response: Yes. The terms "approved program" and "approved management program" are interchangeable.

§ 923.103 Selection and approval of activities leading to significant improvements.

(1) The proposed regulations subject states to specific deadlines and schedules without imposing similar requirements on OCZM. Therefore § 923.103(d) should be amended by adding the requirement that "the Assistant Administrator will provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency."

Response: NOAA agrees and has amended § 923.103 accordingly.

(2) The regulations should clearly state that significant improvements may take more than one financial assistance award period. Therefore § 923.103(e) should be amended by deleting "if there is a specific reason to identify a longer period."

Response: It is NOAA's policy to encourage the achievement of significant improvements within the period of one financial assistance award because of the potential for rapid phase out of Federal financial assistance. However, the regulations permit significant improvements to be reached over a period greater than one financial assistance award if there is a need for a longer period of time. NOAA has determined that deleting the "specific reason" language would lessen the likelihood that specific improvements in coastal program operations are achieved with currently available Federal funds. However, once a significant improvement is achieved it becomes the responsibility of the State to fund the continued operation of that improvement out of program administration funds.

(3) The process for negotiating significant improvement activities between NOAA and the state should provide for participation by the public, Federal agencies, and other interested parties.

Response: The evaluation of approved programs under Section 312 provides opportunities for public involvement. This evaluation will be used by NOAA to indentify program needs that could be addressed with significant improvement funds. Therefore, public participation during the evaluation process will have a direct bearing on the significant improvement negotiations. However, public participation does not extend to grant negotiations between the grantor and grantee.

(4) States should not be allowed to make significant improvements in only one national interest area.

Response: NOAA will negotiate significant improvement activities with the state on a case-by-case basis. There may be occasions when both NOAA and the state agree that one area merits the application of all of the state's significant improvement funds. Therefore NOAA will not arbitrarily limit the negotiation process.

(5) The regulations provide no indication that state priorities will be considered when significant improvement activities are negotiated. The regulations should provide that state identified needs will serve as the basis for negotiation. Therefore the words "based on the results of the continuing review described in 15 CFR Part 928" should be replaced with "In consultation with the state."

Response: It is NOAA's intent that states take the initiative in identifying significant improvement activities. The selection of these activities will depend on the nature of the individual programs and the particular circumstances in each state. NOAA will base its negotiating position in large measure on the Section 312 evaluation. Although the selection of activities will be negotiated, NOAA has the ultimate responsibility to assure that Federal funds are being used effectively and in accordance with the objectives of the CZMA. However, NOAA is amending § 923.103(a) to stress that the states should take the initiative in identifying significant improvement activities and § 923.103(b) to emphasize that significant improvement activities will be determined "in consultation with the state."

(6) Add the words "agreement included in" before the words "financial assistance award" in the last sentence of § 923.103(d).

Response: This editorial correction is made.

§ 923.104 Establishing the increasing proportion.

(1) The 1% annual increase in expenditures required by § 923.104 for significant improvements is too small. At this rate the maximum of 30% may never be reached by many states. The annual increase should be set at 5% or discretion given the Assistant Administrator to require bigger increases on the basis of deficiencies found during program evaluation.

Response: NOAA is requiring each state to expend a minimum of 20% of its financial assistance award on significant improvement activities during the first year it is required to pursue significant improvements. In light of this large initial expenditure and reduced funding levels, NOAA has determined that a 1 percent annual increase is a realistic requirement that will balance the need to devote an increasing share of federal funds to the improvement of coastal programs with the need to allow states to institutionalize existing program elements.

(2) States that choose to devote more than the required amount for significant improvements should be rewarded by priority access to unused funds or points in the allotment system.

Response: The formula for determining significant improvement expenditures is equitable and simple to administer. Therefore NOAA is reluctant to establish a system that would be difficult to administer and could lead to conflicts among the states.

(3) The regulations should make it clear that "increasing proportion" refers to the amount of the financial assistance actually received by a state.

Response: NOAA agrees and has clarified § 923.104 to emphasize that the amount that must be spent on significant improvements is obtained by multiplying the applicable percentage by the amount of Federal funds actually received.

§ 923.105 Failure to agree to pursue significant improvements.

(1) The failure to pursue significant improvements should not result in a loss of all section 306 funding as required by § 923.105(a) because this requirement can be easily circumvented. States can "pretend" to pursue significant improvements to get full funding since failure to achieve a significant improvement will result in a reduction or withdrawal of at most 30% of the state's 306 funds. Therefore, it would be simpler to allow states to declare their intentions before receiving their grant.

Response: Section 306(a)(3) prohibits the Assistant Administrator from awarding a Section 306 grant unless the recipient state agrees to pursue significant improvements. Therefore, NOAA is statutorily precluded from awarding financial assistance to states that choose not to pursue significant improvements. In addition, NOAA does not accept the assumption that states will "pretend" to be working toward significant improvements merely as a ploy to receive full funding under Section 306.

(2) The withdrawal of all Section 306 funds for failure to pursue significant improvements will impair the operation of state coastal management programs but will not necessarily result in withdrawal of program approval. As a result the review for consistency of needed energy development projects may be delayed. Therefore, energy projects should be exempted from consistency review as soon as funding is withdrawn for failure to pursue significant improvements.

Response: The CZMA does not authorize exempting energy projects from consistency review when a state refuses to pursue significant improvements. Consistency requirements cease to apply only when program approval is withdrawn because a state has refused to remedy a failure to adhere to its approved management program or the terms of its Section 306 financial assistance award. Upon the withdrawal of all Section 306 funds for failure to pursue significant improvements NOAA will closely monitor state program performance to determine whether withdrawal of approval is necessary.

B. Part 927 Allocating Administrative Grants—Section 306(b)

(1) The regulations should establish a 1% minimum and a 10–15% maximum financial assistance award level for any state.

Response: CZMA program funding levels and eligible funding recipients are factors which may vary from year to year. Although Congress has established a 1% minimum financial assistance award level, which is reflected in these regulations, no maximum award level is established.

The Assistant Administrator can adjust the maximum and minimum percentages in the allocation formula to meet the basic funding needs of eligible states (commensurate with the total available funding for the program) in implementing effectively CZMA requirements. The need for flexibility in establishing award level is accentuated as appropriations and funding levels decrease in the phase down of Federal funding.

(2) A state failing to make "significant improvements" should be subject to a 0.7 percent minimum rather than a one percent minimum.

Response: NOAA recognizes that at times implementation of the statutory requirements of section 312(c), when a state fails to meet "significant improvement" requirements, might necessitate reducing the base allocation, and that these reductions might result in an award falling below the 1% minimum specified in section 306(b) of the Act. In cases where such statutory conflicts arise award levels may fall below the 1% minimum, as prescribed in the actual calculation of the financial assistance award level under § 927.1(f).

(3) The term "tidal shoreline mileage" should be clearly defined and the National Ocean Survey (NOS) methodology for measuring tidal shoreline mileage should be explained.

Response: NOAA uses the NOS definition and mileage figures for marine and island coastal states and territories and presently accepts the shoreline mileage figures measured by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data for states bordering on the Great Lakes. For marine and island states and territories, tidal shoreline is defined as the shoreline of outer coast, offshore islands, sounds, bays, rivers and creeks to the head of tidewater or to a point where tidal waters narrow to a width of 100 feet. The measurements are made using a recording instrument on the largest-scale charts available. The NOS methodology varies slightly from that used by the International Coordinating Committee on Great Lakes Basic Hydraulic and Hydrologic Data, and NOAA is reviewing this inconsistency as raised in comments on the NPR.

For clarification NOAA is adding language to the final rule to more precisely explain shoreline mileage calculations.

Section 927.1(c)(2)(i) now reads "Sixty percent will be allocated based on each eligible state's proportionate share of the length of tidal shoreline mileage and/or Great Lake shoreline mileage of all participating states based on the most recently available, official data from or accepted by the National Ocean Survey * * *"

(4) Factors other than shoreline and population should be considered in the calculation of allocations, such as areas protected or held in trust, shoreline features, rate of population change, and economic significance of the coastal area.

Response: In developing both the issue paper and proposed regulations, NOAA examined the inclusion of other factors (including those above) in the allocation formula. These factors were not selected because they are too subjective and difficult to quantify. The inclusion of coastal county population and shoreline mileage does provide a reasonable approximation of the magnitude and the pressures for use of coastal resources as objective, quantifiable factors. The exclusive use

of these factors provides continuity with past NOAA practice, proposes an allocation formula which is simple and easy to administer, and results in the least disruption in state funding levels.

C. Part 931 Subpart L—Coastal Energy Impact Grants—General

(1) The relationship of new subpart D to existing subparts D and L should be clarified.

Response: New subpart D contains guidance and requirements applicable to planning grants found in existing subpart D and guidance and requirements applicable to OCS state participation grants found in existing subpart L. The consolidation is intended to simplify the regulations by eliminating duplicative and unnecessary text. The consolidation is not intended to change the substantive requirements of the planning or OCS participation programs. In addition new subpart L includes guidance and requirements applicable to coal and Alternative Ocean Energy (AOE) activity impact mitigation funds. When new subpart D becomes final and effective, it will supersede existing subparts D and L of 15 CFR part 931. The requirements and guidance with respect to objectives and allowable usesof planning grants funded under Section 308(b)(5)(B) that were in existing subpart D have been transferred to subpart G of 15 CFR Part 931. This transfer was made solely to enable existing subpart D to be superseded in its entirety. The substantive requirements applicable to planning grants funded under section 308(b)(5)(B) are not affected.

(2) Some states have two separate agencies administering the existing provisions of section 306. For example, one state agency may administer impact mitigation assistance under sections 308(c)(1), (b) and (d) while another state agency administers OCS state participation assistance under section 308(c)(2). Under the existing regulations this arrangement did not present any administrative problems because there was a specific allotment of funds under each subsection. Under the proposed regulations it is not clear who will administer the consolidated grant program and allocate available funds among eligible uses. Guidelines should therefore be established to require the expenditure of fixed minimum percentages for eligible uses. In addition, a single agency should be designated to administer the consolidated 308(c) program.

Response: NOAA has determined that the state should decide how to allocate available section 308(c) funds among allowable uses. NOAA assumes that the state agency designated under § 931.25(a)(4)(i) to administer the CEIP will submit the state's section 308(c) application and that allocation questions will be decided within the state by responsible program officials, including where necessary, the Governor.

(3) The OCS State Participation Grants Program should not be consolidated with other provisions of section 308 because this is a special purpose program whose effectiveness could be diluted by merger.

Response: The various financial assistance programs under section 308(c) are being consolidated to simplify program administration and improve program flexibility. The consolidation should not detrimentally affect the OCS State Participation program because no changes are being made in the substantive provisions of that program. The only change that could affect this program is that the state will decide how much of the total available under section 308(c) will be spent on OCS state participation purposes. Since the Congress has not appropriated specific amounts for each of the allowable uses, NOAA believes it is appropriate for the state to decide how to apportion its funds among allowable uses.

§ 931.37 Limitations on expenditures.

(1) Increasing the matching share to 30 per cent is unfair because the most needy local governments will not be able to benefit from Federal assistance. The Assistant Administrator should be given discretion to vary the matching share as a means of increasing management flexibility.

Response: A matching share of 30 per cent is consistent with NOAA's policy of phasing down CEIP assistance in an orderly manner. Since the funding available for CEIP purposes is limited, increasing the matching share will, in effect, increase the total amount available for impact mitigation. In addition, an increased matching share will encourage the funding of projects with the highest priority.

(2) The significance of the October 17, 1980 date in § 931.37(c)(3)(i) should be clarified.

Response: Section 931.37(c) prohibits the use of section 308(c) funds for mitigating environmental or recreational losses that (1) result from the sale, lease, or rental by a state or local government of property to another party, or (2) that could have been prevented by a reasonable exercise of a state's existing regulatory authority, if the sale, lease, rental or loss occurs after October 17, 1980—the date that section 308(c)(3) was signed into law. This limit on the eligibility is instituted to prevent the funding of projects for mitigating losses that could readily have been avoided by reasonable state or local action. The October 17, 1980, date allows "grandfathering" state and local actions that occurred before enactment of the 1980 amendments to the CZMA.

(3) To assure that Section 308(c) funds are used to encoufage necessary energy development, the following limitation on 308(c) expenditures should be added to § 931.37: "308(c) funds may not be used to pay for any part of a project likely to prevent, delay, or substantially increase the costs of the development of energy facilities otherwise consistent with the state's approved program."

Response: In reviewing section 308(c) applications, NOAA will carry out its responsibility to see that funds are awarded for allowable uses, none of which are for projects that are likely to prevent, delay, or increase the costs of energy development that is otherwise consistent with the state's approved management program. Therefore, the suggested restriction is neither necessary nor appropriate.

§ 931.35 Section 308(c) allotment.

(1) Basing the proposed allotment formula on coastal county population puts smaller states and states that have controlled development in coastal marshes and other ecologically sensitive coastal areas at a disadvantage. It is these areas that face the greatest threat from new energy development. The allotment formula should therefore be based on the percentage increase in coastal population—since this factor better reflects development pressures from new and expanded energy resources. Consideration should also be given to seasonal fluctuation in coastal population.

Response: Coastal county population is a reasonable estimator of the need for impact assistance. In addition, this factor provides continuity with past OCZM practice. Its use will minimize disruptions in the existing pattern of funding. In addition, using 1980 census data provides recognition of population growth.

(2) Too much discretion is allowed the Assistant Administrator to establish the allocation formula and maximum and minimum shares. All the factors that make up the formula should be specified by regulation. A minimum share that equals two percent of the amount available in a fiscal year under section 308(c) or $75,000, whichever is greater, should be established. The maximum share should be set at 15 percent of the amount available.

Response: Not specifying the allotment formula or the maximum and minimum shares in regulations simplifies the regulations and increases program flexibility.

However, the regulations require the Assistant Administrator to submit any proposed formula, which would include provisions for maximum and minimum shares, to the states for review and comment before allocations are calculated.

(3) Shoreline mileage used in the allocation formula should be clearly defined.

Response: Before calculating allotments § 931.35(c) requires the Assistant Administrator to submit the proposed allotment formula to the states for review and comment. If shoreline mileage is used in the allotment formula it will be the same as used in § 927.1 to allocate section 306 funds. See Comment 3 under *B. Allocating administrative grants* above.

(4) New or expanded coal activities should be given the greatest weight in the allocation formula.

Response: As previously noted, NOAA is not specifying the allotment formula in regulations. The details of the allotment formula will be developed in consultation with the states pursuant to § 931.35(c).

§ 931.31 Objectives.

(1) The phrase "and that permits the coastal states and units of local government a high degree of control and discretion" should be deleted from the statements of CEIP objectives in § 931.31(c) because this phrase is gratuitous and not supported by the legislative history.

Response: NOAA disagrees. The Conference Report (Report No. 94–1298) that accompanied the CEIP legislation states that the coastal state and localities "should make the basic decisions as to the particular needs" that result from energy development and therefore the "discretion" of "Federal officials should be correspondingly limited" (p. 24). Therefore, the objective of allowing states and local governments a high degree of control is consistent with the legislative history of the CEIP and the Administration's policy of returning resource management decisions to the states.

(2) The following objective should be added to the list of CEIP objectives in § 931.31: "To improve and strengthen coastal management in the United States."

Response: This objective is added to emphasize the close relationship between CEIP and coastal management activities.

§ 931.36 Application for financial assistance.

(1) The proposed regulations improperly impose a requirement that the intra-state allocation process be used for OCS state participation grants.

Response: The proposed regulations were not intended to impose any new requirements on the use of funds for section 308(c)(2)—OCS State participation—purposes. Therefore, § 931.36(b)(3) has been amended to indicate that only planning and coal and AOE impact mitigation assistance must be subjected to the intrastate allocation process.

(2) The application and information requirements under § 931.36 are too burdensome for small construction and land acquisition projects.

Response: NOAA is also concerned about burdensome application requirements and has tried to keep these requirements to a minimum. NOAA has determined that the information requirements specified in § 931.36 are necessary and appropriate to assure compliance with Federal environmental and administrative requirements. NOAA has, however, deleted the requirement for submitting state and local permit applications and approvals for construction projects.

§ 931.32 Definitions.

(1) "Rail transport facility" should be added to the list of coal facilities in § 931.32(b)(1).

Response: NOAA agrees and has added the term "rail transport facility" to § 931.32(b)(1)(v).

(13) The regulations should clarify Section 308(c) funds may be used to mitigate the impact of the disposal of ash and sludge, the waste products of burning coal.

Response: NOAA has defined coal to include ash and sludge—the waste products of burning coal. It is NOAA's intent that the impacts of storing and transporting these waste products for the purpose of disposal be eligible under Section 308(c). NOAA has determined that definition of coal facility is sufficiently broad to include facilities involved in ash and sludge disposal and that amending the regulations is not necessary.

§ 931.34 Allowable uses.

(1) The regulations provide no assurance that funds authorized under section 308(c)(3) are expended for mitigating the impacts of coal or AOE activities.

Response: The new regulations appropriately place responsibility on the state for allocating available funds among allowable uses. As noted previously, Congress has not appropriated specific amounts for each of the allowable uses. In the absence of this guidance, NOAA has determined that the states should determine their needs and funding priorities.

D. Part 928 Review of Performance—Section 312

§ 928.1 General.

(1) The statement in § 928.1(b) that "these regulations may be supplemented by procedural memoranda issued periodically by the Office of Coastal Zone Management. . ." is unnecessary and might lead to confusion regarding the legal enforceability of the procedural memoranda.

Response: In response to comments on the Issue Paper on Review of Performance, NOAA shortened and simplified the proposed rules by eliminating detailed procedures from the regulations and retaining only the basic requirements of continuing review and evaluation. The purpose of the procedural memoranda is to provide a more detailed statement of how these basic requirements will be met. NOAA wishes to remove any possible ambiguity concerning the legal status of the procedural memoranda and, therefore, has deleted this reference from the regulations.

§ 928.2 Definitions.

(1) NOAA should change the definition of "justifiable" to state that the principal criterion for determining whether a deviation is justifiable is whether it is beyond the control of the state coastal program manager, not whether it is beyond the control of the state. The proposed criterion—beyond the control of the state—is unrealistic and does not recognize that state coastal programs are constrained in their ability to influence governors and State legislatures.

Response: NOAA disagrees with this comment. It is appropriate to assess whether or not a deviation is beyond "state" control. All coastal management programs must be approved and transmitted to NOAA by the governor of the state. Therefore, although NOAA acknowledges that state coastal program managers frequently are limited in their ability to influence state governors and legislatures, their programs are "state" programs and the states are responsible for carrying them out.

(2) NOAA should limit the criteria for determining whether a deviation is justifiable *only* to those criteria currently enumerated in the proposed definition. All of the criteria should be spelled out in the regulations in order to provide fair and predictable administration and the determination of whether the criteria are met should involve the public.

Response: It is not possible or desirable to define in advance the universe of criteria for assessing "justifiability." The purpose of the criteria identified in the definition is to provide the states and the public with information concerning how the "justifiability" determinations will be made. However, it is impossible to anticipate every conceivable kind of deviation and, therefore, impossible to define in advance the universe of criteria for evaluting them.

NOAA disagrees that the public should be involved in the "justifiability" determinations. While public participation in the program is vital, the statute requires the determination to be made by the Secretary. In making each determination, the Secretary will consider all available information, including public comments on the review of the State's performance.

(3) The definition of "work program" should not be formalized in the regulations. Work programs are usually designed at least a year in advance and, hence, represent a target or "guesstimate" of what a state coastal program feels reasonably able to undertake. There is no benefit in formalizing this document in the regulations.

Response: This comment reflects a misunderstanding of the purpose of defining this term. The definition is included in order to provide a basis for continuing review and evaluation of approved programs if Federal financial assistance ends. In this case, the states would provide to NOAA the same documentation they would need to provide to their state governments or other funding sources describing the work tasks they are undertaking during a particular time period, and NOAA would review the material to determine if the program implementation continued to meet or exceed the threshold requirements for approvability.

This work program must be distinguished from the work program that is a part of the Federal financial assistance award. The work program that is part of the award carries with it a commitment from the state to complete each work task successfully or face reduction or withdrawal of financial assistance. However, if Federal financial assistance ends, obviously there will be no such sanction and the review will simply determine whether the state program continues to meet the requirements for approvability, in order that the state may continue to exercise Federal consistency. Because this distinction was not made clearly, we have added clarifying language to the definition of "work program" and to the use of the term "work program" in the continuing review procedures.

§ 928.3(b) Continuing review procedures.

(1) NOAA should limit state reporting requirements to one report per year.

Response: NOAA understands the need to limit the paperwork burden on the states. To this end, the periodic performance reports required for financial assistance awards are being used to accommodate information needs for continuing review and evaluation. NOAA will make every effort to limit additional information requirements by assessing carefully all information available in-house and targeting requests to fill specific information gaps. However, regular information is required for NOAA's program administration responsibilities—including technical monitoring of awards and continuing review and evaluation. The current information requirements—performance reports and a supplemental information request for evaluation—represent the minimum requirements for information necessary to carry out our responsibilities.

(2) The regulations should State explicitly that a site visit will normally be a part of each evaluation, unless fiscal constraints are so severe that such visits are precluded. Site visits are extremely valuable and the presumption in the regulations should be that they will occur.

Response: NOAA agrees with the intent of this comment. The regulations already provide that the Assistant Administrator may conduct site visits as a part of the evaluation. The discretionary "may" is used to provide necessary flexibility to adjust to funding constraints. Because the recommended standard—"fiscal constraints * * * so severe that such visits are precluded"—is also discretionary, NOAA has determined that no change should be made in the regulatory language.

(3) The discretionary "may" in the third line of § 928.3(b)(5), which provides that states "may" have two weeks from receipt to review draft findings, should be changed to "shall."

Response: NOAA agrees with the comment and we have made the suggested change.

(4) The regulations should specify that draft findings be made available to affected Federal agencies at the same time they are sent to the states.

Response: Draft findings are available to affected Federal agencies, or anyone else, upon request.

(5) Since the proposed rules impose time deadlines on the states in the conduct of evaluations, it is only fair that NOAA should also impose deadlines on itself. In addition, the deadlines should recognize the need for leadtime to respond to findings. Two types of specific suggestions for NOAA deadlines were made:

(a) Issue final findings at least 90 days before the expiration of a state's Federal financial assistance award, and at least 30 days before the the state coastal management agency must submit its proposed budget.

(b) Issue final findings within a certain time period after receipt of state comments on the draft findings. The suggested time periods ranged from two weeks to 60 days.

Response: NOAA recognizes the states' need for leadtime to incorporate the results of evaluations. However, for two reasons NOAA has determined that it should not commit itself to deadlines tying the date of issuance of final findings to the date of the Federal financial assistance award. First, such a tie could restrict NOAA in the expeditious award of available Federal financial assistance. Second, because many state budget cycles are several months in advance of coastal zone management financial assistance awards, a commitment to issue final findings 30 days before the state coastal zone management agency is required to submit its budget can mean a requirement for final findings 1 to 3 months after the beginning of the coastal zone management financial assistance award. Clearly it would be impossible to conduct a meaningful evaluation so soon after the work program under review has begun.

NOAA is willing, however, to commit itself to deadlines for issuing final findings which are tied to state review and comment on the draft findings. While two weeks is not enough time to give adequate consideration to state comments and produce the final findings, 60 days is usually more than sufficient. Therefore, NOAA has modified the regulations to include a commitment to issue final findings 45 days after receipt of state comments on the draft findings, unless NOAA notifies the state of the need for an extension to allow for further meetings or negotiations.

(6) The current regulatory language implies a mistrust of the states.

Response: The regulatory language is procedural only and does not imply a mistrust of the states. NOAA recognizes its responsibility to assist the state coastal program managers in carrying out their responsibilities for implementing their coastal management programs. However, NOAA is also responsible for overall program administration, which includes continuing review and evaluation. It is NOAA's intent to maintain a balance between these two responsibilities.

§ 928.3(c)(1) Requirements for continuing review of approved state coastal zone management programs—Scope of continuing reviews.

(1) NOAA should delete the phrase "all of the elements" of the approved program in § 928.3(c)(1)(i) and adhere to the statutory language. Since it is clear that Federal financial assistance for state coastal management programs is diminishing, the regulations should recognize that some elements of state programs will have to be reduced and that such reduction is possible without reducing the programs below the threshold requirements for Federal approval.

Response: NOAA agrees that the regulations need to recognize the reality of program adjustments in the face of reduced Federal financial assistance, as long as the adjustments do not reduce program elements below the level required for program approval. To this end, the proposed regulatory language defined the term "approved management program" to mean "those elements of the program required for program approval * * *" This change provides such recognition because the definitions of "adherence" and of "justifiable" are tied to the definition of "approved management program." Since the referenced phrase appears to have caused misunderstanding concerning the focus of continuing review and evaluation, NOAA agrees that it should be removed and has amended the regulations accordingly.

(2) NOAA should add to the scope of review a fourth element on Federal consistency.

Response: The three broad elements of the scope of review come directly from the statute. It is not necessary to add another element on Federal consistency because this is a specific factor in the overall evaluation of one of the broad elements already enumerated—the extent to which the state has implemented and enforced its approved program.

§ 928.3(c)(2) Procedure for assessing adherence to the approved management program.

(1) The phrases "fully" or "fully and effectively" in § 928.3(c)(2)(A), (B), and (C) should be deleted because they imply that states will be able to continue to implement their programs at the same or higher levels while Federal financial assistance declines.

Response: As stated above, NOAA agrees that the regulations need to acknowledge declining Federal financial assistance to states. Although in each case the referenced phrases are preceded by the phrase "the extent to which," they still appear to be interpreted as implying an unfair standard for evaluation. For this reason, NOAA agrees that they should be removed and has amended the regulations accordingly.

(2) The term "enforcing" should be added to § 928.3(c)(2)(A) because this term was added to the statute in the 1980 amendments and needs emphasis in the regulations.

Response: NOAA agrees with this comment and has modified the regulations accordingly.

(3) NOAA should delete the phrase "effectively playing a leadership role in coastal issues" in § 928.3(c)(2)(B) because it is highly subjective and is not a requirement of the program approval regulations.

Response: NOAA disagrees with this comment. Section 923.47 of the program approval regulations requires the state to designate a lead state agency which is capable of monitoring, coordinating and providing direction for its coastal program. As the "focal point for program administration," the lead state agency must play a leadership role in coastal issues in order to coordinate effectively the various state and local agencies with responsibilities for carrying out the program. Therefore, this is an appropriate subject for evaluation.

(4) NOAA should add to § 928.3(c)(2)(C) language recognizing specifically that carrying out the provisions of Federal consistency involves cooperation with Federal agencies to minimize potential conflicts. This point needs emphasis because conflicting requirements could impede or block Federal programs that are vital to the nation as a whole.

Response: This is unnecessary because it is understood that state implementation of Federal consistency involves working with affected Federal agencies to minimize potential conflicts. While it would be possible to enumerate a long list of specific issues for evaluation, such action is contrary to the President's directive to avoid unnecessary regulation.

§ 928.3(c)(3) Procedure for assessing how the state has addressed the coastal management needs identified in Section 303(2)(A)–(I).

(1) The word "needs" should be changed to "objectives" wherever it appears in this section in order to track the statutory language.

Response: Although it is true that the statute speaks of "objectives" in section 303, it refers to those objectives in section 312 as "coastal management needs." Since these regulations implement section 312, NOAA has used the statutory language from that section of the Act.

(2) The listing of actions taken to address the coastal management needs of section 303, called for in § 928.3(c)(3)(i), is totally inadequate. A full description should be required, as well as information from which NOAA can ascertain what is *not* being done to address the coastal management needs. The commentator made detailed recommendations on the type of information NOAA should seek for this purpose.

Response: This comment reflects a misunderstanding of the proposed language. The listing of actions is merely the first step in the evaluation of how the states have addressed the coastal management needs of section 303. The regulations go on to say that the Assistant Administrator will assess *the extent to which* the state is meeting identified needs—that is, what the state is and *is not* doing—and the effectiveness of its action in addressing these needs.

NOAA disagrees with the suggestion that it require states to submit extensive information for this determination. All of the coastal management needs are not equally important in all states. Rather, they must be assessed within the context of the conditions in the state and the objectives and priorities of the state management program. Just as conditions in the states differ, so does the information needed to assess the states' efforts to address the coastal management needs of section 303. Extensive uniform information requirements are not appropriate under these circumstances and would create a large additional paperwork burden on the states at a time when the Federal government is attempting to reduce these requirements.

§ 928.3(c)(4) Procedure for assessing adherence to the terms of financial assistance awards.

(1) Section 928.3(c)(4)(ii)(D) should contain a requirement that NOAA respond within 30 days after receipt of a request from a state to modify a project.

Response: This suggestion relates to financial assistance award amendment procedures and hence is inappropriate for incorporation into these regulations. The current procedures for processing amendment requests are specified in the program approval regulations at § 923.100. These procedures require NOAA to acknowledge receipt of amendment requests within 10 working days. The notification must indicate NOAA's decision on the request or indicate a timeframe within which the decision will be made.

(2) No modification of approved projects should be permitted under (c)(4)(ii)(D) without opportunity for public review and comment.

Response: NOAA disagrees with this comment. These regulations provide the opportunity for full public participation. In addition the recipient must notify the A–95 clearinghouse of any substantive changes in approved awards. However, public participation does not extend to negotiations between the agency and the recipient on the financial assistance award itself.

§ 928.3(d) Requirements for continuing review of state coastal energy impact programs.

(1) The regulations should require unified coastal zone management and coastal energy impact program evaluation.

Response: NOAA is not sure how to interpret this comment. If the comment means that coastal zone management and coastal energy impact program evaluations should be conducted at the same time, the procedures already provide for this.

§ 928.4 Public Participation.

(1) The public participation section should be modified to:

(a) require a minimum 30-day period for advance notice of public meetings,

(b) provide wider distribution of findings, and

(c) provide for more Federal participation in the evaluations.

Response: NOAA agrees that the regulations should specify a minimum period for advance notice of the public meeting(s). The draft regulations already provide that the Assistant Administrator will publish an advance notice of intent to evaluate at least 45 days in advance of the public meeting(s) in order to put interested parties on notice that an evaluation is about to occur. Because of frequent modifications of the evaluation schedules, it is often impossible for the states to comply with a 30 day advance notice requirement for public meetings. However, NOAA has modified the regulations to require that states provide a minimum of 15 days notice of the public meeting(s) on their evaluations.

NOAA believes it is not necessary for the regulations to require wider distribution of findings. The regulations already provide for a notice of availability of final findings to be published in the **Federal Register**, and copies of the findings are available to anyone who requests them.

Similarly, NOAA believes that the regulations already provide for full Federal agency participation in the evaluations. Current procedures provide that affected Federal agencies be contacted before evaluations occur, interviewed during evaluation site visits, and invited to participate in public meetings and/or provide written comments on the evaluations.

§ 928.5 Enforcement.

(1) Section 928.5(a)(2)(ii) should be rewritten to provide that enforcement provisions be triggered by a finding that a state is not achieving "all" of its significant improvement objectives.

Response: The commentator evidently intends that the suggested change would make the provision more restrictive by assuring that states must make significant improvement in all of their objective areas. However, the suggested change actually would make the provision less restrictive by triggering the enforcement provisions only if the Assistant Administrator found that the state was failing to achieve *all* of its significant improvement objectives (i.e., using this language, for example, a state could be failing in seven out of eight areas without triggering the enforcement provisions). In fact, the current regulatory language assures that states will achieve all significant improvement objectives or face some level of reduction of financial assistance. Therefore, NOAA has made no change to the regulatory language.

(2) Section 928.5(a)(2)(ii) should be modified by replacing "achieving" with "performing," replacing "objectives" with "tasks," and adding language to clarify that if a state has notified and negotiated with the Assistant Administrator necessary project modifications, as provided in § 923.103(d), the evaluation will be based upon the projects as modified.

Response: The words "achieving" and "objectives" are taken directly from the statute and NOAA has determined that they should not be replaced by less precise substitutes. However, the regulations provide that the assessment of whether a state is achieving its significant improvement objectives will be based on the state's progress in accomplishing the significant improvement tasks negotiated between the state and Assistant Administrator before the beginning of each financial assistance award.

Since procedures for project modification are provided in the regulations, it is understood that the evaluations will be based upon approved projects as modified up to the date of the evaluation. Additional regulatory language is unnecessary.

(3) NOAA should not limit itself to reducing a state's funds for failure to make significant improvement only by the amount previously allotted to the task(s) found deficient. While this might be advisable in some instances, it may not be appropriate for all and the statute does not restrict NOAA's action.

Response: NOAA disagrees with this comment. NOAA believes fairness dictates that a state's funds be reduced for failure to make significant improvement only by the amount allocated to the deficient significant improvement task(s). To do otherwise would create a major disincentive for the states to undertake challenging significant improvement activities.

(4) The regulations give NOAA too much discretion in deciding what is "satisfactory progress" toward significant improvement.

Response: NOAA disagrees with this comment. Satisfactory progress will be determined on a case-by-case basis using the specific products and schedules negotiated between the state and the Assistant Administrator for each significant improvement task.

(5) The regulations should provide public notice of the intent to withdraw program approval, and opportunity for public comment and participation at public hearings.

Response: The regulations already contain these provisions in § 928.5(b)(2)(ii) and (iv).

IV. Other Actions Associated With the Notice of Final Rulemaking

A. Classification Under Executive Order (E.O.) 12291 of February 17, 1981

NOAA has concluded that these regulations are not major because they will *not* result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rules foster improvements in an existing system for administering a program of financial assistance to state and local governments. Therefore, these rules only serve to strengthen the institutional framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts.

B. Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this notice of final rulemaking. The regulations set forth procedures for distributing Federal financial assistance among participating state governments and for evaluating the performance of those state governments in achieving coastal management objectives. The final rules directly affect only state government entities, which are not "small government jurisdictions" as defined by Pub. L. 96-354, The Regulatory Flexibility Act. The final rules will have no effect on small businesses and a negligible effect on local units of government who participate only through the States.

C. Paper Work Reduction Act of 1980 (Public Law 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 on affected state governments. Information requirements of Section 312 Continuing Review regulations embody existing procedures and do no constitute any increase in reporting on the part of any affected party.

D. National Environmental Policy Act (NEPA)

NOAA has concluded that publication of the final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

E. Public Participation

NOAA has actively encouraged public participation in the development of these final rules. NOAA issued an advance notice of proposed rulemaking with a 60-day comment period and distributed issue papers dealing with the proposed rules to over 400 interested persons on a mailing list maintained by the Office of Coastal Zone Management. NOAA reviewed and considered 38 sets of comments on the ANPR and 66 sets of comments on the issue papers in developing proposed regulations. In addition, meetings and briefings on the regulatory process and the substantive issued involved were held with managers of state coastal zone management and coastal energy impact programs, Federal agency representatives, and interest groups. A notice of proposed rulemaking was published on pages 51393-51402 of the Federal Register of October 20, 1981, and invited comments for 30 days ending November 20, 1981. Comments were received from 32 sources including Federal and state government agencies, regional organizations and interest groups.

List of Subjects in 15 CFR Parts 923, 927, 928, and 931

Administrative practice and procedure, Coastal zone, Grant programs, Natural resources, Energy

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

For reasons set out in the Preamble, Part 923 of Title 15 of the Code of Federal Regulations is amended as set forth below.

§ 923.85 [Removed]

1. By removing § 923.85.

2. By adding new Subpart K to read as set forth below.

* * * * *

Sec.

923.101 General.
923.102 Significant Improvement Defined.
923.103 Selection and Approval of Activities Leading to Significant Improvements.
923.104 Establishing the Increasing Proportion.
923.105 Failure to Agree to Pursue Significant Improvements.

Subpart K—Improving Coastal Zone Management

Authority: Sections 303 and 306 of the Coastal Zone Management Act and Section 5 of the Coastal Zone Management Improvement Act of 1980.

§ 923.101 General.

(a) Statutory citations:

(1) Section 303(2)

The Congress finds and declares that it is the national policy—

* * * * *

(2) To encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to the needs for economic development, which programs should at least provide for—

(A) The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and their habitat, within the coastal zone,

(B) The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(D) Public access to the coasts for recreation purposes,

(E) Assistance in the redevelopment of deteriorating urban waterfronts and ports, sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(F) The coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(G) Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(H) The giving of timely and effective notification of and opportunities for public and local government participation in coastal management decisionmaking, and

(I) Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone.

(2) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program if the Secretary—

(3) Finds, if such program has been administered with financial assistance under this section for at least one year, that the coastal State will expend an increasing portion of each grant received under this section (but not more than 30 per centum of the grant unless the State chooses to expend a higher percentage) on activities that will

result in significant improvement being made in achieving the coastal management objectives specified in Section 303(2)(A)–(I).

(b) States whose approved programs have been administered for at least one year with Section 306 funds must expend an "increasing proportion" of each subsequent Section 306 financial assistance award on activities that will result in "significant improvement" in achieving certain national coastal management objectives. This subpart defines "significant improvement," describes the process for determining which significant improvement activities a State may perform, establishes the formula for determining "increasing proportion," and sets forth the consequences of failure to pursue significant improvements.

§ 923.102 Significant improvement defined.

(a) A "significant improvement" is an accomplishment that addresses any of the objectives of Section 303(2)(A)–(I) by:

(1) Substantially expanding the scope of the approved program (such expansion of program scope includes, but is not limited to an amendment or routine program implementation), or

(2) Substantially strengthening the ability of the State to implement or enforce the approved program.

(b) Significant improvements include, but are not limited to, the following types of accomplishments:

(1) The adoption of new enforceable policies for coastal decisionmaking of the conversion of nonenforceable (encouragement) policies to enforceable policies. The State (or local government) may adopt new policies by legislation, rulemaking, memoranda of understanding, executive order or other legally sufficient means.

(2) The adoption of refined enforceable policies for coastal decisionmaking including:

(i) More specific standards for the implementation of existing statutes.

(ii) Site specific management plans for areas designated as Areas of Particular Concern and Areas for Preservation or Restoration or other areas beyond what is required by the approved program.

(3) The extension of existing enforceable coastal management policies to new geographic areas beyond what is required by the approved program.

(4) Development of more effective or efficient administration of the approved management program including:

(i) Improved capability of the coastal management agencies to implement State coastal regulatory, planning, and management requirements contained in the approved program.

(ii) Streamlined intergovernmental coordination and public participation mechanisms.

(5) The following to the extent they exceed what is required by an approved program.

(i) Development of natural resource information critical to making informed coastal management decisions.

(ii) Development and implementation of State and local strategies, projects, and management programs for coastal resources and uses.

§ 923.103 Selection and approval of activities leading to significant improvements.

(a) The State will take the initiative in proposing significant improvement activities. The State's financial assistance application will describe the management activities it will perform and the significant improvements it expects to achieve over the course of the next financial assistance award period. This description will clearly identify specific schedules and expected products.

(b) Based on the results of the continuing review described in 15 CFR Part 928, the Assistant Administrator will determine in consultation with the State if the management activities proposed by the State are likely to result in significant improvement in achieving the coastal management objectives of section 303(2)(A)–(I).

(c) The States and the Assistant Administrator will negotiate an agreement at the beginning of each financial assistance award period establishing: (1) The specific significant improvement objectives to be achieved during the financial assistance award period, (2) The Federal funds to be devoted to each task, and (3) The basis for assessing the State's progress in accomplishing each significant improvement task. The agreement will be included as part of the financial assistance award. There is no requirement that the State address each of the nine significant improvement objectives within an individual financial assistance award period.

(d) If unforeseen circumstances arise that affect the accomplishment of any significant improvement task, the State must provide the Assistant Administrator with prompt notice and negotiate with the Assistant Administrator any necessary changes to the schedule and products before the scheduled completion dates. The Assistant Administrator shall provide the State agency with a schedule for negotiation and a time certain when a decision will be available to the State agency. Any such changes will be made part of the agreement included in the financial assistance award.

(e) Significant improvements need not be achieved within the period of one financial assistance award if there is specific reason to identity a longer period.

§ 923.104 Establishing the "increasing proportion".

(a) During the first year a State is required to make significant improvements (its second 306 award), it must agree to expend 20 percent of the Federal share of its upcoming section 306 financial assistance award on activities designed to lead to significant improvements. Thereafter, the State must agree to constant incremental increases of at least one percent in each succeeding year. The amount to be spent on significant improvements will be determined by multiplying the applicable percentage by the amount of Federal funds actually received.

(b) In no case may a State be required to expend more on significant improvement activities than the incremental increases established by this section. However, States may voluntarily exceed the minimum requirement on significant improvement expenditures established by this section. The failure to make significant improvements as a result of those expenditures in excess of the minimum requirement will not result in any reduction in financial assistance under the provisions of § 928.5(a), unless such failure results in an unjustified deviation under § 928.5(b).

§ 923.105 Failure to agree to pursue significant improvements.

(a) If a State chooses not to pursue significant improvements in accordance with this subpart, the Secretary must withhold all financial assistance under Section 306. However, a decision not to award section 306 funds does not necessarily require withdrawal of program approval. A State may continue to implement and enforce its approved program with State funds. Under these circumstances, a State will still be able to exercise its Federal consistency review rights under Section 307 and will remain eligible for CEIP funds if it meets all other eligibility requirements.

(b) A discussion of the procedures by which the Assistant Administrator will evaluate whether a State has failed to make significant improvements is contained in 15 CFR Part 928, Review of Performance of State Coastal

Management and Coastal Energy Impact Programs.

Form the reasons set out in the Preamble, Part 927 of Title 15 of the *Code of Federal Regulations* is revised to read as set forth below.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

§ 927.1 Allocation formula.

(a) Statutory Citation

(1) Section 306(a).

The Secretary may make grants to any coastal State for not more than 80 per centum of the costs of administering such State's management program . . .

(2) Section 306(b).

Such grants shall be allocated to the States with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided,* That no annual grant made under this section shall be less than one per centum of the total amount appropriated to carry out the purposes of this section: *And provided further,* That the Secretary shall waive the application of the one per centum minimum requirement as to any grant under this section, when the coastal State involved requests such a waiver.

(b) *Minimum/maximum allocation.* The Assistant Administrator may establish minimum and maximum State allocations.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) of this section, and in accordance with the provisions of section 312(a), (c), and (d). Award levels may fall below the one percent minimum established under section 306(b) for purposes of implementing section 312(c) of the Act.

(Sections 306 and 317 of the Coastal Zone Management Act)

5. Part 928 is revised to read as set forth below:

PART 928—REVIEW OF PERFORMANCE

Sec.

928.1 General.
928.2 Definitions.
928.3 Procedure for conducting continuing review of approved State CZM programs and State Coastal Energy Impact Program.
928.4 Public participation.
928.5 Enforcement.

Authority: Sections 312 and 316 of the Coastal Zone Management Act, as amended.

§ 928.1 General.

(a) These regulations set forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act, and of State coastal energy impact programs pursuant to sections 312 and 316 of the Act. They define "continuing review" and other important terms, and set forth the procedures for:

(1) Conducting continuing reviews of approved State CZM programs and State coastal energy impact programs,

(2) Providing for public participation,

(3) Reducing financial assistance for failure to make significant improvement, and

(4) Withdrawing program approval and financial assistance.

§ 928.2 Definitions.

(a) "Continuing review" means monitoring State performance throughout the period of the work program. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every two years but not more than once every year. Evaluations of coastal energy impact programs will be conducted on a schedule to be determined by the Assistant Administrator.

(b) "Adherence" means to comply with the approved CZM program and financial assistance award or work program.

(c) "Justifiable" means that the State must show that the deviation(s) from the approved CZM program was warranted. This determination will be made by the Assistant Administrator in consultation with the State on a case-by-case basis. The principal criterion to be used in making this determination is the extent to which the deviation was beyond State control. Other criteria, including, but not limited to, the following will be considered:

(1) The extent to which the deviation impairs the ability of the program to achieve its goals and objectives;

(2) Whether the deviation is part of a pattern or is an isolated incident;

(3) The magnitude of the deviation.

(d) "Approved CZM program" means those elements of the program required for program approval by the Secretary, under 15 CFR Part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) "Financial assistance award" means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term "financial assistance award" encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

(1) The work program described in the approved application;

(2) The budget;

(3) The standard terms and conditions of the award;

(4) Any special award conditions included with the award;

(5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) "Work program" means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management or the NOAA Official responsible for directing the Federal coastal zone management program.

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs and State coastal energy impact programs.

(a) Statutory citations:

(1) Subsection 312(a).

The Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in Section 303(2)(A)–(I), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(2) Section 316. Section 316 includes a provision for a biennial Coastal Zone Management Report which must include:

* * * a description of the economic, environmental, and social consequences of energy activities affecting the coastal zone and an evaluation of the effectiveness of financial assistance under Section 308 in dealing with such consequences.

(b) Continuing review procedures.

(1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) Within 45 days of receipt of State comments, the Assistant Administrator will issue final findings. This period may be extended upon notification to the State. Notice of the availability of the final findings will be published in the **Federal Register**. Copies will be sent to the head of the State CZM agency, the State program manager, and any person who requests them.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in Section 303(2)(A)–(I); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.*

(i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the "approved CZM program" as defined in § 928.2(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) *Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2)(A)–(I).* The assessment of the extent to which the State has addressed the coastal management needs identified in Section 303(2)(A)–(I) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified "needs" and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in Section 303.

(iii) The findings and recommendations concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award, if any. The evaluation required by section 312(c), concerning whether a coastal State is "failing to make significant improvement in achieving the coastal management objectives," is detailed in § 928.5(a).

(4) *Procedure for assessing adherence to the terms of financial assistance awards*

(i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work

products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 928.3(c)(4).

§ 928.4 Public participation.

(a) Statutory citation, section 312(b):

For the purpose of making the evaluation of a coastal State's performance, the Secretary shall conduct public meetings and provide opportunity for oral and written comments by the public. Each such evaluation shall be prepared in report form and the Secretary shall make copies thereof available to the public.

(b) Requirements.

(1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the **Federal Register** at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) on its evaluation in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held or take other reasonable action to inform the interested public, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings to the public upon request will be published in the **Federal Register**.

§ 928.5 Enforcement.

(a) Reduction of financial assistance for failure to make significant improvement.

(1) Statutory citation section 312(c):

The Secretary shall reduce any financial assistance extended to any coastal State under Section 306 (but not below 70 per centum of the amount that would otherwise be available to the coastal State under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal State is failing to make significant improvement in achieving the coastal management objectives specified in Section 303(2)(A)–(I).

(2) Requirements.

(i) The evaluation will examine whether the State is accomplishing the significant improvement tasks in accordance with specific schedules and expected products negotiated between the State and the Assistant Administrator before the beginning of each financial assistance award, in accordance with the procedures in 15 CFR 923.103.

(ii) If the Assistant Administrator finds, during the continuing review, that the State is not achieving one or more significant improvement objectives as negotiated, the State will be given an opportunity to demonstrate that it can accomplish the objective(s), as prescribed in the financial assistance award, before its expiration.

(iii) If the State cannot make this demonstration to the Assistant Administrator's satisfaction, the Assistant Administrator will determine that the State is failing to make satisfactory progress toward significant improvement in accordance with the previously negotiated agreement.

(iv) Based on this determination, the agency will reduce a State's financial assistance award and withdraw any unexpended portion of the current award by no more than the percentage required to be devoted to making significant improvements for that year. The reduction or withdrawal shall be proportional to the amount of funds allocated to tasks that have failed to result in satisfactory progress in achieving significant improvement.

(b) Withdrawal of program approval and financial assistance.

(1) Statutory citation, section 312(d) and 312(e):

(d) The Secretary shall withdraw approval of the management program of any coastal State, and shall withdraw any financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to, is not justified in deviating from (1) the management program approved by the Secretary, or (2) the terms of any grant or cooperative agreement funded under Section 306, and refuses to remedy the deviation.

(e) Management program approval and financial assistance may not be withdrawn under Subsection (d), unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this Subsection (d), the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) Requirements.

(i) If the Assistant Administrator finds that a State is failing to adhere to, and is not justified in deviating from, its approved CZM program or those terms of its Section 306 financial assistance award specifically implementing the approved CZM program, the agency will provide the State with written notice of this finding and the agency's obligation to withdraw program approval and financial assistance under this title. This notice will set forth the deviation(s) from the approved CZM program or the financial assistance award and will include specifications of the actions that must be taken in order to remedy the deviation(s). The State will be given 30 days from receipt of this notice to respond with evidence of adherence or justification for its deviation(s). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the **Federal Register** and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence of adherence or justification within 30 days of publication of this notice, the agency will decide whether to withdraw program approval and financial assistance and the agency will notify the State in writing of the decision and the reasons for it. The notification will set forth actions by the State which would cause the Secretary to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the **Federal Register** and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in (iii), above.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the **Federal Register** and Federal consistency under Section 307 of the Act will cease to apply to the State's CZM program.

§ 923.82 [Amended]

6. Section 923.82(b)(3) is amended as follows:

a. After the words, "that State may be subject to," change the word "termination" to "withdrawal."

b. After the end of the sentence, change the reference, "(See § 923.85)" to "(See 15 CFR 928.5(b))."

For the reasons set out in the Preamble, Part 931 of Title 15 of the Code of Federal Regulations is amended as set out below.

1. By removing Subpart L and revising Subpart D to read as set forth below:

PART 931—COASTAL ENERGY IMPACT PROGRAM

Subpart D—Coastal Energy Impact Grants

Sec.

931.30 General.
931.31 Objectives.
931.32 Definitions.
931.33 Eligibility for financial assistance under this subpart.
931.34 Allowable uses.
931.35 Section 308(c) allotment.
931.36 Application for financial assistance.
931.37 Limitations on expenditures.

* * * * *

Subpart C—[Removed]

Subpart D—Coastal Energy Impact Grants

Authority: Section 308 and 317 of the Coastal Zone Management Act of 1972, as amended.

§ 931.30 General.

This subpart sets forth the objectives of providing financial assistance to coastal states under section 308(c) and its allowable uses. It also describes procedures for allotting section 308(c) moneys among eligible coastal states and for applying for assistance under section 308(c).

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal states and units of local government plan for economic, social, or environmental consequences of new or expanded energy facilities and to prevent, reduce, or mitigate losses resulting from the transportation, transfer, or storage of coal or from alternative ocean energy activity.

(b) To help coastal states develop the capability to participate effectively in Federal policy, planning, and managerial decisions relating to the development of OCS oil and gas resources.

(c) To provide financial assistance that is simple to administer and that permits the coastal states and units of local government a high degree of control and discretion.

(d) To improve and strengthen coastal zone management in the United States.

§ 931.32 Definitions.

(a) *Coal.* The term "coal" includes all forms of anthracite and bituminous coal, peat, coke, and lignite. In addition to these substances, the term includes ash and sludge, which are waste products of burning coal.

(b) *Coal Facility.* The term "coal facility" includes the following:

(1) Any facility used in the transportation, transfer, or storage of coal. Such facilities include, but are not limited to:

(i) Coal loading docks
(ii) Coal barging terminals
(iii) Coal ports
(iv) Coal storage yards
(v) Rail transport facilities

(2) Any facility that converts coal into another form of energy useable by consumers or industry including but not limited to:

(i) Power plants
(ii) Synthetic fuel plants
(iii) Liquefaction plants

(3) Any facility that utilizes, transports, transfers, stores, handles, processes or produces coal, including mines and steel mills.

(c) *Alternative Ocean Energy (AOE) Facility.* The term "alternative ocean energy facility" means:

(1) Any facility located in or seaward of, the coastal zone whose primary purpose is to utilize the mechanical, chemical, physical, biological or thermal properties of ocean or lake waters in the conversion of those properties into a form of energy usable by consumers or industry. Facilities whose only reliance on ocean or lake waters is for cooling (such as nuclear power plants), liquefied natural gas facilities, and facilities for the exploration for and development of offshore oil and natural gas do not constitute AOE facilities. Solar facilities will also be considered AOE facilities. AOE facilities include, but are not limited to:

(i) Ocean Thermal Energy Conversion (OTEC).
(ii) Tidal and wave generation of electricity.
(iii) Ocean current generation of electricity.
(iv) Salinity gradient generation of electricity.
(v) Pumped storage generation of electricity.
(vi) Solar generation of electricity.
(vii) Biomass production—e.g., kelp farms.
(viii) Wind generation of electricity that depends on the sea or lake breeze.

(d) *Likely to be affected by OCS energy activity.* The Assistant Administrator will find a coastal state "likely to be affected by OCS energy activity" if the Assistant Administrator determines that:

(1) The state can reasonably expect to be exposed to significant social, economic, or environmental consequences as a result of any OCS lease sale that has taken place or is scheduled to take place under the Department of the Interior's (DOI) Five Year Planning Schedule; or

(2) The state has administrative, policy, operational, or managerial responsibilities under the OCS Lands Act that should properly be supported with Section 308(c) funds.

§ 931.33 Eligibility for financial assistance under this subpart.

(a) A coastal state is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C of this Part.

(b) A unit of local government may apply for assistance under this subpart through the state agency designated under Subpart C of this Part to apply for CEIP assistance.

§ 931.34 Allowable uses.

(a) Funds granted to a state under section 308(c) must be used in accordance with the provisions of this section.

(1) *Planning.* States may use section 308(c) funds to plan for any economic, social, or environmental consequence that has occurred, is occurring, or is likely to occur in the coastal zone as a result of siting, constructing, expanding or operating new or expanded energy

facilities that significantly affect the coastal zone, and for reasonable costs of administering the state coastal energy impact program.

(2) *OCS State participation.* States likely to be affected by OCS energy activity may use section 308(c) funds to carry out their responsibilities under the OCS Lands Act. These responsibilities include participating in the administrative, policy, operational, and managerial decisions relating to management of the oil and natural gas resources of the Outer Continental Shelf.

(3) *Coal and AOE impact mitigation.* States may use section 308(c) funds to design and implement projects (including construction and land acquisition) to prevent, reduce, or mitigate unavoidable losses to valuable coastal environmental and recreational resources resulting from the transportation, transfer, or storage of coal or from AOE activities.

§ 931.35 Section 308(c) allotment.

(a) The Assistant Administrator will develop a formula for allotting available Section 308(c) funds among eligible coastal states. This formula will be designed to estimate the relative need for planning, OCS participation, and coal and AOE impact mitigation among eligible states.

(b) This formula will be based on the number of existing and proposed new or expanded energy facilities, the number of existing and proposed coal facilities that significantly affect the coastal zone, the number of existing and proposed AOE facilities located in or seaward of the coastal zone, the nature of their impacts and other relevant factors deemed appropriate by the Assistant Administrator such as coal tonnage, OCS leasing, production of OCS oil and natural gas, shoreline mileage, and coastal county population.

(c) Each fiscal year, before computing an allotment, the Assistant Administrator will submit this formula to all eligible coastal states for review and comment. If appropriate, the formula will be revised before any final allotments are calculated.

(d) The Assistant Administrator may establish minimum and maximum allotments.

§ 931.36 Application for financial assistance.

(a) Applications for financial assistance under this Subpart may be submitted as soon as states are notified of their allotments under Section 308(c).

(b) Applications for assistance under this Subpart must contain the following certification and information:

(1) A clear and brief description of the projects and activities that will be funded under section 308(c) as they relate to allowable uses under § 931.34. For construction projects, as defined in the Office of Management and Budget Circular A–102, or planning projects that are the first stages of site specific development projects, the following additional information is required:

(i) environmental impact assessment data in detail sufficient to allow the Assistant Administrator to determine whether an EIS will be required under NEPA:

(ii) copies of all necessary major Federal permit or license approvals;

(iii) a Preliminary Engineering Report.

(2) A showing that the state has complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A–95 (Part I) or a showing, if the application for assistance has not been submitted to the PNRS, that a memorandum of agreement for coordinating planning under Section 308 has been established with appropriate areawide clearinghouses in the state's coastal zone, pursuant to Part IV, Attachment A, of OMB Circular A–95.

(3) A certification by the state agency designated under § 931.25(a)(4)(i) that the assistance for the purposes specified in § 931.34(a)(1) and (3) has been or will be allocated within the State in accord with the intrastate allocation process described in Subpart J of this part.

(4) A certification by the state agency designated under § 931.25(a)(4)(iii) that the assistance will be used in a manner that is compatible with the state's developing, or consistent with the state's approved, coastal zone management program.

(c) Allotted funds not applied for by the end of the fiscal year for which allotments were made may be reallotted by the Assistant Administrator among other eligible states.

§ 931.37 Limitations on Expenditures.

(a) Section 308(c) funds expended by a state for the purposes described in § 931.34 may not exceed 70 percent of the actual cost of carrying out projects;

(b) States and local governments may use in-kind contributions as the non-federal matching share in accordance with OMB Circular A–102;

(c) Section 308(c) funds may not be used:

(1) For the prevention, reduction, or mitigation of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, or rental of such resource by a state agency or unit of local government when the sale, lease, or rental occurs after October 17, 1980;

(2) To pay for that part of a project designed to prevent, reduce, or mitigate the loss of a valuable environmental or recreational resource which is incommensurate with the value of the loss or which can be paid for with funds readily available from any other Federal program;

(3) To pay for that part of a loss:

(i) That occurs after July 26, 1976, and

(ii) That could have been prevented by a reasonable exercise of a state's existing regulatory authority.

(4) For architectural, engineering, and other technical service fees or costs unless:

(i) Compensation is comparable to the cost of similar work awarded through open competitive bidding;

(ii) Compensation is not based on a cost plus a percentage-of-cost; and

(iii) Design and performance standards conform to professionally recognized national standards.

(5) The purchase of movable construction related equipment such as dump trucks and excavating equipment unless expressly authorized by the financial assistance award.

(d) All awards and expenditures of funds under this subpart are subject to the applicable requirements specified in Subpart I.

2. By amending Subpart G as follows:

a. § 931.70 is revised to read as follows:

§ 931.70 General.

This Subpart states the objectives of financial assistance under section 308(b) and describes its allowable uses. It also describes procedures for applying for Section 308(b) grants.

b. In § 931.71 revise the introductory text to read:

§ 931.71 [Amended]

The objectives for providing assistance under section 308(b) are:

* * * * *

c. In § 931.71 add the following paragraph (d):

* * * * *

(d) To help coastal States and units of local government plan for the provision of public facilities and public services required as a result of OCS energy activity.

§ 931.73 [Amended]

d. In § 931.73 the first sentence of paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and (308)(d)(4)" and inserting in their place the words "Section 308(b)."

§ 931.74 [Amended]

e. In § 931.74 the first sentence of first paragraph (a) is amended by removing the words "Sections 308(b)(5)(c) and 308(b)(4)" and inserting in their place the words "Section 308(b)(5)(c)".

f. In § 931.74 add the following paragraph (d):

* * * * *

(d) Allowable uses under Section 308(b)(5)(B) include:

(1) Planning and study that are necessary to provide new or improved public services that are required as a result of OCS energy activity.

(2) Paying for reasonable costs of administering the provision of assistance under Section 308 to the extent that funding for these administrative costs in not available under section 308(c).

[FR Doc. 82-13359 Filed 5-14-82; 8:45 am]
BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 17

Gross Collection of Exchange-Set Margins

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting new Rule 1.58 which requires that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable market. The Commission is adopting such a rule in order to help to prevent, or at least limit, financial loss to customers, members of the marketplace and the marketplace itself which may be caused by the bankruptcy or insolvency of a futures commission merchant ("FCM") which is not a clearing member of a commodity exchange. The new rule will require the transfer of certain funds now controlled by an originating FCM to the generally better-capitalized clearing FCM, and it will strengthen the financial early warning system by providing carrying FCMs with greater information about the financial condition of those FCMs for which they are carrying omnibus accounts.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 29, 1981, the Commission published a proposed new Rule 1.58 which would require that carrying FCMs collect margin for positions carried in omnibus accounts on a gross basis and at a level which is no less than that established for customer accounts by the rules of the applicable contract market, as well as proposed amendments to Rule 17.04 regarding reporting of omnibus account positions, and solicited public comment theron (46 FR 62864). The Commission received twelve written comments on the proposals. The commentators include eight FCMs and two commodity exchanges, one of which submitted two comment letters, as well as the National Futures Association ("NFA"). The Commission has carefully considered all of the comments received in response to the proposed rules.

II. Discussion

As the Commission stated in the Federal Register release announcing the proposal of Rule 1.58, the Commission believes that gross collection of exchange-set margins will strengthen the industry and enhance customer protection by moving segregated funds into the normally better-capitalized hands of a clearing member. The Commission recognizes the key role of the clearing members in assuring financial integrity and correcting potential problems.

As the Commission also stated in the Federal Register release announcing the proposal of Rule 1.58, the most significant difference in the financial monitoring program of the exchanges and the Commission's financial monitoring program is the information that the exchanges have about clearing members which the Commission does not have about non-clearing FCMs which carry their accounts with a clearing member FCM on an omnibus basis.[1] Such information is primarily developed from the pay and collect information that is generated by the individual clearing organizations. While the Commission could conceivably obtain such information directly from all originating FCMs, such a process would be cumbersome and would not involve an independent source such as a carrying FCM or clearing organization. In addition to the information available to the exchanges about their clearing members through the pay and collect data, there is an informal information network existing among the FCM community. While such information is often communicated to exchange personnel, it rarely, if ever, reaches the Commission. To compensate for the information which is routinely obtained by the exchanges about their clearing member FCMs but which is not readily available to the Commission or in certain instances, any self-regulatory organization with respect to omnibus accounts, the Commission has determined to adopt a rule which will require the gross collection of exchange-set margins. In this regard, pay and collect information is unavailable even to the exchanges regarding omnibus accounts where the originating FCM is a member of one exchange placing orders for execution on another exchange where the FCM is not a member. Rule 1.58 will thus apply to all omnibus accounts and not only to those omnibus accounts of originating FCMs which are not members of any commodity exchange, as some commentators suggested.

One concern expressed by some commentators related to the investment of customer funds. The Commission stated in the Federal Register release announcing the proposal of Rule 1.58 that, if the rule were adopted, an originating FCM would not be precluded from depositing United States Treasury bills or some other acceptable form of interest-bearing instrument with the carrying FCM and would not, therefore, have to forego the interest currently being earned on segregated funds. One commentator stated that Treasury bills or other interest-bearing instruments would be acceptable to a clearing FCM for initial margin purposes. That commentator further stated, however, that since daily settlement obligations or variation margin payments owed by a clearing member to a clearing organization must be satisfied on a cash basis, a clearing member would not accept Treasury bills or other interest-bearing instruments from originating FCMs for any purpose. The Commission disagrees with that statement. The amount of variation margin required of a clearing FCM by a clearing organization should be the same whether the collection of margin with respect to positions held in omnibus accounts carried by the clearing FCM is made on a net or gross basis, and changing from one system to the other should have no bearing upon variation margin payments

[1] While the NFA is expected to develop a financial monitoring program for FCMs, it is anticipated that the NFA will encounter many of the same problems in obtaining information that the Commission has experienced.

required of a clearing FCM by a clearing organization and should not preclude investment of customer funds by originating FCMs. Certain other concerns raised by commentators, such as what types of instruments will be accepted by carrying FCMs and how much credit will be accorded to them, are best resolved between the carrying FCM and originating FCM. Although a greater amount of funds will be shifted from originating FCMs to carrying FCMs under Rule 1.58, as compared to the current system, this should not affect materially the opportunities for investment of customer funds available to originating FCMs.

Some commentators expressed the view that the gross collection of exchange-set margins for omnibus accounts would have anti-competitive effects because there would be increases in costs to firms which would lead to a fewer number of firms, due to mergers or due to some firms going out of business, and the surviving firms would be the larger firms. The Commission does not agree that the costs will increase to the extent cited by the commentators, since the Commission does not believe, as discussed in the preceding paragraph, that investment of customer funds will be affected materially. The Commission is also aware that the argument about increased costs has been raised whenever changes have been proposed which might require that more capital be maintained by firms. In those circumstances, and with respect to the gross collection of exchange-set margins for omnibus accounts, the Commission believes that any increased costs are necessary in the interest of customer protection.

Operational concerns were cited by several commentators, especially the fact that computer programming changes would be necessary. The Commission recognizes that a problem could exist for some firms in this area, and has therefore made the effective date of Rule 1.58 ninety days after publication of this notice, rather than the normal thirty days, so that any required computer programming changes can be made. Some commentators raised the issue of verification of the reports received by carrying FCMs from originating FCMs, especially if spread or hedge positions are reported in accordance with Rule 1.58(b). Carrying FCMs would not be expected to make independent verification of reports filed in accordance with Rules 17.04 and 1.58, unless there was reason to believe that such reports were inaccurate. Such reports can be verified readily during audits conducted by the Commission's staff, the NFA or any self-regulatory organization.

One commentator stated that in order to comply with Rule 1.58, all omnibus accounts would effectively be required to be handled on an "instruct basis." [2] The Commission believes that this is not necessarily the case because Rule 1.58 only requires carrying FCMs to collect margin based on positions already being reported in accordance with Rule 17.04. Further, this commentator asserted that, based on a survey which it conducted, nearly 80% of omnibus accounts surveyed are currently handled on an instruct basis. Since many omnibus accounts are already handled on an instruct basis, it is the Commission's view that, if some FCMs find that it is necessary to handle omnibus accounts on an instruct basis in order to comply with Rule 1.58, there should not be a material effect on operations.

Two commentators stated that the Commission lacks statutory authority to promulgate Rule 1.58. The only limitations on the Commission's authority with respect to margin contained in the Commodity Exchange Act, as amended ("Act") are found in sections 5a(12) and 8a(7), respectively (7 U.S.C. 7a(12) and 12a(7) (1976 & Supp. IV 1980)]. [3] These sections preclude the Commission from approving or disapproving contract market rules relating to setting of levels of margin or altering or supplementing contract market rules for the setting of levels of margin. The intention of these restrictions on the Commission's rule approval authority was to assure that the exchanges retained the power to protect themselves by making daily and an even hourly adjustments of margin. It is for the reason that the control of the amount of margin is left to the exchanges. [4] Rule 1.58 does not purport to affect or to interfere in any way with the setting of levels of margin by a contract market. Under this rule, the Commission wishes to point out that the authority to establish margin levels and to thereby respond quickly to changing market situations remains with the contract markets consistent with the recognition by Congress of their expertise. However, the Act does not preclude the Commission from making rules which prescribe where margin funds must be maintained and how they must be collected and segregated.

Rule 1.58 prescribes where margin as set by an exchange with respect to a specific contract must be held. As such it is intended to increase the strength and credibility of the Commission's segregation and minimum financial rules which are relied on by customers to maintain the customer funds deposited in connection with their commodity transaction intact, as trust funds, even in the event of the insolvency of the firm with which they are doing business. Rule 1.58 would not affect the level of margin established by an exchange or the amount assessed to the beneficial holder of a position.

The Commission is also adopting, in the form proposed, amendments to § 17.04, so that option positions traded through omnibus accounts will be required to be reported on a gross basis. None of the comments addressed this aspect of the proposals. At the present time, § 17.04 applies only to futures positions traded through an omnibus account. The Commission intended to have option positions traded through an omnibus account reported on a gross basis, but believed that this objective could be achieved through rules promulgated by the exchanges establishing a large trader reporting system for options. The large trader reporting system for options will be administered by the exchanges, and the Commission will review the rules of the exchanges relating to large trader reporting in connection with its review of designation applications. Because the Commission proposes to include option positions within the coverage of Rule 1.58, however, and because Rule 1.58 will incorporate § 17.04 by reference, the Commision is amending § 17.04 so that it will apply to options.

III. Certification Under the Regulatory Flexibility Act

When the Commission proposed Rule 1.58, the Chairman certified, on behalf of the Commission and pursuant to the Regulatory Flexibility Act, that if the rule were promulgated as proposed, it would not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invited comment from any firms or other persons which believed that promulgation of the rule might have a significant economic impact upon their activities. [5]

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[2] Under such a system, all positions are held open by the carrying FCM until the originating FCM gives specific instructions as to which positions, if any, to offset.

[3] *But see* Sections 4c(b) and 8a(9) of the Act, 7 U.S.C. 6c(b) and 12a(9) (1976 & Supp. IV 1980), which grant the Commission plenary authority with respect to options and in times of emergency, respectively.

[4] 120 Cong. Rec. H10708 (daily ed. April 11, 1974) (remarks of Rep. Poage).

[5] It should be noted that any impact of Rule 1.58 will fall on FCMs. The Commission has determined

Continued

As discussed above, certain commentators expressed the view that costs will increase for the relatively smaller firms under Rule 1.58. As also stated above, the Commission does not believe that substantial additional costs will result from the adoption of Rule 1.58, and the Commission further believes that any increased costs are necessary in the interest of customer protection. Having undertaken its own reconsideration of this issue and having reviewed the suggestions set forth by the commentators, the Commission believes that there is no satisfactory alternative to the rule which would as effectively accomplish the objectives and policies of the Act.

IV. List of Subjects in 17 CFR Part 1

Commodity futures, Customer protection, Segregated funds.

17 CFR Part 17

Commodity futures, Futures commission merchants, Foreign brokers, Reporting requirements.

V. Paperwork Reduction Act

Information collection requirements contained in regulation Section 1.58 have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #3038–0026.

In consideration of the foregoing and pursuant to the authority contained in Sections 4c, 4d, 4f, 4g and 8a of the Act, 7 U.S.C. 6c, 6d, 6f, 6g and 12a (1976 & Supp. IV 1980), the Commission hereby amends 17 CFR Part 1 by adding a new § 1.58, and amends 17 CFR Part 17 by revising § 17.04, as set forth below. In adopting these rules, the Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anti-competitive means of achieving the regulatory objectives of the Act.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. 17 CFR Part 1 is amended by adding § 1.58 to read as follows:

§ 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant on an omnibus basis must collect, and each futures commission merchant for which the omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant for which the omnibus account is being carried that each such position is entitled to be so margined.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

2. 17 CFR Part 17 is amended by revising § 17.04 to read as follows:

§ 17.04 Reporting Omnibus Accounts to the Carrying Futures Commission Merchant or Foreign Broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity, and, for commodity option transactions, the total open put options purchased, the total open put options granted, the total open call options purchased, and the total open call options granted for each commodity option expiration date, in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with Part 17 of these regulations and reporting requirements established by the contract markets.

(b) In determining open long and open short futures positions, and open purchased and open granted option positions, in an omnibus account for purposes of complying with § 17.00(f), § 1.37(b) and § 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of all traders and the open short positions of all traders in each future of a commodity, and, for commodity option transactions, shall total the open put options purchased, the open put options granted, the open call options purchased, and the open call options granted of all traders for each commodity option expiration date. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future are carried for the same trader, compute open long or open short futures positions as instructed below.

(1) Include both the total open long and the total open short positions of the trader if:

(i) The positions represent transactions on a contract market which requires long and short positions in the same future held in accounts for the same trader to be recorded and reported on a gross basis; or

(ii) The account is an omnibus account of another futures commission merchant or foreign broker; or

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a contract market which does not require long and short positions in the same future held in accounts for the same trader to be recorded and reported on a gross basis.

Issued in Washington, D.C. on May 11, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-13301 Filed 5-14-82; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release Nos. 33-6395; 34-18648; 35-22456; IC-12376; FR-1]

Codification of Financial Reporting Policies

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation and notice of availability.

SUMMARY: The Commission announces the publication of a codification of certain existing Accounting Series Releases (ASRs).[1] The material included in the codification represents only those portions of these ASRs that are relevant today. This publication is part of the Commission's continuing efforts to

that a registered FCM not be considered a "small entity" within the meaning of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1165, 1166 (5 U.S.C. 601 (3) and (6)). *See* 47 FR 18618 (April 30, 1982).

[1] **Note.**—This codification is a separate publication issued by SEC. It will not be published in the **Federal Register**/Code of Federal Regulations system.

review its rules, regulations and releases, and to delete requirements that are no longer necessary and to simplify the remainder. The Commission expects that the codification will make the material therein more useful to issuers, accountants and others. The Commission also announces a new series of releases—Financial Reporting Releases (FRRs)—which will replace ASRs as the title of releases announcing accounting and auditing matters of general interest. This release is the first of the new series.

FOR FURTHER INFORMATION CONTACT: David F. Martin or Edmund Coulson (202–272–2130), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission has identified the relevant portions of certain existing Accounting Series Releases (ASRs) and is publishing a codification of that material. The purpose of the codification is to provide one document which is organized in a logical manner and which can be used as a reference for the Commission's current published positions on accounting and auditing matters relating to financial reporting. The codification will be updated by the issuance of Financial Reporting Releases (FRRs).

In a related action today, the Commission is publishing Accounting and Auditing Enforcement Release (AAER) No. 1 as the first of a series of releases which will be used to announce accounting and auditing matters that are related to Commission enforcement activities. The status of previous ASRs relating to the Commission's enforcement activities is unaffected by the issuance of AAER No. 1, and they are not republished or codified therein. However, the Commission has developed a topical index for the material included in the 100 ASRs which address various accounting and auditing matters in an enforcement context. This index, which is included in AAER No. 1, should facilitate reference to specific areas addressed by the Commission in those releases.

As a result of the Commission's actions today, no further ASRs will be issued since future announcements will be made in FRRs and AAERs.

Background

Since 1937, the Commission has issued 307 ASRs to inform interested parties about matters relating to accounting and auditing. Approximately 200 of the ASRs announced adoption or amendment of accounting related rules or presented the Commission's views on accounting issues. Much of the information in these releases is no longer relevant. Additionally, certain topics are addressed in more than one ASR and some ASRs supersede portions of previously issued ASRs. Because of the volume of ASRs and the variety of topics covered, it has become extremely difficult to determine which ASRs, or portions thereof, are relevant at any given point in time. To simplify the use of the guidance provided in these releases, the Commission has codified the relevant portions of the non-enforcement related releases.

Codification

The codification is a compendium of the Commission's current published views and interpretations relating to financial reporting. It supplements the rules set forth in Regulations S–X (17 CFR Part 210) and S–K (17 CFR Part 229) by providing background and rationale for certain of the rules therein.

The codification process was conducted by performing a comprehensive review of the content of the ASRs. This review indicated that the content of 79 ASRs was no longer relevant, and therefore they have not been carried forward. Previous Commission actions had rescinded 57 other ASRs. The remaining 71 ASRs have been placed in the codification by extracting those portions of the ASRs which provide current, meaningful guidance to registrants, independent accountants and others in complying with the Commission's requirements. The extractions have been organized by topic and, where necessary, editorial comments to explain the sequence of events have been inserted [these are shown in brackets in the codification]. Minor editorial changes were also made in the extractions so that the extractions would fit into the context of the codification. Additionally, all references to rules and regulations of the Commission have been updated to the appropriate current reference. A topical index has been included in order to facilitate easy reference to the material.

The Commission expects that as sections of the codification become obsolete, or otherwise require modification, because of private-sector initiatives, Commission actions, or environmental changes, sections of the codification will be rescinded or appropriately modified. Additionally, in the future when the Commission finds it necessary to issue statements about accounting and auditing matters related to financial reporting, the codification will be appropriately updated.

Financial Reporting Releases (FRR's)

FRRs will be the means by which the codification of financial reporting policies will be updated. The title of these releases has been changed from ASRs to more closely reflect the nature of the material covered. It is not expected that the topics addressed by FRRs will be different from the types of topics addressed in the ASRs except that enforcement related matters will now be announced in a separate series of releases as discussed above.

Status of ASR's

The Commission intends that the codification stand on its own. Therefore, there should be no need to refer to individual ASRs when complying with Commission rules and regulations. To assist users in understanding the codification, a cross-reference index reflecting the status of each of the individual ASRs is included as an appendix to the codification. Further, the material in the codification is referenced to the ASR from which it was extracted.

Finally, the Commission is updating Part 211 of Title 17, Chapter II of the Code of Federal Regulations which lists certain interpretive ASRs. All remaining references to individual ASRs are being deleted because the relevant portions of those ASRs have been included in the codification.

Where appropriate, previously issued ASRs have been published in the **Federal Register.** Therefore, this codification will not be printed in the **Federal Register.** Copies of the codification will be available from the Commission's Public Reference Room of the Office of Consumer Affairs and Information Services, or by calling (202) 523–3761. Where appropriate, future FRRs will be printed in the **Federal Register.**

List of Subjects in 17 CFR Part 211

Accounting, Reporting requirements, Securities.

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS

Commission Action

1. The Commission hereby rescinds and removes the following releases in the accounting series, in Subpart A, Part 211 of Title 17, Chapter II of the Code of Federal Regulations. Accounting Series Release Nos. 4, 8, 19, 21, 22, 25, 27, 36, 44, 47, 51, 81, 90, 98, 103, 112, 113, 115, 116, 118, 123, 124, 126, 130, 135, 142, 146, 146A, 150, 162, 219, 220, 234, 244, 251, 289, 293, 297, 300, 305, 307.

2. The Commission hereby revises the titles of Part 211 of Title 17, Chapter II of the Code of Federal Regulations and of Subpart A thereof to read as follows:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

Subpart A—Financial Reporting Releases

The Commission adds a reference to this release to Subpart A of Part 211.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 15, 1982.

[FR Doc. 82-13211 Filed 5-14-82; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 211

[Release Nos. 33-6396; 34-18649; 35-22457; IC-12377; AAER-1]

Index of Accounting and Auditing Enforcement Releases

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission announces the publication of a topical index to its Accounting Series Releases that have announced enforcement actions involving accountants. The topical index is intended to facilitate reference to the Commission's views on particular accounting and auditing matters that have given rise to Commission enforcement actions. The Commission also announces the institution of a new series of releases entitled Accounting and Auditing Enforcement Releases. In the future, Commission enforcement actions involving accountants will be announced in Accounting and Auditing Enforcement Releases to enable interested persons to easily distinguish enforcement releases involving accountants from other Commission releases.

FOR FURTHER INFORMATION CONTACT: George Diacont or Michael Kigin (202/272-2130), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Since 1937, the Commission has issued 307 Accounting Series Releases (ASRs) to announce rulemaking and enforcement actions and its interpretations of accounting and auditing matters. The Commission's staff has reviewed the nonenforcement related releases to determine which are outdated or have been superseded. In a related action today, the Commission is publishing Financial Reporting Release No. 1 which announces the codification of the material in those ASRs that continues to be relevant to financial reporting.

The Commission's staff has also reviewed the approximately 100 ASRs that announced enforcement related actions involving accountants. Those releases have not been included in the codification although some of them contain explanations of the Commission's views on accounting and auditing and may be useful to registrants and accountants in the preparation of certification of financial statements being filed with the Commission, or otherwise.

In lieu of including the enforcement related ASRs in the codification, the Commission is publishing a topical index (Appendix A) to those ASRs. The index consists of an alphabetical list of accounting, auditing and related topics that are discussed or referred to in the identified enforcement related ASRs. The index is intended to be used as a reference to the particular ASRs and not as a comprehensive representation of the Commission's views on these matters. Publication of the topical index should facilitate research of certain of the Commission's enforcement actions relating to accounting and auditing matters and to the Commission's views on particular accounting and auditing deficiencies. A list of the enforcement related ASRs is also attached as Appendix B.

The issuance of the topical index has no effect on the legal status of the enforcement related ASRs. Those releases remain in effect and persons interested in the Commission's views on the topics listed in the index should consult the particular ASRs, which are not codified or republished herein.

The Commission is also announcing the institution of a new series of releases. This release is the first of that series. Future Commission releases announcing enforcement actions involving accountants will be issued as Accounting and Auditing Enforcement Releases ("AAER"). Henceforth, interested persons will be able to easily distinguish enforcement releases involving accountants from releases in which the Commission announces the adoption or revision of rules related to financial reporting or discusses its interpretive views on financial reporting matters.

AAER No. 1 will be listed in new Subpart C of Part 211 of the Code of Federal Regulations because it is a topical guide to the Commission's views on accounting and auditing matters expressed in connection with enforcement proceedings involving accountants. Future AAERs will not be listed in Subpart C, however, because they will be announcing Commission enforcement actions. Periodically, the topical index may be updated to include references to future AAERs to facilitate research of the Commission's views on particular accounting and auditing issues.

List of Subjects in 17 CFR Part 211

Accountants, Accounting, Financial Statements, Reporting Requirements, Securities.

Commission Action

The Commission hereby amends Part 211 of Title 17, by adding Subpart C to read as follows:

Subpart C—Accounting and Auditing Enforcement Releases

Subject	Release No.	Date	Fed. Reg. vol. and page
Index of Accounting and Auditing Enforcement Releases	1	Apr. 15, 1982	

By the Commission.

George A. Fitzsimmons,

Secretary.

April 15, 1982.

Appendix A.—Topical Index of Enforcement Actions Involving Accountants

Introduction

This is a topical index of certain accounting and auditing matters which have been addressed in enforcement related Accounting Series Releases ("AS"). The index is intended to be used only as a reference to the particular Accounting Series Release and not as a comprehensive representation of the Commission's views on these matters.

Some Accounting Series Releases discuss matters related to more than one company. Accordingly, to facilitate the research of topics in lengthy Accounting Series Releases the following key to major headings, as they are set forth in the releases, is provided:

AS 173-1 National Student Marketing Corporation
AS 173-2 Talley Industries, Inc.
AS 173-3 Republic National Life Insurance Company
AS 173-4 The Penn Central Company

AS 173–5 Stirling Homex
AS 196–1 Cenco Incorporated
AS 196–2 Equity Funding Corporation of America
AS 196–3 Omni-Rx Health Systems
AS 196–4 SaCom
AS 227–1 Cosmopolitan Investors Funding Co.
AS 227–2 Western Properties Limited Partnership
AS 227–3 Co-Build Companies, Inc.
AS 238–1 In the Matter of National Telephone Co., Inc.
AS 238–2 In the Matter of Continental Mortgage Investors
AS 241–1 Fisco, Inc.
AS 241–2 The Falstaff Brewing Corporation
AS 241–3 Oceanography Mariculture Industries, Inc.
AS 241–4 Ampeco Securities, Inc.
AS 292–1 Mattel, Inc.
AS 292–2 Geon Industries, Inc.

Index

Accounting Principles

- The independent accountant must be satisfied that in his professional judgment the principles selected are those which appropriately describe the business reality within the general framework of the accounting approach to economic measurement, (AS 173)
- Failure to obtain sufficient competent evidential matter to provide a basis for concluding that the use of an accounting method was appropriate in the circumstances and that the computations required by the method had been properly made, (AS 238–1)

Accounting Principles Board Opinions ("APBO")

- APBO No. 9, (AS 173–1)
- APBO No. 10, (AS 248)
- APBO No. 16, (AS 241–1)
- APBO No. 20, (AS 292–2)
- APBO No. 21, (AS 238–1)

Accounting Principles Board Statements ("APB Statement")

- APB Statement No. 4 (AS 173–5)

Accounting Research Bulletins ("ARB")

- ARB No. 13, (AS 292)
- ARB No. 43, (AS 227–3)
- ARB No. 45, (AS 173–5)
- ARB No. 48, (AS 248)
- ARB No. 51, (AS 173–4)

Accounts Payable (See "Payables")
Accounts Receivable (See "Receivables")
Accrued Interest (See "Receivables")
Accrued Liabilities (See "Payables")

Advances

- Advances to general partner improperly recorded by limited partners, (AS 227–2)
- Disclosure of advances inadequate, (AS 241–3)

Advertising

- Advertising credits overstated, (AS 153A)
- Advertising expense improperly capitalized, (AS 288)

Allowance (See "Reserves")

Alteration of Accounting Records

- Retail inventory records falsified; inventory purchases not recorded in proper period, (AS 105)
- Inventory quantities altered on inventory count tags and on the computer listing prepared to compile the physical count, (AS 196–1)
- Labor time records altered, (AS 196–4)
- Overstatement of inventory accomplished by the addition of computer punch cards representing non-existent inventory, (AS 210)
- Closing inventory figures falsified, (AS 230, AS 231, AS 232)

Analytical Review Procedures

- Comparative inventory schedule reflected significant increases from prior year; auditor unduly relied on management explanations for increases and did not take appropriate steps to verify their reasonableness, (AS 196–1)

Appraisal Surplus

- Appraisal surplus falsely recorded on books, (AS 179A)

Appraisals

- Auditor should have insisted upon receiving appraisals based upon current value, (AS 173–3)
- Auditor should not have relied on an appraisal prepared by the president of the registrant for valuation of assets acquired by the registrant, (AS 282)

Audit (Report Issued Although Examination Not Conducted)

- Auditor certified financial statements without examining the companies' books, (AS 48, AS 88)
- An accountant (having no participation in, or control or supervision of, an audit) certified financial statements that were prepared and examined entirely by another accountant, (AS 91)
- Balance sheet prepared by auditor on the basis of information supplied over the telephone; report stated that the books and records had been reviewed, (AS 92)
- Audit consisted mainly of discussions with management; no independent verification of company's assets and liabilities, (AS 192)
- Auditor permitted financial information about a company to be transcribed on his letterhead stationery without any independent verification, (AS 196)
- Auditor relied on work papers prepared by the client; made no independent review of the books and records, (AS 213)

Audit Fee

- Fee ostensibly forgiven to show reduced cost in registration statement, (AS 196–3, AS 196–4)
- Audit fee not accrued even though the amount was clearly material, (AS 283)

Audit Program

- Audit program for advertising credits inadequate because the sample selected for external verification was limited, (AS 153A)
- Audit program should have been expanded to test intercompany transactions in greater depth, (AS 173–4)
- Written audit programs needed, (AS 210)
- Audit program was inappropriate, (AS 241–4)

Audit Report

- Auditor failed to withdraw report on basis of new information, (AS 238)
- Unqualified audit report signed by mistake, (AS 241–4)
- Report signed prior to completion of field work and partner's review of workpapers, (AS 285)

Audit Scope

- Audit program for advertising credits inadequate because the sample selected for external verification was limited, (AS 153A)
- Additional audit procedures should have been performed to determine reasons for inventory test count differences, (AS 196–1)
- Vessel commitments made subsequent to the period being audited should have been examined because they had a direct impact on the financial statements in question, (AS 209)
- No adequate audit steps were taken to determine authenticity of investment transaction where auditors knew that individuals managing investment fund had been indicted for bankruptcy fraud, (AS 227–1)
- Further audit work warranted because of suspicious circumstances, (AS 248)

- Failure to extend auditing procedures where the client's treatment of particular assets strongly suggested the need for follow-up, (AS 288)

Bad Debt Allowance (See "Reserves")

Bookkeeping

- Accountant held liable for entries made in client's books which concealed looting, (AS 179A)

Broker-Dealer

- Inadequate audit, (AS 48, AS 51, AS 59, AS 67, AS 97, AS 110, AS 143, AS 160, AS 201, AS 233, AS 241–4, AS 283)

Business Combinations (See "Pooling" and "Merger")

Capitalization

- Improper capitalization of purported start-up costs and test-market costs, (AS 168)
- Improper capitalization of contract costs; inadequate audit, (AS 196–4)
- Auditor unable to determine that items capitalized by a credit to expense had ever been charged to expense, (AS 227–3)
- Improper capitalization of advertising, repair and maintenance, computer and construction costs; inadequate audit, (AS 288)

Cash Basis Accounting

- Failure to adequately disclose modification of supposedly cash basis financials, (AS 227–2)
- Use of cash basis accounting not disclosed, (AS 252)
- Audit report unqualified even though financial statements prepared on a cash basis, (AS 282)

Change in Accounting Principles

- Failure to disclose change in application of accounting principles, (AS 238–1, AS 243)

Change in Auditors (See "Successor Auditor's Responsibilities")

Claims

- Auditors could not verify the amount of the claim because of the insufficiency of the supporting documentation, (AS 196–4)
- Insurance claim recorded at incorrect amount, (AS 292–1)

Collateral

- Need for thorough inquiry into adequacy of collateral (AS 238)

Collectibility

- Auditor failed to inquire regarding the existence of funding, (AS 174)

Combined Financial Statements

- Presentation of combined financial statements of registrant and an affiliate necessary to prevent results from being misleading, (AS 227–3)

Comfort Letter

- Auditor should have made additional disclosures in comfort letter, (AS 173–2)

Commercial Paper

- Investment in non-existent commercial paper recorded by registrant, (AS 196–2)

Computer

- Inventory quantities on computer listing altered, (AS 196–1)
- Overstatement of inventory accomplished by the addition of computer punch cards representing non-existent inventory, (AS 210)

Concurring Partner Review

- Concurring partner failed to discover that the audit engagement had not been conducted in accordance with generally accepted auditing standards, (AS 285)

Confirmations (See also "Receivables")

- Confirmation procedures inadequate, (AS 110)
- Confirmation procedures did not include direct inquiry of bank, (AS 153)
- No confirmation obtained from purchaser of lease, (AS 153)
- Written confirmation of credits necessary, (AS 153A)
- Written confirmations of commitments not obtained; auditors did not insist on proper audit controls for oral confirmations, (AS 173–1)
- Failed to confirm existence of financing commitment, (AS 173–5)
- Bank confirmations cannot be replaced by alternative audit procedures due to the pervasive nature of audit evidence that they provide, (AS 282)
- Certain confirmations not sent at client's request, (AS 285)
- Auditor failed to follow-up on customer confirmations containing material exceptions, (AS 292–1)

Consultations

- Failure to document, (AS 288)

Contingent Liabilities

- Reserve for losses and contingencies materially inadequate, (AS 78)
- Liability for guarantees could not accurately be estimated, (AS 173–1)
- Major contingent liabilities not disclosed, (AS 252)

Correspondent Auditor

- Duty of auditing firm issuing a report to insure that work performed by correspondent auditors complies with generally accepted auditing standards, (AS 209)

Deferred Assets (See also "Capitalization")

- Deferral of public offering cost and accounting fees, (AS 196–3)
- Costs originally charged to cost of goods sold were subsequently reclassified as tooling, leasehold improvements, contract award and acquisition costs and deferred without a reasonable basis, (AS 196–4)
- Deferral of pre-opening costs not justified; inadequate audit, (AS 288)
- Improper deferral of tooling costs and royalty expense, (AS 292–1)

Disciplinary Actions

- Adoption of procedures, (AS 153, AS 167, AS 173, AS 210, AS 285)
- Censure (AS 143, AS 153, AS 153A, AS 157, AS 167, AS 174, AS 191, AS 210, AS 248, AS 255, AS 285, AS 288, AS 292)
- Continuing professional education, (AS 168, AS 170, AS 179A, AS 186, AS 191, AS 198, AS 208, AS 213, AS 233, AS 246)
- Dismissal of proceedings, (AS 67, AS 77, AS 78, AS 99, AS 249, AS 263, AS 266)
- Peer review or other review of practice, (AS 144, AS 153, AS 153A, AS 160, AS 167, AS 168, AS 173, AS 176, AS 191, AS 196, AS 209, AS 210, AS 223, AS 227, AS 233, AS 238, AS 241, AS 246, AS 273, AS 283, AS 285)
- Prohibition from accepting new SEC clients for a limited period, (AS 144, AS 153, AS 168, AS 173, AS 176, AS 196, AS 209, AS 210, AS 223, AS 227, AS 233, AS 241)
- Reinstatement, (AS 87, AS 101, AS 240, AS 256)
- Research project, (AS 173, AS 241)
- Resignation, (AS 51, AS 94, AS 104, AS 105, AS 108, AS 109, AS 110, AS 129, AS 131, AS 139, AS 158, AS 187, AS 198, AS 201, AS 208, AS 213, AS 215, AS 216, AS 217, AS 230, AS 231, AS 232, AS 243, AS 246, AS 252, AS 262, AS 265)
- Review of work by other qualified persons, (AS 186, AS 196, AS 213, AS 233, AS 239, AS 283)
- Suspension:
  1 month or less, (AS 66, AS 73, AS 78, AS 82, AS 200);
  3 months or less, (AS 28, AS 97, AS 191, AS 196, AS 239, AS 241, AS 248);
  6 months or less, (AS 153A, AS 196, AS 229, AS 238, AS 241, AS 288);
  1 year or less, (AS 59, AS 66, AS 166, AS 209, AS 238, AS 248, AS 282, AS 285);
  2 years or less, (AS 160, AS 267);
  Indefinite, (AS 48, AS 82, AS 88, AS 91, AS 92, AS 127, AS 161, AS 170,

AS 179A, AS 182, AS 186, AS 192, AS 199, AS 202, AS 204, AS 205, AS 207, AS 212, AS 214, AS 221, AS 222, AS 224, AS 260, AS 275)

Disclosure

- Establishment of reserves for possible losses on mortgage loans and real estate not an adequate substitute for disclosure, (AS 173–3)
- Footnote contained inaccurate and misleading statements, (AS 174)
- Respondents should have clarified by financial statement notes or other acceptable methods, the items "cash" and "notes payable" on the year-end balance sheets to reflect the effect on those items of certain borrowings and their repayment, (AS 191)
- Auditor knew or should have known that certain disclosures contained in a client's prospectus were inaccurate and that material facts were omitted, (AS 227–3)
- Disclosure of security agreements inadequate, (AS 241)
- Disclosure of revenue recognition policy false, (AS 262)

Documentation (See "Working Papers")

Due Process

- Respondents not deprived of a fair hearing because of Commission involvement in concurrent Chapter X proceedings, (AS 248)

Errors and Irregularities

- Accountants can be expected to detect gross overstatements of assets and profits whether resulting from collusive fraud or otherwise, (AS 19)
- Substantial irregularities on the books and records should have altered the auditors to the possibility of fraud, (AS 209)
- Auditor failed to adequately search for material errors and irregularities, (AS 285)

Expert Witnesses

- Extent of reliance by Administrative Law Judge on expert witnesses in a Commission hearing, (AS 248)

Experts

- Auditor did not seek expert advice, (AS 174)

Exploration Costs

- No indication of any work performed by auditor regarding source of item, the details behind it, any examination of supporting documents, or any other substantive audit work, (AS 196–2)

Extraordinary Income

- Improper netting of extraordinary and ordinary items of income, (AS 173–1)
- Inclusion with ordinary income, (AS 248)

Finders Fees (See "Undisclosed Fees")

Generally Accepted Auditing Standards (See also "Statements on Auditing Procedure" and "Statements on Auditing Standards")

- Commission will not prescribe audit scope or procedures to be followed in the audit of various types of issuers of securities, (AS 19)

Guarantees (See "Contingent Liabilities")

Imputed Interest

- Improperly low interest rates used in discounting future lease payments; auditor failed to gather sufficient competent evidential matter to conclude that interest rates used were proper, (AS 238–1)

Independence

- Partner had direct or material indirect financial interest in client, (AS 28, AS 215, AS 229)
- Auditor made no examination of registrant's books and accepted financial statement prepared by registrant without question, (AS 48)
- Accountant was so enmeshed in the promotion of his client that he could no longer be considered independent, (AS 68)
- Auditor certified financial statements of a company in which his audit partner was a promoter, principal officer and controlling stockholder, (AS 82)
- Auditor was an employee of a subsidiary of his client, (AS 91)
- Auditor lacked independence, (AS 97, AS 110, AS 204)
- Auditor had a creditor-debtor relationship with client or officer of company being audited, (AS 108, AS 229)
- Partners and employees of accounting firm received payments from the general partners of a client for participation in the purchase and sale of "hot issues" during the period of time when the financial statements were being prepared, (AS 144)
- Auditors involved in the organization and financing of a client, (AS 196–3)
- Audit manager and an associate jointly purchased stock of client, (AS 196–4)
- Audit partner signed guarantee agreements for a bank loan by a client used to pay overdue audit fee, (AS 196–4)
- Auditor held direct and indirect nominal interests in securities of certain audit clients, (AS 200)
- Auditor was related to an undisclosed principal of his client, (AS 248)

Insurance

- Audit failed to detect understated casualty claims reserves, (AS 241–1)
- Data contained in development schedules prepared by client should have been tested for completeness by tracing amounts from original claims files to the schedules, (AS 241–1)
- Improper premium recognition method used, (AS 241–1, AS 248)
- Insurance claim recorded at incorrect amount, (AS 292–1)

Intangible Assets

- Intangible assets overstated as a result of the arbitrary use of the par and stated value of shares of stock issued to acquire the assets, (AS 73)

Intercompany Transactions

- Audit program should have been expanded to test intercompany transactions in greater depth, (AS 173–4)
- Material amounts of intercompany inventory profits not eliminated from consolidated income, (AS 292–2)

Internal Control

- Comprehensive knowledge of the client's system of internal check and control is necessary, (AS 19)
- Representation by auditor that company's system of internal control was dependable was misleading, (AS 64)
- Inventory internal controls inadequate, (AS 196–1)
- Failure to properly review and report on significant internal control weaknesses of a broker-dealer, (AS 201)
- Reliance on a system of internal control which was demonstrably inadequate, (AS 209)
- Internal controls not adequately evaluated or tested in certain areas, (AS 285)

Inventory

- Observation of inventory endorsed as a required audit procedure, (AS 19)
- Failure to conduct physical inventory of work-in-process, (AS 64, AS 67)
- Retail inventory records falsified; inventory purchases not recorded in proper period, (AS 105)
- Failure to adequately control inventory count tags, (AS 157)
- Improper use of program cost method of accounting for cost of sales resulted in overstatement of inventory, (AS 173–2)
- Inventory tags created and altered to record quantities of nonexistent inventory, (AS 196–1)
- Failure of auditor to obtain sufficient assurance that the count medium was properly controlled, (AS 210)
- Inadequate write-off of obsolete inventory; inclusion in inventory

account of consigned equipment, fixed assets and trade-in equipment, (AS 212)
- Failure to perform adequate tests to determine value and ownership of the inventory purchased, (AS 227–3)
- Closing inventory figures falsified, (AS 230, AS 231, AS 232)
- Failure to adequately reduce value of inventory for obsolete merchandise, (AS 292–1)
- Material amounts of intercompany inventory profits not eliminated from consolidated income, (AS 292–2)
- Not acceptable under FIFO to use current costs for pricing inventory if inventory turnover is slow, (AS 292–2)

Irregularities (See "Errors and Irregularities")

Leases
- Inadequate allowance and provision established for doubtful lease receivables, (AS 176)
- Lease arrangements improperly reported as sales, (AS 212)
- Present value of long-term lease payments improperly recognized as sales, (AS 238)

Legal Opinion
- Auditors placed too great a reliance on the opinions of counsel and the representations of management with respect to the audit of extraordinary gains from the sale of two subsidiaries, (AS 173–1)
- Auditor should have been aware that certain factual premises underlying lawyer's opinion letter were incorrect, (AS 238–1)

Management (Accountants as Members of Management)
- Responsibility of a corporate officer who is also a certified public accountant, (AS 186, AS 239)
- Officer of a commodity trading firm offered and sold unregistered investment contracts by means of false and misleading statements, (AS 202)
- Undisclosed "kick-back" of a substantial portion of the audit fee to an officer of the company; audit based solely on a review of workpapers prepared by management, (AS 214)
- Violations of the anti-fraud provision of the federal securities laws, (AS 216, As 217)
- Officer played significant role in federal securities law violations, (AS 222)
- Purchasers of unregistered shares of stock concealed in an effort to make it appear that the sales were not subject to registration requirements of the Securities Act, (AS 224)
- Closing inventory figures false, (AS 230, AS 231, AS 232)

Management Representation Letter
- Management has a duty to verify facts before signing representation letter, (AS 255)
- Auditor failed to obtain management representation letter, (AS 282)

Management Representations
- Overreliance on management representations by auditor, (AS 78, AS 153A, AS 173–5, AS 227, AS 238–1, AS 238–2, AS 241–1, AS 241–2, AS 282, AS 285)
- Auditors placed too great a reliance on the opinions of counsel and the representations of management with respect to the audit of extraordinary gains from the sale of two subsidiaries, (AS 173–1)
- Auditor should have refused to rely upon any representations made by the President of the company when confronted with evidence that he had diverted corporate funds to his family corporation, (AS 209)
- Audit based solely on a review of workpapers prepared by management, (AS 214)
- Audit inadequate because of overreliance on management representations and a failure to obtain sufficient competent evidential matter, (AS 248)
- Auditor accepted various management representations with little or no verification or documentation, (AS 292–1, AS 292–2)

Manipulations (Market)
- Auditor facilitated manipulation of trading market, (AS 246)
- Accountant engaged in a scheme to raise and maintain artificially the price of common stock of a company to induce purchase and sales of the stock by others, (AS 260)

Matching Concept
- Deferrals of start-up costs did not appropriately match revenues against costs associated with those revenues, (AS 238–1)

Merger (of Accounting Firms)
- Audit firm's pre-combination examination procedures believed to be inadequate, (AS 196)

Nonmonetary Transactions
- Recording of income was unwarranted because the exchange represented the substitution of an investment in one form for essentially the same investment in another form, (AS 173–4)

Notification
- Accountant's duty to notify the Commission of material adverse changes in unaudited financial statements, (AS 173–1)

Offering Circular
- Failure to exercise appropriate diligence in reviewing issuer's offering circulars, (AS 208)

Other Auditor (See "Correspondent Auditor" and "Reliance on Another Auditor")

Partner's Review
- Involvement of partners in the review of audits is, in the Commission's view, a necessary element of sound auditing practice, (AS 196)

Payables
- Unrecorded accounts payable, (AS 105, AS 153A)
- Liability for construction loan not reported, (AS 227–2)
- Audit fee not accrued even though the amount was clearly material, (AS 283)
- Audit failed to detect unrecorded liabilities, (AS 288)

Percentage of Completion Method
- Application of percentage of completion accounting method was inappropriate, (AS 173–1)
- Allocation of the contract price between module manufacture and installation was arbitrary, (AS 173–5)
- Standard cost sheets of the stage completed were falsified to reflect an unrealistically low cost to construct a house; no adequate test performed by auditors, (AS 227–3)

Planning and Supervision
- Care should be given to the organization of the audit team so that responsibilities are clearly defined, (AS 153A)
- Inadequate supervision of audit personnel, (AS 241–1, AS 285)

Pooling
- Incorrect use of pooling method; inadequate audit, (AS 248)

Post Audit Review
- Auditors failed to make appropriate use of information gained from a post audit review, (196–4)
- Post audit review failed to detect audit deficiencies, (AS 285)

Predecessor Auditor (See "Successor Auditor's Responsibilities")

Premium Recognition Method (See "Insurance")

Pre-Opening Costs (See "Deferred Assets")

Prior Period Adjustment
- Material prior period adjustment recorded without proper accounting or disclosure, (AS 252)

- Corrections of understated beginning inventories of pooled companies improperly treated as current income, (AS 292–2)

Proxy Statement

- Auditor must share responsibility for incomplete disclosure in proxy statement, (AS 157)
- Review of unaudited financial statements included in a proxy statement, (AS 173–1)

Quality Control

- Accounting firms that practice before the Commission are expected to adopt, implement and maintain a thorough system of quality control policies and procedures, (AS 285)

Receivables

- Confirmation of accounts and notes receivable endorsed as a required audit procedure, (AS 19)
- Receivables from affiliates improperly included with trade receivables, (AS 78, AS 255)
- Audit tests of unbilled receivables not adequate or sufficiently documented, (AS 173–1)
- Nearly all of the client's sales and resulting accounts receivable were either improperly recorded or fictitious; auditors unduly relied on management representations without independent verification of their accuracy, (AS 173–5)
- Inadequate allowance and provision established for doubtful lease receivables, (AS 176)
- Interest receivable accrued for bonds that were in default, (AS 179A)
- Confirmations intercepted by client personnel and fictitious responses returned, (AS 196–2)
- No apparent attempt to confirm contractural receivables with the individual plan investors, (AS 196–2)
- Supporting documentation for agent receivables not requested, (AS 196–2)
- Substantial provision for losses on affiliate receivables necessary, (AS 196–3)
- Failure to obtain confirmation of demurrage receivables, (AS 209)
- Alternative confirmation procedures restricted, no aging tests performed, (AS 212)
- Workout borrowers had virtually no assets other than projects financed by the lender, (AS 238–2)
- Allowance for uncollectible receivables inadequate, (AS 239, AS 262)
- Conditional corporate receivable improperly reported as an asset, (AS 246)
- Failure to complete audit of accounts receivable, (AS 285)

Registration

- Report of investigation pursuant to Section 8(e) of the Securities Act of 1933, (AS 64)
- Misuse of proceeds, (AS 196–3)

Regulation S–X

- Rule 1–02, (AS 227)
- Rule 2–01, (AS 196, AS 275)
- Rule 2–01(b), (AS 91)
- Rule 2–02, (AS 275)
- Rule 2–05, (AS 91)
- Rule 3–14, (AS 179A)
- Rule 3–16(r), (AS 282)
- Rule 5–02.3 (AS 173–2)
- Rule 5–02.6, (AS 173–2)
- General reference, (AS 97, AS 275)

Related Party Transactions

- Presence of transactions between affiliates raises questions as to the meaningfulness of financial information, (AS 153)
- Certain transactions were incorrectly reported as bona fide arm's length business transactions, (AS 167)
- Auditors should be especially alert to the possibility of a related party transaction when an ongoing relationship exists, (AS 173–3)
- No disclosures made in financial statements of the relationship of certain officers and directors to the corporations from which investments were purchased, (AS 227–1)
- Auditor failed to clearly understand the nature of the relationship between related entities, (AS 227–2)
- Material amounts of income were recognized from undisclosed related party transactions, (AS 252)
- Window dressing transactions not discovered by auditor because of failure to audit related party transactions, (AS 283)

Reliance on Another Auditor

- Financial statements were certified (without having audited or seen the books and records) in reliance on an audit conducted by another accountant, (AS 91)
- Auditor relied on predecessor auditor's opinion for valuation of assets without contacting him or reviewing his workpapers, (AS 282)
- Auditor purchased workpapers of terminated predecessor, (AS 283)

Repairs and Maintenance

- Capitalization of repairs and maintenance expense improper; inadequate audit, (AS 288)

Representations (See "Management Representations")

Representations Made to Commission's Staff

- Accountant testified falsely in a Commission investigation, (AS 88)
- Staff's advice sought concerning auditor's continued independence without providing the staff with all material facts, (AS 157)
- Unverified statements by auditor to staff constitute unacceptable professional behavior in practice before the Commission, (AS 173–5)

Reserves

- Failure to include a provision for unrecoverable costs resulting from product guarantees, (AS 64)
- Reserve for losses and contingencies materially inadequate, (AS 78)
- Auditor should have resolved question of the propriety of a charging ordinary maintenance costs off against a liability reserve for rehabilitation costs, (AS 173–4)
- Establishment of certain reserves was not an adequate substitute for disclosure, (AS 173–3)
- Accounts receivable reserves inadequate, (AS 176, AS 239, AS 262)
- Substantial provision for losses on affiliate receivables necessary, (AS 196–3)
- Allowances for future maintenance costs inadequate, (AS 238–1)
- Casualty insurance companies' loss reserves understated, (AS 241–1)

Revenue

- Propriety of recognizing income is questioned where payment would not have been made absent advances by the investor company, (AS 173–3)
- Mere formal compliance with the technical legal requirement of a sale is not necessarily sufficient to justify revenue recognition, (AS 173–4)
- Improper recognition of revenue with respect to the manufacture and installation of modular dwelling units, (AS 174)
- Accounting treatment of charter-hire revenues questionable, (AS 209)
- Improper premium recognition method used, (AS 241–1, AS 248)

Review (See "Partner's Review" and "Planning and Supervision")

Rules Cited (See "Securities Act of 1933" and "Securities Exchange Act of 1934")

Rules of Practice before the Commission (17 CFR 201 et seq.)

- Rule 6, (AS 248)
- Rule 8, (AS 196, AS 209, AS 227, AS 285, AS 292)
- Rule 11, (AS 248)
- Rule 16, (AS 196, AS 209, AS 227, AS 292)
- Rule 17, (AS 127, AS 205)

Sales

- Sale of leasehold interest in properties, (AS 153)

- Terms of agreement had not shifted risk of loss to buyer, (AS 153)
- Sales transactions not substantially completed as of the year-end, (AS 166)
- Auditors placed too great a reliance on the opinions of counsel and the representations of management with respect to the audit of extraordinary gains from the sale of two subsidiaries, (AS 173–1)
- Insufficient conversion of interest in the property to justify treatment of the transaction as a sale, (AS 173–4)
- Sales recognized on the basis of a feasibility letter, (AS 173–5)
- Company's future profits sold, (As 196–2)
- Merchandise shipped after cut-off date, (AS 196–4)
- Proceeds of a bank loan recorded as revenue, (AS 196–4)
- Fictitious sales; auditor failed to coordinate inventory and sales work, (AS 212)
- Purchaser did not have sufficient economic interest in the property to justify the current recognition of the sale by the seller; auditor should have obtained current financial statements to determine purchaser's ability to fulfill sales contract, (AS 227–3)
- Audit work should have been extended because of suspicious circumstances surrounding purported sales of oil and gas properties, (AS 248)
- Improper recording of sales where no merchandise was shipped or segregated and customer could cancel order at any time prior to shipment, (AS 292–1)

Securities Act of 1933 (15 U.S.C. 77a et seq., as amended)

- Sections cited:
  3(b), (AS 208);
  5(a), (AS 161, AS 192, AS 202, AS 204, AS 221, AS 222, AS 224, AS 265);
  5(c), (AS 161, AS 192, AS 202, AS 204, AS 221, AS 222, AS 224, AS 265);
  8(d), (AS 48, AS 64);
  8(e), (AS 64);
  11, (AS 64);
  12(2), (AS 64);
  13, (AS 64);
  17(a), (AS 144, AS 158, AS 161, AS 179A, AS 182, AS 192, AS 202, AS 204, AS 207, AS 215, AS 216, AS 217, AS 221, AS 222, AS 224, AS 265, AS 273, AS 275);
  19(a), (AS 275)
- Rules cited (17 CFR 230 et seq.):
  463, (AS 196–2)

Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended)

- Sections cited:
  9(a), (AS 260);
  10(b), (AS 139, AS 144, AS 158, AS 161, AS 167, AS 168, AS 179A, AS 182, AS 192, AS 202, AS 204, AS 207, AS 212, AS 214, AS 215, AS 216, AS 217, AS 221, AS 222, AS 224, AS 230, AS 231, AS 232, AS 252, AS 260, AS 265, AS 273, AS 275);
  12(g), (AS 212, AS 273);
  13(a), (AS 167, AS 168, AS 186, AS 207, AS 212, AS 214, AS 215, AS 230, AS 231, AS 232, AS 239, AS 267, AS 273, AS 288);
  13(b), (AS 267, AS 275);
  14(a), (AS 157, AS 186, AS 207, AS 214, AS 230, AS 231, AS 232);
  15(c), (AS 283);
  15(d), (AS 239);
  17(a), (AS 51, AS 110, AS 201, AS 283);
  19(a), (AS 88);
  21(a), (AS 19, AS 174);
  23(a), (AS 275);
  32(a), (AS 207)
- Rules cited (17 CFR 240 et seq.)
  10b–5, (AS 139, AS 144, AS 158, AS 161, AS 167, AS 179A, AS 182, AS 192, AS 202, AS 204, AS 207, AS 212, AS 215, AS 216, AS 217, AS 221, AS 222, AS 224, AS 230, AS 231, AS 232, AS 252, AS 260, AS 265, AS 275);
  13a–1, (AS 167, AS 186, AS 212, AS 215, AS 230, AS 231, AS 232);
  13a–11, (AS 230, AS 231, AS 232);
  13a–13, (AS 186, AS 230, AS 231, AS 232);
  14a–3, (AS 186, AS 230, AS 231, AS 232);
  14a–9, (AS 157, AS 186, AS 230, AS 231, AS 232);
  15c3–1, (AS 241, AS 283);
  17a–5, (AS 51, AS 59, AS 108, AS 109, AS 110, AS 143, AS 160, AS 201, AS 233, AS 241);
  17a–13, (AS 283)

Security Agreements

- Disclosure of security agreements inadequate, (AS 241)

Statements on Auditing Procedure ("SAP")

- SAP (1951 Codification), (AS 97)
- SAP No. 33, (AS 153, AS 227–2, AS 248)
- SAP No. 33, Ch. 6, (AS 153A)
- SAP No. 33, Ch. 9, (AS 153A)
- SAP No. 38, (AS 179, AS 179A)
- SAP No. 41, (AS 227–3)

Statements on Auditing Standards ("SAS")

- SAS No. 1, Sect. 110, (AS 153)
- SAS No. 1, Sect. 150, (AS 174–5, AS 210, AS 227–2)
- SAS No. 1, Sect. 230, (AS 153)
- SAS No. 1, Sect. 330, (AS 153A)
- SAS No. 1, Sect. 331, (AS 173–1)
- SAS No. 1, Sect. 338, (AS 173–1, AS 288)
- SAS No. 1, Sect. 320, (AS 241, AS 285)
- SAS No. 1, Sect. 516, (AS 179A)
- SAS No. 1, Sect. 561, (AS 173–5, AS 227–3, AS 241–2)
- SAS No. 3, (AS 285)
- SAS No. 4, (AS 153A, AS 285)
- SAS No. 6, (AS 227–2)
- SAS No. 19, (AS 282)
- SAS No. 25, (AS 285)

Subsequent Discovery of Facts

- Auditor took no steps to reexamine or otherwise take a fresh look at prior audit, (AS 173–1)
- Auditor's duty to disclose subsequently acquired information which existed at the date of the auditor's report, (AS 173–5)
- Auditor failed to withdraw prior reports based on subsequently discovered facts, (AS 196–4)
- Auditors required to assure that there is disclosure of certain newly discovered facts, and their impact on the financial statements, (AS 227–3)
- Failure to assure that adequate disclosure of omissions and misstatements in the financial statements was made, (AS 241–2)

Substance Over Form

- Importance of substance over form in determining accounting principles to be applied to particular transactions and situations, (AS 173)

Successor Auditor's Responsibilities

- Communication between accounting firms was not as complete as it should have been, (AS 153)
- Information pertaining to the integrity of management should be communicated between predecessor and successor auditors, (AS 173–1)
- Duty to closely examine the working papers of the predecessor auditors for evidence of substantive disagreements with management and for other unreconciled auditing problems, (AS 209)
- Failed to communicate with predecessor auditor, (AS 282)

Supervision of Audit Personnel (See "Planning and Supervision")

Testimony (See "Representations Made to Commission's Staff")

Treasury Stock

- Treasury stock recorded as an asset, (AS 179A)

Unaudited Financial Statements

- Auditor should have insisted on revised financial statements being sent to shareholders, (AS 173–1)

Undisclosed Fees

- Accountant recommended to clients and others purchase of investment

contracts without disclosing he was paid a substantial fee for each sale consummated, (AS 129, AS 131)
- Partners and employees of accounting firm received payments from the general partners of a client for participation in the purchase and sale of "hot issues," (AS 144)

Window Dressing Transactions

- Respondents should have clarified by financial statement notes or other acceptable methods, the items "cash" and "notes payable" on the year-end balance sheets to reflect the effect on those items of certain borrowings and their repayment, (AS 191)
- Not discovered by auditor because of failure to audit related party transactions, (AS 283)

Working Papers

- Alteration of working papers after investigation began, (AS 108)
- Failure to document either discussions with management or the scope of review of sales projections, (AS 173–2)
- Insufficient information in the workpapers as to the basis of calculations to support the adequacy of the reserve for possible losses on mortgage loans, (AS 173–3)
- Alterations and additions to the workpapers should be properly documented and indicate the time and circumstances under which they are made, [AS 196, AS 209)
- No indication of any work performed by auditor regarding source of item, the details behind it, any examination of supporting documents, or any other substantive audit work, (AS 196–2)
- Auditor on what he understood to be instructions from one of his superiors improperly removed from the workpapers an audit document relating to the existence of guarantees by two partners of his firm of a bank loan to the client whose financial statements were the subject of the engagement, (AS 200)
- Certain workpapers were in an incomplete and disorganized condition, including a lack of cross references and proper documentations, and unnumbered, undated and uninitialled workpapers, (AS 285)
- Working papers failed to permit reasonable identification of work done; consultations not documented, (AS 288)
- Audit workpapers did not indicate that auditor correlated audit procedures with known internal control weaknesses, (AS 292–2)

Write Downs

- Investment seriously impaired, (AS 173–4)

APPENDIX B.—LIST OF ENFORCEMENT RELATED ACCOUNTING SERIES RELEASES

Accounting series release No.	
19	In the Matter of McKesson & Robbins, Inc.—Summary of findings and conclusions (Price Waterhouse & Co.).
28	Findings and Opinion of the Commission in the Matter of proceedings under Rule 2(e) of the Rules of Practice, to determine whether the privilege of Kenneth N. Logan to practice as an accountant before the Securities and Exchange Commission should be denied, temporarily or permanently.
48	Findings and Opinion of the Commission in the Matter of C. Cecil Bryant, proceeding pursuant to Rule 2(e), Rules of Practice—Permanent disqualification of accountant from practice before the Commission.
51	Disposition of Rule 2(e) proceedings against certifying accountant failing to observe appropriate audit requirements as to financial statements of broker-dealer under Rule X-17A-5 [illegible].
59	Findings and Opinion of the Commission in the Matter of proceeding under Rule 2(e) of the Rules of Practice, to determine whether the privilege of Williams and Kingsolver, to practice as accountants before the Securities and Exchange Commission should be denied, temporarily or permanently (Oliver M. Williams).
64	In the Matter of Drayer-Hanson, Incorporated—Report of investigation pursuant to Section 8(e) of the Securities Act of 1933, File No. 2–6670 (Barrow Wade Guthrie & Co.).
67	Findings and Opinion of the Commission in the Matter of proceedings under Rule 2(e) of the Rules of Practice, to determine whether the privilege of Barrow, Wade, Guthrie & Co., Henry H. Dalton and Everett L. Mangam to practice as accountants before the Securities and Exchange Commission should be denied, temporarily or permanently.
68	Findings and Opinion of the Commission in the Matter of proceedings under Rule 2(e) of the Rules of Practice to determine whether the privilege of F. G. Masquelette & Co. and J. E. Cassel to practice as accountants before the Securities and Exchange Commission should be denied, temporarily or permanently.
73	Findings and Opinion of the Commission in the Matter of Haskins & Sells and Andrew Stewart, File No. 4–66, (Rules of Practice—Rule 2(e)).
77	Disposition of Rule 2(e) proceedings against certifying accountant alleged to have failed to observe appropriate audit requirements as to financial statements of broker-dealer under Rule X-17A-5 under the Securities Exchange Act of 1934 (unnamed).
78	Findings and Opinion of the Commission in the Matter of Touche, Niven, Bailey & Smart, Henry Eugene Mendes, William W. Wernitz and Oscar Blomquist, proceeding pursuant to Rule 2(e), Rules of Practice.
82	Findings and Opinion of the Commission in the Matter of Bolt and Shapiro, Theodore Bolt, and Bernard L. Shapiro, proceeding pursuant to Rule 2(e), Rules of Practice.
87	In the Matter of Bolt and Shapiro, Theodore Bolt, and Bernard L. Shapiro. Order readmitting accountant to practice before the Commission.
88	Findings and Opinion of the Commission in the Matter of Myron Swartz, pursuant to Rule 2(e), Rules of Practice.

APPENDIX B.—LIST OF ENFORCEMENT RELATED ACCOUNTING SERIES RELEASES—Continued

Accounting series release No.	
91	Findings and Opinion of the Commission in the Matter of Arthur Levison and Levison and Company, proceeding pursuant to Rule 2(e), Rules of Practice.
92	Findings and Opinion of the Commission in the Matter of Morton I. Myers, pursuant to Rule 2(e), Rules of Practice.
94	Order in the Matter of Nathan Wechsler, pursuant to Rule 2(e), Rules of Practice.
97	Findings and Opinion of the Commission in the Matter of Harmon R. Stone, pursuant to Rule 2(e), Rules of Practice.
99	Order dismissing proceedings in the Matter of Roberts & Morrow, pursuant to Rule 2(e), Rules of Practice.
101	Order readmitting accountant to practice before Commission in the Matter of Morton I. Myers, pursuant to Rule 2(e), Rules of Practice.
104	Order in the Matter of John C. Hurdman, doing business as Hurdman and Company.
105	Order accepting withdrawal from practice and dismissing proceedings—In the Matter of Homer E. Kerlin, pursuant to Rule 2(e), Rules of Practice.
108	Order in the Matter of Nicolas J. Rettery, a certified public accountant.
109	Order in the Matter of Edwin Aronowitz, a public accountant.
110	Order in the Matter of Meyer Weiner, a certified public accountant.
127	Notice that initial decision has become final in the Matter of Martin L. Sanchez.
129	Order accepting resignation from Commission practice in the Matter of Barry L. Kessler.
131	Order accepting resignation from Commission practice in the Matter of Robert Trivision.
139	Order accepting resignation from Commission practice in the Matter of Ralph Duckworth.
143	Findings and Order imposing remedial sanction in the Matter of Robert Lynn Burroughs.
144	Order instituting proceedings and imposing remedial sanctions in the Matter of Laventhol Krekstein Horwath & Horwath.
153	Findings, Opinion and Order accepting waiver and consent and imposing remedial sanctions in the Matter of Touche Ross & Co.
153A	Opinion and order pursuant to rule 2(e) of the Commission's Rules of Practice in the Matter of Touche, Ross & Co., Armin J. Frankel, and Edwin Heft.
157	Findings and Opinion accepting waiver and consent and imposing remedial sanctions in the Matter of Arthur Anderson & Co.
158	Order accepting sworn undertaking not to engage in practice before the Commission in the Matter of Adolph F. Speer.
160	Findings and Order suspending from Commission practice in the Matter of Loux, Goss & Co. and Galen Lloyd Goss.
161	Order permanently suspending accountant from appearance or practice before Commission in the Matter of Jerry A. McFarland.
167	Order instituting proceedings and imposing remedial sanctions in the Matter of Westheimer, Fine, Berger & Co.
168	Order instituting proceedings and imposing remedial sanctions in the Matter of Benjamin Botwinick & Co. and Alvin I. Mindes.

APPENDIX B.—LIST OF ENFORCEMENT RELATED ACCOUNTING SERIES RELEASES—Continued

Accounting series release No.	
170	Order suspending accountant from appearance or practice before the Commission in the Matter of Tubber T. Olude.
173	Opinion and Order in a proceeding pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Peat, Marwick, Mitchell & Co.
173A	Amendment to opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Peat, Marwick, Mitchell & Co.
174	Opinion and Order instituting proceedings and imposing remedial sanctions in the Matter of Harris, Kerr, Forester & Co.
176	Findings and Order imposing remedial sanctions in the Matter of Hertz, Herson & Co.
179	(Omitted; replaced by ASR 179A).
179A	Amended Order suspending accountant from appearance or practice before the Commission in the Matter of Thomas R. Mathews (Replaced ASR 179).
182	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Charles H. Southerland.
186	Order instituting proceeding and imposing sanctions pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Robet L. Ingis.
187	Order accepting resignation from Commission practice as an accountant in the Matter of Bill D. Steele (Rule 2(e) of the Rules of Practice).
191	Findings, Opinion and Order imposing remedial sanctions in the Matter of Rudolph, Palitz & Co. and Harvey B. Spiegel.
192	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Archie S. Barnhill.
196	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Seidman & Seidman, Al A. Finci, Neill W. Freeman, Arthur Glatzer and Joseph DeArmas.
196A	Amendment to the opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Seidman & Seidman (ASR 196).
198	Order accepting resignation from Commission practice as an accountant in the Matter of Leigh A. Verley.
199	Order suspending accountant from appearance or practice before the Commission in the Matter of George E. Weaver.
200	Order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Richard Sommer.
201	Order accepting resignation from Commission practice as accountant in the Matter of Paul D. Klinger.
202	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Phillip Shelby Merkatz.
204	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of E. Veon Scott.
206	Notice that initial decision has become final in the Matter of Robert N. Campbell.
207	Order instituting proceeding and permanently barring from practice before the Commission in the Matter of Joseph Scansaroli.

APPENDIX B.—LIST OF ENFORCEMENT RELATED ACCOUNTING SERIES RELEASES—Continued

Accounting series release No.	
208	Order accepting resignation from Commission practice as accountant in the Matter of Bernard C. Zipern.
209	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of S. D. Leidesdorf & Co., Kenneth Larsen, Joseph Grendi.
210	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Reich, Weiner & Co.
212	Order instituting proceedings and imposing remedial sanctions in the Matter of Eugene Testa and W. A. Stebbins.
213	Order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Maurice Rosen.
214	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Marvin F. Finzenbaum.
215	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Phillip J. Wolfson.
216	Order accepting resignation from Commission practice as an accountant in the Matter of John W. Hosford, d/b/a John W. Hosford & Co.
217	Order accepting resignation from Commission practice as an accountant in the Matter of Wilbert S. Fox.
221	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of C. Wayne Litchfield.
222	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Ernest C. Neuman.
223	Opinion and order pursuant to the Commission's Rules of Practice in the matter of Thomas Leger & Company and Thomas Leger.
224	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Allen M. Lindenberg.
227	Order instituting proceedings and opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Laventhol & Horwath, Louis Goldfine, Jeffrey Lipschutz, and Jack E. Klein.
229	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Luke J. LaLande, John F. Swart, Jr., and William A. Owens.
230	Order accepting resignation from Commission practice as an accountant in the Matter of Bruce Flamm.
231	Order accepting resignation from Commission practice as an accountant in the Matter of Harvey Fein.
232	Order accepting resignation from Commission practice as an accountant in the Matter of Stephen Knaapler.
233	Order for proceedings and opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Norman A. Weiner, C.P.A.
238	Litigation involving Price Waterhouse & Co., Roger Bruttomesso, Michael Bright, R. W. Faulk and M. B. Kearney.
239	Opinion and order pursuant to Rule 2(e)(1) of Commission's Rules of Practice in the Matter of Paul N. Conner.
240	Order granting accountant's application for reinstatement to practice before the Commission in the Matter of Thomas R. Mathews.

APPENDIX B.—LIST OF ENFORCEMENT RELATED ACCOUNTING SERIES RELEASES—Continued

Accounting series release No.	
241	Order instituting proceedings and opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Haskins and Sells, Eugene Cobaugh, Timothy FitzGerald and Billy R. Thomas.
243	Order accepting resignation from Commission practice as an accountant in the Matter of Clifford E. Roop.
246	Order instituting and settling Rule 2(e) proceedings in the matter of Stephen A. Yordon.
248	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Ernst & Ernst, Cleveland, Ohio, Clarence T. Isensee, and John F. Maurer.
249	Order vacating temporary suspension order and dismissing proceedings in the Matter of Julian F. Martin.
252	Order accepting resignation from Commission practice as an accountant in the Matter of Donald R. Ford.
255	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Gerald J. Flannelly.
256	Order granting accountant's application for reinstatement to practice before the Commission in the Matter of Bruce Flamm.
260	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Gerald Greenspan.
262	Order instituting and settling Rule 2(e) proceeding in the Matter of Phillip Stevan Lieberman.
263	Order terminating proceeding in the Matter of S. D. Leidesdorf & Co.
265	Order instituting proceeding and accepting resignation from practice and appearance before the Commission in the Matter of Lawrence J. Stern.
266	Order dismissing proceeding in the Matter of James M. Lynch.
267	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Martin E. Davis.
273	Litigation involving Martineau and Bushman.
275	Notice of permanent disqualification from appearance or practice before the Commission in the Matter of Darrel L. Nielsen.
282	Opinion and order pursuant to Rule 2 (e) of the Commission's Rules of Practice in the Matter of Saul Glazer.
283	Order instituting and settling Rule 2(e) proceeding in the Matter of Norlin G. Boyum.
285	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Lester Witte & Co., and John P. Shea.
288	Opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Kenneth Leventhal & Company and Joseph F. King.
292	Order instituting proceedings and opinion and order pursuant to Rule 2(e) of the Commission's Rules of Practice in the Matter of Arthur Andersen & Co.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 82-93]

Changes in the Field Organization of the Customs Service in New Orleans Region and San Francisco Region

AGENCY: Customs Service, Treasury.
ACTION: Final rule.

SUMMARY: This rule amends the Customs Service regulations relating to customs regions, districts and ports, and the rules on entry, and clearance of vessels, to change the field organization in the New Orleans Region and the San Francisco Region. The changes are part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: June 16, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Gramercy, Louisiana

Gramercy, Louisiana, is currently a very busy Customs station in the New Orleans, Louisiana, Customs Region (Region V). In reviewing the application of the South Louisiana Port Commission for designation of Gramercy as a Customs port of entry, Customs has found that the workload at this station has increased significantly over the past few years and now far exceeds the established workload standards used by Customs for creating a new port of entry. The Gramercy station now handles more than 2,000 cargo vessels annually. The minimum requirement recommended in Customs workload standards is 350 cargo vessels annually. Accordingly, Gramercy, Louisiana, should be established as a Customs port of entry.

Juneau and Anchorage, Alaska

As part of a general revision of the Customs Regulations, by T.D. 77-241, published in the **Federal Register** on October 5, 1977 (42 FR 54274), Part I of Title 19, Code of Federal Regulations (19 CFR Part I), which had set forth the general provisions relating to the operation of the Customs Service, including a listing of the Customs regions, districts, ports, and stations, was replaced with a new Part 101 (19 CFR Part 101).

One of the changes of T.D. 77-241 amended § 101.4, Customs Regulations, (19 CFR 101.4), to indicate that Annette Island, Eagle, Haines, Hyder, and Tok, Alaska, were Customs stations in the Anchorage, Alaska, District. Although this change, which was made to reflect the transfer of the district office from Juneau to Anchorage, was published in the **Federal Register**, the amendment to § 101.4 was never made, and that Customs Regulations section still incorrectly indicates that these Customs stations are in the Juneau District.

Section 101.4 is being amended to indicate that the Eagle, Haines, and Hyder stations are in the Anchorage District, rather than in the Juneau District.

To increase management effectiveness and adjust to the changing traffic patterns in Anchorage, Alaska, it is now considered desirable to abolish the Annette Island and Tok Customs stations. The abolishment of these Customs stations is further warranted by the fact that neither station has been staffed by Customs for some time now due to the lack of requests for services.

To provide the most economical and efficient service to the public and to meet the expanding needs of the importing public in the Anchorage area, it also has been determined to abolish Kodiak, Pelican, and Petersburg, as ports of entry in the Anchorage, Alaska, District, and to designate those three locations as Customs stations in the Anchorage District. All of these areas have peak activity during the summer fishing season and little or no activity at other times. Therefore, it is not practical or feasible that they be retained as Customs ports of entry.

It has been determined to abolish the port of Sand Point. The workload there is so small that it is not practical to retain that location as a Customs station.

Accordingly, to provide the most economical and efficient service to the public and to meet the expanding needs of Customs-related activities in the Gramercy, Louisiana, and Anchorage, Alaska, areas, Customs published a notice in the **Federal Register** on September 14, 1981 (46 FR 45625), proposing to change the field organization of the Customs Service as follows:

(1) In the New Orleans, Louisiana, Customs Region (Region V), (a) establish a new Customs port of entry at Gramercy, Louisiana; and (b) revoke the designation of Gramercy, Louisiana, as a Customs station.

(2) In the San Francisco, California, Customs Region (Region VIII), (a) revoke the designation of Annette Island and Tok, Alaska, as Customs stations under the jurisdiction of the Juneau, Alaska, District; (b) transfer jurisdiction of the Customs stations of Eagle, Haines, and Hyder, Alaska, from the Juneau to the Anchorage, Alaska, District; (c) revoke the designation of Kodiak, Pelican, Petersburg, and Sand Point, Alaska, as Customs ports of entry; and (d) designate Kodiak, Pelican, Petersburg, Barrow, Dutch Harbor, Fort Yukon, Kaktovik, Kenai, and Northway, Alaska, as Customs stations under the jurisdiction of the Anchorage, Alaska, District.

Only three comments were received in response to the notice. Two commenters were concerned with the port codes used by the Bureau of Census for reporting imports for statistical purposes. It was requested that the Gramercy port code remain 20-10, and that the port-limits continue to include the area along the Mississippi River from La Place to Uncle Sam, Louisiana (mileage markers 135 through 160).

The coordinates stated in the notice intersect mileage markers 129 and 165, but the additional markers do not include any additional active work sites. Further, the port code will be maintained as 20-10.

A third commenter requests that the Gramercy port limits be expanded to the area included in the South Louisiana Port Commission, and that the new port of entry be known as the "South Louisiana Port."

One aspect of Customs mission is to provide service to the public when and where it is required. The establishment of new ports of entry in various locations throughout the country is a necessary response to the public demand for increased Customs service. Further, Customs does have minimum workload and facility standards for the establishment of new ports of entry which are applied to prevent the unjustified proliferation of new ports. Prior to establishing ports of entry, Customs carefully reviews the data submitted in support of each application to verify that it meets the criteria. In evaluating the request to establish a Customs port of entry at Gramercy, Louisiana, Customs must be guided by the actual need for the service compared with the service which presently exists. While we appreciate the concerns of the commenter, Customs believes the proposed Gramercy port boundaries are appropriate in light of the jurisdictions of the existing ports of entry of Baton Rouge and New Orleans, Louisiana. The

suggested port name of "South Louisiana Port" is too vague to define the actual port location and could cause confusion regarding the port's relationship to the New Orleans and Baton Rouge ports of entry. Customs believes that the public is better served by a name that specifies the geographical entity where the service will be available.

No comments were received relating to the proposals concerning the Anchorage, Alaska, District.

Accordingly, Customs has determined to adopt the changes as proposed.

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449), the field organization of the Customs Service is changed as follows:

(1) A new Customs port of entry is established at Gramercy, Louisiana, in the New Orleans, Louisiana, Customs District. The geographical limits of the Gramercy, Louisiana, Customs port of entry include that portion of the Parishes of St. Charles, St. John the Baptist, and St. James, lying within the area bounded on the East where the longitudinal line of 90°27'30" intersects on the North at the latitudinal line of 30°06' and intersects on the South at the latitudinal line of 29°57'; and bounded on the West where the longitudinal line of 90°54' intersects on the North at the latitudinal line of 30°06' an intersects on the South at the latitudinal line of 29°57'.

(2) The Customs station at Gramercy, Louisiana, is abolished.

(3) The Customs stations at Annette Island and Tok, Alaska, in the Juneau, Alaska, District are abolished.

(4) The jurisdiction of the Customs stations of Eagle, Haines, and Hyder, Alaska, is transferred from the Juneau, Alaska, District to the Anchorage, Alaska, District.

(5) The Customs ports of entry at Kodiak, Pelican, Petersburg, and Sand Point, Alaska, are abolished.

(6) Kodiak, Pelican, Petersburg, Barrow, Dutch Harbor, Fort Yukon, Kaktovik, Kenai, and Northway, Alaska, are established as Customs stations under the jurisdiction of the Anchorage, Alaska, District.

These changes will update the description of the Customs field organization in the Customs Regulations. They also will help Customs to use its resources more effectively by abolishing Customs ports and stations no longer needed and by creating new stations where they are needed.

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

§ 101.3 [Amended]

1. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended (1) by adding "Gramercy, Louisiana, including territory described in T.D. 82–93." directly below "Chattanooga, Tenn." in the column headed "Ports of entry" in the New Orleans, Louisiana, District (Region V); and (2) by removing the ports of entry of "Kodiak, Alaska (T.D. 55206)." "Pelican (E.O. 10238, Apr. 27, 1951; 16 FR 3627)." "Petersburg (E.O. 4132, Jan. 24, 1925)." and "Sand Point (T.D. 53514)." directly below "Ketchikan, Alaska, including territory described in T.D. 74–100.", in the column headed "Ports of entry" in the Anchorage, Alaska, District (Region VIII).

§ 101.4 [Amended]

2. To reflect the changes relating to the entry and clearance of vessels at Customs stations, the list of Customs stations in § 101.4(c), Customs Regulations (19 CFR 101.4(c)), is amended by: (1) Removing "Gramercy, La." directly below "Biloxi, Miss." in the column headed "Customs stations", and deleting "New Orleans." directly below "Mobile." in the column headed "Port of entry having supervision", in the New Orleans, Louisiana, District; and (2) by removing "Annette Island, Alaska", "Eagle, Alaska", "Haines, Alaska", "Hyder, Alaska", and "Tok, Alaska", in the column headed "Customs stations" and "Ketchikan", "Fairbanks", "Dalton Cache", "Ketchikan", and "Fairbanks" in the column headed "Port of entry having supervision" and "Juneau, Alaska" directly below "San Francisco, Calif." under the column headed "District"; and (3) by inserting the following under the columns headed "District," "Customs stations," and "Ports of entry having supervision" directly below "San Francisco, Calif."

District	Customs stations	Port of entry having supervision
Anchorage, Alaska	Barrow, Alaska	Fairbanks.
	Dutch Harbor, Alaska.	Anchorage.
	Eagle, Alaska	Alcan.
	Fort Yukon, Alaska.	Fairbanks.
	Haines, Alaska	Dalton Cache.
	Hyder, Alaska	Ketchikan.
	Kaktovik (Barter Island), Alaska.	Fairbanks.
	Kenai (Nikiski), Alaska.	Anchorage.
	Kodiak, Alaska	Anchorage.
	Northway, Alaska	Alcan.
	Pelican, Alaska	Juneau.
	Petersburg, Alaska.	Wrangell.

Executive Order 12291

Because these amendments will not result in a "major rule" as defined in section 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, eliminates and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although these amendments may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because the establishment of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

Drafting Information

The principal authors of this document were Barbara E. Whiting and Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 101

Organization and functions (government agencies).

Dated: March 18, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 82-13462 Filed 5-14-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising its procedures for waiver of parole consideration by eliminating the requirement that a prisoner who fails either to apply for parole or sign a waiver form be seen by the Commission's hearing examiners. The revision is intended to simplify waiver procedures and avoid unnecessary hearings. Although these hearings are few in number, they can be very costly when they involve Federal prisoners in non-Federal institutions.

EFFECTIVE DATE: June 16, 1982.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, U.S. Parole Commission Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, MD, 20815, telephone: 301–492–5959.

SUPPLEMENTARY INFORMATION: The Parole Commission is simplifying its procedures for waiver of parole hearing by eliminating the provision that prisoners who neither apply for parole or formally waive parole consideration be interviewed by the Commission's representatives. The revision provides that any prisoner who either declines to apply for parole or refuses to formally waive parole consideration will be deemed to have waived parole consideration. Where a prisoner declines either to apply for or waive parole consideration, a memorandum to the prisoner's file will be prepared in each case noting that the prisoner has been advised of (1) his right to apply for parole consideration and (2) that failure to apply for parole is deemed as a waiver of parole consideration; and that the prisoner has declined to file a parole application or waiver.

This revision will avoid unnecessary hearings. Although these hearings are few in number, they can be very costly when they involve federal prisoners in non-federal institutions.

A prisoner who is deemed to have waived parole consideration under the revised procedure may later apply for parole and, under the terms set forth in 28 CFR 2.11(b), be heard during the Commission's next visit to the institution at which he is confined.

PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.11(c) is revised as follows:

§ 2.11 Application for parole; notice of hearing.

* * * * *

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: April 30, 1982.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 82-13329 Filed 5-14-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 82-040]

Written Warnings by Coast Guard Boarding Officers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 33 CFR Subpart 1.08, Written Warnings by Coast Guard Boarding Officers, to authorize the issuance of written warnings for violations of Visual Distress Signal regulations. The intended effect of this amendment is to emphasize the eductional rather than the punitive nature of the Coast Guard's enforcement posture regarding the regulation.

EFFECTIVE DATE: This amendment becomes effective May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Sobeck, Office of Boating, Public, and Consumer Affairs (G–BEL), U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, D.C. 20593, (202) 426–4176.

SUPPLEMENTARY INFORMATION: Since this amendment relates solely to agency policy and procedure, it is exempt from the notice and public comment requirements of 5 U.S.C. 553(b)(3)(A). Under the provisions of 5 U.S.C. 553(d), this rule may be made effective in less than 30 days. This amendment has been reviewed under Executive Order 12291 and the Department of Transportation's Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5) and has been determined not to be a major or significant rule. An economic evaluation has not been conducted since its impact is expected to be minimal. A possible savings may occur to certain boaters, in that they may receive a warning in lieu of a possible monetary penalty. Because no Notice of Proposed Rulemaking is required under 5 U.S.C. 553(b)(3)(A), this action is exempt from the Regulatory Flexibility Act (94 Stat. 1164). However, the requirements of that Act were taken into consideration, and it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

DISCUSSION: This warning procedure is being adopted because Coast Guard enforcement policy is tempered by an understanding of the problems being encountered by the boating public. Coast Guard policy permits the issuance of written warnings for certain violations of boating laws and regulations. These warnings are issued by the boarding officers who discover the violations. The issuance of a written warning, as opposed to an action for the assessment of a monetary penalty, has been determined to be an effective way for boarding officers to handle minor boating violations that involve first offenders who indicate that discrepancies will be quickly corrected.

There is a specific list of violations, in 33 CFR 1.08–1, for which a warning may be issued. This amendment will extend that list to include 33 CFR 175 Subpart C, Visual Distress Signals. It will authorize written warnings to be issued to operators of boats not in compliance with Federal Regulations for Visual Distress Signals, when good faith in bringing about compliance is demonstrated.

Since the list of "warnable" violations also includes rules concerning various topics and applies to certain commercial vessels, the term "boating safety" is deleted from § 1.08–1, Applicability. Also, since subparagraph (a)(2) of § 1.08–1 was intended to apply only to personal flotation devices, and not all equipment requirements, that subparagraph is made more specific by including the words "subpart B".

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Lieutenant (junior grade) Christopher M. Stratton, Project Manager, Office of Boating, Public, and Consumer Affairs, and Lieutenant Walter J. Brudzinski, Project Attorney, Office of the Chief Counsel.

List of Subjects in 33 CFR Part 1

Marine safety.

Final Regulations

In consideration of the foregoing, Part 1 of Title 33, Code of Federal Regulations is amended as follows:

PART 1—GENERAL PROVISIONS.

1. The authority citation for Subpart 1.08 is revised to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383 (5 U.S.C. 552); 14 U.S.C. 633; sec. 39, Pub. L. 92–75, 85 Stat. 221 (46 U.S.C. 1488); sec. 6 (b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b) and (n)(1).

2. By revising paragraph (a) introductory text, paragraph (a)(2) and by adding a new paragraph (a)(10) to § 1.08–1 to read as follows:

§ 1.08–1 Applicability.

(a) The regulations in this subpart apply to certain violations of the following statutes and regulations for which Coast Guard boarding officers are authorized to issue written warnings instead of recommending civil or criminal penalty procedures under subpart 1.07 of this part:

* * * * *

(2) 33 CFR Part 175, Subpart B and 46 CFR Subpart 25.25, Personal Flotation Devices.

* * * * *

(10) 33 CFR 175 Subpart C, Visual Distress Signals

* * * * *

Dated: April 20, 1982.

V. W. Driggers,

Captain, U.S. Coast Guard, Acting Chief, Office of Boarding, Public and Consumer Affairs.

[FR Doc. 82-13072 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2112-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces today final rulemaking on revisions to the Wisconsin State Implementation Plan (SIP). The revisions pertain to a variance from sections 154.13(4) (e) and (f), Wisconsin Administrative Code (WAC), for the W. H. Brady Company, located in Milwaukee, and to a variance from section NR 154.13(5)(a), WAC, from the Albany Carbide Corporation, located in Albany. The revisions were submitted to EPA by the State to satisfy the requirements of Part D of the Clean Air Act (Act). The purpose of this notice is to discuss EPA's evaluation of the variances and to proceed with final action approving these revisions to the Wisconsin SIP.

EFFECTIVE DATE: This action is effective July 16, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revisions, and other materials relating to this rulemaking are available for inspection at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, Room 2404, 401 M Street, S.W., Washington, D.C. 20460

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Comments on this action should be addressed to: Sharon Reinders, 312/886–6034.

SUPPLEMENTARY INFORMATION: Under Section 107 of the Act, EPA has designated certain areas in each State as not attaining National Ambient Air Quality Standards (NAAQS). On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), EPA designated certain areas in the State of Wisconsin as nonattainment areas for ozone. Milwaukee County, where the W. H. Brady Company is located, is designated as nonattainment for ozone.

For ozone nonattainment areas, Part D of the Act requires each State to revise its SIP to provide for attaining the primary NAAQS by December 31, 1982, or, in certain cases by December 31, 1987.

An adequate Part D SIP for ozone is one which includes control of Volatile Organic Compound (VOC) emissions from stationary sources to provide for attainment of the NAAQS. For stationary sources, the plan must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) for those sources of VOC for which EPA had published a control techniques guideline (CTG) before January, 1978. Each CTG describes techniques available for reducing emissions of VOC from a category of sources and recommends levels of control. For further discussion of CTG's see the **Federal Register** dated September 17, 1979 (44 FR 53761).

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372) as supplemented on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

On June 4, 1979, the State of Wisconsin submitted Sections NR 154.01 and NR 154.13, WAC as revisions to the SIP. These revisions included new or additional controls for fifteen categories of stationary sources which emit VOC. These controls are a part of Wisconsin's strategy to attain the ozone standard. In EPA's January 11, 1980, final rulemaking (45 FR 2319), EPA approved these revisions as part of the Wisconsin SIP.

The Wisconsin DNR has authority to grant source-specific variances from the SIP under section NR 154.02(3), although such variances do not become effective until submitted to and approved by EPA.

Requests for Variances

W. H. Brady Company

On September 30, 1980, the Wisconsin DNR received a request from W. H. Brady Company for an extended final compliance date to December 31, 1987, to meet the limitations for paper, fabric and vinyl coating contained in sections NR 154.13(4) (e) and (f) of the WAC. The Wisconsin DNR granted the variance and on January 22, 1982, submitted it to the EPA as a SIP revision.

In support of its request, W. H. Brady Company demonstrated to the DNR that it was not technically and economically feasible to use add-on control equipment to meet the limitations in the WAC by December 1, 1981, as required. The extra time is required because of the multitude of products and coatings for which the company needs to develop low solvent and water-based coatings meeting specific product quality considerations as well as the limits of section NR 154.13(4) (e) and (f) of the WAC. The time extension results in substantial engineering and operating cost savings when compared to meeting the limitations through use of add-on control equipment.

The variance contains an enforceable schedule with interim dates for low

solvent coating development, quarterly and semi-annual reports, additional recordkeeping to determine compliance and a final compliance date of December 31, 1987. The plan includes interim reduction requirements so that W. H. Brady is demonstrating reasonable further progress towards final compliance. The variance also includes a contingency plan should the research and development program fail. The variance requires the company to make a determination by December 30, 1983, in the success of the low solvent and water-based coatings. Should the development of these products fail, the company must submit new plans for compliance by June 29, 1984 and achieve final compliance by September 30, 1986.

The EPA has reviewed this variance request and has determined that approval of this revision will not interfere with the attainment and maintenance of the ozone standard. Additionally, development of a low solvent program will achieve greater emission reductions than those using the add-on controls and will be more energy efficient. Hence, it will be a more economical compliance operation. Therefore, the EPA is approving the variance from sections NR 154.13(4) (e) and (f) as a revision to the Wisconsin SIP.

Albany Carbide Corporation

On March 30, 1981, the Wisconsin DNR received a request from Albany Carbide Corporation in Albany, Wisconsin, for a variance from section NR 154.13(5)(a)2.b., WAC. NR 154.13(5)(a)2.b. prohibits the use of cutback asphalt after May 1, 1980, during the ozone season. RACT requirements call for the substitution of emulsified asphalt for solvent-based cutback asphalt. Because the unique properties of the product and equipment used by Albany Carbide do not lend themselves to substitution to emulsified asphalt, Albany Carbide Corporation is requesting a time extension variance to October 1, 1983, in order to develop a compliance asphalt to meet the State rule. The State granted the variance and on December 22, 1981, submitted it to the EPA as a SIP revision. Albany Carbide Corporation conducts pavement preservation operations using a product called Gilsabind. Gilsabind is made from gilsonite which is a naturally occurring bituminous asphaltite ore. It is blended with petroleum solvents to produce Gilsabind, Gilsabind combines with the asphalt binder in the pavement to form a new gilsonite asphalt compound, thus preserving and extending the useful life of the pavement.

The company has demonstrated that it is both technologically and economically unreasonable to meet the Wisconsin rule by May 1, 1980, because of the unique properties of Gilsabind. These properties include low temperature requirements, zero surface penetration, high softening point and use on recently paved road surfaces to improve surface conditions rather than to add a new layer of material to provide a new wear course for the pavement. Gilsabind's properties are different from those of conventional cutback asphalt, and, thus, converting it to emulsified asphalt is not technically feasible.

The above properties which cause technical problems for the firm also make it economically unreasonable to switch to emulsified asphalts in the near future. The annualized cost for conversion to emulsified asphalt generally exceeds the average net income of the Corporation for the years 1977 through 1980. Therefore, the State believes that economic unreasonableness has been demonstrated.

The variance contains interim emission limits, recordkeeping, reporting requirements to indicate progress toward developing an alternative product and a final compliance date of October 1, 1983.

Finally the State has determined that reasonable further progress toward attainment of the NAAQS by December 31, 1987 in nonattainment areas is assured and that this variance will not cause a violation of the ozone standard in the attainment areas of the State. Therefore, the EPA is approving this variance as a revision to the Wisconsin SIP.

Because EPA considers today's actions as noncontroversial and routine, it is approving them without prior proposal. The public is advised that this action will be effective July 16, 1982. However, if notice is received by EPA within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and a comment period.

Regulatory Flexibility Analysis

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1981. This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: May 7, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Part 52 is amended by adding § 52.2570(c) (25) and (26) to read:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(25) Revision to plan allowing W. H. Brady Company in Milwaukee variance from regulation NR 154.13(4) (e) and (f), Wisconsin Administrative Code, submitted January 22, 1982, by the State Department of Natural Resources.

(26) Revision to plan allowing Albany Carbide Corporation in Albany variance from regulation NR 154.13(5)(a), Wisconsin Administrative Code, submitted on December 22, 1981, by the State Department of Natural Resources.

[FR Doc. 82-13304 Filed 5-14-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[SW-5-FRL 2126-2]

Illinois, Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (USEPA), Region V.

ACTION: Granting of Phase I Interim Authorization to State hazardous waste program.

SUMMARY: The State of Illinois has applied for Interim Authorization of its hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) and EPA guidelines for the approval of State hazardous waste programs (40 CFR Part 123, Subpart F). USEPA has reviewed the Illinois hazardous waste program and has determined that the Illinois hazardous waste program is substantially equivalent to the Federal program. USEPA is hereby granting Phase I Interim Authorization to Illinois to operate a hazardous waste program in lieu of Phase I of the Federal hazardous waste program in its jurisdiction.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, Regulatory Analysis and Information Unit, State Programs and Information Section, Waste Management Branch (5HW-TUB), U.S. Environmental Protection Agency, 111 West Jackson, Chicago, Illinois 60604, (312) 353-8319.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), requires USEPA to establish a comprehensive Federal program to assure the safe management of hazardous waste. Once a Federal program is established, USEPA is authorized under section 3006 of RCRA to approve certain State hazardous waste programs to operate in lieu of the Federal program in their jurisdictions. Two types of State program approvals are authorized under RCRA: "Final Authorization" is a permanent approval which may be granted to States whose programs are "equivalent" to and "consistent" with the Federal program and provide adequate enforcement; "Interim Authorization" is a temporary approval for States which might not meet the requirements of Final Authorization but whose programs are at least "substantially equivalent" to the Federal program. RCRA contemplates that States receiving Interim Authorization will use the Interim Authorization period to make the changes in their regulations and statutes necessary to qualify for Final Authorization.

On May 19, 1980, USEPA published the first phase of the Federal hazardous waste program (40 CFR Parts 260–263 and 265) and guidelines for authorizing State hazardous waste programs under section 3006 of RCRA (40 CFR Part 123). These guidelines set forth the requirements for Interim Authorization and the procedures which USEPA will follow in acting on State applications for Interim Authorization. They also provide that USEPA will grant Interim Authorization in two major phases (Phase I and Phase II), corresponding to the two major phases of the Federal program.

On October 16, 1981, the State of Illinois submitted to USEPA its complete application for Phase I Interim Authorization (IA application). Included in the IA application was a copy of the Illinois hazardous waste regulations (regulations) which were adopted by the Illinois Pollution Control Board (Board) on September 16, 1981. In the November 4, 1981, **Federal Register** (46 FR 54770), USEPA announced the availability for public review of the Illinois IA application. USEPA also indicated that a public hearing would be held on December 8, 1981, with the public record open until December 18, 1981.

At the December 8, 1981, hearing, two individuals requested an extension of time for filing of comments. On December 14, 1981, the Illinois Environmental Protection Agency (IEPA) waived its right for a final determination on this IA application until May 5, 1982. USEPA accepted this waiver and suspended its final determination until May 5, 1982. As a result of the waiver and the requests received from commenters, USEPA, in the January 11, 1982, **Federal Register** (47 FR 1155), extended its comment period until March 15, 1982. Presented below in Section II of this notice is a synopsis of the significant public comments and USEPA's response.

After detailed review of the final Illinois IA application, USEPA transmitted comments to the State of Illinois on December 11, 1981. These comments requested minor additions and revisions to the Program Description, Attorney General's Statement, Memorandum of Agreement and Authorization Plan portions of the IA application. On March 12, 1982, IEPA responded to USEPA's December 11, 1981, letter by submitting amendments to the above-mentioned portions of the Illinois IA application. In response to concerns raised by commenters at the public hearing, IEPA also submitted to USEPA, on March 12, 1982, amendments to the State's regulations which the Board adopted on February 4, 1982. These amendments primarily correct minor typographical and technical errors contained in the September 16, 1981, State regulations. A copy of USEPA's December 11, 1981, comments and IEPA's submittals are available at the USEPA Region V offices.

II. Responses to Public Comments

Four individuals presented oral and/or written testimony on the Illinois IA application. One individual supported USEPA granting interim authorization to Illinois and three individuals requested USEPA to withhold its decision until certain deficiencies were corrected. The significant issues raised by these commenters and USEPA's responses are summarized below.

Issue. USEPA should defer its consideration of the Illinois IA application until a later time because the Appellate Court for the Third Judicial District issued an order which stayed the effective date of the Illinois regulations.

Response. On March 31, 1982, the State Appellate Court issued an order which vacated its November 19, 1981, stay.

Issue. The RCRA regulations which the Board adopted on September 16, 1981, and the amendments it adopted on February 4, 1982, are invalid under State law because the Board did not follow the proper State rulemaking procedures when it adopted certain of these regulations. Without properly adopted regulations, the Illinois RCRA program cannot be considered "substantially equivalent" to the Federal RCRA program.

Response. Absent a contrary decision by a court of competent jurisdiction, USEPA must assume that regulations which the appropriate governmental body adopts and which the Attorney General has certified as lawfully adopted are valid under State law. In Illinois, the Board is authorized to adopt regulations and IEPA is authorized, among other things, to submit to USEPA the Board-adopted regulations. On October 20, 1981, USEPA received from IEPA the Illinois regulations which the Board adopted on September 16, 1981. IEPA submitted the February 4, 1982, amendments to USEPA on March 12, 1982.

Pursuant to Section 125(a), Part 123 of Title 40 of the Code of Federal Regulations [40 CFR 123.125(a)], the State submitted, as part of its IA application, a statement from the Attorney General. In that document, the Attorney General stated that, among other things, the statutes and regulations adopted as of the time of the statement were lawfully adopted and would be fully effective at the time the program is approved.

Issue. The RCRA regulations which the Board adopted on September 16, 1981, are invalid under State law since the Board adopted new regulations on February 4, 1982. USEPA cannot approve the Illinois IA application until the February 4, 1982, amendments have been officially submitted to USEPA and made part of the Illinois application.

Response. IEPA officially submitted a copy of the February 4, 1982, amendments to USEPA on March 12, 1982. The amendments which the Board adopted on February 4, 1982, were in response to public comments, and consisted of minor corrections of typographical and technical errors contained in the September 16, 1981, regulations. In USEPA's opinion, the February 4, 1982, regulations contained provisions which are identical to those contained in the September 16, 1981, regulations.

Issue. USEPA should provide notice and an opportunity for hearing for any and all revisions which the State may make in its program or its rules. Such notice and opportunity should be held for the amendments which the Board adopted on February 4, 1982. Failure to provide such notice and opportunity in this specific case, or in any subsequent case, would be a violation of the Federal Administrative Procedures Act, 5 U.S.C. § 551.

Response. According to 40 CFR 123.123(c), USEPA will recommence its formal review of a State IA application only in those instances where the State submission is *materially* changed during the formal review period. USEPA does not believe that the amendments which the Board adopted on February 4, 1982, have materially altered the Illinois hazardous waste program.

Issue. The October 9, 1981, Attorney General's Statement is deficient and must be amended. The commenter asserts that the Attorney General's Statement does not certify that the September 16, 1981, State regulations are valid under State law. Furthermore, the commenter asserts that the Attorney General's Statement must be amended to certify that the February 4, 1982, amendments will be fully effectively by the time the program is approved.

Response. USEPA believes that the October 9, 1981, Attorney General's Statement is acceptable and does not need to be revised, amended or updated. The requirements for an acceptable Attorney General's Statement are detailed in 40 CFR 123.125. The Attorney General's Statement must contain, among other things, an evaluation of whether the State's laws provide adequate authority to carry out its hazardous waste program. The October 9, 1981, Attorney General's Statement satisfies this requirement. It states in pertinent part that "* * * the laws of the State of Illinois provide adequate authority, except to the extent noted, to carry out * * *" its RCRA program. The Attorney General further states that these authorities "* * * are contained in statutes or regulations lawfully adopted at the time of this statement * * *". The exceptions cited by the Attorney General are to "* * * amendments which are administrative or technical in nature, omissions/additions which do not affect the substance of the Federal regulations adopted * * * or typographical errors or omissions * * *". The Attorney General concludes "* * * (The State's hazardous waste program) appears to be identical or substantially equivalent to the Federal RCRA program." Although the Attorney General's Statement does not address the amendments which the Board adopted on February 4, 1982, 40 CFR 123.125 does not require the State to submit an amended Attorney General's Statement for amendments such as those adopted by the Board.

Issue. USEPA must clarify which provisions it regards as Federally enforceable in the absence of State enforcement. Under RCRA, the only matters USEPA can enforce as Federal law are federally-required conditions contained in State issued RCRA permits. These conditions are federally enforceable only if the State fails to enforce the federally-required permit conditions in the first instance.

Response. Section 3008 of RCRA provides that USEPA may take enforcement action whenever it has determined that there has been a violation of any of the provisions of Subtitle C of RCRA. According to Section 3006 of RCRA, where a State is authorized by USEPA to carry out its hazardous waste program, it operates that program in lieu of the Federal program developed under Subtitle C of RCRA. Section 7003(a) provides that USEPA may take action against a source whenever there may be present "an imminent and substantial endangerment to health or the environment." Furthermore, the ability of USEPA to take action under section 3013 is not limited by authorization of a State program.

Issue: The IA application is deficient because it does not guarantee that the State will effectively enforce its regulations nor does it provide the public with an opportunity to meaningfully participate in the permit application process. Finally, this commenter asserts that the Illinois hazardous waste management plan does not provide for prompt regulation of on-site disposal of hazardous waste because it may require up to five years for the State to compile an inventory of these sites.

Response: USEPA has reviewed the Illinois IA application and has concluded that the State's Phase I hazardous waste program is substantially equivalent to the Phase I Federal program. Illinois presently has sufficient authority to implement its regulations and to regulate both offsite and on-site disposal of hazardous waste. Through submission of the required RCRA Section 3010 notifications and Section 3004 Part A permit applications, the State may commence the regulation of these sites as soon as its hazardous waste management regulations become effective. USEPA will periodically evaluate the administration and enforcement of the Illinois hazardous waste program through the annual grant process and the Memorandum of Agreement to ensure that it is being implemented consistent with RCRA, the State's regulations and the Memorandum of Agreement. The procedural requirements for public participation in the permitting process are to be addressed by the State when they apply for Phase II interim authorization.

III. Decision

EPA has reviewed the complete application for Phase I Interim Authorization from the State of Illinois, and has determined that the State program is "substantially equivalent", as defined in 40 CFR Part 123, Subpart F, to the Phase I Federal program. In accordance with section 3006(c) of RCRA, the State of Illinois is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase I of the Federal hazardous waste program. The practical effect of this decision is that generators, transporters, and owners and operators of hazardous waste management facilities in Illinois will be subject to the State of Illinois hazardous waste program in lieu of the Federal hazardous waste program (40 CFR Part 260–263 and 265) and will not again be subject to Phase I of the Federal program unless (1) the State fails to obtain final authorization by the deadline specified in 3006(c) of RCRA and implementing regulations, or (2) authorization is withdrawn for cause by EPA.

IV. Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the

requirements of Section 3 of Executive Order 12291.

V. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

VI. Authority

This notice is issued under the authority of Section 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: April 21, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-13328 Filed 5-14-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 435, 436, 440, 441, and 447

Medicare and Medicaid Program; Nurse-Midwife Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These regulations specify Federal requirements under Medicaid (title XIX of the Social Security Act) for the provision of nurse-midwife services. They implement section 965 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, which mandates that payment must be made for nurse-midwife services to categorically needy recipients. The purpose of the regulations is to define nurse-midwife services and specify how States are to pay for these services under Medicaid.

EFFECTIVE DATE: July 16, 1982 or, if State legislation is needed in order to conform the State Medicaid plan to these requirements, the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after May 17, 1982.

Although these regulations are final, comments may be submitted as described below. To assure consideration, comments should be mailed by June 16, 1982.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-133-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, (301) 594-8561.

SUPPLEMENTARY INFORMATION:

Background

Nurse-midwives are registered nurses with additional educational and clincial background in midwifery. Within the scope of their authority under State law or regulation, nurse-midwives manage the care of mothers and newborn babies throughout the maternity cycle—pregnancy, labor, birth, and the immediate postpartum period. They usually work in association with obstetrician-gynecologists or other physicians to whom they refer patients with high-risk conditions or complications.

Acceptance of nurse-midwives has grown in recent years in the United States. In 1976, for example, nurse-midwives accounted for one percent of the deliveries in this country. To promote and assure quality care, nurse-midwives have their own professional organization, the American College of Nurse-Midwives (ACNM) which, among other activities, reviews and approves nurse-midwifery educational programs. These programs vary from eight-month specialty programs in midwifery to two-year Master's degree programs for registered nurses. Presently, most States have laws or regulations authorizing the practice of nurse-midwifery, including management of labor and delivery.

Currently, States may provide coverage under their Medicaid programs for nurse-midwives in a variety of ways, in accordance with title XIX of the Social Security Act. For example, States may recognize nurse-midwife services as within the scope of "inpatient hospital services", "outpatient hospital services", "physician services", or "clinic services" (sections 1905(a) (1), (2), (5), and (9) of the Act). In these cases, payment to the nurse-midwife is made by the State agency on an indirect basis. That is, payment is made to the hospital, physician, or clinic that employs the nurse-midwife. States may also identify nurse-midwives as independent providers of services under "medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law" (section 1905(a)(6) of the Act). In this case, reimbursement is made directly to nurse-midwives for services that they furnish. In addition, States are required by statute to provide for "rural health clinic services" (section 1902(a)(13)(B) of the Act). Federal regulations specify that rural health clinic services may include the services of nurse-midwives (42 CFR 440.20(b)(2)).

Statutory Provisions

In order to increase the availability and accessibility of nurse-midwife services to women eligible for Medicaid, Congress enacted section 965 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980. Section 965 enacted sections 1905(a)(17) and (m) of the Social Security Act, and made conforming amendments to sections 1902(a) (13) and (14) of the Act. These provisions require States to provide coverage for nurse-midwife services to the extent that the nurse-midwife is authorized to practice under State law or regulation. The statute has the effect of requiring also that States offer direct reimbursement to

nurse-midwives as one of the payment options. In other words, the State plan must provide that the nurse-midwife may enter into an independent provider agreement with the State Medicaid agency, regardless of whether the nurse-midwife is under the supervision of, or in association with, a physician or other health care provider.

Nurse-midwife services are mandated for the categorically needy (persons who are eligible for Medicaid and who meet the financial eligibility requirements of a related cash assistance program—Aid to Families with Dependent Children (title IV–A of the Act), Supplemental Security Income (title XVI of the Act), or a State Supplement Program). States may also provide these services to the medically needy (persons whose income exceeds the categorically needy level but is within limits set by the State).

Section 1902(a)(14) of the Act prohibits the Medicaid agency from imposing any deductible, coinsurance, co-payment, or similar charge on the categorically needy for services mandated by the statute. Pub. L. 96–499 amended that section of the Act to include nurse-midwife services.

Section 1905(m) of the Act also states that, for purposes of these provisions, a nurse-midwife must be a registered nurses who either is certified (as a nurse-midwife) by an organization recognized by Secretary or has completed a program of study and clinical experience that has been approved by the Secretary. Section 1905(m) also specifies that nurse-midwives perform services in the area of management of the care of mothers and babies throughout the maternity cycle. Sections 1905(a)(17) and (m) specify that nurse-midwife services must be those which the nurse-midwife is legally authorized to perform under State law and regulations.

Reimbursement levels for nurse-midwife services are not specifically provided for in the Omnibus Reconciliation Act, or in these final regulations. Since general rules on reimbursement levels for Medicaid services, including those furnished by nurse-midwives are provided for in 42 CFR Part 447—Payment for Services, additional regulations are not necessary. For example, if a nurse-midwife chooses direct reimbursement as a payment method, the State would reimburse the nurse-midwife under appropriate State-established payment schedules in accordance with general criteria specified under "Individual Practitioners" (42 CFR 447.341).

Provisions of the Regulations

These regulations contain the following provisions, and interpretations of provisions, set forth in Pub. L. 96–499:

1. Nurse-midwife services are services furnished by a nurse-midwife, whether or not he or she is under the supervision of, or associated with, a physician or other health care provider, except as specified below in item 4.

Because Congress described nurse-midwives as having arrangements with physicians for referral and consultations in the event of complications (H.R. Rep. No. 96–1167, 96th Congress, 2nd Session 80 (1980)), we considered whether we should include in this regulation the requirement that nurse-midwives have such arrangements. Such a standard would also conform to the policy of the American College of Nurse-Midwives (ACNM), which describes nurse-midwives as managing the care of essentially healthy women and newborns and working through mutual agreement and collaboration with a physician in the case of medical complications. (See the ACNM "Functions, Standards, and Qualifications", adopted 1975.) We concluded, however, that such a requirement did not comport well with the clear statutory language that reimbursement is provided for services furnished by a nurse/midwife "whether or not he is under the supervision of, or associated with, a physician or other health care provider" (section 1905(a)(17) of the Act, as enacted by Pub. L. 96–499). Moreover, we believe it is better for this issue not to be resolved by Federal regulation, but rather to be resolved by the State law or regulation governing the practice of nurse-midwives, by the policies of hospitals regarding the granting of staff privileges, and by the professional judgments of the health professions.

2. Nurse-midwife services are those concerned with management of the care of mothers and newborns throughout the maternity cycle.

3. The "maternity cycle" includes pregnancy, labor, birth, and the immediate postpartum period. This reflects the intent of Congress, since this definition is contained in the Report of the Committee on the Budget on the Omnibus Reconciliation Act of 1980 (H.R. Rep. No. 96–1167, p. 80). In addition, these regulations define the "immediate postpartum period" as not exceeding six weeks. We believe that a six-week maximum postpartum period is appropriate since it is a time frame that is generally accepted among health professionals, including the American College of Obstetricians and Gynecologists. We welcome comments and suggestions on the definition of the "maternity cycle" if readers believe that this one is inappropriate in any respect.

4. Services must be furnished within the scope of practice as defined by State law or regulation. This reflects sections 1905 (a)(17) and (m) of the Act, which state that nurse-midwives perform services they are "legally authorized to perform" in the State. Moreover, Congress expressly stressed that the provisions of Pub. L. 96–499 should not preempt State law or regulations relating to the legality or scope of practice of nurse-midwives (H.R. Rep. No. 96–1167, p. 80). Accordingly, a nurse-midwife cannot furnish services without physician supervision if State licensure provisions require that nurse-midwives practice under the supervision of a physician.

5. State Medicaid plans must provide that these nurse-midwife services be furnished to the categorically needy, to the extent nurse-midwives are legally authorized to practice under State law or regulations. State may choose to provide for these services for the medically needy in their State Medicaid plans.

6. State plans must provide that the nurse-midwife can enter into an independent provider agreement, whether or not he or she is under the supervision of, or in association with, a physician or other health care provider.

7. States must not impose any fee or charge for nurse-midwife services on the categorically needy.

8. Nurse-midwives are registered nurses who successfully complete a program of study and clinical experience prescribed by the State for nurse-midwives. If the State does not prescribe such requirements, nurse-midwives must meet the requirements specified in these regulations. Briefly, the individual must be certified as a nurse-midwife by the ACNM, be eligible to take the ACNM certification examination, or meet a "grandfather" clause.

This provision is based on the statute that specifies that a nurse-midwife must be a registered nurse "who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary" (section 1905(m) of the Act). We have chosen, for purposes of this statutory requirement, to adopt State standards and recognize actions by State licensing authorities and, where State standards are absent, to mandate that nurse-midwives meet the ACNM-related requirements of these regulations. We believe that the study

and clinical experience requirements imposed by States that have established standards for nurse-midwives are generally consistent with the ACNM-related requirements that we are specifying for States that have not established standards. Since the statute permits the Secretary to recognize any organization as a certifying authority for nurse-midwives, and confers broad authority on the Secretary to specify the requisite program of study and clinical experience, it is appropriate for the Department to recognize State licensure activity and to utilize State standards where they exist. A State that has explicitly addressed the question of study and clinical experience requirements for nurse-midwives has had the opportunity to tailor those requirements to the needs of the State and those judgments are appropriately recognized. Of course, if a State has no such standards, then it will be necessary for the nurse-midwives of that State to meet the Federal guidelines for study and clinical experience prescribed in these regulations.

It should be noted, however, that this provision, related to study and clinical experience, is distinct from the provision discussed above in item 4, scope of service. In item 4 we addressed the fact that State laws regarding the legality of nurse-midwives remain intact and are not affected by these Federal regulations. Item 4 implements the statutory provision that nurse-midwives can perform only those services they are "legally authorized to perform in the State" (sections 1905(a)(17) and (m) of the Act).

. While providing for ACNM-related requirements in these regulations, we also include a "grandfather" provision. Since the ACNM is a recently formed organization, established in 1955, it is possible that there are qualified nurse-midwives who are not certified by the ACNM, nor eligible to take the ACNM examination, but who can practice under State law or regulations. In particular, there may be nurse-midwives currently participating in the Medicaid program, and providing quality care, who would be unnecessarily excluded from furnishing services under section 965 of Pub. L. 96–499 if we did not include some kind of a "grandfather" provision. There is a "grandfather" provision in the rural health clinic regulations (42 CFR 405.2401(b)(10)(iii)) that defines a nurse-midwife as a registered nurse who successfully completed a formal educational program in gynecological and obstetrical care and who also practiced as a nurse-midwife for 12 months during the 18-month period that preceded the effective date of the regulations regarding certification of rural health clinics (August 8, 1976 to February 7, 1978). This particular grandfather provision was adopted because, at the time, we knew there were nurse-midwives practicing with previously established rural health clinics, who might have been denied continuing participation.

In this final rule, we are adopting a similar provision; but we are expanding the period covered by the "grandfather" clause to include anyone who was practicing as a nurse-midwife for a total of 12 months out of any 18-month period from August 8, 1976 to the effective date of these regulations.

In order to provide for consistency throughout the Medicaid and Medicare programs, we are amending the definition of "nurse-midwife" for rural health clinic purposes to conform to the definition used to implement the new "nurse-midwife services" of section 965 of Pub. L. 96–499. This will facilitate State implementation of the new "nurse-midwife services" in those States currently providing for services of nurse-midwives in rural health clinics. Also, it will avoid the anomaly of prohibiting a qualified nurse-midwife from practicing under one section of Federal regulations, but not under another.

However, it should be noted that the statutory requirements for physician supervision for purposes of "rural health clinic services" and "nurse-midwife services" are different. Section 1905(a)(17) enables the nurse-midwife to be reimbursed under Medicaid without regard to whether he or she is under the supervision of a physician. However, the nurse-midwife who furnishes services that are identified for reimbursement purposes as "rural health clinic services" must be under the medical supervision of a physician. See sections 1861(aa)(2) and 1905 (a)(2) and (l) of the Act and 42 CFR 405.2414 and 440.20(b) for required physician supervision for "rural health clinic services".

9. This final rule makes a technical amendment to the rural health clinic regulations in 42 CFR 405.2401(b)(10). Those regulations provide that one qualifies as a nurse-midwife if he or she satisfactorily completes a formal education program that (a) makes one eligible to take the ACNM certification examination and (b) meets certain other specified educational and training requirements. (For example, the educational program is required to include at least four months of classroom work and a component of clinical practice.) In discussing the additional educational and training requirements with the ACNM, we learned that those requirements are also necessary to be eligible to take the ACNM certification examination. To eliminate this redundancy, we are amending 42 CFR 405.2401(b)(10) to delete specific mention of those educational and training requirements that are already prerequisites to taking the ACNM certification examination.

10. The Medicaid definitions of "inpatient hospital services" (42 CFR 440.10), "outpatient hospital services" (42 CFR 440.20), and "clinic services" (42 CFR 440.90) are revised to provide for services that are furnished by or under the direction of a nurse-midwife, but not under the direction of a physician.

Effective Date

These regulations become effective July 16, 1982. On that date State plans are required to provide for "nurse-midwife services", to the extent that nurse-midwives are legally authorized to furnish those services under State law or regulation. States are also required to provide that nurse-midwives can enter into independent provider agreements with the State agency, without regard to whether the nurse-midwife is practicing under the supervision of, or in association with, a physician or other health care provider. If State legislation is necessary to enable the Medicaid agency to comply with those requirements, there is lead time for States to enact appropriate legislation. In those cases, the State plan must comply with the nurse-midwife requirements no later than the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of publication of these regulations.

The statutory effective date of these regulations is July 1, 1981. However, these regulations require that States amend their State plans. If we implemented these regulations retroactively to the statutory effective date, all State plans would automatically be placed in a position of noncompliance. Therefore, it would not be practical to issue these regulations retroactively, even though we believe the law they implement is clear. We are providing a 90-day period following publication of these regulations to allow States to prepare and submit their State plan amendment regarding nurse-midwife services.

Waiver of Proposed Rulemaking

We are publishing these regulations in final form since, as noted in the Effective Date section above, we believe

that the law is clear, in nearly all respects, as to what States are required to do. For these reasons, proposed rulemaking procedures are unnecessary and contrary to public interest. We believe that it is in the public's best interest to increase the availability and accessibility of nurse-midwife services to women eligible for Medicaid. However, we invite comments from States, recipient groups, professional organizations, and other interested in this new Medicaid benefit, and we will publish in the **Federal Register** any changes to the regulations that are appropriate.

Executive Order 12291

We have determined that this rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this rule will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs of prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. Rather, we anticipate a decrease in expenditures. Because nurse-midwife services are generally less expensive than traditional obstetrical care, we anticipate that these regulations will result in a savings in Federal dollars ranging from $2.2 million for fiscal year 1983 to $2.8 million for fiscal year 1985.

Regulatory Flexibility Analysis

Section 603(a) of Pub. L. 96–354 (the Regulatory Flexibility Act of 1980) requires Federal agencies to prepare a regulatory flexibility analysis when regulations have a significant economic impact on a substantial number of small businesses or small governmental jurisdictions. Small governmental jurisdictions are defined by section 3(a) of the Act as cities, counties, towns, townships, villages, school districts, or special districts, with fewer than 50,000 residents. Since these regulations mandate nurse-midwife services under Medicaid, they affect the States, which are not small governmental jurisdictions. For this reason, and because the economic impact is not significant, a regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Parts 435, 436, 440, 441, and 447

Medicaid, Nurse-midwife services.

42 CFR Chapter IV is amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart X—Rural Health Clinic Services

The authority citation for Part 405, Subpart X reads as follows:

Authority: Secs. 1102, 1833, 1861(aa), 1871, Social Security Act; 49 Stat. 647, 79 Stat. 302, 322, and 331, 91 Stat. 1485; 42 U.S.C. 1302, 1395l, 1395hh, and 1395x(aa), unless otherwise noted.

A. Section 405.2401 is amended by revising paragraph (b)(10) to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.* * * *

(10) "Nurse-midwife" means a registered professional nurse who meets the following requirements:

(i) Is currently licensed to practice in the State as a registered professional nurse.

(ii) Is legally authorized under State law or regulations to practice as a nurse-midwife.

(iii) Except as provided in paragraph (b)(10)(iv) of this section, has completed a program of study and clinical experience for nurse-midwives, as specified by the State.

(iv) If the State does not specify a program of study and clinical experience that nurse-midwives must complete to practice in that State, meets one of the following conditions:

(A) Is currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(B) Has satisfactorily completed a formal education program (of at least one academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(C) Has successfully completed a formal educational program for preparing registerted nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the postpartum period, and care to normal newborns, and was practicing as a nurse-midwife for a total of 12 months during any 18-month period from August 8, 1976 to (the effective date of these regulations).

* * * * *

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. In § 435.3, the uncodified introductory paragraph is reprinted and the first citation of section 1905(a) of the Act is revised to read as follows:

§ 435.3 Basis.

This part implements the following sections of the Act, which state eligibility requirements and standards:

* * * * *

1905(a) (clause following (18)) Prohibitions against providing Medicaid to certain institutionalized individuals.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

C. In § 436.2, the uncodified introductory paragraph is reprinted and the second citation of section 1905(a) of the Act is revised to read as follows:

§ 436.2 Basis.

This part implements the following sections of the Act, which state requirements and standards for eligibility:

* * * * *

1905(a) (clause following (18)) Prohibitions against providing Medicaid to certain institutionalized individuals.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

The authority citation for Part 440 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

D. Part 440 is amended as set forth below:

1. Section 440.1 is revised to read as follows:

§ 440.1 Basis and purpose.

This subpart interprets section 1905(a) of the Act, which lists the services included in the term "medical assistance," sections 1905(c), (d), (f)–(i), (l), and (m), which define some of those services, and section 1915(c), which lists as "medical assistance" certain home

and community-based services provided under waivers under that section to individuals who would otherwise require institutionalization. It also implements sec. 1902(a)(43) with respect to laboratory services (see also §§ 447.10 and 447.342 for related provisions on laboratory services).

2. Section 440.10 is amended by revising the uncodified introductory paragraph and redesignating it as (a)(1), (a)(2), and (a)(3), revising paragraph (c), redesignating existing paragraphs (a), (b), (c), and (d) as (a)(3) (i), (ii), (iii), and (iv), and reserving a new paragraph (b). As revised, § 440.10 reads as follows:

§ 440.10 Inpatient hospital services, other than services in an institution for tuberculosis or mental diseases.

(a) "Inpatient hospital services" means services that—

(1) Are ordinarily furnished in a hospital for the care and treatment of inpatients;

(2) Except in the case of nurse-midwife services, as specified in § 440.165, are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—

(i) Is maintained primarily for the care and treatment of patients with disorders other than tuberculosis or mental diseases;

(ii) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

(iii) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare; and

(iv) Has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of § 405.1035 of this chapter, unless a waiver has been granted by the Secretary.

(b) [Reserved].

3. Section 440.20 is amended by revising paragraph (a) to read as follows:

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) *"Outpatient hospital services"* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

(1) Are furnished to outpatients;

(2) Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

(3) Are furnished by an institution that—

(i) Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting; and

(ii) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

* * * * *

4. Section 440.90 is revised to read as follows:

§ 440.90 Clinic services.

"Clinic services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that—

(a) Are provided to outpatients;

(b) Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

(c) Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist.

5. Section 440.165 is added to read as follows:

§ 440.165 Nurse-midwife service.

(a) "Nurse-midwife services" means services that—

(1) Are concerned with management of the care of mothers and newborns throughout the maternity cycle;

(2) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulation and, in the case of inpatient or outpatient hospital services or clinic services, are furnished by or under the direction of a nurse-midwife to the extent permitted by the facility; and

(3) Unless required by State law or regulations or a facility, are reimbursed without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider. (See § 441.21 of this chapter for provisions on independent provider agreements for nurse-midwives.)

(b) "Nurse-midwife" means a registered professional nurse who meets the following requirements:

(1) Is currently licensed to practice in the State as a registered professional nurse.

(2) Is legally authorized under State law or regulations to practice as a nurse-midwife.

(3) Except as provided in paragraph (b)(4) of this section, has completed a program of study and clinical experience for nurse-midwives, as specified by the State.

(4) If the State does not specify a program of study and clinical experience that nurse-midwives must complete to practice in that State, meets one of the following conditions:

(i) Is currently certified as a nurse-midwife by the American College of Nurse-Midwives.

(ii) Has satisfactorily completed a formal educational program (of at least one academic year) that, upon completion, qualifies the nurse to take the certification examination offered by the American College of Nurse-Midwives.

(iii) Has successfully completed a formal educational program for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the postpartum period, and care to normal newborns, and was practicing as a nurse-midwife for a total of 12 months during any 18-month period from August 8, 1976 to (the effective date of these regulations).

(c) "Maternity cycle" means a period limited to—

(1) Pregnancy;

(2) Labor;

(3) Birth; and

(4) The immediate postpartum period, not to exceed six weeks.

6. Section 440.210 is revised to read as follows:

§ 440.210 Required services for the categorically needy.

A State plan must specify that, as a minimum, categorically needy recipients are provided the services as specified in §§ 440.10–440.50, 440.70, and (to the extent nurse-midwives are authorized to practice under State law or regulation) 440.165.

7. Section 440.220 is amended by revising the introductory paragraph and paragraph (d) to read as follows:

§ 440.220 Required services for the medically needy.

A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

* * * * *

(d) If the State plan includes services in an institution for mental diseases (§ 440.140 or 440.160) or in an intermediate care facility for the mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(1) The services contained in §§ 440.10–440.50 and (to the extent nurse-midwives are authorized to practice under State law or regulation) 440.165; or

(2) The services contained in any seven of the sections in §§ 440.10–440.165.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

E. Part 441 is amended as set forth below:

1. The table of contents is amended by adding a new section 441.21 under Subpart A to read as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Sec.
441.1 Purpose.

Subpart A—General Provisions
* * * * *
441.21 Nurse-midwife services.
* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 441.10, the introductory paragraph is reprinted, paragraph (e) is revised, and a new paragraph (f) is added to read as follows:

Subpart A—General Provisions

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:
* * * * *

(e) Section 1905(a) (following (a)(18)), which prohibits FFP in expenditures for certain services (§ 441.13).

(f) Section 1905 (a)(17) and (m) for nurse-midwife services (§ 441.21).

3. A new § 441.21 is added to read as follows:

§ 441.21 Nurse-midwife services.

If a State plan, under § 440.210 or 440.220 of this subchapter, provides for nurse-midwife services, as defined in § 440.165, the plan must provide that the nurse-midwife may enter into an independent provider agreement, without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

PART 447—PAYMENTS FOR SERVICES

The authority citation for Part 447 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

F. Section 447.53 is amended by revising paragraph (a)(1) to read as follows:

Deductible, Coinsurance, Co-Payment or Similar Cost-Sharing Charge

§ 447.53 Applicability; specifications; multiple charges.

(a) *Categorically needy.* (1) The plan must provide that the Medicaid agency does not impose any deductible, coinsurance, co-payment, or similar charge upon categorically needy individuals for those services listed in §§ 440.10–440.50, 440.70, and 440.165 of this subchapter. These services are inpatient and outpatient hospital services; rural health clinic services; other laboratory and X-ray services; skilled nursing facility services for individuals 21 years of age or older; early and periodic screening, diagnosis and treatment of individuals under the age of 21; family planning services and supplies for individuals of child-bearing age; physicians' services; home health care services; and nurse-midwife services.
* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 1982.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

Approved: April 22, 1982.

Richard S. Schweiker,
Secretary.

[FR Doc. 82-13340 Filed 5-14-82; 8:45 am]
BILLING CODE 4120-03-M

FEDERAL MARITIME COMMISSION

46 CFR 524

[Docket No. 81-40]

Exemption of Exclusive Equipment Interchange Agreements From the Filing and Approval Requirements of Section 15 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This exempts from the filing and approval requirements of section 15 of the Shipping Act, 1916, exclusive equipment interchange agreements covering the exchange of empty containers, chassis, LASH/SEABEE barges and related equipment between two or more persons subject to the Act. The Commission has determined that this exemption will not substantially impair effective regulation of common carrier practices, result in unjust discrimination or be detrimental to commerce.

DATE: Effective June 16, 1982.

ADDRESS: For further information contact: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 35 of the Shipping Act, 1916 (46 U.S.C. 833a) allows the Commission to exempt any class of agreements between persons subject to the Act, or any specified activity of such persons from any requirement of the Act, where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. Under this authority, the Commission previously gave notice (46 FR 32459–32460) that it proposed to amend 46 CFR Part 524 to exempt exclusive equipment interchange agreements from the filing and approval requirements of section 15 of the Act (46 U.S.C. 814).

Carriers often find that they have an imbalance of equipment, *i.e.*, a surplus of equipment at one location and a scarcity at another location. One remedy for this imbalance is for a carrier to move empty equipment from one location to another location. A second remedy is to lease the necessary equipment from another carrier. While the second alternative may render the same result as the first, the time required to obtain Commission approval of other than nonexclusive arrangements may make them commercially unacceptable to the parties. This exemption will afford carriers additional flexibility to meet and respond, in a timely manner, to the problems of equipment imbalance. Participants in such arrangements should also be able to make more effective use of expensive equipment with resultant benefits to shippers and consignees.

Six responses to the notice of proposed rulemaking were filed on behalf of 24 conference/rate agreements and 2 independent carriers. The Japan/Korea-Atlantic & Gulf Freight Conference, the Japan-Puerto Rico & Virgin Islands Freight Conference, the Trans-Pacific Freight Conference of Japan/Korea, the parties to the 8900 Lines Rate Agreement and both independents, Sea-Land Service, Inc. and American President Lines, Ltd. (APL), support the rule.

Sea-Land's support is premised on the availability of section 15 approval for such arrangements at the request of interested parties, something which is already provided by 46 CFR 524.7. APL favors the exemption but requests that it be further enlarged to include the

interchange of loaded containers made in connection with a nonexclusive transshipment agreement. The Commission is presently considering a rulemaking to exempt nonexclusive transshipment agreements from the filing requirements of section 15 and APL's request will be considered in this context.

The 8900 Lines suggest that the title of 46 CFR Part 524 be modified to reflect the fact that it exempts both "nonexclusive transshipment agreements" and "exclusive equipment interchange agreements." This has already been accomplished. In Docket No. 80-34, *Exemption of Nonexclusive Transshipment Agreements From Section 15 Approval Requirements*, the title of 46 CFR Part 524 was amended to read: "Exemption of Certain Agreements From the Requirements of Section 15, Shipping Act, 1916."[1]

Eleven conferences responding as the North European Conferences (NEC) support adoption of the rule, but suggest that the language of the rule be modified to make it clear that any equipment involved in an exclusive interchange agreement could be used by the receiving carrier to transport its own cargo. The final rule has been so modified.

Nine conferences responding as the Associated Latin American Freight Conferences (ALAFC) oppose the rule.[2] Their objection is that the rule will not confer antitrust immunity upon the parties to the exclusive equipment interchange agreement unless the agreement is filed with the Commission for approval. They contend that an exempted agreement should be immune from the antitrust laws. This argument has heretofore been expressly rejected by the Commission in Docket No. 81-18, *Exemption of Agreements Covering the Collection, Compilation and Exchange of Credit Information*, Order serve March 3, 1982. Nothing presented herein persuades the Commission to alter its position.

List of Subjects in 46 CFR Part 524

Maritime carriers.

PART 524—EXEMPTION OF CERTAIN AGREEMENTS FROM THE REQUIREMENTS OF SECTION 15, SHIPPING ACT, 1916

§ 524.2 [Amended]

Therefore, pursuant to sections 15, 35 and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a and 841a) and 5 U.S.C. 553, 46 CFR Part 524 is amended by revising paragraph (b) of § 524.2 *Definitions*, to read as follows:

* * * * *

(b) An equipment interchange agreement is an agreement between two or more common carriers by water for the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment, which provides only for the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment, and no other subject.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13337 Filed 5-14-82; 8:45 am]

BILLING CODE 6730-01-M

[1] The final rule in Docket No. 80-34 exempted only nonexclusive equipment interchange agreements.

[2] Sea-Land, a member of five ALAFC conferences, disassociated itself from these comments.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Thirty-sixth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 12:01 a.m., May 15, 1982, and continuing in effect until 11:59 p.m., September 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840 or 275-1559.

SUPPLEMENTARY INFORMATION:

Decided: May 11, 1982.

Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by adding at Item 25A., the authority for the South Central Arkansas Railway, Inc. (SCAR) to extend its operations from Lillie to Ruston, Louisiana, a distance of approximately 29.5 miles.

The previous order is further revised by extending the expiration date, in this order, until September 30, 1982.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B to this Order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered:

§ 1033.1473 Thirty-sixth revised Service Order No. 1473.

(a) *Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in

accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a) of this section, operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(l) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., May 15, 1982.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1982, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (LA):*
   - A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.
2. *Peoria and Pekin Union Railway Company (PPU):*
   - A. All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.
   - B. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 0.15).
3. *Union Pacific Railroad Company (UP):*
   - A. Beatrice, Nebraska.
   - B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.
4. *Toledo, Peoria and Western Railroad Company (TPW):*
   - A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.
5. *Chicago and North Western Transportation Company (CNW):*
   - A. From Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.
   - B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).
   - C. From Inver Grove (milepost 344.7) to Northwood, Minnesota.
   - D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).
   - E. From Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364).
   - F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).
   - G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).
   - H. From Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).
   - I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
   - J. From Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9).
   - K. From Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).
   - L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502).
   - M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).
   - N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.
   - O. From Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6).
   - P. At Sibley, Iowa.
   - Q. At Worthington, Minnesota.
   - R. At Altoona to Pella, Iowa.
   - S. From Carlisle to Indianola, Iowa.
   - T. At Omaha, Nebraska, (between milepost 502 to milepost 504).
   - U. From Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5).
   - V. Peoria Terminal Company trackage from Iowa Junction (RI milepost 164.32/PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (milepost 7.40).
6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*
   - A. From West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland.
   - B. At Washington, Iowa.

C. From Newport, Minnesota to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.
D. From Davenport to Iowa City, Iowa.
E. At Davenport, Iowa.

7. *St. Louis Southwestern Railway Company (SSW):*
A. From Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.
B. At North Topeka and Topeka, Kansas.

8. *Little Rock & Western Railway Company (LRWN):*
A. From Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2).
B. From Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

9. *Missouri Pacific Railroad Company (MP):*
A. From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).
B. From Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).
C. From Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.
D. From Wichita, Kansas (milepost 243.7) to Kechi, Kansas (milepost 235.9).

10. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

11. *Cadillac and Lake City Railway Company (CLK):*
A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado, a distance of approximately 6.6 miles.
B. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado, and Eastward from Colorado Springs to Falcon, Colorado (milepost 590.3), a total distance of approximately 25.1 miles.
C. From Simla, Colorado (milepost 556.3) to Colby, Kansas (milepost 387.0), a distance of approximately 171.3 miles.
D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado, a distance of approximately 83.8 miles.

12. *Baltimore and Ohio Railroad Company (BO):*
A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.
B. From Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

13. *Keota Washington Transportation Company (KWTR):*
A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.
B. At Vinton, Iowa (milepost 120.0 to 123.0).
C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

14. *The La Salle and Bureau County Railroad Company (LSBC):*
A. From Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois. Street (Subdivision 1A; milepost 14.8), at Blue Island, Illinois.
B. From Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.
C. From Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.
D. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights only.

15. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*
A. At Alva, Oklahoma.
B. At St. Joseph, Missouri.

16. *The Brandon Corporation (BRAN):*
A. From Belleville, Kansas (milepost 226.1), to Manhattan, Kansas (milepost 143.0), a distance of approximately 83 miles.

17. *Iowa Northern Railroad Company (IANR):*
A. From Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa (milepost 225.1).
B. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

18. *Iowa Railroad Company (IRRC):*
A. From Council Bluffs (milepost 490.15) to Dexter, Iowa (milepost 393.0) a distance of approximately 97.15 miles.
B. From Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.
C. From Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.
D. From Bureau, Illinois (milepost 114.2) to a point west of Rock Island, Illinois sufficient to provide service to the Rock Island Arsenal.
E. From Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.
F. At Rock Island, Illinois, including 26th Street Yard.

19. *Missouri-Kansas-Texas Railroad Company (MKT):*
A. From Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

20. *Chicago Short Line Railway Company (CSL):*
A. From Pullman Junction easterly for approximately 1,000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.
B. From Rock Island Junction westerly for approximately 3,000 feet to Irondale Wye.

21. *Kyle Railroad Company (Kyle):*
A. From Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. Kyle will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

22. *North Central Texas Railway, Inc (NCTR):*
A. From Chico, Texas (milepost 562) to Dallas (North Junction), Texas (milepost 643.8).
B. Joint right-of-way district between Dallas (North Junction) and Endot, Texas (milepost 646.4).

23. *Enid Central Railway, Inc. (ENIC):*
A. From Enid, Oklahoma (milepost 345.27) to Kremlin, Oklahoma (milepost 330.03), including operations on the Ponca City Branch line from milepost 0.02 to milepost 0.30.
B. From North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8).

24. *North Central Oklahoma Railway, Inc. (NCOR):*
A. From Mangum, Oklahoma (milepost 97.2) to Chickasha, Oklahoma (milepost 0.0).
B. From Richards Spur, Oklahoma (milepost 486.45) to Anadarko, Oklahoma (milepost 463.39).
C. From Chickasha, Oklahoma (milepost 434.69) to El Reno, Oklahoma (milepost 400.31).
D. From El Reno, Oklahoma (milepost 513.31) to Council, Oklahoma (milepost 494.5).

25. *South Central Arkansas Railway, Inc. (SCAR):*
+A. From El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).

26. *Burlington Northern Railroad Company (BN):*
A. At Burlington, Iowa (milepost 0 to milepost 2.06).
B. At Okeene, Oklahoma.
C. At Lawton, Oklahoma.

27. *Fort Worth and Denver Railway Company (FWD):*
A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.
B. At North Fort Worth, Texas (mileposts 603.0 to 611.4).

+Added.

[FR Doc. 82-13285 Filed 5-14-82; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 95
Monday, May 17, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 752

Schedule B Appointment Authority for Professional and Administrative Career Positions; Correction

AGENCY: Office of Personnel Management.

ACTION: Republication of proposed regulations; correction.

SUMMARY: On May 11, 1982, (47 FR 20264) the Office of Personnel Management published proposed regulations to amend 5 CFR Parts 213 and 752. Because the proposal as published contained invadvertent errors, the proposed regulations are republished in their entirety with corrections.

These proposed regulations establish a new appointing authority which agencies may use during a period when the Office of Personnel Management does not have a register of eligibles for use in filling professional and administrative career positions subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. This new authority is applicable only when agencies must utilize external recruiting and hiring procedures to fill such positions. The proposed regulations also contain an amendment to extend adverse action protections to individuals appointed under the new authority.

DATE: Comments must be received on or before June 16, 1982.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Part 213: William Bohling—(202) 632–6000.
Part 752: Cynthia Field—(202) 254–5517.

SUPPLEMENTARY INFORMATION: On November 19, 1981, the United States District Court for the District of Columbia entered a decree in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. Defendants in that lawsuit included the Director of the United States Office of Personnel Management (OPM) and the heads of 45 other Federal departments, agencies, and establishments in the Legislative and Executive Branches of the United States Government. Pursuant to that decree, OPM must eliminate the use of the Professional and Administrative Career Examination (PACE) and registers of eligibles derived therefrom. At the present time, OPM has no equivalent register of eligible applicants for entry-level professional and carrer positions and, pending further notice, will not establish such a register.

Because of substantial reductions in Federal governmental operations and spending, most agencies will not engage in significant outside hiring for the probable life of the decree. Instead, agencies generally will fill many vacancies that arise either by internal placement; by reinstatment of individuals with career status; or by interagency transfer to accommodate Federal employees who have been displaced by reduction in force, abolition of function, reorganization, or some other agency action taken either to achieve compliance with budgetary or personnel ceiling limitations or to accomplish desirable program changes. In filling vacancies, agencies will give precedence to individuals with priority placement rights and will make maximum use of available applicant sources such as (a) OPM Displaced Employee and VIPP lists and (b) agency repromotion and reemployment priority lists.

OPM recognizes, however, that agencies may experience vacancies in positions that were covered by the PACE on the effective date of the consent decree and that can be filled only through external hiring at the GS–5 and GS–7 entry levels. In the absence of OPM registers of eligible applicants for such positions, and in the event that agencies need to make external appointments to such positions, the agencies must have a special authority to do so. Thus, OPM, pusuant to its authority under Civil Service Rule VI, has determined that such entry-level professional and administrative career positions at the GS–5 and GS–7 grades should be excepted from the competitive service on a case-by-case, position-by-position basis when it is necessary to fill those positions through external hiring. Excepting these positions from the competitive service and placing them in Schedule B is appropriate because, given the elimination of PACE and the unavailability of alternative written tests and other merit selection procedures, it is impracticable to hold competitive examinations for the positions.

The Director of OPM finds that, on account of the urgent needs of several agencies to effect appointments to positions that were formerly covered by PACE, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects

5 CFR Part 213

Goverment employees.

5 CFR Part 752

Administrative practice and procedures, Government employees.

Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. 5 CFR 213.3202 is amended by adding paragraph (1) to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(1) Professional and administrative careeer (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, and which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and when no qualified applicant already in the competitive service is available for appointment thereto, and the agency has made maximum use of priority placement sources, then the agency may apply to OPM for authority to make a new appointment under this paragraph. Such appointments shall be made pursuant to such Schedule B authorities for PAC positions as shall be prescribed in the Federal Personnel Manual. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration by the agency that the employee has met qualifications on the basis of either an examination, review of the employee's performance, or such other means as may be prescribed for such position by civil service laws, rules, and regulations. Terms of service under this appointment authority shall be established by a delegation agreement to be executed for each position excepted from the competitive service pursuant to this authority.

PART 752—ADVERSE ACTIONS

(2) 5 CFR 752.401(b) is amended by adding paragraph (4) to read as follows:

§ 752.401 Coverage.

* * * * *

(b) *Employees covered.* The following are covered by this subpart: * * *

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this title, provided that the employee has completed a trial period of one year after initial appointment in such a position.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577.

[FR Doc. 82-13435 Filed 5-13-82; 4:08 pm]
BILLING CODE 6325-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563b, 563c, and 563d

[No. 82-312]

Information Disclosure Requirements in Connection With Conversions From the Mutual to the Stock Form of Organization, Filings Under the Securities Exchange Act of 1934, and the Issuance of Mutual Capital Certificates and Debt Securities

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") proposes to amend its regulations governing the information disclosure requirements applicable to institutions, insured by the FSLIC, that are converting from the mutual to the stock form of organization. Proposed changes are also made to disclosure requirements of insured institutions which have registered a class of its securities with the Board under Section 12 of the Securities and Exchange Act of 1934. The amendments also would affect the form and content of financial statements included in offering circulars required to be filed with the Board in connection with the offer and sale by an insured institution of mutual capital certificates and debt securities. The amendments are designed to: (1) Provide specific guidance as to appropriate financial statement and related financial information disclosure for insured institutions; (2) eliminate inconsistencies between the disclosure requirements of the Board's Conversion Regulations, Part 563b of the Rules and Regulations for Insurance of Accounts ("Insurance Regulations"), and the disclosure requirements of the Board's regulations under the 1934 Act, Part 563d of the Insurance Regulations; and (3) simplify the financial disclosure requirements and eliminate, where possible, duplication between disclosure in the Notes to Financial Statements and the text of the particular disclosure document.

DATES: Comments must be received by: July 9, 1982.

ADDRESS: Comments should be sent to the Director, Information Services, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT: Craig A. Dabroski, Accounting Fellow (202–377–6992) or William Dobrzykowski, Deputy Chief Accountant (202–377–6539), Office of Examinations and Supervision, regarding financial statement and related financial information requirements; and Thomas J. Haggerty (202–377–6911), Senior Attorney, Office of General Counsel, Federal Home Loan Bank Board, regarding legal matters, at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

The proposed amendments pertain to the disclosure required: (1) In proxy statements and offering circulars used in connection with mutual-to-stock conversions; (2) in filings with the Board under the Securities Exchange Act of 1934 ("1934 Act"); and (3) in offering circulars required to be filed with the Board in connection with the offer and sale of mutual capital certificates and debt securities. In addition, a technical change is proposed in Form AC, the Board's application for mutual-to-stock conversions.

Under the Board's Conversion Regulations, Part 563b of the Insurance Regulations, a converting institution must obtain approval of the conversion by its members, and must sell its stock for a price equal to the estimated pro forma market value of the stock based on an independent valuation. The stock must be offered to members of the converting institution pursuant to certain subscription rights and, if not fully subscribed, to the public. Forms PS and OC under the Conversion Regulations prescribe the information to be included in (1) the proxy statement soliciting membership approval of the conversion, and (2) the offering circulars required to be used in the sale of conversion stock in the subscription and public offerings. Subpart A of Part 563c of the Insurance Regulations specifies the form and content of the financial statements required by Forms PS and OC. The same financial statement disclosure is required in offering circulars filed with the Board under § 563.7–4 of the Insurance Regulations, relating to mutual capital certificates, and §§ 563.8 and 563.8–1 of the

Insurance Regulations, relating to debt securities.

An institution which has a class of equity securities registered with the Board under Section 12 of the 1934 Act is subject to Part 563d of the Insurance Regulations, which adopts the regulations of the Securities and Exchange Commission ("SEC") governing registration, periodic reporting, and proxy solicitation. In addition, Part 563d adopts Regulation S–X of the SEC, 17 CFR § 210.1–01 *et seq.*, which governs the form and content of financial statements required in connection with 1934 Act filings.

II. Proposed Amendments

1. *General.*

The proposed amendments are based upon three premises.

(1) Disclosure of information the compilation of which imposes upon an institution a burden which outweighs any benefit should not be required, provided that investors receive meaningful disclosure of all material information.

(2) In order to avoid unnecessary duplication, there should be deleted from the textual sections of disclosure documents information which is adequately presented in the financial statements and the notes to the financial statements.

(3) The disclosure required in connection with a mutual-to-stock conversion should conform to that which will be required of the converting institution when it registers its equity securities under the 1934 Act.

2. *Form AC.*

Item 7 of Form AC (Application for Conversion) is proposed to be amended to substantially increase the dollar amount of savings account balances of personnel required to trigger disclosure, and to provide for the disclosure of appropriate current information.

3. *Items 5, 6, 7(n) and 9 of Form PS.*

The SEC is engaged in a program of integrating the various disclosure requirements under the Federal securities laws. The SEC's program to integrate the disclosure requirements imposed by the transaction-oriented framework of the Securities Act of 1933 ("1933 Act") with the disclosure requirements imposed by the status-oriented framework of the 1934 Act was discussed comprehensively in SEC Release No. 33–6235 (September 2, 1980) (45 FR 63695), and has been effectuated most recently by the SEC's adoption of an Integrated Disclosure System in SEC Release No. 33–6383 (March 3, 1982) (47 FR 11380). The goal of the SEC's integrated disclosure program has been to revise or eliminate overlapping or unnecessary disclosure and dissemination requirements, thereby reducing burdens on registrants, while at the same time ensuring that security holders, investors, and the marketplace will be provided with meaningful nonduplicative information upon which to base investment decisions.

A principal method by which the SEC has effected its integrated disclosure program has been its adoption and expansion of Regulation S–K, 17 CFR Part 229. Since its initial adoption in SEC Release No. 33–5893 (December 23, 1977) (42 FR 65554), Regulation S–K has evolved from a source of certain standardized registrant-related disclosure provisions to a compendium of disclosure requirements applicable to both 1933 Act and 1934 Act filings.

In recognition of this central role played by Regulation S–K in the disclosure requirements under the Federal securities laws, and the fact that all converted institutions are required to register their stock under the 1934 Act, the Board is proposing to coordinate, where feasible, the disclosure required in mutual-to-stock conversion filings with the disclosure required under the 1934 Act through adoption of certain Regulation S–K requirements. This would benefit converting institutions since they will not be subject to different disclosure obligations.

Accordingly, the Board proposes to amend Item 5 of Form PS, Directors and executive officers, Item 6 of Form PS, Management renumeration and transactions, Item 7(n) of Form PS, Legal proceedings, and Item 9 of Form PS, Description of capital stock, to require the information called for by the equivalent Items of Regulation S–K. However, certain disclosure matters specifically applicable to converting institutions are retained in these Form PS Items. In addition, the proposed Item 5 disclosure requirement concerning directors and officers would incorporate certain disclosure requirements of an equivalent Item under the SEC's proxy regulations, 17 CFR § 240.14a–101, and would increase from $40,000 to $50,000 the minimum salary level of directors and highest paid officers which would be required to be disclosed. These proposed revisions would not result in significantly different disclosure from that currently required by Form PS.

As is discussed below, it is proposed also to amend Item 7 of Form PS in various respects to reflect Regulation S–K disclosure in a manner that is designed to apply specifically to converting savings and loan institutions.

4. *Item 7 of Form PS.*

Item 7 of Form PS govern the disclosure of a converting institutions's business in conversion proxy statements and offering circulars. In addition, the Office of General Counsel has interpreted the description of business required in 1934 Act filings to include the financial and other disclosures contemplated by Item 7 of Form PS. This interpretation is proposed to be adopted by the Board in § 563d.802. Accordingly, Item 7 of Form PS would replace Exchange Act Industry Guide 3, 17 CFR §§ 229.802(c) and Part 241, relating to statistical disclosure by bank holding companies, promulgated by the staff of the SEC, as the guide for description of business in 1934 Act reports filed with the Board by savings and loan institutions.

The following is a summary of proposed amendments to Item 7 of Form PS.

A. Narrative Description of Business

It is proposed to amend Item 7(a) to specify that what is called for is a description of the business done and intended to be done by the institution and its subsidiaries. This required disclosure would include information regarding the organization of the institution and the general development of the business of the institution, its subsidiaries and any predecessor(s) during the past five years, or any shorter period as the institution may have been engaged in business. This disclosure would explain the general policy of the institution in the conduct of the savings and loan business, particularly in light of any recent, expanded authority and the existing economic environment. Factors that might be discussed in appropriate detail are (1) the institution's historical practices, including the average term to maturity of the institution's existing portfolio of mortgage loans, and (2) its present intention regarding the making of loans, whether real estate or other, the nature of security for loans, the retention or resale of loans it originates, and the nature of those loans as to fixed or variable interest rates. Also, the disclosure should explain any significant impact to the institution as a result of any material acquisitions.

This substantive textual explanation regarding the nature of the business conducted by the institution provides a basis for deletion of certain of the detailed tabular data currently required by Item 7.

B. Selected Statement of Financial Data

Current Item 7(b) is proposed to be revised to conform substantially to Item 301 of Regulation S–K, Selected Financial Data, 17 CFR § 229.301.

Information would be required for the preceding five fiscal years and for any required interim period, on a comparative basis with the equivalent period of the past fiscal year. The proposed captions are modified from those contained in the Instructions to Item 301 of Regulation S–K to apply specifically to a savings and loan institution which historically has existed as a mutual organization. The new captions would include: (1) Total interest income; (2) Total interest expense; (3) income (loss) from continuing operations; (4) total loans; (5) total assets; (6) total savings accounts; (7) total borrowings; (8) total net worth; and (9) number of offices, indicating which offices are full service. The Item also would encourage institutions to include additional information which they believe would aid investors and other users. In addition, the Item would provide for inclusion of information regarding changing prices required by FASB Statement of Financial Accounting Standards No. 33, *Financial Reporting and Changing Prices* ("SFAS 33").

Since the proposed revised tabular presentation would include appropriate income statement information, Item 15(b) of Form PS would be revised to require Statements of Operations and Stockholders' Equity for each of the last three years, rather then for the five-year period now required.

In summary, it is intended that the revised Selected Financial Data table would present significant five-year trend data relating to an institution's financial condition and results of continuing operations. The Board believes that this treatment would present in a balanced manner all significant components of the institution's financial condition without unduly emphasizing one or more aspects of that condition, such as income or revenues.

C. Management's Discussion and Analysis of Financial Condition and Results of Operations

There is proposed to be included in Item 7, as new paragraph (c), a section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("Management's Discussion"). Item 7(c) would be substantially identical to Item 303 of Regulation S–K, 17 CFR 229.303, and would replace the Management's Discussion currently required by Note 3 to Item 15 of Form PS.

The major features of the proposed new Management's Discussion are as follows:

(1) The discussion would focus on the financial statements and not center only upon the Statement of Operations.

(2) The discussion would include the following financial aspects of the institution's business—liquidity, capital resources, and results of operations.

(3) Within each area of the discussion, there would be emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) Information concerning the effects of inflation and changing prices would be presented to the extent required by SFAS 33.

(5) The percentage tests and line-by-line analysis encouraged by the current requirements of Note 3 to Item 15 of Form PS would be eliminated. However, the proposed Management's Discussion would indicate that the causes of material changes in the line items should be discussed.

(6) The proposed Item encourages the presentation of projections or other forward-looking information, on a voluntary basis. To facilitate this, the Board proposes to adopt a new § 563d.3b–6 of the Insurance Regulations to clarify the applicability of the Board's safe-harbor rule for projections, 17 CFR § 240.3b–6.

These changes are proposed as a result of the Board's concern that the disclosure elicited by the current requirements of Note 3 to Item 15 of Form PS is not fulfilling originally contemplated objectives. Existing percentage tests often are applied without regard to any concept of materiality to the institution's business. Accordingly, although some portions of the resulting discussion may be meaningful, the meaningful discussion is often obscured by the inclusion of material which is of little relevance. In addition, the Board is concerned that the focus of Note 3 may be too narrow. In today's environment there is a growing need to analyze an enterprise's liquidity and capital resources, in addition to its revenues and income. The narrow approach set forth in Note 3 does not ordinarily produce a discussion which focuses upon the financial condition of the enterprise as a whole. Finally, the proposed changes conform conversion disclosure requirements to 1934 Act requirements.

While the Board recognizes that the terms "liquidity" and "capital resources" lack some precision in definition, it is believed that additional specificity would decrease the flexibility needed by management for a meaningful discussion. In this light, the liquidity and capital resources discussions may be combined. It is not intended that liquidity merely mean "liquid assets" as defined by § 523.10 of the Regulations for the Federal Home Loan Bank System ("Bank System Regulations"), although discussion regarding compliance with the liquidity requirements imposed by § 523.11 of the Bank System Regulations may form a part of the discussion regarding liquidity. Rather, it is intended that the Management's Discussion provide a substantive explanation of the institution's liquidy and capital resources. Comments which merely state that liquidity is adequate or that committed resources are at a satisfactory level would not be acceptable. A narrative discussion of the risk elements included in the institution's loan, investment, and real estate portfolios would be appropriate.

D. Mergers and Acquisitions

It is proposed to delete current Item 7(c) of Form PS which requires a tabular presentation regarding recent mergers, bulk purchases of assets, and similar acquisitions. This deletion is proposed to be made because adequate disclosure regarding mergers and acquisitions should be included in response to the requirements for textual disclosure regarding developments in the business of the applicant, the management's discussion and analysis of the financial condition and results of operation, and the incorporation of the financial statement disclosure requirements of Rules 3–07 and 3–08 of Regulation S–X, 17 CFR §§ 210.3–07 and 3–08.

E. Lending and Savings Activities

The proposed amendments delete the requirements for a five-year tabular presentation of: (1) Loans by type, Item 7(d)(2); (2) loan activity, Item 7 (d)(3); (3) loan origination fees, Item 7(d)(7); (4) scheduled items, Item 7(d)(9); and (5) savings accounts, Item 7(e). In addition, Item 7(d)(8), which requires disclosure of the method of loan-origination fee and discount amortization, would be deleted. Certain information regarding the institution's mortgage market activity and the significance of its service fee income, required under current Item 7(d)(3), would be rearranged and included in the textual description contemplated by the current Item 7(d)(1).

These sections of current Item 7 were initially adopted because the Board was mindful of an investor's need to assess uncertainties and changes in the risk characteristics of loan portfolios. Accordingly, current Item 7 calls for extensive disclosure concerning loan portfolios and related items. The

information was intended to provide information to facilitate analysis and comparison of sources of income and exposure to risks.

It is anticipated, however, that the proposed revisions to the narrative description of business and Management's Discussion will make clear that appropriate disclosure regarding the significance of any material information currently presented in the deleted tables is required to be explained to investors. This narrative presentation should incorporate the required information in a format that is more readable and understandable to investors. Moreover, a significant portion of the tabular information, for a three-year period rather than for a five-year period, would be required to be included in the institution's financial statements or notes thereto pursuant to the requirements of proposed revised Part 563c of the Insurance Regulations (12 CFR 563c.102). For example, disclosure would be required of the amounts of loans in each of the following categories: (1) Real estate-mortgage, (2) Real estate-construction, (3) Installment, and (4) Commercial, financial, and agricultural.

The proposed deletions would relieve institutions from the five-year presentation now required and from disclosure of certain specific detail that does not significantly aid investors. In addition, the deletions would avoid the duplication of disclosure required in the financial statements. It is anticipated that these changes would provide a more meaningful presentation to investors and avoid the tendency merely to include detailed tabular data without appropriate commentary.

Also, under the proposal the tabular presentation regarding the interest-rate differential between the interest earned on assets and the cost of funds would be revised and expanded; and disclosure concerning federal regulation of the institution, including the institution's compliance with the Board's net worth requirements, would be clarified. Finally, proposed new Item 7(e)(5) would require a table presenting return on assets, return on equity, and the ratio of equity to assets.

5. *Item 15 of Form PS.*

It is proposed to replace the Management's Discussion required under current Note 3 with the new Management's Discussion discussed under Item 7. In addition, in light of the revised Selected Financial Data table proposed to be included under Item 7, it is proposed to require income statements for each of the past three years, and requisite interim period, and balance sheets for each of the past two years, and requisite interim period. The provision regarding the timeliness of the financial statements is proposed to be revised to require unaudited interim financial statements if the audited financial statements are not within 135 days of Board approval of the conversion application. Also, it is proposed that the disclosure required in connection with a business acquired or to be acquired, Item 15(f), be revised to conform to that required by Rules 3-07 and 3-08 of Regulation S-X of the SEC.

6. *Other Items of Form PS.*

It is proposed to revise Form PS as follows: (1) Paragraph (f) of Item 8, Description of Plan of Conversion, to remove an instruction that has caused confusion regarding appropriate disclosure; (2) Item 10, Capitalization Table, to clarify appropriate presentation; (3) and Item 13, New charter, bylaws or other documents, to delete reference to possible optional charter provisions.

7. *Form OC, Offering Circular.*

It is proposed that the subscription offering circular be required to include any financial statements which, of necessity, would be required in a subsequent public offering circular. This would coordinate the disclosure required in the subscription and public offerings.

8. *Part 563c—Accounting Requirements.*

It is proposed that § 563c.1 of the Insurance Regulations, which concerns the form and content of financial statements required in various filings with the Board, be revised as follows.

(1) It would be specifically provided that financial statements governed by Subpart A of Part 563c shall be prepared and presented in accordance with generally accepted accounting principles ("GAAP"), except as otherwise provided by rule, regulation or order of the Board.

(2) It would be provided that the form and content of the financial statements shall conform to a new Subpart C, Financial Statement Presentation, except as otherwise provided by rule, regulation or order of the Board. Proposed Subpart C would prescribe, pursuant to the proposed revisions of § 563c.1, the form and content of financial statements included in filings with the Board under the Conversion Regulations, the 1934 Act, and §§ 563.7-4, 563.8 and 563.8-1 of the Insurance Regulations relating to certain offerings of mutual capital certificates and debt securities.

(3) Subpart A of Part 563c would be extended to filings with the Board under the 1934 Act, as provided in proposed § 563d.210.

(4) Articles 1 through 4 of Regulation S-X would be incorporated by reference, and the present incorporation of parts of Articles 5 and 9 of Regulation S-X would be deleted.

In addition, it is proposed to delete § 563c.4, General Notes to Financial Statements; § 563c.6, Balance Sheets; § 563c.7, Income Statements; § 563c.8, Statement of Changes in Financial Position; and § 563c.9, What Schedules are to be Filed. Except as outlined below, the disclosure required by these sections will be required by GAAP, Articles 1 through 4 of Regulation S-X, or the proposed Subpart C. the results of the proposed amendments follow.

(i) *Section 563c.6(d) Accrued Interest Receivable on Loans.*

GAAP requires the amount to be separately disclosed only if it is material. The note disclosure of "00 days plus" delinquent interest is dropped since collectibility problems are addressed by the determination of the loan loss reserve.

(ii) *Section 563c.6(i) Investment in stock of a Federal Home Loan Bank.*

Rather than a separate line item, this amount would be included as "other investment security" and would be separately disclosed in the notes.

(iii) *Section 563c.6(k) Savings accounts.*

Proposed Subpart C would expand the disclosure in the notes to show maturity by interest-rate group as of the most current balance sheet. This disclosure would consist of a table showing balances of certificates by interest-rate groups (no more than 200 basis-point range per group), with each group's maturity shown for the following periods: less than 1 year, 1 to 2 years, 2 to 3 years, and greater than 3 years.

(iv) *Section 563c.6(l) Loans in Process.*

Proposed Subpart C would require this amount to be shown as a deduction from gross loans to arrive at net loans outstanding. This would reduce the asset "loans" to the amount which is outstanding as of the balance-sheet date and is actually earning interest. The loans-in-process amount will continue to be disclosed in the loan note as undisbursed but approved loans.

(v) *Section 563c.8—Statement of Changes in Financial Position.*

General instructions would replace the details specified in the current regulation.

(vi) *Section 563c.9—What Schedules are to be Filed.*

Schedule I—Securities and Related Maturities: This schedule would be eliminated. The required disclosure in the financial statements of market value of the investment securities enables

investors to assess the liquidity of the portfolio. Scheduled maturity has become less meaningful because of the development of active secondary markets.

Schedule II—Amounts Receivable from Related Parties, and Underwriters, Promoters, and Employees other than Related Parties: No basic change would be made in this schedule. It would be designated as Schedule I and its title changed to "Amounts Receivable from Certain Persons."

Schedule III—Investments in, Equity in, Earnings of, and Dividends Received from Affiliates and Other Persons: This schedule would remain unchanged. It would be redesignated as Schedule IV.

Schedule IV—Slow Loans: This schedule would be eliminated since the required loan loss reserve disclosure would cover estimated losses due to uncollectible accounts.

Schedule V—Bonds, Mortgages, and Similar Debt: This schedule would be eliminated since the same information is required to be disclosed in the financial statement notes.

Schedule VI—Guarantees of Securities of Other Issuers; Schedule VII—Valuation and Qualifying Accounts and Reserves: These schedules would remain unchanged. They would be redesignated as Schedules III and II, respectively.

Schedule VIII—Capital Shares; Schedule IX—Warrants or Rights; Schedule X—Other Securities; and Schedule XI—Intangible Assets Schedule: These schedules would be eliminated since comparable disclosure is required in the financial statements.

9. *Part 563d—Securities of Insured Institutions*

Two new sections are proposed to be added to Part 563d. The first, § 563d.210, would incorporate by reference § 563c.1 as governing the form and content of financial statements in 1934 Act filings. The second, § 563d.3b–6, would clarify the Board's safe-harbor rule for projections, 17 CFR § 240.3b–6, in order to encourage projections in conversion proxy statements and offering circulars.

III. OGC Interpretation Regarding Description of Business

The Board proposes to adopt and codify as § 563d.802 an interpretation of its Office of General Counsel that would instruct 1934 Act registrants to conform the description of business required in Form 10K annual reports and other filings to Item 7 of Form PS as a substitute for SEC staff guidelines for Bank Holding Companies, Exchange Act Industry Guide 3, 17 CFR §§ 229.802(c) and 241.

List of Subjects in 12 CFR Parts 563b, 563c and 563d

Accounting, Savings and loan associations, Securities.

Initial Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80–584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposals. Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective, and legal basis underlying the proposed rules.* These elements have been incorporated elsewhere in the supplementary information regarding the proposals.

2. *Small entities to which the proposed rules will apply.* The proposed rules will apply only to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation and which (i) are converting from a mutual institution to the stock form of organization, (ii) have a class of equity securities required to be registered under the 1934 Act, or (iii) are offering for sale mutual capital certificates or debt securities under certain circumstances. Affected institutions generally would not be considered small entities because of their asset size and diffuse ownership.

3. *Impact of the proposed rules on small institutions.* Since the proposed amendments are designed to simplify and clarify the existing disclosure obligations of certain insured savings and loan institutions, they would benefit insured savings and loan institutions which may be considered small entities.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposal.

5. *Alternatives to the proposed rules.* The proposals constitute amendments to existing rules, and, therefore, are themselves an alternative to the existing rules. The proposed rules clarify the requirements for disclosure to the public of information material to investment and ownership decisions. It is not possible to eliminate or significantly modify these requirements for smaller entities engaged in the activities governed by the applicable rules, since the disclosure is mandated by the nature of the activity engaged in by the affected institution rather than by the identity or the size of the affected institution.

Statutory Authority and Findings

The Board hereby proposes the amendments to Parts 563b and 563c of the Insurance Regulations pursuant to the authority set forth in Sections 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726 and 1730; in Section 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; and in Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943 48 Comp.). The Board hereby proposes the amendments to Part 563d of the Insurance Regulations pursuant to the authority set forth in Sections 3(d), 12, 13, 14 and 23 of the Securities Exchange Act of 1934 (the "1934 Act"), 48 Stat. 881, as amended, 15 U.S.C. 78a *et seq.*, and in Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR Part 1071 (1943–48 Comp.). Pursuant to the requirements of Section 12(i) of the 1934 Act, the Board finds that the proposed amendments to its 1934 Act rules, Part 563d of the Insurance Regulations, are substantially similar to regulations and rules issued by the SEC. Also, as required by Section 23(a) of the 1934 Act, the Board has specifically considered the impact that these actions taken pursuant to the 1934 Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the 1934 Act.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 563b, 563c and 563d of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Federal Home Loan Bank Board

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

§ 563b.9 [Amended]

1. Amend Forms AC, PS, and OC following § 563b.9, as follows:

(a) Amend Form AC by revising Item 7;

(b) Amend Form PS by:

(i) Revising Item 6 of the Index to Items;

(ii) Revising prefatory Note 2, items 5 and 6, paragraphs (a) through (f) and paragraph (n) of item 7;

(iii) Removing the instruction to paragraph (f) of item 8;

(iv) Revising paragraph (a) of item 9 and adding a new paragraph (d);

(v) Revising item 10 and the introductory text of item 13;

(vi) Revising paragraphs (a) through (c) and paragraphs (e) and (f) of item 15, and removing Note 3 therefrom; and

(c) Amend Form OC by revising paragraph (2) of item 2.

Form AC

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street NW., Washington, D.C. 20552

Application for Conversion

* * * * *

Item 7. Savings Account Balances of Personnel. For each director and officer of the applicant whose total account balances, including the balances of each associate of the foregoing persons, were more than $100,000 as of the eligibility record date and which balances had increased by more than 25 percent during the two year period prior to that date, set forth in tabular form his total account balances as of (a) the eligibility record date; (b) each of the eight earnings distribution dates of the applicant immediately preceding such date; and (c) the most recent earnings distribution date.

* * * * *

Form PS

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street NW., Washington, D.C. 20552

Proxy Statement

* * * * *

Proxy State Form

Index to Items

* * * * *

Item 6. Management remuneration and transactions.

* * * * *

Form PS—Information Required in Conversion Proxy Statement

Notes

* * * * *

2. The proxy statement shall include such information which the General Counsel or the Director of the Division of Securities and Corporate Analysis of the Office of General Counsel by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

* * * * *

Item 5. Director and executive officers.

(a) Furnish the information called for by Item 401 of Regulation S–K, 17 CFR 229.401, and Item 6, Directors and executive officers, of Regulation 14A, 17 CFR 240.14a–101, that would be required in a registration statement or a proxy statement filed under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Unless the context otherwise requires, the words "registrant" and "issuer" in Item 401 of Regulation S–K and Regulation 14A shall refer to the applicant and the word "Commission" in those regulations shall refer to the Federal Home Loan Bank Board.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Management remuneration and transactions.

(a) Furnish the information called for by Item 402 and instruction 4 to Item 103 of Regulation S–K, 17 CFR 229.402 and 229.103, that would be required in a registration statement or a proxy statement filed under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Unless the context otherwise requires, the words "registrant" and "Commission" in Items 402 and 103 of Regulation S–K shall refer to the applicant and to the Federal Home Loan Bank Board, respectively.

(b) For purposes of the disclosure required by this Item 6, Item 402(f) of Regulation S–K shall be deemed to require disclosure of transactions in which the identified persons had or will have a direct or indirect material interest to which any borrower from the applicant or any of its subsidiaries was or is to be a party. For purposes of this section, a person shall not be deemed a borrower on the basis of: (i) any loan, which is not delinquent by more than 30 days or in default, secured by a first lien on his personal residence where such loan was made in the ordinary course of business, on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and did not involve more than the normal risk of collectibility or present other unfavorable features; (ii) any loan secured by a savings account; or (iii) any loan, which aggregated with all other loans not covered by (i) or (ii) above to such person, does not exceed $10,000 and does not present other features which would otherwise require disclosure under Item 402(f) of Regulation S–K.

Item 7. Business of the applicant.

(a) *Narrative description of business.* Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions. Describe the business done and intended to be done by the applicant and its subsidiaries. This should include a description of the general development of the business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities. Also, explain any significant impact to the institution as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(i) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(ii) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: total interest income; total interest expense; income (loss) from continuing operations; total loans; total assets; total savings; total borrowings; total net worth; and number of offices, indicating which offices are full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross-reference to a discussion of, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which are required to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 33 ("SFAS 33") may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the applicant in the Summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim period financial statements are included, or are required to be included by Item 15, applicants should consider whether any or all of the selected financial data should be updated for the interim period to reflect a material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.*

(1) Discuss applicant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (A), (B), and (C) of this subsection with respect to liquidity, capital resources, and results of operations, and should also provide all other information which the applicant believes to

be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(A) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(B) *Committed Resources.* (i) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period, and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt and any off-balance sheet financing arrangements.

(C) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expense which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(ii) Describe any known trends or uncertainties which have had or which the applicant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(iii) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(iv) For the three most recent fiscal years of the applicant, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(v) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in scheduled items.

Instructions. 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 7(c) need only include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to managment which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(A) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined by § 523.10 of the Regulations for the Federal Home Loan Bank System.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe harbor rule for projections, § 563d.3b–6 of the Insurance Regulations, under the circumstances specified in that section.

7. Applicants which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If the statement is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made.

8. Applicants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim period financial statements are included or are required to be included by Item 15, a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (A) and (B) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(A) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the

interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required the discussions may be combined at the discretion of the applicant.

(B) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the twelve month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that twelve month period and the twelve month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor rule for projections, § 563d.3b–6 of the Insurance Regulations, under the circumstances specified in that section.

(d) *Lending Activities:* (1) Briefly describe the applicable Federal and State restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also, briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title insurance and fire and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of gross income for the year ended as of the latest statement of financial condition required by Item 15(a).

(2) As to the lending area of the applicant, describe briefly (i) the lending area restrictions, if any, applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings and loan associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods covered by the statements of operations required by Item 15(b)(1), and as of the date of the statement of financial condition as of the end of the latest fiscal year, set forth in tabular form, excluding fees which are not considered adjustments of yields, the following: (i) weighted-average yield on loans originated and purchased during each period; (ii) weighted-average yield on all interest-earning assets during each period; (ii) weighted-average effective rate paid on savings during each period; (iv) weighted-average effective rate paid on Federal Home Loan Bank advances and other borrowings during the period; (v) total weighted-average rate paid on all interest-bearing liabilities for the period; and (vi) the weighted-average gross margin, defined as the difference of (ii) minus (v).

(5) For each of the periods covered by the statements of operations required by Item 15(b)(1), and as of the date of the statement of financial condition as of the end of the latest fiscal year, and as of the date of any subsequent interim statement of financial condition, present the following:

(A) Return on assets (net income divided by average total assets).

(B) Return on equity (net income divided by average equity).

(C) Equity-to-assets ratio (average equity divided by average total assets).

Instructions. (1) Applicants should supply any other ratios which they deem necessary to explain their operations.

(e) *Savings activities.* Describe the applicant's methods of computing and paying interest for both passbook savings accounts and certificates of deposit. State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also, indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Corporation, and Federal net worth and reserve requirements, the results of failure to meet those requirements, and the applicant's net worth and reserve position in relation to those requirements. Also describe the annual insurance premium payment and prepayment requirements.

* * * * *

(n) *Legal proceedings.* Furnish the information called for by Item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in Item 103 of Regulation S–K shall refer to the applicant.

* * * * *

Item 9. Description of capital stock.

(a) Furnish the information called for by Item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in Item 202 of Regulation S–K shall refer to the applicant.

* * * * *

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization.

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant:

(A)	(B)	(C)
Capitalization as of most recent available date	Adjustments as a result of conversion	Pro forma capitalization after giving effect to the conversion
Savings Accounts		
FHL Bank Advances		
Subordinated Debt Securities		
Other Borrowings		
Total		
Capital Stock		
Paid-in Capital		
Undivided Profits		
Reserves (amount restricted)		
Total		

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

* * * * *

Item 13. New charter, bylaws or other documents. Describe briefly any material differences between the provisions of the existing charter, bylaws and any similar documents of the applicant and those which will take effect after conversion.

Instruction. * * *

* * * * *

Item 15. Financial statements.

* * * * *

(a) *Statement of financial condition of the applicant.* (1) Furnish audited statements of financial condition as of the close of the applicant's latest fiscal year and as of the close of the preceding fiscal year. (2) If the latest statement furnished under (1) is in excess of 135 days prior to the date of Board approval of the conversion furnish an additional statement of financial condition as of a date within 135 days of such approval. This additional statement need not be audited.

(b) *Statements of operations and statement of stockholders' equity.* Furnish in comparative columnar form statements of operations and stockholders' equity of the applicant (1) for each of the three fiscal years preceding the date of the statement of financial condition as of the close of the applicant's latest fiscal year filed under paragraph (a), and (2) for the period, if any, between the close of the latest of such fiscal years and the date of the latest statement of financial condition filed under paragraph (a). In addition, furnish a statement of operations for the period of the immediately preceding fiscal year comparable to that covered by the statement of operations prescribed by paragraph (b)(2). Statements for the three latest fiscal years prescribed by paragraph (b)(1) shall be audited.

Instructions. * * *

(c) *Statement of changes in financial position.* Furnish audited statement of changes in financial position (1) for each of the three fiscal years preceding the date of the latest statement of financial condition filed under paragraph (a), and (2) furnish a statement for the period, if any, between the close of the latest fiscal year and the date of the latest statement of financial condition filed under paragraph (a). This additional statement need not be audited.

* * * * *

(e)(1) *Consolidated statements.* Furnish consolidated statements for the same periods and as of the same dates as would be required for the applicant. These statements shall be audited as would be required for the applicant's statements.

2. * * *

3. * * *

4. * * *

(f) *Post and future successions to other business.* Applicant shall include the information required by 17 CFR §§ 210.3–07 and 210.3–08 regarding business acquired or to be acquired.

* * * * *

Form OC

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street NW., Washington, D.C. 20552

Offering Circular

* * * * *

Item 2. Additional current information required.

* * * * *

(e) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the Direct Community Offering or Public Offering pursuant to this paragraph (e).

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

1. In the Table of Contents, revise the heading for Subpart A, remove §§ 563c.4, 563c.6, 563c.7, 563c.8 and 563c.9; redesignate § 563c.5 as § 563c.4; and add new Subpart C consisting of § 563c.101 and § 563.102 to read as follows:

Subpart A—Form and Content of Financial Statements

Sec.

563c.1 Form and content of financial statements

563c.2 Definitions

563c.3 Qualifications of public accountant

563c.4 Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities

* * * * *

Subpart C—Financial Statement Presentation

Sec.

563c.101 Application of this subpart.

563c.102 Financial statement presentation.

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260; as amended (17 U.S.C. 1725, 1728 and 1730); Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 3(b), 12, 13, 14 and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended (15 U.S.C. 78c(b), l, m, n and w); and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

Subpart A—Form and Content of Financial Statements

2. Section 563c.1 is amended by revising paragraphs (a)(2), (b) and (c) and by adding new paragraph (a)(3) to read as follows:

§ 563c.1 Form and content of financial statements.

(a) * * *

(2) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.7–4 of this subchapter and the issuance of debt securities under §§ 563.8 and 563.8–1 of this subchapter.

(3) Any filing under the Securities Exhange Act of 1934, 15 U.S.C. 78a *et seq.*, made pursuant to the requirements of Part 563d of this subchapter.

(b) Except as otherwise provided by the Federal Home Loan Bank Board by rule, regulation, or order, financial statements shall:

(1) Be prepared and presented in accordance with generally accepted accounting principles;

(2) Comply with Subpart C of this Part;

(3) Consistent with the provisions of this Subpart, comply with Articles 1 through 4 of Regulation S–X adopted by the Securities and Exchange Commission (17 CFR 210.1, 210.2, 210.3 and 210.4).

(c) The term "financial statements" includes all notes to the statements and related schedules.

* * * * *

3. New Subpart C, consisting of §§ 563c.101 and 563c.102 is added to read as follows:

Subpart C—Financial Statement Presentation

§ 563.101 Application of this Subpart.

This Subpart contains rules pertaining to the form and content of financial statements to be included in filings with the Federal Home Loan Bank Board.

§ 563.102 Financial statement presentation.

Compliance with the form and content of financial statements as prescribed by this regulation is required by the Federal Home Loan Bank Board as part of (a) a conversion application under Part 563b, including financial statements in proxy statements and offering circulars, (b) a filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and (c) any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.7–4 and the issuance of debt securities under §§ 563.8 and 563.8–1 of this Subchapter. This section specifies the various line items which should appear on the face of the financial statements and additional disclosures which should be included with the financial statements in related notes.

I. Balance Sheet

Balance sheets should comply with the following provisions:

A. Assets and Other Debits

1. *Cash and amounts due from depository institutions.* (a) State separately (i) interest bearing deposits and (ii) noninterest bearing deposits and cash.

(b) State in a note the amount and terms of any deposits in depository institutions held as compensating balances against long- or short-term borrowing arrangements. This disclosure should include the provisions of any restrictions as to withdrawal or usage. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposits are not generally included in legally restricted deposits.

In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required in the notes to the financial statements. Compensating balances that are maintained under an agreement to ensure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of the agreement.

2. *Investment securities.* (a) State the aggregate book value of investment securities and show, parenthetically or otherwise on the balance sheet, the aggregate amount of those investment securities on the basis of market quotations or fair value.

(b) State in a note the book value and the value on the basis of market quotations or fair value of securities of (i) the U.S. Treasury and other U.S. Government agencies and corporations; (ii) states of the U.S. and political subdivisions thereof; and (iii) other securities including bonds, notes, debentures and stock of business corporations, foreign governments, intergovernmental agencies, and Federal Home Loan Banks.

(c) State in a note the basis by which book value is determined. A premium on a bond shall be amortized and a discount shall be accreted over the life of the bond.

(d) Include securities pledged, loaned, or sold under repurchased agreements and similar arrangements. Exclude borrowed securities and securities purchased under resale agreements or similar arrangements.

3. *Trading account securities.* State in a note whether securities in dealer trading accounts are valued at (a) cost, (b) lower of cost or market, or (c) market. If market is not used, state parenthetically or otherwise on the balance sheet the aggregate amount of those securities on the basis of market quotations or fair value at the balance sheet date.

4. *Other short-term investments.* (a) State the aggregate value of Federal funds sold and securities purchased under resale agreements or similar arrangements. All securities purchased under transactions of this type shall be included regardless of (i) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, or other terms signifying the same substantive transaction, and (ii) whether the transactions are with the same or different institutions if the purpose of the transaction is to resell identical or similar securities.

(b) Federal funds sold and purchases of securities under resale agreements shall be reported gross and not netted against purchases of Federal funds and sales of securities under repurchase agreements.

5. *Loans.* (a) State separately on the balance sheet or in a note (i) total loans (including financing type leases), (ii) allowance for loan losses, (iii) unearned income on installment loans, (iv) discount on loans purchased, and (v) loans in process.

(b) State on the balance sheet or in a note the amount of loans in each of the following categories:

(i) Real estate—mortgage.

(ii) Real estate—construction.

(iii) Installment.

(iv) Commercial, financial, and agricultural.

(c)(i) Include under the real estate-mortgage category loans payable in monthly, quarterly or other periodic installments and secured by developed income property and personal residences.

(ii) Include under the real estate-construction category loans secured by real estate which are made for the purpose of financing construction of real estate and land development projects.

(iii) Include under the installment category loans to individuals generally repayable in monthly installments. This category shall include but not be limited to credit card and related activities, individual automobile loans, other installment loans, mobile home loans, and residential repair and modernization loans.

(iv) Include under the commercial, financial, and agricultural category all loans not included in another category. This category shall include but not be limited to loans to real estate investment trusts, mortgage companies, banks, and other financial institutions; loans for carrying securities; and loans for agricultural purposes. Do not include loans secured primarily by developed real estate.

(d) State separately any other loan category regardless of relative size if necessary to reflect any unusual risk concentration.

(e) Unearned income on installment loans shall be deducted separately from total loans.

(f) Unamortized discounts on purchased loans shall be deducted separately from total loans.

(g) Loans in process shall be deducted separately from total loans.

(h) A series of categories other than those specified in (b) above may be used to present details of loans if considered a more appropriate presentation.

(i) The notes should disclose, as the date of the most recent balance sheet, the amounts of contractual principal cash repayments by the following categories (based on remaining contractual maturities): less than one year; one year to five years; and greater than five years. If the amount of loans with variable interest rates is significant, those loans should be shown separately with a description of the variability feature(s).

(j) For each period for which an income statement is filed, disclose in a note the total dollar amount of loans being serviced by the association for the benefit of others.

(k) For each period for which an income statement is filed, furnish in a note a statement of changes in the allowance for loan losses, showing balances at beginning and end of the period, provision charged to income, recoveries of amounts previously charged off, and losses charged to the allowance.

6. *Premises and equipment.* State the net amount of premises, equipment, and leasehold improvements.

7. *Real estate owned.* State, parenthetically or otherwise:

(a) The amount of real estate owned and the bases for determining that amount; and

(b) A description of each class of real estate owned (i) acquired by foreclosure or by deed in lieu of foreclosure, (ii) in judgment and subject to redemption, or (iii) acquired for development or resale. Show separately any accumulated depreciation or valuation allowances. Disclose the policies regarding and amounts of capitalized costs, including interest.

8. *Investment in real estate ventures.* In a note, present summarized financial statements for each investment which is 20% or more owned by the registrant or any of its subsidiaries or for which liabilities (including contingent liabilities) to the parent exceed 10% of the parent's net worth. If an allowance for real estate losses subsequent to acquisition is maintained, the amount shall be disclosed, deducted from the other real estate owned, and a statement of changes in the allowance showing balances at beginning and end of period should be included. Provision charged to income and losses charged to the allowance shall be furnished

for each period for which an income statement is filed.

9. *Other assets.* (a) State separately any of the following assets which exceed 1% of assets, or any other asset which exceeds 1% of assets.

(i) Accrued interest receivable.

(ii) Excess of cost over assets acquired (net of amortization).

(iii) Prepayment to FSLIC Secondary Reserve.

The remaining assets may be shown in one amount.

(b) State in a note (i) amounts representing investments in affiliates and investments in other persons which are accounted for by the equity method, and (ii) indebtedness of affiliates and indebtedness of other persons, the investments in which are accounted for by the equity method. State the basis of determinating the amounts reported under (i). (See 17 CFR § 210.4–06(k)).

10. *Total assets and other debits.*

B. Liabilities, Other Credits and Equity

11. *Deposits.* (a) State separately on the balance sheets or in a note the amounts in the following deposit categories:

(i) NOW account deposits.

(ii) Savings deposits.

(iii) Time deposits.

(b) Include under the savings deposits category interest-bearing deposits without specified maturity or contractual provisions requiring advance notice of intention to withdraw funds. Include deposits for which an institution, optionally, may require written notice of intended withdrawal not less than 14 days in advance.

(c) Include under the time deposits category deposits subject to provisions specifying maturity or other withdrawal conditions such as time certificates of deposits, open account time deposits, and deposits accumulated for the payment of personal loans.

(d) Include accrued interest or dividends, if appropriate. In a note, set forth in tabular form the amounts of deposit accounts by categories of interest rate as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, for each interest-rate category set forth in tabular form the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

12. *Short-term borrowings.* (a) State separately here or in a note amounts payable for (i) Federal funds purchased and securities sold under agreements to repurchase, (ii) commercial paper, and (iii) other short-term borrowings.

(b) Federal funds purchased and sales of securities under repurchase agreements shall be reported gross and not netted against sales of Federal funds and purchase of securities under resales agreements.

(c) Include as securities sold under agreements to repurchase all transactions of this type regardless of (i) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries or other terms signifying the same substantive transaction, and (ii) whether the transactions are with the same or different institutions if the purpose of the transactions is to repurchase identical or similar securities.

(d) The weighted-average interest rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings shall be disclosed along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings shall be disclosed in the notes to the financial statements.

This information is not required to be given for any category of short-term borrowings for which the approximate average balance outstanding during the period was less than 1% of assets.

(e) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

13. *Advance payments by borrowers for taxes and insurance.*

14. *Accounts payable and accrued liabilities.* (a) State separately any of the following liabilities which exceed 1% of assets or any other liability which exceeds 1% of assets.

(i) Income taxes payable.

(ii) Deferred income taxes.

(iii) Indebtedness to affiliates and other persons. (See 17 CFR 210.4–06(k)).

(iv) Indebtedness to directors, executive officers, and principal holders (other than affiliates) of equity securities.

The remaining accounts payable and accrued liabilities may be shown in one amount.

(b) In a note, state indebtedness to affiliates and indebtedness to other persons the investments in which are accounted for by the equity method. (See 17 CFR 210.4–06(k)).

15. *Bonds, mortgages and similar debt.* (a) Include bonds, Federal Home Loan Bank advances, capital notes, debentures, mortgages, and similar debt.

(b) For each issue or type of obligations state in a note:

(i) The general character of each type of debt, including: (A) the rate of interest; (B) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990", (C) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (D) a brief indication of priority; and (E) if convertible, the basis. For amounts owed to related parties see 17 CFR 210.4–06(k).

(ii) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that would be disclosed under this rule if used shall be disclosed in the notes to the financial statements if significant.

(c) State in notes with appropriate explanations (i) the title and amount of each issue of debt of a subsidiary included in (a) above which has not been assumed or guaranteed by the registrant, and (ii) any liens on premises of a subsidiary or its consolidated subsidiaries which have not been assumed by the subsidiary or its consolidated subsidiaries.

16. *Total liabilities.*

17. *Deferred credits.*

18. *Commitments and contingent liabilities.*

19. *Minority interest in consolidated subsidiaries.* State separately in a note the amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

20. *Preferred stock subject to mandatory redemption requirements or the redemption of which is outside the control of the issuer.* (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (i) It is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (ii) it is redeemable at the option of the holder; or (iii) it has conditions for redemption which are not solely within the control of the issuer, such as stock which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under caption 21 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title of each issue, the carrying amount, and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07).

(c) State in a separate note captioned "Redeemable Preferred Stocks" (i) a general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made, (ii) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet, and (iii) the changes in each issue for each period for

which an income statement is required to be filed. (See also 17 CFR 210.4–08(d)).

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 21, 22 or 23 which follow.

21. *Preferred stock which is not redeemable or is redeemed solely at the option of the issuer.* State on the face of the balance sheet, or if more than one issue is outstanding state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable. State on the face of the balance sheet or in a note, of each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07). Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be filed. (See also 17 CFR 210.4–08(d)).

22. *Common Stock.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see 17 CFR 210.4–07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common stock state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis for conversion (see also 17 CFR 210.4–08(d)). Show also the dollar amount of any common stock subscribed for but unissued, and show the deduction of subscriptions receivable. Show in a note or statement the changes in each class of common stock for each period for which an income statement is required to be filed.

23. *Other stockholders' equity.* (a) Separate captions shall be shown for (i) additional paid-in capital, (ii) other additional capital, and (iii) retained earning, both (A) appropriated and (B) unappropriated. (See 17 CFR 210.4–08(e)). Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate.

(b) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any descriptions of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) A summary of each account under this caption setting forth the information prescribed in Rule 11–02 of Regulation S–X (17 CFR 210.11–02) shall be given in a note or separate statement, for each period for which an income statement is required to be filed.

24. *Total liabilities, other credits, and stockholders' equity.*

II. Income Statement

Income statements should comply with the following provisions:

1. *Interest and fees and loans.* (a) Include interest, service charges, and fees which are related to or are an adjustment of the loan interest yield.

(b) Current amortization of premiums on mortgages or other loans shall be deducted from interest on loans and current accretion of discount on such items shall be added to interest on loans.

2. *Interest and dividends on investment securities.* Include accretion of discount on securities and deduct amortization of premiums on securities.

3. *Trading account interest.* Include interest from securities carried in a dealer trading account or accounts that are held principally for resale to customers.

4. *Other interest income.* Include interest on short-term investments (Federal funds sold and securities purchased under agreements to resell) and interest on bank deposits.

5. *Total interest income.*

6. *Interest on deposits.* Include interest on all deposits. State separately on the income statement or in a note interest on deposits detailed in the same categories as those specified for deposits at balance sheet caption 11(a).

7. *Interest on short-term borrowings.* Include interest on borrowed funds, including Federal funds purchased, securities sold under agreements to repurchase, commercial paper, and other short-term borrowings.

8. *Interest on long-term borrowings.* Include interest on bonds, capital notes, debentures, mortgages on association premises, capitalized leases, and similar debt.

9. *Total interest expense.*

10. *Net interest income.*

11. *Other income.* State separately any of the following items of income which exceeds one percent of revenue or any other item of income which exceeds one percent of revenue.

(a) Commissions and fees from fiduciary activities.

(b) Fees for other services to customers.

(c) Commissions, fees, and markups on securities under-writing and other securities activities.

(d) Profit or loss on transactions in investment securities.

(e) Equity in earnings of unconsolidated subsidiaries and 50 percent or less-owned persons.

(f) Gains or losses on disposition of investments in securities of subsidiaries and 50 percent or less owned persons.

(g) Profit or loss from real estate operations.

(h) Other fees related to loan originations or commitments not included in Income Statement Caption 1.

The remaining other income may be shown in one amount.

12. *Other expensees.* (a) State separately and of the following expenses which exceed one percent of revenue.

(i) Salaries and employee benefits.

(ii) Net occupancy expense of premises.

(iii) Net cost of operations of other real estate.

(iv) Minority interest in income of consolidated subsidiaries.

(v) Provision for loan losses.

The remaining expenses may be shown in one amount.

(b) Report in one amount the net expense of occupancy of premises used in the ordinary course of business reduced by income from premises leased to others.

(c) Report in one amount the net expense of operations of other real estate reduced by rental or other related income. Include provisions for real estate losses resulting from revaluations of assets subsequent to acquisition, if any, and gains or losses on disposition of assets.

13. *Operation income.*

14. *Other income and expenses.* State separately material events or transactions that are unusual in nature or occur infrequently, but not both, and therefore do not meet both criteria for classification as an extraordinary item. Examples of items which would be reported separately are gain or loss from the sale of premises and equipment, provision for loss on real estate owned, or provision for gain or loss on the sale of loans.

15. *Income or losses before income tax expense (and appropriate items below).*

16. *Income tax expenses.* (See 17 CFR 210.4–08(g)).

17. *Income or loss before extraordinary items.*

18. *Extraordinary items, less applicable tax.* State separately (a) extraordinary items of the association, and (b) equity in extraordinary items of (i) unconsolidated subsidiaries and (ii) 50 percent or less-owned persons for which the equity in earnings was reported under balance sheet caption 14(b). Indicate the nature of any material items and disclose parenthetically or otherwise the tax applicable to each.

19. *Cumulative effects of changes in accounting principles..* State separately (a) changes of the association and (b) equity in changes of (i) consolidated subsidiaries and (ii) 50 percent or less owned persons for which the equity in earnings was reported under balance sheet caption 14(b). Indicate the nature of any material items and disclosure parenthetically or otherwise the tax applicable to each.

20. *Net income or loss.* (See balance sheet caption 20).

21. *Earnings per share data.* Refer to the pertinent requirements in the appropriate filing form.

22. *Conversion footnote.* If the association is an applicant for conversion from a mutual to a capital stock company or has converted within the last three years, describe generally in a note the terms of the conversion and any restrictions on the operations of the registrant imposed by the conversion.

23. *Mergers and acquisitions.* For the period in which a business combination occurs and is accounted for by the purchase method of accounting, in addition to those disclosures required by Accounting Principles Board Opinion No. 16, the association shall make those disclosures as noted below for all combinations involving significant acquisitions. (A significant acquisition is defined for this purpose to be one in which the assets of the acquired association, or group of associations, exceed 10% of the assets of the consolidated associated at the end of the most recent period being reported upon):

(a) Amounts and descriptions of discounts and premiums related to recording the assets

and liabilities at their fair market value. The disclosure should also include the methods of amortization or accretion and the estimated remaining lives.

(b) The net effect on net income before taxes of the amortization and accretion of discounts, premiums and intangible assets related to the purchase accounting transaction(s). For subsequent periods, the association shall disclose the remaining total unamortized or unaccreted amounted of discounts, premiums, and intangible assets as of the date of the most recent balance sheet presented. In addition, the association shall disclose the net effect on net income before taxes of the amortization and accretion of discounts, premiums and intangible assets related to prior business combinations accounted for by the purchase method of accounting. Such disclosures need not be made if the total amounts of discounts, or premiums, or intangible assets do not exceed 1% of total assets as of the date of the most recent balance sheet presented.

III. Statement of Changes in Financial Position

The amounts shown in this statement should be those items which materially enhance the reader's understanding of the association's business. As examples: interest credited to savings accounts should be shown as a non-fund expense separate from increase or decrease in savings; purchase and/or sales of loans should be shown separately from loan originations and loan collections; amortization of loan fees should be shown separately from loan fees collected; significant additions to real estate owned should be shown separately from sales of real estate owned. Additional guidance may be found in the AICPA's *Savings and Loan Associations Audit and Accounting Guide.*

IV. What Schedules Are To Be Filed

(1) Except as expressly provided otherwise in the applicable form:

(a) Schedule III, specified below, shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(b) The other schedules specified below as Schedules I and II shall be filed for each period for which an income statement is required to be filed for each person or group.

(2) If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(3) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

(4) The schedules prescribed by 17 CFR 210.12–04 and 210.12–05 shall be filed in support of balance sheet captions 9(b) and 14(b) of each balance sheet and shall be designated Schedules IV and V, respectively. These schedules shall be filed for each period for which an income statement is required to be filed. These schedules may be omitted if (a) neither the amount required to be reported in a note under balance sheet caption 9(c) in the related balance sheet nor the amount require to be reported in a note under balance sheet caption 14(b) in such balance sheet exceeds 5 percent of stockholders' equity as shown by the related balance sheet at either the beginning or end of the period, or (b) there have been no material changes in the information required to be filed from that last previously reported.

Schedule I—Amounts receivable from certain persons. The schedule prescribed by 17 CFR 210.12–03 shall be filed with respect to indebtedness of more than $500,000 or 2.5 percent of stockholders' equity, whichever is less, which is owed, or at any time during the period for which related income statements are required to be filed, was owed by each person (including those referred to below) related to the reporting person or any of its principal subsidiaries as director, executive officer, or principal holder of equity securities. Indebtedness to be reported for a director, officer or principal holder of equity securities shall include the aggregate of indebtedness owed by such person and indebtedness owed by any of the following which are related to such person: (1) Any corporation, venture or organization of which any of the foregoing persons is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (2) any trust or other estate in which any of the foregoing persons has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person. Indebtedness to be reported shall include amounts owed to the parent company or any consolidated subsidiary. Notwithstanding the foregoing and the requirement of Column A of the 17 CFR 210.12–03 schedule, indebtedness incurred in the ordinary course of business by directors (and related persons specified above) who are neither executive officers nor principal holders of equity securities may be stated in the aggregate in Columns B, C, D, and E of the 17 CFR 210.12–03 schedule and need not be reported on an individual basis. The number of directors whose indebtedness is included in the aggregate amount shall be stated in Column A. It shall not be necessary to include in the individual or aggregate indebtedness reported those amounts related to installment loans as defined in balance sheet caption 5(c)(iii) made in the ordinary course of business. For the purpose of this schedule, loans or indebtedness made or incurred in the ordinary course of business shall be those which (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

Schedule II—Valuation and qualifying accounts. The schedule prescribed by 17 CFR 210.12–09 shall be filed in support of valuation and qualifying accounts included in each balance sheet, excluding the allowances for loan losses and real estate losses.

Schedule III—Guarantees of securities of other issuers. The schedule prescribed by 17 CFR 210.12–08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

PART 563d—SECURITIES OF INSURED INSTITUTIONS

1. Redesignate existing part 563d as Subpart A—Regulations, and add new §§ 563d.3b–6, 563d.200.30 and 563d.210 and add a new Subpart B—Interpretations, consisting of §§ 563d.801 and 563d.802 to read as follows:

Subpart A—Regulations

563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.
563d.3b–6 Liability for certain statements by registrants.
563d.200.30 Delegation of authority to General Counsel.
563d.210 Form and content of financial statements.

Subpart B—Interpretations

Sec.
563d.801 Application of this Subpart.
563d.802 Preparation and filing of reports under the Securities Exchange Act of 1934.

Authority: Secs. 3(b), 12, 13, 14 and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended [15 U.S.C. 78c(b), l, m, n and w]; 15 U.S.C 78d–1; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. p. 1071.

Subpart A—Regulations

§ 563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.

* * * * *

§ 563d.3b–6 Liability for certain statements by registrants.

This section replaces 17 CFR 240.3b–6 and applies as follows:

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a proxy statement or offering circular filed with the Board under Part 563b of this Subchapter; in a registration statement filed with the Board under the Securities Exchange Act of 1934 on Form 10 (17 CFR 249.210); in Part I of a quarterly report filed with the Board on Form 10–Q (17 CFR 241.308a); in an annual report to shareholders meeting the requirements of § 563d.1,

particularly 17 CFR 240.14a–3 (b) and (c) or 17 CFR 240.14c–3 (a) and (b) under the Securities Exchange Act of 1934; in a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available; or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided,* that

(i) At the time such statements are made or reaffirmed, either (A) The issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of 17 CFR 240.13a–1 or 240.15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K; or (B) if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made either in a registration filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, or in a proxy statement or offering circular filed with the Board under Part 563b of this subchapter if such statements are reaffirmed in a registration statement under the Securities Exchange Act of 1934 on Form 10, filed with the Board within 180 days of the institution's conversion, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940;

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.303), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.302), supplementary financial information, and disclosed in a document filed with the Board or in an annual report to shareholders meeting the requirements of 17 CFR 240.14a–3(b) and (c) or 17 CFR 240.14c–3(a) and (b) under the Securities Exchange Act of 1934: *Provided,* that such information included in a proxy statement or offering cricular filed pursuant to Part 563b of this Subchapter shall be reaffirmed in a registration statement under the Securities Exchange Act of 1934 on Form 10 filed with the Board within 180 days of the institution's conversion.

(c) For purposes of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S–K; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in (1), (2), or (3) above.

(d) For purposes of this section, the item "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

§ 563d.200–30 Delegation of authority to General Counsel.

* * * * *

§ 563d.210 Form and content of financial statements.

Financial statements contained in filings with the Federal Home Loan Bank Board under the Securities Exchange Act of 1934 shall conform as to form and content to the requirements of § 563c.1 of this Subchapter.

Subpart B—Interpretations

§ 563d.801 Application of this Subpart.

This Subpart contains interpretations pertaining to the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder as applied to insured institutions by the Corporation.

§ 563d.802 Description of Business.

(a) This section applies to the description of business portion of (1) registration statements filed on Form 10 (Item 1) (17 CFR 249.210), (2) proxy and information statements relating to mergers, consolidations, acquistions and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14c) (17 CFR 240.14a–101 and 240.14c–101), and (3) annual reports filed on Form 10–K (Item 7) (17 CFR 249.310).

(b) The description of business should conform to the description of business required by Item 7 of Form PS under Part 563b of this Subchapter.

(c) No repeat disclosure is required by virtue of similar requirements in Item 7 of Form PS and Items 301 and 303 of Regulation S–K (17 CFR 229.301 and 229.303). However, there should be included appropriate disclosure which arises by virtue of the registrant being a stock institution. For example, the table regarding return on equity and assets, Item 7(e)(5), should include a line item for "dividend payout ratio (dividends declared per share divided by net income per share)".

(Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726 and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; Secs. 3(b), 12, 13, 14 and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended, 15 U.S.C. 78c, *l,* m, n and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-13804 Filed 5-14-82; 8:45 am]

BILLING CODE 6720-01-M

CIVIL AERONAUTICS BOARD

14 CFR Ch. II

Agenda of Significant Regulations

AGENCY: Civil Aeronautics Board.

ACTION: Publication of agenda of significant rules under development or review.

SUMMARY: As part of its implementation of the Regulatory Flexibility Act, Pub. L. 96–354, and in accordance with the policy announced in Executive Order 12291, *Federal Regulation*, the CAB publishes its semiannual Agenda of Significant Rules under Development or Review.

DATE: Adopted: April 15, 1982.

ADDRESSES: Copies of the rulemaking documents listed in this agenda can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428; (202) 673–5432. Each document should be identified by the designation appearing in parentheses after the **Federal Register** citation.

Persons wishing to be placed on a mailing list for future editions of this agenda should send a postcard request to the Distribution Section at the above address.

FOR FURTHER INFORMATION CONTACT: About a specific rulemaking action listed in this agenda—the contact person listed below. About this agenda—Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION:

The Board is publishing this Agenda of Significant Rules under Development or Review in accordance with the Regulatory Flexibility Act, Pub. L. 96–345, and the policy announced in Executive Order 12291, *Federal Regulation*, issued on February 17, 1981. The next agenda will be published in October 1982, as provided in the Regulatory Flexibility Act. The Board's previous agenda appears at 46 FR 53436, October 28, 1981.

This agenda is divided into two main categories, *Rules Under Development* and *Existing Rules Under Review*, and an Appendix. An action to amend an existing part of the Code of Federal Regulations is not necessarily listed as an existing rule under review. If it does not involve a reexamination of the basic policy and purpose of that part, it is listed as a rule under development. Entries in *Rules Under Development* are listed with a letter prefix indicating the subject areas: A—Small Community Air Service Program; B—Fares, Rates, and Tariffs; C—Charters; and D—Miscellaneous. Each rulemaking included in *Existing Rules Under Review* is listed according to the CFR part it would primarily affect, with a numerical suffix to distinguish it from other rulemakings that are listed under the same part. The Appendix lists any rulemaking that appeared in the previous agenda and has since been completed or terminated.

For each rulemaking action listed in this agenda, the following information is set out: title; the name, office abbreviation, and telephone number of a knowledgeable Board official to contact for further information; action schedule; and description. For each proceeding in which a notice of proposed rulemaking has been issued, a scheduled completion date is listed. Addresses for all contact persons are Civil Aeronautics Board, Washington, D.C. 20428. Unless otherwise noted, the legal authority for a rulemaking action is the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978 and the International Air Transportation Competition Act.

The only rules that the Regulatory Flexibility Act requires agencies to include in their agendas are those that are "likely to have a significant economic impact on a substantial number of small entities." This agenda is more inclusive, listing all significant Board rulemaking activity. The following items appear to meet the statutory criterion: A2, A4, A5, A6, B1, B2, B4, B5, C10, D4, D11, D19, D26, D28, D32, 221–1, 211–2, 241–1, 293–1, 313–1 and 389–1. We have not made this determination in cases where a notice of proposed rulemaking was issued before January 1, 1981, because the regulatory flexibility analysis requirements do not apply to those proceedings.

None of the rulemaking included in this agenda is "major" within the meaning of E.O. 12291, and the Board does not plan to perform any formal Regulatory Impact Analyses. Each rulemaking, however, undergoes an analysis of benefits, costs, and alternatives, in a degree of detail and formality that is commensurate with the importance of the rule. The Board also retains the discretion to prepare a formal Regulatory Impact Analysis on any rulemaking.

Statements in the action schedule column that a notice or advance notice of proposed rulemaking is in preparation indicate that the staff is preparing a draft for Board action. They do not imply that the proposal will necessarily be issued, that the Board has endorsed the substance of the proposal, or that the petition (if any) prompting the rulemaking activity will necessarily be granted. Scheduled completion dates are estimates only, and so do not bind the Board or indicate that a final rule will necessarily be adopted.

Although this agenda is intended to list all significant Board regulations that are under development or review, it is not a complete guide to all significant rulemaking activity for the 6 months until publication of the next agenda. First, new rulemaking actions may arise and be completed between now and then. Second, we may have inadvertently omitted one or more items. Any such omission shall not preclude the Board from taking action on the item, and shall not be a ground for judicial review of the rule.

Abbreviations Used in This Agenda

"Act" means the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301 *et seq.*, including amendments made by the Deregulation Act and the International Air Transportation Competition Act, Pub. L. 96–192, 94 Stat. 35.

"Deregulation Act" means the Airline Deregulation Act of 1978, Pub. L. 95–504, 92 Stat. 1705.

"CFR" means Code of Federal Regulations.

"FR" means **Federal Register**.

"ANPRM" means advance notice of proposed rulemaking.

"NPRM" means notice of proposed rulemaking.

Office abbreviations:

BCAA—Bureau of Carrier Accounts and Audits
OCCCA—Office of Congressional, Community and Consumer Affairs
BDA—Bureau of Domestic Aviation
BIA—Bureau of International Aviation
OC Office of Comptroller
OEA—Office of Economic Analysis
OGC—Office of the General Counsel

ER-, EDR-, SPR-, SPDR-, and similar designations appearing in parentheses after a **Federal Register** citation are the Board's internal designations for final rules and proposed rules. Using these designations, interested persons can obtain copies of documents from the Distribution Section at the address listed above. The Distribution Section will also establish and maintain a list of persons wishing to receive copies of future agendas.

Accordingly, the Civil Aeronautics Board publishes the attached Agenda of Significant Regulations under Development or Review.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Rules Under Development

Contact person	Action schedule	Description
A. Small Community Air Service Program		
A1. Essential air service subsidy guidelines (proposed 14 CFR part 271)		
John R. Hokanson, BDA, 202-673-5368, or David Schaffer, OGC, 202-673-5442.	NPRM, 45 FR 83254, December 18, 1980 (EDR-415, Docket 39041). Comment period closed February 17, 1981. Scheduled for completion: August 1982..	The Board provides subsidy to airlines to ensure that small communities receive essential air service at a level determined in accordance with 14 CFR Part 398. This rule would implement section 419(d) of the Act, which directs the Board to establish guidelines for computing the fair and reasonable amount of compensation necessary to guarantee that level of service.
A2. Essential air service subsidy procedures (proposed 14 CFR part 330)		
David Schaffer, OGC, 202-673-5442.	NPRM in preparation.	The Board pays a subsidy to airlines for providing essential air service to small communities. This rule would establish when the rate conference with the airline is held, what happens at the end of the airline's rate term, and other procedural matters involved in setting subsidy rates.
A3. Obligation of carriers to provide adequate service at eligible points (14 CFR part 398)		
David Schaffer, OGC, 202-673-5442.	NPRM, 45 FR 67357, October 10, 1980 (PSDR-68, Docket 38807). Comment period closed December 9, 1980. Scheduled for completion: November 1982.	The Board has set essential air service levels under section 419 of the Act for eligible points (small communities). Some of these points are being served by air carriers that are not providing the required level of service. This rule would establish a new policy under which the Board would rely on the "adequate service" provision of section 404(a) of the Act as authority to order these carriers to provide adequate (*i.e.*, essential) service at points they now serve.
A4. Bumping of subsidized carriers at small communities (14 CFR part 325)		
David Schaffer, OGC, 202-673-5442.	NPRM in preparation.	Section 419 of the Act permits any carrier, after January 1, 1983, to file an application with the Board seeking to have the subsidy that is paid to another carrier paid to it instead. This rule would establish procedures to be followed by the applicant, the incumbent carrier, and the Board.
A5. Policy on overflights at essential air service points (14 CFR part 398)		
David Schaffer, OGC, 202-673-5442	NPRM, 47 FR , May , 1982 (PSDR- , Docket 40280). Comment period closes July , 1982. Scheduled for completion: October 1982.	This rule would prohibit an air carrier from refusing to land at an eligible point for which the Board has issued an essential air service determination, except in specified circumstances.
A6. Termination notices for certificated carriers (14 CFR part 323)		
David Schaffer, OGC, 202-673-5442, OR Peter Bloch, BDA, 202-673-5245.	NPRM in preparation.	By PR-244, the Board changed its notice requirements for certificated carriers that wanted to terminate service to eligible points. The Board eliminated some notices but continued to require notice before a certificated carrier terminated or reduced service so as to leave an eligible point (1) without essential service, (2) without any other certificated carrier, (3) with only one certificated carrier, or (4) with a 33 percent reduction in available capacity. A recent decision by the U.S. Court of Appeals for the District of Columbia has cast doubt on the Board's authority to require some of these notices, particularly the fourth one. This rulemaking proceeding would examine whether any of these notices should be eliminated and whether any other requirements should take their place.
B. Fares, Rates, and Tariffs		
B1. Conditions of carriage (14 CFR 221, 250, 296; proposed 14 CFR part 255)		
Joanne Petrie, OGC, 202-673-5442, or Desta McDowell, OCCCA, 202-673-5191.	NPRM, 45 FR 25617, April 16, 1980 (EDR-388, Docket 38021). Comment period closed August 15, 1980. Reply comment period closed September 3, 1980. NPRM, 45 FR 42629, June 25, 1980 (EDR-404, Docket 38348). Comment period closed September 3, 1980. Reply comment period closed September 22, 1980. Supplemental NPRM, 46 FR 35936, July 13, 1981 (EDR-404B, Docket 38348). Comment period closed September 9, 1981. Reply comment period closed September 28, 1981. Supplemental NPRM, 46 FR 43057 (EDR-404E, Docket 38348). Comment period closed September 28, 1981. Scheduled for completion: June 1982..	Contracts between airlines and their passengers are governed by tariffs, which are filed with the Board and available for inspection at airline ticket offices. Although tariffs are complicated and relatively inaccessible documents, passengers are presumed to have read them and consented to their terms and conditions. The proposed rule, which consolidates a number of different rulemakings, presents two alternatives. The first would prohibit airlines from enforcing tariff provisions against passengers unless the airlines make available to passengers a "plain English" notice of the terms and conditions of the contract. In addition it would simplify the requirements that airlines disclose certain information to consumers on passengers' tickets and counter signs. The second option would eliminate domestic rules tariffs as well as most Board-prescribed notices. Without the protection of tariffs, carriers would have to give passengers actual notice of the conditions of carriage. In order to give maximum flexibility, and because the conditions of carriage will vary among carriers, the Board under this option would eliminate the requirement that carriers post most Board-prescribed notices.
B2. Elimination of mandatory joint fares (14 CFR part 399)		
Joanne Petrie, OGC 202-673-5442, or Julian Schrenk, BDA, 202-673-5208.	NPRM, 46 FR 29719, June 3, 1981 (PSDR-70, Docket 38385). Comment period closed July 31, 1981. Reply comment period closed September 3, 1981. Scheduled for completion: July 1982.	The mandatory joint fare requirements established in the *Domestic Passenger Fare Investigation* will end by January 1, 1983, with the end of the Board's jurisdiction over domestic passenger fares. The Board issued a proposal on its own initiative and in response to a petition filed by American Airlines to change the joint fare requirements in 1 of 3 ways. The Board is considering eliminating the system in some or all market, or making interlining mandatory upon request.
B4. Extension of fare flexibility of Micronesia (14 CFR part 399)		
Joanne Petrie, OGC, 202-673-5442.	NPRM, 46 FR 29727 (PSDR-71, Docket 39975). Comment period closed July 30, 1981. Scheduled for completion: December 1982.	In response to a petition filed by Air Micronesia and Continental Air Lines, the Board proposed to extend upward flexibility of 30 percent above the standard industry fare level (SIFL), and unlimited downward flexibility for passenger fares in and to Micronesia and American Samoa.

RULES UNDER DEVELOPMENT—Continued

Contact person	Action schedule	Description
B5. INTERNATIONAL CARGO RATE FLEXIBILITY (14 CFR PART 399)		
Mark Schwimmer, OGC, 202-673-5442.	NPRM, 45 FR 3595, January 18, 1980 (PSDR-65, Docket 37444). Comment period closed April 9, 1980. Oral argument held July 15, 1980. Comment period reopened, 46 FR 34347, July 1, 1981 (PSDR-65C). Comment period closed July 23, 1981. Scheduled for completion: May 1982.	This rule would establish a policy of not reviewing international cargo rate changes for economic justification if the changes were below a prescribed ceiling, except in extraordinary circumstances. The ceiling would be set initially at the October 1, 1979, rate levels for general commodity rates, and would be periodically adjusted for operating cost increases.
B6. INTERNATIONAL CARGO RATE POLICY—FURTHER CHANGES (14 CFR PART 399)		
Joanne Petrie, OGC, 202-673-5442.	ANPRM in preparation	This notice would invite comments on the broad question of what the Board's cargo rate policy should be, to advise the Board on future rulemaking or legislative proposals.
B7. STANDARD FOREIGN FARE LEVEL METHODOLOGY (14 CFR PART 399)		
Julien Schrenk, BDA, 202-673-5206.	ANPRM, 46 FR 29285, June 1, 1981 (PSDR-72, Docket 39635). Comment period closed July 10, 1981. Reply comment period closed July 30, 1981. Scheduled for completion: June 1982.	This notice solicited comments on the Board's current methodology employed in adjusting the standard foreign fare level (SFFL) for airlines' cost changes, and, additionally, which SFFL adjustments should be utilized for transborder operations.
B8. REGULATION OF DISCOUNT FARES (14 CFR PARTS 221, 399)		
David Schaffer, OGC, 202-673-5442.	Petition filed in Docket 40513. Denial of petition in preparation per Board instruction April 15, 1982.	World Airways petitioned the Board to amend the rules governing discount fares. It asked the Board of exercise greater oversight over such fares and to require airlines to justify any fare that is more than 50 percent below the standard industry fare level for the market involved.
B9. CHANGES TO DOMESTIC TARIFF RULES AFTER JANUARY 1,1983 (14 CFR 221)		
Joanne Petrie, OGC, 202-673-5442.	NPRM in preparation	Airlines may not file tariffs concerning interstate and overseas air transportation to be provided on or after January 1, 1983. The Board is examining its rules to determine what conforming changes need to be made.
B10. HAWAIIAN JOINT FARES (14 CFR PART 399)		
Joanne Petrie, OGC, 202-673-5442, or Lawrence Myers, OGC, 202-673-5206.	Supplemental NPRM, 47 FR——, April 29, 1982 (PSDAR-75, Docket 38589). Comment period closes: June 4, 1982.	The Board is proposing to require certain airlines to provide interline service in Hawaii until the end of 1982, to aid in the transition to domestic fare deregulation. This notice supplements issues addressed in item B2 of this agenda.
B11. INCORPORATION BY REFERENCE IN CONTRACTS OF CARRIAGE AFTER THE SUNSET OF DOMESTIC TARIFFS		
Joseph Brooks, OGC, 202-673-5442.	NPRM in preparation	The Board is considering a rulemaking to establish uniform procedures for notice about terms that are incorporated by reference in air passenger contracts of carriage. Many terms and conditions are now incorporated in the contract of carriage by means of tariff filings with the Board, but tariffs will not be filed for domestic air transportation provided on or after January 1, 1983.
B12. PAYMENTS TO INDIRECT CARGO CARRIERS (14 CFR 296, 297)		
Barry L. Molar, OGC, 202-673-5206.	NPRM, 47 FR 633, January 6, 1982 (EDR-437, Docket 40320). Comment period closed March 8, 1982. Scheduled for completion July, 1982.	This rule would modify the Board's rules on indirect cargo air carriers, foreign air freight forwarders, and foreign cooperative shippers associations, to allow direct air carriers to pay fees to the indirect carriers on shipments by the latter. The proposal would eliminate the express prohibition on payment of commissions to the indirect cargo carriers and would exempt them from the prohibition on soliciting rebates in section 403(b) of the Act. The rule was proposed in response to a request by a direct carrier in order to reduce regulatory intervention in the relationship between direct and indirect air carriers.
C. Charters		
C7. DIRECT CARRIER RESPONSIBILITY FOR RETURNING STRANDED CHARTER PASSENGERS (14 CFR PARTS 207, 208)		
David Schaffer, OGC, 202-673-5442.	NPRM, 46 FR 46812, July 11, 1980 (EDR-405, Docket 37169). Comment period closed September 25, 1980. Reply comment period closed October 10, 1980. Scheduled for completion: July 1982.	This rule would make direct air carriers responsible for returning charter passengers stranded by strikes or other interruptions of their services by eliminating the *force majeure* clause from charter contracts. More recently, however, the Board has issued a comprehensive proposal (item C10 in this agenda) to revise and simplify the charter rules. Prohibition of *force majeure* clauses would be inconsistent with some provisions of the newly proposed scheme. The Board's final action in this proceeding will be consistent with that in item C10.
C10. LIBERALIZATION OF CHARTER RULES (14 CFR PARTS 207, 208, 212, 298, 380)		
Patricia T. Szrom, BDA 202-673-5088.	NPRM, 47 FR 7449, February 19, 1982 (EDR-439/SPDR-86, Docket 40336). Comment period closed April 20, 1982. Reply comment period closes May 10, 1982. Scheduled for completion: July 1982.	The Board has proposed substantial liberalizations of its charter rules, with a view toward the agency's sunset. The proposal seeks comments on replacing the current rules governing public charters with a new registration and bonding requirement for indirect air carriers or, alternatively, keeping some combination of a bonding and escrow requirement and some or all of the requirements designed to protect participants' expectations while eliminating all filing requirements on indirect air carriers. The proposal would also eliminate restrictions on eligible groups and dealings between charter operators and air carriers. The Board seeks to reduce the rules concerning charters to the minimum necessary for public protection. This proposal supersedes several other charter rulemaking proceedings.
C11. OVERSEAS MILITARY PERSONNEL CHARTERS (14 CFR PART 372)		
David Schaffer, OGC, 202-673-5442.	Petition filed in Docket 40213	The Davis Agency petitioned the Board for rulemaking to amend its rules governing Overseas Military Personnel Charters (OMPC's) to permit official travel by OMPC-eligible persons and to enlarge the group of OMPC-eligible persons to include all Federal employees.

RULES UNDER DEVELOPMENT—Continued

Contact person	Action schedule	Description
D. Miscellaneous		
D1. NONDISCRIMINATION ON THE BASIS OF HANDICAP (PROPOSED 14 CFR PART 382)		
David Schaffer, OGC, 202-673-5442.	NPRM, 44 FR 32401, June 6, 1979 (SPDR-70, Docket 34030). Comment period closed September 4, 1979. Reply comment period closed September 24, 1979. Revision of draft final rule in progress, in accordance with Department of Justice review. Scheduled for completion: May 1982.	This would prohibit unlawful discrimination against handicapped air travelers and implement section 504 of the Rehabilitation Act of 1973.
D2. CONSUMER PROTECTIONS FOR MEMBERS OF SCHEDULED-SERVICE TOUR GROUPS		
Joanne Petrie, OGC, 202-673-5442.	ANPRM, 44 FR 43481, July 25, 1979 (SPDR-71, Docket 34997). Comment period closed October 23, 1979. Reply comment period closed November 22, 1979. NPRM in preparation.	The Board is considering whether consumer protection rules are needed for scheduled-service tours.
D3. AIR CARRIER FITNESS (CONTINUING FITNESS) (14 CFR PART 204)		
Carolyn Kramp, BDA, 202-673-5208.	NPRM under consideration.	The Board is considering the development of a system to monitor the continuing fitness of air carriers as required by section 401(r) of the Act.
D4 FITNESS DETERMINATIONS FOR DORMANT CARRIERS (14 CFR PART 204)		
Joseph Brooks, OGC, 202-673-5442, or Curtis B. Maloy, BDA, 202-673-5088.	NPRM, 45 FR 73085, November 4, 1980 (EDR-411, Docket 38904). Comment period closed December 15, 1980. Reply comment period closed December 30, 1980. Scheduled for completion: January 1983..	This rule would impose a 2-year limit for starting sevice or continuing service after a fitness determination. Carriers that did not begin service or operate within that time period would be required to resubmit fitness data and obtain reauthorization before beginning service.
D5. ZONES FOR MAIL RATES (PROPOSED 14 CFR PART 233)		
Barry Molar, OGC, 202-673-5205, or Lawrence Myers, OGC, 202-673-5205.	NPRM, 44 FR 52246, September 7, 1979 (EDR-367/PDR-68, Docket 36497). Supplemental NPRM, 45 FR 83510, December 19, 1980 (EDR-367C/PDR-68C, Docket 36497). Comment period closed February 17, 1981. Scheduled for completion: September 1982..	This rule would end the Board's current practice of prescribing fixed rates for the transportation of mail by air, and in its place establish zones for each category of mail. Each zone would be defined by maximum and minimum rates prescribed by the Board, and airlines would be free to contract with the Postal Service for the carriage of mail at any price within the zone.
D8. AGE DISCRIMINATION (PROPOSED 14 CFR PART 378).		
David Schaffer, OGC, 202-673-5442.	NPRM, 44 FR 55383, September 20, 1979 (SPDR-74, Docket 36639). Comment period closed November 26, 1979. A final rule was adopted by the Board on April 10, 1980, and was forwarded to the Secretary of HHS for approval, as required by the Age Discrimination Act. Scheduled for completion: November 1982..	This rule will prohibit discrimination against air travelers on the basis of age and implement the Age Discrimination Act of 1975.
D9 POLICY STATEMENT ON PREEMPTION (14 CFR PART 399)		
Patricia Snyder, OGC, 202-673-5205.	Interim rule, 44 FR 9946, February 15, 1979 (PS-83). Request for comments on interim rule, 44 FR 9953, February 15, 1979 (PSDR-56, Docket 34684). Comment period closed April 16, 1979. Scheduled for completion: September 1982..	This rule will set out final Board policies for regulation of the rates, routes and services of airlines that have interstate authority. The Board has concluded that under section 105 of the Act it, not the State, is responsible for economic regulation (or deregulation, as the case may be) of all the routes, rates, or services of any airline holding either (I) a certificate of public convenience and necessity to provide interstate air transportation, or (II) an exemption under section 416 of the Act from the requirement for such a certificate.
D11. FOREIGN INDIRECT AIR CARRIER OPERATIONS IN DOMESTIC MARKETS (14 CFR PARTS 296, 380)		
Glenn Datnoff, BIA, 202-673-5614.	NPRM, 46 FR 35864, July 10, 1981 (EDR-427, SPDR-82, Docket 39744). Comment period closed September 8, 1981, Reply comment period closed September 23, 1981. Scheduled for completion: April 1982..	This rule would authorize foreign indirect air carriers to organize tours and forward freight in domestic markets.
D16. UPDATE OF AGREEMENT-FILING RULES (14 CFR PARTS 261, 262, 263, 289, 302)		
Mark Schwimmer, OGC 202-673-5442.	NPRM in preparation.	This rule would update the agreement-filing rules to conform to statutory changes that make agreement filing voluntary, and would remove the now unnecessary Part 289 agreement-filing exemption.
D18. SUSPENSION OF ABANDONED FOREIGN AIR CARRIER PERMITS (14 CFR PART 213)		
Allen F. Brown, BIA 202-673-5878.	NPRM in preparation.	This rule would provide for the automatic suspension of operating authority of a foreign air carrier permit holder if the carrier ceased all operations for an extended period of time.
D19. AIR CARRIER REPORTING REQUIREMENTS (14 CFR PARTS 217, 231, 234, 241, 246, 248, 249, 250, 291, 298, 374a).		
Jack Calloway, OC 202-673-5043.	NPRM in preparation.	The Board is reviewing comments from Federal agencies, State commerce, aeronautical and transportation authorities, airport operators and other interested persons as part of a staff examination evaluating air carrier reporting requirements.
b20. SIMPLIFIED NOTICE REQUIREMENTS FOR 401 CERTIFICATE PROCEEDINGS UNDER SUBPART Q (14 CFR PART 302)		
Rhonda Starck, BIA, 202-673-5225.	NPRM, 46 FR 29716, June 3, 1981 (PDR-75, Docket 39636). Comment period closed August 3, 1981. Scheduled for completion: June 1982.	This rule would provide that applicants for certificates of public convenience and necessity, or for modifications of such certificates, may serve a simplified notice of the application on specified persons, instead of the present requirement that applicants serve complete copies of their applications.

RULES UNDER DEVELOPMENT—Continued

Contact person	Action schedule	Description
D21. SUBPART Q REFINEMENTS (14 CFR PART 302)		
Jeffrey Gaynes, BIA, 202-673-5064.	NPRM in preparation	This rule would correct omissions and inconsistencies in the existing procedures for granting certificates and foreign air carrier permits.
D26. INSURANCE FOR ON-DEMAND AIR TAXI OPERATORS AND CANADIAN AIR TAXIS (14 CFR PART 205, 298)		
Patricia Szrom, BDA, 202-673-5066, or Joseph Brooks, OGC, 202-673-5442.	NPRM, 46 FR 52585, October 27, 1981 (EDR-395B, Docket 37531). Comment period closed: December 28, 1981. Reply comment period closed: January 18, 1982. Scheduled for completion: June 1982.	This rule would set the minimum per-person aircraft accident liability insurance limits for U.S. and Canadian on-demand air taxi operators at $150,000, instead of at $300,000 as it is for other air carriers. The NPRM further includes alternative proposals to set the per-person limit at $75,000 or to eliminate all minimum amounts, requiring a public notice instead. Other rules for insurance coverage for these carriers would be as in 14 CFR Part 205, including the prohibition on safety-related exclusions.
D27. ADHERENCE TO MONTREAL AGREEMENT FOR PASSENGER LIABILITY (14 CFR PART 205)		
Peter Schwarzkopf, OGC, 202-673-5928, or Joseph Brooks, OGC, 202-673-5442.	NPRM in preparation	This rule would require all U.S. and foreign air carriers to sign a counterpart to the Montreal Agreement, which waives the $10,000 liability limit and certain carrier defenses under the Warsaw Convention. Participating carriers in the Agreement could not limit their liability to less than $75,000 for passenger injury for travel in foreign air transportation.
D28. INSURANCE FOR ALL-CARGO AND FOREIGN SMALL AIRCRAFT OPERATORS (14 CFR PARTS 205, 291)		
Joseph Brooks, OGC, 202-673-5442.	NPRM in preparation	This rule would equalize the insurance requirements for certificated air carriers and air taxi operators that utilize small aircraft for cargo service. Certificated carriers would have to maintain the same insurance as on-demand air-taxi operators. The insurance requirements for U.S. and foreign on-demand small aircraft operators would be equalized.
D30. REGULATORY FLEXIBILITY ACT; DEFINITION OF SMALL BUSINESS (14 CFR PART 399)		
Mark Schwimmer, OGC, 202-673-5442.	Request for public comments in preparation	The Regulatory Flexibility Act, Pub. L. 96-354, directs agencies to consider the effects of their rules on small businesses and other small entities. It allows an agency to establish its own definition of "small business" when that would be more appropriate to the agency's activities than the one already established in 13 CFR Part 121 by the Small Business Administration. This notice would request comment on a Civil Aeronautics Board definition of "small business" for airlines.
D31. GROUP CONTRACTOR EXEMPTIONS		
Mark Schwimmer, OGC, 202-673-5442.	NPRM in preparation	This rule would codify the Board's treatment of group contractors. A group contractor, like a charter operator, is an indirect air carrier that purchases air transportation from a direct air carrier and sells it to passengers as a principal rather than as an agent. Unlike charter operators, however, a group contractor is backed up financially by the direct carrier so that a passenger may look to the direct carrier for transportation or refund if the group contractor defaults. Group contractors are currently governed by Board Order 81-7-109, July 21, 1981, as modified by Order 82-3-132, March 24, 1982. They are sometimes referred to as "contract bulk fare operators."
D32. EXPANSION OF ANTITRUST EXEMPTIONS (14 CFR PARTS 251, 287, 291)		
Gwyenth Jones, OGC, 202-673-5011.	Petition filed in Docket 40543. NPRM in preparation	Sections 408 and 409 of the Act require prior Board approval of certain interlocking and control relationships among air carriers, other common carriers, persons substantially engaged in the business of aeronautics, and others. The Board's rules already contain some exemptions from these requirements. On its own initiative and in response to a petition from Delta Airlines, the Board is considering whether and how to broaden the exemptions.

RULES UNDER REVIEW

Contact person	Action schedule	Description
211-1. REDUCTION OF EVIDENCE REQUIRMENTS FOR FOREIGN AIR CARRIER PERMIT RENEWALS (14 CFR PART 211)		
Regie P. Millen, Jr., BIA, 202-673-5675.	NPRM in preparation	Under this rule, foreign air carriers applying for routine renewals or amendments of their permits would, if previous unopposed licensing proceedings had met certain evidentiary standards, be excused from resubmitting certain evidence whose continuing validity could be attested to.
217-1. REPORTING OF CIVIL AIRCRAFT CHARTERS (14 CFR PARTS 217, 241)		
Jack Calloway, OC, 202-673-5042.	NPRM, 47 Fr——, April —, 1982 (EDR-441, Docket ——).	This rule would significantly reduce the Board's charter data reporting requirements by eliminating the reporting of domestic charters and limiting the reporting of international charters to those performed with aircraft of more than 60 seats or 24,000 pounds of payload.
221-2 LIABILITY FOR LOST, DELAYED, AND DAMAGED BAGGAGE (14 CFR PART 221; PROPOSED 14 CFR PART 254		
Joanne Petrie, OGC, 202-673-5442, or Desta McDowell, OCCCA, 202-673-5191.	NPRM, 47 FR 5932, February 4, 1982 (EDR-436, Docket 40338). Comment period closed April 5, 1982. Reply comment period May 5, 1982. Scheduled for completion: July 1982.	The Board is proposing to change its baggage liability rules in one of three ways as part of its review of consumer protection regulations prior to sunset. The first option would remove all baggage regulation, the second would mandate minimum carrier liability, and the third would codify the most significant aspects of the Board's current rules.
223-1. MODIFICATION OR WITHDRAWAL OF EXEMPTION TO FOREIGN AIR CARRIERS TO CARRY TRAVEL AGENTS OR OTHER TRAVEL PROMOTERS FREE OR AT REDUCED RATES (14 CFR PART 223)		
Jeffrey Gaynes, BIA, 202-673-5066.	NPRM, 46 FR 36714, July 15, 1981 (EDR-426, Docket 39794). Supplemental NPRM, 46 FR 40866, August 13, 1981 (EDR-426A). Comment period closed August 21, 1981. Scheduled for completion: September 1982.	This rule would allow the Board to modify or terminate exemptions granted to foreign air carriers to carry travel agents or other travel promoters free or at reduced rates at any time without hearing, as the public interest may require.

RULES UNDER REVIEW—Continued

Contact person	Action scheduled	Description
223–2. FREE AND REDUCED-RATE TRANSPORTATION (14 CFR PART 223)		
Mark Schwimmer, OGC, 202–673–5442.	NPRM in preparation	This rule would update the provisions governing free and reduced-rate transportation, which for domestic transportation have been largely superseded by the tariff flexibility rules (item B3 in the appendix).
234–1. ON-TIME ARRIVAL STANDARDS (14 CFR PART 234)		
Joanne Petrie, OGC, 202–673–5442.	Petition filed in Docket 27691. NPRM in preparation	The Aviation Consumer Action Project has petitioned the Board to restate its on-time arrival standards in terms of actual-versus-scheduled *arrival* times, instead of actual-versus-scheduled *elapsed* times.
241–1. AIR CARRIER FINANCIAL AND STATISTICAL REPORTING (14 CFR PART 241		
Jack Calloway, OC, 202–673–6042.	NPRM, 45 FR 85084, December 24, 1980, 46 FR 11827, February 11, 1980, (EDR–417, EDR–417A, Docket 39077). Comment period closed March 25, 1981. Reply comment period closed April 9, 1981. Scheduled for completion: April 1982..	As part of a major review of its largest reporting system, the Board expects to eliminate, consolidate, and refine a substantial number of financial and statistical reporting schedules to reduce reporting burdens on all certified air carriers. Particular emphasis will be placed on reducing the burdens of small air carriers.
241–2. AMENDMENT OF FUEL COST AND CONSUMPTION REPORTING (14 CFR PART 241)		
Jack Calloway, OC, 202–673–6042.	NPRM, 46 FR 21185, April 9, 1981 (EDR–422, Docket 39498). Comment period closed June 8, 1981. Reply comment period closed June 29, 1981. Scheduled for completion: July 1982.	This rule would reduce the amount of fuel information reported by air carriers each month, and delay the release of carrier-specific information until after the end of each quarter.
241–3. ALIGNMENT OF UNIFORM SYSTEM OF ACCOUNTS AND REPORTS WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPALES (14 CFR PART 241)		
Richard G. Miniek, BCAA, 202–673–5041.	NPRM in preparation.	As part of the continuing effort to align the Board's accounting rules with generally accepted accounting principles, certain sections of the Uniform System of Accounts and Reports need to be deleted or amended. These changes would provide relief from the present requirements for [illegible] sections.
241–4. REVISE DEFINITION OF REVENUE AND NONREVENUE PASSENGERS (14 CFR PART 241)		
David Schaffer, OGC, 202–673–5442.	NPRM in preparation	The present definition of revenue and nonrevenue passengers for reporting purposes is stated in terms of the exemptions for free and reduced/rate transportation in sections 403(b) of the Act. These definitions have become outmoded in the process of fare deregulation. The Board is considering several options for revising these definitions.
245–1. EXEMPTIONS FROM REPORTING STOCK OWNERSHIP (14 CFR PARTS 245)		
Joanne Petrie, OGC, 202–673–5442, or David Fuss, BDA, 202–673–5068.	NPRM in preparation.	The Board is considering whether to change its rules to exempt owners of more than five percent of any class of capital stock or capital of airline from the filing of reports required by section 407(c) of the Act. The filing of these reports has been waived under delegated authority pending the outcome of this rulemaking
246.1 ELIMINATION OF REPORT STOCK OWNERSHIP OF AFFILIATES OF AIR CARRIER (14 CFR PART 246)		
David Fuss, BDA, 202–673–5068.	NPRM in preparation	The Board is considering eliminating a reporting requirement that affiliates of an airline disclose information on their major stockholders.
250–1. DENIED BOARDING COMPENSATION—EXTRA SECTIONS (14 CFR PART 250)		
Joanne Petrie, OGC, 202–673–5442.	NPRM, 45 FR 30086, May 7, 1980 (EDR–400, Docket 36294). Comment period closed July 7, 1980. Scheduled for completion June 1982..	Airlines are required to pay denied boarding compensation to passengers who are bumped from their flights. This rule would clarify the applicability of that requirement to extra sections of flights. The rule would also eliminate a minor exemption to the requirement. The Board is considering related issues in its general review of oversales (item 250–4 in this agenda).
250–4. GENERAL REVIW OF DENIED BOARDING COMPENSATION (14 CFR PART 250)		
Joanne Petrie, OGC, 202–673–5442, or Desta McDowell, OCCCA, 202–673–5191.	NPRM, 46 FR 62266, December 31, 1981 (EDR–436, Docket 39932). Comment period closed: March 8, 1982. Reply comment period closed: March 23, 1982. Scheduled for completion: June 1982..	The Board is considering whether to eliminate the present denied boarding compensation rule or to amend it to remove some inequities. This proposal is part of the Board's general review of its consumer protection rules.
262–1. AGREEMENTS CONCERNING OPERATING RIGHTS IN FOREIGN COUNTRIES (14 CFR PART 262)		
Joanne Petrie, OGC, 202–673–5442, or Nancy Trowbridge. BIA, 202–673–5134.	NPRM in preparation.	The Board is considering whether to revoke 14 CFR Part 262, which requires every U.S. air carrier to file with the Board evidence of each agreement relating to operating rights between that air carrier and any foreign country.
293–1. ALASKAN SUBCONTRACT AGREEMENTS (14 CFR PART 293)		
David Schaffer, OGC, 202–673–5442.	NPRM, 46 FR 46592, September 21, 1981 (EDR–431/PDR–76, Docket 39990). Comment period closed: November 20, 1981. Scheduled for completion: August 1982..	Part 293 applies to subcontract agreements involving the operation of scheduled air services by air taxi operators over Alaskan bush routes of a certificated air carrier. The Board is considering whether to revoke this rule and replace it with different filing requirements.
296–2. ELIMINATION OF COMMUTER SCHEDULE FILING (14 CFR PART 296)		
Mark Schwimmer, OGC, 202–673–5442.	NPRM in preparation.	This rule would eliminate for some, and perhaps all, routes the requirement that commuter airlines file their schedules with the Board. Such a schedule-filing requirement has already been eliminated for domestic service by certificated airlines, and commuter schedule information from the Official Airline Guide (OAG) appears to be adequate for the Board's purposes.

Rules Under Review—Continued

Contact person	Action schedule	Description
302–1. REQUESTS FOR CONFIDENTIAL TREATMENT OF MATERIALS FILED WITH THE BOARD (14 CFR PART 302)		
Mark Schwimmer, OGC, 202–673–5442.	NPRM in preparation.	This rule would revise the procedures governing requests for confidential treatment of material filed with the Board, to clarify the relation between those procedures and the Freedom of Information Act.
313–1. FUEL INFORMATION IN CERTIFICATE APPLICATIONS (14 CFR PARTS 313, 201)		
William J. Wagner, BIA, 202–673–5415.	NPRM in preparation.	To implement the goals of the Energy Policy and Conservation Act, the Board requires appicants for new operating authority to submit fuel information. This rule would eliminate that requirement in instances where it is unnecessary because the United States and a foreign country have agreed that new service is required by the public interest.
323–1. SERVICE TERMIANTIONS IN FOREIGN MARKETS (14 CFR PART 323)		
David Schaffer, OGC, 202–673–5442.	NPRM in preparation.	The Board recently eliminated all advance notice requirements for termiantions of service in foreign air transportation (PR–244). This has created problems in some limited designation markets where the incumbent carrier has terminated service without informing the Board. The Board is considering whether to require carriers to report to the Board if they are terminating foreign air service so that the Board would have time to find a replacement, if necessary.
370–1. EMPLOYEE RESPONSIBILITIES AND CONDUCT (14 CFR PARTS 370, 300)		
Kenneth G. Caplan, OGC 202–673–5718.	NPRM in preparation.	The Board is preparing revisions of its ethics rules to reflect experience since the last revision and to conform to the Ethics in Government Act, Pub. L. 95–521.
375–1. NAVIGATION OF FOREIGN CIVIL AIRCRAFT (14 CFR PART 375)		
George Wellington, BIA, 202–673–5878.	NPRM in preparation.	The Board is reviewing its regulations governing the navigation of foreign civil aircraft within the United States. The review will focus on simplifying and clarifying the procedures to be followed in obtaining operating authority, and on ensuring that conditions imposed on such operations satisfactorily serve the public interest.
379–1. NONDISCRIMIANTION IN FEDERALLY-ASSISTED PROGRAMS OF THE BOARD (14 CFR PART 379)		
David Schaffer, OGC, 202–673–5442.	NPRM in preparation.	The Board is reviewing its rules that implement Title VI of the Civil Rights Act of 1964, in response to suggestions from the Department of Justice.
389–1. CHANGE IN LICENSE AND FILING FEE SCHEDULES (14 CFR PART 389)		
Joseph Brooks, OGC, 202–673–5442.	Order 77–4–42, dated April 8, 1977. NPRM, 47 FR 7846, February 23, 1982 (ODR–25, Docket 20588). Comment period closed: April 20, 1982. Reply comment period closes: May 18, 1982. Scheduled for completion: August 1982..	Because of decisions in the Supreme Court and the U.S. Court of Appeals, the Board suspended its license fees in 1977. Its filing fees have also become outdated in relation to costs. The Board has begun a rulemaking to change its method for calculating filing fees and to bring them into line with current costs. It is also considering deleting the suspended license fees.
399–2. DOMESTIC PASSENGER FARE STANDARDS (14 CFR PART 399)		
Julien Schrenk, BDA, 202–673–5208.	NPRM, 47 FR, April 20, 1982 (PSDR–74, Docket 40584). Comment period closes: May 20, 1982. Reply comment period closes: June 4, 1982. Scheduled for completion:.	The Board has asked for comment on three possible ways of changing its domestic passenger fare flexibility rules. The three options are: 1) granting an additional 20 percentage points of upward flexibility above the present ceiling, which in Mainland markets is the Standard Industry Fare Level plus $16 plus 30 percent, 2) granting a percentage upward flexibility without the current fixed dollar amount, and 3) removing all upward pricing constraints in interstate and overseas air transportation except within Alaska. The notice is the result of a review of domestic air fares and is intended to prepare for the end of the CAB's domestic pricing authority on January 1, 1983.

Appendix—Rulemaking Completed or Terminated Since Previous Agenda

[Numbers in brackets are entry numbers from previous agenda]

Contact person	Status	Description
[83] MAXIMUM TARIFFS (14 CFR PARTS 221, 296, 297)		
George Beranko, OGC, 202–673–6011, or Barry Molar, OGC, 202–673–5208.	NPRM, 45 FR 64864, September 24, 1980 (EDR–408, Docket 38746). Rulemaking terminated with respect to domestic transportation, 46 FR 39656, July 28, 1981 (EDR–406D). Rulemaking terminated with respect to international transportation, 47 FR 15144, April 8, 1982 (EDR–406E, issued December 18, 1981). NPRM on domestic tariff flexibility, 46 FR 39642, July 28, 1981 (EDR–429, Docket 39838). Final rule on domestic tariff flexibility, 46 FR 46787, September 22, 1981 (ER–1246).	This rule would have allowed airlines to file tariffs that state prices as maximum amounts instead of exact amounts, so that any price up to the maximum could be charged. The rule would have also allowed the payment of commissions to air freight forwarders and foreign air freight forwarders. With respect to international transportation, the Board has terminated the rulemaking because it found that the proposal had impeded the United States' ability to successfully pursue competitive policies in international negotiations. Payments to forwarders are being addressed in a separate proceeding (item B12 on this agenda). With respect to domestic transportation, the Board has terminated the maximum tariffs proposal and has begun and completed a separate proceeding on tariff flexibility. The new rule requires airlines to file tariffs stating unrestricted coach fares and, where different, the fares to construct joint fares for interline service. With certain exceptions for joint fares, airlines and travel agents are free, as a regulatory matter, to charge less than the amounts filed in the tariffs. However, airlines may individually continue the existing fixed-price system by requiring their agents, by contract, to charge exactly the amounts filed in tariffs.
[C1] CHARTER FLIGHT DELAYS (14 CFR PARTS 207, 208, 212)		
Mark Schwimmer, OGC, 202–673–5442.	NPRM, 42 FR 64905, December 29, 1977 (EDR–343, Docket 31229). Rulemaking terminated, 47 FR 7443, February 19, 1982 (EDR–439/SPDR–60).	This rule would have tightened the existing rules on flight delays by U.S. charter airlines and extended those rules to passenger charter flights of all types of direct air carriers, other than air taxi operators. The Board terminated this rulemaking as part of its proposal to revise and simplify the charter rules (item C10 of this agenda). The Board concluded that the marketplace will deal adequately with the problem of flight delays.

APPENDIX—RULEMAKING COMPLETED OR TERMINATED SINCE PREVIOUS AGENDA—Continued

[Numbers in brackets are entry numbers from previous agenda]

Contact person	Status	Description
	[C2] ESCROW ACCOUNTING FOR PUBLIC CHARTERS (14 CFR PART 380)	
Mark Schwimmer, OGC, 202-673-5442.	NPRM, 44 FR 32399, June 6, 1979, (SPDR-69, Docket 35705). Rulemaking terminated, 47 FR 7442, February 19, 1982 (EDR-439/SPDR-86).	This rule would have amended the escrow system for the protection of Public Charter passengers' funds, to simplify the accounting procedures and to eliminate a limitation on disbursements by the escrow bank. This proceeding was suspended by, and terminated as a part of, the Board's proposal to revise and simplify the charter rules (item C10 of this agenda).
	[C3] REGISTRATION OF FOREIGN CHARTER OPERATORS (14 CFR PARTS 211, 215, 380, 385)	
David Schaffer, OGC, 202-673-5442.	Final rules, 46 FR 56601, November 18, 1981 (ER-1263, ER-1264, SPR-179, OR-188). Change in effective date, 47 FR 5204, February 4, 1982 (SPR-183, OR-189).	This rule replaces the requirement that foreign charter operators obtain a foreign air carrier permit under section 402 of the Federal Aviation Act with a simple registration requirement, to ease market entry and promote competition.
	[C8] USING INSURANCE POLICIES TO PROTECT PUBLIC CHARTER PASSENGERS, FUNDS (14 CFR PARTS 207, 208, 212, 380)	
David Schaffer, OGC, 202-673-5442.	NPRM, 45 FR 63500, September 25, 1980 (EDR-407/SPDR-79). Rulemaking terminated, 47 FR 7443, February 19, 1982 (EDR-439/SPDR-86).	This rule would have authorized insurance plans as an additional alternative to the security arrangements now permitted for Public Charter passengers' funds. This proceeding was suspended by, and terminated as a part of, the Board's proposal to revise and simplify the charter rules (item C10 on this agenda).
	[C9] REMOVAL OF PROHIBITION AGAINST PART CHARTERS (14 CFR PARTS 207, 208, 212, 380)	
Mark Schwimmer, OGC, 202-673-442.	Final rules, 47 FR 134, January 5, 1982 (ER-1275/ER-1276/ER-1277/SPR-182).	Section 401(n)(1) of the Act states that no carrier certificated under section 401 may commingle, on the same flight, charter passengers and scheduled passengers. That prohibition ceased to be in effect on December 31, 1981. These rules eliminated the various provisions in the Board's charter rules that would otherwise have continued to prohibit commingling of passengers.
	[D6] AMENDMENT OF SERVICE SEGMENT DATA REPORTING (14 CFR PART 241)	
Jack Calloway, OC, 202-673-6042.	Petition for rulemaking denied (Order 81-12-9, December 1, 1981, Docket 39387). Petition for reconsideration filed on December 22, 1981..	USAir petitioned the Board to reduce the level of domestic service segment data reported by large carriers to the same level of detail reported by small carriers. USAir alleged that the public availability of the more detailed data filed by larger carriers placed them at a competitive disadvantage. The Board denied the petition, but granted limited confidential treatment of service segment data to the extent that comparable data are not required from smaller carriers.
	[D7] EXEMPTION FROM REPORT ON FINANCIAL INTERESTS (14 CFR PARTS 245, 246)	
Joanne Petrie, OGC, 202-673-5442.	Final rule, 47 FR 761, January 7, 1982 (EDR-1260, ER-1261).	This rule exempts officers and directors of air carriers from certain shareholder reporting requirements in section 407(c) of the Act.
	[D14] EMPLOYEE PROTECTION PROGRAM (PROPOSED 14 CFR PART 314)	
Steven B. Farbman, BDA, 202-673-5340.	Final rule, 47 FR 9774, March 5, 1982 (PR-245)	Section 43 of the Airline Deregulation Act of 1978 established an employee protection program. Eligible protected employees may receive monthly assistance payments from the Secretary of Labor if the Board determines that a qualifying dislocation of an airline has taken place. This rule sets forth procedures for those Board determinations.
	[D15] ELIMINATION OF AIRPORT NOTICERS AND APPROVED SERVICE PLANS (14 CFR PARTS 202 AND 213)	
Ira Leibowitz, BIA, 202-673-5203.	Final rules, 47 FR 10516, March 11, 1982 (ER-1287, ER-1288, OR-193, OR-194).	The Board discontinued its airport notice and approved service plan requirements, as well as several unnecessary operating restrictions.
	[D22] CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW FOR FOREIGN AIR CARRIERS AND OTHER NON-U.S. CITIZENS. (14 CFR PART 377)	
Jeffrey Gaynes, BIA, 202-673-5035.	Final rule, 47 FR 7211, February 18, 1982 (SPR-184)	This rule amended Part 377 to relieve foreign air carriers and other non-U.S. citizens from the 60-day advance filing requirement for renewal of certain foreign air carrier permits and exemptions.
	[D23] IMPEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT (14 CFR PART 373)	
Joanne Petrie, OGC, 202-673-5442.	Final rule, 47 FR 16006, April 14, 1982 (SPR-186)	The Equal Access to Justice Act authorizes the award of Attorneys' fees and other expenses to certain private litigants who prevail against the United States in adversary adjudications. The rule implements the Act by providing a procedure for applications and processing of awards.
	[D25] DUAL AUTHORITY AFTER DOMESTIC ROUTE DEREGULATION (14 CFR PART 298)	
Mark Schwimmer, OGC, 202-673-5442.	Final rule, 47 FR 604, January 6, 1982 (ER-1278)	The Board's previous "dual authority" rule included exemptions that allowed certificated air carriers to operate with small aircraft under the air taxi rule as if they were air taxi operators. For passenger service, the exemptions were limited to flights outside the carrier's certificated route system. This rule removed that route limitation, so that all of a certificated carrier's passenger operations with small aircraft are considered as operations under the air taxi rule. There is a special provision for service within Alaska.
	[202-1] FORMAT OF CERTIFICATES BEGINNING JANUARY 1, 1982 (14 CFR PART 202)	
Donald Horn, OGC, 202-673-5205, or David Schaffer, 202-673-5442.	Final interpretation, 46 FR 62885, December 18, 1981 (Docket 40208).	The termination of the Board's authority to include terminal and intermediate points in domestic certificates after December 31, 1981, posed questions about the form of section 401 certificates authorizing the carriage of cargo and mail. The Board interpreted the Act as not requiring it to specify terminal and intermediate points in airline certificates authorizing cargo and mail service, except in Alaska. This cleared the way for airlines to serve any U.S. point without first obtaining Board approval.

APPENDIX—RULEMAKING COMPLETED OR TERMINATED SINCE PREVIOUS AGENDA—Continued

[Numbers in brackets are entry numbers from previous agenda]

Contact person	Status	Description
[221-1] FLEXIBILITY IN CHARGING APPLICABLE THROUGH OR LOCAL FARE (14 CFR PART 221)		
Joanne Petrie, OGC, 202-673-5442.	Final rule, 47 FR 1947, March 26, 1982 (ER-1292).....	The Board removed the fare precedence rule in order to give carriers and their agents flexibility to charge the lowest possible fare or rate.
[298-1] REVISION IN THE DEFINITION OF COMMUTER AIR CARRIER (14 CFR PART 298)		
David Schaffer, OGC, 202-673-5442.	Final rules, 47 FR 12945, March 26, 1982 (ER-1289, ER-1290, ER-1291).	This rule changes the definition of commuter air carrier so as to remove small all-cargo and mail carriers from the classification. This reduces the regulatory burdens on these carriers. Passenger commuters are not affected.
[315-1] INFORMATION SUBMITTED IN MERGER APPLICATIONS (14 CFR PART 315)		
David Schaffer, OGC, 202-673-5442.	Final rule, 47 FR . April . 1982 (PR-).....	This rule sets forth the information that must be submitted with a section 408 merger application. It was adopted to enable the Board to meet the 6-month deadline imposed by the Act for issuing a final order or decision in a merger case.
[322-1] AUTOMATIC MARKET ENTRY PROGRAM (14 CFR PART 322)		
David Schaffer, OGC, 202-673-5442.	Final rule, 46 FR 63242, December 31, 1981 (PR-232).....	Part 322 implemented section 401(d)(7) of the Act by establishing procedures whereby a carrier may apply and automatically receive one new domestic certificated route per year. The rule revoked Part 322 because its statutory authority terminated and certificated carriers may now serve new routes without applying for authority from the Board.
[323-1] SUSPENSION NOTICES AFTER JANUARY 1, 1982 (14 CFR PART 323)		
David Schaffer, OGC, 202-673-5442.	Final rule, 47 FR 7393, February 19, 1982 (PR-244).....	Since January 1, 1982, the Act has required carriers to file termination notices only when the suspension would affect a community's essential air service. This rule eliminates most notices now required by Part 323 and requires a few new ones to ensure that the Board retains the capability to monitor essential service levels at eligible points.
[323-2] ELIMINATION OF SUSPENSION NOTICES FOR FOREIGN AIR TRANSPORTATION (14 CFR PARTS 323, 231)		
David Schaffer, OGC, 202-673-5442.	Final rule, 47 FR 7303, February 19, 1982 (PR-244).....	This rule eliminated the requirements in 14 CFR Part 323 for suspension notices in foreign air transportation, which does not involve essential air service.
[380-1] PROTECTION OF CHARTER PARTICIPANTS' FUNDS (14 CFR PARTS 372, 380)		
Mark Schwimmer, OGC, 202-673-5442.	NPRM, 42 FR 61408, December 2, 1977 (SPDR-63, Docket 31735). Rulemaking terminated, 47 FR 7442, February 19, 1982 (EDR-439, Docket 35705).	This proceeding to review the Board's rules was superseded by, and terminated as a part of, the Board's broader proposal to revise and simplify the charter rules (item C10 of this agenda).
[380-2] ELIMINATION OF PROSPECTUS FILING FOR PUBLIC CHARTERS (14 CFR PART 380)		
Mark Schwimmer, OGC, 202-673-5442	Consolidated into item C10.....	Currently a charter operator cannot begin to market a Public Charter until at least 10 days after it files a prospectus with the Board. If the Board disapproves the prospectus, the delay can be longer. The prospectus must include a flight schedule and tour itinerary (if any). It must also include certifications that the charter operator has entered into a charter contract with an airline and made certain arrangements for the protection of passengers' funds. The rule proposed in item C10 of this agenda would replace the prospectus-filing requirement with new, simplified procedures.

[FR Doc. 82-13195 Filed 5-14-82; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

Advisory Circular for Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular and request for comments.

SUMMARY: The draft Advisory Circular on Transport Category Rotorcraft is intended to provide guidance material for demonstrating compliance with the requirements of Part 29 of the Federal Aviation Regulations.

DATE: Commenters must identify file AC 29-X number and comments must be received on or before July 23, 1982.

ADDRESSES: Send all comments on the draft Advisory Circular to: Federal Aviation Administration, Attn: Helicopter Policy and Procedures Staff (ASW-110), P.O. Box 1689, Fort Worth, TX 76101.

Comments received on the draft Advisory Circular may be inspected at the offices of The Helicopter Policy and Procedures Staff (ASW-110) 2nd floor, Building 3A, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Plummer, Aerospace Engineer, Helicopter Policy and Procedures Staff (ASW-110), Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Commercial telephone (817) 624-4911, extension 503, or FTS 736-9503.

SUPPLEMENTARY INFORMATION:

Comments Invited

The first two pages of the Advisory Circular 29-X are published below. These pages give an overview of the intent of the document. Copies of these pages and the second draft of technical material showing acceptable methods of compliance with Part 29 are being mailed to all known affected industry and Government entities, both domestic and foreign. Previous comments by the industry and other FAA offices on the first draft of each paragraph of the technical material were considered in

developing this second draft. Any interested person not receiving a copy of this second draft and desiring one should contact the person named above under "FOR FURTHER INFORMATON CONTACT."

A public meeting will be held in the FAA Southwest Regional Office training room, ground floor, Building 3B, 4400 Blue Mound Road, Forth Worth, Texas, on July 8, 1982, at 8 a.m., for the purpose of allowing interested parties to verbally deliver their written comments.

Issued in Fort Worth, Texas, on May 3, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

[AC 29-X]

Advisory Circular—FAR Guidance Material

Certification of Transport Category Rotorcraft

1. *Purpose.*—a. This advisory circular is one method being utilized to achieve national standardization in rotorcraft certification.

b. This guidance material covers FAA policy regarding methods of compliance with Part 29 of Subchapter C, Chapter 1, Title 14 of the Code of Federal Regulations. Part 29 contains the Airworthiness Standards for Transport Category Rotocraft.

c. This guidance material is based largely on precedents set during helicopter certification programs spanning the past 25 years. This material consolidates policy contained in earlier correspondence between FAA Headquarters, the rotocraft industry, and certificating regions.

d. This advisory circular covers methods of compliance in the areas of basic design, ground tests, flight tests.

e. This material is intended as a ready reference for rotorcraft manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots.

f. Initially this advisory circular is being published before policy material is developed for all sections of Part 29. The first issue covers the most complex and controversial sections. Revisions covering additional sections will be published as soon as practicable.

2. *Cancellation.* Order 8110.32, "Engineering Flight Test Guide for Transport Category Helicopters," dated May 5, 1978, is canceled. Portions of that order are contained in this advisory circular.

3. *Background.* FAA Order 8110.32, approved May 5, 1978, was published for internal use to describe acceptable methods of compliance with the flight test portions of Federal Aviation Regulation (FAR) Part 29. The FAA has now developed more comprehensive material which covers all disciplines of transport rotorcraft certification. This advisory circular was chosen as a medium to achieve distribution of this material to all affected persons.

4. *Deviations.* As rotorcraft designs vary from the conventional configurations it may become necessary to deviate from the methods and procedures outlined herein. These procedures are one acceptable means of compliance with Part 29. Any alternate means proposed by the applicant should be given due consideration. Major deviations from these procedures should be coordinated with the Helicopter Policy and Procedures Staff, ASW-110, in order to assure national standardization.

5. *Applicability.* Each paragraph has the applicable Part 29 amendment shown in the title. As Part 29 revisions occur, the appropriate revisions will be made to the affected paragraphs of this advisory circular.

This material is not to be construed as having any legal status and must be treated accordingly. However, to assure standardization in the certification process, these procedures should be applied to all rotocraft type certification and supplemental type certification activity.

6. *Related publications.* Certification personnel should be familiar with Order 8110.4, Type Certification and Notice N8100.5, Interim Operating Procedures for Aircraft Certification Directorates. The material in Chapter 1 of this advisory circular is closely related to Order 8110.4, however, duplication of procedures contained therein was not intended.

Throughout this advisory circular reference is made to other FAA advisory circulars and orders. Republishing these documents as a part of this advisory circular was not considered to be in the best interest of utilization of FAA resources.

7. *How to order.* Initial distribution is intended to include all interested persons. However, a free copy of this advisory circular is available by writing U.S. Department of Transportation, Publishing Section, M-443.1, Washington, D.C. 20590.

[FR Doc. 82-13199 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASO-18]

Proposed Alteration of Control Zone and Transition Area, Asheville, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the Asheville, North Carolina, Control Zone and Transition Area. In order to satisfy operational needs, changes have been made in instrument flight procedures at Asheville Regional Airport. In addition, a new ILS instrument approach procedure is being established to serve the airport. It is necessary to alter the Control Zone and Transition Area descriptions to reflect the changes and provide required controlled airspace for containment of Instrument Flight Rule (IFR) aircraft operations.

DATES: Comments must be received on or before: June 20, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Chief, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ——." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Chief, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the

notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of the Asheville, North Carolina, Control Zone and transition Area as follows: (1) increase the width and lengths of the control zone extensions to provide controlled airspace for IFR aircraft operating at an altitude of less than 1000 feet above the surface, (2) increase the size of the transition area to provide controlled airspace for IFR aircraft executing procedure turn maneuvers associated with various instrument approach procedures when such aircraft are operating at less than 1500 feet above the surface and (3) provide additional controlled airspace for aircraft flying diverse radar vectors while operating at low altitudes within the Asheville Terminal Radar Service Area (TRSA). Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3 dated January 29, 1982.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by deleting the present description of the Asheville, North Carolina, Control Zone and Transition Area and substituting the following therefor:

Asheville, North Carolina Control Zone—Revised

Within a 5-mile radius of Asheville Regional Airport (Lat. 35°26'04"N., Long. 82°32'25"W.); within 3 miles each side of Runway 16/34 extended centerlines, extending from the runway thresholds to 11.5 miles north and south of the airport.

Asheville, North Carolina, Transition Area—Revised

That airspace extending upward from 700 feet above the surface within a 20-mile radius of Asheville Regional Airport (Lat. 35°26'04"N., Long. 82°32'25"W.); within 7 miles west and 9.5 miles east of the 340° bearing from Keans LOM and the 160° bearing from Broad River RBN, extending from the 20-mile radius area to 18.5 miles north of the LOM and south of the RBN; excluding that portion that coincides with the Cullowhee, North Carolina, Transition Area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on May 5, 1982.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 82-13238 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-23]

Proposed Alteration of Transition Area: Paragould, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes alteration of a transition area at Paragould, AR. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Paragould Muncipal Airport, AR. This action is necessary to provide protection for aircraft executing a new instrument approach procedure using a nondirectional radio beacon (NDB) located 4.5 miles southwest of the airport at latitude 36°01'46" N., longitude 90°35'49" W. This NDB is being relocated from an on-airport site and is being renamed Walcott NDB.

DATES: Comments must be received on or before June 16, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: James L. Owens, Airspace and Procedures Branch, ASW-536, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; Telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation, Part 71, Subpart G § 71.181 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Paragould, AR, will necessitate an amendment to this subpart. This amendment will be required at Paragould, AR, since there is a proposed change in IFR procedures to the Paragould Municipal Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing

each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624–4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Paragould, AR Revised

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Paragould Municipal Airport, AR (latitude 36°03'41" N., longitude 90°30'41" W.), and within 2.5 miles each side of the 247° magnetic bearing from the Walcott NDB (latitude 36°01'46" N., longitude 90°35'49" W.) extending from the 5-mile radius to 11 miles southwest of the NDB, excluding the portion within the Jonesboro, AR Contol Zone.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 5, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-13227 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Standard for the Flammability of Clothing Textiles; Proposed Enforcement and Administrative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to issue a rule for the enforcement and administration of the Flammable Fabrics Act (FFA) regarding the use of tests other than the one in the Standard for the Flammability of Clothing Textiles (the Standard) to support guaranties for items subject to the Standard. The Commission proposes this rule in response to requests from manufacturers to use alternate test apparatus and alternate procedures for testing garments and fabrics under FFA standards. The proposed rule interprets the phrase "reasonable and representative tests," as it is used in section 8 of the FFA, to include any alternate test utilizing apparatus or procedures, other than those specified in the Standard, if the alternate test is as stringent as, or more stringent than, the test in the Standard. The purpose of the proposed rule is to set forth conditions under which persons and firms issuing guaranties for items subject to the Standard may base those guaranties on tests using apparatus or procedures other than those in the Standard.

DATES: Interested persons are invited to submit, on or before, July 16, 1982 written comments concerning the proposed rule.

Proposed Effective Date: The Commission proposes that the rule regarding use of alternate tests to support guaranties for items subject to the Standard become effective 30 days after it is issued in final form.

ADDRESS: Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and titled "Clothing Textiles Standard, Proposed Rule Concerning Alternate Test Apparatus."

FOR FURTHER INFORMATION CONTACT: L. James Sharman, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Standard for the Flammability of Clothing Textiles (the Standard, 16 CFR Part 1610) and the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) require that articles of wearing apparel and fabrics used or intended for use as clothing textiles must not exhibit "rapid and intense burning" when tested in accordance with the Standard.

The manufacture for sale, importation into the United States, or introduction in commerce of any item of wearing apparel or fabric which is subject to the Standard and which exhibits "rapid and intense burning" when tested in accordance with the Standard violates section 3 of the FFA (15 U.S.C. 1192) and section 5 of the Federal Trade Commission Act (FTCA, 15 U.S.C. 45). Such a violation may give rise to an administrative order to cease and desist from further violation of the FFA and FTCA, as well as to a civil action in a United States District Court under provisions of the FFA for injunction, or for seizure of items which fail to comply with an applicable standard of flammability.

In addition to seeking an administrative order, or initiating civil actions for violation of the Standard, the FFA, and the FTCA, the Commission may also proceed under section 7 of the FFA (15 U.S.C. 1196) to seek criminal penalties against any person who "willfully" violates the FFA.

Section 6(a) of the FFA (15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. (A guaranty does not provide the holder any defense to an administrative action for an order to cease and desist from further violation of the applicable standard, the FFA, and the FTCA, nor to any civil action for injunction or seizure brought under the FFA.)

Requirements For Guaranties

Among the requirements established for a guaranty by section 8(a) of the FFA is that it must be based upon "reasonable and representative tests" conducted in accordance with the applicable standard. Section 8(b) of the FFA (15 U.S.C. 1197(b)) prohibits the issuance of a "false guaranty."

On July 8, 1980, Milliken Research Corporation (Milliken) submitted a petition (FP 80–3) requesting the Commission to amend the Standard to allow use of an alternate test utilizing different apparatus and procedure than those specified in the Standard.(9) [1] A

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's

Continued

memorandum of a telephone conversation on November 20, 1980, between a member of the Commission staff and the author of the petition indicates that Milliken desired to use the alternate test for purposes of supporting guaranties of fabrics subject to the Standard. (12)

The petition from Milliken described the alternate test apparatus and procedures and stated that results obtained using the alternate test for two fabrics styles had been compared with results from tests conducted in accordance with the Standard on several hundred samples. According to the petition, the alternate test yielded results which were identical to (or slightly more severe than) results obtained from testing in accordance with the Standard. (9)

The petition stated that use of the alternate test could reduce the burden of testing to Milliken by approximately 75 per cent. (9)

The Commission staff prepared a briefing package which recommended that the Commission grant the relief requested in the Milliken petition by allowing persons and firms issuing guaranties to use alternate apparatus for testing to support guaranties, rather than by amending the Standard to change the apparatus to be used for testing by the Commission. (8)

Requests for inspection of the petition, the staff briefing package, or any other documents relating to the petition should be made at the Commission's public reading room, 1111 18th Street, N.W., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

Staff Analysis Petition

Included in the briefing package was a memorandum dated October 29, 1980 from the Division of Regulatory Management, Directorate for Compliance and Enforcement, which observed that section 8(a) of the FFA, establishing requirements for guaranties, is to some extent analogous to section 14 of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2063), which sets forth requirements for certificates of compliance with safety standards issued under the CPSA. (11) (A major difference between the two acts is that issuance of a guaranty is optional under the FFA for a manufacturer, importer, or other person or firm initially introducing an item subject to a flammability standard into commerce, whereas issuance of a certificate of compliance with the applicable standard is mandatory for the manufacturer, importer, or private labeler of a product subject to a safety standard issued under the CPSA.)

Unlike the FFA, Section 14 of the CPSA requires issuance of the certificate of compliance if a product is subject to a safety standard issued under that act. Section 14(a) of the CPSA provides that the certificate shall be based upon a test of each product, or upon a "reasonable testing program."

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe reasonable testing programs for products subject to standards issued under that act. However, as a general practice, the Commission has not issued regulations to specify detailed requirements for testing programs to support certificates of compliance.

The memorandum from the Division of Regulatory Management recommended issuance of an interpretation of section 8 of the Flammable Fabrics Act to allow use of test apparatus and procedures other than those specified in the Clothing Textiles Standard for purposes of supporting guaranties of items subject to that Standard, provided that the person or firm using such alternate apparatus or procedure has data or other information to establish that tests conducted with the alternate apparatus or procedures are as stringent as, or more stringent than, tests conducted using the apparatus and procedures specified by the Standard. By issuance of such an interpretation, the commission would give manufacturers issuing guaranties for items subject to the Clothing Textiles Standard the same kind of flexibility afforded to manufacturers issuing certificates of compliance for items subject to consumer product safety standards issued under the CPSA.

The memorandum from the division of regulatory Management noted that by requiring the person or firm relying on alternate test apparatus or procedures to establish the equivalency of results with those obtained from testing in accordance with the Standard, the Commission would be able to avoid expenditure of large amounts of its resources on evaluation of proposed alternate test apparatus and procedures.

Commission Decision On Petition

After consideration of the Milliken petition, the staff briefing package, and other relevant information received during the briefing on January 14, 1981, the Commission voted on January 14, 1981 to propose an interpretation of section 8(a) of the FFA as follows:

(1) For purposes of supporting guaranties for items subject to the Standard, the term "reasonable and representative tests" as used in section 8(a) of the FFA includes the test specified in the Standard, and any alternate test utilizing apparatus and procedures other than those in the Standard, if that alternate test is as stringent as, or more stringent than, the test in the Standard. (13, 14) The rule proposed below provides that the Commission will consider an alternate test to be "as stringent as, or more stringent than" the test in the Standard if, when testing identical specimens, the alternate test yields failing results as often as, or more often than, the test in the standard.

(2) Specific approval from the Commission in advance of the use of any alternate test to support guaranties for items subject to the Standard is not required. However, any person or firm using an alternate test to support guaranties must have data or other information to demonstrate that the alternate test is as stringent as, or more stringent than, the test in the Standard. (13, 14)

(3) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus, procedures, and criteria set forth in the Standard. The Commission may consider any failing results from compliance testing as evidence that the item in question failed to comply with the Standard, and that any guaranty issued for that item is a false guaranty in violation of section 8(b) of the FFA. (13, 14)

The staff briefing package suggested that the interpretation of the FFA and the standards in question could take the form of statements of policy and interpretation. After consideration of that package and an oral briefing by the staff, the Commission voted to propose statements of policy and interpretation. (13, 14)

However, in this notice, the Commission is proposing a regulation for the enforcement and administration of the FFA, under the authority conferred by section 5(c) of that act (15 U.S.C. 1194(c)). The Commission believes that the term "enforcement and administrative rule" describes the proposal published below more accurately than the term "statement of policy and interpreation" for the following reason. The rule proposed below, if issued on a final basis, could have a substantive impact on the obligations of persons and firms issuing guaranties of items subject to the Clothing Textiles Standard. The

public reading room, 1111 18th Street, N.W., Eighth Floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

hallmark of a policy statement is that it has no such substantive impact. Although the proposal published below is for an enforcement and administrative rule, it will not amount to an amendment of the Standard itself. As noted above, the Commission will continue to use the apparatus and procedures prescribed by the Standard when testing items subject to its requirements.

Related Proposal

The memorandum from the Division of Regulatory Management concerning the Milliken petition noted that in 1975, the Commission had received a request from a manufacturer of children's sleepwear for approval of an alternate test apparatus for use in testing for compliance with the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616). (11,1) That memorandum and the staff briefing package recommended that any interpretation of the FFA to allow use of alternate apparatus for testing to support guaranties of items subject to the Clothing Textiles Standard should also extend to use of alternate apparatus for testing under the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616). (11)

When the Commission considered the question of use of alternate tests to support guaranties for items subject to the Clothing Textiles Standard (Part 1610), it supported the staff recommendation and also voted to extend the interpretation to include use of alternate tests for purposes of complying with the two children's sleepwear flammability standards, and supporting guaranties of items subject to the children's sleepwear standards. (13,14) Elsewhere in this issue of the **Federal Register**, the Commission has proposed enforcement and administrative rules concerning use of alternate tests for purposes of compliance with the children's sleepwear standards and supporting guaranties of items subject to those standards.

Certification Of No Significant Economic Impact On Small Entities

The Regulatory Flexibility Act (RFA, Pub. L. 96-354) requires that after January 1, 1981, whenever an agency of the Federal government publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it should endeavor to give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities") that may be subject to the agency's requirements.

Specifically, the RFA requires that before publication of a proposal, the agency must either:

(1) Prepare an initial regulatory flexibility analysis of the probable effect of the proposal on small businesses and other small entities in accordance with section 603 of the RFA (5 U.S.C. 603); or

(2) Determine that the proposal, if issued on a final basis, will not have a "significant economic impact on a substantial number of small entities," and prepare a certification to that effect to be signed by the head of the agency in accordance with section 605(b) of the RFA (5 U.S.C. 605(b)). If a certification of no significant impact is made, it must published in the **Federal Register** at the time notice is given of proposed rule-making, together with a succinct explanation of the reasons for the certification. In accordance with provisions of section 605(b) of the RFA, the Commission has certified that the proposed rule to allow use of alternate test apparatus and procedures will not have a significant economic impact on a substantial number of small entities.

Manufacturers, importers, and other persons or firms initially introducing items which are subject to the Clothing Textiles Standard (such as converters) are required to test items subject to the clothing textiles standard only when they issue guaranties for those items. Issuance of guaranties for items subject to the Clothing Textiles Standard is not required by that standard or the FFA, but is optional for the person or firm initially introducing those items into commerce. The rule proposed below does not require any person or firm not already issuing guaranties to begin doing so, or prohibit any person or firm presently issuing guaranties from discontinuing the issuance of such guaranties.

The proposal published below would not impose any new requirements on any person or firm issuing guaranties of items subject to the Clothing Textiles Standard. Rather, the proposed rule would allow persons and firms currently subject to existing requirements for testing to support guaranties to use test apparatus and procedures other than those specified in the Standard if they elect to do so.

The Commission decided to propose the rule in response to a request from a firm which claimed that by use of an alternate test apparatus, it could reduce the costs of testing required to support guaranties. If the Commission issues the rule on a final basis, the option of using alternate test apparatus and procedure would be available to that firm and all others now required to perform testing.

However, if any person or firm concludes that use of alternate test apparatus or procedures under the conditions specified in the proposal would not reduce testing costs or offer any other advantage, that person or firm is free to continue using the apparatus and procedures specified in the standard when testing to support guaranties.

Environmental Considerations

The rule proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Comments Solicited

As stated above, the Commission has reason to believe that if the rule proposed below were issued on a final basis, manufacturers of fabrics and garments subject to the clothing textiles standard and the children's sleepwear standards would be able to reduce their costs of compliance with those Standards and the FFA by using alternate test apparatus or procedures. The Commission also has reason to believe that use of alternative test apparatus or procedures under the conditions set forth in the proposal would not reduce the level of protection currently afforded to the public.

The Commission has published the proposed rule for public comment in order to obtain any additional information and views about these proposals which may be available from interested parties, including consumers and manufacturers.

The Commission specifically solicits comments from persons and firms issuing guaranties under the Clothing Textiles Standard on the following topics:

1. Whether individual firms would use alternate test apparatus or procedures for testing under the conditions set forth in the proposal.

2. If the answer to item one, above, is in the affirmative, estimates of savings in the cost of testing anticipated by such a person or firm from use of alternate test apparatus or procedures in accordance with the conditions specified in the proposal. The Commission desires information about the estimated number of hours of testing which might be eliminated annually, as well as the dollar amount of savings which might be achieved each year if

the proposed policy statements were issued on a final basis. The Commission also desires to know the method by which such estimates of savings are calculated.

3. Whether the proposed rule could be modified to increase savings to persons and firms testing under the standard, either in terms of hours required for testing, or total dollar costs of testing each year. Comments addressed to this issue are requested to suggest specific modifications, and to explain the amounts of additional savings of hours required for testing or dollar costs which could be expected to result from such modification.

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Textiles, Warranties, Records.

Conclusion and Proposal

Therefore, in accordance with provisions of the Flammable Fabrics Act (15 U.S.C. 1194), and the Consumer Product Safety Act (15 U.S.C. 2079), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Sub-chapter B as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Part 1610, Subpart B is proposed to be amended by adding a new § 1610.40 to read as follows:

§ 1610.40 Use of alternate apparatus, procedures, or criteria for tests for guaranty purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) The Standard for the Flammability of Clothing Textiles (the Standard) prescribes apparatus and procedures for testing fabrics and garments subject to its provisions. See 16 CFR 1610.4. The Standard prescribes criteria for classifying the flammability of fabrics and garments subject to its provisions as "Normal flammability, Class 1," "Intermediate flammability, Class 2," and "Rapid and intense burning, Class 3." See 16 CFR 1610.3. Sections 3 and 4 of the Flammable Fabrics Act, as enacted in 1953 and amended in 1954, prohibit the manufacture for sale, importation into the United States, or introduction in commerce of any fabric or article of wearing apparel subject to the Standard which exhibits "rapid and intense burning" when tested in accordance with the Standard. See 16 CFR Part 1609.

(c) The Commission recognize that for purposes of supporting guaranties, "reasonable and representative tests" could be either the test in the Standard, or alternate tests which utilize apparatus or procedures other than those in the Standard. This § 1610.40 sets forth conditions under which the Commission will allow use of alternate tests with apparatus or procedures other than those in the Standard to serve as the basis for guaranties.

(d)(1) Persons and firms issuing guaranties that fabrics or garments subject to the Standard meet its requirements may base those guaranties on any alternate test utilizing apparatus or procedures other than those in the Standard, if such alternate test is as stringent as, or more stringent than, the test in the Standard. The Commission considers an alternate test to be "as stringent as, or more stringent than" the test in the Standard if, when testing identical specimens, the alternate test yields failing results as often as, or more often than, the test in the Standard. Any person using such an alternate test must have data or information to demonstrate that the alternate test is as stringent as, or more stringent than, the test in the Standard.

(2) The data or information required by this paragraph (d) of this section to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be in the possession of the person or firm desiring to use such alternate test before the alternate test may be used to support guaranties of items subject to the Standard.

(3) The data or information required by paragraph (d) of this section to demonstate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be retained for as long as that alternate test is used to support guaranties of items subject to the Standard, and for one year thereafter.

(e) Specific approval from the Commission in advance of the use of any alternate test using apparatus or procedures other than those in the Standard is not required. The Commission will not approve or disapprove any specific alternate test utilizing apparatus or procedures other than those in the Standard.

(f) Use of any alternate test to support guaranties of items subject to the Standard without the information required by this section may result in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)), which prohibits the furnishing of a false guaranty.

(g) The commission will test fabrics and garments subject to the Standard for complaince with the standard using the apparatus and procedures set forth in the Standard. The Commission may consider any failing results from compliance testing as evidence that:

(1) The manufacture for sale, importation into the United States, or introduction in commerce of the fabric or garment which yielded failing results was in violation of the Standard and of section 3 of the FFA; and

(2) The person or firm using the alternate test as the basis for a guaranty has furnished a false guaranty, in violation of section 8(b) of the FFA.

Request for Comments

Interested persons are invited to submit written comments by July 16, 1982. Comments may be acompanied by written data, views and arguments and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, Eighth Floor, 1111 18th Street NW., Washington, D.C. between 8:30 a.m. and 5:00 p.m., Monday through Friday.

(Sec. 5, Pub. L. 90–189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92–573, 86 Stat. 1231, 15 U.S.C. 2079(b))

Dated May 11, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Letter from the William Carter Company to Secretary, Consumer Product Safety Commission, requesting approval for use of alternate test apparatus for purposes of testing for compliance with children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616), with attachments; 38 pages; July 11, 1975.

2. Memorandum from Bernard Schwartz. OSCA, to Distribution concerning request from Carter for approval of alternate test apparatus; 1 page; August 14, 1975.

3. Memorandum from Margaret L. Neily, BESB, to Bernard Schwartz, OSCA, commenting on Carter request for approval of alternate test apparatus; 2 pages; September 12, 1975.

4. Memorandum from Ralph Madison, BESB, to Bernard Schwartz, SCAT, concerning Carter request for approval of

alternate test apparatus; 1 page; September 12, 1975.

5. Log of telephone conversation between Bernard Schwartz, OSCA, and O. P. Beckwith, William Carter Company, concerning Carter request for approval of alternate test apparatus; 1 page; October 23, 1975.

6. Memorandum from Bernard A. Schwartz, OSCA, to Bureau of Engineering Sciences, requesting review of attached memorandum from Bureau of Economic Analysis, with attachments; 4 pages; May 25, 1976.

7. Memorandum from Margaret Neily, BESB, to Bernard Schwartz, OSCA, responding to memorandum of May 25, 1976, concerning economic analysis of Carter request for approval of alternate test apparatus, with attachment; 8 pages; August 26, 1976.

8. Staff briefing package prepared by Elaine A. Tyrrell, Office of Program Management addressing Milliken petition (FP 80–3); 5 pages; December 11, 1980. The tabs to this package are listed separately.

9. TAB A. Petition from Milliken Research Corporation (FP 80–3) requesting amendment of the Standard for the Flammability for Clothing Textiles to allow use of alternate test apparatus; 4 pages; July 1, 1980.

10. TAB B, memorandum from Stephen Lemberg, Assistant General Counsel to Office of the Secretary concerning FP 80–3; 2 pages; July 30, 1980.

11. TAB C, memorandum from Liz Jones, Division of Regulatory Management concerning FP 80–3; 4 pages; October 29, 1980.

12. Memorandum from Allen F. Brauninger, OGC, to Commission, transmitting staff briefing package on FP 80–3, with attachments; 5 pages; January 5, 1981.

13. Vote sheet concerning FP 80–3, from Allen F. Brauninger, OGC, to Commission; 2 pages; January 5, 1981.

14. Minutes of Commission meeting of January 14, 1981, recording Commission vote to grant FP 80–3; 2 pages; January 16, 1981.

[FR Doc. 82-13340 Filed 5-14-82; 8:45 am.]

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16 CFR Part 1615

Flammability Standard for Children's Sleepwear, Sizes 0 through 6X; Proposed Enforcement and Administrative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to issue a rule for enforcement and administration of the Flammable Fabrics Act (FFA) regarding the use of tests other than those set forth in the children's sleepwear flammability standard for sizes 0 through 6X (16 CFR Part 1615) for purposes of complying with that standard and supporting guaranties of items subject to that standard. The Commission proposes this rule in response to requests from manufacturers to use alternate test apparatus and alternate procedures for testing garments and fabrics under Flammable Fabrics Act standards. The proposed rule allows the use of any alternate test apparatus or procedure which is as stringent as, or more stringent than, the apparatus and procedure specified in the standard. The proposed rule also interprets the phrase "reasonable and representative tests" as used in section 8 of the FFA to include any test utilizing an apparatus or procedures differing from those prescribed by the standard if the alternate test is as stringent as, or more stringent than, the test in the standard. The purpose of the proposed rule is to set forth conditions under which persons and firms required to perform testing for purposes of complying with the standard and supporting guaranties of items subject to that standard may use test apparatus or procedures other than those in the standard.

DATE: Interested persons are invited to submit, on or before July 16, 1982, written comments concerning the proposed rule.

PROPOSED EFFECTIVE DATE: The Commission proposes that the rule regarding use of alternate test apparatus and procedure for purposes of complying with the standard and supporting guaranties of items subject to the standard shall become effective 30 days after the rule is issued in final form.

ADDRESS: Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and titled "Children's Sleepwear Flammability Standard (sizes 0 through 6X), Proposed Rule Concerning Alternate Test Apparatus."

FOR FURTHER INFORMATION CONTACT: L. James Sharman, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615) requires that children's sleepwear garments and fabrics intended for use in such garments must self-extinguish when exposed to an open flame ignition source.

In order to comply with this standard, manufacturers, importers, and other persons (such as converters) initially introducing items subject to the standard into commerce must regularly test items from current production. The standard prescribes the apparatus and procedure to be used for performing tests of fabrics and garments subject to its provisions. See 16 CFR 1615.4(a), (f), and (g). The standard prescribes pass/fail criteria. See 16 CFR 1615.3(b). The standard requires that persons and firms subject to its provisions must group items into production units, and test samples from each production unit. See 16 CFR 1615.4(b), (c), and (d). The schedules for sampling and testing set forth in the standard are called "sampling plans."

The manufacture for sale, importation into the United States, or introduction into commerce of any item of children's sleepwear which is subject to the standard but fails to comply with its requirements violates section 3 of the FFA (15 U.S.C. 1192) and section 5 of the Federal Trade Commission Act (FTCA, 15 U.S.C. 45). Such a violation may give rise to an administrative order to cease and desist from further violation of the FFA and FTCA, as well as to a civil action in a United States District Court under provisions of the FFA for injunction, or for seizure of items which fail to comply with the standard.

In addition to seeking an administrative order, or initiating civil actions for violation of the standard the FFA, and the FTCA, the Commission may also proceed under section 7 of the FFA (15 U.S.C. 1196) to seek criminal penalties against any person who "willfully" violates the FFA.

Section 8(a) of the FFA (15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. (A guaranty does not provide the holder any defense to an administrative action to cease and desist from further violation of the applicable standard, the FFA, and the FTCA, nor to any civil action for injunction or seizure brought under the FFA.)

Among the requirements established for a guaranty by section 8(a) of the FFA is that it must be based upon "reasonable and representative tests" conducted in accordance with the applicable standard. Regulations implementing the standard provide that for purposes of supporting guaranties for items subject to those standards, "reasonable and representative tests" shall be those tests performed pursuant to any sampling plan set forth in the applicable standard, or pursuant to any authorized alternate sampling plan. See 16 CFR 1615.31(f).

Section 8(b) of the FFA (15 U.S.C. 1197(b)) prohibits the issuance of a "false guaranty."

Application for Use of Alternate Test Apparatus

By letter dated July 11, 1975, the William Carter Company, a manufacturer of children's sleepwear, requested approval of an alternate test apparatus for use in testing fabrics and garments subject to the children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616) under provisions of § 1616.5(a) of that standard. (2) [1] That section of the standard states:

§ 1616.5 Test procedure.

(a) *Apparatus.* The following apparatus shall be used for the test. Alternate test apparatus may be use only with prior approval of the Consumer Product Safety Commission.

The Carter application included a description of the alternate test apparatus, and a comparison of results from testing two types of fabrics using both the alternate test apparatus, and the apparatus described in the standard. Carter claimed that the comparative test data demonstrated that use of the alternate test apparatus produced results which were equivalent to, or more stringent than, the results obtained from testing using the apparatus described in the standard. The application from Carter also stated that use of the alternate test apparatus would reduce the time required for testing by one-half to two-thirds. (2)

After reviewing the data included in the Carter application, the Commission staff concluded that Carter's analysis of the equivalency of test results was correct with regard to the two specific fabrics which were the subject of Carter's comparative testing program. (5) However, the staff lacked the resources needed to duplicate the apparatus described in the Carter application and verify that it would produce results equivalent to those obtained using the apparatus described in the standard on fabrics representative of the entire range used in the production of children's sleepwear. (8)

Related Petition

On July 8, 1980, Milliken Research Corporation submitted a petition (FP 80–3) requesting the Commission to amend the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) to allow use of an alternate test utilizing different apparatus and procedure, than those specified in the clothing textiles standard. (10)

Unlike the sleepwear standard, the clothing textiles standard does not require manufacturers, importers or other firms introducing items subject to that standard into commerce to test items from current production. All that is required for compliance with the clothing textiles standard is that any item subject to its provisions must not exhibit "rapid and intense burning" if tested by the Commission. (A more complete explanation of the applicability and requirements of the clothing textiles standard appears in a proposed policy statement interpreting that standard, which is also published in this issue of the Federal Register.)

Although manufacturers are not required to perform testing in order to comply with the clothing textiles standard, if they issue guaranties of items subject to that standard, the guaranty must be based on "reasonable and representative tests" conducted in accordance with that standard. A memorandum of a telephone conversation on November 20, 1980, between a member of the Commission staff and the author of the Milliken petition indicates that Milliken desired to use the alternate test for purposes of supporting guaranties of fabrics subject to the clothing textiles standard. (13)

The Commission staff prepared a briefing package which recommended that the Commission grant the relief requested in the petition from Milliken by allowing persons and firms issuing guarantees to use alternate apparatus for testing to support guaranties of items subject to the clothing textiles standard, rather than by amending that standard to change the apparatus to be used for testing by the Commission. (9) The staff briefing package also recommended that the Commission act on Carter's application for approval of alternate test apparatus by issuance of a similar interpretation of the children's sleepwear standards and the FFA to allow use of alternate test apparatus and procedures under certain conditions. (9)

The sleepwear standard for sizes 7 through 14 makes provision for use of test apparatus other than the equipment specified in that standard, as noted above. The sleepwear standard for sizes 0 through 6X has no specific provision authorizing or prohibiting the use of alternate test apparatus or procedure by persons and firms required to perform testing under that standard.

In the Federal Register of February 8, 1978 (43 FR 4853), the Commission amended the sleepwear standard for sizes 0 through 6X to make its requirements for flame resistance of fabrics and garments substantively identical to those of the standard for sizes 7 through 14. (1) The Commission staff is aware that many firms which manufacture sleepwear produce fabrics and garments which are subject to both the standard for sizes 0 through 6X and the standard for sizes 7 through 14. For these reasons, after considering the request from Carter for approval of alternate test apparatus and the petition from Milliken Corporation, the staff recommended that the Commission authorize use of alternate test apparatus and procedures under the same conditions for persons and firms required to perform testing under the sleepwear standard for sizes 0 through 6X as well as the standard for sizes 7 through 14.

Requests for inspection of the application from Carter, the Milliken petition, the staff briefing package, and all other documents relating to this proceeding should be made at the Commission's public reading room, 1111 18th Street, NW., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

Commission Decision on Application and Petition

The staff briefing package suggested that the interpretation of the FFA and the standards in question could take the form of a statement of policy and interpretation. After consideration of the Carter application for use of an alternate test apparatus, the Milliken petition, the briefing package, and other relevant information received during the briefing on January 14, 1981, the Commission voted on January 14, 1981, to propose a statement of policy interpreting section 8(a) of the FFA to allow use of alternate tests to support guaranties of items subject to the clothing textiles standard. (14, 15) The Commission also voted to extend the policy statement to include use of alternate tests for purposes of complying with the two children's sleepwear standards and supporting guaranties of items subject to those standards.

However, in this notice, the Commission is proposing a regulation for the enforcement and administration of the FFA, under the authority conferred by section 5(c) of that act (15 U.S.C. 1194(c)). The Commission believes that the term "enforcement and administrative rule" more correctly describes the proposal published below

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

than the term "statement of policy and interpretation" for the following reason. The rule proposed below, if issued on a final basis, could have a substantive impact on the obligations of persons and firms required to perform testing under the flammability standard for sleepwear in sizes 0 through 6X. The hallmark of a policy statement is that it has no such substantive impact. Although the proposal published below is for an enforcement and administrative rule, it will not amount to an amendment of the standard itself. As noted above, the Commission will continue to use the apparatus and procedures prescribed by the standard when testing items subject to its requirements.

The rule proposed below concerns the use of alternate apparatus and procedures for testing fabrics and garments subject to the standard for children's sleepwear in sizes 0 through 6X (16 CFR Part 1615). Elsewhere in this issue of the **Federal Register**, the Commission has published a proposed rule concerning use of alternate tests and procedures by persons and firms whose products are subject to the children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616).

Summary of Proposal

The rule proposed below sets forth the conditions under which the Commission will approve use of alternate test apparatus or procedures by persons and firms required to perform testing for purposes of compliance with the standard for sizes 0 through 6X, and to support guaranties of items subject to that standard.

Section 1615.35(b) of the proposal states that the Commission gives its approval to any person or firm desiring to use apparatus or procedures other than those appearing in the standard for purposes of complying with the standard, if that person or firm has data or other information demonstrating that a test utilizing the alternate apparatus or procedures is as stringent as, or more stringent than, a test utilizing the apparatus and procedures specified in the standard. Proposed § 1616.35(b) states further that the Commission will consider a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard if, when testing identical specimens, a test utilizing alternative apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the standard.

That section of the proposal also provides that the data or information concerning equivalent stringency of the alternate apparatus or procedures must be in the possession of the person or firm desiring to use such apparatus or procedure prior to its use for purposes of complying with the standard and must be retained for as long as the alternate test or procedure is used for compliance with the standard, and for a period of one year thereafter.

Proposed § 1615.35(c) states that written application to the Commission is not required for approval of alternate test apparatus, and that the Commission will not act on any individual written application for such approval.

Section 1615.36 of the proposal published below concerns use of alternate test apparatus or procedures for purposes of supporting guaranties of items subject to the children's sleepwear standard for sizes 0 through 6X. Proposed § 1615.36(c) states that any person or firm meeting the requirements of § 1615.35 for use of alternate test apparatus for purposes of compliance with the standard may also use such alternate apparatus or procedures under the same conditions for purposes of conducting a "reasonable and representative test to support guaranties of items subject to the standard.

The proposed rule also announces that the Commission will test fabrics and garments subject to the standard using the apparatus and procedures set forth in the standard. The Commission may consider any failing results from its testing as evidence of violation of the standard and section 3 of the FFA, as well as evidence of the issuance of a false guaranty in violation of section 8(b) of the FFA. See proposed §§ 1615.35(e) and 1615.36(d).

Certification of no Significant Economic Impact on Small Entities

The Regulatory Flexibility Act (RFA, Pub. L. 96–354) requires that after January 1, 1981, whenever an agency of the Federal government publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it should endeavor to give particular consideration to small businesses, small nonprofit organizations, and small local governments (collectively called "small entities") that may be subject to the agency's requirements.

Specifically, the RFA requires that before publication of a proposal, the agency must either:

(1) prepare an initial regulatory flexibility analysis of the probable effect of the proposal on small businesses and other small entities in accordance with section 603 of the RFA (5 U.S.C. 603); or

(2) determine that the proposal, if issued on a final basis, will not have a "significant economic impact on a substantial number of small entities," and prepare a certification to that effect to be signed by the head of the agency in accordance with section 605(b) of the RFA (5 U.S.C. 605(b)). If certification of no significant impact is made, it must be published in the **Federal Register** at the time notice is given of proposed rule-making, together with a succinct explanation of the reasons for the certification.

In accordance with provisions of section 605(b) of the RFA, the Commission has certified that the proposed rule to allow use of alternate test apparatus and procedures will not have a significant economic impact on a substantial number of small entities.

The reasons for the certification are as follows:

The children's sleepwear standard for sizes 0 through 6X presently requires manufacturers, importers, and other person initially introducing items subject to the standard into commerce (such as converters) to test fabrics and garments in order to comply with the standard. Regulations implementing the standard (16 CFR Part 1615, Subpart B) require maintenance of records of testing to demonstrate compliance with the standard, and if guaranties of items subject to the standard are issued, to support such guaranties.

The rule proposed below would not impose any new requirements on any persons or firms manufacturing or otherwise initially introducing items subject to the standard into commerce. Rather, the proposed rule would allow persons and firms currently subject to existing requirements for testing to use test apparatus and procedures other than those specified in the standard if they elect to do so.

The Commission decided to propose the rule in response to a request from one manufacturer who claimed that use of an alternate test apparatus could reduce the cost of testing for that firm. If the Commission issues the rule on a final basis, that firm, and any other person or firm currently required to perform testing in order to comply with the standard or support guaranties, would have the option of using alternate test apparatus or procedures.

However, if any person or firm concludes that use of alternate test apparatus or procedures under the conditions specified in the proposal would not reduce testing costs or offer any other advantage, that person or firm is free to continue using the apparatus and procedures specified in the standard for purposes of complying with the

standard and supporting guaranties of items subject to the standard.

Environmental Considerations

The rule proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Comments Solicited

As stated above, the Commission has reason to believe that if the rule proposed below were issued on a final basis, manufacturers of fabrics and garments subject to the clothing textiles standard and the children's sleepwear standards would be able to reduce their costs of compliance with those standards and the FFA by using alternate test apparatus or procedure. The Commission also has reason to believe that use of alternate test apparatus or procedures under the conditions set forth in the proposed policy statements would not reduce the level of protection currently afforded to the public.

The Commission has published the proposed rule for public comment in order to obtain any additional information and views about these proposals which may be available from interested parties, including consumers and manufacturers.

The Commission specifically solicits comments from persons and firms subject to the requirements of the flammability standard for children's sleepwear in sizes 0 through 6X on the following topics:

1. Whether individual firms would use alternate test apparatus or procedures for testing under the conditions set forth in the proposal.

2. If the answer to item one, above, is in the affirmative, estimates of savings in the cost of testing anticipated by such a person or firm from use of alternate test apparatus or procedures in accordance with the conditions specified in the proposal. The Commission desires information about the estimated number of hours of testing which might be eliminated annually, as well as the dollar amount of savings which might be achieved each year if the proposed rule was issued on a final basis. The Commission also desires to know the method by which such estimates of savings are calculated.

3. Whether the proposed rule could be modified to increase savings to persons and firms testing under the standard, either in terms of hours required for testing, or total dollar costs of testing each year. Comments addressed to this issue are requested to suggest specific modifications, and to explain the amounts of additional savings of hours required for testing or dollar costs which could be expected to result from such modification.

List of Subjects in 16 CFR Part 1615

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Textiles, Records, Warranties.

Conclusion and Proposal

Therefore, in accordance with provisions of the Flammable Fabrics Act (Pub. L. 90–189, sec. 5, 81 Stat. 568 (15 U.S.C. 1194), and the Consumer Product Safety Act, sec. 30, Pub. L. 92–573 (15 U.S.C. 2079)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X (FF 3–71)

Part 1615, Subpart B is proposed to be amended by adding new § 1615.35 and § 1615.36 to read as follows:

§ 1615.35 Use of alternate apparatus, procedures, or criteria for testing under the standard.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (the Standard) requires every manufacturer, importer, and other person (such as a converter) initially introducing items subject to the Standard into commerce to group items into production units, and to test samples from each production unit. See 16 CFR 1615.4 (b), (c) and (d). The Standard prescribes an apparatus and procedure for performing tests of fabric and garments subject to its provisions. See 16 CFR 1615.4 (a), (f), and (g). The Standard prescribes pass/fail criteria at 16 CFR 1615.3(b).

(b)(1) By issuance of this § 1615.35, the Commission gives its approval to any person or firm desiring to use test apparatus or procedures other than those prescribed by the Standard for purposes of compliance with the Standard, if that person or firm has data or other information to demonstrate that a test utilizing such alternate apparatus or procedures is as stringent as, or more stringent than, a test utilizing the apparatus and procedures specified in the Standard. The Commission considers a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard if, when testing identical specimens, a test utilizing alternate apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the Standard.

(2) The data or information required by this paragraph (b) of this section as a condition to the Commission's approval of the use of alternate test apparatus or procedures must be in the possession of the person or firm desiring to use such alternate apparatus or procedures before the alternate apparatus or procedures may be used for purposes of compliance with the Standard.

(3) The information required by this paragraph (b) of this section must be retained by the person or firm using the alternate test apparatus or procedure for as long as that apparatus or procedure is used for purposes of compliance with the Standard, and for a period of one year thereafter.

(c) Written application to the Commission is not required for approval of alternate test apparatus or procedure, and the Commission will not act on any individual written application for approval of alternate test apparatus or procedure.

(d) Use of any alternate test apparatus or procedure without the data or information required by paragraph (b), of this section, may result in violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(e) The Commission will test fabrics and garments subjects to the Standard for compliance with the requirements of the Standard using the apparatus and procedures set forth in the Standard. The Commission may consider any failing results from compliance testing as evidence of a violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

§ 1615.36 Use of Alternate Apparatus or Procedures for Tests for Guaranty Purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Section 1615.31(f) of the regulations implementing the Standard

for the Flammability of Children's Sleepwear: Sizes 0 through 6X (the Standard) provides that for purposes of supporting guaranties issued in accordance with section 8 of the FFA for items subject to the Standard, "reasonable and representative tests" are tests "performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard."

(c) At § 1615.35, the Commission has set forth conditions under which the Commission will approve the use of test apparatus or procedures other than those prescribed in the Standard for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of § 1615.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedures under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the Standard, following any sampling plan prescribed by the Standard or any approved alternate sampling plan.

(d) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission may consider any failing results from compliance testing as evidence that the person or firm using alternate test apparatus or procedures has furnished a false guaranty in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

Request for Comments:

Interested persons are invited to submit written comments by July 16, 1982. Comments may be accompanied by written data, views and arguments and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, eighth floor, 1111 18th Street N.W., Washington, D.C. between 8:30 a.m. and 5:00 p.m. Monday through Friday.

(Sec. 5, Pub. L. 90–189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92–573, 86 Stat. 1231, 15 U.S.C. 2079(b))

Dated May 11, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety.

Bibliography

1. **Federal Register** notice amending Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, and Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14; 8 pages; February 6, 1978 (43 F.R. 4848).

2. Letter from the William Carter Company to Secretary, Consumer Product Safety Commission, requesting approval for use of alternative test apparatus for purposes of testing for compliance with children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616), with attachments; 36 pages; July 11, 1975.

3. Memorandum from Bernard Schwartz, OSCA, to Distribution concerning request from Carter for approval of alternate test apparatus; 1 page; August 14, 1975.

4. Memorandum from Margaret L. Neily, BESB, to Bernard Schwartz, OSCA, commenting on Carter request for approval of alternate test apparatus; 2 pages; September 12, 1975.

5. Memorandum from Ralph Madison, BESB, to Bernard Schwartz, SCAT, concerning Carter request for approval of alternate test apparatus; 1 page; September 12, 1975.

6. Log of telephone conversation between Bernard Schwartz, OSCA, and O. P. Beckwith, William Carter Company, concerning Carter request for approval of alternate test apparatus; 1 page; October 23, 1975.

7. Memorandum from Bernard Schwartz, OSCA, to Bureau of Engineering Sciences, requesting review of attached memorandum from Bureau of Economic Analysis, with attachments; 4 pages; May 25, 1976.

8. Memorandum from Margaret Neily, BESB, to Bernard Schwartz, OSCA, responding to memorandum of May 25, 1976, concerning economic analysis of Carter request for approval of alternate test apparatus, with attachment; 8 pages; August 25, 1976.

9. Staff briefing package prepared by Elaine A. Tyrrell, Office of Program Management addressing Milliken Petition, FP 80–3; 5 pages; December 11, 1980. The tabs to this package are listed separately.

10. TAB A, Petition from Milliken Research Corporation (FP 80–3) requesting amendment of the Standard for the Flammability for Clothing Textiles to allow use of alternate test apparatus; 4 pages; July 1, 1980.

11. TAB B, memorandum from Stephen Lemberg, Assistant General Counsel to Office of the Secretary concerning FP 80–3; 2 pages; July 30, 1980.

12. TAB C, memorandum from Liz Jones, Division of Regulatory Management concerning FP 80–3; 4 pages; October 29, 1980.

13. Memorandum from Allen F. Brauninger, OGC, to Commission, transmitting staff briefing package on FP 80–3, with attachments; 5 pages; January 5, 1981.

14. Vote sheet concerning FP 80–3, from Allen F. Brauninger, OGC, to Commission; 2 pages; January 5, 1981.

15. Minutes of Commission meeting of January 14, 1981, recording Commission vote to grant FP 80–3; 2 pages; January 16, 1981.

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BILLING CODE 6355-01-M

16 CFR Part 1616

Flammability Standard for Children's Sleepwear, Sizes 7 Through 14; Proposed Enforcement and Administrative Rule

AGENCY: Consumer Produce Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to issue a rule for enforcement and administration of the Flammable Fabrics Act (FFA) regarding the use of tests other than those set forth in the children's sleepwear flammability standard for sizes 7 through 14 (16 CFR Part 1616) for purposes of complying with that standard and supporting guaranties of items subject to that standard. The Commission proposes this rule in response to requests from manufacturers to use alternate test apparatus and alternate procedures for testing garments and fabrics under Flammable Fabrics Act standards. The proposed rule allows the use of any alternate test apparatus or procedures which is as stringent as, or more stringent than, the apparatus and procedures specified in the Standard. The proposed rule also interprets the phrase "reasonable and representative tests" as used in section 8 of the FFA to include any test utilizing an apparatus or procedures differing from those prescribed by the standard if the alternate test is as stringent as, or more stringent than, the test in the standard.

The purpose of the proposed rule is to set forth conditions under which persons and firms required to perform testing for purposes of complying with the standard and supporting guaranties of items subject to that standard may use test apparatus or procedures other than those in the standard.

DATES: Interested persons are invited to submit, on or before July 16, 1982, written comments concerning the proposed rule.

PROPOSED EFFECTIVE DATE: The Commission proposes that the rule regarding use of alternate test apparatus and procedure for purposes of complying with the standard and supporting guaranties of items subject to the standard shall become effective 30 days after the rule is issued in final form.

ADDRESS: Comments any any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and titled "Children's Sleepwear Flammability Standard (sizes 7 through 14). Proposed

Rule Concerning Alternate Test Apparatus."

FOR FURTHER INFORMATION CONTACT: L. James Sharman, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616) requires that children's sleepwear garments and fabrics intended for use in such garments must self-extinguish when exposed to an open flame ignition source.

In order to comply with this standard, manufacturers, importers, and other persons (such as converters) initially introducting items subject to the standard into commerce must regularly test items from current production. The standard prescribes the apparatus and procedures to be used for performing tests of fabrics and garments subject to its provisions. See 16 CFR 1616.5. The standard prescribes pass/fail criteria. See 16 CFR 1616.3(b). The standard requires that persons and firms subject to its provisions must group items into production units, and test samples from each production unit. See 16 CFR 1616.4. The schedules for sampling and testing set forth in the standard are called "sampling plans."

The manufacture for sale, importation into the United states, or introduction into commerce of any item of children's sleepwear which is subject to the standard but fails to comply with its requirements violates section 3 of the FFA (15 U.S.C. 1192) and section 5 of the Federal Trade Commission Act (FTCA, 15 U.S.C. 45). Such a violation may give rise to an administrative order to cease and desist from further violation of the FFA and FTCA, as well as to a civil action in a United States District Court under provisions of the FFA for injunction, or for seizure of items which fail to comply with the standard.

In addition to seeking an administrative order, or initiating civil actions for violation of the standard the FFA, and the FTCA, the Commission may also proceed under section 7 of the FFA (15 U.S.C. 1196) to seek criminal penalties against any person who "willfully" violates the FFA.

Section 8 (a) of the FFA (15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. (A guaranty does not provide the holder any defense to an administrative action to cease and desist from further violation of the applicable standard, the FFA, and the FTCA, nor to any civil action for injunction or seizure brought under the FFA.)

Among the requirements established for a guaranty by section 8(a) of the FFA is that it must be based upon "reasonable and representative tests" conducted in accordance with the applicable standard. Regulations implementing the standard provide that for purposes of supporting guaranties for items subject to those standards, "reasonable and representative tests" shall be those tests performed pursuant to any sampling plan set forth in the applicable standard, or pursuant to any authorized alternate sampling plan. See 16 CFR 1616.31(e).

Section 8(b) of the FFA (15 U.S.C. 1197(b)) prohibits the issuance of a "false guaranty."

Application for Use of Alternate Test Apparatus

By letter dated July 11, 1975, the William Carter Company, a manufacturer of children's sleepwear, requested approval for use of an alternate test apparatus under provisions of 16 CFR 1616.5(a) for use in testing fabrics and garments subject to the standard for sizes 7 through 14. (1)[1] That section of the standard states:

§ 1616 Test procedure.

(a) *Apparatus.* The following apparatus shall be used for the test. Alternate test apparatus may be used only with prior approval of the Consumer Product Safety Commission

The Carter application included a description of the alternate test apparatus, and a comparison of results from testing two types of fabrics using both the alternate test apparatus, and the apparatus described in the standard. Carter claimed that the comparative test data demonstrated that use of the alternate test apparatus produced results which were equivalent to, or more stringent than, the results obtained from testing using the apparatus described in the standard. The application from Carter also stated that use of the alternate test apparatus would reduce that time required for testing by one-half to two-thirds. (1)

After reviewing the data included in the Carter application, the Commission staff concluded that Carter's analysis of the equivalency of test results was correct with regard to the two specific fabrics which were the subject of Carter's comparative testing program. (4) However, the staff lacked the resources needed to duplicate the apparatus described in the Carter application and verify that it would produce results equivalent to those obtained using the apparatus described in the standard on fabrics representative of the entire range used in the production of children's sleepwear. (7)

Related Petition

On July 8, 1980, Milliken Research Corporation submitted a petition (FP 80–3) requesting the Commission to amend the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) to allow use of an alternate test utilizing different apparatus and procedure, than those specified in the clothing textiles standard. (9)

Unlike the sleepwear standard, the clothing textiles standard does not require manufacturers, importers or other firms introducing items subject to that standard into commerce to test items from current production. All that is required for compliance with clothing textiles standard is that any item subject to its provisions must not exhibit "rapid and intense burning" if tested by the Commission. (A more complete explanation of the applicability and requirements of the clothing textiles standard appears in a proposed policy statement interpreting that standard, which is also published in this issue of the **Federal Register.**

Although manufacturers are not required to perform testing in order to comply with the clothing textiles standard, if they issue guaranties of items subject to that standard, the guaranty must be based on "reasonable and representative tests" conducted in accordance with that standard. A memorandum of a telephone conversation on November 20, 1980, between a member of the Commission staff and the author of the Milliken petition indicates that Milliken desired to use the alternate test for purposes of supporting guaranties of fabrics subject to the clothing textiles standard. (12)

The Commission staff prepared a briefing package which recommended that the Commission grant the relief requested in the petition from Milliken by allowing persons and firms issuing guaranties to use alternate appartus for testing to support guaranties of items subject to the clothing textiles standard, rather than by amending that standard to change the apparatus to be used for testing by the Commission. (8) The staff

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Request for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, N.W., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

briefing package also recommended that the Commission act on Carter's application for approval of alternate test apparatus by issuance of a similar interpretation of the children's sleepwear standards and the FFA to allow use of alternate test apparatus and procedures under certain conditions. (8)

Requests for inspection of the application from Carter, the Milliken petition, the staff briefing package, and all other documents relating to this proceeding should be made at the Commission's public reading room, 1111 18th Street, N.W., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

Commission Decision On Application And Petition

The staff briefing package suggested that the interpretation of the FFA and the standards in question could take the form of a statement of policy and interpretation. After consideration of the Carter application for use of an alternate test apparatus, the Milliken petition, the briefing package, and other relevant information received during the briefing on January 14, 1981, the Commission voted on January 14, 1981, to propose a statement of policy interpreting section 8(a) of the FFA to allow use of alternate tests to support guaranties of items subject to the clothing textiles standard. (13, 14) The Commission also voted to extend the policy statement to include use of alternate tests for purposes of complying with the two children's sleepwear standards and supporting guaranties of items subject to those standards.

However, in this notice, the Commission is proposing a regulation for the enforcement and administration of the FFA, under the authority conferred by section 5(c) of that act (15 U.S.C. 1194(c)). The Commission believes that the term "enforcement and administrative rule" more accurately describes the proposal published below than the term "statement of policy and interpretation" for the following reason. The rule proposed below, if issued on a final basis, could have a substantive impact on the obligations of persons and firms required to perform testing under the flammability standard for sleepwear in sizes 7 through 14. The hallmark of a policy statement is that it has no such substantive impact. Although the proposal published below is for an enforcement and administrative rule, it will not amount to an amendment of the standard itself. As noted above, the Commission will continue to use the apparatus and procedures prescribed by the standard when testing items subject to its requirements.

The rule proposed below concerns the use of alternate apparatus and procedures for testing fabrics and garments subject to the standard for children's sleepwear in sizes 7 through 14 (16 CFR Part 1616). Elsewhere in this issue of the **Federal Register**, the Commission has published a proposed rule concerning use of alternate tests and procedures by persons and firms whose products are subject to the children's sleepwear standard for sizes 0 through 6X (16 CFR Part 1615).

Summary Of Proposal

The rule proposed below sets forth the conditions under which the Commission will approve use of alternate test apparatus or procedures, in accordance with 16 CFR 1616.5(a).

Proposed § 1616.35(c) states that by issuance of the policy statement, the Commission is giving its approval to any person or firm desiring to use apparatus or procedures other than those appearing in the standard for purposes of complying with the standard, if that person or firm has data or other information demonstrating that the alternate apparatus or procedures will yield results as stringent as, or more stringent than, the results which the apparatus and procedures of the standard would yield. Proposed § 1616.35(c) states further that the Commission will consider a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard if, when testing identical specimens, a test utilizing alternative apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the standard.

That section of the proposal also provides that the data or information concerning equivalent stringency of results from use of the alternate apparatus or procedures must be in the possession of the person or firm desiring to use such apparatus or procedures prior to its use for purposes of complying with the standard and must be retained for as long as the alternate apparatus or procedures is used for compliance with the standard, and for a period of one year thereafter.

Proposed § 1616.35(d) states that written application to the Commission is not required for approval of alternate test apparatus, and that the Commission will not act on any individual written application for such approval.

Section 1616.36 of the proposal published below concerns use of alternate test apparatus or procedures for purposes of supporting guaranties of items subject to the children's sleepwear standard for sizes 7 through 14. Proposed § 1616.36(c) states that any person or firm meeting the requirements of § 1616.35 for use of alternate test apparatus for purposes of compliance with the standard may also use such alternate apparatus or procedures under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the standard.

The proposed rule also announces that the Commission will test fabrics and garments subject to the standard using the apparatus and procedures set forth in the standard. The Commission may consider any failing results from its testing as evidence of violation of the standard and section 3 of the FFA, as well as evidence of the issuance of a false guaranty in violation of section 8(b) of the FFA. See proposed §§ 1616.35(f) and 1616.36(d).

Certification Of No Significant Economic Impact On Small Entities

The Regulatory Flexibility Act (RFA, Pub. L. 96–354) requires that after January 1, 1981, whenever an agency of the Federal government publishes a proposal under the Administrative Procedure Act (5 U.S.C. 553), it should endeavor to give particular consideration to small businesses, small non-profit organizations, and small local governments (collectively called "small entities") that may be subject to the agency's requirements.

Specifically, the RFA requires that before publication of a proposal, the agency must either:

(1) prepare an initial regulatory flexibility analysis of the probable effect of the proposal on small businesses and other small entities in accordance with section 603 of the RFA (5 U.S.C. 603); or

(2) determine that the proposal, if issued on a final basis, will not have a "significant economic impact on a substantial number of small entities," and prepare a certification to that effect to be signed by the head of the agency in accordance with section 605(b) of the RFA (5 U.S.C. 605(b)). If a certification of no significant impact is made, it must be published in the **Federal Register** at the time notice is given of proposed rule-making, together with a succinct explanation of the reasons for the certification.

In accordance with provisions of section 605(b) of the RFA, the Commission has certified that the proposed rule to allow use of alternate

test apparatus and procedures will not have a significant economic impact on a substantial number of small entities.

The reasons for the certification are as follows:

The children's sleepwear standard for sizes 7 through 14 presently requires manufacturers, importers, and other persons initially introducing items subject to the standard into commerce (such as converters) to test fabrics and garments in order to comply with the standard. Regulations implementing the standard (16 CFR Part 1616, Subpart B) require maintenance of records of testing to demonstrate compliance with the standard, and if guaranties of items subject to the standard are issued, to support such guaranties.

The rule proposed below would not impose any new requirement on any person or firms manufacturing or otherwise initially introducing items subject to the standard into commerce. Rather, the proposed rule would allow persons and firms currently subject to existing requirements for testing to use test apparatus and procedures other than those specified in the standard if they elect to do so.

The Commission decided to propose the rule in response to a request from one manufacturer who claimed that use of an alternate test apparatus could reduce the cost of testing for that firm. If the Commission issues the rule on a final basis, that firm, and any other person or firm currently required to perform testing in order to comply with the standard or support guaranties, would have the option of using alternate test apparatus or procedures.

However, if any person or firm concludes that use of alternate test apparatus or procedures under the conditions specified in the proposal would not reduce testing costs or offer any other advantage, that person or firm is free to continue using the apparatus and procedures specified in the standard for purposes of complying with the standard and supporting guaranties of items subject to the standard.

Environmental Considerations

The rule proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Comments Solicited

As stated above, the Commission has reason to believe that if the rule proposed below were issued on a final basis, manufacturers of fabrics and garments subject to the clothing textiles standard and the children's sleepwear standards would be able to reduce their costs of compliance with those standards and the FFA by using alternate test apparatus or procedure. The Commission also has reason to believe that use of alternate test apparatus or procedures under the conditions set forth in the proposed rule would not reduce the level of protection currently afforded to the public.

The Commission has published the proposed rule for public comment in order to obtain any additional information and views about these proposals which may be available from interested parties, including consumers and manufacturers.

The Commission specifically solicits comments from persons and firms subject to the requirements of the flammability standard for children's sleepwear in sizes 7 through 14 on the following topics:

1. Whether individual firms would use alternate test apparatus or procedures for testing to support guaranties under the conditions set forth in the proposal.

2. If the answer to item one, above, is in the affirmative, estimates of savings in the cost of testing to support guaranties anticipated by such a person or firm from the use of alternate test apparatus or procedures in accordance with the conditions specified in the proposal. The Commission desires information about the estimated number of hours of testing which might be eliminated annually, as well as the dollar amount of savings which might be achieved each year if the proposed rule were issued on a final basis. The Commission also desires to know the method by which such estimates of savings are calculated.

3. Whether the proposed rule could be modified to increase savings to persons and firms issuing guaranties, either in terms of hours required for testing, or total dollar costs of testing each year. Comments addressed to this issue are requested to suggest specific modifications, and to explain the amounts of additional savings of hours required for testing or dollar costs which could expected to result from such modification.

List of Subjects in 16 CFR Part 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Textiles, Records, Warranties.

Conclusion and Proposal

Therefore, in accordance with provisions of the Flammable Fabrics Act (Pub. L. 90–189, sec. 5, 81 Stat. 569 (15 U.S.C. 1194), and the Consumer Product Safety Act, sec. 30, Pub. L. 92–573 (15 U.S.C. 2079)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B as follows:

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14 (FF 5–74)

Part 1616, Subpart B is proposed to be amended by adding new §§ 1616.35 and 1616.36 to read as follows:

§ 1616.35 Use of alternate apparatus, procedures, or criteria for testing under the standard.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (the Standard) requires every manufacturer, importer, and other person (such as a converter) initially introducing items subject to the Standard into commerce to group items into production units, and to test samples from each production unit. See 16 CFR 1616.4. The Standard prescribes an apparatus and procedure for performing tests of fabric and garments subject to its provisions. See 16 CFR 1616.5. The Standard prescribes pass/fail criteria at 16 CFR 1616.3(b).

(b) Section 1616.5(a) states that alternate test apparatus may be used by persons or firms required to perform testing under the Standard "only with prior approval" of the Commission.

(c)(1) By issuance of this § 1616.35, the Commission gives its approval to any person or firm desiring to use test apparatus or procedures other than those prescribed by the Standard for purposes of compliance with the Standard, if that person or firm has data or other information to demonstrate that a test utilizing such alternate apparatus or procedure is as stringent as, or more stringent than, a test utilizing the apparatus and procedure specified in the Standard. The Commission considers a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard, if when testing identical specimens, a test utilizing alternative apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the standard.

(2) The data or information required by this paragraph (c) of this section as a condition to the Commission's approval of the use of alternate test apparatus or procedures must be in the possession of the person or firm desiring to use such

alternate apparatus or procedures before the alternate apparatus or procedures may be used for purposes of compliance with the standard.

(3) The information required by this paragraph (c) of this section must be retained by the person or firm using the alternate test apparatus or procedures for as long as that apparatus or procedure is used for purposes of compliance with the standard, and for a period of one year thereafter.

(d) Written application to the Commission is not required for approval of alternate test apparatus or procedures, and the Commission will not act on any individual written application for approval of alternate test apparatus or procedures.

(e) Use of any alternate test apparatus or procedures without the data or information required by paragraph (c), of this section, may result in violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(f) The Commission will test fabrics and garments subject to the standard for compliance with the requirements of the standard using the apparatus and procedures set forth in the standard. The Commission may consider any failing results from compliance testing as evidence of a violation of the standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

§ 1616.36 Use of alternate apparatus or procedures for tests for guaranty purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Section 1616.31(e) of the regulations implementing the Standard for the Flammability of Children's Sleepwear; Sizes 7 through 14 (the Standard) provides that for purposes of supporting guaranties issued in accordance with section 8 of the FFA for items subject to the Standard, "reasonable and representative tests" are tests "performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard."

(c) At § 1616.35, the Commission has set forth conditions under which the Commission will approve the use of test apparatus or procedures other than those prescribed in the Standard for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of § 1616.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedure under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the Standard, following any sampling plan prescribed by the Standard or any approved alternate sampling plan.

(d) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission may consider any failing results from compliance testing as evidence that the person or firm using alternate test apparatus or procedures has furnished a false guaranty in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

Request for Comments:

Interested persons are invited to submit written comments by July 16, 1982. Comments may be accompanied by written data, views and arguments and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, third floor, 1111 18th Street NW., Washington, D.C. between 8:30 a.m. and 5:00 p.m. Monday through Friday.

(Sec. 5, Pub. L. 90-189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92-573, 86 Stat. 1231, 15 U.S.C. 2079(b))

Dated: May 11, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Letter from the William Carter Company to Secretary, Consumer Product Safety Commission, requesting approval for use of alternate test apparatus for purposes of testing for compliance with children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616), with attachments; 38 pages; July 11, 1975.

2. Memorandum from Bernard Schwartz, OSCA, to Distribution concerning request from Carter for approval of alternate test apparatus; 1 page; August 14, 1975.

3. Memorandum from Margaret L. Neily, BESB, to Bernard Schwartz, OSCA, commenting on Carter request for approval of alternate test apparatus; 2 pages; September 12, 1975.

4. Memorandum from Ralph Madison, BESB, to Bernard Schwartz, SCAT, concerning Carter request for approval of alternate test apparatus; 1 page; September 12, 1975.

5. Log of telephone conversation between Bernard Schwartz, OSCA, and O. P. Beckwith, William Carter Company, concerning Carter request for approval of alternate test apparatus; 1 page; October 23, 1975.

6. Memorandum from Bernard A. Schwartz, OSCA, to Bureau of Engineering Sciences, requesting review of attached memorandum from Bureau of Economic Analysis, with attachments; 4 pages; May 25, 1976.

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BILLING CODE 6355-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 81

[Docket No. R-82-967]

Federal National Mortgage Association-Maximum Debt-to-Capital Ratio

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to amend the current regulation in order to permit the Secretary to change FNMA's maximum debt-to-capital ratio from time to time upon request by FNMA supported by justification satisfactory to

the Secretary. The proposed revision would require that upon the fixing of any change in the ratio by the Secretary, notice would be published in the **Federal Register**. This action is proposed due to the Secretary's determination that the interests of neither the public nor FNMA or the purposes of the Charter Act require resort to rulemaking procedures upon FNMA requests for increase in its maximum debt-to-capital ratio, and in order to permit the Secretary to respond to requests for increases in a manner more directly focused on FNMA's immediately foreseeable requirements than would be practicable in rulemaking proceedings.

DATE: Comments due June 16, 1982.

ADDRESS: Interested persons are invited to submit written comments on or before the due date to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John A. Maxim, Jr., Associate General Counsel for Finance and Insured Housing, Office of General Counsel, Department of Housing and Urban Development, Room 9252, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6274 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 304(b) the FNMA Charter Act, 12 U.S.C. 1719, provides that FNMA—

> Is authorized to issue * * * and have outstanding at any one time obligations having such rate or rates of interest as may be determined by the corporation * * *; but the aggregate amount of obligations of the corporation under this subsection outstanding at any one time shall not exceed fifteen times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings unless a greater ratio shall be fixed at any time or from time to time by the Secretary of Housing and Urban Development.

Section 304(e) of the Charter Act provides that, for the purpose of the above limitation, the amount of FNMA's outstanding subordinated obligations are deemed to be capital.

By a document published at 33 FR 14779, effective October 1, 1968, the Secretary fixed the maximum ratio described in section 304(b) at 20-to-1. By a document published at 34 FR 19656, effective December 8, 1969, the Secretary changed the ratio to 25-to-1. In the regulations published at 43 FR 36200, effective September 14, 1978, the 25-to-1 maximum ratio was retained and a procedure was established whereby FNMA may request a change in that ratio. Specifically, 24 CFR 81.15 provides in relevant part:

> (a) Under section 304(b) of the Charter Act, FNMA's debt-to-capital ratio may not exceed 15 to 1, unless a greater maximum ratio is fixed by the Secretary. Effective December 8, 1969, the maximum debt-to-capital ratio for FNMA, was fixed at 25 to 1 by the Secretary.
>
> (b) Except as provided in paragraph (f) of this section, FNMA shall not issue any debt instrument if such issuance would cause its debt-to-capital ratio to exceed 25 to 1.
>
> (c) Any request by FNMA to change the maximum debt-to-capital ratio fixed in paragraph (b) of this section shall be submitted in writing to the Secretary, together with a justification for such change (including possible alternatives thereto) and supporting financial data.
>
> (d) Within 30 workdays after the submission of a request by FNMA under paragraph (c) of this section, the Secretary shall approve, reject, or request additional information as to FNMA's proposed change in its maximum debt-to-capital ratio.

Pursuant to the above described procedure, FNMA recently has requested the Secretary to increase the maximum debt-to-capital ratio to 35-to-1. In support of its request, FNMA adivsed that its debt-to-capital ratio had increased to 19.42-to-1 at December 31, 1980, and to 22.5-to-1 at December 31, 1981. Increases in the ratio during 1981 resulted more from contraction of stockholders' equity (caused by losses due to the negative spread on FNMA's portfolio) than from large increases in total borrowings. Further increases resulting from the same factors are expected to occur during 1982. FNMA's request for an increase as great as to 35-to-1, however, was based in major part upon the length of time inevitably consumed by rulemaking proceedings and a desire to avoid such repetitive proceedings.

The Secretary's authority to fix FNMA's maximum debt-to-capital ratio pursuant to section 304(b) of the Charter Act is independent of the Secretary's general authority under Section 309(h) of the Charter Act to issue rules and regulations as shall be necessary and proper to insure that the purposes of the Charter Act are accomplished. The Secretary does not believe that the interests of FNMA or the public or the purposes of the Charter Act require resort to rulemaking procedures under the Administrative Procedure Act whenever a request for an increase in FNMA's maximum debt-to-capital ratio is submitted. The Secretary is aware, however, that knowledge of the maximum debt-to-capital ratio by which FNMA at any time is bound may be material to investors.

The Secretary proposes, therefore, to amend the current regulation in order to permit the Secretary to change FNMA's maximum debt-to-capital ratio from time to time upon request by FNMA supported by justification satisfactory to the Secretary. The proposed revision would require that upon the fixing of any change in the ratio by the Secretary, notice thereof will be published in the **Federal Register**.

Upon adoption of a final rule, the Secretary will respond to FNMA, request for an increase in the current maximum ratio in a manner more directly focused upon FNMA's foreseeable intermediate requirements than would be permitted under the time horizons necessarily considered in rulemaking proceedings. It is also noted that notwithstanding increases in the maximum debt-to-capital ratio, FNMA will continue to require separate Secretarial authorization for increases requested from time to time in obligational authority (24 CFR 85.14).

The Department has determined that this proposed rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the proposed rule indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying (at a charge of 10 cents per page) during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the undersigned hereby certifies that this rule does not have a significant impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

List of Subjects in 24 CFR Part 81

Accounting, Mortgages, Reporting and recordkeeping requirements, Securities.

PART 81—REGULATIONS IMPLEMENTING THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OVER THE CONDUCT OF THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

Accordingly, 24 CFR Part 81 is proposed to be amended as follows:

Section 81.15 is revised to read as follows:

§ 81.15 Debt-to-capital ratio.

(a) Under section 304(b) of the Charter Act, FNMA's maximum debt-to-capital ratio may not exceed 15 to 1, unless a greater maximum ratio is fixed by the Secretary. Upon request submitted in writing by FNMA including justification satisfactory to the Secretary and supporting financial data, the Secretary from time to time may fix such greater maximum ratio as the Secretary, in his discretion, shall determine, which shall remain in effect as FNMA's maximum debt-to-capital ratio until otherwise specified by the Secretary. Upon fixing or changing a maximum ratio pursuant hereto, the Secretary shall cause notice of such action to be published in the **Federal Register.**

(b) Except as provided in paragraph (d) of this section, FNMA shall not issue any debt instrument if such issuance would cause its debt-to-capital ratio to exceed the maximum ratio established by section 304(b) of the Charter Act or such other maximum ratio as has fixed by the Secretary as provided in paragraph (a) of this section.

(c) The Secretary may decrease the maximum debt-to-capital ratio fixed in paragraph (a) of this section (but not below a ratio of 15 to 1), if the Secretary determines that such action: (1) Will not adversely affect the fiscal integrity of or limit the availability of credit to the corporation, and (2) Will not impair FNMA's ability to discharge its obligations to the holders of FNMA's debt instruments and holders of subordinated debentures issued under section 304(e) of the Charter Act. The Secretary shall provide FNMA 60 workdays written notice of the effective date of any decrease in its maximum debt-to-capital ratio.

(d) In the event at any time of a reduction in the sum of the corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to include all obligations issued pursuant to section 304(b) of the Charter Act and outstanding at such time. In the event at any time of a maturity or other event requiring the payment or redemption of any of the obligations issued under section 304(e) of the Charter Act, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to permit the issuance of obligations under section 304(b) of the Charter Act in an amount sufficient to provide the proceeds required to pay the principal of an interest on the obligations outstanding under such section 304(e) and so required to be paid or redeemed at such time.

(Secs. 304(b) and 309(h), Charter Act (12 U.S.C. 1719 and 1723a))

Dated: April 27, 1982.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 82-13419 Filed 5-14-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommiting, and Supervising Federal Prisoners

AGENCY: Parole Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to eliminate provisions in its rules that allow oral presentations at appellate hearings in cases designated for the Commission's original jurisdiction, and that allow for the holding of regional appellate hearings in other cases. The Commission is proposing to consider appeals on the record only, in all cases, in order to promote a more productive use of its time and to provide a more uniform parole decision-making process.

DATE: Comments must be received by July 16, 1982.

ADDRESS: Send comments to the United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD. 20815. Attention: Office of General Counsel.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of General Counsel, telephone 301–492–5959.

SUPPLEMENTARY INFORMATION: This proposed rule revision was originally proposed on July 2, 1980, 45 FR 44966. The proposal was withdrawn on December 22, 1980, 45 FR 84090. It is being proposed again because the Commission's continued experience has confirmed that oral presentations add little to the appeal process and that their elimination would facilitate a more parole decisionmaking process.

The parole hearing, rather than the appeal process, is the appropriate stage of the parole procedure for the submission of evidence, and for oral questioning and dicussion about the case. Prisoners and parolees are given prior notice of the time and place of their parole hearings and full disclosure of any material the Commission will consider so that they may prepare for their hearings. Additionally, prisoners and parolees may be represented at their hearings by a person of their choice. In order for the Commission to make informed initial decisions, prisoners and parolees should present all significant information to the Commission at the time of their hearing and not delay presenting their case until the appeal stage, by way of oral argument. If after a hearing a prisoner or parolee wishes to present to the Commission significant information not known at the time of the hearing, that information can be submitted in documentary form under the Commission's rules, §§ 2.25, 2.26, and 2.27. Furthermore, the rule at § 2.28 provides that a Commissioner may, on his own motion, reopen a case at any time upon receipt of new information of substantial significance.

It has been the Commission's experience that the information provided by represenatives at oral argument is often a repetition of information which has already been submitted, and that effective presentation of a case can be done in writing without any lessening of the opportunity for full consideration. Moreover, the appearance of a representative usually requires considerably more time than that in which an appeal consideration could be completed on the record. Since oral arguments add little that could not be submitted in documentary form, the Commission believes that eliminating this feature of the appeal would not depreciate the opportunity for full consideration of the merits of each case.

Additionally, the Commission believes that the current practice of allowing oral presentations at original jurisdiction appeals can be perceived as providing a right to prisoners and parolees whose cases have been designated for original jurisdiction consideration which is unavailable in practice to those prisoners and parolees whose cases have not been so designated. This is so because, while 28 CFR 2.25(c) provides for the possibility of oral presentations at regional appellate hearings, very few regional

appellate hearings are held. Therefore, only prisoners and parolees who are designated for the Commission's original jurisdiction consideration have the practical opportunity to have an oral presentation on appeal.

To avoid the appearance that there is an unequal advantage for these persons, as well as for the reasons stated above, the Commission proposes the elimination of oral presentations at original jurisdiction appeals and of regional appellate hearings.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—PAROLE, RELEASE, SUPERVISON, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

§ 2.27 [Amended]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6) the Commission proposes the removal of § 2.25(c) and § 2.27[c] from Part 2 of Title 28.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: April 30, 1982.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 82-13288 Filed 5-14-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Coal Mining and Reclamation Enforcement in Tennessee; Review of State Program Submission

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of public comment period.

SUMMARY: The Office of Surface Mining (OSM) is reopening the period for review and comment on the resubmission by Tennessee of its program for the regulation of surface coal mining and reclamation in the State. Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on additional material in the Administrative Record.

DATE: Written comments, data, or other relevant information relating to the Tennessee program submission must be received on or before 4:00 p.m., May 27, 1982, to be considered.

ADDRESS: Comments on the Tennessee program submission should be mailed or hand-delivered to: Office of Surface Mining, *Attention:* Tennessee Administrative Record, 530 South Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 530 South Gay Street, SW., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 971-5104.

SUPPLEMENTARY INFORMATION: On February 10, 1982, at 47 FR 6031-32, OSM published notice of the public hearing and the public comment period on the resubmitted Tennessee program. On April 22, 1982, OSM and Tennessee regulatory authority officials met in executive session in Knoxville, Tennessee to discuss the resubmitted Tennessee program (Administrative Record No. TN-509). Thus, OSM is reopening the public comment period until 4:00 p.m., May 27, 1982, to allow the public time to review and comment on the above meeting notes and additional material submitted by Tennessee (Administrative Record No. TN-515).

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfulling the purposes of the Surface Mining Control and Reclamation Act of 1977.

Dated: May 11, 1982.

William Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 82-13289 Filed 5-14-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Part 5b

Privacy Act Regulations

AGENCY: Education Department.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations under the Privacy Act of 1974 to permit the Office for Civil Rights (OCR) to withhold investigatory materials contained in its "Complaint Files and Log" system of records. Currently, complainants have access to case files compiled during investigations of civil rights complaints made against recipients of Federal financial assistance. A complainant's potential access to information in a case file has in certain instances impeded OCR's investigatory efforts because recipients are reluctant and, at times, refuse to make certain information available to OCR, particularly where providing such information compromises legitimate privacy interests of a source. Untimely release of information may also jeopardize negotiations that would otherwise result in successful resolution of complaints. The proposed regulation would permit OCR to exempt the system of records from certain provisions of the Privacy Act, including the access provisions and some of the notice provisions.

DATE: Comments must be received on or before June 16, 1982.

ADDRESS: Comments should be addressed to Antonio J. Califa, Director for Litigation, Enforcement and Policy Service, Office for Civil Rights, U.S. Department of Education, Room 5054, Switzer Building, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jean Peelen, (202) 245-0261.

SUPPLEMENTARY INFORMATION: The Office for Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, statutes which guarantee equal opportunity in education programs and activities which receive Federal financial assistance. This responsibility includes investigation of discrimination complaints filed against recipients.

Case files are compiled and maintained on complaints investigated by OCR. These files are retrievable by name of the complainant. Generally, the Privacy Act of 1974 and Department regulations (formerly 45 CFR Part 5b) require that an individual have access to all information kept in files retrievable by a personal identifier, such as a name. Thus, complainants currently have access to the information in these case files.

The Privacy act permits the head of an agency to exempt systems of records from certain notification and access provisions of the Act if the system of records contains investigatory material compiled for law enforcement purposes. The Department has not previously made use of this exemption.

Recipients of Federal financial assistance are required to make available any information in their

possession needed by OCR during an investigation, including information of a "confidential" nature, to determine whether prohibited discrimination has occurred. Recipients have often been reluctant and have, at times, refused to make certain information available to OCR due to potential access to that information by complainants. This has been true particularly where providing such information compromises legitimate privacy interests of a source. Refusals to provide information have impeded OCR's ability to carry out its responsibilities and have led to protracted and contentious denial of access proceedings.

Additionally, complaints can often be resolved during the course of an investigation before a formal letter of findings is issued.

Negotiations can, however, be delicate and lengthy. Premature disclosure of draft findings or agreements could jeopardize the agency's ability to resolve complaints.

The proposed regulation would permit OCR to exempt the system of records from the following provisions of the Privacy Act: (c)(3), (d)(1)–(4), (e)(4)(G), (H), and (f). The following discussion describes the effects of these exemptions on the access and notice right of individuals. OCR would not have to provide an individual with access to records that pertain to the individual. In addition, this proposed regulation would permit OCR to delete portions of the notice of the system of records which is published in the Federal Register. OCR would also not have to make the accounting of disclosure of an individual's record available to the individual.

However, if an individual is denied any right, privilege or benefit to which he or she would otherwise be entitled under Federal law, or for which he or she would otherwise be eligible, as a result of maintaining material in this system of records, that material shall be provided to the individual. OCR would not have to release this material if disclosure of the material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Privacy Act, under an implied promise that the identity of the source would be held in confidence.

List of Subjects in 34 CFR Part 5b

Administrative practice and procedure, Civil rights, Privacy, Privacy Act Regulations.

Executive Oder 12291

This proposed amendment has been reviewed by the Department in accordance with Executive Order 12291 and is classified as a non-major regulation because it does not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulation will not have significant economic impact on a substantial number of small entities. These regulations are administrative and do not affect any small entities.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulation.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in this regulation, especially with regard to paperwork and compliance requirements.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. The Secretary will consider all comments received on or before June 16, 1982, in the development of the final regulation.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period in Room 5116, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Citation

A citation of statutory authority is placed in parentheses on the line following the proposed change in the regulations.

Dated: May 10, 1982.

T. H. Bell,

Secretary of Education.

PART 5b—PRIVACY ACT REGULATIONS

The Secretary proposes to amend Part 5b of Title 34 of the Code of Federal Regulations as follows:

1. Section 5b.11 is revised by adding a new paragraph (b)(2)(ii) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ii) Pursuant to subsection (k)(2) of the Act: Complaint Files and Log, Office for Civil Rights.

(5 U.S.C. 552a(k))

* * * * *

[FR Doc. 82-12999 Filed 5-14-82; 8:45 am]
BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-10-FRL 2119-5]

State Implementation Plan and Attainment Status Designations; State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA proposes to approve revisions to the Idaho State Implementation Plan (SIP) submitted between January 15, 1980 and March 1, 1982. Approval of these revisions, cumulatively representing an entirely new recodified Idaho SIP, will remove the new source construction moratorium in nonattainment areas and will result in the State resuming an air pollution control program, provided such action is completed by August 1, 1982. EPA proposes to approve the SIP submittals which replace the original State adopted—EPA approved SIP and which also contain provisions to satisfy requirements of Part D of the Clean Air Act (hereafter referred to as the Act). The proposed approval contains certain conditions and in addition is based on a number of understandings achieved through negotiation with the State.

Further, EPA is proposing to redesignate some areas from nonattainment to attainment or unclassifiable. These changes are made necessary due to air quality improvements and changes in source emissions. The redesignations will remove the need for attainment plans and will lift the construction moratorium now in effect.

DATE: Comments are due by June 16, 1982.

ADDRESSES: Comments submitted on this proposal, copies of SIP submissions, and other relevant information may be examined during normal business hours at the following locations:

Air Programs Branch, M/S 532,
Environmental Protection Agency,

Region 10, 1200 Sixth Avenue, Seattle, WA 98101.
Idaho Operations Branch, Environmental Protection Agency, 422 West Washington Street, Boise, Idaho 83702.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Michael Schultz, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, M/S 532, Seattle, WA 98101, Telephone: (206) 442-1985, FTS: 399-1985.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the requirements of section 107(d) of the Act, EPA published in the **Federal Register** on March 3, 1978 (43 FR 8962) and on September 11, 1978 (43 FR 40412) a designation of the attainment status of certain areas in the State of Idaho with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP), carbon monoxide (CO), and sulfur dioxide (SO_2). Areas designated "nonattainment" by pollutant are as follows:

TSP—Silver Valley, Lewiston, Pocatello, Soda Springs.
SO_2—Silver Valley, Pocatello.
CO—Boise.

This designation process triggered a requirement for the State to submit revisions to the State Implementation Plan (SIP) required by Part D of the Act.

The State of Idaho used this opportunity to revise its existing SIP along with adopting new regulations and plans required by Part D. These revisions, cumulatively representing a new SIP, were received by EPA in eight different submittals between January 15, 1980 and February 5, 1981.

EPA has been negotiating with the State to make needed revisions to the SIP submittals when, early in 1981, the Idaho Legislature acted to terminate funding for the air program as of June 30, 1981. As a result of this Legislative action and due to limited EPA staff resources, EPA hired a contractor to assist in maintaining a minimal air program until the State resumed its leadership role in this area. This joint EPA-contractor effort is continuing at this time.

On July 16, 1981, EPA published rulemaking (46 FR 36869) which proposed to promulgate those rules necessary for EPA to assume a temporary role of managing the Idaho air program. After an extended comment period and lengthy deliberations with affected Idaho industry representatives, EPA developed final draft rulemaking on this subject.

However, before this rulemaking could be submitted for final approval and publication in the **Federal Register**, EPA determined that the 1982 Idaho Legislature was interested in the possibility of reinstating the air program. Thus, final action on the EPA promulgation was suspended, and EPA focused its attention on reinstatement of the State air program. During the 1982 session, the Idaho Legislature requested and EPA provided technical information and support on this subject. Also during this period, the State submitted a seventh SIP submittal. A letter dated March 1, 1982 withdrew certain controversial regulations and clarified the State's intent with respect to other regulations.

In March, 1982, the Legislature passed a Bill and the Governor signed into law an action which funds and reinstates the air program by August 1, 1982. Initiation of the State Air Program is contingent on EPA approving the SIP as submitted during the period January 15, 1980 through March 1, 1982. The enactment provides for the State to make certain changes in the SIP submittal described in the Legislative Special Air Quality Committee Report dated March 8, 1982. The docket contains the enactment and the report. The report incorporates State-EPA correspondence that clarifies the SIP.

Based on these developments, EPA is proposing in today's notice to (1) approve the revised Idaho SIP, (2) rescind the previously approved SIP except for emission regulations which are being temporarily retained to meet continuity requirements, and (3) officially withdraw the July 16, 1981 proposal (46 FR 36869) for an EPA-promulgated SIP.

Furthermore, EPA has reviewed air monitoring data for the Pocatello SO_2 nonattainment area and the Silver Valley SO_2 and TSP nonattainment areas and has determined that nonattainment designations are no longer appropriate. Therefore, EPA is proposing in today's notice to redesignate Pocatello to attainment status for SO_2 and to redesignate the Silver Valley to unclassifiable for both TSP and SO_2. The bases for these redesignations are discussed in greater detail in section III below. EPA intends to approve the State's SIP submittals for these areas, but the criteria for approval will be the requirements of section 110 of the Act rather than those for nonattainment areas contained in Part D of the Act.

It is also important to note that, on July 1, 1979, a construction moratorium went into effect in all nonattainment areas in the State pursuant to section 110(a)(2)(I) of the Act and 40 CFR 52.24. The moratorium applies to new major stationary sources and major modifications to existing sources in all designated nonattainment areas in the State. Further, the moratorium will remain in effect until EPA takes final action to approve or promulgate Part D plans for the nonattainment areas, or takes final action to redesignate the areas to attainment or unclassifiable.

II. Rulemaking Topics

A. *Redesignations.* In the absence of the State agency, EPA is initiating action under section 107(d)(2) of the Act to change the nonattainment designations for SO_2 in Pocatello and for both TSP and SO_2 in Silver Valley.

B. *State Submittals.* The SIP revisions which are now before EPA were submitted as described below.

1. January 15, 1980—Revisions submitted in response to the Act's Section 110 and Part D requirements. The major revisions included new source review procedures for nonattainment areas, revised rules and regulations, emission inventories, air quality monitoring data, source surveillance, emergency episode plans, a CO attainment plan for Boise, TSP attainment plans for Silver Valley, Lewiston (incomplete), and Soda Springs, and an incomplete SO_2 attainment plan for Silver Valley. Operating permits containing emission control provisions for particulate matter were also included for the larger sources in the Silver Valley and Soda Springs nonattainment areas. Permits for the Silver Valley nonattainment area were submitted for a lead and zinc smelter, and four lumber mills. Permits for the Soda Springs and Conda area were submitted for a phosphate fertilizer manufacturing plant, an ore crushing facility, an elemental phosphorus plant, and a vanadium pentoxide (V_2O_5) plant. Finally, much of the previously approved Section 110 SIP was resubmitted, unchanged except for recodification.

2. March 7, 1980—TSP attainment plan for Pocatello, including operating permits for a phosphate fertilizer manufacturing plant, and elemental phosphorous plant, and a Portland cement plant.

3. August 6, 1980—Complete SO_2 attainment plan for Silver Valley, including SO_2 emission regulations for lead and zinc smelters. On December 23, 1980, the State withdrew certain of these

SO_2 emission regulations. On March 1, 1982, the remaining SO_2 emission regulations for lead and zinc smelters were withdrawn.

4. October 27, 1980—Request to delete the indirect source review rules (rules 1–1002.37, 1–1002.76, and 1–1004) and Appendix F (indirect source review techniques) from the Idaho SIP.

5. December 4, 1980—Permits for sources in the Lewiston TSP nonattainment area as well as corresponding revisions to the attainment plan. Estimated particulate matter emissions contained in the State's January 15, 1980 submittal were revised to correspond to permit requirements. Permits were submitted for a Kraft pulp mill and two grain terminals.

6. February 5, 1981—Revision to the TSP attainment plan for Pocatello and a permit inadvertently omitted from the December 4, 1980 Lewiston submittal. Modification to the Pocatello plan focused on correcting errors in the emissions inventory, adding a RACT certification, and redoing the attainment demonstration based on allowable rather than estimated 1982 emissions. The Lewiston permit submitted was for a wood products operation associated with the Kraft mill addressed in submittal five above.

7. March 1, 1982—Withdrawal of the variance regulation and SO_2 emission regulations for lead and zinc smelters.

Each of the above mentioned TSP attainment plans, required by Part D of the Act, contains (1) and ambient air quality summary, (2) emissions inventory, (3) control strategy discussion and demonstration, (4) demonstration of RFP, and (5) attainment demonstration. Permits for sources of particulate matter addressed in each of those TSP plans restrict emissions from process and combusion equipment as well as fugitive emissions.

C. *Past Federal Actions.* Several past EPA promulgations are relevant to today's action on Part D SIPs. The Pocatello plan includes emission limits and other provisions promulgated by EPA in the June 9, 1976 **Federal Register** (41 FR 23203). The Silver Valley plan includes emission limits and other provisions promulgated by EPA in the **Federal Register** on November 19, 1975 (40 FR 53588); December 13, 1979 (44 FR 72120); and January 7, 1980 (45 FR 1419).

Second, EPA approved the transportation control plan portion of the Boise CO attainment plan in a rulemaking published in **Federal Register** on October 28, 1980 (45 FR 70252).

Two provisions in the SIP not referred to or affected by this rulemaking are (1) a State submitted (under Section 110 of the Act) EPA approved consent order limiting SO_2 emissions for Beker Industries in Conda, Idaho, and (2) EPA promulgated (under Part C of the Act) Regulations for Preventing Significant Deterioration of Air Quality (40 CFR Part 52.683).

III

Under Section 107 (d) of the Act, EPA is proposing the following redesignations:

Area	Pollutant	Present designation	Proposed designation
Pocatello	SO_2	Nonattainment	Attainment.
Silver valley.	SO_2	Nonattainment	Unclassifiable.
Silver Valley.	TSP	Nonattainment	Unclassifiable.

In Pocatello, there have been no violations of the NAAQS for SO_2 during the past eight calendar quarters. Therefore, this area meets EPA's criteria for a redesignation to attainment.

In the Silver Valley, a large lead and zinc smelter has indefinitely suspended operations. Since the smelter commenced its phase-down in October 1981, ambient TSP and SO_2 concentrations have dropped dramatically. This industrial source was the only major source of SO_2 and particulate matter emissions in the Valley. Emissions from all other sources of SO_2 and all other industrial sources of particulate matter are insignificant compared to the smelter's emissions. EPA has concluded that the suspension of operations at the smelter facility has had such a significant impact on air quality in the Valley that data collected prior to the suspension are no longer reliable indicators of the area's attainment status. Therefore, EPA is proposing to redesignate the area as unclassifiable for both the SO_2 and particulate matter standards.

With the suspension of operations at the smelter, attainment for both standards appears certain. However, additional data is needed to confirm that the area is in fact in attainment. EPA will be closely monitoring air quality data and the plant's closure status. Information available at the end of this year will be used to redesignate the area to attainment or nonattainment as appropriate.

It is important to note that a designation change from nonattainment to unclassifiable would lift the construction moratorium now in effect for this area and eliminate the need for an attainment plan required under Part D of the Act.

Data supporting the proposed redesignations for both Pocatello and Silver Valley are contained in the docket and are available for review at the locations listed in the "ADDRESSES" section.

IV. Plan Revisions

As noted in the Background section of this notice, the State of Idaho will resume a State-operated air program provided that EPA approves, by August 1, 1982, the SIP submitted between January 15, 1980 and March 1, 1982 in accordance with the terms of the enactment and Committee Report.

A. *Summary of Proposed Approval Actions.* EPA proposes to approve, with the limitations discussed in this section, Idaho SIP submittals dated January 15, 1980, March 7, 1980, August 6, 1980, October 27, 1980, December 4, 1980, December 23, 1980, February 5, 1981, and March 1, 1982. These submittals, in conjunction with the EPA promulgations and approvals discussed in Section II.C above, constitute the entire Idaho SIP.

With respect to the four submitted TSP control strategies, EPA proposes to conditionally approve the Lewiston, Pocatello and Soda Springs attainment plans pursuant to Part D of the Act and the Silver Valley plan pursuant to the requirements of Section 110. Silver Valley approval is being taken under Section 110 and not Part D because EPA is also proposing in today's notice, as discussed in Section III above, to redesignate Silver Valley to unclassifiable (from nonattainment) for TSP. Note that for Pocatello and Lewiston, proposed approval is based on additional studies and control of nontraditional sources as needed. EPA is now working on these studies and Idaho will assume responsibility for completing these actions when the State air program is reinstated.

As stated in Section II.B of today's notice, the State withdrew its submittal of regulations 1–1851 through 1–1868 which represented the SO_2 control strategy for the Silver Valley attainment plan. As also stated earlier, EPA is proposing to redesignate Silver Valley to unclassifiable (from nonattainment) for SO_2. Therefore, EPA is proposing to approve the remaining emissions inventory and air quality data sections of this SO_2 plan under section 110 rather than Part D of the Act.

The content of the Idaho SIP and changes produced by these proposed revisions are shown in the table found in subsection D of this section.

B. *Approval With Certain Understandings.* Several regulations contained language that allowed

interpretations or latitude which, if exercised beyond certain points, could produce results contrary to requirements of the Act. These uncertainties were clarified in a letter from EPA to the Idaho Legislature dated February 24, 1982 and a letter from the IDHW to EPA dated March 1, 1982. Therefore, EPA proposes to approve the following rules with the identified stipulations and understandings:

1. Rule 1–1006 ("Upset Conditions, Breakdown")—Application of this rule will be compatible with Clean Air Act objectives. The State affirmed this position in its March 1, 1982 letter and further stipulated: "The burden of proof that excess emissions are unavoidable due to start up, shut down, upset, or malfunction is on the industry. If such proof is not provided through the required reporting process, a violation is deemed to have occurred. Frequent repetitive exceedances are not allowed by this regulation." It is EPA's understanding that the State is clarifying its operating procedures to achieve the intent stated above.

2. Rule 1–1900.01 ("Alternative Emission Limits")—Individual "bubble" permits developed pursuant to the rule will be submitted to EPA as SIP revisions. EPA will approve such permits provided that the permits:

(a) Are consistent with Idaho rules 1–1327, 1,1328, 1,1329, 1–1330 (process weight rate emission limitations),

(b) Are consistent with approved and applicable SIP control strategies,

(c) quantify the allowable emission for each point of emission,

(d) Are enforceable,

(e) Limit trade-offs between sources to the same criteria pollutant,

(f) Do not allow an existing source within a facility to violate an applicable NSPS under Section 111 of the Act or allow an increase in emissions of pollutants regulated under Section 112 of the Act,

(g) Are adopted with administrative procedures applicable to SIP's.

The applicable SIP control strategies referred to in item (b) above include requirements that major facilities meet BACT and LAER. EPA will approve permits provided that they maintain BACT and LAER limitations. Further, paragraph (b) of Rule 1900.01 requires that "there will be no degradation in air quality." EPA interprets this provision to mean that permits containing bubble applications must demonstrate that there will be no new, or exacerbations of existing, violations of NAAQS. As part of the agreement between the State and EPA, the State intends to seek authority to administer Part C, Prevention of Significant Deterioration (PSD) requirements. Until that is accomplished, EPA will continue to administer the PSD regulation in Idaho, including protection of PSD increments affected by Idaho bubble permits.

Finally, the State has identified development of a generic bubble permit regulation consistent with EPA policy as a priority activity since permits covered by such a generic rule would not have to be submitted as SIP revisions.

3. Rules 1–1003.03(b), 1–1003.04, and 1–1906.08 (permit requirements)—A permit to construct or modify and an opportunity for public comment shall be provided for each new major stationary source and major modification. An opportunity for public comment shall be provided for any other source or modification which will have a significant impact on air quality.

4. Rule 1906.01 ("LAER Requirements")—As was intended by the State, LAER shall apply where rule conditions .01(a) (source location requirements) and .01(c) (cut-off date for commencement of construction) are met or .01(b) (air quality considerations) and .01(c) are met. The State also agreed to make the corresponding correction to the rule and submit it as a SIP revision.

5. Rule 1–1906.07 ("Emission Banking")—Since an emission banking provision is identified but no program or procedures provided, the State has agreed to submit all applications of the emission banking provisions to EPA as SIP revisions. If the State adopts banking procedures, the need to submit individual banking actions can be eliminated.

6. Rules 1–1010 and 1–1803 (Source test procedures)—Any substantive revisions to the formally adopted source test procedures manual (dated 1977) will be submitted to EPA for approval.

7. Definitions:

a. Administrator—As used in the State rules, the term means Director of the IDHW.

b. Source/Facility (1.002.67/1.002.32)—The State defines "facility" as EPA defines "source" and vice versa. This is not a problem except that the terms are not used consistently in different regulations. The occasional oversight of using these terms interchangeably will be corrected by the State.

c. Fugitive Dust (1–1002.34)—It is the State's intent that this definition shall not preclude or interfere with requiring control of fugitive particulate emissions from industrial sources. Further, it is recognized that the Act requires, in certain instances, application of RACT in controlling particulate fugitive emissions from industries.

8. Part D New Source Review Rules. The Idaho NSR rules were designed to satisfy the EPA requirements as they existed in 1979, specifically the Offset Interpretive Ruling (40 CFR Part 51, Appendix S, January 16, 1979) and the General Preamble for Part D SIPs (44 FR 20372, April 4, 1979). Since adoption and submittal by the State, EPA regulations for Part D NSR programs (40 CFR 51.18(j)) have been promulgated in response to court decisions (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980). As a result, a number of State provisions differ from current EPA requirements. Some of these differences are addressed in the "Approval with Certain Understandings and Conditional Approval" sections of this proposed action. Several other differences are discussed in the Technical Support Document ("TSD") which presents EPA's rationale for approving the new source review rules. The TSD has been placed in the docket and is available for inspection at the locations listed in the "ADDRESSES" section of this notice.

As explained in greater detail in the TSD, several of these differences have been addressed by specific interpretations of the State's rules. EPA's proposed approval is also based in part on the State's commitment to review and revise its new source review rules within nine months of EPA's final approval in order to satisfy the requirements of 40 CFR 51.18(j). This commitment was incorporated into the Idaho Legislature's Special Air Quality Committee Report, which is referenced in the March 1982 enactment. In addition, EPA has reviewed the State's program and recent permitting history, and concluded that the differences are not expected to cause any adverse impact on air quality before the State completes its review and revision.

C. *Conditional Approval.* EPA proposes to approve the total suspended particulate (TSP) attainment plans and regulations developed pursuant to Part D of the Act and to approve several definitions only on the condition that specific revisions or actions are completed within nine months from the date EPA publishes final rulemaking on this subject. These conditions are discussed below.

1. TSP Attainment Plans—The State must update statistical data in the plan for each of the TSP nonattainment areas. Information is to include, as required by Section 172 of the Act, emission inventories, updated air quality summaries, and revised RFP curves showing adequate progress toward attainment of NAAQS. Emissions inventory data shall be comprehensive and accurate and shall

include both current and projected emissions.

2. Alternatives Analysis—The State must adopt and submit to EPA a regulation which requires, consistent with section 172(b)(11)(A) of the Act, "an analysis of alternative sites, sizes, production processes, and environmental control techniques." This regulation would apply to the permitting process for construction or modification of a major CO emitting facility in the Boise nonattainment area.

3. Definitions:

a. "Emission Standard"—In order to be consistent with the definition of "emission limitation" found in section 302(k) of the Act, the term "emission standard" must be modified to clearly require "continuous emission reduction."

b. "Major Facility" and "Major Modification"—For consistency with 40 CFR 51.18(j), the State must use the same "allowable emission" cut-off for CO as for other criteria pollutants or must define major facility and major modification in terms of "potential to emit" not to exceed 100 tpy.

D. *SIP Content.* The content of the Idaho SIP and changes produced by these proposed revisions are shown in the table below. The term "Old Designation" refers to identification of sections or regulations in the current approved SIP. "New Designation" identifies corresponding or new elements in the submitted SIP revision being acted on today.

CONTENT OF THE IDAHO SIP

Old designation	New designation	Subject	Substantive change
Chapter I	Chapter I	Introduction and general review	Update for 1977 CAA Amendments.
Chapter II	Chapter III and Appendix B	Emissions inventory	Updated for 1977.
Chapters III and IX	Chapter IV	AQ monitoring and data	Updated through 1978.
Chapter IV	Chapter VIII	Control strategies	Replaced with Part D attainment plans.
Chapter V	Appendices G–K (permits for nonattainment areas).	Compliance schedule	Updated for Part D attainment plans.
Chapters VI, VIII, XIII	Chapter II	Administrative elements including legal authority, intergovernmental cooperation and resources.	Updates plus administrative elements added to meet § 121, 126, 128 and other requirements.
Chapter VII and Federal promulations:	Appendix A.3 and Federal promulations:	Rules and regulations	Itemized below.
40 CFR, Part 52 Subpart A	Same	General provisions	None.
Regulation A:			
Section 1	1–1000, 1–1001	Introduction	Legal authority added.
Section 2	1002	Definitions	Itemized below.
A	1002.01	Act	None.
B	1002.02	Air contaminant	None.
C	1002.03	Air pollution	None.
D	1002.05	Air quality	None.
E	1002.06	Air quality criterion	None.
	1002.07	Allowable emission	New term.
F	1002.08	Ambient air	None.
G	1002.10	Area source	None.
H	1002.11	ASTM	None.
	1002.13	Baseline concentration	New term.
	1002.14	BACT	New term.
I	1002.16	BTU	None.
J	1002.17	Certificate of registration	None.
K	1002.18	Collection efficiency	None.
L	1002.20	Commission	None.
M	1002.22	Control equipment	None.
N	1002.23	Controlled emission	None.
O	1002.64	Settleable particulate	None.
	1002.24	Criteria pollutant	New term.
P	1002.27	Emission	None.
Q	1002.28	Emission standard	None.
R	1002.30	Equivalent air-dried Kraft pulp	None.
S	1002.31	Existing source	None.
	1002.32	Facility	New term.
T	1002.33	Fuel-burning equipment	New term.
U	1002.34	Fugitive dust	None.
V	1002.35	Hot mix asphalt plant	None.
W	1002.36	Incineration	None.
X	1002.38	Industrial process	None.
Y	1002.39	Kraft pulping	None.
	1002.40	LAER	New term.
	1002.41	Major facility	New term.
	1002.42	Major modification	New term.
Z	1002.45	Monitoring	None.
AA	1002.46	Multiple chamber incinerator	None.
BB	1002.47	New source	None.
	1002.48	Nonattainment area	New term.
CC	1002.49	Non-condensibles	None.
DD	1002.50	Odor	None.
EE	1002.51	Opacity	None.
FF	1002.52	Open burning	None.
GG	1002.53	Particulate matter	None.
HH	1002.54	Person	Added "association" and "Federal . . . governmental entity."
II	1002.56	Portable hot-mix asphalt plant	None.
JJ	1002.57	ppm	None.
KK	1002.58	Primary ambient air quality standard	None.
LL	1002.59	Process or process equipment	None.
MM	1002.60	Process weight	None.
NN	1002.61	Process weight rate	None.
OO	1002.62	Salvage operations	None.
PP	1002.63	Secondary ambient air quality standard	None.
QQ	1002.65	Show cause order	None.
RR	1002.66	Smoke	None.
SS	1002.67	Source	Redefined—new a single process.
TT	1002.68	Source operation	None.
UU	1002.69	Stack	None.

CONTENT OF THE IDAHO SIP—Continued

Old designation	New designation	Subject	Substantive change
VV	1002.70	Standard cond.	None.
	1002.72	Time interval	New term.
WW	1002.73	TRS	None.
XX	1002.74	Ringlemann smoke chart	None.
YY	1002.75	Uncontrolled emission	None.
ZZ	1002.75	Wigwam burner (definitions)	None.
AAA	1002.12	Background level	None.
BBB	1002.71	Stationary source	None.
CCC	1002.44	Modification	None.
DDD	1002.56	Pilot plant	None.
EEE	1002.25	Department	None.
FFF		Indirect source	Withdrawn.
GGG	1002.21	Construction	"Modification" added.
HHH	1002.19	Commence construction or modification	None.
III	1002.76	Urbanized area	None.
JJJ	1002.09	Ambient air quality violation	None.
KKK	1002.29	Emission standard violation	None.
LLL	1002.43	Malfunction	None.
MMM	1002.04	Air pollution source permit	None.
NNN	1002.15	Board	None.
OOO	1002.26	Director	None.
Section 3	1-1003	Registration and permit procedures for stationary sources	Permit requirements for nonattainment areas added.
Section 4		Permit procedures for indirect sources	Not in new SIP.
Section 5	1-1005	Reporting	None.
Section 6	1-1006	Scheduled maintenance	Upset and breakdown provisions added.
Section 8	1-1008	Circumvention	None.
Section 9	1-1009	Total compliance	None.
Section 10	1-1010	Sampling and analytical procedures	Procedures manual developed.
Section 11	1-1011	Provisions governing specific activities	None.
Regulation B	1-1052 through 1-1055	Air pollution episodes	CO, O3 and NO_2 added.
Regulation C	1-1101 through ———	Ambient air quality	None.
Regulation D	1-1151 through 1-1153	Open burning	None.
Regulation E	1-1201 and 1-1203	Visible emissions	40% to 20% opacity for most existing sources.
Regulation F	1-1251 and 1-1252	Fugitive dust control	From "where possible" to "where practical."
Regulation G	1-1301	Particulate emission from fuel burning equipment	(1) From lbs/BTU to grains/scf, (2) New rules by fuel type.
Regulation H	1-1327 through 1-1330	Particulate matter from processing equipment	More restrictive for large sources; somewhat less restrictive for sources smaller than 2000 lbs/hr.
Regulation I	1-1351 through 1-1353	Sulfur content of fuels	None.
Regulation J	1-1401 and 1-1402	Fluoride emission	None.
Regulation K	1-1451 and 1-1452	Odors	None.
Regulation L	1-1501 through 1-1503	Particulate matter from incinerators	None.
Regulation M	1-1551 through 1-1553	Motor vehicle emissions	None.
Regulation N	1-1601 through 1-1605	Hot mix asphalt plants	Special provisions for portable plants are deleted.
Regulation O	1-1651 through 1-1662	Kraft pulp mills	None.
Regulation P		Wigwam burners	Deleted.
Regulation Q	1-1751 through 1-1756	Rendering plants	None.
Regulation T	1-1900 through 1-1906	Source operating permits	Added a "bubble" provision and "Permit Requirements in Non-attainment Areas."
Regulation U	1-1955 through 1-1968	New source performance standards	More restrictive particulate standard for new incinerators.
40 CFR Sections 52.675, 52.677 and 52.680 (EPA promulgation 41 FR 23202).	Same	Regulations for control of SO_2 emissions from sulfuric acid plants (J. R. Simplot Co., Pocatello).	None.
Baker Industries 1973 Consent Order.	Same	SO_2 emission limitation	None.
40 CFR 52.683 (EPA promulgations 43 FR 26410 and 44 FR 52676.	Same	Significant deterioration of air quality	None.
Chapter X	Chapter V	Source surveillance	None.
Chapter XI	Chapter VII	Approval procedures for new and modified sources	Replaced with description of regulations and process for reviewing new and modified sources impacting nonattainment areas.
Chapter XII	Chapter VI	Emergency episode plan	Revised program description and added area specific contingency plans.

E. *Continuity of Regulations.* In conjunction with the proposed approval of the recodified and revised Idaho SIP, EPA is proposing to rescind the SIP currently in effect except those Regulations containing actual emission limits. These limits would remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls, while moving toward compliance with the new regulations (or, if it chooses, challenging the new regulations). The old limits will be rescinded when affected sources achieve compliance with new limits proposed for approval in this Notice.

F. *Withdrawal of Rulemaking.* EPA proposes to withdraw proposed rulemaking published on July 16, 1981 (46 FR 36869). This action dealt with those rules necessary for EPA to temporarily manage the Idaho air program.

IV. Call For Comments

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked by June 16, 1982 will be considered in any final action EPA takes on this proposal.

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the addresses listed above.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals and redesignations do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sections 107(d), 110, 171, 172 and 301(a) of the Clean Air Act (42 U.S.C 7407(d), 7410(a), 7501, 7502 and 7601(a))

Dated: May 10, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-13343 Filed 5-14-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[WH-FRL-2095-5]

Ocean Dumping; Proposed Designation of Site

Correction

In the isue of Wednesday, May 5, 1982, on page 19382, in the first column, a correction regarding FR Doc. 82-11524 appeared, however it must be disregarded because it was mislabeled and contained other inaccuracies.

For the correct information, see the issue of Thursday, May 13, 1982, page 20639.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Services Covered Under Automobile, Liability, and Employer Group Health Insurance

AGENCY: Health Care Financing Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Health Care Financing Administration is proposing regulations dealing with services covered under automobile medical, no-fault, or liability insurance and services to end-stage renal disease beneficiaries who are also insured under employer group health plans

These rules are required by sections 953 of the Omnibus Reconciliation Act of 1980 which excludes from Medicare coverage any services for which payment has been made or can reasonably be expected to be made under an automobile or liability insurance policy or plan or under no-fault insurance, and section 2146 of the Omnibus Budget Reconciliation Act of 1981 which makes medicare benefits secondary to benefits payable under an employer group health plan for services furnished to end-stage renal disease beneficiaries during a specified period of up to 12 months.

The intent is to conserve Medicare funds and prevent duplicate payments by Medicare.

DATE: In order to ensure consideration, comments should be mailed by July 16, 1982.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

You may prefer to deliver your comments to:

Health Care Financing Administration, Room 309-G, Hubert Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C.; or

Health Care Financing Administration, Room 789, East High Rise Bldg., 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-164-P. Comments will be available for public inspection beginning approximately two weeks from today, in Room 309-G of our offices at 200 Independence Ave., SW., Washington, D.C. on Monday through Friday 8:30 a.m. to 5 p.m. ((202) 245-7890).

FOR FURTHER INFORMATION CONTACT: Herbert Pollock (301) 594-4078.

SUPPLEMENTARY INFORMATION: The proposed amendments would provide as follows:

1. With respect to services covered under automobile medical or no-fault insurance, Medicare would pay only if private insurance payment would be delayed, and would recover when the private insurer paid.

2. For services covered under liability insurance, Medicare would pay and recover when payment, or a judgment or settlement, was obtained.

3. For services furnished to beneficiaries entitled solely on the basis of end-stage renal disease (ESRD) Medicare would be the secondary payer if those services were—

- Furnished during a specified period of up to 12 months; and
- Covered under an employer group health plan. If employer plan payments were substantially less prompt than Medicare, Medicare would make conditional payments and recover when the employer plan paid.

Statutory Basis

Section 953 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) amended section 1862(b) of the Social Security Act to exclude from Medicare coverage any services for which payment has been made or can reasonably be expected to be made under an automobile or liability insurance policy or plan (including a self-insured plan) or under no-fault insurance.

Section 2146 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) further amended section 1862(b) of the Act to make Medicare benefits secondary to benefits payable under an employer group health plan for services furnished to an end-stage renal disease beneficiary during a 12-month period that begins with the earlier of—

- The month in which the individual initiates a regular course of renal dialysis; or
- If the individual recieves a kidney transplant, the first month in which he or she could become entitled to Medicare on that basis.

This provision does not apply to individual policies.

Under section 1862(b), any Medicare payment for an item or service is conditioned on reimbursement to the appropriate trust fund (the supplementary medical insurance trust fund or the hospital insurance trust fund) when notice or other information is received that payment has been made under automobile medical, no-fault, or liability insurance, or, in the case of an ESRD beneficiary, under an employer group health plan.

The two amendments also authorize us to waive recovery in an individual claim if we determine that the probability of recovery of the amount involved does not justify pursuit of the claim.

Basic Issues

The basic issues we considered during the development of the proposed regulation are discussed below:

Issue: Whether Medicare benefits would be secondary even when the private insurance policy or plan states that its benefits are secondary to Medicare or otherwise excludes or limits its payments to Medicare beneficiaries.

A number of jurisdictions have no-fault laws that, through varying language, provide that the no-fault insurers pay only supplementary benefits if benefits are payable under Medicare. Some of these jurisdictions lower no-fault premiums for the elderly to compensate for the antiduplication provision. Certain automobile medical insurance policies also specify that payment will not be made if Medicare benefits are payable. Most employer group health plans provide coverage that only supplements Medicare. Under the proposed regulations, Medicare would be secondary even if the automobile policy, no-fault law, or employer plan contains a provision making its benefits secondary to

Medicare. Our interpretation of sections 953 of Pub. L. 96–499 and 2146 of Pub. L. 97–35 is consistent with the cost-saving objectives of these provisions and eliminates incentives for States and insurance plans to provide coverage that only supplements Medicare.

The legislative history of sections 953 and 2146 indicates that it was the intent of Congress that Medicare be the secondary payer if services are also covered by private insurance. The Report of the House Committee on the Budget to accompany the Reconciliation Bill H.R. 7765 (Report No. 96–1167, July 21, 1980) contains the following language on page 389:

> Under Title XVIII, Medicare will have residual rather than primary liability for the payment of services required by a beneficiary as a result of an injury or illness sustained in an auto accident where payment for the provision of such services can also be made under an automobile insurance policy* * *
>
> Under present law, medicare is the primary payor (except where a workmen's compensation program is determined to be responsible for payments for needed medical services) for hospital and medical services received by beneficiaries. This is true even in cases in which a beneficiary's need for services is related to an injury or illness sustained in an auto accident and the services could have been paid for by a private insurance carrier under the terms of an automobile insurance policy. As a result, medicare has served to relieve private insurers of obligations to pay the costs of medical care in cases where there would otherwise be liability under the private insurance contract. The original concerns that prompted inclusion of this program policy in the law—the administrative difficulties involved in ascertaining private insurance liability and the attendant delays in payments—no longer justify retaining the policy.

Senate Finance Committee Report No. 97–139, July 1, 1981, p. 469, noted that most employer group health plans preclude payment if there is Medicare coverage and added that the purpose of the Committee's bill was to change the coordination of benefits relationships between Medicare and any private coverage that is present at the onset of ESRD.

> The bill changes the benefit coordination arrangements between the medicare end-stage renal program and any other health benefits * * * by making any private coverage primary to medicare for an initial 12 months after the beneficiary is determined eligible for medicare coverage under the end-stage renal provisions * * *
>
> The committee expects physicians and providers and suppliers of health services to end-stage renal patients to recognize that the purpose of this provision is only to change the coordination of benefits relationships between medicare and private health benefit coverage to the extent that any private coverage is present at the onset of end-stage renal disease. Reimbursement for covered expenses for care of such patients is still assured, through the apportionment of such expenses between private plans and medicare will be somewhat diffeent for the intial 12-month coverage of those patients who have other health benefit coverage. Therefore, the committee expects that no end-stage renal patients will be denied needed care or services by reason of the enactment of this coordination of benefits provision. The committee intends that the provision would not result in a reduction in medicare beneficiaries combined protection under the medicare and private insurance programs.

Full implementation of section 1862(b) to effect congressional intent requires that Medicare be made the secondary payer even if an insurance policy or no-fault law contains a Medicare nonduplication clause. This result would not do violence to the provisions in no-fault laws or insurance policies, since they typically attempt to create coverage secondary to whatever Medicare coverage may exist. Thus, the language of the policies and laws assumes that Medicare coverage might be expanded or contracted and that the scope of coverage under the policy or no-fault law would be changed accordingly. Here, section 1862(b) contemplates that Medicare will not pay benefits that are also covered by insurance and therefore contracts the scope of Medicare coverage. By its own terms, a nonduplication clause would ordinarily not be invoked, since, by virtue of the existence of the insurance policy or no-fault law, Medicare coverage would not exist.

Moreover, even if a Medicare nonduplication clause were not made inapplicable by its own terms, it would properly be overriden by section 1862(b). Insurance policies sometimes include provisions intended to make them secondary to any other insurance, or void if other insurance exists. These "other insurance" clauses are not favored in the law and are construed accordingly. See Appleman, *Insurance Law and Practice*, chapter 204 (1979). By the same token, a provision in an insurance policy or State law attempting to make coverage secondary to Medicare cannot override a Federal statue establishing the opposite priority. We believe that provisions intended to limit coverage when Medicare is available are ineffective under the amendments to section 1862(b).

We considered whether our proposed interpretation of the amendments would violate the McCarran-Ferguson Act. That Act reserves to the several States the right to regulate the business of insurance and provides that no Federal law shall be construed to invalidate, impair, or supersede any State law for regulating insurance unless the Federal statute specifically relates to the business of insurance (15 U.S.C. 1012). Since the amendments to section 1862(b) plainly relate to the business of insurance, however, the McCarran-Ferguson Act is in no way contravened.

With respect to the ESRD provisions, we considered whether the tax provision (an employer may not take a tax deduction for the expenses of a group health plan that differentiates between benefits to ESRD patients and benefits to others) shows that Congress intended to discourage (rather than prevent) employers from making their health benefits secondary to Medicare benefits.

We agree that Congress did not intend to prevent employers from using a group health plan that does not cover ESRD services (at the expense of losing the tax deduction). However, practically all employer group health plans make their benefits secondary to Medicare. Since section 2146 is clearly aimed at making Medicare secondary, the provision would have little if any application or cost-saving effect if interpreted to mean that Medicare would continue paying primary benefits if the employer plan provided benefits which only supplemented Medicare.

The tax provision of section 2146, shows that Congress intended to encourage employer group health plans to accept responsibility for services required by ESRD patients. In this respect, the Senate Finance Committee Report noted that most group health plans preclude payment if there is Medicare coverage, and added that the purpose of the Committee's bill was to change the coordination of benefits relationships between Medicare and any private coverage that is present at the onset of ESRD.

Issue: Whether the period of secondary benefits for ESRD beneficiaries would be 12 months or less. We considered interpreting section 2146 as requiring Medicare to be secondary to the employer group health plan for the first 12 months of an individual's entitlement based solely on ESRD. This alternative would be supported by the Senate Budget Committee Report (Report No. 97–130, June 17, 1981), which states, on page 469, that the bill would: "make * * * private coverage primary to Medicare for an initial period of 12 months after the beneficiary is determined eligible for Medicare * * *"

However, the law states that the 12-month period begins with the first month

of renal dialysis. Medicare entitlement generally begins with the 4th month of dialysis because there is a 3-month waiting period that is waived only if the patient begins training for self-dialysis. Therefore, an individual who became entitled after a waiting period would be entitled only during the last 9 months of the 12-month period. The regulations provide that Medicare will be secondary payer for those 9 months. They also provide for a shortened period of secondary payment if delay in filing an application delays entitlement. (Under the law, an application may not be retroactive for more than 12 months.)

Issue: Whether to deny Medicare payments routinely or pay and recover later from the private insurer.

Under automobile medical or no fault insurance, payment can frequently be foreseen with reasonable certainty. In such cases, the question arises of whether to make payments and later seek recovery, or to withhold Medicare payments in the expectation that insurance payments will be made. A policy of paying and recovering later appears to be supported by the Senate Finance Committee Spending Reduction Recommendations for fiscal year 1981 (CP–96–36, June 25, 1980) which state, on page 42:

> Medicare would pay for the patient's care in the usual manner and then seek to be reimbursed by private insurance after, and to the extent that, liability has been determined.

With respect to automobile medical and no-fault insurance, however, we do not believe that this suggestion overrides the statutory command in section 1862(b)(1) that payments "may not be made" if insurance payments "can reasonably be expected to be made." Under the proposed regulations, conditional Medicare payments could be made if insurance coverage was contested or if payments were delayed, but if insurance payments could reasonably be expected, Medicare payments would be withheld.

With respect to liability insurance (which does not specify what benefits are payable) Medicare would pay and recover when a judgment or settlement is obtained.

With respect to the ESRD provisions we have followed the statutory language.

Section 1862(b)(2)(A) provides that Medicare payment may not be made for services furnished an ESRD beneficiary if payment has been made under an employer plan or the Secretary determines that payment under such a plan will be as prompt as Medicare payment would be.

The Report of the Conference Committee (Report 97–208, 97th Congress, 1st session) refers to Medicare payment until the employer plan begins to pay or will be able to pay as promptly as Medicare. In most cases the ESRD patient will not become entitled until three months after he or she initiates dialysis. This means that in most instances the employer health plan will already be paying benefits when the patient becomes entitled to Medicare.

Our decision to follow the statutory language is consistent with our decision regarding automobile medical and no-fault insurance, and in accordance with the usual sequence of payments. The proposed regulations provide that conditional payments may be made if the intermediary or carrier knows from experience or ascertains that an employer plan's payments are substantially less prompt than Medicare payments.

In order to facilitate recovery of Medicare payments, the proposed regulations provide for recovery directly by Medicare or through the beneficiary. Accordingly, if a beneficary receives payment from any insurer for services for which Medicare has paid, the beneficiary would be required to refund the Medicare payment. If the beneficiary did not pursue the claim, HCFA could institute its own action against the insurer or the person responsible for the injury. In its discretion, HCFA could require a beneficiary who is to receive a conditional payment to authorize HCFA to pursue the beneficiary's rights if the beneficiary fails to do so.

PROVISIONS OF THE REGULATIONS

Services Covered Under Automobile or Liability Insurance

A. Definitions and Basic Rules

Proposed new § 405.322 would specify that the regulations apply to services required because of accidents that occur on or after December 5, 1980 (the date of enactment of the amendments), define terms, preclude Medicare payments that duplicate payments made under either automobile or liability insurance for services furnished on or after the above date, and set forth HCFA's right to recover payments for services covered by the private insurance. To prevent inequity to beneficiaries who have already received insurance payments without knowldege of Medicare's potential claim on them, the proposed regulation would exempt from recovery any payment actually received by a beneficiary before the effective date of the final regulation. This exemption would not apply to insurance payments received by a provider that has been assigned rights under an insurance policy.

B. Automobile Medical or No-Fault Insurance

Proposed new § 405.323 would set forth the specific rules applicable to services covered under automobile medical or no-fault insurance. It would (1) apply to services furnished at least 60 days after issuance of final regulations, (2) stipulate that Medicare payment is excluded even when the automobile policy or plan states that its benefits are secondary to Medicare, and (3) set forth the rules for conditional payments.

C. Liability Insurance

Proposed new § 405.324 would set forth the rules for conditional payments and for recovery when a judgment or settlement has been obtained under any liability insurance, such as automobile liability, homeowners' insurance, or malpractice insurance.

Liability claims are usually filed against the individual or other entity that allegedly caused the injury rather than against a liability insurer. When the claim is setttled or adjudicated, usually after protracted negotiation and possible litigation, a liability insurer may pay all or only part of the claim. A beneficiary who obtained payment, or a judgment or settlement, would be required to reimburse the program. The amount to be reimbursed would take into account the costs of securing the judgment or settlement. We chose this option (as opposed to disregarding these costs) because it is more equitable and is consistent with policies under which Medicaid and other programs that have subrogation rights share in the costs of securing judgment or settlement. Beneficiaries would be expected to avail themselves of insurance benefits so that the Medicare trust funds can be protected to the extent possible. If the beneficiary did not pursue the claim, HCFA could institute its own action.

D. Effect on Benefit Utilization and Deductibles, When Services are Payable Under Automobile or Liability Insurance

Proposed new § 405.325 would specify that services for which Medicare payment is not made (or if made is later recovered) because payment has been made by an automobile medical or no-fault insurer or by a liability insurer would not be charged against the number of inpatient care days available to the beneficiary. It would also specify that expenses incurred for services paid for by an automobile insurer or any

liability insurer would not be credited toward the Medicare deductible amounts. These are expenses for noncovered services. Under the law, noncovered expenses cannot be credited to the deductible amounts.

Services to ESRD Beneficiaries Covered Under an Employer Group Health Plan

A. Scope and Applicability

Proposed new § 405.328 would—

- Specify that the policies and procedures of §§ 405.328–405.329 apply only to beneficiaries who are entitled to Medicare solely on the basis of ESRD and who are covered under an employer group health plan;
- Define "employer" as it is defined in the Internal Revenue Code and regulations, i.e., to include income tax exempt entities and the Federal, State, and local governments, as well as entities engaged in a trade or business.
- Define "employer group health plan" as a plan that is of, or contributed to by, an employer, and provides health care to current or former employees or to current or former employees and members of their families;
- Explain that Medicare benefits are "secondary" to benefits under more than one employer plan if the beneficiary is covered by more than one; and
- Specify that Medicare benefits are secondary to employer plans even though the employer plan states that its benefits are secondary to Medicare, or otherwise excludes or limits its payments to Medicare beneficiaries.

B. Medicare as Secondary Payer

Proposed new § 405.327 would (1) specify that Medicare benefits are secondary to benefits under an employer group health plan for up to 12 consecutive months; (2) make clear that the 12-month period may not begin until October 1981 or later; and (3) set forth the rules for payment during the period when Medicare benefits may be secondary to employer group health plan benefits. it would also—

- Make clear that the individual may become entitled later than the beginning of the 12-month period.
- Specify that the period of secondary payment will end if the basis for the individual's entitlement changes from ESRD to age 65 or disability.
- Provide that the secondary payer rules apply to each period of entitlement based solely on ESRD.

(The 12-month period may not begin earlier than October 1981 because that would make employer plans responsible for paying benfits on the basis of an event (initiation of dialysis or kidney transplant) that occurred before the amendment was enacted.)

C. Limits on Medicare Secondary Payment

Propdsed new § 405.328 would—

- Set forth the limits on the amounts of secondary Medicare payments to supplement the amount paid by an employer plan if the plan does not pay the entire bill.
- Specify that if Medicare pays secondary benefits, the beneficiary will be charged with utilization of Part A benefits only to the extent that Medicare paid for the services.
- Provide that expenses which would serve to meet the beneficiary's Part A or Part B deductible if Medicare were primary payer, will be credited to the deductible even if they are reimbursed by the employer plan.

D. Conditional Payments and Recovery

Proposed new § 405.329 would set forth the policies for making conditional primary payments when the intermediary or carrier knows that payment by the employer plan would be substantially less prompt than Medicare payment.

These rules are essentially the same as the rules for services covered by automobile or liability insurance.

Impact Analysis

Executive Order 12291

We estimate that the changes making Medicare a secondary payer for ESRD services will save $20 million in Medicare expenditures in fiscal year 1983 and $70 million in fiscal year 1984. We estimate the change limiting Medicare payments for services covered under liability insurance would save $9 million in Medicare expenditures in fiscal year 1983 and $30 million in fiscal year 1984. Hence, neither of these separate changes (combined in this rulemaking for convenience) exceeds $100 million.

Moreover, these regulations simply conform the existing rules to the change legislated by section 953 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–449) and section 2146 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Effective dates for these provisions were established by these statutes. the cost impacts are solely the result of the legislation. Therefore, these regulations do not "result in" a cost impact of $100 million or more or otherwise trigger the criteria for a major rule established in E.O. 12291.

Regulatory Flexibility Act

The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–345), that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. By making private insurance companies primarily responsible in covering the services required by Medicare beneficiaries, they will experience an estimated increased outlay of $109 million in fiscal year 1984. This is only about one-tenth of 1 percent of the estimated premium income for fiscal year 1984, $87 billion. This loss can be offset by adjusting premiums. For example, it is estimated that the employer group plans, the premium would increase 50 cents a month per person, when coverage is for a three-person family. We believe an adjustment of this magnitude will not affect significantly the financial situation of the insurance industry or companies large and small within it.

Furthermore, as stated above, the economic effect of these changes is caused by the law rather than the regulations. Therefore, a regulatory flexibility analysis is not required.

Response To Comments

Because we receive large numbers of comments, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

In 42 CFR Part 405, Subpart C is amended as set forth below:

A. The table of contents is revised to reflect the insertion of undesignated centered headings and the addition of new § § 405.322 through 405.329, and to revise the authority statement as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

General Provisions

405.301 Scope of subpart.
405.310 Types of expenses not covered.
405.310–1 Nonreimbursable expenses; conclusive effect of PSRO determinations on claims payment.

General Exclusions

405.311 Nonreimbursable expenses; individual has no legal obligation to pay for items or services.
405.311a Nonreimbursable expenses; items or services furnished by a Federal provider of services or other Federal agency.
405.311b Nonreimbursable expenses; items or services which a provider or other person is obligated to furnish at public expense under a law of, or contract with, the United States.
405.312 Nonreimbursable expenses; items or services paid for by governmental entity.
405.313 Nonreimbursable expenses; items or services not provided in the United States.
405.314 Nonreimbursable expenses; items or service required as a result of war.
405.315 Nonreimbursable expenses; charges imposed by immediate relatives or members of the beneficiary's household.

Exclusion of Services Covered Under Workers' Compensation

405.316 Nonreimbursable expenses; payment for services made under workmen's compensation law.
405.317 Effect of workmen's compensation payment.
405.318 Responsibility of the individual concerning workmen's compensation paymet.
405.319 Responsibility of intermediary where there is a possibility of workmen's compensation coverage.
405.320 Effect of lump-sum settlement and final release.
405.321 Apportionment of a lump-sum compromise settlement of a workmen's compensation claim.

Exclusion of Services Covered Under Automobile Medical, No-fault, or Liability Insurance

405.322 Services covered under automobile medical or no-fault insurance or any liability insurance: General provisions.
405.323 Special provisions: Services for which payment can reasonably be expected under automobile medical or no-fault insurance.
405.324 Special provisions: Services for which payment can reasonably be expected under liability insurance.
405.325 Effect on benefit utilization, deductibles, and coinsurance when services are payable under automobile medical, no-fault, or liability insurance.

Limitations on Payment for Services To End-stage Renal Disease Beneficiaries Who are Covered Under Employer Group Health Plans

405.326 Scope and applicability.
405.327 Period of secondary medicare payment.
405.328 Amount of secondary medicare payment.
405.329 Conditional payments and recovery of payments.

Payment for Certain Excluded Services

405.330 Payment for certain nonreimbursable expenses.
405.331 Liability for certain noncovered items or services.
405.332 Criteria for determining that there was knowledge that certain services were nonreimbursable.

Liability for Payments To Providers or Suppliers and Handling of Incorrect Payments

405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.
405.351 Incorrect payments for which the individual is not liable.
405.352 Adjustment of title XVIII incorrect payments.
405.353 Certification of amount that will be adjusted against individual title II or railroad retirement benefits.
405.354 Procedures for adjustment or recovery—title II beneficiary.
405.355 Waiver of adjustment or recovery.
405.356 Principles applied in waiver of adjustment or recovery.
405.350 Liability of certifying or disbursing officer.

Suspension of Payment To Providers and Suppliers and Collection and Compromise of Overpayments

405.370 Suspension of payments to providers of services and other suppliers of services.
405.371 Proceeding for suspension.
405.372 Submission of evidence and notification of administrative determination to suspend.
405.373 Subsequent action by intermediary or carrier.
405.374 Collection and compromise of claims for overpayments.

Authority: Sec. 1102, 1842, 1862, 1870, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u, 1395y, 1395gg, and 1395hh).

B. The regulation text is amended as set forth below:

1. Undesignated centered headings are inserted as follows:

"General Provisions" is inserted immediately before § 405.301.

"General Exclusions" is inserted immediately before § 405.311.

"Exclusion of Services Covered Under Workers' Compensation" is inserted immediately before § 405.316.

"Payment for Certain Excluded Services" is inserted immediately before § 405.330.

"Liability for Payments To Providers or Suppliers and Handling of Incorrect Payments" is inserted immediately before § 405.350.

"Suspension of Payment and Collection and Compromise of Overpayments" is inserted immediately before § 405.370.

2. Undesignated centered headings and new §§ 405.322 through 405.329 are added to read as follows:

Exclusion of Services Covered Under Automobile Medical, No-fault, or Liability Insurance

§ 405.322 Services covered under automobile medical or no-fault insurance, or any liability insurance: General provisions.

(a) *Applicability.* The provisions of this section and of §§ 405.323 through 405.325 are applicable to services required because of accidents that occurred on or after December 5, 1980.

(b) *Definitions.* As used in this section, and §§ 405.323 through 405.325—*"Automobile"* means any self-propelled land vehicle of a type that must be registered and licensed in the State in which it is owned.

"Automobile medical or no-fault insurance" means automobile insurance (including self-insured plans) that pays for all or part of the medical expenses for injuries sustained in the use, occupancy, or operation of an automobile, regardless of who may have been responsible for causing the accident. (This insurance is sometimes called "medical payments coverage" or "medical expense coverage".)

"Liability insurance" means insurance (including a self-insured plan) that provides payment based on legal liability for injury to persons or damage to property. It includes, but is not limited to, automobile liability insurance, uninsured motorist insurance, homeowners' liability insurance, malpractice insurance, product liability insurance, and general casualty insurance.

"Self-insured plan" means a plan under which an entity (or an individual) is authorized by State law to carry its own risk instead of insuring itself with a carrier.

"Uninsured motorist insurance" means insurance under which the policyholder's insurer will pay for damages caused by a motorist who has no automobile liability insurance or who carries less than the amount of insurance required by law or is underinsured.

(c) *Exclusion from Medicare payment.* Medicare payment may not be made for any services to the extent that payment has been made or can reasonably be expected to be made under automobile medical or no-fault insurance or under any liability insurance policy or plan

(including a self-insured plan). If payment was erroneously made by HCFA for services covered under automobile medical or no-fault insurance, or paid for under liability insurance, the payment is subject to recovery and HCFA may bring an action against the insurer.

(d) *Services paid for under automobile or liability insurance.* Effective for services furnished on or after December 5, 1980, if payment is made under automobile medical or no-fault insurance or any liability insurance—

(1) Except as provided in paragraph (d)(2) of this section, Medicare payment will be denied or, if already made, will be recovered from the provider, supplier, or beneficiary who received the Medicare payment.

(2) *Exception.* HCFA will not recover the Medicare payment if the insurance payment was actually received by the beneficiary between December 5, 1980 and the 60th day after this proposal is published in final form.

(e) *Waiver of recovery.* HCFA may waive recovery action if the probability of recovery or the amount involved does not warrant pursuit of the claim.

§ 405.323 Special provisions: Services for which payment can reasonably be expected under automobile medical or no-fault insurance.

(a) *Effective date.* This section is effective for services furnished sixty days or more after publication of final regulations.

(b) *Automobile medical or no-fault benefits excluded or limited for medicare beneficiaries.* Except as specified in paragraph (c) of this section, payment may not be made for services covered under an automobile medical or no-fault insurance policy or plan even though State law or the insurance policy or plan states that its benefits are secondary to Medicare's or otherwise excludes or limits its payments if the injured party is also entitled to Medicare benefits.

(c) *Conditional payment in contested or otherwise delayed cases.* (1) A conditional Medicare payment may be made under any of the following circumstances:

(i) The beneficiary, or the provider or supplier, has filed a claim for automobile medical or no-fault insurance benefits, but the claim is contested by the insurer or for any other reason, there will be substantial delay in making insurance payments.

(ii) The beneficiary failed to file a claim because of physical or mental incapacity.

(2) If a conditional Medicare payment is made, the following rules apply:

(i) The beneficiary must reimburse Medicare up to the amount it paid if he or she receives payment from the automobile medical or no-fault insurer.

(ii) If, for any reason, payment is not received from the insurer, HCFA may bring an action against the insurer, and the beneficiary must cooperate in HCFA's action.

(iii) HCFA may, as a prerequisite for the conditional payment, require the beneficary to authorize it to pursue the beneficiary's rights against the insurer if the beneficiary does not, and to promise to cooperate in HCFA's action.

(iv) The amount of recovery under paragraph (c)(2)(ii) or (iii) of this section will not exceed the amount of the conditional payment.

(3) At the time the conditional payment is made, the intermediary or carrier will notify the beneficiary or his or her representative of the obligation to refund the conditional payment.

(4) Failure to send notice does not relieve the beneficiary of the obligation to refund the conditional payment, as required by paragraph (c)(2)(i) of this section.

§ 405.324 Special provisions: Services for which payment can reasonably be expected under liability insurance.

(a) *Conditional Medicare payment.* (1) If HCFA has information that services for which Medicare benefits have been claimed are for treatment of an injury or illness that was allegedly caused by another party and that the beneficiary has filed, or has the right to file, a liability claim against the other party, a conditional Medicare payment may be made. In that case—

(i) the beneficiary must reimburse Medicare up to the amount it paid if he or she receives payment from an insurance carrier or self-insured party;

(ii) If payment is not received from the insurer of the responsible party, HCFA may bring an action against the insurer or the responsible party, and the beneficiary must cooperate in HCFA's action;

(iii) HCFA may, as a prerequisite for the conditional payment, require the beneficiary to authorize it to pursue the beneficiary's rights against the insurer or the responsible party if the beneficiary does not, and to promise to cooperate in HCFA's action;

(iv) The amount of recovery under paragraph (a)(1) (ii) or (iii) of this section will noit exceed the amount of the conditional payment.

(2) At the time the conditional Medicare payment is made, the intermediary or carrier will notify the beneficiary or his or her representative of the obligation to refund the conditional payment.

(3) Failure to send notice does not relieve the beneficiary of the obligation to refund the conditional payment as required by paragraph (a)(1)(i) of this section.

(b) *Determining the amount to be recovered from a beneficiary who received a liability insurance payment as a result of a judgment or settlement.*—(1) *Basic rule.* The amount to be recovered from the beneficiary is the amount Medicare paid, less a proportionate share of the costs of procuring the judgment or settlement. If the Medicare payments equal or exceed the amount of the judgment or settlement, the total procurement costs are subtracted from the Medicare payments. The individual will not be required to refund more than the liability insurance payment minus the procurement costs.

(2) *Computation when Medicare payment is less than the amount of the judgment or settlement.* If the Medicare payment is less than the amount of the judgment or settlement—

(i) Determine the ratio of the Medicare payments to the total amount of the judgment or settlement;

(ii) Apply this ratio to the reasonable costs of procuring the judgment or settlement, including attorney fees; and

(iii) Subtract the Medicare share of procurement costs form the Medicare payments. The remainder is the amount of reimbursement to be refunded to the Medicare program.

(3) *Computation when Medicare payment equals or exceeds the amount of the judgment or settlement.* If the Medicare payment equals or exceeds the amount of the judgment or settlement, subtract the total procurement costs from the Medicare payment. The remainder, up to the amount of the liability insurance payment after the procurement costs have been subtracted, is the amount of reimbursement to be refunded to the Medicare program.

§ 405.325 Effect on benefit utilization and deductibles when services are payable under automobile medical, no-fault, or liability insurance.

(a) *Benefit utilization.* Inpatient services for whch Medicare payment is not made (or if made is later recovered) because benefits are paid by an automobile medical or no-fault insurer or by a liability insurer will not be counted against the number of inpatient care days available to the beneficiary under Medicare Part A.

(b) *Deductibles.* Expenses for services for which Medicare payment is not made (or if made is later recovered) because benefits are paid by an automobile medical or no-fault insurer or by a liability insurer cannot be credited toward the Medicare Part A or Part B deductible amounts. If an individual is hospitalized twice in the same benefit period, and the first hospitalization is completely paid for by the insurer, the inpatient hospital deductible would apply to the second hospitalization.

Limitations on Payment for Services to End-Stage Renal Disease Beneficiaries Who Are Also Insured Under Employer Group Health Plans

§ 405.326 Scope and applicability.

(a) Sections 405.327 through 405.329 set forth policies and procedures for payment of benefits for services furnished to individuals who are entitled to Medicare solely on the basis of end-stage renal disease (ESRD) and who are also insured under an employer group health plan.

(b) In §§ 405.327 through 405.329 the following terms have the specified meanings:

(1) *"Employer"* has the same meaning as in the Internal Revenue Code (26 U.S.C. 3401(d)) and implementing regulations at 26 CFR 31.3401(d)–1. It includes, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, the Territories, Puerto Rico, the Virgin Islands, Guam and the District of Columbia, and the agencies, instrumentalities, and political subdivisions of these governments.

(2) *"Employer group health plan"* or *"employer plan"* means any group health plan that—

(i) Is of, or contributed to by, an employer; and

(ii) Provides medical care on an expense-incurred basis, directly or through other methods such as insurance or reimbursement, to current or former employees, or to current or former employees and their families.

(3) *"Secondary,"* when used to characterize Medicare payments, means that Medicare benefits are payable only to the extent that payment cannot be made by one or more employer group health plans under which the Medicare beneficiary is insured.

§ 405.327 Medicare benefits secondary to employer group health plan benefits.

(a) *General rules.* (1) Effective for months after September 1981, Medicare benefits will be secondary to benefits payable under an employer plan, for services furnished to an ESRD beneficiary during a period of up to 12 consecutive months as specified in paragraphs (b) and (c) of this section.

(2) If the individual becomes entitled to Medicare after the 12-month period has begun, as set forth in paragraph (c) of this section, Medicare benefits are secondary only for that portion of the 12-month period that begins with the month of entitlement.

(3) During the period in which Medicare benefits are secondary, Medicare will—

(i) Pay primary benefits for Medicare covered services that are not covered by the employer plan; and

(ii) Make secondary payments, within the limits specified in §405.328, to supplement the amount paid by the employer plan if that plan pays only a portion of the charge for the service.

(4) Any Medicare benefits payable within the 12-month period are secondary to employer policies or plans even though the employer policy or plan states that its benefits are secondary to Medicare's or otherwise excludes or limits its payments to Medicare beneficiaries.

(b) *Beginning of 12-month period.* The period of 12 consecutive months specified by law begins with any month after September 1981 that is the earlier of the following months:

(1) The month in which the individual initiates a regular course of renal dialysis.

(2) In the case of an individual who receives a kidney transplant, the first month in which the individual could become entitled to Medicare if he or she filed a timely application, that is, the earliest of the following:

(i) The month in which the transplant is performed.

(ii) The month in which the individual is admitted to the hospital in preparation for, or anticipation of, a transplant that is performed within the next two months.

(iii) The second month before the month the transplant is performed, if performed more than 2 months after admission.

(c) *Beginning of period in which Medicare is secondary payer.* The period in which Medicare is secondary payer begins later than the beginning of the 12-month period (and therefore lasts less than 12 months) if the individual—

(1) Is subject to the 3-month waiting period for individuals who initiate renal dialysis but do not begin training for self-dialysis during the first 3 months of dialysis; or

(2) Files the application for Medicare entitlement more than 12 months after the month in which a 12-month period begins. (Under the Act, an application may not be retroactive for more than 12 months.)

(d) *Examples.* The following examples illustrate how to determine, in different situations, the number of months during which Medicare is secondary payer.

(1) *Individual filed a timely application and became entitled without a waiting period.* In October 1981, John began a regular course of dialysis and filed an application for Medicare. In December 1981, John began training for self-dialysis. Since John initiated self-dialysis training during the first 3 months of dialysis, he is exempt from the waiting period and becomes entitled as of October 1981, the first month of dialysis. In this situation, the month of entitlement coincides with the beginning of the 12-month period and Medicare is secondary payer during the entire period.

(2) *Individual filed a timely application and became entitled to Medicare after a waiting peiod.* (i) Janice started a regular course of renal dialysis in October 1981 and filed an application in the same month. The 12-month period begins with October 1981, but the 3-month waiting period doesn't end until December 1981. The month of entitlement for Janice is January 1982. Medicare is secondary payer from January through September 1982.

(ii) Peter started a regular course of dialysis in January 1982, and was hospitalized and received a kidney transplant in March 1982. The 12-month period begins with January 1982. The kidney transplant cuts short the dialysis waiting period so that Peter becomes entitled in March 1982. Medicare is secondary payer from March through December 1982.

(3) *Individual did not file a timely application.* In January 1982, Katherine suffered kidney failure and received a kidney transplant but did not apply for Medicare until July, 1983. Since the application is retroactive for only 12 months, Katherine becomes entitled to Medicare in July 1982. The 12-month period begins in January 1982, the month in which Katherine could have been entitled if she had filed a timely application. Medicare is secondary payer from July through December 1982.

(e) *Effect of changed basis for Medicare entitlement.* If the basis for an individual's entitlement to Medicare changes from ESRD to age 65 or disability, the 12-month period terminates with the month before the month in which the change is effective.

(f) *Determinations for subsequent periods of ESRD entitlement.* If an individual has more than one period of entitlement based solely on ESRD, a period during which Medicare may be secondary payer will be determined for each period of entitlement, in accordance with this section.

§405.328 Amounts of secondary medicare payment.

(a) *Services reimbursed on a reasonable charge basis.* The Medicare secondary payment will be the lowest of the following:

(1) The actual charge by the supplier, minus the amount paid by the employer plan.

(2) the amount that Medicare would pay if the services were not covered by the employer plan.

(3) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer, minus the amount actually paid by the employer plan.

(4) If the claim is filed under an assignment, the Medicare reasonable charge, minus the amount paid by the employer plan. (If the beneficiary does not assign the claim but files for direct payment, the limit of this paragraph (a)(3) does not apply.)

(b) *Services reimbursed on a reasonable cost basis.* The Medicare secondary payment will be the lower of the following:

(1) The lesser of the provider's reasonable cost or customary charges, minus any applicable deductible or coinsurance amount.

(2) The lesser of the provider's reasonable cost or customary charges, minus the amount paid by the employer plan.

(c) *Services reimbursed on a fixed-rate basis.* The Medicare secondary payment will be the lower of the following:

(1) The fixed rate established for the service minus any applicable deductible or coinsurance amount.

(2) The fixed rate established for the service, minus the amount paid by the employer plan.

(d) *Example of computation of Medicare secondary payment for services reimbursed on a reasonable charge basis.*

(1) Physician's charge for professional services	$120
(2) Employer plan's allowable charge	110
(3) Medicare reasonable charge	100
(4) As primary payer—	
(i) Employer plan pays 80 percent of allowable charge (.80×110)	88
(ii) Medicare pays 80 percent of reasonable charge (.80×100)	80
(5) As secondary payer—	
(i) Employer plan pays the difference between its allowable charge and the primary payment ($110-$80)	30
(ii) Medicare pays the lowest of the amounts specified in paragraph (a) of this section.	
(6) The excess of the actual charge over the amount paid by the employer plan is $120-$88	32
(7) The amount Medicare would pay if the services were not covered by an employer plan is .80×$100	80
(8) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer, minus the amount actually paid by the employer plan is ($80+$30=$110)−$88	22
(9) If the physician accepted assignment the Medicare reasonable charge minus the amount paid by the employer plan is $100−$88	12

Since Medicare pays the lowest of the amounts determined under paragraph (a), the Medicare payment is $22 if the beneficiary filed for direct payment; $12 if the physician filed the claim under an assignment.

(e) *Effect of secondary payments on Part A utilization.* If Medicare pays secondary benefits, the beneficiary will be charged with utilization of Medicare benefits only to the extent that Medicare paid for the services.

(f) *Crediting expenses toward deductibles.* Expenses that would serve to meet the beneficiary's Part A or Part B deductible if Medicare were primary payer, will be credited to the deductible even if the expenses are reimbursed by the employer group health plan.

§ 405.329 Conditional payments and recovery of payments.

If the intermediary or carrier knows from experience or ascertains that the employer plan's payments in general are substantially less prompt than Medicare, it will pay conditional primary benefits. In that case—

(a) The claimant (beneficiary, provider, or supplier) must file a claim with the employer plan and, to the extent that the claimant receives payment, reimburse the amount that Medicare paid in excess of its obligation as secondary payer;

(b) If payment is not received from the employer plan for any reason, HCFA may bring an action against the employer plan, and the beneficiary must cooperate in HCFA's action;

(c) HCFA may, as a prerequisite to making the conditional payment, require the beneficiary to authorize it to pursue the beneficiary's right against the employer plan if the beneficiary does not, and to promise to cooperate in HCFA's action;

(d) HCFA may waive recovery action if the probability of recovery or the amount involved does not warrant pursuit of the claim.

(Catalog of Federal Domestic Assistance Program No. 13773, Medical—Hospital Insurance; and No. 13774, Medicare—Supplementary Medical Insurance)

Dated: April 5, 1982.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

Approved: April 23, 1982.

Richard S. Schweiker,
Secretary.

[FR Doc. 82-13312 Filed 5-14-82; 8:45 am]
BILLING CODE 4120-03-M

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Regulatory Flexibility Agenda

AGENCY: Federal Maritime Commission.

ACTION: Regulatory flexibility agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 (*et seq.*) the Commission anticipates having under consideration during the period from April 1, 1982 to October 31, 1981 actions in the areas listed below which are likely to have a significant economic impact on a substantial number of small entities.

DATES: None.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking procedures or the status of any matter listed below, contact Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573; (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which the agency may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. The agenda does not necessarily include petitions for rulemakings which are under staff review.

In addition, the Commission is publishing a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda (November 1981). Pursuant to section 602(d) of the Regulatory Flexibility Act, this list will be made available to the press and interested groups.

Francis C. Hurney,
Secretary.

I. Unpublished Rules

Title	Subject	Summary and Objective	Legal basis	Impact	Staff contact
Equal access to justice	Implementation of Commission's responsibilities under the Equal Access to Justice Act (Pub. L. 96-481, 5 U.S.C. 504 *et seq.*).	The Equal Access to Justice Act provides for reimbursement to persons who have been subjected to investigatory processes of government agencies and subsequently prevail on the merits. Proposed rule will prescribe procedures for implementation of this Act.	Equal Access to Justice Act (Pub. L. 96-481, 5 U.S.C. 504 *et seq.*); Section 43, Shipping Act, 1916 (46 U.S.C. 841a).	Unknown	Francis C. Hurney, Secretary (202) 523-5725.
Informal Dockets (46 CFR 502.301).	Petitions for reconsideration in informal complaint proceedings.	The Rules of Practice and Procedure (46 CFR 502) through a drafting oversight permit parties to file petitions for reconsideration after the Commission has determined not to review the decision of the Settlement Officer even though the parties by agreeing to the procedure under Subpart S (46 CFR 502.301) have no right to file exceptions to the decision. This rule would eliminate this inconsistency.	Sections 22 and 43, Shipping Act, 1916; (46 U.S.C. 820, 841a).	do	Do.
Exemption of vessel charters from Section 15.	Section 15 requirements for inbad charters.	This rule would exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, vessel charter arrangements between competitors for a short term or for a small portion of the fleets of the parties and vessel charters between non-competitors.	Sections 15, 35, Shipping Act, 1916 (46 U.S.C. 814, 833a).	None	Robert G. Drew, Director, Bureau of Agreements (202) 523-5787.
Exemption of terminal agreements.	Exemption of routine port and terminal agreements from the requirements of section 15 of the Shipping Act, 1916.	This rule would exempt from the filing and approval requirements of section 15 certain agreements relating to (a) the lease, license, assignment or other similar use of marine terminal real property; (b) the performance of traditional stevedoring services; (c) the use of dock, berth, apron, or pier space; (d) use of other terminal facilities at other than tariff rates; and (e) marine terminal services at other than tariff rates.	Sections 15, 35, Shipping Act, 1916 (46 U.S.C. 814, 833a).	do	Do.
Subjectivity of parties to terminal agreements to the Shipping Act, 1916.	Termination of "Not Subject" procedures for terminal agreements under 46 CFR 530.5a.	To eliminate an expensive and time consuming process for advisory opinions of the amenability of terminal agreements to the requirements of section 15 and to place this responsibility on parties to the agreements. This will probably involve a proposal to delete the last sentence of the guidelines set forth in 46 CFR 530.5(a).	Sections 1, 15, Shipping Act, 1916 (46 U.S.C. 801, 814).	do	Do.
Company policies to combat rebating.	Manner and form of annual certification.	General Order 43 (46 CFR 562) requires vessel operating common carriers to file with the Commission an annual certification of policies and efforts to combat rebating. The proposal would prescribe the certification to take the form of an annual tariff amendment.	Sections 18b, 21b, and 43, Shipping Act, 1916; (46 U.S.C. 817b, 820b and 841a).	Probably none	Daniel J. Connors, Director, Bureau of Tariffs (202) 523-5796.
Currency adjustment factors	Procedures and requirements for publishing currency adjustment factors in common carrier tariffs through amendment to the Commission's General Order No. 13 (46 CFR 536).	The proposed rule would establish a simplified and uniform procedure for the publishing and filing of currency adjustment factors in tariffs based upon changes in the exchange rate of the tariff currency.	Sections 18b and 43 of the Shipping Act, 1916 (46 U.S.C. 817b, 841a).	Unknown	Do.
Definition of non-vessel operating common carrier.	Applicability of General order 13 (46 CFR 536) to non-vessel operating common carriers.	The existing definition of carrier (46 CFR 536.26) incorporates the definition of non-vessel operating common carrier as contained in 46 CFR 510.21(d) (now 46 CFR 510.2(e)), which limits the definition to transportation from the United States. This change will correct the definition to include export and import movements.	Sections 18b and 43 of the Shipping Act, 1916 (46 U.S.C. 817b, 841a).	do	Do.
Filing and service fees	Revision of fee schedules	The Commission is authorized to recoup costs for services of value to a person through imposition of fees.	Independent Office Appropriation Act of 1950 (31 U.S.C. 483 (a)); OMB Circular A-25; section 43, Shipping Act, 1916 (46 U.S.C. 841a).	do	Samuel L. Simonovich, Office of Budget and Financial Management (202) 523-5770.
Foreign discrimination	Actions to adjust or meet conditions unfavorable to shipping in the foreign trades.	Review of 46 CFR Part 507, effective December 14, 1977 which was designed to deal with conditions created by the Government of Guatemala. See: Year 1, 10 year plan to review regulations pursuant to § 610 Regulatory Flexibility Act (5 U.S.C. 610).	See: 46 CFR Part 507	do	James K. Cooper, Managing Director (202) 523-5800.
Foreign tariff provisions	Green hide weighing practices.	Review of 46 CFR Part 534, effective May 5, 1964, which was designed to provide a uniform method of declaring weight of green salted hides. See Year 1, supra.	See: 46 CFR Part 534	do	Daniel J. Connors Director, Bureau of Tariffs (202) 523-5796.
Regulations to implement Economic Stabilization Act, 1970.		Review of 46 CFR Part 548, effective April 13, 1972. See Year 1, supra.	See: 46 CFR Part 548	do	C. Jonathan Benner General Counsel (202) 523-5740.

I. UNPUBLISHED RULES—Continued

Title	Subject	Summary and Objective	Legal basis	Impact	Staff contact
Carrier compliance with wage and price standards.		Review 46 CFR Part 536.61. See Year 1, supra.	See: 46 CFR Part 536.11	NA	Do.

II. PUBLISHED RULES

Docket No. FRN	Title	Summary and objective	Status—Target date	Legal basis	Impact	Staff contact
76-63; Nov. 23, 1976, June 20, 1979.	Filing of Agreements by Common Carriers by Water.	Comprehensive rule dealing with filing, notice, justification, comments, protests, and Commission consideration of agreements (46 CFR 528).	Pending issuance of final rule; June 1, 1982.	Sections 15, 43 Shipping Act, 1916 (46 U.S.C. 814, 841a).	NA	Francis C. Hurney, Secretary (202) 523-5725.
80-13; July 14, 1981, Jan. 5, 1982.	Licensing of Independent Ocean Freight Forwarders.	Revision of 46 CFR 510.23g regarding payment of freight forwarder compensation to steamship carriers or agents.	Pending decision; June 1, 1982.	Sections 43, 44 Shipping Act, 1916 (46 U.S.C. 841a, 841b).	NA	Do.
80-54; Aug. 20, 1980, Nov. 2, 1981.	Time-Volume Rates in Foreign Commerce of the U.S.	To provide uniform rules for filing of time/volume rates and insure compliance with 46 U.S.C. 817b.	Pending Bureau recommendation; June 30, 1982.	Sections 18b, 43 Shipping Act, 1916 (46 U.S.C. 817b, 841a).	Exempt under 5 U.S.C. 601(2).	Do.
80-58; Sept. 3, 1980, July 7, 1981, Sept. 3, 1981, Dec. 25, 1981.	Temporary Tariff Filings in Foreign Commerce of U.S.	To prohibit the publication of temporary tariff filings and to expand hours for acceptance of tariff matter.	do	do	Cert. of no sign. econ. impact on a substan. no. of small entities.	Do.
81-40; June 23, 1981	Exemption of Exclusive Equipment Interchange Agrmts.	Exemption of routine equipment interchange agrmts from an unnecessary regulatory burden to provide better and more flexible service.	Pending issuance of Final Rule; May 12, 1982.	Sections 15, 53 Shipping Act, 1916 (46 U.S.C. 814, 841a).	No impact reduction of present regulation.	Do.
81-50; Aug. 28, 1981	Per Container Rates Tariff Requirements.	Specification of form and manner of filing per container and per trailer rates. Amendment of 46 CFR Part 536.	Pending Commission action; June 30, 1982.	Sections 18b, 43 Shipping Act, 1916 (46 U.S.C. 817b, 841a).	Exempt under 5 U.S.C. 601(2).	Do.
81-51; Aug. 28, 1981	Time Limits on Filing Overcharge Claims.	Abolition of conference and carrier rules prohibiting settlement more than 6 months after shipment.	Pending General Counsel recommendation; June 4, 1982.	Sections 14 Fourth 15, 17, 18b, Shipping Act, 1916 (46 U.S.C. 812, 814, 816, 817b).	do	Do.
81-54; Sept. 9, 1981	Dual Rate Contract Systems.	To provide a rebuttable presumption that merchant paying freight charges has legal right to select the carrier.	Pending Bureau Recommendation.	Sections 14b, 43 Shipping Act, 1916 (46 U.S.C. 813a, 841a).	No sign. econ. impact on a substan. no. of small entities.	Do.
81-76; Dec. 28, 1981	Licensing of Independent Ocean Freight Forwarders.	Revision to comport with Pub. L. 97-35 permitting shipper affiliates.	Pending decision; May 25, 1982.	Sections 43, 44 Shipping Act, 1916 (46 U.S.C. 841a, 841b).	Cert. of no sign. econ. impact on substan. no. of small entities.	Do.
82-13; Mar. 12, 1982	Exemption of Bulk Cargo Moving in Containers.	Exemption of movements of bulk commodities carried in containers from tariff filing requirements in 46 CFR Part 536.	Comments due May 12, 1982; Aug. 1, 1982.	Sections 18b, 35 Shipping Act, 1916 (46 U.S.C. 817b, 833a).	No foreseeable impact reduction in present requirements.	Do.
82-16; Mar. 23, 1982	Removal of Regulations on Rate for Military Cargo.	Determination whether to repeal 46 CFR 549. See year 1, Ten Year Plan to Review Regulations pursuant to §610 Regulatory Flexibility Act (5 U.S.C. 610).	Comments due Apr. 22, 1982.	do	Cert. of no sign. econ. impact on substan. no. of small entities.	Do.
82-21; Apr. 6, 1982	Improvements in Prehearing and Discovery Procedures.	To provide for more prompt commencement and completion of discovery in formal proceedings.	Comments due June 7, 1982; Sept. 19, 1982.	See: 46 CFR Part 502.	do	Do.

III. FINAL RULES

Docket No.	Title	Summary and Objective	Status	Legal Basis	Impact	Staff Contact
80-13	Licensing of Independent Ocean Freight Forwarders.	Provision for handling cargo for charitable organizations at free or reduced rates.	Final Rule served April 8, 1982, 47 FR 16030 (Apr. 14, 1982).	See: 46 CFR 510.32j	Cert. of no sign. econ. impact on a substan. no. of small entities.	Jeremiah D. Hospital Chief, Office of Freight Forwarders, Bureau of Certification and Licensing (202) 523-5843.
80-70	Status of Bulk Commodities.	Statement of applicability of section 18b, Shipping Act, 1916 (46 U.S.C. 817b) to bulk commodities loaded into containers.	Interpretative Rule served March 8, 1982; 47 FR 10851, (Mar. 12, 1982); effect. date stayed until further order.	Section 18b, Shipping Act, 1916 (46 U.S.C. 817b). See: 46 CFR 530.18.	NA	Daniel J. Connors Director, Bureau of Tariffs (202) 523-5796.
81-18	Exemption of Agreements Covering the Collection, Compilation, and Exchange of Cred2 Information.	Elimination of Unnecessary Filing and approval requirements.	Final Rule served March 3, 1982; 47 FR 10217 (Mar. 10, 1982).	Sections 15, 35 Shipping Act, 1916 (46 U.S.C. 814, 833a). See: 46 CFR 524.2(a) and 524.3.	Cert. of no sign. econ. impact on a substan. no. of small entities.	Robert G. Drew Director, Bureau of Agreements (202) 523-5787.
81-36	Procedures for Environmental Policy Analysis.	Clarification of categorical exemptions and addition of new exemptions to environmental rules (46 CFR 547).	Final Rule served January 20, 1982, 47 FR 3359 (Jan. 25, 1982).	See: 46 CFR Part 547	Diminution of requirements. No impact.	Edward R. Meyer Director, Office of Energy and Environmental Impact (202) 523-5836.

[FR Doc. 82-13306 Filed 5-14-82; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 47, No. 95
Monday, May 17, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Comments on Applicant for Designation in the Area Currently Assigned to the Kansas State Grain Inspection Department (KS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for designation as the official agency in the area currently assigned to the Kansas State Grain Inspection Department (Kansas). The designation terminates August 31, 1982.

DATE: Comments to be postmarked on or before July 1, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–0231. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1982, issue of the **Federal Register** (47 FR 8730) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the area currently assigned to Kansas. Applications were to be postmarked by March 31, 1982.

One applicant requested designation for all of the geographic area currently assigned to Kansas. That applicant is Kansas State Grain Inspection Department, Topeka, Kansas, which applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicant for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than July 1, 1982.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicant will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Date: May 12, 1982.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 82-13330 Filed 5-14-82; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Availability; Legal Descriptions and Maps for National Forest Wildernesses in Alaska

The Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96–487, designated 14 wildernesses on the Tongass National Forest, Alaska, and placed the following areas in the National Wilderness Preservation System:

Admiralty Island Wilderness[1]
Coronation Island Wilderness[2]
Endicott River Wilderness[1]
Maurelle Islands Wilderness[2]
Misty Fiords National Monument Wilderness[2]
Petersburg Creek-Duncan Salt Chuck Wilderness[3]
Russell Fiord Wilderness[1]
South Baranof Wilderness[1]
South Prince of Wales Wilderness[2]
Stikine-LeConte Wilderness[3]
Tebenkof Bay Wilderness[2]
Tracy Arms-Fords Terror Wilderness[1]
Warren Island Wilderness[2]
West Chichagof-Yakobi Wilderness[1]

Section 103(b) of ANILCA provides that a legal description and map(s) of each wilderness shall be published in the **Federal Register** and filed with the President of the Senate, and the Speaker of the House of Representatives.

The legal description and maps for the involved units consist of about 88 single-spaced pages and 145 map sheets. Costs to publish this material in the **Federal Register** are estimated to be $73,400. In the interests of economy, this notice of availability is published to provide public notice that this material is on file for public inspection and may be reviewed by interested parties in the following offices:

Chief, Forest Service, USDA, South Agriculture Building, Room 4238, 12th and Independence Avenue, SW, Washington, DC 20013

Regional Forester, Alaska Region, Federal Office Building, Juneau, AK 99802 (all Wildernesses)

Forest Supervisor, Tongass-Chatham Area, Sitka, AK 99835 (Wildernesses with footnote 1)

Forest Supervisor, Tongass-Ketchikan Area, Federal Building, Ketchikan, AK 99901 (Wildernesses with footnote 2)

Forest Supervisor, Tongass-Stikine Area, Petersburg, AK 99833 (Wildernesses with footnote 3)

In compliance with ANILCA, the legal descriptions and maps have been sent to the President of the Senate and the Speaker of the House of Representatives.

Further information is available from Charles R. Joy, Forest Service, USDA, Recreation Management Staff, P.O. Box 2417, Washington, DC 20013, telephone (202) 447–2422.

Dated: May 7, 1982.

R. M. Housley,
Deputy Chief.

[FR Doc. 82-13294 Filed 5-14-82; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 40603]

Air Niagara Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated at Washington, D.C., May 12, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-13316 Filed 5-14-82; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Week Ended May 7, 1982

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Dated filed	Docket No.	Description
May 5, 1982	40662	Aero West Airlines, Inc. c/o David P. Cline, 12075 E. 45th Avenue, Suite 503, Denver, Colorado 80239. Application of Aero West Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to provide scheduled interstate air transportation in the following markets: Chicago, Illinois, Denver, Colorado, Las Vegas, Nevada, Burbank, California. Conforming Applications, motions to modify scope, and Answers may be filed by June 2, 1982.
May 5, 1982	40663	Lone Star Airways, Inc., c/o George T. Voisky, 1522 K Street, N.W. Suite 1030, Washington, D.C. 20005. Application of Lone Star Airways, Inc. pursuant to Section 401(b) of the Act and Subpart Q of the Board's Procedural Regulations requests that the Board approve (1) the transfer of Lone Star's certificate authorizing domestic scheduled operations to Lone Star Domestic, Ltd., d/b/a Lone Star Airways, Inc.; (2) the transfer to Lone Star Overseas, Ltd. d/b/a Lone Star Airways, Inc. of Lone Star's certificates authorizing foreign scheduled air transportation as well as those authorizing foreign oversees and domestic charter operations. Answers may be filed by June 2, 1982.
May 6, 1982	40668	The Flying Line Inc., 7401 World Way West International Airport, Los Angeles, California 90009. Application of The Flying Tiger Line Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests that its certificate of public convenience and necessity for Route 119 be amended to add Iceland as an additional point on its transatlantic route authority. Conforming Applications, motions to modify scope, and Answers may be filed by June 3, 1982.
May 6, 1982	40669	Airborne Express, Inc., c/o V. Michael Straus, Suite 401, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Airborn Express, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations for a certificate of public convenience and necessity authorizing scheduled and charter all-cargo service between points in the United States, on the one hand and points in Canada, Mexico and Puerto Rico, on the other hand. Conforming Applications, motions to modify scope, and Answers may be filed by June 3, 1982.
May 7, 1982	40675	Northwest Airlines, Inc., Minneapolis/St. Paul Intl Airport, St. Paul, Minnesota 55111. Application of Northwest Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a new certificate of public convenience and necessity for Route 9F permanently or temporarily authorizing Northwest to engage in the scheduled air transportation of persons, property and mail on an unrestricted basis between Billings, Montana and Calgary, Alberta, Canada. Conforming Applications, motions to modify scope, and Answers may be filed by June 4, 1982.
May 7, 1982	40674	Air Polynesia, Inc. t/a DHL Cargo, c/o Herbert A. Rosenthal, Hausman and Rosenthal, 2020 K Street, N.W. #350, Washington, D.C. 20006. Application of Air Polynesia, Inc. T/A DHL Cargo, pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests a certificate authorizing it to engage in the transportation of property and mail between the terminal point Honolulu, the intermediate points Kona, Maui (Kahului), Lanai, Lihue, Molokai, Kamuela, and Lipdu, and the terminal point Hilo. Conforming Applications, motions to modify scope, and Answers may be filed by June 4, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-13317 Filed 5-14-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Prestressed Concrete Steel Wire Strand From France; Postponement of Countervailing Duty Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of countervailing duty preliminary determination.

SUMMARY: The countervailing duty preliminary determination involving prestressed concrete steel wire strand ("PC strand") from France is being postponed because we have determined the investigation to be extraordinarily complicated. We intend to issue the preliminary countervailing duty determination not later than August 2, 1982.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 377-3534.

SUPPLEMENTARY INFORMATION: On March 24, 1982, we announced our initiation of the countervailing duty investigation to determine whether producers, manufacturers, or exporters of PC strand in France receive any benefits that are subsidies within the meaning of the countervailing duty law (47 FR 13397). The notice stated that we would issue a preliminary determination by May 28, 1982.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges that the government of France and the European Communities provide various programs which constitute subsidies to producers, manufacturers, or exporters of PC strand. The alleged subsidy practices are numerous and raise complex issues. Moreover, it is difficult to determine the extent of utilization of the programs by the manufacturers, producers, or exporters. We have determined that the government of France, the European Communities, and the other parties concerned are cooperating and that additional time is necessary to make the countervailing duty preliminary determination. For these reasons we determine that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and we intend to issue a countervailing duty preliminary

determination not later than August 2, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 10, 1982.

[FR Doc. 82-13347 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-25-M

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 81-00389. Applicant: Massachusetts Institute of Technology, National Magnet Laboratory, 150 Albany Street, Cambridge, MA 02139. Article: Polarizing Dispersive, Phase Modulated Fourier Transformed Spectrometer. Manufacturer: National Physical Laboratory, United Kindom. Intended use of article: See Notice on Page 58631 in the Federal Register of November 18, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article permits measurement of refractive index and absorption coeffecient of low-loss ceramic and crystalling materials in the millimeter and sub-millimeter wavelength range. The National Bureau of Standards advises in its memorandum dated march 2, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13348 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-25-M

University of Maine at Orono; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entery of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 81-00381. Applicant: University of Maine at Orono, Department of Zoology, Murry Hall, Orono, Maine 04469. Article: Flow Meter-4 Digital #2536-B. Manufacturer: Rigosha & Co., Ltd., Japan. Intended use of article: See Notice on page 51627 in the Federal Register of October 21, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket No. 81-00086, which was denied without prejudice to resubmission for informational deficiencies (August 5, 1981). The foreign article provides high sensitivity at low flow rates (threshold velocity is 5-6 centimeters/second and linear response is 6-12 centimeters/second). The National Bureau of Standards advises in its memorandum dated March 26, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign articles for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13349 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Public Meeting on Reorganization of Office of Product Standards Policy

Notice is hereby given that there will be a public briefing on the reorganization of the Commerce Department's Office of Product Standards Policy (OPSP) and the transfer of that office to the National Bureau of Standards (NBS). Details on the meeting are as follows:

Date: June 16, 1982.

Place: Green Auditorium of the NBS Administration Building, Gaithersburg, Maryland (off Interstate 270 at Quince Orchard Road).

Time: 1:30-5:00 p.m.

Agenda:

1:30—Opening Remarks—Dr. Ernest Ambler, Director, NBS

1:50—OPSP Overview—Dr. Stanley Warshall, Director, OPSP

2:00—Laboratory Accreditation—Mr. John Locke, Program Manager

2:15—Standards Code and Information—Mr. Walter Leight, Program Manager

2:30—Standards Coordination and Management—Mr. Donald Mackay, Program Manager

2:45—Weights and Measures—Mr. Albert Tholen, Program Manager

3:00—International Legal Metrology—Mr. David Edgerly, Program Manager

3:15—Discussion

4:30—Closing Summary—Dr. Stanley Warshaw

Purpose of Meeting: Secretary of Commerce Malcolm Baldrige recently approved the transfer of OPSP to NBS. Secretary Baldrige has assigned to the Bureau OPSP's responsibility for management of standards policy and coordination of government involvement in voluntary standards activities and has added to these existing NBS responsibilities for national and international legal metrology. The purpose of the meeting is to outline the policy directions the standards community can expect to see NBS pursue, to describe the organization and programs of OPSP, and to allow for comments and discussion with attendees.

Contact for Further Information: Mr. Donald R. Mackay, Manager, Standards Coordination and Mangement, Office of Product Standards Policy, National Bureau of Standards, Room A-100 Technology Building, Washington, DC 20234. Telephone [301] 921-2287.

Dated: May 12, 1982.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 82-13300 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Subpanel; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established a Surf Clam and Ocean Quahog Subpanel which will meet to discuss limited entry provisions of the Surf Clam/Ocean Quahog Fishery Management Plan.

DATE: The public meeting will convene on Friday, June 25, 1982, at 10 a.m., and will adjourn at approximately 4 p.m. The meeting may be lengthened or shortened or agenda items rearranged depending upon progress on the agenda.

ADDRESS: The meeting will take place at the Sheraton, Route 13, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: May 12, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13307 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council, Public Meeting With a Partially Closed Session and Public Meeting of its Scientific and Statistical Committee

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings with a partially closed session.

SUMMARY: As required by the Federal Advisory Committee Act, this notice sets forth the schedule and proposed agendas of the forthcoming separate public meetings of the Pacific Fishery Management Council and its Scientific and Statistical Committee. The Pacific Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), and the Council has established a Scientific and Statistical Committee to assist it in carrying out its responsibilities.

DATES: July 13-15, 1982.

ADDRESS: The meetings will take place at the Hacienda Airport Hotel, 525 Sepulveda Boulevard, El Segundao, California.

FOR FURTHER INFORMATION: Pacific Fishery Management Council, 526 SW., Mill Street, Second Floor, Portland, Oregon 97201, Telephone (503) 221-6352.

Agendas

Council (open meetings) July 14-15, 1982 (10 a.m. to 5 p.m. on July 14; 8 a.m. to 5 p.m., on July 15)—consideration of the FY 1983 Council budget matters, status of 1982 salmon fisheries and enchovy fishery management plan (FMP), and conduct a public comment period beginning at 3 p.m., on July 14.

Council (closed session) July 14, 1982 (8 a.m. to 10 a.m.)—discussion of the status of maritime boundary and resource negotiations between the U.S. and Canada. Only those Council members and selected staff having security clearances will be allowed to attend this closed session.

Scientific and Statistical Committee (open meetings) July 13-14, 1982 (1 p.m. to 5 p.m., on July 13; 8 a.m. to 5 p.m. on July 14)—consideration of anchovy management issues; evaluate and develop recommendations on issues referred to the Committee by the Council; conduct a public comment period beginning at 3:30 p.m. on July 14.

The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on February 10, 1982, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda item covered in the closed session is exempt from the provisions of the Act relating to open meetings and public participation therein, because the meeting will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1), as information which will disclose matters that are (A) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such executive order. (A copy of the determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce.) All other portions of the Council's meeting will be open to the public.

Dated: May 12, 1982.

Jack L. Falls,

Chief, Administrator Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13308 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Application for Approval To Transfer Ownership of a U.S. Vessel to a U.S. Corporation More Than 25 Percent Foreign Owned

AGENCY: National Marine Fisheries Service, National Oceanic and Atomospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: Anthony Carri, 27 Maplewood Drive, Clinton, Connecticut 06413 has applied to the Maritime Administration (MarAd), Department of Trasportation, for approval to transfer ownership of the vessel Mollie B ex Canonicus (O.N. 584178, built 1977, reg. length 43.8') to Steel Pipe Repairs, Inc., 180 Locust Avenue, Bronx, New York 10455. The contemplated transfer would subject the vessel to ownership of a U.S. Corporation more than 25 percent foreign owned. Reportedly, the vessel would be transferred to Dominican Republic registry and operated in the fisheries of that country.

Request for comments: Interested persons are invited to send written comments to Michael L. Grable, Financial Services Division, Attention: John A. Kelly, Jr., National Marine Fisheries Service, National Oceanic and Atomospheric Administration, Washington, D.C. 20235. All comments must be postmarked no later than June 16, 1982.

SUPPLEMENTARY INFORMATION: Application for approval of the transfer was received by MarAd April 7, 1982. Approval is required by Section 9 of the Shipping Act, 1916, as amended (46 U.S.C. 808) because *Moille B* is a documented vessel and because Steel Pipe Repairs, Inc., a U.S. Corporation, is not a citizen of the United States within the meaning of Section 2 of the Act (46 U.S.C. 802). Where a foreign transfer involves a fishing vessel, MarAd customarily requests the National Marine Fisheries Service (NMFS) to review the application and give clearance. Clearance has been requested from NMFS in this case. Accordingly we are soliciting the views of interested persons in regard to this application and will convey them to MarAd with our recommendation. Generally our recommendation will be favorable unless it si concluded that the

transfer will adversely affect the particular segment(s) of the U.S. commercial fishery involved. In this case an important consideration is that the purchaser meets Coast Guard eligibility requirements for documenting the vessel in the fisheries of the United States and does not need MarAd approval to later return her to U.S. registry. The significance of this possibility is diminished, however, by the fact that a U.S. Corporation under foreign control may contract for the construction within the United States of a fishing vessel for documentation in the fisheries of the United States. No public hearing is contemplated at this time.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr., (202) 634-7486 (this number is not a toll-free number).

Dated: May 11, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-13355 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Applications for Approval To Transfer Ownerships of Two U.S. Vessels to a U.S. Corporation Under Foreign Control

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: Applications have been received by the Maritime Administration (MarAd), Department of Transportation, for approval to transfer to Whitney-Fidalgo Seafoods, Inc., 2360 Commodore Way, Seattle, Washington 98199, ownership of the vessels *Katherine M* (O.N. 227723, built 1928, reg. length 60.6') and *Luxor* (O.N. 228730, built 1927, reg. length 59.4') owned by Sea Fisheries, Inc. and M/V Viking, Inc., respectively. Address of both companies is 2336 Magnolia Bvlvd. West, Seattle, Washington 98199. The contemplated transfers would subject the vessels to foreign control since Kyokuyo Company, Ltd., a Japanese corporation, owns 99.26 percent of the stock of Whitney Fidalgo Seafoods, Inc. Both vessels would be operated by Whitney-Fidalgo Seafoods in the fishery for salmon in Puget Sound.

Request for Comments: Interested persons are invited to send written comments to Michael L. Grable, Financial Services Division, Attention John A. Kelly, Jr., National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. All comments must be postmarked no later than 30 days after the date this notice is published.

SUPPLEMENTARY INFORMATION: Applications for approval of the transfers were received by MarAd March 30, 1982. Approvals are required by Section 9 of the Shipping Act, 1916, as amended (46 U.S.C. 808) because Whitney Fidalgo Seafoods, Inc., a U.S. corporation, is not a citizen of the United States within the meaning of Section 2 of the Act (46 U.S.C. 802). The Maritime Administration is the Federal agency responsible for the approval or disapproval of applications submitted pursuant to the Shipping Act. Where a foreign transfer involves a fishing vessel, MarAd customarily requests the National Marine Fisheries Service (NMFS) to review the application and give clearance. Clearance has been requested from NMFS for these applications. Accordingly we are soliciting the views of interested persons in this regard and will convey them to MarAd with our recommendations. Generally a recommendation will be favorable unless it is concluded that the transfer will adversely affect the particular segment(s) of the U.S. commercial fishery industry involved. No public hearing is contemplated at this time.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr., (202) 634-7486 or Phillip M. Behr (206) 527-6122 (these numbers are not toll free numbers).

Dated: May 11, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-13356 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: The Durov Zoo Animals World (P295), 129090 Moscow, U.S.S.R.
2. Type of Permit: Public Display
3. Name and Number of Animals: California sea lions (*Zalophus californianus*)—2
4. Type of Take: To obtain rehabilitated beached/stranded animals from the United States
5. Location of Activity: Marineland of the Pacific, Rancho Palos Verdes, California
6. Period of Activity: 2 years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 16, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

(i) A certification from such appropriate government agency verifying the information set forth in the application;

(ii) A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

(iii) A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Ministry of Culture of the U.S.S.R.

and the Veterinary Commission of the City of Moscow have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 11, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-13362 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mr. Michael Graybill (P304), Oregon Institute of Marine Biology, University of Oregon, Charleston, Oregon 97420
2. Type of Permit: Scientific Research
3. Name and Number of Animals: Harbor seals (Phoca vitulina)—up to 200
4. Type of Take: Potential harassment while observing and censusing.
5. Location of Activity: Pigeon Pt., Oregon
6. Period of Activity: 2 years

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 16, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices.

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: May 11, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-13363 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Modification of Permit No. 317 (P6C)

On February 23, 1981, Notice was published in the **Federal Register** (46 FR 13541) that a permit had been issued to the National Zoological Park, Smithsonian Institution, Washington, D.C. 20008, authorizing the importation of specimen material of gray seals taken in Canada. The Permit Holder has submitted a request to modify the Permit as follows:

Section A–2 be changed to read as follows:

A. 2. Specimen material from up to 100 gray seals (*Halichoerus grypus*) which are taken by the Government of the United Kingdom may be imported.

Section B–1 is changed to read as follows:

B. 1. The authorized activities shall be conducted by the means and for the purposes set forth in the application and documents submitted in the modification.

The Permit as modified and documentation pertaining to the proposed modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: May 11, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-13364 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 6, 1982.

The dates for the meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Turbine Engine Monitoring Systems as published in the **Federal Register**, Volume 47, No. 73, Page 16, Thursday, April 15, 1982 have been changed. The new meeting dates are August 10 and 11, 1982. All other information remains the same.

For further information contact the SAB Secretariat at (202) 697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-13309 Filed 5-14-82; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 5, 1982.

The USAF Scientific Advisory Board Ad Hoc Committee on Air-to-Air Missile Requirements will meet at Los Angeles Air Force Station, California, on 21 and 22 June 1982. The purpose of the meeting will be to review air-to-air missile requirements for air defense of the United States. The meeting will convene at 0900 and adjourn at 1700 on the 21st and will convene at 0900 and adjourn at 1700 on the 22nd.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-13309 Filed 5-14-82; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Committee has been scheduled as follows: Monday, 14 June 1982, Plaza West, Rosslyn, Virginia.

The entire meeting, commencing at 0900 hours is devoted to the discussion

of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on the Department of Defense Intelligence Information System.

Dated: May 11, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-13291 Filed 5-14-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Committee has been scheduled as follows: Wednesday, 30 June 1982, Plaza West, Rosslyn, Virginia.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on Soviet naval trends.

Dated: May 11, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-13292 Filed 5-14-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Thursday, 1 July 1982, Plaza West, Rosslyn, Virginia.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on the REIS program.

Dated: May 11, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-13293 Filed 5-14-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume No. 59]

Availability of Federal Power Commission Reports

Notice is hereby given that Volume No. 59 of the Federal Power Commission Reports, the last of the FPC series, is available for purchase at the United States Government Printing Office Bookstore. These volumes contain Federal Power Commission (Federal Energy Regulatory Commission's predecessor) opinions, orders, and precedential procedural orders.

Persons interested in purchasing Volume 59 covering the period July 1 through September 30, 1977, may remit $35.00 for GPO Stock #061-002-000-77-4 to the following address:

Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13278 Filed 5-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. DP81-188-001]

Consolidated Gas Supply Corp.; Petition To Amend

May 11, 1982.

That notice that on April 23, 1982, Consolidated Gas Supply Corporation (Petitioner), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-188-001 a petition to amend the order issued August 1, 1981, in Docket No. CP81-188 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas to Niagara Mohawk Power Corporation (Niagara) until October 31, 1983, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued August 19, 1981, Petitioner was authorized to transport and deliver up to 65,000 dekatherms equivalent of natural gas per day to Niagara for use in the generation of electric power at Niagara's Albany steam plant. It is asserted that the authorization was for a limited term expiring July 31, 1982. Petitioner proposes herein to continue the transportation of natural gas to Niagara until October 31, 1983.

Petitioner further requests that the gas sold in the nonjurisdictional direct sale to Niagara not be considered in designing Petitioner's jurisdictional rates and that it be permitted to retain all revenues from the direct sale of natural gas to Niagara.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13283 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-54-000]

Kansas City Power & Light Co.; Notice of Application

May 10, 1982.

Take notice that on May 3, 1982, Kansas City Power and Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $200,000,000 principal amount of short-term debt to be issued prior to June 30, 1984, with maturities not later than June 30, 1985.

Any person desiring to be heard or to make any protest with reference to the application should, on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13284 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. G-2602-001, et al.]

Marathon Oil Company, et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

May 10, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition to pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 26, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed with the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000[2]	Pressure base
G-2602-001, D, Apr. 26, 1982	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Natural Gas Pipeline Company of America Rooke, Plymouth and Portilla Fields, San Patricio and Refugio Counties, Texas.	(3)	
G-11630-000, D, Apr. 26, 1982	....do	Natural Pipeline Company of America Rooke, Plymouth and Portilla Fields, San Patricio and Refugio Counties, Texas.	(3)	
G-13963-000, D, Apr. 30, 1982	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	Northern Natural Gas Company, Roeston Field, Beaver County, Oklahoma.	(3)	
G-19788-000, D, Apr. 29, 1982	....do	Northern Natural Gas Company, Crossett Plant, Upton County, Texas.	(3)	
C160-502-000, D, Apr. 29, 1982	....do	Northern Natural Gas Company, Wilburton Field, Morton County, Kansas.	(3)	
C163-181-000, D, May 3, 1982	....do	Ringwood Gathering Co. (formerly Oklahoma Natural Gas Gathering Co.), Ringwood Field, Major County, Oklahoma.	(3)	
C163-479-000, D, May 3, 1982	....do	Cities Service Gas Company, Hobart Ranch Field, Hemphill County, Texas.	(3)	
C168-929-000, D, Apr. 30, 1982	....do	Northern Natural Gas Company, N. E. Oates Field, Pecos County, Texas.	(3)	
C162-1041-000, D, May 30, 1982	....do	Northern Natural Gas Company, Tippett Gas Plant, Pecos and Crockett Counties, Texas.	(3)	
C166-1283-001, D, May 3, 1982	....do	Cities Service Gas Company, South Bishop Field, Ellis County, Oklahoma.	(3)	
C175-227-001, D, Apr. 30, 1982	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102.	Kansas-Nebraska Natural Gas Company, Bradshaw Field, Hamilton county, Kansas.	(3)	
C176-160-001, D, Apr. 30, 1982	Sun Exploration and Production Company, (formerly Sun Oil Company), P.O. Box 20, Dallas, Texas 75221.	El Paso Natural Gas Company, Lahuerta and Golden Lane Fields, Eddy County, New Mexico.	(4)	
C176-666-001, Apr. 21, 1982	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Grand Isle Area Field, Offshore Louisiana.	(5)	15.025
C176-684-002, C, Apr. 30, 1982	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, High Island Blocks A-302, A-303, and A-316, Offshore Texas, Federal Domain.	(6)	14.73
C181-111-001, C, May 3, 1982	American Petrofina Company of Texas, P.O. Box 2159, Dallas, Texas 75221.	United Gas Pipe Line Company, Henderson Field, Rusk County, Texas.	(7)	14.65
C181-195-001, C, Apr. 28, 1982	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, West Cameron Block 238, Offshore Louisiana.	(8)	15.025
C182-215-001, Apr. 30, 1982	Aminoil USA, Inc., Golden Center One, 2800 North Loop West, P.O. Box 94193, Houston, Texas 77018.	Natural Gas Pipeline Company of America, Block A-499 Field, High Island Area, South Addition, Offshore Texas.	(9)	14.73
C182-240-000 (C184-1077), B, Apr. 27, 1982.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, Palacios Field, Matagorda County, Texas.	(10)	
C182-241-000, A, Apr. 29, 1982	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	United Gas Pipe Line Company, West Cameron Block 637, X-70 Reservoir, Offshore Louisiana.	(11)	15.025
C182-242-000, (C167-110), B, Apr. 25, 1982.	Grace Petroleum Corporation, Broadway Executive Park, 6501 North Broadway, Oklahoma City, Oklahoma 73116.	Cities Service Gas Company, Redrock Field, Noble County, Oklahoma.	(12)	
C182-243-000, A, Apr. 4, 1982	Texasgulf Inc., 1100 Milam Building, Suite 3000, Houston, Texas 77002.	Southern Natural Gas Company, Eugene Island Block 108, OCS-G-3811, Offshore Louisiana.	(13)	15.025
C182-244-000, A, Apr. 30, 1982	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, High Island Blocks A-351 and A-368 Field, Offshore Texas.	(14)	14.73
C182-245-000, A, Apr. 30, 1982	Natresco Incorporated, P.O. Box 1521, Houston, TExas 77001.	Michigan Wisconsin Pipe Line Company, High Island Blocks A-351 and A-368 Field, Offshore Texas.	(14)	14.73
C182-247-000, A, May 4, 1982	Ashland Exploration, Inc., P.O. Box 391, Ashland, Kentucky, 41114.	Texas Gas Transmission Corporation, Oak Hill West Field, Hopkins County, Kentucky.	(15)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000³	Pressure base
CI82-248-000, B, May 3, 1982	Delta Corporation, 2820 Liberty Tower, Oklahoma City, Oklahoma 73102.	Cities Service Gas Company, Eureka Field, Grant County, Oklahoma.	(14)	

[1] By Partial Release and Designations of Retained Acreage dated December 15, 1954, Plymouth Oil Company released to the Lessors all rights, title and interest in certain non-productive acreage. Marathon Oil Company is successor in interest to Plymouth Oil Company.
[2] Shell Oil Company is no longer able to render service from the acreage involved in this application because it has no interest in the acreage.
[3] Cities Service Company, by a Release of Oil and Gas Lease dated May 17, 1979 and a Release of Oil and Gas Leases dated December 9, 1980, has released all of its right, title and interest in the leases set out therein. Those leases were beyond their primary term and were not held by any other production, therefore, said leases have terminated and have reverted back to the owners.
[4] Sun released rights to this property because all economically recoverable reserves had been depleted.
[5] Applicant is filing under Gas Contract dated June 7, 1976, amended by amendatory agreement dated April 2, 1982, requesting to change the depth limitation to cover sands from the surface of the earth to the base of the LQ Sand.
[6] Applicant is filing under Gas Sales Agreement dated June 8, 1978, as amended, amended by amendment dated March 29, 1982.
[7] Applicant is filing under Gas Purchase Contract dated October 15, 1980, amended by Supplemental Gas Purchase Contract dated November 18, 1980, and February 27, 1982.
[8] Applicant is filing under Gas Purchase Contract dated December 1, 1980, amended by Amendment dated March 29, 1982.
[9] Applicant is filing under Gas Purchase Contract dated February 3, 1982, amended by Amendment dated April 16, 1982, requesting to change delivery point.
[10] Leases dedicated to contract expired when production ceased.
[11] Applicant agrees to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the Natural Gas Policy Act of 1978 and the Commission's Regulations under said Act.
[12] Production from Section 7-23N-1W was dedicated to a Cities Service gas gathering system with 800 to 900 lb. linepressure, for which Cities Service terminated the gas purchase contract on April 16, 1970 due to the property no longer producing gas in commercial quantities.
[13] Applicant is filing under Gas Purchase Contract dated June 4, 1981.
[14] Applicant agrees to accept an initial rate consistent with that prescribed by the Natural Gas Policy Act of 1978.
[15] Applicant is filing under Gas Sales Contract dated October 2, 1979.
[16] Gas production lost—well dry—reserves depleted.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 82-13285 Filed 5-14-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-288-000]

Michigan Wiconsin Pipe Line Co. and Michigan Consolidated Gas Co.; Notice of Application

May 11, 1982.

Take notice that on April 16,,1982, Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, and Michigan Consolidated Gas Company (Consolidated), 500 Griswold Avenue, Detroit, Michigan 48226, filed in Docket No. CP82-288-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of lateral pipeline and associated measurement facilities necessary to establish a new delivery point for Wisconsin Public Service Company (Public Service), the displacement of various quantities of gas for Consolidated, and incident to the establishment of the delivery point for Consolidated, the exchange of supplies of nautral gas with Consolidated, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that Public Service purchases natural gas supplies from Mich Wis. pursuant to Rate Schedule CD-1 of Mich Wis' FERC Gas Tariff, Original Volume No. 1 and Public Service has requested Mich Wis to establish a new delivery point in Niagara Township, Marinette County, Wisconsin, to enable Public Service to provide natural gas service to GAF Corporation's Kremlin plant in the town of Pembine, Marinette County, Wisconsin. As the location of the proposed delivery point is proximate to Consolidated's mainline transmission system in the Upper Penninsula of Michigan, Mich Wis states that it has solicited Consolidated's assistance in establishing such point. In accordance with Mich Wis' proposal, it would construct a lateral pipeline connecting Consolidated's mainline to the proposed new delivery point for Public Service and would construct and operate the following facilities necessary to effectuate deliveries of gas to such point:

(1) 4.6 miles of 4½-inch O.D. pipeline in Dickinson County, Michigan, and Marinette County, Wisconsin; and

(2) Associated gas measurement facilities located proximate to the interconnection of the lateral pipeline with the facilities of Consolidated in Dickinson County, Michigan.

Applicants estimate the total cost of the above-described facilities to be $726,310 which would be financed by Mich Wis with funds on hand.

Mich Wis further proposes to exchange a daily quantity of up to 2,650 dekatherms (dt) equivalent of gas pursuant to the terms of a gas displacement and exchange agreement dated April 5, 1982. It is stated that Consolidated would make deliveries to Mich Wis for exchange service at its Vulcan city gate station Dickinson County, Michigan, where Mich Wis' lateral pipeline would be connected. It is further stated the that Mich Wis would concurrently redeliver equivalent quantities of gas to Consolidated at any one of all of the following existing points of interconnection between the facilities of Consolidated and Mich Wis:

(1) The Menominee No. 2 meter station, Menominee Township, Menominee County, Michigan;

(2) The Crystal Falls meter station, Crystal Falls Township, Iron County, Michigan; and

(3) The Willow Run meter station, Ypsilanti Township, Washtenaw County, Michigan.

Applicants assert that as consideration for Consolidated participating in the exchange service and as further provided in the agreement Mich Wis has agreed to assist Consolidated in displacing from Consolidated's River Rouge Station to Consolidated's Willow Run Station a quantity of natural gas of up to 25,000 dt equivalent per day during the months of July, August, and September. It is stated that Consolidated would cause supplies of natural gas to be delivered to Mich Wis for displacement service at Mich Wis' Definance compressor station, Definance County, Ohio, and Mich Wis would redeliver equivalent quantities of gas to Consolidated at the Willow Run meter station. It is further asserted that Consolidated would be solely responsible for making suitable arrangements to effectuate the deliveries of gas to Mich Wis at the Definance delivery point.

Consolidated also requests that the Commission issue a declaratory order to the effect that Consolidated's Utility Division, notwithstanding the exchange of natural gas with Mich Wis, remains exempt from the provisions of the Natural Gas Act under Section 1(c) thereof.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13206 Filed 5-14-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES82-53-000]

Montana-Dakota Utilities Co., Application

May 10, 1982.

Take notice that on April 30, 1982, Montana-Dakota Utilities Company (Applicant) filed an Application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to $45,000,000 principal amount of its First Mortgage bonds, via negotiated placement.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before May 27, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13207 Filed 5-14-82; 8:45 am]
BILLING CODE 717-01-M

[Docket No. CP80-274-001]

Mountain Fuel Supply Co. and Mountain Fuel Resources, Inc.; Amendment to Application

May 11, 1982.

Take notice that on April 2, 1982, Mountain Fuel Supply Company (Mountain Fuel), 180 East First South Street, Salt Lake City, Utah 84139, and Mountain Fuel Resources, Inc., (Resources), Suite 1540, 36 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP80-274-001 an amendment to their application in the instant docket filed pursuant to Section 7 of the Natural Gas Act so as to reflect the impact of stipulations and an agreement executed by Applicants and certain Utah and Wyoming interveners herein and filed and approved in proceedings before Utah and Wyoming state public service commissions, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants submit that in their application they requested permission and approval for Mountain Fuel to abandon by transfer to Resources certain interstate transmission facilities and appurtenances, gas purchase agreements, sales and other transmission services as well as authorization for the acquisition by Resources of the transmission facilities and gas purchase agreements to be abandoned by Mountain Fuel, the operation by Resources of the transmission facilities to be abandoned, and the continuation by Resources of the interstate sales and other interstate transmission services to be abandoned by Mountain Fuel.

Applicants state that a settlement agreement has been reached at the state level concerning the ownership of certain properties and products, the allocation of benefits and obligations, and the manner in which the exploration and production operations of Mountain Fuel and its affiliates would be conducted. It is further stated that pursuant to such agreement Mountain Fuel would retain ownership of natural gas produced from defined productive gas reservoirs and would purchase natural gas produced from defined productive oil reservoirs from Wexpro Company (Wexpro). Accordingly, Applicants submit that is is no longer proposed that Resources purchase natural gas from either productive gas or productive oil reservoirs as those terms are used in the aforementioned settlement agreement.

It is asserted that in order to conform to the stipulations and agreement it is necessary to amend the instant application so as to delete from Exhibit P all costs attributable to such formerly proposed purchases by Resources and further to revise Exhibit P so as to reflect that Resources would be providing transportation service for that gas which under the settlement agreement Mountain Fuel owns in productive gas reservoirs or would purchase from certain productive oil reservoirs owned by Wexpro.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 1, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13208 Filed 5-14-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-297-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

May 11, 1982.

Take notice that on April 23, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-297-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 24 small volume sales measuring stations for the sale and delivery of additional volumes of natural gas in the states of Minnesota, Kansas, South Dakota, Iowa, Nebraska, Montana, Wisconsin, Colorado and

Texas, all as more fully set forth in the application which is on file with the Commission and open to public.

Applicant proposes to provide natural gas service to persons who have granted Applicant right-of-way easements to construct and operate pipeline facilities across their property. It is stated that such service would be made to small volume [1] industrial, commercial and residential customers.

Applicant proposes to install and operate 21 small volume measuring stations in Minnesota, Colorado, South Dakota, Iowa, Nebraska, Kansas and Texas which are required to make the sale of natural gas to customers through Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples). It is stated that the volumes to be delivered would be provided from People's presently authorized contract demand.

Applicant further proposes to construct and operate one small volume measuring station in Wisconsin which is required to make sales of natural gas to a customer through St. Croix Valley Natural Gas (St. Croix). It is submitted that the firm volumes to be delivered would be provided from St. Croix's presently authorized contract demand.

Moreover, Applicant proposes to provide natural gas service to two right-of-way grantors in Hill County, Montana. Applicant proposes to construct and operate the delivery stations required to make direct sales and deliveries of natural gas volumes to these new Montana customers. It is explained that the proposed service would be rendered pursuant to the terms of farm tap service contracts between Applicant and the new customers.

Applicant more fully describes the 24 proposed small volume sales measuring stations as follows:

Right-of-Way grantor	Location
Peoples:	
Abbott, C. W.	Dodge, NE.
Boone Park, Inc.	Boone, IA.
Cernensky, Joseph	LeSueur, MN.
Eckhoff, Elroy	Renville, MN.
Fisher, Curtis	Blue Earth, MN.
Flor, John	Freeborn, MN.
Hahn, Joe	Saline, NE.
Jagush, George	Todd, MN.
Kastle, Tom	Dodge, NE.
Kosman-Garten, Inc.	Mesa, CO.
Nizzi, Lloyd	Dallas, IA.
Rantdazzo, James V.	Mesa, CO.
Scharing, Eldon	Stafford, KS.
Seath, Merlin	Freeborn, MN.
Severson, Donald	Olmstead, MN.
Sims, Randy	Seward, KS.
Sisters, Guss	Hamlin, SD.
Stark, Robert	Morton, CO.
Sutton, Tom	Ochiltree, TX.
Tietjen, Kim	Saline, NE.

[1] As defined in Applicant's Gas Tariff, customers with maximum daily gas requirements under 200 Mcf are considered small volume customers.

Right-of-Way grantor	Location
Tonn, Allan	Stevens, MN.
St. Croix: Most, William	Pierce, WI.
Applicant:	
Boyuls, Kermit V.	Hill, MT.
Wilkins, David	Hill MT.

Applicant estimates the cost of the proposed facilities to be $47,537 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission of its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13299 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-298-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

May 11, 1982.

Take notice that on April 23, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2233 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-298-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation of certain compressor facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to remove one 9,100 horsepower compressor unit from its Beatrice, Nebraska, compressor station and relocate and operate the 9,100 horsepower compressor unit and appurtenant facilities at its Plainview, Texas, compressor station. Applicant asserts that the relocation of the Beatrice unit is warranted by the reduced flow into Applicant's primary market area caused by the input of gas from Northern Border Pipeline Company at Ventura, Iowa, Welcome, Minnesota, and Aberdeen, South Dakota.

Applicant explains that a fire damaged the 9,100 horsepower compresor unit at its Clifton compressor station which compressor was replaced with the one from Plainview. It is further submitted that Applicant's need to deliver volumes to others in the south end of its system has increased in the recent past necessitating reinstallation of a 9,100 horsepower unit at Plainview.

Applicant asserts that the cost of the proposed activities is estimated at $1,283,684 which would be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13270 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10699-000]

Panhandle Eastern Pipe Line Co.; Petition to Amend

May 11, 1981.

Take notice that on April 28, 1982, Panhandle Eastern Pipe Line Company (Petitioner), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. G-10699-000 a petition to amend the order issued July 9, 1959,[1] in Docket No. G-10699 pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase in deliveries of natural gas to Lebanon Chemical Corporation (Lebanon), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is asserted that Lebanon uses natural gas to dry granulated fertilizer during the production of chemical fertilizer at its plant in Danville, Illinois. It is further stated that the plant is currently planning to increase production in anticipation of greater demand for its product due to improving economic conditions. In order to facilitate this increased production, it is stated that Lebanon has requested an increase in the volumes of gas delivered by Petitioner from 200 Mcf per day to 275 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13271 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-491-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

May 11, 1982.

Take notice that on April 26, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-491-002 a petition to amend the order issued November 20, 1978, in Docket No. CP78-491 pursuant to Section 7(c) of the Natural Gas Act so as to authorize a reduction in the maximum daily volume of natural gas transported for Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued November 20, 1978, Petitioner was authorized to transport up to 25,000 Mcf of natural gas per day which Alabama-Tennessee had agreed to purchase from Sunmark Exploration Company (Sunmark). It is asserted that the maximum daily volume was reduced to 19,835 Mcf per day effective November 1, 1980, as purchases fell below a level of 96 percent of Alabama-Tennessee's purchase entitlement for a given 12-month period.

Petitioner states that by letter dated January 1, 1981, the transportation contract was amended by reducing the maximum daily volume of the contract from 19,835 Mcf per day to 13,000 Mcf per day effective January 1, 1981. Petitioner proposes herein to reduce the maximum daily volume of gas transported from 19,835 Mcf per day to 13,000 Mcf per day effective January 1, 1981. Such reduction, it is asserted, has become necessary due to lower than anticipated production of the reserves purchased from Sunmark.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13272 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-83-001]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

May 11, 1982.

Take notice that on April 21, 1982, Transcontinental Gas Pipe Line Corporation (Petitioner), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP81-83.001 a petition to amend the order issued February 8, 1982, in Docket No. CP81-83 pursuant to Section 7(c) Natural Gas Act so as to authorize an increase in the contract demand quantity of natural gas to be transported for Southern Natural Gas Company (Southern), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued February 8, 1982, it is stated that Petitioner was authorized to transport on a firm basis up to 6,000 Mcf of natural gas per day for Southern. Petitioner asserts that for such service Southern agreed to pay a monthly demand charge of $18,720 with Petitioner initially retaining 1.2 percent of the quantities transported as compressor fuel and line loss make-up.

It is stated that by amendatory agreement dated March 4, 1981, Petitioner and Southern agreed to increase the contract demand quantity to 9,000 Mcf per day and as a result to increase the monthly demand charge to $28,080. It is further asserted that in the amendment Petitioner and Southern also clarified the agreement in that the transportation to be rendered by Petitioner would be for Southern both individually and as agent for Amoco Production Company.

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[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13273 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-93-001]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

May 11, 1982.

Take notice that on April 28, 1982, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP81-93-001 a petition to amend the order issued February 8, 1982, in Docket No. CP81-93 pursuant to Section 7(c) of the Natural Gas Act so as to authorize a decrease in the contract demand quantity transported for United Gas Pipe Line Company, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued February 8, 1982, Petitioner states that it was authorized to transport up to 13,300 Mcf of natural gas per day for United both individually and as agent for Amoco Production Company. It is stated that United agreed to pay Petitioner a monthly demand charge of $41,496 with Petitioner initially retaining 1.2 percent of the quantities transported as compressor fuel and line loss make-up for the proposed service.

It is asserted that by amendatory agreement dated March 7, 1981, Petitioner and United agreed to decrease the contract demand quantity to 9,000 Mcf per day and as a result to decrease correspondingly the monthly demand charge to $28,080. Petitioner requests herein authorization for such changes.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13274 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP76-469-004]

United Gas Pipe Line Co.; Petition To Amend

May 11, 1982.

Take notice that on April 20, 1982, United Gas Pipe Line Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP76-469-004 a petition to amend the order issued September 13, 1979, as amended, in Docket No. CP76-469 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for the account of Southern Natural Gas Company (Southern) from an additional point of receipt, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued September 13, 1979, as amended, it was authorized to transport up to 4,550 Mcf of natural gas per day from Southern's reserves in West Cameron Block 586, offshore Louisiana, which gas Southern delivers to Stringray Pipeline Company (Stingray) at a point on Stringray's line in West Cameron Block 595 and Petitioner redelivers such gas in Vermilion Parish, Louisiana.

Pursuant to an amendatory transportation agreement dated August 28, 1981, it is stated, Southern requests the transportation of recent purchases of gas in West Cameron Blocks 537, 551, 552, and 560, offshore Louisiana. Such gas, it is submitted, would be delivered to Petitioner through a previously authorized point in West Cameron Block 537, offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 1, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it is determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13275 Filed 5-14-82; 8:45 am]

BILLING CODE 6717-01-M

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Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 10, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-AMERADA HESS CORPORATION			RECEIVED:	04/19/82		JA: LA			
8228337	81-2807	1709900664	108			S L 411 #6 NRA SUA	LAKE CHICOT	19.6	FLORIDA GAS TRANS
-ART MACHIN & ASSOCIATES INC			RECEIVED:	04/19/82		JA: LA			
8228313	81-2697	1711920282	103			S R CRAFT #1 PET RA SUNN	NORTH SHONGALOO - RED	18.0	UNITED GAS PIPE L
-FRANKS & PETROFUNDS INC			RECEIVED:	04/19/82		JA: LA			
8228326	81-2698	1701320482	103			CRAWFORD #1 MOSS B SUJ	SAILES	110.0	LOUISIANA GAS PUR
-GAS RESOURCES INC			RECEIVED:	04/19/82		JA: LA			
8228323	81-2891	1706720627	108			LEVEQUE HEIRS #3	MONROE GAS	3.5	CENTRAL TRANSMISS
-GLENDA PETROLEUM CORP			RECEIVED:	04/19/82		JA: LA			
8228343	81-2706	1711123104	103			GLENDA P 12 #8 S/N 174154	MONROE	16.0	MID LOUISIANA GAS
8228315	81-2707	1711123105	103			GLENDA P 12 #9 S/N 174155	MONROE	16.0	MID LOUISIANA GAS
8228328	81-2899	1707321539	103			PENNZOIL 28 #7 S/N 170766	MONROE	16.0	UNITED GAS PIPELI
8228317	81-2709	1707321519	103			PENNZOIL 29 #1 S/N 177224	MONROE	16.0	UNITED GAS PIPELI
8228329	81-2900	1707321588	103			PENNZOIL 29 #17 S/N 171101	MONROE	16.0	UNITED GAS PIPELI
8228330	81-2901	1707321589	103			PENNZOIL 29 #18 S/N 171102	MONROE	16.0	UNITED GAS PIPELI
8228331	81-2902	1707321590	103			PENNZOIL 29 #19 S/N 171103	MONROE	16.0	UNITED GAS PIPELI
8228319	81-2710	1707321550	103			PENNZOIL 29 #8 S/N 177225	MONROE	16.0	UNITED GAS PIPELI
8228316	81-2708	1707321485	103			PENNZOIL 4 #1 S/N 177003	MONROE	16.0	UNITED GAS PIPELI
8228318	81-2711	1707321826	103			PENNZOIL 4 #15 S/N 177301	MONROE	16.0	UNITED GAS PIPELI
8228332	81-2903	1707321486	103			PENNZOIL 4 #2 S/N 170603	MONROE	16.0	UNITED GAS PIPELI
8228333	81-2904	1707321487	103			PENNZOIL 4 #3 S/N 170604	MONROE	16.0	UNITED GAS PIPELI
8228334	81-2905	1707321491	103			PENNZOIL 4 #7 S/N 170608	MONROE	16.0	UNITED GAS PIPELI
8228335	81-2906	1707321492	103			PENNZOIL 4 #8 S/N 170609	MONROE	15.0	UNITED GAS PIPELI
8228349	81-2907	1707321493	103			PENNZOIL 4 #9 S/N 170610	MONROE	15.8	UNITED GAS PIPELI
-HERBST RESOURCES INC			RECEIVED:	04/19/82		JA: LA			
8228324	81-2701	1707326010	108			FAIRBANKS #1	MONROE GAS ROCK	2.4	MID LOUISIANA GAS
8228325	81-2702	1707320718	108			FAIRBANKS #4	MONROE GAS ROCK	2.4	MID LOUISIANA GAS
8228314	81-2703	1707320719	108			FAIRBANKS #5	MONROE GAS ROCK	2.4	MID LOUISIANA GAS
8228342	81-2704	1707320720	108			FAIRBANKS #6	MONROE GAS ROCK	2.4	MID LOUISIANA GAS
8228339	81-2705	1707320721	108			FAIRBANKS #7	MONROE GAS ROCK	2.4	MID LOUISIANA GAS
-J J J PARTNERSHIP			RECEIVED:	04/19/82		JA: LA			
8228347	81-2910	1711121738	108			J J J #1	MONROE	2.0	IMC PIPELINE CO
8228348	81-2911	1711121737	108			J J J #2	MONROE	2.0	IMC PIPELINE CO
-L&N DRILLING CO & K D LANKFORD JR			RECEIVED:	04/19/82		JA: LA			
8228336	81-2913	1711101016	108			K D LANKFORD #1	MONROE	4.0	IMC PIPELINE CO I
-LANKFORD & NANCE			RECEIVED:	04/19/82		JA: LA			
8228310	81-2657	1711123331	103			EXXON #1	MONROE	0.0	MID-LOUISIANA GAS
-LOUISIANA CRUDE OIL & GAS CO INC			RECEIVED:	04/19/82		JA: LA			
8228312	81-2689	1711120303	108			HUMBLE ARCO #8	MONROE GAS	9.0	MID LOUISIANA CO
-MID LOUISIANA GAS COMPANY			RECEIVED:	04/19/82		JA: LA			
8228351	81-2645	1711123072	108			MLGC FEE GAS #1024	MONROE GAS FIELD	10.3	MID LOUISIANA GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228352	81-2646	1711123080		108		MLGC FEE GAS #1026	MONROE GAS FIELD	15.9	MID LOUISIANA GAS
8228341	81-2648	1711123089		108		MLGC FEE GAS #1035	MONROE GAS FIELD	4.0	MID LOUISIANA GAS
8228302	81-2649	1711123090		108		MLGC FEE GAS #1036	MONROE GAS FIELD	7.7	MID LOUISIANA GAS
8228303	81-2650	1711123091		108		MLGC FEE GAS #1037	MONROE GAS FIELD	17.6	MID LOUISIANA GAS
8228320	81-2712	1711121481		108		MLGC FEE GAS #705	MONROE GAS FIELD	15.7	MID LOUISIANA GAS
8228321	81-2713	1711121529		108		MLGC FEE GAS #712	MONROE GAS FIELD	21.2	MID LOUISIANA GAS
8228344	81-2714	1711121531		108		MLGC FEE GAS #714	MONROE GAS FIELD	21.1	MID LOUISIANA GAS
8228336	81-2715	1711121532		108		MLGC FEE GAS #715	MONROE GAS FIELD	18.4	MID LOUISIANA GAS
8228322	81-2716	1711121654		108		MLGC FEE GAS #756	MONROE GAS FIELD	19.8	MID LOUISIANA GAS
8228304	81-2651	1711121967		108		MLGC FEE GAS #837	MONROE GAS FIELD	19.2	MID LOUISIANA GAS
8228305	81-2652	1711122055		108		MLGC FEE GAS #857	MONROE GAS FIELD	18.8	MID LOUISIANA GAS
8228306	81-2653	1711122415		108		MLGC FEE GAS #879	MONROE GAS FIELD	16.7	MID LOUISIANA GAS
8228307	81-2654	1711122493		108		MLGC FEE GAS #899	MONROE GAS FIELD	9.8	MID LOUISIANA GAS
8228308	81-2655	1711122518		108		MLGC FEE GAS #906	MONROE GAS FIELD	14.8	MID LOUISIANA GAS
8228309	81-2656	1711122535		108		MLGC FEE GAS #907	MONROE GAS FIELD	18.2	MID LOUISIANA GAS
-R M R OIL CO				RECEIVED:	04/19/82	JA: LA			
8228345	81-2908	1711102309		108		RABUN #1	MONROE	2.9	IMC PIPELINE CO
8228346	81-2909	1711102310		108		RABUN #2	MONROE	2.0	IMC PIPELINE CO
-TEXACO INC				RECEIVED:	04/19/82	JA: LA			
8228311	81-2691	1705120576		103		BDC UA #122 VUA	BAY DE CHENE	119.0	KAISER ALUMINUM &
8228348	81-2700	1710922305		103		BSE U8 #15 VU8	BAY ST ELAINE	540.0	KAISER ALUMINUM &
8228358	81-2692	1710922321		103		DGL U12 #65 VUL	DOG LAKE	4.0	TEXAS GAS TRANSMI
8228327	81-2699	1710921911		103		SL 301 TERREBONNE BAY #342	CAILLOU ISLAND	255.0	KAISER ALUMINUM &
-VANGUARD PETROLEUM CORP				RECEIVED:	04/19/82	JA: LA			
8228353	81-2647	1711120322		108		ARMSTRONG #1	MONROE GAS	7.5	IMC EXPLORATION C
**********									
MONTANA BOARD OF OIL & GAS CONSERVATION									
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-FALCON-COLORADO EXPLORATION INC				RECEIVED:	04/20/82	JA: MT			
8228375	8-81-151	2507121675		108		1-25 YANCHEK	SWANSON CREEK	14.4	MONTANA-DAKOTA UT
**********									
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
**********									
-BOUNTY OIL & GAS INC				RECEIVED:	04/21/82	JA: NY			
8228367	2181	3101316015		107-TF		SEITZ/KOZAK #1	WILDCAT	0.0	NATIONAL FUEL GAS
-ECLIPSE MANAGEMENT ASSOCIATES INC				RECEIVED:	04/21/82	JA: NY			
8228364	1773	3101314770		108		BALLING #1 #3156	LAKE SHORE	13.0	NATIONAL FUEL GAS
8228363	1774	3101314669		108		BALLING #2 #3157	LAKE SHORE	15.0	NATIONAL FUEL GAS
8228365	1791	3101315029		108		SMITH #1 #3146	MINA - RIPLEY	6.0	NATIONAL FUEL GAS
8228366	1792	3101315030		108		SMITH #2 #3147	MINA - RIPLEY	0.0	NATIONAL FUEL GAS
-TRAHAN PETROLEUM INC				RECEIVED:	04/21/82	JA: NY			
8228368	1703	3101315284		107-TF		C STRATTON - NY #79 31-013-15284	PANAMA	36.0	COLUMBIA GAS TRAN
8228370	1707	3101315373		107-TF		CHARLES LEFFINGWELL - CRONER #1	PANAMA	36.0	COLUMBIA GAS TRAN
8228371	1740	3101315578		107-TF		F & J DELAHOY #1 31-013-15578	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8228372	1738	3101315579		107-TF		F & J DELAHOY #2 31-013-15579	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8228373	1692	3101315996		107-TF		G & L DARLING #1 31-013-15996	ELLINGTON	36.0	COLUMBIA GAS TRAN
8228374	1705	3101315997		107-TF		J & J HORTON - NY #20 31-013-15997	ELLINGTON	36.0	COLUMBIA GAS TRAN
8228361	1665	3101314499		107-TF		KLINE N Y #61 31-013-14499	PANAMA	8.0	COLUMBIA GAS TRAN
8228358	1699	3101312535		107-TF		M & D LENT - N Y #18 31-013-12535	CHERRY CREEK	37.0	COLUMBIA GAS TRAN
8228369	1698	3101314819		107-TF		M & D LENT - NY #17 31-013-14819	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8228360	1667	3101312536		107-TF		M & D LENT N Y #19 31-013-12536	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8228356	1708	3101312539		107-TF		M MAZIAR - N Y #22 31-013-12539	CHERRY CREEK	36.0	COLUMBIA GAS TRAN
8228359	1674	3101315525		107-TF		MARVIN WELLMAN #1 31-013-15525	ELLINGTON	1.2	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228362	1702	3101315053		107-TF		T WELLER - N Y #78 31-013-15053	PANAMA	36.0	COLUMBIA GAS TRAN
8228357	1675	3101312546		107-TF		WELLSVILLE TIMBER - NY #15	ELLINGTON	1.0	COLUMBIA GAS TRAN
8228354	1670	3101314796		107-TF		WIDRIG N Y #67	PANAMA	8.0	COLUMBIA GAS TRAN
8228355	1734	3101316032		107-TF		WULFFRAAT #1 31-013-16032	CHERRY CREEK	36.0	COLUMBIA GAS TRAN

OHIO DEPARTMENT OF NATURAL RESOURCES

-ATLAS ENERGY GROUP INC			RECEIVED: 04/22/82		JA: OH				
8228379		3415521827	102-2	107-TF		BENNETT #1	KINSMAN	18.0	COLUMBIA GAS TRAN
8228383		3415521878	102-2	107-TF		D D TRICKER #1	KINSMAN	18.0	COLUMBIA GAS TRAN
8228382		3415521868	102-2	107-TF		HUFFMAN #3	GUSTAVUS	22.0	COLUMBIA GAS TRAN
8228378		3415521749	102-2	107-TF		HYDE #1	GUSTAVUS	27.0	COLUMBIA GAS TRAN
8228385		3415521980	102-2	107-TF		JONES UNIT #1	VERNON	26.0	COLUMBIA GAS TRAN
8228384		3415521963	102-2	107-TF		KUCK #1	KINSMAN	22.0	COLUMBIA GAS TRAN
8228376		3415521560	102-2	107-TF		KUZMICK #1	JOHNSTON	22.0	COLUMBIA GAS TRAN
8228381		3415521854	102-2	107-TF		LIEBERT UNIT #3	KINSMAN	26.0	COLUMBIA GAS TRAN
8228377		3415521696	102-2	107-TF		LOGAN #4	GUSTAVUS	23.0	COLUMBIA GAS TRAN
8228380		3415521836	102-2	107-TF		MCLAUGHLIN #1	KINSMEN	24.0	COLUMBIA GAS TRAN
-AUSTIN DEVELOPMENT CO			RECEIVED: 04/22/82		JA: OH				
8228388A		3408323026	103			CENTURY #5	UNION	58.0	EAST OHIO GAS CO
8228388B		3408323026	D	107-TF		CENTURY #5	UNION	50.0	EAST OHIO GAS CO
8228386A		3403124507	103			HOFSTETLER-BACHNA #6	MONROE	50.0	COLUMBIA GAS TRAN
8228386B		3403124507	D	107-TF		HOFSTETLER-BACHNA #6	MONROE	50.0	COLUMBIA GAS TRAN
8228387A		3407523595	103			N GALLION #2	RICHLAND	50.0	POI ENERGY INC
8228387B		3407523595	D	107-TF		N GALLION #2	RICHLAND	50.0	POI ENERGY INC
-BANDS COMPANY INC			RECEIVED: 04/22/82		JA: OH				
8228390		3407523351	107-TF			BIGLER #3	HARDY	1.8	COLUMBIA GAS TRAN
8228393		3407523403	107-TF			BIGLER #4	HARDY	1.5	COLUMBIA GAS TRAN
8228397		3407523606	107-TF			BIGLER #5	MILLERSBURG	2.0	COLUMBIA GAS TRAN
8228399		3407523634	107-TF			BIGLER #6	MILLERSBURG	1.0	COLUMBIA GAS TRAN
8228400		3407523669	107-TF			BURKEY #1	MILLERSBURG	1.0	COLUMBIA GAS TRAN
8228396		3407523564	103			EVERT & ZELMA FOX #1	KILLBUCK	1.5	COLUMBIA GAS TRAN
8228395		3407523459	107-TF			JOSEPH MILLER #1	MILLERSBURG	2.0	COLUMBIA GAS TRAN
8228398		3407523633	107-TF			KURTZ #1	MILLERSBURG	1.7	COLUMBIA GAS TRAN
8228394		3407523404	107-TF			L HERSHBERGER #3	HARDY	1.5	COLUMBIA GAS TRAN
8228389		3407522758	107-TF			LOWER #1	NEW BEDFORD	2.0	COLUMBIA GAS TRAN
8228391		3407523352	107-TF			MAST #2	HARDY	2.0	COLUMBIA GAS TRAN
8228392		3407523354	107-TF			MAST #4	HARDY	1.5	COLUMBIA GAS TRAN
-BB ENERGY CORP			RECEIVED: 04/22/82		JA: OH				
8228401		3412122733	107-DV			ULLMAN #2	HARRETTSVILLE	12.0	COLUMBIA GAS TRAN
8228402		3412122734	107-DV			ULLMAN #3	HARRETTSVILLE	12.0	COLUMBIA GAS TRAN
8228403		3412122735	107-DV			ULLMAN #4	HARRETTSVILLE	12.0	COLUMBIA GAS TRAN
-BEREA OIL AND GAS CORPORATION			RECEIVED: 04/22/82		JA: OH				
8228409		3415520632	108			CREED-GIFFORD UNIT #1	LIBERTY	4.2	EAST OHIO GAS CO
8228408		3415520630	108			CREED-GIFFORD UNIT #2	LIBERTY	11.5	EAST OHIO GAS CO
8228406		3415520628	108			CREED-GIFFORD UNIT #3	LIBERTY	11.5	EAST OHIO GAS CO
8228407		3415520629	108			CREED-GIFFORD UNIT #4	LIBERTY	11.5	EAST OHIO GAS CO
8228404		3411924404	108			H & K BRILL #1	RICH HILL	9.4	COLUMBIA GAS TRAN
8228411		3415520766	108			H SCHLACT #2	FARMINGTON	1.6	EAST OHIO GAS CO
8228412		3415520781	108			H SCHLACT #3	FARMINGTON	4.3	EAST OHIO GAS CO
8228410		3415520735	108			H SCHLACT #4	FARMINGTON	1.6	EAST OHIO GAS CO
8228414		3415520792	108			R A STILLWAGON #1	LIBERTY	11.1	EAST OHIO GAS CO
8228413		3415520791	108			R A STILLWAGON #2	WEATHERSFIELD	18.4	EAST OHIO GAS CO

JO NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228405		3413321172		108		W & H HANGOLD #1	RANDOLPH	3.1	EAST OHIO GAS CO
-BLAUSER WELL SERVICE INC				RECEIVED: 04/22/82 JA: OH					
8228415		3410522239		103	107-DV	RUTH TAYLOR #1	CHESTER	17.5	COLUMBIA GAS TRAN
-BROWN PETROLEUM CORP				RECEIVED: 04/22/82 JA: OH					
8228416		3407522533		103		CARPENTER #2	KILLBUCK	258.0	COLUMBIA GAS TRAN
-CALLANDER & KIMBREL INC				RECEIVED: 04/22/82 JA: OH					
8228417		3403124509		103		BARCUS #1	COPPERDALE	3.0	
-CHANSE PETROLEUM CORPORATION				RECEIVED: 04/22/82 JA: OH					
8228418		3400721876		107-TF		CARNEY #1	NEW LYME	2.0	
8228419		3408721910		107-TF		J & J MCINTOSH #2	NEW LYME	3.1	
-CLINTON OIL CO				RECEIVED: 04/22/82 JA: OH					
8228423		3411926170		103	107-TF	CLYTA YOUNG #1-705	BLOOMFIELD	10.0	
8228421		3411926056		103	107-TF	DAWSON #1-576	DRESDEN	18.0	
8228422		3411926062		103	107-TF	J HICKMAN #1-674	OTSEGO	18.0	
8228424		3416723812		108		L LANG #1		10.0	GAS TRANSPORT INC
8228420		3403124266		103	107-TF	R MCCONNELL #2-569	TRINWAY	18.0	
-COLLINS-MCGREGOR OPERATING COMPANY				RECEIVED: 04/22/82 JA: OH					
8228425		3415721438		108		CRIM #1		19.0	EAST OHIO GAS CO
-CYCLOPS CORP				RECEIVED: 04/22/82 JA: OH					
8228427		3413920576		103		D H & K E CULLER #3	MONROE	15.0	
8228428		3413920584		103		M E AND E E MOWRY #1	MIFFLIN	39.0	
-DERBY OIL & GAS CORP				RECEIVED: 04/22/82 JA: OH					
8228429		3407523408		103	107-TF	ELMER COBLENTZ #1	SALT CREEK	12.0	COLUMBIA GAS TRAN
8228430		3412725539		103	107-TF	KENNETH SEARCH #1	HARRISON	12.0	COLUMBIA GAS TRAN
-EDCO DRILLING & PRODUCING INC				RECEIVED: 04/22/82 JA: OH					
8228431		3407522145		107-RT		MILLER MO-1C	PAINT	18.0	COLUMBIA GAS TRAN
-ENSERCH EXPLORATION INC				RECEIVED: 04/22/82 JA: OH					
8228437		3400720795		108		GOLEMBIOWSKI-REED UNIT 1 #1	LENOX	5.0	JONES & LAUGHLIN
8228436		3400720793		108		GOLEMBIOWSKI-REED UNIT 1 #2	LENOX	5.0	JONES & LAUGHLIN
8228435		3400720777		108		J J PEPIN UNIT 1 #1	LENOX	6.0	JONES & LAUGHLIN
8228440		3400720961		108		J J PEPIN UNIT 1 #2	LENOX	3.0	JONES & LAUGHLIN
8228438		3400720897		108		SZAJKOWSKI UNIT #2	LENOX	2.0	JONES & LAUGHLIN
8228439		3400720905		108		WAYNE-KELLER UNIT 1 #2	LENOX	6.0	JONES & LAUGHLIN
-ENTERPRISE ENERGY CORP				RECEIVED: 04/22/82 JA: OH					
8228432		3408922524		103	107-TF	DRYDOCK COAL #6Y	YORK	18.2	COLUMBIA GAS TRAN
8228434		3416320700		103	107-TF	HEWITT #1	SWAN	18.2	COLUMBIA GAS TRAN
8228433		3416320688		103	107-TF	WOODGEARD #2	SWAN	27.3	COLUMBIA GAS TRAN
-FRANK A CSAPO JR				RECEIVED: 04/22/82 JA: OH					
8228426		3416923150		103	107-TF	NORMA LANCE #1	MILTON	12.0	COLUMBIA GAS TRAN
-GASEARCH INC				RECEIVED: 04/22/82 JA: OH					
8228442		3415522105		103	107-TF	KESSLER UNIT #1	CORTLAND	0.0	
8228441		3415521760		103	107-TF	SHOFF #2	VIENNA	20.0	EAST OHIO GAS CO
-HOFFMAN & KUHN INC				RECEIVED: 04/22/82 JA: OH					
8228443		3412725411		103		SWEENEY-FORSYTHE #1	JACKSON	15.0	
-HOPCO RESOURCES INC				RECEIVED: 04/22/82 JA: OH					
8228444		3403124177		103	107-TF	BRUSHWOOD #1	KEENE	12.0	COLUMBIA GAS TRAN
8228445		3403124486		103	107-TF	BURRELL #1	KEENE	12.0	COLUMBIA GAS TRAN
8228446		3403124725		103	107-TF	FINTON #1	KEENE	12.0	COLUMBIA GAS TRAN
8228447		3411926096		103	107-TF	MCGINNIS #A2	ORESDEN	12.0	COLUMBIA GAS TRAN
-JAMES P NOLL				RECEIVED: 04/22/82 JA: OH					
8228462		3412725119		103		GROVER-WAUGH #1	READING	300.0	COLUMBIA-GAS-TRAN
-K S T OIL & GAS CO INC				RECEIVED: 04/22/82 JA: OH					
8228448		3413322801		103	107-TF	CHAPPELL #1	FREEDOM	8.0	

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228449		3415320920		103	107-TF	DEVAN VALE ACRES INC #2	NORTHAMPTON	0.0	
8228452		3415320991		103	107-TF	JOSS #2	BATH	0.0	
8228450		3415320942		103	107-TF	REVERE SCHOOL #1	BATH	0.0	EAST OHIO GAS CO
8228451		3415320973		103	107-TF	THOMPSON #1	NORTHAMPTON	0.0	
-KRAMER EXPLORATION CO				RECEIVED:	04/22/82	JA: OH			
8228453		3405320722		103		O JOHNSON #1	ADDISON	12.0	COLUMBIA GAS TRAN
-M B OPERATING CO INC				RECEIVED:	04/22/82	JA: OH			
8228457		3401921485		103		C JONES #1-A	HARRISON	8.0	REPUBLIC STEEL CO
8228458		3407523237		103	107-TF	COBLENTZ #1	PAINT	36.5	REPUBLIC STEEL CO
8228456		3401921484		103	107-TF	GEIGER #1	BROWN	14.6	REPUBLIC STEEL CO
8228460		3415123553		103	107-TF	GREER #1	PLAIN	12.8	REPUBLIC STEEL CO
8228455		3401921474		103	107-TF	MILLIGAN UNIT #1	BROWN	9.1	REPUBLIC STEEL CO
8228454		3401921446		103	107-TF	Y M C A UNIT #1	BROWN	14.6	REPUBLIC STEEL CO
8228459		3415123545		103	107-TF	YODER #1-A	NEMISHILLEN	7.3	REPUBLIC STEEL CO
-NORTHEASTERN ENERGY				RECEIVED:	04/22/82	JA: OH			
8228463		3418322647		103	107-TF	REEDY #1	WADSWORTH	21.0	EAST OHIO GAS CO
-OHIO NATURAL FUEL CO				RECEIVED:	04/22/82	JA: OH			
8228469		3403124523		107-TF		DUNCAN #1	BETHLEHEM	7.0	COLUMBIA GAS TRAN
8228468		3403124504		107-TF		FINLAY #1	BETHLEHEM	12.0	COLUMBIA GAS TRAN
8228465		3403123977		107-TF		LAPP #5	BETHLEHEM	12.0	COLUMBIA GAS TRAN
8228467		3403124503		107-TF		LAPP #6	BETHLEHEM	12.0	COLUMBIA GAS TRAN
8228466		3403124250		107-TF		OLINGER #3	JACKSON	12.0	COLUMBIA GAS TRAN
-OXFORD OIL CO				RECEIVED:	04/22/82	JA: OH			
8228470	2993	3407522162		108		CLARENCE SNYDER UNIT #1		15.0	COLUMBIA GAS TRAN
8228471		3412725387		103	107-TF	RICHARD STEELE #2-A	MILLERSBURG	12.0	
-PAUL J OBERMILLER				RECEIVED:	04/22/82	JA: OH			
8228464		3416923073		103	107-TF	SANDY OBERMILLER #1	CRESTON	12.0	COLUMBIA GAS TRAN
-PENN-OHIO ENERGY CORP				RECEIVED:	04/22/82	JA: OH			
8228472		3407523003		107-TF		JACOB J BEACHY B-13-1	BERLIN TOWNSHIP	75.0	COLUMBIA GAS TRAN
8228473		3407523007		107-TF		RAYMOND & MARY MILLER B-3-1	BERLIN TOWNSHIP	83.0	COLUMBIA GAS TRAN
-POI ENERGY INC				RECEIVED:	04/22/82	JA: OH			
8228478		3413320763		108		BURKE #1		1.5	
8228474		3400721633		103	107-TF	CHEBRA #1	ORWELL	40.0	
8228475		3413320319		108		JECKEL #1		17.3	
8228479		3415320522		108		KREJCI #1		1.0	
8228482		3415320537		108		KREJCI #2		1.0	
8228480		3415320535		108		REID FARMS #4		0.9	
8228481		3415320536		108		RIED FARMS #2		0.9	
8228476		3413320717		108		SARGENT-PULSFORD #1		7.9	
8228477		3413320739		108		STADTLANDU #1		3.3	
-PONDEROSA OIL COMPANY				RECEIVED:	04/22/82	JA: OH			
8228483		3407523248		107-TF		EZRA SCHMUCKER #1	HOLMES	11.0	COLUMBIA GAS TRAN
-PYRAMID OIL OF AMERICA				RECEIVED:	04/22/82	JA: OH			
8228484		3410322479		103	107-TF	JONES #1	LAYFAYETTE	15.0	
-REPUBLIC OIL CO				RECEIVED:	04/22/82	JA: OH			
8228485		3408322973		103		JOHNSON/HINKLE DOWNS #1	JACKSON	12.0	COLUMBIA GAS TRAN
-RICHARD W ULLMAN				RECEIVED:	04/22/82	JA: OH			
8228513		3411522690		103		JANES #1	CHESTERHILL	18.0	COLUMBIA GAS TRAN
-RIMCO OPERATING INC				RECEIVED:	04/22/82	JA: OH			
8228486		3416922411		103	107-TF	BOWERS #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228493		3416922685		103	107-TF	BRICKER #3	FRANKLIN	12.0	COLUMBIA GAS TRAN
8228488		3416922468		103	107-TF	COCHRELL #3	CANAAN	12.0	COLUMBIA GAS TRAN
8228498A		3416923086		103		CROWNER #1	WAYNE	12.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228488		3416923086	D	107-TF		CROWNER #1	WAYNE	12.0	COLUMBIA GAS TRAN
8228489		3416922573		103	107-TF	DAVEY TREE #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228497		3416922950		103	107-TF	GEORGE #2	WAYNE	12.0	COLUMBIA GAS TRAN
8228490		3416922608		103	107-TF	HOFF #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228496		3416922710		103	107-TF	KACHMAR #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228494		3416922692		103	107-TF	LADRACH #2	CHESTER	12.0	COLUMBIA GAS TRAN
8228499		3416923196		103	107-TF	REHM #2	GREEN	12.0	COLUMBIA GAS TRAN
8228491		3416922616		103	107-TF	RICE #4	FRANKLIN	12.0	COLUMBIA GAS TRAN
8228487		3416922529		103	107-TF	ROMAN #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228495		3416922787		103	107-TF	SILVER #2	PLAIN	12.0	COLUMBIA GAS TRAN
8228492		3416922640		103	107-TF	SPECK #2	CHESTER	12.0	COLUMBIA GAS TRAN
-ROBERT WOODYARD				RECEIVED: 04/22/82 JA: OH					
8228519		3411522642	D	107-DV		J NEWTON #1	STOCKPORT	10.0	COLUMBIA GAS TRAN
-RONALD F MORAN				RECEIVED: 04/22/82 JA: OH					
8228461		3408924182		103		JOHN L BAUGHMAN #1	PERRY	8.0	
-SANTA FE DRILLING CO INC				RECEIVED: 04/22/82 JA: OH					
8228502		3416726309		107-DV		CHARLES & DIANE LANTRY #1	LIBERTY	50.0	
8228503		3416726319		107-DV		DONALD O HESLOP #1	LIBERTY	50.0	
8228504		3416726588		107-DV		DONALD O HESLOP #2	LIBERTY	50.0	
8228501		3416725561		107-DV		FRANK J GALLAGHER #2	LIBERTY	50.0	
8228500		3416724852		103		ORPHA AND MYRL VESS #1	SALEM	50.0	
-TOWNER PETROLEUM CO				RECEIVED: 04/22/82 JA: OH					
8228508		3405923203		103	107-TF	BULLIONS #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8228510		3405923276		103	107-TF	C TAYLOR #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8228507		3405923071		103	107-TF	C TROYER #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8228505		3405922432		103	107-TF	DEAN #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228512		3405923285		103	107-TF	J CRISLIP #4-B	GUERNSEY	0.0	TENNESSEE GAS PIP
8228509		3405923274		103	107-TF	NEUHART #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8228506		3405922886		103	107-TF	R BOND #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8228511		3405923284		103	107-TF	W REPIK #1	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
-UNITED PETROLEUM CORP				RECEIVED: 04/22/82 JA: OH					
8228517		3413320879		108		BLACK #1	SHALERSVILLE	10.0	AMERICAN ENERGY S
8228518		3413320881		108		BLACK #2	SHALERSVILLE	5.0	AMERICAN ENERGY S
8228515		3413320673		108		KLOHN #1	RAVENNA	9.0	AMERICAN ENERGY S
8228516		3413320674		108		KLOHN #2	RAVENNA	0.0	AMERICAN ENERGY S
8228514		3409921008		108		LIBB BLACK #1	CANFIELD	7.0	AMERICAN ENERGY S

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-ADOBE OIL & GAS CORPORATION				RECEIVED: 04/22/82 JA: PA					
8228521	11240	3703321181		103		FRANK BELLELLA #1	BURNSIDE	22.0	
8228545	11242	3703321159		103		GERALD LOCKARD #1	BURNSIDE	22.0	
8228546	11243	3706322288		103		LITTLE LEO CORPORATION #1-B	PUNXSUTAWNEY	24.0	T W PHILLIPS GAS
8228547	11244	3706322289		103		LITTLE LEO CORPORATION #1-C	PUNXSUTAWNEY	25.0	T W PHILLIPS GAS
8228548	11245	3706326527		103		THOMAS COLLIER #1	BURNSIDE	25.0	CONSOLIDATED GAS
8228520	11239	3706325745		103		VERA WALACH #1-B	MCINTYRE	20.0	T W PHILLIPS GAS
8228522	11241	3706322489		103		WILLIAM HENNEMAN #1	PUNXSY	23.0	T W PHILLIPS GAS
-ANGERMAN ASSOCIATES INC				RECEIVED: 04/22/82 JA: PA					
8228523	11201	3712921916		103		LATROBE BREWING CO #4 - WES-21916	W PA - UPPER DEVONIAN	45.0	PEOPLES NATURAL G
8228524	11202	3712921919		103		NORA B RICHEY #1 - WES-21919	W PA - UPPER DEVONIAN	45.0	PEOPLES NATURAL G
8228525	11203	3706326404		103		SHEFFIELD OIL & GAS #3 - IND-26404	W PA - UPPER DEVONIAN	45.0	PEOPLES NATURAL G
-C & C TROYER BROTHERS				RECEIVED: 04/22/82 JA: PA					
8228601	11221	3704921425		102-B		E STAFFORD #1 (8443)	EDINBORO	18.0	NATIONAL FUEL GAS

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228599	10715	3704921372		102-2		HALMI #1	EDINBORO	20.0	NATIONAL FUEL GAS
8228600	11003	3704921490		102-2		L KRZYWICKI #1 (#47)	EDINBORO	30.0	NATIONAL FUEL GAS
-C & N CO				RECEIVED:	04/22/82	JA: PA			
8228527	7667	3706325211		108		ST BERNARD'S CHURCH #2	WHITE	19.4	COLUMBIA GAS TRAN
-CARDINAL OIL CO				RECEIVED:	04/22/82	JA: PA			
8228549	10757	3704900000		107-TF		RAYMOND T LYONS #81-35 PA ERI-21510	CONNEAUT	0.0	COLUMBIA GAS TRAN
-CLARENCE K TUSSEL JR				RECEIVED:	04/22/82	JA: PA			
8228602	11151	3704921479		103		E HUSTON #1		30.0	
8228603	11152	3704921479		107-TF		E HUSTON #1		30.0	
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	04/22/82	JA: PA			
8228551	8455	3706324527		108		AUDREY S TANNER WN-1744	CANOE	12.7	GENERAL SYSTEM PU
8228553	9331	3706321928		108		B L HEITZENRATER WN-1778	MCCALMONT TOWNSHIP	3.0	GENERAL SYSTEM PU
8228552	8457	3706323963		108		J LON WINEBARK WN-1443	CANOE	12.7	GENERAL SYSTEM PU
8228554	10555	3703320903		108		JOHN E HAYES/LABORDE UNIT WN-1763	BRADY	11.4	GENERAL SYSTEM PU
8228550	10842	3732120140	D	102-2		ROY D LEAMER WN-1869	SUSQUEHANNA	29.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED:	04/22/82	JA: PA			
8228556	10115	3706325167		108		HELEN STOUT #2 KA-57	UPPER DEVONIAN SANDS	8.8	CONSOLIDATED GAS
8228555	10114	3706325830		108		HELEN STOUT #3 KA-58	UPPER DEVONIAN SANDS	16.4	CONSOLIDATED GAS
-ENVIROGAS INC				RECEIVED:	04/22/82	JA: PA			
8228557	10745	3704921462		107-TF		M KOVACH #1	NORTH EAST DEEP	18.8	NATIONAL FUEL GAS
-FOX OIL & GAS INC				RECEIVED:	04/22/82	JA: PA			
8228536	10962	3712500000		108		ANDREW NOSAL #26	UNION TOWNSHIP	14.4	PEOPLES NATURAL G
8228537	10963	3712500000		108		CHILDS WELL	GLASSPORT	14.4	PEOPLES NATURAL G
8228533	10959	3712500000		108		DAVID SWICKARD #28	UNION	14.4	PEOPLES NATURAL G
8228538	10964	3700500000		108		ELKHORN	FORWARD TOWNSHIP	14.4	PEOPLES NATURAL G
8228528	7469	3712920758		108		IRMA WEYANDT #1	HEMPFIELD TOWNSHIP	20.5	PEOPLES NATURAL G
8228534	10960	3712500000		108		JENNIE BEBOUT	PETERS TOWNSHIP	14.4	PEOPLES NATURAL G
8228529	10955	3700300000		108		JOHN SNYDER/BROWN	WILKINS	14.4	PEOPLES NATURAL G
8228535	10961	3712500000		108		JOHN ZIPPAY 48	UNION TOWNSHIP	14.4	PEOPLES NATURAL G
8228530	10956	3700300000		108		MCDONALD	FORWARD	14.4	PEOPLES NATURAL G
8228531	10957	3700300000		108		MCDOWELL	PLUM	14.4	PEOPLES NATURAL G
8228532	10958	3700300000		108		YOUNG/PIONEER PARK	PATTON TOWNSHIP	14.4	PEOPLES NATURAL G
-GOE PRO INC				RECEIVED:	04/22/82	JA: PA			
8228559	10768	3704921465		103		NED BISHOP #1	ALBION WEST	0.0	NATIONAL FUEL GAS
8228561	10769	3704921465		107-TF		NED BISHOP #1	ALBION WEST	0.0	NATIONAL FUEL GAS
8228558	10766	3704921554		103		ROSE LANG #1	ALBION-WEST	0.0	NATIONAL FUEL GAS
8228560	10767	3704921554		107-TF		ROSE LANG #1	ALBION-WEST	0.0	NATIONAL FUEL GAS
-HILTON MINICH				RECEIVED:	04/22/82	JA: PA			
8228585	10871	3703100000		108		EVANS WELL	ALLEGHENY PLATEAU	3.5	APOLLO GAS CO
8228586	10872	3703100000		108		J H BOWERSOX #496	ALLEGHENY PLATEAU	1.2	APOLLO GAS CO
-J & J ENTERPRISES INC				RECEIVED:	04/22/82	JA: PA			
8228540	9214	3706325359		108		FRED A MUSSER #2 (129A)	WHITE	8.8	COLUMBIA GAS TRAN
8228539	7749	3706324282		108		ST BERNARDS CHURCH #1	WHITE	9.7	COLUMBIA GAS TRAN
-KALTSAS OIL CO				RECEIVED:	04/22/82	JA: PA			
8228562	10651	3704921404		103		EDWARD CHYLINSKI #1	NORTH EAST FIELD HORN	14.0	COLUMBIA GAS TRAN
8228576	10650	3704921404		107-TF		EDWARD CHYLINSKI #1	NORTH EAST FIELD HORN	14.0	COLUMBIA GAS TRAN
8228566	10655	3704921406		103		EDWARD CHYLINSKI #3	NORTH EAST FIELD HORN	13.0	COLUMBIA GAS TRAN
8228573	10647	3704921406		107-TF		EDWARD CHYLINSKI #3	NORTH EAST FIELD HORN	13.8	COLUMBIA GAS TRAN
8228564	10653	3704921412		103		EDWARD ZAJAC #1	NORTH EAST FIELD HORN	12.0	COLUMBIA GAS TRAN
8228575	10649	3704921412		107-TF		EDWARD ZAJAC #1	NORTH EAST FIELD HORN	12.0	COLUMBIA GAS TRAN
8228565	10654	3704921413		103		EDWARD ZAJAC #2	NORTH EAST FIELD HORN	22.0	COLUMBIA GAS TRAN
8228574	10648	3704921413		107-TF		EDWARD ZAJAC #2	NORTH EAST FIELD HORN	22.0	COLUMBIA GAS TRAN
8228563	10652	3704921504		103		F S PATALON #1	NORTH EAST FIELD HORN	18.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228581	11607	3704921504		107-TF		F S PATALON #1	NORTH EAST FIELD HORN	18.0	COLUMBIA GAS TRAN
8228568	11031	3704921600		103		FRANK GULCZYNSKI #1	NORTH EAST FIELD HORN	16.0	COLUMBIA GAS TRAN
8228578	11056	3704921600		107-TF		FRANK GULCZYNSKI #1	NORTH EAST FIELD HORN	16.0	COLUMBIA GAS TRAN
8228569	11032	3704921601		103		FRANK GULCZYNSKI #2	NORTH EAST FIELD HORN	24.0	COLUMBIA GAS TRAN
8228579	11057	3704921601		107-TF		FRANK GULCZYNSKI #2	NORTH EAST FIELD HORN	24.0	COLUMBIA GAS TRAN
8228567	10656	3704921410		103		GERALD ORTON #2	NORTH EAST FIELD HORN	23.0	COLUMBIA GAS TRAN
8228572	10646	3704921440		107-TF		GERALD ORTON #2	NORTH EAST FIELD HORN	23.0	COLUMBIA GAS TRAN
8228571	11034	3704921603		103		SEVERINA ORTON #1	NORTH EAST FIELD HORN	20.0	COLUMBIA GAS TRAN
8228577	11055	3704921603		107-TF		SEVERINA ORTON #1	NORTH EAST FIELD HORN	28.0	COLUMBIA GAS TRAN
8228570	11033	3704921626		103		WALLACE MAY #1	NORTH EAST FIELD HORN	30.0	COLUMBIA GAS TRAN
8228580	11058	3704900000		107-TF		WALLACE MAY #1	NORTH EAST FIELD HORN	30.0	COLUMBIA GAS TRAN
-KEYSTONE ENERGY OIL & GAS PRODUCTIO				RECEIVED:	04/22/82	JA: PA			
8228582	11107	3706326394		103		PATZ #1	WAYNE C PATZ	93.4	COLUMBIA GAS TRAN
-LONDON OIL & GAS CO INC				RECEIVED:	04/22/82	JA: PA			
8228583	10882	3703120809		103		DAVIS BOYD #1	PICKARD VALLEY	12.0	COLUMBIA GAS TRAN
8228584	10885	3703120831		103		DAVIS BOYD #6	PICKARD VALLEY	12.0	COLUMBIA GAS TRAN
-MONROE RESOURCES LTD				RECEIVED:	04/22/82	JA: PA			
8228587	10978	3712326998		102-2		NOAH MILLER #1	SUGAR GROVE	25.0	COLUMBIA GAS TRAN
-R E BARRETT				RECEIVED:	04/22/82	JA: PA			
8228526	11238	3706326662		103		LYLE D AND VERLE D BARRETT #1	W MAHONING	40.0	T W PHILLIPS GAS
-TAURUS OIL CORP				RECEIVED:	04/22/82	JA: PA			
8228590	11081	3704920935		107-TF		E GOLLMER #1	CONNEAUT	1.0	NATIONAL FUEL GAS
8228593	11084	3709920934		107-TF		G & V NEAL #1	CONNEAUT	2.0	NATIONAL FUEL GAS
8228588	11079	3704920938		107-TF		K & M RAYMOND #1	CONNEAUT	7.0	NATIONAL FUEL GAS
8228591	11082	3704920937		107-TF		L & E GOLLMER #1	CONNEAUT	1.0	NATIONAL FUEL GAS
8228597	11088	3704920824		107-TF		LAURENCE #1	CONNEAUT	2.5	NATIONAL FUEL GAS
8228592	11083	3704920936		107-TF		M & A NEAL #1	CONNEAUT	12.0	NATIONAL FUEL GAS
8228589	11080	3704920939		107-TF		M TOZER #1	CONNEAUT	9.4	NATIONAL FUEL GAS
8228598	11089	3704900000		103		MERRITT #1 ERI-20871	CONNEAUT	36.5	NATIONAL FUEL GAS
8228594	11085	3704920861		107-TF		NASVYTIS #1	CONNEAUT	13.9	NATIONAL FUEL GAS
8228595	11086	3709920832		107-TF		PARKNOW #1	CONNEAUT	1.7	NATIONAL FUEL GAS
8228596	11087	3704920839		107-TF		PARKNOW #2	CONNEAUT	3.0	NATIONAL FUEL GAS
-WAINOCO OIL & GAS CO				RECEIVED:	04/22/82	JA: PA			
8228541	11229	3703921291		102-2		GEORGE W BANCROFT #3 (W-118)	ATHENS (ATHENS)	0.0	COLUMBIA GAS TRAN
8228543	11228	3703921291		107-TF		GEORGE W BANCROFT #3 (W-118)	ATHENS (ATHENS)	0.0	COLUMBIA GAS TRAN
8228542	11233	3703921224		102-2		JAMES L LOVE #1 (W-100)	ATHENS (SPARTA)	70.0	COLUMBIA GAS TRAN
8228544	11232	3703921224		107-TF -TF		JAMES L LOVE #1 (W-100)	ATHENS (SPARTA)	70.0	COLUMBIA GAS TRAN

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13276 Filed 5-14-82; 8:45 am]
BILLING CODE 6717-01-C

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-GATOR OIL CO				RECEIVED:	04/19/82	JA: KS			
8228098	K-82-8026	1512522273		108		MCCONNELL EAST #1	JEFFERSON-SYCAMORE	3.7	UNION GAS SYSTEMS
8228097	K82-8024	1512522275		108		MCCONNELL EAST #3	JEFFERSON-SYCAMORE	3.7	UNION GAS SYSTEMS
-KANEX OIL, INC.				RECEIVED:	04/19/82	JA: KS			
8228099	K-81-1138	1505320701		102-4		CANNON #1	ELLSWORTH	36.5	COMANCHE PRODUCTI
LOUISIANA OFFICE OF CONSERVATION									
-AMOCO PRODUCTION CO				RECEIVED:	04/19/82	JA: LA			
8228112	81-2586	1705721599		103		DUCOS-ABRIBAT #14	VALENTINE	25.0	COLUMBIA GAS TRAN
-CHEVRON U S A INC				RECEIVED:	04/19/82	JA: LA			
8228111	81-2504	1707522698		103		I R PRICE ET AL #28	COQUILLE BAY	1255.0	SOUTHERN NATURAL
-GAS RESOURCES INC				RECEIVED:	04/19/82	JA: LA			
8228132	81-2631	1711123413		103		MEEKS #1	MONROE GAS	26.0	MID LOUISIANA GAS
8228134	81-2632	1711123415		103		MEEKS #2	MONROE GAS	27.0	MID LOUISIANA GAS
8228133	81-2633	1711123416		103		MEEKS #3	MONROE GAS	29.0	MID LOUISIANA GAS
-GETTY OIL COMPANY				RECEIVED:	04/19/82	JA: LA			
8228106	81-2518	1703100000		103		W H NUNLEY #2	LOGANSPORT	13.0	TENNESSEE GAS PIP
-GLENDA PETROLEUM CORP				RECEIVED:	04/19/82	JA: LA			
8228128	81-2516	1707321545		103		PENNZOIL 28 #13 S/N 176976	MONROE	16.0	UNITED GAS PIPELI
8228114	81-2517	1707321547		103		PENNZOIL 28 #15 S/N 176978	MONROE	16.0	UNITED GAS PIPE L
8228118	81-2514	1707321516		103		PENNZOIL 28 #4 S/N 176969	MONROE	16.0	UNITED GAS PIPELI
8228119	81-2515	1707321518		103		PENNZOIL 28 #6 S/N 176971	MONROE	16.0	UNITED GAS PIPELI
-HOGAN EXPLORATION INC				RECEIVED:	04/19/82	JA: LA			
8228108	81-1646	1702120686		102-4		BURNS #1	SOUTH GRAYSON	75.0	LOUISIANA INTRAST
-INC EXPLORATION COMPANY				RECEIVED:	04/19/82	JA: LA			
8228110	81-2502	1707321273		103		COLE HEIRS A #16	MONROE	75.0	INC PIPELINE CO I
-MID LOUISIANA GAS COMPANY				RECEIVED:	04/19/82	JA: LA			
8228124	81-2641	1711123061		108		MLGC FEE GAS #1015	MONROE GAS FIELD	9.8	MID LOUISIANA GAS
8228125	81-2642	1711123062		108		MLGC FEE GAS #1016	MONROE GAS FIELD	4.1	MID LOUISIANA GAS
8228126	81-2643	1711123063		108		MLGC FEE GAS #1017	MONROE GAS FIELD	15.5	MID LOUISIANA GAS
8228127	81-2644	1711123071		108		MLGC FEE GAS #1023	MONROE GAS FIELD	8.4	MID LOUISIANA GAS
8228115	81-2511	1711123298		103		MLGC FEE GAS #1081	MONROE GAS FIELD	18.2	MID LOUISIANA GAS
8228116	81-2512	1711123299		103		MLGC FEE GAS #1082	MONROE GAS FIELD	20.1	MID LOUISIANA GAS
-MIDWAY PRODUCTION CO				RECEIVED:	04/19/82	JA: LA			
8228137	81-2636	1707321730		108		NORTH MONROE LAND CO #2	MONROE	7.7	INC PIPELINE CO I
-MIDWAY PRODUCTION CO VIII				RECEIVED:	04/19/82	JA: LA			
8228135	81-2634	1707321723		108		LEDOUX #1	MONROE	9.8	INC PIPELINE CO I
-MIDWAY PRODUCTION CO XI				RECEIVED:	04/19/82	JA: LA			
8228136	81-2635	1707321724		108		NORTH MONROE LAND CO #1	MONROE	7.7	INC PIPELINE CO I
-PELICAN DRILLING				RECEIVED:	04/19/82	JA: LA			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228113	81-2507	1707321710		103		CULPEPPER #2	MONROE	10.3	IMC PIPELINE CO I
8228128	81-2508	1707321711		103		CULPEPPER #3	MONROE	5.1	IMC PIPELINE CO I
8228129	81-2509	1707321823		103		CULPEPPER #4	MONROE	9.2	IMC PIPELINE CO I
8228130	81-2510	1707321824		103		CULPEPPER #5	MONROE	8.2	IMC PIPELINE CO I
				RECEIVED:	04/19/82	JA: LA			
-PETROFUNDS INC									
8228107	81-2520	1701320510		103		CONTINENTAL CAN CO #3 HOSS A SU V	WEST BRYCELAND	1500.0	LOUISIANA GAS PUR
				RECEIVED:	04/19/82	JA: LA			
-PRIMOS PRODUCTION CO									
8228117	81-2513	1711123357		103		PETRO LEWIS HOLLIS #5	MONROE	18.5	PETRO LEWIS FUNDS
				RECEIVED:	04/19/82	JA: LA			
-SHADRACK PRODUCTION CO									
8228123	81-2640	1711123412		103	107-TF	EMMETT TAYLOR #1	MONROE	13.0	WEST MONROE GAS G
8228138	81-2637	1711123401		103	107-TF	ROBERT ABERCROMBIE #1	MONROE	13.0	WEST MONROE GAS G
8228121	81-2638	1711123410		103	107-TF	S L PATRICK #1	MONROE	13.0	WEST MONROE GAS G
8228122	81-2639	1711123411		103	107-TF	S L PATRICK #2	MONROE	13.0	WEST MONROE GAS G
				RECEIVED:	04/19/82	JA: LA			
-SINGER-FLEISCHAKER OIL OPR CO									
8228131	81-2526	1701921027		103		WILLIE BREAUX #1	COULEE HYPPOLITE 2960	0.0	CONOCO INC
				RECEIVED:	04/19/82	JA: LA			
-TENNECO OIL COMPANY									
8228105	81-2519	1702720891		103		BAMMA BAUCUM #1 SMK "C" SU E	HAYNESVILLE	900.0	ARKANSAS LOUISIAN
				RECEIVED:	04/19/82	JA: LA			
-TEXACO INC									
8228109	81-2501	1704520539		103		SL 334 VERMILION BAY B-71	VERMILION BAY	438.0	COLUMBIA GAS TRAN

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NEW MEXICO DEPARTMENT OF ENERGY & MINERALS

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-AMOCO PRODUCTION CO									
8228141		3004507926		RECEIVED:	04/19/82	JA: NM			
8228155	C#100924	3001523462		108		ARMENTA GAS COM "A" #1			
-AMCO OIL AND GAS COMPANY				102-4		STATE IZ #1	AZTEC - PICTURED CLIF	28.0	EL PASO NATURAL G
8228143		3002508866		RECEIVED:	04/19/82	JA: NM	UND DARK CANYON PENN	264.6	EL PASO NATURAL G
8228142		3002521878		108		D D HARRINGTON (OIL) WN #3			
8228147		3002527548		108		ELMER C HILL #2	EUNICE (7 RV QN S)	2.0	PHILLIPS PETROLEU
8228160		3002500000		103		LEA 407 STATE #7	WANTZ (ABO)	1.0	WARREN PETROLEUM
8228159		3002527647		103		STATE 731 #3	SAN SIMON YATES NORTH	114.8	PHILLIPS PETROLEU
-BLACKWOOD & NICHOLS CO LTD				103		STATE 731 #4	JALMAT	0.0	PHILLIPS PETROLEU
8228169		3004523480		RECEIVED:	04/19/82	JA: NM	JALMAT YATES 7 RIVERS	17.0	PHILLIPS PETROLEU
-DUGAN PRODUCTION CORP				107-TF		NORTHEAST BLANCO UNIT #204			
8228162		3004522003		RECEIVED:	04/19/82	JA: NM	SOUTH LOS PINOS FRUIT	200.0	EL PASO NATURAL G
8228153		3004522253		108		STERLING #1-Y			
-HOMER J KYLE				108		STERLING #2	WILDCAT PICTURED CLIF	12.0	GAS CO OF NEW MEX
8228163		3001500000		RECEIVED:	04/19/82	JA: NM	WILDCAT PICTURED CLIF	6.0	GAS CO OF NEW MEX
-HUNT OIL COMPANY				108		STATE B #1			
8228146		3002527135		RECEIVED:	04/19/82	JA: NM	SQUARE LAKE	1.5	CONOCO INC
-J M HUBER CORPORATION				103		STATE 4 #1			
8228152		3001520843		RECEIVED:	04/19/82	JA: NM	NORTH GRAMA RIDGE-BON	58.0	PHILLIPS PETROLEU
-LEWIS B BURLESON				108		MOORE COM #1			
8228150		3002523575		RECEIVED:	04/15/82	JA: NM	SOUTH CARLSBAD (MORRO	15.0	LLANO INC
8228151		3002526319		108		COOK #1			
8228149		3002511693		108		HORNER #3	JALMAT GAS	21.0	EL PASO NATURAL G
-M C & DALE GANDY				108		STUART #2	JALMAT	0.5	EL PASO NATURAL G
8228148		3002526178		RECEIVED:	04/19/82	JA: NM	LANGLIE - MATTIX	7.5	EL PASO NATURAL G
-MERRION OIL & GAS CORP				103		WISER STATE #1			
8228166		3003922884		RECEIVED:	04/19/82	JA: NM	EAST CROSSROADS SAN A	10.2	WARREN PETROLEUM
-MWJ PRODUCING CO				103		RITA #1			
8228168		3001500000		RECEIVED:	04/19/82	JA: NM	LYBROOK GALLUP	73.0	
-NORTHWEST PIPELINE CORPORATION				102-2		DOG CANYON 35 G #1			
				RECEIVED:	04/19/82	JA: NM	WILDCAT - MORROW	1767.0	EL PASO NATURAL G

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228139		3004576899		108		BLANCO COM #5
8228161		3003907933		108		ROSA UNIT 24
8228154		3003922679		103		SAN JUAN 30-5 UNIT 77
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/19/82	JA: NM
8228170		3002527658		103		LEAMEX #31
-PIONEER PRODUCTION CORPORATION				RECEIVED:	04/19/82	JA: NM
8228158		3004500000		103		SCOTT #1-E
-SOUTHLAND ROYALTY CO				RECEIVED:	04/19/82	JA: NM
8228167		3001523425		103		PARKWAY "B" STATE #1
8228156		3001522985		103		STATE "25" COMM #1
-TAHOE OIL & CATTLE CO				RECEIVED:	04/19/82	JA: NM
8228140		3002500000		108		ROY WHITTEN #1
-TEXACO INC				RECEIVED:	04/19/82	JA: NM
8228157		3002527194		103		CENTRAL VACUUM UNIT #153
8228164		3002500000		108		DOLLIE BALLENGER #2
-THE HARLOW CORP				RECEIVED:	04/19/82	JA: NM
8228144		3000500000		103		O'BRIEN FEE "18" #6
8228145		3000500000		103		O'BRIEN FEE "24" #2
-THRESHOLD DEVELOPMENT CO				RECEIVED:	04/19/82	JA: NM
8228169		3001523933		103		CONOCO "7" STATE #10
**********						
OKLAHOMA CORPORATION COMMISSION						
**********						
-AMERICAN NAT GAS PROD CO				RECEIVED:	04/19/82	JA: OK
8228278	17885	3514920119		107-DP		CROWDER #1-29
-AMOCO PRODUCTION CO				RECEIVED:	04/16/82	JA: OK
8228285	16472	3503920485		102-2		SWOSU NO 1
-AMOCO PRODUCTION CO				RECEIVED:	04/19/82	JA: OK
8228288	09560	3501121453		103		EDSALL GAS UNIT #1
8228289	17826	3501521259		107-DP		GLADYS TETER NICHOLS UNIT #1
-AN-SON CORPORATION				RECEIVED:	04/16/82	JA: OK
8228264	16494	3512920690		102-4		SPROWLS #2-28
-ANDOVER OIL COMPANY				RECEIVED:	04/19/82	JA: OK
8228295	16388	3501722196		102-2		BOMHOFF #20-4
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/16/82	JA: OK
8228260	13503	3502520460		103		SMALTS UNIT #7
-B & H EXPLORATION CO				RECEIVED:	04/19/82	JA: OK
8228300	13568	3514321637		103		MCGUIRE #2
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/16/82	JA: OK
8228254	13518	3507323163		103		INEZ JONES B-2
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/19/82	JA: OK
8228287	07398	3504721845		103		EWALD MILLER #2
-CLARK RESOURCES INC				RECEIVED:	04/19/82	JA: OK
8228301	13568	3509322270		103		MALONE 28-1
-CUMA OIL CO INC				RECEIVED:	04/16/82	JA: OK
8228252	12874	3506321099		103		TREECE 1-A
-DAMSON OIL CORPORATION				RECEIVED:	04/16/82	JA: OK
8228250	13230	3509322069		103		NICKEL #2
-DAVIS OIL COMPANY				RECEIVED:	04/19/82	JA: OK
8228279	16214	3504722767		103		RIFFEL #1
-DYCO PETROLEUM CORPORATION				RECEIVED:	04/19/82	JA: OK
8228289	17766	3512920699		107-DP		YOWELL #1-26
-EAGLE MINERALS INC.				RECEIVED:	04/19/82	JA: OK

FIELD NAME	PROD	PURCHASER
BLANCO MESAVERDE	21.5	NORTHWEST PIPELIN
BLANCO MESAVERDE	25.0	NORTHWEST PIPELIN
BASIN DAKOTA	73.6	PHILLIPS PACIFIC
MALJAMAR GB/SA	0.8	EL PASO NATURAL G
BASIN DAKOTA	0.0	PIONEER CORP
WILDCAT	10.0	CONOCO INC
PARKWAY (STRAWN)	28.0	CONOCO INC
JALMAT YATES SEVEN RI	0.0	EL PASO NATURAL G
VACUUM GRAYBURG (SAN	0.1	PHILLIPS PETROLEU
DRINKARD	5.0	GETTY OIL CO
TWIN LAKES - SAN ANDR	1.1	MAPCO PRODUCTION
TWIN LAKES - SAN ANDR	4.0	MAPCO PRODUCTION
UNDES TURKEY TRACK MO	10.0	CONOCO INC
NW COLONY	821.0	MICHIGAN WISCONSI
WEATHERFORD	788.0	SOUTHERN NATURAL
NORTHWEST WATONGA	738.0	DELHI GAS PIPE LI
WILDCAT	1206.7	SOUTHERN NATURAL
S CHEYENNE	284.7	
	180.0	DELHI GAS PIPELIN
MIDWELL	18.3	PHILLIPS PETROLEU
UNNAMED	3.5	DIAMOND S GAS SYS
DOVER HENNESSEY	73.0	MUSTANG FUEL CORP
N E ENID	43.0	CHAMPLIN PETROLEU
SOONER TREND	78.8	CITIES SERVICE GA
S WETUMKA	15.0	OKLAHOMA NATURAL
ORIENTA	248.0	UNION TEXAS PETRO
ITUNA	0.0	PANHANDLE EASTERN
	300.0	PANHANDLE EASTERN

JD NO	JA OKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228277	16462	3511921869		102-4		HADLEY #1
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/19/82	JA: OK
8228285	11789	3503906778		108		MCFANN WEBSTER #1
-FOREST OIL CORPORATION				RECEIVED:	04/19/82	JA: OK
8228268	17828	3592018888		107-DP		REIMER #1
-FUNK EXPLORATION INC				RECEIVED:	04/19/82	JA: OK
8228272	16832	3513921576		102-4		G MYERS #1
-GMC OIL AND GAS CORP				RECEIVED:	04/16/82	JA: OK
8228261	13502	3511921741		103		SHEPARD "A"-2
-GULF OIL CORPORATION				RECEIVED:	04/19/82	JA: OK
8228284	12079	3500700000		108		KORAN "A" #1
-IREX CORP				RECEIVED:	04/19/82	JA: OK
8228274	16559	3505921109		102-4		BRIZZOLARA #1
-JCCO INC				RECEIVED:	04/16/82	JA: OK
8228248	13269	3503120612		108		SCHOOLLAND #20-2
8228247	13270	3503120646		108		SCHOOLLAND #20-3
8228249	13268	3503120647		108		SCHOOLLAND #20-4
-KEPCO INC				RECEIVED:	04/16/82	JA: OK
8228258	13507	3501722023		103		BLEVINS #2-23
8228257	13508	3501721958		103		YANDA #1-33
-M-T DRILLING CO				RECEIVED:	04/19/82	JA: OK
8228298	13907	3508321624		102-2		FAUST #1
-NATOMAS NORTH AMERICA INC				RECEIVED:	04/19/82	JA: OK
8228280	15781	3504321278		102-4	103	SMITH 1-13
-NATURAL GAS ANADARKO INC				RECEIVED:	04/19/82	JA: OK
8228278	16365	3500720864		102-4		POTTER 1-33
-NOBLE OPERATING INC				RECEIVED:	04/19/82	JA: OK
8228286	11446	3508121224		103		TISLOW #1
-OKLAHOMA CONVEYANCE CORP				RECEIVED:	04/19/82	JA: OK
8228282	13413	3507121632		108		R N MURET #1-19
-P-T LTD #1				RECEIVED:	04/19/82	JA: OK
*8228283	13033	3504722606		103		TEFET 13-2
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/16/82	JA: OK
8228259	13504	3505121101		103		CHILES "A" #1
8228245	13320	3501121501		103		MATLI "A" #1
8228246	13311	3501721976		103		TRUITT "A" #1
-POTTS-STEPHENSON EXPLORATION CO				RECEIVED:	04/16/82	JA: OK
8228251	13213	3512120838		103		BENNIGHT #2-28
-RAY LONDON				RECEIVED:	04/16/82	JA: OK
8228256	13512	3501922440		103		RAY LONDON #1 DILLARD
8228255	13513	3501922335		103		RAY LONDON #2 DILLARD
-READING & BATES PETROLEUM CO				RECEIVED:	04/19/82	JA: OK
8228273	16623	3503920429		102-2		REDMOON #1-29
-REH INDUSTRIES				RECEIVED:	04/16/82	JA: OK
8228267	14317	3510524444		102-2		MILLIGAN #7
8228266	14318	3510524432		102-2		MILLIGAN #9
-SABINE PRODUCTION COMPANY				RECEIVED:	04/19/82	JA: OK
8228275	16521	3507920441		102-4	103	GAMBLE 1-36
-SAMEDAN OIL CORPORATION				RECEIVED:	04/19/82	JA: OK
8228292	16549	3501922227		102-4		TAYLOR TRUST #1
8228293	16550	3508520428		102-2		W J BANKS #1-6
-SAMSON RESOURCES COMPANY				RECEIVED:	04/19/82	JA: OK
8228296	15469	3512120885		102-2	103	DOBBS #1

FIELD NAME	PROD	PURCHASER
	0.0	COLORADO GAS COMP
ERICK SOUTH (BROWN DO	6.0	EL PASO NATURAL G
WILDCAT	1400.0	EL PASO NATURAL G
DOMBEY	0.0	PANHANDLE EASTERN
WEST YALE	100.0	PHILLIPS PETROLEU
LAVERNE	16.0	TRANSWESTERN PIPE
S E SELMAN SECTION 3-	0.0	DELHI GAS PIPELIN
LAWTON DIST	7.0	MANN INDUSTRIES I
LAWTON DIST	7.0	MANN INDUSTRIES I
LAWTON DIST	7.0	MANN INDUSTRIES I
	275.0	CONOCO INC
	140.0	CONOCO INC
MULHALL	0.0	
CHESTER	191.0	PANHANDLE EASTERN
	400.0	TRANSWESTERN PIPE
W DAVENPORT DIST	0.0	MERIDIAN ENERGY I
PERMEAN BASIN	2.2	CITIES SERVICE GA
SOONER TREND	250.0	PANHANDLE EASTERN
NE VERDEN	0.0	MOBIL OIL CORP
WATONGA	41.0	ONG WESTERN INC
WATONGA	146.0	ONG WESTERN INC
NW FEATHERSTON	8.0	SOUTHEAST TRANSMI
NE HEWITT	13.0	AMINOIL USA INC
NE HEWITT	42.0	AMINOIL USA INC
N E HAMMON PROSPECT	1152.0	PANHANDLE EASTERN
	6.0	CITIES SERVICE GA
	8.0	CITIES SERVICE GA
	330.4	
NO NAME	37.0	AMINOIL USA INC
NO NAME	10.0	AMINOIL USA INC
KIOWA	1186.2	ARKANSAS LOUISIAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SENECA OIL COMPANY				RECEIVED:	04/19/82	JA: OK			
8228276	16540	3513921248		102-2		WALL #1-8		73.0	PANHANDLE EASTERN
-SENTRY PETROLEUM CORP				RECEIVED:	04/19/82	JA: OK			
8228281	13522	3511921526		102-4		CAESAR #1	YALE-QUAY	14.0	PHILLIPS PETROLEU
8228294	15658	3592178300		102-4		MARCO #3	YALE-QUAY	16.0	PHILLIPS PETROLEU
-STEPHENS PRODUCTION COMPANY				RECEIVED:	04/19/82	JA: OK			
8228291	16552	3502920285		102-2		WARREN JONES #1-29	CENTRAHOMA	100.0	EL PASO NATURAL G
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/19/82	JA: OK			
8228271	17790	3512920700		107-DP		WRIGHT #2	REYDON	209.0	KANSAS NEBRASKA N
-TEXOMA RESOURCES INC				RECEIVED:	04/16/82	JA: OK			
8228262	13473	3507323219		103		EMMERICH "A" #1-19	SOONER TREND	75.0	EXXON CO USA
-THE WIL-MC OIL CORP				RECEIVED:	04/19/82	JA: OK			
8228299	13589	3505320701		103		RILEY #1	WAKITA	160.6	EL GRANDE PIPELIN
-TOMLINSON OIL CO INC				RECEIVED:	04/16/82	JA: OK			
8228263	13448	3500722061		103		JENNINGS 1-12	MOCANE-LAVERNE	1095.0	EL PASO NATURAL G
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	04/16/82	JA: OK			
8228253	11057	3507322640		103		CLUCK #1-21	SOONER TREND	385.8	CITIES SERVICE GA
-WHITMAR EXPLORATION CO				RECEIVED:	04/19/82	JA: OK			
8228297	15506	3509204378		102-4		THARP #1-16	S E ANTON	300.8	ARKANSAS LOUISIAN
-WOODS PETROLEUM CORPORATION				RECEIVED:	04/19/82	JA: OK			
8228298	17064	3503920539		102-2	103	WHITE SHIELD #31-1	ARAPAHO	1003.0	DELHI GAS PIPELIN
UTAH DIVISION OF OIL,GAS, & MINING									
-FRANK B ADAMS				RECEIVED:	04/14/82	JA: UT			
8228244	K-104-4	4301930808		103		MILLIGAN #7	GREATER CISCO AREA	0.0	NORTHWEST PIPELIN
-PAGE PETROLEUM INC				RECEIVED:	04/14/82	JA: UT			
8228243	K-140-1	4304730881		103		FEE 1-10-B1E	EAST BLUEBELL EXT	60.0	GARY OPERATING CO
-TRIGG DRILLING COMPANY INC				RECEIVED:	04/14/82	JA: UT			
8228242	K-143-1	4300705080		102-2		KEEL RANCH UNIT #1-16	(WILDCAT)	0.0	MOUNTAIN FUEL SUP
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
-AMOCO PRODUCTION CO				RECEIVED:	04/19/82	JA: NM 4			
8228184	NM 1907-81	3002527406		102-4		FEDERAL "AF" COM #1	WILDCAT BONE SPRINGS	129.2	CONOCO INC
8228212	NM-0170-82	3004525213		103		GALLEGOS CANYON UNIT #96E	BASIN DAKOTA	0.0	AMOCO GAS CO
8228194	NM-2026-81	3004507276		108		J C DAVIDSON "E" #1	FULCHER KUTZ - PICTUR	17.0	SOUTHERN UNION GA
8228224	NM-0201-82-B	3004524100		103		J C GORDON "D" #2E (DAKOTA)	BASIN DAKOTA	55.0	EL PASO NATURAL G
8228218	NM-0194-82	3004524356		103		JACK FROST "B" 1E	BASIN DAKOTA	50.0	EL PASO NATURAL G
8228217	NM-0193-82	3003922482		103		JICARILLA CONTRACT 146 #31	GONZALES-MESAVERDE	30.0	EL PASO NATURAL G
8228213	NM-0171-82	3004524088		103		PAN AM FEDERAL "C" #3	FLORA VISTA	12.0	EL PASO NATURAL G
8228223	NM-0199-82	3004524149		103		STANOLIND GAS COM "B" #1	BLANCO-MESAVERDE	30.0	EL PASO NATURAL G
-ANADARKO PRODUCTION COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228197	NM-2034-81	3001522623		102-4		POWER FED COMM #1-Y	UNDESIGNATED	300.0	GAS CO OF NEW MEX
-BRAZOS PETROLEUM CO				RECEIVED:	04/19/82	JA: NM 4			
8228208	NM-0038-82	3002527560		103		KRINGEL FEDERAL #1	SAWYER (SAN ANDRES)	10.0	WARREN PETROLEUM
8228210	NM 0041-82	3002527561		103		KRINGEL FEDERAL #2	SAWYER (SAN ANDRES)	65.0	WARREN PETROLEUM
8228207	NM-0037-82	3002527562		103		KRINGEL FEDERAL #3	SAWYER (SAN ANDRES)	70.0	WARREN PETROLEUM
8228209	NM-0039-82	3002527563		103		KRINGEL FEDERAL #4	SAWYER (SAN ANDRES)	50.0	WARREN PETROLEUM
-CONOCO INC				RECEIVED:	04/19/82	JA: NM 4			
8228235	NM0237-82	3003922744		103		JICARILLA 22 #12	WEST LINDRITH	56.8	EL PASO NATURAL G
8228236	NM0238-82	3002527141		103		STEVENS A-35 #3	NMFU-LANGLIE MATTIX	25.0	
8228234	NM0236-82	3002527105		103		WARREN UNIT NO 84	NMFU-BLINEBRY	22.0	GETTY OIL CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228237	NM0239-82	3002527142		103		STEVENS A-35 #4	NMFU-LANGLIE MATTIX	25.0	
8228238	NM0240-82	3002527143		103		STEVENS A-35 #5	NMFU-LANGLIE MATTIX	25.0	
-DEVON ENERGY CORPORATION				RECEIVED:	04/19/82	JA: NM 4			
8228200	NM-0035-82	3001522624		102-4		POWER FED COMM #1-Z	UNDESIGNATED	300.0	GAS CO OF NEW MEX
-HARVEY E YATES COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228206	NM-0036-82	3002527559		103		SOUTH PECOS DEEP UNIT #1	WILDCAT	0.0	
-MARATHON OIL COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228214	NM-0172-82	3004524089		103		PAN AM FEDERAL "D" #3	FLORA VISTA	12.0	EL PASO NATURAL G
-MERIDIAN OIL INC				RECEIVED:	04/19/82	JA: NM 4			
8228222	NM-0198-82	3004524148		103		STANOLIND GAS COM "A" #1	BLANCO-MESAVERDE	30.0	EL PASO NATURAL G
-MOBIL PRODUCING TEXAS & NEW MEXICO INC				RECEIVED:	04/19/82	JA: NM 4			
8228196	NM-2033-81	3001522622		102-4		POWER FED COMM #1-X	UNDESIGNATED	300.0	GAS CO OF NEW MEX
-PHILLIPS PETROLEUM CO				RECEIVED:	04/19/82	JA: NM 4			
8228202	NM-0042-82	3002527564		103		KRINGEL FEDERAL #5	SAWYER (SAN ANDRES)	70.0	WARREN PETROLEUM
-TEXACO INC				RECEIVED:	04/19/82	JA: NM 4			
8228233	NM0235-82	3002527104		103		WARREN UNIT NO 83	NMFU-BLINEBRY	22.0	GETTY OIL CO
-TEXAS OIL & GAS CORP				RECEIVED:	04/19/82	JA: NM 4			
8228227	NM-0203-82-B	3004524101		103		J C GORDON "D" #3E (DAKOTA)	BASIN DAKOTA	55.0	EL PASO NATURAL G
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/19/82	JA: NM 4			
8228232	NM0234-82	3002527103		103		WARREN UNIT NO 82	NMFU-BLINEBRY	22.0	GETTY OIL CO
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/19/82	JA: NM 4			
8228231	NM0233-82	3002527102		103		WARREN UNIT NO 81	NMFU-BLINEBRY	22.0	GETTY OIL CO
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/19/82	JA: NM 4			
8228230	NM0232-82	3002527101		103		WARREN UNIT NO 80	NMFU-BLINEBRY	22.0	GETTY OIL CO
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/19/82	JA: NM 4			
8228229	NM0231-82	3002527100		103		WARREN UNIT NO 79	NMFU-BLINEBRY	22.0	GETTY OIL CO
-TEXAS PACIFIC OIL CO INC				RECEIVED:	04/19/82	JA: NM 4			
8228228	NM0230-82	3002527099		103		WARREN UNIT NO 78	NMFU-BLINEBRY	22.0	GETTY OIL CO

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CURTIS J LITTLE				RECEIVED:	04/19/82	JA: NM 4			
8228241	NM0243-82	3003970239		103		FOSTER #1	SO BLANCO PC	25.0	EL PASO NATURAL G
-DAVID FASKEN				RECEIVED:	04/19/82	JA: NM 4			
8228178	NM 1707-81	3001523847		103		EL PASO FEDERAL #6	AVALON (MORROW)	1440.0	EL PASO NATURAL G
-DELTA DRILLING CO				RECEIVED:	04/19/82	JA: NM 4			
8228187	NM-1930-81	3001500000		102-2		SOUTH CULEBRA BLUFF #7	SCB (BONE SPRINGS)	0.0	EL PASO NATURAL G
-DEPCO INC				RECEIVED:	04/19/82	JA: NM 4			
8228199	NM-2041-81	3001523744		103		COQUINA FEDERAL #1	WILDCAT MISS	292.0	NORTHERN NATURAL
8228240	NM0242-82	3004524964		103		FEDERAL 31 #21	WEST KUTZ PICTURED CL	78.0	
8228239	NM0241-82	3004524963		103		FEDERAL 31 #31	WEST KUTZ PICTURED CL	180.0	
8228238	NM0240-82	3004524965		103		FEDERAL 31 #43	WEST KUTZ PICTURED CL	320.0	
8228329	NM-0206-82	3001522336		103		FEDERAL 432 #1	LOCO HILLS	21.0	PHILLIPS PETROLEU
-DOME PETROLEUM CORP				RECEIVED:	04/19/82	JA: NM 4			
8228195	NM-2029-81	3004320492		102-2		DOME NAVAJO 22-22-7 #1	WILDCAT	16.1	SOUTHWEST GAS COR
-DUGAN PRODUCTION CORP				RECEIVED:	04/19/82	JA: NM 4			
8228204	NM-0028-82	3004500000		107-TF		APRIL SURPISE #2	BASIN DAKOTA	80.0	EL PASO NATURAL G
8228205	NM-0029-82	3004524905		107-TF		ELWOOD P DOWD #2	WHITEWASH MANCOS DAKO	11.0	EL PASO NATURAL G
8228206	NM-0030-82	3004524420		107-TF		HARVEY #2	BASIN DAKOTA	17.5	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228175	NM-1296-81	3004520740		108		HUERFANO UNIT #131	BASIN-DAKOTA	21.0	EL PASO NATURAL G
8228180	NM-1794-81	3003906362		108		JICARILLA G #1	SOUTH BLANCO - PICTUR	22.0	EL PASO NATURAL G
8228192	NM-1968-81	3003905797		108		JICARILLA 67 #5	BASIN - DAKOTA	28.0	EL PASO NATURAL G
8228214	NM-0189-82-A	3003922644		103		RINCON UNIT #223A	LARGO CHACRA	25.0	EL PASO NATURAL G
8228215	NM-0189-82-B	3003922644		103		RINCON UNIT #223A	BLANCO MESAVERDE	50.0	EL PASO NATURAL G
8228216	NM-0190-82	3003922645		103		RINCON UNIT #229	BASIN DAKOTA	100.0	EL PASO NATURAL G
8228171	NM0027-81-ER	3003920435		106-ER		SAN JUAN 25-7 UNIT #154	BASIN - DAKOTA GAS	21.2	EL PASO NATURAL G
8228176	NM-1399-81	3003920902		108		SAN JUAN 27-4 UNIT #86	TAPACITO-PICTURED CLI	20.0	EL PASO NATURAL G
8228232	NM0228-82-A	3003922677		103		SAN JUAN 28-6 UNIT #29A	BLANCO MESAVERDE	198.0	EL PASO NATURAL G
8228233	NM0228-82-B	3003922677		103		SAN JUAN 28-6 UNIT #29A	SOUTH BLANCO PICTURED	90.0	EL PASO NATURAL G
8228177	NM-1681-81	3003920697		108		SAN JUAN 28-7 UNIT #173 PC & CH	SOUTH BLANCO - PICTUR	23.0	EL PASO NATURAL G
8228174	NM-0621-81	3003907642		108		SAN JUAN 29-7 UNIT #4	BLANCO - MESAVERDE	22.0	EL PASO NATURAL G
8228191	NM-1963-81	3004520322		108		TAPP #7	SOUTH BLANCO - PICTUR	28.0	EL PASO NATURAL G
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED:	04/19/82	JA: NM 4			
8228193	NM-2006-81	3001523836		103		BURCH "B" #34	GRAYBURG-JACKSON	6.0	PHILLIPS PETROLEU
-GETTY OIL COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228201	NM-0018-82	3002527153		102-2		GETTY 15 FEDERAL #1	UNDESIGNATED MORROW	383.5	UNITED GAS PIPELI
8228202	NM-0024-82	3004505921		108		NAVAJO "O" #1	SOUTH GALLEGOS FRUITL	15.0	EL PASO NATURAL G
-HARVEY E YATES COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228188	NM-1947-81	3002527535		102-4		YOUNG DEEP UNIT #8	N YOUNG BONE SPRING	0.0	EL PASO NATURAL G
-HOLLY ENERGY INC				RECEIVED:	04/19/82	JA: NM 4			
8228208	NM-0002-82	3001523780		103		BEESON "D" #2	GRAYBURG-JACKSON	35.0	
8228182	NM-1837-81	3001523444		102-4		CANADIAN KENWOOD 18 FEDERAL #1	NORTH SHUGART	332.5	TRANSWESTERN PIPE
8228183	NM-1849-81	3001523536		102-4		ROCHE FEDERAL #3	NORTH SHUGART	1642.0	TRANSWESTERN PIPE
-JACK A COLE				RECEIVED:	04/19/82	JA: NM 4			
8228173	NM-0385-81	3003921602		108		APACHE HILLS #1	BALLARD PICTURED CLIF	14.4	EL PASO NATURAL G
-KEN BLACKFORD				RECEIVED:	04/19/82	JA: NM 4			
8228211	NM-0061-82	3003922504		103		WELL 13 #3 LEASE NO 09-000013	BALLARD PICTURED CLIF	224.0	EL PASO NATURAL G
-LIVELY EXPLORATION COMPANY				RECEIVED:	04/19/82	JA: NM 4			
8228221	NM-0197-82	3004525046		103		LIVELY #10E	BASIN DAKOTA	136.0	EL PASO NATURAL G
8228222	NM-0198-82	3004525045		103		LIVELY #11E	BASIN DAKOTA	80.0	EL PASO NATURAL G
8228220	NM-0196-82	3004525188		103		LIVELY #7E	BASIN DAKOTA	39.0	EL PASO NATURAL G
-MCCLELLAN OIL CORPORATION				RECEIVED:	04/19/82	JA: NM 4			
8228185	NM1911-81107	3000561042		102-4	107-TF	"BO" FEDERAL #1 NM-14120	WILDCAT (ABO)	68.0	TRANSWESTERN PIPE

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 JD NO   JA DKT         API NO      D SEC(1) SEC(2) WELL NAME
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-HERRION OIL & GAS CORP                 RECEIVED:  04/19/82    JA: NM  4
 8228237  NM0239-82     3003922821   103            SALAZAR G 34-1
-MOBIL PROD TEXAS & NEW MEXICO INC      RECEIVED:  04/19/82    JA: NM  4
 8228196  NM-2033-81    3001521051   108-SA         FEDERAL RR COM #1
 8228172  NM0100-81-PB  3001521425   108-PB         SECTION 22 FEDERAL #2
-MTS LTD PARTNERSHIP                    RECEIVED:  04/19/82    JA: NM  4
 8228228  NM-0285-82    3004525220   103            SOUTH BLANCO FEDERAL 26 #7
-NORTHWEST PIPELINE CORPORATION         RECEIVED:  04/19/82    JA: NM  4
 8228186  NM 1918-81    3003907246   108            INDIAN I #1
-STEVENS OIL COMPANY                    RECEIVED:  04/19/82    JA: NM  4
 8228181  NM1835-81107  3000561140   102-4  107-TF  EDMONDSON FEDERAL #1 (NM-43524)
 8228189  NM1950-81107  3000570383   102-4  107-TF  EDMONDSON FEDERAL #2 (NM-43524)
 8228179  NM1781-81107  3000561041   102-4  107-TF  HANAGAN FEDERAL #1 (NM-27634)
 8228190  NM1951-81107  3000561101   102-4  107-TF  SLAYTON FEDERAL #1 (NM-14293)
-TENNECO OIL COMPANY                    RECEIVED:  04/19/82    JA: NM  4
 8228219  NM-0195-82    3004524989   103            BOLACK #1E
 8228230  NM-0207-82    3004524910   103            BOLACK #2E
 8228227  NM-0204-82    3004525124   103            BOLACK B8
 8228226  NM-0203-82    3004524639   103            HUGHES COM 5
 8228225  NM-0202-82    3004524712   103            NEAL 20E
 8228231  NM-0208-82    3004525017   103            RIDDLE COM 9
-URIAH EXPLORATION INC                  RECEIVED:  04/19/82    JA: NM  4
 8228198  NM-2040-81    3001520769   102-4          STEIN FEDERAL #1
-YATES PETROLEUM CORPORATION            RECEIVED:  04/19/82    JA: NM  4
 8228203  NM-002682103  3000561123   103            ENGWALL "RL" FEDERAL #1
**********************************************************************
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK
**********************************************************************
-GULF OIL CORPORATION                   RECEIVED:  04/16/82    JA: OK  8
 8228102                3513321391   108            DYCO /C/ #1
-J M GRAVES                             RECEIVED:  04/16/82    JA: OK  8
 8228100                3511300000   103            MULLENDORE #1-B
 8228101                3511300000   103            MULLENDORE #3-B
-TAURUS OIL CORP                        RECEIVED:  04/16/82    JA: OK  8
 8228103                3511300000   103            EAST ADAMS RANCH 1A
 8228104                3511300000   103            SAND CREEK #1A
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    VOLUME  646          PAGE  007

FIELD NAME                PROD    PURCHASER
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DEVILS FORK GALLUP        23.0    EL PASO NATURAL G

SOUTH CARLSBAD MORROW    180.2    LLANO INC
CORRAL DRAW (MORROW)       8.1    EL PASO NATURAL G

LYBROOK GALLUP EXTENS     15.0    GAS CO OF NEW MEX

GAVILAN - BLANCO          20.8    NORTHWEST PIPELIN

UNDESIGNATED ABO         785.0    TRANSWESTERN PIPE
UNDESIGNATED ABO         620.0    TRANSWESTERN PIPE
WILDCAT                  267.0    TRANSWESTERN PIPE
WILDCAT                   64.0    TRANSWESTERN PIPE

BASIN DAKOTA             500.0    EL PASO NATURAL G
BASIN DAKOTA             500.0    EL PASO NATURAL G
BASIN DAKOTA             500.0    EL PASO NATURAL G
BASIN DAKOTA             500.0    EL PASO NATURAL G
BASIN DAKOTA             500.0    EL PASO NATURAL G
BASIN DAKOTA             500.0    EL PASO NATURAL G

WILDCAT                  438.4    EL PASO NATURAL G

UND ABO                    8.0    TRANSWESTERN PIPE

LANDON NW                  7.0    PHILLIPS PETROLEU

HICKORY CREEK            100.0    AJAX OIL & GAS CO
HICKORY CREEK            144.0    AJAX OIL & GAS CO

WILDCAT                  365.0
WILDCAT                  109.0
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OTHER PURCHASERS VOLUME NO :646

8228283 UNION TEXAS PETROLEUM CORP

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13277 Filed 5-14-82; 8:45 am]
BILLING CODE 6717-01-C

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51384A; PH-FRL 2125-6]

Polyhalogenated Aromatic Alkylated Hydrocarbon; Premanufacture Notice Extension of Review Periods.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) P-82-23 under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on August 9, 1982. The PMN was submitted by a company which has claimed its identity to be confidential. The submitter has also claimed confidential the specific chemical identity and the specific intended use of the substance.

FOR FURTHER INFORMATION CONTACT: Richard Green, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-208, 401 M St. SW., Washington, DC 20460, (202-382-3740).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a premanufacture notice (PMN) to EPA 90 days prior to commencement of manufacture or import. Under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt. EPA issued proposed rules to implement the premanufacture notification program in the Federal Register of January 10, 1979 (44 FR 2263). Section 720.35 of the proposed rules addressed the section 5(c) extension authority and provided examples of situations in which the Agency believe there would be good cause to extend the notice period.

Review to Date

On January 13, 1982, EPA received a PMN from a confidential submitter who intends to import a chemical substance with the following generic identity: Polyhaolgenated aromatic alkylated hydrocarbon. Notice of receipt of this PMN was published in the Federal Register of January 20, 1982 (47 FR 3592).

The submitter claimed the specific use confidential but provided the generic use description of "contained use". The submitter claims that the maximum volume to be imported will be one million kilograms during the third year. The original 90-day review period was scheduled to expire on May 11, 1982.

In its evaluation of the substance described in PMN P-82-23, EPA reviewed information provided by the submitter, as well as information obtained from the relevant technical literature. Data available on substances similar in chemical structure of the PMN substance were also collected and examined.

EPA's detailed analysis addressed the following: process chemistry, environmental fate, dermal absorption, metabolic pathways, effects on human health, human exposure, ecological effects, release to the environment, degree of risk relative to available commercial substitutes, and testing required to resolve any outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. The substance described in P-82-23 may cause effects of concern to human health. EPA is concerned that the chemical may cause central nervous system effects, liver effects, and reproductive effects;

2. Significant occupational exposure to this chemical may occur during processing of this chemical. Significant exposure to the general population may occur during use of the chemical;

3. The substance may be toxic to fish, avians, and mammals; and

4. Processing, use, and disposal of the chemical may result in significant release to the environment.

EPA's market analysis also indicates that the chemical is a good candidate for uses in addition to those listed in the PMN. EPA also has information which indicates a greater potential market penetration than that predicted by the submitter.

Extension of the Review Period

Based on its analysis to date, EPA finds that there is a signficant possibility that the substance submitted for review in P-82-23 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to evaluate the need for additional data on the substance, to examine its regulatory control options (including the possibility of negotiation with the submitter), and to prepare the necessary documents should formal regulatory action be required. An administrative order under section 5(e), if such action becomes appropriate, must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to August 9, 1982.

Public Record

PMN P-82-23 is available for public inspection in Room E-106, at the EPA Headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday. The identity of the submitter and all information claimed confidential by the submitter have been deleted from the documents in the public record.

Dated: May 10, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-13290 Filed 5-14-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. CC 81-351, Transmittal No. 13663 (5-5-82, 47 FR 19447)]

American Telegraph and Telephone Company; Order

Adopted: May 7, 1982.

Released: May 11, 1982.

1. On April 23, 1982, American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc. jointly requested an extension of 75 days in which to file comments in this investigation.[1] Currently these comments are due on May 10, 1982. In support, the networks argue that this investigation raises complex questions, and that AT&T has submitted new data in its comments filed April 9, 1982, which require lengthy study. Under 47 CFR 1.46(a) of the Commission's Rules, extensions of time are not routinely granted. We, however, agree with the networks that, because of the new data submitted by AT&T, the parties should have some additional time in which to prepare their comments. Based on our own review of the record, we have

[1] Also before the Bureau are an opposition filed by the Association of Independent Television Stations, Inc. in which the Commissioner of Baseball joined. Hughes Television Network filed comments on the television network's motion as well as a counterproposal for extension of time. Hughes asks the Commission to order AT&T to supplement its comments and to afford parties an opportunity to comment on the supplemental information. Should we reject this proposal, Hughes requests an additional 25 days to prepare comments. Midwestern Relay Company filed comments in support of Hughes' pleading. We will defer action on Hughes' proposal to require AT&T to supplement its April 9, 1982 comments until parties have an opportunity to comment on the request.

decided to allow interested parties until June 1, 1982, to file comments. This extension should afford parties sufficient time to comment without delaying unduly proceeding.

2. Accordingly, it is ordered that interested parties shall file comments on or before June 1, 1982.

3. It is further ordered that this Order take effect upon adoption.

4. It is further ordered that the Secretary shall cause this Order to be published in the **Federal Register.**

Federal Communications Commission.

Leon M. Kestenbaum,

Deputy Bureau Chief (Policy).

[FR Doc. 82-13201 Filed 5-14-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-250, File No. 21235-CD-P-81; CC Docket No. 82-251, File No. 21943-CD-P-81]

Mobile Phone of Texas, Inc. and Rogers L. Dennis d.b.a. Dennis Mobilfone; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: May 4, 1982.

Released: May 7, 1982.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the applications of Mobile Phone of Texas, Inc. (Mobile), File No. 21235-CD-P-81 proposing to add frequency 158.70 NHz to its Station KLB716 at Abiline, Texas, and Rogers L. Dennis d.b.a. Dennis Mobilfone (Dennis), File No. 21943-CD-P-81, proposing to construct a new one-way station to operate on frequency 158.70 at Abilene, Texas.[1] Dennis filed a petition to deny the application and responsive pleadings were filed.[2]

2. These proposals to use frequency 158.70 MHz in the same general area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

3. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Mobile Phone of Texas, Inc., File No. 21235-CD-P-81, and Rogers L. Dennis d.b.a Dennis Mobilfone, File No. 21943-CD-P-81, are designated for hearing in a consolidated proceeding on the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[3] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[4] and to determine the relative demand for the proposed service in said areas; and

(c) To determine, in light of the evidence adducted pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants shall file written notices of appearances under § 1.221(c) of the Commission's Rules within 20 days of the release date of this Order.

7. It is further ordered, that the petition to deny filed by Dennis is denied.

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82-13282 Filed 5-14-82; 8:45 am]

BILLING CODE 6712-01-M

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[1] We note that while Dennis proposes to construct a new facility, Mobile seeks to add an additional frequency for Station KLB716. A grant of either application would preclude grant of the other.

[2] In its petition to deny, Dennis argues that Mobile's application was incomplete for failure to indicate whether it had other applications pending in the same area as required by § 22.15(l)(2) of the Commission's Rules. Dennis urged the Commission to return Mobile's application thereby freeing a previously filed Dennis application (File No. 20648-CD-P-81) from a mutually exclusive status. On May 21, 1981, the Commission returned as defective Dennis's previously filed application, File No. 20648-CD-P-81. Before the Commission acted on Mobile's application, Dennis filed the captioned application. It is unclear whether Dennis still seeks to pursue its petition to deny which it coupled with its subsequently dismissed application. Although Mobile should have included the information concerning its pending application, as a result of the information contained in the pleadings, the Commission is now aware of Mobile's pending applications in the Abilene area. We will, therefore, deny Dennis's petition to deny.

[3] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6406, equation 8.

[4] Section 22.504(A) of the Commission's Rules and Regulations describes a field stength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 156.70 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing this location of service contours F(50, 50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau consult with the goal of reaching joint technical exhibits.)

FEDERAL ELECTION COMMISSION

[Notice 1982-4]

Filing Dates for Ohio Special Primary and General Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Ohio special primary and general elections.

SUMMARY: Committees required to file reports in connection with the special primary election to be held in the 17th Congressional District of Ohio on June 8, 1982, must file the 12-day pre-primary report by May 27, 1982, and a quarterly report by July 15, 1982. Committees required to file reports in connection with *both* the special primary election *and* the special general election to be held on June 8, 1982, and June 29, 1982, respectively, must file the 12-day pre-primary report by May 27, 1982, the 12-day pre-general report by June 17, 1982, a quarterly report by July 15, 1982, and the 30-day post-election report due on July 29, 1982. After filing these reports, committees should resume filing reports on a quarterly basis.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 1325 K Street, NW., Washington, D.C. 20463, Tel: (202) 523-4068; Toll-free: (800) 424-9530.

Notice of Filing Dates for Special Primary and Special General Elections, 17th Congressional District, Ohio

All principal campaign committees of candidates in the special primary election and all other quarterly filing political committees supporting candidates in this special primary election shall file a 12-day pre-election report due on May 27, 1982, with coverage dates from date of candidacy, or last report, through May 19, 1982, and a quarterly report due on July 15, 1982, with coverage dates from May 20, 1982, through June 30, 1982.

All principal compaign committees of candidates in the special general election and all other quarterly filing political committees supporting candidates in this special general

election shall file a 12-day pre-election report due on June 17, 1982, with coverage dates from May 20, 1982, through June 9, 1982, a quarterly report due on July 15, 1982, with coverage dates from June 10, 1982, through June 30, 1982, and a 30-day post-election report due on July 29, 1982, with coverage dates from July 1, 1982, through July 19, 1982.

After filing these reports, committees should resume filing reports on a quarterly basis.

Dated: May 12, 1982.

Frank P. Reiche,

Chairman, Federal Election Commission.

[FR Doc. 82-13351 Filed 5-14-82; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. 10441, 10440 and 8900-18

Availability of Finding of no Significant Impact

Upon completion of environmental assessments, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreements Nos. 10441, 10440 and 8900-18 will not constitute major Federal actions significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of environmental impact statements is not required. Agreement No. 10441 will associate certain common carriers in a conference, to be known as the North Atlantic Mediterranean Freight Conference, covering ocean commerce from U.S. North Atlantic ports to ports in the Mediterranean Sea, on the Sea of Marmara, the Black Sea, and on the Atlantic Coast of Morocco and to all points in countries bordering the Mediterranean Sea, except Spain and Israel. Agreement No. 10440 is a space charter arrangement between Lykes Bros. Steamship Company, Inc. and Lineas Navieras Bolivianas to provide transportation of Bolivian cargo via ports on the West Coast of South America to and from U.S. ports in the Gulf of Mexico. Agreement No. 8900-18, between Barber Blue Sea Lines and seven other lines, provides for alternate port service between loading ports within the geographic scope of the agreement. These Findings of No Significant Impact (FONSI) will become final within 20 days unless petitions for review are filed pursuant to 46 CFR 547.6(b).

Francis C. Hurney,

Secretary.

[FR Doc. 82-13331 Filed 5-14-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of governors, or at the Federal Reserve Bank indicated for the application. With respect to the application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *East—Tex Bancorp., Inc.*, Trinity, Texas; to acquire 50.001 percent of the voting shares of Mont Belvieu State Bank, Mont Belvieu, Texas. Comments on this application must be received not later than June 10, 1982.

Board of Governors of the Federal Reserve System, May 11, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13252 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to the application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Bancgroup—Alabama, Inc.*, Mobile, Alabama; to acquire 100 percent of the voting shares or assets of The First National Bank of Russellville, Russellville, Alabama. Comments on this application must be received not later than June 9, 1982.

Board of Governors of the Federal Reserve System, May 10, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13254 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares of assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Crown Bancshares, Inc.*, Kansas City, Missouri; to acquire 22.5 percent of the voting shares or assets of Merchants Bancorporation, Topeka, Kansas. Comments on this application must be received not later than May 28, 1982.

B. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Mercantile Texas corporation,* Dallas, Texas; to acquire 100 percent of the voting shares of Brazosport Bank of Texas, Freeport, Texas. Comments on this application must be received not later than June 6, 1982.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13237 Filed 5-14-82 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 7, 1982.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporations,* New York, New York (consumer finance and credit insurance activities; Pennsylvania): To engage through its indirect subsidiaries Finance One Consumer Discount, Inc. and Finance One Mortgage of Pennsylvania, Inc. (collectively "Finance One") in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a Finance One office located at Neshaminy Interplex, Route #1 and Old Lincoln Highway, Trevose, Pennsylvania. The service areas of the office would include the entire State of Pennsylvania. Manufacturers Hanover Corporation also wishes to expand the previously approved service area for other activities of Finance One at the above location to include the entire State of Pennsylvania. The previously approved activities include arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit; purchasing installment sales finance contracts, and acting as agent or broker for the sale of single and joint credit life insurance and credit accident and health insurance which is directly related to such loans and extension of credit.

2. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Louisiana): To engage through its indirect susbsidary Finance One of Louisiana, Inc. ("Finance One"), in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a Finance One office located at 3838 Sherwood Forest Boulevard, Baton Rouge, Louisiana. The service area of the office would include the State of Louisiana. Manufacturers Hanover Corporation also wishes to expand the previously approved service area of the activities of Finance One at the above location to include the entire State of Louisiana. The previously approved activities include purchasing installment sales finance contracts, and acting as agent or broker for the sale of single and joint credit life insurance and credit accident and health insurance which is directly related to such loans and extensions of credit; purchasing motor vehicle sales finance contracts; acting as agent or broker for the sale of single and joint credit life insurance; arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, and servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit.

3. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Alabama): to engage through its indirect subsidiary Finance One of Alabama, Inc. ("Finance One") in the making or acquiring of direct loans, secured or unsecured, such as would be made by a finance company; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. These activities would be conducted from a Finance One office located at Two East Office Building, Suite #108, 400 East Boulevard, Montgomery, Alabama. The service area of the office would include the State of Alabama. Manufacturers Hanover Corporation also wishes to expand the previously approved service area for the activities of Finance One at the above location to include the entire State of Alabama. The previously approved activities include purchasing installment sales finance contracts, and acting as agent or broker for the sale of single credit life insurance and credit accident and health insurance which is directly related to such loans and extensions of credit; purchasing motor vehicle sales finance contracts, and the sale of credit life insurance directly related to such lending activity; arranging, making or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single credit life insurance which is directly related to such loans and extensions of credit.

B. Federal Reserve Bank of Minneapolis (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Bancorporation,* Minneapolis, Minnesota (financing, servicing, leasing activities; Illinois, Iowa, Kansas, Missouri, Nebraska, and South Dakota): To engage through its subsidiary, Banco Financial Corporation, in making or acquiring loans or other extensions of credit such as would be made by a commercial finance company, including commercial loans secured by borrower's inventory, accounts receivable, or other assets; servicing such loans for others; and making leases of personal property in accordance with the Board's Regulation Y. These activities would be conducted from an office at Seventh and Walnut Streets, Des Moines, Iowa 50304, serving Illinois, Iowa, Kansas, Missouri, Nebraska, and South Dakota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation,* Los Angeles, California (financing, leasing and servicing activities; New York): To engage through its subsidiary, Security Pacific Leasing Corporation, in financing, leasing and servicing activities with respect to personal property and equipment and real property. These activities would be conducted from an office of Security Pacific Leasing Corporation in Williamsville, New York, serving the State of New York.

2. *Security Pacific Corporation,* Los Angeles, California (financing, industrial loan, and insurance activities; California): To engage through its subsidiary, Security Pacific Finance Money Center, Inc., in financing an industrial loan corporation activities including making, acquiring and servicing loans and other extensions of credit; selling and issuing investment certificates; and acting as agent for the sale of credit-related life, credit-related accident and health, and credit-related property insurance, as authorized by California law. These activities will be conducted from offices in San Diego, Santa Ana, and Santa Maria, California, serving the State of California.

Board of Governors of the Federal Reserve System, May 10, 1982

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13260 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*) directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than June 8, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Consumer Services, Inc.,* New York, New York, (financing and insurance activities; United States): To engage, through its subsidiaries, Ritter Life Insurance Company and Tempco Life Insurance Company, in the reinsurance of single and joint credit life insurance related to extensions of credit made by Applicant's subsidiaries in the State of Connecticut, credit accident and health insurance related to extensions of credit made by Applicant's subsidiaries in the State of Kentucky, and single and joint life insurance and credit accident and health insurance related to extensions of credit made by Applicant's subsidiaries in the States of Washington and Oregon.

2. *Societe Generale,* Paris, France (commercial lending and leasing activities; Texas, Louisiana, New Mexico, Oklahoma, Colorado and Wyoming): To engage through de novo office of Sogelease Corporation in making or acquiring, for its own account or for the account of others, commercial loans and other extensions of credit; and leasing personal or real property or acting as agent, broker or advisor in leasing such property and servicing such leases, subject to all the qualifications specified in 12 CFR 225.4 (a) and (b), where the leases serve as the functional equivalent of an extension of credit to the lessee of the property. Such activities would be conducted from an office in Houston, Texas serving the area identified in the caption above.

B. **Federal Reserve Bank of Minneapolis** (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Bancorporation,* Minneapolis, Minnesota (venture capital investment and lending; continental United States, Alaska, Hawaii, Puerto Rico, any commonwealth, territory or possession of the United States, Canada or Mexico): To engage through a *de novo* subsidiary, Northwest Growth Capital, Inc. in venture capital investment, including secured and unsecured lending investment. These activities would be conducted from offices at 1730 Midwest Plaza Building, Minneapolis, Minnesota, 1300 S.W. Fifth Avenue, Suite 3018, Portland, Oregon, and 7625 West Fifth Avenue, Suite 202, Lakewood, Colorado. Comments on this aplication must be received not later than June 3, 1982.

Board of Governors of the Federal Reserve System, May 10, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13263 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

First Interstate Bancorp; Proposed Acquisition of Thomas L. Karsten Associates

First Interstate Bancorp, Los Angeles, California, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire indirectly through its wholly owned subsidiary, First Interstate Investment Services, Inc., all the voting shares of Thomas L. Karsten Associates, Los Angeles, California.

Applicant states that the proposed subsidiary would engage in the activities of acting as an investment advisor (real estate), as defined in Section 2(a)(20) of the Investment Company Act of 1940, to closed-end pooled real estate funds that are investment companies registered under

that act; providing portfolio investment advice (real estate) to any other person; providing financial advice to state and local governments with respect to real estate investments and development projects; providing real estate-related management consulting to nonaffiliated banks and other nonaffiliated depository institutions; performing appraisals of real property; and furnishing general economic information and advice and industry studies (real estate). These activities would be conducted from the current offices of Thomas L. Karsten in Los Angeles, California, and the geographic areas to be served are the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming and the Chicago, New York, Houson, Dallas and Pittsburgh metropolitan areas. Such activities have been specified by the Board in § 225.4(a)(5)(12) and (14) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or request for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 8, 1982.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13230 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bethesda Bancorporation,* Bethesda, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bethesda, Bethesda, Maryland. Comments on this application must be received not later than June 10, 1982.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Four-D, Inc.,* Litchfield, Nebraska; to become a bank holding company by acquiring 83.3 percent of the voting shares of State Bank of Litchfield, Litchfield, Nebraska. Comments on this application must be received not later than June 10, 1982.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Morehouse Bancshares,* Bastrop, Louisiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Morehouse, Bastrop, Louisiana. Comments on this application must be received not later than June 10, 1982.

2. *Troup Bancshares Inc.,* Troup, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Troup Bank & Trust Company, Troup, Texas. Comments on this application must be received not later than June 10, 1982.

D. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Western Indiana Bancorp,* Covington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Western Indiana, Covington, Indiana. Comments on this application must be received not later than June 10, 1982.

Board of Governors of the Federal Reserve System, May 11, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13231 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Susquehanna Bancshares, Inc.,* Lititz, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers First Bank, Lititz, Pennsylvania. Comments on this application must be received not later than June 9, 1982.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Peoples National Bancorp., Inc.,* Shelbyville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Peoples National Bank of Shelbyville, Shelbyville, Tennessee. Comments on

this application must be received not later than June 9, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Highland Bancshares, Inc.*, Highlands, Texas; to become a bank holding company by acquiring 93.5 percent of the voting shares of Highlands State Bank, Highlands, Texas.

Board of Governors of the Federal Reserve System, May 10, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13255 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

International Bancshares of Oklahoma, Inc.; Proposed Acquisition of Citizens Mortgage Corporation

International Bancshares of Oklahoma, Inc., Yukon, Oklahoma, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Citizens Mortgage Corporation, Oklahoma City, Oklahoma.

Applicant states that the proposed subsidiary would engage in the mortgage company business, including making or acquiring, for its own account or the account of others, loans and other extensions of credit, and in servicing loans and other extensions of credit. These activities would be performed from offices of Applicant's subsidiary in Oklahoma City, Oklahoma, and the geographic area to be served is the State of Oklahoma. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than June 6, 1982.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13239 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Harry W. Huning, Vice President) 1455 East Soxth Street, Cleveland, Ohio 44101:

1. *Bluegrass Bancshares, Inc.*, Lexington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Bluegrass and Trust Company, Lexington, Kentucky. Comments on this application must be received not later than June 6, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *N.F.B. Corporation*, Madison, Florida; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Madison County, Madison, Florida. Comments on this application must be received not later than June 6, 1982.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Decorah State Bank Holding Co.*, Decorah, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Decorah State Bank, Decorah, Iowa. Comments on this application must be received not later than June 6, 1982.

2. *United Community Financial Corporation*, Wayland, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank, Wayland, Michigan. Comments on this application must be received not later than June 6, 1982.

Board of Governors of the Federal Reserve System, May 7, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13238 Filed 5-14-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[F-82-14]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Kentucky Public Service Commission involving intrastate telecommunications service rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Kentucky Public Service Commission in Case No. 8369 involving the application of the South Central Bell Telephone Company to change its service offerings.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation

with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add the General Services Administration to its service list in this case so that GSA will receive copies of testimony, briefs and other Department of Defense filings.

Dated: May 6, 1982.

Francis A. McDonough,

Deputy Commissioner for Government-wide Management, Automated Data and Telecommunications Service.

[FR Doc. 82-13310 Filed 5-14-82; 8:45 am]

BILLING CODE 6820-25-M

[F-82-15]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Montana Public Service Commission involving intrastate telecommunications service rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly Sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Montana Public Service Commission in Docket No. 82-28 involving the application of the Mountain States Telephone & Telegraph Company for an increase in rates for telecommunications services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add the General Services Administration to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: May 6, 1982.

Francis A. McDonough,

Deputy Commissioner for Government-wide Management, Automated Data and Telecommunications Service.

[FR Doc. 82-13311 Filed 5-14-82; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Montana; Big Dry Vegetation Allocation Final Environmental Impact Statement Availability

April 20, 1982.

T2agency: Bureau of Land Management.

ACTION: Big Dry Vegetation Allocation Final Environmental Impact Statement Availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Environmental Impact Statement (EIS) for vegetation allocation upon the public lands in eastern Montana. The EIS details four alternative vegetation allocations on nearly 1.18 million acres of public land within BLM's Miles City District.

DATE: Hearings were held: March 1, 1982, in Forsyth, Montana; March 2, 1982, in Terry, Montana; March 3, 1982, in Baker, Montana.

ADDRESSES: Requests for further information should be addressed to: Ray Brubaker, District Manager, Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION:

The final EIS describes and analyzes environmental consequences for four alternative courses of action. The four alternatives are: (A) Continued development for Optimum Range Utilization, (BLM's Preferred Alternative); (B) Enhanced Watershed Value and Wildlife Habitat; (C) No Grazing and (D) No Action. Comments upon the Draft EIS analysis were considered and used to prepare the Final EIS. The Final EIS will be used to develop a Rangeland Program Summary for the area included in the EIS.

A limited number of copies of the Final EIS are available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th & C Streets NW., Washington, D.C. 20240

Bureau of Land Management, Montana State Office, P.O. Box 30157, 222 North 32nd Street, Billings, Montana 59107

Bureau of Land Management, Miles City District, P.O. Box 940, Miles City, Montana 59301.

Kannon Richards,

Acting State Director.

[FR Doc. 82-13319 Filed 5-14-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the South Bay Marchand Federal Unit Agreement No. 14-08-001-3915, submitted on May 6, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the South Bay Marchand Federal Unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 10, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13313 Filed 5-14-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers Permanent Authority Decisions; Decision Notice

Correction

In FR Doc. 82-9449, appearing at page 15168, in the issue of Thursday, April 8, 1982, on page 15173, middle column, under "MC 146463 [Sub-4]", tenth line from top of page, on "MA, MN, * * *" should read, "MA, MI, MN, * * *".

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under § 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-170

The following applications were filed in Region I. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 161791 (Sub-1-1TTA), filed May 3, 1982. Applicant: H. W. ASHLINE & SONS, INC., Weston Street, Randolph, VT 05060. Representative: Albert J. Cirone, Jr., 23 Bank Street, Lebanon, NH 03766. *Contract carrier:* irregular routes: *Wood and coal stoves and accessories thereto which relate to the installation or use of the stoves, and raw materials used in the manufacture of wood and coal stoves,* under continuing contract(s) with Vermont Castings., Inc. between Bethel and Randolph, VT, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contracts with Vermont Castings, Inc., of Randolph, VT. Supporting shipper: Vermont Castings, Inc., Prince Street, Randolph, VT 05060.

MC 161791 (Sub-1-2TA), filed May 3, 1982. Applicant: H. W. ASHLINE & SONS, INC., Weston Street, Randolph, VT 05060. Representative: Albert J. Cirone, Jr., 23 Bank Street, Lebanon, NH 03766. *Contract carrier:* irregular routes: *Manufactured wood products* between Randolph, VT, on the one hand, and, on the other, points in Suffolk County, NY, Ocean County, NJ, Wayne County, IN, and Worcester County, MA, under continuing contact(s) with Branchwood, Inc., of Randolph, VT. Supporting shipper: Branchwood, Inc., Box 268 Randolph, VT 05060.

MC 37398 (Sub-1-4TA), filed May 3, 1982. Applicant: JOHN J. BOYCE TRANSPORTATION, INC., West End Avenue, P.O. Box 663, Hammonton, NJ 08037. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Food and related products,* between points in MA, MD, NJ, NY and PA, on the one hand, and, on the other, points in FL, GA, NC, SC and VA. Supporting shipper(s): There are 11 statements in support of this application which may be examined at the Regional Office of the ICC in Boston, MA.

MC 146026 (Sub-1-8TA), filed April 30, 1982. Applicant: CROSS COUNTRY FARMING CO., INC., Pine Island Turnipke, P.O. Box 134, Pine Island, NY 10969. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Applicances and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above,* between Harriman and New York, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Indesit Manufacturing Crop., 101 Indesit Parkway, P.O. Box 304, Harriman, NY 10926.

MC 161750 (Sub-1-1TA), filed April 30, 1982. Applicant: INDUSTRYWIDE SERVICE, INC., Route 102, Londonderry Professional Park, Londonderry, NH 03053. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *General commodities (except classes A and B explosives, household goods, and hazardous materials)* between points in the US (except AK and HI). Supporting shipper(s): There are 25 statements in support of this application which may be examined at the Regional Office of the ICC in Boston, MA.

MC 161760 (Sub-1-1TA), filed April 30, 1982. Applicant: M. J. D. TRUCKING, INC., Coles Mill Road, P.O. Box 492, Williamstown, NJ 08094. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *(1) Frozen foodstuffs, and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above* between points in the U.S. (except AK and HI). Supporting shipper: Mrs. Smith's Frozen Foods Co., South & Charlotte Sts. P.O. Box 296, Pottstown, PA 19464.

MC 157109 (Sub-1-1TA), filed April 30, 1982. Applicant: MERRIT TRANSPORTATION, INC., 373 East Main Street, Somerville, NJ 08876. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Climate control equipment, and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above,* between the facilities used or utilized by Snyder General Corporation at Red Bud, IL, Wilmington, NC, Auburn, NY, and Carteret, NJ, on the one hand, and, on the other, points in the US. Supporting shipper(s): Snyder General Corporation, 401 Randolph St., Red Bud, IL 62278.

MC 161761 (Sub-1-1TA), filed April 30, 1982. Applicant: MONTCLAIR MOTOR EXPRESS, INC., 147 Eagle Rock Way, Montclair, NJ 07042. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10123. *General commodities (excluding classes A & B explosives and household goods)* between points in NY, NJ, PA, DE, MD, VA, CT, MA, RI, and DC. Supporting shipper(s): There are 19 statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 161730 (Sub-1-1TA), filed April 29, 1982. Applicant: ROADEX TRANSPORT, LTD., 24 Jellicoe Crescent, Brampton, Ontario, CD L4S 3N8. Representative: John Theso (same as applicant). *Contract carrier:* irregular routes: *Extruded plastic materials* from

the U.S./CD Border crossings at Queenston-Lewiston Bridge and Peace Bridge in NY to Indiana, PA, under continuing contract(s) with Royal Plastics Ltd., of Toronto, Ontario, CD. Supporting shipper: Royal Plastics Ltd., 4945 Steeles Avenue West, Weston, Ontario, CD M9L 1R4.

MC 156800 (Sub-1–5TA), filed May 4, 1982. Applicant: SEABOARD EXPRESS, INC., 565 Plank Road, Waterbury, CT 06705. Representative: Joseph A. Keating, Jr., 121 S. Main Street, Taylor, PA 18517. *Contract carrier:* irregular routes: *Air ducts and materials and supplies used in the manufacture and distribution of air ducts* between Mississippi County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Wiremold Co., West Hartford, CT. Supporting shipper: Wiremold Company, West Hartford, CT 06110.

MC 98017 (Sub-1–1TA), filed April 29, 1982. Applicant: SHAY'S SERVICE, INC., Box 340, North Main Street, Dansville, NY 14437. Representative: Warren A. Goff, 109 Madison Avenue, Memphis, TN 38103. *General commodities, except classes A and B explosives, household goods and commodities in bulk,* between points in Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Steuben, Tioga, Wayne, Wyoming and Yates Counties, NY and Potter County, PA. Supporting shipper(s): Herbert Cooper Co., Inc., Box 256, Pennsylvania Route 449, Genesee, PA 16923; RMC Fabricating Co., Cooper Slide Co., School Street, Genesee, PA 16923.

MC 161507 (Sub-1–1TA), filed April 30, 1982. Applicant: SUNCOOK TAXI AND BUS LINES, INC., 7 Albin Avenue, Allenstown, NH 03275. Representative: Diversified Legal Services, 133 London Road, Concord, NH 03301. *Passengers and their baggage in special and charter operations,* between Manchester, Gilford, and Pembroke, NH, on the one hand, and, on the other, Boston, MA. Supporting shipper (s): There are five support statements which may be examined at the I.C.C. Regional Office in Boston, MA.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 161793 (Sub-II–1TA), filed May 3, 1982. Applicant: RALPH BLOOM, 6831 U.S. 50, Hillsboro, OH 45133. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *Fertilizer, fertilizer ingredients and farm chemicals,* between Highland, Brown, Adams, Clinton, Ross, Hamilton, Clermont and Fayette Counties, OH and Campbell and Pendleton Counties, KY, on the one hand, and, on the other, points in OH, IN and KY for 270 days. An underlying ETA seeks 120 days authority. Shipper(s): Highland Landmark, Inc., 404 N.W., St., Hillsboro, OH 45133; New Van, Inc., Box 135, Rainsboro, OH 45165; Johns Chemical Company, Inc., Box 204, Hillsboro, OH 45133; Mid-Ohio Chemical Co., Inc., 111 Moore St. (Box 413), Hillsboro, OH 4513.

MC 142864 (Sub-II–7TA), filed May 3, 1982. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. *Contract; irregular: General commodities (except houshold goods, commodities in bulk, and classes A and B explosives),* between points in the U.S. (except AK and HI), under continuing contract with Giant Eagle Markets, Inc. and its affiliates, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Giant Eagle Markets, Inc., 101 Kapta Dr., RIDC Park, Pittsburgh, PA 15238.

MC 128940 (Sub-II–4TA), filed May 6, 1982. Applicant: RICHARD A. CRAWFORD, d.b.a. R. A. CRAWFORD TRUCKING SERVICE, P.O. Box 303, Ganbrills, MD 21504. Representative: Edward N. Button, 635 Oak Hill Avenue, Hagerstown, MD 21440. *Food and related products,* between the facilities of Frank A. Serio & Sons located at or near Baltimore, Maryland on the one hand, and, on the other, all points in and East of ND, SD, NE, KA, OK, & TX for 270 days. Supporting shipper(s): Frank A. Serio & Sons, Inc., 8441 Dorsey Run Road, Jessup, MD 20794.

MC 143374 (Sub-II–3TA), filed May 3, 1982. Applicant: DURBIN TRANSPORT, INC., 17683 Oakmont Ave., Gaithersburg, MD 20760. Representative: H. Neil Garson, 3251 Old Lee Highway, Fairfax, VA 22030. Pizzas from Montgomery, AL to points in DE, FL, GA, MD, NJ, NY, NC, PA, SC, VA, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: General Mills, P.O. Box 1113, Minneapolis, MN 55440.

MC 154687 (Sub-II–1TA), filed May 3, 1982. Applicant: D. L. GEORGE & SONS CONSTRUCTION CO., INC., Box K, Blue Ridge Summit, PA 17214. Representative: Edward N. Button, 635 Oak Hill Avenue, Hagerstown, MD 21740. *Roofing granules, crushed stone, filler materials, equipment and supplies,* at or near Charmain, PA on the one hand, and, on the other, points in MD, VA, WV, NJ, NC, CT, MA, DE, SC, GA, & OH, for 270 days. Supporting shipper(s): G.A.F. Corporation, 1361 Alps Road, Wayne, NJ 07470.

MC 161835 (Sub-II–1TA), filed May 4, 1982. Applicant: LISBOA TRANSPORTATION COMPANY, INC., 1520 Easton Road, Roslyn, PA 19001. Representative: Stuart J. Scheffler, 5006F N. Convent Lane, Philadelphia, PA 19114. *Passengers and their baggage, in special and charter operations, in vans capable of transporting fifteen passengers or less, not including drivers,* beginning and ending in points in PA and extending to points in NY for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 18 supporting shippers. Their statements may be examined in the Philadelphia ICC office. Please make note that out of the 18 supporting shippers, 15 are individual affiants.

MC 161836 (Sub-II–1TA), filed May 6, 1982. Applicant: RONALD W. PETERS, d.b.a. R. W. PETERS TRUCKING CO., Rt. 2, Box 498, Ridgeway, Virginia 24148. Representative: Ronald W. Peters, Rt. 2, Box 498, Ridgeway, Virginia 24148. *Furniture, parts and supplies to manufacture same* between Henry County, Va., Marion, Va., and Chilhowie, Va., on the one hand, and points in Florida, Texas, Minnesota, Arizona, and California on the other hand, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): American Furniture Co., Inc., Martinsville, VA 24112.

MC 157114 (Sub-II–2TA), filed May 6, 1982. Applicant: R. H. A. TRUCKING, INC., R.R. #2, Napoleon, OH, 43545. Representative: Robert Arps (same as applicant). *Contract; irregular: Machinery, material and supplies used in the manufacturing and sale of machinery,* between Napoleon, OH, on the one hand, and, on the other, pts. in the U.S., under continuing contract(s) with Automatic Feed Co., Nepoleon, OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Automatic Feed Co., R.R. #4, Nepoleon, OH 43545.

MC 152840 (Sub-II–12TA), filed May 3, 1982. Applicant: RAPID DISTRIBUTION SERVICE, INC., 2392 N. Dupont Hwy., Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. *Contract* carriage; irregular routes; *Such merchandise as is dealt in and distributed by retail department stores and chain stores* and materials and supplies used in the manufacture of the aforementioned commodities, between Dallas, NC, on the one hand,

and, on the other, Los Angeles, CA, Atlanta, GA, Chicago, IL, Robbinsville, NJ, and Kansas City, MO, under continuing contract(s) with Mason Athletic Company, Sport Division of Riegle Textile Corp., of Greenville, SC, for 270 days. Supporting shipper: Mason Athletic Company, Sports Division of Riegle Textile Corp., Dallas, NC 28034.

MC 146807 (Sub-II–27TA), filed May 3, 1982. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F. V. Pietrowski, 430 Scranton, PA 18503. *Perlite (other than crude),* from Lake Zurich, IL to Baltimore, MD; Philadelphia, PA; New York, NY; Newark, NJ; St. Louis, MO; Indianapolis, IN; Memphis & Knoxville, TN; Oklahoma City, OK; Kansas City, KS; Shreveport and Lake Charles, LA; and Houston and Dallas, TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Filter Products Corp., 20 Ellerman Rd., Lake St. Louis, MO 63367.

MC 158613 (Sub-II–6TA), filed May 4, 1982. Applicant: TRICOR BUSINESS GROUP, INC., 1242 Tatamy Rd., Easton, PA 18042. Representative: Martin O'Shaughnessy, 22 Olde Mill Run Medford, NJ 08055. *Such commodities as are dealt in or used by manufacturers or distributors of automotive repair parts,* between pts. in the U.S., restricted to traffic originating at or destined to the facilities, suppliers and distributors of Chromium Corp., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Chromium Corp., 1221 W. Campbell Rd., Dallas, TX 75080.

MC 161795 (Sub-II–1TA), filed May 3, 1982. Applicant: VANTAGE TRANSPORT, INC., 6810 Fleetwood Rd., McLean, VA 22101. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Contract:* Irregular: *General commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, and MI, under continuing contract(s) with Draft, Inc., of Glenview, IL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Draft, Inc., Draft Court, Glenview, IL 60025.

The following applications were filed in region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 146343 (Sub-3–8TA), filed May 4, 1982. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Boulevard, Pompano Beach, FL 33062. Representative: Joe Badway, 2 Sawyer Drive, Coventry, RI 02816. *Contract* Carrier: irregular: Scrap, *Insulated copper wire, copper coated copper wire, Related Materials, Equipment and Supplies, (Except class A and B explosives, household goods as defined by the Commission, and commodities in bulk),* from Olmsted Falls,OH to Points in WV, VA, DE, MD, NJ, PA, NY, CT, MA, NH, VT, ME, and RI under continuing contract or contracts with American Wire and Cable Company of Olmsted Falls, Ohio. Supporting Shipper: American Wire & Cable Company, 7951 Bronson Road, Olmsted Falls, OH 44138.

MC 161781 (Sub-3–1TA), filed April 30, 1982. Applicant: AAA PICKUP AND DELIVERY, INC., 2615 Crestwood Boulevard, Birmingham, AL 35210. Representative: Julius Fore (same address as above). *Common:* regular. *Passengers, their baggage and express and newspapers in the same vehicle with passengers,* between Birmingham, AL and Chattanooga, TN serving all intermediate points: From Birmingham over Alabama Hwy. 75 to the GA/AL State Boundary Line, then over GA Hwy. 301 to junction GA Hwy. 136, then over GA Hwy. 136 to Interstate Hwy. 59, then over Interstate Hwy. 59 to Chattanooga, TN and return over the same route. There are 20 statements of support attached to the application which may be reviewed at the ICC Regional Office in Atlanta, GA. Applicant intends to interline at Chattanooga, TN and Birmingham, AL.

MC 143065 (Sub-3–1TA), filed May 3, 1982. Applicant: WEATHERFORD TRANSIT, INC., Hwy. 15 N, Hartsville, SC 29550. Representative: Kim G. Meyer, 235 Peachtree St., N.E., Ste. 1200, Atlanta, GA 30303. *Passengers and their baggage, in the same vehicle with passengers, in round-trip charter operations,* beginning and ending at points in Fontana Dam, NC (and its commercial zone) and extending to points in Knoxville, TN (and its commercial zone). Supporting shipper: Econo-Touristic Associates, Inc., agent for Fontana Village Resort, 60 Lockwood Blvd., Charleston, SC 29401.

MC 159610 (Sub-3–2TA), filed April 30, 1982. Applicant: C. W. BOONE, d.b.a. T. WOLF CO., Route 3, Dallas, GA 30132. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237. *Contract carrier:* irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between points in the U.S., under continuing contract with Fortune Manufacturing Corp. Supporting shipper: Fortune Manufacturing Corp., 16420 Gundry Ave., Paramount, CA 90723.

MC 156694 (Sub-3–2TA), filed May 3, 1982. Applicant: TWIN CITY WAREHOUSES, INC., 800 Chatham Road, Winston-Salem, NC 27101. Representative: Mark C. Ellison, 300 Interstate North Parkway, Suite 329, Atlanta, GA 30339. *Caskets,* from the facilities of Simmons Casket Company in Winston-Salem, NC., to points in WV. Supporting shipper: Simmons Casket Company, 372 Washington Street, Wellesley Hills, MA 02181.

MC 146646 (Sub-3–49TA), filed May 4, 1982. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355–A, Birmingham, AL 35217. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209–4786. *General Commodities (except Classes A and B explosives and hazardous wastes)* between points in the U.S. for the account of Distribution Technology, Inc. d/b/a International Freight Brokers, Inc. Supporting shipper: Distribution Technology, Inc. d.b.a. International Freight Brokers, Inc., P.O. Box 7123, Charlotte, NC 28217–7123.

MC 161553 (Sub-3–1TA), filed May 4, 1982. Applicant: JOHN L. SHADD TRUCKING, INC., 220 W. Main St., Lake Butler, FL 32054. Representative: John L. Shadd (address same as applicant). *Contract* carrier: irregular: *reworked bolsters, side frames and center plates (railroad parts)* between Jacksonville, FL and Alexandria, VA. Supporting shipper: Fruit Growers Express Co., P.O. Box 37003, 2565 W. 5th St., Jacksonville, FL 32205.

MC 128021 (Sub-3–4TA), filed May 4, 1982. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *Contract* carrier: irregular: *Margerine, shortening and peanut butter* from Birmingham, AL to Buffalo, NY; Elizabeth, NJ; Tewsbury, MA; Philadelphia, PA; and Chicago, IL; *Cheese* from Northvale, NJ to Philadelphia, PA and Boston, MA; *Cheese* from Philadelphia, PA to Northvale, NJ.; *Wine* from Atlanta, GA to Brooklyn, NY; Fort Worth, TX; Chicago, IL and Kenosha, WI; *Canned vegetables* from Cheriton, VA and Queen Anne, MD to Atlanta, Thomasville, and Savannah, GA; Anniston, Birmingham, Montgomery and Mobile, AL; and Charleston, SC; *Plastic* from Lenaxa, KS and Chicago, IL to Birmingham, AL; *Sugar* from Chicago, IL to Birmingham, AL; *Glass* from Coventry, RI to Atlanta, GA. Supporting

shipper: Sunnyland Refining Company; P.O. Box 457; Birmingham, AL 35201.

MC 145154 (Sub-3–16TA), filed May 4, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 240, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue NW., Washington, DC 20005. *Porcelain enamel ware, and materials and supplies used in the manufacture and distribution thereof,* between points in Rockdale County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: John S. Frey Porcelain, Inc., 1035 South Access Road, Conyers, GA 30207.

MC 161456 (Sub-3–1TA), filed May 5, 1982. Applicant: HARMONY HILL TRUCKING COMPANY, INC., Range Road, Thomaston, AL 36783. Representative: William S. Poole, Jr., 111 South Walnut Street, P.O. Box 118, Demopolis, AL 36732. *Contract;* Irregular; *Ammonium Nitrate* from the facilities of Air Products in Pace, FL to Gallion, Geiger and Uniontown, AL. Supporting shipper: Estech, Inc., P.O. Box 2419, Montgomery, AL 36103.

MC 146180 (Sub-3–6TA), filed May 5, 1982. Applicant: QUALITY EXCHANGE, INC., Route 4, Box 459–A, Kings Mountain, NC 28086. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue NW., Washington, DC 20005. *Furniture and foam products,* between the facilities of Burton Dixie of Blacksburg, Inc., located at or near points in Cherokee County, SC, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, and NM. Supporting shipper: Burton Dixie of Blacksburg, Inc., P.O. Box 608, Blacksburg, SC 29702.

MC 161878 (Sub-3–1TA), filed May 7, 1982. Applicant: TEAGUE HAULING, 1631 Boynton Avenue, Anniston, AL 36201. Representative: James A. Mitchell, 219 South K Street, Anniston, AL 36201. *Cast iron and rubber goods* between Anniston, AL, AR, CA, CO, DE, FL, GA, ID, AZ, IL, IN, IO, KS, KY, LA, MI, MA, MD, MS, MN, MO, MT, NE, NV, NH, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, WA, WY, WV and WI. Supporting shippers: Southeastern Specialty Company, 1906 West 13th Street, Anniston, AL 36201 and Donoho Clay Company, Post Office Box 843, Anniston, AL 36202.

MC 147402 (Sub-3–4TA), filed May 5, 1982. Applicant: WACO DRIVERS SERVICE, INC., 138 Atando Avenue, Charlotte, NC 28206. Representative: Carl L. Helms (same address as applicant). *Contract carrier:* Irregular: *Foodstuffs and Related Products, including concession supplies and accessories,* between Mecklenburg County, NC, on the one hand, and, on the other, points in FL, GA, AL, NC, MS, SC, TN, KY, VA and WV. Supporting shipper: Piedmont Popcorn Company, 3730 Monroe Road, Charlotte, NC 28216.

MC 161875 (Sub-3–1TA), filed May 7, 1982. Applicant: Lloyd Masters, d.b.a. HAPPY DAY EXPRESS, 121 Alsip Trail, Corbin, KY 40701. Representative: Lloyd Masters (same as above). *Passengers, no baggage, in special and charter operations,* from Corbin, KY to Knoxville, TN and return. Supporting shipper: Corbin Chamber of Commerce, 401 S. Lynn Avenue, Corbin, KY 40701.

MC 151173 (Sub-3–20TA), filed May 7, 1982. Applicant: HAR-BET, INC., 7209 Tara Boulevard, P.O. Box 855, Jonesboro, GA 30236. Representative: O. L. Godfrey, Jr. (same address as applicant). *General commodities (except household goods as described by the commission and classes A and B Explosives, hazardous waste, and commodities in bulk)* between points in the U.S. (except AK and HI). Restricted to shipments originating at or destined to facilities used by Ralston Purina Company and its Subsidiaries. Supporting shipper: Ralston Purina Co., Checkerboard Square, St. Louis, MO 63164.

MC 143165 (Sub-3–2TA), filed May 7, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., Post Office Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Foodstuffs, and such commodities as are used in the manufacture and distribution of foodstuffs,* between St. Landry Parish, LA, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper, Lou Ana Foods, Inc., Post Office Box 591, Opelousas, LA 70570.

MC 161876 (Sub-3–1TA), filed May 7, 1982. Applicant: LAUREL DIVING HEADQUARTERS, INC., Route 4 Box 146–B, Corbin, KY 40701. Representative: Carl Turner (same address as applicant). *Passengers and their baggage* in special and charter operations between Corbin, KY and Knoxville, TN. Supporting shipper: Quality Inn, I–75 & U.S. 25–E, Corbin, KY 40701.

MC 161667 (Sub-3–1TA), filed May 7, 1982. Applicant: GRAY LINE SIGHTSEEING TOUR, INC., 626 Valley Hill Rd. Riverdale, GA 30274. Representative: Archie W. Andrews, 617 F Lynrock Terrace, Eden, NC 27288. *Passengers and their baggage in special and charter operations,* beginning and ending at points in Rabon County, GA, Macon, Jackson, and Transylvania Counties, NC and extending to points in GA, NC, SC and TN. Supporting shippers: There are 7 supporting shippers statements attached to the application which may be examined at the regional office in Atlanta, GA.

MC 140484 (Sub-3–29TA), filed May 7, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same as applicant). *Foodstuffs and related products* from points in IL, IN, MN, OH, and WI to points in Westmoreland County, PA. Supporting shippers: Fox Grocery Company, Box 29, Rehoboth Valley, Belle Vernon, PA 15012.

MC 2934 (Sub-3–46TA), filed May 7, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract* Carrier: Irregular *Household Goods:* between points within the U.S. under continuing contracts with Jimmy Swaggart Ministries, P.O. Box 2550, Baton Rouge, LA 70821: Supporting shippers: Jimmy Swaggart Ministries, P.O. Box 2550, Baton Rouge, LA 70821.

MC 161862 (Sub-3–1TA), filed May 7, 1982. Applicant: DIXIE MOTOR FREIGHT, INC., 1375 White Circle, Marietta, GA 30065. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061. *Contract* Carrier: Irregular: *Plastic Containers and Materials, Equipment and Supplies used in the manufacture of plastic containers,* Between Birmingham, AL, Marietta and Warner Robins, GA, and LaVergne, TN, on the one hand, and on the other, points in AL, FL, GA, KY, LA, NC, SC, TN, TX and VA under continuing contract(s) with North American Beverage Cases, Inc. of Marietta, GA. Supporting shippers: North American Beverage Cases, Inc., 1375 White Circle, Marietta, GA 30065.

MC 116254 (Sub-3–31TA), filed May 7, 1982. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). *Contract;* Irregular— *Commodities (except Meat and Packing House Products) used or dealt in by operators of grocery stores,* between points in FL, on the one hand, and, on the other, points in GA. Supporting shipper: Jewel T Discount Grocery, 511 Lake Zurich Road, Barrington, IL 60010.

The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 141951 (Sub-4–1TA), filed April 29, 1982. Applicant: MARY DICK and

HOLLIS DICK, d.b.a. H. O. DICK TRANSFER CO., P.O. Box 307, Bethany, IL 61914. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Corn oil, soy bean oil* between points in IN and IA on the one hand, and on the other, points in Milwaukee County, WI. An underlying E/T/A seeks 120 days authority. Supporting shipper: Bestel, Inc., 352 Grain Exchange Bldg., Minneapolis, MN 55415.

MC 150331 (Sub-4–3TA), filed April 30, 1982. Applicant: RPH, INC., P.O. Box 717, Champaign, IL 61820. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Malt beverages* from Milwaukee, WI and Evansville, IN to Danville, IL. Underlying ETA seeks 120 day authority. Supporting shipper: Herb Wiese Distributing Co., Inc., 310 South St., Danville, IL 61832.

MC 154127 (Sub-4–9TA), filed April 29, 1982. Applicant: A. LUURTSEMA PRODUCE, INC., 5367 School Street, P.O. Box 67, Hudsonville, MI 49426. Representative: Andrew K. Light, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204–3491. *Contract* irregular: *Food and related products,* from Chicago, IL and its commercial zone to points in FL. Restricted to continuing contracts with Fearn International, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Fearn International, Inc., 9353 West Belmont Avenue, Chicago, IL 60131.

MC 155118 (Sub-4–7TA), filed April 29, 1982. Applicant: T.D.S. TRANSPORTATION, INC., 1700 S. Wolf Road, Des Plaines, IL 60018. Representative: H. Barney Firestone, Esq., Sullivan & Associates, Ltd., 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601. *Contract, Irregular; furniture and fixtures, doors and partitions and household products* between Covington, TN on the one hand, and, on the other, Chicago, IL; Los Angeles, CA; Dallas, TX and Atlanta, GA under a continuing contract with Clopay Corporation. Supporting shipper: Clopay Corporation, 101 East Fourth Street, Cincinatti, OH 45202.

MC 161753 (Sub-4–1TA), filed April 29, 1982. Applicant: MINORITY UNIVERSAL CARRIERS, INC., 967 40th Lane, Anoka, MN 55303. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Telephone trucks & related equipment* from points in OK to points in IA, MN, ND, NE, and SD. An underlying ETA seeks 120 days authority. Supporting shipper: Southwestern Bell Telephone Co., 121 Dean McGee Ave., Oklahoma City, OK 73102.

MC 161754 (Sub-4–1TA), filed April 29, 1982. Applicant: ANCONA GRAIN, INC., Ancona, IL 61311. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601. *Fertilizer,* from Clinton, IA to points in the State of IL. Supporting Shippers: Stockdale Fertilizer, Morris, IL, Deacon Farm Management & Appraisal Service, 209 Prospect, Streator, IL, Stockdale Fertilizer, R.R., Ottawa, IL, Stockdale Fertilizer, Kinsman, IL and Larry Martell d.b.a L & M Chemical, Ancona, IL.

MC 161765 (Sub-4–1TA), filed April 29, 1982. Applicant: JOE E. ROBERTSON & FOE H. ROBERTSON d.b.a. JOE'S BODY SHOP, Rt 136 East, P.O. Box 533, Rantoul, IL 61866. Representative: Joe H. Robertson (Same as Above). *Transporting trucks,* between points in IL, WI, MI, IA, IN, OH, KY, TN, MO, OK, and MN. Supporting Shipper: Southland, Inc., Bloomington Rd., Champaign, IL 61820.

MC 161771 (Sub-4–1TA), filed April 30, 1982. Applicant: ROBERT H. HICKS TRUCKING, INC., 65668 Brick Church Road, Cassopolis, MI 49031. Representative: Paul D. Borghesani and Daniel G. Areaux, 300 Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516. *Furniture and fixtures,* from Elkhart, IN; and Niles, MI, to points in the United States (except AK and HI). Supporting Shippers: Trawood Manufacturing, Inc., 1600 W. Mishawaka Rd., Elkhart, IN; and Packard Industries, Inc., 1515 U.S. 31–N, Niles, MI.

MC 161774 (Sub-4–1TA), filed April 30, 1982. Applicant: LYLE HAYES, an individual, d.b.a. HAYES TRUCKING, Kings Road, Kings, IL 61045. Representative: Dennis P. Drda, 13 East Stephenson Street, Freeport, IL 61032. *Contract irregular: Agricultural Chemicals* from points in IL to various points in WI, IN, IA, MO, and MN, and return, under a continuing contract(s) with USS Agri-Chemicals. Applicant has filed a corresponding ETA seeking up to 120 days of operating authority. Supporting shipper: USS Agri-Chemicals Division, United States Steel Corporation, 233 Peachtree St., NE., Atlanta, Georgia 30303.

MC 161778 (Sub-4–1TA), filed April 30, 1982. Applicant: IONA OVERFIELD d.b.a. T.I.M. CO., 531 South Park St., Sheffield, IL 61361. Representative: Carl E. Munson, 469 Fischer Building, P.O. Box 796, Dubuque, IA 52001. *Hazardous waste and materials (except classes A and B explosives and radioactive materials),* from points in IL, IN, IA, MI, MN, SD and WI, to points in AR and OH. Supporting shippers: Cecos International, 5324 West 124th Street, Alsip, IL, and Power Transformer Services, Inc., Box 232, Somers, WI 53171.

MC 15735 (Sub-4–14TA), filed May 3, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract irregular: Household goods* between points in the U.S. (except AK and HI) under a continuing contract with International Harvester Company. Supporting shipper: International Harvester Company of Chicago, IL 60611.

MC 15735 (Sub-4–16TA), filed May 6, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Kendall Company Supporting shipper: Kendall Company, Boston, MA.

MC 15735 (Sub-4–17TA), filed May 7, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Ave., Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods* between points in Gila, Maricopa, Pima, and Yavapai Counties, AZ; Almeda, Contra Costa, Merced, Monterey, San Benito, Santa Cruz, Santa Clara, San Joaquin, San Mateo and Stanislaus Counties, CA; Clackamas, Clatsop, Columbia, Linn, Marion, Multonamah, Tillamook, Washington and Yamhill Counties, OR; Clark, Cowlitz and Skamania Counties, WA; Bastrop, Bell, Blanco, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Milam, Travis and Williamson Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI) under a continuing contract with Intel Corporation. Supporting Shipper: Intel Corporation of Santa Clara, CA.

MC 120184 (Sub-4–5TA), filed May 6, 1982. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Rd., Warren, MI 48092. Representative: Thomas B. Hill, 1010 Jorie Blvd., Oak Brook, IL 60521. Contract, irregular: *Televisions, radios, cassette recorders, and such other commodities as are dealt in or used by dealers of RCA Distributing Corporation,* between Wayne Cty., MI, on the one hand, and, on the other, Fulton, Lucas, Ottawa, Wood, Henry, Sandusky, Seneca, and Hancock Ctys., OH, under continuing contract(s) with RCA Distributing Corporation. Supporting shipper: RCA Distributing Corporation, 27000 Trolley Dr., Taylor, MI 48180.

MC 138569 (Sub-4-3), filed May 6, 1982. Applicant: DAVID BRAITHWAITE AND DENNIS BRAITHWAITE d.b.a. BRAITHWAITE TRUCKING, 3819 Sunset Dr., Rapid City, SD 57701. Representative: Thomas J. Simmons, Box 480, Sioux Falls, SD 57101. *Contract,* irregular; *Precast concrete products,* between the facilities of U-Cart Concrete and Precast Products, in Campbell County, WY, on the one hand, and, on the other, points in NE, ND, SD, and WY, under contract with U-Cart Concrete and Precast Products, Gillette, WY. An underlying ETA seeks 120 days. Supporting shipper: U-Cart Concrete and Precast Products, Gillette, Wyoming.

MC 144621 (Sub-4-10TA), filed May 4, 1982. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 66, South Bend, IN 46624. Representative: Charles M. Williams, 1660 Sherman St., #665, Denver, CO 80203. *Such commodities as are dealt in by manufacturers and distributors of shelving and filing systems,* between the facilities of Lundia, Division of MI Industries, Inc., at or near Jacksonville, IL, on the one hand, and, on the other, points in the United States. Supporting shipper: Lundia, Division of MI Industries, Inc., 600 Capitol Way, Jacksonville, IL 62650.

MC 144621 (Sub-4-11TA), filed May 4, 1982. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 66, South Bend, IN 46624. Representative: Charles M. Williams, 1660 Sherman St., #665, Denver, CO 80203. *(1) pulp, paper, and related products, (2) metal products, and (3) machinery,* from the facilities of Bunn-O-Matic Corporation, at or near White Hall, IL to points in the U.S. in and east of WI, IL, KY, TN, MS, LA and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Bunn-O-Matic Corp., 1400 Stevenson Drive, Springfield, IL 62703.

MC 145629 (Sub-4-2TA), filed May 7, 1982. Applicant: FUCHS, INC., R.R. 1, Box 576, Sauk City, WI 53583. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by manufacturers and distributors of buildings, building materials, furniture, and fixtures* between Waunakee, WI, on the one hand, and, on the other, points in the U.S. in and east of MT, WY, CO, and NM. An underlying ETA seeks 120 days authority. Supporting shipper: Marshall Erdman & Associates, 500 Division St., Waunakee, WI 53597.

MC 146436 (Sub-4-6TA), filed May 3, 1982. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Frozen foods* between the facilities of Saluto Foods Division, General Mills, Inc. at Benton Harbor, MI and Montgomery, AL, on one hand, and points in MA, TX, CT, LA and MS on the other. Supporting shipper: Saluto Foods Division, General Mills, Inc.

MC 147771 (Sub-4-4TA), filed May 3, 1982. Applicant: RALPH J. MARQUARDT & SONS, INC., P.O. Box 1040, Yankton, SD 57078. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Salt and salt products,* from the Lake Point, UT commercial zone to points in the U.S. (except AK and HI). Supporting shipper: Domtar Industries, Inc., Sifto Salt Division, 4285 North Scott Street, Schiller Park, IL 60176.

MC 149406 (Sub-4-3), filed May 6, 1982. Applicant: E. W. WYLIE CORPORATION, P. O. Box 1188, Fargo, ND 58107. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402. *Contract,* irregular route: *such commodities as are dealt in or used by manufacturers and distributors of brick, tile and other clay products* between points in the U.S. (except AK and HI) under continuing contracts with Sioux City Brick & Tile Company, United Brick & Tile Co. of IA and Ballou Brick Company. Supporting shippers: Sioux City Brick & Tile Company of Sioux City, Iowa; United Brick & Tile Co. of Iowa of Adel, Iowa and Ballou Brick Company of Sergeant Bluff, Iowa.

MC 150358 (Sub-4-4TA), filed May 3, 1982. Applicant: RICHARD R. KROHN, d.b.a. NORTHWEST DELIVERY SERVICE, 4060 Trenton Ave. North Plymouth, MN 55441. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402. *Food and related products,* from Chicago, IL to Minneapolis-St. Paul, MN. An underlying ETA seeking 120 days authority is pending. Supporting shipper: Gourmet Foods, Inc., 860 Vandalia Street, St. Paul, MN 55114.

MC 152706 (Sub-4-5TA), filed May 3, 1982. Applicant: MIDWEST OIL TRANSIT, INC., Post Office Box 68083, Indianapolis, IN 462680. Representative: Robert B. Hebert, HARRISON & MOBERLY, 777 Chamber of Commerce Building, Indianapolis, IN 46204. *Asphalt cement and asphalt emulsion.* From Indianapolis, IN and Louisville, KY to points in Champaign and Vermilion Counties, IL. Supporting Shipper: Asphalt Materials & Construction, Inc., 4902 West 66th Street, Indianapolis, IN 46268. An underlying ETA seeks 120 days authority.

MC 152779 (Sub-4-5), filed May 5, 1982. Applicant: KFM TRANSPORT, INC., 222 E. 5th Ave., Naperville, IL 60540. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract, Irregular: New Furniture, supplies, materials, and equipment used in the manufacture, sale and distribution* from the facilities of Luxor-Springs Crop., d.b.a. Kroehler Furniture Division at Bradley & Chicago, IL to points in and east of ND, SD, NE, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Luxor-Springs Crop., d.b.a. Kroehler Furniture Division, 404 Southwest Ave., Bradley, IL 60195.

MC 157836 (Sub-4-2TA), filed May 6, 1982. Applicant: JIM SCHAUER d.b.a. BASELINE COMPANY, 5660 Gregory Road, Dexter, MI 48130. Representative: Paul M. Ross, Attorney, 3104 S. Cedar St., Lansing, MI 48910, (517) 394-4220. *Contract* irregular: *Machinery, concrete sweepers, and construction equipment* between points in states East of the Mississippi River, on the one hand, and, on the other, between points in the U.S. under continuing contracts with Equipment Brokering Specialists Company, Aeschliman Equipment Company, and Sweepsters Equipment Company (an underlying ETA seeks 90 day authority). Supporting Shippers: Aeschliman Equipment Company, 284 Six Mile Road, Whitmore Lake, MI 48190; Equipment Brokering Specialist Company, P.O. Box 445, Dexter, MI 48130; Sweepsters Equipment Company, 2810 Baker Road, Dexter, MI 48130.

MC 158466 (Sub-4-2), filed May 3, 1982. Applicant: INDUSTRIAL STEEL CONSTRUCTION, INC., 6150 East Ave., Hodgkins, IL 60525. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515. *Steel plate,* from Chicago, IL and points in its commercial zone to the facilities of Gibralter Sprocket Co., 3592 Military Street, Port Huron, MI 48060.

MC 161810 (Sub-4-1TA), filed May 3, 1982. Applicant: M & E MILK TRANSPORT, INC., R.R. 3, Box 243, Middlebury, IN 46540. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180, 703-442-8330. *Contract: Irregular; Citric Acid and Enzymes* between Elkart, IN on the one hand, and, on the other, points in and east of MT, WY, CO, NM and TX under continuing contract with Miles Laboratories, Inc. An underlying ETA seeking 120 days authority has been filed. Supporting shipper: Miles Laboratories, Inc., P.O. Box 40, Elkhart, IN 46515.

MC 161842 (Sub-4-1TA), filed May 5, 1982. Applicant: KNAACK MANUFACTURING COMPANY, 420 E.

Terra Cotta Ave., Crystal Lake, IL 60014. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah WI 54956. *Contract* irregular: *plastic articles* from (1) Bound Brook, NJ to points in IL, IN, OH, PA and WI under continuing contract with P.V.P. Products Co., Inc. and (2) from Baltimore, MD and Mansfield, TX to points in IL, IN & OH under continuing contract with Life-Like Products, Inc. Supporting shippers: Life-like Products, Inc. 1600 Union Ave., Baltimore, MD and P.V.P. Products Co., Inc., Bld G–W, Chimney Rock Road, Bound Brook, NJ.

MC 161863 (Sub-4–1TA), filed May 6, 1982. Applicant: MERLE STERENBERG, d.b.a. BROOKFIELD FARMS TRUCKING, Rt. 2, Morrison, IL 61270. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Fertilizer and anhydrous ammonia,* between Clinton, Durant, Wyoming and Lowden, IA on the one hand, and on the other, points in IL. An underlying E/T/A seeks 120 days authority. Supporting Shippers: Lyndon Lumber & Grain, Inc., P.O. Box 276, Lyndon, IL 61261, Big Bill's Feeds, Inc., P.O. Box 8, Onslow, IA 52321, J. A. Bull & Sons, Inc., P.O. Box 358, Morrison, IL 61270, Mapco Fertilizer, Inc., R.R. #2, Box 43, Athens, IL 62613.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 61396 (Sub-5–23TA), filed May 3, 1920. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Cement, in bag and bulk,* between pts in St. Louis County, MN on the one hand, and, on the other, pts in WI, SD, ND, MI and IA. Supporting shipper: Dundee Cement Company, P.O. Box 67, Clarksville, MO 63336.

MC 123476 (Sub-5–16TA), filed May 3, 1982. Applicant: CURTIS TRANSPORT, INC., #23 Grandview Ind. Ct., Arnold, MO 63010. Representative: David G. Dimit (Same address as applicant). *Paper and paper products, and materials, equipment and supplies used in the manufacture and distribution thereof,* between the facilities of Alton Packaging Corp. on the one hand, and on the other hand, all points in AR, MO, IA, MN, WI, IL, IN, MI, KY, TN, VA, WV, OH, PA, MD, NY, NJ, NC and DE. Supporting shipper: Alton Packaging Corp, R.R. #2, Box 1, Pacific, MO 63069.

MC 124411 (Sub-5–4TA), filed May 4, 1982. Applicant: SULLY TRANSPORT, INC., P.O. Box 185, Sully, IA 50251. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Anhydrous ammonia and liquid fertilizer solutions, in bulk,* from Niota, IL and Herman and Louisiana, MO to all pts in IA. Supporting shipper(s): Kaiser Agricultural Chemicals Div. of Kaiser Aluminum & Chemical, 7025 Hickman Road, Des Moines, IA 50322.

MC 135936 (Sub-5–6TA), filed May 3, 1982. Applicant: C & K TRANSPORT, INC., Box 205, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Food products* between Weld County, CO and Hall County, NE on the one hand and, on the other, pts in CO, CT, DE, DC, IL, IN, IA, KS, KY, MD, MA, MI, MN, MO, NE, NY, OH, OK, PA, TN, TX, VA, WV, WI and WY. Supporting shipper: Monfort of Colorado, Inc., Grand Island, NE.

MC 136275 (Sub-5–4TA), filed May 3, 1982. Applicant: WHITFIELD ASSOCIATED TRANSPORT, INC., 777 Executive Blvd., El Paso, TX 79922. Representative: Dana L. Drewry, 777 Executive Blvd., El Paso, TX 79922. *Fly Ash, in bulk, in Pneumatic Equipment* between Amarillo, TX on the one hand, and on the other points in AZ, CO, OK, KS and WY. Supporting Shipper: De Pauw Construction, Amarillo, TX.

MC 143638 (Sub-5–3TA), filed May 3, 1982. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74036. Representative: Michael H. Lennox, Box 75613, Oklahoma City, OK 73147. *Pig Iron, in dump vehicles,* Between TX, LA, AR, MO, KS, OK. Supporting shipper: Philipp Bros., Inc., 1221 Avenue of the Americas, New York, N.Y. 10020.

MC 144618 (Sub-5–11TA), filed May 3, 1982. Applicant: SOUTHWESTERN CARRIERS, INC., P.O. Box 79495, Saginaw, TX 76179. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Cranes, crane parts, booms, and items used in the installation, testing and repair of cranes,* between Harris County, TX, on the one hand, and, on the other, points in the US. Supporting shipper: Mechanical Systems, Houston, TX 77041.

MC 145396 (Sub-5–5TA), filed May 3, 1982. Applicant: BOYCE HOWARD d.b.a. HOWARD TRUCKING, P.O. Box 165, Newport, AR 72112. Representative: John Paul Jones, P.O. Box 3140, Front St. Station, Memphis, TN 38103. *Metal Products* between Jackson County, AR on the one hand, and, on the other points in AL, FL, GA, IL, IN, KS, KY, MO, NC, OH, OK, SC, VA and WV, restricted to the facilities of Razorback Steel Corp. Supporting shipper: Razorback Steel Corp., Newport, AR.

MC 146442 (Sub-5–6TA), filed May 3, 1982. Applicant: CLEARFIELD TRANSPORTATION COMPANY, INC., P.O. Box 313, Clinton, MO 64735. Representatives: Mark J. Andrews, Lawrence Rudolph, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036. Contract, irregular. *Foodstuffs, and products pertaining to restaurant service,* between points in the US (except AK and HI), undercontinuing contract(s) with Howard Johnson, Inc. Supporting shipper: Howard Johnson, Inc., 229 Forbes Road, Braintree, MA 02184.

MC 149035 (Sub-5–3TA), filed May 4, 1982. Applicant: HARLAN D. RUDD, P.O. Box 57, Drakesville, IA 52552. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Contract irregular: *Anhydrous Ammonia and Fertilizers,* (1) Between pts in ID and WA on the one hand, and, on the other, pts. in MT under continuing contract(s) with Cargill, Inc., and Shoco Fertilizer, Inc. (2) Between pts in ID, MT, OR, UT, WA and WY on the one hand, and, on the other, pts. in the U.S. under continuing contract(s) with McIntosh Grain & Feed of Great Falls, MT. Supporting shippers: Cargill, Inc., P.O. Box 1584, Great Falls, MT 59403; Shoco Fertilizer, Inc., P.O. Box 654, Great Falls, MT 59403; McIntosh Grain & Feed, P.O. Box 1425, Great Falls, MT 59403.

MC 149199 (Sub-5–8TA), filed May 3, 1982. Applicant: FRONTIER EXPRESS, INCORPORATED d.b.a. D & M TRANSPORTATION, 905 S.W. Second, Oklahoma City, OK 73109. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. *Air conditioning and heating equipment and related supplies;* and *materials, equipment and supplies used in the manufacture and distribution thereof (except bulk commodities);* between the facilities of Waugh Bros. Supply Co. at Oklahoma City, Enid, Lawton, and Tulsa, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Waugh Bros. Supply Co., 2015 N.W. 7th, Oklahoma City, OK 73106.

MC 149199 (Sub-5–9TA), filed May 3, 1982. Applicant: FRONTIER EXPRESS, INCORPORATED d.b.a. D & M TRANSPORTATION, 905 S.W. Second, Oklahoma City, OK 73109. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. *Materials, parts and accessories used in the manufacturing of off-highway vehicles and drilling rig draw works (except bulk commodities);* between the facilities of Unit Rig & Equipment Co. at Tulsa, OK, and the facilities of Kimco,

Inc., at Conroe, TX, on the one hand, and, on the other, points in the U.S. (except AK & HI). Supporting shipper: Unit Rig & Equipment Co., P.O. Box 3107, Tulsa, OK 74101.

MC 150812 (Sub-5–11TA), filed May 4, 1982. Applicant: FROST TRANSPORTATION, INC., P.O. Box 3400, Shreveport, LA 71103. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517. Contract, Irregular. *Metal products,* between Baton Rouge, LA on the one hand, and, on the other, points in Kent, WA, Seattle, WA, San Diego, CA, Ontonagon, MI, Bath, ME, and Fairless Hills, PA under contract with Spiral Metals Corp., Baton Rouge, LA. Supporting shipper(s): Spiral Metals Corp., 4145 Flannery Road, North, Baton Rouge, LA 70814.

MC 159474 (Sub-5–4TA), filed May 3, 1982. Applicant: U.S. EXPRESS, INC., P.O. Box 9652, Little Rock AR 72219. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402. *Meat, meat by-products, meat products and articles distributed by meat packing houses,* from points in IA and NE to New Orleans, LA. Supporting shipper: AJC International, Inc., 6065 Roswell Rd., Atlanta, GA 30328.

MC 160785 (Sub-5–2TA), filed May 4, 1982. Applicant: CASTAR TRUCKING, 7840 "F" Street Omaha, NE 68127. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Food and related products (except commodities in bulk),* between the facilities of Blue Star Foods, Inc. at or near Council Bluffs, IA, and cold storage facilities in Douglas and Sarpy Counties, NE, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Blue Star Foods, Inc., 1023 4th Street, Council Bluffs, IA 51501.

MC 161431 (Sub-5–1TA), filed May 4, 1982. Applicant: C & C TRANSPORT, INC., 1400 Airline Highway, Baton Rouge, LA 70805. Representative: John C. Mangano, (same as applicant). *Bulk petroloum products,* From points in LA to points in MS. Supporting shippers: The Southland Corporation, P.O. Box 7002, Addison, TX 75001.

MC 161662 (Sub-5–1TA), filed May 3, 1982. Applicant: HOLMES TRUCKING, INC., 206 East May, Osceola, IA 50213. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Pork products,* (1) From the facilities of The Jimmy Dean Meat Company, Inc. at Osceola, IA to all pts in the U.S., and (2) From Dallas, TX to the facilities of The Jimmy Dean Meat Company, Inc. at Osceola, IA. Supporting shipper(s): The Jimmy Dean Meat Company, Inc., P.O. Box 467, Osceola, IA 50213.

MC 114028 (Sub-5–4TA), filed May 6, 1982. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Boulevard, Dubuque, IA 52001. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603. *Bananas,* From Ft. Lauderdale, FL, to Chicago, IL; Terre Haute, IN; Grand Rapids, MI; and Milwaukee, WI. Supporting shipper: Pandol Brothers, Inc., 500 S.E. 17th Street, Ft. Lauderdale, FL 33316.

MC 121037 (Sub-5–2TA), filed May 7, 1982. Applicant: CONTINENTAL FREIGHTWAYS, INC., P.O. Box 9423, Houston, TX 77011. Representative: Damon R. Capps, 1300 Main St., Suite 1230, Houston, TX 77002. *Mercer Commodities, metal and metal products and pipe* between the plantsite of Great Western Pump and Supply in Tarrant and Harris Counties, TX and points in OK, MT, LA, CO, AR, WY, AZ, CA, KS, and NM. Supporting shipper: Great Western Pump and Supply, 3121 Yuma, Ft. Worth, TX 76119.

MC 142672 (Sub-5–31TA), filed May 7, 1982. Applicant: DAVID BENEUX PRODUCE AND TRUCKING INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same as applicant). *Such commodities as are dealt in by grocery and food business houses (except frozen and in bulk), materials, equipment, and supplies used in the manufacture or distribution thereof;* between French Lick, IN, on the one hand, and, on the other, points in AZ, CA, CO, FL, GA, IL, MD, MA, MN, MO, NC, NJ, OH, PA, and TX. Supporting shipper: Pluto Corp., P.O. Box 391, French Lick, IN 47432.

MC 142755 (Sub-5–1TA), filed May 7, 1982. Applicant: W. E. HAMILTON, d.b.a. HAMILTON TRUCKING COMPANY, 103 North Cedar Street, Pecos, TX 79772. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767. *Drilling mud and completion fluids, in bulk, in tank vehicles,* between points in Ector, Reeves and Ward Counties, TX, on the one hand, and, on the other, points in Chaves, Curry, Eddy, Lea and Roosevelt Counties, NM. Supporting shipper(s): M. L. Baroid, Odessa, TX, Runnels Mud Co., Pecos, TX, Hughes Drilling Fluid, Inc., Pecos, TX.

MC 143654 (Sub-5–2TA), filed May 7, 1982. Applicant: DOYLE BRANT, INC., Route 4, Grand Terrace Estates, St. Joseph, MO 64507. Representative: Tom B. Kretsinger, Jr., P.O. Box 258, Liberty, MO 64068. *Malt beverages and empty containers* between points in Buchanan County, MO on the one hand, and on the other hand, points in Tarrant County, TX. Supporting shipper: Midland Bottling Co., Inc., 1422 South 6th Street, St. Joseph, MO 64503.

MC 143768 (Sub-5–3TA), filed May 6, 1982. Applicant: F. R. ANDERSON, INC., Box 782, Des Moines, IA 50306. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities (except explosives, household goods and commodities in bulk)* between Linn County, IA on the one hand, and, on the other, points in IA. Supporting shipper: Best Refrigerated Express, Inc., Scott Truck Line, Inc.

Note.—Applicant intends to interline.

MC 144505 (Sub-5–6TA), filed May 5, 1982. Applicant: DOYLE LOVE, d.b.a. LOVE TRUCKING, Route 1, Box 438, Maybank, TX 75147. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Such Articles as are dealt in by manufacturers or distributors of Power Products—Motorcycles or Automobiles* between facilities of American Honda Motor Co., Inc. at points in the U.S. on the one hand, and, on the other, points in the U.S. Restricted to shipments originating at or destined to the facilities of American Honda Motor Co., Inc. Supporting Shipper: American Honda Motor Co., Inc., 100 West Alondra Blvd., Gardena, CA 90427.

MC 147196 (Sub-5–50TA), filed May 7, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 10686, Jefferson, LA 70k181–0686. Representative: Donald A. Larousse (same as applicant). *General Commodities* between Orleans Parish, LA on the one hand, and on the other points in the US (except AK and HI) for the account of Transoceanic Shipping Co., Inc., New Orleans, LA. Supporting Shipper: Transoceanic Shipping Co., Inc., 1505 Int'l Trade Mart Bldg., New Orleans, LA 70130.

MC 148943 (Sub-5–3TA), filed May 6, 1982. Applicant: TEJAS OESTE TRUCK INC., 2209 Mills St., El Paso, TX 79901. Representative: Greg J. Evans (same as applicant). *General commodities, freight all kinds, (except bulk liquid in tank vehicles, or bulk requiring special equipment or commodities which either due to size, weight, or value would require special equipment)* between El Paso, TX and points in NM. Applicant will tack and interline. Supporting Shipper(s): 14.

MC 148987 (Sub-5–2TA), filed May 6, 1982. Applicant: W. C. CARRIERS, INC., P.O. Box 519, Bethany, OK 73008. Representative: Kenneth L. Peacher, 3925 N. Ann Arbor, Oklahoma City, OK

73122. *Dry Drilling Fluid Additives* between points in Benton and Washington Counties, AR, Kimble County, TX, and points west of the Mississippi River, including the states of AR, AZ, CA, CO, ID, KS, LA, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY. Supporting Shipper: Southern Mineral and Fibers, Inc., Springdale, AR.

MC 151124 (Sub-5–2TA), filed May 5, 1982. Applicant: LOLA JEANNE LYNN, d.b.a. LYNN LEASING, P.O. Box 117, Labadie, MO 63055. Representative: Lola Jeanne Lynn (same address as applicant). Contract, irregular; *Sand, in bulk,* from points in Jefferson and St. Louis Counties, MO, to Hillsboro, IL, under contract with Hillsboro Glass Co. Supporting shipper(s): Hillsboro Glass Co., Schram Avenue, Hillsboro, IL 62049.

MC 160058 (Sub-5–1TA), filed May 6, 1982. Applicant: SPIKES COMMODITIES, INC., P.O. Box 758, Hugoton, KS 67951. Representative: Larry E. Gregg, P.O. Box 1979, Topeka, KS 66601. *Urea ammonium nitrate solution* from Woodward, OK, to points in CO, NE, KS, NM, and TX. Supporting shipper: Terra Chemicals International, Inc., P.O. Box 1628, Sioux City, IA 51102.

MC 160785 (Sub-5–3TA), filed May 7, 1982. Applicant: CASTAR TRUCKING, 7840 "F" Street, Omaha, NE 68127. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Such commodities as are dealt in or used by manufacturers and distributors of machinery and communication equipment (except Classes A and B explosives and commodities in bulk),* from the facilities of the Western Electric Company, Inc. at or near Omaha, NE, to pts in the U.S. (except AK and HI). Supporting shipper: Western Electric Company, Inc., P.O. Box 14000, West Omaha Station, Omaha, NE 68114.

MC 161256 (Sub-5–1TA), filed May 5, 1982. Applicant: CACTUS TRANSPORTATION COMPANY, INC., 909 North Judge Ely, Abilene, TX 79601. Representative: Sam Hallman, Attorney at Law, 4555 First National Bank Bldg., Dallas, TX 75202. Contract, irregular; *drilling mud and drilling mud additives, in sacks and in containers, except commodities in bulk, in tank vehicles,* from Lovell, Upton, Green River and Casper, WY; Belle Fourche, SD; Gascoyne, ND; and Lathrop Wells, NV, to Wichita Falls, Abilene, San Angelo, Midland, Odessa, Lubbock and Slayton, TX, under continuing contract(s) with Cactus Consolidated, Inc., d.b.a. Cactus Wholesale Mud, of Abilene, TX.

MC 161509 (Sub-5–1TA), filed May 5, 1982. Applicant: BAUDY TRANSPORT, INC., 1717 S. Peters St., New Orleans, LA 70130. Representative: C. W. Ferebee, 3010 FM 1960 West, Suite 106, Houston, TX 77068. *Iron and steel articles* between New Orleans, LA and its commercial zone on the one hand, and, points in TX and MS on the other hand. Supporting shipper(s): Tri State Steel Sales, Inc., Morrera, LA, Atlas Steel & Wire, Inc., Harrahan, LA.

MC 161509 (Sub-5–2TA), filed May 5, 1982. Applicant: BRAUDY TRANSPORT, INC., 1717 S. Peters St., New Orleans, LA 70130. Representative: C. W. Ferebee, 3010 FM 1960 West, Suite 106, Houston, TX 77068. *General Commodities having a prior or subsequent movement by water* between the facilities of Kaiser Aluminum and Chemical Corp. located in Chalmette, Gramercy, and Baton Rouge, LA, on the one hand, and, points in LA on the other hand. Supporting shipper: Kaiser Aluminum and Chemical Corp., New Orleans, LA.

MC 161674 (Sub-5–1TA), filed May 7, 1982. Applicant: B & D TRANSPORTATION, INC., P.O. Box 37581, Omaha, NE 68137. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Food and related products,* between (1) pts in Pottawattamie County, IA and Douglas and Sarpy Counties, NE, and (2) Monmouth County, NJ on the one hand, and on the other pts in the U.S. (except AK and HI). Supporting shipper: Blue Star Foods, Inc., 1023 4th Street, Council Bluffs, IA 51501.

MC 161682 (Sub-5–1TA), filed May 7, 1982. Applicant: MID–SOUTH CABINET AND MILLWORK, INC., Hwy 65 South, Conway, AR 72032. Representative: Paul H. Patton (same as applicant). Contract, Irregular; *Paper, paper products, cardboard containers, materials and supplies used in the manufacture and distrubtion thereof* between the facilities of Container Service Corp. located at Dallas, TX, Houston, TX, and North Little Rock, AR and all points in TX and AR, under continuing contract with Container Service Corp., No. Little Rock, AR 72119.

MC 161683 (Sub-5–1TA), filed May 7, 1982. Applicant: MUNROE COLD HEADING, INC., 3020 Lewis St., Little Rock, AR 72204. Representative: C. K. Munroe (same as applicant). Contract, Irregular; *Plastic, rubber, or foam articles* from Little Rock, AR to Memphis, TN and Tupelo, MS under continuing contract with Foam Packaging, Inc., 8503 New Benton Hwy, Little Rock, AR.

The following applications where filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 161786 (Sub-6–1TA), filed May 3, 1982. Applicant: A S C PACIFIC INC., POB 2075, Tacoma WA 98401. Representative: W. E. Seliski, POB 8255, Missoula, MT 59807. *Building materials and iron and steel articles* between points in CA, WA, OR, ID and MT on the one hand, and, on the other points in the U.S. in and west of MT, WY, CO, and NV for 270 days. Supporting shippers: There are five shippers. Their statements may be examined at the Regional Office listed above.

MC 161797 (Sub-6–1TA), filed May 3, 1982. Applicant: ACCURATE DELIVERY SERVICE, INC., 353 West 56th Ave., Denver, CO 80216. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. *Contract carrier;* irregular route, *merchandise, equipment and supplies sold, used or distributed by a manufacturer of cosmetics* between points in CO for the account of Avon Products, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Avon Products, Inc., 63rd & College, Kansas City, MO 64141.

MC 161297 (Sub-6–1TA), filed April 29, 1982. Applicant: HOWARD CHRISTIANSON AND CRAIG CHRISTIANSON, d.b.a. ARLINGTON DISTRIBUTING COMPANY, P.O.B. 366, Arlington, WA 98223. Representative: Clyde H. MacIver, 1700 Peoples National Bank Bldg., 1415 Fifth Ave., Seattle, WA 98171. *Contract carrier,* irregular routes, *lumber and wood products* between points in the U.S. under continuing contract with J. H. Baxter & Co. of Renton, WA., for 270 days. Supporting shipper: J. H. Baxter & Co. P.O.B. 568, Renton, WA 98057.

MC 161330 (Sub-6–1TA), filed April 30, 1982. Applicant: KENNETH R. AMICK and JOSEPH H. SWANDA, d.b.a. B.A.S. TRUCKING, 8981 Lamar St., Spring Valley, CA 92077. Representative: Kenneth R. Amick (same as applicant). *Contract carrier,* Irregular routes: *rock and ore,* from Truna, CA to Esmeralda County, NV for the account of D.K. Mining for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: D.K. Mining, 10029 Medina Dr., Santee, CA 92071.

MC 161780 (Sub-6–1TA), filed April 30,, 1981. Applicant: BASRAN FREIGHT & LUMBER, division of BASRAN INDUSTRIES LTD., 517 Wood St., New Westminster, B.C., CD V3M 5K8. Representative: George LaBlesontere, 15 S. Grady Way, Suite 230, Renton, WA

98055. *Commodities as are dealt in or used by manufacturers and dealers of prefabricated log homes* between ports of entry on the International Boundary line between the U.S. and CD located in WA and Pierce County, WA, for 270 days. Supporting shipper: Lindal Cedar Homes Ltd., P.O.B. 2080, New Westminster, B.C. V3L 5A3.

MC 147981 (Sub-6–2TA), filed April 30, 1982. Applicant: CORNWELL TRANSPORTATION, P.O.B. 247, Norco, CA 91760. Representative: Foster L. Kent, P.O.B. 285, Council Bluffs, IA 51501–285. *Contract;* Irregular. *Plastic products,* between points in Los Angeles and Orange Counties, CA on the one hand, and on the other, points in AZ, ID, OR, UT and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Future Foam, Inc., 1400 N. Jefferson, Anaheim, CA 92807.

MC 146464 (Sub-6–17TA), filed May 3, 1982. Applicant: NEVADA GENERAL TRANSPORTATION, INC., 11560 So. State, Draper, UT 84020. Representative: Carl I. Sundeaus (same address as applicant). *General commodities* (except Classes A & B explosives, household goods and commodities in bulk) between Boston, MA, Chicago, IL, Emeryville, CA, Los Angeles, CA, So Kearney, NJ and St. Louis, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Westransco, Inc., 330 S. Santa Fe Ave., Los Angeles, CA 90013.

MC 161531 (Sub-6–1TA), filed April 29, 1982. Applicant: POWDER RIVER TRANSPORTATION SERVICES, INC., P.O.B. 2578, Gillette, WY 82716. Representative: H. Wayne Worthen (same as applicant). Authority: *Passengers and baggage* in charter operations between points in WY on the one hand, and, on the other, points in CO, SD, UT, MT, ID, NV, NE, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: There are 9 shippers. Their statements may be examined at the Regional office listed above.

MC 159308 (Sub-6–2TA), filed April 30, 1982. Applicant: G. RADEN & SONS, INC., 1915 So. Corgiat Dr., Seattle, WA 98108. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006. *Glass containers and accessories thereof* from points in King County, WA, to points in CA, for 270 days. Supporting shipper: Northwestern Glass, 5801 East Marginal Way South, Seattle, WA 98134.

MC 128114 (Sub-6–2TA), filed May 4, 1982. Applicant: SAVAGE & SONS, INC., P.O.B. 2422, Pasco, WA 99302. Representative: Boyd Hartman, P.O.B. 3641, Bellevue, WA 98009. *Petroleum* and *petroleum products* between Pasco, WA and Hanford, Benton County, WA for 270 days. Supporting shipper: Pacific Northern Oil Corporation, Suite 1800, 1100 Olive Way, Seattle, WA 98101.

MC 156509 (Sub-6–3TA), filed May 4, 1982. Applicant: W.M.M. COMPANY, INC., P.O.B. 80, Goshen, OR 97401. Representative: Wilford L. Main, 2299 Willona Dr., Eugene, OR 97401. *Steel & Steel by-products, Zinc, Alloy, Aluminum and scrap material to be used for recycle and Light & Heavy equipment* between WA, OR, CA, for 270 days. Applicant requests tacking privileges. Supporting shippers: Western Equipment Co., 6309 N.E. Columbia Blvd., Portland OR, 97218; and Oregon Metal Slitters Inc., 2245 N.W. Suffork, Portland, OR 97210.

MC 161779 (Sub-6–1TA), filed April 29, 1982. Applicant: WENTZ EQUIPMENT HAULING, LTD., #170 Lake Slyvan Close SE., Calgary, Alberta, CD, T2J 3E6. Representative: Murray K. Mullen, P.O. Box 8984, Station "F", Calgary, Alberta, CD, T2J 5S6. *Contract carrier,* irregular routes: *Oilfield equipment,* between ports of entry on the International Boundary between the U.S. and CD located in MT on the one hand, and, on the other, points in LA, TX, OK, CO, WY, MT, and ND, under a continuing contract(s) with M.N.M. Machinery Ltd. of Calgary, Alberta, for 270 days. Supporting shipper: M.N.M. Machinery Ltd., 2707—58 Ave., SE., Calgary, Alberta, CD, T2C 0B4.

MC 161847 (Sub-6–1TA), filed May 5, 1982. Applicant: MEL PEARL, 380 Sutherland Ln., Reno, NV 89511. Representative: Mel Pearl (same as applicant). *Contract carrier,* irregular routes: *Metal products, as iron, steel, bar plate strip, structural, pipe,* (1) from Stockton and Fontana, CA and Santa Clara, Alameda, Contra Costa and Los Angeles Counties CA; Plymount, UT; and Portland, OR; to Sparks and Reno, NV; and (2) from Sparks, NV to Bishop and Lone Pine, CA for account of Pittsburg DesMoines Steel Co. for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Pittsburg DesMoines Steel Co. 1250 Kleppe Ln, Sparks, NV 89431.

MC 161530 (Sub-6–1TA), filed May 5, 1982. Applicant: RAIDER TRUCKING, INC. 3621 W. Dailey, Phoenix, AZ 85023. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Contract carrier:* Irregular routes: *Tires and commodities dealt in or used by tire stores,* between the facilities of Goodyear Tire & Rubber Co. in Los Angeles, CA, on the one hand, and, on the other, points in AZ and Clark County, NV, for the account of Goodyear Tire & Rubber Co., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Goodyear Tire & Rubber Co. 1144 E. Market St. Akron, OH 44316.

MC 146075 (Sub-6–7TA), filed May 5, 1982. Applicant: TEXAS INTERMOUNTAIN TRANSPORTATION, INC., 6161 West 29th Place, Wheatridge, CO 80214. Representative: Delbert Ewing, (same as applicant). (1) *food and related products* (except in bulk, in tank vehicles); (2) *beverages* (except in bulk, in tank vehicles); and (3) *meat and meat products* (except in bulk, in tank vehicles) (1) from points in LA, MS, and TX to points in AR, CO, IA, IL, IN, KS, MN, ND, NE, OH, and SD; (2) from points in AZ, CA, OR, TX, WA, and WI to Denver, CO; and (3) from the facilities of Sigman Meat Company at/near Denver, CO to points in AZ, CA, ID, MT, NM, NV, OR, TX, UT, WA, and WY, for 270 days. Supporting shippers: Castle & Cooke Foods, P.O.B. 8743, Metarie, LA 70011; C&C Distributing, Inc., 6275 E. 62nd Ave., Denver, CO 80207; Murray Bros. Dist. Co., 1505 W. 3rd Ave. Denver, CO 80223; and Sigman Meat Company, Inc. 6000 W. 54th Ave., Arvada, CO 80002.

MC 148791 (Sub-6–13TA), filed May 5, 1982. Applicant: TRANSPORT–WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier:* Irregular routes: *Packaging, packaging products and related materials, equipment and supplies,* between points in the U.S. (except AK and HI), for the account of Boise Cascade Corporation of Boise, ID for 270 days. Supporting shipper: Boise Cascade Corporation, P.O. Box 7747, Boise, ID 83707.

MC 161879 (Sub-6–1TA), filed May 5, 1982. Applicant: DAVID CABRAL, CABRAL TRANSPORTATION COMPANY, 14756 Raritan Dr., Whittier, CA 90604. Representative: David Cabral (same address as applicant). *Contract carrier,* Irregular routes: *Frozen Meats and Fish,* from Santa Fe Springs, CA to Portland, OR; Phoenix, AZ; Las Vegas, NV and Seattle, WA for 270 days. Supporting shipper: Certi-Fresh Food Corp., 13055 E. Molette St., Santa Fe Springs, CA 90670.

MC 161339 (Sub-6–1TA), filed May 6, 1982. Applicant: COMANCHE ROAD TRANSPORT, LTD., 232 38th Ave., N.E., Calgary, Alberta T2E 2M2. Representative: James M. Christenson, 4444 IDS Center, 80 South Eighth St.,

Minneapolis, MN 55402. *Crude gypsum rock and coke* between Whatcom County and Stevens County, WA, on the one hand, and, points on the U.S./ Canadian border on the other, for 270 days. Supporting shippers: Columbia Cement Corporation, P.O. Box 37, Bellingham, WA 98227; and Philipp Bros. Inc., 1221 Ave. of the Americas, New York, NY 10020.

MC 157488 (Sub-6–2TA), filed May 6, 1982. Applicant: ROY WESSELS, d.b.a. D & K TRANSPORTATION, P.O. Box 816, Lewiston, ID 83501. Representative: Roy Wessels (same as applicant). *Contract carrier* irregular routes, *lumber, plywood, and all forest related products* under continuing contract with Inland Forest Products, between points in WA, ID, OR, CA, AZ, ND, SD, UT, CO, WY, NE, NV, MN, IA, KS, MT, for 270 days. Supporting shipper: Inland Forest Products, P.O. Box 505, Clarkston, WA 99403.

MC 161799 (Sub-6–1TA), filed May 5, 1982. Applicant: DAVE R. GRANT HAY, INC., 910 W. 24th St., Ogden, UT 84401. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. *Contract carriage,* irregular routes, transporting *machinery,* from Mitchell, SD, Las Vegas, NV, Denver, CO, Wassau, WI, Barnesville, MN, Owatonna, MN, and Lamarada, CA to Salt Lake City, UT under a continuing contract(s) with Masonry Equipment & Supply Company, for 270 days. Supporting shipper: Masonry Equipment & Supply Company, 295 S. Redwood Rd., North Salt Lake City, UT 84054.

MC 144053 (Sub-6–2TA), filed May 6, 1982. Applicant: DON MUMMA TRUCKING CO., INC., Rt. 2, Box 143M, Spokane, WA 99207. Representative: James E. Wallingford, P.O. Box 2647, Spokane, WA 99220. *Building materials, machinery* and *parts thereof, dry chemicals in packages* (excluding Type A & B explosives and hazardous waste products) and *scrap materials* not identified by industry; between points in WA, OR, and ID on one hand and points in AL, AK, AR, AZ, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MD, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SD, TN, TX, UT, WA, WI, and WY on the other hand: fpr 270 days. Supporting shippers: There are fifteen shippers, their statements may be examined at the regional office above.

MC 161732 (Sub-6–1TA), filed May 6, 1982. Applicant: R. & I. TRUCKING, INC., 9727 Glandon St., Bellflower, CA 90706. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Such commodities* as are dealt in or used by housing products manufacturers, from Fullerton, CA, to points in AZ, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Nutone Division of Scovill Manufacturing Co., 2330 Raymer Ave., Fullerton, CA 92633.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13280 Filed 5-14-82; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: June 3–4, 1982
Time: 8:30 a.m. to 5:30 p.m.
Room: 807
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after November 1, 1982.

Date: June 10–11, 1982
Time: 8:30 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after November 1, 1982.

Date: June 9, 10 and 11, 1982
Time: June 9, 7:00 p.m. to 9:00 p.m.
June 10, 8:30 to 7:00 p.m.
June 11, 8:30 to 5:00 p.m.
Room: 807
Program: This meeting will review applications submitted for Humanities Projects in Media Division of Public Programs, for projects beginning after September 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 82-13226 Filed 5-14-82; 8:45 am]
BILLING CODE 7536-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: June 7–8, 1982
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications submitted for the Youth Projects Program, Division of Public Programs, for projects beginning after October 1, 1982.

Date: June 11, 1982
Time: 9:00 a.m. to 5:00 p.m.
Room: 1134
Program: This meeting will review applications submitted for the Libraries Humanities Projects Program, Division of Special Programs, for projects beginning after September 1, 1982.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the

agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or condifential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call 202–724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–13296 Filed 5–14–82; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Operations and TMI–2 Action Plans; Meeting

The ACRS Combined Subcommittees on Reactor Operations and TMI–2 Action Plans will hold a meeting on June 2, 1982, Room 762, 1717 H Street, NW, Washington, DC. The Subcommittees will discuss with members of the NRC Staff and other interested parties two proposed regulations. The first topic concerns proposed rulemaking to clarify applicability of the license conditions and technical specifications in an emergency and would be implemented by adding the necessary clarifications to 10 CFR 50.54, "Conditions of License" and 10 CFR 50.72, "Notification of Significant Events". The other proposed rule deals with licensing requirements for pending operating license applications. This rule will modify 10 CFR 50.34 (contents of applications; technical information) and contains the basic requirements of NUREG–0737, "Clarification of TMI Action Plan Requirements".

In accordance with the procedures outlined in the Federal Register on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Suboommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: Wednesday, June 2, 1982—1:00 p.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard K. Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Industrial Security information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552(c)(4).

Dated: May 12, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13317 Filed 5–14–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 318]

Baltimore Gas and Electric Co.; Issuance of Amendments to Facility Operating Licenses and Negative Delcaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 69 and 52 to Facility Operating Licenses Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (the licensee), which revised the licenses and their appended Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2. The amendments are effective as of the date of issuance.

The amendments authorize an increase in the maximum allowable number of fuel assemblies in the fuel storage pool from 1760 to 1830 assemblies.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Notice of Consideration of Proposed Modification to Facilities Spent Fuel Storage Pool in connection with this action was published in the Federal Register on February 4, 1982 (47 FR 5372). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal of the action being authorized and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action significantly greater than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1973, and the action will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated October 30, 1981, (2) Amendment Nos. 69 and 52 to License Nos. DPR–53 and DPR–69, and (3) the Commission's related Safety Evaluation

and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 82-13320 Filed 5-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co. (H. B. Robinson Unit No. 2); Exemption

I

The Carolina Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-23 which authorizes operation of the H. B. Robinson Plant, Unit No. 2. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR regarding fire protection features of nuclear power plants (45 FR 76602). This revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these fifteen subsections III.G and III.L are the subject of this exemption request. III.G specified detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment is that area, was required (III.G.3) and III.L.[1]

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3 and III.L) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certaim time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 11, 1981, as amended June 30, 1981, October 15, 1981 and March 1, 1982, Carolina Power and Light requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G and III.L of Appendix R as follows:

(1) Extend from March 19, 1981, to March 10, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to March 10, 1982, the date for filing additional exemptions from Section III.G and III.L pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to March 10, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 and III.L if such are necessary; and

(4) Extend from February 17, 1981, to March 10, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well know and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by section III.G.3 and III.L of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of 50.48(c). All of these submittals, however, were deficient in some respect. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, H. B. Robinson Unit 2 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in two supplements to the FPSER. The FPSER and its supplements supported the issuance of amendments to the operating licenses of H. B. Robinson Unit 1[2] which required modifications to

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[1] Note III.L provides the criteria for III.G.3.

[2] H. B. Robinson Unit 2—Operating License DPR-23. Amendment 31 supported by FPSER issued

be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the H. B. Robinson Unit 1 has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R to 10 CFR 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at H. B Robinson Unit 2 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plants and schedules to achieve compliance as required by § 50.48(c)(5) is extended to March 10, 1982;

(2) The date, March 19, 1981 for filing exemption requests pursuant to § 50.48(c)(6) which include a tolling provision is extended to March 10, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3 and III.L as required by § 50.48(c)(5) is extended to March 10, 1982;

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to March 10, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c) (6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant incurred by full compliance with III.G and III.L. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 and III.L, as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section B of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13321 Filed 5-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Co. (Turkey Point Plant, Unit Nos. 3 and 4); Exemption

I

The Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 which authorize operation of the Turkey Point Plant (TTP), Unit Nos. 3 and 4. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Dade County, Florida.

II

On November 19, 1980, the Commisison published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of

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February 28, 1978, Supplement 1 to FPSER issued February 21, 1980, Supplement 2 to FPSER issued December 5, 1980.

this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, Florida Power and Light requested exemptions from 10 CFR 50.48(c) with respect to the requirements of section III.G of Appendix R as follows:

1. With respect to the requirements of section III.G.2 and III.G.3 of Appendix R FPL requests that the Commission exempt it from the reuqirements of § 51.48(c) as follows:

(a) Extend from March 19, 1981 for six months the date for:

(1) Submittal of plans and schedules and/or design descriptions for any modifications necessary to achieve compliance with sections III.G.2 and III.G.3 of Appendix R for the Auxiliary Building Corridor and the Cable Spreading Room;

(2) Filing requests for additional exemptions from Sections III.G.2 and III.G.3 of Appendix R for the Auxiliary Building Corridor and the Cable Spreading Room pursuant to 10 CFR 50.12(a) and 50.48(c)(6).

(b) Extend from March 19, 1981 for six months the date for submittal, if applicable, of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.

2. With respect to section III.G.2 and III.G.3 of Appendix R, FPL requests exemption from the requirements of those sections for those areas of the plant which have been already reviewed and approved by the Commission as shown by the NRC's Fire Protection Safety Evaluation Report (SER) for Turkey Point Units 3 and 4, as amended.

(a) Should the Commission deny FPL's request for such exemption, extend the date for submittal of plans and schedules and/or design descriptions necessary to achieve compliance with the requirements of III.G.2 and III.G.3 for a period of twelve months following the date of such denial.[1]

[1] Based on our November 9, 1981 denial of your requested exemption, proposing section III.G.2 and III.G.3 criteria not be applied to the remainder of the plant, we understand that your requested date for submitting justifiable exemption bases is November 9, 1982.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, has to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of §50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to all licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Turkey Point Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of all items except alternative Safe Shutdown which is the subject of this exemption. The FPSER and its supplements supported the issuance of amendments to the operating licenses of Turkey Point Units [2] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Turkey Point Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of section III.G to Appendix R of 10 CFR Part 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Turkey Point Plant Units 3 and 4 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. The Commission is granting an extension until July 1, 1982. This date is based upon the response of all the

[2] a. A. Schwencer to R. E. Uhrig dated March 21, 1979, Amendments 45 and 37 to Facility Operating License Nos. DPR–31 and DPR–41 and supporting FPSER.

b. S. Varga to R. E. Uhrig dated April 10, 1982, Amendments 84 and 78 to Facility Operating License Nos. DPR–31 and DPR–41 updating the Fire Protection Technical Specifications to include modifications and requirements of Appendix R to 10 CFR Part 50.

c. S. Marga to R. E. Uhrig dated January 20, 1982, completed our review of modifications as designated in our FPSER dated March 21, 1979.

d. A. Schwencer to R. E. Uhrig dated April 3, 1980, Review and Status of Fire Protection modifications.

e. S. Varga to R. E. Uhrig dated July 9, 1980, Review and Status of Fire Protection modifications.

licensees with regard to the time needed to perform the reassessment required and the redesign of plant features if necessary. All but a few licensees indicated submittal dates prior to July 1, 1982, and many have already made their submittals. On this basis, we cannot find that your proposed schedule exhibits your best effort in meeting the requirements of 10 CFR 50.48(c) and Appendix R to 10 CFR 50. Therefore, in the judgment of the Commission, the time elapsed from November 19, 1980, when the Fire Protection Rule was published, until July 1, 1982, allows adequate time for you to complete your submittal. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of section III.G. of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981 for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Although item 4 is not in your exemption request, it is implied in the request for items 1, 2, and 3.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3., a required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the work-load associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 10th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13323 Filed 5-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-213, 50-245 and 50-336]

Connecticut Yankee Atomic Power Co., et al.; Exemption

I

In the matter of Connecticut Yankee Atomic Power Company; The Connecticut Light and Power Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Northeast Nuclear Energy Company (Haddam Neck Plant and Millstone Nuclear Power Station, Unit Nos. 1 and 2).

The Connecticut Yankee Atomic Power Company (CYAPCO) (the licensee) is the holder of Facility Operating License No. DPR–61 which authorizes operations of the Haddam Neck Plant. Northeast Nuclear Energy Company, et al, (NNECO) (the licensee) is the holder of Provisional Operating License No. DPR–21 and Facility Operating License No. DPR–65 which authorizes operation of Millstone Nuclear Power Station, Units No. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The Haddam Neck Plant comprises a pressurized water reactor located in Middlesex County, Connecticut. Millstone Station, Units No. 1 and 2 comprise boiling and prerssurized water reactors, respectively, located in Waterford, Connecticut.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this exemption request. III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).[1]

[1] III.L. specifies the criteria for meeting III.G.3. and is included in the NNECO schedular exemption

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as amended June 23, 1981, November 6, 1981 and January 15, 1982, CYAPCO and NNECO requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to March 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to March 1, 1982, the date for filing additional exemptions from section III.G.2 pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to March 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, if such are necessary; and

(4) Extend from February 17, 1981, to March 1, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of section III.G of Appendix R to CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested a in generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Haddam Neck Plant and the Millstone Units No. 1 and 2 have been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lesson learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and Fire Protection Safety Evaluation Reports (FPSER) are issued. A few items remained unresolved. Further discourse between the licensees and the NRC staff resulted in resolution of all items except for requirements related to alternative safe shutdown capability as documented in supplements to the FPSERs. The FPSERs and their supplements supported the issuance of amendments to the operating licenses for [2] the Haddam Neck Plant and Millstone Unit Nos. 1 and 2 which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, these plants have been upgraded to a high degree of fire protection already and the extensive reassessment involved in the request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of section III.G to Appendix R of 10 CFR 50 and to proposed modifications in conformance with Appendix R for areas requiring alternative safe shutdown or justify and request specific exemptions.

The licensees also stated in the request for exemption that all other subsections of Appendix R would be met on the schedules required by 10 CFR 50.48(c). As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, section III.L., provides the criteria for Alternative Safe Shutdown capability and, thus, affects the final reassessment and redesign, if necessary, of this feature at these plants. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensees have completed a substantial part of the fire protection features at the Haddam Neck and the Millstone Units No. 1 and 2 plants in conformance with the requirements of the Fire Protection Rule and are applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic

requests dated March 19, June 23, November 6, 1981 and January 15, 1982.

[2] Haddam Neck Operating License No. DPR–61, Amendment No. 28 dated 10/3/78 and Amendment No. 45 dated November 20, 1981. Millstone Unit 1 Operating License No. DPR–21, Amendment No. 53 dated 9/26/78 and Amendment No. 83 dated 4/2/82. Millstone Unit 2 Operating License No. DPR–65, Amendment No. 35 dated 3/3/78 and Amendment No. 43 dated 9/19/78.

Letter 81–12, dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions for the Haddam Neck Plant and Millstone Station Units No. 1 and 2 with respect to the requirements of Section III.G of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to March 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to March 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, as required by § 50.48(c)(5) is extended to March 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to March 1, 1982.

Provided that the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) a sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedidated shutdown systems to comply with section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensees do not meet the above conditions, the licensees will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the work-load associated with reviewing all of the submittals falling due near the same time, will not relieve the licensees of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any signficant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need be not prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13322 Filed 5-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-201 OLA]

Nuclear Fuel Services, Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center), Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel reprocessing and radioactive waste disposal facility operating license amendment proceeding:

Thomas S. Moore, Chairman
Dr. W. Reed Johnson
Gary J. Edles

Dated: May 11, 1982.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-13326 Filed 5-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 44 to Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 3 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective 21 days from the date of issuance.

The amendment revises the plant Technical Specifications to require operability of a system to sample the plant effluent for indications of radioiodine and particulates. The amendment also provides a minor restructuring of Table 3.5–3 and Table 3.5–4 with no deletions or additions of new requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for the amendment dated February 1, 1982, (2) Amendment No. 44 to License No: DPR–64, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of May 1982.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-13324 Filed 5-14-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co. (San Onofre Nuclear Generating Station Unit 1); Exemption

I

The Southern California Edison Company (the licensee) is a holder of Provisional Operating License No. DPR-13 which authorizes operation of the San Onofre Nuclear Generating Station Unit 1 (the facility). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor located in San Diego County, California.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative or dedicated safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3.).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative or dedicated safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative or dedicated safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented November 9, 1981, Southern California Edison Company requested an exemption from 10 CFR 50.48(c) with respect to the requirements of Section III.G. This request would extend the deadline for submittal of plans and schedules for a safe shutdown capability, including design descriptions of modifications needed to satisfy section III.G.3, from March 19, 1981 to approximately six months after completion of the Systematic Evaluation Program.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative or dedicated safe shutdown capability had to be designed as required by section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Amendment 44 to Provisional Operating License No. DPR-13, supported by the staff's Fire Protection Safety Evaluation Report (FPSER) for San Onofre Unit 1 dated July 19, 1979, predated issuance of the revised 10 CFR 50.48 and Appendix R. This amendment and FPSER approved the deferral of the implementation of certain fire protection modifications to the completion of the Systematic Evaluation Program (SEP). In approving the schedular requirements of the revised 10 CFR 50.48, the Commission decided that implementation of the fire protection modifications should not be deferred to the SEP. By letter dated March 19, 1981, Southern California Edison stated that with the exception of providing alternative or dedicated safe shutdown capability per Section III.G of Appendix R, it was probable that each of the fire protection items could be implemented in accordance with the required schedules in the revised 10 CFR 50.48. The licensee has informed us that these modifications are scheduled to be completed during the current outage which began on February 27, 1982.

As stated previously, the licensee's supplemental application dated November 9, 1981, requested an exemption from 10 CFR 50.48(c) that would adjust the deadline for submission of required information regarding safe shutdown capability for San Onofre Unit 1 to approximately six months after completion of SEP. None of the other plants in the SEP have requested a schedular delay subsequent to the issuance of the revised 10 CFR 50.48 that is linked to completion of the SEP. All but a few licensees have indicated submittal dates prior to July 1, 1982, and many have already made their submittals. On this basis, the Commission cannot find that Southern California Edison's proposed schedule exhibits a best effort in meeting the requirements of 10 CFR 50.48(c) and Appendix R to 10 CFR Part 50. Therefore, in the judgment of the Commission, the time elapsed from November 19, 1980, when the Fire Protection Rule was published, until July 1, 1982, allows adequate time for the licensee to complete the submittal. Accordingly, a schedular exemption until July 1, 1982 is the subject for consideration.

IV

Prior to the issuance of Appendix R, San Onofre Unit 1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in Supplement No. 1 to the FPSER dated February 4, 1981. The licensee has completed most of the fire protection modifications and had indicated that the remaining modifications not associated with alternative or dedicated shutdown capability are scheduled to be completed during the current outage which began on February 27, 1982. In addition, as stated in our FPSER, the licensee has taken several measures to provide alternate shutdown capability in the interim by the installation of an additional source of offsite power, modifications to the station air system, provisions for isolation capability of affected control system, and development of station procedures. Therefore, San Onofre Unit 1 has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences betweeen what was recently approved and the specific requirements of section III.G to Appendix R of 10 CFR 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at San Onofre Unit 1 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of section III.G of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982; and

(2) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, as required by § 50.48(c)(5) is extended to July 1, 1982.

Provided that the following condition is met:

The design description of alternative or dedicated shutdown systems to comply with section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above condition, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the work-load associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13325 Filed 5-14-82; 8:45 am]
BILLING CODE 7590-01-M

Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals Meeting Notice

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that NRC's Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals will hold its second meeting at 10:00 a.m., June 2, 1982. This meeting will take place at the office of Shaw, Pittman, Potts and Trowbridge, South Building, 9th Floor Lobby, 1800 M Street, NW, Washington, DC and will be open for public observation. The third meeting of the committee has been scheduled for 10:00 a.m. on June 10, 1982 at the asme location.

At these meetings, the committee will continue its review of proposals for reforming the NRC's licensing process for nuclear plants. Transcripts of the meetings will be made available for public inspection and copying at NRC's Public Document Room, 1717 H Street, NW, Washington, DC.

Further information on the meetings may be obtained from Mr. Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. (Telephone 202/634–1465).

Dated at Washington, D.C., this 13th day of May, 1982.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc 82-13430 Filed 5-14-82; 8:45 am]
BILLING CODE 7590-01-M

THE PRESIDENT'S TASK FORCE ON PRIVATE SECTOR INITIATIVES

Meeting

May 12, 1982.

The President's Task Force on Private

Sector Initiatives will hold its third meeting on May 28, 1982 in the Francis Scott Key Ballroom, South of the Baltimore Hilton Hotel, (101) West Fayette Street, Baltimore, Maryland.

The meeting will convene at 9:00 a.m. and adjourn at 1:00 p.m. The meeting is open to the public. However, due to fire regulations, the attendance will be limited. Those persons wishing to attend should call Tish Manes at the President's Task Force on Private Sector Initiatives at (202) 395–7366 to make a reservation. Calls should be placed during business hours no sooner than May 20, and no later than May 21, 1982.

Michael P. Castine,

Deputy Director, Private Sector Initiatives.

[FR Doc. 82-13350 Filed 5-14-82; 8:45 am]

BILLING CODE 3510-CW-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—George G. Kundahl—202–272–2700. Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549

New
Form U–5
No. 270–257

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance proposed Rule 15b7–1, (17 CFR 240.15b7–1), and proposed Form U–5 under the Securities Exchange Act of 1934 which would provide qualification standards for broker-dealers not members of a registered national securities association ("SECO broker-dealers") and their associated persons.

The potential respondents are all SECO broker-dealers and their associated persons. There are currently approximately 436 SECO broker-dealers registered with the Commission.

Submit comments to OMB Desk Officer: Robert Veeder 202–395–4814.

George A. Fitzsimmons,

Secretary.

May 11, 1982.

[FR Doc. 82-13305 Filed 5-14-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22490; 70–6732]

New England Electric System; Proposed Transactions by Holding Company to Assure Payment of Post-Retirement Benefits to Subsidiaries' Employees

May 11, 1982.

In the Matter of New England Electric System, 25 Research Drive, Westborough, Massachusetts 01581 (70–6732)

New England Elecrtic System ("NEES"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

The declaration states that the subsidiaries of NEES (the "Employers") provide for the benefit of certain of their officers: an Incentive Compensation Plan, a Deferred Compensation Plan, an Executive Supplemental Retirement Plan, and a Retirement Supplement Plan (the "Four Plans"). To avoid constructive receipt of income for federal income tax purposes, the amounts held under the Four Plans are not funded. In order to provide greater assurance of payment of post-retirement benefits to the particpants under the Four Plans, NEES proposes (1) to make any payment due under the Four Plans not made by the Employer liable for such payment and (2) to indemnify surety companies for any payments they might make which are not made by the Employers or NEES.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 7, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulations, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13297 Filed 5-14-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18727; SR–CBOE–80–16]

Chicago Board Options Exchange, Inc.; Order Partially Approving Proposed Rule Change on Summary and Temporary Basis

May 11, 1982.

In the matter of Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, IL 60604 (SR–CBOE–80–16).

On June 9, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE"), filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b–4 thereunder, copies of a proposed rule change to modify its operations and procedures relating to options market makers. Among other things, the proposed rule change created a single class of market makers by eliminating supplemental appointments, increased the number of options classes in which market makers were permitted to have appointments, and established a new exchange committee responsible for evaluating the performance of and taking disciplinary action against market makers.[1] The proposed rule change also required that a minimum number of contracts or percentage of transactions be executed by market makers in person.[2]

On February 12, 1981, the Commission, pursuant to Section 19(b)(2) of the Act, approved the proposed rule change.[3] On April 13, 1981, Charles B. Clement, a member of the Chicago Board of Trade ("CBT") and a market maker on the CBOE, filed a petition for review of the Commission's approval order in the United States Court of Appeals of the Seventh Circuit.[4]

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[1] Notice of the proposed rule change was published in Securities Exchange Act Release No. 16919 (June 24, 1980), 45 FR 43914 (1980).

[2] Subsequently, on July 9, 1980, the CBOE filed an amendment to the proposed rule change excluding certain closing transactions from the calculations of transactions required to be executed in person by market makers and requiring the recording of additional information on market maker orders. Notice of the amendment to the proposed rule change was published in Securities Exchange Act Release No. 17012 (July 25, 1980), 45 FR 51325 (1980).

[3] Securities Exchange Act Release No. 17535 (February 12, 1981), 46 FR 13055 (1981).

[4] On April 14, 1981, Clement requested that the Commission stay its approval order pending a

On April 5, 1982 the Seventh Circuit vacated the Commission's order approving the proposed rule change.[5]

The Court based its decision upon a finding that the Commission, in approving the proposed rule change and denying the stay, did not adequately consider the possible anti-competitive and discriminatory effects of the rule change on CBT members who also were CBOE market makers as require by Sections 6(b)(7) and 19(b)(2) of the Act. The Court then remanded the matter to the Commission for further proceedings consistent with its decision. The Court specifically refrained from addressing the substantive merits of the rule change.

The Commission has reviewed the rule filing and has determined to approve, on a summary basis and for a 90-day period, those portions of the proposed rule change not in contention in the judicial proceeding.[6] In particular, the Commission has determined to approve on a temporary basis all of the amendments contained in the proposed rule change except those establishing requirements that a specified minimum number of options contracts or percentage of market makers options transactions must be executed in person.[7]

The Commission is approving the proposed changes on temporary basis without prior additional public comment because it appears approval is necessary, consistent with Sections 6(b)(1) and 6(b)(5) of the Act, to assure that the CBOE has the capacity to enforce compliance by CBOE market makers with the Act and rules thereunder and the rules of the CBOE, as well as for the protection of investors and the maintenance of fair and orderly markets on the CBOE. The proposed changes have been in effect since February 12, 1981. To require CBOE to return to its former procedures would result in considerable disruption of its ability to monitor and evaluate market maker activities, particularly because it would leave the CBOE without a basis to evaluate maker performance. In addition, a policy manual revised by the CBOE and filed in connection with the proposed rule change permitted CBOE market makers to increase substantially the number of options classes in which they hold appointments. Return to the status of CBOE rules before the rule changes became effective would require market makers to give up appointments granted as a result of that revision, a result that clearly would be disruptive and confusing to CBOE market markers, and possibly anticompetitive.

In addition, the Commission believes that these proposed rule changes are consistent with the Act because by increasing the number of options classes in which a CBOE market maker may be registered, they enhance opportunities for fair competition among broker-dealers. In this connection, the Commission believes that it is important to note that when it initially published the proposed rule change these proposed changes, unlike the "in-person" requirement, were not the subject of any adverse comment.

The Commission therefore finds that approval of these proposed changes is necessary in the public interest and for the protection of investors. The Commission further finds good cause to allow the rule change to become effective immediately because their absence impairs the CBOE's ability to enforce compliance by its members and their associated persons with the CBOE's rules, the Act and Commission rules thereunder, and it would be contrary to the public interest to require CBOE to operate without the rules.

The Commission has determined that 90 days should be sufficient to permit the Commission and the CBOE to reevaluate the entire proposal in light of the Court's opinion, and in particular will permit the Commission to consider *de novo* whether the proposed rule change, or any other proposal submitted by the CBOE during the 90-day period, is consistent with the Act.

Interested persons are invited to submit written data, views and arguments concerning those portions of the proposed rule change being approved on a temporary basis by June 7, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR–CBOE–80–16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed changes which are filed with the Commission and all written communications relating to the proposed changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

It is therefore ordered, that the proposed rule change referenced above be, and it hereby is, approved for a period of 90 days from the date hereof.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13286 Filed 5-14-82; 8:45 am]

BILLING CODE 8010-01-M

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determination by the Court of Appeals on the issues presented in his petition. The Commission denied Clement's request in Securities Exchange Act Release No. 17815 (May 22, 1981).

[5] *Clement v. Securities and Exchange Commission*, No. 81–1583 (7th Cir., April 5, 1982).

[6] CBOE has requested that the Commission approve on an accelerated and temporary basis those portions of the rule change not at issue in the court's decision. *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Richard T. Chase, Assistant Director, Division of Market Regulation, SEC (April 14, 1982).

[7] The following addition to Interpretation and Policy 8.7(.03) has not been approved:

"Moreover, for each quarter, except for unusual circumstances, a Market-Maker must execute in person and not through the use of orders either (a) 75% of his total trading activity less closing transactions not executed in person (measured in terms of contract volume), or (b) 20,000 contracts in those classes to which a Market-Maker holds an appointment."

In approving the rule change temporarily, the Commission notes that Rule 8.7(b) imposes a "continuous obligation" on a person with a market maker appointment to maintain a fair and orderly market. Approving this portion of the rule change is not inconsistent with the Court's opinion and does not appear to result in discrimination against CBT members because CBOE has interpreted this provision in connection with the rule change to "impose a duty on market makers only while they are on the trading floor," and does not impose an obligation to be continuously on the floor. *See* letter from Arne R. Rode, General Counsel, CBOE, to Geroge A. Fitzsimmons, Secretary, SEC (April 20, 1981).

[Release No. 34–18721; File No. SR–OCC–82–8]

Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corp. Relating to Use of Letters of Credit for Margin Required To Be Deposited With the Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

The proposed rule change would set forth the existing standards for approval of U.S. financial institutions as letter of credit issuers, and permit OCC to approve letters of credit from non-U.S. issuers meeting certain specified criteria. These standards relate to net worth, country of origin, and institution strength. The proposed rule change would also include limitations on Clearing Members' use of letters of credit issued by non-U.S. banks.

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified below. OCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to codify existing standards for approval of U.S. financial institutions as letter of credit as issuers, and to expand the forms of margin available to Clearing Members to meet OCC margin requirements by providing for the approval by OCC of qualifying non-U.S. banks issuers of letters of credit. The criteria for non-U.S. banks derive from the diversity of regulatory structures and political and economic systems and climates outside the U.S. The restrictions on use of non-U.S. letters of credit by Clearing Members are intended to limit dependence by OCC and its Clearing Members on foreign bank issuers, and the appropriateness of these limitations will be periodically re-evaluated by OCC.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended, in that it is intended to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsibile by providing reasonable standards for the acceptance of letters of credit from foreign and domestic issuers.

(B) Burden on Competition

The proposed rule change is expected to have a positive impact on competition by allowing U.S. branches and agencies of foreign banks to enter the market for Clearing Members' letters of credit.

(C) Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By June 11, 1982, or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed ruler change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 7, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

May 10, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13299 Filed 5-14-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0330]

First Wall Street Small Business Investment Co., Inc.; License Surrender

Notice is hereby given that First Wall Street Small Business Investment Co., Inc., 767 Fifth Avenue, Suite 4403, New York, New York 10022 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). First Wall Street Small Business Investment Co., Inc., was licensed by the Small Business Administration on August 31, 1976.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 22, 1982, and accordingly, all rights, privileges, and franchises derived there from have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: May 10, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-13314 Filed 5-14-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0256]

FSA Capital, Ltd., Issuance of License To Operate as a Small Business Investment Company

On March 11, 1982, a notice was published in the **Federal Register** (47 F.R. 10694), stating that an application had been filed by FSA Capital, Ltd., 301 West Sixth Street, Austin, Texas 78701, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business March 26, 1982, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0256, on April 23, 1982, to FSA Capital, Ltd. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: May 10, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-13315 Filed 5-14-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0431]

MRN Capital Co.; Issuance of a License To Operate as a Small Business Investment Company

On September 15, 1981, a Notice was published in the **Federal Register** (46 FR 45847) stating that MRN Capital Company, 111 Great Neck Road, Great Neck, New York 11021, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA Rules and Regulations governing small business investment companies (13 CFR 107.102 (1981)), for a license to operate as a small business investment company.

Interested parties were given until the close of business September 30, 1981, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on April 23, 1982, issued Licensed No. 02/02-0431 to MRN Capital Company, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 10, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-13316 Filed 5-14-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: (1) Motor vehicle, (2) Rail freight, (3) Cargo vessel, (4) Cargo-only aircraft, (5) Passenger-carrying aircraft.

DATES: Comment period closes June 14, 1982.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, D.C.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8816-N	Hunt-Wesson Foods, Inc., Fullerton, CA	49 CFR 172.504(c)(2)	To authorize shipment of matches, strike anywhere, flammable solid, in quantities of up to 2,000 pounds without placarding. (Mode 2).
8817-N	Allied Corp., Morristown, NJ	49 CFR 173.274(a)(1), Note 1	To authorize shipment of fluorsulfonic acid, corrosive material, in acid resistant screw cap glass bottles instead of glass bottles with glass stoppers. (Modes 1, 2, 3).
8818-N	Dow Chemical Co., Midland, MI	49 CFR 173.252(a)(3), 179.102-7(a)(1)	To authorize shipment of bromine corrosive material in DOT Specification 105A500W tank car tanks with a maximum capacity of 263,000 pounds gross weight. (Mode 2).
8819-N	Radiation Service Organization, Laurel, MD	49 CFR 173.395	To authorize a one-time shipment, via exclusive use vehicle, of less than 100 curies of encapsulated metallic cobalt-60 in its original non-DOT specification and uncertified container. (Mode 1).
8820-N	Fauvet-Girel, Paris, France	49 CFR 173.315	To manufacture, mark and sell non-DOT specification IMCO Type 5 portable tanks for shipment of various refrigerant gases, nonflammable gases. (Modes 1, 2, 3).
8821-N	Rocket Research Co., Redmond, WA	49 CFR 173.304	To authorize shipment of compressed gases, n.o.s. in non-DOT specification inflator assembly, incorporating an explosive device, for use in a sonobuoy. (Modes 1, 4).
8822-N	Certified Tank Manufacturing, Inc., Long Beach, CA	49 CFR 173.119(a)(17), 173.245(a)(30), (31), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for bottom outlet valve variations for transport of flammable or corrosive waste liquids or semi-solids. (Mode 1).
8823-N	International Air Transport, Anchorage, AK	49 CFR 172.101, 173.119, 175.3	To authorize the transportation of fuel, aviation, turbine engine, classed as flammable liquid, in DOT Specification 34 polyethylene containers of 15 gallon capacity loaded in cargo compartments of helicopters. (Mode 4).
8824-N	Pengo Industries, Inc., Fort Worth, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix (B).	To authorize shipment of various Class A and B explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4).
8825-N	Mustang Aviation, Inc., San Diego, CA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix (B).	To authorize carriage of Class A, B and C explosives not permitted for air shipment or in quantities of greater than those prescribed for air shipment. (Mode 4).
8826-N	Phoenix Air, Marietta, GA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix (B).	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8827-N	Union Carbide Corp., Danbury, CT	49 CFR 173.315	To authorize shipment of vinyl methyl ether, flammable gas, in DOT Specification MC-330 and MC-331 cargo tanks. (Mode 1).
8828-N	Economics Laboratory, Inc., St. Paul, MN	49 CFR 173.277	To authorize use of a DOT Specification 12A fiberboard box containing 4 liner 1-gallon capacity, vented polyethylene bottles for shipment of a sodium hypochlorite solution, classed as a corrosive material. (Mode 1).
8829-N	Mountstar Division of Amalgamet, Inc., New York, NY	49 CFR 173.164	To authorize a one-time shipment of zinc skimmings, flammable solid, in non-DOT specification 20 foot freight containers lined with heavy duty plastic. (Mode 3).
8830-N	Logical Technical Services Corp., Newtown, PA	49 CFR 173.119	To manufacture, mark and sell DOT Specification 34 containers for shipment of methyl alcohol, solution classed as a flammable liquid. (Modes 1, 2, 3, 4).
8831-N	Teledyne Energy Supplies, Timonium, MD	49 CFR 173.249, 172.400	To authorize shipment of potassium hydroxide solution, not exceeding one gallon in non-DOT specification blotter like material within a module overpacked in a plywood case, excepted from labeling. (Modes 1, 4).
8833-N	Streeau Laboratory, Inc., Spooner, WI	49 CFR 173.76, 173.74, 173.78	To authorize shipment of an initiating explosive, Class A, wetted with hexane, flammable liquid, in inside containers of plastic not to exceed 30 grams of explosive, overpacked in DOT Specification 6, 5B 17H metal drums containing no more than 8 inside containers. (Mode 1).
8834-N	Crosby & Overton, Inc., Long Beach, CA	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.240(a), 178.340-7, 178.341-5, 178.343-5.	To authorize shipment of various liquid and semi-solid waste flammable, corrosives or poison B materials in non-DOT specification vacuum cargo tanks similar to DOT Specification 307/312 except for bottom outlet and circumferential reinforcement. (Mode 1).
8835-N	Georgia-Pacific Corp., Atlanta, GA	49 CFR 172.202(b)	To authorize use of shipping papers which list the quantity ordered and product number before the proper shipping name. (Modes 1, 2).
8836-N	United States Steel Corp., McKeesport, PA	49 CFR 178.37-10(b), 178.37-10(c), 178.45-7(a), 178.45-7(b).	To manufacture, mark and sell DOT Specification 3A, 3AX, 3AA, 3AAX and 3T high pressure cylinders with small reduced wall sections which would permit calculation of excess stresses at these points, for shipment of those compressed gases presently authorized in these cylinders. (Modes 1, 2, 3).
8837	Fabricated Metals, Inc., San Leandro, CA	49 CFR 173.245	To manufacture, mark and sell non-DOT specification portable steel tanks with a polyethylene liner for shipment of a corrosive liquid, n.o.s. (Modes 1, 2, 3).

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on May 6, 1982.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-13021 Filed 5-14-82; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 95
Monday, May 17, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, May 21, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–726–82 Filed 5–13–82; 12:42 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, May 28, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–727–82 Filed 5–13–82; 12:42 pm]

BILLING CODE 6351–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, May 18, 1982.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

1. Ratification of Notation Vote: Freedom of Information Act Appeal No. 82–3–FOIA–46.
2. Freedom of Information Act Appeal No. 82–3–FOIA–038–MK, concerning a request for information from an open investigative case file.
3. Freedom of Information Act Appeal No. 82–3–FOIA–2–AT, concerning a request for information from open Title VII investigative files.
4. Freedom of Information Act Appeal No. 82–3–FOIA–14–ME, concerning a request for administrative decisions on administrative subpoenas.
5. Freedom of Information Act Appeal No. 82–2–FOIA–10–ME, concerning a request for contents of a charge file.
6. Freedom of Information Act Appeal No. 82–2–FOIA–021–MK, concerning a request for copies of materials contained in three investigative age discrimination charge files.
7. A report on Commission Operations by the Executive Director.

Closed:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Officer, at (202) 634–6748.

This Notice Issued May 11, 1982.

[S–722–82 Filed 5–13–82; 10:10 am]

BILLING CODE 6570–06–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meetings

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the Corporation's Board of Directors has determined, by affirmative vote of Chairman William M. Isaac, Director Irvine H. Sprague (Appointive), and Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business requires the withdrawal from the agenda for consideration in the Board's closed meeting scheduled for 2:30 p.m. on Monday, May 17, 1982, and the addition to the agenda for consideration in the Board's open meeting scheduled for 2:00 p.m. that same day, on less than seven days' notice to the public, of the following matter:

Petition of the Investment Company Institute seeking certain relief in connection with the creation and operation by The Boston Five Cents Savings Bank, Boston, Massachusetts, of The Boston Five Mutual Fund, The Boston Five Money Market Fund, The Boston Five Fund Distributor, Inc., and The Boston Five Fund Adviser, Inc.

By the same unanimous vote, the Board has also determined that Corporation business requires the withdrawal from consideration at its May 17, 1982 open meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and Resolution re: Proposed new Part 350 of the Corporation's rules and regulations, to be entitled "Special Reporting Basis for Insured Savings Banks," which would improve the quality of financial data reported to the FDIC by insured savings banks by (1) requiring all insured savings banks to report all financial assets and liabilities acquired or funded on or after January 1, 1983 on a fair value basis for purposes of preparing their Reports of Condition and Income that are filed with the FDIC, and (2) permitting insured savings banks to restate all financial assets and liabilities and bank premises existing on January 1, 1983, to their fair value.

By the same majority vote, the Board determined that no earlier notice of these changes in the subject matter of the meetings was practicable.

Dated: May 12, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–725–82 Filed 5–13–82; 12:42 pm]

BILLING CODE 6714–01–M

5

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 3 p.m., May 13, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Passenger vessel certification of Canadian Cruise Lines, Ltd., owner and operator of the passenger vessel *Prince George*.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–721–82 Filed 5–13–82; 10:06 am]

BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thurday, May 20, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding Regulation B (Equal Credit Opportunity):

(A) Interpretations on treatment of income and disclosure of reasons for adverse action (proposed earlier for public comment—Docket No. R–0203); and

(B) Amendments to the business credit provisions (proposed earlier for public comment—Docket No. R–0185).

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne Assistant to the Board; (202) 452–3204.

Dated: May 12, 1982.

James McAfee,

Associate Secretary of the Board.

[S–723–82 Filed 5–13–82; 10:13 am]

BILLING CODE 6210–01–M

7

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10 a.m., Wednesday, May 26, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: (a) CAT scan equipment (Docket No. 825).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

S–724–82 Filed 5–13–82; 10:25 am]

BILLING CODE 7020–02–M

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federal register

Monday
May 17, 1982

Part II

Department of Health and Human Services

Office of Human Development Services

Head Start Training and Technical Assistance Program; Availability of FY 1982 Funds

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13600-821]

Head Start Training and Technical Asistance Program; Availability of FY 1982 Funds

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of FY 1982 Funds and Request for Applications for Head Start Training and Technical Assistance Grants.

SUMMARY: The Administration for Children, Youth and Families (ACYF), Head Start Bureau, announces that competing applications will be accepted for new State-wide Training and Technical Assistance grants to assist local Head Start grantees in the management and provision of services in Regions I, II, IV, VI, VII, VIII, IX, X. Excluded from the State-wide provider system are Regions III and V. Applications will also be accepted for one T/TA grant to assist all Migrant Head Start programs and one grant to assist Indian Head Start programs in four States.

DATE: The closing for reciept of applications is July 1, 1982.

Scope of This Program Announcement

Under the restructured Head Start training and technical assistance system, we plan to place more emphasis on *technology transfer* by which we mean disseminating good program practices, developed and tested in Head Start, to other Head Start programs and—to the extent resources allow—to other State and local child care providers e.g., day care, public schools, health agencies, etc. As a parallel effort Head Start will also be systematically incorporating program practices from other social services programs. In addition, we will be placing increased emphasis on technical consultation services, by which we mean joint participation in the solution of programmatic and management problems. This joint participation of Head Start programs with training and technical assistance providers is intended to increase Head Start grantee capacity to manage and secure their own T/TA.

This program announcement contains the following sections:

- Program Purpose
- Program Goals and Objectives
- Program Priorities
- The Application Process

Grant Categories are listed below, and described in detail under Program Priorities. Applications are requested in the following two categories:

Grant Category 1: State-wide Training and Technical Assistance.

2: Indian and Migrant Programs Division Training and Technical Assistance.

2a: Training and Technical Assistance grant to serve migrant programs.

2b: Training and Technical Assistance grant to serve East Coast Indian programs (6 grantees in 4 States).

Program Purpose

The Head Start Act, Pub. L. 97–35, Subchapter B, section 648, provides for technical assistance to communities in developing, conducting, and administering programs and for training for specialized or other personnel needed in connection with Head Start programs. In keeping with the law, ACYF will provide financial assistance for training and technical assistance (T/TA) services to Head Start services to children and families. The training and technical assistance is to build capacity in all substantive service components, as well as administration and management, to meet the qualitative standards expected of Head Start.

Program Goals and Objectives

Beginning in Fiscal Year 1982, ACYF plans to restructure the Head Start T/TA delivery system, streamlining it into primarily State-wide provider service areas. The goals are fivefold:

1. To increase direct participation of local Head Start grantees and the broader child care/child development community in the planning, management and delivery of T/TA services.

2. To foster increased utilization of State/local government, private and voluntary sector resources in Head Start programs.

3. To make the Head Start T/TA system responsive to the T/TA needs of the broader child care/child development community.

4. To establish a more cost-effective T/TA network which is more responsive to the needs of Head Start programs at the local community level.

5. To increase Head Start grantee capcity for self-determination in asessing, securing, and managing T/TA services.

T/TA functions vital to the continued success and improvement of Head Start programs are to be assured. Among these functions are: Child Development Associate (CDA) training, assistance to grantees in identifying and correcting both programmatic and management deficiencies, and assistance to grantees in effecting linkages with other child and family service agencies.

The restructuring of the T/TA delivery system into State-wide provider service areas is expected to provide for cost-effectiveness through a reduction in requirements for consultants of staff T/TA from the provider. T/TA gantees will be expected to rely to the maximum extent upon existing Head Start program staff and parents as experts who will be available to provide T/TA services, generally at no fee (but with reimbursement as needed for travel and per diem). Grantees are expected to seek other resources from State and local governments and the private sector of the child care/child development community.

Eight of the ACYF regions will participate in the Category 1 Statewide provider system while Regions III and V will continue the T/TA delivery system presently in place in those regions. ACYF intends to do a management analysis of all the delivery systems during the FY 1983 operating year in order to make decisions for the FY 1984 system.

Program Priorities

The Administration for Children, Youth and Families proposes to make financial assistance awards for the provision of training and technical assistance (T/TA) services to Head Start programs. Each type project is described below.

Category 1: State-wide Training and Technical Assistance Projects.

ACYF solicits applications for financial assistance to assist Head Start programs to meet their T/TA needs and to arrange (through brokerage activities) or provide training and technical assistance as appropriate. Training and technical assistance should be delivered or arranged upon request or demonstrated need of the recipient Head Start program(s). While it is ACYF's intent to use the experienced and competent staff of other Head Start programs to deliver T/TA, some instances will require the use of the State-wide T/TA grantee's own specialists or specialists obtained from other sources in the Head Start Training and technical assistance network.

Functional areas of need include:

1. Assisting Head Start programs to identify, classify and assign priorities to their T/TA needs;

2. Organizing these needs for the geographic area served by the State-wide T/TA grantee to determine the range and severity of needs;

3. Identifying or helping Head Start programs to identify individual staff

members who can provide T/TA to others within that program or within the geographic area served by the State-wide T/TA grantee, or model programs or components which can serve as a demonstration site for T/TA.

4. Matching identified needs with appropriate individuals or site, and brokering an assistance relationship (which in most cases will not involve payment of a fee, though it may require reimbursement for travel and/or per diem);

5. Receiving reports of user satisfaction with T/TA services brokered or provided, and modifying future efforts accordingly;

6. Coordinating with the ACYF Regional Office and with other State-wide T/TA projects; and

7. Reporting plans, activities, and accomplishments to the ACYF Regional Office which awards the grants.

All of these functional areas of need are expected to be accomplished within the framework of advice and guidance received from other elements of the child development community. For this purpose, each State-wide T/TA grantee is to establish and work with a T/TA Advisory Group which is representative of Head Start programs and other child care/child development interests in the geographic areas to be served.

Subject matter areas of need include the components of the Head Start program: Education, Health (including nutrition, medical, and mental health, but not dental health), Parent Involvement, Social Services, Administration and Financial Management. An additional area of need is the ability to provide or to arrange through qualified sub-grantees, Child Development Associate (CDA) staff training. In the provision of CDA training; the State-wide T/TA grantee will be expected to do the following:

- Continue to use the CDA training criteria presently in use.
- Arrange for persons presently receiving CDA training to continue to participate in training to the extent feasible. Grantees are encouraged to work out collaborative arrangements with existing CDA training providers where this will facilitate continued provision of quality CDA training.

While most of these projects are expected to cover State-wide geographic areas, a few will cover a sub-State area or a multi-State area (see Appendix II). In some jurisdictions some Head Start programs will be funded directly by the Regional Office to purchase or provide their own T/TA. These programs will not receive technical assistance services from the State-wide T/TA grantee, but they are to be included in training courses which are intended to serve more than one Head Start program.

Number of grants to be awarded: Approximately 45.

Amount of Individual grants: See Appendix II.

Category 2: Indian and Migrant Programs Division T/TA grants.

2a: ACYF solicits applications for financial assistance to provide T/TA services to all migrant Head Start programs. The functional and subject matter expectations are the same as those described for the State-wide T/TA Grants, Category 1.

2b: ACYF solicits applications for financial assistance to provide T/TA services to 6 Indian Head Start programs located in New York (2), Florida (2), North Carolina (1), and Mississippi (1), the functional and subject matter expectations are the same as those described for the State-wide T/TA Grants, Category 1.

Number of grants to be awarded: 2.

Funds available: See Appendix II.

General Instructions

Training and technical assistance are considered key factors in implementing and maintaining Head Start program quality and performance. Training and/or technical assistance may be given to any Head Start program for the purpose of conforming with Head Start regulations and policies. The determination that particular areas of the program require improvement is made by comparing actual program operation with Federal regulations and policies that govern the Head Start program. Training is defined as an educational activity or event which is designed to impart knowledge, understanding or develop skills. Such activities may be in the form of assembled events (e.g. workshops, seminars), programmed or self-instructional activities. Technical assistance is a problem solving event generally utilizing the services of an expert. Such services are generally provided on-site, address a specific problem or set of problems and are intended to assist the consumer with an immediate resolution or an approach to resolving a given problem or set of problems.

Prospective grantees should assess needs expressed by Head Start programs within the designated geographic area in order to plan for training and/or technical assistance.

The scope of the training and technical assistance (T/TA) efforts includes content related to all the Head Start program components and administration. Regions have in the past used, and to varying extents in different Regions still may use some or all of the following tools and methods to identify T/TA needs: The Program and Administrative Self-Assessment/Validation Instruments (SAVIs), or other self-assessment tools, Routine Validations, In-Depth Validations, audits, general program reviews, pre-reviews and Performance Indicators. In addition, T/TA may be provided in major national and regional/IMPD ACYF program emphases and pertinent regional, multi-State and State Head Start Association emphases. Major content areas for Head Start training and technical assistance are:

- Education
- Parent Involvement
- Social Services
- Health (medical, nutrition, and mental health)
- Staff Training for Career Advancement
- Management and Administration
- Handicapped
- Bilingual-Multicultural

Handicapped and Bi-Lingual/Multi-Cultural T/TA should be provided only to the extent that Head Start programs have high priority T/TA needs in these areas which cannot be met by the Resource Access Projects (RAPs) and the Bi-Lingual/Multi-Cultural Resource Centers.

Management and administration includes systems for the management of needs assessments, program planning, program improvement, personnel administration, fiscal management, program funding, organizational structure and compliance with administrative and programmatic regulations and requirements.

The T/TA grantee should take full advantage of the resources and expertise available from other ACYF grants and contracts, and should coordinate as necessary with those contractors or grantees. Specifically, the coordination should be with Resource Access Projects for handicapped services: Home Start Training Centers (HSTC's) for Head Start programs which are home-based or have home-based components; Bi-Lingual/Multi-Cultural Resource Centers; the National and Regional Child Development Associate (CDA) grantees and contractors; the Public Health Service for dental health T/TA; and the national Exploring Parenting contractor. These contractors and grantees are available to provide leadership, materials, advice and, in most cases, both training and orientation for the staff of the State-wide T/TA grantee, and direct T/TA for local Head Start programs.

In addition, the ACYF will furnish a set of basic training materials on each of the following: The Head Start Administrative Regulations, a curriculum for conducting Management Institutes for New Head Start Directors, and (in FY 1983) a curriculum for Advanced Management Training for experienced Head Start Directors. Head Start and Day Care materials will be made available to the T/TA grantee for reproduction or distribution and use, depending upon availability.

In addition to program content which is strictly related to Head Start, the T/TA grantee should, to the extent feasible, provide generic training and technical assistance in early childhood education to all the elements of the child development community. This coverage should be on an as-needed basis and is regarded as "feasible" if T/TA can be offered to day care staff or organizations beyond the local Head Start program at no additional cost as, for example, including day care staff in Head Start training programs where space is available.

Each State-wide, multi-State and sub-State T/TA grantee must establish a T/TA Advisory Board, which must be representative of the entire child care/child development community in the area served, and which, for example, may include among its members: Representatives of Head Start Directors, or of a State Head Start Directors Association; State or local day care official; representatives of Head Start parents, or of a State Head Start Parent Association; representatives of the State chapter of a child development professional association, such as the Association for the Education of Young Children, or the State Head Start program staff, or of the State Head Start Staff Association; representatives of appropriate schools of faculties in colleges and universities; and experts in such subjects as: Bilingual Education Program Administration, Nutrition, Finance, Mental Health, Early Childhood Education, Licensing, Social Services, etc.

One person, of course, may have qualifications in several of the above areas. The Advisory Board should have no more than ten members if it is to function efficiently, The group should meet at least twice each year, and should be consulted frequently for the purposes of budget planning, needs assessment design, planning activities, policy development, resource allocation, coordination with other T/TA activities within the State, resource identification (volunteer or paid), design and adaptation of training materials, and design and analysis of evaluation activities.

Eligible Applicants

Any public or private non-profit organization may apply for financial assistance under this announcement, including but not limited to organizations formed especially for this purpose (such as consortia of State Head Start Associations and other early childhood organizations within a State), institutions of higher education, and existing non-profit providers of Head Start training and technical assistance. "For profit" organizations are not eligible applicants but may be proposed by eligible applicants as sub-contractors. Applications which are developed jointly by eligible applicants (non-profit organizations, colleges or universities, etc.) in consultation with business and industry are encouraged in order to bring together broader capability and interdisciplinary skills required to implement the intent of these projects. However, in all cases the recipient is expected to perform a substantive role as either principal performer of project activities or overall administration of the project. Applicants must be organizations which are located within the geographic areas to be served by the grants.

Available Funds

Under this announcement awards will be made in FY 1982 and FY 1983.

The Administration for Children, Youth and Families expects to award $9,229,613 in FY 1982 for Head Start Training and Technical Assistance projects.

It is expected that approximately 45 financial assistance awards will be made in Category 1 of this announcement and 2 awards under Category 2. The amount of awards is presented in Appendix II. Some FY 1982 awards will be for a period of less than twelve (12) months.

Appendix II is a table of (1) the amounts available from FY 1982 allocations for awards in each category and (2) the approximate annualized amount for a complete grant year.

Support for FY 1983 will depend on the grantee's satisfactory performance on the project for which the award was made, the availability of funds, the results of the management analysis in FY 1983 of the various T/TA delivery systems, and the best interests of the Government.

Recipient Share of the Project

Recipients are not required to provide a non-Federal share or in-kind contributions. However, in-kind contributions are encouraged.

Instrument of Award

ACYF will award grants under this Announcement.

The Application Process

Availability of Forms

Application for a financial assistance award under the Head Start Training and Technical Assistance Program must be submitted on the standard forms provided for this purpose. Application kits which include the forms, and other information may be obtained by writing or calling the Regional Office or Indian and Migrant Programs Division contact listed in Appendix III of this Program Announcement. Application conferences will be scheduled for prospective grantees. Attendance at these conferences is not required in order to apply for a grant. (See Appendix I).

Application Submission

One signed original and two copies of the application, including all attachments, must be submitted for Category 1 projects to the appropriate Regional Office of Fiscal Operations (OFO), Office of Human Development Services, and for the Category 2 projects to the Grants and Contracts Management Division (GCMD) in Washington, D.C. (See Appendix III for a list of grants officials).

Application Consideration

The cognizant ACYF Regional Program Directors and the Director of the Indian and Migrant Programs Division of the Administration for Children, Youth and Families determine the final action to be taken with respect to each application for financial assistance for this program. Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified persons from the Administration for Children, Youth and Families, and other consumer representatives.

The results of the review assist the Regional Program Director and IMPD Director in considering competing applications. Comments may also be requested from appropriate specialists and consultants inside and outside the Federal Government.

After the cognizant Regional Program Director or IMPD Director has reached a decision either to approve or not to fund competing applications, unsuccessful applicants are notified in writing of this decision. Successful applicants are

notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds awarded, the terms and conditions of the award, the budget period for which support is given, and the total period for which project support is contemplated.

Criteria for Review and Evaluation of Applications

Competing applications for financial assistance will be reviewed and evaluated against the following criteria:

I. Understanding: Extent to which the project objectives support or are capable of achieving the program objectives and priorities as described by the program announcement—10 points.

II. Technical Approach: Extent to which the application shows an ability to apply the appropriate training methodology to different audiences for different purposes, knowledge of the use of various training and technical assistance techniques and their application to Head Start program staff and parents, and ability to satisfy the requirements and standards of the statement of work–15 points.

III. CDA Services: Extent to which the application shows capacity for training in CDA competencies (including center, home-based, and bilingual) at the multi-State, Statewide or Sub-State level—10 points.

IV. Head Start Performance Standards and administrative requirements: Degree to which the application reflects the ability and knowledge to train Head Start staff and parents in areas of need to satisfy program standards and applicable regulations—15 points.

V. Grantee Capability: Extent to which the applicant has or will have adequate facilities and resources and demonstrates familiarity with needs assessment, training and resource identification in the areas to be served.

Staff Capability: Extent to which the applicant's staff are shown to be qualified, experienced in, and familiar with the work to be performed and the programs to be served; and extent to which professional personnel are shown to be available to the applicant at the anticipated time of award—20 points.

VI. Advisory Board and Child Care Community Linkages: Extent to which the proposed Advisory Board represents the user community and will be involved in planning, policy development, determination of needs, resource allocation and oversight in evaluating delivery. Extent to which linkages can be developed with entire child care community for benefit of both Head Start and other child care providers—25 points.

VII. Cost: Extent to which the estimated cost to the Government is reasonable considering the anticipated results—5 points.

Closing Date for Receipt of Application

The closing date for receipt of all applications under this Program Announcement is forty-five days after the date of the **Federal Register** in which the Announcement appears. If the forty-fifth day falls on a Saturday, Sunday, or Federal holiday, the closing date is the first working day thereafter. Applications may be mailed or hand-delivered.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

(Category of Federal Domestic Assistance Program Number 13.000 Project Head Start)

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Approved:

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Dated: May 10, 1982.

Appendix I

Regional Application Conference

Each ACYF Regional Office and the Indian and Migrant Programs Division (IMPD) will schedule a conference for interested organizations within the first two weeks after the date this announcement appears in the **Federal Register.** There will be one conference in each Regional Office city, and one conference in Washington for IMPD.

It is recommended that interested organizations secure a copy of the application kit before the conference, if possible. The number of application kits available at the conferences may be limited.

Contact the office of the ACYF Regional Program Director or the Director, IMPD, for the exact time, date and place of the conference for the Region (or IMPD) in which you are interested in submitting an application.

APPENDIX II

Region and State	Approximate amount of fiscal year 1982 grant	Duration of fiscal year 1982 grant (month)	Proposed maximum amount of a full year grant	Total number of head start grantees
I—Boston:				
Connecticut	$245,462	12	$245,462	14
Maine	83,075	12	83,075	23
Massachusetts	449,862	12	449,862	30
New Hampshire[2]	0	N/A	0	6
Rhode Island	72,957	12	72,957	9
Vermont[2]	0	N/A	0	5
II—New York:				
New Jersey[2]	188,350	7	324,264	25
New York[1] (New York City)	83,785	7	148,621	1
(NW NYS)[2]	169,131	7	283,731	24
(SE NYS)[2]	165,287	7	296,229	20
Puerto Rico[2]	152,229	7	283,731	2
Virgin Island[2]	0	N/A	0	1
IV—Atlanta:				
Alabama[2]	340,993	12	340,993	32
Florida[2]	342,500	12	342,500	31
Georgia[2]	296,759	12	296,759	30

APPENDIX II—Continued

Region and State	Approximate amount of fiscal year 1982 grant	Duration of fiscal year 1982 grant (month)	Proposed maximum amount of a full year grant	Total number of head start grantees
Kentucky[5]	316,926	12	316,926	39
Mississippi[5]	515,319	12	515,319	23
N. Carolina[5]	299,755	12	299,755	45
S. Carolina[5]	222,091	12	222,091	19
Tennessee[5]	275,203	12	275,203	22
VI—Dallas:				
Arkansas	181,002	9	231,670	21
Louisiana	269,512	9	298,353	33
New Mexico	151,300	9	191,300	14
Oklahoma	223,800	9	306,256	23
Texas	692,287	8	1,042,311	70
VII—Kansas City:				
Iowa	173,795	12	173,795	18
Kansas	135,755	12	135,755	18
Missouri	405,269	12	405,269	19
Nebraska	89,481	12	89,481	13
VIII—Denver:				
Colorado[5]	228,278	10	264,610	23
Montana[5]	46,891	8	71,780	5
N. Dakota[5]	41,556	8	61,013	5
S. Dakota[5]	41,265	8	60,295	7
Utah[5]	70,132	8	111,877	8
Wyoming[5]	31,819	8	46,925	5
IX—San Francisco				
Trust Territory	148,750	12	148,750	7
California	1,037,710	11	1,118,750	47
Hawaii	126,750	12	126,750	5
Arizona[5] amd Nevada	235,750	12	235,750	10
Samoa[5]	0	N/A	0	1
X—Seattle:				
Alaska[5]	0	N/A	0	3
Idaho	80,000	9	100,000	8
Oregon	144,093	8	206,586	13
Washington	197,937	9	262,937	22
Indian and Migrant Programs Division:				
Migrant	190,219	12	190,219	25
East Coast Indian	42,264	5	100,000	5

[1] New York State is divided into three separate areas to receive 2 or 3 grants. The three areas are New York City, Western and Northern New York State, and Southern and Eastern New York State. Applicants may apply for one or both of the areas outside of New York City. The grant for New York City will be awarded as a separate grant. Western and Northern New York State includes the following counties: Broome (2 HS programs), Cattaragugus, Cayuga, Chautauqua, Chemung, Cortland, Erie, Jefferson, Lewis, Madison, Monroe, Niagara, Onandaga (Syracuse), Oneida (2 programs), Ontario (Geneva), Orleans, Oswego, St. Lawrence, Schuyler, Steuben, Tioga, Tompkins. The remaining counties in New York State are included in the Southern and Eastern cluster.

[5] To be direct-funded. No competitive grants will be awarded.

[6] These Region II and IV state-wide grants for fiscal year 1982 will not include Child Development Associate Training (CDA). CDA will be direct-funded.

[4] These Region II sub-state grants in New York state will not include CDA. CDA in these jurisdictions will be direct-funded.

[3] In Region VIII the state grants will exclude the following number of grantees that are to be direct-funded: Colorado, 6; Montana, 1; North Dakota, 1; South Dakota, 1; Utah, 2; Wyoming, 1.

Appendix III.—Administration for Children, Youth and Families Regional Offices

Region I

Administration for Children, Youth and Families, OHDS/DHHS, Federal Building, Room 2000, Government Center, Boston, Massachusetts 02203 (Connecticut, Maine, Massachusetts, New Hampshire, Vermont, Rhode Island)
Richard Stirling, Regional Program Director, (617) 223–6450, FTS (8) 223–6450

Region II

Administration for Children, Youth and Families, OHDS/DHHS, Federal Building, Room 4149, 26 Federal Plaza, New York, New York 10278 (New York, New Jersey, Puerto Rico, Virgin Islands)
Elaine Danavall-Williams, Acting Regional Program Director, (212) 264–2974, FTS (8) 264–2974

Region III

Administration for Children, Youth and Families, OHDS/DHHS, 3535 Market Street, (P.O. Box 13716), Philadelphia, Pennsylvania 19101 (Delaware, Washington, D.C. Maryland, Pennsylvania, Virginia, West Virgina)
Alvin Pearis, Regional Program Director, (215) 596–0356 FTS (8) 596–0356

Region IV

Administration for Children, Youth and Families, OHDS/DHHS, 101 Marietta Tower, Suite 903, Atlanta, Georgia 3023 (Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee)
John Jordan, Regional Program Director, (404) 221–2134 FTS (8) 242–2134

Region V

Administration for Children, Youth and Families, OHDS/DHHS, 300 Souther Wacker Driver, 15th Floor, Chicago, Illinois 60606 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
Hilton Baines, Regional Program Director, (312) 353–6503 FTS (8) 353–6506

Region VI

Administration for Children, Youth and Families, OHDS/DHHS, 1200 Main Tower Building, 20th Floor, Dallas, Texas 75202 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Tommy Sullivan, Regional Program Director, (214) 767–2976, FTS (8) 729–2976

Region VII

Administration for Children, Youth and Families, OHDS/DHHS, Federal Building, 3rd Floor, 601 East 12th Street, Kansas City, Missouri 64106 (Iowa, Kansas, Missouri, Nebraska)
German White, Regional Program Director, (816) 374–5401, FTS (8) 758–5401

Region VIII

Administration for Children, Youth and Families, OHDS/DHHS, 1961 Stout Street, Room 7417, Denver, Colorado 80202 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
David Chapa, Regional Program Director, (303) 837–3106 FTS (8) 327–3106

Region IX

Administration for Children, Youth and Families, OHDS/DHHS, Federal Building, Room 143, 50 United Nations Plaza, San Francisco, California 94102 (Arizona, California, Hawaii, Nevada, Pacific Trust Territories)
Roy Fleischer, Regional Program Director, (415) 556–6153 FTS (8) 556–6153

Region X

Administration for Children, Youth and Families, OHDS/DHHS, Arcade Plaza Building, 1321 2nd Avenue, Seattle, Washington 98101 (Alaska, Idaho, Oregon, Washington)
William Hayden, Regional Program Director, (206) 442–0838 FTS (8) 399–0482

Indian and Migrant Programs Division

Hank Aguirre, Director, Indian and Migrant Programs Division, Head Start Bureau, ACYF, OHDS/DHHS, Donohoe Building, Room 5851 (P.O. Box 1182) Washington, D.C. 20013, (202) 755-7715

Directors, Office of Fiscal Operations, Regions I-X, OHDS Grants and Contracts/IMPD

Region I

Mr. St. Clair Phillips, Director, OFO/HDS, JFK Federal Building, Room 200, Boston, Massachusetts 02203

Region II

Mr. Nicholas Cordasco, Director, OFO/HDS, Federal Building, 26 Federal Plaza, New York, New York 10007

Region III

Mr. William Chesser, Director, OFO/HDS, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101

Region IV

Mr. Ed Shulz, Acting Director, OFO/HDS, 101 Marietta Tower, Atlanta, Georgia 30323

Region V

Mr. Russell Armstrong, Director, OFO/HDS, 300 South Wacker Drive, Chicago, Illinois 60606

Region VI

Mr. Marvin Layne, Director, OFO/HDS, 1200 Main Tower, Dallas, Texas 75202

Region VII

Mr. William Howard, Director, OFO/HDS, 601 East 12th Street, Kansas City, Missouri 64106

Region VIII

Mr. Masaru Yoshimura, Director, OFO/HDS, 1961 Stout Street, Room 7440, Denver, Colorado 80202

Region IX

Mr. Al Huerta, Director, OFO/HDS, 50 United Nations Plaza, San Francisco, California 94102

Region X

Mr. Gary Griffith, Director, OFO/HDS, 1321 Second Avenue, Mail Stop 813, Seattle, Washington 98101

Indian and Migrant Programs Division

Mary White, Office of Human Development Services, Grants & Contracts Management Division, North Building, Room 1296, 330 Independence Avenue, S.W., Washington, D.C. 20201

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federal register

Monday
May 17, 1982

Part III

Department of Transportation

Coast Guard

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 91, and 153

[CGD 78–128]

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: This Amendment revises the safety rules for self-propelled vessels carrying hazardous liquids. It adds to the list of cargoes regulated under Part 153 and includes carriage requirements for these new cargoes. It corrects editorial errors, clarifies provisions that are confusing, deletes provisions that are impractical, and adds a number of new provisions. In general, the changes are in keeping with comparable standards adopted by IMCO in the eighth set of amendments to the IMCO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IMCO Chemical Code), Resolution A.212. Finally, the rule updates the addresses of the Coast Guard Merchant Marine Technical Offices found in Part 91.

DATE: This Amendment is effective on July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James W. Gormanson, Office of Merchant Marine Safety (G–MHM–1/14), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202–426–1217).

SUPPLEMENTARY INFORMATION: On July 17, 1980, the Coast Guard published a proposal in the **Federal Register** (45 FR 48058) to revise the regulations governing self-propelled vessels carrying certain bulk hazardous liquid cargoes.

Interested persons were given an opportunity to submit written comments to the Coast Guard concerning the proposal until September 2, 1980. The Coast Guard announced in the **Federal Register** dated August 31, 1981 (46 FR 43789) that the final wording of CGD 78–128 would be discussed at a public meeting of the Chemical Transportation Advisory Committee's (CTAC) Chemical Vessels Subcommittee. The meeting was held at U.S. Coast Guard Headquarters in Washington, D.C., on October 7, 1981. A copy of the meeting minutes and the tape recording of the meeting have been placed in the public docket. A discussion of comments received is contained in the following paragraphs.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Commander James W. Gormanson, Project Manager, Office of Merchant Marine Safety and Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion of Comments on Specific Sections

Section 91.55–15 Procedures for submittal of plans. The Coast Guard closed the 5th Coast Guard District (mmt) office effective July 1, 1981. Accordingly, its functions have been assumed by the 3rd Coast Guard District (mmt) office.

Section 153.2 Definitions. One comment recommended that the definition of "Cargo Area" in the rule correspond to the definition adopted for tankers in 46 CFR 30.10–5a. The Coast Guard has added a definition of "Cargo Area" in this rule to clear up confusion which has occurred in interpreting the definition in 46 CFR 30.10–5a. The definition conforms with that contained in the IMCO Chemical Code and should serve to clarify the intent of the requirements contained in this part.

The proposed definition of "emergency overflow device" was found to be ambiguous and has been deleted. A new definition of "independent," as applies to § 153.408, has been added. (See the discussion under § 153.408.)

Table I—Table of Minimum Requirements; Sections 153.555 Special requirements for inorganic acids; 153.600 Special requirements for nitropropane; 153.963 Incompatible cargoes; and 153.1055 Nitropropane. One comment suggested that the I–B electrical hazard class and group assigned to hydrochloric acid was unnecessarily restrictive since it is normally carried in rubber lined equipment. The Coast Guard assigned hydrochloric acid and other inorganic acids to hazardous atmosphere group I–B as a result of the reevaluation of the potential for hydrogen generation associated with the carriage of inorganic acids. The accumulation of hydrogen gas in deck areas is not considered a major problem due to its low density and relatively low evolution rate. Of primary concern, however, is the possibility of acid leaking into a void or other enclosed space where hydrogen would be generated and could accumulate in hazardous concentrations. Section 153.555 previously prohibited electrical equipment in enclosed compartments adjacent to or containing cargo tanks for inorganic acids. This rulemaking relaxes § 153.555 by deleting § 153.555(b) of the existing rule. Electrical equipment, that is safe in an atmosphere containing hydrogen and conforms to requirements in Subchapter J, may be used in enclosed spaces within the containment area. The Coast Guard is adding footnote 10 to table I which eliminates the inorganic acid I–B electrical hazard classification for weather deck locations. Subchapter J was recently revised to incorporate this exception for inorganic acids. This revision was published in the **Federal Register** on April 8, 1982. This relaxation is consistent with the international proposal for inorganic acids which is to be included in the IMCO Chemical Code. It also gives the owner/operator of a vessel the option to install I–B or no electrical equipment and still comply with Subchapter J.

The electrical hazard classifications for carbon disulfide, diethylethanolamine, dimethylethanolamine, and ethylene chlorohydrin have been corrected to reflect the current National Academy of Science (NAS) electrical hazard classifications. The electrical hazard classifications and special requirements for some of the new cargoes being added to table I have been corrected to conform to the NAS electrical hazard classifications and IMCO Chemical Code requirements.

Electrical installations for cargoes assigned new or revised electrical hazard classifications and groups should be completed at the first drydock examination or no later than two years from the effective date of these regulations. Footnote 12 has been added to those cargoes affected.

The Coast Guard received data from industry indicating that copper and copper alloys do not corrode significantly as a result of prolonged exposure to ethylene dichloride or styrene. The reference to § 153.236(b) for ethylene dichloride and styrene has been deleted by this rule. This will allow vessels having copper or copper alloy components in their cargo containment systems to be certified to carry ethylene dichloride and styrene. The Coast Guard will address IMCO concerning this issue in the future.

Four cargoes, vinyl acetate, vinyl ethyl ether, vinylidene chloride and vinyl toluene, were inadvertently left out of the NPRM and have been assigned § 153.1002 (a) and (b) as a special requirement in table I.

The Coast Guard has reevaluated the hazards of 1- or 2-Nitropropane and is relaxing the carriage requirements to be equivalent to be IMCO requirements. Accordingly, the special requirements

for nitropropane found in §§ 153.600 and 153.1055 are being deleted.

As discussed in the NPRM extensive revisions were proposed to table I. To ensure that table I is correct, a revised table is being promulgated in its entirety. The revised carriage requirements for a number of cargoes and new cargoes in the revised table include:

(1) The cargo name entry in table I of this part for "1,1- or 1,2-Dichloropropane" is amended to read "1,1-, 1,2- or 1,3-Dichloropropane."

(2) The table I column entries for propylene oxide are amended to read as follows:

Cargo name * * *	Vent height	* * *	Special requirements
* * * * *			
Propylene oxide[a]	B/3		.252, .408, .440, .500, .526, .530, .1010, .1011.

(3) The table I column entry under "Fire protection system" is amended to read "NSR" for the following cargoes:

Carbon tetrachloride
Caustic potash solution
Caustic soda solution
Chloroform
Chlorosulfonic acid
Dichloromethane
Ethylene dibromide
Hydrochloric acid
Nitric acid (70 pct or less)
Oleum
Pentachloroethane
Phosphoric acid
Sodium hydrosulfide solution (45 pct or less)
Sodium hypochlorite solution (15 pct or less)
Sulfur (liquid)
Sulfuric acid
1,1,2,2-Tetrachloroethane

(4) ".316" is added in proper numerical sequence to the "Special requirements" column of table I for "(iso-, n-, sec-, tert-) Butylamine."

(5) ".336" is deleted from the "Special requirements" column of table I for the following cargoes:

Acetonitrile
Acrylonitrile
Allyl alcohol
Allyl chloride
Aniline
Benzyl chloride
(iso-, n-, sec-, tert-) Butylamine
Chloroprene
Crotonaldehyde
Epichlorohydrin
Ethylene chlorohydrin
(ortho-, para-) Nitrotoluene
Oleum
Pentachloroethane
1,1,2,2-Tetrachloroethane

(6) ".440" is added in proper numerical sequence to the "Special requirements" column of table I for the following cargoes:

Ethyl ether
Isoprene
Sulfur (liquid)
Vinyl ethyl ether
Vinylidene chloride

(7) ".527" is added in proper numerical sequence to the "Special requirements" column of table I for the following cargoes:

Acetic acid
Acetic anhydride
Acetone cyanohydrin
Acrylonitrile
Allyl alcohol
Allyl chloride
Benzyl chloride
(iso-, n-, sec-, tert-) Butylamine
Carbon disulfide
Chloroform
Chloroprene
Chlorosulfonic acid
Crotonaldehyde
1,1-Dichloroethane
1,3-Dichloropropene
Diethylamine
Diisopropylamine
Dimethylamine (40 pct or less)
Epichlorohydrin
Ethyl acrylate
Ethylene chlorohydrin
Ethylene dibromide
Ethyl ether
Formaldehyde solution (37 to 50 pct)
Formic acid
Hydrochloric acid
Methyl acrylate
Motor fuel anti-knock compounds (containing lead alkyls)
Nitric acid (70 pct or less)
Oleum
Propionic acid
Toluene diisocyanate
Triethylamine
Vinylidene chloride
Vinyl ethyl ether

(8) ".602" is added in proper numerical sequence to the "Special requirements" column of table I for the following cargoes:

Chlorosulfonic acid
Oleum
Sulfuric acid
Toluene diisocyanate

(9) ".912(a)" is changed to read ".912(a)(1)" in the "Special requirements" column of table I for the following cargoes:

Acrylic acid
Acrylonitrile
(iso-, n-) Butyl acrylate
Butyl methacrylate
Chloroprene
(iso-, n-) Decyl acrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
2-Hydroxyethyl acrylate
Isoprene
Methyl acrylate
Methyl methacrylate
(alpha-) Methyl styrene
Vinyl acetate
Vinylidene chloride
Vinyl ethyl ether
Vinyl toluene

(10) ".912(b)" is changed to read ".912(a)(2)" in the "Special requirements" column for table I for the following cargoes:

Acetone cyanohydrin
Benzyl chloride
Tetrahydrofuran

(11) ".1002 (a), (b)" is added in proper numerical sequence to the "Special requirements" column of table I for the following cargoes:

(iso-, n-) Butyl acrylate
Butyl methacrylate
Chloroprene
(iso-, n-) Decyl acrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
2-Hydroxyethyl acrylate
Isoprene
Methyl acrylate
Methyl methacrylate
(alpha-) Methyl styrene
Vinyl acetate
Vinyl ethyl ether
Vinylidene chloride
Vinyl toluene

(12) ".1002" is added in proper numerical sequence to the "Special requirements" column in table I for "Acetone cyanohydrin.

(13) ".1002(a)" is added in proper numerical sequence to the "Special requirements" column in table I for "Acrylic acid."

(14) ".1004" is added in proper numerical sequence to the "Special requirements" column of table I for the following cargoes:

Acetone cyanohydrin
Acrylic acid
Acrylonitrile
Benzyl chloride
(iso-, n-) Butyl acrylate
Butyl methacrylate
Chloroprene
(iso-, n-) Decyl acrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
2-Hydroxyethyl acrylate
Isoprene
Methyl acrylate
Methyl methacrylate
(alpha-) Methyl styrene
Tetrahydrofuran
Vinyl acetate
Vinylidene chloride
Vinyl ethyl ether
Vinyl toluene

(15) The entries under "Special requirements" column of table I for the cargoes listed below are revised to read as follows:

Cargo name	Special requirements
* * * * *	
Ammonium hydroxide (28 pct or less NH_3)	.256(b),(c),(f), .526 .527
* * * * *	
Carbon tetrachloride	.316, .408, .525, .526, .527, .1020
* * * * *	
Ethylene dichloride	.408, .526
* * * * *	
1- or 2-Nitropropane	.526
* * * * *	
Styrene	.912(a)(1), .1002(a),(b), .1004
* * * * *	
Tricresyl phosphate (containing 1 pct or more of the ortho isomer).	.408, .525(a),(c),(d),(e), .1020

(16) The table I column entry under "Electrical hazard class and group" is amended to read "I–A" for "Carbon disulfide."

(17) The table I column entry under "Electrical hazard class and group" is amended to read "I–B[19]" for the following cargoes:

Chlorosulfonic acid
Hydrochloric acid
Nitric acid (70 pct or less)
Oleum
Phosphoric acid
Sulfuric acid

(18) The table I column entry under "Electrical hazard class and group" is amended to read "I–C[19]" for the following cargoes:

(n-) Butyl ether
Dibutylamine
Diethylethanolamine
Dimethylethanolamine
2-Ethyl-3-Propyl acrolein
Paraldehyde
Furfural
Sulfur (liquid)
Vinyl ethyl ether

(19) The table I column entry under "Electrical hazard class and group" is amended to read "I–D[19]" for the following cargoes:

(iso-, n-, sec-, tert-) Butylamine
Butyl methacrylate
Chloroprene
Cyclohexylamine
1,1-Dichloroethane
Dimethylformamide
Ethylene chlorohydrin
Ethyl methacrylate
Formic acid
Isoprene
(alpha-) Methyl styrene
Motor fuel anti-knock compounds (containing lead alkyls)
Pyridine

(20) The table I column entry under "Electrical hazard class and group" is amended to read "NA" for the following cargoes:

Acetone cyanohydrin
Adiponitrile
Aminoethylethanolamine
Aniline
Benzyl chloride
Carbolic oil
Carbon tetrachloride
Caustic potash solution
Caustic soda solution
Chloroform
Creosote
Cresols
(iso-, N-) Decyl acrylate
Dichlorobenzene
Dichloromethane
Diethanolamine

Diethylenetriamine
Diisopropanolamine
Ethanolamine
Ethylene cyanohydrin
Ethylene dibromide
2-Ethylhexyl acrylate
2-Hydroxyethyl acrylate
2-Methyl-5-Ethyl pyridine
Naphthalene (liquid)
(mono-) Nitrobenzene
(ortho-, para-) Nitrotoluene
Pentachloroethane
Phenol
Phthalic anhydride (liquid)
(iso-, n-) Propanolamine
Propionic anhydride
Sodium hydrosulfide solution (45 pct or less)
Sodium hypochlorite solution (15 pct or less)
1,1,2,2,-Tetrachloroethane
Tetraethylenepentamine
Toluene diisocyanate
Tricresyl phosphate (containing 1 pct or more of the ortho isomer)
Triethanolamine
Triethylenetetramine

(21) The new cargoes incorporated into table I are as follows:

Alkyl benzene sulfonic acid
Butyl methacrylate, decyl methacrylate, cetyl eicosyl methacrylate mixture
Cashew nut shell oil (untreated)
2- or 3-Chloropropionic acid
Diisobutylamine
Diphenyl methane diisocyanate
Dodecyl diphenyl oxide disulfonate solution
2-Ethylhexylamine
Hexamethyleneimine
Isophorone diamine
Isophorone diisocyanate
Methacrylic acid
Methyl formate
(ortho) Nitrophenol
1,3-Pentadiene
Perchloroethylene
Polyethylene polyamines
Polymethylene polyphenyl isocyanate
Propionaldehyde
(iso-) Propylamine
(n-) Propylamine
(iso-) Propyl ether
1,1,2-Trichloroethane
Trichoroethylene
Vinyl neodecanate
Xylenols

One comment requested clarification of the acceptance of non-compatible cargoes stowed diagonally across a corner or cruciform joint. The Coast Guard has added a new 46 CFR Part 150-Compatibility Cargoes and Operational Requirements for Bulk Liquid Hazardous Waste Cargoes (October 23, 1980, 45 FR 70282) which specifically address loading of incompatible cargoes across a cruciform joint. Section 150.130(b) states, "In this subpart, isolation across a cruciform joint is equivalent to isolation by two barriers." With the addition of the new Part 150, references to compatibility in other regulations for bulk liquid cargoes, such as § 153.963, were deleted. Since no other reference to cargo compatibility information is contained in Part 153, a new footnote 1 is added to the table I column heading "Cargo name" to refer the user to Part 150. The existing footnotes 1–6 have been renumbered 2–7.

Section 153.14 Requirements for flammable and combustible cargoes. The proposed § 153.14 was found to duplicate the certification requirements for U.S. flag vessels found in §§ 153.8 and 153.900 which require a U.S. flag vessel to have a Subchapter D Certificate of Inspection. Foreign flag vessels carrying flammable and combustible cargoes must comply with 46 CFR 30.01–5 which refers to Parts 32, 34 and 35. The Coast Guard is withdrawing the proposed § 153.14 because of the duplication.

Section 153.216 Shower and eyewash fountains. Several comments expressed the opinion that the temperature limits of 10°C minimum and 35°C maximum for the water in the emergency shower and eyewash fountains is overly restrictive. The purpose of establishing temperature limits is to prevent burning of flesh and eyes when the piping for these showers and fountains is exposed to prolonged periods of sunlight or other heat sources. This topic was discussed at a meeting of the Chemical Transportation Advisory Committee (CTAC) and it was generally felt that wash water temperature limits should be specified. Instances were cited when piping for emergency showers had been insulated and water recirculated to keep the wash water from becoming too hot. Furthermore, persons whose skin or eyes come into contact with toxic chemicals should be encouraged to use the emergency shower and eye wash fountains no matter how minor the initial symptoms may be. Keeping a wash water upper temperature that is reasonably comfortable to the touch would permit the use of the emergency shower and eye wash fountains without aggravating the injury or causing additional discomfort. The comments stated that the lower temperature limit should be ambient temperature in keeping with the IMCO standard. The Coast Guard agrees that the proposed water temperatures of 10°C to 35°C may be slightly restrictive. Accordingly, the requirement has been changed to maintain the wash water temperature between 0°C and 40°C (approx. 32°F and 104°F).

Another comment recommended that each tankship be required to have a second emergency shower and eyewash fountain at a location widely separated from the first on the weather deck. The Coast Guard has no reason to believe that a second emergency shower and eyewash station is necessary. Should the one required emergency shower and eyewash station become inoperable or inaccessible, the conventional showers located in the accommodation spaces could be utilized. This requirement does not preclude the owner/operator from installing additional emergency shower and eyewash fountains.

Section 153.239 Use of cast iron. One comment pointed out that although the requirements for the use of cast iron in a cargo containment system are contained in 46 CFR 56.60–10(b), no definition of "Lethal" products has been provided. For purposes of this section, the term "Lethal" product in § 56.60–10(b) means a cargo that table I references to §§ 153.525 or 153.527. This clarification has been added to § 153.239.

Sections 153.251 Independent cargo tanks; and 153.252 Special requirements for an independent cargo tank. In the preamble of the NPRM for § 153.251, the Coast Guard proposed that all independent tanks be designed for the same stresses and dynamic sloshing loads. The proposed requirement represents a significant upgrading for independent cargo tanks and exceeds both the IMCO Chemical Code and the current requirements of Part 153. For these reasons the Coast Guard has rewritten §§ 153.251 and 153.252 to restate the present requirements. Section 153.251 details the minimum attachment standards for all independent tanks. The requirements for dynamic loading and weld radiography have been placed in § 153.252. No substantive changes are made to either §§ 153.251 or 153.252.

Section 153.283 Valving for cargo piping. One comment questioned the requirement in § 153.283(f) for a "Positive Shutoff Valve" since a definition and specific standards for this type valve have not been included in Part 153. The intent of a "Positive Shutoff Valve" is to minimize the leakage of cargo in the event of fire, explosion, or collision resulting in a breakage of the pipeline, loss of power, etc. Section 153.283(f) has been clarified to indicate the standards of 46 CFR 56.50–60(d). Resilient seated valves are not acceptable as positive shutoff valves (see 46 CFR 56.20–15).

Section 153.284 Characteristics of required quick closing valves. Section 153.284 has been rewritten to show that the standards of this section apply to the remotely actuated quick closing valves required under § 153.530(n). Since § 153.464 is being deleted, the fusible element requirement previously found in § 153.464 is being added as § 153.284(e).

Section 153.294 Marking of piping systems; and 153.910 Cargo piping plan. Two comments suggested that marking every hose connection of a cargo piping system with the system's working pressure and any maximum cargo loading rate chosen under § 153.365(c) of the proposed rule was redundant. The comments recommended that the information be posted on a sign at the port and starboard manifold areas or on the cargo piping plan in lieu of marking every hose connection. Since there are several sizes of cargo piping and corresponding working pressures, each hose connection should be marked to aid in preventing the accidental

overpressurization of the cargo piping system. Likewise, the installed tank venting system equipped with emergency overflow devices would most likely be found in varying configurations aboard the same tankship. A different cargo loading rate chosen under § 153.365(b) would correspond to each size system. In order to prevent accidentally exceeding the maximum cargo loading rate of any particular venting system overflow device, any maximum cargo loading rate should be available to the person-in-charge of the cargo transfer.

The Coast Guard has reconsidered the marking of every hose connection with the maximum loading rate chosen under the proposed § 153.365(b) and is withdrawing the proposed revision of § 153.294. The Coast Guard is adding a new § 153.910(f) to require the cargo piping plan to be marked with the cargo loading rates chosen under § 153.365(b) for the individual cargo lines. This will make the information readily available to the person-in-charge of the cargo transfer. Section 153.910(d) is also revised to reflect Part 150 in lieu of the former § 153.963.

Section 153.340 Venting system design. As a prerequisite for a Subchapter O endorsement under this part, a tankship must meet Subchapter D. 46 CFR 31.30–1 requires that all tankships must meet the Marine Engineering regulations, Subchapter F, which includes part 56. The proposed § 153.340 duplicates the Subchapter D requirement and is withdrawn.

Section 153.361 Arrangements for removal of valves from venting having multiple relief valves. This section has been rewritten to eliminate grammatical errors found in the NPRM.

Section 153.365 Liquid overpressurization protection. One device that has been accepted as an "emergency overflow device" is a spill valve. The Coast Guard has allowed spill valves to be installed in restricted gauging systems only, except for cargoes that are toxic by skin absorption or by inhalation (cargoes referencing §§ 153.525 or 153.527). Additionally, spill valves should be constructed and sized to a specific cargo transfer rate to provide adequate protection. Since the Coast Guard does not have specifications for or approvals of spill valves detailed in Subchapter Q, § 153.365(b) has been rewritten to have spill valves specifically approved by the Commandant (G–MMT).

In response to one comment, this section has been rewritten to give owners/operators alternatives to prevent overpressurization of cargo tanks. However, the Coast Guard prefers the use of a system that meets requirements of § 153.406.

Section 153.407 Special requirements for sounding tube gauges. The only comment regarding this section suggested a further study as to whether the sounding tube perforation will not provide a path for flame propagation. There are two thoughts on the use of perforated sounding tubes. Those who advocate unperforated sounding tubes maintain that the purpose of a restricted sounding tube is to restrict the flow of cargo vapor or the release of cargo vapor when measuring the tank liquid level. By providing a path for vapors to escape from the cargo tank, a perforated sounding tube does not totally limit the release, defeating the primary function of a sounding tube as a restricted gauge. On the other hand, those who advocate perforated sounding tubes claim that the vapor trapped in an unperforated tube is compressed as the cargo tank is filled and the liquid level rises in the tank and the tube. As the liquid level approaches the top of the tank, it is possible for liquid cargo in the sounding tube to be carried over with a sudden release of the compressed vapor in the sounding tube. This will most likely occur if someone quickly removes the sounding tube cap to take a sounding. If the cap is removed rapidly, the sudden release of vapor could draw liquid out of the tube into the face of the individual taking the sounding. A perforated sounding tube would allow the vapor in the sounding tube to equalize with the vapor space in the tank. By eliminating the pressure differential between the vapor spaces in the sounding tube and the tank, the danger described above is avoided.

There is a wide diversity of opinion on the pros and cons of perforated sounding tubes. By permitting the use of one perforation hole the Coast Guard had planned to minimize the hazards of either case described above. After reconsidering available information, the Coast Guard is uncomfortable with a perforated sounding tube that vents the tank's vapor space, thereby defeating the purpose of a restricted gauging system as defined in § 153.2. Accordingly, the Coast Guard will not allow perforations in the tube wall. If documentation is later submitted to the Coast Guard which supports the case for perforated sounding tubes, this position may be reconsidered. In the interim, small pressure bleed cocks could be tapped into the top of the tube wall which could manually relieve any pressure buildup in the sounding tube before one removes the sounding tube cap, or personnel could be instructed to remove the cap slowly. Accordingly the revision of § 153.407, as contained in the **Federal Register** of 17 July 1980 (45 FR 48058), is withdrawn.

Section 153.408 Tank overflow controls. One comment objected to the requirement that the tank overflow control system operate automatically and activate on the loss of power, claiming that any automatic cessation of the cargo loading operation should be avoided unless an actual tank overflow is imminent. Although routine and frequent use of the automatic tank overflow control system is undesirable, the system is provided as a safety device in the event of personnel error, failure of the required tank gauging system, or an emergency. Power failure could be the sign of an emergency such as a fire, collision or explosion thereby warranting the automatic shutdown of cargo transfer. Furthermore, since automatic closing valves in tank filling lines can be designed to close slowly on the loss of power, the automatic shutdown of cargo transfer should pose no serious problems unless the source of power is unreliable. The requirements that the tank overflow control system be automatic, and activate on loss of power are consistent with the standards adopted by the IMCO under the eighth set of amendments. However, a provision has been added to § 153.408 as described below that will allow an alternative to the automatic tank overflow system.

Numerous countries have expressed concern about the possibility of pipeline pressure surges due to the rapid closing of automatic shutoff valves. As a result IMCO recommended delaying implementation of the eighth amendment standards until 1 October 1982 in order to permit additional study on the matter of tank overflow controls. At the November 1980 meeting of the IMCO Subcommittee on Bulk Chemicals, a proposal for relaxing the IMCO tank overflow requirements was agreed upon. During the April 1981 IMCO meeting of the Marine Safety Committee (MSC), the Committee approved the relaxation of the overflow control requirements as an interim measure pending the development of an acceptable ship/shore linked overflow control system.

IMCO recommends that the tank overflow alarm or control systems be independent of the tank high level alarm and gauging systems. This recommendation exceeds the one system failure concept of Part 153 and has not been incorporated into this rule. The IMCO recommendations incorporated into this revision of § 153.408 are as follows:

(1) The testing and marking requirements for the high level alarms

are removed from § 153.408 and placed in § 153.409.

(2) The interim use of a tank overflow alarm as a replacement for an automatic tank overflow control system is permitted.

(3) In conjunction with the tank overflow alarm, at the cargo transfer conference the persons-in-charge of the vessel and facility must agree to a signal so that sequential shutdown of on-shore pumps and/or valves and of the ship's shutdown valves can be made in sufficient time to prevent the tank from becoming 100 percent liquid full.

These revisions relax the requirements of § 153.408 and impose lesser economic burdens on the shipping industry than requiring the installation of an automatic tank overflow control system.

The independence of the tank overflow control/alarm and the high level alarm system required under this section applies to the sensors, alarm systems, electrical cables and electrical circuits. The systems may have a common power source and electrical feeder panel. A new definition of "independent," as applies to § 153.408, has been added to § 153.2.

Section 153.409 High level alarms. The Coast Guard is transferring requirements to § 153.409 that previously were in § 153.408 to test each high level alarm prior to loading and to mark the high level alarms. The revised § 153.409 is now in conformity with the recommended standards set by IMCO.

Section 153.432 Cooling systems. The Coast Guard is withdrawing the proposed revision to § 153.432(b). The Coast Guard will consider, after further study, a revision of § 153.432(b) in a future rulemaking.

Section 153.436 Heat transfer fluid. The Coast Guard review of a heat transfer fluid included a check of its: (1) suitability of service; (2) chemical compatibility with all cargoes to be carried in the comtainment system serviced by the heat transfer system; and (3) flashpoint and the temperature setting of the high temperature limit device of the thermal fluid heater. The limit on the fluid's flashpoint is from a fire safety standpoint. In the event of a heat transfer pipeline rupture, a fluid released as a liquid presents a lesser fire hazard than a vapor.

Section 153.436 has been rewritten as a performace standard and incorporates the suitability of service, compatibility and flashpoint considerations for heat transfer fluids. Owners/operators should be prepared to show that any heat transfer fluid used meets these criteria.

Section 153.467 Ventilation systems for flammable cargoes. Section 153.467 duplicates the requirements found in Subchapter J for ventilation systems and has been deleted.

Sections 153.520 Special requirements for carbon disulfide; and 153.545 Special requirements for liquid sulfur. All U.S. flag tankships are required to comply with Subchapter J as a prerequisite to obtaining a Certificate of Inspection. Since the proposed revisions to §§ 153.520 and 153.545 require compliance with Subchapter J, they have been found to be redundant and have been deleted.

Sections 153.525 Special requirements for unusually toxic cargoes; and 153.1020 Unusually toxic cargoes. One person suggested that new vessels should be fitted with an independent tank venting system for each cargo tank if the vessel is authorized to carry toxic and non-toxic cargoes simultaneously. The basis for this comment was two-fold: (1) Cargo tank venting systems rarely have the same capabilities for arrangement flexibility as do cargo transfer piping systems; and (2) while company personnel ashore and afloat are usually keenly aware of existing and possible cargo transfer arrangements, they may not always have the same knowledge or concern for cargo tank venting arrangements. The Coast Guard considers it overly restrictive to require independent venting systems for each cargo tank. The intent of section 153.525(a) is to minimize the possibility of contaminating cargo systems of less toxic cargoes. This can be accomplished operationally by using separate venting systems for unusually toxic cargoes. The intent of §§ 153.525(a) and 153.1020(a) can be met without requiring independent tank venting systems.

Section 153.526 Toxic vapor detectors. One comment requested this section be clarified as to: (1) Whether the detectors had to give instantaneous or time weighted average (TWA) vapor concentration readings; and (2) What locations had to be tested. A TWA concentration reading usually requires continuous monitoring of a space with integration of those readings over the monitoring period. This is usually a feature of fixed equipment. Portable detector tube instruments give direct instantaneous readings for a specific location. Since the enclosed spaces within the ship's containment system to be tested for cargo vapor come in varied configurations, multiple locations should be tested prior to allowing personnel to enter the space. Fixed monitoring equipment may be arranged to sample multiple locations within specific spaces; however, a portable unit can be utilized to sample all shipboard spaces. For this reason at least one detector must be portable. Section 153.526 has been revised to state that the toxic vapor readings of any detector must be within the range of the TWA.

Section 153.527 Toxic vapor protection. Two comments recommended that filter type respiratory protection devices be considered as satisfactory substitutes for the emergency escape breathing apparatus (EEBA) described in this section. Problems associated with cartridge or canister filter type respiratory devices are:

(1) The filter type respiratory device does not supply air and cannot be used in an oxygen deficient atmosphere.

(2) These devices utilize cannisters containing chemical sorbents to remove toxic vapors. Once the chemical sorbents are saturated (depleted), the user is no longer protected. Furthermore, the life of the sorbent is a direct function of the vapor concentration.

(3) Channeling of air and toxic vapors may occur at the inner wall of the canister where the irregular sorbent grains touch the smooth cannister walls. This causes the sorbent particles at the outside to become rapidly depleted and reduces the life of the canister.

(4) These devices work on negative pressure. Leakage around the face piece seal, such as around a beard, can result in toxic vapors being inhaled.

(5) Cannisters are generally suitable for only a limited number of cargoes. For a sophisticated parcel tanker a series of cannisters would be required to give adequate protection.

For the reasons discussed above the filter type respiratory protection devices will not be considered substitutes for EEBA's on U.S. flag vessels. However, personnel protection equipment on foreign flag vessels that meet the approval of the tankship's flag administration will be acceptable to the Coast Guard.

Another comment recommended that the required EEBA's should be a one piece apparatus that also provides eye protection instead of permitting a set of goggles to be provided separately. Where the EEBA does not protect the eyes from irritating vapors, a set of goggles used in conjunction with such a device provides the necessary protection in the event of a fire or cargo release. Even though goggles will not increase visibility, they will protect an individual's eyes from smoke and cargo vapors.

One person addressed the need for an operational respiratory protection

requirement for persons working in the cargo area during cargo operations. At present the intent of § 153.527 is to provide for emergency escape from the vessel in the event of a catastrophic toxic chemical release. The Coast Guard agrees that either the intent of § 153.527 should be changed or a similar operational requirement should be made to provide for escape from the immediate vicinity of pipeline rupture or flange leakage in the cargo area during cargo operations. The Coast Guard will consider amending the IMCO Chemical Code and Part 153 in the future.

Section 153.530 Special Requirements for alkylene oxides. New paragraph (q) requires propylene oxide to be carried in independent gravity tanks for vessels contracted for after 1 January 1982. This date conforms to the IMCO implementation date. Since no U.S. vessels currently carry or anticipate to carry propylene oxide, this requirement should have no economic impact.

Section 153.602 Special requirements for cargoes reactive with water. Since table I specifies open venting for sulfuric acid, the requirements of this section will apply to sulfuric acid if it is carried in a containment vent system equipped with a PV valve.

Section 153.809 Procedures for having the Coast Guard examine a vessel for a Letter of Compliance. The Coast Guard has reconsidered the addition of a new § 153.809(e) which would establish a new reporting requirement. The proposed § 153.809(e) is withdrawn.

Section 153.905 Regulations required to be on board. With the incorporation of the cargo compatibility information into 46 CFR Part 150, a copy of Part 150 will also be required to be on board a vessel carrying products subject to Part 153.

Section 153.909 Cargo location plan. The information required by § 153.909 is duplicated in the shipping document requirement, § 153.908. To reduce the paperwork burden on the public, the Coast Guard is deleting § 153.909.

Section 153.934 Entry into spaces containing cargo vapor; and 153.974 Ventilation of cargo handling spaces and pumprooms during cargo transfers. The proposed § 153.974 overlaps § 153.934. The ventilation of cargo handling spaces and pumprooms falls under the responsibility of the master to make sure than an enclosed space is free of toxic vapors and has sufficient oxygen to support life. The Coast Guard is revising § 153.934 by adding the word "pumproom" and is withdrawing the proposed § 153.974.

Section 153.957 Person in charge of cargo transfer. The Coast Guard has published a NPRM in the **Federal Register** of 18 December 1980 (45 FR 83290) that establishes additional requirements for U.S. and foreign flag vessels. Accordingly, the proposed amendment to § 153.957, as contained in the **Federal Register** of 17 July 1980 (45 FR 48058), is withdrawn.

Section 153.968 Cargo transfer conference. Provided the vessel is equipped with the interim tank overflow control system required under § 153.408(c), § 153.968(b)(5) has been added to have the persons-in-charge of the cargo transfer for the vessel and facility to agree to a signal that complies with § 153.408(d).

Section 153.1002 Special operating requirements for heat sensitive cargoes. One comment recommended § 153.1002(a) be expanded to prohibit any operational procedure in an adjacent cargo tank or enclosed space that would cause a localized excessive temperature rise of a heat-sensitive cargo. Although the Coast Guard concurs with this comment conceptually, a further amplification of § 153.1002 would be redundant. The intent of § 153.1002, as written, includes the prohibition of any operational procedure in an adjacent cargo tank or enclosed space that would cause a localized excessive temperature rise of a heat sensitive cargo.

Section 153.1010 Alkylene Oxides. One person mentioned that the requirement that a Coast Guard marine inspector be on board a vessel before each loading of an alkylene oxide will unnecessarily slow turn around time of vessels carrying alkylene oxides. The requirements in § 153.1010(a)(1) parallels the new requirements adopted by IMCO in the second set of amendments to the IMCO Gas Carrier Code, Res. A.328. The Coast Guard concurs with the recommended standards for alkylene oxide carriage since alkylene oxides may be carried on both chemical and gas ships. One minor modification which applies to foreign flag vessels will change the wording in § 153.1010(a)(1)(i) to: "(1)(i) obtain verification, from a Coast Guard marine inspector or from a representative of the tankship's flag administration, that separation of the alkylene oxide piping system complies with alkyene oxide handling plans approved by the Coast Guard or the tankship's flag administration."

Another comment recommended that ships personnel seal the flanges specified in § 153.1010(a)(1)(ii). This is not acceptable because such an arrangement is not consistent with the intent of the recommendations adopted by the IMCO.

CTAC suggested a provision be added to exempt tankships equipped with independent piping from the inspection for piping separation and sealing of flanges requirements in § 153.1010(a) of the proposed rule. Sections 153.1010 (a) and (d) have been rewritten to incorporate this change. Tankships with independent piping must have onboard the vessel approved alkylene oxide handling plans and certification from the Coast Guard or the tankship's flag administration that the vessel has independent piping for alkylene oxides.

One comment stated that §§ 153.1010(c) of the existing rule and 153.1010(d) of the proposed rule overlapped. The Coast Guard has revised section 153.1010(c) to incorporate the proposed § 153.1010(d).

Section 153.1025 Motor fuel antiknock compounds. One comment expressed concern about a Master's ability to calculate a time weighted average (TWA) exposure for a crewman. In industry a dosimeter is normally worn by a person and is sent to a laboratory for exposure analysis. Since this is beyond the facilities of a tankship, the Coast Guard is revising this section to have the space tested for a lead level of 0.075 mg/m^3.

Appendix I—List of cargoes not regulated under Part 151, Part 153 or Subchapter D. Five additional cargoes have been evaluated as non-regulated cargoes and have been added to Appendix I. The Coast Guard has recently evaluated sodium chlorate solution and has assigned it to table I of this part. On the basis of chemical similarity, sodium bromate solutions have been deleted from the proposed Appendix I pending further evaluation.

Other comments were received pertaining to sections of Part 153 which were unchanged in the proposed rules. Changes to sections not revised in the proposed rules are beyond the scope of this regulatory project. Although comments on such sections have not been addressed in this preamble, they have been retained on file for use in future regulatory projects to revise and update Part 153.

Besides the changes to the original proposal described in this preamble, the final rule corrects some typographical errors.

Regulatory Evaluation

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be

nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). The cost of these regulations have been determined through an incremental cost-benefit analysis for each new requirement taking into consideration the approximate number of affected vessels. An estimation of the cost per vessel can not accurately be determined due to the variation in the cargoes carried on each chemical tankship. For the thirty-three U.S. chemical tankships, the economic impact is expected to be less than $486,000 per year or approximately $14,700 per vessel annually. The benefits to be derived from these regulations take into account the anticipated reductions in deaths, injuries and property damage. The benefits arising from the carriage of new cargoes have not been considered. The overall annual benefit in property preservation is expected to be 1.8 million dollars. Additional details are presented in the Final Regulatory Evaluation which has been included in the public docket. Copies may be obtained from Commandant (G–CMC/44), U.S. Coast Guard, 2100 2nd St., SW., Washington, D.C. 20593.

Regulatory Flexibility Evaluation

Even though the NPRM was published before the effective date of the Regulatory Flexibility Act (94 Stat. 1164), this rulemaking has been evaluated under the Act. It is certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 91

Cargo vessels, Marine safety.

46 CFR Part 153

Hazardous materials transportation, Marine safety, Tank vessels.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is hereby amended as follows:

PART 30—GENERAL PROVISIONS

§ 30.25–1 [Amended]

1. By removing "Propyl Ether (iso-)" from the table in § 30.25–1.

PART 91—INSPECTION AND CERTIFICATION

2. By revising § 91.55–15(a) (2) and (3) to read as follows:

§ 91.55–15 Procedure for submittal of plans.

(a) * * *

(2) The plans may be submitted directly to the Commandant (G–MMT), U.S. Coast Guard, Washington, D.C. 20593. In this case, the plans will be returned directly to the submitter, with a copy of the action being forwarded to the interested Officer in Charge, Marine Inspection.

(3) The plans may be submitted directly to one of the following field technical offices:

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd and 5th Coast Guard Districts.

(ii) Commander, 8th Coast Guard District (mmt), Hale Boggs Federal Building, 500 Camp St., New Orleans, LA. 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(iii) Commander, 9th Coast Guard District (mmt), 1240 East Ninth Street, Cleveland, Ohio 44199, for the geographical area covered by the 9th Coast Guard District.

(iv) Commander, 12th Coast Guard District (mmt), 630 Sansome St., San Francisco, CA. 94126, for the geographical area covered by the 11th, 12th, 13th, 14th and 17th Coast Guard Districts.

PART 153—SAFETY RULES FOR SELF-PROPELLED VESSELS CARRYING HAZARDOUS LIQUIDS

3. By revising the following definitions in § 153.2 to read as follows:

§ 153.2 Definitions.

* * * * *

"B" means the breadth of the vessel and is defined in § 42.13–15(d) of this chapter.

* * * * *

"Dedicated ballast tank" means a tank that is used only for ballast.

* * * * *

"L" means the length of the vessel and is defined in § 42.13–15(a) of this chapter.

* * * * *

"Letter of Compliance" means a letter issued by the Coast Guard permitting a foreign flag tankship to carry a bulk cargo regulated under this part.

* * * * *

"Restricted gauging system" means a method of gauging the amount of cargo in a tank through an opening of limited size that restricts or prevents the release of cargo vapors from the tank vapor space.

* * * * *

4. By amending § 153.2, by adding in alphabetical sequence the following definitions:

* * * * *

"Cargo area" means that part of a vessel that includes the cargo tanks, spaces adjacent to the cargo tanks and the part of the deck over the cargo tanks and adjacent spaces.

* * * * *

"Independent," as applied to a cargo piping, venting, heating or cooling system means that the system is connected to no other system, and has no means available for connection to another system.

* * * * *

"Independent," as applied to the tank overflow control or alarm system and the high level alarm system required under § 153.408, means that each system must have a separate sensor, alarm, electrical cable and electrical circuit. The system may have a common power source and electrical feeder panel.

* * * * *

"Separate" and "separated," as applied to a cargo piping, venting, heating or cooling system, means either an independent system or one that may be disconnected from all other systems by—

(a) Removing spool pieces or valves and blanking the open pipe ends; or

(b) Blocking each system interconnection with two blind flanges in series and providing a means of detecting leakage into the pipe section between the flanges.

* * * * *

5. By revising § 153.7(b)(4) introductory text and (c) to read as follows:

§ 153.7 Existing tankships.

(b) * * *

(4) The Commandant (G–MHM) considers on a case by case basis endorsing the permit of an existing tankship to carry a cargo listed in table I if—

* * * * *

(c) An existing tankship must meet all the requirements of this part except as provided in paragraphs (c) (3), (4), (5) and (6) of this section.

(1) (Reserved.)

(2) (Reserved.)

(3) The Commandant (G–MHM) considers on a case by case basis endorsing as a type II containment system one that fails to meet §§ 153.21, 153.231(b), and 153.234 if the tankship

and containment system meet the following minimum standards:

(i) The tankship has a loadline certificate.

(ii) The cargo tank is not part of the tankship's shell plating.

(iii) The distance between the bottom plating of the cargo tank and the bottom shell plating of the tankship is at least 76 cm measured parallel to the vertical axis of the tankship.

(4) The Commandant (G–MHM) considers on a case by case basis endorsing a containment system as a type II containment system if—

(i) The containment system is modified to meet § 153.231(b) by adding double bottoms or wing tanks; and

(ii) The tankship can survive the damage described in §§ 153.32 and 153.34 to the parts of the tankship other than machinery spaces.

(5) The Commandant (G–MHM) considers on a case by case basis endorsing as a type III containment system one that does not meet §§ 153.22 and 153.234 if the tankship has a loadline certificate.

(6) The Commandant (G–MHM) considers on a case by case basis endorsing the tankship to carry cargoes listed in table I of this part if the tankship does not meet §§ 153.217, 153.219 and 153.254.

6. By revising table I to Subpart A to read as follows:

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name[1]	Cargo containment system[2]	Vent height[3]	Vent[4]	Gauge[5]	Fire protection system[6]	Special requirements	Electrical hazard class and group[7]
Acetic acid	III	4m	PV	Restr	A	.238(a), .527, .554	I-D.
Acetic anhydride	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I-D.
Acetone cyanohydrin	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	NA.
Acetonitrile	II	B/3	PV	Restr	A	.525, .526, .1020	I-D.
Acrylic acid	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	I-D.
Acrylonitrile	II	B/3	PV	Closed	A	.236 (a), (c), (d), .316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I-D.
Adiponitrile	III	4m	PV	Restr	A	.526	NA.
Alkyl benzene sulfonic acid	III	NR	Open	Open	B	None	NA.
Allyl alcohol	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020	I-C.
Allyl chloride	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-D.
Aminoethylethanolamine	III	NR	Open	Open	A	.236 (a), (b), (c), (g)	NA.
Ammonium hydroxide (28 pct or less NH_3)	III	4m	PV	Restr	C	.236 (b), (c), (f), .526, .527	I-D.
Aniline	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	NA.
Benzene	III	B/3	PV	Restr	B	.316, .526, .1060	I-D.
Benzyl chloride	II	B/3	PV	Closed	B	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020.	NA.
(iso-, n-) Butyl acrylate	II	4m	PV	Restr	A	.526, .912(a)(1), .1002 (a), (b), .1004	I-D.
(iso-, n-, sec-, tert-) Butylamine	II	B/3	PV	Closed	A	.236 (b), (c), .316, .408, .525, .526, .527, .1020	I-D[12].
(n-) Butyl ether	III	B/3	PV	Closed	A	.500, .525, .526, .1020	I-C[12].
Butyl methacrylate	III	4m	PV	Restr	B	.526, .912(a)(1), .1002 (a), (b), .1004	I-D[12].
Butyl methacrylate, decyl methacrylate, cetyl eicosyl methacrylate mixture.	III	4m	PV	Restr	A, C, D	.912(a)(1), .1002 (a), (b), .1004	I-D.
(iso-, n-, crude) Butyraldehyde	III	4m	PV	Open	A	.526	I-C.
Camphor oil	III	4m	PV	Open	B	None	I-D.
Carbolic oil	II	B/3	PV	Closed	A	.408, .525, .526, .933, .1020	NA.
Carbon disulfide	II	B/3	PV	Closed	C	.236(c), .252, .408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A.
Carbon tetrachloride	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA.
Cashew nut shell oil (untreated)	III	4m	PV	Restr	B	.526, .933	NA.
Caustic potash solution	III	NR	Open	Open	NSR	.236 (a), (c), (g), .933	NA.
Caustic soda solution	III	NR	Open	Open	NSR	.236 (a), (c), (g), .933	NA.
(mono-) Chlorobenzene	III	4m	PV	Restr	B	.526	I-D.
Chloroform	III	B/3	PV	Restr	NSR	.525, .526, .527, .1020	NA.
(crude) Chlorohydrins	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D.
2- or 3-Chloropropionic acid	III	NR	Open	Open	A	.238(a), .554	NA.
Chloroprene	II	B/3	PV	Closed	B	.316, .525, .526, .527, .912(a)(1), .1002(a), (b), .1004, .1020.	I-D[12].
Chlorosulfonic acid	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .802, .933, .1000, .1020, .1045.	I-B[10].
Coal tar naphtha	III	4m	PV	Restr	A	.526	I-D.
Creosote	III	NR	Open	Open	B	.409	NA.
Cresols	III	NR	Open	Open	B	None	NA.
Crotonaldehyde	II	B/3	PV	Restr	A	.316, .525, .526, .527, .1020	I-C.
Cyclohexanone	III	4m	PV	Restr	A	.236 (a), (b), .526	I-D.
Cyclohexylamine	III	4m	PV	Restr	A	.236 (a), (b), (c), (g), .526	I-D[12].
(iso-, n-) Decyl acrylate	III	NR	Open	Open	A, C	.236 (b), (c), .912(a)(1), .1002 (a), (b), .1004	NA.
Dibutylamine	III	4m	PV	Restr	B	.236 (b), (c), .526	I-C[12].
Dichlorobenzene	III	4m	PV	Restr	B	.236 (a), (b), .526	NA.
1,1-Dichloroethane	III	4m	PV	Restr	B	.526, .527	I-D[12].
2,2'-Dichloroethyl ether	II	4m	PV	Restr	A	.236 (a), (b), .526	I-D.
Dichloromethane	III	4m	PV	Restr	NSR	.526	NA.
1,1-, 1,2-, or 1,3-Dichloropropane	II	B/3	PV	Restr	B	.525, .526, .1020	I-D.
1,3-Dichloropropene	II	B/3	PV	Closed	B	.316, .336, .408, .525, .526, .527, .1020	I-D.
Diethanolamine	III	NR	Open	Open	A	.236 (b), (c)	NA.
Diethylamine	III	B/3	PV	Restr	A	.236 (a), (b), (c), (g), .525, .526, .527, .1020	I-C.
Diethylenetriamine	III	NR	Open	Open	A	.236 (b), (c)	NA.
Diethylethanolamine	III	4m	PV	Restr	A	.236 (a), (b), (c), (g), .526	I-C[12].
Diisobutylamine	II	4m	PV	Restr	B, D	.236 (a), (b), (c), (g), .409, .525 (a), (c), (d), (e), .526, .1020.	I-C.
Diisopropanolamine	III	NR	Open	Open	A	.236 (b), (c)	NA.
Diisopropylamine	II	B/3	PV	Closed	A	.236 (b), (c), .408, .525, .526, .527, .1020	I-C.
Dimethylamine (40 pct or less)	III	B/3	PV	Restr	A, C	.236 (a), (b), (c), (d), .525, .526, .527, .1020	I-C.
Dimethylethanolamine	III	4m	PV	Restr	A	.236 (b), (c), .526	I-C[12].
Dimethylformamide	III	4m	PV	Restr	A	.236(b), .526	I-D[12].
Diphenyl methane diisocyanate[11]	II	B/3	PV	Closed	C, D	.236 (a), (b), .316, .409, .500, .801, .525, .526, .602, .1000, .1020.	NA.

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name[1]	Cargo containment system[2]	Vent height[3]	Vent[4]	Gauge[5]	Fire protection system[6]	Special requirements	Electrical hazard class and group[7]
1,4-Dioxane	II	B/3	PV	Closed	A	.406, .525, .526, .1020	I-C.
Dodecyl diphenyl oxide disulfonate solution	III	NR	Open	Open	NSR	None	NA.
Epichlorohydrin	II	B/3	PV	Closed	A	.316, .406, .525, .526, .527, .1020	I-C.
Ethanolamine	III	NR	Open	Open	A	.236 (b), (c), .526	NA.
Ethyl acrylate	II	4m	PV	Restr	A	.526, .527, .912(a)(1), .1002 (a), (b), .1004	I-D.
Ethylene chlorohydrin	II	B/3	PV	Closed	A, C	.316, .406, .525, .526, .527, .933, .1020	I-D[12].
Ethylene cyanohydrin	III	NR	Open	Open	A	None	NA.
Ethylenediamine	II	4m	PV	Restr	A	.236 (b), (c), .526	I-D.
Ethylene dibromide	II	B/3	PV	Closed	NSR	.406, .525, .526, .527, .1020	NA.
Ethylene dichloride	II	4m	PV	Restr	B	.406, .526	I-D.
Ethyl ether	II	4m	PV	Closed	A	.236(g), .252, .406, .440, .500, .515, .526, .527	I-C.
2-Ethylhexyl acrylate	III	NR	Open	Open	A	.912(a)(1), .1002 (a), (b), .1004	NA.
2-Ethylhexylamine	II	B/3	PV	Restr	A	.236 (b), (c), .525, .526, .1020	I-C.
Ethyl methacrylate	III	4m	PV	Restr	B	.526, .912(a)(1), .1002 (a), (b), .1004	I-D[12].
2-Ethyl-3-propyl acrolein	III	4m	PV	Restr	A	.526	I-C[12].
Formaldehyde solution (37 to 50 pct)	III	4m	PV	Restr	A	.526, .527	I-C.
Formic acid	III	4m	PV	Restr	A	.238 (b), (c), .526, .527, .554	I-D[12].
Furfural	III	4m	PV	Restr	A	.526	I-C[12].
Hexamethyleneimine	II	4m	PV	Restr	A, C	.236 (a), (b), (c), (g), .526	I-C.
Hydrochloric acid	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052	I-B[10].
2-Hydroxyethyl acrylate	II	B/3	PV	Closed	A	.406, .525, .526, .912(a)(1), .933, .1002 (a), (b), .1004, .1020.	NA.
Isoprene	II	4m	PV	Restr	B	.440, .912(a)(1), .1002 (a), (b), .1004	I-D[12].
Isophorone diamine	III	4m	PV	Restr	A	.236 (b), (c), .526	NA.
Isophorone diisocyanate[11]	III	B/3	PV	Closed	C, D	.236 (a), (b), .316, .409, .525, .526, .602, .1000, .1020.	NA.
Mesityl oxide	III	4m	PV	Restr	A	.409, .526	I-D.
Methyl acrylate	II	4m	PV	Restr	B	.526, .527, .912(a)(1), .1002 (a), (b), .1004	I-D.
Methacrylic acid	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	NA.
2-Methyl-5-ethyl pyridine	III	NR	Open	Open	A	.236(b)	NA.
Methyl formate	II	B/3	PV	Restr	A	.406, .440, .525, .526, .527, .1020	I-D.
Methyl methacrylate	II	4m	PV	Restr	B	.526, .912(a)(1), .1002 (a), (b), .1004	I-D.
(alpha-) Methyl sytrene	III	4m	PV	Restr	B	.526, .912(a)(1), .1002 (a), (b), .1004	I-D[12].
Moropholine	III	4m	PV	Restr	A	.236 (b), (c)	I-C.
Motor fuel anti-knock compounds (containing lead alkyls).	II	B/3	PV	Closed	B, C	.252, .336, .406, .525, .526, .527, .933, .1020, .1025.	I-D[12].
Naphthalene (liquid)	III	4m	PV	Restr	B, C	None	NA.
Nitric acid (70 pct or less)	II	4m	PV	Restr	NSR	.406, .526, .527, .554, .555, .559, .933, .1045	I-B[10].
(mono-) Nitrobenzene	II	B/3	PV	Closed	B, C	.316, .336, .406, .525, .933, .1020	NA.
(o-) Nitrophenol	II	B/3	PV	Closed	A, C, D	.409, .440, .525, .526, .1020	NA.
1- or 2-Nitropropane[8]	III	4m	PV	Restr	A[9]	.526	I-C.
(o-, p-) Nitrotoluene	II	B/3	PV	Closed	B	.316, .406, .525, .526, .1020	NA.
Oleum	II	B/3	PV	Closed	NSR	.316, .406, .526, .527, .554, .555, .556, .602, .933, .1000, .1045, .1052.	I-B[10].
Paraldehyde	III	4m	PV	Restr	A	None	I-C[12].
Pentachloroethane	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	NA.
1,3-Pentadiene	III	4m	PV	Restr	B	.526, .912(a)(1), .1002, .1004	I-D.
Perchloroethylene	III	4m	PV	Restr	NSR	.526	NA.
Phenol	II	B/3	PV	Closed	A	.406, .525, .526, .933, .1020	NA.
Phosphoric acid	III	NR	Open	Open	NSR	.554, .555, .556, .1045, .1052	I-B[10].
Phthalic anhydride (liquid)	III	4m	PV	Restr	D	None	NA.
Polyethylene polyamines	III	NR	Open	Open	A	.236 (b), (c)	NA.
Polymethylene polyphenyl isocyanate[11]	II	B/3	PV	Closed	C, D	.236 (a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA.
(iso-, n-) Propanolamine	III	NR	Open	Open	A	.236 (b), (c), .526	NA.
Propionaldehyde	III	4m	PV	Restr	A	.316, .526, .527	I-C.
Propionic acid	III	4m	PV	Restr	A	.238(a), .527, .554	I-D.
Propionic anhydride	III	4m	PV	Restr	A	.238(a), .556	NA.
(iso-) Propylamine	II	B/3	PV	Closed	C	.236 (b), (c), .406, .440, .525, .526, .527, .1020	I-D.
(n-) Propylamine	II	B/3	PV	Closed	C	.236 (b), (c), .406, .500, .525, .526, .527, .1020	I-D.
Propylene oxide[8]	II	B/3	PV	Closed	A	.252, .406, .440, .500, .526, .530, .1010, .1011	I-B.
(iso-) Propyl ether	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D.
Pyridine	III	4m	PV	Restr	A	.236(b)	I-D[12].
Sodium hydrosulfide solution (45 pct or less)	III	4m	PV	Restr	NSR	.526, .933	NA.
Sodium hypochlorite solution (15 pct or less)	III	4m	PV	Restr	NSR	.236 (a), (b)	NA.
Styrene	III	4m	PV	Open	B	.912(a)(1), .1002 (a), (b), .1004	I-D.
Sulfur (liquid)	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C[12].
Sulfuric acid	III	NR	Open	Open	NSR	.554, .555, .556, .602, .933, .1000, .1045, .1046, .1052.	I-B[10].
1,1,2,2-Tetrachloroethane	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	NA.
Tetraethylenepentamine	III	NR	Open	Open	A	.236 (b), (c)	NA.
Tetrahydrofuran	III	4m	PV	Restr	A, D	.526, .912(a)(2), .1004	I-C.
Toluene diisocyanate[11]	II	4m	PV	Closed	C, D	.236(b), .316, .406, .500, .501, .525, .526, .527, .602, .1000, .1020.	NA.
1,1,2-Trichloroethane	III	B/3	PV	Restr	NSR	.526	I-D.
Trichloroethylene	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D.
Tricresyl phosphate (containing 1 pct or more of the ortho- isomer).	II	4m	PV	Closed	B	.406, .525 (a), (c), (d), (e), .1020	NA.
Triethanolamine	III	NR	Open	Open	A	.236 (a), (b), (c), (g)	NA.
Triethylamine	II	B/3	PV	Restr	B	.236 (b), (c), .525, .526, .527, .1020	I-C.
Triethylenetetramine	III	NR	Open	Open	A	.236 (a), (b), (c)	NA.
Urea, ammonium nitrate solution (containing more than 2 pct NH_3).	III	4m	PV	Restr	A	.236(b), .526	I-D.
(iso-, n-) Valeraldehyde	III	4m	PV	Restr	A	.500, .526	I-C.
Vinyl acetate	III	4m	PV	Open	A	.912(a)(1), .1002 (a), (b), .1004	I-D.
Vinyl ethyl ether	II	4m	PV	Closed	A	.236 (b), (f), (g), .406, .440, .500, .515, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-C[12].
Vinylidene chloride	II	4m	PV	Restr	B	.236 (a), (b), .440, .500, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-D.

TABLE I.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name[1]	Cargo containment system[1]	Vent height[2]	Vent[4]	Gauge[5]	Fire protection system[6]	Special requirements	Electrical hazard class and group[7]
Vinyl neodecanate	III	NR	Open	Open	B	.912(a)(1), .1002 (a), (b), .1004	NA.
Vinyl toluene	III	4m	PV	Restr	B	.236 (a), (c), (g), .912(a)(1), .1002 (a), (b), .1004	I-D.
Xylenols	III	NR	Open	Open	B	None	NA.

For details see these sections:
[1] Cargoes must be stowed in accordance with Part 150, Subpart A—Compatibility of Cargoes, of this chapter.
[2] 152.230–153.232.
[3] 153.350–153.351.
[4] 153.355.
[5] 153.400–153.406.
[6] 153.460.
[7] Subchapter J of this chapter.
[8] Dry chemical extinguishers should not be used on nitropropane fires because some dry chemicals may react with nitropropane and make the fire worse.
[9] 153.530(q).
[10] I–B electrical hazard classification does not apply to weather deck locations.
[11] Although water is suitable for extinguishing open air fires involving chemicals to which this footnote applies, water should not be allowed to contaminate closed tanks containing these chemicals because of the risk of hazardous gas generation.
[12] Effective date: at the first drydock examination after July 16, 1982 or not later than July 16, 1984.

NOTES ON TABLE I:
Cargo containment system—The containment system type, either I, II, or III, is listed. See § 153.230 through 153.232.
Vent heights—The location and height of the vent riser is described in terms of vent height, either B/3 or 4m. See sections 153.350 and 153.351.
Vent—The type of venting control valve, either pressure vacuum (PV) or open, is listed. See section 153.355.
Gauge—The type of gauge, either closed, restricted (Restr.), or open, is listed. See sections 153.400 through 153.406.
Fire protection system—The type of fire protection system is shown where:
A is a foam system for water soluble cargoes (polar solvent foam),
B is a foam system for water insoluble cargoes (non-polar solvent foam),
C is a water spray system,
D is a dry chemical system, and
NSR means there is no special requirement for a fire protection system.
When table I specifies more than one type of fire protection system, any one of the listed options will satisfy the requirements for a fire protection system under this part. Unless table I specifies a dry chemical (D) system as an option, a dry chemical system may be substituted for an A or B type system only if the Commandant (G-MMT) approves the substitution.
Special requirement—The special requirements are shown by the digits of the section numbers, without the "153." part number preceding them.
Electrical Hazard Class and Group—This column is for use with Subchapter J (Electrical Engineering) of this chapter. Under this column NA means that the electrical hazard classes and groupings in Subchapter J do not apply to this cargo.
NOTE.—See app. I of this part for a list of cargoes to which neither this part nor Subchapter D (Tank Vessels) of this chapter apply.

7. By revising § 153.208(c) and adding a new (d) to read as follows:

§ 153.208 Ballast tank arrangements.

* * * * *

(c) Except as prescribed in paragraph (d) of this section, pumps, piping, vent lines, overflow tubes and sounding tubes serving dedicated ballast tanks must not be located within a cargo containment system.

(d) Each vent line, overflow tube and sounding tube that serves a dedicated ballast tank and that is located within a cargo containment system must meet § 32.60–10(e)(2) of this chapter.

8. By revising § 153.214 (b)(1) and (c) to read as follows:

§ 153.214 Personnel emergency and safety equipment.

* * * * *

(b) * * *

(1) A 30 minute self-contained breathing apparatus of the pressure demand type, approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health, or the tankship's flag administration with five refill tanks or cartridges of 30 minutes capacity each.

* * * * *

(c) First aid equipment.

9. By revising § 153.215(c) to read as follows:

§ 153.215 Safety equipment lockers.

* * * * *

(c) The second safety equipment locker must be adjacent to the second emergency shutdown station required by § 153.296. This locker must contain the remaining equipment required by § 153.214 (a) and (b).

* * * * *

10. Section 153.216 is amended by redesignating paragraphs (b) and (c) as (c) and (d), and adding a new paragraph (b) to read as follows:

§ 153.216 Shower and eye wash fountains.

* * * * *

(b) Maintain the water at a temperature between 0°C and 40°C (approx. 32°F and 104°F);

(c) Are located on the weatherdeck; and

(d) Are marked "EMERGENCY SHOWER" as described in § 153.955 (c), (d), and (e), so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

11. By revising § 153.217 to read as follows:

§ 153.217 Access to enclosed spaces and dedicated ballast tanks.

An access opening to an enclosed space or a dedicated ballast tank must meet the requirements for a cargo tank access in § 153.254 (b), (c), and (d) if—

(a) The enclosed space or dedicated ballast tank is located within the cargo area of the vessel; or

(b) A part of a cargo containment system lies within the enclosed space or dedicated ballast tank.

12. By adding a new section § 153.219 to read as follows:

§ 153.219 Access to double bottom tanks serving as dedicated ballast tanks.

(a) Except as prescribed in paragraph (b) of this section, access openings to double bottom tanks serving as dedicated ballast tanks must not be located within a cargo containment system.

(b) Each access opening to a double bottom tank that is a dedicated ballast tank and that is located within a cargo containment system must be:

(1) Enclosed in an access trunk extending to the weatherdeck;

(2) Separated from the cargo containment system by two manhole coverings; or

(3) Approved by the Commandant (G-MMT).

13. By revising § 153.239 to read as follows:

§ 153.239 Use of cast iron.

(a) Cast iron used in a cargo containment system must meet the requirements of § 56.60–10(b) of this chapter.

(b) For purposes of this section, the term "lethal products" in § 56.60–10(b) means those cargoes that table I references to § 153.525 or § 153.527.

14. By revising § 153.251 to read as follows:

§ 153.251 Independent cargo tanks.

All independent cargo tanks must meet §§ 38.05–10(a)(1), (b), (d) and (e)(1) of this chapter.

15. By revising § 153.252 to read as follows:

§ 153.252 Special requirement for an independent cargo tank.

When table I refers to this section, the cargo tank must be an independent tank that meets §§ 38.05–2(d) and 38.05–4(g) of this chapter. (See also § 153.256(b)).

16. By removing § 153.253.

17. By revising § 153.281 to read as follows: .

§ 153.281 Piping to independent tanks.

Piping for an independent cargo tank must penetrate the tank only through that part of the tank or dome extending above the weatherdeck.

18. By adding § 153.283(f) to read as follows:

§ 153.283 Valving for cargo piping.

* * * * *

(f) If the cargo exerts a gravity head pressure on a valve required by this section, the valve must be a positive shutoff valve that meets § 56.50–60(d) of this chapter.

19. By revising § 153.284 to read as follows:

§ 153.284 Characteristics of required quick closing valves.

A remotely actuated quick closing shutoff valve required by § 153.530(n) must—

(a) Be positive shutoff valve;

(b) Be of the fail-closed type that closes on loss of power;

(c) Be capable of local manual closing;

(d) Close from the time of actuation in 30 seconds or less; and

(e) Be equipped with a fusible element that melts at less than 104°C (approx. 220°F) and closes the valve.

20. By adding a new section § 153.292 to read as follows:

§ 153.292 Separation of piping systems.

Cargo piping systems must be arranged so that operations necessary to provide separate systems can be accomplished in a cargo handling space or on the weatherdeck.

21. By revising § 153.296(c) to read as follows:

§ 153.296 Emergency shutdown stations.

* * * * *

(c) A second emergency shutdown station must be located so that one of the two stations is accessible from any part of the weatherdeck if a break in a cargo piping system or hose causes spraying or leaking.

* * * * *

22. By revising § 153.314(b) to read as follows:

§ 153.314 Ventilation of spaces not usually occupied.

* * * * *

(b) Each enclosed space within the cargo area that does not have a permanent ventilation system meeting § 153.312 must have—

* * * * *

23. By revising § 153.336 to read as follows:

§ 153.336 Special cargo pump or pumproom requirements.

(a) When table I refers to this section—

(1) The cargo pump must be an intank cargo pump;

(2) The cargo pumproom must be on or above the weatherdeck; or

(3) The cargo pumproom must have the specific approval of the Commandant (G–MHM).

(b) For a cargo pumproom described in paragraph (a)(2) or (a)(3) the tankship must—

(1) Have a low pressure breathing quality air supply system for use with the breathing apparatus in the pumproom; or

(2) Meet any requirements specified by the Commandant (G–MHM).

(c) A low pressure air supply system described in paragraph (b)(1) of this section must—

(1) Run from fixed air bottles to the pumproom;

(2) Have an air compressor to recharge the fixed air bottles;

(3) have hose connections in the pumproom suitable for use with the breathing apparatus required in § 153.214(b)(1); and

(4) have the air capacity to enable two men to work in the pumproom for at least one hour each without using the cartridges for the breathing apparatus required in § 153.214(b)(1).

24. By revising § 153.350 to read as follows:

§ 153.350 Location of B/3 vent discharges.

Except as prescribed in § 153.353, a B/3 venting system must discharge:

(a) At the highest of the following points:

(1) 6m (approx. 19.7 ft) above the weatherdeck.

(2) B/3 above the weatherdeck.

(3) 6m (approx. 19.7 ft) above a walkway, if the walkway is within a 6m (approx. 19.7 ft) horizontal radius from the vent discharge.

(b) At least 15m (approx. 49.2 ft) from air intakes for, or openings into, accommodation and service spaces.

25. By revising § 153.351 to read as follows:

§ 153.351 Location of 4m vent discharges.

Except as prescribed in § 153.353, a 4m venting system must discharge:

(a) At least 4m (approx. 13.1 ft) above the higher of—

(1) the weatherdeck; or

(2) any walkway that is within a 4m (approx. 13.1 ft) horizontal radius from the vent discharge.

(b) At least 10m (approx. 32.8 ft) from air intakes for, or openings into, accommodation or service spaces.

26. By revising § 153.353 to read as follows:

§ 153.353 High velocity vents.

The discharge point of a B/3 or 4m venting system must be located at least 3m (approx. 10 ft) above the weatherdeck or walkway if—

(a) the discharge is a vertical, unimpeded jet;

(b) the jet has a minimum exit velocity of 30 m/sec (approx. 98.4 ft/sec); and

(c) the high velocity vent has been approved by Commandant (G–MMT).

27. By revising § 153.361 to read as follows:

§ 153.361 Arrangements for removal of valves from venting having multiple relief valves.

A venting system having multiple relief valves may be arranged to allow the removal of a valve (for repair, as an example) provided the venting system—

(a) has valves that are interlocked, so that the removal of a valve does not reduce the venting system relieving capacity below the minimum relieving capacity required by § 153.358; and

(b) is arranged so that cargo vapor will not escape through the opening left after a valve has been removed.

28. By adding a new section § 153.365 to read as follows:

§ 153.365 Liquid overpressurization protection.

(a) Except as noted in paragraph (b) of this section, a containment system requiring closed or restricted gauging must—

(1) be designed to withstand the maximum pressure that develops during an overfill of the densest cargo endorsed for the containment system; or

(2) have an overflow control system that meets § 153.408; or

(3) meet the requirements specified by the Commandant (G–MHM).

(b) A containment system requiring restricted gauging, except for those cargoes that reference §§ 153.525 or 153.527, may be equipped with a spill valve that—

(1) is specifically approved by the Commandant (G–MMT); and

(2) limits the maximum pressure during liquid overfill at a specified cargo loading rate to that which the containment system is able to withstand (see §§ 153.294(b) and 152.977(b)).

§ 153.336 [Removed]

29. By removing § 153.336.

30. By revising § 153.408 to read as follows:

§ 153.408 Tank overflow controls.

(a) When table I refers to this section, a cargo containment system must have—

(1) a cargo high level alarm that meets § 153.409;

(2) a continuous tank cargo level indicator; and

(3) not later than 1 October 1982, a tank overflow control system that—

(i) operates automatically;

(ii) is independent of the high level alarm system;

(iii) prevents a cargo tank from becoming 100 percent liquid full; and

(iv) activates on the loss of power.

(b) If the tank overflow control system has either an automatic shutoff value or an automatic stop valve to prevent overfilling of a cargo tank, the automatic valve must close without creating surge pressures that exceed the pressure prescribed in § 153.294(b).

(c) As an interim alternative to the automatic overflow system required in paragraph(a)(3) of this section, the cargo containment system may be equipped not later than 1 October 1982 with a tank overflow alarm—

(1) that is independent of the high level alarm system;

(2) that gives an audible and visual alarm such that there is sufficient time to stop tank loading before the tank fills to 100 percent liquid full;

(3) that can be seen and heard where cargo transfer is controlled and on the open deck;

(4) that activates on loss of power;

(5) whose operation can be checked prior to each loading; and

(6) that must be marked as described in § 153.955 (c), (d) and (e) with the legend "Tank Overflow Alarm" so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

(d) In conjunction with the tank overflow alarm described in paragraph(c) of this section, during the cargo transfer conference provisions must be made for an agreed signal for sequential shutdown of on-shore pumps and valves and of the ship's shutdown valves without creating surge pressures that exceed the pressure prescribed in § 153.294(b).

31. By revising § 153.409 to read as follows:

§ 153.409 High level alarms.

When table I refers to this section or requires a cargo to have a closed gauging system, the cargo's containment system must have a high level alarm—

(a) that gives an audible and visual alarm before the tank fills to 97 percent of its capacity;

(b) that can be seen and heard where cargo transfer is controlled and on the open deck;

(c) whose operation can be checked prior to each loading; and

(d) that must be marked as described in § 153.408(c)(6) with the legend "High Level Alarm."

32. By revising § 153.430(b) to read as follows;

§ 153.430 Heat transfer systems; general.

Cargo cooling and heating systems must—

* * * * *

(b) have valving that enables the system to be separated from all other cooling and heating systems; and

* * * * *

33. By revising § 153.432(a) to read as follows:

§ 153.432 Cooling systems.

(a) Each cargo cooling system must have an equivalent standby unit that is installed and that can be placed in operation immediately after failure of the primary cooling system.

* * * * *

34. By revising § 153.434 to read as follows:

§ 153.434 Heat transfer coils within a tank.

When a cargo tank contains any quantity of cargo, a cargo cooling or heating system having coils within the tank must keep the heat transfer fluid at a pressure greater than the pressure exerted on the heating or cooling system by the cargo.

35. By revising § 153.436 to read as follows:

§ 153.436 Heat transfer fluid.

A heat transfer fluid used in a cargo tank heat transfer system must—

(a) Be suitable for its intended use;

(b) Be chemically compatible with any cargo carried in those cargo tanks serviced by the heat transfer system; and

(c) Have a flashpoint that does not exceed the temperature setting of the high temperature limit device on the thermal fluid heater.

36. By revising § 153.440 to read as follows:

§ 153.440 Cargo temperature sensors required.

(a) Except as prescribed in paragraph (c) of this section, when table I refers to this section, the containment system must meet the following requirements:

(1) A heated or refrigerated cargo tank must have a remote reading thermometer sensing the temperature of the cargo at the bottom of the tank.

(2) A refrigerated tank must have a remote reading second thermometer near the top of the tank and below the maximum liquid level allowed by § 153.981.

(b) A readout for each remote thermometer required by this section must be at the point where cargo transfer is controlled.

(c) No portable thermometers that are lowered into the tank may be substituted for the temperature sensors required by paragraph (a) of this section, unless—

(1) The cargo requires either open or restricted gauging.

(2) In the case of restricted gauging, they are lowered into the tank through a gauging tube that meets § 153.407.

§ 153.464 [Removed]

37. By removing § 153.464.

§ 153.467 [Removed]

38. By removing § 153.467.

39. By removing and reserving § 153.520(b):

§ 153.520 Special requirements for carbon disulfide.

* * * * *

(b) [Reserved]

* * * * *

40. By revising § 153.525 (a), (d) and (f) to read as follows:

§ 153.525 Special requirements for unusually toxic cargoes.

(a) Cargo piping and venting systems must be designed so that they can be separated from any containment system endorsed for a cargo not covered by this section.

* * * * *

(d) A heat transfer system for the cargo must—

(1) Be independent of other ship service systems, except for other cargo heat transfer systems, and not enter the engine room;

(2) Be totally external to the cargo containment system; or

(3) Be approved by the Commandant (G-MHM) for use with toxic cargoes.

* * * * *

(f) A cargo containment system must have a vapor return connection.

41. By revising § 153.526 to read as follows:

§ 153.526 Toxic vapor detectors.

(a) When table I refers to this section, a tankship must have two toxic vapor detectors, at least one of which must be portable, each able to measure vapor concentrations in the range of the time weighted average (TWA) for the cargo. The portable detector may be a direct reading detector tube instrument. These vapor detectors may be combined with those required by § 153.465.

(b) When the toxic vapor detectors required by paragraph (a) of this section are not available and the cargo referenced to this section is transferred through a cargo pumproom, the tankship must meet § 153.336(b).

42. By revising § 153.527 to read as follows:

§ 153.527 Toxic vapor protection.

When table I refers to this section, a tankship must have on board for each crew member:

(a) An emergency escape breathing apparatus (EEBA) approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health, or the tankship's flag administration.

(b) Where the emergency escape breathing apparatus does not protect the eyes from vapors, a set of goggles that either—

(1) Meet the specifications of ANSI Practice for Occupational and Educational Eye and Face Protection, Z-87.1(1979); or

(2) Are approved by the tankship's flag administration.

43. By revising § 153.530 (e), (f), (g)(3), (h), (l) and (n) to read as follows:

§ 153.530 Special requirements for alkylene oxides.

* * * * *

(e) The tank's relief valve setting must not be less than 21 kPa gauge (approx. 3 psig).

(f) If the containment system is equipped with a cooling system, the cooling system must—

(1) Not compress the cargo; and

(2) Regulate the cargo temperature automatically and allow manual regulation.

(g) * * *

(3) Be assembled from valves, fittings, and accessories having a pressure rating of not less than 1030 kPa gauge (approx. 150 psig) (American National Standards Institute); and

* * * * *

(h) The cargo containment system and those spaces listed in paragraphs (k) and (l) must have an arrangement for monitoring the oxygen content of the space as prescribed by § 153.1010(c).

* * * * *

(l) Cofferdams, cargo tanks, double bottom spaces, void spaces and other enclosed spaces adjacent to an integral cargo tank must have an inert gas system meeting the requirements that apply to the inert gas system of a containment system in § 153.500.

* * * * *

(n) The cargo discharge piping system must have a remotely actuated quick closing shutoff valve that meets § 153.284 at the cargo transfer hose connection.

* * * * *

44. By adding a new paragraph § 153.530(q) to read as follows:

§ 153.530 Special requirements for alkylene oxides.

* * * * *

(q) On a tankship for which a building contract is let after 1 January 1982, an alkylene oxide cargo tank must be an independent tank.

45. By revising § 153.555 to read as follows:

§ 153.555 Special requirements for inorganic acids.

When table I refers to this section, a tankship's shell plating must not be a part of the cargo tank.

§ 153.600 [Removed]

46. By removing § 153.600.

47. By adding a new § 153.602 to read as follows:

§ 153.602 Special requirements for cargoes reactive with water.

When table I refers to this section, the air inlet to the pressure-vacuum valve for the cargo tank must be located at least 2m (approx. 6.6 ft) above the weatherdeck.

48. By revising § 153.808 to read as follows:

§ 153.808 Examination required for a Letter of Compliance.

To be issued a Letter of Compliance, a vessel must call at a U.S. port and be examined by the Coast Guard as prescribed in § 153.809.

§ 153.900 [Amended]

49. By changing the footnote numbers in § 153.900 (a) and (b) and that of the corresponding footnote to read "5."

50. By revising § 153.905 to read as follows:

§ 153.905 Regulations required to be on board.

No person may operate a tankship unless the most recent editions of this part, and parts 35 and 150 of this chapter are on board.

§ 153.909 [Removed]

51. By removing § 153.909.

52. By revising § 153.910 (d) and (e) and adding a new (f) to read as follows:

§ 153.910 Cargo piping plan.

* * * * *

(d) Shows any modifications necessary to a containment system that is to be separated as prescribed under Part 150 of this subchapter, or §§ 153.525 and 153.1020;

(e) Emphasizes the piping and equipment described in paragraphs (a), (b) and (d) of this section by using contrasting colors, line widths, or similar methods; and

(f) Shows the cargo loading rates chosen under § 153.365(b) for all applicable cargo lines.

53. By revising § 153.932(b)(2) to read as follows:

§ 153.932 Goggles and protective clothing.

* * * * *

(b) * * *

(2) In a cargo pumproom, an enclosed space adjacent to a cargo tank, or a space containing part of a cargo containment system.

* * * * *

54. By revising § 153.934(a) and the introductory text of (b) to read as follows:

§ 153.934 Entry into spaces containing cargo vapor.

(a) No person may enter a cargo tank, cargo handling space, pumproom or enclosed space in the cargo area without the permission of the master.

(b) Before permitting anyone to enter a cargo tank, cargo handling space, pumproom or other enclosed space in the cargo area, the master shall make sure that—

* * * * *

55. By revising § 153.935(c) to read as follows:

§ 153.935 Opening of tanks and cargo sampling.

* * * * *

(c) The master shall make sure that cargoes requiring closed gauging are sampled only through the controlled sampling arrangement required by § 153.404(d).

56. By adding a new § 153.935a to read as follows:

§ 153.935a Storage of cargo samples.

(a) The master shall make sure that any cargo samples are stored in—

(1) A designated and ventilated space in the cargo area of the vessel; or

(2) An area approved by the Commandant (G–MHM) or the tankship's flag administration for the stowage of cargo samples.

(b) The master shall make sure that cargo sample bottles are stored—

(1) In a way that prevents shifting of the sample bottles when the vessel is at sea;

(2) In bins or containers constructed of materials that are resistant to the cargo samples; and

(3) Apart from other sample bottles containing incompatible liquids (See Part 150, Subpart A).

57. By revising § 153.940(b)(3) to read as follows:

§ 153.940 Standards for marking of cargo hose.

* * * * *

(b) * * *

(3) Date of the last test made as prescribed in paragraph (e) of this section; and

* * * * *

58. By revising § 153.968(b)(2) and adding a new paragraph § 153.968(b)(5) to read as follows:

§ 153.968 Cargo transfer conference.

* * * * *

(b) * * *

(2) The cargo loading rates marked on the cargo piping plan or the maximum safe transfer rates.

* * * * *

(5) The signal to be used to prevent a tank overflow as required by § 153.408(d).

* * * * *

59. By revising § 153.975(f) to read as follows:

§ 153.975 Preparation for cargo transfer.

* * * * *

(f) The cargo high level alarms, tank overflow alarms and overflow control systems are functioning correctly when the cargo is loaded.

* * * * *

60. By revising § 153.977 to read as follows:

§ 153.977 Supervision of cargo transfer.

The person in charge of cargo transfer shall—

(a) Supervise the operation of cargo system valves;

(b) Monitor the cargo loading rate to ensure it does not exceed that stated on the cargo piping plan; and

(c) Monitor the cargo level in the tanks to make sure they do not overflow.

61. By adding a new section § 153.980 to read as follows:

§ 153.980 Isolation of automatic closing valves.

The person in charge of cargo transfer may isolate automatic closing valves described in § 153.408(b) from a cargo containment system if the following conditions are met:

(a) The containment system carries products to which § 153.408 does not apply.

(b) The valves are isolated by—

(1) Removing the valves; or

(2) Installing removable pipes and blind flanges to by-pass the valves.

62. By adding a new section § 153.1002 to read as follows:

§ 153.1002 Special operating requirements for heat sensitive cargoes.

When table I refers to this section, the master shall make sure that—

(a) The cargo temperature is maintained below the temperature that would induce polymerization, decomposition, thermal instability, evolution of gas or reaction of the cargo;

(b) Any heating coils in the cargo tank are blanked off; and

(c) The cargo is not carried in uninsulated deck tanks.

63. By adding a new section § 153.1004 to read as follows:

§ 153.1004 Inhibited and stabilized cargoes.

(a) Before loading a cargo containment system with a cargo referenced to this section in table I, the person in charge of cargo transfer shall make sure that the cargo containment system is free of contaminants that could—

(1) Catalyze the polymerization or decomposition of the cargo; or

(2) Degrade the effectiveness of the inhibitor or stabilizer.

(b) The master shall make sure that the cargo is maintained at a temperature which will prevent crystallization or solidification of the cargo.

64. By revising § 153.1010 (a) and (c) and adding a new paragraph (d) to read as follows:

§ 153.1010 Alkylene oxides.

(a) Before each loading of a cargo containment system with a cargo referenced to this section in table I, the person in charge of cargo transfer shall—

(1) Unless the tankship is equipped with independent cargo piping that meets paragraph (d) of this section—

(i) Obtain verification from a Coast Guard Marine Inspector or from a representative of the tankship's flag administration that separation of the alkylene oxide piping system complies with alkylene oxide handling plans approved by the Coast Guard or the tankship's flag administration; and

(ii) Make sure that each spectacle flange and blank flange connection that is required to separate alkylene oxide piping systems from other systems has a wire and seal attached by a Coast Guard Marine Inspector or a representative of the tankship's flag administration.

(2) Purge the containment system until the oxygen content of the cargo tank is less than 2% by volume.

* * * * *

(c) While alkylene oxides are onboard the vessel, the master shall make sure that the oxygen content of the vapor space above the alkylene oxide and those spaces specified in § 153.530 (k) and (l) is maintained below 2% by volume.

(d) Tankships with independent piping for alkylene oxides must have onboard—

(1) Alkylene oxide handling plans approved by the Coast Guard or the tankship's flag administration; and

(2) Certification from the Coast Guard or the tankship's flag administration that the cargo piping for alkylene oxides is independent.

65. By revising § 153.1011 to read as follows:

§ 153.1011 Changing containment systems and hoses to and from alkylene oxide service.

(a) The person in charge of cargo transfer shall make sure that—

(1) No alkylene oxide is loaded into a containment system that last carried a cargo other than an alkylene oxide unless the containment system has been cleaned to remove heavy rust accumulations and all traces of previous cargoes;

(2) No alkylene oxide is loaded into a containment system that within the previous three loadings carried a cargo listed in paragraph (b) of this section unless the containment system has been cleaned to the satisfaction of a Coast Guard Marine Inspector or a person specifically authorized by the Commandant (G–MHM) to approve alkylene oxide tank cleaning;

(3) No cargo but an alkylene oxide is loaded into a containment system which last carried an alkylene oxide unless the containment system has been cleaned of alkylene oxide to the satisfaction of a Coast Guard Marine Inspector or person

specifically authorized by the Commandant (G–MHM) to approve alkylene oxide tank cleaning; and

(4) No hose marked "For Alkylene Oxide Transfer Only" is used for the transfer of a cargo other than an alkylene oxide.

(b) The following cargoes are particularly reactive with alkylene oxides:

(1) Non-oxidizing mineral acids (e.g. hydrochloric, phosphoric);

(2) Sulfuric acid;

(3) Nitric acid;

(4) Organic acids (e.g. acetic, formic);

(5) Halogenated organic acids (e.g. chloroacetic);

(6) Sulfonic acids (e.g. alkyl benzene sulfonic);

(7) Caustic alkalies (e.g. caustic soda, caustic potash; sodium hydrosulfide);

(8) Ammonia and ammonia solutions;

(9) Aliphatic amines;

(10) Alkanolamines; and

(11) Oxidizing substances.

66. By revising § 153.1020(a) to read as follows:

§ 153.1020 Unusually toxic cargoes.

(a) No person may load or carry a cargo referenced to this section in table I unless the cargo's piping and venting systems are separated from piping and venting systems carrying cargoes not referred to this section.

* * * * *

67. By revising § 153.1025(b)(1) to read as follows:

§ 153.1025 Motor fuel antiknock compounds.

* * * * *

(b) * * *

(1) The pumproom or void space atmosphere has been analyzed for its lead (as Pb) content and found to be less than 0.075 mg/m^3; or

* * * * *

68. By revising § 153.1052 to read as follows:

§ 153.1052 Carriage of other cargoes in acid tanks.

No person may load or carry other cargoes in a cargo containment system endorsed to carry sulfuric acid, hydrochloric acid, or phosphoric acid without specific authorization from the Commandant (G–MHM).

§ 153.1055 [Removed]

69. By removing § 153.1055.

70. By revising Appendix I to read as follows:

Appendix I—List of Cargoes Not Regulated Under Part 151, Part 153 or Subchapter D

The following bulk liquid cargoes may be carried in tank vessels having neither a Certificate of Inspection under Subchapter D (Tank Vessels) nor a Letter of Compliance under Part 153:

Ammonium nitrate solution (34% or less)
Ammonium nitrate, urea, water solution, 2% or less NH_3
Ammonium phosphate solution
Ammonium phosphate, urea, water solution
Ammonium polyphospate
Ammonium sulfate solution (20% or less)
Apple juice
Calcium bromide solution
Calcium chloride in water
2-Chloro-4-ethylamino-6-isopropylamino-5-triazine, water solution
Choline chloride solutions
Glucose solution
Hexamethylene diamine adipate
Kaolin clay slurry
Lignin liquor (Calcium lignosulfonate, water solution)
Magnesium chloride solution
Magnesium hydroxide suspensions in water
Molasses
Pentasodium salt of Diethylene triamine pentaacetic acid, water solution
Sewage sludge, treated so as to pose no additional decomposition and fire hazard
Sludge (stable, non-corrosive, non-toxic, non-flammable)
Sodium carbonate solutions
Sodium lignosulfonates, Sodium hydroxide (not exceeding 1% by weight), water solutions
Sodium naphthenate solutions (free alkali content, 3% or less)
Sodium polyacrylate solution
Sodium silicate solution
Sorbitol in water
Tetrasodium salt of Ethylene diamine tetraacetic acid, water solution
1,1,1-Trichloroethane (Methyl chloroform)
1,1,2-Trichloro-1,2,2-trifluoroethane
Trisodium salt of n-hydroxyethyl ethylenediamine triacetic acid, water solution
Urea in water
Water
Zinc bromide/Calcium bromide solution
Mixtures solely of the cargoes in this list.

Appendix III [Amended]

71. Appendix III to Part 153 is amended in the column headed *Equivalent to English or Common Metric* by revising the entry reading "1×10^{-3}kg/cm^2" to read "1.02×10^{-3}kg/cm^2".

(46 U.S.C. 170; 46 U.S.C. 391a; 49 U.S.C. 1803; 49 CFR 1.46 (n)(4) and (t))

Dated: May 3, 1982.

Clyde T. Lusk,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82–13073 Filed 5–14–82; 8:45 am]
BILLING CODE 4910–14–M

federal register

Monday
May 17, 1982

Part IV

Department of Justice

Antitrust Division

United States of America v. Western Electric Company, Inc., et al. and United States of America v. American Telephone & Telegraph Company et al.; Notice Concerning Public Comments and Response

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Western Electric Company, Inc., et al., Civil Action No. 82-0192 (D.D.C.) and United States of America v. American Telephone & Telegraph Company, et al., Civil Action No. 74-1698 (D.D.C.); Notice Concerning Public Comments and Response Thereto

Notice is hereby given that on May 10, 1982, the United States Department of Justice issued the following announcement concerning the proposed Modification of Final Judgment in *United States* v. *Western Electric Company, Inc., et al.*, Civil Action No. 82-0192 (D.D.C.):

Text of Announcement

The Justice Department announced today that the U.S. District Court for the District of Columbia, where the United States' antitrust litigation against AT&T is pending, has (1) permitted an extension of time for the Department to file its response to comments on the proposed Modification of Final Judgment, and (2) approved certain procedures to be used in lieu of **Federal Register** publication of all comments on the proposed modification.

The new date for filing with the court of the Department's response to comments is May 20, 1982, with **Federal Register** publication of the response to occur no later than May 27.

The court also approved the Department's request to be relieved of the obligation to publish in the **Federal Register** the approximately 8,750 pages of comments it has received. the comments would have filled about 1,500 pages of the **Federal Register** at a cost to the Antitrust Division of more than $600,000.

The Department, in order to insure that the comments are available to interested persons, will:

(1) Publish in the **Federal Register** by May 27, 1982, the name and address of each person filing a comment, with a statement of the number of pages in the comment;

(2) Make available for inspection by the public at each of the 27 District Courts listed below a copy of each comment received;

(3) Within fifteen days of receipt, provide to any person requesting it a copy of any designated comment or comments, at the nominal charge of one cent per page;

(4) Within fifteen days of receipt, provide to any person requesting it a copy of any or all of the microfilm reels containing the comments, at a charge of $15.00 per reel.

Requests for copies of the comments should be directed to: Eric Donovan, U.S. Department of Justice, Antitrust Division, Room 1028 SAFE, Washington, D.C. 20530.

Telephone requests should be directed to Donovan on (202) 724-5790. Written requests should include a check or money order in the proper amount made payable to the Treasurer of the United States.

The U.S. District Courts at which the full text of the comments may be inspected are in the following cities:

Washington, D.C.; Newark, New Jersey; Los Angeles, San Francisco, and San Diego, California; Denver, Colorado; Jacksonville and Miami, Florida; Atlanta, Georgia.

Also, Chicago, Illinois; New Orleans, Louisiana; Baltimore, Maryland; Boston, Massachusetts; Detroit, Michigan; Minneapolis, Minnesota; St. Louis, Missouri; New York City (Manhattan), New York; Cleveland, Akron and Cincinnati, Ohio.

Alto Philadelphia and Pittsburgh, Pennsylvania; Dallas and Houston, Texas; Richmond, Virginia; Seattle, Washington; and Milwaukee, Wisconsin.

In further compliance with the Court's order, there follows a list of the names and addresses of the persons who filed comments concerning the proposed Modification of Final Judgment, indicating the number of pages in each comment:

Andrew Abott, c/o Ms. Mary C. Parkin, 2809 Arlington Boulevard, Apt. 201, Arlington, Virginia 22201 (pgs. 4).

Ad Hoc Telecommunications Users Committee, James S. Blaszak, Esquire, McKenna, Wilkinson & Kittner, 1150 17th Street, NW., Washington, District of Columbia 20036 (pgs. 61).

Len Adamowicz, 8 Allen Street, Cambridge, Massachusetts 02140 (pgs. 2).

Katherine C. Akona, 225 Kaiulani Avenue, Apt. 601, Honolulu, Hawaii 96815 (pgs. 1).

State of Alabama, Charles A. Graddick, Esquire, Attorney General (pgs. 2).

Joint Comments of the State of Alabama, et al., Stephen H. Sachs, Esquire, Attorney General for Maryland, 131 East Redwood Street, Suite 701, Baltimore, Maryland 21202 (pgs. 29).

Wayne Albin, 10733 2nd NW., Seattle, Washington 98177 (pgs. 20).

Mildred Aller, 16065 Ireland Road, Mishawaka, Indiana 46544 (pgs. 2).

American Bankers Association, Gerald M. Lowrie, Executive Director, 1120 Connecticut Avenue, NW., Washington, District of Columbia 20036 (pgs. 5).

American Electronics Association, Kenneth C. O. Hagerty, Vice President, Government Operations, 1612 K Street NW., Washington, District of Columbia 20036 (pgs. 2).

American Hospital Association, Bernard Dickens, 840 North Lake Shore Drive, Chicago, Illinois 60611 (pgs. 2).

American Newspaper Publishers Association, Katherine M. Holden, Esquire, Kirkland & Ellis, 1776 K Street, NW., Washington, District of Columbia 20006 (pgs. 46).

American Petroleum Institute, Wayne V. Black, Esquire, Keller and Heckman, 1150 17th Street, NW., Suite 1000, Washington, District of Columbia 20036 (pgs. 21).

American Satellite Company, Joan M. Griffin, Esquire, 1801 Research Boulevard, Rockville, Maryland 20850 (pgs. 11).

AMI, Mr. Thomas L. Humphrey, Director, Corporate Planning, 3800 Homestead Road, Santa Clara, California 95051 (pgs. 2).

Amtel Systems Corporation, Donald P. Allen, President, 1293 Anvilwood Avenue, Sunnyvale, California 94086 (pgs.2)

Amtelco, William J. Curtin, President, 6026 Monona Drive, Madison, Wisconsin 53716 (pgs. 3).

Roland C. Amundson, Esquire, 4150 IDS Center, Minneapolis, Minnesota 55402 (pgs. 3).

Answering Service, Inc., Richard V. McNamara, 940 Bender Building, 1120 Connecticut Avenue, NW., Washington, District of Columbia 20036 (pgs. 11).

The State of Arizona, Robert L. Brickman, Esquire, Assistant Attorney General, State Capitol, Phoenix, Arizona 85007 (pgs. 41).

Public Service Commission of Arkansas, N. M. Norton, Jr., Chairman, P.O. Box C-400, Markham & Victory Streets, Little Rock, Arkansas 72203 (pgs. 14)

Associated Telephone Answering Exchanges, Inc., Stephen Paul Mahinka, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, District of Columbia 20036 (pgs. 47).

Association of American Railroads, R. Scott Gardner, Washington, District of Columbia 20036 (pgs. 17).

Association of Data Communications Users, August H. Blegen, P.O. Box 1184, New York, New York 10019 (pgs. 21)

Association of Data Processing Service Organizations, Inc., Joseph P. Markoski, Esquire, Wilkinson, Cragun

& Barker, 1735 New York Avenue, N.W., Washington, District of Columbia 20006 (pgs. 38).
Association of Long Distance Telephone Companies, Victor J. Toth, Esquire, 2719 Soapstone Drive, Reston, Virginia 22091 (pgs. 6).
Richard M. Augustine, 951 Klein Road, Williamsville, New York 14221 (pgs. 1).
Automated Sales Company, James V. Rhode, 344 40th Street, Oakland, California 94609 (pgs. 1).
BEK Telephone Mutual Aid Corporation, Jerome Tishmack, Steele, North Dakota 58482 (pgs. 2).
W.R. Bailey, Box 4681, Incline, Nevada 89450 (pgs. 10).
Willis E. Bame, 208 Stadium Drive, Findlay, Ohio 45840 (pgs. 1).
Bank of America, Bank of America Center, John M. Mickel, Executive Vice President, San Francisco, California 94137 (pgs. 19).
J. Peyton Barnes, M.D., 1000 St. Joseph Professional Building, Houston, Texas 77002 (pgs. 2).
R.W. Baruth, 69 E. San Vincent Drive, Green Valley, Arizona 85614 (pgs. 2).
Alfred H. Baume, 11 Kimberly Lane, Dearborn, Michigan 48120 (pgs. 1).
Maude Baxter, 3106 Shahan Avenue, Gadsden, Alabama 35904 (pgs. 1).
Mrs. Grace Beagle, 427 Union Street, Grand Blanc, Michigan 48439 (pgs. 1).
Arthur S. Bechhoefer, 1640 Argonne Place, N.W., Washington, District of Columbia 20009 (pgs. 3).
Ed Bell, 15027 Kelly Road, Kansas City, Missouri 64149 (pgs. 1).
William J. Bell, *et al.*, Florida, (petition, 212 signatories) (pgs. 2).
Joan Beran, 1566 Moorings Drive, #2–B, Reston, Virginia 22090 (pgs. 1).
Mrs. Ernest P. Bergmann, 37 Hillcrest Avenue, Yonkers, New York 10705 (pgs. 1).
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Joseph C. Bernstein, 1411 North Flager Drive, West Palm Beach, Florida 33401 (pgs. 1).
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A. F. Boke, 15718 Milbank, Encino, California 91436 (pgs. 3).
Mr. & Mrs. Marine J. Booden, 1022 Par-4 Circle, Kalamazoo, Michigan 49008 (pgs. 1).
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Alvin V. Zipnick, 160 Broadway, New York, New York 10038 (pgs. 1).
17 letters by anonymous parties (pgs. 48).

Persons desiring copies of any designated comment or comments are requested to direct their request to the number given in the announcement set forth above.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

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Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule With Request for Comments

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final rule with request for comments.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment a regulation to implement the Valid Court Order amendment to Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended.

This regulation establishes a basic framework within which State law or procedure may permit non-criminal juvenile offenders who violate valid court orders to be placed in secure facilities.

DATE: All comments are due on or before June 16, 1982. Unless final comments raise major issues not already considered by OJJDP which result in modification of the regulation, the regulation will become effective on July 1, 1982.

ADDRESS: Send all comments to David D. West, Director, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Ave., N.W., Washington, D.C. 20531 Telephone: (202) 724–5911.

SUPPLEMENTARY INFORMATION: On December 31, 1981, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** final regulations to implement the formula grant program authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. These regulations, 28 CFR Part 31, reserved § 31.303(i)(3), Valid Court Order, because of the substantial comment and criticism received in response to the draft of this section of the regulation. The reserved regulation would implement the Valid Court Order amendment to Section 223(a)(12)(A) of the JJDP Act. The Juvenile Justice Amendments of 1980 (Pub. L. 96–509, December 8, 1980) amended this provision of the JJDP Act to exempt juveniles who commit offenses which constitute violations of a valid court order from the scope of the deinstitutionalization requirement.

On February 9, 1982, OJJDP published in the **Federal Register** a notice of public hearings and request for additional written comment on proposals to implement the Valid Court Order amendment. In response to this notice, 31 written comments were received. In addition, 16 individuals testified at public hearings held in Washington, D.C. and Denver, Colorado. OJJDP has reviewed all written comments and testimony in the preparation of the revised valid court order regulation.

At the outset, there are several matters of which interested parties should be aware in reviewing the regulation. First, some commentators expressed opposition to publication of any regulation providing a Valid Court Order exception to the deinstitutionalization requirement, expressing the opinion that there is a danger that their State's progress since 1974 in removing non-criminal children from secure confinement could be undermined by such an exception. Congress debated this matter at length in considering the Juvenile Justice Amendments of 1980. There was vigorous subcommittee, committee, and floor debate in the House of Representatives. The House approved the amendment by a vote of 235–123. The Senate subsequently passed the House bill without amendment. Thus, there is no option in the matter of developing guidance to the States in the implementation of this change in the Federal statute.

Second, in developing the regulation, OJJDP has been mindful of the need to formulate a regulation which will preserve the deinstitutionalization thrust of the JJDP Act yet provide juvenile and family courts with the ability to enforce their lawful orders. Congress clearly did not intend to reverse the substantial progress that participating States have made in achieving deinstitutionalization. Further, the legislative history of the amendment clearly indicates that Congress wanted the exception applied to status offenders who chronically fail to follow court orders and anticipated that juvenile and family court judges would use the exception only where necessary to preserve the courts' authority to enforce their orders and to carry out their responsibility to rehabilitate and protect juvenile offenders.

Third, it is important to note that the Valid Court Order exception language to Section 223(a)(12)(A) does not grant any *legal* authority to State and local governments or to juvenile courts to place juveniles in secure incarceration. The granting or withholding of such authority, as well as the attendant procedures and due process protections, are matters of State law and policy, applicable Constitutional protections, court rules, and proceedings. The JJDP Act establishes minimum requirements which must be met for a State to be eligible for a formula grant award. The scope of these requirements is established by the law itself and OJJDP's implementing policies and regulations. The latter are restricted by Congressional intent as expressed in the legislative history and guided by the Congressional purposes and objectives which provide the framework for all of OJJDP's programs. Thus, the Valid Court Order regulation should be viewed as establishing a basic framework within which States can act, if they so choose, to permit non-criminal juvenile offenders who violate valid court orders to be placed in secure facilities under Section 223(a)(12)(A). If individual State laws and procedures operate in a manner that is consistent with this regulation, the State will be in compliance with the Section 223(a)(12)(A) plan requirement. If not, then the State may be in noncompliance and be ineligible for funding under the Act. OJJDP views its role as establishing minimum constraints consistent with Congressional intent, the purposes of the JJDP Act, and established principles of due process. If States and their juvenile courts wish to permit the exercise of judicial authority consistent with the valid court order exception, the regulation provides a starting point from which they may further consider the matter. OJJDP will not attempt to structure a regulation which anticipates or speculates on possible judicial positions on complex due process legal issues which may or may not arise under a variety of potential regulatory positions.

Fourth, the Valid Court Order exception is not necessarily based on a juvenile court's exercise of its common law or inherent criminal or civil contempt power, the exercise of statutory contempt power, or the existence of a juvenile code provision which categorizes a violation of a valid court order as a "delinquent" offense. One rationale for the amendment was to obviate the need for courts to use their criminal contempt power as a means of obtaining compliance with court orders. Further, OJJDP's legal counsel has ruled that a violation of a court order by a status offender is an insufficient legal basis to categorize the juvenile as a criminal-type or delinquent offender, thus removing the juvenile from the

deinstitutionalization requirement. As OJJDP views it, the amendment simply provides that if a State wants to allow a juvenile who has been adjudicated for an act which would not be criminal if committed by an adult to be placed in secure detention for the violation of a juvenile or family court order resulting from such adjudication, it may make provision in State law, policy or procedure for such detention in a manner that would not be inconsistent with the Section 223(a)(12)(A) deinstitutionalization requirement of the JJDP Act. The details of how a State would provide for this, if at all, are left up to the State to determine within the basic framework established by the regulation.

Fifth, OJJDP believes it is unnecessary to regulate in a manner that presumes bad faith on the part of State or local officials and juvenile and family court judges. We believe that underlying trust is required and that the record of the vast majority of the States in implementing the Act since 1974 fully justifies such trust. State and local officals and juvenile and family court judges have consistently demonstrated a commitment to implementing the JJDP Act's mandates and objectives. We are confident that this commitment will result in careful and rational implementation and use of the valid court order exception in those jurisdictions which choose to provide their juvenile courts with this authority.

Sixth, OJJDP has consulted and used the Standards adopted by the National Advisory Committee for Juvenile Justice and Delinquency Prevention in reviewing comments and testimony and in adopting some of the changes in the proposed regulation. Although the Standards do not authorize secure detention or confinement for a violation of a valid court order pursuant to an adjudication for non-criminal behavior (status offenses), the Standards were used to determine appropriate procedural protections consistent with the legislative history and other provisions of the Act.

Finally, readers are advised to note carefully the distinctions to be drawn between the words "must" and "should" throughout the guideline and explanatory text. Use of the word "must" indicates mandatory matters, while the word "should" is directory or suggestive only. Other matters which were the subject of comment and worthy of review and consideration by States and juvenile and family court judges are briefly discussed in the "other comments" Section.

Explanation of Changes

The following discusses the changes proposed to be made to the draft regulation published in the **Federal Register** on September 3, 1981. The changes are based on substantial and persuasive comments presented to OJJDP in written testimony and at the public hearings held in Washington, D.C. and Denver, Colorado.

(1) Subparagraph (iii) of § 31.303(i)(3) is changed to require that the judge provide, at the initial adjudicatory/dispositional hearing, a written warning of the consequences of violating the court order. At the time the order is issued, this warning must be provided to both the juvenile and his/her attorney and/or legal guardian. It should clearly state that a violation of the court order could result in the secure incarceration of the juvenile and/or other consequences. If an attorney is representing the juvenile, the attorney must be provided a copy of the written warning. The warning must also be reflected in the court record and proceedings.

This change in the draft regulation is based on Standard 3.188, Dispositional Hearings, contained in the *Standards for the Administration of Juvenile Justice, Report of the National Advisory Committee for Juvenile Justice and Deliquency Prevention* (hereafter referred to as the NAC Standards). This standard states that the family court judge should explain the terms of the disposition and should state, on the record, the facts and reasons underlying the dispositional decision. Having the judge explain the terms of the order and the facts and reasons on which the disposition is based, followed by a written warning of the possible consequences of violating the court order, constitutes, in OJJDP's view, the adequate and fair warning anticipated by the amendments and legislative history. The court's articulation of the reasons underlying the court order and the consequences of violating that order will serve to avoid misunderstandings of both the conditions imposed and the potential consequences of violating the order.

(2) Subparagraph (iv) of § 31.303(i)(3) is changed to clarify and delineate the conditions which must be present to securely detain, beyond the 24-hour "grace period," a status offender accused of violating a valid court order. First, a hearing must be held and a judicial determination made within 24 hours of a juvenile being placed in secure custody (exclusive of Saturdays, Sundays, and legal holidays) that there is probable cause to believe the juvenile violated the court order. Second, the court must also determine that the juvenile has a recent record of willful failure to appear at family court proceedings or a recent record of violent conduct resulting in physical injury to self or others.

This modification is based on NAC Standard 3.155, Initial Review of Detention Decisions, which provides that in delinquency proceedings, a probable cause (or detention) hearing should be held before a family court judge no more than twenty-four hours after a juvenile has been taken into custody. At that hearing, the State should establish that there is probable cause to believe that a violation of the terms of the order was committed by the juvenile subject to the order. If probable cause is established, the court should next review the necessity for continued detention. Unless the State demonstrates by clear and convincing evidence that continued secure detention is warranted pending the violation hearing, the court should place the juvenile in the least restrictive form of release consistent with the purposes and factors set forth in NAC Standard 3.153, Criteria and Procedures for Detention and Release—Noncriminal Misbehavior.

At the inception of the hearing, the judge should assure that the juvenile understands his/her right to counsel, should appoint an attorney to represent the juvenile if the juvenile is not already represented by counsel, and meets the eligibility requirements set forth in NAC Standard 3.132, Representation by Counsel—For the Juvenile.

OJJDP's position, strongly supported by the comment and testimony, is that status offenders, including those accused or found to have violated a valid court order, will seldom need to be detained in secure detention or correctional facilities. Such juveniles should, whenever possible, be released to a parent or legal guardian or be placed in a foster home or shelter facility pending an adjudicatory violation, or dispositional hearing or as a dispositional alternative.

The legislative history of the "valid court order" amendment reflects the fact that this exception was intended by the Congress to give the juvenile or family court judge the ability to enforce valid court orders by authorizing secure incarceration of those status offenders who "continually flout the will of the court," who "chronically refuse voluntary treatment," or who are considered "chronic offenders" as the result of a pattern of continued violations of the court's orders. The

legislative history also states that the judicial discretion to securely detain a status offender for violating a valid court order "would be rarely used as far as a juvenile judge would go." Thus, consistent with NAC Standard 3.152, Criteria for Detention in Secure Facilities, and the legislative history, the regulation was modified.

The regulation now provides that, where it has been judicially determined that there is probable cause to believe a status offender violated a valid court order, secure detention pending the violation hearing may be authorized if the juvenile has a demonstrable recent record of willful failure to appear in court *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others. This provision of the regulation is consistent with the basic principles regarding the use of short-term secure settings pending adjudication or disposition. Secure detention prior to a violation hearing should only be used when it is needed to assure appearance in court or for protective purposes and should not be used as a punitive measure. If a juvenile accused of violating a valid court order has no recent history of failing to appear in court, then there is no need to securely hold the juvenile to assure court appearance. Similarly, if the juvenile has no recent record of violent conduct resulting in physical harm to self or others, there is no need to securely detain the juvenile for protective purposes. The term "demonstrable record" is not intended to require introduction of a certified copy of a prior adjudication order or certified documents that the juvenile has recently and willfully failed to appear at family court proceeding, but should include more than mere allegations of prior failure to appear or violent conduct.

(3) Subparagraph (iv) of § 31.303(i)(3) is modified to provide that the period of time a status offender may be held after the probable cause hearing and pending a violation hearing should be such period of time provided by State law but in no event *should* detention prior to the violating hearing exceed 72 hours exclusive of Saturdays, Sundays, and legal holidays. The use of the term "should" in this section of the regulation provides States with the flexibility to accommodate existing State law and policy. State laws vary on the maximum length of secure detention permitted before and adjudicatory or fact-finding hearing must be held. Clearly, a factor in determining the time frame between the probable cause hearing (if any) and the hearing on the valid court order violation would include adequate time to obtain counsel and prepare witnesses and evidence for the hearing. The factual issues would generally not be complex. Therefore, OJJDP's position is that if secure detention based on a probable cause determination is to be permitted in the specific circumstances, the detention should not exceed 72 hours exclusive of nonjudicial days. OJJDP is establishing the 72-hour benchmark based upon a substantial number of comments and recommendations which supported a 72-hour time frame. Some States have already considered this question and established time frames. Neither the statute nor the legislative history would support any Federal regulation interference in these enactments.

(4) Subparagraph (vi) of § 31.303(i)(3) is modified to require that the judge presiding over an initial probable cause hearing, and at a violation hearing, determine on the record that all the elements of a valid court order, and the full range of *Gault* rights, have been afforded the juvenile before any order is entered which results in secure confinement. The regulations also require a judicial determination on the record that there is no less restrictive alternative appropriate to the needs of the juvenile and the community before an order is entered authorizing secure placement either pending the violation hearing or as a disposition after a determination that the juvenile violated a valid court order. These two determinations assure that the court has provided full due process. Before a juvenile can be placed in secure detention based on a finding of probable cause, the judge must determine on the record that all due processs rights (*Gault*) were afforded the juvenile at the initial adjudicatory hearing which resulted in the order or at the probable cause hearing itself. All the due process rights must be provided the juvenile at the violation hearing and the judge must determine on the record that these rights were afforded the juvenile prior to or at the time of entering an order authorizing a disposition of placement in a secure facility.

The basis for the requirement of a judicial determination that there is no less restrictive alternative appropriate to the needs of the juvenile is based upon both the legislative history of the valid court order amendment and specific statutory language contained in Section 223(a)(12)(B) of the JJDP Act, as amended. As stated in the supplemental views on the Juvenile Justice Amendments of 1980 from the Report of the House Committee on Education and Labor, the purpose of the JJDP Act is "to discourage the placement of juveniles in secure facilities unless there is no rational alternative to incarceration." The Report further states that the intent of the Act is to provide sufficient resources and incentives to insure that alternatives are available and "that there would be few, if any, instances where juvenile status offenders or non-offenders would be incarcerated."

(5) A new subparagraph (vii) is added to § 31.303(i)(3) of the regulation to provide that a non-offender such as an abused, dependent, or neglected child cannot be placed in a secure detention or correctional facility for the violation of a valid court order. The House debate on the valid court order amendment and the specific wording of the amendment to Section 223(a)(12)(A) appear to exclude non-offenders from the coverage of the amendment. Further, we are convinced by the testimony and comments that the potential harm to this group of children from secure incarceration far outweighs any foreseeable need for a court to require the sanction of a secure placement for a child who is before the court as a victim rather than an offender.

The prohibition on placing non-offenders in secure facilities is consistent with NAC Standard 3.154, which states that juveniles subject to the neglect and abuse jurisdiction of the family court should not be placed in detention or correctional facilities.

Discussion of Other Comments

The OJJDP received many recommendations which, while serving to add to the protection of status offenders subject to secure placement, are matters which can more appropriately be addressed by State law, policy, and procedure, or which are not supported by the legislative history of the Amendment. A brief explanation of these recommendations and OJJDP's rationale for *not* including the proposals in the final regulation follows.

1. *Recommendation:* At the initial adjudication or other court proceeding in which the court order regulating future conduct was entered, require that the full range of due process rights specified in *In re Gault* be provided the juvenile status offender or, at a minimum, that the juvenile have the right to counsel at the proceeding.

OJJDP Response: This recommendation is not supported by the legislative history of the Amendment. Had Congress intended to restrict the valid court order exception to those States which provide the full range of due process rights at all status offender

proceedings which result in a court order regulating conduct, it would have done so clearly and explicitly.

Although many States provide a right to counsel for juveniles alleged to be status offenders, others have not extended the right to counsel to non-criminal proceedings, taking a narrow view of the Supreme Court's holding in *In re Gault*. OJJDP takes the position that Congress intended that full due process be provided to the juvenile prior to any secure placement and has provided in the revised regulation that full due process must be provided at either the adjudicatory hearing or the probable cause hearing in order to support a temporary detention pending a violation hearing and at the violation hearing itself.

2. *Recommendation:* The regulation should allow a "grace period" for the detention of status offenders alleged to have violated a court order of 48 or 72 hours rather than OJJDP's existing 24 hour time frame.

OJJDP Response: The 24-hour "grace period," which permits temporary custody of non-criminal children for up to 24 hours, exclusive of non-judicial days (i.e., holidays or weekends), has been a longstanding policy of the JJDP Act program. It is a monitoring exception intended solely to provide for investigation, processing, and release to home or other non-secure alternative. A probable cause hearing involving readily determinable and narrow factual issues or release of the juvenile to a non-secure setting should be possible within the 24-hour time frame.

3. *Recommendation:* The term "court of competent jurisdiction" (§ 31.303(i)(3)(iv)) should be defined so that a juvenile would only be subject to valid court order violation proceedings before the *same judge* in the *same court* in which the order was entered.

OJJDP Response: The regulation has not been modified to provide that the juvenile is subject to valid court order violation proceeding only before the same judge or the same court. Commentators generally disagreed with the proposal to limit the proceedings before the same judge. A different judge may add an element of objectivity needed in a State where the violation hearing is the court's criminal contempt power. Further, in some rural jurisdictions there may only be a single judge available. In either event, a Federal regulation could never specify which judge should be used in any proceeding without creating unreasonable problems for some jurisdictions. No basis in the statute or legislative history exists for either position.

4. *Recommendation:* The regulation should establish some gravity guidelines (i.e., chronicity standards) to be used by the courts in determining whether the behavior of the alleged violator is sufficiently serious to warrant a finding of a violation of a valid court order.

OJJDP Response: This is a matter for the individual States to consider. Congress clearly did not intend that courts use the valid court order exception for trivial matters or trivial violations. However, States are in a far better position to establish appropriate guidelines, court rules or law to regulate this type of matter. A Federal regulation on such a matter would only serve to create legal issues as States tried to implement it and conform State substantive or procedural law to subjective criteria or a Federal regulatory position with no clear statutory basis.

5. *Recommendation:* The regulation should specify the type of *evidence* necessary to initiate or prove that a court order has been violated.

OJJDP Response: See response No. 4.

6. *Recommendation:* The regulation should address the question of who would have *standing* to allege a violation of a valid court order. To safeguard against unsupported and insubstantial allegations, only a person directly aggrieved by the alleged violative conduct should be able to bring a violation petition.

OJJDP Response: See response No. 4.

7. *Recommendation:* The regulations should mandate that in order for a child to be found to have violated a valid court order, it must be proven that the behavior was *intentional, voluntary,* and *without just cause.*

OJJDP Response: See response No. 4.

8. *Recommendation:* Any duly authorized officer of the court, acting on behalf of a judge, should be empowered to determine a valid court order violation.

OJJDP Response: The determination of a valid court order violation, to support a sanction of secure placement, must be the result of a judicial and not an administrative proceeding. For example, if a referee in a particular jurisdiction has the authority to assert the court's jurisdiction over a status offender, hold a hearing on the facts, determine the legal rights of the parties in a judiciable controversy, and enter a judgment and/or remedy in accordance with established legal principles, then a referee could, like a judge, be authorized to order secure confinement of a juvenile under the valid court order amendment. Also, refer to response No. 4.

9. *Recommendation:* Any court order violation on which a subsequent disposition of incarceration is based should bear "a reasonable relationship to the underlying status offense."

OJJDP Response: While OJJDP believes that the conduct required by a court order should reasonably relate to the status offense on which the adjudication and order are based, we have concluded that this matter is best addressed by State law and procedure. See response No. 4.

10. *Recommendation:* In deciding the disposition of a juvenile found to have violated a valid court order, the judge should be required to find "beyond a reasonable doubt" that there is no less restrictive alternative available than secure confinement.

OJJDP Response: The standard of proof for judicial determinations or dispositions is a matter of law which should be determined by State law and court decision. See response No. 4.

11. *Recommendation:* The regulations should prohibit the commingling of those persons found to have violated a valid court order from juveniles charged with crimes or adjudicated as a juvenile criminal-type offender.

OJJDP Response: There is no congressional intent to prohibit such commingling of these types of offenders in detention or correctional facilities. See discussion in No. 12 below.

12. *Recommendation:* Status offenders found to have violated a valid court order should never be placed in adult jails or lockups.

OJJDP Response: The Office agrees with the recommendation. However, each of the major provisions of the Act limiting the placement of juveniles in detention or correctional facilities has its own legislative history and thus requires one to view each provision separately. For example, the deinstitutionalization provision (Section 223(a)(12)(A)) requires full compliance within five years for participating States and longstanding OJJDP policy allows a 24-hour grace period for the detention of status offenders held in a secure detention or correctional facility. Further, the separation provision (Section 223(a)(13)) requires immediate implementation by the States and allows no more than haphazard or incidental contact between adults and juveniles held in secure detention or correctional facilities. Finally, the jail removal provision (Section 223(a)(14)) requires full compliance within five years and provides for a six-hour grace period for juvenile criminal-type offenders to be held in adult jails or lockups.

Thus, in a specific jurisdiction, the following scenario would exist with regard to the placement of a valid court order violator in an adult jail or lockup:

(a) For compliance purposes with Section 223(a)(12)(A), the placement would be permissible for up to 24 hours exclusive of non-judicial days. However, after that period, it would be reported as a violation of this requirement.

(b) For compliance purposes with Section 223(a)(13), the placement would be permissible *only* if there was no sight or sound contact between the subject juvenile and incarcerated adults.

(c) For compliance purposes with Section 223(a)(14), the placement would be in violation of the jail removal requirement.

Each State monitors and reports on compliance with each provision of the Act separately. For example, most participating States have reached or nearly reached the statutory time frame for Section 223(a)(12)(A) but participating States are now just beginning to address the jail removal provision. In summary, this recommendation did not become part of the regulations due to the unique nature of each provision.

13. *Recommendation:* The OJJDP should establish within the regulations a maximum number of status offenders who can be held as valid court violators in any single jurisdiction.

OJJDP Response: This recommendation finds no support in the legislative history and would be impractical to implement. The Office will, however, review the use of this authority through individual State monitoring reports. If these reports demonstrate a pattern or practice of substantial overuse, the situation would be reported to the Congress for possible legislative action. See response No. 4.

14. *Recommendation:* The OJJDP should regulate the maximum length of secure confinement for a valid court order violator, i.e., ten days or until the juvenile agrees to follow the order.

OJJDP Response: Again, the recommendation lacks a basis in Congressional intent. The Office expects that the States will address this matter through State law, court rules, or policy. See response No. 4.

15. *Recommendation:* The OJJDP regulations should address the time limits on secure detention of out-of-state runaways.

OJJDP Response: This issue is beyond the scope of the valid court order provision. The experience of the States has shown that there are few instances where the out-of-state runaway needs to be held beyond the 24-hour grace period. For those instances when it is necessary, the criteria for de minimis exceptions to full compliance with Section 223(a)(12)(A) (See 46 FR 2566–2569) has a provision to consider the holding of out-of-state runaways as an exceptional circumstance when such holding meets specified criteria. See response No. 4.

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, *et seq.*, 28 CFR Part 31 is accordingly amended by adding a new § 31.303(i)(3) to read as follows:

PART 31—FORMULA GRANTS

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile *and to his attorney and/or to his legal guardian* in writing *and* be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, only if: (A) There has been a judicial determination, based on a hearing *during the 24-hour grace period,* that there is probable cause to believe the juvenile violated the court order; *and* (B) *the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others.* In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed *72 hours exclusive of nonjudicial days.* A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceedings;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine *on the record* that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile *and the judge must determine on the record that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.*

(vii) *A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.*

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 82-13248 Filed 5-14-82; 8:45 am]
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Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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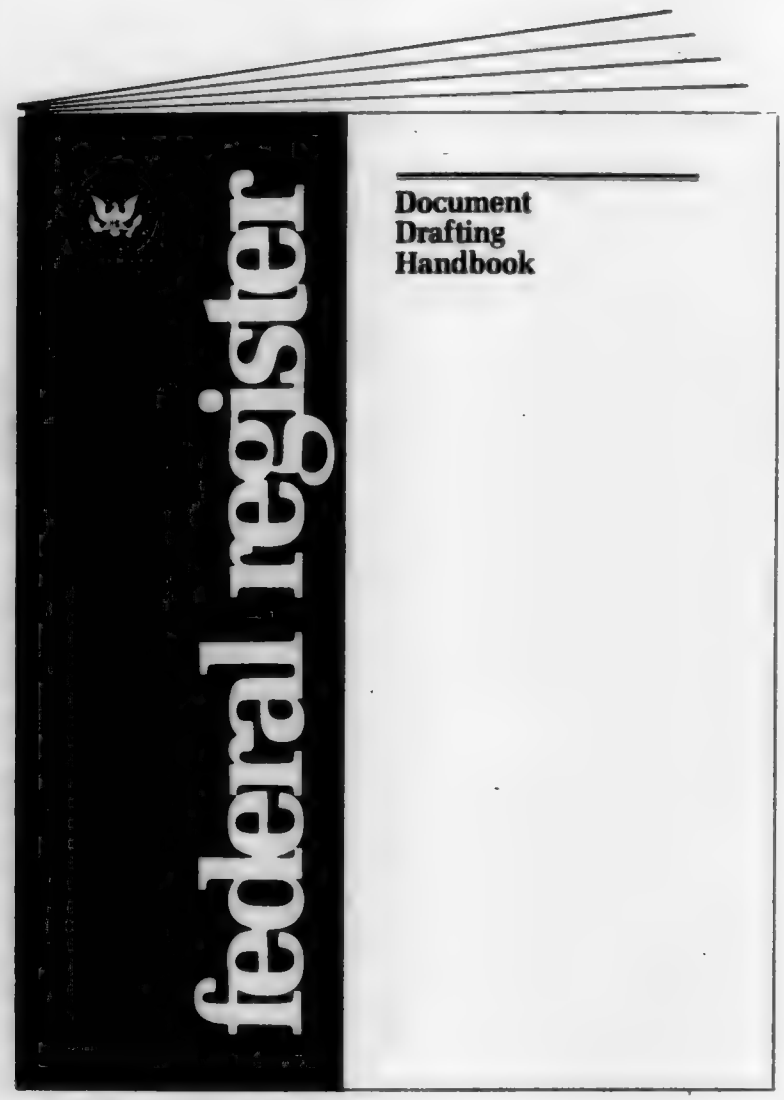

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Marine Mammals:
National Oceanic and Atmospheric Administration

Marine Safety:
Federal Trade Commission

Radio:
Federal Communications Commission

Securities:
Federal Reserve System

Television:
Federal Communications Commission

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Presidential Documents

Title 3—

The President

Executive Order 12362 of May 12, 1982

Overseas Employment

By the authority vested in me as President of the United States of America by Sections 3301 and 3302 of Title 5 and Section 301 of Title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

Section 1. A United States citizen who is a family member of a civilian employee or of a member of a uniformed service and who has completed a total of 24 months of fully satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the Executive branch within the United States (including Guam, Puerto Rico and the Virgin Islands) if he or she meets the qualifications and other requirements established by the Director of the Office of Personnel Management and the provisions of this Order.

Sec. 2. In order to be eligible for noncompetitive appointment to positions within the United States under this authority, such an individual must:

(a) have been appointed to an overseas position or positions while residing in the overseas area under local hire procedures approved by the Director of the Office of Personnel Management;

(b) have completed 24 months of overseas service in an appropriated fund position after January 1, 1980 within a ten year period from the date of initial appointment;

(c) have received a satisfactory or better performance rating for such overseas service;

(d) have been a family member of a civilian employee or of a member of a uniformed service (the civilian or uniformed sponsor) while serving in the overseas position or positions;

(e) have accompanied the civilian or uniformed sponsor on official assignment to an overseas post of duty while serving in the overseas position or positions; and

(f) exercise the eligibility for noncompetitive appointment within two years of returning to the United States.

Sec. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this Order, including uniform local hire procedures to assure merit selection of overseas employees.

Sec. 4. To the extent there is any conflict between this Order and Civil Service Rule 8.2 (5 CFR 8.2), the provisions of this Order shall control.

Ronald Reagan

THE WHITE HOUSE,
May 12, 1982.

[FR Doc. 82-13686
Filed 5-17-82; 10:32 am]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 46 and 47

Clarification of Regulations Under the Perishable Agricultural Commodities Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Sevice amends its regulations relating to perishable agricultural commodities received, shipped, sold, offered to be sold in interstate and foreign commerce. 7 CFR 46.2 is amended to reflect the increased exemption used to determine license responsibility for retailers and frozen food brokers as required by the statutory amendment effectuated by Pub. L. 97–98—December 22, 1981. 7 CFR 46.45 is amended to clarify the schedule for informal disposition of misrepresentation violations, and to allow the purging of cumulative records of misrepresentation violations which were informally resolved and which are more than three (3) years old and are not involved in a formal disciplinary action. 7 CFR 47.15 and 47.20 are amended to reflect the increased monetary level necessary to "trigger" an oral hearing as required by the statutory amendment effectuated by Pub. L. 97–98—December 22, 1981.

EFFECTIVE DATE: May 18, 1982.

FOR FURTHER INFORMATION CONTACT: Michael D. Price, Assistant Chief, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447–4180.

SUPPLEMENTARY INFORMATION: These final actions have been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and have not been classified as major because they do not meet any of the three criteria identified under the Executive Order. These actions will not have an annual effect on the economy of $100 million or more nor will they have a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. These actions will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. This rule has also been reviewed with regard to the requirements of Pub. L. 96–354. William Manley, Administrator, Agricultural Marketing Service, has certified that these rules do not have a significant economic impact on a substantial number of small entities.

The Perishable Agricultural Commodities Act (PACA) was enacted by Congress, in 1930, to curb abuses in the marketing of perishable agricultural commodities in interstate and foreign commerce. The Act establishes a code of fair trade and provides for the enforcement of contracts. The law is enforced through a system of licensing. Commission merchants, dealers and brokers are required to be licensed.

Exemption From Regulation

Retailers and certain frozen food brokers are classified as dealers but receive an exemption from the licensing requirements based on the invoice cost of perishable commodities, in the case of retailers, or value of perishable commodities handled, in the case of frozen food brokers, in a calendar year. This exemption was previously established by statute at $200,000 per calendar year. On December 22, 1981, the statute was amended by Public Law 97–98, to increase the exemption level to $230,000 per calendar year. The regulations are therefore, amended to reflect this change.

Misrepresentation Violations

On April 15, 1981, the regulations that implement the statutory provision relating to the informal resolution of misrepresentation violations were amended to clarify the procedure to be followed. A continuing review of the procedures indicates that further clarification is needed in order to fully inform the industry as to procedures which are to be followed in dealing with such violations.

First, there is found a need for clarifying the schedule for informal disposition of violations to reflect that the option of informal settlement is not restricted to a specific number of violations. Although the chart in the regulations lists seven violations, it is intended that informal settlement be considered if there are additional violations. The regulations are, therefore, amended to reflect this.

Second, there is need to amend the regulations with regard to the length of time that records of misrepresentation violations should be maintained.

Records of misrepresentation, under the current regulations, are purged if there are no further violations in the twenty-four (24) months period immediately following the most recent violation. However, if there never was a twenty-four (24) months period entirely free of any violations, then the record of such violations was maintained indefinitely. It has now been determined that this history is not necessary. The regulations are therefore amended to reflect that records of misrepresentation violations more than thirty-six (36) months old will no longer be maintained unless they have been incorporated into a formal administrative action before the end of the thirty-six (36) months period.

Jurisdictional Amount for Oral Hearings

Oral hearings are made available to parties, in formal reparation proceedings under the PACA, when the amount prayed for in the complaint or counterclaim reaches a specific monetary level, or a special need for a hearing is shown. This monetary level had been established at $3,000. However, the amount necessary to trigger an oral hearing was increased to $15,000 by Pub. L. 97–98. All requests for oral hearings after December 22, 1981, must meet the new guidelines. The regulations are therefore amended to reflect this change.

List of Subjects in 7 CFR Parts 46 and 47

Agricultural commodities, Administrative practice and procedure.

Inasmuch as the amendments are either mandated by statute or procedural in nature, it is impracticable

and contrary to the public interest to give preliminary notice, engage in public rule-making, and postpone the effective date until thirty (30) days after publication in the **Federal Register** (5 U.S.C. 553). Therefore, 7 CFR Parts 46 and 47 are amended as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

§ 46.2 [Amended]

1. 7 CFR 46.2 is amended by revising paragraphs (m)(2) and (n) to read as follows:

* * * * *

(m) "Dealer" means any person engaged in the business of buying or selling produce in wholesale or jobbing quantities in commerce and includes:

* * * * *

(2) Retailers, when the invoice cost of all purchases of produce exceeds $230,000 during a calendar year. In computing dollar volume, all purchases of fresh and frozen fruits and vegetables are to be counted, without regard to quantity involved in a transaction or whether the transaction was intrastate, interstate or foreign commerce;

* * * * *

(n) "Broker" means any person engaged in the business of negotiating sales and purchases of produce in commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a "broker" within the meaning of the Act if such person is an independent agent negotiating sales for or on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of $230,000 in any calendar year.

* * * * *

§ 46.45 [Amended]

2. 7 CFR 46.45 is amended by revising paragraphs (c)(1)(iii), (d)(2), and (e)(6) to read as follows:

* * * * *

(c) * * *

(1) * * *

(iii) The schedule for informal disposition is as follows:

Violation		Disposition
1st		(1)
2d		(1)
3d	(2)	(2)
4th	$200	$250
5th	350	500
6th	500	1,000
7th	1,000	2,000
	2,000	2,000

[1] Warning letter.
[2] Ill serious violation.
[3] Very serious violation.

Informal disposition of misrepresentation violations is not limited to seven occurrences and will be considered for further violations.

* * * * *

(d) Cumulative Record. A cumulative record of licensee's misrepresentation violations will be maintained with the following limitations:

* * * * *

(2) The record of violations *not* involved in formal proceedings will be expunged if there are no violations during a twenty-four (24) month period from the date of the most recent violation, or after thirty-six (36) months from the date of said violation, unless it was made a part of a formal disciplinary complaint.

* * * * *

(e) Summary of Procedure.

* * * * *

(6) Use of record of misrepresentation. A cumulative record of misrepresentation is maintained. It is used as a basis for determining whether a warning letter should be considered, and, if so, the amount of monetary penalty which is appropriate, or whether there is cause for instituting a formal disciplinary proceeding seeking suspension or revocation of the violator's license. But after payment of a monetary penalty or after two years from the date of the last violation, no formal disciplinary use can be made of the previous record of violation. The record of misrepresentation shall be erased if there are no further violations in the twenty-four (24) month period immediately following the most recent violation, or after 36 months from the date of each individual violation unless it is involved in formal disciplinary proceedings.

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

3. 7 CFR 47.15(a) is revised to read as follows:

§ 47.15 Oral hearing before the examiner.

(a) *When permissible.* (1) Where the amount of the damages claimed, either in the complaint or in the counterclaim, does not exceed $15,000 an oral hearing shall not be held, unless deemed necessary or desirable by the Division or unless granted by the examiner upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case. In lieu of an oral hearing in any proceeding where the amount of damages claimed does not exceed $15,000 the proceeding shall be decided upon a record formed under the shortened procedure provided in § 47.20.

(2) Where the amount of damages claimed, either in the complaint or in the counterclaim, is in excess of $15,000, the procedure provided in this section (except as provided in § 47.20(b)(2)) shall be applicable.

* * * * *

4. 7 CFR 47.20 is amended by revising (b) (1) and (2) to read as follows:

§ 47.20 Shortened procedure.

* * * * *

(b) *When applicable*—(1) *Where damages claimed do not exceed $15,000.* The shortened procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed $15,000.

(2) *Where damages claimed exceed $15,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than $15,000, the examiner, whenever he is of the opinion that proof may be fairly and adequately presented by use of the shortened procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he has not waived oral hearing, may consent to the use of the shortened procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, deposition shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The suggestion that the shortened procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the shortened procedure be used.

Done at Washington, D.C. on May 13, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-13680 Filed 5-17-82; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1924, 1941, 1943, and 1945

Farmer Programs Insured Borrower Responsibilities and Loan Servicing Options

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation for supervision and servicing of Farmer Program insured borrowers. Form FmHA 1924–14, "Farmer Program Borrower Responsibilities," will be used to explain borrowers' loan responsibilities and available servicing options and will be given to all applicants/borrowers during the process of loan making.

Circumstances creating the need for this amendment are cited in recent Office of Inspector General (OIG) audits indicating that many FmHA Farmer Programs insured borrowers do not understand their loan responsibilities. Also, it is FmHA policy to discuss conditions for consolidation, reamortizing, rescheduling and deferring payments of loans with applicants/borrowers; however, there is no formal document notifying the applicant/borrower of these available FmHA servicing options.

The intended effect of this action is to make sure that the conditions for consolidation, reamortizing, rescheduling and deferring payments of existing loans are explained to applicants/borrowers and, furthermore, to educate the applicant/borrower about loan responsibilities, resulting in better servicing of loan accounts.

EFFECTIVE DATE: May 18, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. A. Veldon Hall, Loan Officer, Farmer Programs, Emergency Loan Division, Farmers Home Administration (FmHA), Room 5344, South Agriculture Building, Washington, DC 20250, telephone: (202) 382–1652, or Mr. George T. Moore, Acting Director, Farm Real Estate and Production Division, FmHA, Room 5322, South Agriculture Building, 14th and Independence Avenue, SW, Washington, D.C. 20250, (202) 447–5352.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291, and has been determined to be non-major because there is not an annual effect on the economy of $100 million or more, or a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not directly affect any FmHA programs or projects that are subject to A–95 Clearinghouse review.

CFDA program numbers and titles are listed as follows:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Grazing Association Loans
10.409 Irrigation, Drainage, and other Soil and Water Conservation Loans
10.416 Soil and Water Loans
10.428 Economic Emergency Loans

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statement". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Need for Governmental Action

Sections 1951.33 and 1951.40 of Part 1951, Subpart A of this chapter gives FmHA authority to defer, consolidate, reamortize and reschedule Farmer Program insured loans when circumstances occur that will not permit borrowers to pay as scheduled or to refinance their loans. The present policy in Farmer Programs is for County Supervisors to discuss these options with the borrowers when circumstances warrant taking one of the actions. However, there is no formal document notifying applicants/borrowers of these options or mandatory language in FmHA procedure that requires the County Supervisor to discuss these options with applicants/borrowers. Thus, FMHA decided to adopt such a document, which new borrowers or existing borrowers receiving another loan will be required to sign during the preparation and revision of Form FmHA 431–2, "Farm and Home Plan."

Part 1924, Subpart B, of this chapter, "Management Assistance to Borrowers," requires County Supervisors to provide credit counseling to all FmHA borrowers. Part 1910, Subpart A, of this chapter "Receiving and Processing Applications," requires the County Supervisors to discuss and explain applicant/borrower loan responsibilities. Therefore, action was taken to provide the County Supervisors with a formal instrument for effectively meeting these objectives.

A proposed rule was published in the **Federal Register** (46 FR 54751) on November 4, 1981. That rule provided for a 60-day comment period through January 4, 1982. Comments on the proposed rule were received from one concerned group, Center For Rural Affairs. Although Form FmHA 1924–14, "Farmer Program Borrower Responsibilities," was inadvertently reproduced for distribution, FmHA's review of these comments and suggestions received during the proposed rule making comment period resulted in minor changes of Form FmHA 1924–14 making it more understandable. The present inventory of Form FmHA 1924–14 will be distributed for use until exhausted, at which time the revised version reflecting FmHA's consideration of the comments received will be distributed.

The following is a discussion of the comments received.

(1) The Center For Rural Affairs commented that Form FmHA 1924–14, "Farmer Program Borrower Responsibilities," is misleading to the borrowers.

We disagree because it is the intent of Form FmHA 1924–14 to call attention to FmHA borrowers of certain of their responsibilities, including that of inquiring about available FmHA loan servicing options, which are consolidation, reamortizing, rescheduling and deferring payments of existing loans. However, we do agree that the subtitle for addressing the available FmHA loan servicing options, "Additional Information," needs improvement, and therefore, have changed it to read "Available FmHA Loan Servicing Options," and made other minor changes which are more appropriate for highlighting FmHA borrower's responsibilities.

(2) They also felt that Form FmHA 1924–14 was too brief, and would not be readily understood by FmHA borrowers; and that it does not explicitly provide information which borrowers can keep in their records.

We believe this charge is not well founded. The purpose of Form FmHA 1924–14 is to notify FmHA borrowers of their responsibilities and available FmHA loan servicing options through the authorities of the Farmer Programs. Further detail in the form would not be appropriate. The change in the subtitle and other minor modifications to Form FmHA 1924–14 should adequately clarify this concern.

(3) The Center For Rual Affairs also commented that the local FmHA County and District Offices have not understood FmHA Instructions which implement Farmer Programs "deferral/moratorium servicing options" and that the use of Form FmHA 1924–14 will only partially correct such misunderstandings.

We do not agree. Current Farmer Programs loan servicing regulations do not even use the term "moratorium." However, these regulations do provide for deferrals of principal and interest payments for up to three years. This has the same effect as a moratorium on payments. Also, the FmHA borrower and County Supervisor will now be signing Form FmHA 1924–14, which provides clear and adequate information to the borrower concerning the available FmHA deferral servicing option. We believe the recommended statement signed by both the County Supervisor and borrower will adequately inform and correct any problem relative to use of deferrals.

(4) The Center for Rural Affairs also commented on a change recently made to FmHA Instruction 1960–A, "Special Servicing of Delinquent and Problem Case FmHA Farm Borrowers." Their comments on that revision were dated well after the comment period for the change had expired. Nevertheless, we will discuss them briefly. The Center suggested that FmHA Guide Letter 1960–A–1 was too brief and should include a list of circumstances under which a borrower might qualify for one of the FmHA servicing options and a description of the procedure used to apply for these options. This is not the purpose of that Guide Letter. It is merely intended to notify FmHA borrowers of their problems and how they can be corrected. Further detail in the form would not be appropriate. That will be supplied by further contact with the FmHA County Supervisor.

They also suggested that the regulation should provide formal notice of servicing options as soon as a borrower is identified as a "problem" or delinquent borrower. It is true that FmHA Guide Letter 1960–A–1 includes notification of loan servicing options available regarding consolidation, rescheduling, reamortization and deferring of accounts only to those delinquent and problem case borrowers who will have not shown substantial progress but who continue their operations for the coming year. Whether to provide notice of the type contemplated by the Center's comment is something which goes beyond the scope of the published change to FmHA Instruction 1960–A.

The Major Alternative Actions Considered Are as Follows

Continue with present policy in servicing problem case and delinquent accounts.

The FmHA County Supervisor does consider the alternatives and borrower loan responsibilities, and discusses them on a case by case basis. However, the present policy does not require that *all* borrowers be provided specific advice concerning the conditions for rescheduling, consolidating, reamoritizing and deferring payments of FmHA loans.

Revise all acceleration notices to include language describing alternatives.

An acceleration letter could be developed for notifying borrowers of alternative servicing options: However, FmHA does not consider this satisfactory. Acceleration letters are usually sent to the borrower as an early step in foreclosure proceedings and by that time all other alternatives have already been considered.

Develop a document explaining borrower's loan responsibilities and available loan servicing options.

The Farmers Home Administration adopted this alternative and developed a document, Form FmHA 1924–14, "Farmer Program Borrower Responsibilities," that explains borrower responsibilities and available FmHA loan servicing options for borrowers who are unable to pay in accordance with their security instruments and other agreements with FmHA.

The projected USDA and other Federal costs and savings as a result of the final rule are undetermined.

List of Subjects

7 CFR Part 1924

Agriculture, Loan programs—agriculture.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan Programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart B—Management Assistance to Individual Borrowers and Applicants

1. Section 1924.57 is amended by adding paragraph (f)(3) to read as follows:

§ 1924.57 Planning.

* * * * *

(f) * * *

(3) Whenever a Farmer Program initial or subsequent loan is to be made, all items of borrower responsibility enumerated on Form FmHA 1924–14, "Farmer Program Borrower Responsibilities," will be discussed and clearly understood by the applicant(s)/borrower(s). Form FmHA 1924–14 will be executed in accordance with the FMI during the preparation or revision of Form FmHA 431–2.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures and Authorizations

2. Exhibit A, paragraph A, is amended to read as follows:

A. Applicant Interview

* * * * *

Form No	Name	
410–1	Application for FHA Services	*.
410–5	Request for Verification of Employment.	*.
410–8	Applicant Reference Letter	*.
410–9	Statement Required by the Privacy Act.	*.
410–10	Privacy Act Statement to References.	*.
431–1	Long-Time Farm and Home Plan	*.
431–2	Farm and Home Plan	*.
431–4	Business Analysis—Nonagricultural Enterprise.	*.
440–32	Request for Statement of Debts and Collateral.	*.
1924–14	Farmer Program Borrower Responsibilities.	*.
1940–51	Crop-Share-Cash Farm Lease	*.
1940–53	Cash Farm Lease	*.
1940–55	Livestock-Share-Farm Lease	*.
1940–58	Annual Supplement to Farm Lease	*.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

3. Section 1943.32, paragraph (a) is amended by adding, in numerical sequence, a new entry *1924–14* to read as follows:

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* * * *

FmHA form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
*1924–14	Farmer Program Borrower Responsibilities	2	2	1-O	1-C.

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

4. Section 1943.82, paragraph (a) is amended by adding, in numerical sequence, a new entry *1924–14* to read as follows:

§ 1943.82 Loan docket processing.

(a) *Forms.* * * *

FmHA form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
*1924–14	Farmer Program Borrower Responsibilities	2	2	1-O	1-C.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

5. Section 1943.132, paragraph (a) is amended by adding, in numerical sequence, a new entry *1924–14* to read as follows:

§ 1943.132 Loan docket processing.

(a) *Forms.* * * *

FmHA form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy to borrower
*1924–14	Farmer Program Borrower Responsibilities	2	2	1-O	1-C.

PART 1945—EMERGENCY

Subpart B—Emergency Loan Policies, Procedures and Authorizations for Those Applications Associated With Disaster Designations Having a Beginning Incidence Period Date Prior to May 26, 1981

6. In Subpart B, Exhibit A, paragraph III. A. 6. is amended by adding in numerical sequence a new entry *1924–14* to read as follows:

6. The following FmHA Forms will be used as appropriate:

FmHA Form No.	Name	Use
1924–14	Farmer Program Borrower Responsibilities.	*

Subpart C—Economic Emergency Loans

7. In Subpart C, Exhibit A, paragraph A, is amended by adding, in numerical sequence, a new entry *1924–14* to read as follows:

A. *Application Interview.* * * *

Form No.	Name	EE
1924–14	Farmer Program Borrower Responsibilities.	(*).

Subpart D—Emergency Loan Policies, Procedures and Authorizations, for Applications Associated With FmHA Disaster Designations Having a Beginning Incidence Period Date on or After May 26, 1981

8. In Subpart D, Exhibit A, Paragraph III. A. 6. is amended by adding in numerical sequence, a new entry *1924–14* to read as follows:

6. The following FmHA Forms will be used as appropriate:

Form No.	Name	Use
1924–14	Farmer Program Borrower Responsibilities.	(*).

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: March 29, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-13411 Filed 5-17-82; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket 82-053]

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Los Angeles County in California because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Los Angeles County in California on May 10, 1982. Therefore, in order to prevent the dissemination of exotic Newcastle disease, it is necessary to quarantine the affected area.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: W. W. Buisch, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This final action has been reviewed in conformance with Executive Order 12291, and has been determined to be not a "major rule." The Department has determined that this rule will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Dr. E. C. Sharman, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, has determined that

the emergency nature of this final rule warrants publication without opportunity for public comment. This amendment is necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the quarantine imposed due to the existence of exotic Newcastle disease affects only one premises, and that premises is not owned by a small entity.

This amendment quarantines a portion of Los Angeles County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry & Poultry products, Quarantine, Transportation, Exotic Newcastle Disease, Ornithosis, Psittacosis.

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

In § 82.3, new paragraph (c)(1) is added to read:

§ 82.3 Imposition and removal of quarantine.

* * * * *

(c) * * *

(1) *California.* (i) The premises of Fancy Feather Pet Shop, 9355 Telegraph Road, Pico Rivera, Los Angeles County.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141))

Done at Washington, D.C., this 12th day of May 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-13330 Filed 5-17-82; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0370]

Regulation T; Credit by Brokers and Dealers; Deposit Required for Borrowing and Lending Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On November 10, 1981, the Board published for comment a proposal to amend § 220.6(h) Regulation T to permit brokers and dealers to borrow and lend securities against letters of credit issued by banks insured by the Federal Deposit Insurance Corporation and against U.S. government securities (46 FR 55533). The existing rule requires a deposit of cash.

The Board has adopted a modified version of its November 10, 1981 proposal. The amendment will permit, in addition to cash, the use of securities issued or guaranteed by the United States government or its agencies, certain letters of credit, bank CD's and bankers acceptances, as permissible collateral in stock lending and borrowing transactions. The amendment will also permit foreign banks to issue letters of credit in such transactions if they have filed with the Board agreements to comply with the same rules and regulations applicable to member banks in securities credit transactions.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer or Robert Lord, Attorney, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. (202) 452–2781.

SUPPLEMENTARY INFORMATION: The Board's November 10, 1981 proposal to amend § 220.6(h) of Regulation T would have expanded acceptable kinds of collateral in stock lending transactions to include letters of credit and U.S. government securities. Many commenters believed the Board's proposed limitation with respect to acceptable kinds of collateral was too restrictive. These commenters suggested that CD's bankers acceptances, commercial paper and equities security be included as permissible collateral in transactions governed by § 220.6(h). The Board has determined that certain negotiable CD's and bankers acceptances along with letters of credit and U.S. government securities, will be permitted as acceptable collateral when securities are lent or borrowed by brokers and dealers.

The Board's proposal to limit use of letters of credit in stock lending and borrowing transactions to letters issued by FDIC-insured banks was opposed by many foreign banks doing business in the United States. These banks regarded the Board proposal as discriminatory and unnecessary. The Board believes that their position is not without merit, and will permit use of foreign bank letters of credit for purposes of § 220.6(h) if such bank has filed a Form F.R. T–2 with the Board agreeing to comply with all laws relating to securities credit that are applicable to their U.S. counterparts. Only foreign banks with branches or agencies that are supervised and examined by State or Federal banking authorities are eligible to file such agreements.

In its original proposal, the Board certified for the purpose of 5 U.S.C. 605(b) that its action would not have a significant impact on a substantial number of small entities. No comments were received which would lead the Board to conclude that the adoption of this amendment would have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78g, 78w), the Board revises § 220.6(h) of Regulation T (12 CFR Part 220) to read as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

§ 220.6 Certain technical details.

* * * * *

"(h) *Borrowing and lending securities.* Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar

situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, securities issued or guaranteed by the United States government or its agencies, negotiable bank certificates of deposit and bankers acceptances issued by banking institutions in the United States and payable in the United States, or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form F.R. T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day."

* * * * *

OMB Control Number: Approval by OMB is pending.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

By order of the Board of Governors of the Federal Reserve System, May 12, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-13428 Filed 5-17-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 81F-0303]

Indirect Food Additives: Paper and Paperboard Components; Mono-, di-, tri-(1-Methyl-1-Phenylethyl)-Phenol, Ethoxylated, Sulfated, Ammonium Salt (Average 12 to 16 Moles Ethylene Oxide)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of mono-, di-, tri-(1-methyl-1-phenylethyl)-phenol, ethoxylated, sulfated, ammonium salt with an average of 12 to 16 moles of ethylene oxide as a component of paper and paperboard in contact with aqueous and fatty foods. This action is in response to a petition filed by the Westvaco Corp.

DATES: Effective May 18, 1982; objections by June 17, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 23, 1981 (46 FR 52033), FDA announced that a petition (FAP 1B3554) had been filed by the Westvaco Corp., Box 70848, Charleston Heights, SC 29405, proposing that § 176.170 (21 CFR 176.170) be amended to provide for the safe use of mono-, di-, tri-(1-methyl-1-phenylethyl)-phenol, ethoxylated, sulfated, ammonium salt with an average of 12 to 16 moles of ethylene oxide as a component of paper and paperboard in contact with aqueous and fatty foods.

FDA has evaluated data in the petition and other relevant material, and concludes that the proposed food additive use is safe and that § 176.170 should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and replied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives; Food packaging; Paper and paperboard.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Mono-, di-, tri-(1-methyl-1-phenylethyl)-phenol, ethoxylated, sulfated, ammonium salt with an average of 12 to 16 moles of ethylene oxide (CAS Reg. No. 68123-71-4).	For use only as an emulsifier for rosin based sizing at a level not to exceed 0.68 percent by weight of the finished dry paper and paperboard.
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 17, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 18, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13427 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 452

[Docket No. 82N-0076]

Antibiotic Drugs; Erythromycin Ethylsuccinate for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of a new strength of erythromycin ethylsuccinate for oral suspension and to revise test methods for potency and pH for this drug. The manufacturer has supplied sufficient data and information to establish the safety and efficacy of this drug.

DATES: Effective May 18, 1982; comments, notice of participation, and request for hearing by June 17, 1982; data, information, and analyses to justify a hearing by July 19, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new strength (80 milligrams) of erythromycin ethylsuccinate for oral suspension and to revise test methods for potency and pH for this drug. The revised potency assay procedure incorporates a blending method for sample preparation in lieu of the existing method and is adequate for all strengths of the drug. The agency has contacted the only other known affected manufacturer, and the firm supports the revised potency assay. The pH test method is also revised for the 80-milligram strength of the drug to provide for a delay in the period of time it takes for the test solution to reach equilibrium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR 452) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 452

Antibiotics, Macrolide.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), § 452.125c is amended by revising the second sentence of paragraph (a)(1) and by revising paragraph (b) (1) and (2) to read as follows:

§ 452.125c Erythromycin ethylsuccinate for oral suspension.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Erythromycin ethylsuccinate for oral suspension is a dry mixture of erythromycin ethylsuccinate with suitable and harmless buffer substances, dispersing agents, diluents, colorings, and flavorings. It contains the equivalent of 40 milligrams or 80 milligrams of erythromycin per milliliter of the reconstituted suspension. * * *

* * * * *

(b) * * *

(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Place an accurately measured representative portion of the sample into a high-speed glass blender jar containing sufficient methyl alcohol to give a final volume of 200 milliliters. Blend for 3 to 5 minutes. Further dilute an aliquot with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension prepared as directed in the labeling. If the suspension contains 80 milligrams per milliliter, equilibrium usually is reached in approximately 15 minutes.

* * * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act (21 U.S.C. 357), FDA permits the manufacturer to market this drug on a "release" status pending this regulation's effective date. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective May 18, 1982. However, interested persons may, on or before June 17, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 17, 1982, a written notice of participation and request for hearing, and (2) on or before July 19, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the

heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective May 18, 1982.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371, (f) and (g)))

Dated: May 7, 1982.

James C. Morrison,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 82-13301 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 510

New Animal Drugs; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental new animal drug applications (NADA's) filed by Byk-Gulden, Inc., providing for a change of sponsor address.

EFFECTIVE DATE: May 18, 1982.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Bureau of Veterinary Medicine (HFV–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: Byk–Gulden, Inc., filed several supplemental NADA's providing for changing its address to 60 Baylis Rd., Melville, NY 11747.

This action concerns a change of sponsor address, and does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I change which does not require reevaluation of the safety and effectiveness data in the parent applications. The supplemental NADA's for the change of sponsor address are approved and the regulations are amended to reflect the approvals.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure; Animal drugs; Labeling; Reporting requirements.

PART 510—NEW ANIMAL DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 510 is amended in § 510.600 by revising the entry "Bky-Gulden, Inc." in paragraph (c)(1) and revising the entry "025463" in paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747	025463
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
025463	Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747.
* * * * *	

Effective date. May 18, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 11, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-13302 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2550

Rules and Regulations for Fiduciary Responsibility; Trust Requirement and Definition of Plan Assets—Governmental Mortgage Pools

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that: (1) Describe the assets that an employee benefit plan is considered to acquire, for purposes of the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (ERISA), when it invests in certain governmental mortgage pools; and, (2) descibe the way in which the requirement of ERISA that plan assets must be held in trust is satisfied with respect to specified kinds of property. There has been considerable uncertainty regarding what constitutes "plan assets" with respect to a plan's investment in governmental mortgage pools, as well as uncertainty regarding the manner in which the trust requirement of ERISA is satisfied. The regulations will provide guidance to plan fiduciaries, participants and beneficiaries of plans, persons borrowing from plans, certain mortgage pool sponsors and other affected parties.

DATE: The regulation is effective June 17, 1982.

FOR FURTHER INFORMATION CONTACT: William A. Schmidt, Plan Benefits Security Division, Office of the Solicitor, telephone (202) 523–8592, or R. F. Nuisel, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, telephone (202) 523–8369, U.S. Department of Labor, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: On August 28, 1979, the Department of Labor (the Department) published a notice in the **Federal Register** (the 1979 proposal) (44 FR 50363) containing proposed regulations that would: (1) Describe property interests that would be regarded as assets of an employee benefit plan under ERISA, and (2) Provide a limited exemption from the

requirement of section 403(a) of ERISA that plan assets be held in trust. The notice gave interested persons an opportunity to comment on the proposal. At the request of certain members of the public, the comment period was extended and, after the expiration of the extended period, subsequently reopened (44 FR 61618, October 26, 1979; 44 FR 74858, December 18, 1979). The comment period was later reopened again in connection with the Department's public hearing on the proposals (45 FR 7521, February 1, 1980).

The public hearing on the proposals was held in Washington, D.C., on February 27 and 28, 1980. At the conclusion of the hearing, the record in the proceeding was held open until March 28, 1980, in order to permit the filing of additional submissions. On June 6, 1980, the Department reproposed paragraph (e) of proposed § 2550.401b–1 (the 1980 proposal) (45 FR 38084) which described the assets that a plan would be considered to own by reason of its acquisition of an equity security, and additional comments were received with respect to the matters covered by the reproposal.

In response to the proposals, the Department received comments from a great number of interested parties who raised questions regarding a variety of different arrangements that might be affected by the proposed regulation defining the term "plan assets." Among the commentators were representatives of certain governmental entities and quasi-governmental entities that sponsor mortgage pools in which a plan may invest. These commentators questioned whether certain provisions of the proposed regulation should apply to a plan's investment in such a pool. Since these comments involve issues that can be addressed separately from other issues that have been raised with respect to the proposed regulation, the Department has decided, in order to eliminate uncertainty, to issue a final regulation at this time which deals with the investments referred to above. This regulation describes the assets that a plan is considered to own, for purposes of the fiduciary responsibility provisions of ERISA [1] when it acquires an interest in a governmental pool.

[1] The regulation applies to Part 4 of Title I of ERISA and to section 4975 of the Internal Revenue Code. Section 102 of Reorganization Plan Number 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), gives the Department authority to issue regulations under most provisions of section 4975 of the Code, including those provisions to which the definition of the term "plan assets" is relevant.

The Department also believes that most of the issues raised in connection with the proposed regulation under section 403(a) of ERISA (relating to the requirement that plan assets be held in trust) may also be resolved at this time. Accordingly, this document also includes a final regulation which describes how the trust requirement of ERISA may be satisfied in specified situations.

The Department intends to address the other issues that have been raised with respect to the proposed plan assets regulation in the near future.

The discussion below summarizes the comments that were received by the Department in connection with those aspects of the proposed regulations that are being dealt with here and describes the provisions of the final regulations.

Plan Assets Regulation—Governmental Mortgage Pools

A. *Description of Governmental Mortgage Pools.* The Department received a number of comments regarding certain investment pools consisting of mortgage notes held for the benefit of investors who acquire certificates which represent a fractional undivided beneficial interest in, or are backed by, the pooled mortgages. Some of these mortgage pools are sponsored by a government agency or a quasi-governmental organization. The commentators were concerned that, under the proposed regulation, the assets of a plan that invests in a mortgage pool might be deemed to include the underlying mortgages of the pool (and the sponsor of such a pool might, therefore, be considered to be a fiduciary with respect to investing plans) under either paragraph (a) or paragraph (e) of the proposal. Paragraph (a) of the proposal provided, as a general rule, that the assets of a plan include any property in which the plan has a "beneficial ownership interest." Paragraph (e) of the proposal provided that the assets of an entity (other than an investment company registered under the Investment Company Act of 1940) in which a plan makes an equity investment will be deemed to include plan assets, unless a specified exception applied.[2] Since ERISA defines the term "fiduciary" to include, among others, persons who exercise authority or control respecting the management or disposition of the assets of a plan,[3] the effect of this provision would be to cause the managers of certain entities in which a plan makes an equity investment to be subject to all of the fiduciary responsibility provisions of ERISA with respect to their dealings with the entity's assets.

Although some of the governmental mortgage pools described by the commentators involve instruments of the kind described in paragraph (b) of the proposed regulation (which stated that when a plan acquires certain interest-bearing securities that are issued by an agency or instrumentality of the United States, its assets would include the securities, but would not include any property underlying the securities), each of these governmental programs has certain different features. These features are described below.

1. *Government National Mortgage Association (GNMA) Mortgage Pools.* GNMA mortgage-backed securities are issued by a private lender, but are backed by pools of mortgages that are insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration. A holder of such securities acquires the right to receive a proportionate share of the principal and interest attributable to collections on the pooled mortgages, and, when a mortgage is liquidated as a result of prepayment or foreclosure, the security holder becomes entitled to a proportionate share of the unscheduled recovery of principal.

The issuer of GNMA guaranteed securities administers monthly payments to securities holders, and services the pooled mortgages. In addition, an issuer is required to make up from its own funds any shortfalls in scheduled collections as well as certain losses associated with foreclosure. If an issuer of GNMA guaranteed securities is unable to make any required payments as scheduled, GNMA either advances funds to the issuer or pays security holders directly so as to assure timely payment by the fifteenth day of each month. GNMA's guarantee is backed by the full faith and credit of the United States.

Upon the issuance of GNMA guaranteed securities, GNMA becomes the owner of the pooled mortgages, including any past or future collections attributable to the mortgages. Although the issuer, for administrative convenience, remains the mortgagee of

[2] The exceptions in the 1979 proposal were for securities issued by companies engaged primarily in the provision, production or sale of a product or service other than the investment of capital (operating companies) and securities that are widely held, freely transferable and registered pursuant to certain requirements of the Federal securities acts. The 1980 proposal also excluded securities issued by companies engaged directly in the management or development of real estate, and securities issued by certain venture capital companies, from the general rule.

[3] See section 3(21)(A)(i) of ERISA.

record with respect to the pooled mortgages, its interest in such mortgages is, upon the issuance of the securities, reduced to the right to receive a service fee from GNMA (derived from mortgage collections) for so long as it remains an issuer in good standing.

2. *Federal National Mortgage Association (FNMA) Mortgage Pools.* FNMA engages in certain mortgage pool operations pursuant to the Federal National Mortgage Association Charter Act (the Charter Act).[4] The FNMA mortgage pools consist of mortgage loans purchased by FNMA and assembled into separate pools. FNMA holds the mortgages in each pool in trust for the benefit of investors in the pool and issues a "guaranteed mortgage pass-through certificate" to each investor which evidences a pro-rata undivided beneficial interest in the equitable ownership of the mortgage loans comprising each separate identified pool. FNMA is obligated to distribute to certificate holders amounts representing scheduled payments of principal and interest attributable to the underlying mortgages whether or not such amounts are actually received and is also obligated to distribute the full principal amount of any foreclosed or otherwise fully liquidated mortgage loan whether or not such principal amount is actually recovered.

FNMA was originally established in 1938 as a subsidiary of a government corporation. It is now a privately-owned corporation under the Charter Act. However, FNMA is regulated by the U.S. Department of Housing and Urban Development, its securities are provided the same exemption from the registration requirements of the Federal securities laws as that provided for securities issued by the government of the United States, and all offerings of FNMA debt securities and FNMA guaranteed mortgage pass-through certificates must be approved by the Secretary of the Treasury. In addition, one third of the members of the FNMA's board of directors are appointed by the President of the United States.

3. *Federal Home Loan Mortgage Corporation (FHLMC) Mortgage Pools.* FHLMC issues participation certificates and guaranteed mortgage certificates which convey a beneficial ownership interest in certain underlying mortgages. FHLMC guarantees payment of interest on the mortgages underlying guaranteed mortgage certificates or participation certificates to the extent of the certificate rate and also guarantees collection of principal on the mortgages. FHLMC is a corporate instrumentality of the United States created by Congress [5] for the purpose of increasing the availability of mortgage credit for the financing of housing. The Board of Directors of FHLMC is composed of the three members of the Federal Home Loan Bank Board, whose Chairman is the Chairman of the Board of FHLMC. The members of the Federal Home Loan Bank Board are appointed by the President of the United States with the advice and consent of the Senate. The capital stock of FHLMC consists solely of non-voting common stock held by the twelve Federal Home Loan Banks.[6]

B. *Discussion of the Final Regulation Relating to Governmental Mortgage Pools.* When an employee benefit plan invests in a governmental mortgage pool of the kind described above, it acquires a certificate that represents an undivided beneficial interest in, or is specifically backed by, the underlying mortgages of the pool. Thus, under the "beneficial ownership" test in paragraph (a) of the proposed regulation, the underlying mortgages might be considered to be "plan assets" by reason of such an investment. However, the governmental mortgage pool investments described above involve guarantees of the plan's investment by a government agency or government-sponsored corporation. In view of these special characteristics, the Department has concluded that it would be inappropriate to consider such underlying mortgages as plan assets solely because a plan may acquire an interest in the mortgages as an incident of its investment.

Even if the mortgages underlying a governmental mortgage pool are not considered to be plan assets under a "beneficial ownership" rule, the mortgages, might be considered to be plan assets under paragraph (e) of the proposed regulation, relating to equity securities.[7] As discussed in the preambles to both the 1979 proposal and the 1980 proposal, paragraph (e) reflected the Department's concern that, unless the underlying assets of certain entities in which an employee benefit plan invests are characterized as including "plan assets", the purposes of the fiduciary responsibility provisions of ERISA might easily be defeated. However, the special characteristics of governmental mortgage pools described above indicate that a plan's investment in such an entity is not the kind of investment that might be used to avoid fiduciary responsibility.[8] GNMA guaranteed pass-through mortgage certificates are guaranteed by the United States, and where such a guarantee by the United States exists with respect to a plan's investment in a mortgage pool, the Department believes that a plan that invests in the pool will look to the guarantee, rather than to the mortgages underlying the pool, for assurance that amounts due on its investment will be paid. Although FHLMC and FNMA mortgage pool certificates are not guaranteed directly or indirectly by the United States, each corporation guarantees principal and interest on such investments and, accordingly, an investing plan will rely on the creditworthiness of the issuing corporation in making its investment decision. Since there is a significant Federal government involvement in the management of each corporation, and protections similar to those provided to holders of GNMA mortgage pool certificates are afforded to holders of certificates in mortgage pools that are sponsored by FNMA and FHLMC, the Department has concluded that plan investments in these pools should, for purposes of the regulation, be treated in the same way as investments in mortgage pools that have a "full faith and credit" guarantee.

In view of the foregoing, the Department has decided that it is appropriate to treat all governmental mortgage pool investments in the manner contemplated by paragraph (b) of the proposal (relating to obligations of the United States or an agency or instrumentality thereof). Accordingly, the final regulation provides that when a plan invests in a governmental mortgage pool, its assets include its investment,

[4] 12 U.S.C. 1716–1723h.

[5] Title III of the Emergency Home Finance Act of 1970, as amended, 12 U.S.C. 1451–1459.

[6] Legislation has recently been introduced that would, among other things, result in the conversion of the non-voting capital stock of FHLMC to voting common stock and would provide authority for distribution of voting stock to the shareholders of the various Federal Home Loan Banks. FHLMC also would have authority to sell common and preferred stock to the public, and, after a transitional period, six of the nine directors of FHLMC would be elected by the common stockholders.

[7] The exception in paragraph (e), as proposed, for securities that are widely held, freely transferable and registered under certain provisions of the Federal securities acts would not be available for interests in governmental mortgage pools because such interests are issued pursuant to an exemption from the registration requirements of the Securities Act of 1933. *See* 15 U.S.C. 77c(a)(2) (relating to securities guaranteed by the United States or an instrumentality thereof) and 12 U.S.C. 1719(b) (relating to interests in FNMA pools).

[8] Although the distinction between investments in governmental mortgage pools and those equity investments that would be subject to the general "look through" rule of paragraph (e) of the proposal is significant to the Department's decision to adopt a special rule for governmental mortgage pools, the discussion in this notice should not be read to imply that paragraph (e) will ultimately be adopted substantially as it was proposed.

but do not, solely by reason of such investment, include any of the underlying mortgages. Thus, the sponsor or manager of a governmental mortgage pool would not be a fiduciary of a plan merely by reason of the plan's investment in the pool. The regulation specifically states that interests in FHLMC, GNMA and FNMA mortgage pools are among the investments to which the regulation's general rule applies.[9]

C. *Other Issues Under the Proposed Plan Assets Regulation.* As noted above, the Department has decided to issue a final regulation relating to governmental mortgage pools at this time in view of the widespread concern regarding the potential effect of the proposed regulation, if adopted, on employee benefit plan investments in such pools and the consequent need for guidance in this area. However, the Department is not prepared at this time to issue a final regulation which deals comprehensively with the definition of "plan assets" as it relates to the fiduciary responsibility provisions of ERISA. Nonetheless, the Department contemplates that the regulation being adopted here will be redesignated and incorporated in the forthcoming plan assets regulation.

Regulation Relating to the Trust Requirement

A. *General Considerations.* The comments received by the Department in connection with the proposed regulation under section 403(a) of ERISA indicated that there is uncertainty regarding the manner in which the requirement of that section that plan assets be "held in trust" may be satisfied with respect to various kinds of property. The final regulations under section 403(a) contain specific rules for those arrangements that were of most concern to the commentators. These specific rules are discussed below.

The rules in the final regulation are intended to permit trustees to hold plan assets in conventional ways, but are also intended to be consistent with the purposes underlying the trust requirement of section 403(a) of ERISA. In this respect, the Department noted in the preamble to its original proposed regulation under section 403(a) that an underlying rationale of the trust requirement is to prevent commingling of plan assets.[10] In addition, the Department believes that the trust requirement also should be interpreted in the context of the further requirement of section 403(a) that the plan's trustee [11] must have exclusive authority and discretion to manage and control the assets of the plan (except as otherwise specifically provided). In the Department's view, the purposes underlying the trust requirement suggest that the two primary considerations in determining whether a particular arrangement satisfies the trust requirement are: (1) The segregation of the property so as to prevent commingling of the property held in trust with property held for his own account by the person managing the property; and, (2) The trustee's retention of the exclusive authority and discretion to manage and control all of the plan's rights with respect to the property.

When the primary considerations identified above are taken into account, it is apparent that plan trustees should have considerable flexibility under the trust requirement to determine the manner in which an asset of the plan will be held. Nonetheless, plan assets must, in any event, be held in a manner that is consistent with the general fiduciary provisions of ERISA, including the "prudence" rule of section 404(a)(1)(B).[12] In addition, a person holding property on behalf of the plan's trustee may be acting as agent for the trustee. The Department is not addressing here the question of the extent to which a plan trustee is responsible as principal for the acts of such a person.

B. *Street Name and Nominee Registration.* In footnote 14 to the preamble of the 1979 proposal, the Department suggested that, generally, the practice of registering securities in which a plan has invested in the name of a broker-dealer or its nominee (sometimes referred to as "street name" registration) [13] would violate the requirement of section 403(a) of ERISA that plan assets be held in trust, unless the broker-dealer held the securities as trustee for the plan pursuant to an executed trust agreement. Several commentators stated that it is customary for the securities of employee benefit plans to be held in street name and urged that the Department reconsider whether it is permissible to hold securities in this manner under section 403(a).

According to the commentators, where securities are owned by an employee benefit plan, but registered in street name, the interests of the plan are adequately protected, and a plan trustee's control over such assets is assured, even though the securities are not actually registered in the name of the trust under which the plan is maintained. In this regard, the commentators pointed out that the Securities and Exchange Commission has promulgated rules that specifically regulate the conduct of a broker-dealer with respect to its holdings of customer securities.[14]

Moreover, the commentors noted, insurance is provided (under the Securities Investor Protection Act of 1970) [15] against losses resulting from the insolvency of a broker-dealer in whose name, or in the name of whose nominee, securities of a plan are held. In addition, the commentators noted that most major broker-dealers also carry additional insurance against losses which exceed the amount covered by the Securities Investor Protection Act. The commentators also pointed out that the Federal Bankruptcy Code establishes certain preferences in bankruptcy with respect to claims against a broker-dealer in whose name securities are held on behalf of a customer,[16] and those

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[9] Of course, the plan's interest in a governmental mortgage pool would itself be an asset of the plan, and would include all of the rights of a holder of such an interest under applicable law.

[10] 39 FR 44456, December 24, 1974.

[11] The discussion in this notice refers to a single plan "trustee" for purposes of convenience. However, section 403(a) expressly contemplates that a plan may have more than one trustee, and, where a plan does have more than one trustee, such trustees are generally obligated, under section 405(b)(1)(B) of ERISA, to jointly manage and control the assets of the plan. The discussion of the trust requirement in this document also applies to a plan with two or more trustees.

[12] Whether a person holding property on behalf of a plan is a fiduciary with respect to such property would be determined under the definition of that term in section 3(21) of ERISA.

[13] Securities also are frequently held in the name of a nominee of an institutional investor (such as a bank or insurance company) and such arrangements are referred to as "nominee" name registration. *See* Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities 1 (1976).

[14] The commentators specifically referred to Rules 8c–1, 15c–1 and 15c3–3 under the Securities Exchange Act of 1934 (17 CFR 240.8c–1, 240.15c2–1 and 240.15c3–3). Rules 8c–1 and 15c2–1 restrict the hypothecation of customers' securities by a broker-dealer; rule 15c3–3 establishes rules relating to a broker-dealer's control over securities held on behalf of a customer and also requires a broker-dealer to establish a special reserve account with a bank for the exclusive benefit of customers.

[15] 15 U.S.C. 78aaa–78*lll*. The Securities Investor Protection Act of 1970 established the Securities Investor Protection Corporation, which has authority to bring actions in order to assure the protection of customers of a broker-dealer and also administers a fund from which advances may be made, subject to certain limitations, in order to satisfy a broker-dealer's obligation to its customers.

[16] 11 U.S.C. 752. Section 752 provides for the priority distribution of customer property to a broker-dealer's customers to the extent of their "allowed net equity claims." In general, the customer's "net equity claim" is equal to the amount

Continued

provisions provide additional protection against loss.

The commentators also pointed out that the plan trustee does not relinquish control over securities of an employee benefit plan merely because they are registered in street name. For example, the owner of stock registered in street name must be given proxy solicitations and has the right to vote the stock, and, in addition, is entitled to bring stockholder derivative actions.

The commentators also stated that street name registration may, in some respects, be advantageous to employee benefit plans. Several commentators pointed out that a plan's actual registration of securities increases the costs associated with holding and transfer of the securities. In addition, some commentators asserted that street name registration is particularly important for plans that allow a participant to direct the investment of his individual account [17] because such transactions are normally relatively small and their timing is not under the control of the plan's trustee.

According to the commentators, the use of street name registration is an important factor in the promotion of a Congressional policy favoring the establishment of a national clearance and settlement system because the ability to deposit and maintain customers' securities in a securities depository (thereby eliminating the necessity for the physical movement and delivery of stock certificates and making possible book entry transfers) is an essential component of such a national clearance and settlement system.[18] In this respect, some commentators called particular attention to certain central securities depositories which routinely hold securities in the name of a nominee.

The Department has reconsidered its position with respect to the application of the trust requirement to securities that are owned by an employee benefit plan, but are registered in street name. On the basis of the comments received, it appears that where securities owned by a plan are held in the name of a nominee or in street name, the trustee of the plan ordinarily retains exclusive control over all of the rights of ownership of such securities. For example, notwithstanding that securities are held in street name, the trustee may freely sell the securities, or pledge them, and, in the case of stock, may vote the shares. In addition, the comments received indicate that other statutes and regulations relating to such arrangements provide certain meaningful protections to the owners of securities (including plans) against the risks arising from the registration of the securities in the name of an entity other than their beneficial owner. Therefore, the Department has determined that the holding of securities of an employee benefit plan in nominee or street name will not, in itself, be a violation of the trust requirement of section 403(a). A new paragraph has accordingly been added to the final regulation to make it clear that the trust requirement of section 403(a) does not prohibit the holding of securities in street name or in the name of a nominee, provided such securities are held on the plan's behalf by a bank or its nominee, a broker-dealer or its nominee, or a "clearing agency" (as defined in the Securities Exchange Act of 1934) or its nominee.[19]

Notwithstanding the inclusion of a specific provision relating to street name registration in the final regulation, the Department notes that plan trustees and other plan fiduciaries should take steps to assure that any such arrangement in fact provides the trustee or trustees of the plan with authority and control over the securities. In addition, plan trustees and other fiduciaries have an obligation to evaluate the safeguards against loss that exist with respect to an arrangement under which securities owned by a plan are held in street name.[20] Such an evaluation is a particularly important part of a fiduciary's obligations in this context because the plan might be unable to dispose of securities held in street name on its behalf if the holder of such securities becomes bankrupt.

C. *Corporations Described in Section 501(c)(2) of the Internal Revenue Code.* Some commentators expressed concern that the regulation relating to the trust requirement as proposed by the Department would prevent a trustee of a plan from holding real property in a corporation described in section 501(c)(2) of the Internal Revenue Code.[21] According to these commentators, certain trustees have traditionally established such corporations in order to hold title to real property in states in which they do not do business because many states prohibit corporations other than those domiciled or doing business in the state from owning real property that is located within the state.

In the case of a corporation described in section 501(c)(2) of the Code that is organized for purposes of holding real property on behalf of a plan, the plan's rights to the assets of such corporation—*i.e.* the real property held by the corporation—are evidenced by shares of stock. Therefore, it appears that, under such an arrangement, a plan trustee would control all of the plan's rights with respect to such property if he holds all of the stock in trust.[22] Accordingly, the final regulation has been revised to make it clear that the trust requirement of section 403(a) would be satisfied with respect to real property held in a 501(c)(2) corporation on behalf of the plan if the stock of the corporation is held in trust.

D. *Certain Plan Investments.* Under the Department's proposed regulation dealing with the definition of plan assets, the assets of an entity in which a plan makes an equity investment under certain circumstances would include "plan assets".[23] Several commentators

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that would have been realized at the time of filing of the bankruptcy petition, upon liquidation of the customer's security position, less the amount of any claims of the broker-dealer against the customer. *See* 11 U.S.C. 741(a)(5).

[17] Section 404(c) of ERISA specifically contemplates participant directed individual account plans.

[18] The commentators referred specifically to Pub. L. No. 94–21 (May 8, 1975) which amended certain provisions of the Federal securities acts. Section 2 of that statute states that one of Congress' purposes in enacting the amendments was to "remove impediments to and perfect mechanisms of * * * a national system for clearance and settlement of securities transactions and the safeguarding of securities and fails related thereto."

[19] The specific provision relating to securities held in street name or by a nominee deals with those arrangements which were brought to the attention of the Department in the public comments. The regulation does not specifically address how the trust requirement would be satisfied with respect to other arrangements under which securities might be held on behalf of a plan.

[20] See the general discussion above regarding the application of the trust requirement. Among the factors that would be relevant to such an evaluation in cases where securities are held in the name of a broker-dealer or its nominee would be the financial stability of the broker-dealer, the safeguards established for the holding of securities, the extent to which adequate insurance is provided against loss (relative to the value of the securities held on behalf of the plan), and the feasibility of alternative methods of holding the securities.

[21] Section 501(c)(2) of the Code exempts from taxation a "(c)orporation organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which is itself exempt under this section." (Section 501(a) of the Code exempts from taxation trusts that form part of an employee pension plan that meets the requirements of section 401(a) of the Code).

[22] The Department will separately address the issue of when the assets of a plan will be considered to include the underlying assets of a corporation which is wholly owned by the plan in its final regulation dealing with the definition of "plan assets." The Department also notes that Interpretive Bulletin 75–2, 29 CFR 2509.75–2 describes the application of certain of the fiduciary responsibility provisions of ERISA in cases where a corporation is controlled by a plan.

[23] See paragraph (e) of the proposed plan assets regulation, discussed above.

noted that the proposed regulation relating to the trust requirement did not state how the requirement that plan assets be held in trust is satisfied in such cases.

The Department is not at this time addressing all of the issues that have been raised in connection with the proposed regulations relating to plan investments in entities such as corporations and partnerships. Nonetheless, the Department believes that is both feasible and appropriate to describe, in the regulation being issued here, how the trust requirement of ERISA is satisfied where the assets of an entity include plan assets by reason of a plan's investment in the entity.

In the Department's view, the fact that the assets of an entity in which a plan invests may, for purposes of the fiduciary responsibility provisions ERISA, be considered to include plan assets does not, in itself, have the effect of requiring that the assets of the entity be held in trust. In such circumstances, the plan's rights in the entity, and the terms and conditions to which its interest in the entity is subject, are usually governed by a contract, certificate, or other instrument. Where control over such an instrument is sufficient to provide the plan's trustee with exclusive authority to exercise all to the plan's rights with respect to the assets of the entity (other than those rights which arise from the fiduciary obligations of either the management of the entity or other persons who are fiduciaries with respect to such assets) the trustee's control of such instrument is sufficient to satisfy the trust requirements of section 403(a). For example, if the assets of a limited partnership are considered (for purposes of ERISA) to include plan assets by reason of a plan's acquisition of an interest in the partnership, persons with discretionary authority or control with respect to the assets of the partnership would be fiduciaries (because they are exercising discretion over plan assets). However, under the final trust regulation, it is the evidence of the plan's interest in the partnership, rather than some other evidence of ownership of an interest in each of the partnership's assets, that must be held in trust.

In view of the foregoing, the final regulation relating to the trust requirement includes a new paragraph which indicates that when the assets of an entity are considered to include plan assets by reason of a plan's investment in the entity, the trust requirement is satisfied if the certificate, contract or other instrument evidencing the plan's investment is held in trust.

E. *Administrative Exemptions From the Trust Requirement.* Several commentators discussed various issues concerning the provision of the proposed regulations that would have provided a limited exemption from the trust requirement of section 403(a) for certain employee contributions under welfare plans. This provision has been reserved in the final regulation. Many of these commentators also raised issues relating to when employee contributions become "plan assets," and the Department intends to deal with all of the comments relating to employee contributions in its regulation relating to the definition of that term.

Another commentator requested that the Department provide an exemption from the trust requirement for certain organizations described in section 501(c)(9) of the Internal Revenue Code. The Department will also deal separately with that issue.

F. *Conforming Change.* Section 403b–1(b) of the final regulation has been modified to include an additional exemption from the trust requirement of ERISA that was enacted as part of the Multiemployer Pension Plan Amendments Act of 1980. This exemption concerns certain unfunded plans of companies owned by employees and former employees.[24]

G. *Organization of the Final Regulation Relating to the Trust Requirement.* In view of the revisions that have been made to the final regulation, the Department has decided to reorganize the regulation for the purpose of clarity. Paragraph (a) of the regulation under section 403(a) sets forth the general rule that plan assets must be held in trust; paragraph (b) of the regulation describes the manner in which the trust requirement is satisfied in certain specific situations; paragraph (c) sets forth specific obligations of trustees and is derived from paragraph (a) of the proposed regulation.

The final regulation under section 403(b) sets forth the exemptions from the trust requirement specifically established by statute.

In addtion, a minor revision has been made to paragraph (a)(3) of the regulation under section 403(b) to make it clear that the language limiting the availability of the statutory exemption in section 403(b)(3) of ERISA to assets held under certain custodial accounts applies to plans covering employees described in section 401(c)(1) of the Internal Revenue Code as well as to individual retirement accounts.

[24] See section 411(c), Pub. L. 96–364, September 25, 1980.

Regulatory Flexibility Act

The requirements of 5 U.S.C. 603–604 are not applicable to regulations with respect to which a notice of proposed rulemaking was published before January 1, 1981. *See* section 4 of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165 (1980).

Executive Order 12291

The Department has determined that the regulations being issued here are not "major" rules as defined in section 1(b) of Executive Order 12291, because they are not likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Estimates recently compiled by the Department of Housing and Urban Development indicate that approximately 7.3% of current (1981) private non-insured plan assets are in housing related entities, or approximately $20 billion. To the extent pension fund fiduciaries have avoided investing pension fund assets in governmental mortgage pools because of concern or uncertainty as to the extent of their fiduciary liabilities or fear of engaging in prohibited transactions, this regulation could increase investments by pension funds in governmental mortgage pools. This possible transfer of funds from other investments to governmental mortgage pools, will, of course, result in no net increase in pension fund investments in the economy.

While no additional pension investments will result from the regulation relating to governmental mortgage pools, the allocation of plan assets among competing investments would be expected to be more efficient to the extent there have been impediments imposed on investment managers. In addition, the regulation would not result in a reduction in protection offered plan participants and beneficiaries. Therefore, the regulation should not have any adverse, and could have a positive, effect on competition for funds and the functioning of the market.

Similarly, the clarification of the trust requirement will allow normal business practices to continue while still protecting the interests of participants and beneficiaries.

Paperwork Reduction Act

The regulations being issued here are not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because they do not contain an "information collection request" as defined in 44 U.S.C. 3502(11).

Statutory Authority

The regulations below are adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., .332.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee Stock Ownership Plans, Exemptions, Fiduciaries, Investments, Investments, foreign, Party in interest, Pensions, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

Regulation

For the reasons stated above, Subchapter F, Chapter XXV, Subtitle B, of Title 29, Code of Federal Regulations, is amended as set forth below.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for Part 2550 is revised to read as follows:

Authority: Sec. 505, Employee Retirement Income Security Act of 1974. Pub. L. 93–406, 88 Stat. 894 (29 U.S.C. 1135) unless otherwise noted. Sec. 401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp. .332.

2. In Part 2550, a new § 2550.401b–1 is added, in the appropriate place, to read as follows:

§ 2550.401b–1 Definition of "Plan Assets"—Governmental Mortgage Pools.

(a) *In General.* (1) Where an employee benefit plan acquires a guaranteed governmental mortgage pool certificate, as defined in paragraph (b), then, for purposes of part 4 of Title I of the Act and section 4975 of the Internal Revenue Code, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate.

(b) A "guaranteed governmental mortgage pool certificate" is a certificate backed by, or evidencing an interest in, specified mortgages or participation interests therein and with respect to which interest and principal payable pursuant to the certificate is guaranteed by the United States or an agency or instrumentality thereof. The term "guaranteed governmental mortgage pool certificate" includes a mortgage pool certificate with respect to which interest and principal payable pursuant to the certificate is guaranteed by:

(1) The Government National Mortgage Association;

(2) The Federal Home Loan Mortgage Corporation; or

(3) The Federal National Mortgage Association.

3. In Part 2550, § 2550.403a–1 and § 2550.403b–1 are added in the appropriate place to read as follows:

§ 2550.403a–1 Establishment of trust.

(a) *In General.* Except as otherwise provided in § 403b–1, all assets of an employee benefit plan shall be held in trust by one or more trustees pursuant to a written trust instrument.

(b) *Specific applications.* (1) The requirements of paragraph (a) of this section will not fail to be satisfied merely because securities of a plan are held in the name of a nominee or in street name, provided such securities are held on behalf of the plan by:

(i) A bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company;

(ii) A broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer; or

(iii) A "clearing agency," as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee.

(2) Where a corporation described in section 501(c)(2) of the Internal Revenue Code holds property on behalf of a plan, the requirements of paragraph (a) of this section are satisfied with respect to such property if all the stock of such corporation is held in trust on behalf of the plan by one or more trustees.

(3) If the assets of an entity in which a plan invests include plan assets by reason of the plan's investment in the entity, the requirements of paragraph (a) of this section are satisfied with respect to such investment if the indicia of ownership of the plan's interest in the entity are held in trust on behalf of the plan by one or more trustees.

(c) *Requirements concerning trustees.* The trustee or trustees referred to in paragraphs (a) and (b) shall be either named in the trust instrument or in the plan instrument described in section 402(a) of the Act, or appointed by a person who is a named fiduciary (within the meaning of section 402(a)(2) of the Act). Upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that:

(1) The plan instrument or the trust instrument expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to the proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the provisions of Title I of the Act of Chapter XXV of this Title, or

(2) Authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers (within the meaning of section 3(38) of the Act) pursuant to section 402(c)(3) of the Act.

§ 2550.403b–1 Exemptions from Trust Requirement.

(a) *Statutory exemptions.* The requirements of section 403(a) of the Act and section 403a–1 shall not apply—

(1) To any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) To any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) To a plan—

(i) Some or all of the participants of which are employees described in section 401(c)(1) of the Internal Revenue Code of 1954; or

(ii) Which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954 to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable;

(4) To a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

(5) To any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their

beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to the Act.

(b) [Reserved]

Signed at Washington, D.C. this 13th day of May, 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13400 Filed 5-13-82; 3:17 pm]

BILLING CODE 4510-29-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Disclosure of Listings of Employees at Postal Facilities

Correction

In FR Doc. 82-13047, appearing at page 20303, in the issue of Wednesday, May 12, 1982, make the following correction:

On page 20304, in § 265.6(e) the 8th line should read "names or addresses (past or present) of".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 228

Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, directs the Secretary to allow, upon request, the taking of small numbers of marine mammals incidental to specified activities if the Secretary makes certain findings and prescribes regulations. These regulations establish a mechanism for the submission and evaluation of requests and establish requirements for specific regulations and Letters of Authorization to conduct allowed activities. In addition, pursuant to a request and available information, specific regulations allowing the taking of ringed seals incidental to on-ice seismic exploratory activities in the Beaufort Sea for the period 1982 to 1986, which set forth permissible methods of taking and requirements for monitoring and reporting, are established.

EFFECTIVE DATE: These regulations become effective on May 18, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. R. B. Brumsted, Acting Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, Telephone (202) 634-7529.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 97-58 amended the Marine Mammal Protection Act of 1972 (MMPA), by adding, among other things, a new Section 101(a)(5) (16 U.S.C. 1371(a)(5)) which directs the Secretary to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, the incidental, but not intentional, taking of small numbers of marine mammals. This permission may be granted for periods of five years or less. Such taking may be allowed only if the species involved is not depleted and if the Secretary, after notice and opportunity for public comment, (a) finds that the total taking will have a negligible impact on the species, its habitat, and the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking.

On November 20, 1981 (46 FR 57098), the National Marine Fisheries Service (NMFS) published a Request for Information and Advanced Notice of Proposed Rulemaking in the **Federal Register**, which solicited information and suggestions from interested persons on (a) the types of activities that may be authorized under Section 101(a)(5); (b) the structure and content of regulations relating to permissible methods of taking, monitoring and reporting; and (c) a processing system for individual requests for such permission to take. In particular, NMFS specifically invited relevant information concerning seismic activities which might affect marine mammals so that appropriate implementing regulations could be considered.

The NMFS published proposed regulations in the **Federal Register** on March 3, 1982 (47 FR 9027), to implement Section 101(a)(5) of the MMPA by establishing a mechanism for the submission and evaluation of requests and establishing requirements for specific regulations and Letters of Authorization to conduct allowed activities (50 CFR Part 228, Subpart A). In addition, pursuant to a request from the International Association of Geophysical Contractors and available information, specific regulations to allow the taking of ringed seals (*Phoca hispida*) incidental to on-ice seismic exploratory and associated activities in the Beaufort Sea for the period 1982 to 1986 were proposed which set forth permissible methods of taking and requirements for monitoring and reporting (50 CFR Part 228, Subpart B). These regulations were based on a proposed finding that on-ice seismic exploratory activities in the Beaufort Sea of Alaska over the next five years may involve the taking of small numbers of non-depleted marine mammals, specifically ringed seals, and that the total of such taking will have a negligible impact on the species, on its habitat, and on the availability of such species for subsistence uses. The **Federal Register** notice also invited requests and outlined the information required for Letters of Authorization to conduct activities pursuant to final regulations, if established, for on-ice seismic activities.

Comments and Discussion

Ten comments were received from the public on the proposed regulations: The Whale Center felt the general regulations were appropriate, but expressed concern over the specific regulations governing the taking of ringed seals incidental to on-ice seismic activities.

The Environmental Defense Fund submitted comments on the general and specific regulations to ensure that the regulations provide for a system of accountability designed to evaluate the effects of each activity, and that the allowed activity be reevaluated annually.

The Animal Protection Institute of America expressed concern that the regulations regarding the incidental taking of ringed seals by seismic activities did not seem to address the effects of such taking on the health and stability of the ecosystem, and that the harassment and displacement of nursing females, which they feel will result in pup mortality, appear to violate at least the spirit of the MMPA which was intended to offer special protection to infant and nursing marine mammals.

The Alaska Department of Fish and Game expressed a general concern about the annual differences in the

geographical extent and intensity of seismic exploration since the impact is directly proportional to these factors. The ADF&G felt that all seismic lines actually shot should be plotted to monitor the intensity and assess the probable impacts. Further, the ADF&G felt that in the vicinity of Point Barrow, on-ice seismic activity conducted after mid-April may be in close proximity to the migratory corridors of the bowhead and beluga whales, and that this should be considered.

The Mayor, North Slope Borough, felt that the effects on the Beaufort Sea population of ringed seals would be more than negligible and that no taking should be allowed until the study by the Alaska Department of Fish and Game assessing the degree of disturbance of ringed seals has been completed. The Mayor also expressed concern that the seismic work might impact bowhead and beluga whales. The law firm of Terris and Sunderland, which submitted additional comments on behalf of the North Slope Borough, felt that the definition of "small numbers" should be changed, and that the specific regulations governing seismic activities would allow the taking of large numbers of ringed seals, would involve significant adverse impacts on the population, would impose inadequate monitoring and research obligations, and would be inconsistent with NMFS' April 1, 1982, biological opinion on Outer Continental Shelf activities in the Arctic Region.

Defenders of Wildlife, while not opposed to the regulations, did express reservations about the new amendment which sanctions human activities which have some degree of adverse impact on marine mammals. Defenders felt that NMFS must ensure that progress is made towards eliminating adverse effects on all marine mammals and that research be conducted to address the effects of seismic activities on other species including beluga whales, bearded and spotted seals, and endangered whales.

The taking of a depleted species cannot be allowed under Section 101(a)(5) of the MMPA. The bowhead whale is listed as depleted under the MMPA and is listed as endangered under the Endangered Species Act of 1973. Under Section 7 of the Endangered Species Act, the Bureau of Land Management and the Minerals Management Service, Department of the Interior, are required to consult with NMFS to ensure that activities associated with the Outer Continental Shelf oil and gas program are not likely to jeopardize the continued existence of endangered species or result in the destruction or adverse modification of critical habitat. In biological opinions issued pursuant to Section 7(b) of the Endangered Species Act, NMFS has included reasonable and prudent alternatives and recommendations to assist the Department of the Interior in planning OCS acitivities in the Arctic Region and fulfilling its obligations under Section 7 of the Endangered Species Act.

The NMFS does not have information which indicates that on-ice seismic activities will result in the taking of beluga whales, bearded or spotted seals, or other species of marine mammals. Further, these regulatons would not allow the taking of species of marine mammals other than ringed seals.

The International Association of Geophysical Contractors and the National Ocean Industries Association submitted joint comments in support of the regulations and findings, as proposed. The IAGC and NOIA offered to cooperate in a training program to assure that the observations and reports are made on a sound basis, and have been advised by the Alaska Department of Fish and Game that they would be willing to cooperate in such a venture. Further, IAGC and NOIA stated that geophysical operators have met with members of the Alaska Department of Fish and Game to assist in the design of the scientific studies. Exxon suggested certain changes to the wording of the regulations.

Chevron U.S.A. Inc. felt that the regulations proposed are not necessary and should not be adopted because: there can be no justification for a regulation on an activity that admittedly will have a negligible impact on the species; contrary to a statement in the discussion, the proposed regulations would regulate or restrict seismic activities because of the burden and the bureaucracy required to implement the regulations; the contention that the requirements of the Paperwork Reduction Act are inapplicable was erroneous; and the propriety, if not the authority, to change the definition of "taking" to accommodate the proposed regulations was questioned.

In regard to Chevron's comments, the MMPA requires the establishment of regulations to allow the taking of small numbers of marine mammals where the taking will have a negligible impact. The definition of "taking" has not been changed; however, "incidental, but not intentional, taking" has been defined since only this type of taking is allowed under Section 101(a)(5) of the MMPA. The NMFS does not believe that the requirements of the regulations place an undue burden or restrict seismic activities. Nor does NMFS have any indication that more than nine contractors will be requesting Letters of Authorization, and therefore has determined that the requirements of the Paperwork Reduction Act are not applicable.

In addition, comments were received from NMFS Regional Offices, the Marine Mammal Commission, and the Minerals Management Service and the Office of OCS Program Coordination, U.S. Department of the Interior. All comments are available for review in the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Specific substantive comments on Subpart A and Subpart B of the regulations and the proposed findings under MMPA will be discussed separately.

Subpart A—General

Section 228.1 Purpose. It was suggested that the purpose statement be clarified to state that the permission to take can be allowed only "for a specified period of time not to exceed five consecutive years." The House Report on the Amendment (No. 97–228) states that the permission to take can be granted for periods of five years or less, but does not imply that taking cannot be allowed after the five-year (or less) period originally authorized for a specified activity is reached. After the initial period authorized, the permission to take could be allowed again for the same activity only after additional opportunity for public comment and after the necessary findings were made. Therefore, the purpose statement has been modified to state that the taking can be allowed during periods of not more than five consecutive years each.

Section 228.2 Scope. The required finding of negligible impact has been modified to read "* * * finds that the total taking during the specified time period will have a negligible impact * * *," as suggested by one reviewer. Further, it was suggested that the total taking must be considered with other factors which impact the population, such as predation and taking for subsistence use, in a determination of negligible impact. The NMFS agrees and feels that the present wording takes this into account.

Section 228.2 states that the taking can be allowed only after NMFS "prescribes regulations setting forth permissible methods of taking and other

means of effecting the least practicable adverse impact on the species and their habitat * * *." It was suggested that the phrase "means of effecting the least practicable adverse impact" be replaced by language indicating that activities should be conducted so as to minimize adverse effects. The NMFS has used the specific language contained in Section 101(a)(5) of the MMPA, which NMFS believes includes specifying methods of conducting an activity. Therefore, the suggested change has not been made.

Section 228.3 Definitions. It was suggested that the definition of incidental taking include activities such as directed harassment to accommodate situations where directed harassment could prevent accidental mortality, such as blasting for harbor construction. The House Report notes that the phrase "incidental, but not intentional" is intended to mean accidental taking; however, the MMPA also requires the Secretary to prescribe regulations setting forth permissible methods of taking and means of effecting the least practicable adverse impact on the species and its habitat. It is conceivable that a specified activity could involve the accidental taking of small numbers of marine mammals which would have a negligible impact on the species and its habitat, but that the impact, although negligible, could be reduced by requiring certain measures such as directed harassment to prevent mortality. However, it is not clear whether such activities could be allowed under Section 101(a)(5) of the MMPA since other exceptions to the MMPA which allow directed taking are more explicit. Therefore, the definition of "incidental, but not intentional, taking" has not been changed; however, NMFS may consider a change in the future with additional opportunity for public comment.

One reviewer argued that the definition of "small numbers" equates it with "negligible impact" and is, therefore, inconsistent with the intent of Congress as cited in the House Report to make the small number requirement separate from, and in addition to, the negligible impact requirement. The reviewer suggested that the definition of "small numbers" be changed to refer to takings which are "infrequent, unavoidable, or accidental," and should contain a standard separate from the one for "negligible impact," such as a specified percentage of the relevant population (e.g. 1 percent). In discussing the term "small numbers," the House Report recognizes "the imprecision of the term * * *, but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits. The Committee intends that these provisions be available for persons whose taking of marine mammals is infrequent, unavoidable, or accidental." The NMFS does not believe that the term can be expressed as an absolute number or percentage or be defined in any absolute terms. However, NMFS feels that by defining "small numbers" to mean a portion of a marine mammal species or stock whose taking would have a negligible impact, an upper limit is placed on the term, and the phrase more effectively implements the Congressional intent underlining the new Section 101(a)(5) of the MMPA.

It was suggested that a definition for "total taking" be added to make clear that total taking refers to the taking that results from the combination of all applicants' activities. Since a finding of negligible impact is made for the specified activity, it cannot be made unless the total taking by all persons conducting the specified activity is found to be negligible. The NMFS feels that a separate definition would not add to the clarity of the regulations; therefore, a separate definition has not been added.

In general, commenters were concerned that NMFS define the terms of new Section 101(a)(5) in a fashion consistent with Congressional intent. A potential problem area is that the new Section speaks in terms of "citizens of the United States" requesting authority to take small numbers of marine mammals in carefully proscribed circumstances. The NMFS believes that a definition of "citizens of the United States" is necessary with respect to corporations, partnerships, associations, or governmental entities that may request Section 101(a)(5) authorization. Thus, a definition has been added to the effect that any of these entities will be deemed citizens of the United States for purposes of this Part.

The NMFS, for good cause, finds that a comment period regarding this particular definition is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B) because it would impede the Agency's timely and orderly implementation of new Section 101(a)(5) and otherwise would prevent the Agency from properly administering and enforcing these new rules.

Section 228.4 Submission of Requests. One reviewer questioned the appropriateness of requiring that requests include the biological information in § 228.4(a) (3) and (4) since comprehensive knowledge of these biological parameters is the responsibility of NMFS. Another reviewer questioned whether requestors would be able to specify the numbers of animals, much less their probable age, sex, and reproductive condition. The NMFS recognizes that for certain activities it may not be possible to supply specific and detailed information. Furthermore, NMFS feels that it is the responsibility of the person seeking authorization to demonstrate that the taking would be consistent with the purposes of the MMPA. Inherent in this demonstration is a description of the potential taking and potential impacts resulting from the activities. However, NMFS will use all available information, in addition to any information provided, in its determinations of negligible impact.

Section 228.4(a)(5) has been separated into two statements, as suggested, and the subsequent sections renumbered accordingly. It was recommended that § 228.4(a)(7), which requests information on the likelihood of restoration of the habitat, specify that only restoration by natural causes is relevant; however, NMFS feels that information concerning restoration of the habitat by both natural and man-made causes is appropriate to consider and is encompassed by the proposed wording. Therefore, no change has been made. Section 228.4(a)(10), which concerns means of accomplishing the necessary monitoring and reporting, has been changed to specify monitoring and reporting "which will result in increased knowledge of the species, level of taking or impacts," as suggested. It was recommended that § 228.4(a)(11), which asks for suggested means of encouraging and coordinating research, be supported by a specific commitment of the applicant's resources. The NMFS feels that the commitment, if appropriate to a specific activity, should be requested from the individuals requesting Letters of Authorization under established regulations, rather than from the person making the general request for NMFS to consider regulations. In addition, minor changes in wording suggested by reviewers have been made to § 228.4(a) for clarification.

One reviewer objected to § 228.4(b), which states that the Assistant Administrator shall determine the adequacy of a request prior to review by the public, and felt that public comments should be solicited before the agency determines its adequacy. If a request is received which contains insufficient information for evaluating impacts, NMFS sees no reason to expend the time and money of publishing a notice in the **Federal Register**, newspapers of general circulation and appropriate

electronic media. Therefore, the regulations have not been changed. However, this initial determination of adequacy does not preclude NMFS, based on comments and suggestions, from requiring further information at any time concerning the request.

Section 228.6 Letters of Authorization. Under § 228.6, the Assistant Administrator will make available the information to be included in requests for Letters of Authorization. It was suggested that the information required in requests for Letters of Authorization be specifically noted in § 228.6(a) or in each subpart addressing a specified activity. The information required for a Letter of Authorization will be specific for each specified activity and, therefore, would be inappropriate to address in the general regulations. Further, based on experience, the information required may be altered or additional information may be required. In order to avoid the necessity of modifying regulations in the future, NMFS feels it more appropriate to have the Assistant Administrator specifically inform requestors about the informational requirements, all of which will be noted in the **Federal Register**. For Letters of Authorization requested this year for on-ice seismic activities, the information required was outlined in the proposed rulemaking and is again outlined in this rulemaking.

Further, certain reviewers felt it was redundant and inappropriate to request the same type of information already provided in the general request under § 228.4. One reviewer felt that in light of the information already provided, the only useful information for determining whether effects of a specific operation would exceed those estimated by NMFS would be information on the area to be disturbed by a specific operation and that requiring estimates of the age, sex, etc., of seals estimated to be taken would result only in speculation. However, in order to be assured that the specific request is covered by the general request and findings, NMFS feels that the information requested is necessary. For this reason, it is important for potential users of the regulations to submit comments on proposed rules to ensure that final regulations will cover the activities which they seek to conduct.

One reviewer suggested that the time frame within which NMFS will act on a request for a Letter of Authorization should be specified, and recommended that it be no greater than 30 days. The NMFS will act as expeditiously as possible on all requests; however, depending on the nature and completeness of a request, the time frame may vary. Although not possible this year, NMFS suggests that requests be made at least 60 days prior to the desired effective date to allow sufficient time for processing.

One reviewer expressly supported the required annual renewal of Letters of Authorization, while another felt that it was an unnecessary administrative burden to make a general one-year restriction on Letters of Authorization and that it would be more appropriate to determine the period of validity on a case-by-case basis depending on the specific activity. The NMFS agrees that the term of Letters of Authorization should be based on the specified activity and has modified § 228.6(d) to reflect this. However, for the Letters of Authorization issued under the specific regulations under Subpart B—Taking of Ringed Seals Incidental to on-Ice Seismic Activities, NMFS has determined that a one-year Letter of Authorization is appropriate. The purpose of this requirement for new Letters of Authorization each year is to ensure that the authorized taking will be consistent with the original findings. This assessment will be based on the required reports, ongoing research, and information contained in the requests for Letters of Authorization.

As was suggested, § 228.6(e) has been clarified to read that Letters of Authorization "shall" (as opposed to "may") be withdrawn or suspended "either on an individual or class basis, as appropriate."

A new § 228.6(g) has been added to state that a violation of the terms and conditions of a Letter of Authorization or the specific regulations will subject the Holder to the penalties provided in the MMPA.

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

As suggested, the title of Subpart B has been renamed "Taking of Ringed Seals Incidental to on-Ice Seismic Activities," to emphasize that these regulations do not allow the taking of any other species of marine mammals which occurs as a result of the seismic activities.

Two comments addressed the general scheme of Letters of Authorization under these specific regulations. One reviewer felt that an annual limit should be established on the number of seals which can be taken, and that when the quota is reached, no new authorizations should be issued and existing ones should be suspended. The other reviewer questioned whether operators would be allotted or assigned authorizations on a first come, first served basis, or whether new operators could request that the total allowable take be reallocated. As each request for a Letter of Authorization is received, it will be reviewed and evaluated to determine whether it is consistent with the specific regulations and findings, and, if so, a Letter of Authorization with appropriate conditions would be issued. If the request is for activities not covered by the regulations, no authorization would be granted. A general request would be needed, and the procedures, findings, and opportunity for public comment as outlined in Subpart A would be required to either develop new regulations or modify existing regulations. If it is determined that the level of taking for the specified activity would exceed that upon which the findings were made, then all existing Letters of Authorizations along with the one proposed to be issued would have to be amended with restrictions to ensure that the total taking by all Holders of Letters of Authorization would be negligible and involve only small numbers. Therefore, NMFS does not believe it necessary to establish specific numerical quotas.

Section 228.11 Specified Activity and Specified Geographical Region. It was suggested that seismic work be allowed only in areas where the ADF&G is conducting research. The NMFS feels that it is not appropriate to restrict the areas of operation solely on the basis of where research is being conducted since the intent of the regulations is to insure that the taking is negligible. However, if the total requested taking was determined to have more than a negligible impact, restriction could be imposed to insure that the allowed taking would be negligible.

Section 228.12 Effective Dates. Two reviewers objected strongly to the proposed five-year term of the regulations because of the uncertainties concerning the level of taking, adverse effects and impacts, and the successfulness of the program under the new amendment. Based on information and research collected during the suggested one-year term, NMFS could then consider a longer period of effectiveness for these, or modified regulations. The NMFS agrees in part that the activities, along with new information which becomes available, should be re-evaluated after each year to determine if the level of taking is consistent with the findings, and has, therefore, determined to make the required Letters of Authorization valid for only one year. Further, additional

requirements could be developed and incorporated sooner under the existing scheme of annual Letters of Authorization than by new regulations. One reviewer suggested that the five-year effective date period be changed to 1983–1987 since these regulations will be promulgated too late to be effectively applied to the 1982 seismic season. While we recognize that the information to be gained from this year's activities will be limited, NMFS feels it desirable to require the monitoring and reporting for any period remaining this year in order to have better information for evaluating subsequent requests for Letters of Authorization.

Another reviewer noted that while Section 101(a)(5) allows authorization of incidental taking for up to a five-year period, the scheme accomplishes the authorization through the Letter of Authorization, not through the regulations themselves, and therefore suggested that this section on effective dates be deleted to avoid the need to repromulgate regulations. The NMFS feels that the intent of the new amendment, which requires notice and affords the opportunity for public comment, can best be served through the notice and comment rulemaking process.

The effective date statement has been modified to clarify that the regulations are effective for the entire 1982 through 1986 period, rather than from January to May each year. Although the taking is allowed only from January to May, other aspects of the regulations, such as reporting requirements, are valid throughout the year.

Section 223.13 Permissible Methods. It was recommended that seismic testing not be allowed during the pupping and weaning season (March through May). Unless the activities were found to have more than a negligible impact during the pupping season, NMFS does not feel such a drastic restriction is appropriate.

It was suggested that § 228.13(a)(1) include vibrator-type, airgun, "or similar energy source equipment," to allow and encourage the development and use of improved equipment. It was also suggested that the permitted activities include the "Poulter technique" which is now being tested and which has logistical and technical advantages with comparatively lesser impact on the environment. The wording has been changed to potentially allow in the future the use of other energy source equipment. Energy sources, other than the vibrator-type or airgun, would be allowed only if they were shown to have similar or lesser effects.

As was suggested, § 228.13(b) has been modified to state that activities be conducted in a manner which minimizes adverse effects "to the greatest extent practicable."

One reviewer felt that the phrase "as far as practicable" in § 228.13(c) required clarification by definition so that seals are not unnecessarily harassed. The NMFS does not feel that at this time a more precise restriction is appropriate; although, based on new information and required reports, further refinements of restrictions may be developed and required in the future. It was pointed out that the requirement in § 228.13(c), which states that no energy source be placed over a ringed seal lair, may impose an unrealistic requirement. Therefore, the wording has been changed to "observed" ringed seal lair to be consistent with the first sentence of § 228.13(c), as proposed.

Section 228.14 Requirements for Monitoring and Reporting. It was recommended that in § 228.14(a), the words "as necessary" be inserted after the word monitor which would allow the suspension of the five-year monitoring requirement if further research proves monitoring to be unnecessary. The requirement that Holders of Letters of Authorization cooperate with NMFS and designated agencies will not change, although the scope of monitoring may change. Therefore, the suggested change has not been made.

Certain reviewers felt that the requirements for monitoring should be strengthened. One reviewer suggested that a preliminary survey of seal distribution be required prior to any seismic testing so that test sites could be selected from the lowest seal distributions. Another reviewer suggested that since seismic testing is usually concentrated at a few locations, at a minimum, the regulations should require monitoring before and after testing to evaluate the effects on seals in those locations. One reviewer felt that in order for the monitoring program to be effective, it would be necessary to determine the locations of all lairs using trained dogs, mark all lairs for future identification, and recheck lairs following surveys to determine if they have been abandoned and determine the fate of the pup. Another reviewer questioned the effectiveness of any monitoring program in view of the difficulty of finding any lairs by simple visual inspection by untrained people. Alternatively, another reviewer felt that while it would be reasonable to require operators to make visual observations and maintain reports, it would not be reasonable to require an elaborate and costly research program, employing specialists and equipment that may be limited or not available, in order to detect and monitor the locations of lairs and seals along all shot lines and camps before, during, and after activities are conducted. The reviewer was also concerned that such unrealistic requirements may be imposed in the future as NMFS interprets and refines its perceived needs, and requested that NMFS clarify this section to indicate that operators will be responsible only for visual observations. At this time, NMFS feels that the regulations concerning monitoring which require observations and reports as proposed are sufficient. The industry has been in contact with the Alaska Department of Fish and Game, which has offered its assistance concerning a training program to teach designated individuals how best to make observations. Further, the ADF&G is conducting research designed to study the effects of the seismic operations on ringed seals. However, since additional monitoring requirements may be needed in the future, NMFS reserves the option to do so.

One reviewer, who felt that the reporting requirements were inadequate, recommended that the information required in annual reports parallel the requirements of the initial request, including information on the number of ringed seals taken by age, sex, reproductive condition, type of taking, and description of the seismic activity, and information pertaining to means of minimizing impacts on the marine mammals. Another reviewer suggested that information on all recovered carcasses and the number of expected mortalities should be included in required reports to help assess the rate of natural and man-related mortality. Also, to adequately assess impacts, one reviewer suggested that data on seismic operations should include total number, frequency, decibel level, timing, site-specific distribution, and duration of tests conducted and observations on direct seal reactions to seismic activities. Further, it was suggested that these and other data should be identified and then collected as part of a well-designed and coordinated research/monitoring program through NMFS Alaska Regional Office, but that in the absence of such an articulated program at this time, it may be desirable to add an item calling for submission of such other information as may be requested in the Letter of Authorization. As a result of these comments, the information required in annual reports has been expanded along with the option of requiring additional information, if appropriate, in the future.

It was also recommended that an incident report be required to ensure adequate reporting of any incident of non-negligible taking of marine mammals. Due to the extremely small numbers of expected actual, observable takings, NMFS feels that an annual report is sufficient.

There was also concern expressed as to how the information from the required reports is to be used in view of the extremely low probability of direct observations. The NMFS concurs with the views expressed that the information provided by operators be considered as very conservative data and not be used as an indication of seal distribution or as proof that only the observed seals are affected by activities.

The due date for the required annual report has been clarified, as suggested, to be within 90 days of completion of the year's activities. Since activities are allowed only through May 31, this report is due not later than August 31.

Certain reviewers referenced the House Report which states that "the Committee expects that persons operating under the authority of Section 101(a)(5) shall engage in appropriate research designed to reduce the incidental taking of marine mammals pursuant to the specified activity concerned," and felt that the regulations should require the industry to initiate and conduct research designed to reduce the effects of seismic activities on ringed seals. The industry has met with the Alaska Department of Fish and Game to assist in the design of studies during the present operating season that will help to assure that the effects of seismic activity on ringed seals will be addressed more directly, is coordinating their operations with the ADF&G, and is providing information and logistical support. Further, industry is now testing the "Poulter technique" as an alternative method which may have lesser environmental impacts. In view of the ongoing efforts and research, NMFS does not feel any regulatory requirement is necessary, but encourages industry to continue and expand efforts to assist, coordinate, and conduct appropriate research.

Proposed Findings Under the MMPA

Two reviewers felt that in determining the impact of the taking, an overly broad geographic region, that being the Bering, Chukchi, and Beaufort Seas, was identified in defining the relevant population of ringed seals. One of the reviewers referenced the House Report which states that the specified geographical region "should not be larger than is necessary to accomplish the specified activity," and interpreted this to mean that only those animals in the specified geographical region could be considered the relevant population in determining effects. The NMFS feels it is more appropriate to evaluate the effects on the population of animals, rather than on just those animals which coincide with the specified activity, in its determination of negligible impacts. These reviewers felt that the appropriate population to consider was the winter residents of the Beaufort Sea, estimated at 40,000 animals. Further, they felt that the taking would involve more than small numbers compared to the population size and would have more than a negligible impact. There is no evidence that the Beaufort Sea population is discrete. There is a seasonal migration of seals which winter in the Bering Sea northward to the edge of the permanent ice pack and near shore ice remnants. There is also evidence of year to year changes in abundance within the same area. Lower ringed seal densities in the Beaufort Sea and northern Chukchi Sea, apparently due to heavy ice in 1975 and 1976, were noted concurrently with increased densities in the Bering and southern Chukchi Seas. Based on available information, NMFS feels that the Bering, Chukchi, and Beaufort population of ringed seals is the relevant "stock" to consider in its findings.

Certain reviewers questioned the statement in the request for IAGC that the preferred habitat of ringed seals is ice which is two feet or less thick, and, therefore, was less likely to coincide with seismic activities. Because of the lack of evidence supporting this assumption, this rationale was not used as a basis for NMFS' proposed finding of negligible impact.

One reviewer questioned the use of the word "may" in the proposed finding that seismic activities may result in the taking or ringed seals. However, since there is no definitive evidence that any specific seismic activity has or will result in actual takings of ringed seals, NMFS feels that the wording is appropriate.

One reviewer felt that since the taking is largely by displacement, the potential impact on opportunity for subsistence hunters is minimal. Another reviewer felt that it was premature to state that seismic activities will have negligible impact on subsistence use until proper studies have been conducted. The NMFS has no basis to support a finding that the potential taking, which would be mainly by displacement of animals, would have more than a negligible impact on the availability of ringed seals for subsistence uses.

Statement of Findings

Based on a review of the available data and comments received, NMFS has found that on-ice seismic activities may result in the taking of small numbers of ringed seals and that the total taking during the period 1982 through 1986 will have a negligible impact on the Bering, Chukchi, and Beaufort Seas stock, its habitat, and on the availability of such stock for subsistence uses.

Letters of Authorization

A Letter of Authorization is required to conduct activities pursuant to the specific regulations governing the taking of ringed seals incidental to on-ice seismic activities. United States citizens who engage in on-ice seismic exploratory activities which may result in the incidental take of ringed seals in the Beaufort Sea may submit a request for a Letter of Authorization. Requests should include the following information:

(1) Name, address, and telephone number of requestor;

(2) A description of the activities, including methods, dates and duration, and general locations of activities, including estimated area to be surveyed;

(3) Anticipated numbers of ringed seals which may be taken by age, sex, and reproductive condition, and the type of taking (e.g., disturbance or harassment, displacement, or abandonment of pups);

(4) Anticipated impact of the activity upon the habitat and the likelihood of restoration;

(5) Actions which will be taken to minimize potential adverse impacts on the ringed seals, their habitat, and on their availability for subsistence uses; and

(6) Actions which will be taken to assist in, cooperate with, or conduct research related to reducing the incidental taking or evaluating its effects.

Letters of Authorization issued under 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to on-Ice Seismic Activities will be valid for one year only. Each year, a written request containing the information outlined above will be required, and a new Letter of Authorization issued. If further or different information is required in subsequent years, Holders of Letters of Authorization will be so notified. As stated in § 228.6(d), Letters of Authorization may contain additional terms and conditions appropriate for the specific request.

Applicability to Other Laws and Requirements

The general regulations in Subpart A implement section 101(a)(5) of the MMPA by providing a mechanism for authorizing the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens engaged in a specified activity in a specified geographical region, for up to five years. Also included are specific regulations in Subpart B allowing the taking of small numbers of ringed seals incidental to on-ice seismic operations in the Beaufort Sea for the period 1982 to 1986.

The NMFS has determined that the general regulations will have no impact on the human environment. The NMFS has prepared an Environmental Assessment reflecting the determination that the specific regulations allowing the taking of ringed seals will have an insignificant impact on the human environment and, therefore, do not constitute a major action under the National Environmental Policy Act. The Environmental Assessment is available on request from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

These regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The NMFS has determined, therefore, that these regulations do not constitute a major rule and require no regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce has certified that the general regulations will not have a significant economic impact on a substantial number of small entities, and that the specific regulations allowing the taking of ringed seals will not have a major significant impact on a substantial number of small entities since the oil companies and their contractors identified as possible applicants under the specific regulations cannot be identified as small businesses under the Small Business Act. Therefore, a regulatory flexibility analysis is not required.

Since the number of requests expected under the general regulations is expected to be less than ten, and the number of applicants under the specific regulations allowing the taking of ringed seals is expected to be less than ten, the requirements of the Paperwork Reduction Act are inapplicable.

These regulations contemplate exemptions to the moratorium on the taking of marine mammals imposed by the Marine Mammal Protection Act and potentially relieve a restriction by authorizing the taking of marine mammals subject to certain conditions. For these reasons, the requirements of Section 553(d) of the Administrative Procedure Act, that the publication of a substantive rule be made not less than 30 days before its effective date is waived. These regulations shall become effective May 18, 1982.

To ensure consistency, 50 CFR 216.11 is also revised to indicate that takings allowed under the new Part 228 of 50 CFR are not prohibited. Because of the non-substantive nature of this revision to 50 CFR 216.11 and in view of the public's participation in commenting on the substantive aspects of the new Part 228 to 50 CFR, NMFS for good cause finds that a further comment period is impractical, unnecessary, and contrary to the public interest. Further, because the revision refers to exemptions that may be granted under the new 50 CFR Part 228, NMFS finds good cause for making this revision effective immediately upon the date of publication under 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 228

Marine mammals, Administrative practice and procedure, Outer Continental Shelf, Oil and gas exploration.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Accordingly, 50 CFR Chapter II, Subchapter C—Marine Mammals, is amended as set forth below.

1. The authority citation for Part 216 is revised to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

2. The introductory text of § 216.11 is revised to read as follows:

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Part 228, it is unlawful for:

* * * * *

3. A new Part 228 is added as follows:

PART 228—Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

Subpart A—General

Sec.

228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Submission of Requests.
228.5 Specific Regulations.
228.6 Letters of Authorization.

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

228.11 Specified Activity and Specified Geographical Region.
228.12 Effective Dates.
228.13 Permissible Methods.
228.14 Requirements for Monitoring and Reporting.

Authority: 16 U.S.C. 1371(a)(5), unless otherwise noted.

Subpart A—General

§ 228.1 Purpose.

The regulations in this part implement Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), Pub. L. 97–58, which provides a mechanism for allowing, upon request, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

§ 228.2 Scope.

The taking of small numbers of marine mammals under Section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the species involved are not depleted and if the National Marine Fisheries Service (a) finds that the total taking during the specified time period will have a negligible impact on the species and their habitat, and on the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this Part 228.

§ 228.3 Definitions.

In addition to definitions contained in the Act and in 50 CFR 216.3 and unless

the context otherwise requires, in this Part 228:

"Citizens of the United States" and "U.S. citizens" mean individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this Part.

"Incidental, but not intentional, taking" means accidental taking. It does not mean that the taking is unexpected, but rather it includes those takings which are infrequent, unavoidable or accidental. (Complete definition of take is contained in 50 CFR 216.3).

"Negligible impact" means an impact which can be disregarded or which is so small, unimportant, or of so little consequence as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is depleted under 16 U.S.C. 1362(1).

"Small numbers" means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

"Specified activity" means any activity, other than commercial fishing, which takes place in a specified geographical region and potentially involves the taking of small numbers of non-depleted marine mammals. The specified activity and specified geographical region should be identified so that the anticipated effects on non-depleted marine mammals will be substantially similar.

"Specified geographical region" means an area within which a specified activity is conducted and which has certain biogeographic characteristics.

§ 228.4 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider allowing the taking by U.S. citizens of small numbers of non-depleted marine mammals incidental to a specified activity, a written request must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. Requests shall include the following information on the activity in general and cumulative impacts of the total potential taking (by all persons conducting the activity):

(1) A description of the specific activity or class of activities that can be expected to result in incidental taking of non-depleted marine mammals;

(2) The dates and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be taken by age, sex and reproductive condition, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

(5) The anticipated impact of the activity upon the species or stocks;

(6) The anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

(7) The anticipated impact of the activity upon the habitat of the marine mannal populations, and the likelihood of restoration of the affected habitat;

(8) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(9) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(10) Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species, level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

(11) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b) The Assistant Administrator shall determine the adequacy and completeness of a request, and if found to be adequate, will invite information, suggestions, and comments through notice in the **Federal Register**, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations.

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking constitutes a negligible impact on the species or stocks of marine mammals, their habitat, and on the availability of the species for subsistence uses. Any preliminary finding of negligible impact shall be proposed for public comment before specific regulations are promulgated.

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth permissible methods of taking and requirements for monitoring and reporting.

(b) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting or research, the regulations may be modified, in whole or part, after notice and opportunity for public review.

§ 228.6 Letters of authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established. Requests for Letters of Authorization shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. The information to be submitted in a request may be obtained by writing the Assistant Administrator.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding that the total of such taking will have a negligible impact on the marine mammal species or stocks and their habitat, and on the availability of the species for subsistence uses.

(c) Notice of issuance of all Letters of Authorization will be published in the **Federal Register** within 30 days of issuance.

(d) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the National Marine Fisheries Service determines that (1) the regulations prescribed are not being substantially complied with, or (2) the taking allowed is having, or may have, more than a negligible impact on the species or stocks concerned, their habitat, or on their availability for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 228.6(e) shall not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407).

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

§ 228.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 miles and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 228.12 Effective dates.

Regulations in this subpart are effective for the period 1982 through 1986.

§ 228.13 Permissible methods

(a) The incidental, but not intentional, taking of ringed seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activities:

(1) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects; and

(2) Operation of transportation and camp facilities associated with seismic activities.

(b) All activities identified in § 228.13(a) shall be conducted in a manner which minimizes to the greatest extent practicable adverse effects on ringed seals and their habitat.

(c) All activities identified in § 228.13(a) shall be conducted as far as practicable from any observed ringed seal or ringed seal lair. No energy source shall be placed over an observed ringed seal lair, whether or not any seal is present.

§228.14 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, State, or local agency monitoring the impacts on ringed seals.

(b) Holders of Letters of Authorization shall designate an individual or individuals to make observations and record the presence of ringed seals and ringed seal lairs along shot lines and around camps, and the information required in §228.14(c).

(c) An annual report shall be submitted to the Assistant Administrator for Fisheries within 90 days of completion of the year's activities which shall include the following information:

(1) Location(s) of survey activities;

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location;

(3) Numbers of ringed seals observed, proximity to seismic or associated activities, and any seal reactions observed for each location;

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location; and

(5) Other information as required in a Letter of Authorization.

Dated: May 12, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries National Marine Fisheries Service.

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National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of emergency interim rule.

SUMMARY: An interim rule in effect through May 15, 1982, implements certain provisions of the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic. NOAA extends this emergency interim rule from May 16, 1982, through June 29, 1982. The extension will continue the protection of the spawning stock in the fishery conservation zone (FCZ) until the final regulations become effective.

DATES: Emergency rule effective from May 16, 1982 through June 29, 1982.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813–893–3141.

SUPPLEMENTARY INFORMATION: Under Section 305(e)(1) of the Magnuson Fishery Conservation and Management Act, emergency interim regulations implementing certain provisions of the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic were published on March 30, 1982 (47 FR 13353). The rulemaking stated that the regulations would be effective for 45 days and that they could be repromulgated for an additional 45-day period, if necessary. The emergency interim rule (1) establishes a closed season in the fishery conservation zone (FCZ) during the peak spawning period; and (2) provides the authority for any Authorized Officer to dispose of lobster traps that are in the management area during the period April 6–July 20. The intended effect of this interim rule is to provide protection for the spawning stock in the FCZ during the major spiny lobster reproductive period. The Assistant Administrator for Fisheries, NOAA, acting on behalf of the Secretary of Commerce, has determined that the emergency situation described in the initial emergency rule continues to exist, and therefore extends the emergency regulations through June 29, 1982.

The NOAA Administrator has determined that these regulations are non-major under Executive Order 12291, and that the emergency provisions in section 8 of the Order apply to this action.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 640

Fish; Fisheries.

Dated: May 13, 1982.

William H. Stevenson,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 82-13447 Filed 5-17-82; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of California, Oregon, and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule, notice of availability of plan amendment, and request for comments.

SUMMARY: NOAA issues emergency regulations to implement on an interim basis the 1982 amendment to the fishery management plan for the ocean salmon fisheries in the fishery conservation zone off the coasts of Washington, Oregon, and California. This action constitutes a notice of availability and request for comments on the plan amendment which was partially approved by the Assistant Administrator for Fisheries, NOAA, on May 6, 1982. Also, comments are requested on the interim rule which will be used in preparing the final rule implementing the 1982 amendment. Specific management measures in the implementing regulations vary by fishery and area, but generally establish fishing seasons, quotas, necessary inseason management modifications, daily catch limits for recreational fisheries, and minimum size limits for salmon. The 1982 amendment and implementing regulations are intended to prevent overfishing, to apportion equitably the ocean harvest between commercial and recreational fisheries, to allow more salmon to survive the ocean fisheries and reach the various inside fisheries, to meet the U.S. obligations to treaty Indian fisheries, and to achieve spawning escapement requirements.

DATES: Interim rule is effective on May 14, 1982 and remains effective until June 28, 1982.

ADDRESSES: Send comments on the 1982 FMP amendment and these implementing rules to the Director, Northwest Region, National Fisheries Service (NMFS), BIN C15700, Seattle, WA 98115. Copies of the 1982 amendment, the regulatory impact review/initial regulatory flexibility analysis, and the final supplement to the final environmental impact statement are available from the Pacific Fishery Management Council, 526 S.W. Mill St., Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins (Regional Director, NMFS), 206–527–6150.

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, prepared by the Pacific Fishery Management Council (the Council), was approved by the Assistant Administrator for Fisheries (Assistant Administrator), NOAA, on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978 (43 FR 15629), as emergency rules. Regulations to implement the 1981 amendment to the FMP were last issued as final rules on September 9, 1981 (46 FR 44989), as corrected on September 16, 1981 (46 FR 45960), except off California where 1980 regulations were reinstated (published on January 29, 1982, 47 FR 4275).

The Council has amended the FMP to improve management of the salmon fisheries in 1982. A supplement to the environmental impact statement (SEIS) for the 1982 amendment has been filed with the Environmental Protection Agency. A notice of availability of the SEIS was published on April 30, 1982 (47 FR 18652). The Council held six hearings on the amendment during the period February 26 through March 1, 1982. The 1982 amendment is intended to (1) provide adequate spawning escapements from ocean salmon fisheries for the various salmon runs; (2) meet treaty obligations to Indian fishermen; and (3) allow for a viable harvest for each segment of the salmon fishery, including the commercial and recreational ocean fisheries and the various internal water fisheries. The current FMP amendment as it applies to the commercial salmon fishery north of Cape Blanco, Oregon, and to the recreational fisheries coastwide was approved by the Assistant Administrator on May 6, 1982, under section 304 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The portion of the Council's recommended amendment pertaining to seasons, gear restrictions, and chinook quotas for the commercial fisheries south of Cape Blanco, Oregon, was disapproved by the Assistant Administrator; therefore, existing measures govern the commercial fisheries south of Cape Blanco, Oregon. That action is consistent with a concern expressed in the minority report submitted by the Oregon Department of Fish and Wildlife on the 1982 amendment. Consequently, the 1981 management measures that governed the fishery in the fishery conservation zone (FCZ) off Oregon south of Cape Blanco and the 1980 management measures off California will continue to control commercial fishing open seasons, gear restrictions, and size limits in those areas, until superseded. The NOAA issues a notice of availability of the FMP amendment for public review and comment, as required by section 305(a) of the Magnuson Act.

Section 305(e) of the Magnuson Act authorizes the Secretary of Commerce to promulgate emergency regulations to implement fishery management plans and amendments thereto. The Assistant Administrator has determined that the approved portion of the 1982 amendment should be implemented by emergency regulations under that section, and that relevant portions of the 1981 and 1980 measures that are not superseded should be republished, so that all regulations pertaining to salmon fishing in the FCZ off Washington, Oregon, and California appear together in a single **Federal Register** publication. These regulations reflect the following changes from existing regulations, in addition to changes required to implement the approved portions of the 1982 amendment. First, the regulations have been partially reorganized into a standard format used for our other fishery regulations; certain sections have been simply renumbered, while others have been consolidated. The balance of that reorganization will be accomplished when the final rules for the fishery are promulgated. Second, the management measures for the commercial, recreational, and treaty Indian fisheries have been organized in a different manner in the regulations. Third, certain stylistic changes have been made (e.g., using "this part" for "this Part 661," or "begins" for "shall begin"). Fourth, former section 661.4 "Effective dates" has been deleted as unnecessary. Fifth, certain definitions have changed: (a) Definitions of ODF&W, OPI, WDF, and WPP have been deleted as obsolete, since those terms were used in inseason management provisions deleted by the 1982 amendment; and (b) certain definitions have been modified to reflect changed underlying realities (definition of "Act," "Authorized Officer," and "Regional Director") or to clarify the intended meaning ("land or landing" and "troll fishing gear"). Sixth, certain "General restrictions" provisions have been modified to delete unnecessary and confusing references to definitional provisions and to simplify the specification of the applicable restrictions. Seventh, provisions regarding boarding procedures and signals have been added to the "Facilitation of enforcement" section. Finally, certain portions of the "Treaty Indian fishing" section and the "Inseason adjustments" section have been changed to more clearly reflect current law.

This emergency rulemaking remains in effect for 45 days and may be extended for a second 45-day period.

These interim regulations also are being published for public review. All comments received will be considered when developing the final regulations. Following publication in the **Federal Register**, the final regulations will be effective for 1982 and subsequent years unless superseded or otherwise modified.

Status of the Salmon Resource in 1982

Current information on abundance of the major stocks of chinook and coho salmon available to the ocean fisheries in 1982 indicates (1) that some stocks continue to be depressed to such an extent that ocean harvests must be reduced to assure adequate survival to inside fisheries and spawning escapements, and (2) other stocks continue to be at or near optimum levels of population abundance. The status of stocks is discussed in detail in Chapter IV of the Report accompanying the 1982 FMP amendment. The management objectives set forth in the 1982 FMP amendment can only be achieved by carefully balancing a decrease of the ocean harvest in some areas with relatively less restrictive regulations in other areas. The Council and its advisors considered the status-of-stocks information included in the Report accompanying the 1982 amendment, along with many other factors, during their deliberations on the 1982 amendment. Except for those measures controlling commercial fishing south of Cape Blanco, which were not approved, the management measures adopted by the Council are considered to be consistent with the FMP objectives, as revised in the 1982 amendment, and with the requirements of the Magnuson Act.

Treaty Indian Obligations

Dissatisfaction on the part of some tribes with the level of returns of salmon to tribal "usual and accustomed" fishing areas prompted litigation in Federal District Court in 1981. One suit, *Hoh v. Baldrige*, involves three Washington coastal tribes (the Hoh, Quileute, and Quinault), the Secretary of Commerce, and the State of Washington. The other suit, *Confederated Tribes v. Baldrige*, involves four Columbia River tribes (the Yakima, Umatilla, Warm Springs, and Nez Perce), the Secretary of Commerce, and the States of Oregon and Washington.

Hoh v. Baldrige

In this case, the U.S. District Court ruled that the tribes were entitled to take up to 50 percent of each run of coho salmon returning to each river where the tribes traditionally fished, but noted that this rule is not inflexible. Strict compliance with such an order would require that ocean fisheries be managed in a manner which assures that returns of the weakest run be sufficient to allow a treaty Indian harvest equal to the non-Indian ocean harvest while meeting spawning escapement goals. If strictly applied, such a rule would preclude the non-Indian ocean fishery from taking its 50 percent share of salmon produced in many streams where runs are healthier.

The court also ordered the development of a long-range plan consistent with the equal-sharing rule for managing the various coastal runs relevant to the lawsuit. Despite continued effort, the parties have been unable to agree on all significant points. One of the major items yet to be agreed on is coho spawing escapement goals. The State of Washington has set strict numerical goals for coho spawning escapement based on the occurrence of average environmental conditions every year and on the use of the entire watershed of each stream as a rearing area, including the main stream. In turn, the State of Washington Department of Fisheries (WDF), in a minority report on the 1982 amendment, has opposed any approach to management of coho in the ocean north of Cape Falcon that will result in spawning escapements other than those which the State proposes. In contrast, however, optimum water flows can be expected to occur one year in five on the average, and experience has confirmed that coho are primarily reared in tributary streams, while few successfully rear in the main stem of coastal streams. Furthermore, rigid adherence to Washington State's coho spawning escapement goals will result in wasting fish which could otherwise be caught without jeopardizing reproduction of stocks and will cause unnecessary instabilities in the fishery. Management of all fisheries to achieve spawning escapement within a range of spawning escapement goals for each coastal stream, rather than a single numerical goal for each coastal stream, would maintain coho production at a favorable level while obtaining the data necessary to determine the optimum level of escapement and would also provide some stability to the fisheries operating on these stocks.

The State in its minority report contends that the Council's choice of an ocean coho quota which is derived from a range of spawning escapements is inconsistent with prior orders of the Federal Court endorsing State escapement goals. The Court's order of September 29, 1981, referred to in the WDF minority report, was intended to encourage mutual agreement among the parties on escapement goals before the beginning of each season consistent with existing orders in *U.S. v. Washington*, primarily an order entered on August 31, 1977. In recognition of the fact that no judicially endorsed or established spawning escapement goals exist for the Washington coast, the Court on April 12, 1982, ordered the parties to the negotiations to continue deliberations in an effort to arrive at agreement on spawning escapement policy for the duration of the agreement.

In the absence of any court-approved management plan and spawning escapement goals, the tribes and the Council, therefore, agreed on 1982 quotas for ocean coho that were intended to recognize the advantages of management to achieve spawning escapements within given ranges.

The reports of the Council's salmon plan development Team and in-Court testimony acknowledge that the ocean coho quota north of Cape Falcon will not allow achievement of State escapement goals this year. However, those same reports and testimony indicate that overfishing will not occur even if coho return in fewer numbers than anticipated; and this is true of the run which is expected to be the weakest (Queets River fall coho) as well as stronger runs. On the other hand, escapement goals recommended by the State combined with strict imposition of weakest-run management principles would have required reducing the 1982 ocean harvest to about half the 1981 harvest. Indeed, the primary difference between the State's recommended ocean quotas and those chosen by the Council emanates from a disagreement as to the number of fish which must escape to maximize the harvestable portion of each run. The State believes a greater number of fish must be allowed to escape to acheive optimum spawning escapement than do the tribes and the Council. However, by using a range of spawning escapement goals for coho, established by the tribes for the coastal streams, rather than the fixed goal set by the State, the allowable harvest was set at a higher level. Further, the tribes agreed to target on hatchery-produced coho in their Queets River fishery to the extent possible, which further increased the number of coho that could be taken by the ocean fisheries. This cooperative approach should prevent overfishing of any coho run, meet the treaty fishing right of the plaintiff tribes, and preserve a viable, although reduced, ocean fishery.

Confederated Tribes v. Baldrige

In this action, the U.S. District Court directed the Secretary to evaluate possible management measures for the FCZ off Alaska, Washington, and Oregon which would return more fall chinook salmon to the upper reaches of the Columbia River (bright fall chinook destined for the river above Bonneville Dam, or upriver brights). Analysis by the technical staffs of the Alaska and Northwest Regions of the NMFS indicates that a total closure of all U.S. ocean salmon fisheries north of Cape Falcon, off Oregon, Washington, and Alaska in State and Federal waters, would add an estimated 27,100 upriver brights to the 1981 run size of 63,900 upriver brights, for a total inriver run of about 91,000 fish. Of this additional 27,100 fish, only 4,600 would be attributable to a total closure of all ocean fishing off Washington and Oregon north of Cape Falcon. An ocean catch, sport and commercial, on the order of 200,000 chinook (other than upper Columbia River fall chinook) and 500,000 coho would be lost as a result of such an ocean closure. Even if 4,600 upriver brights were saved as a result of a total FCZ closure north of Cape Falcon, only 2,600 of those additional fish could be expected to escape above McNary Dam due to an unexplained but ever present interdam loss between Bonneville and McNary of about 50 percent.

NMFS also plans to tag upriver brights at Bonneville Dam using radio tags to investigate the cause of the loss of upriver brights between Bonneville and McNary Dams, which was about 50 percent in 1981. The goal is to discover the cause of the unaccounted for loss of upriver brights in this reach of the river, and correct it if possible.

The tribes have also questioned the propriety of the May chinook fishery off Washington and Oregon north of Cape Falcon because of its impact on upper Columbia River springs, summer, and fall chinook. Although these runs of chinook are not subjects of the lawsuit brought by the tribes, analysis by the Council indicates that summer chinook comprise less than three percent of the total May catch of chinook north of Cape Falcon, and that spring chinook contribute negligibly to any ocean fishing in that area; these salmon have already left the area on their way to the spawning grounds. Upriver fall chinook are not found in the ocean between Cape Falcon and the Canadian border in May.

Council proposals for 1982

In January 1982, the Council adopted for public review the draft 1982 FMP amendment, which contained five options for managing the commercial fishery and three options for the recreational fishery. The options ranged from more to less restrictive than 1981 management measures. That document, including the draft supplemental environmental impact statement, was widely distributed and was the subject of discussion at six public hearings held in the three coastal states and Idaho. As a result of these hearings, over 100 written comments on the draft amendment, and the analysis produced by the Council's salmon plan development team of the impacts of the options, the Council adopted the management measures contained in the 1982 amendment.

1982 Management Measures

The Council's approved management measures for commercial fishing in the area north of Cape Blanco and for recreational fishing along the entire coast are intended to achieve expected spawning escapements and treaty Indian allocations, while equitably apportioning the regulatory burden and minimizing shifts in fishing effort along the coast. The approved measures are a combination of fishing areas, seasonal restrictions, and quotas on the harvests.

North of Leadbetter Point, Washington, the recreational season for all species except coho runs from May 29 through 11. Recreational fishing for all species opens on June 12, with a coho quota of 115,000. Fishing for all species ends when the coho quota is taken. Minimum sizes are 24 inches for chinook and 16 inches for coho with a 2-fish bag limit. Commercial fishing for all species except coho begins on May 1 and ends on May 31. The all-species commercial season opens July 15 with a 204,000 coho quota. Fishing for all species ends when the coho quota is taken. Minimum sizes are 28 inches for chinook and 16 inches for coho.

From Leadbetter Point to Cape Falcon, Oregon, the recreational season for all species begins on June 12, with a coho quota of 100,000 fish. Fishing for all species ends when the coho quota is taken. Minimum sizes are 24 inches for chinook and 16 inches for coho. The commercial season for all species except coho runs from May 1 thorugh May 31. The commercial season for all species runs from July 1 until the 89,000 coho quota is taken. Minimum sizes are 28 inches for chinook and 16 inches for coho.

From Cape Falcon to Cape Blanco, Oregon, the recreational season for all species opens June 12 and ends when the 114,000 coho quota is taken. No minimum size is imposed on this fishery, but anglers must keep and are limited to the first two fish taken each day. The commercial season for all species except coho runs from May 1 through June 15 with special gear required from June 1 through June 15. The all-species, commercial season opens July 1, with a coho quota of 488,000. Fishing for all species except coho using special gear begins when the coho quota is taken, and continues until September 5. An all-species-except-coho season using barbless hooks begins September 6 and continues through October 31. Minimum sizes are 26 inches for chinook and 16 inches for coho.

From Cape Blanco to the Oregon-California border, recreational fishing for all species begins on May 29 and continues until the 114,000 coho quota south of Cape Falcon is reached, after which time fishing for all species except coho continues through October 31. No minimum size limit applies, but anglers must keep and are limited to the first two fish taken each day. The 1981 management measures pertaining to open seasons, gear restrictions, and size limits for commercial fishing between Cape Blanco and the Oregon-California border remain in effect; hence, commercial fishing for all species except coho begins May 1 and ends May 31. The all-species season begins July 1 and ends on September 8 unless terminated sooner because the 1982 coho commercial quota south of Cape Falcon (488,000 fish) is reached. Fishing for all species except coho using special gear begins after the coho quota is taken and continues through September 8 between Cape Blanco and Cape Sebastian, Oregon. In this management area, a second all-species-except-coho season opens on September 9 and closes on October 31. Minimum sizes are 26 inches for chinook and 16 inches for coho.

For California, recreational fishing for all species begins February 13 and ends November 14. The bag limit is two salmon of any species with a 22-inch minimum length, except that one fish may be between 20 and 22 inches. Management measures pertaining to open seasons, gear restrictions, and size limits for commercial fishing will be the same as those for 1980 unless changed by subsequent amendment. For California north of Cape Vizcaino, the commercial season for all species except coho is from May 1 through May 15 and the all-species seasons run from May 16 through May 31 and July 16 through

September 30. The minimum sizes are 26 inches for chinook, and 22 inches for coho. From Cape Vizcaino southward, the commercial season for all species except coho opens May 1; the season for all species opens on May 16 and closes on May 31. A second all-species season opens on July 1 and closes on September 30. Minimum sizes are 26 inches for chinook and 22 inches for coho.

Inseason adjustments: All quotas are fixed quotas that may not be changed during the season except for the coho quotas between Leadbetter Point and Cape Falcon and from Cape Falcon, southward. These quotas may be adjusted when 75 percent of the quota is taken if the contribution of coho produced by private hatcheries significantly departs from preseason forecasts. Recoveries of coded wire tags during the season will provide a basis for making any needed adjustment of the preseason estimate of the catch of coho from private hatcheries. In addition, the coho commercial quota for the area south of Cape Falcon will be adjusted to take into account estimated coho losses associated with the late season, all-species-except-coho commercial fisheries in this area. The only other inseason management actions will be automatic closures when quotas are reached.

Treaty Indian fishing: Persons authorized to exercise the Makah Indian treaty ocean fishing right may fish in their adjudicated ocean area for all species from May 1 through October 31 but may not retain chinook smaller than 24 inches or coho smaller than 16 inches. Either fixed or hand-held lines or poles may be used. Except as noted, all other commercial salmon fishing regulations for the area north of Leadbetter Point apply to persons exercising the Makah treaty right to fish in the ocean.

Persons authorized to exercise treaty ocean fishing rights granted the Quileute, Hoh, and Quinault tribes may fish in their respective adjudicated ocean area for all species from May 1 through September 7 but may not retain chinook smaller than 26 inches or coho smaller than 16 inches. Either fixed or hand-held lines or poles may be used. During the time that all non-Indian ocean fisheries are closed north of Leadbetter Point, there will be a closure for all treaty fishermen within a six mile radius of the mouths of the Queets and Hoh rivers to conserve Hoh and Queets chinook and coho runs. Except as noted, all other commerical salmon fishing regulations for the area north of Leadbetter Point apply to persons exercising the Quileute, Hoh, or Quinault treaty right to fish in the ocean.

Supporting Documents and Data Sources

The salmon FMP and the 1982 amendment incorporate by reference a number of documents and data sources utilized in deriving salmon fishery management measures. These documents and data sources or copies thereof will be made available to interested parties at reasonable times and places, and at a reasonable cost (if personal copies are desired), upon request to: H. A. Larkins, Regional Director, NMFS, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115; telephone 206–527–6150.

Classification

The Assistant Administrator has determined that the portion of the 1982 amendment to the FMP which has been approved is necessary and appropriate for conservation and management of the salmon fisheries resources off the coasts of Washington, Oregon, and California, and that it is consistent with the Magnuson Act, including the national standards, and other applicable law.

The amendment has been partially approved and comments thereon are requested for a 45-day period. Recognizing the critical need for specific regulations for the 1982 ocean salmon fisheries, the Assistant Administrator has determined that an emergency exists and these regulations are issued under section 305(e) of the Magnuson Act. He has determined that continued effect of all regulations now in force would not safeguard the resource; therefore, he determined it is necessary to promulgate these emergency regulations immediately.

The Assistant Administrator finds for good cause that the reasons for justifying promulgation of emergency regulations under section 305(e) of the Magnuson Act also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The NOAA Administrator has determined that the rules implementing the 1982 amendment are not "major" rules under Executive Order (E.O.) 12291 requiring a regulatory impact analysis. A regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) has been prepared. This review focuses on the issues and problems in the fishery and contains an analysis of the expected impacts of the adopted management measures and alternative management options. Some issues could only be partially analyzed because of data limitations. Nonetheless, the review supports the determination that these rules are not "major" under the E.O. 12291 criteria.

The NOAA Administrator has determined that the resource emergency which justifies the promulgation of emergency regulations under section 305(e) of the Magnuson Act also constitutes an emergency situation under section 8(a)(1) of E.O. 12291. Because it is imperative to implement the approved portion of the 1982 amendment immediately, it is impracticable to comply with section 3(c)(3), which requires that NOAA transmit to the Director of the Office of Management and Budget (OMB) a copy of every nonmajor rule, at least 10 days prior to publication. However, a copy of these emergency regulations and a copy of the RIR/IRFA have been transmitted to the Director of OMB.

The NOAA Administrator also has determined that the rules implementing the 1982 amendment will have a significant economic impact on a substantial number of small entities, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601–12. The IRFA has been prepared in conjunction with the regulatory impact review. A summary of the IRFA follows:

The generally more restrictive management measures imposed on the ocean fisheries in 1982 will have adverse economic impacts on both commercial and recreational fishermen and industries dependent on the ocean fisheries. The RIR/IRFA estimates that losses in revenue in 1982 compared to 1981 for the areas covered by approved parts of this amendment will be $1,754,000 to the Oregon trollers and $1,520,000 to the Washington trollers. Estimated losses from reduced recreational fishing will be $4,390,000 in Oregon and $3,180,000 in Washington. No incremental losses to the ocean recreational fishery off California are expected since the regulations for that area are essentially identical to those for 1981. Appendix E, pages 5–10, to the 1982 FMP amendment describes the procedures used, and the assumptions made, to estimate these values.

The RIR/IRFA acknowledges but does not quantify gains that will result from increased harvests by fishermen fishing inshore waters, particularly treaty Indian fishermen, as a result of the 1982 regulations. It also does not attempt to quantify the benefits that will accrue to all of the fisheries including the ocean fisheries in future salmon cycles, as a result of increased spawning escapement over what would have

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occurred if the ocean fisheries were allowed to harvest more salmon in 1982. Long-run benefits, resulting from maintenance and enhancement of the salmon runs are believed to more than offset the short-term adverse impacts of more restrictive regulations; that is why the Council placed first priority on meeting spawning escapement goals.

The final supplement to the environmental impact statement (SEIS) for this action, which supplements the original environmental impact statement and previous supplements prepared for the FMP, is on file with the Environmental Protection Agency. A notice of availability of this SEIS was published on April 30, 1982.

These regulations to implement the FMP, as amended, do not entail any Federal collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: May 14, 1982.

William H. Stevenson,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 is revised to read as follows:

1. The authority citation for Part 661 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Part 661 is revised to read as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF CALIFORNIA, OREGON, AND WASHINGTON

Subpart A—General Measures

Sec.

661.1 Purpose.
661.2 Relation to other laws.
661.3 Definitions.
661.4 [Reserved]
661.5 Reporting requirements.
661.6 [Reserved]
661.7 General restrictions.
661.8 Facilitation of enforcement.
661.9 Penalties.

Subpart B—Management Measures

661.20 Commercial fishing.
661.21 Recreational fishing.
661.22 Inseason adjustments.
661.23 Treaty Indian fishing.
661.24 Experimental fisheries.
661.25 Scientific research.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 661.1 Purpose.

The purpose of this part is to provide for the management of the salmon fisheries off the coasts of Washington, Oregon, and California in the Fishery Conservation Zone (the FCZ, also known as the 3-to-200 mile zone) over which the United States exercises exclusive fishery management authority (i.e., the Pacific Fishery Management Council's Fishery Management Area). This part implements the Pacific Council's Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, under authority conferred by the Magnuson Fishery Conservation and Management Act.

§ 661.2 Relation to other laws.

(a) This part does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48° N. latitude and the provisional international boundary between the United States and Canada.

(b) This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the Fishery Management Area, and which is consistent with the salmon management plan, including any State landing law, shall continue to have force and effect with respect to fishing activities addressed herein.

(c) Any person fishing subject to this part shall be bound by the international boundaries of the management subareas described in § 661.3, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 661.3 Definitions.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

(b) Any special agent of the National Marine Fisheries Service or other officer authorized by the Secretary;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commercial fishing means fishing with troll fishing gear as defined in this section, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.

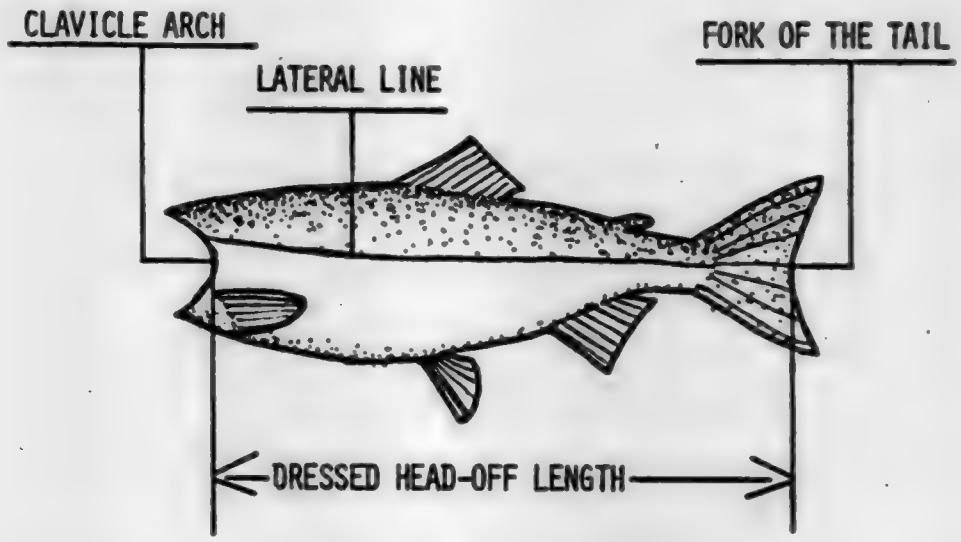

Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery Management Area means the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the Fishery Management Area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the Fishery Management Area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a) through (c) of this definition.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for fishing.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, which has a present capability for (a) on-board freezing of the catch, *and* (b) storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Recreational fishing means fishing with recreational fishing gear as defined in this section and not for the purpose of sale or barter.

Recreational fishing gear means conventional angling tackle consisting of a rod, reel, line, and hooks with bait or lure attached.

Regional Director means the Northwest Regional Director, National Marine Fisheries Service (7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115) or his designee.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Chinook (king) salmon—*Oncorhynchus tshawytscha*

Coho (silver) salmon—*Oncorhynchus kisutch*

Pink (humpback) salmon—*Oncorhynchus gorbuscha*

Chum (dog) salmon—*Oncorhynchus keta*

Sockeye (red) salmon—*Oncorhynchus nerka*

Secretary means the Secretary of Commerce, or a designee.

Single, barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

Subarea means one of the six salmon management subdivisions of the Fishery Management Area, as follows:

(a) Subarea A:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the U.S. and Canada (at 48°29'37" N. latitude, 124°43'33" W. longitude), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line [1] connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;
48°30'11" N. lat., 124°47'13" W. long.;
48°30'22" N. lat., 124°50'21" W. long.;
48°30'14" N. lat., 124°52'52" W. long.;
48°29'57" N. lat., 124°59'14" W. long.;
48°29'44" N. lat., 125°00'06" W. long.;
48°28'09" N. lat., 125°05'47" W. long.;
48°27'10" N. lat., 125°08'25" W. long.;
48°26'47" N. lat., 125°09'12" W. long.;
48°20'16" N. lat., 125°22'48" W. long.;
48°18'22" N. lat., 125°29'58" W. long.;
48°11'05" N. lat., 125°53'48" W. long.;
47°49'15" N. lat., 126°40'57" W. long.;
47°36'47" N. lat., 127°11'58" W. long.;
47°22'00" N. lat., 127°41'23" W. long.;
46°42'05" N. lat., 128°51'56" W. long.;
46°31'47" N. lat., 129°07'39" W. long.

(3) Southern boundary: a line extended due west from Leadbetter Point, Washington, at 46°38'10" N. latitude.

(b) Subarea B:

(1) Northern boundary: a line extended due west from Leadbetter Point, Washington, at 46°38'10" N. latitude.

(2) Southern boundary: a line extended due west from Cape Falcon, Oregon, at 45°46'00" N. latitude.

(c) Subarea C:

(1) Northern boundary: a line extended due west from Cape Falcon, Oregon, at 45°46'00" N. latitude.

(2) Southern boundary: a line extended due west from Cape Blanco, Oregon, at 42°50'20" N. latitude.

(d) Subarea D:

(1) Northern boundary: a line extended due west from Cape Blanco, Oregon, at 42°50'20" N. latitude.

(2) Southern boundary: a line extended due west from the Oregon-California border at 42°00'00" N. latitude.

(e) Subarea E:

(1) Northern boundary: a line extended due west from the California-Oregon border at 42°00'00" N. latitude.

(2) Southern boundary: a line extended due west from Cape Vizcaino, California, at 39°43'30" N. latitude.

(f) Subarea F:

(1) Northern boundary: a line extended due west from Cape Vizcaino, California, at 39°43'30" N. latitude.

(2) Southern boundary: The United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat., 117°27'49" W. long.;
32°37'37" N. lat., 117°49'31" W. long.;
31°07'58" N. lat., 118°36'18" W. long.;
30°32'31" N. lat., 121°51'58" W. long.

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Troll fishing gear means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, *and* which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation.

§ 661.4 [Reserved]

§ 661.5 Reporting requirements.

This part recognizes that catch and effort data necessary for implementation of this Fishery Management Plan is collected by the States of Washington, Oregon, and California under existing State data-collection provisions. No additional catch reports will be required of fishermen or processors as long as the

[1] The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18001.

data-collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

§ 611.6 [Reserved]

§ 661.7 General restrictions.

Except as otherwise provided by or pursuant to this part, the following restrictions apply to all salmon fishing in all subareas of the Fishery Management Area:

(a) No person shall use nets to fish for salmon in the Fishery Management Area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(b) No person shall fish for or take and retain any species of salmon:

(1) During closed seasons or in closed areas;

(2) Once any catch limit is attained;

(3) By means of gear or methods other than recreational fishing gear or troll fishing gear; or

(4) In violation of any field order issued under § 661.22.

(c) No person shall take and retain or possess aboard a fishing vessel any species of salmon which is less than the applicable minimum total length specified in §§ 661.20(c), 661.21(c), 661.23(a), or 661.23(b)(4).

(d) No person aboard a fishing vessel shall possess a salmon, for which a minimum total length is set by this part, in such a condition that its minimum total length is extended, or cannot be determined, except that "dressed, headoff salmon" may be possessed aboard a "freezer trolling vessel" (unless the adipose fin of such salmon has been removed—see paragraph (f) of this section).

(e) No person shall fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(f) No person shall remove the head of any salmon caught in the Fishery Management Area, nor possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(g) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken and retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act.

§ 611.8 Facilitation of enforcement.

(a) No person shall:

(1) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act;

(2) Forcibly assault, resist, oppose, impede, initimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (a)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by this part; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(b) *General.* Each person aboard a fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this part.

(c) *Signals.* Upon being approached by U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The VHF–FM radiotelephone is the normal method of communicating between vessels. Listen to VHF–FM channel 16 (emergency channel) for instructions to shift to another VHF–FM channel and receive boarding instructions. Visual methods or loudhailer may be used if the radio does not work. The following signals, extracted from U.S. Hydrographic Office publication H.O. 102 International Code of Signals, may be communicated by flashing light or signal flags:

(1) "L," meaning "You should stop your vessel instantly."

(2) "SQ3," meaning "you should stop or heave to; I am going to board you."

(3) "AA AA AA etc.," meaning "Call for unknown station or general call." The operator should respond by identifying his vessel by radio, visual signals or illuminating the vessel name or number.

(4) "RY–CY," meaning "You should proceed at slow speed. A boat is coming to you."

(d) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the boarding party to come aboard; and

(2) Take such other actions as necessary to ensure the safety of the boarding party.

§ 661.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act.

Subpart B—Management Measures

§ 661.20 Commercial fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to commercial salmon fishing except as opened by this part or superseding regulations. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified herein. Applicable quotas are specified in § 661.22(a)(1).

(1) Subarea A (U.S.-Canada border to Leadbetter Point, Washington):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 31; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, including coho, begins on July 15 and ends when the commercial coho quota is reached.

(2) Subarea B (Leadbetter Point, Washington, to Cape Falcon, Oregon):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 31; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, including coho, begins on July 1 and ends when the commercial coho quota is reached.

(3) Subarea C (Cape Falcon, Oregon, to Cape Blanco, Oregon):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 31; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, except coho, reopens on June 1 and ends on June 15; during this season, only the gear specified in § 661.20(b)(3) may be used.

(iii) The season for all salmon species, including coho, begins on July 1 and ends when the commercial coho quota is reached.

(iv) The season for all salmon species, except coho, continues from the date the commercial coho quota is reached and ends on October 31; during this season, only the gear specified in § 661.20(b)(3) may be used before September 6, and only the gear specified in § 661.20(b)(2) may be used after September 5.

(4) Subarea D (Cape Blanco, Oregon, to the Oregon-California border):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 31; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, including coho, begins on July 1 and ends on September 8 or when the commercial coho quota is reached, whichever occurs first.

(iii) In that part of Subarea D between Cape Blanco and Cape Sebastian (at 41°19'26" N. latitude), the season for all salmon species, exept coho, continues from the date the commercial coho quota is reached and ends on September 8; during this season, only the gear specified, in § 661.20(b)(3) may be used.

(iv) The season for all salmon species, except coho, begins on September 9 and ends on October 31.

(5) Subarea E (Oregon-California border to Cape Vizcaino, California):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 15; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, including coho, begins on May 16 and ends on May 31.

(iii) The season for all salmon species, including coho, begins on July 16 and ends on September 30.

(6) Subarea F (Cape Vizcaino, California, to U.S.-Mexico border):

(i) The season for all salmon species, except coho, begins on May 1 and ends on May 15; during this season, only the gear specified in § 661.20(b)(2) may be used.

(ii) The season for all salmon species, including coho, begins on May 16 and ends on May 31.

(iii) The season for all salmon species, including coho, begins on July 1 and ends on September 30.

(b) *Gear restrictions.* (1) No person shall engage in commercial salmon fishing using other than troll fishing gear (as defined in § 661.3) in the Fishery Management Area; however, in subareas E and F troll fishing gear need not be affixed to the fishing vessel as specified in § 661.3.

(2) No person shall engage in commercial salmon fishing in the Fishery Management Area using other than single barbless hooks as defined in § 661.3; or bait hooks with whole natural bait attached as the primary bait; or hooks on artificial salmon plugs not less than five (5) inches long in the following areas during the following periods:

Subarea	Season
A	May 1–31.
B	May 1–31.
C	May 1–31 and after Sept. 5 during season specified in § 661.20(a)(3)(iv).
D	May 1–31.
E	May 1–15.
F	May 1–15.

Gear commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures, are not considered artificial salmon plugs, and must be equipped with barbless hooks during the seasons described above.

(3) No person shall engage in commercial salmon fishing using other than hooks with whole natural bait or salmon plugs not less than five (5) inches long from June 1 to June 15 in subarea C, from the date the commercial coho quota is reached to September 5 in subarea C, or from the date the commercial coho quota is reached to September 8 in that part of subarea D between Cape Blanco and Cape Sebastian. Gear commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures, are not considered salmon plugs and are prohibited during the times specified in this § 661.20(b)(3).

(c) *Length restrictions.* Minimum total lengths of salmon and minimum dressed, head-off lengths of salmon are as follows:

Subareas	Species	Minimum total lengths (inches)	Minimum lengths for dressed, head-off salmon (inches)
A and B	Chinook	28	21¼
	Coho	16	12
C and D	Chinook	26	19½
	Coho	16	12
E and F	Chinook	26	19½
	Coho	22	16½
All subareas	Species other than Chinook and Coho.	None	None

(d) Steelhead. No person engaged in commercial salmon fishing shall take and retain, or possess any steelhead (*Salmo gairdneri*) within the Fishery Management Area.

(e) *Restriction on use of commercial troll fishing gear for recreational fishing.* No person while on a fishing vessel with troll fishing gear on board shall use any part of that troll fishing gear to engage in recreational fishing for salmon.

§ 661.21 Recreational fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to recreational salmon fishing except as opened by this part or by superseding regulations. All seasons begin at 0001 hours and end at 2400 hours local time on the dates specified herein. Applicable quotas are specified in § 661.22(a)(1).

(1) Subarea A (U.S.-Canada border to Leadbetter Point, Washington):

(i) The season for all salmon species, except coho, begins on May 29 and ends on June 11.

(ii) The season for all salmon species, including coho, begins on June 12 and ends when the recreational coho quota is reached.

(2) Subarea B (Leadbetter Point, Washington, to Cape Falcon, Oregon): The season for all salmon species, including coho, begins on June 12 and ends when the recreational coho quota is reached.

(3) Subarea C (Cape Falcon, Oregon, to Cape Blanco, Oregon): The season for all salmon species, including coho, begins on June 12 and ends when the recreational coho quota is reached.

(4) Subarea D (Cape Blanco, Oregon, to the Oregon-California border):

(i) The season for all salmon species, including coho, begins on May 29 and ends when the recreational coho quota is reached.

(ii) The season for all salmon, except coho, continues from the date the recreational coho quota is reached and ends on October 31.

(5) Subareas E and F (California): The season for all salmon species, including coho, begins on February 13 and ends on November 14.

(b) *Gear restrictions.* (1) No person shall engage in recreational salmon fishing in the Fishery Management Area using other than recreational fishing gear (as defined in § 661.3), to which may be attached not more than one artificial lure or natural bait, with no more than four single or multiple hooks.

(2) No person shall use more than one rod and line for recreational salmon fishing in subareas A, B, C, and D; however, there is no limit to the number of rods and/or lines used for recreational salmon fishing in subareas E and F.

(3) No person engaged in recreational fishing for salmon in subareas E and F may use weights of more than four (4) pounds attached directly to the line.

(4) Recreational fishing gear (as defined in § 661.3) must be held by hand by the angler while the angler is playing a hooked fish and reducing it to possession.

(c) *Length restrictions.* Minimum total lengths of salmon are as follows:

MINIMUM TOTAL LENGTHS (INCHES)

Subareas	Chinook	Coho	Other salmon
A and B	24	16	None.
C and D	[1]None	[1]None	None.
E and F	[2]22	[2]22	None.

[1] In Subareas C and D, recreational anglers must retain the first two salmon taken.
[2] Except that one chinook or coho salmon per day may be less than 22 inches but not less than 20 inches.

(d) *Daily bag limits.* No person shall fish for, or take and retain, or possess more than two salmon per day while recreationally salmon fishing in the Fishery Management Area. In subareas C and D, the first two salmon taken must be retained.

§ 661.22 Inseason adjustments.

(a) *Automatic season closures based on quotas.* (1) Salmon harvest quotas are as follows:

COHO QUOTAS

Subareas	Recreational	Commercial
A	115,000	204,000
B	[1]100,000	[1]89,000
C and D	[1]114,000	[1]488,000
E and F	[2]None	[2]None

[1] These are quotas subject to adjustments based on inseason evaluations of private-hatchery contributions to the harvests or catches, to be made when 75% of any commercial or recreational quota is reached. *See* § 661.22(b).
[2] Coho salmon caught in subareas E and F will count towards the coho quota established for subareas C and D, but if those quotas are reached, only subareas C and D will close.

(2) When a quota for the commercial or the recreational fishery, or both, in any subarea or subareas of the Fishery Management Area is projected by the Regional Director to be reached on or by a certain date, the Secretary shall, by publishing a field order in the **Federal Register**, close the commercial or recreational fishery, or both, as of the date the quota will be reached in that subarea or subareas.

(b) *Adjustment of quotas.* (1) The estimated contributions of private hatchery coho to the quotas for subareas B, C, and D are:

	Subarea B	Subareas C and D
Commercial	10,000	136,000
Recreational	11,000	33,000

When 75% of any coho quota specified in § 661.22(a)(1) for subareas B, C, or D is reached, the Regional Director will review the estimated contributions of private hatchery coho, taking into account coded-wire tag data gathered during the season. If the contribution of private hatchery coho varies from the preseason estimates, the Secretary will modify the coho quotas for subareas B, C, and D accordingly by publishing a field order in the **Federal Register**.

(2) On or before the time that 75% of the commercial coho quota specified in § 661.22(a)(1) for subareas C and D is reached, the Regional Director will estimate the number of coho salmon that will be hooked and released during the open seasons specified in §§ 661.20(a)(3)(iv) and (a)(4)(iii) and (iv), and the Secretary will reduce the commercial coho quota for subareas C and D accordingly by publishing a field order in the **Federal Register**.

(c) *Availability of Data.* The Regional Director will compile in aggregate form all data and other information relevant to the actions described in this section and shall make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way N.E., Seattle, Washington 98115.

(d) *Effective dates.* (1) Any field order issued under this section is effective on the date specified in the field order or on the date the field order is filed for public inspection with the Office of the Federal Register, whichever is later.

(2) Any field order issued under this section will remain in effect until the expiration date stated in the order, or until rescinded or superseded; *Provided, That,* no such field order has any effect beyond the end of the calendar year in which issued, at which time provisions of this part that were superseded by such field order again become effective until subsequently modified or superseded.

(e) Nothing contained in this part limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act, if the Secretary determines that an emergency involving the salmon resource exists. Such emergency regulations are effective upon filing for public inspection with the Office of the Federal Register.

§ 661.23 Treaty Indian fishing.

(a) *Makah Tribe.* Persons authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah may fish for all salmon species only in ocean areas where that Tribe is entitled by Federal judicial determination to exercise its treaty fishing rights, including that portion of subarea A north of 48°07'36" N. latitude (Sand Point) from 0001 hours on May 1 to 2400 hours on October 31. Minimum size limits are 24 inches for chinook salmon and 16 inches for coho salmon.

(b) *Quileute, Hoh, and Quinault Tribes.*—(1) *Quileute and Hoh.* Persons authorized by the Quileute and Hoh Tribes to exercise fishing rights under the Treaty of Olympia may fish for all salmon species only in ocean areas where those Tribes are entitled by Federal judicial determination to exercise their treaty fishing rights, including that portion of subarea A south of 48°07'36" N. latitude (Sand Point) and north of 47°31'42" N. latitude (mouth of Queets River), from 0001 hours on May 1 to 2400 hours on September 7.

(2) *Quinault Tribe.* Persons authorized by the Quinault Tribe to exercise fishing rights under the Treaty of Olympia may fish for all salmon species only in ocean areas where that Tribe is entitled by Federal judicial determination to exercise its treaty fishing rights, including that portion of subarea A south of 47°40'06" N. latitude (Destruction Island) and north 46°53'03" N. latitude (Point Chehalis), from 0001 hours on May 1 to 2400 hours on September 7.

(3) *Closed areas.* Salmon fishing, by persons specified in this paragraph (b), in those areas of the FCZ within a six-mile radius from the center of the midpoints of the baselines closing the mouths of the Queets and Hoh Rivers is prohibited during any period when subarea A is closed to all non-Indian salmon fishing.

(4) *Minimum size limits.* Minimum total lengths of salmon for persons specified in this paragraph (b) are chinook—26 inches; and coho—16 inches.

(c) *Exceptions.* Unless otherwise specified by this section, persons specified in paragraphs (a) and (b) of this section are subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act, except that the restrictions contained in § 661.20 (b)(1), (d) and (e) and § 661.21 (b) and (d) do not apply.

(d) The Secretary will give due consideration in promulgating emergency regulations to the treaty fishing rights of Indian tribes with Federally adjudicated usual and accustomed fishing grounds in the area affected by such regulations.

§ 661.24 Experimental fisheries.

(a) The Pacific Council may recommend to the Regional Director that experimental fisheries for research purposes be allowed in the Fishery Management Area, as may be proposed by the Council, the Federal Government, State Governments, and treaty Indian tribes having usual and accustomed fishing grounds in the Fishery Management Area.

(b) The Regional Director shall not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (Section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Regional Director is subject to all provisions of this part, except those portions necessarily relating to the purpose and nature of the experimental fishery. These exceptions will be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter must be carried aboard each participating vessel.

§ 661.25 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific or oceanographic research in the fishery management area by a scientific research vessel. The Regional Director shall acknowledge any notification he might receive of any scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Regional Director shall transmit copies of such letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

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V 47 / 96 MAY 18 82 UMI

Proposed Rules

Federal Register
Vol. 47, No. 96
Tuesday, May 18, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 752

Schedule B Appointment Authority for Professional and Administrative Career Positions; Correction

Note.—This document originally appeared in the Federal Register of Monday, May 17, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Office of Personnel Management.

AGENCY: Office of Personnel Management.

ACTION: Republication of proposed regulations; correction.

SUMMARY: On May 11, 1982, (47 FR 20264) the Office of Personnel Management published proposed regulations to amend 5 CFR Parts 213 and 752. Because the proposal as published contained invadvertent errors, the proposed regulations are republished in their entirety with corrections.

These proposed regulations establish a new appointing authority which agencies may use during a period when the Office of Personnel Management does not have a register of eligibles for use in filling professional and administrative career positions subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. This new authority is applicable only when agencies must utilize external recruiting and hiring procedures to fill such positions. The proposed regulations also contain an amendment to extend adverse action protections to individuals appointed under the new authority.

DATE: Comments must be received on or before June 16, 1982.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Part 213: William Bohling—(202) 632–6000.

Part 752: Cynthia Field—(202) 254–5517.

SUPPLEMENTARY INFORMATION: On November 19, 1981, the United States District Court for the District of Columbia entered a decree in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. Defendants in that lawsuit included the Director of the United States Office of Personnel Management (OPM) and the heads of 45 other Federal departments, agencies, and establishments in the Legislative and Executive Branches of the United States Government. Pursuant to that decree, OPM must eliminate the use of the Professional and Administrative Career Examination (PACE) and registers of eligibles derived therefrom. At the present time, OPM has no equivalent register of eligible applicants for entry-level professional and career positions and, pending further notice, will not establish such a register.

Because of substantial reductions in Federal governmental operations and spending, most agencies will not engage in significant outside hiring for the probable life of the decree. Instead, agencies generally will fill many vacancies that arise either by internal placement; by reinstatment of individuals with career status; or by interagency transfer to accommodate Federal employees who have been displaced by reduction in force, abolition of function, reogranization, or some other agency action taken either to achieve compliance with budgetary or personnel ceiling limitations or to accomplish desirable program changes. In filling vacancies, agencies will give precedence to individuals with priority placement rights and will make maximum use of available applicant sources such as (a) OPM Displaced Employee and VIPP lists and (b) agency repromotion and reemployment priority lists.

OPM recognizes, however, that agencies may experience vacancies in positions that were covered by the PACE on the effective date of the consent decree and that can be filled only through external hiring at the GS–5 and GS–7 entry levels. In the absence of OPM registers of eligible applicants for such positions, and in the event that agencies need to make external appointments to such positions, the agencies must have a special authority to do so. Thus, OPM, pusuant to its authority under Civil Service Rule VI, has determined that such entry-level professional and administrative career positions at the GS–5 and GS–7 grades should be excepted from the competitive service on a case-by-case, position-by-position basis when it is necessary to fill those positions through external hiring. Excepting these positions from the competitive service and placing them in Schedule B is appropriate because, given the elimination of PACE and the unavailability of alternative written tests and other merit selection procedures, it is impracticable to hold competitive examinations for the positions.

The Director of OPM finds that, on account of the urgent needs of several agencies to effect appointments to positions that were formerly covered by PACE, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects

5 CFR Part 213

Goverment employees.

5 CFR Part 752

Administrative practice and procedures, Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. 5 CFR 213.3202 is amended by adding paragraph (1) to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(1) Professional and administrative careeer (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, and which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and when no qualified applicant already in the competitive service is available for appointment thereto, and the agency has made maximum use of priority placement sources, then the agency may apply to OPM for authority to make a new appointment under this paragraph. Such appointments shall be made pursuant to such Schedule B authorities for PAC positions as shall be prescribed in the Federal Personnel Manual. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration by the agency that the employee has met qualifications on the basis of either an examination, review of the employee's performance, or such other means as may be prescribed for such position by civil service laws, rules, and regulations. Terms of service under this appointment authority shall be established by a delegation agreement to be executed for each position excepted from the competitive service pursuant to this authority.

PART 752—ADVERSE ACTIONS

(2) 5 CFR 752.401(b) is amended by adding paragraph (4) to read as follows:

§ 752.401 Coverage.

* * * * *

(b) *Employees covered.* The following are covered by this subpart: * * *

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this title, provided that the employee has completed a trial period of one year after initial appointment in such a position.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577.

[FR Doc. 82-13435 Filed 5-13-82; 4:08 pm]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. ERPA–2]

Egg Research and Promotion Order; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments

Correction

In FR Doc. 82–12633, appearing at page 20258, in the issue of Tuesday, May 11, 1982, make the following change:

On page 20259, in the first column, the 8th line from the top, should read "case each year thereafter up to the 10-cent".

BILLING CODE 1505-01-M

Rural Electrification Administration

7 CFR Part 1701

Appendix A—REA Bulletins; Proposed "File With" To REA Bulletins 320–1, 320–4 and 320–14

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins by issuing a "File With" to REA Bulletin 320–1, "Preloan Procedures for Rural Telephone Cooperatives", REA Bulletin 320–4, "Preloan Procedures for Telephone Loan Applicants", and REA Bulletin 320–14, "Loans for Telephone System Improvements and Extensions".

This "File With" will amend these bulletins and all bulletins inconsistent herewith concerning the financing of headquarters facilities, furniture and office equipment, vehicles and other work equipment, station apparatus and associated inside wiring. Except as otherwise determined by the Administrator, these items will be financed by the borrower from general funds or non REA loans. For these purposes, REA includes the Rural Telephone Bank and guarantees of loans.

The proposed "File With" will ensure that all REA telephone borrowers are treated equitably in the financing of facilities to furnish or improve telephone service in rural areas and will enable REA to make optimum use of available loan funds.

DATE: Public comments must be received by REA no later than: July 19, 1982.

ADDRESS: Submit written comments to Joel M. Babb, Chief, Loans, Management and Marketing Branch, Telecommunications Management Division, Room 2913-South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Henry I. Buchanan, Borrower Loans, Management and Marketing Specialist, Telecommunications Management Division, Room 2913-South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number (202) 382–8548. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available upon request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend REA Bulletin 320–1, "Preloan Procedures for Rural Telephone Cooperatives", REA Bulletin 320–4, "Preloan Procedures for Telephone Loan Applicants" and REA Bulletin 320–14, "Loans for Telephone System Improvements and Extensions", by issuing a "File With" to the Bulletins. 7 CFR Part 1701, Appendix A—REA Bulletins, will be amended to include the proposed "File With" upon its issuance as a final rule. This proposed action has been issued in conformance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action is not subject to the Regulatory Flexibility Act or to OMB Circular A–95 review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. All written submissions made pursuant to this action will be made available for public

inspection during regular business hours at the above address.

The text of the proposed "File With" is as follows: *Change in REA policy on financing certain telephone facilities:* REA has revised its policy concerning financing of the following items: Headquarters facilities, furniture and office equipment, vehicles and other work equipment, station apparatus and associated inside wiring.

Except as otherwise determined by the Administrator, these items will be financed by borrowers from general funds or non-REA loans. For these purposes, REA includes the Rural Telephone Bank and guarantees of loans.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Loan programs—communications, Telecommunications, Telephone.

Dated: May 3, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-13449 Filed 5-17-82; 8:45 am]
BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

General License For Shipment in Packages Approved for use by Another Person

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations concerning the transportation of radioactive material. Specifically, it is proposing to change recordkeeping requirements of the general license authorizing an NRC licensee to use a package that the Commission has previously evaluated and specifically authorized another licensee to use. Currently, as a condition of the general license, the general licensee must possess copies of all documents referred to in the Commission's specific authorization. This proposed amendment would require the general licensee to possess only those drawings and other documents relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment.

DATES: Comment expires June 17, 1982. Comments received after June 17, 1982 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed amendment may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donovan A. Smith, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 443–5825.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is considering amending its regulations to modify the recordkeeping requirements of the general license for shipment in packages specifically approved by the Commission or by a foreign national competent authority. The proposed amendment to § 71.12 pertains to the documents which users of the general license must possess. The amendment will have no effect on other NRC requirements in 10 CFR Part 71 "Packaging of Radioactive Material for Transport and Transportation of Radioactive Material under Certain Condition," for packaging and transportation of radioactive material.

Background

In 1970 the U.S. Atomic Energy Commission (AEC) amended its transportation regulations to provide a general license for the use of packages used to ship licensed material which the Commission had previously evaluated, found to meet the standards of Part 71, and specifically authorized another licensee to use. Prior to that amendment, a licensee was required to apply to the Commission and obtain specific authorization to use a package even though another licensee was already licensed to use it for the same radioactive material. The procedure prior to that amendment involved unnecessary paperwork by the Commission and its licensees without any increase in the safety of the shipments.

The general license procedures adopted in 1970 provided authority for any AEC licensee to use any package which had been specifically licensed by the AEC for this use if the general licensee (1) had a copy of the specific license and related documents authorizing use of the type of package, (2) complied with the terms and conditions of the specific license, and (3) notified the AEC of the specific licensee's name and license number and the model number of the packaging.

The general license published by AEC (now in § 71.12 of NRC regulations) has been effective in reducing paperwork; however, one of its requirements has caused questions about the documents which the general licensee must possess. The general licensee must have a copy of "* * * all documents referred to in the license, certificate, or other approval * * *"

The specific approval issued by the Commission refers to the entire application, as supplemented, which was submitted in requesting approval of the package. Applications include safety analyses to demonstrate that the package is adequate to meet the regulations in Part 71. These analyses include detailed information on, for example, codes and standards that were used during structural evaluations to determine material properties, design limits, and methods of combining loads and stresses. The analyses also include operating procedures for loading and unloading the package, preparation of an empty package for transport, and a maintenance program for packages. (Guidance to applicants for package approval is given in NRC Regulatory Guide 7.9, "Standard Format and Content of Part 71 Applications for Approval of Packaging of Type B, Large Quantity, and Fissile Radioactive Material.")

By letter dated March 10, 1980, the Foster Wheeler Energy Corporation filed a petition for rulemaking (Docket No. PRM 71–8) requesting that the Commission exempt persons licensed under 10 CFR Part 34 for industrial radiography from the requirement for the general licensee to have a copy of all the documents referred to in the specific approval. In considering this petition, the Commission has noted that although all the referenced documents may have been important in the package designer/manufacturer's demonstration of package adequacy, some of the documents may be of questionable value to subsequent users of the package under a general license. As the petitioner suggested, the requirement for the general licensee to possess "all" referenced documents may cause acquisition and retention of some documents which would not contribute to safety of shipments.

Upon consideration of the information that would contribute to safe shipment, it appears appropriate to modify § 71.12(b)(1)(i) so that the general

licensee will not be required to have "all" referenced documents, but will be required to have those drawings and other documents which relate to the use and maintenance of the packaging and to the actions to be taken prior to shipment. Additional guidance on the drawings and other documents which will be required to be kept by the general licensee is provided in sections 1, 7 and 8 of NRC Regulatory Guide 7.9.

The proposed amendment also would revise § 71.12(c) to clarify the requirement for the general licensee's possession of documents when using foreign-approved packaging. Presently, the general licensee must have "* * *the documents referenced * * *" in the certificate that was issued by the foreign national competent authority. The proposed amendment would require the general licensee to have "* * * the drawings and other documents referenced * * *" in the certificate. This addition of specific reference to drawings will make no change in the substance of § 71.12(c), but it will help to emphasize the importance of drawings in the use and maintenance of the packaging and in the actions to be taken prior to shipment.

The Regulation

The proposed amendment of § 71.12(b)(1)(i) would modify the requirement that the general licensee have all documents referred to in the Commission's specific approval of the package. As modified, the regulation would require that the general licensee have those drawings and other documents relating to use and maintenance of the packaging and to the actions to be taken prior to shipment.

The proposed amendment of § 71.12(c)(1) would clarify that the requirement for users of foreign-approved packages to possess documents relating to use and maintenance and preparation of the packages for use, includes an obligation to possess pertinent drawing.

Paperwork Reduction Act Statement

Upon issuance of a final amendment, the Office of Management and Budget will be notified of the reduction of a recordkeeping requirement contained in Part 71.

Regulatory Flexibility Certification

Since these amendments would reduce a present recordkeeping requirement, the Commission, in accordance with sec. 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Persons using the general license in § 71.12 will be required to possess fewer documents and thus will incur a reduction of approximately 50 percent in paperwork and recordkeeping costs.

List of Subjects in 10 CFR Part 71

Hazardous materials transportation, Nuclear materials, Packing and containers, Penalty, Reporting requirements.

PART 71—PACKAGING OF RADIOACTIVE MATERIAL FOR TRANSPORTATION AND TRANSPORTATION OF RADIOACTIVE MATERIAL UNDER CERTAIN CONDITIONS

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 71 is contemplated.

1. The authority citation for 10 CFR Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232 and 2233); secs. 201, 202 and 206, 88 Stat. 1242, as amended, 1244, and 1246 (42 U.S.C. 5841, 5842 and 5846).

Sections 71.4(r) and (s), 71.5a and 71.5b also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), §§ 71.3, 71.5(a) and (b), 71.31, 71.32, 71.33, 71.42(a) and (b), 71.52, 71.53, 71.54 and 71.55 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.51(a), 71.61, 71.62 and 71.63 are issued under sec. 161o, 68 Stat. 950, as amended, (42 U.S.C. 2201(o)).

2. Section 71.12 is amended by revising paragraphs (b)(1)(i) and (c)(1) to read as follows:

§ 71.12 General license for shipment in DOT specification containers, in packages approved for use by another person, and in packages approved by a foreign national competent authority.

A general license is hereby issued by persons to holding a general or specific license issued pursuant to this chapter, to deliver licensed material to a carrier for transport provided the licensee has a quality assurance program whose description has been submitted to and approved by the Commission as satisfying the provisions of § 71.51.

* * * * *

(b) In a package for which a license, certificate of compliance or other approval has been issued by the Commission's Director of Nuclear Material Safety and Safeguards or the Atomic Energy Commission, provided that:

(1) The person using a package pursuant to the general license provided by this paragraph:

(i) Has a copy of the specific license, certificate of compliance, or other approval authorizing use of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment.

* * * * *

(c) In a package which meets the pertinent requirements in the 1967 regulations of the International Atomic Energy Agency and the use of which has been approved in a foreign national competent authority certificate which has been revalidated by the Department of Transportation: *Provided,* That the person using a package pursuant to the general license provided by the paragraph:

(1) Has and complies with the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

* * * * * *

Dated at Bethesda, Maryland, this 7th day of May 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-13448 Filed 5-17-82; 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 398

[PSDR-77; Docket No. 40620]

Guidelines for Individual Determinations of Essential Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to clarify its policy on overflights of small communities by airlines providing essential air service there. Airlines would be prohibited from overflying an eligible point except when the overflight became necessary due to circumstances beyond the airline's control or when the eligible point's essential service was already being provided by other flights.

DATES: Comments by: July 16, 1982.

Comments and other relevant information received after this date will

be considered by the Board only to the extent practicable.

Requests to be put on the Service List: June 1, 1982.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40620, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Patrick V. Murphy, Jr., Chief, Essential Air Services Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673–5408; or David Schaffer, Office of the General Counsel, Rules & Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673–5442.

SUPPLEMENTARY INFORMATION: Under section 419 of the Federal Aviation Act, all communities that are eligible points are assured that they will continue to receive at least essential air transportation. Eligible points are communities that were listed on an air carrier's section 401 certificate on the date the Airline Deregulation Act of 1978 (Pub. L. 95–504) was enacted (October 24, 1978), and other communities that are designated eligible points by the Board under 14 CFR Part 270. Section 419(a)(2) requires the Board to set essential air service levels for eligible points that are served by not more than one certificated air carrier. The Board has established procedures and guidelines for setting these air service levels in 14 CFR Parts 325 and 398. For each eligible point covered by section 419(a)(2), it has issued an order setting forth the number of flights and seats that must be provided to that community and has named the carrier or carriers that it is relying on to provide that service. These carriers cannot terminate service at those points unless they have complied with the notice obligations of section 419(a)(3) or (b)(7) and 14 CFR Part 323, and another carrier has been designated to provide the essential service.

In the administration of the essential service program, questions and problems have arisen concerning the practice of some carriers of overflying an eligible point. Overflights may occur when no persons have given notice at the eligible point that they wish to board and no passengers on the plane seek to deplane there. In Order 81–12–103, involving service by Air Illinois at El Dorado/Camden, Arkansas and Natchez, Mississippi, the Board confronted this problem and decided that, with a few exceptions, overflights of eligible points do not qualify as essential air service. The conclusion was reached in the context of a proceeding to establish a final rate of compensation for Air Illinois' forced service at those communities. The question there was whether the Board could pay for the flights that had overflown the eligible points. The Board found, at page 2, that it was "not authorized under section 419 to pay compensation for such service." This proposal is to clarify the Board's position on the broader questions of whether, compensation issues aside, overflights would ever be permitted at points guaranteed essential air service under section 419 of the Act.

The Board tentatively concludes that as a general matter overflights of eligible points are not permitted and a policy statement is proposed below on this subject. This conclusion is based on both legal and policy grounds.

Section 419(f) of the Act sets the minimum level of essential service for all communities, except those in Alaska, as two round trips per day, five days per week or the level of service that existed in 1977, whichever is less. Section 102(a)(8) emphasizes the importance of maintaining "continuous scheduled airline service for small communities and for isolated areas." It is clear that Congress intended to ensure communities scheduled airline service on a regular basis, not merely on-demand service. Yet a practice of overflying a point would turn the scheduled service into an on-demand type of operation.

Predictability is an important factor in the success of local air service. Many people show up for a flight without having made a reservation, relying on the schedule that states that the flight is going to be there. They have a right to expect that the plane will board on schedule unless there is a good reason that prevents it.

A Board policy of permitting overflights may also damage the long-term potential of the air service market at eligible points. Carriers may be tempted to take advantage of such a policy and overfly a point not only when there are no passengers there, but also when there are too few to make the run profitable. Travelers, in turn, may lose faith in the reliability of their local air transportation and begin driving to their destination or to another airport. The dwindling number of passengers is likely to lead both to further deterioration in local air serivce and to increasing subsidy costs. These are the reasons for the proposed policy statement set forth below.

Although eligible points are broadly defined in the Act as including all communities that were listed on an airline's certificate in 1978, this notice is only concerned with overflights in essential air service (EAS) markets. These are the markets which the Board has decided that air service is essential for the eligible point. When the Board makes an essential air service determination for a point, it designates the hub or hubs to which the community is guaranteed air service. The route between the designated hub and the eligible point is the essential air service (EAS) market. The Board also establishes a number of seats and flights that the carrier must provide in the essential air service market. As long as the carrier provides the required number of flights and seats, it may overfly the eligible point on its additional flights. It also may, of course, overfly points in markets where the Board has not made an EAS determination. To the extent, however, that it does not provide the required number of flights or seats in the EAS market, either as a result of not providing the flights at all or by overflying the point, it is in violation of the Act and the Board's essential service guarantee for the point.

Where a carrier is not receiving compensation for serving the eligible point, it could also overfly that point when another carrier's flights were making up the shortfall in service caused by the overflight. If the carrier is receiving compensation, however, it could not rely on the service of another carrier as justification for overflying an eligible point unless it first received permission from the Board. When the Board pays a subsidy to a carrier it is buying an agreed-on amount of service. While changed circumstances, such as another carrier serving the point, may justify overflights or other changes in its service pattern, the carrier may not take it upon itself to make this change without consulting the Board.

There may be some situations where overflying an eligible point is justified. For instance, in bad weather it may be impossible for the aircraft to land. The test would be whether the situation was beyond the control of the carrier. If it were, then the overflight would be permitted.

The proposed policy statement also contains an exception for essential air

service in Alaska. Under an agreement with the Alaska Transportation Commission, authorized by section 419(f)(2) of the Act, the Board has decided that the essential service needs of some Alaskan communities will be met by on-demand service. For those communities, overflights would be permitted to the extent that the essential service determination of the particular eligible point would permit them.

There may be other situations not contemplated here where overflights would be justified. In such cases, the Board would consider granting an exemption from section 419(f) and a waiver of this rule to permit an on-demand type of operation.

The policy statement proposed here would apply to both subsidized and unsubsidized operations. As a practical matter, however, the problem is likely to arise only at points receiving subsidized service, because it is only at those points that traffic is likely to be so light that a carrier would wish to overfly.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, Pub. L. 96-354, the Board concludes that this rule, if adopted, may have a significant economic impact on at least some small air carriers and small communities. It is not clear how many would be affected, because it cannot be established precisely how many small air carriers would overfly eligible points in the absence of this rule. Those small air carriers that would otherwise overfly would be adversely affected by their inability under this rule to do so. Small communities, on the other hand, would benefit from the increased reliability of their air service. The only alternative would be to permit overflights that could lead to a deterioration of air service at small communities.

The need, objective, and legal basis for this policy statement are described above. It would not add any reporting or recordkeeping requirements, or duplicate, overlap, or conflict with other Federal rules.

List of Subjects in 14 CFR Part 398

Air transportation, Essential air service.

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF ESSENTIAL AIR TRANSPORTATION

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 398, *Guidelines for Individual Determinations of Essential Air Transportation*, as follows:

1. A new § 398.10 would be added to the Table of Contents, as follows:

Sec.

* * * * *

398.10 Overflights.

2. A new § 398.10 would be added, to read:

§ 398.10 Overflights.

The Board considers it a violation of section 419 of the Act and the air service guarantees provided to an eligible point under this part for an air carrier providing essential air transportation to an eligible point to overfly that eligible point, except under one of the following circumstances:

(a) The carrier is providing by its other flights the capacity required by the Board's essential air transportation determination for that point;

(b) The carrier is not compensated for serving that point and another carrier is providing by its flights the capacity required by the Board's essential air transportation determination for that point;

(c) Circumstances beyond its control prevent the air carrier from landing at the eligible point;

(d) The flight involved is not in a market where the Board has determined air transportation to be essential; or

(e) The eligible point involved is a point in Alaska for which the Board's essential air transportation determination permits the overflight.

(Secs. 204, 419, Pub. L. 85-726, as amended, 72 Stat. 743, 92 Stat. 1732, 49 U.S.C. 1324, 1389)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-13424 Filed 5-17-82; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 812 3052]

National Association of Scuba Diving Schools, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require a Long Beach, CA. corporation, in connection with the issuance or authorization of various seals of approval, among other things, to cease representing that any diving equipment or product bearing their seal or insignia meets an objective standard of safety or reliability unless such equipment has been competently and credibly tested. The order would bar any misrepresentations concerning the significance of any seal or insignia and would require the corporation to provide those who utilize the seals with a copy of the order and a letter explaining its provisions; discontinue doing business with any user of such seals who does not comply with the order's provisions; and institute a program of reasonable surveillance to ensure compliance with the order.

DATE: Comments must be received on or before July 19, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. & Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Dean Hansell, Los Angeles, Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, CA 90024 (213) 824-7575.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Diving, Marine safety, Seals and insignias.

In the matter of National Association of Scuba Diving Schools, Inc., a corporation, File No. 812 3052 Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the National Association of Scuba Diving Schools, Inc. ("NASDS"), a corporation, and it now appearing that NASDS (hereinafter sometimes referred to as "proposed respondent") is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between NASDS, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent NASDS is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 641 West Willow Street, Long Beach, California 90806.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceedings and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order had been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent National Association of Scuba Diving Schools, Inc., ("NASDS"), a corporation, and its successors and assigns, and respondent's officers, agents, representatives, and employees, jointly or severally, directly or through any corporation, subsidiary, division, or other device, in connection with the issuance or authorization of various seals of approval, emblems, shields, or other insignia in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such seal, emblem, shield, or other insignia, is attached to or affixed to or used in conjunction with any scuba diving or skin diving product, or any other product, as an assurance that such product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such assurance and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

2. Using or encouraging, authorizing, or allowing anyone else to use any such seal, emblem, shield, or other insignia that represents, directly or by implication, that any scuba diving or skin diving product or any other product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such representation and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

3. Misrepresenting, directly or by implication, the significance of any such seal, emblem, shield or other insignia.

II

It is further ordered that respondent shall provide all present and future persons, corporations, partnerships, or other entities who use any insignia of respondent with a copy of this Order and a letter informing such users that they can no longer use the respondent's insignia except in a manner consistent with the provisions of this Order. Respondent shall immediately stop doing business with any user of its insignia if that user acts in a manner inconsistent with the provisions of this Order; and respondent shall institute a program of reasonable surveillance of all users in order to ensure their compliance with this Order.

III

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

IV

It is further ordered that respondent shall within sixty (60) days after service upon it of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which respondent has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the National Association of Scuba Diving Schools, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint accompanying the order alleges that respondent has used and has allowed others to use its seal of approval to promote the sale of scuba and skin diving products. The complaint further alleges that the seal of approval on a diving product represents to consumers that the product has been tested or certified for safety and quality by respondent. In fact, no such testing ever took place. The complaint charges that respondent has, therefore, committed an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

The proposed order prohibits respondent from representing that any seal used with a diving product is a sign that the product meets an objective standard of safety or reliability, unless such product has actually been tested. The proposed order also requires respondent to stop using or allowing other people to use any seal representing that a diving product meets an objective standard of safety and reliability, unless such product has actually been tested. Testing, under the order, must be done competently, thoroughly, and reliably so as to substantiate the representations made for the product, and any material

connection between the tester and the product must be disclosed. The proposed order also bars any misrepresentations about the significance of any seal or other insignia.

Finally, the proposed order requires respondent to provide all users of the seal with a copy of the order and demand that they stop using the seal in a manner inconsistent with the terms of the order. Respondent must also stop doing business with any person who uses the seal in a manner inconsistent with this order, and must begin a program of surveillance to ensure compliance with this order.

The settlement should provide greater assurance to consumers that any scuba or skin diving equipment bearing a seal of approval has passed appropriate tests to ensure that the claims made for the product are true.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-13374 Filed 5-17-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0144]

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use; Correction

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration is correcting an advance notice of proposed rulemaking that would classify hormone-containing drug products for over-the-counter (OTC) human use as not generally recognized as safe and effective and as being misbranded.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-6 appearing in the issue for Tuesday, January 5, 1982, the following correction is made in the first column on page 13326: In the "Summary," in the sixth line, the word "oral" is removed.

Dated: May 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13366 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 951

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: The Crow Tribe submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the Tribe's Plan.

DATE: Written comments on the Plan will be accepted until further notice.

ADDRESSES: Copies of the full text of the proposed Plan are available for review during regular business hours at the following locations:

State Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644;

Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" St., NW., Washington, D.C. 20236.

Written comments should be sent to: William Thomas, State Director, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

The Administrative Record will be available for public review at the State Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming, during regular business hours.

FOR FURTHER INFORMATION CONTACT: William Thomas, State Director, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644. Telephone 307/261-5550.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 et seq., establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State or Tribe has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State or Tribal legislation to implement the provisions of Title IV, the Secretary may approve the State or Tribal program and grant to the State or Tribe exclusive responsibility and authority to implement the provisions of the approved program.

OSM received a proposed abandoned mine land reclamation plan from the Crow Tribe. The purpose of this submission is to determine both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter 7, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 44 FR 49932-49952.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Secretary's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State or Tribal AMLR Plan are found in 30 CFR 884.13 and 884.14 (44 FR 49948). Additional information may be found under corresponding sections of the preamble to OSM's AMLR Program Final Rules (44 FR 49932-49940).

The receipt of the Crow Tribe's Plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands on the Crow Tribe's Reservation.

By submitting a proposed Plan, the Crow Tribe has indicated that it wishes to be primarily responsible for this program. If the submission, as hereafter modified, is approved by the Secretary, the Crow Tribe will have primary responsibility for the reclamation of abandoned mine lands on the Crow Tribe Reservation. If the program is disapproved and the Tribe does not choose to revise the Plan, a Federal AMLR Program will be implemented and OMS will have primary responsibility for these activities.

Representatives of OSM's State office or of the Division of Abandoned Mine Land Reclamation will be available to meet at the request of members of the public to receive their advice and recommendations concerning the proposed Crow Tribe AMLR Plan. To arrange for such meetings contact the person listed above under "For Further Information Contact."

The Department intends to continue to discuss the Crow Tribe's proposed Plan with representatives of the Tribe throughout the review process. All contacts between OSM personnel and representatives of the Tribe will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

Pursuant to 30 CFR 884.14, OSM will continue the period of review of the proposed Crow Tribe Plan until a decision is made by the Secretary of the Interior on his authority to approve the abandoned mine land reclamation program submissions of the Tribes.

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Office of Surface Mining has determined that the Crow Tribe Abandoned Mine Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the Tribe's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual 5162.3(A)(1), the Office's decision on the Crow Tribe's Plan is categorically excluded from the National Environmental Policy Act process. As a result no Environmental Assessment or Environmental Impact Statement has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with approval of the Pub. L. 95–87 Title IV abandoned mine land regulations. Moreover, an environmental analysis or an environmental impact statement will be prepared for the approval of the grants for the abandoned mine land reclamation projects under 30 CFR 886.

The Crow Tribe Reclamation Plan for Abandoned Mine Lands can be approved if:

1. The Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The Tribe has the legal authority, policies and administrative structure to carry out the Plan.

4. The Plan meets all the requirements of the OSM, AML Program provisions.

5. The Tribe has an approved Regulatory Program.

6. It is determined that the Plan is in compliance with all applicable State/Tribe and Federal laws and regulations.

The following constitutes a summary of the contents of the Crow Tribe's Reclamation Plan submission:

The Crow Tribe's Division of Natural Resources has been designated by the Chairman of the Crow Tribe to implement and enforce the Abandoned Mine Land Reclamation Program in accordance with SMCRA (Pub. L. 95–87). Contents of the Tribe's Plan submission include:

(a) Designation of authorized Tribal Agency to administer the program.

(b) Tribe's General Counsel's opinion that the designated Agency has the legal authority to operate the program in accordance with the requirements of Title IV of the SMCRA, 30 CFR Subchapter R and the Tribal Reclamation Plan.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives;

(2) Project ranking and selection procedures;

(3) Coordination with other reclamation programs;

(4) Land acquisition, management and disposal;

(5) Reclamation on private land;

(6) Rights of Entry; and

(7) Public participation in the program.

(d) Description of the Administrative and Management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program;

(2) Personnel staffing policies;

(3) Purchasing and procurement systems and policies; and

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the Plan.

(f) A general description of activities to be conducted under the Reclamation Plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map;

(2) General description of the problems identified and how the plan proposes to deal with them;

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses:

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the Plan; and

(5) General description of the social, economic and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base;

(ii) Sociologic and demographic characteristics;

(iii) Significant aesthetic, historic or cultural, and recreational values;

(iv) Hydrology including water quality and quantity problems associated with past mining;

(v) Flora and fauna including endangered or threatened species and their habitat;

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction; and

(vii) Anticipated benefits from reclamation.

List of Subjects in 30 CFR Part 951

Coal mining, Indian lands, Surface mining, Underground mining.

Dated: May 5, 1982

J. S. Griles,

Acting Director, Office of Surface Mining.

Dated: May 10, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

[FR Doc. 82-13425 Filed 5-17-82; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 82-244; RM-3451; FCC 82-204]

Amendment of the Commission's Rules To Delete a Table Limiting the Effective Radiated Power of Stations at Elevations Exceeding 1,500 feet Above Sea Level in a Certain MHz Band in the Los Angeles Urbanized Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to delete the Antenna Height vs. Effective Radiated Power Table which applies to systems operating in TV-shared bands in the Los Angeles area. A Petition for Reconsideration filed by the National Mobile Radio Association requested relief from interference resulting from implementation of the table. Deletion of the table could benefit some existing land mobile systems in Los Angeles, but at the sacrifice of channel re-use capability.

DATE: Comments are due by June 14, 1982 and replies by June 29, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Keith Plourd, Private Radio Bureau, Washington, D.C. 20554 (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative Practice and Procedure, Business and Industry, Industrial Radio Services, Land Transportation Radio Services, Private Land Mobile Radio Services, Public Safety Radio Services, Radiolocation Radio Service, Special Emergency Radio Service.

In the matter of Amendment of § 90.307(f) of the Commission's rules and regulations to delete a table limiting the effective radiated power of stations at elevations exceeding 1500 feet ASL in the band 470-512 MHz in the Los Angeles Urbanized Area, PR Docket No. 82-244, RM-3451, FCC 82-204. *Notice of Proposed Rulemaking.*

Adopted: April 29, 1982.

Released: May 7, 1982.

Summary

1. In this Notice of Proposed Rulemaking, the Commission proposes to delete a rule which applies to private land mobile radio systems in the band 470-512 MHz. The rule (See 47 CFR 90.307(f)) contains a table limiting the effective radiated power of radio systems in Los Angeles, according to antenna height above mean sea level (AMSL). This rule decreases the permitted effective radiated power of base and repeater stations as antenna height AMSL is increased above 1500 feet. The action to delete the table responds to a Petition for Reconsideration filed by the National Mobile Radio Association (NMRA).

Background

2. The rule containing the above-referenced table was adopted on December 10, 1974, during proceedings in Docket No. 20109 (See 49 FCC 2d 1300), which sought to promote frequency re-use by limiting the effective radiated powers of stations sited at high elevations. These stations, because of the unusually high sites available in the Los Angeles urbanized area, have "virtually line-of-sight paths into much of the Los Angeles metropolitan area." (49 FCC 2d 1303, at paragraph 10.) Recognizing that the siting of these stations was a hindrance to channel re-use, the Commission adopted the table limiting base and repeater stations' effective radiated power (ERP), in order to prevent destructive interference to co-channel stations spaced a minimum of 40 miles apart. (See 47 CFR 90.313.) Systems which exceeded the new ERP limits at the time were given until January 1, 1980, to comply with the table. Prior to this compliance date, NMRA (then, the California Mobile Radio Association, or CMRA) petitioned the Commission to delete the table (RM-3451). The Commission denied the requested relief on October 21, 1980, in a Memorandum Opinion and Order. (See 83 FCC 2d 141.) On December 2, 1980, NMRA petitioned for reconsideration of this decision. Since that time, the Private Radio Bureau, under delegated authority, has stayed the effectiveness of the table at the request of NMRA pending Commission action on NMRA's Petition for Reconsideration, which supplied new information.

3. The Petition for Reconsideration (Petition) pointed to an increased potential for interference due to reduced powers, NMAR submitted an engineering statement to support that contention. The Petition further stated that re-use is not possible, anyway, because the transmitters on which many licensees operate cover much of the same portions of the Los Angeles basin, due to the close spacing permitted between co-channel transmitters. NMRA stated that because re-use is not feasible, given the present siting of stations in this band in Los Angles, the table should be deleted to alleviate the interference problem.

4. In the engineering statement submitted on behalf of NMRA, the Petitioner purported to show how reducing the effective radiated power of community repeaters which simultaneously serve the Los Angeles basin would result in greater likelihood that mobile units would not hear co-channel communications as they monitor the frequency before transmitting. (See 47 CFR 90.403(e).) In addition, the study noted that the R-6602 [1] curves used to set up the table were not appropriate for that purpose, since the curves are not applicable to abrupt changes in geography, as is the case in Los Angeles. As a consequence, the radiated patterns, which differs from patterns in other cities, conflict greatly with the requirement for mobile units to operate within 30 miles of their associated base or repeater station. The abrupt changes in topography in Los Angeles distort the signal strength contours in comparison to what we would expect from analysis using R-6602 curves. This would result from "terrian roughness" factors in Los Angeles which exceed those upon which R-6602 was based. Thus, in many cases, signals cannot be received in areas close to the transmitter, while they simultaneously come in strong in locations much more than 30 miles away.

5. In addition to NMRA's submissions, there is also material before us which maintains that restricting the power of existing systems will result in "dead spots" in system coverage—particularly in local governmental systems—and will require substantial expenditures by these entities, if they are to assure communications throughout the entire geographic area for which they are responsible.

6. It is clear that conversion of present systems may increase the costs to local

[1] See FCC Report No. R-6602 September 7, 1966, entitled "Development of VHF and UHF Propagation Curves for TV and FM Broadcasting," reprinted May 1974.

government entities. We do not view the interference within the Los Angeles area argument as particularly persuasive, however, as a basis for deletion of the Table. On the other hand there is an issue as to whether there can be feasible geographic re-use of these channels. Additionally, the Commission has undertaken a study [2] of the land mobile interference problems in Southern California including potential ducting interference effects between Los Angeles and San Diego. We will, therefore, tentatively propose the deletion of the Table in order to expedite action, should our study of ducting demonstrate this is desirable. We are doing this because of the time that has already elapsed since this petition was submitted. However, we emphasize that a final decision on this matter will not be made until the results of this study and the comments are thoroughly analyzed.

7. Accordingly, we propose to delete § 90.307(f) in its entirety, and to delete the Antenna Height vs. Power table which is reproduced on "Figure 'A,' Power Reduction Graphs, 50 dB Protection," contained in § 90.311 of our rules. (See 47 CFR 90.311.) These amendments are set out in the Appendix below.

8. We encourage all interested parties to respond to this Notice since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule-making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting of until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Secretary for inclusion in the public file. Any person who initiates an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

9. Authority for issuance of this notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before June 14, 1982, and reply comments on or before June 29, 1982. Timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemakings is available from the Commission's Consumer Assistance Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632–7000.

10. In accordance with the provisions of § 1.419 of the Commission's rules, an original and five copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

11. The commission has determined that sections 603 and 604 of the Regulatory Flexibility act of 1980 (Pub. L. 96–354) do not apply to this rule-making proceeding. These rules which propose to relieve an existing burden on small entities will not if promulgated, have a significant economic impact on a substantial number of small entities because the rule is confined to operations in the Los Angeles metropolitan area. Further, the proposed amendment, if adopted, imposes no new recordkeeping, reporting or other requirement upon license applicants or holders. Accordingly, the Commission certifies that sections 603 and 604 of the Regulatory Flexibility Act do not apply to these proceedings.

12. For further information concerning this rulemaking proceeding, contact Keith Plourd (202) 632–6497.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission,
William J. Tricarico,
Secretary

Appendix

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The Commission proposes to amend 47 CFR, Part 90, as follows:

§ 90.307 [Amended]

1. Amend §90.307, *Protection criteria,* by removing paragraph (f) and the reference to paragraph (f) in paragraph (b).

§ 90.309 [Amended]

2. Amend § 90.309, *Frequencies,* by removing Footnote 2 on Figure 'A', Power Reduction Graphs, 50 dB Protection," as indicated on the following page.

BILLING CODE 6712-01-M

[2] This Southern California Propagation Project was begun in September 1981 as a result of a large number of compliants concerning interference between co-channel stations in the private radio service located in the Los Angeles/San Diego area.

1 Directions for using this graph:
1. Determine antenna height above average terrain.
2. Locate this value on the antenna height axis.
3. Determine the separation between the LM antenna site and the nearest protected co-channel TV station.
4. Draw a vertical line to intersect the LM/TV separation curve at the distance determined in step 3 above. For distances not shown on the graph, use linear interpolation.
5. From the intersection of the LM/TV separation curve draw a horizontal line to the power reduction scale.
6. The power reduction in dB determines the reduction below 1 kW that must be achieved.
7. See Table II for dB/power equivalents.

FIGURE "A"

POWER REDUCTION GRAPHS 1/

50 DB PROTECTION

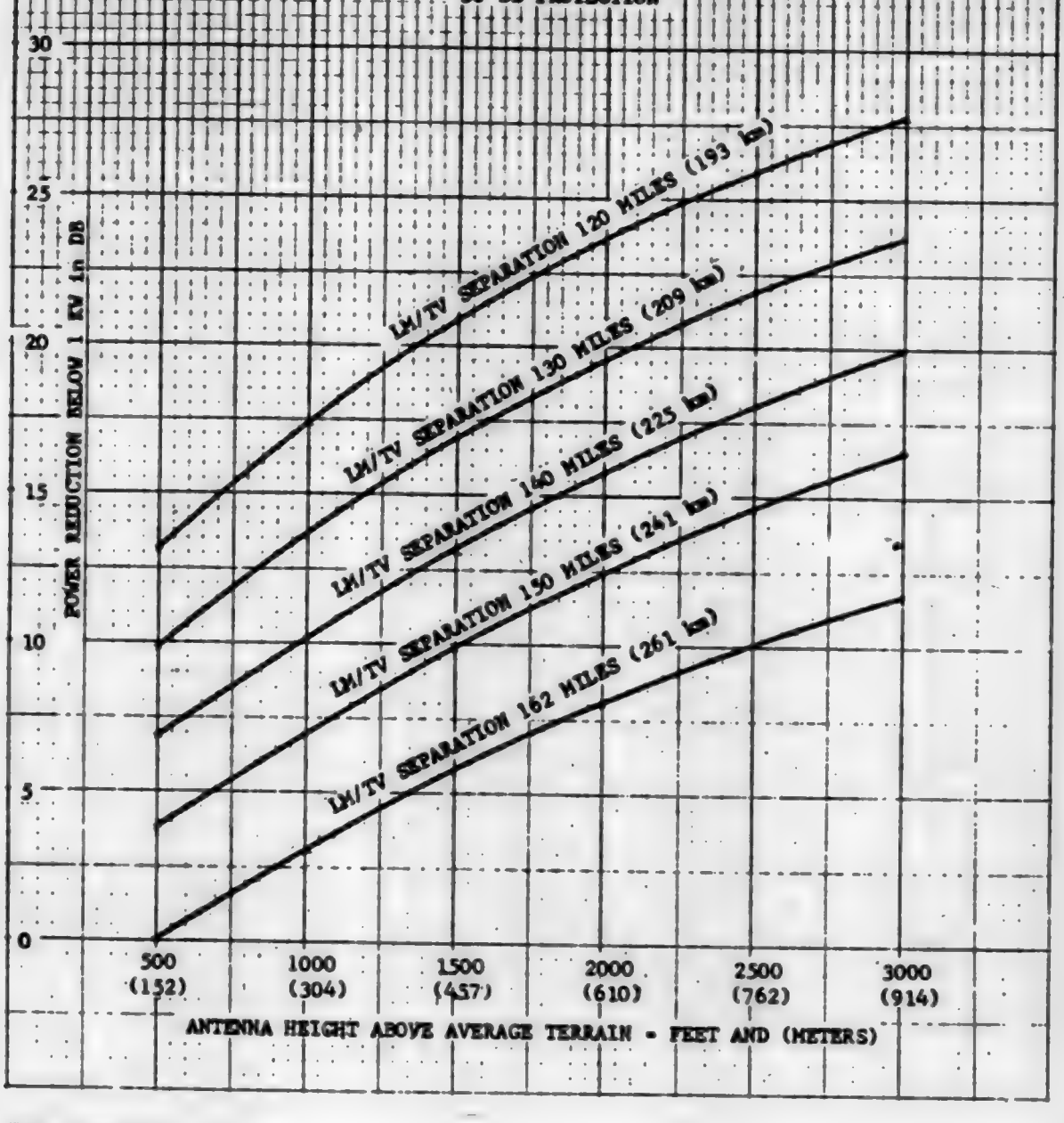

[FR Doc. 82-13339 Filed 5-17-82; 8:45 am]

BILLING CODE 6712-01-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The Assistant Administrator for Fisheries has initially approved the Fishery management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. NOAA announces that copies of the fishery management plan are available, issues this proposed rulemaking to implement the plan, and requests comments on the plan and implementing regulations. The plan and proposed implementing regulations: (1) Provide management measures to minimize conflicts between user groups; (2) establish optimum yields for king and Spanish mackerel and cobia and quotas for king and Spanish mackerel; (3) establish size limits for Spanish mackerel and cobia, (4) provide for observers on vessels harvesting king and Spanish mackerel with purse seines; and (5) establish a minimum mesh size for gill nets used to harvest king mackerel. The intended effect of these regulations is to reduce user-group conflicts and prevent overfishing of the king and Spanish mackerel and cobia stocks.

DATES: Written comments must be received on or before July 2, 1982.

ADDRESSES: Comments and requests for copies of this fishery management plan or the regulatory impact review should be sent to: Mr. Jack T. Brawner, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, st. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mr. Harold B. Allen, 813–893–3141.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries initially approved the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) on April 1, 1982, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). These proposed regulations implement the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils).

The FMP manages the coastal pelagic fishery throughout the fishery conservation zone (FCZ) off the southern Atlantic coastal States from the Virginia-North Carolina border south and through the Gulf of Mexico. The FMP covers Spanish mackerel, king mackerel, cobia, dolphin, bluefish, little tunny and cero mackerel. The last four are minor species in the fishery that are caught incidentally to the directed fishing effort for king and Spanish mackerel and cobia; only data collection requirements of the FMP apply to these minor species. Bluefish are exempt from data collection requirements in the Atlantic because the Mid-Atlantic Fishery Management Council intends to develop a plan for bluefish.

Historically, the majority of the coastal pelagic fishery is conducted from the Virginia-North Carolina border south and in the Gulf of Mexico. Minor commercial catches of Spanish and king mackerel are taken north to the mid-Atlantic States and Chesapeake Bay. However, because these catches always have been less than two percent of the southern catches, they were not used in calculating maximum sustainable yield (MSY). For this reason, regulations would not apply to these areas.

Background

The coastal migratory pelagic (mackerel) fishery of the Gulf of Mexico and south Atlantic is of importance to recreational and commercial fishermen, the businesses directly serving them, and the regional economies. The MSY of the migratory pelagic management unit in the Gulf and south Atlantic is 65 milion pounds. This estimate includes stocks of king mackerel, Spanish mackerel, and cobia.

The recreational fishery occurs both inshore (within three miles of shore) and offshore for Spanish and king mackerel. Recreational surveys indicated that in 1975, anglers caught 33.1 million pounds and in 1979, 15 million pounds. The poor nature of recreational catch statistics makes it difficult to say whether catches have been declining over time. However, expenditures related to recreational fishing have been constantly increasing over time; in 1980, the value of sales related to the management unit was an estimated $103 million with an associated 2,840 person-years of employment.

The commercial fishery for king mackerel is conducted offshore, while the Spanish mackerel fishery occurs in both zones. Commercial landings of king mackerel peaked at 10.5 million pounds in 1974, and Spanish mackerel commercial landings peaked at 16.0 million pounds in 1976. The value of the commercial fishery increased steadily; in 1980, the dockside value of the king and Spanish mackerel fisheries was $8.5 million and its contribution to the Gross National Product exceeded $20 million.

The increasing level of effort in both fisheries may have contributed to a decline in the relative abundance of stocks of both mackerel species. Cobia stocks in particular are overfished. In addition, intense conflicts exist between recreational and commercial users of the mackerel stocks, and between commercial users employing different gears.

Quotas

The Councils established the optimum yield (OY) for king mackerel at 37 million pounds annually. This amount is equal to the best available estimate of MSY and it is expected to balance the risk of overfishing against the chance of failure to maximize utilization of the resource. The total allowable catch is set at OY and is divided into allocations of 28 million pounds for the recreational fishery and 9 million pounds for the commercial fishery. The commercial allocation is further divided between hook-and-line fishermen (3,877,200 pounds) and net fishermen (5,122,800 pounds). Division of the annual quota for king mackerel will prevent one or more groups from taking such a large portion of the harvest that other users are unable to engage in their traditional fishery. The fishery will be closed for a user group, including the recreational fishery, when its allocation has been harvested.

The OY for Spanish mackerel is also set at MSY, which is 27 million pounds annually, with no qotas by user group. This permits some increase in the present catch and allows optimization of economic and social benefits to users. The fishery will be closed when OY is harvested. For both species, catches will be counted against the quotas for the fishing year in which they are harvested, not when they are sold.

The OY for cobia is determined to be the available amount of cobia at a size equal to or greater than a 33-inch fork length, measured from the tip of the head to the center of the tail. This OY will reduce the possibility of recruitment overfishing, stabilize catch at or near MSY, and increase yield and average size of fish. No other catch limitation is set for cobia.

It is anticipated that domestic fishermen will harvest the OYs of king and Spanish mackerel and cobia; therefore, the total allowable level of

foreign fishing is specified as zero for these species.

Size limits

To reduce the potential for overfishing by commercial and recreational fishermen, a size limit of 12 inches is proposed for Spanish mackerel. This will discourage harvest of Spanish mackerel below the size required for optimum biological yield.

A catch allowance for undersized fish will be allowed equal to five percent of the total catch by weight of Spanish mackerel on board. This allowance will provide for any incidental catch and yet will discourage marketing of small fish. The size limit for cobia is 33 inches. There is no size limit for king mackerel.

Gear limitations

A minimum mesh size of 4¼ inches is proposed for king mackerel gill nets. This measaure will eliminate the harvest of small, less valuable fish and will increase the potential yield from the fishery. The use of gill nets for the harvest of king mackerel is extremely controversial and has resulted in intense conflicts between netters and commercial hook-and-liners and recreational fishermen. Commercial hook-and-liners and sport fishermen perceive this management measure as necessary to prevent overfishing of the resource by users of gill nets. The proposed minimum mesh size is consistent with Florida law; presently all gill netting of mackerel takes place in waters off the cost of the State of Florida.

Fishing group conflicts

Procedures are proposed in the FMP to resolve conflicts when they occur between recreational and commercial fishermen and between commercial hook-and-line fishermen and commercial net fishermen. Upon determining that a conflict exists, the Secretary of Commerce (Secretary), after consultation with the Councils, may implement by regulatory amendment such FMP measures as (1) separation of user groups by fishing time and area; (2) prohibition of specific gear; (3) establishment of bag limits for recreational fishermen and trip limits for commercial fishermen; and (4) establishment of a size limit for king mackerel.

In addition, specific measures are proposed for field order action to resolve recurring conflicts between king mackerel gillnet fishermen and hook-and-line fishermen in the FCZ off the southern coast of Florida between 27°00.6′ N. latitute and 27° 50′ N. latitude. These measures include establishment of an area within which the use of gill nets or hook-and-line gear may be restricted, and the establishment of two other areas between 27° 10′ N. latitude and 27° 50′ N. latitude where the use of gear may be alternated or fishing for king mackerel may be prohibited. These measures can be implemented by the Secretary only after consultation with the South Atlantic Fishery Management Council, appropriate law enforcement agencies, the State of Florida agency with fishery management responsibility, and any other persons that the Secretary deems appropriate.

Purse Seines

There presently are no prohibitions against harvesting king and Spanish mackerel with purse seines in the FCZ. However, certain State possession and landing laws have effectively prohibited use of this gear, both in State waters and the FCZ. Implementation of the FMP is expected to affect the validity of these laws as applied to FCZ-harvested fish, and to affect their enforceability in State waters.

Purse seines are very efficient and highly controversial gear. Both Councils and most users of the resource, including purse-seine operators, believe unrestricted purse seining will result in overfishing and in adverse socioeconomic impacts on all users of the mackerel stocks. Since data for evaluating the effect of this gear are inadequate, the Councils have restricted the quantity of mackerel that may be harvested with purse seines (400,000 pounds of king mackerel and 300,000 pounds of Spanish mackerel in the Gulf of Mexico and the same amounts in the Atlantic). Also, the Councils require that all vessels fishing purse seines have observers on board. This will facilitate collecting information on catch per unit of effort and size selectiveness of this gear. Harvest restrictions will protect the resource while these data are collected and appropriate management measures are developed for the control of purse seines.

Statistical Reporting

Better information on landings is needed for effective management of the pelagic fishery. Currently, statistics on commercial landings are based only on data obtained through dealers and processors. Obtaining complete, detailed biological, social, and economic data from each user would be prohibitively expensive. Therefore, NMFS is developing a mandatory reporting system that utilizes sampling methods whenever a sample will provide adequate information. The Center Director, Southeast Fisheries Center, National Marine Fisheries Service, will determine the number of individuals selected, the reporting interval, and the duration of reporting, based on specific management needs.

Because this system has not been completely developed and the forms are not yet prepared, the proposed regulations reserve the section that provides for data reporting. It is anticipated that the mandatory reporting system will be proposed as soon as sampling procedures and reporting forms are developed and approved. The forms will be submitted to the Office of Management and Budget for clearance under section 3507 of the Paperwork Reduction Act, Pub. L. 96–511.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that the plan complies with the national standards, other provisions of the Magnuson Act, and other applicable law.

The adoption and implementation of the FMP is a major Federal action that will have a significant impact on the quality of the human environment. Under the National Environmental Policy Act and NOAA Directive 02–10, a draft environmental impact statement was filed with the Environmental Protection Agency. The notice of availability was published on February 5, 1980 (45 FR 7831).

The Administrator, NOAA, has determined that these proposed regulations are not major under Executive Order 12291. A Regulatory Impact Review (RIR) has been prepared that analyzes the expected benefits and costs of the regulatory action. The review provides the basis for the Administrator's determination. The FMP's management measures are designed to maintain current landings and productivity of each user group, while preventing overfishing of the king and Spanish mackerel and cobia stocks.

The RIR indicates that the proposed regulations will result in benefits to fishermen and the economy that are greater than the associated Federal costs to manage the fishery on a continuing basis. Benefits that will accrue from implementation of the proposed measures come from the prevention of overfishing. The benefit, in terms of pounds of fish, is the difference between the OY specified in the plan and the amount caught after overfishing occurs; in monetary terms, the benefit is the difference between the contribution to the Gross National Product (GNP) by OY and the contribution to GNP associated with the catch after

overfishing occurs. The expected benefits range from $5.6 million to $27.9 million annually over the next five years. Empirical data indicate that the level of fishing effort by commercial and recreational fishermen is increasing rapidly and mackerel stocks and catch will decline if effort increases. The FMP and implementing regulations will not increase the Federal paperwork burden as defined by the Paperwork Reduction Act, because the data collection system will not be implemented at this this time. Section 642.24(b) of the implementing regulations requires that owners or operators of purse seine vessels fishing for king and Spanish mackerel report their catch for each trip by telephone. Since there are fewer than 10 vessels in this fleet, this information is to be gathered from fewer than ten persons, so no "collection of information" is involved under the Paperwork Reduction Act.

These regulations will have a significant impact on a substantial number of small entities, under the Regulatory Flexibility Act. An initial regulatory flexibility analysis has been prepared in compliance with the Regulatory Flexibility Act and has been combined with the RIR summarized above.

The Coastal Zone Management offices from each State having an approved program under the Coastal Zone Management Act and whose territorial waters are adjacent to the management area have reviewed the FMP. These offices have determined the FMP to be consistent with their coastal zone management programs. The States of Georgia and Texas do not have approved programs.

List of Subjects in 50 CFR Part 642

Fish; Fisheries.

Dated: May 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

50 CFR is amended by adding a new Part 642 to read as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

642.1 Purpose and scope.
642.2 Definitions.
642.3 Relation to other laws.
642.4 Permits and fees.
642.5 Recordkeeping and reporting requirements [Reserved].
642.6 Vessel identification [Reserved].
642.7 Prohibitions.
642.8 Facilitation of enforcement.
642.9 Penalties.

Subpart B—Management Measures

642.20 Seasons.
642.21 Quotas.
642.22 Closures.
642.23 Size restrictions.
642.24 Vessel, gear, equipment limitations.
642.25 Specifically authorized activities.
642.26 Area, time limitations.

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 642.1 Purpose and scope.

(a) The purpose of this Part is to implement the Fishery Management Plan for Coastal Migratory Pelagic Resources developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This Part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States within the fishery conservation zone off the Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 642.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this Part have the following meanings:

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305–361–5761.

Coastal migratory pelagic fish means the following species:

King mackeral—*Scomberomorus cavalla*
Spanish mackerel—*Scomberomorus maculatus*
Cero mackeral—*Scombermorus regalis*
Cobia—*Rachycentron canadum*
Little tunny—*Euthynnus alletteratus*
Dolphin—*Coryphaena hippurus*
Bluefish—*Pomatomus saltatrix* (Gulf of Mexico only)

Commerical fisherman means a person who sells any part of his catch.

Dealer means the person who first receives or purchases fish directly from a commercial fisherman.

Fishery conservation zone (FCZ) means that area adjacent to the territorial sea of the constituent States of the United States which, except where modified to accommodate international boundaries, encompassed all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vesels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fork length means the distance from the tip of the head to the center of the tail (caudal fin).

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish products for commercial use or consumption.

Regional Director means the Regional Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813–893–3141, or a designee.

Secretary means the Secretary of Commerce or a designee.

U.S. fish processor means a facility located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) A vessel under five net tons that is registered under the laws of any State.

§ 642.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and south Atlantic FCZ.

§ 642.4 Permits and fees.

No permits or fees are required for domestic recreational or commercial fishing vessels engaged in fishing in the coastal migratory pelagic fishery.

§ 642.5 Recordkeeping and reporting requirements. [Reserved]

§ 642.6 Vessel identification [Reserved].

§ 642.7 Prohibitions.

It is unlawful for any person to:

(a) Fail to comply immediately with enforcement and boarding procedures specified in § 642.8;

(b) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.22 or § 642.26;

(c) Possess in the FCZ Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2);

(d) Possess in the FCZ cobia under the minimum size limit specified in § 642.23(b);

(e) Fish for king mackerel using gill nets with a minimum mesh size less than that specified in § 642.24(a)(1), except for a catch allowance as specified in § 642.24(a)(2);

(f) Fish for king or Spanish mackerel using a purse seine, except in compliance with § 642.24(b);

(g) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this Part, or any other regulation under the Magnuson Act;

(h) Refuse to permit an Authorized Office to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation or permit issued under the Magnuson Act;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (h) of this section;

(j) Resist a lawful arrest for any act prohibited by this Part;

(k) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this Part;

(l) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested pelagic fish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under Section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested pelagic fish; or

(m) Violate any other provision of this Part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 642.8 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Magnuson Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" means "You should stop your vessel instantly,"

(2) "SQ3" means "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." is the call to an unknown station, to which the signaled vessel should respond by illuminating any vessel identification.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and his party if necessary;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 642.9 Penalties.

Any person or fishing vessel found to be in violation of this Part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures) and other applicable law.

Subpart B—Management Measures

§ 642.20 Seasons.

The fishing year for all species of coastal migratory pelagic fish begins on July 1 and ends on June 30.

§ 642.21 Quotas.

(a) *Hook-and-line and net fishing.*—(1) *King mackerel.* The total allowable catch for king mackerel is 37 million pounds per year.

(i) Annual quotas are 28 million pounds for the recreational fishery and 9 million pounds for the commercial fishery. A fish is counted against the commercial quota if it is sold.

(ii) The commercial quota is further divided between hook-and-line fishing and net fishing as follows:

Hook and Line: 3,877,200 pounds
Net: 5,122,800 pounds

(2) *Spanish mackerel.* The total allowable catch for Spanish mackerel is 27 million pounds per year.

(b) *Purse seine fishing*—(1) *King mackerel.* The harvest of king mackerel by purse seines is limited to 400,000 pounds in the Atlantic and 400,000 pounds in the Gulf of Mexico per year. King mackerel harvested by purse seines are included in the net quota under paragraph (a)(1)(ii) of this section.

(2) *Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Atlantic and 300,000 pounds in the gulf of Mexico per year. Spanish mackerel harvested by purse seines are included in the total allowable catch under paragraph (a)(2) of this section.

(3) *Geographic boundary.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and the 83° W. longitude, proceeds north to 24°35′ N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

§ 642.22 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, shall close the king or Spanish mackerel fishery for a particular gear type or user group when the quota is reached for that gear type or user group under § 642.21(a)(1) or (b).

(b) The Secretary, by publication of a notice in the **Federal Register**, shall close the king or Spanish mackerel fishery when the total allowable catch for the fishery under § 642.21(a) (1) or (2) has been harvested.

§ 642.23 Size restrictions.

(a) *Spanish mackerel*—(1) *Minimum size.* The minimum size limit for possession of Spanish mackerel in the FCZ is 12 inches (fork length) for both the recreational and commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) *Catch allowance.* A catch of Spanish mackerel under the 12-inch fork length is allowed equal to five percent of the total catch by weight of Spanish mackerel on board.

(b) *Cobia.* The minimum size limit for the possession of cobia in the FCZ is 33 inches (fork length).

§ 642.24 Vessel, gear, equipment limitations.

(a) *Gill nets*—(1) *Minimum size.* The minimum mesh size for king mackerel gill nets is 4¾ inches (stretched mesh).

(2) *Catch allowance.* A catch of king mackerel is allowed equal to ten percent of the total catch by weight of Spanish mackerel on board a vessel using gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) above.

(b) *Purse seines.* Owners or operators of purse seine vessels fishing for king and Spanish mackerel shall:

(1) Send a letter of intent to fish for king or Spanish mackerel to the Regional Director, at least three months in advance of beginning fishing each fishing year;

(2) Notify the Center Director by telephone, in advance of each trip, of the expected landing port, dock, and date;

(3) Report to the Center Director, by telephone, the quantity of landings, by species, for each trip as soon as practical after landing, and not later than 15 hours after unloading;

(4) Upon request by NMFS, accommodate observers for scientific and statistical purposes; and

(5) Provide for embarkment and disembarkment of observers as determined by the Center Director.

§ 642.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

§ 642.26 Area, time limitations.

(a) *Field orders.* Subject to the procedures and restrictions set forth in paragraphs (b) and (c) of this section, the Secretary may take any of the following actions by field order under the circumstances specified:

(1) If the Secretary determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the FCA between 27°00.6′ N. latitude and 27°50′ N. latitude off the east coast of the State of Florida, the Secretary may:

(i) Prohibit use of gillnet gear to take king mackerel within the areas (depicted in Figure 1 and described in Table 1) encompassed by points 1, 2, 5, and 6; 2, 3, 4, and 5; or 1, 2, 3, 4, 5, and 6;

(ii) Prohibit use of hook-and-line gear to take king mackerel in the FCZ landward of a line between points 1 and 2, 2 and 3, or 1, 2, and 3;

(iii) In the first year a conflict arises, close the FCZ between 27°30′ N. latitude and 27°10′ N. latitude to the use of gill nets for taking king mackerel, and close the FCZ between 27°30′ N. latitude and 27°50′ N. latitude to the use of hook-and-line gear for taking king mackerel (In any succeeding year that a conflict develops, the Secretary may change the zone that is closed to each gear.); or

(iv) Alternate daily the use of each gear within the area between 27°10′ N. latitude and 27°50′ N. latitude as follows:

(A) On even days of the month, close the area to the use of gillnet gear to take king mackerel.

(B) On odd days of the month, close the area to the use of hook-and-line gear to take king mackerel.

(2) If a conflict described in paragraph (a)(1) of this section results in death or serious bodily injury or significant gear loss, the Secretary may close the fishery for king mackerel to all users in the FCZ between 27°10′ N. latitude and 27°50′ N. latitude.

(b) *Procedures.* The Secretary shall use the following procedures in determining whether a conflict exists for which a field order is appropriate:

(1) When the Secretary is advised by any person that a conflict exists, he will confirm the existence of such a conflict through information supplied him by NMFS, the U.S. Coast Guard, other appropriate law enforcement agencies, or personnel of the State of Florida agency with marine fishery management responsibility.

(2) The Secretary shall also confer with the Chairmen of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils), the State of Florida agency with marine fishery management responsibility, and such other persons as the Secretary deems appropriate.

(c) *Restrictions on field orders.*

(1) No field order may be implemented which results in exclusive access of any user group or gear type to the fishery during the time the field order is in effect.

(2) No field order may be effective for more than five days, except under the conditions set forth in paragraph (c)(4) of this section.

(3) When the Secretary submits to the **Federal Register** a field order for implementation under this section, he will immediately arrange for a fact-finding meeting in the area of the conflict, to be convened no later than 72 hours from the time of implementation of the field order.

(i) The following persons will be advised of such a meeting:

(A) The Chairmen of the Councils;

(B) The State of Florida agency with fishery management responsibility;

(C) Local media;

(D) Such user-group representatives or organizations as may be appropriate and practicable; and

(E) Other persons as deemed appropriate by the Secretary or as requested by the Chairmen of the Councils or the State of Florida agency.

(ii) The fact-finding meeting will be held for the purpose of evaluating the following:

(A) The existence of a conflict needing resolution by field order;

(B) The appropriate term of the field order, i.e., either greater or less than five days;

(C) Other possible solutions to the conflict besides Federal intervention; and

(D) Other relevant matters.

(4) If the Secretary determines, as a result of the fact-finding meeting, that the term of the field order should exceed five days, he may, after consultation with the Chairmen of the Councils and the State of Florida agency, extend such field order for a period not to exceed 30 days from the date of initial implementation. If the Secretary determines that it is necessary or appropriate for the term of such field order to extend beyond 30 days, he may extend it a second time, after consulting with the Chairman of the Council, for such period of time as necessary to resolve the conflict.

(5) The Secretary may rescind a field order if he finds, through application of the same procedures set forth in paragraph (b) of this section, that the conflict no longer exists.

TABLE 1

Point 1—Bethel Shoal light at 27°44.3′ N. latitude, 80°10.4′ W. longitude.

Point 2—A wreck 15 miles southwest of Fort Pierce Inlet at 27°23.5′ N. latitude, 80°03.7′ W. longitude.

Point 3—Market WR 16, five miles northeast of Jupiter Inlet at 27°00.6′ N. latitude, 80°02.0′ W. longitude.

Point 4—27°00.6′ N. latitude, 79°44.0′ W. longitude at approximately the 100 fm. depth due east of Point 3.

Point 5—27°23.5′ N. latitude, 79°54.0′ W. longitude at approximately the 100 fm. depth due east of Point 2; and

Point 6—27°44.3′ N. latitude, 79°53.5′ W. longitude at approximately the 100 fm. depth due east of Point 1.

BILLING CODE 3510-22-M

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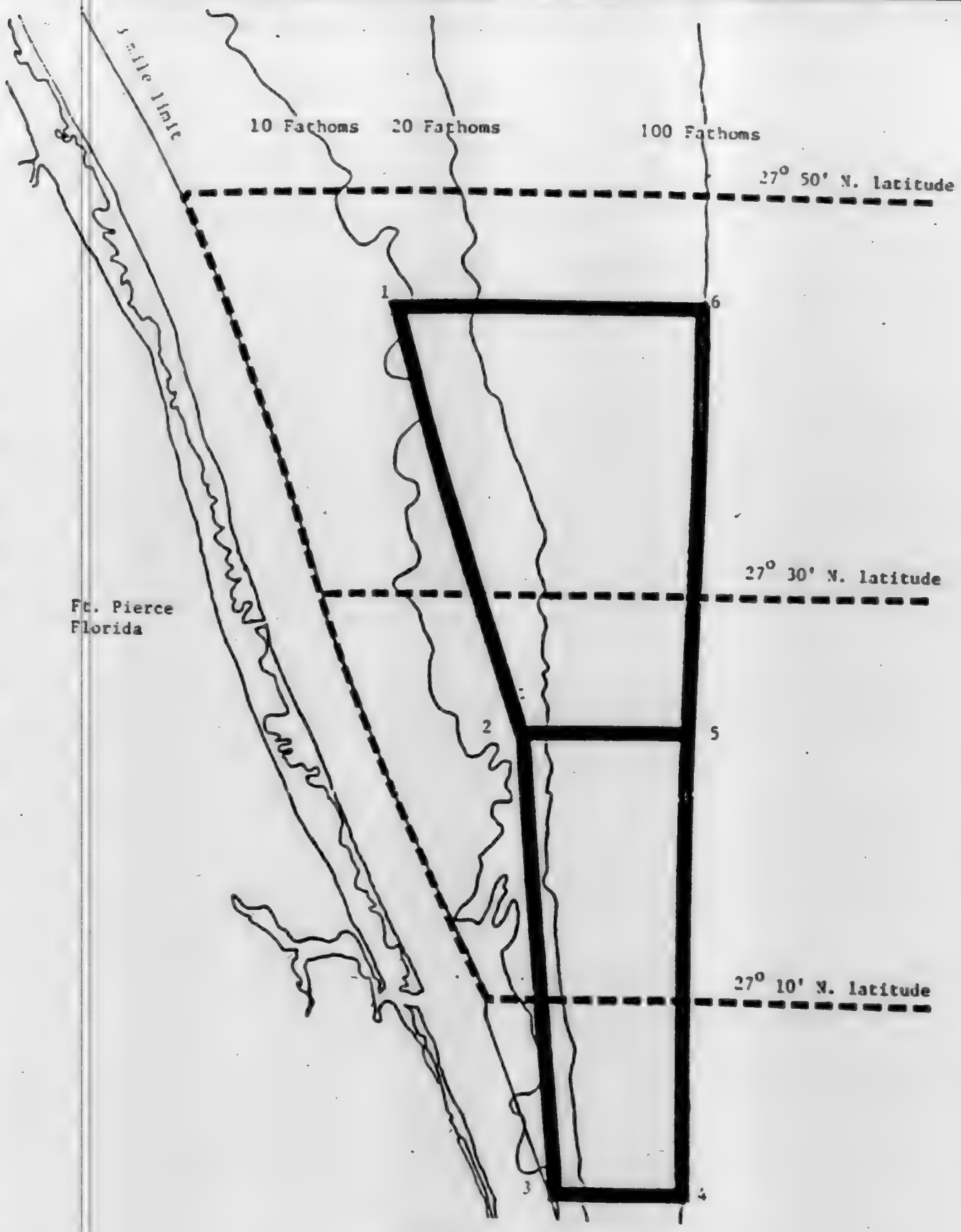

Figure 1 Area divisions under § 642.36

[FR Doc. 82-13440 Filed 5-17-82; 8:45 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 47, No. 96
Tuesday, May 18, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Fixed Income Counseling Program: Guidelines

AGENCY: ACTION.

ACTION: Proposed Guidelines.

SUMMARY: The following notice sets forth proposed guidelines under which applications for Fixed Income Consumer Counseling (FICC) project grants will be accepted when funding is made available. The notice describes the program authorization, history, purpose, applicant eligibility, criteria for sponsor selection, sponsor responsibilities, application procedures, application deadlines, and required reports and recordkeeping.

FOR FURTHER INFORMATION CONTACT: John Herbert, FICC, ACTION, Room 1007, 806 Connecticut Avenue, NW., Washington, D.C. 20525, telephone number (202) 254–5205, or call toll-free (800) 424–8580, Ext. 234. The addresses and phone numbers of State ACTION offices may also be obtained by calling either number.

DATE: Written comments should be submitted on or before June 17, 1982 to John Herbert at the same address given above.

SUPPLEMENTARY INFORMATION: ACTION has determined that this guideline is not a major rule as defined by Executive Order 12291. The guidelines will not result in any of the following:

(1) Any effect on the economy;

(2) Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Applications for FICC grants will be accepted under the following guidelines:

1. Program Authorization

The Fixed Income Consumer Counseling program is authorized under Title I, Part C, Section 122 (a) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113), as amended.

2. Purpose of the Program

FICC is a program designed to respond to the economic needs of people living on fixed incomes. Its purpose is to recruit and train volunteers to work with people on fixed incomes—specifically those who live near or below the poverty level—and to provide them with skills, information, and personal assistance to enable them to live better on their limited income, and help them find additional resources to supplement their net income.

3. Objectives of the Program

a. Recruit and train community professionals and neighborhood people to provide a variety of volunteer support services, including financial counseling and practical information in such areas as nutrition, low-cost transportation, energy conservation, and budget and credit counseling;

b. Assist fixed income consumer contacts with appropriate public and private service agencies to obtain relief or services to which they may be entitled.

c. Assist low-income consumers in building their own local self-help mechansims to deal with inflation and promote energy conservation, such as food co-ops energy/fuel co-ops, and shared housing.

4. Sponsor Eligibility

A FICC sponsor shall be a public or private non-profit organization, or a coalition of such organizations, in the United States which has the authority to accept and the capability to administer the grant. Any eligible organization may apply for a grant. Applicants may also be solicited by FICC pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited and unsolicited applications.

5. Criteria for Sponsor Selection

To be considered for FICC sponsorship, an organization must be able to demonstrate:

a. Proof of non-profit status;

b. Capacity to effectively manage fiscal resources and to fulfill program goals, including the goal of continuing fixed income consumer counseling operations after becoming financially independent of ACTION, which should occur in less than three (3) years;

c. Established credibility with community service organizations;

d. Prior experience with potential client groups or populations, such as the elderly, the disabled or handicapped, the unemployed or underemployed, displaced homemakers, dependent welfare recipients, refuges, and migrants;

e. Experience in the recruitment and utilization of volunteers.

6. Sponsor Responsibilities

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

a. Employ, direct, and support the Project Director, who will be directly responsible to the sponsor for the management of the project, including selection, training, and supervision of project staff. The Project Director shall serve full-time with the FICC program and may not serve simultaneously in another paid or unpaid capacity during working hours without written permission from ACTION. The sponsor must obtain ACTION's concurrence in the selection of a project director prior to hiring.

b. Establish, orient, and support an FICC Advisory Council. The purpose of the Advisory Council shall be to advise and assist the project sponsor and staff in the formulation of local policy, promote community support and non-federal financial assistance, and conduct an annual appraisal of the project;

c. Provide for the recruitment, training, assignment, supervision and evaluation of the volunteers;

d. Provide for appropriate recognition of the FICC volunteers and their activities;

e. Provide for maintenance of project records in accordance with generally

accepted accounting practice and the preparation and submission of reports required by ACTION;

f. Orient project staff and volunteers to FICC and its activities;

g. Arrange for the training of project staff and volunteers in both content and techniques of training in consumer affairs;

h. Provide or arrange for volunteer reimbursement for transportation in a timely manner;

i. Provide for staff and volunteer safety;

j. Comply with applicable regulations, policies and procedures prescribed by ACTION;

k. Ensure that appropriate liability insurance is maintained for owned, non-owned, or hired vehicles used in the project;

l. Provide for public awareness of the project and the volunteer activities.

7. Application Procedures

a. *Initial Award* FICC applicants will complete ACTION Form A–1017, *Application for Federal Assistance*, in accordance with instructions printed on the form. The requirements of Part IV thereof will be responded to by completing ACTION Form A–1034, entitled *Title I, Part C, Program Narrative*. An original and two copies of the above forms are to be sent to the ACTION state office serving the applicant's State.

(1) Subject to the availability of funds, FICC will award a grant to those applicants whose grant proposals indicate the best potential for achieving the purpose of the program.

(2) Grants are awarded for one-year periods and may be renewed for up to two additional one-year periods.

(3) Grant awards will not be made in excess of $40,000 for a twelve month period.

(4) A sponsor may receive a grant award for more than one ACTION program.

b. *Continuation Award.* The maximum project period will be for three (3) years, and shorter perods are often appropriate. Regardless of the length of the project period, the maximum funding period will be for one (1) year. After it is established by ACTION that the sponsor is fulfilling its current year goals and objectives, the sponsor may submit a request for a continuation award for the subsequent budget period. Only information not submitted in the original application or information changed substantively from that given in the initial application need be submitted in the continuation application to ACTION. The same forms used for the initial application will be used for continuations.

8. Application Deadlines

The deadline for submission of an application will be established by the ACTION state office.

9. Reports

a. *Fiscal Reports.* In accordance with ACTION Handbook No. 2650.2 and on a schedule prescribed by ACTION, Grantees will be required to submit:

(1) *Request for Advance or Reimbursement*—Standard Form SF–270, and

(2) *Financial Status Report*—ACTION Form A–451

b. *Performance Report.* Grantees will be required to submit quarterly the FICC program progress report, entitled:

Title I, Part C, Project Progress Report—ACTION Form A–1035.

10. Records

Grantees must retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of three (3) years after submission of the final Financial Status Report. If any litigation, claim or audit is begun before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

Signed at Washington, D.C., this 16th day of April 1982.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 82-13388 Filed 5-17-82; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Finding of No Significant Impact; East Kentucky Power Cooperative (EKP), Winchester, Ky.

The Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to proposed financing assistance to East Kentucky Power Cooperative (EKP) of Winchester, Kentucky, for construction of the following 161 kV facilities (the Project) in Kentucky: The Powell County—Beattyville transmission line to extend 37 km (23 mi) from Stanton in Powell County to Beattyville in Lee County and the Powell County Substation.

REA determined that a Borrower's Environmental Report (BER) submitted by EKP provides adequate information regarding the environmental aspects of the Project. Based upon the BER and other information, REA prepared an Environmental Assessement (EA) addressing the impacts of the Project. REA concluded that the Project would not be a major Federal action significantly affecting the quality of the human environment.

REA determined that the Project: (1) Will have no effect on threatened or endangered species or wetlands. (2) Will have no significant adverse effect on floodplains or known cultural resources. While a few poles will be located in floodplains, they will not be incompatible with the ecological function of the floodplains. Several potential archeological sites along the transmission line right-of-way will be surveyed and approved by REA and the State Historic Preservation Officer prior to clearing and construction. (3) Will affect prime farmland. All reasonable measures will be taken to minimize the amount of floodplains and prime farmland affected. There is no practicable alternative to using the floodplains and prime farmland. Construction, operation and maintenance of the Project will not, in REA's judgment, result in any unacceptable environmental impacts.

Alternatives examined include the Project, no action, conservation, 69 kV in lieu of 161 kV facilities, other substation sites and line routes, and other construction materials and methods. After reviewing these alternatives, REA determined that the Project is an acceptable alternative because it will meet EKP's needs with minimal environmental impact.

The FONSI, EA and BER may be reviewed at or requested from the Office of the Director, Power Supply Division, Room 0230, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone: (202) 382–1400, or at the office of East Kentucky Power Cooperative, P.O. Box 707, Lexington Road, Winchester, Kentucky 40391, telephone: (606) 744–4812.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 11th day of May 1982.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 82-13400 Filed 5-17-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Buncombe County Schools, Flood Prevention, Land Drainage and Critical Area Treatment, R.C. & D. Measure, North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buncombe County Schools Flood Prevention, Land Drainage and Critical Area Treatment, RC&D Measure, Buncombe County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, Telephone (919) 755–4210.

SUPPLEMENTARY INFORMATION: The environmetal assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the reduction of flooding on one acre. improve drainage on 3 acres and reduction of erosion on approximately 13.25 acres of critically eroding land. The planned works of improvement include necessary subsurface drainage, grassed waterways, diversions, drop inlets, pipes to convey surface water to satisfactory outlets and seeding eroding areas with adapted perennial vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken June 17, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: May 10, 1982.

Coy A. Garrett,

State Conservationist.

[FR Doc. 82–13406 Filed 5–17–82; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Announcement of Proposed Collection of Information Under Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency clearance officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673–5922.

Extension

Title of the collection of information: Part 375, "Navigation of Foreign Civil Aircraft within the United States."
Agency form number: None.
How often the collection of information must be filed: On occasion.
Who is asked or required to report: Foreign air carriers.
Estimate of number of annual responses: 53.
Estimate of number of annual hours needed to complete the collection of information: 13.

Revision

Title of the collection of information: "Registration or Amendments Under Part 297 of the Economic Regulations of the Civil Aeronautics Board."
Agency form number: 297A.
How often the collection of information must be filed: Nonrecurring.
Who is asked or required to report: Foreign indirect air carriers.
Estimate of number of annual responses: 50.
Estimate of number of annual hours needed to complete the collection of information: 150.

Extension and Revision

Title of the collection of information: "Report of Scheduled Operations of Commuter Air Carriers."
Agency form number: 298–C.
How often the collection of information must be filed: Quarterly.
Who is asked or required to report: Commuter air carriers.
Estimate of number of annual responses: 880.
Estimate of number of annual hours needed to complete the collection of information: 6,160.

Revision

Title of the collection of information: "Registration or Amendments Under Part 380 of the Economic Regulations of the Civil Aeronautics Board."
Agency form number: 300.
How often the collection of information must be filed: Nonrecurring.
Who is asked or required to report: Foreign charter operators.
Estimate of number of annual responses: 24.
Estimate of number of annual hours needed to complete the collection of information: 12.
None applicable under 3504(h) of Pub. L. 96–511.
OMB desk officer: Wayne Leiss (202) 395–7340.

Dated: May 12, 1982.

Anthony F. Toronto,

Comptroller.

[FR Doc. 82–13421 Filed 5–17–82; 8:45 am]

BILLING CODE 6320–01–M

COMMISSION ON CIVIL RIGHTS

New York Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 8:30 a.m. and will end at 5:00 p.m., on June 17, 1982, at the World Trade Center, Two World Trade Center, in the Conference Room on the 44th Floor, New York, New York. The purpose of this meeting will be to conduct a conference on the growth of racial, religious, ethnic bigotry and violence in the State of New York.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Robert Mangum, 420 East Twenty-third Street, New York, New York, 10010, (212) 420–3935 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 13, 1982.
John I. Binkley,
Advisory Committee Management Officer.
[FR Doc. 82-13386 Filed 5-17-82; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Financial Assistance Application Announcement; San Francisco Region

The Minority Business Development Agency announces that it is seeking applications under its program to operate a BDC in the San Francisco Region for a twelve month period. The estimated total costs of the project are $170,000.

Funding Instrument: It is anticipated that the funding instruments as defined by the Federal Grant and Cooperative Agreement Act of 1977 will be Cooperative Agreements.

Program Descriptions: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible minority clients in areas related to the establishment and operation of businesses. The proposed project is specifically designed to provide business information counseling, financial packaging assistance, and assistance in identifying and exploiting business opportunities and new/or expanding markets.

One Cooperative Agreement Under the Business Development Center (BDC) Program to operate a pilot project for a 12 month period beginning October 1, 1982 in the Tucson SMSA. This pilot project will operate at a cost not to exceed $170,000 and the project I.D. Number is 09-10-82012-01.

Closing Date: June 22, 1982.

An application kit is available upon written request.

The pre-application conference to assist all interested applicants will be held at the Federal Building, 230 North First Avenue, Room 1013, in Phoenix, Arizona, on May 25, 1982, at 10:00 A.M.

MBDA offers competitive Cooperative Agreements to all individuals, non-profit organizations, for-profit firms, local and state governments, federally recognized American-Indian Tribes and educational institutions to perform the functions of a BDC which are:

To provide management and technical assistance to qualified minority firms,

To develop and maintain an inventory of existing minority businesses and prospective entrepreneurs, and

To provide brokering service that will foster and promote new business ownership, business expansions, market opportunities and new capital sources.

Legal services are excluded.

Applicants shall be required to contribute at least 10% of the total program costs through non-federal funds. A fee for services for assistance provided clients will be charged. The fee for services will be 10% for firms with gross sales of $500,000 or less and 25% for the firms with gross sales of over $500,000. Cost sharing contributions can be in the form of cash contributions, fee for services, or in-kind contributions.

The program is subject to OMB Circular A-95 requirements.

Proposals are to be mailed to the following address:

Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102

For further information contact Mr. Mikel R. Cook at 415/556-6733.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 5, 1982.

R. V. Romero,
Regional Director.
[FR Doc. 82-13373 Filed 5-17-82; 8:45 am]
BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Implementation of the Salmon and Steelhead Conservation and Enhancement Act of 1980; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA Commerce.

ACTION: Notice.

SUMMARY: Notice of a public meeting to discuss implementation of the Salmon and Steelhead Conservation and Enhancement Act of 1980 (P. L. 96-561).

DATE: June 14, 1982. The meeting will commerce at 10:00 a.m. and is scheduled to continue not later than 5:00 p.m. The meeting will be open to interested members of the public; however space is limited.

ADDRESS: Hyatt Hotel, 17001 Pacific Highway South, Seattle, Washington 98118, (206) 244-6000.

MEETING AGENDA: *Organizational Matters*—Those present will discuss organizational procedures in accord with the requirements of P.L. 96-561 and the Federal Advisory Committee Act including staffing needs, office and meeting locations, and schedules. *Establishment of Operational Procedures*—In accord with the provisions of Public Law 96-561 guidelines will be developed and objectives established to achieve the goals established by Pub. L. 96-561. Involved will be overall objectives and budget requirements. *Other matters* may be brought up during the meeting.

FOR FURTHER INFORMATION CONTACT: H.A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, Telephone: (206) 527-6150.

Dated: May 13, 1982.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.
[FR Doc. 82-13431 Filed 5-17-82; 8:45 am]
BILLING CODE 3510-22-M

Emergency Striped Bass Study; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Study as authorized by the amended Anadromous Fish Conservation Act, (Public Law 96-118).

DATE: The meeting will convene on Friday, June 25, 1982, at 1:00 p.m., and will adjourn at approximately 5:00 p.m. The meeting is open to the public; however, space is limited.

ADDRESS: National Marine Fisheries Service, Room 401, Page Building #2, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, State Federal Division, Office of Resource Conservation and Management, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7454.

Dated: May 12, 1982.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.
[FR Doc. 82-13432 Filed 5-17-82; 8:45 am]
BILLING CODE 3510-23-M

New England and Mid-Atlantic Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils were established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265). These two councils will hold joint public meetings to discuss: Groundfish, Squid, Mackerel and Butterfish, Herring, Surf Clam and Ocean Quahog, Scallops, Bluefish, Lobster, Summer Flounder, Tilefish, Swordfish, and Billfish Fishery Management Plans; gear conflict amendment; joint ventures; Magnuson Act amendments, as well as other business pertaining to the Councils.

DATES: The public meetings will convene on Tuesday, June 15, 1982, at approximately 1 p.m., and will adjourn on Thursday, June 17, 1982, at approximately noon. The meetings may be lengthened or shortened or agenda items rearranged depending upon progress on the same.

ADDRESS: The meetings will take place at the Ramada Inn, Mystic, Connecticut.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617–231–0422).

Dated: May 13, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13434 Filed 5-17-82; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Councils; Scientific and Statistical Committee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established a Scientific and Statistical Committee, which will meet to discuss a five-year program plan, Scientific and Statistical Committee membership, as well as other committee business.

DATES: The public meetings will convene on Thursday, June 10, 1982, at approximately 9 a.m., and will adjourn on Friday, June 11, 1982, at approximately 4 p.m.

ADDRESS: The public meeting will take place at the National Marine Fisheries Service, Honolulu Laboratory, 2570 Dole Street, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1608, Honolulu, Hawaii 96813, Telephone: (808/523–1358).

Dated: May 13, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13433 Filed 5-17-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95–202 and DODD 1000.20

Under the provisions of Section 401 of Pub. L. 95–202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Civilian Personnel in the European Theater of Operations Assigned to the Secret Intelligence Element of the OSS. Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, D.C. 20330. For further information contact Technical Sergeant Stephen J. Koegle, USAF, Telephone No. 694–5380.

Winnibel F. Holmes,

Air Force Federal Register Liasion Officer.

[FR Doc. 82-13301 Filed 5-17-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Transition Program for Refugee Children

AGENCY: Education Department.

ACTION: Application Notice for Fiscal Year 1982.

Applications are invited for grants under the Transition Program for Refugee Children.

Authority for this program is contained in section 412(d)(1) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980 (Pub. L. 96–212).

(8 U.S.C. 1522(d))

Eligible applicants are State educational agencies.

This program supports educational activities designed to meet the special needs of eligible refugee children and to enhance their transition into American society.

Closing date for transmittal of applications: An application for a grant must be mailed or hand-delivered by July 23, 1982.

Applications delivered by mail: An application sent by mail must be addressed to Mr. James H. Lockhart, Chief of the Refugee Assistance Staff, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 508, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commerical carrier.

(4) Any other of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as a proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Application delivered by hand: An application that is hand-delivered must be taken to the Refugee Assistance Staff, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, Room 508, Reporters Building, 300 7th Street SW., Washington, D.C.

The Refugee Assistance Staff will accept a hand-delivered application between 8:00 p.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: The Department has asked each State Educational Agency to conduct, on May 20, 1982, a count of refugee children eligible for assistance under the Transition Program

for Refugee Children. A grant is made to a State educational agency based on the number of eligible children enrolled in public and nonprofit private schools in the State, using the weighting factor announced in this notice. Using the same formala, the State educational agency awards subgrants to local educational agencies in its State that proposed to serve eligible children within their jurisdictions. As provided in 34 CFR 538.20, the State educational agency makes subgrants to local educational agencies within 60 days after the State receives the grant award funds. When a local educational agency does not apply to serve its eligible children, the State educational agency provides services directly to those children or arranges for provision of services to those children through subgrants, contracts, and cooperative agreements with other public and private nonprofit organizations, agencies, and institutions.

Awards under this program are to provide educational services to eligible children during the 1982–1983 school year.

Weighting factors: Section 538.31 of the program regulations authorizes the Secretary to announce the weighting factors to be used in distributing funds under this program. For the award of fiscal year 1982 funds, the Secretary uses the following formula for fund distribution:

Recency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary	Secondary
Less than 1	10	10
1 to 2	3	3
2 to 3	0	3
3 to 4	0	0
More than 4	0	0

The adjustment is necessary to reflect the need for more educational services to refugee children who have been in this country for less than one year.

Available funds: It is expected that approximately $20 million will be available for grants to State educational agencies. These funds are a fiscal year 1982 appropriation with availability until September 30, 1982.

It is estimated that these funds will provide approximately $300 of assistance per eligible child. However, the approximate amount of funds available per eligible child may increase or decrease depending on the total number of eligible children that the States report.

These estimates, however, do not bind the U.S. Department of Education to specific numbers of grants or to the amount of any grant.

Application forms: Application forms and instructions will be mailed to all State educational agencies. Additional forms may be obtained by writing to the Refugee Assistance Staff, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 506, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. The Secretary strongly urges that the narrative portion of the application not exceed four pages. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(1) Regulations governing the Transition Program for Refugee Children (34 CFR Part 538) published on January 14, 1981 (46 FR 3378).

(2) Regulations governing the Refugee Resettlement Program (45 CFR Part 400) published on September 9, 1980 (45 FR 59618).

(3) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 76 and 77; formerly 45 CFR Parts 100b and 100c), except as otherwise provided in 34 CFR Part 538.

Further information: For further information contact Mr. James H. Lockhart, Chief of the Refugee Assistance Staff, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 506, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. Telephone (202) 472–3520.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

(8 U.S.C. 1522(d))

Dated: May 11, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-13405 Filed 5-17-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP81-126-007, et al.]

Alabama-Tennessee Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

April 30, 1982.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 17, 1982. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Apr. 14, 1982	Alabama-Tennessee Natural Gas Company	RP81-126-007	LFUT Report.
Apr. 15, 1982	Northern Natural Gas Company	RP81-62-003	Report.
Do	Western Gas Interstate Company	RP81-10-006	Report.
Apr. 16, 1982	Transwestern Pipeline Company	RP82-24-001	LFUT Report.
Apr. 19, 1982	Southern Natural Gas Company	RP81-105-014	LFUT Report.
Do	Transcontinental Gas Pipe Line Corporation	RP77-108-021	Report.
Apr. 22, 1982	Transwestern Pipeline Company	RP82-24-002	LFUT Report.
Apr. 26, 1982	Arkansas Louisiana Gas Company	RP81-101-006	LFUT Report.
Do	Florida Gas Transmission Company	RP81-7-005	Compliance Report.
Do	Tennessee Gas Pipeline Company	RP81-44-004	Report.

[FR Doc. 82-13416 Filed 5-17-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE82-8-000]

Prince William Electric Coop.; Application for Exemption

April 26, 1982.

Take notice that Prince William Electric Cooperative (PWEC) filed an application on March 16, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act, Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on

or before June 30, 1982, information on the costs of providing electric service as specified in §§ 290.301–290.308 inclusive, 290.404(a) as it applies to Rate Class PS6A, and 290.103(b). In the same filing, PWEC requested an extension of the June 30, 1982 filing date to June 30, 1983.

In its application for exemption PWEC states that it should not be required to file the specified data for the following reasons, in part:

A. The usage characteristics, cost characteristics and service classification characteristics of Prince William are such that compliance with the data gathering and filing requirements will not advance the purposes of PURPA.

Exemption of Prince William from these requirements will not impact adversely its obligations concerning consideration and determination of rate making and service standards specified in §§ 111–115 of PURPA.

Cost of compliance by Prince William is substantial and imposes an undue economic burden on Prince William.

B. Sample load meters were not installed and operating until December 1981.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of a general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 2, 1982. Within that 45-day period such person must also serve a copy of such comments on:

Harry K. Bowman, Manager, Prince William Electric Cooperative, P.O. Box 1750, Manassas, Virginia 22110.
James V. Lane, Esq., Litten, Sipe & Miller, 250 East Market Street, Harrisonburg, Virginia 22801.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13417 Filed 5-17-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP80-58-000]

The State of Oklahoma and the Corporation Commision of the State of Oklahoma, Complainants v. Western Gas Interstate Company and Southern Union Gas Company, respondents; Informal Technical Conference and Notice Granting Petitions To Intervene

May 4, 1982.

Take notice that on June 9, 1982, an informal technical conference will be held at the A.P. Murrah Federal Building, 200 N.W. 5th Street, Room 911, Oklahoma City, Oklahoma, at 9:00 a.m. with respect to matters pending in the above proceeding.

The purpose of the conference is to discuss the complaint filed on December 4, 1979, as amended on September 4, 1981, by the State of Oklahoma and the Corporation Commission of the State of Oklahoma (Complainants) against Western Gas Interstate Company and Southern Union Gas Company (Respondents) in Docket No. RP80–58. Respondents filed an answer to this compliant on March 3, 1980.

After notice by publication in the **Federal Register** on February 7, 1980 (45 FR 8344), timely petitions to intervene were filed by Northern Natural Gas Company, Cities Service Gas Company, and by Texas County Irrigation and Water Resources Association and Beaver County Irrigation Association.

An untimely petition to intervene was filed by the Cimarron County Irrigation and Water Resources Association, the Oklahoma Panhandle Gas Users Association, the City of Boise City, and the City of Texhoma (Cimarron County, *et al.*) which demonstrates an interest in this proceeding that cannot be adequately protected or presented by any other party and is important to a resolution of the issues in this proceeding. Accordingly, good cause exists to permit the intervention of Cimarron County, *et al.*

Petitioners to intervene listed above are hereby granted intervention in this proceeding subject to the Commission's Rules and Regulations; *Provided, However,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

In their complaint and request for joint hearings of December 4, 1979, Complainants requested an investigation which would assure the Commission that Respondents are presently operating in accordance with the law and the best management practices to assure service at lowest reasonable cost. Additionally, Complainants seek that the Commission determine what proper and legal actions could have been taken by respondents in 1974 to deal with supply problems, what the cost of acting properly at that time would have been, and what additional costs have been incurred if Respondents acted improperly.

In their answer of March 3, 1980, Respondents argued *inter alia,* that the instant complaint, on its face, is without merit and is merely an attempt to relitigate issues fully tried in Docket Nos. CP76–462, *et al.* Respondents submit that the subject compaint should be dismissed.

Respondents have agreed to make an oral presentation concerning the current operation of their facilities. The first order of business at this informal technical conference will be to allow Respondents to make the proposed report describing their present gas system operations. Following the Respondents' reports, each party will be afforded an opportunity to make a statement. Additionally, written statements will be accepted by Commission staff as informal Comments. Commission staff may file a report to the Commission following this informal teachnical conference.

The informal conference is open to the public; however, attendance or participation at the conference will not serve to make attendees parties to the proceeding.

Copies of this notice are being sent to all parties and will be published in the **Federal Register.**

For further information contact David G. Tishman or Russell B. Mamone, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, Telephone No. (202) 357–8433.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13418 Filed 5-17-82; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 7, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate this has been done.

Agreement No. 161–39.

Filing Party: Howard A. Levy, Esquire, 17 Battery Place, Suite 727, New York, New York 10004.

Summary: Agreement No. 161–39 will modify the way conference expenses are apportioned among the members of the Gulf United Kingdom Freight Conference.

Agreement No. 3868–27.

Filing Party: Nathan J. Bayer, Esq., Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Summary: Agreement No. 3868–27 amends and restates the basic agreement of the Atlantic & Gulf/Panama Canal Zone, Colon and Panama City Conference to provide numerous clarifications, additions and language changes to various items, including: transshipment services; authority to cancel rates; the collection and distribution of trade statistics; intermodal authority in Panama; credit rules; freight forwarder commissions; voting rights; membership; security deposit of members; arbitration; and, the conference name.

Agreement No. T–4026–1.

Filing Party: Mr. Randall V. Adams, Accounting/Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T–4026–1, between the Port of Palm Beach (Port) and Johnson's Shipping Agency (JSA), modifies the basic agreement between the parties which provides for the lease by Port to JSA of certain warehouse and office space. The purpose of the modification is to provide for an additional one-year renewal period.

Agreement No. T–4043.

Filing Party: Mr. John J. Desmond, Manager, Port Operations, Cleveland-Cuyahoga County Port Authority, 101 Erieside Avenue, Cleveland, Ohio 44114.

Summary: Agreement No. T–4043 between the Cleveland-Cuyahoga County Port Authority, (Port) and Cleveland Stevedoring Company (CSC) provides for the preferential use by CSC, as a Terminal Operator, of Berths 24, West and East, 26 West, 28 North and 32 East, at the Port of Cleveland, Ohio. The term of the agreement is for one year. CSC shall pay to the Port all wharfage, dockage and heavy-lift charges, and assess and collect all terminal storage and wharf demurrage charges for the Port's account, with 33⅓ percent of terminal storage and wharf demurrage revenue being retained by CSC as compensation for administrative overhead and related expenses. Insurance, liability, repairs, cost for utilities are as provided for in the agreement.

Agreement No. 8090–22.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Summary: Agreement No. 8090–22 modifies the basic agreement of the Mediterranean North Pacific Coast Freight Conference to bring its self-policing provisions into conformity with the Commission's rules governing self-policing (46 CFR, Part 528).

Agreement Nos. 10442–10449.

Filing Party: Joseph H. Dettmar, Esquire, Garvey, Schubert, Adams & Barer, 1000 Potomac Street NW., Washington, D.C. 20007.

Summary: Agreements Nos. 10442 through 10449 are nonexclusive equipment interchange agreements providing for the interchange of empty and loaded container equipment between Totem Ocean Trailer Express, Inc., and the following carriers in the trades listed below:

Agreement No.	Carrier	Trade
10442	Japan Line	Far East.
10443	Hanjin Container Lines, Ltd.	Do.
10444	Johnson Scanstar	Europe.
10445	Showa Line Limited	Far East.
10446	Mitsui O.S.K. Lines, Ltd	Do.
10447	Westwood Shipping Lines	Europe.
10448	Nippon Yusen Kaisha Line	Far East.
10449	Kawasaki Kisen Kaisha, Limited (K-Line).	Do.

Agreements Nos. 10450 and 10451.

Filing Party: John Evan Greenwood, Esquire, Kirlin, Campbell & Keating, One Twenty Broadway, New York, New York 10271.

Summary: Agreement No. 10450 will establish a new rate agreement in the Calcutta/U.S. Great Lakes trade and Agreement No. 10451 will establish a new rate agreement in the U.S. Great Lakes/India trade.

By Order of the Federal Maritime Commission.

Dated: May 12, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13378 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1615–R]

Argus Shipping Co. (Andreas Schuemer, d.b.a.); Order of Revocation

On May 6, 1982, Argus Shipping Company (Andreas Schuemer, d.b.a.), 2300 East Higgins Road, Elk Grove Village, IL 60007 surrendered his Independent Ocean Freight Forwarder License No. 1615–R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1615–R issued to Argus Shipping Company (Andreas Schuemer, d.b.a.) be revoked effective May 6, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Argus Shipping Company (Andreas Schuemer, d.b.a.).

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-13379 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 40]

J. M. Altieri Inc., Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be

automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of J. M. Altieri Inc., 201–B Tetuan Street, San Juan, PR 00903, was cancelled effective May 6, 1982.

By letter dated April 9, 1982, J. M. Altieri Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 40 would be automatically revoked unless a valid surety bond was filed with the Commission.

J. M. Altieri Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 40 be and is hereby revoked effective May 6, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 40 issued to J. M. Altieri Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon J. M. Altieri Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-13381 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 501]

International Express Co., Inc.; Order of Revocation

On April 30, 1982, International Express Company, Inc., P.O. Box 2307, New Orleans, LA 70176 surrendered its Independent Ocean Freight Forwarder License No. 501 for revocation.

Therefore, by virute of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 501 issued to International Express Company, Inc. be revoked effective April 30, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon International Express Company, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-13379 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2221]

J. R. Prescott & Co., Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of J. R. Prescott & Co., Inc., 722 W. Pine Hill, Pinehurst, TX 77362 was cancelled effective April 7, 1982.

By letter dated March 30, 1982, J. R. Prescott & Co., Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2221 would be automatically revoked unless a valid surety bond was filed with the Commission.

J. R. Prescott & Co., Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2221 be and is hereby revoked effective April 7, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 2221 issued to J. R. Prescott & Co., Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon J. R. Prescott & Co., Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification & Licensing.

[FR Doc. 82-13380 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

Combi Line Joint Service; Cancellation

Agreement No. 9929–7

Filing party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue, NW., Washington, D.C. 20036.

Summary: Agreement No. 9929, as amended, between Hapag-Lloyd, A.G. and Intercontinental Transport (ICT) B. V., provides for the joint service known as Combi Line. Agreement No. 9929–7 provides for the termination of the basic agreement to be effective April 30, 1982.

By Order of the Federal Maritime Commission.

Dated: May 12, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13378 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight fowarders pursuant to section 44 (a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Aleksander Grochowski, dba Universal Shipping Service, 61 Cabot Street, Chicopee, MA 01013;

Marx Commercial Freight Forwarders, Inc., 127 Luquer Road, Port Washington, NY 11050, Officer: Alberto Cypriano Marques, President;

Takashi Uryu, d.b.a. Central Shipping Co., 433 Hegenberger Road, Suite 105H, Oakland, CA 94621;

Ocean-Air Forwarding, Incorporated, R.D. #1, Burgettstown, PA 15021, Officers: Richard E. Starck, President/Stockholder, Robert J. Starck, Vice President/Stockholder, Marguerite J. Starck, Stockholder, Jeffrey J. Starck, Stockholder, Jay J. Starck, Stockholder.

By the Federal Maritime Commission.

Dated: May 12, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13377 Filed 5-17-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C.

1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Citizens Bancorp*, Riverdale, Maryland; to acquire 100 percent of the voting shares or assets of Kennedy Bank and Trust Company, Bethesda, Maryland. Comments on this application must be received not later than June 11, 1982.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Rifle Bank Agency, Inc.*, Rifle, Colorado; to acquire 100 percent of the voting shares of a proposed new bank, The First National Bank in Parachute, Parachute, Colorado. Comments on this application must be received not later than June 11, 1982.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares or assets of Bank of Eagleville, Eagleville, Tennessee. Comments on this application must be received not later than June 11, 1982.

Board of Governors of the Federal Reserve System, May 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13307 Filed 5-17-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comment and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 11, 1982.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Seafirst Corporation*, Seattle, Washington (commerical finance activities; Texas): To engage through Seafirst Commerical Corporation in making or acquiring loans and other extensions of credit including commerical loans secured by a borrower's inventory, accounts receivable, capital equipment or other assets; servicing loans; and leasing personal property. These activities would be conducted through an office in Dallas, Texas, serving the State of Texas.

2. *U.S. Bancorp*, Portland, Oregon (consumer finance; Denver, Colorado): To engage, through its subsidiary, U.S. Bancorp Financial, Inc. ("Bancorp Financial"), doing business as Citizens Finance Company ("Citizens"), in the making, acquiring and servicing of loans and other extensions of credit either secured or unsecured for its own account or for the account of others, including the making of consumer installment loans, purchasing consumer installment and real estate sales finance contracts and evidences of debt and making consumer home equity loans secured by real estate, making industrial loans, and acting as insurance agent with the regard to credit life and disability insurance, solely in connection with extensions of credit by Bancorp Financial. This notification is for the relocation of an existing office at 12131 E. Iliff, Unit D, Aurora, Colorado, to 1776 Lincoln Building, 8th Floor, Lincoln Street, Denver, Colorado. The geographic area to be served would be the Denver SMSA.

Board of Governors of the Federal Reserve System, May 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13308 Filed 5-17-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First State Corporation*, Waynesboro, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Waynesboro, Mississippi. Comments on this application must be received not later than June 11, 1982.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 925 South Akard Street, Dallas, Texas 75222:

1. *Great American Bancshares, Inc.*, Arlington, Texas; to become a bank holding company by acquiring 80 percent or more of the voting shares of

American Bank of Arlington, Arlington, Texas. Comments on this application must be received not later than June 12, 1982.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *AmBank Holding Company*, Phoenix, Arizona, to become a bank holding company by acquiring 99.3 percent of the voting shares of American Bank, Phoenix, Arizona. Comments on this application must be received not later than June 12, 1982.

2. *MBC Corp.*, Modesto, California; to become a bank holding company by acquiring 100 percent of the voting shares of Modesto Banking Company, Modesto, California. Comments on this application must be received not later than June 9, 1982.

3. *Professional Bancorp*, Santa Monica, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Professional Bank of Los Angeles, Santa Monica, California. Comments on this application must be received not later than June 9, 1982.

4. *TriCo Bancshares*, Chico, California; to become a bank holding company by acquiring 100 percent of the voting shares of Tri-Counties Bank, Chico, California. Comments on this application must be received not later than June 11, 1982.

C. **Secretary, Board of Governors of the Federal Reserve System**, Washington, D.C. 20551:

1. *NBC Bancorporation, Inc.*, Newport, Minnesota; to become bank a holding company by acquiring 100 percent of the voting shares of National Bank of Commerce in Mankato, Mankato, Minnesota. Comments on this application must be received not later than June 11, 1982.

2. *Town & Country Bancshares, Inc.*, Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Town and Country Bank-Maplewood, Maplewood, Minnesota. Comments on this application must be received not later than June 11, 1982.

Board of Governors of the Federal Reserve System, May 12, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13366 Filed 5-17-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Atlanta District Office, Chaired by John Turner, District Director.

DATE: Thursday, May 27, 1982, 10:30 a.m.

ADDRESS: Brighton Multipurpose Center, outside Birmingham, Alabama.

FOR FURTHER INFORMATION CONTACT: Janice Moton, Consumer Affairs Officer, Food and Drug Administration, 1182 W. Peachtree St. NW., Atlanta, GA 30309, 404-881-7355.

Cincinnati District Office, Chaired by James C. Simmons, District Director.

DATE: Wednesday, June 9, 1982, 1 p.m.

ADDRESS: Rm. 504, The Federal Bldg., 200 W. Second St., Dayton, OH 45402.

FOR FURTHER INFORMATION CONTACT: Ruth E. Weisheit, Consumer Affairs Officer, Food and Drug Administration, Rm. 463, 601 Rockwell Ave., Cleveland, OH 44114, 216-522-4844.

Cincinnati District Office, Chaired by James C. Simmons, District Director.

DATE: Thursday, June 10, 1982, 1:30 p.m.

ADDRESS: Rm. 5525A, Federal Bldg., 550 Main St., Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Ruth E. Weisheit, Consumer Affairs Officer, Food and Drug Administration, Rm. 463, 601 Rockwell Ave., Cleveland, OH. 44114, 216-522-4844.

Philadelphia District Office, Chaired by Loren Johnson, District Director.

DATE: Wednesday, June 16, 1982, 1 to 3 p.m.

ADDRESS: Wm. H. Green, Federal Bldg., Rm. 7306, 6th and Arch Sts., Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Theresa A. Young, Consumer Affairs Technician, Food and Drug Administration, 2d and Chestnut Sts., Philadelphia, PA 19106, 215-597-0837.

Chicago District Office, Chaired by Mary K. Ellis, District Director.

DATE: Tuesday, June 22, 1982, 1:30-3:30 p.m.

ADDRESS: Food and Drug Administration, Rm. 1204, 433 W. Van Buren, Chicago, IL 60607.

FOR FURTHER INFORMATION CONTACT: Darlene M. Bailey, Consumer Affairs Officer, Food and Drug Administration, 433 W. Van Buren, Chicago, IL 60607, 312-353-7126.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13473 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 79N-0339 and 79N-0340; DESI Nos. 8515, 9152, 9188, 50168, and 10210]

Certain Ophthalmic Combination Drugs Containing a Steriod and Anti-Infective(s) for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice amends two previous **Federal Register** notices concerning ophthalmic combination drug products containing a steroid and one or more anti-infective agents. This amendment requires revised labeling which more precisely states the conditions of use for which such drugs are safe and effective. The notice also states the rationale for regarding these drugs as safe and effective.

DATES: Amendments or supplements to approved applications (NDA's, ANDA's, or antibiotic forms) due on or before July 19, 1982. Revised labeling must be put into use on or before November 15, 1982.

ADDRESSES: Communications in resonse to this notice should be identified with the appropriate DESI number, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number); Division of Anti-Infective Drug Products (HFD-140), Rm. 12B-45, Bureau of Drugs.

Supplements to approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Amendments to approved antibiotic forms (identify with form number); Antibiotic Drug Review Branch (HFD–535), Bureau of Drugs.

Request for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Requests for a copy of the Health Reserach Group comments and/or FDA's response (identify with Docket Nos.): Dockets Management Branch (HFA–305), Rm. 4–65.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In two notices published in the **Federal Register** of August 29, 1980 (45 FR 57776 and 45 FR 57780), FDA announced its conclusion that certain ophthalmic combination drugs containing a steroid and one or more anti-infective agents are effective. The notices also set forth a general outline for labeling of the effective products as a condition for marketing and approval.

On December 4, 1980, the Health Research Group (HRG), 2000 P St. NW., Washington, D.C. 20036, wrote to the Commissioner of Food and Drugs concerning the agency's conclusion for this class of combinaton drug products. HRG asked that the decision be reconsidered, alleging that no adequate and well-controlled clinical trials are available to support the effectiveness of all ingredients in these combinations. Copies of HRG's letter and the FDA response have been placed in the docket of these proceedings. Copies are available from the Dockets Management Branch (address given above)

As a result of the HRG letter, the Bureau of Drugs reevaluated the August 29, 1980 notices and the record of this proceeding. Based upon this reevaluation, the Director of the Bureau has concluded (1) that the basic finding stated in those notices that these drug products are safe and effective should be reaffirmed, (2) that the rationale for concluding that these combination products are effective was not stated in the notices and should be stated clearly to avoid further confusion, and (3) that the labeling for these drug products, as described in the 1980 notices, should be revised to state more precisely the conditions of use for which these products are safe and effective.

Background

As noted in the August 29, 1980 notices, the ophthalmic steroid/anti-infective combination products covered by these notices were originally classified as possibly effective under the Drug Efficacy Study in a series of notices published in 1971 and 1972. Subsequently, the ophthalmic steroid/anti-infective combination drug products were exempted from the schedule established for completing the study (37 FR 26643). The products were exempted because of their potential effectiveness in the treatment of marginal keratitis secondary to staphylococcus blepharoconjunctivitis, vernal catarrh, and allergic conjunctivitis, and their frequent use postoperatively by ophthalmologists to reduce inflammatory reactions and prevent infection. The exemption was conditioned upon the commitment of manufacturers and distributors to conduct appropriate studies to establish which particular combinations and concentrations are effective for specific indications.

In response to the exemption notice, several manufacturers submitted plans for studies. The agency determined that the studies as planned were inadequate to demonstrate that all active ingredients contributed to the effectiveness of the fixed-combination drug products. Because the sponsors were unable to develop appropriate protocols and because of controversy over the role of these combination products in ophthalmology, the matter was presented to FDA's Ophthalmic Drugs Advisory Committee at a public meeting held May 8, 1973. Discussion centered on the safety of these products and the design of meaningful studies. The committee concluded that the data available to it were insufficient to make a decision on any of the issues presented and appointed a subcommittee to obtain additional information.

The subcommittee then drafted a proposal for clinical studies. This proposal was sent to affected firms for comment, and on August 6, 1973, the Advisory Committee met in open session to discuss the proposal. In spite of extensive discussion and continued subcommittee deliberations, the Committee was unable to finalize a protocol.

Therefore, the subcommittee proposed that manufacturers and distributors prepare a single document containing all available data pertaining to each indication outlined in the exemption notice. The subcommittee believed that this data search might provide sufficient evidence of effectiveness in lieu of new clinical studies. On November 2, 1973, the full Advisory Committee adopted the proposal, and representatives of the pharmaceutical industry agreed to conduct the joint data search. On September 27, 1974, the industry task force submitted its data, which consisted of published studies (domestic and foreign with translations), unpublished studies, and domestic and foreign adverse reaction surveys.

These data then underwent thorough review by agency staff with input from the Advisory Committee and the Bureau of Drugs' Combination Drugs Committee, an internal staff committee established to evaluate products with respect to the agency's combination drug policy. The Advisory Committee reviewed the data and made recommendations at public meetings held November 4, 1974, November 3, 1975, August 2, 1976, and November 7, 1977, and the Combination Drugs Committee considered the matter at its meetings of August 27, 1977 and January 18, 1978.

With respect to safety, these reviews showed that the data from adverse reaction surveys and unpublished studies reveal a low number of adverse reactions, particularly when judged against the extensive use of these products. Adverse reaction rates, as estimated by the number of adverse reaction reports divided by the distribution of these drugs, were, if anything, lower for steroid/anti-infective combination products than for single-ingredient anti-infective ophthalmological products, possibly because of a therapeutic or prophylactic effect of the steroid component on sensitivity reactions to the anti-infective component. The safety data supported the conclusions that the most serious adverse reactions resulting from the combinations are those related to the steroid component (e.g., increase in intraocular pressure, scleral perforation, and exacerbation of certain infections), that these reactions are most commonly associated with long-term use, that they are best prevented by periodic examinations during treatment, and that the only incremental risk added by the anti-infective component is occasional sensitivity reactions.

With respect to effectiveness, the Advisory Committee recommended that the agency review five potential indications for these combination products: marginal keratitis secondary to *Staphylococcus aureus*, staphylococcal blepharoconjunctivitis, phylctenular keratoconjunctivitis, vernal catarrh, and allergic conjunctivitis

secondary to infection. These indications and their supporting evidence resulted from the Advisory Committee review and industry data search conducted in 1973 and 1974. The Bureau of Drugs' staff and its Combination Drugs Committee reviewed the submitted information and concluded that there were not at least two adequate and well-controlled trials demonstrating that both the steroid component and the anti-infective component contribute to the effectiveness of the combination in these conditions. There are studies showing that the combination is more effective than the antibiotic component alone. However, of two studies designed to show whether the combination is more effective than the steroid component alone, one failed to show any such advantage and the other suggested only a marginal advantage of the combination, namely in providing more rapid resolution of symptoms. The Combination Drugs Committee thus concluded that the effectiveness of these combinations in the above conditions can be attributed to the steroid component alone.

The Combination Drugs Committee also noted, however, that these steroid-responsive conditions can be accompanied by bacterial infection or risk of infection, that bacterial overgrowth in the eye is catastrophic although fortunately rare, that animal studies using techniques to make the eye more susceptible to infection demonstrate that steroids can reduce resistance to infection and anti-infective agents can counteract this effect, and that it is medically reasonable to include both ingredients in a single preparation so that one drug does not wash out the other. For these reasons, the Committee recommended that steroid/anti-infective combination products should remain available under appropriate labeling and that the requirement for adequate and well-controlled trials to demonstrate the contribution of each ingredient should be waived.

This recommendation was discussed with the Advisory Committee at its meeting of November 7, 1977. The Advisory Committee believed that the specific indications noted previously were appropriate although it acknowledged that adequate and well-controlled trials showing that the anti-infective component contributes to the therapeutic effect in the routine management of these conditions are not available. After considerable discussion the Advisory Committee recommended a more general labeling indication for consideration by the Combination Drugs Committee: "For use in the treatment of ocular inflammation where concurrent use of anti-infectives and steroids are indicated."

This indication was considered by the Bureau staff and by the Combination Drugs Committee on January 18, 1978. The conclusion was announced in the 1980 notices that ophthalmic steroid/anti-infective combination products are considered safe and effective under a slightly modified general indication as follows: "A steroid/anti-infective combination is indicated in ocular inflammation when concurrent use of an antimicrobial is judged necessary." The notices also set forth class labeling that contained specific contraindications, warnings, and precautions. It is this decision and labeling statement that was challenged by the Health Research Group.

Decision and Rationale

The Director of the Bureau of Drugs has reviewed the record of this proceeding. On the basis of this review, the Director reaffirms that these combination products are safe and effective if properly labeled and that they meet the agency's policy with respect to combination drug products. The rationale for this conclusion was not published in the 1980 notices, nor is it adequately and completely articulated in the minutes of agency or advisory committee meetings. Furthermore, the Director finds that the labeling indication published in the 1980 notices is vague and does not adequately describe the conditions for which these products are considered safe and effective. Accordingly, the Director is announcing the rationale that supports the conclusion that these combination products are safe and effective and is also announcing a requirement for revised labeling.

The Director concludes that the available data indicate that the effectiveness of combination steroid/anti-infective products in ophthalmologic inflammatory conditions is, in most cases, due to the steroid component. If the anti-infective component contributes to the effectiveness of the combination in the treatment of these conditions, e.g., staphylococcal blepharoconjunctivitis or marginal keratitis, this alleged effect is sufficiently small or unpredictable that it has proven difficult to document in adequate and well-controlled trials. In some cases, however, steroid-responsive inflammatory conditions in the eye may be accompanied by frank bacterial infection or the risk of such infection. In such cases the safety of treatment with the steroid is increased by concomitant administration of an effective anti-infective agent to either treat or prevent accompanying bacterial infection.

The addition of an anti-infective component to an ophthalmic steroid preparation is thus done to enhance the safety of the product when bacterial infection is present or possible. Such addition of an ingredient to enhance the safety of a product is permitted under FDA's combination policy (21 CFR 300.50(a)(1)).

While clinical trials to demonstrate the contribution of each active ingredient are ordinarily required for combination drugs, clinical trials to prove the increased safety of the combination in the presence of bacterial infection are not feasible for both technical and ethical reasons. An extremely large trial would be necessary to determine the incidence of eye infections in patients undergoing treatment with steroids because such infections are relatively rare. It would also be ethically impossible to obtain a valid control group of patients with eye infections treated with steroids alone because of the risk of serious damage to the eye. For these reasons clincial trials to prove the increased safety of the combination in such circumstances are not deemed feasible or necessary.

Labeling

While the labeling indication in the 1980 notices implied this rationale, the Director concludes that modification of that indication is necessary to reflect more accurately the appropriate indication. Furthermore, because the anti-infective component is added to treat or prevent specific infections, the labeling should state those common eye pathogens that are generally sensitive to the particular anti-infective drug and those that are not. Accordingly, a requirement for revised labeling for combination steroid/anti-infective drug products is included in this notice.

Manufacturers and distributors of the following drug products, which were evaluated as effective in the 1980 notices, are required to revise their labeling in accordance with this amendment (antibiotic form numbers are stated as NDA numbers below):

DESI 8615

1. NDA 50-169; Cortisporin Ophthalmic Suspension containing neomycin sulfate, polymyxin B sulfate, and hydrocortisone; Burroughs Wellcome & Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 22709.

2. NDA 50-202; Chloromycetin Hydrocortisone Ophthalmic Suspension containing chloramphenicol and

hydrocortisone acetate; Parke-Davis, Division of Warner-Lambert Co., Morris Plains, NJ 07950.

3. NDA 50–272; Achromycin Ophthalmic Ointment with Hydrocortisone containing tetracycline hydrochloride and hydrocortisone; Lederle Laboratories Division, American Cyanamid Co., Pearl River, NY 10965.

4. NDA 50–362; Metimyd with Neomycin Ophthalmic Ointment containing neomycin sulfate, prednisolone acetate, and sodium sulfacetamide; Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.

5. NDA 60–310; Neomycin Sulfate with Hydrocortisone Acetate Ophthalmic Ointment; Biocraft Laboratories, Inc., 92 Route 42, East Patterson, NJ 07407.

6. NDA 60–452; Isopto P-H-N Ophthalmic Suspension containing neomycin sulfate, polymyxin B sulfate, and hydrocortisone acetate; Alcon Laboratories, Inc., 2601 South Freeway, Fort Worth, TX 76134.

7. NDA 60–464; Neo-Deltef Eye Drops containing neomycin sulfate and prednisolone; The Upjohn Co., 7171 Portage Rd. Kalamazoo, MI 49001.

8. NDA 60–788; Di-Hydrin Ophthalmic Solution containing neomycin sulfate, polymyxin B sulfate, and hydrocortisone; Broemmel Pharmaceuticals, 1235 Sutter St., San Francisco, CA 94109.

9. NDA 60–790; Neo-Polycin HC Ophthalmic Ointment containing bacitracin, neomycin sulfate, polymyxin B sulfate, and hydrocortisone acetate; Pitman-Moore Co., Division of the Dow Chemical Co., 55 West Sheffield, Englewood, NJ 07631.

10. NDA 60–925; Florinef-S Ophthalmic Ointment and Suspension containing neomycin sulfate, gramicidin, and fludrocortisone acetate; E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

11. NDA 61–045; Neosone Ophthalmic Ointment containing neomycin sulfate and cortisone acetate; The Upjohn Co.

12. NDA 61–075; Hydrocortisone-Neomycin Ophthalmic Ointment containing neomycin sulfate and hydrocortisone acetate; Day-Baldwin, Inc., 1460 Chestnut Ave., Hillside, NJ 07205.

13. NDA 61–107; Neomycin Sulfate with Hydrocortisone Acetate Ophthalmic Ointment; Kasco Laboratories, Inc., Cantiaque Rd., P.O. Box 73, Hicksville, NY 11802.

DESI 9152

1. NDA 61–016; Terra-Cortril Ophthalmic Suspension containing oxytetracycline hydrochloride and hydrocortisone acetate; Pfizer Laboratories, Division of Charles Pfizer & Co., Inc., 235 East 42d St., New York, NY 10017.

DESI 9155

1. NDA 50–322; Neo-Decadron Ophthalmic Solution containing dexamethasone sodium phosphate and neomycin sulfate; Merck Sharp & Dohme, Division Merck & Co., Inc., West Point, PA 19486.

2. NDA 50–324; Neo-Decadron Ophthalmic Ointment containing dexamethasone sodium phosphate and neomycin sulfate; Merck Sharp & Dohme.

3. NDA 50–378; Neo-Hydeltrasol Ophthalmic Ointment containing prednisolone sodium phosphate and neomycin sulfate; Merck Sharp & Dohme.

4. NDA 50–379; Neo-Hydeltrasol Ophthalmic Solution containing prednisolone sodium phosphate and neomycin; Merck Sharp & Dohme.

5. NDA 60–186; Cor-Oticin Ophthalmic Suspension containing hydrocortisone acetate and neomycin sulfate; Maurry Biological Co., Inc., 6109 South Western Ave., Los Angeles, CA 90047.

6. NDA 60–442; Neo-Aristocort Ophthalmic Ointment containing triamcinolone acetonide and neomycin sulfate; Lederle Laboratories.

7. NDA 60–610; Neo-Cortef Ophthalmic Ointment containing hydrocortisone acetate and neomycin sulfate; The Upjohn Co.

8. NDA 60–612; Neo-Cortef Eye Drops containing hydrocortisone acetate and neomycin sulfate; The Upjohn Co.

9. NDA 60–645; Neo-Medrol Ophthalmic Ointment containing methylprednisolone and neomycin sulfate; The Upjohn Co.

10. NDA 61–037; Neo-Delta-Cortef Ophthalmic Ointment containing hydrocortisone acetate and neomycin sulfate; The Upjohn Co.

11. NDA 61–039; Neo-Delta-Cortef Ophthalmic Ointment containing prednisolone acetate and neomycin sulfate; The Upjohn Co.

DESI 10210

1. NDA 10–210; Metimyd Ophthalmic Susension, each milliliter containing 5 mg prednisolone acetate and 100 mg sodium sulfacetamide; Schering Corp.

The following drug products were listed in one notice (45 FR 57778) as lacking substantial evidence of effectiveness because they contained less than 10,000 units of polymyxin B. The notice provided that if the manufacturers reformulated these products to contain no less than 10,000 units of polymyxin B, the products would be regarded as effective when labeled as described in thie notice. These products have since been reformulated and the reformulated products are regarded as effective. Manuafacturers and distributors of these reformulated products are also required to revise their labeling in accordance with this amendment.

DESI 8615

1. NDA 50–081; Predmycin-P Liquifilm Ophthalmic Suspension containing neomycin sulfate, polymyxin B sulfate, and prednisolone acetate; Allergan Pharmaceuticals, 1000 South Grand Ave., Santa Ana, CA 92705.

2. NDA 50–201; Ophthocort Ophthalmic Ointment containing chloramphenicol, polymyxin B sulfate, and hydrocortisone acetate; Parke-Davis.

3. NDA 60–731; Bacitracin-Polymyxin-Neomycin with Hydrocortisone Ophthalmic Ointment containing zinc bacitracin, neomycin sulfate, polymyxin B sulfate, and hydrocortisone acetate; Kasco Laboratories, Inc.

DESI 50168

1. NDA 50–416; Cortisporin Ointment containing polymyxin B sulfate, zinc bacitracin, neomycin sulfate, and hydrocortisone; Burroughs Wellcome & Co.

Manufacturers or distributors of the following drug products, which were not listed in either of the 1980 notices, are also required to revise their labeling in accordance with this amendment:

1. NDA 50–023; Maxitrol Suspension containing neomycin sulfate, ploymyxin B sulfate, and dexamethasone, Alcon Laboratories, Inc.

2. NDA 50–065; Maxitrol Ointment containing neomycin sulfate, ploymyxin B sulfate, and dexamethasone; Alcon Laboratories, Inc.

3. NDA 61–188; Chloroptic-P Ointment containing chloramphenicol and prednisolone; Allergan Pharmaceuticals.

4. ANDA 87–547; Isoptocetapred containing prednisolone acetate and sodium sulfacetamide; Alcon Laboratories, Inc.

All Steroid/anti-infective combination drug products recommended for ophthalmic use that are the subject of an approved new drug application or are eligible for certification or release, whether or not listed above, are subject to this notice. All manufacturers and distributors are required to revise the labeling of such products in accordance with this amendment.

CONDITIONS FOR MARKETING AND APPROVAL

The conditions for marketing and approval stated in the August 29, 1980 notices are amended to read as follows:

I. Steroid/Anti-Infective Combination Drug Products for Ophthalmic Use Containing One or More Antibiotic Components

(Subject to Section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357)) (see 45 FR 57776) (DESI Nos. 8615, 9152, 9188, and 50168).

Batches of such drugs with labeling not in accordance with the "Labeling Requirement" listed below will no longer be acceptable for certification or release after November 15, 1982.

II. The Combination of 5 mg Prednisolone Acetate and 100 mg Sodium Sulfacetamide for Ophthalmic Use

(Subject to Section 505 of the Act (21 U.S.C. 355)) (see 45 FR 57780) (DESI 10210).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the product specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to the product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug product is effective for the indication described in the "Labeling Requirement" listed below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product contains 5 mg prednisolone acetate and 100 mg sodium sulfacetamide, and is in a form suitable for ophthalmic administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The labeling conforms to the "Labeling Requirement" listed below.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before July 19, 1982, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated application (21 CFR 314.1(f)), if such information has not previously been submitted. Revised labeling in accord with the labeling conditions described in this notice must be put into use on or before November 15, 1982. The revised labeling may be put into use before approval of the supplemental new drug applications, as provided for in 21 CFR 314.8(d) and (e).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. An abbreviated application will be acceptable only for the formulation containing 5 mg prednisolone acetate and 100 mg sodium sulfacetamide. Any new combination requires a full new drug application and appropriate studies. Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

III. Labeling Requirement

A. The indication is as follows:

For steroid-responsive inflammatory ocular conditions for which a corticosteroid is indicated and where bacterial infection or a risk of bacterial ocular infection exists.

Ocular steroids are indicated in inflammatory conditions of the palpebral and bulbar conjunctiva, cornea, and anterior segment of the globe where the inherent risk of steroid use in certain infective conjunctivitides is accepted to obtain a diminution in edema and inflammation. They are also indicated in chronic anterior uveitis and corneal injury from chemical radiation, thermal burns, or penetration of foreign bodies.

The use of a combination drug with an anti-infective component is indicated where the risk of infection is high or where there is an expectation that potentially dangerous numbers of bacteria will be present in the eye.

The particular anti-infective drug(s) in this product is [are] active against the following common bacterial eye pathogens: [*insert appropriate organisms from the list in the Appendix to this notice*].

The product does not provide adequate coverage against: [*insert appropriate organisms from the list in the Appendix to this notice*].

B. If the combination contains neomycin sulfate, the WARNINGS section of the labeling must contain an appropriate statement concerning the potential of neomycin sulfate to cause cutaneous sensitization.

(Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 507, 52 Stat. 1050-1053, 59 Stat. 463 as amended (21 U.S.C. 352, 355, 357) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70)))

Dated: May 5, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

Appendix

Organisms To Be Included in Labeling, as Appropriate.

(If a manufacturer wishes to claim that its particular anti-infective component is active against an organism(s) not covered in the following list, the manufacturer must submit current susceptibility data supporting the inclusion of the additional organism(s) and receive FDA approval before including the organism(s) in the labeling).

I. Neomycin sulfate

Active against:

Staphylococcus aureus
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species

Does not provide adequate coverage against:

Pseudomonas aeruginosa
Serratia marcescens
Streptococci, including *Streptococcus pneumoniae*

II. Neomycin sulfate, polymyxin B sulfate.

Active against:

Staphylococcus aureus
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Pseudomonas aeruginosa

Does not provide adequate coverage against:
Serratia marcescens
Streptococci, including *Streptococcus pneumoniae*
III. Neomycin sulfate, sodium sulfacetamide.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumoniae*
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Does not provide adequate coverage against:
Pseudomonas aeruginosa
Serratia marcescens
IV. Neomycin sulfate, bacitracin, polymyxin B sulfate.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumoniae*
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Pseudomonas aeruginosa
Does not provide adequate coverage against:
Serratia marcescens
V. Neomycin sulfate, gramicidin.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumoniae*
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Does not provide adequate coverage against:
Pseudomonas aeruginosa
Serratia marcescens
VI. Tetracycline hydrochloride/oxytetracycline hydrochloride.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumoniae*
Escherichia coli
Neisseria species
Does not provide adequate coverage against:
Haemophilus influenzae
Klebsiella/Enterobacter species
Pseudomonas aeruginosa
Serratia marcescens
VII. Chloramphenicol.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumoniae*
Escherichia coli
Haemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Does not provide adequate coverage against:
Pseudomonas aeruginosa
Serratia marcescens
VIII. Sodium sulfacetamide
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumonia*
Escherichia coli
Does not provide adequate coverage against:
Hemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Serratia marcescens
IX. Chloramphenicol, Polymyxin B.
Active against:
Staphylococcus aureus
Streptococci, including *Streptococcus pneumonia*
Escherichia coli
Hemophilus influenzae
Klebsiella/Enterobacter species
Neisseria species
Pseudomonas aeruginosa
Does not provide adequate coverage against:
Serratia marcescens

[FR Doc. 82-13279 Filed 5-14-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 81N-0395; DESI Nos. 5914 and 6514]

Four Prescription Products Offered for Relief of Symptons of Cough, Cold, or Allergy, Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug applications for four prescription products offered for relief of symptoms of cough, cold, or allergy. Approval is withdrawn because these combination drug products lack substantial evidence of effectiveness for their labeled indications. The products contain certain expectorants that have not been shown to be effective.

EFFECTIVE DATE: May 28, 1982.

ADDRESS: Requests for opinion of the applicability of this notice to a specific product should be identified with Docket No. 81N-0395 and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1982 (47 FR 11973), the Director of the Bureau of Drugs revoked the temporary exemption for the drug products described below which permitted these products to remain on the market beyond the time limit scheduled for the implementation of the Drug Efficacy Study. The March 19, 1982 notice also reclassified the products to lacking substantial evidence of effectiveness and offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications for the products. No data was submitted to show the effectiveness of these combination products, and they contain certain expectorants that have not been shown to be effective.

Because neither the holders of the following new drug applications nor any other interested person requested a hearing, approval of these applications is now being withdrawn. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing.

1. NDA 5-914: As it pertains to PBZ Expectorant with Ephedrine (formerly "Pyribenzamine Expectorant with Ephedrine"), containing tripelennamine citrate, ephedrine sulfate, and ammonium chloride; Ciba Pharmaceutical Co., 556 Morris Ave. Summit, NJ 07901 (DESI 5914).

2. NDA 6-303: As it pertains to Thephorin Expectorant containing phenindamine tartrate, codeine phosphate, papaverine hydrochloride, ammonium chloride, and chloroform; Roche Laboratories, Division Hoffmann-La Roche, Inc., Roche Park, 340 Kingsland St. Nutley, NJ 07110 (DESI 6514).

3. NDA 6-529: Coditrate Syrup containing hydrocodone bitartrate and potassium guaiacolsulfonate; The Central Pharmaceutical Co., 116-128 E. Third St., Seymour, IN 47274 (DESI 6514). Other components listed in a February 9, 1973 **Federal Register** notice (38 FR 4006) are no longer contained as active ingredients. Chloroform has been removed from the formulation.

4. NDA 9-248: Clistin Expectorant containing carbinoxamine maleate, ammonium chloride, sodium citrate, potassium guaiacolsulfonate, and benzyl alcohol; McNeil Laboratories, Inc., 500 Office Center Dr., Ft. Washington, PA 19034 (DESI 6514). Chloroform has been removed from the formulation.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). This notice is not applicable to over-the-counter products (21 CFR 310.6(f)). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

Based on new information on the drug products and the evidence available when the applications were approved, the Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that there is a lack of substantial evidence that the drug

products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of new drug applications 5–914 and 6–303 pertaining to the drug products named above, and approval of new drug applications 6–529 and 9–248, and all amendments and supplements thereto are withdrawn effective May 28, 1982.

Shipment in interstate commerce of the above products, or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: May 7, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-13291 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service
Centers for Disease Control

Occupational Safety and Health Field Research Projects

AGENCY: National Institute for Occupational Safety and Health (NIOSH) Centers for Disease Control, PHS, HHS.

ACTION: Notice of Research Projects to be Initiated.

SUMMARY: This notice announces the field research projects involving the collection of information from the public which are planned for initiation by NIOSH during Fiscal Year 1982.

This notice does not constitute a request for proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin L. Myers, Director, Office of Program Planning and Evaluation; NIOSH, 1600 Clifton Road, NE., Atlanta, Georgia; Telephone: (404) 329–3158 or FTS 236–3158.

SUPPLEMENTARY INFORMATION: The NIOSH field research projects described below will be conducted under the authority of Section 20 of the Occupational Safety and Health Act (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for the conduct of these types of projects has been reviewed by the Office of Management and Budget and determined to be in compliance with the Paperwork Reduction Act. The list of the projects includes the title and (a) purpose of each project, (b) the frequency with which the information will be collected, (c) an indication of types of workers from whom information will be sought, (d) the estimated number of responses and (e) the estimated burden in reporting hours.

1. *Case-Control Study of Painters and Workers in the Allied Trades.*

(a) The purpose of this study is to determine the possible adverse health effects of occupational exposure to paints, coatings and associated substances, (b) single time, (c) construction and maintenance painters in the allied trades, (d) 1000 respondents, (e) 20 minute person hour burden per response.

2. *Reproductive History Study of Women Exposed to Polychlorinated Biphenyls in the Workplace.*

(a) The purpose of this study is to determine the possible adverse health effects in women occupationally exposed to polychlorinated biphenyls, (b) single time, (c) women working with polychlorinated biphenyls, (d) 800 respondents, (e) 30 minute person burden per response.

Six weeks before beginning field work on any of the projects, NIOSH will publish a separate notice in the **Federal Register** giving specific information on the project.

Dated: May 10, 1982.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 82-13360 Filed 5-17-82; 8:45 am]

BILLING CODE 4160-19-M

National Institutes of Health

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 25, 1982. The meeting will be held at the Ramada Inn, Bethesda, 8400 Wisconsin Avenue, Bethesda, Maryland 20814, 5th Floor, Skyview Room. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 4A21, (301) 496–4236, will provide summaries of the meeting and roster of the Committee members. Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, Federal Building, Room 504, (301) 496–6931, will furnish substantive program information.

Dated: May 11, 1982.

Betty J. Beveridge,

NIH Committee Management Officer.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

[FR Doc. 82-13384 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Toxicology Program Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on June 16, 1982.

The meeting will be open to the public from 9:00 a.m. until adjournment for the purpose of completing peer reviews on draft technical reports of toxicology and carcinogenesis bioassays from the National Toxicology Program (NTP). Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

Draft technical reports on the following chemicals (and routes of administration) will be peer reviewed June 16.

Chemical	Route
L-Ascorbic Acid	Feed.
Benzyl Acetate	Gavage.
Diallyphthalate	Gavage.
Melamine	Feed.
4,4'-Methylenedianiline dihydrochloride	Water.
Trichloroethylene	Gavage.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish summary minutes of the reviews, rosters of subcommittee and panel members, and other meeting information.

Dated: May 5, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-13382 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Cancer Bioassay Reports of C.I. Acid Red 14, Guar Gum, and Tara Gum

The HHS' National Toxicology Program today announces the availability of Technical Reports on carcinogenesis bioassays of C.I. Acid Red 14, a high volume dye; guar gum, a widely-used food additive; and tara gum, a plant product. Under the conditions of these bioassays none of these chemicals were carcinogenic

C.I. Acid Red 14 did not cause cancer in rats or mice of either sex in this 103-week feeding study. C.I. Acid Red 14 is used to color fabrics (such as nylon, silk, and wool) and other materials, including acetate, aluminum, cellulose, leather, paper and wood. C.I. Acid Red 14 was used in cosmetics and externally-applied drugs until 1966 when approval was withdrawn. An estimated 51,000 pounds were produced in 1978 in the United States.

Guar gum, which is used in foods, cosmetics, pharmaceuticals, and manufactured products, did not cause cancer in rats or mice of either sex in this 103-week feeding study. Guar gum is used in beverages; breakfast cereals; cheese, ice cream, and other milk and imitation dairy products; pie fillings; processed meats and vegetables; salad dressings; sauces; and soups. It is also used in the manufacture of agricultural sprays, caulking materials, dyes, enamels, inks, textiles, and porcelain.

A second plant product, tara gum, did not cause cancer in rats or mice of either sex during a 104-week feeding study.

Copies of these Technical Reports—*Carcinogenesis Bioassay of C.I. Acid Red 14* (T.R. 220), *Carcinogenesis Bioassay of Guar Gum* (T.R. 229), and *Carcinogenesis Bioassay of Tara Gum* (T.R. 224)—are available without charge by writing to the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991, FTS 629-3991.

Dated: May 4, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-13383 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Advisory Allergy and Infectious Diseases Council; Meeting

Notice is hereby given of changes in the meeting dates and times of the "closed" and "open" portions of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, which was published in the **Federal Register** on April 26, 1982 (47 FR 17865).

The open session which was previously scheduled for Friday, May 28, 1982, from 8:30 a.m. to 9:30 a.m. has been rescheduled for Thursday, May 27, 1982. The meeting in Conference Room 10, Building 31C, Bethesda, Maryland, 20205, will be open to the public from approximately 8:30 a.m. until 9:30 a.m. and again from 2:00 p.m. until adjournment on Thursday, May 27, 1982.

The closed portions of the meeting will be from 9:30 a.m. until approximately 12:30 p.m. on Thursday, May 27, 1982, and from 8:30 a.m. until adjournment on Friday, May 28. In addition, because of a heavy workload, a closed session of the Allergy and Immunology Subcommittee has been scheduled for Wednesday, May 26, 1982, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 8100 Wisconsin Avenue, Bethesda, Maryland 20814.

Dated: May 11, 1982.

NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Sections 8(b) (4) and (5) of that Circular.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Mirobiology and Infectious Diseases Research, National Institutes of Health)

[FR Doc. 82-13386 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, June 22, 1982, UCLA Jonsson Comprehensive Cancer Center, Louis Factor Health Sciences Building, A-Floor Auditorium, Los Angeles, California 90024. The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Director, National Cancer Institute, and the Chairman, President's Cancer Panel; and discussions to obtain information on grants supported by the National Cancer Institute from scientists of the universities in the Los Angeles area. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A35, National Institutes of Health, Bethesda, Maryland 20205 (301/496-1148) will furnish substantive program information.

Dated: May 11, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-13387 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

Workshop on Implications of Recent Beta-Blocker Trials for Post-MI Patients

Notice is hereby given of the Workshop on Implications of Recent Beta-Blocker Trials for Post-MI Patients, sponsored by the National Heart, Lung, and Blood Institute, May 25-26, 1982, at the National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20205.

This workshop will be open to the public on May 25, 1982, from 8:30 a.m. to 4:50 p.m., and on May 26, 1982, from 8:30 a.m. to 3:30 p.m. Attendance will be limited to space available.

The workshop is meeting to review and document the state of knowledge regarding the effects of beta-blocking agents in post-MI patients; generate recommendation for future research on beta-blocking agents, including additional analysis of existing data, further basic science research, and new clinical trials; and address questions regarding the implications of recent beta-blocker trials for public health, clinical practice, and scientific research.

For detailed program information and agenda conctact: Mr. Larry Blaser, Chief of the Research Reporting Section, National Heart, Lung, and Blood Institute, Building 31, Room 4A21A, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236.

Dated: May 11, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-13385 Filed 5-17-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-82-1128]

Withdrawal of Prior Notice Regarding Real Estate Settlement Procedures Act

The Secretary of HUD has various duties and functions under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) ("RESPA"), including the authority to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of the Act (RESPA, section 19, 12 U.S.C. 2617).

Section 8 of RESPA (12 U.S.C. 2607) prohibits the giving or acceptance by any person of "any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of real estate settlement service involving a federally related mortgage loan shall be referred to any person."

Under interpretive regulations issued by the Secretary in 1976, "an agreement or understanding for the referral of settlement business need not be verbalized but may be established by a practice, pattern or course of conduct pursuant to which the payor and recipient of the thing of value understand that the payment is in return for the referral of business. A payment that is made repeatedly and *is connected in any way with the volume or value of the business referred to by the payor* is presumptively pursuant to an agreement or understanding" (24 CFR 3500.14(c) (emphasis added)).

Appendix B to 24 CFR Part 3500 sets forth "illustrations" to "provide additional guidance" regarding the application of Section 8. Example 10 hypothesizes the performance of title services for a broker who is a part owner of the title agent, along with other brokers. The title agent pays "annual dividends to its owners * * * based on the relative amount of business each of its owners refers to" the title agent. The illustration held that because the "dividends" were based on the amount of business referred, a violation of Section 8 was present. The illustration stated further that if the amount of stock or other ownership interest held by the broker varied in proportion to the amount of business referred or expected to be referred, or if the title agent retained funds for subsequent distribution to the broker "where such funds were generally in proportion to" the amount of business referred, Section 8 violations also would be present.

On July 24, 1980, the Department published a notice in the **Federal Register** (45 FR 49360), labelled an "interpretive rule," which set forth an interpretation of Section 8 which appeared to expand its coverage beyond that indicated by the Department's prior regulations (which were not amended). The notice stated that it was being issued in reponse to "numerous inquiries * * * received from the public regarding the application of Section 8 * * * to practices relating to a form of corporate organization known as 'controlled business,' " described as "an arrangement whereby a person in a position to refer settlement business (typically a real estate broker, mortgage lender, attorney, etc.) has an ownership interest in a settlement service provider, refers business to that provider and shares in the profits of that provider through direct or indirect distribution."

The notice went on to state that the Department "has concluded that the existence of the 'controlled business' relationship *may be* a violation of Section 8" (emphasis added) because the Department "interprets this section as applying, notwithstanding (1) that the person referring the business has an ownership interest in the provider of the service, or (2) that the payment of the 'fee, kickback or thing of value' is characterized as a return on capital invested."

On its face, the above "interpretation" stated in the July 1980 notice is fully consistent with the Department's existing regulations cited above, since both factors cited in the "interpretation" were present also in Example 10 of Appendix B. The "interpretation" pointedly did not address the critical element which in fact would have indicated an extension of earlier interpretations, viz., whether, or under what circumstances, a return on capital invested which did *not* vary in proportion to volume or value of business referred could be found indicative of the presence of an "agreement or understanding * * * that business * * * shall be referred to" the firm in which capital is invested. While remaining silent on this essential point, and notwithstanding its plain indefiniteness, the notice appeared to be intended to indicate, and in fact was generally perceived as indicating, that the mere fact of a controlled business relationship between two firms, and the referral of settlement services business by one to the other, constituted a Section 8 violation. (This perception of the notice's intent was not diminished by the notice's statement that it was "not to be construed as marking the initiation of a change in policy.")

The Department's notice has received severe criticism, principally because of its intended effect of deterring economic arrangements through reference to a criminal statute without stating any more clearly than has been stated previously whether, or why, the statute was applicable. Other economic interests, particularly title insurers, who favor the prohibition of controlled business relationships have supported the deterring effect of the "interpretive rule" even while acknowledging that Congress did not consciously address the desirability of controlled business relationships in settlement services industries when enacting Section 8 or subsequently.

Because the Department's notice published July 24, 1980, neither stated clearly whether or in what respects it conveyed an "interpretation" different from that previously conveyed nor why it should be perceived as doing so, and because of the unfortunate confusion it has created regarding coverage of a criminal statute, the Department hereby gives notice that its prior notice denominated as an "interpretive rule" is not to be considered authoritative and is withdrawn.

Dated: May 12, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-13712 Filed 5-17-82; 11:22 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Policy for Use of the Federal Portion of the Land and Water Conservation Fund

Correction

In FR Doc. 82-12393 appearing on page 19784 in the issue of Friday, May 7, 1982; on page 19785, first column, sixth line from the bottom, "objections" should read "objectives".

BILLING CODE 1505-01-M

Bureau of Land Management

Proposed Livestock Grazing Management for the Sierra Planning Unit, Folsom Resource Area, Bakersfield District, Calif.; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statment concerning a proposed grazing management program for the Sierra Planning Unit in parts of ten counties in central California. The proposed action allocates 10,216 AUMs to livestock and 5,877 AUMs to deer. The alternatives analyzed include no domestic livestock grazing, no action (continue with 9,674 AUMs to livestock), livestock maximization (16,093 AUMs to livestock), and watershed/wildlife maximization (5,111 AUMs to livestock).

Comments on this draft environmental impact statement are being solicited from public agencies and interested individuals and entities. The Bureau of Land Management invities written comments on the statement to be submitted by July 5, 1982 to the Area Manager, Folsom Resource Area, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630.

A limited number of copies of this document are available upon request at the Folsom Resource Area (916) 985–4474 and the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4541.

In addition to the above offices, copies of this EIS are available for public reading and review at:

Division of Rangeland Management, Bureau of Land Management, Premier Building, Room 909–H, 1725 I Street, NW., Washington, D.C. 20006.
Bakersfield District Office, Bureau of Land Management, Federal Building, Room 304, 800 Truxton Street, Bakersfield, CA 93301.

Dated: May 7, 1982.

Ronald D. Hofman,
Associate State Director.

[FR Doc. 82-13392 Filed 5-17-82; 8:45 am]
BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Forms Being Submitted to Office of Management and Budget for Review.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the number listed below. Comments and suggestions should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at (202) 395–7340.

Title: 43 CFR Part 2200, Exchanges, General.

Bureau Form Number: 1004–0056.

Frequency: Intermittent.

Description of Respondents: General Public, state and local governments, other Federal agencies.

Annual Responses: 115.

Annual Burden Hours: 345.

Bureau clearance officer (alternate): Linda Gibbs (202) 653–8853.

James M. Parker,
Acting Director.

May 13, 1982.

[FR Doc. 82-13404 Filed 5-17-82; 8:45 am]
BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 § 10), that a meeting of the Cape Code National Seashore Advisory Commission will be held at 1:30 p.m. on Friday, June 4, 1982, at the Headquarters Building, Cape Code National Seashore.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows:

Dexter M. Keezer, Truro
Francis R. King, Wellfleet
Nathan Malchman, Provincetown
Barbara S. Mayo, Provincetown
Joshua A. Nickerson, Chatham
David F. Ryder, Chatham
Sherrill B. Smith, Jr., Orleans
Clifford H. White, Wrentham
Elizabeth F. Worthing, Eastham
Paul F. Nace, Jr., Woods Hole

At the meeting at 1:30 p.m. the Commission will consider the following: Renewal of Certificates of Suspension of Condemnation for commercial properties and the Comprehensive Design for Coast Guard and Nauset Light Beaches.

The afternoon meeting will be preceded by a field trip at 10:00 a.m. to the various commerical properties currently operating under certificates of suspension of condemnation. Interested members of the public may join in the field trip, which will begin at Park Headquarters, but must provide their own transportation.

The meeting is open to the public. It is expected that 15 persons will be able to attend the afternoon session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, telephone (617) 349–3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,
Superintendent, Cape Cod National Seashore.

May 4, 1982.

[FR Doc. 82-13406 Filed 5-17-82; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 12, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by June 2, 1982.

Carol D. Shull,
Acting Keeper of the National Register.

MASSACHUSETTS

Essex County

Andover, *Bradlee School (Town of Andover Multiple Resource Area)* 147 Andover St.

[FR Doc. 82-13405 Filed 5-17-82; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 7, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by June 2, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

ARIZONA

Pima County

Tucson, *Cannon, Dr. William Austin, House (Prof. Andrew Ellicott Douglass Residence)*, 1189 E. Speedway
Tucson, *Smith, Professor George E. P., House*, 1195 E. Speedway

COLORADO

Boulder County

Boulder, *Williams, Wilbur, House*, 1434 Baseline Rd.

Denver County

Denver, *Chappell, Delos Allen, House (5DV320)*, 1555 Race St.
Denver, *Dow-Rosenzweig House*, 1129 E. 17th Ave.
Denver, *St. Joseph's Roman Catholic Church of Denver*, 600 Galapago
Denver, *Stearns House*, 1030 Logan St.
Denver, *Union Warehouse*, 1514 17th St.
Denver, *West Colfax Historic District*, 1389, 1390, 1435, 1444, and 1471 Stuart St.
Denver, *Zang Barn and Stable-Rocky Mountain Hotel*, 2283 and 2301 7th St.

El Paso County

Colorado Springs, *City Hall of Colorado City*, 2902 W. Colorado Ave.
Colorado Springs, *St. Mary's Catholic Church*, 26 W. Kiowa St.

Logan County

Sterling, *First United Presbyterian Church (First Presbyterian Church)*, 130 S. 4th St.
Sterling, *I and M Building*, 223 Main St.
Sterling, *St. Anthony's Roman Catholic Church*, 329 S. 3rd St.
Sterling, *Union Pacific Depot*, 210 N. Front St.

Mesa County

Clifton, *Clifton Community Center and Church*, F and Main St.

Montrose County

Montrose, *Denver and Rio Grande Depot*, 20 N. Rio Grande Ave.
Montrose, *Montrose City Hall*, 433 S. 1st St.

Morgan County

Brush, *All Saints Church of Eben Ezer*, 120 Hospital Rd.

Pueblo County

Pueblo, *Galligan House*, 501 Colorado Ave.
Pueblo, *Gast Mansion*, 1801 Greenwood St.

CONNECTICUT

Fairfield County

Bridgeport, *Division Street Historic District*, Roughly bounded by State St., Iranistan, Black Rock and West Aves.

DELAWARE

Kent County

Milford vicinity, *Archeological Site No. 7K-F-4 and 23.*

FLORIDA

Pinellas County

Bay Pines, *Bay Pines Site (8Pi64)*, VA Medical Center

IDAHO

Bannock County

Pocatello, *Pocatello Historic District*, Roughly bounded by RR tracks, W. Fremont, W. Bonneville and Garfield Sts.

ILLINOIS

Adams County

Quincy, *Newcomb, Richard F., House*, 1601 Maine St.

Coles County

Oakland, *Rutherford, Dr. Hiram, House and Office*, 14 S. Pike St.

Cook County

Brookfield, *Grossdale Station*, 8820½ Brookfield Ave.
Chicago Heights, *Bloom Township High School*, 10th St., Dixie Hwy. and Chicago Heights St.
Chicago, *Railway Exchange Building*, 80 E. Jackson Blvd. and 224 S. Michigan Ave.
Chicago, *Warner, Seth, House*, 631 N. Central Ave.

DuPage County

West Chicago vicinity, *McAuley School District No. 27*, Roosevelt Rd.

Jersey County

Chautauqua, *New Piasa Chautauqua Historic District*, Off McAdams Pkwy.

Kane County

Aurora, *Hotel Aurora*, 2 N. Stolp Ave.

Kankakee County

Kankakee, *Swannell, Charles E., House*, 901 S. Chicago

Lake County

Libertyville, *Lewis Lloyd, House*, 153 Little St. Mary's Rd.

McHenry County

McHenry, *Count's House*, 3803 Waukegan

Monroe County

Waterloo, *Moore, Capt. James Farmstead*, S. Church St.

Randolph County

Sparta, *Sparta Historic District*, S. St. Louis, W. 3rd and S. James Sts.

Rock Island County

Rock Island, *Rock Island Lines Passenger Station*, 3029 5th Ave.

Sangamon County

Springfield, *Boult, H. P., House*, 1123 S. 2nd St.

Whiteside County

Tampico, *Main Street Historic District*, S. Main St.

KENTUCKY

Fayette County

Lexington vicinity, *McCann, Benjamin, House (Castlelawn)*, Old Richmond Pike
Lexington vicinity, *McCann, Neal, House*, 5364 Toods Rd.

MASSACHUSETTS

Bristol County

New Bedford, *Clark's Point Light (Lighthouses of Massachusetts TR)*, Wharf Rd.

MISSOURI

Howard County

Franklin vicinity, *Cedar Grove*, W of Franklin

NEW HAMPSHIRE

Grafton County

Grafton, *Ruggles Mine*, Off U.S. 4

NEW JERSEY

Camden County

Collingswood, *Collingswood Theatre*, 943 Haddon Ave.

Monmouth County

Allentown, *Allentown Historic District*, N. and S. Main Sts.

Monmouth County

Red Bank, *Reckless, Anthony, Estate*, 164 Broad St.

NEW YORK

Bronx County

Bronx, *House at 175 Belden Street*

Bronx County

Bronx, *Park Plaza Apartments*, 1005 Jerome Ave.

Broome County

Windsor, *Houtchkiss, Jedediah, House*, 10 Chestnut St.

Chenango County

South Otselic, *Newton Homestead*, Ridge Rd.

Columbia County

Valatie, *Wild's Mill Complex*, U.S. 9 and NY 203

Delaware County

Delhi, *Murray Hill*, Murray Hill Rd.

Dutchess County

Dover Plains, *Tabor-Wing House*, NY 22 and Cemetery Rd.

Kings County

Brooklyn, *68th Police Precinct Station House and Stable*, 4302 4th Ave.
Brooklyn, *Cronyn, William B., House*, 271 9th St.
Brooklyn, *Gage and Tollner Restaurant*, 372 Fulton St.

Montgomery County

Nelliston, *Ehle House Site (Site No. A057–48–0001)*

New York County

New York, *Baker, George F., Jr. and Sr. Residences*, 67, 69, and 75 E. 93rd St.
New York, *Church Missions House*, 281 Park Ave., S.
New York, *Houses at 146—156 East 89th Street*
New York, *Houses at 26, 28, and 30 Jones Street*
New York, *Knox Building*, 452 5th Ave.
New York, *Lamb's Club*, 128 W. 44th St.
New York, *Lanier, James F. D., Residence*, 123 E. 35th.
New York, *New York Presbyterian Church*, 151 W. 128th St.

Onondaga County

Elbridge, *Elbridge Hydraulic Industry Archeological District (A067–49–0001–DO1)*

Richmond County

Staten Island, *Brighton Heights Reformed Church*, 320 St. Mark's Pl.

Ulster County

Bruynswick vicinity, *Reformed Church of Shawangunk Complex*, Hoagerburgh Rd.
Gardiner vicinity, *Tuthilltown Gristmill*, Albany Post Rd.

Westchester County

Rye City, *Kanapp, Timothy, House and Milton Cemetery*, 285 Rye Beach Ave. and Milton Rd.
Tarrytown, *Foster Memorial A.M.E. Zion Church*, 90 Wildey St.

[FR Doc. 82–13410 Filed 5–17–82; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

May 13, 1982.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

No. 43965, Southwestern Freight Bureau, Agent (No. B–156), carload rates on cottonseed hulls between stations in Southwestern Territory, including Mississippi River Crossings Memphis, TN and South; also between points in Southwestern Territory, on the one hand, and stations in Illinois and Western Trunk Line Territories, on the other hand, and only for account of the SP and/or SSW, in Supplement 254 to its tariff ICC SWFB 4450, effective June 6, 1982. Grounds for relief—Rate Relationships.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13371 Filed 5–17–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements state in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC–FC–79534. By decision of May 4, 1982, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ATS Transport, Inc. of Certificate of Registration No. MC–69038 (Sub-No. 1 issued June 16, 1965, to Olson Express, INC. evidensing a right to engage in transportation in interstate commerce transporting property from and to Lorain, OH; also household goods, office furniture and fixtures to and from any point in Lorain County, OH, corresponding in scope to Ohio Certificate No. 3367–I dated April 7, 1958 issued by Public Utilities Commission of Ohio subject to the following conditions: a copy of State Order approving the transfer of the corresponding State rights must be furnished when it is available. Applicant's representative is: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212.

Note.—A directly related application seeking a conversion of the Certificate of Registration in MC–69038 (Sub-No. 1) into a Certificate of Public Convenience and Necessity has been filed in MC-153061 (Sub-No. 1), published in this same Federal Register issue.

MC–FC–79692. By decision of May 13, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to AFFILIATED VAN LINES, INC. of Lawton, OK, of Certificate and Permit Nos. MC–141364 (Sub-Nos. 5 and 6) issued to OFFILIATED VAN LINERS; INC., of Lawton, OK, which has recently changed its name to AFFILIATED TRANSPORTATION SYSTEMS, INC., the authority to be transferred authorizes the transportation of (1) *household goods*, as defined by the Commission, between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, DC, WY, and MN; (2) *textile mill products*, between points in the U.S., under continuing contract(s) with Haggar Company, of Dallas, TX; and (3) *new furniture, mirrors, and furniture parts*, crated, (a) between Oklahoma City, OK, Trumann, AR, Toccoa, GA, and Selma, AL, (b) from Oklahoma City, OK, and Trumann, AR, to points in NE, CO, NM, KS, OK, TX, MN, IA, MO, AR, WI, IL, CA, AZ, ND, and SD, (c) from Toccoa, GA, Selma, Al, and Trumann, AR, to points in ME, NH, VT, MA, CT, and RI, and (d) from Trumann, AR, to points in NC, LA, MS, MI, IN, KY, TN, AL, VA, FL,

GA, MD, NJ, and DE. Representative: Charles J. Kimball, 665 Capitol Life Center, Denver, CO 80203.

Note.—Transferee is not a carrier but is affiliated with the transferor.

MC–FC–79724. By decision of May 4, 1982, issued under 49 U.S.C. 10926, 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to L.A.S.V. Transportation, Ltd., of Los Angeles, CA, of Certificate No. MC–99972 (Sub-No. 3) issued October 31, 1966, and Certificates of Registration Nos. MC–99972 (Sub-No. 3) issued October 31, 1966, and Certificates of Registration Nos. MC–99972 (Sub-No. 2) issued April 30, 1964, and MC–99972 (Sub-No. 4) issued October 31, 1966, to 20th Century Trucking Company, of Los Angeles, CA, corresponding in scope to state certificate No. 61192 dated December 13, 1960, and No. 61815 dated April 11, 1961, issued by the Public Utilities Commission of the State of California, authorizing the transportation in Sub-No. 2 of general *commodities* with named exceptions between all points and places within Los Angeles and Los Angeles Basin Territory, between all points and places within the San Diego Territory and between Los Angeles and Los Angeles Basin Territory, on the one hand, and the San Diego Territory on the other hand, including all points and places on, along and within 5 miles laterally of U.S. Highways Nos. 101 and 101 Alternate in Sub-No. 3; *general commodities* with baned exceptions, between points in the Los Angeles, CA, Commercial Zone, on the one hand, and, on the other, steamship docks and piers at Los Angeles and Long Beach Harbors, CA, in line haul service, and in Sub-No. 4 *general commodities* with named exceptions, between all points and places within the Los Angeles Basin Area, between all points in said Los Angeles Basin Area, on the one hand, and, on the other, the City of Santa Barbara, between all points in said Los Angeles Basin Area, on the one hand, and, on the other, all points in the San Diego Territory, and between the Los Angeles Basin area, on the one hand, and, on the other, all points on U.S. Highway 101 and U.S. Highway 101–A between the city of Santa Barbara and the San Diego Territory, inclusive, including all points laterally within five miles of said highways subject to the following conditions: transferee shall file the following with this Commission's Office of Proceedings (either prior to or concurrently with the consummation of this transfer): (i) a certified copy of the State certificate as reissued to transferee, or—if the State Commission does not reissue the certificate—a certified copy of the State order approving the transfer of the underlying intrastate rights; and (ii) a written notice confirming the date of consummation of that intrastate transaction. Representative: James J. Keller, 1625 W. Olympic Blvd., Suite 810, Los Angeles, CA 90015, phone (213) 388–0489.

Note.—TA lease is not sought. Transferee is not a carrier.

MC–FC–79761. By decision of May 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BIG BEAR SERVICES, INC., Waterloo, Ontario, Canada, of Cetificate No. MC–146559 (Sub-No.2F) and Permit No. MC–149379, issued to LARAMEE LEASING & TRUCKING LIMITED, also of Waterloo, Ontario, Canada, which authorize the transportation of (1) *glass*, from the facilities of LOF Glass, Inc., and LOF Co. at or near Laurinburg, NC, and Toledo, OH, to ports of entry on the international boundary line between the U.S. and Canada; and (2) *lumber and lumber products*, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Sinclair Lumber Company, of Laurinburg, NC. Representative: John C. Scherbarth, 30200 Telegraph Road, Suite 467, Birmingham, MI 48010, (313) 644–4433.

Note.—TA has not been filed. Transferee is not a carrier, but is affiliated with transferor.

MC–FC–79763. By decision of May 4, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to DAN BROWN TRUCKING, INC., of Greybull, WY, of Certificate Nos. MC–107452 (Sub-No.14) MC–107452 (Sub-No. 15X) issued August 5, 1981, and September 30, 1981, respectively, to R. D. BROWN d.b.a. DAN BROWN TRUCKING of Greybull, WY, authorizing the transporation, over irregular routes, of *coal; salt; sand, cement, barite, bentonite, salt, drilling mud and fertilizer; drilling mud and energy development products; farm products and materials, equipment, and supplies; clay, concrete, glass or stone products; mercer commodities and equipment, materials and supplies; mercer commodities, cement, chemicals and related products, materials, equipment and supplies*, generally between points in central and western United States.

MC–FC–79770. By decision of May 3, 1982, issued under 49 U.S.C. 10926 and transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LOMA, INC., d.b.a. ABE LIMO–BUS SERVICE, of Allentown, PA, of Cetificate No. MC–150253 (Sub-No.1) issued to FRED MATTERN, d.b.a. ABE LIMO–BUS SERVICE, of Allentown, PA, authorizing *passengers and their baggage*, in the same vehicle with passengers, in door to door non-scheduled service, in special and charter operations, between points in Lehigh and Northampton Counties, PA, on the one hand, and, on the other, (1) New York, NY, restricted to passengers having an immediate prior or subsequent movement by air or water, and (2) Atlantic City, NJ, restricted to no more than eleven (11) passengers in any one vehicle. Representative: Francis W. Day, 323 Maple Ave., Southampton, PA 18966.

Note.—TA lease is not sought. Transferee is not a carrier.

MC–FC–79771. By decision of May 4, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 U.S.C. 1132, Review Board Number 3 approved the transfer to Red Carpet Executive Charter Service, Inc., of Pensacola, FL, of Certificate No. MC–158106 issued to Red Carpet Charter Service, Inc., of Pensacola, FL, authorizing the transportation of passengers and their baggage in the same vehicle with passengers, in round-trip, charter operations, beginning and ending at points in Escambia County, FL, and extending to points in Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia. Representative: K. Edward Wolcott, 235 Peachtree Street NE., Suite 1200, Atlanta, GA 30303.

Note.—Transferee holds no authority from this Commission. TA has not been sought.

MC–FC–79772. By decision of May 4, 1982, issued under 49 U.S.C. 1093 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Gary D. Kilgore, d.b.a. G&J Freight, at Clovis, CA of Certificate of Registration No. MC–121620 issued to G&J Freight, Inc., of Fresno, CA, authorizing: named commodities, including iron and steel, roofing and building materials, waste paper, lumber, brick, petroleum and machinery, between described points in CA, as corresponding to Certificate No. MC–52512 issued by the California Public Utilities Commission. Condition: This proceeding may not be consummated until the Commission receives a copy of the State order approving transfer of the underlying intrastate rights. Representative: Michael S. Rubin, 250

Montgomery St., Fifth Fl., San Francisco, CA 94104.

Note.—TA lease is not sought. Transferee is not a carrier.

MC–FC–79774. By decision of May 4, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 U.S.C. 1132, Review Board Number 3 approved the transfer to LEO R. FALARDEAU, d.b.a. E.M. HEFLER MOVERS, of Lowell, MA, of Certificate No. MC–42218, issued to RALPH B. WILKINS, d.b.a. E.M. HEFLER, also of Lowell, MA, which authorizes the transportation of *household goods*, between Lowell, MA, on the one hand, and, on the other, points in Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. Representative: Charles B. Mead, 173 Chelmsford Street, Chelmsford, MA 01824.

Note.—Transferee is not a carrier.

MC–FC–79775. By decision of May 5, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 U.S.C. 1132, Review Board Number 3 approved the transfer to T&L LEASE SERVICE, INC. of Certificate No. MC–151855 (Sub-No. 1) issued to AUTOMOTIVE EXPRESS, INC. authorizing the transportation of (1) *automotive parts*, between points in AR, IL, IA, LA, MO, NC, NY, OH, OK, PA, and TN on the one hand, and, on the other, points in TX, and (2) *petroleum products*, between points in Jefferson County, TX, on the one hand, and, on the other, points in IA, IL, IN, MO, NC, OH, OK and TN. Representative: Jeannie Fryar, 427 East South Street, Alvin, TX 77511.

Note.—(1) Transferee is a carrier. (2) An application for temporary authority has been filed. (3) A directly related conversion application has been filed in MC–66875 and published in the same Federal Register.

MC–FC–79779. By decision of 5/4/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to HORWITH TRUCKS, INC. of Permit No. MC–125499 (Sub-No. 4)X isued to LV COMPANY, INC. authorizing the transportation of (1) *building materials* and *supplies*, between points in the United States, under continuing contract(s) with Eastern Industries of Wescoesville, PA and (2) *commodities in bulk*, between points in the United States under continuing contract(s), with the Bylite Corporation of Wilkes-Barre, PA. Representative: Francis W. Doyle, 323 Maple Avenue, Southampton, PA.

Note.—Transferee is a carrier.

MC–FC–797844. By decision of May 6, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to *Nancy Transportation, Inc.* of Certificate No. MC–47686 issued February 21, 1941, to *Kimball's Motor Dispatch, Inc.* authorizing the transportation of general commodities, except those of unusual value, commodities in bulk, dangerous explosives, and those requiring special equipment between Williamstown, MA and New York, NY over a described regular route serving all intermediate points and Sharon, Tacanic, Lakeville and Salisbur, CT, Millerton, Amenice and Millbrock, NY, and those in Berkshire County, MA and points in NY and NJ within 20 miles of New York, NY, as off-route points; and (2) worsted yarn over irregular-routes from Pittsfield, MA to Philadelphia, PA. Representative is: L. William Higley, Esq., Roberts & Heneghan, 1015 Locust, Suite 700, St. Louis, MO 63101.

MC–FC–79788. By decision of May 6, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to CONTINENTAL CARRIERS, INC., of Millbrook, AL, of Certificate No. MC–143458 (Sub-No. 2), issued to L.T. MADDOX, d.b.a. PRONTO TRUCKIN', also of Millbrook, AL, which authorizes the transportation of *animal hides*, from points in GA, TN, SC, FL, and AL, to points in CA, restricted to the transportation of traffic originating at the named origins. Representative: L. N. Hubbard, P.O. Box 892, 2911 Main Street, Millbrook, AL 36054.

Note.—Transferee is not a carrier, but is affiliated with Continental Express, Inc., a property broker under MC–152988.

MC–FC–79791. By decision of May 6, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to COBALT CORPORATION (To Be Renamed East Texas Motor Freight Lines, Inc.) of Certificate No. MC–41432 and all issued to subs thereunder EAST TEXAS MOTOR FREIGHT LINES, INC. authorizing the transportation of specified and general commodities between points in the United States. Representative: David G. MacDonald, 1000 Sixteenth St. NW., Suite 502, Solar Bldg., Washington, DC 20036.TA Lease is not sought. Transferee is not a carrier.

Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application

involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: May 11, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC 153051 (Sub-1), filed December 31, 1981. Applicant ATS TRANSPORT, INC.—CONVERSION, 34439 Mills Rd., North Ridgeville, OH 44039. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. To operate as a *common carrier,* over irregular routes, transporting: general commodities (except Class A and B explosives) between Lorain, OH, on the one hand, and, on the other, points in OH.

Note.—The purpose of this application is to convert the Certificate of Registration in MC-99038 (Sub-No. 1) into a Certificate of Public Convenience and Necessity. This proceeding is a matter directly related to a proceeding pursuant to 49 U.S.C. 10931 or 10932 in MC-FC-79534 published in this same Federal Register issue.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13372 Filed 5-17-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980 at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP2-82

Decided: May 5, 1982.

By the Commission Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 1222 (Sub-56), filed April 19, 1982. Applicant: THE REINHARDT TRANSFER COMPANY, 1410 Tenth Street, Portsmouth, OH 45662. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602, (502) 223-8244. Transporting *metal and metal products,* between points in Campbell County, KY, on the one hand, and, on the other, points in AR.

Note.—Applicant intends to tack with regular route authority in No. MC-1222.

MC 11592 (Sub-35), filed April 19, 1982. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, Omaha, NE 68107. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036, 202-223-5900. Transporting *food and related products,* between points in Cache County, UT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 16513 (Sub-34), filed April 19, 1982. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NJ 08110. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312, 703-750-1112. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Phelps Dodge Corporation and its subsidiary companies, of New York, NY.

MC 24583 (Sub-50), filed April 22, 1982. Applicant: FRED STEWARD COMPANY, P.O. Box 665, Magnolia, AR 71753. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, 501-375-3022. Transporting *chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with T & T Chemical Company, of El Dorado, AR.

MC 107012 (Sub-762), filed April 16, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30, West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko, (Same as applicant), (219) 429-2224. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with K-Mart Corporation, of Troy, MI.

MC 111432 (Sub-24), filed April 20, 1982. Applicant: FRANK J. SIBR & SONS, INC., 2122 York Rd., Suite 100, Oak Brook, IL 60521. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, 217-753-3925. Transporting *chemicals,* between points in the U.S., under continuing contract(s) with Thompson-Hayward Chemical Company, of Kansas City, KS.

MC 124813 (Sub-240), filed April 19, 1982. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 134813 (Sub-18), filed April 29, 1982. Applicant: WESTERN CARTAGE, INC., P.O. Box 964, Pryor, OK 74361. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 1124, El Reno, OK 73036, 405–262–1322. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Midwest Carbide Corporation, of Keokuk, IA.

MC 144572 (Sub-65), filed April 13, 1982. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80632. Representative: Steven K. Kuhlmann, 2600 Petro-Lewis Tower, 717 17th St., Denver, CO 80202, 303–892–6700. Transporting *general commodities* (except classes A and B explosives and household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 146343 (Sub-16), filed April 29, 1982. Applicant: SOUTHERN EXPRESS CORPORATION, 505 South Ocean Blvd., Pompano Beach, FL 33062. Representative: Joseph Badway, 2 Sawyer Dr., Coventry, RI 02816, 401–822–0878. Transporting *general commodities* (except classes A and B explosives and household goods and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with American Wire & Cable Company, of Olmsted Falls, OH.

MC 146813 (Sub-9), filed April 14, 1982. Applicant: A.M. DELIVERY, INC., 21454 Cold Springs Lane, Diamond Bar, CA 91765. Representative: Milton W. Flack, 8484 Wilshire Blvd. Suite 840, Beverly Hills, CA 90211, 213–655–3573. Transporting (1) *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Technibilt Corporation, Division of Whitar Corporation, of Burbank, CA, (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Wilsey Foods, Inc., of Los Angeles, CA, (3) *such commodities* as are dealt in or used by hospitals, nursing homes, pharmacies, drug stores, and health and medical centers, between points in the U.S. (except AK and HI), under continuing contract(s) with American McGaw, Division of American Hospital Supply Corporation, of Santa Ana, CA, and American Pharmaseal, Division of American Hospital Supply Corporation, of Glendale, CA, and (4) *chemicals and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Calusa Chemical Company, of Santa Fe Springs, CA.

MC 147313 (Sub-3), filed April 1, 1982 Applicant: JOHN PFROMMER, INC., P.O. Box 307, Douglassville, PA 19518. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101, (703) 893–4924. Transporting *commodities in bulk, ores and minerals, clay, concrete, glass or stone products, petroleum, natural gas and their products, coal and coal products, waste or scrap materials not identified by industry producing, metal products, building materials, machinery, chemicals and related products*, between points in the U.S., (except AK and HI). Condition: To the extent any certificate issued in this proceeding embraces the transportation of liquefied petroleum gas, it shall be limited to a period of 5 years from its date of issuance.

Note.—Applicant requests cancellation of its Permit No. MC–147313 (Sub-No. 1) X served May 28, 1981, concurrently with the issuance of the authority sought.

MC 148263 (Sub-1), filed April 20, 1982 Applicant: FLEETWOOD TRUCKING COMPANY, Route #1, Spalding, MI 49886. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, 616–459–6121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MI, on the one hand, and, on the other, points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the United States and Canada, under continuing contract(s) with (a) Menominee Box & Lumber Co., Inc., of Menominee, MI, (b) Ryan Wood Resources, of Marinette, WI, (c) Escanaba Lumber Co., Inc., of Escanaba, MI and (d) P–S Manufacturing Co., Inc., of Spalding, MI.

MC 153553 (Sub-2), filed April 9, 1982 Applicant: ROCKINGHAM CARRIAGE SERVICE, INC., Route 1 Bypass (P.O. Box 1349), Portsmouth, NH 03801. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *trucks, truck chassis and tractors*, between points in the U.S., under continuing contract(s) with Iveco Truck of North America, Inc., of Blue Bell, PA.

MC 153992 (Sub-1), filed April 21, 1982 Applicant: C & C TRUCKING, 106 Coburn Dr., Chattanooga, TN 37414. Representative: J. Greg Hardeman, 618 United American Bank Bldg., Nashville, TN 37219, 615–244–8100. Transporting *food and related products*, (a) between points in Hamilton County, TN, on the one hand, and, on the other, points in TX, TN and AR, and (b) between points in TX and IL, on the one hand, and, on the other, points in AR, AL, GA, FL, LA, IL, MO, MS, NC, SC, TN and TX.

MC 154103 (Sub-7), filed April 20, 1982. Applicant: MID-SOUTH FREIGHT, INC., 28 Industrial Park Dr., P.O. Box 446, Hendersonville TN 37075. Representative: Joe F. Powell (same address as applicant), 615–822–6140. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in AL, FL, GA, IN, KY, MI, MS, NC, OH, SC, TN, and WV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157112 (Sub-1), filed April 20, 1982. Applicant: SIMONICH TRUCKING, 3455 15th Ave. South, Great Falls, MT 59405. Representative: F. B. Simonich (same address as applicant), 406–761–0699. Transporting *alcoholic beverages*, between points in CA, WA and OR, on the one hand, and, on the other, points in MT, under continuing contract(s) with Gusto Distributing Company dba Bruce Watkins Distributing Company, of Great Falls, MT.

MC 158133, filed April 29, 1982. Applicant: CONTRACT TRANSPORTATION SERVICE, INC., 1711 South 2nd St., Piscataway, NJ 08854. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. Transporting *building materials and supplies and chemicals and related products* between points in the U.S. (except AK and HI), under continuing contract(s) with Vanguard Vinyl Siding, Inc., of Manville, NJ.

MC 159732 (Sub-1), filed April 1, 1982. Applicant: WITHERS TRANSFER AND STORAGE OF CORAL GABLES, INC., 357 Almeria Ave., Coral Gables, FL 33134. Representative: Wayne E. Withers, Jr. (same address as applicant), (305) 444–7116. Transporting *household goods, furniture and fixtures, wall*

coverings, floor coverings, building materials, hotel furnishings, residential supplies, objects of arts and antiques, between points in FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160483, filed April 20, 1982. Applicant: JOE C. VALLELONGA, d.b.a. VALLELONGA TRUCKING, Hazelwood Dr., Seville, OH 44273. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652–2789. Transporting (1) *textile mill products,* between points in AL, CA, IL, IN, KY, MD, MO, OH, SC, TX, UT, VA, NJ, MI, NC, CO, FL, PA, MS, LA, TN and GA and (2) *such commodities* as are dealt in or used by manufacturers of toys, games, sporting goods, and children's furniture, between points in AZ, CA, CO, FL, GA, KS, MI, MD, OH, PA and TX.

MC 161362 filed April 5, 1982. Applicant: CONTROL DATA CORPORATION, 8100 34th Ave. So., P.O. Box 42–A, Minneapolis, MN 55440. Representative: James L. Nelson, 1821 University Ave., Suite 163 North, St. Paul, MN 55104, 612–646–6677. As a *broker,* in arranging for the transportation of *household* goods, between points in the U.S. (exluding AK, but including HI). Condition: The holder of the license issued in this proceeding shall provide a copy of publication OCP–100 to its customers before any contract is executed.

MC 161512 filed April 15, 1982. Applicant: RICHARD HUSKEY AND HARLEY SMITH, d.b.a. GRAPEVINE EXPRESS, R.R. 1, Box 143, Granville, IL 61326. Representative: Irwin D. Rozner 134 North LaSalle St., Chicago, IL 60602, (312) 782–6937. Transporting *beverages* between points in IL, on the one hand, and, on the other, and points in CA, WI, IN, KY, OH, MO, and NY.

MC 161622, filed April 22, 1982. Applicant: G & L TRUCKING, Commercial Quarters Industrial Park, Onalaska, WI 54650. Representative: Edward H. Instenes, P.O. Box 676, Winona, MN 55987, (507) 454–3914. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IA, MN, and WI.

MC 161732, filed April 29, 1982. Applicant: R. & I. TRUCKING, INC., 9727 Glandon St., Bellflower, CA 90706. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, 213–945–2745. Transporting *such commodities* as are dealt in or used by housing products manufacturers, between points in Orange County, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, MN, OR, TX, UT, WA, and WY.

MC 161733, filed April 29, 1982. Applicant: CARLOS DE LA TORRE LEASING, 2093 Vancouver Ave., Monterey Park, CA 91754. Representative: Carlos De La Torre, 141 West Avenue 34, Los Angeles, CA 90031, 213–227–8377. Transporting *furniture parts,* between points in the U.S., under continuing contract(s) with American Caster Corporation, of Los Angeles, CA.

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Decided: May 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 117373 (Sub-5), filed April 26, 1982. Applicant: NU–WAY TRUCKING, INC., P.O. Box 1129, Rosebud, MO 63091. Representative: Phillip N. Engle (same address as applicant), 314–764–2185. Transporting *such commodities* as are dealt in and used by manufacturers and distributors of electrical equipment, between points in the U.S. (except AK and HI), under continuing contract(s) with A.B. Chance Co., of Washington, MO.

MC 123663 (Sub-4), filed April 23, 1982. Applicant: Trout Run Transport, Inc., 2736 Dove St., Williamsport, PA 17701. Representative: George E. Campbell, 985 Old Eagle School Road, Suite 501, Wayne, PA 19312, (215) 293–9220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in PA, NY, NJ, OH, MD, NH, VT, VA, and DE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 123922 (Sub-24), filed April 19, 1982. Applicant: AMTRUK TRANSPORT, INC., P.O. Box 4327, Bergen Station, Jersey City, NJ 07304. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue NW., Washington, DC 20005, 202–347–9332. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with (a) BASF Wyandotte Corporation, of Parsippany, NJ, and (b) Badische Corporation, of Williamsburg, VA.

MC 128333 (Sub-10), filed April 23, 1982. Applicant: LES CALKINS TRUCKING, INC., 19501 North Highway 99, Acampo, CA 95220. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, D.C. 20006, (202) 833–8884. Transporting (1) *clay, concrete, glass or stone products* and (2) *coal and coal products* between points in AZ, CA, CO, ID, MT, NY, NM, OR, UT, WA, and WY.

MC 135653 (Sub-14), filed April 23, 1982. Applicant: SPECIAL SERVICE TRANSPORTATION, INC., 1100 W. Smith, Medina, OH 44256. Representative: Michael Spurlock, 275 E. State Street, Columbus OH 43215 (614) 228–8575. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Ohio, on the one hand, and, on the other, points in PA, NJ, MA, CT, MD, NY, IN, IL, MI, WI, VA, NC, KY, TN, WV, RI, and OH.

MC 138432 (Sub-30), filed April 27, 1982. Applicant: GARLAND GEHRKE TRUCKING, INC., 1800 N. Jefferson St., Lincoln, IL 62656. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, (312) 726–6525. Transporting *glass and building materials,* between points in the U.S. (except AK and HI).

MC 142603 (Sub-67), filed April 23, 1982. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 179, Springfield, MA 01101. Representative: Barbara J. Withers (same address as applicant), (413) 732–6283. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Westfield and Chester, MA, and Niagara Falls NY, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with General Abrasive Division of Dresser Industries, Inc., of Niagara Falls, NY.

MC 148632 (Sub-10), filed April 23, 1982. Applicant: DIXON MOTOR FREIGHT, INC., 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Gary V. Dixon (same address as applicant), (609) 767–5885. Transporting *food and related products,* between FL, GA, IL, IN, MI, NJ, OH, PA and TX.

MC 150783 (Sub-23), filed April 26, 1982. Applicant: SCHEDULED TRUCKWAYS, INC. P.O. Box 757, Rogers, AR 72756. Representative: James H. Berry, P.O. Box 32, Wesley, AR 72773, (501) 456–2453. Transporting *furniture and fixtures,* between points in Mississippi County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152822 (Sub-3), filed April 23, 1982. Applicant: PAWNEE MOTOR SERVICE, INC., 5101 St. Charles Road, Bellwood, IL 60104. Representative: Jerome Miceli (same address as applicant), (312) 544–2300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in

IL, PA, MI, IL, OH, IN, WI, IA, MO, and KY.

MC 161033, filed April 28,1982. Applicant: CARDINAL CONTAINER, INC., 500 Nordhoff Pl., Englewood, NJ. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except clases A and B explosives, household goods, and commodities in bulk) between points in the U.S. (except AK and HI), under continuing contract(s) with E. Holzer, of Englewood Cliffs, NJ, and Fueur Leather Corp., of New York, NY.

MC 161483, filed April 13,1982. Applicant: A & A TRANSFER, INC., 4235 Sideburn Road, Fairfax, BA 22030. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200 Washington, D.C. 20036, (202) 785–0024. Transporting *household goods, telephone equipment, and electrical equipment,* between points in MD, VA, and DC, on the one hand, and, on the other, points in NY, NJ, PA, MD, DE, VA, NC, WV, and DC.

MC 161542, filed April 16,1982. Applicant: WIDMAN TRUCKING & EXCAVATING, INC., Rt. 2, Box 316, Godfrey, IL 62039. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *machinery,* between points in the U.S. (except AK and HI), under continuing contract(s) with Owens Illinois Incorporated Machine Manufacturers, of Godfrey, IL.

MC 161652, filed April 23, 1982. Applicant: CARGO TRANSPORTERS, INC., North Oxford Street, Claremont, NC 28610. Representative: Tony A. Pope (same address as applicant), (704) 459–9222. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in NC, SC, and VA, (2) between points in NC, SC, and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161663, filed April 26,1982. Applicant: R. W. SANDERS, d.b.a. R. W. SANDERS ENTERPRISE, 508 East Main Street, Bellevue, OH 44811. Representative: Roger D. Paul, P.O. Box 157, Bellevue, OH 44811, (419) 483–2141. Transporting *farm products, metal products, machinery, and waste or scrap materials not identified by industry producing,* between points in OH, PA, and IL, on the one hand, and, on the other, points in CO and CA, under continuing contract(s) with Oakley Industries, Inc., of Englewood, CO, and Paramount Truck Body & Equipment Co., of Long Beach, CA.

MC 161683, filed April 28, 1982. Applicant: ROBERT D. HUFFMAN, d.b.a. HUFFMAN TRANSPORTATION CO., 640 19th Street S.E., P.O. Box 269, Mason City, IA 50401. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA, (515) 282–3525. Transporting *passengers and their baggage in the same vehicle with passengers,* in special and charter operations, beginning and ending at points in Winnebago, Worth, Mitchell, Hancock, Cerro Gordo, Floyd, and Franklin Counties, IA, and extending to points in the U.S. (except AK and HI).

MC 161702, filed April 28, 1982. Applicant: BACON TOUR SERVICE, INC., 28 Highbank Road, S. Dennis, MA 02660. Representative: Donald Bacon (same address as above), (617) 394–5739. To operate, as a *broker* at Dennis, MA, in interstate or foreign commerce, to arrange for the transportation, by motor vehicle, of passengers and their baggage, between points in the U.S.

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Decided: May 10, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 79658 (Sub-19), filed April 30, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), 812–424–2222. Transporting *used household goods and office furniture,* between points in the U.S. (except AK and HI), under continuing contract(s) with Southern Pacific Company and Southern Pacific Transportation Company of San Francisco, CA.

MC 123898 (Sub-1), filed April 30, 1982. Applicant: MORIN'S & SONS, INC., 188 Warren Avenue, Portland, ME 04103. Representative: William D. Pinansky, 477 Congress St., Portland, ME 04101, (207) 774–2645. Transporting *coarse concrete aggregate,* in bulk, between points in the U.S., under continuing contract(s) with Blue Rock Industries, Inc., of Westbrook, ME.

MC 128618 (Sub-2), filed April 30, 1982. Applicant: MARTINO TRUCKING, INC., Railroad St., Rochester, PA 15074. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471–1800. Transporting *metal products* between points in Beaver County, PA, on the one hand, and, on the other, points in OH.

MC 129219 (Sub-35), filed April 30, 1982. Applicant: C M D TRANSPORTATION, INC., 12340 SE Dumold Rd., Clackamas, OR 97045. Representative: Richard C. Shearer, P.O. Box 1970, Lake Oswego, OR 97034, (503) 655–7118. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 130998 (Sub-1), filed April 30, 1982. Applicant: TRIPP ASSOCIATES, LTD., 99 Pleasant St., Northampton, MA 01060. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781–6205. To operate as a *broker* at Northampton, MA, arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 135399 (Sub-24), filed May 3, 1982. Applicant: HASKINS TRUCKING, INC., 1208 F.M. 1845, P.O. Drawer 7729, Longview, TX 75602. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Fort Worth, TX 76104, (817) 332–4415. Transporting *metal products, machinery,* and *commodities which because of their size and weight require the use of special handling or equipment,* between points in the U.S., under continuing contract(s) with Morrow Crane Company, of Salem, OR.

MC 140409 (Sub-9), filed April 29, 1982. Applicant: CIRCLE B TRANSPORTATION CORPORATION OF NORTH DAKOTA, P.O. Box 207, Wheat Ridge, CO 80034. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lykes Bros. Steamship Co., Inc., of New Orleans, LA. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 6370.

MC 143179 (Sub-29), filed April 26, 1982. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant), 712–323–9124. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with TG&Y Stores Co. of Oklahoma City, and (2) *rubber*

and plastic products, between points in the U.S. (except AK and HI), under continuing contract(s) with Poly Foam, Inc. of Lester Prarie, MN.

MC 151009 (Sub-4), filed April 28, 1982. Applicant: ATLANTA CARRIERS, INC., 1260 Southern Rd., Morrow, GA 30260. Representative: Jeffrey W. Kohlman, 3390 Peachtree Rd., NE, Suite 520, Atlanta, GA 30326, (404) 262–7855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in GA, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, IA, and MN.

MC 151518, filed April 29, 1982. Applicant: JOHN V. DONVITO, 1001 Eynon St., Scranton, PA 18504. Representative: Joseph A. Keating Jr., 121 Main St., Taylor, PA 18517, 717–344–8030. Transporting *food and related products* (1) between points in Lackawanna and Luzerne Counties, PA and Onondaga and Broome Counties, NY on the one hand, and on the other, New York, NY and points in Albany County, NY, Essex and Hudson Counties, NJ, Baltimore County, MD and New Castle County, DE, and (2) between Lackawanna County, PA, on the one hand, and, on the other, points in Onondaga and Broome Counties, NY.

MC 153419 (Sub-1), filed April 29, 1982. Applicant: THOMAS D. COX, 2105 Hamilton St., Murphysboro, IL 62966. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), under continuing contract(s) with Bemis Company, Inc., of Minneapolis, MN, and (2) *food and related products,* under continuing contract(s) with Rend Lake Beverages, Inc., of Carbondale, IL, between points in the U.S. (except AK and HI).

MC 153958, filed April 20, 1982. Applicant: CALGARY GOOSENECK SERVICE LTD., 936 Abbeydale Dr., N.E., Calgary, Alberta Canada T2A 6H2 Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502, 701–223–5300. Transporting *mercer commodities in foreign commerce* between ports of entry on international boundary line between the United States and Canada at points in WA, ID, MT, and ND, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 157049 (Sub-3), filed April 30, 1982. Applicant: AMATO MOTORS, INC., 977 West Cermak Rd., Chicago, IL 60608. Representative: Anthony E. Young, 29 South LaSalle St., Chicago, IL 60603, 312–782–8880. Transporting *such commodities* as are dealt or used by manufacturers and distributors of clothing, between points in the U.S. under continuing contract(s) with Wells Lamont Corp. of Niles, IL.

MC 157099, filed April 29, 1982. Applicant: HUGO'S SERVICES, INC, P.O. Box 3158, Shiremanstown, PA 17011. Representative: Edward N. Button, 635 Oak Hill Avenue, Hagerstown, MD 21740, (301) 739–4860. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Baltimore, MD, points in PA, and DC, on the one hand, and, on the other, points in PA.

MC 158419 (Sub-8), filed May 3, 1982. Applicant: ON TIME FREIGHT SYSTEMS, INC., P.O. Box 7212, Omaha, NE 68107. Representative: Steven K. Kuhlmann, 717—17th St., Ste. 2600, Denver, CO. 80202, (303) 892–6700. Transporting *food and related products,* between points in CO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158939, filed April 29, 1982. Applicant: H. L. KELLY TRUCKING, P.O. Box 935, Great Bend, KS 67530. Representative: Eugene W. Hiatt, 207 Casson Bldg., 603 Topeka Blvd., Topeka, KS 66603, 913–232–7263. Transporting *oil field machinery,* between points in KS, AZ, CA, CO, LA, MT, NE, NM, OK, TX, and WY.

MC 159138, filed April 30, 1982. Applicant: LELLAND J. CREEL, d.b.a. PORT CITY DRAYAGE CO., 115 Bluewood Dr., Biloxie, MS 39532. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061, 404–428–6143. Transporting *general commodities* (except classes A and B explosives, and hazardous materials), between Gulfport, MS on the one hand, and, on the other, points in AL, FL, GA, KY, LA, MS, and TN, under continuing contract(s) with Care Shipping Co., Inc. of New Orleans, LA.

MC 159379, filed April 30, 1982. Applicant: DAVID J. VAILLANCOURT and WAYNE KRUM, d.b.a. NORTHEAST TRANSPORT, 398 Pinebrook Rd., Lincoln Park, NJ 07035. Representative: Richard G. Lepley, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036, 202–452–8800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with The Green Fan Company, a division of Ecolaire, Inc., of Beacon, NY.

MC 161599, filed April 20, 1982. Applicant: THE TOURING MACHINE, INC., 1206 Longford Rd., Lutherville, MD 21093. Representative: Jerianne Pugh, 212 Melanchton Ave., Lutherville, MD 21093, 301–252–3342. As a *broker at Lutherville, MD,* in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at Lutherville, MD, and extending to points in the U.S. (except AK and HI).

MC 161688, filed April 27, 1982. Applicant: MEDLEY BUS COMPANY, Route 1, Box 389–B, Hamlet, NC 28345. Representative: Bronson Medley (same address as applicant), 919–276–1122. Transporting *passengers and their baggage* in the same vehicle with passengers in special and charter operations, between points in Richmond and Scotland Counties, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161749, filed April 30, 1982. Applicant: P & F TRUCKING, INC., P.O. Box 897, 1125 National Rd., Hebron, OH 43025. Representative: Charles H. McCreary, 100 East Broad St., Columbus, OH 43215, (614) 227–2300. Transporting *solvents and hazardous waste materials,* between points in Licking County, OH, on the one hand, and, on the other, points in MI, PA, WV, IN, TN, KY, MD, TX, and MO, under continuing contract(s) with Safety-Kleen Corp., of Hebron, OH.

MC 161759, filed April 30, 1982. Applicant: NIPPON TRANSPORTATION SERVICE, 3408 Wisconsin Ave. NW., Washington, DC 20016. Representative: Noble & Roberts, 4801 Massachusetts Ave. NW., Washington, DC 20016, (202) 966–4440. To operate as a *broker* in Washington, DC arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending at DC and extending to points in the U.S.

MC 161799, filed May 3, 1982. Applicant: DAVE R. GRANT HAY, INC., 910 W. 24th St., Ogden, UT 84401. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111, (801) 531–1300. Transporting *machinery,* between points in the U.S. (except AK and HI), under continuing contract(s) with Masonry Equipment & Supply Co., Inc., dba MESCO, of North Salt Lake, UT.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13369 Filed 5-17-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract". Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP2-91

Decided: May 5, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 147433 (Sub-8), filed March 30, 1982. Applicant: LONG LEASING CORP., P.O. Box 587, East Jordan, MI 49727. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684, 616-941-5313. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 148562 (Sub-2), filed April 19, 1982. Applicant: UNIVERSITY CORP., P.O. Box 2339, Columbus, OH 43204. Representative: David A. Turano, 100 E. Board St., Columbus, OH 43215, (614) 228-1541. As a *broker of general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 156502 (Sub-1), filed April 9, 1982. Applicant: McGREGOR CARTAGE COMPANY, INC., 6845 Dix Ave., Detroit, MI 48209. Representative: Ron McDougald (same address as applicant), 313-849-1310. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 159473 (Sub-1), filed April 19, 1982. Applicant: MOON-LITE EXPRESS, INC., 133 Lincoln St., Jersey City, NJ 07307. Representative: Harold L. Reckson, 33-28-Halsey Rd., Fair Lawn, NJ 07410, 201-791-2270. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161463, filed April 12, 1982. Applicant: FRED L. GROVES, P.O. Box 255, Elmwood, NE 68349. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506, 402-488-4841. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161532, filed April 16, 1982. Applicant: SHARON BADEN, d.b.a. IMPORTER'S FORWARDING COMPANY, INC., 909 Western Ave., Seattle, WA 98104. Representative: Sharon Baden (same address as applicant), (206) 624-3936. As a *broker* of *general commodities* (except household goods), between points in the U.S., (except AK and HI).

Volume No. OP2-93

Decided: May 6, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 15643 (Sub-13), filed April 27, 1982. Applicant: FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, CA 92138. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036, 202-785-0024. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 35153 (Sub-5), filed April 26, 1982. Applicant: RUPP-SOUTHERN TIER FREIGHT LINES, INC., P.O. Box 489, Rt. 221 East, Middletown, NY 10940. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 145773 (Sub-18), filed April 20, 1982. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Road, Sidney, OH 45365. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228-1541. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161533, filed April 16, 1982. Applicant: J. K. SPARKS TKG., 4172 Rigel Ave., Lompoc, CA 93436. Representative: Jeffery K. Sparks (same address as applicant), (805) 733–1555. (1) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., (except AK and HI), (2) transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161592, filed April 23, 1982. Applicant: PRESTIGE MESSENGER SERVICE, INC., 3808 Cedar Brook Pl., Baltimore, MD 21236. Representative: Steven L. Weiman, Suite 200, 444 N. Frederic Ave. Gaithersburg, MD 20877 (301)–840–8565. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161682, filed April 26, 1982. Applicant: RALPH F. TOMLINSON, d.b.a. R. F. TOMLINSON TRUCKING, 3692 W. 8800 N., Plesant Grove, UT 84062. Representative: Irene Warr, 311 S. State St. Ste. 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *food and other edible products and by-products intended for human consumption (except alcholic beverages and drugs), agricultural limestone and fertilizers, and other soil conditioners* by owner of the motor vehicle in such vehicle, between points in the U.S., (except AK and HI).

MC 161763, filed April 30, 1982. Applicant: TRANSPORT BROKERS INTERNATIONAL, INC., 7420 North Main St., Columbia, SC 29203. Representative: George Douglas Massengale, Jr., 112 Avery Lane, Columbia, SC 29210, 803–735–1500. As a *broker* of *general commodities* (household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–166

Decided: May 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161736, filed April 29, 1982. Applicant: UNION PACIFIC FREIGHT SERVICES COMPANY, 1416 Dodge St., Omaha, NE 68179. Representative: Forrest N. Krutter (same address as applicant), (402)–271–4750. As a *broker of general commodities* (except household goods), between points in the U.S. (except HI).

MC 161806, filed May 3, 1982. Applicant: STANLEY M. SHIPP, d.b.a. SHIPP TRANSPORT, 404 W Cochita, Hobbs, NM 88240. Representative: Stanley M. Shipp (same address as applicant), (505) 392–4782. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous of secret materials, and sensitive weapons and munitions), between points in Lea and Eddy Counties, NM, on the one hand, and, on the other, points in NM, TX, OK, CO, UT and AZ.

MC 161816, filed May 3, 1982. Applicant: CRAWLEY L. ELLIS, 1727 Brewester Rd., Jacksonville, FL 32207. Representative: Elbert Brown, Jr., P.O. Box 1378, Altamonte Springs, FL 32701, (305) 869–5936. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in FL and GA.

MC 161826, filed May 4, 1982. Applicant: BEN DEAN, d.b.a. BEN DEAN TRUCKING, 10602 LaVernia Rd., Adkins, TX 78101. Representative: William E. Collier, 6107 Callaghan Rd., San Antonio, TX 78228, (512) 680–2050. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP5–105

Decided: May 10, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 159639 (Sub-2), filed April 27, 1982. Applicant: FLA-TEX, INC., P.O. Box 631, Pharr, TX 78588. Representative: David Thompson (same address as applicant), 512–787–5951. (1) Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), and (2) Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161699, filed April 27, 1982. Applicant: ZEPHYR CONTAINER LINE, 110 West Ocean Blvd., Ste. 618, Long Beach, CA 90802. Representative: William Eric Reinka (same address as applicant), 213–432–7431. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13370 Filed 5–17–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Released Rates Application

AGENCY: Interstate Commerce Commission.

ACTION: Notice. Released Rates Application No. MC–1525.

SUMMARY: Clipper Exxpress Company, a freight forwarder, seeks authority to establish released rates in its own tariff on Freight, All Kinds. The proposed rates will apply on those shipments containing comodities released to a value not exceeding $5 per pound, subject to a maximum valuation of $200,000 per shipment. When the shipping papers on such shipments fail to show a released value, they will be considered as being released to a value not exceeding $5 per pound. When the value is shown as exceeding $5 per pound but not exceeding $20 per pound, the shipment will be subject to an additional charge of $100. When a shipment is subject to a value exceeding $20 per pound, these tariff rates will not apply.

ADDRESSES: Anyone seeking copies of this application should contact the party listed below, who represents Clipper Exxpress: Mr. Owen B. Katzman, Vorys, Sater, Seymour and Pease, Suite 1111, 1828 L Street, N.W., Washington, D.C. 20036,Tel. (202) 822–8200.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423, Tel. (202) 275–0781.

SUPPLEMENTARY INFORMATION: Relief is sought from 49 U.S.C. 10730.

Agatha L. Mergenvich,

Secretary.

[FR Doc. 82–13365 Filed 5–17–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-128)]

Chicago and North Western Transportation Co. Exemption for Contract Tariff ICC–CNW–0118

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The Chicago and North Western Transportation Company (CNW) filed a petition on March 26, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner requests that we permit contract tariff ICC–CNW–0118 to become effective on one day's notice.

The tariff issued on April 20, 1982 and scheduled to become effective on statutory notice on May 25, 1982. It provides for the transportation of industrial sand at reduced rates.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Due to a longer than anticipated negotiation period, an advance effective date is necessary to fulfil the total delivered tonnage package. Until the transportation portion of the dated package is effective, the contracting shipper will suffer economic harm not anticipated. We find this to be the type of circumstances which warrants a provisional exemption.

Petitioner's contract tariff ICC–CMW–0118 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission permits the amended contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, or review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 11, 1982.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Taylor. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13390 Filed 5-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-129)]

Seaboard Coast Line Railroad Company, Exemption for Contract Tariff ICC–SCL–C–0024

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: Seaboard Coast Line Railroad Company (SCL) filed a petition on April 26, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner requests that we permit contract tariff ICC–SCL–C–0024 to become effective on one day's notice. The tariff provides for the transportation of nitrogen fertilizer solution.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 day's notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations. Advancement of the effective date would permit shipper to meet greater than anticipated demand for its product and avoid diversion of carrier's traffic to other modes. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC–SCL–C–0024 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of justification to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 days notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or conservation of engery resources.

(49 U.S.C. 10505)

Dated: May 11, 1982.

By the Commission, Division 1, Commissioners Sterrett, Gilliam, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13387 Filed 5-17-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-132)]

Western Pacific Exemption for Contract Tariff ICC WP–C–0019

AGENCY: Interstate Commerce Commision.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The Western Pacific Railroad Company (WP) filed a petition on May 3, 1982, seeking an exemption under 49 U.S.C.

10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC–WP–C–0019 filed on April 29, 1982 to become effective on one day's notice. The contract involves the movement of copper and copper products. The shipper filed a letter in support of the petition.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The shipper is in a weak financial posture created by a downturn in the copper market and denial of an exemption would cause a slowdown of production at its Nevada facility. Moreover, any curtailment of shipments from the shipper would adversely affect the carrier equipment utilization. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC–WP–C–0019 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register**.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 11, 1982.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Taylor. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13306 Filed 5-17-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

The Order-Maintenance Function of Police Departments; Notice of Solicitation

The National Institute of Justice plans to initiate a program to stimulate examination of the order-maintenance function of police in the belief that this information can improve overall police department performance. As a means of improving our understanding of the order-maintenance function, the National Institute of Justice intends to support a multi-year program involving field experiments that will measure the effect of police order-maintenance activities on crime, law enforcement, and police service delivery. The solicitation request proposals that will assist in identifying an intermediary organization that, in turn, will act cooperatively with the National Institute in identifying and assisting interested and capable police departments in developing projects intended for implementation within their own communities and designed for careful measurement of effect.

The solicitation, entitled "The Order-Maintenance Function of Police Departments", asks for the submission of preliminary proposals rather than concept papers. The selection of the recipient of the award will be determined by a peer review panel process in accordance with the criteria set forth in the solicitation. In order to be considered, all papers must be postmarked no later than July 23, 1982. One award, not to exceed $350,000, will be made. The time period for the project should be between 18–24 months. To maximize competition for this award, both profit-making and non-profit organizations are eligible.

Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request, "The Order-Maintenance Function of Police Departments", National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Further information regarding the solicitation can be obtained by contacting William E. Saulsbury, Office of Research Programs, National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531 (202/724–2953).

Dated: May 11, 1982.

Approved:

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-13309 Filed 5-17-82; 8:45 am]

BILLING CODE 4410-18-M

Evaluation of Victim Assistance Service Delivery Programs; Notice of Solicitation

The National Institute of Justice announces a competitive research cooperative agreement program to evaluate victim assistance service delivery programs. The purpose of this evaluation award is to evaluate the relative effectiveness of crisis intervention components.

The solicitation asks for the submission of full final proposals. In order to be considered, all papers must be submitted no later than June 18, 1982. This cooperative agreement is planned for award in September, 1982 with funding support not to exceed $300,000 for 18 months. To maximize competition for the award, both profit-making and non-profit organizations are eligible to apply; however, a fee will not be paid.

Further information and copies of the solicitation can be obtained by contacting Jan Hulla at the Office of Program Evaluation, NIJ, 633 Indiana Avenue, NW., Washington, D.C. 20531, or phone 202/724–2953.

Dated: May 11, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-13304 Filed 5-17-82; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 3, 1982–May 7, 1982.

In order for an affirmatiave determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an apppropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or

appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,306; Schreck Industries, Inc, Strongsville, OH
TA–W–12,487; United Technologies Corp., Automotive Group, Components Div., Metal & Plastic Products Section, Morganton, NC
TA–W–12,420; Tonia Fashions, Inc., Weehawken, NJ
TA–W–12,230; Lear Siegler, Inc., Bogen Div., Paramus, NJ
TA–W–12,138; Lapeer Metal Products Co., Lapeer, MI
TA–W–11,978; Blue Ridge Shoe Co., Aulander, NC
TA–W–12,057; 3M Co., Chattanooga, TN
TA–W–12,564; Carole Curtis, Inc., New York, NY
TA–W–12,284; Electro-Voice, Inc., Sevierville, TN
TA–W–12,490; Allen-Bradley Co., Electronic Div., Milwaukee, WI
TA–W–11,927; Allen Manufacturing Co., Bloomfield, CT
TA–W–11,769; Westinghouse Electric Corp., Large Power Transformer Div., Muncie, IN
TA–W–12,493; Angela Manufacturing Co., Inc., Windber, PA
TA–W–12,237; Winer Industries, Inc., Paterson, NJ
TA–W–12,344; Rondalco Industries, Inc., New York, NY
TA–W–11,688; Marion Power Shovel, Marion, OH
TA–W–11,355; Freddi-Gail, Inc., Hoboken, NJ

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–11,848; Seal-O-Matic Corp., Newark, NJ
TA–W–11,709; General Electric Co., Cleveland Equipment Plant, Cleveland, OH
TA–W–11,682; Christopher Dyeing & Finishing Co., Inc., Paterson, NJ
TA–W–11,942; Viner Brothers, Inc., Bangor, ME
TA–W–11,943; Viner Brothers, Inc., Belfast, ME
TA–W–11,944; Viner Brothers Inc., Presque Isle, ME
TA–W–11,613; Surgical Sponge Div., Humboldt Products Corp., Columbus, MS
TA–W–11,626; Surgical Sponge Div., Ultratek Disposables Co., Columbus, MS

In the following case the investigation revealed that criterion (3) had not met the reason specified.

TA–W–12,065; Swiss Time Impertra Corp., New York, NY

The workers did not produce an article within the meaning of the Trade Act of 1974.

TA–W–11,980; Lawrence Maid Footwear, Inc., Lawrence, MA

The investigation revealed that criterion (2) has not been met. Sales or production, or both, did not decrease as required for certification.

Affirmative Determinations

TA–W–12,084; Carroll Shoe Co., Summersville, W. VA.

A certification was issued in response to a petition received on January 12, 1981 covering all workers separated on or after January 1, 1981.

TA–W–12,260; Milwaukee Glove Co., Marinette, WI.

A certification was issued in response to a petition received on February 6, 1981 covering all workers separated on or after January 20, 1980.

TA–W–12,203; Microdot Manufacturing, Inc., Detroit Diamond Div., Wyandotte, MI

A certification was issued in response to a petition received on January 28, 1981 covering all workers separated on or after January 26, 1980.

TA–W–12,697; Microdot Manufacturing, Inc., Everlock, TN and Portland, TN

A certification was issued in response to a petition received on May 12, 1981 covering all workers separated on or after May 8, 1980.

TA–W–12,590; Sprague Electric Co., Grafton, WI.

A certification was issued in response to a petition received on April 2, 1981 covering all workers separated on or after March 30, 1980 and before September 18, 1981.

TA–W–12,494; Bobbie Brooks Corp., Bobbie Brooks Div., Cleveland Cutting Center, Cleveland, OH.

A certification was issued in response to a petition received on March 16, 1981 covering all workers separated on or after March 12, 1980 and before January 17, 1981.

TA–W–11,891; L S. Sutton & Sons, Inc., Newark, N.J.

A certification was issued in response to a petition received on December 8, 1980 covering all workers separated on or after December 1, 1979 and before January 9, 1982.

TA–W–12,003; Nandy Knits, Inc., Greenvale, NY.

All workers who became totally or partially separated on or after December 30, 1979 and before March 31, 1981 are certified eligible to apply for adjustment assistance.

TA–W–12,063A; Nandy Knits, Inc., New York, N.Y.

All workers who became totally or partially separated on or after December 30, 1979 and before March 31, 1981 are certified eligible to apply for adjustment assistance.

I hereby certify that the aforementioned determinations were issued during the period May 3, 1982–May 7, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 11, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–13463 Filed 5–17–82; 8:45 am]
BILLING CODE 4510–30–M

Office of Inspector General

Report on Computer Matching Project Involving Beneficiaries of Office of Worker's Compensation Programs

The Office of the Inspector General (OIG), pursuant to its Authority Under Pub. L. 95–452 (Inspector General Act of 1978) has initiated a program of computer matching.

Description of Matches

One of the responsibilities of the Inspector General under the Act is to prevent and detect fraud and abuse in the programs and operations of the Department of Labor while keeping the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the need for and progress of corrective actions. Computer matching is the most efficient and also the least intrusive means of determining the propriety of program claimants receiving benefits.

The Office of Workers' Compensation Programs (OWCP) of the Department of Labor administers the Federal Employees' Compensation (FECA) and Coal Mine Workers' Compensation (Black Lung) Programs. The FECA and Black Lung Programs provide monthly compensation payments plus medical benefits to disabled workers. This

matching effort will compare the records of FECA and Black Lung claimants to records of beneficiaries of organizations and programs outside of DOL. The organizations and programs involved in the match with the DOL programs are: (1) Office of Personnel Management's Central Personnel Data File of active Federal employees and Federal Annuity Payroll File of retirees and survivors, (2) Tennessee Valley Authority's Current Employee File and Retirement System Retiree Payroll, (3) Veterans Administration's Compensation and Pension Programs, (4) Social Security Administration's Supplemental Security Income and Medicare Programs, (5) Health Programs of the United Mine Workers of America Health and Retirement Funds, (6) Department of Defense's Civilian Health and Medical Programs for the Uniformed Services, (7) Office of Inspector General, Department of Agriculture (OIG/USDA) records which are the result of the match of District of Columbia Food Stamp participants with income source records.

Although scheduled as a one-time match, recommendations for continuing and/or periodic matching, based on the results of this match may be made to source agencies.

Procedures of the Matching Program

Step 1. Acquisition of Data Files

OWCP will provide OIG/DOL the following files through March 1982: (1) Black Lung (Medical) Provider File, (2) Black Lung Benefit (Compensation) Payments, (3) FECA Case Management File, (4) and the FECA Automated Compensation Payments System. In addition, OWCP will provide Black Lung and FECA records of medical bill payments made during the period October 1, 1978 through March 1982.

OPM, VA, TVA, SSA, UMW, DOD, and OIG/USDA will provide records of program beneficiaries to OIG/DOL.

Step 2. Computer Processing

The OIG/DOL will prepare, on magnetic tape, extracts from OWCP files, selecting only those data elements which are relevant to the actual match process or to the determination of the propriety of the payments. Compensation match will be conducted using software developed by the General Accounting Office (GAO) for the conduct of matching programs. GAO has provided software for the mechanical match, but will not be involved in any other way. Medical match procedures will be designed, developed and processed by the OIG/DOL.

Step 3. Analysis of the Results

An initial manual review of the output data will be conducted to determine its significance. If required, additional computer processing will be performed to futher refine the data. The data will be evaluated to determine the appropriate verification procedures. Follow-up procedures will be determined by the nature of the findings. Investigation(s) may be conducted as part of the verification process or to develop criminal cases.

Consideration of the costs and benefits of additional actions will be a part of a continual evaluation process. Follow-up will be the responsibility of OIG/DOL, except that OIG/USDA will be responsible for follow-up of the Food Stam match. Assistance from other agencies may be required in the review of case files.

Description of Records to be Matched

The Office of Workers' Compensation Programs (OWCP) files as published in the Federal Register are:

DOL/ESA–6, Black Lung Benefit Claim File, 42 FR 187, pg. 49658 on September 27, 1977;

DOL/ESA–7, Black Lung Benefit Payments File, 46 FR 30 pg. 12356 on February 13, 1981;

DOL/ESA–8, Black Lung Claimant Information File, 46 FR 30, pg. 12357 on February 13, 1981;

DOL/ESA–9, Black Lung Medical Treatment Records File, 42 FR 187 pg. 49659 on September 27, 1977;

DOL/ESA–11, Black Lung Service Payments File, 46 FR 30, pg. 12357 on February 13, 1981;

DOL/ESA–13, Federal Employees' Compensation Act File, 46 FR 30 pg. 12357–12318 on February 13, 1981;

OWCP records are obtained by OIG/DOL under authority of the provision of the Privacy Act specified in Title 5, U.S. Code, Section 552a (b) (1).

Office of Personnel Management Files

OPM/GOVT–1, General Personnel Records system, 45 FR 229, pg. 78415–78419 on November 25, 1980.

OPM/Central–1, Civil Service Retirement and Insurance Records 45 FR 229, pg. 78398–78397 on November 25, 1980.

Tennessee Valley Authority Files

TVA 2–Personnel Files, 46 FR 249 pg. 62993–62994 on December 29, 1981

TVA 26–Retirement Systems Records, 46 FR 249 pg. 62993–62994 on December 29, 1981

Veterans Administration File

VA Compensation, Pension, Education and Rehabilitation System 42 FR 187 on September 27, 1977, amended in 47 FR 364 on January 5, 1982.

Department of Health and Human Service, Social Security Administration File.

Supplemental Security Income Records, HHS, SSA, OURV, 47 FR 5, pg. 1032–1034 on January 8, 1982.

Department of Health and Human Services, Health Care Financing Administration Files.

System Notice 09–70–0501, Carrier Medicare Claims Records, HHS, HCFA, BPO, 46 FR 138, July 20, 1981, pg. 37332–37333;

System Notice 09–70–0502, Health Insurance Master Record, HHS, HCFA, BPO, 46 FR 138, July 20, 1981, pg. 37333–37335;

System Notice 09–70–0530, Intermediary Medicare Claims Records, HHS, HCFA, BPO, 46 FR 138, July 20, 1981, pg. 37335–37336;

The United Mine Workers of America Health and Retirement Funds will provided provide data on medical program beneficiaries.

Department of Defense File

DOCHA–07, Medical Claim History files, 46 FR 114, pg. 31317–31318 on June 15, 1981.

Department of Agriculture, Office of Inspector General File

USDA/OIG, Audit Information System, 44 FR 18, pg. 1174 on January 25, 1979.

Starting and Ending Dates of the Project

The first match should begin approximately in late May and the final match during June 1982. Follow-up procedures may extend through the end of calendar year 1982.

Privacy Protection and Data Security

The personal privacy of individuals identified on tapes is protected by strict compliance with the Privacy Act (Public Law 93–579) and OMB Circular A–108. Information from matching programs is used ony for official purposes and "raw hits" are not released to the press or to the public.

All automated data sets will be password protected, and only those who need to know will be given access to the data sets or the passwords. All paper listings of data will be stored in a room which will be locked when not occupied.

Disposal of Records

Source records do not become part of the OIG/DOL's system of records and will be returned to the program and/or destroyed within 6 months after the completion of the match. Output records become a part of OIG/DOL's system of records and will be disposed of in accordance with records disposition authority approved by the Archivist of the United States.

Signed at Washington, D.C. on the 12th day of May 1982.

Robert E. Mages

Deputy Inspector General.

[FR Doc. 82-13462 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-21-M

Mine Safety and Health Administration

[Docket No. M-81-256-C]

CF&I Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

CF&I Steel Corporation, P.O. Box 316, Pueblo, Colorado 81002 has filed a petition to modify the application of 30 CFR 75.1714-2(e)(3) (Self-rescue devices; use and location) to its Bokoshe Mine located in LeFlore County, Oklahoma. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that self-contained self-rescuers (SCSRs) be stored within 25 feet of miners or carried by the miners on all mantrips into and out of the mine.

2. Because of the weight and bulk of the SCSRs, petitioner states that carrying the SCSRs, would be awkward and could cause an accident during conveyor belt mantrips at the mine. Also, vibration on the belt could be detrimental to the SCSRs.

3. As an alternative method, petitioner proposes to store the SCSRs at 1400 foot intervals along the belt conveyor used for mantrips.

4. Petitioner will require that all miners be equipped with 60 minute filter-type self-rescuers which they would wear on mantrips into the mine and at all times until returning to the surface.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13455 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under Section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulation affected	Summary of findings
M-79-15-M	44 FR 42956	Johns Manville Sales Corp.	30 CFR 55.13-20	Petitioners' proposal to clean employees clothing with compressed air using specific safeguards considered acceptable alternative method of compliance. Granted with conditions.
M-80-77-M	45 FR 57791	Domtar Industries, Inc.	30 CFR 57.21-24(a)	Allowing miners to remain underground with specified safety precautions when the main fan stops considered acceptable alternative method. Granted with conditions.
M-80-81-M	45 FR 52810	Domtar Industries, Inc.	30 CFR 57.21-46	Crosscuts at intervals greater than 100 feet at specified areas considered acceptable alternative method of compliance. Granted with conditions.
M-80-86-M	45 FR 46734	Domtar Industries, Inc.	30 CFR 57.21-95	Use of nonpermissible explosives or blasting faces and benches in the underground mine, with specified safeguards and precautions considered acceptable alternative method. Granted with conditions.
M-80-85-M	46 FR 170	Domtar Industries, Inc.	30 CFR 57.21-99	Petitioner's proposal to blast without the use of stemming materials in the boreholes coupled with specified safeguards and procedures considered acceptable alternative method. Granted with conditions.
M-80-29-C	45 FR 10479	United States Steel Corp.	30 CFR 75.326	Installation of second belt conveyor system in intake to transport miners and supplies considered acceptable alternative methods. Granted with conditions.
M-80-50-C	45 FR 28606	Solar Fuel Co.	30 CFR 77.100(b)(2)	Petitioner's proposal to establish a single certification process for certified persons considered acceptable alternative method. Granted with conditions.
M-81-10-C	46 FR 17929	Peabody Coal Co.	30 CFR 75.305	Proposed installation of an air monitoring station at the first South Seals considered acceptable alternative method of compliance. Granted with conditions.
M-81-121-C	46 FR 49232	Jim Walter Resources, Inc.	30 CFR 75.1400	Petitioner's proposal to inspect tiled surface every two or four weeks using a platform suspended by a personnel hoist equipped with specific safeguards considered acceptable alternative method of compliance. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulation affected	Summary of findings
M-81-123-C	46 FR 38167	G.M. & W. Coal Co., Inc	30 CFR 75.155(b)(2)	Operation of automatic hoist system as a conventional electric hoist when mechanical or electrical problems cancel the automatic control considered acceptable alternative method of compliance. Granted with conditions.
M-81-133-C	46 FR 42942	Ranger Fuel Corp.	30 CFR 49.6(a)(1)	Equipping the mine rescue stations with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-137-C	46 FR 38612	Jones & Laughlin Steel Corp.	30 CFR 75.305	Proposal to establish specified air monitoring stations and record results of examinations on a date board at each location considered acceptable alternative method of compliance. Granted with conditions.
M-81-139-C	46 FR 42941	Jewell Ridge Coal Corp.	30 CFR 49.6(a)(1)	Equipping the mine rescue station with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-147-C	46 FR 41233	Beckley Coal Mining Company	30 CFR 49.6(a)(1)	Equipping the mine rescue station with nine self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-149-C	46 FR 41234	Southern Ohio Coal Corp.	30 CFR 49.6(a)(1)	Equipping the mine rescue station with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-151-C	46 FR 41234	Consolidation Coal Company	30 CFR 75.305	Proposal to establish specified air monitoring stations and record results of examinations on a date board at each location considered acceptable alternative method of compliance. Granted with conditions.
M-81-153-C	46 FR 41233	Badger Coal Co.	30 CFR 49.6(a)(1)	Equipping the mine rescue station with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-155-C	46 FR 42943	Ranger Fuel Co.	30 CFR 75.1807	Petitioner's proposed form to be used in lieu of form required by the standard considered acceptable alternative method. Granted with conditions.
M-81-165-C	46 FR 42941	Elkay Mining Co.	30 CFR 49.6(a)(1)	Equipping the mine rescue stations with six self-contained oxygen breathing apparatus with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method compliance. Granted with conditions.
M-81-166-C	46 FR 43910	Gateway Coal Co.	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative methods to leaving coal barriers around the wells. Granted with conditions.
M-81-170-C	46 FR 49234	North American Coal Corp.	30 CFR 49.6(a)(4)	Maintaining an agreement with National Mine Service Company to refill and recharge all emergency oxygen equipment which is compatible with petitioner's equipment and located within one hour ground travel time from the mine considered acceptable alternative method. Granted with conditions.
M-81-178-C	46 FR 49231	Consolidation Coal Company	30 CFR 75.312	Establishing seven air checkpoints at designated locations to take weekly methane readings considered acceptable alternative to rehabilitation of deteriorated entries. Granted with conditions.
M-81-179-C	46 FR 49231	Consolidation Coal Co.	30 CFR 75.305	Proposal to establish and maintain specified air monitoring stations considered acceptable alternative method. Granted with conditions.
M-81-185-C	46 FR 49232	Eastover Mining Co.	30 CFR 49.6(a)(1)	Equipping the mine reecuuce stations with six self-contained oxygen breathing apparatus and maintaining agreements with fully equipped backup teams located within 2 hours ground travel time from the mines considered acceptable alternative method. Granted with conditions.
M-81-187-C	46 FR 52446	Peabody Coal Co.	30 CFR 75.1710	Installation of cabs or canopies on shuttle cars and roof bolting machines in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M-81-188-C	46 FR 56074	D.C. Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternative method of compliance. Granted with conditions.
M-81-189-C	46 FR 53610	R.C. & R. Coal Co.	30 CFR 75.301	Proposed airflow reduction in petitioner's mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative methods of compliance. Granted with conditions.
M-81-199-C	46 FR 53606	Consolidation Coal Co.	30 CFR 75.305	Proposal to establish and maintain seven air monitoring stations at specific locations and record the results in a date book considered acceptable alternative method. Granted with conditions.
M-81-203-C	46 FR 53605	Amherst Coal Co.	30 CFR 49.6(a)(1)	Equipping the mine rescue stations with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method of compliance. Granted with conditions.
M-81-205-C	46 FR 52447	United States Steel Corp.	30 CFR 75.1707	Requirement that an intake escapeway be installed and maintained separate from belt and trolley haulage system continuous from the surface to each working section would result in a diminution of safety. Granted with conditions.
M-81-210-C	46 FR 58364	Jones & Laughlin Steel Corp.	30 CFR 49.6(a)(1)	Equipping the mine rescue stations with six self-contained oxygen breathing apparatus and maintaining an agreement with a fully equipped backup team located no more than 2 hours ground travel time from the mine considered acceptable alternative method. Granted with conditions.
M-81-216-C	46 FR 62199	BSb Coal Co., Inc.	30 CFR 75.1710	Installations of cabs or canopies on the mine's shuttle cars in specified low mining heights would result in a diminutions of safety. Granted with conditions.
M-81-219-C	46 FR 56073	Consolidation Coal Co.	30 CFR 75.305	Proposal to establish specified air monitoring stations and record results of examinations on a date board at each location considered acceptable alternative method of compliance. Granted with conditions.
M-81-220-C	46 FR 56075	Thacker Brothers Mining Co.	30 CFR 75.1710	Installation of cabs or canopies on the mine's cutting machine in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M-81-237-C	47 FR 5493	G.M. & W. Coal Co., Inc.	30 CFR 75.155(b)(2)	Petitioner's proposal regarding training and qualifications of hoisting engineers considered acceptable alternative method. Granted with conditions.

[FR Doc. 82-13454 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-41-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1403-9 (criteria-shelter holes) to its Loveridge Mine (I.D. No. 46-01433) located in Marion County, West Virginia. This petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Petitioner seeks a modification of the standard as it applies to track haulage from the loaded track switch for the rotary dump to the Flat Run Portal and one other area of the mine.

2. The track haulage was developed prior to 1970 and roof deterioration has occurred in some crosscuts requiring the installation of additional roof support, such as posts and cribs. Cribs and ventilation stoppings were constructed near the edge of crosscuts to provide long range roof control along the haulage. Permanent stoppings were installed near the track, on initial development. Removal of these cribs and stoppings would adversely affect roof conditions along the mainline haulage and expose miners to unnecessary and dangerous conditions.

3. Certain sections of the haulage have been graded to various depths and the top was taken down to facilitate level haulage. As a result, the access to certain crosscuts is as high as eight feet above track level. Shooting shelter holes in the rock rib will create unstable ribs resulting in a hazard to the miners.

4. As an alternative method, petitioner proposes that:

a. Luminous signs, stating that persons are not to enter those areas on foot, unless the person controlling haulage traffic has been notified, will be posted at the inby and outby ends and at the junctions which enter the affected area;

b. All designated shelter holes in the affected areas will be marked with luminous signs or reflectors;

c. Work crews assigned to these haulage entries will notify the person controlling haulage traffic of the locations where work is to be performed. Upon arrival at the work site, workers will locate a shelter hole or crosscut where they can take refuge when haulage equipment is passing;

d. The person controlling haulage traffic will notify all locomotive operators of the location of work crews in the affected area;

e. When workers are required to perform work along these haulage tracks, signs will be posted indicating "persons working" at the inby and outby ends and all equipment will travel at a slow rate of speed through the area;

f. The above provisions will be posted at all entrances to the haulage road; and

g. Crosscuts used as shelter holes on all existing haulage will be maintained four feet wide to the depth of the stopping in the crosscut.

4. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 11, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13456 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-31-C]

Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 2 Mine (I.D. No. 42-00171) located in Emery County, Utah. The petition was filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner seeks a modification of the standard for that part of the main return which passes through the area of second mining, along the No. 1 stopehole beltline of 2nd South Star Point. Petitioner states that application of the standard to this area during and after second mining will result in a diminution of safety for persons required to perform the weekly examinations because the entire area was developed under a spot bolting plan and roof control in the timber areas would be impossible to maintain after second mining was completed. This would expose miners to the hazards of potential roof falls.

3. As an alternative method, petitioner proposes to examine the return entry as long as it existed outby the second mining area up to the existing pillar line, monitoring the bleeder entry from old works. The fireboss would enter the main fan from the surface and monitor air flow through the gob area to the main return. This method of monitoring air vacuums and air quality on each side of the gob would provide miners with the same degree of safety as walking the return in its entirety.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13458 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-45-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, Powhatan Point, Ohio 43942 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Powhatan No. 7 Mine (I.D. No. 33-02624) located in Monroe County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a certified person make weekly examinations for hazardous conditions, including tests for methane, in the return aircourses.

2. Petitioner states that application of the standard would result in a diminution of safety for the miners affected because overriding pressure from the previous longwall panel has caused the roof to settle and the bottoms to heave along the return aircourse. This has reduced the height of this entry to 23 inches or less and has made the return aircourse too hazardous to travel.

The entry is already cribbed and planked to the maximum practicable extent. No effective rehabilitation can be performed and no additional cribs or other roof supports can be set. Rehabilitation attempts would expose miners to extremenly hazardous conditions.

3. As an alternative method, petitioner proposes to establish and maintain specified air monitoring stations at both ends of the return aircourse. Daily air and methane readings will be made by a certified person and the results recorded on a fireboss dateboard at each location.

4. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13457 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-14-M]

St. Cloud Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

St. Cloud Mining Company, P.O. Box 11398, Albuquerque, New Mexico 87112 has filed a petition to modify the application of 30 CFR 57.18-13 (communications system) to its St. Cloud Mine (I.D. No. 29-01869) located in Sierra County New Mexico. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a suitable communication system be provided at the mine to obtain assistance in the event of an emergency.

2. Because of the remote location of the mine, no commercial telephone service is available, and because of the rugged topography, no effective or useful radio communications system (citizens band, radio phone, or FM) have worked.

3. To insure the safety of the employees and use the best possible communications system available, petitioner has established an office at the closest available point to the mine (about 10 miles) and installed a telephone. At the mine site, a fully equipped ambulance is present, and other company-owned vehicles for relaying messages or alerting officials to a mine emergency are always available.

4. Petitioner states that the procedure outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13457 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-10-M]

Union Carbide Corp.; Petition for Modification of Application of Mandatory Safety Standard

Union Carbide Corporation, Bishop, California 93514 has filed a petition to modify the application of 30 CFR 57.11-59 (hoists) to its Pine Creek Mine (I.D. No. 04-00899) located in Inyo County, California. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground hoist operators be provided with a respirable atmosphere completely independent of the mine atmosphere, i.e., an independent ventilation system that shall convert, without contamination, to an approved and properly maintained 2-hour self-contained breathing apparatus.

2. Petitioner states that application of the standard would result in a diminution of safety for the miners affected because existing data strongly indicate against any one person wearing such equipment unless in the company of other personnel similarly equipped. A person can collapse and die in a respirable environment while wearing a self-contained breathing apparatus if it malfunctions and no one is present to render assistance.

3. As an alternative method, petitioner proposes use of the following system at each hoist installation: a full face mask with purge button, a 30 foot section of hose with Hanson fittings, a reduction gauge, two man outlet, and a pressure relief valve. A 300 cubic foot compressed air cylinder is located with this equipment in each hoistroom and allows for approximately 24 hours of breathing noncontaminated air. Each location has a 45 cu. ft. portable tank of compressed air complete with gauges and snap-on connections adaptable to the face mask that will provide for safe exit from the hoistroom to the surface or fresh air base.

4. Petitioner states that the method outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 17, 1982. Copies of the petition are available for inspection at that address.

Dated: May 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13460 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupation Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of Federal standards as State standards by reference or after comments and/or public hearings. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letters of June 26, 1981 and November 5, 1981 from Commissioner Harvey A. Epstein, Maryland Division of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to: (1) Amendments to 29 CFR 1926.500(g) and .502(p), pertaining to guarding of low-pitched roof perimeters during the performance of built-up roofing work, as published in the **Federal Register** dated November 14, 1980 (45 FR 75624–75631); (2) 29 CFR Part 1910, Subpart S, pertaining to electrical standards, as published in the **Federal Register** dated January 16, 1981 (46 FR 4055–4076); (3) amendments and corrections to 29 CFR 1910.217, pertaining to mechanical power presses, as published in the **Federal Register** dated February 18, 1980 (45 FR 8593–8594); and (4) amendments to 29 CFR 1910.35, 1910.37, 1910.38, 1910.107–.109, 1910.155–.165(b), Appendix to 29 CFR Part 1910, Subpart E and Appendices A through E to 29 CFR Part 1910, Subpart L, all pertaining to fire protection, means of egress and hazardous materials, as published in the **Federal Register** dated September 12, 1980 (45 FR 60703–60727). These standards, which are contained in COMAR 09.12.31 Maryland Occupational Safety and Health Act, were promulgated after public comment pursuant to Article 89, Sections 30 (a), (i), (l) and (m), annotated Code of Maryland.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of the supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor and Industry, 203 East Baltimore Street, Baltimore, Maryland 21202; Office of the Regional Administrator—OSHA, 3535 Market Street, 2100 Gateway Building, Philadelphia, Pennsylvania 19104; and the Office of State Programs, Room N3613, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for the other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the porcedural requirements of State law and further participation would be unnecessary.

This decision is effective May 18, 1982.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania this 10th day of December, 1981.

David H. Rhone,

Regional Administrator.

[FR Doc. 82–13461 Filed 5–17–82; 8:45 am]

BILLING CODE 4510-26-M

Federal Advisory Council on Occupational Safety and Health; Postponement of Meeting

Notice is hereby given that the meeting of the Federal Advisory Council on Occupational Safety and Health, scheduled for May 20, 1982 (47 FR 18694; April 30, 1982), is postponed until a later date.

All communications regarding this Advisory Council should be addressed to Mr. John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Bicentennial Building, 600 E Street, NW., Suite 500, Washington, D.C. 20210, telephone (202) 376–3005.

Signed at Washington, D.C., this 13th day of May 1982.

Thorne G. Auchter,

Assistant Secretary.

[FR Doc. 82–13451 Filed 5–17–82; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

Proposed Amendments to Prohibited Transaction Exemption 81-7 for Certain Transactions Involving Mortgage Pool Investment Trusts

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Amendments to Class Exemption 81–7.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed amendments to Prohibited Transaction Exemption 81–7. Prohibited Transaction Exemption 81–7 exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code) certain transactions related to the origination, maintenance and termination of mortgage pool investment trusts (mortgage pools), and the acquisition and holding of certain mortgage-backed pass-through certificates (certificates) of mortgage pools under certain circumstances by employee benefit plans (investing plans). In addition to making certain technical changes in the class exemption, the proposed amendments would expand the coverage of the class exemption to include: (1) Pools consisting of loans secured by second mortgages or second deeds of trust; and (2) forward delivery commitments by investing plans to purchase pool certificates under certain circumstances. The proposed amendments, if adopted, would affect participants and beneficiaries of employee benefit plans investing in such certificates, the sponsors and trustees of such mortgage pools, and other persons engaging in the described transactions.

DATES: Written comments and requests for a public hearing must be received by

the Department on or before June 17, 1982.

EFFECTIVE DATE: It is proposed to make these amendments effective January 1, 1975.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, *Attention:* Mortgage Pools. Applications pertaining to the exemptive relief proposed herein (Applications D-2789 and D-3060) and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Frances Perkins Building, Room N4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Carol Gold of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-8971, or William J. Flanagan of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-8610. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 23, 1981, the Department granted Prohibited Transaction Exemption 81-7 (PTE 81-7) for certain transactions involving plan investments in mortgage pool investment trusts. (46 FR 7520.) [1] As defined in section III (B) of PTE 81-7, a mortgage pool is an investment pool the corpus of which (1) is held in trust; and (2) consists solely of (a) interest bearing obligations secured by first mortgages or deeds of trust on single-family residential property; (b) property which had secured such obligations and which has been acquired by foreclosure; and (3) undistributed cash. Generally, the loans comprising the pool corpus have been either originated by the sponsor of the pool or purchased by the pool sponsor from other sources. These mortgage loans are collected by the pool sponsor and transferred in trust to a trustee which is independent of the pool sponsor. The pool trustee then transfers to the pool sponsor certificates representing fractional undivided beneficial interests in the pooled mortgages. The certificates are then sold by the pool sponsor (or by an underwriting syndicate) to investors including employee benefit plans. The principal and interest payments made by individual mortgagors are passed through the mortgage pool in the form of fixed monthly payments to certificateholders, with the pool sponsor retaining a fixed percentage of the interest as a servicing fee. The rights and obligations of the pool sponsor and pool trustee are set forth in a binding pooling and servicing agreement which governs the organization and maintenance of the mortgage pool.[2]

It should be noted that the Act contains no *per se* prohibition against plan investments in mortgage pool certificates or any other mortgage-related investment. Sections 406 and 407 of the Act, however, do generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Where the sponsor, trustee or insurer of a mortgage pool are not parties in interest with respect to a plan, the Act will not prohibit plan investments in such pool so long as the plan fiduciaries have exercised their fiduciary authority in accordance with the standards established in section 404 of the Act. Where, however, one or more of the entities involved in the organization and maintenance of a mortgage pool are parties in interest with respect to a plan, the Act may prohibit investments by such plan in the pool in the absence of an administrative or statutory exemption.

Prohibited Transaction Exemption 81-7 was granted to provide generalized relief from such prohibitions for transactions involving mortgage pools when the pool sponsor, trustee or insurer are parties in interest with respect to an investing plan. Section I(A)-(D) of the exemption provides relief for several different types of transactions under certain conditions specified for each type of transaction.[3] Section I(A) provides relief from the prohibitions of sections 406(a) and 407 of the Act [4] for the direct or indirect sale, exchange or transfer of certificates between a plan and the pool sponsor, and for the continued holding of such certificates by the plan. Section I(B) provides relief from the prohibitions of section 406(b)(1) and (2) of the Act for the direct or indirect sale, exchange or transfer of certificates between a plan and the pool sponsor when the pool sponsor, trustee or insurer is a fiduciary with respect to the plan assets invested in such certificates. Among the conditions applicable to this relief are that the sale, exchange or transfer be approved by an independent fiduciary, that the plan pays no more for the certificates than would be paid in an arm's-length transaction with an unrelated party,[5] and that a plan cannot purchase more than 25% of the amount of the issue of certificates. Section I(C) provides conditional relief from the restrictions of sections 406(a) and (b), and 407 of the Act for all transactions in connection with the servicing and operation of mortgage pools.[6] Section I(D) provides relief from the restrictions of sections 406(a) and 407 of the Act for any transactions to which such restrictions would otherwise apply

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[1] The Department originally proposed class exemptive relief for transactions involving mortgage pools (45 FR 29037, May 6, 1980) on the basis of individual exemption applications filed by the Bank of America National Trust and Savings Association (D-1446), the Crocker National Bank (D-1449), the Wells Fargo Bank, National Association (D-1357) and PMI Mortgage Corporation (D-1447). These applicants, although not originally requesting class relief, indicated that transactions entered with regard to each of their pools were similar to those entered with regard to pools formed by other institutions within the mortgage pool industry. Because of this, the Department decided to treat these four individual applications as the basis upon which to propose class exemptive relief. The exemptive relief proposed and eventually adopted is not, therefore, limited to transactions involving pools formed by the four applicants, but rather is available for any transaction involving a mortgage pool which meets the conditions contained in the exemption.

In response to the May 6, 1980 proposal, the Department received a large number of comments and, pursuant to requests by the commentators, held a hearing on the proposal on September 9, 1980. These comments, the transcript of the hearing, and the original exemption applications are available for public inspection in the Public Documents Room of the Pension and Welfare Benefit Programs, U.S. Department of Labor, Frances Perkins Building, Room N4677, 200 Constitution Avenue, N.W., Washington, D.C.

[2] For a more detailed explanation of the form and operation of mortgage pools, see the preamble to the proposed mortgage pool class exemption, 45 FR 29037, 29038-41 (May 6, 1980).

[3] For the sake of convenience, the entire text of PTE 81-7, including the proposed amendments, is reprinted at the end of this notice.

[4] Pursuant to Reorganization Plan No. 4 of 1974 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to grant exemptions of the type herein proposed was transferred to the Secretary of Labor. As a result, PTE 81-7 contains relief both from sections 406 and 407 of the Act and from the parallel provisions of the Internal Revenue Code of 1954. References in this discussion to sections of the Act should be understood to encompass references to the relevant provisions of the Code.

[5] As originally printed (46 FR 7520, 7526), this condition, contained in section I(B)(1)(b) of the exemption, stated that a plan would have to pay more than an arm's-length price for the certificates. This misprint was corrected by notice in the Federal Register on February 13, 1981 (46 FR 12363), and the corrected version is reprinted in this notice today.

[6] The preamble to the final class exemption indicated that PTE 81-7 would give relief from both section 406(a) and section 406(b) of the Act for transactions in connection with the servicing and operation of a mortgage pool. 46 FR 7520, 7522. However, the reference to section 406(b) was inadvertently omitted from the text of section I(C) of the final exemption. This oversight has been corrected in the version of PTE 81-7 reprinted today, as proposed to be amended.

merely because a person is deemed to be party in interest with respect to a plan who provides services to the plan, or who has a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, solely by reason of the ownership of a certificate by such plan. Section II of PTE 81–7 contains conditions applicable to all of the transactions covered by section I. These conditions are designed to assure a minimum level of protection for investing plans, and include, among others, a condition tht the pool have a trustee which is not an affiliate of the pool sponsor unless such sponsor is a governmental or quasi-governmental entity. Finally, section III contains definitions of terms used in the class exemption. It was th eDepartment's intention that these definitions be broad enough to provide relief to a wide spectrum of entities involved in the mortgage pool industry.

Since the adoption of PTE 81–7, it has come to the Department's attention that further relief in additional areas may be justified under the class exemption. One such area relates to pools comprised of notes secured by second mortgages or second deeds of trust. The other area deals with forward delivery commitments by plans to purchase certificates. The Department's proposals with regard to each of these areas are discussed below.

A. Pools of Second Mortgages or Second Deeds of Trust

Section III(B) of PTE 81–7 states:

> For the purposes of this exemption, the term "mortgage pool" means an investment pool the corpus of which
> (1) is held in trust; and
> (2) consists solely of
> (a) interest bearing obligations secured by first mortgages or deeds of trust on single-family residential property;
> (b) property which had secured such obligations and which has been acquired by foreclosure; and
> (c) undistributed cash.

46 FR 7520, 7527. The definition of the term "mortgage pool" in the proposal had been similarly restricted to first mortgages or first deeds of trust. 45 FR 29937, 29946. In response to the proposal, the Department received two comments which requested that the Department expand this definition to include junior lien loans. Although these commentators provided some information about the quality of investments in junior lien loans, the preamble to the final class exemption stated:

> The Department notes that the proposal was based on information regarding pools of first mortgage loans. The applications, comments and hearing testimony all indicated that first mortgage pools have a structural uniformity which makes class relief possible. The Department has not received similar information concerning second mortgage pools. While there is nothing on the record reflecting adversely upon the quality of investment in second mortgages and second mortgage pools, the record is similarly silent regarding the extent to which second mortgage pools differ as a general matter, from first mortgage pools. Different conditions may be necessary for pools of second mortgage loans. In the absence of sufficient information upon which to base class exemptive relief, the Department has decided not to adopt this comment and the final exemption is restricted to pools of first lien loans.

46 FR 7520, 7525.

Since the publication of PTE 81–7, the Department has received additional information regarding pools of loans secured by second mortgages and second deeds of trust. This information has come in the form of two applications for individual exemptions filed on behalf of Transamerica Financial Corporation (D–2789) and Merrill Lynch MBS Inc. (D–3060). These applications indicate that there is a uniformity of structure and function among pools of second mortgage loans similar to that which exists for pools of first mortgage loans. As a result, the Department has decided to treat these applications as the basis upon which to propose class exemptive relief for pools of loans secured by second mortgages or second deeds of trust. The relief provided in this proposed amendment to PTE 81–7 would not, therefore, be limited to transactions involving pools formed by the applicants. Rather, the relief woud be available for any transaction involving a pool which meets the terms of the amendment and the other conditions of the class exemption.

Both applications indicate that pools of second mortgage loans are organized and maintained in the same way as pools of first mortgage loans. Both applications request exemptive relief which is the same as that provided in PTE 81–7, only applicable also to second mortgage pools. The potential prohibited transactions identified by the applicants are precisely those examined in detail in the preamble to the proposed class exemption. See 45 FR 29937, 29941–44.

The applicants represent that the provision of exemptive relief for pools of loans secured by second mortgages or second deeds of trust is administratively feasible; in the interest of investing plans, their participants and beneficiaries; and protective of the rights of participants and beneficiaries of such plans. The applicants state that, as in the case of pools of first mortgage loans, second mortgage pool certificates provide plans with a steady flow of income as well as a sound method by which to diversify plan investments. The applicants indicate that second lien loans provide a higher rate of return over a shorter period of time. Statistics provided by the applicants indicate that the default rate on second lien notes is comparable to that on first lien loans.

The applicants further represent that second mortgage pools share the same structural safeguards present in the pools exempted under PTE 81–7. Chief among these is the fact that each pool is administered by trustees independent of the pool sponsor for the sole benefit of the certificateholders. In addition, the operation of each pool is governed by a binding pooling and servicing agreement which, among other things, operates to prevent the pool sponsor from retaining unreasonable fees. Further, the applicants indicate that the sponsor of each pool will maintain a system for insuring against reductions in pass-through payments due to loan defaults.

The applicants also note that second mortgage pools will be subject to the same general conditions applicable to first mortgage pools under PTE 81–7. The applicants state that, due to the similarities between pools of first and second lien notes, the conditions already built into the class exemption should be sufficient protection for plan participants and beneficiaries.

On the basis of these facts and representations, the Department is proposing to amend section III(B)(2)(a) to include interest bearing obligations secured by either first or second mortgages or deeds of trust on single-family residential property.

B. Forward Purchase Commitments

As proposed and granted, PTE 81–7 provides relief, under certain circumstances, for the sale of certificates between a plan and a party in interest with respect to such plan. During its consideration of PTE 81–7, the Department received one comment and some hearing testimony referring to the possibility that an investor could make a "forward delivery commitment"[1] for pool certificates. Although not specifically requested to provide exemptive relief for forward purchase commitments, the Department

[1] Information received by the Department indicates that the terms "forward delivery commitment," "forward placement" and "delayed delivery" all refer to the same type of transaction involving pool certificates. For the sake of convenience, the Department has chosen to use the term "forward delivery commitment" to refer to this transaction.

addressed this area in the preamble to the final class exemption, noting:

> The Department does not have sufficient information at this time to identify this practice completely, to ascertain the frequency of its use in the mortgage pool industry or to determine what, if any, abuses may be involved with such practices. The Department does not believe that it would be beneficial at this time to reopen the comment period regarding this subject and thereby delay adoption of a final class exemption . . . Therefore, to the extent that so-called "forward placements" or "forward commitments" involve transactions which precede the formation of a mortgage pool such transactions are beyond the scope of this class exemption. To the extent that members of the public believe that relief is appropriate for such transactions, they are invited to file with the Department an application for relief in accordance with the provisions of ERISA Procedure 75–1 [40 FR 18741, April 28, 1975].

46 FR 7520, 7525–26.

Since the publication of PTE 81–7, the Department has received additional information regarding the use of forward delivery commitments and their importance in the mortgage pool industry. Although the Department has not received any requests for exemptive relief pursuant to ERISA Proc. 75–1, the Department believes that the information it has received forms a sufficient basis upon which to propose exemptive relief.[5] This information and its ramifications are discussed below.

1. *Contracts for Forward Delivery Commitments.* The information received by the Department indicates that forward delivery commitments may play a central role in the formation of some mortgage pools and the marketing of some pool certificates. In the preamble to the proposed mortgage pool class exemption, the Department described in detail the manner in which a mortgage pool is established. 45 FR 29937, 29938–39. Basically, as described in that preamble, a mortgage pool is formed when the pool sponsor chooses loans from among those it has made or bought, and transfers those loans in trust to an independent trustee. The pool trustee in turn transfers to the pool sponsor certificates representing fractional, undivided beneficial ownership interests in the pooled loans. The pool sponsor, either through a broker or directly, then places certificates with prospective investors.

The additional information recently received by the Department indicates that the pool sponsor, before collecting loans for inclusion in a pool, seeks to assure that the certificates of a subsequently formed pool will be marketable. This concern is especially acute during periods of fluctuating interest rates, since, when interest rates rise, such fluctuations could force pool sponsors to sell at a discount certificates from a pool of previously-made loans having interest rates lower than current market levels. It appears that pool sponsors, in order to avoid such situations, will seek agreements from prospective investors whereby such investors commit themselves to purchase a specific amount of certificates possessing a specified pass-through interest rate and evidencing interests in a pool possessing certain characteristics. Such agreements are called forward delivery commitments (or forward delivery commitment contracts), and are of two types. First, a mandatory forward delivery commitment obligates both parties to perform or risk default. In other words, the pool sponsor is obligated to deliver by a specified date certificates possessing certain agreed upon characteristics. At the same time, the investor is obligated to accept delivery of a specified amount of such certificates provided the certificates meet the negotiated criteria. The second type are optional (or standby) forward delivery commitments which provide that performance by either the pool sponsor or the investor (or possibly both) is optional. One example of an optional forward delivery commitment contract would occur when the pool sponsor is not required to deliver certificates, but if he does, the investor must accept delivery if the certificates meet the agreed upon criteria.

It appears that, in some cases, the investor making a forward delivery commitment will receive a so-called "commitment fee" from the pool sponsor. Typically, this fee (usually equal to one basis point) is paid with the understanding that it will be either refunded to the pool sponsor or used against the price of the certificates upon delivery. In this respect, this fee operates like an earnest money deposit. Other than this fee, it does not appear that any other funds change hands when the investor gives a commitment. The investor is not obligated to pay until delivery is tendered.

The information received by the Department indicates that forward delivery commitment contracts are concluded on an over-the-counter basis in a bid and offer market through the use of a broker. It appears that there are between seven and ten brokers currently in this market. The forward market appears to be fairly deep, especially for certificates guaranteed by the Government National Mortgage Corporation, and daily "quotes" of current transaction rates are readily available.

Based on the information submitted to the Department, it appears that the activities of the mortgage pool industry may be substantially facilitated through the use of forward delivery commitments. This is especially true in situations where the pool sponsor would be reluctant to make mortgage loans for inclusion in a pool until such pool sponsor has received forward delivery commitments for a substantial portion of the certificates of a prospective pool. It has been suggested that the Department's discussion of forward delivery commitments in the preamble to PTE 81–7, quoted above, has discouraged pension plans from entering the forward market and thereby limited plan participation in the mortgage pool market in general. It was not the Department's intention to limit the range of prudent plan investment options. Rather, the Department hoped that identifying areas in which the original applicants and commentators had failed to supply sufficient information would cause other individuals to submit additional facts in this area. The information received by the Department seems to fill the need identified in the preamble to PTE 81–7, and based upon that information, the Department is proposing to amend PTE 81–7 to provide the exemptive relief discussed below.

2. *Proposed Exemptive Relief.* PTE 81–7 provides relief for a broad range of transactions related to mortgage pools, including the sale of certificates to plans. As noted above, section I(A) of PTE 81–7 exempts from the prohibitions of section 406(a) of the Act the direct or indirect sale of certificates between a plan and a pool sponsor when the pool sponsor, pool trustee or pool insurer is a party in interest with respect to the plan. Section I(B) provides relief for such sales when the pool sponsor, pool trustee or pool insurer is a fiduciary with respect to the plan assets being invested in pool certificates. The information received by the Department indicates that, in most cases, a forward delivery commitment contract is a commercially reasonable adjunct to the sale of pool certificates. As a result, in order to make more meaningful the relief provided in sections I(A) and I(B) of PTE 81–7, the Department believes it is appropriate to provide relief for forward delivery commitments involving mortgage pool certificates.

In order to provide this relief, the Department is proposing to add two paragraphs to section III of PTE 81–7,

[5] Section 3.01 of ERISA Proc. 75–1 provides that the Secretary of Labor may initiate an exemption proceeding on his own motion. 40 FR 18471.

which contains definitions of terms used in the class exemption. Proposed paragraph G states that, for the purposes of this exemption, the term "sale" shall include a forward delivery commitment by an investing plan provided certain conditions are met. The first proviso of this proposed paragraph states that the relief provided by section I(A) of the exemption would be available only if the terms of the forward delivery commitment are no less favorable to the plan then they would be in an arm's length transaction with an unrelated party. The second proviso of this proposed paragraph relates to section I(B), and states that the relief provided in section I(B) from the restrictions of section 406(b) of the Act would be available only if three conditions are met. First, the forward delivery commitment must be approved by a fiduciary independent of the pool sponsor, trustee or insurer who has authority to manage and control those plan assets being committed for investment in such certificates. This provision is designed to mirror the condition contained in section I(B)(1)(a) of the class exemption and to assure oversight by an independent fiduciary both at the time the commitment is made and when the sale is finally executed. Second, the forward delivery commitment shall not be an option or standby commitment unless performance is optional on the part of the investing plan. The information received by the Department indicates that the market for optional forward delivery commitments is thin, and, thus, the structural market safeguards relied upon, in part, in PTE 81–7 would not be present. Third, at the time the plan is called upon to perform pursuant to its commitment, and the sale of certificates is executed, all of the conditions of section I(B) of the exemption must be met. This condition is designed to address the situation in which a plan properly entered a forward delivery contract but subsequently cannot honor its commitment without engaging in a prohibited transaction.

Proposed paragraph H defines the term "forward delivery commitment" and "forward delivery commitment contract". The proposal states that these terms would mean a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date, which is more than thirty calendar days after the contract's trade date. These terms would include both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional (also called standby) contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party). Proposed paragraph H is patterned after the common usage of this term in the mortgage pool industry.[*]

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

[*]The information received by the Department indicates that the mortgage pool industry distinguishes between forward delivery commitments on the one hand and future contacts in pass-through certificates on the other. It appears that the distinction (other than differing regulatory frameworks) lies in the fact that an investor making a forward delivery commitment is primarily interested in the delivery of specific certificates. Investors in the future market are less concerned with delivery, seeking instead a certain investment yield rather than an identifiable certificate. By utilizing the industry definition of the term "forward delivery commitment," the Department intends that PTE 81–7 will not cover future transactions in pass-through certificates. The Department is, however, presently considering an application filed by the Futures Industry Association for various advisory opinions and exemptions with regard to plan investments in commodity futures contracts.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption

On the basis of the facts and representations set forth in the applications, and other information available to the Department, the Department is considering amending, to read as set forth below, Prohibited Transaction Exemption 81–7 (46 FR 7520) under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1:

I. Transactions

A. Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving mortgage pool investment trusts (mortgage pools) and pass-through certificates evidencing interests therein (certificates):

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor of a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a party in interest with respect to such plan, provided that the plan pays no more than fair market value for such certificates, and provided further that the rights and interests evidenced by such certificates are not subordinated to the rights and interests evidenced by other certificates of the same mortgage pool;

(2) The continued holding of certificates acquired pursuant to subparagraph (1), above, by an employee benefit plan.

B. Effective January 1, 1975, the restrictions of section 406(b)(1) and (2) of the Act and the taxes imposed by

section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to the following transactions involving mortgage pools and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or a mortgage pool and an employee benefit plan when the sponsor, trustee or insurer of such pool is a fiduciary with respect to the plan assets invested in such certificates provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of the pool sponsor, trustee or insurer who has authority to manage and control those plan assets being invested in such certificates;

(b) The plan pays no more for the certificates than would be paid in an arm's length transaction with an unrelated party;

(c) No investment management, advisory, or underwriting fee or sales commission or similar compensation is paid to the pool sponsor with regard to such sale, exchange or transfer;

(d) The total value of certificates purchased by a plan does not exceed 25% of the amount of the issue; and

(e) At least 50% of the aggregate amount of the issue is acquired by persons independent of the pool sponsor, trustee or insurer.

C. Effective January 1, 1975, the restrictions of section 406 (a) and (b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing and operation of the mortgage pool provided that: (1) such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and (2) such pooling and servicing agreement is made available to investors before they purchase certificates issued by the pool.

D. Effective January 1, 1975, the restrictions of sections 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act), solely because of the ownership of a certificate evidencing an interest in a mortgage pool by such plan.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The sponsor and trustee for each mortgage pool must maintain a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all covered pooled mortgage, or the principal balance of the largest covered mortgage;

(2) Except in the case of a governmental or quasi-governmental entity such as the Federal National Mortgage Association, the trustee for each mortgage pool must not be an affiliate of the sponsor of such pool, provided, however, that the trustee shall not be considered to be an affiliate of the pool sponsor solely because the trustee has succeeded to the rights and responsibilities of the pool sponsor pursuant to the terms of the pooling and servicing agreement providing for such succession upon the occurrance of one or more events of default by the pool sponsor; and

(3) The sum of all payments made to and retained by the pool sponsor in connection with a mortgage pool, and all funds inuring to the benefit of the pool sponsor as a result of the administration of the mortgage pool, must represent not more than adequate consideration for selling the mortgage loans plus reasonable compensation for services provided by the pool sponsor to the pool.

III. Definitions

A. For the purpose of this exemption the term "sponsor" or "pool sponsor" means:

(1) The entity which organizes, and either continues to service or supervises the provision of services to, a mortgage pool comprised of mortgage loans either made or purchased by such entity; and

(2) Any successor thereto.

B. For the purposes of this exemption, the term "mortgage pool" means an investment pool the corpus of which

(1) Is held in trust; and

(2) Consists solely of

(a) Interest bearing obligations secured by either first or second mortgages or deeds of trust on single-family, residential property;

(b) Property which had secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

C. For the purposes of this exemption, the terms "mortgage pool pass-through certificate," or "certificate" mean a certificate representing a beneficial undivided fractional interest in a mortgage pool and entitling the holder of such certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by the pool sponsor.

D. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director, or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

E. For the purposes of this exemption, the term "single-family, residential property" means non-farm property comprising one to four dwelling units, and also includes condominiums.

F. For the purposes of this exemption, a person will be "independent of the pool sponsor, trustee, or insurer" only if:

(1) Such person is not an affiliate (as defined in paragraph III(D) of this exemption) of the pool sponsor, trustee, or insurer; and

(2) Neither the pool sponsor, trustee, insurer, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

G. For the purposes of this exemption, the term "sale" includes a forward delivery commitment (as defined in paragraph H, below) by an investing plan, provided

(1) For the purposes of section I(A), the terms of the forward delivery commitment contract are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party; and

(2) For the purposes of section I(B)

(a) The forward delivery commitment has been expressly approved by a fiduciary independent of the pool

sponsor, trustee or insurer who has authority to manage and control those plan assets being commited for investment in such certificates;

(b) The commitment shall not be an optional or standby commitment unless performance is optional on the part of the investing plan; and

(c) At the time of delivery, all of the conditions of section I(B) of this exemption are met.

H. For the purposes of this exemption, the terms "forward delivery commitment," and "forward delivery commitment contract" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date, which is more than thirty calendar days after the contract's trade date. The terms includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

Signed at Washington, D.C. this 13th day of May 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

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[Prohibited Transaction Exemption 82-87; Exemption Applications D-1937 and D-2004]

Class Exemption for Transactions Involving Certain Residential Mortgage Financing Arrangements

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain of the prohibited transactions provisions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The exemption involves the issuance of commitments for the provision of mortgage financing to purchasers of residential dwelling units, the receipt of a fee in exchange for the issuance of such commitment, the making or purchase of loans or participation interests therein pursuant to such commitments, and the direct making, purchase, sale, exchange or transfer of mortgage loans or participation interests therein by employee benefit plans, if the conditions specified in the exemption are met. The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, certain employers who contribute to such plans and other persons who engage in the described transactions. In the absence of this exemption, certain purchase and sale transactions between the plan and parties in interest and certain extensions of credit transactions between the plan and other parties in interest would be prohibited by the Act and the Code.

EFFECTIVE DATE: January 1, 1975. (Certain conditions, as specified herein, are applicable effective June 17, 1982.)

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4526, Washington, D.C. 20216 (202)523-6915. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On December 3, 1981, notice was published in the **Federal Register** (46 FR 58773; republished December 4, 1981, 46 FR 59335) of the pendency before the department of Labor (the Department) of a proposed class exemption from the restrictions of section 406(a)(1) (A) through (D) of the Act and from certain taxes imposed by section 4975 (a) and (b) of the code by reason of section 4975(c)(1) (A) through (D) of the Code.[1] The proposed exemption was based on applications filed by the National Coordinating Committee for Multiemployer Plans (NCCMP) (D-1937) and by the National Association of Home Builders (NAHB) (D-2004) (collectively referred to as the applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). In addition, other applications for both class and individual exemptions for transactions of the type covered by this exemption have been filed with the Department.[2]

The notice set forth a summary of facts and representations contained in the applications of the NCCMP and the NAHB, and referred interested persons to the applications for a complete statement of facts and representations. The applications have been available for public inspection at the Department in Washington, D.C.

The Department received 90 public comments with regard to the proposed class exemption. Upon consideration of all the comments submitted, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Description of the Proposal

Part I of the proposed class exemption provided conditional relief prospectively and retroactively to January 1, 1975, for transactions involving the issuance of commitments by employee benefit plans to purchasers of new single family dwelling units, the receipt of a fee in exchange for the issuance of such commitment and the actual making or purchase of the mortgage loan by the plan pursuant to such commitment. Part II of the proposal contained the general conditions applicable to the transactions listed in Part I. Conditions A and B addressed the nature and scope of the commitment and required that the commitment be consistent with customary practices in the residential financing industry. Condition C provided that the commitment be made on behalf of the plan by an "established financial institution" which was not subject to a controlling influence over its management or policies by an entity related to the plan.[3] Condition D provided that the financing for the purchase of the residential dwelling unit must have been provided through an "established financial institution" (1) based on criteria which were consistent with customary practices in the residential mortgage industry, and (2) which commonly made mortgage loans on similar terms and conditions from its own funds. Condition E outlined the requirements for the loan which included an arm's length standard, that the loan be consistent with customary practices in the residential mortgage industry and that it be secured by a duly recorded first lien on the unit. Condition F limited those individuals who could exercise authority or render investment advice so as to make them a fiduciary with respect to the commitment decision. Condition G restricted those eligible parties in interest for whom the plan could provide mortgage financing. condition H outlined the requirements to be followed should a plan decide to service those loans which it acquired under this exemption. Condition I contained recordkeeping requirements

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[1] Hereafter, references to provisions of the Act shall include references to parallel provisions of the Code.

[2] Carpenters Pension Trust Fund of Detroit and Vicinity, D-2421, Carpenters Pension Fund of Illinois, D-2674, and the United States League of Savings Associations (D-2875). The Department gave due consideration to these applications in considering the scope of this final exemption.

[3] The Department specifically sought public comment on viable alternatives for this aspect of the proposed exemption.

required by the department in providing certain types of exemptive relief. Part III of the proposal contained definitions of the terms affiliate, established financial institution, and residential dwelling unit.

General Discussion

The two original applications for class exemptions which formed the basis for the proposal described general types of transactions which appeared to the Department to be customary for the residential mortgage industry. As a result of the comments filed with the Department pursuant to the proposal, as well as a review of other applications for class and individual exemptions, the Department has become aware of other transactions customarily involved in residential mortgage financing which, subject to applicable conditions, are also covered in this exemption. Therefore, as stated above, and as further described below, the class exemption as here granted is significantly broader in scope in several respects than originally proposed.

In the Department's view, the class exemption, as granted, not only provides certainty to plan fiduciaries as to the application of the Act's prohibited transactions provisions to many transactions which are customary in residential mortgage financing, it is also designed to accommodate changes in the mortgage marketplace as they occur, without the necessity of amendments to the exemption. This flexibility results from the definition of a "recognized mortgage loan" contained in the final exemption. Pursuant to this definition, generally, the exemption will apply to covered transactions involving mortgages which are eligible for purchase by the Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA) (collectively the Agencies). As new residential financing arrangements are introduced in the marketplace for which the Agencies establish acquisition programs and underwriting standards, the exemption will automatically apply to such arrangements. It is the existence of these recognized programs and ascertainable underwriting standards that contributed to the Department's conclusion that a broadened exemption would be consistent with the requirements of section 408(a) of the Act.

The Department wishes to specifically point out that the granting of this exemption should not, in any way, be construed as encouraging or endorsing plan investments in residential mortgages. Rather, it is the Department's objective to adequately respond to the applications for exemption submitted for transactions of the subject type and, in so doing, to remove, where the applicable statutory findings can be made, barriers that may exist to such plan investments. Decisions regarding specific plan investments or an investment course of action must, of course, be made by appropriate plan fiduciaries and must be consistent with the Act's fiduciary standards including the prudence standard contained in section 404(a)(B). The Department wishes to emphasize, for example, that any mortgage loan (or program of mortgage loans) which is acquired by an employee benefit plan, must be considered as a plan investment or investment course of action. Because the investment would be selected (if at all) in preference to other investment alternatives, it would generally not be prudent if the investment or investment course of action provided the plan with less return, in comparison to the risk involved, than comparable investments or investment courses of action available to the plan; or, alternatively, involved a greater risk to the security of plan assets than such other investment or investment course of action offering similar return.[4]

As proposed, and as granted, the exemption provides both prospective and retroactive relief. Unlike the proposal, however, certain conditions are applicable only prospectively (see detailed discussion below). The Department wishes to specifically note that no exemption is provided either prospectively or retroactively, from the prohibitions of section 406(b) of the Act. Thus, for example, if a plan acquires mortgages (even if the mortgages are "recognized mortgage loans") in a transaction which violates section 406(b) of the Act, this exemption will not apply to exempt plan fiduciaries from such violations.

Finally, the Department notes that section 3.04 of ERISA Procedure 75–1 provides that an application for an individual exemption will not ordinarily be considered separately if a class exemption which would encompass the transaction has either been the subject of an exemption proceeding or is under consideration. Nevertheless, the Department recognizes that there may be circumstances involving the general types of transactions which are the subject of this class exemption that deserve separate consideration. Accordingly, the Department will determine, on a case-by-case basis, whether to consider such applications on their merits.

Discussion of the Comments

A. Transactions

1. *Plan Acquisition of Mortgage Loans.* Pursuant to the applicants' request, the transactions covered by the proposed class exemption were limited to plan acquisitions of whole mortgage loans on new residential units pursuant to a commitment. Many commentators noted that limiting purchases to those made pursuant to a commitment unduly restricted a plan's investment flexibility, profit opportunity and liquidity. Plans were represented as frequently purchasing mortgage loans on an over-the-counter or immediate purchase basis. Commenting in light of its own pending exemption, the United States League of Savings Associations (USLSA) urged the Department to expand the existing proposal arguing that both the interests of housing and pension plan participants would be best served by a more comprehensive exemption. On the basis of these comments the Department has concluded that it would be appropriate to expand the exemption to cover direct acquisitions as well as those made pursuant to a prior commitment.

2. *Acquisition of Participation Interests.* Several commentators also suggested that the principles and protections embodied in the exemption would be equally applicable to plan acquisitions of loan participations. A loan participation was described as an agreement involving the ownership in common of mortgage loans by two or more investors. A typical transaction was represented as one where an orginating lender retains a small interest and sells the remainder to an institutional investor. The originating lender would hold equitable title in the underlying mortgage(s) and "service" the mortgages for all interest holders by, e.g., passing through periodic payments of principal and interest on a pro rata basis and sharing in any losses on the same basis. These agreements are similar to the larger scale selling of certificate interests in a pool of loans. The department has previously provided relief for these "mortgage backed security" arrangements; [5] however, that exemption did not provide relief for the purchase of a participation interest in individual loans. According to one commentator, participation interests are generally structured as investment

[4] Department of Labor Advisory Opinion 81–12A, January 15, 1981.

[5] Prohibited Transaction Exemption 81–7 (PTE 81–7) (46 FR 7520, January 23, 1981.)

contracts rather than the grantor trusts used in PTE 81-7. It was represented that while on the smaller scale, this activity accounts annually for a substantial level of investment in the secondary market financing of residential mortgage loans. In support of this form of investment the commentator argued that the purchase of a participation interest could result in greater protection for an investing plan since the risks are shared with the originating lender who generally retains an interest in the loan(s) sold.[6] In addition, the class application filed by the USLSA requested relief for the acquisition of participation interests by plans both for over-the-counter transactions and pursuant to a prior commitment.

The Department believes that the process under which plan decisions are made along with the protections inherent in any continuing arrangement are crucial elements in evaluating whether the statutory criteria for granting administrative relief have been satisfied. Based on the description of these arrangements provided by the USLSA, among others, which indicates that the role of an seller/servicer may generally be restricted to essentially mechanical functions and because the exemption requires that any plan decision to acquire a participation interest be made by an independent fiduciary the Department is able to expand the exemption to include both the commitment to purchase and the direct purchase of a participation interest in mortgage loans.

3. *Pooling of Assets by Plans.* Section 404(a)(1)(C) of the Act requires a plan to diversify the investments of the plan so as to minimize the risk of large losses. One commentator suggested that many smaller plans interested in investing in mortgage loans believe they are precluded from doing so because of the amount of plan assets needed to purchase either a participation interest or a whole mortgage.

In its application the NAHB requested consideration be given to the creation of nonprofit corporations established by regional, state or local home building associations (HBAs) affiliated with NAHB to assist plans in pooling financial resources for mortgage investment. In the proposed exemption, the Department responded that the inclusion of relief for such HBA arrangements was not necessary in order to achieve the purposes for which the exemption was requested. the Department noted the availability of section 408(b)(2) of the Act and interpreting regulations (29 CFR 2550.408b-2) which provided, if certain conditions were satisfied, an exemption from the provisions of section 406(a) of the Act. The Department agrees that the pooling of funds, in certain situations, may be a suitable form of investment; however, it will not advocate any specific format for such pooling. The Department believes the exemption, as modified to include acquisition of participation interests, should adequately address these concerns.

4. *Sales of Mortgage Loans or Participation Interests.* One commentator noted that the proposal failed to include as a separate covered transaction the sale of a mortgage loan held by a plan. While noting that pension plans are likely to retain mortgage investments until their maturity, the commentator suggested that their sale may be desirable from time to time. Therefore, the Department was urged to revise the list of transactions to include the sale of mortgage loan or participation interest investments. The Department has adopted this comment and modified the final exemption accordingly.

5. *Servicing of Mortgage Loans or Participation Interests.* Several commentators urged the Department to expand the exemption to include relief for the provision of services incidental to the purchase of a mortgage. As explained by the applicants and discussed in the comments, plans would purchase morgage loans from a financial institution and retain that institution, or a similar financial institution to "service" the loan by collecting and remitting to the plan the installment payments made by the borrower. In the event of a default this entity would be responsible for protecting the plan's interests under any foreclosure proceeding including rights available under any Federal or private insurance or guaranty program. This servicing is a separate contractual arrangement between the parties distinct from the purchasing of the mortgage loan. Where this servicing arrangement satisfies the conditions of section 408(b)(2) of the Act and applicable regulations, no additional administrative relief would appear to be necessary or appropriate.

B. Conditions

1. *Established Financial Institution.* For purposes of the exemption the term "established financial institution" was defined as an investment manager described in section 3(38) of the Act with respect to the plan, or a savings and loan association subject to regulation by the Federal Home Loan Bank Board, which, in the normal course of its business, engages in trnasactions described in this exemption.

As stated in the proposal, the Department viewed the existence of an independent decision maker ("established financial institution") as a significant factor in its ability to propose exemptive relief. In recognition of the fact that the condition requiring that the commitment decision be made by such an independent fiduciary had not been a part of the original application requests and the applicants' contention that the condition was not essential, the Department invited specific comments regarding this condition. Several commentators urged the Department to delete the condition as unnecessary or proposed a variety of alternatives to this independent fiduciary. Other commentators suggested that, as proposed, the exemption was not protective enough and urged the Department adopt additional safeguards to ensure that the investment decisions were made in the best interests of plan participants and beneficiaries.

In the context of a request for relief for such a large and varied class of persons, the Department has determined that the suggested approaches either did not afford adequate protection or would result in an arbitrary approach that would depreive plans of desirable flexibility in establishing a mortgage investment program which best suits their individual needs. After considering the range of alternatives presented, the Department is unable to conclude that any of the suggested alternatives is appropriate, in the context of a class exemption, to provide the protections which would enable the Department to make the findings necessary to grant exemptive relief.

The Department has determined, based in large part, on the additional protections which are inherent in the adoption of the "recognized mortgage loan" standard in the final exemption, that the potential for abuse has been minimized so that additional protections beyond those proposed need not be included in this condition. The

[6] The Depository Institution Deregulation and Monetary Control Act of 1980 Public Law 96-221; 94 Stat. 132, 12 U.S.C. 1724 *et seq.* resulted in the removal of the mandatory retention requirement by the originating lender from the Federal Savings and Loan Insurance Corporation regulations (12 CFR 563.9-1 withdrawn 45 FR 76095 Nov. 10, 1980). However, it is represented as a practical matter, that originating lenders generally still retain a limited (5 percent) ownership in participation interests which they create. This retention of 5 percent is required should they seek to sell such participation interest to FHLMC (Section 3.102 FHLMC Sellers Guide for Conventional Mortgages) or FNMA (FNMA Form 637, Appendix F, FNMA Conventional Home Mortgage Selling Contract Supplement).

Department has determined to retain the role of an independent fiduciary in the decision making process as proposed. The categories of entities who may serve in such capacity, however, have been broadened.

As indicated in the summary of the proposed exemption above, the involvement of an "established financial institution" was required both with respect to the commitment decision and the financing or loan origination process. Many commentators expressed concerns regarding the Department's application of the term in both conditions.

Condition C of the proposed exemption provided that the decision to issue the commitment must be made on behalf of the plan by an "established financial institution" which would not be subject to influence by parties related to the plan. Several comments suggested that the residential financing industry contains a wide range of institutions, currently active in the mortgage market, with the knowledge and experience to make commitment type decisions which were not included in the proposed definition. Several of the commentators urged the Department to expand the list of "established financial institutions" and suggested what they considered to be appropriate additions.

Rather than expand a listing of specifically eligible institutions, the Department has decided to delete the term "established financial institution" from the final exemption and develop a new term to describe those persons eligible to make commitment decisions on behalf of employee benefit plans. The term"qualified real estate manager," as described below, provides a more flexible standard of eligibility—that of acceptance in the marketplace.

Several comments expressed concern whether the independent fiduciary envisioned by Condition C of the proposed exemption would be able to maintain sufficient independence. Clearly, what the Department seeks to prevent is the existence of influence which may affect the exercise of the fiduciary's best judgment. This, in the Department's view, is an inherently factual matter based on the facts and circumstances of the particular relationship existing at that time. The Department believes that all the conditions contained in the final exemption, taken together, provide an adequate basis for granting the exemption.

Other commentators posed a related concern by noting that trustees of a plan often provide certain guidelines or investment policies to those making investment decisions on behalf of a plan. The Department believes, that a fiduciary may appropriately follow certain guidelines and not be considered to be under the controlling influence of the plan trustee. However, a fiduciary is not entitled to blindly rely upon guidelines or investment policies established by other plan fiduciaries. The Department considers that under section 404(a)(1)(B) of the Act, a fiduciary has a duty not to act in accordance with a delegation of plan investment duties to the extent that such fiduciary either knows or should know that the delegation involves a breach of fiduciary responsibility.

Condition D of the proposed exemption required that financing be provided through an "established financial institution" which selects the recipient and originates the loan based on criteria that are consistent with "customary practices" and which "* * * commonly makes mortgage loans on similar terms and conditions from its own funds." The comments suggested that the requirements of the condition served to bar potential providers of this service which in the commentator's view were otherwise qualified. In addition, the comments noted that the "from its own funds" requirement eliminated a major segment of the mortgage investment community from providing such loan origination services when these business enterprises have been recognized as possessing the requisite knowledge and expertise to perform this role. The Department had not intended, by the terms of this condition to unduly limit the categories of parties eligible to provide this service to plans. The record, however, reflects the need to modify the definition describing those entities eligible to provide loan origination services to plans. The Department has determined to delete the term "established financial institution" from this condition and adopt a new definition of an "established mortgage lender" which recognizes the role of parties such as mortgage bankers and the full range of depository institutions which have traditionally provided this service.

Several comments suggested the Department adopt a general definition relating to institutional experience in the mortgage market followed by a comprehensive listing of those institutions which presently originate mortgage loans. Other comments suggested that the secondary market itself contained recognized criteria for loan origination services. The Department has determined it more appropriate to adopt a standard which incorporates the existing approval processes of those agencies with a congressional mandate to operate in the residential housing market.

The first category under the new definition incorporates those standards developed for lenders who originate loans which qualify for participation in any mortgage insurance program under the National Housing Act.[7] The Department of Housing and Urban Development (HUD) has established a procedure for the approval of such originators.[8] The second category involves lenders who originate conventional loans where qualification procedures have been developed by FNMA [9] and FHLMC.[10] At the request of several commentators the Department has included in its definition of those eligible to provide origination services a third category—state housing finance agencies (HFAs). According to the commentators, HFAs are currently expanding their traditional programs to deal directly with the public as mortgage lenders. The commentators have represented that HFAs have the size and staff capacity to manage all mortgage purchase operations of pension plans. It has also been suggested that in some regions of the country, HFAs may be one of the primary mortgage lenders. Therefore, the Department has included these entities in its definition of an "established mortgage lender."

One commentator raised the question whether the discretion exercised by an originator in qualifying a buyer would be construed by the Department as fiduciary conduct. Section 3(21) of the Act provides in relevant part, "* * * a person is a fiduciary with respect to a plan to the extent (1) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets * * *" In the Department's view the decision to invest plan assets in residential mortgage financing is a fiduciary decision. Once the decision is made either to issue a commitment on particular terms, or invest directly in certain morgage loans, the Department is of the view that the specific actions of qualifying a buyer consistent with those terms would generally not constitute fiduciary conduct.

2. *Mortgage Loans and the Requirement of "Customary Practices".* Condition E of the proposed exemption

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[7] Public Law 479, 73rd Congress, 48 Stat. 1246, 12 U.S.C. 1701 *et seq.*

[8] 24 CFR 203.1 *et seq.*

[9] FNMA Conventional Home Mortgage Selling Contract Supplement, Sections 203–204.

[10] FHLMC Sellers Guide for Conventional Mortgages, Part 1, section 206.

required, among other things, that the mortgage loan to be acquired be "consistent with customary practices in the residential mortgage industry." This condition was included to indicate the Department's concern that mortgage loans to be acquired by a plan be of investment quality and marketable to insure some measure of safety and liquidity. As discussed above, the Department's position regarding prudence in investment does not seek to restrict the range of investment options available to a plan. However, where the subject investments would violate the prohibited transactions rules of the Act, the Department has an obligation to consider those investments in light of the statutory criteria for granting administrative relief.

Several commentators pointed out that the economic climate of recent years has had a significant impact on the residential mortgage market. The impact appeared to have been most evident in the mortgage instruments used in financing. The result has been the creation of a number of "alternative mortgage instruments" (AMIs). These AMIs have achieved varying degrees of recognition; however, as indicated by the comments, in many cases this acceptability could not be equated to a "customary practice in the residential mortgage industry."

The Department has determined that the language "customary practices in the residential financing industry," does not establish an adequate standard against which plan fiduciaries may judge, with the necessary degree of certainty, compliance with this condition of the exemption. In developing a more objective standard, the Department has adopted the suggestion of some commentators and modified the condition by requiring that those mortgage loans to be acquired under this exemption must be eligible, through an established program, for purchase by one of the Agencies. Therefore, Condition E of the proposed exemption, has been modified to reflect the "recognized loan" standard.

Adopting the "recognized mortgage loan" standard also enables the Department to address another concern raised in several comments relating to Condition E of the proposed exemption. By limiting the allowable security to first liens on a residential unit, investments in junior or second liens were precluded. Several commentators suggested that properly underwritten, fully amortizing second mortgage liens can offer investors a combination of safety, high yield and short maturities which could allow for a further diversification of pension fund portfolios. Another commentator argued that, in enacting the Depository Institution Deregulation and Monetary Control Act of 1980, Congress recognized that the loan-to-value ratio rather than lien position provides the security for real estate investment by removing the first lien requirement for residential real estate lending. To the extent that nationwide programs are operated by the Agencies for the purchase of mortgage loans secured by junior or second liens, such liens would satisfy the "recognized mortgage loan" requirement.

The third requirement of Condition E required that the terms of the mortgage loan be at least as favorable to the plan as the terms of a loan involving unrelated parties. No comment was received regarding this issue, accordingly the Department has incorporated this language in the final exemption.

3. *Joint Commitment and Origination Services.* Condition F of the proposed exemption provided that certain parties who had previously been involved with the building or development of a unit, the construction financing for such unit or would be involved with the provision of loan origination services would not be eligible to exercise discretionary authority or control or provide commitment advice to a plan. Several comments suggested that this condition was not necessary, given the protections provided through the other conditions and the fact that the proposed exemption did not extend to section 406(b) of the Act. Two commentators expressed concern that the effect of the condition was to mandate the involvement of two financial institutions which would disrupt the traditional practice of mortgage lenders providing both construction and permanent financing. The Department does see a potential for abuse where a financial institution involved with the construction financing would make decisions on behalf of a plan, for the provision of permanent financing.

The Department has not been pursuaded by the arguments of the commentators who urged that the condition be deleted. However, the arguments of the commentators that, as presently drafted, the condition would mandate the involvement of two financial institutions and thereby add significant costs to the investment process has been accepted. As modified, this condition would permit an originator to make the decision to purchase (whether directly or pursuant to a commitment), provided it was not at the time of the decision the owner of a mortgage loan or participation interest therein which is subsequently sold to the plan. The sequence of events where an originator makes "recognized mortgage loans" after a commitment has been made with the intent on selling them to the plan is consistent with the Department's understanding of the origination-purchase form of acquisition by a plan.

4. *Restrictions on Borrowers.* Condition G of the proposed exemption which limited the eligible party in interest (as defined in section 3(14) of the Act) borrowers was based on the relief requested by one of the original applicants. Three comments, including those of both the NCCMP and the NAHB, suggest that with the existing conditions present in the exemption, no additional safeguard is provided by retaining this condition. The commentators also note that the screening process necessary to prevent inadvertent loans to those parties in interest not eligible for loans would be an unnecessary added expense to the plan.

The Department accepts the arguments and has eliminated the condition from the final exemption.

5. *Loan Servicing by Plans.* Condition H of the proposed exemption provided that where plans serviced loans, as opposed to contracting with a professional servicing organization, such plans were required to establish written procedures that were consistent with customary industry practices. No comments were received on this condition; however, the Department has reconsidered the necessity for a condition of this type in light of the other protections contained in this exemption and has determined to delete the condition from the final exemption. Plans which choose to service loans which they have made or purchased must obviously do so in accordance with the general fiduciary duty requirement of prudence found in section 404(a)(1)(B) of the Act. However, the procedures suggested in this condition deserve consideration in making a determination about the appropriate procedures to adopt.

6. *Retroactivity.* At the request of the applicants, the proposed exemption provided retroactive relief based on the representation that the transactions involved were customary for the residential mortgage financing industry. The comments noted that residential mortgage lending programs may be structured in a variety of ways and that it would not have been unreasonable for some plans to have made commitment decisions themselves and retained an independent financial entity only to originate the mortgage loans. The

Department acknowledges that certain of the conditions—namely the requirements of an independent fiduciary decision and recordkeeping—may not have been reasonably anticipated to plans seeking to avail themselves of the exemption retroactively even though the past transactions were engaged in for the benefit of the plans and their participants and beneficiaries. Accordingly, these conditions have been made prospective only. This approach is consistant with the approach taken by the Department in other class exemptions involving similar issues.

C. Definitions

1. *Residential Dwelling Unit or Unit.* The "transactions" section of the proposed exemption limited the type of unit eligible for purchase to "new" units. All comments which discussed this issue opposed the limitation as one which unjustifiably restricted pension fund investment flexibility. One commentator pointed out that "new" unit sales accounted for only one-third of all homes sold nationwide during a recent three-year period. To provide the broadest possible range of investment options, the Department has determined that the final exemption should not contain any limitation to "new" housing.

According to many comments, the phrase "single family residential dwelling unit," without further clarification, may create confusion. One commentator noted that long standing mortgage lending practices, including government guaranty and secondary market programs, have resognized loans on "two to four unit structures" as an extension of the "single family" loan. The commentators note the Department acknowledged this definition in PTE 81–7. The Department has accepted these comments and utilized the PTE 81–7 definition of "non-farm property comprising one to four dwelling units" in the final exemption.

Two of the commentators urged the express incorporation of manufactured housing [11] as a unit eligible for purchase under the final exemption. The comments further stated that mortgages secured by such housing were eligible for purchase in the secondary market by GNMA, FNMA and FHLMC under their single family purchase programs. Based on the positions taken by the Agencies, the Department has decided to include the specific reference in the definition.

[11] Manufactured housing means a manufactured home as defined in section 603(b) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Pub. L. 93–383, 88 Stat. 700 as amended by Pub. L. 96–399, 94 Stat. 1641, 12 U.S.C. 5402(6)) and which is used as a residence.

However, the Department notes that the type of manufactured housing loan to be acquired by a plan must also meet the exemption condition of a "recognized mortgage loan."

The proposal identified condominiums as one form of multiple family housing expressly included in the definition. Several commentators suggested the inclusion of two other types of multiple family housing units—cooperatives and rental units. Cooperative housing for purposes of this exemption would be financing for individual unit purchases as opposed to project financing under a blanket mortgage for the land and its improvements. Unit financing is not secured by a mortgage on the unit, but rather by a lien on the share or membership interest associated with that unit and rights under the proprietary lease which governs occupancy. The commentators noted that this form of housing has gained market acceptance in the major metropolitan areas throughout the country. The Department has included this form of ownership interest in the definition because in many ways it provides a parallel form of individual ownership in multiple unit properties to that of condominiums. However, other conditions of this exemption may affect the purchase of a cooperative housing unit. As discussed above, to be eligible for acquisition by a pension plan a mortgage loan must be a "recognized mortgage loan." While the Department understands that cooperatives are eligible for purchase by FNMA, to date no established program is in operation—a prerequisite to meeting the requirements of a "recognized mortgage loan." Therefore, the Department's inclusion of cooperatives in the definition of a "residential dwelling unit" is an example of the Department's intent to make this class exemption one which will evolve with the recognized marketplace.

Those commentators which urged the Department to further expand its definition of eligible housing units to include multiple unit rental structures noted the market for this type of housing and the fact that purchase programs exist which could provide the nationally recognized standard for such loans. Investment in the mortgages of such housing units differ both in magnitude and complexity from the one to four unit structures contemplated by this exemption. After considering the issue, the Department has determined it would not be appropriate to include multiple unit rental housing in this exemption.

The definition of a "residential dwelling unit" also contained a reference to planned unit developments and included a requirement which limited the "* * * use of the *property* to residential purposes * * *" (emphasis added). Two commentators noted that planned unit developments frequently contain varying amounts of commercial or retail space to provide convenience services. To eliminate the concern over the scope of the intended limitation, the exemption has been modified by substituting "unit" in place of "property" in the language of the definition.

The express language of the definition also imposed an "owner occupied" restriction on the units covered by the proposed exemption. The commentators suggested that the majority of units to be financed under this exemption would be owner occupied; however, such limitation may restrict investment opportunities. By permitting mortgages for some investor units, it was argued that a commitment would become more attractive to a developer, command higher commitment fees and subsequently more favorable interest rates in the event such mortgage loans are subsequently originated. One comment noted that borrowers may represent an intention to occupy and then, for a variety of reasons, be forced to rent the unit. This change in the character of the occupant, it was urged, should not void the exemption in whole or in part. The Department accepts the suggestion. Once a unit has satisfied the conditions for acquisition, a subsequent change in the character of the occupant would not void the applicability of the exemption. It was also noted that industry practices provides essentially the same underwriting standards for investor unit mortgages except that the maximum mortgage on investor units is limited to 80 percent of value whereas owner-occupied mortgages may go up to 95 percent of value. The Department has determined to permit investor owned units within the definition of a "residential dwelling unit" to the extent it satisfies recognized industry practices as outlined above.

Description of Exemption

Although the exemption retains the same basic format as the proposal, it has been largely restructured to reflect the substantial modifications discussed above.

Part I of the Exemption describes those categories of transactions to which the exemption applies. As discussed above, the acquisition transactions have been expanded to include the direct purchase of whole mortgages and the acquisition of participation interests in mortgages both

directly and pursuant to a commitment. In addition, the exemption now covers sales, exchanges and transfers of such mortgage investments to parties in interest. These covered transactions are in addition to those originally proposed in the notice.

It should be noted, that the exemption provided for sales, exchanges or transfers under Section E of Part I, does not restricting such dispositions to mortgage investments acquired pursuant to this exemption. However, it does not permit the plan to dispose of less than its entire interest in the mortgage investment to or for the benefit of a party in interest.

Also, interested parties are reminded that no exemption is provided for transactions which constitute violations of section 406(b) of the Act. The record of this exemption suggests that plans may acquire participation interests from a "recognized mortgage lender" where that institution retains a noncontrolling interest in the participation agreement and continues to serve the mortgage(s) underlying that agreement. However, the conditions of the exemption do not contemplate any situation in which the seller/servicer would become a fiduciary of the plan under section 3(21) of the Act. There may be situations in the operation of a participation agreement under which the seller/servicer does become a fiduciary by virtue of the authority it retains, e.g., with respect to the decisions regarding collection of mortgage lone payments. Violations of section 406(b) which result from such arrangements are not covered by this exemption.

Part II of the exemption contains the conditions which are to be met if the transactions described in Part I are to be exempt. Section A provides those conditions which are applicable retroactively to January 1, 1975, the effective date of the fiduciary responsibility provisions of the Act. Section B provides conditions which apply prospectively, beginning 30 days after the date of publication of this exemption. The delayed effective date is provided in order to give affected parties ample opportunity to adopt procedures necessary to implement these conditions.

Subsection (1) of section A sets out these conditions which are applicable, retroactively and prospectively, to all covered transactions.

Paragraph (a) provides that any mortgage investment acquired by a plan pursuant to the exemption must be a "recognized mortgage loan" for the purchase of a "residential dwelling unit." Both of these terms are defined in Part III of the exemption.

Paragraph (b) requires that a covered mortgage investment must be originated by an "established mortgage lender." This originator, who will qualify the borrower, must not be subject to a controlling influence regarding its management or policies by the plan, a contributing employer or group of contributing employers or participating employee organization.

Paragraphs (c) and (d) are substantially the same as appeared in the proposal. Paragraph (d), however, has been modified to reflect the expansion of categories of transactions covered by the exemption. In addition, this provision has been changed to reflect the possibility that plans may acquire mortgage investments from an entity, which purchases are technically from inventory, but which were originated pursuant to a prior commitment made on behalf of the plan.

Subsections (2) and (3) of Section A establish specific conditions which must be met, as applicable, both retroactively and prospectively, if the subject transaction involves a commitment or a participation. The conditions regarding commitments are essentially those contained in the proposed exemption modified only to reflect the adoption of the "recognized mortgage loan" standard. The conditions addressing participations are based on the Department's understanding of the operation of participation agreements and are designed to provide protections to a plan and its participants and beneficiaries regarding the operation of such an agreement.

Section B provides certain conditions which become applicable 30 days after the date of publication of this exemption.

Subsection (1) requires, as did the proposal, that plan decisions to purchase or sell mortgage investments must be made by an independent fiduciary who is not subject to a controlling influence by certain interested persons. This condition is applicable to all covered transactions. The independent fiduciary is referred to as a "qualified real estate manager" a term defined in Part III of the exemption.

Finally, subsection (2) provides certain recordkeeping requirements which were contained in the proposal. In view of the comments received concerning this requirement, it has been made prospective only.

Part III contains definitions of terms used in the exemption.

Section A defines the term "affiliate" for purposes of the exemption. The definition is the same as has appeared in other class exemptions issued by the Department.

Section B defines the term "established mortgage lender" as an entity which, in the normal course of its business, is engaged in making or purchasing mortgage investments, and either has the approval of HUD to participate in mortgage insurance programs under the National Housing Act, has been approved to act as a seller/servicer for FHLMC or FNMA programs, or is a state housing agency or independent state authority. This term replaces the term "established financial institution" as it applied to the condition of the proposed exemption governing mortgage loan originations. (See Section D of Part II of the proposal.) This new provision is designed to assure that those providing origination services to a plan meet a professional financial standard and are subject to the continuing oversight of independent agencies.

As in the proposed exemption, the final exemption contains a requirement that mortgage investment decisions be made on behalf of a plan by an independent fiduciary. Section C contains the term "qualified real estate manager" a term intended to replace the "established financial institution" used in the proposed exemption. Under the new definition this independent fiduciary is required to be a financial institution which, in the normal course of its business, provides institutional investors with advice regarding mortgage investments and acknowledges in writing its fiduciary responsibilities to the plan. Under this definition many more entities will be eligible to provide the required advisory services to plans than would have been the case under the proposal. The Department believes that the interests of plans will be served and protected under the exemption as granted without the necessity of unduly restricting the ability of responsible plan fiduciaries in choosing their investment advisors.

Section D defines the term "recognized mortgage loan" as the only type of loan covered by the exemption. This term is defined as a mortgage loan on a "residential dwelling unit" which, at its origination was eligible for purchase through an established program by the FHLMC, FNMA or GNMA. Because these agencies have established programs for the acquisition of certain kinds of mortgages and, in so doing, have established extensive underwriting criteria for such loans, the Department has found it possible to provide an exemption under a set of standards which is more flexible than was the case in the original proposal and at the same time provides very

substantial protections to plans, their participants and beneficiaries. These agencies, in addition to setting standards, maintain an active secondary market in qualifying mortgages and maintain standards for originators and servicers as well. In light of these readily ascertainable and understood standards for the making of mortgage loans maintained by these agencies, the Department, by conditioning this exemption on the satisfaction of those standards, has been able to provide substantial relief without the necessity of setting its own standards for employee benefit plan investment in mortgages.

Section E defines the term "residential dwelling unit." Under the exemption only mortgages on units which meet this definition may be made or purchased by plans. As in the case of many other aspects of this exemption, this definition has been substantially broadened from the proposal.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

2. This exemption does not extend to transactions prohibited under section 406(b) of the Act or section 4975(c)(1)(E) and (F) of the Code.

3. This exemption is supplemental to and not in derogation of any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

4. The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notices of December 3, 1981, and December 4, 1981, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) It is in the interests of plans and of their participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75–1.

I. Transactions

Effective January 1, 1975, the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (Code) by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions if the conditions set forth in Part II below are met:

A. The issuance of a commitment by one or more employee benefit plans to provide mortgage financing to purchasers of residential dwelling units, either by making or participating in loans directly to purchasers or by purchasing mortgage loans or participation interests in mortgage loans originated by a third party;

B. The receipt by the plan of a fee in exchange for issuing such commitment;

C. The actual making or purchase of a mortgage loan or participation interest therein pursuant to such commitment;

D. The direct making or purchase by one or more employee benefit plans of a mortgage loan or a participation interest therein other where a commitment has been issued; and

E. The sale, exchange or transfer of a mortgage loan or participation interest therein by an employee benefit plan prior to the maturity date of such instrument whether or not acquired pursuant to this exemption, provided that the ownership interest sold, exchanged or transferred represents the plan's entire interest in such investment.

II. Conditions

A. Effective January 1, 1975, the exemption provided for transactions described in Part I is available only if each of the following conditions, as applicable, is met:

(1) General Conditions

(a) Any mortgage loan to be acquired must be a "recognized mortgage loan" (as defined in Section D of Part III) or a participation interest in such loan for the purchase of a "residential dwelling unit" (as defined in Section E of Part III).

(b) Any mortgage loan must be originated (either directly for the plan or by the origination-purchase process) by an "established mortgage lender" (as defined in Section B of Part III); (i) who qualifies the recipient and (ii) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "established mortgage lender";

(c) The price paid or received by the plan must be at least as favorable to the plan as a similar transaction involving unrelated parties; and

(d) No person who is a developer or a builder involved in the development or construction of the units, or a lender who is associated with the construction financing arrangement for the units, or who, at the time the decision to purchase is made by the plan (whether directly or pursuant to a commitment) is the owner of a mortgage or a participation interest therein which is subsequently sold to the plan, shall have exercised any discretionary authority or control or rendered any investment advice that would make that person a fiduciary with respect to the plan's decision to purchase, or to commit to purchase, a mortgage loan or a participation interest therein or setting the terms thereof.

(2) Specific Conditions Applicable to Commitments

Where the decision by the plan involves a commitment to purchase either a mortgage loan or participation interest therein:

(a) The commitment must be in writing and must be at least as favorable to the plan as a commitment involving unrelated parties and consistent with customary practices in the residential finance industry; and

(b) The commitment must provide for the use of underwriting guidelines and mortgage instruments which will ensure that all mortgage loans originated pursuant to such commitment will result in a "recognized mortgage loan";

(3) Specific Conditions Applicable to Participations

Where the acquisition by the plan involves a participation interest in a mortgage loan(s) (whether directly or pursuant to a commitment):

(a) The participation agreement governing such transaction must provide that: (i) the rights and interests evidenced by such participation interest not be subordinated to the rights and interests of other holders of the same participation agreement, (ii) the majority interest in the participation agreement must be owned by parties independent of and not controlled by the person selling the participation interest and servicing the underlying mortgage(s), and (iii) in the event of an inability to obtain collections on any mortgage loan(s) underlying the participation agreement, decisions regarding foreclosure options must be directed by persons other than the seller/servicer; and

(b) Such participation agreement must be in writing and must be at least as favorable to the plan as a participation agreement involving unrelated parties and consistent with customary practices in the residential finance industry.

B. Effective 30 days after date of publication of this notice in the **Federal Register** the exemption provided for tarnsactions described in Part I is available only if each of the following conditions is satisfied in addition to each of the applicable conditions described in section A of this Part II:

(1) The decision to purchase or sell the mortgage loan or participation interest therein, or to issue a commitment to do so, must be made on behalf of the plan by a "qualified real estate manager" (as defined in Section C of Part III) as to which neither the plan, nor an employer or group of employers contributing to the plan, nor an employee organization any of whose members are covered by the plan, has the power to exercise a controlling influence over the management or policies of such "qualified real estate manager."

(2) (a) The plan shall maintain for the duration of any loan made pursuant to this exemption records necessary to enable the persons described in paragraph (b) of this sub-section to determine whether the conditions of this exemption have been met, except that; (i) a prohibited transaction will not be deemed to have occurred, if due to circumstances beyond the control of the fiduciaries of the plan, records are lost or destroyed prior to the termination of the loan and, (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of ERISA, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by subparagraph (b) below.

(b) Notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (a) of this paragraph must be unconditionally available at their customary location for examination during normal business hours by: any trustee, investment manager, participant or beneficiary of the plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service.

III. Definitions

For purposes of this exemption:

A. References to persons described in this exemption includes their affiliates. An affiliate is defined as:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director or partner.

B. An "established mortgage lender" means an organized business enterprise which has as one of its principal purposes in the normal course of business the origination of loans secured by real estate mortgages or deeds of trust and which has satisfied the qualification requirements of one of the following categories:

(1) Approval by the Secretary of the Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(2) Approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation as a qualified Seller/Servicer; or

(3) A State agency or independent State authority empowered by State law to raise capital to provide financing residential dwelling units.

C. A "qualified real estate manager" means fiduciary as defined in section 3(21) of the Act who: (1) Is a financial institution or business organization, which in the normal course of business advises institutional investors regarding investments similar to those in which the plan desires to engage and which are described in Part I of this exemption; and (2) acknowledges in writing to the plan that it will make decisions regarding plan investments in mortgage loans or participation interests therein in its capacity as a fiduciary of such plan.

D. A "recognized mortgage loan" is any mortgage loan on a "residential dwelling unit" which, at the time of its origination, was eligible, through an established program, for purchase by the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation;

E. A "residential dwelling unit" or "unit" means: (1) owner occupied non-farm property comprising one to four dwelling units, including detached houses, townhouses, manufactured housing, condominiums, units in a housing cooperative, or a unit in a multi unit subdivision (planned unit development) restricted by recorded documents which limit the use of the unit to residential purposes and provide for maintenance of common facilities; or (2) certain non-owner occupied units where such unit complies with the uniform underwriting standards required for investor loans to qualify as a "recognized mortgage loan" under this exemption.

Signed at Washington, D.C. this 13th day of May 1982.

Jeffrey N. Clayton,

Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13402 Filed 5-13-82; 2:17 pm]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-66; Exemption Application Nos. D-3014 and D-3015]

Exemption From the Prohibitions for Certain Transactions Involving the Michael Merkley Ranch, Inc. Defined Benefit Retirement Plan and the Michael Merkley Ranch, Inc. Profit Sharing Plan Located in Sacramento, California

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed leasing (the Proposed Lease) by the Michael Merkley Ranch, Inc. Defined Benefit Retirement Plan (the Defined Benefit Plan) and the Michael Merkley Ranch, Inc. Profit Sharing Plan (the Profit Sharing Plan, collectively, the Plans) of certain real property (the Property) to Michael Merkley Ranch, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S.

Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 12, 1982, notice was published in the **Federal Register** (47 FR 10929) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Proposed Lease of the Property by the Plans to the Employer provided that the terms and conditions of the Proposed Lease are at least as favorable to the Plans as those which the Plans would receive in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13449 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82–64; Exemption Application No. D–2948]

Exemption From the Prohibitions for a Certain Transaction Involving the Kinco, Inc. Profit Sharing Plan and Trust Located in Jacksonville, Fla.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the contribution of a mortgage note receivable (the Note) by Kinco, Inc. (the Employer) to the Kinco, Inc. Profit Sharing Plan and Trust (the Plan), and the guaranty of the mortgage note by the principal shareholders of the Employer.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 5, 1982, notice was published in the **Federal Register** (47 FR 9610) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied

with the requirements of notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested person is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fidiciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 406(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the contribution of the Note by the Employer to the Plan provided that the Note is valued at its fair marekt value when contributed, and (2) the guaranty of the Note by the principal shareholders of the Employer.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be comsummated pursuant to this exemption.

Signed at Washington, D.C., this 12th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–13442 Filed 5–17–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–82; Exemption Application No. L–2536]

Exemption From the Prohibitions for Certain Transactions Involving Retail Clerks Local 212 Western New York Pension Plan Located in Buffalo, N.Y.

AGENCY: Pension and Welfare Benefit Programs, Office Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits, effective May 23, 1980, the decision by those trustees of the Retail Clerks Local 212 Western New York Pension Plan (the Plan) who represent Local 212, United Food and Commercial Workers Union (the Union) to retain the Union for a period of five years ot provide certain administrative services to the plan.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5528) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to summit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed in accordance with the requirments set forth in the proposed exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b) (1) and (3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including Statutory or Administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an Administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(b)(2) of the Act shall not apply, effective May 23, 1980, to the decision by the Union Trustees to retain the Union to provide administrative services to the Plan for a five year period.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this Exemption.

Signed at Washington, D.C., this 12th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13444 Filed 5-17-82; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82–83; Exemption Application No. D–2736]

Exemption From the Prohibitions for Certain Transactions Involving Retirement Plans of the Westinghouse Electric Corp. and Its Affiliates Located in Pittsburgh, Pa.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption provides (a) general relief for various transactions involving the assets of a real estate advisory account (the W Account) managed by The Equitable Life Assurance Society of the United States (Equitable) for the retirement plans (the Plans) now or hereafter maintained by the Westinghouse Electric Corporation (Westinghouse) or its affiliates, and (b) specific relief regarding (i) the furnishing by Westinghouse or its affiliates of goods and services with respect to real property investments of the W Account, and (ii) transactions involving places of public accommodation which are acquired for the W Account.

EFFECTIVE DATE: This exemption is effective August 26, 1981.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5537) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from: (a) the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the general section of the exemption mentioned above; and (b) from the restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, for the two specific sections of the exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the provisions of the notice of proposed exemption. No requests for a hearing were received by the Department.

The Department has received two comments on the proposed exemption. The first requests that the exemption be limited to prevent Equitable from investing Plan assets held in the W Account in any Equitable or Westinghouse real property or in any real estate owned by employees of Equitable or Westinghouse. In this regard, section (a)(1) (i) and (ii) of the proposed exemption (on page 5541) would not permit, among other things, Plan assets in the W Account to be invested in real property owned by Equitable, Westinghouse, employees of Equitable, and other specified parties. This section of the proposed exemption, however, would permit Plan assets in the W Account to be invested in real estate owned by an employee of Westinghouse if such employee does not exercise discretionary authority, responsibility, or control or provide investment advice with respect to either the investment of Plan assets in the W Account or the management and disposition of Plan assets held in the W Account (see section (a)(1)(iii) of the proposed exemption).

The applicant believes that permitting Plan assets in the W Account to be invested in real estate owned by other Westinghouse employees is administratively feasible, in the interests of the Plans and their participants and beneficiaries, and protective of the rights of such participants and beneficiaries because none of these other employees has any direct or indirect responsibility for the investment or management of assets held in the W Account or would be in a position to influence the investment or management of such assets. Westinghouse and its affiliates have more than 100,000 employees. As mentioned above, section (a)(1)(iii) of the proposed general exemption already excludes from its coverage any transaction with a Westinghouse employee who is involved in the investment or management of such assets, such as a member of the Westinghouse Pension Plan Administration Committee or those Westinghouse officers, directors, or employees (if any) who may be involved in the investment of Plan assets or the selection of investment managers. Excluding other employees, who are not involved in the investment or management of assets held in the W Account, would preclude nonabusive transactions with such employees, thereby adding significantly to the recordkeeping and compliance burdens of the W Account.

In view of the foregoing, the Department has decided to limit the types of parties in interest only to the extent of the limitations specified in the proposed exemption.

The other comment was submitted by the applicant to clarify which plans will be covered by the exemption and to provide additional information relating to the holding of title to properties in the W Account. Regarding the first point, the application for exemption (page 1, paragraph 1) states that the exemption requested involves the six plans named

in the Notice of Proposed Exemption.[1] However, the applicant's comment letter recommends that parts of the exemption should be modified to cover transactions with parties in interest, of the types specified in the proposed exemption, with respect to any plan that is now or may hereafter be maintained by Westinghouse or its affiliates. The parts of the proposed exemption affected are the general exemption (section (a), on page 5541) and the specific exemption for transactions involving places of public accommodation (section (b)(2), on page 5541). The applicant represents that except for the six plans listed in the Notice of Proposed Exemption, neither Westinghouse nor any of its affiliates currently has any other employee benefit plans that are contemplated to become participants in the W Account. However, it is conceivable that other plans may participate in the W Account in the future as a result of mergers or the acquisition of new subsidiaries by Westinghouse or its affiliates. Thus, the applicant wishes the exemption to cover transactions with parties in interest with respect to these plans, as well as to the six plans named in the Notice of Proposed Exemption.

The Department agrees to modify the exemption to clarify that the plans affected are those that are now maintained or may hereafter be maintained by Westinghouse or its affiliates.

The second item in the applicant's comment letter explains that under certain circumstances ancillary trustees or tax-exempt corporations will be used to hold title to real properties managed in the W Account. The reason for using such intermediaries is to alleviate any difficulties that might arise in connection with the application of state laws concerning out-of-state corporations to Mellon Bank, N.A. (Mellon), the trustee of the master trust of which the W Account will be a part (see paragraphs 3 and 7 of the Summary of Facts and Representations in the Notice of Proposed Exemption). Thus, an ancillary trustee locate within the state where the property investment is situated may be appointed to hold legal title to the property on behalf of the W Account. Such ancillary trustee would possess no discretionary responsibility, authority, or control over the management and operation of the property. Alternatively, a title-holding corporation that qualifies for tax-exempt status under section 501(c)(2) of the Code may be formed to hold title to properties within a state that are managed in the W Account. When this alternative is used, Equitable will be responsible for the formation and maintenance of the section 501(c)(2) corporation. Mellon will hold in trust, on behalf of the W Account, all of the shares of stock of each such corporation and will provide Equitable with a proxy to vote all such shares. Equitable will exercise its proxy to elect directors (who, in turn, will appoint the officers) of each such corporation who will be responsible, at Equitable's discretion, for causing such corporation to engage in transactions, hold real property in such corporation's name, and do all other things deemed appropriate by Equitable on behalf of the W Account.

The applicant represents that both of these types of intermediaries are commonly used by institutional real estate investors to hold title to properties and that using such intermediaries will affect neither Equitable's responsibilities in managing real properties in the W Account nor the material terms of any of the subject transactions. Based on the foregoing, the Department agrees with the applicant that the use of these title-holding alternatives will not have a material bearing on the proposed exemption.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) (3) of the Act and section 4975(c) (1) (f) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c) (2) of the Code and the procedues set forth in ERISA Procedure 75-1 and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the following relief is granted, effective as of August 20, 1981:

(a) *General Exemption*—the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership management, development, leasing, or sale of real property (including the acquisition, ownership, or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Plans and the W Account provided that the following conditions are met:

(1) Such party in interest is not—

(i) Equitable, any person directly or

[1] Section 4.02(1) of ERISA Proc. 75-1 (40 FR 18471, April 28, 1975) requires each application for exemption to include the name and type of plan or plans involved.

indirectly controlling, controlled by, or under common control with Equitable, any officer, director, or employee of Equitable, or any partnership in which Equitable (on behalf of its general account) is a partner;

(ii) Westinghouse or any affiliate of Westinghouse (within the meaning of section 407(d)(7) of the Act); or

(iii) A person who exercises discretionary authority, responsibility, or control, or who provides investment advice, with respect to the investment of Plan assets in the W Account or with respect to the management or disposition of the Plan assets held in the W Account;

(2) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Equitable, the terms of the transaction are not less favorable to the W Account than the terms generally available in arm's-length transactions between unrelated parties;

(3) Equitable maintains for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in paragraph (4) of this section to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Equitable, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (4) below; and

(4) (i) Except as provided in subparagraph (ii) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (3) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan in the W Account or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Plan or any duly authorized employee or representative of that employer,

(D) Any participant or beneficiary of any Plan or any duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described in subparagraphs (i)(B) through (i)(D) of this paragraph shall be authorized to examine Equitable's trade secrets or commercial or financial information which is privileged or confidential; and

(b) *Specific Exemptions*—The restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(1) *Furnishing of Goods and Services.* The furnishing of goods and services with respect to the real property investments of the W Account described in section (a) above by Westinghouse or any affiliate thereof (within the meaning of section 407(d)(7) of the Act), provided that—

(i) The transaction satisfies the requirements of subparagraphs (a)(2), (3) and (4) of this proposed exemption, and

(ii) The total amount involved in the furnishing of such goods and services in any calendar year does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets acquired for the W Account on the most recent valuation date of the W Account prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accommodation acquired for the W Account, to a party in interest with respect to the Plans if the services, facilities, or incidental goods are furnished on a comparable basis to the general public and if the requirements of subparagraphs (a) (3) and (4) of this proposed exemption are met.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Signed at Washington, D.C., this 12th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13443 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-65; Exemption Application No. D-2974]

Exemption From the Prohibitions for Certain Transactions Involving Pension Plans Participating in the Alco Standard Corporation Group Trust Fund, Located in Valley Forge, Pennsylvania

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the acquisition and holding of certain excess qualifying employer securities by plans participating in the Alco Standard Corporation Group Trust Fund (the Fund) which plans acquired their interest in the Fund subsequent to December 30, 1975.

EFFECTIVE DATE: This exemption is effective December 31, 1975.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 26, 1982, notice was published in the **Federal Register** (47 FR 13063) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in an application filed by legal counsel for the Fund. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the requirements set forth in the notice of proposed exemption. No public comments and no

requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Fund and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Fund.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not aply to excess acquisition and holding of qualifying employer securities by a plan if such excess results solely from the plan's acquisition of an interest in the Fund subsequent to December 30, 1975, provided (1) that the terms of the transactions are not less favorable to the plans than those obtainable in arm's length transactions with unrelated parties at the time of consummation of each transaction; and (2) the Fund does not acquire any additional Alco common stock if such acquisition would cause the Fund to violate section 407(a) of the Act.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which are the subject of this exemption.

Signed at Washington, D.C., this 12th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13441 Filed 5-17-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-3187]

Proposed Exemption for a Certain Transaction Involving the Massachusetts State Carpenters Pension Fund, Located in Burlington, Massachusetts

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $500,000 by the Massachusetts State Carpenters Pension Fund (the Plan) to Northampton Hotel Associates (the Partnership). One of the partners in the Partnership, Irwin J. Nebelkopf (Nebelkopf) is an owner of Nebel Heating Corp. (Nebel), which is a contributing employer to the Plan. The proposed exemption, if granted, would affect the Partnership, participants and beneficiaries of the Plan, and others participating in the transaction.

DATES: Written comments must be received by the Department of Labor on or before July 6, 1982.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D–3187. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of Nebel, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multi-employer pension plan which covers persons employed as carpenters. The Plan has approximately 10,000 participants, and

as of May 31, 1981, had assets of approximately $110,000,000.

2. Nebel is a contributing employer to the Plan. It is engaged in the business of constructing residential, commercial and industrial buildings as a general contractor. Nebel has been engaged to serve as the general contractor with respect to the historic rehabilitation of the Hotel Northampton (the Hotel), which is owned by the Partnership.

3. Nebelkopf is a fifty percent stockholder in Nebel. The remaining fifty percent is owned by persons unrelated to Nebelkopf. Nebelkopf is also a general partner in the Partnership, owning no more than a one-third interest in the Partnership. The other general partners are unrelated to Nebelkopf or to Nebel. The sale of limited partnership interests has not yet been closed. After the closing of such interests, Nebelkopf will own not more than a one-sixth interest in the Partnership.

4. The Plan proposes to lend $500,000 to the Partnership, for a 15 year term, at 15% interest for use in the renovation of the Hotel. The loan will be amortized over a 25 year schedule, with the balance due at the end of the 15th year. The loan will be secured by the Hotel land and buildings. The applicant represents that there are no clauses in any of the renovation project documents prohibiting the use of non-union labor.

5. The Partnership estimates that approximately $4,150,000 will be needed to complete the renovation of the Hotel. Of that total, $1,150,000 is to come from capital contributions. First mortgage loans will make up $2,700,000 of the total. The Plan will be participating in the first mortgage on a pro-rata basis. In addition to the subject loan, the first mortgage financing will consist of three loans, each with different terms. It is anticipated that all first mortgage loans will be secured by the same mortgage and all will be serviced by the Nonotuck Savings Bank in Northampton, Massachusetts. The other first mortgage lenders are:

(1) A consortium of seven Northampton banks, the trustees of Smith College and H.S. Gere & Sons, Inc., the publisher of the Northampton Gazette, which loaned $1,000,000 to the Partnership;

(2) The International Union of Operating Engineers Local 98 Pension Fund and Electrical Workers Local 36 Health and Welfare Trust Fund, which loaned $600,000 to the Partnership; and

(3) The Commonwealth Bank and Trust Company, which loanded $600,000 to the Partnership.

6. None of the trustees of the Plan is either a limited or general partner in the Partnership, or a stockholder in Nebel. Neither Nebelkopf nor Nebel has control over or access to Plan funds. Nebel played no role in the Plan's decision to make the subject loan, although the Partnership solicited the loan by direct contact with union officials, and Nebelkopf participated in the Partnership's formal presentation to the Plan.

7. The 15% interest rate on the subject loan was arrived at by arm's-length negotiation. The Partnership wanted to pay no more than 13.2%, as they are paying for the first three years to the Operating Engineers Pension Fund (which will not have participants working on the project) and the Electrical Workers Health and Welfare Fund for the first mortgage loans from those Funds. The Plan trustees insisted on a higher rate for the subject loan, however, and 15% was agreed upon. As protection for the Plan, the trustees insisted that its loan be the final debt paid into the Partnership, that the loan be contingent upon minimum equity contributions being paid into the Partnership, and that an appraisal be obtained.

8. The Hotel land and buildings which will secure all the first mortgage loans have been appraised by Mr. John F. Tehan, Jr. of Springfield, Massachusetts, an independent appraiser, to have a fair market value of $4,685,000 as of December 15, 1981. This amount would be approximately 1.8 times the total amount of first mortgage loans to be secured by the property.

9. Nonotuck Savings Bank (the Bank), which is independent of the Plan and the Partnership, will service all the first mortgage loans, including the subject loan. The Bank has been given the authority to act as agent for all first mortgage lenders in the event of default. The Bank may take foreclosure action in event of default after a ⅔ vote by the lenders approving such action. Voting rights are based on the dollar amounts of the loans.

10. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (1) The loan only involves less than 0.5% of Plan assets; (2) the terms of the loan were arrived at by arm's-length negotiation; and (3) the collateral/loan ratio is approximately 180% as determined by an independent appraiser.

Notice to Interested Persons

On or before June 1, 1982, the applicant will notify the local unions which represent Plan participants, in care of their bargaining agents, and the employer associations which represent contributing employers. The notice will request that local unions post the notice on bulletin boards in the union halls for a 30 day period. The interested persons will be sent a copy of the proposed exemption by mail, and will be informed of their right to comment within the time period set forth in the notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the

record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (d) of the Code shall not apply to a loan by the Plan to the Partnership of $500,000, based on the terms and conditions set forth above, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13437 Filed 5-17-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-3195]

Proposed Exemption for Certain Transactions Involving Control Data Retirement Plan Located in Minneapolis, Minn.

AGENCY: Pension and Welfare Benefit Programs, Office Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The proposed investment by the Control Data Retirement Plan (the Plan) of $500,000 in Minnesota Seed Capital Fund, Inc. (MSCF), a portion of the stock of which is owned by parties in interest with respect to the Plan; (2) the future purchase of MSCF stock by the Plan; and (3) the granting of a put option regarding the Plan's MSCF stock by Control Data Corporation (CDC), the Plan sponsor. The proposed exemption, if granted, would affect MSCF, CDC, the Plan and its participants and beneficiaries and other parties participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before July 1, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3195. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in a application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan with 32,097 participants and net assets of approximately $150 million as of December 31, 1981. The Plan trustee, which is Northwestern National Bank of Minneapolis (the Bank), would have the complete and sole authority to act on the Plan's behalf with regard to all facets of the transactions described herein. The bank has extended a line of credit to CDC in the amount of $24 million. This line of credit represents approximately 2.3% of CDC's total available line of credit and less than ½ of 1% of the Bank's current commercial loan business.

2. MSCF was incorporated on July 30, 1980 under the laws of the State of Minnesota. MSCF was formed for the purpose of investing in new, technologically innovative small businesses by providing the early stage funding and, in some cases, second stage funding when a project-business has achieved a successful start and seeks further funding. MSCF's stated objective is to make a significant return on investment over a period of time, primarily through gains realized on the subsequent disposition of equity investments in successful new businesses. A further, less direct goal is to strengthen local, state and national economies by aiding the growth of businesses, technological innovation, competition, worker productivity and long term employment opportunities.

3. It is proposed that the Plan invest $500,000 upon the grant of the exemption proposed herein and up to a total of 1% of Plan assets in the future in MSCF stock. CDC owns approximately 25% of the stock of MSCF and Mr. William Norris, President of MSCF and president and chairman of the board of CDC, owns approximately 2.5% of the stock of MSCF. MSCF stock is sold in private placements and potential investors are supplied with a private placement memorandum which describes in detail the operation and investment strategies and goals of MSCF.

4. The purchase price that the Plan would pay for the initial $500,000 investment would be $40 per share, which is the offering price of the current issue. If the Plan purchases additional MSCF stock in the future, the purchase price would be determined as follows: (a) If the purchase is from a new issue, the stock would be purchased at the offering price; (b) if the purchase is pursuant to a right of first refusal

(discussed below), the price would be the net book value of the stock; and (c) if the purchase is from another shareholder but not pursuant to a right of first refusal, the purchase price would be the fair market value of the stock as determined by an independent appraiser.

5. In conjunction with the purchase of MSCF stock, the Plan would receive a put option under which all or a portion of the stock could be sold to CDC at such time as the Bank, in its sole discretion, would determine. The put option will be exercised at a price which will be the greater of the net book value of the stock determined as of the end of the most recent calendar quarter, or the fair market value of the stock as determined by an independent appraiser. In accordance with the MSCF stock subscription agreements, the put option would be subject to a right of first refusal of the other MSCF stockholders at the net book value of the stock. CDC and Mr. Norris have agreed to waive their rights of first refusal.

6. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The Bank will have complete and exclusive authority with regard to the Plan's purchases of MSCF stock; (b) the Bank will have complete and exclusive authority with regard to the exercising of all rights inuring to the Plan as a shareholder, and with regard to the exercise of the put option; (c) the Plan will have the option at any time to sell any or all of its MSCF stock to CDC; and (d) except for the put option, the Plan will purchase and dispose of MSCF stock on the same basis as all other shareholders pursuant to the terms and conditions of the private memorandum and the stock subscription agreements.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Plan participants and beneficiaries within 14 days of its publication in the **Federal Register** by posting on bulletin boards generally used for employer-employee communications and, with respect to such persons who do not normally have access to such bulletin boards, by first class mail. The notice will inform interested persons of their right to comment on or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, wil be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the purchase of $500,000 of MSCF stock; (2) the future purchase of MSCF stock up to a limit of 1% of Plan assets; and (3) the put option given to the Plan by CDC, provided that the terms and conditions of all such transactions are at least as favorable to the Plan as those the Plan could obtain from an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13439 Filed 5-17-82; 8:45 am]
BILLING CODE 4510-29-M

[Application Nos. D-2841 and D-2842]

Proposed Exemption for Certain Transactions Involving the Jeff Dell Pension and Employee Benefits Plans and Trust Located in New York, N.Y.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of certain improved real property (the Property) by the Jeff Dell Employee Benefit Plan and Trust (the Money Purchase Pension Plan) and the Jeff Dell Pension Plan and Trust (the Defined Benefit Pension Plan) (collectively, the Plans) to Jeff Dell Film Services, Inc. (the Employer). The proposed exemption, if granted, would affect the participants and beneficiaries

of the Plans and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 28, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application Nos. D–2841 and D–2842. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b) (1) and (b) (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

This notice of pendency was originally published in the **Federal Register** on March 5, 1982, at 47 FR 9611. Because of a decline in the value of the Property, the Employer proposes to modify the sales terms. Therefore, this notice of pendency is being republished as follows:

1. The Employer, a corporation organized under the laws of New York State, is engaged in the film editorial business. On June 2, 1970, the Employer, along with a sister corporation, Jeff Dell Enterprises, Inc.,[1] adopted a profit sharing plan (the Profit Sharing Plan) and on September 30, 1973 the Money Purchase Pension Plan. To comply with relevant provisions of the Act, the Profit Sharing Plan and Money Purchase Pension Plan were restated and consolidated into one document covering both Plans. On October 1, 1979, the Employer and its sister corporation terminated their Profit Sharing Plan and adopted the Defined Benefit Pension Plan. At present, there are eleven participants in the existing Plans.

2. The assets of the Plans, including the terminated Profit Sharing Plan, are commingled for investment purposes. As of August 31, 1981, the Plans held $2,212,895 in total assets. Of these assets, the distributive shares maintained by the individual Plans were $1,068,998 for the Money Purchase Pension Plan, $902,411 for the Profit Sharing Plan and $241,486 for the Defined Benefit Pension Plan. The trustees of the Plans (the Trustees) are Mr. Jeff Dell and his spouse, Mrs. Bunny Dell. The Trustees make investment decisions for the Plans.

3. In January 1981, the Plans purchased land and a building located at 68 East 56th Street, New York, New York (the East 56th Street Property) from Mr. Norman Fuerth (Mr. Fuerth), an unrelated party, for a purchase price of $1,200,000. The Plans paid $400,000 in cash and obtained a first mortgage on the property in the amount of $800,000 from the Chemical Bank of New York. The Plans also obtained a second mortgage on the East 56th Street Property from Mr. Fuerth for the $200,000 remaining balance. The balance was to be repaid in monthly installments over a one year period commencing on the date of closing.

In May 1981, the Plans sold the East 56th Street Property to an unrelated party for $2,375,000 and thereby realized a gain of $1,175,000. The Trustees then decided to purchase additional real property to hold for investment purposes for the Plans. In June 1981, the Plans acquired for the cash price of $1,050,000 another parcel of land and a vacant two story building located at 241 East 51st Street, New York, New York. The Property was purchased pursuant to the terms of a contract of sale entered into between the Trustees and unrelated parties, Mr. and Mrs. Arthur Janov of Beverly Hills, California. At the time of acquisition, the Property represented over 61 percent of the combined total assets of the Plans. The Trustees represent that the acquisition of the Property was a prudent investment for the Plans because of its prime commercial location and its potential for resale and profit.[2]

4. The application documents numerous but futile efforts made by the Trustees to sell the Property to unrelated parties primarily through advertisements appearing in *The New York Times*. In addition, the application states that the Trustees have listed the property with the real estate agent who originally effected the sale to the Plans. However, despite all endeavors no firm offers have been made to the Trustees. The difficulty in selling the real property is attributed to high interest rates and a tight financial market.

5. At present, the Employer leases offices at 10 East 53rd Street, New York, New York from an unrelated party. Since the lease at the current location expires in April 1982 and cannot be renewed, the Employer is looking for new premises in which to relocate its business. Originally, the Employer requested an exemption to lease from the Plans (the Lease) the vacant building (the Building) situated on the Property. The Lease would have been a "net net" lease whereby the Employer would have assumed all expenses involved in occupying the space, including the payment of real estate taxes, insurance premiums and renovations costs required to make the property habitable for commerical use. The Lease would have been for a ten year term, subject to the right of an independent fiduciary to evict the Employer after five years. The Lease would also have been based on rental amounts and increments as determined by an independent appraisal. Initially, the annual rental was established at $120,402 to reflect the unimproved condition of the Building. Once renovations were made to the Building, the annual rentral would have been increased to $148,500. In addition, Mr. Dell would have guaranteed the Lease in the event of a rental delinquency by the Employer.

6. Because of the high percentage of the Plans' assets that were invested in the Property, the Department could not make a favorable determination with regard to the proposed leasing arrangement. The exemption application

[1] Jeff Dell Enterprises, Inc. is currently an inactive corporation.

[2] In this proposed exemption, the Department expresses no opinion as to whether the acquisitions of the East 56th Street Property and the Property violated any requirement of Part 4 of Title I of the Act.

was then amended to provide for a sale of the Property by the Plans to the Employer. The proposed sale was to be a cash sale whereby the sales price of $1,250,000 was to be due and payable at the time of closing. In addition, no real estate commissions or fees were to be incurred by the Plans.

7. The sales price of the Property is based on independent appraisals made by Mr. Barry Becker (Mr. Becker) and Mr. Jack Chudnoff (Mr. Chudnoff). Both men are New York City-based real estate brokers with over twenty years' experience in the sale and evaluation of residential and commerical properties. In September 1981, Mr. Becker initially appriased the Property for Lease purposes and determined it had an annual fair rental value of $120,402 and a fair market value of $1,600,000 based on the existing state of the premises. To reflect the Employer's intention of purchasing the Property from the Plans, Mr. Becker appraised the Property in January 1982 and found the fair market value to be $1,250,000. Mr. Chudnoff appraised the Property on January 5, 1982 and placed its fair market value at $1,200,000.

With respect to the decline in the fair market value of the Property between September 1981 and January 1982, Mr. Becker stated that the Manhattan real estate market had quieted down and there was a lessening of interest in small properties in the midtown-Manhattan area. He further stated that investor-users were interested in four to five story buildings (the Property has two stories). Mr. Becker attributed the current market to the lack of firm direction as to where interest rates were going, declining corporate profits and increasing unemployment. He stated that buyers with cash had new leverage in making offers to property-owners, and for the time being, and perhaps through the second quarter of 1982, there would be a levelling off of prices.

8. Because of a further decline in market conditions, the Employer proposes to revise the sales price of the Property from the original selling price of $1,250,000 to $1,000,000, or the fair market value of the Property as determined by an independent appraiser on the day of closing.

The Employer represents that in no event will the sales price of the Property be less than $1,050,000, the original purchase price paid by the Plans plus any related expenses incurred by the Plans with respect to the Property.

In connection therewith, by letter dated March 2, 1982, Mr. Chudnoff indicates that due to a softening in the New York real estate market, he does not believe $1,200,000 (the fair market value in his January 5, 1982 appraisal) is obtainable for the subject Property. He suggests the appropriate sales price should be within the range of $1,000,000 to $1,100,000. Therefore, unless the value of the Property changes again by the day of sale, the Employer proposes to revise the sales price to $1,100,000.

9. In summary, it is represented that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) the Sales price of the Property will be determined by an independent appraisal, and in no event will the sales price be less than the original purchase price paid by the Plans plus expenses incurred by the Plans with respect to the Property; (c) the Plan will incur no real estate commission or fees in connection with the sale; and (d) the Trustees have determined that the sale is in the best interests of the protective of the Plans and their participants and beneficiaries.

Notice to Interested Persons

Notice of the pending exemption will be given to the participants and beneficiaries of the Plans within five (5) days of the publication of the notice of pendency in the Federal Register. The notice will include a copy of the pending exemption as published in the Federal Register and will inform interested persons of their right to comment and/or request a hearing within the time frame set forth in the notice of pendency. Notice will be given to participants and beneficiaries by certified mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of the Property by the Plans to the Employer, provided that the price received by the Plans is no less than the fair market value of the Property on the date of the sale, and further provided that the sales price is no less than the Plans' original cost plus any expenses incurred by the Plans with respect to the Property.

The proposed exemption, if granted, will be subject to the express condition that the material facts and

representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 12th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13436 Filed 5-17-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3194]

Proposed Exemption for a Certain Transaction Involving the Jim D. Owen, Pension Plan Trust for Self-Employed Individuals, Single-Employer Plan Located in Knoxville, Tenn.

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a tract of real property to the Jim D. Owen, Pension Plan Trust for Self-Employed Individuals, Single-Employer Plan (the Plan) by Mr. and Mrs. Jim D. Owen, disqualified persons with respect to the Plan. Since Mr. Owen is the only participant in the Plan, which is an HR-10 Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. The proposed exemption, if granted, would affect the Plan and Mr. and Mrs. Owen.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 21, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective April 15, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3194. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Mr. Owen, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a Keogh Plan with one participant, Mr. Owen. The trustee for the Plan is the Southern Industrial Banking Corporation. The Plan document gives Mr. Owen broad investment discretion.

2. On March 28, 1978, Mr. and Mrs. Owen purchased, from unrelated parties, two large tracts of rough mountain land in remote Hancock County, Tennessee. The price paid was $9,000 per tract.

3. In early 1979, Mr. Owen decided that the purchase of one of the tracts (the Property) by the Plan from Mr. and Mrs. Owen would be in the best interests of the Plan. Mr. Owen decided that the transaction would offer the Plan a diversification of investments with good potential for high interest yield.

4. On April 15, 1979, Mr. and Mrs. Owen conveyed the Property to the Plan for consideration of $9,000. This amount was the same as the price Mr. and Mrs. Owen had paid for the Property in 1978. An independent appraiser, Mr. Bob Hodges of Knoxville, Tennessee, has estimated the fair market value of the Property to be not less than $11,250 as of April 15, 1979.

5. In summary, the applicant represents that the transaction meets the statutory criteria for exemption under section 4975(c)(2) of the Code because: (1) The Plan paid the same purchase price that Mr. and Mrs. Owen had paid for the Property one year before, and this price was no more than the fair market value as established by an independent appraiser; (2) the acquisition provides the Plan with diversification of investments and provides a significant long-term investment with the potential for large return; and (3) the only Plan participant affected by the transaction was Mr. Owen, and he desired and caused the transaction to be consummated.

Notice of Interested Persons

Because Mr. Owen is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This proposed exemption, if granted, will not extend to transactions

prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale on April 15, 1979 of the Property by Mr. and Mrs. Jim D. Owen to the Plan for $9,000, provided that this amount was not higher than the fair market value of the Property as of the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 13th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–13438 Filed 5–17–82; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Privacy Act of 1974; Revised Systems of Records

AGENCY: National Endowment for the Humanities.

ACTION Notice of revisions.

SUMMARY: National Foundation on the Arts and the Humanities Systems of Records under the Privacy Act of 1974 were last published in the **Federal Register** September 20, 1977, 42 FR 47434 (1977). The following notice updates information included in the earlier notice of systems of records maintained by the Humanities Endowment.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary. Deputy General Counsel, National Endowment for the Humanities, Washington, D.C. 20506, (202) 724–0367.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities and the National Endowment for the Arts no longer share an administrative staff. Also, locations of systems and retention and disposal information have changed during the past several years. The following updates the Humanities Endowment's notice of systems of records by reflecting these changes.

Dated: May 12, 1982.

Victor Loughnan,

Director of Administration.

Alphabetical List of Systems Names

Consultants, Reviewers and Panelists—NEH–1
Contracts—NEH–2
Employee Payroll, Leave and Attendance Records and Files—NEH–3
Equal Employment Opportunity Case File—NEH–4
Grant Applications—NEH–5
Grants to Individuals—NEH–6
Personnel Records—NEH–7

NEH–1

SYSTEM NAME:

Consultants, Reviewers and Panelists—NEH—1

SYSTEM LOCATION:

NEH—806 15th Street, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the National Council on the Humanities, Advisory Panels to the Humanities Endowment, and scholars and experts who may be called upon to serve on advisory panels or to review applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address and telephone number of individual. Contains compensation claims, travel diaries, notification of personnel actions, correspondence. May contain curriculum vitae and press clippings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

The records are used by Endowment staff in administration of our peer review system, including identification of scholars to serve as consultants, reviewers and panelists; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in 9 inch by 12 inch folders or computer data base.

RETRIEVABILITY:

Indexed by name or indexed keys.

SAFEGUARDS:

Records are maintained in lockable drawers, file cabinets, or computer controlled by passwords.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary to the National Council on the Humanities, Office of the General Counsel; Director, ADP Systems, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, newspapers and journals, Endowment employees.

NEH-2

SYSTEM NAME:

Contracts—NEH—2

SYSTEM LOCATION:

NEH—Office of the General Counsel, Room 1000, 806 15th Street, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have entered into contracts with the Endowment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains contract, including name and address of contractor, specific and general contract provisions, contract amendments, correspondence, relevant back-up material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Accounting Office audits; reporting on agency contracting activities to the Federal Procurement Data Center and other agencies, general congressional oversight; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in 12 inch by 10 inch folders.

RETRIEVABILITY:

Indexed by name and number.

SAFEGUARDS:

Records are maintained in a lockable file cabinet.

RETENTION AND DISPOSAL:

Scheduled for destruction 6 years, 3 months after fianl payment is made.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel—NEH, Room 1000, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Foundation employees involved in contract development, administration, and execution.

NEH-3

SYSTEM NAME:

Employee payroll and leave and attendance records and files—NEH-3.

SYSTEM LOCATION:

Payroll Processing Branch, 1500 Bannister Road, Kansas City, MO 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Endowment employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of manual and automated files containing payroll-related information for Endowment employees. Payroll and leave and attendance records and information includes many records or information also maintained in employee's official folder and related files maintained in accordance with Office of Personnel Management regulations and of which notice has been given by the OPM in its notice of Governmentwide systems of personnel records. Payroll and related information consists of various forms which disclose on a biweekly, year-to-date, and in some cases an annual basis, payroll and leave data for each employee relating to rate and amount of pay, leave, and hours worked, and leave balances; tax and retirement deductions; life insurance and health insurance deductions; savings allotments; savings bond and charity deductions; mailing addresses and home addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.). Federal Personnel Manual and Treasury Fiscal Requirements Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to prepare payroll and to meet Government payroll recordkeeping and reporting requirements, and for retrieving and supplying payroll and leave information as required for agency needs. Notice of Governmentwide Systems of Personnel Records: "C.S.C.—General Personnel Records (Official Personnel folder and records related thereto)"; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Time and attendance files maintained on 8 inch by 5 inch cards included with other information maintained in 9 inch by 12 inch folders or computer data base.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are maintained in a lockable file cabinet, or computer data base controlled by password.

RETENTION AND DISPOSAL:

Records maintained for three years or until audited by the General Accounting Office.

SYSTEM(S) MANAGER AND ADDRESS:

Accounting Officer, Room 815, Shoreham Building, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NEH-4

SYSTEM NAME:

Equal Employment Opportunity Case File-NEH-4

SYSTEM LOCATION:

Room 506, 806 15th Street, NW., Washington, DC 20506.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains transcripts, documentation concerning pre-complaint counseling activities, documentation concerning filing of complaint, written records of terms of adjustment and disposition of complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 CFR chapter I, Part 713.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Implementation of Endowment program for equal opportunity in employment and personnel operations; disclosure may be made to a congressional office from the record of an individual in resonse to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in 9 inch by 12 inch folders.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Maintained in lockable filing cabinets.

RETENTION AND DISPOSAL:

Retained for four years after resolution of the case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, Room 506, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Foundation employees involved in the claim or proceeding.

NEH–5

SYSTEM NAME:

Grant Applications–NEH–5

SYSTEM LOCATION:

806 15th Street, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and institutions applying to the National Endowment for the Humanities for financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant application, sample of work where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General administration of grant review process; statistical research; congressional oversight and analysis of trends; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS TO THE SYSTEM:

STORAGE:

9 inch by 12 inch folders.

RETRIEVABILITY:

Indexed by name of applicant.

RETENTION AND DISPOSAL:

Successful applications are merged into "Grants to Individuals and Institutions" file. Rejected applications are retained for five years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Officer-NEH, Room 522, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual and institution on whom the record is maintained.

NEH–6

SYSTEM NAME:

Grants to individuals and Institutions—6

SYSTEM LOCATION:

806 15th Street, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and institutions receiving grant awards from the National Endowment for the Humanities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant application including sample of work where appropriate, award notification letter, grant award acceptance agreement, payment schedule, relevant correspondence, final report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Administrative processing, general statistical research, congressional analysis of trends; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

Information concerning grantees, principal investigator's location of grantee, title of grant, field of study, type of grantee, special characteristics, length of award, application date, date of recommendation, grant number, division and program element, amount and brief description of purpose of award is routinely forwarded to the Smithsonian Science Information Exchange (SSIE) and the Foreign Area Research Unit (FARU) in the Intelligence and Research Office of the Department of State.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in 9 inch by 12 inch folders.

RETRIEVABILITY:

Indexed by name of individual, name of institution, and number.

SAFEGUARDS:

Records are maintained in a lockable filing cabinet.

RETENTION AND DISPOSAL:

After receipt of final reports. Retained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Officer—NEH, Room 522, 806 15th St., NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Employees involved in administration of the grant.

NEH–7

SYSTEM NAME:

Personnel Records—NEH–7.

SYSTEM LOCATION:

Room 410, 806 15th Street, N.W., Washington, DC 20506.

This system of records is part of the Office of Personnel Management's government-wide system of personnel

records "OPM/GOVT—1—General Personnel Records" and subject to that agency's rules.

[FR Doc. 82-13420 Filed 5-17-82; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit 2); Exemption

I

The Arkansas Power and Light Company (the licensee) is the holder of Facility Operating License No. NPF-6 which authorizes operation of Arkansas Nuclear One, Unit No. 2. This license provides, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility uses a Combustion Engineering, Inc. pressurized water reactor at the licensee's site located in Pope County, Arkansas.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3.).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, Febuary 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, Arkansas Power and Light Company requested exemptions from meeting the schedule requirements for those items as outlined in 10 CFR 50.48(c). The staff discussed the March 19, 1981, request with Arkansas Power and Light Company and it was understood that Arkansas Power and Light Company was requesting exemption from meeting the schedule requirements for those items (of Appendix R Section III.G and L) as outlined in 10 CFR 50.48(c). By letter dated January 15, 1982, Arkansas Power and Light Company indicated that they were unable to commit to any firm schedule for submitting technical exemptions and design details.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazard analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for example, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Arkansas Nuclear One, Unit No. 2 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER)[1] was issued. Some items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of several of these items as documented in letters[2,3,4] to Arkansas Power and Light Company. The FPSER supported the issuance of an amendment to the operating license of Arkansas Nuclear One, Unit No. 2 which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, Arkansas Nuclear One, Unit No. 2 has had upgrading to a high degree of fire protection already and the extensive reassessment involved in this request for exemption from the schedular dates of § 50.48(c) time is to quantify, in detail, the differences between what was recently

[1] Arkansas Nuclear One, Unit No. 2—Operating License No. NPF-6 Amendment 1 dated September 1, 1978 supported by FPSER (NUREG-0223) published in August 1978.

[2] Letters dated January 17 and April 16, 1980 from Mr. R. W. Reid, NRC, to Mr. William Cavanaugh, III, AP&L Co., approving FPSER Item 3.8 "Protection of Redundant Cables in the Cable Spreading Room (2078-L)".

[3] Letter dated April 25, 1980 from Mr. R. W. Reid, NRC, to Mr. William Cavanaugh, III, approving FPSER Item 3.15 "Manual Hose Stations".

[4] Letter dated November 5, 1980 from Mr. R. W. Reid, NRC, to Mr. William Cavanaugh, III, approving FPSER Items 3.14 "Smoke Detectors" and 3.18 "RCP Oil Collection System".

approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

In the letter dated January 15, 1982, Arkansas Power and Light Company stated that they were unable to commit to any firm schedule for submitting exemption requests and design details.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Arkansas Nuclear One, Unit No. 2 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. This date is based upon the response of all the licensees with regard to the time needed to perform the reassessment required and the redesign of plant features if necessary. All but a few licensees indicated submittal dates prior to July 1, 1982, and many have already made their submittals. Arkansas Power and Light Company did not indicate a submittal date. Therefore, an exemption should be granted to allow only such time for completion as is consistent with the time needed by other licensees for similar efforts. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property, or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3,[5] as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Sections III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13462 Filed 5-17-82; 8:45 am]
BILLING CODE 7590-01-M

[5] By implication, this includes III.L which specifies the criteria for meeting III.G.3.

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2); Exemption

I

The Baltimore Gas and Electric Company (the licensee) is the holder of Facility Operating License Nos. DPR-53 and DPR-69 which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Calvert County, Maryland.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. Subsection III.G. specfies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of

that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated May 18, 1981, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to October 1, 1981, the date for submittal of design descriptions of alternative or dedicated shutdown systems for Calvert Cliffs Unit 1 to comply with Section III.G.3., and

(2) Extend from March 19, 1981, to February 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems for Calvert Cliffs Unit 2 to comply with Section III.G.3.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals, to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, Calvert Cliffs Units 1 and 2 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised from constitutes the section of the Standard Review Plan used for the review of application for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued on September 14, 1979. With issuance of the FPSER, a few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of most of these items as documented in two supplements to the FPSER dated October 2, 1980 and March 18, 1982. In addition to the licensee's analysis for compliance of Calvert Cliffs Units 1 and 2 to Section III.G.3 of Appendix R, the only remaining fire protection issue concerns the adequacy of protection afforded to certain openings in fire barriers. Our letter of June 30, 1981 suspended the schedule concerning this item in accordance with 10 CFR 50.48(c)(6). This issue will be addressed in future correspondence.

The FPSER supported the issuance of License Amendments 41 and 23 to the operating licenses for Calvert Cliffs Units 1 and 2 which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, Calvert Cliffs Units 1 and 2 have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to demonstrate, in detail, the conformance to the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at the Calvert Cliffs Units 1 and 2. Nevertheless, compliance with the remaining applicable sections of Appendix R has been completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Calvert Cliffs Units 1 and 2 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to the Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR Part 50:

(1) Extend from March 19, 1981, to October 1, 1981, the date for submittal of design descriptions of alternative or

dedicated shutdown systems for Calvert Cliffs Unit 1 to comply with Section III.G.3., and

(2) Extend from March 19, 1981 to February 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems for Calvert Cliffs Unit 2 to comply with Section III.G.3.

Provided the following condition is met:

The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to Gen ·ic Letter 81-12, dated February 20, 198..

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13603 Filed 5-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 and 50-330]

Consumers Power Co.; Availability of Safety Evaluation Report for the Midland Plant, Units 1 and 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of the Midland Plant, Units 1 and 2, located in Midland County, Michigan. Notice of receipt of Consumers Power Company's application for a facility operating license for Midland Plant, Units 1 and 2, was published in the Federal Register on March 3, 1978 (43 FR 8870).

The report (Document No. NUREG-0793) is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Grace Dow Memorial Library, 1710 W. St. Andrews Road, Midland, Michigan 48640. Copies may be purchased for $13.00 directly from NRC by sending check or money order, payable to Superintendent of Documents, to Director, Division of Technical Information and Document Control, U.S. NRC, Washington, D.C. 20555. GPO Deposit Account holders may charge their orders by calling (301) 492-9530. Copies are also available for purchase through the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 11th day of May 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-13604 Filed 5-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co. (St. Lucie Plant Unit No. 1); Exemption

I

The Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-67 which authorizes operation of the St. Lucie Plant, Unit No. 1, a pressurized water reactor located in St. Lucie County, Florida. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this exemption request. III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3.).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3. require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented April 3 and July 10, 1981, and January 20 and March 18, 1982, Florida Power and Light requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

Should the Commission deny Florida Power and Light's (FPL's) request for an exemption for all areas of the plant that have already been reviewed and approved by the Commission as shown by the NRC's safety Evaluation Report (SER) for St. Lucie Unit No. 1, extend for a period of twelve months from the date of denial, pursuant to §§ 50.12(a) and 50.48(c), the date for submittal of plans, schedules and/or design descriptions for any modifications necessary to achieve compliance with, and/or request exemptions from Sections III.G.2 and III.G.3 of Appendix R for all items not in compliance with sections III.G.2 and III.G.3 regardless of whether such items were ever approved in the SER.

By letter dated June 4, 1981 the Commission did deny the exemption requested for those areas of the plant which have already been reviewed and approved by the Commission. Therefore, the twelve month delay requested corresponds to a submittal date of June 4, 1982.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet

the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of non-conformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, St. Lucie Unit No. 1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. As a result of that review numerous modifications have been made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. St. Lucie Unit No. 1 has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G of Appendix R to 10 CFR Part 50.

In its March 19, 1981 exemption request, the licensee stated that "Except to the extent specific exemptions are requested in this document, St. Lucie 1 is in full compliance with the requirements of the rule." A few items addressed in the exemption request and which are not subject to the requirements of Section III.G remain unresolved. These items deal with Section III.A, Water Supplies for Fire Suppression Systems. The licensee has requested until the Spring 1983 reload to reroute fire pump cables; not to replace existing fire pump controllers with U.L. approved controllers meeting all the requirements of NFPA–20; and not to automatically load the fire pumps onto vital buses in the presence of a safeguards actuation.

These exemption requests are being reviewed by the staff. The staff has, with respect to the technical exemptions requested, previously determined that the licensee has provided sound technical bases warranting further staff review. Because the Spring 1983 reload is the first scheduled outage, following receipt of the final design plans, in which to perform the cable rerouting, the current fire pump controllers and switchgear are nuclear class IE and seismic category I, and the fire pumps will auto load onto the vital buses in the event of loss of offsite power and a drop in fire system pressure the staff has determined that the outstanding exemption requests associated with Section III.A do not affect the acceptability of the requested delay in submitting Section III.G information. Furthermore, compliance with the balance of the Fire Protection Rule means that fire protection requirements, other than the identified exemptions from Section III.A and the requested delay in submitting Section III.G information, have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at St. Lucie Unit 1 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved by delaying the completion of this reassessment until June 4, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

The date, March 19, 1981, for submittal of plans, schedules and/or design descriptions for any modifications necessary to achieve compliance with, and/or request exemption from Sections III.G.2 and III.G.3 of Appendix R, is extended to June 4, 1982.

Provided the following conditions are met:

(1) Requests for exemption pursuant to §50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) a sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's

judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82–13405 Filed 5–17–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–78 which authorizes operation of the Vermont Yankee Nuclear Power Station. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is a boiling water reactor at the licensee's site located near Vernon, Vermont.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections III.G., is the subject of this Exemption. Section III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated February 13, 1981, Vermont Yankee Nuclear Power Corporation, among other things, requested exemption from 10 CFR 50.48(c) with respect to the requirements of Section III.G. of Appendix R in order to extend from March 19, 1981, to July 30, 1981, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G. of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Vermont Yankee Nuclear Power Station had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety

Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in a supplement to the FPSER. The FPSER and its supplement supported the issuance of amendments to the operating license of the Vermont Yankee Nuclear Power Station [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the Vermont Yankee Nuclear Power Station has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G. to Appendix R of 10 CFR Part 50.

Based on the licensee's request for exemption, all other applicable subsections of Appendix R would be met on the schedules required by 10 CFR 50.48(c). As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at the Vermont Yankee Nuclear Power Station. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Vermont Yankee Nuclear Power Station in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with the Section III.G. We find that because of the already-completed upgrading of the facility, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 31, 1981. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licenses have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

[1] Vermont Yankee Nuclear Power Station—Operating License DPR–28. Amendment 43 supported by FPSER issued January 30, 1978, Letter from NRC to Vermont Yankee Nuclear Power Corporation supported by Supplement to FPSER issued October 24, 1980.

IV

Accordingly, the Commission had determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to the requirements of Section III.G. of Appendix R to 10 CFR Part 50: The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by 50.48(c)(5) is extended to July 31, 1981.

Provided the following condition is met: The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 of Generic Letter 81–12, dated February 20, 1981.

If the license does not meet the above condition, the license will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in conneciton wiht this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13600 Filed 5-17-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–305)

Wisconsin Public Service Corp.; et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 44 to Facility Operating License No. DPR–43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensees), which revised Technical Specifications for operation of the Kewaunee Nuclear Plant (the facility) located in Kewaunee, Wisconsin. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specification in relation to Environmental Monitoring of Radioactive Effluents.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involved a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 20, 1981, (2) Amendment No. 44 to License No. DPR–43 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555: Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-13467 Filed 5-17-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

New Statistical Standard on Comparability of Statistics on Business Size

AGENCY: Office of Information and Regulatory Affairs, OMB.

ACTION: Notice of adoption of the new statistical standard entitled, Comparability of Statistics on Business Size.

SUMMARY: The new statistical standard provides common size of business categories to be followed by statistical agencies in their tabulations of business size data. The standard was formulated as part of a Government-wide effort to assist the Small Business Administration in developing a small business data base. The uniform size categories will enhance the use of business size data for economic analysis and policymaking. The standard was endorsed in the President's March 1982 report on small business. This is the first Government-wide standardization of business size statistical data.

A draft standard was published in the December 2, 1980 **Federal Register** and the December 1980 *Statistical Reporter* for public comment. There were no objections to adopting the standard. A new item was added to the draft which recommends the provision of information on the average firm size within each category; such information is now published by the statistical agencies and presents no problem in the data compilation.

Issues in Developing the Business Size Standard

In developing the standard, special attention was given to balancing the considerations of which classifications are most relevant for analysis and policymaking, easy to understand, and do not diverge in a major way from existing size categories. Also, while the interest for analyses of small business is in businesses at the lower end of the size spectrum, it is necessary to trace developments in firms of a wide range of size categories in order to better understand the relationship of "small business" to the rest of the economy.

The employment, revenues, and assets size variables are based on numerical criteria only. They do not include descriptive terminology such as "small," "medium" or "large." Such nomenclature is a qualitiative assessment which may vary with the use of the data, and is best left to users to apply as they see fit.

The standard provides for Federal agencies to use the statistical size categories for administering programs in the section on "Use for Federal Nonstatistical Purposes." It states that they shall be used * * * "only if the responsibile Secretary (Administrator) has first determined that the use of such size categories is appropriate to the implementation of the program's objectives." In addition, if they are used in the operative text of a law or regulation, an example of recommended language to accompany their use is given to assure sufficient flexibility.

The new standard is published below.

Christopher DeMuth,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Statistical Standard: Comparability of Statistics on Business Size

The purpose of this directive is to provide a standard means of comparing business size series prepared by various Federal agencies. The Statistical Business Size Categories in the table below are to be used to classify reporting businesses by employment (number of employees), revenues (sales, receipts, shipments, etc.), or assets. Tabulations based on these categories shall be accompanied by precise definitions of the variables used to measure size (i.e., employment, revenues, or assets) and of the type of reporting unit tabulated (e.g., establishments, enterprises, companies, taxpaying units). Such definitions shall include adequate detail to allow comparisons with other definitions commonly used by Federal agencies.

1. *Combining or Partitioning Categories.* At the discretion of the agency which controls the data, adjacent size categories may be combined and/or the size scale may be truncated in published tabulations. Justification for such actions includes factors as the limited scope of the data, the need to assure the confidentiality of individual response, or very large sampling variability at the recommended level of detail. For example, tabulations of small businesses often truncate the upper end of the scale of size categories. The reasons for such actions shall be noted in the affected publication.

Whenever data are published that combine size categories, the Agency which controls the data shall maintain unpublished estimates or internal documentation sufficient to allow reasonable retrospective estimates of the unpublished detail. However, if categories are combined to assure confidentiality of individual responses, the unpublished estimates or agency documentation must be maintained in a form which is consistent with the confidentiality objective and the agency's authority to protect information from disclosure.

STATISTICAL BUSINESS SIZE CATEGORIES

EMPLOYMENT

[Number of employees]

0	(none)	
1	under	5
5	under	10
10	under	20
20	under	50
50	under	100
100	under	250
250	under	500
500	under	1,000
1,000	under	2,500
2,500	under	5,000
5,000	under	10,000
10,000	or more	

REVENUES OR ASSETS

	under	$25,000.
$25,000	Under	$50,000.
$50,000	Under	$100,000.
$100,000	Under	$250,000.
$250,000	Under	$500,000.
$500,000	Under	$1 million.
$1 million	Under	$2.5 million.
$2.5 million	Under	$5 million.
$5 million	Under	$10 million.
$10 million	Under	$25 million.
$25 million	Under	$50 million.
$50 million	Under	$100 million.
$100 million	Under	$250 million.
$250 million	Under	$500 million.
$500 million	Under	$1 billion.
$1 billion	Under	$2.5 billion.
$2.5 billion	Under	$5 billion.
$5 billion	or more	

An agency may also define additional partitions within the standard tables to meet particular analytical needs. These partitions, however, must be in addition to and not in lieu of the standard categories, i.e., they must not prevent summing to the standard categories.

The largest size categories in the standard tables were selected to accommodate current (1980) uses. If it becomes useful to define additional (larger) categories, they should be defined in a manner consistent with the pattern established in the standard tables (e.g., 10,000 under 25,000 employees or $5 billion under $10 billion revenues).

2. *Average Size Within Categories.* The average size of firms within a size category may range from the lower to the upper end of the category. Knowledge of the average size provides additional information for analyzing patterns and trends in firm size. Therefore, it is recommended that statistical tabulations of business size data include the average size of firms in each category or information on the number of firms in each category that would enable the user to calculate the average size.

3. *Effect on Data Collection Activities.* The requirement to use Statistical Business Size Categories will often impact the planning of data collection activities. The size categories should be considered in defining stratum boundaries and in choosing cutoffs to limit reporting burden or for other purposes. Data collection plans which unnecessarily impede or encumber analyses based on the standard size categories should be avoided.

4. *Transition to New Size Categories.* Data tabulations that are presented in the new size categories for the first time shall be accompanied by overlapping data in the old categories for the same period, or some other means of bridging the old and new categories. This will enable users to link the historical data in the transition period and thus minimize the effect on the continuity of the series.

5. *Use for Federal Nonstatistical Purposes.* The Statistical Business Size Categories shall be used in the administration of any regulatory, administrative, or tax program only if the responsible Secretary (Administrator) has first determined that the use of such size categories is appropriate to the implementation of the program's objectives.

If the term, "Statistical Business Size Categories" is to be used in the operative text of a law or regulation, language similar to the following should be used to assure sufficient flexibility: "Business size categories shall mean the Statistical Business Size Categories as defined by the Office of Management and Budget subject to such modifications with respect to individual businesses or groups of businesses as the Secretary (administrator) may determine to be appropriate for the purpose of this Act (regulation)".

[FR Doc. 82-13413 Filed 5-17-82; 8:45 am]
BILLING CODE 3110-01-M

PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

Meeting

May 14, 1982.

The President's Economic Policy Advisory Board will meet on May 20, 1982, at the White House, Washington, D.C. from 10:00 a.m. to 2:30 p.m. Unexpected circumstances preclude the customary 15 days advance notice for such a meeting.

The purpose of the meeting is to review and discuss:

(a) Economic Outlook and Financial Market Developments.

(b) International Economic Intelligence Outlook.

All agenda items concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1), (4), (8), and (9) thereof, and will be closed to the public.

For further information, please contact the Office of Policy Development, the White House, at (202) 456-6515.

Edwin L. Harper,

Assistant to the President for Policy Development.

[FR Doc. 82-13367 Filed 5-17-82; 10:54 am]
BILLING CODE 3195-01-M

SYNTHETIC FUELS CORPORATION

Interim Policy on Standards of Conduct

ENTITY: Synthetic Fuels Corporation.

ACTION: Publication of interim policy on standards of conduct.

SUMMARY: This notice publishes and invites public comment on an Interim Policy on Standards of Conduct implemented by the U.S. Synthetic Fuels Corporation to carry out the requirements of Sections 118(a) and 118(d) of the United States Synthetic Fuels Corporation Act of 1980, Pub. L. 96-294 relating to financial disclosure and post-employment restrictions applicable to directors, officers and employees of the Corporation, and for other purposes.

PERSON TO CONTACT FOR MORE INFORMATION: Owen J. Malone, U.S. Synthetic Fuels Corporation, Office of General Counsel, 1900 L Street, NW., Washington, D.C. 20586, (202) 653-4230.

Interim Policy on Standards of Conduct

To All Interested Parties

The United States Synthetic Fuels Corporation ("Corporation") announces an interim policy on standards of conduct applicable to directors, officers, and employees of the Corporation.

The responsibility for these matters will be vested primarily in the Corporation's Ethics Officer, Mr. Owen J. Malone, Office of General Counsel, United States Synthetic Fuels Corporation, Suite 540, 1900 L Street, NW., Washington, D.C. 20586.

It is contemplated that the Corporation's Board of Directors will conduct a further review of the Interim Policy in light of comments received following this publication.

Comments will only be accepted in writing through June 15, 1982, and should be directed to the Corporation's Office of General Counsel. For further information regarding this interim policy or the comment period, contact Owen J. Malone: telephone (202) 653-4230.

Interim Policy—Standards of Conduct

April 27, 1982.

Standards of Conduct

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Part 1—General

Section 1. Purpose and Scope

(a) The purpose of this policy is to assure that the business of the United States Synthetic Fuels Corporation (the "Corporation") is conducted effectively, objectively, and without improper influence or the appearance thereof. The Corporation expects that its Directors, Officers, and Employees will exhibit courtesy, consideration, and promptness in all dealings with the public, with parties having business before the Corporation, and with government agencies and will avoid any action, whether or not specifically prohibited by this policy, which might result in, or create the appearance of:

(1) Using Corporation office for private gain;

(2) Giving improper preferential treatment to any person;

(3) Impeding the efficiency and economy of the operations of the Corporation;

(4) Making a Corporation decision outside of official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Corporation.

(b) This policy also implements:

(1) The financial disclosure provisions of the Ethics in Government Act of 1978, as amended (Pub. L. 95–521), made applicable to the Corporation by Section 118(a) of the Energy Security Act (Pub. L. 96–294) (the "Act" or the "Energy Security Act");

(2) The regulations relating to the financial disclosure provisions of the Ethics in Government Act of 1978, as amended, issued by the Office of Personnel Management (5 CFR Part 734);

(3) The provisions of Section 207(a) of title 18 of the United States Code (and subsections (f), (h), and (j) of such section to the extent that they relate to section 207(a)) relating to post-employment prohibitions applicable to former Directors, Officers, and Employees of the Corporation, pursuant to Section 118(d) of the Energy Security Act; and

(4) The regulations relating to 18 U.S.C. 207(a) and subsection (f), (h), and (j) of said section as they relate to 18 U.S.C. 207(a), issued by the Office of Personnel Management. (5 CFR Part 737).

In addition, this policy directs the attention of the Directors, Officers, and Employees of the Corporation to certain important prohibitions and requirements imposed by the Energy Security Act and other laws of the United States. This policy does not purport to reflect or enumerate all restrictions or requirements imposed by statutes, regulations or otherwise upon Corporation Directors, Officers, and Employees and former Directors, Officers, and Employees of the Corporation. The omission of a restatement of or a reference to any restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable in accordance with its own terms.

(c) It is expected that the provisions of this policy will be observed and administered in a manner which is consistent with both their spirit and their letter.

Section 2. Applicability

Unless specifically provided otherwise, the provisions of this policy apply to all Directors and Employees of the Corporation.

Section 3. Definitions

Unless the context requires otherwise, the following definitions apply in this policy:

"Act" and "Energy Security Act" mean the Energy Security Act (95 Stat. 611, Pub. L. 96–294) approved June 30, 1980.

"Board of Directors" and "Board" mean the Board of Directors of the Corporation.

"Chairman" means the Chairman of the Board of Directors or his delegee.

"Corporation" or the "United States Synthetic Fuels Corporation" means the corporation created by Subtitle B of Title I of the Act.

"Director" means a member of the Board of Directors.

"Employee" means a Corporation officer or a full-time or part-time employee of the Corporation or an employee of a Government agency assigned or detailed to the Corporation.

"Ethics Officer" means the person designated pursuant to Section 5 hereof to administer this policy and the provisions of Title II of the Ethics in Government Act within the Corporation.

"Participating Organization" means any entity listed on the List of Participating Organizations published from time to time by the Ethics Officer under Section 6(b)(5) hereof, which List shall contain the name of each firm, corporation or other entity which has undertaken or formally proposes to undertake a synthetic fuels project involving the Corporation and any other entity participating in any material way in any such project, including but not limited to financial institutions, investment bankers, construction companies engineering firms, supply contractors and attorneys.

Section 4. Corporation Ethics Program

(a) The Corporation's ethics program shall consist generally of liaison with the Office of Government Ethics; review of financial disclosure reports; ethics counseling; and the administration of this policy within the Corporation.

(b) The Ethics Officer under the direction of the Chairman is the Corporation official responsible for establishing, maintaining, and carrying out the Corporation's ethics program. To carry out this responsibility, sufficient resources (including investigative, audit, legal, and administrative staff as necessary) shall be made available to enable the Corporation to administer its program in a positive and effective manner.

Section 5. Designated Corporation Ethics Officer

(a) By designation of the Chairman, a qualified attorney in the Office of the General Counsel of the Corporation shall serve as the Corporation's ethics official and as such will administer the provisions of Title II of the Ethics in Government Act within the Corporation, coordinate and manage the

Corporations's ethic program, and provide liaison to the Office of Government Ethics with regard to all aspects of the Corporation's ethics program.

(b) The Chairman may designate an alternate Corporation Ethics Officer who shall serve in an acting capacity in the absence of the designated Ethics Officer.

Section 6. Responsibilities and Administration

(a) Each Employee shall:

(1) Read and comply with this policy and the statutes and regulations referred to herein. Each Employee shall receive a copy of this policy and acknowledge such receipt in writing prior to assuming duties at the Corporation or, if already employed, promptly after the effective date of the policy;

(2) Be mindful of the high standards of integrity expected of them in all their activities, personal and official;

(3) Recognize that violation of the provisions of this policy or the laws referred to herein may subject them to dismissal, disciplinary action, and other penalties;

(4) Discuss with the Ethics Officer any problems arising out of this policy.

(b) The Ethics Officer shall:

(1) Assure that required reports are promptly filed by all Directors and Employees;

(2) Review all reports submitted to him;

(3) Notify Directors and Employees at the time of entrance on duty and periodically thereafter of the availability of counseling services and how and where these services are available;

(4) Bring the provisions of this policy to the attention of each Director and Employee as circumstances warrant;

(5) Compile, maintain, and periodically update a list of all Participating Organizations and submit such list to the Vice President for Administration for distribution to all Directors and Employees; and

(6) Serve as the Corporation's designee to the Office of Government Ethics on matters within the jurisdiction of that office covered by this policy.

(c) The Director of Personnel shall:

(1) Distribute to prospective Employees, and departing Employees, those forms required to be submitted pursuant to this policy; and

(2) Distribute a copy of this policy to all prospecive Employees at the time of an offer of employment with the Corporation is made, or if possible, prior to making such offer.

Part 2—Conduct of Employees

Section 7. General

(a) It is the policy of the Corporation not to interfere in the private lives of its Directors and Employees. However, in view of the public trust confided to the Corporation by the Energy Security Act, certain standards of conduct, some of which are statutory, are required to assure the proper performance of the Corporation's business and the maintenance of public confidence in the Corporation. The provisions of this section are designed to insure the fulfillment of that trust and the maintenance of that public confidence. Adherence to the provisions in this section requires that Directors and Employees not do indirectly what would be improper to do directly.

(b) The attention of Director and Employees is directed to the following statutory provisions:

(1) The prohibition contained in section 118(c) of the Act (42 U.S.C. 8714(c)) relating to a Director voting on any matter in which, to his or her knowledge, he or she has a financial interest (See Section 17(g) hereof).

(2) The prohibition contained in section 118(d) of the Act (42 U.S.C. 8714(d)) relating to post-employment activities of former Directors and Employees of the Corporation (See Section 20 hereof).

(3) The prohibition contained in section 161 of the Act (42 U.S.C. 8716) relating to false statements in connection with certain Corporation activities.

(4) The prohibition contained in section 162 of the Act (42 U.S.C. 8762) relating to forgery of Corporation instruments and agreements.

(5) The prohibition contained in section 163 of the Act (42 U.S.C. 8763) relating to misappropriation of funds and unauthorized activities in relation to the Corporation's business.

(6) The prohibition contained in section 164 of the Act (42 U.S.C. 8764) relating to conspiracy to commit acts made unlawful by sections 161, 162, or 163 of the Act.

(7) The prohibition contained in section 171(b) of the Act (42 U.S.C. 8771(b)) relating to the exercise of the Corporation's authorities.

(8) The prohibition contained in section 121(c) of the Act (42 U.S.C. 8717(c)) and 18 U.S.C. 1905 relating to the disclosure of confidential information.

(9) The prohibition contained in 18 U.S.C. 201 relating to the solicitation or receipt of anything of value for or because of an official act.

(10) The prohibition contained in 18 U.S.C. 1719 relating to misuse of the franking privilege.

(11) The prohibition contained in 18 U.S.C. 600 relating to promises of employment or other benefit for political activity.

(12) The prohibition contained in 18 U.S.C. 601 relating to deprivation of employment or other benefit for political contribution.

(13) The prohibition contained in 18 U.S.C. 602 relating to solicitation of political contributions.

(14) The prohibition contained in 18 U.S.C. 603 relating to making political contributions.

Section 8. Gifts, Gratuities, Entertainment, and Favors

(a) Acceptance of gifts, gratuities, entertainment, and favors from those who have or seek business with the Corporation may be a source of embarrassment to both the Corporation and the Director or Employee involved, may affect or appear to affect the objective judgment of the recipient, and may impair public confidence in the integrity of the Corporation's business relationships. Therefore, except as provided in subection (b) of this section, no Director or Employee shall knowingly solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any Participating Organization or any person who (1) has, or is seeking to obtain, contractual, or other business or financial relations with the Corporation; or (2) has interests that may be substantially affected by the performance or nonperformance of the Director's or Employee's official duty. In those cases in which the tender of any such gift, gratuity, or other thing of monetary value occurs under circumstances making the return thereof to the donor either impractical or impossible, the item involved shall be promptly delivered to the Vice President for Administration of the Corporation. All such items delivered to the Vice President shall be disposed of by him in accordance with instructions of the General Counsel of the Corporation.

(b) Notwithstanding the foregoing, a Director or Employee may:

(1) Accept gifts, entertainment, or favors given him as a result of obvious family or personal relationships (such as those between a parent, child, spouse, or other relative of the Director or Employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Accept food and refreshments of moderate value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where such Director or Employee is authorized by the Corporation to be in attendance;

(3) With approval of the Vice President to whom he or she reports and the Ethics Officer, accept food and refreshment, transportation, lodging, or subsistence from a consumer, environmental, industrial, technical, trade, professional, or other association or similar group, in connection with the Employee's participation in a widely attended luncheon, dinner, seminar, conference, or similar gathering sponsored by the donor; provided that this exception shall not apply when the donor is a Participating Organization or an association or group composed principally of Participating Organizations.

(4) Accept loans from banks or other financial institutions or parties on customary terms to finance proper and usual activities such as home mortgage loans;

(e) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value; and

(f) Accept transportation to inspect or investigate a location of facility, if under the circumstances it would be unduly inconvenient or inefficient to use other transportation.

Section 9. Outside Employment and Other Outside Activity

(a) Employees are prohibited from holding employment with any Participating Organization and shall not engage in any other outside employment or outside activity not compatible with the full and proper discharge of the duties and responsibilities of their Corporation employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; or

(2) Outside employment which tends to impair the individual's mental or physical capacity to perform his or her Corporation duties and responsibilities in an acceptable manner, or which requires time or attention during the Employee's official work hours.

(b) Within the limitations imposed by this section, Employees are encouraged to engage in teaching, lecturing, and writing. However, a Director or Employee shall not, either for or without compensation, engage in teaching, lecturing or writing that is dependent on information obtained as a result of the Employee's Corporation employment, except (1) where that information has been made available to the general public or will be made available on request, or (2) when the Chairman gives written authorization for the use of non-public information on the basis that the use is in the public interest. To the extent there is a variance, any such teaching, lecturing, and writing shall clearly distinguish the views of the Employee from those of the Corporation and its management. In addition, Directors and Employees, shall not accept any compensation or honorarium for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Corporation.

(c) No Employee shall accept a fee from an outside source on account of a public appearance, speech, or lecture (1) if the public appearance or the preparation or delivery of the speech or lecture was a part of the official duties of the Employee, (2) if the public appearance, speech, or lecture was made during official working hours, or (3) if travel for the purpose of the public appearance, speech, or lecture was made at Corporation expense. In addition, no Employee shall accept a fee for the preparation, publication, or review of an article, story or book if it was prepared during official working hours or was part of the official duties of the Employee.

(d) This section shall not preclude an Employee from:

(1) participating in discussions and meetings of a professional nature and from receiving from outside sources (other than a Participating Organization) bona fide reimbursement for actual expenses of travel and subsistence incurred in connection with his or her participation if such Employee's participation is not a part of his official duties at the Corporation;

(2) participating in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization.

Section 10. Confidential Information

(a) Section 163(a)(4) of the Act makes it a criminal offense for anyone to give to any person any unauthorized information concerning any future action or plan of the Corporation, or having such information to invest or speculate, directly or indirectly, in the securities or property of any company, bank, or corporation receiving financial assistance from the Corporation. Criminal statutes also prohibit a Director or employee from disclosing, other than as provided by law, confidential business information obtained through his employment (Section 121(c) of the Act, and 18 U.S.C. 1905).

(b) A Corporation Director or Employee shall not make use or give the appearance of making use, or permit others to make use or give the appearance of making use, of Corporation information not made available to the general public, for the purpose of furthering a private interest.

(c) As a result of their official duties, Directors and Employees will frequently have access to business information of a confidential nature, including commercial, financial, or proprietary data provided by companies seeking financial assistance from the Corporation. Such information is disclosed for official use within the Corporation and is made available for no other purpose than consideration of the financial assistance application or other Corporation matters. Where such confidential business information might be compromised in responding to outside inquiries from apparently authorized or legitimate sources, such as Government agencies, these inquiries should be referred to the Director of Public Disclosure to determine whether the nature and circumstances of such inquiries justify disclosure of the particular information sought.

Section 11. Use of Corporation Property

A Director or Employee shall not, directly or indirectly, use, or allow the use of, Corporation property of any kind, including property leased to the Corporation, for other than officially approved activities. An employee has a positive duty to protect and conserve Corporation property, including equipment, supplies, and other property entrusted or issued to him.

Section 12. Gambling, Betting, and Lotteries

An Employee shall not participate, while on Corporation owned or leased property, or while on duty for the Corporation, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing numbers slips or tickets.

Section 13. Courtesy

A Employee shall conduct himself in a manner that will assure effective

accomplishment of his responsibilities and must observe the requirements of courtesy, consideration, and promptness in dealing with those seeking the Corporation's assistance.

Section 14. Availability of Counseling

Each Director or Employee may consult the Ethics Officer at any time during normal Corporation hours for counseling on problems raised by this policy.

Section 15. Complaints

Complaints from any source concerning the subject matter of this policy, whether emanating from within or outside the Corporation, are to be submitted to the Ethics Officer.

Part 3—Financial Interests, Prior Employment, and Similar Interests

Section 16. Restrictions Related to Employee Financial Interests, Prior Employment, and Similar Interests

(a) The maintenance of public confidence in the Corporation requires that a Director or Employee not take any action which would constitute the use of his or her Corporation position to advanced personal or private interests.

(b) After assuming an officer or employment with the Corporation, a Director or Employee shall not acquire any financial interest in a Participating Organization while it is on the list of Participating Organizations maintained by the Ethics Officer pursuant to Section 6(b)(5).

(c) Unless authorized to do so as provided hereafter in this section, an Employee shall not participate personally and substantially as an Employee in a particular matter in which the Employee knowingly has a financial interest or in which he or she participated personally and substantially prior to employment by the Corporation.

(d) For purposes of this section—

(1) An Employee "participates" in a particular matter through decision, approval, disapproval, recommendations, evaluation, the rendering of advice, negotiation, investigation, implementation, or otherwise.

(2) "Particular matter" is any synthetic fuel project proposal or other application, request for determination, determination, proposal, agreement, contract, claim, controversy, or other similar matter involving a specific party or parties under consideration within the Corporation.

(3) A "financial interest" of an Employee includes the financial interest of the Employee's spouse, dependent child, partner, or an organization (other than the Corporation) in which the Employee is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom the Employee is negotiating or has an arrangement concerning prospective employment. An Employee shall be deemed to be negotiating for prospective employment upon an expression of interest in response to a solicitation for future employment by either the Employee or the person or organization.

(e) With the approval of the Chairman, the Ethics Officer may waive the restrictions of subsection (c) of this section in a particular matter for an individual if the Ethics Officer determines in writing that the interest is too remote or too inconsequential, or the prior participation was too insubstantial, to affect the integrity of the services which the Corporation may expect of the individual. This determination shall be made after consultation with the Vice President in charge of the Employee's work assignment. Where it appears that a conflict of interest would arise in other matters in which the Employee might in the future be involved in the performance of normal duties, the Ethics Officer will so advise the Chairman and appropriate action shall be taken.

(f) The Chairman may by rule waive the restrictions of subsection (c) of this section for classes of financial interests which the Chairman determines are too remote or too inconsequential to affect the integrity of an Employee's services. The restrictions on the following financial interests are waived pursuant to this paragraph:

Financial interests in mutual funds, regulated investment companies or similarly constituted entities the portfolios of which are widely diversified, an similarly constituted commercially fungible entities.

(g) Procedure Applicable to Directors.

(1) Subsection 118(c) of the Act prohibits a Director from voting on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to the Director's knowledge, he or she, his or her spouse, minor child, partner, or an organization (other than the Corporation) in which the Director is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom the Director is negotiating or has any arrangement concerning prospective employment, has a financial interest. This prohibition shall not apply if the Director first advises the Board of Directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such Director's services for the Corporation in that matter. The Director involved shall not participate in such determination.

(2) Prior to any meeting of the Board of Directors at which the Board is expected to vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, the Ethics Officer shall review the financial disclosure report filed with the Corporation by each Director and shall advise each Director in writing if any reported financial interest is within the purview of section 118(c)(1) of the Act.

(3) If a Director has a financial interest within the purview of section 118(c)(1) of the Act and believes that the interest is too remote or too inconsequential to affect the integrity of his services for the Corporation in the particular matter on which the Board is scheduled to vote, he may request the Ethics Officer to evaluate the particular financial interest and make a recommendation to the Board of Directors as to whether, in his opinion, the financial interest in question is too remote or too inconsequential to affect the integrity of the Director's service within the meaning of section 118(c)(3) of the Act.

Part 4. Executive Personnel Financial Disclosure Requirements

Section 17. Financial Disclosure Requirements for Directors and Certain Employees

(a) Statutory. Section 118(a) of the Act and Title II of the Ethics in Government Act of 1978, (the 1978 "Act") (Pub. L. 95–521, as amended), requires the Directors and certain Employees of the Corporation to disclose personal financial interests and a description of certain employment relationships in order to avoid potential conflicts of interest, and the appearance of such conflicts, which may arise as they carry out the duties of their positions. The 1978 Act directs the Office of Government Ethics ("OGE") to provide for the systematic review of the financial holdings of both current and prospective Directors and Employees. The Office of Personnel Management ("OPM"), on the recommendation of the Director of OGE, has promulgated regulations establishing the procedures for the filing, review, and public

availability of the Financial Disclosure Report required under the 1978 Act. (5 CFR Part 734).

(b) General Policy and Purpose. The purpose of this section is to implement the statutory requirements and to provide guidelines for those Directors and those Employees who are required to submit financial disclosure reports under the 1978 Act and the OPM regulations. Reference should be made to the Ethics Act and regulations for detailed statements of the law, definitions, exemptions, limitations, and illustrative examples (5 CFR 734.103).

Under Title II of the Ethics Act, Directors and officers of the Corporation, and Employees whose positions are compensated at a rate equivalent to or above that payable for the grade GS–16 of the Federal General Schedule under 5 U.S.C. 5332, are required to complete financial disclosure forms, disclosing any other employment relationships, any income received (other than from Corporation employment), assets, liabilities, and certain purchases, sales, exchanges, and gifts. These reports are not net worth statements. Only assets held as investments and certain other items must be reported. Items for personal use, such as a residence, a personal automobile or jewelry not held for sale need not be reported. Although the reports must be made available if requested by a member of the public, subject to compliance with certain procedures set out in the OPM regulations, they cannot be used for any commercial purpose, for establishing credit rating or, directly or indirectly, in the solicitation of money for any political, charitable or other purpose. In the event that a report is used by a person for one of these prohibited purposes, the Attorney General may institute a civil action against such person.

(c) Persons Required to File—General Requirements for Filing.

Each Director and each employee compensated at a rate equivalent to or above the rate payable for grade GS–16 of the General Schedule prescribed by 5 U.S.C. 5332, and any other Employee in a position determined by the Director of OGE to be of equal classification and certain others unless excluded pursuant to 5 CFR 734.203 (hereinafter referred to as a "reporting individual"), shall file a report in accordance with the following rules:

(1) A reporting individual who, during any calendar year, performs the duties of his or her office for more than sixty days shall file a report on or before May 15 of the succeeding year.

(2) Within thirty days of assuming a position or office at the Corporation, a reporting individual shall file a report, unless such individual:

(a) Has left another position within the thirty days prior to the assumption of the Corporation position in which a report required by 5 CFR 734.201 has previously been filed, or

(b) Has already filed such a report as a nominee for the Corporation position.

(3) On or before the thirtieth day after termination of his or her Corporation employment, a reporting individual shall file a report for the period from the end of the calendar year with respect to which a report was last filed to the date on which the individual left such office or position. If the individual assumes employment within thirty days of leaving the Corporation in another position or office in which a report is required to be filed pursuant to Title II of the 1978 Act, he or she need not file a report under this paragraph.

(4) The Ethics Officer may, for good cause shown, grant to any Employee or class of Employees an extension of up to 45 days. OGE may grant an additional extension of up to 45 days if it makes a determination, based upon the reporting individual's specific reasons which have been forwarded to OGE by the Ethics Officer along with his or her own comments on the request, that there is good cause shown for an extension.

(5) Any reporting individual who, as determined by the Ethics Officer, is not reasonably expected to perform the duties of his or her office for more than sixty days in a calendar year need not file a report.

(6) Notwithstanding the provisions of paragraph (5) of this section, if the reporting individual does perform the duties of his or her office or position for more than sixty days in a calendar year, and (i) if such individual is a new entrant or a nominee, he or she shall file a report within fifteen calendar days after the sixty-first day unless the individual has filed a request for a waiver which is subsequently granted or (ii) if such individual is terminating employment, he or she shall file a report required by paragraph (3) of this section.

(7) In unusual circumstances, the Director of OGE may grant a request for a waiver of any public reporting requirement otherwise applicable under this section for a reporting individual who is reasonably expected to perform, or has performed, the duties of his or her office for less than 130 days in a calendar year. Such a determination will be made after OGE has received advice from the Corporation and shall be in accordance with the guidelines established in 5 CFR 734.205.

(d) Contents of Reports. The information required to be included in each report is fully described in the instructions accompanying the Executive Personnel Financal Disclosure Report (S.F. 278) prescribed by OGE and in regulations promulgated by OGE (5 CFR Part 734), which requirements are incorporated herein by reference. Directors and Employees are encouraged to consult with the ethics officer, as necessary, concerning such requirements.

(e) Filing, Custody, Review. A reporting individual shall file the report with the Ethics Officer of the Corporation, who shall note on the report or supplemental report the date it is received. The Ethics Officer shall submit the report of each Director, as well as his or her own report, to the Director of OGE after he or she has reviewed it (except that the Chairman or his delegee shall review the report of the Ethics Officer).

(f) The Corporation shall, within fifteen days after any report is received by the Ethics Officer, make each report filed with it under this Part available to the Public by permitting inspection of such report by, or furnishing a copy of such reprot to, any person who makes a written application stating (1) the person's name, occupation and address, (2) the name and address of any other person or organization on whose behalf the inspection or copy is requested, and (3) that such person is aware of the prohibitions on obtaining or using the report for (a) any unlawful purpose, (b) any commercial purpsoe, other than by news and communications media for dissemination to the general public, (c) determining or establishing the individual's credit rating, or (d) use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. The Corporation may require a reasonable fee to be paid which is necessary to recover the direct cost of reproduction or mailing of such report, or may waive or reduce the fee if the Corporation determines that such waiver or reduction is in the public interest.

All reports shall be retained by the Corporation for six years, during which time they shall be made available to the public as provided above. After the six-year period a report shall be destroyed, unless needed in an ongoing investigation.

(g) The Ethics Officer shall review each report within 60 days after the date of filing (or earlier if required by the expedited procedure of 5 CFR 734.604(c)) in order to determine that the individual is in compliance with applicable laws

and regulations and that the interests or positions disclosed on the form do not violate any applicable statute or regulation. Such review shall be conducted pursuant to 5 CFR 734.604.

(h) The Chairman of the Corporation shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully falsified or willfully failed to file information required to be reported and may take any appropriate personnel or other action in accordance with applicable law or Corporation policy against such individual.

Part 5—Financial Interests of Other Corporation Employees

Section 18. Financial Disclosure Reports

(a)*Filing Requirement.* To the extent they are not covered by Part 4 of these Standards of Conduct, reports of employment and financial interest shall also be submitted by:

(1) Each Corporation Employee whose position is compensated at a rate equivalent to that payable for grade GS–13 or above of the General Schedule established by Chapter 53 of title 5 of the United States Code who occupies a position the basic duties and responsibilities of which consist of the investigation, evaluation, negotiation, administration, or implementation of any synthetic fuels project formally proposed to the Corporation or the procurement of goods and services for the Corporation; and

(2) Such other Employees who are in positions which otherwise meets the criteria set out in clause (1) (other than rate of compensation), and whose inclusion has been determined by the Chairman in writing as essential to protect the integrity of the Corporation and avoid Employee involvement in a possible conflict-of-interest situation.

(b) *Time and Place for Submission.* The reports referred to in this section shall be submitted to the Ethics Officer. An Employee who, after the effective date of this policy, is appointed to a position requiring submission of such report, shall submit such report within 30 days after appointment. Each covered Employee who previously submitted any such report shall submit a supplementary report on or before June 30 of each succeeding year, regardless of whether or not there were occurrences which would require changes in, or additions to, information previously submitted.

(c) *Form of Reports.* Reports of employment and financial interests shall be submitted on a standard form "Report of Financial Interests," copies of which are available in the Personnel Office of the Corporation.

The folowing rules shall be observed in preparing the statements:

(1) The interest, if any, of a spouse, minor child, or other member of the employee's immediate household is considered to be an interest of the Employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

(2) If any information required to be included on a Report of Financial Interests or supplementary report, including holdings placed in trust, is not known to the Employee but is known to another person, the Employee shall request that other person to submit information in his behalf.

(3) An employee is not required to submit in a report of Financial Interests or supplementary report any information relating to the Employee's connection with, or interest in, a professional society, a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise.

(d) *Confidentiality of Employee's Statements.* The Corporation shall hold each Report of Financial Interests, and each supplementary report, filed under this section in confidence. To insure this confidentiality, the Ethics Officer is designated to review and retain the reports, and shall be responsible for the maintenance of the reports in confidence, and he shall not allow access to, or allow information to be disclosed from a report except as necessary to carry out the purpose of this section. The corporation shall not disclose information from a report except as the Chairman may determine for good cause shown. All reports filed under this section shall be retained by the Corporation for six years, after which period a report shall be destroyed, unless needed in an ongoing investigation.

(e) *Effect of Employee's Reports on Other Requirements.* The reports required by this section are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, or regulation. The submission of a report or supplementary report by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, or this policy.

(f) Review of Statements and Remedial Action. All reports submitted under this section shall be reviewed by the Ethics Officer. If, in the judgment of the Ethics Officer, any report discloses a conflict of interest, or an apparent or potential conflict of interest between the interests of the Employee and the performance of such Employee's duties at the Corporation, the ethics Officer shall consult with such Employee and shall take such action as he deems appropriate to resolve such conflict, or apparent or potential conflict. If the Ethics Officer is unable to resolve the situation, he shall report the matter to the Chairman who shall then take appropriate remedial action to end such conflict or potential conflict, or apparent conflict. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Disqualification for a particular assignment;

(3) Divestment by the Employee of his conflicting interest; or

(4) Disciplinary action.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws and regulations.

(g) Exclusions From Reporting Requirements.

(1) Any Employee who considers that his or her position has been improperly included among those requiring the submission of the reports required by this section may submit the matter for review by the Ethics Officer.

(2) Employees in positions that meet the criteria in subsection (a) of this section may be excluded from the reporting requirements of this section if the Chairman determines that:

(a) The duties of a position are at such a level of responsibility that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote; or

(b) The duties of a position are at such a level of responsibility that the submission of a report is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect of the duties of the position on the integrity of the Corporation.

Part 6. Post-Employment Conflicts of Interest.

Section 19. Post-Employment Conflicts of Interest

(a) *Statutory.* Section 118(b) and 118(d) of the Act relate to post-employment activities of Directors and Employees. Section 118(b) applies to former Federal employees employed by the Corporation and provides that the laws governing post-Federal employment shall not apply to them while acting on behalf of the

Corporation. Section 116(d) provides that section 207(a) of title 18 of the United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former Directors, officers and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government, and also provides that section 207(a) shall apply to the Corporation as if it were an agency of the executive branch of the United States Government. In addition, under the Ethics in Government Act of 1978 the Office of Government Ethics within the Office of Personnel Management has supervisory jurisdiction over the administration of subsection (j) of section 207 throughout the Government. Pursuant to the 1978 Act, the OPM has, on the recommendation of the Director of OGE and in consultation with the Attorney General, issued regulations in 5 CFR Part 737 to guide agencies (including the Corporation) in exercising the administrative enforcement authority contained in Section 18 U.S.C. 207(j), and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207(a) is the exclusive responsibility of the Attorney General.

(b) *Purpose.* It is the purpose of this section to provide guidelines for Directors and Employees within the framework of 18 U.S.C. 207(a) and the OPM regulations. Reference should be made to the regulations, and the Ethics Officer should be consulted, for detailed statements of the law, definitions, exemptions, limitations and illustrative examples.

(c) *Guidelines.* The statute bars certain acts by former Directors and Employees, which may reasonably give the appearance of making unfair use of prior Corporation employment and affiliations. It does not, however, bar any former Director or Employee, regardless of rank, from employment with any private or public employer after he or she has left the Corporation's employ. Nor does it bar employment even on a particular matter in which the former Director or Employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Rather, the specific prohibitions arise from a combination of the following factors which in any given situation may include the following: (1) The nature and extent of the involvement in a particular matter by the individual while employed by the Corporation, (2) the identity of the particular matter with which the individual dealt while employed by the Corporation with the same matter with respect to which he or she may represent others after leaving the Corporation, (3) the manner in which the former Director or Employee appears before or communicates with the Corporation or the U.S. Government, and (4) the position occupied by the individual while in the Corporation's employ.

(d) Permanent restriction against any former Director or Employee acting as representative as to a particular matter in which the Director or Employee personally and substantially participated.

(1) The Prohibition of 18 U.S.C. 207(a). No former Director or Employee after terminating employment with the Corporation shall knowingly act as agent or attorney for, or otherwise represent any other person, in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (1) to the Corporation or otherwise to the United States, (2) in connection with any particular Corporation matter involving a specific party, and (3) in which matter such Director or Employee participated personally and substantially while with the corporation.

(2) Pertinent combination of factors involved in this prohibition include the following:

(a) Since the prohibition has no time limit, it raises a permanent bar to the proscribed activity;

(b) The former Employee is prohibited from acting as agent or attorney for any other person, but not for himself;

(c) It prohibits representation by an "appearance" even if only in a technical procedural sense regardless of physical presence;

(d) It also prohibits any communication with intent to influence;

(e) The prohibition against an appearance or communication extends to other departments, agencies and courts of the United States and is not limited to the Corporation;

(f) The representation by the former Employee must be in connection with a particular matter involving specific parties; and

(g) The particular matter must be one in which the former Employee participated personally and substantially while in the Corporation's employ.

(3) The prohibition in paragraph (1) of this subsection shall not apply to:

(a) Any appearance, attendance, or communication by a former Director or employee who is employed by and acting on behalf of the United States; or

(b) Any appearance or communication by the individual where such appearance or communication is made in response to a subpoena, or concerns any matter of an exclusively personal and individual nature such as pension benefits.

(e) Exemption for persons with special qualifications.

(1) A former Director or Employee may be exempted from the prohibitions of 18 U.S.C. 207(a) and this section if the Chairman, in consultation with the Director of OGE, executes a certification published in the **Federal Register** that such individual has outstanding qualifications in a scientific, technological, or other technical discipline and is acting with respect to a particular matter which requires such qualifications and that the national interest would be served by such individual's participation.

(2) This exemption shall be used only in instances where the former Director or Employee's services are needed on so continuous and comprehensive a basis that other procedures for the communication of technical information designed to isolate the individual from other aspects of the matter would be burdensome and impractical.

(3) The exemption shall be effective upon the execution of the certification required by paragraph (1), provided that it is transmitted to the **Federal Register** for publication.

(f) Testimony and statements subject to penalty of perjury. A former Corporation Director or Employee may make any statement required to be made under penalty of perjury.

(g) Administrative Enforcement.

(1) Information of Violation. On receipt of information regarding a possible violation of 18 U.S.C. 207(a) and after determining that such information appears substantiated, the Chairman or the Ethics Officer, if so directed by the Chairman, shall expeditiously provide such information along with any comments or pertinent Corporation policy to the Director of the OGE and to the Criminal Division, Department of Justice. Any continuing investigation by the Corporation on administrative action shall be coordinated with the Department of Justice to avoid prejudicing criminal proceedings unless the Department of Justice advises the Corporation that it does not intend to initiate criminal prosecution (18 U.S.C. 207, 5 CFR 737.27).

(2) Initiation of Administrative Proceedings. Whenever the Corporation

has determined after appropriate review that there is reasonable cause to believe that a former Director or Employee has violated any of the provisions of 18 U.S.C. 207(a) or 5 CRR 737, it may initiate an administrative disciplinary proceeding by providing the former Director or Employee with notice as defined in the statute. Prior to a determination of sufficient cause to initiate an administrative disciplinary hearing, all records under the Corporation's control relating to allegations of a violation shall be confidential, subject to applicable law (18 U.S.C. 207, 5 CFR 737.27).

(3) Notice and Hearing. The notice of an administrative disciplinary proceeding and any hearing pursuant to such notice requested by the former Director or Employee shall follow the procedures set forth in 5 CFR 737.27(a) (3), (4), (5), (6), (7) and (8).

(4) Administrative Sanctions. Actions which may be taken by the Corporation in the case of an individual who is found in violation of 18 U.S.C. 207(a) or 5 CFR Part 737, after a final administrative decision, or who failed to request a hearing after receiving adequate notice, include: (1) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Corporation on any matter of business for a period not to exceed five years, which may be accomplished by directing corporation Employees to refuse to participate in such appearance or to accept any such communications, or (2) taking other appropriate disciplinary action.

Part 7—Procedures and Standards of Conduct Applicable to Consultants.

Section 20. Procedures Applicable to Consultants

(a) This section sets forth procedures which shall be observed in appointing and utilizing consultants.

(1) All individuals and organizations retained to perform consulting services for the Corporation shall be required to read the "Standards of Conduct of Consultants to the Corporation" set forth in subsection (b) of this Section.

(2) Prior to appointment or retention prospective consultants shall be required to make disclosure of any financial interest in and any affiliation with any person, firm, or organization listed on the list of participating organizations published by the Ethics Officer pursuant to section 6(b)(5) of this policy. "Affiliation" includes, but is not limited to service as an employee, officer, member, owner, director, trustee, advisor, or consultant.

(3) No consultant having any financial interest in or affiliation with any Participating Organization shall be retained by the Corporation, unless the Ethics Officer determines in writing (1) that the financial interest or affiliation is too remote or too inconsequential to affect the integrity of the services which the Corporation may expect from the consultant or (2) that satisfactory arrangements have been made to obviate any conflicts of interest on the part of such consultant. This determination shall be made after consultation with the Employee proposing retention of the consultant.

(4) Each person who is retained as an individual to provide consulting services on a full-time, part-time, or intermittent basis for more than 60 days in a calendar year at a rate of compensation equivalent to or above the rate payable for grade GS–16 of the General Schedule prescribed by 5 U.S.C. 5332 shall file a financial disclosure report in accordance with section 18 of this Policy. Individual consultants compensated at a rate less than the rate payable for grade GS–16 but equivalent to or above the rate payable for GS–13 of such schedule whose services for the Corporation meet the criteria set out in Section 19(a) shall file a "Report of Financial Interests" in accordance with section 19 of this policy.

(5) The Ethics Officer shall advise those authorizing the services of consultants of the requirements of this section, and each officer of the Corporation shall observe such requirements in engaging consultant services for the Corporation.

(b) Standards for Conduct for Outside Consultants. The following is intended for the guidance of consultants retained to provide services to the Corporation.

(1) Inside information. A consultant must conduct himself in a manner devoid of the slightest suggestion that he is exploiting his Corporation consultancy for private advantage. Thus, a consultant must not, on the basis of any information gained in the course of his activities with the Corporation invest or recommend investment in any commodities, land or securities. Moreover, he should be careful in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his activities with the Corporation.

(2) It is important for a consultant to have access to Corporation data pertinent to his duties and to maintain familiarity with the Corporation's plans and programs and the requirements thereof, within the area of his responsibility. Where such data have been made generally available to the public, there is generally no impropriety in a consultant's utilizing such information in the course of his non-Corporation activities after it has become so available. However, a consultant may, in addition, acquire information which is not generally available to those outside the Corporation. In the event, he may not use such information for the benefit of a business or other entity by which he is employed or retained or in which he has a financial interest.

(3) Consultants must also be alert to section 163(a)(4) of the Energy Security Act which makes it a criminal offense for anyone to give to any person any unauthorized information concerning any future action or plan of the Corporation, or having such knowledge to invest or speculate, directly or indirectly, in the securities or property of any company, bank, or corporation receiving financial assistance from the Corporation.

(4) Consultants and advisors are encouraged to confer with the Ethics Officer and other appropriate persons at the Corporation to assist them in the identification of information not generally available and in the resolution of any actual or potential conflict between duties to the Corporation and to other employers or clients.

(5) Occasionally an individual who becomes a consultant to the Corporation may, subsequent to his designation as such, be requested by another party to act in a similar capacity. In some cases the request may give the appearance of being motivated by the desire of the other party to secure inside information. Where the consultant has reason to believe that the request for his services is so motivated, he should make a choice between acceptance of the tendered employment and continuation of his Corporation consultancy. In such circumstances he may not engage in both.

(6) A consultant shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business, or financial ties.

(c) Statutory provisions. The attention of all Corporation consultants is directed to the following statutory provisions:

(1) The prohibition contained in Section 161 of the Act (42 U.S.C. 8761) relating to false statements in connection with certain Corporation activities.

(2) The prohibition contained in section 162 of the Act (42 U.S.C. 8762) relating to forgery of Corporation instruments and agreements.

(3) The prohibition contained in section 163 of the Act (42 U.S.C. 8763) relating to misappropriation of funds and unauthorized activities in relation to the Corporation's business.

(4) The prohibition contained in section 164 of the Act (42 U.S.C. 8764) relating to conspiracy to commit acts made unlawful by sections 161, 162, or 163 of ther Act;

(5) The prohibition contained in section 171(b) of the Act (42 U.S.C. 8771(b)) relating to the exercise of the Corporation's authorities;

(6) The Prohibition contained in section 121(c) of the Act (42 U.S.C. 8717(c)) and 18 U.S.C. 1905 relating to the disclosure of confidential information;

(7) The Prohibition contained in in 18 U.S.C. 201 relating to the solicitation or receipt of anything of value for or because of an official act;

(8) The Prohibition contained in section in 18 U.S.C. 1719 relating to misuse of the franking privilege.

Synthetic Fuels Corporation.
Dated: May 13, 1982.
Edward E. Noble,
Chairman of the Board of Directors.

[FR Doc. 82-13412 Filed 5-17-82; 8:45 am]
BILLING CODE 6800-00-M

SMALL BUSINESS ADMINISTRATION

Minority Small Business and Capital Ownership Development Assistance; Minority Group Consideration; Asian Indian Americans

Pursuant to the provisions of Section 8(a) of the Small Business Act, 15 U.S.C. 637(a) et. seq., as amended, and 13 CFR 124. 1–1 (c)(3)(iv)(A), notice is hereby given that the Small Business Administration (SBA) has received a request that it consider Asian Indian Americans to be a minority group which has members who are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for SBA's section 8(a) program.

Asian Indian Americans are defined for the purposes of the 8(a) program as U.S. Citizens who trace their national origin to India. SBA has decided that the request is adequately documented and makes a prima facie showing that the group has suffered chronic racial or ethnic prejudice or cultural bias, and has decided to publish this notice of its intent to consider the group to have members who are socially disadvantaged because of their identification with the group for purposes of eligibility for the section 8(a) program.

SBA shall receive comments and information from the public, on or before June 18, 1982, which tend to show:

(1) If the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control,

(2) If the group has generally suffered from prejudice or bias,

(3) If such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95–507, 96–302, and

(4) If such conditions have produced impediments in the business world for members of the group over which they have no control and which are not common to all small business people.

All such comments and information should be submitted to:

Mr. Robert L. Wright, Jr., Associate Administrator, Minority Small Business and Capital Ownership Development, U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Subsequent to the close of the receipt of information on this matter, SBA will consider the information received in response to this notice and will publish its decision on the group's request in the form of a Notice in the Federal Register, pursuant to the provisions of 13 CFR 124.1–1(C)(3)(iv)(D).

Dated: May 11, 1982.
James C. Sanders,
Administrator.

[FR Doc. 82-13366 Filed 5-17-82; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2038]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the county of Orange, California constitutes a disaster loan area because of damage resulting from a fire beginning on April 21, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 24, 1982, and for economic injury until January 24, 1983, at: Small Business Administration, 350 S. Figueroa Street, 6th Floor, Los Angeles, California 90071, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	15%
Homeowners without credit available elsewhere	7⅛
Businesses with credit available elsewhere	16⅛
Businesses without credit available elsewhere	8
Businesses (EIDL) without credit available elsewhere	8
Other (non-profit organizations including charitable and religious organizations)	11⅛

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59006)

Dated: April 28, 1982.
J. C. Sanders,
Administrator.

[FR Doc. 82-13413 Filed 5-17-82; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-0165]

White River Capital Corp.; Issuance of a Small Business Investment Company License

On December 15, 1981, a notice was published in the Federal Register (46 FR 61383) stating that an application has been filed by White River Capital Corporation, 500 Washington Street, Columbus, Indiana 47201, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)) for a license as a small business investment company.

Interested parties were given until close of business December 31, 1981, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0165 to White River Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 11, 1982.
Robert G. Lineberry,
Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-13414 Filed 5-17-82; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Boards; Appointment of Members

AGENCY: U.S. Customs Service.

ACTION: General notice; correction.

SUMMARY: This document corrects a name of the list of members of the U.S. Customs Services Performance Review Board which appeared at page 18209 in the Federal Register of Wednesday, April 28, 1982 (47 FR 18209).

FOR FURTHER INFORMATION CONTACT: Alexander Faison, Director, Office of Human Resources, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 3417, Washington, D.C., (202) 566-5563.

The following correction is made to the document:

On page 18209, the name and title "Edward F. Kwas—Assistant Regional Commissioner, (Operations) U.S. Customs Service", which appears in the list at the end of the first paragraph under the caption "Supplementary Information", is removed, and the name and title "George Estengo, Deputy Assistant Secretary (Administration), Department of the Treasury" is inserted in its place.

Dated: May 13, 1982.

Alexander Faison,

Director, Office of Human Resources.

[FR Doc. 82-13423 Filed 5-17-82; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Dept. Circular Public Debt Series—No. 13-82]

Treasury Notes for May 31, 1984, Series S-1984

May 13, 1982.

I. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $5,500,000,000 of United States securities, designated Treasury Notes of May 31, 1984, Series S-1984 (CUSIP No. 912827 NF 5). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated June 1, 1982, and will bear interest from that date, payable on a semiannual basis on November 30, 1982, and each subsequent 6 months on May 31 and November 30 until the principal becomes payable. They will mature May 31, 1984, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, May 19, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 18, 1982, and received no later than Tuesday, June 1, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hours, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subjects to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will

be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.q., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressely reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Tuesday, June 1, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 27, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to our required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interm certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-13722 Filed 5-17-82; 11:40 am]

BILLING CODE 4810-40-M

Notices

Federal Register
Vol. 47, No. 96
Tuesday, May 18, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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	Items
Consumer Product Safety Commission	1
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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, May 20, 1982.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Baby Walkers*
The staff will brief the Commission on the status of CPSC staff activities concerning baby walkers, including CPSC engineering tests conducted to evaluate the stability of currently available baby walkers.
2. *Infant Strangulations*
The staff will brief the Commission on alternative strategies to address hazards of entanglement strangulation of young children.
3. *Infant Suffocations*
The staff will brief the Commission on infant suffocations associated with plastic materials and on possible efforts to increase consumer awareness of this hazard.
4. *Expandable Baby Gates and Wooden Enclosures*
The staff will brief the Commission on CPSC staff activities regarding possible entrapment hazards associated with expandable baby gates and wooden enclosures.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–731–82 Filed 5–14–82; 1:36 pm]
BILLING CODE 6355–01–M

2

FEDERAL ELECTION COMMISSION

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 20, 1982 at 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

THE FOLLOWING CHANGES HAVE BEEN MADE IN THE OPEN MEETING:

Deletions—
Letter from Senator Mathias re Citizens' Research foundation and request from CFR re waiver of fees
Revision to debt settlement procedures
Addition—
Proposed legislative recommendations will be continued from the May 13, 1982 meeting.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer Telephone: 202–523–4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S–732–82 Filed 5–14–82; 2:24 pm]
BILLING CODE 6715–01–M

3

FEDERAL RESERVE SYSTEM
Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 20438, May 12, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, May 17, 1982.

CHANGES IN THE MEETING: Addition of the following closed item to the meeting:

Issues relating to bankers' acceptances in connection with the Board's statement on H.R. 6016, Bank Export Services Act.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: May 14, 1982.

James McAfee,
Assistant Secretary of the Board.

[S–733–82 Filed 5–14–82; 3:27 pm]
BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM
Board of Governors.

TIME AND DATE: 10 a.m., Tuesday, May 25, 1982.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve Systems employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 14, 1982.

James McAfee,
Associate Secretary of the Board.

[S–734–82 Filed 5–14–82; 3:26 pm]
BILLING CODE 6210–01–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–13]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 20066, May 10, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, May 20, 1982.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below:

MATTERS TO BE CONSIDERED:

1. *Proposed Board Order:* Safety Studies Program.
2. Safety Studies Proposals.
3. *Brief of Aviation Accident:* U.S. Air Carrier, File No. 1–0015; Texas International Airlines, Baton Rouge, Louisiana, March 15, 1980.
4. *Opinion and Order:* Administrator v. Alphin, Dkt. SE–4224; disposition of respondent's petition for reconsideration and rehearing.
5. *Opinion and Order:* Administrator v. Blackburn, Dkt. SE–5282; disposition of the appeals of both parties.
6. *Opinion and Order:* Administrator v. Garber, Dkt. SE–5252; disposition of respondent's appeal.
7. *Opinion and Order:* Administrator v. Honan, Dkt. SE–5192; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION:
Sharon Flemming, (202) 382–6525.

May 13, 1982.

[S-729-82 Filed 5-14-82; 10:00 am]

BILLING CODE 6810-55-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of May 17, 1982.

PLACE: Commissioner' Conference Room, 1717 H St., NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Wednesday, May 19:*

10:00 a.m.:

Status Report on Capability of Reactors to go to Cold/Hot Shutdown (public meeting)

Thursday, May 20:

10:00 a.m.:

Discussion of Court Decision on S-3 Rule (closed—Exemption 10)

2:00 P.M.:

Briefing on Generic Evaluation of First-Round Exercises and Appraisals (NTOLs and ORs)— (public meeting)

Friday, May 21:

10:00 a.m.:

Discussion of Enforcement Action (closed—Exemption 5)

1:00 p.m.:

Briefing on Design Basis Threat (closed—Exemptions 1 & 3)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410

Walter Magee,

Office of the Secretary.

May 12, 1982.

[S-730-82 Filed 5-14-82; 10:00 a.m.]

BILLING CODE 7590-01-M

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federal register

Tuesday
May 18, 1982

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Mining Control and Reclamation Act of 1977; Kentucky

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Conditional Approval of the Permanent Regulatory Program Submission from the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On December 30, 1981, the Commonwealth of Kentucky resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* This follows an initial approval in part and disapproval in part of the proposed program which was published in the **Federal Register** on October 22, 1980 (45 FR 69940–69970). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

Only those portions of the Commonwealth's original submission which were initially not approved or which were changes are considered in this decision. This rule grants conditional approval of the Kentucky permanent regulatory program.

A new Part 917 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective May 18, 1982. This conditional approval will terminate as specified in 30 CFR 917.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 917.11.

ADDRESSES: See "Supplementary Information" for addresses where copies of the Kentucky program and administrative record on the Kentucky program are available.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240. Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

Availability of Copies.

Copies of the Kentucky program and the administrative record on the Kentucky program are available for public inspection and copying during regular business hours at:

Administrative Record Room, Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C. 20240. Telephone: (202) 343–7896

Administrative Record Room, Office of Surface Mining, Region II, 530 South Gay Street SW., Suite 500, Knoxville, TN 37902

Bureau of Surface Mining, Reclamation and Enforcement, Capital Plaza Tower, Sixth Floor, Frankfort, KY 40601

Bureau of Surface Mining, Reclamation and Enforcement, Old TB Facility, Laffoon Street, Madisonville, KY 42431

Bureau of Surface Mining, Reclamation and Enforcement, 1632 East Cumberland Avenue, Middlesboro, KY 40965

Bureau of Surface Mining, Reclamation and Enforcement, Howell Building, Route 2, Box 500, Jackson, KY 41339

Bureau of Surface Mining, Reclamation and Enforcement, 431 South Lake Drive, Prestonburg, KY 41653

Bureau of Surface Mining, Reclamation and Enforcement, 165 South Mayo Trail, Pikeville, KY 41051

Bureau of Surface Mining, Reclamation and Enforcement, KY 80, Reclamation Building, London, KY 40601

Bureau of Surface Mining, Reclamation and Enforcement, 620 West Main Street, Grayson, KY 41143

Background

The general background on the permanent program, the program approval process, and the Kentucky program submission were discussed in the **Federal Register**, October 22, 1980 (45 FR 69940–69942). Subsequent to that **Federal Register** notice, amendments to the federal regulations were published December 12, 1980 (45 FR 82084–83100); July 17, 1981 (46 FR 37233); September 29, 1981 (46 FR 47720), October 8, 1981 (46 FR 50018–50019); October 28, 1981 (46 FR 53376) and December 7, 1981 (46 FR 59934–59936). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended pending further rulemaking August 19, 1981 (46 FR 42063).

Also, in the October 22, 1980 **Federal Register** notice, the Secretary announced his partial approval and partial disapproval of the Kentucky program. The rules and legislative provisions in the Commonwealth's initial submission were approved with the exceptions noted under the heading "SECRETARY'S DECISION", October 22, 1980 (45 FR 69964–69970).

Background on the Kentucky Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the Commonwealth of Kentucky originally had 60 days from the date of publication of the Secretary's partial approval decision on October 22, 1980, to resubmit a revised program for consideration. On October 31, 1980, the Kentucky Circuit Court for Martin County enjoined the Kentucky Department for Natural Resources and Environmental Protection (DNREP) from submitting or resubmitting to the Office of Surface Mining (OSM) the Kentucky Permanent State Program. On October 31, 1981, acting upon a motion by Kentucky the Court terminated the suspension. The State submitted its revised program for consideration on December 30, 1981. Announcement of Kentucky's resubmission was made in newspapers of general circulation within the Commonwealth of Kentucky and published in the **Federal Register** on January 7, 1982 (47 FR 820–822). That **Federal Register** notice also announced a public comment period extending to February 8, 1982 and a public hearing which was held on January 26, 1982, in Lexington, Kentucky. Kentucky submitted modifications to the resubmission on February 22 and a public comment period was opened on these modifications from February 24 through March 10, 1982.

Public disclosure of comments by federal agencies was made on April 12, 1982 (47 FR 15605–15606). The Administrator of the Environmental Protection Agency transmitted her written concurrence on the Kentucky program.

The Regional Director completed his program review on April 1, 1982, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

The Director recommended to the Secretary that the Kentucky program be conditionally approved.

The statement of the basis and purpose for the Secretary's decision to conditionally approve Kentucky's program consists of this notice and the October 22, 1980 **Federal Register** notice announcing the Secretary's initial decision. The Kentucky program consists of the formal submission of February 29, 1980, (Administrative Record No. Ky–61–A), as amended on June 12, 1980, May 14, 1980, July 18, 1980,

July 22, 1980, July 28, 1980 and December 30, 1981 and February 22, 1982 (Administrative Record Nos. Ky–163, 225, 238, 262, 413 and 438).

Throughout the remainder of this notice, "Kentucky program" or "Kentucky submission" is used to mean the documents cited above together with those parts of the initial submission partially approved on October 22, 1980. The term "resubmission" only refers to those portions of the Kentucky program resubmitted on December 30, 1981 (Administrative Record Ky–413), as modified on February 22, 1982. The title, "Response to October 1980 Findings" refers to that portion of the program resubmission of December 30, 1981, in which DNREP addressed the initial Findings on the program submission. References to "Explanations for Recent Revisions" means that portion of the program resubmission of December 30, 1981, in which DNREP addressed substantive changes to regulations which do not relate to a previous Finding by the Secretary. Citations to KRS and KAR are the Kentucky Revised Statutes and the Kentucky Administrative Rules, respectively.

The Secretary's Findings below are organized to follow the order set forth in section 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program. When the Secretary announced his initial decision on the Kentucky program, he included with the analysis his findings on the program provisions. The resolution of the previous findings which requested action from the State are addressed within the new findings. Previous findings such as 1.1 (45 FR 69942) and 13.13 (45 FR 69949) which were positive in nature and did not require further action are not rediscussed in this decision. Where appropriate, the reader is referred to specific findings in the October 22, 1980, **Federal Register** notice for a complete discussion of the issues.

Secretary's Findings

Section 503(a)

In accordance with section 503(a) of SMCRA the Secretary finds that Kentucky has the capability to carry out the provisions of SMCRA. Findings made in accordance with Section 503(a) of SMCRA are set forth in Findings 1 through 7 below:

Finding 1

The Secretary finds that Kentucky has laws which provide, except as noted in the findings below, for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Kentucky in accordance with SMCRA. The issues underlying this finding are analyzed as follows:

1.1 Previously (Finding 1.2(e) October 22, 1980, **Federal Register**, 45 FR 69944), the Secretary could find no apparent Kentucky counterpart to Section 520(e) of SMCRA, the savings clause. However, the Secretary is now satisfied that Kentucky's response, to the original finding, in the form of an opinion by the General Counsel of DNREP, has adequately addressed the problem. (See "Response to October 1980 Findings", Administrative Record KY–413.) The addition of a savings clause comparable to Section 520(e) of SMCRA is unnecessary, since State common law and other statutory remedies remain in effect unless specifically abrogated, and KRS 350.250 contains no such express abrogation.

1.2 KRS 350.062(8) classifies abandoned mine land (AML) projects as government-financed projects; which, by the Secretary's previous interpretation (Finding 1.4, October 22, 1980, **Federal Register** 45 FR 69944), would categorically exempt the projects from environmental performance standards. The amendments to KRS 350.010(1) and 350.062(8) made by the 1980 General Assembly and interpreted by the General Counsel, according to the Kentucky response to this finding (see "Response to October 1980 Findings", Administrative Record KY–413), are in accordance with SMCRA Section 101 *et seq.* and the federal regulations. It is understood that the statutory provisions as amended and interpreted exempt from the performance standards only the coal extracted as an incidental part of AML reclamation projects.

1.3 As discussed in Finding 1.2 of the October 22, 1980, **Federal Register** notice (45 FR 69943), the Secretary is unable to find KRS 350.250, Citizen Suit, to be consistent with the requirements of SMCRA for the following reasons:

1.3(a) As discussed in Finding 1.2(a) of the October 22, 1980, **Federal Register** (45 FR 69943), KRS 350.250 is not in accordance with section 520(a) of SMCRA because the Kentucky language creates a right of action only for "any citizen of the Commonwealth" whereas SMCRA creates a right of action for "any person having an interest which is or may be adversely affected."

In the program resubmission Kentucky submitted no new material but requested that the Secretary reconsider the legal opinion submitted by the General Counsel of DNREP prior to the initial decision. This legal opinion and the concerns with it are summarized in the October 22, 1980 **Federal Register** (45 FR 69943) and are not repeated here. The Secretary has reviewed the original information and finds no basis to reverse the initial decision.

As stated in the initial decision, the Secretary believes that the language, "Any citizen of this Commonwealth having knowledge * * *" is broader than that required by Section 520 of SMCRA in that it does not require, "an interest which is or may be adversely affected," but it is narrower in excluding citizens of other states, foreign corporations, aliens, and possibly even domestic corporations. Therefore, the Secretary finds that the latter feature renders KRS 350.250 not in accordance with SMCRA.

1.3(b) On October 22, 1980 (45 FR 69943) the Secretary determined in finding 1.2(c) that KRS 350.250(3) was not in accordance with section 520 of SMCRA. Kentucky's statute provides that any person who is or may be adversely affected by a violation of the regulatory program may bring a "civil action" in State Circuit Court. Section 520 of SMCRA creates two separate and distinct causes of action, one to compel compliance and one for money damages, making it possible to obtain an injunction and monetary damages in a single legal action. After an analysis of Kentucky law, the Secretary has concluded that Kentucky's statute does not create two separate causes of action, but merely incorporates the common law which allows equitable or injunctive relief only in "extraordinary" circumstances when monetary damages are found to be inadequate.

The Kentucky Rules of Civil Procedure, at Rule 2 (CR2), state that, "There shall be one form of action to be known as 'civil action.'" On its face, this rule seems to support the State's argument that by using the term "civil action" in its statute, all types of causes of action available at common law and their related remedies are made available. The case law construing this rule, however, is otherwise. In *Johnson v. Holbrook*, 302 SW2d 608, the Court stated, "Although one form of action is provided by CR2, this merely signifies that legal and equitable claims or defenses may be merged in a pleading * * * [t]his Rule * * * while permitting legal and equitable claims or defenses to be fused for purely procedural purposes, did not intend to abolish, and certainly [was] not intended to abolish, the time-honored distinction between remedies applicable to a legal cause of action or to one sounding in equity." 302 SW2d at 610.

One of the distinctions between the legal remedy of damages and the

equitable remedy of injunction is that an injunction is considered an extraordinary remedy which will not be granted unless remedies at law are unavailable or inadequate. *See Travis* v. *Pennyrile Rule Electric Cooperative*, 399 F.2d 726; *Shotz* v. *American Surety Co. of New York*, 295 SW2d 809; and *Collins* v. *Commonwealth*, 324 SW2d 406. In *Collins*, 324 SW2d at pages 408, 409, the Court cites 28 Am. Jur. 233, quoting, " 'The applicable rule, reaffirmed in almost every case dealing with the matter, is that *in the absence of some positive provision of the law to the contrary*, an injunction will not be granted in cases where there is a choice between the ordinary processes of law and the extraordinary remedy by injunctions, and the remedy at law is sufficient to furnish the injured party the full relief to which he is entitled in the circumstances.' " (Emphasis added.)

In its present form, Kentucky's statute does not contain any positive provision which would change this rule of law and allow a court to grant a plaintiff both monetary damages for his present injury and injunctive relief to prevent future injury. Section 520 of SMCRA changes the common law and creates two separate causes of action which allow a plaintiff to obtain full relief in one proceeding. A recent decision of the U.S. Supreme Court, *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 49 L.W. 4783, June 25, 1981, supports the proposition that specific causes of action and remedies must be provided for by express statutory language to be effective.

For the reasons stated above, the Secretary finds that § 350.250(3) is not in accordance with SMCRA.

Therefore, approval of the Kentucky program is conditioned upon a statutory amendment of KRS 350.250(3) providing that persons who bring suit in state circuit court due to a violation of the state surface mining regulatory program may recover both monetary damages and obtain injunctive relief in a single action.

1.3(c) Finding 1.2(d) of the October 22, 1980 Federal Register (45 FR 69949) determined that no Kentucky counterpart to section 520(c)(2), SMCRA, existed relative to intervention by both the Secretary of Interior and DNREP as a matter of right in citizen suits and that, as such, the Kentucky program was deficient. The Secretary has, upon further legal evaluation and reconsideration, determined that a reading of section 520(c)(2) of SMCRA does not support the proposition that a State program must provide for both intervention by the Secretary of the Interior and the state regulatory authority. A State program must allow for the intervention of one or the other, but not both. The Secretarial decision in Colorado program approved the Colorado statute which authorized intervention by the state regulatory authority but not by the Secretary of the Interior (December 15, 1980, 45 FR 82190).

However, Kentucky has not submitted any material establishing that DNREP has the right of intervention. The legal opinion furnished by the State relative to the original finding states that the State has on objection to intervention as a matter of right being given to DNREP. (See Response to October 1980 Findings, Finding 1.2(d), Administrative Record Ky–413.) The document does not address whether DNREP has such a right without a modification to the statute. Therefore, program approval is conditioned upon the enactment of statutory provisions in accordance with SMCRA section 520(c) relative to intervention by the regulatory authority or the submission of a legal opinion which demonstrates that DNREP has such right of intervention.

1.4 Section 526(c) of SMCRA sets forth procedural requirements and substantive criteria for the granting of temporary relief from any order or decision of the Secretary, pending judicial review. The substantive criteria are: (a) that the moving party demonstrate a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and (b) that temporary relief will not adversely affect the public health or safety or cause significant, imminent environmental harm.

KRS 350.032(2), on the other hand, incorporates by implication the common law standards for injunctive relief applicable in most State courts: (a) the moving party demonstrates that he will suffer immediate and irreparable injury unless temporary relief is granted; (b) the various equities, including harm to the moving party, possible detriment to the public interest, and harm to the opposing party, favor the granting of temporary relief; and (c) the moving party has raised a "substantial question" as to the merits of the dispute. *See Maupin* v. *Stansbury*, 575 SW2d 695 (Ky. Ct. of App. 1978).

The October 22, 1980, Secretarial Finding (1.3) concluded that KRS 350.032(2) is not in accordance with section 526(c) of SMCRA because neither of the substantive federal criteria is required to be met under state law. The Secretary finds no reason to reverse this decision. Therefore, approval of Kentucky's State Program is conditioned on the State's adoption of an amendment to KRS 350.032(2) that incorporates temporary relief criteria that are in accordance with section 526(c) of SMCRA.

Finding 2

The Secretary finds that Kentucky has laws which provide sanctions for violations of state laws, regulations or conditions of permits which meet the minimum requirement of SMCRA. The issues underlying this finding are analyzed as follows:

2.1 The Secretary was previously concerned (Finding 2.1, 45 FR 69944) that Kentucky's use of the term "order of suspension" in KRS 350.130(1) is ambiguous and might have an adverse effect on Kentucky's authority to issue summary cessation orders under KRS 350.130 (1) and (4). Kentucky states that the use of this term is superfluous and is the result of language contained in the present statute's predecessor. Kentucky states that DNREP intends to propose legislation eliminating the use of the term "order of suspension." (See "Response to October 1980 Findings", Administrative Record Ky–413.)

Kentucky does not interpret KRS 350.130(1) to require a hearing prior to the issuance of a summary cessation order. Therefore the Secretary finds the concerns in Finding 2.1 of the October 22, 1980, Federal Register resolved.

2.2 The Secretary previously requested further information relative to judicial practice in order to determine whether KRS 350.032(2) is consistent with Section 526(b) of SMCRA in regard to a trial *de novo* (Finding 2.2, October 22, 1980, Federal Register, 45 FR 69944).

Kentucky's response satisfactorily allays all previous concerns (see "Response to October 1980 Findings", Administrative Record KY–413). Kentucky has submitted material demonstrating that its highest court has consistently held that, where there is an opportunity to be heard before the administrative agency and the statute does not specifically authorize *de novo* review, then *de novo* review is not available. The State cites *Barner v. Turner*, 280 SW 2d 185 (KY 1955); *Department of Economic Security v. Mills*, 391 SW 2d 383 (KY 1965); *Trimble County Board of Supervisors v. Mullikin*, 438 SW 2d 524 (KY 1968); *Department of Public Saftey v. Thomas*, 467 SW 2d 335 (KY 1971).

KRS 350.032 expressly states that an action will be remanded to the administrative forum if the court determines that additional evidence need be taken. Further, a copy of the record must be filed with the appeal,

and no arguments may be raised on an appeal which were not raised at the hearing before the agency. Clearly, then, Kentucky law not only does not specifically authorize *de novo* review; in fact, State law prohibits it. The Secretary, therefore, finds the Kentucky Program provision is in accordance with SMCRA section 526(b).

2.3 As discussed in Finding 2.4 of the October 22, 1980, **Federal Register** (45 FR 69944), the Secretary determined that KRS 350.028(4) was ambiguous and arguably in conflict with SMCRA because it was possible to interpret the Kentucky law so that only a civil penalty would be the proper sanction for a pattern of violations. The Secretary found that an amendment was required unless the State submitted a legal opinion demonstrating that this section is consistent with Sections 521(a)(4) and 518 of SMCRA. A review of this section in its final form as codified shows a material change in the text which renders this section unambiguous. The Secretary, therefore, finds the previous concerns resolved.

2.4 As discussed in Finding 2.5 of the October 22, 1980, **Federal Register** (45 FR 69944–69945), KRS 350.990(1) was found to be inconsistent with Section 518(h) of the Act and 30 CFR 845.15(b) as KRS 350.990(1) fails to provide for a mandatory $750 per day minimum penalty for the failure to comply with the requirements contained in the Kentucky equivalent of imminent danger cessation orders. KRS 350.990(1) provides for the minimum $750 per day penalty for the failure to abate a violation set forth in a notice of non-compliance (Kentucky's equivalent of a notice of violation). However, section 518(h) of the Act provides that the $750 minimum daily penalty for failure to abate a violation includes both a cessation order for imminent harm and a notice of violation.

Kentucky has revised its regulations regarding enforcement actions. The resulting system of citation of violations is different than the Federal system but is no less stringent than the Federal system and will result in the minimum daily fine being imposed whenever any violation is not abated within the proper time period. (See "Response to October 1980 Findings", Administrative Record Ky–413.)

Under the federal system, upon discovery of a violation, an inspector issues either a notice of violation or a cessation order which sets forth the period of abatement and required remedial action. If the violation is not corrected within the allowed period, section 518(h) of SMCRA requires an assessment of a fine of no less than $750 for each day the violation continue. Kentucky will always issue a notice of non-compliance and an order for remedial measures if a violation is discovered (405 KAR 12:020E, section 2(1) and (2)). If a violation is detected which causes or could cause an imminent harm, an order for cessation and immediate compliance will also be issued immediately by a Kentucky inspector (405 KAR 12:020E, section 3(1)(b) and (2)(b)). Required remedial actions will be set forth in both the order for cessation and immediate compliance and the notice of non-compliance and order for remedial measures.

The failure to abate an order for cessation and immediate compliance will also constitute a failure to abate a notice of non-compliance. The mandatory daily penalty provisions of KRS 350.990(1) are thus triggered providing that the failure to abate *either* a notice of non-compliance or an order for cessation and immediate compliance requires assessment of the $750 per day penalty. Thus, Kentucky's regulatory program provides for a minimum daily penalty for the failure to abate any violation issued.

KRS 350.990(1) also provides for the issuance of a maximum penalty of $5,000 per day for an order of cessation and immediate compliance issued when an imminent harm is detected (KRS 350.130(4)). 405 KAR 7:090E, section 10(1) makes it clear that this penalty is to be assessed in addition to the mandatory daily penalty assessed for failing to abate a violation cited in an order of cessation and a notice of non-compliance.

The Secretary expressed concern in Finding 2.5 that an order requiring the cessation of relevant operations in an imminent harm situation would not be issued promptly upon discovery of the imminent harm. Kentucky now describes such orders as "orders for cessation and immediate compliance" rather than "orders to abate and alleviate." 405 KAR 12:020E, section 3(b), as revised, provides that the authorized representative shall *immediately* issue an order for cessation and immediate compliance upon finding an imminent harm situation. Therefore, Kentucky has resolved the issues raised by the Secretary in the October 22, 1980 Finding by revising its regulations concerning issuance of citations.

2.5 As discussed in Finding 2.6 of the October 22, 1980, **Federal Register** (45 FR 69945), the Secretary was concerned that the language of KRS 350.465(3)(h) would unacceptably permit the regulatory authority to substitute penalties other than those provided for by KRS 350.900. The Secretary was especially concerned that KRS 350.465(3)(h) not be interpreted so as to eliminate, or provide exceptions to, the mandatory daily penalty for failing to abate a violation cited in a notice of non-compliance or in an imminent harm cessation order.

Kentucky regulations provide that mandatory daily penalties *shall* be imposed for the failure to abate a violation cited in a notice of non-compliance or order of cessation (405 KAR 7:090E, Section 10). Kentucky views this regulation as limiting the regulatory authority's discretion. (See "Response to October 1980 Findings", Administrative Record Ky–413.) In addition, KRS 350.465(4) provides that, "the Department shall not promulgate regulations which are inconsistent with (the Act)." Kentucky interprets this statute as prohibiting the exercise of Departmental discretion so that the mandatory daily penalties required by section 518(h) cannot be avoided.

The Secretary accepts Kentucky's assurances that KRS 350.465(3)(h) will be interpreted to require the mandatory imposition of penalties in accordance with the requirements of section 518(h) of SMCRA, and finds KRS 350.465 in accordance with the Federal requirements.

Finding 3

The Secretary finds that the State regulatory authority will have sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining – and reclamation operations in accordance with the requirements of SMCRA. Refer to Finding 30 for further discussion.

Finding 4

The Secretary finds that the State has laws which provide for effective implementation, maintenance and enforcement of a permit system meeting the requirements of SMCRA. Discussion of significant issues raised during the review of Kentucky statutes in relation to permitting follows:

4.1 As discussed in Finding 4.2 of the October 22, 1980, **Federal Register** (45 FR 69945), the Secretary was concerned that the language "where advisable" in KRS 350.440(1) would allow spoil disposal by end-dumping in situations prohibited under SMCRA. Kentucky has responded by pointing out that its regulations which implement KRS 350.440(1) are fully consistent with federal regulations and that the statutory language is necessary so that alternative spoil disposal methods, such

as durable rock fills, may be provided for by regulation. (See "Response to October 1980 Findings", Administrative Record KY–413.) The Secretary's previous concern is, therefore, resolved.

4.2 This finding pertains to permit denial provisions in KRS 350.085(5), which is the counterpart to Section 522(e)(1) of SMCRA (Congressionally designated areas). As discussed in Finding 4.4 of the October 22, 1980, Federal Register (45 FR 69946), the Kentucky provision contains the qualifying term "privately owned lands." The previous finding expressed concern that this term may not include state and municipally-owned lands.

Kentucky responds that municipal and state owned lands are included in the term "privately owned lands", citing the rationale in *National League of Cities v. Usery*, 95 S.Ct. 2465 (1976) and *United States v. California*, 297 U.S. 175 (1936). Kentucky maintains that a town or state holding lands within one of the described areas and permitting it to be surface mined would not be acting in a governmental capacity but rather in a proprietary one. Given this fact, that the municipality or State would be engaged in interstate commerce and not protected by the Tenth Amendment, and would be subject to the prohibitions in SMCRA. In view of the Kentucky statute's intent to be compatible with SMCRA, Kentucky believes that it is reasonable to interpret the phrase "privately owned lands" as including state and municipally owned land. (See "Response to October 1980 Findings", Administrative Record KY–413.)

The Secretary concludes that the Kentucky statutory provision is acceptable. Kentucky's rationale is that even if the state or municipality conducted surface mining or allowed surface mining to be conducted on its lands within these areas they would not be acting in a governmental capacity and that such mining would, therefore, be prohibited in the Kentucky statute. Furthermore, even if the state should authorize surface mining operations on state or municipal lands in one of the designated areas, the federal provision could and would make such operations illegal. Given the intent of the Kentucky statute to protect the designated areas and, under federal law, the illegal nature of any operations within these areas, no sound basis exists upon which to conclude that the Kentucky statute would jeopardize the protected areas. The language of the Kentucky statute is, therefore, in accordance with the language of the federal statute in this respect.

4.3 As discussed in Finding 4.5 of the October 22, 1980, Federal Register (45 FR 69946), the Secretary was concerned that KRS 350.060(15) would allow surface areas overlying underground mines to be categorically exempted from all bonding requirements. KRS 305.060(16) (formerly 350.060(15)) is acceptable as interpreted by the General Counsel in the Department's response to Finding 4.5. It is the Department's legal opinion that Section 350.060(16) "does not categorically exempt all surface areas overlying underground mines from bonding requirements, but rather it prohibits the *per se* inclusion of all areas overlying underground mines into the bonding requirements without any showing of either surface disturbance or surface impact from the underground workings." (See "Response to October 1980 Findings" Administrative Record Ky–413.) Kentucky's regulations provide for bonding of areas to be affected by surface operations and facilities, at 405 KAR 10:010E section 2. It is not necessary that subsidence control measures be bonded. (See the suspension of 30 CFR 801.16(a), published December 7, 1981 at 46 FR 59934.) Kentucky has adequately demonstrated that KRS 350.060(16) will permit bonding to the extent required by section 509 of SMCRA and the federal regulations.

4.4 As discussed in Finding 4.8 of the October 22, 1980, Federal Register (45 FR 69946), the Secretary was previously concerned that the definition of "overburden" in KRS 350.010 does not contain the language "excluding topsoil" as does 30 CFR 701.5. This finding has been resolved by a policy statement from DNREP. Kentucky has stated that "as a matter of policy, it is the Department's intention to use the definition of 'overburden' contained in 405 KAR 7:020. (See "Response to October 1980 Findings", Administrative Record Ky–413.) The definition found in 405 KAR 7:020 contains the required phrase "excluding topsoil".

Finding 5

The Secretary finds that the State has adequate processes for the designation of lands unsuitable for surface coal mining. Significant issues discovered during the review of Kentucky regulations corresponding to Federal regulations implementing section 522 of SMCRA are discussed under Finding 21, below.

Finding 6

The Secretary finds that the State has an adequate process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with all of the Federal and State permit processes applicable to the proposed operations. Significant issues discovered during the review of Kentucky regulations corresponding to the Federal regulations on permitting are discussed under Finding 14 below.

Finding 7

The Secretary finds that the State has rules and regulations which, except for minor deficiencies discussed in the Findings, are no less effective than 30 CFR Chapter VII. Significant issues discovered during the review of the State regulations, which were enacted under the emergency powers of the Governor, are explained under Findings 12 through 29, below.

Section 503(b) of SMCRA Findings

As required by section 503(b)(1)(3) of SMCRA, and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

Finding 8

The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Kentucky program.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Kentucky program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Finding 10

The Secretary has held public review meetings in Madisonville, Kentucky, on April 16, 1980, and Pikeville, Kentucky, on April 17, 1980, to discuss the completeness of the Kentucky submission; held public hearings on the submission at Madisonville, Kentucky on July 22, 1980, and at Hazard, Kentucky on July 23, 1980, and held a public hearing on the resubmission at Lexington, Kentucky on January 26, 1982.

Finding 11

In accordance with section 503(b)(4) of SMCRA, the Secretary finds that Kentucky has, except for minor deficiencies discussed in this decision, the legal authority and sufficient qualified personnel to enforce the

environmental protection standards in accordance with SMCRA.

30 CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Kentucky program submission, resubmission, public comments and testimony, written presentation at public hearings and other relevant information within the administrative record.

Finding 12

In accordance with 30 CFR 732.15(a), the Secretary finds that the program provides for the State to carry out the provisions and meet the purposes of SMCRA. The State legislative authority is discussed in Findings 1, 2 and 4. State regulations and narrative descriptions are discussed in Findings 12 through 30. Issues which are general in nature and do not apply to individual program sections only are analyzed as follows:

12.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several State regulations to be substantially identical to their Federal counterparts. For this reason the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** are no longer issues: 12.2(c), 12.2(d), 12.2(e), 12.2(f), 12.2(g) and 12.2(h).

12.2 In the initial decision (Finding 12.1, October 22, 1980, **Federal Register**, 45 FR 69946), the Secretary was concerned that 405 KAR 7:030E, section 2 was inconsistent with 30 CFR 700.11(b) because the State's use of the words "disturbed by" rather than "affected by" might exempt areas above underground mines in determining the total area of the mine for the purposes of the two-acre exemption. Kentucky has deleted section 2 and has revised 405 KAR 7:030E section 1(1) to exempt operations of two acres or less "to which Pub. L. 95–87 does not apply." This will allow Kentucky to react immediately to any future OSM rule or policy changes which interpret SMCRA with regard to what portions of an underground mine must be included in the 2 acre mine size determination. The revised regulation is no less effective than Federal requirements.

12.3 In Finding 12.2(j) of the October 22, 1980, **Federal Register** (45 FR 69948), the Secretary pointed out that the Kentucky definition of "probable hydrologic consequences" does not include aquatic habitat as a consideration. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky correctly states that the Federal definition of "probable hydrologic consequences" is found in the regulations dealing with the small operator assistance program (SOAP) and is applicable only to that part. Kentucky further states that its definition is applicable to all operators, and the elimination of aquatic habitat makes the definition more compatible with the Federal definitions of hydrologic regime, hydrologic balance and probable cumulative impacts. (The Federal District Court in *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, U.S.D.C.D.C., held that section 507 of SMCRA does not authorize requesting a fish and wildlife plan of which aquatic habitat is a part.) The Secretary finds the Kentucky rationale persuasive and finds the State's definition of "probable hydrologic consequences" no less effective than the Federal regulations.

12.4 The Secretary notes that Kentucky has deleted references to physical characteristics from its definitions of "toxic-forming materials" (405 KAR 7:020E, section 1(123)) and "toxic mine drainage" (405 KAR 7:020E, section 1(124)). Although the Federal definitions at 30 CFR 701.5 do contain references to physical conditions, the Secretary agrees with Kentucky's rationale provided for the deletion expressed in the "Explanation for Recent Revisions" (Administrative Record KY–413). Kentucky has pointed out that the customary use of the term "toxic" refers to chemical and not physical characteristics. Further harmful physical characteristics such as combustibility or excessive sediments are regulated under the performance standards referring specifically to combustible materials (405 KAR 16:190E section 3) or the amount of solids to be discharged into streams (405 KAR 16:070E section 1.) Therefore, the Secretary finds the State definitions no less effective than the Federal definitions.

Finding 13

In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Kentucky program submission demonstrates, except as noted below, that the Kentucky DNREP can implement, administer and enforce all applicable requirements of Subchapter K of 30 CFR Chapter VII under existing authority in Kentucky laws, regulations and descriptive elements of the program submission. Kentucky incorporated provisions of 30 CFR Chapter VII, Subchapter K in 405 KAR Chapters 16 and 18. Kentucky's description of its system to administer and enforce the performance standards, found in the narrative entitled, "State section 731.14(g)(4–7) and (15)" is acceptable. Issues related to the State legislative authority are discussed under Findings 1, 2 and 4 above. Significant issues discovered during the review of Kentucky regulations corresponding to Subchapter K of 30 CFR Chapter VII are as follows:

13.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several State regulations to be substantially identical to their Federal counterparts. For this reason the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** are no longer issues: 13.1, 13.2, 13.3, 13.4, 13.5, 13.7, 13.9, 13.10, 13.11, 13.12, 13.14, 13.16, 13.18, 13.20, 13.25, 13.29, 13.32, 13.37, 13.38, 13.39, 13.41, 13.42, 13.43 and 13.51.

13.2 As discussed in Finding 13.6 of the October 22, 1980, **Federal Register** (45 FR 69948), 405 KAR 16:110E, section 1(2) and 18:110E, section 1(2) were previously disapproved because they were not consistent with 30 CFR 816.52 and 817.52 as the State regulations did not require mineralogical and chemical analysis of aquifer, overburden and spoil as a part of monitoring. Kentucky has not revised the regulations in question but has stated that the requirement for anlysis of aquifer, overburden, and spoil has been treated as geologic data required with the permit application under 405 KAR 8:030E and 8:040E rather than as a monitoring requirement (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary believes Kentucky is technically correct and, therefore, finds 405 KAR 16:110E, section 1(2) and 18:110E, section 1(2) no less effective than the Federal regulations.

13.3 Finding 13.8 of the October 22, 1980, **Federal Register** (45 FR 69948), identified 405 KAR 16:060, section 11 and 18:060, section 9 less stringent than 30 CFR 816.57(a) because the State regulation appeared to allow for stream relocation without applying all relevant standards. Upon reviewing the questioned Kentucky regulations, the Secretary finds that they are substantially identical to the corresponding Federal regulations. The Secretary surmises that the original concern was caused by a difference in the structure between the State and Federal regulations. However, the Secretary finds that all Federal criteria for stream relocation are found within 405 KAR 16:060E section 11 and 18:060E section 9 and that these sections are no less effective than the Federal requirements.

13.4 As discussed in Finding 13.15 of the October 22, 1980, Federal Register (45 FR 69949), 405 KAR 16:120E, section 4(9) and 18:120E, section 3(9) were identified as less stringent than 30 CFR 816.65(i) because the State regulations allowed for measuring the vector sum of the three peak particle velocities in three mutually perpendicular directions in lieu of the largest of the three velocities. Kentucky has not revised the regulation in question, but has stated that, mathematically, the magnitude of the vector sum of three mutually perpendicular vectors is always greater than the magnitude of any one of those vectors. If the permittee chooses to use vector sum monitors, then the maximum peak particle velocity recorded will be conservative (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary believes Kentucky is technically correct and, therefore, finds 405 KAR 16:120, section 4(9) and 18:120E, section 3(9) no less effective than Federal regulations.

13.5 In Finding 13.19 of the October 22, 1980, Federal Register (45 FR 69950), the Secretary found 405 KAR 16:130E, Section 1(11) and 18:130E, section 1(11) less stringent than 30 CFR 816.71(k) and 817.71(k)(3), respectively, because the Kentucky regulations allowed coal processing wastes to be disposed of in head-of-hollow or valley fills. However, upon reviewing the regulations in question, the Secretary finds the Kentucky regulations no less effective than federal regulations. 405 KAR 16:130E, section 1(11) and 18:130E, section 1(11) are approved as submitted, as the previous finding was in error because the federal regulations do not prohibit disposal of coal processing waste in head-of-hollow or valley fills.

13.6 As discussed in Finding 13.21 of the October 22, 1980, Federal Register (45 FR 69950), the Secretary previously found 405 KAR 16:130E and 18:130E section 1(7) less stringent than 30 CFR 816.71(g) and 817.71(g) because the Kentucky regulations prohibited "significant" depressions or impoundments on a fill whereas the federal regulations prohibit any depressions or impoundments. Kentucky has revised its regulations to provide, "that no impoundments shall be allowed on the completed fill and no depressions shall be allowed on the completed fill unless they are determined by the Department to have no potential adverse effect on the stability of the fill and to have no potential for interference with the approved post-mining land use." Kentucky has stated that it is the State's intent to allow minute depressions caused by natural settling (see "Response to October 1980 Findings", Administrative Record Ky–413). The Secretary believes the revised language of 405 KAR 16:130E and 18:130E, section 1(7) is no less effective than the federal requirements.

13.7 In Finding 13.22 of the October 22, 1980, Federal Register (45 FR 69951), the Secretary found 405 KAR 16:130E and 18:130E, section 2(2)(c) less stringent than 30 CFR 816.72(b)(3) and 817.72(b)(3) because the State regulations allowed for smaller drainage systems on fills than are allowed by federal regulations. Kentucky has pointed out that its regulations do have the same minimum size requirements except where the applicant demonstrates, through a detailed engineering analysis, that a smaller drain would be adequate (see "Response to October 1980 Findings", Administrative Record Ky–413). The Secretary believes there are situations where a smaller drain size would be adequate and agrees that the State regulatory authority should have the discretion to approve variations where no environmental harm would result. Therefore, the Secretary finds the state provisions no less effective than the federal regulations.

13.8 As discussed in Finding 13.23 of the October 22, 1980, Federal Register (45 FR 69950), 405 KAR 16:130E, section 2(3) and 18:130, section 2(3) were found inconsistent with 30 CFR 816.72(c) and 817.72(c) because the State allowed for greater than 4 foot lifts of excess spoil in valley fills. The Kentucky regulations also allow for alternate methods of controlled placement. However, the Kentucky regulations allow lifts greater than 4 feet only where an engineering analysis shows that it is appropriate. Further, the State's regulations expressly prohibit end dumping over the outslope of the fill, and Kentucky has assured OSM that no "alternate methods of spoil placement" would be allowed that have not been sanctioned by OSM (see "Response to October 1980 Findings", Administrative Record Ky–413).

The Secretary acknowledges that there are circumstances where an engineering analysis would show that lifts of greater than 4 feet would provide sufficient compaction for a safe fill. Since the State has agreed to limit alternate methods of placement to those approved by OSM, the Secretary finds that the state regulations are no less effective than the federal requirements.

13.9 As discussed in Finding 13.24 of the October 22, 1980, Federal Register (45 FR 69950), the Secretary found 405 KAR 16:130 and 18:130, section 4(4)(c) less stringent than 30 CFR 816.74(c)(3) and 817.74(c)(3) because the state regulations failed to require that the internal drainage system for durable rock fills be protected by a properly designed filter system in all cases. In the October 22, 1980, finding, the Secretary recognized that while Kentucky's argument that some rock drains would remain free draining without a filter system was valid, the federal regulations made no exception to the filter requirement. Kentucky argues that its regulations are consistent with the federal requirements in that "there will always be a drainage system and filter as required by 30 CFR 816.74(c), either as a consequence of the nature of the material and method of construction, or by separate construction as required by the Department based upon a case-by-case review of the fill design during the permit review process" (See "Response to October 1980 Findings", Administrative Record KY–413.)

The Secretary believes the state is technically correct and finds 405 KAR 16:130 and 18:130, section 4(4)(c) no less effective than the federal requirements.

13.10 As discussed in Finding 13.26 of the October 22 Federal Register (45 FR 69951), the Secretary previously found 405 KAR 16:190E, section 2(1) inconsistent with 30 CFR 816.102(a) because the state regulation failed to require that final grade not exceed the approximate premining slope and because highwall elimination was limited to only newly created highwalls.

Kentucky has changed language in its regulation regarding the elimination of highwalls to include any highwall that is "adversely physically impacted" in accordance with a decision by the Interior Board of Appeals, *Cedar Coal Company*, IBSMA 79–5. The Secretary finds the change no less effective than the federal regulations as the latter are presently interpreted.

With regard to the issue of final graded slopes not exceeding premining slopes, Kentucky argues that the concept of approximate original contour allows for some flexibility so as to deviate from the premining slope in either direction. The Kentucky term of "approximate the general nature of the premining topography" is, according to the State, consistent with the intent of SMCRA (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary is persuaded by Kentucky's argument and, therefore, finds 405 KAR 16:190E, section 2(1) no less effective than 30 CFR 816.102(a).

13.11 As discussed in Finding 13.27 of the October 22, 1980, Federal Register (45 FR 69950), 405 KAR 16:200E, Section 1 was disapproved because it allowed for a seeding exemption which the

Secretary believed needed further explanation. 405 KAR 16:200E, section 1 has been revised by deleting section 1(2)(a) and adding a new paragraph (c) as follows: "(c) Subject to the approval of the Department, small incidental areas related to the fulfillment of the post-mining land use may be exempted from the revegetation standards where no adverse environmental impact will occur if the exemption is granted." The State offered the example of a salt area where vegetation was trampled by cattle under a grazing post-mining land use (see "Response to October 1980 Findings", Administrative Record KY–413).

The Secretary finds that the type of discretion Kentucky provides for in this language is no less effective than federal requirements. Therefore, 405 KAR 16:200, Section 1 is approved.

13.12 Finding 13.28 of the October 22, 1980, Federal Register (45 FR 69951) stated that 405 KAR 16:200E and 18:200E, Section 1 were inconsistent with 30 CFR 816.111(b) and 817.111(b) because, in the case of a cropland postmining land use, the state regulations failed to require that vegetative cover protect against erosion or be of the same seasonal variety. Kentucky has revised the regulations to include consideration of soil erosion. However, Kentucky argues that the successful planting of normally grown crops and normal husbandry practices should fulfill the requirement for soil stabilization if one acknowledges that most crops are not capable of soil stabilization (see "Response to October 1980 Findings", Administrative Record KY–413).

The Secretary agrees that cropland is a viable post-mining land use and that some soil erosion is inherent in agricultural activities. Since Kentucky has included a provision for temporary vegetation where necessary and requires normal husbandry practices, the Secretary finds that the Kentucky rules are now no less effective than the federal requirements.

13.13 As discussed in Finding 13.30 of the October 22, 1980 Federal Register (45 FR 69951), 405 KAR 16:200 and 18:200, section 6 were previously found inconsistent with 30 CFR 816.116 and 817.116 because the State allowed for technical standards for ground cover other than those developed by USDA or USDI. The revised regulation allows for the Director of OSM to approve any technical standards developed by the State. Until such time as state technical guides are submitted to and approved by the Director, 405 KAR 16:200E section 6(1) requires that State officials use USDA or USDI guidelines if reference areas are not used. The Secretary, therefore, finds the state regulations no less effective than the federal requirements.

13.14 As discussed in Finding 13.31 of the October 22, 1980, Federal Register (45 FR 69951), 405 KAR 16:200E, section 6(2)(b) was previously disapproved because the State added the word "substantially" before "augmented seeding, fertilization * * *" in specifying when the period of extended responsibility under bonding begins. The regulation has not been changed, but the Secretary now believes it is no less effective than 30 CFR 816.116 based on Kentucky's explanation. For further discussion refer to Finding 18.4 which deals more directly with the bond liability period.

13.15 In Finding 13.33 of the October 22, 1980, Federal Register (45 FR 69951), the Secretary found that the federal regulations, 30 CFR 816.116(d) and 817.116(d), require that standards to measure success of revegetation be met for five full years, while Kentucky regulations, 405 KAR 16:200E, section 6(4) and 18:200E, section 6(4), require that the standards be met during the last three years of the five-year period of liability.

The Secretary believes that this finding has been resolved. The logic and approach of Kentucky's explanation is correct (see "Response to October 1980 Findings", Administrative Record Ky–413). 30 CFR 816.116(d) was not remanded by Judge Flannery as the result of the litigation challenging the regulations, *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, U.S.D.C. D.C. However, § 816.116(b) was remanded and the reason for the remand applies equally to both sections. Kentucky is measuring a five-year period beginning with the initial establishment of vegetation, but is only measuring the on-site results against the standards during the third, fourth, and fifth years. Since vegetation needs some time to become established, it is more important for the vegetation to meet the standards during the last portion of the five-year period. Kentucky's approach is reasonable and effective. The Secretary finds the regulations in question no less effective than the federal counterpart.

13.16 Finding 13.35 of the October 22, 1980, Federal Register (45 FR 69951), stated 405 KAR 16:210E and 18:220E, section 2 did not require that the post mining land use be compatible with surrounding areas, and that it make allowances for damages resulting from previous improper management (not specifically provided by the federal regulations, 30 CFR 816.133(b) and 817.133(b)). In the "Response to October 1980 Findings" (Administrative Record Ky–413), Kentucky has explained that 405 KAR 16:210E and 18:220E, section 2 apply only when the approved post-mining land use is the same as the pre-mining land use. This resolves the issue of compatibility with surrounding areas. Kentucky's response also clarifies that the DNREP's interpretation of "irreparable damage" is consistent with the federal regulations. The term has been interpreted by OSM to allow the regulatory authority to consider the "extent and reversibility of damage" (preamble to federal regulations, March 13, 1979, Federal Register, 44 FR 15243). The Kentucky regulations in question are found to be no less effective than the federal requirements.

13.17 Finding 13.36 of the October 22, 1980, Federal Register (45 FR 69951) questioned 405 KAR 16:010E, section 7 and 18:010E, section 5 (2) and (3) because they do not require that the permittee's notice of cessation of operations beyond 30 days include a statement of environmental monitoring plans and efforts that will continue during the temporary cessation as do federal regulations 30 CFR 816.131(a) and 817.131(a).

In the "Response to October 1980 Findings" (Administrative Record KY–413), DNREP has explained that the inspection generated by the notice will be used to ensure that reclamation is contemporaneous, as required, and that treatment and monitoring facilities will continue to function. The Secretary finds that, based upon the Department's interpretation of the notice provision and its explanation that the notice will generate a field inspection, the provisions in 405 KAR 16:010E, section 7 and 18:010E, section 5(2) are no less effective than the federal requirements.

The second part of the October 22, 1980, finding concerns 405 KAR 16:010E, section 7(2), and section 5(2) of 405 KAR 18:010E, which require only that the operator "prevent unreasonable adverse effects upon the environment." Kentucky has revised these regulations by replacing the above phrase with "comply with all applicable conditions of the permit." These regulations are now no less effective than federal requirements.

13.18 Finding 13.40 of the October 22, 1980, Federal Register (45 FR 69952), identified 405 KAR 16:070E, section 1(1)(a) and 18:090E, section 1 as inconsistent with 30 CFR 817.42 and 817.46 because the state regulations failed to properly state the conditions under which drainage does not have to be passed through a sediment pond or

treatment facility. Kentucky revised its regulations so that the only substantive difference between the state and federal regulations is that the state will allow mixed drainages from underground and surface mines to be exempted from treatment whereas the federal regulations do not allow mixed drainages to be exempted. However, the state regulations require the operator to demonstrate that each drainage meets the applicable water quality standards before being mixed. Therefore, the Secretary finds 405 KAR 18:070E, section 1 and 18:090E, section 1 no less effective than the federal requirements.

13.19 Finding 13.44 of the October 22, 1980, Federal Register (45 FR 69952), identified 405 KAR 18:110E, section 1(3) as less stringent than 30 CFR 817.52(a)(3) because the Kentucky regulation did not require that the results of hydrologic tests demonstrate compliance with criteria specified in 30 CFR 817.50. The federal regulation at 30 CFR 817.52(a)(3) refers to § 817.50 which is an error. 30 CFR 817.52(a)(3) addresses ground water monitoring while § 817.50 relates to the control of discharge from an underground mine. In addition, the Secretary believes that the primary purpose of 30 CFR 817.52(a)(3) is to give the regulatory authority the discretionary power to require specialized monitoring, and the state regulation achieves this purpose. The Kentucky regulation avoids the questionable reference and is no less effective than its federal counterpart. The October 22, 1980 finding (13.44) was unnecessary and 405 KAR 18:110, section 3 is approved as written.

13.20 405 KAR 18:060, section 7 was previously disapproved (see Finding 13.45 of the October 22 Federal Register, 45 FR 69952) because it did not specify that water discharged into an underground mine: "Continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility", as does 30 CFR 817.55. As stated in the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky feels that the federal statement is ambiguous and that the intent of 30 CFR 817.55 is fulfilled by the other requirements of section 7: "(2) that the discharge to other underground workings be controlled; (3) that the discharge meet the effluent limitations for pH and suspended solids except under certain conditions; (4) that the resulting discharge, if any, from the underground workings to surface waters not cause violations of effluent limitations or water quality standards (and, therefore, must be treated if necessary to prevent such adverse effects on surface waters), and the probable locations of eventual discharge to surface waters, if any, be identified; and (5) that the discharges minimize disturbances to the hydrologic balance."

The Secretary finds that Kentucky has interpreted the federal regulation correctly, and, therefore, finds 405 KAR 18:060, section 7 no less effective than 30 CFR 817.55.

13.21 In the October 22, 1980, Federal Register (45 FR 69952), 405 KAR 18:210E, section 2 was identified in the Federal Register as being less stringent than 30 CFR 817.122 concerning public notice to property owners and residents within the area above the underground workings. The federal regulation requires that a six-month notice be given to property owners when underground mining will occur beneath their residences, whereas the Kentucky regulation requires only a three-month notice. Kentucky stated that its regulation is consistent with the intent of the federal regulation, i.e. to provide adequate notice to property owners and residents without placing an unreasonable burden on the operator (see "Response to October 1980 Findings", Administrative Record KY–413).

The Secretary is persuaded by Kentucky's argument that three months' notice will be as valuable to surface owners because a notice given three months in advance could be more specific and will give the surface owner adequate time in which to react. Therefore, the Secretary finds 405 KAR 18:210E, section 2 no less effective than the federal regulations.

13.22 As discussed in Finding 13.48 of the October 22, 1980, Federal Register (45 FR 69952), 405 KAR 18:220E, section 4(8) was previously found to be inconsistent with 30 CFR 817.133(c) because the state regulations appeared to allow for the determination of the post-mining land use to be delayed until near the end of the life of the mine. The State has explained that its permitting requirements do, in fact, require that a post-mining land use be approved before a permit is issued, but that 405 KAR 18:220E, section 4(8) is worded to allow for the post-mining land use to be changed as a permit revision (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary agrees that a change in post-mining land use is allowable as a permit revision in accordance with 30 CFR 788.12 and 788.15. 405 KAR 18:220E, section 4(8) is found to be no less effective than the federal requirement.

13.23 Finding 13.49 of the October 22, 1980, Federal Register, identified 405 KAR 20:030E, section 1(1) as being inconsistent with 30 CFR 819.11(a) pertaining to auger mining. The Kentucky regulation appeared to allow the applicant to avoid provisions of the federal regulations requiring undisturbed areas of coal to be left in unmined sections for future entryways for underground mining. The state regulation also omitted the requirement that distances between undisturbed areas of coal greater than 2,500 feet must be approved by the regulatory authority. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky has submitted to the Secretary the explanation that 405 KAR 20:030E, section 1(1) would allow the applicant to designate specific areas where he/she plans to develop future entryways so that the Department can approve those specific areas as the areas not to be disturbed by auger mining. Further, Kentucky has stated that this procedure is only applicable when the applicant will be doing both the underground mining and the auger mining. Since the federal regulation is intended to maximize coal production by guaranteeing access for future underground mines, the State's system of allowing the operator, who will conduct underground mining, to select his own entryways is logical and effective. Regarding the omission of the requirement for regulatory authority approval of distances greater than 2,500 feet between undisturbed areas, Kentucky has amended its regulation by adding the required phrase "and approved by the Department". The Secretary has reviewed Kentucky's explanation of, and amendment to, 405 KAR 20:030E, and finds the regulation to be no less effective than the federal regulation.

13.24 As discussed in Finding 13.50 of the October 22, 1980, Federal Register (45 FR 69953), the Secretary disapproved 405 KAR 20:060E because it did not contain criteria for spoil placement on pre-existing benches as set forth in 30 CFR 826.16. 405 KAR 20:060E was also lacking provisions similar to 30 CFR 826.15(c) which limit land disturbance above the highwall. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky has pointed out that other sections, specifically 405 KAR 18:130E and 18:130E, section 5 contain criteria for spoil placement on pre-existing benches. As for the omission of criteria for disturbing the area above the highwall, section 3, of 405 KAR 20:060E has been amended by adding language substantially identical to 30 CFR 826.15(c). The Secretary finds that the sections referenced in the

Kentucky response document and the amendments made by Kentucky to 405 KAR 20:060E are no less effective than the federal regulations.

13.25 The Secretary notes that section 2(2)(d) of 405 KAR 16:130E and 18:130E allow for alternative materials to be used to fill underdrain systems "if the applicant demonstrates through detailed engineering analysis to the satisfaction of the Department that the alternative materials will provide for adequate long-term capacity for drainage at the site." The federal regulations at 30 CFR 816.72 and 817.72 specify the type rock allowed for fills. There are no provisions for alternatives.

Kentucky stated that its intent is to "allow use of materials other than natural stone, but such materials would be required to be non-acid forming, non-toxic forming and non-slaking. Synthetic materials which met these requirements would be permissible. Also, properly designed pipe drains could be used in lieu of natural stone drains * * *." (See February 12, 1982, letter from DNREP, Administrative Record No. Ky–438).

The Secretary believes alternative materials, limited by the Kentucky policy, would provide environmental protection and assure safety equal to that required by the federal regulations. Therefore, the Secretary finds section 2(2)(d) of 405 KAR 16:130E and 18:130E no less effective than 30 CFR 816.72 and 817.72.

13.26 As discussed in Finding 13.34 of the October 22, 1980, **Federal Register** (45 FR 69951), 405 KAR 16:200E, Section 7(3) and 18:200E, section 7(3) are inconsistent with 30 CFR 816.117(c)(2) and 817.117(c)(2). The state regulations allow stocking and groundcover to approximate that on reference areas or *"as approved in the mining and reclamation plan as appropriate for the approved postmining land use"*. The emphasized phrase provides discretion not found in the federal rules, and the state has failed to identify the standards it would use to approve stocking in the plan. Therefore, the Secretary finds 405 KAR 16:200E, section 7(3) and 18:200E, section 7(3) inconsistent with federal requirements. Approval of the Kentucky program is conditioned upon the state's use of reference areas until such time as the state develops, and OSM approves, standards for use in stocking plans involving wildlife management, recreation, shelter belts and forest uses other than commercial forest.

13.27 405 KAR 16:090E and 18:090E section 5(5) are less effective than 30 CFR 816.46(i) and 817.46(i) because the Kentucky regulations allow DNREP to approve sedimentation ponds designed without emergency spillways. The federal regulations require emergency spillways in all cases to prevent overtopping and damage to the embankment if the principal spillway fails to perform properly.

The Secretary acknowledges that there are situations where the pond could be safely designed without the emergency spillways, but believes the standards the state will use in approving such ponds must be approved as part of the state program. An example of the standards which would be acceptable have been furnished to Kentucky by OSM. Program approval is conditioned upon Kentucky's amending its program to provide standards acceptable to the Secretary for the design of sedimentation ponds without emergency spillways. Program approval is further conditioned upon Kentucky's not using its authority to approve sedimentation ponds designed without emergency spillways until Secretarial approval of the above program amendment.

Finding 14

In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Kentucky program demonstrates that the DNREP can implement, administer, and enforce a permit system consistent with Subchapter G of 30 CFR Chapter VII. The description of the permit system is found in the narrative section entitled, "State Section 731.14(g)(1), (9), and (10)." The permit system descriptions are acceptable. The state legislative authority relating to permitting is discussed in Finding 4, above. Kentucky incorporated provisions of 30 CFR Chapter VII, Subchapter G, in 40 KAR Chapter 8. Significant issues discovered during the review of Kentucky regulations corresponding to Subchapter G of 30 CFR Chapter VII are as follows:

14.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several state regulations to be substantially identical to their federal counterpart. For this reason, the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** are no longer present: 14.2, 14.3, 14.5, 14.6, 14.7, 14.12, 14.14, 14.15, 14.21, 14.22, 14.23, 14.29, 14.32, and 14.33.

14.2 As discussed in Finding 14.1 of the October 22, 1980, **Federal Register**, the Kentucky regulatory program was found to be lacking provisions similar to 30 CFR 770.12(c) which requires that the program demonstrate coordination of review and issuance of permits with other applicable federal acts. Sections 731.14(g) (9) and (10) of the state program narrative description have been revised to list the state and federal agencies with which the issuance of permits is to be coordinated along with the federal acts enumerated in 30 CFR 770.12. The revisions, combined with the language in 405 KAR 8:010E section 8(7) and section (9) which require notification and an opportunity for review and comment by all appropriate agencies, make the program no less effective than 30 CFR 770.12.

14.3 Section 4 of 405 KAR 8:030E and 8:040E was previously found to be inconsistent with 30 CFR 778.15(b) and 782.15(b). The Kentucky regulation provides that where the private mineral estate to be mined has been severed from the private surface estate, the applicant must provide "a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods." Section 510(b)(6) of SMCRA contains specific criteria for evidence of the right to mine. See Finding 14.4, 45 FR 69953.

Kentucky responds that its regulation is consistent with the Act and the Federal regulations, because of the wording of its regulation and the interpretation given under Kentucky law to the "broad-form" deed.

The Secretary is satisfied that the Kentucky regulation is no less effective than the Federal regulation. The Federal regulation requires that where the proposed operation involves severed estates, the applicant must provide: (1) A written consent by the surface owner, (2) A copy of the document of conveyance expressly granting the right to extract the coal by surface mining methods, or (3) Where that right is not expressly granted, documentation that under applicable State law the conveyance permits the applicant to extract coal by surface mining methods. Under Kentucky law, the conveyance of mineral rights by means of so called "broad-form" deeds is held to confer the right to extract coal by surface mining methods. *Jenkins v. DePoyster*, 299 Ky. 500, 186 S.W. 2d. 14, 15 (1945). The broad-form deed is the deed-form widely used in Kentucky. Consequently, the Kentucky regulation need not distinguish between those situations where the conveyance expressly grants or reserves the right to extract coal and where the conveyance merely conveys the right to the minerals. As for Kentucky's not including a specific provision for the alternative of written surface owner consent, such a provision is implicit in the Kentucky rule. If the broad-form deed has not been used, the applicant would have to submit the written consent of the surface owner.

14.4 Finding 14.8 of the October 22, 1980, **Federal Register** (45 FR 69954),

identified 405 KAR 8:030E section 23(1)(d) and 8:040E section 23(1)(d) as being inconsistent with 30 CFR 779.24(g) and 783.24(g), respectively. The federal regulations require maps to show the locations of water supply intakes for current users of "surface water flowing into, out of, and within a hydrologic area defined by the regulatory authority," whereas the Kentucky regulations require maps showing the locations of water supply intakes for current users of surface waters only "within a hydrologic area defined by the Department." In the "Response to October 1980 Findings" (Administrative Record Ky–413), Kentucky has stated that its regulations are consistent with the intent of 30 CFR 779.24(g) and 783.24(g) because the Kentucky regulations require that the Department define a hydrologic area on a case-by-case basis for purposes of showing hydrologic intakes. Furthermore, the limitation for showing the locations of water supply intakes for only the hydrologic area prevents confusion, as the term "into" the hydrologic area could be interpreted to require that all intakes upstream from the hydrologic area be shown. Upstream intakes are not of concern since the water at these intakes cannot be affected by the proposed mining operations. The term "out of" the hydrologic area can be interpreted to require that all intakes located downstream from the hydrologic area be shown. Kentucky states that, without some limitation on the necessary downstream extent within which intakes must be shown, it would extend downstream indefinitely. When such a downstream limit is set, an actual area has been defined by the Department within which intakes must be shown.

The Secretary acknowledges that the federal regulations do not define how far upstream or downstream water supply intakes must be shown and that the hydrologic area definition is within the regulatory authority's discretion in any event. Since Kentucky has stated its intent is to more clearly define what intakes must be considered where the federal regulations are ambiguous and much discretion is left to the regulatory authority, the Secretary finds 405 KAR 8:030E, section 23(1)(d), and 8:040E, section 23(1)(d), no less effective than the federal requirements.

14.5 The Secretary previously found section 25(2) of 405 KAR 8:030E and 8:040E less stringent than 30 CFR 780.12(b) and 784.12(b) because the federal regulations require both design and performance standards to be met on existing structures requiring modifications, whereas the state regulations require only performance standards to be met (see Finding 14.9 of the October 22, 1980, Federal Register, 45 FR 69954).

The Secretary recognizes that a modification to an existing structure is only required in those situations where the structure is not already meeting a performance standard. The requirement that an existing structure meeting a performance standard need not be reconstructed was clarified in the permanent program regulation litigation, Memorandum Opinion of May 16, 1980 at 53. Logically, if a minor modification can be made to the structure that would prevent violation of performance standards, the environment will be protected to the same degree as a major reconstruction to meet design requirements intended to prevent violation of performance standards. Therefore, the Secretary finds the State regulations no less effective than federal requirements.

14.6 In Finding 14.10 of the October 22, 1980, Federal Register, the Secretary found that 405 KAR 8:030E, section 25(2)(c) and 8:040E, section 25(2)(c) give DNREP the discretion to require permittee monitoring of existing, non-conforming structures during and after reconstruction, while 30 CFR 780.12(b)(3) and 784.12(b)(3) require monitoring in all cases. In the original finding, the Secretary stated that he was not persuaded that monitoring was ever unnecessary. Kentucky, however, wanted to retain the flexibility to require monitoring or not to require monitoring on a case-by-case basis.

The Secretary acknowledges that, except for water quality monitoring required for the operation as a whole under 30 CFR 816.52 and 817.52 (405 KAR 16:110E and 18:110E), the monitoring requirements for an existing structure are not specified in the federal regulations and are to be determined by the regulatory authority.

The Secretary is now satisfied that Kentucky's approach will be no less effective than the federal requirement. Kentucky will require monitoring except where determined unnecessary (see "Response to October 1980 Findings") (Administrative Record KY–413). If monitoring is necessary in all cases, then Kentucky is bound to require it in all cases. If experience shows that monitoring is not necessary in some cases, however, the flexibility Kentucky desires will have been justified.

14.7 The Secretary previously found Section 24 405 KAR 8:030E and 8:040E inconsistent with 30 CFR 780.14(b) and 784.14(b) because the state regulations fail to require that the mining plan map show features adjacent to the permit area (see Finding 14.11 of the October 22, 1980, Federal Register (45 FR 69954)). However, the U.S. District Court for the District of Columbia has suspended the use of the term "mine plan area," Memorandum Opinion of February 20, 1980 at 36; 14 ERC 1083, 1097. The Secretary is, therefore, satisfied that KAR need not contain references to the "mine plan area." KAR 8:030E, section 24 and 8:040E, Section 24 are thus consistent with 30 CFR 780.14(b) and 784.14(b), as modified by the Court's ruling.

14.8 As discussed in Finding 14.13 of the October 22, 1980, Federal Register (45 FR 69958), 405 KAR 8:030E, section 34(1)(a)(3) was found inconsistent with 30 CFR 780.25(a)(1)(iii) because the state regulation did not appear to require the information to "assess the hydrologic impact of the structure" of plans for ponds, impoundments, banks, dams, and embankments. Kentucky has revised its regulations to refer to the determination of probable hydrologic consequences and has pointed out that the assessment of hydrologic consequences is covered by 405 KAR 8:030E, section 12(2). The Secretary believes 405 KAR 8:930E, section 35, as revised, when considered with section 12, requires the assessment of the hydrologic impact of any structures. Therefore, the Secretary finds the State regulations no less effective than the federal requirements.

14.9 Under Finding 14.16 of the October 22, 1980, Federal Register, the Secretary found 405 KAR 8:040E, Section 13(1)(a)(3) less stringent than 30 CFR 783.14(a)(1)(iii) because the state regulation did not require a description of the compaction and erodibility factors in relation to the physical characteristics of each stratum of the overburden. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky states that this information would only be useful for strata which are to be used for topsoil substitution since compaction and erodibility potential of only the eventual *surface* materials will affect stability against erosion, infiltration/runoff characteristics, and revegetation success. Therefore, Kentucky has revised topsoil substitution performance standards at 405 KAR 16:050E, Section 2(5)(a)(1) and 18:050E, section 2(4)(a)(1) to require evaluation of compaction and erodibility potential only for all strata which are to be substituted for topsoil.

The Secretary believes that Kentucky is technically correct and, therefore, finds 405 KAR 8:040E no less effective than the federal regulations.

14.10 As discussed in Finding 14.17 of the October 22, 1980, **Federal Register** (45 FR 69955), 405 KAR 8:040E, Section 23(2)(e) was found less stringent than 30 CFR 783.25(f) because the state regulation omits the requirement to portray the area and vertical extent of aquifers and seasonal differences of head in different aquifers in cross-sections and contour maps when subsurface water will be encountered. Kentucky believes other regulations (i.e., 405 KAR 8:040E, section 14) give DNREP the authority to require that information when necessary and has pointed out that there is an inconsistency between the federal regulations on surface mining, 30 CFR 779.25(f), and underground mining, 30 CFR 783.25(f), on this issue (see "Response to October 1980 Findings", Administrative Record KY–413).

The Secretary recognizes that the inconsistency between 30 CFR 779.25(f) and 30 CFR 783.25(f), regarding the level of detail required in maps to describe aquifers, raises some questions as to what should be the minimum requirements. The purpose of the information required by 30 CFR 779.25(f) and 783.25(f) is to "establish the premining subsurface hydrologic regime, to determine changes that mining would cause to the hydrologic balance, to help plan corrections for adverse impacts and to set standards for postmining groundwater flows" (44 FR 15045, March 13, 1979). This is similar to the requirements of 30 CFR 779.15 and 783.15 (State counterparts 405 KAR 8:030E and 8:040E, section 14) which is intended to require a "full description of the ground water hydrology" (44 FR 15033, March 13, 1979).

Considering 405 KAE 8:040E, section 14 and 8:040E, Section 23 together, the Secretary concludes that the State regulations require sufficient information to assess the impacts of mining on the hydrologic regime even though the level of detail for the mapping of the aquifer may be somewhat less than required by 30 CFR 78.25(f). As noted by Kentucky, the detail required by the State for underground mines is similar to the detail required for surface mines in the federal regulations. Further, the preamble for 30 CFR 779.15 states that the "regulatory authority, therefore, will have broad discretion in determining the types and level of detail which it needs with respect to marginal aquifers" (44 FR 15034, March 13, 1979). Therefore, the Secretary finds 405 DAR 8:040E, Section 23 no less effective than federal requirements.

14.11 Finding 14.18 of the October 22, 1980, Secretarial Findings Document, 45 FR 69955, erroneously concluded that 405 KAR 8:040 Section 25 (now 405 KAR 8:040 section 23) was inconsistent with 30 CFR 783.25 in that the state regulation omitted a provision comparable to 30 CFR 783.25(h) on the location of previously mined areas within the permit area. The latter federal provision had been remanded by the United States District Court, *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, slip. op. at 14–16 (D.D.C. May 16, 1980). 405 KAR 8:040E section 23, is therefore, no less effective than 30 CFR 783.25 in this respect.

14.12 In Finding 14.19 of the October 22, 1980, **Federal Register** (45 FR 69955), the Secretary identified 405 KAR 8:040E, section 23(2)(h) as being inconsistent with 30 CFR 783.25(i). On August 4, 1980, 30 CFR 783.25 (c), (h), and (i) were suspended. Therefore, there is no remaining inconsistency and the Secretary approves 405 KAR 8:040E, section 23(2)(h).

14.13 In Finding 14.24 of the October 22, 1980, **Federal Register** (45 FR 69955), the Secretary found 405 KAR 8:060E, sections 6(1)(b)(1) and 6(2)(d)(1) inconsistent with 30 CFR 785.16(b)(1) and (c)(4)(i) for two reasons which are addressed as follows:

(a) The federal regulations allow a steep slope approximate original contour (AOC) variance if watershed control will be improved compared to the premining condition. The State regulation allows a variance if watershed control will be improved compared to the postmining condition had there been restoration.

In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky argues that, given that the land will be mined whether or not the variance is allowed, it is more logical to compare the probable postmining conditions and to select the one which is least likely to worsen watershed conditions. The State argues that comparing the two hypothetical postmining conditions, which differ only in slope, is more logical than comparing the postmining condition to the premining condition which differs in erodibility permeability, vegetative cover, etc.

Kentucky further states, "It is inconceivable to Kentucky that the Secretary would interpret SMCRA to deny a landowner a desired AOC variance by requiring watershed improvement over conditions (premining) which have in fact been removed from consideration by the initial decision to mine the land. SMCRA does not require that watershed improvement be demonstrated as a precondition to mining and returning to AOC. Thus, the only equitable criterion for watershed conditions is that the variance not serve to worsen watershed conditions as compared to returning to AOC."

The Secretary agrees with Kentucky's interpretation of SMCRA. Therefore, the State regulations in question are found to be no less effective than the federal requirements.

(b) The State regulations consider an increase in streamflow that would benefit users at times when streams are normally low as watershed improvement, whereas the federal regulations do not mention this as an alternative. In the original finding the Secretary expressed concern that such a change might also cause additional flooding and other problems at times of high flow. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky points out that improved vegetative growth and increased infiltration rates which are sometimes associated with mining are conditions which tend to produce decreased peak flows and increased low flows.

The Secretary believes Kentucky is technically correct and, therefore, finds the regulations in question no less effective than the federal requirements.

14.14 The Secretary previously disapproved 405 KAR 8:050E, section 3(2) because it omitted a provision comparable to 30 CFR 785.17(b)(9) which requires prime farmland to be returned to equivalent levels of yield as non-mined prime farmland of the same soil type (see Finding 14.25, October 22, 1980, **Federal Register** (45 FR 69956). Kentucky has not revised its regulations, but considers this requirement to be a performance standard rather than a permitting requirement and, therefore, has placed the provision at 405 KAR 20:040E, section 1(3). The Secretary finds that Kentucky regulations, when considered as a whole, are no less effective than the federal requirements and, therefore, approves 405 KAR 8:050E, section 3(2).

14.15 405 KAR 8:010E, section 8(8,) was identified by Finding 14.27 of the October 22, 1980, **Federal Register** (45 FR 69956), as less stringent than 30 CFR 786.11(d) because the Kentucky regulation did not specify when the applicant must file a copy of the application in a local public office for public inspection.

In the "Explanation for Recent Revisions" (Administrative Record KY–413), Kentucky explains that its

regulations provide that the last newspaper notice of the application must appear after the applicant receives notice from DNREP that the application is complete. Since the regional office of the Bureau of Surface Mining Reclamation and Enforcement is the public office where, the application is filed, the Kentucky system will insure that the public will always have access to a complete application. Therefore, the Secretary finds 405 KAR 8:010E, section 8(8) no less effective than 30 CFR 786.11(d).

14.16 In Finding 14.30 of the October 22, 1980, Federal Register, the Secretary identified three problems with 405 KAR 8:010E, section 15 as it related to existing structures because of references to 405 KAR 7:040 which was considered inconsistent with 30 CFR 786.21. These problems have been resolved as follows:

(a) The Secretary was concerned that the State regulations provided for compliance with only performance standards whereas the federal regulations require compliance with both design and performance standards when modifying an existing structure. The Secretary now concurs that modifying an existing structure to meet performance standards is no less effective than meeting design standards. For further discussion see Finding 14.5 of this decision.

(b) The Secretary previously found 405 KAR 7:040 section 5(2)(c)(1) inconsistent with 30 CFR 786.21(a)(2)(iii) because the State section allows for more than the federally-imposed six-month time limit for modification of existing structures. In the "Response to October 1980 Findings" (Administrative Record KY–413), Kentucky has indicated that deviation from the six-month time limit would only be allowed for exceptional cases where DNREP makes a specific determination that a longer period is necessary because of the scope and nature of the reconstruction. The State has also pointed out that this is a one time problem that will cease to exist after mines started under the interim program terminate.

For the truly exceptional cases where the reconstruction could not be corrected in six months, the only difference between the State and Federal regulations is that the Federal regulations would result in the issuance of a violation notice and establishment of an abatement period, whereas the State would specify a correction period during the permit approval. Since the Federal regulations would allow for a reasonable abatement period after a violation is issued, the actual effect of the State regulations will be similar if the state will, as stated by DNREP, exercise its discretion only for those cases where reconstruction would be impossible within the six-month period. The potential abuse of the discretion will be monitored as a part of Federal oversight. Under these circumstances the Secretary believes the State regulation is no less effective than 30 CFR 786.21.

(c) The Secretary previously found 405 KAR 7:040E, section 4(2)(c)(3) inconsistent with 30 CFR 786.21 because the State section did not require monitoring in all cases when an existing structure was modified. The Secretary now consure that Kentucky regulations which provide for monitoring when necessary are no less effective than the federal requirements. (See also Finding 14.10 of this Notice.)

14.17 In Finding 14.31 of the October 22, 1980, Federal Register (45 FR 69958), the Secretary previously determined 405 KAR 8:010E, section 16(4) to be inconsistent with 30 CFR 786.23(c) because the State failed to require that notices be simultaneously delivered to relevant parties. The State has indicated that it could not guarantee simultaneity but did change 405 KAR 8:010E, Section 23 to provide that all parties would have 30 days to respond from the time they receive such notice (see "Response to October 1980 Findings", Administrative record KY–413). The Secretary finds that the regulations, as amended, are no less effective than the requirement of the federal regulation.

14.18 405 KAR 8:030E and 8:040E, section 15(2)(b) are inconsistent with 30 CFR 779.16 and 783.16 with regard to the surface water quality parameters required to be identified as part of the permit application. The state regulations give the regulatory authority the discretion to delete all of the listed parameters except total dissolved solids (or specific conductance) and total suspended solids. The federal regulations require information on the listed parameters for all permits.

The Secretary is concerned that the authority to delete certain water quality parameters could result in an inadequate analysis of the effect of the mining on the receiving stream. Each parameter listed in the federal regulations was selected because it was a direct requirement of the Act or was a historical problem associated with mining (see Preamble to 30 CFR 779.16, March 13, 1979, Federal Register, 44 FR 15334 and 15035). The analysis of these parameters is necessary to determine if compliance with existing effluent limitations will prevent material damage to the receiving stream or if more stringent measures are necessary. This analysis is especially critical for consideration of storm flow conditions when effluent standards for a sedimentation pond are relaxed.

As part of a program resubmission modification (Administration Record KY–438), Kentucky argues that such discretion should be considered no less effective than the federal regulations for two basic reasons. First, the State believes SMCRA intended regulatory authorities to have flexibility to match the regulatory requirements for protecting the hydrologic balance to local conditions. Second, the State believes their guidelines would require all the listed elements except for existing operations, and Kentucky provides technical rationale as to why certain deletions should be allowed for existing operations.

In order to support the contention that the Act intended to give the states flexibility to establish hydrologic requirements, Kentucky quoted the following section from the Act's legislative history:

"For (the) most critical areas (with) uncertain fragile hydrologic settings, the bill sets standards that are imperative to begin to assure that adverse impacts to the hydrologic balances are not irreparable * * * It is anticipated that the state regulatory authorities will strengthen such provisions and require whatever measures are necessary to meet local conditions." (H.R. Rep. No. 95–218, 95th Congress, First Session (1977) p. 110.)

Kentucky argues that the Act does not specify particular parameters which must be used to characterize the adverse effects of mining and state that, "It could be argued that the parameters of pH, specific conductance and total suspended solids would be sufficient to address the water quality categories of acid and toxic mine drainage, dissolved solids (mineralization) and suspended solids." However, Kentucky recognizes that in many cases these minimum requirements would be insufficient for a proper evaluation of adverse impacts.

Kentucky states that it has guidelines which specify the water quality parameters which must be addressed by the applicant, and further that the only requirements which have been deleted are dissolved iron, dissolved manganese and sulfate for existing underground mines and preparation plants. However, the guidelines were not submitted as part of the program, and Kentucky has not stated that the parameters listed in its explanation will be required as a matter of policy.

The Secretary basically agrees with the State's interpretation of the legislative history except that he believes that the flexibility desired by

the State is obtainable through the state program approval process. The Secretary does not believe Congress intended the State to have unlimited flexibility to delete all parameters on a case-by-case basis.

The explanation submitted by Kentucky does not actually commit the State to limiting the deletion of water quality parameters to the situations discussed in the explanation. The guidelines mentioned in the explanation have been submitted to OSM for informal review but the drafts and OSM's comments on the drafts have not been incorporated into the administrative record since a final guideline was not submitted, nor required, as part of the program resubmission.

The Secretary concurs that the deletion of dissolved manganese, dissolved iron, and sulfate from the list of required parameters for existing operations producing no significant new surface disturbance is no less effective than the federal regulations for the following reasons given by the state: "Since (1) existing operations should have previous knowledge of, and experience with, any treatment requirements for iron and manganese; (2) rates of mineralization have likely stabilized at many older existing underground mines and coal preparation plants; (3) premining planning cannot be done for existing disturbed acres to reduce the rate of mineralization; and (4) such operations generally create less disturbed material than surface mines."

Based on this explanation, the Secretary believes that he could approve the State's regulations if Kentucky submits a clear policy statement indicating that the deletions allowed in the regulations would only be exercised for dissolved manganese, dissolved iron and sulfate for existing operations not expected to create significant new surface disturbance. Either a regulatory change or a policy statement, as discussed, is required as a condition of program approval. The State may elect to submit additional material, such as its final hydrology guidelines, to support further flexibility for deletion of parameters in certain situations. However, until such time as the Secretary approves the circumstances for which further deletions may be made, the state must not use its authority to delete parameters other than dissolved manganese, dissolved iron, and sulfate for existing operations not expected to create significant new surface disturbance. The state may also delete the parameters of temperature, alkalinity, dissolved manganese and sulfate for any operation since these parameters are not specifically required by the Federal regulations.

14.19 The Secretary finds that the Kentucky program does not adequately demonstrate that the State meets the requirements of 30 CFR 771 and SMCRA section 502(d) regarding the time limits for receiving and processing permanent program permit applications for existing operations. The Secretary recognizes that Kentucky is in a unique situation because of the large number (3500) of applications relating to existing operations expected during the first eight months of primacy, which would preclude the meeting of the statutory deadline of eight months for reviewing all applications. Therefore, the Secretary must consider the State's plan for receiving and reviewing applications to determine if it is a good faith effort to meet the intent of SMCRA. The regulatory requirements relating to this process are described in 405 KAR 8:010E section 2 and section 16, and the state plan for processing the surge of applications is described in the narrative titled "Kentucky's Plan for Transition to Primacy" (Administrative Record KY-438).

The Kentucky program has a two step process where the operator must provide preliminary data as a "transition application" during the first two months of primacy and then must complete his application by the eighth month of primacy. The Secretary interprets SMCRA as allowing existing operators to continue mining past eight months after primacy if they make a good faith effort to submit an application during the first two months of primacy and work within a reasonable schedule to complete the application, if the application is determined to be incomplete. Given the large number of anticipated applications in Kentucky, the Secretary is persuaded of the necessity for a preliminary application followed by a complete application since all operators are to be made aware that the application must be complete by the eighth month.

However, the Kentucky plan does not specify when the State will finish its completeness determinations for existing operations. An incomplete application could wait in a backlog of applications for months. In addition, the State plan shows that priority will be given to processing applications for new operations. Although the plan indicates that a low number (100) of new permits is expected during the first 20 months of primacy, the Secretary is concerned that processing of the new permits could preclude processing of the other applications as required by SMCRA section 502(d). This concern would become manifest if the number of new permits expected in the program plan is underestimated.

The Secretary recognizes that the State is trying to balance its time requirements for processing new applications with the eight month deadline for permit review established in section 502(d) of SMCRA. Given Kentucky's circumstances, the Secretary believes that a goal of 20 months from primacy for processing the applications for operations continuing under interim permits is reasonable. However, to ensure that the goals for receipt and review of complete applications are not pushed forward indefinitely because of work on new applications, the Secretary is requiring, as a program condition, that the State submit a plan which includes: (1) A process for prompt completeness determinations by DNREP on full applications from existing operators expecting to continue mining past the eighth month of primacy; (2) assurances that operators who have not submitted complete applications by eight months after primacy will be immediately advised that they may not continue mining until a permit is approved; (3) a policy that applications for new operations will not be given priority for processing over applications for existing operations which are continuing under interim program permits when such existing mine applications are one year old or older.

Finding 15

In accordance with 30 CFR 732.15(b)(3), the Secretary finds that the Kentucky program demonstrates that the Kentucky DNREP can regulate coal exploration consistent with 30 CFR Parts 776 and 815. The State's authority is discussed in Findings 1, 2 and 4, above. Kentucky has incorporated the provisions of 30 CFR Parts 776 and 815 into portions of 405 KAR 8:020E and 20:020E. The narrative description of the state systems is found in the narratives entitled "State section 731.14(g)(1)" and "State section 731.14(g)(8)". Significant issues underlying this finding are as follows:

15.1 The Secretary previously found 405 KAR 8:020E, section 2(3)(a) to be inconsistent with 30 CFR 776.12(b)(1) because the State section did not require posting of the notice of the exploration application at a public office (Finding 15.1, October 22, Federal Register, 45 FR 69956). However, Kentucky has brought to the attention of the Secretary 405 KAR 8:020E, section 2(3)(a) which requires the applicant to publish a

newspaper notice of the application. The Secretary concurs that this advertisement will provide the notice necessary to give the public the opportunity for comment on the application. Therefore, 405 KAR 8:020E, section 2(3)(a) is found to be no less effective than the intent of 30 CFR 776.12(b)(1).

15.2 The Secretary previously found the State program narrative description for 731.14(g)(1) and 731.14(g)(2) inconsistent with the regulatory requirements because the narrative description misstated the number of days for public comment on an application. The program narrative sections have been revised to correct these discrepancies and the Secretary finds them acceptable.

Finding 16

In acccordance with 30 CFR 732.15(b)(4), the Secretary finds that the Kentucky program demonstrates that the Kentucky DNREP can regulate the extraction of coal incident to Government-financed construction consistent with 30 CFR Part 707. Legislative authority is discussed under Finding 1. State regulations consistent with 30 CFR Part 707 are found in portions of 405 KAR 7:030.

The Secretary previously questioned 405 KAR 7:030, section 3 because it appeared to allow all reclamation work under Title IV of SMCRA (abandoned mine land (AML) reclamation fund) to be exempted from the environmental protection performance standards. This finding is resolved by a policy statement from DNREP as explained in Finding 1.2 above.

Finding 17

In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Kentucky program demonstrates, except as noted below, that the Kentucky DNREP can enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. The State's legislative authority is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in 405 KAR 12:010E, 12:020E and 12:030E. The description of the State's inspection system is found in the narratives entitled "State section 731.14(g) (4)–(7) and 15". Significant issues discussed during the review of the Kentucky program corresponding to Subchapter L of 30 CFR Chapter VII are as follows:

17.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several State program sections to be substantially identical to their federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** have been resolved: 17.1, 17.3, 17.4, 17.5 and 17.6.

17.2 The Secretary previously found 405 KAR 12:010E, Section 3(2) inconsistent with 30 CFR 840.11(d)(2) because the State section did not specify that inspections would be made without prior notice. (See Finding 17.2, October 22, 1980, **Federal Register**, 45 FR 69957.) Kentucky has clarified that it is the State's policy to conduct unannounced inspections (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary therefore, finds 405 KAR 12:010E, Section 3, as stringent as the federal requirement.

17.3 405 KAR 12:010E, section 3(5)(a), differs from 30 CFR 840.11 concerning the frequency of inspections. The Kentucky regulation provides that monthly partial inspections will continue at a site until after DNREP determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections will provide adequate inspection. The regulation further provides that this determination will not be made until at least after the end of Phase I reclamation, which is defined in 405 KAR 10:040E, Section 2, as after an area has been backfilled, regraded and seeded. The federal regulations state that the regulatory authority shall conduct at least one partial inspection per month and one complete inspection per calandar quarter. However, the Secretary agrees that monthly inspections are not necessary on sites which have been stabilized and are pending bond release. The Kentucky system allows the regulatory authority to concentrate its inspection efforts on sites with a higher potential for problems than the stabilized areas. The Secretary finds the Kentucky provisions no less effective than the federal requirements.

17.4 The Secretary notes that the Kentucky program provides that only inspectors who obtain the rank of principal inspector or above are empowered to write cessation orders for practices creating an imminent danger. (See Finding 2.5 in the Response to October 1980 Findings, Administrative Record KY–413.) In response to questions by OSM relating to the State's capability to immediately issue cessation orders, the State submitted a list (Administrative Record KY–438) showing that, at present, approximately 66% of its inspectors have the title of "principal" or above, and that these people are evenly distributed among the regional offices. This information insures that Kentucky can, as stated in its program, immediately dispatch a principal inspector to a site if an inspector who is not empowered to write a cessation order discovers a possible imminent danger. Therefore, the Secretary finds that the Kentucky program adequately demonstrates that Kentucky can issue cessation orders in accordance with section 521 of SMCRA.

17.5 405 KAR 12:030 is inconsistent with 30 CFR 842 because the State has deleted all provisions for citizens' access to the minesites. Kentucky maintains that SMCRA does not require that citizens be able to accompany state inspectors on the mine site and that citizens would still have access to mine sites with federal inspectors (see "Explanation of Recent Revisions", Administrative Record KY–413).

As a requirement for program approval, the State must demonstrate that they have regulations consistent with those promulgated by the Secretary (SMCRA Section 503(a)(7)). Therefore, program approval is conditioned upon promulgation of regulations providing citizen access to mine sites in accordance with 30 CFR Part 842.

Finding 18

In accordance with 30 CFR 732.15(b)(6), the Secretary finds that the Kentucky program demonstrates, except as noted below, that DNREP can implement, administer and enforce a system of performance bonds and liability insurance consistent with the requirements of Subchapter J of 30 CFR Chapter VII. Legislative authority related to bonding is considered in Finding 4. The description of the proposed system for bonding and insurance is located in the narrative entitled "State section 731.14(g)(3)". Significant issues discovered during the review of the Kentucky program corresponding to Subchapter J of 30 CFR Chapter VII are as follows:

18.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several State program sections to be substantially identical to their federal counterparts. For this reason the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** have been resolved: 18.3, 18.9, 18.12, 18.13, 18.14, 18.17, 18.19, and 18.20.

18.2 As discussed in Finding 18.1 of the October 22, 1980, **Federal Register** (45 FR 69957), the Secretary found

Kentucky's definition of "self-bond" in 405 KAR 7:020E, section 1 inconsistent with 30 CFR 800.5. Kentucky has decided to delete self bonding as an option and has amended the regulations accordingly. Therefore, the previous finding has been resolved. The elimination of self bonding regulations also resolves Finding 18.7 of the October 22, 1980, Federal Register (45 FR 69958).

18.3 The Secretary previously found 405 KAR 10:060E, which applied to long-term facilities such as underground mines, inconsistent with 30 CFR Part 801 because the state regulation did not consider surface construction related to subsidence control or measures for mine drainage treatment (see Finding 18.4, October 22, 1980, Federal Register, 45 FR 69958). Kentucky has deleted all of 405 KAR 10:060E on the basis of OSM's decision to suspend substantial portions of 30 CFR 801 (see December 7, 1981, Federal Register, 46 FR 59934–59936). The Secretary finds the remaining sections of 405 KAR Chapter 10 apply to both surface mines and long-term facilities even though the State regulations no longer distinguish between the two. The State regulations are, therefore, no less effective than federal requirements.

18.4 As discussed in Finding 18.5 of the October 22, 1980, Federal Register (45 FR 69958), the Secretary previously found KAR 10.020E, section 3 less stringent than 30 CFR 805.13, as the addition of the word "substantially" in front of the phrase "augmented seeding" appeared to change the intended meaning of 30 CFR 805.13. The October 22, 1980, finding requested that Kentucky specify what husbandry practices would be permissible, and thus would not extend the period of bond liability.

The purpose of 30 CFR 805.13, as set forth in the preamble to the regulation (45 FR 52310, August 6, 1980) is to distinguish between normal conservation practices which do not extend a period of bond liability and augmented conservation practices which require an extension of the liability period. Kentucky interprets augmented seeding, fertilizing and irrigation to mean *any* such action taken after the initial planting. However, § 805.13 is intended to allow corrective action and associated reseeding or other husbandry practices necessitated by corrective actions without requiring re-initiation of the bond liability period. Kentucky considers it unnecessary to specify what constitutes selective husbandry practices beyond its standard of "substantially augmented seeding, fertilization, irrigation, or other work," and considers minor augmentations to constitute the "normal conservation practices" provided for in § 805.13(b)(3). Thus, minor augmentations are all those which are not substantial. (See "Response to October 1980 Findings", Administrative Record Ky–413.) The Secretary agrees that minor augmentation by seeding, fertilizing, and irrigation is a normal conservation practice, and finds Kentucky's regulation no less effective than the federal requirements.

18.5 As discussed in Finding 18.6 of the October 22, 1980, Federal Register (45 FR 69959), the Secretary found the bond adjustment provisions of Kentucky's program less stringent than § 805.14. Kentucky has revised 405 KAR 10:020E, section 1(4), to include a factor for past changes in the cost of performing reclamation (historical cost factor) when calculating the initial amount of the bond. Also, Kentucky has revised 405 KAR 8:010E, section 19(1)(a) to include a provision for bond re-evaluation at the time of the permit review. Changes in the mining operation or reclamation plan will require a permit revision (405 KAR 8:010E section 2). Any changes in the cost of reclamation above the "historical cost factor" will be covered by 405 KAR 10:020E, section 4, which provides for an adjustment of the bond amount when the cost of reclamation, restoration, or abatement work changes substantially. 405 KAR 10:020E, section 4 differs from 30 CFR 805.14 as the costs changes must be substantial before causing the bond to be adjusted. However, because of the above cited revisions, Kentucky's program is no less effective than the federal regulation in providing for bond adjustments as conditions or costs change.

18.6 The Secretary previously disapproved 405 KAR 10:030E, section 2 as it did not require the collateral supporting a collateral bond to be valued at its current market value rather than its face value, as required by 30 CFR 808(f)(2). (See Finding 18.8, October 22, 1980, 45 FR 69958.) Under Kentucky's present definition of collateral bonds, supporting collateral is limited to "cash, negotiable certificates of deposit or an irrevocable letter of credit." 405 KAR 7:020E(19). The market value of each of these types of collateral is its face value. Kentucky has deleted any negotiable bonds from its definition of acceptable collateral bonds, thus eliminating the use of any collateral for which fair market value is a factor. Therefore, the Secretary finds 405 KAR 10:030E, section 2 no less effective than the Federal requirements.

18.7 In Finding 18.5 of the October 22, 1980, Federal Register (45 FR 69959), the Secretary found 405 KAR 10:040E less stringent than 30 CFR 807.11(f)(5) as the state section contained no provision for notification to local government bodies of a decision to release a bond and the right to request a hearing. Kentucky has revised 405 KAR 10:040E, section 1(5)(b) to include notice to the County Judge-Executive. The Secretary finds that this action resolves the previous concern.

18.8 As discussed in Finding 18.11 of the October 22, 1980, Federal Register (45 FR 69959), the Secretary previously questioned 405 KAR 10:040E, section 2 because it did not contain sufficient criteria to assure that no increment was prematurely released from the permit area. The State has completely revised its bonding regulations, and has included language similar to 30 CFR 807.12 (b) and (e) as requested by the Secretary. The main difference remaining between the state and the federal regulations is that 405 KAR 10:040E, section 3 allows each bond increment to be treated independently and deleted from the permit area after final release on the increment, whereas 30 CFR 807.12(c) specifies that the increment not be released from the permit area separately from the last remaining increment.

However, the Secretary finds the State requirements no less effective than the federal requirements because of the additional safeguards that the State has established for the increments. 405 KAR 10:010E, section 3(3)(a) provides that, "where the approved postmining land use is of such a nature that successful implementation of the postmining land use capacity depends upon an area being integrally reclaimed then that area must be contained within a single increment". Further, 405 KAR 10:040E, section 2(3) provides that, "the Department shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability * * * to an amount less than that necessary for the Department to complete the approved reclamation plan, achieve compliance with the requirements of KRS 350, Title 405 * * * and abate any significant harm * * * which might occur prior to the release of all performance bond liability for the permit area". The State also requires in 405 KAR 10:010, section 3(3)(d) that the increment boundaries be physically marked on the site.

The state provisions require the regulatory authority to determine that the units are independent at the

initiation of the bond and before the increment is released from the permit area. The State regulations would assure that an increment is not released from the permit area if the increment was not self-supporting or if it had a potential impact on the remaining area. Therefore, the Secretary finds that 405 KAR 10:040E, section 3 is no less effective than 30 CFR 807.12(c).

18.9 As discussed in Finding 18.16 of the October 22, 1980, **Federal Register** (45 FR 69959) 405 KAR 10:050E section 2 was previously found inconsistent with 30 CFR 808.12 (a)(4) and (b) because the State regulations failed to include language requiring the regulatory authority to pursue bond forfeitures through all levels of appeal. To resolve this issue Kentucky submitted a policy statement explaining that an Order of Forfeiture becomes final after the opportunity for an administrative hearing, and that such an order would be diligently pursued through the courts if necessary (See February 12, 1982, letter from DNREP, Administrative Record Ky 438). The Secretary believes the policy statement resolves the previous concerns, and finds 405 KAR 10:050E, section 2 no less effective than the federal requirements.

18.10 The narrative under State program § 731.14(g)(3) was previously disapproved because the bond computation formula shown in the narrative yielded maximum per acre bond amounts that were unrealistically low. (See Finding 18.18, October 22, 1980, **Federal Register**, 45 FR 69959). The revised program submission deletes the previous formula but the State has assured the Secretary that a new formula will be developed to establish sufficient bond amounts. The Secretary believes that the actual formula or other internal guidelines used to establish bond amounts are not required as part of the narrative description and 30 CFR 731.14. The Secretary accepts the State's explanation that a formula will be used and considers verification of the adequacy of the formula an oversight function. State program narrative § 731.14(g)(3) is, therefore, approved except as related to cumulative bonding as discussed in Finding 18.11.

18.11 In Finding 18.21 of the October 22, 1980, **Federal Register** (45 FR 69961), concern was expressed that Kentucky might have such a large backlog of pending bond forfeiture actions that DNREP might not be able to effectively implement a bond forfeiture system under primacy. In a letter dated February 12, 1982 (Administrative Record Ky 438), DNREP explained that the backlog has been reduced and organizational and manpower changes have been made to eliminate this problem. The Secretary believes the explanation given adequately resolves the previous concerns.

18.12 The Secretary notes that 405 KAR 10:040E section 1 differs from 30 CFR 807.11(f) because the State regulations fail to clearly state that a requested hearing on a bond release decision would be held before the actual release is made. However, a policy statement submitted by DNREP clarified that releases will not be made prior to the completion of the hearing process. (See February 12, 1982, letter from DNREP, Administrative Record KY–413.) As clarified by this policy statement, the Secretary finds 405 KAR 10:040E section 1 no less effective than 30 CFR 807.11(f).

18.13 The Secretary notes that Kentucky has deleted regulatory references similar to 30 CFR 806.12(g) which specify the maximum amount a bank can extend on a letter of credit. As part of the program resubmission, Kentucky includes KRS 304.5–120, which places statutory limits on letters of credit. The Secretary finds the limitations imposed by the Kentucky statute are no less effective than the federal regulations at 30 CFR 806.12(g) in preventing banks from being overextended through letters of credit.

18.14 The Secretary finds 405 KAR 10:040, section 1(7) inconsistent with SMCRA section 519 because the State regulations allow for a bond-crediting procedure under their cumulative bonding system that does not provide for adequate public participation. Kentucky provides an operator with the opportunity for a hearing on a bond crediting decision but fails to provide such an opportunity to others with a legal interest which may be affected. Kentucky maintains that its bond credit is not a bond release since no actual section of the permit is released from liability even though the part of the bond amount originally applicable to one section of the permit is "credited" to another section (see 18.11 under the "Response to October 1980 Findings", Administrative Record KY–413).

The Secretary is not persuaded by Kentucky's argument that a credit is not a release. Section 519(c) of SMCRA refers to releases "in whole or in part" of reclaimed areas covered by a "bond or deposit thereof". SMCRA section 519 does not limit bond release procedures to a release of bond liability but consistently refers to release of all or part of the bond. The Secretary finds no substantive difference between a release under section 519 of SMCRA and a credit under Kentucky regulations. Approval of the Kentucky program is conditioned upon the State enacting regulations including public participation requirements consistent with section 519 of SMCRA or deleting the cumulative bonding system.

Finding 19

In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Kentucky program demonstrates, except as noted below, that the State has sufficient provisions for civil and criminal sanctions for violations of State law, regulations and conditions of permits and exploration approvals consistent with Section 518 of SMCRA. Legislative authority relating to enforcement is discussed in Finding 2. Regulatory provisions related to Section 518 of SMCRA are found in 405 KAR 7:090E. The State's system for implementing these sanctions is described in the narrative entitled "State section 731.14(g)(4)–(7) and (15)". Significant issues discovered during the review of the systems and regulations pursuant to SMCRA section 518 are as follows:

19.1 In response to findings published in the October 22, 1980, **Federal Register**, the State has changed several program sections to be substantially identical to their federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** have been resolved: 19.1, 19.3, 19.4, 19.5, and 19.6.

19.2 In Finding 19.2 of the October 22, 1980, **Federal Register** (45 FR 69961), the Secretary previously found the Kentucky program insufficient because it failed to establish a procedure for the assessment of civil penalties. In the program resubmission the State has included guidelines which will be used in the assessment of civil penalties. Since the State's law and regulations are in accordance with section 518(a) of SMCRA, the Secretary believes the guidelines provide sufficient procedural guidance for assessment. The Secretary finds that the Kentucky program is no less effective than the federal requirements for assessing civil penalties.

19.3 405 KAR 7: 090E section 3 differs from 30 CFR 845 because the Kentucky regulation provides that the Department send its notice of a proposed civil penalty assessment following the issuance of the final notice of inspection of noncompliance rather than following the initial issuance of the notice or order as in 30 CFR 845.17(b). As explained in the "Explanation for

Recent Revisions" (Administrative Record KY–413), Kentucky believes its method is more practical than the federal procedure, which often requires a reassessment after all relevant facts pertaining to the violation are known. Under the Kentucky system, the civil penalty assessment process would not begin until the final determination as to abatement had been made. At most, the process would be initiated 30 days after a violator had failed to abate a violation. In this manner the Department would always know the total amount to be assessed before sending its notice of proposed penalty assessment. The Secretary concurs with Kentucky's rationale, and finds 405 KAR 7:090E section 3 no less effective than the federal requirements.

Finding 20

In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Kentucky program demonstrates that the State can issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with section 521 of SMCRA and Subchapter L of 30 CFR Chapter VII. Legislative authority relating to Section 521 of SMCRA is discussed under Finding 2. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in 405 KAR 12:010E, 12:020E, and 12:030E. The description of the State's system for issuing enforcement notices is contained in the narrative entitled "State section 731.14(g)(4–7) and (15)". Significant issues raised during the review of Kentucky narrative and regulations are as follows:

20.1 In response to the findings published in the October 22, 1980, **Federal Register**, the State has changed several program sections to be substantially identical to their federal counterparts. For this reason, the Secretary finds that Findings 20.1 and 20.3 of the October 22, 1980, **Federal Register** have been resolved.

20.2 Finding 20.2 of the October 22, 1980, **Federal Register** (45 FR 69961), identified 405 KAR 12:020E, Section 2 as being inconsistent with 30 CFR 843.12(a) because the State section does not exempt violations creating an imminent danger from a notice of violation (NOV). The federal regulation requires a cessation order for a violation creating an imminent danger. Kentucky has explained that in order to have a standard record-keeping device for their computer, a notice of non-compliance *and* a cessation order for imminent danger will be issued. Issuing both citations fits the State scheme of using inspections of non-compliance to follow up all enforcement orders of the Department (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary finds the Kentucky procedure no less effective than the federal regulations.

20.3 In Finding 20.4 of the October 22, 1980, **Federal Register** (45 FR 69961), the Secretary expressed concern that in Kentucky's system description under State program § 731.14(g)(5), there was no provision for State inspectors to vacate a notice of non-compliance. Seemingly, the only way Kentucky could remedy a violation issued in error would be a formal hearing, which the Secretary felt would be cumbersome and inconsistent with 30 CFR Part 843. Kentucky has informed the Secretary that the Director of Operations and Enforcement is authorized by regulation to vacate, without a formal hearing, a notice or order upon written recommendation of the inspectorand the regional administrator (see "Response to October 1980 Findings", Administrative Record No. KY–413). The Secretary finds Kentucky's system to be no less effective than 30 CFR 843.

Finding 21

In accordance with 30 CFR 732.15(b)(9), the Secretary finds that the Kentucky program demonstrates that the State can designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Kentucky incorporated provisions of Subchapter F in 405 KAR Chapter 24. The State's description of the proposed system for designating lands unsuitable is located in the narrative entitled, "State Program § 731.14(g)(11)." The State has sufficient legislative authority to accomplish this requirement. Significant issues raised during the review of the Kentucky regulations are analyzed as follows:

21.1 In response to findings made in the October 22, 1980, **Federal Register**, the State has changed several State program sections to be substantially identical to the federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 22, 1980, **Federal Register** have been resolved: 21.1, 21.2, 21.3, 21.6 and 21.7.

21.2 405 KAR 24:030E section 4(1) provides that a person petitioning to have an area designated as unsuitable for surface mining will not be notified of permit applications received that include any of the area covered in the petition until such time as the petition is determined to be complete. A previous finding noted that the Kentucky regulation did not agree with 30 CFR 764.15(a)(6), which seemingly requires that a petitioner be notified of relevant permit applications without regard to the completeness of the petition. See Findings 21.5, 45 FR 69961.

Kentucky responds by referring to the completeness requirements described in 30 CFR 764.13(b) and 764.15(a)(1) and the reference to frivolous petitions in 30 CFR 764.15(a)(3). Kentucky insists that it should have "reasonable administrative discretion" to await these completeness and frivolity determinations before it undertakes the potentially burdensome notification procedures required in the subject regulation. Kentucky insists that no prejudice would result to the petitioner from its proposed procedure, as the public notice requirements in 30 CFR 786.11(a) and its parallel provision, 405 KAR 8:010E section 8, provide a minimum of four notices in a local newspaper of general circulation, which enables a petitioner to identify relevant permit applications and file objections as appropriate.

30 CFR 764.15 and the Kentucky counterpart, 405 KAR 24:030E section 3 and section 4 address the concept of a "complete" petition. Each establishes that upon the receipt of a petition the first order of business for the regulatory authority is the determination of the petition's completeness. This determination is to be made in less than 30 days from the receipt of the petition. By the end of that period the petitioner is to be notified by certified mail whether the petition is complete.

Kentucky's desire not to start notifying petitioners of applications filed until the completeness determination has taken place does not render the Kentucky program deficient. As stated above, the permit application regulations in 30 CFR 786.11(a) and the parallel Kentucky provision, 405 KAR 8:010E section 8, require four consecutive weekly notices published in the newspaper of largest bonafide circulation in the county where the proposed surface coal mining and reclamation operation is to be located. That notice is to include a map or description which clearly shows or describes the exact location and boundaries of the proposed area so as to enable interested parties readily to identify the proposed permit area. This notification enables a truly interested petitioner to apprise him or her of relevant permit applications. The requirement in 30 CFR 764.15(a)(6), therefore, does not represent the petitioner's sole source of notification of relevant pending permit applications. Kentucky's requirement that the petitioner take it upon him or her to keep apprised, through alternative means provided, of relevant permit

applications filed during the short period between the time the petition is filed and the time the agency has determined an application to be complete is not onerous.

Noteworthy is that one of the requirements for completeness in both the Kentucky and the Federal regulations is that the petitioner provide the location and size of the area covered by the petition. Certainly, the State should be given a reasonable amount of time to determine whether the petitioner has met this requirement before its obligation to notify the petitioner of applications pertaining to the same area is triggered. Otherwise, the State would be in the contradictory position of being required to notify a petitioner of permit applications pertaining to the petition area when perhaps the petitioner has not even identified the area petitioned or may have done so inadequately.

In sum, the question is one of adequacy of notice; whether under the Kentucky program adequate notice is provided to the petitioning party. Given the short period involved and the ready availability of other means by which the petitioner could apprise him or herself of competing permit applications, the Kentucky regulation is no less effective than the Federal regulation.

21.3 The Secretary notes that Kentucky has included a provision in 405 KAR 24:020E, section 3(3) requiring notarization of petitioners' signatures on lands unsuitable petitions. Although the federal regulations are silent with regard to notarization, the Secretary does not believe the added State requirement is unreasonable and, therefore, finds the provision no less effective than federal requirements.

21.4 405 KAR 24:030E, section 3(6) allows the filing of a petition to designate an area, for which a permit application has been filed, at any time up to the end of the public comment period on that permit application. However, Kentucky does not provide that the public comment period would extend to the informal conference as provided in 30 CFR 764.15(a)(7). The Secretary believes that some cut-off is necessary in order to facilitate an orderly permit review process. Without a cut-off, petitions could indefinitely delay a final decision on the permit. While the time period allowed by Kentucky is not identical to the federal requirement, it is not unreasonable. Kentucky has provided that the time period during which a petition can be filed terminates at the end of the public comment period regardless of whether an informal conference has been requested. In those cases where an informal conference is not requested, the Kentucky provision allows a time period identical to the federal provision. Kentucky's effort to provide a process which balances the desire of the regulatory authority to have a permit review process which is more easily managed, is administratively efficient and still allows an adequate opportunity for public participation is found to be no less effective than 30 CFR 764.15(a).

21.5 The Secretary notes that 405 KAR 24:030E section 4(3) includes a provision requiring the State to include a petitioner's name and address in a newspaper notice on a lands unsuitable designation request. At this time, the Secretary has no reason to object to such a provision.

21.6 405 KAR 24:030E, section 7(3) differs somewhat from 30 CFR 764.17(b). While the Federal regulation provides that all parties be notified by certified mail of a hearing on a petition to designate lands unsuitable, the Kentucky regulation provides for notification by certified mail to the principal participants and by regular mail to all others.

Kentucky believes that its proposal would provide adequate notice to interested parties, pointing out that regular mail is a recognized, valid method of service in legal proceedings. Kentucky cites its own rule of civil procedure and *Daniel v. Michigan Mutual Liability Company*, 88 F. Supp. 339 (W.D. Ky. 1950).

The rules covering service of process in formal adjudicatory proceedings are designed to be fair and efficient. One would not expect that such service would be inferior to that required in regulatory administrative proceedings. Certainly, any valid system of notification must represent a weighing of the expenses involved, along with the advantages and disadvantages of each method, in an attempt to achieve the best service reasonably possible. Kentucky appears to have struck a proper balance. Certified mail only helps to assure the sender that the recipient has received the item sent. Assuming a participant or other interested party in a petition proceeding provides a valid address, both the regulatory authority and the party should be permitted to rely on regular mail.

21.7 The Secretary notes that 405 KAR 24:030, section 2(2) omits the requirement in 30 CFR 762.5 that substantial legal and financial commitments for exemption of an area from a "lands unsuitable" designation be based on investments made on the basis of a long term coal contract. The Kentucky regulation still specifies that acquiring the coal or the right to mine will not alone constitute substantial legal and financial commitments. The Secretary agrees that a long term coal contract is only one way of many to show substantial commitments. Therefore, the Secretary finds 405 KAR 24:030, section 2(2) no less effective than federal requirements.

21.8 The Secretary notes that the Kentucky regulation 405 KAR 24:030E section 8(7) provides that the decision of the Secretary of the regulatory authority on a petition to designate lands unsuitable for surface mining may be appealed and that such a proceeding will be conducted according to rules applicable to adjudicatory hearings. The federal regulation (30 CFR 764.17) provides for only a legislative-type hearing.

Kentucky points out that the adjudicatory hearing provided for in the Kentucky regulation is an addition to, rather than a substitute for, the legislative-type hearing from which the appeal is taken. Kentucky states that the appeal will not stay the effect of the decision made by the department following the legislative-type hearing, and the adjudicatory hearing will serve only to provide a record for purposes of the appeal. Kentucky emphasizes that the adjudicatory hearing, as such, will permit the introduction of new information not properly considered at a legislative-type hearing but which may nonetheless be relevant. The State stresses that the nature of the legislative hearing will not be affected by the adjudicatory proceeding, as the department will defend the agency's decision at the adjudicatory hearing. Kentucky insists that the petition process will not be chilled by the appellate procedures provided. (See February 12, 1982, letter, Administrative Record Ky–438.)

While Judge Flannery's February 26, 1980 decision (Round I) upholds the regulation in 30 CFR 764.17, it also acknowledges that a State may provide "additional procedural safeguards" beyond the legislative-type hearing. *In Re: Permanent Surface Mining Regulation Litigation*, 14 ERC 1083, 1093 n. 14 (1980). The Kentucky provision may be viewed as providing such an additional safeguard. The Kentucky regulation is not intended to weaken or alter the fundamentally legislative nature of the petition process, and it does not have that effect. To the contrary, it strengthens and insures the validity of that process. Significantly, the Kentucky procedure is in the first instance a purely legislative one, and the provisions for adjudicatory proceedings are triggered only if a party chooses to appeal the initial

determination. Then, by providing for an adjudicatory hearing at the appellate level, it allows the regulatory authority to meet those "unusual circumstances" referred to in the Flannery decision, *id.*, where the legislative-type procedure is inadequate or inappropriate. It would not seem that participants in the petition process would be averse to the Kentucky procedure. Under the Kentucky regulation, the unsuccessful party still has a second opportunity to obtain administrative relief, but this represents no burden or expense to the winning party, as the State shoulders the burden of defending the agency's decision. On the whole, the Kentucky procedure appears designed to assure a full and fair consideration of all matters relevant to the petition. Thus, while Kentucky's petition process does not mirror the federal regulation, it is no less effective in meeting the requirements of the regulations.

Finding 22

In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the Kentucky program demonstrates that the State provides for adequate public participation in the development, revision, and enforcement of state regulations and that the State program is, except as noted below, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Provisions for public participation in the development and revision are discussed in the narrative entitled "State Program § 731.14(g)(14)". The legislative authority for public participation is discussed in Finding 1.

The Secretary finds that there are inconsistencies between state and federal public participation requirements relating to enforcement during implementation of the program. These deficiencies are discussed under Findings 1.3, 17.5, 18.4, 27.4 and 27.5.

Finding 23

In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Kentucky program demonstrates that the State can monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by the employees of the state regulatory authority consistent with the requirements of Subchapter A of 30 CFR Chapter VII. The state description of the proposed system for monitoring, reviewing and enforcing the prohibition against indirect or direct financial interest in coal mining operations by the employees of the state regulatory authority is located in the narrative entitled, "State Program § 731.14(g)(12)". Kentucky has the legislative authority under KRS 350.460 to restrict financial interests. Implementation of the provisions of 30 CFR Part 705 is accomplished by DNREP policy directives.

In Findings 23.1 and 23.2 of the October 22, 1980, Federal Register (45 FR 69962), the Secretary found the State program insufficient because it did not contain regulations relating to conflict of interest. Kentucky has stated that its policy memoranda on this subject, which are substantially identical to 30 CFR Part 705, are enforceable against employees, and that actual regulations are unnecessary (see "Response to October 1980 Findings", Administrative Record KY–413). The Secretary is persuaded by Kentucky's assertion and further notes that the State has been successfully enforcing its conflict of interest provisions under the interim program without regulations. Therefore, the Secretary finds that the program contains conflict of interest provisions that are no less effective than 30 CFR Part 705.

Finding 24

In accordance with 30 CFR 732.15(b)(12), the Secretary finds that Kentucky has sufficient legislative authority to require the training, examination, and certification of persons engaged in or responsible for blasting. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with section 719 of SMCRA until such time as the federal rules on blaster certification are promulgated.

Finding 25

In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Kentucky program demonstrates that the State can provide for a Small Operators Assistance Program (SOAP) consistent with the requirements of 30 CFR Part 795. The State has adequate legislative authority to implement the SOAP. The proposed system described in the narrative entitled, "State § 731.14(g)(16)" is also adequate. Regulations implementing 30 CFR Part 795 are contained in 405 KAR 7:080E, which are found to be no less effective than federal requirements. The State has changed several program sections to be substantially identical to the federal counterparts in response to findings made in the October 22, 1980, Federal Register. For this reason, the Secretary finds that Findings 25.1, 25.2 and 25.3 of the October 22, 1980, Federal Register have been resolved.

Finding 26

In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Kentucky program provides, through KRS 350.990(7), for the protection of State employees of the regulatory authority in accordance with the protection afforded federal employees under section 704 of SMCRA.

Finding 27

In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Kentucky program demonstrates, except as noted below, that the DNREP has an administrative and judicial review process in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. Legislative authority corresponding to sections 525 and 526 of SMRCA are discussed under Finding 1. The State's description of the proposed system for administrative and judicial review is located in the narrative entitled "State § 731.14(g)(4–7) and (15)." Kentucky regulations related to administrative and judicial review are found in 405 KAR 7:090E. Significant issues raised during the review of the regulations related to administrative and judicial review are as follows:

27.1 In response to the findings published in the October 22, 1980, Federal Register, Kentucky has revised several program sections to be substantially identical to the Federal counterparts. For this reason, the Secretary finds that the problems identified in the following findings from the October 22, 1980, Federal Register have been resolved: 27.1, 27.2, 27.4, 27.5, 27.6, 27.7, 27.8, 27.9, 27.10, 27.11, 27.12(a), 27.12(d), 27.13, and 27,15,

27.2 In Finding 27.3 of the October 22, 1980, Federal Register, the Secretary noted that the Kentucky provisions for an informal conference for bond release under 405 KAR 7:080E section 4 are inconsistent with 30 CFR 807.11(e). Kentucky has clarified that it does not intend to provide for the informal conference for bond release which is considered optional for State programs (see "Response to October 1980 Findings," Administrative Record No. KY–413). The Secretary concurs that the informal conference is optional, and finds that the concerns raised by the previous findings are resolved.

27.3 In Finding 27.12(c) of the October 22, 1980, Federal Register (45 FR 69963), the Secretary found that the program lacked provisions consistent with 43 CFR 4.1295 and 4.1296, regarding the award of costs and expenses in administrative hearings and the review of such awards. The State amended its

rules at 7:090E section 12(6) to comply with 43 CFR 4.1295 relative to awards. However, the State asserts that a system of internal appeal of awards as prescribed by 43 CFR 4.1290 is not necessary because any person aggrieved by an award decision may appeal pursuant to KRS 224.085 to the Franklin Circuit Court (see "Response to October 1980 Findings," Administrative Record No. KY–413). The Secretary finds that an appeal to the Circuit Court is no less effective than the federal requirements, and finds the issues raised by previous Finding 27.12(c) resolved.

27.4 As discussed in Finding 27.14 of the October 22, 1980, Federal Register (45 FR 69983), the Secretary previously found that the State had no procedural regulations comparable to 43 CFR 4.1109 (service), 4.1130 *et seq.* (discovery), 4.1155 (burden of proof in civil penalty proceedings), and 4.1171 (burden of proof in review of section 521 notices or orders). Kentucky has attempted to correct these deficiencies by adding a provision to 405 KAR 7:090E, section 5(5)(a) specifying that, "the pertinent provisions of the Kentucky rules of civil procedure shall apply to cases before the Department." However, the State program does not demonstrate which rules are pertinent. The Secretary finds, therefore, that the State program is still insufficient in this area. Correction of this deficiency is required as a condition of approval.

27.5 As discussed in Finding 27.12(b) and (e), of the October 22, 1980, Federal Register notice, Kentucky did not include a standard for the award of costs and expenses consistent with 43 CFR 4.1294. The State regulations provide only that awards be assessed within the sound discretion of the hearing officer. Kentucky has amended 405 KAR 7:090E section 12 to provide for the award of costs and expenses "as Secretary deems proper." In contrast, 43 CFR 4.1294 specifies who is required to pay the costs, and what showing is necessary to receive an award.

The Secretary finds that Kentucky regulation 405 KAR 7:090E section 12 is less effective than 43 CFR 4.1294 in providing standards for awards of costs and expenses consistent with the intent of section 525(e) of SMCRA. Approval of the Kentucky program is conditioned upon revisions to the program which correct this deficiency.

Finding 28

In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Kentucky program demonstrates that the State can coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. There is nothing in the Kentucky legislation which would prohibit dissemination of information to OSM. Further, the State regulations on permitting in 405 KAR Chapter 8 specifically provide for permit information to be provided to OSM. There is also nothing in 405 KAR Chapter 10 on bonding or Chapter 12 on inspections which restricts coordination with OSM. The State has corrected the previously identified deficiency (see Finding 28, October 22, 1980, Federal Register, 45 FR 69984), concerning the lack of the Director of OSM's approval authority on experimental practices by adding a provision requiring such approval to 405 KAR 7:090E section 2.

Finding 29

In accordance with 30 CFR 732.15(c), the Secretary finds that there are no other laws or regulations in addition to those discussed in the preceding findings which would preclude implementation of SMCRA and 30 CFR Chapter VII.

Finding 30

In accordance with 30 CFR 732.15(d), the Secretary finds that the DNREP and other agencies having a role in the State program will have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the State program.

In response to questions on Kentucky's staffing and budget in Finding 30 of the October 22, 1980 Federal Register (45 FR 69983), Kentucky assured the Secretary that it intends to adjust personnel as each need becomes apparent during the implementation of the program. Based on this assurance the Secretary accepts Kentucky's staffing and budget plan.

Disposition of Agency and Public Comments

Comments have been accepted and considered on Kentucky's program resubmission of December 30, 1981 (Administrative Record KY–413) and information provided by Kentucky in connection with a reopened public comment period. The majority of the public comments were submitted by a collection of the following organizations as a group: Appalachian Research and Defense Fund of Kentucky, Appalachia Speak Out, the Citizens Group of the Kentucky Primacy Task Force, the Cumberland Chapter of the Sierra Club and the Kentucky Conservation Committee. Several individual commenters either endorsed the comments made by this group or made specific comments very similar to certain comments by the group. In addressing the comments made by the group and endorsed by individuals the Secretary has identified the commenter as ARDFK *et al.* Comments from groups or agencies are identified by name but names of individuals have not been used. Comments are organized into the following seven groups: General, Permitting, Bonding, Performance Standards, Public Participation, Inspection and Enforcement, and Lands Unsuitable.

General

1. ARDFK *et al.* asserted that the State definition of coal processing plant found at 405 KAR 7:020, section 1(17) is inconsistent with section 701(28) of SMCRA, defining surface coal mining operations. The Secretary finds that the State definition is, on its face, consistent with the 30 CFR 701.5 definition of coal processing plant. In its permanent program submission in the explanations for recent revisions DNREP sets forth its interpretation of the definition, which excludes from DNREP regulation off-site facilities which crush but do not separate impurities. The Secretary is currently evaluating the Department's policy regarding processing facilities subject to OSM regulation, but is not in the position to disagree with Kentucky's interpretation at this time. If the State's interpretation is in disagreement with the Department's final policy determination, then a modification of the State's interpretation will be required.

2. ARDFK *et al.* objected to Kentucky's definition of "Best Technology Currently Available (BTCA)" which deletes the phrase found at 30 CFR 701.5 that reads: "but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal Laws * * *" The commenter maintained that the legislative history makes it clear that mining operations must not go forward unless all applicable water quality standards are achieved.

The Secretary does not believe the deletion of the phrase weakens the Kentucky regulations. Kentucky still requires that BTCA "* * * prevent, to the extent possible, additional contributions of suspended solids * * *" This general requirement in the definition is in addition to the specific performance standards which specify the minimum acceptable level of contributions. For example: 405 KAR 16:070, section 1(g) states that, "Discharges of water from areas disturbed by surface mining activities

shall at all times be in compliance with all applicable federal and state water quality standards including the effluent limitation guidelines for coal mining promulgated by the U.S. EPA in 40 CFR 434." The Secretary believes the change in the definition is largely editorial.

3. ARDFK *et al.* commented that Kentucky should be required to include a reference to physical conditions in the definitions of "toxic forming materials" and "toxic mine drainage" as does 30 CFR 701.5. The commenter stated that, "toxicity, although a chemical condition has discernible direct and indirect physical impact on biota and water uses".

As indicated in Finding 12.4, the Secretary believes the deletion of the word "physical conditions" as used in the federal regulations makes the intent of the requirement more clear. Toxicity is indeed a chemical condition and the elimination of the word physical does not mean that a physical effect, such as death caused by a chemical condition, would not be considered. It does, however, make it clear that these terms relate to conditions which are chemically induced, such as acidity, rather than physically induced, such as sedimentation. The Secretary can think of no examples under mining conditions where toxic forming materials or toxic mine drainage would create a physical condition which would not be covered by Kentucky regulations.

4. ARDFK *et al.* commented that the provisions at 405 KAR 7:11OE, Section 2, that allow DNREP to suspend regulations without soliciting public input, violates the intent of SMCRA section 102(i) and K.R.S. Chapter 13.

The Secretary does not agree that the suspension of regulations violates SMCRA section 102, and notes that OSM itself has suspended regulations prior to public review. The key point is that public participation is provided for in subsequent revisions to the suspended sections, and that these revisions are timely. In the "Explanation for Recent Revisions" (Administrative Record KY–413) Kentucky acknowledged that a suspension would have to be coordinated with an amendment to the state program. The State must demonstrate adequate public participation for a program amendment so the Secretary believes the public participation requirements of SMCRA are not circumvented. The Secretary believes a judgment as to the effect of K.R.S 13 on the State's regulation is beyond the scope of this decision.

5. Several commenters were concerned with the potential for poor performance by DNREP after primacy, and cited instances where the regulatory authority did an adequate job in the past. No action can be taken in regard to these comments. The Secretary cannot consider past performance in evaluating a program submission. Section 503 of SMCRA specifically requires only that the states demonstrate, "the capability of carrying out the provisions of this Act * * *" As discussed in the preamble to 30 CFR Chapter VII (44 FR 14946–14947), a State's past history of administration is not considered a fair indicator of its future abilities under the federal legislation, and past performance would have to be judged on factors which may not necessarily relate to a state's future intentions or capabilities (44 FR 14961).

6. The U.S. Fish & Wildlife Service made some general comments relative to program implementation, which do not require consideration during the program decision. These comments have been furnished to the State for later reference.

7. ARDFK *et al.* stated that Kentucky's program does not adequately demonstrate that Kentucky has sufficient staffing for hearing officers, attorneys and inspectors. The commenter noted that the program contained even less information than the original submission which was found to be insufficient in the area of staffing. Specifically the commenter pointed out the following concerns:

(a) The costs and logistics of the hearing process have not been described. There is no information on: (1) Conflict of interest provisions for local hearing officers, (2) Qualifications for local hearing officers, (3) Pay scale and funding for local hearing officers, (4) Provisions for terminating services for local hearing officers, and (5) Possible interplay between the hearing officers and the enforcement branch of DNREP which would eliminate the independence of hearing officers.

(b) The program is vague concerning the number of attorneys who will be available for surface mining matters. Attorneys listed in the program work in a Division that handles more than coal related programs, and they have been historically backlogged in mining cases.

(c) Since the original submission, the number of inspections which the state has shown an individual inspector is expected to accomplish in one month has gone from 34 to 41. This increase grossly underestimates the additional requirements of the permanent program. The state inspector needs do not address follow-up inspections, citizen complaints and other permit related inspections such as pre-mine bond release and exploration. The commenter further cited the OSM staffing study referenced in Finding 30 of the October 22, 1980, Federal Register (44 FR 69984) that calculated state inspector needs at a minimum of 223.

(d) The modification (Administrative Record KY–438) to the resubmission (Administrative Record KY–413) makes significant reductions to the manpower originally proposed in the resubmission without any explanation. The estimated need for inspectors, which the commenter maintains is inadequate, will not be reached until after July 1983. This fact indicates that Kentucky will fall short of even minimal compliance with mandatory inspections. The program mentions a 225% increase in permit workload but the eventual manpower increase in permit review is not proportional, and a significant proportion of the increase is delayed until after July 1983.

The Secretary recognizes that there may be some short-term staffing problems at the initiation of primacy. However, as stated in Finding 30, Kentucky has agreed to adjust its staffing as needs are determined. Staffing will be monitored in oversight.

8. The Fish and Wildlife Service (FWS) furnished a Biological Opinion pursuant to section 7 of the Endangered Species Act which stated that the program was not likely to jeopardize the continued existence of endangered or threatened species or result in the adverse modification of their critical habitat. However, the FWS recommended OSM work with Kentucky to develop procedures for on-site inspections of the area with regard to endangered species since the Federal regulations, requiring a Fish and Wildlife Plan (30 CFR 779.20 and 780.16) were remanded. FWS also advised that its Biological Opinion extended only to the approval of the program and another Biological Opinion was needed for OSM's oversight program.

OSM is presently developing regulations to replace the remanded 30 CFR 779.20 and 780.16 and full promulgation along with the subsequent amendment to Kentucky's program may eliminate some of the FWS's concern. Pending this revision the Secretary will request that OSM work with Kentucky to insure that the State is meeting its responsibilities for protection of endangered and threatened species as set out in the Kentucky program.

The FWS comments will also be considered in the development of an oversight plan.

Permitting

1. ARDFK *et al.* stated that the state program was inconsistent with 30 CFR 786.11(d) and SMCRA section 507 and

513 with regard to the local filing of permit applications and publication of Notices of Intent to mine. The commenters had several specific concerns which have been separately considered as follows:

(a) ARDFK *et al.* stated that the application must be filed locally in the county which is the situs of the proposed operation. The Kentucky program requires that the application be filed at the "appropriate" Regional office of the Bureau where mining is proposed to occur. This concept was approved in the initial decision (45 FR 69940–69969) regarding the Kentucky program, and has not been reconsidered in this decision. For a complete discussion of the issue, refer to the response to comment B–10 in the October 29, 1980 **Federal Register** (45 FR 71593–71594).

(b) The commenter maintained that the Kentucky program did not demonstrate clearly that the applicant be responsible for filing at a local office as required by section 507(e) of SMCRA. Although the Kentucky program makes the regulatory authority responsible for the local filing, the Secretary does not believe the intent of SMCRA has been violated. The applicant is still responsible for filing the application in a system which will result in filing at the mining locality. The Secretary does not consider this as materially different than specifically requiring that the applicant file locally.

(c) The commenter objected to the language in the Kentucky regulations which would allow the applicant to begin the newspaper notices before the application was determined complete as long as the last notice appears after the completeness determination [405 KAR 8:010E, section 8(2)]. The Secretary believes the State regulatory language will achieve the same result as 30 CFR 786.11(d) in meeting the requirements of SMCRA section 513. The federal regulations specify that the applicant begin his notification upon the filing of a complete application but does not specify if, how, or when a completeness determination by the regulatory authority would affect the process. The Kentucky scheme of interjecting a formal completeness determination into the review process is descretionary to the state, and clarifies that the public will have the opportunity to review an application that has formally been deemed complete by the regulatory authority (1) at least 30 days before the end of the public comment period, and (2) after four consecutive weeks notice that the application is available for review in the Regional office.

(d) The commenter states that the regulations do not require the operator to update the application with any revisions or changes. The Secretary interprets the requirement in 405 KAR section 8(8), which requires the application to be available at the regional office, to include all sections of the application including updates and copies of written objections. This requirement will be monitored as an oversight function.

2. ARDFK *et al.* requested that clarification be made regarding 405 KAR 8:010E, section 23 to ensure that new areas which are added to the permit by amendment are treated as new permits except for bookkeeping purposes. The commenters maintained that this was necessary to insure that new areas do not relate back to the existing permit date for the purposes of grandfathering under section 522 (a)(6) and (e) of SMCRA. The commenters were also concerned that the process consider the new area both separately and as a part of the existing permit, and that bond be set at a minimum of $10,000 for the new area.

The Secretary believes the requirement in Kentucky's regulations that the "new area shall be subject to all procedures and requirements applicable to applications for original permits under this title" would exclude grandfathering based on the existing permit date. The new area's relationship to the existing permit should be considered in the permit decision regardless of whether it is added under the same permit number or is treated as a new permit. Therefore, the Secretary does not consider any special language necessary with regard to protection of the environment. The question of bonding is addressed in comment No. 4 under "Bonding" below.

3. ARDFK *et al.* objected to 405 KAR 8:010E, section 20 claiming it allows for incidental boundary revisions in excess of that intended by Congress and allows for other significant revisions without adequate notice.

The Secretary disagrees with the comment, and believes that the State has taken a reasonable approach to defining what requirements will apply to revision requests as required by section 511(a)(2) of SMCRA. Kentucky is not proposing to allow operators to add up to five acres of coal removal area "without new bonds, plans or public participation" as asserted in the comment.

Kentucky divides revisions into "major revisions" and "minor revisions". The permittee must submit all necessary plans and any additional bond for either type of revision. For "major revisions", *all* public participation rights are made available. For "minor revisions", notice to persons who may be adversely affected will be given by DNREP, such persons will be able to file written objections, and administrative and judicial review rights are available. Thus, even for "minor revisions", public participation rights are available. The only major omission is the right to informal conferences.

The 5 acre-10% limit on incidental boundary revisions is found in the subsection on "major revisions". Virtually all of 405 KAR 8:010E is made applicable to such revisions. The only portions not made applicable are the compliance history provisions, which would have been covered in the initial permit application.

The commenter was also concerned with the manner in which both the state and federal provisions should be interpreted. Section 511(a)(3) of SMCRA and 405 KAR 8:010E, section 20(4) both state that any extension to the area covered by a permit must be made by application for a new permit "except for incidental boundary revisions". The point is that any boundary revisions under these provisions must, in fact, be *incidental to* whatever revision in mining or reclamation operations the permittee is seeking.

"Incidental", does not mean "inconsequential" or "insignificant". It means secondary in importance to, but necessary or useful in achieving some other primary objective. The primary objective cannot be extension of the permit area. If it is, section 511(a)(3) and 405 KAR 8:010E, section 20(4) require a new permit application. If there is some other primary objective, however, and some revision of the permit boundary will be necessary to achieve that objective, then such a boundary revision could be considered under these sections.

4. ARDFK *et al.* objected to KAR 8:030 section 2(4) and 8:040, section 2(4) on the ground that section 507(b)(3) of SMCRA requires a listing of all previous mining permits held by the applicant, whereas KAR limits the list to permits held within the five years preceding the date of the new application. Kentucky argues that its provisions are as effective as their federal counterparts—30 CFR 778.13(d) and 782.13(d)—since the five-year period preceding the new application should adequately represent the applicant's compliance history. (See "Explanation for Recent Revisions", Administrative Record KY–413.) The Secretary agrees with Kentucky.

Congress recognized in SMCRA sections 507 (b)(4), (5), 510(c) that an applicant's compliance history beyond the recent past was of little value in

predicting the applicant's probable future compliance record. The five-year period preceding the new application date should be a sufficient guide for this purpose.

5. ARDFK *et al.* asserted that Kentucky's proposal for receiving and processing transition permits violates the 2 month/8 month deadlines established in section 502(d) of SMCRA. According to the commenter, the proposal would almost assure last minute, rubber-stamp approval of permits. The transition application, which must be submitted within the first 2 months of primacy, is insufficient to constitute an application under Section 507(a) of the Act. The commenter requested that Kentucky by required to submit a system which (1) sets priorities for certain types of surface coal mining operations with the goal of requiring a staggered submittal of complete permanent program permit applications, and (2) provides a date certain, not to exceed 12 months from primacy, for issuance of all permits. The commenter was also concerned that permit processing not detract from enforcement staff responsibilities.

As indicated by Finding 14.19, the Secretary has similar concerns with Kentucky's process for the transition of existing operations into the permanent program requirements. The Secretary believes it would be difficult for Kentucky to enforce a requirement for certain operators to submit applications before other operators. However, if operators are made aware that permit applications must meet a finding of actual completeness, rather than a finding of a good faith effort to complete, by the eighth month of primacy, it is likely that more timely and complete applications will be made. The Secretary also believes that it will be impossible for Kentucky to set an absolute date to stop repermitting without creating a situation conducive to last minute rubber stamping of inadequate applications. However, if Kentucky must prioritize processing of the applications so that excessively delayed actions would prohibit processing of new applications the pressure from industry would insure that Kentucky act prudently. The Secretary agrees with ARDFK's assessment of the problems, but has established other solutions as program conditions. The commenter's concern with staff is considered in Finding 30.

6. ARDFK *et al.* asserted that the discretion provided in section 15(2)[b] of 405 KAR 8:030E and 8:040E regarding background data on water quality was too open-ended. As indicated by Finding 14.18, the Secretary agrees with the commenter and is requiring correction of this deficiency as a condition of program approval.

7. The Mine Safety and Health Administration (MSHA) mentioned that one section of the Kentucky program, 405 KAR 7040E section 5(1), did not properly refer to MSHA determination of hazard potential. The regulation questioned was approved in the initial submission and is not being reconsidered at this time. However, the Secretary believes the concern raised by MSHA is adequately covered by several other references to MSHA approval found at other sections of the regulations such as 8:030E section 2(6) and 16:100E section 1(1)(e).

8. The Advisory Council on Historic Preservation contended that the program did not contain sections comparable to 30 CFR 770.12(c) which provides for coordination with section 106 of the National Historic Preservation Act, or 30 CFR 810.2(h) which requires that programs provide for protection of historic land. The Council stated that 405 KAR 8:030E section 11(2) and 405 KAR 8:040E section 11(2) inadequately limited historic considerations to the review of only available data and that 405 KAR 8:030E section 30 and 8:040E section 30 limit consideration to only those properties that are on the National Register and publicly owned.

Because of the above issues, the Council contends that the program does not comply with the November 1980 Programmatic Memorandum of Agreement (PMOA) among the Council, OSM and the National Conference of State Historic Preservation Officers. OSM has not implemented the PMOA because it would require OSM to exceed its authority under SMCRA section 522(2)(3). OSM has contacted the council about renegotiating the PMOA. In any event, the Secretary finds that the Kentucky State program and its requirements are no less effective than 30 CFR Chapter VII in providing for the protection of cultural and historic resources.

9. The Bureau of Mines stated that the Kentucky program's provisions for small operator assistance extended to operators mining up to 200,000 tons, which exceeded the 100,000 ton Federal limit. The Secretary finds that the State has not exceeded the Federal limit for its financial assistance program comparable to 30 CFR Part 795 as indicated by 405 KAR 7:080E and the narrative at State program § 731.14(g)(16). The State does provide for special assistance (non-financial) for operators mining less than 200,000 tons per year in the permit review process as indicated by 405 KAR 8:010, section 13. However, the special review provisions do not violate any federal requirements.

Bonding

1. ARDFK *et al.* objected to provisions in Kentucky's bonding regulations which allow each increment to stand on its own rather than being applicable to the entire permit area as is by 30 CFR 800.11(b)(1) and SMCRA section 509(a). In support of their position, the commenter quoted a portion of section 509(a) which states, "the applicant shall file * * * a bond for performance * * * conditional upon faithful performance of all requirements of this Act *and the permit*" (emphasis added by commenter).

The Secretary disagrees with the commenter's interpretation of SMCRA section 509. The section quoted by the commenter goes on to state "the bond shall cover that area of land within the permit area upon which the operator will initiate * * *. As succeeding increments * * * the permittee shall file * * * an additional bond to cover such increments * * *." SMCRA does not require bond increments to cover the entire permit area.

The Secretary has found the State provisions no less effective than the federal regulations because of the additional safeguards the state regulations contain in relation to deleting an increment from the permit area. See Finding 18.8.

2. ARDFK *et al.* stated that 405 KAR 10:020E, Section 4 violated SMCRA sections 509, 519 and 503 by providing that the public be excluded from bond release decisions which involved reductions in acreage which has not been affected by a surface mine. The commenter believed areas such as buffers or drainage areas should not be deleted merely because the area is not to be mined.

The Secretary does not agree that a bond reduction caused by a deletion of acreage is subject to the release procedures of SMCRA section 509. 405 KAR 10:020E, section 4 allows bond reduction without public participation only on areas which have not yet been affected by the operation. In addition to coal removal areas, drainage areas, buffers, or any area affected by the operation could not be deleted. The reduction is akin to a withdrawal of part of the area to be considered for mining and there will be no reclamation work for the public review.

3. ARDFK *et al.* stated that Kentucky has not modified its regulations regarding bond adjustment where the

cost of future reclamation work changes. The Secretary assumes the commenter is referring to 405 KAR 10:020E, section 4, which is discussed in Finding 18.5 of this notice. As stated in that finding, the primary difference between the state and federal regulations is that the state regulations do not require a change unless there is a substantial difference in the bond and the newly estimated cost to reclaim. The Secretary does not believe this results in a material difference in the regulations since the cost of reclamation is, at best, an estimate and, in practice, no regulatory authority will begin the process of adjustment unless the change in estimates is significant.

4. ARDFK *et al.* maintained that 405 KAR 10:020E, section 2, which allows new areas to be added to the permit without a $10,000 minimum bond on the new areas, violated the provisions of SMCRA section 509(a), 506(d)(2) and 511(a)(3). As the commenter interprets SMCRA, any extension of a permit area requires a new permit and each new permit requires a $10,000 minimum bond.

The Secretary disagrees with the commenter. SMCRA section 506(d)(2) and 511(a)(3) speak consistently to extensions of an existing permit being subject to the "full standards applicable to new applications * * *." The Secretary interprets SMCRA as allowing for extensions of permit boundaries under an existing permit so long as the new areas are subject to the same review procedures and performance standards as a new permit. The permit area, including the old and new area collectively, would be subject to section 509(a) of the Act which provides that, "in no case shall the bond for the entire area under one permit be less than $10,000". In addition, Kentucky has stated as part of its program submission that, except in these instances when the amendment would cover an acre or two, it is probable that the bond for the new area would be greater than $10,000. (See "Explanation for Recent Revisions", Administrative Record KY-413.) The State is required to establish an adequate bond under 405 KAR 10:020E, section 1, and the Secretary does not believe the intent of SMCRA is being violated by the exclusion of extension areas from a $10,000 bond limitation.

5. ARDFK *et al.* objected to the Kentucky regulations for bond "crediting" without public participation. The Secretary agrees with the comment and has requested correction of this deficiency as a condition of program approval (see Finding 18.14).

6. ARDFK *et al.* commented that the State's failure to define "substantially" as used before "augmented seeding fertilization * * *" concerning the triggering anew the five/ten year period of liability under the bond in 405 KAR 10:020E, section 3 is in direct conflict with the provisions of SMCRA section 515(b)(2). As indicated by Finding 18.4, the Secretary believes the intent of the word "substantially" has been adequately addressed in the State program.

7. ARDFK *et al.* asserted that Kentucky's explanation of how it would eliminate its existing backlog of bond forfeiture cases was inadequate. The commenter stated that DNREP had 136 outstanding forfeiture actions unresolved for pre-January 1, 1981 revocations. The commenter pointed out that this related to inadequate attorney staffing.

The Secretary recognizes that the State's situation in regard to delayed actions on bond forfeitures is less than ideal, but believes the explanation submitted by Kentucky shows that progress toward elimination of the problem is being made (see Finding 18.11). In addition, it is possible that the need for bond forfeiture actions will be reduced by the higher bond amounts set under the permanent program. Under the permanent program, abandonment of a site may be more costly to an operator than performing reclamation, because the operator's cost to reclaim would be less than his cost of defaulting on a bond.

8. ARDFK *et al.* stated that the regulations on bonding should clearly specify that a bond release will not occur until after notice and opportunity for a hearing. The commenter asserted that the policy statements submitted by DNREP which specified that bond release would not occur until after the hearing were insufficient.

As indicated by Finding 18.12, the Secretary believes the policy statement is sufficient to clarify the intent of the regulations. To release the bond prior to the notice and opportunity for a hearing would also violate the provisions of KRS 350.093 which addresses the opportunity for a hearing on "the proposed bond release."

Performance Standards

1. ARDFK *et al.* commented that the Kentucky regulations dropped the requirement of 30 CFR 816.71(a)(3) which requires controlled placement of spoil which ensures "(3) that the land mass designated as the disposal areas is suitable for reclamation and revegetation compatible with the natural surroundings". Upon examination, the Secretary finds that the State has not deleted the requirement, but has moved it from the regulation dealing with initial spoil placement (405 KAR 16:130E, Section 1(1)) to the regulation dealing with the final configuration of the fill (405 KAR 16:130E, Section 1(7)). The movement of this requirement is logical since it is the final fill configuration which relates most closely to compatibility with the natural surroundings.

2. ARDFK *et al.* objected to Kentucky's deletion of the requirement that a qualified registered engineer certify the plan for removal of burned coal processing waste (405 KAR 16:140E, Section 6 and 18:140E, section 6). The Secretary finds that the Kentucky program makes a distinction between plans "prepared" by an engineer and those "certified" by an engineer. The Kentucky regulations at 405 KAR 7:040E, section 10 establish specific criteria by which a certification means that the plans must be certified to be in accordance with the requirements of KRS 350 and the regulations. When the Kentucky regulations require that a plan only be "prepared" by an engineer, the engineer still must certify that the work is in accordance with sound engineering practice, but there is no requirement that he/she be aware of KRS 350 or Kentucky regulations. Since there are no statutory or regulatory standards for burned waste utilization, a certification under the Kentucky regulatory language of 405 KAR 7:040E, section 10 would be inappropriate. This issue was discussed with state officials at a December 31, 1981, meeting (Administrative Record KY-412) on a draft state document.

3. ARDFK *et al.* objected to Kentucky regulatory language at 405 KAR 16:190E, section 3 and 18:190E, section 3, which would allow treatment of acid and toxic-forming material as an alternative to covering such material. This provision of the Kentucky program was approved in the initial decision (45 FR 69940–69969) regarding the Kentucky program and has not been reconsidered in the decision.

4. ARDFK *et al.* questioned Kentucky's deletion of all references to reconstruction in the regulations dealing with roads. Although the federal regulations on roads, 30 CFR 816.150–.176 and 817.150–.176 have been remanded, the deletion of the word reconstruction was discussed with state officials at a meeting (Administrative Record KY-412) with OSM on a draft document. The State explained that any reconstruction, including roads, was covered under its regulations on existing structures, 405 KAR 7:040E, section 4. The Secretary, therefore, believes ARDFK's concern that roads are

exempted from reconstruction because the word reconstruction does not appear in 405 KAR 16:220E and 18:220E has been resolved by the State.

5. ARDFK *et al.* objected to the Kentucky regulations regarding disposal of excess spoil which waive the twenty (20) foot maximum terrace width in all cases (405 KAR 16:130E, section 1(8) and 18:130E, section 1(8)) ARDFK *et al.* point out that the federal regulations (30 CFR 816.102(b)(1) and 816.71(H)) only allow terracing widths to be greater when specifically approved by the regulatory authority based on the necessity for stability, erosion control, etc.

The Secretary does not believe the state's regulatory waiver of the 20 foot maximum terrace width results in a substantive difference between the state and federal regulations. In the federal regulations, the terrace width limitation can indeed be waived by the regulatory authority when necessary for stability, erosion control or roads in the approved post mining land use. The Kentucky language requires that terraces be necessary to control erosion and enhance stability, and be specifically approved by the regulatory authority. No safety factors or other requirements are reduced. The decision on terrace widths is to be based on sound engineering practices, and is a discretionary decision for the regulatory authority in both the Kentucky and the federal regulations.

6. ARDFK *et al.* objected to the changes Kentucky made from its previous submission in the area of sedimentation pond storage volume (405 KAR 16:090E, section 2 and 18:090E, section 2). The federal requirements on design storage volume (30 CFR 816.46(b) and 817.46(b)) have been suspended (44 FR 77452) and the Secretary is, therefore, unable to require more in the Kentucky rules on this issue at this time.

7. ARDFK *et al.* stated concern that Kentucky's deletion of the requirements for an emergency spillway for all sedimentation ponds (405 KAR 16:09)E and 18:090E, sections 5(3)(5)), could lead to loss of pond performance and difficulty in enforcement of design criteria. The Secretary agrees with this comment and will require changes in Kentucky's program to correct the deficiency (see Finding 13.27 above).

8. ARDFK *et al.* stated that the 405 KAR 7:040E, section 4 and 16:220E, 16:250E, 16:230E and 18:260E were less effective than federal regulations because the state regulations fail to require that a non-conforming structure be reconstructed to meet both design as well as performance standards. The Secretary disagrees with the comment and believes meeting a performance standard is no less effective than meeting a design criteria in these cases. See Findings 14.5 and 14.16 for further discussion.

9. ARDFK *et al.* commented that 405 KAR 16:120E, section 4(5) and 18:220, section 4(5) are inconsistent with 30 CFR 816.133(c)(5) and SMCRA section 515(c)(3)(vi) and (vii) because the state regulations do not require that the postmining land use plan be designed to assure conformity with accepted standards for "vegetative cover and esthetic design". The Secretary does not believe the language in the Kentucky regulations is substantially different than the federal requirements. The language in the state regulations virtually mirrors the SMCRA section quoted by the commenter, requiring that postmining land use plans be "designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site". Vegetative cover and esthetic design are not items that would be covered by an engineer's certification, and Kentucky's deletion of these items from this particular section is logical. The requirement that vegetative cover be supportive of the postmining land use is specifically required in 405 KAR 16:200E and 18:200E. Esthetic design is a very subjective and unenfoceable term, and its exclusion from the state regulations will not result in a detectable difference in mine reclamation.

10. ARDFK *et al.* questioned 405 KAR 16:130E and 18:130E, sections 2(2)(c) and 2(2)(d) because these regulations appear to allow the regulatory authority discretion to approve: (1) Inappropriate materials for underdrains, and (2) Inadequate sized underdrains. The commenter maintained that the limitations on the material for underdrains should be mandated by regulations rather than the policy statement submitted by DNREP. ARDFK *et al.* also made specific suggestions as to what must be considered in any engineering analysis for the size of underdrains.

The Secretary does not believe a regulatory change is necessary. The DNREP policy statement explains that alternative materials would not be approved that are acid forming, toxic forming or slaking. The policy statement clarifies the State's provision allowing only alternative materials which meet the same performance criteria as the type of rock described in 30 CFR 816.72 and 817.72 (see Finding 13.25). As to the size of the drain material, the Secretary believes that Kentucky's variance from the minimum size, based on an engineering analysis to assure long-term capacity for drainage, is no less effective than the federal requirements. The commenter contended that any variance should consider the substitute's capability to support the fill in a stable condition and prevent filtration of water into the spoil in addition to providing adequate long-term drainage. The Secretary believes "long-term drainage" is a broad term that will encompass consideration of fill stability and toxic drainage if properly administered by the regulatory authority. (See Finding 13.7.)

11. ARDFK *et al.* objected to the provisions in 405 KAR 16:130E and 18:130, sections 2(3), which allow the regulatory authority to grant exemptions to the four foot lift limitation in valley and head-of-hollow fills. The commenter maintained that the four foot lift design standard was not arbitrary and ensured enforceability. The lack of identification in the program of specific data on which the variance would be made and Kentucky's previous history of "end dumping" problems were also cited by the commenter.

As discussed in Finding 13.8, the Secretary believes that these concerns have been resolved by Kentucky's interpretation of its rules. The Secretary has not requested that Kentucky identify the specific data that would be required before the variance would be granted because this level of detail is not considered necessary as part of a program review. The State is not waiving any performance standards, and the Secretary considers the appropriateness of the engineering analysis that results in the waiver of the design standard to be a case-by-case decision by the State which will be considered in oversight.

12. ARDFK *et al.* object to 405 KAR 18:190E, section 2 because it allowed a variance from the requirement that the operator regrade and backfill the face up for a deep mine where the fill has stabilized and revegetated. Since the federal regulation, 30 CFR 817.102, which requires backfilling of face up areas, has been remanded for the purposes of consideration of fill stabilization (see 45 FR 51547–51549), the Secretary cannot ask the state to make a change at this time.

13. Two commenters presented technical data to show that the satisfaction of both 405 KAR 16:060E, Section 6, dealing with recharge phenomenon, and 405 KAR 16:130E, section 1(6), dealing with slope stability, are technically impossible in certain steep slope mining situations. The Secretary disagrees and finds that the requirements of concern to the

commenters are essentially identical to the requirements of 30 CFR 816.51 and 816.71(f).

14. Two commenters questioned the hydrologic monitoring frequency of the program in general, and recommended that coal companies be forced to use automatic type samplers. The Secretary finds that federal regulations at 30 CFR 816.52 and 817.52 allow the regulatory authority discretion in determining the frequency of monitoring.

15. Two commenters contended that the premining data base collection methodology for hydrologic calculations was inadequate. The commenters believed that more than six months was necessary because of natural inconsistencies. The commenter also recommended that certain areas be preserved and used for long-term determinations of hydrologic consequences.

The Secretary believes the commenter's concerns are beyond the scope of this decision. The state regulations (405 KAR 8:030 and 8:040 sections 15 and 32) requiring hydrologic information are, except as described in Finding 14.18, consistent with the federal regulations. The adequacy of state decisions under these requirements will be considered in oversight, but the Secretary presently finds no inconsistencies between the program and any current federal requirements.

16. The Tennessee Valley Authority (TVA) believed that both the Secretary's concerns expressed in Finding 14.24 of the October 22, 1980, Federal Register and the State's counter arguments expressed in the program resubmission relating to AOC variances had merit. TVA recommended that Kentucky and OSM consider the use of numeric models to evaluate the impact of AOC variances on a given watershed. As explained in Finding 14.13 of this notice, the Secretary has approved the State requirements.

17. One commenter stated that 405 KAR 18:050E, section 2 should be revised to insure that qualified people are used to gather the samples for tests on material to be substituted for topsoil. The Secretary agrees that qualified people should be used, but notes that the requirements in the state regulations are essentially the same as those in 30 CFR 816.22. Therefore, no changes in the state program are required.

18. One commenter stated that the Kentucky regulations did not properly consider the unique physiographic differences between Western Kentucky and Eastern Kentucky. The State has primary responsibility for developing regulations to meet unique differences within its boundaries (see SMCRA section 101(f)). At any time, the State can develop additional regulations to address such differences if Kentucky believes changes are needed. These changes must then be submitted to OSM as program amendments pursuant to 30 CFR 732.17.

Public Participation

1. ARDFK *et al.* asserted that KRS 350.250 fails to provide for intervention by the Secretary of DNREP as a matter of right. The commenter implied that intervention by the Secretary of the Interior was also required as a matter of maintaining uniformity of regulation among the states. As discussed in detail under Finding 1.3(c), the Secretary believes that intervention by the Secretary of the Interior is not a state program requirement. Intervention by DNREP is being required as a program condition.

2. ARDFK *et al.* asserted that the Kentucky provision on intervention (405 KAR 7:090E, Section 11) grants more discretion to the hearing officer in the area of "intervention of right" than is allowed under 43 CFR 4.1110. The State rule allows the hearing officer to consider the adequacy of representation of the proposed intervenor by existing parties in all cases where the Federal rule does not. The Secretary does not believe the State rule will lead to the exclusion of citizens from administrative actions. Rather, the State rule is intended to provide the hearing officer the discretion to limit parties whose claims would be merely duplicative. Therefore, the Secretary believes that the operation of 405 KAR 7:090E, Section 11 will be no less effective than 43 CFR 4.1110.

3. ARDFK *et al.* asserted that no state counterpart to 43 CFR 4.1103, "eligibility to practice" provisions, exist and that meaningful access might be denied citizens who are unable to retain counsel. The Secretary is not persuaded that such would be the case under the Kentucky regulations. For example, 405 KAR 7:090E, section 5(6)(a) provides that a party to a hearing *may* be represented by counsel and 405 KAR 7:090E, section 5(6)(b) provides that a party *may* conduct cross-examinations. The Secretary can find nothing in the Kentucky regulations to suggest that only lawyers would be allowed to represent parties. The Secretary assumes that the Kentucky regulations are not inconsistent with the practice of *pro se* representation, and thus finds the Kentucky regulations acceptable.

4. Appalachian Alliance commented that the program narrative is deficient for failure to detail how citizen complaints will be addressed. State program narrative § 731.14 (g)(4–7)(15) clearly describes the mechanisms and rights for complaints during mining. State program narrative § 731.14(g)(1) and (g)(6) describe the procedures for citizen input into the permitting and bonding processes. More detailed information on how each complaint is handled is not considered necessary.

5. ARDFK *et al.* stated that Kentucky's hearings provisions were inadequate because they lacked procedural regulations comparable to 43 CFR 4, particularly in the area of discovery. As indicated in Finding 27.4, the Secretary concurs with the comment and is requiring correction of this deficiency as a condition of approval.

6. ARDFK *et al.* commented that KRS 350.250 is inconsistent with SMCRA section 520 because the State statute requires persons bringing an action to compel performance by regulatory authority personnel of non-discretionary duties to make such demands under oath. This issue was considered in the initial decision and the oath concept was considered acceptable. For a discussion of this question refer to the Secretary's response to comment No. A–7 beginning on page 71591 of the October 29, 1980, Federal Register.

7. ARDFK *et al.* objected to the lack of standards in the program for the award of costs and expenses in administrative cases consistent with the criteria set forth in 43 CFR 4.1294. The commenter presented detailed rationale as a counter argument to the statements made by DNREP in the "Response to October 1980 Findings" (Administrative Record Ky–413). As discussed in Finding 27.5, the Secretary agrees with the commenter and is requiring correction of this deficiency as a condition of approval.

8. ARDFK *et al.* asserted that KRS 350.250(a)(2) is more restrictive than SMCRA section 520(a)(2) because the State statute limits the right of citizen suits to "citizen of this Commonwealth" rather than "any person having an interest which is or may be adversely affected". As indicated by Finding 1.3(a), the Secretary concurs with the commenter and is requiring correction of this deficiency as a condition of program approval.

9. ARDFK *et al.* commented that KRS 350.250 did not contain the "savings clause" found at section 520(e) of SMCRA. As indicated by Finding 1.1, the Secretry believes the legal opinion furnished with the resubmission adequately resolves this concern.

10. ARDFK *et al.* asserted that KRS 350.250(3) fails to clearly provide for an action for damages for violations of the

Act consistent with section 520(f), and for injunctive relief consistent with section 520(a)(1). The commenter provided a detailed counterargument to the legal opinion furnished by DNREP on this issue. As discussed in Finding 1.3(b), the Secretary agrees with the commenter and is requiring correction of this deficiency as a program condition.

Inspection and Enforcement

1. ARDFK *et al.* asserted that Kentucky should be required to include provisions in its regulations for citizen access to minesites. As indicated in Finding 17.4, the Secretary agrees with the comment and is requiring correction of this deficiency as a program condition.

2. ARDFK *et al.* commented that State regulations unduly restrict citizen participation in inspection and enforcement activities (see 405 KAR 12:030 which covers "Public participation in inspection and enforcement" as per 405 KAR 12:010, section 6). The latter section restricts public participation to "any person having an interest which is or may be adversely affected". The commenter argues that section 521(a) of SMCRA specifies that an inspection shall be conducted when "any person" provides information giving rise to a "reason to believe" that a violation exists. Under SMCRA, the commenter continues, "any person" who furnishes information which prompts an inspection shall be allowed to accompany the inspector during the inspection. SMCRA does not require the person giving information to have any specific attributes, e.g., an interest that is or may be affected. Section 521(d) of SMCRA requires that state regulatory programs contain enforcement provisions which, "contain the same or similar procedural requirements" as the federal program. 30 CFR 840.15 requires that state regulatory programs provide for public participation in enforcement activities consistent with section 842. this section requires that any "citizen may request a(n) * * * inspection * * * by furnishing to an authorized representative reason to believe that a violation exists * * *."

The Secretary agrees with the commenter the Federal regulations require a state program to contain certain public participation requirements in inspection and enforcement activities. The Kentucky program is not necessarily inconsistent with federal requirements. The Kentucky regulatory section entitled, "public participation in inspection and enforcement", 405 KAR 12:030, is no less effective than the comparable Federal regulations. The Secretary reads 405 KAR 12:010, section 6 as not limiting public participation, but rather as creating an additional category of persons who may participate in Kentucky's program.

The commenter goes on to state that "any person" should also be able to participate in a review of the adequacy of an inspection and a review of a decision not to inspect. 30 CFR 842.14 and 842.15 state that, "any person who is or may be adversely affected" may participate in a review of the adequacy of an inspection or a review of a decision not to inspect. These provisions are made a State program requirement by 30 CFR 840.15. Kentucky's regulations are consistent, therefore, with 30 CFR 842.14 and 842.15.

3. ARDFK *et al.* stated that the Kentucky program did not demonstrate that cessation orders could be immediately issued upon finding in imminent danger by inspectors in the field because only some inspectors will be empowered to issue such orders. The Secretary believes Kentucky has adequately addressed this concern, as indicated by Finding 17.5.

4. ARDFK *et al.* stated that KRS 350.032(2) is inconsistent with SMCRA section 526(c) because the State statute does not set forth all criteria for granting temporary relief. The commenter presented its rationale and cited some examples of Kentucky case history as an argument to the legal opinion furnished by DNREP. As indicated by Finding 1.4, the Secretary agrees with the commenter and will require correction of this deficiency as a program condition.

Lands Unsuitable

1. ARDFK, *et al.* commented that Kentucky's requirements at 405 KAR 24:020E, section 3(7), concerning allegations and supporting evidence, are too stringent. Specifically, the commenters assert that the language, "Allegations of fact and supporting evidence * * * shall be specific as to the petitioned area * * * *", will exclude the use of more general scientific evidence, which may be pertinent to the petitioned area, but which refers to a more general area. According to the commenter, this would increase the threshold burden of petitioning beyond those in section 522 of SMCRA.

The Secretary agrees with the commenter to the extent that information of a general but pertinent nature cannot be excluded from the petition review process. The Secretary believes, however, that the commenters have chosen a very narrow interpretation of the Kentucky language, i.e. Kentucky does not intend to limit its review only to that information which has been gathered from the petitioned area. On the contrary, the State intends a broader and more reasonable interpretation which would include review of data gathered external to the petitioned area, but which is pertinent to reaching a decision on unsuitability. For example, the State would consider mining/soils studies external to the petitioned areas provided the petitioner would clearly demonstrate that the soils are physical and chemically similar to those of the petitioned area and that mining activities could cause similar effects. In this example, the supportive evidence is based on data gathered from the petitioned area but, nevertheless, is specific to the area because of the conclusions which it can support.

2. ARDFK *et al.* objected to the State's definition of Substantial Legal and Financial Commitments (SLFC) at 405 KAR 24:030E, section 2(2), which excludes the requirement of 30 CFR 762.5 that SLFC be based on a long-term coal contract. The commenter cited the following sections from the Act's legislative history to support the position that a long-term coal contract is a prerequisite to SLFC:

1. The designation process is not intended to be used as a process to close existing mine operations, although the area in which such operations are located may be designated with respect to future mines. The committee recognized that an existing mine might not be one actually producing coal, because it was in a *substantial* state of development to coal production. Thus the meaning of existing operations is extended to include operations for which there are "substantial legal and financial commitments". H. Rep. No. 95–218, 95th Congress, First Session 94–95 (1977).

2. The phrase "substantial legal and financial commitments" in the designation section and other provisions of the Act is intended to apply to situations where, on the basis of a long-term coal contract, investments have been made in powerplants, railroads, coal handling and storage facilities and other capital-intensive activities. The committee does not intend that mere ownership or acquisition costs of the coal itself or the right to mine it should constitute "substantial legal and financial commitments". H. Rep. No. 95–218 *supra*, at 95; H. Rep. No. 94–896, 94th Congress, Second Session, 47 (1976).

The Secretary does not agree with the commenter's interpretation of these references. These portions of the legislative history must be read together as they actually appear in the House Report. Accordingly, the first paragraph states that the Act intends to protect, from the designation process, those operations which are in a substantial state of development. "Substantial state of development" is the emphasis of this

paragraph without any regard to the existence of long-term coal contracts. Read in this context, the second paragraph serves only to establish two extremes where SLFC may be found and not found, respectively. Thus, in situations where, on the basis of a long-term coal contract, investment has been made in capital-intensive activities, e.g., powerplants and railroad, SLFC clearly exists. On the other hand, where the operator has only the "mere ownership or acquisition costs of the coal itself or the right to mine", then SLFC clearly does not exist.

As stated in Finding 21.7, the Kentucky regulation is, at the very least, as effective as the federal regulation. The Secretary's definition of SLFC merely parrots the legislative history while the Kentucky regulation attempts to provide guidelines for determining SLFC in those situations between the two extremes spelled out in the legislative history.

3. ARDFK *et al.* objected to 405 KAR 24:030E, section 3(6) because it allows a cut-off of the deadline for submitting a petition to designate lands unsuitable at the close of the period for filing written comments and objections on a permit rather than at the close of any informal conference. As stated in Finding 21.4, the Secretary believes that the Kentucky still provides ample time for a petition submission before a permit is issued, and has found the Kentucky provision no less effective than 30 CFR 764.15(a)(7).

4. ARDFK *et al.* objected to the provisions of 405 KAR 24:020E, sections 3(3) and 4(3) requiring notarized signatures as part of a petition. The commenter asserts that Congress showed a "marked dislike" for requiring citizens to exercise their rights under oath, and cited the removal by the House committe of such language from SMCRA section 520 (a section not here at issue). The commenter further maintained that the oath would serve no useful purpose as it would be impermissible to prosecute a petitioner for falsely swearing to matters contained in a petition.

As indicated in Finding 21.3, The Secretary disagrees with the commenter. Section 518(g) of SMCRA provides criminal sanctions for knowingly making false statements. The Kentucky statute has a counterpart to section 518(g), i.e., KRS 350.990(7). Provisions to assure accurate and truthful information are, therefore, not inconsistent with SMCRA, and the kentucky provisions are as effective as those in SMCRA in insuring this end.

5. ARDFK *et al.* objected to the provisions of 405 KAR 24:030E section 8(7) which states: "any person having an interest which is or may be adversely affected by the department's final decision under subsection (6) of this section may request a formal hearing under 405 KAR 7:090E".

The commenter maintains that this regulation is an attempt to remove the public from the lands unsuitable decision process because: (1) The regulation includes those affected by a designation decision but not those affected by a termination decision; (2) Temporary relief could conceivably be granted, suspending the petition and allowing permitting; (3) What is ultimately appealed to the Franklin Circuit Court will be the artificial record of the adjudicatory hearing rather than the real record consisting of the transcript, the petition and pertinent data and analysis developed by DNREP; and (4) The only proper vehicle for "rehearing" a designation and allowing new evidence is a petition to terminate designation as specified by 30 CFR 764.13(c).

As indicated by Finding 21.8, the Secretary does not agree that the hearing provisions will reduce public participation in the petition process. As to the first two points in the comment, the Secretary finds nothing in the regulation which would exclude a termination decision from the hearing process or allow temporary relief in violation of KRS 350.610(8). The Secretary does not agree that the record from the hearing under 405 KAR 7:090E will be less than complete for purposes of the appeal to the Franklin Circuit Court as asserted by the commenter's third contention. As to the question of the proper vehicle for "rehearing" a designation decision, the Secretary considers the State procedures to be an "additional procedural safeguard" as further discussed in Finding 21.8.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM and the states to test new ideas and for OSM to explain portions of the federal requirements and how the states might meet them.

The Secretary has dispensed over $8.5 million in program development grants and over $54.8 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times (44 FR 54444; September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a state after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a state program. Under 30 CFR 732.13 of the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to conditionally approve a program.

Conditional approval has a vital effect for programs approved in the Secretary's

initial decision. It results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. It also avoids the costly and cumbersome problem of implementing federal programs where the state submittal was deficient in only minor respects. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by SMCRA and these regulations" (44 FR 14961, March 13, 1979). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete, because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. The federal regulation, 30 CFR 732.13(i), gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist states in achieving compliance with SMCRA, not to excuse them from compliance.

The Secretary's Decision

As indicated above, under "Secretary's Findings", there are minor deficiencies in the Kentucky program which the Secretary requires to be corrected. In all other respects, the Kentucky program meets the criteria for approval. The deficiencies identified in the findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

1. As discussed in Finding 13.26, Kentucky submitted a regulation which gives the regulatory authority total discretion in approving stocking and ground cover rates on noncommercial forest land as an alternative to reference areas. This deficiency is minor since the state has agreed to use reference areas until its technical standards for the discretionary decisions are developed and approved by OSM.

2. As discussed in Finding 17.5, Kentucky regulations do not provide for citizens to accompany an inspector onto a minesite. This deficiency is minor since citizen visits are not frequent. Also Kentucky has agreed to an administrative policy to allow citizens to accompany inspectors during the period the State has to amend the program.

3. As discussed in Finding 18.14, Kentucky's cumulative bonding system does not provide adequate public participation in the bond crediting process. This deficiency is considered minor since Kentucky has agreed not to use this process during the period the State has to amend this provision. The State has two other bonding methods, bonding of the entire permit and incremental bonding, which are now available.

4. As discussed in Finding 27.4, the Kentucky program fails to specify what rules of civil procedure shall apply to hearings before DNREP. This deficiency is considered minor because the State has procedures for hearings. In addition, the State has agreed to develop guidelines as effective as 43 CFR Part 4 for use until regulations can be enacted. Therefore, few, if any, affected citizens would be unaware of or unable to exercise their rights at administrative hearings.

5. As discussed in Finding 1.3(a), the Kentucky statute excludes citizens of other states, foreign corporations, aliens and possibly even domestic corporations from its citizens suit provisions. This deficiency is minor since those persons who cannot gain access through the state court system can utilize their rights under SMCRA section 520 in federal court. Therefore, during the time allowed for the state to correct its statute, no person who has an interest which may be adversely affected will be denied his/her rights.

6. As discussed in Finding 1.3(b), the Kentucky statute fails to include citizen suit provisions which would allow two causes of action (one to compel compliance through injunctive relief and one for monetary damages) against a violator. This deficiency is minor since those persons who might be denied the two causes of action or suite against a government agency have access to the federal court system under Section 520 of SMCRA. Therefore, during the time allowed for the State to correct its statute, no person who has an interest which may be adversely affected will be denied his/her rights.

7. As discussed in Finding 1.3(c), the Kentucky statute fails to provide for intervention by DNREP in citizen suits as a matter of right. This deficiency is considered minor since, in all likelihood, DNREP will be cited as a third party at the outset of any suit involving a violation of Kentucky's surface mining laws or regulations. Further, it is extremely unlikely that DNREP will be excluded from any suit in which it wishes to intervene.

8. As discussed in Finding 1.4, the Kentucky statute does not set forth standards for State courts granting temporary relief. This deficiency is considered minor since temporary relief is still available through the courts, and although the standards are different than those in SMCRA, relief cannot be granted without consideration of the merits of the case. During the time given for the state to correct its statute there will likely be few, if any, cases where temporary relief will be granted under the existing state law which would not have been granted under the criteria in SMCRA.

9. As discussed in Finding 13.27, the Kentucky regulations allow DNREP the discretion to exclude emergency

spillways from the design requirements for sedimentation ponds. This deficiency is considered minor since the state has agreed not to use this discretion until such time as the standards for approval of ponds without emergency spillways are developed by Kentucky and approved by the Secretary.

10. As discussed in Finding 14.18, the Kentucky regulations provide DNREP with more discretion to delete the requirements for permit information on surface water quality parameters than allowed by the corresponding federal regulation. This deficiency is considered minor since Kentucky has agreed not to use this discretion except for parameters and circumstances which are approved by OSM.

11. As discussed in Finding 27.5, the Kentucky regulations fail to set standards for the award of costs and expenses in administrative proceedings. This deficiency is minor because the State has agreed to establish the standards by policy until such time as regulations can be promulgated. In the short time given to the State to develop the policy statement, it is unlikely that parties would be denied the proper award of costs and expenses.

12. As discussed in Finding 14.19, the Kentucky program does not demonstrate that the State will meet the requirements of section 502(d) of SMCRA regarding the time limits for receipt and review of permit applications. This deficiency is minor because Kentucky has agreed to provide a compliance plan acceptable to the Secretary before the concerns identified by the Secretary would become relevant.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Kentucky program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Kentucky program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

4. Kentucky has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Kentucky has agreed, by letter dated April 7, 1982, to correct the regulation deficiencies by October 31, 1983, and the statutory deficiencies by May 1, 1984. Further, DNREP has agreed to develop civil procedure guidelines by December 31, 1982, standards for awards of costs and expenses in administrative proceedings by July 31, 1982, and modifications to the permit review process by July 31, 1982.

Accordingly, the Secretary is conditionally approving the Kentucky program. If regulations correcting the deficiencies are not promulgated by October 31, 1983, if State legislation correcting the statutory deficiencies is not enacted by April 30, 1984, if standards for awards of costs and expenses in administrative proceedings are not developed by July 31, 1982, and if civil procedure guidelines are not developed by September 30, 1982, the Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program. This conditional approval is effective on publication in the **Federal Register**. Beginning on that date, the Kentucky Department for Natural Resources and Environmental Protection shall be deemed the regulatory authority in Kentucky and all Kentucky surface coal mining and reclamation operations on non-federal and non-Indian lands and all coal exploration on non-federal and non-Indian lands in Kentucky shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Kentucky, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with section 523(c) of SMCRA, Kentucky may elect to enter into a cooperative agreement with the Secretary to provide for state regulation of surface coal mining and reclamation operations on Federal lands within the State.

The Secretary's approval of the Kentucky program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Kentucky may submit a state reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mine lands reclamation will be reviewed by officials of the Department of the Interior.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 917 as set forth herein.

Dated: April 13, 1982.

James G. Watt,

Secretary of the Interior.

PART 917—KENTUCKY

Sec.

917.1 Scope.

917.10 State regulatory approval.

917.11 Conditions of State regulatory approval.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

§ 917.1 Scope.

This Part contains all rules applicable only within Kentucky that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 917.10 State regulatory program approval.

The Kentucky State program, as submitted on February 29, 1980, as amended and clarified on June 12, 1980, as resubmitted on December 30, 1981, and clarified in material submitted February 12 and 16, and in an April 7, 1982 letter to the Director of OSM is conditionally approved, effective on May 18, 1982. Beginning on that date, the Department for Natural Resources and Environmental Protection shall be deemed the regulatory authority in Kentucky for all surface coal mining and reclamation operations and all exploration operations on non-federal and non-Indian lands. Only surface coal mining and reclamation operations on non-federal and non-Indian lands shall be subject to the provisions of the Kentucky permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department for Natural Resources and Environmental Protection agreeing to the conditions of 30 CFR 917.11, are available at:

Administrative Record Room, Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C.

Administrative Record Room, Office of Surface Mining, 530 South Gay Street, SW., Suite 500, Knoxville, Tennessee 37902

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Sixth Floor, Frankfort, Kentucky 40601

§ 917.11 Conditions of State regulatory program approval.

The approval of the Kentucky State program is subject to the state revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, to the regulations, to the

program narrative, or by means of a legal opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a) The approval found in § 917.10 will terminate on October 31, 1983, unless Kentucky submits to the Secretary by that date, copies of promulgated regulations eliminating the discretionary stocking plan approval for noncommercial forest land or otherwise amends its program to set standards for stocking when the post mining land use is forest land other than commercial forest. Furthermore, pending completion of the above, Kentucky must utilize the reference areas concept for these areas or the approval will terminate immediately.

(b) The approval found in § 917.10 will terminate on October 31, 1983, unless Kentucky submits to the Secretary by that date, copies of promulgated regulations or otherwise amends its program to provide for citizens to accompany state inspectors onto a mine site. Furthermore, pending completion of the above, Kentucky must allow citizens to accompany inspectors as an administrative policy or the approval will terminate immediately.

(c) The approval found in § 917.10 will terminate on October 31, 1983, unless Kentucky submits to the Secretary by that date, copies of promulgated regulations to provide adequate public participation in the cumulative bond crediting process. Furthermore, pending completion of the above, Kentucky may not use its authority to approve bond crediting or the approval will terminate immediately.

(d) The approval found in § 917.10 will terminate on December 31, 1982, unless Kentucky submits to the Secretary by that date, copies of guidelines of civil procedure which are no less effective than those at 43 CFR 4 for use in administrative hearings. Furthermore, the State must submit copies of promulgated regulations or otherwise amend its program by October 31, 1983, to provide for civil procedures which are no less effective than those at 43 CFR 4 or the approval will terminate on that date.

(e) The approval found in § 917.10 will terminate on May 1, 1984, unless Kentucky submits to the Secretary by that date copies of enacted legislation which creates a right of action in accordance with section 520(a) of SMCRA for any person having an interest which is or may be adversely affected.

(f) The approval found in § 917.10 will terminate on May 1, 1984, unless Kentucky submits to the Secretary by that date copies of enacted legislation in accordance with section 520 of SMCRA which specifically creates two causes of action against a violator (one to compel compliance through injunctive relief and one for monetary damages).

(g) The approval found in § 917.10 will terminate on July 31, 1982, if a legal opinion is to be submitted, or on May 1, 1984, unless Kentucky submits to the Secretary by that date copies of enacted legislation, or otherwise amends its program to provide for intervention in citizen suits by DNREP as matter of right in accordance with SMCRA section 520.

(h) The approval found in § 917.10 will terminate on May 1, 1984, unless Kentucky submits to the Secretary by that date copies of enacted legislation which sets forth standards for State courts granting temporary relief in accordance with SMCRA section 526(c).

(i) The approval found in § 917.10 will terminate on October 31, 1983, unless Kentucky submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to provide standards acceptable to the Secretary for the design of sedimentation ponds without emergency spillways. Furthermore, pending completion of the above, Kentucky may not use its authority to approve sedimentation ponds designed without emergency spillways.

(j) The approval found in § 917.10 will terminate on October 31, 1983, unless Kentucky submits to the Secretary by that date copies of promulgated regulations, or otherwise amends its program to limit DNREP's authority to delete water quality parameters from the permit information to circumstances approved by OSM. Furthermore, pending completion of the above, Kentucky must not use its authority for parameter deletion other than for dissolved iron for existing operations not expected to create significant new surface disturbance, and for dissolved manganese, temperature, alkalinity and sulfate for any operation or the approval will terminate immediately.

(k) The approval found in § 917.10 will terminate on July 31, 1982, unless Kentucky submits to the Secretary by that date a policy statement establishing standards no less effective than those at 43 CFR 4.1294 for the award of costs and expenses in administrative proceedings. Furthermore, the state must submit by October 31, 1983, copies of promulgated regulations establishing standards of costs and expense no less effective than those at 43 CFR 4.1294 or approval will terminate on that date.

(l) The approval found in § 917.10 will terminate on July 31, 1982, unless Kentucky submits to the Secretary by that date a plan from DNREP which includes: (1) a process for prompt completeness determination of applications from existing operators expecting to continue mining past the eighth month of primacy; (2) assurances that operators who do not have complete applications eight months after primacy will be immediately advised that they may not continue mining until a permit is approved; (3) a policy that applications for new areas will not be given priority for processing over applications for existing operations which are continuing under the interim program when such existing mine applications are one year or older.

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30 CFR Part 917

Approval of the Abandoned Mine Reclamation Plan for the State of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On June 4, 1981, the State of Kentucky submitted to OSM its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Kentucky Abandoned Mine Reclamation Plan meets the requirements of both SMCRA and the Secretary's Regulations. Accordingly, the Assistant Secretary has approved the Kentucky Plan.

Final promulgation of this rule has been delayed because Kentucky did not have an approved State Regulatory Program under Title V of SMCRA and was enjoined from submitting its program. Under section 405(c) of the SMCRA, the Secretary cannot approve a State abandoned mine reclamation program unless that State has an approved State regulatory program

pursuant to section 503 of the SMCRA. The State of Kentucky received such approval on April 13, 1982.

EFFECTIVE DATE: This approval is effective May 18, 1982.

ADDRESSES: Copies of the full text of the Kentucky Reclamation Plan are available for review during regular business hours at the following locations:

Kentucky Department of Natural Resources and Environmental Protection, Frankfort, Kentucky 40601
Office of Surface Mining, Region II, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Lands, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

General Background of Abandoned Mine Lands Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary of State a reclamation plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for the State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947, 49949, October 25, 1978). Under those regulations the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the plan is disapproved the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan by the Secretary, the State may submit to the Office, on an annual basis, a grant application for funds to be expended in that State on specific reclamation projects. These funds are necessary to implement the State reclamation plans as approved. The annual grant requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950. Provisions relating to Kentucky are found in 30 CFR Part 917.

Background on the Kentucky Abandoned Mine Plan Submission

On April 23, 1979, a cooperative agreement between the Kentucky Department for Natural Resources and Environmental Protection and the OSM was approved. The purpose of this agreement was to assure that information required for the preparation of the Kentucky Abandoned Mine Reclamation Plan would be assembled.

On June 4, 1981, Kentucky submitted its proposed State Abandoned Mine Land Reclamation Plan to OSM.

On August 19 and 27, 1981, representatives of the Kentucky Department of Natural Resources and Environmental Protection met with OSM to discuss amendments and modifications to the proposed Plan.

On August 31, 1981, the Kentucky Department of Natural Resources provided errata to be appended to each section of the Plan. These pages contain the amendments and modification to the original Plan resulting from public comments and the discussion between the Kentucky Department of Natural Resources and OSM. The necessary changes have been incorporated into the Kentucky Reclamation Plan and therefore comply with the requirement that the policies and procedures to be followed by the agency be incorporated into the State Reclamation Plan.

All documents mentioned above are available for public inspection at OSM and the Kentucky Department of Natural Resources at the addresses listed above under "Addresses." Notice of receipt of the submission initiating plan review was published August 6, 1981 (45 FR 40047–40049). The announcement requested public comments. It was determined by the OSM Regional Director that a public hearing was not necessary because the public had been provided adequate notice and opportunity to be heard on the Plan, and further that the record did not reflect any major unresolved controversy.

On October 6, 1981, the OSM Regional Director and on December 24, 1981 the Assistant Director for Program Operations and Inspection recommended to the Director of OSM that the Secretary approve the Kentucky Reclamation Plan.

Assistant Secretary's Findings

1. In accordance with section 405 of SMCRA the Assistant Secretary finds that Kentucky has submitted a Plan for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14 that:

(a) The Department of Natural Resources of the State of Kentucky has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) The plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the views of other Federal Agencies having an interest in the Plan as required by 30 CFR 884.14(a)(2). These agencies include the USDA Forest Service (USFS), the Soil Conservation Service (SCS) and the US Fish and Wildlife Service (FWS).

Disposition of Comments

The comments received on the Kentucky Reclamation Plan during the public comment period raised the issues listed below, which were considered in the Secretary's evaluation of the Kentucky Plan as indicated.

1. The FWS recommended that a section be added to the State Plan outlining how OSM and the Commonwealth of Kentucky plan to

meet their section 7 obligations and the June 10, 1980, Memorandum of Understanding (MOU) for the protection of listed species.

The State has subsequently modified Chapter 5 of the Plan to address the question of interagency coordination as well as providing for a future MOU with FWS to address the issue of protecting listed species.

2. FWS recommended that in Chapter 5, page 4–2, ranking factors be developed for threatened and endangered species or they should be incorporated in the existing ranking factors under parameter categories 4, 7, 8, and 9. OSM's response is that the Plan adequately addresses threatened and endangered species. No modification of the Plan is considered necessary.

3. FWS suggested that in Chapter 7, page 7–2, "a provision be provided to waive a lien if endangered and threatened species would be benefited." OSM's response is that a provision already exists in its regulations (30 CFR 882.13) and Kentucky's Plan for waiver of liens when the greater public interest is served by a project. These provisions protect endangered and threatened species and are considered to be in the greater public interest. No additional action is, therefore, necessary.

4. FWS suggested that, since in Chapter 10, page 10–5 of the Plan, expertise from other State and Federal agencies will be used for reclamation assistance as the need arises, a cooperative agreement or MOU be prepared to facilitate this use. OSM agrees with this suggestion. The State has incorporated this change into the Plan by errata and will negotiate agreements with other agencies as the need arises.

5. FWS suggested that in Chapter 10 of the Plan, positions entitled "Reclamation Inspector" and "Environmental Specialist I" include specific duties concerning endangered and threatened species. It was further suggested that the position of "Wildlife Biologist" should include certain endangered and threatened species duties, particularly that of determining impacts of abandoned mine lands and proposed reclamation projects on endangered and threatened species.

The first part of the suggestion has been incorporated into the Plan by errata. The second part of the sugggestion was deemed unnecessary by OSM because fish and wildlife considerations are already adequately addressed by the State.

6. FWS suggested that in Chapter 12, the environmental assessment should be completed prior to pre-construction conferences. This comment was not acted upon because environmental assessments are required by the National Environmental Policy Act and must be complied with prior to issuance of a grant. The Plan is in compliance with this comment.

7. FWS made the following recommendations on Chapter 16:

(a) Page 16–3, environmental damage, line 3—add "include adverse impacts on endangered and threatened species" after "loss of fish and wildlife habitat."

(b) Page 16–5, problems with acid mine drainage—add:"a statement of the problems should include fish and wildlife and endangered and threatened species."

(c) Page 16–6 and 16–7, problems with unvegetated areas—add: "a statement should include endangered and threatened species."

(d) Page 16–10, problems with fires—add: "a statement should include endangered and threatened species."

(e) Page 16–13 and 16–14, problems with surface subsidence—add " a statement should address endangered and threatened species, particularly the blocking of caves or mine shafts utilized by listed bats."

These recommendations have been incorporated into Chapter 16 of the State Plan by errata.

9. FWS recommended that the fish and wildlife and endangered and threatened species characteristics of the coalfields discussed in Chapter 17 of the Plan should be included or referenced. The State has incorporated additional material into the proposed Plan in compliance with the recommendation by errata of Chapter 17.

10. FWS commented that all tables in Chapter 21 should distinguish those species that occur on the Federal list of endangered and threatened species and those that are on the State list. The State has modified the Plan to include the recommendations of FWS by errata to Chapter 21.

11. FWS recommended certain additions to the fish and wildlife file in the State Plan. The State has subsequently modified Chapter 21 of the Plan accordingly.

12. The USFS recommended that national forest land should be eligible for Abandoned Mine Land Reclamation funds where conditions warrant, and suggests that grants for treatment of national forest land should be available to them through State programs and from the Office of Surface Mining. OSM agrees with the recommendation. The State has modified the Plan by errata of Chapter 5. The modification provides for future cooperation between the State, Forest Service and OSM through agreements or Memoranda of Understanding.

13. The USFS commented that coordination is needed between State and USFS in relation to acquisition of private land and disposition of acquired land and rights of entry § 884.113–C–6) for intermingled lands within the National Forest and Purchase Unit boundaries. See OSM's comment on item 11. OSM responded by stipulating that no modification is necessary to the Plan for the same reason as noted in item 11 above.

14. The USFS commented that it would be appropriate for their Berea Research Center to participate in research and demonstration projects particularly on national forest land. The State has modified their Plan to provide for future cooperative procedures between the State and USFS.

15. The USFS commented that the Redbird Purchase Unit discussed in Chapter 19, page 16, is referred to as a recreational area which could be misleading, and pointed out that the Redbird Purchase Unit was established and is managed for multiple resources use and watershed protection. The State modified its Plan incorporating the recommendation by errata to Chapter 19.

16. The USFS noted that on page 4–3 of the State Plan, the significance of public property, including Federal lands, should be highlighted in the ranking factors given on page 4–3 of the Plan. OSM is satisfied that this comment is adequately covered in the Site Score Sheet (Figure 4–1, page 4–2) under the "Existing Site Parameters/ Socioeconomic/Number of People Affected," category. No changes are necessary in the plan.

17. The USFS commented that consideration should be given to weighing the "collective impacts" on downstream values and that these values be based on watershed data rather than site-specific data. OSM's response is that the subject "collective impacts" is sufficient, as written and allows the State the flexibility to consider broader factors. No modification of the Plan is necessary to implement this recommendation.

18. The USFS commented that a better measure to evaluate vegetative cover on page 4–12 would be desired land use rather than merely percent of cover. The State agrees to consider this approach in its future program; however, no modification of the Plan is necessary to implement this recommendation.

19. The USFS commented that recreational use on page 4–13 should be evaluated based on total recreation

need whether local or from other areas. The State has modified the Plan to accommodate this comment.

20. The USFS recommended that high priority should be given to public property (discussed on page 4–14 of Plan) since it involves public moneys and is there for public use and production of resources. See OSM response to USFS recommendation in item 16.

21. The USFS recommended that when considering permanent project maintenance cost (page 4–19), priorities should be weighed when the landowner is willing to accept long-term maintenance responsibility. "This would prevent high priority projects from being foregone because of permanent maintenance even though someone was willing to accept this responsibility." OSM's response is that modification to the Plan is unnecessary since flexibility already exists to consider this possibility.

22. USFS commented that the Director of the Kentucky Division of Forestry should be included as a permanent member of the Kentucky Advisory Committee for the Abandoned Mine Reclamation Program under page 5–1 of the Plan because forestry will be a major land use in reclaiming land, particularly in Eastern Kentucky. OSM has determined that the State has already made provision for coordination through an interagency coordination agreement. All applicable agencies will be coordinated with on a site- or issue-specific basis. This comment does not necessitate a modification to the Plan.

23. The USFS recommended that on page 5–3, reference should be made to coordinate efforts with OSM with large acreages of abandoned mined land occurring on Federally administered land. The State has modified the Plan by the errata of Chapter 5 which provides for agreements to be made between OSM, the State and USFS for the purpose of accomplishing reclamation.

24. The USFS suggested that to insure that reclaimed lands are put under intensive protection and management and insure that public funds used in reclamation work would not be wasted, consideration be given in Section 6 to purchase tracts of private land intermingled with national forest and transferred or sold to the United States for administration and managment if legally possible. OSM has determined that no modification of the Plan is necessary. This recommendation may be accomplished under cooperative agreements or procedures developed by the State.

25. The USFS suggested that the Daniel Boone National Forest be included in section 17 of the Plan because of the amount of land involved (670,000 acres) and the significance of the economic benefits it provides to the area and the long-term resource production that will be produced on the land. The State has modified its Plan by submission of errata on Chapter 17.

26. The SCS commented that on page 5–3 it is implied that 121 conservation districts were developed in 1940. This statement should state that the districts were probably developed over a period of years during the 1940's decade. The State has corrected the Plan by submitting errata to Chapter 15.

27. The SCS commented that Chapter 16 might be improved by inclusion of more description of natural soils of the eastern and western coalfields and more complete discussion or description of soil conditions of abandoned mine land. Adequate classification, analysis and treatment of soil conditions are critical in the establishment of vegetation during reclamation. OSM disagreed with this comment for the following reasons: (1) Abandoned mine reclamation seldom occurs on natural soils. The actual condition on past mine sites often has no relationship to surrounding soil conditions because of the severe disturbances resulting from total soil intermixing and subsequent structureless conditions, and (2) Soil Conservation Service publications describe such sites only as mined land with no attempt at further description. OSM has determined, therefore, that further description of soils of abandoned mine lands would be impossible and would serve no purpose. No modification of the Plan was considered necessary.

28. The SCS commented that excessive reference is made in Chapter 21 to prior flora conditions not in existence now. This information detracts from easy recognition of present day conditions. OSM has determined that the descriptions contained in flora data of Chapter 21 are those of ecological plant communities based on climax vegetation. Species of prior undisturbed conditions are the key species to the classification and are properly used as such. No further modification of the Plan is considered necessary as a result of this comment.

29. The FWS suggested that the State should point out the adverse impacts on the Big South Fork National River and recreation area resulting from abandoned mine lands within this region on page 17–6 of the Plan. The State has modified the Plan to accommodate this recommendation.

30. The FWS commented that on page 18–1, Tables 18–1 and 2 and the narrative concerning Tables 18–1 and 2 entitled "Acreage of Abandoned Lands" show that not all of the acres listed are high priority. Some of these lands may later be determined to be acceptable in their current state of condition or may require very limited efforts to correct specific problems. The State has modified the Plan to accommodate the above concern with the errata of Chapter 19.

31. The FWS suggested that information concerning the State's commitment to use an EA for examining environmental consequence of projects be highlighted by including it under a separate heading "Environmental Assessments." OSM agrees that the FWS suggestion is desirable; however, there is no requirement in SMCRA for this action. No modification to the Plan is required.

32. The FWS commented that the Department of Fish and Wildlife Resources has the primary responsibility for fisheries and wildlife resources within the State and should either supply or be provided an opportunity to concur with any information which pertains to its area of responsibility (page 21–86). OSM's response is that Chapter 5 of the Plan adequately covers coordination on wildlife matters. No further modification of the State Plan is necessary.

Additional Findings

The Office of Surface Mining has examined this rulemaking under section 1(b) of Executive Order No. 12291 (February 17, 1981), and determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying the determination on the Kentucky Reclamation Plan are as follows:

1. Approval will not have an effect on the costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

2. Approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and

recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Kentucky Abandoned Mine Plan will not have a significant effect on the quality of the human environment because the decision relates to policies, procedures and organization of the State's Abandoned Mine Plan. Therefore, under the Department of the Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Kentucky Plan is categorically excluded from the National Environmental Policy Act requirement. As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an EA or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

This approval is effective upon publication. The good cause for making this rule effective upon date of publication is: (1) OSM desires to minimize the time between the approval of the Title V regulatory programs and Title IV State reclamation programs; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 13, 1982.

J.R. Harris,

Director, Office of Surface Mining.

Dated: April 13, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary-Energy and Minerals.

Therefore, Part 917 is amended by adding § 917.20 to read as follows:

PART 917—KENTUCKY

§ 917.20 Approval of the Kentucky Abandoned Mine Reclamation Plan.

The Kentucky Abandoned Mine Reclamation Plan as submitted on June 4, 1981, is approved. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region II, 503 Gay Street, Suite 500, Knoxville, Tennessee 37902

Kentucky Department of Natural Resources and Environmental Protection, Frankfort, Kentucky 40601

Adminsitrative Record, Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240

[FR Doc. 82-13081 Filed 5-17-82; 8:45 am]

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Part III

Department of the Interior

Office of Surface Mining and Reclamation and Enforcement

Permanent Regulatory Program; General Requirements for Coal Exploration

DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation and Enforcement

30 CFR Parts 701, 772, 776, and 815

Permanent Regulatory Program; General Requirements for Coal Exploration

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise rules governing coal exploration. The proposed rules would amend the coal exploration permit requirements and performance standards. Most of the changes are needed to eliminate counterproductive or burdensome rules. The proposal would require notices of intention to conduct exploration to be filed only by persons whose activities may substantially disturb the natural land surface rather than by all persons conducting coal exploration. Also included are proposed changes to the definitions of "coal exploration" and "substantially disturb."

DATES:

Written comments: Accepted until further notice.

Public hearings: Held on request only, on June 16, 1982, at 9:00 a.m. (local).

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR–27), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administration Record (TSR–27), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Pittsburgh, Pa.,—William S. Moorehead Federal Building, Room 2212, 1000 Liberty Ave.; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; Pittsburgh, Pa.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT:

Public hearings and information: Jerry R. Ennis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–7887.

Public meeting: Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Bankground.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking. The comment period will remain open until the close of the comment period on the draft environmental impact statement that will consider this proposed rule.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Section 512 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* (the Act), sets forth the notice and reclamation requirements for the conduct of coal exploration operations on non-Federal lands. That section requires that each State and Federal program must insure that coal exploration operations that substantially disturb the natural land surface are conducted in accordance with rules issued by the regulatory authority.

Section 512(a) of the Act provides that, at a minimum, the rules shall include (1) the requirement that prior to conducting any exploration under that section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration, and (2) provisions for reclamation in accordance with the performance standards in Section 515 of the Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

Although the filing of a notice of intention is required for activities substantially disturbing the natural land surface, the Act does not require regulatory authority approval of exploration that removes less than 250 tons of coal. However, Section 512(d) of the Act provides that no operator shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority.

On March 13, 1979, OSM issued rules (44 FR 14901) governing coal exploration notice and permit requirements, 30 CFR Part 776, and coal exploration performance standards, 30 CFR Part 815. This proposed rulemaking would revise the existing rules applicable to coal exploration operations and redesignate Part 776 as Part 772.

In August 1981, the preproposal draft was distributed to interested parties for comment and review. Several States and industry groups have provided written comments, which have been considered in the development of this proposal.

III. Discussion of Proposed Rules

Definition of Coal Exploration

The term "coal exploration" is defined in existing § 701.5 as the field gathering of (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; and (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations.

OSM is proposing a new more easily understood definition of coal exploration in § 701.5. Under the proposal, coal exploration would mean the gathering of data, through drilling, excavation, or other field activities, on the physical and chemical characteristics of coal deposits, overburden, or the strata below the coal deposits; on the hydrologic conditions associated with coal deposits; or on related environmental conditions.

OSM is proposing to continue to include both core drilling and the collection of environmental data in the definition of coal exploration. (See prior preamble discussion, 44 FR 14927 (March 13, 1979).) However, under the rule proposed today, these activities would be subject to the minimum Federal requirements only if they will result in a substantial disturbance of the natural land surface. Comments are specifically requested on the need to include the collection of data on environmental resources within the definition of coal exploration.

Definition of Substantially Disturb

OSM is proposing a new definition in § 701.5 of the term "substantially disturb," for purposes of coal exploration. The existing rule defines substantially disturb, for purposes of coal exploration, to include activities such as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of the land, which significantly impact upon and, air, or water resources. OSM's experience has been that certain activities, such as core hole drilling or the collection of environmental data, do not in and of themselves result in significant impacts. These activities generally result in a significant disturbance only in conjunction with the construction of access roads, or sediment ponds, or with other activities that, where combined, result in a significant surface disturbance. Unfortunately, the existing rule has been misinterpreted by some persons to apply to all drilling operations regardless of whether the operation involved actually resulted in a significant disturbance to the natural land surface.

To clarify this definition, the proposed rule would not specifically refer to blasting, drilling, mechanical excavation, or placement of structures. Rather, the proposed definition would include any coal exploration activity that resulted in a significant impact on land or water resources, including the removal of vegetation, topsoil, or overburden. By relating the definition of substantially disturb to the removal of vegetation, topsoil, or overburden, the definition would also be more closely alined with the general definition of a disturbed area. The proposed rule would continue to specify the construction of roads or other access routes as activities that may result in a significant impact, since these activities are frequently associated with environmental problems resulting from coal exploration. The proposed rule would also separately specify that the placement of excavated earth or waste materials on the natural land surface would be a substantial disturbance, since these activities also would likely have a significant impact on the natural land surface, without necessarily being associated with the excavation or removal of surface materials.

The existing definition of substantially disturb specifically includes reference to air resources, together with land and water resources, as a measure of significant impacts. The proposed rule would eliminate the reference to air resources. OSM is not aware of any coal exploration activities that have a significant impact on air resources and, for purposes of simplicity and clarity, would delete the reference as unnecessary.

Finally, the proposed definition would provide that all exploration activities during which more than 250 tons of coal will be removed is to be considered a substantial disturbance. This would be consistent both with Section 512(d) of the Act, which requires regulatory authority approval of such activities, and with the significant impacts that actually result from such activities.

Redesignation of Part 776

As part of an overall effort to group related CFR parts together, OSM is proposing to redesignate Part 776 as Part 772. The proposed substantive changes in the redesignated part are described below.

Scope, Objectives, and Responsibilities

Existing §§ 776.1, 776.2, and 776.3 set forth the general scope, objectives, and responsibilities, respectively, of existing Part 776. Proposed Part 772 would not contain a specific section entitled "Responsibilities" because the substantive requirements of the proposed rules delineate with adequate specificity the respective obligations of the regulatory authorities and the persons conducting coal exploration activities. Similarly, there is no need for a separate section containing the objectives of the part. Thus, the scope and purpose of proposed Part 772 would be set forth in one short section, proposed § 772.1, providing that the part establishes the requirements and procedures applicable to the development of regulatory programs for regulation of coal exploration operations on non-Federal lands outside of the permit area.

Notice of Intention for Exploration Removing Less Than 250 Tons

Existing § 776.11(a) requires any person who intends to conduct coal exploration during which less than 250 tons will be removed in the area to be explored, prior to conducting the exploration, to file a written notice of intention with the regulatory authority. This requirement is imposed in the existing rule regardless of whether the exploration will substantially disturb the natural land surface. This broad notice requirement was upheld in *In re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144 (D. D.C. February 28, 1980) at p. 33.

Some commenters on the preproposal draft suggested that notices of intention to conduct exploration should only be required when a substantial disturbance is contemplated because only exploration which substantially disturbs the natural land surface subjects the exploration operation to the performance standards of Part 815.

OSM agrees that it may not be necessary, and may be overly burdensome, to require every person who conducts a coal exploration activity to file a notice of intent regardless of whether a substantial disturbance will occur. Thus, OSM is proposing that only persons who will engage in exploration activities which may substantially disturb the natural surface of the land would be required to file a notice of intent to conduct exploration. If such a rule were adopted, States could continue to require notices of all coal exploration activities under § 732.15(b)(3) which allows State coal exploration rules to be

more stringent than OSM's rules. However, States could implement the proposed rule by setting standards, consistent with the definition in § 701.5, as to activities that would or would not substantially disturb the natural land surface. Adoption of the proposal should ease the paperwork burden associated with the existing filing requirement, but would continue to provide a level of protection for the environment. The proposed rules would be in accordance with the Act because the Act does not mandate persons conducting exploration to provide notices of intention for operations that will not substantially disturb the natural land surface.

Comments are requested on the relative merit of the proposal as compared to the existing broader notice requirement.

Contents of Notice of Intention

Existing § 776.11(b) contains detailed information that has to be in a notice of intention. Two of these requirements, a map of the exploration area and a statement describing the person's right to enter the exploration area for purposes of exploration, were struck down in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D. D.C. May 16, 1980) at p. 54. These were held to be beyond the authority of the act for activities that do not require regulatory authority approval.

The required contents of a notice of intention to conduct exploration activities would be set forth in proposed § 772.11(b). In accordance with the May 16, 1980, district court decision referred to above, the proposal would neither require the submission of a map of the exploration area nor a description of the legal basis of the right to enter for exploration. At the option of the person conducting the exploration, a map could be submitted, rather than a narrative description, to satisfy the requirement for a description of the exploration area. The proposal would also require the notice to include a description of the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities.

Approval for Exploration Removing More Than 250 Tons

Any person who intends to conduct coal exploration activities that will remove more than 250 tons from the exploration area must obtain prior written approval from the regulatory authority. Existing §§ 776.12, 776.13, and 776.14 specify the application and approval process, including detailed information submission requirements, notice and comment procedures, and required findings for approval, including a finding of compliance with applicable performance standards of Part 815.

Under proposed § 772.12, persons conducting coal exploration activities that will remove more than 250 tons of coal would continue to have to receive prior approval from the regulatory authority. Proposed § 772.12(a) would require such persons to obtain an exploration permit. The required application information in proposed § 772.12(b) would be similar to that of existing § 776.12(a). Unlike the existing rule, the description would not be required to contain cross-references to the required map; the places eligible for, but not on, the National Register of Historic Places; or information pertaining to fish and wildlife habitats. As a result of the February 26, 1980, district court decision, cited to previously, information pertaining to fish and wildlife habitats cannot be required to be in surface mining permit applications. In addition, while the proposal would continue to require a narrative description of the methods and equipment used in conducting the exploration, it would not specify particular activities to be included in the description, as is currently required in existing § 776.12(a)(3)(ii). A map and a description of the basis of the right to enter would continue to be required in the exploration permit application because these would aid the regulatory authority in making the required findings. The May 16, 1980, district court decision invalidated these latter requirements only for situations not requiring prior approval. The information to be contained in the map has been rewritten to provide clarity. As a new requirement suggested by a commenter on the preproposal draft, the applicant would have to include the reason why removal of more than 250 tons may be necessary for exploration.

Notice and Opportunity for Comment

Existing § 776.12(b), providing for notice and opportunity to comment on exploration applications, would be renumbered as § 772.12(c). Existing § 776.12(b)(1) requires a person who is seeking regulatory authority approval for exploration activities to post public notice of the filing of an application with the regulatory authority at a public office in the vicinity of the proposed exploration area. OSM believes that the current requirement may be inadequate to ensure that interested persons receive actual notice of the pending application. Thus, proposed § 772.11(c) would require that the applicant place public notice of the filing in a newspaper of general circulation in the vicinity of the exploration area.

Findings and Terms for Approval

Section 776.13 is proposed to be renumbered as § 772.12(d), but it would remain unchanged in substance and would continue to set forth the necessary findings and terms for approval of an exploration application, including compliance with the performance standards of Part 815.

Notice of Decision

Existing § 776.14, pertaining to notice of decision and right of review, would become § 776.12(e). The existing provision requires written notice of the decision to the applicant and appropriate local government officials. It also requires the regulatory authority to provide public notice of the decision in a newspaper of general circulation in the vicinity of the exploration area. The proposal would require commenters on the application also to be notified in writing of the decision on the application. OSM believes it more important to require a newspaper notice while there is still an opportunity to comment on the application, rather than after the decision is made. Thus, as described above, OSM would require a newspaper notice of the filing of the application. However, once a decision has been made, public notice would only be required to be posted at a public office in the vicinity of the proposed exploration operations.

Compliance With Performance Standards

The proposal would renumber existing § 776.15 as § 772.13. Under proposed § 772.13(a), any person who conducts coal exploration activities which remove more than 250 tons or which otherwise substantially disturb the natural land surface would continue to have to comply with the performance standards of Part 815. The requirement of existing § 776.11(c) would thus be continued.

Requirements for Commercial Sale

Existing § 815.17, setting forth the requirements for commercial sale of coal extracted during exploration operations, would be retitled and moved to Part 772 as proposed § 722.14. The substance of the section would remain unchanged except to clarify that a surface coal mining and reclamation operations permit woud be needed for the commercial sale of coal extracted during exploration operations.

Public Availability of Information

Existing § 776.17 would be renumbered as § 772.15. Proposed § 772.15 has been rewritten in clearer and more concise language, but without intended change in substance.

Revision of Performance Standards

Part 815 sets forth the permanent program performance standards for coal exploration. The specific performance standards applicable to coal exploration operations that substantially disturb land surfaces (including operations which remove more than 250 tons) are contained in § 815.15.

Scope, Objectives, and Responsibilities of Part 815

Existing §§ 815.1, 815.2, and 815.11 set forth the scope, objectives, and general responsibilities, respectively, under Part 815. For the same reasons described above that §§ 776.2 and 776.3 would not be repromulgated, OSM is proposing to remove §§ 815.2 and 815.11. In addition, the language in § 815.1 describing the scope of Part 815 would be shortened, without an intended change of legal effect.

Required Documents

Existing § 815.13 would be revised to provide clarity, without an intended change in meaning.

Section 815.15

Fish and Wildlife Protection

Existing § 815.15(a), which sets forth the protection for fish, wildlife, and other related environmental values and areas, would be amended by specifying habitats that cannot be disturbed during exploration rather than by referencing the provisions § 780.16(b). The level of protection for these habitats would not be changed.

Measurement of Environmental Characteristics

Existing § 815.15(b) requires operators to measure "important environmental characteristics of the exploration area during the operations * * *" OSM is proposing to remove this requirement because it is too vague to be enforceable and is not deemed necessary to the program. A request to collect and measure such information could be imposed by the regulatory authority in specific instances if deemed necessary to ensure compliance with any of the performance standards which require protection of important environmental characteristics during coal exploration.

If existing § 815.15(b) were to be removed, then existing § 815.15(c), (d), (e), (f), (g), (h), (i), (j), and (k) would be redesignated as § 815.15(b), (c), (d), (e), (f), (g), (h), (i), and (j), respectively.

Roads

The existing performance standards for roads used in exploration are set forth in § 815.15(c). Existing § 815.15(c)(1) provides that vehicular travel on ungraded and unsurfaced roads must be limited to that which is absolutely necessary. Section 815.15(c)(2) provides that new exploration roads must meet the requirements of the general roads rules. Exploration roads used less than 6 months are to comply with the provisions of §§ 816.170 through 816.176; those roads used longer than 6 months must comply with §§ 816.150 through 816.166. However, currently there are no general roads performance standards in effect because, as a result of the May 16, 1980, district court decision referred to above, OSM suspended §§ 816.150 through 816.176 (45 FR 51547, August 4, 1980).

Existing § 815.15(c)(3) provides that existing roads used for coal exploration must meet all applicable laws and rules governing roads. When they are significantly altered or if they contribute suspended solids to streamflow or runoff, such roads must also meet certain requirements prohibiting stream diversions and otherwise protecting water. If such new altered roads are to remain after exploration, they must meet the general roads rules (which were suspended).

None of the specific requirements of existing § 815.15(c) would appear in the corresponding provision of the proposal, § 815.15(b). Instead, the proposal would conform to a new set of performance standards for roads which are currently being developed in a separate rulemaking. The new set of performance standards that an exploration road would have to satisfy would depend upon whether the exploration road would be considered "ancillary" or "primary." Ancillary roads would be those used infrequently and for short durations of time. Primary roads would be those frequently used for access, coal hauling, and other purposes during substantial periods of time. In general, the performance standards and reclamation requirements for primary roads would be more rigorous than those for ancillary roads. A detailed description of these standards appears in the recently published notice proposing the roads performance standards (47 FR 16592, April 16, 1982).

The proposed regulatory language in this rule, which references the new sections in Part 816 proposed in the roads rule, will not be adopted until after the Part 816 performance standards are adopted in final form. Specifically, proposed § 815.15(b) would provide that roads used for coal exploraton must comply with § 816.180 (the proposed performance standards for ancillary roads) if the roads are determined to be ancillary or must comply with §§ 816.150 through 816.156 (the proposed performance standards for primary roads) if the exploration roads are determined to be primary roads.

Unchanged Performance Standards

Existing § 815.15(d), requiring approximate original contour (AOC) restoration after exploration, would remain unchanged in proposed § 815.15(c). Similarly, existing § 815.15(e), requiring topsoil removal, storage, and distribution, would remain unchanged in proposed § 815.15(d). Existing § 815.15(h), requiring the casing and sealing of exploration holes would be revised for clarity, but without intended change of legal effect in proposed § 815.15(g). Existing § 815.15(i), requiring prompt removal of facilities and equipment no longer needed for exploration, would remain unchanged in proposed § 815.15(h) except for the deletion of the superfluous word "quality" currently contained in the phrase "environmental quality data."

Revegetation

Existing § 815.15(f), which requires prompt revegetation, would be rewritten for clarity in proposed § 815.15(e). It would adopt the language of Section 515(b)(19) of the Act and require recovery of a diverse, effective, and permanent vegetative cover. For a fuller discussion of the meaning of those terms, see OSM's proposed rule on revegetation appearing in the March 23, 1982, **Federal Register** (47 FR 12596). The separate references in existing § 815.15(f)(1) to preexploration and postexploration land use of land used for intensive agriculture would be amended to reflect OSM's belief that exploration activities are not expected to change land uses.

Stream and Flow Diversion

Existing § 815.15(g) is the exploration performance standard for diversions of overland flows and streams. It does not allow diversion of ephemeral, intermittent, or perennial streams with the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities. Diversions of overland flow must be done in a manner that (1) prevents erosion; (2) to the extent possible using the best technology

currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area; and (3) complies with all other applicable State or Federal requirements.

The corresponding provision in the proposal, § 815.15(f), would allow diversion of streams, as well as the diversion of overland flow. Such diversions would be permitted if allowed by the regulatory authority in accordance with the performance standards for such diversions in Part 816. Existing § 816.43 contains the performance standards for diversions of overland flow and ephemeral streams. Proposed § 815.15(f)(1) would reference existing § 816.43 except for § 816.43(f) that sets forth specific diversion design criteria. Similarly, proposed § 815.15(f)(2) would reference the requirements of existing § 816.44, the perennial and intermittent stream diversion performance standards. Existing § 816.44(b)(2), containing design criteria for perennial and intermittent stream diversions, would not be referenced in the proposal. The diversion design criteria would not be included so as to provide flexibility for persons to meet exploration performance standards.

Hydrologic Balance

Existing § 815.15(j) requires exploration to be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance and requires sediment control measures such as those listed in § 816.45 or sedimentation ponds which comply with § 816.46. It also provides that the regulatory authority may specify additional measures which must be adopted by the person engaged in coal exploration.

The corresponding provision in the proposal, § 815.15(i), would continue the requirement to minimize disturbance of the hydrologic balance and would reference §§ 816.41, 816.42, and 816.47, in addition to §§ 816.45 and 816.46.

Toxic- or Acid-Forming Materials

Existing § 815.15(k), requiring that toxic- or acid-forming materials must be handled and disposed of in accordance with §§ 816.48 and 816.103, would be revised in proposed § 815.15(j) to reference the standards of § 816.50 also.

IV. Procedural Matters

National Environmental Policy Act

OSM has prepared an Environmental Assessment (EA) of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA is on file in the OSM Administrative Record office at the address listed in the "ADDRESSES" section of this preamble. OSM is also preparing a Supplemental Environmental Impact Statement that will consider this proposed rule. (See 47 FR 18920, May 3, 1982.)

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291.

Regulatory Flexibility Act

These rules have also been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and OSM has determined that the proposed rule does not have significant economic impact on a substantial number of small entities. The proposed rule is expected to ease the regulatory burden on small coal operators by requiring from them notices of intent only when their exploration activities may substantially disturb the natural land surface. Currently, all persons who conduct exploration activities are required to file a notice of intent to explore.

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Part 776 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned a new clearance number 1029–0033 on April 1, 1981. This approval was identified in the "Note" paragraph at the introduction to Part 776 under the old number R0603 (B–190462). OSM is proposing to remove the "Note" paragraph and to codify the OMB approvals for the existing requirements under a new § 772.10. The information required by Part 772 is being collected to meet the requirements of Section 512(a) of the Act, which provides that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration rules. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed operation during the permanent regulatory program. The obligation to respond is mandatory.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Parts 772 and 776

Coal mining, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 815

Coal mining, Surface mining.

Accordingly, 30 CFR Parts 701, 772, 776, and 815 are proposed to be amended as set forth below.

Dated: April 28, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. Section 701.5 is amended by revising the definitions of the terms "coal exploration" and "substantially disturb" to read as follows:

§701.5 Definitions.

* * * * *

Coal exploration means the gathering of data, through drilling, excavation, or other field activities, on the physical and chemical characteristics of coal deposits, overburden, or the strata below the coal deposits; on the hydrologic conditions associated with the coal deposits; or on related environmental conditions.

* * * * *

Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by such activities as the removal of vegetation, topsoil, or overburden; and construction of roads or other access routes; or the placement of excavated earth or waste material on the natural land surface, and includes all exploration activities during which more than 250 tons of coal will be removed.

* * * * *

2. Part 772 is added to read as follows:

PART 772—REQUIREMENTS FOR COAL EXPLORATION

Sec.

772.1 Scope and purpose.
772.10 Information collection.
772.11 Notice requirements for exploration removing less than 250 tons.
772.12 Permit requirements for exploration removing more than 250 tons.
772.13 Coal exploration compliance duties.
772.14 Requirements for commercial sale.
772.15 Public availability of information.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

§ 772.1 Scope and purpose.

This part establishes the requirements and procedures applicable to the development of regulatory programs for regulation of coal exploration operations on non-Federal lands outside of the permit area.

§ 772.10 Information collection.

The information collection requirements contained in §§ 772.11, 772.12, and 772.14(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0033. The information is being collected to meet the requirements of Section 512(a) of the Act which provides that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration rules. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed operation during the permanent regulatory program. The obligation to respond is mandatory.

§ 772.11 Notice requirements for exploration removing less than 250 tons.

(a) Any person who intends to conduct coal exploration outside a permit area during which less than 250 tons of coal will be removed and which may substantially disturb the natural land surface shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore.

(b) The notice shall include—

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A narrative description or a map of the exploration area;

(4) A statement of the period of intended exploration; and

(5) A description of the practices that will be followed to protect the environment and reclaim the area from adverse impacts of the exploration activities.

§ 772.12 Permit requirements for exploration removing more than 250 tons.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed shall, prior to conducting the exploration, submit an application and obtain the written approval, in an exploration permit, from the regulatory authority.

(b) *Application information.* Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

(2) The name, address and telephone number of the representative who will be present and responsible for conducting the exploration activities.

(3) A narrative description of the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of cultural or historical resources listed on the National Register of Historic Places and known archeological resources located within the proposed exploration area.

(9) A description of the measures to be used to comply with the applicable requirements of Part 815 of this chapter.

(10) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(11) A map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, bodies of surface water, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drilled holes or underground openings; and the location of excavated earth or waste materials disposal areas.

(12) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(c) *Public notice and opportunity to comment.* Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of the application with the regulatory authority in the newspaper of general circulation in the vicinity of the proposed exploration area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person whose interest is or may be adversely affected has the right to file written comments on the application within reasonable time limits.

(d) *Decisions on application for exploration removing more than 250 tons.*

(1) The regulatory authority shall act upon a complete application within a reasonable period to time.

(2) The regulatory authority shall approve a complete application filed in accordnace with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application—

(i) Will be conducted in accordance with this part, Part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such resources.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, Part 815 of this chapter, and the regulatory program.

(e) *Notice and hearing.* (1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person whose interest may be adversely affected by a decision of the regulatory authority pursuant to Paragraph (d)(1) of this section has the opprtunity for administrative and judicial review as set forth in Part 787 of this chapter.

§ 722.13 Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface or that remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of this part, Part 815, and the regulatory program, and any exploration permit conditions imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, Part 815 of this chapter, or the regulatory program shall be subject to the provisions of Section 518 of the Act, Subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

§ 772.14 Requirements for commercial sale.

Any person who extracts coal for commercial sale during coal exploration operations must obtain a surface coal mining and reclamation operations permit for those operations from the regulatory authority under Part 771 of this chapter. No surface coal mining and reclamation operations permit is required if the regulatory authority makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

§ 772.15 Public availability of information.

(a) Except as provided in Paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the regulatory authority determines that the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under Paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

PART 776—GENERAL REQUIREMENTS FOR COAL EXPLORATION—[REMOVED]

3. Part 776 is removed.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

4. Section 815.1 is revised to read as follows:

§ 815.1 Scope and purpose.

This part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface.

§§ 815.2 and 815.11 [Removed]

5. Sections 815.2 and 815.11 are removed.

6. Section 815.13 is revised to read as follows:

§ 815.13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface (including exploration which removes more than 250 tons of coal) while in the exploration area shall have available the required notice of intention to explore or exploration permit for review by the authorized representative of the regulatory authority or OSM upon request.

7. Section 815.15 is revised to read as follows:

§ 815.15 Performance standards for coal exploration.

The performance standards in this section are applicable to coal exploration which substantially disturbs the natural land surface (including exploration which removes more than 250 tons of coal).

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values, including critical habitats of threatened or endangered species and critical habitats of species protected by State or Federal law, shall not be disturbed during coal exploration.

(b) All roads used for coal exploration shall comply with the provisions of § 816.150 of this chapter when determined to be ancillary roads or §§ 816.150 through 816.156 of this chapter when determined to be primary roads.

(c) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the regulatory authority.

(e) All disturbed areas shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(f)(1) Diversions of overland flows and ephemeral streams shall be made in accordance with paragraphs (a) through (e) of § 816.43 of this chapter.

(2) Diversions of perennial or intermittent streams shall be made in accordance with Paragraphs (a), (b)(1), (c), (d), and (e) of § 816.44 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with §§ 816.13, 816.14, and 816.15 of this chapter.

(h) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to—

(1) Provide additional environmental data;

(2) Reduce or control the on- and offsite effects of the exploration activities; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with §§ 816.41, 816.42, 816.45, 816.46, and 816.47 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Toxic- or acid-forming materials shall be handled and disposed of in accordance with §§ 816.46, 816.50, and 816.100 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

§ 815.17 [Removed]

8. Section 815.17 is removed.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 82-13448 Filed 5-17-82; 8:45 am]
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federal register

Tuesday
May 18, 1982

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1982.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1982 of twenty-six rescission proposals and 243 deferrals contained in the first eleven messages of FY 1982. These messages were transmitted to the Congress on October 1, 20, 23, and 29, and November 6, and 13, 1981, January 22, February 8, and 19, March 18, and April 23, 1982.

Rescissions (Table A and Attachment A)

Two rescission proposals totaling $235.7 million are currently pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of May 1, 1982 while Attachment A shows the history and status of each rescission proposed during FY 1982.

Deferrals (Table B and Attachment B)

As of May 1, 1982, $3,128.1 million in 1982 budget authority was being deferred from obligation and another $5.4 million in 1982 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1982.

Information from special messages

The special messages containing information on the rescissions and the deferrals covered by the cumulative report are printed in the Federal Registers of:

Vol. 46, No. 194, FR p. 49793, Wednesday, October 7, 1981
Vol. 46, No. 206, FR p. 52289, Monday, October 26, 1981
Vol. 46, No. 210, FR p. 54259, Friday, October 30, 1981
Vol. 46, No. 212, FR p. 54691, Tuesday, November 3, 1981
Vol. 46, No. 218, FR p. 55905, Thursday, November 12, 1981
Vol. 46, No. 223, FR p. 57019, Thursday, November 19, 1981
Vol. 47, No. 18, FR p. 4021, Wednesday, January 27, 1982
Vol. 47, No. 28, FR p. 6193, Wednesday, February 10, 1982
Vol. 47, No. 37, FR p. 8145, Wednesday, February 24, 1982
Vol. 47, No. 57, FR p. 12751, Wednesday, March 24, 1982
Vol. 47, No. 82, FR p. 18301, Wednesday, April 28, 1982

David A. Stockman,

Director.

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ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 AS OF 05/06/82 16:05

AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT							
International Development Assistance							
Functional development assistance program							
BA	R82- 4		8,129	2 8 82		8,129*	4 23 82
Sahel development program							
BA	R82- 5		2,500	2 8 82		2,500*	4 23 82
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL BA			10,629			10,629	
DEPARTMENT OF AGRICULTURE							
Extension Service							
Extension service							
BA	R82- 6		2,000	2 8 82		2,000*	4 26 82
DEPARTMENT OF AGRICULTURE TOTAL BA			2,000			2,000	
DEPARTMENT OF COMMERCE							
National Oceanic and Atmospheric Administration							
Coastal zone management							
BA	R82- 7		12,000	2 8 82		12,000*	4 26 82
Coastal energy impact fund							
BA	R82- 8		7,000	2 8 82		7,000*	4 26 82
DEPARTMENT OF COMMERCE TOTAL BA			19,000			19,000	
DEPARTMENT OF DEFENSE - MILITARY							
Procurement							
Aircraft procurement, Air Force							
BA	R82- 1	55,700		10 23 81		55,700	12 14 81
Missile procurement, Air Force							
BA	R82- 2	22,500		10 23 81		22,500	12 14 81
DEPARTMENT OF DEFENSE - MILITARY TOTAL BA		88,200				88,200	
DEPARTMENT OF EDUCATION							
Office of Elementary and Secondary Education							
Compensatory education for the disadvantaged							
BA	R82- 9		411,933	2 8 82		411,933*	4 26 82
Special programs and populations							
BA	R82-10		65,600	2 8 82		65,600*	4 26 82
Indian education							
BA	R82-11		6,266	2 8 82		6,266*	4 26 82

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 — AS OF 05/06/82 18:06

AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Office of Special Education and Rehab. Services								
Education for the handicapped	BA	R82-12		258,572	2 8 82		258,572 *	4 26 82
Rehabilitation services and handicapped research	BA	R82-13		91,171	2 8 82		91,171 *	4 26 82
Office of Vocational and Adult Education								
Vocational and adult education	BA	R82-14		105,741	2 8 82		105,741 *	4 26 82
Office of Postsecondary Education								
Student financial assistance	BA	R82-15		141,500	2 8 82		141,500 *	4 26 82
Higher and continuing education	BA	R82-16		42,739	2 8 82		42,739 *	4 26 82
Office of Educational Research and Improvement								
Libraries	BA	R82-17		22,110	2 8 82		22,110 *	4 26 82
Departmental management								
Educ. res. & train. overseas (spec. for. curr.)	BA	R82-18		80	2 8 82		80 *	4 26 82
Office of Bilingual Educ. & Minority Lang. Affairs								
Bilingual education	BA	R82-19		11,504	2 8 82		11,504 *	4 26 82
DEPARTMENT OF EDUCATION TOTAL	BA			1,157,205			1,157,205	
DEPARTMENT OF ENERGY								
Energy Programs								
Energy conservation	BA	R82-20		20,000	2 8 82		20,000 *	4 26 82
DEPARTMENT OF ENERGY TOTAL	BA			20,000			20,000	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs	BA	R82-21		9,399,789	2 8 82		5,998,788 *	4 26 82
	BA	R82-21A		-3,400,000	4 23 82			
Solar Energy and Energy Conservation Bank								
Assistance for solar and conserv. improvements	BA	R82-22		21,850	2 8 82		21,850 *	4 26 82
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL	BA			8,021,639			8,021,638	
DEPARTMENT OF LABOR								
Mine Safety and Health Administration								
Salaries and expenses	BA	R82-23		4,005	2 8 82		2,005 *	4 26 82
	BA	R82-23A		-2,000	2 19 82			

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 AS OF 05/06/82 16:05

AS OF MAY 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
DEPARTMENT OF LABOR							
TOTAL BA			2,088			2,088	
DEPARTMENT OF TRANSPORTATION							
Federal Highway Administration							
Highway-related safety grants							
BA	R82-24		9,623	2 8 82		9,623*	4 26 82
DEPARTMENT OF TRANSPORTATION							
TOTAL BA			9,623			9,623	
OTHER INDEPENDENT AGENCIES							
Corporation for Public Broadcasting							
Public broadcasting fund							
BA	R82- 3		20,500a	11 6 81			
National Foundation on the Arts and Humanities							
Institute of Museum Services: Program operations							
BA	R82-25		10,877	2 8 82		10,877*	4 26 82
Postal Service							
Payment to the Postal Service Fund							
BA	R82-26		215,230	3 18 82			
OTHER INDEPENDENT AGENCIES							
TOTAL BA			246,607			10,877	
TOTAL BA		88,200	7,488,798			7,341,268	

* This item is still under consideration by the Congress, but the amounts were made available upon expiration of the 45-day clock.

a. This is a proposal to rescind FY 1983 funds.

END OF REPORT

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 18:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
EXECUTIVE OFFICE OF THE PRESIDENT									
White House Office									
Salaries and Expenses	BA	D82- 27	366		10 20 81	-366			
Special Assistance to the President									
Salaries and Expenses	BA	D82- 28	28		10 20 81	-28			
Council of Economic Advisers									
Salaries and Expenses	BA	D82- 86	32		10 23 81	-32			
Council on Envir. Quality & Office of Envir. Qual.									
Salaries and Expenses	BA	D82- 29	9		10 20 81	-9			
Office of Policy Development									
Salaries and Expenses	BA	D82- 30	45		10 20 81	-45			
National Security Council									
Salaries and Expenses	BA	D82- 31	62		10 20 81	-62			
Office of Administration									
Salaries and expenses	BA	D82- 32	139		10 20 81	-139			
OMB, Office of Fed. Procurement Policy									
Salaries and expenses	BA	D82- 33	24		10 20 81	-24			
Office of Science and Technology Policy									
Salaries and expenses	BA	D82- 34	30		10 20 81	-30			
Office of the U.S. Trade Representative									
Salaries and expenses	BA	D82- 35	78		10 20 81	-78			
EXECUTIVE OFFICE OF THE PRESIDENT TOTAL	BA		813			-813			
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	BA	D82- 1	15,000		10 1 81				
	BA	D82- 1A		a	1 22 82				
	BA	D82- 1B		a	2 8 82				15,000
Disaster Relief									
Disaster relief	BA	D82-158	7,000		10 29 81	-7,000			
	BA	D82-159	139,000		10 29 81	-139,000			
International Security Assistance									
Foreign military credit sales	BA	D82-222	680,000		2 8 82	-480,000			200,000
Economic support fund	BA	D82-219	1,756,980		1 22 82	-1,604,775			152,205
Military assistance	BA	D82-223	129,512		2 8 82	-68,000			61,512
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA		2,726,492			-2,297,775			428,717
DEPARTMENT OF AGRICULTURE									
Office of the Secretary									
Office of the Secretary	BA	D82-160	29		10 28 81	-29			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/09/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Agricultural Research Service								
Agricultural research service								
BA	D82-161	1,813		10 28 81	-1,813			
Cooperative State Research Service								
Cooperative state research service								
BA	D82-162	2,790		10 28 81	-2,790			
Extension Service								
Extension service								
BA	D82-163	1,990		10 28 81	-1,990			
National Agricultural Library								
National agricultural library								
BA	D82-164	83		10 28 81	-83			
Statistical Reporting Service								
Statistical reporting service								
BA	D82-165	198		10 28 81	-198			
Agricultural Cooperative Service								
Agricultural cooperative service								
BA	D82-166	39		10 28 81	-39			
Office of Internat. Cooperation and Development								
Scientific activities overseas								
BA	D82-167	700		10 28 81	-700			
Rural Electrification Administration								
Rural electr. and telephone revolving fund								
BA	D82-169	49,368b		10 28 81	-49,368			
Foreign Assistance Programs								
Expenses, P.L. 480								
BA	D82- 36	25,696		10 20 81	-25,696			
Agricultural Stabilization & Conservation Service								
Dairy and beekeeper indemnity programs								
BA	D82- 88	28		10 23 81	-28			
Agricultural conservation								
BA	D82- 87	8,600		10 23 81	-8,600			
Emergency conservation program								
BA	D82-168	1,400		10 28 81	-1,400			
Farmers Home Administration								
Salaries and expenses								
BA	D82-171	826		10 28 81	-826			
Rural housing for domestic farm labor								
BA	D82-173	1,750		10 28 81	-1,750			
BA	D82-324	10,726		2 8 82				10,726
Mutual and self-help housing								
BA	D82-174	490		10 28 81	-490			
Rural water and waste disposal								
BA	D82-170	8,680		10 28 81	-8,680			
Rural community fire protection grants								
BA	D82-172	490		10 28 81	-490			
Agricultural credit insurance fund								
BA	D82-175	1,316		10 28 81	-1,316			
Rural development insurance fund								
BA	D82-176	21,000		10 28 81	-21,000			
Soil Conservation Sevice								
Watershed and flood prevention operations								
BA	D82- 89	8,926		10 23 81	-8,926			
Animal and Plant Health Inspection Service								
Animal and plant health inspection service								
BA	D82- 90	4,125		10 23 81	-4,125			
Buildings and facilities								
BA	D82-177	236		10 28 81	-236			
Agricultural Marketing Service								
Payments to States and possessions								
BA	D82-178	210		10 28 81	-210			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/06/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR.	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Food and Nutrition Service									
Food program administration	BA	D82-209	487		11 6 81	-487			
Child nutrition programs	BA	D82-210	472		11 6 81	-472			
Special supplemental food programs (WIC)	BA	D82-211	13,831		11 6 81	-13,831			
Forest Service									
State and private forestry	BA	D82- 92	776		10 23 81	-776			
	BA	D82-179	657		10 29 81	-657			
Agricultural research	BA	D82- 91	1,348		10 23 81	-1,348			
National forest system	BA	D82- 93	12,516		10 23 81	-12,516			
	BA	D82-180	1,059		10 29 81	-1,059			
Construction and land acquisition	BA	D82- 94	6,693		10 23 81	-6,693			
Timber salvage sales	BA	D82- 2	6,723		10 1 81				
	BA	D82- 2A		561	1 22 82				7,284
Rangeland improvements	BA	D82- 96	108		10 23 81	-108			
Acquisition of lands to complete land exchanges	BA	D82- 95	6		10 23 81	-6			
Expenses, brush disposal	BA	D82- 3	49,349		10 1 81			-948	
	BA	D82- 3A		0	4 23 82				48,401
DEPARTMENT OF AGRICULTURE TOTAL BA			245,247	561		-178,447		-948	66,413
DEPARTMENT OF COMMERCE									
General Administration									
Participation in U.S. expositions	BA	D82- 4	507		10 1 81	-32			475
Bureau of the Census									
Periodic censuses and programs	BA	D82-225	1,015		2 8 82				1,015
Economic and Statistical Analysis									
Salaries and expenses	BA	D82- 97	420		10 23 81	-420			
Economic Development Administration									
Economic development assistance programs	BA	D82- 98	38,855		10 23 81	-38,855			
Minority Business Development Agency									
Minority business development	BA	D82- 99	857		10 23 81	-857			
	BA	D82-226	5,000		2 8 82				5,000
United States Travel Service									
Salaries and expenses	BA	D82-181	287		10 29 81	-287			
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	BA	D82-100	12,891		10 23 81	-12,891			
Construction	BA	D82- 5	2,000		10 1 81				
	BA	D82- 5A		0	1 22 82				2,000
National Telecom. and Information Admin.									
Salaries and expenses	BA	D82-101	277		10 23 81	-277			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 8-1-82
DEPARTMENT OF COMMERCE									
TOTAL BA			62,109			-53,619			8,490
DEPARTMENT OF DEFENSE-MILITARY									
Procurement									
Shipbuilding and conversion, Navy									
	BA	D82-227	1,275,000		2 8 82				1,275,000
Military Construction									
Military construction, all services									
	BA	D82- 6	38,837		10 1 81				
	BA	D82- 6A		14,101	1 22 82				
	BA	D82- 6B		714,785	2 8 82	-476,355		38,510	330,878
Family Housing, Defense									
Family housing, Defense									
	BA	D82- 7	1,992		10 1 81	-1,992			
DEPARTMENT OF DEFENSE-MILITARY									
TOTAL BA			1,315,829	728,886		-478,347		38,510	1,605,878
DEPARTMENT OF DEFENSE-CIVIL									
Cemeterial Expenses, Army									
Salaries and expenses									
	BA	D82- 37	85		10 20 81	-85			
Corps of Engineers									
General investigations									
	BA	D82- 38	2,068		10 20 81	-2,068			
Construction, general									
	BA	D82- 39	14,284		10 20 81	-14,284			
General expenses									
	BA	D82- 40	370		10 20 81	-370			
Special recreation use fees									
	BA	D82- 41	59		10 20 81	-59			
Soldiers and Airmen s Home									
Operation and maintenance									
	BA	D82- 42	63		10 20 81	-63			
Wildlife Conservation, Military Reservations									
Wildlife conservation, all services									
	BA	D82- 8	597		10 1 81	-8		8	
	BA	D82- 8A		433	1 22 82				1,030
DEPARTMENT OF DEFENSE-CIVIL									
TOTAL BA			17,526	433		-16,837		8	1,030
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy R&D									
	BA	D82-105	14,769		10 23 81	-14,769			
	BA	D82-236	44,883		3 18 82		-44,883		
Fossil energy construction									
	BA	D82- 9	135,000		10 1 81		-135,000		
Gen. science & research-plant & capital									
	BA	D82-102	1,682		10 23 81	-1,682			
Energy supply R&D-operating expenses									
	BA	D82-103	49,393		10 23 81	-49,393			
	BA	D82-228	4,000		2 8 82				4,000
	BA	D82-228A		a	3 18 82				
Energy supply R&D-plant and capital equip.									
	BA	D82-104	11,948		10 23 81	-11,948			
Energy conservation									
	BA	D82-106	14,007		10 23 81	-14,007			
Strategic Petroleum Reserve									
	BA	D82- 10	8,000		10 1 81				
	BA	D83- 10A		52,860	2 8 82	-8,000			52,860
Energy information administration									
	BA	D82-107	2,042		10 23 81	-2,042			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 — AS OF 05/09/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO-DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Economic regulation									
	BA	D82-108	2,436		10 23 81	-2,436			
Federal Energy Regulatory Commission									
	BA	D82-109	490		10 23 81	-490			
Geothermal resources development fund									
	BA	D82-110	18		10 23 81	-18			
DEPARTMENT OF ENERGY									
TOTAL	BA		288,688	52,990		-104,796	-179,883		56,999
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Services Administration									
Health Services									
	BA	D82- 11	1,908		10 1 81				1,908
Indian health services									
	BA	D82-212	10,880		11 6 81	-10,880			
Centers for Disease Control									
Preventive Health Services									
	BA	D82-213	791		11 6 81	-791			
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St. Elizabeths Hospital									
	BA	D82- 12	11,500		10 1 81				
	BA	D82- 12A		a	1 22 82				11,500
Office of Assistant Secretary for Health									
Health services management									
	BA	D82-214	1,142		11 6 81	-1,142			
Special foreign currency program									
	BA	D82- 13	7,000		10 1 81				
	BA	D82- 13A		a	1 22 82				7,000
Health Care Financing Administration									
Program management									
	BA	D82-215	420		11 6 81	-420			
Social Security Administration									
Refugee assistance									
	BA	D82- 43	10,000		10 20 81	-10,000			
Cuban and Haitian entrants, reception & process.									
	BA	D82- 44	4,900		10 20 81	-4,900			
	BA	D82- 44A		a	1 22 82				
Cuban and Haitian entrants, domestic asst.									
	BA	D82- 45	87,000		10 20 81				
	BA	D82- 45A		11,388	1 22 82	-48,388			
Limitation on administrative expenses									
	BA	D82-237	9,600		3 18 82				9,600
Human Development Services									
Work incentives									
	BA	D82-216	10,523		11 6 81	-10,523			
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
TOTAL	BA		105,334	11,388		-87,124			29,608
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Subsidized housing programs									
	BA	D82-182	79,218		10 29 81	-79,218			
Payments for operation of low income housing									
	BA	D82-183	102,482		10 29 81	-102,482			
Housing for the elderly or handicapped									
	BA	D82-111	14,284		10 23 81	-14,284			
Solar Energy and Energy Conserv. Bank									
Assist. for solar and conserv. improvements									
	BA	D82-184	3,500		10 29 81	-3,500			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Community Planning and Development								
Community development support assistance								
BA	D82-112	61,589		10 23 81	-61,589			
Urban development action grants								
BA	D82-113	8,412		10 23 81	-8,412			
Rehabilitation loan fund								
BA	D82-185	26,958		10 29 81	-26,958			
Neighborhoods, Vol. Assoc. & Consumer Prot.								
Housing counseling assistance								
BA	D82- 46	207		10 20 81	-207			
Policy Development and Research								
Research and technology								
BA	D82- 47	420		10 20 81	-420			
Fair Housing and Equal Opportunity								
Fair housing assistance								
BA	D82- 48	96		10 20 81	-96			
Management and Administration								
Salaries and expenses								
BA	D82-186	3,590		10 29 81	-3,590			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
TOTAL BA		300,737			-300,737			
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Acquisition, construction and maintenance								
BA	D82- 49	121		10 20 81	-121			
Range improvements								
BA	D82-114	237		10 23 81	-237			
Bureau of Reclamation								
Loan program								
BA	D82-115	782		10 23 81	-782			
Construction program								
BA	D82-116	4,600		10 23 81	-4,600			
General investigations								
BA	D82-117	944		10 23 81	-944			
Operations and maintenance								
BA	D82-118	64		10 23 81	-64			
General administrative expenses								
BA	D82-119	353		10 23 81	-353			
Office of Water Research & Technology								
Salaries and expenses								
BA	D82-120	600		10 23 81	-600			
U.S. Fish and Wildlife Service								
Resource management								
BA	D82-121	5,815		10 23 81	-5,815			
Construction and anadromous fish								
BA	D82- 50	392		10 20 81	-392			
National Park Service								
Urban park and recreation grants								
BA	D82-125	1,400		10 23 81	-1,400			
BA	D82-238	858		3 18 82				858
Operation of the National Park Service								
BA	D82-122	5,216		10 23 81	-5,216			
John F. Kennedy Center for the Performing Arts								
BA	D82-124	40		10 23 81	-40			
Construction								
BA	D82-123	5,207		10 23 81	-5,207			
Land and water conservation fund								
BA	D82-126	16,256		10 23 81	-16,256			
BA	D82- 14	30,000		10 1 81				
BA	D82- 14A		a	2 8 82				30,000
BA	D82-239	2,821		3 18 82				2,821

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/06/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Historic preservation fund									
	BA	D82-218	108		11 13 81	-108			
	BA	D82-240	781		3 18 82				781
Geological Survey									
Surveys, investigations and research									
	BA	D82- 51	9,019		10 20 81	-9,019			
Exploration of National Petroleum Res. in Alaska									
	BA	D82- 52	80		10 20 81	-80			
Payments from proceeds, sale of water									
	BA	D82- 15	45		10 1 81				45
Office of Surface Mining Reclam. and Enforcement									
Regulation and technology									
	BA	D82- 53	1,245		10 20 81	-1,245			
Bureau of Mines									
Drainage of anthracite mines									
	BA	D82- 16	881		10 1 81				
	BA	D82- 16A			2 8 82				881
Mines and minerals									
	BA	D82- 54	2,600		10 20 81	-2,600			
Bureau of Indian Affairs									
Operation of Indian programs									
	BA	D82-127	16,607		10 23 81	-16,607			
Construction									
	BA	D82-128	148		10 23 81	-148			
Road construction									
	BA	D82-129	279		10 23 81	-279			
Office of Territorial Affairs									
Administration of territories									
	BA	D82- 55	2,439		10 20 81	-2,439			
Trust territory of the Pacific Islands									
	BA	D82- 56	2,068		10 20 81	-2,068			
Office of the Solicitor and Office of the Secy									
Departmental management									
	BA	D82-130	414		10 23 81	-414			
Youth conservation corps									
	BA	D82-131	2,494		10 23 81	-2,494			
DEPARTMENT OF THE INTERIOR TOTAL	BA		115,037			-79,541			35,496
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses									
	BA	D82-187	250		10 29 81	-250			
	BA	D82-188	196		10 29 81	-196			
United States Parole Commission									
Salaries and expenses									
	BA	D82-189	60		10 29 81	-60			
Legal Activities									
Salaries and expenses, Antitrust Division									
	BA	D82-190	81		10 29 81	-81			
Salaries and expenses, Foreign Claims Settl.									
	BA	D82-191	12		10 29 81	-12			
Federal Prison System									
Buildings and facilities									
	BA	D82-192	1,922		10 29 81	-1,922			
	BA	D82- 17	2,700		10 1 81				
	BA	D82- 17A			2 8 82				2,700
Office of Justice Assist., Res., and Statistics									
Law enforcement assistance									
	BA	D82-193	10,728		10 29 81	-10,728			
DEPARTMENT OF JUSTICE TOTAL	BA		15,950			-13,250			2,700

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ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
DEPARTMENT OF LABOR									
Employment and Training Administration									
Employment and training assistance									
	BA	D82-194	407,670		10 29 81	-407,670			
	BA	D82-229	88,543		2 8 82				88,543
	BA	D82- 18	49,881		10 1 81	-49,881			
Occupational Safety and Health Admin.									
Salaries and expenses									
	BA	D82-195	8,500		10 29 81	-8,500			
DEPARTMENT OF LABOR TOTAL	BA		554,594			-466,051			88,543
DEPARTMENT OF STATE									
Administration of Foreign Affairs									
Emergencies in dipl. and consular service									
	BA	D82- 58	84		10 20 81	-84			
Acquis., oper. and main. of buildings abroad									
	BA	D82- 57	514		10 20 81	-514			
International Commissions									
Salaries and expenses									
	BA	D82- 59	80		10 20 81	-80			
Construction									
	BA	D82- 60	20		10 20 81	-20			
American sections, internat. commissions									
	BA	D82- 61	25		10 20 81	-25			
Other									
Emergency refugee and migration assistance fund									
	BA	D82- 19	35,043		10 1 81				
	BA	D82- 19A		100	1 22 82				35,143
Migration and refugee assistance									
	BA	D82-241	40,000		4 23 82				40,000
	BA	D82-242	10,000		4 23 82				10,000
U.S. bilateral science and technology agreements									
	BA	D82-230	1,000		2 8 82				
	BA	D82-230A		1,000	4 23 82				2,000
DEPARTMENT OF STATE TOTAL	BA		86,766	1,100		-723			87,143
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Civil supersonic aircraft development termination									
	BA	D82- 20	3,446		10 1 81	-3,400			46
Facilities & equip. (Airport & airway trust fund)									
	BA	D82- 21	185,783		10 1 81				
	BA	D82- 21A		164,730	1 22 82				350,513
Federal Railroad Administration									
Commuter rail transfer									
	BA	D82-243	37,500		4 23 82				37,500
Grants to National Railroad Passenger Corp.									
	BA	D82-217	93,400		11 6 81	-12,740	-80,660		
Maritime Administration									
Ship construction									
	BA	D82-231	10,000		2 8 82				10,000
Research and Special Programs Administration									
Research and special programs									
	BA	D82-220	1,080		1 22 82				1,080
DEPARTMENT OF TRANSPORTATION TOTAL	BA		331,179	164,730		-16,140	-80,660		399,109

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE ONE /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
International affairs	BA	D82-196	109		10 29 81	-109			
Office of Revenue Sharing									
Salaries and expenses	BA	D82-197	26		10 29 81	-26			
State and local government fiscal assistance fund	BA	D82- 22	106,738		10 1 81	-4,122		676	106,282
	O	D82- 23	6,287		10 1 81				
	O	D82- 23A		14,635	3 18 82	-19,477		3,837	5,382
Federal Law Enforcement Training Center									
Construction	BA	D82- 24	4,200		10 1 81				4,200
Salaries and expenses	BA	D82-198	240		10 29 81	-240			
Bureau of Government Financial Operations									
New York City loan guarantee program	BA	D82-199	16		10 29 81	-16			
Chrysler Corporation loan guarantee program	BA	D82-200	23		10 29 81	-23			
Bureau of Alcohol, Tobacco and Firearms									
Salaries and expenses	BA	D82-201	1,039		10 29 81	-1,039			
Bureau of the Mint									
Expansion and improvements	BA	D82-132	70c		10 23 81			-70	
Internal Revenue Service									
Payment where energy credit exceeds liab. for tax	BA	D82-202	8		10 29 81	-8			
DEPARTMENT OF THE TREASURY TOTAL BA			115,469			-6,583		606	110,482
DEPARTMENT OF THE TREASURY TOTAL O			6,287	14,635		-19,477		3,837	5,382
ENVIRONMENTAL PROTECTION AGENCY									
Research and development	BA	D82-133	1,889		10 23 81	-1,889			
Abatement, control and compliance	BA	D82-134	8,062		10 23 81	-8,062			
Buildings and facilities	BA	D82-135	69		10 23 81	-69			
Hazardous substance response trust fund	BA	D82-136	3,360		10 23 81	-3,360			
	BA	0000							
ENVIRONMENTAL PROTECTION AGENCY TOTAL BA			13,380			-13,380			
NATIONAL AERONAUTICS & SPACE ADMINISTRATION									
Construction of facilities	BA	D82-137	2,800		10 23 81	-2,800			
	BA	0000							
NATIONAL AERONAUTICS & SPACE ADMINISTRATION TOTAL BA			2,800			-2,800			
VETERANS ADMINISTRATION									
Medical and prosthetic research	BA	D82-138	2,583		10 29 81	-2,583			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Medical admin. and misc. operating expenses	BA	D82-139	921		10 23 81	-921			
Construction, major projects	BA	D82-140	31,300		10 23 81		-33,800		57,500
	BA	D82-141	7,877		10 23 81	-7,877			
Construction, minor projects	BA	D82-142	907		10 23 81	-907			
	BA	0000							
VETERANS ADMINISTRATION TOTAL BA			103,588			-12,288	-33,800		57,500
OTHER INDEPENDENT AGENCIES									
ACTION									
Operating expenses, domestic programs	BA	D82- 62	2,896		10 20 81	-2,896			
Administrative Conference of the U. S.									
Salaries and expenses	BA	D82-143	16		10 23 81	-16			
Advisory Committee on Federal Pay									
Salaries and expenses	BA	D82-144	4		10 23 81	-4			
Arms Control and Disarmament Agency									
Arms control and disarmament agency	BA	D82- 63	282		10 20 81	-282			
Board for International Broadcasting									
Salaries and expenses	BA	D82- 64	252		10 20 81	-252			
Comm. for the Purchase from the Blind									
Salaries and expenses	BA	D82- 65	10		10 20 81	-10			
District of Columbia									
Loans for capital outlay	BA	D82-232	38,832		2 8 82				38,832
Equal Employment Opportunity Commission									
Salaries and expenses	BA	D82-145	3,000		10 23 81	-3,000			
Federal Emergency Management Agency									
State and local assistance	BA	D82-205	1,814		10 29 81	-1,814			
National flood insurance fund	BA	D82-203	7,140		10 29 81	-7,140			
	BA	D82-204	358,860		10 29 81	-358,860			
General Services Administration									
Consumer information center	BA	D82- 68	26		10 20 81	-26			
Nat. Archives & Records Service-operating	BA	D82- 66	140		10 20 81	-140			
Federal Property Resources Service-operating	BA	D82- 67	748		10 20 81	-748			
Automated Data & Telecom. Service-operating	BA	D82-206	120		10 29 81	-120			
Advisory Commission on Intergovt. Relations									
Salaries and expenses	BA	D82- 69	10		10 20 81	-10			
Delaware River Basin Commission									
Salaries and expenses	BA	D82- 70	2		10 20 81	-2			
Contribution to the Del. River Basin Comm.	BA	D82- 71	4		10 20 81	-4			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/06/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE ORG /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Interstate Commission on the Potomac River Basin								
Contrib. to Interst. Comm. on Potomac Riv. Basin								
BA	D82- 72	1		10 20 81	-1			
Susquehanna River Basin Commission								
Salaries and expenses								
BA	D82- 73	1		10 20 81	-1			
Contrib. to the Susquehanna River Basin Comm.								
BA	D82- 74	1		10 20 81	-1			
International Communication Agency								
Salaries & expenses								
BA	D82- 75	4,680		10 20 81	-4,680			
Center for cul. and tech. exch. bet. east & west								
BA	D82- 76	125		10 20 81	-125			
Interstate Commerce Commission								
Salaries and expenses								
BA	D82-146	648		10 23 81	-648			
Japan-U.S. Friendship Commission								
Japan-U.S. Friendship Commission trust fund								
BA	D82- 77	34		10 20 81	-34			
Marine Mammal Commission								
Salaries and expenses								
BA	L82- 78	11		10 20 81	-11			
National Capital Planning Commission								
Salaries and expenses								
BA	D82-207	19		10 29 81	-19			
National Foundation on the Arts & Humanities								
Nat. endowment for the arts: sal. & expenses								
BA	D82-147	11,208		10 23 81	-11,208			
Nat. endowment for the human.: sal. and expenses								
BA	D82-208	5,882		10 28 81	-5,882			
Nat. endowment for the human.: matching grants								
BA	D82-148	2,628		10 23 81	-2,628			
National Mediation Board								
Salaries and expenses								
BA	D82- 79	58		10 20 81	-58			
National Science Foundation								
Research and related activities								
BA	D82- 80	19,924		10 20 81	-19,924			
Scientific activities overseas								
BA	D82- 81	59		10 20 81	-59			
Science and engineering educ. activities								
BA	D82- 82	2,623		10 20 81	-2,623			
Neighborhood Reinvestment Corporation								
Payment to Neighborhood Reinvest. Corp.								
BA	D82- 83	181		10 20 81	-181			
Pennsylvania Avenue Development Corporation								
Salaries and expenses								
BA	D82-149	15		10 23 81	-15			
Public development								
BA	D82-150	238		10 23 81	-238			
Land acquisition and development fund								
BA	D82-151	42		10 23 81	-42			
BA	D82- 25	30,896		10 1 81	-10,000			
BA	D82- 25A		8	2 8 82				20,896
Selective Service System								
Salaries and expenses								
BA	D82- 84	192		10 20 81	-192			
Small Business Administration								
Salaries and expenses								
BA	D82-152	8,137		10 23 81	-8,137			
Business loan and investment fund								
BA	D82-233	2,500		2 8 82				2,500

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 05/05/82 16:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-82
Surety bond guarantees revolving fund									
	BA	D82-154	373		10 23 81	-373			
	BA	D82-234	3,000		2 8 82				3,000
Lease guarantees revolving fund									
	BA	D82-153	67		10 23 81	-67			
Smithsonian Institution									
Museum programs and related research									
	BA	D82-155	231		10 23 81	-231			
Restoration and renovation of buildings									
	BA	D82-156	145		10 23 81	-145			
Motor Carrier Ratemaking Study Commission									
Salaries and Expenses									
	BA	D82- 26	150		10 1 81				150
Pres. Com. for the Study of Ethical Probs. in Med.									
Salaries and expenses									
	BA	D82-221	262		1 22 82				262
Tennessee Valley Authority									
Tennessee Valley Authority fund									
	BA	D82-157	2,321		10 23 81	-2,321			
United States Railway Association									
Payments for purchase of Conrail securities									
	BA	D82-235	84,500		2 8 82				84,500
Water Resources Council									
Water resources planning									
	BA	D82- 85	42		10 20 81	-42			
OTHER INDEPENDENT AGENCIES									
TOTAL BA			880,361			-440,221			150,140
TOTAL BA			6,991,880	958,946		-4,868,862	-294,343	30,178	3,128,119
TOTAL O			6,287	18,635		-19,477		3,937	5,382

a. This report was transmitted solely to reflect technical adjustments to the previous report.

b. Off-budget.

c. This deferral was reported in error. Funds for this budget account were not withheld.

END OF REPORT

[FR Doc. 82-13429 Filed 5-17-82; 8:45 am]
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Tuesday
May 18, 1982

Part V

Federal Communications Commission

Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76, and 78

[BC Docket No. 78-253; FCC 82-107]

An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to include a new low power television service. The service will: (1) Permit a fuller utilization of the broadcast spectrum, (2) allow broadcasting to maximize its potential to meet the needs of consumers, and (3) open the regulatory doors to purveyors of alternative technologies. The action is necessary to resolve the issues of multiple ownership, comparative procedures and technical standards, as well as permitting program origination and/or subscription service via TV translator.

DATE: Effective June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, (202) 632-6460.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Parts 73 and 74

Communications equipment, Television.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television, Communications equipment.

In the matter of an inquiry into the future role of low power television broadcasting and television translators in the National Telecommunications System, BC Docket No. 78-253.

Report and Order—Proceeding Terminated

Adopted: March 4, 1982.

Released: April 26, 1982.

By the Commission: Chairman Fowler dissenting in part and issuing a statement in which Commissioner Dawson joins; Commissioner Washburn dissenting in part and issuing a statement; Commissioners Fogarty and Rivera issuing separate statements.

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X. Conclusion.

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A. Rule Amendments.
B. Amended Form 346.
C. List of Comments.
D. Summary of Comments.
E. Tiered Application Processing Procedures for Pending Applications.

1. We have before us a document that culminates a lengthy proceeding in which we have considered authorization of a low power television service. This service in many ways is the logical extension of the existing translator service, which was authorized as a rebroadcast service in 1956.[1] However, our decision today to permit far greater program flexibility than we ever have permitted on translators also may be viewed as inaugurating a new broadcast service. In today's telecommunications environment, we are witnessing the rapid development of a multitude of new and competitive technologies designed to deliver entertainment and information services to the public. The low power service will permit fuller utilization of the broadcast spectrum in service to those ends. It is fitting that we engage in initiatives that will allow broadcasting to maximize its potential to meet the needs of consumers as we also open the regulatory doors to purveyors of alternative technologies that will attempt competitively to meet similar needs.

I. History of BC Docket No. 78-253

2. A television translator is a broadcast station, operating at relatively low power, that receives a television signal on one channel, amplifies it and retransmits it on another channel. Over 3,000 translators are licensed today, under Subpart G of Part 74 of the Commission's Rules. 47 CFR 74.701 *et seq.* The development of the present translator service previously has been detailed in several places in this docket, most notably in Appendix B of the Notice of Inquiry,[2] in the Report and Recommendations in the Low Power Television Inquiry ("Staff Report"),[3] paragraphs 11 through 46, and briefly, in the Notice of Proposed Rule Making ("Notice"),[4] paragraphs 9 through 21. Therefore, we shall not reiterate this history here, but instead direct interested persons to the above-referenced documents for more detailed information. We do note that in the annals of the translator service one may find several examples of waivers authorizing program origination (via video casette) and subscription service, the principal modes of operation that the Commission has proposed to permit generally via rule change, in the instant proceeding.[5] These instances have illustrated the viability of a low power service substantially as proposed, though on a limited scale, and, as such, may be considered significant elements in the record of this proceeding.

3. This proceeding was initiated with a Notice of Inquiry in 1978. Citing various recent study reports, petitions and suggestions urging an expanded role for television translators, the inquiry posed the fundamental question: "what role may low power television stations and translator stations play in delivering programming to the public."[6] Comments were requested on six "decision criteria" as the framework for initial policy development:

1. Public need for program diversity;
2. Spectrum requirements;
3. Interference to communications services;
4. Media competition and economic impact;
5. Low power/translator economic viability and ownership; and
6. Impact on Commission resources and service implementation delays.

68 F.C.C. 2d at 1536. These areas continue to be the major concerns in this proceeding. Resolution of these basic issues, which the rule making record provides, informs our determination of whether there should be a low power service and what it should look like.

4. The inquiry was concluded two years after its commencement, with the introduction into the record of the Staff Report and adoption of the Notice. The Staff Report documents the approximately 100 comments and reply comments filed in response to the Notice of Inquiry and also contains detailed staff analysis of the present television translator service and the potential for its expanded use as an originating

[1] *Report and Order*, Docket No. 11611, FCC 56-44 (1956).

[2] 68 F.C.C. 2d 1525 (1978).

[3] Couzens, M., *et al.*, U.S. Government Printing Office No. 721-146/134 (September 9, 1980).

[4] 45 FR 69178 (published October 17, 1980).

[5] *See, e.g.*, Unalaska School District (BPTTV-4857) and City of St. Paul (BPTTV-4858), Report No. 11887, October 25, 1973; Leeco TV, Inc., 9 F.C.C. 2d 1028 (1967).

[6] 68 F.C.C. 2d 1525, 1527 (1978).

broadcast service. The Report addresses and recommends an approach toward numerous aspects of the proposed low power service, within the framework of the six decision criteria. It also contains a report prepared under a Commission contract that describes the development of prototype low-powered television operations in the United States and Canada.

5. The Staff Report served as a backdrop for the contemporaneous Notice of Proposed Rule Making, which sought comment on a series of fairly explicit proposals for a new low power service.[7] The Notice proposed generally that translators be permitted to originate programming and/or operate subscription service to any degree. It proposed that low power stations be permitted to operate on any available VHF or UHF channel on a secondary, noninterfering basis to full-service stations, at powers of up to 100 watts VHF (in certain instances) and 1,000 watts UHF. It proposed relaxation of Commission rules relating to program content and would tailor program-related statutory requirements to the limited technical capacity of the station. Finally, the Commission proposed to continue authorizing translator stations, including applications for translators seeking low power features on a waiver basis, during the pendency of the rule making. Interim grants would be conditioned upon the outcome of the rule making. Where the outcome of an application would depend upon an issue to be resolved in the rule making, such as comparative criteria, action would be deferred until the conclusion of the rule making. The rationale for this was that to stop processing applications in the conventional translator service, whose merit already was amply proved, would disserve the public, but that to refuse to consider applications seeking low power features would encourage disingenuous translator applications from parties whose real interest was low power operation.

6. The interim processing policy cannot be deemed successful in facilitating prompt implementation of the service.[8] Nevertheless, it highlighted the importance of the sixth decision criterion, in paragraph 3, *supra*, providing an invaluable indication of the potential demand for the service and an object lesson regarding the necessity for additional administrative and technical refinements in the proposals that could not have been anticipated without practical experience. The notion of interim processing itself was controversial, spawning two lawsuits. In Little Rock Television Company, et al. v. FCC, 646 F. 2d 1271 (8th Cir. 1981) *per curiam*, the court dismissed, on grounds of jurisdiction and ripeness, a challenge to the Commission's extension of a cut-off date.[9] In Corporation for Public Broadcasting v. FCC, No. 81–1075, the United States Court of Appeals for the District of Columbia Circuit was asked to adjudicate the claim that interim allocation of spectrum for low power stations prejudices noncommercial applicants, who require more time to secure funding for applications than do their commercial counterparts. The suit was dismissed at the request of the petitioner in October, 1981.

7. In addition to the court challenges, the unexpectedly large number of interim applications filed brought to the Commission's attention a technical inadequacy in the low power proposal. The existing rules, amendment of which was not proposed, prohibit translator-to-translator interference, but essentially leave the judgment as to whether a proposed translator is mutually exclusive with existing translators or other applications to engineering discretion.[10] This approach was sufficient for the largely rural translator service, where mutually exclusive applications were unusual and the relatively low volume of applications permitted extensive manual analysis. However, during the pendency of the rule making, over 7,000 applications were filed.[11] Many of these were in major markets and were obviously mutually exclusive with each other, but without precise translator-to-translator exclusivity standards that permit automated analysis, it was impossible formally to determine mutual exclusivity. To remedy this, a Further Notice of Proposed Rule Making was issued, augmenting the technical proposals in the Notice with a prohibited contour overlap mode of processing that can be substantially automated.[12]

8. The United States Congress also involved itself with the administrative dilemma posed by the great number of applications filed. The Omnibus Budget Reconciliation Act of 1981 amended Section 309 of the Communications Act to permit random selection among competing telecommunications facilities applicants.[13] This was intended as an alternative to time-consuming comparative hearings:

> The conferees are particularly concerned with the delay that will result if comparative proceedings are used to award licenses for low power television service. The Commission has already received over 5,000 applications, most of which are, or will be mutually exclusive with other applications. Unless alternate procedures are devised, the Commission will have a geometric increase in comparative hearings and many years of delay in action on these applications. The conferees note that a matter such as this is ideally suited for the application of random selection procedures. By authorizing the Commission to apply random selection to any license application already submitted, but not yet designated for hearing, it will be possible to process low power television applications rapidly on a random selection basis.

Omnibus Budget Reconciliation Act of 1981, Conference Report, H.R. Rep. No. 97–208, 97th Cong. 1st Sess. (July 29, 1981), at 898. In accordance with the Congressional authorization, we commenced rule making seeking public comment upon general proposals for implementation of a random selection system with preferences for underrepresented groups or individuals.[14] The proceeding was terminated on February 8, 1982, with the Commission's conclusion that, on the basis of the record adduced, it would not be feasible to implement a system of random selection within the constraints of the legislative provisions.[15]

9. We have received numerous comments and reply comments on both the Notice and the Further Notice, as well as comments in the lottery proceeding relating to low power

[7] The proposals will be addressed specifically below.

[8] To date, approximately sixty-five interim translator grants have been made in the continental United States, eight including a waiver for low power features. Over one hundred additional interim grants have been made for low power operations in the State of Alaska.

[9] A cut-off date is the deadline for filing petitions to deny and competing applications with respect to applications previously published on a cut-off list of applications ready and available for processing.

[10] Each translator application is examined on a case-by-case basis; separate calculations are performed regarding other authorized spectrum users to which the proposed facility could cause interference. Fixed coordination distances or protected contours are not utilized between translators; rather, engineering assessment of each particular case is relied upon.

[11] When it became clear that the existing method of processing was inadequate to deal with this magnitude, the Commission stopped accepting additional applications, except in areas where the need for service outweighed the administrative burdens. See, Memorandum Opinion and Order, 46 FR 26062 (published May 11, 1981).

[12] 46 FR 42478 (published August 21, 1981).

[13] Pub. L. No. 97–35, 95 Stat. 736 (August 13, 1981).

[14] Notice of Proposed Rule Making, In the Matter of Amendment of Part 1 of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, Gen. Docket No. 81–768, FCC 81–524, 46 FR 56110 (published November 30, 1981).

[15] Report and Order, Gen. Docket No. 81–768, adopted February 8, 1982, 47 FR 11888 (published March 19, 1982).

application processing.[16] From the voluminous record developed to date and the practical experience we have gleaned via the interim processing policy, we have been able to distill the following regulations for a low power television service. We believe the rules set out below will fulfill the multiple goals of satisfying public demand, protecting the rights of other broadcasters and affected telecommunications services, not prohibitively burdening Commission administrative resources and generally furthering our current regulatory policies and those established by Congress.

II. Overview

10. The basic issue presented in this proceeding simply is: should there be a low power service? This question must be addressed in several levels, both theoretical and practical. As the recent past has shown, we also must consider the relatively great administrative resource impact that implementation of the low power service will have upon the Commission. This is a particularly significant consideration, in light of present budgetary constraints that mandate austerity at the Commission. Nevertheless, weighing all the factors, we are convinced that the benefits of the low power service will outweigh its costs to the public. The most persuasive evidence for this conclusion are the pleadings comprising the record. The comments overwhelmingly favor institution of the low power service. As the comment summary reveals, a variety of modifications to our initial proposal are suggested. Among them are some proposals with which we are in accord; these are reflected in the rules and policies promulgated herein, which, it will be noted, do not in every instance track our initial proposals. Other comments propose changes in our proposals that, on consideration, we find unrealistic or impracticable, or simply not in accord with our policy goals. Nevertheless, the record adduced in response to the Notice airs thoroughly the major issues in this rule making and contains commentary representing a variety of interests. What is most noteworthy is the paucity of direct opposition to the concept of a low power television service.

11. Our first decision criterion was "public need for program diversity." It is self-evident that additional stations will provide additional programming. How "different" this additional programming will be is not readily determinable; however, the analysis in our Radio Deregulation proceeding provides a basis for the inference that provision of additional outlets can act as an incentive for licensees to provide program diversity. Report and Order, Deregulation of Radio, 84 F.C.C. 2d 968, 1981. In addition, we believe that the record evidences a public desire for additional television service, as well as a belief that low power stations can provide diverse programming. We have concluded, however, that the specific nature of the programming is properly left to the licensees' discretion, based upon the mandates of the marketplace.

12. Local programming usually has been an important service objective in the broadcast services (*see*, Sixth Report and Order, Docket Nos. 8736, 8975, 9175 and 8976, 41 F.C.C. 148 (1952)), an objective that the low power service is particularly suited to carry out. The comments are in accord on this issue; however, they differ in their recommendations as to how we might achieve this objective. In our deliberations, the issue becomes: acknowledging the public desire for additional television stations with the potential to provide diverse or local program service, what should be the Commission's role in determining the precise nature of the program service?

13. In general, we are reluctant to mandate that particular kinds and amounts of programming be aired, substituting our decision for market mechanisms. First and foremost, to do so would run afoul of the discretion we must afford to the program decisions of licensees, under the First Amendment to the Constitution and our long line of precedent upholding that discretion. *See, e.g.*, Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1976). Second, even where we perceive a need to adopt a hands-on policy toward low power program content, we historically have found less intrusive means of effectuating that policy. The law constrains us to choose the least drastic means of achieving even a legitimate governmental purpose that has the incidental effect of intruding upon protected freedoms. *See*, Shelton v. Tucker, 364 U.S. 479 (1960); U.S. v. O'Brien, 391 U.S. 367 (1968). In the past, we have sought to achieve programming objectives by means of more or less content-related regulations, such as ascertainment. *See*, Report and Order, Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 F.C.C. 2d 650 (1971). As the radio service became more directly responsive to consumer demands, however, we found it unnecessary to continue to impose this obligation on licensees. *See*, Deregulation of Radio, 84 FCC 2d 968 (1981); *reconsid. denied*, 87 FCC 2d 797 (1981).

14. In our deliberations, we remain mindful of the fact that, while low power television indeed is a broadcast service, its technical and operational differences from full service television inform different sets of regulatory decisions. Title III of the Communications Act sets out the basic precepts of broadcast regulation, but affords the Commission considerable latitude in their interpretation and application.[17] Generally, our broadcast rules and policies proceed from the assumption that broadcast stations serve the public interest when they meet the programming needs and interests of all elements of the community. The Commission has attempted to achieve its regulatory objectives regarding programming by both content and structural rules. However, in light of the nature of the low power service, particularly the small and undefined coverage areas of low power stations, a concern that all elements of the larger community be provided with program service is not present. In addition, it is likely that low power stations will have to be very directly responsive to the interests of local consumers, to assure economic viability. In light of these factors, it is our judgment that minimal regulation of low power television is in the public interest notwithstanding the fact that it is a broadcast service.

15. We carefully have considered the option of imposing no regulatory mechanisms, direct or indirect, and instead relying exclusively upon market forces to achieve diversity of programming. (This approach seems suited to the low power service, in which we have proposed, and will apply, only minimal restrictions upon the free transferability of stations.) Further, low power stations may be constructed, and presumably transferred, at relative low costs, and their small coverage areas lend themselves to programming to suit discrete groups in a community. In this environment, where licensees are likely

[16] A summary of comments is attached hereto as Appendix D.

[17] For example, subscription radio operation using an FM subcarrier has been treated as a hybrid broadcast service and, on that basis, been exempted from statutory provisions otherwise applicable to broadcast services. See, KMLA Broadcasting Corp. v. Twentieth Century Cigarette Vendors Corp., 254 F. Supp. 35 (C.D. Cal. 1967); Greater Washington Educational Telecommunications Association, Inc., 49 FCC 2d 999 (1974). And the legal appendix to the staff report Policies for Regulation of Direct Broadcast Satellites (DBS), F. Setzer, *et al.*, FCC, Office of Plans and Policy (October, 1980), raises the question of whether subscription television is properly considered a broadcast service.

to be directly responsive to audience desires, we believe there lies a very good possibility of consumer sovereignty. Thus, if the market works to establish consumer preferences, we must ask if anything is to be gained by imposing regulations designed to achieve those same ends. The Commission need engage in this sort of intervention only when factors exist that significantly impede consumers from influencing program fare. On the basis of the rulemaking record in this proceeding, we find no likelihood that such a market failure will occur. In addition, we are reluctant to burden an untried service with regulations that could prove unnecessary. Accordingly, we resolve our first decision criterion with the conclusion that the low power service, as authorized herein, is likely to provide program service that is responsive to public demand without the necessity of regulatory intervention by the Commission.[18]

16. Another issue that is critical to our conclusions is what might be considered the opportunity cost of low power, in terms of utilization of spectrum. That is, what are the legitimate, competing claims to the spectrum we have proposed for low power stations, and to what extent will they be precluded by the authorization of the low power service? Our second and third decision criteria, spectrum requirements and interference to communications services, focus upon this issue. A good deal of commentary was devoted to these questions, primarily from other users or would-be users of the frequencies that would be used by low power licensees. Full service television stations are the primary users of the radio frequencies at issue. Many voice the concern that low power stations will be permitted to encroach upon their primary status. Land mobile services share some of the channels at issue with television stations. Their representatives also fear encroachment by low power users. Another concern, raised in the Notice, is the possible use of auxiliary broadcast services by low power licensees, and the possible scarcity of television microwave spectrum that could result. The availability of frequencies for television microwave uses may be essential to continued local coverage, both for full service and originating low power stations. Although we received little commentary on this issue, we believe it warrants consideration as a primary spectrum management concern arising from the low power proposal. Finally, cable systems, at various points in the distribution system, and multipoint distribution services, at the converters that provide the TV input signals, make use of TV broadcast frequencies. Because this use of spectrum does not require radiation of signals on frequencies allocated for broadcast use and operates on a nonpreclusion basis to broadcast stations, it has not been necessary to license it. Although cable and microwave operators generally have been able to use available television channels without interference to the primary users, they have evinced concern that authorization of low power stations will preclude them from spectrum that heretofore has been available for their use.

17. Our evaluation of the record and the technical questions involved in these issues has convinced us that we are not faced with an either/or situation, in terms of spectrum utilization. First and foremost, we intend to maintain the secondary spectrum priority of low power stations, a policy that assures protection from interference to full service stations. Secondary spectrum priority has two aspects: Low power stations may not cause objectionable interference to existing full service stations, and low power stations must yield to facilitate increases of existing full service stations or to new full service stations where interference occurs. A similar policy holds true where land mobile services currently share primary use of some UHF spectrum with full service television. In paragraphs 24 through 46, *infra*, we have defined the parameters under which we will authorize low power stations in relation to land mobile and full service stations, and thereby have defined criteria for predicting objectionable interference. We also have come to believe that auxiliary services used by low power stations and the other auxiliary broadcast services can coexist, as discussed in paragraph 47, *infra*. Finally, we believe that cable and MDS systems will be able to adapt to an environment in which low power stations use the radio spectrum. These services' use of broadcast frequencies is subject to nonpreclusion of all other authorized broadcast users. We are convinced, though, that the likelihood of interference problems arising warrants a minor change in the policy proposed in the Notice with respect to cable systems. *See*, paragraph 45, *infra*.

18. In brief, we have concluded that the competing uses for television spectrum all may be accommodated, in varying degrees. However, we also recognize that this spectrum is becoming crowded, and, with the exception of full service stations, whose primary use of this spectrum is assured, no one set of interests can receive all they have sought. We believe that this is a situation in which it is feasible and indeed desirable to attempt to partially satisfy all competing claims, and it is well within our discretion to do so. *See*, Goodwill Stations, Inc. v. FCC, 325 F. 2d 637 (D.C. Cir. 1963); Coastal Bend Television Co. v. FCC, 234 F. 2d 686, 690 (D.C. Cir. 1956); Loyola University, et al v. FCC, Nos. 80-1824 and 80-2018, *slip op.* (D.C. Cir., January 26, 1982).

19. Our fourth and fifth decision criteria, media competition and economic impact and low power/translator economic viability and ownership, are interrelated to a large degree, and are amenable only to speculation until the service is operational. The record does not contain convincing evidence that the low power service could have a competitively destructive impact on existing broadcast, cable or microwave stations. Nor does it contain convincing assurance of the viability of the low power service. Indeed whether low power will be viable at all appears more uncertain than whether it will pose an undesirable competitive threat to existing facilities. For this reason, we have structured our ownership criteria to permit existing licensees to engage in low power ventures within the limits imposed by the comparative criterion favoring diversification of broadcast interests. To the extent that this may preclude new entrants later, the value to be gained from permitting experienced broadcasters to develop the service initially is believed to outweigh the possible loss of new entrants. In sum, we believe that the balance we have struck will foster a low power service that can grow to provide program alternatives to full service stations and cable systems in a manner that increases competition in the marketplace and thus enhances the telecommunications service available to the public.

20. We already have alluded to our sixth decision criterion, impact upon Commission resources and service implementation delays. This has proved to be the most critical and troublesome element of all. Throughout this proceeding, we have struggled to solve

[18] We recognize, of course, that the Commission's ownership rules also are intended to influence programming content because a paramount purpose of structural regulations is to assure a variety of viewpoints in any informational programming provided by licensees. Public interest considerations relating to the imposition of ownership rules in the low power service are discussed separately at paragraphs 19 and 78 through 80, *infra*.

the dilemma posed by the early deluge of applications. Indeed, our experience with interim applications has been invaluable in informing our deliberations regarding the administrative tools required for implementation of the low power service. Our solution to this dilemma is detailed in paragraphs 51 thorugh 74, *infra*. Briefly, we are not now proposing to lift the freeze on new applications that was imposed on April 9, 1981.[19] Before considering termination of the freeze, we shall identify applications that are mutually exclusive with applications that already have been cut off,[20] place them on a "B" cut-off list, process those applications and either grant or designate them for hearing, as circumstances dictate. This processing will occur in several phases, beginning with the most rural applications. *See*, Appendix E. The cases will be set for hearings as our resources permit. When the processing of the currently cut-off applications is completed, the Commission will publish cut-off lists of applications on file that were neither mutually exclusive with applications on the existing cut-off lists nor cut off at the time of the freeze. The freeze will be lifted for acceptance of applications in competition with those on cut-off lists, and processing will continue in the manner described above.

21. The hearing process obviously will be time-consuming. When and if a system of random selection is instituted for choosing among competing broadcast applications, it, of course, will be applied to low power. Until such time, it would behoove competing applicants to settle their conflicts privately and resolve mutual exclusivities prior to hearing. We strongly encourge plans that involve time-sharing and pooling resources, which could be especially beneficial in light of the fact that low power is a new service whose viability is as yet undetermined. We shall make every effort to rule promptly on all settlements among competing applicants, under Section 311 (c) or (d) of the Communications Act of 1934, as amended, and §§ 73.3525 and 73.3568 of our rules. The use of largely paper hearings should shorten the time until authorization considerably. We are reallocating our staff resources to the extent possible to process the backlog and new applications expeditiously, within existing budgetary limitations.

22. We recognize that the hearing process can be needlessly cumbersome, particularly in a secondary service. However, we have not been able to develop acceptable alternative procedures within current legislative constraints. We have attempted to devise somewhat streamlined comparative hearing procedures. Furthermore, we intend to restrict the types of pleadings and issues we shall entertain during this abbreviated hearing process, to a degree consistent with the nature of the low power service. *See*, paragraphs 65 through 68, *infra*. We continue to believe that both a lottery and modification of the hearing process may be essential to improving our efficiency with reduced staff; however, we do not believe this proceeding is the appropriate vehicle in which to modify all our practices and procedures that may affect other broadcast services, particularly in light of the functional differences between full service and low power stations.[21] As we have indicated, we are making every effort to expedite the processing of low power applications, both with increased staff resources and computer capacity. However, some of this burden quite properly falls upon the applicants. If, given the strong incentive to settle privately or opt for paper hearings, we still are confronted with thousands of competing applicants insistent on hearings, we cannot promise prompt authorizations. The Commission is committed to elimination of the backlog; but we have discovered no magic formula for this.

23. Our conclusion that low power applications should be processed similarly to other broadcast applications is related to a broader policy issue: to what extent should the rules for low power stations diverge from the analogous rules for other broadcast facilities? As stated above, this proceeding is not intended to set broadcast policy generally. In some instances, however, low power can provide a useful test case for more general deregulatory initiatives. On the other hand, there are other areas where we believe it is more sensible to decide a particular issue in a separate proceeding designed to air all aspects of that issue alone. For example, it has come to our attention that some low power applications propose a teletext service. Because we are looking into the advisability of teletext-related service generally, (*see*, Notice of Proposed Rule Making, Amendment of Part 73 to Authorize Transmission of Teletext by TV Stations, BC Docket No. 81-741, 46 FR 60851 (published December 14, 1981)), the issue of whether the same or different rules for teletext should apply to low power stations, on account of their singular service capability, will be resolved in our separate proceeding on teletext. Finally, while we have several "unregulatory" initiatives underway, and a number of additional ones are contemplated, we do not intend to dispense with rule making and enact them in the low power context, rather than awaiting the results of the separate proceedings in question. We do intend, however, to resume acceptance of applications for experimental stations that propose novel uses of low power technology, at such time as we have eliminated the present processing backlog and otherwise lifted the freeze on acceptance of new applications.[22]

III. Issues Relating to Channel Allocation

24. *Spectrum Priority.* Although some parties urge us to do otherwise, it is our firm intention that low power stations remain secondary, in terms of spectrum priority. While we agree with parties averring that low power stations can provide needed and meaningful service, we point out that the coverage obligations to which we subject full service stations specifically are designed to ensure maximum service to the public, beyond what we shall require of low power. This fact, we believe, constrains us to ensure the continued primacy of full service stations by emphasizing the secondary status of low power stations. We also emphasize, though, that while the rules for the low power service are intended to protect the public's expectation of service from full service stations, we do not intend to cater to full service licensees' unreasonable fears of competition from low power stations, and fetter the low power service for that reason. We believe low power can provide competition that stimulates the entire telecommunications marketplace.

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[19] Because we are deciding not to abrogate the freeze herein, the several pending petitions for reconsideration of the freeze will be dismissed, as will pending requests for waiver of the freeze that do not raise a novel and compelling public interest ground for waiver in a particular unique situation.

[20] The pre-freeze cut-off lists were published at 45 FR 70974 (October 17, 1980); 46 FR 8114 (December 9, 1980); and 46 FR 12853 (February 18, 1981).

[21] We are committed generally to reduction or elimination of unnecessary regulations, *see*, e.g., Report and Order, Deregulation of Radio, 84 F.C.C. 2d 968 (1981); *recons. denied*, 87 F.C.C. 2d 797 (1981); Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees, 46 FR 21236 (published May 11, 1981). It goes without saying that any proceedings that accomplish this task with respect to relevant rules will apply to the low power service.

[22] We stopped accepting applications for such experimental stations on April 24, 1980. *See*, Public Notice, FCC 80-202, April 29, 1980.

25. The record indicates that not all parties share a common understanding of the concept of secondary spectrum priority. Under the Commission's present rules (§ 74.703) and the Notice of Proposed Rule Making, secondary status means (1) a low power station will not be authorized where there is a possibility of objectionable interference to an existing full service station, under the standards prescribed herein; (2) an authorized low power station that causes objectionable interference to an existing full service station is responsible for eliminating the interference, or the low power station must cease operation; (3) an existing low power station that would cause interference in connection with a proposed increase or modification of facilities of an existing full service station or in connection with a proposed new full service station is responsible for eliminating the interference, or the low power station must cease operation. These are the rules under which low power stations will operate. The notification and reporting provisions in § 74.703 (c) and (d) will continue to apply with the one modification proposed in the Notice and advocated by Citizens Communications Center, the National Telecommunications and Information Administration and the National Translator Association, to wit, that low power stations need not cease operation until they have been proved by the complaining party to be the cause of the interference complained of, but they must cooperate fully in tests to determine the cause of interference and remain willing to cease operation at the request of the Commission.[23] "Interference" as it is used in this context is discussed in the following paragraphs, to facilitate a common understanding among all parties of when interference will be predicted to occur.

26. In agreement with parties urging that we develop more detailed interference prediction criteria, we proposed desired-to-undesired (D/U) signal ratios to define the relative signal strengths of the dominant and interfering signals, both in the low power-to-full service and low power-to-low power contexts. After evaluation of the comments received in response to the Further Notice, we remain convinced that a modified prohibited contour overlap standard is the preferable method of predicting interference, in order to promote spectral efficiency. We therefore delete from our rules the UHF spacing requirements of § 74.702(c). We do note that, making a few conservative assumptions, a set of mileage requirements can be derived. While processing will be based on prohibited overlap criteria contained in the rules, detailed calculations are not required of the applicant and unless an unusually high power (greater than 20 kW UHF ERP or 100 watts VHF ERP) or antenna height (greater than 500 feet above average terrain) is anticipated, applications meeting the following full spacings should have no conflicts with full service stations:

Full service station is—	
VHF	
Co-channel non-offset	210 miles.
Co-channel offset	150 miles.
±1 Channel	90 miles.
UHF	
Co-channel non-offset	210 miles.
Co-channel offset	150 miles.
± channel	75 miles.
±2, 3, 4, 5 channels	20 miles.
±7 channels	60 miles.
±14 channels	70 miles.
±15 channels	75 miles.

In many cases, prohibited overlap processing will allow grant of applications at smaller mileage separations. However, applicants are reminded that applications not meeting the prohibited overlap standards will be returned, so, particularly in areas where low power demand exceeds available spectrum, the proposed technical facilities should be carefully selected. Because of uncertainties inherent in predicting propagation, variations in equipment characteristics and the fact that we are, in essence, attempting to add a significant number of additional stations to a long-established allocations scheme, instances of interference from, to and between low power stations may occur. Indeed, in certain circumstances, there may be a potential for significant interference. We have attempted to adopt criteria that strike a balance between concerns over interference and a desire to maximize the benefits of a new service. As low power stations are authorized, and cases of interference are called to our attention, it is our intent to identify categories where it may be appropriate to refine our criteria to take into account special circumstances, such as overwater paths or superrefraction and ducting, in which we would want to be more restrictive in low power authorizations. Intensified efforts also are underway by propagation scientists and engineers at the Commission, NTIA/ITS, other agencies and private organizations to improve the accuracy of propagation predictions in general and to develop practical criteria that can be incorporated into Commission deliberations and assignment decisions. For example, the Commission's Office of Science and Technology has an on-going project in cooperation with NTIA/ITS to collect propagation data in Southern California where superrefraction has created problems for a number of years. Data collection is scheduled to continue through October, 1982, leading to development of a more realistic propagation model for that area.

27. *Distance Separations.* Some parties asked that we retain the UHF separations, add VHF separations and/or adopt mileage separations to govern between low power stations, or that we promulgate a table of assignments for low power. We decline to do either, for several reasons. These approaches do not comport with the secondary nature of low power stations. They are less spectrally efficient than the prohibited contour overlap standards we have proposed. Finally, we believe a table of assignments would represent an unnecessarily rigid approach in a demand-driven service where we are fostering marketplace sovereignty. In the words of Gammon and Grange, "Communities need not rely on the Commission's clouded crystal ball for an access to spectrum space, but on market forces which will result in an efficient and quick allocation of spectrum space."[24] Within the constraints necessarily imposed by our prohibitions upon objectionable interference, which will be strictly enforced, we believe the public interest best will be served by our permitting applicants to locate their stations and configure their service areas as market conditions dictate. The mandates of Section 307(b) of the Communications Act are fulfilled by virtue of the fact that most channel availabilities for low power exist outside the major markets. In addition, we shall process rural applications before urban, at least until the present backlog is significantly reduced. *See,* Appendix E. This will have the effect of providing service where it arguably is most needed. Beyond this, we do not believe that fair and efficient spectrum

[23] Several parties, including Citizens Communications Center and United Auto Workers, ask that the Commission give favorable consideration to the existence of a low power station that would be precluded by a full service application, where this situation arises. We are reluctant to do so. Where possible, the low power licensee on an allocated channel is free to propose to upgrade its service by filing a competing full service application; however, as it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full service stations, and we urge low power applicants to consider this fact when they select channels.

[24] Gammon and Grange comments at 10.

allocation can be furthered significantly by our engineering an elaborate allocation plan for stations that have no coverage requirements and whose continued existence is uncertain in light of their secondary status.

28. *Noncommerical channel reservations.* Similar reasoning applies to channel reservations for noncommerical low power stations, advocated by the corporation for Public Broadcasting, the Public Broadcasting Service and the National Assocation of Public Television Stations, among others. Indeed, the entire notion of noncommerical operation is called into question in this service, as discussed in paragraphs 71 and 72, *infra.* The request for reserved channels is premised on the difficulty noncommerical applicants have in obtaining financing. The theory is based upon spectrum scarcity, that is, because it takes them longer to secure funding, there may be no more channels left by the time noncommerical applicants are ready to apply. However, there still are reserved channels available for full service stations in many markets, which, we believe, fulfills the overall plan for allocation of public stations embodied in the Sixth Report and Order, supra. Moreover, in recognition of the often disadvantaged financial status of all noncommercial stations, Congress directed the Commission to explore alternative funding sources for public stations. Public Broadcasting Amendments Act of 1981, Pub. L. No. 97–53, 95 Stat. 736, sections 1221–1234 (August 13, 1981). In light of this initiative, and the fact that the Commission is not requiring public low power stations to operate without advertising, we believe it is unnecessary to reserve channels for noncommercial low power stations. Channel reservation comports with neither or overall approach to low power noncommercial operation nor with the secondary status of all low power stations. Indeed, we are herein adopting our proposal to eliminate the preference for educational rebroadcast on reserved channels, which gives noncommercial translators an absolute priority over commercial ones on reserved channels. *See,* 23 R.R. 2d 1504, 1508 (1971).[28]

29. *Channel Selection.* We have received comments from many parties asking that we preclude low power use of certain channels or bands, in order to secure that spectrum for a competing use. For example, the National Cable Television Association, representing cable interests, would have low power limited to UHF channels; various land mobile concerns want Channels 4, 5, 7 and 14 through 20 to be unavailable to low power stations. As we have stated, we are aware of the competing uses for the television spectrum. However, we do not intend to engage in spectrum reallocation in this proceeding. Low power is a broadcast use; as such, it is entitled to use the radio frequencies allocated for television broadcast use, subject to the constraints imposed by its secondary priority. We are confident that the desired-to-undesired frequency ratios we are adopting are adequate to protect the primary users of this spectrum. Therefore, we shall permit low power applicants to select any channel between 2 and 69, subject to our technical rules, including land mobile protection as discussed in paragraph 46, *infra.*[29] We are not requiring certification that the channel selected is the one least likely to cause interference of the channels available. We do caution, however, that low power use of certain channels (principally 4, 5, 6, 7, 13, 14 through 21 and 69) may be subject to interference from authorized land mobile, point-to-point or FM stations; the rules we are adopting are not designed to protect low power stations from this. Prudence would suggest choosing a different channel where possible, but we shall not adopt a rule requiring this. Neither will we require an applicant filing a mutually exclusive application to certify that no other channel is available in the market,[27] because we recognize that other factors, such as site availability, may influence choice of channel, particularly in a service where stations have small coverage areas and where viability is uncertain.[28]

30. To provide maximum flexibility in channel selection, we are adopting our proposal to eliminate § 74.732(d), which prohibits VHF translators from all-UHF markets and, § 74.732(e)(1) and (2), which has the effect of prohibiting UHF stations from operating VHF translators on unassigned channels in distant markets. It is possible that the addition of a number of UHF low power stations will further the goal of UHF comparability; however, we do not see additional VHF low power stations generally as posing a significant enough competitive threat to UHF full service facilities to justify restricting VHF low power stations geographically.[29] Finally, we are eliminating our current prohibition on use of the fifteen-mile rule, § 73.607(b), embodied in § 74.702(b)(2) and (g), because elimination of the preference in § 74.703(a) for 1,000 watt UHF translators on assigned channels renders this prohibition meaningless.

31. *Maximum Power Limits.* We have reviewed the comments regarding the power limits proposed for low power stations. A number of parties urge the Commission to permit higher power on low power stations, either across the board or on a waiver basis. Others advise against this, on the grounds that the likelihood of interference, both to full service stations and other low power stations, will increase with increased power. We are inclined to agree with this view. With one exception, it is our opinion that the power limits proposed in the *Notice* are adequate to ensure viable coverage areas for low power stations while restrictive enough to preclude undue interference under the technical standards adopted. We initially proposed to allow 100 watts VHF power in situations where both co-channel and adjacent channel mileage separations are met. Full service adjacent channel mileage separations allow substantial amounts of predicted interference, on the theory that viewers losing service will gain a replacement primary service, generally one closer to them and therefore more attuned to their local needs. We do not believe that secondary low power stations can provide an equivalent replacement service. Therefore, the power limit for low power stations will continue to be 10 watts VHF, except where a 100-watt station is proposed on an assigned channel;[30] and

[28] In the fall service context, these channels continue to be reserved for the exclusive use of noncommercial stations. *See,* § 73.606(a) of the rules.

[29] To effectuate this policy, we are amending § 74.702(c)(1) and (d) so as to eliminate priorities in UHF channel selection. Nevertheless, applications will not be accepted on channels where they cannot protect full service television stations, existing translators and land mobile allotments in the manner described in paragraphs 32 through 46.

[27] This has been advocated by Community Television Network.

[28] Indeed, it is possible to envision a situation in which a channel might be particularly desirable to an applicant on the basis of its unlikelihood of being affected by future full service stations. On the other hand, even in markets with a large number of low power channels available, a few particular channels might be attractive because they offer an opportunity for future upgrading to full service operation.

[30] Our belief is based upon the secondary status and limited coverage potential of low power stations. For similar reasons, we believe that only in rare instances will a party alleging adverse impact on a UHF station be able to make an initial showing warranting consideration of the issue in a hearing prior to the award of a low power construction permit. *See,* WFMY Television Corp., 59 F.C.C. 2d 1010 (1976) (limiting the applicability of the policy inunciated in Triangle Publications, Inc., 29 F.C.C. 315 (1960), *aff'd sub. nom.* Triangle Publications v. FCC, 1291 F. 2d 342 (D.C. Cir. 1961)); *and see,* paragraph 68, *infra.*

[30] This provision is in the current translator rules and has little or no negative impact on the coverage

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1,000 watts UHF. We currently anticipate that we only would find it in the public interest to waive the power limits in extraordinary circumstances.

32. *Full Service Protected Contour.* The Further Notice indicated the Commission's intention to use the Grade B contour as the full service protected contour, but sought comment on the desirability and feasibility of attempting to protect service received from full service stations outside their Grade B contour. We received a good deal of thoughtful commentary on this matter. It is discussed in detail in the comment summary, Appendix D. Among parties advocating protection of all service received outside the full service Grade B contour are the Association of Maximum Service Telecasters, NAB, ABC and Storer. Cox suggests that one way of accomplishing this is to establish a full service contour seven dBu below the Grade B and require low power stations to protect that contour. This is the policy that the Commission adopted in Docket No. 20735, establishing that Channel 200 educational FM stations must protect the 40 dBu contour of Channel 6 television stations. *See,* Second Report and Order, Noncommercial Educational FM Broadcast Stations, 43 FR 39704, 39712, 39713 (1978); *but see* Second Further Notice of Proposed Rule Making, to be issued at a subsequent date. Others contend that service received outside the full service Grade B contour should be protected, but on a more flexible basis, giving the Commission room to evaluate the circumstances. Communications Investment Corporation suggests that the Commission prohibit low power stations from causing "significant degradation" of service beyond the full service Grade B contour, in terms of the number of households affected. American Christian Television Stations would have low power stations protect full service stations beyond the Grade B contour where they are "significantly viewed," as defined in § 76.54 of the rules. AGK asks that the Commission not license a low power station on possibly interfering channels in any community outside the Grade B contour of a full service station in cases where the community is within the area of dominant influence (ADI) of the full service station. CBS advocates requiring low power applicants to select the channel least likely to cause interference, and then protecting service beyond the full service Grade B contour on a complaint basis.

33. Other parties, including Spectra, Attaway and Community Media Network, aver that it is appropriate for low power stations to protect the Grade B contours of full service stations but no further. The National Translator Association agrees with this, except that NTA believes it is arbitrary to prohibit low power signals in areas where terrain prevents actual reception of a full service station within its Grade B contour. The Corporation for Public Broadcasting contends that it is unreasonable for low power stations to be required to protect the full service Grade B, because the Commission's present rules do not require full service stations to protect each other to their Grade B contours. Adding that low power stations are more likely to provide truly local service than are full service stations at the outer reaches of their field strength contours, CPB proposes the following full service contours to be protected by low power stations:

Frequency	Protected contour
Low band VHF	[illegible] dBu
High band VHF	[illegible] dBu
UHF	[illegible] dBu

34. We have considered the various alternatives and believe that the following approach is the one that will best accommodate the competing interests and ensure maximum television service to the public. We agree that existing service from full service television stations should not be impaired. Notwithstanding inferences that may have been derived from paragraph 9 of the Further Notice, we do not intend to deviate from the basic thrust of our present translator interference rule, which states:

> An application for a new television broadcast translator station or for changes in the facilities of an authorized station will not be granted where it is apparent that interference will be caused * * * Interference will be considered to occur whenever reception of a regularly used signal is impaired by signals radiated by the translator, *regardless of the quality of such reception or the strength of the signal so used.* (Emphasis supplied.)

Section 74.703(a) and (b) of the rules. This means that any service from a full service station is to be protected from interference by a translator even beyond where the full service station provides reliable service or would be predicted to be received. However, as we stated in the Further Notice, because we are unable to process the great volume of applications manually, and in the interest of certainty among both applicants and the Commission, it is necessary that we use an objective standard for where we consider that it is "apparent that interference will be caused." We acknowledge that inherent in the definition of the Grade B contour is the fact that some locations outside the Grade B contour receive an acceptable signal, although the majority of locations do not. Conversely, inside the Grade B contour there are locations that do not receive an acceptable signal, although the majority of locations do. Because of the characteristics of TV frequency propagation and the unaccounted-for effects of terrain, this contour value and this procedure are not particularly useful for predicting service at particular locations. This also would be true of any other predicted contour we might choose to protect, a higher contour, as proposed by CPB, or a more conservative, lower contour, which Cox advocates. It is self-evident that, were we to protect full service to the 40 dBu contour, for example, we would provide somewhat greater assurance of continued reception of full service signals where they actually are received by listeners beyond the Grade B contour. However, this undoubtedly also would preclude low power from areas that are not able to receive even attenuated full service signals beyond the Grade B contour and that may not receive any off-air service at all without low power. We cannot generalize with any expectation of accuracy whether fewer or more people would receive fewer or more signals, as a result of our choosing a different protected contour for full service stations. We continue to believe that the Grade B contour offers the most realistic approximation of service received, and therefore is an appropriate standard to use in automating application processing.[31]

of full service stations. Continuing it is not expected to present significant problems, because there are few vacant VHF assignments and they tend to be in relatively isolated locations.

[31] It is within our discretion to adopt this contour as a processing standard, and even as an absolute protection standard. As we have said, "There is no rule of law or section of the Communications Act which affords broadcast stations protection against 'interference,' as that term is defined in the abstract without reference to the Commission's rules and regulations. Section 303(f) of the Act provides in pertinent part that the Commission shall 'make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations.' In this Section Congress has delegated to the Commission the authority to determine to what extent interference between broadcast and other radio stations shall be permitted to exist. The delegation is broad and leaves within the Commission's discretion, subject to the criterion of the public interest, convenience and necessity, not only the determination of what degree of interference between stations shall be considered excessive but also the methods by which such

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35. However, we shall continue our present policy to protect full service reception from impairment of the signal by translators.[32] If we receive a well-documented complaint that an authorized low power station impairs regular reception of a full service signal outside the full service Grade B contour, this could be a ground for corrective action against the low power licensee, depending upon an evaluation of the situation. This approach does not differ significantly from what we previously have done, under our existing rules.[33] Nor does it differ significantly from the approach we would take in the case of low power/full service interference anywhere. That is, we shall not knowingly authorize a low power station that would impair the reception of a full service station. Our mode of processing gives us a reasonable degree of certainty that this normally will not occur within the full service Grade B contour, and if it does, it will be the sole responsibility of the low power operator to correct the situation. On the other hand, because we have no record of where service is received outside the full service Grade B contour, we cannot take this into account in processing. As CBS recommends, we shall deal with such interference on a complaint basis, should the need arise.[34] We do not believe it is feasible to adopt CBS's other suggestion, that we require low power applicants to select the channel least likely to cause interference, essentially because this may be difficult to determine; furthermore, it should not be necessary, because our processing procedure will eliminate applications on channels where excessive interference is likely to be caused. However, our strict adherence to the secondary priority policy should be an incentive for low power applicants to endeavor to select channels with a minimal chance of future interference problems, the primary onus of which would fall upon thenselves.[35]

36. *Low Power Protested Contour.* The comments focused primarily on the proposed UHF Zone 1 protected contour of 84 dBu. Almost universally, this value was viewed as too high, protecting an area too limited to allow a station to be viable. It also is argued that many translators provide acceptable service to their communities, even where they do not provide a predicted 84 dBu signal. In addition, comments claim that many low power applications specifying existing TV towers as their transmitting site would not provide an 84 dBu signal to their city of license. Values of 70 dBu and 74 dBu most often are suggested as substitutes for the 84 dBu value. We believe that use of a 74 dBu protected contour is a reasonable compromise. A protected contour value of 74 dBu was proposed in the Further Notice for those parts of the country not in TV Zone 1 or FM Zone 1A. A couple of comments supported a zone system and suggested that the proposed UHF protected contour values in all parts of the country should be reduced by similar amounts. We are not convinced that the low power protected contour for UHF stations located outside of Zones 1 and 1A should be reduced below 74 dBu. In areas of scarce spectrum the effect of reducing the protected contour would be to lower the number of possible low power stations. This would be a restraint on the marketplace that we believe is unnecessary because the protected contour is part of a minimum protection standard. An applicant, except in most of the northeast and some urban areas, often can choose to exceed the minimum standard significantly. In areas where translators have flourished, these standards should prevent a newcomer from causing severe disruption of existing service. However, we expect that the vast majority of applicants in these areas will coordinate with each other and with existing operators and will take local factors (including terrain) into account in determining how close to a minimum standard they should apply to operate. In view of this, we believe that the 74 dBu protected contour is a reasonable

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excessive interference shall be avoided." Memorandum Opinion and Order, Roy Hofheinz (KSOX), Harlingen, Texas, 9 R.R. 784c (1953).

[32] This raises an issue addressed by several parties, including the Association of Maximum Service Telecasters and General Electric Broadcasting Company. They suggest that we require low power applicants specially to notify nearby full service licensees of the filing of the application. We agree with the National Translator Association that the public notice the Commission gives by statute of the acceptance of all broadcast applications is sufficient to notify all possibly affected full service stations of the pendency of a low power application. We also will not require low power facilities to conduct field tests prior to final authorization; we believe that the entailment of secondary spectrum priority, that interfering stations cease operations on the Commission's request, will fulfill the same goal, and therefore a field test requirement is unnecessary and duplicative.

[33] *E.g.*, Tri-State Television Translators, Inc., Docket No. 17654, and Wellersburg TV, Inc., Docket No. 17655, 15 RR 2d 1300 (1969). In this case, VHF translator systems in the Cumberland, Maryland, area were causing interference to the off-air reception of Washington, Baltimore and Pennsylvania stations. Several local residents outside the Grade B contour of these stations were able to receive the signals. The expense of modifying the translators to non-interfering UHF channels would have been prohibitive for the community-supported systems. In weighing the equities, it was concluded that protection of the distant signal reception of a small minority who had similar programming available from other distant full service stations would not justify the resultant service loss to the greater number of translator homes, many of which would not otherwise receive television service, because they could not afford CATV.

[34] The individual circumstances of interference to a full service station beyond the Grade B contour vary so widely as to preclude any attempt to state hard and fast rules. In many circumstances, while reception may be possible, this service is relatively unimportant to viewers themselves because alternative signals are available to them—perhaps other full service television stations, translator service or cable service. While the varying circumstances require an *od hoc* approach of case-by-case decision making, it may be useful to specify some of the factors that would influence our decision. We would view destruction of a viewer's only television service by a translator/low power station as extremely serious. Elimination of viewers' opportunity to view a particular television network signal also would be serious. As the service impaired becomes more redundant we would feel obligated to give more attention to the benefits obtained by the translator/low power service. We also would give less attention to interference received by viewers in special circumstances receiving a full service station that their neighbors do not receive, for example, reception caused by a viewer's location on the top of a hill or the installation of a receiving system far more sophisticated than that used by the viewer's neighbors. As our past precedents show, we also shall consider the value of the translator/low power service in terms of both the numbers served and the importance of this service to the viewers. Having discussed some of the factors we would consider in whether to terminate service by a translator/low power station we must emphasize that we expect to have to deal with very few situations of this nature. The translator service has a long history of operators successfully resolving interference problems by cooperative efforts with the viewers. We expect low power operators to continue this tradition. Translator and low power stations are secondary to full service stations, and we expect operators to engage in good faith efforts to resolve *all* complaints of interference to full service stations.

[35] This applies also to low power applicants that cause interference to existing translators. As we have indicated, we shall not authorize low power stations that do not meet our protection criteria to existing translators or low power stations. We have modified our low power protected contour to values that the record in this proceeding generally supports. If interference inside these protected contours results from a subsequent low power authorization and the stations involved cannot resolve the problem among themselves, the burden to correct the interference will be on the later entrant. We, of course, would expect the licensees to cooperate in resolving the problem; however, in view of the increasingly competitive nature of this service, we believe that a significant number of unresolved cases could reach the Commission. Therefore, we wish to establish now that, absent exceptional circumstances, we shall rely upon a "seniority system" for both VHF and UHF low power stations and translators. If both parties agree, we would permit two translator or low power stations to accept interference from each other, if there is no other way to authorize both and they create no additional interference to other authorized broadcast facilities. We shall not, however, permit a subsequent translator or low power station to cause interference to a currently existing translator, because this would result in destruction of existing service to the public, which is not in the public interest.

minimum standard. By adopting it for UHF stations in all parts of the country we are slightly simplifying the processing and conforming the UHF and VHF procedures. Based upon the comment record, we also are adopting the VHF protected contours as proposed.

37. *Terrain Shielding.* In our Notice, we proposed consideration of terrain shielding on a case-by-case basis. Although several comments contend that consideration of terrain is essential for a realistic authorization process, we believe that the overwhelming argument is presented by our experience with the interim applications. It is far beyond our staff capacity to evaluate individually thousands of terrain shielding claims. Also, we do not have in this proceeding sufficient information to adopt any standard method for computing a low power terrain correction factor. As indicated elsewhere in this document, we do not intend this proceeding to be the source of sweeping changes in broadcasting regulation. Therefore, the proper forum for considering a standard method of terrian correction is in a proceeding designed to deal with that subject.[36]

38. *Receiving Antenna Front-to-Back Ratio.* Some comments support consideration of front-to-back ratios in determining desired-to-undesired interference ratios. A larger number of comments oppose it and their arguments are persuasive. For example, the average antenna front-to-back ratios listed in the Further Notice were based on test range measurements and, particularly in rough terrain, it is unlikely that they would be equalled under normal reception conditions. Further, it was indicated that front-to-back ratios for individual antennas varied significantly from channel to channel and there is no reasonable procedure by which a consumer can identify the antenna that will perform best in their specific situation. In addition, a possible scenario is described where the undesired station is in the same direction as the desired low power station so there is no benefit from receiving antenna front-to-back ratio. Finally, at the low power protected contours we are adopting herein (*see*, paragraph 36, *supra*) acceptable reception will often be possible without an outside receiving antenna. For each of these reasons we feel that the traditional role of front-to-back ratios as a "safety factor" is appropriate in the low power service. By "safety factor" we mean it is a characteristic of receiving antennas that permits interference or ghosting to be eliminated in some instance, but we will not rely on it in determining where it is "apparent that interference will be caused."

39. *Offset Operation and Frequency Tolerances.* We are convinced by comment that carrier frequency offsets should be a permitted means of limiting or eliminating co-channel interference. To assure uniform, and we believe fair, treatment of applicants and licensees, we are adopting standards for low power offset operation. If an application proposes offset operation, an offset must be specified. The possible offsets are the same as those at which full service TV stations are authorized: Zero, at the standard carrier frequencies for the channel; plus, with carrier frequencies 10 kHz above the zero offset carriers; and minus, with carrier frequencies 10 kHz below the zero offset carriers. The frequency tolerance of a low power station operating with a specified offset will be ± kHz, the same as the full service TV station frequency tolerance. The frequency tolerance for stations without a specified offset will be the same as the current translator requirements. When two stations (both low power or one low power and one full service) are to operate with difference offsets (zero and plus, zero and minus, or plus and minus) the co-channel offset D/U ratio applies. When two stations are to operate with the same offset, or one or both stations do not specify an offset, the co-channel non-offset D/U ratio applies. *See*, paragraph 40, *infra*. Comments indicate that manufacturers are capable of producing equipment meeting the ± kHz frequency tolerance. Comments also convince us that even if only a small increase in equipment cost is involved, it is not justified for the vast majority of existing stations (and a significant number of proposed stations) that are located in rural areas where little or nothing would be gained by a tighter frequency tolerance.

40. *D/U Ratios.* We are adopting the desired-to-undesired ratios proposed in the Notice for UHF and in the Further Notice for VHF. No comments raised objections to the proposed values for VHF or the proposed co-channel values for UHF. In addition, no comments addressed the possibility raised in the Further Notice that low power to low power ratios could be different from low power to full service ratios. Lacking support or opposition, we are adopting the same ratios for predicting interference to either a low power or a full service station. Several parties note that the D/U ratios proposed in the Notice for adjacent channel and taboo channel relationships are mean receiver values from the 1974 Commission staff study [37] and they argue for a more conservative approach where the D/U ratios would represent a level of performance exceeded by 90% of the tested receivers. The Electronics Industries Association, Consumer Electronics Group, representing receiver manufacturers, suggests that more conservative ratios be used for a period of five years. EIA indicates that receivers have improved noticeably since the 1974 tests and that they will continue to improve. However, EIA argues that additional time is required for the newer, better receivers to represent a larger percentage of the sets being used. Because of the industry representative's comments on receiver improvements, and the eight years that have passed since the tests were completed, we are of the opinion that use of the proposed mean values is justified. Essentially, there are two reasons for this conclusion. On the basis of the above, we are convinced that most receivers currently in use actually perform better than the ratios indicate. In addition, we expect that, over the next few years, most new low power stations will exceed the protection criteria by a comfortable margin so there will be few, if any, problems of actual interference. Thus, some additional time will exist during which the average receiver is expected to improve. Finally, we do not wish to reduce the manufacturers' incentive to continue to improve those receiver characteristics that affect interference. Inferior receivers, as some point, will be exposed to undesired signals that will produce interference. We believe that this is preferable to adopting standards that protect inferior receivers, at a cost of reducing the number of low power stations that can exist.

41. *Circular Polarization.* In comments discussing transmitter output power, General Electric Company proposes that transmitters with twice the normally permitted power be allowed to feed a circularly polarized transmitting antenna. Circular polarization is a recognized means of improving

[36] For example, *see*, Report and Order, Docket Nos. 16004 and 16052, adopted May 29, 1975, which incorporated a terrain "roughness factor" into the FM and TV rules. However, *see also*, Stay, adopted April 28, 1977, 42 FR 25736 (May 19, 1977), where the Commission stayed indefinitely the effectiveness of the terrain roughness rules. We would expect that any general terrain correction factor that might be adopted would explicitly be extended to the low power service.

[37] W. K. Roberts and L. C. Middlekamp, A Study of the Characteristics of Typical Receivers Relative to the UHF Taboos, NITS PB-235 057 (June, 1974).

reception within a station's service area. It commonly is achieved by transmitting both a horizontally polarized and a vertically polarized component of the signal with a fixed phase relationship between the components. The addition of a vertical component does not increase the distances at which a station provides service or causes interference. Full service stations are permitted to transmit a vertically polarized component as long as it does not exceed the horizontal component in any direction. In the past, through a waiver process, translators have been allowed to transmit a circularly polarized signal. However, they have been required to use two transmitters or a transmitter with multiple final amplifier stages, and two transmission lines connecting the transmitters to the antennas. We believe that it is both reasonable and appropriate for us to amend our rules herein to permit low power circular polarization and to permit a higher transmitter power output when a circularly polarized antenna is used.

42. *Canadian and Mexican Notification.* A translator notification procedure has evolved for stations in the Canadian border area. Canada is notified of 1 watt VHF translators within 10 miles of the border, and 10 watt VHF translators and 100 watt UHF translators within 20 miles of the border. Because 100 watt VHF translators and 1,000 watt UHF translators have required a channel in the Table of Assignments, they have been coordinated if they were in the area covered by the full service TV Agreement, within 250 miles of the U.S.-Canada border. There is no established protocol for notifying Mexico of translators in the border area. The full service TV Agreements with Mexico require coordination of VHF stations within 250 miles of the border and UHF stations within 199 miles. We currently are formulating a procedure for both Mexican and Canadian notifications. Until new agreements are reached, low power authorizations in the border areas (except those that would not require notification under the above standards) will be conditioned on Canadian or Mexican concurrence.

43. *Cable Protection.* The National Cable Television Association, with Spectradyne, has voiced concern that low power stations could cause interference to cable systems at the headend antenna where TV rebroadcast signals are received, cable distribution systems and at subscribers' receivers. To protect cable, NCTA would have the Commission license low power stations only on UHF channels and put the burden of frequency coordination and correction of interference on the low power operator. The Association of Maximum Service Telecasters, the Corporation for Public Broadcasting, the National Translator Association and others oppose NCTA, arguing that the potential for interference to cable is not as serious as NCTA fears and that, in any case, cable's unregulated use of radio frequencies is predicated on its nonpreclusion of broadcast uses of the band. NTIA supports a scheme substantially similar to that proposed in the Notice, whereby the Commission would consider well-documented objections to low power applications based on potential headend interference, but that other low power/cable interference is to be solved between the parties, with primary responsibility for correction of cable-related problems on the cable operator. In the interest of spectral efficiency, we have decided not to limit low power to the UHF spectrum. We are aware that, on occasion, interference problems have arisen between cable and full service stations on VHF channels. However, we believe that it would be spectrally inefficient to preclude low power stations from the VHF band altogether, when there are many locations where this will not occur. We do not feel it necessary to restrict the low power operator's range of choice between VHF and UHF frequencies, which may depend on factors such as cost differential, channel availability and coverage potential.

44. We believe that, with one minor modification, the cable/low power interference rules originally proposed generally will be adequate to control potential interference problems with minimal disruption to existing service. The rules are as follows:

1. The low power station operator is strictly responsible for taking immediate corrective action when an interfering condition to any other service results from operation in violation of the Commission's technical standards, or from improper maintenance.[38]

2. The cable operator generally is responsible for correcting interference in the cable distribution system and at subscribers' sets.[39]

3. The Commission will not knowingly authorize a low power station that is likely to cause serious interference to reception at an existing cable television headend. If this does occur, the parties will be encouraged to settle the matter between themselves, in light of the Commission's first-come, first-served policy, that will favor the pre-existing service.

Because the Commission has no computer data base of cable headend locations and stations received, or of channels used elsewhere in the cable distribution system, we have no means of considering cable systems in our automated processing procedures. Where we receive documented submissions raising a substantial and material question that a proposed low power station will cause serious interference to a cable system, we shall designate the application for hearing, pursuant to Section 309 of the Communications Act.[40] However, as we have said, where an operational low power station causes interference to a pre-existing cable headend, we expect the parties to settle the dispute among themselves and come to the Commission only as a last resort. We would afford the earlier entrant, whether it be the cable system or the low power station, favorable consideration over the later one, and we would expect this to be a factor in their negotiations.

45. With respect to other interference problems, *e.g.*, "local pickup" interference at the television receiver, we do not find a sound basis for affording formal protection to cable systems in general.[41] Cable's use of radio frequencies is based on its nonpreclusion of broadcast uses; therefore there is no basis for affording cable such formal protection.[42] On the

[38] This provision applies not only to cable, but to all services.

[39] As discussed in paragraph 45, *infra*, we are persuaded that the special case of co-channel interference to the output of a set-top converter requires a different approach.

[40] *See*, H & B Communications Corporation v. FCC, 420 F. 2d 638 (D.C. Cir. 1969). However, as noted above, pre-grant hearings on cable/low power interference issues will be authorized only where CATV systems are able to show the potential for interference with sufficient certainty and specificity to warrant designation of the issue for hearing. *See*, Washoe County School District, File No. BPTTV-6080, FCC 81-533, released December 3, 1981; Capital Communications, Inc., File Nos. BPTTV-800311IC and BPTTV-800312IB, FCC 81-534, released December 4, 1981.

[41] Microband makes an argument for protection of Multipoint Distribution Service down-converters that operate on Channels 12 and 13. We believe the same rationale applies to MDS use of radio frequencies as to cable and, accordingly, we are not extending such protection, but expect the parties to any such disputes to settle them privately.

[42] *See*, e.g., Memorandum Opinion and Order, Heart of Texas TV, 28 F.C.C. 2d 754 (1970); *reconsid. denied*, 27 F.C.C. 2d 206 (1971). While this case holds that cable systems must alter facilities to permit VHF translators, the text evinces the Commission's flexible approach, mandated in H & B Communications Corporation, *supra*, n. 36, of attempting to accommodate as many competing interests as possible in such situations. Accord, San Juan Nonprofit TV Association, 22 F.C.C. 2d 371 (1970).

other hand, we find merit in NCTA's contention that some interference problems may occur frequently and be expensive for cable operators to correct. Various means to alleviate interference from broadcast stations may be available to cable operators. In some instances, the cost of correction would not be prohibitive, and would more easily be borne by the cable operator. *See,* Oregon Broadcasting Company, 20 F.C.C. 2d 246 (1969). We also note that our decision to restrict VHF translators and low power stations to 10 watts except where a station is proposed on an assigned channel further will reduce the magnitude of the problem. In the Notice we proposed to allow 100 watt operation in any situtation where the co-channel, and adjacent channel full service mileage separations were met. As a result of our decision not to extend 100 watt operation beyond assigned channels, cable operators will no longer have to accept the consequences of 100 watt VHF translators or low power stations except in locations where they already were aware of the possibility of a VHF full service station. The comments have persuaded us that one additional circumstance, however, does require special consideration. Where a new translator or low power station will cause interference to the output channel of an existing cable converter, we believe that the cable system may deserve some protection. In view of the minimal preclusive impact this will have (foreclosing at most one VHF channel from local use by translators or low power stations), we find this a reasonable accommodation to make to a cable operator who already has gone to considerable effort to minimize the system's use of broadcast spectrum by using a converter. We believe that this possibility warrants extension of the "first in time, first in right" policy we are adopting with respect to headend interference. Not only will this achieve equity between the parties, more importantly, we believe that in this circumstance it best serves the public interest to protect an expectation of continued service that may have arisen over time, instead of permitting its degradation by a later entrant. Given the small number of cases in which this should occur, we believe that the best way to handle the situation is via documented objections filed by the cable operator operators to applications of translators or low power stations that will be both co-channel to the output channel of existing converters and close enough to generate local pick-up problems.[45] We continue to encourage private resolution of all cable/low power interference problems, informed by our policy to favor the earlier spectrum user in the headend or converter situations. Therefore, we are amending our rules explicitly to state that, in the event of cable/low power interference, the first user of the frequency, whether cable or low power, will have priority when interference precludes joint use in these two circumstances, and the later entrant will be responsible to correct the interfering condition. The cable operator will be responsible to correct all other interfering situations. *See,* Appendix A, § 74.703(d).

46. *Land mobile service.* The 1979 World Administrative Radio Conference recognized the potential for shared Land Mobile/Broadcast use of the frequencies between 512 and 806 MHz (TV channels 21 through 69). Assuming the WARC agreement is ratified by the U.S. Senate, the Commission will be permitted, if it wishes, to authorize both land mobile and broadcast stations in this spectrum. In this regard, we intend to implement procedures for the processing of LPTV applications that take into account the potential for such sharing in and near major urban areas where the greatest long-term needs for land mobile channels exist. Specifically, we shall examine all low power TV applications within at least a 100-mile radius of the ten largest U.S. metropolitan areas to determine what accommodation, if any, is possible if we decide to provide some land mobile spectrum, while, at the same time, not unduly diminishing the spectrum available for low power television. (We are most concerned with: Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, New York, Philadelphia, San Francisco, and Washington, D.C.) In effect, we shall attempt, through a staff study and our application processing procedures, to determine what impact additional land mobile sharing with low power TV has in these cities. Also with respect to land mobile operations, we note that a number of parties have decried the protection standards we proposed for land mobile systems now sharing VHF frequencies with broadcast users. The UHF taboos, however, still are a matter of study. Pending final resolution of this issue, we are inclined to adopt the standards proposed in the Notice for the protection of land mobile stations, with a few modifications urged in comments. We do not believe that these standards normally will result in interference, and we conclude that they are practicable, at least on a short-term basis. However, to the extent that interference does result, low power stations are being authorized on a secondary basis to all stations in existing primary allocations and must both correct whatever interference they cause or cease operation and accept whatever interference they receive from stations in the primary allocations. Also, to protect the Offshore Radio Telecommunications Service Operations on Channel 17, we are adopting somewhat more restrictive standards for low power stations in the Gulf of Mexico. We believe that this is possible without significantly reducing the area within which Channels 16, 17 and 18 can be used, because existing full service stations on related channels and the Channel 17 Houston land mobile allocation leave little of the Gulf area with these channels available. Further, the area where Channels 16, 17 and 18 otherwise might have been used are for the most part sparsely populated with a large number of other UHF channels available for low power use. Therefore, we are adopting rules prohibiting Channel 16, 17 and 18 low power stations in the following areas: (1) Channel 17 will not be available in the area south of 31° 30′ North Latitude, west of 86° 30′ West Longitude and east of 95° 30′ West Longitude; (2) Channels 16 and 18 will not be available in the area south of 30° 00′ North Latitude, west of 87° 00′ West Longitude and east of 95° 00′ West Longitude. A computer review of translator stations and applications and pending low power and translator applications disclosed only two on these channels within these areas, both for Channel 16 at Galveston, Texas. Because Galveston is 40 miles from Houston, within the Channel 17 land mobile protected contour, these applications cannot be granted, regardless of the ORTS protection standards. The Commission also is aware of two petitions for rulemaking, one filed by the Offshore Telephone Company (RM–3924) and the other by the Sheriff's Department of Los Angeles County (RM–3975), both requesting nonbroadcast use of portions of the UHF–TV broadcasting spectrum. Our action today could have a negative impact upon the possibility of a favorable outcome on either of these petitions. Based upon our initial analysis, it appears that some degree of sharing between the Offshore Telephone Company use of Channels 15 and 16 and

[45] Unlike consumer electronics products such as TV games and VCRs, cable coverters normally do not come with a switch to change the output between two adjacent channels. If they did, then the cable problem could be solved simply by switching to the channel unused by the translator or low power station.

low power TV may be possible. On the other hand, the mutual accommodation of the Sheriff's petition and low power TV seems to be considerably more difficult, if not impossible. Again this expectation is based on very preliminary analysis, and some possibilities for land mobile sharing still may exist even with significant development of low power TV. However, due to the strong public support and demand for low power TV, we do not consider it to be in the public interest to delay this proceeding to review further these two petitions, particularly because the Commission has not yet even determined whether petitioners have made a threshold showing warranting rulemaking. After further analysis has been completed, these petitions will be accommodated through separate proceedings and to the extent the Commission determines appropriate.

47. *Auxiliary Services.* The Notice proposed that low power stations have access to auxiliary broadcast frequencies, where available, for studio-to-transmitter links and remote broadcast pickups. Subparts D, E, F and H of Part 74 of the Rules cover these uses. Low power licensees are eligible for remote pickup broadcast station licenses, under Subpart D. Because in BC Docket No. 81–793 we are proposing to delete § 74.603(b), to eliminate use of aural microwave spectrum in connection with television transmissions, we shall not license this spectrum to low power licensees, until and unless resolution of Docket 81–793 permits. The present rules governing television translator microwave relays in Subpart F permit their use in connection with translators only to obtain permissible TV programming; the frequencies may not be used in connection with program origination. Television translator relays are accorded the lowest priority in use of the microwave frequencies under our present rules, *see*, § 74.602(h). As part of an originating broadcast service, low power stations should be directly eligible for television microwave assignments for STLs, intercity relay and/or TV pickups, and § 74.632(a) will be amended accordingly. The Commission recently initiated a proceeding to establish new licensing policies for television broadcast auxiliary stations, BC Docket No. 81–794.[44] The Notice of Proposed Rule Making in that docket encourages private frequency coordination in the assignment of television auxiliary microwave frequencies and proposes the establishment of priorities for such assignments. The Notice seeks comment on the proper place for low power stations in the hierarchy. Because there was little commentary on this issue in the instant proceeding, and because BC Docket No. 81–794 is intended to encompass the entire panoply of users of this spectrum, we shall defer any possible modification of the present priority afforded to television translator relays, and leave resolution of the priority of low power stations to BC Docket 81–794. Finally, we are amending § 74.832, Subpart H of the rules to make low power television licensees eligible for low power auxiliary stations,[45] as well as § 74.432(a), audio remote pickup stations.

[44] FCC 81–537, released November 25, 1981.

IV. Technical and Engineering Requirements

46. The Notice addressed a number of technical issues not strictly related to spectrum priority. See, Notice, paragraphs 63 through 67, 45 FR at 69188, 69189. We did not receive a great deal of commentary on this subject, possibly because we are maintaining rather than changing most of our current regulations in this area. Nevertheless, it remains our belief that the technical aspects of low power operation are critical to its success as a new broadcast service and to its coexistence with existing services. We emphasize that we shall require strict adherence to the technical standards, both interference-related and others, adopted herein for low power stations.

49. *Transmitter and Other Equipment Standards.* We are retaining § 74.750, which requires type acceptance of low power transmitters. Low power STV operations must use a Commission-approved encoding system. Section 74.736, which governs out-of-band emissions, will remain in force. Section 74.761, requiring frequency tolerance maintenance, will continue to be enforced. Where offset operation is proposed, transmitting equipment with the stability needed to meet a stricter frequency tolerance will be required. *See*, paragraph 39, *supra*. While we are amending § 74.734 to require an operator in attendance under some conditions (*see*, paragraph 95, *infra*), we shall continue to enforce § 74.734(a)(6), which requires observation for ten continuous minutes per day of the off-air signal of translators employing modulators. We shall require the transmitting equipment used by low power stations to comply with those existing provisions of § 74.750 that relate to the prevention of interference. However, we are not adopting technical operating standards for the transmitted sync pulse and blanking wave forms, color burst or audio distortion. Our concern in regard to low power technical standards is primarily avoidance of objectionable interference. We would hope that marketplace considerations will provide additional incentive for low power licensees to maintain high quality signals for viewers.

[45] In this connection, we shall state here that we do not see the necessity of changing the name of the low power television service, as some parties have suggested, either because the term "low power" itself has a negative connotation or to avoid confusion with low power auxiliary stations. We believe a greater amount of confusion is likely to result from changing the name of the low power television service at this point.

V. Applications

50. Form 346, as revised for use by both translator and low power applicants, continues to seek information regarding the citizenship, character and financial qualifications of the applicant, as well as technical aspects of the proposal, as enumerated in Section 308(b) of the Communications Act and our rules and regulations.[46] Without opining on their continued vitality, we shall continue to enforce the minimum qualifications to hold a broadcast license in the low power service, leaving the possible modification or curtailment of such qualifications to proceedings designed for that purpose, e.g., Notice of Inquiry, Gen Docket No. 81–500, 47 FR 40899 (August 13, 1981).[47] It goes without saying that we believe that the low power service is an ideal candidate for any modifications of qualifications that are accomplished in other proceedings. However, because the Commission intends to examine these issues in separate proceedings in the future, we shall not make changes at this time.

51. We also envision several simplifications in application processing procedures for low power applications. It is consistent with the spirit of Gen. Docket No. 79–137, Revised Procedures for the Processing of Contested

[46] The information that will be required on revised Form 346 is attached as Appendix B. OMB approval must be obtained. Forms 347 and 348, the license and renewal forms, also will be revised to reflect the rule changes contained herein. Until the computer to be used in processing is operational, we shall continue processing rural, freeze-exempt applications manually. In order to facilitate these efforts, we have appended a request for a topographical exhibit to the application form. As indicated, this additional information may be supplied at the option of the applicant. However, it could considerably expedite the processing of the application.

[47] We are, however, simplifying the showing required to demonstrate financial ability to a certification requirement, in conformity with our practice with other broadcast applications.

Broadcast Applications, 72 F.C.C. 2d 202 (1979), and with the secondary nature of the low power service, that low power processing procedures be streamlined to the extent practicably possible. We emphasize, however, that we intend to maintain strict standards for acceptance of applications. A low power application must be complete and sufficient to be accepted for filing. Applications with blatant defects will be returned. This policy represents a departure from the standard set out in § 73.3564(a) of our rules, under which "substantially complete" applications are acceptable for filing. It resembles, rather, the acceptance criteria of Part 22 of our rules, which requires complete applications, and return of blatantly defective applications. *See, e.g.*, §§ 22.31(b)(2) and 22.32(b)(1) of the rules. Under our present broadcast rules, an application that is not grantable because it is incomplete still may be acceptable for filing, because it is not "patently defective" and it is "substantially complete." See, James River Broadcasting Corp. v. FCC, 399 F. 2d 585 (1968). On the other hand, clearly deficient applications may be returned. Henry M. Lesher, 41 R.R. 2d 1593 (1977). The Commission and the courts, in applying this standard, have emphasized that administrative fairness requires full notice to parties whose rights may be affected by our rules regarding what is required of them to comply. Where such notice is afforded, the Commission may require strict compliance. Ranger v. FCC, 297 F. 2d 240 (1961). It is open to us to modify our acceptability standards as they apply to low power and translator applications, so long as we do so explicitly and with good reason:

> There is also an interest in procedures and administrative techniques that enable the Commission to handle its work load efficiently, and with optimum use of limited administrative resources. Perhaps the Commission can accommodate the various interests by adopting administrative expedients that, for example, explicitly require all applications to be letter-perfect when filed.

Radio Athens, Inc. (WATH) v. FCC, 401 F. 2d 398 (D.C. Cir. 1968). We now do so, for the following reason. The Commission's limited resources and the large number of low power applications to be processed simply will not permit the staff to coach applicants in correcting defects or omissions in applications that have been filed, as sometimes has been the case in the past. Defective low power applications will be returned summarily, and if they are resubmitted with perfecting amendments, they will be placed at the end of the processing line, unless passage of a cut-off date precludes consideration altogether, in which case the resubmission will be returned. Because explicit notice of change in policy was not afforded in the Notice of Proposed Rule Making in this proceeding, pending applicants will have the opportunity to perfect their applications without loss of rights that arguably may have accrued during the ninety day amendment period discussed in paragraph 56, *infra*.

52. Once an application has been accepted for filing, it will be placed on a cut-off list, which will set the deadline for the filing of competing applications and petitions to deny. Applications received by the cut-off date that are accepted for filing will be examined for exclusivity, and those determined to be mutually exclusive with applications that appeared on the "A" cut-off list will be placed on a "B" cut-off list, that sets a deadline for petitions to deny; no competing applications may be filed to "B" list applications.

VI. Comparative Procedures and Criteria

53. The Notice of Proposed Rule Making proposes the following system of comparative evaluation, to enable the Commission expeditiously to decide among competing applicants:

(1) Notification of mutual exclusivity to applicants;

(2) Thirty days for amendments to remove mutual exclusivity;

(3) Pre-designation conference among applicants and staff;

(4) Designation of mutual exclusivity and paper hearing concerning:

(a) Qualification issues;

(b) Technical aspects of the applications; and

(c) Claims to preference points.

(5) If no single applicant emerges victorious from the paper hearing, random selection among qualified applicants.

The Notice proposes the following comparative preference points:

(1) First applicant to file a complete and sufficient application;[48]

(2) Over fifty percent minority ownership; and

(3) Noncommercial applicant proposing noncommercial service to the general public.

The preferences would be cumulative and be worth one point each, so that a first-filed minority applicant would have two points and would win the frequency over a competing noncommercial applicant, for example. This comparative system contains three departures from our customary method of comparing mutually exclusive applications: a paper hearing would be held on designated issues intead of a hearing with oral testimony; there are only three comparative criteria, and they have yes-or-no answers; and a lottery would be used to decide among applications that are equal in comparative points. These modifications were intended to "avoid head-to-head competition among applicants, with its profound drain upon the resources of the parties and the administrative agency." Notice 45 FR at 69189.

54. These comparative criteria and procedures explicitly were proposed as a "first draft" in the Notice, and we promised to consider comments advancing other approaches. The comments addressing the comparative process are voluminous, with many opposing the notion of curtailed comparative procedures and others proposing much more elaborate preference systems, while applauding the basic concept. Among the many factors favoring abbreviated comparative procedures for low power applications are that low power is a secondary service; that prolonged and elaborate comparative proceedings may impose serious financial barriers for new entrants into the industry; that for a new service it is difficult to predict which comparative factors ultimately will be the most significant or desirable; that, without a prohibition on trafficking, stations may change hands soon after construction, mooting an elaborate preference system; and that the Commission simply does not have the resources promptly to handle the volume of comparative hearings required to resolve the plethora of mutually exclusive low power applications. We find these arguments convincing, and we think the solution is to have largely paper hearings among competing applications, as detailed below. We believe the modifications in our original proposals discussed in paragraphs 65 through 68, *infra*, take into account the somewhat contradictory goals of prompt authorizations and a time-consuming, comprehensive examination of all relevant information. In discussing the steps in the process, we shall address each of the proposals from the Notice in the order listed in paragraph 53 above.

55. *Notice of Exclusivity.* Applicants will be notified that their applications are mutually exclusive with a (or several) application(s) by their inclusion on a "B" cut-off list. Mutually exclusive applications will be designated for hearing. However, mutually exclusive applicants may, and are encouraged to,

[48] This preference would only be operative for applications filed after the close of the rule making.

cooperate in private settlement endeavors to remove mutual exclusivity. Applicants should explore various options, such as buying out a competing applicant or agreeing to a time sharing arrangement, keeping in mind that settlement agreements must be submitted for Commission approval, pursuant to Section 311 of the Communications Act, and that we are committed to expeditious processing of all settlement agreements that eliminate the necessity for comparative hearings. It will facilitate such efforts that the Commission does not consider changes in ownership or control of low power television applications to constitute a major change entailing competing applications, although these are subject to petitions to deny. *See,* paragraph 77, *infra.* Accordingly, applicants can alter their ownership structure via amendment without losing cut-off protection. We point out, however, that our policy prohibiting amendments affecting ownership that would result in comparative advantage after the "B" cut-off date has passed will apply in the low power context.

56. *Ninety Day Amendment Period.* All present applicants will be afforded a specific ninety day period during which they can amend to bring their applications into conformance with the final low power rules. On account of the large number of applications, we may, as resources permit, stagger our requests for amendments. This will be announced via public notice following the effective date of this Report and Order.[49] We have devised a phased approach to the processing of pending applications. *See,* Appendix E.

57. *General Processing Procedures.* Applications that are mutually exclusive with applications already on published "A" lists will be placed on "B" lists. These "B" lists will be published, and will afford applicants notice of their mutual exclusivity. After the deadline specified in the "B" list for filing amendments and petitions to deny has passed, the mutually exclusive applications will be processed. If the applicants are able to resolve their mutual exclusivity in a manner acceptable to the Commission, the resulting application can be processed to grant. However, if the parties are unable to resolve their exclusivity, the applications will be designated for hearing. After these mutually exclusive applications have been designated for hearing, the Commission will begin processing the remaining applications.

58. *Predesignation Conference.* We are not making the initially-proposed predesignation conference with staff a formal part of the comparative process, because we believe settlements and accommodations can be accomplished expeditiously without Commission intervention, and our limited staff resources better can be utilized elsewhere. In light of the delays that, to some extent, will be unavoidable, should competing applicants be unable to resolve their differences via private negotiation, we strongly encourage all groups of mutually exclusive applicants to cooperate in private settlement endeavors and particularly to explore the possibility of time-sharing arrangements.[50] As we have said, the Commission will attempt to consider settlement agreements submitted pursuant to Section 311 (c) and (d) of the Communications Act and §§ 73.3525 and 73.3568 of the rules in as expeditious a manner as possible. Indeed, such settlements will be given our highest priority and will be processed and granted before other pending applications, in the order in which the settlement agreements are received.

59. *Designation.* The designation orders will include issues raised in petitions to deny that raise substantial and material questions of fact that are in dispute and require a hearing for resolution. *See,* Section 309(e) of the Communications Act. These issues may include qualifications to hold a broadcast license under Section 308(b) of the Communications Act, as well as relevant comparative issues.

60. *Issues not appropriate for designation.* Because of the many differences between the low power television service and the existing full service television broadcast service, expecially the secondary status of low power stations and their small service areas, we intend to limit the number of issues considered in low power comparative hearings to only those truly relevant to the situation at hand. One of the perennial technical issues considered in traditional hearings among mutually exclusive television applicants has arisen under the aegis of Section 307(b).[51] When two competing applicants propose service areas that are to any degree different, the Commission traditionally has considered evidence on the amount of area and the population served by the competing applicants. This inquiry, undertaken in the interest of ensuring that the applicant proposing the most fair, efficient and equitable distribution of new service will predominate in the selection contest,[52] has been one of the most time consuming and litigated issues addressed in the hearing context.[53]

61. We shall not consider arguments directed to Section 307(b) of the Communications Act [54] in designating issues for low power applications, for several reasons. In the first place, the tiered processing program we are implementing (*see,* Appendix E) embodies a general Section 307(b) judgment that, of the 6,000 pending applications, those which fall within the most rural markets should be given priority over those proposing to serve more urban, and well-served, areas. We recognize that the rural authorizations may have a preclusive effect in more urban areas, and we believe that this is justified by the fact that the areas to which we are giving priority are more in need of service and that it represents fair and equitable spectrum allocation to favor them. Second, today's broadcast

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[49] As part of this process, we wish applicants to ensure that they have provided appropriate antennas, with model numbers, a correct polar diagram, including the total polar plot, accurate overall height above ground of the antenna and altitude of ground above mean sea level figures and accurate coordinates for the site proposed, which must reasonably be believed to be available for their use. Inaccurate information on applications delays the entire processing endeavor, and, under our newly-adopted strict acceptance standards, will result in nonacceptance of future low power applications.

[50] *See,* Notice of Inquiry on Part-time Programming, 55 R.R. 2d 81 (1978); but see, Cosmopolitan Broadcasting Corp. v. FCC, —— F. 2d —— (D.C. Cir. 1982).

[51] 47 U.S.C. 307(b) provides that "[i]n considering applications for licenses, and modifications * * * thereof * * the Commission shall make such distribution of licenses * * * among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

[52] We note that at its meeting on September 17, 1981, the Commission directed its staff to include in its upcoming legislative amendments a proposal to delete Section 307(b) from the Communications Act "since fair and equitale distribution of radio and television service generally had been established nationwide." See, F.C.C. News, Report No. 5068, Mimeo 003451 (September 17, 1981).

[53] This may well be because a "Section 307(b)" preference is considered dispositive over applicants who do not receive this preference. See, e.g., FCC v. Allentown Broadcasting Corp., 349 U.S. 348, 12 R.R. 2019, 2021 (1955).

[54] In the Table services, TV and FM, the fairness of the allocation is dealt with primarily in conjunction with the rule making that amends the Table to reflect the frequency assignment. Applications filed under §§ 73.203(b) and 73.607(b), which permit construction of a radio or television station within ten or fifteen miles of the community of assignment, represent the only instances in which Section 307(b) issues generally arise in the application process. In AM radio, where there is no table of assignments, Section 307(b) issues more frequently arise in connection with competing applications. Clear resolution of the Section 307(b) issue in favor of one qualified applicant over another is dispositive, and no further comparison of applications is made. Low power resembles AM, in that there is no table of assignments, although AM is a primary service, unlike low power.

services may be considered quite mature, in a Section 307(b) sense. The Tables of Assignments for FM and television stations, §§ 73.202(b) and 73.606(b), and the allocation scheme for wide-area AM stations memorialized in § 73.22, are intended to fulfill the Commission's Section 307(b) mandate. *See,* Logansport Broadcasting Corporation v. FCC, 210 F. 2d 24 (D.C. Cir., 1954); *also see,* Loyola University, et al. v FCC, Nos. 80–1824 and 80–2018, *slip op.* (D.C. Cir., January 26, 1982). Finally, the existing array of television channel utilization will force low power into less well-served areas. The Television Table of Assignments distributed the available television allotments between large cities and less populated areas in a manner that balanced the natural gravitation of stations to large urban areas with high population densities with the need to reserve some spectrum capacity to serve the less profitable, low population density areas of the country. One result of this balanced distribution pattern is that in approximately the 50 largest markets no additional full-spaced television stations can be accommodated. Although the lower maximum transmitter power of low power stations will permit somewhat shorter coordination distances, this existing concentration of full service stations in and around the top 50 markets on every available channel will result in very few opportunities to add low power stations to locations that can serve the largest markets. Conversely, most of the locations where new low power stations can be spectrally accommodated will be outside of the top 50 markets, where the television band is not saturated. This is fortuitous in two respects. First, the lower construction and operation costs that will characterize low power stations promise to make their operation economically viable in areas with population insufficient to support a full service station. Second, and relevant to this discussion, this existing station distribution pattern, coupled with our requirement that low power stations protect the Grade B contours of all full service stations will result in the vast majority of low power authorizations being granted outside the top 50 markets. Thus, the assignment policies we are adopting for the low power service automatically will acccomplish the concern we formerly addressed in our Section 307(b) hearing contests.

62. Second, the basic regulatory structure of this new service makes the application of our full service station Section 307(b) practices inappropriate. As discussed above, we are not requiring low power licensees to serve a particular community, to maintain any specified programming format, or to retain ownership of the initial license for a fixed length of time. Furthermore, because of their secondary status, what service they do provide may be preempted by the addition of a full service station too close to permit simultaneous operation. Given these characteristics, the added delay in authorizing new low power stations, and the great cost of an expanded or otherwise unnecessary hearing to the applicant, the Commission, and ultimately the public, cannot be justified.

63. The courts have held that neither Section 307(b) nor our particular past applications express rigid and inflexible standards. The Commission has a great deal of discretion in solving problems attendant to its responsibilities for providing a "fair, efficient, and equitable distribution of radio services." Television Corporation of Michigan v. FCC, 294 F. 2d 730 (D.C. Cir. 1961); 21 R.R. 2107; Logansport Broadcasting Corp. v. United States, 210 F. 2d 24 (D.C. Cir. 1954), 10 R.R. 2006; Federal Radio Commission v. Nelson Brothers Broadcasting Bond and Mortgage Co., 289 U.S. 266 (1933); WBEN, Inc. v. United States, 396 F. 2d 60 (2nd Cir., 1968), *cert. denied,* 393 U.S. 914 (1968). For instance, the Court affirmed the Commission in its determination that every initial licensing proceeding in which mutually exclusive applicants propose different communities need not present a Section 307(b) issue. Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951), 7 R.R. 2030. In the new service before us today, we believe the inevitable allocation of the majority of low power stations to locations away from the top 50 markets, coupled with the secondary nature of the service these licensees will provide, creates a situation where none of the mutual exclusivities created by competing low power and translator applicants present a meaningful Section 307(b) issue. Therefore, consideration of Section 307(b) issues are not, in this instance, in the public interest. We do not intend this to constitute a relaxation of our concern for the Section 307(b) mandate. We remain committed to Section 307(b) determinations in the primary broadcast services. However, we believe that implementation of the low power proposal takes cognizance of the existing distribution of services. We further believe that the allocation procedures in this Report and Order will reduce the costs to all parties—society generally, the applicants, and the Commission—while allowing for greater flexibility for the market to fine-tune allocations. In accordance with this policy, we also shall not consider *Berwick* or suburban community issues. *See,* Berwick Broadcasting Corp. v. FCC, 20 FCC 2d 393 (1969).

64. *UHF Impact.* We find it difficult to envision a situation in which a VHF low power station will cause a substantial economic threat to a full service UHF station. Because their spectrum priority is secondary, low power stations always remain vulnerable to new full service entrants or existing full service modifications on interfering channels. In addition, our limit on maximum output power and our contour overlap prohibitions both place limitations on the coverage potential of low power stations. The coverage area of a full service UHF station inevitably will be many times greater than that of a low power VHF station. Under these circumstances, we see little point in extending our UHF impact policy to the low power service. This is particularly true at a time when, as a result of Congressional and Commission efforts, as well as the workings of the marketplace, the increasing vitality of the UHF service generally is making our policies designed to protect UHF stations from competition less appropriate. *See, e.g.,* All-Channel Receiver Law, 47 U.S.C. 303(s); Report and Order, 21 FCC 2d 245 (1970); Report and Order, 62 FCC 2d 164 (1976); Final Report, UHF Comparability Task Force, Gen. Docket No. 78–391, P. Gieseler, *et al.,* FCC, Office of Plans and Policy (September, 1980), available from NTIS, Springfield, Virginia. Neither do we anticipate designating low power/CATV interference issues in many cases. See, Notes 39 and 41, *supra.* We also foresee few instances in which an allegation of harmful economic impact, made pursuant to Carroll Broadcasting Co. v. FCC, 258 F. 2d 440 (D.C. Cir. 1956), will meet the test of Section 309(e) and require designation for hearing, particularly in light of the secondary status and limited coverage potential of low power stations. Low power stations will have smaller coverage areas than full service stations. Therefore, their ability to garner advertising revenues on the basis of audience size will be less great. Similarly, their ability to divert revenues from existing full service stations will be limited. Finally, their secondary status, which makes their continued existence uncertain, could hinder their ability to sustain audience and advertisers. In light of these facts, we do not see a likelihood of many full service stations being able to document

a *prima facie* case that a low power station will so impair their ability to maintain its revenues that a net loss of public service programming will result. Today, where several full service television stations exist in many major markets, it is even less likely that a low power entrant will have an economic effect so severe as to result in loss of public service programming on all the full service stations. Our holding in Monroe County Board of Commissioners, 42 FCC 2d 683 (1979), that the "Carroll" doctrine should not apply to cable systems, is consistent with this belief and with the record adduced in the instant proceeding. Also see, Wrangell Radio Group, et al., 75 F.C.C. 2d 404, 407 (1980).[55]

65. *Hearing.* It is our intention to minimize the expense of establishing low power stations. This goal requires that we not subject applicants to long and costly comparative hearings. Moreover, if we flood the hearing process with numerous low power proceedings, we shall further delay the resolution of all other hearing proceedings including those involving construction permits for full service facilities. Therefore, it remains our intention to utilize a random selection process when and if that becomes practicable. Applicants for licenses in this service, therefore, are advised that their applications, if mutually exclusive with other applications, may be subject to revised processing procedures, standards and qualifications in connection with implementation of a system of random selection. At this point, however, we must utilize most of our existing hearing procedures. Nevertheless, we shall make certain modifications in those procedures in order to reduce or eliminate the number of days low power applicants will have to spend in the hearing room.

66. The comparative hearing process can be expensive and time-consuming.[56] For these reasons, we have studied steps that could be taken to minimize the expense and long delays normally inherent in comparative proceedings involving broadcast applicants. Our goal has been twofold: *First,* to assure that applicants are given an opportunity adequately an fairly to present their cases and, thus, to demonstrate why they are the "best" applicant within the context of the criteria established by the Commission; and second, to conclude the administrative process and provide service to the public as expeditiously as possible. We believe that we have identified several procedural actions that can facilitate this goal.

67. Based upon our review of our application processing and hearing procedures, we believe that it may be possible to shorten both the evidentiary and appellate aspects of the process through the use of a modified paper proceeding directly administered by the Commission.[57] Under the modified procedure set forth herein, the Commission *en banc* will receive the evidence and issue the final decision as to which applicant should be awarded the license.[58] Also, unlike in traditional hearings, the Broadcast Bureau will not appear as a party, unless otherwise ordered by the Commission. Instead, the Bureau will serve as advisors and staff support to the Commission with responsibility for reviewing and analyzing the pleadings and preparation of a draft of the final decision.

68. The Commission's low power application processing procedures call for the issuance of two cutoff lists: The "A" list invites competing [59] applications and the "B" list invites only petitions to deny. We shall begin the low power television comparative process upon issuance of a modified "B" list. This notice will include the hearing designation order and will set forth the standard comparative issues and the pleading schedule to be followed by applicants and other interested parties to the proceeding.

69. Specifically, the "B" list will specify that each applicant must submit in writing its direct case[60] within the approximately 30 day time period set forth therein. In addition to spelling out those facts and characteristics of its proposed operation that the applicant wishes the Commission to consider, the direct case also should include any matters that normally would be raised in a petition to deny against another applicant. Within twenty (20) days after the filing of the direct case, each applicant must submit its written rebuttal case,[61] including oppositions to any matters raised in any petitions to deny filed against its application. Twenty (20) days thereafter each applicant may submit its written surrebuttal case,[62] including any replies to oppositions to matters raised in its petitions to deny filed against other applicants. With its surrebuttal case, each applicant also may submit any request it hs for oral hearings and cross examination, the subject matter of the desired cross-examination, and the basis therefor. Any request for oral hearing must state specifically the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why oral hearing with cross-examination is necessary to bring it out,

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[55] In addition, the operational differences between the low power service and full service television stations should make it unnecessary to investigate in hearing many of the issues raised in petitions to deny that we have designated in full service hearings in the past. For example, issues related to ascertainment and programming will not be relevant. Also, it rarely will be necessary to explore economic of financial issues, in light of the self-certification format of the application form. In addition, the fact that strict enforcement of the twelve-month period for construction will provide conclusive demonstration of whether an applicant's finances were sufficient makes it less important to consider this issue in hearing. Our general policy in favor of permitting free transferability of stations to some extent reduces the general efficacy of painstaking scrutiny of applications in the hearing process. Finally, as we have indicated, we believe that one principal way to expedite the hearing process is to discourage the filing of pleadings on issues that, taken alone, would be less than dispositive of the challenged application. We envision relatively simple designation orders, including only unresolved substantial and material issues of fact necessary to the disposition of the applications and the comparative criteria.

[56] Pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), mutually exclusive applications for the same frequency are entitled to simultaneous consideration before a grant of any of the applications. *See,* Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). The Commission traditionally has afforded mutually exclusive applicants a "trial-type" evidentiary hearing and has established an elaborate set of procedural rules governing the process. *See,* 47 CFR 1.201–1.364.

[57] *See,* 5 U.S.C. 556(d); 47 CFR 1.248(d).

[58] *See,* 5 U.S.C. 556(b); 47 CFR 1.241(a). It is within the Commission's discretion to implement largely paper hearings pursuant to Section 309(e) with the Commission presiding, under the Administrative Procedure Act. *Also see,* WJR v. FCC, 337 U.S. 265, 275 (1949); Bell Telephone Company of Pennsylvania v. FCC, 503 F. 2d 1250 (3d Cir. 1974); *cert. denied* AT&T v. FCC, 422 U.S.C. 1026, *reh. denied* 423 U.S. 886 (1975); RCA Global Communications, Inc. v. FCC 559 F. 2d 861 (2d Cir. 1977), *reh.* 563 F. 2d 1, *appeal after remand* 574 F. 2d 727 (1978). Indeed, it virtually is essential that we utilize the abbreviated hearing procedures outlined herein, with only a limited right for oral testimony, at the discretion of the Commission, in light of the concomitant savings of time and resources, both for applicants and the Commission itself.

[59] Under our current procedures, the "A" list invites both petitions to deny any competing applications. Pursuant to the modified procedures set forth herein, filing of all petitions to deny will be delayed until issuance of the "B" list, which will identify all non-mutually exclusive applications, as well as mutually exclusive groups.

[60] The direct case is to be limited to 50 pages in length including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8½ by 11 inch paper.

[61] The rebuttal case is to be limited to 40 pages in length, including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8½ by 11 inch paper.

[62] The surrebuttal case must be limited to 30 pages in length, including any index to subject matter, argument, appendices, and other attachments. An original and one (1) copy of the pleading should be filed. The pleading must be typewritten, double-spaced, on 8½ by 11 inch paper.

and what evidence already in the record would be contravened (with specific identification of the pleading and the page number). All material statements contained in any pleading must be verified by the person offering the statement—*i.e.*, the facts must be sworn to as true and within the specific knowledge of the person offering the statement.

70. Within 30 days after the filing of the surrebuttal case, each applicant must file a proposed decision.[62] This decision must set forth such information as the Commission would find necessary to make its decision, including a brief summary of the facts, proposed findings (including findings on all allegations raised in any petition to deny), and ultimate conclusions.

71. The Commission will attempt to dispose of virtually all low power comparative cases under the paper hearing procedure set forth herein. The Commission, of course, will review requests for oral testimony at the same time the staff recommended decision is submitted for consideration. However, oral testimony will be ordered only where it is shown that the paper proceeding alone will prejudice a party;[64] where a substantial and material issue of decisional significance cannot adequately be resolved without oral hearing;[65] or where designation of the matter for oral testimony would be otherwise required by the public interest.[66] Denial of an oral hearing request will not be made in a separate decision. The request will be deemed denied where the Commission decides the case on the basis of all the pleadings submitted.

72. Should the Commission determine that oral testimony is necessary, it will order that the particular issue or issues be heard by an Administrative Law Judge. The issue or issues to be tried will be set forth in an interlocutory order, which also will set a pre-hearing conference, to establish a discovery and trial schedule. At this stage, the applicants may avail themselves of the discovery procedures normally available in adjudication cases, *but not before*. After the Administrative Law Judge issues the initial decision on the issue(s) being tried, it may be appealed directly to the Commission.

[62] The proposed decision must be limited to 30 pages in length. An original and one (1) copy of the decision must be filed. The decision must be typewritten on 8½ by 11 inch paper. However, it may be single-spaced.

[64] *See*, Section 556(d) of the Administrative Procedure Act, 5 U.S.C. 556(d).

[65] *See*, Section 309(e) of the Communications Act, 47 U.S.C. 309(e).

[66] *Id.*

73. With these procedures and the cooperation of applicants, we believe that most low power proceedings will be resolved on the basis of entirely written submissions within reasonable time frames. With this goal in mind, we shall require strict compliance with procedural dates. Applicants that fail to adhere to established procedural dates or that, in any way, seek to delay resolution of these hearings are subject to having their applications dismissed for failure to prosecute. *See*, § 73.3568(b) of the rules. We encourage expedition, and we are concentrating staff resources with an eye to facilitating low power application processing; nevertheless, mutually exclusive applications that require hearings inevitably will suffer delay. We anticipate that this knowledge itself will act as an incentive to private settlements.

74. *Comparative Factors.* In the interest of administrative simplicity and efficiency, as well as to promote particular service objectives, the Notice proposed three tentative comparative criteria, for which an applicant either qualifies or does not, without more. In order to refine these proposals, we explicitly sought comments in this area. We take the wide range of commentary received to be an indication of the controversial nature of our proposal. Some parties praise the comparative factors as proposed. Others suggest various refinements on the up-or-down nature of the preferences themselves, *e.g.*, consideration of factors such as participation of ownership in management, program proposals, past broadcast record and civic involvement, as part of the minority ownership preference. Still others suggest preference systems more elaborate than the traditional comparative hearing criteria. *See*, Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393 (1965). Finally, there are those who advocate that nothing short of traditional hearings using traditional comparative criteria are permitted under the Communications Act.

75. The comments raise problems with two of the preferences proposed. Commenters generally disapprove the preference to be afforded to the first-filed complete and sufficient application. They argue that this preference has little relevance to the quality of service that may be expected from an applicant. The first come, first served preference initially was proposed for two reasons: We wished to encourage complete and sufficient applications; and we believed that in a new, uncharted service there might be a need to provide an incentive for parties to use the previously fallow spectrum. The avalanche of interim applications belied the necessity of a measure to this end, however. We still wish to encourage complete and sufficient applications. However, we are convinced that we can better do this via strict adherence to our policy of returning deficient applications, without regard to any cut-off protection that might be considered to have vested. We shall adopt the single standard for acceptance of low power applications set out in §§ 22.31(b)(2) and 22.32(b)(1) of the rules and we shall require all applicants to meet that standard. We therefore shall not accord any preferential treatment to first-filed applications.[67]

76. On examination of the record, we perceive confusion about the notion of noncommercial or public low power stations. Noncommercial low power service is defined only in the context of the preference proposed for applicants that are nonprofit entities proposing noncommercial service for the public. There are no other rules proposed that would distinguish the character or operation of a noncommercial low power station from its commercial counterparts. Among the commenters, contradictory assumptions regarding noncommercial or public low power stations appear to be operative.[68]

77. This issue previously has not arisen in the translator service, because the rules limit translators to rebroadcast only, and they therefore fully track the mode of operation of the primary, full service station, whether noncommercial under § 73.621 or commercial.[69] We

[67] Elimination of this proposed preference will not prejudice current applicants, because it was not to be effective for applications filed during the pendency of the rule making. *See*, note 48, *supra*.

[68] To receive funding from the Corporation for Public Broadcasting, a station must be both nonprofit and noncommercial, as defined in Section 397(b) of the Communications Act. A noncommercial educational television station licensee, under § 73.621 of the Commission's rules, likewise must be nonprofit, noncommercial and have an educational or cultural purpose, or be a municipality with no independently constituted educational entity. In the FM and TV services, compliance with this rule is a conditions of operation on a channel reserved for noncommercial use. In the AM service, where there is no table of assignments, a station may be noncommercial, educational and comply with the above definition, but there also may be stations operated by nonprofit entities that are not educational in nature.

[69] Under a 1971 policy, any applicant, noncommercial or otherwise, proposing rebroadcast of noncommercial, educational programming, has priority over a commercial translator operating on a reserved channel in the Television Table of Assignments. *See*, 23 RR 2d 1504, 1506 (1971). We are eliminating this policy as part of our removal of all distinctions in translator or low power status arising from operation on channels in the Table. *See*, paragraph 22, *supra*.

perceive several reasons for not imposing strict regulations regarding noncommercial operation of low power stations. With respect to all aspects except technical ones, we envision the low power service as an essentially unregulated service. The Notice specifically stated that the mode of support, including free and pay programming in any proportions, would be left to the licensees' judgment of what the marketplace requires. In light of the secondary status, the absence of a prohibition upon the free transfer of stations and the as yet undetermined viability of low power stations, we believe that the decision whether or not to air commercials, and in what amounts, should be left to the licensee's discretion.[70] The Commission will not concern itself with this matter, nor with the corporate or organizational structure of an applicant. Whether a low power applicant or licensee is noncommercial or not-for-profit is a decision properly made by the licensee on the basis of applicable corporate and tax law, pertinent requirements of the Corporation for Public Broadcasting and perceived characteristics of the market in which it proposes to operate. Therefore, § 73.621 will not apply to low power stations.

78. In light of the above, we are not going to adopt the three preferences proposed.[71] We are encouraged by many commenters to expand the comparative criteria proposed in the Notice of Proposed Rule Making, to include for example, female ownership, free versus pay service, local ownership, hours of operation, rebroadcast versus origination, financial capacity, integration of ownership and management, locally-oriented programming and/or local program production. While some of these characteristics of service might be a basis for preference in particular cases or in particular areas, it is not clear that they generally should be dispositive in every case, as they would be if they operated as perference points. In many cases, the nature of the particular market proposed to be served should dictate the characteristics of service that might be considered desirable. In a secondary service, particularly one where no prohibition on "trafficking" will be imposed, (*see*, paragraphs 93 and 94, *infra*), meticulous comparative evaluation on the basis of an elaborate system of preferences easily could turn out to be a pointless, though time-consuming, exercise. Additionally, in an untested service, we cannot reliably predict what characteristics ultimately will prove desirable in a license proposal, and therefore should receive comparative perference.

79. We believe that the better course is to distill the issues that currently may be considered in broadcast application hearings to a modicum that should prove relevant for the low power service and manageable in a largely paper hearing. These include issues relating to basic qualifications as well as comparision of competing applicants. As stated above (*see*, paragraphs 60 through 62) we do not believe that Section 307(b) comparisons among competing low power applications is a worthwhile endeavor, because the goal of fair and efficient spectrum allocation already has been anticipated via the Tables of Assignments, and we can expect to accomplish little more by applying such analysis to a secondary service that has no required coverage area nor local programming requirement. As indicated in note 47, above, the application form has been amended to provide for certification of financial qualification, to conform to our practice with other broadcast applications. *See*, Appendix B. The citizenship requirement is straightforward enough. Because the Commission currently has the character requirement under scrutiny in Gen. Docket No. 81-500 (*see*, Notice of Inquiry, 47 FR 40899 (August 13, 1981)), we are not modifying this qualification for low power applications, but shall await the outcome of that Inquiry.

80. Of the comparative issues, we shall retain the criterion enunciated in our 1965 Policy Statement, *supra*, that we consider most relevant in the low power context, diversification of control of the media of mass communications. Along with this, we shall afford merit to applicants that are over 50 percent minority owned. We shall not consider full-time participation in station operation by owners because, in many instances, the functional characteristics of low power stations will not require such extensive involvement in the operations of a particular station by any individual, whether owner or owner's employee. Nor shall we consider program proposals, because we believe low power licensees should be fully responsive to marketplace considerations, without the Commission second-guessing their decisions. These issues are designated in full service comparative hearings only on a special showing, and they rarely are dispositive of the case. *See*, Chapman Radio and Television Co., et al., 7 F.C.C. 2d 213, 215 (1967); Flint Family Radio, Inc., et al., 69 F.C.C. 2d 38, 42-46 (1977), George E. Cameron, Jr. Communications, 71 F.C.C. 2d 460, 464-466 (1979). Additionally, comparative advantage generally is afforded to program proposals on the basis of local or public service programming. We are not requiring local programming by low power licensees, because we cannot determine across the board that this would be in the public interest in every market. Therefore, we would not want to afford across-the-board comparative preference for this. We are not going to consider comparative coverage, for reasons similar to those on which we based our decision not to make Section 307(b) considerations dispositive in individual cases. *See*, paragraphs 60 through 63, *supra*. We are not considering character in the comparative context, beyond the initial qualification determination (*see*, paragraph 74, *supra*). We also are not going to consider past broadcast record comparatively; because so many applicants are new entrants to the telecommunications industry, a result that we do not discourage, it could disadvantage them to accord merit or demerit that only could be garnered by applicants with previous broadcast experience. Both to facilitate expedition in the hearing process and, more importantly, because we believe that low power stations will be very directly responsive to audience needs and interests, we find it in the public interest to limit the comparative issues to diversification and minority ownership. Moreover, we believe that this combination of criteria can further a primary objective for the low power service, facilitating entry by groups and individuals that are new to the broadcast industry.

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[70] The Public Broadcasting Amendments Act of 1981, Pub. L. No. 97-35, *supra*, mandated the establishment of the Temporary Commission on Alternative Financing for Public Telecommunications, whose mission it is to identify additional sources of funding to maintain and enhance public telecommunication services. The Tempocary Commission was given specific authorization to conduct an Advertising Demonstration Project to test the desirability and revenue potential of advertising on public stations. In addition, other amendments to the Public Broadcasting Act (*see e.g.*, Section 399) specifically authorize commercial and commercial-like activities by public stations. In light of these amendments and other factors that are forcing public stations to become increasingly self-sufficient financially, we believe that those broadcasting entities that choose to operate on a non-profit basis should be given the greatest possible flexibility in raising operating revenue.

[71] We do, however, reaffirm the continuing vitality and usefulness of our minority ownership policy, as its intent was expressed in the comparative preference proposed for minority low power applicants. We shall continue to award a comparative merit on this basis in the comparative hearing. *See also*, Policy Statement on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 (1978).

81. *Low Power License Renewal.* As proposed in the Notice, we are not now modifying the standards governing contested and comparative renewals. *See*, Notice, 45 FR at 69189 n. 60. Contested renewals will be handled in the manner that full service stations are at present. The license term for translators and low power stations will be five years, in accordance with the amendment to § 73.1020(a) contained in the *Order*, FCC 81-497 (adopted October 30, 1981; released November 2, 1981). An abbreviated renewal form will be used, in conformity with the Commission's practice for full service stations. *See*, Revision of Application for Renewal of License of Commercial and Noncommercial AM, FM and Television Licensee, 46 FR 26236 (published May 11, 1981).

82. *Modifications to the License.* Sections 73.3572(a) and 74.751 currently require formal application for various equipment changes, channel changes, power changes, transmitter location changes and/or change in the primary station being rebroadcast. We are modifying this rule to include facilities or other modifications that would have a significantly greater or different preclusive effect than the existing authorization, including power or frequency change, certain equipment or other engineering modification and change in transmitter location (present § 74.751(b) (1–5), (f) and (c)). Applications for such modifications will be treated as applications for major modification and be placed on "A" cut-off lists, subject to competing applications and petitions to deny. Transfer of ownership or control will not be considered a major modification, but applications for transfer will be subject to petitions to deny. Present or future translator licensees wishing to include low power features must notify the Commission in a manner that indicates an understanding of the additional rules with which they must comply, *e.g.*, the operator requirements. Those wishing to change the primary station being retransmitted (present § 74.751(b)(6)) will be subject only to a notification requirement.

VII. Low Power Station Operation

83. The Commission's ownership rules are informed by two related policies. The prohibitions upon multiple ownership at once are designed to encourage diversity of voices in the marketplace of ideas and to foster competition by preventing undue concentration of control of telecommunications facilities. The present rules are structured as barriers to entry imposed on proscribed entities in proscribed markets.[72] In a new service, whose viability is unknown and probable competitive impact on other telecommunications services is believed not to be significant cannot yet accurately be predicted, we must exercise no less care to assure that we do not create entry barriers that fetter the development of the service. Ideally, the service effectively will compete with other video services and thus stimulate their responsiveness to market forces, and low power stations will compete with each other in a manner that promotes superior service within the low power service itself.

84. Ownership of translators did not raise the issue of diversity of voices, translators being repeater stations only. In the present ownership regulations, translators are regarded as mere extensions of the primary station and not as new voices. The present rules regarding translator ownership are:

(1) Commercial television stations may not own or financially support VHF translators in distant markets not operating on assigned channels. Section 74.732(e)(1) and (2).

(2) Cable systems may not own translators licensed to the community in which the cable system is franchised. Section 76.501(a)(3).

(3) No VHF translators may be licensed in areas receiving satisfactory service from UHF television stations or UHF translators, except where particular circumstances warrant. Section 74.732(d).

(4) Translators operating at maximum power on assigned channels may be authorized only to existing licensees of television stations, unless non-licensee applicants demonstrate the technical capability to operate them. Section 74.732(i).

The *Notice* proposed deletion of the first, third and fourth rules cited above. It also proposed that cable systems be permitted to own translators, but no originating or subscription low power stations, within their franchise areas. Few commenters take issue with deletion of §§ 74.732(e)(1) and (2), 74.732(d) and 74.732(i), affirming our belief that it is in the public interest to do so. Cable/low power cross ownership is discussed in greater detail, *infra*.

85. Several additional ownership restrictions were proposed for low power stations, but not translators, on the theory that low power stations should be treated as "voices" in the first amendment sense:

(1) A *duopoly* rule, which prohibits commonly-owned stations in the *same service* with overlapping contours.

(2) A *one-to-a-market* rule, which prohibits commonly-owned stations *in different services* with overlapping contours.

(3) The three national networks (*see*, § 73.658(l)(1)(v)) would not be permitted to own any low power stations.

The duopoly and one-to-a-market rules would apply to noncommercial, as well as commercial, low power stations. No newspaper/low power cross ownership rule was proposed. Nor was a limit proposed on the maximum number of low power stations permitted in common ownership.[73] No rule restricting regional concentration of control was proposed.

86. As the comment summary reveals, there are comments virtually on all sides of the ownership issues, with public interest groups generally supporting restrictions and broadcasters generally opposing restrictions. Citizens and consumer groups and other proponents of ownership restrictions tend to characterize the proposed ownership restrictions as devices designed to promote diversity and competition. Those opposing restrictions consider them unnecessary barriers to entry into the low power service. We find that in today's telecommunications environment in which there are an increasing number of avenues on which to communicate, there may be less need for structural restrictions designed to facilitate diverse entrants. That is, the increasing availability of other technologies for telecommunications itself is providing additional modes of access that reduce the efficacy of the scarcity rationale. These general arguments may be applied to each of the rules proposed.

87. *Duopoly rule.* The proposed duopoly rule is opposed particularly by those wishing to operate multiple-channel subscription systems via low power. They argue that STV may be distinguished from true origination on low power STV systems that merely retransmit terrestrial microwave or

[72] It is our intention presently to re-examine in a separate proceeding the efficacy of the Commission's ownership rules and policies in light of the conditions that prevail in today's telecommunications marketplace. Until such time as that is accomplished with respect to all broadcast services, we shall endeavor to enact flexible ownership policies for the low power service that are sensitive to the environment in which the service will develop. The low power rules of course would be subject to modification, should they deviate significantly from future revisions in our overall ownership policy.

[73] A limit of 15 stations in common ownership was imposed during the pendency of the rule making only. *See*, Memorandum Opinion and Order, 46 FR 10728 (published February 4, 1981).

satellite feed; therefore, low power STV need not be considered a separate "voice" for multiple ownership purposes. Also, they contend that only with multiple channel capacity can low power STV compete effectively with cable.[74] A number of comments advocate waiver of the duopoly restriction in rural areas, at least for low power STV, on the grounds that spectrum is less scarce in rural areas and viability also is less certain.

88. The Justice Department is among those who believe that a duopoly rule promotes competition.[75] The worst-case scenario is that, in the absence of a duopoly prohibition, one entity will gain control of all available low power outlets in a community, when there are others who would, if they could obtain licenses, provide greater diversity. On the other hand, it is possible to envision more or less rural markets where only one entrepreneur would be willing to operate, using more than one channel, on a subscription basis or otherwise; if he is permitted to operate on only one channel, the other availabilities may lie fallow into the indefinite future, or he will choose not to initiate a single-channel operation, and the public will be deprived of service altogether. The irony of this situation is that it is precisely in markets that currently have the least service, where the viability of low power is the least certain, that have the greatest need for low power. On balance, we believe the public best may be served if we do not impose a duopoly restriction in the low power service. Therefore, we shall not do so.

89. *One-to-a-market rule.* Many commenters oppose a one-to-a-market rule, especially in the radio/low power context. Convincing arguments are made that local radio licensees already have broadcast expertise, already may have access to local and or national news services, already are familiar with the local community and may have the financial wherewithal to cross subsidize a low power operation with revenues from other broadcast properties. We agree that ownership rules that effectively restrict the entry of those with prior expertise or financial capacity can work to the detriment of a new service. Also, there may be significant economies in same-market ownership of a low power station and a broadcast station in another service. We note that the full service television/low power cross ownership situation closely resembles a duopoly situation, depending upon the nature of the low power operation, *i.e.*, a free full service station and STV low power station that merely broadcasts satellite feed actually may be quite different and appeal to different audiences. While the proponents of a one-to-a-market rule argue that it will have the effect of promoting diversity and competition, we find the countervailing arguments in favor of free entry persuasive, especially in the context of a new service whose viability is undetermined. Moreover, where there are competing applicants, the comparative process will favor diversification. In a comparative situation new entrants will be favored, while current licensees will not be precluded from areas where new entrants may not wish to propose service.

90. *Network ownership of low power stations.* The three commercial networks express opposition to the prohibition on their ownership of low power stations that was proposed. They argue that their expertise can be put to good use in ensuring the viability of the fledgling service and that they are in a favorable position to develop and introduce new technological advances via low power. They dispute the contention of the Justice Department that network ownership of low power stations is highly anticompetitive and will preclude new entrants from the field. The networks cite in support of their position the Network Inquiry Staff Report's conclusion that group owners have an incentive to air diverse programming on co-owned stations, to maximize audience, rather than airing similar programming that could have the effect of fragmenting audience among several co-owned stations. We do not have sufficient evidence of the magnitude of the anticompetitive potential of network ownership of low power stations to justify implementing the rule proposed at this time. Both for this reason, and because we believe that the networks can, as they claim, contribute to the development of the fledgling low power service, we shall not prohibit network ownership of low power stations.

91. *Multiple ownership of low power stations.* A number of commenters advocate a limit on the number of low power stations, on diversity and competition grounds. We are encouraged to impose limits of between five and 25 on the number of stations the Commission would permit to a common owner; however, we are afforded no convincing reason, other than general administrative efficiency in application processing, for the choice of any particular number. Others point out that there are economies of scale in multiple ownership that may be essential to viability in the low power service. As stated in paragraph 78, above, the Commission's ownership rules have a dual purpose: prevention of undue concentration and promotion of diversity. The over 6,000 applications currently on file evince an array of diverse kinds of applicants and program proposals. And, as we stated in the *Notice:* "The concern for anticompetitive effects is lessened where the stations are both secondary and inherently limited in their coverage potential." 45 FR at 69184. The comments do not persuade us to the contrary. That is, we regard low power as neither a significant and general enough competitive threat to other broadcast services nor sufficiently distinct as a market in itself that monopolization should be considered a serious or dangerous enough possibility to warrant structural restraints on ownership. Should a real threat of inappropriate economic concentration arise as the service develops, it can be addressed via antitrust enforcement or by the Commission in appropriate proceedings.

92. We are told by some commenters that a ceiling on multiple ownership would prevent low power network formation. We believe, however, that program-oriented networking of stations can occur other than via common ownership of numerous stations. Affiliation for program distribution or syndication is an alternative. Also, a series of satellite or terrestrial microwave interconnected translators may be used to relay programming originated by one low power station. This suggests that common ownership of a number of low power stations is not necessary to the provision of common programming. However, with a network consisting on commonly-owned low

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[74] We perceive a difficulty in justifying a different ownership rule for STV low power stations. It is unlikely that they will operate on a subscription basis during all their hours of operation, although we are not adopting rules prohibiting this. When STV low power stations are operating in a free mode, they are indistinguishable from other low power stations, and we encourage some local origination on each station with the authority to do so.

[75] The comments afford two contradictory economic theories that predict the behavior of common owners of stations in the same service in the same market. There may be an incentive not to actualize fully the potential of one commonly-owned facility, in order not to draw from the audience of the other. On the other hand, in a more formated service, an owner might attempt to attract different audiences with different kinds of programming on each commonly-owned station, and to add to the total audience without fragmenting the audience of either station. The Commission's Network Inquiry Staff Report, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, October, 1980, describes such a result. The nature of the of the particular market would seem to be essential to realistic prediction of the whether in fact this will occur.

power stations, as opposed to translators, the potential exists for each station to originate some programming targeted to discrete local or regional interests. This is a result that we would encourage. Additionally, there may be economies of scale in common ownership of a number of low power stations other than those related to program acquisition or distribution. It is our present belief that the potential economic savings of multiple ownership far outweigh a remote potential of undue concentration. For this reason, we are not imposing a ceiling on the number of low power stations that may be owned in common. We also shall not impose a rule relating to regional concentration of control.

93. *Low power/cable cross ownership.* The cable/low power cross ownership issue is treated similarly in the comments to cross ownership of low power and other broadcast services. The Justice Department is among those that believe that a cable system owning a low power station in its franchise area has an incentive not to maximize the potential of the low power station, because it would compete with the cable system. Other commenters argue that there may be rural areas where the cable operator is the sole potential low power licensee, and that in such cases diversity will be enhanced, not inhibited by cable/low power cross ownership.[76] We note that issues affecting cable cross ownership are under separate consideration.[77] Without prejudging any subsequent proceeding involving the full service/cable cross ownership rules, we believe that in the low power service, the possible economies of scale, including those relating to program distribution, favor our permitting cable/low power cross ownership. Therefore, we believe that there should be no restraints on cable/translator cross ownership.

94. *Summary.* As the preceding discussion indicates, the primary considerations that inform our deliberations on all aspects of the ownership policy are that low power may provide an opportunity for new entrants into the telecommunications industry at lower cost than would be incurred in starting full service stations or cable systems. Because of both the low cost and the comparative criterion favoring diversification, even absent ownership restrictions, it is unlikely that new entrants will be precluded by existing broadcasters. Additionally, in some areas, the development of the service itself might be fettered irretrievably, were we to impose inviolable rules that eliminate experienced broadcasters with the potential to make the service viable. This is so particularly in markets where an owner of other broadcast properties might be the sole potential entrant. Furthermore, NTIA points out in comments that an alternative to imposition of ownership rules that accommodate the latter concern is the adoption of policies that apply in the comparative situation. That is, ownership of other local or distant outlets would not be considered when no one but a sole applicant is applying for the frequency; but only when there are competing applications. NTIA suggests that in such cases a comparative demerit or disadvantage be given to applicants that already own facilities, in local or distant markets. This approach resembles that taken in the traditional comparative hearing context, where diversification of ownership is part of the standard comparative issue among competing applicants, and we are continuing to apply that criterion in the low power service.

95. In summary, we are adopting no ownership restrictions *per se* for the low power service. This approach is in accord with our general belief that free entry into and out of the low power industry will best serve potential applicants and also the public. Low power stations have limited coverage potential, which effectively limits the area from which advertising support may be garnered; their secondary status poses the possibility that they might be required to alter facilities or cease operation at any time; the majority of channel availabilities are in rural areas, where viability generally is less certain than in urbanized areas. We believe these factors augur in favor of permitting experienced participants in the market to pioneer the low power service and outweigh our traditional concerns regarding multiple and cross-ownership. We do not wish to discourage new entrants, and we note again that the comparative criterion favoring diversification will inure to their benefit. However, we also recognize the important role those with proven track records may play in the development of the service, particularly in localities that individuals inexperienced in the market may perceive as posing too great an economic risk to warrant entry.

VIII. Low Power Station Operation

96. *Construction Permit.* Section 73.3598(b) will be applied to low power, and the Commission will strictly enforce the requirement that construction must be completed and the station be operational within twelve months of issuance of the authorization, or the construction permit must be turned back to the Commission. We envision no extensions of time with regard to this rule, the only possible exception being documented evidence of unforeseen and unavoidable delay in delivery of equipment that was contracted for properly. We do not believe this rule is overly stringent, in light of the relatively minimal burdens of construction of low power stations, as compared with full service stations. Section 73.3597 (e) and (f), which prohibits payments upon assignment or transfer or a construction permit from exceeding reimbursement of the transferor's expenses and limits the equity interest that a transferor or assignor may retain in the permittee to a proportion equal to the transferor's capital contribution, until the station commences program test operations, also will be strictly applied in the low power context, as with the other broadcast services. This appears to be an area in which Sections 301 and 304 of the Communications Act, as well as general public interest concerns, dictate that regulation should be continued. Sections 301 and 304 provide, *inter alia*, that licenses issued by the Commission convey no property interest. Allowing profit to be obtained upon transfer of a construction permit prior to commencement of program test operations appears to violate this prohibition. The permittee would appear to have nothing to convey for profit beyond the mere expectation of future profits that appends to the permit itself. Also, implicit in the filing of an application is an intent to construct a station and commence service. To maintain the integrity of the Commission's processes and to encourage the expeditious introduction

[76] We believe that this would depend on the nature of the particular market: where a cable operator has little hope of garnering additional subscribers, there may be an incentive to maximize total audience with a low power operation. On the other hand, where there is head-to-head competition between cable and low power for audience, the service affording the lowest marginal cost per viewer, or greatest profit margin per viewer, may be favored by a common owner.

[77] *See, Staff Report, FCC Policy on Cable Cross Ownership*, November, 1981. We believe that permitting cable/low power cross ownership could provide valuable data for any proceeding that is initiated regarding cable cross ownership, in general. We received little commentary regarding the proposed deletion of § 76.501(a)(3), which prohibits cable/translator cross ownership. We note that, where there are competing applicants for a translator, one a cable operator and one unaffiliated, the comparative criteria would favor the unaffiliated applicant. As the Staff Report pointed out in paragraph 362, this is the only area of real concern.

of new service in an environment in which free transferability of stations is permitted, we believe it is in the public interest that § 73.3597 (e) and (f) be maintained for the low power service.

97. *License.* We received one comment seeking that the format for the call sign for low power stations be changed to a five-letter one resembling the four-letter call signs assigned to full service stations. We believe that the confusion that is likely to result from such a change, as well as the administrative inconvenience of carrying it out, are not justified by the result. Therefore, we shall continue to assign low power call signs as we assign translator call signs.

98. We proposed in the Notice that § 73.3597 (a) through (d), the "three year rule" not apply to low power stations. We opined that permitting free transferability of stations would encourage entrants into the industry, as well as provide a useful example for reference in other contexts. Indeed, we recently have sought comments on a proposal to do away with the "trafficking" issue altogether, on the grounds that the rule no longer serves a useful purpose in the present telecommunications environment. See, Notice of Proposed Rule Making, Amendment of § 73.3597 of the Commission's rules, supra.

99. The comments on the proposal not to impose an anti-"trafficking" rule in the low power service were divided. The Justice Department supports a policy facilitating ready entry into and exit from the market. The principal objection to the absence of a "trafficking" prohibition is voiced by groups that would hope to garner preference in the competition for licenses. They complain that the preference system easily can be defeated, unless the Commission imposes either a required holding period for the original licensee, or a condition that the station be transferred only to another preferred entity. We do not gain say the cogency of this argument. However, it rests on an incorrect assumption about the purpose of a system of preferences. It is the statutory duty of the Commission to allocate the use of broadcast spectrum in a manner that best serves the public interest. This may be accomplished via comparative hearing, comparative preferences or lottery. However, requiring an unwilling licensee to retain an unwanted broadcast property hardly can result in the best service to the public. The Commission ought not to second guess private decisions that are made in response to marketplace forces, but should permit stations to be put to the highest valued use in the marketplace. Therefore, we shall not impose a "three year rule" in the low power service. We shall, however, impose a one-year holding period on new low power licenses in order to maintain the integrity of the Commission's comparative processes in situations where the constuction permit was awarded by virture of a comparative preference.

100. *Station Management.* The Commission's rules and policies governing Equal Opportunity in Employment will apply to all low power stations. Reporting requirements will apply to those with sufficient employment levels to trigger the requirements. *See,* § 73.2080 of the Rules, which imposes a reporting requirement on all stations with five or more full-time employees. While some commenters argued forcefully to the contrary, we continue to believe that Sections 318 and 325(a) of the Communications Act require that all originating low power stations have an operator holding at least a Restricted Radio Telephone Operator's Permit in continuous attendance during local originations. It appears that some parties misunderstood the nature of the requirements proposed, for a number of comments argue that a low power station merely retransmitting terrestrial microwave or satellite feed should not require a full-time operator. We proposed that, during microwave-fed retransmissions, the statutory operator requirement would be fulfilled in the same manner as the current requirement for all translators employing modulators: observation of the off-air signal for ten continuous minutes each day on a conventional television receiver. In cases of local origination, the operator must be in continuous attendance at the transmitter site, at a remote control point or at the program source. These operator requirements are neither extraordinary nor overly burdensome, and we shall maintain them until and unless they are made unnecessary by legislative change.

101. *Low Power Station Maintenance.* We shall require translator and low power licensees to comply with §§ 74.752 (c), (d) and (e) and also to measure the carrier frequencies of their output channels at least once a year, and as often as necessary to assure compliance with the frequency tolerance standards. *See,* paragraph 39, *supra.* The aural carrier frequency of stations employing modulators also must be measured, but we would permit factory measurement of the modulation characteristics. Proof of performance may be certified by a holder of a General Operator's permit.[78] Maintenance logs must be kept by all translator and low power station licensees. *See,* § 74.781.

IX. Programming

102. *Station Identification.* We shall require low power stations, during periods of program origination, to comply with the station identification requirements of full service broadcast stations. *See,* § 73.1201. However, we shall continue to allow translators, and low power stations operating in a rebroadcast mode, to be identified in accordance with the current provisions of § 74.783.

103. We believe that low power stations should be subject to a minimum of program-related regulations, so that they might be fully responsive to marketplace conditions. We received comments urging a panoply of programming rules, some even more stringent than those governing full service stations. We do believe this kind of governmental surveillance is neither necessary nor appropriate. In many instances, particularly in rural or remote areas, low power stations will be set up specifically to fill local needs. In areas where the marketplace demands coverage of local events of common interest, licensees can be expected to provide it. In some urban markets, unserved ethnic enclaves may be targeted for low power service. But in a major market that already receives adequate local coverage from several full service stations, a low power licensee may discover and attempt to fill a need for additional national news, sports or entertainment programming. Such judgments properly are left to licensees; it is in their interest, and the public's, to garner audience by attempting to serve unmet needs.

104. The principal structural limit we shall impose on low power stations with respect to programming is that the programming aired must comply with the definition of "broadcast" in the Communications Act and § 73.641(b) of the Commission's rules. Where a potential use of radio frequencies has not yet been authorized for broadcast use, it will not be permitted via low power. *See, e.g.,* Notice of Proposed Rule Making, Amendment of Part 73 to Authorize Transmission of Teletext by TV Stations, BC Docket No. 81–741, 46 FR 60851 (published December 14, 1981).

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[78] The General Radiotelephone Operator's license now is issued in place of both First and Second Class licenses. *See, Report and Order,* Docket No. 20617, Radio Operator Licensing Program, 46 FR 35450 (published July 8, 1981).

Nor may low power stations be used for private communications, a service provided more suitably by point-to-point private and common carrier services. *See, e.g.*, Report and Order, Docket No. 19493, Amendment of Parts 1, 2, 21 and 43 of the Commission's rules and regulations to Provide for Licensing and Regulation of Common Carrier Radio Stations in the multipoint Distribution Service, 45 F.C.C. 2d 616 (1974). Finally, while we repeatedly have acknowledged the difficulty of adhering strictly to any definition by which translators and low power stations may be distinguished, we continue to believe that the distinction is best framed in terms of rebroadcast versus origination. Under § 74.784 of the Commission's rules, rebroadcast is simultaneous retransmission of the signal of an existing TV broadcast station. Anything other than this is, by definition, origination, for which a low power license is required. Whether or not the low power licensee engages in any local origination, broadcasts a network feed, offers a subscription service, etc., the potential to do so defines the station.

105. *Statutory requirements.* As we have indicated, the statutory prohibitions on the broadcast of obscene material, plugola, payola and lotteries apply to the low power service. *See,* 18 U.S.C. 1304, 1464, Section 303(m)(D) of the Communications Act of 1934, as amended, and § 73.1211 of the Commission's rules. 47 CFR 73.1211 (1980). Our rule requiring fairness in licensee-conducted contests also will apply. We also shall continue to impose Fairness Doctrine obligations in the low power service only to an extent consonant with a station's origination capacity. If the Commission receives a complaint related to Part I of the Fairness Doctrine, the station may meet it by showing that it aired responsive issue-oriented programming submitted in a mode compatible with the station's origination equipment. Likewise, to meet its obligation under Part II of the Fairness Doctrine, the station must make time available, with or without sponsorship, to responsive issue-oriented programming submitted in a format compatible with the station's origination equipment. The fairness obligation would be on a sliding scale, depending upon the direct involvement of the station management in program production and decisions. Similarly, Sections 312(a)(7) and (f) and 315 will apply to low power stations, to the extent that their origination capacity permits. *See,* Alaska Public Broadcasting Commission, 82 F.C.C. 2d 220 (1980). The reasonable requests of legally qualified candidates for federal elective office who seek to purchase reasonable amounts of time or respond to their opponents' messages must be acceded to, so long as they provide program material that is compatible with the station's origination equipment. See, Public Notice, Acceptance of Political Advertising by UHF Translator Licensees, 62 F.C.C. 2d 896 (1976). Without prejudging issues in our pending rule making on DBS, we note that the hybrid nature of subscription television, which suggest that statutory provisions for broadcast stations properly may not apply to STV stations, has been raised in the DBS proceeding. *See,* note 17, *supra.* In light of the fact that numerous low power applicants envision subscription service, the resolution of that issue in the DBS proceeding may have a direct bearing on our present conclusions regarding the applicability of these statutory provision to low power STV stations.

106. We are not imposing a formal ascertainment obligation on low power stations. It is in the nature of low power stations to be familiar with and responsive to the needs of the viewers they serve. Formalizing this would be needless. To be viable in the highly competitive telecommuncations marketplace, these small stations will have to react with sensitivity to the needs and desires of their markets. Similarly, we are leaving decisions regarding commercialization and nonentertainment programming to the licensees' discretion. Such regulations also would have little public interest value. Indeed, at a time when the continuing vitality of such content-oriented regulations increasingly has been called into question even with respect to full service stations, it would be unreasonable to apply them to low power. *See, e.g.* Report and Order, Deregulation, of Radio, 84 F.C.C. 2d 968 (1981), *reconsid. denied,* 87 F.C.C. 2d 797 (1981). Consonant with this view, we are requiring no minimum hours of operation in the low power service, nor the maintenance of program logs, but only maintenance logs.

107. *Applicability of Copyright Law to Low Power Service.* As we have recognized, the copyright laws apply fully to translators and low power stations. Under the General Revision of the copyright law, Pub. L. No. 94–553, 17 U.S.C. 101 *et seq.* (1976), translator and low power operations are subject to full copyright liability, with an exception for secondary transmissions made by local governments or non-profit organizations. *See,* 17 U.S.C. 111(a)(4). Section 325(a) of the Communications Act requires the consent of the originating station for rebroadcast of programming. *Also see,* §§ 73.1207 and 74.784(b) of the rules. Retransmission consent may not unreasonably be refused. *See, e.g.,* Memorandum Opinion and Order, Docket No. 9806, 17 FR 10309 (1952). We believe that this standard is appropriate to govern the negotiations of low power operators for program services, until and unless legislative change preempts it. Presumption of rebroadcast consent, sought by National Translator Association, could amount to a substantive modification of the initial bargaining positions of the parties, one for which we do not see a necessity. Likewise, the specific standards for refusal of consent and terms for consent agreement, sought by the Washington State Association of Broadcasters, if enacted by this agency via rule making, would amount to a substantial intervention of the government in what properly should be left to private negotiations between parties at arm's length. We also believe that commercial substitution should be permitted, with consent, subject to the negotiations of the parties. Although the Washington State Association of Broadcasters opposes this, it is possible to envision a situation in which the primary station may benefit from allowing commercial substitution, and we believe the issue is best left to the parties.

108. *Low Power Subscription Service.* As we proposed, we are permitting STV via low power, at the licensees' discretion, and not subject to a "complement-of-four" restriction.[79] STV may be particularly suited to formated programming on low power stations; indeed, in some markets it may be essential to the viability of the service. We believe that STV and low power share the potential to accelerate utilization of unused channels, provide viable financial support for specialized programming and small market stations and respond to the interests of the audience. We are not requiring a separate STV authorization, although proposed subscription operation must be indicated on the application form, and existing low power licensees that are providing free service wishing to change to subscription service must so notify the Commission via an application for minor modification. We also will not require low power STV stations to file their franchise agreements with the Commission, although we shall require

[79] This rule restricts STV operations to communities within the Grade A contour of at least five commercial television stations, including that of the STV operator.

that such agreements be consistent with the rules applicable to full service STV agreements, Section 73.642(e). Licensees, however, must provide a copy of the franchise agreement for public inspection at the station office. Consonant with the First Report and Order in Docket No. 21502, adopted September 25, 1979, FCC 79–535, 45 FR 60091, published October 18, 1979, we are not setting technical compatability standards for low power STV equipment. We also are not requiring any minimum hours of free programming, because this requirement could prove overly burdensome to low power operators, and would not be consonant with the absence of minimum required hours of operation. *See,* paragraph 101, *supra.*

109. We note that several of the issues relating to STV are under separate consideration in Docket No. 21502. *See,* Further Notice of Proposed Rule Making, FCC 81–449, adopted September 30, 1981, released November 13, 1981. That document explicitly leaves resolution of STV issues related to low power to the instant proceeding. There is one area, however, where we believe the issues are more appropriately addressed in the context of the separate proceeding on STV. That area is the sale of decoders. The Notice in the instant case proposed that decoders could be sold or leased, at the low power licensee's discretion. We received some comments on both sides of this issue, including a petition seeking consolidation of the STV and low power proceedings, filed by the Subscription Television Association. While that petition was denied (*see,* Further Notice, Docket No. 21502, *supra,* paragraph 58), we believe this particular issue would be the subject of more narrowly focused debate in the proceeding focused exclusively on subscription television service, particularly because we have sought comments on a proposal to permit the sale of decoders generally in that proceeding. Therefore, we shall defer resolution of the issue of the sale of decoders in this docket, pending its resolution in Docket No. 21502.[80] Except in this respect, we believe that the functional differences between low power and full service stations, as well as the secondary nature of the low power service, and its inherently limited coverage potential, justify a distinction in regulatory treatment between full service and low power stations. Again, we note that the structuring of subscription on a broadcast model has been called into question in the DBS proceeding. *See,* note 17, *supra.* Without prejudging issues in our separate STV or DBS proceedings, we believe it is appropriate to acknowledge the possibly hybrid nature of subscription service in our treatment of low power STV stations, particularly in light of the fact that low power is something of a hybrid service itself.

110. *Network Affiliation.* In the interest of ensuring even-handed treatment of all network affiliates, full service or low power, we are requiring that any affiliation agreements between low power stations and networks will be subject to the same regulations as full service station affiliation agreements, *see,* §§ 73.658 and 73.3613 of the Commission's rules.

111. *Mandatory Carriage.* We proposed no mandatory carriage requirement of low power stations by cable systems. *See,* Notice, 45 FR at 69183 n. 31.[81] This issue was hotly contested in the comments. A number of parties, including ABC, NTA and the National Association of Low Power Broadcasters, advocate mandatory carriage, on the grounds that "may carry" status could put low power stations at a serious competitive disadvantage, especially in markets where cable penetration is high. The National Cable Television Association, on the other hand, resists "must carry" rules for low power, on the grounds that they violate the first amendment rights of cable operators to choose the programming they carry and are anticompetitive. Field adds that, without a local public service requirement, low power stations do not fulfill the intent of the "must carry" rules: maintenance of local broadcast coverage within a market.

112. We carefully have considered both sides of the dispute. We believe that the decision whether a low power station will be carried on a local cable system is one best left to the private parties. Noting that the mandatory carriage issue is under consideration in connection with pending copyright legislation, and may well be considered by the Commission in the near future, we do not wish to prejudge or preempt forthcoming developments in this area. While we are not here questioning the continuing usefulness of our rules that require carriage of local full service stations by cable systems, we believe that it is not in the public interest to extend this rule to low power stations. Low power stations are not subject to the programming obligations with regard to the community of license that form the basis for our requiring carriage of full service stations. Additionally, it will not further our goal of fostering a fully competitive telecommunications marketplace if the Commission, by regulation, injects itself between the parties to what should be a private decision-making process. The cable operator, on the basis of his own assessment of marketplace conditions, not the FCC, should decide what programming a cable system will carry, beyond that required by our present carriage rules. Indeed, it is reasonable to assume that, if a cable system has excess channel capacity, it will carry low power programming. Where there is no excess channel capacity, the cable operator should not be required to make the hard choice between the low power signal and other programming for which his subscribers may indicate demand via pay mechanisms, when he already carries the local full service stations. And where low power must compete with other program sources for cable carriage, absence of "must carry" protection could be a spur to low power's provision of creative, innovative programming. This also may encourage low power applicants to seek out remote, unserved areas where cable is thought not to be viable economically, and thereby to fill gaps in existing television coverage, a function for which low power stations are uniquely suited. It is not inconceivable that provision of a high isolation switch, so that both cable and broadcast may be received alternately on the subscriber's set, may be negotiated, at the expense of one, or both, parties in situations where a cable system truly is unwilling or unable to carry a low power station. Finally, until and unless it becomes clear that low power stations are not being carried on cable systems, we have no reason to believe that a "must carry" rule for low power will be useful or necessary.

113. *Alaska.* The Alaska Public Broadcasting Commission evinces concern that several of the technical rules proposed in the Notice (and adopted herein) for the low power service would be overly burdensome, as well as unnecessary. For example, on-site measurememt of frequency tolerance and on-site proof-of-performance certification would be prohibitively expensive, as well as unnecessary. APBC also avers that the operator requirement is unnecessary, as the Alaskan stations primarily engage in

[80] Interim low power grantees proposing STV have been informed that they may not sell decoders until the Commission finally has resolved this issue.

[81] Under the present rules, cable systems must carry, as well as full service stations, commercial translators over 100 watts and educational translators over 5 watts within a 35-mile radius of the cable system, except where this would result in substantial duplication or the cable system already carries the primary station. *See,* §§ 73.55(c)(1) and (2); 76.57(a)(2); 76.59(a)(5); and 76.61(a)(3).

rebroadcast. We acknowledge that Alaska is a "special case," because the low power concept long has been in use there, on a waiver basis, and it is the only means by which much of the State may receive television service. *See, e.g.,* Wrangell Radio Group, *supra.* We agree that the present maintenance program that the state carries out is adequate, and we shall not impose additional requirements in that area. Also, to the extent that we are adding other rules, such as the full-time operator requirement for local originations, that exceed the requirements to which the Alaskan low power facilities previously have been subjected and would be particularly burdensome in that unique environment, we shall continue to authorize waivers where appropriate.

114. *Emergency Broadcast System Participation.* Translator stations normally would carry any Emergency Action Notification alert messages originated by the full service TV broadcast station being retransmitted. However, low power stations, during periods of program origination, would have the obligation, similar to other broadcast stations, promptly to inform viewers of an Emergency Action Notification under the established Emergency Broadcast System procedures. Low power stations therefore will be expected to comply with the EBS procedures set forth in Subpart G of Part 73 of the rules with one exception because of the expected limited coverage area and unspecified operating schedule. Although encouraged to do so, low power stations will be exempted from the requirement to install the encoding device for generating the two-tone EBS attention signal. This exemption is similar to that afforded 10 watt noncommercial FM stations. Subpart G is being amended to accommodate this exemption.

X. Conclusion

115. The rules promulgated herein represent, we believe, judicious balancing of competing concerns, for spectrum, for broadcast licenses, for overall maintenance of a healthily competitive telecommunications environment. The record adduced in this proceeding proffered opinion from all sectors on all aspects of the Commission's original proposals. With the comments as a basis, we have resolved the six decision criteria with which we commenced this proceeding in 1978. In light of the comment, and the Commission's intervening experience, it will be noted, we modified, to some extent, the proposals of the Notice. The one sentiment that has remained unshaken by the controversy surrounding this proceeding is that the low power service can provide additional television service, particularly in areas where there currently is little or none.

116. The existence of so many pending applications, filed by so many eager applicants, may belie, to some degree, the uncertainties to which the fledgling service will be subjected as it becomes operational. As the public has been reminded, a low power license may not be a license to print money. It certainly is, however, a license to serve the public. It is in this spirit that we authorize the low power service today. The Commission has every hope that low power will succeed in the marketplace, adding to the mix of competitive technologies in today's telecommunications environment and acting as a bellwether for "unregulation" of the broadcast services generally.

117. *Regulatory Flexibility Act—Final Analysis.*[82]

a. *Need for and Purpose of Rules.* The rule amendments promulgated herein are necessary to achieve the goal of additional low-powered television stations, for which the record indicates an overwhelming public demand. While the Commission intends the low power service to be a largely unregulated service, it nevertheless is essential that the technical aspects of the service, from application processing to operating specifications, be strictly maintained, to ensure that low power stations do not cause destructive interference to full service stations or to each other.

In view of the unexpectedly great numbers of TV translator and low power applications filed since the initiation of the rule making, as well as additional applications anticipated upon the lifting of the present moratorium, additional technical standards were proposed in the Further Notice to facilitate more fully automated application processing. The Commission's rules for TV translators did not contain precise standards for determining mutual exclusivity between proposed stations. A mode of processing that left much to engineering judgment was believed not to be feasible for use with large numbers of competing applications. The Commission herein adopts standards of prohibited contour overlap that will facilitate automated processing.

b. *Comments.* We received little commentary directly in response to the initial Regulatory Flexibility Analysis. Several parties took issue with our prediction that the proposed technical standards would not significantly increase the burdens attendant upon preparation of the engineering section of the application. They evince particular concern about the burden of calculating antenna radiation center height above average terrain (HAAT).[83] The Commission acknowledges the possible validity of this position. However, it is our belief that the two major competing considerations, expeditious reduction of the application backlog and spectral efficiency, override the possibly increased burdens on applicants. In the long run, it is our position that the increased opportunity in broadcasting provided for small entrepreneurs by authorization of the low power service is a much more significant overall benefit of the rule changes than the details required in making an application.

c. *Alternatives Considered.* The alternatives to the mode of processing are: (1) A table of assignments for low power stations, which was ruled out as too great an administrative burden on the Commission, as well as spectrally inefficient; (2) processing using assumed antenna heights, which also is spectrally inefficient; (3) processing taking actual, instead of average terrain factors into account, which also is too cumbersome administratively and may create too great a risk of interferene; and (4) not authorizing the service at all, a result not supported by the record. The technical rules adopted herein, represent an optimal compromise between factors of spectral efficiency, prevention of undue interference, administrative efficiency and cost to both applicants and the Commission. As stated above, the overall effect of the rule changes is to create additional opportunities for small entrepreneurs to own and operate new broadcast facilities by using spectrum where full service stations would cause and sustain interference. The lower power service is subject to a minimum of regulations; however, certain technical requirements are

[82] The Notice of Proposed Rule Making in this proceeding was promulgated prior to the effective date of the Regulatory Reform Act of 1980, so that no comments on the particular impact on small businesses were elicited therein. The Further Notice of Proposed Rule Making, however, was subject to the Act. This Final Analysis addresses issues raised in the Initial Analysis, at paragraph 29, of the Further Notice.

[83] Applicants are not required to compute this figure as part of the application process. Indeed, in most cases of UHF low power applications, conformance with the "UHF" taboos, formerly in § 74.702(c)(2), will ensure a noninterfering application. However, because the Commission will make the calculation and use it in processing, it may be presumed that most, if not all, applicants will base their own engineering calculations upon HAAT.

essential to national spectrum management and compliance with these bears a cost that must be sustained by applicants and station operators.

d. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

118. In light of the foregoing and pursuant to authority contained in Sections 1, 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered, That the rule amendments set out in Appendix A are adopted, effective June 7, 1982;

119. It is further ordered, That the petitions for reconsideration of the April 9, 1981, *Order*, FCC 81–173, filed by the Association of Maximum Service Telecasters, Bogner Broadcast Equipment Corp., the National Association of Broadcasters and the National Translator Association, are dismissed; and

120. It is further ordered, That this proceeding is terminated.

121. For further information concerning this proceeding, the contact person is Edythe Wise, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

Federal Communications Commission.[84]

William J. Tricarico,

Secretary.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. Section 73.601 is revised in its entirety to read as follows:

§ 73.601 Scope of Subpart.

This subpart contains the rules and regulations (including engineering standards) governing TV broadcast stations, including noncommercial educational TV broadcast stations and, where indicated, low power TV and TV translator stations in the United States, its Territories and possessions. TV broadcast, low power TV, and TV translator stations are assigned channels 6 MHz wide, designated as set forth in § 73.603(a).

2. Section 73.903 is revised in its entirety to read as follows:

§ 73.903 Emergency Broadcast System (EBS).

The EBS is composed of AM, FM, and TV broadcast stations; low power TV stations; and non-government industry entities operating on a voluntary, organized basis during emergencies at National, State, or Operational (Local) Area Levels.

3. Section 73.904 is revised in its entirety to read as follows:

§ 73.904 Licensee.

The term "licensee" as used in this subpart means the holder of a broadcast station license granted or continuing in force under authority of the Communications Act of 1934, as amended. Such licensee includes any AM, FM, TV, or low power TV station holding a valid license, program test authorization, or other authorization permitting regular programming operation.

4. The second sentence of paragraph (b) in § 73.932 is revised to read:

§ 73.932 Radio monitoring and attention signal transmission requirements.

* * * * *

(b) *Transmission Requirement.* * * * All broadcast station licensees except noncommercial educational FM stations authorized to operate with transmitter output powers of 0.010 kW or less and low power TV stations, must install, operate, and maintain equipment capable of generating the Attention Signal (see § 73.906) to modulate the transmitter so that the signal may be broadcast to other stations.

* * * * *

5. Paragraph (c) of § 73.961 is revised by adding a sentence at the end of the text, to read as follows:

§ 73.961 Tests of the Emergency Broadcast System procedures.

* * * * *

(c) Weekly Transmission Tests of the Attention Signal and Test Script. * * * However, Class D noncommercial educational FM stations authorized to operate with transmitter output powers of 0.01 kW or less and low power TV stations need not transmit the two-tone EBS Attention Signal.

6. Section 73.1001 is amended by revising paragraph (c) to read as follows:

§ 73.1001 Scope.

* * * * *

(c) Certain provisions of this subpart apply to International Broadcast Stations (Subpart F, Part 73), TV translator stations, and low power TV stations (Subpart G, Part 74) where the rules for those services so provide.

* * * * *

7. Section 73.1010 is amended by revising paragraph (e) to read as follows:

§ 73.1010 Cross reference to rules in other Parts.

* * * * *

(e) Part 74 (Volume III), "Experimental, Auxiliary and Special Broadcast, and Other Program Distributional Services" including subparts on the following stations: A, "Experimental Television—," B, "Experimental Fascimile—," C, "Developmental—", "Instructional TV Fixed Service—," L, "FM Translator and Booster—."

§ 73.3500 [Amended]

8. Section 73.3500 is amended by revising the titles for FCC Forms 346, 347, and 348 as follows:

* * * * *

346	Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or FM Translator Station.
347	Application for a Low Power TV, TV Translator, or FM Translator Station.
348	Application for Renewal of a Low Power TV, TV Translator, or FM Translator Station License.

* * * * *

9. Section 73.3516 is amended by revising paragraph (a) to read as follows:

§ 73.3516 Specification of facilities.

(a) An application for facilities in the AM, FM, or TV broadcast services or low power TV service shall be limited to one frequency, or channel assignment, and no application will be accepted for filing if it requests alternate frequency or channel assignments.

* * * * *

10. Section 73.3533 is amended by revising paragraph (a)(7) to read as follows:

§ 73.3533 Application for construction permit.

(a) * * *

(7) FCC Form 346, "Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or FM Translator Station."

* * * * *

11. Section 73.3536 is amended by revising paragraph (a)(7) to read as follows:

[84] Statements of Commissioners Fowler, Chairman; Dawson, Washburn, Fogarty and Rivera attached.

§ 73.3536 Application for license to cover construction permit.

(a) * * *

(7) FCC Form 347, "Application for a Low Power TV, TV Translator, or FM Translator Station License."

* * * * *

12. Section 73.3539 is amended by revising paragraph (d)(8) to read as follows:

§ 73.3539 Application for renewal of license.

* * * * *

(d) * * *

(8) FCC Form 348, "Application for Renewal of Low Power TV, TV Translator, or FM Translator Station License."

* * * * *

13. Section 73.3564 is amended by revising paragraph (a) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Broadcast Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV and TV translator applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete are accepted for filing and are given file numbers. Low power TV and TV translator applications that are not complete will be returned to the applicant.

* * * * *

14. Section 73.3572 is amended by revising the headnote and paragraph (a)(1) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator station applications.

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or station location, or any change in the power or antenna location or height above average terrain (or combination thereof) that would result in a change of 50% or more of the area within the Grade B contour of the station. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area.) In the case of low power TV and TV translator stations authorized under Part 74 of this chapter, it is any change in:

(i) Frequency (output channel) assignment;

(ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters;

(v) Authorized operating power; or

(vi) Community or area to be served.

However, the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

* * * * *

15. Section 73.3580 is amended by revising the introductory texts to paragraphs (c), (d)(3), and (g) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provision of this Section, must give a notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, and International broadcast stations; low power TV stations; TV and FM translator stations; FM booster stations; and applications subject to paragraph (e) of this section. The filing notice shall be given in a newspaper either immediately following the tendering for filing of the application or amendment, or immediately following notification to the applicant by the FCC that a major change is involved requiring the applicant to give public notice pursuant to §§ 73.3571, 73.3572, 73.3573, or 73.3578.

* * * * *

(d) * * *

(3) *An applicant who files for modification, assignment or transfer of a broadcast station license* (except for International broadcast, low power TV, TV translator, FM translator, and FM booster stations) shall give notice of the filing in a newspaper as described in paragraph (c) of this section, and also broadcast the same notice over the station as follows:

* * * * *

(g) An applicant who files an application or amendment thereto for a low power TV, TV translator, FM translator, or FM booster station must give notice of this filing in a daily, weekly, or biweekly newspaper of general circulation in the community or area to be served. The filing notice will be given immediately following the tendering for filing of the application or amendment or immediately following notification to the applicant by the FCC that public notice is required pursuant to §§ 73.3571, 73.3572, 73.3573, or 73.3578.

* * * * *

16. Section 73.3594 is amended by revising the introductory text to paragraphs (a), (b), (f), and paragraph (f)(2) to read as follows:

§ 73.3594 Local public notice of designation for hearing.

(a) Except as otherwise provided in paragraph (c) of this section when an application subject to the provisions of § 73.3580 (except for applications for International broadcast, low power TV, TV translator, FM translator, and FM booster stations) is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least twice a week, for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing, in a daily newspaper of general circulation published in the community in which the station is located or proposed to be located.

* * * * *

(b) When an application which is subject to the provisions of § 73.3580 and which seeks modification, assignment, transfer, or renewal of an operating broadcast station is designated for hearing (except for applications for an International broadcast, low power TV, TV translator, FM translator, or FM booster stations), the applicant shall, in addition to giving notice of such designation as provided in paragraph (a) of this section, cause the same notice to be broadcast over that station at least once daily for 4 days in the second week immediately following the release of the FCC's order, specifying the time and place of the commencement of the hearing. In the case of both commercial and noncommercial TV broadcast stations such notice shall be broadcast orally with the camera focused on the announcer. The notice required by this paragraph shall be broadcast during the following periods:

* * * * *

(f) When an application for a low power TV, TV translator, FM translator, or FM booster station which is subject

to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the rive notice of such designation as follows: Notice shall be given at least once during the 2-week period immediately following release of the FCC's order, specifying the time and place of the commencement of the hearing in a daily, weekly or biweekly publication having general circulation in the community or area to be served. However, if there is no publication of general circulation in the community or area to be served, the applicant shall determine an appropriate means of providing the required notice to the general public, such as posting in the local post office or other public place. The notice shall state:

* * * * *

(2) The call letters, if any, of the station or stations involved, the output channel or channels of such stations, and, for any rebroadcasting, the call letters, channel and location of the station or stations being or proposed to be rebroadcast.

* * * * *

17. Section 73.3597 is amended by revising paragraphs (a)(1) and (e)(1)(i) to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

(a) * * *

(1) The application involves a low power TV, TV translator, FM translator, or FM booster station only;

* * * * *

(e) * * *

(1) * * *

(i) "Unbuilt station" refers to an AM, FM, or TV broadcast station or a low power TV station for which a construction permit is outstanding, and, regardless of the stage of physical completion, for which program tests have not commenced or, if required, been authorized.

* * * * *

18. Section 73.3598 is amended by revising paragraph (b) to read as follows:

§ 73.3598 Period of construction.

* * * * *

(b) *Other broadcast, auxiliary and Instructional TV Fixed Stations.* Each original permit for the construction of a new AM, FM, or International broadcast; low power TV; TV translator; FM translator; FM booster; broadcast auxiliary; or Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of 12 months within which construction shall be completed and application for license be filed.

19. Section 73.3613 is amended by revising paragraph (a)(1) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(a) * * *

(1) All network affiliation contracts, agreements, or understandings between a TV broadcast or low power TV station and a national, regional, or other network.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

20. Section 74.15 is amended by revising introductory text to paragraph (d) to read as follows:

§ 74.15 License period.

* * * * *

(d) Initial licenses for low power TV, TV translator, and FM translator stations will ordinarily be issued for a period running until the date specified in this section for the State or territory in which the station is located or, if issued after such date, to the next renewal date determined in accordance with this Section. When renewed, low power TV and TV translator station licenses will ordinarily be renewed for 5 years and FM translator station licenses be renewed for 7 years. However, if the FCC finds that the public interest, convenience, or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The time of expiration of all licenses will be 3 a.m., local time, on the following dates, and, thereafter, at 5-year intervals for low power TV and TV translator stations and at 7-year intervals for FM translator stations:

* * * * *

21. Section 74.432 is amended by revising paragraph (a) to read as follows:

§ 74.432 Licensing requirements and procedures.

(a) A license for a broadcast remote pickup station or system will be issued only to the licensee of an AM, FM, noncommercial educational FM, TV, or International broadcast station; low power TV station; or to an eligible network entity. To be eligible, a network entity must provide a program service for simultaneous transmission by 10 or more stations through circuit facilities available for program distribution to each affiliated station at least 12 hours of each day.

* * * * *

22. Section 74.601 is revised in its entirety to read as follows:

§ 74.601 Classes of TV broadcast auxiliary stations.

(a) *TV pickup station.* A land mobile station used for the transmission of television program material and related communications from the scenes of events occurring at points removed from the station studios to TV broadcast and low power TV stations.

(b) *TV STL station (studio-transmitter link).* A fixed station used for the transmission of television program material and related communications from the studio to the transmitter of a TV broadcast or low power TV station.

(c) *TV intercity relay station.* A fixed station used for intercity transmission of television program material and related communications for use by TV broadcast and low power TV stations.

(d) *TV translator relay station.* A fixed station used for relaying programs and signals of TV broadcast stations to LPTV, TV translator, and other communications facilities that the FCC may authorize.

(e) *TV broadcast licensee.* Licensees and permittees of both TV broadcast and low power TV stations, unless specifically otherwise indicated.

23. Section 74.602 is amended by revising paragraph (h) as follows:

§ 74.602 Frequency assignment.

* * * * *

(h) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, i.e., subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast stations, or to community antenna relay stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by stations having primary use of TV auxiliary frequencies.

24. The title of Subpart G of Part 74 is amended to read as follows:

Subpart G—Low Power TV and TV Translator Stations

25. Section 74.701 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 74.701 Definitions.

* * * * *

(f) *Low power TV station.* A station authorized under the provisions of this subpart that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service. (See § 73.641 of Part 73 of this chapter.)

(g) *Program origination.* For purposes of this part, program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV broadcast station. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.

26. Section 74.702 is revised in its entirety to read as follows:

§ 74.702 Channel assignments.

(a) An applicant for a new low power TV or TV translator station or for changes in the facilities of an authorized station shall endeavor to select a channel on which its operation is not likely to cause interference. The applications must be specific with regard to the channel requested. Only one channel will be assigned to each station.

(1) Any one of the 12 standard VHF Channels (2 to 13, inclusive) may be assigned to a VHF low power TV or TV translator station. Channels 5 and 6 are allocated for nonbroadcast use in Alaska, and will not be assigned to a VHF low power TV or TV translator station in that State.

(2) Any one of the UHF Channels from 14 to 69, inclusive, may be assigned to a UHF low power TV or TV translator station. In accordance with § 73.603(c) of Part 73, Channel 37 will not be assigned to such stations.

(3) Application for new low power TV or TV translator stations or for changes in existing stations, specifying operation on output Channels from 70 through 83 will not be accepted for filing. License renewals for TV translator stations operating on those channels will be granted only on a secondary basis to land mobile radio operations.

(b) Changes in the TV Table of Assignments (§ 73.606(b) of Part 73 of this chapter), authorizations to construct new TV broadcast stations or to change facilities of existing ones, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast station, the licensee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment.

27. Section 74.703 is revised in its entirety to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV or TV translator station or for changes in the facilities of an authorized station will not be granted when it is apparent that interference will be caused. The licensee of a new low power TV or TV translator station shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707.

(b) It shall be the responsibility of the licensee of a low power TV or TV translator station to correct at its expense any condition of interference to the direct reception of the signals of a TV broadcast station operating on the same channel as that used by the low power TV or TV translator station or on an adjacent channel, which occurs as the result of the operation of the low power TV or TV translator station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV or TV translator station, regardless of the quality of such reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV or TV translator stations shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low power TV or TV translator licensee to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV or TV translator station is absolved of further responsibility.

(c) It shall be the responsibility of the licensee of a low power TV or TV translator station to correct any condition of interference which results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by the spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) When a low power TV or TV translator station causes interference to a CATV system by radiations within its assigned channel at the cable headend or on the output channel of any system converter located at a receiver, the earlier user, whether cable system or low power TV or TV translator station, will be given priority on the channel, and the later user will be responsible for correction of the interference.

(e) Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation.

(f) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, D.C., after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

28. New § 74.705 is added to read as follows:

§ 74.705 TV broadcast station protection.

(a) The TV broadcast station protected contour shall be its Grade B contour as defined in § 73.683 of Part 73 of this chapter.

(b)(1) An application to construct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel TV broadast station.

(2) Due to the frequency spacing which exists between TV Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, adjacent channel protection standards shall not be applicable to these pairs of channels. (See § 73.603(a) of Part 73 of this chapter.)

(3) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site within the UHF TV broadcast station's protected contour and proposes operation on a channel either 14 or 15 channels above the channel in use by the TV broadcast station.

(4) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF TV broadcast station operating on a channel which is the seventh channel above the requested channel.

(5) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF TV broadcast station operating on a channel which is the second, third, fourth, or fifth channel above or below the requested channel.

(c) The low power TV or TV translator station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F (50, 10) charts) of Part 73 of this chapter.

(2) For low power TV or TV translator applications that do not specify the same channel as the TV broadcast station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV or TV translator station application will not be accepted if the ratio in dB of its field strength to that of the TV broadcast station at its protected contour fails to meet the following:

(1) −45 dB for co-channel operations without offset carrier frequency operation or −28 dB for offset carrier frequency operation. An application requesting offset carrier frequency operation must include the following:

(i) A requested offset designation (zero, plus, or minus) identifying the proposed direction of the 10 kHz offset from the standard carrier frequencies of the requested channel. If the offset designation is not different from that of the station being protected, the −45 dB ratio must be used.

(ii) A description of the means by which the low power TV or TV translator station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

(2) 6 dB when the protected TV broadcast station operates on a VHF channel that is one channel above the requested channel.

(3) 12 dB when the protected TV broadcast station operates on a VHF channel that is one channel below the requested channel.

(4) 15 dB when the protected TV broadcast station operates on a UHF channel that is one channel below the requested channel.

(5) 23 dB when the protected TV broadcast station operates on a UHF channel that is fourteen channels below the requested channel.

(6) 6 dB when the protected TV broadcast station operates a UHF channel that is fifteen channels below the requested channel.

29. New § 74.707 is added to read as follows:

§ 74.707 Low power TV and TV translator station protection.

(a)(1) A low power TV or TV translator will be protected from interference from other low power TV and TV translator stations within the following predicted contours:

(i) 62 dBu for stations on Channels 2 through 6;

(ii) 68 dBu for stations on Channels 7 through 13; and

(iii) 74 dBu for stations on Channels 14 through 76.

(2) The low power TV or TV translator station protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(b)(1) An application to constuct a new low power TV or TV translator station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel low power TV or TV translator station.

(2) Due to the frequency spacing which exists between TV Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, adjacent channel protection standards shall not be applicable to these pairs of channels. (See § 73.603(a) of Part 73 of this chapter.)

(3) A UHF low power TV or TV translator construction permit application will not be accepted if it specifies a site within the UHF low power TV or TV translator station's protected contour and proposes operation on a channel either 7 channels below or 14 or 15 channels above the channel in use by the low power TV or TV translator station.

(c) The low power TV or TV translator construction permit application field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50,10) charts) of Part 73 of this chapter.

(2) For low power TV or TV translator applications that do not specify the same channel as the low power TV or TV translator station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV or TV translator station application will not be accepted if the ratio in dB of its field strength to that of the authorized low power TV or TV translator station at its protected contour fails to meet the following:

(1) −45 dB for co-channel operations without offset carrier frequency operation or −28 dB for offset carrier frequency operation. An application requesting offset carrier frequency operation must include the following:

(i) A requested offset designation (zero, plus, or minus) identifying the proposed direction of the 10 kHz offset from the standard carrier frequencies of the requested channel. If the offset designation is not different from that of the station being protected, or if the station being protected is not maintaining its frequencies within the tolerance specified in § 74.761 for offset operation, the −45 dB ratio must be used.

(ii) A description of the means by which the low power TV or TV translator station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

(2) 6 dB when the protected low power TV or TV translator station operates on a VHF channel that is one channel above the requested channel.

(3) 12 dB when the protected low power TV or TV translator station operates on a VHF channel that is one channel below the requested channel.

(4) 15 dB when the protected low power TV or TV translator station operates on a UHF channel that is one channel above or below the requested channel.

(5) 0 dB when the protected low power TV or TV translator station operates on a UHF channel that is seven channels above the requested channel.

(6) 23 dB when the protected low power TV or TV translator station operates on a UHF channel that is fourteen channels below the requested channel.

(7) 6 dB when the protected low power TV or TV translator station operates on a UHF channel that is fifteen channels below the requested channel.

30. New §74.709 is added to read as follows:

§ 74.709 Land mobile station protection.

(a) Stations in the Land Mobile Radio Service, using the following channels in the indicated cities will be protected from interference caused by low power TV or TV translator stations, and low power TV and TV translator stations must accept any interference from stations in the land mobile service operating on the following channels:

City	Channels	Coordinates	
		Latitude	Longitude
Boston, MA	14, 16	42°21'24"	071°03'24"
Chicago, IL	14, 15	41°52'28"	087°38'22"
Cleveland, OH	14, 15	41°29'51"	081°41'50"
Dallas, TX	16	32°47'09"	096°47'37"
Detroit, MI	15, 16	42°19'48"	083°02'57"
Houston, TX	17	29°45'29"	095°21'37"
Los Angeles, CA	14, 20	34°03'15"	118°14'28"
Miami, FL	14	25°46'37"	080°11'32"
New York, NY	14, 15	40°45'06"	073°59'39"
Philadelphia, PA	16, 20	39°56'58"	075°09'21"
Pittsburgh, PA	14, 16	40°26'19"	080°00'00"
San Francisco, CA	16, 17	37°46'39"	122°24'43"
Washington, DC	17, 16	38°53'51"	077°09'33"

(b) The protected contours for the land mobile radio service are 130 kilometers from the above coordinates, except where limited by the following:

(1) If the land mobile channel is the same as the channel in the following list, the land mobile protected contour excludes the area within 145 kilometers of the corresponding coordinates from list below. Except if the land mobile channel is 15 in New York or Cleveland or 16 in Detroit, the land mobile protected contour excludes the area within 95 kilometers of the corresponding coordinates from the list below.

(2) If the land mobile channel is one channel above or below the channel in the following list, the land mobile protected contour excludes the area within 95 kilometers of the corresponding coordinates from the list below.

City	Channel	Coordinates	
		Latitude	Longitude
San Diego, CA	15	32°41'48"	116°58'10"
Waterbury, CT	20	41°31'02"	072°01'00"
Washington, DC	14	38°57'17"	077°00'17"
Washington, DC	20	38°57'48"	077°08'18"
Champaign, IL	15	40°04'11"	087°54'45"
Jacksonville, IL	14	39°45'52"	090°30'29"
Ft. Wayne, IN	15	41°05'25"	085°10'42"
South Bend, IN	16	41°39'20"	086°12'44"
Salisbury, MD	16	38°24'16"	075°34'45"
Mt. Pleasant, MI	14	43°34'24"	084°46'21"
Hanover, NH	15	43°42'30"	072°09'16"
Canton, OH	17	40°51'04"	081°16'37"
Cleveland, OH	19	41°21'19"	081°44'24"
Oxford, OH	14	39°30'28"	084°44'09"
Zanesville, OH	18	39°56'42"	081°59'06"
Elmira-Corning, NY	18	42°06'20"	076°52'17"
Harrisburg, PA	21	40°30'44"	076°52'09"
Johnstown, PA	19	40°19'47"	078°53'48"
Lancaster, PA	15	40°15'45"	076°27'49"
Philadelphia, PA	17	40°02'30"	075°14'24"
Pittsburgh, PA	18	40°26'46"	079°57'51"
Scranton, PA	18	41°10'56"	075°52'21"
Parkersburg, WV	15	39°20'50"	081°33'56"
Madison, WI	15	43°03'01"	089°29'15"

(c) A low power TV or TV translator station application will not be accepted if it specifies a site that is within the protected contour of a co-channel or first adjacent channel land mobile assignment.

(d) The low power TV or TV translator station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) The field strength is calculated using Figure 10c of § 73.699 (F(50, 10) charts) of Part 73 of this chapter.

(2) A low power TV or TV translator station application will not be accepted if it specifies the same channel as one of the land mobile assignments and its field strength at the land mobile protected contour exceeds 52 dBu.

(3) A low power TV or TV translator station application will not be accepted if it specifies a channel that is one channel above or below one of the land mobile assignments and its field strength at the land mobile protected contour exceeds 76 dBu.

(e) In order to protect stations in the Offshore Radio Telecommunications Service, a low power TV or TV translator station construction permit application specifying operation on Channel 17 will not be accepted if it specifies a latitude south of the line 31°30′ North, and between longitudes 86°30′ West and 95°30′ West. An application specifying operation on either Channel 16 or Channel 18 will not be accepted if it specifies a latitude south of the line 31°00′ North and between longitudes 87°00′ West and 95°00′ West.

31. Section 74.731 is amended by adding new paragraphs (g), (h), (i), and (j) to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(g) Low power TV stations may operate under the following modes of service:

(1) As a TV translator station, subject to the requirements of this Part;

(2) For origination of programming and commercial matter as defined in § 74.701(f);

(3) For the transmission of subscription television broadcast (STV) programs, intended to be received in intelligible form by members of the public for a fee or charge, subject to the provisions of §§ 73.642(e) and (f)(3), and 74.644.

(h) A low power TV station may not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution or relaying.

(i) Low power TV stations are subject to no minimum required hours of operation and may operate in any of the 3 modes described in paragraph (g) of this section for any number of hours.

(j) An applicant for a 1 kW UHF TV translator station to operate on a channel assigned to a TV broadcast station which is not in operation, shall notify the licensee or permittee of the TV broadcast station, in writing of the filing of the application and shall certify to the FCC that such notice has been given.

32. Section 74.732 is revised in its entirety to read as follows:

§ 74.732 Eligibility and licensing requirements.

(a) Subject to the restrictions described in paragraph (e) of this section, a license for a low power TV or TV translator station may be issued to any qualified individual, organized group of individuals, broadcast station licensee, or local civil governmental body.

(b) More than one low power TV or TV translator station may be licensed to the same applicant whether or not such stations serve substantially the same area. Low power TV and TV translator stations are not counted for purposes of § 73.636 of Part 73 of this chapter, concerning multiple ownership.

(c) Only one channel will be assigned to each low power TV or TV translator station. Additional low power or translator stations may be authorized to provide additional reception. A separate application is required for each station and each application must be complete in all respects.

(d) The FCC will not act on applications for new low power TV or TV translator stations or for changes in facilities of existing stations when such changes will result in an increase in signal range in any horizontal direction until at least 30 days have elapsed since the date on which "Public Notice" is given by the FCC of acceptance for filing of such application, in order to afford interested parties opportunity to comment and afford opportunity for competing applications to be filed.

(e) A proposal to change the primary TV station being retransmitted or an application of a licensed translator station to include low power TV station operation, i.e., program origination or

subscription service will be subject only to a notification requirement.

(f) Applications for transfer of ownership or control of a low power TV or TV translator station will be subject to petitions to deny.

33. Section 74.734 is revised in its entirety to read as follows:

§ 74.734 Attended and unattended operation.

(a) In all circumstances other than during local origination (see § 74.701(g)), low power TV and TV translator stations may be operated without a licensed radio operator in attendance if the following requirements are met:

(1) If the transmitter site cannot be promptly reached at all hours and in all seasons, means shall be provided so that the transmitting apparatus can be turned on and off at will from a point that readily is accessible at all hours and in all seasons.

(2) The transmitter also shall be equipped with suitable automatic circuits that will place it in a nonradiating condition in the absence of a signal on the input channel or circuit.

(3) The transmitting and the ON/OFF control, if at a location other than the transmitter site, shall be adequately protected against tampering by unauthorized persons.

(4) The FCC shall be supplied with the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the transmitter promptly should such action be deemed necessary by the FCC. Such information shall be kept current by the licensee.

(5) In cases where the antenna and supporting structure are considered to be a hazard to air navigation and are required to be painted and lighted under the provisions of Part 17 of the Rules, the licensee shall make suitable arrangements for the daily observations, when required, and lighting equipment inspections required by §§ 17.37 and 17.38 of the FCC rules.

(6) In the case of a low power TV or TV translator station using modulating equipment, observation of the transmitted program signal on a suitable receiver shall be made for at least 10 continuous minutes each day by a person designated by the licensee, who shall institute measures sufficient to assure prompt correction of any condition of improper operation that is observed.

(b) An application for authority to construct a new low power TV station (when rebroadcasting the programs of another station) or TV translator station or to make changes in the facilities of an authorized station, and that proposes unattended operation, shall include an adequate showing as to the manner of compliance with this section.

34. Section 74.735 is amended by revising paragraphs (a), the introductory text of paragraph (b), and paragraphs (c), (d), and (e); and adding new paragraph (f) to read as follows:

§ 74.735 Power limitation.

(a) The power output of the final radiofrequency amplifier of a VHF low power TV or TV translator station, except as provided for in paragraphs (d) and (f) of this section shall not exceed 0.01 kW peak visual power. A UHF station shall be limited to a maximum of 1 kW peak visual power, except as provided for in paragraph (f) of this section. In no event shall the transmitting apparatus be operated with a power output in excess of the manufacturer's rating.

(b) In individual cases, the FCC may authorize the use of more than one final radio frequency amplifier at a single VHF or UHF station under the following conditions:

* * * * *

(c) No limit is placed upon the effective radiated power that may be obtained by the use of horizontally or vertically polarized directive transmitting antennas, provided the provisions of §§ 74.705, 74.707, and 74.709 are met.

(d) VHF low power TV and TV translator stations authorized on channels listed in the TV table of allocations (see §73.606(b) of Part 73 of this Chapter) will be authorized a maximum output power of the radio frequency amplifier of 0.1 kW peak visual power.

(e) The power output of the final radio amplifier of a VHF or UHF transmitter may be fed into a single transmitting antenna, or may be divided between two or more transmitting antennas or antenna arrays in any manner found useful or desirable by the licensee.

(f) A station proposing to use antenna(s) designed for circularly polarized radiation may be authorized to use a type accepted transmitter or parallel connected of two type accepted translator amplifiers to operate at peak visual output power of twice that specified under the maximum transmitter power limitations given above in this section.

35. Section 74.736 is amended by revising paragraph (a) to read as follows:

§ 74.736 Emissions and bandwidth.

(a) The license of a low power TV or TV translator station authorizes the transmissions of the visual signal by amplitude modulation (A5) and the accompanying aural signal by frequency modulation (F3).

* * * * *

36. Section 74.737 is revised in its entirety to read as follows:

§ 74.737 Antenna location.

(a) An applicant for a new low power TV or TV translator station or for a change in the facilities of an authorized station shall endeavor to select a site that will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station, if any, that will be retransmitted.

(b) The transmitting antenna should be placed above growing vegetation and trees lying in the direction of the area intended to be served, to minimize the possibility of signal absorption by foliage.

(c) A site within 8 kilometers of the area intended to be served is to be preferred if the conditions in paragraph (a) of this section can be met.

(d) Consideration should be given to the accessibility of the site at all seasons of the year and to the availability of facilities for the maintenance and operation of the transmitting equipment.

(e) The transmitting antenna should be located as near as is practical to the transmitter to avoid the use of long transmission lines and the associated power losses.

(f) Consideration should be given to the existence of strong radio frequency fields from other transmitters at the site of the transmitting equipment and the possibility that such fields may result in the retransmissions of signals originating on frequencies other than that of the primary station being rebroadcast.

37. Section 74.750 is amended by revising the headnote and paragraphs (a), (b), the introductory text to paragraph (c), (c)(3)(iii), (c)(5), (c)(7), the introductory text to paragraph (d), (d)(1), (e)(1), (e)(2), (e)(3), and (g) to read as follows:

§ 74.750 Transmission system facilities.

(a) Application for new low power TV and TV translator stations and for increased transmitter power for previously authorized facilities will not be accepted unless the transmitter is listed in the FCC's list of equipment type accepted for licensing under the provisions of this subpart.

(b) Transmitting antennas, antennas used to receive the signals to be

rebroadcast, and transmission lines are not type accepted by the FCC. External preamplifiers also may be used provided that they do not cause improper operation of the transmitting equipment, and use of such preamplifiers is not necessary to meet the provisions of paragraph (c) of this section.

(c) The following requirements must be met before low power TV and TV translator transmitters will be type accepted by the FCC:

* * * * *

(3) * * *

(iii) Plus or minus 1 kHz of its rated frequency for transmitters to be used at stations employing offset carrier frequency operation.

* * * * *

(5) The apparatus must be equipped with automatic controls that will place it in a non-radiating condition when no signal is being received on the input channel, either due to absence of a transmitted signal or failure of the receiving portion of the facilities used for rebroadcasting the signal of another station. The automatic control may include a time delay feature to prevent interruptions caused by fading or other momentary failures of the incoming signal.

* * * * *

(7) The transmitters of over 0.001 kW peak visual power (0.002 kW when circularly polarized antennas are used) shall be equipped with an automatic keying device that will transmit the call sign of the station, in International Morse Code, at least once each hour during the time the station is in operation when operating in the translator mode retransmitting the programming of a TV broadcast station. However, the identification by Morse Code is not required if the licensee of the low power TV or TV translator station has an agreement with the TV broadcast station being rebroadcast to transmit aurally or visually the low power TV or TV translator station call as provided for in § 74.783. Transmission of the call sign can be accomplished by:

* * * * *

(d) Low power TV and TV translator transmitting equipment using a modulation process for either program origination or rebroadcasting must meet the following requirements:

(1) The equipment shall meet the requirements of paragraphs (l)(1), (a)(2), (a)(3), (b)(1), and (b)(7) of § 73.687.

* * * * *

(e) * * *

(1) Any manufacturer of apparatus intended for use at low power TV or TV translator stations may request type acceptance by following the procedures set forth in Part 2, Subpart J, of this chapter. Equipment found to be acceptable by the FCC will be listed in the "Radio Equipment List" published by the FCC. These lists are available for inspection at the FCC headquarters in Washington, D.C. or at any of its field offices.

(2) Low power TV and TV translator transmitting apparatus that has been type accepted by the FCC will normally be authorized without additional measurements from the applicant or licensee.

(3) Applications for type acceptance of modulators to be used with existing type accepted TV translator apparatus must include the specifications electrical and mechanical interconnecting requirements for the apparatus with which it is designed to be used.

* * * * *

(g) Low power TV or TV translator stations installing new type accepted transmitting apparatus incorporating modulating equipment need not make equipment performance measurements and shall so indicate on the station license application. Stations adding new or replacing modulating equipment to existing low power TV or TV translator transmitting apparatus must have an operator holding a General Radiotelephone Operator License examine the transmitting system after installation. This operator must certify in the application for the station license that the transmitting equipment meets the requirement of paragraph (d)(1) of this section. A report of the methods, measurements, and results must be kept in the station records. However, stations using modulating equipment solely for the limited local origination of signals permitted by § 74.731 need not comply with the requirements of this paragraph.

38. Section 74.751 is amended by revising paragraphs (b)(1), (b)(2), (b)(6), and (c), and adding new paragraph (d) to read as follows:

§ 74.751 Equipment changes.

* * * * *

(b) * * *

(1) Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been type accepted by the FCC for use by low power TV and TV translator stations, or any change which could result in a change in the electrical characteristics or performance of the station.

(2) Any change in the transmitting antenna system, including the direction of radiation, directive antenna pattern, antenna gain, transmission line loss characteristics, or height of antenna center of radiation.

* * * * *

(6) Any changes in the location of the transmitter except within the same building or upon the same pole or tower.

* * * * *

(c) Other equipment changes not specifically referred to in paragraph (a) or (b) of this section may be made at the discretion of the licensee: *Provided,* That the Engineer in charge of the Radio District in which the low power TV or TV translator station is located and the FCC in Washington, D.C., are notified in writing upon completion of such changes, and that the changes are appropriately reflected in the next application for renewal of the station license.

(d) Upon installation of new or replacement transmitting equipment for which prior FCC authority is not required under the provisions of this section, the licensee must place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the station authorization.

39. Section 74.761 is amended by revising the introduction and adding new paragraph (d) to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a low power TV or TV translator station shall maintain the transmitter output frequencies as set forth below. The frequency tolerance of stations using direct frequency conversion of a received signal and not engaging in offset carrier operation as set forth in paragraph (d) of this section will be referenced to the authorized plus or minus 10 kHz offset, if any, of the primary station.

* * * * *

(d) The visual carrier shall be maintained to within 1 kHz of the assigned channel carrier frequency if the low power TV or TV translator station is authorized with a specified offset designation in order to provide protection under the provisions of § 74.705 or § 74.707.

40. Section 74.762 is amended in its entirety to read as follows:

§ 74.762 Frequency measurements.

(a) The licensee of a low power TV or TV translation station is not required to provide a means for measuring the operating frequencies of the transmitter. However, only equipment having the required stability will be type accepted for use by low power TV or TV translator stations.

(b) In the event that a low power TV or TV translator station is found to be operating beyond the frequency tolerance prescribed in § 74.761, the licensee promptly shall suspend operation of the transmitter and shall not resume operation until transmitter has been restored to its assigned frequencies. Adjustment of the frequency determining circuits of the transmitter shall be made only by a qualified person in accordance with § 74.750(g).

41. Section 74.763 is revised by amending paragraphs (a) and (c) to read as follows:

§ 74.763 Time of operation.

(a) A low power TV or TV translator station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator station is expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

* * * * *

(c) Failure of a low power TV or TV translator station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC.

* * * * *

42. Section 74.764 is revised in its entirety to read as follows:

§ 74.764 Station inspections.

The licensee of a low power TV or TV translator station shall make the station and the records required to be kept by the rules in this part available for inspection by representatives of the FCC.

43. Section 74.765 is revised in its entirety to read as follows:

§ 74.765 Posting of station and operator licenses.

(a) The station license and any other instrument of authorization or individual order concerning the construction of the station or manner of operation shall be kept in the station record file so as to be available for inspection upon request of authorized representatives of the FCC.

(b) The licenses or permits of operators employed at low power TV stations originating programs shall be posted in accordance with the provisions of § 73.1230(b) of Part 73 of this chapter.

(c) The call sign of the station, together with the name, address, and telephone number of the licensee or local representative of the licensee, if the licensee does not reside in the community served by the station, and the name and address of the person and place where the station records are maintained, shall be displayed at the transmitter site on the structure supporting the transmitting antenna, so as to be visible to a person standing on the ground. The display shall be maintained in legible condition by the licensee.

44. Section 74.766 is amended by revising the headnote and adding new paragraph (e) to read as follows:

§ 74.766 Low power TV and TV translator operator requirements.

* * * * *

(e) An operator holding any class of FCC operator license or permit, except the Marine Operator Permit, must be on duty in charge of the transmitting apparatus of a low power TV station during all periods of program origination as defined in § 74.701(g).

45–47. New § 74.780 is added to read as follows:

§ 74.780 Broadcast regulations applicable to low power TV stations.

The following rules are applicable to programs originated by low power TV stations:

(a) Section 73.658, "Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements."

(b) Section 73.1202, "Station identification."

(c) Section 73.1205, "Fraudulent billing practices."

(d) Section 73.1206, "Broadcast of telephone conversations."

(e) Section 73.1207, "Rebroadcasts."

(f) Section 73.1208, "Broadcast of taped, filmed, or recorded material."

(g) Section 73.1211, "Broadcast of lottery information."

(h) Section 73.1212, "Sponsorship identification; list retention; related requirements."

(i) Section 73.1216, "Licensee-conducted contests."

(j) Section 73.1940, "Broadcasts by candidates for public office."

(k) Section 73.2080, "Equal employment opportunities."

(l) Part 73, Subpart G, "Emergency Broadcast System."

48. Section 74.783 is amended by revising the introductory text of paragraph (a), paragraph (c), and adding new paragraph (d) to read as follows:

§ 74.783 Station identification.

(a) Each TV translator station over 0.001 kW peak visual power (0.002 kW when using circularly polarized antennas) must transmit its station identification as follows:

* * * * *

(c) A low power TV station shall comply with the station identification procedures given in § 73.1201 of Part 73 of this chapter when originating programming (See § 74.701(g)). The identification procedures given in paragraphs (a) and (b) are to be used when programs of another station are being rebroadcast.

(d) Call signs for low power TV and TV translator stations will be made up of the initial letter K or W followed by the channel number assigned to the station and two additional letters. The use of the initial letter generally will follow the pattern used in the broadcast service, i.e., stations west of the Mississippi River will be assigned an initial letter K and those east, the letter W. The two letter combinations following the channel number will be assigned in order and requests for the assignment of the particular combinations of letters will not be considered. The channel number designator for Channels 2 through 9 will be incorporated in the call sign as a 2-digit number, i.e., 02, 03, ..., so as to avoid similarities with call signs assigned to amateur radio stations.

49. Section 74.784 is amended by revising paragraphs (b) and (c) and adding new paragraph (d) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station authorized under the provisions of this Subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC shall be notified of the call letters of each station rebroadcast and the licensee of the low power TV or TV broadcast translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

(c) A TV translator station may rebroadcast only programs and signals that are simultaneously transmitted by a TV broadcast station.

(d) The provisions of § 73.1207 of Part 73 of this chapter apply to low power TV stations in transmitting any material during periods of program origination obtained from the transmissions of any other type of station.

50. Section 74.832 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(1) A licensee of an AM, FM, TV, or International broadcast station or low power TV station. Low power auxiliary stations will be licensed for used with a specific broadcast or low power TV station or combination of stations licensed to the same licensee within the same community.

* * * * *

(c) Licensees of AM, FM, TV, and International broadcast stations; low power TV stations; and eligible network entities may be authorized to operate low power auxiliary stations in the frequency bands set forth in § 74.802(a).

PART 76—CABLE TELEVISION SERVICE

51. Section 76.501 is amended by revising paragraph (a)(2) and removing paragraph (a)(3) in its entirety as follows:

§ 76.501 Cross-ownership.

(a) * * *

(1) * * *

(2) A TV broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of Part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(3) [Reserved]

52. Section 76.605 is amended by revising paragraph (a)(9)(iii) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(9) * * *

(iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station or a low power TV station.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

53. The last sentence in § 78.1 is revised to read as follows:

§ 78.1 Purpose.

* * * In addition CARS stations may be used to transmit television and related audio signals to TV translator and low power TV stations.

54. The first sentence of § 78.11, paragraph (a) is revised to read as follows:

§ 78.11 Permissible service.

(a) CARS stations are authorized to relay TV broadcast and low power TV and related audio signals, the signals of AM and FM broadcast stations, signals of instructional TV fixed stations, and cablecasting intended for use by one or more cable television systems. * * *

* * * * *

Appendix B

Instructions for FCC 346

Application for Construction Permit For Translator or Low Power Television Station

(FCC Form 346 attached)

General Instructions

A. This FCC form is to be used to apply for authority to construct a new translator or low power television broadcast station, or to make changes in the existing facilities of such a station. It consists of the following sections:

I. General Information
II. Legal Qualifications
III. Financial Qualifications
IV. Program Service Statement
V. Engineering Data and Antenna and Site Information
VI. Equal Employment Opportunity Program
VII. Certification.

An applicant for a change in facilities need not file Sections II, III, IV and VI.

B. Prepare and submit three copies of this form and all exhibits to: The Secretary, Federal Communications Commission, Washington, D.C. 20554.

C. Many references to FCC Rules (47 CFR) are made in this application form. Before filling it out, the applicant should have on hand and be familiar with current broadcast rules in:

(1) Volume I: Parts 0 ("Commission Organization"), 1 ("Practice and Procedure"), and 17 ("Construction Marking and Lighting of Antenna Structures").

(2) Volume III: Part 73 ("Radio Broadcast Services").

FCC Rules may be obtained through the Government Printing Office, Washington, D.C. 20402. Orders should be sent directly to the Government Printing Office (not through the FCC). The printed rules are sold on a subscription basis, which entitles the purchaser to receive subsequent amendments to the rule part purchased until and overall revised edition is printed. You may telephone the Government Printing Office at (202) 783–3238.

D. Public Notice Requirement:

(1) Section 73.3580 of the Commission's Rules requires that applicants for construction permits for new broadcast stations and major changes in existing facilities (as defined in Section 73.3572(a)(1) or 73.3573(a)(1) of the Rules) give local notice in a newspaper of general circulation in the community to which the station is licensed. This publication requirement also applies with respect to major amendments thereto as defined in Sections 73.3572(b) and 73.3573(b) of the Rules.

(2) Completion of publication may occur within 30 days before or after tendering of the application. Compliance or intent to comply with the public notice requirement must be *certified* in Section VI of this application. The information that must be contained in the notice of filing is described in Paragraph (f) of Section 73.3580 of the Rules. Proof of publication need not be filed with this application.

E. A Copy of this completed application and all related documents shall be made available for inspection by the public, pursuant to Section 73.3526 of the FCC Rules.

F. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. If any portions of the application are not applicable, so state. *Defective or incomplete applications will be returned without consideration.* Furthermore, inadvertently accepted applications are also subject to dismissal.

G. In accordance with Section 1.65 of the Rules, the applicant has a *continuing obligation* to advise the Commission, through amendments, of any substantial and significant changes in the information furnished.

Section I Instructions

A. The name of the applicant stated in Section I shall be:

(i) if a corporation, the *EXACT* corporate name;

(ii) if a partnership, the names of all partners, and the name under which the partnership does business;

(iii) if an association, the name of the individual(s) authorized to act on behalf of the association, and the name of the association;

(iv) if an individual applicant, the full legal name.

In all other sections of this form, the organization name alone will be sufficient for identification of the applicant.

B. In Section I use the following State abbreviations:

Alabama	AL
Alaska	AK
American Samoa	AS
Arizona	AZ
Arkansas	AR
California	CA
Colorado	CO
Connecticut	CT
Delaware	DE
District of Columbia	DC
Florida	FL
Georgia	GA
Guam	GU
Hawaii	HI
Idaho	ID
Illinois	IL
Indiana	IN
Iowa	IA
Kansas	KS
Kentucky	KY
Louisiana	LA
Maine	ME
Maryland	MD
Massachusetts	MA
Michigan	MI
Minnesota	MN
Mississippi	MS
Missouri	MO
Montana	MT

Nebraska	NB
Nevada	NV
New Hampshire	NH
New Jersey	NJ
New Mexico	NM
New York	NY
North Carolina	NC
North Dakota	ND
Northern Mariana Islands	CM
Ohio	OH
Oklahoma	OK
Oregon	OR
Pennsylvania	PA
Puerto Rico	PR
Rhode Island	RI
South Carolina	SC
South Dakota	SD
Tennessee	TN
Texas	TX
Trust Territory Of The Pacific Islands	TT
Utah	UT
Vermont	VT
Virginia	VA
Virgin Islands	VI
Washington	WA
West Virginia	WV
Wisconsin	WI
Wyoming	WY

Section II Instructions

A. As used in Section II, the words "party to this application" have the following meanings:

Individual Applicant: The applicant.

Partnership Applicant: All partners, including limited partners. If any partner is a corporation or other entity, the definitions set forth below will apply.

Corporate Applicant: All officers and directors, and all persons or entities who are the beneficial or record owners or have the right to vote any capital stock, membership or owner interest, or subscribers to such interests, shall be considered parties to this application. If any corporation or other legal entity owns stock in the applicant, its officers, directors and persons or entities who are the beneficial or record owners or have the right to vote any capital stock, membership or owner interest, or subscribers to such interest, of that entity shall also be considered parties to this application.

In the event the applicant has more than 50 stockholders, only officers and directors and persons or entities who are the beneficial or record owners or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest shall be considered parties to this application. However, if such entity is a bank, insurance company, or investment company (as defined by 15 U.S.C. § 80a–3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more. If any corporation or other legal entity owns 1% or more of an applicant with more than 50 stockholders, its officers, directors and all persons or entities who are the beneficial or record owners or have the right to vote 1% or more of the capital stock, membership or owner interest, or subscribers to such interest in the entity, shall also be considered parties to this application. However, if such entity is a bank, insurance company or investment company (as defined by 15 U.S.C. § 80–3) which does not invest for purposes of control, the relevant stock, membership or owner interest is 5% or more.

Any Other Applicant: All executive officers, members of the governing board and owners or subscribers to any membership or ownership interest in the applicant.

B. All applicants must comply with Section 310 of the Communications Act of 1934, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any corporation of which any officer or director is an alien or of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the captial stock is owned and voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

C. The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant precentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

Section III Instructions

A. All applicants filing Form 346 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.

B. An applicant for a new station must attest it has sufficient net liquid assets on hand, or committed sources of funds to construct the proposed facility and operate for three months, without revenue. As used in Section III, "net liquid assets" the means lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

C. Documentation supporting the attestation of financial qualification need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.

D. It is Commission policy not to grant extension of time for construction on the basis of financial inability or unwillingness to construct.

Section VI Instructions

A. Applicants seeking authority to constuct a new low power television (LPTV) broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaskan Natives, and Hispanics). This is submitted to the Commission as the Model EEO Program Form. If minority group representation in the available labor force is less than five percent (in the aggregate), a program for minority group members is not required. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five full-time employees, no EEO program for women or minorities need be filed.

B. Guidelines for developing an Equal Employment Opportunity program are set forth as a separate Model EEO program.

Note.—This five-point Model EEO Program Form is to be utilized only by applicants for new construction permits, assignees and transferees.

PAGE I

Section I

General Information

FILE # _____

FCC FORM 346

1. _____

Name of Applicant

_____

Mailing Address

City _____

State _____

Zip Code _____

Telephone No. _____

2. This application is for: FM Translator LPTV TV Translator

(a) Channel number:———

(b) Community of license: City State

(c) Check one:

——New Station

——Major change in existing station (Call Letters)

——Minor change in existing station (Call Letters)

——Amendment to pending application (Application Reference Number)

——Modification of Construction Permit (Construction Permit File Number)

Note.—It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. (a) Is this application mutually exclusive with a renewal application?

☐ YES ☐ NO

If Yes, state: Call letters:

Community of license:

(b) To the applicant's knowledge, is this application mutually exclusive with any other application(s)?
☐ YES ☐ NO
If Yes, state: Call letters:
Community of license:
4(a) Is translator applicant the licensee of primary station?
——Yes; ——No.
(b) If answer to 4(a) is no, has written authority been obtained from the licensee of the station whose programs are to be retransmitted?
——Yes; ——No.
5. Station Identification.
Indicate how station identification will be made:
——FSK
——By primary station
——Live or tape
——Amplitude modulation of FM Aural Carrier
——Not required
6. Is type approved broadcast equipment being specified?
——Yes; ——No. If no, please indicate date equipment submitted to FCC Lab for approval.
7. Would a Commission grant of your application be major action as defined by Section 1.1305 of the Commission's Rules?
——Yes. If yes, submit as Exhibit No.

the required statement in accordance with Section 1.1311 of the Rules.
——No. If no, explain briefly.
8. If this application is for a new FM translator, have any funds, legal or engineering services or anything else of value been furnished, directly or indirectly, by the licensee or permittee of any FM broadcast station or any person associated with such station? If the answer is "Yes", attach an explanation as Exhibit No. , identifying the source and nature of the financial support or assistance.
——Yes; ——No

Legal Qualifications

Section II
Applicant's Name: ———————————
1. Applicant is: an individual; a general partnership; a limited partnership; a corporation other.
2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, describe in Exhibit No. the nature of the applicant.

Citizenship and Other Statutory Requirements

3. (a) Is the applicant in compliance with the provisions of Section 310 of the Communications Acts of 1934, as amended, relating to interests of aliens and foreign governments? Yes No .
(b) Will any funds, credit, etc., for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents? Yes No
If yes, provide particulars as Exhibit No.
4. (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination? Yes No .
(b) Is there now pending in any court or administrative body any proceeding involving any of their matters referred to in (a)? Yes No .
If the answer to (a) or (b) above is yes, submit as Exhibit No. , a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status of the matter.

Other Media Interests

5. Does the applicant or any party to this application have any interest in or connection with the following:
(a) An AM, FM or TV broadcast station? Yes No .
(b) A broadcast application pending before the FCC? Yes No .
(c) Other non-broadcast media of mass communications, e.g. cable television, theatres and printed publications. Yes No .
6. Has the applicant or any party to this application had any interest in:
(a) An application which has been dismissed with prejudice by the Commission? Yes No .
(b) An application which has been denied by the Commission? Yes No .
(c) A broadcast station, the license which has been revoked? Yes No .
(d) An application in any Commission proceeding which left unresolved character issues against the applicant? Yes No .

If the answer to any of the questions in 5 is yes, state in Exhibit No. the following information:
(i) Name of party having such interest;
(ii) Nature of interest or connection, giving dates;
(iii) Call letters of stations or file number of application, or docket number;
(iv) Location.

Minority Ownership

7. Is the applicant over 50 percent minority owned? Yes No .
If the answer is yes, state in Exhibit No. for each minority owner:
(i) Name, address and percentage of ownership;
(ii) Minority group (e.g., Black not of Hispanic origin, Asian or Pacific Islander, American Indian or Alaskan native, and Hispanic).

Section III

Financial Qualifications

Note.—If this application is for a change in an operating facility, do not fill out this section. Yes No .
1. The applicant certifies that sufficient net liquid assets are on hand or are available from committed sources to cnstruct and operate the requested facilities for three months without revenue. Yes No .
2. The applicant certifies that: (a) It has a reasonable assurance of a present firm intention for each agreement to furnish capital or purchase capital stock by parties to the application, each loan by banks, financial institutions or others and each purchase of equipment on credit; (b) it can and will meet all contractual requirements as to collateral, guarantees, and capital investment; (c) it has determined that a reasonable assurance exists that all such sources (excluding banks, financial institutions and equipment manufacturers) have sufficient net liquid assets to meet these commitments. Yes No .

Section IV

Program Service Statement

For LPTV (Including STV applicants) only:
1. LPTV stations must offer a broadcast program service: a non-program broadcast service will not be permitted. Therefore, submit as Exhibit No. , a brief description, in narrative form, of your planned programming service. STV applicants should provide a complete description of your proposed STV system including the manner in which you intend to provide decoders to the public.

BILLING CODE 6712-01-M

Section V, Page 1

ENGINEERING DATA

1. Facilities requested:

a. Output Channel No.	Transmitter Output Power (watts)	Proposed Principal Community or Communities to be served: City: State:	Primary Station (station to be rebroadcast) (Translator only) Call: Channel No. City: State: Frequency: MHz
b. Offset (Low Power TV and TV Translator Stations only) ___ No offset ___ Plus offset ___ Zero offset ___ Minus offset			
c. Input Channel No.	If station is to operate via another translator station, indicate call sign and location of final intermediate translator:		

2. Proposed transmitter location:

City	County	State
Address or other description of location	Geographical coordinates of transmitting antenna to nearest second North Latitude ° ' "	West Longitude ° ' "

Attach as Exhibit No. a map or maps (preferably topographic, if obtainable, such as U. S. Geological Survey quadrangles) for the area of the proposed transmitter location and show drawn thereon the following data:

a. Scale of miles.
b. Proposed transmitter location accurately plotted.
c. Principal community to be served by the proposed TV or FM translator station, clearly identified and labeled.
d. Locations of all known radio stations (except amateur), such as AM, FM, TV, Translator, Police, Fire, Aeronautical, Public Utility, etc., and known commercial or government receiving sites, within the immediate vicinity of the proposed transmitter location.

3. Transmitter:

Make	Type No.	Rated output power (watts) P

4. Transmission line:

Make	Type No.	Length	Rated efficiency E for length given (decimal fraction)

5. Transmitting antenna

Manufacturer	Model No. 1/	Description 1/	Power gain G (multiplier) in lobe of maximum radiation relative to a half-wave dipole	Height of radiation center above mean sea level (ft)

Orientation 2/ :	Height above ground 3/	Elevation of Site 4/	Elevation of Community 5/	Effective radiated power R (R = P × E × G) (kW)

1. Give basic type using general descriptive terms such as half-wave dipole, "bow-tie" with screen, corner reflector, 10 element Yagi, 4 element in-phase array, two stacked 5 element Yagis, etc.
2. Show the direction of the main radiation lobe in degrees with respect to true north in a 360 degree horizontal azimuth, numbered clockwise, with true north as zero azimuth.
3. Show height to topmost portion of structure, including highest top mounted antenna and beacon if any.
4. Show the ground elevation above mean sea level at the base of the transmitting antenna supporting structure.
5. Show the average elevation of the community above mean sea level, or in lieu thereof, the commonly used elevation figure for the community to be served.

Section V, Page 2

6. Attach as Exhibit No. a vertical plan sketch for the proposed total structure(s) including supporting structure(s), giving height of center of radiation above ground, overall height of structure above ground, including lighting beacon (if any) and height above mean sea level in feet for all significant features for BOTH RECEIVING AND TRANSMITTING ANTENNAS. Also indicate any horizontal separation between receiving transmitting antennas.

7. Will the proposed antenna supporting structure be shared with another station or stations of any class? ☐ YES ☐ NO
If the answer is "Yes", list the call signs and class of such stations.

8. Attach as Exhibit No. a polar diagram of the radiation pattern (relative field) of the transmitting antenna, showing clearly the correct relationship between the major lobe or lobes and the minor lobes of radiation. If a non-directive transmitting antenna will be employed, i.e., an antenna with an approximately circular radiation pattern, check this ☐ and omit the polar diagram.

9. Has FAA been notified of proposed construction? ☐ YES ☐ NO
If yes, give date and office where notice was filed.
(Not necessary to file FCC Form 714, See Part 17 of the rules.)

10. Unattended operation:

a. Is unattended operation proposed? ☐ YES ☐ NO
If the answer is "Yes", and this application is for authority to construct a new station or to make changes in the facilities of an authorized station which proposes unattended operation for the first time, attach Exhibit No. , containing a full description of the means of compliance with the several requirements of Section 74.734 (TV Translators) or Section 74.1234 (FM Translators) of the Rules concerning unattended operation.

b. In space below state name, address and telephone number of a person or persons who may be contacted in an emergency to suspend operation of the translator should such action be deemed necessary by the Commission:

Name(s)

Address (street or other description)

City & State ZIP Code

Telephone number(s) (include area code)

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Date _____ Signature _____
(check appropriate box below)

Telephone _____ (include area code)

☐ Technical Director ☐ Chief Operator
☐ Registered Professional Engineer ☐ Other (Specify)
☐ Consulting Engineer

FCC Form 346

BILLING CODE 6712-01-C

Section VI

Equal Employment Opportunity Program

1. Does the applicant propose to employ five or more fulltime employees? ☐ Yes; ☐ No.

If the answer is Yes, the applicant must include an EEO program called for in the separate 5 Point Model EEO Program.

Section VII

Certification

1. Has or will the applicant comply with the public notice requirement of Section 73.3580 of the Commission's Rules? ☐ Yes; ☐ No.

A copy of the text and dates of publication is attached as Exhibit No. ——.

The Applicant hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. *(See Section 304 of the Communications Act of 1934, as amended.)*

The Applicant acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

The Applicant represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

In accordance with Section 1.65 of the Commission's Rules, the Applicant has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

Willful False Statements Made on This Form Are Punishable by Fine and Imprisonment—U.S. Code, Title 18, Section 1001

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this — day of ——, 19—.
Name of Applicant ——————
Signature ——————
Title ——————

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Permit.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3).

Attachment 1 to FCC Form 346

The following information may be submitted at the option of applicants. However, applications containing the requested information will be processed at a faster rate than applications not containing such information. In the latter case, the Commission's limited staff will be required to compute the data manually and processing will, therefore, require substantially more time.

Attach as Exhibit No. —— an allocation study utilizing topographic maps or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following:

(a) Normally protected and the interfering contours for the proposed operation along all azimuths.

(b) Normally protected and interfering contours of existing stations and other proposed stations in pertinent areas with which prohibited overlap would result as well as those existing stations and other proposals which require study to clearly show absence of prohibited overlap.

(c) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers, and operating or proposed facilities.

(d) Properly labeled longitude and latitude degree lines, shown across entire exhibit.

United States of America,
Federal Communication Commission,
Washington, D.C.

Model EEO Program

1. Name of Applicant ——————
Street Address ——————
City ——————
State ——————
Zip Code ——————
Telephone No. (Include Area Code) ——————

2. This form is being submitted in conjuction with:

☐ Application for Construction Permit for New Station
☐ Application for Transfer of Control
☐ Application for Assignment of License

(a) Call letters (or channel number of frequency)

(b) Community of License

——————
City ——————
State ——————

Instructions

Applicants seeking authority to construct a new low power television broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. See Section 73.2080 of the Commission's Rules. Pursuant to these requirements, an applicant who proposes to employ five or more fulltime station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is, Blacks not of Hispanic origin, Asians or Pacific Islanders, American Indians or Alaskan Natives and Hispanics.) This is submitted to the Commission as the Model EEO Program. If minority group representation in the available labor force is less than five percent (*in the aggregate*), a program for minority group members is not required. In such cases, a statement so indicating must be set forth in the EEO model program. However, a program must be filed for women since they comprise a significant percentage of virtually all area labor forces. If an applicant proposes to employ less than five fulltime employees, no EEO program for women or minorities need be filed.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

Note.—Check appropriate box, sign the certification below and return to FCC:

☐ Station will employ less than 5 fulltime employees; therefore no written program is being submitted.
☐ Station will employ 5 or more fulltime employees. Our 5 point program is attached.

Certification

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this —— day of ——, 19—.
Signature ——————
Title ——————

Willful False Statements Made on This Form Are Punishable by Fine and Imprisonment—U.S. Code, Title 18, Section 1001

FCC Notice to Individuals Required by the Privacy Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3).

Guidelines to the Model EEO Program

The model EEO program adopted by the Commission for construction permit

applicants contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. General Policy

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of minorities and women in the relevant available labor force.

II. Responsibility for Implementation

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. Policy Dissemination

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

IV. Recruitment

The applicant should specify the recruitment sources and other techniques it proposes to use to attract minority and female job applicants. Not all of the categories of recruitment sources need be utilized. The purpose of the listing is to assist the applicant in developing specialized referral sources to establish a pool of minorities and women who can be contacted as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

V. Training

Training programs are not mandatory. Each applicant is expected to decide, depending upon its own individual situation, whether a training program is feasible and would assist it in its effort to increase the pool of available minority and female applicants. Additionally, the applicant may set forth any other assistance it proposes to give to students, schools or colleges which is designed to be of benefit to minorities and women interested in entering the broadcasting field. The beneficiary of such assistance should be listed, as well as the form of assistance, such as contributions to scholarships, participation in work study programs, and the like.

Model Equal Employment Opportunity Program

I. General Policy

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. Responsibility for Implementation

(Name/Title), _____ will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. Policy Dissemination

To assure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

( ) The station's employment application form will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

( ) Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.

( ) We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

( ) Other (specify).

IV. Recruitment

To ensure nondiscrimination in relation to minorities and women, and to foster their full consideration in filling job vacancies, we propose to utilize the following recruitment procedures:

( ) We will attempt to maintain systematic communication, both orally and in writing, with a variety of minority and women's organizations to encourage the referral of qualified minority and female applicants. Examples of organizations we intend to contact are:

_____

_____

( ) In addition to the organizations noted above, which specialize in minority and female candidates, we will deal only with employment services, including State employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex. Examples of these employment referral services are:

_____

_____

Model Equal Employment Opportunity Program

( ) When we recruit prospective employees from educational institutions such recruitment efforts will include area schools and colleges with significant minority and female enrollments. Educational institutions to be contacted for recruitment purposes are:

_____

( ) When utilizing media for recruitment purposes, help-wanted advertisements will always include a notice that we are an Equal Opportunity Employer and will contain no indication, either explicit or implied, of a preference for one sex over another.

( ) When we place employment advertisements in printed media some of such advertisements will be placed in media which have significant circulation or are of particular interest to minorities and women. Examples of publications to be utilized are:

_____

_____

( ) We will encourage employees, particularly minority and female employees, to refer minority and female candidates for existing and future openings.

V. Training

( ) Station resources and/or needs will be such that we will be unable or do not choose to institute specific programs for upgrading the skills of employees.

( ) We will provide on-the-job training to upgrade the skills of employees.

( ) We will provide assistance to students, schools or colleges in programs designed to enable minorities and women to compete in the broadcast employment market on an equitable basis:

School or Other Beneficiary _____

Proposed Form of Assistance _____

_____

( ) Other (Specify):

_____

_____

Appendix C

List of Commenters

1. ABC Television Affiliates Association (ABC Affiliates)
2. Action for Children's Television (ACT)
3. Alaska Public Broadcasting Commission

4. American Broadcasting Companies, Inc. (ABC)
5. American Community Television Association (ACTVA)
6. American Radio Relay League (ARRL)
7. American Women in Radio and Television (AWRT)
8. Association of Maximum Service Telecasters (MST)
9. Attaway Broadcast Group, Inc. (Attaway)
10. Frances Ayers
11. Stephen A. Ballo (Ballo)
12. Dr. Marvin R. Bensman, Memphis State University (Bensman)
13. Birmingham Amateur Radio Club (BARC)
14. Blonder-Tongue Laboratories, Inc. (Blonder-Tongue)
15. Blue Mt. Translator District (Blue Mt.)
16. John W. Boler (Boler)
17. Bonneville International Corporation (Bonneville)
18. Craig H. Brown
19. Paul James Broyles (Broyles)
20. Cable Television Review Commission, City of San Diego
21. California Public-Safety Radio Association, Inc. (CPSRA)
22. CBS, Inc. (CBS)
23. Channel 57 Corporation (Channel 57)
24. Children's Hospital of Los Angeles, University Affiliated Program (Childrens Hospital)
25. Christian Broadcasting Network (CBN)
26. Citizens Communications Center, Black Citizens for a Fair Media and National Latino Media Coalition (CCC)
27. City University of New York, Graduate School and University Center (CUNY)
28. Command Productions
29. Colorado Translator Association (CTA)
30. Communications Investment Corporation (CIC)
31. Community Television Network, Inc. (CTN)
32. Consumer Federation of America (CFA)
33. Corinthian Broadcasting Corporation (CBC)
34. Corporation for Public Broadcasting (CPB)
35. Margaret E. Coughlin
36. Council on Wage Price Stability (COWPS)
37. Department of Communications of the County of Los Angeles (LA Communications Dept.)
38. E.B. Craney (Craney)
39. Harvey Dinerstein
40. Charles E. Edgley (Edgley)
41. Electronics Industries Association, Consumer Electronics Group (EIA/CEG)
42. EMCO
43. Federal Express Corporation (Federal Express)
44. Reginald A. Fessenden Educational Fund (Fessenden)
45. Field Communications Corporation (Field)
46. Gammon & Grange (G&G)
47. Garryowen Corporation (Garryowen)
48. General Electric Broadcasting Company, Inc. (GE Broadcasting)
49. General Electric Company (GE)
50. Grassroots Video, Inc. (Grassroots)
51. Robert C. Greene (Greene)
52. Darwin Hillberry (Hillberry)
53. Howard Publications, Inc. (Howard)
54. Independent Cinema Artists and Producers (ICAP)
55. International Broadcasting Network (IBN)
56. International Cultural Network, Inc. (ICN)
57. Joint Business Council of the Shoshone and Arapahoe Tribes (Joint Business Council)
58. Joint Comments of Broadcast Licensees (Joint-Licensees)
59. Joint Comments of Colony Communications, etc. (Joint-Colony)
60. Joint Comments of Cosmos Broadcasting Corp., etc. (Joint-Cosmos)
61. KBOW
62. Kitchen Productions (Kitchen)
63. Ron Kurtenbach (Kurtenbach)
64. Lake County Television Club (Lake County)
65. Land Mobile Communications Council (LMCC)
66. Laramie Plains Antenna TV Association (Laramie Plains)
67. Los Angeles County Sheriff (LA Sheriff)
68. M/A COM, Inc. (M/A COM)
69. Don H. Martin (Martin)
70. Maryland/District of Columbia/ Delaware Broadcasters Association (MDCDBA)
71. Daniel M. Mayeda (Mayeda)
72. Metonomy Cable Corporation (Metonomy)
73. Microband Corporation of America (Microband)
74. Missionary Society of the Oblate Fathers of Texas (Oblate Fathers)
75. Morongo Basin TV Club (Morongo Basin)
76. National Association of Broadcasters (NAB)
77. National Association of Business & Educational Radio, Inc. (NABER)
78. National Association of Public Television Stations (NAPTS)
79. National Black Media Coalition (NBMC)
80. National Broadcasting Company (NBC)
81. National Cable Television Association (NCTA)
82. National Congress of American Indians (NCAI)
83. National Council of Churches of Christ in the U.S.A., Communications Commission (NCC)
84. National Hockey League (NHL)
85. National League of Cities (NLC)
86. National Telecommunications and Information Administration (NTIA)
87. National Telephone Cooperative Association (NTCA)
88. National Translator Association (NTA)
89. Neighborhood Television Company (Neighborhood)
90. New York State Education Department (NYSED)
91. Ohio Educational Broadcasting Network Commission (OEBNC)
92. OK TV Translator Systems (OK TV)
93. Omega Communications, Inc.
94. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
95. O.D. Page
96. Kevin Parkansky (Parkansky)
97. Pennsylvania Association of Broadcasters (PAB)
99. Potomac Communications, Inc. (Potomac)
100. Public Broadcasting Service (PBS)
101. Publicoop
102. Quality Media Corporation, Inc. (QMC)
103. Radio & Television Commission, Southern Baptist Convention (Southern Baptist Convention)
104. RCA Corporation (RCA)
105. Residential Entertainment, Inc. (Residential)
106. Henry R. Sandy (Sandy)
107. Lee R. Shoblom (Shoblom)
108. Sino Communication Group, Inc. (SINO)
109. J. Rodger Skinner (Skinner)
110. Thomas C. Smith (Smith)
111. Southern California Committee for Open Media (SCCOM)
112. Span-Com Broadcasting Group (Span-Com)
113. Spanish International Communications Corp. & Spanish Intl. Network (SIN)
114. Spanish Radio Broadcasters Association
115. Spectradyne, Inc. (Spectradyne)
116. Susan L. Stolcker
117. Storer Broadcasting, Inc. (Storer)
118. Charles E. Strange, M.D. (Strange)
119. William E. Sullivan (Sullivan)
120. Summers Broadcasting, Inc. (Summers)
121. Television Technology Corp. (TTC)
122. Telicommunity, Inc. (Telicommunity)
123. Telocator
124. Third Avenue Community Center (Third Ave.)
125. Tunnel Radio
126. B.D. Thornton (Thornton)
127. Mr. Tomczak (Tomczak)
128. Turner Television Stations, Inc. (Turner)
129. Philip Tymon (Tymon)
130. United Church of Christ (UCC)
131. United Media Corp.
132. United States Catholic Conference (USCC)
133. United States Department of Justice
134. University of Wisconsin System (Univ. of Wisconsin)
135. U.P. TV Systems, Inc. (U.P. TV)
136. Utilities Telecommunications Council (UTC)
137. Richard I. Vega & Associates (Vega)
138. The Video Factory.
139. Video Makers
140. Washington State Broadcasters Association (WSBA)
141. Watts Labor Community Action Committee
142. Westinghouse Broadcasting Company, Inc. (Westinghouse)
143. WWHT, Inc. (WWHT)
144. Wometco
145. Steven Zeitlin (Zeitlin)

Reply Comments

1. Alaska Public Broadcasting Commission (APBC)
2. American Broadcasting Companies, Inc. (ABC)
3. American Community Television Association (ACTVA)
4. Associated Public-Safety Communications, Inc. (APCO)

5. Association of Community Organizations for Reform Now (ACORN)
6. Association of Maximum Service Telecasters (MST)
7. Belvidere Daily Republican Co. (Belvidere)
8. Messenger Publishing Company (Messenger)
9. John W. Boler (Boler)
10. Channel 57 Corporation (Channel 57)
11. Citizens Communications Center (CCC)
12. CBS, Inc. (CBS)
13. Community Television Network, Inc. (CTN)
14. Corporation for Public Broadcasting (CPB)
15. Council for UHF Broadcasting (CUB)
16. Joint Reply of Broadcast Licensees (Licensees)
17. Joint Reply of Cox Broadcast Corp., etc. (Joint, Cox)
18. Jerrell K. Davis (Davis)
19. Electronic Industries Association, Consumer Electronics Group (EIA/CEG)
20. Field Communications Corp. (Field)
21. State of Florida, Division of Communications (Florida)
22. Gammon & Grange (G&G)
23. Gannett Co., Inc. (Gannett)
24. General Electric Broadcasting Co., Inc. and General Electric Broadcasting Co. of Colorado, Inc. (GEBCO)
25. Global Village Video Resource Center, Inc. (Global Village)
26. Robert C. Greene
27. Arnold Gregg (Gregg)
28. Howard Publications, Inc. (Howard)
29. Honorable Daniel K. Inouye
30. International Broadcasting Network (IBN)
31. B. Jackson (Jackson)
32. Harlan L. Jacobsen (Jacobsen)
33. Joint Council on Educational Telecommunications (JCET)
34. Land Mobile Communications Council, Inc. (LMCC)
35. Don Mason (Mason)
36. Microband Corp. of America (Microband)
37. National Association of Broadcasters (NAB)
38. National Association of Business & Educational Radio, Inc. (NABER)
39. National Association of Educational Broadcasters (NAEB)
40. National Association of Public Television Stations (NAPTS)
41. National Association of Low Power Broadcasters (NALPB)
42. National Black Media Coalition (NBMC)
43. National Broadcasting Company (NBC)
44. National Cable Television Association (NCTA)
45. National Citizens Committee for Broadcasting (NCCB)
46. National Congress of American Indians (NCAI)
47. National Council of Churches of Christ in the U.S.A., Communications Commission (NCC)
48. National Federation of Local Cable Programmers (NFLCP)
49. National Hockey League (NHL)
50. National Innovative Programming Network (NIPN)
51. National League Of Cities Network, Inc. Companies (NIPN)
52. National League of Cities (NLC)
53. National Translator Association (NTA)
54. Neighborhood TV Company (Neighborhood)
55. New Jersey Television Corp.
56. Jeffrey Nightbyrd (Nightbyrd)
57. Oak Industries, Inc. (Oak)
58. Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
59. Park Broadcasting
60. Praxis
61. Public Broadcasting Service (PBS)
62. Response Broadcasting Corp. (Response)
63. Lloyd R. Smith, Sr. (Smith)
64. Spanish International Communications Corp. and Spanish International Network (SIN)
65. Television Technology Corp. (TTC)
66. Tunnel Radio of America, Inc. (Tunnel)
67. International Union, UAW (UAW)
68. UP TV Systems, Inc. (UP)
69. Utilities Telecommunications Council (UTC)
70. Ventures In Communications, Inc. (Ventures)
71. Washington State Association of Broadcasters (WSAB)
72. Western Communications Research Institute (Western)

N.B. All informal comments and letters are not identified herein, on account of the volume received.

List of Commenters—Further Notice of Proposed Rule Making

1. AGK Communications, Inc. (AGK)
2. American Broadcasting Companies, Inc. (ABC)
3. American Christian Television System, Inc. (ACTS)
4. American Petroleum Institute, Central Committee on Telecommunications (API, CCT)
5. Associated Public-Safety Communications Officers, Inc. (APCO)
6. Association of Maximum Service Telecasters (MST)
7. Attaway Broadcast Group, Inc. (Attaway)
8. CBS, Inc. (CBS)
9. Communications Investment Corporation (CIC)
10. Community Media Network, Inc. (CMN)
11. Corporation for Public Broadcasting (CPB)
12. Cox Broadcasting Corporation (Cox)
13. Electronics Industries Association, Consumer Electronics Group (EIA)
14. Field Communications Corporation (Field)
15. John P. Gallagher and Garry N. Johnson (Gallagher and Johnson)
16. Garryowen Corporation (Garryowen)
17. General Electric Broadcasting Company, Inc. and General Electric Broadcasting Company of Colorado, Inc. (GEBCO)
18. Howard Publications, Inc. (Howard)
19. International Broadcasting Network (IBN)
20. KHQ, Incorporated (KHQ)
21. Kitchen Productions (Kitchen)
22. Motorola, Inc. (Motorola)
23. Multilingual Broadcasting Company, Inc. (Multilingual)
24. National Association of Broadcasters (NAB)
25. National Association of Public Television Stations (NAPTS)
26. National Cable Television Association, Inc. (NCTA)
27. National Translator Association (NTA)
28. Neighborhood TV Company, Inc. (Neighborhood)
29. New Jersey Television Corporation (NJTV)
30. Offshore Telephone Company (Offshore)
31. Ohio Educational Broadcasting Network Commission (OEBNC)
32. Radio Broadcasting Company, *et al.* (RBC)
33. Spectra Associates, Inc. (Spectra)
34. Storer Broadcasting Company (Storer)
35. Taft Broadcasting Company, McGraw-Hill Broadcasting Company, NEP Communications, Inc. (Taft)
36. Joint Comments of Television Station Licensees (Licensees)
37. Television Technology Corporation (TV Technology)
38. WHP, Inc. (WHP)

Reply Comments

1. ABC
2. ACTS
3. MST
4. CBS
5. SPB
6. Cox
7. GEBCO
8. IBN
9. King Broadcasting Company (King)
10. NAB
11. National Association of Business and Educational Radio, Inc. (NABER)
12. National Broadcasting Company, Inc. (NBC)
13. NTA
14. NJTV
15. Licensees
16. International Union, UAW (UAW)

Appendix D—Summary of Low Power Comments

Contents

General commentary on the low power proposal
Spectrum-related issues
  Secondary Status
  Interference
    Multipoint Distribution Service
    Land Mobile Service
    Cable
    Full-Service Stations
    Notification
    Field Tests
    Low Power Stations
Allocation Issues
  Channel Selection
  Desired-to-Undesired Signal Ratios
  Noncommercial Reservations
  UHF Comparability
  Engineering Issues
  Power
License Issues
  Operator requirement
  License renewal

Trafficking
Programming Issues
Ascertainment
Fairness Doctrine
Access for Political Candidates; Personal Attack Rule
Nonentertainment Programming
Limits on Commercialization
Prohibitions on Obscenity and Lotteries
Retransmission and Commercial Substitution Consent
Local Programming
Alaska
Ownership Restrictions
Duopoly Rule
One-to-a-Market Rule
Network Ownership
Multiple Ownership
Regional Concentration Rule
Translators
Newspapers
Local Ownership
Cable Ownership
Mandatory Carriage
Comparative Issues
Lottery
Paper hearing
Predesignation Conference
Alternative Proposals
Comparative Preferences
First to File
Minority Ownership
Female Ownership
Noncommercial
Commercials on Noncommercial Stations
Channel Reservations for Noncommercial Use
Free Versus Pay
Local Preference
Translator Versus Low Power Station
Alternative Proposals

1. In this summary, an attempt was made to note all relevant comments on the proposals in the *Notice of Proposed Rule Making*. Comments occasionally are referred to by the abbreviation following their names in the list of comments, attached hereto. Except where necessary to the sense of the commentary, whether a statement was made in comments or reply comments is not indicated. Neither all the details nor the identity of every proponent of each suggestion are included, both for the sake of brevity and in recognition of the fact that the entire record is available for examination by anyone wishing to do so. Where a party laid out a detailed counterproposal, an effort was made to include all relevant details, however. Comments that clearly are irrelevant or beyond the scope of this proceeding are not mentioned herein.

2. *General commentary on the low power proposal.* The vast majority of the comments support the concept of the low power service in principle. Supporting comments were filed by such diverse entities as broadcast companies, trade associations, commercial and noncommercial networks, government agencies, public interest groups, religious groups, Indian tribes, individuals, newspaper publishers and equipment manufacturers. Laundry lists of names generally are eschewed herein as of less value than specific suggestions themselves; however, the following list, while by no means exhaustive, may be useful in affording a sense of the apparently broad appeal of the low power proposal. General supporting comments were filed by, among others: Action for Children's Television (ACT), Alaska Public Broadcasting Commission (APBC), American Broadcasting Companies, (ABC), Association of Community Organizations for Reform Now (ACORN), Attaway Broadcast Group (Attaway), Birmingham Amateur Radio Club (BARC), John Boler (Boler), Bonneville International Corporation (Bonneville), Children's Hospital of Los Angeles-University Affiliated Programs, Paul James Broyles (Broyles), Citizens Communications Center (Citizens), Columbia Broadcasting System (CBS), Consumer Federation of America (CFA), Independent Cinema Artists and Producers (ICAP), International Union-United Auto Workers (UAW), Joint Business Council of the Shoshone and Arapahoe Indian Tribes, Lake County Translator Association (Lake County), Messenger Publishing Company (Messenger), Microband Corporation of America (Microband), Missionary Society of the Oblate Fathers of Texas (Oblate Fathers), National Association of Broadcasters (NAB), National Cable Television Association (NCTA), National Federation of Local Cable Programers (NFLCP), National Hockey League (NHL), National Congress of American Indians (NCAI), National Telecommunications and Information Administration (NTIA), National Translator Association (NTA), New York State Department of Education (NYSED), Kevin Parkansky (Parkansky), Potomac Communications, Inc. (Potomac), The Public Broadcasting Service (PBS), Thomas Smith (T. Smith), Spanish International Network (SIN), Charles E. Strange (Strange), William Sullivan (Sullivan), Philip Tymon (Tymon), United Church of Christ (UCC), United States Catholic Conference (USCC), United States Department of Justic (DOJ), Western Communications Research Institute (WCRI), and Steven Zeitlin (Zeitlin). Their various reasons for supporting the proposal include the deregulatory and marketplace-oriented aspects of the proceeding, the potential importance of the low power service to rural telecommunications, the possibilities for additional local television outlets providing local service, the potential for additional minority-owned and noncommercial stations, the possibility for increased programming for specialized audiences such as children and the elderly and the potential for more diverse television service nationally.

3. In contrast, the number of negative comments was quite small, generally relating to what may be characterized as competing needs for spectrum space. The Los Angeles County Sheriff and other representatives of land mobile interests evince concern regarding low power's impact on land mobile services sharing frequencies with broadcast uses. Field Communications Corporation (Field), Channel 57 Corporation (Channel 57), Corinthian Broadcasting Corporation (Corinthian) and Omega Communications (Omega) voice concern about impact on full-service UHF stations. Garryowen Corporation (Garryowen) argues that the typical low power coverage area will not be large enough to serve rural areas adequately. B. D. Thornton (Thornton) wonders whether and how low power stations will be profitable. ABC cautions against "financial bailouts," such as waivers of technial standards, after the service is on line. The ABC Television Affiliates Association (ABC Affiliates) and Pennsylvania Association of Broadcasters (PAB) oppose the proposal, fearing that audience fragmentation will cause a decline in exisiting program services, especially in marginally profitable markets that cannot withstand increased competition. The above points are addressed in greater detail in the discussion that follows.

4. *Spectrum-related issues.* The greatest volume of commentary was addressed to spectrum-related issues, including low power's spectrum priority, channel selection and other technical and engineering matters. A number of parties discuss the proposed secondary status, or spectrum priority, for low power stations. Not all parties are in agreement on the definition of secondary status, not to mention whether or not it should be accorded to low power stations.[1]

5. Parties favoring maintenance of secondary status for the low power service are generally full-service broadcasters and their representatives. They include ABC, ABC Affiliates, CBS, Association of Maximum Service Telecasters (MST), NAB, National Broadcasting Company (NBC), Storer Broadcasting, Inc. (Storer), and Washington State Association of Broadcasters (WSAB). They argue that secondary status must be maintained, to protect full-service stations from potential interference from low power stations and generally to preserve the integrity of the Television Table of Assignments. They encourage the Commission not to modify the secondary stations of low power stations to preserve against possible future economic problems. NAB cautions against waiver of technical standards, in particular. Gammon and Grange states that secondary status permits flexibility in low power authorizations.

6. Parties opposing secondary status generally wish the Commission to provide added channel security for low power stations. They include Metonomy Cable Corporation (Metonomy) and Grassroots Video. Some comments address spectrum priority among translators and low power stations themselves. Colorado Translator Association (CTA) would like translators to have priority over low power stations. Garryowen states that it would expect a low power station on a channel in the Television Table of Assignments to have priority over one on an unassigned channel. Several parties evince concern about low power stations being required to yield their frequency to later full-service stations.

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[1] For purposes of reference, the *Notice of Proposed Rule Making* defined secondary status as follows:

"This means that a translator or low power station creating harmful interference to a full-service station must cease operation if it is unable to change its channel or take other steps to correct the interference. Translators and low power stations also are secondary in the sense that they must give way to a full-service station proposing a mutually exclusive use of a frequency." 45 FR at 69181, paragraph 22, published October 17, 1980.

Citizens accepts that low power stations would be secondary to existing full-service stations, but finds it unfair that an existing low power station would have to yield to a later full-service station, suggesting that the Commission hold a hearing on which station would better serve its community before mandating the elimination of the low power station. UAW also argues that the Commission should give consideration to the fact that a proposed full-service station would preclude an existing low power station, in licensing the full-service station. The Ohio Educational Broadcasting Network Commission (OEBNC) seeks channel security for noncommercial educational translators, as does the New York State Board of Education, contending that noncommercial low power stations in operation for over three years be accorded primary status. The National Translator Association also would like primary status for low power stations over three years old, adding that when a full-service station is applied for on the channel of a low power station, the low power station should have the opportunity to upgrade to full service, with a comparative preference over the full-service applicant, or a preference on another channel, if the low power station chooses to yield its original frequency to the full-service applicant. International Broadcasting Network (IBN) favors primary status for originating, free low power stations that broadcast a minimum number of hours. The Los Angeles Children's Hospital University Affiliated Program would like the Commission to afford primary status to low power stations providing a unique service.

7. *Interference.* Several parties including ABC, the Los Angeles County Department of Communication, Microband and Storer, would like the Commission to develop more detailed interference criteria than those in the *Notice of Proposed Rule Making.*[3] A number of comments address the potential for interference by low power stations to various other services that use the same frequencies.

8. *Interference to Multipoint Distribution Service.* (The multipoint distribution service (MDS) transmits a signal using microwave frequencies and down-converts the signal to a television channel for receipt on subscribers' television sets.) Microband believes that the Commission should not permit low power stations on channels currently used by MDS carriers, or should require the low power operator to pay to retrofit the MDS down-converters to another channel and related costs. In reply comments, NTA avers that no additional protection is necessary for MDS down-conversion because any channel can be used. CPB contests the right of MDS home delivery to protection from low power, because MDS is unregulated based upon the rationale that it does not preclude broadcast uses of spectrum.

9. *Interference to Land Mobile Stations.* (In thirteen major urban areas, land mobile services are permitted on UHF Channels 14 through 20 on a sharing basis with broadcast uses.) Microband sees a need for interference criteria to and from low power stations and land mobile services using UHF channels.[3] The Los Angeles County Department of Communication, joined by the California Public Safety Radio Association, urge the Commission not to authorize low power stations on Channels 14 through 20. The State of Florida wants Channels 14 through 20 frozen for land mobile use in the top 25 urban areas, as does Channel 57. The Land Mobile Communications Council, citing the 1979 WARC authorization of the band 614–806 MHz (Channels 38 through 69) for land mobile uses, would like this band either reserved exclusively for land mobile, or for land mobile priority to be established in the band. The National Association of Business and Educational Radio Stations (NABER) would like low power to be secondary to land mobile between Channels 4 and 5 and on Channels 14 through 20. Telocator, fearing interference to mobile paging devices, would forbid low power on Channels 4 and 5 and 14 through 20. The Utilities Telecommunications Council (UTC) would like more channels, as well as Channels 38 through 69 restricted as to low power uses. APCO agrees with this approach, including Channel 7 in its prohibition, at least until the Commission studies the utilization of these channels in connection with land mobile needs. The Los Angeles County Sheriff wants the Commission to limit low power to the upper end of the UHF band and to require greater receiver selectivity and sensitivity, to prevent potential interference to land mobile uses.

10. The Maryland, District of Columbia, Delaware Broadcasters Association and the Association of Maximum Service Telecasters oppose the position taken by the Land Mobile Communications Council and allied commenters. Howard Publications (Howard) urges the Commission to resist land mobile claims to Channels 4 and 5. The Corporation for Public Broadcasting (CPB), in response to the land mobile advocates, contends that low power stations should be required to afford protection to land mobile stations on Channels 14 through 20 in the same manner as other broadcast stations must, but that low power should not be made secondary to nonbroadcast uses on Channels 4 and 5, 14 through 20 or 38 through 69. NTA agrees that no additional protection for land mobile is necessary. OK TV Translator Company asks that Channels 70 through 83 be reinstated for low power use.

11. The American Radio Relay League fears that low power stations will receive interference from amateur radio operations, because current television receivers do not have sufficient rejection capacity to prevent this.

12. *Interference to Cable Systems.* (Cable systems sometimes receive program material at the headend via VHF radio frequencies; they also may convert the signal from the cable into the subscribers' receivers using available low-band VHF channels.)[4]

13. NCTA is concerned about interference low power stations might cause to cable systems, both at the headend and the subscribers' receivers. As a solution, it suggests that the Commission either authorize no VHF low power stations, or put the burden of frequency coordination with existing cable systems entirely on the low power operator. Joint comments filed by a group of cable companies also argue that cable systems should not be required to yield if a low power station causes interference to the signal received at the subscribers' sets, but that the low power station should be required to modify its operation to a noninterfering UHF channel, because a cable company cannot modify its subscribers' receivers. Storer believes that low power stations should be authorized only when no potential interference to cable is illustrated. Spectradyne, explaining that MATV systems use coaxial cable to bring pay television into hotels on Channels 12 and 13, states that low power could cause ghosting at the MATV headend, and urges either that low power stations be required to meet the VHF mileage separations, or not be authorized at all on Channels 12 and 13.

14. NTIA advocates a policy that would require cable systems and low power stations to work out interference problems by mutual agreement. NTIA would require a cable company first to object to a low power proposal that would result in headend interference, and then make the cable company responsible to correct all other interference, including that which occurs at subscribers' receivers. NTA takes issue with NCTA's allegation that low power will cause interference to cable, claiming that little evidence exists to support this, and favors the policy proposed in the *Notice* with respect to cable/low power interference. TV Technology Corp. suggests that low power stations be required to protect cable headends within the Grade B contour of the primary station and not more than five degrees below the line-of-sight path between the primary station and any obstacle in the path to the cable headend, and not beyond, because beyond this area there is not a reasonable expectation of reception of the primary station. As a precaution against interference at cable subscribers' receivers, this comment also would require low-band VHF low power stations to maintain a frequency tolerance of better than 25 kHz where cable systems use the phase lock "zero beat" technique to reduce the interference potential of ambient co-channel signals. In reply to NCTA's comment, TV Technology

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[3] It should be noted that these comments were filed prior to issuance of the *Further Notice of Proposed Rule Making*, which proposes expanded exclusivity and interference definitions and criteria for the low power service.

[3] The *Further Notice of Proposed Rule Making* proposes such standards.

[4] The *Notice* proposed the following policies, with respect to low power/cable interference:

1. The low power station operator is strictly responsible for taking immediate corrective action where an interference condition to any other service results from operations in violation of the Commission's technical standards, or from improper maintenance.

2. The cable operator should be responsible to correct interference at the cable distribution system and at the subscriber's set (footnote omitted).

3. The first-come, first-served principle should govern conditions of interference between a low power station and reception to a cable television headend. Where possible, a solution should be found by mutual agreement upon the lowest cost solution, and the sharing of any burdens from taking corrective action.

Corp. argues that cable systems can use midband or superband, instead of VHF channels, so that VHF frequencies should not be off limits to low power stations. CPB, in response to NCTA and Spectradyne, contends that because cable's use of broadcast spectrum is unregulated based upon a nonpreclusion theory, delivery via cable or MATV should not be protected from low power frequency use. CPB supports the proposed first-come, first-served policy with respect to headend protection.

15. MST and NBC urge that all low power applicants be required to make noninterference showings, including measurement of field strength in the direction of the affected primary station, to establish antenna performance. NBC and Field point out that low power stations must yield when later full-service station modifications, particularly facilities increases of UHF stations, preclude the low power stations. NBC, Field and General Electric (GE) urge that low power stations be required to cease operations immediately on a report of any interference to full-service stations and remain dark until the interference is cured. ABC also advocates prompt procedures for testing for and remedying interference. NAB suggests that the Commission place the burden of resolution on a low power station whenever it receives notice of interference and that it file a report with the Commission regarding resolution of interference. Bonneville evinces concern that authorization of low power stations as proposed in the *Notice* will jeopardize the integrity of the Television Table of Assignments. Joint comments filed by broadcasters, including Cosmos Broadcasting Corp., seek that the Commission revise § 74.703(b) of the rules (the "UHF Taboos") to govern all VHF and UHF low power applications. Microband and Turner Television Stations, Inc. (Turner) ask for clarification as to whether assigned but unoccupied channels are to be taken into account, in finding a channel available for low power use.

16. NTIA believes that, when interference is complained of, a low power station should be permitted to continue operating until it is proved to be the cause of the interference. Citizens supports this position. NTA argues that the low power station only should be required to cease operations if it cannot correct interference it causes.

17. *Notification.* Several comments addressed the question of whether and under what circumstances low power applicants should be required to notify full-service stations of the pendency of the application. MST, GE and Joint Comments filed by broadcasters, including Cosmos, would require from low power applicants both a noninterference showing and notification to all full-service stations within whose Grade B contour the low power station would be. GE would dismiss low power applications that do not provide this. ABC and Field would require notification to full-service stations to which low power applications do not meet the "UHF Taboos" or full-service mileage separations. NTA objects to such notification as both unnecessary and burdensome, arguing that publication of low power applications in the **Federal Register** should be sufficient to notify interested parties, as is the case with all other broadcast applications.

18. Two comments addressed whether low power stations should be required to protect service received inside the Grade B contour of full-service stations.[5] NTIA believes that low power stations should be required to protect any reasonable expectation of service within the Grade B contour of a full-service station. Field wishes low power stations to protect service received outside a full-service station's Grade B contour and to this end encourages low power-to-full-service mileage separations.

19. *Field Tests.* Several parties commented upon whether low power stations should be required to conduct field tests prior to authorization. NAB says the Commission should require a field test prior to grant under a one-to-two month temporary authorization. Field would like low power stations to be required to certify to the Commission that they can directionalize as predicted. NCTA supports the concept of a sixty-to-ninety day provisional license, during which period the low power operator must ensure that the low power station does not cause interference. Citizens opposes the NCTA proposal; while recognizing that such a policy might have the effect of encouraging noninterfering applications, Citizens complains that it also would disadvantage applicants who could not afford to risk termination of the low power service, once initiated. NTA and Western Communications Research Institute argue that temporary licenses and field tests are unnecessary and merely burdensome in a secondary service such as low power.

20. *Low Power-to-Low Power Interference.* The Colorado Translator Association, while acknowledging that this might cause problems in the larger markets, argues that generally low power stations can work out interference problems among themselves. The National League of Cities (NLC) supports interference criteria that would permit as many low power stations as possible. National Association of Public Television Stations (NAPTS) argues that leaving the resolution of interference problems up to low power stations themselves will promote marginal applications, cause delays in service and generally favor wealthier applicants. Garryowen states that a low power station on an assigned channel should receive priority over a low power station on an unassigned channel, if an interference problem should arise. TV Technology Corporation would like a policy to protect the first-filed low power applications from interference by later filers, or for the Commission to intervene and decide interference questions. Turner suggests that the Grade B concept be extended from full-service, so that later low power stations can be guided by a standard in protecting earlier low power stations.

21. *Allocation Issues—Channel Selection.* The Los Angeles County Sheriff sees no need for additional television service in urban areas at all. The Los Angeles County Department of Communications likewise would have the Commission require low power applicants first to select a channel from the TV Table of Assignments and if none is available, then to select from Channels 21 through 69, and authorize low power stations on channels not in the Table only in rural areas that do not receive four television signals already. NTIA opposes low power stations being permitted on channels in the Table in urban areas, which it defines as areas receiving a Grade B or better signal from three or more stations. Thomas Smith suggests that low power applicants should try to meet the full-service mileage separations in major markets, that the Commission permit use of the 15-mile rule for low power applicants and that the Commission should amend the Table with additional available channels, because this would be less expensive for low power applicants.

22. ABC supports the establishment of mileage separations for the low power service. William Sullivan advocates a three-tiered system, including full-service and regional and local low power stations, with a new low power table of assignments, to document low power authorizations. Mr. Sullivan proposes the following mileage separations:

	To full-service stations (miles)	To low power stations (miles)
Co-channel:		
Full-service stations	60	45
Regional stations	45	25
Local stations	40	15
Adjacent channel:		
Full-service stations	55	
Regional stations	40	20
Local stations	30	15

NAPTS and PBS advocate a table of allotments for low power stations. They contend that a demand system of allocation may permit interference, while a table based on mileage separations is both simpler to administer and encourages the use of maximum facilities. They propose three classes of stations, full-service, low power and micro-power (these would be UHF only, with less than one kilowatt effective radiated power (ERP) and would not be reflected in the table of allotments).

23. CPB, while supporting reserved channels for noncommercial low power stations, advocates a protected contour allocation standard based upon desired-to-undesired (D/U) signal ratios. The National League of Cities supports CPB's approach. Spanish International Network advocates relaxed channel selection standards. TV Technology Corporation opposes milage separations or a table of assignments, averring that engineering flexibility is necessary for low power. Praxis supports case-by-case application processing as essential for maximum spectrum utilization. Gammon and Grange agrees that a table of assignments would result in inefficient spectrum use, stating that a demand system of allocation is most responsive to market forces: "Communities need not rely on the Commission's clouded crystal ball for an access to spectrum space, but on market

[5] This issue specifically was raised in the Further Notice of Proposed Rule Making, FCC 81-369.

forces which will result in an efficient and quick allocation of spectrum space." Gammon and Grange comments, at page 10.

24. National Black Media Coalition (NBMA), citing the WARC Third Notice of Inquiry, Docket No. 20271, asked that low power stations be precluded from Channels 65 through 69, because these frequencies might be used for FM stations.

25. *Desired-to-Undesired Signal Ratios.* Several parties commented on the D/U ratios proposed in the *Notice*. MST, NAB and RCA criticize the use of D/U ratios based upon mean receiver performance, because under this standard, theoretically, up to one-half of the receivers could sustain interference in an affected area. MST and NAB suggest use of a 90 percent standard. RCA Corporation (RCA) advocates use of § 74.702(c) ("UHF Taboos") only, for three years after a Report and Order in this proceeding, and then modification of the taboos based upon an assessment of receiver performance, stating that receivers would be redesigned to reflect the modified taboos. Electronics Industries Association, Consumer Electronics Group (EIA/CEG) suggest the following D/U ratios be used for five years after a Report and Order, with increased protection to take into account a time lag in improved receiver design, including better RF transistors and surface acoustic wave filters:

	D/U Ratio dB		Maximum U dB		
	EIA/CEG	(Notice)	EIA/CEG	(Notice)	
Co-channel	n	45		19	
Adjacent channel	n+1	−6	(−15)	70	(79)
Sound image	n−14	−7	(−23)	71	(87)
Picture image	n−15	10	(−6)	54	(71)
Intermodulation	n+2, 3, 4, 5	(1)			
Oscillator	n+7	(2)			

[1] Minimum separation, 20 miles.
[2] Minimum separation, 50 miles.

EIA/CEG also advocates specific standards under which terrain shielding may be taken into account. CPB argues that the median receiver standard is an appropriate one, because use of a worst case, or ninety percent, standard would be unduly preclusive.

26. Turner states that facilities proposing directional antennas cannot simply use a line between stations as a D/U measure, because there might be interference in other directions than the line, adding that applicants should have to provide full interference analysis, including interstation radial interference analysis with respect to all full-service stations inside the separation requirements on taboo channels.

27. *Noncommercial reservations.* A number of parties address the issue of whether channels should be reserved for noncommercial low power stations. The New York State Department of Education favors reservation of low power channels for noncommerical use by educational institutions. Community Television Network (CTN) would like one channel reserved for noncommercial use in each of the top 25 markets. Citizens would like a low power table of assignments, with UHF channels reserved for minority and noncommercial ownership. CPB, in reply comments, contends that CTN's and Citizens' suggestions are inadequate, and that a table of channel reservations based upon population is necessary to ensure full development of noncommercial low power service. The Joint Council for Educational Telecommunications (JCET) supports this position. CPB attached proposed tables to its comments and reply comments. Its population criteria for the top 150 markets would be: Three reserved channels in communities of over one million population, two channels in communities of over 250 thousand population and one channel in communities of under 250 thousand population. NAPTS and PBS discuss the theory underlying the need for reserved channels for noncommercial use—that nonprofit corporations require more time to acquire funding and thus prepare complete applications. In light of this, they advocate channel reservations for five years after a Report and Order in this proceeding and suggest that 36 percent of the channels available for low power stations be reserved for noncommercial, educational use to mirror the proportion of full-service stations that are noncommercial. They also advocate retention of the priority for noncommercial low power stations on reserved channels in the Television Table of Assignments and urge that the Commission permit subscription service on reserved low power channels.

28. Noncommercial reservations for low power stations are opposed by IBN, Microband and NAB. Gammon and Grange and NTA point out that reserved channels in the Television Table of Assignments still are available in many markets. NAB argues that the concept of reserved channels gives noncommercial low power stations an enhanced status that does not comport with the policy of secondary status for all low power stations.

29. *UHF Comparability.* Several parties commented on whether VHF low power stations would pose a significant competitive threat to UHF full-service stations. NBC argues against any VHF low power authorizations in all-UHF markets, because of the impact on UHF full-service stations and the greater risk of interference. NTIA proposes no 100 watt VHF authorizations in all-UHF markets, until the UHF comparability question is resolved. The Council for UHF Broadcasting states that the entry of low power stations on VHF channels makes it important to achieve UHF comparability as soon as possible. Joint comments filed by various broadcast licensees seek abolition of § 74.732(d) as is proposed, so that UHF full-service stations may operate VHF low power stations.

30. *Engineering Issues.* The pleadings contain various suggestions regarding other engineering matters. Turner argues against relaxation of spurious emissions standards because present equipment is manufactured in accordance with present standards, and even the savings involved in relaxed standards do not justify increased interference. Sullivan would like elimination of the IF beat taboo for low power, while NAB contends it should not be eliminated without further testing. Vega avers that the rules should encourage the use of frequency offset and, as a separation criterion, would permit low power applications outside the Grade B contours of a co-channel full-service or low power station and outside the Grade A contour of adjacent channel stations. Harlan L. Jacobsen (Jacobsen) would like the low power "pick-up" channel protection to be modeled on that of cable, that is, first in time must be protected by later users. GE favors the use of circular polarization to increase the low power coverage area. Grassroots Video urges no vertical blanking requirements for low power.

31. *Power.* Some comments, including those of ABC, GE and Bonneville, strongly urge the Commission never to waive the power limitations proposed in the *Notice*, because of the likelihood that low power stations with higher powers than those proposed could cause interference. Field thinks this is important because low power stations are likely to operate with ERPs higher than those predicted. Western Communications Research Institute stresses that the VHF power limit should be 100 watts. The Los Angeles County Department of Communications would like the Commission to retain the present translator power limits—10 watts VHF and 100 watts UHF, except on channels in the Television Table of Assignments, where 100 watts VHF and 1,000 watts UHF are permitted. Vega supports the 100 watt VHF and 1,000 watt UHF power limits proposed in cases where the mileage separations for full-service stations are satisfied.

32. On the other hand, a number of parties support increased power, either on a waiver basis or across the board. Edward Craney believes low power stations should apply for whatever power they actually would need to cover the desired service area. Los Angeles Children's Hospital thinks that interference alone should limit the power of a low power station. Grassroots Video suggests a 1,000 watt VHF power limit in areas where UHF availability is low. Sullivan, who suggests two classes of low power stations, would permit regional stations to operate at powers up to five kilowatts UHF and one kilowatt VHF, while local stations would be limited to one kilowatt UHF and 100 watts VHF. Garryowen, contending that the proposed power limits are too low to permit adequate coverage of rural areas, would permit, on channels in the Television Table of Assignments, 1,000 watts VHF and 10 kilowatts UHF, as well as multiple final amplifier outputs. GE, supported by UAW, avers that circular polarization would permit 2,000 watts UHF and 20 watts VHF without a low power station's increasing the coverage

in a particular direction, by radiating 1,000 watts UHF or 10 watts VHF each way from one horizontal antenna and one vertical antenna. Spanish International Network urges the Commission to consider waiver requests for higher power on a showing that this is necessary to provide adequate service and that no interference to full-service stations will be caused thereby. Turner believes that the Commission should revisit the power issue at some time after the conclusion of the rule making and consider authorizing low power stations to operate with higher power, or should waive the power limitations on a noninterference showing.

33. *License Issues—Operator Requirement.* A number of commenters argue that the Section 318 operator requirement should not apply to low power stations that merely rebroadcast satellite feed, as opposed to literal program origination. These include Spanish International Network, Residental, Community Broadcasting Network and Gammon and Grange. Westinghouse argues that requiring a full-time operator when this is technically unnecessary imposes a needless barrier to entry into the low power industry, but that in the case of local originations, including tape, film or live transmission, an operator should be available at the transmitter site, a remote control point, or the program source. Turner would like to see Congress amend the statute to permit unattended operation in situations where there is no local origination by a low power station, or permit the operator requirement to be met by having an operator at a remote monitoring point from which the transmitter can be controlled. Metonomy believes there should be no operator requirement, but that the Commission should establish a parameter of satisfactory performance, possibly mandating refunds for subscribers if low power service is disrupted.

34. The OK TV Translator Company believes that a service technician should be available at not more than one hour's distance from the low power station, with 24-hour telephone availability. The telephone number to be posted at the transmitter site. MST suggests that a "low power" operating license be required to monitor low power transmissions, not just a restricted operator's permit. NAPTS believes that low power stations should have to meet the same operator requirements as full-services. station.

35. *License Renewal.* The OK TV Translator Company suggests that the renewal form be streamlined and that the license term be two-to-three years or more. Colorado Translator Association also would have a three-year license term. NTA and Morongo Basin TV Association opt for a five-year license term. Metonomy suggests 10 years. The now-defunct executive Council on Wage Price Stability (COWPS) refers to the statement in the *Notice* to the effect that "responsiveness to specialized needs and interests" would be favored at license renewal, suggesting that this statement either be made more specific or abandoned. CFA avers that the incumbent should not be favored automatically in a contested renewal situation.

36. NTIA suggests that the following technical information is necessary on the license application: Transmitter output power, antenna gain, azimuth at point of maximum gain, gain in horizontal plane at ten degree intervals, height above ground of center of maximum radiation, elevation above mean sea level of the ground on which the tower is situated and ERP in the direction of maximum antenna gain. NTIA and Community Television Network contend that the financial qualification requirement can be replaced by a requirement that construction be completed within a certain period, say, a year, after authorization. NTIA would have no character requirement beyond no felony conviction and no loss of license in the previous five years. NTIA also believes that an applicant that agrees to abide by Commission rules should be deemed technically qualified.

37. NBC suggests a requirement that construction be completed within one year after grant of the construction permit, as in § 73.3598(b), and a requirement that low power stations also commence programming within a specified time. NBC also recommends that minimum hours of operation be prescribed, and that the amount be at least as much as that set out for full-service stations in § 73.1740(a)(12). The National League of Cities advocates a policy requiring prompt construction, with a penalty of forfeiture of the construction permit. ACTVA advocates automatic one-year extensions of the construction period permitted when equipment is not readily available. Kitchen Productions believes that licenses should include a condition that the site be shared with other facilities on different channels serving the same area with the same power. The OK TV Translator Company believes that low power licensees should be required to live in the state of license. Robert C. Greene (Greene) thinks no license should be required for 100 milliwatt translators serving rural areas. William Sullivan thinks new technologies should be permitted on low power stations without specific authorization required: "Local or low power stations may originate subsidiary or ancillary services as part of their licensed service, provided the service does not interfere with the normal reception standards and good engineering practice." He also would like originating low power stations to be assigned five call letters—W or K and four following letters of the licensee's choice.

38. NTIA advocates a *WLVA* standard for when a hearing will be granted under *Carroll Broadcasting Company* v. *FCC*, 258 F. 2d 440 (1958), on a petition to deny based on economic harm. Under this standard, the petitioner must make a *prima facie* case that (1) his loss of income in his market will cause (2) elimination of public service programming, the loss of which (3) will not be offset by similar programming provided by the applicant.

39. A number of parties encourage the Commission to consider the change from translator to low power station a minor modification. Morongo Basin TV Club (Morongo Basin) and OK TV Translator Company believe it should be a minor modification for translators licensed for more than six years. UPTV also advocates the upgrade being a minor modification and adds that a facility engaging in rebroadcast should be considered a translator and a low power station only if it originates programming. CTN also believes that the upgrade should be a minor modification, but cautions that upgrades not be permitted where they would violate the ownership restrictions. NTA points out that minor modification treatment for translator/low power upgrades would encourage rapid development of the service. NFLCP believes that the upgrade should be considered a minor modification, but that low power ownership restrictions should extend to translators. NAPTS also favors minor modification treatment for upgrades, after final rules are adopted for the low power service. Western Institute of Communications Research says that applications to upgrade translators to low power should be subject to petitions to deny but not competing applications. Kitchen Productions would like upgrade applications to be subject to competing applications, but otherwise not treated as a major modification. CFA and CPB believe that translator-to-low power upgrades should be treated as major modifications, with competing applications. Richard I. Vega and Associates (Vega) advocates major modification treatment for translator-to-STV upgrades.

40. *Trafficking.* The Justice Department favors no prohibition on trafficking, because this permits ready entry into and exit from the market. NTIA also supports the absence of a trafficking prohibition, so long as the Commission maintains the minimal involvement in transfers required by the Communications Act. CTN agrees that a prohibition on trafficking is not necessary, but encourages that the Commission oversee transfers to prevent sham transactions. National Citizens Committee for Broadcasting (NCCB) also favors no trafficking prohibition, but wants the Commission to remain willing to investigate complaints regarding particular transfers. NFLCP avers that there should be no trafficking prohibition, but would permit transfers of low power stations only to entities with at least as many preference points as the transferor (*see* paragraph 91, *infra*), or where this does not occur, would require that a transfer be open to challenge from competing applicants. (*But see* Section 310(d), *Avco* Rule.)

41. A number of commenters point out that lack of a trafficking rule could undercut the effect of awarding licenses on the basis of preference points. They include CFA, CPB, Microband, NBMC, NLC and NTA. NBC would not permit sale by a preferred applicant within the first three years of authorization, but would require that the license be turned back to the Commission. UAW would limit the sale price to not more than 200 percent of cost incurred to date, if a station acquired on the basis of preference is not transferred to a preferred applicant. Western Institute of Communications Research would prohibit noncommercial licensees from transferring the station to a commercial entity and would prevent transfer of a low power station to an entity with

fewer preference points than the transferor. Channel 57 says that it is not fair to UHF full-service licensees not to prohibit trafficking in low power stations. NAPTS would require permittees to complete construction and commence operation before allowing sale of a low power station for a price in excess of costs incurred in its acquisition.

42. *Programming Issues.* Turner would like the low power rules to promote diverse programming, particularly all-news formats. NTA agrees that program content regulation should be minimal, perhaps mandated by legislative change, if necessary. ABC avers that minimal programming requirements are consistent with the deregulatory nature of the low power service. Colorado Translator Association cites the necessity for flexible programming rules, especially in rural areas. NAPTS would have the Commission afford a comparative advantage to public service programming proposals, and also would like an hourly station identification requirement, as with full-service stations. The OK TV Translator Company believes there should be no identification requirement on translators of under 100 watts. Telicommunity urges that teleconferencing be permitted to low power stations. Tymon would permit teletext in the low power service. Garryowen argues that translators should not be permitted to duplicate over 50 percent of the prime-time network programming aired on any local full-service station.

43. *Ascertainment.* A number of parties believe that some form of ascertainment should be required of low power stations. The Video Factory suggests a smaller scale ascertainment process than that required of full-service stations. ABC Affiliates aver that if no ascertainment is required of low power stations this will be unfair to full-service stations. The National Association of Low Power Broadcasters (NALPB) and the United Church of Christ also believe that low power stations should be subject to an ascertainment requirement. Citizens proposes, in lieu of ascertainment, a requirement that low power stations periodically broadcast a message to the effect that the station has a statement reflecting its familiarity with community needs and interests and a list of responsive programming in its public file, which the public may examine and comment upon to the Commission. CFA also supports a requirement that low power stations maintain such a statement in the public file. NBMC states that if there is no ascertainment requirement, low power stations should be required to keep logs of nonentertainment programming broadcast, to facilitate monitoring by the public. The American Community Television Association (ACTVA) supports the proposal in the *Notice* that no ascertainment be required of low power stations.

44. *Fairness Doctrine.* Several parties believe that the Fairness Doctrine should be strictly applied to low power stations. These include the National Council of Churches, United Auto Workers and the United Church of Christ, which would impose a fairness obligation only on originating low power stations. Citizens would like to see greater Fairness Doctrine responsibility than that proposed in the *Notice*, suggesting that a sliding scale of fairness obligations be used only if the station provides access time. CFA thinks that originating low power stations should be required to pay for responsive programming, not merely offer time for opposing views free of charge. NAB avers that stringent fairness obligations will discourage experimental originated programming by low power licensees.

45. *Access for Political Candidates; Personal Attack Rule.* CFA and UAW believe that sections 312 (a) and (f) and 315, the rules relating to political candidates, as well as the rules regarding personal attacks and political editorials, should apply to low power stations. Los Angeles Children's Hospital believes that editorializing prohibitions should not be imposed upon noncommercial low power licensees. NAB avers that these rules will discourage experimental originated programming.

46. *Nonentertainment Programming.* CFA suggests a five percent news and public affairs programming requirement for low power stations. ABC Affiliates argue that it is unfair to full-service stations not to impose nonentertainment programming guidelines on low power stations.

47. *Limits on Commercialization.* CFA wants a ceiling of no more than one-third of all originated programmming to be commercial material. ABC Affiliates complains that the absence of limits on low power commercialization is unfair to full-service stations. Los Angeles Children's Hospital supports the absence of limits on commercialization on low power stations.

48. Several parties, including Ventures in Communications and the National League of Cities, indicate that they would like noncommercial low power stations to be permitted to air commercial material. *See also* paragraph 80, *infra.* ACTVA, for example, proposes that a commercial entity be permitted to lease up to ten hours per day from a noncommercial low power licensee, during which hours commercials could be broadcast. ACTVA further suggests that the noncommercial licensee could own the commercial entity, so long as separate corporate identities are maintained. ACORN believes that nonprofit corporations holding low power licenses should be permitted to air advertisements and still receive a noncommercial preference. Global Village supports the concept of advertising on noncommercial low power stations, so long as the majority of broadcast time is free from commercial material. UAW believes that commercial material should be permitted on noncommercial low power stations, so long as they are nonprofit. NFLCP also thinks commercials are acceptable on noncommercial low power stations, but would favor comparatively the nonprofit applicant proposing the highest percentage of air time without commercials. National Innovative Programming Network would afford a preference to instructional programming, whether aired on a noncommercial station or not. Western Communications Research Institute, SINO Communications Group, Inc. (SINO) and Washington State Broadcasters Association believe that noncommercial low power stations should not be permitted to air commercials, except possibly those in rebroadcasted programming.

49. *Prohibition on Obscenity and Lotteries.* ABC believes these rules should apply to low power stations. Los Angeles Children's Hospital disagrees, arguing that they should not apply to a secondary service.

50. *Retransmission and Commercial Substitution Consent.* Colorado Translator Association believes that retransmission consent should not be required. National Translator Association asks the Commission to establish a presumption in favor of retransmission consent. CBS opposes this suggestion, stating that the present standard of reasonableness for refusal is adequate in the low power context. NTIA agrees with CBS. ABC and the National Hockey League also favor required consent for program retransmission and commercial substitution. Washington State Association of Broadcasters would like the grounds for refusal of retransmission consent within the Grade B contour of the originating station to be clearly defined, and to include failure to negotiate in good faith. This party also would like a requirement that the request be in writing, include a fee as compensation for market fragmentation and a prohibition on commercial substitution.

51. *Local Programming.* Some parties suggest additional programming requirements not proposed in the *Notice.* The only one for which there appears to be even a moderate consensus is that low power programming be required to have some sort of local component. *See also* paragraph 83, *infra.* This view is taken by Stephen A. Ballo (Ballo) and Kitchen Productions. Charles Edgely would like a local news and public affairs requirement for rural areas. Colorado Translator Association believes that originated programming should be shown to be in the local public interest. New York State Department of Education wants all low power stations outside the Grade B contour of the originating station or 80 miles from the control point to be required to provide local emergency information.

52. A couple of parties suggest a name change for the low power television service, either because they dislike the connotation of "low power," or because they fear confusion with Subpart H of Part 74 of the rules, "Low Power Auxiliary Stations." ACTVA, supported by Ventures in Communications, suggests "Community Television Service." Attaway, also supported by Ventures in Communications, suggests "Local Television Service." Gammon and Grange believes that the rules for low power should be different according to the nature of the community served, including site of market, urban or rural, whether or not already served by STV or cable and character of population, *i.e.*, large minority component. The comment suggests that the zone concept of § 76.51 could be used to define an urban market.

53. *Alaska.* Alaska Public Broadcasting Commission states that a number of the rules proposed in the *Notice* and, more particularly, additional proposals made in comments, are too burdensome and unnecessary for Alaskan low power stations.

For example, some of the maintenance requirements are too burdensome to be carried out in remote bush country. The comment complains that an annual video proof of performance check would cost $278,000, because it would require year-round use of an airplane and two personnel. Further, the comment contends that it is unnecessary to check for frequency drift where there are no full-service stations for over 50 miles. Because the Alaskan stations engage primarily in rebroadcast, the comment adds, no operator requirement should be imposed. Alaska also opposes the proposed ownership restrictions and any suggestion that a table of assignments might be implemented for low power stations in Alaska.

54. *Ownership Restrictions.* Various parties comment generally on the ownership issues. M/A Com, Inc. (M/A Com) avers that the ownership rules proposed in the *Notice* are premature and that the Commission should first institute the low power service without ownership restrictions and evaluate whether the Fairness Doctrine obligation is sufficient to promote diversity, before imposing additional requirements toward that end. Communications Investment Corporation believes that media concentration only should be an issue in the comparative situation. Community Television Network states that the secondary nature and limited coverage area of low power stations do not distinguish the low power service sufficiently from full-service stations to justify relaxed ownership restrictions. CTN believes that ownership rules based on local and national diversity considerations should apply to low power, including all those proposed in the *Notice*, and argues that the "clear threat of monopoly" test proposed for the Direct Broadcast Satellite Service is not adequate for low power, because competitive abuses can occure far short of a monopoly situation. Gammon and Grange believes there should be no cross ownership prohibition in rural areas, only urban. The National Association of Educational Broadcasters, joined by the National Association of Public Television Stations and the Public Broadcasting Service, objects to multiple ownership restrictions for noncommercial low power stations, on the grounds that such restrictions would have the effect of fragmenting the already limited funds available for noncommercial broadcasting. The Corporation for Public Broadcasting favors no cross ownership rules for noncommercial low power stations, or at least no cross ownership prohibition for noncommercial radio and low power licensees, with a comparative preference for the applicant with fewer other media interests when two noncommercial low power applications are mutually exclusive. The National Federation of Local Cable Programmers advocates no exception to the multiple ownership restriction for noncommercial low power stations, except in rural areas or for an interactive or other kind of service that would require more than one channel. NFLCP also suggests that the Commission maintain a favorable attitude toward the possibility of waivers to permit noncommerical radio/low power cross ownership.

55. *Duopoly Rule.* [A duopoly rule prohibits common ownership of more than one station in *the same service* with overlapping contours.] A number of parties oppose the duoply rule proposed for low power stations. These include Storer, Summers Broadcasting, Inc. (Summers), Howard, Communications Investment Corporation, NAB, the Maryland, Delaware, District of Columbia Broadcasters Association and Joint Comments filed by various broadcast licensees, including Cox. Boler believes a low power duopoly rule is unsuitable for rural areas. The National Congress of American Indians and the Joint Business Council of the Shoshone and Arapahoe Tribes think that the rule would have a harsh effect on Indian tribes. Garryowen cautions against extension of the duopoly prohibition to translators. A great many commenters believe that multiple-channel, low power STV services are economically essential, to be competitive with cable systems, particularly in rural areas. Residential Entertainment, Inc. (Residential) argues that where STV is rebroadcast solely, the duopoly prohibition should not apply. UPTV Systems concurs that originating low power stations should be distinguished from STV rebroadcast. Metonomy, Blonder Tongue Laboratories, Inc. (Blonder Tongue), M/A Com, Kevin Parkansky, TV Technology Corp., Jerrell K. Davis (Davis), General Electronic Broadcasting Company and Morongo Basin also take this position. NTA believes that low power STV stations with multiple channel capacity should be permitted in rural areas on a waiver basis. Morongo Basin also takes this position. NBC would favor a comparative preference for an applicant with no other low power stations in a market, but opposes a duopoly rule. Turner argues that overlapping contours of commonly-owned low power stations should be permitted where the programming is the same. CBS, pointing out that the basis of a duopoly prohibition is to foster diversity in the face of spectrum scarcity, contends that a duopoly rule is not necessary for low power stations because there is no scarcity of spectrum. WHA–TV, City University of New York, Graduate School and University Center (CUNY/GSUC) and the New York State Board of Education oppose a duoply prohibition for noncommercial low power stations, on the grounds that contour overlap may be necessary to facilitate regional educational networking.

56. ACORN, Community Television Network, Consumer Federation of America, Federal Express, Arnold Gregg (Gregg), National Citizens Committee for Broadcasting, and Western Communications Research Institute support a duopoly rule for low power. The Justice Department favors a duopoly rule as promoting competition. Citizens Communications Center believes it can promote diversity within a market. William Sullivan believes the rule should apply to heterodyne conversion modulated signal translators, as well.

57. *One-to-a-Market Rule.* (A one-to-a-market rule prohibits common ownership of broadcast facilities in different services with overlapping contours.) A great number of parties oppose the one-to-a-market prohibition proposed for the low power service. They include NBC, OK TV Translator Company, Howard Publications, Maryland, District of Columbia, Delaware Association of Broadcasters, TV Technology Corporation, the Joint Reply of Cox Broadcast Corp., etc., NAB and Park Broadcasting (Park). Don Martin and Quality Media Corporation believe the rule will hamper the development of the low power service. Gannett Co., Inc. (Gannett) sees no reason for it. A number of parties believe that local broadcasters can lend their already-acquired expertise and familiarity with the community to a new low power venture. This is regarded as a potential economy by Field Communications. ABC and Bonneville see it as a way for local broadcasters to provide specialized service to parts of a larger service area. Many parties, including Lee R. Shoblom (Shoblom), Storer and Summers, believe that the one-to-a-market prohibition will have an especially detrimental effect in smaller communities. Many see wisdom in permitting local radio stations to lend their expertise and financial backing to low power stations. These include Span-Com Broadcasting Group (Span-Com), the Justice Department and Communications Investment Corporation. Joint comments filed by broadcast companies including Forward Communications wonder if low power stations will be financially viable if existing broadcasters are not permitted to subsidize new ventures in low power. Joint comments filed by various broadcast licensees state that the market is sufficiently competitive already, so that a one-to-a-market rule for low power is not necessary to promote diversity. CBS argues that low power does not face the scarcity of spectrum space that is necessary to justify a one-to-a-market rule to ensure diversity. General Electric opposes the rule on the grounds that low power stations are not sufficiently like full-service stations for such a precaution to be required. The National Congress of American Indians and the Joint Business Council of the Shoshone and Arapahoe Tribes object to a one-to-a-market restriction for Indian tribes, alleging that on most reservations it is unlikely that anyone other than existing licensees would start a low power station. CUNY/GSUC, WHA–TV and Dr. Marvin R. Bensman (Bensman) object to the rule for noncommercial low power licensees. Residential and Oak Industries, Inc. (Oak) believe the rule should not preclude common ownership of originating low power stations, STV low power stations that merely rebroadcast any full-service STV stations in the same market. NTIA believes that the rule might be applied in the form of a comparative demerit, but not as an across-the-board cross-ownership prohibition.

58. ACORN, Gregg, Consumer Federation of America, National Citizens Committee for Broadcasting and William Sullivan support a one-to-a-market rule for low power. Community Television network contends that viewer preferences do not determine that there will be diverse programming on commonly-owned stations, and, with Citizens Communications Center, believes the one-to-a-market rule can promote diversity. Gammon and Grange agrees, adding that

such a rule also will discourage strike applications. Microband supports the rule, except in the case of MDS/low power cross ownership, because MDS operations do not control the programming broadcast via MDS.

59. *Network Ownership of Low Power Stations.* Several parties believe networks should be permitted to own low power stations, including NBC, the National Association of Broadcasters and Quality Media Corporation (QMC). William Sullivan believes networks should be limited by the one-to-a-market rule only. Turner states that networks will not garner affiliates on account of the counter-programming principle. NTIA would permit networks to own low power stations, but would prohibit duplication of network programs on a network-owned low power station within the Grade B contour of a network affiliate. ABC and NBC cite the conclusion of the Commission's Network Inquiry to the effect that multiple owners have an incentive to provide diverse programming, to add to, rather than simply fragment their existing audiences. CBS adds that it is unfair to distinguish networks from other group owners and points out that networks are in a favorable position to develop and introduce new technologies via low power.

60. Network ownership of low power stations is opposed by ACTVA, Gammon and Grange, Western Communications Research Institute, Charles Edgely, Consumer Federation of America, IBN, ACORN and Gregg. Community Television Network and National Citizens Committee for Broadcasting ascribe to the view that an entity with the capacity to reach up to 25 percent of the nation's television households should not be permitted further broadcast interests. This would preclude network ownership of low power stations. Field would preclude the three national commercial networks, but not any new networks that might arise in connection with low power. The National Council of Churches would forbid network ownership in major markets, but not in rural areas. The Justice Department believes that networks should not be permitted to own or affiliate with low power stations or translators, because this would have the anticompetitive effect of precluding new entrants into the industry. Community Television Network, in reply comments, opposes this view insofar as it applies to network affiliates as well as networks themselves.

61. *Multiple Ownership.* A great many commenters, including Channel 57, the National Association of Low Power Broadcasting, National League of Cities, Lake County Translator Association and the United Church of Christ, believe there should be some limit upon the number of low power stations permitted in common ownership. Attaway would put the limit at 25 low power stations. Quality Media Corporation suggests 21. Fessenden supports 15 to 20. Fifteen is supported by the National Council of Churches, Arnold Gregg, B. Jackson, IBN, Citizens, NBMC, Consumer Federation of America, Westinghouse Broadcasting Company, Inc. (Westinghouse), Jeffrey Nightbyrd, Darwin Hillberry and Western Communications, and Research Institute. Gregg would add a limit of not more than five applications of an entity with five or more percent common ownership interest to be eligible for processing at one time, for purposes of administrative efficiency. NBMC would favor a liberal waiver policy for minority ownership in excess of 15. UPTV Systems would put the limit at twelve, four VHF and eight UHF low power stations. Sullivan would start from the seven-station limit for full-service stations and set a ten-station limit for regional stations (including full-service in the total), a fourteen station limit for local stations (including full-service, and regional) and a sixteen-station limit for translators (including full-service, regional and local). *See* paragraph 19, *infra.* Don Mason (Mason) would permit seven low power stations in common ownership. Potomac Communications would set a limit of not more than five low power stations in common ownership. Community Television Network would prohibit further ownership of low power stations by any entity with existing broadcast ownership interests that permit access to over twenty-five percent of national television households. Vega believes that one way to encourage joint ventures to resolve mutually exclusive applications would be to exempt from the mutiple ownership limit an applicant acquiring less than twenty percent interest in a competing application.

62. ACORN, Federal Express, the Department of Justice, Gammon and Grange, the Corporation for Public Broadcasting, Residential, Turner and Videomakers oppose a numerical limit on low power stations in common ownership. Daniel Mayeda and the United Auto Workers believe a preference for local ownership is preferable to an overall limit. Microband points to economies of scale involved in group ownership. NTIA believes that networking may be necessary for low power to be viable economically. Neighborhood TV Company sees a benefit in low power facilitating additional national networks. New York State Board of Education cites the BOCES system, which has 70 stations, as a successful low power network experiment. The Radio and Television Commission, Southern Baptist Convention, believes there should be no multiple ownership limitation on noncommercial low power licensees. National Innovative Programming Networks seeks no limit for minority owners.

63. *Regional Concentration Rule.* Citizens Communications Center, Community Television Network and Consumer Federation of America believe there should be a regional concentration rule for low power stations. CFA suggests that an owner of two stations not be permitted to acquire a third if the primary service contours of any of the three overlap.

64. *Translators in Common Ownership.* Colorado Translator Association urges that conventional translators not be included in the low power ownership restrictions. The *Notice* does not propose to do so, although a number of parties appear to assume that translators would be included.

65. *Newspapers.* The parties evince some confusion regarding whether the cross-ownership rules proposed for the low power service would include low power/newspaper crossownership. Community Television Network and Consumer Federation of America believe that newspaper/low power cross ownership should be prohibited, in the interest of diversity. Messenger Publishing Company, Gannett, Belvedere Daily Republican and Joint Reply of Cox Broadcast Corp., etc., advocate no newspaper/low power cross ownership prohibition, on the grounds that local newspapers, especially in smaller communities, may be uniquely well-situated to operate low power stations that provide local information services subsidized by newspaper revenues.

66. *Local Ownership.* In addition to comments advocating a comparative preference for local ownership, some would like a local ownership requirement. Craney wants local ownership and operation required for low power stations. Kitchen Productions believes that low power stations should be 50 percent locally owned. Darwin Hillberry proposes that for all entities that own more than seven low power stations, 61 percent of the owners should live within 300 miles of the station.

67. *Noncommercial Operation.* Ron Kurtenbach argues that either all low power stations should have to operate noncommercially, or 75 percent, with 50 percent of those providing access for free speech messages. International Culture Network would like 50 precent of low power stations to be noncommercial or minority-owned.

68. *Cable/Low Power Cross Ownership.* A number of parties, including Attaway, Storer, Don Martin, National Telephone Cooperative Association, believe that cable companies should be permitted to own low power stations within their franchise areas. NTIA believes that this situation should give rise to a comparative demerit only. National Congress of American Indians believes that a cable/low power cross ownership rule should not apply to Indian reservations, where a local cable company is likely to be the only entity with the financial wherewithal and communications expertise to operate a low power station. Joint Comments filed by Colony Communications and other Cable Companies dispute that cable/low power cross ownership would be anticompetitive.

69. Opposing cable/low power cross ownership are Blue Mountain Translator District, Colorado Translator Association, Consumer Federation of America, Charles Edgely, Garryowen and Spanish International Network. The Justice Department envisions a situation where a cable company could acquire a local low power license solely for the purpose of thwarting potential competitors.

70. *Mandatory Carriage Rules.* The issue of whether cable systems should be required to carry low power stations is contested. The National Cable Television Association supports a "may carry" policy, such as was proposed in the *Notice.* NCTA claims that "must carry" rules violate the first amendment rights of cablecasters, inhibit competition and have the illegal effect of imposing a common carrier-like obligation on cablecasters. Field argues that the primary

intent of the Commission's mandatory carriage requirement is to maintain local broadcast coverage within a market, but for low power "must carry" rules would have the additional effect of extending the signal. Because low power stations are under no public service obligations, Field contends that "must carry" rules for low power work an unfairness on full-service broadcasters, who have public service obligations. Finally, Field adds, with respect to low power STV stations, the scrambled signal may be incomprehensible to cable subscribers anyway, defeating the purpose of a "must carry" rule. Omega opposes a "must carry" rule on the grounds that it would provide an improper subsidy to low power stations. Channel 57 thinks mandatory carriage is inappropriate for low power because it is a secondary service on which no local programming is required. TV Technology Corporation opposes "must carry" rules, but believes that cable operators should be required to provide all subscribers with high isolation switches, so that broadcast signals, including low power, may be received.

71. Numerous parties favor "must carry" status for low power signals. They include the National Translator Association, New Jersey TV Corp., Spanish International Network, Kitchen Productions, ACORN, Fessenden Educational Foundation, P. J. Broyles, Ron Kurtenbach, Thomas Smith, Los Angeles Children's Hospital, Grassroots Video, National Hockey League and Ventures In Communications. Garryowen believes that all low power stations of 100 or greater wattage should be carried. ABC supports "must carry" rules based on the principle that local broadcasters are entitled to an assurance of their audiences. Association of Maximum Service Telecasters and National Association of Broadcasters urge maintenance of the present translator/cable carriage rules. Howard contends that low power will not be viable in areas of high cable penetration without a "must carry" requirement. Harlan Jacobsen would require carriage of all free low power stations that originate over five percent of their programming locally. The National Association of Public Television Stations and Philip Tymon advocate mandatory carriage of all low power stations by cable systems located within the low power station's Grade B contour. Alternatively, Tymon would require that cable companies provide A/B switches free of charge to subscribers if there are no "must carry" rules for low power. International Broadcasting Network would require cable carriage of low power signals except on a showing of no preclusion to their off-air reception. ACTVA would require mandatory carriage on a first-come, first-served basis. The National League of Cities would require carriage if a vacant cable channel is available. Gammon and Grange would grandfather saturated cable systems and give them 18 months to add channel capacity for low power carriage. Nightbyrd would require cable carriage of low power stations on all greater-than-twelve channel cable systems. National Federation of Local Cable Programmers would impose a "must carry" rule for low power on all cable systems having over 30 channels. On systems with fewer than 30 channels, NFLCP would require carriage unless the system were saturated, in which case the cable operator would be required to provide an A/B switch. NFLCP contends that low power would be severely hampered without a "must carry" rule, designed to assure local broadcasters access to their audience and thus promote competition in local programming. National Citizens Committee for Broadcasting would require free carriage of low power signals on all cable systems of over 36 channels, channels to be shared among low power operators if the subject cable system is saturated. Western Communications Research Institute also would require low power carriage on all over-36-channel systems, and smaller systems that have available channels, that are within the 64 dBu contour of the subject low power station. United Auto Workers would require the cable company to pay the costs associated with carriage of the low power signal if the cable system is located within the low power coverage area; otherwise the low power station should pay for coverage. UAW believes that low power stations should share channels in saturated cable systems. OK TV Translator Company wants cable companies to be required to obtain written consent to carry low power signals and to be forbidden to degrade the low power signal. Darwin Hillberry suggests that cable operators must pay low power operators for signals carried.

72. *Comparative Issues.* (The Omnibus Budget Reconciliation Act (Pub. L. No. 97-35), signed into Law by President Reagan on August 13, 1981, gave the Commission 180 days to establish a system of choosing among competing applicants by random selection, with significant preferences for groups that are under represented in ownership of telecommunications facilities. A separate proceeding was initiated toward this end. It set the framework for establishment of a random selection system *with* preferences, but does not apply to any particular service. Institution of the system in the broadcast service will be accomplished in a separate proceeding directed toward that end. However, because a comparative selection system for the low power service may be implemented sooner than the lottery for broadcast services, the comments and replies relating to comparative procedures and criteria for low power stations are memorialized below.)

73. *Lottery.* A number of parties oppose the lottery proposed as the last resort mode of selection for competing low power applications. NBC, Residential, CBS, General Electric, Howard, Citizens Communications Center, Consumer Federation of America, United Church of Christ, United States Catholic Conference, National Translator Association, Washington State Association of Broadcasters, National Council of Churches, National Citizens Committee for Broadcasting, International Broadcasting Network, National Federation of Local Cable Programmers, National Innovative Programming Network and United Auto Workers agree that the lottery violates the Communications Act of 1934 (before it was amended by the Omnibus Budget Reconciliation Act of 1981). ACORN calls the lottery proposal capricious. The Corporation for Public Broadcasting and Microband contend that the lottery proposal violates the strictures of the *Ashbacker* case. The Maryland, District of Columbia, Delaware Broadcasters Association argues that a lottery will not elicit the best-qualified applicant, in many cases. ABC states: "The only possible justification for administrative adjudication by lot would be if reasoned decision-making were infeasible."

74. The Justice Department and the now-defunct Executive Council on Wage/Price Stability would support a lottery, although they believe that auction is the most efficient method of frequency allocation. NTIA, Community Television Network and International Cultural Network support a lottery where the preference system proposed results in a tie. Mason would favor a lottery only in the last resort.

75. *Paper hearing.* Parties generally were in favor of a paper hearing of some sort. National Citizens Committee for Broadcasting, United Auto Workers, the Justice Department and NTIA support the paper hearing proposal as detailed in the *Notice*. International Broadcasting Network, Gammon and Grange, and Western Communications Research Institute commend the cost-saving aspect of the proposal. Gammon and Grange believes this is particularly appropriate in a secondary service. Summers believes that paper hearings can be a significant time-saving device. National Translator Association and National Association of Public Television stations believe curtailed hearing procedures are essential. Other commenters, while supporting the concept of a paper hearing, believe that all relevant comparative considerations must be evaluated in the paper hearing, not just the proposed comparative preferences. They include Microband (suggesting additional factors for comparison such as financial capacity, technical, programming and entrepreneurial experience), Community Television Network (suggest factors such as diversification of ownership and programming, integration of ownership and management and past broadcast record), joint comments by broadcast licensees and by cable operators, Citizens Communications Center (including additional factors such as efficient use of spectrum, programming free vs. pay service and integration of ownership and management), Consumer Federation of America, National Council of Churches and National Innovative Programming Network. General Electric would like the paper hearing to include recognition of past service by translator operators. The Corporation for Public Broadcasting favors the paper hearing concept only as an initial screening device.

76. Residential contends that the paper hearing concept violates the Communications Act. ABC agrees, on grounds of arbitrariness. CBS finds no public interest justification for the departure from a full hearing requirement, and argues that a paper hearing violates Section 307(b). The National Association of Broadcasters would like a traditional hearing required for low power. Washington State Association of Broadcasters also opposes the

paper hearing concept. Federal Express proposes evidentiary hearings, held in the locality of the competing applications. Grammon and Grange replies that this would be prohibitively expensive.

77. *Predesignation Conference.* Microband and the Washington State Association of Broadcasters favor the predesignation conference proposed in the *Notice.* International Broadcasting Network believes the plan will not work.

78. *Alternative Proposals.* Microband suggests a system which affords a thirty-day period for amendment after designation of mutual exclusivity, followed by the predesignation conference and a paper hearing with extensive pleadings on all relevant comparative factors, particularly program proposals, as opposed to comparative preferences. Turner would like to see amendments to change channel permitted without a cut-off requirement, or a grant specifying a different channel, in the situation where applications are mutually exclusive and none has comparative preferences. The Justice Department advocates as an alternative, should the streamlined comparative procedures proposed prove legally insufficient, a predesignation conference, designation of issues as to which a *prima facie* case has been made and a paper hearing on those issues. NTIA proposes issuance of a show cause order asking why a mutually exclusive applicant should not change to another frequency, with dismissal of the application as the penalty for an insufficient response. If no alternative frequency is available, NTIA suggests a thirty-day period for the filing of pleadings establishing claims to the comparative preferences, a thirty-day reply period, Commission solicitation of pleadings regarding material questions of fact, responsive pleadings to the solicitation, oral hearings on unresolved questions, Commission ranking of applications based on the pleadings and a lottery, in the event of a tie. Community Television Network favors a presumption that a later-filed mutually exclusive application is a strike application, if other channels are available, and, minor modification treatment of amendments by mutually exclusive applicants to change channel to a non-mutually exclusive channel. William Sullivan describes a preliminary hearing without counsel before a local official, with the results certified to the Commission on a rating form. *See* paragraph 90, *infra.* National Federation of Local Cable Programmers would give minimally acceptable, mutually exclusive applications twenty days to file information relating to the preferences claimed, followed by sixty days for rebuttal pleadings and then either a compromise proposal or a comparative hearing. John Boler advocates case-by-case evaluation of mutually exclusive applications as the preferable comparative procedure.

79. *Comparative Preferences—First to File.* An overwhelming number of parties oppose the preference point proposed for the first-filed complete and sufficient application. Microband argues that this is irrelevant as a comparative criterion. NBC insists that this would have the effect of encouraging sloppy applications. Summers finds no public interest justification in the notion. ACTVA believes it is arbitrary. Southern California Committee for Open Media and United Church of Christ state that the first-filed preference would have the effect of disadvantaging noncommercial, minority and other less affluent applicants. These commenters' disapproval is echoed by Citizens Communications Center, SINO, Joint Comments filed by Cable Companies, Los Angeles Children's Hospital, Consumer Federation of America, National Black Media Coalition, National Congress of American Indians, National League of Cities, Corporation for Public Broadcasting, National Association of Broadcasters, Gammon and Grange, National Council of Churches, Ohio Educational Broadcasting Network, National Citizens Committee for Broadcasting, United Auto Workers, National Association of Public Television Stations and National Federation of Local Cable Programmers.

80. Community Television Network, NTIA and National Innovative Programming Network find the first-filed preference acceptable.

81. *Minority-Ownership Preference.* The preference proposed for minority ownership is widely supported, by Spanish International Network, NTIA, Community Television Network, Consumer Federation of America, Grassroots Video, National League of Cities, National Congress of American Indians, Corporation for Public Broadcasting, ACORN, International Broadcasting Network, National Federation of Local Cable Programmers, National Innovative Programming Network, National Citizens Committee for Broadcasting, United Auto Workers, Ventures in Communications, Western Communications Research Institute and Microband. National Black Media Coalition would prefer channel reservations for minority applicants to a minority preference. Mason believes 100 percent ownership by minorities is preferable to the over 50 percent proposed. National Association of Broadcasters contends that minority participation in management of the stations must be considered in conjunction with mere ownership. Turner would like minority-oriented program proposals to be considered part of the minority preference. SINO says the minority ownership criterion should be based on the existing comparative criteria, including the extent of minority ownership, the degree of integration of ownership and management, program proposals. Summers concurs, averring that minority ownership alone might be unconstitutional, but that the existing criteria, including participation of ownership in management, local ownership, past broadcast record, program proposals and civic involvement of ownership, should be part of the minority evaluation.

82. CBS contends that a minority preference is tantamount to reverse discrimination, that minority control cannot be assured by an initial preference, absent a trafficking prohibition and that the Commission cannot make an irrebuttable presumption that minority owners will air minority-oriented programming. Federal Express agrees that a minority preference is discriminatory. The National Hockey League complains that it inhibits the free enterprise system. E. B. Craney opposes it on the grounds that excellence of service should be the sole criterion of a license award.

83. *Preference for Women.* A number of parties contend that, although not within the Commission's definition of minority, female low power applicants should receive a comparative preference. They include the National League of Cities, NTIA, Corporation for Public Broadcasting, American Women in Radio and Television, National Federation of Local Cable Programmers, Western Communications Research Institute, United Auto Workers, Microband, Los Angeles Children's Hospital and Consumer Federation of America.

84. *Noncommercial Preference.* The proposed preference for noncommercial service is favored by Grassroots Video, National Black Media Coalition, National Congress of American Indians, National League of Cities, Corporation for Public Broadcasting, International Broadcasting Network, Mason, National Innovative Programming Network, National Federation of Local Cable Programmers, United Auto Workers, Ventures In Communications and Western Communications Research Institute. National Citizens Committee for Broadcasting believes the preference should be afforded to nonprofit corporations applying for low power stations. National Association of Public Television Stations would like the preference to go to public service programming proposals. Independent Cinema Artists and Producers wants a preference for local noncommercial programming only.

85. The noncommercial preference is opposed by NBC, Summers, Consumer Federation of America and the National Hockey League. The comment of the now-defunct Executive Council on Wage/Price Stability claims that noncommercial stations are becoming increasingly less important because of the increase in "high-brow" programming on commercial stations. CBS says that it is not clear why noncommercial service is more in the public interest than commercial service. E. B. Craney believes the only appropriate comparative criterion is excellence of service, whether commercial or noncommercial. National Association of Broadcasters avers that the presence of a noncommercial station in no way assures that a market's needs will be met.

86. *Commercials on Noncommercial Stations.* Several comments raise the issue of whether noncommercial low power stations that air commercials nevertheless should receive a comparative preference. National League of Cities and Ventures In Communications support this view. United Auto Workers believes this is permissible, so long as no profit is made. National Innovative Programming Network would give a preference point for instructional programming, whether proposed by a commercial or noncommercial applicant. Global Village proposes a preference in the situation under consideration, so long as the majority of the station's time is without commercials. ACORN would give a preference to applicants that are nonprofit corporations, whether or not they propose to

have advertising. National Federation of Local Cable Programmers would rank noncommercial applicants in the basis of the highest percentage of advertising-free time proposed and issue preference points on that basis. *See* paragraph 91, *infra.* National Citizens Committee for Broadcasting supports the concept of a noncommercially-preferred low power station being permitted to sell up to ten hours per day to a commercial entity, so long as the noncommercial entity is kept strictly separate from the commercial entity, even if one owns the other. Western Communications Research Institute, SINO and Microband believe that noncommercial low power stations should be bound by § 73.621 of the rules, which currently forbids advertising on full-service stations.

87. *Channel Reservations for Noncommercial Stations.* Corporation for Public Broadcasting proposes that channels be set aside for noncommercial low power stations in the top 150 markets, the number of channels to be set aside to be determined by the population of the market. It is claimed that only in this way will the more slowly developing noncommercial service be permitted to develop fully in the low power context. *See* paragraph 24, *supra.* Western Communications Research Institute believes that Channels 2 through 4 and 14 through 35 should be set aside for noncommercial low power stations and that a comparative preference should be afforded to noncommercial applicants for channels over 35. National Federation of Local Cable Programmers supports the concept of channel reservations for noncommercial low power applicants only if no comparative preference is to be awarded to same.

88. *Free vs. Pay.* William Sullivan, National Association of Broadcasters, Los Angeles Children's Hospital, International Broadcasting Network and Consumer Federation of America believe that free low power stations should be preferred over those proposing subscription service. Community Television Network disagrees.

89. *Local Preference.* A number of parties propose a preference for some sort of local component, whether ownership, program origination or orientation. These include the United Church of Christ, the National League of Cities and William Sullivan. Potomac Communications favors a local ownership preference. Daniel Mayeda would give a comparative preference for 50 percent local ownership. Video makers would prefer local owners proposing service oriented to unique community needs. Community Television Network would give a comparative preference for 100 percent participation of local owners in management of a low power station proposing locally produced news of public affairs programming. Thomas Smith would give a comparative preference to local origination of public service programming. National Federation of Local Cable Programmers and Los Angeles Children's Hospital would prefer local ownership and programming. Video Factory would award a preference point for locally originated "high quality art and cultural programming." Independent Cinema Artists and Producers believe a preference should go to local noncommercial programming. Praxis would favor programs to serve local needs. International Broadcasting Network would give preference to locally produced programming. Consumer Federation of America would give a comparative preference for local access and management and programming addressed to local concerns. Ventures In Communications also would prefer a proposal that includes local access and program origination. Metonomy would favor local small business as low power applicants.

90. Microband disagrees, stating that the market may be depended upon to provide local programming, if there is demand for it. GEBCO and joint comments filed by various broadcast licensees argue that a further notice of proposed rule making is necessary to explore further the entire issue of comparative preferences.

91. *Translator vs. Low Power Station.* UPTV Systems, Residential, Colorado Translator Association and OK TV Translator Company argue that existing translator licensees should get a comparative advantage when seeking to add low power features in competition with new low power applicants, in recognition of the service previously provided by the translator. NBC and joint comments filed by broadcast licensees aver that extension of the coverage of a full-service station should be the only decisive comparative preference. Telecommunity believes that a locally-originating low power application should be preferred over a translator application. Consumer Federation of America and Ventures In Communications agree that low power applications should be favored when in competition with translator applications. Gammon and Grange and Microband disagree.

92. NBC argues that all relevant comparative factors must be weighed together, particularly technical and service characteristics of mutually exclusive low power proposals. National Association of Broadcasters contends that the proposed preferences are not flexible enough. National Translator Association and National Council of Churches urge that all relevant comparative factors be considered. Washington State Association of Broadcasters would like the 1965 comparative criteria used for low power applications. Summers argues that the proposed preferences are not sufficiently detailed to provide a basis for a meaningful choice among competing applicants, stating that the present criteria are preferable. Response argues that the secondary nature of the low power service justifies abbreviated preferences. Turner would like a system of weighted preferences, the foremost for live informational programming proposals, the next most important for minority ownership and the least most important for noncommercial applicants. NTIA would give equal weight to the following comparative criteria: First-to-file, ownership (demerit for duopoly situations), women or minority applicant, but would not consider the proposed service area. Ed Craney would place paramount emphasis upon excellence of service as a comparative criterion. Thomas Smith would look to local origination, minority ownership, minority programming and proposed coverage area as comparative criteria. Joint comments filed by various cable companies cite financial qualifications, ability to meet local needs, local preference and proposed service as appropriate comparative criteria. Los Angeles Children's Hospital suggests ownership by the handicapped and women, local ownership and programming, time sharing or other innovative concepts, service to underserved audiences or geographical areas and free service as meriting favorable comparative consideration. Gammon and Grange suggests that in urban markets a preference be afforded to the first specialized programming of its kind.

93. National Association of Public Television Stations believes that the comparison of competing low power applications should include the complete range of relevant criteria, including public service programming, other media interests and local ownership. National Association of Low Power Broadcasters also favors a greater range of preferences, stating that the Commission should determine the unmet needs of a service area and award the license on that basis. Mason would give a preference point for residence of the licensee in the proposed service area, noncommercial service, 100 percent minority ownership, no more than 51 percent ownership of another broadcast facility and demonstrated broadcasting expertise (two years of work or four years of education). In case of a tie, the license would be awarded to the most extensively qualified applicant.

94. ABC argues that a further notice of proposed rule making must be issued to consider expanded comparative criteria, including ability to implement proposals, recognition of the value of traditional translator service, financial qualification, prior broadcast experience and record, familiarity with the community to be served, ability to acquire or produce programming and program plans. GEBCO and Joint Reply of Broadcast Licensees also recommend a further notice of proposed rule making to consider as comparative issues: minimum hours of operation, local origination, familiarity with community interests, recognition of translator service, minority population served, noncommercial service, the need for local service, the need for STV and program proposals.

95. Community Television Network advocates a paper hearing preference system based in part upon media concentration, with two points if the applicant's other broadcast interests reach fewer than fifteen percent of national television households, one point if they reach between fifteen and twenty percent of national television households and no points if they reach over twenty percent. CTN also would award two points for at least one-half hour per day of local informational programming, two points for minority ownership and one point for 100 percent participation of local owners in management. CTN would not give comparative merit to free versus pay service, hours of operation, first-filed application, population covered or efficient use of spectrum, on the grounds that

these factors are too difficult to evaluate without an oral hearing. Consumer Federation of America would award comparative preference to, in descending order of importance, low power versus translator service, minority and female ownership, specialized programming addressing local concerns (*e.g.*, programming for the elderly, handicapped, foreign language, cultural and educational programming), opportunity for local access, commitment to Fairness Doctrine and access for political candidates, news and public affairs programming, control of least other broadcast interests, local management, EEO compliance, hours of operation, free versus pay service, amount of commercial material and originated programming. NBMC indicates that it assumes that the Commission's EEO policies will apply to low power stations.

96. International Broadcasting Network proffers a three-tiered preference system, first awarding one point each for noncommercial service, minority ownership and free versus pay service; then, in the event of a tie, one point each for locally produced programming and absence of other broadcast interests and, finally, one point each for specialized programming and greatest hours of operation. Corporation for Public Broadcasting would consider minority ownership, female ownership, local origination facilities (as opposed to local ownership), absence of other media interests, efficient use of frequency (*i.e.*, larger service area than competitor by a least 50 percent) and noncommercial service (outside the top 150 markets, where CPB advocates noncommercial channel reservations). *See* paragraphs 27 and 84, *supra*, on the comparative process.

97. William Sullivan advocates the following system of preferences:

Preference	Points
First local service	10
Local ownership (within one hour's drive)	9
Population covered (largest)	8
Local origination of more than 20 prime time hours per week	6
Financial feasibility	5
Familiarity with community needs	4
Free, versus pay, service	3
Nonduplicated program service	2
Site availability	1
Possibility of channel upgrade	1
Creative or auxiliary service	1
City grade coverage over entire community	1

98. The National Federation of Local Cable Programmers suggests the following preference scheme:

Category	Amount (percent)	Points
Minority/female ownership, control	91 to 100	20
	81 to 90	17
	71 to 80	15
	61 to 70	12
	51 to 60	10
Percent of time noncommercial	95 to 100	20
	85 to 95	10
	75 to 85	5
Local ownership, control	100	15
	75 to 99	10
	51 to 74	5
Local programming	Over 25	15
	15 to 25	10
	10 to 14	5
No other broadcast interests owned		15
Local access	Over 25	15
	20 to 25	10
	10 to 19	5

99. Western Communications Research Institute proposed:

Noncommercial	10
Minority/female ownership, control:	
Over 50	10
Over 25	3
Less than 3% minority	−2
Less than 10% women	−2
Other media interest:	
5% or greater control	5
None within 150 miles or in same state	2
Radio	1
Low power stations—over 10	−3
TV	−3
Newspaper	−3
Other print media	−3
Cable:	
Under 10,000 subscribers	−1
10–50,000 subscribers	−2
Over 50,000 subscribers	−3
Integration of ownership and management (full-time):	
Over 50	3
Over 25	1
Under 2	−1
Local residence of owners (within 64 dBu contour of station):	
Over 50	3
Over 25	1
Under 2	−1
Local programming production:	
Over 10	3
Some	1
None	−2
Amount of service, free or pay:	
Over 12 hours/day	2
100% free	3
70% free	2
Under 20% free	−2

Western Communication Research Institute would not consider the size of the service area, the population served or specific program proposals.

Summary of Comments and Reply Comments Filed in Response to the Further Notice of Proposed Rule Making

1. *Automated Processing.* A number of parties, including CBS and NBC, support the concept of automated processing with a prohibited contour overlap standard. CPB proposes a system virtually identical to that proposed in the Further Notice. According to CPB, the application should include location, frequency, ERP, antenna gain and directionality and HAAT. Field strengths should be calculated in accordance with § 73.684 of the rules. Processing should be accomplished using automated terrain data, the F(50,10) curves and standardized antenna patterns. NAPTS evinces concern that low power stations not be locked into their initially authorized facilities and suggests that the Commission establish and assume maximum power and antenna height in processing. NTA opposes this concept on grounds of spectral efficiency. NAB opposes protecting future low power facilities increases. Cox approves automated processing only to reduce the present application backlog. NAB endorses automated processing, but adds that manual engineering review should continue, as well.

2. Other parties advocate retention of the mileage separations [1] and the two-tiered mode of processing originally proposed: Applicants first should try to meet the mileages, but if they cannot they may submit a special engineering showing with a request for waiver of the mileage separations. ABC, American Christian Television Systems, EIA and Cox are in this group. MST proposes a new set of mileage separations for low power stations. Field would have the Commission establish three classes of low power stations, each with mileage separations prescribed:

	ERP	HAAT (feet)
Class A	1 kW	300
Class B	10 kW	500
Class C	[1]	[1]

[1] Facilities in excess of Class B—must meet full service mileage separations.

3. A number of parties urge the Commission to permit UHF low power licensees to accept interference received on the seventh, fourteenth or fifteenth adjacency. They include ACTS, CTN, Kitchen, Neighborhood, NTA and Taft. CPB, Kitchen and Taft also advocate elimination of the separation directed toward intermodulation interference.

4. A great number of parties, including OEBNC and Multilingual, object that the low power UHF protected contour is too small, a result, they aver, of the unrealistic assumption on which the 84 dBu contour was calculated. Community Media Network says that instead of assuming two maximum facilities UHF stations at the minimum separation, the UHF stations should be assumed to operate at 1 megawatt power with 1,000 foot antennas, which more closely approximates actual full service UHF station operating characteristics. AGK finds the contour proposed for VHF low power stations acceptable, but, with ACTS, recommends a 74 dBu protected contour for UHF low power stations. CTN, Neighborhood, Storer and Taft would have a 70 dBu protected contour for UHF low power stations. EIA believes the UHF adjacent channel D/U ratio should be used for UHF low power stations. MST says that the low power-to-low power station protected contours proposed are adequate. CPB says that they are too small and that the Grade B contour should be used. Cox believes that the low power protected contour should be the higher of the Grade B or interference received from full service stations. IBN proposes a Grade B protected contour for low power stations as follows:

Frequency	Protected contour (decibel units)
Low band VHF	47
High band VHF	[illegible]

[1] It should be noted that there currently are no VHF translator-to-full service mileage separations in the rules.

Frequency	Protected contour (decibel units)
UHF	64

King wants low power stations protected beyond the Grade B contour. Garryowen, complaining that the protection standards proposed for low power stations won't protect existing translators, proposes the following protected contours for low power stations:

TPO (watts)	Protected contour (miles)
1	10
1 to 10	20
10 to 100	40
100 to 1,000	80

NBC suggests an 8-to-10 dB increase in the D/U ratios proposed for both low power and full service stations. OEBNC states that low power protected contours should be defined with reference to the population and area proposed to be served.

5. Spectra argues that the Commission should not play the role of engineer but should rely on applicants' engineering showings and suggests five percent interference caused and ten percent probability of interference. Taft advocates use of the antenna radiation height above the elevation center of the community of license instead of height above average terrain. NBC agrees that HAAT is too burdensome for applicants to compute. CPB favors use of HAAT, for greater spectral efficiency.

6. *Protection to full service stations.* A number of parties advocate protection of any service received from full service stations. MST, endorsed by EIA, GEBCO, ABC, Storer and Joint Comments filed by broadcast licensees, proposes a set of mileage separations for low power stations, or, alternatively, that low power stations be required to protect the following contours of full service stations:

Frequency	Protected contour (decibel units)
Low band VHF	40
High band VHF	50
UHF	60

7. Cox, in response to CPB's argument that a low power station will provide more truly local service than a full service station at the farthest reaches of its signal, points out that full service stations have a secondary ascertainment obligation within their field intensity contours. Cox proposes that a low power/full service protected contour be established seven dB below the Grade B at 40 dBu, similar to that adopted in Docket 20735 for Channel 200/Channel 6 protection. Cox also asks that low power stations that would cause interference to full service stations that increase facilities be required to amend their licenses to correct the interference within 60 days after issuance of the full service construction permit. NAB concurs that full service stations should be protected beyond the Grade B by low power stations, adding that the Grade B concept should be re-examined before it is used as an allocations tool. CIC argues that the standards must be flexible and allow for waivers in deserving cases, suggesting that the Commission permit no low power interference to existing service beyond the full service Grade B contour where the low power signal would cause "significant degradation" to the full service signal, in terms of the number of hosueholds affected. ACTS suggests a rule requiring low power stations to protect a full service signal beyond the Grade B contour where it is "significantly viewed," as defined in § 76.54 of the rules. Kitchen believes that actual reception should be the test of protection of service by low power licensees. AGK suggests that the Commission not license a low power station in any community outside the Grade B contour of a full service station if the community is within the ADI (area of dominant influence) of the full service station. CBS advocates a requirement that low power applicants choose the channel least likely to cause interference and that the Commission then protect service received beyond a full service station's Grade B contour on a complaint basis. Field would require low power applicants to engage in prior frequency coordination with full service licensees, in the hopes that this policy would encourage private resolution of interference disputes.

8. NAPTS avers that full service stations should receive protection from low power stations at least to the Grade B contour. Spectra contends that service received beyond the full service Grade B contour should be disregarded, in a low power context. ACTS and Attaway believe that low power stations should have to protect the Grade B contour of full service stations. Community Media Network agrees, arguing that full service stations should be limited to their power levels as of a date certain, *e.g.*, December 31, 1982. NTA advocates low power stations protecting full service station coverage to the Grade B contour, except where terrain prevents actual reception of a full service station within the predicted Grade B contour.

9. CPB, supported by IBN, argues that low power stations should not have to protect full service stations to their Grade B contours because two full service stations are not required to protect each other's signal to the Grade B contour. MST contests this by pointing out that neither of two full service stations is secondary to the other, as low power is to full service. CPB adds that low power stations are more likely to provide truly local service than are full service stations at the perimeter of their field intensity contours. CPB recommends that the following full service contours should be protected by low power stations:

Frequency	Protected contour (decibel units)
Low band VHF	62
High band VHF	68
UHF	80

10. *Terrain roughness.* Several parties, including Attaway, Community Media Network, NTA, Multilingual and OEBNC, recommend that terrain roughness be considered in processing, to achieve greater spectral efficiency. Others, including ABC, NAB and Spectra, argue that automated terrain data is not sufficiently reliable to justify the cost.

11. *Offset.* ABC, Cox and MST argue that use of a nonstandard offset factor is too expensive to justify its implementation. CBS believes that relaxed frequency tolerance standards such as those proposed will not permit the maintenance of a nonstandard visual carrier offset factor. Other commenters, including NTA, Multilingual and Gallagher and Johnson, support the use of a nonstandard offset factor as an interference reducer, provided that frequency stability is required. CPB endorses the use of a 10 kHz offset factor, with 1 kHz frequency tolerance required. Field would permit ±20 kHz offset, with a ± 1.5 kHz frequency tolerance requirement. TV Technology Corp and IBN support a 8 or 24 kHz offset factor with a ± 1 kHz tolerance requirement. Kitchen endorses use of an offset factor with a tolerance requirement, on a waiver basis, in large cities. OEBNC and Community Media Network endorse a higher frequency tolerance requirement. NTA would require a stricter tolerance standard where it proves necessary on a case-by-case basis. EIA would require between 2 and 3 kHz tolerance.

12. Attaway, Kitchen, Multilingual, CMN, NTA, OEBNC and Spectra support the inclusion of a front-to-back ratio in the protection ratio, as proposed in paragraph 10 of the Further Notice. A number of other parties, including ABC, MST, CBS, CPB, Cox, EIA, Field, Gallagher and Johnson, NAB, Storer, Taft, ACTS, IBN and NBC, advocate consideration of a front-to-back ratio as a safety factor only. Storer contends that use of a front-to-back ratio has been considered and rejected in BC Docket No. 80-499, VHF Drop-Ins. *See,* Notice of Proposed Rule Making, BC Docket No. 80-499, 83 F.C.C. 2d 51, 102 (1980). The other comments aver that outdoor receiving antennas cannot be relied upon to afford additional protection against interference in a uniform manner. CPB believes inclusion of a front-to-back ratio would result in low power stations receiving more interference from full service stations than they would otherwise.

13. Several parties, including ABC, Taft Cox, NAB and MST, express the concern that any standards adopted ensure the secondary spectrum priority of low power stations, as well as ensuring that full service stations are fully protected from interference. Others believe that, in certain circumstances, the status of power of low power stations should be enhanced. As discussed in paragraph 4,

above, Garryowen believes that higher power is necessary for low power adequately to serve rural areas. IBN wants the standards to afford full protection between low power stations and to permit future facilities increases to ensure good reception. NTA would like rural low power stations to be fully protected from interference within the city of license.

14. A number of comments, including those of CBS and Garryowen, believe that any standards adopted should ensure protection from interference to traditional translators. OEBNC and NTA believe that existing translators that do not meet the standards adopted should be grandfathered. NTA would like low power stations to be required to protect existing translators to a contour twenty miles beyond the Grade B contour of the station the translator rebroadcasts. CMN also advocates full protection from interference by low power stations for translators completing plans of area-wide coverage by full service stations. AGK proposes a comparative preference for translators proposed by full service stations within their Grade B contours. KHQ, Taft and King would like low power applicants to be required to show that they will not interfere with the off-air input channels of translators, as well as their output channels. King also believes that low power stations should be required to protect translators outside their Grade B contour.

15. NCTA complains that the Further Notice does not propose that low power stations protect the use of radio frequencies by cable systems. The Commission should, according to NCTA, require frequency coordination between low power applicants and cable operators. NCTA also would prefer low power stations only to be licensed in UHF channels, but if the Commission should license low power stations in VHF channels, NCTA believes that low power licensees should be held responsible to correct all interference between low power and cable, including interference to set-top converters on output channels 2, 3 or 4, interference to cable headends and frontend overload, all of which NCTA claims, would be very expensive for the cable operator to correct. NTA would have low power licensees protect CATV systems to twenty miles beyond the Grade B contour of stations whose signal the CATV system extends. Taft would require showings from low power applicants that they will not interfere with any existing cable system off-air pickup. MST objects to NCTA's proposal, averring that cable systems have to remedy cable/low power interference, because cable does not have to pay for programming but charges for program service. NAB also opposes low power having to protect cable reception at the headend or the output channel of set-top converters, further contending that cable systems can correct frontend overload with filters.

16. A number of parties decry the protection standards proposed for land mobile systems. The Central Committee on Telecommunications of the American Petroleum Institute emphasizes the health and safety factors involved in maintaining interference-free communications service to offshore drilling personnel in the Gulf Coast off Southern Louisiana. The Offshore Telephone Company concurs. They are concerned that the Channel 17 land mobile stations in Southern Louisiana and others will receive interference from low power stations, because the assumed maximum facilities UHF stations on which the low power/full service UHF separations are based are unrealistic. Where land mobile shares frequencies with full service television stations, it is averred, low power stations should be secondary to both. The Offshore Telephone Company would require low power applicants to select the highest available UHF channel and believes that enhanced separation criteria from Zone 3 should be applied to low power stations proposed in Zone 3. APCO believes that land mobile stations would receive interference from low power stations because of the wideband characteristics of television receivers. APCO would prohibit low power stations on Channels 14 through 20 and on 4 and 5, to protect the 72 through 76 MHz band between Channels 4 and 5 that is used by land mobile. Motorola advocates increased separations to prevent low power interference to land mobile base stations, *viz.* a 190 mile co-channel separation between a low power station and the center of the land mobile city and a 170-mile adjacent channel separation. NABER endorses these separations, adding that low power applicants should be required to choose from channels 55 through 69 first and that low power stations should not be permitted on Channels 14 through 20 within 115 miles of the urban areas in which these channels may be used by land mobile. Radio Broadcasters, concerned that land mobile stations in Philadelphia will receive interference from low power stations, argue that the F(50,50) curves instead of the F(50,10) curves should be used to calculate permitted low power signal strengths in relation to the land mobile channels and suggest that co-channel low power stations should not be permitted to exceed 38 dBu at the land mobile protected contour. 68 dBu is suggested for adjacent channel stations. Telocator advocates prohibition of low power stations from Channels 14 through 20 and 4 and 5, and a 140-mile separation requirement from Philadelphia and Los Angeles on Channel 21.

17. ACTS, on the other hand, contends that the threat of interference by low power to land mobile is not as serious as that claimed by land mobile advocates. Kitchen agrees with the land mobile protection standards proposed in the Further Notice and also believes that low power/land mobile sharing should be reinstituted on Channels 70 through 83. NTA would like land mobile removed from the other channels used by television and relegated entirely to 70 through 83. WHP would permit low power on Channels 14 through 20 without regard to land mobile and remove land mobile to Channels 70 through 83 (in the 806 and 960 MHz band). MST also would remove land mobile uses from Channels 14 through 20 and opposes keeping low power off Channels 4 and 5. Neighborhood would either remove land mobile from Channels 14 through 20 or have no fixed protection standards for land mobile by low power applicants on those channels, but require a noninterference showing by the low power applicant. NJTV contends that adjacent channel interference to land mobile is not a serious risk and simply would condition low power grants on the licensee's correcting any interference caused to adjacent channel land mobile stations. NJTV also advocates the Commission's appointing a committee to investigate the land mobile and television channel sharing issue.

Appendix E—Tiered Application Processing Procedures for Pending Applications

1. The Commission currently is confronted with an unprecedented processing backlog of more than 6,500 applications for television translators and low power stations. While herein we adopt channel allocation standards tailored to rapid computerized interference analysis, the full implementation of this capability cannot be realized for at least the next 12 months. During this period, the processing staff faces the enormous task of identifying mutually exclusive applications on an essentially manual basis.[1] We also are confronted by a situation in which a sizeable majority of the applications propose service in the larger television markets. We estimate that approximately one half of the applications are associated with the top 50 television markets and 70 percent with the top 100 markets. In contrast, only 15 to 20 percent propose to locate outside of any ranked market, *i.e.*, outside a market having at least one commercial television station. We recognize that these percentages do not reflect the extent to which numerous applicants compete for relatively few available channels in the largest markets. Nonetheless, we are concerned that this imbalanced demographic array of the pending applications could frustrate near-term attainment of one of our principal goals in this proceeding: to provide programming, including local outlets, in unserved and lesser-served rural areas. We believe the public interest would be served by our adopting a processing hierarchy that would facilitate the expeditious authorization of service to rural areas. In view of the circumstances, we believe the best vehicle for achieving this objective is a transitional "tiered" processing system, in which the application backlog is subdivided into a number of prioritized groups of applications on the basis of the extent of existing television diversity. Once the present backlog has been eliminated (in three phases), and only then, will we lift the freeze on the filing of television translator and low power applications.

2. In general terms, the tiered processing system will function in the following manner. We shall identify and make public lists of applications as either TIER I, TIER II or TIER III applications, classified on the basis of market location. We envision three stages of processing pending applications, including freeze-exempt applications. During the initial phase only TIER I and freeze-exempt applications will be processed. All pending

[1] To this end, we are requesting additional topographical information from present applicants that could greatly facilitate our manual processing. *See*, note 46 of the *Report and Order*.

freeze-exempt applications as of the effective date of this *Report and Order* will be treated as TIER I applications. During the second stage, only pending TIER II and freeze-exempt applications (as these are filed) will be considered. TIER I applications still awaiting grant or denial (some may be awaiting hearing) will be accorded "protected" status in terms of our contour overlap standards. During this second stage, newly-received freeze-exempt applications will be accorded equal protection status with pending TIER II applications. The freeze will be lifted only for competing TIER II filings. Finally, the Commission will enter into the third stage, in which the remaining pending TIER III applications will be considered. At this stage, TIER III applications must protect yet-undisposed TIER I and II applications. Freeze-exempt applications received during this stage will be treated as TIER III applications. The Commission will announce publicly the completion of each stage of processing.

3. The three tier classifications will be defined in terms of the Commission's ranking of television size as contained in the Public Notice encaptioned "Television Channel Utilization" (Public Notice dated April 16, 1982, mimeo number 3331). This report ranks markets from one to 212. For purposes of tiered processing, we define the boundary of a market as a 55-mile circle centered about the reference coordinates of the principal market city or town (cities or towns in the case of hyphenated markets).[2] The 55-mile radius is roughly equivalent to the predicted Grade B coverage area of a full service UHF television station operating at maximum power. Thus, TIER I will consist of those applications proposing to locate the transmitting antenna at a distance of more than 55 air miles from any FCC-ranked television market. TIER II will consist of those additional applications proposing a location within 55 miles from the reference coordinates of all ranked markets from 101 through 212. TIER III will comprise the remaining applications proposing location within 55 miles of the reference coordinates of all ranked markets from one through 100, inclusive. Fractions of miles should be rounded off to the nearest mile, in accordance with the Commission's customary practice, *See* § 73.611(d) (5) of the rules. Hereinafter, we shall eliminate the freeze exemption pertaining to the number of television services received. In its place, we shall consider any prospective applicant meeting TIER I qualifications to be freeze exempt. The remaining two freeze exemptions will remain unchanged.[3]

4. We believe that this tiered processing approach is consistent with the public interest and represents the best means of addressing the application backlog until a fully automated system of processing can be implemented. During the initial stage, the staff will be required to make its determinations through analysis of only 15 to 20 percent of the pending applications. Upon commencement of the last stage, involving some 70 percent of the applications, we expect to have a fully automated processing capability. Second, and perhaps of greater significance, the tiered processing approach will provide greater opportunities for increased service, beginning with the least-served rural areas, a major goal of this proceeding.[4]

5. We recognize that, in affording priority to rural applicants, we may be precluding timely-filed non-rural applications that may be mutually exclusive with rural applications. To alleviate this situation and to preserve any rights that may be argued to have accrued on behalf of non-rural applicants, where a group of mutually exclusive applications includes applications that would fall into a tier to be processed later, the entire group will be deferred until we reach the later tier. That is, if an otherwise exclusively TIER I group contains one or more applications that do not meet the standard for processing during TIER I (more than 55 miles from any ranked market) but fall within TIER II or III, we will defer processing of the group until TIER II (or III) applications are to be processed. The same will hold true when TIER II groups contain TIER III applications. Only in this manner can we ensure that urban channel availabilities will not be precluded by tiered processing of rural applications. With this exception, we believe that tiered processing is fully justified, both on policy and administrative grounds. Provision of service to rural areas that currently are unserved or underserved is an objective that the low power service is particularly suited to carry out. The cost of constructing and operating a full service station often is prohibitive in sparsely-populated rural areas. The lower cost of a low power television may facilitate the introduction of local television service in such areas. However, saddling rural applicants with the costs and delays associated with hearings involving urban applicants as well would raise the entry costs considerably and could discourage applicants from attempting to provide service to rural areas. Additionally, giving priority to rural applicants comports with our mandate under Section 307(b) of the Communications Act to allocate spectrum in an equitable, fair and efficient manner, and with the way we interpret Section 307(b) as it applies to the low power service. *See*, paragraph 61 of the Report and Order. Moreover, applications in TIERS II and III appear to contemplate additional television service to areas and populations already receiving multiple services, whereas TIER I applications would bring needed service to unserved or underserved rural areas and populations. Affording processing priority to the latter group would appear to comport with our Section 307(b) obligations. Finally, all interim applicants have been on notice from the outset of this proceeding that their applications and/or interim authorizations would be conditioned upon the outcome of the rule making, so that no inalterable rights can be argued to have accrued.

6. In the near term, between of adoption of the Report and Order and employment of fully computerized processing methods, the tier system will be of little assistance in expediting authorization of service due to the necessarily tedious nature of manual processing using complex engineering criteria. However, with the advent of the computer as a processing tool, the tier system will aid in increasing the number of authorizations because it will reduce the numbers of mutually exclusive applications that must be considered together in chain sequences. This also will expedite the hearing process.

Statement of Chairman Mark S. Fowler in Which Commissioner Mimi Weyforth Dawson Joins

Re: Low Power Television

Low power television may not have the transmission capabilities of full broadcast television, but its capacity to provide televised programming that is directly responsive to the interests of smaller audience segments makes it truly unique in its ability to expand consumer choices in video programming. From this perspective, the power of these stations may be low, but their potential is enormous.

I fear, however, that the majority may not realize how their vote to impose a one year trafficking limitation on low power facilities may undercut the potential for this service to provide an outlet for new broadcast entrepreneurs, particularly minorities and nonprofit groups, to enter the market. We cannot ignore the fact that the low power service will be inaugurated during a time when financing costs pose a significant barrier to capital investment. It will be difficult enough for these new entrants to obtain financial backing without the added burden that this limitation on the disposability of the facility will impose. Against this very real concern, the majority's speculations as to possible problems that might arise absent a rule seem all the less compelling as a pretext for a general proscription.

Absent a showing of need for government interference in the marketplace, the burden for imposing regulation should lie with those proposing regulation with the presumption in favor of non-interference. I find no argument of the majority overcoming the presumption in favor on non-interference and, therefore, dissent to this aspect of the order.

Dissenting—in Part—Statement of Commissioner Abbott Washburn

Re: Low Power Television, BC Docket No. 79-253

The absence of any limitation on multiple ownership of this new low power service is inconsistent with the Commission's long-

[2] We shall utilize the reference coordinates for cities and towns specified in the publications "All Populated Places," available from the United States Geological Survey, 507 National Center, NCIC, Reston, Virginia 22092.

[3] The other exceptions are applications for major amendments to change frequency from Channels 70 through 83 or to change frequency to resolve interference to or from full service stations.

[4] The *Notice* formulated the two principal goals as (1) not adopting burdensome new regulations "that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest" and "to provide maximum flexibility for new originating services to come into being, easily and at low cost." *See*, Notice of Proposed Rule Making, 45 FR at 60179.

standing limitation on ownership of conventional television stations and of AM and FM stations. Currently, ownership of each of these three services is limited to seven stations per licensee. Such limits have proved valuable in preventing concentration (chain ownership) of these facilities and in encouraging diversity of voices of opinion. It would have been in the public interest to include a similar provision here for low power television. Therefore, I dissent to that portion of today's decision which permits unlimited ownership of low power stations.

I also dissent to the majority's abandonment of the proposed preference for noncommercial applicants. As both the Congress by statute and the Commission by our decisions have affirmed repeatedly: *There is an important place for public broadcasting in our society.* But the tremendous number of applications for LPTV, only 6% of which are noncommercial applicants, suggests that we cannot be sure that noncommercial licensees will occupy that place in low power television unless we award a comparative preference to noncommercial licensees. Similarly, the record before us does not persuade me that a completely open and unregulated market environment will assure diversity of programming. Specifically, programming which appeals to special or limited audiences will not survive in a commercial marketplace environment where success is largely determined by broad audience appeal.[1] The Commission recognizes this fact in preserving the comparative preference for minority low power applicants (see Footnote 62). I regret that my colleagues' desire to maximize diversity of programming for the public does not extend to awarding a preference to noncommercial applicants.

Finally, I caution the Commissioners to keep a close watch on the hearing procedures under which decisions in mutually exclusive low power cases are to be made by the Commission in the first instance. It may happen that contrary to our goal of expediting establishment of the new low power service, resolution of mutually exclusive cases by the Commission itself without the helpful assistance of an Administrative Law Judge's Initial Decision and review by the Review Board will prove to be too cumbersome and burdensome. It is possible that a total of 10,000 to 12,000 additional applications will be received. Our staff estimates that three quarters of these are likely to be mutually exclusive. Such a flood of LPTV paperwork could end up seriously impeding the other work of the Commissioners and their staffs.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Low Power Television Broadcasting—Report and Order.

This *Report and Order* begins to clear the way for Low Power Television (LPTV) to have its chance in the telecommunications marketplace. The regulatory framework established by this decision gives LPTV the opportunity to prove its promise of enhanced program service diversity and increased minority ownership without jeopardizing the technical integrity or continued development of the full service television station system.

Because of the uncertain viability of this new and secondary LPTV service and the herculean administrative task of processing the 6,000 low power applications now pending before the Commission, this *Report and Order* wisely and appropriately prescribes a minimum of governing regulation. At the same time, however, I also believe that the tiered processing system and comparative criteria specified by this decision meet the Commission's important statutory responsibilities under Sections 307(b) and 309(e) of the Communications Act. In particular, the tiered processing standards ensure first consideration of underserved rural area LPTV applications but also guarantee that where early grant of a rural application might preclude the availability of an LPTV frequency in an urban area, those rural and urban applications will be jointly processed and reviewed. In light of the fledgling and secondary status of this new LPTV service, I am convinced that this processing system meets the command of Section 307(b) that the Commission "provide a fair, efficient, and equitable distribution" of service to each of the "several States and communities." As I emphasized in my Separate Statement on the Notice of Proposed Rulemaking in this proceeding, the statutory mandate of Section 307(b) is not a static, one-time requirement because the balance of demand for broadcast facilities and service is dynamic and changes over time.[1] While the Commission has considerable discretion in implementing the Section 307(b) requirement, it may not ignore it. We have kept faith with Section 307(b) in this *Report and Order.*

Our decision to apply the *1965 Policy Statement on Comparative Broadcast Hearings* [2] to competing LPTV applications according to diversification and minority ownership criteria also adheres to the statutory requirements of Section 309(e) of the Act while providing the flexibility and expedition necessary for the effective implementation of this untested, secondary service. While difficult *ad hoc* adjudicatory issues may be presented under these two criteria, I believe that the paramount public interest in "best practicable service" will be advanced and protected by this case-by-case process.

In terms of further protecting the public interest, I am especially pleased that the Commission has decided to apply a one-year anti-trafficking rule to LPTV license grants. Together with the strict requirement that LPTV stations be constructed and go on-air within one year of grant of construction permit, this action safeguards the integrity of the diversification and minority ownership comparative criteria and provides critical assurance that only bona fide public interest applications will be prosecuted.

Low Power Television offers exciting new ownership and public service opportunities in broadcasting, as the 6,000 applications filed during the pendency of this proceeding more than amply demonstrate. This Commission is doing its part to provide the fair chance for these dreams to become reality. Candor, as well as standards of truth in advertising, compels the final observation that there are no guarantees. As former Chairman Robert E. Lee perhaps presciently observed, an LPTV authorization "isn't going to be a license to print money." [3] The fair opportunity, however, is afforded. This Commission should do no less and can do no more.

Separate Statement of Commissioner Henry M. Rivera

Re: Broadcast Docket No. 78-253; Low Power Television

Today's Report and Order is the first concrete step toward making the low power television service available to the American public. There are several impediments to substantial near-term development of this service. Among the most prominent obstacles to the low power service are: (i) The staggering number of pending applications and the resulting continuation of the existing processing freeze; and (ii) the possibility that low power grants may even be *precluded* in some large markets if the Commission reallocates television spectrum for land mobile use after reviewing the staff recommendations it has requested on the subject. In this context, truth in advertising requires that the public (especially members of minority groups) be advised to temper its optimism over the low power television service at this juncture.

Despite these implementation handicaps, I firmly support the decision to launch the first new broadcast service in decades. The Commission's initiative offers a rich, if distant, opportunity to promote diversity of ownership generally and to widen opportunities for minority ownership in particular; it also may serve as a testing ground for new regulatory approaches.

Our decision to impose minimum regulatory constraints upon low power television is appropriate for a service whose viability is so uncertain, and whose stations are of limited reach and easily preemptable by full-service stations. However, the framework adopted is not without risk. The failure to impose any ownership limitations, for instance, is said to be likely to induce experienced broadcasters to provide LPTV service and to allow parties to achieve economies of scale from multiple ownership—thereby generally fostering the development of the low power service. It is also possible, on the other hand, that without restrictions on network ownership, cross-ownership or duopolies, a low power television landscape far different from that intended by the Commission will develop. I am persuaded by the Report and Order that the Commission does not now need to impose ownership limits but am prepared to reconsider if the absence of ownership rules

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[1] An example of this is children's television programming which today, in quality and quantity, is so well handled on public television.

[1] Separate Statement of Commissioner Joseph R. Fogarty, Concurring in Part, 82 FCC 2d 82, 83–84 (1980), *citing* Pasadena Broadcasting Co. v. FCC, 555 F. 2d 1046 (D.C. Cir. 1977).

[2] 1 FCC 2d 393 (1965).

[3] Concurring Statement of Commissioner Robert E. Lee, 82 FCC 2d 81 (1980).

seriously erodes the primary goals of the low power service.

The tiered processing system adopted to resolve the serious administrative problems caused by the ocean of pending LPTV applications is an unfortunate, but probably necessary, by-product of this proceeding. Most unfortunate is that under the scheme, LPTV authorizations in major urban centers—where ethnic and minority groups with special needs are highly concentrated—will be the last to be made. However, to its credit, the system is designed to protect urban LPTV service: it expressly defers action on all rural applications, which if granted, would foreclose a pending application to serve an urban area.

Not surprisingly, a sizeable number of applications filed by minorities are concentrated in urban markets. A processing hierarchy premised exclusively on geographic remoteness would have precluded many of these applications at the starting gate, and substantially undercut this proceeding's goals of encouraging minority ownership of broadcast facilities. The Commission's modified tier approach avoids that pitfall by according priority to underserved rural area as a general matter but preserving the interests of those proposing service in urban areas where there are competing demands to provide LPTV.

The one-year holding period preserves the dignity of the comparative process. It gives some assurance that those who were deemed comparatively superior by the Commission will indeed serve the public and forestalls the creation of a low power "CP futures market" that could vitiate the essential goals of the comparative process. Contrary to assertions in some quarters, this restriction will not force parties to operate failing LPTV stations. Waivers of the holding period are always grantable upon a proper showing by the licensee. Moreover, if the restriction works an unintended hardship on the development of the service the Commission has the discretion to revisit the issue.

I sincerely hope that the Commission's decision to award priority to diversification of media control and minority ownership in comparative cases will go far in advancing the goals of this new service.[1]

Applying these two comparative factors will surely be among the Commission's most challenging tasks. I frankly would have preferred a more precise discussion of the substantive elements of the comparative process, but on balance am satisfied to let the requisite detail emerge as we begin to process the myriad pending comparative cases.

The Commission may ultimately find that adoption of a policy statement to guide its application of the two primary comparative criteria—diversification of ownership and minority ownership—will facilitate speedier and surer resolution of comparative cases. Until that time, considerable gloss will have to be placed on these criteria in evaluating competing applications. The Commission has reconfigured its comparative licensing standards for the low power service,[2] and its comparative analysis will have to be reconfigured as well.[3]

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[1] In view of the severe underrepresentation of minorities in broadcast ownership, *see, e.g.*, Policy Statement on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979 (1979), the decision to accord comparative priority to applicants proposing over fifty percent minority ownership in low power television licensing policies is eminently justified. That decision also follows the theme of prior agency actions designed to increase minority ownership of broadcast facilities. In the clear channel proceeding, for example, *see* Clear Channel Broadcasting in the AM Broadcast Band, 78 FCC 2d 1345 (1980), the Commission found that the public interest would be served (in awarding frequencies made available by the decision to allow limited sharing of clear channel frequencies), by giving precedence to applicants proposing a first or second local primary service, applicants with over fifty percent minority ownership and applicants proposing non-commercial operations. See 78 FCC 2d at 1368–70. The Commission classified as "paramount" among competing demands for spectrum the need to increase the number of minority-owned radio stations, citing the fact that just 200 of the over 8,000 radio stations were then owned by minorities. *Id.* at 1368. This decision was recently judicially affirmed. Loyola University v. FCC, No. 80–1624 (D.C. Cir. Jan. 28, 1982). The record regarding minority ownership of television outlets is even more discouraging, with just 16 of 1,050 licensees being minority owned, and thus, the case for awarding comparative priority in this new television service all the more compelling. *See also* Policy Statement on Minority Ownership, supra; Grayson Enterprises, Inc., FCC 80–175 (1980) (allowing approval of "distress sale" applications when it is shown that over fifty percent of the prospective licensee is minority-owned).

[2] As an initial matter, the focus of the Commission's comparative inquiry has been substantially narrowed. In addition, the Commission has altered the prerequisites for comparative recognition of minority ownership in two important particulars: integration of ownership and management is no longer required, but over fifty percent ownership by minorities must now be shown. The Commission, in my judgment, has the latitude to recast its comparative analysis in this manner, and the record in this proceeding furnishes a rational basis for doing so.

[3] For example, because the Commission has altered the circumstances under which it will consider minority ownership in the low power service, reference to the "merit" concept as it has evolved under TV 9, Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973) and its progeny would be essentially inapposite here.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
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DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
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DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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Environmental Protection Agency

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Justice Department

Civil Rights
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Flood Insurance
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Milk Marketing Orders
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Trade Practices
Federal Trade Commission

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 82-023]

Importation of Certain Animals; Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document makes final the interim rule concerning the issuance of special authorization to be drawn on a lottery basis for the allotment of quarantine space for animals to be imported through the Harry S Truman Animal Import Center (HSTAIC). This action provides an alternative use of the HSTAIC when the total number of animals for which special authorizations are granted for use of the HSTAIC is less than 50. This action provides individuals the opportunity to apply for exclusive use of the HSTAIC on a first-come, first-served basis. The intended effect of this action is to provide an additional means by which the HSTAIC may be efficiently used.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Room 821, Federal Building, Hyattsville, MD 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will result in no significant effect on the economy; will result in no increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will have no adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This document provides a method by which a single entity may have exclusive use of the HSTAIC for the quarantine of 50 or more cattle, when, under the present regulations the facility would otherwise remain unused. Although any entity which wishes to import animals may apply for exclusive use of the HSTAIC, there will only be an economic impact on one entity for each quarantine period. Further, this action imposes no new additional requirements or costs on small entities.

Alternatives Considered

Under the present regulations (9 CFR 92.41) if the total number of animals for which special authorization is requested is not at least 50 no lottery or importation is held because it has been found that it is not economical to use the HSTAIC with less than 50 animals. However, if no lottery is held then HSTAIC remains unused. This document provides a method of utilizing the HSTAIC when the total number of animals for which special authorizations are requested in a lottery is not at least 50, namely, by allowing an individual's application for exclusive use of the HSTAIC. The Department found that interest was shown by importers to use HSTAIC (for 50 or more animals) if they could use it exclusively for their animals, rather than risk the danger of infection from animals of other importers. This amendment was developed in reponse to this interest shown by importers who would like to use the HSTAIC, but only if it can be used exclusively for their animals. The only alternative considered was not to amend the regulations, and this would mean the HSTAIC would remain unused at the expense of the public. The following amendment was found to be less costly and more beneficial to the public than the alternative of not amending the regulations, and was, therefore, adopted.

Background

In a document published in the **Federal Register** on September 22, 1981 (46 FR 46784–46787), the Department issued an interim rule amending the regulations (9 CFR 92.41 (a), (b), (c), (d), and (e)) pertaining to importation of animals through the HSTAIC which set forth procedures for the issuance of special authorization for exclusive use of the HSTAIC for between 50 and 400 animals.

This amendment retains the present lottery found in § 92.41(a). However, it amends present § 92.41 (b), (c), and (d), and the references thereto by redesignating them § 92.41 (c), (d), and (e), respectively, and by adding a new paragraph (b).

The document of September 22, 1981, invited interested persons to submit written comments concerning the amendments on or before November 23, 1981. No written comments were received. Based on the reasons set forth in the document of September 22, 1981, the provisions in the interim rule have been adopted as published on September 22, 1981.

The factual situations which were set forth in the document of September 22, 1981, still provide a basis for the amendments. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on September 22, 1981.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and Livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

(Sec. 2, 32 Stat. 792, as amended, sec. 1, 84 Stat. 202, (21 U.S.C. 111 and 135); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 14th day of May, 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-13627 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3088]

General Electric Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Fairfield, Conn. diversified, industrial company, among other things, to divest its stock in Applicon, a major producer of stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems, under a two-part divestiture plan to be completed by March 31, 1982. Pending divestiture, GE is prohibited from exerting any influence over Applicon's operations; voting its stock in a manner which would be contrary to that in which it votes all other shares; and obtaining, from Applicon, confidential information of any kind. Additionally, for a five-year period, any GE employee who was in any way affiliated with Applicon is barred from serving in any position in Calma Company, a Sunnyvale, Calif. subsidiary of United Telecommunications, Inc., including its board of directors; prohibited from disclosing confidential information received during their tenure with Applicon, and barred from intervening in any of Calma's business operations. GE is also prevented from discriminating against Applicon, when purchasing CAD/CAM systems and products and restricted, for a ten-year period, from acquiring any interest in any firm in the manufacture and sale of CAD/CAM products without prior Commission approval.

DATES: Complaint and order issued May 4, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, James C. Egan, Washington, D.C. 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Friday, Oct. 16, 1981, there was published in the **Federal Register**, 46 FR 50977, a proposed consent agreement with analysis In the Matter of General Electric Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Computer technology, Computer hardware/software.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Carol M. Thomas,

Secretary.

[FR Doc. 82-13619 Filed 5-18-82; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

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16 CFR Part 13

[Docket C-3087]

Vinyl Improvement Products Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires Vinyl Improvement Products Company (VIPCO), a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy-related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Further, VIPCO is required to mail to each business entity which had sold or distributed its products during the previous year, a letter advising that vinyl siding by itself does not save energy.

DATES: Complaint and order issued April 30, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PE, Michael Dershowitz, Washington, D.C. 20580. (202) 724-0726.

SUPPLEMENTARY INFORMATION: On Monday, February 1, 1982, there was published in the **Federal Register**, 47 FR 4532, a proposed consent agreement with analysis In the Matter of Vinyl Improvement Products Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Supart—Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc.

List of Subjects in 16 CFR Part 13

Advertising, Trade practices, Vinyl siding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended (15 U.S.C. 45))

Carol M. Thomas,

Secretary.

[FR Doc 82-13620 Filed 5-18-82; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

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16 CFR Part 13

[Docket C-3089]

Western General Dairies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Utah dairy cooperative to cease engaging in price discrimination in the sale and distribution of raw milk and dairy products, or communicating in any manner disparaging or derogatory information or opinions concerning competing firms. Commencing one year from its effective date, the order bars

the cooperative from restricting, for more than six months, the sale or transfer of "base" by any of its members to any bona fide Grade A milk producer. ("Base" is a member's right to receive from the cooperative the going rate for raw milk.)

DATE: Complaint and order issued May 4, 1982.[1]

FOR FURTHER INFORMATION CONTACT: Judith D. Ford, Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Tuesday, February 23, 1982, there was published in the **Federal Register** 47 FR 7853, a proposed consent agreement with analysis in the matter of Western General Dairies, Inc., an incorporated cooperative association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective actions and/or Requirements: § 13.533 Corrective actions and/or Requirements; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Discriminating Between Customers: § 13.685 Discriminating between customers; 13.685–10 Federal Trade Commission Act. Subpart—Discrimination in Price Under Section 5—Federal Trade Commission Act: § 13.870 Charges and prices. Subpart—Disparaging Competitors and Their Products—Competitors: § 13.950 Reliability, history and financial condition; § 13.953 Reputation or standing.

List of Subjects in 16 CFR Part 13

Milk, Price controls, Trade practices.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,

Secretary.

[FR Doc. 82-13021 Filed 5-13-82; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5214, 0H5247/R87; PH FRL 2125–7]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Hexakis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the insecticide hexakis and its organotin metabolites in or on raisins and dried prunes. This regulation to permit the maximum permissible level for the combined residues of the herbicide hexakis and its metabolites in or on the commodities was requested by Shell Chemical Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2368).

SUPPLEMENTARY INFORMATION: EPA issued notices in the **Federal Register** of January 16, 1980 (45 FR 3109) (0H5247) and October 21, 1981 (46 FR 51644) (9H5214) which announced that Shell Chemical Co., 1025 Connecticut Ave., NW., Washington, DC 20036, had submitted food additive petitions to the EPA proposing that 21 CFR 193 be amended by the establishment of a regulation permitting the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on raisins (9H5214) at 20 parts per million (ppm) and dried prunes at 8 ppm and dried peaches at 80.0 ppm (0H5247).

FAP 0H5247 was subsequently amended deleting the proposed tolerance in or on dried peaches.

No comments were received in response to these notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the regulation are included in a related document (PP 0F2302, 0F2408/R351) which establishes tolerances for the combined residues of hexakis and its organotin metabolites in or on cherries, peaches, plums, prunes, and strawberries which appears elsewhere in this issue of the **Federal Register.**

The metabolism of hexakis in plants is adequately understood and there are no actions currently pending against the continued registration of the subject insecticide, nor are there any other relevant considerations involved in establishing this regulation.

The insecticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the regulation is established in 21 CFR Part 193 as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: May 19, 1982.

(Sec. 409(c)(1), 72 Stat. 1786, (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: May 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 193 is amended by establishing a new § 193.236 to read as follows:

§ 193.236 Hexakis.

A regulation is established permitting the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the following food items:

Food	Parts per million
Prunes, dried	5
Raisins	20

[FR Doc. 82-13344 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R-82-969]

Environmental Review Procedures for Title I Community Development Block Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on April 12, 1982 (47 FR 15750) which sets forth the environmental regulations applicable to the Title I block grant programs of the Department as authorized and amended under the Housing and Community Development (HCD) Amendments of 1979 and 1981. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published April 12, 1982, at 47 FR 15750, is May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 13, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-13347 Filed 5-18-82; 8:45am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-82-940]

Community Development Block Grants: States' Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of effective date for final rule.

SUMMARY: This document announces the effective date for the final rule published in the **Federal Register** on April 8, 1982 (47 FR 15290) which established policies and procedures for State administration of Community Development Block Grants for nonentitlement areas. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register.**

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published April 8, 1982, at 47 FR 15290, is May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, SW., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 13, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-13346 Filed 5-18-82; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Civil Division Directive No. 151-82]

Revision of Civil Division Directive No. 145-81

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: This document amends Civil Division Directive No. 145-81 regarding delegations of authority in Civil cases. These changes clarify certain points in the presently published version and correct certain typographical errors. The revisions clarify the authority of U.S. Attorneys to compromise or settle routine collections cases even after judgment in the trial courts, while preserving the Solicitor General's authority over appeals. In addition, the Directive has been clarified to limit the authority of Civil Division Branch Directors and the other officials enumerated therein to close cases or claims on behalf of the government.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Robert N. Ford, Civil Division, Room 3137, 9th & Pennsylvania Avenue NW., Washington, D.C. 20530 (202-633-3309).

SUPPLEMENTARY INFORMATION: The requirements of Executive Order No. 12291 (Federal Regulation) do not apply to this directive because it deals with agency management and is therefore exempt under section 1(a)(3) of that Order. Additionally, the requirements of the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, do not apply because this directive is not a "rule" under section 601(2).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Claims, Government employees organization and functions (Government agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Accordingly, by the authority vested in me as Assistant Attorney General, Civil Division, by 28 CFR section 0.168, Civil Division Directive No. 145-81 (Appendix to Subpart Y of Part 0, Title 28, Code of Federal Regulations) is revised as follows:

1. In Section 1, paragraphs (b) and (c) are revised.

2. In Section 4, paragraphs (b) and (c)(2) are revised.

3. Section 5 is revised.

As revised, the paragraphs read as follows:

Redelegation of Authority to Branch Directors, Heads of Offices and United States Attorneys in Civil Division Cases

[Directive No. 145–81]

Section 1. Authority to compromise or close cases.

(a) * * *

(b) Delegation to Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation. Subject to the limitations imposed by paragraph (d) of this section, Branch Directors, the Director of the Apellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are hereby authorized, with respect to matters assigned to their respective components, to reject any offer in compromise and to accept offers in compromise and close claims or cases in the manner and to the same extent as Deputy Assistant Attorneys General, except that Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation cannot accept or reject any offers in compromise of, or settle administratively any claim or case against the United States where the principal amount to be paid by the United States exceeds $150,000. Nor can these Civil Division officials close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $150,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $150,000 or 10 percent of the original claim, whichever is greater. Branch Directors, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are further authorized to file suits, counterclaims, and cross-claims, or to take any other action necessary to protect the interests of the United States in all nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the claim does not exceed $150,000.

(c) Delegation to U.S. Attorneys and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by paragraph (d) of this section, and the authority of the Solicitor General set forth in 28 CFR 0.163, United States Attorneys and Attorneys-in-Charge of field offices are authorized to:

(1) Reject any offer to settle a monetary claim on behalf of the United States where the amount offered is below $100,000 or below an amount previously indicated by the appropriate Civil Division official to be an acceptable minimum, in any case for which they have primary responsibility.

(2) Accept or reject offers to compromise cases and close claims which have been directly referred or delegated to them by the Civil Division, as set forth in sections 4 (a) and (b) of this directive, in the same manner and to the same extent as Branch Directors, except that United States Attorneys and Attorneys-in-Charge of field offices cannot accept or reject any offers in compromise of any claim or case against the United States where the principal amount of the proposed settlement exceeds $100,000. Nor can United States Attorneys or Attorneys-in Charge of field offices close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $100,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $100,000 or 10 percent of the original claim, whichever is greater. United States Attorneys may redelegate this authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(d) * * *

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Section 2. * * *

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Section 3. * * *

Section 4. Authority for direct reference and delegation of Civil Division cases to United States Attorneys.

(a) * * *

* * * * *

(b) Delegation to United States Attorneys. Branch and office directors and unit chiefs of the Civil Division may delegate to United States Attorneys any nonmonetary claims or suits, and monetary claims or suits involving amounts up to $150,000, where the circumstances warrant such delegations. Upon the recommendation of branch and office directors and unit chiefs, the Assistant Attorney General, Civil Division, may delegate to United States Attorneys any claims or suits involving amounts up to $750,000, where the circumstances warrant such delegations. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(d) of this directive also remain applicable in any case or claim delegated hereunder.

(c) * * *

(1) * * *

(2) Cases within the jurisdiction of the commercial litigation branch involving patents, trademarks, copyrights, etc.

(3) * * *

* * * * *

Section 5. Adverse decisions. All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult Title 2 of the United States Attorneys' Manual for procedures and time limitations.

Section 6. * * *

J. Paul McGrath,

Assistant Attorney General.

[FR Doc. 82–13612 Filed 5–18–82; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–6–FRL 2066–8]

Approval and Promulgation of Implementation Plan; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the Union Carbide Corporation (UCC) Alternative Emission Reduction Plan ("Bubble") that uses emission reduction credits from a source shutdown in lieu of controls on storage tanks and loading facilities. This action trades emission reductions from the shutdown of a Low Density Polyethelyne (LDP) unit for the control of the 29 tanks and storage facilities (used for Synthetic Organic Compounds) at UCC's petrochemical plant in Texas City, Texas. The use of emission reduction credits from a source shutdown is consistent with EPA's newly expanded emissions trading policy statement.

EFFECTIVE DATE: This rule is effective on May 19, 1982.

ADDRESSES: A copy of the State's submittals and incorporation by reference materials are available for review during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NE., Room 8401, Washington, D.C. 20460

Environmental Protection Agency, Public Information Reference Unit (PM–213), EPA Library, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Air Branch, Region 6, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Programs Section, Air and Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION: On August 12, 1981, EPA proposed to approve a bubble for Union Carbide Corporation's Texas City, Texas petrochemical plant. 46 FR 40774. In brief, the UCC bubble involves a trade of emission reductions resulting from the shutdown of a Low Density

Polyethylene (LDP) unit for controls on the emissions from 29 storage tanks and loading facilities. The bubble balances a reduction of 243.3 tons per year of synthetic organic compounds (SOCs) from the LDP unit against 228.8 tons per year of uncontrolled emissions from the storage tanks and loading facilities.

At the time of proposed rulemaking, EPA's bubble policy did not permit the use of source shutdowns in most bubble trades. 44 FR 71780 (December 11, 1979). The bubble policy referenced Section IV.C. of EPA's Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) for determining the equivalence of emissions and air quality impact in a bubble trade. That Section also limits the crediting of shutdowns to units that replace the shutdown unit. Because EPA anticipated an amendment to modify this aspect of the Offset Ruling, EPA proposed to approve the UCC bubble with final promulgation contingent upon the anticipated amendment.

Since the Notice of Proposed Rulemaking, EPA has significantly amended its bubble policy. The new EPA bubble policy is now incorporated in a comprehensive Emissions Trading Policy Statement. 47 FR 15076 (April 7, 1982). Under EPA's new policy, bubble trades may use "emissions reduction credits" (ERCs) from shutdowns subject to the same restrictions as those governing other emission reduction credits. Therefore, ERCs created by a source shutdown that are surplus, enforceable, quantifiable, and permanent may be used to balance an emissions increase, regardless of whether or not the increase results from a replacement unit.

In the Notice of Proposed Rulemaking for the UCC bubble, EPA evaluated the bubble in detail and determined that, except for the shutdown issue, it was fully approvable. EPA determined that the bubble satisfies ambient air quality impact considerations and that it uses emission reductions that are surplus, enforceable, permanent, and quantifiable. Thus, for example, the UCC bubble does not interfere with reasonable further progress and attainment.

Several comments were submitted to EPA during the public comment period. EPA's response to these comments is set out below:

I. Final Compliance Date Under the Texas State Implementation Plan: EPA noted in the August 12, 1981, **Federal Register** (46 FR 40774) on page 40775 that the "schedule for UCC calls for final compliance by December 31, 1982." EPA agrees with the comment it received from the affected industry noting the compliance date for UCC was incorrect; the compliance date should be December 31, 1981.

II. More Stringent Controls on the LDP Unit: One commentor wanted to know what would happen to the UCC bubble if EPA, at a later date, required more stringent controls on the LDP units. EPA believes that this issue is moot since the LDP will be permanently closed (i.e. dismantled).

III. The affected industry commented that the UCC bubble could be approved through a change in the bubble policy without regard to any anticipated amendment to the Offset Ruling. EPA agrees with the commentor, and therefore has amended its bubble policy and is today approving the UCC bubble. As noted in the proposed rulemaking, EPA still intends to propose a similar change to the Offset Ruling.

Conclusion

After consideration of all relevant comments, and in accordance with EPA's Emissions Trading Policy Statement, EPA approves the UCC Alternative Emission Reduction Plan ("Bubble"), as discussed above, for incorporation into the Texas SIP. This rulemaking is being made immediately effective because it enables the affected source to promptly begin dismantling the LDP unit in order to meet the tight deadline contained in the Texas SIP.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of May 19, 1982. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it will impose no new regulatory burden since it only approves State actions. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the SIP for Texas was approved by the Director of the Federal Register on July 1, 1981. This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: May 11, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart SS—Texas

In § 52.2270, (c) is amended by adding paragraph (30) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(30) Revisions to the Texas SIP for the Union Carbide Corporation Bubble in Texas City, Texas were submitted by the Governor on December 15, 1981.

* * * * *

[FR Doc. 82-13599 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL-2115-5]

Approval and Promulgation of Implementation Plans: Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: The purpose of today's rulemaking is to approve revisions to Michigan's State Implementation Plan (SIP) regarding particulate emission reductions for the Traverse City Board of Light and Power (TCBLP) and the Monitor Sugar Company (MSC). These revisions were submitted in the form of Consent Orders. Consent Order APC No. 23–1981 for TCBLP limits the operation of its No. 1 and No. 2 coal-fired boilers after December 31, 1982, provides for additional controls on its No. 4 coal-fired boiler, and establishes a final compliance date of December 31, 1982. Consent Order APC No. 21–1981 for MSC provides for additional controls on its coal-fired boilers 1, 2, 3 and 4 and establishes a final compliance date of October 15, 1982.

EFFECTIVE DATE: These actions will be effective July 19, 1982, unless notice is received within 30 days that someone

wishes to submit critical or adverse comments.

ADDRESSES: Copies of these SIP revisions are available for review at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written comments on these actions should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On April 25, 1979, the State of Michigan formally submitted its SIP revision to comply with the Clean Air Act Amendments of 1977 (Act). Part of that submittal included the commitment to develop abatement orders for sources contributing to the particulate emission problem.

On December 16, 1981 and January 7, 1982, the State of Michigan submitted Consent Order APC No. 21–1981 and APC No. 23–1981 for the MSC and TCBLP companies. Presented below is a synopsis of EPA's review of these Consent Orders submitted to meet the requirements of Michigan's Rules 336.1301 and 336.1331.

Bay County (Order 21–1981)

On December 16, 1981, the State of Michigan submitted to EPA Consent Order APC No. 21–1981 for the MSC. The MSC is located in Bay City, County of Bay in an area designated attainment for total suspended particulates (TSP). Consent Order APC No. 21–1981 for MSC contains a schedule of interim progress dates for reducing particulate emissions and provides for additional controls on its coal-fired boilers 1, 2, 3, and 4. The Consent Order also requires the replacement of the existing particulate collection equipment on the boilers with higher efficiency collectors and installing new combustion controls. A final compliance date of October 15, 1982, has been established for MSC's four boilers to achieve compliance with Michigan Rule 336.1331. Rule 331(1)(a), contained therein refers to Table 31 of the General Rules, which specified an emission limitation of 0.30 pounds particulate per 1,000 pounds exhausts gas, to be achieved as expeditiously as practical but not later than December 31, 1982.

Grand Traverse County (Order 23–1981)

On January 7, 1982, the State of Michigan submitted Consent Order No. 23–1981 for the TCBLP. The TCBLP is located in Traverse City, County of Grand Traverse in an area designated attainment for TSP. Consent Order No. 23–1981 for TCBLP contains a schedule of interim progress dates for reducing particulate emissions from its boilers. To achieve compliance by December 31, 1982, TCBLP wil retire Boiler 1 and Boiler 2 and equip Boiler 4 with a sidestream baghouse in addition to existing multiclones. By December 31, 1982, TCBLP will be in compliance with the emission limitation of 0.30 pounds particulate per 1,000 pounds exhausts gas as required in R336.1331.

EPA has reviewed Consent Orders APC No. 21–1981 and APC No. 23–1981 for the MSC and TCBLP companies. EPA believes that these orders contain enforceable emission limitations and control measures necessary to ensure attainment of the Primary National Ambient Air Quality Standards (NAAQS) by December 31, 1982. EPA, therefore, approves Consent Orders APC No. 21–1981 and APC No. 23–1981, as part of the Michigan SIP.

EPA also believes that this is a noncontroversial rulemaking action, and is taking immediate final rulemaking action. On September 4, 1981 (46 FR 44476) EPA published a general notice explaining this special rulemaking procedure. This action will be effective 60 days from the date of this Federal Register notice. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, the action will be withdrawn and a new rulemaking will propose this action and establish a comment period. Today's action approves a submittal by the State pursuant to the provisions of Section 110 of the Act and imposes no new requirements beyond those which the State has already imposed.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291 (46 FR 13193), EPA must also judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a major regulation since it merely approves the State's actions. This regulation was exempted from review by the Office of Management and Budget (OMB) under Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the SIP for the State of Michigan was approved by the Director of Federal Register on July 1, 1981.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: May 10, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraphs (c)(54) and (c)(55) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(54) On December 16, 1981, the State of Michigan submitted to EPA Consent Order APC No. 21–1981 for the Monitor Sugar Company. Consent Order APC No. 21–1981 provides for additional controls on its coal-fired boilers, 1, 2, 3, and 4 and establishes a final compliance date of October 15, 1982 for attaining the primary National Ambient Air Quality Standards.

(55) On January 7, 1982, the State of Michigan submitted to EPA Consent Order APC No. 23–1981 for the Traverse City Board of Light and Power. Consent Order APC No. 23–1981 limits the company's operation of its No. 1 and No. 2 coal-fired boilers after December 31, 1982; provides for additional controls on its No. 4 coal-fired boiler; and

establishes a final compliance date of December 31, 1982.

[FR Doc. 82-13681 Filed 5-18-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 65

[FRL-2117-4]

Approval of a Delayed Compliance Order Issued by the Puget Sound Air Pollution Control Agency to Fletcher Oil Co., Tacoma, Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Puget Sound Air Pollution Control Agency to Fletcher Oil Company, Tacoma, Washington. The Order requires the Company to bring air emissions from its gasoline terminal and tank farm at Tacoma, Washington, into compliance with certain regulations contained in the federally-approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Fletcher Oil Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Betty Swan, Environmental Protection Agency, 1200 Sixth Avenue, M/S 524, Seattle, Washington 98101, phone (206) 442-2676.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101—11B, 11th Floor.

SUPPLEMENTARY INFORMATION: On February 12, 1982, the Regional Administrator of EPA's Region 10 Office published in the **Federal Register**, 47 FR 6442, a notice proposing approval of a Delayed Compliance Order issued by the Puget Sound Air Pollution Control Authority (PSAPCA) to Fletcher Oil Company. The Notice asked for public comments by March 15, 1982 on EPA's proposed approval of the Order. One document was received requesting an extension of the public comment period or to postpone final approval of the Order for 90 days. The Company requesting the extension claims to be in the process of acquiring the Fletcher Oil Company's assets. Since the Order contains the provision that the Order "shall apply and be binding upon the parties to this action, their officers, directors, employees, and successors," and since the Company was notified a month before the PSAPCA Board of Directors meeting and failed to comment, and since PSAPCA has advised EPA that it does not intend to make any changes in the Order regardless of change of ownership, EPA finds that no good cause is shown to extend the comment period.

Therefore, the Delayed Compliance Order issued to Fletcher Oil Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Fletcher Oil Company on a schedule to bring its gasoline terminal and tank farm at Tacoma, Washington, into compliance as expeditiously as practicable with WAC 173-490-040 and 173-490-201 and Sections 2.04, 2.05, 2.13, 3.05 and 3.10 of Puget Sound Air Pollution Control Agency Regulation II, a part of the federally approved Washington State Implementation Plan. If the conditions of the Order are met, it will permit Fletcher Oil Company to delay compliance with the SIP regulations covered by the Order until January 1, 1983. Fletcher Oil Company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Fletcher Oil Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: May 11, 1982.

Anne M. Gorsuch,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. Section 65.521 is amended by adding the following entry to the table to read as follows:

§ 65.521 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Fletcher Oil Co.	Tacoma, Washington	W13	WAC 173-490-040, WAC 173-490-201, PSAPCA Reg. II.	Feb. 12, 1982	Jan. 1, 1983.

[FR Doc. 82-13683 Filed 5-18-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 1F2491/R417; PH-FRL 2126-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Nosema Locustae

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide *Nosema locustae* in or on all raw agricultural commodities and home gardens. This regulation to eliminate the need to establish a maximum permissible level for residues of the insecticide in or on all raw agricultural commodities was requested by Reuter Laboratories, Inc.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION, CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of June 2, 1981 (46 FR 29530) which announced that Reuter Laboratories, Inc., 1405 James Madison Highway, Haymarket, VA 22069, had filed

pesticide petition 1F2491 with the EPA which proposed that an exemption from the requirement of a tolerance be established for residues of the insecticide *Nosema locustae* when applied to all raw agricultural commodities.

No comments were received in response to this notice of filing.

The data submitted or referenced in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirement of a tolerance included: a rat acute inhalation study, a rat acute oral toxicity study, a rat 90-day feeding study, a guinea pig acute dermal toxicity study, and a rabbit primary skin irritation study. In addition, the following toxicology studies were performed by the Agency: intraperitoneal injection in mice, intracerebral, and ocular innoculation. These studies were designed to show whether *Nosema locustae* is pathogenic to a mammalian test species. The result of these tests showed no adverse effects.

EPA sponsored an extramural study conducted by Dr. J. A. Shadduck entitled "Maximum Challenge Safety Tests of *Nosema lucustae* in Mice and Rabbits." Rabbits and mice were exposed by intracerebral, intraocular, and intraperitoneal injection (rabbits, 10-week studies) and intracerebral and intraperitoneal injection (mice, 8-week studies) to *Nosema locustae*. During the course of the study, no differences in clinical behavior, weight gain, body temperature, or hemograms were noted between injected and control rabbits, and no differences in body weight gain were noted between injected and control mice. It was concluded that *Nosema locustae* is not likely to be a hazard to mammals or humans even if exposure to high doses occurs.

Nosema locustae showed that, once removed from the insects for which it was intended, it rapidly dissipated into the environment. It is not expected to enter the human food chain. Thus acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition.

Nosema locustae is a naturally occurring protozoan of the class *Cnidosphoridea* which produces multicellular spores. When ingested by susceptible insects (mainly grasshoppers), these spores penetrate the midgut epithelium and vegetative forms reproduce repeatedly in fat bodies. When host tissue is depleted, sporulation occurs and spores are released as the host cadaver decomposes, allowing the cycle to continue.

No enforcement actions are anticipated. Therefore, the requirement of an analytical method for enforcement purposes is not applicable to this exemption request. However, an analytical method is available for quality control.

Nosema locustae is considered useful for the purpose for which an exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticide and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: May 5, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1041 is revised to read as follows:

§ 180.1041 Nosema locustae; exemption from the requirement of a tolerance.

The insecticide *Nosema locustae* is exempted from the requirement of a tolerance for residues in or on all raw agricultural commodites.

[FR Doc. 82-13084 Filed 5-18-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP OF2399/R434; PH FRL 2125-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Cyano(3-Phenoxyphenyl)Methyl 4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of the insecticide in or on these cc ...modities was requested by Shell Oil Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of October 15, 1980 (45 FR 68461) which announced that Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036, had submitted pesticide petition OF2399 to the EPA proposing that tolerances be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on celery at 4.0 parts per million (ppm), corn ensilage (forage and fodder) at 0.02 ppm, corn stover at 1.0 ppm, dried beans at 0.25, dried peas at 0.25, field corn grain at 0.02, meat and fat of cattle, goats, hogs, horses, and sheep at 0.2

ppm, milk fat at 0.2 ppm, and pears at 2.0 ppm.

This petition was subsequently amended by deleting the tolerances for celery, corn stover, meat and fat of cattle, goats, hogs, horses, and sheep and milk fat and increasing the tolerances for corn fodder and forage from 0.02 ppm to 1.0 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances included an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1–3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethylsulfoxide (DMSO)) vehicle; a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10–50 ppm for males and 50–250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested—significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncogenic effects were observed; a 3-generation rat reproduction study with a NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative); and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: A hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (6-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.125 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5 mg/day (60 kg). Approval of the tolerances would result in a theoretical maximum residue contribution (TMRC) of 0.8101 mg/day (1.5 kg) and utilize 10.80 percent of the ADI.

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are currently no regulatory actions pending against the continued registration of this insecticide. There is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3). The tolerances established for meat and milk will accommodate any secondary residues resulting from this use.

The pesticide is considered useful for the purposes for which the tolerances are sought, and it is concluded that establishment of these tolerances will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agriculture commodities, Pesticides and pests.

Dated: May 4, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.379 is amended by adding and alphabetically inserting the raw agricultural commodities corn fodder, corn forage, dried beans, dried peas, and field corn grain, and increasing the established tolerance on pears to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
Beans, dried	0.25
Corn, field, grain	0.02
Corn, fodder	1.0
Corn, forage	1.0
Pears	2.0
Peas, dried	0.25

[FR Doc. 82-13309 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0F2302, 0F2406/R351; PH FRL 2125–6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Hexakis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of the insecticide hexakis and its organotin metabolites in or on certain raw agricultural commodities. This rule to establish the maximum permissible level for the combined residues of hexakis and its metabolites in or on the commodities was requested by Shell Chemical Co.

EFFECTIVE DATE: Effective on May 19, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, (A–110), Environmental Protection Agency, Rm.

M–3706, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued notices published in the Federal Register of January 16, 1980 (45 FR 3109) (0F 2302) and October 28, 1980 (45 FR 71421) (0F 2406) that Shell Chemical Co., Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036, had filed pesticide petitions proposing to amend 40 CFR 180.362 by establishing tolerances for the combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl) distannoxane in or on the raw agricultural commodities plums and prunes at 2 parts per million (ppm); cherries at 4.0 ppm; peaches at 10.0 ppm (0F2302); and strawberries at 10.0 ppm (0F2406).

No comments were received in response to these notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a 2-year dog feeding study with a no-observed-effect-level (NOEL) of 1,200 ppm; a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects at 600 ppm (highest dose tested); a multigeneration reproduction study with NOEL of 100 ppm; mammalian mutagenicity assays which were negative for mutagenic effects; and rat and rabbit teratology studies with NOEL's of 30 mg/kg and 1.0 mg/kg, respectively. Based on the 2-year rat feeding/oncogenicity study with a NOEL of 100 ppm (5 mg/kg of body weight (bw)/day) and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.05 mg/kg of bw/day. The theoretical maximum residue contribution (TMRC) in the human diet from these tolerances and tolerances which have previously been established for this chemical on a variety of raw agricultural commodities does not exceed the ADI.

The metabolism of hexakis (2-methyl-2-phenylpropyl) distannoxane in plants is adequately understood, and an adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. Because no feed items are involved there will be no problem of secondary residues in meat, milk, poultry, and eggs. No actions are currently pending against the continued registration of the insecticide, nor are there any other relevant considerations involved in establishing these tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register file written objections with the Hearing Clerk, EPA, Rm. M–3706 (A–110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: May 19, 1982.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 8, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.362 is amended by adding and alphabetically inserting the raw agricultural commodities cherries, peaches, plums, prunes, and strawberries as follows:

§ 180.362 Hexakis; tolerances for residues.

* * * * *

Commodities	Parts per million
Cherries	4.0
Peaches	10.0
Plums	2.0
Prunes	2.0
Strawberries	10.0

[FR Doc. 82–13345 Filed 5–18–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

41 CFR Parts 9–1, 9–3, 9–4, 9–7, 9–15, 9–50, 9–51

Proposed Amendments to the DOE Procurement Regulations

AGENCY: Energy Department.

ACTION: Final rule.

SUMMARY: This rule revises the DOE Procurement Regulations. It adds a new § 9–1.355, "Contracts conditioned upon the availability of funds"; as well as a new § 9–1.356, "Solicitations conditioned upon availability of funds;" amends § 9–1.405, "Ratification of unauthorized contract awards," to clarify the requirements which must be met to allow ratifications of unauthorized actions; revises § 9–1.705, "Cooperation with the Small Business Administration," to increase from $2 million to $3 million the ceiling for small business class set-aside procurements of construction; deletes Subpart 9–1.53, "Options"; revises § 9–3.805–51, "Noncompetitive procurement," in order to improve the Department's competitive posture by revising approval procedures for noncompetitive procurements to assure that the approving official is outside the initiating office and that the accountable official is the Contracting Officer and to emphasize the prudence of early coordination with legal counsel; amends § 9–3.809, "Contract audit as a pricing aid," to increase preaward audit thresholds; revises Subpart 9–4.57, "Program Opportunity Notices," and Subpart 9–4.58, "Program Research and Development Announcements," to simplify the approval process for using these solicitation methods; revises §§ 9–7.203 and 9–7.403, "Clauses to be used when applicable," to provide for use of a Cost and Schedule Control Systems clause under appropriate circumstances; revises § 9–7.402–59, "Stop work order,"

to make that clause optional rather than mandatory for contracts with educational and other nonprofit institutions; revises Subpart 9–50, "Operating and on-site service contracts," relating to procurement procedures for operating and on-site contractors; and clarifies § 9–51.102, "Contract actions requiring advance Headquarters' review and approval," regarding the requirement for Headquarters review of certain contract actions. This final rule is the result of operational experience which has shown a need to update and revise the regulations as herein described.

EFFECTIVE DATE: July 19, 1982.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Langston, Procurement Policy Branch (MA931.1); Policy and Procedures Division, Procurement and Assistance Management Directorate, Department of Energy, (202) 252–8188
Mr. Elliot Winnick, DAGC for Procurement and Financial Incentives, Office of General Counsel (GC44), Department of Energy, (202) 252–6902

SUPPLEMENTARY INFORMATION:

I. Background
II. Statutory and Regulatory Requirements
III. Public Comments

I. Background

Under Section 644 of the Department of Energy Organization Act (hereinafter referred to as "the Act") (Pub. L. 95–91, 91 Stat. 565, 41 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Accordingly, the Department of Energy Procurement Regulations (DOE–PR) were promulgated with an effective date of June 30, 1979 (see 44 FR 34424).

II. Statutory and Regulatory Requirements

A. Review Under Executive Order 12291

Inasmuch as this final rule relates to agency management of the procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) are not applicable.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Plan Act

DOE has determined that this rulemaking imposes no information collection and reporting requirements on organizations and individuals external to DOE that may be subject to this regulation in accordance with the Paperwork Reduction Plan Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 *et seq.* 1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the environmental impact statement pursuant to NEPA.

III. Public Comment

The changes being made by this final rule were published as a notice of proposed rulemaking on December 24, 1981, 46 FR 62480. That notice invited public comments for a 30 day period ending January 25, 1981. Comments were received from one association representing universities conducting research and from several interested individuals within the DOE procurement community. The specific comments, identified by proposed change number, and the Department's response are as follows:

Change 5.2

This proposed change involved the addition of a new clause for use in contracts conditioned upon the availability of funds. One reviewer suggested that a variation of the clause be developed for use in solicitations conditioned upon the availability of funding. This suggestion has been adopted by the addition of a variation of the clause to be used in solicitations. Another reviewer asked whether such a clause was used by any other Government agency. The answer is yes. The clause is essentially the same as that used by the Department of Defense. The Department of Defense's clause may be found at Section 1–318 of the Defense Acquisition Regulation and has been a part of that regulation since September 1962.

Change 5.3

This proposed change involved additional review and approval procedures to be followed when considering the ratification of unauthorized contractual commitments. Comments were received which suggested clarification was needed in the text of the change. Minor changes have been made for the purpose of clarifying the change.

Change 5.6

This proposed change involved providing that the Source Selection Official might be the HPA, the Contracting Officer, or some other official designated by the HPA. Several reviewers pointed out that our proposed language did not provide for situations in which the official designated by the HPA is outside the Contracting Officer's organization. This has been corrected by deleting the words "at a level higher than the Contracting Office" from the change.

Change 5.7

The proposed change involved reassigning the authority for approving noncompetitive procurement and specifying approval procedures. Comments were received which suggested that clarification of the text was needed. Minor changes have been made in the text for the sake of clarity.

Change 5.11

The proposed change set forth a clause entitled "Cost and Schedule Control Systems" to be used in certain instances. One reviewer was unfamiliar with such management control systems and suggested that such systems not be mandated for contracts with universities. The Cost and Schedule Control Systems Criteria are a set of management standards used by DOE, as well as the Department of Defense and NASA, to improve the visibility of contractor cost and schedule performance. This management system is only used for major acquisition projects. Full implementation is required only for contracts exceeding $50 million. Few university projects would require application of these criteria. The Department believes that any organization awarded a contract of such magnitude would need a disciplined approach to cost and schedule control. For the sake of uniformity, the Department has chosen the CSCS approach and will not consider an exemption based on type of organization. Language has been added to the preamble of the clause to show the dollar threshold at which such a system would be required.

Change 5.12

This proposed change involved making use of the "Stop Work Order" clause optional rather than required for contracts with educational or nonprofit institutions. One reviewer felt that contracting personnel would indiscriminately add this clause to university contracts and suggested that the clause be completely deleted from the DOE–PR. The Department believes there may be circumstances in which the clause is appropriate for a university contract and for this reason will not delete the clause from the DOE–PR. Another reviewer pointed out that the clause should remain mandatory for use if an operating or on-site contract is involved even if a university is involved. the Department agrees and has added a provision to that effect.

Change 5.13

This proposed change involved further limiting the allowability of precontract costs with a maximum term of 15 days of precontract cost allowance. A reviewer suggested that the final sentence of § 9–15.5006–4(a) be rewritten to make it clear that such costs under DOE contracts must be specifically identified in the contract document. This was done. It was also suggested that this guidance be inserted at §§ 9–15.107 and 9–15.205–30 to make it clear that the Department's policy and limitations regarding precontract costs are in addition to the standards set by 1–15.107 and 1–15.205–30 of the FPR. The Department has added a notice at §§ 9–15.107 and 9–15.205–30 directing the reader's attention to § 9–15.5006–4. Another comment suggested that the maximum period of 15 days was impractical and failed to recognize situations in which legitimate precontract costs under the FPR standard are incurred without a specific prior authorization. The Department recognizes this possibility and has changed the limitation from an absolute maximum of 15 days to a maximum of 15 days unless a longer period is approved by the HPA based on a finding that such an allowance is reasonable. As a result of this, the Department has added a provision to require, to the extent practical, that authorized precontract costs be recognized by establishing advance understandings as described at 1–15.107 of the FPR. It was further suggested that the "Date of Incurrence of Cost" clause from FPR 1–7.204–3 be included in any such contract. The Department has added this guidance to § 9–15.5006–4(a).

Change 5.16

This proposed change was the same as that at change 5.11 above except that it specifies the use of cost and schedule control systems in certain operating and on-site contracts. The comments and the Department's disposition are the same as discussed at 5.11 above.

Change 5.17

This proposed change involved increasing the dollar threshold at which individual employee compensation for operating and on-site contractors must be approved. One reviewer objected to the approval practice regardless of the dollar threshold and suggested that, in the case of university contracts, standard university compensation practices should suffice. The Department does not share this view and believes it must retain this management tool for all operating and on-site contractors regardless of type of organization. The Department thanks those parties providing comments for the helpful insights furnished by their views and has carefully considered their comments in the preparation of this final rule.

List of Subjects in 41 CFR Parts 9–1, 9–3, 9–4, 9–7, 9–15, 9–50, 9–51

Government procurement.

For the reasons set forth in the preamble, Chapter 9 of Title 41 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on May 14, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance Management Directorate.

41 CFR Chapter 9 is amended as follows:

Authority: Sec. 644, Department of Energy Organization Act, Pub L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Change 5.1

PART 9–1—GENERAL

The Table of Contents of Part 9–1, "General," is amended by adding a new § 9–1.355 titled "Contracts conditioned upon the availability of funds," and a new Part 9–1.356 titled "Solicitations conditioned upon the availability of funds," and by removing and reserving Subpart 9–1.53, "Options," the provisions of which have been superseded by FPR Amendment 213, dated January 12, 1981. The revised text will read:

Subpart 9–1.0—Regulation System

Sec.

* * * * *

9–1.355 Contracts conditioned upon the availability of funds.

9–1.356 Solicitations conditioned upon the availability of funds.

* * * * *

Subpart 9–1.53 [Reserved]

Change 5.2

Subpart 9–1.3, "General Policies," is amended by adding a new § 9–1.355, "Contracts conditioned upon the availability of funds," and a new Part 9–1.356 titled "Solicitations conditioned upon the availability of funds." The new sections will read:

§ 9–1355. Contracts conditioned upon the availability of funds.

(a) There are many day-to-day supplies and services which must be provided on a continuing basis if the Department is to function efficiently. These requirements are generally funded under yearly operation and maintenance appropriations. A disruption in providing these requirements would seriously impact the orderly operation of the Department.

(b) When it is necessary to initiate a procurement properly chargeable to funds of a new fiscal year prior to the availability of such funds, the clause in paragraph (c) of this section shall be included in the contract.

This clause shall be used only for administrative operations and continuing services (such as rentals, utilities, and guard services) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(c) The following clause shall be used as described in paragraph (b) this section:

Availability of Funds—Award

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money shall arise unless and until the funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the contractor.

(d) When the clause in paragraph (c) of this section is used, the supplies or services shall not be accepted by the Department until funds are available to the Contracting Officer for the procurement and until the Contracting Officer has given notice to the contractor (to be confirmed in writing) of such availability. Records shall be maintained to insure adequate administrative control of funds.

§ 9–1.356 Solicitations conditioned upon the availability of funds.

(a) There may be instances in which advance procurement planning indicates that the administrative leadtime necessary to allow contract award by a required date will require release of the solicitation prior to the availability of funds. In such circumstances, the best interests of the Department may be served by early release of the solicitation document in advance of funding available for an award. Any solicitation released for such reason, shall include the clause set forth at paragraph (c) of this section.

(b) *Limitation.* Solicitations shall not be released in advance of the availability of funds unless the initiating office obtains a certificate from the responsible budget officer to the effect that funding for the action has been included in a budget request released by the President to the Congress.

(c) The following clause shall be used when solicitations are released in advance of the availability of funds:

Availability of Funds—Solicitation

Funds have not, as of the date of issuance of this solicitation, been made available to the Contracting Officer for award of a contract anticipated by this solicitation. It is expected that sufficient funds will become available for award prior to the contemplated contract award date. Offerors are advised that should funds not be made available, it will be necessary to either cancel this solicitation or make an award subject to inclusion of the clause entitled "Availability of Funds—Award" set forth at 41 CFR 9–1.355(c). The Government will not be responsible for any expenses incurred by others in connection with this solicitation.

Change 5.3

Section 9–1.405, "Ratification of unauthorized contract awards," is revised at paragraphs (b) and (c) (1), (2), and (3) to clarify the types of actions that can be ratified and what approvals are required. The revised text will read:

§ 9–1.405 Ratification of unauthorized contract awards.

(a) * * *

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements, e.g., there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The HPA shall then be notified of the circumstances. If the HPA agrees that the work appears to be without valid authorization, the HPA will take appropriate steps to resolve the matter if within his or her area of cognizance. If outside the HPA's normal area of cognizance, the Senior Procurement Official and Senior Program Official will be notified by the HPA. If they determine that an unauthorized commitment exists, they will arrange for the appropriate contracting office to contact the person and direct that the work be stopped or arrange for valid contractual coverage. The Contracting Officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(c) * * *

(1) * * * Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Senior Procurement Official may waive the requirement that the responsible employee initiate and document the request: *Provided,* The cognizant Assistant Secretary or the Head of the Procuring Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive procurement, and the information required by Section 9–1.405(c)(1) must be forwarded to the cognizant Assistant Secretary, or HPA, based on the source of funds for the proposed contract, for that person's concurrence, together with recommended corrective actions to preclude reoccurrence.

(3) If the Assistant Secretary, or HPA concurs with the request for ratification, the request and concurrence shall be forwarded to the Senior Procurement Official. The Senior Procurement Official will review the request, the Justification for Non-Competitive Procurement, along with any comments or information submitted by the Contracting Officer which should be considered in evaluation of the request, and the information submitted in accordance with DOE–PR 9–1.405(c)(2). Based upon this review and advice from the Office of General Counsel, the Senior Procurement Official will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring Assistant Secretary or equivalent official without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the Senior Procurement Official may ratify the action and return the file to the Contracting Officer for action and monitor the implementation of the corrective action plan.

(iii) A detailed record of the review shall be maintained for audit purposes.

* * * * *

Change 5.4

Subpart 9–1.7, "Small Business Concerns," is amended at § 9–1.705–3(b)(1) to increase the class set-aside ceiling for procurements of construction to $3,000,000, and by adding a new § 9–1.706–1(e) to read:

§ 9–1.705–3 Screening of procurements.

* * * * *

(b) * * *

(1) *Class Set-Asides.* By agreement with SBA, DOE has established a class set-aside for procurements of construction where the estimated value is from $10,000 through $3,000,000, including new construction and repair and alteration of structures. Lists of other class set-asides shall be maintained by all DOE procuring offices, including contractors who manage Government-owned sites. These lists shall be updated at least annually.

* * * * *

§ 9–1.706–1 General.

* * * * *

(e)(1) In lieu of the set-aside priorities set forth in FPR 1–1.706–1(a) and (e), DOE shall award contracts, and encourage the placement of subcontracts for procurement to small business concerns in the following manner:

(i) Concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

(ii) Concerns which are small business concerns, on the basis of a total set-aside;

(iii) Concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside; and

(iv) concerns which are small business concerns, on the basis of a partial set-aside.

(2) After priority is given to the small business concerns specified in subsection (e), priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which:

(i) Are not eligible under subsection (e);

(ii) Are not small business concerns; and

(iii) Will perform a substantial proportion of the production of those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.

(3) See FPR 1–1.801 for the definition of a concern located in a labor surplus area.

Change 5.5

Subpart 9–1.53 entitled "Options" is removed and reserved because Amendment 213 to the Federal Procurement Regulation (46 FR 7966, January 28, 1981) has added coverage of this topic to the FPR and makes DOE–PR coverage unnecessary. The revised text will read:

Subpart 9–1.53 [Reserved]

Change 5.6

PART 9–3—PROCUREMENT BY NEGOTIATION

Section 9–3.805–50, "Selection procedures," is amended at paragraph (a)(1)(iv) to provide that the Source Selection Official may be an official designated by the HPA. As revised the text will read:

§ 9–3.805–50 Selection procedures.

* * * * *

(a) * * *

(1) * * *

(iv) The Source Selection Official shall be the HPA, an official designated by the HPA or the Contracting Officer.

* * * * *

Change 5.7

Section 9–3.805–51, "Noncompetitive procurement", is revised at paragraph (a)(2) by removing the words "an approved" and substituting the words "a recommended" and by removing the present text of paragraph (d) and inserting new language in its place. The effect of the change is that the justification will be in the form of a recommendation by the initiating office with approval outside the initiating office. The revised text will read:

§ 9–3.805–51 Noncompetitive procurement.

(a) * * *

(2) For a noncompetitive procurement, a recommended justification shall be attached to the procurement request when the request is sent to a contracting Officer for action.

* * * * *

(d) *Review and approval.* The justification shall contain a recommendation, concurrence (when needed) and approval as follows: (In the case of cost shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(i) The recommendation shall be prepared and reviewed within the initiating office at such levels as are deemed appropriate by the Senior Program Official for procurements initiated by Headquarters or the Head of the Procuring Activity for field initiated procurements. The objective of maximizing the use of competitive procurement procedures as well as the complexity or cost of a procurement shall be used as a guide in establishing the appropriate level of responsibility for preparation of a noncompetitive recommendation. In establishing levels for the review of such recommendations, the Senior Program Official or Head of the Procuring Activity shall assure that the recommendation is reviewed at a senior organizational level in order to assure that competition is sought whenever possible.

(ii) The more complex and costly transactions will benefit from early coordination with counsel. Justifications exceeding $1,000,000, or such lower level as counsel may determine, shall be submitted by the initiator to counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the Contracting Officer. The Senior Program Official or the Head of the Procuring Activity, in consultation with counsel, may establish lower thresholds as appropriate to their organizations and circumstances.

(iii) The justification, following review of the recommendation and concurrence of counsel (if required or considered appropriate), shall be forwarded to the Contracting Officer. If the justification is acceptable to the Contracting Officer, review shall be sought at such level as the Head of the Procuring Activity may require. In specifying levels of review, the HPA shall assure that justifications of more than $10,000 are reviewed at a level above the Contracting Officer as required by Section 1–3.101(d) of the FPR. The HPA shall further assure that the official designated as the reviewing official is a Contracting Officer.

(iv) Justifications may be approved without regard to the award authority limitations. An information copy of the approved justification shall be furnished to the Contract Business Clearance Division, Procurement Review Office, Headquarters, for advisory purposes whenever it is anticipated that the contract award will require Headquarters approval.

Change 5.8

Section 9–3.809 is amended at paragraph (b)(1) to increase the preaward audit thresholds from $100,000 to $500,000 for fixed price contracts and from $250,000 to $1,000,000 for cost reimbursement type contracts, and by correcting an erroneous FPR reference at the end of the second sentence and replacing it by reference to FPR 1–3.807–2 and 1–3.809(b)(ii). The revised text will read:

§ 9–3.809 Contract audit as a pricing aid.

* * * * *

(b) *Auditor's reports on contract price proposals.* (1) Prior to negotiation of any contract or modification resulting from a proposal in excess of $500,000 for firm fixed-price and fixed-price with economic price adjustment provisions or $1,000,000 for all other contract types including initial prices, estimated costs of cost-reimbursement types, interim and final price redeterminations, escalation, target and settlement of price redeterminations, target and settlement of incentive types where the price will be based on cost or pricing data (FPR 1–3.807–3) submitted by the contractor, the Contracting Officer or authorized representative shall request an audit review by the contract audit activity. Also see FPR 1–3.807–2 and 1–3.809(b)(ii).

Change 5.9

PART 9–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Section 9–4.5702–2 is amended at paragraphs (a)(2), (b)(2), and (b)(3) to remove the requirement that the prior concurrence of the Senior Procurement Official be obtained on determinations to use the Program Opportunity Notice type of solicitation and its content. The revised text will read:

§ 9–4.5702–2 Determination to use and approval of content.

(a) * * *

(2) The Senior Program Official or designee may approve the determination.

* * * * *

(b) * * *

(2) When a source evaluation board is not required, notices may be approved by the Senior Program Official or designee after prior concurrence by Counsel.

(3) When an SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by Counsel, and the Senior Program Official, or designee.

* * * * *

Change 5.10

Section 9-4.5802-2 is amended at paragraph (a)(1) by removing the final sentence which requires the prior concurrence of the Senior Procurement Official for use of the Program Research and Development Announcement under $2 million, by removing and reserving paragraph (a)(2) which requires additional justification for use of the Program Research and Development Announcement for individual award situations expected to exceed $2 million and by removing the requirement at paragraph (b)(2) that the content of Program Research and Development Announcements have the prior concurrence of the Senior Procurement Official, Headquarters. The revised text will read:

§ 9-4.5802-2 Determination to use and approval of content.

(a) * * *

(1) Before the PRDA is selected by the program office as the appropriate solicitation procedure, a written program determination shall be made to show that the conditions in § 9-4.5802-1(c) exist to support the conclusion that the use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(2) [Reserved]

(b) * * *

(2) The PRDA content may be approved by the Senior Program Official or designee after prior concurrence by counsel.

* * * * *

Change 5.11

PART 9-7—CONTRACT CLAUSES

The Table of Contents of Part 9-7 is revised to add new §§ 9-7.203-58 and 9-7.403-75 entitled "Cost and schedule control systems." The new text will read:

PART 9-7—CONTRACT CLAUSES

Sec.

* * * * *

9-7.203-58 Cost and schedule control systems.

* * * * *

9-7.403-75 Cost and schedule control systems.

* * * * *

§ 9-7.203-58 Cost and schedule control systems.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the Contracting Officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," Office of the Controller Publication CR-0015, in the solicitation and shall include the following clause in the contract:

Cost and Schedule Control Systems

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR-0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the Contracting Officer and within ——— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the Contracting Officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the Contracting Officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the Contracting Officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

§ 9-7.403-75 Cost and schedule control systems.

In those instances where the procurement request identifies the requirement as one for which cost and schedule control systems criteria are applicable, insert the clause set forth at § 9-7.203-58.

Change 5.12

Section 9-7.402-59 is amended by adding a preamble which will make the Stop Work Order clause optional for use rather than mandatory for use in contracts with educational or nonprofit institutions. The revised text will read:

§ 9-7.402-59 Stop work order.

Use of this clause is optional if the contract is for research and development being performed by an educational or nonprofit institution unless an operating or on-site contract is involved.

* * * * *

Change 5.13

PART 9-15—CONTRACT COST PRINCIPLES AND PROCEDURES

A new provision is added as § 9-15.107 entitled "Advance understandings" which will refer the reader to the policy guidance stated at § 9-15.5006-4. A new provision is added as § 9-15.205-30 entitled "Precontract costs," which will refer the reader to the policy guidance stated at § 9-15.5006-4.

Section 9-15.006-4 is amended by deleting all of the present text. The revised text will read.

§ 9-15.107 Advance understandings.

See § 9-15.5006-4 for further guidance.

§ 9-15.205-30 Precontract costs.

See § 9-15.5006-4 for further guidance.

§ 9-15.5006-4 Precontract costs.

(a) Precontract costs are those defined in 1-15.205-30 of the Federal Procurement Regulations. To the extent practical, known expenditures of precontract costs should be governed by establishing advance understandings as contemplated by Section 1-15.107 of the FPR. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause set forth at 1-7.204-3 of the FPR.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HPA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the finding shall be forwarded to the Senior Procurement Official at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued in accordance with DOE-PR 9-3.408.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the Contracting Officer.

(3) Retroactive precontract cost authorizations and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

Change 5.14

PART 9-50—OPERATING AND ON-SITE SERVICE CONTRACTS

The Table of Contents of Part 9-50, "Operating and On-site Service Contracts," is amended by inserting a new entry 9-50.704-48, "Cost and Schedule Control Systems" and by removing and reserving § 9-50.2002, "Compensation approval requirements." The revised entry will read:

Sec.

* * * * *

90-50.704-48 Cost and Schedule Control Systems.

* * * * *

90-50.2002 [Reserved]

Change 5.15

Section 9-50.104(c) (45 FR 24380, April 9, 1980) is amended to increase the ceiling for small business class set-asides of procurement of construction, including new construction and repair and alteration of structures, from $2 million to $3 million. The set aside threshold is also revised from $2,500 to $10,000 for the sake of consistency with § 9-50.302-3(h). The revised text will read:

§ 9-50.104 Small business and small disadvantaged business concerns.

(a) * * *

(b) * * *

(c) Procurement of construction between $10,000 and $3 million, including new construction, and repair and alteration of structures, shall be set-aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular procurement falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification to SBA shall be made through the DOE Contracting Officer. Unless SBA appeals the decision (see FPR 1-1.706-2), the contractor shall proceed to process the procurement on an unrestricted basis. Small business set-aside preferences should be considered for construction procurements in excess of $3 million on a case-by-case basis, with such preferential participation of small business to be favored, whenever appropriate.

* * * * *

Change 5.16

Section 9-50.704 is amended by adding a new § 9-50.704-48, "Cost and Schedule Control Systems". The new text will read:

§ 9-50.704-48 Cost and schedule control systems.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control Systems Criteria are to be utilized, the Contractor shall follow the current Cost and Schedule Control Systems Implementation Guide, and the following clause, appropriately modified to identify the parties, shall be included:

Cost and Schedule Control Systems

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR-0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the Contracting Officer and within ——— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the Contracting Officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the Contracting Officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the Contracting Officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

Change 5.17

Section 9-50.1510-14 is amended at paragraph (d) to increase from $40,000 to $45,000 the level at which individual employee compensation for operating and on-site employees must be approved by the Contracting Officer. The revised text will read:

§ 9-50.1510-14 Compensation for personal services.

* * * * *

(d) Review and approval of compensation paid individual employees. In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subject to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for group of employees. However, in the case of operating and on-site contracts, all compensation due an individual of $45,000 or more shall require the Contracting Officer's or designee's review and approval. In addition, in the case of operating and on-site contracts, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $45,000, when the Contracting Officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the Contracting Officer of the cost of compensating an individual contractor employee above the level determined by the Contracting Officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's base salary and bonus or incentive compensations. As in the case of other personnel and compensation costs, it is intended that Contracting Officer review and approval of individual compensation normally will be prior to incurrence of costs.

* * * * *

Change 5.18

Section 9-50.2002, "Compensation approval requirements," is removed as its content is duplicative of 9-50.1510-14(d). The revised entry will be:

§ 9-50.2002 [Reserved]

Change 5.19

PART 9-51—REVIEW AND APPROVAL OF CONTRACT ACTIONS

Section 9-51.102, paragraph (b)(3) is revised by adding the word "initial" before "proposed contract" to clarify the meaning and by changing the word "will" to "may" to better reflect the nature of estimates of future actions. A new subparagraph (5) is added to paragraph (b) to clarify that the estimated cost in the case of cost-shared procurements is the sum of the contractor and Government shares for purpose of ascertaining whether the action requires Headquarters review. The revised text will read:

§ 9-51.102 Contract actions requiring advance Headquarter's review and approval.

* * * * *

(b) * * *

(3) Any initial proposed contract or subcontract, regardless of amount, which in the opinion of the Head of the Procuring Activity may as a result of extension, follow-up work, or otherwise increase the contract or subcontract, or lead to a contract or subcontract with the same contractor, in an amount in excess of the delegated authority.

* * * * *

(5) In the case of cost-shared contracts, the estimated cost shall be considered to be the sum of the contractor and Government shares for the purpose of ascertaining whether Headquarters review and approval is required.

[FR Doc. 82-12887 Filed 5-18-82; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3140

Final Regulatory Impact Analysis for Regulations Governing Competitive Oil and Gas Leasing in the National Petroleum Reserve in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of availability of final regulatory impact analysis.

SUMMARY: In accordance with the provisions of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-534), the Bureau of Land Management has prepared a Final Regulatory Impact Analysis for the regulations promulgated at 43 CFR Parts 3130 and 3140 which provide procedures for competitive oil and gas leasing in the National Petroleum Reserve—Alaska (November 9, 1981; 46 FR 55494). Notice is hereby given that the final regulatory impact analysis has been completed and is available for inspection and review.

ADDRESSES: Availability: The final regulatory impact analysis is available for inspection and review at the following addresses:

Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240

Bureau of Land Management, Alaska State Office, 701 C Street, P.O. Box 13, Anchorage, Alaska 99513.

The document will be available for public inspection and review in Room 5555 of the Washington, D.C. address and in the Public Room of the Alaska State Office during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wink Hastings, Bureau of Land Management, Division of Oil and Gas, Room 3417, 1800 C Street, NW., Washington, D.C. 20240, (202) 343-7753.

James M. Parker,

Acting Director.

May 13, 1982.

[FR Doc. 82-13844 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6249

[OR-19001-A]

Oregon; Partial Revocation of Public Water Reserve No. 146

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order creating Public Water Reserve No. 146. This action will restore 200 acres to full operation of the public land laws generally, including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5907 of August 18, 1932, which withdrew certain lands for public water reserve purposes, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

Public Water Reserve No. 148

T. 36 S., R. 32½ E.,
Sec. 23, SW¼NE¼, S½NW¼, and N½SE¼.

The area described contains 200 acres in Harney County.

2. At 10 a.m. on June 15, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 15, 1982, the land will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and will remain open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13560 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6250

[ES 28424]

Florida; Revocation of Public Land Order No. 869

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a military withdrawal affecting 39.91 acres of public land withdrawn for use by the Department of the Navy in connection with a gunnery range. This action will restore the land to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Knipfing, Eastern States Office, 703–235–2846.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 869 of October 24, 1952, which withdrew the following described public lands for use of the Department of the Navy in connection with the Gulf Beach Gunnery Range is hereby revoked in its entirety:

Tallahassee Meridian

T. 3 S., R. 32 W.,
Sec. 33, lots 5 to 20 inclusive.

The area described contains 39.91 acres in Escambia County.

2. At 8:00 a.m. on June 15, 1982, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands also will be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, at 8:00 a.m. on June 15, 1982.

Inquiries concerning the lands should be addressed to Michael J. Knipfing, Division of Lands and Minerals Operations Branch of Lands and Title Adjudication, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13562 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6251

[I-017167]

Idaho; Revocation of Public Land Order No. 4337

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order affecting 7,857.08 acres of public lands withdrawn for use by the Bureau of Land Management as a research and grazing study area. This action will restore the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4337 of December 6, 1967, which withdrew the following described lands for use in connection with the Point Springs Research and Grazing Study Area is hereby revoked in its entirety.

Boise Meridian

T. 13 S., R. 27 E.
Sec. 1;
Sec. 2, lot 1, SE¼NE¼, E½SE¼;
Sec. 11, E½E½;
Secs. 12 and 13;
Sec. 14, E½E½;
Sec. 24.
T. 13 S., R. 28 E.,
Secs. 6 to 8 inclusive;
Sec. 9, W½, except that portion on the east side of Interstate Highway 80 North;
Sec. 17 to 19 inclusive;
Sec. 20, N½, SW¼.

The area described aggregates 7,857.08 acres in Cassia County.

2. At 8:00 a.m. on June 15, 1982 the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on June 15, 1982 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the United States mining laws, at 8:00 a.m. on June 15, 1982. They have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Garrey E. Carruthers,

Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13559 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6519]

Notice of Communities With No Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency, after consultation with local officials of the communities

listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by 100-year flood. Therefore, the Agency is converting the communities listed below to the Regular Program of the National Flood Insurance Program of (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of list of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as Zone C. In a Zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate of a one-story 1–4 family dwelling is $.40 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.10 per $100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium is $.15 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agency or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program would not appear in the Code of Federal Regulations except for the page number of this entry in the **Federal Register.**

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice regarding the completed stage of engineering tasks in delineating the special flood hazard areas of the specified community and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood Insurance, Flood plains.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community	Date of conversion to regular program
California	Santa Barbara	City of Guadalupe	Apr. 30, 1982.
California	Los Angeles	City of Maywood	Apr. 30, 1982.
California	Fresno	City of San Joaquin	Apr. 30, 1982.
California	Los Angeles	City of Santa Monica	Apr. 30, 1982.
Louisiana	Evangeline Par.	Village of Chataignier	Apr. 30, 1982.
Missouri	St. Louis	Village of Sycamore Hills	Apr. 30, 1982.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 7, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13828 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Harris County, Texas; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Harris County, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood-information and after further technical review of the Flood Insurance Rate Map for Harris County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0218.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480287 Panel 0200C, published on October 6, 1980, in 45 FR 66008, indicates that Harris County Municipal Utility District No. 200, being a 530.0635 acre tract of land in the John W. Bryan Survey, Abstract No. 159, Harris County, Texas, recorded as Instrument Number 124–88–1887 through 124–88–1893; Instrument Number 130–12–1783 through 130–12–1838 in Volume 1225, Pages 1 through 54; Instrument Number 136–83–0390 through 136–83–0397; Instrument Number 147–86–1504 through 147–86–1511; Instrument Number 150–87–0539 through 150–87–0553; Instrument Number 166–87–1834 through 166–87–1841; Instrument Number 185–86–1894 through 185–86–1899; and Instrument Number 188–87–1357 through 188–87–1375, in the Office of the Clerk, Harris County, Texas is within the Special Flood Hazard Area.

Map No. H & I 480287 Panel 0200C is hereby corrected to reflect that the above mentioned property with the exception of the area designated for Drainage Easement recorded in Volume 1225, Page 1, H.C.D.R. is not within the Special Flood Hazard Area identified on February 24, 1981. This property is in Zone C.

Map No. H & I 480287 Panel 0350C, published on October 6, 1980, in 45 FR 66098, indicates that Lots 5 through 7, Block 1; Lots 1 through 6, Block 9; and Lots 54 and 59 through 62, Block 12, Hunterwood Village Subdivision, Sections Three and Four, Harris County, Texas, recorded as Instrument No. H212023 in Volume 305, Page 13 of Map Records and Instrument No. H235031 in Volume 305, Page 74 of Map Records, respectively, in the Office of the Clerk, Harris County, Texas, are within the Special Flood Hazard Area.

Map NO. H & I 480287 Panel 0350C is hereby corrected to reflect that the above mentioned properties are not within the Special Flood Hazard Area identified on February 24, 1981. These lots are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 4, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13533 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5009]

Letter of Map Amendment for Larimer County, Colorado; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Larimer County, Colorado. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Larimer County, Colorado, that certain property is within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is within the Special Flood Hazard Area, reinforces the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 080101 Panel 0178B, published on October 6, 1980, in 45 FR 66109, indicates that Lots 2 and 24 and Tracts A, B, and C, Plat of Granada Heights, Fort Collins, Colorado, recorded as Reception Number 323945 in Book 1981, Page 414, in the Office of the Recorder, Larimer County, Colorado are not located within the Special Flood Hazard Area.

Map No. H & I 080101 Panel 0178B is hereby corrected to reflect that the above mentioned properties are within the Special Flood Hazard Area identified on April 2, 1979. These properties are in Zone A.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood Insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13532 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5048]

Letter of Map Amendment for the Unincorporated Area of Cook County, Illinois; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Unincorporated Area of Cook County, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Unincorporated Area of Cook County, Illinois, that portions of certain property are not within the Special Flood Hazard Area.

This map amendment, by establishing that portions of the subject property are not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for those portions as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or

broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170054, Panel No. 0040B, published on May 2, 1981, in 46 FR 26307, indicates that portions of a parcel of land, located in the Northwest Quarter of the Southeast Quarter of Section 12, Township 42 North, Range 10 East of the Third Principal Meridian, also identified on Tax Map No. 42–10–12G as Parcel No. 2–12–400–003, being a portion of the lands recorded as Document No. 19 411 954, in the Office of the Recorder of Deeds of Cook County, Illinois, are located within the Special Flood Hazard Area.

Map No. 170054, Panel No. 0040B, is hereby corrected to reflect that the portions of the above-mentioned property that are presently at or above the 100-year Base Flood Elevations (BFE's) which vary from elevation 722.0 feet National Geodetic Vertical Datum (NGVD) at Baldwin Road to elevation 717.5 feet NGVD at a point immediately below the Prairie Brook Detention Lake to elevation 716.5 feet NGVD at the east property line as shown on the topographic drawing entitled: Portion of Section 12, T. 42 N., R. 10 E., Cook County, Illinois, dated May 15, 1979, prepared by Chicago Aerial Survey, are not within the Special Flood Hazard Area identified on April 15, 1981. The portions of the property which are presently at or above the above-mentioned elevations are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13831 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA–5909]

Letter of Map Amendment for the City of Tulsa, Oklahoma; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Tulsa, Oklahoma. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for The City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 405381D Panel 71, published on October 6, 1980, in 45 FR 66095, indicates that Lot 2, Block 3, 2nd Resubdivision of Block 3, Lindell Park Addition, Tulsa, Oklahoma, recorded as Plat No. 1259, Record No. 754252, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 71 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 25, published on October 6, 1980, in 45 FR 66095, indicates that Lot 20, Block 45, Valley View Acres Second Addition, Tulsa, Oklahoma, recorded as Plat No. 2068, Record No. 273310, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 25 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 73, published on October 6, 1980, in 45 FR 66095, indicates that Lot 9, Block 6, Annahlee Heights, Tulsa, Oklahoma, recorded as Plat No. 1856, Record No. 159923, in the Office of the Clerk, Tulsa County, Oklahoma, is located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 73 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This property is in Zone C.

Map No. H & I 405381D Panel 71, published on October 6, 1980, in 45 FR 66095, indicates that Lots 1 and 2, Block 3, Harvard Hills, Tulsa, Oklahoma, recorded as Instrument No. 563938 in Book 1265, Page 1639, in the Office of the Clerk, Tulsa County, Oklahoma, are located within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 71 is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on August 14, 1979. These lots are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 4, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13530 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. 5909]

Letter of Map Amendment for the City of Rochester, Minnesota, Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Rochester, Minnesota. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Rochester, Minnesota, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 275246, Panel No. 0007B, published on October 6, 1980, in 45 FR 66063, indicates that the residential structures located on Lots Nos. 17 and 18, Block 10 and Lots Nos. 1 through 4, Block 11, Homestead Trails First Replat, City of Rochester, Olmsted County, Minnesota, as recorded in Book Z of Plats, Page 17, in the Office of the Recorder of Olmsted County, Minnesota, are located within the Special Flood Hazard Area.

Map No. 275246, Panel No. 0007B, is hereby corrected to reflect that the above-mentioned residential structures are not within the Special Flood Hazard Area identified on February 4, 1981. The residential structures located on Lots Nos. 17 and 18, Block 10 and Lots Nos. 1 through 3, Block 11, are in Zone B. The residential structure located on Lot No. 4, Block 11, is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 8, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13529 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 20870; FCC 82-207]

Regulatory Policies and Procedures for the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Second report and order.

SUMMARY: This Order eliminates the requirement that applicants in the Domestic Public Land Mobile Radio Service requesting one initial two-way frequency demonstrate a public need for the proposed service. This action will serve the public interest by making frequencies available for use by the public in a more timely manner, by reducing the costs associated with filing applications and by relieving the staff of an unnecessary processing burden. This action is necessary to speed service to the public and to reduce staff resources necessary to process applications.

DATES: Effective April 29, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas Gutierrez, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

In the matter of regulatory policies and procedures for the Domestic Public Land Mobile Radio Service, CC Docket No. 20870.

Second Report and Order

Adopted: April 29, 1982.

Released: May 5, 1982.

Background

1. In this proceeding,[1] the Commission has requested comment on whether to eliminate the requirement that applicants for one initial two-way[2] frequency in the Domestic Public Land Mobile Radio Service (DPLMRS) demonstrate a public need for the service proposed.[3]

2. The need standards which are applied to applications for a new frequency have evolved primarily out of two cases, *Long Island Paging*[4] and *New*

[1] CC Docket 20870, Further Notice of Proposed Rulemaking, 84 FCC 2d 857 (1981) 46 FR 15749, March 9, 1981.

[2] In another proceeding, General Docket 80–183, we are eliminating need showings for one initial one-way frequency.

[3] The Commission's rules do not expressly require such a showing; however, as discussed below, longstanding Commission policy does impose such a requirement.

[4] Long Island Paging, 30 FCC 2d 405, *review denied*, 32 FCC 2d 235 (1971), *recon. denied*, 34 FCC 2d 216 (1972).

York Telephone Co.[5] Although these cases suggest several types of evidence that might be considered persuasive in demonstrating public need for an initial frequency,[6] more recent Commission practice has been to require applicants for an initial two-way channel to submit a public need survey, with demographic and commercial information being accepted only to supplement the need survey. Edward R. Buckmaster and Burton R. Gigoux d/b/a Communications Services, Mimeo 26930, released March 19, 1981, aff'd sub nom. Advanced Electronics v. FCC, No. 81-1436 (D.C. Cir. February 19, 1982). Beyond this point, however, need standards for an initial frequency are far from clear, for two reasons. First, although these cases addressed the approach to be used to demonstrate public need, the discussions of methodology contained in them are sufficiently vague to invite almost endless argument over the adequacy of any particular need showing. Second, and more important, the cases afford inadequate guidance regarding the minimum size of public need required to justify one initial frequency, *i.e.*, the minimum amount of actual demand for the service as measured by the number of persons desiring service or the number of two-way mobile units requested by prospective customers.

3. As a result of these shortcomings, the public need standards have been a less than effective tool in deciding whether to grant initial two-way channel applications. The vague nature of the standards relating to need demonstration methodology has unnecessarily delayed service to the public because it has provoked frequent petitions to deny,[7] while amendments to applications almost always cure any deficiencies noted in the petitions. In addition, as we have acted on these cases individually, the situation has evolved to the point that virtually any initial need showing has been sufficient, if measured properly by an applicant, to justify assignment of an initial two-way frequency. In sum, under our current policy an applicant's need showing frequently becomes the subject of a petition to deny which adds to the Commission's workload and delays the availability of service to the public, while, in the end, the application, as amended in response to a petition to deny, almost invariably demonstrates a public need for the service proposed. For the above reasons, we proposed to eliminate the requirement that applicants for one initial two-way frequency in the Domestic Public Land Mobile Radio Service demonstrate a public need for the service proposed.

Comments

4. Six parties commented on our proposal. All but one supported it. That dissenter [8] argued that adoption of our proposal would permit warehousing of frequencies because applications that effectively request an additional frequency, or an additional location for the same frequency, would be designed specifically to meet our definition of an application for an initial frequency [9] and thus bypass any requirement for a need showing. [10]

Discussion

5. We have carefully considered the comments and have decided to eliminate the need showing required for one initial two-way channel. This policy will apply to all pending applications and to all applications filed after the effective date of the Order. We no longer find it necessary to impose such an affirmative requirement for initial two-way frequency applications. There is a clear public need for additional two-way services and facilities. [11] Over the last decade demand for these facilities has grown at the rate of 10 percent annually and is expected to grow at an even greater rate as technology advances and costs decline. Intensive competition already exists among RCCs and between RCCs and wireline carriers. [12] In sum, the mobile telephone market is demonstrably one in which individual need showings for new entry are not required to further the public interest. Accordingly, we conclude that a general policy in favor of new entry in the mobile telephone industry would serve the public interest, convenience and necessity. Consistent with that finding, we shall no longer require applicants for an initial two-way channel to demonstrate need. [13]

6. In addition to the benefits to potential users, there are also administrative benefits to elimination of this requirement. As we stated earlier, while public need showings frequently become subjects of petitions to deny, which add to the staff's workload, the Commission almost invariably finds these showings adequate to demonstrate a public need for an initial frequency. Thus, our current policy serves no useful purpose. [14] Elimination of it should reduce the Commission's workload and avoid delays in application processing.

7. In reaching our conclusion, we have thoroughly considered the prospect of frequency warehousing, which is contrary to Commission policy. However, we have decided that our action today will not significantly increase the likelihood of this, for two reasons. First, in our view, the incentive for warehousing is closely linked to the number of frequencies available. Limited availability encourages applicants to apply for frequencies which they do not currently need to insure that they will have those frequencies later should they develop a need. Several actions we have taken recently to make more frequencies available [15] should reduce this incentive.

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[5] New York Telephone Co., 47 FCC 2d 408, *recon. denied*, 49 FCC 2d 284 (1974), *aff'd sub nom.* Pocket Phone Broadcast Service, Inc. v. FCC, 536 F. 2d 447 (D.C. Cir. 1976).

[6] New York Telephone Co., *supra*, 47 FCC 2d at 494, lists four types of evidence which Long Island Paging considered "persuasive." These include (1) statistics or specific facts tending to show need, such as the nature and economics of the service area; (2) demographic or statistical evidence showing the nature and number of industries, businesses, professions and trades in the service area; (3) information on the identity and occupation of persons making service inquiries together with a statement as to whether or not costs were quoted and whether definite commitments were made; and (4) evidence as to the success or failure of other carriers offering that type of service in the same market.

[7] A review by Bureau staff shows that "public need" was among the issues most often raised in petitions filed against mobile telephone applications that were granted during the last two years.

[8] This set of comments was filed jointly on behalf of Radio Broadcasting Company (RBC) and Radio Dispatch Company (RDC).

[9] Our procedures provide that a determination regarding whether a requested facility is an additional or new frequency is based, in general, on the amount of overlap between existing and proposed facilities. *See* Public Notice entitled, "Clarification of Existing Policy", Mimeo 002411, released July 27, 1981, where our procedures for classifying applications are set forth.

[10] Our proposal provides that an applicant will still be required to demonstrate need for an application requesting any additional two-way channels. This action will only eliminate the requirement to show need for one initial two-way frequency.

[11] Cellular Communications Systems, 86 FCC 2d, 469, 489-490; Further Notice of Proposed Rulemaking in this proceeding, at 869, 46 FR 15748, March 9, 1981.

[12] In most major markets several carriers currently provide two-way service.

[13] In making this determination we act consistent with Commission and judicial precedent. *See* Specialized Common Carrier Services, 29 FCC 2d 870, 920 (1971), *aff'd sub nom.* Washington Utilities & Transportation Commission v. FCC, 513 F. 2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975). *Accord*, American Telephone and Telegraph Co. v. FCC, 539 F. 2d 787 (D.C. Cir. 1976). *See also* Land Mobile Channels, 69 FCC 2d 1555, 1569 (1978).

[14] After arriving at this conclusion, we also considered whether our current need standards should be strengthened rather than eliminated. However, for the reasons discussed above, we determined that such a change would not serve the public interest. Also, we note that we considered this option on our own motion. None of the commenters in this proceeding advocated such a change.

[15] *See* Docket 21039, 69 F.C.C. 2d 1555 (1978), *recon. granted in part*, 77 FCC 2d 201 (1980), *appeal*

Continued

Second, our decision to eliminate need showing requirements applies only to applications for *one* initial two-way frequency. We shall continue to require licensees to construct their facilities within eight months of receiving a construction permit. We believe that few, if any, entrepreneurs will undertake the expense of applying for and constructing a facility for one initial two-way frequency unless they have assessed the potential of the market to support that operation and have found at least the level of public interest that we have found satisfactory in the past. We note that if an applicant for one-initial channel can demonstrate that an authorized frequency will serve even one two-way customer, the frequency will be used more efficiently than if it were left unassigned and, if other carriers are authorized in the area, a competitive alternative is afforded for other potential customers. Presumably, as further need for service develops, additional two-way customers will use that frequency.[16] Finally, we observe that although our existing need standards for an initial two-way frequency have been minimal, as noted in paragraph 3 above, we are unaware of any warehousing problem to date.

Conclusion

8. We believe that our decision here will benefit the public, applicants and the Commission. As we stated earlier, while public need showings frequently become subjects of petitions to deny, the Commission staff almost invariably finds these showings adequate to demonstrate a public need for an initial frequency. During the process of applicants perfecting these need showings, the public is deprived of needed service. In addition, our action today eliminating this requirement should reduce the administrative workload associated with applications, freeing valuable staff resources to work on other, more pressing matters and providing service to the public more expeditiously than in the past. We conclude, therefore, that on the balance, the public interest will be served by elimination of the requirement for need showings for one initial two-way frequency.[17]

9. The Commission has determined that the rule adopted in this rulemaking proceeding will have a significant beneficial economic effect on a substantial number of small entities. Pursuant to Section 604 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, we have performed the following analysis. This rule is necessary to provide service to the public as expeditiously as possible and to lessen the cost incurred by applicants and the Commission's staff in the preparation and processing of applications. All but one of those commenting supported the rule. The concern of the lone dissenting commenter was unrelated to the economic effect of the rule on small entities. The Commission considered applying the proposed rule to selected classes of applicants but ultimately determined that total elimination of the requirement would contribute most toward reduction of regulatory burdens and the speeding of service to the public.

10. In view of the foregoing, it is ordered, effective immediately,[18] that the requirement that applicants for one initial two-way frequency in the Domestic Public Land Mobile Radio Service demonstrate a public need for that service is eliminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-13671 Filed 5-18-82; 8:45 am]

BILLING CODE 6712-01-M

pending sub nom. Telocator Network of America v. FCC, No. 78-2218, (D.C. Cir., filed November 27, 1978); and Cellular Communications Systems, FCC Docket No. 79-318, FCC 81-101, Report and Order, 86 FCC 2d 469 (1981), *recon. granted in part,* FCC 82-09, released March 3, 1982, 47 FR 10018 (March 9, 1982).

[16] We recognize that the Commission has a statutory mandate to assure that available frequencies are assigned so as to serve the public interest. However, we do not consider our action today to be in any way inconsistent with such a mandate. Rather, we believe that the public interest can be best served through a regulatory framework which leaves considerable room for independent business judgment while also containing adequate safeguards to protect against the hoarding of scarce public resources, such as radio spectrum.

[17] We note that our action today is rather limited in scope. Relative demand remains a comparative hearing factor in the evaluation of all competing applications. In addition, an applicant seeking more than one new two-way frequency must still provide a public need demonstration, as set forth in Long Island Paging and New York Telephone Co., *supra.* This is because of the limited number of frequencies available and the potential for warehousing, which, as discussed above, is *more likely to be present* in multiple channel requests for new frequencies. We shall also continue to require that an applicant for any number of additional frequencies provide traffic loading studies, as required by § 22.516 of our rules.

[18] Our action today is a substantive rule that relieves a requirement currently imposed on applicants. Therefore, under section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1) there is no need for publication or service prior to the effective date of this action.

Proposed Rules

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 112

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Title VI of the Civil Rights Act of 1964

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of 28 CFR 42.403(d) which requires Federal agencies to list the types of programs that receive Federal financial assistance for purposes of effectuating the provisions of the Civil Rights Act of 1964, the Small Business Administration proposes to revise Appendix A to Part 112 which list those programs, and to add nonfinancial assistance programs which are provided by the agency.

DATES: Comments on this proposed rule must be received by June 18, 1982.

ADDRESSES: Send comments to: Office of Civil Rights Compliance, Small Business Administration, 1441 L Street, N.W., Vermont Bldg., 12th Floor, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:
Adelino Sanchez, Chief—(202) 653–6054.

List of Subjects in 13 CFR Part 112

Civil rights, Small businesses.

For the reasons set forth above, Appendix A of Part 112 of Title 13 of the Code of Federal Regulations should read as follows:

APPENDIX A

Name of program	Authority
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small Business Energy Loans.	Small Business Act, sec. 7(a)(12).
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
DISASTER LOANS	
Physical, including riot	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal Action Loan Program	Small Business Act, sec. 7(b)(3) and Pub. L. 97–35. (No funds have been authorized for this program for FY 1982 thru FY 1984.)
Women's Business Enterprise.	Executive Order 12138.
Small Business Research	Public Law 96–302.
Procurement Automated Source System.	Small Business Act, sec. 8 and Pub. L. 96–302.
Business Development Program.	Small Business Act, sec. 9(a) and Pub. L. 95–507, as amended by Pub. L. 96–481.
Small Business Institute Program.	Small Business Act, sec. 8(b)(1) and Pub. L. 95–536.
Certificate of Competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95–89.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d), and Pub. L. 95–507.
Technology Assistance Program.	Small Business Act, sec. 9.
Small Business Development Centers.	Small Business Act, sec. 21 and Pub. L. 95–302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96–481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95–510.

NOTE.—All programs listed above are also covered by Part 113 of Title 13 of the Code of Federal Regulations.

Dated May 4, 1982.

James C. Sanders,
Administrator.

[FR Doc. 82-13378 Filed 5-18-82; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 113

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Policies of Federal Government and Administrator

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of 28 CFR 42.403(d) and in effectuation of Federal Government and Small Business Administration policies against discrimination, the Small Business Administration proposes to revise Appendix A to Part 113 by updating its listing of programs that receive Federal financial assistance and to add to the list those nonfinancial assistance programs which are provided by the Agency. This appendix lists programs not specifically covered by Title VI of the Civil Rights Act of 1964.

DATES: Comments on this proposed rule must be received by June 18, 1982.

ADDRESSES: Send comments to: Office of Civil Rights Compliance, Small Business Administration, 1441 L St., N.W., Vermont Bldg., 12th Floor, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:
Adelino Sanchez, Chief—(202) 653–6054.

List of Subjects in 13 CFR Part 113

Civil rights, Small businesses.

For the reasons set forth above, Appendix A of Part 113 of Title 13 of the Code of Federal Regulations should read as follows:

APPENDIX A

Name of program	Authority
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Seasonal Line of Credit	Small Business Act, sec. 7(a).
Contract Loan Program	Small Business Act, sec. 7(a).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small Business Energy Loans.	Small Business Act, sec. 7(a)(12).
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, Title III.
Pollution Control	Small Business Investment Act, Title IV, Part A.
Surety bond guarantees	Small Business Investment Act, Title IV, Part B.
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, Title V.
Debtor local development company loans (502) and their small business concerns.	Small Business Investment Act, Title V.
Debtor certified development company loans (503) and their small business concerns.	Small Business Investment Act, Title V and Pub. L. 96–302.
Disaster Loans	
Physical, including riot	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal Action Loan Program	Small Business Act, sec. 7(b)(3) and Pub. L. 97–35. (No funds have been authorized for this program for FY 1982 thru FY 1984.)
Women's Business Enterprise.	Executive Order 12138.
Small Business Research	Public Law 96–302.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d), and Pub. L. 95–507.
Procurement Automated Source System.	Small Business Act, sec. 8 and Pub. L. 96–302.
Certificate of Competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95–89.
Subcontracting Program	Small Business Act, sec. 8(d) and Pub. L. 95–507.
Small Business Institute Program.	Small Business Act, sec. 8(b)(1) and Pub. L. 95–536.

APPENDIX A—Continued

Name of program	Authority
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Technology Assistance Program.	Small Business Act, sec. 9.
Small Business Development Centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.

Dated: May 4, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-13579 Filed 5-18-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF STATE

22 CFR Ch. I

[Docket No. SD-176]

Semiannual Agenda of Regulations and Regulatory Flexibility Agenda

AGENCY: State.

ACTION: Publication of Regulatory Agenda.

SUMMARY: As required by section 5 of Executive Order 12291, Federal Regulation (46 FR 13193), the first 1982 agenda of regulations of the Department of State is set forth below. The agenda also contains regulatory flexibility information required by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354).

FOR FURTHER INFORMATION CONTACT: K. E. Malmborg, Assistant Legal Adviser for Management, Department of State, Room 4427A, 2201 C Street, NW., Washington, DC 20520, telephone (202) 632-2350.

Regulatory Agenda

The Department of State has no major regulations under consideration.

The proposed International Traffic in Arms Regulations (ITAR) referred to in the October Semiannual Agenda (46 FR 51258) are still under reconsideration in light of the criteria of Executive Order 12291. The point of contact for this regulation in the Department is Mr. William B. Robinson, Director, Office of Munitions Control, Department of State, 2201 C Street, NW., Washington, D.C., telephone (202) 632-0755.

The final report of the President's Commission on Hostage Compensation was submitted to the President on September 21, 1981. Proposed legislation on matters covered by the report is being prepared, but it has not yet been determined whether new or revised regulations to implement such legislation, if adopted by the Congress, will be necessary. The point of contact on this subject is Mr. Walter F. Weiss, Office of the Assistant Secretary for Administration, Department of State, 2201 C Street, NW., Washington, D.C. 20520, telephone (202) 632-1728.

Public Notices concerning the registration of claims of U.S. nationals against Iran and various developments at the Iran-United States Claims Tribunal established by the Claims Settlement Agreement signed at Algiers on January 19, 1981 have been published in the Federal Register (46 FR 19893, 25026, 25584, 30277, 37418, 45057, 49895, 55468, 57612, 58831; 47 FR 1063 8118). The most recent notice addresses proposed rules of procedure applicable to the adjudication of claims before the Tribunal. The point of contact on this subject is David P. Stewart, Administrator for Iranian Claims, Office of the Legal Adviser, Department of State, 2201 C Street, NW., Washington, D.C. 20520, telephone (202) 632-5040.

Flexibility Agenda

The Department of State has reviewed presently planned regulations in the light of the guidance issued by the Office of Management and Budget on incorporating regulatory flexibility into the regulatory process. We have not identified any which will have a significant economic impact on a substantial number of small entities.

The Department plans to publish its next semiannual agenda in October 1982.

Dated: April 23, 1982.

Richard T. Kennedy,

Under Secretary of State for Management.

[FR Doc. 82-13480 Filed 5-18-82; 8:45 am]

BILLING CODE 4710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2107-7]

Approval and Promulgation of Implementation Plans; Alabama; Proposed Group II VOC Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by Alabama, pursuant to the requirements of Part D of Title I of the Clean Air Act of 1977, for the control of volatile organic compounds (VOC). The plan revision would regulate all Alabama VOC sources covered by the second set of Control Techniques Guidelines (CTGs) issued by EPA, and known as Group II sources. The adoption of these control measures was triggered by the ozone nonattainment status of three Alabama counties. We are requesting written comments on the proposed action.

DATE: We will consider comments received on or before June 18, 1982.

ADDRESSES: Address any written comments to Sally Bethea of EPA Region IV's Air and Waste Management Division (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Sally Bethea, EPA Region IV, Air and Waste Management Division, at the above listed address and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION:

Background.

Part D of Title I of the Clean Air Act, as amended in 1977, requires that States revise their State Implementation Plan (SIP) for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). Jefferson, Mobile and Russell Counties, Alabama have been designated by EPA as nonattainment for ozone.

As part of its control strategy for attainment of the ozone standard, Alabama has revised its SIP to require control of VOC from additional categories (Group II) of major sources. Major sources are those which have emissions, before control, of 100 tons per year or more. These control regulations for Group II VOC sources are to be applied statewide, to accommodate new source growth.

Public hearings were held on August 21 and November 17, 1980. On January 27, 1981, the Alabama Air Pollution Control Commission adopted regulations covering the added Group II source categories for inclusion in Chapter 6 (Control of Organic

Emissions) of the State Rules and Regulations.

Discussion. From January 1978 to January 1979, EPA published CTGs to assist the States in determining Reasonably Available Control Technology (RACT) for Group II source categories. These CTGs provide information on available air pollution control techniques and make recommendations on what EPA calls the "presumptive norm" for RACT. Group II CTGs cover the following source categories:

—Factory Surface Coating of Flatwood Paneling
—Petroleum Refinery Fugitive Emissions (Leaks)
—Pharmaceutical Manufacture
—Rubber Tire Manufacture
—Surface Coating of Miscellaneous Metal Parts and Products
—Graphic Arts (Printing)
—Perchloroethylene Dry Cleaning
—Gasoline Tank Trucks, Leak Prevention
—Petroleum Liquid Storage, Floating Roof Tanks

The VOC regulations submitted by Alabama cover the nine Group II categories listed above and are consistent with all the CTGs, except the one for tire manufacturing. The regulations for the Manufacture of Pneumatic Rubber Tires (Section 6.17) deviate from the EPA recommendations outlined in the CTG for (1) emission limits, (2) averaging time, and (3) operational components to be controlled.

(1) In the CTG, EPA assumed that a well-operated and well-maintained tire facility of reasonable capture and control device efficiency could expect to average 57 grams of VOC per tire. The submitted Alabama regulations use a standard of 76 grams per tire. After a plant-specific review, the State submitted documentation showing that a more stringent standard was not achievable due to the age of its existing plants and the humidity in the area.

(2) The submitted regulations, as written, require that average VOC emissions be determined on a yearly basis. The State has certified that it is in the process of reducing this averaging time to 30 days. The CTG recommends a shorter period for determining average emissions. According to the State, a shorter averaging period is not feasible due to procedures used by Alabama tire manufacturers. Those procedures involve the mixing of cement in batched loads, which makes it difficult to meter emission limits for a period of less than 30 days.

(3) Section 6.17 of the submitted regulations does not list "bead dipping" as an element of the tire manufacturing operation which require emission control. Although the CTG assumed this element was normally a part of such an operation, the State has certified that its plants do not dip beads.

Action. EPA today proposes to approve Alabama's Group II VOC regulations. This approval is based on the understanding that the State will change the averaging time for Rubber Tire Manufacturing (Section 6.17) to a maximum of 30 days. The State has made this commitment in a letter to EPA dated February 12, 1982. EPA is soliciting public comment on these regulations. A thirty-day comment period is being provided because the SIP submission and the issues involved are not so complex as to warrant a longer comment period. At the close of the comment period, EPA will review all comments and publish a notice of final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: April 12, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-13669 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6312]

Proposed Special Flood Hazard Areas for San Bernardino County, California Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas as described below.

The proposed special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazards areas are available for review at the County Planning Department, 1111 East Mill Street, San Bernardino, California.

Send comments to: Mr. Robert Hammock, Chairman, Board of County Supervisors, San Bernardino County Courthouse, 175 West Fifth Street, San Bernardino, California 92415.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas for San Bernardino County, California in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These special flood hazard areas, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas are being added and the corporate limits are being updated. On Panel 7945,

the proposed special flood hazard areas, identified as Zone A, are being added along an unnamed stream between 4th Avenue and 3rd Avenue and along Del Rosa Channel, north of Route 30. On Panel 7965, along the Little Sand Creek Channel overflow the proposed special flood hazard area, identified as Zone A, is being added north of Citrus Street. Also along the Little Sand Creek Channel Overflow, the area located south of Citrus Street is being revised from Zone A to Zone B. On Panels 8705 and 8715, the proposed special flood hazard area, identified as Zone A, is being added along The Mission Zanja between Redlands Boulevard and a point just west of Alabama Street. Panels 7875, 7900, 7915, 8630 and 8635 have been revised to reflect the corporate limits for the city of Rancho Cucamonga.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of Technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13534 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6310]

Proposed Base Flood Elevations and Zone Designations for the Town of Oro Valley, Pima County, Ariz., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is requried to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the Town Clerk, Town Hall, 680 West Calle Concordia, Oro Valley, Arizona.

Send comments to: Honorable E. S. Engle, Mayor, Town of Oro Valley, 680 West Calle Concordia, Oro Valley, Arizona 85704.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the Town of Oro Valley, Arizona in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations in the recently annexed areas are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
Canada Del Oro:		
At the easternmost corporate limits	2,450	A3.
At the point approximately 40 feet downstream of Calle Loma Linda.	2,456	A3.
At a point approximately 200 feet downstream of First Avenue.	2,543	A6.
At a point approximately 150 feet upstream of First Avenue.	2,546	A6.

Also along Canada Del Oro, between the limit of detailed study and the easternmost corporate limits, the proposed zone designation is Zone A. Along an unnamed tributary to Canada Del Oro, Zone A is being added in the easternmost portion of the City. All the remaining annexed areas have been identified as Zone C. The floodway delineation has been added along Canada Del Oro.

Pursuant to the provisions of 5 USC 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968, effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13522 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6306]

Proposed Base Flood Elevations and Special Flood Hazard Areas for the City of Willcox, Cochise County, Ariz., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and special flood hazard areas as described below.

The proposed base flood elevations and special flood hazard areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and special flood hazard areas are available for review at the Office of the City Clerk, City Hall, 151 West Maley Street, Willcox, Arizona.

Send comments to: Honorable Charles W. Leighton, Mayor, City of Willcox, 151 West Maley Street, Willcox, Arizona 85643.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and special flood hazard areas for the City of Willcox, Arizona in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and special flood hazard areas, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and special flood hazard areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas and base flood elevations have been added due to recently annexed areas. The proposed special flood hazard area, designated as Zone A, has been added in the southernmost portion of the City. In the northernmost portion of the City and west of Interstate Route 10, the proposed zone designation identified as Zone AH with a proposed based flood elevation of 4180 feet National Geodetic Vertical Datum is being added. In addition, the areas throughout the City, identified as Zone AO, are being revised from designated base flood elevations to proposed depths of 1, 2 and 3 feet.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List in Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13089 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6309]

Proposed Base Flood Elevations and Zone Designations for the City of Thousand Oaks, Ventura County, Calif., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Clerk, City Hall, 401 West Hillcrest Drive, Thousand Oaks, California.

Send comments to: Honorable Lawrence E. Horner, Mayor, City of Thousand Oaks, P.O. Box 1496, Thousand Oaks, California 91360.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Office of Natural and Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0218.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Thousand Oaks, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by

§ 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations on Panel 15 of 25 are as follows:

Source of flooding and location	Elevation (feet) national geodetic vertical datum	Zone designation
South Branch Arroyo Conejo:		
Approximately 300 feet upstream of Borchard Road.	644	A4.
Just upstream of Strauss Drive extended.	648	A4.
Approximately 800 feet downstream of Reno Road.	662	A5.
Just downstream of Reno Road	666	A5.
Just downstream of Mayfield Street.	677	A5.
Just downstream of Kimber Road	682	A5.
Just upstream of Kimber Road	685	A3.
Approximately 400 feet upstream of Kimber Road.	688	A3.

In addition, the special flood hazard areas, identified as Zone A, have been added in the recently annexed area located north of Ventura Freeway and east of Paseo Vista.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968, effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13624 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6317]

Proposed Base Flood Elevations and Zone Designations for the City of Lakewood, Jefferson County, Colorado

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations as described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Office of the City Engineer, City Hall, 44 Union Boulevard, Lakewood, Colorado 80228.

Send comments to: Honorable William Reitler, Mayor, City of Lakewood, 44 Union Boulevard, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed base flood elevations and zone designations for the City of Lakewood, Colorado, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations and zone designations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base flood elevations and zone designations are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
Sanderson Gulch:		
At the confluence of North Sanderson Gulch.	5,448	A1.
At a point located approximately 100 feet upstream of West Jewell Avenue.	5,452	A1.
At a point located approximately 1,200 feet upstream of West Jewell Avenue.	5,462	A1.

The proposed special flood hazard area, identified as Zone A, is being added at Smith Reservoir. All the remaining annexed areas have been identified as Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR

17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13625 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6318]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the City of Westernport, Allegany County, Maryland

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations and zone designations are available for review at City Hall, Worston Street, Westernport, Maryland.

Send comments to: Honorable James Wills, Mayor, City of Westernport, P.O. Box 266, Westernport, Maryland 21562.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Westernport, Maryland, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to polices established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance preminum rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding and location	Elevation (feet), national geodetic vertical datum	Zone designation
North Branch Potomac River: Upstream corporate limits	918	A2, B.
Confluence with Georges Creek	918	A2, B, C.
Downstream corporate limits	887	A2, B.
Georges Creek:		
Upstream corporate limits	980	A7, B.
Downstream side of Waverly Street	945	A7, B, C.
Downstream side of Washington Street	922	A7, B.
Downstream side of Maryland Avenue	912	A7, B, C.
Overflow from Georges Creek into portions of the area bounded by River Road Drive from the eastern corporate limits to First Street, by a line which is parallel to and approximately 340 feet northeast of the Chessie System Railroad and which extends from the junction of River Road Drive and First Street to Georges Creek, by the eastern corporate limits, by the North Branch Potomac River, and by Georges Creek.		
Eastern corporate limits	897	A2, B, C.
Third Street	903	A2, B.
Junction of River Road Drive and the Chessie System Railroad	915	A2, B, C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13626 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Antidecertification Research; Meeting.

In accordance with the Federal Advisory Committee act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776), the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Antidecertification Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: May 26 and 27, 1982, Wednesday—8:00 a.m. to 5:00 p.m.; Thursday—8:00 a.m. to 4:00 p.m.
Place: La Quinta Motor Inn, 3975 Peoria Way, Denver, Colorado Telephone: (303) 371–1040
Type of meeting: Closed.
Contact Person: Charles B. Rumburg, Principal Agronomist, Manager, Antidecertification Program, United States Department of Agriculture, Room 6431 South Building, CSRS, Washington, D.C. 20250, Telephone: (202) 447–6074.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Antidecertification Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

W. I. Thomas

Administrator, Cooperative State Research Service.

[FR Doc. 82-13519 Filed 5-18-82 8:45 am]
BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Aquaculture; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Aquaculture of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 7, 8, and 9, 1982, Monday—9:00 a.m. to 5:30 p.m.; Tuesday—9:00 a.m. to 5:30 p.m.; Wednesday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, Fourteenth and Independence Avenue, SW., Room 6034, South Building, Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Clyde R. Richards, Acting Deputy Administrator, Aquaculture Program, United States Department of Agriculture, Cooperative State Research Service, Room 6034, South Building, Washington, D.C. 20250, Telephone: (202) 447–6821.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Aquaculture.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13525 Filed 5-18-82; 8:45 am]
BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 8, 10, and 11, 1982, Wednesday—8:30 a.m. to 5:00 p.m.; Thursday—8:30 a.m. to 5:00 p.m.; Friday—8:30 a.m. to 5:00 p.m.
Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 20250.
Type of meeting: Closed.
Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Reserch Service, United States Department of Agriculture, Washington, D.C., 20250. Telephone: (202) 447–5007.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the program on Beef and Dairy Cattle Enteric and Digestive Diseases, Mastitis and Other Diseases and Parasites.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W.I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13521 Filed 5-18-82; 8:45 am]
BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Beef and Dairy Cattle Reproductive Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Beef and Dairy Cattle Reproductive Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—8:30 a.m. to 4:30 p.m.; Thursday—8:30 a.m. to 4:30 p.m.; Friday—8:30 a.m. to 4:30 p.m.
Place: United States Department of Agriculture, 14th and Independence Avenue, SW., Room 6038-South Building, Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Howard S. Teague, Principal Nonruminant Nutritionist, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–3847.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Reproductive Diseases Affecting Beef and Dairy Cattle.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13520 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Animal Health, Beef and Dairy Respiratory Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Animal Health—Beef and Dairy Respiratory Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—9:00 a.m. to 5:30 p.m.; Thursday—9:00 a.m. to 5:30 p.m.; Friday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, Fourteenth and Independence Avenue, S.W., Room 6034-South Building, Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Clyde R. Richards, Acting Deputy Administrator, Animal Health—Beef and Dairy Respiratory Diseases, United States Department of Agriculture, Cooperative State Research Service, Room 6034-South Building, Washington, D.C. 20250. Telephone: (202) 447–6626.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in the program on Beef and Dairy Respiratory Diseases.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13525 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Energy Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Energy Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 2, 3, and 4, 1982, Wednesday—9:00 a.m. to 5:30 p.m., Thursday—9:00 a.m. to 5:30 p.m., Friday—9:00 a.m. to 5:30 p.m.
Place: Westpark Hotel, Rosslyn, 1900 N. Fort Meyer Drive, Arlington, Virginia.
Type of meeting: Closed.
Contact person: Paul E. Schleusener, Agricultural Engineer, United States Department of Agriculture, Room 6424 South Building, CSRS, Washington, D.C. 20250, Telephone: (202) 447–5880.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Energy Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13510 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Programs; Subommittee for Food Quality and Safety Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, 86 Stat. 770–776, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Food Quality and Safety Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: May 24, 25, and 26, 1982, Monday—9:00 a.m. to 5:30 p.m., Tuesday—9:00 a.m. to 5:30 p.m., Wednesday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, 1300 Wilson Boulevard, Suite 103, Rosslyn, Virginia.
Type of meeting: Closed.
Contact person: Richard G. Garner, Food Scientist, United States Department of Agriculture, Room 6403 South Building, CSRS, Washington, D.C. 20250. Telephone: (202) 447–5547.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Food Quality and Safety Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary

of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92-463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13518 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-22-M

Technical Advisory Committee for Science and Education Research Grants Program, Subcommittee for Poultry and Horse Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Poultry and Horse Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 22, 23, and 24, 1982, Tuesday—8:30 a.m. to 5:00 p.m., Wednesday—8:30 a.m. to 5:00 p.m., Thursday—8:30 a.m. to 5:00 p.m.
Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-5007.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Poultry and Horse Diseases Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92-463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13522 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-03-M

Technical Advisory Committee for Science and Education Research Grants Progam, Subcommittee for Soybean Research; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, 86 Stat. 770-776), the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Soybean Research of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: May 20 and 21, 1982, Thursday—9:00 a.m. to 5:30 p.m., Friday—9:00 a.m. to 5:30 p.m.
Place: United States Department of Agriculture, 1300 Wilson Boulevard, Suite 103, Rosslyn, Virginia.
Type of meeting: Closed.
Contact person: Charles B. Rumburg, Principal Agronomist, Manager, Soybean Special Grants Program, United States Department of Agriculture, Room 6431, South Building, Washington, D.C. 20250, Telephone: (202) 447-6047.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Soybean Research Program.
Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92-463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13517 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-03-M

Technical Advisory Committee for Science of Education Research Grants Program; Subcommittee for Swine and Sheep Diseases; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the United States Department of Agriculture announces the following meeting:

Name: Subcommittee for Swine and Sheep Diseases of the Technical Advisory Committee for Science and Education Research Grants Program.
Date and time: June 15, 16, and 17, 1982, Tuesday—8:30 a.m. to 5:00 p.m., Wednesday—8:30 a.m. to 5:00 p.m., Thursday—8:30 a.m. to 5:00 p.m.
Place: Room 6030, South Agriculture Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250.
Type of meeting: Closed.
Contact person: Earl J. Splitter, Principal Veterinarian, Cooperative State Research Service, United States Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-5007.
Purpose of subcommittee: To provide advice and recommendation concerning support for research in the program on Swine and Sheep Diseases.
Agenda: To review and evaluate research proposals and project as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92-463.

W. I. Thomas,

Administrator, Cooperative State Research Service.

[FR Doc. 82-13523 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-03-M

Organization, Functions and Availability of Information

Notice is hereby given for the guidance of the general public as to the organization, functions, and availability of information for the Economics Management Staff (EMS).

Part 1—Organization and Functions

Section 1—General. EMS is an agency of the U.S. Department of Agriculture which provides mutually agreed-upon management support services to the agencies reporting to the Assistant Secretary for Economics. It was created on September 30, 1981, (46 FR 47753) in response to Secretary's Memorandum 1000-1, of June 17, 1981, entitled "Reorganization of Department." The specific delegations of authority by the Assistant Secretary for Economics to the Director, EMS, are contained in 7 CFR 2.87.

Section 2—Organization. EMS maintains its offices in the South Building of the Department of Agriculture, 14th Street and Independence Avenue SW., Washington, D.C. 20250, and at 500 12th Street SW., Washington, D.C. 20250. The organization consists of the following:

Director
Deputy Director
Director, Administrative Services Division
Director, Budget and Finance Division
Director, Information Division
Director, Personnel Division
Director, Equal Opportunity and Civil Rights Staff

Section 3—Authority to act for the Director. In the absence of the Director, the following officials are authorized to act for him/her in the order indicated:

Deputy Director
Director, Personnel Division
Director, Budget and Finance Division
Director, Administrative Services Division
Director, Information Division

Section 4—The Director. Under the direction of the Assistant Secretary for Economics, the Director formulates, recommends, coordinates, and administers a comprehensive program of management support services for the Economic Research Service, the Statistical Reporting Service, the World Agricultural Outlook Board, the Office of Energy, and the Economics Management Staff itself. The incumbent is authorized to execute any document, authorize any expenditure, and promulgate any rule, regulation, order or instruction deemed by him/her to be necessary and proper to the discharge of the functions assigned to EMS, and to delegate and provide for redelegation of authority to appropriate officers and employees consistent with his/her personal responsibilities for the proper discharge of functions assigned to EMS. Delegations are stated in sections 5, 6, 7, 8, 9, and 10.

Section 5—Deputy Director. The Deputy Director is hereby delegated the authority to perform all the duties, and exercise all the functions and the powers, which are now, or which may be in the future, vested in the Director.

Section 6—Director, Administrative Services Division. The Director, Administrative Services Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning procurement and contracting, real and personal property management, paperwork management, management analysis, and related functions.

Section 7—Director, Budget and Finance Division. The Director, Budget and Finance Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning the discharge of the budget and related financial management functions.

Section 8—Director, Information Division. The Director, Information Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning public information functions.

Section 9—Director, Personnel Division. The Director, Personnel Division, is hereby delegated authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning staffing, organization, position management and classification, employee relations, employee development, and related functions.

Section 10—Director, Equal Opportunity and Civil Rights Staff. The Director, Equal Opportunity and Civil Rights Staff, is hereby delegated the authority to perform all the duties, and to exercise all the functions and powers, which are now, or which may be in the future, vested in the Director relating to actions required by law or regulation concerning Affirmative Action Program development and implementation, EEO discrimination complaint processing, civil rights compliance, and related functions.

Part II—Availability of Information

Section 11—General. This part is issued in accordance with the regulations of the Secretary of Agriculture in part I, Subpart A of Subtitle A of Title 7, CFR (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, govern the availability of records of EMS to the public.

Section 12—Indexes. 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials likewise be made available. EMS does not maintain any materials within the scope of these requirements.

Section 13—Requests for records. Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to: Chief, Records, Systems, and Analysis Branch, Administrative Services Division, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Section 14—Appeals. Any person whose request for records is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e) and 1.7. All appeals shall be addressed to: Director, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250.

Issued at Washington, D.C., this 14th day of May 1982.

Allan S. Johnson,
Director.

[FR Doc. 82-13629 Filed 5-18-82; 8:45 am]
BILLING CODE 3410-25-M

Organization, Functions and Availability of Information

Notice is hereby given for the guidance of the general public as to the organization, functions, and availability of information for the Office of Energy (OE).

Part I—Organization and Functions

Section 1—General. OE is an office of the U.S. Department of Agriculture which is responsible for Departmental energy policy development and the coordination of energy programs and strategies for the allocation of scarce fuel resources. It was created on December 22, 1981, (46 FR 62046) as authorized by Secretary's Memorandum 1020-4, of December 24, 1981, entitled "Establishment of the Office of Energy." The specific delegations of authority by the Assistant Secretary for Economics to the Director, OE, are contained in 7 CFR 2.88.

Section 2—Organization. The central and only office of OE is located in the Administration Building of the Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. The staff is headed by the Director.

Section 3—Authority to act for the Director. The Policy Analyst is authorized to act for the Director in his absence or when he is temporarily unavailable.

Section 4—Functions. OE has five major areas of responsibility:

(a) Provide Department leadership in:

(1) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(2) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(3) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(4) Developing agricultural and rural components of national energy policy plans;

(5) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive Orders, including those

involving testimony and reports on legislative proposals.

(b) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(c) Represent the Assistant Secretary for Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(d) Provide the Assistant Secretary for Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(e) Work with the Assistant Secretray for Governmental and Public Affairs to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in Congress, appearances before Congressional committees and related activities.

Part II—Availability of Information

Section 5—General. This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of Subtitle A of Title 7, CFR (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this part, govern the availability of records of OE to the public.

Section 6—Indexes. 5 U.S.C 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials likewise be made available. OE does not maintain any materials within the scope of these requirements.

Section 7—Requests for records. Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to: Chief, Records, Systems, and Analysis Branch, Administrative Services Division, Economics Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

Section 8—Appeals. Any person whose request for records is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e) and 1.7. All appeals shall be addressed to: Director, Office of Energy, U.S. Department of Agriculture, Washington, D.C. 20250.

Issued at Washington, D.C., this 14th day of May 1982.

Earle E. Gavett,

Acting Director.

[FR Doc. 82-13630 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-96-M

Forms Under Review by Office of Management and Budget

May 14, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447–6201.

New

• Food and Nutrition Service
Claim for Reimbursement
FNS–806
Monthly
Businesses or other institutions: 15,000 responses; 21,900 hours; not applicable under 3504(h)
Rose T. Buskey (703) 756–3864

• Human Nutrition Information Service
Study to Determine the Effects of Infant Feeding Practices on Morbidity and Growth in the First Year of Life
Monthly
Individuals or households: 20,000 responses; 12,400 hours; not applicable under 3504(h)
Dr. Catherine Woteki (703) 436–8470

• Animal and Plant Health Inspection Service
9 CFR 166—Swine Health Protection (Reporting)
VS 13–15, VS 13–16
Monthly
Farms: 103,848 responses; 16,616 hours; applicable under 3504(h)
Dr. Robert Good (301) 436–8438

• Animal and Plant Health Inspection Service
9 CFR 166—Swing Health Protection (Recordkeeping)
On occasion
Farms: 8,229 responses; 1,317 hours; applicable under 3504(h)
Dr. Robert Good (301) 436–8438

Revised

• Agricultural Stabilization and Conservation Service
Peanut Warehousing Contracts, Examination Reports, Bond CCC–1028, 1028–A, 1029, 1031, 1031(1), 1032, 1033, 1036, 1071
Monthly and annually
Farms, businesses or other institutions: 2,320 responses; 232 hours; not applicable under 3504(h)
Bob Ray, (202) 382–9106

Extension

• Agricultural Marketing Service
Designated Handlers Report and Application for Refund of Assessment (Potato Research and Promotion Act)
Monthly
Farms, Businesses: 21,158 responses; 10,379 hours; not applicable under 3504(h)
Charles W. Porter (202) 4470–2615

Richard J. Schrimper,

Statistical Clearance Officer.

[FR Doc. 82-13528 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Boise National Forest Grazing Advisory Board; Meeting

The Boise National Forest Grazing Advisory Board will meet at 1 p.m. June 18, 1982, in the Boise National Forest conference room at 1750 Front Street, Boise, Idaho 83702. The purpose of this meeting is to discuss the functions, structure, and procedures the board will use to conduct its business.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702, phone 208–334–1232. Written statements may be filed with the committee before or after the meeting.

Dated: May 10, 1982.

John J. Lavin,

Forest Supervisor.

[FR Doc. 82-13691 Filed 5-18-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Vermont Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 pm and will end at 9:00 pm, on July 12, 1982, at the Vermont Agency for Human Services Training Center, 103 South Maine Street, in the Stanley Hall, Waterbury, Vermont, 05676. The purpose of this meeting is to discuss Committee plans to produce educational materials about prejudice, distribute pamphlets on sexual harassment, and hate group activity in Vermont.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Philip H. Hoff, 192 College Street, Hoff, Wilson and Powell, P.C., Burlington, Vermont 05401, (802) 658-4300 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13693 Filed 5-18-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council, its Administrative Subcommittee, its Scientific and Statistical Committee and its Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established a Scientific and Statistical Committee (SSC), and Advisory Panel (AP), and an Administrative Subcommittee to assist the Council in carrying out its responsibilities under the Act. The Council, its SSC, its AP and its Administrative Subcommittee will hold separate meetings. The Council will hold its 41st regular meeting to consider status reports on fishery management plans (FMPs) under development; draft framework for the shallow-water reef fish fishery; draft FMP for coastal pelagic resources; draft FMP for the fishery resources of the Puerto Rican and St. Croix geological platforms and discuss other administrative and Council matters. The SSC and AP will consider status reports on FMPs under development; draft framework for the shallow-water reef fish fishery; draft FMP for the fishery resources of the Puerto Rican and St. Croix geological platforms and discuss other related matters. The Administrative Subcommittee will consider matters related to the Council's budget and regular administrative operations.

DATES: The Council's public meeting will convene on Wednesday, June 23, 1982, at approximately 9 a.m. and will adjourn on Thursday, June 24, 1982, at approximately noon. The SSC public meeting will convene on Wednesday, June 16, 1982, at approximately 9:30 a.m., and will adjourn at approximately 3 p.m.; the AP meeting will convene on Thursday, June 17, 1982, at approximately 9:20 a.m., and will adjourn at approximately 3 p.m., and the Administrative Subcommittee meeting will convene on Tuesday, June 22, 1982, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m.

ADDRESS: The Council and Administrative Subcommittee public meetings will take place at the Conference Room of the Hotel Pierre, 105 de Diego Avenue, Santurce, Puerto Rico. The SSC and AP public meetings will take place at the Conference Room of the Council's Headquarters Office, 1108 Banco De Ponce Building, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918; telephone: (809) 753-4926.

Dated: May 14, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13688 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit

On February 19, 1982, Notice was published in the Federal Register (47 FR 7478) that an application had been filed with the National Marine Fisheries Service by the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, to take up to 960 Dall porpoises (*Phocoenoides dalli)* over a period of five years for scientific research.

Notice is hereby given that on May 13, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the Northwest and Alaska Fisheries Center, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: May 13, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82-13689 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The New England Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 942-65), has established a Scientific and Statistical Committee which will meet to discuss the relationship of science/fisheries regulation; the redefinition of the Committee's role vis-a-vis the Council and the Northeast Fisheries Center, and other scientific working groups, as well as discuss other Committee business.

DATES: The public meeting will convene on Wednesday, June 9, 1982, at approximately 10 a.m., and will adjourn at approximately 5 p.m. The meeting may be lengthened or shortened or agenda items rearranged depending upon progress of the same.

ADDRESS: The meeting will take place at the Council's Headquarter's Office, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts.

FOR FURTHER INFORMATION CONTACT:
New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, telephone: (617) 231–0422.

Dated: May 14, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-13641 Filed 5-18-82; 8:45 am]
BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cranbury Medical Labs, Inc., having a place of business at Cranbury, New Jersey 08512 an exclusive right in the United Sates to manufacture, use and sell products embodied in the invention, "Fiber Optic pH Probe for Tissue Measurements," U.S. Patent Application No. 6–296,239 (dated August 25, 1981). The availability of this invention for licensing was announced in the **Federal Register** (47 FR 14215, dated April 2, 1982). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: May 10, 1982

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-13469 Filed 5-18-82; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: Tuesday, 1 June 1982, Wednesday, 2 June 1982, Thursday, 3 June 1982

Times and places: 1 June 1982—1300–1700 hours—SRI International, Menlo Park, CA; 2 June 1982—0900–1230 hours—Stanford University, Palo Alto, CA, 1530–1800 hours—Northrop Corporation, Los Angeles, CA; 3 June 1982—0900–1700 hours—Hughes Aircraft, El Segundo, CA

Agenda: The Army Science Board Ad Hoc Subgroup conducting a study on Robotics/Artificial Intelligence will meet for briefings and visits of artificial intelligence laboratory/manufacturing facilities and to hold discussions with key personnel of host facilities. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. In order to be able to accommodate prospective attendees, the Army Science Board Administrative Officer, Helen M. Bowen, must be notified no later than 27 May 1982. For further information and specific meeting locations, call (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-13634 Filed 5-18-82; 8:45 am]
BILLING CODE 3710-02-M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 15 June 1982 in MRA&L Conference Room #3E794, The Pentagon, and from 9:30 a.m. to approximately 12:00 noon, 16 June 1982 in MRA&L Conference Room #3E794, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the recommendations/requests for information/continuing concerns made at the 1982 Spring Meeting, discuss current issues relevant to women in the Services, and plan the itinerary/program for the next Semiannual Meeting scheduled for 7–11 November 1982.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, DACOWITS Executive Secretary, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697–2122 no later than 10 June 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 13, 1982.

[FR Doc. 82-13527 Filed 5-18-82; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Proposed Funding Priorities for Fiscal Year 1983

AGENCY: Education Department.

ACTION: Notice of proposed funding priorities for fiscal year 1983.

SUMMARY: The Secretary of Education proposes funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1983. NIHR is required under the Rehabilitation Act of 1973, as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These proposed priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. NIHR final regulations (46 FR 45300, September 10, 1981) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

Authority for the research program of NIHR is contained in section 204 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602.

Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities.

These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIHR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties. The priorities are grouped according to the program authority under which NIHR believes they should be funded. These programs are described below. The public is asked to comment also on the merits of this organizational grouping of priorities (i.e., whether certain research objectives are better accomplished by Centers or by other grantees as discrete projects).

This Notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in the form of an Application Notice in the **Federal Register**. That Notice will solicit grant applications and set the closing date.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before June 18, 1982.

ADDRESS: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FURTHER INFORMATION: For further information contact Betty Jo Berland, National Institute of Handicapped Research, Department of Education, Room 3511, Switzer Office Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone: (202) 472-6551 or TTY for the Deaf (202) 472-4217.

SUPPLEMENTARY INFORMATION: The following proposed priorities represent areas in which NIHR proposes to support research and related activities through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily*.

The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these research areas. Funding of particular projects depends on both the availability of funds and on responses to this Notice.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities proposed in this Notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Following are brief overview descriptions of these four research programs.

Research and Training Centers (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research, and to provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally each Center conducts a program of research, evaluation, and training activities that is directly concerned with one or more *related core areas* of research. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education.

Rehabilitation Engineering Centers (RECs) have been established to conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped individuals. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally each REC conducts a program of research, scientific evaluation, and training that is directly concerned with one or more *related core areas* of research. RECs are encouraged to develop practical applications for their research through scientific evaluation activities which validate their findings as well as related findings of other Centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, inservice training, continuing education, and distribution of information and appropriate technology.

Research and Demonstration Projects have been supported to conduct research and/or demonstrations in single project areas on problems encountered by handicapped individuals in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, sexual, psychiatric, psychological, economic, and other factors affecting the rehabilitation of handicapped individuals.

Knowledge Dissemination and Utilization Projects have been supported to insure that rehabilitation knowledge generated from projects and Centers funded by NIHR and other sources is fully utilized to improve the lives of handicapped persons.

The following priorities are proposed by research program. Following each identified research area is a brief statement of national need and specific research concepts or objectives that singly or in combination address this need. NIHR has not yet decided the precise scope of research to be carried out by individual Centers or projects in each prioritized research area, i.e., whether all specific research objectives are better accomplished by an individual Center or project or by distributing them among several Centers or projects.

Rehabilitation Research and Training Centers

NIHR proposes that research in the following 16 areas be carried out in Research and Training Centers.

Chronic Obstructive Pulmonary Disease (COPD)

Pulmonary diseases like emphysema, chronic bronchitis, cystic fibrosis, asthma, black lung disease, and tuberculosis kill relatively early in life and account for significant amounts of lost work and functioning. In 1975, treatment costs for COPD amounted to $7.5 billion.

- Determine the proper role of physical conditioning in the management of patients with chronic obstructive pulmonary diseases.
- Define specific psychological and cognitive characteristics that must be considered in developing rehabilitation

programs for pulmonary disease patients.

Arthritis

Arthritis directly affects almost every American and is a crippling and often painful disease. While the incidence of arthritis increases enormously with age, the disease also affects ten of thousands of children, often with devastating consequences. The Arthritis Foundation estimates that the cost of arthritis exceeds $13 billion in medical care and implications of lost work alone. There are no reliable indicators of the efficacy of various treatment regimens, given the variability of the course of the illness and the unpredictability of the responses to therapy.

- Evaluate clinically various rehabilitation modalities for arthritis to determine their effectiveness for treatment and/or maintenance of sympton-free states.
- Investigate the value of physcial rehabilitation modalities on the treatment and control of osteoarthritis. Determine the clinical course of past traumatic arthrists and its long-term disability effects.
- Evaluate the utilization of surgical treatment versus drug therapy and other non-surgical treatment for juvenile arthritis.

Rehabilitation of the Cardiac Patient

Each year approximately 200,000 of those who survive coronary infarction will experience repeated cardiac symptoms and psychological complications affecting regular life activities. Exercise is regarded as a major factor in assessment and improvement of performance after infarction.

- Evaluate the benefits and hazards of prescribed exercise testing programs on survivors of myocardial infarction, including the changes that may be necessary to strengthen the guidelines for standards and procedures developed for exercise testing.
- Study the physiological and psychological effect of early ambulation and exercise therapy.
- Investigate causes of the failure to achieve normal exercise performance following definitive heart repair.

Severe Head Trauma

Brain trauma is a major catastrophic occurrence resulting in a costly and significant impairment of neurological function, behavior, mobility, cognition, and perception. To date, the clinical course of severe head trauma has not been understood and documented. Rehabilitation needs and service delivery methods have not been identified. The available scientific literature yields few insights into appropriate and effective rehabilitation modalities.

- Study the timing of the return and plateau of different behavioral systems, including language, cognitive functions, perception, and motor activity, following traumatic brain damage.
- Develop tools to indicate prognosis, as measured by noninvasive neurometric indices, including eye movements, length of coma, and post-traumatic amnesia.
- Determine the importance of age at the time of brain injury to prognosis and differential recovery.
- Document the possible stages of recovery, especially from psychiatric and medical perspectives.
- Examine clinically physiological theories explaining recovery, including compensating neural centers, synaptic connections, and related theories.

Multiple Sclerosis (MS)

Multiple sclerosis afflicts as many as 500,000 persons in the Untied States. Although there is now no cure for multiple sclerosis, there is a substantial need for rehabilitation modalities to restore or maintain physical function and retard the disabling effects of this disease.

- Develop quantitative, standardized methods of measuring remission of MS with emphasis on locomotion and movement.
- Study the prevention and control of ataxia, spasticity, and urinary tract and sensory problems in persons with multiple sclerosis.

Spinal Cord Injury

Between 175,000 and 200,000 persons have spinal cord injuries (SCI), with new incidences occurring at a rate of 8 to 10,000 annually. The cost of care (estimated as $2.3 to $3 billion annually) is considered excessive and attributable to several factors: age of onset; involvement of multiple body systems; improved survival rates among very severely handicapped persons; and need for prolonged, sophisticated treatment regimens.

- Develop and evaluate methods of treatment for urinary tract management in spinal cord injured persons.
- Study the mechanisms, prevention, and treatment of life threatening respiratory and circulatory complications in persons with SCI.
- Identify and describe the basic pathophysiological mechanisms of secondary neurological complications of SCI.
- Investigate the precipitating factors and causative mechanisms, including etiologic factors of gastrointestinal stress reaction in the active traumatic phase.
- Develop invasive and noninvasive therapeutic modalities for prevention, control, and treatment of mass reflex spasm and spasticity, orthostatic hypotension, and autonomic dysreflexia.

Improving Delivery of Vocational Rehabilitation Services

Improved management of service programs for the handicapped and development of new service delivery mechanisms are needed to improve the effectiveness of individual service programs and the coordination between these service programs.

- Develop model individual service plans for common use by multiple agencies, basing this on surveys of current content requirements, agency needs, and usages.
- Evaluate the effectiveness of client followup and post-employment services in vocational rehabilitation agencies.
- Assess over a three-year period the effects of program reductions on counselor roles, including changes in counselor roles and the use of technology to increase productivity.
- Demonstrate and evaluate programs based on new definitions of counselor roles and develop related counselor training materials.
- Investigate the parameters, implications and alternative models of client co-management in rehabilitation settings and evaluate the effectiveness of these models.
- Evaluate the job development and placement performance of post-secondary programs for deaf individuals over the past 3–5 years and determine which of these many programs provides the best return to clients/students in terms of maximum success in today's labor market.
- Analyze legislation relating to rehabilitation of railroad workers at State and Federal levels, review rehabilitation efforts in the industry, and develop and demonstrate effective service models for this population.
- Assess the relationship of organizational structure and distribution of adminsitative personnel to organizational performance and develop organizational models.
- Assess the management and utilization of human resources in rehabilitation agencies as it impacts on the functioning of agencies and delivery systems and develop human resource use models.

Increasing Employability

Research is needed to improve the entire continuum of employability development from client assessment through training, job development, placement, and followup.

There remains a need to increase the validity and reliability of client assessment instruments and to conduct studies of their effectiveness in improving job opportunities for severely handicapped persons. Training methods require analysis to identify successful approaches.

Traditional service delivery approaches for stimulating jobs for handicapped persons and for placement assistance are changing rapidly. Staff shortages will decrease job counseling in rehabilitation with increasing use of job clubs, peer support, private vendors, and other resources. Research is needed to assist the rehabilitation services delivery system to adopt, adapt, and evaluate these techniques.

Target groups which are underserved in vocational rehabilitation are neglected due in part to basic weaknesses in rehabilitation methods and materials for addressing their specific needs. Acute need exists for developing or adapting new rehabilitation approaches to Rubella youth and deaf-blind individuals, to mentally retarded persons, to psyhiatrically disabled persons, to severely hearing and speech impaired individuals, and to learning disabled individuals.

- Develop and refine client assessment techniques and test for validity and reliability and determine effective combinations of techniques.
- Develop techniques to synthesize and correlate data from assessment measures to identify strengths and abilities of rehabilitation clients.
- Investigate the applicability of the work-study model which organizes the student's schedule to include paid work experience along with a regular program of instruction for rehabilitation and retraining of adult workers.
- Develop new techniques for job placement, with special attention to resolving problems of the "hard-to-place" severely handicapped persons and increasing jobs for such workers in specific industries or service sectors.
- Evaluate the impact of affirmative action on the employment of disabled individuals in private industry.
- Assess the special vocational needs of each of the above-mentioned under-served groups.
- Develop or improve vocational assessment, training, job development, placement, and post-employment methods and technologies for each special population based on the above analysis.

Vocational Rehabilitation at the Work Site

Adaptation at the work site to improve functional capacities for mobility, self-care, endurance, communication, dexterity, and social intereaction is an extremely important factor in successful employment outcomes for disabled individuals. Research is needed on both early intervention for individual adjustment and on modification of the work site.

- Identify target populations and jobs with both high rates of disability and low participation in rehabilitation services.
- Identify factors in successful early intervention.
- Design and implement model programs of early intervention and evaluate the impact of early intervention on employment outcomes and rehabilitation at the work site.

Sheltered and Protected Employment

There is a need to improve the eocnomic viability of sheltered workshops as well as to develop innovative forms of semi-sheltered or alternative employment.

- Analyze the management, procurement practices, and production factors correlated with successful business operations in sheltered workshops.
- Devise alternatives to sheltered employment via employment in the public sector.
- Devise alternatives to sheltered employment via employment in the home.
- Devise and assess alternative forms of protected employment in the competitive sector.

Community Services for the Mentally Retarded

As retarded youth leave school or are released into the community from institutions, new problems of individual adjustment, work, daily living, and use of appropriate resources emerge. Successful, sustained living in the community will require some manipulation of the social environment for these youth.

- Identify multiple measures of successful living in the community and devise instruments to assess needs and predict outcomes.
- Identify optimal matches between individual characteristics and the social environment prescribed for or chosen by individuals, with emphasis on living arrangements.
- Identify factors which enhance productivity, job security, and job satisfaction for severely retarded persons in settings involving various types and levels of social support.
- Identify actual costs and benefits of various service delivery and income support models for retarded persons with various functional deficits and assets.

Comprehensive Services for Handicapped Children and Youth

Disabled children require a range of services from medical treatment and restoration through education, rehabilitation, and assistance in psychological and social development. Current services to this group are fragmented and uncoordinated, with ineffective linkages among the various service systems involved. Not enough is known about the impact and course of disability in children and youth.

- Study the psychosocial development of handicapped children, including the impact of various handicapping conditions on peer relationships, the nature of adolescent experiences, the interaction of handicap and patterns of sexual maturation, and the career aspirations of handicapped children and youth.
- Determine the existing components of a comprehensive service system for children and devise innovative methods to forge linkages to create a service continuum and interrelate the components in a coordinated manner.
- Evaluate the long-term costs and benefits of intervention programs with children.
- Develop guidelines for optimal use of practitioners at various skill levels and in various disciplines as team members, educators, case managers, and related roles.

Deafness and Psychosocial Development

Deaf persons experience, especially in early childhood, serious social deprivation which may have an impact upon their psychosocial development and mental health. Modalities of measurement and therapy must be based on factors different from those for a hearing population.

- Develop developmental norms for physical, cognitive, social, and emotional growth of deaf children.
- Develop diagnostic instruments to assess deaf infants and children.
- Study mother-infant bonding processes and their impact on emotional growth and family relations of deaf children.

• Develop techniques to enhance communication competency in deaf children with emphasis on alternatives to English language competencies.

• Study the processes of linguistic maturation in young deaf adults in the post-secondary years.

• Study the effects of deafness on family relations, including patterns of family interaction, impact on the marital relationships, sibling behavior, and integration of deaf children and adults and their families into the community at the neighborhood level.

Specific Learning Disability

A learning disability may be characterized by perceptual and/or auditory deficits, language disorders, aggressiveness, hyperactivity, and academic problems. The disability may last throughout life, making it difficult to succeed in school, in interpersonal relationships, and in employment. It is necessary to investigate specific areas relating to the impact of a learning disabled member has on a family, the vocational rehabilitation needs of the learning disabled population, and the diagnostic and service needs of urban minority group members who are learning disabled.

• Develop instruments to measure family interaction patterns; develop strategies for teaching high risk families how to improve relationships and meet the unique needs of the learning disabled member; and develop a plan for disseminating the information and training parents in the strategies that result from the research.

• Identify unique vocational rehabilitation needs of learning disabled persons and the existing and potential barriers to the provision of services; determine the factors to be considered in job placement; develop strategies for providing appropriate rehabilitation services; and demonstrate model rehabilitation programs to meet the needs of this population.

• Investigate the patterns of learning disabilities among urban minority groups; and design and test model programs to meet the needs of this population.

Psychiatric Disabilities

The process of deinstitutionalization, especially of the chronically mentally ill, has imposed new, unique demands on the service-delivery system. Traditional community-based agencies are being called upon to provide services to the more severely disabled psychiatric population. This major change in the place *where* services are provided has become an impetus for *what* and *how* services are provided. As a result, innovative methods for service delivery and the interaction among various components of this community-based service system must be assessed.

• Develop and evaluate community resource utilization programs for clients tailored to specific levels of functioning; develop training programs to teach networking skills as well as the recognition of dysfunctional behavior and sources of assistance.

• Investigate the unique treatment needs of the physically disabled with psychiatric disabilities.

• Develop and assess programs for family members of psychiatric patients in: behavior management, "early warnings signs," legal issues, social agency linkages, and medical management.

Psychosocial Development

Not enough is known about processes of psychosocial adjustment in handicapped individuals. Investigations in this area will not only add to our understanding of the effects of handicapping conditions on the process of psychosocial development but will provide information for developing more effective remedial and treatment programs.

Social, attitudinal and legal barriers limit the full participation of handicapped individuals in society. Research is needed to provide an improved understanding of the psychosocial environment relevant to handicapped individuals, and to develop methods for increasing the acceptance of handcicapped individuals as full-fledged members of society.

• Design and conduct a comprehensive, logitudinal study of the processes of psychological responses to the existence or acquisition of a disability, including emotional, cognitive, social, and environmental developments; the relation of adjustment patterns to disability type; and the personal and environmental factors conducive to effective coping for disabled men and women.

• Develop a comprehensive theory which describes and measures the physical, social, and psychological ecology most relevant to handicapped individuals and develop theory-based techniques to modify psychosocial environments.

• Develop a program to asess attitudes of the general public and specific target populations toward handicapped individuals and to increase the readiness to accept persons with handicaps, disabilities, and chronic illness.

Rehabilitation Engineering Centers

NIHR proposes that research in the following 11 areas be carried out by Rehabilitation Engineering Centers.

Communication/Mobility for the Blind and Partially Sighted

Independent orientation and mobility of blind and partially sighted persons is essential for full rehabilitation. The long cane, dog guide and sighted guide are the only systems with universal acceptability, but each is deficient in terms of cost-effectiveness, independence or information provided. Similar problems exist for blind and partially sighted persons in obtaining immediate independent rapid access to printed materials.

• Conduct a study of the performance of blind pedestrians judged to be competent travelers, and develop a theory of blind mobility to be used in the design of new electronic travel aids for the blind.

• Determine the efficacy of foldable long canes with appropriate acoustical and mechanical properties.

• Develop and evaluate electronic orientation systems including systems for both indoor and outdoor orientation.

• Develop electronic reading machines with synthetic speech output using modern optical character recognition technology.

• Conduct research and development of a high quality personal braille embosser to permit original braille copy by an individual.

• Conduct research to improve paperless braille.

Communication Controls and Interfaces of Assistive Devices

Communication aids and other assistive devices are useless the disabled person can effectively operate them. Appropriate controls and interfaces of controls for different devices are crucial for these consumers. Vairous parties have devised controls for specific applications, but little effort has been given to considering controls comprehensively as they pertain to all assistive devices and users.

• Develop and clinically evaluate controls and interfaces between different systems to meet specific needs of disabled persons.

• Disseminate information, educate medical clinicians and administrative officials, and train medical personnel on availability and use of controls, including the generation of quantitative data on the performance of controls.

• Evaluate new electronic education aids for use with congenitally blind or deaf children to assist in the teaching of

perceptual, manipulative, cognitive, and voice communication skills.

Improved Wheelchair Systems

Approximately three-quarters of a million handicapped persons use the wheelchair as their primary mode of mobility. The problems of wheelchair reliability, durability, and versatility are constant sources of frustration to the user and prevent the achievement of true independence. The average lifespans of manual and power wheelchairs are similarly brief, while the major repair problems differ somewhat. Repair services are not evenly dispersed geographically.

- Develop new designs with emphasis on more durable and lightweight chairs; maneuvering, stability, and ease of use in both manual and powered chairs; improved performance and safety characteristiscs; new materials; improved design, power systems, and controls.
- Develop and evaluate programs to conduct tests and assessment of new designs and establish demonstration projects to inform manufacturers and new consumers.
- Develop educational programs to train physicians and allied health staff in the proper prescription of wheelchairs and a training program for manufacturers and others regarding the repair of wheelchairs.
- Conduct research to develop standards and specifications for modular seating and body positioning supports that can be customized and used independently or as integral parts of standard or newly designed wheelchairs.
- Conduct research and development on cost-effective methods to produce custom modular seating systems for persons with severe neuromuscular body problems and/or deformity.
- Conduct research on ways of reducing costs of wheelchairs and frequency and cost of repairs.

Nonvocal Communication Assistance

The loss of speech, or the inability to speak in an easily understood manner, may quickly isolate an individual. The inability to communicate in a natural and expressive way disrupts the normal educational process, makes employment difficult, and leaves the speech-impaired person unable to complete the communicative cycle. The loss of effective speech can be caused by birth defect, childhood diseases, cancer, stroke, or other neuromyopathies.

Further refinements are needed in synthetic speech devices and alternatives such as printers and devices using light-emitting diodes.

- Conduct research and development in the various methods of interfacing communication aids by persons with different disabilities and investigate the various types of spoken word, light-emitting diodes, and print devices.
- Conduct research and development in laryngeal implants or similar permanent devices for patients with laryngectomies.
- Conduct research and development in aphasic and other speech and language disabled pre-school children to determine what devices and techniques can allow improved speech.
- Conduct research and development in cerebral vascular episodes and other neuropathies leading to speech and language dysfunction in adults, and determine which devices and techniques can best ameliorate these problems.

Stimulation of Industry

To meet the challange of providing devices and technologieal products for the handicapped community there is a need to encourage and facilitate greater business involvement in the development and distribution of these devices and equipment because private industry has the necessary resources required to make new and improved products more readily available.

- Conduct a study of the market for technology for the handicapped, including demand, distribution of demand among groups with various types of handicaps, and among regions, and cost considerations.
- Study of incentives to promote business investment in ventures that have potentially high social benefit which at present are not profitable. Incentives to be studied include: (1) Low cost loans or grants; (2) tax abatements; (3) contracting arrangements related to government purchases.
- Conduct a comprehensive study of disincentives to business investment including: patent policy, product liability; and third party payment problems.

Transportation

The vast majority of handicapped people do not use mass transit systems because of accessibility problems. Vehicle design, limited routes, need to coordinate connections among transportation modes, and inaccessibility of destination points from transit terminal points are some of the problems. Individual vehicles also present problems of vehicle design and operation, cost, and safety issues.

- Research and develop alternatives for existing mass transit systems for the handicapped community and demonstrate projects of "model" systems to verify workable solutions. Include innovations to improve interfaces between different transit modes and facilitate intermodal transfer.
- Conduct a program to develop a "universal" wheelchair restraint system for both driver and passenger and to improve overall wheelchair design of tubular frame models to allow their use as a vehicle seat.
- Conduct studies on handicapped drivers' accident and traffic violation records to provide more accurate data on which to base insurance rates.
- Stimulate the private sector to develop energy-efficient cars, including electrical ones, which can accommodate a wheelchair whether occupied or unoccupied.
- Evaluate all currently available handicapped driver control systems and personal licensed vehicle adaptations and mmodifications to determine the most appropriate devices and combinations of devices for disable persons with various types of physical and sensory abilities.

Prostheses, Orthoses and Functional Electrical Stimulation

Several million persons have neuro-musculoskeletal impairments that cause abnormal limb and/or spinal functions which can be ameliorated by technological systems. Current devices are often cumbersome, uncomfortable, unattractive and expensive.

Millions of persons have impariments of function and deformity of the feet as a result of disease, trauma, and congenital abnormality. There is a substantial need for custom orthopedic footwear to provide improved comfort, function and appearance, as well as to reduce the incidence of surgical intervention for these people.

- Determine which materials and fabrication methods provide the best means for producing orthotic devices which are lighter weight, more comfortable and more cosmetic, while reducing fabrication time and costs.
- Develop new orthotic techniques and principles that avoid overbracing so that an orthosis designed to correct one problem does not interfere with the function of other normal activities.
- Develop practical orthotic joints that conform to anatomical joint motion and maximize function.
- Develop improved spinal orthoses which are effective in reducing or limiting spinal deformity while being comfortable and cosmetically acceptable.
- Design and develop devices and modes of therapy utilizing functional

electrical stimulation and biofeedback training for impairments resulting from stroke, head injury and cerebral palsy.

• Design and develop devices and modes of therapy utilizing functional electrical stimulation in combination with passive or active orthotic systems to restore or assist function in persons with spinal cord discontinuity or deformity.

• Design and develop devices and modes of therapy utilizing functional electrical stimulation to restore or assist bowel and bladder function.

• Develop innovative approaches to the attachment of prostheses to human beings, featuring greater compatibility and natural transition from flesh to apparatus.

• Determine ways to utilize new technology and materials to reduce the time needed to fabricate and fit prostheses.

• Develop powered upper-limb prostheses which have characteristics more commensurate with those of "normal" human joints.

• Develop simple devices that permit conscious control of multifunctional arm prostheses.

• Investigate sensory and proprioceptive aspects of the prostheses/human interface.

• Design and develop an experimental computer-aided design system for custom orthopedic footwear using existing technologies that convert optical and/or tactile information into digital form to produce inputs yielding visual displays of the foot and ankle from variable but controllable viewpoints.

• Design and develop methods using graphic displays for modification of foot-ankle displays to produce corrections required. Utilize clinical pressure distribution matrix systems to assist modifications and produce individually designed foot lasts, shoe inlays or inlay molds using computer aided millery molding equipment.

New Generation Hearing Aid Research

Hearing aids can be used to various degrees of satisfaction by those persons impaired by conductive, sensorineural, mixed conductive and sensorineural, and central hearing losses.

Hearing aid technology has advanced to a state where it could benefit from additional research to improve the quality of amplification and frequency responses produced.

• Conduct research and development into new concepts in hearing aids and conduct evaluation and demonstration projects on these new concepts.

• Initiate a five-year program to develop performance evaluation standards for hearing aids, evaluate existing aids, and develop diagnostic/prescriptive tests and common prescriptive criteria.

• Evaluate responses of hearing-handicapped individuals to use of new generation hearing aids.

Work Site Modification

Employability for handicapped persons could be greatly enhanced by technological and social modifications to the work site. These can include adaptations of equipment and work stations, access to work sites and auxiliary locations, relocation of workers, or other modifications to the environment. Work site modification can be useful in maintaining employability for the worker who acquires a disability as well as for unemployed handicapped populations.

• Conduct a series of case studies in innovative work site modification to test the effectiveness of each modification and develop standards and criteria for each.

• Classify and objectively describe places of work in terms related to client functional assessment indicators.

• Conduct a series of case studies in innovative equipment modifications and development to document the most effective means of adapting work environments and equipment to solve problems within industry.

• Develop a training program for VR counselors in the use of workplace modification and special equipment.

• Design technology to mechanize and automate production systems in sheltered workshops and to minimize the impact of functional impairment in severely handicapped individuals.

Low Back Pain

Disability as a result of low back pain is one of the most common handicapping conditions affecting millions of Americans and limiting their productivity. Very little systematic, coordinated research has been focused upon the rehabilitation of persons with chronic low back syndrome. The complexity of the problem has resulted in very few scientists willing to undertake research in this area. It is anticipated that this area can benefit from concentrated, coordinated research which combines the efforts of the medical and engineering scientists.

• Design and develop methods and equipment to quantify low back pain including pain perception and measure limitation of motion.

• Evaluate existing, and design and develop new, orthotic systems used to immobilize the low back and to modify chairs, seating, and other environmental components to reduce low back pain.

• Evaluate the effectiveness of electrical stimulation for the control of low back pain and for increasing muscular strength to stabilize the low back.

• Evaluate existing exercise regimens and design new ones to reduce the incidence of low back pain.

Quantification of Motor Performance

At present, therapeutic treatment of physically impaired individuals is usually evaluated subjectively by clinicians on the basis of experience. The development of new diagnostic systems based on current technology can save years of ineffective treatment by redirecting resources to more effective therapeutic treatment. This will result in more rapid rehabilitation for more people and thus be more cost effective.

• Develop instrumentation to measure the energy expenditure in walking for various disabilities with and without internal and external devices such as joint replacements or braces. Quantify which devices and/or treatment methods provide the most effective performance.

• Develop instrumentation that accurately measures spasticity and test various drugs (under FDA certification), treatment methods, and devices designed to reduce uncontrolled spasticity.

• Develop quantification techniques to measure functioning and performance of appropriate body systems indidividually or in combination.

• Develop precise instrumentation to measure the active range of motion and strength at all joints in the extremities.

Research and Demonstration Projects

NIHR proposes that research in the following 18 areas be conducted through discrete research and demonstration projects.

Interpreters for the Deaf

Both the Education of All Handicapped Children Act of 1975 (Pub. L. 94–142) and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) have had a profound impact on the deaf community. New opportunities have led to a demand for greater quality and quantity of interpreter services for deaf persons.

Not only deaf individuals but also service providers and institutions could use the services of interpreters in discharging their duties.

• Identify characteristics of successful manual and oral interpreters

for deaf individuals for use in training, evaluating, and certifying new interpreters.

• Study evaluation as a process that leads to appropriate certification of interpreters for deaf persons, address the quality and content of evaluation materials and consistency of evaluation procedures among States, and establish reliability and validity measures for the entire evaluation/certification process.

• Develop an evaluation measure of entrance and exit skills for interpreter trainees to determine what is needed to produce good interpreters on a timely, cost-effective basis.

• Conduct research relating to the employment of interpreters and the deaf consumer of services, and the geographic projections for future demand.

• Evaluate current curricula used in training interpreters, measure their effectiveness, and develop improved, tested, and more uniform instructional packages for training both manual and oral interpreters for deaf individuals.

Rural Outreach

Severly handicapped persons in rural areas are hampered in their ability to live independently by remoteness from services and resources. At the same time, there are existing outreach networks which could be used to benefit this population.

• Develop and test innovative models for using existing outreach networks such as Home Demonstration Agents for the delivery of independent living services to deinstitutionalized and other severely handicapped persons in rural areas.

Private Sector Rehabilitation

There is evidence of increasing private sector involvement in some types of rehabilitation activities. It is important to assess appropriate roles for public and private sector rehabilitation activities and to determine whether the approaches and techniques developed in one sector can be advantageously transferred to the other.

• Analyze private sector hiring of disabled individuals, trends and patterns thereof, and the role of private placement services in these hires.

• Review existing rehabilitation efforts in workmen's compensation programs in various businesses and industries, and develop alternative model programs for appropriate classes/groups of workers.

• Analyze the growing field of private rehabilitation services to identify its research needs, exemplary service practices, impact on public rehabilitation programs, and implications for public policy.

Economics of Disability

Among the reasons more advanced economic analysis of the impact of rehabilitation is needed now are: (1) Major economic initiatives now underway require study as to their impact on disabled people; (2) the value of rehabilitation programs in economic terms is a vital ingredient in formulating public policy about the nature of future rehabilitation programs and on the level of support; (3) advances in economic analysis, including econometrics, simulation models, benefit-cost analysis, and other methodological approaches are now available.

• Compare trends in expenditures for rehabilitation services with those for transfer payments and medical insurance.

• Evaluate the impact on handicapped individuals of changes in the organization of intergovernmental rehabilitation efforts. Determine methods to continue management support services with minimum resources and minimal Federal involvement.

Work-Study Programs for Disabled Students

Improved methods are needed to ease the transition of disabled students from school or college to work and at the same time provide them greater participation in career choice and meaningful career exposures prior to placement. Research in cooperative education indicates that such an approach or similar work-study methods can be very effective in meeting these goals, yet there is little information or knowledge in this area.

• Determine the reasons for low participation of disabled students in work-study and cooperative education programs.

• Determine the components of these programs and which adaptations are most appropriate for disabled students.

• Design and demonstrate innovative approaches in cooperative school-work programs for disabled students, including vocational training and coordination with independent living and facilities programs.

• Develop strategies to optimize involvement of handicapped persons in vocational education.

Developmental Processes as Indicators of Learning Disabilities

Learning disabilities include perceptual disorders and language deficits and are associated with math and reading problems, hyperactivity, and poor social relationships. Learning disabilities remain difficult to diagnose and predict; neither effective prevention nor early intervention are possible without a more complete knowledge base.

• Develop instruments, methods, and/or techniques to identify factors that may predispose children to learning disabilities.

• Examine the correlations and preductive utility of these factors.

• Develop and implement appropriate early rehabilitation strategies and programs to reduce the consequences of learning disabilities.

Mental Health in Mental Retardation

Mentally retarded persons are highly susceptible to a range of mental, emotional and/or behavioral disorders. Efforts to integrate mentally retarded individuals into the community place additional strains on their limited adaptive behavioral skills.

• Develop an improved knowledge base of the causes and successful treatment of mental health and behavior problems in mentally retarded individuals.

• Develop effective prevention and treatment procedures and related service delivery systems for mentally retarded persons with mental health and behavior problems.

Recreation

Handicapped people are often unable to particpate in many recreational and leisure activities such as hobbies, avocations, entertainment, and sports. In addition, they are prevented from using some facilities because of their inaccessibility, unsuitable equipment, or inadequate staff.

• Demonstrate an accessible and usable recreation and leisure program that allows inclusion of handicapped individuals.

• Develop protocols for fitness programs for handicapped individuals to be carried out within the home as well as in fitness courses adapted for disabled persons.

Use of Adaptive Devices

There are many assistive devices which are rarely prescribed or infrequently used. There has been little systematic investigation of the factors that affect the prescription and utilization of adaptive devices and equipment.

• Investigate the attitudes, perceptions, and motivating factors that affect disabled individuals' acceptance of adaptive equipment and assistive devices.

• Investigate the attitudes and perceptions of rehabilitation professionals as they facilitate or impede the prescription and/or adoption of the products of rehabilitation engineering, adaptive devices and equipment.

• Develop strategies and techniques for modifying clients' and clinicians' attitudes and behaviors to facilitate acceptance of adaptive equipment.

• Provide means of feedback of consumer and clinician opiniona to those who research, design, manufacture, or distribute assistive devices.

Independent Living

New emphasis on independent living necessitates the development of new models of service delivery, new technology, and new knowledge of successful independent living models.

• Develop and implement a mode for the application of scientific systems analysis to the delivery of a range of services for handicapped persons. Areas to be addressed include housing, transportation, employment, communications, health care, education, and cost analysis.

• Develop and evaluate systems to control personal environments designed to produce supportive environments for handicapped persons.

• Develop optimal housing design criteria and standards that utilize human factors and anthropometric data derived from disabled persons in independent living situations.

• Develop optimal retrofitting systems that will allow existing housing to be modified to better serve the needs of disabled persons at reasonable cost and minimal disruption.

• Design and develop remote signal systems for monitoring safety and health of severely disabled persons from a central community control center to facilitate immediate assistance.

• Conduct analytic studies of existing independent living centers to determine the characteristics that foster successful outcomes.

• Develop criteria and guides for selection, training, and employment of peer counselors for independent living programs, including guidelines for appropriate goals.

• Develop methods for assisting elderly persons with disabilities, including those requiring institutional care, to maintain maximum independence.

• Develop methods for involving family members in programs of independent living for handicapped individuals.

• Study factors in successful matches of foster home and client characteristics.

Severe Burns

It is estimated that more than two million persons per year receive burns requiring medical attention. Approximately 70,000 of those require hospitalization, and another 9,000 die. Recent studies indicate that successful rehabilitation is possible for 95 percent of burn victims, provided treatment during the acute-care and first year post-burn period is adequate to prevent contractures and severe hypertrophic scarring.

• Evaluate long-term rehabilitation efforts, using various outcome measures and identify factors important in success.

• Develop national consensus for preventive treatment, and burn rehabilitation procedures to develop an adequate rehabilitation program for burn medicine.

• Assess rehabilitation needs of adolescents and young adults burned in childhood: evaluate psychological and social adjustment of young adults burned in childhood, including a study of relationship of age-at-onset to adjustment process; identify problems and stages in long-term adjustment process.

• Explore relationship of medical preventive rehabilitation, such as splints, pressure, and surgical reconstruction, to outcome measures, including function, mobility, dexterity, and wound healing.

Chronic Obstructive Pulmonary Diseases (COPD)

Chronic obstructive pulmonary diseases like emphysema, chronic bronchitis, cystic fibrosis, asthma, black lung disease, and tuberculosis kill early in life and account for considerable years of lost work and limitation on health and functioning. In 1975, treatment costs for COPD amounted to $7.5 billion.

• Evaluate the effectiveness of bronchial hygiene (including antibiotic therapy) in treatment of patients with chronic bronchitis.

• Evaluate the value of pursed lips and "abdominal" breathing techniques in the treatment of patients with predominant pulmonary emphysema.

• Develop knowledge and techniques to maximize the vocational options of young people with crystic fibrosis.

Multiple Sclerosis

Multiple sclerosis afflicts as many as 500,000 persons in the United States. Although there is now no known cure for multiple sclerosis, there is a substantial need for rehabilitation modalities to restore or maintain physical function and retard the disabling effects of this disease.

• Study the effect of exercise and drug therapy on physical performance in persons with multiple sclerosis.

Spinal Cord Injury

It is estimated that 175,000 to 200,000 persons have spinal cord injuries (SCI), with new incidences occurring at a rate of 8 to 10,000 annually. Care is costly and complicated due to generally young age of onset and to the involvement of most body systems.

• Develop and evaluate methods of treatment for urinary tract management in spinal cord injured persons.

• Study the mechanisms, prevention, and treatment of life threatening respiratory and circulatory complications in persons with SCI.

• Identify and describe the basic pathophysiological mechanisms of secondary neurological complications in SCI.

• Investigate the precipitating factors and causative mechanisms, including etiologic factors of pastrointestinal stress reaction in the acute traumatic phase.

Technology Evaluation

It is important to improve the national capability for testing and evaluating products developed to assist handicapped individuals, in order to assure the safety, utility, feasibility and appropriateness of such technological developments. Products may include mobility or communication aids, prostheses, orthoses, adaptive devices for daily living, or environmental control systems, for example.

• Develop guidelines for establishing performance and safety criteria and methods to test products against such criteria. This includes procedures for utilizing existing test and evaluation systems such as that of the Veterans Administration.

• Develop guidelines on how to design protocols for clinical and/or field evaluation and how to manage such evaluations.

• Demonstrate how to effectively disseminate the results of tests and evaluations to disabled persons and others in the rehabilitation delivery system.

Deaf Communications Systems and Telecommunications

The large population of auditorially impaired individuals requires careful matching of available technology with existing needs and the development of

new systems to promote and enhance communication capabilities with other people, both in person and through telecommunication networks. Problems with current technology include high cost and short useful life of equipment and high cost and excessive time required for repairs.

• Develop speech vocoders (devices designed to display speech sounds either visually or tactually) utilizing modern micro-processor technology and determine methods of improving cutaneous and/or visual displays.

• Develop devices for flexible use of existing teletypewriters (TTYs), including those of home computers.

• Investigate the possibility of creating time-sharing networks to reduce costs of long-distance communication for deaf persons.

Intergenerational Self-Sufficiency Services

It is estimated that there are more than 20 million preschool aged children in the United States, approximately one-half of whom have both parents in the work force. An almost identical number of Americans aged 65 or older are residents of nursing homes and many of these persons are only slightly disabled. A model program could be developed to selectively place preschool children (handicapped or not) who are in day care centers and elderly (slightly disabled) nursing home residents in conjoint settings to simultaneously provide adult care for the children and improve the emotional health of the elderly handicapped persons.

• Idenify the most sutiable care environment for the conduct of such a program and develop criteria and standards.

• Identify the types of handicapping conditions and other factors most suited to participation of children and elderly in these programs and identify criteria to be used in determining the best match of preschoolers and elderly persons.

Special Populations

It is apparent that minority populations such as Blacks and Hispanics have unique handicapping problems. There appears to be a differential distribution of handicapping conditions among various minority populations, although documentation is inadequate. Further, it is clear that vocational rehabilitation services are underutilized for reasons that are not documented and there are no known systems to improve service delivery.

• Document the unique handicapping problems and rehabilitation needs of one or more minority populations.

• Determine causes of underutilization of vocational rehabilitation services.

• Design and demonstrate model service delivery programs to meet the needs of one or more of these populations.

• Provide for a grant award to at least one historically black college or university to investigate variables significant to disabilities in black persons and establish and evaluate a model service delivery program for this population.

Knowledge Dissemination and Utilization

NIHR proposes that research in the following two areas be accomplished through Knowledge Dissemination and Utilization Projects.

International Information Exchange

There is a need to assess research information and exemplary programs in other countries against identified needs in the United States as well as to transmit rehabilitation knowledge to other countries in need.

• Conduct surveys of practices and programs, develop a compendium describing such programs, practices, and devices available in other countries, and disseminate findings within the United States.

• Develop demonstrations including training and other activities designed to improve knowledge exchange between the United States and other countries.

• Provide opportunitys for the international exchange of researchers and others in order to improve communications about developments in rehabilitation knowledge and increase the skill level of rehabilitation personnel.

Utilization of Research Results

There is a need to promote the widespread adoption of new, tested and validated practices and exemplary programs resulting from rehabilitation research and training which will improve and generally enhance the service delivery system for disabled individuals. Projects should include one or more of the following functions:

• Develop regionally based programs to provide technical assistance, and access to research information, exemplary programs and training opportunities provided by NIHR, its grantees, or other governmental entities.

• Establish and maintain a screening activity to select those innovations in the field with the greatest potential for improving practice and develop materials to disseminate validated results of research, training, and exemplary programs.

(Catalog of Federal Domestic Assistance No. 84.133—National Institute of Handicapped Research)

Dated: May 14, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-13510 Filed 5-18-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact Fuel Materials Facility, Savannah River Plant, Aiken, South Carolina

AGENCY: Department of Energy.

ACTION: Notice of availability of environmental assessment and proposed finding of no significant impact for the construction and operation of the Naval Reactor Fuel Materials Facility.

SUMMARY: The Department of Energy has prepared an environmental assessment for the proposed construction and operation of the Naval Reactor Fuel Materials Facility at the Department's Savannah River Plant near Aiken, South Carolina (copies of the assessment are available upon request). Based upon the analysis in the environment assessement, a proposed Finding of No Significant Impact has been prepared and is presented below. The Finding is being made available for public review and comment for 30 days before the Department makes its final determination whether to prepare an environmental impact statement.

DATE: Comments must be postmarked no later than June 18, 1982.

ADDRESS: Address comments to, and obtain copies of the environmental assessment from: Roger P. Whitfield, Director, Fuel Materials Facility Project Office, Department of Energy, P.O. Box A, Aiken, South Carolina 29801.

Proposed Finding of No Significant Impact

The proposed action involves the construction and operation of the Naval Reactor Fuel Materials Facility at the Department of Energy's Savannah River Plant (SRP) near Aiken, South Carolina. The facility will convert enriched uranium into a form suitable for use in the fabrication of reactor cores for propulsion of the ships of the Naval Nuclear Fleet. The Fuel Materials Facility will argument the production of

fuel material, currently limited to an existing commerical supplier, as a contingency against unforseen events.

There are no known sigificant environmental impacts associated with the proposed action. The Fuel Materials Facility will be located on a previously cleared 6-acre site in an existing SRP operating area. Minor construction impacts will be experienced, including minimal increases in particulate emissions and noise levels at the SRP boundary. The peak construction work force demand for 580 employees will primarily be met by the local labor force. Immigration of an estimated 180 construction employees should have a minor effect on land use, housing and social services. No impacts are expected on historic or archeologocial sites or ecological resources.

The routine operation of the proposed Fuel Materials Facility will result in atmospheric and liquid radiological releases that will be substantially below naturally occurring (background) levels. Similary, even the most serious accident (tornado) would result in a maximum individual dose (at the SRP boundary 6 miles away) of 1.9 millirem, which is 2 percent of naturally occurring levels and 0.4 percent of the Department's standard for radiation protection (DOE Order 5480.1).

Nonradiological releases will not signficantly affect the environment. Atmospheric emissions will result in maximum offsite concentrations that are substantially below background levels and will have a negligible effect on air quality. The liquid effluents will result in increased concentrations of pollutants in onsite streams; however, levels will be well below drinking water standards (40 CFR Part 140 and Part 143) and changes in offsite concentations in the Savannah River will be undetectable.

The alternatives to the proposed action considered were: no action, commerical production, alternative processes and alternative DOE sites. The no-action alternative is considered unacceptable because of project need. Commerical production of fuel materials was eliminated as a viable alternative due to requirements by commercial firms for Government funding and assumption of finanical risks. Alternative processes were precluded from consideration since only one process is technically qualified for producing fuel materials. A siting study identified an alternate site at Oak Ridge, Tennessee, which was assessed; no sigificant difference between it and the SRP were found.

Dated: May 13, 1982.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 82-13606 Filed 5-18-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF82-133-000]

Alternative Energy Decisions, Inc.; Greenville; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Greenville, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Greenville, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13605 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-134-000]

Alternative Energy Decisions, Inc.; Pittston Farm; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Pittston Farm, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Pittston Farm, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13604 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CF82-122-000]

Alternative Energy Decisions, Inc.; Stratton; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Stratton, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Stratton, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13585 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3757-001]

City of Bountiful, Utah; Application for License (5 MW or Less)

May 12, 1982.

Take notice that City of Bountiful, Utah (Applicant) filed on February 22, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Lost Creek Hydro Project No. 3757. The project would be located on Lost Creek, Weber River, in Morgan County, Utah. Correspondence with the Applicant should be directed to: W. Berry Hutchings, Manager, City of Bountiful Light and Power, 196 South 200 West, Bountiful, Utah 84010.

Project Description—The proposed project would utilize the existing Bureau of Reclamation's Lost Creek Dam and Reservoir, operated and maintained by the Weber Basin Water Conservancy District, and would consist of: (1) A new 36-inch steel penstock utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse containing a turbine-generator unit having a total rated capacity of 1,000 kW; (3) a tailrace; (4) a new 46-kV transmission line, 1,200 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4,092,000 kWh. Project energy would be utilized by the City of Bountiful through transmission agreements with Utah Power and Light Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Western Hydro Electric Incorporated's application for Project No. 5243 filed on August 18, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [*See:* 18 C.F.R. § 4.30 et. seq. *or* § 4.101 et. seq. (1981), as appropriate.]

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the reqirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13587 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2952-001]

City of Idaho Falls, Idaho; Intent To Prepare Environmental Impact Statement and Notice of Scoping Meeting and Public Session

May 12, 1982.

The City of Idaho Falls, Idaho filed on September 11, 1981, an application for license for the Gem State Project, FERC No. 2952–001. The project would be located on the Snake River, 5.5 miles southwest of the City of Idaho Falls in the Counties of Bingham and Bonneville, Idaho.

Public notice of the filing of the application was issued by the Commission on January 26, 1982. The application has been mailed out for agency review and comment. The Commission's staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement in accordance with the

National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

Interested persons and agencies are invited to participate in a scoping meeting to discuss the environmental impact expected from the proposed Gem State Project. The scoping meeting will be convened by the Commission's staff at 2:00 p.m., Wednesday, June 9, 1982 at the Council Chambers, 140 South Capitol Street, Electric Division Building, Idaho Falls, Idaho 83402. Interested persons are encouraged to attend the scoping session commencing at 2:00 so that they will have the opportunity to hear the comments of participating governmental agencies in addition to expressing their own views. For those persons unable to attend the scoping meeting during business hours, an additional session will be convened at the same location at 7:30 p.m. and interested persons will have an opportunity to express their views regarding significant environmental issues. The submission of prepared written statements is encouraged. Both sessions will be recorded by a stenographer.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13508 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5160-001]

Edwards Energy Systems, Inc.; Application for License (5MW or Less)

May 12, 1982.

Take notice that Edwards Energy Systems, Inc. (Applicant) filed on November 2, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as Inglis Lock & Dam Hydropower Project No. 5160. The project would be located on the Withlacoochee River in Levy County, Florida. Correspondence with the Applicant should be directed to: Dean N. Edwards, President, 2902 Heather Trail, Clearwater, Florida 33519.

Project Description—The proposed project would utilize the U.S. Army Corps of Engineers' Inglis Dam. The reservoir, owned by the State of Florida, has a surface area of 6.5 square miles, a storage capacity of 41,184 acre-feet, and an approximate surface elevation of 27.5 feet m.s.l. Project No. 5160 would consist of: (1) An enclosed reinforced concrete penstock crossing under the road between the spillway and the powerhouse; (2) a proposed powerhouse located downstream of the spillway structure on the north bank of the river, with an estimated installed capacity of 2.8 MW; (3) existing transmission lines; and (4) appurtenant facilities. The project would be operated on a run-of-the-river basis.

Purpose of Project—All project energy produced will be sold to the Florida Power Company to offset the consumption of oil by the power company's older generating stations. The average annual generation is expected to be 15,693 MWh.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 19, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in §4.33(c) or §4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to inervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13509 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6212-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 12, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on April 15, 1982, an application for preliminary permit [persuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6212 to be known as the Caddo Lake Project located on Caddo Lake, Cypress Bayou in Caddo Parish, Louisiana and Harrison and Marion Counties, Texas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: President, Energenics Systems, Inc., 1717 K Street, Suite 706, Washington, D.C. 20006.

Project Description—The project would consist of: (1) An existing 620-foot long, 47-foot high earth dam; (2) a 920-foot long, 37-foot high concrete spillway section; (3) an 860-foot long, 35-foot high concrete spillway section; (4) a reservoir with a maximum usable storage capacity of 129,000 acre-feet at elevation 168.5 feet M.S.L.; (5) a new powerhouse located at the south dam abutement containing turbine-generators with a total rated capacity of 5 MW; (6) a 75-foot long tailrace canal; (7) a 2 mile long 115-kV transmission line; and (8) appurtenant facilities. The dam and reservoir are jointly owned by the states of Texas and Louisiana. The project would produce up to 30,000,000 kWh annually. Energy produced would be sold to a local utility or industrial user.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under this preliminary permit would include engineering plans, an assessment of compatibility with local uses of water from the lake and U.S. Army Corps of Engineers navigational plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for exemption or license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 16, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 19, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13570 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5089-001]

Fall River Rural Electric Cooperative, Inc.; Application for License (Over 5 MW)

May 12, 1982.

Take notice that Fall River Rural Electric Cooperative, Inc. (Applicant) filed on February 22, 1982, and revised on April 19, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for reconstruction and continued operation of a water power project known as the Felt Project No. 5089. The project would be located on the Teton River in Teton County, Idaho. Correspondence with the Applicant should be directed to: Mr. Calvin Wickhan, Fall River Rural Electric Cooperative, Inc., 714 Main Street, Ashton, Idaho 83420.

Project Description—The Applicant-owned and operated project presently consists of the following existing facilities: (1) A 12-foot high 135-foot long dam having a 90-foot long spillway section with crest elevation 5,530 feet m.s.l; (2) a reservoir having a surface area of 10 acres and a storage capacity of 40 acre-feet; (3) three intake structures along the reservoir right bank; (4) flowline no. 1 consisting of a 170-foot long tunnel and an inoperative 530-foot long 54-inch diameter wood-stave penstock; (5) flowline no. 2 consisting of a 215-foot long tunnel and a 395-foot long 59-inch diameter steel penstock; (6) flowline no. 3 consisting of a 180-foot long tunnel and a 405-foot long 59-inch diameter steel penstock; (7) a powerhouse containing: (a) Generating units 1, 2 and 3 having a total rated capacity of 650 kW and connected to flowline no. 1; (b) generating unit 4 having a rated capacity of 720 kW and connected to flowline no. 2; (c) generating unit 5 having a rated capacity of 500 kW and connected to flowline no. 3; (8) a short 2.4-kV transmission line; (9) a plant substation; (10) a 1,000-foot long 46-kV transmission line; (11) the Badger Substation; and (12) appurtenant facilities.

Applicant proposes to: (1) Construct a fish ladder; (2) provide a public parking area near the Badger Substation; (3) reconstruct the access road; (4) construct an 8-foot diameter 1,200-foot long steel penstock extending from the 59-inch penstocks to a new powerhouse; (5) construct a powerhouse containing two generating units having a total rated capacity of 6,025 kW at a net head of 123 feet and hydraulic capacity of 660 cfs; (6) construct a 4.16/46-kV plant substation; (7) excavate a 170-foot long tailrace; and (8) construct a 1,600-foot long 46-kV transmission line.

The redeveloped Felt Project would be operated as run-of-river. The new construction would affect lands of the United States under the jurisdiction of the Bureau of Reclamation. Applicant estimates that project redevelopment would cost $9,420,000.

Purpose of Project—Project energy would be sold to the Bonneville Power Administration. Applicant estimates that the average annual energy output would be 31,400 MWh.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 26, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice intent [See 18 CFR 4.33 (b) and (c) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13571 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6140-000]

Greene County Electric Company; Application for Preliminary Permit

May 12, 1982.

Take notice that Greene County Electric Company (Applicant) filed on March 29, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6140 to be known as the Normandy Dam Hydroelectric Project located on Duck River in Coffee and Bedford Counties, Tennessee. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Daniel E. Burgner, President, Greene County Electric Company, Route 1, Box 183 A, Greenville, Tennessee 37743.

Project Description—The proposed project would utilize the existing Tennessee Valley Authority (TVA) Normandy Dam and would consist of: (1) the existing 117,000 acre-feet reservoir; (2) a proposed powerhouse with generating units having an estimated installed capacity of 2,200 kW and producing an average annual energy output of 19 GWh; (3) a proposed 500-foot-long tunnel through the dam to convey water from the reservoir to the turbines; (4) a proposed ½-mile 161-kV transmission line to connect an existing line; and (5) appurtenant facilities. The proposed market for the power is TVA or Duck River Electric Membership Corporation (DREMC).

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant requested a 36-month permit to prepare a project report including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of these activities along with obtaining agreements with TVA or DREMC, consulting Federal, State, and local agencies, and preparing a license application is estimated by the Applicant at $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 8, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for licnese or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for licnese or exemption must be submitted to the Commission on or before July 19, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Pitition to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13572 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6176-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 12, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 6176 to be known as the Proctor Creek Project located on Proctor Creek, within Snoqualmie-Mt. Baker in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122-190th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structural placed in the streambed at elevation 1,600 feet; (2) a diversion pipeline 7,000 feet long; (3) a powerhouse at 640 feet containing a turbine generator with 2.3 MW capacity and 10.1 GWh annual energy production; and (4) a transmission line 1 mile long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project

feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 22, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981; and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 22, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate.

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 20, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to interevene must be received on or before July 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kennety F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13573 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-125-000]

Watson Biogas Systems—Corona; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Watson Biogas Systems, 22010 S. Wilmington Avenue, Suite 207, Carson, California 90745, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Corona, California. The primary energy source of the facility will be biomass in the form of biogas obtained from a sanitary landfill. The electric power production capacity of the facility will be 6 megawatts. Diesel oil will be used for ignition fuel and will make up approximately seven percent of the total fuel use. There is no other facility located within one mile of the facility owned by Watson Biogas Systems which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13574 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-124-000]

Watson Biogas Systems—Duarte; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Watson Biogas Systems, 22010 S. Wilmington Avenue, Suite 207, Carson, California 90745, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Duarte, California. The primary energy source of the facility will be biomass in the form of biogas obtained from a sanitary landfill. The electric power production capacity of the facility will be 2.3 megawatts. Diesel oil will be used for ignition fuel and will make up approximately seven percent of the total fuel use. There is no other facility located within one mile of the facility owned by Watson Biogas Systems which uses the same energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13575 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5860-000]

West Slope Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 12, 1982.

Take notice that on January 8, 1982, West Slope Power Company (Applicant) filed an application, under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5860) would be located on Big Creek, near Pine in Fresno County, California. Correspondence with the Applicant should be directed to: Mr. John S. Hansen, President, West Slope Power Company, 59880 Cascadel Drive North, North Fork, California 93643.

Project Description—The proposed project would consist of (1) a proposed low concrete weir, approximately 5 feet high; (2) a proposed reinforced concrete intake structure approximately 5 feet wide, 7.5 feet long, and 4 feet deep; (3) a proposed penstock of 24-inch diameter welded steel pipe, and approximately 10,500 feet long; (4) a proposed powerhouse containing one turbine generator with an installed capacity of 4.5 MW; (5) a proposed 60 kV transmission line; and (6) appurtenant facilities. The project is located on the Sierra National Forest. The proposed project would be operated on a run-of-river basis. The Applicant estimates that the average annual energy output would be 12.6 GWh. Power at the proposed project would be sold to the Pacific Gas & Electric Company (PG&E).

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of California Department of Fish & Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 1, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13576 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6091-000]

Western Hydro Electric, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 Mw Capacity

May 12, 1982.

Take notice that on March 15, 1982, Western Hydro Electric, Incorporated (Applicant) filed an application under section 408 of the Energy Security act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6091) would be located on Skate Creek, Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Donald J. White, Vice President, Western Hydro Electric, Incorporated, Commercial Security Bank Building, Suit 600, 50 S. Main Street, Salt Lake City, Utah 84144.

Project Description—The proposed project would consist of: (1) A 70-foot long, 6-foot high diversion structure; (2) a 10,600-foot long, 60-inch diameter diversion pipeline; (3) a 2,100-foot long, 60-inch diameter penstock; (4) a powerhouse with a total rated capacity of 2,700 kW; and (5) a 3,700-foot long transmission line from the powerhouse to an existing 69-kV transmission line. The Applicant estimates that the average annual energy production would be 13.0 GWh. The project is located on U.S. Federal lands owned by the Gifford Pinchot National Forest.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and

operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, the State of Washington Department of Fisheries and State of Washington Department of Game are requested, for the purposes set forth in section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 29, 1982 either the competing license application that proposes to develop at least 7.5 magawatts in that project, or notice of intent to file such a license application. Submission of a a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before June 28, 1982.

Filing and Service of Responsive Documents—Any filings must bar in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Brancy, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13577 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-713-003]

Arkansas Power & Light Co.; Order Dismissing Appeal and Granting Joint Request for Deferral of Action on Compliance Filing

Issued May 10, 1982.

On April 9, 1982, certain wholesale customers[1] of Arkansas Power & Light Company (AP & L) submitted an "application for rehearing" and request for stay of a letter order issued March 9, 1982, by the Acting Director of the Office of Electric Power Regulation. The letter order accepted for filing a January 22, 1982 submittal by AP & L reducing rates to these wholesale customers purportedly in accordance with an earlier settlement agreement between the parties dated August 8, 1980, and accepted for filing by Commission letter order dated October 21, 1980.

The Acting Director's March 9 letter order also directed AP & L to make refunds with interest to the wholesale customers within thirty days of all amounts previously collected in excess of the rate levels reflected in AP & L's January 22, 1982 submittal. AP & L also was directed to file with the Commission a refund compliance report within fifteen days after such refunds had been made.

The wholesale customers state that they "have learned that AP & L intends to accomplish a variety of previously unknown actions under the color of the March 9, 1982 qualified, letter order, possibly including the calculation of refunds in a prejudicial manner." No specific information has been provided by the wholesale customers that would further describe their concerns.

The wholesale customers ask for rehearing and request that the Commission stay the effect of the Acting Director's March 9, 1982 letter order to allow the parties to confer and resolve their differences. On April 16, 1982, AP & L filed a response in opposition to the customers' pleading.[2] AP & L has already tendered refunds to its affected customers and the company submitted a refund compliance report to the Commission on April 20, 1982.

On April 27, 1982, AP & L and its cutomers filed a joint request that final action with respect to the April 20 compliance report be deferred for a period of three weeks. In support of this extension of time, AP & L and the intervenors state that a conference has been scheduled between the intervenors and AP & L to attempt to reach an amicable resolution of any problems presented by the disputed compliance filing, and that a deferred decision should obviate the need for critical comments with respect to the compliance report.

Discussion

While captioned as an "application for rehearing," the customers' April 9, 1982 pleading was filed with the Commission and should have been filed as an appeal of a staff action, under § 1.7(d) of the Commission's regulations, 18 CFR 1.7(d). In any event, it is untimely since it was filed more than thirty days after the issuance of the Acting Director's letter order. Moreover, based on the extremely limited information provided by the wholesale customers, we would have no basis at this time for reconsidering the conclusions expressed in the Acting

[1] Benton Municipal Light and Waterworks, Hope Water & Light Commission, Farmers Electric Cooperative Corp., and the Cities of North Little Rock, Osceola, and Prescott, Arkansas.

[2] While responses to an application for rehearing may not be submitted under § 1.34(d) of the Commission's regulations, as noted below, the customers' pleading is, in fact, an appeal under § 1.7 of the regulations. Moreover, insofar as the customers moved for a stay of the Acting Director's letter order, AP & L's response is permitted.

Director's letter order. As noted, AP & L has already filed a compliance refund report with the Commission. In the event that the customer's concerns materialize and the compliance filing is inconsistent with the prior settlement agreement, the customers may file a pleading with the Commission describing the disputed matters. Accordingly, we shall at this time deny the relief sought by the customers in their April 9 pleading.

However, upon consideration of the joint request of AP & L and its wholesale customers filed on April 27, 1982, we shall defer action of AP & L's compliance filing in order to give the parties an opportunity to resolve their differences. We fully expect the parties to make every effort to do so and to promptly report the results of their discussions. The administrative burdens on the Commission and the parties will be reduced if a controversy concerning AP & L's filing can be avoided.

The Commission orders:

(A) The appeal of the Acting Director's March 9, 1982 letter order submitted by the wholesale customers on April 9, 1982, is dismissed as untimely.

(B) The wholesale customer's request for a stay of the March 9, 1982 letter order is denied without prejudice.

(C) The joint request for deferral of action filed on April 27, 1982, by Arkansas Power & Light Company and its customers is hereby granted.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13801 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-302-000]

Cities Service Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 27, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82-302-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of up to 100,000 Mcf of natural gas per day on an interruptible basis to Williams Gas Supply Company (Williams) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a contract dated March 12, 1982, between Applicant and Williams, assignee of Faustina Pipe Line Company, Applicant proposes to sell up to 100,000 Mcf of natural gas per day to Williams for a term of five years. It is asserted that Applicant would sell up to 100,000 Mcf per day of its excess quantities of gas and Williams would take or pay for a minimum annual quantity of 70,000 Mcf times the number of days in the contract year that 100,000 Mcf are made available for purchase. It is stated that the price is at a rate level equal to Applicant's Rate Schedule I-2. It is further asserted that the sale of gas herein would be subordinate only to Applicant's established market area requirements including storage injection requirements.

It is submitted that in order to effect delivery to Williams, Applicant would deliver gas to Natural Gas Pipeline Company of America (Natural) for William's account at existing points of interconnection in Ford and Barton Counties, Kansas, or other mutually agreed upon delivery points. It is further stated that Natural would transport the gas for Williams for delivery at a point of interconnection between Stingray Pipeline Company and Louisiana Resources Company in Cameron Parish, Louisiana. It is explained that no new facilities are necessary to make the sale.

Applicant indicates that it currently has substantial gas volumes surplus to the needs of its own customers which surplus would continue throughout the term of the proposed sale and that such sale would substantially reduce the anticipated claims for take-or-pay payments which would be made pursuant to Applicant's gas supply contracts during the five-year term of the proposed sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13802 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP70-258-005]

Cities Service Gas Co.; Notice of Petition To Amend

May 12, 1982.

Take notice that on April 22, 1982, Cities Service Gas Company (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP70-258-005 a petition to amend further the order issued July 22, 1970,[1] in Docket No. CP70-258 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the construction and operation of facilities for an additional delivery point for the exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 22, 1970, in the instant docket, Petitioner states that it was authorized to exchange up to 150,000 Mcf of natural gas per day with Kansas-Nebraska Natural Gas Company, Inc. (K-N), pursuant to an exchange agreement dated March 27, 1970. The order has been amended from time to time to authorize additional delivery points.

Petitioner asserts that by amendment dated February 18, 1982, the exchange agreement was further amended so as to provide for an additional delivery point from Petitioner to K-N, the Copeland II delivery point. It is stated that this

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

delivey point would be located on K–N's rural irrigation system in Gray County, Kansas.

It is submitted that K–N has requested this additional delivery point to provide service to new irrigation customers in the area. It is stated that the estimated cost of constructing the facilities is $40,350 which would be reimbursed by K–N.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13603 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–303–000]

Cities Service Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 28, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–303–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to make a direct sale of natural gas to the Board of Public Utilities of Springfield, Missouri (City Utilities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to tap its Springfield 16-inch pipeline in Greene County, Missouri, and construct and operate measuring, regulating and appurtenant facilities and to make direct sale of natural gas to City Utilities for operation by City Utilities of two 50 MW combustion turbine electric generating units. It is submitted that City Utilities has purchased two United Technologies FT4C–1 (DF) Twin Pac plants to be installed at City Utilities' Southwest Power Station for use as peaking units. It is asserted that Applicant's current supply is adequate to meet the needs of this customer on an interruptible basis.

Applicant estimates the cost of the proposed facilities to be $94,450 which would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13604 Filed 5–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–301–000]

Cities Service Gas Co.; Application

May 11, 1982.

Take notice that on April 26, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–301–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of pubic convenience and necessity authorizing the construction and operation of facilities necessary for the sale of natural gas to Peoples Natural Gas Company, a Division of InterNorth, Inc. (Peoples) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a tap on its Murray Gill 20-inch pipeline in Sedgwick County, Kansas, including measuring, regulating and appurtenant facilities to make a proposed sale to Peoples for resale to Vulcan Materials Company (Vulcan) at its plant located near Wichita, Kansas. Applicant asserts that it and Peoples entered into a contract dated January 18, 1982, whereby Applicant would sell and deliver up to 15,000 Mcf of gas per day on an interruptible basis to Peoples for Vulcan. It is stated that the sale to Peoples would initially be made at a commodity rate equal to Applicant's Rate Schedule I–2 rate with a minimum monthly bill of $2,000.

It is asserted that Vulcan proposes to increase the plant's chlor-alkali production by an amount equivalent to roughly 30 megawatts of additional power demand. Vulcan, it is submitted, proposes to generate the additional power with a gas turbine powered generator.

Applicant estimates the cost of the proposed facilities to be $57,600 which would be financed from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intevene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13591 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3431-001]

City of East Providence, Rhode Island; Surrender of Preliminary Permit

May 12, 1982.

Take notice that the City of East Providence, Rhode Island, Permittee for the proposed Hunts Mills Project No. 3431, requested by letter dated April 15, 1982, that its preliminary permit be surrendered. The preliminary permit was issued on February 24, 1981, and would have expired on August 1, 1982. The project would have been located at the James V. Turner Reservoir Dam on the Ten Mile River in the City of East Providence, Providence County, Rhode Island.

The surrender of the permit is in the public interest. Therefore, the surrender of the preliminary permit for Project No. 3431 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13590 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-146-002 and ER82-146-003]

Commonwealth Edison Co.; Order Denying Application for Rehearing in Part and Granting Application in Part

Issued: May 10, 1982.

On February 17, 1982, and March 1, 1982, applications for rehearing were filed by the Cities of Batavia, Naperville, Geneva, St. Charles, and Rochelle, Illinois (Cities), and by the Village of Winnetka, Illinois, challenging aspects of the Commission's order entered February 5, 1982, in this docket. That order, *inter alia*, accepted for filing an increase in wholesale rates submitted by Commonwealth Edison Company (Commonwealth), suspended its effectiveness for one day, and ordered a hearing concerning the rates. The Cities seek rehearing of the Commission's denial of their request to reject the filing or, in the alternative, to suspend it for the maximum period. On March 16, 1982, the Cities requested that their petition for rehearing be handled on an expedited basis.

Winnetka also seeks rehearing as to the suspension period and urges the Commission to summarily reject the proposed demand ratchet contained in Commonwealth's partial requirements tariff. To the extent that the use of a ratchet is permitted, Winnetka contends that it should be applied on a prospective basis only.

By order issued on March 16, 1982, the Commission granted rehearing of its suspension order for the limited purpose of further consideration; at the same time, we granted the petition of members of the Illinois delegation to Congress to intervene in support of the Cities' application for rehearing. In their petition, the Congressional intervenors stated that a one day suspension does not give the Cities sufficient time to reflect an increase in their wholesale rates at the retail level, and that the Commission erred in not holding an evidentiary hearing concerning the period for which Commonwealth's rate increase should be suspended.

On March 16, 1982, Commonwealth filed an answer to Winnetka's motion for summary disposition concerning the demand ratchet. While disputing Winnetka's claim that the proposed ratchet constitutes "retroactive ratemaking" and results in a double recovery of capacity costs incurred in 1981, the company admits that it would overcollect its demand-related costs for 1982 under the original proposal; this overcollection occurs because Commonwealth used its projected 1982 summer peak demands to develop projected billing determinants, rather than using the 1981 demands to which the ratchet was intended to apply.[1] To alleviate the concerns expressed by Winnetka, Commonwealth proposed to delay implementation of the ratchet until October 1, 1982, on the condition that its proposed demand charge of $9.16/kW for the period February 9, 1982, to September 30, 1982, be redetermined to yield the same overall revenue level. This would result in a demand charge of $9.81/kw applicable to unratcheted billing demands.

On March 25, 1982, Winnetka responded to Commonwealth's proposal, again requesting that the Commission summarily reject the partial requirements tariff or a retroactive application of the demand ratchet. In addition, Winnetka restated its request that the rate increase be suspended for five months.

Discussion

In support of their application for rehearing, the Cities contend that: the Commission failed to state the reasons for imposing a one day suspension in its February 5, 1982 order; a five month suspension is appropriate in order to prevent or minimize the anticompetitive effects of the alleged price squeeze caused by Commonwealth's rate increase; a one day suspension fails to give the Cities sufficient time to reflect the increase in wholesale rates at the retail level; the inclusion of a 100% demand ratchet for the partial requirements customers results in retroactive application of its new rate design; the filing fails to comply with the Commission's regulations; and suspension of the filing for the maximum period more properly reflects the Congressional policies embodies in the Federal Power Act.

As noted, Winnetka also challenges the imposition of a one day suspension and argues that Commonwealth's proposed partial requirements tariff or demand ratchet should be rejected or, at least, that the ratchet should be limited to prospective application. In large part, Winnetka's rationale parallels that of the Cities. The Congressional intervenors state that a one day suspension does not give the Cities sufficient time to reflect an increase in their wholesale rates at the retail level, and that the Commission erred in not holding an evidentiary hearing concerning the period for which Commonwealth's rate increase should be suspended.

We appreciate and share the concern of the intervenors that the Cities and Winnetka not be burdened with excessive rates. However, we believe that the Congressional purpose in granting this Commission the authority to suspend rate filings was not to protect customers against rate increases but against unjustifiably increased rates. To achieve this purpose, the Commission

[1] Commonwealth's 1982 summer demand projections were based upon demands established in the summers of 1978-80. At least as to the City of Rochelle, the 1981 demands proved to be abnormally high. However, with respect to Winnetka, Commonwealth states that 1981 and projected 1982 demands are relatively consistent.

must balance the respective interests of utilities and ratepayers.[2]

We note that neither the Federal Power Act nor the Commission's regulations provide for a hearing on the length of time for which a utility's rates are suspended, if at all. This decision typically must be made within 60 days of a rate filing; the decision whether to accept or suspend a filing, and the length of any suspension imposed, is a matter within the exclusive discretion of this agency, as provided for by section 205(e) of the Federal Power Act. *Arrow Transportation Co.* v. *Southern Railway Co.*, 372 U.S. 658 (1963); *Delmarva Power & Light Co.* v. *FERC*, Docket No. 80–2102 (D.C. Cir., February 19, 1982); *Papago Tribal Utility Authority* v. *FERC*, 628 F.2d 235 (D.C. Cir.), *cert. denied*, 449 U.S. 1061 (1980). The suggestion that there be hearings concerning the length of any suspension period imposed is, therefore, fundamentally at odds with the present statutory scheme.

The Cities assert that a one day suspension fails to given them sufficient time to redesign their retail rates to reflect the increase in Commonwealth's wholesale rates. We do not believe that the purpose of the suspension period is to provide notice of rate changes. That purpose is achieved by section 205(d) of the Federal Power Act which provides that, unless waiver is granted, an increase in rates shall not become effective except upon 60 days notice. We note that the Cities do not allege that they failed to receive copies of Commonwealth's filing in a timely fashion as provided for in §§ 35.2 and 35.3 of the Commission's regulations. Nor have the Cities specified the nature of the difficulties they allegedly face. We shall therefore deny their request for reconsideration on this point.[3]

Since the decision in *Connecticut Light & Power Co.* v. *FERC*, 627 F.2d 467 (D.C. Cir. 1980), the Commission has articulated the reasons for the suspension period imposed in rate proceedings. Thus, we stated in our suspension order of February 5, 1982, in this docket that our review of Commonwealth's proposed rates may not produce substantially excessive revenues, and that, in those circumstances, a nominal suspension period and a refund obligation should provide adequate protection to Commonwealth's customers pending the outcome of a hearing. While we recently announced a reformulation of our suspension policy in *West Texas Utilities, supra*, the substantive effect of our policy remains unaltered. Accordingly the Cities' claim that we have failed to comply with the decision in *Connecticut Light & Power Co.* v. *FERC, supra*, is without merit.[4] Further review indicates, however, that, with respect to the company's application of its proposed demand ratchet in its partial requirements tariff, reconsideration is warranted. Accordingly, to the extent indicated below, we shall grant the Cities' and Winnetka's applications for rehearing.

With respect to the demand ratchet, the argument that Commonwealth has improperly engaged in "retroactive ratemaking" is misplaced. By including a demand ratchet based upon the four summer months of the preceeding twelve month period, Commonwealth is neither retroactively altering the rates previously charged to its customers nor presently charging rates other than those currently on file with the Commission.

As indicated, Commonwealth admits that application of its proposed demand charge to billing demands ratcheted to 1981 summer peaks results in an overcollection of its test year demand-related costs. The inconsistency between Commonwealth's projected partial requirements billing determinants and the actual billing determinants appears to contravene Commonwealth's proposed partial requirements contract as well as the Commission's regulations. The partial requirements contract provides that the billing demands will be determined by application of a ratchet to actual demand experienced during the prior summer; yet Commonwealth's filed cost of service develops projected billing determinants that rely, in part, on a ratchet applied to projected demands for the summer following the billing month. In addition, pursuant to § 35.13 of the Commission's regulations, utilities are required to submit with their cost of service a summary of the proposed revenue levels developed by application of the proposed charges to the projected billing determinants. Due to the inconsistency noted above, between projected and actual billing determinants, Commonwealth has substantially understated its proposed revenues.

The unusually high 1981 summer peak and the interaction of Commonwealth's proposed demand charge and ratchet results in an overcollection of test year demand-related costs which we cannot permit to occur. We believe that this overcollection should be remedied by using the summer peaks during the test year for purposes of determining actual ratcheted billing demand. This will, in effect, "normalize" the abnormally high 1981 summer peaks. Accordingly, Commonwealth will be directed to substitute its projected summer peaks for the 1981 summer peaks in determining actual billing demand and then to apply its originally proposed demand charge to the billing demands thus determined. This resolution of the problem arising as a result of aberrational 1981 demands, appears to be the solution most equitable to both Commonwealth and its customers.

While we find no basis upon which to summarily reject Commonwealth's proposed ratchet provision at this time, we emphasize that our decision is without prejudice to a final Commission determination concerning the inclusion of a demand ratchet in the partial requirements tariff following a hearing.

The Commission orders:

(A) The applications of the Cites and Winnetka for rehearing of the Commission's order of February 5, 1982, in this docket are, except as indicated below denied.

(B) For billing purposes Commonwealth is hereby ordered to apply its originally proposed demand charge to actual billing demand: when the proposed ratchet clause is applicable, billing demand is to be determined by substituting the projected 1982 test year summer peaks for actual 1981 summer peaks. This requirement shall apply as of the date on which the rates filed in this proceeding became effective subject to refund, and Commonwealth shall refund all additional amounts already collected under the demand ratchet as originally proposed to operate within thirty (30) days of the date of this order. Within (15) days after refunds have been made, Commonwealth shall file a refund compliance report.

(C) The Secretary shall promptly publish this order in the Federal Register.

[2] *See West Texas Utilities*, Docket No. ER82–22–000 (February 26, 1982), in which the Commission recently gave an expanded explanation of its suspension policy.

[3] The Cities and Winnetka also allege that Commonwealth officials expressed their belief that a five month suspension period would be imposed. Assuming *arguendo* that this assertion is correct, this fact does not affect our decision. We note, in this regard, that Commonwealth did not be itself or jointly with the Cities or Winnetka, request such a suspension.

[4] With respect to the Cities' contention that a five month suspension is warranted in light of their price squeeze claim, the Commission has consistently stated that, barring extraordinary circumstances, it would not consider unproved price squeeze allegations as a separate factor in the suspension analysis. *E.g., Virginia Electric & Power Company*, Docket Nos. ER81–120–000 and ER81–129–000 (February 25, 1981).

By the Commission.
Kenneth F. Plumb,
Secretary
[FR Doc. 82-13998 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-477-000]

Connecticut Light and Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 28, 1982, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated November 1, 1981 between (1) CL&P, The Hartford Electric Light Company (HELCOM) and Western Massachusetts Electric Company (WMECO) and (2) Holyoke Gas and Electric Department (HG&E).

CL&P states that the Transmission Agreement provides for a transmission service to HG&E for the wheeling of HG&E's entitlement in the Somerset Unit No. 6 generating facility during the period from November 1, 1981 to April 30, 1982.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northwest Utilities system determined in accordance with Schedule A and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts which HG&E is entitled to receive during such month. The monthly transmission charge is reduced by 50% to give due recognition for payments made by HG&E to other systems also providing transmission service to HG&E.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective on November 1, 1981.

CL&P states that copies of this filing have been mailed to HELCO, WMECO and HG&E.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before May 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.
[FR Doc. 82-13992 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-283-000]

East Tennessee Natural Gas Co.; Notice of Application

May 12, 1982.

Take notice that on April 14, 1982, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP82-283-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to three of its existing customers, The Jefferson-Cocke Utility District of Newport, Tennessee, (Jefferson-Cocke), United Cities Gas Company of Nashville, Tennessee, (United Cities) and Tennessee-Virginia Energy Corporation (Tennessee-Virginia), under combined purchase gas contracts and supplemental winter service contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant's three customers each purchases natural gas under two separate contracts. Applicant proposes to combine the contracts of each of these three customers into single gas sales contracts and to combine the supplemental winter service contracts into single supplemental winter service contracts. Applicant explains that each of these three customers has requested these changes to give additional operating flexibility to serve the high priority needs of its customers.

Applicant states that Jefferson-Cocke purchases natural gas for it Jefferson City service area under a gas sales contract dated January 1, 1970, wherein Applicant's maximum daily contract obligation is 1,984 Mcf. Applicant asserts that Jefferson-Cocke also purchases natural gas for its Newport service area under a separate contract dated November 1, 1969, wherein Applicant's maximum daily contract obligation is 4,040 Mcf. It is submitted that Jefferson-Cocke's supplemental winter service contract volume is currently 700 Mcf at its Jefferson City service area. Applicant avers that Jefferson-Cocke needs the flexibility of shifting volumes between these two service areas to recognize shifts in load patterns as would be permitted under single, consolidated contracts.

Applicant states that United Cities currently purchases natural gas for its Lynchburg, Maryville-Alcoa, Columbia, and Shelbyville service areas under a gas sales contract dated November 1, 1973, wherein Applicant's maximum daily contract obligation is 21,988 Mcf. It is submitted that the contract demands for each of these service areas are as follows:

	Contract demands (1,000 ft.³ per day)
Lynchburg	1,280
Maryville-Alcoa	7,400
Columbia	7,808
Shelbyville	5,300

Applicant avers that the supplemental winter service maximum daily contract volume is 7,000 Mcf for the above service areas.

Applicant asserts that United Cities also purchases natural gas for its Morristown and Bristol service areas under a separate contract dated December 1, 1972, wherein Applicant's maximum daily contract obligation is 5,500 Mcf per day at Bristol and 5,700 Mcf per day at Morristown. Applicant avers that United Cities' supplemental winter service maximum daily contract volume is 6,000 Mcf for these service areas. It is submitted that United Cities needs the flexibility of shifting volumes between its six service areas to best meet the high priority requirements of its customers.

Applicant states that Tennessee-Virginia was formed following the merger of Colonial Natural Gas Company (Colonial) with Volunteer Natural Gas Company (Volunteer). It is submitted that Applicant currently has in effect a gas sales contract with Volunteer dated August 1, 1970, wherein Applicant's maximum daily contract obligation is 18,285 Mcf. Applicant asserts that the contract demand for the service areas contained in this contract are as follows:

	Contract demands (1,000 ft.³ per day)
Elizabethton	2,894
Greeneville	4,668

	Contract demands (1,000 ft.³ per day)
Gray	200
Johnson City	5,700
Kingsport	4,600

Applicant explains that the supplemental winter service maximum daily contract volume is 3,000 Mcf for these service areas.

It is asserted that Tennessee-Virginia also purchases natural gas for the former Colonial service area in southwestern Virginia under a separate contract dated January 1, 1969, wherein Applicant's maximum daily contract obligation is 18,005 Mcf. Applicant avers that Tennessee-Virginia's supplemental winter service maximum daily contract volume is 4,000 Mcf for the Colonial service area. Applicant submits that Tennessee-Virginia has requested that the Volunteer contracts and the Colonial contracts be consolidated into new Tennessee-Virginia contracts.

Applicant states that Jefferson-Cocke, United Cities, and Tennessee-Virginia each have installed peak-shaving facilities in one or more of their service areas but not in every service area. Applicant submits that the proposed combination of the contracts would permit the entire, nonintegrated distribution system of each to use and benefit from existing peak-shaving facilities regardless of the location of such facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13600 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-18-000]

Houston Oil & Minerals Corp.; Notice of Application for Adjustment

May 12, 1982.

Take notice that on April 27, 1982, Houston Oil & Minerals Corporation (applicant), 1100 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) 15 U.S. 3301–3432, (Supp. IV 1980), and § 1.41 of the Commission's regulations. Applicant seeks an exception to § 273.204 of the Commission's regulations.

Specifically, applicant states that its Vermillion Block 50 No. B–1 well and its F–19 well received final determinations that they qualified pursuant to section 102 of the NGPA on September 2, 1979 and February 2, 1981, respectively. Applicant also states that after production ceased in the Vermillion Block 50 No. B–1 well and the F–19 well, those wells were recompleted, and the gas from the recompletion location in each well, like that from the completion location that had ceased producing, was sold to Texas Gas Transmission Corporation (Texas Gas) and United Texas Transmission Company, respectively, at the section 102 price. Applicant asserts that it filed an application with the jurisdictional agency for a determination for the recompletion in the Vermillion Block 50 No. B–1 well on June 24, 1981, and the F–19 well on April 13, 1981. Applicant further states that if the adjustment is not granted the gas from the recompletion in the Vermillion Block 50 No. B–1 well and the F–19 well would qualify pursuant to section 104 and 109, respectively, for the period beginning with initial deliveries until the dates the applications for section 102 determinations were filed with the jurisdictional agency for the wells. Applicant, in addition, alleges that it has repaid the pipeline purchasers the amounts paid above the applicable maximum lawful price, with interest, and now requests the Commission to adjust § 273.204 of the Commission's regulations to permit the applicant to collect the section 102 rate from the date of initial deliveries from the recompletion locations rather than the date the applications for determination were filed for the recompletion locations.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979, (44 FR 19861, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41(e). All petitions to intervene must be filed on or before June 3, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13607 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RO82-15-000]

Kitty Bell, d.b.a. Bell's Texaco; Terminating Proceedings

May 11, 1982.

On April 20, 1982, the petitioner, Bell's Texaco Service Garage, filed a request to withdraw its appeal in this proceeding because it has executed a consent order, settling all issues involved in the proceeding, with the Department of Energy. Accordingly, pursuant to 18 CFR 1.38(p) the request to withdraw is hereby granted.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13606 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-483-000]

Middle South Services, Inc.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, Middle South Services, Inc. (Services) tendered for filing a revised System Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light

Company, New Orlean Public Services Inc., and Services dated April 23, 1982. The Agreement supersedes in its entirety the Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc., and Services, dated April 16, 1973 as amended in Docket Nos. ER79–277, ER80–366 and ER81–405. This new Agreement is proposed to be effective August 1, 1982 and suspended five months to a revised effective date after suspension of January 1, 1983.

Services states that this new Agreement provides for certain power pooling transactions, including Reserve Equalization, Transmission Equalization, Energy Transactions, Unit Power Sales, as well as other interchange arrangements between the companies.

Services further states that the filing includes detailed workpapers demonstrating the changes incorporated in the new Agreement and also schedules of the effects of the changes on the various companies included in the Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13594 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-296-000]

Northern Border Pipeline Co.; Notice of Application

May 12, 1982.

Take notice that on April 22, 1982, Northern Border Pipeline Company (Applicant), P.O. Box 3330, Omaha, Nebraska 68103, filed in Docket No. CP82–296–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, but not the operation, of a right-of-way tap to the Fort Peck Indian Reservation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction of a tee, side valve and blind flange to accommodate the future delivery of natural gas to the Fort Peck Indian Reservation, Roosevelt County, Montana, a right-of-way grantor. It is asserted that in the course of construction across the Fort Peck Reservation the delivery outlet was installed. Applicant states that prior to the time of installation it was intended that a request would be made of the Office of the Federal Inspector for approval to install the facilities. Subsequently, Applicant states that it was advised that Commission approval was required. Applicant asserts that it is herein requesting authorization for the delivery outlet already installed on the Fort Peck Indian Reservation.

It is asserted that the actual cost of the proposed facilities is $42,200 which would be financed as a part of the overall financing plan for Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13595 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-484-000]

Northern States Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company (Minnesota) [NSP (Minn)] on April 30, 1981, tendered for filing proposed rate schedule changes to NSP (Minn)'s contracts with the following 25 wholesale customers:

	FERC rate schedule No.
City of Ada	380
City of Anoka	338
City of Arlington	378
City of Brownton	324
City of Buffalo	368
City of Chaska	323
City of East Grand Forks	367
City of Fairfax	400
City of Granite Falls	355
Home Light and Power Company	335
City of Kasota	318
City of Kasson	379
City of Kenyon	384
City of Lake City	361
City of Le Sueur	382
City of Madelia	387
City of Melrose	401
City of North Saint Paul	371
City of Olivia	369
City of Saint Peter	325
City of Sauk Centre	389
City of Shakopee	388
City of Sioux Falls	386
City of Waseca	360
City of Wilmop	364

The rate schedule changes were filed concurrently with a new Coordinating Agreement between Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) [NSP (Wisc)], and Lake Superior District Power Company (LSDP) which is a newly acquired NSP subsidiary. NSP (Minn) has requested that the tariff changes become effective on the same date as is ordered by the Commission in that Coordinating Agreement filing, proposed by the parties in that filing to be June 30, 1982.

The new Coordinating Agreement brings LSDP within the existing arrangements for single system planning, operation, and cost sharnig

among the affiliated companies in the NSP electric system. As a result of this affiliation, NSP system fuel costs will increase by $9,131,000 or 0.012¢ per kilowatt-hour, based upon 1982 budgeted costs. NSP (Minn) proposes to increase the base cost of fuel in the fuel clause provision of its wholesale rate schedules by 0.012¢ per kilowatt-hour, to insulate its existing wholesale customers from the higher fuel costs and prevent the double recovery of those costs which would otherwise result.

A copy of the filing has been mailed to each of NSP (Minn)'s customers affected by the proposed change, to the Minnesota Public Utilities Commission the South Dakota Public Utilities Commission, and the North Dakota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13586 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-486-000]

Northern States Power Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Northern States Power Company (Wisconsin) (NSP (Wis.)) on April 30, 1982, tendered for filing proposed rate schedule changes to NSP (Wis.)'s contracts with the following 11 existing and 1 prospective wholesale customers:

	FERC rate schedule No.
Bangor	56
Barron	(1)
Black River Falls	54
Bloomer	62
Cadott	61
Cornell	59
New Richmond	60
Rice Lake	58
Spooner	64
Trempealeau	52
Westby	55
Whitehall	51

[1] Customer not yet receiving service. No FERC Rate Schedule Number has yet been assigned.

The rate schedule changes were filed concurrently with a new Coordinating Agreement between Northern States Power Company (Minnesota) (NSP (Minn.)), Northern States Power Company (Wisconsin) (NSP (Wis.)), and Lake Superior District Power Company (LSDP) which is a newly acquired subsidiary of NSP (Minn.).

NSP (Wis.) requests an effective date of June 30, 1982, and therefore requests waiver of the Commission's notice requirements.

The new Coordinating Agreement brings LSDP within the existing arrangements for single system planning, operation and cost sharing among the affiliated companies in the NSP electric system. As a result of this affiliation, NSP system fuel costs will increase by $9,131,000 or 0.012¢ per kilowatt hour, based upon 1982 budgeted costs. NSP (Wis.) proposes to increase the base cost of fuel in the fuel clause provision of its wholesale rate schedules by 0.012¢ per kilowatt hour, to insulate its existing wholesale customers from the higher fuel costs and prevent the double recovery of those costs which would otherwise result.

A copy of the proposed rate schedule changes has been mailed to each of NSP (Wis.)'s customers affected by the proposed change, and the Wisconsin Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13585 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-485-000]

Northern States Power Company (Minnesota) et al.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, Northern States Power Company (Minnesota) (NSP (Minn.)) and Northern States Power Company (Wisconsin) (NSP (Wisc.)), and Lake Superior District Power Company (LSDP) jointly tendered for filing a Coordinating Agreement dated April 23, 1982. The Coordinating Agreement brings LSDP, a newly acquired subsidiary of NSP (Minn.), within the existing arrangements for single system planning, operating and cost sharing among the affiliated companies in the NSP electric system.

The Coordinating Agreement revises and supersedes a 1970 Coordinating Agreement between NSP (Minn.) and NSP (Wisc.) which now provides for coordination on the NSP electric system.[1] The new Coordinating Agreement preserves the substantive provisions of the previous agreement. The only changes are those needed to bring LSDP within the terms of the Agreement and to preserve consistency of usage in language throughout the Agreement.

Write-off charges under the Coordinating Agreement associated with the Commission-ordered write-off of the cancellation losses on the Tyrone nuclear plant in Docket No. ER79-616 will not be shared between LSDP and the two NSP companies.

The parties request an effective date of June 30, 1982, and therefore request waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8

[1] The 1970 Coordinating Agreement is designated FERC Rate Schedule No. 374 for NSP (Minn.) and FERC Rate Schedule No. 58 for NSP (Wisc.). It was executed on October 12, 1970 and was amended on August 22, 1979 and December 30, 1981.

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13587 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-478-000]

Ohio Power Company; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that Ohio Power Company (OPCo), on April 28, 1982, tendered for filing a power sales agreement executed with the City of Bryan, Ohio (Bryan) dated may 21, 1980. This agreement is intended to replace the existing service agreement between Bryan and the Toledo Edison Company (Toledo Edison), designated by the Commission as FERC Electric Tariff Original Vol. 1.

OPCo requests a proposed effective date for the tendered agreement of June 1, 1982 to match the requested effective date of the notice of cancellation by the Toledo Edison Company in Docket No. ER82-425-000. OPCo therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the City of Bryan, and the Toledo Edison Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13588 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-473-000]

Pacific Power & Light Co.; Filing

May 11, 1982.

The filing Company submits the following:

Take notice that on April 23, 1982, Pacific Power & Light Company (PP&L) tendered for filing Bonneville Power Administration's (Bonneville) determination of Average System Cost (ASC) for Pacific's Appendix 1 for the states of Idaho, Montana, Oregon and Washington, and Pacific's Reconciliation of filed Appendix 1 to Bonneville's Recommendations for each state.

The additional information filed by PP&L, as a result of Bonneville's determination, indicates an ASC for the states as detailed below:

State	Mills/kWh
Idaho	13.28
Montana	20.18
Oregon	24.40
Washington	20.43

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 25, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13589 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS82-52-000, et al.]

Petro-Energy Exploration Inc., et al.; Applications for "Small Producer" Certificates [1]

May 11, 1982.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 27, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS82-52-000	Apr. 6, 1982	Petro-Energy Exploration Inc., 500 American Standard Life, Center South, Enid, Oklahoma 73701.
CS82-53-000	Apr. 12, 1982	William J. Hancock, P.O. Box 1555, Billings, Montana 59103.
CS82-54-000	Apr. 16, 1982	Patterson Resources, Inc., 305 Baronne St., Suite 404, New Orleans, Louisiana 70112.
CS82-55-000	Apr. 21, 1982	Charles, Winchester & Co., 1861 First National Building, Detroit, Michigan 48226.
CS82-56-000	Apr. 23, 1982	Iris V. Selbach, Lorna R. Harvey, 1536 18 Road, P. O. Box 968, Fruita, Colorado 81521.
CS82-57-000	Apr. 28, 1982	Tortuga Oil & Mineral, 7745 San Felipe, Suite 200, Houston, Texas 77068.
CS82-58-000	Apr. 30, 1982	G. & N. Company and James H. French, Jr., Post Office Box 398, Smackover, Arkansas. 71762.
CS82-59-000	....do....	Old Dominion Oil Corportion, 660 Court Plaza Building, Oklahoma City, Oklahoma 73102.
CS82-61-000	May 3, 1982	L. B. Hodges, Post Office Box 469, Roswell, New Mexico 88201.
CS82-62-000	....do....	Empire Boeki K.K. Inc., Cutty Sark Scotch Whisky, (Japan) Ltd., 617th St., Suite 202, Denver, Colorado 80202.

[FR Doc. 82-13600 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP82-34-000]

Southern Union Gathering Co.; Notice of Application for Commission Determination

Issued: May 12, 1982.

On April 22, 1982, Southern Union Gathering Company (Southern Union—filed an application, pursuant to § 270.203(g) of the Federal Energy Regulatory Commission's (Commission) regulations implementing the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. IV 1980), for a determination by the Commission that certain sales made by Southern Union will not longer be treated as "first sales" under the NGPA, as defined in section 2(21)(A).

Southern Unions states: It is currently making first sales in Northwest New Mexico to two primary purchasers, El Paso Natural Gas Company (El Paso) and Gas Company of New Mexico (GCNM). Both of the sales are made pursuant to long-term contracts, and commenced in 1953, the year Southern Union began doing business. After producer-type sales were held, in 1954, to be jurisdictional under the Natural Gas Act (NGA), 15 U.S.C. 717–717w, as amended (Supp. IV 1980), Southern Union made its sales to El Paso under a permanent certificate issued by the Federal Power Commission. *See* 19 FPC 594 (1958). Southern Union's sales to GCNM have been and continue to be made pursuant to the laws of the State of New Mexico. The rate at which Southern Union sold gas to El Paso was regulated, during the period 1954–1978, under the NGA. After passage of the NGPA, however, the rates for Southern Union's sales to El Paso and GCNM became subject to the NGPA "first sale" regulations. Southern Union is seeking to establish a regulatory framework under which the rates for sales from its existing gathering system will be treated by this Commission as if the sales are made by an interstate pipeline and are subject to the just and reasonable standards of the NGA. In light of its past rate treatment, Southern Union is requesting that the exemption from first sale treatment be granted with respect to the sale to GCNM also, as well as with respect to other sales in the San Juan Basin Area.

Any person desiring to be heard or to make any protest with reference to said application should file, on or before June 4, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13609 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-286-000]

Texas Eastern Transmission; Application

May 12, 1982.

Take notice that on April 15, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in docket No. CP82-286-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange the natural gas produced in South Pass Block 89, offshore Louisiana, with Gulf Oil Corporation acting through Gulf Oil Exploration and Production Company, A Division thereof (Gulf), pursuant to a gas exchange agreement dated April 2, 1982. It is stated that Applicant has available quantities of gas from certain producers attributable to production from Platforms A and B, South Pass Block 89, offshore Louisiana. Applicant explains that it has filed an application in Docket No. CP82-1-000 to construct approximately 47 miles of 20-inch pipeline from Platform B, South Pass Block 89 to Applicant's 36-inch pipeline near Gulf's Venice Plant in Plaquemines Parish, Louisiana, to attach the above quantities of gas from South Pass Block 89. Applicant assets that prior to completion of its proposed South Pass Block 89 pipeline, the producers would be transporting crude petroleum and associated casinghead gas and that such gas would be separated and delivered to Gulf for the account of Applicant at or near the producer's receiving station. Applicant avers that this gas would be available for delivery to Gulf on July 1, 1982.

Applicant proposes to cause to be delivered by the producers to Gulf for the account of Applicant daily gas quantities of up to 15,000 dekatherms (dt) equivalent per day and such additional quantities as are mutually agreeable at Applicant's point of exchange located at a mutually acceptable existing point between the producers and Gulf at or near the producers' West Delta Receiving Station in Plaquemines Parish, Louisiana. It is

submitted that Gulf would deliver to Applicant at Gulf's primary point of exchange quantities equivalent to those quantities delivered by Applicant to Gulf at Applicant's point of exchange.

Applicant states that if Gulf is unable, wholly or in part, to deliver the equivalent quantity of gas to Applicant at Gulf's primary point of exchange Gulf would deliver the balance to Applicant at a secondary point of exchange. Gulf's primary point of exchange would be those existing locations on Applicant's offshore Cameron system at which Applicant currently receives gas for the account of Gulf, it is averred. Applicant explains that this gas is attributable to Eugene Island Block 313, West Cameron Blocks 198, 332, 406, 409 and 479 and Vermilion Block 260. Applicant states that Gulf's secondary point of exchange would be the existing interconnection between Gulf's facilities at Gulf's Venice processing plant and Applicant's 36-inch Line No. 40 located near the City of Venice, Plaquemines Parish, Louisiana. Applicant asserts that pursuant to the agreement quantities of gas received by each party would be exchanged on an equivalent heating value basis and would be adjusted for plant fuel use and the heating value of liquefiables extracted at Gulf's Venice processing plant. It is submitted that neither party would charge for the exchange.

Applicant asserts that the exchange arrangement proposed herein would enable Applicant to obtain on an interim basis quanitites of casinghead gas which it has purchased in South Pass Block 89. Applicant states that the exchange would commence upon the date of initial delivery and would terminate either one year from such date or on the date on which Applicant's South Pass Block 89 pipeline is placed into service. Applicant expects that the South Pass Block 89 pipeline would be placed into service in October 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10 and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13610 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-322-002]

Texas Gas Transmission Corp.; Petition To Amend

May 12, 1982.

Take notice that on April 22, 1982, Texas Gas Transmission Corporation (Petitioner), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP81-322-002 a petition to amend the order issued August 12, 1981, in Docket No. CP81-322 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Natural Gas Pipline Company of America (Natural) for an additional 363-day term, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued August 12, 1981, Petitioner received authorization to transport up to 50,000 Mcf of natural gas per day for Natural to Dow Intrastate Gas Company for ultimate delivery to Dow Chemical Company (Dow) for a term of 363 days. It is asserted that Natural agreed to sell on a best-efforts basis up to a total of 15,000,000 Mcf of gas to Dow over the period.

Petitioner proposes herein to transport gas for Natural for an additional 363-day term. Petitioner further proposes to transport on an interruptible basis a daily volume of gas not to exceed a total of 30,000,000 Mcf during this additional term. It is submitted that Natural and Dow on March 30, 1982, executed an amendment to their gas sales agreement providing for the sale of an additional 30,000,000 Mcf of natural gas over a 363-day period following the expiration of the initial term of the sales agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13611 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-129-000]

Alternative Energy Decisions, Inc.—Ashland; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Ashland, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying

status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13084 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-128-000]

Alternative Energy Decisions, Inc.—Carrabassett Valley; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Carrabassett Valley, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13082 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-127-000]

Alternative Energy Decisions, Inc.—Chester; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Chester, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13083 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-130-000]

Alternative Energy Decisions, Inc.—Columbia; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Columbia, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13085 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-131-000]

Alternative Energy Decisions, Inc.—Harrington; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Harrington, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 20,000 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13087 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-126-000]

Alternative Energy Decisions, Inc.—Houlton; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 12, 1982.

On April 29, 1982, Alternative Energy Decisions, Inc., 84 Harlow Street, Bangor, Maine 04401, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in Houlton, Maine. The primary energy source of the facility will be biomass. The electric power production capacity of the facility will be 16,700 kilowatts. Fuel oil number 2 will be used for start up purposes and will make up less than or equal to one percent of total fuel consumption. There is no other small power production facility located within one mile of the proposed facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 18, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13086 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6236-000]

Dale L. R. Lucas; Application for Preliminary Permit

May 13, 1982.

Take notice that Dale L. R. Lucas (Applicant) filed on April 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6236 to be known as the Nelder Creek Power Project located on Nelder Creek, within Sierra National Forest in Madera County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to Mr. Dale L. R. Lucas, 30600 Orange Grove Avenue, Madera, California 93637.

Project Description—The proposed project would consist of: (1) A 5-foot high natural rock and concrete diversion structure at elevation 3,800 feet; (2) a diversion conduit 4,707 feet long; (3) a penstock 1,640 feet long; (4) a powerhouse at 3,040 feet containing an impulse turbine powerplant with 748 kW capacity and 6.5 GWh annual energy production; and (5) a transmission line 7,200 feet long. Power output would be purchased by the Pacific Gas and Electric Company.

Purposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and evironmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such and application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent of file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980).

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION","COMPETING APPLICATION" "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13071 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6238-000]

Dale L. R. Lucas; Application for Preliminary Permit

May 13, 1982.

Take notice that Dale L. R. Lucas (Applicant) filed on April 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6238 to be known as the Lewis Fork Creek Power Project located on Lewis Fork Creek, within Sierra National Forest in Madera County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Dale L. R. Lucas, 36600 Orange Grove Avenue, Madera, California 93637.

Project Description—The proposed project would consist of: (1) A 5-foot high natural rock and concrete diversion structure at elevation 3,960 feet; (2) a diversion conduit 3,362 feet long; (3) a penstock 1,660 feet long; (4) a powerhouse at 3,360 feet containing an impulse turbine powerplant with 1,480 kW capacity and 13 GWh annual energy production; and (5) a transmission line 1,900 feet long. Power output would be purchase by the Pacific Gas and Electric Company.

Purpose Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and and to support application for a license to construct and operate the project. The estimated cost of permit activities is $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file in acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13072 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5940-000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 13, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on February 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5940 to be known as the Green River Lock and Dam No. 1 Hydroelectric Project located on Green River near Spottsville, in Henderson County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Green River Lock and Dam No. 1 and would consist of: (1) A proposed powerhouse with generating units having an estimated installed capacity of 3,000 kW and producing an average annual energy output of 13.1 GWh; (2) a proposed 5-mile long transmission line to connect to an existing Henderson Union

Cooperative line; and, (3) appurtenant facilities. The proposed market for the power is Henderson Union Cooperative, Tennessee Valley Authority, or Henderson Municipal Power and Light.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $35,000.00.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 2, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13995 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5957-000]

The Farmers Irrigation District; Application for Exemption of Small Conduit Hydroelectric Facility

May 13, 1982.

Take notice that on February 9, 1982, The Farmers Irrigation District (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Reed Road Pump/Generator Plant Project (FERC Project No. 5957) would be located on Ditch Creek, Hood River County, Oregon. Correspondence with the Applicant should be directed to: Mr. Henderson, Manager, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031.

Purpose of Project—Project energy would be sold to Pacific Power and Light Company.

Project Description—The proposed project would consist of: (1) A 16-inch diameter, 2,300-foot long existing conduit; (2) a turbine-generating unit with a rated capacity of 160 kW; (3) a 50-foot long transmission line connecting into an existing Pacific Power and Light Company's line; and (4) appurtenant facilities. Applicant estimates a 750,000 kWh average annual energy production.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Oregon State Department of Fish and Wildlife are requested, for the purposes set forth in Section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulation to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13060 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6178-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 13, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6178 to be known as the Anderson Creek Project located on Anderson Creek, within Snoqualmie-Mt. Baker in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 198th N.E., Redmond, Washington, 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake struture placed in the streambed at elevation 1,600 feet; (2) a diversion pipeline 6,000 feet long; (3) a powerhouse at 640 feet containing a turbine generator with 1.41 MW capaicty and 6.17 GWh annual energy production; and (4) a transmission line 1 mile long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Purposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself, or a notice of intent to file such an application [see 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than Septebmer 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION","COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-136 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6209-000]

Springfield Utility Board; Application for Preliminary Permit

May 13, 1982.

Take notice that Springfield Utility Board (Applicant) filed on April 13, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6209 to be known as the Christy Creek in Lane County, Oregon in the Williamette National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Steve L. Loveland, Springfield Utility Board, P.O. Box 300, Springfield, Oregon 97477.

Project Description—The proposed project would consist of: (1) A reinforced concrete diversion dam approximately 8 feet high with negligible impoundment; (2) a penstock approximately 9,400 feet long; (3) a powerhouse containing a turbine generator with 4.0 MW capacity and 18.0 GWh annual energy output; (4) transmission lines; and (5) appurtenant facilities. Power would be sold to the Bonneville Power Administration or a local utility.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which time engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $80,000.

Competing Applications—This application was filed as a competing application to Grisdale Hill Company's application for Project No. 5685 filed on November 24, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an appplication for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or

exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13675 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5642-000]

Tuolumne County, California; Application for Preliminary Permit

May 13, 1982.

Take notice that Tuolumne County (Applicant) filed on November 12, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5642 to be known as the Clavey River Project located on the Clavey River in the Stanislaus National Forest in Tuolumne County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Mildred Filiberti, Chairperson, Board of Supervisors, County of Tuolumne, Tuolumne Administration Center, 2 South Green Street, Sonora, California 95370.

Project Description—The proposed project would consist of two developments. The Hunter Bend Development would consist of: (1) a 450-foot high earthfill dam; (2) a reservoir with a surface area of 200 acres and a storage capacity of 41,000 acre-feet at normal water surface elevation 2,250 feet; (3) a 900-foot-long, 66-inch-diameter, power tunnel; (4) a powerhouse containing two 6-MW generating units; and (5) a two–mile–long, 69kV transmission line.

The Butcher Knife Development would consist of: (1) A 450-foot-high, earthfill dam; (2) a reservoir with a surface area of 152 acres and a storage capacity of 29,000 acre-feet at normal water surface elevation 1,750 feet; (3) a 1,700-foot-long, 69-inch-diameter power tunnel; (4) a powerhouse containing two 5.6-MW generating units; and (5) a 2.5-mile-long, 69-kV transmission line. Applicant estimates that the project would have an average annual generation of 102,100 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. During the term of the permit Applicant would conduct engineering, economic, financial and environmental studies of the project. Applicant stated that no more than 4 core borings would be made at each dam site. Equipment would be airlifted into the site and all disturbed areas would be restored. Applicant estimates that the studies would cost $300,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 23, 1982, the competing application itself or a notice of intent to file such an application [see 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 23, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 21, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application" "Competing Application", "Protest", or "Petition to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13676 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3188-003]

Joseph M. Keating; Application for License (5 mW or Less)

May 13, 1982.

Take notice that Joseph M. Keating (Applicant) filed on April 2, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Pyramid Creek Project No. 3188. The project would be locate on Pyramid Creek, near Twin Bridges, in El Dorado County, California, and affect U.S. lands within El Dorado National Forest. Correspondence with the Applicant should be directed to: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: (1) Reconstruction of the existing 6.3-foot high diversion dam with 3-foot high flashboards; (2) two earth dikes; (3) an intake structure; (4) a 1,200-foot long, 42-inch diameter steel penstock; (5) a concrete powerhouse containing two generating units, one rated at 350 kW and one rated at 640 kW; and (6) a 1,200-foot long transmission line. The average annual energy generation is estimated to be 3.1 million kWh.

Purpose of Project—The energy generated by the project would be sold to the Pacific Gas and Electric Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Application—Anyone desiring to file a competing application must submit to the Commission, on or before July 23, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13070 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6090-000]

Rainsong Company; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 13, 1982.

Take notice that on March 15, 1982, Rainsong Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2706 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6090) would be located on Smith Creek, within Gifford Pinchot National Forest in Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) A 6-foot high prefabricated steel and concrete gravity diversion weir at elevation 2,640 feet; (2) a 36-inch pipeline and penstock with a total length of 14,000 feet; (3) a powerhouse at 1,100 feet containing a turbine generator with 5 MW capacity and 30.66 GWh annual energy production; and (4) a transmission line 2,000 feet long.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington State Department of Fisheries and Department of Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly indentified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 2, 1982 either the competing license application that proposed to develop at least 7.5 megawats in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of intent to file competing application", "Competing application", "Protest", or "Petition to intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13874 Filed 5-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5862-000]

West Slope Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

May 13, 1982.

Take notice that on January 8, 1982, West Slope Power Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended),* for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5862) would be located on Whisky Creek & Willow Creek, near North Fork in Madera County, California. Correspondence with the Applicant should be directed to: Mr. John S. Hansen, President, West Slope Power Company, 59880 Cascadel Drive North, North Fork, California 93643.

Project Description—The proposed project would consist of: (1) A proposed low concrete weir, approximately 5 feet high; (2) a proposed reinforced concrete intake structure approximately 5 feet wide, 7.5 feet long, and 4 feet deep; (3) a proposed penstock of 30-inch diameter welded steel pipe, and approximately 8,500 feet long; (4) a proposed powerhouse containing one turbine generator with an installed capacity of 4.0 MW; (5) a proposed 60 kV transmission line; and (6) appurtenant facilities. The project is located on the Sierra National Forest. The proposed project would be operated on a run-of-river basis. The Applicant estimates that the average annual energy output would be 15.1 GWh. Power at the proposed project would be sold to the Pacific Gas & Electric Company (PG&E).

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of California Department of Fish and Game are requested, for the pruposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applicqtions—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 2, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application" "Competing Application", "Protest", or "Petition to Intervene", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13607 Filed 5-18-82; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementations of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to members of the public $431,651.48 in consent order funds. The funds are maintained in escrow accounts that were established in settlement of enforcement proceedings brought by the Office of Enforcement [now the Office of Special Counsel] in the Matters of Triton Oil and Gas Corporation ($78,358.48), Perry Gas Processors, Inc. ($36,000), and Upham Gas and Oil Company ($315,293).

DATES AND ADDRESS: Applications for refund must be postmarked on or before August 17, 1982, and should be addressed to Triton Consent Order Refund Proceedings, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. All applications and comments should display conspicuously a reference to the appropriate case name and number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633–8377.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the final decision and order set out below. The final decision and order relates to consent orders entered into by the Office of Enforcement of the DOE's Economic Regulatory Administration and Triton Oil and Gas Corporation, *see* 44 FR 40548 (1979), Perry Gas Processors, Inc., *see* 44 FR 52863 (1979), and Upham Gas and Oil Company *see* 44 FR 61903 (1979). All three firms are gas plant operators that produced natural gas liquids (NGLs). Pursuant to the consent orders, these firms have agreed to make refunds totaling over $431,651 to settle alleged violations of the DOE price regulations which occurred for periods between 1973 and 1976.

The Office of Hearings and Appeals has previously issued proposed decisions and orders which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The proposed decision and order discussing the distribution of funds obtained through the consent order with Triton Oil and Gas Corporation was issued on May 22, 1981, 46 FR 28929 (1981). The proposed decision and order discussing the distribution of funds obtained through the consent orders with Perry Gas Processors, Inc. and Upham Gas and Oil Company was issued on August 18, 1981, 46 FR 42743 (1981).

The final decision and order reflects our analysis of comments received from interested parties. As we indicate in the final decision, applications for refund from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than ninety days from the date of publication of this notice. *See* 10 CFR 205.283. We will accept applications from all claimants that can affirmatively demonstrate that they have been directly injured by the violations alleged in the consent orders. A detailed discussion of what information a party must provide in order to assert a successful claim is set forth in the final decision and order appended to this notice.

The final decision reaches no determination with regard to the disposition of any funds in the second stage of the proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stage of the proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds. Commenting parties are requested to submit two copies of their comments. Comments should be filed within 30 days of publication of this notice, and should be addressed to the address set forth at the beginning of that notice.

All comments received in this proceeding will be available for public inspection in the public Docket Room of the Office of Hearings and Appeals, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 11, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 11, 1982.

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Triton Oil and Gas Corportation, Perry Gas Processors, Inc., and Upham Gas and Oil Company.

Dates of Filing: March 16, 1981, May 13, 1981, May 18, 1981.

Case Numbers: BEF–0038, BEF–0046, BEF–0051.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds to injured persons in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the OE filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with Triton Oil and Gas Corporation (Triton), Perry Gas Processors, Inc. (Perry), and Upham Gas and Oil Company (Upham). Under the terms of these consent orders, the three firms agreed to make refunds for their alleged violations of the DOE price regulations in sales of natural gas liquids (NGLs) (*1*) in the following amounts: $78,358.48 (Triton) (*2*), $36,000 (Perry) (*3*), $315,293 (Upham) (*4*). The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their distribution.

Background

Proposed decisions and orders which tentatively established special refund procedures to be used in adjudicating claims to the settlement funds involved in this proceeding have been previously issued, and comments have been received from interested parties concerning the proper disposition of the consent order funds. (*5*) In the proposed decisions we tentatively established a two-stage special refund procedure for the consent order funds. In the first stage, those firms which purchased NGLs during the relevant period from the firms involved and who believed they were eligible for a portion of the consent order funds could file Applications for Refund pursuant to 10 CFR 205.283. Downstream purchasers would also be permitted to file

Applications for Refund during the first stage of the refund process. Each application would be analyzed, and individual determinations on the merits of each would be rendered. All meritorious claims would then be paid. Finally, we suggested as the second stage of the refund process that first purchasers submit proposals which set forth appropriate mechanisms for returning moneys to the parties who likely paid increased prices as a result of the alleged overcharges. We alternatively proposed that if such plans proved infeasible, any portion of the settlement fund which, because of prohibitive administrative costs, might otherwise go undistributed be deposited in the Treasury of the United States. *See* 10 CFR 205.287(c).

The proposed decisions and orders were published in the **Federal Register**, and copies were sent to all interested parties. The comment periods specified in the **Federal Register** have passed. The cases of Triton, Perry and Upham (hereinafter "the three firms") have in common many factual and legal issues. All three firms are "gas plant operators" as that term is defined in 10 CFR 212.62. In all cases first purchasers have been identified. Furthermore, all of the proposed decisions issued for these firms contained identical first-stage refund procedures. Finally, many of the commenters who responded to our request for comments filed virtually the same comments in each case. Consequently, we believe that these three cases should be consolidated for a final determination concerning the first stage of the refund procedures.

The purpose of this decision will be to establish the mechanism by which firms that purchased NGLs from the three firms may file Applications for Refund. We shall first discuss the comments which we received concerning the first-stage refund procedures which we tentatively adopted in the proposed decisions and orders in these cases. Then we shall discuss in detail the Application for Refund procedures that we have decided to adopt. We shall not, however, discuss the second stage refund process in this decision since the first purchasers identified in this proceeding may file claims which, if meritorious, would thoroughly deplete the consent order funds. In that event no second stage would be necessary. (*6*) Moreover, our determination concerning the final disposition of any residual funds will necessarily depend on the size of the fund. *Office of Enforcement*, 8 DOE ¶ 82, 597 (1981) (hereinafter cited as *Vickers*). It is therefore unnecessary at this time for us to reach the issues raised by the commenters concerning the proposed disposition of funds remaining after all meritorious claims have been paid. (*7*)

Jurisdiction and Authority to Fashion Refund Procedures

We previously determined that the jurisdictional requirements of Subpart V have been satisfied with regard to Triton and assumed jurisdiction over distribution of the funds involved in this case in an Interlocutory Order issued on April 8, 1981. *See Office of Enforcement*, 8 DOE ¶ 82,516 (1981). With regard to Perry and Upham, we tentively determined that we should likewise exercise jurisdiction to distribute the funds in those cases in our August 18, 1981 Proposed Decision. *See* 46 FR 42743, 42746 (1981).

Two parties who submitted comments following the issuance of the proposed decisions and orders for these cases contend that the OHA should not have asserted juridiction. In particular, the commenters contend that: (i) It would be more appropriate to permit state governments to distribute the refunds under the states' inherent power to take possession of unclaimed funds belonging to their citizens; (ii) the OHA's authority extends only to fashioning refund procedures for entities that were direct purchasers from these firms. We shall discuss each of these contentions in turn.

The Controller of the State of California has commented that the state governments are better suited to adjudicate the disposition of the settlement funds than is the OHA. The Controller noted that under the American common law system, states have traditionally held the sovereign right to take possession of unclaimed funds belonging to their citizens. The Controller stated that the State of California has amply procedures and expertise to assure all claimants of due process in the adjudication of their claims. The Controller observed that in another Proposed Decision, the OHA tentatively determined that a portion of certain settlement funds should be distributed through the states. *See Office of Enforcement*, No. DFF-0002 (May 8, 1981) (proposed decision), 46 FR 16681 (1981) (hereinafter cited as *Alkek*). The Controller therefore suggests that it would be more efficient to turn over each state's share of the settlement funds to each state for redistribution in accordance with the national restitutionary goals and state procedures, rather than utilizing Subpart V in these cases.

As our proposal in *Alkek* indicates, we agree that states can be effective conduits for the distribution of settlement funds in appropriate cases. However, the three cases presently before us involve circumstances that are materially different from those present in *Alkek*. In *Alkek* most of the settlement funds were obtained from producers or resellers of crude oil whose alleged regulatory violations fell into three major categories. The first category concerned producers' sales of "old" price-controlled crude oil as "new" or "stripper well" oil subject to less stringent controls. The second type of violation involved producers who allegedly miscalculated the prices of "old" oil which they sold. The third type involved resellers or brokers of crude oil who miscertified "old" crude oil. We observed that due to the nature of these violations and the operation of the Crude Oil Entitlements Program, 10 CFR 211.67, it was likely that few firms would be able to demonstrate during the first stage that they had been injured. Consequently, we predicted that there would be a large fund remaining at the conclusion of the first stage of the refund process. In contrast, in the present cases we have received numerous notices of claims which, if meritorious, would completely exhaust the settlement funds.

In addition, the locale of the injured parties may be more readily ascertained in the present cases in *Alkek*. In *Alkek*, we determined that it was unlikely that the effects of crude oil violations could be localized due to the operation of the DOE regulatory program. In particular, we noted that the operation of the Entitlements Program would have spread the effects of the violations among all refiners even if they had not purchased crude oil from any of the crude oil producers involved. (*8*) Consequently, we proposed to disburse the remainder of the *Alkek* funds through a nation-wide mechanism. In the case of NGLs, tracing the effects of overcharges may be much less complex because they were not subject to the Entitlements Program. Furthermore, it may develop that in the course of adjudicating Applications for Refunds we may determine that a firm who purchased NGLs passed on the overcharges to customers in a discrete marketing area. *See, e.g., Vickers*. In that event we may conclude that distribution through the indicated states would be appropriate if the amount of money involved is substantial. (*9*) However, we do not know the amount, if any, of the funds that will be available for distribution after the first stage is completed. As we have stated above, the first purchasers identified in this proceeding may file claims which, if meritorious, would completely use up the settlement fund, and there would not be a second-stage distribution. We have therefore concluded that it would be inappropriate for us to relinquish responsibility over these funds to the states at this time.

Gulf Oil Corporation (Gulf) and the Transportation Group (*10*) contend that the OHA does not have authority to fashion refund procedures that would result in funds being disbursed to firms that were not direct purchasers from the three firms. Gulf apparently objects to both the proposed first and second stages of the refund procedures on the grounds that downstream purchasers and consumers may obtain refunds at either stage. Gulf argues that because only direct purchasers may maintain an action for overcharges under Section 210 of the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1976), only direct purchasers should be able to recover from DOE settlements. Furthermore, Gulf particularly objects to our proposals that first purchasers be obliged to demonstrate that they did not pass on the overcharges to their customers and, if a first purchaser cannot make such a showing, that downstream purchasers may qualify for refunds. Gulf maintains that such a requirement is beyond the OHA's authority. Gulf therefore contends that the entire consent order funds must be distributed among first purchasers only.

Inasmuch as the present determination only establishes procedures for the filing of Applications for Refunds, we will not address Gulf's objections to our proposals for the distribution of residual funds. In addition, we shall reserve our discussion of whether the OHA may require a showing of injury until later in this Decision. As for its objections to the first-stage procedures, Gulf consistently confuses a party's private right of action under Section 210 of the ESA with DOE enforcement actions on behalf of the general

public that are authorized by the ESA and the Emergency Petroleum Allocation Act (EPAA), 15 U.S.C. 751 *et seq.* (1973). The cases which Gulf cites concerning private remedies under Section 210 of the ESA are simply inapposite to the special refund procedures, which are based upon Section 209 of the ESA and "the broad purposes of the Congressional mandate in both the ESA and the EPAA." *Bonray Oil Co. v. DOE*, 472 F. Supp. 899, 904 (W.D. Okla. 1978), *aff'd on basis of district court opinion*, 601 F. 2d 1191 (Temp. Emer. Ct. App. 1979). (*11*) The Temporary Emergency Court of Appeals has expressly held that private actions authorized by Section 210 and governmental actions authorized by Section 209 serve different purposes and may be maintained separately at the same time. *Bulzan v. Atlantic Richfield Co.*, 620 F. 2d 278 (Temp. Emer. Ct. App. 1980); *see also S.O.S. Gasoline Enterprises v. DOE*, 3 Fed. Energy Guidelines ¶ 26,231 (D.D.C. July 8, 1981).

Gulf also contends that *United States v. Ringer*, 492 F. Supp. 350 (D. Colo. 1980), and certain opinions of the Comptroller General of the United States stand for the proposition that the DOE may not order restitution to indirect purchasers. In *Ringer* the court refused to enforce a price rollback provision in a Remedial Order because it was not evident that future purchasers, who would benefit from the rollback, were the same parties as previously overcharged customers. Similarly, the Comptroller General objected to certain proposals for distribution of settlement funds on the basis of his belief that there was not a sufficient nexus to the overcharged parties. (*12*) We believe that those opinions, which are not binding upon this office, are inconsistent with the DOE's broad restitutionary authority as outlined by the courts. The Temporary Emergency Court of Appeals has construed Section 209 of the ESA as conferring an extremely broad remedial authority on DOE and the courts. In *Sauder v. DOE*, 648 F. 2d 1341 (Temp. Emer. Ct. App. 1981), the court states that it did not "believe that Congress intended to limit the agency's and courts' power to restore overcharges" by enacting Section 209 of the ESA. The court further states that "[t]here is no indication * * * that [Section 209] * * * attempts to limit the power of the courts or the agency to restitution or to a particularly strict interpretation of restitution." *Id.* Thus, nothing in the governing statutes nor in judicial interpretation of those statutes prohibits the DOE from ordering restitution to indirect purchasers. Moreover, the refund procedures which we adopt today expressly require that an applicant must establish, *inter alia*, that it purchased NGLs produced by one of the three firms in order to qualify for a refund. We believe that the adoption of this criterion will alleviate the concerns of the *Ringer* court *and* the Comptroller General. Accordingly, we reject Gulf's contention and hold that first purchasers and downstream customers may file Applications for Refund.

Comments on the Proposed First Stage

In the proposed decisions which we issued for these cases, we tentatively concluded that as the first stage of the refund procedures we would accept Applications for Refunds from parties who had purchased NGLs produced by the three natural gas processors involved. In addition to satisfying the filing requirements of 10 CFR 205.283, the applicant would be required to demonstrate that it purchased during the relevant time period a specific quantity of products which were produced with or from the NGLs sold by the three firms. In addition, unless the applicant was an ultimate consumer, a party claiming that it was injured would also have to demonstrate that it absorbed any cost increase resulting from the alleged overcharges. We also stated that we would accept and evaluate on a case-by-case basis applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers. Finally we solicited comments from all interested parties concerning our proposals.

In response to our request, we received comments from numerous parties including first purchasers from the three firms, their downstream purchasers, state governments, an office within the DOE, and public interest groups. Commenting parties suggested various modifications of the proposed procedures and expressed several concerns which we shall discuss below. They commented that: (1) The Application for Refund proceedings must be held publicly so that no potential claimants are excluded from contesting their eligibility for a portion of the funds; (2) The proposed first stage is unfair because it would give first purchasers first priority in filing claims for the settlement funds. Those commenters also though that the Proposed Decisions did not establish an adequate level of proof of injury for claimants; and (3) Claimants who have themselves entered into DOE consent orders or are the subject of DOE enforcement proceedings for the relevant time periods should not be permitted to file Applications for Refunds.

With regard to the conduct of the first stage proceedings, the Controller of the State of California commented that the Application for Refund proceedings should be open to the public. He suggested that copies of all Applications for Refund should be made available at no cost to all potential claimants and that all claimants should be permitted to participate in the initial proceedings.

We believe that the Controller's concerns are adequately met by the existing procedural regulations. The Subpart V regulations require that any application for a refund in excess of $100 be filed in duplicate and a copy of the Application, with confidential information deleted, be made available in the OHA Public Docket Room. 10 CFR 205.283(a). It is the policy of the OHA Public Docket Room to make available to any requester a copy of any document filed with it. Copies are provided at no cost, if the requested document consists of 30 pages or less, or at a cost of 10 cents per page for each page in excess of 30 pages. In addition, the applicable regulations specify that in evaluating an Application the OHA may conduct an investigation of any statement made in an Application and may solicit and consider information from any source. 10 CFR 205.284(b). Therefore it is clear that any party may submit information and comments to aid us in our adjudication of specific claims.

Some of the commenters complained that the proposed decisions gave first purchasers first priority treatment of their claims to the prejudice of downstream purchaser claimants. In addition, those commenters objected to the proposed procedures because they believed the proposals would permit first purchasers to automatically recover refunds to the extent that their "banked" (unrecovered increased product) costs for the relevant period equalled or exceeded the amount claimed.

We believe that these commenters have taken an unnecessarily narrow view of the proceedings envisoned by the proposed decisions and the Subpart V regulations. As an initial matter, our proposed decisions clearly stated that Applications for Refunds would be accepted from *all* claimants, including representatives of groups of consumers. *See, e.g., Office of Enforcement*, Nos. BEF–0049, 0046, 0051, 0054, 0056 (August 18, 1981) (proposed decision), 46 FR 42744, 42747. In addition, the required showing of sufficient banks is only a threshold showing to be applied in making a determination as to whether a claimant actually suffered any injury. If a claimant meets this test, it will still be necessary for the firm to proffer some type of additional evidence, depending upon the size and nature of firm, to demonstrate that it indeed was injured by the alleged overcharges. To the extent that a first purchaser can establish that it did not pass on overcharges to its downstream customers, those customers were not injured and would have no claim. We therefore disagree with commenters who believe that first purchasers are being accorded an unwarranted priority status in these proceedings.

The Office of Special Counsel (OSC) of the DOE contends that claimants who have themselves entered into consent orders or who are currently the subject of enforcement proceedings should be precluded from filing Applications for Refunds. The OSC observed that since it has closed its investigation of firms with which it has entered into consent orders, there is no mechanism for ascertaining the truth of a firm's allegations concerning its banks of unrecovered product cost increases. Moreover, the OSC asserts that its agreement to a consent order does not indicate that it has retreated from its position that a firm violated the regulations. With respect to those firms against which enforcement actions challenging costs are pending, the OSC states that until these actions are resolved, correct banks cannot be determined.

Upon consideration of the documents filed in these proceedings, we have concluded that it would be inappropriate at this time to refuse to entertain Applications for Refund from any class of claimants. The purpose of the present determination is simply to "set forth the standards and procedures that will be used in evaluating individual Applications for Refunds." 10 CFR 205.282(d). A determination on the merits of a particular Application for Refund is a separate process which may include an investigation of statements made by the applicant, submission of information by other sources, and the convening of a conference or hearing.

10 CFR 205.284. While we agree that consent order funds should not be distributed to parties who, for example, have profited from a criminal scheme to circumvent the DOE regulations, we certainly are in no position to rule on a claimant's eligibility in advance of the filing of an Application for Refund. Moreover, we think it would be undesirable to delay distribution of these funds for the period of years that may elapse before pending enforcement actions have been completed.

Instead of adopting a blanket prohibition against certain claimants, we shall require that each person filing an Application for Refund specify whether there is or has been an enforcement proceeding covering its compliance with the DOE regulations. The applicant should also state whether the matter has been concluded and provide a copy of any final order issued in the case (*i.e.* remedial order, consent order, court order). Where appropriate, the relevant enforcement office may be informed of the application by the OHA. We shall then decide on a case-by-case basis whether the applicant was injured by the alleged overcharges in light of all the available information, including substantial evidence of violations.

The records in these proceedings do not contain sufficient case-specific information for us to set forth more than general considerations that we shall apply in the disposition of cases involving allegations of violations by claimants. We note that if there is an ongoing enforcement proceeding involving an applicant, any recovery from the consent order funds may be offset against its available banks and recovered if a remedial order is ultimately issued. Where a claimant has already negotiated a consent order, we believe that it will generally be contrary to the policy encouraging settlements to exclude a claimant on that basis. Finally, we wish to emphasize that these refund proceedings may not be used as a substitute for actions that might be brought under sections 209 or 210 of the ESA. The purpose of these proceedings is to provide an equitable mechanism for restitution of funds to parties who were injured by alleged overcharges, not to provide an alternative legal forum to adjudicate the regulatory compliance of claimants.

Application for Refund Procedures

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our Proposed Decisions we have concluded that: (i) The OHA has properly asserted jurisdiction over the distribution of the funds involved in these cases pursuant to 10 CFR Part 205, Subpart V; (ii) the OHA has authority to implement all of the procedures which were tentatively adopted in the Proposed Decisions for these cases; (iii) Applications for Refunds should now be accepted from parties who purchased NGLs from Triton, Perry, and Upham. We shall now discuss the specific requirements for Applications for Refunds the we have decided to adopt.

We have determined to accept Applications for Refund for a portion of the three firms' consent order funds file within 90 days after the publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify which case it pertains to, by firm name and case number. If the applicant is not a first purchaser from one of the three firms, it should indicate from whom the NGLs were purchased and indicate what basis the applicant has for its belief that the NGLs which it purchased originated from the natural gas processing plants named in the consent orders.

Any application for a refund in excess of $100 must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the maters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application. All applications should be sent to: Triton Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. All Applications for Refund received within the time limit specified will be processed pursuant to CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following section discusses the showing that should be made by refiners, resellers, retailers and end-users of the NGLs covered by the consent orders:

A. Each applicant should report its volume of purchases of NGLs by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges.

B. Each applicant should specify how it used the NGLs—as a petrochemical producer, refiner, reseller or ultimate user.

C. If the applicant is a refiner or reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the violation through January 27, 1981. It should furnish the OHA with quarterly bank calculations for the entire period.

D. The applicant must state whether it or any of its affiliates have any other Applications for Refunds which might affect its level of banks.

E. The applicant must submit evidence to establish that it did not pass on the overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover overcharges were infeasible.

F. The applicant should report whether it is or has been involved as a party in DOE or private, section 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of the remainder, if any, of the consent order funds after all meritorious claims have been paid. Those comments can be divided into two groups. First, some comments contend that the OHA lacks the statutory or regulatory authority to implement the proposed distribution. Secondly, some comments acknowledge that this Office possesses the authority to fashion such a restitutionary mechanism, but suggest alternatives to or modifications of our original proposal. In this Decision we are not implementing the second-stage refund procedure. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first-stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. Moreover, in the present cases claimants have asserted claims which, if meritorious, would completely exhaust the consent order funds. However, in order for members of the public to be made aware of outstanding issues and be able to comment on them, we summarized and briefly addressed the comments received concerning the proposed second-stage procedure in the *Vickers* decision. *See Vickers*, 8 DOE at 85,396–99. Many of the same parties who commented on the second-stage procedures proposed for the *Vickers* case submitted virtually identical comments in the present cases. We will not reiterate our discussion of these issues. We continue to seek additional comments on these issues.

It Is Therefore Ordered That:

The refund amounts provided by Triton Oil and Gas Corporation, Perry Gas Processors, Inc., and Upham Gas and Oil Company will be distributed in the manner set forth in the foregoing Decision.

Dated: May 11, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) As discussed in n.4 below, the Perry consent order also covered sales of plant condensate ("scrubber oil") from the firm's Ozona and Levelland gas plants. "Plant condensate" was included in the regulatory

definition of "crude oil" and was subject to the crude oil pricing regulations. *See* 10 CFR 212.31; 212.73. In the Notice of probable Violation (NOPV) issued to the firm, the OE alleged that Perry erroneously sold "old" crude oil as "new" crude oil in apparent violation of 10 CFR 212.73. This decision will focus on refund procedures for purchasers of NGLs, and throughout the decision we will refer to purchasers of NGLs from the three firms. Since violations involving crude oil of the type allegedly committed by Perry were necessarily affected by the Crude Oil Entitlements Program (see pages 4–5 and n.8), different considerations are involved in devising refund procedures than for purchasers of NGLs. With respect to purchasers of plant condensate, we will therefore follow our recent decisions in *Office of Enforcement (Alkek)*, 9 DOE ¶ 82,521 (1982) and *Adams Resources and Energy, Inc.*, 9 DOE ¶ ———, Nos. BEF–0055 *et al.* (April 8, 1982), 47 FR 16381 (April 16, 1982). We refer purchasers of plant condensate and their downstream customers to these decisions for a detailed discussion of eligible claimants and of the showing required to obtain a refund.

The Perry consent order funds will be prorated among purchasers of NGLs and plant condensate based on the violations alleged in the NOPV. Thus, $5,007 will be available for distribution to those claimants eligible for refunds as a result of alleged violations involving plant condensate (approximately 13% of the consent order funds) and the remaining $32,993 will be available for distribution to purchasers of NGLs and their downstream customers.

(*2*) In its audits of Triton's gas plants, the OE found possible violations with respect to Triton's first sales of NGLs during the period September 1, 1973 to July 31, 1976. Triton sold the NGLs to four companies: Teneco Oil Company, American Oil Company, Cities Service Oil Company, and Dorchester Gas Processing Company. On June 27, 1979, the DOE and Triton entered into a Consent Order under which Triton agreed to refund $78,358.48 to the DOE in settlement of all claims and disputes between the parties arising from the audits of Triton's gas plants. The parties also stipulated that the funds were to be distributed by the DOE pursuant to 10 CFR Part 205, Subpart V. The terms of the final consent order were published in the **Federal Register** on July 11, 1979. *See* 44 FR 40548 (1979). Interested parties were given an opportunity to comment on the terms of the Consent Order and to submit written notice of potential claims against the refund account. The DOE received no claims in response to that notice.

(*3*) In its audits of Perry's Antelope Ridge plant, OE found possible violations of DOE price regulations with respect to first sales of NGLs during the period September 1973 through August 1975. The OE also found possible violations of the DOE price regulations with respect to Perry's first sales of plant condensate from its Ozona and Levelland gas plants. The OE therefore alleged that Perry had overcharged the initial purchasers of products sold from these plants. The initial purchasers were identified as Shell Oil Company, Tesoro Crude Oil Company, and the Permian Corporation. In order to settle all claims and disputes between the parties regarding the firm's first sales of NGLs and plant condensate, Perry and the OE entered into a consent order on August 13, 1979. Notice of the Consent Order was published by the DOE in the **Federal Register** on September 11, 1979, and the DOE requested that persons believing they had a claim to all or a portion of the refund amount file written notification of such a claim with ERA within 30 days of publication. 44 FR 52863 (1979). A claim was filed by Tesoro Petroleum Corporation on behalf of Tesoro Crude Oil Company; Shell and Permian did not submit claims.

(*4*) The OE audit of Upham's Chico gas processing plant revealed possible overcharges with respect to first sales of NGLs during the period September 1973 through December 1975. In order to settle all claims and disputes between the parties regarding the firm's first sales of NGLs, Upham and the OE entered into a consent order in which the firm agreed to refund a total of $500,000 including interest. Of that amount, $184,707 has been refunded to the firm's customers by price reductions made prior to the initiation of Subpart V proceedings. Consequently, $315,293, which is deposited in an escrow account under the control of the DOE, is available for distribution through a Subpart V proceeding. Notice of the Consent Order was published in the **Federal Register** on October 29, 1979, 44 FR 61993 (1979), and interested persons were invited to submit written notification of potential claims. No claims were received. However, the OE has identified a number of first purchasers from Upham during this time period, including Pedigo Oil Company, Petroleum Industries, the Permian Corporation, T-LOK Corporation—Marketing Division, Odessa LPG Transport, LP Gas Marketing, and Culbertson Oil and Gas.

(*5*) We issued a proposed decision and order discussing the distribution of funds obtained through the consent order with Triton on May 22, 1981. *See* 46 FR 28929 (1981). The proposed decision and order which included our tentative determinations concerning the Perry and Upham consent order funds was issued on August 18, 1981. *See* 46 FR 42743 (1981).

(*6*) Since most of the first purchasers claim that they have adequate banks of unrecouped product costs to establish that they did not pass through the overcharge amounts, none of the identified first purchasers submitted plans for distribution of the remainder of the funds.

(*7*) We have already discussed many of these comments in *Vickers*.

(*8*) Briefly stated, the Entitlements Program was generally designed to equitably distribute among all domestic refiners the access to benefits of price controls on domestic crude oil. Most of the firms covered by the *Alkek* proposed decision had allegedly miscertified price-controlled crude oil as being exempt from price controls. When this information was included in the data base used by the DOE to formulate the monthly Entitlements Lists, it had the effect of causing the entitlements obligations of some firms to increase while other firms' obligations correspondingly decreased. *See Alkek*, 46 FR at 20682–83.

(*9*) Several of the States that submitted comments regarding the *Alkek* proposal observed that unless the amounts of funds to be distributed were quite considerable, their administrative expenses would be so prohibitive that they would decline to accept their pro rata share of the funds. *See, e.g.*, Comment filed by the State of Texas.

(*10*) The Transportation Group is an *ad hoc* organization of four trade associations whose members are regulated transportation companies.

(*11*) While Gulf has cited cases which it claims hold that only direct purchasers may sue under ESA section 210, *e.g., Stertz v. Gulf Oil Corp.*, 3 Fed. Energy Guidelines ¶ 26,280 (Temp. Emer. Ct. App. 1981), *Arnson v. General Motors Corp.*, 377 F. Supp. 209 (N.D. Ohio 1974), and *Go-Tane Service Stations v. Ashland Oil, Inc.*, No. 79–C 1675 (N.D. Ill. 1981), none of those cases state that the DOE's remedial authority is limited to refunding monies only to direct purchasers. Additionally, Gulf cited *Bow Valley Coal Resources, Inc. v. DOE*, Civ. Action No. C–80–0162W (D. Utah 1980). We are unable to understand the relevance of that citation because the only reported opinions in that case hold that (i) a certain first purchaser may maintain a section 210 action and (ii) the action was dismissed as to the DOE.

(*12*) In his October 10, 1980 letter, the Comptroller General discussed a proposal for distribution of funds obtained through a consent order with Getty Oil Company and specifically held that "in order for any distribution of the Getty funds to satisfy the statutory and regulatory requirements for restitution, it must be made in approximate proportion to the injury actually sustained to Getty customers and to *ultimate customers of Getty products* who were the victims of the overcharges." GAO letter at 7 (Emphasis added). In his April 1, 1981 letter, while espousing a view of our authority to institute the proposed second stage refund procedures which we find overly narrow, *see Vickers*, 8 DOE at 85,398, the Comptroller General again directed his criticism towards refunds "to persons or organizations with no necessary nexus to the alleged violations which gave rise to the consent orders." April 1, 1981 Letter at 8.

[FR Doc. 82–13636 Filed 5–18–82; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Central Valley Project; Proposed Rate for Minor New Service

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of a proposed power rate for a minor new service—Central Valley Project.

SUMMARY: On January 28, 1982, (47 FR 4139) the Western Area Power Administration (Western) allocated 30

MW of Central Valley Project (CVP) power (diversity allocations) to certain customers which will shed load upon request during CVP's peak periods. The purpose of the allocations was to provide a benefit in return for an agreement to shed load. This will maintain the CVP systems maximum simultaneous peak load within contractually prescribed limits and avoid a general withdrawal of power from other CVP customers. The additional power allocated will be available to such customers at any time except during CVP system peak periods. The amount of load required to be shed will be provided in the customer's contract.

The National Aeronautics and Space Administration (NASA)-Ames (Ames) and three Department of Energy laboratories were given diversity allocations on the condition that satisfactory contracts could be negotiated to provide the necessary load shedding. However, the benefits of the increased allocation are marginal compared to the cost of shedding load for Ames because it has a low load factor. Thus, to provide an incentive to encourage Ames to shed load upon request, Western is proposing a rate for a minor new service. That rate will reduce Ames' billing demand in return for the obligation to shed load. This rate schedule is printed in full below.

Recognizing that the CVP could have peaks reaching the maximum allowable simultaneous demand as early as May, and the CVP customers are in jeopardy of having their contract rates of delivery reduced, Western will not be able to complete the public notice and comment process prior to the required effective date of the rate. However, an opportunity for public comment will be provided but will occur after the effective date of the rate. Western will condition the contract under which the rate applies so that possible modification of the rate would occur should the rate be rejected or a substitute rate be approved by the Federal Energy Regulatory Commission.

DATES: The rate will be effective May 1, 1982, through April 30, 1983.

A consulation and comment period will begin with the publication of this notice in the Federal Register and will end not less than 45 days thereafter, or 15 days after the comment forum, whichever is later.

A comment forum will be held on June 17, 1982, at the Holiday Inn, Holidome, 5321 Date Avenue, Sacramento, California, beginning at 9:30 a.m. Western will accept oral or written comments on the proposed rate or any alternatives to the proposed rate.

Written comments may be submitted to the address below throughout the consultation and comment period.

ADDRESS: For further information contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, CA 95825, (916) 484–4251.

PROPOSED RATE SCHEDULE:

United States Department of Energy, Western Area Power Administration, Central Valley Project, California

Schedule of Rates for Wholesale Interruptible Power Service

Effective: May 1, 1982, through April 30, 1983.

Available: In the area served by the Central Valley Project.

Applicable: To NASA-Ames for interruptible power service provided by contract under which NASA-Ames agrees to shed load upon telephone notice from Western and provided NASA-Ames maintains an average annual load factor of less than 40 percent.

Character and Conditions of Services: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Demand charge: $2.00 per kilowatt of billing demand.

Energy charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing demand: The billing demand will be the customer's contribution to the Central Valley Project system maximum simultaneous demand for the month.

Energy obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum bill: None.

Billings for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligations, such overrun shall be billed at ten times the above rate.

Adjustments:

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, 5 percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased 2 percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

SUPPLEMENTARY INFORMATION: Power rates for the CVP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*) as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project and divisions thereof.

The Secretary of Energy delegated to the Assistant Secretary for Resource Applications, by Delegation Order No. 0204–33 (43 FR 60630, December 28, 1978), the authority to develop, acting by and through the Administrator of Western and to confirm, approve, and place into effect on an interim basis, power and transmission rates for Western. The delegation order also gave to the Federal Energy Regulatory Commission the authority to make a final decision either confirming and approving, disapproving or remanding such rates. On March 19, 1982, Delegation Order No. 0204–33 was amended by substituting the "Assistant Secretary for Conservation and Renewable Energy" for the "Assistant Secretary for Resource Applications" (46 FR 25426, May 7, 1981).

Procedures for public participation in rate adjustments for power marketed by Western are found at 10 CFR Part 903 (hereinafter referred to as the "Procedures").

Under Section 903.2 of the procedures, a minor rate adjustment means a rate adjustment which ". . . (3) is a rate for a minor new service." A minor new service is a new service which ". . . (3) will not be provided for more than one year." The Contract for the service to which the rate applies will be in effect for the period of May 1982 through April of 1983. Whether Western will want to continue providing and Ames will want to continue taking the service after the 1-year period will depend upon the new CVP power sales rate which is expected to become effective in May 1983, Ames ability and willingness to continue shedding load upon demand, and the costs and benefits resulting to both Ames and Western. If the service to which this rate will apply continues beyond April 30, 1983, the rate for that service will be established in the general

rate adjustment which is anticipated to become effective during early 1983. Since this is a minor rate adjustment under the procedures, a minimum 30-day consultation and comment period is required. Neither public information nor public comment forums are mandatory and, therefore, a public information forum will not be provided. However, Western will hold one public comment forum on June 17, 1982. At the public comment forum interested persons will be allowed to make oral comments on the record or submit written comments for the record. All proceedings at the public comment forum will be recorded. Pursuant to Section 903.21 of the Procedures, "Following completion of the consultation and comment period and review of any oral and written comments on the Proposed Rates . . . the Administrator shall develop rates which, in the Assistant Secretary's judgment, should be confirmed, approved, and placed in effect on an interim basis . . . The Assistant Secretary shall set the effective date for the rates he or she has confirmed and approved on an interim basis (Provisional Rates). The effective date shall be at least 30 days after the Assistant Secretary's decision, except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, to provide a rate for a new service, or to make a minor new service, or to make a minor rate adjustment." Here the exception applies and the effective dates will be May 1, 1982, through April 30, 1983.

The purpose of the proposed rate schedule is to encourage Ames to reduce its demand during periods of high CVP system peaks, maintain the CVP's system simultaneous demand within contract limits and reduce the possibility of withdrawals from CVP customers.

Under this rate schedule, the rate is the wholesale rate currently applicable to firm sales. However, the billing demand to which the rate applies is based upon the contribution to CVP's peak during the month, i.e., the demand at the time of the CVP system's monthly peak(s). Thus, the revenue received by the CVP for capacity sold under this rate schedule will be reduced.

The rate will be applicable to Ames which has a diversity allocation and an average annual load factor of less than 40 percent. This rate schedule is applicable to Ames because it does not receive a proportionate savings in its cost of energy as a result of its diversity allocation when coupled with a commitment to shed load upon request. The cost of load shedding for Ames equals or exceeds the benefits of the diversity allocation.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the CVP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate of CVP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA) and Department of Energy (DOE) regulations published in the **Federal Register** on March 26, 1980 (45 FR 20694–20701), Western will conduct an environmental evaluation of proposed rate adjustments.

Section D of the above guidelines states that for rate adjustments for power marketing administrations, the level of documentation under NEPA depends on the magnitude of the rate as it relates to the rate of inflation since the last rate adjustment. If, as in the case of this proposed rate, it does not exceed the rate of inflation since the last rate adjustment, no further NEPA documentation is required. In such cases, a memorandum is prepared explaining the basis for that determination and an administrative determination is made that no further documentation under NEPA is required.

Determination under Executive Order 12291

DOE has determined that this is not a major rule because it does not meet the criteria of Section 1(b) of Executive Order 12291, 46 CFR 13193 (February 19, 1981). Western has an exemption from Sections 3, 4, and 7 of Executive Order 12291.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, California, 95825, (916) 484–4251.

Issued at Golden, Colo., May 14, 1982.

Robert L. McPhail,

Administrator.

[FR Doc. 82-13818 Filed 5-18-82; 10:44 am]
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ENVIRONMENTAL PROTECTION AGENCY

[OPP 00156; PH-FRL 2124-3]

Pesticides on Commercial Non-Food/Non-Feed Nursery and Greenhouse Crops Not Named on Product Labels; Minor Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: EPA is considering whether to develop a determination, under sec. 2(ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the use of pesticides on commercial non-food/non-feed nursery and greenhouse specialty crops not explicitly named on product lables would be found consistent with the purposes of FIFRA. Although specific terms and conditions remain to be decided, several options are currently under consideration to accommodate these minor use pesticide needs.

DATE: Submit comments and pertinent information by July 19, 1982.

ADDRESS: Comments should be submitted to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–401, 401 M Street, SW.

FOR FURTHER INFORMATION CONTACT: Karen Flagstad, Policy and Special Projects Office (TS–766C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Room 1109, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7102).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. General Background

The amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), effected by the Federal Pesticide Act (FPA) of 1978 (Pub. L. 95–396), included revisions to sec. 2 and sec. 3(c)(2) intended to alleviate some of the problems associated with registration of pesticides for minor uses.

In general, a "minor use" is defined as a pesticide use for which there is insufficient economic incentive, on the part of pesticide product manufacturers, to justify timely development of the market for that particular use, and to register the use in accordance with the provisions of FIFRA. According to specialty crop growers represented by the National Forest Products Association (NFPA), the American Association of Nurserymen (AAN), and the Society of American Florists (SAF), economic disincentives have consistently dissuaded pesticide product manufacturers from obtaining timely registrations to meet the minor use pesticide needs of commercial growers of non-food/non-feed nursery and greenhouse crops. According to these associations, this has been the case even though pesticides already registered for uses on food crops would be effective on nursey and greenhouse sites, since these pesticides are now used to control many of the same pests which also infest non-food/non-feed nursery and greenhouse plants.

The economic disincentives in question are two-fold: (1) The extremely low market potential for each of the diverse uses for which pesticides are needed to control pests on nursery and greenhouse sites; and (2) the possibility of liability problems in the event that expensive nursery or greenhouse specialty crops are damaged by a pesticide. At the same time, effective pest control is economically urgent for commercial non-food/non-feed specialty crop growers, especially since many nursery crops are subject to United States Department of Agriculture (USDA) quarantines as well as State quarantines and regulations prohibiting shipments of pest-infested plants.

For purposes of this Notice, the term "nurseries" refers to commercial outdoor production sites (including lath and slat houses, shadestructures, and cold and hotbed frames) where plants are grown for transplanting, for production of seed, for use as stocks for propagation, or for sale. The term "greenhouses" refers to commercial indoor production sites (including frame houses and sash houses) where plants are grown for the same purposes as in nurseries.

The registration of many pesticides needed to control pests on these commercial nursery and greenhouse sites is not to any significant extent impeded by EPA registration requirements. Under current policy, EPA requires little, if any, additional data to add minor non-food/non-feed uses to the label of a product which already has been registered on the basis of data adequate to show that its major uses do not pose the risk of unreasonable adverse effects on the environment. This is especially true if the pesticide has already been approved for use on food crops. Instead, the primary impediment to registration in many instances has been the time and cost of data not required by EPA, but routinely developed to show that the pesticide is effective and will not damage expensive specialty crops.

Because unintended damage to treated plants could create complicated liability problems, pesticide product manufacturers have generally not taken steps to add these minor use specialty crop uses to their labels unless extensive phytotoxicity and efficacy testing has been conducted, demonstrating that a product will be efficacious without damaging the plant it is intended to protect. The marketplace offers registrants little incentive to invest in this kind of testing. There are thousands of species of nursery crops (including forest products) and greenhouse plants, each of which could react differently to pesticide applications, and there is little market potential for any single use.

For these reasons, commercial growers represented by the NFPA, the AAN, and the SAF contend that it has not been possible to accommodate the minor use pesticide needs of commercial growers of non-food/non/feed nursery and greenhouse crops. Therefore, these growers have collectively appealed to EPA for assistance in this matter, within the context of the existing law.

B. Legal Background

Sec. 12(a)(2)(G) of FIFRA provides that it shall be unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." The 1978 amendments to FIFRA added a new sec. 2(ee) which states, among other things, that the term "to use any registered pesticide in a manner inconsistent with its labeling" shall not include certain defined use practices, such as using pesticides on unnamed pests so long as the correct site is observed, or employing a method of application not specifically prohibited by the label (sec. 2(ee)(2) and (3)). Sec. 2(ee) also authorizes the Administrator to declare other uses "not inconsistent" with the label if such uses are consistent with the purposes of the Act.

Sec. 2(ee) was intended in part to reduce the need for minor use registrations in instances when additional uses not specifically named on the label would not cause unreasonable adverse effects on the environment. In addition, the 1978 amendments to FIFRA included changes to sec. 3(c)(2) which were intended to alleviate minor use registration problems by providing guidance regarding appropriate registration requirements for minor uses. Specifically, the Congress clarified that EPA is to make minor use pesticide data requirements "commensurate with anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide." In tailoring registration requirements for minor uses, EPA has been further instructed to "consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data."

Congress also envisioned sec. 24(c), State registration to meet special local needs, as a way to help alleviate minor use problems. Under sec. 24(c), a State may expand the uses of an already federally registered product to meet local needs, except that food uses not covered by a tolerance may not be registered. If State registrations under sec. 24(c) could accommodate a significant number of the pest control needs of commercial growers of non-food/non-feed nursery and greenhouse crops, the registration problems of these specialty crop producers might be considerably alleviated. However, these producers report that since the States generally require efficacy and phytotoxicity data to support 24(c) registrations, the cost of those data, and the overwhelming number of species which require testing, make State registrations a burdensome avenue for protecting their crops. Additionally, commercial producers of non-food/non-feed nursery and greenhouse crops point out that their pest control needs are often multi-State in scope, and as such are not properly "local" needs. Extensive and duplicative sec. 24(c) registrations might therefore be required.

Outside of FIFRA, Congress has also provided, in special programs, funds for developing data to aid the private sector. The funds pertaining to developing data to support minor use pesticide registrations are administered by the United States Department of Agriculture (USDA) through the Inter-Regional Project No. 4(IR-4), which has programs in concert with the land grant universities and extension services to develop data for both food and non-food use registrations. The IR-4 operates an Ornamental Program which has been

supporting increasing numbers of pesticide registrations for non-food/non-feed sites. Growers represented by the NFPA, the AAN, and the SAF report, however, that so many individual uses remain to be registered for their purposes that many years would be required for the IR–4 Program to meet their pest control needs.

In view of the registration problems persistently encountered by commercial growers of non-food/non-feed nursery and greenhouse crops, the Agency is considering a determination under FIFRA sec. 2(ee) which would address the minor use pesticide needs of these commercial specialty crop producers. Several specific options, described in II below, are under consideration as possible remedial courses of action. Comments concerning these options, as well as additional suggestions, are requested from all interested parties, so that the Agency can take these views into account before proposing the terms and conditions of a determination in this area.

II. Options Under Consideration

The Agency is soliciting comments on the following options as remedial courses of action to address the minor use pesticide registration problems of commercial producers of non-food/non-feed nursery and greenhouse crops:

(1) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on any nursery plant may be used to control labeled pests on all non-food/non-feed crops grown in commercial nurseries, including slat and lath houses, shadestructures, and cold and hotbed frames (outdoor sites).

(2) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on any greenhouse plant may be used to control labeled pests on all non-food/non-feed crops grown in commercial greenhouses, including frame houses and sash houses (indoor sites).

(3) Determining that a registered pesticide labeled for non-restricted (general) use on one or more food crops may be used to control labeled pests on all non-food/non-feed crops grown in commercial nurseries, including slat and lath houses, shadestructures, and cold and hotbed frames (outdoor sites), provided that the methods of application specified on the label are explicitly followed.

(4) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on food crops may be used to control labeled pests on commercial non-food/non-feed nursery and greenhouse sites. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. It would, however, permit changes in method of application so long as methods of application prohibited by the labeling are not employed. Comments are requested on the need for specific restrictions to ensure that such unlabeled use would not represent a significant increase in potential exposure and risk to man or the environment.

(5) Offering registrants, without data or compensation obligations, a label addition which would permit food use pesticides to be used on non-food/non-feed commerical nursery or greenhouse crops provided that the methods of application specified on the label are explicitly followed. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. The Agency would allow the manufacturer to state on the label that all liability for any damage to crops treated under this label provision is the responsibility of the user. The Agency requests comment particularly regarding how many registrants would add this label statement. If enough registrants were willing to take this initiative, the problems of meeting the minor use pesticide needs of commercial non-food/non-feed commercial speciality crop growers would be considerably diminished by this option alone.

(6) Determining that a registered pesticide labeled for either restricted or non-restricted (general) use on food crops may be used on commercial non-food/non-feed nursery and greenhouse plants, provided that the use in question had been given a "third party certification" by trade associations or other interested parties such as extension service agents and university experts. Such third parties would be responsible for certifying that certain food use pesticides can effectively be used without crop damage on commercial non-food/non-feed nursery or greenhouse sites. This would not include greenhouse (indoor) uses of pesticides registered only for outdoor field uses. Methods of application not specified on the label would be permissible if endorsed by a responsible third party, so long as methods of application prohibited by the label are not employed.

The commercial non-food/non-feed specialty crops encompassed by the above options under consideration would include (1) ornamental and/or landscape plants and other nursery and greenhouse products such as bulbs, florists' greens, flowers and flower seeds and plants, and sod; (2) forest seed and seedling trees cultivated for purposes of reforestation; and (3) Christmas trees. According to figures provided by the NFPA, the AAN, and the SAF, commercial non-food/non-feed nursery and greenhouse crops comprise roughly the following site areas in the U.S.: forest nurseries (3,000 acres); forest seed orchards (13,600 acres); non-food/non-feed horticultural specialty crops (364,274 field acres; and 483,879,000 square feet, or 11,000 acres, under glass or other protection [extrapolated from the 1978 Census of Agriculture].

If adopted, Options 1 through 6 above would represent a determination that the additional uses in question do not pose the risk of unreasonable adverse effects to man or the environment, taking into account the economic, social, and environmental costs and benefits associated with these uses. This determination would also reflect considerations of economic factors including the low potential volume of use involved, the small extent of distribution anticipated, and the lack of incentives for potential registrants to take steps to obtain registrations for minor uses on commercial non-food/non-feed nursery and greenhouse sites. It would likewise reflect consideration of the level and degree of potential exposure to man and the environment. The Agency does not at this time have reason to believe that these additional minor uses of pesticides on unlabeled non-food/non-feed crops grown in commercial nurseries and greenhouses would represent any significant increase in potential exposure, given that very limited additional acreage would be involved, and the expanded uses allowed would not include indoor uses of pesticides registered only for outdoor field uses.

Issues of efficacy and phytotoxicity would not be affected by any of the options under consideration, and the Agency would not assume responsibility for determining the potential efficacy or phytotoxicity of pesticides used on unlabeled nursery or greenhouse crops. If proposed and implemented as a policy, a determination in this area would affect only the enforcement finding of what uses do or do not constitute pesticide misuse under FIFRA sec. 12(a)(2) (F) and (G). A user would not be able to avail himself of the provisions of such a policy if he chose to proceed under the unlabeled use practices allowed by FIFRA sec. 2(ee) (2) and (3). Nor would a determination in this area allow the use of pesticides classified for restricted use by any user who is not a certified applicator, or under the direct supervision of a certified applicator, for any uses not

covered by the certified applicator's certification. All comments and additional suggestions on the options under consideration will be welcome.

Dated: May 0, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 12000 Filed 5-18-82 8:45 am]

BILLING CODE 6560-20-M

[PP 1G2550/T366; PH FRL 2124-8]

Acephate; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide acephate and its metabolite, methamidophos, in or on the raw agricultural commodity avocados. This temporary tolerance was requested by Chevron Chemical Company.

DATE: This temporary tolerance expires March 30, 1983.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804, has requested, in pesticide petition PP 1G2550, the establishment of a temporary tolerance for the combined residues of the insecticide acephate *O,S*-dimethyl acetyl-phosphoramidothioate and its cholinesterase inhibiting metabolite, methamidophos, in or on the raw agricultural commodity avocados at 2.0 parts per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 239-EUP-99 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 30, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: May 5, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13132 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2570/T365; PH-FRL 2123-6]

Amitraz; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide/acaricide amitraz and its metabolites in or on the raw agricultural commodities fat, meat, and meat byproducts of cattle. These temporary tolerances were requested by BFC Chemicals, Inc.

DATE: These temporary tolerances expire March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: BFC Chemicals, Inc., P.O. Box 2867, Wilmington, DE 19805, has requested the establishment of temporary tolerances for the combined residues of the insecticide/acaricide amitraz, N'(2,4-dimethylphenyl)-N-[[(2,4-dimethylphenyl)imino]methyl]-N-methylmethanimidamide, and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound), in or on the raw agricultural commodities fat, meat, and meat byproducts of cattle at 0.5 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 45639-EUP-4 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BFC Chemicals, Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 17, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally

applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of pesticide Programs.

[FR Doc. 82-13000 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP OG2344/T366; PH-FRL 2124-2]

Amitraz; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide amitraz and its metabolite in or on the raw agricultural commodities citrus, milk, fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep.

DATE: These temporary tolerances expire March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA has extended temporary tolerances for the combined residues of the insecticide amitraz (N'-(2,4-dimethylphenyl)-N-[[2,4-dimethylphenyl) imino] methyl]-N-methyl-methanimidamide) and its metabolite containing the 2,4-dimethyl-aniline moiety (calculated as the parent compound) in or on the raw agricultural commodities citrus at 1.0 part per million (ppm); and in milk, fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm. These temporary tolerances had been established in response to pesticide petition PP OG2344, submitted by BFC Chemicals, Inc., P.O. Box 2867, Wilmington, DE 19805.

The company has requested a one-year extension of the temporary tolerances to permit the continued marketing of the remaining raw agricultural commodities named above when treated in accorance with the provisions of experimental use permit (43142–EUP–1), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. BFC Chemicals, Inc. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 17, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FDR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 26, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 13006 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-271; PH-FRL 2123-5]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to establishment, amendment, and/or withdrawal of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF–271]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to establishment, amendment, and/or withdrawal of tolerances for residues of certain pesticide chemicals in or on certain agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 1H5304. Zoecon Corp., PO Box 10975, Palo Alto, CA 94303. Proposes amending 21 CFR Part 193 by establishing a regulation permitting

residues of the insecticide *N*-[2-chloro-4-(trifluoromethyl)phenyl]-*DL*-valine (+)-cyano (3-phenoxyphenyl) methyl ester in the commodity cottonseed oil at 0.3 part per million (ppm). (PM 17, Franklin D. R. Gee, 703–557–2690).

FAP 1H5304. Zoecon Corp., PO Box 10975, Palo Alto, CA 94303. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide *N*-[2-chloro-4-(trifluoromethyl)phenyl]-*DL*-valine (+)-cyano (3-phenoxyphenyl) methyl ester in or on the commodity cottonseed hulls at 0.1 ppm. (PM 17, Franklin D.R. Gee, 703–557–2690).

FAP 2H5338. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 21 CFR Part 561 by establishing a regulation permitting residues of the insecticide *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine on poultry feeds at 5.0 ppm in connection with an experimental use program involving the application of the insecticide around poultry. (PM 17, Franklin D. R. Gee, 703–557–2690).

PP OF2399. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW, Washington, DC 20036. In the **Federal Register** of October 15, 1980 (45 FR 68461), EPA announced that Shell Oil Co. submitted pesticide petition (PP OF2399) proposing the establishment of tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities celery at 4.0 ppm; corn fodder and forage at 0.02; corn stover 1.0 ppm; fat and meat of cattle, goats, hogs, horses, and sheep at 0.2 ppm; and milk fat at 0.2 ppm.

Shell Oil Company has amended this petition by deleting the tolerances for celery; corn (stover); fat and meat of cattle, goats, hogs, horses, sheep; and milk fat, and increasing the tolerances for corn fodder and forage from 0.02 ppm to 1.0 ppm. The proposed analytical method for determing residues is gas chromatography. (PM 17, Franklin D.R. Gee, 703–557–2690).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of March 10, 1982 (47 FR 10290), EPA announced that FMC Corp. submitted a food additive petition (FAP 2H5337) proposing that a regulation be established permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl[(dibutylamino)thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methylcarbamate; 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate; (2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 3,7-benzofurandiol) and its dibutylamine metabolite in or on citrus oil at 14.5 ppm and molasses 12.5 ppm.

FMC Corp. has submitted an amendment to this petition proposing that the tolerances be increased from 14.5 ppm to 21.0 ppm in citrus oil and from 12.5 ppm in molasses. (PM 12, Jay S. Ellenberger, 703–557–2386).

FAP 2H5337. FMC Corp., 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of March 10, 1982 (47 FR 10290), EPA announced that FMC Corp. submitted a feed additive petition (FAP 2H5337) proposing that a regulation be established permitting residues of the insecticide (2,3-dihydro-2,2-dimethyl-7-benzofuranyl[(dibutylamino)thio]methyl carbamate) and its carbamate cholinesterase inhibiting metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranyl *n*-methylcarbomate; 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate; (2,3-dihydro-2,2-dimethyl-3-keto-7-benzofuranyl-*n*-methylcarbamate); and its phenolic metabolites (2,3-dihydro-2,2-dimethyl-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 3,7-benzofurandiol) and its dibutylamine metabolite in or on dried citrus pulp 9.50 ppm.

FMC Corp. has submitted an amendment to this petition proposing that the tolerances be increased from 9.50 ppm to 15.5 ppm in dried citrus pulp. (PM 12, Jay S. Ellenberger, 703–557–2386).

PP 1F1088. FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. In the **Federal Register** of June 18, 1971, (36 FR 11772), the EPA announced that FMC Corp. had submitted a pesticide petition (PP 1F1088) which proposed establishment of interim tolerances for negligible residues of the fungicide that is a mixture of 5.2 parts by weight of ammoniates of [ethylenebis(dithiocarbamato)] zinc with 1 part by weight ethylenebis[dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate, in or on the raw agricultural commodities peanuts, sugar beet roots, and sweet corn (kernels plus cob with husks removed) at 0.5 ppm.

FMC Corp. has withdrawn this petition without prejudice to future filing in accordance with 40 CFR 180.8. (PM 21 Henry M. Jacoby, 703–557–1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136). (Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 346))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13001 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-270; PH-FRL-2123-7]

Pennwalt Corp.; Food and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pennwalt Corporation has submitted food and feed additive petitions proposing the establishment of a regulation permitting the combined residues of the fungicide thiophanate-methyl (dimethyl [(1,2-phenylene)bis(iminocarbonothioyl)]bis-(carbamate], its oxygen analogue, dimethyl-4,4′-*o*-phenylenebis (allophanate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on certain commodities.

ADDRESS: Written comments to: Henry Jacoby, Product Manager (PM–21), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF–270]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Pennwalt Corp., Agchem Division, Three Parkway, Philadelphia, PA 19102, has submitted food and feed additive petitions to EPA proposing that 21 CFR Parts 193 and 561 be amended as follows.

FAP 2H5341. Proposes amending 21 CFR 561.387 by establishing a regulation permitting the combined residues of the fungicide thiophanate-methyl and its metabolites in or on the commodity dried grape pomace at 125 parts per million (ppm).

FAP 2H5341. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of thiophate-methyl and its metabolites in or on the commodity raisins at 50 ppm.

FAP 2H5342. Proposes amending 21 CFR 561.387 by establishing a regulation permitting the combined residues of thiophanate-methyl and its metabolites in or on commodity rice hulls at 20.0 ppm.

(Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: April 26, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12999 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2583/T370; PH-FRL 2123-8]

Polymeric Film Coating; Establishment of an Exemption From Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporaryexemption from the requirement of a tolerance for residues of the copolymer formed by reaction of linseed oil alone or a combination of linseed oil and soybean oil with dicyclopentadiene when used as a coating agent to be used in or on the raw agricultural commodity rice..

DATE: This temporary exemption from the requirement of a tolerance expires August 1, 1982

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: Sierra Chemical Company, 1001 Yosemite Drive, Milpitas, CA 95035, has requested, the establishment of a temporary exemption from the requirement of a tolerance for residues of the copolymer formed by reaction of linseed oil alone or a combination of linseed oil and soybean oil with dicyclopentadiene (containing less than 10 percent manganese, cobalt, or zirconium salts of organic acids) when used as a coating agent for S-ethyl hexahydro-1H-azepine-1-carbothioate at no more than 20 percent of the pesticide formulation. This exemption is limited to use in or on the raw agricultural commodity rice, before edible parts form. This exemption from the requirement of a tolerance was established in response to pesticide petition PP 2G2583.

This temporary exemption is to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 46574-EUP-1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Sierra Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires August 1, 1983. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience or scietific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FDR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: April 29, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 13002 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 2G2581/T357; PH-FRL 2124-1]

Thiodicarb; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite methomyl in or on the raw agricultural commodities cottonseed and soybeans. These temporary tolerances were requested by Union Carbide Corporation.

DATE: These temporary tolerances expire March 31, 1983.

FOR FURTHER INFORMATION CONTACT: J. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703-557-2386).

SUPPLEMENTARY INFORMATION: Union Carbide Corporation, P.O. Box 12014, Research Triangle Park, NC 27709, has requested, in pesticide petition PP 2G2581, the establishment of temporary tolerances for residues of the insecticide thiodicarb (dimethyl N,N'-[thiobis[(methylimino)carbonyloxy]]bis[ethanimidothioate]) and its metabolite methomyl (N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities cottonseed at 0.4 part per million (ppm) and soybeans at 0.1 ppm. A related document establishing a feed additive regulation permitting residues of thiodicarb in or on cottonseed hulls at 0.8 part per million (ppm) and soybean hulls at 0.4 ppm, has been published.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-61 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated,

and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 31, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 28, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13261 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[A-1-FRL-2127-2]

Approval of PSD Permits

Notice is hereby given that the Environmental protection Agency (EPA) has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. Algonquin Gas Transmission Company, Boston, Massachusetts (PSD-026042CT01); modification of the existing natural gas compressor station in Cromwell, Connecticut by the addition of a natural gas-fired turbine engine; issued on March 5, 1982;

2. Energy Answers Corporation, Albany, New York (PSD-025-120MA14); construction of a resource recovery facility in Rochester, Massachusetts; issued on March 15, 1982.

These permits have been issued under EPA's PSD regulations (40 CFR 52.21) and are subject to certain conditions. For Algonquin, these include:

1. NO_x emissions shall not exceed 0.0135% by volume at 15% oxygen and on a dry basis;

2. SO_x emissions shall not exceed 0.015% by volume at 15% oxygen and on a dry basis; and,

3. Only natural gas shall be combusted in the modification.

For Energy Answers, the conditions include:

1. The firing rate shall not exceed 75 tons of refuse derived fuel per hour;

2. Under oil firing conditions, the firing rate shall not exceed 3,200 gallons of No. 2 fuel oil per hour, and the sulfur content shall not exceed 0.3% sulfur by weight;

3. TSP emission shall not exceed 0.05 gr/dscf, corrected to 12% CO_2;

4. SO_x emissions shall not exceed 0.23 lb/million Btu;

5. NO_x emissions shall not exceed 0.3 lb/million Btu under oil firing conditions, and 0.5 lb/million Btu under refuse firing conditions;

6. CO emissions shall not exceed 0.3 lb/million Btu and the applicant must submit a plan to further minimize the CO emissions.

The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Copies of the applications and permits are available for public inspection upon request at the following location: U.S. Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203. The Algonquin application and permit is also located at: Connecticut Department of Environmental Protection, Office of the Air Quality Director, Room 144, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06115.

The Energy Answers application and permit is also located at: Massachusetts Department of Environmental Quality Engineering, Southeast Massachusetts Air Pollution Control District, c/o Lakeville Hospital, Main Street, Lakeville, Massachusetts 02346.

Dated: April 30, 1982.

Leslie Carothers,

Acting Regional Administrator, Region I.

[FR Doc. 82-13264 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G1838/T372; PH-FRL 2126-6]

Butachlor; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide butachlor in or on the raw agricultural commodities rice and rice straw.

DATE: These temporary tolerances expire April 23, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of March 24, 1981 (46 FR 18346), announcing the renewal of temporary tolerances for residues of the herbicide butachlor [N-(butoxymethyl)-2-chloro-2', 6'diethylacetanilide] in or on the raw agricultural commodities rice at 0.5 part per million (ppm) and rice straw at 3 ppm. These tolerances were established in response to pesticide petition (PP 6G1838), submitted by Monsanto Company, 1101 17th St., NW., Washington, D.C. 20036. A food additive regulation permitting the residues of butachlor at 1 part per million (ppm) in rice hulls and 0.5 ppm in rice bran has been published.

The company requested a one-year extension of the temporary tolerances to permit the continued marketing of the

temporary tolerances to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of exprimental use permit (524–EUP–30), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 23, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: May 10, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13555 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[A-1-FRL-2127-1]

Delegation of Authority to the State of New Hampshire for Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: EPA Region I has delegated authority for the Administrative and Technical portions of the Prevention of Significant Deterioration (PSD) program to the State of New Hampshire Air Resources Agency (ARA) under 40 CFR 52.21. The New Hampshire ARA will receive, conduct technical review, and process the PSD applications; however, issuance of final PSD permits, as well as enforcement of these permits, will continue to be performed by EPA.

EFFECTIVE DATE: March 18, 1982.

ADDRESS: Copies of the State request for delegation and State/EPA Agreement for delegation of authority are available for public inspection at the Air Branch, Environmental Protection Agency, Region I, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Arnold Leriche, Air Branch, Environmental Protection Agency, Region I, J. F. Kennedy Federal Building, Boston, Massachusetts 02203, 617/223–4448.

SUPPLEMENTARY INFORMATION: On August 31, 1981, Governor Gallen of New Hampshire submitted to EPA Region I a request for EPA to delegate to the New Hampshire ARA the responsibility for the administrative and technical review authority of sources under EPA's PSD regulations. After a thorough review of their request the Regional Office determined that the State's procedures for this portion of the PSD program are adequate and effective. Thus, on March 18, 1982 the Regional Administrator delegated authority for the technical and administrative review portion of the Federal PSD program to the State of New Hampshire. The conditions of the delegation are delineated in the Regional Administrator's letter to the State dated March 18, 1982.

Effective immediately, all applications and other information pursuant to 40 CFR 52.21 for sources locating in the State of New Hampshire should be sent directly to the State agency at the following address: Air Resources Agency, State Laboratory Building, Hazen Drive, Concord, New Hampshire 03301.

Dated: May 6, 1982.

Lester A. Sutton,

Regional Administrator.

[FR Doc. 82-13553 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL 2116-5]

Mississippi Pretreatment Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the national pollutant discharge elimination system pretreatment program of the State of Mississippi.

SUMMARY: On May 13, 1982, the Environmental Protection Agency approved the State of Mississippi's National Pollutant Discharge Elimination System State Pretreatment Program. This action authorizes the State of Mississippi to administer the National Pretreatment Program as it applies to muncipalities and industries within the State.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202–426–4793.

SUPPLEMENTARY INFORMATION:

Background

The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) Prevent introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. Local pretreatment programs will be the primary vehicle for administering, applying and enforcing pretreatment standards for industrial users of POTWs. To receive pretreatment program approval a State must submit to the EPA a modification to its NPDES program pursuant to the requirements

and procedures of the General Pretreatment Regulation (40 CFR Part 403).

Federal Register Notice of Approval of State NPDES Programs or Modifications

Under the Consolidated Permit Regulations (45 FR 33290, May 19, 1980), EPA will provide Federal Register notice of any action by the Agency approving or modifying a State NPDES program.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Mississippi NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: May 13, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-13561 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-20-M

[AAA-FRL-2124-6]

Performance Review Board; Addition of Members

AGENCY: Environmental Protection Agency.

ACTION: Notice of addition of members to the performance review board.

SUMMARY: This Notice announces the appointment by the Administrator of the Environmental Protection Agency of two members and an executive secretary to the Agency's Performance Review Board as provided for in 5 U.S.C. 4314. The appointments announced in this Notice are in addition to the appointments of eleven members published in the Federal Register of December 22, 1981.

The purpose of the Performance Review Board is to review initial senior executive appraisals and to make recommendations to the Administrator concerning performance of senior executives in the Agency and performance awards.

ADDRESSES: The names, titles, and addresses of the individuals now appointed to the EPA Performance Review Board are as follows:

1. Dr. Roger S. Cortesi, Deputy Director, Office of Health Research, Office of Research and Development, Environmental Protection Agency, Washington, D.C. 20460.
2. Mr. William A. Whittington, Director, Facility Requirements Division, Office of Water, Environmental Protection Agency, Washington, D.C. 20460.
3. Mr. Clarence Hardy, Director, Personnel Management Division, Office of Administration, Environmental Protection Agency, Washington, D.C. 20460 (Executive Secretary, PRB).

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Environmental Protection Agency Performance Review Board may contact Mr. Clarence Hardy, Director, Personnel Management Division, Environmental Protection Agency, Washington, D.C. 20460; telephone (202) 382-3300.

Anne M. Gorsuch,

Administrator.

May 17, 1982.

[FR Doc. 82-13561 Filed 5-18-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA-RED-7-NE-1]

Nebraska Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and state and local government's radiological emergency response plans. Since FEMA has a responsibility for reviewing the state and local government plans, the State of Nebraska has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Nebraska, and include those local of governments near the Omaha Public Power District, Fort Calhoun Nuclear Station located in Washington County, Nebraska.

Date plans received: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Breheny, Regional Director, FEMA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5912.

NOTICE: In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of state and local government's radiological emergency response plants. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," the "Nebraska Radiological Emergency Response Plan for Nuclear Power Plant Incidents" was received by the Federal Emergency Management Agency Region VII Office.

Included are plans for local governments which are wholly or partially within the emergency planning zones of the Port Calhoun Station. Plans are included for Sarpy, Washington, Douglas and Dodge Counties.

Copies of the Plan are available for review at the FEMA Region VII Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 666 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Patrick J. Breheny, Regional Director, at the above address on or before June 17, 1982.

Dated: May 6, 1982.

Patrick J. Breheny,

Regional Director, FEMA Region VII.

[FR Doc. 82-13564 Filed 5-18-82; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-658-DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA-658-DR), dated May 11, 1982, and related determinations.

DATED: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148, effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitles "Disaster Relief Act of 1974" (88 Stat. 143); notice is

hereby given that, in a letter of May 11, 1982, the President declared an emergency as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding beginning on or about February 19, 1982, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, the Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area except for technical assistance which will be funded at 100 percent.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under the Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster.

Adams, Grant and Hettinger Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83–300, Disaster Assistance. Billing Code 6718–02).

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 82–13503 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–653–DR]

Ohio; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–653–DR), dated March 26, 1982, and related determinations.

DATED: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, telephone No. (202) 287–0501.

NOTICE: In a letter of April 28, 1982, the President amended this major disaster as follows:

I therefore amend the March 26, 1982, declaration to include Public Assistance. Consistent with the requirement that Federal assistance be supplemental, the Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area except for technical assistance which will be funded at 100 percent.

The notice of a major disaster for the State of Ohio, dated March 26, 1982, is hereby amended to designate the following areas eligible for Public Assistance.

Defiance County and Paulding County, The Village of Grand Rapids in Wood County.

(Catalog of Federal Domestic Assistance no. 83.300, Disaster Assistance).

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 82–13502 Filed 5–18–82; 8:45 am]

BILLING CODE 6718–02–M

Privacy Act of 1974; New System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed New System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Emergency Management Agency gives notice of the proposed new system of records, FEMA/RMA–10, Claims Collection Files. A new system report has been filed with the Office of Management and Budget, the Speaker of the House of Representatives and the President of the Senate. The Office of Management and Budget has been requested to waive the advance notice requirement.

DATE: The proposed new system of records shall be effective as proposed without further notice on June 18, 1982, unless the waiver is not approved or comments are received on or before that date which would result in a contrary determination. If the waiver is not approved or comments are received within 30 days of this publication which would result in a contrary determination, FEMA will publish such notice at this time. Any interested party may submit written comments regarding this proposal.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Linda Keener, FOIA/Privacy Specialist, at (202) 287–0313.

SUPPLEMENTARY INFORMATION: The proposed system of records is needed to comply with the Federal Claims Collection Act of 1966 and the related FEMA regulations, 44 CFR Part 11, Subpart C. It is the policy of the Federal Emergency Management Agency to ensure the timely and economical collection of all monies owed the Government, including, but not limited to, monies due for loans, grants, procurements, sales of goods and services, fines, penalties, forfeitures, interest, overpayments, fees, duties, rents, royalties, claims and damages.

Dated: April 30, 1982.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/RMA–10

SYSTEM NAME:

Claims Collection Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary System is located in the Office of Comptroller, Resource Management & Administration, Federal Emergency Management Agency, Washington, D.C. Secondary Systems will be maintained by the specific Claims Collection Officers of the following offices: Federal Insurance Administration, National Preparedness Programs, State and Local Programs and Support, National Emergency Training Center, U.S. Fire Administration, and each FEMA Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative reports with supporting documentation, employee's financial condition, and requests for

waiver. The Claim Collection Officers' file will contain, as a minimum, the name and address of the debtor; amount of claim or delinquent amount; basis of claim; date claim arose; office referring claim to the Claim Collection Officer; record of each collection made; date claim should be referred to the Agency Claims Officer, Resourcement Management & Administration, in order to avoid statute of limitations deadlines; citation of basis on which claim was terminated or compromised; credit reports or other information which show the net worth of the debtor; and the name of the accounting officer to which the claim was reported and the appropriation symbol under which the Accounts/Notes Receivable was established.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

31 U.S.C. 951–953 (Federal Claims Collection Act of 1966), Pub. L. 90–616, Pub. L. 92–453.

PURPOSE:

Information is used to collect monies owed the U.S. Government. Information is maintained to support case files; financial statements provide an understanding of individuals' financial condition with respect to request for deferment of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If debtors do not enter into satisfactory arrangements or demonstrate a legitimate dispute within a specific period, the debt will be reported to a commercial credit bureau. When debts are uncollectable, case files are forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

Filed alphabetically by name.

RETENTION AND DISPOSAL:

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate officer not less than 1 year after the applicable statute of limitations has run. As deemed appropriate, the files are either forwarded to the Federal Records Center for remaining years or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Resource Management and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager identified above.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager. Written requests should be clearly marked "Privacy Act Amendment" on the envelope and letter. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6, published in the Federal Register.

RECORD SOURCE CATEGORIES:

Directly from the debtor, initial loan applications, other Federal agencies, financial institutions, and members of the general public.

[FR Doc. 82-13506 Filed 5-18-82; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons or Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Canadian Cruise Lines Ltd., 401 1208 Wharf Street, Victoria, B.C. V8W 3B9, Canada.

Dated: May 14, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13505 Filed 5-18-82; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Canadian Cruise Lines Ltd., 401 1208 Wharf Street, Victoria, B.C. V8W 3B9, Canada.

This Certificate expires June 11, 1982.

Dated: May 14, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-13507 Filed 5-18-82; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Continued Use of Certain Former Public Health Service Facilities; Delegation of Authority

Notice is hereby given that in furtherance of the April 20, 1982 delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health (47 F.R. 19797–19798) of authority under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982," the Assistant Secretary for Health has delegated to the Director, Medical Facilities Conversion Staff, Office of the Assistant Secretary for Health, without authority to redelegate, all the authority delegated to the Assistant Secretary for Health under section 911 of Public Law 97–99, the "Military Construction Authorization Act, 1982" (42 U.S.C. 248c), as amended, concerning the continued use of certain former Public Health Service facilities.

The delegation to the Director, Medical Facilities Conversion Staff, became effective April 28, 1982 and terminates October 1, 1982.

Dated: April 20, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 82-13510 Filed 5-18-82; 8:45 am]
BILLING CODE 4160-17-M

Health Maintenance Organizations; MetroCare Inc.; Revocation of Federal Qualification

AGENCY: Public Health Service, HHS.

ACTION: Notice, continued regulation of health maintenance organizations: Determination of noncompliance and revocation of Federal Qualification.

SUMMARY: On September 19, 1980, the Office of Health Maintenance Organizations (OHMO) determined that MetroCare, Inc., (MetroCare), 1701 West Euless Boulevard, Euless, Texas 76039, a federally qualified health maintenance organization (HMO), was not in compliance with the assurances it has provided to the Secretary that it would (1) maintain a fiscally sound operation and (2) maintain satisfactory administrative and managerial arrangements. On April 26, 1982, the Director of OHMO notified MetroCare that he was revoking MetroCare's Federal qualification and this revocation would become effective the fifth working day after receipt of this letter. Accordingly, Metrocare is no longer a federally qualified HMO.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph. D., Director Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: Under Section 1312(b)(1) of the Public Health Service Act (the Act) (42 U.S.C. 300e–11(b)(1)), if the Secretary makes a determination under section 1312(a) that a qualified HMO is not organized or operated in the manner prescribed by section 1301(c), then the HMO shall be (1) notified in writing of the determination and (2) directed to initiate corrective action to bring it into compliance with the assurances it provided to the Secretary under section 1310(d)(1). The notice of September 19, 1980, gave MetroCare an opportunity to initiate corrective action to bring it into compliance with the assurances that it would (1) maintain a fiscally sound operation and (2) maintain satisfactory administrative and managerial arrangements. On April 15, 1982, MetroCare notified OHMO that it chose not to pursue continuance of Federal qualification at this time. The basis for the revocation of Federal qualification was OHMO's determination that MetroCare has not carried out the corrective action necessary to return to compliance.

The effect of the revocation of MetroCare's Federal qualification is as follows: (1) MetroCare may not seek inclusion in employees' health benefits plans under section 1310 of the Act; (2) with respect to employers including MetroCare in the health benfits plan offered their employees, MetroCare is not a qualified HMO for purposes of section 1310 of the Act; (3) the inclusion of MetroCare in an employees' health benefits plan will be disregarded for purposes of determining whether, and to what extent, the employer is subject to 42 CFR Part 110, Subpart H, and will not constitute compliance with the requirements of that subpart; and (4) MetroCare is not a qualified HMO for purposes of the financial assistance programs under 42 CFR Part 110.

Section 1312(b)(1) of the Act requires that a notice of the determination of noncompliance and of the revocation of Federal qualification of an HMO be published in the **Federal Register.**

Dated: May 11, 1982.

Frank H. Seubold,

Director, Office of Health Maintenance Organizations.

[FR Doc. 82–13307 Filed 5–18–82; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 17526]

Baker District Office, Oregon; Realty Action—Land Exchange

Correction

In FR Doc. 82–11380, appearing at page 18053, in the issue of Tuesday, April 27, 1982 make the following change:

On page 18053, the land description following the paragraph beginning "Exchange for these lands," should read:

Willamette Meridian, Oregon

T. 10 S., R. 45 E.,
Sec. 11, E½SW¼ and SE¼; and
Sec. 14, NE¼ and E½NW¼.
T. 10 S., R. 46 E.,
Sec. 4, Lot 4 and SW¼NW¼ and W½SW¼; and
Sec. 5, Lots 1, 2, and 3 and SE¼NW¼ and E½SW¼, and SE¼ and S½NE¼.
Aggregating 1,112.55 acres of private land.

BILLING CODE 1505–01–M

Elko District, Nevada; Meeting of Elko District Grazing Advisory Board

In accordance with the Federal Advisory Committee Act and the Federal Land Policy and Management Act, notice is hereby given that the Elko District Grazing Advisory Board will meet on June 3 & 4, 1982. The meeting will begin on June 3 at 8:00 a.m. at the Ranchinn, 852 Idaho Street, Elko, Nevada. On June 4 a field tour will be conducted. Participants will depart from the Elko District Office, 2002 Idaho Street, Elko, Nevada at 8:00 a.m.

The agenda for the meeting will include: (1) Approval of the last meetings minutes; (2) update on FY 1982 range improvement projects; (3) discussion of proposed FY 1983 range betterment funds and expenditures; (4) update on district Selective Management Category Criteria—Rangeland management Policy; (5) update on pesticide/herbicide program; (6) update on current water policy; (7) slide show, field tour and discussion on riparian management objectives and obtainable results.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 on June 3 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 2002 Idaho Street, Elko, Nevada 89801, by May 28, 1982. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

May 11, 1982.

[FR Doc. 82–13405 Filed 5–18–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial No. I–2834]

Idaho; Partial Termination of Classification for Multiple-Use Management; Correction

May 10, 1982.

In F.R. Doc. 82–10182, filed April 13, 1982, and appearing on page 16107 of the issue of April 14, 1982, the following correction should be made:

T. 12 N., R. 20 E., sec. 34 S½SE¼, should read: T. 12 N., R. 20 E., sec. 34, S½SW¼.

Clair M. Whitlock,

State Director.

[FR Doc. 82–13404 Filed 5–18–82; 8:45 am]

BILLING CODE 3410–01–M

[Group 743]

California; Filing of Plat of Survey

May 7, 1982.

1. A plat of survey of the following described land accepted May 3, 1982, will be officially filed in the California State Office, Sacramento, California, effective at 10:00 a.m. on July 1, 1982.

Mount Diablo Meridian, California

T. 10 N., R. 9 W.,
Sec. 3.

2. This plat representing the dependent resurvey of a portion of the east boundary of the Rancho Caslamayomi, the Second Standard Parallel North along the south boundary of Township 11 North, Range 9 West, a portion of the subdivisional lines, and the survey of a portion of the subdivision of section 3, Township 10 North, Range 9 West, Mount Diablo Meridian, California.

3. The plat will become the basic record for describing the land for all authorized purposes at and after 10:00 a.m. of the above date. Until this date and time, the plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to restore the corners in their true original locations according to the best available evidence.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E–2841, Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc 82-13490 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Minerals Operations Section as an authorized signing alternate:

Section 2.3 Fiscal Affairs

(c) Repayments

This redelegation is effective May 19, 1982.

Dated: May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13488 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of the Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Lands Operations Section:

Section 2.2 General and Miscellaneous Matters

(b) Cancellations or surrenders of contracts and leases
(c) Copies of records

Section 2.9. Land Use

(a) Airport and air navigation facilities
(b) Cemetery sites
(c) Color-of-Title
(d) Exchanges
(f) Indian Allotments
(i) Sites for recreational or any public purpose
(j) Public sales

This redelegation is effective May 19, 1982.

Dated: May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13489 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Redelegation of Authority

Pursuant to the authority contained in Section 2.1 of Bureau order No. 701, as amended, the following specific authority delegated to the Chief, Branch of Lands and Minerals Operations in the cited order is hereby redelegated to the Chief, Minerals Operations Section:

Section 2.6 Minerals

(a) Oil and Gas Leases
(k) Mining Claims
(n) Geothermal Leases

This redelegation is effective upon publication in the **Federal Register**.

Dated May 7, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-13490 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Utah; Correction to State Director's Final Wilderness Inventory Decisions

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice.

SUMMARY: The following **Federal Register** notices were published on the Utah State Director's final wilderness inventory decisions, protests and appeals.

Final Wilderness Inventory Decision—November 14, 1980 (vol. 45, No. 222).

Final Wilderness Inventory Decision in Effect—December 31, 1980 (vol. 45, No. 252).

Decision on Protests—March 5, 1981 (vol. 46, No. 43).

Republication of Decision on Protests—March 12, 1981 (vol. 46, No. 48).

These **Federal Register** notices indicated that several areas of less than 5,000 acres in the State of Utah were designated as wilderness study areas (WSAs) under authority of section 603(a) of the Federal Land Policy and Management Act (FLPMA) of 1976, and indicated that they would be managed under restrictions imposed by section 603(c) of that Act. This notice makes a correction to those **Federal Register** notices. Wilderness study areas of less than 5,000 acres in size are designated as such under authority of sections 202 and 302 of FLPMA rather than section 603(a). Wilderness study areas identified under this authority need not be reported to the President and Congress if they are found non-suitable for Wilderness designation. These WSAs fall under the general management authority as contained in sections 202 and 302 and are not managed under the more restrictive management criteria imposed by section 603(c) of FLPMA as do others WSAs designated under authority of section 603(a).

The WSAs of less than 5,000 acres involved in this correction notice are:

		Acres
UT-040-145	Orderville Canyon	1,710
UT-040-146	Deep Creek	3,320
UT-040-147	Red Butte	804
UT-040-148	Spring Canyon	4,433
UT-040-149	The Watchman	800
UT-040-150	North Fork Virgin River	1,040
UT-040-153	LaVerkin Creek Canyon	857
UT-040-154	Taylor Creek Canyon	35
UT-040-176	Goose Creek Canyon	80
UT-040-177	Beartrap Canyon	40
UT-060-221	Fremont Gorge	3,540
UT-060-131B	South Lost Spring Canyon	3,880
UT-060-414	Daniel's Canyon	2,475

FOR FURTHER INFORMATION CONTACT:
Kent Biddulph, BLM, Utah State Office, (801) 524–4257.

Dated: May 10, 1982.

Roland G. Robison,

State Director, Utah.

[FR Doc. 82-13487 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado and Wyoming; Meeting of the Green River-Hams Fork Regional Coal Team

May 7, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The next meeting of the Green River-Hams Fork Regional Coal Team will be held at the Bonnie Brae Room in the Airport Holiday Inn, 4040 Quebec, Denver, CO 80216 at 8:00 a.m., June 16, 1982. Principal agenda items are a review of Expressions of Interest, existing delineated tracts, existing site specific analysis and tract profiles. The Team may provide guidance to the coal activity planning process. Tract ranking factors and subfactors will be reviewed and discussed. Public comment on the ranking subfactors will be accepted by the Team and a ranking system adopted.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Smith, Bureau of Land Management (932), 1037 20th Street, Denver, CO 80202.

SUPPLEMENTAL INFORMATION: All expressions of interest for this round of coal leasing in the Green River-Hams Fork Region will be reviewed at the meeting. The completed tract delineations, site specific analysis and tract profiles will be reviewed and the Team will provide appropriate guidance pursuant to 43 CFR 3420.4–3(h).

Tract ranking factors are set forth in the regulations at 43 CFR 3420.4–4. Subfactors are a matter of Regional Coal Team discretion. Factors and subfactors are used to rank tracts in terms of low, medium and high desirability for coal leasing. For instance, if archeology is a subfactor, a tract that has no archeological conflicts would rank high for that subfactor.

The Regional Coal Team will initially discuss a ranking system with the following subfactors:

Factor	Subfactors
1. Coal Economics	a. Coal Quality.
	b. Coal Quantity.
	c. Energy Production Potential.
	d. Transportation.
	e. Surface Ownership.
2. Impacts on the Natural Environment.	a. Air Quality.
	b. Water.
	c. Reclamation Potential.
	d. Wildlife.
	e. Archeology.
	f. Paleontology.
	g. Historic.
	h. Transportation.
	i. Other Unique Resources.
3. Socio-Economic Impacts	a. Public Attitudes.
	b. Revenue Generation.
	c. Life Style and Social Structure.
	d. Community and Social Services.
	e. Consistency with Other Plans and Policies.
	f. Agricultural Operations.

Cecil Roberts,

Acting State Director, Colorado.

[FR Doc. 82-13506 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Capitol Reef National Park; Availability for Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability for draft environmental impact statement for general management plan, Capitol Reef National Park.

SUMMARY: The Draft Environmental Impact Statement for the General Management Plan, Capitol Reef National Park is available for public distribution. Copies will be mailed to some 500 individuals, interest groups and public Agencies for review and comment.

The document addresses the issues of management zoning, resources management, visitor use and interpretation, general development, and boundary adjustment. The draft environmental impact statement describes the affected environment; five alternatives, including the preferred alternative, for the management of the park; and the environmental consequences of implementing these alternatives.

A copy of the draft environmental impact statement may be obtained from the Superintendent, Capitol Reef National Park, Torrey, Utah 84775 or from the Regional Director, Rocky Mountain Region, National Park Service, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225. Comments on the document will also be received at these addresses through July 20, 1982 and should be addressed to either the Superintendent or Regional Director.

Dated: May 6, 1982.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 82-13508 Filed 5-18-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Fourth Rev. ICC Order 80 Under S.O. 1344]

St. Louis Southwestern Railway Co. et al.; Rerouting of Traffic

In the opinion of J. Warren McFarland, Agent, the Chicago, Rock Island and Pacific Railroad Company is unable to transport promptly traffic offered for movement via its lines, because of an embargo of its lines.

Rerouting authority previously granted in Reroute Order No. 63, was continued in Reroute Order No. 80, and should be extended for those carriers which have indicated that tariff modifications in progress could not be completed by the expiration of that order. This matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and therefore requires this action by the Commission.

It is ordered, (a) *Rerouting traffic.* The Chicago, Rock Island and Pacific Railroad Company (RI), being unable to transport promptly traffic offered for movement via its lines because of an embargo of its lines, that lines interim operators named below are authorized to reroute such traffic via any available route. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenue of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

St. Louis Southwestern Railroad Company.
Cadillac & Lake City Western Transportation Company.
Chicago and North Western Transportation Company.
Iowa Railroad Company.

(b) Concurrence of receiving roads to be obtained. The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be rerouted, before rerouting.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted and shall furnish to such shipper the new routing provided for under this order, except when the disability requiring the rerouting occurs after the movement has begun.

(d) Inasmuch as the rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic rerouted by said Agent shall be rates which were

applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:01 a.m., May 12, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 10, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-13475 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte 387 (Sub-131)]

Rail Carriers; the Baltimore & Ohio Railroad Co.; Exemption for Contract Tariffs ICC-BPO-C-0028, 0029, and 0030

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariffs to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275-7277.

SUPPLEMENTARY INFORMATION: Baltimore & Ohio Railroad Company (BO) filed a petition on April 29, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioner requests that we permit contract tariff ICC-BO-C-0028, 0029, and 0030 to become effective on one day's notice. Tariff 0028 and 0030 provide for the transportation of sand and alpite rock. Tariff 0029 provides for the transportation of industrial sand, alpite rock, and limestone. All contracts involve the same receiver.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirements. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The receiver has experienced a severe loss for the first quarter of 1982 and will divert his traffic to a lower-priced mode of transportation unless an exemption is granted. Moreover, the contracting carriers have a vast surplus of covered hoppers and this surplus would increase with the diversion of this traffic. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC-BO-C-0028, 0029, and 0030 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission has permitted the contracts to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 days notice requirements in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 12, 1982.

By the Commission, Division 1, Commissioners Sterrett, Gilliam, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13477 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

May 13, 1982.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

MC 43966, Southwestern Freight Bureau, Agent (No. B-157), published reduced rates on shipments of Iron or Steel Pipe and Related Articles, from Doraville, Savannah, Ga. and Kernersville, NC to points in Arkansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas, in Supplement 339 to Tariff ICC SWFB 4853, effective June 9, 1982. Grounds for relief market competition.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13474 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume 256]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 11, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law*

and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 109632 (Sub-38)X, filed March 25, 1982. Applicant: LOPEZ TRUCKING, INC., 131 Linden St., Waltham, MA 02154. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109. Lead and Subs 11, 16, 17, 20, 21, 22, 23, 27, 28G, 30, 31 and 33 and E–1 letter notice. Broaden: lead, general commodities (with exceptions) to "general commodities (except classes A and B explosives)"; household goods to "househod goods and furniture and fixtures"; cotton in bales, wool, waste materials, sugar, building materials, and heavy machinery and equipment, to "textile mill products, waste materials, food and related products, building materials, machinery and equipment"; lumber, plywood and millwork to "lumber and wood products"; broaden turf to "farm products"; Waltham, MA to Norfolk, Suffolk and Middlesex Counties, MA; Watertown, Cambridge, Somerville, Brookline, and Boston, MA to Essex, Middlesex, Suffolk, Norfolk, Plymouth and Bristol Counties, MA; Boston, MA to Suffolk, Norfolk, Middlesex, Essex, Plymouth, Bristol, and Worcester Counties, MA; in Sub 11, building materials to "construction and building materials"; Boston, MA (and points within 15 miles thereof) as in lead; in Sub 16, sectional floors and sectional board tracks, uncrated, and parts and supplies used in the installation thereof, to "construction and building materials"; Boston, MA (as in lead); in Sub 17, building materials, except commodities in bulk, to "construction and building materials"; points in NJ and NY within 50 miles of point of origin (New York, NY and points in Westchester, Nassau, Suffolk, Orange and Rockland Counties, NY, and points in Hudson, Essex, Union, Bergen, Passaic, Middlesex, Warren, Hunterdon, Morris, and Somerset Counties, NJ) to points in NJ in and north of Gloucester and Atlantic Counties, NJ, and points in NY in and south of Dutchess, Ulster and Orange Counties, NY; port of Newark, NJ and port of New York, NY to points in NY in and south of Westchester and Rockland Counties, NY, and points in Hudson, Bergen, Essex, Union, Middlesex and Passaic Counties, NJ; points in PA east of an imaginary line and points in NY east of an imaginary line to points in PA in and east of Susquehanna, Wyoming, Luzerne, Schuylkill, Berk, and Lancaster Counties, PA, points in NY in and east of Sullivan, Delaware, Ostego, Herkimer and St. Lawrence, Counties, NY; in Sub 20, beer, ales, beverages and brewery supplies to "food and related products"; porcelain enamel panels, crated or uncrated, to "construction and building materials"; irregular routes: Boston, MA to Essex, Middlesex, Norfolk, Suffolk, Bristol, Plymouth and Worcester Counties, MA; Westerly, RI to Washington County, RI; Albany, Amsterdam, Endicott, Long Island City, Smithtown, Troy and Utica, NY to Saratoga, Oneida, Herkimer, Albany, Schenectady, Montgomery, Fulton, Broome, Tioga, Queens, Suffolk, and Rensselaer Counties, NY; Bayonne, Elizabeth, Hoboken, Jersey City, Newark, Perth Amboy, Point Pleasant, Union City, and Weehawken, NJ to Middlesex, Union, Essex, Passaic, Hudson, Bergen, Ocean and Monmouth Counties, NJ; Milford, MA to Worcester, Middlesex and Norfolk Counties, MA; in Sub 21, prefabricated buildings, complete, knocked down, or in sections and when transported in connection with such buildings, component parts thereof and
equipment and materials incidental to the erection and completion of such buildings to "building and construction materials"; Acton, Sudbury and Billerica facilities to Middlesex County, MA; prefabricated structural beams, arches and trusses to "construction and building materials"; in Sub 22, roofing materials, except in bulk, in tank vehicles, to "construction and building materials"; Waltham facilities to Middlesex, Norfolk and Suffolk Counties, MA; in Sub 23, structural steel to "metal products"; finishing materials, flooring, shingles, and lumber to "construction and building materials"; Boston, MA (as in lead); Dover and Rochester to Strafford County, NH, Exeter and Salem to Rockingham County, NH, Nashua to Hillsborough County, NH and West Warwick to Kent County, RI; Sayleaville to Providence County, RI; Boston and points in MA within 35 miles of Boston to Essex, Suffolk, Norfolk, Middlesex, Bristol, Plymouth and Worcester Counties, MA; in Sub 27, general commodities, with exceptions to "general commodities (except classes A and B explosives)"; paper and paper products, and machinery, except commodities in bulk, to "pulp, paper, and related products and machinery"; building materials, except in bulk, to construction and building materials"; paint, lead and zinc, except in bulk, to chemicals and related products and ores and minerals"; paints, lead, zinc, and building materials, except in bulk, to "construction and building materials, chemicals and related products and ores and minerals"; Monmouth, Mercer, Somerset, Morris, Passaic, Bergen Essex, Hudson, Union and Middlesex Counties, NJ for points in NJ within 25 miles of New York, NY; Worcester, Middlesex, Essex, Norfolk, Suffolk, Plymouth and Bristol Counties, MA for points in MA within 30 miles of Boston; Essex, Middlesex, Plymouth, Norfolk and Suffolk Counties, MA for Peabody and points in MA within 25 miles of Peabody; Boston, MA (as in lead); Claremont, Hanover, Keene, Nashua, and Manchester, NH to Graifton, Sullivan, Cheshire, Hillsborough and Rockingham Counties, NH; Burlington and Montpelier, VT to Washington and Chittendon Counties, VT; Portland and Bangor, ME to Cumberland and Penobscot Counties, ME; Providence and Pawtucket, RI to Providence, Kent and Bristol Counties, RI; Hartford and Meriden, CT to Hartford, Tolland, Middlesex and New Haven Counties, VT; Lancaster, Dover, Keene and Claremont, NH to Koos, Strafford, Cheshire and Sullivan Counties, NH; Portland and Winthrop, ME to Cumberland and Kennebec Counties, ME; Bennington, VT to Bennington County, CT; Pawtucket, RI to Providence County, RI; Newark, NJ to Hudson, Bergen, Essex, Passaic, Union, Somerset and Middlesex Counties, NJ; Points within an imaginary line in NJ beginning at Belmar, NJ to points in Monmouth, Mercer, Somerset, Morris and Passaic Counties, NJ; points within an imaginary line to points in NH in and south of Sullivan, Merrimack, Belknap and Strafford Counties, NH and points in ME in and south of Oxford, Androscoggin, Kennebec and Knox counties, ME; in Sub 28G, building materials (except commodities in bulk) to "construction and building materials"; lumber, plywood and millwork to "lumber and

wood products"; prefabricated buildings, complete, knocked down, or in sections and when transported in connection with such buildings, component parts thereof, and equipment and materials incidental to the erection and completion of such buildings to "construction and building materials"; prefabricated structural beams, arches, and trusses to "construction and building materials", broaden roofing materials (except in bulk, in tank vehicles) to "construction and building materials"; remove restrictions: against transportation of refractory products from/to named points; pipe, tubing and fittings from/to facilities/points; and restriction to transportation of building materials; points in NJ within 25 miles of New York, NY to Monmouth, Mercer, Somerset, Morris, Passaic, Bergen, Essex, Union, Middlesex and Hudson Counties, NJ; points in MA within 30 miles of Boston to Worcester, Essex, Middlexsex, Norfolk, Suffolk, Plymouth and Bristol Counties, MA; in Sub E1, building materials (except commodities in bulk) to "construction and building materials"; lumber, and lumber, plywood and millwork to "lumber and wood products"; in Sub 30, coated crushed granules, in bulk, in tank vehicles, to "clay, concrete, glass or stone products"; asphalt to "petroleum, natural gas, and their products"; Belle Mead and Bound Brook, NJ to Somerset County, NJ; Waltham facilities to Norfolk, Suffolk, and Middlesex Counties, MA; Kearney, NJ to Hudson, Essex, Union and Bergen Counties, NJ; in Sub 31, iron and steel wire rods, in coils, to "metal articles"; Perth Amboy to Union, Middlesex and Monmouth Counties, NJ; in Sub 33, general commodities, with exceptions, in containers or in trailers, to "general commdities (except classes A and B explosives)"; ports of: Portland, ME to Cumberland and York Counties, ME; Portsmouth, NH to Strafford and Rockingham Counties, NH; Boston, New Bedford and Fall River, MA to Norfolk, Suffolk, Essex, Middlesex, Bristol and Plymouth Counties, MA; Providence, RI to Providence, Kent and Newport Counties, RI; New London, New Haven, and Bridgeport, CT to New London, New Haven and Fairfield Counties, CT; Albany and Poughkeepsie to Albany and Dutchess Counties, NY; Port Newark, Port Elizabeth, Camden, Perth Amboy, Carteret, Jersey City, Sewaren, and Port Reading, NJ to Bergen, Essex, Cumberland, Hudson, Union, Passaic, Somerset, Middlesex, Monmouth, Burlington, Camden, and Gloucester Counties, NJ; Philadelphia, PA to Philadelphia, Bucks, Montgomery, Delaware and Chester Counties, PA; Wilmington, DE to New Castle County, DE; remove immediately prior/subsequent water restriction; broaden to radial service in all authorities except Subs 11 and 16.

MC 114868 (Sub-8)X, filed April 30, 1982. Applicant: HARRY EARL NEWLON, JR., d.b.a. NEWLON'S TRANSFER, 1511 North Nelson St., Arlington, VA 22201. Representative: Betty Jo Christian, Esq., Steptoe & Johnson, Chartered, 1250 Conn. Ave., N.W., Washington, DC 20036. Subs 1, 2, 3G, 4 and 5G, broaden household goods to "household goods, furniture and fixtures, and materials, equipment and supplies used in the manufacture, sale and distribution of furniture and fixtures."

MC 125788 (Sub-4)X, filed April 29, 1982. Applicant: RAYMOND A. HARSCH, INC., 53 Evans Ave., Elmont, NY 11003. Representative: Kenneth M. Piken, Esq., Piken & Piken, P.C., Queens Office Tower, 95–25 Queens Blvd., Rego Park, NY 11374. Subs 1 and 3 permits, broaden: to "lumber and wood products, furniture and fixtures, electrical machinery and equipment, and accessories and materials used in the installation and assembly of those commodities" from kitchen equipment, kitchen cabinets, moldings, vanities, mirrors, exhaust fans, garbage disposal units and parts, accessories and materials used in the installation and assembly of the commodities described above, in Sub 1; to "furniture and fixtures" from new furniture and new furniture parts, in Sub 3; to between points in the U.S. under continuing contracts with named shippers, in both subs.

MC 133757 (Sub-6)X, filed April 30, 1982. Applicant: CAROLINA EAST FURNITURE TRANSPORT, INC., P.O. Box 1426, Sumter, SC 29501. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Lead (1) broaden new furniture, new furniture crated, used furniture, and used furniture (except hotel equipment and kitchen equipment) to "furniture and fixtures"; (2) remove restriction against service from Rochester, NY and Williamsport PA, to Columbia, SC, (3) broaden Sumter, SC to Sumter County; Bennettsville, SC to Malboro County; Fairfax, SC to Allendale, Bamberg and Collton Counties, Florence, SC to Florence County; Mullins, SC to Marion County; Newark, NJ to Hudson, Bergen, Essex, Middlesex, Morris, Passaic, and Union Counties; and Bronx, Kings, Queens, Manhattan, and Richmond Counties, NY; Philadelphia, PA to Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, PA; New Castle County, DE; Burlington, Camden, Gloucester, Mercer and Salem Counties, NJ; Goldsboro, Lumberton, Tabor City, Whiteville and Wilmington, NC to Wayne, Robeson, Columbus, Brunswick, and New Hanover Counties; Abbeville, Charleston, Darlington, Dillon, Hartsville, Lake City, Leesville, Mullins, Summerton, Sumter and Walterboro, SC to Abbeville, Berkeley, Charleston, Colleton, Dorchester, Darlington, Dillon, Florence, Lexington, Marion, Clarendon, and Sumter Counties, Rochester, NY to Monroe, Orleans, Ontario and Wayne Counties; Williamsport, PA to Lycoming County and Columbia, SC to Lexington and Richmond Counties; Laurens, SC to Laurens County; (4) remove restriction against transportation of traffic when moving as household goods, and (5) to radial authority.

MC 136270 (Sub-6)X, filed May 3, 1982. Applicant: BIG WHEELS TRANSPORT AND LEASING, LTD., 5 Seaton st., P.O. Box 275, Kensington, PE1, Canada. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingham, MA 02043. Sub-5: (1) Broaden commodity description (a) processed fish and fish to "food and related products" and (b) bananas, to "farm products and food and related products"; (2) expand ports of entry at Calais, Houlton, Bar Harbor and Portland, to Washington, Aroostook, Hancock, and Cumberland Counties, ME; (3) Change Gloucester to Essex County, MA; (4) replace one-way with radial authority; and (5) remove the restrictions as to: (a) mixed loads; (b) except in bulk; (c) except lumber; and (d) foreign commerce and traffic having prior or subsequent movement by water.

MC 141483 (Sub-6)X, filed May 3, 1982. Applicant: VALCON PACKAGE DELIVERY, INC., 3840 West St., Landover, MD 20785. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. Sub 4F permit: broaden to "between points in the U.S. (except AK and HI)," under continuing contracts with a named shipper.

MC 144858 (Sub-48)X, filed May 3, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel, P.O. Box 9799, Little Rock, AR 72219. Subs 10 and 35F permits. Broaden foodstuffs (except in bulk), to "food and related products"; and to between points in U.S., under continuing contract(s) with named shipper.

[FR Doc. 82-13479 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note:—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP3–072

Decided: May 11, 1982.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 1934 (Sub-48), filed April 29, 1982. Applicant: THE ARROW LINE, INC., 105 Cherry St., East Hartford, CT 06108. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting (1) *passengers and their baggage,* in special operations and (2) *automobiles,* in secondary movement, in truckaway service, between points in Hartford and Fairfield Counties, CT, Middlesex County, MA, Westchester County, NY and Bergen County, NH, on the one hand, and, on the other, points in FL.

MC 1934 (Sub-49), filed May 3, 1982. Applicant: THE ARROW LINE, INC., 105 Cherry St., East Hartford, CT 06108. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting *passengers and their baggage,* in charter and special operations, beginning and ending at points in CT, and Hampden County, MA, and extending to points in the U.S. (except AK and HI).

MC 2455 (Sub-2), filed April 23, 1982. Applicant: BAYARD TRUCKING CO., INC., 237 Harrison St., Elizabeth, NJ 07202. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park NJ 08904, (201) 572–5551. Transporting *food and related products,* between New York, NY, Philadelphia, PA, and points in Fairfield County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 2934 (Sub-119), filed April 23, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Parkway, Suite 403, Indianapolis, IN 46205, (317) 923–6118. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 2934 (Sub-121), filed May 3, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Jimmy Swaggart Ministries, of Baton Rouge, LA.

MC 15735 (Sub-43), filed April 29, 1982. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with General Mills, Inc. of Minneapolis, MN.

MC 99455 (Sub-14), filed April 29, 1982. Applicant: M. H. HILLERY, INC., 90 Western Ave., Allston, MA 02134. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, D.C. 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Freight Train, Inc. of Chicago, IL.

MC 107934 (Sub-48), filed May 4, 1982. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27292. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, FL, GA, LA, MD, MS, NC, OK, SC, TN, TX, and VA.

MC 111274 (Sub-87), filed April 27, 1982. Applicant: SCHMIDGALL TRANSFER, INC., P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall (same address as applicant), (309) 266–9773. Transporting *paper and paper mill products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Chesapeake Corporation, of West Point, VA.

MC 116164(Sub-16), filed April 26, 1982. Applicant: ARROW TRANSPORTATION CO., 1911 N.E. 58th Ave., Des Moines, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting (1) *building materials and refractory products,* between the facilities of General

Refractories Company at points in the U.S., on the one hand, and, on the other, points in IL, IN, IA, KY, KS, MD, MI, MN, MO, NE, NJ, NY, OH, PA, TN, WI and WV and (2) *plastic pipe, building and insulating materials*, between the facilities of Manville Corporation at points in the U.S., on the one hand, and, on the other, those points in and east of ND, SD, NE, KS, OK and TX.

MC 116164 (Sub-17), filed April 27, 1982. Applicant: ARROW TRANSPORTATION CO., 1911 N.E. 58th Ave., Des Moines, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *lumber, wood products, building and construction materials*, between the facilities of Weyerhaeuser Company and The Celotex Corporation at points in the U.S., on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 120764 (Sub-4), filed May 3, 1982. Applicant: EXPEDITE TRUCK LINES, 600 S. Maple Ave., Montebello, CA 90640. Representative: William Davidson, 5501 Pacific Blvd., Suite 200, Huntington Park, CA 90255, (213) 589–6073. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 127505 (Sub-83), filed May 3, 1982. Applicant: R. H. BOELK TRUCK LINES, INC., R.R. 2, Mendota, IL 61342. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, (901) 526–2900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paper and paper products, between points in Brown County, WI and Muskogee County, OK, on the one hand, and, on the other, points in AR, CO, IL, IN, KS, KY, LA, MS, NM, OK, TN, TX, and WI.

MC 140834 (Sub-4), filed April 27, 1982. Applicant: TURNER TRANSPORTATION, INC., R.R. #2, South Second St., Mitchell, IN 47446. Representative: Andrew K. Light, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, (317) 638–1301. Transporting *transportation equipment*, in drive-away service, between points in Jennings and Lawrence Counties, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141464 (Sub-5), filed April 28, 1982. Applicant: TOM SMITH TRUCKING CO., a corporation, 2277 N. Locust St., Canby, OR 97013. Representative: Robert G. Harrison, 4290 James Dr., Carson City, NV 89701, (702) 882–5649. Transporting *food and related products*, between points in CA, OR, WA, UT, AZ, CO, NM, ID, TX, and OK.

MC 142124 (Sub-2), filed April 29, 1982. Applicant: PACKAGE DELIVERY, INC., 421 W. Tremont Ave., Charlotte, NC 28203. Representative: E. H. Van Deusen, P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NC and SC, on the one hand, and, on the other, points in NC, SC, GA, TN, KY, VA and WV.

MC 143154 (Sub-15), filed April 29, 1982. Applicant: A & S TRUCKING, P.O. Box 4027, Missoula, MT 59806. Representative: Charles A. Murray, Jr., 2822 Third Ave. N., Billings, MT 59101, (406) 252–4165. Transporting *general commodities* (except classes A and B explosives and household goods), between points in MT, ID, WA, OR, CA, UT, NV, AZ, NM, CO, WY, ND, SD, TX, MN, WI, MI, IL, IN, KS, MO, AR, KY, TN, FL, GA, OH, PA, MD, NY, NJ, MA, VA, WV; OK, IA and NE.

MC 143165 (Sub-6), filed April 26, 1982. Applicant: MC CLELLAND LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland (same address as applicant), (314) 885–2160. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paint and sealers, between points in the U.S. (except AK and HI), under continuing contract(s) with Prismo Universal Corporation, of East Point, GA.

MC 143185 (Sub-6), filed April 28, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., P.O. Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., Arlington, VA 22210, (703) 525–4050. Transporting *food and related products*, (1) between Baltimore, MD, and points in Pike County, AL, Sussex County, DE, and Vigo County, IN, (2) between Baltimore, MD, on the one hand, and, on the other, points in AL, and (3) between points in Pike County, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149295 (Sub-2), filed April 28, 1982. Applicant: H & W HOT SHOT DELIVERY SERVICE, INC., 13907 Gainsville, Houston, TX 77015. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024, (713) 827–1407. Transporting *Mercer commodities*, and *metal products*, between points in TX and LA.

MC 150724 (Sub-11), filed April 26, 1982. Applicant: DONALD SANTISI TRUCKING COMPANY, 340 Victoria Rd., P.O. Box 4145, Youngstown, OH 44515. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting *meats, meat products and meat byproducts and articles distributed by meat packing houses*, as described in Section A and C, Appendix I, to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, between points in the U.S. (except AK and HI), under continuing contract(s) with Swift Independent Packing Company of Chicago, IL.

MC 154695 (Sub-1), filed May 3, 1982. Applicant: ATLANTIC TRANSPORTATION COMPANY, a corporation, P.O. Box 82000, Atlanta, GA 30366. Representative: Paul M. Daniell, Suite 1200, 235 Peachtree St., N.E., Atlanta, GA 30303, (404) 522–2322. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Atlantic Steel Company, of Atlanta, GA.

MC 156045 (Sub-3), filed April 30, 1982. Applicant: H. P. LEASING, INC., 44 Chandler Dr., Somerset, MA 02726. Representative: Francis E. Barrett, Jr., 100 Industrial Park Rd., Hingham, MA 02043, (617) 749–6500. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contracts with (1) Eastern Company, d.b.a. Eastco, of Westwood, MA, (2) Handy Pax Inc., of Randolph, MA, and (3) U.S. Textile Co., Inc., of Fall River, MA.

MC 157555 (Sub-1), filed April 28, 1982. Applicant: E. CLAYTON OWEN, d.b.a. OWEN TRANSPORT, 7 Glen Carran Circle, Sparks, NV 89431. Representative: Robert G. Harrison, 4290 James Drive, Carson City, NV 89701, (702) 882–5649. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR, WA, ID, CA, NV, UT, CO, AZ, and NM.

MC 158414, filed April 29, 1982. Applicant: HUB TRUCKING, INC., P.O. Box 190, U.S. Hwy 431 So., Wedowee, AL 36278. Representative: Wade H. Brown, P.O. Box 217, Bessemer, AL 35021, (205) 428–8629. Transporting (1) *lumber and wood products and building materials*, between points in Dallas County, AL, on the one hand, and, on the other, points in FL, GA, LA, MS, NC, SC, TN, TX and VA, (2) *textile mill products*, between points in Randolph County, AL, Berrien, Decatur and Jeff Davis Counties, GA on the one hand, and, on the other, points in AR, CA, ID, IL, IN, MO, OK, OR, TX and WA, (3)

lumber and wood products and furniture and fixtures, between points in Clay County, AL, on the one hand, and, on the other, points in AZ, CA, CT, FL, IL, IN, IA, LA, MD, MA, MS, NJ, NY, NC, OH, PA, SC, TX, UT and VA, (4) *furniture and fixtures and metal products,* between points in Randolph County, AL, on the one hand, and, on the other, points in GA, FL, IL, KY, MD, MA, MO, NC, OH, SC, VA and DC, and (5) *pre-cut log buildings, building materials and lumber and wood products,* between points in Whitfield County, GA, on the one hand, and, on the other, points in AR, FL, IL, LA, MI, NC, OH, PA, SC, TN, TX and WV.

MC 161494, filed May 3, 1982. Applicant: THOMAS O. GOESSL, d.b.a. T.O.G. TRUCKING, Route 1, Box 60, Stetsonville, WI 54480. Representative: Standley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of metal products, between points in the U.S. (except AK and HI), under continuing contract(s) with Arrow Tank & Engineering Co., of Minneapolis, MN.

MC 161645, filed April 28, 1982. Applicant: A.W. McAFEE, d.b.a. McAFEE TRUCKING, Route 1, Box 469, Lowell, AR 72745. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *cement,* between points in Allen and Neosho Counties, KS, and Mayes County, OK, on the one hand, and, on the other, points in Benton County, AR.

MC 161704, filed April 27, 1982. Applicant: BERTS TOWING RECOVERY CORPORATION, 173rd and Kennedy Ave., P.O. Box 2100, Hammond, IN 46323. Representative: Harry J. Harman, 700 Harrison Bldg., 143 West Market St., Indianapolis, IN 46204, (317) 634–4242. Transporting (1) *wrecked, disabled, and repossessed motor vehicles,* (2) *freight trailers,* and (3) *replacement motor vehicles and freight trailers,* between points in Lake, Porter, LaPorte, and Newton Counties, IN, and Cook and Will Counties, IL, on the one hand, and, on the other, points in IA, IL, IN, KS, KY, MA, MI, MN, MO, NC, ND, NE, NY, OH, OK, PA, SC, SD, TN, VA, WI, and WV.

MC 161715 filed April 27, 1982. Applicant: THOMAS M. MURPHY AND RICHARD J. MURPHY, 8455 Verree Rd., Philadelphia, PA 19111. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046, (215) 576–0131. Transporting *general commodities* (except classes A and B explosives and household goods), between points in PA in the east of Bedford, Blair, Centre, Clinton, Lycoming, Sullivan, and Bradford Counties, PA, on the one hand, and, on the other, points in NJ.

MC 161735, filed April 29, 1982. Applicant: MOTOR COACH TOURS, INC., 13 Syossett Lane, Cazenovia, NY 13035. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. As a *broker,* at Cazenovia, NY, in arranging for the transportation of *passengers and their baggage,* between points in the U.S.

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Decided: May 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 89716 (Sub-59), filed May 3, 1982. Applicant: DICK JONES TRUCKING, P.O. Box 965, Powell, WY 82435. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101, (406) 248–2611. Transporting (1) *petroleum, natural gas and their products,* between points in WY, on the one hand, and, on the other, points in ND, SD, NE and CO, and (2) *crude petroleum,* between points in ND and SD, on the one hand, and, on the other, points in MT, WY and CO.

MC 125386 (Sub-2), filed May 3, 1982. Applicant: BULLOCK'S, INC., East Monroe St., Maquoketa, IA 52060. Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001, (319) 557–1320. Transporting *metal products,* between points in Scott County IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143788 (Sub-7), filed May 4, 1982. Applicant: HAL MAST TRUCKING CO., INC., Route 1, Box 259, Sugar Grove, NC 28679. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continung contract(s) with Associated Meats, Inc., of Silver Spring, MD, and Swift Independent Packing Company, of Chicago, IL.

MC 152146 (Sub-4), filed May 3, 1982. Applicant: FAR WEST TRANSPORTERS, INC., 14901 Chandler Rd., Omaha, NE 68138. Representative: Arlyn L. Westergren, 9202 W. Dodge St., Suite 201, Omaha, NE 68114, (402) 397–7033. Transporting *building materials,* between points in Douglas and Sarpy Counties, NE, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, NM, OK, TX, UT and WY.

MC 152706 (Sub-5), filed May 4, 1982. Applicant: MIDWEST OIL TRANSIT, INC., P.O. Box 68023, Indianapolis, IN 46268. Representative: Robert B. Hebert, 777 C of C Bldg., Indianapolis, IN 46204, (317) 639–4511. Transporting *petroleum and coal products,* between Indianapolis, IN and Louisville, KY, on the one hand, and, on the other, points in Champaign and Vermilion Counties, IL.

MC 160596, filed April 29, 1982. Applicant: NANCY BAER TRUCKING INC., 880 Conrad Ave., Jasper, IN 47546. Representative: Barbara J. Gears, 2225 Hwy 41-North, Evansville, IN 47711, (812) 423–0389. Transporting *cleaning compounds, gym bags, molded plastic articles, greeting cards, suntan products and bath products,* between Cincinnati, OH, and points in Robertson County, TN, Green County, KY, Calhoun County, AL, and Hidalgo County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Nasco Inc. and its subsidiaries.

MC 160906, filed May 3, 1982. Applicant: LEE LUNDE, d.b.a. VIKING OIL AND HOTSHOT SERVICES, Mohall, ND 58761. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502, (701) 756–7112. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Dover Corporation—Norris Division, of Williston, ND, and National Supply Company, a division of Armco Inc., of Mohall, ND.

MC 161586, filed May 3, 1982. Applicant: JACK GREESON, d.b.a. GREESON TRUCKING, 304 N 8th St., Midlothian, TX 76065. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *chemicals and related products,* between points in Ellis County, TX, on the one hand, and, on the other, points in NM, NY, NJ, NC, GA, MO and MI.

MC 161786, filed April 30, 1982. Applicant: K & L TRANSPORT, INC., 417 Washington Ave., North Haven, CT 06473. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, on the one hand, and, on the other, points in AR, CA, CO, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, NC, NH, NJ, NY, OH, OK, OR, PA, RI, SC, TN, TX, VA, VT, WA, WI, WV and DC.

MC 161796, filed May 3, 1982. Applicant: JERRY D. RAINEY, d.b.a. J.R. ExPRESS, Greenland Road, Anderson, SC 29622. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328, (404) 256–4320. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Clark-Schwebel Fiber Glass Corporation, of Anderson, SC.

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Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 44927 (Sub-5), filed May 4, 1982. Applicant: PRO EXPRESS, 1225 W. Washington Blvd., Montebello, CA 90640. Representative: Wyman C. Knapp, Suite 1800, 707 Wilshire Blvd., Los Angeles, CA 90017, (213) 627–8471. Transporting *electrical equipment and supplies,* between points in Los Angeles, Orange, Santa Barbara, Ventura, San Bernardino, Riverside, and San Diego Counties, CA.

MC 143406 (Sub-6), filed May 5, 1982. Applicant: MICHEL PROPERTIES, INC., Stenersen Lane, Cockeysville, MD 21030. Representative: Walter T. Evans, 4304 East-West Hwy, Bethesda, MD 20814, (301) 657–2636. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nabisco Brands, Inc., of New York, NY, and its subsidiaries.

MC 143446 (Sub-5), filed May 5, 1982. Applicant: McCALLISTER BROTHERS, INC., 510 Signal Dr., P.O. Box 2114, Rock Springs, WY 82901. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001, (307) 634–2184. Transporting (1) *Mercer commodities,* and (2) *those commodities* which because of their size or weight require the use of special handling or equipment, between those points in the U.S. (except AK and HI), in and west of ND, SD, NE, KS, OK, TX and LA.

MC 143787 (Sub-9), filed April 30, 1982. Applicant: ADMIRAL TRANSPORT CORPORATION, 921 Pulliam Ave., Worland, WY 82401. Representative: Winston A. Hollard, P.O. Box 1169, Arvada, CO 80001–1169, (303) 425–0384. Transporting *non-alcoholic beverages,* between points in Weber County, UT, on the one hand, and, on the other, points in AZ, CO, ID, NM, MT, NV and WY, under continuing contract(s) with Admiral Beverage Corporation, of Ogden, UT.

MC 144177 (Sub-2), filed May 6, 1982. Applicant: BILL'S MOBILE HOME TRANSPORT, INC., 4900 Laurel Rd., Billings, MT 59101. Representative: Joel E. Guthals, P.O. Box 1977, Billings, MT 59101, (406) 245–3071. Transporting (1) *trailers* designed to be transported by passenger automobiles and other vehicles, and (2) *buildings and buildings in sections,* between points in AZ, CO, ID, KS, MT, NE, NV, MN, ND, OK, OR, SD, UT, WA and WY.

MC 146807 (Sub-38), filed May 3, 1982. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes-Barre, PA 18702. Representative: Edward F. V. Pietrowski, 430 Scranton Life Bldg., Scranton, PA 18503, (717) 346–5761. Transporting *perlite,* between points in Lake County, IL, on the one hand, and, on the other, points in MD, PA, NY, NJ, MO, IN, TN, OK, KS, LA, TX, OH, MI, AR, GA, FL, NC, SC, VA and DC.

MC 151637 (Sub-4), filed May 3, 1982. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Rd., Van Buren, AR 72956. Representative: Don Garrision, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *paper articles and plastic articles,* between points in Sebastian County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159367 (Sub-1), filed May 3, 1982. Applicant: MID-AMERICA TRAVEL CENTERS, INC., 508 6th St., Grundy Center, IA 50638. Representative: Martha Martell, 600 Fifth Ave. Plaza, Des Moines, IA 50309, (515) 282–6068. Transporting *passengers and their baggage,* in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Blackhawk County, IA, and extending to points in the U.S. (including AK, but excluding HI).

MC 161837, filed May 4, 1982. Applicant: FIRST NATIONAL TRAVEL SERVICE, INC., 126 E. Main St., Norman, OK 73069. Representative: Glenda Heinsius (same address as applicant), (405) 364–1130. To operate as a *broker,* at Norman, OK, in arranging for the transportation of *passengers and their baggage,* between points in OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–170

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

Applicant: POLMAN TRANSFER, INC., Rt. 3 Box 470, Wadena, MN 56482. Representative: Robert P. Sack, 837 Apollo Rd., Eagan, MN 55121, (612) 452–8770. Transporting *food products,* between points in Todd County, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144547 (Sub-16), filed April 20, 1982. Applicant: LEASING SYSTEMS, INC., 1346 E. Taylor St., San Jose, CA 95133. Representative: Gary L. Teskey (same address as applicant), (408) 286–3051. Transporting *Liquor, wine, and distilled products,* between points in AZ, CA, ID, NM, OR, UT, WA, WY, CO, TX, OK, KS, NE, NV, IA, MO, and IL, under continuing contract(s) with Frank-Lin Distillers, a Corporation, of San Jose, CA.

MC 161827, filed May 3, 1982. Applicant: A. M. DELIVERY EXPRESS, INC., P.O. Box 16235, Chattanooga, TN 37416–0235. Representative: Edward L. Moore, Rt. #3, Box 148, Decatur, TN 37322, (615) 334–9050. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 156227 (Sub-1), filed May 3, 1982. Applicant: STATELINE SYSTEMS, INC., P.O. Box 101020, Nashville, TN 37210. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Bldg., 315 Union St., Nashville, TN 37201, (615) 244–2926. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between points in TN, on the one hand, and, on the other, points in AL, AR, GA, KY, MS, and TN, and (b) between points in Wilson County, TN, on the one hand, and, on the other, points in Charleston County, SC.

MC 158657, filed May 4, 1982. Applicant: PATRICK A. BARRETT, d.b.a. SHAMROCK ENTERPRISES, 2540 Gail Dr., Riverside, CA 92509. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602, (213) 945–3002. transporting *petroleum products,* between points in CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, ND, NM, NV, TX, UT, and WY.

MC 159467 (Sub-2), filed May 3, 1982. Applicant: JOOR TRUCKING, INC., 52nd St., New Rochelle, NY 10801. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Seven-Up Bottling of St. Louis, of Hazelwood, MO.

Volume No. OP5-106

Decided: May 11, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 31389 (Sub-338), filed May 3, 1982. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons (same address as applicant), 919-721-2433. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Union Carbide Corporation of Danbury, CT.

MC 37398 (Sub-5), filed May 3, 1982. Applicant: JOHN J. BOYCE TRANSPORTATION, INC., West End Ave., P.O. Box 663, Hammonton, NJ 08037. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, 215-561-1030. Transporting *food and related products*, (except in bulk), between points in the U.S. (except AK and HI).

MC 130189 (Sub-3), filed May 3, 1982. Applicant: SHENANDOAH TOURS, INC., 2309 Poplar St., Staunton, VA 24401. Representative: Robert E. Everidge (same as applicant), 703-885-1528. As a *broker* at points in VA, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, between points in the U.S.

MC 142649 (Sub-8), filed May 3, 1982. Applicant: H. O. SMESTAD CO., P.O. Box 2904, Great Falls, MT 59403. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in the MT, ND, and WY, on the one hand, and, on the other, points in CA, MT, ND, OR, TN, WA, and WY.

MC 144999 (Sub-10), filed May 3, 1982. Applicant: JEM TRUCKING COMPANY, INC., P.O. Box 217, Wilkesboro, NC 28697. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355-3543. Transporting *food and related products* between points in U.S. (except AK and HI), under continuing contracts with Geraphyl, Inc., of Bristol, TN, and Lowe's Food Stores of Wilkesboro, NC.

MC 148299 (Sub-1), filed April 28, 1982. Applicant: CHAMY TRANSPORT LTD., 3080 Bernard Pilon St., St. Mathieu de Beloeil, Quebec, Canada J3G 4S5. Representative: W. Norman Charles, P.O. Box 724, Glens Falls, NY 12801, 518-792-0957. Transporting in foreign commerce *general commodities* (except classes A and B explosives and household goods), between ports of entry on the international boundary line between the United States and Canada, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 151118 (Sub-22), filed May 3, 1982. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, (601) 335-3576. Transporting *transportation equipment* between points in Craighead County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151359 (Sub-3), filed May 3, 1982. Applicant: PAC-WEXT CARRIERS, INC., P.O. Box 873, Los Alamitos, CA 90720. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212, (213) 277-2323. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 152808, filed April 27, 1982. Applicant: NICHOLSON TRUCKING, INC., 1532 S.E. 3rd Ave., Portland, OR 97214. Representative: Paul C. Nicholson (same address as applicant), 503-235-8375. Transporting *general commodities* (exept classes A and B explosives, and household goods), between points in AZ, CA, CO, ID, MT, NE, NM, NV, OK, OR, TX, UT, WA, and WY.

MC 159629, filed May 3, 1982. Applicant: CONSOLIDATED SHIPPERS, INC., P.O. Box 962, North Little Rock, AR 72115. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375-3022. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, KS, KY, GA, AL, TN, MS, LA, OK, MO, TX, and CA.

MC 160859, filed April 30, 1982. Applicant: ABBOTT BROTHERS TRUCKING, INC., Route 8, Palm St., Paragould, AR 72450. Representative: James M. Duckett, Suite 411, 221 West 2nd, Little Rock, AR 72201, 501-375-3022. Transporting *lumber and wood products*, between points in Craighead County, AR, on the one hand, and, on the other, points in NE, TX, MO, IL, MS and FL.

MC 161788, filed April 30, 1982. Applicant: E. MAC TRANSPORTATION CO., INC., 38 West River St., Providence, RI 02904. Representative: Richard M. Passalacqua, 84 State St., Boston, MA 02109, 617-227-0420. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MA and RI, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA and NC.

MC 161799 (Sub-1), filed May 3, 1982. Applicant: DAVE R. GRANT HAY, INC., 910 W. 24th St., Ogden, UT 84401. Representative: Bruce W. Shand, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531-1300. Transporting (1) *metal products* and (2) *lumber, wood products, and* (3) *building materials* (except those in (1) and (2) above), between points in AZ, CA, CO, ID, IL, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 161809, filed May 4, 1982. Applicant: B & S TRANSPORTATION, INC., 915 Visco Drive, Nashville, TN 37210. Representative: Rebecca Lyford, J. C. Bradford Bldg., Suite 916, Nashville, TN 37219, (615) 255-0441. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in Williamsom, Rutherford, Dickson, Davidson, Wilson, Montgomery, Cheatham, Robertson, and Sumner Counties, TN, on the one hand, and, on the other, points in Chirstian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson, and Daviess Counties, KY, and Vanderburg County, IN, (b) between points in Williamson, Rutherford, Dickson, Davidson, and Cheatham Counties, TN, on the one hand, and, on the other, points in Montgomery County, TN, and (c) between points in Christian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson, and Daviess Counties, KY, on the one hand, and, on the other, points in Vanderburg County, IN.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13482 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to

provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP 3–71

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 41294 (Sub-3), filed April 28, 1982. Applicant: UNITED RIGGING & HAULING, INC., 6701 Ammendals Rd., Beltsville, MD 30705. Representaitive: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 737–1030. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 50185 (Sub-2), filed April 23, 1982. Applicant: CROZIER BROS. VAN LINES, INC., 460 Tarrytown Rd., White Plains, NY 10607. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20423. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 157555, filed April 12, 1982. Applicant: E. CLAYTON OWEN, d.b.a. OWEN TRANSPORT, 3344 Good Hope Ln., Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882–5649. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), betweeen points in the U.S. (except AK and HI).

MC 161665, filed April 23, 1982. Applicant: LYONS TRANSPORT, Route 1, Loyal, WI 54446. Representative: Michael J. Lyons (same address as applicant), (715) 255–9281. Transporting *food and other edible products and byproducts intended for human consumption,* (except alcoholic beverages and drugs) *agricutural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in WI, on the one hand, and, on the other, points in CA.

MC 161684, filed April 27, 1982. Applicant: SERVICE BROKERAGE, INC., P.O. Box 356, Oneida, TN 37841. Representative: Marshall Kragen, 1919 Pennsylvania Ave., N.W., Washington, DC 20006, (202) 466–3776. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161794, filed April 30, 1982. Applicant: R. J. BAKER, 112 S. Glenwood Ave., Aldan, PA 19018. Representative: R. J. Baker (same address as applicant), (215) 622–5158. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4–171

Decided: May 11, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161787, filed April 30, 1982. Applicant: EARL KEGLEY AND SAME WILLIAMS, d.b.a. KEGLEY DAIRY, P.O. Box 26, Front St., Piggott, AR 72454. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375–9151. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161807, filed May 3, 1982. Applicant: M.C. NOLEN, d.b.a. PGA DISTRIBUTION, P.O. Box 820321, Dallas, TX 75382. Representative: M.C. Nolen (same address as applicant), (214) 494–4091. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161817, filed May 3, 1982. Applicant: WESTERN OVERSEAS CORPORATION, 2801 Temple St., Long Beach, CA 90806. Representative: Michael F. Dugan, (same address as applicant), (213) 595–0616. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–107

Decided: May 11, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 155779 (Sub-4), filed April 27, 1982. Applicant: DIAMONDHEAD FREIGHT SYSTEM, INC., P.O. Box 462, Decatur, IN 46733. Representative: Andrew K. Light, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, (317) 638–1301. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161618, filed May 3, 1982. Applicant: SEAPOOL, INC., 333 Flower St., Los Angeles, CA 90071. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211, (213) 655-3573. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13480 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP4-168]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification; Permanent Authority Decision; Notice

May 12, 1982.

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the of his Federal Register notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 103997 (Sub-28) (republication), filed January 5, 1982; published in the Federal Register issue of February 9, 1982; and republished this issue. Applicant: CARRIER VAN SERVICE, INC., 3041 Paseo, Kansas City, MO 64109. Representative: David Earl Tinker, Suite 1112, 1000 Connecticut Ave., N.W., Washington, DC 20036.

In a decision by the Commission, Review Board Number 2 decided April 22, 1982, and finds that performance by the applicant as *a common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting *household goods*, (1) between points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina, and South Carolina; and (2) between points in Kansas and Missouri, on the one hand, and, on the other, points in Arizona, California, New Mexico, Oklahoma, Texas, Maryland, North Carolina, and South Carolina; will serve a useful purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include part 2 above, in the scope of authority granted.

MC 157457 (Sub-1) (republication), filed November 9, 1981; published in the Federal Register issue of December 1, 1981; and republished this issue. Applicant: CONGOLEUM CARTAGE CORPORATION, 2323 S. 17th St., Elkhart, IN 46514. Representative: H. Barney Firestone, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603, Phone: (312) 263-1600.

In a decision by the Commission, Review Board Number 3, decided April 7, 1981, and finds that performance by the applicant as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) furniture and fixtures; and (2) plastic products, between Seattle, WA; St. Louis, MO; Philadelphia, PA; Roanoke, VA; and Knoxville, TN; and points in Los Angeles County, CA; Marathon County, WI; Winston County, AL; Marion County, MS; and Logan County, OK; and points in Florida, North Carolina, Georgia, and Arkansas, on the one hand, and, on the other, points in Alabama, Georgia, South Carolina, Michigan, Florida, North Carolina, Arizona, Idaho, Oregon, Texas, Missouri, Kansas, Indiana, Mississippi, California, Pennsylvania, Virginia, Tennessee, Wisconsin, Illinois, Kentucky, Nevada, New York, Massachusetts, and Ohio; will serve a useful pubic purpose, responsive to a public demand or need. Applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include points in Los Angeles County, CA, in the scope of authority.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13479 Filed 5-18-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-171

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 160468 (Sub-3-2TA), filed May 7, 1982. Applicant: FOLSOM TRUCKING COMPANY, INC., 101 Folsom Road, P.O. Box 98, McCalla, AL 35111. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209-4786. *Contract* carrier: irregular: *Metal and metal articles, plastic and plastic articles* between the facilities of Folsom Metal Products, Incorporated in or near McCalla, AL on the one hand and on the other TX, LA, OK, MS and AL, under continuing contracts with Folsom Metal Products, Incorporated. Supporting shipper: Folsom Metal Products, Incorporated, P.O. Box 98, McCalla, AL 35111.

MC 145154 (Sub-3-17TA), filed May 7, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 248, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005. *Flexible steel*

conduit, copper wire, and armored cable, and materials and supplies used in the manufacture and distribution thereof, between points in Suffolk County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Steelflex Electro Corp., 145 S. 13th Street, Lindenhurst, NY 11757.

MC 159964 (Sub-3–2TA), filed May 7, 1982. Applicant: VARALLO FOODS, INC., d.b.a. VARALLO TRANSPORT, P.O. Box 40424, Melrose Station, Nashville, TN 37204. Representative: D. R. Beeler, P.O. Box 482, Franklin, IN 37064. *(1) Metal cans, glass, paper, and plastic* between the facilities of American Recyclers at Nashville, TN on the one hand, and, on the other, Atlanta, GA; and *(2) rubber and vinyl products* between the facilities of Tennessee Mat Company, Inc. at Nashville, TN on the one hand, and, on the other, points in GA. Supporting shippers: American Recyclers, 237 Hermitage Ave., Nashville, TN 37210; Tennessee Mat Company, Inc., 1400 3rd Ave. S., Nashville, TN 37210.

MC 155013 (Sub-3–6TA), filed May 7, 1982. Applicant: FREIGHTMASTER, INC., P.O. Box 664, Taylorsville, NC 28681. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Contract;* Irregular. *Metal products* from Anderson, IN to points in NC and Morristown, TN. Under continuing contract(s) with Barber Manufacturing Company. Supporting shipper: Barber Manufacturing Company, P.O. Box 2454, Anderson, IN 46018.

MC 161269 (Sub-3–1TA), filed May 11, 1982. Applicant: ARMSTRONG LOGGING, INC, Rt. 5, Box 279–A, Elizabeth City, NC 27909. Representative: George P. Armstrong, same address as applicant. *Contract,* Irregular: *Lumber, Wood Products, and Waste Paper,* Between Points in NC, VA, MD, NJ, NY, PA, WV, OH, MI, SC, TN, DE. Supporting shipper: Chesapeake Lumber Co., a division of Chesapeake Corp. of VA, West Points, VA 23181.

MC 161941 (Sub-3–1TA), filed May 11, 1982. Applicant: MICHALE G. MORRIS, d.b.a. MORRIS TRUCKING, P.O. Box 1034, Tupelo, MS 38801. Representative: Michael G. Morris same as Applicant. *Contract;* irregular; Finished clothing and unfinished clothing material between Verona, MS and Dallas, TX. Supporting shipper: WGW Clothing Company, P.O. Box 480, Verona, MS 38879.

MC 161942 (Sub-3–1TA), filed May 11, 1982. Applicant: UNIVERSAL TRUCKING OF SPARTANBURG, INC., P.O. Box 1241, Spartanburg, SC 29304. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract Carrier,* Irregular routes: *Aluminum ingots and sows and liquid aluminum, including materials, equipment and supplies,* between points in the United States in and east of MN, IA, MO, KS, OK, and TX, for the account of Batchelder Blasius, Inc. Supporting shipper: Batchelder Blasius, Inc., P.O. Box 5503, Spartanburg, SC 29304.

MC 151480 (Sub-3–2TA), filed May 11, 1982. Applicant: SUNBELT EXPRESS, INC., P.O. Drawer 13008, Florence, SC 29501. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Contract;* irregular; (1) *General Commodities, except household goods,* between points in the US, except AK and HI, under continuing contract with United Forwarding Inc., of Omaha, NE; (2) *General Commodities, except household goods,* between points in the US, except AK and HI under continuing contract with Southeastern Shippers Association, Inc., of Florence, SC; (3) *Fiberboard and pulpboard, waste paper, and materials, supplies and equipment used in the manufacture, sale or distribution of fiberboard or pulpboard,* between Florence, SC, on the one hand, and, on the other, points in the US, in and east of MN, IA, MO, AR and LA under continuing contract with Stone container Corp. of Florence, SC. Supporting shippers: United Forwading Inc., 7000 Building, Suite 445, Omaha, NE 68106, Southeastern Shippers Association, Inc., 1926 Damon Drive, P.O. Box 12262, Florence, SC 29504, Stone Container Corp., P.O. Box 4000, Florence, SC 29502.

MC 161617 (Sub-3–1TA), filed May 12, 1982. Applicant: ALYSON-AARON, INC., Route 3, Box 202, Kanuga Road, Hendersonville, NC 28739. Representative: Evelyn M. Barker (same address as applicant). *Passengers and their baggage in the same vehicle with said passengers, in special and charter operations;* from Hendersonville, NC to Knoxville, TN and return. Supporting shipper: Ramada Inn, I–26 and Hwy. 54E, P.O. Box 669, Hendersonville, NC 28739.

MC 161959 (Sub-3–1TA), filed May 12, 1982. Applicant: FRED MILLER, 9236 Sandler Road, Jacksonville, FL 32244. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Fixtures and supplies used by grocery stores,* between Jacksonville, FL on the one hand, and, on the other, points in GA, AL, MS, LA, TX, SC, NC, and TN. Supporting shipper: Load King Manufacturing Co., 1357 West Beaver Street, Jacksonville, FL 32209.

MC 161960 (Sub-3–1TA), filed May 12, 1982. Applicant: JOHNNY E. ROBINSON, Route 1, Box 74A, Fayette, AL 35555. Representative: Roger C. Williams, 2628 Eighth Street, P.O. Box 2890, Tuscaloosa, AL 35403. *Passengers, and their baggage (charter operations only)* between Fayette County, AL and various point in MS, GA, TN and FL. Supporting shipper: Piney Grove Baptist Church, 338 14th Street, N.W., Fayette, AL 35555.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 109818 (Sub-5–11TA), filed May 10, 1982. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Plastic product and paper and related products and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk),* between the facilities of Trinity Paper and Plastic Corp. in Elizabeth, NJ; Plainfield, Will County, IL; Yulee, Nassau County, FL; and Remington, Fauquier County, VA, on the one hand, and, on the other, all pts in the U.S. (except AK and HI). Supporting shipper: Trinity Paper and Plastics Corporation, 529—5th Avenue, New York, NY 10017.

MC 121281 (Sub-5–1TA), filed May 11, 1982. Applicant: BIG MAC TRUCKING COMPANY, 2400 Augusta Dr., Suite 150, Houston, Texas 77057. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, Texas 77024. *Prestressed concrete products* from points in Tarrant and Austin Counties, TX to points in AR, LA, and OK. Supporting shipper: Everman Corp. Everman, TX.

MC 128449 (Sub-5–2TA), filed May 10, 1982. Applicant: JIMMIE TUCKER TRUCKING, INC., P.O. Box 428, Broken Bow, OK 74728. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Potash (except in bulk),* from the facilities of KCL Sales, Inc., at or near Carlsbad, NM to points in AL, AR, CA, CO, FL, GA, KS, LA, MN, MS, MT, ND, OH, OK, TX, UT, VA and WY. Supporting shipper: KCL Sales, Inc., P.O. Box 990, Tyler, TX 75710.

MC 133194 (Sub-5–9TA), filed May 11, 1982. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Road, P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr., Same as applicant. *General commodities (except those of unusual value, classes A and B explosives,*

household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from facilities of Emerson Electric Company at Rogers, AR, to and from all points in OK and MO, and from the facilities of International Paper Company at Russellville, AR, to and from all points in OK and MO. Applicant intends to tack with existing authority and applicant intends to interline. Supporting shipper: Emerson Electric Company, 13 Street North, Rogers, AR 72756 and International Paper Company, P.O. Box 1588, Russellville, AR 72801.

MC 133802 (Sub-5–1TA), filed May 10, 1982. Applicant: EMPAK TRANSPORTATION COMPANY, P.O. Box 1974, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. Contract, irregular; *Plastic bottles* from the Commercial Zone of Creighton, PA, to the Commercial Zones of Chicago, IL; Detroit, MI, Tulsa, OK; and St. Louis and Kansas City, MO, under continuing contract(s) with Penn-Plastics, Inc., of Creighton, PA.

MC 139306 (Sub-5–3TA), filed May 11, 1982. Applicant: STANAGE TRANSPORTATION, INC., 121 Indian Springs Road, Hot Springs, AR 71901. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201. Contract; Irregular. *Cullet Glass, in bulk,* between points in the U.S. (except AK and HI), under continuing contracts with Westinghouse Electric Corporation, Little Rock, AR.

MC 143165 (Sub-5–2TA), filed May 10, 1982. Applicant: McCLELLAN J. LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland, Same address as applicant. *Contract* irregular: *Lumber and lumber products,* between pts in the U.S. (except AK & HI), under contracts with Broadview Lumber Co., Inc., American Log Homes, Inc., Slanker & Co., Denney Lumber Company, Inc., and Binder & Son Lumber Co., Inc.

MC 146457 (Sub-5–6TA), filed May 10, 1982. Applicant: PAISLEY TRUCKING, INC., P.O. Box 208, Durango, IA 52309. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Fertilizer,* From East Dubuque, IL to pts in Dubuque, Delaware and Jones Counties, IA. Supporting shippers(s): Swiss Valley Ag Service, Route 2, Monticello, IA 52310.

MC 146729 (Sub-5–5TA), filed May 10, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd. Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Chemicals and allied products* (except Classes A and B explosives, radioactive materials and commodities in bulk) between points in TX on the one hand, and, on the other hand, points in DE, NJ, NY, OH, PA, MO, CA, KS, VA, IL and AL. Supporting shipper(s): Hancock Industries, Inc., 7144 Burns Street, Richland Hills, TX 76118.

MC 148378 (Sub-5–1TA), filed May 10, 1982. Applicant: STOVER TRUCK LINE, INC., 809 E. Court, Beloit, Ks. 67420 Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, Ks. 66612. *Cereal malt beverages and cooperages including empty pallets, empty kegs and empty bottles,* Between Beloit, KS on the one hand and the Commercial zones of St. Paul, MN and St. Louis, MO on the other hand. Supporting shipper: Pestinger Distributing Co., Inc., Hwy. 24, P.O. Box 11, Beloit, KS 67420.

MC 154405 (Sub-5–2TA filed May 11, 1982. Applicant: JAMES GOAD, d.b.a. JOPLIN PITTSBURGH EXPRESS, Route 2, Box 4, Liberal, MO 64762. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. *General commodities (except Class A and B Explosives),* between pts in Jasper County, MO on the one hand and pts in Benton and Washington Counties, AR; and Montgomery County, KS on the other hand. Supporting shippers: Safeway Stores, Inc., 4525 North Cooper, Oklahoma City, OK 73118; Highway 66 Salvage, Inc., Route 6, Box 64, Joplin, MO 64801; Butler Paper Company, 410 Adele, Joplin, MO 64801; Pennington Drug Company, Fifth and Grand Street, Joplin, MO 64801; and Joplin Supply Company, Fourth and Michigan, Joplin, MO 64801.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 161824 (Sub-6–1TA), filed May 10, 1982. Applicant: ARIES TRANSPORTATION COMPANY, INC., 13932 E. Valley Blvd., City of Industry, CA 91744. Representative James Bowers (same as applicant). *General Commodities, excluding used household goods, Classes A & B Explosives, Shipments in bulk in tank vehicles,* between points and places in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY for 270 days, an underlying ETA seeks 120 days authority. Supporting shippers: There are 6 supporting shippers. Their statements may be examined in the office listed above.

MC 161915 (Sub-6–1TA), filed May 10, 1982. Applicant: DAVID C. ARNIO, d.b.a. DAVID C. ARNIO TRUCKING, 1224 Granada, Casper, WY 82601. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. *(a) Mercer Commodities; (b) Machinery; and (c) Electrical Machinery, equipment and supplies,* between points in Richland and Yellowstone Counties, MT; Williams County, ND; and Natrona County, WY on the one hand, and on the other hand, points in CO, ID, KS, MT, NE, ND, OK, SD, TX, UT and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Karst Enterprises, Inc., POB 1748, Casper, WY 82602; Woods Petroleum, 340 Energy 2 Bldg., 951 W. Werner Ct., Casper, WY 82601; Williams Exploration, 1252 S. Elk St., Casper, WY 82601; and Karst Rental Equipment, POB 1417, Mills, WY 82644.

MC 161913 (Sub-6–1TA), filed May 10, 1982. Applicant: BEN CREGGER, d.b.a. BEAR TRUCKING CO., 1945 Bonnie Brae, Casper, WY 82601. Representative: Robert Cregger (same as applicant). *Machinery, material, equipment and supplies used in, or in connection with the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products,* between WY, CO, NM, AZ, UT, NV, ID, MT, ND, SD, KS, and OK, for 270 days. Supporting shipper: ERC Wellheads, P.O.B. 3102, Casper, WY 82602; Rocky Mountain Machinery, P.O.B. 617, Casper, WY 82602; The Western Company of North American, P.O.B. 9710. Casper, WY 82609; and Signal Oilfield Service, Inc., Drawer 79, Casper, WY 82602.

MC 133154 (Sub-6–3TA), filed May 10, 1982. Applicant: BELL TRANSPORT COMPANY, 14000 E 183rd St., La Palma, CA 90623. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210. *Contract carrier:* Irregular routes: *pulp, paper and related products,* between points in OR, WA, CA, NV, ID, UT, AZ, MT, WY, CO, NM and TX, for 270 days. Supporting shipper: Superior Transportation Systems, Inc., 9450 S W Commerce Ct, Ste 400, Wilsonville, OR 97070.

MC 129219 (Sub-6–7TA), filed May 10, 1982. Applicant: C M D TRANSPORTATION, INC., 12340 S.E. Dumold Rd., Clackamas, OR 97045. Representative: Richard C. Shearer, P.O. Box 1970, Lake Oswego, OR 97034. *Contract Carrier,* Irregular routes: *Malt Beverages,* from the facility of General Brewing Company (Lucky Lager) at Vancouver, WA, to points in CA, OR, and WA, for the account of General Brewing Company (Lucky Lager), for 270 days. Supporting shipper: General

Brewing Company (Lucky Lager), 312 W. 8th St., Vancouver, WA 98660.

MC 146303 (Sub-6–2TA), filed May 10, 1982. Applicant: COLO-TEX INDUSTRIES, INC., 1325 Quincy Ave., Englewood, CO 80110. Representative: William J. Lippman, P.O. Box 6060, Snowmass Village, CO 81615. *Meat and meat products* from Garden City, KS to points in CT, IL, MI, MA, MS, MD, NH, NJ, NY, OH, PA and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kansas Process Beef, Inc., P.O. Box 957, Garden City, KS 67846.

MC 161930 (Sub-6–1TA), filed May 7, 1982. Applicant: FLEENOR BROS. LTD., 328 Panorama Crescent, Courtenay, B.C., CD V9N 6V2. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. *Contract carrier*—irregular routes: (1) *Red cedar shakes and shingles* from the ports of entry on the international boundary line between the U.S. and CD located in WA, to points in TX, OK, MO, KS, AR, IA, NE and WY; (2) *Hazardous materials (Class A and B explosives)* from Carthage, MO, Casper, WY, and Helliwell, KS, to the ports of entry on the international boundary line between the U.S. and CD located in WA, for 270 days. Supporting shippers: Watkins Sawmills Ltd., P.O.B. 3280, Mission, B.C. V2V 4J4; Canadian Explosives Ltd., 2150 Gull Ave., Comox, B.C. V9N 5P1.

MC 146024 (Sub-6–2TA), filed May 10, 1982. Applicant: G & R PETROLEUM, INC., 253 S.W. 4th Ave., Ontario, OR 97914. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carrier*, Irregular routes: *Fertilizer*, from Kennewick and Finley, WA to points in Malheur County, OR and Ada, Canyon, Gem, Owyhee, Payette and Washington Counties, ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Agro-West, Inc., P.O.B. 594, Wilder, ID 83676 and Union Fertilizer, Inc., P.O.B. 816, Nampa, ID 83651.

MC 149036 (Sub-6–8TA), Filed May 10, 1982. Applicant: MAHAFFEY'S WAREHOUSE, INC., P.O. Box 317, Yellow Jacket, CO 81335. Representative: James F. Crosby & Associates, 7363 Pacific St., Suite 210B, Omaha, NE 68114. *Beer and wine*, from Fresno and Los Angeles, CA and Longview, TX (and points in their commercial zones) to Gallup and Farmington, NM (and points in their commercial zones), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gallup Sales Company, 530 E. 66th Ave., Gallup, NM 87301.

MC 116045 (Sub-6–2TA), Filed May 10, 1982. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *Sulphuric acid, in bulk*, from Grants, Gallup and Waterflow, NM together with a fifteen mile radius of each and from Gila County, AZ to the facilities of Energy Fuels Nuclear, Inc., near Blanding, UT for 270 days. Supporting shippers: Energy Fuels Nuclear, Inc., Suite 900, 3 Park Central, 1515 Arapahoe, Denver, CO 80202; Western Nuclear, Inc., P.O. Box 71, Riverton, WY 82501; and Phillips Petroleum Company, 836 Adams Building, Bartlesville, OK.

MC 161917 (Sub-6–1TA), Filed May 10, 1982. Applicant: NORTHWEST MOTOR FREIGHT, 4216 S. 160th, Seattle, WA 98188. Representative: Richard H. Johnston (same as applicant). *Contract carrier*, irregular routes, *Such commodities as are dealt in or used by retail chain department stores.* Between points in WA, OR, and ID, for 270 days. Supporting shipper: Mariposa Warehouse Managers, P.O. Box 40, Woodinville, WA 98072–0040.

MC 161918 (Sub-6–1TA), Filed May 10, 1982. Applicant: SANDIA TRUCKING, INC., 4432 San Isidro NW., Albuquerque, NM 87107. Representative: James C. Ash, 2524 Vermont NE., Albuquerque, NM 87110. *Frozen offal in refrigerated vans requiring temperatures of 0° F. or below*, between Los Angeles County, CA and Potter County, TX for 270 days. Supporting shipper: Kal Kan Food, Inc., P.O. Box 58853, Vernon, CA 90058.

MC 148791 (Sub-6–14TA), Filed May 10, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier*, Irregular routes: *Salt and salt products* from points in UT, IA, MO, IL, and OH to points in the U.S., for the account of Domtar Industries, Inc. of Schiller Park, IL, for 270 days. Supporting shipper: Domtar Industries, Inc., 4825 N. Scott St., Schiller Park, IL 60176.

MC 113271 (Sub-6–14TA), Filed May 7, 1982. Applicant: TRANSYSTEMS, INC., P.O. Box 399, Black Eagle, MT 59414. Representative: Kenneth G. Thomas (same as applicant). *Agricultural fertilizer*, in bulk, from Conda, ID and its commercial zone to points in MT for 270 days. Supporting shippers: Peavey, Inc., 730 2nd Avenue So., Minneapolis, MN 55402; Great Plains Crop Management, Inc., P.O. Box 115, Glendive, MT 59446. An underlying ETA seeks 120 days authority.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13482 Filed 5-18-82; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 603-TA-7]

Certain Airtight Cast-Iron Stoves; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of preliminary investigation.

SUMMARY: On January 4, 1982, at the request of the Division of Unfair Import Investigations, the Commission voted to institute a preliminary investigation pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) into the possible existence of unfair methods of competition and unfair acts with respect to the importation into the United States and sale of stoves and the effects, if any, of such methods and acts. Notice of this investigation was issued on January 13, 1982, and published in the Federal Register on January 20, 1982 (47 F.R. 2946).

The scope of the investigation, as set forth in the Notice, was:

1. Passing off imported copies of domestic airtight cast-iron stoves and causing the consumer to believe that such imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

2. Engaging in false and deceptive advertising for the purpose of furthering the belief on the part of the consumer that the imported stoves are the domestic stoves, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

3. Infringing the common law trademark protection provided to various airtight cast-iron stove companies because respondents' stovds are virtually identical copies, the effect or tendency of which is to destroy or substantially injure the efficiently and economically operated airtight cast-iron stove industry in the United States.

Having conducted an investigation into these matters, the Commission has determined that no further investigatory activity need take place at this time.

However, the Commission will continue to monitor the airtight cast-iron stove market and enforce the orders issued in Commission investigations *Airtight Cast-Iron Stoves,* No. 337–TA–69, and No. 337–TA–106, *Airtight Cast-Iron Stoves.* If the Commission determines that any of the aforementioned unfair acts and unfair methods of competition, or any other unfair acts, are occurring in the future, appropriate Commission action will be taken. The Unfair Import Investigations Division will continue to respond to inquiries from persons seeking advice on how they might comply with the Commission's actions and orders in this matter.

FOR FURTHER INFORMATION CONTACT: Donald R. Dinan, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0488.

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13842 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No 337–PA–112]

Certain Cube Puzzles; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on May 21, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W, Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 11, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82–13843 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–110]

Certain Methods for Extruding Plastic Tubing; Termination of Respondents

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to respondents Pacific Orient Imports and ABC Jewelry Imports.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondents Pacific Orient Imports (Pacific Orient) and ABC Jewelry Imports (ABC Jewelry) on the basis of motions filed by those respondents. The complainant and the Commission investigative attorney have not opposed the motions.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a and concerns alleged unfair trade practices in the importation into and sale in the United States of certain plastic bags allegedly made abroad in accordance with the claims of a method patent owned by the complainant in this proceeding, Minigrip, Inc. The motion to terminate the investigation as to Pacific Orient included an affidavit by the owner of Pacific Orient in which he stated that Pacific Orient is a small jewelry importer/wholesaler, which has not imported and does not intend to import the plastic bags involved in this investigation. The motion to terminate the investigation as to ABC Jewelry includes a sworn statement by its owner, which stated that ABC Jewelry has not and will not be in the business of the manufacture, distribution, or sale of the plastic bags involved in this investigation, except for those subject to a 1976 license obtained from complainant.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq. Office of the General Counsel, telephone 202–523–0079.

Issued: May 10, 1982.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 82–13844 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–122]

Certain Miniature, Battery-Operated, All-Terrain, Wheeled Vehicles; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a compliant was filed with the U.S. International Trade Commission on April 23, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Schaper Manufacturing Co. Division of Kusan, Inc., 9909 S. Shore Drive, P.O. Box 1426, Minneapolis, Minnesota 55440, and A. Eddy Goldfarb, d/b/a A. Eddy Goldfarb and Associates, 19434 Londelius Street, Northridge, California 91324. The compliant alleges unfair methods of competition and unfair acts in the importation of certain miniature, battery-operated, all-terrain, wheeled vehicles ("vehicles") into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,306,375 and (2) false designation of source by reason of the copying of complainant's vehicles. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to conduct expedited temporary relief proceedings and to issue (1) a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and (2) a temporary cease and desist order; and, after a full investigation, to issue (1) a permanent exclusion order and (2) a permanent cease and desisit order.

AUTHORITY: The authoirty for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the compliant, the U.S. International Trade Commission, on May 12, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain vehicles into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 4,306,375, and (2) false designation of origin by reason of copying complainant's vehicles, the effect or tendency of which is to destroy or substantially injure an industry,

efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Schaper Manufacturing Co., Division of Kusan, Inc., 9909 S. Shore Drive, P.O. Box 1426, Minneapolis, Minnesota 55440

A. Eddy Goldfarb, d/b/a A. Eddy Goldfarb and Associates, 19434 Londelius Street, Northridge, California 91324

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

LJN Toys, Ltd., 200 Fifth Avenue, Suite 734, New York, N.Y. 10010

LJN Toys (Hong Kong), Ltd., Tung Ying Bldg., Suite 807, 100 Nathan Road, Tsimshatsui, Kowloon, Hong Kong

Universal International (Holdings) U.S.A., Ltd., 41 Madison Avenue, 18th Floor, New York, N.Y. 10010

Greenman Bros. Inc., 105 Price Parkway, Farmingdale, N.Y. 11735

Larco, Inc., 2413 San Fernando Road, Los Angeles, Calif. 90065

Pensick & Gordon, 6501 Flotilla Street, Los Angeles, Calif. 90040

Esco Imports of Texas, 5671 Business Park, San Antonio, Texas 78218

Soma Traders, Ltd., 417 J. Hotung Ho, 5 Hankow Road, Kowloon, Hong Kong

Fishel Toys, Ltd., 18 Fendwick Street, 5/f, Hong Kong

Milton D. Myer Co., Rothesay Avenue, Carnegie, Penn. 15106

Northern Specialties, 6635 North Baltimore, Portland, Oregon 97203

Novelty Distributing, 3100 West Fourth Street, Owensboro, Ky. 42301

M. W. Kasch Co., 5401 W. Donjes Bay Road, Mequon, Wisc. 53092

(c) M. Brooke Murdock, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer with instructions to issue a recommended determination as to whether there is a reasonable indication of violation of section 337 forty five days from the date of publication of the notice of investigation in the **Federal Register** and the Commission hereby shortens to five (5) days the period to be allowed for filing exceptions to the recommended determination and for filing alternative findings of fact and conclusions of law under § 210.54 of the Commission's Rules of Practice and Procedure.

(4) The presiding officer shall also establish a schedule for oral presentations concerning the remedy, bonding, and public-interest aspects of the investigation for the purpose of creating an administrative record to be certified to the Commission five (5) days after the recommended determination on violation is issued. In addition the presiding officer shall provide for a prehearing briefing schedule to be published in the **Federal Register** soliciting the written views of any persons interested in the temporary relief phase of the investigation. The transcript of the oral presentations, the prehearing briefs, and the other written comments will constitute the administrative record concerning remedy, bonding, and the public interest to be certified to the Commission. The Commission shall issue its determination on temporary relief thirty days (30) following certification of the record to the Commission.

Responses conforming to the requirements of § 210.21(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than 10 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0176.

FOR FURTHER INFORMATION CONTACT: M. Brooke Murdock, Esq., Unfair Import Investigations Division, Room 132, U.S. International Trade Commission, telephone 202–523–0115.

Issued: May 14, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13045 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-114]

Certain Miniature Plug-in Blade Fuses; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on June 2, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 11, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82-13040 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-121]

Certain Plastic-Capped Decorative Emblems; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 13, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of D.L. Auld Company, 1209 North Fifth Street, Columbus, Ohio 43201. An amendment to the complaint was filed on May 3, 1982. The amended complaint (hereinafter, the complaint) alleges unfair methods of competition and unfair acts in the importation of certain plastic-capped decorative emblems into the United States, or in their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 4,100,010, U.S. Letters Patent 4,139,654, and U.S. Letters Patent 4,259,388. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue an order excluding said emblems from entry into the United States for the life of the patents in issue and/or issue an order directing respondents to cease and desist from the unfair acts and unfair methods of competition complained of.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 12, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain plastic-capped decorative emblems in the United States, or into their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 4,100,010, U.S. Letters Patent 4,139,654, and U.S. Letters Patent 4,259,388, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States,

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served.

(a) the complainant is—D.L. Auld Company, 1209 North Fifth Street, Columbus, Ohio 43201.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Craft Originators, Div. of Dennison Manufacturing Co. of Canada, Ltd., 41 Brockley Drive, Hamilton, Ontario, Canada L8E 3C3

Marklyn Co., Inc., 58 Oakwood Avenue, North Port Credit, Ontario, Canada L5G 3L8

John Brichetto, Jr., d.b.a. Motorsport Graphics, P.O. Box 720076, Atlanta, Georgia

John Brichetto, Sr., d.b.a. Autosport Medallions, P.O. Box 9553, Knoxville, Tennessee 37920

(c) Samuel Bailey, Jr., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation, and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Samuel Bailey, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-1273.

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13067 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-121]

Certain Plastic-Capped Decorative Emblems; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: May 13, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-13068 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-170 Through 173 (Preliminary)]

Certain Steel Products From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation and the scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: May 7, 1982.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-170 through 173 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of certain steel products upon which bounties or grants are alleged to be paid. The products covered in these investigation are as follows: Hot-rolled carbon steel plate, provided for in items 607.8615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (1982) (TSUSA); hot-rolled carbon steel sheet, provided for in TSUSA items 607.8610, 607.8700, 607.8320, 607.8342, and 607.9400; cold-rolled carbon steel sheet, provided for in TSUSA items 607.8320 and 607.8344; and galvanized carbon steel sheet, provided for in TSUSA items 608.0730 and 608.1300.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Magrath, Office of Industries, U.S. International Trade Commission; telephone 202-523-0342.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on May 7, 1982, by the United States Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions or by June 21, 1982 (19 CFR 207.17). The investigations will be subject to the provisions of part 207 of the

Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission, Building, 701 E Street, NW., Washington, D.C. 20436, on or before June 7, 1982. All written submissions except for confidential business date will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m., e.d.t., on June 1, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Lynn Featerstone, telephone 202–523–0242, not later than May 27, 1982, to arrange for their appearance. It is anticipated that parties in support of the imposition of countervailing duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Record

The records of Commission investigations Nos. 701–TA–86 through 144 (Preliminary), 701–TA–146 (Preliminary), 701–TA–147 (Preliminary), 701–TA–155 through 163 (Preliminary), and 731–TA–53 through 86 (Preliminary), Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, Spain, the United Kindom, and West Germany, will be incorporated in the records of investigations Nos. 701–TA–170 through 173 (Preliminary).

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR 201). Further information concerning the conduct of the conference will be provided by Mr. Featherstone.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13651 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–46 (Final)]

Certain Steel Wire Nails From Korea; Change of Public Hearing Date

AGENCY: International Trade Commission.

ACTION: Change of date of public hearing in connection with investigation No. 731–TA–46 (Final).

SUMMARY: Notice is hereby given that the United States International Trade Commission has changed the date of the previously announced public hearing in the subject investigation (46 FR 16126). The hearing will now be held on June 22, 1982, beginning at 10:00 a.m., in the U.S. International Trade Commission Building, 701 E St., NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 2, 1982. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m., on June 4, 1982, in Room 117 of the U.S. International Trade Commission Building and must file prehearing statements on or before June 15, 1982. Any person may submit to the Commission on or before July 1, 1982, written statements of information pertinent to the subject matter of the investigation.

FOR FURTHER INFORMATION CONTACT: Judith Zeck, Office of Investigations, U.S. International Trade Commission, (202) 523–0339.

Issued: May 14, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–13652 Filed 5–18–82; 8:45 am]

BILLING CODE 7020–01–M

[Investigation No. 701–TA–164 (Final)]

Prestressed Concrete Steel Wire Strand From Spain

AGENCY: International Trade Commissioner.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 701–TA–164 (Final) to determine, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of prestressed concrete steel wire strand (PC strand) provided for in item 642.11 of the Tariff Schedules of the United States (TSUS) upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1981, a petition was filed with the Department of Commerce by counsel for American Spring Wire Corporation, Armco Inc., Bethlehem Steel Corporation, Florida Wire & Cable Company, and Shinko Wire American Inc., alleging that the government of Spain pays or bestows, directly or indirectly, bounties or grants upon the manufacture, production or export of PC strand within the meaning of section 303 of the Tariff Act of 1930 (the Act). As Spain was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act, there was no requirement for the Commission to conduct a preliminary material injury investigatiion pursuant to section 703(a). On April 12, 1982, Commerce issued a preliminary determination that the government of Spain is providing its manufacturers, producers, and exporters of PC strand with benefits that are bounties or grants.

On April 14, 1982, however, the United States Trade Representative announced that Spain had become a "country under Agreement" (47 FR 16697). As a result of this announcement, Title VII of the Act applies to all countervailing duty investigations of merchandise from Spain. According to section 102 of the Trade Agreements Act of 1979, once

Title VII becomes applicable, any pending investigation under section 303 must terminate. Where a preliminary but not a final determination has been made, the case is to be treated as if the preliminary determination were made under section 703 of the Act as of the date Title VII first applied to the country.

On April 26, 1982, Commerce notified the Commission that it had terminated its investigation under section 303, and that, in accordance with section 102(a)(2) of the Trade Agreement Act of 1979, it was changing the effective date of its preliminary determination to April 14, 1982. Accordingly, the Commission is instituting a final countervailing duty investigation, effective April 26, 1982, the date of receipt of notice from Commerce. The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CRR 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982)), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before July 1, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statement must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data". All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

A staff report containing preliminary findings of facts will be made available to all interested parties on June 21, 1982.

Public Hearing

The Commission will hold a public hearing in connection with this investigation on July 12, 1982, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 10:00 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 17, 1982. Persons desiring to appear at the hearing and make oral presentations may file a prehearing brief and should attend a prehearing conference to be held at 10:00 a.m., on June 21, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed on or before July 1, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearings should be included in prehearing briefs in accordance with rule 207.22. Posthearing briefs will also be accepted within a time specified at the hearing.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982, and part 201, subparts A through E (19 CFR Part 201 (1981), as amended by 47 FR 6188 (Feb. 10, 1982)).

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 12, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13049 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-95 (Preliminary)]

Stainless Steel Sheet and Strip From France

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-95 (Preliminary) to determine, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of stainless steel sheet, provided for in items 607.7610, 607.9010, and 607.9020 of the Tariff Schedules of the United States Annotated (TSUSA), and stainless steel strip (over 0.01 inch in thickness), provided for in TSUSA items 608.4300 and 608.5700 which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Leahy, Jr., Office of Investigations, U.S. International Trade Commission; telephone 202-523-1369.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America. The Commission must make its determination in the investigation within 45 days after the date of receipt of petition, or by June 24, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982)), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before June 9, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted (19 CFR 201.8 (1981), as amended by 47 FR 6188 (Feb. 10, 1982)).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with the investigation for 10:00 a.m., e.d.t., on June 7, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the

conference should contact the investigator for the investigation, Mr. Daniel Leahy, telephone 202–523–1369, not later than June 1, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 6188 (Feb. 10, 1982)), and part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 6188 (Feb. 10, 1982)). Further information concerning the conduct of the conference will be provided by Mr. Leahy.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13860 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-165 Through 169 (Preliminary)]

Welded Carbon Steel Pipes and Tubes From Brazil, France, Italy, South Korea, and West Germany

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The International Trade Commission hereby gives notice of the institution of investigations Nos. 701–TA–165 through 169 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, France, Italy, South Korea, and West Germany of welded carbon steel pipes and tubes, provided for in item 610.32 of the Tariff Schedules of the United States (TSUS) (1982), upon which bounties or grants are alleged to be paid.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted following receipt of petitions filed by U.S. Steel Corp. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions, or by June 21, 1982 (19 CFR Part 207.17). These investigations will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, (1981) and 47 FR 6190, Feb. 10, 1982), and particularly subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before June 7, 1982, a written statement of information pertinent to the subject matter of these investigations. A signed original and fourteen copies of such statements must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet must be clearly marked at the top "Confidential Business Data." All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on June 2, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the Investigator for the investigations, Ms. Abigail Eltzroth, telephone 202–523–0289, not later than May 26, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 201 (1981)), as amended by 47 FR 6190 (Feb. 10, 1982) and part 201, subparts A through E (19 CFR Part 201 (1981)), as amended by 47 FR 6188 (Feb. 10, 1982). Further information concerning the conduct of the conference will be provided by Ms. Eltzroth.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

Issued: May 13, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-13863 Filed 5-18-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Crime Information Center Advisory Policy Board; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 16 and June 17, 1982 from 9:00 a.m. until 5:00 p.m. at the Ramada Inn, Steamboat Village, Steamboat Springs, Colorado.

The major topics to be discussed include:

(1) Status of the first phase and format of the second phase of the Interstate Identification Index.

(2) Report of the pilot project on an unidentified dead file as maintained by the State of Colorado and status of pending legislation on establishment of a national file on the unidentified dead.

(3) Expansion of entry criteria of NCIC Wanted Person File to include delinquent juveniles who have escaped or absconded from custody.

(4) The presentation of proposals recommended by local and state users of the NCIC System to enhance the quality and completeness of records in the System.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least

twenty-four hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202–324–2606.

Dated: May 11, 1982.

William H. Webster,

Director.

[FR Doc. 82-13514 Filed 5-18-82; 8:45 am]

BILLING CODE 4410-05-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

May 13, 1982.

Additional changes have been made to the agenda for the May 24–25, 1982 meeting of the National Advisory Committee on Oceans and Atmosphere (NACOA) published in the **Federal Register** of May 10, 1982 (Page 20054). The revised tentative agenda is as follows:

Monday, May 24, 1982 (Room 416)

9:00 a.m.–12:30 p.m.—Plenary
9:00 a.m.–9:30 a.m.—Swear-In Ceremony for New Member; Edward N. Gladish, Manager, Land Services, Champlin Petroleum Co., CA
9:30 a.m.–12:30 p.m.—Review and Approval of Fisheries Panel Report
12:30 p.m.–1:30 p.m.—Lunch
1:30 p.m.–4:00 p.m.—Plenary; Weather Services Report Review of Conclusions
4:00 p.m.–5:00 p.m.—Panel meeting; Ocean Satellite Planning Session
5:00—Recess

Tuesday, May 25, 1982 (Room 416)

8:00 a.m.–9:30 a.m.—Panel Meeting; OCS Revenue Sharing, Chairman: Jack Van Lopik, Topic: Review Proposed Legislation and Refine Position
9:30 a.m.–12:30 p.m.—Plenary
9:30 a.m.–11:30 a.m.—Guest Speaker: ADM John B. Hayes, Commandant, U.S.C.G.
11:30 a.m.–12:30 p.m.—(To Be Announced)
12:30 p.m.–1:30 p.m.—Lunch
1:30 p.m.–3:00 p.m.—Plenary; Action Items and Panel Reports, OCS Revenue Sharing, Ocean Satellites Initiative, Annual Report Review
3:00 p.m.—Adjourn

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: May 13, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82-13483 Filed 5-18-82; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-27)]

Intent To Pay Senior Executive Service Performance Awards

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to pay Senior Executive Service performance awards.

SUMMARY: The National Aeronautics and Space Administration will give performance awards to career members of the Senior Executive Service (SES) as authorized under 5 U.S.C. 5384. The awards will be paid no earlier than June 1, 1982.

ADDRESS: Executive Personnel Management Program, NPD–31, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip D. Waller, telephone 202–755–6825.

James M. Beggs,

Administrator.

May 13, 1982.

[FR Doc. 82-13494 Filed 5-18-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Subpanel on Sensory Physiology and Perception; Amended Notice of Meeting

The Subpanel on Sensory Physiology and Perception of the Advisory Panel for Behavioral and Neural Sciences is meeting in Washington, D.C. on May 27–28, 1982. The agenda for this meeting is being amended to include an open session on May 28 from 1 p.m. to 2:30 p.m. For convenience, the meeting notice is being reprinted in its entirety.

Name: Advisory Panel for Behavioral and Neural Sciences Subpanel for Sensory Physiology and Perception
Date and time: May 27 and 28, 1982, 9:00 A.M. to 5:00 P.M.
Place: Room 634, at The National Science Foundation; 1800 G Street, N.W., Washington, D.C. 20550
Type of meeting: Part Open—Open 1:00 P.M. to 2:30 P.M. May 28; Closed 9:00 A.M. to 5:00 P.M., May 27; 9:00 A.M. to 1:00 P.M. & 2:30 to 5:00 P.M., May 28
Contact person: Dr. John K. Harting, Staff Associate, Developmental Neurosciences Panel, Room 320, National Science Foundation, Washington, D.C. 20550; telephone 202/357–7428
Summary minutes: May be obtained from the Contact Person, Dr. John K. Harting at the address listed above.

Purpose of panel: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda

Open—Discussion of the future of the scientific field of developmental neurosciences.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

This notice originally appeared in the **Federal Register** on Friday, May 7, 1982, Volume 47, No. 89, page 19832.

M. Rebecca Winkler,

Committee Management Coordinator.

May 14, 1982.

[FR Doc. 82-13078 Filed 5-18-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on June 8, 1982, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review the Department of Energy's Public Draft of the National Plan for Siting High-Level Waste Repositories and Environmental Assessment, the

NRC's FY 1984 and FY 1985 waste management research plans, advances in waste management practices, and other NRC waste management activities.

In accordance with the procedures outlined in the Federal Register on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitte, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance. The agenda for the subject meeting shall be as follows:

Tuesday, June 8, 1982—8:30 a.m. until the conclusion of business.

Discussion of the topics noted above.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley or the Staff Engineer, Ms. R. C. Tang (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 14, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-13980 Filed 5-18-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 13, 1982 (47 FR 15942). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meetings open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1982 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Qualification Program for Safety Related Equipment,* May 19 and 20, 1982, Albuquerque, NM. The Subcommittee will discuss three major program areas (Sandia Qualification Test Evaluation Program, Independent Verification Research Test Program, and Hydrogen Burn Equipment Survivability) conducted by Sandia Laboratory and continue its review of equipment qualification requirements. Notice of this meeting was published May 4, 1982.

**Midland Plant Units 1 and 2,* May 20 and 21, 1982, Midland, MI. The Subcommittee will review the Consumers Power Company application for an operating license for Midland Plant Units 1 and 2. Notice of this meeting was published May 4, 1982.

**Clinch River Breeder Reactor (CRBR),* May 24 and 25, 1982, Washington, DC. The Subcommittee will discuss seismic-related issues regarding the Clinch River Breeder Reactor Construction Permit review. Notice of this meeting was published May 6, 1982.

**Advanced Reactors,* May 26, 1982, Washington, DC. The Subcommittee will discuss the NRC Research Program on advanced reactors in conjunction with the ACRS Report on the NRC Long-Range Research Plan. Notice of this meeting was published May 7, 1982.

**Electrical Systems and Qualification Programs for Safety-Related Equipment,* May 27, 1982, Washington, DC. The Joint Subcommittees will discuss the NRC-sponsored research programs, proposed research funding for FY 1984 and FY 1985, and those parts of the Long-Range Research Plan which relate to the areas for which these two Subcommittees are responsible.

**Class 9 Accidents,* May 28, 1982, Washington, DC. The Subcommittee will discuss the Nuclear Regulatory Commission's Nuclear Plant Severe Accident Research Plan and related items.

**Human Factors,* June 1, 1982, Washington, DC. The Subcommittee will review the Nuclear Regulatory Commission's proposed FY 1984 and FY 1985 Research Programs and budget and will develop specific comments on the NRC's Long-Range Research Plan as each relates to the area of Human Factors.

**Clinch River Breeder Reactor (CRBR),* June 1 and 2, 1982, Washington, DC. The Subcommittee will discuss the seismicity and associated seismic design for the Clinch River Breeder Reactor.

**Safety Research Program,* June 2, 1982, Washington, DC. The Subcommittee will review the NRC Safety Research Program and budget for FY 1984 and FY 1985.

**Reactor Operations and Three Mile Island Unit 2 Action Plans,* June 2, 1982, Washington, DC. The Subcommittee will discuss with members of the NRC Staff and other interested parties two proposed regulations. The first concerns proposed rulemaking to clarify applicability of license conditions and technical specifications in an emergency and would be implemented by adding the necessary clarifications to 10 CFR 50.54, "Conditions of License" and to 10 CFR 50.72, "Notification of Significant Events". The other proposed rule deals with licensing requirements for pending operating license applications. This

proposed rule will modify 10 CFR 50.34 (contents of applications; technical information) and contains the basic requirements of NUREG–0737, "Clarification of TMI Action Plan Requirements".

**Metal Components,* June 7, 1982, Palo Alto, CA. The Subcommittee will be given a status report by nuclear reactor Steam Generator Owners Group on research results and any changes made in steam generator design/operation. Three Mile Island Unit 1 steam generator problems will also be discussed.

**Waste Management,* June 8, 1982, Washington, DC. The Subcommittee will review and comment on the Department of Energy's Public Draft of the National Plan for Siting High-Level Waste Repositories and Environmental Assessment; provide input for the Waste Management Chapter of the FY 1984 and FY 1985 Safety Research Program Review; review NRC Staff waste management activities; and discuss advances in waste management practices.

**Emergency Core Cooling Systems (ECCS),* June 16 and 17, 1982, Idaho Falls, ID. The Subcommittee will discuss General Electric Company's request for a change in 10 CFR Part 100, Appendix K requirements, the NRC Staff's code audit capability, the LOFT ATWS test Nuclear Steam Supply System vendor code predictions and results, and the NRC work on operator accident guidelines and procedures.

**Reactor Radiological Effects,* June 23, 1982, Washington, DC. The Subcommittee will discuss NRC Staff proposed revision to 10 CFR 20 and the use of potassium iodide for thyroid blocking in the event of a radiation accident.

**Washington Public Power Supply System Unit 2 (WPPSS),* June 23 and 24, 1982, Hanford, WA. The Subcommittee will continue the review of the application of Washington Public Power Supply System for an operating license for the WPPSS Nuclear Project Unit 2.

**Clinch River Breeder Reactor (CRBR) and Site Suitability,* June 24 and 25, 1982, Washington, DC. The Subcommittee will continue the site suitability review for the Clinch River Breeder Reactor.

**Perry Nuclear Power Plant Units 1 and 2,* June 28 and 29, 1982, Cleveland, OH. The Subcommittee will continue the review of the application of Cleveland Electric Illuminating Company for an operating license for the Perry Nuclear Power Plant Units 1 and 2.

**Systematic Evaluation Program,* June 30, 1982, Washington, DC. The Subcommittee will review the completion of the Systematic Evaluation Program review on Ginna.

**Grand Gulf Unit 1,* July 1, 1982, Washington, DC. The Subcommittee will continue the review of the Mississippi Power Company application for an operating license for Grand Gulf Unit 1.

**Extreme External Phenomena,* July 1, 1982, Washington, DC. The Subcommittee will review the Office of Nuclear Regulatory Research proposed FY 1984 and FY 1985 research funding and programs in this area for the Long-Range Research Plan.

**Reliability and Probabilistic Assessment,* July 1, 1982, Washington, DC. The Subcommittee will review the Office of Nuclear Regulatory Research proposed FY 1984 and FY 1985 research funding and programs for the Systems and Reliability Analysis (SARA) decision unit.

**Regulatory Activities,* July 6, 1982 (Tentative), Washington, DC. The Subcommittee will review proposed Regulatory Guides and Regulations.

**Safety Research Program,* July 7, 1982, Washington, DC. The Subcommittee will continue its review of the NRC Safety Research Program and budget for FY 1984 and FY 1985.

**Reactor Operations,* July 21 or 22, 1982, Washington, DC. The Subcommittee plans to discuss NRC's enforcement policy, the Inspection and Enforcement (IE) performance apprisal team inspection program and the IE regionalization program.

**Watts Bar,* Date to be determined (July), Washington, DC. The Subcommittee will continue the review of the application of Tennessee Valley Authority for an operating license for the Watts Bar Nuclear Power Plant Units 1 and 2.

**Safety Research Program,* August 11, 1982, Washington, DC. The Subcommittee will provide early input to the RES Staff for their preparation of the Long-Range Research Plan for FY 1985 through FY 1989.

**Transportation of Radioactive Materials,* Date and location to be determined. The Subcommittee will continue its review of the adequacy of the NRC procedures for certifying packages for transporting radioactive materials.

**Metal Components,* Date to be determined, Washington, DC. The Subcommittee will continue the review of pressurized thermal shock.

ACRS Full Committee Meeting

June 3–5, 1982: Items are *tentatively* scheduled.

**A. Midland Nuclear Plant*—Operating license.

**B. Quantitative Safety Goals*—Proposed NRC policy regard Quantitative Safety Goals for Nuclear Power Plants (NUREG–0880).

**C. Reactor Safety Research*—Proposed NRC Safety Research budget for FY 1984 and FY 1985.

**D. Reactor Pressure Vessel Integrity*—Proposed NRC action plan to resolve concerns regarding repressurization of reactor pressure vessels following rapid cooldown transients.

**E. NRC Regulations*—Proposed NRC regulations regarding safety related matters including Application of TMI–2 Lessons Learned to Operating Reactors (10 CFR 50.34); Applicability of License Conditions and Technical Specifications in an Emergency (10 CFR 50.54/50.72); Accreditation of Testing Organizations (10 CFR 50.49(a)); and Evaluation of Alternate Decay Heat Removal Systems (Task Action Plan A–45).

**F. ACRS Subcommittee Activities*—Discuss the status of designated ACRS Subcommittee activities regarding safety related matters including consideration of seismic events in emergency planning; and proposed changes in seismic design methodology.

**G. Meeting with NRC Commissioners (Tentative)*—Discuss ACRS activities regarding quantitative safety goals for nuclear power plants, integrity of reactor pressure vessels, ACRS plans for review of the CRBR, the NRC Long-Range Research Program Plan, and instrumentation for detection of inadequate core cooling.

**H. Three Mile Island Nuclear Plant Unit No. 1*—Briefing regarding causes of and status of steam generator tube damage.

July 8–10, 1982: Agenda to be announced.

August 12–14, 1982: Agenda to be announced.

Dated: May 14, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–13661 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit 1); Exemption

I

The Arkansas Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR–51, which authorizes operation of Arkansas Nuclear One, Unit No. 1. This license provides, among other things, that it is subject to all rules, regulations and

Orders of the Commission now or hereafter in effect.

The facility uses a Babcock and Wilcox pressurized water reactor at the licensee's site located in Pope County, Arkansas.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 5048 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any mofications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, Arkansas Power and Light Company requested exemption from meeting the schedule requirements for those items as outlined in 10 CFR 50.48(c). The NRC staff discussed the March 19, 1981, request with Arkansas Power and Light Company and it was understood that Arkansas Power and Light Company was requesting exemption from meeting the schedule requirements for those items (of Appendix R Sections III.G and L) as outlined in 10 CFR 50.48(c). By letter dated January 15, 1982, Arkansas Power and Light Company indicated that they were unable to commit to any firm schedule for submitting technical exemptions and design details.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determined whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, Arkansas Nulear One, Unit No. 1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of most of these items as documented in letters to Arkansas Power and Light Company. The FPSER supported the issuance of amendment [1] to the operating license of Arkansas Nuclear One, Unit No. 1 which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5–1. All of these modifications except those associated with an alternate safe shutdown capability have been completed. Therefore, Arkansas Nuclear One, Unit No. 1 has had upgrading to a high degree of fire protection already and the extensive reassessment involved in the request for exemption from the schedular dates of § 50.48(c) is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

In the letter dated January 15, 1982, Arkansas Power and Light Company stated that they were unable to commit to any firm schedule for submitting exemption requests and design details.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Arkansas Nuclear One, Unit No. 1 in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. This date is based upon the response of all the licensees with regard to the time needed to perform the reassessment required and the redesign of plant features if necessary. All but a few licensees indicated submittal dates prior to July 1, 1982, and many have already made their submittals. Arkansas Power and Light Company did not

[1] Arkansas Nuclear One, Unit No. 1—Operating License No. DPR–51 Amendment 35 supported by FPSER issued August 22, 1978.

indicate a submittal date. Therefore, an exemption should be granted to allow only such time for completion as is consistent with the time needed by other licensees for similar efforts. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 [1] as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the NRC staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to Generic Letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81–12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-13655 Filed 5-18-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 47 and 70 to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (the licensee) which revised the Technical Specifications for operation of the Brunswick Steam Electric Plant, Units Nos. 1 and 2 (the facility), located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to permit certain, specific core alterations to be performed when the source range nuclear instrumentation are indicating below the otherwise required threshold value.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated April 30, 1982, (2) Amendment Nos. 47 and 70 to License Nos. DPR–71 and DPR–62, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of May 1982.

For the Nuclear Regulatory Commission.

Philip J. Polk,

Acting Branch Chief, Operating Reactors Branch #2, Division of Licensing.

[FR Doc. 82-13656 Filed 5-18-82; 8:45 am]

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[1] By implication, this includes III.L which specifies the criteria for meeting III.G.3.

[Docket No. 50-289]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit No. 1); Exemption

I

The General Public Utilities Nuclear Corporation (the licensee) and three co-owners are the holders of Facility Operating License No. DPR-50 which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located in Dauphin County, Pennsylvania.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G, is the subject of this Exemption. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented August 17, 1981, December 15, 1981, and April 15, 1982, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to October 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to October 1, 1982, the date for filing additional exemptions from Section III.G pursuant to § 50.12(a) and § 50.48(c)(6);

(3) Extend from March 19, 1981, to October 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary;

(4) Extend from February 17, 1981, to October 1, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated; and

(5) Exemption from additional fire suppression system protection as required by Section III.G.2 where redundant safe shutdown equipment is located in the same fire area/zone.

Exemption (5) above is under review by the NRC staff, and we have requested that the licensee provide additional information to support that exemption request. Hence, the request for Exemption (5) is not being addressed by this Exemption.

With regard to the other exemption requests, when this fire protection rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the fire protection rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, TMI-1 had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. Several items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in five supplements to the FPSER. The FPSER and its supplements supported the issuance of amendments to the operating license of TMI-1 [1] which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications with the exception of five items which are related to safe shutdown (Section III.G) have been completed. Therefore, TMI-1 has been upgraded to a high degree of

[1] Three Mile Island Unit No. 1—Operating License No. DPR-50; Amendment No. 44 supported by FPSER issued September 19, 1978; Amendment No. 50 supported by Supplement 1 to FPSER issued March 16, 1979; Supplement 2 to FPSER issued April 14, 1979; Supplement 3 to FPSER issued July 21, 1980; Supplement 4 to FPSER issued September 19, 1980; Supplement 5 to FPSER issued November 19, 1980.

fire protection already. With respect to items related to safe shutdown, with the issuance of Appendix R, an extensive reanalysis of the Fire Hazards Analysis for TMI–1 was undertaken and is still in progress. GPU Nuclear with contractor support is applying a significant effort to complete the reassessment and determine modifications which may be necessary to conform with Section III.G. The additional time requested will allow time to quantify in detail the plant specific changes needed to comply with Section III.G. We note also that TMI–1 has not operated since early 1979 due to the July 2, 1979 Commission Order and, in any case, there will be no plant operation before October 1, 1982. Thus, the licensee concludes that the delays requested impose no additional risk to the public.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at TMI–1 in conformance with the requirements of the fire protection rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. However, the Commission has decided to grant an extension for areas (1) through (4) above only until July 1, 1982. It is our position that an extension until July 1, 1982, provides sufficient time for licensees to complete the reassessment required and redesign of modifications, if required. Since all but a few licensees have either indicated submittal dates prior to July 1, 1982, or have already made their submittals, we cannot conclude that sufficient effort has been applied by the licensee towards meeting the requirements of 10 CFR 50.48(c) and Appendix R. Accordingly, we find that because of the already-completed upgrading of this facility and since TMI–1 is not operating, there is no undue risk to the health and safety of the public caused by delay of this reassessment until July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to July 1, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § .50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81–12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81–12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the Exemption. If such violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the Exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the NRC staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation

[FR Doc. 82–13657 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–59 which authorizes operation of the James A. FitzPatrick Nuclear Power Plant. This license provides, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of one boiling water reactor at the licensee's site located in Oswego County, NY.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on Feburary 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Two

of these fifteen subsections, III.G. and III.J, are the subject of this Exemption. Section III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3.) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 19, 1981, as supplemented by letters dated June 22, 1981, January 11, 1982, and January 19, 1982, the licensee requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Appendix R as follows:

(1) Extend from March 19, 1981, to June 22, 1981, the date for submittal of an action plan to evaluate the requirements of Section III.G and to provide plans and schedules for the implementation of Section III.J or any exemptions thereto; and

(2) Extend from March 19, 1981, to December 28, 1981, the date for submittal of plans and schedules to implement the requirements of Section III.G or exemption thereto;

(3) Extend to October 31, 1982, the date for completion for plant modifications to satisfy the requirements of Section III.J;

(4) Extend from March 19, 1981, to February 18, 1982, the date for submittal of plans and schedules to implement the requirements of Section III.G.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR Part 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to Januray 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, where deficient in some respects. In general, much of the information requested in a generic letter (81–12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the FitzPatrick Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5–1 (BTP 9.5–1). The BTP 9.5–1 was developed to resolve the lessons learned from the fire at Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applciations for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued as amendment number 47 to Facility Operating License No. DPR–59 on August 1, 1979. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in supplements to the FPSER. The FPSER and supplementary letters approved modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of appendix A to BTP 9.5–1. All of these modifications have been completed. Therefore, the FitzPatrick plant has upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R to 10 CFR Part 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative Safe Shutdown capability and thus affects the final reassessment and redesign, if necessary, of this feature at the FitzPatrick plant. Another of these, Section III.J, requires that Emergency Lighting be installed. However, modifications in areas where there is access during normal plant operation have not been implemented as required by § 50.48(c). The emergency lighting for areas inaccessible during plant operation is not required until the next extended outage, presently planned for Fall 1983. Other than the above this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at the FitzPatrick plant in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. and III.J. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation during our assessment of the licensee's submittal dated February 26, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81–12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such

information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of an action plan to evaluate the requirements of Section III.G and to provide plans and schedule for the implementation of Section III.J as required by § 50.48(c)(5) is extended to June 22, 1981;

(2) The date, March 19, 1981 for filing exemption requests for the requirements of Section III.G as required by § 50.48(c)(6) which includes a tolling provision is extended to February 18, 1982.

(3) The date, March 19, 1981, for submittal of design descriptions of alternate or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to February 18, 1982, and

(4) The date, Febraury 17, 1981, from which installation schedules for completion of modifications associated with Section III.G.2 as established in § 50.48(c)(2) and (3) are calculated, is extended to February 18, 1982;

(5) The date for completion of plant modifications to satisfy the requirements of Section III.J is extended to October 31, 1982 except for areas where the installation of the emergency lighting would require or risk plant shutdown. For these latter areas, the required completion date is prior to return to operation from an extended outage as defined in 10 CFR 50.48(c) except that the date for computing the schedules, February 17, 1981, is extended to the date of this exemption.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to Generic Letter 81-12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be a considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration an environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

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[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes operation of the Vermont Yankee Nuclear Power Station (VY). This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The Facility is a boiling water reactor at the licensee's site located near Vernon, Vermont.

II

Section III.G.3 of Appendix R to 10 CFR Part 50 requires that a fixed fire suppression sstem be installed in an area, room or zone under consideration for alternative, safe shutdown modifications. In the Case of VY, under this provision a fire suppression system would be required in the control room.

The licensee indicated in its February 17, 1982 letter that the fire protection features currently installed in the control room are equal in effectiveness to a fixed fire suppression system and, therefore, requested an exemption from the requirement to install a fixed suppression system in the control room. The licensee's exemption request is based on the following:

—The control room is continually manned.
—Fire detection equipment has been installed generally throughout the control room including in cabinets and other areas not readily visible to operators.
—All electrical penetrations into the control room are sealed.
—Fire dampers have been provided on ventilation lines.
—Portable extinguishers are immediately available to operating personnel.

The modifications, which the licensee's exemption request is based on, are required by Appendix R to 10 CFR Part 50. Therefore, the above modifications alone do not justify an exemption from the requirement to install a fixed fire suppression system in areas where redundant divisions are located. However, the control room is a unique area of the plant that is required to be continually occupied by the operators. In the event of a fire, manual fire suppression would be effective and prompt. Because the operators provide a continuous fire watch in the control room, a fixed suppression system is not necessary to achieve adequate fire protection in the control room. This is similar to the concept reflected in the staff's acceptance, on a short-term basis, of a continuous fire watch as an alternative to fixed suppression systems in other locations when fire protection systems become unavailable (See Section 3.7.7.2 of the BWR Standard Technical Specifications, NUREG-0123, Rev. 3, as an example).

Based on our evaluation, we conclude that the licensee's fire protection features for the control room meet the objectives of Section III.G, "Fire Protection of Safe Shutdown Capability," of Appendix R to 10 CFR Part 50 and, therefore, the licensee's request to be exempted from the requirement to provide a fixed fire suppression system in the control room should be granted.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12 an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

With respect to the control room, the licensee is exempt from the requirement of Section III.G.3.b of Appendix R to 10 CFR Part 50 for a fixed fire suppression system.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 10th day of May 1982.

for the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

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Abnormal Occurrence; Blockage of Coolant Flow to Safety-Related Systems and Components

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following recurrence of certain incidents was determined to be an abnormal occurrence using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). Example I.D.4 ("For All Licensees") in Appendix A notes that recurring incidents, and incidents with implications for similar facilities (generic incidents), which create major safety concern can be considered an abnormal occurrence. The following description of the incident also contains the remedial actions taken.

Date and Place—The NRC has received notifications from several nuclear power plant licensees indicating that the heat transfer capabilities in some safety-related and non-safety-related cooling systems were degraded by unanticipated blockage of the coolant flow paths. Table 1 lists several incidents of a generic nature with varying degrees of safety significance. The incidents are listed by date of discovery. The incident discovered at Brunswick Unit 1 was the most significant from the safety standpoint due to the total loss of both redundant trains of the residual heat removal system. The other incidents, which were of lesser safety significance, are other recent examples of the recurrent nature of flow blockage problems which have been experienced. The principal cause for the flow blockage in many of these situations was a buildup of biological organisms.

TABLE 1.—INCIDENTS INVOLVING COOLANT FLOW BLOCKAGE TO SAFETY SYSTEMS AND COMPONENTS

Date, plant, location, and licensee	Event description
1. Sept. 3, 1980; Arkansas Nuclear One; Units 1 and 2; Pope County, Arkansas; Arkansas Power and Light Company (see note 1).	Coolant flow in the service water systems was blocked due to debris from Asiatic clams growing in the system and from a buildup of silt and corrosion products. Containment coolers, high pressure safety injection pump bearing and seal coolers, and containment spray and low pressure injection pump seal water coolers were most significantly affected. Clam shells were also found in the Auxiliary Cooling Water System (ACWS) which serves non-safety-related equipment in the turbine building. Due to design differences, Unit 2 had more severe problem than Unit 1.
2. Mar. 15, 1981; Rancho Seco Unit 1; Sacramento County, California; Sacramento Municipal Utility District (see note 2).	During a refueling outage, the licensee observed that the inlet plenum of the safety-related lube oil cooler on each of the high pressure injection pumps was 80 to 90% clogged with corrosion products. The cause was attributed to excessive corrosion of the lube oil cooler cast steel heads. Routine surveillance testing did not previously verify performance of this equipment.
3. Apr. 26, 1981; Brunswick Units 1 and 2; Brunswick County, North Carolina; Carolina Power and Light Company (see note 3).	Coolant flow in the service water systems was blocked due to debris from marine organisms growing in the system. Species present included American oysters, blue mussels, barnacles, and tubeworms. The Residual Heat Removal (RHR) systems, which provide decay heat removal capability following normal shut downs and during post-accident recirculation cooling, at both units were affected. Some shells were also found in other safety and non-safety related component coolers such as the diesel generator heat exchangers, core-spray pump room cooler and the turbine building component cooling water heat exchangers. Three RHR heat exchangers (both of those on Unit 1 and one on Unit 2) had their baffle plates displaced, as a result of the high differential pressure caused by the change in flow rate, allowing the service water to bypass the heat exchanger tubes. Therefore, the heat exchangers were inoperable.
4. June 9, 1981; San Onofre Unit 1; San Diego County, California; Southern California Edison Company (see note 4).	Growth of gooseneck barnacles on the salt-water discharge pipe of the safety-related component cooling water heat exchangers caused a low coolant flow and the malfunctioning of a butterfly valve. This growth was noticed while making preparations to restart the plant following a 14-month protracted shutdown. No problems were noted previously when the plant was in normal operation with routine flushings of the system with heated water.
5. Aug. 28, 1981; Pilgrim Unit 1; Plymouth County, Massachusetts; Boston Edison Company (see note 5).	While conducting an inspection in conjunction with an NRC Information Notice 81-21, the Reactor Building Closed Cooling Water (RBCCW) heat exchanger baffle plate had deformed allowing water to bypass the heat exchanger tubes. Although the heat exchanger problem involved a design deficiency, the growth of mussels in the Salt Service Water (SSW) system contributed to the degradation of the SSW system capabilities. Pilgrim had experienced problems with mussels growing in the cooling system for several years. The RBCCW system cools both non-safety and safety-related systems. The degradation of the RBCCW heat exchanger affects the heat removal capability of the residual heat removal system, as well as safety-related pump lube oil and bearing coolers and safety-related area coolers. (Note.—The RBCCW heat exchanger design deficiency is being reviewed seperately for generic implications as a possible corrosion mode failure mechanisms.)
6. Jan. 14, 1982; Arkansas Nuclear One, Unit 2; Pope County Arkansas; Arkansas Power and Light Company (see note 1).	While the plant was shutdown a weekly surveillance flow test was being conducted of the containment fan cooler heat exchangers. For the "C" cooler, flow dropped from about 1800 gpm to 500–600 gpm within five minutes. A normal flush did not increase flow; however, a high velocity flush did get the flow through the "C" cooler back to about 1300 gpm (technical specification value is 1800 gpm). The "C" and "D" coolers were disassembled and about five gallons of Asiatic clams were removed from the "C" cooler inlet water box; some clams were also found in the "D" cooler inlet water box. Most of the clams were dead. Other coolers were inspected but no significant amount of clams were found.

Notes to table 1:

1. Arkansas Nuclear One, Units 1 and 2 utilize pressurized water reactors designed by Babcock & Wilcox and Combustion Engineering, respectively.
2. Rancho Seco Unit 1 utilizes a pressurized water reactor designed by Babcock & Wilcox.
3. Brunswick Units 1 and 2 both utilize boiling water reactors designed by General Electric.
4. San Onofre Unit 1 utilizes a pressurized water reactor designed by Westinghouse.
5. Pilgrim Unit 1 utilizes a boiling water reactor designed by General Electric.

* * * * *

Nature and Probable Consequence—In a nuclear power plant, it is imperative that the heat generated by the nuclear reactor and the components of safety systems be dissipated to the environs. This process is usually performed by transferring the heat being generated to various cooling systems via heat exchangers and then to a heat sink such as a river, lake or cooling tower. These processes are utilized during normal operations and subsequent to normal plant shutdownns or accidents. Failure to provide adequate cooling could result in severe damage to the safety-related components or systems designed to safely shut down the plant and to mitigate the consequences of a major occurrence (such as a loss of coolant accident, LOCA).

The events described in Table 1, although limited in actual consequence, clearly are precursors to a possible common cause failure that could lead to more serious consequences, particularly in conjunction with postulated accidents. The nature of aquatic fouling in piping systems is such that it may go unnoticed, or not severely degrade system performance, until the system is called upon to function following an incident. Some of the ways that this can be postulated to occur are described below.

a. During normal operation, particularly if an adequate control program is not being followed, fouling organisms can grow in large diameter piping if the flow velocity is low. A quantity of fouling organisms, sufficient to cause severe flow blockages in safety-related coolers under accident conditions, could accumulate in such piping without causing significant flow degradation under normal operating conditions. Therefore, a situation such as this could go undetected for a long time since a large accumulation of fouling organisms would be required before any noticeable flow degradation was observed. These fouling organisms may potentially be slowly swept into components requiring cooling water causing tube plugging and degraded performance. If additional service water pumps are started following an incident, the tendency for live organisms, marine shell fragments, and other debris to be swept down the piping into heat exchangers would increase due to the higher flow velocity.

b. Fouling organisms also thrive in stagnant runs of piping in operating systems or in piping systems which have been inactive for long periods of time. Particularly during initial construction or extended maintenance outages, systems that would normally be operating may be laid-up for months or even years without the implementation of an adequate control program, allowing fouling organisms ample time to become established in systems that otherwise might be unaffected during operation. The concern here is that plants could begin operation without the operators being aware of the fouling that could exist.

An example of this, that did not go undetected by the licensee, is the described occurrence at San Onofre Unit 1. This plant had been shutdown for steam generator tube repairs for over one year. During this time, the periodic flushing of the system with heated water (heat treatment) normally used by the licensee to control the growth of marine organisms, was curtailed. Due to the lack of periodic heat treatment the licensee discovered, after observing a low saltwater coolant flow rate, that gooseneck barnacles were present on the component cooling water heat exchanger discharge tubesheet and in the saltwater discharge piping. The growth of the barnacles effectively (1) reduced the flow area of the piping causing low flow and (2) caused the malfunctioning of a butterfly valve.

Fire protection systems using service water are also prime candidates for fouling by aquatic organisms since they inherently contain stagnant branch lines that are conducive to marine growth. Branch lines in fire protection sprinkler heads generally have orifices of one-half inch. These would be susceptible to plugging. In addition, live organisms or marine shell fragments would be swept toward the open sprinkler head in the event of a fire.

c. Seismically diked emergency ponds utilized by some power plants as the ultimate heat sink could also support the growth of Asiatic clams. If make-up to the pond is from a waterbody in which the Asiatic clams are known to be present, then it is likely that the clams will be found in the ultimate heat sink and possibly in the service water supply header leading to the plant from the ultimate heat sink.

Under design heat loads (e.g., post-LOCA) ultimate heat sink temperatures could reach 110 to 120°F during summer months. This is not enough to cause a substantial mortality of the clam population. Dead clams may be more of a problem than live organisms, since they are more easily swept along by the flow. Therefore, following a LOCA that resulted in high pond temperatures, service water system performance could be gradually degraded if the dead clams are swept into the system. Even if the temperature of the ultimate heat sink does not reach the point that causes clam mortality, clams residing in the service water supply header could still be swept along the piping if the flow velocity is sufficiently high. Since the service water supply headers can be quite long, even a moderately dense infestation may translate into a large volume of clams. A small percentage of these, if swept along the piping, could overburden automatic backwash service water strainers.

d. Although all nuclear power plants are designed to withstand a seismic event, the vibratory motion induced by such an event may cause fouling organisms such as oysters, that attach themselves to piping walls by a strong but brittle bond, to be broken loose in sufficient quantities by the pipe flexure to cause flow blockage in cooling water systems. In a similar manner, during a seismic event, piping severely encrusted with corrosion products may release a substantial amount of debris which can collect in equipment bearing or seal coolers blocking the cooling water flow. In both cases, the buildup of fouling organism or corrosion products may not noticeably degrade system performance during normal operation; however, the performance of redundant systems could be simultaneously degraded following a seismic event. Since the reactor coolant system is seismically designed, a LOCA is not postulated to result from a seismic event. A degradation of the service water system, in this case, would not be an immediate safety concern but may lengthen the time required to go to cold shutdown as a result of the unavailability or diminished heat removal capacity of the shutdown cooling system.

e. Seal coolers are generally provided on pumps that may be called upon to pump heated water from the containment sump following a LOCA; for example, such pumps include the high and low pressure injection pumps, containment spray pumps or residual heat removal pumps. Surveillance testing of these pumps is, by necessity, performed with water at ambient temperature. This is not representative of the temperatures of water encountered during the post-LOCA recirculation mode of operation. Therefore, if flow blockage existed in the pump seal coolers due to the growth of fouling organisms, or a buildup of silt or corrosion products, it could go unnoticed during pump surveillance testing unless flow measurements through the coolers were part of the test. There are two reasons for this: (1) Since the pumped fluid is at ambient temperature, seal cooling may not be necessary and no seal degradation

would be observed even after hours of running without cooling water; and (2) generally, surveillance testing is of such a short duration that no noticeable seal degradation would occur even if cooling flow were necessary for sustained operation. Since pumps required during the post-LOCA recirculation are generally located outside primary containment (in the auxiliary building) degraded pump seals would result in the leakage of radioactively contaminated water outside containment.

Similarly, pumps provided with bearing lube oil coolers could be susceptible to flow blockages due to fouling organisms or the accumulation of corrosion products or silt deposits. Flow blockages in these coolers could also go unnoticed during surveillance testing unless the cooling water flow was monitored. This could result in premature bearing failure when the pumps are needed to run for an extended period of time, e.g., following a LOCA.

The safety concern identified by these events is the possible degradation of the heat transfer capabilities of redundant safety systems to the point where system function is lost. Preventive measures and methods of detecting gradual degradation have been inadequate in certain areas to preclude the occurence. The above postulated events involve a common cause failure mode that can affect redundant systems. Aquatic organisms, mud silt and corrosion products have been the main source of flow blockage in the coolant piping system and associated heat exchangers where events have occurred.

Cause or Causes—A variety of causes lead to the events reported in Table 1. At Arkansas Nuclear One, the first event discovered September 3, 1980, the growth of Asiatic clams was unanticipated in the design and appropriate operational control features were not provided. The design and operational control features that did exist were inadequate to prevent the buildup of mud, silt, and corrosion products from becoming a major problem.

The second event at Arkansas Nuclear One, Unit 2 on January 14, 1982 assumes additional significance as compared to the other described events since it indicates that (1) although the corrective actions taken to prevent buildup of marine organisms may not be totally effective, the increased frequency of surveillance implemented as a result of the previous event allowed the licensee to detect the claim intrusion in its early stages,[1] and (2) the rate of accumulation of the organisms can be rapid. During the surveillance test, the flow dropped from 1800 gpm to approximately 600 gpm over a five minute interval, indicating a sizeable blockage. About six buckets of clams were removed. The event remains under investigation. The licensee is studying the service water piping to identify for inspection any portions of piping that may be conductive to Asiatic clam growth, and other long-term preventative measures; this study is planned to be complete prior to the refueling outage scheduled for October 1983.

At Rancho Seco, the corrosion occurred because the heads were cast steel. A corrosion resistant coating such as epoxy or copper/nickel cladding would have prevented the problem. Existing surveillance testing procedures, however, were also deficient in that the safety-related heat exchanger performance was not verified under appropriate accident conditions.

At Brunswick, the chlorination program, which was part of the program to control the growth of marine organisms, was stopped for approximately 14 months due to potential operational problems and environmental effects. Although operational and administrative controls were inadequate at Arkansas Nuclear One and Brunswick to detect early signs of the problem, the plants were shutdown when the technical specification limits could no longer be met. As previously discussed, the incident at Brunswick has the most safety significance of the incidents described in this report. Unit 1, which was shutdown on April 17, 1981 to begin a scheduled maintenance outage, experienced a total loss of the residual heat removal system on April 25, 1981. In order to provide residual heat removal capacity during the plant shutdown, an alternate cooling flow path had to be established. Because of the problems found on the Unit 1 RHR heat exchangers, the similar heat exchangers in the operating Unit 2 were examined. For RHR heat exchanger 2A, a higher than normal differential pressure at design flow was discovered; however, the baffle plate was not displaced. The baffle plate was found displaced for RHR heat exchanger 2B. Therefore, Unit 2 was shutdown using heat exchanger 2A at reduced capacity. After the unit was in cold shutdown, and alternate cooling flow path was established (as in Unit 1 described above) and the heat exchangers were taken out of service of repair.

At San Onofre, the growth of gooseneck barnacles was attributed to the termination of a heat treatment procedure that controls their growth. The treatment was terminated during a protracted plant shutdown of 14 months. The system problems were noted during routine operational checks.

At Pilgrim, the mussels apparently grew in the Salt Service Water System even though a back flusing and cleanout program was instituted to control their growth. Routine surveillance indicated a continuing problem due to decreasing heat transfer capabilities.

In general, the causes of the incidents above related to an inadequate surveillance and monitoring of the heat exchanger performance characteristics such as flow rates, fouling factors, heat transfer coefficients, etc.

Actions Taken To Prevent Recurrence

Licensees—The licensees of Arkansas Nuclear One, Rancho Seco, Brunswick, San Onofre Unit 1 and Pilgrim have cleaned and flushed the affected cooling water systems. The licensees have also committed to improving design features and detection techniques which are intended to preclude the development of significant fouling of safety-related cooling systems in the future.

NRC—The NRC conducted special inspections regarding the events at the facilities noted above. In addition, on April 10, 1981 the NRC's Office of Inspection and Enforcement issued IE Bulletin 81-03, "Flow Blockage of Cooling Water to Safety System Components by *Corbicula* sp. (Asiatic Clam) and *Mytilus* sp. (Mussel)". The Bulletin requested licensees to determine whether either species was present in the vicinity of their station and the extent of any fouling these organisms may have caused in fire protection or safety-related systems. The responses to the Bulletin have been received from all of the operating plants. The responses received represent 48 sites. Of these, 21 sites reported positive findings either in the plant or in the source or receiving waterbody. Eight sites have seen some evidence of Asiatic Clams in the plant and six sites have seen evidence of mussels in the plant. This has ranged from occasional findings of a few shell fragments in the main condenser to major infestations. An additional seven sites have reported that while Asiatic clams were not yet present in the plant, they were present in either source or receiving

[1] Inspection of other safety-related coolers showed only traces of Asiatic clams with no significant accumulation.

waterbodies and infestations at the plant were possible in the future.

The Bulletin also asked licensees to describe their methods for preventing and detecting any future fouling at their plants. A combination of chlorination, heat treatment, flushing, backflushing and the installation of strainers were the preventative actions taken by most of the affected plants. Many of them routinely inspect the intake canal, the pump discharge strainers and the main condenser, cleaning them out as needed. Detection methods included surveillance programs comprised of visual inspections and measurements of flow, differential pressure, and temperature at various system locations. These actions by the licensees can be expected to have varying degrees of effectiveness depending on the frequency with which they are performed and the severity of the infestation present at and around the plant.

IE Bulletin 81–03 addressed fouling by Asiatic clams and musseles only. Therefore, most plants discussed only these two species in their responses. Some plants however, mentioned the presence of other fouling organisms such as other species of clams, oysters, barnacles, tubeworms and algae to name a few. In addition, a number of plants reported problems caused by mud and silt. In some cases, they claimed this to be a bigger problem at the plant than marine fouling.

In July 1981, NRC issued IE Information Notice 81–21, "Potential Loss of Direct Access to Ultimate Heat Sink". The Notice described the loss of the normal decay heat removal system at Brunswick. It also emphasized the need for licensees to initiate appropriate actions, as described in IE Bulletin 81–03, for any marine organisms that could cause fouling at their plant.

A case study entitled "Report on Service Water System Flow Blockages by Bivalve Mollusks at Arkansas Nuclear One and Brunswick", was issued by the NRC's Office for Analysis and Evaluation of Operational Data in February 1982.

The NRC's Office of Nuclear Reactor Regulation (NRR) is conducting a generic study of service water system malfunctions. This study is being assisted through the Special Studies program at the Oak Ridge National Laboratory (ORNL). In the program, ORNL will investigate licensee event reports (LERs) from January 1979 through June 1981 on the partial or complete loss of service water systems and organize these results systematically. From this collection of events, ORNL will evaluate the safety significance of service water malfunctions and provide their recommendations for any corrective measures that they believe may be needed. NRR will attempt to correlate specific plant design features, surveillance programs and preventative measures with the magnitude and types of service water problems reported in LERs and the responses to IE Bulletin 81–03. Based on the results of this study, corrective actions will be recommended in order to improve the reliability of service water systems.

In addition to the service water study, NRR is reviewing the design of baffle plates in "U" tube heat exchangers similar to those used at Brunswick. This review is to determine if a generic problem exists and if the design is appropriate for the given application.

Future reports on the findings and investigations will be made, as appropriate, in the quarterly Report to Congress on Abnormal Occurrences (NUREG–0900 series.)

Dated at Washington, D.C. this 13th day of May 1982.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82–13654 Filed 5–18–82; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Revised Supplemental Guidance for Conducting Matching Programs

May 14, 1982.

AGENCY: Office of Management and Budget.

ACTION: Issuance of Revised Guidance for Conducting Computerized Matching Programs

SUMMARY: This document revises and updates guidance to the agencies on conducting automated matching programs originally issued on March 30, 1979.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20502; telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Guidelines were originally issued on March 30, 1979 [44 FR 23138]. After evaluating agencies experiences operating under those Guidelines and considering comments from agencies and concerned groups such as the President's Council on Integrity and Efficiency in Government, OMB concluded that a revision was in order. Accordingly, the Guidelines were revised to clarify the language and to simplify, where possible, the administrative and procedural requirements.

The Revised Guidelines were signed by the Director of OMB on May 11, 1982, and became effective on that date. Their text is set forth below.

Brenda A. Mayberry,

Acting Budget and Management Officer.

May 11, 1982.

Memorandum for the Executive Departments and Establishments

From: David A. Stockman, Director.
Subject: Revised Supplemental Guidance for Conducting Matching Programs.

I am attaching a copy of our revised Guidelines on conducting computerized matching programs. This revision updates and simplifies earlier guidance issued on March 30, 1979. It is effective immediately.

The revision is the result of our evaluation of agencies' operating experiences under the original Guidelines. The new Guidelines incorporate many agency recommendations for clarifications and changes. In addition, they greatly simplify the notice and reporting requirements of the earlier version.

Direct comments or questions on these Guidelines to OMB's Office of Information and Regulatory Affairs.

Matching Guidelines

1. *Purpose*—These Guidelines supplement and should be used in conjunction with the "OMB Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975 and supplemented on November 21, 1975. They replace earlier guidance on conducting computerized matching programs issued on March 30, 1979. They are intended to help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching. They are designed to address the concerns expressed by the Congress in the Privacy Act of 1974 that "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." These Guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. Complying with these Guidelines, however, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act,

including any provisions not cited in these Guidelines.

2. *Scope*—These guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a), and to all matching programs:

a. Performed by a Federal agency, whether the personal records used in the match are Federal or non-Federal.

b. For which a Federal agency discloses any personal records for use in a matching program performed by any other Federal agency or any non-Federal organization.

3. *Effective Date*—These guidelines are effective on their date of issuance—May 11, 1982.

4. *Definitions*—For the purposes of these Guidelines:

a. All the terms defined in the Privacy Act of 1974 apply.

b. A "personal record" means any information pertaining to an individual that is stored in an automated system of records, e.g., a data base which contains information about individuals that is retrieved by name or some other personal identifier.

c. A "matching program" is a procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of non-Federal records to find individuals who are common to more than one system or set. The procedure includes all of the steps associated with the match, including obtaining the records to be matched, actual use of the computer, administrative and investigative action on the hits, and disposition of the personal records maintained in connection with the match. It should be noted that a single matching program may involve several matches among a number of participants.

Matching Programs do not include the following:

(1) Matches which do not compare a substantial number of records, e.g., comparison of the Department of Education's Defaulted Student Loan data base with the Office of Personnel Management's Federal Employee data base would be covered; comparison of six individual student loan defaultees with the OPM file would not be covered.

(2) Checks on specific individuals to verify data in an application for benefits done reasonably soon after the application is received.

(3) Checks on specific individuals based on information which raises questions about an individual's eligibility for benefits or payments done reasonably soon after the information is received.

(4) Matches done to produce aggregate statistical data without any personal identifiers.

(5) Matches done to support any research or statistical project where the specific data are not to be used to make decisions about the rights, benefits, or privileges of specific individuals.

(6) Matches done by an agency using its own records.

d. A "matching agency" is the Federal agency which actually performs the match.

e. A "source agency" is the Federal agency which discloses records from a system of records to be used in the match. Note that in some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match. The disclosure of records to the matching agency and any subsequent disclosure of "hits" (by either the matching or the source agencies) must be done in accordance with the provisions of paragraph (b) of the Privacy Act.

f. A "hit" is the identification, through a matching program, of a specific individual.

5. *Guidelines for Agencies Participating in Matching Programs*—Agencies should acquire and disclose matching records and conduct matching programs in accordance with the provisions of this section and the Privacy Act.

a. Disclosing Personal Records for Matching Programs

(1) To Another Federal Agency—source agencies are responsible for determining whether or not to disclose personal records from their systems and for making sure they meet the necessary Privacy Act disclosure provisions when they do. Among the factors source agencies should consider are:

(a) Legal authority for the match;

(b) Purpose and description of the match;

(c) Description of the records to be matched;

(d) Whether the record subjects have consented to the match; or whether disclosure of records for the match would be compatible with the purpose for which the records were originally collected, i.e., whether disclosure under a "routine use" would be appropriate; whether the soliciting agency is seeking the records for a legitimate law enforcement activity—whichever is appropriate; or any other provision of the Privacy Act under which disclosure may be made;

(e) Description of additional information which may be subsequently disclosed in relation to "hits";

(f) Subsequent actions expected of the source (e.g., verification of the identity of the "hits" or follow-up with individuals who are "hits").

(g) Safeguards to be afforded the records involved, including disposition.

If the agency is satisfied that disclosure of the records would not violate its responsibilities under the Privacy Act, it may proceed to make the disclosure to the matching agency. It should ensure that only the minimum information necessary to conduct the match is provided. If disclosure is to be made pursuant to a "routine use" (Section (b)(3) of the Privacy Act), it should ensure that the system of records contains such a use, or it should publish a routine use notice in the **Federal Register**. The agency should also be sure to maintain an accounting of the disclosures pursuant to section (c) of the Privacy Act.

(2) To a Non-Federal Entity—Prior to disclosing records to a non-Federal entity for a matching program to be carried out by that entity, a source agency should, in addition to all of the considerations in 5a(1) above, also make reasonable efforts, pursuant to section (e)(6) of the Privacy Act, to "assure that such records are accurate, complete, timely, and relevant for agency purposes."

b. Written Agreements—Prior to disclosing to either a Federal or non-Federal entity, the source agency should require the matching entity to agree in writing to certain conditions governing the use of the matching file, e.g.: That the matching file will remain the property of the source agency and be returned at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the file(s) previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency.

c. Performing Matching Programs—

(1) Matching agencies should maintain reasonable administrative, technical and physical security safeguards on all files involved in the matching program.

(2) Matching agencies should insure that they have appropriate systems of records including those containing "hits," and that such systems and any routine uses have been appropriately noticed in the **Federal Register** and reported to OMB and the Congress as appropriate.

d. Disposition of Records—

(1) Matching agencies will return or destroy source matching files (by mutual agreement) immediately after the match.

(2) Records relating to hits will be kept only so long as an investigation, either criminal or administrative, is active and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule.

e. Publication Requirements—

(1) Agencies, prior to disclosing records outside the agency, will publish appropriate "routine use" notices in the Federal Register, if necessary.

(2) If the matching program will result in the creation of a new or the substantial alteration of an existing system of records, the agency involved should publish the appropriate Federal Register notice and submit the requisite report to OMB and the Congress pursuant to OMB Circular No. A–108.

f. Reporting Requirements—

(1) As close to the initiation of the matching program as possible, matching agencies shall publish in the Federal Register a brief public notice describing the matching program. The notice should include:

(a) The legal authority under which the match is being conducted;

(b) A description of the matching program including whether the program is one time or continuing, the organizations involved, the purpose(s) for which the program is being conducted, and the procedures to be used in matching and following up on the "hits";

(c) A complete description of the personal records to be matched, including the source(s), system of records identifying data, date(s) and page number(s) of the most recent Federal Register full text publication where appropriate;

(d) The projected start and ending dates of the program;

(e) The security safeguards to be used to protect against unauthorized access or disclosure of the personal records; and

(f) Plans for disposition of the source records and "hits."

Agencies should send a copy of this notice to the Congress and to the Office of Management and Budget at the same time it is sent to the Federal Register.

(2) Agencies should report new or altered systems of records as described in e (2) above as necessary.

(3) Agencies should also be prepared to report on matching programs pursuant to the reporting requirements of either the Privacy Act or the Paperwork Reduction Act. Reports will be solicited by the Office of Information and Regulatory Affairs and will focus on both the protection of individual privacy and the government's effective use of information technology. Reporting instructions will be disseminated to the agencies as part of either the reports required by section (p) of the Privacy Act or section 3514 of Pub. L. 96–511.

g. Use of Contractors—Matching programs should, as far as practicable, be conducted "in-house" by Federal agencies using agency personnel, rather than by contract. When contractors are used, however,

(1) The matching agency should, consistent with subsection (m) of the Privacy Act, cause the requirements of that Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by FPR Amdt. 155, 41 CFR 1–1.337–5;

(2) The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards and guidelines issued by OMB, GSA, and the Department of Commerce;

(3) The terms of the contrct should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use;

(4) Contractor personnel involved in the matching program should be made explicitly aware of their obligations under the Act, and of these guidelines, agency rules and any special safeguards in relation to each specific match performed.

(5) Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (Section (b)(3) of 5 U.S.C. 552a).

6. *Implementation and oversight*— the Office of Management and Budget will oversee the implementation of these Guidelines and shall interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

[FR Doc. 82-13493 Filed 5-18-82; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 12, 1982.

The above named national securites exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Anacomp Incorporated
Common Stock, $1 Par Value (File No. 7–6214)

Cullinane Database Systems Incorporated
Common Stock, $.10 Par Value (File No. 7–6215)

Hitachi Limited
American Depositary Shares, 50 Yen Par Value (File No. 7–6216)

Kaiser Cement Corporation (Delaware)
Common Stock, $1 Par Value (File No. 7–6217)

L&N Housing Corporation
Common Stock, $.50 Par Value (File No. 7–6218)

L. E. Myers Company Group
Common Stock, $1 Par Value (File No. 7–6219)

Southmark Corporation (Georgia)
Common Stock, $1 Par Value (File No. 7–622)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13496 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34–18722; File No. SR–MSRB–82–5]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Change

Proposed Rule changes by Municipal Securities Rulemaking Board, relating to calculations. Comments requested on or before June 9, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board filed with

the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing herewith certain amendments to rule G–33 on calculations. The text of the proposed rule changes is as follows:

Rule G–33.—Calculations.[1]

(a) through (d) No change.

(e) Day Counting.

(i) *Day Count Basis.* Computations under the requirements of this rule shall be made on the basis of a thirty-day month and a three-hundred-sixty-day year, or, in the case of computations, on ►securities paying interest solely at redemption◄ [municipal notes], on the day count basis selected by the issuer of the securities.

(ii) Day Count Formula. ►For purposes of this rule, c◄[C]omputations of day counts ►on the basis of a thirty-day month and a three-hundred-sixty-day year◄ [for purposes of this rule] shall be made in accordance with the following formula:

Number of Days = (Y2 − Y1) 360 + (M2 − M1) 30 + (D2 − D1) For purposes of this formula the symbols shall be defined as follows:

"M1" is the month of the date on which the computation period begins;

"D1" is the day of the date on which the computation period begins;

"Y1" is the year of the date on which the computation period begins;

"M2" is the month of the date on which the computation period ends;

"D2" is the day of the date on which the computation period ends; and

"Y2" is the year of the date on which the computation period ends.

For purposes of this formula, if the symbol "D2" has a value of "31", and the symbol "D1" has a value of "30" or "31", the value of the symbol "D2" shall be changed to "30". If the symbol "D1" has a value of "31", [and the symbol "D2" has a value other than "31",] the value of the symbol "D1" shall be changed to "30". For purposes of this rule time periods shall be computed to include the day specified in the rule for the beginning of the period but not to include the day specified for the end of the period.

[1] Arrows ► ◄ indicate additions; [brackets] indicate deletions.

(f) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The Board has adopted the proposed rule changes to clarify the application of certain of the day counting provisions set forth in Board rule G–33 on calculations, and to correct an error in the statement of assumptions regarding securities dated or paying interest on the 31st of a month.

(b) The Board has adopted the proposed rule changes, and rule G–33 itself, pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules which are:

designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The Board is of the view that rule G–33 furthers the purposes of the Act inasmuch as it standardizes the methods of computing yield and dollar price on customer and inter-dealer transactions, and fosters the improvement of the accuracy of such computations. The Board believes that the proposed rule changes will further these ends since they clarify the application of certain provisions of the rule and ensure accuracy in the performance of day counts used in the computations prescribed in the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, inasmuch as they merely clarify the application of certain aspects of the rule to particular situations, and correct an error in one of the rule's provisions.

C. Self-Regulatory Organization's Statement of Comments Received on the Proposed Rule Changes Received From Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13495 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–18724; File No. SR–MSRB–82–6]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Changes

Proposed rule changes by Municipal Securities Rulemaking Board relating to calculations. Comments requested on or before June 9 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 5 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board (the "Board") is filing herewith certain amendments to rule G-33 on calculations. The text of the proposed rule changes is as follows:

Rule G-33.—Calculations[1]

(a) No change.

(b) Interest-Bearing Securities.

(i) Dollar Price. For transactions in interest-bearing securities effected on the basis of yield the resulting dollar price shall be computed in accordance with the following provisions:

(A) Securities Paying Interest►Solely◄at►Redemption◄[Maturity]. Except as otherwise provided in this section (b), the dollar price for a transaction in a security paying interest ►solely◄at►redemptio n◄ [maturity] shall be computed in accordance with the following formula:

$$P = \left[\frac{\left[RV\right]\left[1\right] + \left(\frac{\left[DIR\right]\left[DIM\right]}{B} \times R\right)}{1 + \left(\frac{\left[DIR-A\right]\left[DSM\right]}{B} \times Y\right)}\right] - \left[\frac{A}{B} \times R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

►"DIR"◄ ["DIM"] is the number of days from the issue date to the ►redemption◄[maturity] date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);]

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal); [and]

►"RV" is the redemption value of the security per $100 par value (divided by 100); and ◄

"Y" is the yield price of the transaction (expressed as a decimal).

(B) Securities with Periodic Interest Payments. Except as otherwise provided in this section (b), the dollar price for a transaction in a security with periodic interest payments shall be computed as follows:

(1) For securities with six months or less to►redemption◄[maturity], the formula following shall be used:

$$P = \left[\frac{\frac{RV}{100} + \frac{R}{M}}{1 + \left(\frac{\left[E-A\right]\left[DSM\right]}{E} \cdot \frac{Y}{M}\right)}\right] - \left[\frac{A}{B} \cdot R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with provisions of section (e) below);

["DSM" is the number of days from the settlement date to the redemption date (computed in accordance with the provisions of section (e) below);]

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of section (e) below);

"M" is the number of interest payment periods per year standard for the security involved in the transactions;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

(2) for securities with more than six months to►redemption◄[maturity], the following formula shall be used:

$$P = \left[\frac{RV}{\left(1 + \frac{Y}{2}\right)_{exp}^{N-1+\frac{E-A}{E}}}\right] + \left[\sum_{K=1}^{N} \frac{100 \cdot \frac{R}{2}}{\left(1 + \frac{Y}{2}\right)_{exp}^{K-1+\frac{E-A}{E}}}\right] - \left[100 \cdot \frac{A}{B} \cdot R\right]$$

For purpose of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of Section (e) below);

"N" is the number of interest payments (expressed as a whole number) occurring between the settlement date and the redemption date, including the payment on the redemption date;

"P" is the dollar price of the security for each $100 par value;

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

[1] In the rule text, arrows►◄ indicate additions: [brackets] indicate deletions. In the formulas, additions are indicated by arrows►◄ and asterisks; deletions are indicated by [brackets] and asterisks.

For purposes of this formula the symbol "exp" shall signify that the preceeding value shall be raised to the power indicated by the succeding value; for purposes of this formula the symbol "K" shall signify successively each whole number from "1" to "N" inclusive; for purposes of this formula the symbol "sigma" shall signify that the succeeding term shall be computed for each value "K" and that the results of such computations shall be summed.

(C) and (D) No change.

(ii) Yield. Yields on interest-bearing securities shall be computed in accordance with the following provisions:

(A) Securities Paying Interest ►Solely◄ at ►Redemption◄ [Maturity]. The yield of a transaction in a security paying interest ►solely◄ at ►redemption◄ [maturity] shall be computed in accordance with the following formula:

$$Y = \left[\frac{\left(RV + \left(\frac{DIR}{B} \times R\right)\right) - \left(P + \left(\frac{A}{B} \cdot R\right)\right)}{P + \left(\frac{A}{B} \cdot R\right)}\right] \times \left[\frac{B}{DIR - A^{K} [DSM]^{K}}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

►"DIR"◄ ["DIM"] is the number of days from the issue date to the ►redemption◄ [maturity] date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);]

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal); [and]

►"RV" is the redemption value of the security per $100 par value (divided by 100); and ◄

"Y" is the yield on the investment if the security is held to ►redemption◄ [maturity] (expressed as a decimal).

(B) Securities with Periodic Interest Payments. The yield of a transaction in a security with periodic interest payments shall be computed as follows:

(1) for securities with six months or less to ►redemption◄ [maturity], the following formula shall be used:

$$Y = \left[\frac{\left(\frac{RV}{100} + \frac{R}{M}\right) - \left(P + \left(\frac{A}{E} \cdot \frac{R}{M}\right)\right)}{P + \left(\frac{A}{E} \cdot \frac{R}{M}\right)}\right] \cdot \left[\frac{M \cdot E}{E - A^{+} [DSM]}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

["DSM" is the number of days from the settlement date to the redemption date (computed in accordance with the provisions of section (e) below);]

"E" is the number of days in the interest payment period in which the settlement date falls computed in accordance with the provisions of section (e) below;

"M" is the number of interest payment periods per year standard for the security involved in the transaction;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield ►on the investment if the security is held to redemption◄ [price of the transaction] (expressed as a decimal).

(2) for securities with more than six months to ►redemption◄ [maturity], the formula set forth in item (2) of subparagraph (b)(i)(B) shall be used.

(c) through (f) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The Board has adopted the proposed rule changes which would make technical modifications to clarify or permit the use of the formulas for purposes of computing dollar prices or yields to a premium call or par option feature. In addition, the proposed rule changes slightly revise certain of the formulas to eliminate an extraneous variable and make other clarifying changes to certain of the references in the rule.

(b) The Board has adopted the proposed rule changes, and rule G–33 itself, pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules which are

> designed * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

The Board is of the view that rule G–33 furthers the purpose of the Act inasmuch as it standardizes the methods of computing yield and dollar price on customer and inter-dealer transactions, and fosters the improvement of the accuracy of such computations.

The Board believes that the proposed rule changes will further these ends since they clarify the application of certain provisions of the rule, simplify certain of the formulas, and modify them to facilitate computations of dollar prices and yields to call or option features. The Board notes that these latter modifications will also facilitate compliance with certain of the pricing and yield disclosure requirements of Board rules G–12 and G–15.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Board does not believe that the proposed rule changes will impose any burden on competition, inasmuch as they merely clarify the application of certain aspects of the rule to particular situations.

C. Self-Regulatory Organization's Statement of Comments Received on the Proposed Rule Changes Received From Members, Participants or Others

The Board neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commissiion may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted on or before June 9, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13499 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-18726; File No. SR-PHILADEP 82-3]

Philadelphia Depository Trust Co.; Self-Regula;tory Organizations; Proposed Rule Change

Proposed rule change by Philadelphia Depository Trust Company relating to reorganization procedures. Comments requested on or before June 9, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1982, Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Depository Trust Company (PHILADEP) proposes to amend its Rule 6 (Services) to refer to participation in tender offers on behalf of participants and new PHILADEP tender offer procedures. PHILADEP wished to clarify and formalize procedures for participants to follow in the event any of their securities become subject to a mandatory exchange, and to set forth new procedures for members wishing to participate in voluntary exchange and tender offers through PHILADEP. Currently, for other than mandatory exchanges, PHILADEP participants must withdraw shares that they wish to exchange or tender. A fee of $10.00 per request will be assessed for the processing of voluntary exchange or tender offers.

Amended PHILADEP Rule 6 and new PHILADEP Reorganization Procedures are attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHILADEP currently processes mandatory corporate actions, which include mandatory exchanges, cash redemptions, conversions, and name changes. PHILADEP is formalizing and clarifying the procedures for these types of actions. In the case of voluntary exchanges and tender offers, participants currently must withdraw the shares from PHILADEP that they wish to exchange or tender. By this amendment of Rule 6 and the implementation of an new procedure for voluntary offers, PHILADEP is offering to perform this service for participants at a charge of $10.00 per request for processing of voluntary exchanges and tender offers.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the Act) in promoting the prompt and accurate clearance and settlement of securities transactions for which SCCP is responsible, and in fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Referenced Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1,982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

Dated: May 10, 1982.

Exhibit A

(PHILADEP) Rule 6. Services

(New material indicated by arrows)

The Corporation, acting in accordance with duly authorized instructions from the Participant or Participants and the Pledgee or Pledgees, if any, having interest in the transaction, shall accept Eligible Securities from Participants for deposit with the Corporation; effect transfers by a Participant of its Deposited Securities to another Participant or Particiants; effect pledges by a Participant of its Deposited Securities to a Pledge or Pledgees and effect the release of such pledges; deliver to a Participant or its designee a Participant's Deposited Securities registered in the name of and endorsed by the Corporation's nominee or in the name of such Particpant or its designee; deliver dividends, distributions, rights, securities, proxy material and other property or documents received by the Corporation in respect of a Participant's Deposited Securities or Pledged Securities; disburse money to, and receive money from Particiants and Pledgees on behalf of other Participants or Pledgees in connection with related securities transactions; ►participate in tender offers on behalf of participants◄ and acting on its own or by appropriate instruction, provide to Participants and Pledgees information and statements of account regarding their business with the Corporation. Such transactions shall be effected in accordance with the By-Laws, these Rules and the Procedures.

(The rest rest of Rule 6 remains unchanged)

PHILADEP Reorganization Procedures

Procedure for Mandatory Actions

Since becoming a limited-purpose trust company, PHILADEP has processed all mandatory corporate actions which include mandatory exchanges, cash redemptions, conversions and name changes. The PHILADEP Reorganization Department will continue to process all mandatory corporate actions in the following manner:

1. A mandatory exchange may include mergers, redemptions, revers splits, etc. PHILADEP will forward to all participants an "Important Notice" describing the mandatory exchange. The Important Notice will specify the processing cut-off dates based on the information available at the time the notice is prepared. Subsequent notices will follow should the terms of the exchange differ.

2. When the exchange is effective, the Reorganization Department will surrender to the processing agent the participant's ►unpledged position◄ in the security and obtain the new secruity and/or proceeds from the exchange. On the same day that PHILADEP submits the security to the processing agent for exchange, PHILADEP will reduce the participant's position for the security being exchanged and either increase the position in the new security, if eligible, or show the ineligible security as a transfer withdrawal on the transfer activity report. If cash proceeds or cash-in-lieu of fractional shares are payable to the participant, PHILADEP will prepare a separate check for this amount upon receipt of funds from the processing agent.

Note.—When the security being exchanged is used as collateral for a loan, it is the responsibility of the participant to release or substitute other securities for that security.

Procedure for Voluntary Offers

The current PHILADEP procedure for voluntary exchange and tender offers calls for participants to withdraw shares that they wish to exchange or tender. The new procedure is as follows:

1. Upon PHILADEP receiving notification of a voluntary offer, PHILADEP will prepare a Reorganization Important Notice describing the offer and advising of the processing cut-off date, which will be 48 hours prior to either the expiration of the offer or pro-ration date.

Note.—Since the information on corporate actions is received from various sources, PHILADEP cannot guarantee the completeness nor the correctness of the information supplied regarding corporate actions. Participants will be responsible for maintaining their own records and notification sources.

2. A copy of the Reorganization Important Notice will be distributed to all participants.

3. The eligibility of the security will be dependent upon the terms and conditions of the offer. Whenever possible, the security will remain eligible for all SCCP and PHILADEP book-entry services. If the security subject to the offer must be made ineligible for deposit only, the security will remain eligible for intra-PHILADEP book-entry MDO activity and CNS settlement activity. Inter-Depository MDO activity will be dependent on the eligibility of the security in other interfaced depositories. PHILADEP will cease to process all customer transfer requests for securities involved in voluntary offers during the period of the offer. Street withdrawal request will continue to be honored in accordance with procedure defined below.

4. It is the responsibility of each participant to release shares in pledged accounts prior to requesting other activity.

5. PHILADEP will only accept written instructions from its participants to tender all or part of their shares on deposit, according to the terms and conditions of the offer.

Note.—PHILADEP ►will not◄ tender any shares unless specifically authorized in writing to do so no later than the reported PHILADEP cut-off date which will appear on the Reorganization Important Notice.

6. Participants may tender their own shares by submitting a street withdrawal order form conspicuously marked "Attention: Reorganization Department." Street withdrawal order forms received prior to 10:00 a.m. will be processed that day. If proper denominations are not available to honor the withdrawal, PHILADEP will notify the participant. If necessary, PHILADEP will submit a letter of protest for those street withdrawals that could not be made because of denominational problems.

7. Upon receipt of funds and/or the new security, PHILADEP will receive the new security, if eligible, into the participant's depository account and payment of funds will be made either by

check or by credit adjustment to the participant's SCCP CNS account.

[FR Doc. 82-13499 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 12, 1982.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Cullinane Database Systems Inc.
Common Stock, $.10 Par Value (File No. 7-8221)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-13500 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-18725; File No. SR-SCCP 82-3]

Stock Clearing Corporation of Philadelphia; Self-Regulatory Organizations; Proposed Rule Change

Proposed rule change by Stock Clearing Corporation of Philadelphia relating to reorganization procedures. Comments requested on or before June 9, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1982, Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes to amend its Rule 5 (Delivery of Securities) regarding tender offers to refer to new SCCP reorganization procedures. SCCP wishes to clarify and formalize procedures for participants to follow in the event any of their securities become subject to mandatory exchanges or voluntary offers.

Amended SCCP Rule 5 and new SCCP Reorganization Procedures are attached as Exhibit A.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP's present rule relating to tender offers is very general, and is not backed by specific procedures. In order to describe more adequately the rights and responsibilities of both SCCP and its participants during the course of a tender offer or mandatory exchange of stock, SCCP has developed procedures setting forth delivery requirements, protection responsibilities with the transfer agent, cut-off times, etc.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the Act) in promoting the prompt and accurate clearance and settlement of securities transactions for which SCCP is responsible, and in fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before June 23, 1982, or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 9, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1982.

George A. Fitzsimmons,

Secretary.

Exhibit A

(Deleted material bracketed; new material indicated by arrows)

(SCC) Rule 5. Delivery of Securities

Tender Offers

In connection with tender offers, Stock Clearing Corporation of Philadelphia will guarantee delivery to the buyer only those items purchased to settle no later than the date necessary to enable Stock Clearing Corporation to get the stock to the transfer agent [prior to the expiration date of the protection period as determined by the transfer agent] ►or protect shares with the agent in accordance with the SCCP reorganization procedures.◄

Sellers, upon notification that their [transaction] ►position◄ is participating in the [the] ►a◄ tender offer, are liable for any losses incurred by the buyer as a result of the seller's failure to make delivery to the Philadelphia office of the Stock Clearing Corporation [by settlement date] ►or protect the shares with the agent in accordance with the SCCP reorganization procedures.◄

SCCP Reorganization Procedures

Procedures for Mandatory Exchanges

On the sixth business day after the effective date of a merger, redemption or reverse split, SCCP will adjust all long-valued positions and short-valued positions to reflect the new security and/or funds. On and after the effective date, SCCP will only accept delivery of the new security.

Procedure for Voluntary Offers

1. Once a security becomes ineligible for PHILADEP deposit, participants will be responsible to cover open sales in CNS accounts by making physical delivery of the security directly to SCCP. Normal delivery requirements consistent with SCCP delivery rules will apply to securities subject to voluntary offers. Multiple certificates accompanied by one stock power are not acceptable.

2. Overdeliveries will not be accepted without prior approval of the Reorganization Department. SCCP will protect long positions if necessary only upon receipt of written notice from the participant which specifically requests protection. ►Such notice must be received by SCCP no later than 48 hours prior to either the expiration of the offer or the expiration of the proration period.◄ This circumstance should not be confused with the expiration of the protection period. SCCP business hours are from 9:00 a.m. to 5:00 p.m. Notice must be received prior to the close of business. After the SCCP/PHILADEP cut-off date, participants must protect for themselves any open long-valued positions remaining in their CNS account.

3. If SCCP is notified of a liability, every effort will be made to deliver shares to the long participant prior to the expiration of the offer. If the shares are in fail-to-receive, SCCP will notify the failing broker of their liability. The failing broker must either deliver the shares to the Philadelphia office of SCCP or protect the shares with the agent. In either case, the failing broker must notify the SCCP Reorganization Department of their course of action no later than 12:00 noon one business day prior to the expiration of the offer. SCCP will protect on shares in its possession when it is unable to deliver shares to participants having long-valued positions.

4. SCCP will continue to accept instructions to tender or exchange shares subject to a voluntary offer from participants maintaining margin account positions. SCCP must be notified in writing no later than 48 hours prior to the expiration of the offer.

5. Upon expiration of the voluntary offer, the security will again be made eligible for deposit in PHILADEP providing no further corporate action is pending. Participants will be notified by means of a Reorganization Important Notice of the eligibility of the security.

[FR Doc. 82-13497 Filed 5-18-82; 8:45 am]

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[Release No. 12432; (812-5145)]

American Shares, Inc.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Granting Exemptions From Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

May 12, 1982.

Notice is hereby given that American Shares, Inc. ("Applicant"), P.O. Box 3942, 405 Central Avenue, St. Petersburg, FL 33731, registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on March 23, 1982, and an amendment thereto on April 16, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a Maryland corporation that intends to offer initially two series of shares of capital stock. The series designated as "American Treasury Shares" (the "Fund") is the subject of this application and any exemptive order granted pursuant to this application will apply only to the Fund. Applicant states that the investment objective of the Fund is to attain high current income consistent with the preservation of capital and the maintenance of liquidity. Applicant further states that it will seek to achieve that objective by investing the Fund's assets primarily in United States Government securities that mature within one year from the date of purchase, including (1) a variety of securities that are issued by the United States Treasury, (2) securities that are backed, with regard to both principal and interest, by the full faith and credit of the United States, and (3) repurchase agreements relating to securities included in (1) and (2) above.

As here pertinent, Section 2(a)(41) of the Act defines "value" to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the investment company's board of directors. Rule 22c-1 provides, in part, that no registered investment company, or principal underwriter therefor, issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption, and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by

the board of directors. The Commission has expressed the view that, among other things, it is inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis and that such valuation should be made with reference to market factors (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the exemptive relief requested, Applicant asserts that two features are helpful in attracting investment in a money market fund: (1) stability of principal and (2) steady flow of investment income. Applicant believes that by maintaining a portfolio of United States Government obligations it can provide these features to investors. Applicant states that its investment adviser's experience in the management of other investment companies indicates that, given the nature of Applicant's policies and operations with respect to the Fund, there will normally be a negligible discrepancy between the net asset value of the Fund calculated using the amortized cost method of valuation and that obtained using a market valuation method. Applicant represents that its board of directors has determined in good faith, in light of the characteristics of the Fund, that the amortized cost method of valuing portfolio securities is appropriate and preferable for the Fund, and reflects the fair market value of such money market instruments. Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising the Fund's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective with respect to the assets of the Fund, to stabilize the net asset value per share of the Fund, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in consideration of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of the Fund, as determined by using available market quotations, from the Fund's $1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, the Applicant intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its board of directors, in the exercise of its discretion, to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or other unfair results, which action may include: selling portfolio securities prior to maturity to realize capital gains or losses, or to shorten the Fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain, with respect to the Fund, a dollar-weighted average portfolio maturity appropriate to the Fund's objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument for the Fund with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument of the Fund results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest the Fund's available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place, a written copy of the procedures (and any modification thereto) described in condition 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place), a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit the Fund's portfolio investments including repurchase agreements, if any, to those United States Government obligations which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Applicant submits that the granting of its requested exemptive order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication

should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13584 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22497; (70-6630)]

The Connecticut Light & Power Co. et al.; Notice of Proposal To Amend Lease Agreement

May 13, 1982.

The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, electric utility subsidiaries of Northeast Utilities ("NU"), and Northeast Utilities Service Company ("NUSCO"), Selden Street, Berlin, Connecticut 06037, a subsidiary service company, have filed an application-declaration and amendments thereto pursuant to Sections 9, 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act").

Declarants propose to amend an Agreement of Lease ("Lease") dated as of July 1, 1966 under which CL&P, HELCO and WMECO are designated as the Lessors and NUSCO is designated as the Lessee. Under the Lease, the Lessors have leased the Connecticut Valley Electric Exchange ("CONVEX") owned by them including land, buildings and equipment located at Southington, Connecticut to the Lessee. NUSCO employs the leased CONVEX facilities to provide central dispatching services for the Northeast Utilities System ("System") and for five other utility systems in Connecticut and Western Massachusetts. The CONVEX facilities are also used in connection with the obligations of the participants under the New England Power Pool Agreement. The CONVEX participants are billed monthly by NUSCO on a system peak basis. The System comprises 77.4% of all billing, with 22.6% billed to the five other participants. At present CL&P owns all the property subject to the Lease. This property is in CL&P's rate base and its cost is being recovered as a cost of service.

On June 30, 1981, the Lessors installed an Automatic Generation Control and Supervisory Control and Data Acquisition System (AGA/SCADA) at the CONVEX facilities at a cost of $6,780,000. The total gross investment as of June 30, 1981 in the CONVEX facilities including the AGA/SCADA was $8.1 millon. The AGA/SCADA allows for better control and monitoring of generation and substation activity.

The Amendment to be dated as of June 1, 1981, is proposed in order to revise the rental terms to reflect more appropriately the Lessor's cost of capital for new facilities including AGA/SCADA and the Lessors' current accounting practices. In October 1980, the Connecticut Department of Public Utilities Control allowed CL&P to earn 14½% return on equity. However, CL&P stated that as of June 30, 1981 it had actually earned 7.04% and 10.45% on equity, based on the cost of capital method and net income method, respectively. Under the Amendment, from and after June 1, 1981, the Lessee would pay to each of the Lessors, as rental for the portion of the property leased from that particular Lessor, monthly rental installments equal to the sum of the investment return, associated income taxes, other taxes, depreciation and applicable leasing expense less any investment tax credits. The investment return is equal to the investment base, defined as the original cost of the leased facilities (less accumulated depreciation and certain deferred taxes), times the sum of the common equity, long term debt and preferred stock components of the elements of the investment base. The equity, long-term debt and preferred stock values of investments placed in service on or before December 31, 1980 are fixed by the Amendment at 10.2% except for changes in the common equity return, which will vary over the lease term; the values for investments placed in service after December 31, 1980 will vary over the lease term in accordance with the changes in the common equity return and weighted costs of long-term debt and preferred stock. The investment return for the period January through November 1981 is fixed at 10.2% and changes to 10.75% for the period December 1981 through December 1982 (assuming no change in the allowed rate of return on equity for 1982) on the investments placed in service on or before December 1980. The investment return for the AGA/SCADA equipment (an investment of a major addition (as defined in the Amendment) placed in service after December 1980) is fixed at 13.95% for the period July 1981 through November 1981 and changes to 14.5% for the period December 1981 through December 1982 (assuming no change in the allowed rate of return on equity for 1982). Under the original Lease, annual payments equaled the depreciation accrued on the property for the year, plus 6% of the depreciated original cost of the property, plus an appropriate allowance to cover related income taxes of the Lessor.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 7, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of any attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13585 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12453; (812-5152)]

JP Money Market Fund, Inc.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

Notice is hereby given that JP Money Market Fund, Inc. ("Applicant"), 101

North Elm Street, P.O. Box 21008, Greensboro, NC 27420, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on April 1, 1982, and an amendment thereto on April 26, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant's price per share for the purposes of sales, redemptions and repurchases to be calculated by means of the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it will operate as a "money market fund," and that its investment objective is to provide maximum current income consistent with liquidity and stability of principal. JP Investment Management Company will act as investment adviser to Applicant.

The application states that Applicant may not purchase any security which has a maturity date more than one year from the date of Applicant's purchase, unless purchased subject to a repurchase agreement requiring repurchase from Applicant in one year or less. It is asserted that Applicant's portfolio may be invested only in the following money market instruments: (i) Obligations issued or guaranteed by the United States Government or its agencies or instrumentalities; (ii) negotiable certificates of deposit and bankers' acceptances if they are obligations of a domestic bank or savings institution having total assets of at least $1,000,000,000 and which is a member of the Federal Deposit Insurance Corporation or Federal Home Loan Bank System and insured by the Federal Savings and Loan Insurance Corporation; (iii) commercial paper rated at least "A–1" by Standard & Poor's Corporation or at least "Prime–1" by Moody's Investors Services, Inc., or, if not rated, issued by companies which have an outstanding debt issue rated at least "AA" by Standard & Poor's Corporation, or at least "Aa" by Moody's Investors Services, Inc.; (iv) outstanding non-convertible corporate debt securities not issued as short-term obligations but which have at the time of purchase one year or less remaining to maturity and which at the time of purchase are rated at least "AA" by Standard & Poor's Corporation, or at least "Aa" by Moody's Investors Services, Inc.; and (v) repurchase agreements covering securities issued or guaranteed by the United States Government or its agencies or instrumentalities, certificates of deposit or bankers' acceptances described in (ii) above, or commercial paper described in (iii) above.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in part, that the Commission upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the requested exemption, Applicant states its belief that the type of investors it seeks to attract prefers that the daily income dividends declared by Applicant reflect income as earned, and that Applicant's sales and redemption price remain fixed. Applicant's directors have determined in good faith that (i) the stable per-share value and the steady flow of investment income resulting from the foregoing policies will be helpful in attracting shareholders to Applicant and will provide such investors substantial benefits; and (ii) in light of the characteristics of Applicant the amortized cost method of valuation is appropriate and preferable for Applicant and will fairly reflect the fair value of each shareholder's interest in Applicant, and that Applicant will continue to use that method only so long as the board of directors believes that it fairly reflects the value of each shareholder's interest. Finally, Applicant represents that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Applicant has agreed that the following conditions may be imposed in any order granting the exemptions it has requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adoped by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of

current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action if any should be initiated by it.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessble place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request.

As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (If ordered) and any postponements thereof.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13999 Filed 5-18-82; 8:45 am]
BILLING CODE 8010-01-M

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 12431; (812–5158)]

MassMutual Liquid Assets Trust and MML Investors Services, Inc.; Filing of an Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicants From the Provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 Under the Act May 12, 1982

Notice is hereby given that MassMutual Liquid Assets Trust (the "Trust"), a no-load, open-end, diversified, management investment company, registered under the Investment Company Act of 1940 (the "Act"), and MML Investors Services, Inc., 1295 State Street, Springfield, Massachusetts 01111, (the "Distributor") (collectively, the "Applicants"), the proposed principal underwriter of the Trust's shares and a wholly-owned subsidiary of Massachusetts Life Insurance Company, filed an application on April 6, 1982, and an amendment thereto on April 21, 1982, for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit the Trust to calculate its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Trust is a "money market" fund organized as a Massachusetts business trust and that its investment objective is to maximize current income to the extent consistent with liquidity and the preservation of capital. The Trust invests in short-term debt instruments, including commerical paper, certificates of deposit, bankers' acceptances, obligations issued, guaranteed or sponsored by the government of the United States or its agencies or instrumentalities and repurchase and firm commitment agreements with respect to such securities. The Trust may enter into reverse repurchase agreements, with, and lend portfolio securities to financial institutions. Applicants state that when the Trust enters into a firm commitment

agreement it will maintain in a segregated account (not with a broker), beginning on the date the Trust enters into the firm commitment agreement, liquid assets equal in value to the purchase price due on settlement date under the firm commitment agreement in accordance with Investment Company Act Release No. 10666.

The Trustees of the Trust believe that it is in the best interest of the Trust's potential shareholders to adopt the amortized cost method of valuation. Amortized cost valuation will permit relatively steady daily dividends to shareholders and, at the same time, investors would have the convenience of being able to value their holdings simply by knowing the number of shares they own.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security, and no principal underwriter of any such security, shall sell, redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The term "value" is defined in Section 2(a)(41) of the Act to mean the market value of securities for which market quotations are readily available, and for other securities and assets, the fair value as determined in good faith by the board of directors. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 7986, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the issuance of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants consent to the following conditions to an order of the Commission granting the relief requested in the application:

1. In supervising the Trust's operations and delegating special responsibilities involving portfolio management to the Trust's investment adviser, the Trustees of the the Trust undertake—as a particular responsibility within the overall duty of care owed to the Trust's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Trust's investment objectives, to stabilize the Trust's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Trustees of the Trust shall be the following:

(a) Review by the Trustees of the Trust, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Trust's $1.00 amortized cost price per share and the maintence of records of such review.[1]

(b) In the event that such deviation from the trust's $1.00 amortized cost price per share should exceed ½ of 1%, a requirement that the Trustees will promptly consider what action, if any should be initiated by it.

(c) Where the Trustees determine that the extent of any deviation from the Trust's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or lossess, or to shorten the Trust's average portfolio maturity; suspending dividends; or utlizing a net asset value per share as determined by using available market quotations.

3. The trust will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Trust will not (a) purchase any instrument with remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. The Trust will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above; the Trust will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their reponsibilities, as set forth above, to be included in the minutes of the meetings of the Trustees. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Trust will limit its portfolio investments, including repurchase agreements and firm commitment agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of an instrument that is not rated, of comparable quality as determined by the Trustees.

6. If any action pursuant to condition 2(c) is taken the Trust will include in its quarterly report, as an attachment to Form N-1Q, a statement describing the nature and circumstances of such action.

The application states that, prior to its use, the Trustees will have made a

[1] To fulfill this condition, the Trust intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Trustees in the exercise of their discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolios instruments, or (2) value obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, the Trust agrees that if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Trust will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

determination that, absent unusual circumstances, amortized cost value represents the fair value of the Trust's portfolio securities.

Notice is further given that any interested person may, not later than June 7, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearng upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13587 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18728; File No. SR–MSRB–82–8]

Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

May 12, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1982, the Municipal Securities Rulemaking Board ("MSRB") 1150 Connecticut Avenue, N.W., Suite 507, Washington, D.C. 20036, filed with the Securities and Exchange Commission a proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change deletes references in MSRB Rules G–8, G–12, and G–15 to "bonds" and "notes" and substitutes the phrase "municipal securities" in order to clarify the application of these three rules to all municipal securities. MSRB Rule G–8 prescribes recordkeeping requirements for municipal securities brokers and municipal securities dealers, MSRB Rule G–12 deals with the Uniform Practice requirements of such brokers and dealers, and MSRB Rule G–15 concerns customer confirmations of transactions in municipal securities. The MSRB states that these changes are necessary because of recent determinations by the Commission staff that certain financial instruments other than bonds or notes are municipal securities and subject to the MSRB's rules. The rule change is proposed pursuant to Section 15(B)(b)(2) of the Act which directs the MSRB to adopt rules with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act, as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before June 9, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–MSRB–82–8. Copies of the submission, all subsequent amendments, all written statements with respect to the rule change which are filed with the Commission, and all written communications relating to the rule change between the commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13588 Filed 5–18–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2037]

Mississippi; Declaration of Disaster Loan Area

Neshoba County and the adjacent counties of Leake and Kemper in the State of Mississippi constitutes a disaster area as a result of damage caused by a tornado which occurred on April 3, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 28, 1982, and for economic injury until January 28, 1983, at the addresses below: Small Business Administration, District Office, New Federal Building, Suite 322, 100 West Capitol Street, Jackson, Mississippi 39269 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—15¾ percent
Homeowners without credit available elsewhere—7¾ percent
Businesses with credit available elsewhere—16½ percent
Businesses without credit available elsewhere—8 percent
Businesses (EIDL) without credit available elsewhere—8 percent
Other (non-profit organization including charitable and religious organizations)—11½ percent

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 28, 1982.

J. C. Sanders,

Administrator.

[FR Doc. 82–13631 Filed 5–18–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2035]

Missouri; Declaration of Disaster Loan Area

Ozark County and the adjacent county of Howell in the State of Missouri constitutes a disaster area as a result of damage caused by high winds and tornadoes which occurred on April 2, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 21, 1982, and for economic injury until January 21, 1983, at the addresses below: SBA Disaster Office, c/o West Plains City Hall, North Highway Business 63, West Plains, Missouri 63121; and SBA Disaster Office, c/o Whites Grocery, Highway 160, Tecumseh, Missouri 63141 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—15¼ percent
Homeowners without credit available elsewhere—7⅛ percent
Businesses with credit available elsewhere—16½ percent
Businesses without credit available elsewhere—8 percent
Businesses (EIDL) without credit available elsewhere—8 percent
Other (non-profit organizations including charitable and religious organizations)—11⅛ percent

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 22, 1982.

J.C. Sanders,
Administrator.

[FR Doc. 82-13563 Filed 5-18-82; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[TMK-2 COREE]

Britches Great Outdoors; Application for Recordation of Trade Name

Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Britches Great Outdoors," used by Canterbury Tales, Inc., 1321 Leslie Drive, Alexandria, Virginia 22301.

The application states that the trade name is used in connection with the following merchandise which is manufactured in Hong Kong and Taiwan: Men's and women's clothing; shoes, slippers, down booties and shoe trees; umbrellas; key rings; brass accessories; gift items; wallets; leather goods; attaches; luggage; clocks, watches and watch bands; sunglasses; razors; smoker's accessories; knives; games; books; food products; pens and ink; fabric; camping equipment; and retail clothing store services, in U.S. Patent and Trademark Office Classes 3; 11; 22; 27; 39; 40; 46; and 101. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than July 19, 1982.

FOR FURTHER INFORMATION CONTACT:
Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

Dated: May 13, 1982.

Donald W. Lewis,
Director, Entry Procedures and Penalties Division.

[FR Doc. 82-13561 Filed 5-18-82; 8:45 am]
BILLING CODE 4820-02-M

Mead Johnson & Company, Application for Recordation of Trade Name

Application has been filed pursuant to §133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Mead Johnson & Company," a corporation organized under the laws of the State of Delaware, located at 2404 Pennsylvania Street, Evansville, Indiana 47721.

The application states that the trade name is used in connection with the following merchandise manufactured in numerous foreign countries: pharmaceuticals and medicines; chemicals; toiletries; vitamins; medical appliances; foods for infants and invalids and other nutritional foods. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229, in time to be received no later than July 19, 1982.

FOR FURTHER INFORMATION CONTACT:
Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5765).

Notice of the action taken on the application for recordation of this trade name will be published in thee Federal Register. Dated: May 13, 1982.

A. Piazza,
Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 82-13560 Filed 5-18-82; 8:45 am]
BILLING CODE 4120-02-M

Office of the Secretary

Privacy Act of 1974; Reinstatement and Update of System of Records

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of reinstatement and update of Treasury/OS.196—Physical Security Information System.

SUMMARY: Under the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Director (Physical Security), Preparedness and Physical Security Deputy Division, Office of Administrative Programs, gives notice of intent to reinstate and update the system entitled "Physical Security Information System" (Treasury/OS.196), as last published in 41 FR 45200, October 14, 1976. This system is being updated to include a category of records that relates to (1) Treasury personnel with security clearances who attend security orientation on the implementation of Executive Order No 12065, which encompasses procedures for the handling and safeguarding of classified national security information and (2) those Treasury officials who do not have original classification authority for national security information who may control and/or decontrol officially limited information. Finally, the maintenance and disposition time on

reports within the system has been revised from quarterly to annually.

DATES: Comments must be received not later than June 18, 1982. If no comments are received, to which the Department publishes a revision to incorporate comments, this system will become effective on July 19, 1982.

ADDRESSES: Comments may be sent to: Dennis E. Southern, Deputy Director (Physical Security), Preparedness and Physical Security Division, Office of Administrative Programs, Room 706, 1331 G Street, NW., c/o Main Treasury Mailroom, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Dennis E. Southern, Deputy Director (Physical Security), Telephone: 202–376–0823.

SUPPLEMENTARY INFORMATION: This system of records was last published at 41 FR 45200, October 14, 1976. For management purposes, 48 systems of records (Treasury/OS.196 included) were consolidated into one system, Treasury/OS.001, published at 42 FR 49099, September 26, 1977. The latter system proved inadequate because the system failed to list all the routine uses and authorities of the separate systems it incorporated. Therefore, the consolidated system was deleted and the original systems were reinstated, published at 44 FR 7009, February 5, 1979. At the time this action was taken, Treasury/OS.196 was withheld from reinstatement because of the pending of the Physical Security Staff. Upon completion of the reorganization, the Building Pass function, formerly covered under OS.196, was transferred to the Security Operations Branch. A new system of records, Treasury/OS.006 Building Passes, published at 46 FR 57211, November 20, 1981, was established to cover the Building Pass function within the Security Operations Branch. This reinstatement and update of Treasury/OS.196 will cover the records still under the jurisdiction of the Physical Security Staff.

Dated: May 5, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

TREASURY/OS.196

SYSTEM NAME:

Physical Security Information System—Treasury/OS.196.

SYSTEM LOCATION:

Room 706, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Treasury officials, who classify documents with a national security classification, i.e., Top Secret, Secret, or Confidential.

Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information. The authority is delegated only by an official authorized to exercise original classification authority for Top Secret information or an official acting in that position.

Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information as Confidential. This authority is delegated only by a Departmental official authorized to exercise original classification authority to Top Secret information or an official acting in that position.

Each Department of the Treasury official who does not have original classification authority for national security information who may control and/or decontrol officially limited information.

An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and officially limited information.

Department of the Treasury personnel concerned with classified national security and officially limited information who have participated in a security orientation program regarding the significant features of the security requirements and procedures for the handling and safeguarding of classified national security and officially limited information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Data Index System for national security information, (2) Report of Authorized Downgrading and Declassification Officials, (3) Report of Authorized Classifiers, (4) Designation of Controlling/Decontrolling Officials, (5) Record of Security Violations, and (6) Physical Security Orientation and Acknowledgment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12065, dated June 28, 1978, the Information Security Oversight Office Directive No. 1, dated October 5, 1978, Title 31, Subtitle A, Part 2, and Treasury Directives Manual Chapters 71–05.A, dated September 11, 1981, and 71–20.A, dated 20 June, 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is designed to (1) oversee compliance with Executive Order No. 12065 and Departmental programming and implementation, (2) prevent improper classification of national security information, (3) ensure prompt declassification of appropriate documents, (4) record details of valid security violations, (5) assist in determining the effectiveness of the physical security programs, and (6) provide a basis for administrative or judicial action, when such action is indicated. For additional routine uses, see Appendix AA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, date, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security filing containers to which access is limited to personnel with the need-to-know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violations, which is maintained for a period of two years, and the Data Index System cards for national security information, which are retained for one (1) year from the declassification date, the remaining records are destroyed and/or updated on an annual basis. Destruction is effective by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director (Physical Security), Preparedness and Physical Security Division, Office of Administrative Programs, Room 706, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and types of records sought; (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment of similar information) to

the Chief, Disclosure Branch (See access below).

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 100, 1331 G Street N.W., c/o Main Treasury Mailroom, Washington, D.C. 20220

CONTESTING RECORD PROCEDURES:

See access above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and the U.S. Department of State security officials as concerns Department of the Treasury personnel attached to U.S. diplomatic posts or missions.

[FR Doc. 82-13508 Filed 5-18-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 97
Wednesday, May 19, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M–351, May 12, 1982]

TIME AND DATE: 9:30 a.m., May 19, 1982.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Discussions with Israel. (BIA)
2. Discussions with Germany. (BIA)
3. Discussions with Scandinavia. (BIA)
4. Discussions with China. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–735–82 Filed 5–14–82; 4:08 pm]

BILLING CODE 6320–01–M

2

CIVIL AERONAUTICS BOARD.

[M–353, May 13, 1982]

TIME AND DATE: 10 a.m., May 20, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 39102, *Eastern Air Lines, Civil Penalties for Violation of Part 252*, BCCP petition for review of initial decision assessing $200 as the civil penalty for a Part 252 violation; Dockets 38747, 39464, and 39674, *United Air Lines, Compliance with Part 252 Enforcement Proceeding*, BCCP and airline petitions for review of initial decision assessing $500 in civil penalties for each violation of the smoking regulations. (Memo 1278, OGC)
3. Revision of the Board's rule implementing Title VI of the Civil Rights Act. (OGC)
4. Docket 40513, Petition of World Airways for rulemaking with regard to fare discounting. (OGC, BDA)
5. Board comments on draft Justice Department regulations prohibiting discrimination against the handicapped in Federally conducted programs. (Memo 1283, OGC)
6. Elimination of flight schedule filing requirements. (OGC, OC, BDA, BIA)
7. Part 384 Statement of Organization. (OGC, OCCCA, BCCA)
8. Docket 40176, Airport "slot" exchange agreement filed by the Air Transport Association of America. (BDA)
9. Docket 40545, CAB Recommendations to the FAA concerning the Interim Operations Plan. (OGC)
10. Docket 39864 and EAS–813, Western's notice to suspend service at Pierre, South Dakota. (BDA)
11. Docket 40470, Jamaire Inc's (name recently changed to Sunbelt Airlines, Inc.) notice of intent to suspend all service at University/Oxford, Mississippi, Memo 1287, BDA)
12. Docket 38374, Notice of Cochise Airlines to terminate service at Winslow, Arizona, and Blythe, California. (Memo 087–H, BDA)
13. Dockets 40533 and 40538, 90-day notice of Golden West Airlines to terminate service at numerous California EAS points and application for exemption from the notice requirements to trigger immediate subsidy payments. (Memo 1188–A, BDA)
14. Docket 40505, 90-day notice of Sky West airlines to terminate service at Cedar City, Utah, and Page, Arizona. (Memo 1288, BDA)
15. Dockets EAS–705 and EAS–792, Appeal of Berlin, New Hampshire and Newport, Vermont for inclusion in the small communities program under section 419(b) of the Act. (BDA)
16. Docket 40511, Application of North American Airlines for a Certificate to Provide Charter Air Transportation. (Memo 1285, BDA)
17. Dockets 40597 and 40598, Petitions of Hermens Air, Inc. and Cape Smythe Air Service, Inc., for a Temporary Mail Rate. (BDA)
18. Docket 36592, *All American Aviation, Inc. et al., (Agreement CAB No. 1041, as amended) Petition of Air Freight Haulage Co., Inc. (Air Cargo, Inc. Show-Cause Proceeding).*
19. Dockets 33361, 33362, 33363, Petition of Aeroamerica, Inc., for Reconsideration of Order 82–2–83. (BDA)
20. Employee Protection Program: Applications on Behalf of Employees of Aeroamerica (Dockets 38885 and 38979); Airlift International (Dockets 38418, 40342 and 40352); Air New England (Dockets 40201, 40251, 40349, 40529, and 40530); American (Dockets 38570 and 39115); Braniff (Dockets 38978 and 40280); Continental (Dockets 38720, 38816 and 39524); Delta (Docket 39700); Eastern (Docket 38586); Mackey International (Docket 39783); Overseas National (Dockets 34562 and 34711); Pan Am (Dockets 38883 and 40279); TWA (Dockets 38184, 38193, 38196, 38884, 39013 and 39032); and United (Dockets 38571, 38882 and 39525) for Determination of Qualifying Dislocation. (BDA)
21. Docket 32660, Agreement CAB 28655, R–1 through R–13, Agreement CAB 28665, IATA agreements amending resolutions dealing with fare construction rules and currency conversion procedures as well as other resolutions having worldwide application. (BIA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–736–82 Filed 5–14–82; 4:08 pm]

BILLING CODE 6320–01–M

3

COMMODITY CREDIT CORPORATION.

TIME AND DATE: 2 p.m., May 19, 1982.

PLACE: Room 200–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Executive Session, closed to the public.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: Edward D. Hews, Secretary, Commodity Credit Corporation, P.O. Box 2415, Room 3090-South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447–7563.

[S–738–82 Filed 5–17–82; 11:45 am]

BILLING CODE 3410–05–M

4

FEDERAL COMMUNICATIONS COMMISSION

The following item has been deleted at the request of the Chairman's office from the list of agenda items scheduled for consideration at the May 13, 1982, Open Meeting and previously listed in the Commission's Notice of May 5, 1982.

Agenda, Item No., and Subject

General—2—*Title:* Notice of Proposed Rulemaking to expand the frequencies available for use by Aural broadcast STL and Intercity relay stations. *Summary:* The Commission will consider the merits of RM–2887, filed by the National Association of Broadcasters (NAB), to reallocate the

942–947 MHz band back to the Broadcast Auxiliary Service and RM–3246, filed by Moseley Associates, Inc., to use unassigned UHF-TV channels for Broadcast Auxiliary Service. Additionally, the Commission will consider the merits of sharing the 2130–2150 MHz and 2180–2200 MHz bands, presently allocated to the Private Operational-Fixed Microwave Service, with the Broadcast Auxiliary Service.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-6712-01 Filed 5-17-82; 11:46 am]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 20, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—*Title: Third East Coast Earth Station. Summary:* The Commission will consider whether to authorize the construction of 14/11 GHz and 6/4 GHz communications satellite earth station facilities in the vicinity of Bloomsburg, Pennsylvania, for operation with the INTELSAT satellite system.

Renewal—1—*Title:* License renewal application of Mid-Ohio Communications, Inc. for WBBY(FM), Westerville, Ohio, and mutually exclusive construction permit application of Metro Broadcasting, Inc., and transfer of control of Mid-Ohio Communications, Inc. *Summary:* Mid-Ohio Communications, Inc., filed for renewal of license for Station WBBY(FM) Westerville, Ohio. Metro Broadcasting, Inc. filed for a construction permit for an FM station in Westerville, Ohio, utilizing the facilities of WBBY(FM). In addition, an application was filed to transfer control of Mid-Ohio Communications, Inc. The Commission considers designating the Mid-Ohio and Metro applications for a comparative hearing and considers whether to grant the Mid-Ohio transfer application.

Television—1—*Title:* Petition filed by Eastern Carolinas Broadcasting Company, Inc. seeking reconsideration of Commission action granting the application of Clay Broadcasting Corporation for minor changes in the facilities of WWAY–TV, Channel 3, Wilmington, North Carolina. *Summary:* The Commission will consider whether the Commission properly denied Eastern's informal objection claiming UHF impact of Clay's proposed changes on WPDE–TV, Channel 15, Florence, South Carolina.

Television—2—Applications of Charleston, S.C. VHF television stations WCBD, WCIV, WCSC, and WITV to make changes in their facilities; petitions to deny. *Summary:* The Commission will consider whether grant of the applications will have an impact on UHF stations in Columbia and Florence, S.C., which would adversely affect the public interest.

Broadcast—1—*Title:* Revision of FM Assignment Policies and Procedures (BC Docket No. 80–130). *Summary:* A Notice of Proposed Rule Making and Notice of Inquiry was issued proposing new policies and procedures for FM channel assignment rule making cases. The Report and Order discusses and resolves the remaining issues in the proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 245–7674.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-740-82 Filed 5-17-82; 11:46 am]

BILLING CODE 6712-01-M

6

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, May 20, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Draft Decision in the Simon Geller, Gloucester, Massachusetts comparative FM renewal proceeding (Docket Nos. 21104 and 21105).

This item is closed to the public because it concerns adjudicatory matters (See 47 CFR 0.603(j)).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 13, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-741-82 Filed 5-17-82; 11:46 am]

BILLING CODE 6712-01-M

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 20909, Friday, May 14, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board Meeting:

Perfecting of Security Interest in U.S. Government Securities Collateralizing Retail Repurchase Agreements

[No. 34, May 17, 1982]

[S-743-82 Filed 5-17-82; 3:05 pm]

BILLING CODE 6720-01-M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., May 27, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Report on Notation Items disposed of during April, 1982.

2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during April, 1982.

3. Report of the Secretary on Applications for Admission to Practice approved during April, 1982, pursuant to delegated authority.

4. Agreement No. 10433: Space Charter Agreement between Societe Ivoirienne De Transport Maritime and Delta Steamship Lines, Inc.

5. Agreement No. T–3856: Mid-Gulf Seaports Marine Terminal Conference, the Terminal Operators Conference of Hampton Roads, and the South Atlantic Marine Terminal Conference—Request for hearing on order of conditional disapproval.

6. Docket No. 81–76: Proposed Amendment to General Order 4, Revised, for the Purpose of Implementing the Amendments to Sections 1 and 44 of the Shipping Act, 1916, made by Pub. L. 97–35—Consideration of Comments and proposed final rule.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S-742-82 Filed 5-17-82; 2:49 pm]

BILLING CODE 6730-01-M

9

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

May 13, 1982.

TIME AND DATE: 10 a.m., Wednesday, May 19, 1982.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Minerals Exploration Company, Docket No. WEST 81–189–RM; Petition for Interlocutory Review. (Consideration of the operator's petition concerning whether the judge erred in denying the operator's motion for disciplinary sanctions.)

2. Ozark-Mahoning Company, Docket No. VINC 79–173–PM; Petition for Review seeking relief from, or reconsideration of, final order of the Commission. (Issues include whether the operator should be allowed relief from a final Commission order against it.)

Vote.—Voting to Close the Meeting: Chairman Collyer, Commissioners Backley and Jestrab. Commissioner Lawson voted to hold Ozark-Mahoning open.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–744–82 Filed 5–17–82; 3:21 pm]

BILLING CODE 6735–01–M

10

INTERNATIONAL TRADE COMMISSION.

[USITC SE–82–16A/18]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 F.R. 20244 May 11, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, May 19, 1982.

CHANGES IN THE MEETING: Change to the Agenda for the Meeting of Wednesday, May 19, 1982, and the Scheduling of a Meeting to be Held on Thursday, May 20, 1982, at 2:00 p.m.:

By action jacket SE–82–07, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted to postpone item No. 7 (Investigation 337–TA–103 (Certain Stabilized Hull Units and Components Thereof and Sonar Units Utilizing Said Stabilized Hull Units)—briefing and vote) and reschedule it as item No. 1 for an emergency meeting to be held on Thursday, May 20, 1982, at 2:00 p.m.

Commissioners Alberger, Calhoun, Stern, Eckes, Frank, and Haggart determined by recorded vote that Commission business requires the change in schedule and affirmed that no earlier announcement of the change to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–737–82 Filed 5–17–82; 10:30 am]

BILLING CODE 7020–02–M

11

NUCLEAR REGULATORY COMMISSION.

DATE: Week of May 17, 1982 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTER TO BE DISCUSSED: Monday, May 17 (Additional Item):

3:30 p.m.:

Discussion of DOE Request for Reconsideration of CRBR Exemption (public meeting).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Water Magee (202) 634–1410.

Walter Magee,
Office of the Secretary.
May 14, 1982.

[S–745–82 Filed 5–17–82; 3:28 pm]

BILLING CODE 7590–01–M

12

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19508, May 5, 1982.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 30, 1982.

CHANGES IN THE MEETING: Additional meeting. The following items were considered at a closed meeting scheduled on Friday, May 14, 1982, at 11:00 a.m.:

Litigation matters.

Chairman Shad and Commissioners Loomis, Evans and Thomas determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Diane Klinke at (202) 272–2178.

May 17, 1982.

[S–746–82 Filed 5–17–82; 3:32 pm]

BILLING CODE 8010–01–M

V 4 7 / 9 MY 19 82 UMI

federal register

Wednesday
May 19, 1982

Part II

Department of Agriculture

Agricultural Marketing Service

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Tentative Marketing Agreements and to Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1106, 1126 and 1132,

[Docket Nos. AO-210-A43, etc.]

Milk in the Oklahoma Metropolitan and Certain Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions to Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR parts	Marketing area	Docket Nos.
1106	Oklahoma Metropolitan	AO-210-A43.
1071	Neosho Valley	AO-227-A35.
1073	Wichita, Kansas	AO-173-A37.
1104	Red River Valley	AO-296-A30.
1126	Texas	AO-231-A46.
1132	Texas Panhandle	AO-262-A32.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends a merger of the Oklahoma Metropolitan, Neosho Valley, and Wichita marketing areas and the Oklahoma counties of the Red River Valley marketing area under one order. The combined "Southwest Plains" marketing area also would include all presently unregulated areas in the State of Oklahoma, and also the Oklahoma county of Beckham that is now a part of the Texas Panhandle marketing area. The provisions of the proposed merged order are patterned largely after those of the Oklahoma Metropolitan order with minor modifications. The decision recommends also that the Texas counties of the Red River Valley marketing area be added to the marketing area of the Texas order. The recommended changes, which are based on industry proposals considered at a public hearing in May 1980, are necessary to reflect current marketing conditions and to assure orderly marketing in the respective areas.

DATE: Comments are due June 18, 1982.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act, this document is exempt from such requirements since this proceeding was initiated prior to January 1, 1981.

Prior documents in this proceeding: Notice of Hearing—Issued April 25, 1980, published April 30, 1980 (45 FR 28736).

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the respective marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, by June 18, 1982. Five copies of the exceptions should be filed. All written submissions made pursuant to the this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Oklahoma City on May 20-23 and May 27-29, 1980, pursuant to a notice issued April 25, 1980 (45 CFR 28734).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and/or expanded marketing areas is in the current of interestate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

2. Whether any of the following proposed mergers of marketing areas or parts thereof should be included under one or more orders:

(a) Merger of the Oklahoma Metroplitan, Neosho Valley, Red River Valley, and Wichita marketing areas;

(b) Merger of the Oklahoma Metropolitan and Red River Valley marketing areas; and

(c) Merger of the Texas and Red River Valley marketing areas;

3. Whether the proposed Southwest Plains marketing area should be expanded to include additional counties in the State of Oklahoma; and

4. With respect to any of the aforesaid orders, or proposed combination thereof, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices and location adjustments;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of Commerce.* The handling of milk in the proposed merged marketing area is in the current of interstate commerce and directly burdens or obstructs interstate commerce in milk and milk products.

The proposed merged marketing area, designated as the "Southwest Plains" marketing area, includes the present marketing areas of Order 71 (Neosho Valley), Order 73 (Wichita, Kansas), and Order 106 (Oklahoma Metropolitan); the Oklahoma portion of the present marketing area of Order 104 (Red River Valley); Beckham County, Oklahoma, which is in the marketing area of Order 132 (Texas Panhandle); and presently unregulated territory in the State of Oklahoma. The marketing area includes territory in three states (the entire State of Oklahoma, 52 counties in the State of Kansas and 4 counties in the State of Missouri).

Interstate commerce is involved in the procurement and sale of fluid milk products by handlers distributing milk in the proposed marketing area. Handlers regulated under the Oklahoma Metropolitan order who operate plants in the State of Oklahoma receive milk from out-of-state producers located in Arkansas, Kansas, Missouri, New Mexico, and Texas. Fluid sales by such handlers are made in Kansas, Missouri, Oklahoma and Texas. Also, fluid milk sales are made in Oklahoma by handlers who operate plants that are located in the States of Arkansas, Kansas, Missouri, and Texas.

2. *Need for merger of orders.* Marketing conditions in the Neosho Valley (Order 71); Wichita, Kansas (Order 73); Red River Valley (Order 104); and Oklahoma Metropolitan (Order 106) marketing areas justify a merger of the orders regulating the handling of milk in these areas. This single order, to be known as the "Southwest Plains" marketing area, is the most appropriate means of promoting orderly marketing conditions and thus effectuating the

declared policy of the Act. The merged order should include all of the territory included in the marketing areas of the four orders, except for seven Texas counties in the Order 104 marketing area. Such counties should be added to the Texas (Order 126) marketing area as handlers regulated under Order 126 are the primary distributors serving this area.

Associated Milk Producers, Inc. (AMPI), proposed the merged order that is adopted herein. AMPI operates a distributing plant and two manufacturing plants that are pooled under Order 106 and a manufacturing plant that was pooled at the time of the hearing under Order 73.[1] The cooperative represents more than 80 percent of the dairy farmers that would be producers under the merged order. Currently, AMPI markets milk on behalf of producers in each of the four order areas and is the principal supplier for handlers regulated under Orders 106 and 73. AMPI is also the principal cooperative association supplying the Order 104 market. However, a substantial volume of the market's milk is supplied by 40 dairy farmers who are not members of any cooperative association. In the Order 71 market, AMPI represents a relatively limited number of the producers who supply the market.

AMPI testified that the markets regulated by the four orders should be merged because they now represent one common market rather than the four separate and distinguishable markets contemplated by the existing regulations. AMPI contends that the increasing regionalization of milk marketing brought about by changes in both the procurement of raw milk supplies and in the distribution of finished products requires a single regulation to promote more orderly marketing conditions throughout the area under consideration. In effect, AMPI contends that each of the four orders was intended to reflect a local market situation that no longer exists in view of the expanding sales areas of fewer but larger distributing plants and the organization of the producer milk supply on a regional basis to effectively furnish and balance the fluid milk needs of such plants. AMPI testified that a regional order would: (1) Recognize the common sales area of distributing plants regulated under the respective orders; (2) eliminate competitive inequities among handlers that result from the application of different regulatory provisions in a common sales area; (3) provide for a more equal sharing of the Class I sales and the cost of maintaining the necessary reserve milk supply for such sales among all producers supplying the region's fluid milk needs; and (4) provide for a greater degree of blend price stability than that which is exhibited by the four separate orders.

Mid-America Dairymen, Inc., (Mid-Am) generally supported AMPI's proposed four-market merger, particularly the inclusion of the Order 71 marketing area. Mid-Am is the principal supplier of milk to handlers regulated under Order 71 and also represents producers who supply handlers regulated under Orders 73 and 106. Mid-Am testified that the main reason for including Order 71 in the merger is the significant degree to which the Order 71 procurement area overlaps with the procurement areas of handlers regulated under the other orders proposed to be merged.

Forty nonmember producers who are the primary suppliers of a distributing plant regulated under Order 104 opposed to the merger proposed by AMPI. These producers represent approximately 30 percent of the dairy farmers who supply the Order 104 market, or approximately 2 percent of the total number of dairy farmers that would be producers under the merged order. The nonmember producers were primarily concerned that their pay prices would be reduced if the merged order proposed by AMPI were adopted. For this reason they opposed AMPI's proposal and supported alternatives that they believed would have a lesser negative effect on their blend price.

Three alternative proposals were submitted by the 40 producers and were published in the hearing notice for consideration at the hearing. The three alternatives, in order of preference, were to: (1) Retain Order 104 as a separate order; (2) merge Orders 104 and 106; and (3) merge Orders 104 and 126.

At the hearing, a witness testifying on behalf of the 40 producers offered no support for the proposal to retain Order 104 as a separate order. Instead, he advocated that Order 104 be merged with one of the larger orders in the Southwest. The witness testified that in his opinion a strong economic basis exists for two merger alternatives, namely; (1) A merger of Orders 71, 73, 104, 106 and 126 into a single order; and (2) a merger of Orders 104 and 126 into a single order (and perhaps separately a merger of Orders 71, 73 and 106). Alternatively, the witness advocated the merger of Orders 104 and 106 as an interim step pending the five-market merger that the witness advocated.

In their post-hearing brief and proposed findings of fact, the 40 producers opposed the four-market merger proposed by AMPI. They advocated, as did their hearing witness, that if any merger is undertaken by the Secretary at this time, Order 104 should be merged with Order 126. They also supported merging Orders 104 and 106 as an intermediate step pending a five-market merger suggested by their hearing witness. In addition, they concluded that the record evidence supports the scheduling of a new hearing to consider the inclusion of Order 126 in a five-market merger while maintaining the status quo of the other four orders now under consideration. Their brief differed, however, from the position set forth by their witness at the hearing in that they do not believe that an economic basis exists for a separate merger of Orders 71, 73 and 106. In fact, they conclude that the two northernmost markets (Orders 71 and 73) are insufficiently associated with Orders 104 and 106. They contend that, on the basis of handler competition, the two northernmost markets have a greater association with markets not involved in this proceeding. For this reason, they conclude that Orders 71 and 73 should not be merged with Orders 104 and 106, a position which appears to be in conflict with their conclusion that the record evidence supports a hearing to consider a five-market merger.

In addition to their interest in the potential impact of any merger on their blend price, the 40 producers opposed the four-market merger on the basis that such a merger is an attempt by the major cooperatives to divide their sales areas in such a way as to lessen supply competition. The producers contend that their ability to continue to market milk as nonmembers hinges on the formation of a five-market merger or a merger of Orders 126 and 104. They claim that under either of such mergers AMPI would represent a lesser proportion of the total milk supply than under any of the other merger alternatives.

Three other interested parties commented on the merger issue in their briefs. The Order 104 handler who operates the distributing plant that is supplied by the 40 producers supported the merger proposals submitted by the nonmember producers as contained in the hearing notice. A cooperative association that represents producers who supply Orders 71 and 106 and a handler who operates a distributing plant pooled under Order 106 supported

[1] This plant, located at Hillsboro, Kansas, became pooled as a supply plant under the Texas order in September 1981. Official Notice is taken of the "List of Handlers September 1981" published by the market administrator of the Texas order.

a merger of markets that would best facilitate and foster supply competition. While neither of these two parties specified which markets should be merged, each expressed opposition to the four-market merger proposed by AMPI as well as to some of the terms and provisions proposed to be included in the merged order.

The current marketing areas of the four orders to be merged and the terms and provisions of such orders evolved from public hearings held to promulgate Federal milk order regulations in these areas. The merging of the four marketing areas and the marketing area expansion adopted herein would continue a trend of order consolidations and marketing area expansions that are already a part of the history of the development of Federal regulation in the area under consideration.

Federal regulation within the proposed merged marketing area was initiated in 1944 with the issuance of the Wichita, Kansas, order. After marketing area expansions in 1954 and 1959, the Wichita order was merged in 1966 with the Southwest Kansas order, which had been promulgated in 1954. At that time the combined marketing area was also expanded to include all of the territory comprising the marketing area of the current Wichita order. As a consequence of those regulatory actions, the marketing area of the Wichita order now encompasses 43 Kansas counties.[2]

The Neosho Valley order was promulgated in 1951 and its marketing area was expanded in 1960 to include an additional county in Kansas. Currently, the order encompasses four Missouri and nine Kansas counties in its marketing area.[3]

The Oklahoma Metropolitan order was issued in 1957 to merge the Oklahoma City order (promulgated in 1950 and marketing area expanded in 1951) and the Tulsa-Muskogee order (the Tulsa and Muskogee orders were promulgated in 1950 and 1951, respectively, and the orders were merged in 1953). The marketing area of the Oklahoma Metropolitan order was then expanded in 1960 to its current size. The marketing area currently includes one entire county plus 9 cities and other specified towns, townships and divisions that comprise parts of 12 other counties, all in the State of Oklahoma.[4]

The Red River Valley order was promulgated in 1958 and the marketing area was expanded in 1965. Currently, the marketing area of the order encompasses 17 Oklahoma counties and seven Texas counties.[5]

When the original orders were established they included marketing areas in which the handlers regulated by the individual orders were the primary distributors serving the respective markets. In most cases the distributing plants were supplied by local cooperative associations that assumed the burden of maintaining the reserve milk supplies for each of the separate and distinguishable markets. Although the original orders were expanded and merged over the years as local markets began to take on more regional characteristics, the four orders herein proposed to be merged do not currently reflect the extent to which further regionalization of milk marketing has occurred in the proposed Southwest Plains area. Technological developments have led to fewer but larger competing plants that distribute fluid milk products over wider areas. Also, local cooperatives have merged to form larger cooperative associations that organize milk supplies over a broad area for shipment to these distributing plants. Any decision to merge the several orders involves a consideration of how much more extensive the regionalization of milk marketing has become and whether this tends to reduce the ability of the separate orders to carry out the purposes of the Act.

In this regard, major recognition must be given to the marketing operations of AMPI, the major cooperative operating in the four-market area. Through its "Southern Region" subunit, AMPI markets milk not only in this area but in eight other Federal order markets located to the south, east and to the west of the four-market area. The northernmost of these markets are regulated by Orders 71 and 73 while the southernmost market is regulated by Order 126. The entire proceeds obtained from the sale of milk and dairy products throughout the 12-market region are combined and reblended by AMPI to make payments to the cooperative's producer members in this region. Such practice results in all AMPI members in the region sharing proportionately in both the cooperative's Class I sales in the region and its cost of maintaining the reserve milk supplies that are associated with such fluid milk sales.

With respect to the four markets to be merged, AMPI represented about 81 percent of the approximately 3.7 billion pounds of milk pooled under the four orders during the period of 1977 through 1979. About 83 percent of AMPI's 3 billion pounds of milk on these markets during this period was delivered to distributing plants regulated under the orders, primarily on a direct-shipped basis from farms to plants.

In addition to a distributing plant that is pooled under Order 106, AMPI operates two manufacturing plants that also are pooled under Order 106. The manufacturing plants are located at Oklahoma City and Tulsa, Oklahoma. A third manufacturing plant operated by AMPI that is located at Hillsboro, Kansas, was pooled under Order 73 at the time of the hearing. During 1977 through 1979, about 318 million pounds of milk were received at the three manufacturing plants. This volume of milk represented about 8.5 percent of the total four-market supply of producer milk. From these plants limited quantities of milk were shipped to distributing plants regulated under the four orders to supplement fluid milk needs. Minor quantities were also shipped to distributing plants regulated under other orders. Approximately 90 percent of the milk received at the plants, however, was used to produce manufactured dairy products.

Milk received at the three manufacturing plants represents the milk of AMPI's members which is not needed on certain days, such as holidays and weekends, and during the seasonal flush period by the distributing plants supplied by AMPI. Under AMPI's operating procedure, this milk is pooled under the order that regulates the manufacturing plant that receives the milk. Thus, although AMPI supplies milk to distributing plants for Orders 71 and 104, the reserve milk for these markets is pooled under Order 73 (or at times Order 126) and Order 106. For the 1977 through 1979 period, about 88 percent of the reserve milk for the four markets was pooled on Order 106 and 12 percent on Order 73. For the year 1979, when the Hillsboro plant first became regulated under Order 73, 57 percent of the reserve milk for this area was pooled on Order 106 and 43 percent was pooled in Order 73. It is noted that this milk represents a reserve supply not only for the four

[2] Official notice is taken of decisions issued by the U.S. Department of Agriculture on August 10, 1966 (31 FR 10825), April 23, 1959 (24 FR 3241), March 29, 19054 (19 FR 1823), and March 12, 1954 (19 FR 1463).

[3] Official notice is taken of decisions issued by the U.S. Department of Agriculture on June 17, 1960 (25 FR 5702) and October 15, 1951 (16 FR 10647).

[4] Official notice is taken of decisions issued by the U.S. Department of Agriculture on April 12, 1960 (25 FR 3324), March 29, 1957 (22 FR 2151), July 24, 1953 (18 FR 4424), October 11, 1951 (16 FR 10561), May 18, 1951 (16 FR 4887), March 10, 1950 (15 FR 1604) and March 8, 1950 (15 FR 1437).

[5] Official notice is taken of decisions issued by the U.S. Department of Agriculture on February 2, 1965 (31 FR 1289) and September 12, 1958 (23 FR 7221).

markets to be merged but also to some extent a reserve supply for other Federal order markets as well. On occasion, milk is shipped from the AMPI manufacturing plants to distributing plants regulated under Order 126, Order 108 (Central Arkansas), and Order 97 (Memphis, Tennessee).

AMPI's Hillsboro plant was pooled as a supply plant under Order 126 prior to August 1979 on the basis of shipments made to distributing plants regulated under that order. Significant changes in milk movements by AMPI resulted in the plant becoming regulated under Order 73 in August 1979. The plant was pooled under that order as a cooperative balancing plant through August 1981. Beginning with September 1981, the plant again became pooled under Order 126 as a supply plant. In either case, however, the plant was an outlet for reserve milk supplies associated with markets other than those where the plant was actually pooled.

In addition to the change in the regulation of the Hillsboro plant, AMPI also shifts producers among the various regulated markets to meet the fluid milk needs of handlers. As a result, some dairy farmers are often producers under more than one order during the same month. Of the dairy farmers that supplied the four markets to be merged, about 10 percent supplied more than one market during the month of December in 1977 and in 1978, with this number increasing slightly to 12 percent in December 1979. Also the data indicate that during these years there were substantial month-to-month fluctuations in the numbers of producers who supplied each of the four markets. Such changes in producer numbers reflect changes in market structures (e.g., plants going out of business or shifting from one order to another) as well as deliberate shifts of producers by AMPI and others to meet fluid milk needs.

These marketing arrangements by AMPI go considerably beyond the marketing concept envisioned for the individual orders. The separate orders were intended to reflect basically a local marketing situation where certain milk producers are regularly associated with a particular market and where those producers share in both that market's higher-valued Class I sales and the lower-valued reserve milk supplies that must be available. Because of AMPI's varied arrangements for supplying handlers and disposing of the reserve milk, however, many members of this regional cooperative have no regular association with a particular market. As noted, the returns from member milk sold in the various markets are reblended to its members. The price each member receives for his milk may or may not be closely related to the order uniform price announced for the market or markets to which his milk was delivered.

The incompatibility of the separate orders with current marketing practices is particularly evident with respect to the handling of reserve milk supplies. It is contemplated under the individual orders that each market pool carry the reserve milk supplies associated with the local market's fluid milk sales. However, the Order 71 and Order 104 markets do not have manufacturing facilities for handling the reserve milk. Although milk could be diverted from distributing plants in these markets to out-of-area manufacturing outlets, this is not the customary handling procedure. Instead, the reserve milk is received at AMPI's manufacturing plants regulated by Orders 106 and 73 and is pooled under these orders. This arrangement results in producers under Orders 71 and 104 who are not members of AMPI not bearing their proportionate share of the lower-valued reserve milk that necessarily must be associated with the Class I sales in those markets. This results in inequities between AMPI's members and the other producers on those markets.

Inequities also can prevail in the markets where the reserve supplies are actually pooled. Because of AMPI's reblending, pooling of reserve milk from other markets on the Order 106 market, for example, has a much lesser adverse impact on the blend price received by the cooperative's members on this market than on producers who are not members of AMPI. This pricing situation can result in disorderly marketing conditions and considerable unrest among the non-AMPI producers who are receiving the lower prices.

It might be argued that changes in operating procedures could be made so that a reasonable share of the reserve supplies is pooled under the orders that do not regulate the manufacturing plants. This can be difficult to do on a day-to-day basis, however, in the case of the Order 71 and Order 104 markets, which have very small volumes of Class I use. The Class I utilization and resulting blend prices can change dramatically in these markets in response to very minor changes in milk movements. For example, with a monthly pooled volume of approximately 500,000 pounds of producer milk, a change in the movement of less than two tanker loads (about 47,000 pounds per tanker) of milk a month would change the Order 71 Class I utilization by 10 percentage points. The Order 104 Class I utilization, with just over 3.5 million pounds of milk pooled under the order per month, would change by 10 percentage points in response to a change of about 10 tanker loads of milk a month. These circumstances tend to foster the regular pooling of the reserve supplies for these markets on the larger markets in AMPI's operating area.

Opponents of the four-market merger (the 40 nonmember producers who supply Order 104) cited AMPI's reblending practice and supply arrangements throughout its Southern Region area as two reasons why the four-market merger should not be adopted. In effect, they contend that the four markets should not be merged because they are only a part of a larger, inter-related market. They believe that consideration should be given to a broader merger that would include Order 126, which is by far the largest volume market in the Southwest.

The fact that AMPI markets milk over a 12-order area does not preclude the merger of several orders within the group. The organization of the milk supply system by AMPI, although encompassing a larger number of orders, clearly establishes a significant relationship among the four markets to be merged that makes it appropriate to consolidate the four marketing areas under one order. Any broader merger is beyond the scope of this proceeding. The four-order merger, which will promote a greater degree of market stability than is currently being achieved by the four separate orders, should not be forestalled until such time as a broader merger may be considered.

The 40 nonmember producers also contend that the two northernmost markets, Orders 71 and 73, have a greater association with other northern markets not involved in this proceeding and, therefore, should not be merged with Orders 104 and 106. This position is in conflict with the producers' conclusion that the record evidence supports a hearing to consider a five-market merger. It is also contradicted by the strong structural relationship among the four orders in terms of the organization of the supply system by AMPI over the entire region. All of the changes in milk movements by AMPI that were explored on the record establish that milk flows from Kansas to more deficit southern areas. For example, the Hillsboro manufacturing plant was pooled under Order 126 on the basis of milk shipments to distributing plants regulated under that order. Also, the subsequent pooling of such plant

under Order 73 resulted in further shifts in the producer milk supply whereby milk from Oklahoma was shifted to Texas outlets and Kansas supplies were shifted to outlets in Oklahoma.

The primary interest of the nonmember producers is the preservation of as high a blend price as is possible. They stated that a merger of Order 104 with any other order would have resulted in a blend price reduction for them but that the greatest reduction would have occurred under the four-market merger adopted herein.

Computations of blend prices that would result under different merger alternatives generally indicate that such merger order blend prices would have been lower than the Order 104 blend price. The somewhat higher Order 104 blend price, however, reflects a small local market situation that is no longer realistic in terms of the broader regional marketing practices applicable in the area. As noted, for example, reserve milk supplies for the Order 104 market are not being pooled on that market, which results in a blend price level higher than normally would be warranted. In addition, because the order does not reflect the regional supply-demand relationship, its blend price can vary significantly from the regional blend price that accrues to a substantial majority of the producers throughout the area. Also, because of the market's small size, the Order 104 blend price can fluctuate substantially in response to even relatively minor changes in regional marketing practices at the producer or processor level. Such price instability and the resulting lack of certainty over future prices is not conducive to long-run market stability and is contrary to the intent of Federal milk orders.

In this regard, significant Class I use and blend price disruptions have occurred in both the Order 104 and Order 71 markets as a result of structural changes in the distribution sector. Throughout the four-market area generally, distributing plants have declined in number and increased in size. There were five fewer plants regulated under the four orders in December 1979 than in December 1976. In total, there were 21 distributing plants regulated under the four orders in December 1979, with three under Order 71, eight under Order 73, two under Order 104, and eight under Order 106.[6]

[6] Official notice is taken of the commercial fact that since the hearing five additional distributing plants in the four-market area have ceased operations—two under Order 71 and three under Order 73.

As distributing plants have declined in number and increased in size, the market impact of plant closings or switches in regulation between orders has increased and is magnified in small volume markets.

The differences in the size of the four markets to be merged in terms of the yearly volume of producer milk pooled during 1976–1979 are indicated in Table 1. The Order 73 and Order 106 markets are by far the largest of the four markets, with the volume of milk pooled in these two markets during these years representing 90 percent of the total volume of producer milk pooled under the four orders. The Order 71 market is by far the smallest of the four markets.

TABLE 1.—PRODUCER MILK POOLED UNDER FOUR ORDERS TO BE MERGED, 1976–79

(1,000,000 pounds)

	Order 71	Order 73	Order 104	Order 106	Total
Years:					
1976	7	344	160	810	1,321
1977	7	343	131	834	1,315
1978	9	306	111	813	1,259
1979	30	318	63	760	1,171

For the years 1976 through 1978, the volume of milk pooled under Order 71 (equivalent to 12 to 16 tanker loads of milk per month) represented less than one percent of the total milk pooled under the four orders. In 1979, the volume of milk pooled under Order 71 increased to 3 percent of the total producer milk pooled under the four orders. In contrast, the volume of milk pooled under Order 104 has decreased steadily since 1976, when it represented 12 percent of the milk pooled under the four orders. By 1979, the milk pooled under Order 104 represented only 5 percent of the milk pooled under the four orders.

Because of the relatively small volume of milk pooled under Orders 71 and 104; these markets are susceptible to disruptive impacts caused by changes in the number of distributing plants regulated under such orders. These changes occur as a result of either plant closings or a switch in regulation of a plant between orders. Consequently, the producers supplying plants regulated under these orders and the handlers regulated under such orders have no assurance that the conditions under which they are marketing milk will not change significantly on a month-to-month basis. The extent of such changes is illustrated in Table 1 which shows that the volume of milk under Order 104 decreased by over 60 percent from 1976 to 1979 while the volume of milk pooled under Order 71 increased by over 300 percent during the same period.

Particular actions that led to significant changes in the Class I utilization of the two orders and the resulting impacts on the blend prices under the orders were identified on the record. As a point of reference, the yearly Class I utilization and blend prices under the four orders are indicated in Tables 2 and 3.

TABLE 2.—PERCENT OF PRODUCER MILK IN CLASS I UNDER FOUR ORDERS TO BE MERGED, 1976–79

	Order 71	Order 73	Order 104	Order 106	Combined
Year:					
1976	90	59	72	84	83
1977	91	60	71	86	85
1978	83	67	69	67	67
1979	39	66	76	74	71

TABLE 3.—AVERAGE BLEND PRICES UNDER FOUR ORDERS TO BE MERGED 1976–79

(Dollars per hundredweight)

	Order 71	Order 73	Order 104	Order 106
1976	$10.05	$9.58	$10.17	$9.83
1977	9.98	9.57	10.07	9.83
1978	10.75	10.51	10.91	10.68
1979	11.42	12.00	12.40	12.26

In May 1979, a distributing plant regulated under Order 104 ceased operations and the Class I sales and producer milk associated with the plant became associated with plants regulated under other orders, primarily Order 106. Since the plant had a higher than average Class II use, its closing had a significant impact on the Order 104 Class I utilization. As indicated in the yearly data in Table 2, the Class I use increased to 76 percent in 1979, after declining steadily during 1976 through 1978 to 69 percent. The yearly data, however, mask the actual impact of the plant closing. For the months of June through December 1979, which was right after the plant closed, the average Order 104 Class I utilization was 86 percent, compared to 70 percent during the preceding months of January through May. On a comparable basis, the Class I utilization under Order 106 was 75 percent for the months of June through December, 11 percentage points lower than the Order 104 utilization. For the years 1976 through 1978, the Class I utilization under Orders 106 and 104 had been converging as Class I use declined steadily under Order 104 and increased steadily under Order 106. For 1976, 1977, and 1978, the Class I utilization under the two orders differed by 8, 5, and 2 percentage points, respectively.

The increase in the percentage of milk utilized in Class I under Order 104 resulted in an increase in the blend

prices for producers who continued to supply the Order 104 market relative to the bland prices under adjacent orders. For example, the simple average of the Order 104 announced prices for the period of June through December 1979 was $12.63 per hundredweight, 37 cents above the average Order 106 blend price for the same period. During the same months of the previous year, the Order 104 average blend price exceeded the average Order 106 blend price only by 13 cents per hundredweight. Also, the average Order 104 blend price during the June through December 1979 period exceeded the average Order 126 blend price at Dallas, Texas, by 2 cents per hundredwieght. During the same period of the previous year, the Order 104 blend prices averaged 27 cents per hundredweight less than the Order 126 blend prices.

The increase in the Order 104 blend prices, relative to the blend prices under adjacent orders, provided a signal for the remaining Order 104 producers to increase production and an incentive for dairy farmers supplying adjacent orders to shift to the Order 104 market. However, there was no increase in the demand for fluid milk products in the market or by the two remaining distributing plants regulated under the order.

In May of 1979 when the Order 104 plant closed, that order's blend price was $12.23. Because of the plant closing, dairy farmers who continued to supply the Order 104 market received a blend price of $12.49 in June, a 26-cent per hundredweight increase. However, dairy farmers who continued to supply the same consumer market, but through plants regulated under Order 106, experienced a 15-cent reduction from May to June, as the Order 106 blend price was $12.08 in June. These changes in producer prices in terms of minimum order blend prices occurred even though there was no change in either the demand for fluid milk products or in the supply of milk.

It is also noted that monthly producer receipts under Order 104 were cut approximately in half when the plant closed (a reduction from 7.7 million pounds per month to 3.5 million pounds per month). The relatively small volume of milk remaining in the Order 104 pool makes the order even more susceptible to future blend price fluctuations as a result of various marketing activities or events.

Another significant market disruption occurred when a plant previously regulated under Order 106 became regulated under Order 71 in April 1979. This change caused Order 71 producer receipts to increase from 1.1 million pounds in March to 6.5 million pounds in April and Class I utilization to drop from 57 percent to 34 percent. As a consequence of this plant's shift in regulation, there was a 39-cent reduction in the Order 71 blend price from March to April while the Order 106 blend price dropped by only 6 cents. The plant then ceased operations in September 1979 and the Class I distribution of the plant was acquired by plants regulated under various other orders. However, the producer milk formerly associated with the plant became pooled under Order 106. In the month immediately following the plant's closing, the volume of Order 71 producer receipts declined to half a million pounds while Class I utilization under Order 71 increased from 23 percent to 78 percent, and the blend price of the order increased by 92 cents per hundredweight.

The magnitude of the effects of structural changes on these small-volume markets is evidenced also in the range in Class I utilization experienced by the Order 104 and Order 71 markets during the year 1979. The Class I utilization under Order 104 ranged from a high of 91 percent in October to a low of 67 percent in February (24 percentage points), while Class I utilization under Order 71 ranged from a high of 76 percent in October to a low of 16 percent in August (60 percentage points). These wide variations in the two markets are due, in part, to the size of the two markets. In contrast, the range in Class I use under Order 106, a much larger volume market, varied during 1979 from a high of 82 percent in January to a low of 67 percent in May (16 percentage points). This market, simply because of its size, experienced much less variation although it was directly affected by the structural changes that occured in the Order 71 and Order 104 markets. As previously noted, milk that was pooled under Order 106 became pooled under Order 71 when a plant switched regulation in April 1979. The Order 106 market then reacquired the volume of producer milk associated with the plant when it ceased operation. Also, much of the fluid milk sales of a distributing plant previously regulated under Order 104 and the reserve milk supplies associated with such sales were pooled under Order 106 when the distributing plant ceased operations.

Unless action is taken to merge the marketing areas of Orders 71 and 104 with other orders, the threat of further unstable marketing conditions will continue to persist. The widely fluctuating blend prices do not reflect the kind of price stability that is intended under Federal regulation. Such prices provide false signals to producers to make production and delivery adjustments in that such prices are a result of inter-order actions and structural changes in the market rather then changes in the actual supply of milk or the demand for fluid milk products. Incentives for producers to change their market or membership affiliation in response to false signals are not conducive to the maintenance of an efficient procurement and delivery system on either a local or regional basis.

Merging the marketing areas of Orders 71 and 104 with the marketing areas of Orders 73 and 106 will result in a blend price for the proposed Southwest Plains area that reflects a greater volume of milk and supply-demand conditions over a wider area. As such, the resulting blend price will be less susceptible to extreme fluctuations and will provide a stable climate in which dairy farmers will be able to plan their future production and marketing strategies with a greater degree of certainty than exists under current conditions. Also, a merger of these marketing areas under one order will result in a greater recognition of the broader structural relationship among markets in terms of the overall organization of the producer milk supply by AMPI. Separate regulations for these smaller local markets are no longer viable in that they cannot accommodate in an orderly manner, the inter-order movements of milk that occur because of the more regional outlook to milk marketing that is prevalent among a substantial majority of the producers. One order regulating a single, larger market will provide the potential for greater efficiencies in coordinating the movements of milk to distributing plants located throughout the area without causing distruptions in local areas that can occur under the current regulatory scheme.

Additional considerations involved in the marketing area merger issue concern the extent to which distribution areas of handlers regulated under different orders overlap, and also the extent of overlapping procurement areas. Both of these criteria, which were relied upon by both proponents and opponents of the four-market merger, can be important indicators of the extent to which there has been an integration of the marketing structures of two or more markets. Such overlaps, which may represent a potential for or the existence of disorderly marketing, may have a bearing on which markets can or should be merged.

AMPI testified that the sales areas of distributing plants regulated under the

four orders overlap to such a degree as to warrant combining the marketing areas under one order, except for the seven Texas counties of the Order 104 marketing area. With respect to these counties, AMPI's proposal as contained in the hearing notice would have excluded such counties from all Federal orders. At the hearing, however, AMPI revised its position and proposed that the seven Texas counties be added to the Order 126 marketing area on the basis of fluid milk sales in such counties by distributing plants regulated under Order 126.

The 40 nonmember producers contended that there is insufficient overlap of sales between the group of distributing plants regulated under Orders 71 and 73 and the group of distributing plants regulated under Orders 104 and 106 to justify the four-market merger proposed by AMPI. However, they testified that there is enough sales overlap between distributing plants regulated under Orders 104, 106 and 126 to justify a merger of the Order 104 marketing area with either the Order 106 or Order 126 marketing areas. However, they also testified that there is a greater overlap between the procurement areas of Orders 104 and 126 than between the procurement areas of Orders 104 and 106 and, therefore, there is a stronger basis for a merger of Orders 104 and 126.

As previously stated, the primary basis for merging the four orders is to provide a greater degree of market stability than exists under the current regulation of the area with four milk orders. The four separate orders do not reflect the more regional marketing approach of AMPI, which represents a substantial majority of the producers supplying the proposed Southwest Plains area. Also, the lack of blend price stability under the small-volume orders, as a result of structural changes in the distribution sector or even relatively minor changes in the movement of raw milk supplies, can best be rectified by a consolidation of the marketing areas under one order. Under these circumstances, the degree of market commonality that is evidenced by sales and procurement overlaps among these markets is of somewhat lesser importance in the need to merge these orders. Nevertheless, the sales and procurement overlaps do have a bearing on the extent to which there is greater regionalization in the marketing of milk. A more detailed discussion of the overlaps and their implications in this proceeding follows, beginning with the procurement of raw milk supplies and concluding with the distribution of fluid milk products.

An overlap of the procurement areas of handlers regulated under different orders is evidence of a structural relationship among markets. The application of different order blend prices in the same general procurement area can be expected to result in disorderly marketing conditions since producers seek the more remunerative outlet for their milk. A shifting of producers among markets can upset the supply arrangements of regulated handlers and result in transportation inefficiences in obtaining the necessary fluid milk supplies for the various markets. This is particularly true if there are significant and frequent fluctuations in blend price relationships that cause continuing unrest among neighboring farmers. The reblending of the proceeds from the sale of milk in more than one market by a cooperative association has a stabilizing influence in the supply area as different order blend prices are not reflected in producer returns. The likelihood of supply distruptions because of changes in order blend prices is significantly reduced to the extent that a uniform pay price accrues to a substantial number of the dairy farmers. However, when more than one market is supplied by a cooperative that reblends the proceeds from total sales, such markets, in essence, already represent a single market for the cooperative and its producer members.

The reblending of proceeds from sales in several markets by a cooperative association cannot totally solve the problems of blend price differences among adjacent orders. Differences between the local market blend price and the cooperative's pay price can continue to cause dissatisfaction among producers and provide the incentive for market affiliation changes that can disrupt the orderly flow of milk to where it is needed. If the cooperative's pay price exceeds the local market blend, there may be an incentive for other producers on the market to seek different marketing arrangements, which can disrupt the supply arrangements of handlers who serve the fluid milk needs of the local market. If the local market blend exceeds the cooperative's pay price, there may be an incentive for the cooperative to return a higher price to its members supplying that market even though the relevant regional market, from the point of view of the cooperative, might not indicate such a price. In the absence of a higher price, there may be an incentive for the cooperative's members to change their cooperative affiliation or market which works against the ability of the cooperative to manage the movement of milk on a regional basis.

In such circumstances, it is reasonable to consolidate the marketing areas on the basis of their reliance on a common procurement area. This broader sharing of the fluid milk sales and the application of a uniform price throughout the milkshed provides for greater equity among all dairy farmers as well as the opportunity for the development of more efficient and stable supply systems by the cooperative association and by handlers that obtain milk from other than a regional cooperative association.

There is an overlap of the procurement areas of the four separate markets proposed to be merged. There are also overlaps with the procurement areas of adjacent Federal order markets which is to be expected with the increased mobility of milk from farm to plant.

In total, milk produced in Kansas and Oklahoma represents the primary source of supply for handlers regulated under the four orders. Of the total amount of milk pooled under the four orders in 1979, 37 percent originated in Kansas and 55 percent was produced in Oklahoma. The remaining eight percent of the milk pooled under the four orders during 1979 was produced in the States of Arkansas, Missouri, Nebraska, New Mexico, and Texas. A general description of the 1979 procurement areas of each of the individual orders follows, with a comparison with the source of supply in 1976.

During 1976, 42 percent of the total amount of milk pooled under Order 71 originated in Kansas and 58 percent was produced in Missouri. For 1979, 62 percent was from Kansas, 32 percent from Missouri and six percent from Oklahoma. The addition of the Oklahoma milk in 1979 was a result of the distributing plant regulation change previously discussed. When the plant ceased operations, milk from Oklahoma was no longer pooled under the order.

Order 73 handlers receive their milk supplies primarily from Kansas. Kansas milk represented about 94 percent of the total milk pooled under Order 73 in 1976 and 99 percent in 1979. Minimal supplies were received from Nebraska and Oklahoma in 1976 and 1979 and from Arkansas, Missouri and Texas in 1979.

Oklahoma basically represents the entire source of supply for Order 104 handlers, accounting for more than 99 percent of the total milk pooled under the order in 1976 and 1979. Texas was a minor source of supply in 1976 while

Missouri was a minor supply source in 1979.

Oklahoma also represents the primary source of supply for Order 106 handlers, accounting for about 76 percent of the total amount of milk pooled under the order in both 1976 and 1979. In 1976, Arkansas, Kansas and Missouri accounted for about eight percent, 10 percent and seven percent, respectively, of the Order 106 total supply. In 1979, the proportion of the total supply produced in Arkansas declined to three percent, while the proportions produced in Kansas and Missouri increased to 13 percent and 8 percent, respectively.

As previously stated, opponents of the four-market merger contend that there is an insufficient supply association between the two northernmost orders and the two southernmost orders and that Order 126 has a greater supply overlap with Order 104 than that which exists between Orders 104 and 106. In this connection, it is noted that Texas represents the primary supply area for Order 126, accounting for over 88 percent of the producer milk in 1976 and over 91 percent in 1979. In 1979, Kansas and Oklahoma represented five percent and two percent, respectively, of the Order 126 total supply. In 1979, the proportion of the Order 126 total supply attributable to Kansas declined to about two percent while the Oklahoma proportion increased to over four percent.

As these data indicate, a gradual change in supply arrangements occurred during the period, resulting in less Kansas milk being pooled under Order 126. Such supplemental milk supplies for Order 126 handlers were replaced by milk produced in Oklahoma, which then resulted in the need for a greater quantity of Kansas milk to become associated with Order 106. These changes are more clearly indicated by supply data for the month of October for the years 1977, 1978 and 1979. The monthly volume of Oklahoma milk pooled on Order 126 increased consistently from 7.0 million pounds in 1977 to 11.6 million pounds in 1978, and to 16.6 million pounds in 1979. At the same time, the volume of Kansas milk declined consistently, from 15.5 million pounds in 1977 to 10.1 million pounds in 1978. In October 1979, no Kansas milk was pooled under Order 126. Also, the amount of Kansas milk pooled under Order 106 increased consistently: 6.4 million pounds in 1977, 11.0 million pounds in 1978, and 11.3 million pounds in 1979. The 11.3 million pounds pooled under Order 106 in October 1979 represented 17.7 percent of the Order 106 total supply while the Oklahoma proportion declined to 69 percent.

These changes in milk movements resulted in changes in the degree to which supply areas overlapped among Orders 73, 104, 106, and 126. The Order 126 procurement area included 32 Oklahoma counties in October 1979, compared to 14 such counties in 1977. The Order 104 procurement area declined from 20 Oklahoma counties in 1977 to 16 such counties in 1979. The number of common counties between the two orders, however, increased from three in 1977 to 12 in 1979. The Order 106 procurement area included 55 Oklahoma counties in October 1977 and declined to 48 counties in 1979. Also, the common procurement counties between Orders 104 and 106 declined from 16 to eight during the same period. It is also noted that the common Oklahoma procurement counties between Orders 106 and 126 increased from six in 1977 to 13 in October 1979.

The decline in the volume of Oklahoma milk associated with Order 106 resulted in an expansion of the procurement area into Kansas as the volume of such milk pooled under Order 106 increased from 81 million pounds in 1976 to 102 million pounds in 1979. The number of Kansas counties that served as a source of supply for Order 106 handlers increased from eight in December 1976 to 26 in October 1979. The number of common counties between Orders 73 and 106 increased from five to 16 over the same period. Also, the number of common procurement counties between Order 64 (Greater Kansas City marketing area) and Order 73 was 16 in October 1979, down from 19 in December 1976.[1] It is also noted that the volume of Kansas milk pooled under Order 64 decreased from 461 million pounds for the year 1976 to 434 million pounds in 1979.

The gradual change in the milksheds of the various orders from 1976 to 1979, which basically resulted in a greater amount of Kansas milk being pooled under Order 106 and a greater amount of Oklahoma milk being pooled under 126, did not involve Order 71. However, the regulated handlers in the Order 71 market operate relatively small distributing plants and thus do not require a large volume of milk. The procurement area for the market is difficult to identify since the area shifts constantly and is interwined with the procurement areas of other markets. As evidence of the shifting procurement area, Order 71 handlers received milk from three Kansas counties and three Missouri counties in October 1976; four Kansas, two Missouri and three Oklahoma counties in 1977; one Kansas and eight Missouri counties in 1978; and four Kansas and four Missouri counties in 1979. In October of each of these years, only Crawford County, Kansas, and Jasper County, Missouri, were consistent sources of supply. However, throughout the entire period every county from which milk was received, except one, was also a source of supply for Order 106 handlers. Thus, the Order 106 procurement area nearly envelops the supply area of Order 71 handlers.

Contrary to opponent's contention, there is almost a complete overlap of the milksheds of Orders 71 and 106 throughout the data period and, in terms of the most recent data, a significant overlap between the milksheds of Orders 73 and 106. However, in prior years there was a greater supply overlap in Kansas between Orders 64 and 73 than between Orders 73 and 106. Also, opponent's contention that there is a greater supply overlap in Oklahoma between Orders 104 and 126 than between Orders 104 and 106 is supported in terms of the most current data in the record. However, this was not the case in prior years.

Primary changes occurred in the milksheds of the various markets as a result of the shifting of the regulation of AMPI's Hillsboro plant from Order 126 to Order 73 and the 111 million-pound reduction in the amount of Kansas milk pooled under Order 126 from 1976 to 1979. Further changes in milk movements resulted in a 21 million-pound increase in the amount of Kansas milk pooled under Order 106 from 1976 to 1979 and a 65 million-pound increase in the amount of Oklahoma milk pooled under Order 126 during the same time period. These shifts in milk movements varied the overlaps amoung the procurement areas of different markets at different times and are primarily a function of changes in milk movements by AMPI, which represents a substantial proportion of the dairy farmers throughout the region. It would be expected that changes in market procurement area overlaps would continue as AMPI redirects available supplies of milk to the various markets the cooperative supplies. Consequently, any lack of evidence of a strong supply-source association among these markets in terms of overlapping procurement areas should not be overriding consideration in determining whether the proposed four-market merger is justified. The proportion of the milk

[1] December 1976 is used for the procurement area comparison because October data were not presented for Order 64 and also because 1977 "Sources of Milk" data on a county basis for all Federal order markets were not published.

produced by AMPI members, the manner in which AMPI markets such milk, and the impact of marketing changes on the procurement areas of the separate orders is evidence of an integrated supply management system throughout the area that virtually assures a supply area commonality among the four orders proposed to be merged.

Opponents of the four-market merger further contended that such a merger would generally result in a blend price reduction in the southern portion of the milkshed (Oklahoma) and a blend price increase in the northern portion of the milkshed. They contended that this would result in market disorder, particularly in Oklahoma where the Order 126 blend price has generally been very competitive with the Order 104 blend price. In this connection, it is noted that during the most recent period following the increase in Class I utilization under Order 104 because of the closing of a distributing plant, the Order 104 blend prices have, for the most part, exceeded the Order 126 blend prices in Oklahoma.

One of the functions of an order blend price is to encourage an orderly allocation of available milk supplies among markets in accordance with fluid milk needs. A merger of the four marketing areas under one order will result in a more stable blend price that reflects the same supply-demand relationship over a wider, common procurement area than the blend prices reflected under the four separate orders. The Order 126 blend price is presently stabilized by the larger volume of milk associated with that market (well over 3 billion pounds of milk per year). Thus with two large-volume markets, dairy farmers in these areas would be basing their production and marketing decisions on more stable regionalized supply-demand situations.

The marketing area of a Federal milk order is established primarily on the basis of the sales areas of the distributing plants that would be regulated under the order. The marketing area boundaries are intended to encompass the area in which regulated handlers account for most of the Class I sales and minimize the extent to which regulated handlers compete for sales with unregulated dealers or handlers regulated under other orders. Sales area overlaps among handlers regulated under different orders is thus an indication that the individual regulated markets do not represent separate markets for particular groups of producers. Consequently, sales area overlaps can be an important factor in determining the need to redefine marketing area boundaries or to merge the marketing areas of two or more orders. Handlers that compete with each other for most of the sales in a common distribution area should be subject to the same regulatory provisions. In addition, dairy farmers who supply the milk requirements of a common distribution area should share equally the benefits of the Class I sales throughout such area as well as the cost of maintaining the reserve milk supplies associated with such sales.

As previously stated, there has been a general decline in the number of fluid milk processing plants. The volume of milk processed at the fewer plants has increased and the sales areas have been extended to other consumption centers. The general sales area expansion of fewer but larger distributing plants, which is particularly evident with respect to distributing plants regulated under Order 106, has led to sales area overlaps among distributing plants regulated under the four orders herein proposed to be merged, and between such plants and distributing plants regulated under adjacent orders.

Of the 21 distributing plants regulated under the four orders in December 1979, seven distributed fluid milk products in two of the four marketing areas, one plant had sales in three of the marketing areas, and one plant had distribution in all four marketing areas. In addition to the three distributing plants that were regulated under Order 71 in December 1979, sales were made in the Order 71 marketing area by one plant regulated under Order 73 and one plant regulated under Order 106. With respect to the Order 73 market, sales were made in the marketing area by the eight distributing plants regulated under that order and by two plants regulated under Order 106. Class I sales in the Order 104 marketing area were made by the two Order 104 distributing plants and by six distributing plants regulated under Order 106. Sales in the Order 106 marketing area in December 1979 were made by the eight distributing plants regulated under that order and by one plant regulated under Order 73 and by one plant regulated under Order 104.

Also, in December 1979, 11 of the 21 distributing plants regulated under the four orders had sales in nonfederally regulated territory. Most of such sales were within the State of Oklahoma. Of the 11 plants, eight were regulated under Order 106, two were regulated under Order 73 and one was regulated under Order 104. Also, eight of the 21 distributing plants had sales within the marketing areas of one or more adjacent Federal orders. In total, nine of the 21 distributing plants had sales only within the marketing area of the order regulating the plant in December 1979. These nine plants included the three plants regulated under Order 71, four plants regulated under Order 73, one plant regulated under Order 104 and one plant regulated under Order 106.

Fluid milk products are also distributed within the marketing areas of the four orders proposed to be merged by distributing plants regulated under other orders. In December 1979, six plants regulated under such other orders—three plants regulated under Order 62 (St. Louis-Ozarks marketing area) and three regulated under Order 64—distributed fluid milk within the Order 71 marketing area. Seven other order plants outside the four-market area had sales within the Order 73 marketing area in December 1979. Five were regulated under Order 64, one was regulated under Order 65 (Nebraska-Western Iowa marketing area), and one was under Order 126. Similarly, nine other order plants had sales within the Order 104 marketing area, with eight being regulated under Order 126 and one under Order 132 (Texas Panhandle marketing area). Class I sales in the Order 106 marketing area were made by five plants regulated under other orders in December 1979, three under Order 62 and two under Order 126.

In view of the preceding description, it is apparent that there would continue to be an overlap of the sales areas of distributing plants under the four-market merger proposed herein and distributing plants under other orders. Sales overlaps would continue under any market merger since it is impossible to define a marketing area which completely encompasses the sales area of regulated plants, and at the same time excludes all territory in which sales are made by plants regulated under other orders. The greatest overlaps between plants that would be regulated under the merged order and other order plants, however, occur in the current marketing areas of Orders 71 and 104. This is indicated by sales data for the years 1976 through 1979 that are contained in the record in terms of the proportion of total sales by handlers in and out of the marketing areas as well as the proportion of total sales within the marketing area by all handlers.

During 1976 through 1978, handlers regulated under Order 71 distributed over 90 percent of their total sales within the marketing area and less than 10 percent outside the marketing area. In 1979, however, the proportion of regulated handler sales in the marketing

area declined to 63 percent of total sales while sales outside the marketing area increased to 37 percent. The increased out-of-area sales were made in nonfederally regulated areas and in the Order 106 marketing area. This change was a result of a plant switching from being regulated under Order 106 to Order 71. As previously noted, such plant has gone out of business. Upon the plant's closing, the Order 71 marketing area covered the majority of the sales area of the distributing plants regulated under the order. As indicated earlier, all of the fluid milk sales of Order 71 distributing plants were within the marketing area in December 1979.

Although over 90 percent of the sales by Order 71 handlers were made within the marketing area, such sales only represented between seven and nine percent of total fluid milk sales in the marketing area by all handlers during 1976 through 1978 because of the small volume of milk processed by the three distributing plants regulated under Order 71. Most of the sales in the marketing area were made by handlers regulated under Orders 62, 64, 73 and 106, with Order 62 handlers accounting for over 67 percent of the total marketing area sales in 1979, up from 51 percent of sales in 1976. Order 64 handlers' percentage of the total sales in the Order 71 marketing area declined from 24 percent in 1976 to 12 percent in 1979. The proportion of sales by Order 73 handlers declined from two percent to less than one percent of total sales in the marketing area from 1976 to 1979. Order 106 handlers' proportion of total sales increased from 12 percent to 14 percent from 1976 to 1978 and then declined to six percent in 1979 because of the plant regulation change previously discussed.

Although Order 62 handlers represent a substantial proportion of the total fluid milk sales in the Order 71 marketing area, there are over-riding considerations for proceeding with the merger of the Order 71 marketing area with the marketing areas of the other three orders as proposed herein. Because of the smallness of the Order 71 market, it is essential that Order 71 be included in a merger with other orders at this time to eliminate the market disorder previously discussed. There was no opposition expressed by any other handlers to the inclusion of the Order 71 marketing area in the merger herein adopted. Also, no alternative proposal was submitted by any party to include the Order 71 marketing area with any other marketing area. Furthermore, because of the small sales volume of fluid milk products in the Order 71 marketing area (approximately 6 million pounds per month) even limited sales by a handler of any significant size would represent a large proportion of the total milk sales in the market. It may well be that sales in the area by other handlers represent a minor proportion of their total fluid milk sales, even though such sales appear to be significant in terms of the small-volume Order 71 market.

While other order handlers have substantial sales in the Order 71 marketing area, the Order 71 market does have a significant linkage with the Order 106 market due to the switching of regulation of a distributing plant between the two orders. Also, for the years 1976 through 1978, Order 106 handlers accounted for more sales in the Order 71 marketing area than Order 71 regulated handlers. There is also a substantial procurement area overlap between Orders 106 and 71 as previously discussed. In view of all these considerations, Order 71 should be merged with Order 106 as it is the only alternative available at this time to establish orderly marketing conditions.

During 1976 through 1979, handlers regulated under Order 73 distributed more than 80 percent of their fluid milk sales within the Order 73 marketing area. The actual percentage of in-area sales declined slightly from 82 percent in 1976 to 81 percent in 1979. Most of the sales outside the marketing area were in other order areas (about 13 percent of sales during 1976 through 1979) and included sales in the Order 71 and Order 106 markets as well as in five other order areas not involved in this proceeding.

The in-area Class I sales by Order 73 handlers accounted for most of the total sales of fluid milk products in the marketing area although the proportion of total sales declined somewhat from 1976 to 1979. Order 73 handlers accounted for 87 percent of the total sales in the marketing area in 1976, and 82 percent in 1979.

Most of the remaining sales of fluid milk products in the Order 73 marketing area were made by handlers regulated under Orders 106 and 64. During 1976 through 1979, annual sales by Order 64 handlers ranged between six and eight percent of the total fluid milk sales in the Order 73 marketing area. Sales by Order 106 handlers increased from five percent to nine percent of the total sales of fluid milk products in the Order 73 marketing area from 1976 to 1979.

To a large degree the Order 73 marketing area represents the sales area of handlers operating distributing plants under the order. Such handlers also represent a substantial portion of the total fluid milk sales in the marketing area. Consequently, it is appropriate to include the entire Order 73 marketing area in the merged order.

There has been a significant sales area expansion by handlers operating distributing plants regulated under Order 106. While such distributing plants continued to account for a substantial proportion of the total fluid milk sales in the marketing area, the proportion of sales made in the area by Order 106 handlers declined. For example, the proportion of the Order 106 handlers' sales within the marketing area declined steadily from 71 percent in 1976 to 64 percent in 1979. However, such sales represented 93 percent of the total fluid milk sales in the Order 106 marketing area in 1976 and 89 percent of the total in-area sales in 1979.

In addition to accounting for most of the sales in the Order 106 marketing area, the proportion of the Order 106 handlers' sales outside the marketing area increased from 29 percent in 1976 to 36 percent in 1979. The proportion of such handlers' total sales in nonfederally regulated areas increased from 16 percent in 1976 to 19 percent in 1979 while the proportion of sales in other order areas increased from 12 percent to 17 percent over the same period. In December 1979, seven of the eight distributing plants regulated under Order 106 had sales in nonfederally regulated territory and six had sales within the marketing area of other Federal orders. Order 106 handlers had sales in each of the marketing areas of the other three orders proposed to be merged and their proportion of total sales in the Order 73 and Order 104 marketing areas almost doubled from 1976 to 1979. Only in the Orders 71 marketing area did the proportion of sales by Order 106 handlers decline (from 12 percent in 1976 to six percent in 1979). As previously stated, the decline resulted when a fluid milk plant previously regulated under Order 106 became regulated under Order 71. Order 106 handlers also distributed fluid milk products in the marketing areas of Orders 64, 126, and 132.

In contrast to the sales area expansion of Order 106 handlers, there has been a contraction in the sales areas of handlers regulated under Order 104. Of the total sales of Order 104 handlers, the proportion within the Order 104 marketing area increased from 71 percent in 1976 to 85 percent in 1979. While the proportion of out-of-area sales decreased from 29 percent to 15 percent, it is significant that the proportion of the Order 104 handlers' total sales in

nonfederally regulated areas increased from 5 percent in 1976 to 11 percent in 1979. These sales were made in the nonfederally regulated area of Oklahoma, primarily in competition with handlers regulated under Order 106. The proportion of sales by Order 104 handlers in other order areas decreased from 24 percent in 1976 to 3 percent in 1979. Such sales were made in only the Order 106 and Order 132 marketing areas in 1979.

Although Order 104 handlers distributed an increasing proportion of their sales within the Red River Valley marketing area from 1976 to 1979, such sales represented a smaller proportion of the total fluid milk sales in the marketing area. The Order 104 handlers' share of the total sales within the marketing area declined steadily from 58 percent in 1976 to 30 percent in 1979. During the same period, the proportion of total Class I sales in the Order 104 marketing area by Order 106 handlers increased from 20 percent to 39 percent and sales by Order 126 handlers increased from 22 percent to 30 percent.

As the result of changes in their distribution areas, handlers regulated under Orders 104, 106 and 126 now account for almost all of the fluid milk sales in the Order 104 marketing area. The greatest degree of overlap is between handlers regulated under Orders 106 and 104. However, the largest portion of the Order 104 market's fluid milk requirements is supplied by handlers regulated under Order 106. Furthermore, the out-of-area sales by Order 104 handlers are in nonfederally regulated areas in Oklahoma in competition with Order 106 handlers.

The record evidence indicates that the Order 104 marketing area does not represent the basic sales area of handlers regulated under the order. The current marketing area, which consists of 17 Oklahoma counties and seven Texas counties, contains two primary sales areas. The 17 Oklahoma counties are supplied primarily by handlers regulated under Orders 104 and 106. The seven Texas counties are supplied primarily by handlers regulated under Order 126.

The boundary line separating the two areas, i.e., the Red River, is a natural geographic boundary that forms the dividing line between the States of Texas and Oklahoma. The existence of this natural boundary is probably the most valid reason why there are limited sales in the 17 Oklahoma counties by handlers regulated under the Texas order and a corresponding lack of sales in the seven Texas counties by Oklahoma handlers that are regulated by the Red River Valley and Oklahoma Metropolitan orders.

During November 1978 and May and November 1979, the only months for which data were available at the hearing, most of the sales in the Oklahoma counties of the Order 104 marketing area were made by Order 104 and Order 106 handlers. During the same period, most of the sales in the Texas counties of the Order 104 marketing area were made by Order 126 handlers. With the exception of the Order 104 handler that ceased operations in May 1979, sales in the Oklahoma and Texas counties of the Red River Valley marketing area were made by the same handlers during each of the three months. The sales were made by eight Order 126 distributing plants, six Order 106 distributing plants and three Order 104 distributing plants (two in November 1979).

For the three months combined, handlers regulated under Orders 104 and 106 distributed over 28.9 million pounds of fluid milk products in the Order 104 marketing area. Of this total 82.5 percent was distributed in the Oklahoma counties and only 17.5 percent was distributed in the Texas counties. For the most recent month (November 1979), over 85 percent of such handlers' sales was in the Oklahoma counties while less than 15 percent was in the Texas counties.

The eight Order 126 handlers distributed over 9.8 million pounds of fluid milk products for the three months combined in the Order 104 marketing area. Of this total, only 1.7 million pounds, or 17.9 percent of the Order 126 hander's sales, were in Oklahoma while over 8 million pounds, or 82.1 percent, were distributed in the Texas counties. For the most recent month (November 1979), less than 16 percent of such handlers' sales was in the Oklahoma counties while over 84 percent was in the Texas counties.

In view of the limited intermarket relationship between handlers with sales in the 17 Oklahoma counties and handlers with sales in the seven Texas counties, the Order 104 marketing area should not be merged in its entirety with the marketing areas of the other three orders proposed herein to be merged. Instead, only the 17 Oklahoma counties should be merged with the marketing areas of Orders 71, 73 and 106. The seven Texas counties should be added to the marketing area of the Texas order. This division of the Order 104 marketing area and the merger of the Texas portion with the marketing area of the Texas order will result in an expanded marketing area that covers the basic sales area of handlers regulated under the Texas order. Similarly, the inclusion of the 17 Oklahoma counties in the marketing area of the Southwest Plains order will result in a marketing area that is supplied primarily by handlers who would be regulated under such order.

The Texas counties of Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger that are to be added to the marketing area of Order 126 should be included in a minus 12-cent per hundredweight zone under Order 126. This will result in a Class I differential of $2.20 at plants located in the seven-county area. Such location pricing is indentical to that currently provided under Order 126 for this area.

The merged order adopted herein continues the use of the part number for the present Oklahoma Metropolitan order, Part 1106. The amended Part 1106, upon issuance, would supersede Parts 1071, 1073, and 1104.

Although the present four orders would no longer exist upon effectuation of the Southwest Plains order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with repect to milk handled prior to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Additional territory to be regulated.* The merged Southwest Plains marketing area should be expanded to include all territory within the State of Oklahoma. All territory occupied by government (municipal, State or Federal) reservations, installations, institutions or other similar establishments, if any party thereof is within any of the designated counties of the Southwest Plains marketing area, likewise should be a part of such marketing area. Such marketing area expansion involves all or portions of Oklahoma counties. Twelve of the 59 counties are partially within the Oklahoma Metropolitan marketing area and one county (Beckham) is in the Texas Panhandle marketing area. The 46 remaining counties are not part of any Federal order marketing area.

The population of Oklahoma as of April 1, 1980, was slightly over 3

million.[8] Of this total, about 63 percent was within the marketing areas of Orders 104, 106 and 132.[9] The population of the unregulated territory to be added is estimated to be 1.1 million, or about 37 percent of the State's population. About 30 percent of the State's population is in the 46 totally unregulated counties and 7 percent is in the unregulated parts of the 12 counties that are partly within the Order 106 marketing area.

AMPI proposed that the entire State of Oklahoma be included within the marketing area because handlers regulated under the four orders to be merged are the primary distributors of fluid milk products throughout the State. Also, AMPI proposed that the marketing area be defined in terms of the entire area within the State rather than in terms of the major population centers, as is currently provided under Order 106.

The unregulated territory in Oklahoma should be added to the marketing area of the merged order because handlers who would be regulated under the merged order are the principal distributors of fluid milk products in such unregulated area. At the time of the hearing, 11 handlers regulated under the four orders to be merged distributed fluid milk products in the unregulated area of Oklahoma. Eight of the handlers were regulated under Order 106, two were regulated under Order 73 and one was regulated under Order 104.

Data concerning the extent to which handlers regulated under the four orders distribute fluid milk products in unregulated territory were presented in terms of two groups of counties—28 counties in eastern Oklahoma and 23 counties in western Oklahoma. The 28 eastern counties included the following:

Adair	Muskogee
Atoka	Nowata
Cherokee	Okfuskee
Choctaw	Okmulgee
Craig	Osage
Creek	Ottawa
Delaware	Payne
Haskell	Pittsburg
Kay	Pushmataha
Latimer	Rogers
Le Flore	Sequoyah
Mayes	Tulsa
McCurtain	Washington
McIntosh	Wagoner

[8] Official notice is taken of "Advance Reports; 1980 Census of Population and Housing", PHC80–V–38, Bureau of the Census, U.S. Department of Commerce, issued March 1981.

[9] Official notice is taken of "Federal Milk Order Market Statistics, 1980 Annual Summary," Statistical Bulletin Number 670, Agricultural Marketing Service, U.S. Department of Agriculture, issued July 1981.

Handlers regulated under the four orders proposed to be merged account for over 81 percent of the total fluid milk sales in the 28 counties.[10] Most of the remaining sales are made by three Order 62 (St. Louis-Ozarks) handlers who account for just over 15 percent of the total fluid milk sales in the 28-county area.

On an individual county basis, handlers regulated under the four orders account for 55 percent or more of the total sales in 22 of the 28 counties. In the remaining six counties (Adair, Delaware, Haskell, LeFlore, McCurtain and Sequoyah), handlers under the four orders had less than 50 percent of the sales in such counties.

In Le Flore and McCurtain Counties, it is estimated that handlers regulated under the four orders account for 38 and 40 percent, respectively, of the total fluid milk sales. the proportion of sales in these counties by handlers regulated under the four orders is greater than the proportion of sales made by any other group of handers. In Le Flore County, Order 62 handlers' sales are estimated to represent 29 percent of the total county sales and a handler regulated under Order 102 (Ft. Smith, Arkansas) accounts for 30 percent of the total sales. In McCurtain County, it is estimated that an Order 126 handler accounts for 24 percent of the sales while three plants operated by handlers who are not fully regulated under any Federal order account for 34 percent of the sales.

The percentage of sales in the remaining four counties by handlers regulated under the four orders is estimated at 35 percent of the total sales in Adair, Delaware, and Haskee Counties and 30 percent in Sequoyah County. It is estimated that Order 62 handlers account for 60 percent of the sales in Adair County, 65 percent in Delaware County, 50 percent in Haskell County and 46 percent of the sales in Sequoyah County. It is also estimated that an Order 102 handler accounts for 24 percent of the sales in Sequoyah County.

The entire 28-county area represents a substantial distribution area of handlers regulated under the four orders and all of the territory within this area that is now regulated under any order should be included in the Southwest Plains marketing area. Inclusion of the entire area in the Southwest Plains order will result in an easily identifiable marketing area boundary and will encompass all of the principal sales areas of regulated handlers.

[10] The 28-county area includes some territory that is currently in federally regulated marketing areas. Choctaw and Pushmataha Counties are currently in the Order 104 marketing area and Tulsa County is in the Order 106 marketing area. Also, parts of Cherokee, Creek, Kay, Muskogee, Osage, Payne, and Pittsburg Counties are in the Order 106 marketing area.

The inclusion of the 28-county area would result in a dairy located at Mena, Arkansas, becoming a partially regulated distributing plant under the Southwest Plains order. Also, two plants located at Texarkana, Texas, have sales in portions of the 28-county area and on the basis of evidence in the record would be partially regulated distributing plants under the Southwest Plains order as a result of including the 28 counties in the marketing area.

There was no testimony offered at the hearing in opposition to including the entire 28-county area in the Southwest Plains marketing area. However, in his brief, a handler who indicated his plant would be partially regulated under the Southwest Plains order opposed including in the marketing area the six counties in which regulated handlers under the four orders do not have a majority of the sales. The handler contends that there is no evidence of disorderly marketing conditions that would necessitate including these counties in the Southwest Plains marketing area.

Evidence in the record indicates that the opposing handler distributes fluid milk products in only one of the six counties, namely McCurtain. Furthermore, the record indicates that the handler's sales in the county would not be sufficient to result in full regulation of the handler's plant under the merged order. Consequently, there is no compelling reason to exclude these counties from the marketing area.

The previously mentioned 23-county area in western Oklahoma also should be added to the Southwest Plains marketing area.[11] These counties are:

Alfalfa	Harmon
Beaver	Harper
Beckham	Kingfisher
Blaine	Logan
Canadian	Major
Cimarron	Noble
Custer	Roger Mills
Dewey	Texas
Ellis	Washita
Garfield	Woods
Grant	Woodward
Greer	

Fluid milk sales in each of the above counties are made primarily by handlers regulated under Orders 73 and 106. A handler regulated under the Texas Panhandle order distributes in two of the counties (Cimarron and Texas) but such sales would not result in the

[11] Parts of Garfield and Logan Counties are currently included in the Order 106 marketing area.

handler becoming regulated under the Southwest Plains order.

Beckham County is currently in the marketing area of the Texas Panhandle order. However, no handlers regulated under that order distribute fluid milk products in Beckham County. Most of the sales in the county are by handlers regulated under Order 106. On this basis, it is concluded that Beckham County should be removed from the marketing area of the Texas Panhandle order and included in the marketing area of the Southwest Plains order. The other 22 counties of the 23 counties in western Oklahoma should also be included in the Southwest Plains marketing area because the counties are within the distribution areas of Order 106 and Order 73 handlers who would be regulated under the proposed order.

In addition to the 28 counties and the 23 counties previously mentioned, 11 additional Oklahoma counties should be included in the Southwest Plains marketing area.[12] These counties are:

Cleveland	Oklahoma
Coal	Pawnee
Garvin	Pontotoc
Hughes	Pottawatomie
Lincoln	Seminole
McClain	

The 11 counties are completely surrounded by territory that would be included in the marketing area. Under such circumstances, it is reasonable to assume that sales in such area would be made primarily by handlers who would be regulated under the merged marketing order. Accordingly, the 11-county area should be included in the merged order. Accordingly, the 11-county area should be included in the merged marketing area.

Although some of the route disposition of regulated handlers will extend beyond the boundaries of the merged marketing area, it is neither practical nor reasonable to extend the regulated area to cover all areas where a handler has or might develop some route disposition. Nor is it necessary to do so to accomplish effective regulation under the order. The marketing area herein proposed is a practical one in that it encompasses the great bulk of the fluid milk sales areas of handlers that would be regulated under the merged order. On the basis of the record evidence, the inclusion of Beckham County, Oklahoma, and the presently unregulated territory in the State of Oklahoma in the merged marketing area would not result in the full regulation of any additional plants.

[12] Parts of Cleveland, Oklahoma, and Pottawatomie Counties are currently in the Order 106 marketing area.

All producer milk received at regulated plants must be made subject to classified pricing under the order, however, regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and orderly marketing would be jeopardized.

If only a regulated handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chooses to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area.

Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

4(a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describes the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant" and "nonpool." Definitions of persons include "producer," "handler," "producer-handler" and "cooperative association." Definitions relating to milk and milk products include "producer milk," "fluid milk product," "fluid cream product," "filled milk" and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Route disposition. A "route disposition" definition should be provided in the merged order. The definition provided in each of the four orders to be merged varies slightly. The definition proposed for the merged order by AMPI includes any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a plant.

The definition adopted herein is essentially the one proposed by AMPI. The principal change is that the definition has been expanded to clarify what constitutes a delivery. As adopted herein, route disposition means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

Plant. A plant defintion should be provided for the purpose of designating the type of milk handling facilities to which the order provisions would apply. None of the four orders now contains a definition of a plant.

The plant definition adopted herein was proposed by AMPI. As provided herein, a plant would be the land, buildings, facilities, and equipment constituting a single operating unit at which milk products are received, processed or packaged. Separate facilities which are used only as a reload point for transferring bulk milk from one tank truck to another would not be a plant. Similarly, separate facilities used as intermediary distribution points in the disposition of packaged fluid milk products would not be plants.

Under the provisions adopted herein, producer milk would be priced at the plant where it is physically received. It is necessary, then, to have guidelines for determining whether or not certain milk handling facilities should be considered as a plant. It is not intended under this order that facilities used only for the reloading of milk from one tank truck to another be the pricing point for milk so handled. Thus, milk that has been picket up at the farm, brought to a reload point and transferred to an over-the-road tanker for movement to a processing plant would be priced at the processing plant.

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption and in which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition adopted herein is essentially the same as the one proposed by AMPI.

Three of the four orders to be merged presently define a distributing plant. A definition of a distributing plant should be provided in the merged order to describe the activities conducted at such plant and to distinguish this type of plant operation from others. Such definition is also helpful in referring to this particular type of plant throughout the order.

Supply plant. The orders should define a supply plant as a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(s) during the month. Three of the four orders to be merged define a supply plant. The definition adopted herein is patterned after one proposed by Kraft, a proprietary handler that operates a pool supply plant on the Oklahoma Metropolitan market. This definition differs from the one suggested by AMPI in that the definition encompasses diversions from a supply plant to a distributing plant. As discussed in the section dealing with the qualification standards of a pool supply plant, a supply plant operator would be permitted to divert a portion of the plant's regular source of supply directly from the farms to a distributing plant in meeting the qualification standards for a pool supply plant. Consequently, it is necessary that the supply plant definition be broad enough to encompass such diversions.

Pool Plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are contained in the attached order would carry out this concept under present marketing conditions.

The following discussion sets forth the pooling standards that should apply to both types of plants. To facilitate the discussion, it is convenient to note at this point that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its receipts that is disposed of from the plant. In this case, such receipts should include producer milk that is diverted from the plant to other plants.

The Wichita order includes diversions made by the plant operator and cooperative association from pool distributing plants and pool supply plants to nonpool plants as receipts of the plant from which diverted in the application of the pool plant provisions. The Red River Valley and Oklahoma Metropolitan orders include in the receipts of a distributing plant and a supply plant only those diversions that are made by the plant's operator to nonpool plants and that qualify as producer milk. The Neosho order includes in the receipts of a distributing plant the diversions made from such plant by the plant operator to another plant if such milk movements are claimed as diversions by the diverting handler. The Neosho order does not include diversions from a supply plant as a receipt of such plant in the application of the pool plant provisions.

AMPI supported the adoption of provisions that would include diversions from pool distributing plants and pool supply plants that are made by the plant operator to nonpool plants as producer milk as receipts of the diverting plant in the application of the pool plant provisions. Kraft suggested no specific provisions with regard to pool distributing plants but proposed that receipts of a supply plant should include diversions from the supply plant to nonpool plants and other pool plants. However, diversions received at the supply plant from other plants would be excluded from the supply plant's receipts in the application of the pool plant provisions.

Milk that a cooperative bulk tank handler diverts from a pool plant to another plant also should be included in the pool plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Although diverted milk is not physically received at the plant from which diverted, it is, nonetheless, an integral part of the plant's supply of milk. Furthermore, unless producer milk is associated with a pool plant, the pooling standards are weakened. Such standards are intended to insure that the milk supplies eligible to share in the Class I proceeds in the pool are those that have a reasonable association with the Class I market. Diverted milk that is not associated with a specific plant is, in effect, a "floating" supply of milk that may be used for manufacturing irrespective of the limitations that the pooling standards are intended to place on the amount of milk that may be associated with the pool for other than Class I uses. Thus, when referring herein to a plant's receipts used in computing pooling percentages, it is intended that such receipts include producer milk diverted from the plant.

Along that same line, milk diverted to a supply plant from another plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant with manufacturing capabilities may represent the nearest available outlet for milk surplus to the fluid needs of this or another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

A proposal by Kraft, which is adopted herein, would structure the Southwest Plains order to exclude from the pool plant definition a facility which is physically separated from the portion of a pool plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption. Kraft's spokeman indicated that Kraft now operates a plant with Grade A and non-Grade A facilities at Bentonville, Arkansas, and the Grade A portion of the plant is pooled as a supply plant under the Oklahoma Metropolitan order.

AMPI opposed the adoption of such a provision in the merged order. It took the position that a Grade A operation and a non-Grade A operation conducted within a plant should be considered as a single plant operation.

It is noted that the market administrator of the Oklahoma Metropolitan order has treated the Bentonville facility as two separate plant operations under the current provisions of the Oklahoma Metropolitan order in the absence of specific provisions requiring a different

treatment. The record does not provide a basis for departing from this pooling treatment of a "dual" operation if the two types of operations can be kept separate for accounting purposes under the order. It is thus concluded that the requested exclusion should be provided in the merged order. Under the provision adopted, the term "pool plant" would not apply to a facility that is physically separated from the portion of a plant that is approved by a duly constituted regualtory agency for the receiving, processing, or packaging of any fluid milk product approved for fluid consumption.

Pool distributing plant. Under the adopted pooling standards, any distributing plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption would be a pool plant if during the month at least 50 percent of its receipts of fluid milk products is disposed of as route disposition. Also, the plant's route disposition in the marketing area must equal at least 10 percent of such receipts. The receipts of fluid milk products to which these percentages should apply are receipts (including allowable diversions) from producers, cooperatives acting as bulk tank handlers, other pool plants and nonpool plants.

The pooling standards for distributing plants adopted herein are essentially the standards proposed by the cooperative advocating the merger of the four orders. The provisions are patterned after the related provisions in the Oklahoma Metropolitan order except that the in-area route disposition requirement is established at 10 percent of the plant's receipts of fluid milk products instead of 15 percent of the plant's total route disposition. In addition, the plant's receipts would include all milk that is diverted from the plant as producer milk instead of only that milk which is diverted as producer milk by the plant operator. There was no opposition to the pooling standards proposed. Furthermore, there is no indication that the adopted pooling standards would cause any distributing plant now regulated under the four orders to lose its status as a fully regulated plant.

Requiring that a pool distributing plant dispose of on routes at least 50 percent of its receipts of fluid milk products is consistent with the general supply situation for the area under consideration. Except during the months of seasonally heavy milk production, milk supplies in the Southwest Plains market are somewhat short relative to the demand in the area for Class I milk. It is essential in this circumstance that available milk supplies in the market be channeled primarily into fluid uses. For this reason, a pool distributing plant in this market should be primarily engaged in the fluid milk business and not in the manufacture of milk products.

A plant distributing less than 10 percent of its receipts inside the marketing area should not be a fully regulated plant under the merged order. The plant with a limited degree of association with the market is not a major competitive factor for fully regulated handlers whose sales are largely or entirely in the marketing area. Hence, full regulation of such plant is not necessary to assure the orderly marketing of milk in the proposed market. Payment provisions applicable to such a plant are contained in the attached order to assure that route disposition in the marketing area from such a plant is treated in such a way as to minimize any building advantage on raw milk that this plant might have relative to fully regulated handlers. The order would require a pool payment on such sales equal to the difference between the order's Class I and uniform price. As an alternative, the plant could pay its dairy farmers the classified use value for all receipts or purchase from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. These payment arrangements have been applicable under each of the four orders for many years.

It is possible that a distributing plant may meet the pooling requirements of two orders during the same month. As under the present orders, the merged order whould provide certain guidelines for determining under which order the plant should be regulated.

A distributing plant that has route disposition in two marketing areas should be regulated in the market in which it has the greater route sales. However, if a plant regulated under the merged order should have greater sales in another market, the plant should remain regulated under the merged order until the third consecutive month in which it has greater route disposition in the other marketing area. This should limit the casual, disruptive shifting between orders on a month-by-month basis that can occur when intermarket distribution results in qualifying a distributing plant for pooling under more than one order. This procedure, which was proposed by the merger proponent, is now provided in the Wichita, Red River Valley and Oklahoma Metropolitan orders. The Neosho Valley order exempts the plant from regulation the first month in which it disposes of more Class I milk in another marketing area.

The possibility that a plant pooled under the Southwest Plains order might become pooled under one of the adjacent orders does exist. The "lock-in" provision now provided in three of the four orders to be merged should be included in the merged order to limit the month-to-month shifts in order regulation for a plant with intermarket distribution. In addition, the merged order should contain a provision now in the Red River Valley and Oklahoma Metropolitan orders that allows a handler to exclude military contract sales in computing route dispositions within Federal order marketing areas. The provisions should provide that if the operator of a distributing plant files a written application at least 15 days prior to the date for which a determination is to be effective, the Secretary may determine that for pooling purposes the route dispositions in the Southwest Plains marketing area from the plant shall exclude (for a specified period of time) route disposition made under limited-term contracts to government bases and insititutions. The adoption of such provision will limit the shifts in order regulations that might otherwise occur for a plant that acquired a short-term government contract.

Pool Supply plant. Any plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption that does not qualify as a pool distributing plant should be a pool plant in any month in which 50 percent or more of its receipts of milk from dairy farmers (including the milk diverted from the plant as a producer milk but excluding milk diverted to such plant) and cooperative associations acting as bulk tank handlers is transferred (or diverted within specified limits) in the form of fluid milk products to pool distributing plants. However, any supply plant that is pooled during each of the months of September through January should continue to qualify as a pool plant during each of the following months of February through August without meeting the 50 percent requirement if at least 20 percent of its receipts is shipped to pool distributing plants. A plant not meeting the 20 percent shipping requirement during any month of the February-August period should qualify as a pool supply plant in any remaining month of such period only by shipping not less than 50 percent of its receipts to pool distributing plants.

The order also should provide that the Director of the Dairy Division (Agricultural Marketing Service, U.S. Department of Agriculture) may temporarily increase or decrease the supply plant shipping percentages by up to 10 percentage points during any month if it is determined that any additional shipments are needed or that excessive shipments are likely to be made.

In addition, the order should permit the operator of a plant that is located within the marketing area or in a county adjacent to the marketing area to include as qualifying shipments from a supply plant milk that is diverted by the plant operator from such plant to pool distributing plants. However, a supply plant operator should only be permitted to meet up to 60 percent of the qualifying shipments for each month of the year by diverting producer milk from the supply plant to pool distributing plants. The remaining qualifying shipments for each month would have to be met by transferring milk from the supply plant to pool distributing plants.

The four orders now require that 50 percent of a supply plant's receipts from dairy farmers must be shipped to pool distributing plants if the supply plant is to qualify as a pool plant. The Neosho Valley and Wichita orders provide for automatic pool plant qualification for supply plants during the months of flush production for plants that qualified as pool supply plants during the immediately preceding months of short production. The Red River Valley and Oklahoma Metropolitan orders provide that a supply plant that qualified as a pool plant during each of the months of September–December shall be pooled during the following months of January–August if at least 20 percent of the plant's receipts are shipped to pool distributing plants during each of such months.

AMPI proposed that a supply plant be a pool plant in any month in which 60 percent or more of its receipts of milk directly from dairy farmers (including diversions of milk as producer milk by the plant operator) is moved to pool distributing plants. Under the proposal, a supply plant that qualified as a pool plant during each of the months of September through January would continue to qualify as a pool supply plant in the succeeding months of February through August if its shipments to pool distributing plants exceeded 40 percent of its receipts during each month. A plant that did not meet the 40 percent shipping requirement during any month of February–August would not be a pool supply plant in any subsequent month of such period unless the plant shipped 60 percent of its receipts to pool distributing plants.

AMPI's representative stated that higher shipping standards for pool supply plants are needed during the months of September–January because distributing plants have the greatest need for milk during such months. During the subsequent months of February–August, the cooperative's spokesman indicated, a lower shipping standard should be established. He held that the minimum shipping standard for such months should be at least 40 percent of the plant's producer receipts since it has been necessary during these months for AMPI to ship a much higher percentage of its producer milk to pool distributing plants to meet their fluid milk requirements.

Kraft opposed the 60 percent shipping standard proposed by AMPI on the grounds that such level of performance could result in supply plants being required to furnish a greater proportion of their receipts to supply the market's fluid needs than is required of distributing plants with a high Class II and Class III use. In addition, Kraft testified that a higher performance level could inhibit the possible entry of new dairy farmer suppliers to the market. In support of its position, Kraft contended that as dairy farmers who furnish the current manufacturing grade milk supply at its manufacturing plant in Bentonville, Arkansas, convert to the production of Grade A milk, such milk will be available as a potential reserve supply for Federal order markets. Kraft contended that an increase in the performance standards, as proposed by AMPI, would preclude this new production as a supply for the merged market as long as the dairy farmers continue to supply Kraft since Kraft would not be able to meet the higher shipping standard.

Kraft proposed that the current provisions of the Oklahoma Metropolitan order for pooling a supply plant be continued in the merged order. Kraft proposed, in addition, during any month in which a 50 percent shipping standard must be met that any supply plant be permitted to meet up to 60 percent of such shipping percentage by shipments directly from the farm to pool distributing plants. In support of its position, Kraft noted that its supply plant at Bentonville, Arkansas, receives milk from producers located in southwestern Missouri, northwestern Arkansas and southeastern Kansas for shipment to a pool distributing plant located at Ponca City, Oklahoma. Kraft's representative noted that 50 percent or more of the supply plant's Grade A receipts could move directly from the farm to the distributing plant, when needed, at a substantial savings in hauling costs and energy use. The actual mileage that could be saved by moving milk in this manner was estimated by Kraft to be 9,200 miles per month.

Kraft noted that under current provisions milk produced on farms located between a supply plant and the distributing plant to which such milk is shipped must be picked up at the producers' farms, hauled from the farms to the supply plant (located in the opposite direction of the distributing plant), received at the supply plant, and reloaded for transportation to the distributing plant. In addition to minimizing hauling costs, Kraft indicated that direct shipments from farms to distributing plants would eliminate the expense of unloading milk at the supply plant for the purpose of associating such milk with the market.

Although Kraft held that the current shipping standards for supply plants under the Oklahoma Metropolitan order represent an adequate association with the market, it suggested that the Director of the Dairy Division be given the authority to adjust the supply plant performance standards upward or downward by 10 percentage points in the event that at some future time an adjustment was needed. Kraft noted that the use of such provision would provide greater flexibility in dealing in a timely manner with any potential changes in supply-demand relationships that could not be predicted at the time of the hearing.

During December 1979, the most recent month for which data were available, there was only one supply plant associated with the orders proposed to be merged. The supply plant, which was operated by Kraft, was a pool plant under the Oklahoma Metropolitan order.

The purpose of pooling standards for supply plants is to distinguish between those plants substantially engaged in serving the fluid milk needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing, through pooling, in the market's Class I returns. The standards also must assure that supply plants associated with the market will ship milk to distributing plants at the times and in the quantities needed to meet fluid use requirements. However, supply plant standards should not be so high as to encourage the shipment of substantial quantities of milk in excess of fluid milk needs.

The record of this proceeding indicates that the current standards for pooling supply plants under the Oklahoma Metropolitan order are appropriate for the merged order with minor exceptions. The months when supply plants are required to make increased shipments to pool distributing plants should be expanded to include January. In addition, the plant's receipts upon which shipping percentages are based should include all milk diverted from the plant as producer milk but should not include milk that is diverted to such plant. Furthermore, the order should provide for the temporary upward or downward adjustment of the shipping percentages by the Director of the Dairy Division.

The pool supply plant shipping standards adopted herein generally meet the objectives of Kraft and AMPI. In general, the standards reflect the standards proposed by Kraft. At the same time, the inclusion of a provision providing for a temporary upward adjustment in shipping percentages in the event that distributing plants need additional milk supplies would allow the standards for the months of September–January to be adjusted upward to the level proposed by AMPI. For the months of February–August, the pooling standards adopted herein could be adjusted upward to within 10 percentage points of the level proposed by AMPI. The need for a higher level of shipments can be reviewed at a later time after an opportunity to gain marketing experience under the merged order.

Pool supply plants should be required to make qualifying shipments during the month of January at the same level required during September-December. The month of January is also a month in which the fluid milk requirements of handlers are greater than average. Market statistics reveal that for the four markets combined the average daily Class I sales by all pool plants during January of 1978 and 1979 were greater than the average daily sales for each of these years. Also, the Class I utilization of producer milk in January was greater than yearly Class I use during 1978 and 1979, indicating a somewhat tighter than average supply-demand relationship. Because the month of January is one of the months in which production is somewhat short relative to Class I sales, it should be included in that time period when shipments at the higher level are required. Such change would provide greater assurance of the availability of pool supply plant milk to meet the fluid milk needs of distributing plants. Furthermore, the application of the higher performance standards during the months of September-January would provide greater consistency with other provisions that are also based, in part, on a distinction between the relatively short and heavy production seasons. For example, the diversion provisions adopted herein provide greater limits on the quantity of milk that may be diverted to nonpool plants during the months of September through January with lesser limits applicable during other months of the year.

The performance standards for pool supply plants adopted herein provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or that fewer shipments to such plants are needed. The adjustment should be limited to not more than 10 percentage points.

Under this provision the Director would investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

As indicated previously, there is no compelling reason to increase the performance standards on a permanent basis. However, short-term changes in supply or demand could result in the need to adjust the performance standards on short notice. Under current provisions, changes in performance standards for supply plants can be accomplished only through a time-consuming amendment proceeding or by suspension.

Furthermore, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Inclusion of a provision to adjust temporarily supply plant shipping standards will enhance the ability of the order to deal in a timely manner with short-run changes in supply-demand conditions that cannot now be perdicted. However, any such temporary revision of shipping standards is intended only to meet an emergency situation in meeting Class I needs of distributing plants and, therefore, should be of short duration.

Kraft's proposal to permit a supply plant operator to move part of the plant's milk supplies directly from farms to distributing plants and count them as part of the plant's shipments should be adopted with minor modifications. Such provision should apply each month of the year and its application should be limited to a supply plant located within the marketing area or a county adjacent to the marketing area. As adopted herein, the movement of milk directly from the farm to pool distributing plants would be limited to 60 percent of the supply plant operator's qualifying shipments. The remaining 40 percent of such operator's qualifying shipments would have to be transferred from the supply plant to pool distributing plants. Under such limits, a plant that must ship 50 percent (or the alternative shipping percentage established by the Director of the Dairy Division) of its total receipts to pool distributing plants would be permitted to utilize diversions amounting to not more than 30 percent (or 60 percent of the alternative shipping standard) of the supply plant's total receipts in partial fulfillment of its qualifying shipments for the month. In the case of a supply plant which qualified as a pool plant during the months of September-January and which must ship 20 percent of its receipts to pool distributing plants to qualify as a pool plant during February-August, such supply plant would be permitted to utilize diversions amounting to not more than 12 percent (or 60 percent of the alternative shipping standard) of the supply plant's total receipts in partial fulfillment of its qualifying shipments in any month would have to be transferred from the supply plant to pool distributing plants.

AMPI supported Kraft's proposal that direct shipments from the farm be used to qualify a supply plant. The cooperative's support of the proposal, however, was conditioned upon the establishment of pool supply plant shipping percentages of 60 percent in the months of short production and 40 percent in all other months of the year.

Kraft's proposal as modified and adopted herein will enable Kraft's Bentonville plant, which is located in a county that adjoins the marketing area, to discontinue some of the uneconomic milk shipments that the plant has been required to make to achieve pool plant status under the Oklahoma Metropolitan order. Under the provisions adopted herein, the milk supply that is located between the pool supply plant and the distributing plant can be delivered directly from the farm to the pool distributing plant and be considered as qualifying shipments of the supply plant.

The adoption of the direct-shipment method of qualifying a supply plant for

pool plant status should be accompanied by a geographical plant location limit to insure that the milk pooled at the plant is reasonably associated with the market. In the absence of such limit, a milk manufacturing plant located in territory remote from the production area could be pooled primarily on the basis of direct shipments of milk from the nearby production area. Thus, without some appropriate limitation on the area within which a plant can pool on the basis of direct shipments from the farm, there would be a possibility of milk pooled that is produced in an area remote from the market which is not a practicable source of milk supply for pool distributing plants. This could in turn detract from the basic purpose of the pooling provisions, which is to aid in insuring that adequate milk supplies will be made available to pool distributing plants. Accordingly, the option of pooling a plant on the basis of direct shipments should be limited to those plants located within the nearby production areas which include the marketing area and those counties adjacent to the marketing area. This limitation would not preclude, however, a supply plant located outside such production areas from being able to qualify as a pool plant on the basis of transfers of milk from the plant to pool distributing plants.

Kraft's proposal that a pool supply plant be permitted to count as qualifying shipments for pooling purposes fluid milk products that are transferred to fluid milk plants not fully regulated under the order should not be adopted. Under Kraft's proposal, qualifying shipments would include transfers to producer-handler plants, to partially regulated distributing plants and to other order plants. Its representatives held that the adoption of such provision would remove an artificial barrier which discourages the movement of milk where needed and which denies producers under the order the benefit of additional Class I sales.

One of the primary purposes in establishing shipping standards for pool supply plants is to assure that pool distributing plants receive a sufficient supply of milk to meet their fluid milk demands. Under Kraft's proposal, a supply plant that delivers only a token shipment to a pool distributing plant could be pooled by shipments to plants whose distribution area is outside the Southwest Plains marketing area. Such provisions might be appropriate for a market in which there are ample milk supplies and limited Class I outlets. Such conditions, however, are not characteristic of this market. Because of this, milk supplies that are being pooled on the market should be available to handlers who are engaged in processing milk for fluid use in the market. Under Kraft's proposal, there would be no assurance that a sufficient supply of milk would be made available at all times to meet the fluid milk needs of such handlers.

It should be noted that the provisions adopted herein would not preclude pool supply plants from making milk available to producer-handlers, partially regulated distributing plants or other order plants for Class I use (and producers would benefit from such additional sales). However, the supply plant, in meeting the pooling requirements, would also have made a minimum amount of milk available to distributing plants fully regulated under the Southwest Plains order.

Kraft also proposed that the order provide pool plant status for a "supply unit". A "supply unit" would be the facilities and equipment that are used when milk of two or more designated producers is physically picked up on one or more farm tank trucks and delivered to pool distributing plants. The operator of the unit would be limited to a person who operates a pool plant, or a nonpool plant located within an area consisting of the marketing area plus an additional area extending 100 miles from the nearest edge of the marketing area. The operator of the unit could also be a person who provides to the satisfaction of the market administrator that he has sufficient assets to pay producers. To qualify as a pool plant, the supply unit would need to deliver during September–January 60 percent of its receipts to pool distributing plants. During February–August the supply unit would be required to deliver 40 percent to its receipts to pool distributing plants. In addition, the delivery requirements could be increased or decreased by 10 percentage points by the Director of the Dairy Division if he finds that such revision is necessary.

The spokesman for Kraft pointed out that the basic difference in pooling milk through a supply unit and a supply plant is that it would eliminate the need for milk to be physically received at a supply plant and reloaded onto a truck solely for the purpose of qualifying for pool participation. Furthermore, the adoption of the provision would eliminate the need to construct a Grade A receiving operation and to qualify such plant as a pool supply plant in order for the Grade A producers supplying such operator to participate in the pool.

Any need for adopting the "supply unit" concept as a method of pooling is very minimal in view of the revisions made in the pool supply plant qualification standards. Under the changes adopted herein, the operator of a pool supply plant could deliver up to 60 percent of the qualifying shipments that a supply plant needs to make a pool distributing plants by diverting milk directly from the farm to the pool distributing plant.

The pool supply plant standards adopted herein will permit Kraft, as the operator of a pool supply plant at Bentonville, Arkansas, to associate Grade A milk that is currently being delivered to the handler's nonpool plant at Berryville, Arkansas, with the Bentonville plant. With the exception of one day's production per month, the milk of the Berryville dairy farmers that Kraft wants to associate with the pool could be delivered directly from farms to pool distributing plants supplied by Kraft's supply plant. As previously noted, the volume of milk that could be delivered directly from farms to pool distributing plants and used to qualify a supply plant would be limited to 60 percent of the qualifying shipments that the supply plant would be required to make to pool distributing plants during such month. At least one day's production of the producers whose mild is diverted must be received at the Bentonville plant each month in order to assure that the producers whose milk is used to qualify the Bentonville plant have at least a minimal association with such plant. On those days when the milk from the Berryville dairy farmers is not needed at the pool distributing plant, the milk could then be diverted directly from the farms to the nonpool plant at Berryville as a diversion from the Bentonville supply plant.

Under the circumstances, there is no need to burden the order with additional pooling provisions that are not needed under current marketing conditions. Accordingly, the "supply unit" pooling provision should not be adopted at this time.

The order language adopted herein excludes the pooling of a supply plant that meets the pooling requirements of this order and of another Federal order of greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order. Such provision is contained in the Oklahoma Metropolitan milk order and was proposed by AMPI for inclusion in the merged order. The inclusion of such provision will eliminate the conflict that would otherwise exist if a supply plant

qualifies as a pool plant under this order and another order.

The order language adopted herein also excludes the pooling of a supply plant which has automatic pooling status under another Federal order and which also meets the performance standards for pooling under this order. The plant could be pooled under this order, however, if the plant operator elects to relinquish pool plant status under the other order. In the absence of any such action by the plant operator, a conflict would exist with regard to which of the two orders would regulate such plant. Adoption of the modification, which was proposed by AMPI, would eliminate such conflict by allowing the plant to continue as a pool plant under the order in which it has automatic pooling status.

Cooperative balancing plants. A cooperative should be permitted to qualify a balancing plant located in the marketing area as a pool plant as long as 50 percent of the producer milk marketed by the cooperative association is delivered to pool distributing plants. The producer milk marketed by the cooperative should include the producer milk of the cooperative's members as well as the producer milk of nonmembers and the producer milk of any other cooperative that is marketed by such cooperative. The producer milk could be moved by the cooperative in its capacity as a bulk tank handler directly from the farms of producers to pool distributing plants. The producer milk could also be delivered to pool distributing plants from pool supply plants and pool balancing plants operated by the cooperative association.

A provision for pooling a balancing plant operated by a cooperative is now provided under the Oklahoma Metropolitan order for a plant located within 50 miles of Tulsa or Oklahoma City, Oklahoma. To qualify a balancing plant as a pool plant under the current order, a cooperative must deliver to pool distributing plants a quantity of fluid milk products (except filled milk) that is in excess of 50 percent of the total milk of member producers. Such fluid milk products may be transferred to pool distributing plants from such cooperative association plant(s) or may be received directly from the farms of member producers.

AMPI and Kraft proposed that provisions be provided under the merged order for pooling a cooperative's balancing plant if such plant is located within the marketing area. AMPI proposed that pool plant status be accorded a balancing plant if the cooperative operating such plant requests that the plant be pooled and 60 percent or more of the producer milk of members of the cooperative is physically received at pool distributing plants. Such receipts at pool distributing plants could be received directly from the farms of members of the cooperative or by transfers from the cooperative's balancing plant or from the cooperative's pool supply plant(s).

Kraft's proposal to pool a cooperative's balancing plant differed from the one proposed by AMPI in three respects. Kraft would reduce from 60 percent to 50 percent the producer milk that members of the cooperative association must deliver to pool distributing plants. Under Kraft's proposal, however, the 50 percent would apply not only to a cooperative's own member producer milk but also to the producer milk of nonmembers and the producer milk of another cooperative association of such milk is marketed by the cooperative operating the balancing plant. In addition, Kraft proposed that a cooperative be permitted to count as qualifying shipments producer milk that the cooperative delivers to plants of producer-handlers, partially regulated distributing plants (limited to the quantity of milk so transferred that is classified as Class I milk) and distributing plants fully regulated under other orders (would not apply to milk shipped for agreed upon Class II or Class III use or to the quantity of milk that was in excess of the plant's shipment to pool distributing plants).

The provisions adopted herein for pooling balancing plants operated by cooperative associations are patterned after the provisions proposed by AMPI with two exceptions. A cooperative should be required to deliver to pool distributing plants 50 percent or more of the milk that the cooperative markets as producer milk under the order. While the percentage adopted herein is 10 percentage points less than was proposed by AMPI, it is also noted that the cooperative proposed a 60 percent shipping standard for a pool supply plant. Since the lower shipping standards (50 percent) were deemed appropriate for pool supply plants, it is concluded that the same percentage should also apply in establishing performance standards for balancing plants. In addition, the performance standards for a cooperative's balancing plant should be based not only on the producer milk marketed by the cooperative for its members but also on nonmember milk and member milk from any other cooperative that the cooperative also markets as producer milk. Unless the performance standards apply to all producer milk marketed by the cooperative, there is the possibility that substantial quantities of milk could be associated with the Southwest Plains order. In the absence of the limits adopted herein, the only limit on the quantity of milk that a cooperative could associate with the market would be the manufacturing capacity of the plant operated by the cooperative.

Nonpool plants. A definition of "nonpool plant" is provided to facilitate formulation of the various provisions of the order as they apply to such a plant. The four separate orders now contain comparable nonpool plant definitions with the exception of the Oklahoma Metropolitan order which defines a "governmental agency plant" as a nonpool plant. The other three orders do not specifically define a governmental agency plant under the nonpool plant definition. The definition adopted herein is essentially the same as the definition proposed by the merger proponent.

The nonpool plant definition of the merged order should define a "governmental agency plant" as a plant which is owned and operated by a governmental agency from which fluid milk products are distributed in the marketing area. The definition adopted herein will exempt governmental institutions such as Oklahoma State University and the several other state institutions which have their own herds and package milk primarily for use within their own institutions from all the provisions of the merged order. In general, the operation of a governmental agency plant has little, if any, effect upon the marketing of milk within the marketing area.

Such self-contained operation which operates its own dairy farm and processing plant and which distributes the milk from such operation either on a college campus or otherwise within the institution should not be fully regulated under the order. These operations are normally not a competitive factor in the overall market and for this reason should not be pooled. Accordingly, as suggested by the merger proponent, nonpool status should apply to such plants.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and making payments for milk under the merged order.

Accordingly, the order should designate handler status for the following persons:

(1) Any person who operates one or more pool plants;

(2) A cooperative association with respect to milk of producers that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk of producers picked up at the farm for delivery to the pool plant of another handler;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler; and

(6) The operator of an other plant from which milk is disposed of in the marketing area.

The current handler definition of the Oklahoma Metropolitan order is appropriate for the merged order with two principal exceptions. The order should not include the current proviso which states that, in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler. The deletion of this provision, which is not contained in the other three orders involved in the merger, was proposed by the merger proponent.

This provision, if continued, would have no applicability since no corporation that would be regulated under the merged order operates any divisions as separate business units. In the absence of any indication that the provision is needed, the proposed change is adopted.

The other revision would permit a pool plant operator to be the responsible handler on bulk tank milk moved by the cooperative from the farm to the plant if both the cooperative and the pool plant operator notify the market administrator prior to the movement of such milk that they have agreed to such handling arrangement. Also, the plant operator must agree to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement the pool plant operator would be responsible for the milk in the same manner as for producer milk that he procures from individual producers and receives at his plant directly from the farm.

Under the terms of the merged order, the pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" would be the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool operator in turn settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up at the farm for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The merged order also provides that a cooperative could be a handler of the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist cooperatives in balancing supplies among several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

A pool plant operator receiving farm bulk tank milk from a cooperative also should be responsible for paying to the market administrator the administrative assessment on such milk. The audit and verification activities of the market administrator relate essentially to the operation of the pool plant where the milk is processed. As in the case of the producer milk which he receives from individual producers, the plant operator thus should pay his pro rata share of the administrative costs on milk received from the cooperative in its capacity as a bulk tank handler.

When the cooperative assumes its role as the responsible handler on farm bulk tank milk, the pool plant operator may buy such milk on the basis of weights and butterfat tests determined at the plant rather than on the basis of measurements determined at the farm. Usually, the quantity of milk picked up at the farm slightly exceeds the quality ascertained as actually received at the plant. In such cases, the difference in quantity between the farm and plant measurements should be considered as a receipt of producer milk by the cooperative association at the location of the pool plant where the milk in the tank truck was delivered. The cooperative should be obligated to settle with the producer-settlement fund and to pay the administrative assessment on the difference in the quantity of milk involved in the two measurements.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmembers producers along with the milk of its members for delivery to pool plants or for diversion to nonpool plants. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to act as the marketing agent for his or her milk. Nothing the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the merged order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives may "deal in the products of nonmembers" and which limits such dealing to amounts not greater in value than are "handled by it for members."

Producer-Handler. The merger order should provide for the exemption of a "producer-handler" from the pooling and pricing provisions of the order. As adopted herein, a producer-handler would be any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production and by transfer from pool plants and other order plants. A producer-handler could not dispose of any other source milk in the form of a fluid milk product except receipts from other order plants and nonfat milk solids used only to fortify fluid milk products. To qualify as a producer-handler, such person would have to provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

and operation of the processing plant are the personal enterprise and risk of such person.

Presently, the four orders to be merged define a producer-handler as a dairy farmer who operates a distributing plant and who receives no milk from other dairy farmers. Each of the four orders allows producer-handlers to buy unlimited supplemental suppliers of fluid milk products from pool plants. With the exception of the Oklahoma Metropolitan order, each of the orders also allows producer-handlers to obtain supplemental supplies from other order plants. Currently, only the Wichita order provides that such person provide proof satisfactory to the market administrator that all the resources necessary for his own production of milk and the management and operation of the processing plant be the personal enterprise and risk of such person.

The producer-handler definition adopted herein is identical to the definition proposed initially by the merger proponent, as reflected in the hearing notice. At the hearing, however, AMPI took the position that all persons operating plants with route disposition in the marketing area should be either fully or partially regulated by the order. Proponent stated, though, that if it is the Department's policy to exempt from regulation a person who basically distributes only his own production on routes in the marketing area, then it supported adoption of its initial proposal.

The four separate orders now exempt a producer-handler from full regulation and such exemption should be continued under the merged order. Congress has on several occasions reaffirmed the action of the Secretary in exempting producer-handlers from full regulation as handlers under Federal milk orders. Although the term "producer-handler" is not mentioned in the original Agricultural Marketing Agreement Act of 1937, subsequent amendments in 1965, 1968, 1970 and 1973 referred directly to producer-handlers. In each case, Congress indicated that the legal status of producer-handler under milk marketing orders should be left unchanged.

Experience under Federal orders over many years generally has demonstrated that effective regulation can be insured without the full regulation of individuals who produce, process, and distribute substantially only milk produced on their own farm and who buy no milk from other dairy farmers. Individuals who assume a dual role of producer and handler and who carry their own balancing supplies generally have no economic advantage either as a producer or a handler. As a dairy farmer such person maintains control of his milk until ultimate disposition and therefore his situation is quite different from the regular producer whose milk is marketed through a handler. The protection of the minimum price provisions of the order have little significance to the producer-handler in his capacity as a dairy farmer.

On the other hand, in his capacity as a handler, the producer-handler competes in the retail market with regulated handlers. In such role he does have the advantage of not paying the administrative assessment and of marketing his milk at a price without regard to costs associated with milk priced under the order. As a result of these advantages, he may receive a greater margin of profit than regulated handlers handling similar quantities of milk. However, a producer-handler has the disadvantage of balancing his own supply against his demand. Also, in disposing of his surplus he may not equalize his costs of milk used for manufacturing purposes through payments from the producer-settlement fund.

The exemption from pricing and pooling of producer-handlers should be limited to bona fide producer-handlers. Without appropriate safeguards, milk distributors with own-farm production might be encouraged to seek producer-handler status. Various business arrangements may be used to give the appearance of a true producer-handler operation. To preclude the use of such devices, the order should provide that the producer-handler must provide proof satisfactory to the market administrator that the maintenance, care and management of the dairy animals and all other resources used to produce the milk as well as the resources required for the distribution of the milk are each the personal enterprise and the personal risk of the person who claims producer-handler status.

A producer-handler who needs supplemental supplies of fluid milk products to supply his customers should be required to purchase such supplies from pool plants or other order plants. Under the provisions adopted herein, such requirement will assure that the producers supplying the market from which the producer-handler acquires the milk receive a Class I price for such milk to compensate them for carrying the necessary reserve milk supplies for the market. As a further condition for exempt status, a producer-handler should be precluded from reconstituting or converting milk products into fluid milk products. If such activities were permitted, the producer-handler would have a significant competitive advantage over regulated handlers since the milk products used by the producer-handler would have only a surplus value. However, a producer-handler should be permitted to increase the nonfat milk solids content of the milk produced on such person's own farm or purchased from pool plants and other order plants by fortifying a fluid milk product. In addition, a producer-handler should be permitted to buy Class II and Class III milk products from any source for distribution along with such handler's fluid milk products.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the merged market. The producer definition provided herein follows closely the definition proposed by the proponent of the merged order.

Producer status under the merged order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a farm bulk tank handler. Producer status also should be accorded a dairy farmer who has an established association with the market and whose milk is diverted to nonpool plants on occasion for surplus disposal by cooperatives or pool plant operators.

The merged order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, the merged order should preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should continue the provisions of the present order that exclude (1) a person with respect to milk which is diverted from a pool plant regulated under another order to a pool plant regulated under this order if such person is a producer under the other order with respect to such milk and it is allocated by agreement to Class II or Class III use

under this order, and (2) a person with respect to milk which is diverted to another order plant from a pool plant regulated under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Also, the merged order should exclude from the producer definition any dairy farmer with respect to milk produced by him during the months of February through July if the same person (cooperative association or pool plant operator) caused more than one-third of the monthly milk production from the same dairy farm to be associated with another market during any one of the immediately preceding months of September through November. The exclusion was proposed by the merger proponent.

This provision should be adopted to prevent cooperative associations and pool plant operators from pooling on the proposed Southwest Plains market during the months of February through July, when milk supplies are more than adequate, milk that could be reasonably considered as a reserve supply for another market. Such provisions would not apply to dairy farmers coming onto the market from another market if different persons were directing the delivery of the milk in each market, or to dairy farmers delivering milk to a pool plant that was a nonpool plant within the September-November period. In such instances, the milk of dairy farmers delivered to the market during the February-July period does not necessarily represent reserve supplies associated with another market and these dairy farmers should be allowed to obtain producer status under the order during this period.

This provision is not intended to prevent a dairy farmer from obtaining the approval of a duly constituted regulatory agency for the production of milk for fluid consumption and becoming a producer on the market during the months of February through July. It is only designed to prevent a handler from pooling milk of producers on some other fluid market during the months of September through November and then pooling the milk of that same group of producers on the Southwest Plains market during the months of February through July.

If a handler causes the milk of a dairy farmer to be moved to another market as other than producer milk during the months when supplies are in greatest demand, producers regularly supplying the Southwest Plains market should not have the burden of sharing their pool proceeds with such other dairy farmers during the flush production months when the handler finds their milk to be surplus to the needs of the other market. A handler associating a dairy farmer with another market during the short-production season should not be able to have the dairy farmer qualify as a producer on the Southwest Plains market in other months when supplies are much more plentiful relative to demand. Permitting a hander to shift dairy farmers back and forth between markets in this manner would take supplies away form the Southwest Plains market at a time when they are needed and then would reassociate such supplies with the market at a time when they are not needed. This procedure would not be conducive to the orderly marketing of milk of producers regularly supplying the Southwest Plains market.

Under the provisions adopted herein, milk received at a pool plant during the months of February through July from a "dairy farmer for other markets" would be designated as other source milk and allocated to the extent possible to Class III milk. As such, this milk would be accounted for in a manner similar to receipts of fluid milk products from a producer-handler or a governmental agency plant that has non-producer status.

Kraft opposed the "dairy farmer for other market" provision on the basis that the provision would make it difficult for handlers to move producers between markets. The provision is designed to inhibit the movement of producers among markets under only certain specified conditions. The provision is intended to require a handler to pool the reserve milk supplies of a diary farmer in the market that the producer supplied with milk during the months of short production. To accomplish that result, it is necessary that the movement of producers among markets be restricted in the manner provided herein.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the merged order. The definition adopted herein carries out the basic objectives set forth by the merger proponent.

As provided herein, producer milk would include milk received during the month directly from a producer at a pool plant by the plant operator. It also would include milk of a producer that is received during the month by a cooperative association as a bulk tank handler for delivery to a pool plant. Milk picked up by a handler at the farm in a bulk tank truck but not received at a plant until the next month would be producer milk in the month in which picked up. Under the adopted provisions, producer milk also would include milk of producers that is diverted from pool plants to nonpool plants under specified conditions.

Under the present accounting procedures, bulk tank milk that is picked up at the farm but not physically received at a plant until the following month is treated as a receipt of producer milk in such following month. This procedure has presented substantial accounting problems, particularly when milk passes through a reload facility and a portion of the load on the pick-up tanker is transferred to an over-the-road tanker and received at a plant that month, while the remainder is held at the reload facility for delivery to a plant the next month. While administrative guidelines have been adopted to promote uniform accounting procedures for bulk milk receipts, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement for milk that results when milk picked up in the current month is not physically received at a plant during that month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of a month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at a farm. The changes adopted herein will permit the pooling of producer milk in the month it is picked up at the farm if the milk is received at a plant in the current or the following month. Milk received in the following month will be included in the responsible handler's end-of-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk reasonably will be received at a plant on the 1st or 2nd day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report, which he mails by the 7th day of the following month. If, however, none of the milk in the pick-up tanker is received at a plant, such milk will not be included in the handler's report and he will have no pool obligation on it. This conforms with the present provisions which tie the producer milk provisions to its receipts at a plant.

If the operator of a pool plant is the responsible handler, he will account for this producer milk as part of his end-of-month inventory and will be charged the

Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products he had in inventory.

If a cooperative association bulk tank handler is the responsible handler, such cooperative will account will account for the milk in transit as end-of-month inventory. The cooperative will be charged the Class III price for such milk and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation on such milk in the preceding month. In such following month, this milk is included in the obligations of the pool plant handler who physically received it and he will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but since the milk was pooled in the preceding month it would not be included in the pool computation of the current month.

It should be noted here that bulk tank milk being diverted by a cooperative from another handler's pool plant to a nonpool plant should not be included in the cooperative's ending inventory if the milk is in transit at the end of the month. Instead, the final accounting for the milk should be in the month in which it is picked up at the farm. The inventory accounting procedure is not necessary in this case since the cooperative is the only accountable handler under the order for such milk. The milk is received by the cooperative, of course, at the time it is picked up at the farm.

Diversions of producer milk from a pool plant to a nonpool plant that is not a producer-handler plant, for the account of the handler operating the pool plant, are recognized with specific limitations. Similar diversions could be made for the account of a cooperative from the pool plant of another handler.

Diversion provisions are desirable to facilitate the orderly and efficient disposition of the market's reserve milk supplies. When producer milk is not needed in the market for Class I use, its movement to nonpool plants for manufacturing without loss of producer milk status should be accommodated. It is necessary, however, to safeguard against the association with the market of unneeded milk supplies through the diversion process. Accordingly, certain limitations should apply with respect to diversions of producer milk to nonpool plants.

The merger proponent proposed that during each month of the year cooperatives be permitted to divert to nonpool plants, except producer-handler plants, a quantity of milk not in excess of one-half of the quantity of member producer milk that is received at pool plants during the month. The operator of a pool plant (other than a cooperative association) would be allowed to divert to nonpool plants, except producer-handler plants, any non-member milk. The quantity of milk that the plant operator would be permitted to divert could not exceed one-half of the quantity of milk received at such pool plant from such non-member producers during the month. AMPI also indicated that it would support a diversion limitation equal to the reciprocal of supply plant shipping requirements if shipping standards of 60 percent in September–January and 40 percent in February–August were adopted. Diversions in excess of the proposed quantities would not be eligible for pooling under this order and the diverting cooperative or pool plant operator would be required to specify the dairy farmers' milk which would not be eligible for diversion. If the cooperative or handler fails to designate the dairy farmers whose milk is not eligible for diversion, then none of the milk diverted by the cooperative or handler, respectively, would be eligible for pooling.

The cooperative also proposed that milk of a producer would not be eligible for diversion unless at least 15 percent of the total monthly milk production of such person is received at a pool plant.

Kraft proposed that diversions of producer milk to nonpool plants for each of the months of September–January by cooperatives and pool plant operators be limited to the quantity of milk physically received at pool plants from those producers for which the handler is eligible to divert. During each of the months of February–August, Kraft proposed that diversions to nonpool plants by such handlers not exceed twice the quantity of milk physically received at pool plants from those producers for which the cooperative or the plant operator, respectively, is eligible to divert. In the event of over-diversions, the diverting handler may designate the dairy farmer deliveries that would not be producer milk. If the handler failed to designate the milk that was over-diverted, Kraft proposed that milk diverted on the last day of the month, then the second to last day of the month, and so on, be excluded until all diversions in excess of the prescribed limits are accounted for.

Kraft proposed that in any month of September–January milk of a producer not be eligible for diversion unless at least one day's production from such producer is physically received at a pool plant during the month. In the event a dairy farmer loses his producer status (except at a result of a temporary loss of Grade A approval), Kraft proposed that the milk of such producer not be eligible for diversion until milk of such producer is physically received once again as producer milk at a pool plant.

The handler's spokesman pointed out that milk of certain distant producers may not be needed every day of the month, especially, during the season of flush production. In the event there is need to divert reserve milk supplies to nonpool plants for manufacturing, he indicated that a handler should have the opportunity to move such milk in the most efficient manner. For this reason, he proposed that during the months of September through January only a minimal association with the market be required in order for milk of a producer to be diverted and that the main limit on the quantity of milk that may be diverted be based upon the aggregate quantity of producer milk physically received at pool plants. In Kraft's opinion, such diversion provisions would promote efficiency by permitting the milk of the more distant producers to be diverted every day of the year except for one day's production during each of the months of September through January.

To insure that each producer whose milk is being diverted maintains his established association with the market, at least one day's production of his milk should be received at a pool plant each month. If a dairy farmer loses his producer status under the order (except for temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), his milk should be reassociated with a pool plant before it is eligible for diversion. For transitional purposes, a dairy farmer who held producer status under any of the four orders merged herein during the month preceding the effective date of the merged order could have his milk diverted under the merged order without being received first at a pool plant under the merged order. However, at least one day's production from such dairy farmer would have to be received at a pool plant sometime during the month for any milk of the producer to be eligible for diversion during such month. These requirements will assure that only the milk of producers who have established as association with the market's fluid needs is eligible for diversion to nonpool plants.

There is no need to require that at least 15 percent of an individual dairy

farmer's production be delivered to a pool plant each month in order for any milk of such producer to be eligible for diversion. Such requirement would unnecessarily limit a handler's ability to divert efficiently the milk of producers. While a minimal individual "touch-base" requirement is necessary, the primary limits should be established on the basis of the aggregate quantity of producer milk that the handler caused to be received at pool plants. Such method will provide adequate safeguards on diversions to nonpool plants and provide handlers greater flexibility in moving excess milk supplies to nonpool plants. For example, the provisions adopted herein will enable a handler to divert more often the milk of those producers whose farms are more distant from his plant than those located closest to his plant, thereby reducing the cost of hauling milk. On days when the milk of distant producers is not needed at the central market, it can be diverted to nearby manufacturing plants.

The total quantity of producer milk that may be diverted monthly to nonpool plants by a cooperative association during each of the months of September through January should not exceed one-half of the producer milk that the cooperative association caused to be delivered to and was physically received at all pool plants. During each of the months of February through August, the quantity that may be so diverted should not exceed the quantity of producer milk that is so moved by the cooperative.

The operator of a pool plant should be able to divert any milk that is not under the control of a cooperative association that is diverting milk during the month. The total quantity of milk so diverted during each of the months of September through January should not exceed one-half of the producer milk physically received at pool plant(s) as producer milk for which the plant operator is the handler. During each of the months of February through August, such diversions should not exceed the quantity of producer milk that was physically received at pool plant(s) as producer milk of the plant operator.

Any milk diverted by handler in excess of the quantity limitations should not be producer milk. The diverting handler should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted during such month, in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk.

As provided herein, milk diverted from a pool plant would be included in the plant's receipts for purposes of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a pool plant not meeting the pooling standards because too much milk was diverted from the plant by a cooperative, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant that would cause such plant to become a nonpool plant should not be considered as producer milk. In such event, the cooperative should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted by the cooperative from the pool plant, in lots of an entire day's production, should be excluded first in determining the milk of dairy farmers that would not be producer milk.

The limit on diversions adopted herein would permit up to one-third of the producer milk of a handler to be diverted off the market during the months of September through January. Such limit comports with the limit proposed by proponent cooperative for all months of the year and should accommodate any needed diversions by handlers during the months when milk production declines seasonally. In that regard, the greatest diversions during 1978 and 1979 for the months of January and September-December occurred in December 1979. In that month, 5.3 percent of the total producer milk on the four markets was diverted to nonpool plants.

During the months of February through August when the demand for fluid milk is less and the supply of producer milk is more plentiful than during other months of the year, handlers will find it necessary to divert greater quantities of milk to nonpool plants than during the months of September through January. Accordingly, during the months of February through August, handlers should be permitted to divert producer milk to nonpool plants in an amount equal to the quantity of producer milk physically received at pool plants. As a practical matter, there is no reason to have the order provide that the operator of a pool distributing plant may divert any greater quantity than the amount adopted herein. The same would be true for a pool supply plant that is required to ship at least 50 percent of its producer receipts to pool distributing plants during such months. If such handlers were to divert more milk to nonpool plants for manufacturing than was received at their plants, they would be unable to meet the pooling standards for pool distributing plants and pool supply plants that are provided herein.

As proposed by the merger proponent, all diverted milk should be priced at the location of the plant to which the milk was diverted. Pricing diverted milk at the location of the plant where such milk is physically received removes the possibility of subsidizing distant producers when their milk is diverted to distant manufacturing plants. This would occur if such producers received a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation cost to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

Kraft, Inc., proposed that the order provide for diversions between pool plants. This proposal was a corollary change to its proposal to allow supply plants to qualify for pool status on the basis of direct shipments of milk from producers' farms to distributing plants.

Since the merged order would allow limited quantities of milk that is diverted to count as qualifying shipments for the purposes of pooling a supply plant, the order also should provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month would have to physically receive the milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of

determining whether such plants have met the requirements for pooling under the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The individual orders provide that milk which is transferred from one distributing plant to another shall be included in the receipts of both the transferor plant and the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but are excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

(b) *Classification of milk.* The uniform classification plan adopted August 1, 1974, for each of the four orders under consideration for merger (along with 35 other milk orders) should be continued under the merged order. The plan provides for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to the utilization of such receipts in each class in order to determine the classification of producer milk.

The classification provisions of the four orders to be merged are generally identical to such provisions of the proposed merged order. Consequently, adoption of the proposed provisions in the merged order will not result in any change in regulation for handlers currently regulated by the separate orders.

(c) *Class prices and location adjustments.* The Class I price for the Southwest Plains market should be established for the Oklahoma City area, or "Zone I," with prices applicable at plants in other areas to be determined through the use of location adjustments. Such Class I price should be the basic formula price for the second preceding month plus a Class I differential of $1.98.

For purposes of applying location adjustments, the marketing area should be divided into six pricing zones. The location adjustment for each zone, the resulting Class I differential (shown parenthetically) and the counties in Oklahoma, Kansas and Missouri that should be included in each zone are as follows:

Zone I—no adjustment ($1.98)

In the State of Oklahoma

Caddo	McClain
Canadian	McIntosh
Cleveland	Okfuskee
Coal	Oklahoma
Garvin	Pittsburg
Grady	Pontotoc
Haskell	Pottawatomie
Hughes	Seminole
Latimer	Sequoyah
Le Flore	

Zone II—plus 7 cents ($2.05)

In the State of Oklahoma

Alfalfa	Jefferson
Atoka	Johnston
Beaver	Kiowa
Beckham	Love
Bryan	Major
Carter	Marshall
Choctaw	McCurtain
Cimarron	Murray
Comanche	Pushmataha
Cotton	Roger Mills
Custer	Stephens
Dewy	Texas
Ellis	Tillman
Greer	Washita
Harmon	Woods
Harper	Woodward
Jackson	

Zone III—minus 10 cents ($1.88)

In the State of Oklahoma

Adair	Muskogee
Blaine	Noble
Cherokee	Nowata
Craig	Okmulgee
Creek	Osage
Delaware	Ottawa
Garfield	Pawnee
Grant	Payne
Kay	Rogers
Kingfisher	Tulsa
Lincoln	Wagoner
Logan	Washington
Mayes	

Zone IV—minus 33 cents ($1.65)

In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V—minus 18 cents ($1.80)

In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI—minus 13 cents ($1.85)

In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearny	

The cooperative proposing the merged order proposed that the basic formula price now used under the separate orders be continued. There was no opposition to this proposal.

The present basic formula price in each of the separate orders is based on pay prices for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. This basic formula price is used in setting Class I prices under all Federal orders. Its continued use under the merged order will assist in the maintenance of adequate supplies for the market. Also, Class I price changes under this order will remain coordinated with those under all other orders.

The cooperative also proposed that the Class I price for the Southwest Plains order be established for the Oklahoma City area, with prices applicable at plants in other areas to be determined through the use of location adjustments. Under its proposal, as discussed at the hearing, the Class I price at Oklahoma City would be the basic formula price for the second preceding month plus $.198. Under the hearing proposal, the present price relationships between plants fully regulated by the separate orders would be continued with the exception of a minor change for a portion of the Red River Valley marketing area.

Basically, the Class I price for the Southwest Plains market should be established at a level which, in conjunction with the Class II and Class III prices, will result in returns to producers sufficient to insure an adequate supply of pure and wholesome milk for the market. The adequacy of milk supplies for the merged area has been dependent upon the Class I prices applicable under the separate orders to be merged. The minimum Class I price levels now applicable within this area, as expressed in terms of the Class I differentials of the separate orders, are as follows:

Oklahoma Metropolitan	$1.98
Red River Valley	$2.20
Neosho Valley	$1.65
Wichita	$1.80

The Class I differentials of these separately regulated markets reflect in a

generally uniform manner a portion of the cost of moving milk from the upper Midwest to these markets. This accounts for the graduated price levels in the separately regulated markets. The gradation of prices reflects to a large degree a transportion rate of 1.5 cents per hundredweight per 10 miles. The regional price structure reflected by these Class I differentials in the separately regulated areas should be maintained in the merged market. This will continue the current alignment of prices at plants regulated by the merged order with Class I prices at plants regulated under adjacent Federal milk orders.

Only one Class I price should be announced under the order and that price should be applicable only at plants located in a specified portion of the marketing area. The Class I price at plants located outside this territory, defined herein as Zone I, should be the announced Class I price adjusted for the location of the plant.

Zone I should include the Oklahoma City area of the current Oklahoma Metropolitan order. This area has the largest population concentration of the proposed market and, thus, should be the focal pricing point within the Southwest Plains market. Counties in the general vicinity of the Oklahoma City area (including the counties of Caddo and Grady) and eastward to the Arkansas line should also be included in Zone I. In Zone I, a Class I differential of $1.98 should apply. Such Class I differential currently applies at plants in the Oklahoma City area under the Oklahoma Metropolitan order.

Zone II should encompass the Oklahoma counties of the present Red River Valley marketing area, except for the counties of Caddo and Grady. In Zone II, a plus location adjustment of seven cents should apply. This would result in an effective Class I differential of $20.05 which is seven cents higher than the one applicable at Oklahoma City. The differential adopted herein represents a reduction of three cents from the differential of $2.08 that currently applies at a plant located in Lawton, Oklahoma. Zone II should extend eastward to the Arkansas border and should also include the unregulated counties in western Oklahoma and in the Oklahoma Panhandle area as well as Beckham County, Oklahoma.

Zone III should include the area comprising the Tulsa-Muskogee portion of the Oklahoma Metropolitan order. The current differential in such area is $1.88. Under the minus 10-cent location adjustment adopted herein, this Class I differential would be continued in the Tulsa-Muskogee area. The unregulated Oklahoma counties and territory in the northeastern part of the State should also be in Zone III.

Zone IV should encompass the current Neosho Valley marketing area. In such area, a minus location adjustment of 33 cents should apply. Such adjustment would maintain the Class I differential that is currently effective in that general area.

Zones V and VI should be the current Zones I and II, respectively, of the Wichita marketing area. Location adjustments of minus 18 cents and minus 13 cents should apply Zones V and VI, respectively, of the Southwest Plains market. Such adjustments would provide Class I differentials for such zones that are the same as those now provided under the Wichita order.

Previously unregulated territories in Oklahoma and Beckham County should be included in a zone so that the resulting Class I differential at a plant located in such territory would be comparable with other plants that presumably would be the plant's primary competitors. On this basis, the territory near the Oklahoma City area and eastward to the Arkansas line should be included in Zone I. All of the territory in northeastern Oklahoma (the principal cities in such area, Tulsa and Muskogee, are currently included in the Oklahoma Metropolitan marketing area) should be included in Zone III. The other Oklahoma counties in the western part of the State and in the Oklahoma Panhandle should included in Zone II. The inclusion of such area in Zone II will establish a Class I differential which is less than the Class I differential in the Texas Panhandle area and slightly more than the Class I differential in portions of the Southwest Plains market that are located to the north and east of the currently unregulated territory.

Out-of-area location adjustments. Provision should be made also for location adjustments at plants located outside the Southwest Plains marketing area. The Class I price at plants located in most of the territory in seven states (Louisiana, Texas, New Mexico, Colorado, Kansas, Missouri and Arkansas) surrounding the Southwest Plains marketing area should be adjusted for location on a zone pricing basis. The location adjustments adopted herein for the zones essentially would provide in the outlying areas a level of Class I prices under this order that is applicable in those areas under other Federal orders.

No location adjustments should apply at plants located in certain portions of the States of Arkansas and Colorado. For plants located outside any designated zone in the State of Texas, plus location adjustments to the Zone I price should apply at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the city hall in Oklahoma City, Oklahoma. Such distance would be computed on the basis of the shortest hard-surfaced highway distance as determined by the market administrator. At all other out-of-area plants, a minus location adjustment to the Zone I price should apply at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma. The distance between such points should be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Except for the State of Arkansas and Bowie and Cass Counties in Texas, the out-of-area location adjustment provisions adopted herein are identical to those that were proposed by AMPI. AMPI testified that its proposed out-of-area location adjustments essentially would provide Class I prices under the merged order in those areas at levels currently prescribed by the four orders proposed to be merged or by adjacent Federal milk orders.

AMPI testified that such adjustments would be needed in the event milk is diverted to nonpool plants located outside the marketing area or milk is received at pool plants from producers and nonpool plants located in such areas.

AMPI proposed that the Southwest Plains Class I differential be increased for plants located to the south and west of the marketing area and decreased for plants located north of the marketing area. In Louisiana, three pricing zones would be established to reflect generally higher differentials established under the Greater Louisiana order. In Texas, 16 pricing zones would be established to reflect the higher differentials established under the Texas, Lubbock-Plainview, Texas Panhandle, and Rio Grande Valley orders. In New Mexico, two pricing zones would be established to reflect the higher differentials established under the Rio Grande Valley order. In Colorado, four pricing zones would be established to reflect the differentials established by the Eastern Colorado, Western Colorado and Rio Grande Valley orders. In Kansas, three pricing zones would be established to reflect the differentials established under the Wichita, Neosho Valley, and Greater Kansas City orders. In Missouri, three pricing zones would be established

to reflect differentials established under the Greater Kansas City and St. Louis-Ozarks orders.

In the State of Arkansas, AMPI proposed that location adjustments be applied in the manner currently provided under the Oklahoma Metropolitan order. Under current provisions, the Class I differential at any plant in Arkansas is $1.88 per hundredweight, minus 1.5 cents for each 10 miles that such plant is located from the nearer of Ponca City or Tulsa, Oklahoma.

Kraft opposed the use of the current Oklahoma Metropolitan location adjustment provision as a means of establishing a location value for milk received at plants in the State of Arkansas. A Kraft witness testified that AMPI's proposed pricing in Arkansas is inconsistent with the rest of AMPI's proposal to establish specific pricing zones in six states. In that regard, the witness held that the proposal failed to take into account the location value of milk at plants in Arkansas as determined under other Federal orders.

Kraft operates a supply plant located in Benton County, Arkansas that is currently pooled under the Oklahoma Metropolitan order. The current Class I differential applicable at the supply plant under the Oklahoma Metropolitan order is $1.685 per hunderdweight. Kraft testified that the appropriate Class I differential at such location is $1.77 per hundredweight because the Arkansas counties of Benton, Boone, Marion and Washington are currently included in a $1.77 zone under the St. Louis-Ozarks Federal order.

Kraft further testified that a distributing plant located in Washington County, Arkansas is currently regulated under the St. Louis-Ozarks order. If such plant were to become regulated under the Southwest Plains order, the Class I price at such plant under AMPI's proposal would decrease by approximately seven cents per hundredweight. Also, a plant located in Sebastian County, Arkansas that is currently regulated under the Fort Smith, Arkansas order would have its Class I price reduced approximately 25 cents per hundredweight in the event that such plant were to become regulated under the Southwest Plains order.

Class I prices established at pool plants regulate under Federal orders have been determined through the hearing process to be the minimum prices necessary to attract an adequate supply of milk to such locations. Should a plant located in Arkansas, or in other neighboring markets, become regulated under the Southwest Plains order, this would not change the minimum price necessary to attract an adequate supply of milk to that plant on a regular basis. For this reason, AMPI's proposal to establish Class I prices outside the marketing area that reflect Class I prices under other orders at such locations should be extended to include the State of Arkansas. On this basis the Arkansas counties of Benton, Boone, Marion and Washington should be included in a minus 21-cent zone. Such zone pricing would result in a $1.77 Class I differential at all plants in these counties. The same differential is applicable currently under the St. Louis-Ozarks order at such county locations.

The order also should include Carroll County, Arkansas, in the same minus 21-cent location adjustment zone. This is necessary in order to provide the same location value for producer milk that Kraft diverts to its nonpool plants located at Bentonville in Benton County and at Berryville in Carroll County. Carroll County adjoins Benton County on the west and Boone County on the east. Because Benton and Boone Counties would be in a minus 21-cent zone, Carrol County should also be included in the same pricing zone. This will result in the same location value for producer milk that Kraft diverts from its pool supply plant at Bentonville to either of Kraft's two nonpool plants in northwestern Arkansas. Thus, when it is necessary for Kraft to divert milk to one of its nonpool plants, producers would receive the same price for their milk whether such milk is received at the Bentonville or Berryville plant locations.

An additional modification should be made to AMPI's proposed out-of-area location adjustments for the two southwestern Arkansas counties of Little River and Miller. Under AMPI's proposal, minus adjustments would apply at plants in the two Arkansas counties on the basis of mileage from Tulsa, Oklahoma. Using a mileage of 270 miles from Tulsa, this would result in a Class I differential of $1.475 per hundredweight at a plant located in Texarkanna, Arkansas. The two Texas counties of Bowie and Cass that adjoin the Arkansas counties of Little River and Miller, however, would be included in a plus 40-cent zone. This would result in a Class I differential of $2.38 in these counties. Consequently, under AMPI's proposal, there could be a different in Class I prices at plants in the adjoining Texas and Arkansas counties of 90.5 cents per hundredweight.

There are two distributing plants located at Texarkanna, Texas, that are partially regulated under the Texas order. One of the plants is also partially regulated under the Central Arkansas order and it is expected that both plants would be partially regulated under the Southwest Plains order.

A handler that operates one of the Texarkana, Texas, plants testified that the plant would be partially regulated under the Central Arkansas, Southwest Plains and Texas orders. The handler opposed AMPI's proposed $2.38 differential for the Texas counties of Bowie and Cass. The witness stated that the proposed pricing could result in inequities between the two Texarkana plants in the event that they were fully regulated under different orders. For example, the witness testified that if one of the plants distributed 10 percent of its receipts in the Central Arkansas marketing area and became fully regulated under that order while the other plant became fully regulated under the Southwest Plains order on the same basis, the plants could be in competition with one another on 90 percent of their sales with Class I prices that differed by 21.5 cents per hundredweight. The witness computed the Class I price difference on the basis of the $2.38 differential AMPI proposed for the Texarkana area under the Southwest Plains order and a $2.165 differential that AMPI had proposed to be applicable at such location under the Central Arkansas order.[13]

The witness also noted that the Texas order provides for a $2.23 differential at Texarkana. The witness supported a Class I differential of $2.165 at Texarkana based on mileage from Little Rock, Arkansas.

In its brief, APMI revised its position with respect to a location adjustment for plants at Texarkana. The cooperative association stated that the Texas counties of Bowie and Cass should be in a plus 25-cent zone which would establish a $2.23 differential at plants located in such counties.

The entire four-county area (Little River and Miller in Arkansas and Bowie and Cass in Texas) should be included in the same price zone under the Southwest Plains order. These counties should be in a plus 25-cent zone to result in a Class I differential of $2.23. This differential will be identical to the Class

[13] Prior to April 1, 1982, the Central Arkansas order provided for a $1.82 differential at Texarkana. On the basis of amendments that became effective April 1, 1982, the order now provides for a plus location adjustment at Texarkana at the rate of 1.5 cents per 10 miles from Little Rock. On this basis the Class I differential at Texarkana would be $2.15 since Texarkana is 140 miles from Little Rock. The actual differential at the Texarkana plant would depend on its distance from Little Rock. Official notice is taken of an amended order for the Central Arkansas marketing area that was issued by the U.S. Department of Agriculture on February 23, 1982 (47 FR 8319).

I differential in these four counties under the Texas order.

Class I prices under the Texas order represent an alignment of prices among the various pricing zones that were found necessary to attract an adequate supply of milk to regulated plants that furnish the fluid milk needs of the market. In addition, it was found that prices in the eastern Texas area must reflect the location value of milk at various locations relative to the price of milk in Houston. The Class I prices established under the Texas order reflect increasingly higher Class I prices from north to south that are necessary to obtain an adequate supply of milk at various locations in the eastern part of Texas. It was concluded that a $2.23 Class I differential at Texarkana would result in a reasonable price alignment among distributing plants in the Texarkana area and at Marshall, Tyler and Houston and intermediate locations.[14]

Since location adjustments under the Southwest Plants order would recognize the alignment of Class I prices within the Texas marketing area, it is reasonable also for the Southwest Plains order to recognize the Class I price alignment between the Texas marketing area and the unregulated area around Texarkana. This is best accomplished by including the previously mentioned Texas and Arkansas counties in a location adjustment zone that will match the Southwest Plains Class I price with the Texas order Class I price in such counties.

It is not necessary to specify a fixed location adjustment for the remaining counties in the State of Arkansas in order to recognize the appropriate location value of milk in such areas under the Southwest Plains order. This is because the location value of milk in an East-West direction from Memphis, Tennessee to Oklahoma City, Oklahoma, is almost identical. Class I differentials established under current Federal orders are $1.94 at Memphis, Tennessee and Little Rock, Arkansas; $1.95 at Fort Smith, Arkansas; and $1.98 at Oklahoma City, Oklahoma. Consequently, it is only necessary to specify that no location adjustments should be applied to the Southwest Plains Class I price in the State of Arkansas, except for the six counties mentioned previously. This will result in a Class I differential at plants in all other counties in Arkansas of $1.98 and will provide appropriate price alignment with the Class I differentials established in such area under other orders.

There was no opposition to the remaining portions of AMPI's out-of-area pricing proposals and no alternative provisions were explored on the hearing record. Basically, the proposal provides for recognizing under the Southwest Plains order the Class I prices established under other Federal orders. The method of accomplishing this objective is set forth in the attached order provisions. A general description of the pricing zones established in various states and the other order Class I differentials that are reflected in the Southwest Plains location adjustments set set forth as follows.

In the State of Louisiana, three location adjustment zones should be established under the Southwest Plains order to reflect the higher location values of milk established under the Greater Louisiana order. The zones and location adjustments (with the Class I differential in parenthesis) are:

(1) The area comprising Zone I of the Greater Louisiana marketing area—plus 49 cents ($2.47).

(2) The area comprising Zone II of the Greater Louisiana marketing area and Zone 2 of the New Orleans-Mississippi marketing area—plus 68 cents ($2.66).

(3) The area comprising Zone III of the Greater Louisiana marketing area and Zone 1 of the New Orleans-Mississippi marketings area—plus 87 cents ($2.85).

In the State of Texas, 16 locations adjustments zones (in addition to the pricing zone that includes Bowie and Cass Counties as previously discussed) should be established under the Southwest Plains order to reflect higher location values of milk established by the Texas, Texas Panhandle, Lubbock-Plainview and Rio Grande Valley orders. The zones and location adjustments (with the Class I differential in parenthesis) are:

(1) The area comprising the Texas Panhandle marketing area, plus the counties of Lipscomb and Parmer—plus 27 cents ($2.25).

(2) The area comprising the Lubbock-Plainview marketing area—plus 44 cents ($2.42).

(3) The area comprising the Texas Counties of the Red River River Valley marketing area—plus 22 cents ($2.20).

(4) The areas comprising the following zones of the Texas marketing area:

(a) Zone 1 plus that portion of Hill County, Texas, in Zone 3—plus 34 cents ($2.32).

(2) Zone 2—plus 40 cents ($2.38).

(c) Zone 3 with the exception of territory in Hill County, Texas—plus 49 cents ($2.47).

(d) Zone 4—plus 52 cents ($2.50).

(e) Zone 5—plus 54 cents ($2.52).

(f) Zone 6—plus 59 cents ($2.57).

(g) Zone 7—plus 64 cents ($2.62).

(h) Zone 8—plus 70 cents ($2.68).

(i) Zone 9—plus 76 cents ($2.74).

(j) Zone 10—plus 87 cents ($2.85).

(k) Zone 11—plus 100 cents ($2.98).

(l) Zone 12—plus 109 cents ($3.07).

(5) The Texas portion of Zone I of the Rio Grande Valley marketing area plus 37 cents ($2.35).

Location adjustments under the Southwest Plains order should also be provided in all of the remaining Texas counties that are not specifically included in any of the previous pricing zones. All of such remaining counties are located in southwestern Texas and are not included within the boundaries of any Federal marketing area. The Class I price under the Texas order at any plant in this area is the Class I price applicable at the nearer of Midland, San Angelo, San Antonio nor Corpus Christi, Texas. Under the Southwest Plains order, the Class I price at any plant in this area shoud be the Zone I (Oklahoma City) price plus an additional 1.5 cents per 10 miles from Oklahoma City to the plant. Such price structure will reflect the increase in value of milk from north to south and maintain an approximate alignment of prices in such area with Class I prices in other Texas locations.

In the State of New Mexico, two location adjustment zones should be established under the Southwest Plains order to reflect the location value of milk provided under the Rio Gande Valley order in such areas. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the New Mexico portion of Zone I of the Rio Grande Valley marketing area, plus Catron and Hidalgo Counties—plus 37 cents ($2.35).

(2) The area comprising Zone III and the New Mexico portion of Zone II of the Rio Grande Valley marketing area plus Colfax and Union Counties—plus 22 cents ($2.20).

In the State of Colorado, four location adjustment zones should be established under the Southwest Plains order to reflect the location value of milk established by the Eastern Colorado, Western Colorado and Rio Grande Valley orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the Colorado portion of Zone II of the Rio Grande

[14] Official notice is taken of Departmental decision merging 5 Texas markets issued on May 2, 1975 (40 FR 20004).

Valley marketing area—plus 22 cents ($2.20).

(2) An area consisting of a north-south band of 21 counties of the Eastern Colorado marketing area in central and east central Colorado—plus 32 cents ($2.30).

(3) An area consisting of a north-south band of 12 counties in eastern Colorado along the western boundaries of Kansas and Nebraska—plus 10 cents ($2.08).

(4) All remaining counties in western Colorado—no adjustment ($1.98). Application of the Southwest Plains Zone I Class I differential in these counties approximates the $2.00 Class I differential provided under the Western Colorado order.

In the State of Kansas, three location adjustment zones should be established under the Southwest Plains outside the marketing area. Such adjustments reflect the location value of milk established by the Neosho Valley; Wichita, Kansas; and Greater Kansas City orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) An area comprising 18 north central and northwestern Kansas counties—minus 18 cents ($1.80).

(2) The area comprising the Kansas portion of the Greater Kansas City marketing area plus the six nonfederally regulated counties of Anderson, Chase, Coffey, Franklin, Lin and Osage—minus 24 cents ($1.74).

(3) The three nonfederally regulated counties Elk, Greenwood, and Woodson that are located between the current Neosho Valley marketing area and Zone I of the Wichita, Kansas Marketing area—minus 23 cents ($1.75).

In the State of Missouri, the Southwest Plains order should provide for three location adjustment zones to reflect the location value of milk established by the Greater Kansas City and St. Louis-Ozarks orders. The zones and location adjustments (with the Class I differential in parenthesis) are as follows:

(1) The area comprising the Missouri portion of the Greater Kansas City marketing area plus 40 additional central and northern nonfederally regulated counties—minus 24 cents ($1.74).

(2) The area comprising Zone II of the St. Louis-Ozarks marketing area-minus 31 cents ($1.67).

(3) The area comprising the Missouri portion of Zone I of the St. Louis-Ozarks marketing area plus an additional 26 nonfederally regulated counties in Southern Missouri—minus 38 cents ($1.60).

In addition to the previously described location adjustment zones, the Southwest Plains order should provide for location location adjustments at any plants that might be located beyond such zones on the same basis that is currently provided under the Oklahoma Metropolitan order. The Class I price at any such plant should be the Zone I price ($1.98) minus 10 cents less an additional 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma. Such distance should be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Plants that might be subject to this adjustment generally would be expected to be located in areas north of the marketing area and previously described location adjustment zones. Location adjustments computed at this rate for northern plants will reflect the lesser location value of milk for this market at the more distant northern plants relative to plants nearer the marketing area. Such adjustments will provide uniform pricing to handlers for milk received at the market from distant plant locations and will reflect the appropriate economic value of milk to producers in consideration of the point of delivery of their milk.

Location adjustment credit. Location adjustment credit should apply under the merged order to skim milk in Class I milk received in bulk from transferor-pool plants with certain limitations relative to the Class I use and receipts of milk at the transferee-distributing plant. The quantity of skim milk in Class I at the transferee-distributing plant should be increased by five percent after allocating the volume of skim milk assigned as Class I to receipts of fluid milk products from other order plants and unregulated supply plants and subtracting the pounds of skim milk in receipts of packaged fluid milk products from other pool plants. The quantity of skim milk in Class I at the transferee-distributing plant should then be reduced by the pounds of skim milk in receipts of milk from producers, 9(c) handlers and milk received by diversion from other pool plants. Any remaining quantity of skim milk in Class I would be eligible for assignment of Class I location adjustment credit to skim milk in Class I received in bulk from transferor-plants. Any assignment of Class I location adjustment credit should be made first to the transferor-plant at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies. Location adjustment credit for butterfat should be computed separately but in the same manner as set forth for skim milk.

The Neosho Valley and Oklahoma Metropolitan orders provide for assignment of location adjustment credit to that quantity of Class I milk received from transferor-pool plants that does not exceed an amount equivalent to 105 percent of the Class I disposition at the transferee-plant minus the volume of milk received directly from producers and 9(c) handlers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants. The Wichita order limits location adjustment credit on transfers between pool plants to the quantity of Class I disposition at the transferee-plant in excess of the volume of milk received from producers and 9(c) handlers in addition to the volume of receipts from other order plants and unregulated supply plants assigned to Class I. The Red River Valley order has location adjustment credit provisions similar to the Wichita order except that 95 percent of the receipts of milk received from producers instead of 100 percent are subtracted from the plant's Class I disposition in determining the quantity of milk which would be eligible for location adjustment credit.

AMPI proposed that a location adjustment credit apply to receipts of skim milk from other pool plants only to the extent that the quantity of skim milk assigned to Class I milk available for such assignment exceeded 95 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers of bulk tank milk plus the pounds of skim milk in receipts of packaged fluid milk products from other pool plants. Any assignment of Class I location adjustment credits would be made first to pool plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies.

Class I location adjustment credit on bulk milk transferred between pool plants should be limited. In the absence of any limits, the pool obligation of the transferor-plant operator for producer milk transferred to a pool distributing plant as Class I milk would be the Class I price adjusted for the location of such transferor-plant. The order should provide, however, that if the transferee-distributing plant has sufficient milk from local direct ship producers to cover all of its Class I sales, the transferor-plant would not receive location adjustment credit on the milk transferred because such milk was not

needed for Class I use at the distributing plant.

Class I location adjustment credits should be limited in order to encourage distributing plant operators to use locally-produced milk first for their Class I needs. If a handler were permitted to bring in distant milk from a pool plant for Class I use and channel the local supply into lower-valued uses, this would result in a lowering of returns to producers on the market. This is because the Class I milk involved would not be priced at the location of the distributing plant but rather at the supply plant location where the Class I price is lower. This would subvert the intent of the Class I price level at the distributing plant, which is to attract milk to that location for Class I use. It is this price, then, that must be reflected in the returns to producers.

Under the provisions of each of the current orders, a disallowed location adjustment credit results in the application of the central market f.o.b. Class I price at the transferor-plant even though both the transferor-plant and the transferee-plant may be located in areas where minus location adjustments are applicable. However, milk transferred to a pool distributing plant in Zone III (minus 10-cent location adjustment zone) from a pool plant with a greater minus adjustment (minus 33 cents, for example) should reflect the $1.88 location value when the usual location adjustment credit is disallowed rather than the higher $1.98 location value applicable in the central market. The provisions adopted herein would carry out that concept.

Under the merged order, the pricing of transferred milk that does not receive a location adjustment credit will reflect its value at the location of the transferee-plant. In order to accomplish this objective, the computation of any location adjustment credit that may be assigned should be based on the difference between the order's Class I prices applicable at the transferor-plant and the transferee-plant rather than at the difference between the Class I price at the transferor-plant and the central market Class I price as is provided under the current orders.

In addition, under the provisions adopted herein, the transferor-plant would have to account for such transferred milk at the Class I price applicable at the transferee-plant. For example, if milk were transferred from a plant in the no location adjustment zone to a plant in Zone II (plus 7-cent adjustment zone) and there was no location adjustment credit allowed for the transferor-handler, then the transferor-handler would have to account to the pool for such transferred Class I milk at the Class I price at the transferee-plant, i.e., a Class I differential of $2.05. Since the location value of milk in this example is the Class I differential price of $2.05, the order should not provide a credit for transportation on any of the transferred milk since the milk was not needed for Class I purposes at the distributing plant.

The intent of the limitation provided is to insure that producers on the market do not have their returns lowered through the granting of price credits on milk unnecessarily moved between pool plants for other than Class I use. In this connection, location adjustment credits should not apply to Class I milk shipped to pool plants in lower-priced zones. Although such shipment would not be a usual movement of milk, it could occur. For example, a plant in Zone I with receipts in excess of its fluid milk requirements might ship such excess to handlers in Wichita, Kansas, a lower-priced area. The Class I price level established under the order in Zone I and in the plus location adjustment zones are intended to attract milk to these areas for Class I use at such plant locations and not for reshipment to lower-priced zones. Such reshipments should not be encouraged through the granting of price credits on such milk movements. If the prices provided tend to attract greater quantities of milk than are needed locally, then consideration should be given to whether a lower price should be provided.

At the hearing, Kraft suggested two modifications to the location adjustment provisions concerning the assignment of location adjustment credits to milk transferred to distributing plants from supply plants. One modification would increase Class I use at a distributing plant from 105 to 115 percent prior to the assignment of location adjustment credit to milk received from supply plants. The other modification would provide for a pro rata assignment of location adjustment credits to transfers from two or more supply plants to a distributing plant without regard to the location of supply plants. Kraft stated that the modifications are necessary to help defray the cost of transporting milk from supply plants to distributing plants.

The fact that testimony on the record indicated that location adjustments do not fully cover the cost of hauling milk does not provide a sufficient basis for adopting Kraft's modifications. Both modifications are concerned with the manner in which available location adjustment credits are assigned to receipts from various sources rather than the rate of location adjustments that are provided under the order. With respect to the manner in which adjustment credits are assigned, both modifications are in conflict with the intent of the current provisions of the four separate orders. As previously stated, the current provisions limit the assignment of location adjustment credits to discourage the shipment of milk between pool plants for other than Class I use. To the extent that shipments between pool plants are necessary to meet Class I needs, location credits are limited to the nearest available alternative source of supply.

In determining the amount of location adjustment credit it must be recognized that it is impossible for a distributing plant to utilize 100 percent of its receipts in Class I uses. There are certain unavoidable Class II and Class III uses associated with a fluid milk operation and such uses are recognized in three of the four orders to be merged. In the Assignment of location adjustment credit, three orders provide for a five percent allowance for unavoidable Class II and Class III uses in the processing of fluid milk products. This five percent allowance should be continued under the merged order.

Under the three orders, two different methods are used to recognize the five percent unavoidable Class II and Class III uses in computing the amount of location adjustment credits assigned to bulk milk shipments from pool plants to distributing plants. The Red River Valley order subtracts 95 percent of producer receipts from a distributing plant's Class I disposition to determine the remaining amount of milk received from pool plants that may receive a location credit. The Neosho Valley and Oklahoma Metropolitan orders, on the other hand, multiply the distributing plant's Class I disposition by 105 percent before subtracting the receipts of milk from producers and other sources. Any remaining Class I disposition is then eligible for a location adjustment credit. The latter method was proposed by Kraft while the former method was proposed by AMPI.

Both methods are intended to reflect approximately the same amount of Class II and Class III uses. It is recognized, however, that the two methods can result in slight differences in the amount of location adjustment credits assigned.

In the record of this proceeding, the only marketing experience relative to this issue involved transfers between pool plants under the Oklahoma Metropolitan order. Under this order, Class I disposition is increased by five percent rather than by reducing receipts

by five percent in the computation of location adjustment credits. A handler who testified regarding the application of the location adjustment credit provisions of the Oklahoma Metropolitan order to the operation of his pool supply plant stated that such provision resulted in little, if any, disallowed location adjustment credit. In view of the current operating situation, this method should be continued under the merged order rather than adopting an alternative method at this time.

In addition to the above change, the procedure for computing location adjustment credits should be modified slightly to take into account that the merged order would permit milk to be received at a distributing plant by diversion from other pool plants. Milk that is diverted from a pool plant to a pool distributing plant moves to market in the same manner as direct-shipped producer milk. For this reason, the diverted milk should receive the same priority as direct-shipped milk in the assignment of location adjustment credits to transfers from pool plants. To the extent that there are sufficient receipts of milk from producers to meet fluid milk needs, shipments from pool plants are unnecessary to supply the Class I needs of distributing plants.

Pricing milk not needed for Class I use. The Class II and Class III prices established under each of the orders proposed to be merged are identical. Such prices should be continued under the merged order.

The identical Class II and Class III prices that are now applicable under each of the four orders are based primarily on two proceedings. One of these was the 39-market classification proceeding referred to earlier in this decision. The other proceeding, which was initiated after the closing of this hearing, was held to consider proposals to revise the method of calculating and announcing the Class II price under 29 orders, including the four orders proposed to be merged. The hearing, which was held on August 12–14, 1980, was a reopening of this proceeding with respect to the Class II pricing issue. Each of the four orders have subsequently been amended on the basis of the 29-market hearing. It is concluded that the Class II pricing procedure under each of the four orders is equally appropriate for the merged order for the identical reasons set forth in the Assistant Secretary's decision of July 8, 1981 (46 FR 36151) and such decision is adopted as part of this decision as if set forth in full herein.

Butterfat differential. A single butterfat differential should apply under the merged order. It should be computed by multiplying the average Chicago 92-score butter price for the month by 0.115, rounding such amount to the nearest 0.1 cent. The differential should be announced by the market administrator by the 5th day after the end of the month to which it applies. This differential is now applicable under the separate orders and was adopted in conjuction with the uniform classification plan now in use.

(d) *Distribution of proceeds to producers.* A marketwide pool should be used under the merged order as a means of distributing among all producers in the market the total proceeds derived from the use of their milk by all regulated handlers. Under marketwide pooling, a uniform price is paid to all producers regardless of how a particular producer's milk is utilized by the handler to whom it is delivered. By receiving payment at the uniform price, each producer shares in the higher-valued Class I milk in the market as well as the lower-valued Class II and Class III uses of milk. This type of pooling is now being used in each of the four markets and was proposed for use under the merged order.

The base-excess provisions for distributing returns to producers that were scheduled at the time of the hearing to become effective under the separate orders should not be included in the merged order. Proponent cooperative initially proposed that such provisions be continued in the merged order. However, the cooperative's representative testified that the cooperative did not want the base-excess provisions included in the event such provisions were terminated prior to the issuance of a decision on the proposed merger. The provisions were terminated in an order issued by the Assistant Secretary on June 12, 1980, and published in the **Federal Register** on June 27, 1980 (45 FR 43369). Accordingly, the base-excess provisions have not been included in the merged order.

Computation of uniform price. Under the order adopted herein, a uniform price for the preceding month would be computed and announced prior to the 11th day of the month. It would be computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value would then be divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In order to compute the uniform price the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool. Under the proponent cooperative's proposed order, handler reports of receipts and utilization would have to be postmarked on or before the 7th day of each month.

Three of the four orders currently provide that handlers must submit a report of their receipts and utilization on or before the 7th day after the end of the month. The Wichita order specifies the 8th day as the due date. Under each of the orders, the market administrator announces the uniform price by the 12th day of the month.

The dates for handlers to submit reports, for the market administrator to announce prices and for handlers to pay order obligations need to be structured so that sufficient time is available for each regulatory function to be performed. Also, many of the regulatory functions cannot be performed until a report has been submitted or an announcement of prices has been made.

Before the market administrator can announce the uniform price for the month that must be paid to producers, he must announce the class prices that handlers are to pay for receipts of producer milk. He must also obtain a report of each handler's receipts and utilization early in the month. This is necessary so that the market administrator has sufficient time to review and correct the report for obvious errors, compute each handler's value of milk at classified prices, compute the uniform price and announce such price. It is only after the uniform price is available that obligations to and from the producer-settlement fund can be determined and payments made to producers and cooperatives. Thus, in order for producers to receive payment at the earliest practicable date, the uniform price should be announced as soon as possible.

The timing for announcing the uniform price is dependent primarily upon when the handlers' reports of receipts and utilization are received by the marketing administrator. When consideration is given that such reports needs not be mailed until the 7th of the month and that the market administrator's office is not customarily open on weekends or holidays, it is concluded that the date for the announcement of the uniform price should be on or before the 11th day of the month. While the date for the announcement of the uniform price under the merged order is one day earlier than the date provided under the separate orders, the earlier date is necessary to minimize the impact of a change in the timing by which payments by a handler must be made to the market administrator. In that regard, as

discussed later in this decision, a handler's obligation to the producer-settlement fund would have to be received by the market administrator by the due date (the 14th day of the month under the merged order) instead of postmarked by the due date (the 13th under the individual orders).

An equalization (producer-settlement) fund should be used to enable all handlers in the market to pay the minimum uniform price to their producers. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. As adopted herein, payment by handlers into the producer-settlement fund must be received by the market administrator by the 14th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 15th day of each month. In the event that the balance in the producer-settlement fund on the 15th is insufficient to make the required payments out of the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The order should also provide that if the due date by which payment must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payment shall not be due until the next day on which the market administrator's office is open for public business. Also, in the event the application of such provision should result in a delay in payment to the market administrator, the corresponding payments by the market administrator to handlers, cooperative associations and producers may be delayed by the same number of days. Likewise, if payment from the producer-settlement fund by the market administrator to a handler is delayed, the handler may delay making the final payment to producers by the same number of days.

Payments to handlers by the market administrator from the producer-settlement fund should be made by the 15th of the month, the day after payments from handlers to the fund must be received by the market administrator. Currently, the separate orders require that payments from the producer-settlement fund be made by the 14th day of the month. The payment date by which the market administrator can make payments from the producer-settlement fund, however, is contingent upon the date that payments from handlers are credited to the producer-settlement account maintained by the market administrator. Thus, in order to assure that the market administrator could make payment from such account by the 15th of the month, it is necessary that the merged order provide that handler payments to the account be physically received by the market administrator on the preceding day, the 14th of the month.

Handler payments for producer milk. Handlers under the merged order should be required to make a single partial payment and a final payment for milk received from producers. Partial payments to producers for milk received during the first 15 days of the month should be mailed (postmarked) or delivered to producers on or before the last day of the month. Lump-sum partial payments to cooperative associations for the milk of producers for whom the cooperative is marketing such milk (including 9(c) milk and plant milk) should be made two days earlier. For all milk received during the month, handlers should be required to pay the uniform price for such milk. Payments of the uniform price by handlers to producers should be mailed (postmarked) or delivered to the producer by the 17th of the month and to cooperative associations 2 days earlier. Handlers also should be required to pay a cooperative for 9(c) milk and plant milk by the 15th of each month.

Under the Wichita order, partial payments to producers are due on the 27th of the month. Under the other three orders, partial payments to producers are due on the last day of the month. Partial payments to cooperatives are due on the 24th of the month under the Wichita order, the 27th under the Red River Valley and Oklahoma Metropolitan orders and the 2nd day before the end of the month under the Neosho Valley order. The amount of the partial payment due each producer is determined by multiplying the rate of such payment by the hundredweight of milk received from such producer during the first 15 days of the month. The rates of partical payments are discussed later.

The final payment to producers under the four orders is determined by multiplying the uniform price for milk adjusted by the butterfat differential and location adjustments to producers by the respective hundredweights of milk received from each producer during the month. The payments are then reduced by the amount of the partial payment made for milk received during the first 15 days of the month.

AMPI proposed that final payment to producers be at the uniform price(s) for the applicable month adjusted for the butterfat content of the milk and the location of the receiving plant. Deductions from the final payment to producers would be made for two partial payments, any authorized deductions, and marketing services performed on behalf of such producers.

For milk delivered during the first 15 days of the month, the cooperative proposed that a handler make a partial payment to the market administrator for such milk by the 23rd of the month. If the handler received milk directly from producers and a cooperative was not marketing their milk, the handler could make payment to the individual producers on or before the 23rd of the month in lieu of making such payments to the market administrator.

AMPI proposed that on the 24th of the month, the market administrator transmit handler payments for milk of producers to cooperative associations on behalf of their member producers and to a handler who elects to make payment to individual producers. In making such payments the market administrator would remit to the cooperative and such handler partial payments received from handlers for milk delivered during the first 15 days of the month. Handlers receiving payment from the market administrator to pay individual producers would be required to make such partial payment on or before the 25th of the month. On the 25th of the month, the market administrator would then make partial payment to producers who are not receiving payment from either a cooperative association or a handler.

For milk received during the second half of the month, the cooperative proposed that a handler make partial payment for such milk on or before the 8th of the following month to the market administrator or to the individual producers. On the 9th of the following month, the market administrator would transmit to a cooperative association the partial payment due its members. A handler who elects to pay individual producers would also have the option of transmitting to the market administrator by the 8th day of the following month the second partial payment due the individual producers. The market administrator would then return such funds to the handler by the 9th day. The market administrator and the handler receiving partial payment funds from the market administrator to pay producers would be required to make payment to the individual producers on the 10th of the following month.

The cooperative proposed that a final payment for producer milk received during the month be made to the market administrator by the 20th of the following month. A handler who elects to pay individual producers directly instead of making such payment to the market administrator could do so by making final payment to such producers by the 20th of the following month. On the 21st of the following month, the market administrator would pay a cooperative the amount due the members of the cooperative and pay to the handler who elects to pay individual producers the amount due the individual producers. The market administrator and the handler receiving payment funds from the market administrator would then make the final payment to individual producers on the 22nd of the following month.

Two key elements of AMPI's proposed method of paying producers and cooperative associations for milk are not adopted herein. As set forth in detail under the next heading, handlers would not be obligated to pay all order obligations for milk to the market administrator, who in turn would distribute such money, in terms of the uniform price, to producers, cooperative associations and handlers who elect to pay producers. In addition, handlers would not be required to make 2 partial payments and a final payment to producers and cooperative associations. In lieu of such proposed changes, as also discussed in detail under the next heading, it is concluded that except for a handler who fails to make payment of any order obligation on a timely basis, handlers should be permitted to pay producers and cooperative associations directly for milk received from them. Payments to producers and cooperatives would consist of a partial payment for milk received during the first 15 days of the month and a final payment at the uniform price for all milk received during the month less the partial payment.

Under the payment plan adopted herein, the payment schedule is predicated on the filing of handler reports by the 7th day of the month and the announcement of the uniform price by the 11th day of the month. After the uniform price is announced, handlers' obligations to the producer-settlement fund can then be computed. Handlers would be required to make payment of their obligation to the producer-settlement fund so that it is received by the market administrator by the 14th day of the month. The market administrator then would make payment from the producer-settlement fund on the following day to handlers with less than market-average Class I utilization. Handlers then would be required to make final payments to producers by the 17th day after the end of the month. In those cases where a cooperative is collecting the payment for milk of producers, handlers would be required to make final payment two days prior to the date payments are due individual producers. Handlers would make partial payments to producers on or before the last day of each month for milk received during the first 15 days of the month. The remainder of the handler's obligation for milk received during the month from producers and cooperatives would be made by the handler in his final payment on the 17th of the following month. If a cooperative is collecting the payments for milk of producers, handlers would be required to make payment two days prior to the date paymments are due individual producers.

The partial payment date adopted herein, the last day of the month, is the same date provided for such payment to producers under three of the separate orders. With reapect to payments to cooperative associations, such payments should be made two days prior to the last day of the month to enable the cooperatives to pay producers for whom they are marketing milk on the last day of the month, the same date payments are due to other producers who are paid directly by handlers.

The final payment date adopted herein, the 17th day after the end of the month, is the earliest practicable date for handlers to make payment to producers. Payment at any earlier date would not be feasible since handlers who operate plants with less than market-average Class I utilization should not be expected to make payment to producers prior to receipt of funds due them from the producer-settlement fund. Even then, final payment on or before the 17th is only practical if the market administrator has funds available to dispense from the producer-settlement fund on the 15th of the month.

To insure that payments may be made from the producer-settlement fund on the 15th day of the month, the order should provide that a handler who is required to make an "equalization" payment to the producer-settlement fund (the amount by which the handler's utilization value of producer milk receipts at his plant exceeds the market-average utilization value of all producer milk) shall make payment in such manner so that it is received by the market administrator on or before the 14th day of the month. It is necessary that the market administrator have physical possession of these funds on or before the due date in order for the market administrator to make payment from the producer-settlement fund on the following day to handlers whose utilization value of producer milk receipts is less than the marketwide utilization value of all producer milk.

The order should also provide that a handler who fails to pay an order oligation within 3 days of the due date, and as a consequence is then required to pay all order obligations due producers and cooperative associations to the market administrator, shall make such payments in a manner so that they are received by the market administrator at least one day prior to the date by which the handler would otherwise be required to pay such obligations to payees. This is necessary since the market administrator is required under the order to make payment on behalf of such handler to producers and cooperative associations on the following day. Payment by the market administrator on such dates would coincide with the date the handler would otherwise be required to make such payments under the order. Such payment obligations of the "delinquent" handler would include the partial and final payments to producers and cooperatives for producer milk (including milk from a plant operated by a cooperative) and payment to a cooperative association for marketing services performed on behalf of producers.

All other order obligations of handlers may be mailed to the payee and shall be deemed to have been made on a timely basis if postmarked by the U.S. Postal Service on or before the due date. Payment of such obligations would include amounts due the market administrator for administrative expenses, deductions from payments to producers for marketing services performed by the market administrator and audit adjustments. In the case of a handler who is current in the payment of all order obligations, it would also include the partial and final payments due producers, the amounts deducted from payments to producers which are due cooperative associations for marketing services performed on behalf of such producers, and audit adjustments due producers and cooperative associations. Likewise, any payment of order obligations by the operator of a partially regulated distributing plant shall be deemed to have been made on a timely basis if postmarked by the U.S. Postal Service on or before the due date.

Under the terms of the order, the market administrator would have the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payment, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

Under the adopted payment procedure, there is no time provided for checks to clear and, hence, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arrangement. However, with the payment schedule herein, the market administrator will need to make payments from the producer-settlement fund of the order to certain handlers the day after the payments are due the fund. Such payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. Time will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund.

Also, in the event payments by handlers regulated under the order are more than 3 days late, such handlers would be required to channel their payment for producer milk through the market administrator. Under such procedure substantially greater amounts of money would be transferred in and out of accounts maintained by the market administrator and, as a consequence, the receipt of a bad check of a substantial sum could render such an account insolvent.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payment tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Method of paying producers and cooperative associations. The merged order should provide that producers be paid by the handlers receving their milk in the same manner as now provided in the four separate orders. However, the order should provide that any handler who is more than 3 days late in the payment of any obligation under the order shall then be required to pay all order obligations for producer milk to the market administrator who, in turn, would distribute such money (in terms of the uniform price) to producers and cooperative associations.

Each of the four orders provides for the payment of producers by the handlers who receive their milk. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. As previously discussed, this exchange of money is accomplished through a "producer-settlement fund" maintained by the market administrator.

AMPI proposed that the market administrator collect from handlers all order payments due producers. However, handlers could elect to pay the individual producers supplying them with milk. As proposed by the cooperative, any handler who was not delinquent with respect to any of his payment obligations under the order and who wished to pay individual producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay producers. Alternatively, the handler could make payment to individual producers prior to the time such amount is payable to the market administrator. In such instance, the handler would then offset such amounts paid to individual producers against any obligation due the market administrator for such producer milk.

The cooperative proposed that payment not be made to any handler by the market administrator if he determines that the handler is or was delinquent with respect to any payment obligation under the order. Once the market administrator determines that a handler is delinquent (one day or more late) in the payment of any order obligation, payments to producers and cooperatives supplying milk to the handler would then be made by the market administrator until such handler had once again demonstrated his ability to meet his financial obligations by having paid all payment obligations prescribed under the order to the market administrator on or before the due dates for 3 consecutive months. In this regard, the cooperative proposed that the market administrator consider not only payments from the handler to the market administrator but whether payments by the handler to the individual producers had been made by the specified due dates.

The cooperative requested that a producer-settlement fund be used as a mechanism to receive the money due producers from handlers. The fund would serve as a conduit to move money from handlers to the market administrator who would then transmit such funds to producers and cooperative associations.

The cooperative proposed that the market administrator make payment to a cooperative association that so requests with respect to those producers for whom it markets milk. It also proposed that the market administrator make payment to those producers for whom the cooperative association is not collecting payments unless the handler receiving the producer's milk requests that such payments be made to him for subsequent payment to producers.

Proponent urged the adoption of its proposed payment arrangements on the basis that it would provide handlers with a stronger incentive for making prompt payment of their order obligations. The cooperative claimed that since handlers tend to pay the market administrator on a timely basis all producer monies should be channeled through him rather than allowing handlers to pay producers directly. Also, proponent contended that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers must borrow money or use their own capital.

A representative of a handler that operates a pool supply plant regulated under the Oklahoma Metropolitan order opposed the adoption of such payment requirements under the merged order. In his opinion, the evidence presented by the merger proponent did not establish conclusively that handlers were "delinquent" in paying their obligations to the market administrator, producers and cooperative associations under the four individual orders merged herein.

A spokesman for the Milk Industry Foundation (MIF), on behalf of nearly one-half of the handlers regulated under the four individual markets, proposed that handlers be required to make payment of their order obligations through the market administrator only under certain conditions. He also proposed that a handler who is up to 3 days late on three occasions in paying his order obligations during the immediately preceding 12-month period

be required to make all prescribed payments to the market administrator for 3 consecutive months. A handler who makes any payment more than 3 days late would be required to pay immediately all of his order obligations for producer milk to the market administrator for 3 consecutive months.

If the order is to serve its intended purpose of promoting orderly marketing in the marketing area, it is essential that handlers under such order pay their obligations on a timely basis. Currently, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place then in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on a timely basis. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a source of funds for operating purposes.

For these reasons, the order should be structured to encourage prompt payment by handlers of order obligations. While the institution of late-payment charges under the order should provide a strong incentive for handlers to pay their order obligations when due, some further incentive should be provided. In this regard it is noted that the principal cooperative association has been imposing a late-payment charge on accounts that are overdue. However, the incidence of late payments to the cooperative has continued. On the basis of that experience, it is concluded that the order should provide a special payment arrangement for a handler who might otherwise decide to use money due producers as a source of funds and thus intentionally pay his order obligations late.

The special payment arrangement for delinquent handlers proposed by MIF should be provided under the merged order. Any handler who is more than 3 days late in the payment of any order obligation would not be permitted to pay producers and cooperative associations directly for 3 consecutive months. During those 3 months the handler would be required to pay all of his obligations for producer milk to the market administrator who, in turn, would pay the producers and cooperatives supplying the handler. Except for the length of time involved before this payment arrangement is invoked, the proposal on behalf of handlers is essentially the same as the payment arrangement proposed by the merger proponent.

Producers and handlers in the four markets are in general agreement that the adoption of a provision requiring a handler who is late in paying any order obligation to relinquish his right to pay producers directly would be an effective tool for obtaining compliance with the order's payment provisions. Hence, the order should provide that handlers who are more than 3 days late in the payment of an order obligation must channel payments to producers through the market administrator. This payment procedure is needed to deter handlers who fail to make a payment by the due date from deferring such payment until the next month's due date. In the absence of such a requirement, there would be little incentive for a handler to pay an overdue account since no additional penalty would apply under the charge on overdue accounts until the same day of the next month. By structuring the merged order in this fashion, handlers will have two incentives for complying with the order's payment provisions. Thus, if a handler pays his obligation by the due date, he avoids a charge on overdue accounts and he may continue to pay producers and cooperative associations directly. On the other hand, if the handler does not pay an order obligation by the due date, he will be subject to a charge on overdue accounts. If such handler pays his order obligation within 3 days after the due date, he may continue to pay producers and cooperatives. However, if the handler does not make payment within 3 days after the due date, he would not only be subject to the charge on overdue accounts but he would forfeit his right to pay producers and cooperatives directly.

Also, the payment plan adopted herein tends to be self-policing, since a handler would not be permitted to make payment directly to producers and cooperative associations if he fails to pay any order obligation within 3 days of the due date. Under this procedure, a producer or cooperative association would be aware immediately that the handler who is buying his milk has failed to pay an order obligation and thus may represent a financial risk with respect to future milk deliveries.

Presently, under the separate orders a handler may pay all producers the blend price and at the same time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, producers presumably would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, producers would be aware of the handler's financial difficulty in the first month that such handler has failed to pay an order obligation on a timely basis (within 3 days of the due date—a time limit suggested by a representative of handlers as a basis for determining when a handler should forfeit his right to pay producers for a temporary period). Producers then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment amounts to the point that they would be placed in a severe economic bind.

Partial payments to producers and rate of such payments. The merged order would provide for a handler to make one partial payment each month for milk received from producers. The rate of the partial payment for the months of March–July would be the Class III price for the preceding month and during the months of August–February would be the Class III price for the preceding month plus one dollar. The rate of payment during the months of August–February would be further adjusted by the location adjustment applicable at the receiving plant. Both the partial and final payment to producers could be reduced by the amount of deductions authorized in writing by the producers. Also, a handler would not be required to make a partial payment to any producer who quits delivering milk prior to the 25th day of the month.

AMPI proposed the use of two partial payments and a final payment in settlement for milk received from producers instead of the one partial and final payment provided under the four individual orders. As previously noted, proponent cooperative proposed the revised payment procedure as a means of requiring handlers to pay producers for milk on a more current basis. Its spokesman indicated that under the present payment plan producers are now paid from 15 to 30 days late for milk produced during the first 15 days of the month. At the time of final payment, producers are paid from 15 to 45 days late for milk produced during the preceding month. The cooperative held that producers should not be required to wait such lengthy periods of time for the money due them from handlers. The spokesman stated that under the current

payment plan producers have to forego the use of funds invested in the dairy operation or pay interest upon the money borrowed for such capital investment. For this reason, proponent held that an accelerated rate of payment by the handler for milk received from producers was warranted.

Kraft opposed the addition of a second partial payment because it would accelerate the handler's payments to producers. Kraft's witness noted that, while both producers and handlers are faced with cash flow problems, handlers are burdened with a disproportionate share of such problems. He indicated that an economic slow-down and rising interest rates have significantly delayed payments to milk handlers while producers have continued to receive timely payments because of payment dates prescribed by the milk order and enforced by the Federal government.

A spokesman for MIF opposed the requirement that handlers make two partial payments to producers for their milk each month. The primary basis of the handlers' opposition to the proposed requirement was that it would create a cash flow problem for them. The handlers contended that they would be required to make payment to producers prior to the time in which they could receive, package, distribute, invoice and collect for the milk products sold. The spokesman for handlers noted that if the proposals were adopted processors would either have to use their own cash reserves or borrow the funds needed to meet the accelerated payment procedure. The increased cost to the handler would then be passed on to the consumers. Handlers also claimed that the extra partial payment would increase their office costs due to the increased reporting requirements and require additional audit work by the market administrator.

The hearing evidence does not support the adoption of the proposal for a second partial payment. There is no indication that marketing conditions are such that it is necessary that the order require more than one partial and a final payment to producers each month.

While the Act authorizes the setting of payment dates under an order, it does not specify how frequently handlers must pay producers. The payment dates are customarily established under an order on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually agreeable. On this basis, each of the four orders now provides for one partial payment and one final payment by handlers to producers each month.

Under the proposal being considered, handlers would be required each month to make a second partial payment to producers. While the proposal by AMPI was not opposed by an producers, none of the handlers under the four orders to be merged supported the proposal. All handler representatives who testified at the hearing opposed a second partial payment to producers. Because there are conflicting opinions between producers and handlers as to whether a different payment arrangement between these parties is desirable under the order, more burden is placed on proponents to show that a second partial payment for milk is essential to the maintenance of orderly marketing in the merged marketing area and that the order must be structured to provide that a second partial payment be made to producers by regulated handlers.

In general, the argument advanced by proponent cooperative for more frequent payments was the need to improve the cash flow of producers. Proponent contended that producers are required to make payment for production facilities and supplies prior to using such items and should be paid more frequently so that they will be more able to meet their financial commitments on a timely basis. It is evident from the record, however, that the cash flow of members of the cooperative most likely would not be affected by structuring the order to require handlers to make more frequent payments. The spokeman for the cooperative indicated that the cooperative had no plans to change the current dates on which members of the cooperative are paid.

The cooperative's spokesman also stated the cooperative at times makes payment to producers in advance of the date on which it collects payment from handlers for such milk. This, however, is a business practice that has been in existence for some length of time and does not by itself provide sufficient reason to require that handlers make a second partial payment to producers.

AMPI proposed that the partial payment rate for the months of March–July be the Class III price for the preceding month. For the months of August–February, the cooperative proposed that the rate be the Class III price for the preceding month plus one dollar. The rate for the months of August–February would be further adjusted by the location adjustment applicable at the receiving plant.

The partial payment rate for each month under the Neosho Valley, Red River Valley and Oklahoma Metropolitan orders is the Class III price for the preceding month. Under the Wichita order, the partial payment rate is 110 percent of the previous month's Class III price.

AMPI proposed that the partial payment rate during the months of August–February be higher than the rate for the months of March–July as a means of providing two fairly equal payments for dairy farmers for milk delivered to pool plants during the month. The cooperative's witness contended that the use of the Class III price for the preceding month plus $1.00 would approximate the uniform price during the months of August–February. A lower payment rate was proposed for the months of March–July because of the possibility that the uniform price under the merged order might not exceed the Class III price for the preceding month by one dollar.

The spokesman for MIF opposed the proposed $1.00 per hundredweight increase in the partial payment rate for the months of August–February. He opposed the increase on the basis that it would require plants with a high Class II/Class III operation to pay in excess of their obligations at the class prices under the order and would accelerate handler payments to producers.

Kraft also opposed any increase in the partial payment rate for the months of August–February. Kraft's witness contended that the rate increase would accelerate handler payments to producers and thereby cause a cash flow problem for handlers.

Producers under the Wichita order have been receiving partial payments since November 1978 in excess of that proposed for the merged order. Because Wichita producers receive a partial payment amounting to not less than 110 percent of the previous month's Class III price, they received a partial payment of $11.20 per hundredweight (110 percent of the October 1978 Class III price of $10.18) in November 1978 or $1.02 per hundredweight in excess of the previous month's Class III price. Because the Class III price has exceeded $10.00 in each succeeding month, the partial payment for each month since November 1978 has exceeded the previous month's Class III price by more than the $1.00 per hundredweight that AMPI proposed for the months of August–February.

The proposed partial payment rate represents a compromise among the partial payment rates that apply under the four orders and should be adopted. For the months of March–July, the payment rate would be unchanged from the one that currently applies under the

Neosho Valley, Red River Valley and Oklahoma Metropolitan orders. For the Wichita area, the proposed rate for such months would represent a nine percent reduction (percentage change in reducing rate from 110% to 100%) in the current rate. For the months of August–February, the partial payment rate adopted herein represents a $1.00 per hundredweight increase for the Neosho Valley, Red River Valley and Oklahoma Metropolitan orders. For the Wichita area, the proposed rate for the months of August 1979–February 1980 would have averaged 13 cents per hundredweight less than the partial payments made to producers under that order during such months. This decrease amounts to one percent of the average blend price that prevailed during such period.

An objection raised by handlers to the partial payment rate for the months of August–February was that a handler operating a plant with a high Class II or Class III utilization could be assessed a partial payment in excess of the utilization value of the milk at the class prices during the first 15 days of the month. The possibility of such overpayment is quite unlikely since proprietary handlers usually operate plants with Class I utilizations in excess of the marketwide average.

The merged order should provide that handlers need not make a partial payment to any producer who no longer is delivering milk to the market on the 25th of the month. In the absence of such provision, the possibility exists that a handler might over-pay a producer. This could result if a producer ceased delivering milk to a handler shortly after the 15th of the month and the butterfat content of the milk delivered by such dairy farmer averaged consideredly less than 3.5 percent for the month. Under the provisions adopted herein, such producer would receive no partial payment if he quits delivering milk to a handler prior to the 25th of the month. If he quits delivering on or after the 25th of the month, such handler would have received in most instances a minimum of 10 days' production in addition to the 15 days' production initially received from such producer. In such circumstance, if the handler overpaid for the butterfat in the milk received during the first 15 days of production, he could recover such overpayment in making payment for that milk received after the 15th of the month.

The merged order should provide for deductions authorized in writing to be made from both the partial and final payments to producers. Only those amounts to assignees that have been paid by the handler prior to the date payment is otherwise due the producers may be deducted from the amounts due producers.

AMPI proposed that deductions authorized by the producer be made from the two partial payments that the cooperative proposed to be used in paying for milk received from producers. While provisions for a second partial payment are not adopted herein, the intent of AMPI's proposals can be accommodated by permitting the authorized deductions from payments for milk delivered during the last half of the month to be deducted from the final payment to the producers.

Kraft supported AMPI's proposal that handlers be permitted to make authorized deductions from both the partial and final payments to a producer. Its spokesman noted that this would result in a producer receiving two relatively equal payments during the month. Currently, producers under the orders which permit deductions for assignments only from the final payment to producers receive one large payment and one small payment each month. A further reason advanced by Kraft for permitting deductions to be made from both the partial and the final payment to producers is that it would allow a producer to assign to creditors a greater proportion of the monthly payment that is due the producer.

Kraft's proposal that assignments to creditors from the partial and final payment be paid to assignee only at the time of the final payment should not be adopted. Kraft contended that the majority of the bankers preferred receiving only one assignment check per month. Some of the bankers who receive assignments twice a month put the first check in a hold file until the second check is received and then credit the assignee's account. Even though assignees may prefer one payment per month, there appears to be no reason why handlers should have the use of money that is assigned to creditors by a producer. It is concluded, therefore, that only those deductions that have been paid to an assignee by the date of the partial or final payment may be deducted from payments due a producer, as AMPI proposed.

Payments by handlers for milk received from a pool plant operated by a cooperative association. The merged order should specify that any handler who receives bulk fluid milk or bulk fluid cream products during the month from a pool plant operated by a cooperative association shall make a partial and final payment to the cooperative for such purchases. Such handlers would be required to make a partial and final payment to the cooperative for such plant milk by the same dates such a handler would be required to pay a cooperative for milk received directly from producers' farms when the cooperative moves the milk to such plant as a bulk tank handler. The same partial payment rates used by handlers to pay cooperatives for milk received in their capacity as a bulk tank handler should be applicable in paying the cooperative for milk and/or cream purchased from the cooperative's pool plant. However, the buying handler should be permitted to adjust the partial payment rate in any month to reflect the butterfat content of the milk purchased, if he so desires. The final payment should be determined by multiplying the quantity of all bulk fluid milk products and/or bulk cream products received during the month from the cooperative's plant that were classified in each class by the applicable class prices as adjusted by the butterfat differential, less the amount of the partial payment. The Class I price applicable to such transfers would be the Class I price at the buying handler's plant. The buying handler also would be responsible for paying the administrative assessment applicable to such milk.

Payments for such milk by the buying handler should be made directly to the cooperative association unless the market administrator determines that such handler was more than 3 days late in making any payment obligation under the order. In that event, the payment would be made through the market administrator who, in turn, would transmit the money to the cooperative. The handler would be required to make all of his payment obligations to the market administrator for 3 consecutive months before he would again be permitted to pay the cooperative directly.

The proponent cooperative suggested that payment for such plant milk be made on the same basis it proposed for the payment for all other producer milk under the merged order, i.e., all order obligations of handlers for milk received from producers would be paid to the market administrator who, in turn, would pay producers. Proponent also suggested that two partial payments be made to producers on such milk shipments. Since the proponent's payment arrangement has not been adopted under the merged order for the reason previously set forth in this decision, this aspect of the cooperative's proposal need not be discussed further at this point.

Most of the milk marketed by the proponent cooperative under the four

orders proposed herein to be merged is moved to distributing plants directly from the farm. Some milk under the Wichita, Kansas, order is shipped to pool distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant at Hillsboro, Kansas.

Irrespective of the supply arrangements used, the producers involved are supplying milk for fluid markets and should be assured of receiving payment for their milk. Such assurance is essential to the orderly marketing of milk and the maintenance of an adequate supply of milk for consumers. The incorporation within the merged order of specific payment requirments by handlers for such shipments received from a cooperative association's plant will enhance the ability of the cooperative association to collect for such plant shipments. By providing specific payment dates under the merged order, applying a late-payment charge on any payment that is not made on or before the due date, and requiring any handler who is more than 3 days late in making any payment obligation under the order to channel all of his payment for producer milk through the market administrator, there should be considerable incentive under the order for the buying handler to comply with the order's payment provisions.

The order should provide that the buying handler may adjust the partial payment rate during any month to reflect the butterfat content of the milk purchased if he desires to do so. This option will permit handlers who buy skim milk from a cooperative's pool plant to adjust the applicable price level downward for milk containing less than 3.5 percent butterfat. If the price were not adjusted to reflect the lower butterfat content of the skim milk, the handler would be paying in excess of the classified use value for all such plant milk shipments during the first half of the month. At the time of the final settlement on all such shipments the handler then would be due a credit from the cooperative. Such a situation can be avoided by allowing a handler to adjust his partial payment to reflect the butterfat content of milk purchased from a cooperative's pool plant.

With regard to the Class I price to be used in computing a handler's final monthly settlement for plant milk received from a cooperative, AMPI proposed that such price should be the higher of the Class I prices applicable at the plant of the buying handler or the cooperative's selling plant plus the applicable administrative assessment. Under such pricing arrangement, the Class I price applicable at the location of the transferee-plant would apply if milk were transferred from a lower-price zone to a higher-price zone. Conversely, the Class I price applicable at the location of the transferor-plant would apply if milk were transferred from a higher-price zone to a lower-price zone. Proponent contended that payment at the higher of the two prices is necessary to be consistent with the Act which states in part that a cooperative that is reblending the proceeds from the sale of its milk may not sell milk to any handler in any market at less than the class prices applicable under the order.

The cooperative's proposal to require payment at the higher of the prices applicable at the transferee-plant or the transferor-plant should not be adopted. Rather, payment by handlers for milk transferred from a cooperative's plant should reflect the Class I price applicable at the location of the transferee-plant regardless of whether the milk is shipped to a higher-price zone or a lower price zone. The buying handler also should be responsible for paying the applicable administrative assessment.

Under normal circumstances, transfers of Class I milk from a cooperative's plant to a distributing plant would be from a lower-price zone to a higher-price zone. In such case, the distributing plant operator should be required to pay the cooperative directly for such milk at the Class I price applicable at the distributing plant. This price would generally reflect the order value of milk at the cooperative's pool plant plus the cost of transporting it to the distributing plant. This is the same price that would apply to Class I milk received at the distributing plant directly from the farms of producers or from a cooperative acting as a bulk tank handler.

Although it is unlikely in this merged market, Class I milk could be transferred from a cooperative's pool plant located in a higher-price zone to a pool distributing plant in a lower-price zone. For this type of milk movement, the cooperative in its capacity as a pool plant operator receiving milk at its plant should be required to account to the pool at the Class I price applicable at its plant. However, it would be inappropriate for the order to enforce such price in the final settlement for such milk between the distributing plant operator and the cooperative association. This would result in the distributing plant operator having to pay a higher Class I price for milk received from producers via the cooperative's plant than for milk received from producers either directly or by delivery from a cooperative acting as a bulk tank handler. Also, the order Class I price on such transfers would be higher at the receiving handler's plant than the order Class I price applicable to milk received from producers by other regulated handlers at the same general location as the transferee-handler. This would result in nonuniform class prices to handlers. Requiring payment to the cooperative at the Class I price applicable at the location of the transferee-plant satisfies the requirement that a cooperative association may not sell milk at less than class prices.

It is recognized that requiring the cooperative association to account to the pool at the higher Class I price applicable at its plant in this case probably would make the transfer uneconomic to the cooperative. The cooperative would have to decide, of course, if it should undertake this kind of milk handling arrangement.

(e) *Administrative provisions:*

Charges on overdue accounts. The order should provide for the application of a charge on handler obligations that are overdue. The charge should be one percent per month (12 percent annually) and should apply on the first day the payment is past due and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due from handlers to the producer-settlement fund, to producers and cooperative associations, for order administration, for marketing services and for audit adjustments.

Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, the order should provide that all late-payment charges shall accrue to the administrative expense fund.

Currently, the Wichita and Red River Valley orders provide for charges on overdue accounts. Such charges accrue to the account that is overdue. The Neosho Valley and Oklahoma Metropolitan orders contain no provisions for charges on overdue accounts. The two orders with charges on overdue accounts provide that the unpaid obligation of a handler shall be increased one-half of one percent on the 1st day of each succeeding month until such obligation is paid. Under each of the two orders, the charges apply on

handler obligations due the producer-settlement fund, on certain handler obligations resulting from audit adjustments and on the handler's pro rata share of the expense of administering the order. Under the Red River Valley order, a late-payment charge also applies on the amount that handlers deduct from payments due producers to cover the cost of providing marketing services if such amounts are not transmitted by such handler to the party performing the marketing service by the date specified in the order.

AMPI proposed that any unpaid obligation of a handler that is due producers, cooperative associations and the market administrator be increased one percent per month, beginning on the first day after the due date, and on each date of subsequent months following the day on which such obligation is due. The cooperative proposed that late-payment charges accrue to the fund to which payment is due except that charges resulting from late payment of producers should accrue to those producers who are paid late. Proponent held that payment of late-payment charges to the producers who are paid late is justifiable on the basis that the producers who have to wait for payment should be reimbursed for having to forego the use of such money. In the event the individual producers involved cannot be identified, the cooperative proposed that the late-payment charges for producers' receipts should accrue to the producer-settlement fund for distribution among all producers on the market.

The spokesman for AMPI contended that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments of order obligations by regulated handlers. He pointed out that unless a charge is provided under the order, a handler who fails to pay his order obligation by the due date has a competitive advantage over those handlers who are making payments by the due date.

A representative of MIF, on behalf of nearly one-half of the handlers in the four markets, proposed the adoption of a two-tiered charge for accounts that are overdue (one of MIF's members, Kraft, testified in opposition to any charges on overdue accounts). MIF proposed that if payment is not received by the date specified in the order but is received on or before the third day following the date due, a "late payment charge" of 0.05 percent of the unpaid balance for each day payment is not received be assessed. If payment is not received on or before the third day following the due date, he proposed that a "delinquent payment charge" of 1.5 percent of the unpaid balance be assessed on each 30-day anniversary of the payment due date.

In support of the proposed minimal daily rate for the first three days a payment is overdue, proponent contended that it is possible for a late payment to be made unintentionally. In his opinion, payment a few days late on an occasional basis is much different than payment several days late on a regular basis.

The spokesman for MIF also proposed that any late-payment charges accrue to the administrative expense fund. He contended that the charges should be channeled to the administrative expense fund in order to reimburse it for the costs incurred by the market administrator in collecting the late payments.

Data presented at the hearing confirm that handlers have been late in making payments for producer milk under each of the four orders. Also, handlers have been late in making payments to the producer-settlement funds and to the administrative and marketing service funds of the separate orders. The data illustrated a wide range of payment practices by handlers. Some handlers were paying their obligations on time while other handlers were paying their obligations more than 15 days late.

Several handlers took the position at the hearing that not all payments listed as being paid from 1 to 5 days late should be considered as late payments. The argued that the data presented at the hearing should have listed all payments made by mail that were postmarked on or before the due date as being made on time. Instead, in the tabulation of the data such payments were listed as being late because payment was not considered to have been made until it was received by the addressee. In that regard, payment made by a handler to a bank's postal lock box for the account of a cooperative was tabulated as being received when the bank posted such payment to the cooperative's account.

Even if one were to accept the handers' premise that all payments postmarked on or before the due date were made on time, one would eliminate at the most only the payment listed as being overdue from 1–5 days. However, one would presume that those payments listed as being overdue from 6–10 days, 11–15 days and more than 15 days were most likely postmarked after the due date and, consequently, were overdue by the handlers' own standards for timeliness.

It is essential to the effective operation of the order that all handler payments for obligations under the order be made promptly. Under the merged order, handlers with higher than market-average Class I utilization would pay any excess of the value of their producer milk over its value at the uniform price into this fund. Payments into this fund must be made on a timely basis since the market administrator must immediately transmit such funds to handlers with a lower than market-average Class I utilization to enable them to include such payment in the uniform price they pay to producers.

Under the merged order, it is also necessary that handlers make partial and final payments to producers and cooperative assocations on a timely basis. Producers should not be expected to wait beyond the scheduled time for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts relating to the administrative expense fund and to the marketing service fund of the merged order is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay producers late are in effect borrowing money from producers. In the absence of any late-payment charge, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Without a late-payment charge handlers have little incentive to make payment to the market administrator on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route and the practicality of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers substantial inducement to make their payments to the market administrator, producers and cooperative associations on time.

The effectiveness of the late-payment charges that currently apply under the Wichita and Red River Valley orders is

nullified to a large extent by the relatively small penalty charge (⅓ of 1 percent per month of the unpaid obligation) and the fact that the charge does not apply until the 1st of the month following the due date. If the charge on overdue accounts is to have any impact on encouraging prompt payments, it should be an amount that is more nearly what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. The late-payment charge should be established at the rate of one percent per month of the unpaid balance, the rate proposed by the proponent of the merged order. While this charge on a per annum basis is below the prime rate of interest being charged, the charge when applied to a payment that is less than a month late would be, in effect, at a higher rate. The rate adopted herein in conjunction with the application of such rate on the 1st day that an obligation is past due should be sufficient to encourage prompt payment of such obligation under the merged order.

The MIF proposal that all late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. Proponent supported this proposal on the basis that handlers who are prompt in meeting payment obligations are, in effect, being assessed for expenses incurred by the market administrator in obtaining compliance by delinquent handlers. In addition, proponent contended that in case of late payments to producers there would be an incentive on the part of the producers or cooperative associations to continue delivery of milk to a delinquent handler if the dairy farmer or the cooperative thought they would benefit by the delay in payment.

In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

As an inducement for handlers to make payments to producers and cooperatives on time, it is appropriate that the charge on overdue accounts payable to such persons also accrue to the administrative assessment fund. If the late-payment charge were added to the amount handlers owed producers and cooperatives, it would likely result in such producers being less concerned whether they are paid on time and more concerned with the possibility of earning additional money by extending credit. This could be counterproductive to the purpose sought to be achieved by the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a higher value than the cost of money borrowed from commercial sources for the short time span. Thus, producers might prefer to be paid a few days late in order to receive a late-payment charge and thus not be inclined to press handlers for timely payment. Since the late-payment charge is to be an inducement to meet the payment date, the charges on obligations that are overdue to producers and cooperatives should accrue to the administrative assessment fund of the market administrator who is charged with the responsibility of administering the payment transaction rather than to be paid to the producers who were not paid on time, as the merger proponent suggested.

As proposed at the hearing, the merged order should require that a late-payment charge apply on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

In addition, the charge on late payments should apply beginning the day following the date on which payment of the obligation is due and on the same day of each succeeding month until the obligation is paid. The current provisions of the Wichita and Red River Valley orders which provide that a charge on overdue accounts shall not apply until the 1st of the month following the due date provide no incentive for handlers to make payment of order obligations by the due date. Payment of order obligations by the due date can be fostered best by applying a late-payment charge on the 1st day after the due date.

While present economic conditions might warrant the adoption of a late-payment charge greater than one percent per month, AMPI did not propose any higher rate. However, it should be noted that the late-payment charge adopted herein would be the same whether payment is one day, three days or a month late. If a handler decides to delay payment for up to 3 days, the charge of 1 percent of the unpaid balance would be much more than the handler would be charged by a commercial bank for money borrowed for such period of time. If, however, a handler delays more that 3 days in paying his obligation, he would then be required under the merged order, as discussed elsewhere in this decision, to channel his payments to producers through the market administrator. Such payment requirement in conjunction with a late-payment charge should be a sufficient inducement for handlers to make payment by the due date.

The MIF proposal to apply the late-payment charge on a daily basis for the first three days that a payment is overdue should not be adopted. If late-payment charges were treated on a money market basis, the order would represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a charge on overdue accounts which is sufficiently large to induce handlers to pay their obligations under the order on time.

A further reason for not adopting the proposed two-tiered charge on overdue accounts is that the payment plan under which such charges would apply would not be compatible with the use of fixed dates in the payment of producers. Under the "flexible" payment schedule proposed by a representative of MIF, a handler would have the option of paying an order obligation within 3 days after the "due" date and being assessed a nominal charge for the credit extended for such period of time. However, a lag of up to 3 days in the "due" date would require that a similar lag be incorporated in the scheduled payment dates for producers. Producers have been accustomed to receiving payment on a fixed schedule and, to the extent

possible, such producers should continue to receive payment on a fixed schedule. For this reason, fixed dates should be continued for handlers to make payment of their obligations under the order so that producers may continue to receive payments on a fixed schedule.

The spokesman for MIF requested the payments be considered as having been made for purposes of meeting the payment requirement if received by an agent mutually agreeable to the handler, the cooperative or producers and the market administrator. The provisions of the merged order do not preclude the use of an agent as an intermediary under the conditions proposed by the handlers' spokesman. Under these circumstances, there is no reason to modify the order as proposed.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the merged order should be 6 cents per hundredweight.

The current maximum rates of assessment for order administration are 4 cents per hundredweight under the Wichita and Oklahoma Metropolitan orders and 5 cents per hundredweight under the Neosho Valley and Red River Valley orders.

The merger proponent proposed that the maximum rate for administrative assessment each year be determined as soon as possible after the beginning of each year by multiplying the simple average of the monthly uniform prices for producers milk for the preceding calendar year by 0.6 percent. The cooperative proposed a formula method be used to set the rate annually as a means of tying the assessment fee to the rate of inflation. Such method, it was claimed, would avoid the need for calling a hearing to raise the maximum rate at some future date due to inflation.

Kraft proposed, on the other hand, that the rate be established at 5 cents per hundredweight, which represents a 1-cent increase over the rate under the Oklahoma Metropolitan order under which Kraft's plant is currently regulated. The spokesman pointed out that 5 cents is the highest rate now prevailing in any of the orders and he believed that such rate would be sufficient under the merged order.

The Act requires handlers to pay the cost of operating an order through an assessment on milk handled. The actual assessment rate, which may not exceed the maximum specified in the order, is established by the market administrator at a level which results in a reserve fund sufficient to cover projected operating expenses for 6 months. The reserve fund normally would be needed to carry out the market administrator's responsibilities in the event an order is withdrawn for any reason. If the reserve fund exceeds the projected 6-month operating expenses, the administrative assessment may be suspended or the rate may be lowered until the reserve fund has been reduced to the desired level.

Except for the month of September 1977 when the assessment was waived in all 4 markets, the administrative assessment under each of the orders has been at the maximum permitted under such orders since January 1, 1976. During 1975 the rate was 4 cents per hundredweight in each of the 4 markets. The ending reserves for the 4 markets for the years 1975–1979 varied from a low of 69 percent in 1978 to a high of 82 percent in 1976 of the expenses incurred for the year.

Since October 1977, it has been necessary for the market administrator to collect the maximum administrative assessment permitted under each of the separate orders in order to have sufficient funds available to meet the monthly expenses of administering the four orders and to maintain a 6-month contingency reserve fund plus an additional reserve to cover a portion of the costs of separating the market administrator and the employees of such person from the government work force in the event an order is withdrawn for any reason. On this basis, it is concluded that the maximum assessment rate under the merged order should be established at a higher level than the prevailing maximum rates under the separate orders. This will give the market administrator the necessary flexibility to increase the assessment rate at some future time in the event of a decline in milk receipts by handlers, a shift in regulation by a handler under this order to another order, a decline in the number of handlers regulated under the order, or increased in the cost of administering the order as a result of inflationary pressures.

The maximum rate should be established at six cents per hundredweight. This would amount to an increase ranging from 20 percent to 50 percent in the rates effective for the separate orders. Such increase should provide sufficient funds for the market administrator to carry out his duties and to provide a sufficient reserve for the market administrator to carry out his responsibilities in the event the order is withdrawn for any reason. If experience indicates that the administration of the order plus the maintenance of an adequate reserve can be accomplished at a lesser rate than the maximum, provision is made whereby the Secretary may lower the rate at any time without the necessity of a hearing.

Handlers should be required to make payment to the market administrator for the administrative assessment fund on or before the 15th day after the end of the month. In this regard, handler payments postmarked by the 15th will be considered to have been made by the due date. The 15th is now the specified date for making such payment under the Oklahoma Metropolitan and Red River Valley orders. In the Wichita order the due date is the 14th and in the Neosho Valley order the due date is the 16th of the month. Under the circumstances, it is concluded that the use of the 15th as the due date will have the least disruptive effect on handlers. Furthermore, such due date is the same as the due date adopted herein for handlers to remit marketing service deductions to the party performing such service. As discussed in the next section dealing with marketing service deductions, the use of the 15th as the due date will allow a handler who is required to transmit the marketing service deductions to the market administrator to make a single payment in settlement of such obligation and the handler's obligation to the administrative expense fund.

Marketing service deduction. The Southwest Plains order should provide for a maximum deduction of 7 cents per hundredweight from payments to producers to cover the cost of marketing services that are performed by the market administrator for certain producers.

The current maximum rates of deductions for marketing services are 5 cents per hundredweight under the Red River Valley and Oklahoma Metropolitan orders and 6 cents per hundredweight under the Neosho Valley and Wichita orders.

The merger proponent proposed that the maximum rate of deduction for marketing services that would apply during the year be determined, as soon as possible after the beginning of the year, by multiplying the simple annual average of the monthly uniform prices for producer milk for the preceding calendar year by 0.7 percent. The formula method for setting the rate was proposed as a means of tying the rate to the rate of inflation. Proponent noted that the formula method would eliminate the need for calling a hearing to adjust the rate upward in the event that inflationary pressures cause an increase in the cost of performing marketing services.

Kraft proposed that the maximum rate for marketing services be established at 6 cents per hundredweight.

The marketing service deduction under each of the orders has been at the maximum permitted under such orders since January 1, 1975, the earliest year for which data were presented at the hearing. The ending reserves for the 4 markets, except for 1976 and 1979, have varied from 23 to 35 percent of the expenses incurred for the year. In 1976 the ending reserves amounted to 60 percent of the annual expenses while in 1979 such reserves amounted to about 10 percent of the annual expenses.

The marketing service fund can be operated with a lower level of reserves than is required for the administrative expense fund. In the case of marketing services, the expenses of performing such services ceases as soon as service is no longer provided. However, some reserve is needed to assure that funds are available to meet the month-to-month operational costs of providing marketing services, for the expense of maintaining an inventory of needed supplies, and to provide a contingency reserve to cover a portion of the costs of separating the marketing administrator and the employees of such person from the government work force in the event an order is withdrawn for any reason. In view of the steady decline in the ending reserves for the four markets—from a high of 60 percent in 1976 to 10 percent in 1979, it is concluded that the maximum marketing service rate for the merged order must be established at a higher rate than the prevailing maximum rates of the separate orders to fund the marketing service operation. Such higher rate will give the market administrator the necessary flexibility to increase the rate in the future to meet any increased cost resulting from inflationary pressures.

The new maximum rate should be 7 cents per hundredweight. Such rate would amount to an increase ranging from 17 percent to 40 percent in the rates effective for the separate orders. Such increase should provide a sufficient reserve to assure the operation of a satisfactory marketing service program. If experience indicates that the services can be performed at a lesser rate than the maximum rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

The date by which handlers are required to make payment to the market administrator for the marketing service fund (or to a cooperative association that is performing marketing services for the producer for whom it is marketing milk) should be on or before the 15th day after the end of the month. In this regard, handler payments postmarked by the 15th will be considered to have been made by the due date.

The 15th is now the specified date for making such payment under three or the four orders. In the Wichita order, the due date is the 14th. Under these circumstances, it is concluded that the use of the 15th as the due date will have the least disruptive effect on handlers. A further reason for choosing the 15th as the due date is to have it correspond with the due date for making payment to the administrative assessment fund. This will enable handlers who are required to make payment to the market administrator for the 2 funds to make a single payment in settlement of such obligations.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the orders effectively and equitably, the reserves in the administrative expense funds that have been accumulated under the four separate orders should be combined. Similar procedures should be followed with respect to the marketing service fund reserves and the producer-settlement fund balances of these individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the four orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Southwest Plains market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the four orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A brief filed on behalf of one interested party contended that certain of the payment provisions provided herein cannot be adopted since the provisions would increase the returns to producers and no economic data upon which the Secretary may make the analysis and findings required by § 608c(18) of the Act in support of such increase were placed in evidence by the proponent cooperative association. Although the payment provisions of the merged order provide for an increase during the months of August through February in the partial payments to producers relative to such payments under three of the current orders, the final payments to producers would be decreased by a corresponding amount. As a consequence, the total monthly compensation to be paid producers would not be increased. Thus, the issue raised in the handler's brief is moot.

A ruling of the Administrative Law Judge to which a specific objection was taken in a brief has been reviewed. An

objection was raised by the attorney representing the 40 nonmember producers to the Administrative Law Judge excluding the admission of an exhibit offered by the attorney as evidence. The exhibit was proffered as an offer of proof that the Administrative Law Judge erred in excluding the exhibit and it was marked for identification to accompany the record.

The exhibit consisted of various documents pertaining to proceedings before the United States District Court For The Western District of Missouri involving the U.S. vs. Associated Milk Producers, Inc., (Supplemental to: No. 74 CV 80–W–1). According to arguments presented at the hearing and in the brief, the exhibit should have been received in evidence to show the history of certain terms of sale announced by AMPI (as indicated in other exhibits that were received in evidence) and to demonstrate that such terms of sale are subject to judicial scrutiny. The attorney for AMPI objected to the exhibit on the basis that the material was irrelevant to this proceeding.

The Administrative Law Judge ruled that the exhibit was irrelevant to this proceeding in that the facts concerning the actual terms of sale were contained in other exhibits previously received. The Judge indicated that parties would be able to rely on the proferred document for the purpose of arguments or demonstration in the same manner that they draw upon documents in any other proceedings that have been adjudicated in the Courts.

The Administrative Law Judge's ruling has been reviewed in light of the arguments presented. The ruling, for the reasons stated by the Administrative Law Judge on the record, is hereby affirmed.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and deteminations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements, the Southwest Plains order (which merges and amends the Oklahoma Metropolitan, Red River Valley, Wichita and Neosho Valley orders), and the Texas Panhandle and Texas orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in each of the aforesaid marketing areas and the minimum prices specified in the tentative marketing agreements, the merged Southwest Plains order, and in the Texas Panhandle and Texas orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements, the merged Southwest Plains order, and the Texas Panhandle and Texas orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements, the merged Southwest Plains order, and in the Texas Panhandle and the Texas orders, as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that for the merged Southwest Plains order the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1106.85 of the tentative marketing agreement and the Southwest Plains order.

Recommended Marketing Agreements and Order Amending the Orders

The recommend marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the merged Southwest Plains order and in the Texas Panhandle and Texas orders, as hereby proposed to be amended. The following order regulating the handling of milk in the respective marketing areas of these orders is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

1106.1 General provisions.

Definitions

1106.2 Southwest Plains marketing area.
1106.3 Route disposition.
1106.4 Plant.
1106.5 Distributing plant.
1106.6 Supply plant.
1106.7 Pool plant.
1106.8 Nonpool plant.
1106.9 Handler.
1106.10 Producer-handler.
1106.11 [Reserved]
1106.12 Producer.
1106.13 Producer milk.
1106.14 Other source milk.
1106.15 Fluid milk products.
1106.16 Fluid cream product.
1106.17 Filled milk.
1106.18 Cooperative association.
1106.19 [Reserved]
1106.20 Product prices.

Handler Reports

1106.30 Reports of receipts and utilization.
1106.31 Payroll reports.
1106.32 Other reports.

Classification of Milk

1106.40 Classes of utilization.
1106.41 Shrinkage.
1106.42 Classification of transfers and diversions.
1106.43 General classification rules.
1106.44 Classification of producer milk.
1106.45 Market administrator's reports and announcements concerning classification.

Class Prices

1106.50 Class prices.
1106.51 Basic formula price.
1106.51a Basic Class II formula price.
1106.52 Plant location adjustments for handlers.
1106.53 Announcement of class prices.
1106.54 Equivalent price.

Uniform Price

1106.60 Handler's value of milk for computing uniform price.
1106.61 Computation of uniform price.
1106.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1106.70 Producer-settlement fund.
1106.71 Payments to the producer-settlement fund.
1106.72 Payments from the producer-settlement fund.
1106.73 Payments to producers and to cooperative associations.
1106.74 Butterfat differential.
1106.75 Plant location adjustments for producers and on nonpool milk.
1106.76 Payments by handler operating a partially regulated distributing plant.
1106.77 Adjustment of accounts.
1106.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1106.85 Assessment for order administration.
1106.86 Deduction for marketing services.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1106.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1106.2 Southwest Plains marketing area.

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	McClain
Canadian	McIntosh
Cleveland	Okfuskee
Coal	Oklahoma
Garvin	Pittsburg
Grady	Pontotoc
Haskell	Pottawatomie
Hughes	Seminole
Latimer	Sequoyah
LeFlore	

Zone II.—In the State of Oklahoma

Alfalfa	Jefferson
Atoka	Johnston
Beaver	Kiowa
Beckham	Love
Bryan	Major
Carter	Marshall
Choctaw	McCurtain
Cimarron	Murray
Comanche	Pushmataha
Cotton	Roger Mills
Custer	Stephens
Dewey	Texas
Ellis	Tillman
Greer	Washita
Harmon	Woods
Harper	Woodward
Jackson	

Zone III.—In the State of Oklahoma

Adair	Muskogee
Blaine	Noble
Cherokee	Nowata
Craig	Okmulgee
Creek	Osage
Delaware	Ottawa
Garfield	Pawnee
Grant	Payne
Kay	Rogers
Kingfisher	Tulsa
Lincoln	Wagoner
Logan	Washington
Mayes	

Zone IV.—In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI.—In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearny	

§ 1106.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of any fluid milk product classified as Class I milk.

§ 1106.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1106.5 Distributing plant.

"Distributing plant" means any plant:

(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition in the marketing area during the month.

§ 1106.6 Supply plant.

"Supply plant" means a plant approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption from which fluid milk products are transferred or diverted to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1106.13, but excluding milk diverted to such plant) and handlers described in § 1106.9(c) is transferred or diverted pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified.

(2) The operator of a supply plant that is located in the marketing area or in a county adjacent to the marketing area may include milk diverted pursuant to § 1106.13(c) from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting the supply plant's monthly shipping percentages. Diversions in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the

cooperative association and 50 percent of more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and iniviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qalifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1106.30.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, neverthless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part;

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order; or

(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.

§ 1106.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a governmental agency plant, or a producer-handler plant.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7.

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered.

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(e).

§ 1106.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route distribution in the marketing area;

(b) Who receives no fluid-milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except receipts from other order plants and by increasing the nonfat milk solids content of the fluid

milk products received from his own farm production, pool plants, or other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant or by a handler described in § 1106.9(c); or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to §1106.8(e);

(3) Any peson with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(b);

(4) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of approval from a duly constituted regulatory agency for the fluid consumption of such milk or the application of § 1106.13(d)(4) and (5)) unless such pool plant was a nonpool plant during any of such immediately preceding months.

§ 1106.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant directly from such producer. Any milk picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. The paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1106.9(c), is the handler for such milk.

(b) Received by a handler described in § 1106.9(c).

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month. Such milk shall be priced at the location of the plant to which diverted.

(d) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a nonpool plant (other than a producer-handler plant), subject to the following conditions:

(1) In any month, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a cooperative association in any month of September through January shall not exceed one-half of the producer milk that such cooperative caused to be delivered to and was physically received at pool plants during the month, and in any month of February through August, such diversions shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month;

(3) The operator of a pool plant other than a cooperative association may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted in any month of September through January shall not exceed one-half of the producer milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler. In any month of february through August, the total quantity of milk so diverted shall not exceed the total quantity of milk that was physically received at pool plant(s) as producer milk for which the plant operator is the handler;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for;

(6) If a dairy farmer loses his producer status under this order (except as a result of temporary loss of approval from a duly constituted regulatory agency for the production of milk for fluid consumption), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant; and

(7) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1106.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in § 1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1106.40(b)(1)) for which

the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1106.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1106.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifers, or flavoring) resemble milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or milk products for its members.

§ 1106.19 [Reserved]

§ 1106.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 11061.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1106.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1106.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1106.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully

regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1106.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report for each of the handler's plants with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (a), (b) and (c) who pays producers pursuant to § 1106.73 shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month;

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month;

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hunderdweight and the net amount paid each dairy farmer.

§ 1106.32 Other reports.

(a) On or before the 21st day of each month, each handler described in § 1106.9(a) who is required pursuant to § 1106.71(c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month;

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 7th day after the end of each month, each handler described in § 1106.9 (a), (b), and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month.

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average butterfat content and the total pounds of milk diverted to each plant that is not a pool plant;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferror-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and §§ 1106.30 and 1106.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(e) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

Classification of Milk

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section; and

(2) Not specifically accounted for the Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid from other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition.

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1106.15; and

(6) In skrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41(b) and (c).

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1106.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurements at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1106.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step of § 1106.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilitization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the

conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1106.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1106.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in § 1106.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1106.9(c) to another handler's pool plant shall be classified pursuant to § 1106.44 pro rata with producer milk received at the transferee-handler's plant and the value thereof at the class prices shall be included in the pool plant handler's value of milk pursuant to § 1106.60.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9(b) of (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1106.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1106.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1106.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an off set for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were received in packaged from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1106.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii)(*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all

such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1106.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)[2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity pro rated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1106.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1106.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1106.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after

the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1106.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the amount and class utilization of milk received by each handler from producers whose milk is being marketed by such cooperative association. For the purpose of this report, the milk caused to be so delivered by a cooperative association shall be pro rated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price in Zone I shall be the basic formula price for the second preceding month plus $1.98.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1106.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1106.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1106.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.51a Basic class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1106.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1106.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii)) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the

quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraph (a)(1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustent shall be as follows:

	Adjustment per hundredweight
Zone I	No adjustment.
Zone II	Plus 7 cents.
Zone III	Minus 10 cents.
Zone IV	Minus 33 cents.
Zone V	Minus 18 cents.
Zone VI	Minus 13 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) Minus 24 cents.

Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Donipham, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington, Wyandotte.

(ii) Minus 23 cents.

Elk, Greenwood, Woodson.

(iii) Minus 18 cents.

Cheyenne, Decature, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Wallace.

(3) For a plant located in any of the following Missouri counties, the adjustment shall be as follows:

(i) Minus 24 cents.

Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Chariton, Clark, Clay, Clinton, Cole, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Pike, Platte, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, Sullivan, St. Clair, Worth.

(ii) Minus 31 cents.

Bollinger, Cape Girardeau, Perry, St. Francois, Ste. Genevieve.

(iii) Minus 38 cents.

Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Howell, Iron, Jefferson, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, St. Charles, St. Louis, City of St. Louis, Scott, Shannon, Stoddard, Stone, Taney, Texas, Warren, Washington, Wayne, Webster, Wright.

(4) For a plant located in any of the following Louisiana parishes the adjustments shall be as follows:

(i) Plus 49 cents.

Beinville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Winn.

(ii) Plus 68 cents.

Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livingston, Rapides, St. Helena, St. Tammany, Tangipahoa, Vernon, Washington, West Feliciana.

(iii) Plus 87 cents.

Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge.

(5) For a plant located in any of the following Texas counties the adjustment shall be as follows:

(i) Plus 22 cents.

Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

(ii) Plus 25 cents.

Bowie and Cass.

(iii) Plus 27 cents.

Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(iv) Plus 34 cents.

Camp, Collin, Cook, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

(v) Plus 37 cents.

El Paso.

(vi) Plus 40 cents.

Gregg, Harrison, Marion, Panola, Rusk, Smith.

(vii) Plus 44 cents.

Bailey, Castro, Cochran, Cottle, Crosby, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry Yoakum.

(viii) Plus 49 cents.

Anderson, Bell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Lampasas, Limestone, McLennan, Mills, Navarro.

(ix) Plus 52 cents.

Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

(x) Plus 54 cents.

Brazos, Burleson, Grimes, Madison, Milam, Robertson, Walker.

(xi) Plus 59 cents.

Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

(xii) Plus 64 cents.

Bastrop, Burnet, Lee, Travis, Williamson.

(xiii) Plus 70 cents.

Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto, Waller, Washington.

(xiv) Plus 76 cents.

Bexar, Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

(xv) Plus 87 cents.

Arkansas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

(xvi) Plus 100 cents.

Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

(xvii) Plus 109 cents.

Cameron, Hidalgo, Willacy.

(xviii) All other areas in the State of Texas not listed shall be plus 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the city hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in any of the following New Mexico counties the adjustments shall be as follows:

(i) Plus 22 cents.

Chaves, Colfax, Curry, DeBaca, Eddy, Lea, Quay, Roosevelt, San Juan, Union.

(ii) Plus 37 cents.

Bernalillo, Catron, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia.

(7) For a plant located in any of the following Colorado counties the adjustments shall be as follows:

(i) Plus 10 cents.

Baca, Bent, Cheyenne, Kiowa, Kit Carson, Lincoln, Logan, Phillips, Prowers, Sedgwick, Washington, Yuma.

(ii) Plus 22 cents.

Archuleta, La Plata, Montezuma.

(iii) Plus 32 cents.

Adams, Arapahoe, Boulder, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Morgan, Otero, Park, Pueblo, Teller, Weld.

(iv) No adjustment.

Any Colorado county not specified in paragraph (a)(7) (i), (ii) or (iii) of this section.

(8) For a plant located in any of the following Arkansas counties the adjustments shall be as follows:

(i) Minus 21 cents.

Benton, Boone, Carroll, Marion, Washington.

(ii) Plus 25 cents.

Little River and Miller.

(iii) No adjustment.

Any Arkansas county not specified in paragraph (a)(8) (i) or (ii) of this section.

(9) For a plant located outside the areas described in paragraph (a)(1) through (8) of this section, the adjustment shall be minus 10 cents plus an additional reduction of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1106.44(a)(12) the pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Multiply the remaining pounds of skim milk in Class I by 105 percent;

(3) Subtract the pounds of skim milk in receipts of milk at the transferee-plant from producers, handlers described in § 1106.9(c), and diverted milk from other pool plants;

(4) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(5) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(4) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(6) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(5) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1106.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(5) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(5) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(7) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (6) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the final Class II price and the Class III price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1106.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1106.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1106.9(c) that were classified in each class pursuant to §§ 1106.43(a) and 1106.44(c) by the applicable class prices; and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage substracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44(a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I

pursuant to § 1106§ 44(a)(7)(i) through (iv) and (vii) and the corresponding step of § 1106.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7)(v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment oligation under any order; and

(g) Subtract for a handler described in § 1106.9(c) the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1106.61 Computation of uniform price.

The market administrator shall compute for each month the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who filed the reports prescribed in § 1106.30 for the month and who made the payments pursuant to § 1106.71 for the preceding month;

(b) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1106.75;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1106.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for milk received from producers.

§ 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall annnounce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price pursuant to § 1106.61 for such month.

Payments for Milk

§ 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.76, and 1106.77, and from which he shall make all payments pursuant to §§ 1106.72 and 1106.77, except that payments to a cooperative association pursuant to § 1106.72 shall be offset by any payments due from such cooperative association pursuant to § 1106.71 that have not been received by the market administrator.

§ 1106.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1106.9(c). In the case of a cooperative association which is a handler, less than the amount due from other handlers pursuant to § 1106.73(d), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1106.60(f).

(b) Subject to paragraph (d) of this section, each person who operated a plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1106 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to § 1106.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1106.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1106.73 (b) and (d).

§ 1106.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to

§ 1106.71(c) the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1106.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1106.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1106.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1106.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1)(i) On or before the last day of each month of March through July to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price multipied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(ii) On or before the last day of each month of August through February to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer from whom the handler received milk, except that the amount deducted shall not exceed the value of the milk received during the partial payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1106.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due to the producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1106.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of this section, in the case of a cooperative association which the market administrator determines is authorized by those producers for whom it markets milk to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1106.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from those producers from whom it markets milk as determined by the market administrator an amount equal to not less than the amount due such producers as determined pursuant to paragraph (a) of this section.

(c) In making payments to producers pursuant to paragraph (a) of this section, or to a cooperative association pursuant to paragraph (b) of this section, each handler shall furnish such producer or cooperative association with respect to each of the producers for whom it markets milk and from whom the handler received milk during the month, a written statement showing:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds, and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(d) Except as provided in § 1106.71(c) and paragraph (f) of this section, each handler pursuant to § 1106.9(a) who receives milk from a cooperative association as a handler pursuant to § 1106.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 2nd day prior to the last day of the month for milk received during the first 15 days of the month, not less than the applicable partial payment rate specified for such month in paragraph (a)(1) of this section; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the uniform price as adjusted pursuant to §§ 1106.74 and 1106.75 less any payments made pursuant to paragraph (a)(1) of this section.

(e) Except as provided in § 1106.71(c), each handler who received bulk fluid milk or bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified for such month in paragraph (a)(1) of this section. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1106.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to

§ 1106.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1106.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant including the applicable administrative assessment rate.

(f) If the application of § 1106.71(d)(2) results in a delay in payment by the market administrator to handlers, the payments prescribed in paragraph (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1106.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to § 1106.73, the uniform price computed pursuant to § 1106.61 shall be adjusted by the amounts set forth in § 1106.52 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price shall be adjusted by the amount set forth in § 1106.52 that is applicable at the location of the nonpool plant from which the milk was received (except that the adjusted uniform price shall not be less than the Class III price).

§ 1106.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1106.30(b) and § 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1106.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), exept that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1106.30(b) and 1106.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1106.60 for such nonpool

supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1106.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which results in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which the error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required pursuant to § 1106.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1106.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1106.71, 1106.73, 1106.76, 1106.77, 1106.85, or 1106.86 shall be increased 1 percent beginning on the first day after the due date, and on the same day of each subsequent month until such obligation is paid, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1106.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1106.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1106.9(c);

(c) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (d) and (f);

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1106.76(a)(2).

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1106.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. Each handlier making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. The monies shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide producers with market information. The services shall be performed by the market administrator or an agency engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deduction to the cooperative association rendering such services accompanied by a statement showing the quantity of milk for which such deduction was computed for each such produer.

PART 1126—MILK IN TEXAS MARKETING AREA

1. In § 1126.2, a new heading, Zone 1–A, and a listing of counties thereunder is added immediately following the counties listed under Zone 1 and prior to the heading Zone 2 to read as follows:

§ 1126.2 Texas marketing area.

* * * * *

Zone 1–A

Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger.

* * * * *

2. In § 1126.52(a)(1), a new provision is added immediately following "Zone 1 . . . No Adjustment" to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1–A	Minus 12 cents.

* * * * *

3. In § 1126.52(a)(2), all of the provisions contained in subdivision (iii) are removed.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Section 1132.2 is revised to read as follows:

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas.

List of Subjects in 7 CFR Parts 1106, 1126, 1132

Milk Marketing Orders, Milk, Dairy Products.

Signed at Washington, D.C. on May 12, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

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Wednesday
May 19, 1982

Part III

Department of Commerce

Patent and Trademark Office

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Reissue, Reexamination, Protest and Examination Procedures in Patent Cases

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases (1) to eliminate consideration of the so-called "no defect" reissue applications, (2) to limit the participation by protestors during the examination of patent applications, (3) to reject and permit appeal to the Board of Appeals for failure to comply with the duty of disclosure rather than striking applications without appeal rights, and (4) to clarify the interface between patent application examination and patent reexamination in certain areas. These changes are intended to (1) reduce the prosecution costs of patent applicants, and (2) permit some of the Patent and Trademark Office resources now devoted to consideration of the so-called "no defect" reissue applications, and to extensive participation by protestors during application examination, to be directed toward reduction of the backlog of pending patent applications. The changes are also intended to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. The rule changes are further intended to clarify the interface between the duty of disclosure during patent application examination and the duty of disclosure during patent reexamination, as well as the treatment of concurrent reissue and reexamination proceedings on the same patent.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. R. Franklin Burnett by telephone at (703) 557–3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the **Federal Register** on November 10, 1981, at 46 FR 55666–55672 and in the Official Gazette on December 8, 1981, at 1013 O.G. 19–25. An oral hearing was held on February 4, 1982. Forty-two written letters and statements were submitted. Fourteen persons testified at the oral hearing which resulted in 113 pages of testimony. Consideration was also given to the comments presented at the oral hearing on April 16, 1981, relating to the proposed rules for implementing patent reexamination.

Objectives of Rule Change

The rule change is designed to adopt and implement suggestions from members of the public for changes in patent examination practice considered desirable in light of the implementation of statutory patent reexamination, contained in Public Law 96–517. Many of the persons who commented in writing and at the hearing held on April 16, 1981, on the proposed rules for implementing patent reexamination favored modification of patent examination rules as amended herein. This rule change is designed to implement the suggestions received and, in particular, to reduce the prosecution costs of patent applicants by limiting the amount of participation by protestors during the patent application examination process.

The rule change also seeks to reduce the amount of time required by the Patent and Trademark Office to examine protested applications by limiting protestor participation. The technical expertise of the Patent and Trademark Office will continue to be available to make determinations of patentability on the basis of prior art and related facts on an ex parte basis. However, the patent examiners in the Office are not trained as hearing examiners and have no substantial experience in handling inter partes matters. Under the rule change, protestor participation will be limited to the filing of papers in opposition to the grant of a patent with no Office communications to the protestor resulting therefrom beyond an acknowledgment of receipt of a protest or petition to strike in reissue applications. The opportunity to comment on Office actions and applicants' responses is eliminated. The rule change also intends to accomplish these purposes by eliminating the consideration of reissue applications not initially presented to correct defects pursuant to 35 U.S.C. 251.

The rule change is also designed to provide for review by the Board of Appeals of duty of disclosure issues which arise during patent application examination. This is accomplished by amending § 1.56(d) to provide that the claims in an application be rejected if upon examination pursuant to 35 U.S.C. 131 and 132 it is found that applicant is not "entitled to a patent under the law" because of fraud or a violation of the duty of disclosure. The rejection would be made under the same conditions and circumstances previously used to strike an application, i.e., "clear and convincing evidence" of fraud or any violation of the duty of disclosure through bad faith or gross negligence. The statute, 35 U.S.C. 131, provides for examination of an application "and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent * * *" Section 132 of Title 35, United States Code, makes provision for the rejection of a claim for a patent as a result of the examination directed by 35 U.S.C. 131. While questions of fraud and violations of the duty of disclosure have historically been dealt with by the Commissioner through the mechanism of striking the affected application, there is no statutory requirement that the Commissioner act in that manner. Clearly the Commissioner can choose how, and by whom, the examination directed by 35 U.S.C. 131 can be made. 35 U.S.C. 132 authorizes a rejection in those circumstances where applicant is not "entitled to a patent under the law." The rule change simply modifies the mechanism and procedures which the Commissioner will use where the applicant is not "entitled to a patent under the law" because of failures to comply with § 1.56(d).

The rule change is also designed to clarify the interface between patent application examination and patent reexamination in certain areas. The two areas involved are duty of disclosure and concurrent proceedings involving a patent under reexamination and for which a reissue application has been filed.

Sections 1.56, 1.108, 1.175, 1.193, 1.291, 1.555, 1.565, and 1.570 are amended to accomplish the purposes indicated above.

Discussion of Specific Rules

Access and Publication of Reissue Applications

The changes proposed in § 1.11 are not being adopted since only one of the twenty-two comments favored the changes.

The publication of notices of the filing of reissues and provisions for public access to reissues will therefore continue as at present. Such publication eliminates the need for interested members of the public to periodically monitor the patent files to determine if a reissue application has been filed.

Amendments to § 1.56

A large majority of the comments supported the amendments to § 1.56. A number of comments questioned the advisability of having relatively inexperienced or non-attorney examiners handle questions of fraud or violation of the duty of disclosure. In response thereto, the amendments to the rule do not require that such questions be handled by the examiner who examines the application for questions of obviousness, enablement, etc. The Office presently plans to have questions of possible fraud or violation of the duty of disclosure examined by examiners with legal training assigned to the Office of the Assistant Commissioner for Patents. Several comments suggested that the provisions for striking an application pursuant to existing paragraph (c) of § 1.56 are inconsistent with the rejection for fraud or violation of the duty of disclosure contemplated in the amendment to paragraph (d). In response thereto, it is pointed out that paragraph (c) of § 1.56 makes striking of the application discretionary with the Commissioner. It is thus more appropriate to retain this authority to strike the application in appropriate circumstances rather than to make it subject to a rejection. No inconsistency is seen between the different routes under paragraphs (c) and (d) of § 1.56. Several comments were received indicating concern about the possible delay of a decision by the Board of Appeals pending consideration of a fraud or duty of disclosure question. In response to these concerns, it is pointed out that less time overall will be required by having the Board of Appeals consider the matter once rather than in a series of separate decisions. Further, expense to the applicant will be minimized by one appeal rather than two. The amendments to § 1.56 are adopted as proposed except for some clarifying changes in paragraph (g).

Section 1.56 is amended by revising the title and paragraph (d), and by adding new paragraphs (e) through (i). The revision to the title and paragraph (d) provides for the rejection of claims upon examination pursuant to 35 U.S.C. 131 and 132 on the ground that applicant is not entitled to a patent under the law if it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the application relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies. Under amended paragraph (d), any rejection which would be made would include all the claims in the application.

The standards to be used in rejecting the claims under paragraph (d) as amended, would be the same as those utilized by the Commissioner in striking applications pursuant to present paragraph (d), i.e., clear and convincing evidence of fraud or any violation of the duty of disclosure through bad faith or gross negligence. Consistent with present practice, the revision of paragraph (d) looks to fraud or a violation of the duty of disclosure through bad faith or gross negligence with relation to the application under consideration or any previous application upon which the application relies.

The phrase "in connection with the application" is construed in the same manner as in the present unamended paragraph (d). For purposes of this section, a reexamination proceeding on a patent would be considered as being "in connection with the application" insofar as consideration of any subsequent reissue application is concerned. The phrase also includes within its scope the mere refiling of the subject matter of an application in another application without relying in the second application upon the first application. Thus, an appropriate rejection upon examination pursuant to 35 U.S.C. 131 and 132 based on conduct or actions proscribed by § 1.56(d) could not be avoided merely by refiling the subject matter of the application in a second or subsequent application which did not rely upon the earlier application. The phrase "in connection with any previous application upon which the application relies" is intended to include all applications upon which the application under consideration relies, either directly or indirectly. For example, an application to reissue a patent obviously relies upon the application which resulted in the patent sought to be reissued. Likewise, continuation applications, continuation-in-part applications, and divisional applications also rely upon one or more parent applications.

New paragraph (e) of § 1.56 normally delays the examination of an application for compliance with paragraph (d) of § 1.56 until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise ready for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. Present plans are to have this examination on the question of fraud or violation of the duty of disclosure conducted by examiners with legal training assigned to the Office of the Assistant Commissioner for Patents. Paragraph (e), as added, would thus permit the resolution of issues arising under § 1.56(d) to be delayed until consideration of such issues is necessary and appropriate. The practice under new paragraph (e) is generally consistent with present practice under paragraph (d) which normally delays the substantive resolution of fraud and duty of disclosure issues until other issues have been resolved in favor of applicant. Under new paragraph (e) an appeal would be suspended for examination pursuant to amended paragraph (d) of § 1.56 once appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise ready for consideration by the Board of Appeals. If no questions of possible violation of § 1.56 are raised or evident on the record before the examiner, no examination for compliance with paragraph (d) of § 1.56 will be undertaken. New paragraph (e) provides for the reopening of prosecution of the application to the extent necessary to conduct the examination pursuant to amended paragraph (d) of § 1.56 including any appeal pursuant to § 1.191. New paragraph (e) also indicates that where an appeal has already been filed based on a rejection on other grounds, any further rejection under amended paragraph (d) will be treated in accordance with amended § 1.193(c).

New paragraph (f) continues the present long standing practice whereby any member of the public can file a petition to strike an application from the files pursuant to paragraph (c) of § 1.56. Such petitions are currently being filed without specific mention in § 1.56. Under revised § 1.56 petitions to strike an application for a violation of § 1.56 are limited to violations of paragraph (c), with any violations of paragraph (d) being subject matter for rejection under paragraph (d). New paragraph (f) requires that any such petition alleging a violation of paragraph (c) which is entered in the application file must: (1) Be timely filed, (2) specifically identify the application to which the petition is directed, and (3) be served on the applicant or be filed with the Office in duplicate in the event service is not possible. New paragraph (f) does not specifically limit a "timely petition" to

any particular point in the examination of the application. Such petitions will generally be considered "timely" if they are filed before final rejection or allowance of the application by the examiner. Whether or not a petition filed after final rejection or allowance of the application by the examiner is considered "timely" will depend upon the circumstances and the point in the prosecution at which the petition is submitted.

New paragraph (f) requires that the petition specifically identify the application to which the petition is directed. While an identification by application serial number is not essential, the identification must include enough specificity that the Office can determine with certainty the application to which the petition is directed. Paragraph (f) requires service of the petition on the applicant, or a duplicate copy in the event service is not possible, before the petition will be entered. While the Office might, in some circumstances, reproduce and serve a petition on the applicant, a member of the public would have no assurance that this would be done and, under paragraph (f), could not rely upon the Office doing so. Paragraph (f) also requires that any petition filed by an attorney or agent comply with § 1.346.

New paragraph (g) of § 1.56 assures a member of the public that a petition to strike an application for violation of paragraph (c) of § 1.56 which meets the requirements of paragraph (f) will be considered by the Office. Language has been added to conform to additional language in § 1.291(c). The Office will send petitioner an acknowledgment of the entry of a petition to strike in a reissue application file. However, the Office will not communicate with the member of the public filing such a petition in non-reissue applications, except for the return of any self-addressed postcard which was enclosed which merely acknowledges receipt of the petition. The member of the public filing the petition will not be permitted to contact the Office as to the disposition, or status, of the petition, or to participate in any Office proceedings relating to the petition. No further papers will be acknowledged or considered unless they raise new issues which could not have been earlier presented and thereby constitute a new proper petition. Mere arguments relating to the Office's decision on the petition or applicant's response to the petition would not qualify as a new proper petition. The disposition of the petition, once one has been filed, will, under paragraph (g), be an ex parte matter between the Office and the applicant. Paragraph (g) provides for communication by the Office with the applicant regarding a petition to strike the application which has been entered in the application file. Under new paragraph (g) the applicant could be required by the Office to respond to the petition. Any such response would be ex parte and would not be served on the member of the public filing the petition.

New paragraph (h) of § 1.56 provides that any member of the public may seek to have the claims in an application rejected pursuant to the amended paragraph (d) of § 1.56 by filing a timely protest in accordance with § 1.291. New paragraph (h) also requires that any such protest filed by an attorney or agent seeking a rejection of claims pursuant to amended paragraph (d) of § 1.56 must be in compliance with § 1.346. One comment suggested that the last sentence of paragraph (h) is redundant since § 1.346 applies without any specific mention. After careful consideration of the comment the sentence is being retained in order to emphasize and remind attorneys and agents of the obligations imposed by § 1.346.

New paragraph (i) provides for the Office requiring the applicant to supply information pursuant to paragraph (a) of § 1.56 in order for the Office to decide any issues relating to paragraphs (c) and (d) of § 1.56, whether or not such issues arise as a result of a petition or a protest, or arise from other sources, e.g., an examiner discovering the issue while studying the application file. Any requirements for information under new paragraph (i) will be ex parte in nature between the Office and the applicant. The ex parte nature of the requirements for information under new paragraph (i) differs from past practice under which information was required, or requested, from applicant and one or more petitioners or protestors in some cases.

Rejection of Claims

Five comments were submitted relating to new paragraph (c) of § 1.106. Two of the comments favored the paragraph as written and three recommended modification or clarification of the paragraph to ensure that it is not inconsistent with *In re Ruff et al.*, 45 CCPA 1037, 118 USPQ 340 (CCPA 1958), and subsequent decisions. No modification or clarification of the paragraph is considered necessary since the intent of the paragraph was not to change current practice, but was merely to emphasize the importance placed on admissions and to make § 1.106 more closely reflect current practice, which includes practice following *In re Ruff et al.*, and subsequent decisions. The amendments to § 1.106 are adopted as proposed.

Section 1.106 is amended to include a new paragraph (c) which emphasizes the importance placed on admissions by the applicant or the patent owner in a reexamination proceeding insofar as matters affecting patentability are concerned. Paragraph (c) includes a reference to the use of rejections based upon facts within the knowledge of the examiner as provided in § 1.107. Paragraph (c) does not constitute a change in practice, but does result in § 1.106 more closely reflecting current practice.

Reissue Oath or Declaration

Ten persons commented on § 1.175. Four comments were received in support of the proposed change. Three of these favorable comments were from patent law groups. Of the six comments received opposing the change, two were from patent law groups. Eleven comments received at the April 16, 1981, hearing on reexamination argued for retraction of the "Dann Amendments" which included § 1.175(a)(4). Four comments at the April 16, 1981, hearing favored retaining the "Dann Amendments". The arguments supporting the change were generally that paragraph (a)(4) was not necessary in view of the new reexamination procedure. The arguments opposing the deletion were generally that an inter partes practice before the Office is desirable from the standpoint of the judiciary and for a complete resolution of issues. After careful consideration of all of the arguments and the resources available in the Patent and Trademark Office, it is felt that the practice under paragraph (a)(4) of § 1.175 should be discontinued and paragraph (a)(4) should be cancelled.

The numbering of paragraphs (a) (5) and (6) is not being changed. Proposed paragraph 1.175(a)(6) is being adopted as new paragraph 1.175(a)(7). The proposed wording is otherwise being adopted without change.

Amended § 1.175 eliminates paragraph (a)(4). Under paragraph (a)(4), the Office gave advisory opinions on patentability over additional prior art without any changes in the patent claims. The courts have generally refused to give preclusive effect to these advisory opinions. See *PIC Inc.* v. *Prescon Corp.*, 485 F. Supp. 1302, 205 USPQ 228 (D. Del. 1980), and *Rohm and Haas Co.* v. *Mobil Oil Corp.*, 525 F. Supp. 1298, 212 USPQ 354 (D. Del. 1981). Accordingly, in view of the implementation of patent reexamination

pursuant to Pub. L. 96-517 it is appropriate to discontinue the advisory opinions provided pursuant to § 1.175(a)(4). Under amended § 1.175 an applicant for reissue of a patent will be required to file with the reissue application a statement under oath or declaration specifically averring a defect in the patent, e.g., "a defective specification or drawing," or an excess or insufficiency in the claims. Amended § 1.175 also requires, in paragraphs (a)(5) and (a)(6), that applicant specify "errors" as opposed to "what might be deemed to be errors." Amended § 1.175 effectively eliminates Office consideration of the merits of "no defect" reissue applications since any such "no defect" reissue applications filed after July 1, 1982, the effective date of the changes to § 1.175, will not be examined as to questions of patentability. In addition, § 1.175(a)(7) has been added to parallel the provisions in § 1.65 requiring the same acknowledgment of the duty of disclosure in the oath or declaration of reissue applications as in the case of non-reissue applications.

Delay in Examination of Reissue Applications

Six comments were received relative to the proposed changes in § 1.176. One comment supported, and five comments opposed, deleting the two month waiting period before action could be taken by an examiner in a reissue application. The opposing comments favored retaining the two month period to provide an opportunity for interested parties to submit information relating to the examination of a reissue application after notice of the filing thereof has been published in the Official Gazette. Since the notices under § 1.11 will continue to be published, no need is seen to change § 1.176. The proposed change is therefore not adopted.

Examiner's Answer

Only one comment was made relating to the proposed addition of paragraph (c) to § 1.193. It suggested including a minimum time period for response in the rule. This suggestion was not adopted because in some circumstances it may be appropriate to set a shorter or a longer period for the reply brief. The amendments to § 1.193 are adopted as proposed.

Paragraph (c) adds to § 1.193 a provision that any decision rejecting claims pursuant to § 1.56(d) in an application already on appeal from a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e). Prior to entering any such supplemental examiner's answer under paragraph (c), the Office may require information from applicant pursuant to paragraph (i) of § 1.56. Under paragraph (c) of § 1.193, the appellant may file a reply to the supplemental examiner's answer. Paragraph (c) provides that the appellant's reply to the supplemental examiner's answer will be considered and responded to as necessary with appellant being provided with an additional month, or such other time as may be set, within which to reply to any such response from the Office. After introduction of a supplemental examiner's answer pursuant to paragraph (c) and any replies and response thereto, the application will be forwarded to the Board of Appeals for consideration.

Protests by the Public Against Pending Applications

Fifteen persons commented on the proposed amendment of § 1.291. Two persons suggested that protests be acknowledged by more than the return of a self-addressed postcard. The suggestion has been adopted to the extent of providing for an acknowledgment of the entry of a protest in a reissue application file to be sent to the member of the public filing the protest. The suggestion has not been adopted insofar as original applications are concerned since these applications are generally required to be kept in confidence under 35 U.S.C. 122. Further, the use of return postcards is an established method of receiving acknowledgment from the Office that a paper has been filed. By merely returning the postcard to a protestor in an application for an original patent and directing Office initiated communications solely to applicant, the amount of Office resources required will be minimized.

Several persons commented that the protest proceeding should be more inter partes. The weight of the comments received at the hearings held on April 16, 1981, and February 4, 1982, and in writing, favored ex parte proceedings. To ensure that the proceedings are essentially ex parte, a sentence is being added to paragraph (c) of § 1.291, indicating that active participation by a member of the public ends with the filing of the protest. To retain the inter partes nature of the protest would be contrary to the majority of the comments received and to one of the major purposes of the rule change, i.e., to reduce the amount of time spent by the Office in examining protested applications. The amendments to paragraphs (a) and (b) of § 1.291 are adopted as proposed and paragraph (c) is being revised as indicated above.

Amended § 1.291 continues to permit protests by the public against pending original and reissue applications. The protest may include any grounds which the member of the public filing the protest believes to be applicable.

Amended paragraph (a) of § 1.291 provides for entry of a protest in the application file if the protest specifically identifies the application, is timely submitted, and is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate, in the event service is not possible. The comments made above in the discussion of new paragraph (f) of § 1.56 regarding the timeliness of the filing or submission, specific identification of the application, and service on the applicant, are also applicable to the amendments of paragraph (a) of § 1.291. The requirement that the Office acknowledge the filing of a protest is deleted from paragraph (a), but is covered in paragraph (c).

New paragraph (b) of § 1.291 assures members of the public that a protest will be considered by the Office if (1) it specifically identifies the application to which it is directed; (2) it is timely submitted; (3) it is properly served upon the applicant in accordance with § 1.248, or is filed with the Office in duplicate in the event service is not possible; (4) it includes a listing of the patents, publications or other information relied upon and a concise explanation of the relevance of each listed item; (5) it includes a copy of each listed patent or publication or other item of information in written form, or at least the pertinent portions thereof; and (6) it includes an English language translation of all the necessary and pertinent parts of any non-English language document relied upon. It is considered desirable that §1.291 advise members of the public as to the contents which should be included in any protest since there will be no Office communications directed to the member of the public submitting the protest under paragraph (c). Thus, under paragraph (c) members of the public will not be given an opportunity to complete any protest which is incomplete. Amended paragraph (c) provides for the acknowledgment of the entry of a protest in a reissue application file.

Amended paragraph (c) of § 1.291 provides that a member of the public filing a protest in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard acknowledging

receipt of the protest. Amended paragraph (c) of § 1.291 does not permit the member of the public filing the protest, or any other member of the public, to contact the Office as to the disposition, or status, of the protest or to participate in any Office proceedings relating to the protest. The disposition of the protest, once it has been filed will, under paragraph (c), be an ex parte matter between the Office and the applicant. However, applications which are open to the public may be inspected pursuant to § 1.11.

Amended paragraph (c) provides for the Office to communicate with the applicant regarding any protest entered in the application file. Under paragraph (c), the applicant could be required by the Office to respond to the protest. Any response would be ex parte and would not be served on the member of the public filing the protest. Paragraph (c) provides for the Office to require applicant to supply information pursuant to paragraph (a) of § 1.56 in order for the Office to decide any issues raised by the protest. Requirements for information under paragraph (c) will be ex parte in nature between the Office and the applicant. The ex parte nature of the requirements for information under paragraph (c) differs from past practice under which information could be required, or requested, from applicant and one or more protestors. Under amended paragraph (c), the active participation of the protestor ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest. Mere arguments relating to an Office action or an applicant's response would not qualify as a new protest.

Duty of Disclosure in Reexamination Proceedings

Only two comments were received relative to proposed § 1.555. One comment argued that the Office should never ignore a violation of the duty of disclosure or leave it hanging. In response thereto, neither the statute nor the presently existing reexamination rules provide for reexamination on grounds other than those based on patents or printed publications. The second comment questioned whether a patent owner has a duty to cite new prior art after a request but prior to an order to reexamine. No further clarification of the section is necessary since § 1.555(a) specifies when the patent owner should file a prior art statement in a reexamination proceeding. The amendments to § 1.555 are adopted as proposed.

Amended § 1.555 makes the duty of disclosure in reexamination proceedings more consistent with the duty of disclosure in patent applications. Paragraph (a) of § 1.555 specifes that a duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner or involved employees of the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. This rule is consistent with the duty set forth in § 1.56(a) insofar as patent applications are concerned, except that in paragraph (a) of § 1.555 the patent owner is specified rather than the inventor as set forth in paragraph (a) of § 1.56. This does not, however, impose the responsibility for compliance with the duty of disclosure on a corporate entity or organization but leaves the responsibility with involved individuals in the corporation or other organization. Paragraph (a) of § 1.555 places a requirement on the individuals identified to bring to the attention of the Office patents or printed publications material to the reexamination which have not been previously made of record in the patent file and specifies how that should be accomplished.

Amended paragraph (b) of § 1.555 essentially parallels existing paragraph (b) of § 1.56 and makes similar provisions applicable to disclosures in reexamination proceedings.

Amended paragraph (c) of § 1.555 provides that the duties of candor, good faith, and disclosure required in paragraph (a) of § 1.555 have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding. The language of paragraph (c) refers to fraud or violation of the duty of disclosure in the reexamination proceeding since such conduct during the pendency of applications is covered by § 1.56.

Amended paragraph (d) of § 1.555 affirms that the responsibility for compliance with § 1.555 rests upon the individuals identified in paragraph (a). Paragraph (d) also provides that no evaluation will be made in the reexamination proceeding by the Office as to compliance with § 1.555. Paragraph (d) of § 1.555 also provides that questions of compliance with § 1.555 which are discovered during a reexamination proceeding will be noted as unresolved questions in accordance with present § 1.552(c). Paragraph (d) will not preclude the patent owner from filing a reissue application to have questions of candor, good faith, and duty of disclosure considered and resolved, including such questions which arise during a reexamination proceeding, so long as the requirements of 35 U.S.C. 251 have been met. Paragraph (d) does not preclude suspension or disbarment proceedings under present § 1.348 based upon conduct during a reexamination proceeding.

Concurrent Office Proceedings

Four comments were received on § 1.565. One comment proposed adding a sentence at the end of paragraph (b) of § 1.565 reflecting that reexamination would only be stayed in extraordinary situations. This suggestion has not been adopted since it is considered inappropriate to attempt to further define by rule the circumstances under which a stay of the reexamination may be appropriate. Two comments were received raising questions as to the treatment, during a merged reissue and reexamination proceeding, of broader claims which are present therein because of a reissue application which contained broadened claims. No clarification or change is necessary since the broadened claims are properly in the merged proceeding during the period it is merged. Such broader claims which are present in both the reissue and reexamination files during the pendency of the merged proceeding will be treated in accordance with the reissue statute and case law during the pendency of the merged proceeding. If the merged proceeding ceases to exist because of the abandonment of the reissue application, the claims in the reexamination file, including any broadened claims, will be examined in accordance with the reexamination statute and rules. Finally, one comment did not agree with merging reissue and reexamination proceedings because the merger is not seen to produce cost savings or other salutary results. One of the reasons for the merged proceedings is to ensure that claims of differing scope and inconsistent responses are not presented at the same time in different proceedings in the same patent. Moreover, since the proceedings are concurrent rather than sequential, a significant savings in resources and overall pendency time may be realized by merging in many cases.

The amendment to § 1.565 clarifies the proposed language of paragraph (b),

eliminates from paragraph (b) the last two sentences relating to the treatment of concurrent reexamination and reissue proceedings, and adds a new paragraph (d) relating to this subject. The clarification in paragraph (b) is intended to avoid misinterpretations relating to stay determinations where concurrent litigation or reissue applications are involved.

Under new paragraph (d), which is consistent with the practice presently in effect under paragraph (b), if a reissue application and a reexamination proceeding on which an order pursuant to present § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the proceedings. New paragraph (d) also provides that where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with present §§ 1.171–1.179. The examiner, in examining the merged proceeding, will apply the reissue statute and case law, in addition to applicable provisions of §§ 1.171–1.179, to the merged proceeding. This is appropriate in view of the fact that the statutory provisions for reissue applications and reissue application examination include, *inter alia*, provisions equivalent to 35 U.S.C. 305 relating to the conduct of reexamination proceedings. New paragraph (d) of § 1.565 makes clear that the patent owner must place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. Under new paragraph (d) of § 1.565 the examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and will be physically entered into both files. New paragraph (d) also provides that any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent. The amendments to § 1.565 are adopted with the changes for clarification indicated in paragraph (b).

Reexamination Certificate

Section 1.570, as amended, revises paragraph (e) to refer to new paragraph (d) of § 1.565 rather than paragraph (b) in order to reflect the changes in § 1.565.

No comments were received concerning the section and it is adopted without change.

Interim Procedures on Applications Pending on Effective Date

On July 1, 1982, the revised procedures of §§ 1.56(d) and 1.193(c) will apply to any applications then pending which have not been the subject of a final Office decision on questions of fraud or violation of the duty of disclosure. Any petition to strike an application from the files or any protest against a pending application filed prior to July 1, 1982, will be governed by the rules in effect prior to that date. Any applications filed under § 1.175(a)(4) prior to July 1, 1982, will be examined until the application is amended and a reissue patent issues thereon or the application becomes abandoned. For a discussion of the interim practice in effect prior to July 1, 1982, see 1013 O.G. 18–19.

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354).

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Lawyers.

Amendment of Regulations

PART 1—RULES OF PRACTICE IN PATENT CASES

For the reasons indicated above and pursuant to the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Part 1 of Title 37, Code of Federal Regulations is amended as set forth below.

1. Section 1.56 is amended by revising the heading and paragraph (d) and by adding new paragraphs (e) through (i) to read as follows:

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

* * * * *

(d) No patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or gross negligence. The claims in an application shall be rejected if upon examination pursuant to 35 U.S.C. 131 and 132, it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the application relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies.

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.193(c).

(f) Any member of the public may seek to have an application stricken from the files pursuant to paragraph (c) of this section by filing a timely petition to strike the application from the files. Any such timely petition and any accompanying papers will be entered in the application file if the petition and accompanying papers (1) specifically identify the application to which the petition is directed, and (2) are either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Any such petition filed by an attorney or agent must be in compliance with § 1.346.

(g) A petition to strike an application from the files submitted in accordance with the second sentence of paragraph (f) of this section will be considered by the Office. An acknowledgement of the entry of such a petition in a reissue application file will be sent to the member of the public filing the petition. A member of the public filing such a petition in an application for an original patent will not receive any communications from the Office relating to the petition, other than the return of a self-addressed postcard which the member of the public may include with the petition in order to receive an acknowledgement by the Office that the petition has been received. The Office will communicate with the applicant regarding any such petition entered in the application file and may require the

applicant to respond to the Office on matters raised by the petition. The active participation of the member of the public filing a petition pursuant to paragraph (f) of this section ends with the filing of the petition and no further submission on behalf of the petitioner will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new petition.

(h) Any member of the public may seek to have the claims in an application rejected pursuant to paragraph (d) of this section by filing a timely protest in accordance with § 1.291. Any such protest filed by an attorney or agent must be in compliance with § 1.346.

(i) The Office may require applicant to supply information pursuant to paragraph (a) of this section in order for the Office to decide any issues relating to paragraphs (c) and (d) of this section which are raised by a petition or a protest, or are otherwise discovered by the Office.

2. Section 1.106 is amended by adding a new paragraph (c) to read as follows:

§ 1.106 Rejection of claims.

* * * * *

(c) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to § 1.107.

3. Section 1.175 is amended by revising paragraph (a) to read as follows:

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had the right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) [Reserved]

(5) Particularly specifying the errors relied upon, and how they arose or occurred.

(6) Stating that said errors arose "without any deceptive intention" on the part of the applicant.

(7) Acknowledging a duty to disclose information applicant is aware of which is material to the examination of the application.

* * * * *

4. Section 1.193 is amended by adding a paragraph (c) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(c) Any decision pursuant to § 1.56(d) rejecting claims in an application already under appeal of a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e), in which case appellant may file a reply thereto within two months from the date of the supplemental examiner's answer. Such reply will be considered and responded to as necessary. Appellant may file a reply brief directed to any such response within one month of the date of the response or within such other time as may be set in the response.

5. Section 1.291 is amended by revising the title, amending paragraphs (a) and (c), and adding paragraph (b), to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

(b) A protest submitted in accordance with the second sentence of paragraph (a) of this section will be considered by the Office if it includes (1) a listing of the patents, publications or other information relied upon; (2) a concise explanation of the relevance of each listed item; (3) a copy of each listed patent or publication or other item of information in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information in written form relied upon.

(c) An acknowledgment of the entry of a protest under paragraph (a) of this section in a reissue application file will be sent to the member of the public filing the protest. A member of the public filing a protest under paragraph (a) of this section in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office will communicate with the applicant regarding any protest entered in the application file and may require the applicant to supply information pursuant to paragraph (a) of § 1.56, including responses to specific questions raised by the protest, in order for the Office to decide any issues raised by the protest. The active participation of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest.

6. Section 1.555 is revised to read as follows:

§ 1.555 Duty of disclosure in reexamination proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. All such individuals who are aware, or become aware, of patents or printed publications material to the reexamination which have not been previously made of record in the patent file must bring such patents or printed publications to the attention of the Office. A prior art statement, preferably in accordance with § 1.98, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such patents or printed publications to the attention of the Office.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility on behalf of the patent owner for the reexamination proceeding or through a patent owner acting in his or her own behalf. Disclosure to such an attorney, agent or patent owner shall

satisfy the duty of any other individual. Such an attorney, agent or patent owner has no duty to transmit information which is not material to the reexamination.

(c) The duties of candor, good faith, and disclosure required in paragraph (a) of this section have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding.

(d) The responsibility for compliance with this section rests upon the individuals identified in paragraph (a) of this section and no evaluation will be made in the reexamination proceeding by the Office as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

7. Section 1.565 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 1.565 Concurrent office proceedings.

* * * * *

(b) If a patent in the process of reexamination is or becomes involved in interference proceedings or litigation, or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination, reissue or interference proceeding.

* * * * *

(d) If a reissue application and a reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings. Where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171–1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

8. Section 1.570 is amended by revising paragraph (e) to read as follows:

§ 1.570 Issuance of reexamination certificate after reexamination proceedings.

* * * * *

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d) the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

* * * * *

Dated: April 6, 1982.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 82-13613 Filed 5-18-82; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing May 13, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S. 2244 / Pub. L. 97–176 Northern Pacific Halibut Act of 1982. (May 17, 1982; 96 Stat. 78) Price: $1.75.

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Buses
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Copyright Office

Coal Mining
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Colleges and Universities
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Communications Equipment
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Environmental Impact Statements
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Securities
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Securities and Exchange Commission
Telecommunications
Federal Communications Commission
Veterans
Veterans Administration
Water Supply
Delaware River Basin Commission

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 6, Amdt. 9]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action lowers the minimum grade requirements for domestic shipments of Florida white and pink seedless grapefruit and imports of white and pink seedless grapefruit from Improved No. 2 (external) and U.S. No. 1 (internal) to U.S. No. 2 Russet. These changes recognize current and prospective demand for such grapefruit and are consistent with the remaining crop in the interest of growers and consumers.

EFFECTIVE DATE: May 17, 1982, for Florida pink seedless grapefruit. May 24, 1982, for Florida white seedless grapefruit.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

The regulation with respect to Florida white and pink seedless grapefruit is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida.

The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information.

The minimum grade requirements specified herein reflect the Committee's and the Department's appraisal of the need to revise the grade requirements applicable to Florida white and pink seedless grapefruit in recognition of the diminishing available supplies of such grapefruit. The committee reports an increased market demand for the remaining white and pink seedless grapefruit supply. Specification of these requirements assures that the available supply of marketable fruit reaches the consumer.

Under Section 8e of the Act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestically produced commodity. Thus, the grade requirements for imported white and pink seedless grapefruit will also change to conform to the grade requirements for domestic shipments of Florida white and pink seedless grapefruit. It is hereby found that this regulation will tend to effectuate the declared policy of the Act.

It is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the Act to make this regulatory provision effective as specified. This amendment relieves restrictions on shipments of Florida white and pink seedless grapefruit and imports of seedless grapefruit.

To minimize disruption as much as possible and still bring this marketing order into compliance with the Secretary's guidelines for fruit, vegetable, and specialty crop marketing orders, issued January 25, 1982, this regulation is being issued with the understanding that the Citrus Administrative Committee will initiate certain actions in 1982. These actions are necessary so that operations under the program will conform with the guidelines. These guidelines state that orders containing quality provisions like the Florida citrus order, should not be used as a form of supply control. In evaluating quality control programs, emphasis is placed on (1) whether quality controls have varied significantly from season to season or within seasons, (2) whether the percentage of product meeting minimum quality standards has been declining, or (3) whether the standards have been tightened over the years. In addition, to conform with the guidelines, marketing orders should provide for periodic referenda.

List of Subjects in 7 CFR Part 905

Marketing Agreements and Orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

Accordingly, it is found that the provisions of § 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6 (46 FR 60170; 60411; 61441; 47 FR 599; 5912; 5999; 6248; 7203; 10065), should be and are amended by revising Table I paragraph (a), applicable to domestic shipments to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
• • •	• • •	• • •	•
Grapefruit:			
Seedless, except pink	May 24, 1982 to August 22, 1982	U.S. No. 2 Russet	3⅝
	On and after August 23,1982	Improved No. 2	3⅝
Seedless, pink	May 17, 1982 to August 22, 1982	U.S. No. 2 Russet	3⅝
	On and after August 23,1982	Improved No. 2	3⅝
• • •	• • •	• • •	•
• • •	• • •	• • •	•

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 14, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-13606 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 908

[Valencia Orange Reg. 691; Valencia Orange Reg. 690, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 21–27, 1982, and increases the quantity of such oranges that may be so shipped during the period May 14–20, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective May 21, 1982, and the amendment is effective for the period May 14–20, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under Secretary's Memorandum 1512–1, and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on May 18, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is good.

It further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. § 908.991 is added as follows:

§ 908.991 Valencia orange regulation 691.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 21, 1982, through May 27, 1982, are established as follows:

(a) District 1: 408,000 cartons;

(b) District 2: 392,000 cartons;

(c) District 3: Unlimited cartons.

2. § 908.990 Valencia Orange Regulation 690 (47 F.R. 20553), is hereby amended to read:

§ 908.990 Valencia orange regulation 690.

• • • • •

(1) District 1: 561,000 cartons;

(2) District 2: 539,000 cartons;

(3) District 3: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 19, 1982.

Russell L. Hawes

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-14062 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

[Docket No. R-0372]

Securities Credit Transactions; Revision of Criteria for Initial and Continued Inclusion on the List of OTC Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its criteria for inclusion on the List of OTC Margin Stocks ("Over The Counter List"). These amendments will (1) permit inclusion of securities of certain foreign issuers, (2) eliminate alternative market value criterion and make the price and capital criteria mandatory, (3) reduce the initial listing capital and publicly-held share criteria, and (4) reduce the continued listing price and capital criteria. These changes are the result of recent developments in the securities, particularly the OTC market, and staff experience administering the OTC List.

DATE: Effective date June 12, 1982.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, or Robert Lord, Attorney, Division of

Banking Supervision and Regulation (202) 452–2781.

SUPPLEMENTARY INFORMATION: On November 24, 1981, the Board published for comment (46 FR 57532) a proposal to amend its criteria for initial and continued inclusion on the list of OTC Margin Stocks ("OTC List"). Brokers and dealers may not extend credit on stocks which are traded over-the-counter unless such stocks appear on the OTC List. Loans by banks and other lenders that are used to purchase stocks appearing on the OTC List are subject to the Board's margin requirements if the loans are secured by margin stock.

In it announcement, the Board proposed to revise OTC List criteria in three important respects. First, equity securities of foreign issuers and American Depository Recipts would, for the first time, be eligible for OTC List inclusion. Second, certain alternative criteria with respect to price and capital were to be made mandatory. Third, a proposal was made to relax capital and price criteria to more closely resemble the listing requirements of major stock exchanges.

In its action today, the Board adopts revisions to OTC List criteria in substantially the same form as proposed. Specifically, the OTC List criteria are amended to (1) permit the inclusion of securities of foreign issuers registered with the Securities and Exchange Commission, (2) eliminate the alternative market value criterion and make the price and captial criteria mandatory, (3) reduce the intial listing capital and publicly-held share criteria to $4 million and 400,000 shares, respectively, and (4) reduce the continued listing price and captial criteria to $2 and $1 million, respectively.

In response to public commentary, the price requirement for continued listing adopted by the Board today is higher than that originally proposed for comment but lower than that in the existing rule. The Board wishes to make clear that its action today with respect to the inclusion of foreign issuers on the OTC List is limited to those issuers who have actually registered with the Securities and Exchange Commission or file reports comparable to those filed by domestic companies.

In order to give brokers and service bureaus time to adjust their programs to reflect changes in the OTC List, the Board will hereafter publish the OTC List two weeks in advance of its effective date. This change was suggested by many commenters.

The Board wishes to make clear that no existing OTC margin stock which ceases to meet new OTC List criteria will be immediately removed from the OTC List as a result of these amendments; the Board intends to "grandfather" such stocks for two years. Interested persons should also be aware that special consideration for inclusion on the List will be given to companies which voluntarily file an application to delist their securities from a national exchange and are trading in NASDAQ. Such a procedure will prevent any interruption in the marginability of certain securities.

In July 1969, pursuant to the Over the Counter Market Act of 1968 (Pub. L. 90–437), the Board adopted criteria which, if met by issuers of over-the-counter stocks, would result in the stocks being placed on the OTC List and hence afforded the same treatment as exchange listed stocks for purposes of the Board's margin rules. This meant that once on the OTC List, over-the-counter stocks were eligible for margin trading. In addition to criteria for initial eligibility for the OTC List, criteria for continued eligibility for inclusion on the OTC List were also established by the Board in 1972.

Changes in the OTC List criteria made today are the result of a review of recent developments in the securities markets, particularly the OTC market, staff experience with the administration of the OTC List and the public commentary. Each change is discussed below.

Foreign Issuers Now Eligible for OTC List Inclusion

Issuers eligible for inclusion on the OTC List will no longer have to be organized under the laws of the United States or a State. Foreign issuers were precluded from OTC List eligibility in the past because of the relative lack of access to such issuers' financial information. The strengthened disclosure rules of the Securities and Exchange Commission now make it possible to obtain comprehensive and up to date financial information on many foreign issuers. Because of these improvements, it is no longer necessary to restrict OTC List candidates to domestic issuers. Foreign as well as domestic issuers must, however, be registered or file comparable reports with the Securities and Exchange Commission in order to be eligible for inclusion on the OTC List.

Eliminating Alternate Criteria and Making Price and Capital Criteria Mandatory

Another change in OTC List criteria involves the alternative requirements with respect to the size and character of the issue and issuer. Prior to these amendments, a stock could fail one of the three criteria of a $5.00 minimum price, $5 million capital, or $5 million in market value and still be placed on the OTC List. The criterion requiring an aggregate market value of $5 million is of limited value in determining OTC List eligibility since it only affects stocks worth between $5 and $10 per share. During the past two years, for example, only seven percent of the stocks added to the OTC List failed the aggregate market value test. Accordingly, the retention of this test is no longer justified.

The remaining alternate criteria for both initial and continued inclusion on the OTC List—relating to price per share and minimum capital—are now made mandatory. Doing so will lessen the effect of systemic fluctuations which have indirectly been affecting the size and composition of the OTC List.

The Board originally proposed to lower the price and capital criteria for continued listing from $3 and $2.5 million to $1 and $1 million, respectively. Some public comment, however, reflected the view that the proposed criteria may encourage the use of speculative credit. The Board has decided, therefore, to adopt a higher continued listing price criterion than that proposed. The new criterion will still be lower than the criterion existing before these amendments. The capital criterion for initial and continued listing has been reduced to $4 million and $1 million, respectively. The initial listing price per share criterion will remain at $5. The continued listing price per share criterion has been reduced to $2. The initial listing publicly held share criterion has been reduced to 400,000 shares. These changes will make the Board's OTC List criteria more comparable to the listing criteria of the American Stock Exchange.

List of Subjects in 12 CFR Parts 207 and 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin Requirements, Reporting requirements, Securities.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin Requirements, Investments, Reporting requirements, Securities.

Accordingly, pursuant to Secs. 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g, 78w), the Board amends Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively) as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. Section 207.5 is amended by revising paragraphs (d)(1), (4) and (7) through (9), (e)(1) and (4) through (7) to read as follows:

§ 207.5 Supplement.

* * * * *

(d) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) The issuer or a predecessor in interest has been in existence for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(e) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public,

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(6) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

PART 220—CREDIT BY BROKERS AND DEALERS

2. Section 220.8 is amended by revising paragraphs (h) (1), (4) and (7) through (9), (i) (1) and (4) through (7) to read as follows:

§ 220.8 Supplement.

* * * * *

(h) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G)(15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Reciept of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) The issuer or a predecessor in interest has been in existence for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(i) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public,

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(6) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3. Section 221.4 is amended by revising paragraphs (d) (1), (4) and (7) through (9), (e) (1) and (4) through (7) to read as follows:

§ 221.4 Supplement.

* * * * *

(d) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) The issuer or a predecessor in interest has been in existence for at least three years,

* * * * *

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer has at least $4 million of capital, surplus, and undivided profits.

(e) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment

Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)),

* * * * *

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public,

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 per cent of the stock,

(6) The minimum average bid price of such stock, as determined by the Board, is at least $2 per share, and

(7) The issuer has at least $1 million of capital, surplus, and undivided profits.

* * * * *

Final Regulatory Flexibility Analysis

The initial regulatory flexibility analysis indicated that because the proposals to amend OTC List criteria involved a mixture of relaxing and tightening changes, it was not easy to judge the overall impact on small domestic entities—primarily those small-sized corporations whose stocks are traded in the over-the-counter market.

No comments were received which would lead the Board to conclude that the adoption of these amendments would have a significant economic impact on a substantial number of small entities.

By order of the Board of Governors of the Federal Reserve System, May 12, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82–13482 Filed 5–19–82; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

Improving Coastal Management in the United States

Correction

In FR Doc. 82–13359, appearing at page 21009, in the issue of Monday, May 17, 1982, make the following correction:

On page 21024, in the first column, remove the heading Subpart C—[Removed] appearing after the table of Contents for Subpart D;

On page 21024, in the first column, before paragraph 1., add:

§ 931.140 through § 931.152 (Subpart L) [Removed]

BILLING CODE 1505–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–18737; File Nos. S7–855, 856, 922 and 923]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Amendments to net capital rule.

SUMMARY: The Commission is amending parts of its net capital and customer protection rules for broker-dealers. The amendments will alter the haircuts under the net capital rule on most debt securities, preferred stock and redeemable securities of certain registered investment companies. The amendments will also affect the treatment of securities borrowing and fails to deliver by brokers-dealers under both rules. Finally, the Commission is adopting a new provision in the net capital rule designed for a unique class of broker-dealer generally known as municipal securities broker's brokers.

EFFECTIVE DATE: June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Division of Market Regulation (202) 272–2372, 500 N. Capitol Street, Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: In January 1982, the Commission announced the adoption and proposal of amendments to the net capital and customer protection rules that, taken together, would significantly revise the capital requirements for broker-dealers.[1] The amendments as adopted or proposed for comment represented the Commission's conclusion, following a comprehensive examination of the financial responsibility requirements applicable to broker-dealers and the capacity of the securities industry to avoid operational and financial problems encountered in the "Paperwork Crisis" of the late 1960's, that those capital requirements could be revised without creating undue risks to investors.

The amendments that were adopted by the Commission in January 1982, generally, reduced by half (from 4% to 2%) the percentage requirement of net capital for those broker-dealers which have elected the alternative method of calculating net capital, allowed the use of revolving subordinated loans, moderated the treatment of short securities differences and allowed elimination from the Reserve Formula[2] of securities borrowed from customers under certain circumstances. The amendments that were proposed in January 1982 included changes in the percentage deductions ("haircuts") from the market value of certain securities in the proprietary accounts of broker-dealers in computing capital requirements; changes in the treatment of municipal securities that have no ready market; changes in the treatment of fail to deliver contracts that allocate to fail to receive contracts ("matched fails") under the Reserve Formula; and changes in the time period before a deduction must be taken for fail to deliver contracts. The Commission also proposed to amend the customer protection rule to change the treatment of securities borrowed by broker-dealers from persons other than brokers, dealers, or municipal securities dealers under the possession or control requirement of that rule. The effective date of the amendments that were adopted by the Commission in January 1982 was delayed until May 1, 1982.

Following the Commission's actions in January 1982, self-regulatory organizations and the Commodities Futures Trading Commission (the "CFTC") have taken action affecting the capital requirements of many broker-dealers. The New York Stock Exchange (the "NYSE") adopted a rule proposal reducing the early warning levels, thereby reducing, as a practical matter, the net capital required of member firms. The Board of Directors of the National Association of Securities Dealers, Inc. (the "NASD") has approved a substantially similar rule and has submitted that rule to its membership for approval. The CFTC has proposed for comment amendments that would substantially parallel the amendments to the net capital rule adopted by the Commission.

The Commission is adopting the amendments proposed in January 1982, modified, as discussed below, to account for certain of the comments received. The Commission, however, declines to revisit at this time, as several commentators suggested, certain issues considered in January 1982. In view of the significant reduction in overall

[1] Securities Exchange Act Releases Nos. 18417–18420 (Jan. 13, 1982), 47 FR 3512 (Jan. 25, 1982).

[2] 17 CFR 240.15c3–3a.

capital requirements, the Commission has determined not to revisit the liquidity concept of the net capital rule as applied to the treatment of exchange seats and unsecured receivables (which are now treated as not readily convertible into cash).[3] The Commission will, however, continue to explore alternatives with the securities industry. The Commission believes that a balance must be struck by increasing deductions for some of the items in the net capital calculation to reflect the changing economic and market conditions.

The Commission has received thoughtful and helpful comments from the securities industry in its efforts to update the financial responsibility rules. The Securities Industry Association (the "SIA"), some of its members, the various self-regulatory organizations, broker-dealers and others have assisted in the analysis of relevant issues by supplying data, views and recommendations appropriate to the Commission's undertaking. The Commission believes that the success of its public dialogue with the securities industry in this matter, which began in 1979, is evident in the rules as adopted today. The Commission hopes this dialogue will continue as other issues of public concern are explored.

I

The Haircuts

A broker-dealer arrives at its net capital by deducting from its net worth (calculated in accordance with generally accepted accounting principles)[4] the value of assets not readily convertible into cash, and also certain percentages of the market value of securities carried in its accounts. The amount of the haircuts for debt securities (including short term notes) depends on the nature of the issuer, the time to maturity of the security and, for securities of non-governmental issuers, the ratings of nationally recognized statistical rating services. In general, the haircuts for debt securities were designed to take into account the historical market fluctuations of each type of instrument and its associated market.

Relatively recent events in the debt market have caused the Commission to question the adequacy of the present haircut provisions for debt securities generally. Interest rates rose to unprecedented heights in the 1979–80 period, causing precipitous declines in the values of already issued debt instruments. The Commission is concerned that individual firms have an adequate capital cushion to cover potential market risks in light of the volatility of the current markets.

In Securities Exchange Act Release No. 17209,[5] the Commission proposed for comment amendments to the haircut schedules for Government securities, municipal securities and nonconvertible debt securities. Also, in an effort to make its financial responsibility rules more compatible with sound business practices, the Commission solicited comment on the degree to which the haircut provisions should deal with hedges among various classes of debt instruments. Through the comment process the Commission expected to develop criteria for hedging which would be objective, clear and easily determinable.

As discussed in its October 1980 Release, data provided to the Commission tended to confirm doubts as to the adequacy of the present haircut provisions. The data were compiled from records accumulated by brokerage firms in the ordinary course of dealing in debt securities. In one of its January 1982 Releases,[6] the Commission reproposed for comment the haircuts on debt securities and proposed for comment a rather sophisticated hedging schedule as to Government securities. It also proposed for comment changes in haircuts for preferred stock and for redeemable securities of certain registered investment companies.

A. Government Securities

Haircut Schedules. The net capital rule currently requires, in the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, deductions from net worth equal to a percentage of the net long or short position in each category described in subparagraph (A) of the haircut provisions of the rule. There is no deduction for securities having less than one year to maturity. The deduction for securities having one year but less than three years to maturity is 1 percent; that for securities having three years but less than five years to maturity is 2 percent; that for securities with five years or more to maturity is 3 percent.

The data submitted to the Commission by the SIA in 1979 indicated that these haircuts were inadequate in measuring the risk in carrying the securities, particularly those securities with less than one year to maturity and those with five years or more to maturity. That data showed that the majority of monthly changes in market value were greater than the existing haircuts and that, for some months, the month-end to month-end price movements were considerably greater than the existing haircuts. For example, in 26 of the 49 months in the survey, Treasury bills maturing in 6 months moved in price between one tenth of 1% to over 1%. In one month, Treasury bills maturing in nine months moved 1.50% and in February 1980, 1.90%. Finally, in 39 of 49 months, Treasury bills maturing in 12 months moved between one tenth of 1% and 2.51% (February 1980). In each case, however, the rule required no haircut.

The data for bonds with 2 years, 5 years, 10 years, 20 years and 30 years to maturity showed the same discrepancies between the haircuts and the price fluctuations as securities having 1 year or less to maturity. For example, in 3 different months within a 6 month period, Treasury bonds maturing in 30 years declined substantially: 7.06% in February 1980, 8.82% in January 1980 and 9.16% in October 1979. Yet, the required haircut for these securities is only 3%. Based largely on these data and other data later submitted to the Commission, the Commission proposed in its January 1982 Release to alter the haircuts on Government securities.

In an effort to recognize more realistic hedging approaches by brokers-dealers, the Commission also proposed for comment a sophisticated hedging provision as initially presented by the SIA and modified by the Commission. The computation process includes the "weighting" of subcategory haircuts in determining the overall haircut for the category. Permitting only a partial offset of haircuts among subcategories within each category is necessary to account for the increasing fluctuation in prices and yields as the differences in dates to maturity of the long and short positions increase. At the same time, however, permitting a partial offset of haircuts among subcategories recognizes that the market risks of holding both positions are historically less than the total deduction that would be required with respect to each position if the haircut schedule did not permit hedging of securities in different subcategories. Thus, for example, a long position consisting of $1 million of three month Treasury bills does not entirely offset a short position consisting of $1 million in six month Treasury bills, but the haircut required on both positions is less than

[3] The Commission understands, however, that the staff has issued an interpretation allowing a broker or dealer to net receivables from and payables to another broker or dealer for net capital purposes.

[4] This means, among other things, using the accrual method of accounting.

[5] Securities Exchange Act Release No. 17209 (Oct. 9, 1980), 45 FR 69911 (Oct. 22, 1980).

[6] Securities Exchange Act Release No. 18618 (Jan. 13, 1982), 47 FR 3521 (Jan. 25, 1982).

the sum of the haircuts required if the positions were viewed separately.

The hedging formula also prescribes a safety factor that is a percentage of the lesser of the aggregate net long or short positions within each category. By including the safety factor in the haircut computation for each category, the computation takes into consideration the degree to which the various security positions act as hedges for each other. Since the haircuts for the subcategories reflect only the manner in which the market value of the individual security positions within a particular subcategory fluctuate, the safety factor adds a measure of how the market value of the subcategories vary with each other.[7] The SIA determined that the safety factor for the haircut schedule based on an analysis of 30-day price fluctuations would be 48%. For ease of computation and to provide an added measure of safety in the case of portfolios with a heavy concentration in a particular subcategory, the Commission has increased the safety factor to 50%.

The Commission also included in the proposed amendments a provision whereby a broker-dealer can elect to recognize some cross category hedges. Under that provision, an electing broker-dealer could exclude the market values of a long or short security from one category and one from another category provided that such securities have maturity dates: (1) Between 9 months and 15 months and within 3 months of one another; (2) Between 2 years and 4 years and within 1 year of one another; or (3) Between 8 years and 12 years and within 2 years of one another. The electing broker-dealer, however, would be required to include the net market value of the two securities in the category for the security with the longer date to maturity.

Moreover, the Commission proposed to amend the Government securities haircut provisions to permit brokers-dealers to exclude long or short positions in Government securities that are hedged by certain futures contracts.[8] To qualify, the futures contract must be traded on a regulated market and must provide for the delivery of a Government security with a maturity date that would be within a specified range of the maturity date of the long or short Government securities position that the broker-dealer seeks to exclude.

Finally, the Commission proposed, as an alternative to the principal haircut procedure, a simplified procedure for computing applicable haircuts to satisfy the concerns of commentators that the rule continue to provide a simple and direct method for computing required deductions from net capital. That procedure would require an electing broker-dealer to apply the percentage deduction provided in the schedule to the value of each net long or short position in Government securities in the 12 subcategories, and would prohibit any hedging between subcategories or adjacent categories. By netting long or short positions within subcategories, however, the rule would continue to permit some risk-reducing hedges by electing brokers-dealers.

The Commission received few comments regarding the proposed amendments. Most who commented stated that the haircuts on Government securities should not be increased except as to those having a maturity of less than one year. Indeed, the SIA recommended that the haircuts be decreased for all Government securities having a maturity of more than one year, except in two subcategories. The commentators contend that the markets for these securities (and presumably they are referring to Treasury notes and bonds) are highly liquid. They assert that a weekly volatility analysis is more appropriate than the monthly volatility analysis relied upon by the Commission because the average inventory turnover in the market among dealers in Government securities is 1.5 days. They state that the proposed haircuts will cause firms to reduce unnecessarily their Government securities inventory. This, in turn, will diminish the industry's ability to serve the unprecedented demand for liquidity and stability in the Government securities market.

With respect to hedging, although the commentators commended the Commission for incorporating a hedging framework in the proposed rule, they suggest that the Commission's proposed hedging mechanism did not go far enough. They contend that it would be consistent with the goal of providing relief for hedged positions to permit netting among securities in different subcategories (within the same category). In addition, they assert that further netting with futures, forwards and "ratio trading" should be allowed.

Bear Stearns, a reporting government dealer,[9] submitted its own proposal. The proposal would set up 12 categories of maturity ranges, similar to those in the Commission's proposal, but would substantially alter the hedging provisions. Bear Stearns, in its proposal, presumes that all Government securities have some relationship to one another. Therefore, Bear Stearns contends that the rule should allow a dealer to reduce its haircut by netting one category against any of the other 12 categories including those in the shortest maturity band against those in the longest maturity band.

The haircut for the netted categories would be determined by a predesigned formula which it represents is based on an historical analysis of the relationship of the securities in the two categories. The netting would involve a so-called hedging "ratio" which establishes the amount of the shorter-term position which must be maintained to provide an effective hedge against the longer-term position; *e.g.*, for every dollar of positions in category 3, two dollars of contrapositions in category 2 would be needed as an effective hedge.

The Commission acknowledges the responsible recommendations of the securities industry in the Commission's effort to adopt an appropriate haircut schedule for Government securities. Many broker-dealers have devoted substantial amounts of time to assist the Commission by compiling relevant data and by making alternate recommendations. The primary issues remaining for discussion are the basis for higher haircuts and the hedging formula.

The higher haircuts are prompted by the higher price volatility in the market for Government securities and the fact that the present haircuts do not adequately reflect the risks inherent in this increased volatility. The commentators do not dispute these facts. Instead, they contend that the use of the 30-day volatility data period in establishing the haircuts was not appropriate.

The Commission, however, believes that the 30-day period is appropriate since the rule was designed, among other things, to ensure a conservative measurement of the risks in holding positions. The rule cannot account for a particular broker-dealer's trading or hedging strategy. Moreover, the argument of the commentators presumes

[7] The safety factor was derived by analyzing the covariance coefficients of each security position to formulate the safety factor in terms of a percentage of the lesser of the aggregate haircut on the long positions or the aggregate haircut on the short positions within a given category.

[8] Exchange listed options on debt securities will be factored into the formula as the options begin trading. A separate haircut schedule as to the GNMA options has already been approved. *See* letter from the Division of Market Regulation to the Chicago Board Options Exchange, Inc., dated Sept. 29, 1981. The Commission continues to solicit comment and analysis on the impact of this development.

[9] A reporting dealer is one which submits reports to the Federal Reserve Bank of New York.

that the net capital rule is a "going concern" measure of liquidity, which overlooks the fact that the rule was designed to ensure that a firm can be liquidated to an equity. Hence the Commission must treat securities positions on a more conservative basis then a broker-dealer might view them in its everday operations.

Although the Commission believes that the haircuts should be raised as proposed in its release, it recognizes that there is a class of Government securities dealers, which report to the Federal Reserve Bank of New York, that should not be subject to the full impact of the increased haircuts, not only because these dealers turn over their inventory of Government securities within several days, but because they have undertaken certain affirmative obligations to the Federal Reserve System ("the System"). These reporting Government securities dealers must report on a regular basis their trading volume, positions and financing arrangements. They are also expected to participate in Treasury auctions and underwrite new issues of Treasury securities, particularly in troubled markets when there may be insufficient bids to meet the Treasury's cash needs. The dealers are also expected to make a market in certain new issues of Treasury securities. In sum, they are an essential part of the network through which United States monetary policy is maintained.

The Commission believes that these facts constitute sufficient reasons to lessen the haircuts for those reporting Government dealers that actually transact business with the System, provided they maintain a specified minimum net capital to ensure that their dealer activities do not impair the remainder of their business. Thus, the Commission has determined that such reporting Government securities dealers would be required to take only 75% of the haircut on Government securities positions, provided the dealer maintains in excess of $50,000,000 in tentative net capital.

Based on the comments and information before it, the Commission has determined to adopt the substance of the proposed hedging formula as modified to make it more compatible with actual securities industry trading strategies. As the Commission has previously noted, however, the rule cannot possibly reflect the most sophisticated hedging techniques of traders in Government securities. The hedging provisions will, however, be amended so that a broker-dealer will be deemed to be long or short the value of the security which is deliverable against a futures contract for a Government security where the broker-dealer has an open futures contract held in a proprietary account. The contract must be traded on a contract market as defined in the rules of the Commodity Futures Trading Commission.[10] The hedging formula will also be amended so that when a position in a lower haircut category is utilized to offset a position in a higher haircut category, the difference in the market value should remain in the category for the position with the greater dollar value. The January 1982 proposal would have required the net market value of the two securities to be included in the category with the longer date to maturity.

The hedging schedule proposed by Bear Stearns will be the subject of further study and analysis of the underlying assumptions and data. The Commission requests comment on that proposal from interested persons.[10a]

Repurchase, Reverse-Repurchase and Matched Repurchase Agreements

In Securities Exchange Act Release No. 18418, the Commission proposed to amend the net capital rule to clarify the treatment of repurchase, reverse-repurchase and matched repurchase agreements. In response to the proposal, the Commission received helpful comments from the NYSE, the SIA and others.

The NYSE suggested that the Commission continue to apply the tangible net asset test as established in informal staff advice.[11] The Commission agrees with the NYSE that the creditworthiness of the persons dealing with the broker-dealer is an important factor in determining whether to charge the entire deficit. There is, however, insufficient support for the $16,000,000 threshold figure as suggested by the NYSE. The Commission, therefore, declines to continue use of the tangible net asset test. The Commission notes, however, that in circumstances where the broker-dealer has reason to believe that a party to either a repurchase or reverse-repurchase agreement will not comply with its obligations under the agreement, the broker-dealer must treat the contract, for net capital purposes, as dishonored. Accordingly, in the case of a reverse-repurchase agreement, the broker-dealer must deduct the full deficit from net worth. In the case of a repurchase agreement which is part of a matched repurchase agreement, the broker-dealer must treat the security which is the subject of the agreement as a proprietary position and, as in the case of a repurchase agreement which is not part of a matched repurchase agreement, must deduct the appropriate haircut from net worth in computing net capital.

The Commission received other suggested changes to the rule which it believes should be incorporated into the proposed provisions. The rule will accordingly be amended to provide that, for those reverse-repurchase agreements that mature in 90 days or less, the entire deficit in an account or in related accounts that exceeds 5% of tentative net capital must be deducted from net worth. The original proposal would have aggregated the total deficits of all reverse-repurchase agreements with 90 calendar days or less to maturity and required their deduction from net worth if the total exceeded 5% of tentative net capital. The rule will be further clarified to indicate that it requires a deduction of only the loss (deficit in an account) and not a profit (gain in an account). Finally, because subparagraphs (c)(2)(iv)(F)(2)(ii) and (iv), as proposed in January 1982, could have been construed to require a deduction of an amount in excess of the total deficit in certain reverse-repurchase agreements, the provision will clearly state that the computing broker-dealer need not deduct more from net worth than the total deficit, in a reverse-repurchase agreement.

The Commission expresses its concerns about the high leverage achieved by a broker-dealer through repurchase agreements for which there is no net capital charge. The present rule amendment does not adequately address the problems raised by these transactions. Indeed, some may argue with great force that, as the time to maturity of a reverse-repurchase agreement decreases, the percentage of the deficit which must be charged should increase, not decrease. The Commission intends to continue studying the repurchase matters and requests information and comments from interested persons.

B. Municipal Securities

In its January 1982 Release, the Commission proposed to increase the haircuts for certain intermediate and long term municipal securities. The Commission also proposed for comment

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[10] *See* 17 CFR 1.3 (1980).

[10a] Copies of Bear Stearns' proposal are available to interested persons at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

[11] The net asset test ($16,000,000) is used to determine the extent to which a deduction should be taken for a deficit with respect to a reverse-repurchase agreement. *See*, NYSE, Interpretation Handbook: Regulation Surveillance 139–40 (1980).

a modified version of the "presumed marketability" test devised by the NASD as an alternative to the ready market test now in effect for all other securities.[12]

In response to the proposals, the Commission received many thoughtful comments from members of the industry, certain industry groups, self-regulatory organizations and others.[13] Although the Commission was not soliciting comment with respect to the appropriateness of the specified percentage deductions,[14] most comments received questioned the appropriateness of the deductions. In addition, a number of comments disputed the necessity for the presumed marketability test.

1. Haircuts on Municipal Securities

The Commission proposed to increase the haircuts for municipal securities having at least two but less than five years to maturity from 3% to 5% and for municipal securities having five or more years to maturity from 5% to 7%.

The need for the increased haircuts was based largely on data supplied to the Commission by industry sources which indicated that the existing haircuts for municipal securities were not adequate to cover price fluctuations in the municipal bond market in recent years. The data were supplied by broker-dealer firms dealing in municipal debt securities and included data over a 49 month period from February of 1976 through February of 1980. Prices were extracted from the Bond Buyer Municipal Index ("BBI"). Among other things, the data showed that municipal bond prices moved 8.58 percent in October 1979 and 11.05 percent in February 1980.

Most commentators opposed the Commission's proposal to raise haircuts on municipal securities.[15] The SIA conceded that recent volatility in the municipal securities marketplace justified increases in the haircuts for municipal securities. On the basis of the relative price movements of 30 municipal bonds, however, the SIA recommended haircut increases more modest than those recommended by the Commission. More specifically, the SIA proposed that the haircut for municipal bonds with at least two but less than five years to maturity be increased from 3% to 3.5%, that a separate haircut category be created for municipal bonds with at least five but less than ten years to maturity and that the haircut be 5% and, finally, that the haircut for municipal bonds with at least ten years to maturity be increased from 5% to 5.5%.

As to the justification for the proposed increases, some commentators questioned the Commission's use of the BBI as a means of demonstrating volatility in the municipal securities marketplace. These commentators suggested that, since the BBI is only a general indicator of the price movements of municipal securities,[16] it alone is not sufficient to justify the increases proposed. The PSA argued that a 30-day time period to measure price fluctuations is inappropriate since, according to a survey of 50 PSA members, the average turnover of inventory among those members is 12 days in periods of high volatility.

The PSA also argued that the Commission, by narrowly focusing on volatility, ignored important self-correcting mechanisms [17] which help to maintain the financial integrity of firms during volatile period. Due to the anticipated adverse impact of the Commission's proposal as outlined below, the PSA, as well as the MSRB, believes that a greater justification for the proposed increases is necessary.

As to the impact of the proposed haircut increase many commentators pointed out that such increases will reduce the ability of municipal securities firms to carry inventory and will therefore impair liquidity in the secondary market.[18] They argue that impairing liquidity in the secondary market will ultimately raise the borrowing cost of issuers of municipal securities. Moreover, many regional firms, as well as the PSA, commented that the proposed increases in haircuts discriminate against smaller firms and will have anti-competitive effects in the industry.

The PSA suggested that the Commission withdraw its proposal to increase the haircuts for municipal securities or at least adopt more moderate increases for these securities. The PSA, as well as the MSRB, also suggested that the Commission create additional haircut categories for municipal securities which would, in their view, more clearly reflect the realities of the municipal securities marketplace.

The arguments as to increased haircuts do not adequately deal with the extended periods of sharp volatility in the municipal securities marketplace since 1979. It should be noted that the present haircut schedule was devised in a period when municipal securities prices were subject to significantly less fluctuation. The Commission believes the contention as to the appropriateness of the 30-day volatility analysis does not address all of the areas of Commission concern dealing with inventory risk. The Commission has set forth reasons in its January Release for use of a 30-day period. In addition, the Commission believes it is not possible for any municipal securities dealer to determine with precision how long it will have to maintain a position in inventory. Every dealer of course, seeks to turn over its inventory as rapidly as possible. In any event, estimates by various broker-dealers that they hold positions for an average of 12 business days during periods of high volatility is neither determinative nor persuasive in this context.

The 30-day period is useful because it represents a reasonable margin of safety for liquidation of inventory positions which cannot be duplicated by an estimated turnover rate. Haircuts are designed to measure future risk. Moreover, the net capital rule does not assume the "going concern" nature of the broker-dealer. It attempts to ensure that the firm will liquidate to an equity at a particular point in time and provides a cushion to protect investors against unanticipated adverse events.

In addition, the commentators' concerns with respect to use of the BBI

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[12] The Commission, due to the lack of sufficient information to formulate an appropriate provision, declined, at least for the present, to distinguish between rated and unrated municipal securities for purposes of applying haircuts under the rule.

[13] The Commission received comments from, among others, 32 members of the municipal securities industry.

[14] *See* Exchange Act Release No. 18418, 47 FR 3521 (Jan. 25, 1982) at 3521.

[15] Many comments were also received from a specialized type of municipal broker-dealer known as a brokers' broker. Unlike other members of the municipal industry, the brokers' brokers were concerned, not with the level of the increased haircuts or the presumed marketability test but, rather, with the Commission's proposals regarding fails to deliver and fails to receive. That matter is discussed later in this release.

[16] The BBI is a general indicator of historical price movements in the municipal bond market. It is based, not on actual price movements of actual securities, but rather, is derived from averages of estimates made by market professionals of the yield levels at which a specified list of issuers could sell 20-year maturity new issues generally.

[17] For example, the PSA points out that, in response to volatile markets, firms will make substantial downward adjustments in inventory and dealers will maintain greater spreads.

[18] The PSA pointed out that, at the end of the fourth quarter of 1980, municipal dealers doing a public business and carrying customer accounts held an aggregate of $2.373 billion in municipal securities. The PSA went on to point out that, assuming that 75 percent of this aggregate amount had maturities of two years or more, the additional amount of capital required to support their inventory would be approximately $36 million if the haircut levels are raised as proposed. The removal of $36 million of capital, the PSA argues, would reduce the positioning capacity of municipal securities dealers by approximately $600 million, assuming an average 6 percent haircut.

are somewhat misplaced. In determining volatility in the municipal securities marketplace in connection with amendments adopted herein, the Commission relies, not only on the BBI, which is widely used by broker-dealers to detect historical movements in municipal securities, but also on data supplied by the SIA, as well as data obtained from a municipal bond evaluation service. These data traced the price movements of actual issues of municipal securities and led to the same conclusion as the BBI data.

Finally, an impact analysis reveals that the effect of the proposed changes in municipal securities haircuts on the securities industry as a whole will be modest. While, as expected, municipal securities dealers dealing primarily in municipal securities will be disproportionately affected by the proposed increases,[19] the Commission's impact analysis showed that these firms carried more excess net capital proportionately than the rest of the securities industry.[20] As a result, the overall net capital position of municipal securities dealers should not be significantly impaired.[21]

It appears to the Commission that most of the higher haircuts as to municipal securities will be absorbed by the larger NYSE firms which have elected the alternative method of computing net capital. Because of the recent reduction, from 4% to 2%, of the percentage of net capital required to be maintained by those firms electing the alternative method of computing net capital and because of other adjustments to the financial responsibility rules which, overall, will reduce by hundreds of millions of dollars the required level of net capital for those firms, the Commission believes that it would be imprudent to ignore the recent steep increases in volatility in the municipal marketplace. Accordingly, the Commission believes that an increase in the level of haircuts for municipal securities is entirely justified.

Nonetheless, the Commission recognizes that it may not be appropriate to treat 5 year municipal bonds identically with 20 year municipal bonds for haircut purposes. Unfortunately, up to now, the Commission has not had sufficient data to justify creation of additional categories. After the January 1982 proposal, however, it obtained from the municipal securities industry additional data on price movements of selected municipal securities of intermediate maturity which allows the refinement of the category for municipal securities having 2 years or more to maturity.

On the basis of this additional data, the Commission has determined that applying a 7% haircut to all municipal securities having 5 years or more to maturity appears to be overly conservative. Municipal securities with 5 years to maturity generally exhibited less volatility than municipal securities with 20 years or more to maturity. Accordingly, the Commission is revising the percentage deductions to take account of this increased volatility of municipal securities as the length to maturity increases. The Commission is also revising the haircuts applicable to municipal securities having a maturity of 2 years or more based on the additional data.

These revisions will reduce the impact of the increased municipal securities haircuts on municipal securities dealers, who have inventory positions in such securities with maturities between 2 and 20 years.

2. Market Value of Municipal Securities

Rule 15c3–1(c)(2)(vii) requires broker-dealers to deduct from net worth in computing net capital 100% of the carrying value of securities in their proprietary or other accounts for which there is no "ready market." Under subparagraph (c)(11)(i) of the rule, a "ready market" includes a recognized established securities market where there exist independent bona fide offers to buy and sell. Recognizing the unique structure of the municipal securities marketplace, however, the Commission decided to suspend, by interpretation, application of the ready market provision to municipal securities pending development of appropriate marketability criteria for municipal securities.[22]

Since almost six years had lapsed since the interpretation was issued, the Commission, in Securities Exchange Act Release No. 17209, again requested comment regarding appropriate criteria to determine the market value of municipal securities for net capital purposes where the securities were the subject of quotations only by the computing broker-dealer.

In its January 1982 Release, the Commission proposed for comment a modified version of the presumed marketability criteria developed by the NASD as follows:

> Municipal securities dealers should value their municipal securities inventories at market, or if such values are unavailable, at cost for a period of 30 calendar days following settlement date. Thereafter, in the absence of further price or transaction data, a municipal firm would markdown or reduce the value of such positions by 5% per month until its capital value declined to 50% of its originally assigned value. At that point, the position would be valued at zero and considered a non-marketable security for net capital purposes.

Although the SIA endorsed the concept of presumed marketability, the PSA, the MSRB and many others who commented on this aspect of the Commission's proposal voiced their opposition to the adoption of a presumed marketability test.[23] Some commentators stated that the presumed marketability test was arbitrary, rigid and inappropriate for the municipal securities marketplace.[24] The MSRB stated that, because of the sheer volume and diversity of issues in the municipal marketplace,[25] formulas for determining the market value of municipal securities are not very useful.[26]

An accounting firm commented that adoption of the presumed marketability provision would result in municipal securities being valued differently for generally accepted accounting principles and net capital purposes. In their opinion, ability to hypothecate the

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[19] Obviously, this is because the ratio of municipal haircuts to total net capital for sole municipal securities dealers is generally high relative to the rest of the securities industry.

[20] For year end 1981, the average NASD member had excess net capital equal to approximately 300 percent of required net capital while the average sole municipal securities dealer had excess net capital equal to approximately 470 percent of required net capital.

[21] As noted previously, for the year end 1981, the average municipal securities dealer had excess net capital in an amount equal to approximately 470 percent of required net capital. Even assuming that the municipal haircuts were raised to the level originally proposed in Securities Exchange Act Release No. 18418, excess net capital of these firms would still approximate 430 percent of required net capital.

[22] Securities Exchange Act Release No. 11884 (Nov. 20, 1975). In this release, the Commission requested public comment on developing market criteria for municipal securities.

[23] The PSA expressed its belief that the present practice of not applying the ready market provision to municipal securities has worked relatively well. The PSA believes that the broker-dealer quoting the security "maintains" the secondary market for issues and provides the necessary liquidity in the market. In the PSA's view, regional municipal dealers would be penalized by application of the ready market provision.

[24] The MSRB pointed out that there are many other ways of obtaining price verification for municipal securities. Unfortunately, none of them is satisfactory for issues which have no ready market.

[25] According to the MSRB there are approximately 47,000 issuers having 1,500,000 issues outstanding.

[26] In addition, the MSRB as well as an accounting firm, pointed out that adoption of the presumed marketability test may well induce firms to effect "accommodation trades" solely for the purpose of price validation. this, of course, would be fraudulent.

securities should be sufficient evidence of marketability.

As to the effects of adoption of the presumed marketability test, many commentators pointed out that the proposal discriminates against small regional dealers who may be the only market maker for a certain issue. As with the haircut proposal, they state that adoption of a presumed marketability test will reduce liquidity in the secondary market and raise the borrowing cost of issuers. In this regard, the MSRB states that the increased costs to regional firms may very well cause some of them to curtail their activities.

The Commission has in the past encouraged the industry to find a solution to the vexing problem of the valuation of municipal securities held in inventory for more than 30 days, which have no ready market in the usual sense. The problem remains that there are instances when the examining staffs of the Commission and the self-regulatory orgainzations have been unable to substantiate the valuation of specific municipal securities assigned by particular municipal dealers. More importantly, some broker-dealers were found to have capital problems after an examination because they were overvaluing securities which had no "ready market."

On the basis of information available to the Commission, it appears that, because of the relatively few issues that are held in inventory for substantial periods of time in excess of 30 days, the adverse effects of adoption of the presumed marketability test have been overstated. The presumed marketability test only comes into effect after 30 days and then only if the broker-dealer cannot establish the market value of the security involved, by reference to last sales data, legitimate quotes from other broker-dealers who are willing to buy the security or pledge of the securities under a bank loan to a bank lender.

In view of the comments received, however, the Commission has made some adjustments to the proposed test. More specifically, instead of being denied any value for inventory positions after the market value has declined to 50% of its originally assigned value, broker-dealers will be allowed to continue to reduce the value, for purposes of the rule, by 5% per month until the value reaches zero.[27]

[27] The wording of the presumption will also be altered to make clear that the valuation is for net capital purposes only and that a ready market for the securities can still be established if the securities are actually collateral for a bank loan. *See* Rule 15c3-1(C)(11)(ii).

The presumed marketability test, as revised, is as follows:

Municipal securities dealers should value their municipal securities inventories at market, or if such values are unavailable, at cost for a period of 30 calendar days following settlement date. Thereafter, in the absence of further price or transaction data, a municipal firm would markdown or reduce the value of such positions by 5% per month until its capital value declined to zero. At that point, the position would be considered a non-marketable security for net capital purposes.

C. Preferred Stock

The net capital rule currently requires in the case of cumulative, nonconvertible preferred stock a deduction of 20% of the market value of the greater of the long or short position. In its January 1982 Release, the Commission proposed to reduce from 20% to 10% the haircut for nonconvertible preferred stocks which are rated in one of the four highest categories by at least two of the nationally recognized statistical rating organizations. Under this proposal, all other issues of preferred stock would be treated as commonstock and receive a haircut of 30%. For firms using the alternative method, however, the haircut would be reduced to 15%.

This proposal resulted from a determination by the Commission that, since higher rated preferred stock presented little risk of non-payment of dividends when due, allowing preferential treatment to higher rated preferred stock more accurately reflected the degree of risk involved. At the same time, the Commission determined that, since the financial health of an issuer affects its ability to pay dividends on its preferred stock, lower rated preferred stock should be treated more like equity securities.

While the Commission received comments from the NASD and others endorsing the proposed revisions for preferred stock, it received no comments opposing the proposal. Accordingly, the Commission finds that the proposed treatment of preferred stock is a reasonable alternative to the present treatment of preferred stock and adopts the provision as proposed.

D. Securities of Certain Registered Investment Companies

In light of the proposed changes in the haircut schedules for certain debt securities, the Commission believed it appropriate to adjust the haircut provisions relating to redeemable securities issued by registered investment companies investing in such debt securities. In its January 1982 Release, the Commission proposed to amend the net capital rule to provide for (1) a deduction of 2% of the market value of the greater of the long or short position of redeemable securities of a registered investment company whose assets consist of investments restricted to certain debt securities with one year or less to maturity ("the 2% haircut") ("money market funds"); (2) a deduction of 7% of the greater of the market value of the long or short position of redeemable securities of a registered investment company whose assets consist of investments in long-term debt securities (other than corporate debt securities) with one year or more to maturity ("the 7% haircut"); and (3) a deduction of 9% of the market value of the greater of the long or short position of redeemable securities of a registered investment company whose assets consist of investments in long-term debt securities including nonconvertible debt securities ("the 9% haircut").[28]

In response to the proposal, the NASD commented that the permissible investments of a registered investment company qualifying for the lower 2% haircut are unnecessarily restrictive. More specifically, the NASD argued that, by restricting the permissible assets of the registered investment company to cash or securities or money market instruments with one year or less to maturity which are described in paragraphs (c)(2)(vi)(A) through (C) or (E) of the rule, the Commission may unintentionally be excluding securities of otherwise bona fide money market funds from the lower haircut provision.[29] In the NASD's view, this provision should be structured to make reference to any generally acceptable definition of a money market fund, perhaps one contained in another Commission rule.

Also in this connection, the NASD pointed out that it would be difficult for a broker-dealer to determine whether a certain investment company in whose securities the broker-dealer had invested qualified for the 2% haircut at any particular point in time. This is due to the fact that most broker-dealers have no effective means of determining

[28] The Commission's also proposed to amend the rule to clarify that it applies only to "redeemable" securities of registered investment companies.

[29] For example, the NASD points out that paragraph (c)(2)(vi)(E) limits qualifying commercial paper to that rated in one of the three highest categories by at least two of the nationally recognized statistical rating organizations. The NASD goes on to point out that proposed Rule 2a-7 under the Investment Company Act recognizes that unrated instruments may be perfectly appropriate for a money market fund portfolio, subject to certain safeguards.

whether all of the assets of a particular investment company are restricted to the prescribed debt instruments with one year or less to maturity. As a solution, the NASD suggested that the Commission use a dollar weighted average maturity of the fund's portfolio as a means of determining whether a certain fund qualifies as a "money market fund" under the rule. The NASD points out that an average maturity figures are regularly published and readily available to broker-dealers and regulators.

The Commission recognizes that its original proposal as to the permissible investments of a registered investment company whose redeemable securities qualify for the lower 2% haircut may have been overly restrictive. Apparently, there are investments which are entirely suitable for investment companies commonly known as "money market funds" that may not come within the confines of a permissible investment as originally proposed by the Commission. Unfortunately, however, due to the rapidly changing nature of investment company activities, the Commission has as yet been unable to develop a comprehensive definition of a "money market fund." [30] Rather, the Commission, in reviewing registration statements of investment companies, has employed various criteria in determining whether a certain investment company is justifiably holding itself out to the public as a "money market fund."

Despite the lack of an explicit Commission rule, the Commission has determined to revise its proposal to provide that a broker-dealer may take the lesser 2% haircut on redeemable securities of a registered investment company which is commonly known as a "money market fund." This should alleviate the NASD's concern regarding the unintended exclusion of redeemable securities of otherwise bona-fide "money market funds" and should also provide broker-dealers and others with a degree of certainty in determining whether a particular investment company in whose securities the broker-dealer has invested qualifies as a "money market fund" under this provision.[31]

[30] Rule 434d of the Securities Act of 1933 (the "Act") makes reference to a "money market fund" for purposes of determining whether an advertisement is deemed to be a prospectus under Section 10(b) of the Act for purposes of Section 5(b)(1) of the Act. The rule does not, however, establish criteria that an investment company must meet in order to hold itself out to the public as a "money market fund."

[31] For purposes of this provision, a broker-dealer may rely upon the representations made by an investment company in its prospectus stating generally that its investment policy is to invest in money market instruments.

The Commission received no adverse comment regarding the proposed 7% and 9% haircuts for redeemable securities of registered investment companies which invest in long-term debt securities. In the Commission's view, these increased haircuts are necessary to reflect the increased volatility in the long-term debt market in recent years. Accordingly, the Commission is adopting the 7% and 9% haircuts as proposed and the 2% haircut as revised.

E. Nonconvertible Debt Securities

Rule 15c3–1(c)(2)(vi)(F) requires, in the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and that are rated in one of the four highest categories by at least two of the nationally recognized statistical rating organizations, haircuts ranging from 1% for those securities with less than one year to maturity to 7% for securities with five years or more to maturity.

In its January 1982 Release, the Commission, on the basis of available data, proposed to increase the haircuts on nonconvertible debt sucurities ranging from 2% for those securities with less than one year to maturity to 9% for those securities with five years or more to maturity. The Commission believed that it was appropriate to propose increased percentage haircuts in the schedule of maturities categories in order to reflect more accurately the volatility of nonconvertible debt securities.

In the same release, the Commission proposed amendments that would allow broker-dealers to reduce applicable haircuts on nonconvertible debt securities that are hedged by certain debt obligations of the United States or agencies thereof. The proposed amendments would permit a reduction in the applicable haircut on a nonconvertible debt securities position when hedged by a position in securities issued by the U.S. Government with certain dates to maturity and would eliminate the haircut otherwise applicable to the Government security. The Commission proposed these amendments to establish a basis for closer examination of the relationship among various securities positions and the extent to which market risks can be reduced through hedging strategies.

The Commission received few comments regarding the proposed amendments. All the commentators recommended that the Commission further refine the proposed amendments by permitting broker-dealers to hedge nonconvertible debt securities with Government securities futures and forward contracts. In addition, the commentators recommended that the Commission permit the hedging between two nonconvertible debt securities with similar maturity dates.

The commentators, however, did not provide the Commission with sufficient relevant data that would substantiate their claim that the aforementioned hedging strategies should be recognized by the Commission. The Commission is willing to address this matter in the future if it can obtain data upon which to make an informed decision. The Commission, therefore, specifically requests commentators to submit relevant data concerning the price spreads of nonconvertible debt securities that are hedged by either U.S. Government futures[32] or other nonconvertible debt securities with similar maturity dates. The Commission also invites commentators to submit relevant data on price spreads involving other hedging strategies so as to enable the Commission to establish hedging criteria that are objective, clear and easily determinable for reducing any required haircuts on nonconvertible debt securities.

The Commission also invites comment on a recommendation by one broker-dealer that certain privately placed nonconvertible securities issued by large corporations without registration under the Securities Act be exempted from the provisions of paragraph (c)(2)(vii) of the net capital rule, which requires the deduction from net worth of 100% of the market value of securities which cannot be publicly offered or sold. The firm argues that these securities are marketable through an extensive institutional market.

On the basis of the foregoing, the Commission adopts the amendments as proposed which increase the haircuts on nonconvertible debt securities, but at the same time reduce the applicable haircuts on those securities that are hedged by positions in U.S. Government securities.

Borrowing and Lending of Securities by Broker-Dealers and Related Requirements

A. Introduction and Background

Brokers-dealers frequently borrow securities from institutions that are not ordinarily retail customers of the borrowing broker-dealer, but who are treated as customers of the borrowing

[32] The Commission will defer indefinitely any consideration of using forward contracts for hedging purposes under the net capital rule.

broker-dealer under the customer protection and net capital rules. Broker-dealers borrow securities, including U.S Government obligations, in order to complete short sales and to avoid fails to deliver to other broker-dealers or institutions due to delayed deliveries (fails to receive) by others. Securities are also borrowed to relend to other broker-dealers. The ability of broker-dealers to borrow and lend securities facilitates the smooth operation of the market for securities by reducing the level of incomplete transactions. The securities borrowing process also enables financial institutions to convert their securities portfolios into short term funds, thereby increasing the return to such institutions from these securities.

With the explosion of institutional and other trading activity over the last few years, the proliferation of trading strategies incorporating short sales of stock in combination with options, and the heightened activity of risk arbitrage and convertible arbitrage trading, there has been an enormous growth in broker-dealer requirements to borrow securities. December 1981 FOCUS filings by 392 NYSE member firms reported a total of over $8 billion in securities borrowed at year end.

Rule 15c3–3 under the Securities Exchange Act of 1934 requires, among other things, that a broker-dealer obtain and thereafter maintain possession or control of all fully paid or excess margin securities held for the account of customers.[33] For purposes of Rule 15c3–3, the term "customer" includes any person or entity, such as a financial institution, that lends securities to a broker-dealer, whether or not it maintains an investment or trading account with that broker-dealer. Thus, it would appear that the only securities available for lending would be securities that are held by the broker-dealer as collateral for margin accounts.

Although borrowing and relending securities from financial institutions and others could be viewed as violating Rule 15c3–3, the Commission staff has taken the position, on a no-action basis, that it will raise no question as to non-compliance with the possession or control requirement of Rule 15c3–3(b), provided the borrower provides a written agreement containing certain specific terms covering the securities subject to the loan. However, because the "Formula for the Determination of the Reserve Requirements of Brokers and Dealers" (the "Reserve Formula") of Rule 15c3–3 draws no distinction between securities held for the account of retail customers and securities obtained from persons pursuant to a collateralized loan, the market value of securities borrowed from others than retail customers, including financial institutions, are includable in the Reserve Formula.

In its January 1982 Release,[34] the Commission set forth a proposed amendment to exempt from the possession or control requirements those securities that are borrowed in accordance with the proposed amendment. The proposed amendment would allow the borrowing of customers' fully paid and excess margin securities, but would permit such borrowings only on transactions where there is a written agreement between the broker-dealer and the lender, which, in addition to other provisions:

(1) Requires that the written agreement entered into at the time of the loan specifically identify the securities to be loaned and the basis of compensation therefore,

(2) Requires 100% collateral, either in cash or in U.S. Treasury bills or notes,

(3) Requires, if the value of the borrowed security exceeds 105% of the value of the collateral, the delivery of additional collateral to satisfy the deficiency, and

(4) Requires the physical possession of the collateral be transferred to the lender or to his appointed agent.

In the same release, the Commission, as an interim measure, announced an interpretation of the customer protection rule which would reduce the reserve and net capital requirements of certain broker-dealers by excluding from the Reserve Formula debit and credit items that are related to securities borrowed from customers and financial institutions. To qualify for exclusion from the Reserve Formula, the securities must be borrowed pursuant to a written agreement and the broker-dealer must (1) deliver collateral in the form of cash or Government securities equal to at least 100 percent of the value of the securities; and (2) undertake to deliver additional collateral to satisfy the entire deficiency in the event that the market value of the securities exceeds by five percent the value of the collateral. Thus, securities borrowed in conformity with these requirements should be treated as if borrowed from a broker-dealer or municipal securities dealer. Furthermore, for purposes of allocating funds associated with these securities in the Reserve Formula, a broker-dealer may treat lenders of securities as being non-customers, so long as the broker-dealer complies with the requirement of proposed paragraph (b)(3) of Rule 15c3–3.

B. Discussion

In general, the majority of the comments received commended the Commission on its attempt to liberalize the conditions under which broker-dealers are permitted to borrow securities from customers as well as financial institutions. However, most of the commentators were critical of the conditions under which such borrowings would be permitted by the proposed rule as being too restrictive, fails to recognize fully general industry practice, and would create operational handicaps. Those commentators suggested that the proposal should, therefore, be reconsidered by the Commission. The commentators' primary concerns center around the Commission's refusal to expand the scope of acceptable collateral to include, among other things, irrevocable letters of credit. In addition, the majority of the commentators suggested that the Commission should reconsider the provisions that require: (1) Mark to the market; (2) transfer of actual possession of the collateral to the lender; and (3) a separate written agreement for each borrowing and lending transaction. In sum, the comments fall into two general classes, one relating to the written agreements and applicable disclosures and the second relating to the loan collateral, including delivery of additional collateral.

1. *Written Agreement and Notice Provisions.* Proposed Rule 15c3–3(b)(3)(i) requires that borrowers and lenders enter into a written agreement at the time of the loan identifying the securities to be loaned and the basis for compensation. Subparagraph (b)(3)(iii) requires that the agreement contain a provision disclosing that the securities lender may not be afforded protection under the Securities Investor Protection Act of 1970 ("SIPA") and therefore the collateral would constitute the first source of satisfaction of the borrower's obligation.

The commentators stated that most institutional lenders have written master agreements with the borrowing broker-dealers so that any given loan is covered not only by an established relationship but by a general contract specifying the terms of the loan, acceptable collateral and the rights of the lender in the event of default. Seldom, however, do these agreements identify the specific securities involved, and even where the compensation rates are specified, they are usually subject to renegotiation as warranted by changing

[33] *See* 17 CFR 240.15c3–3(b)(1).

[34] Securities Exchange Act Release No. 18420 (Jan. 13, 1982), 47 FR 3594 (Jan. 25, 1982).

money rates, market conditions, expected duration of the loan, and the supply and demand for a specific security. These master agreements are normally executed at about the time of the initial transaction between the borrowing broker-dealer and the lender. However, sometimes the formal agreement is executed shortly thereafter. Thus, the commentators assert that there is no need for the agreements to specify each security loaned and the rates on each loan.

The commentators share the Commission's concern that the lenders be aware of their prospective status as "non-customers" for purposes of SIPA. They disagree, however, on the proposed means to accomplish this goal. Several broker-dealers maintain that mandatory disclosures regarding a lender's rights would only add unnecessary paperwork and expense and would not supply any relevant new information not known to the lender or the borrowing broker-dealer. One broker-dealer and the SIPA, on the other hand, proposed that the Commission adopt a rule which requires that the lender receive a notice from the borrowing broker-dealer contemporaneously with the first loan transaction between the parties. The notice would state that stock loan transactions are not customer transactions covered by SIPA and that the collateral would constitute the lender's primary source of satisfaction in case of default by the borrowing broker-dealer. Under this formulation, the borrowing broker-dealer would be responsible for conveying this information in a manner it determines appropriate.

The Commission agrees that there need be only one written agreement, which must be supplemented by a separate statement or confirmations specifying the securities actually loaned to the broker-dealer. The agreement to lend should be separate from other account agreements and should be executed at or before the first transaction. It should specify the rights and obligations of the parties in detail as to the borrowed securities, including applicable provisions dealing with mark to the market and the return of the borrowed securities. The written agreement should also set forth in bold type that the lender of the borrowed securities may not be protected by SIPA and that any collateral received by the lending entity may be its sole source of protection in the event of default by the broker-dealer. The Commission believes that the inclusion of this last statement will not create any substantial increase in paperwork for broker-dealers.

2. *Collateral Provisions.* Most of the commentators opposed all of the Commission's proposals as to the collateral delivery and mark to the market requirements. In essence, the commentators stated that a broker-dealer should be able to deliver to the lender whatever collateral the parties agree upon, including secured or unsecured irrevocable letters of credit. They also oppose the mark to the market provisions. They do so, not because marks to the market are not standard practice, but rather because, in their view, the lender should initiate the mark. That is to say, the customer should be on guard and protect its own interests. Finally, the commentators disagreed with the Commission's expressed concern as to the leverage inherent in the securities borrowing process.

The securities borrowed proposal was designed to curtail the leverage inherent in the securities borrowing process. Broker-dealers contend that this fear is illusory.

The Commission believes that the leverage in the securities borrowing process is undeniable. The commentators contend that if they use the funds retained from the process in a speculative manner, the net capital rule will require some charge. They also contend that obtaining cash through securities borrowing is not different than borrowing on an unsecured basis.

Neither point appears to completely answer the Commission's concerns. There are clearly instances where the broker-dealer will take no net capital charge for the use of money obtained from the securities borrowing process. In addition, as a general rule, broker-dealers do not borrow money on an unsecured basis for any extended period of time, except through subordinated loans. Finally, in many instances, the broker-dealer will have no balance sheet accountability for the securities borrowed if it provides no asset collateral in return for them.

While the Commission continues to believe that the securities lender should be given full cash (or its equivalent) collateral for the securities loaned, it does not want to restrict the business of borrowing and lending securities, some portion of which is used to complete legitimate short sales or fails to deliver. Therefore, the rule proposal will be revised so that if a broker-dealer delivers a letter of credit as collateral to the lending party, it must charge its net capital 1% of the market value of the securities borrowed. In effect, broker-dealers will be authorized (if Regulation T permits) [35] to deliver letters of credit, secured or unsecured.[36] The rule will still compel the firm to turn over the collateral physically to the lender and mark to the market. The definition of collateral will be broadened to include all forms of cash, Treasury bills or notes as well as letters of credit. The Commission also requests comments from broker-dealers, self-regulatory organizations and other interested members of the public discussing the impact the 1% surcharge will have on the securities borrowing business. The Commission will monitor the effects of the securities borrowing program for the next year and will at that time determine whether any alterations to the rules are necessary.[37]

III

Fails to Deliver

In Securities Exchange Act Release No. 18419, the Commission proposed for comment an amendment to a staff interpretation of Rule 15c3–3 which would allow a broker-dealer to exclude both fails to receive [38] and fails to deliver [39] which allocate to one another ("matched fails") from the Reserve Formula. The net capital rule would, however, be amended so that fails to deliver excluded by allocation would be subject to a capital charge of 1 percent of the contract value of the fail to deliver.[40] The Commission also

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[35] 12 CFR 220.6(k).

[36] The Commission notes that requests have been made that letters of credit be allowed to be used to secure primary capital contributions in the business of broker-dealers. While the Commission has not determined the issues, the staff has taken the position that promises to pay (or receivables on the broker-dealer's books) secured by letters of credit must be deducted from net worth in computing net capital. They otherwise have no value in determining the net capital of a broker-dealer.

[37] If customer margin securities are used as collateral for the letter of credit, the value of the securities borrowed must be entered as a credit in the Reserve Formula.

[38] A "fail to receive" arises when a buying broker-dealer has not taken delivery from the selling broker-dealer as of settlement date. A fail to receive is a liability which the buying broker-dealer must satisfy when the securities are delivered.

[39] A "fail to deliver" arises when the selling broker-dealer fails to deliver the certificates in proper form at the agreed upon settlement date to the buying broker-dealer. A fail to deliver is an asset since it represents monies due to the firm for sales of securities.

[40] The Commission's response in its letter to M.S. Wien & Co., Inc. dated July 13, 1978 (the "Wien letter") and in similar letters to other broker-dealers, as noted later in this release, will no longer be applicable and are withdrawn. Under the Wien letter, broker-dealers who do primarily a dealer business and who have substantial amounts of fails to receive versus fails to deliver which are not allocable to customers may under certain conditions

(Continued

proposed to amend the net capital rule to reduce the time period before which a deduction under subparagraph (c)(2)(ix) of the rule must be taken for a fail to deliver.

A. Matched Fails

The commentators generally supported the proposal to exclude "matched fails" from the Reserve Formula. Many commentators, however, objected to the imposition of the 1 percent charge on excluded fails to deliver.

The NASD argued that the 1 percent capital charge is unduly harsh and unwarranted, particularly since a substantial number of their members had been netting their fails in reliance on a staff no-action letter without the additional burden of the 1 percent charge. The NASD also asserted that the 1 percent charge will not provide retail firms additional incentive to close-out fails to deliver. First, firms with retail business would still be able to operate with "dangerously low" minimum net capital by simply switching from the alternative to the basic method of computing net capital, thereby avoiding the 1 percent charge on excluded fails to deliver. Second, the net capital rule already provides such an incentive though the "aged fails to deliver" haircut provision, Rule 15c3–1(c)(2)(ix). The NASD maintained that this provision works well to reduce fails to a level commensurate with the capability of industry facilities to close-out and complete open trades. The NASD suggested that the Commission develop specific proposals to address the particular universe of firms which would be allowed to operate with lower minimum net capital absent the 1 percent capital charge, rather than impose the additional 1 percent capital charge on all broker-dealers using the alternative method of computing net capital.

The Commission has reviewed the comments received and has determined that imposition of the 1 percent capital charge on the contract value of the excluded fails to deliver is necessary in order to ensure that firms which have a substantial amount of formula debits that consist of fails to deliver excluded from the Reserve Formula will maintain a sufficient minimum level of net capital. The net capital rule establishes minimum levels of capital in an effort to assure that firms have sufficient liquid assets to meet obligations to customers and other broker-dealers as they come due. The rule operates to place an outer limit upon the amount of leverage or risk that broker-dealers may incur. Members of the securities industry do not dispute that the maintenance of sufficient capital requirements is an essential regulatory discipline which ensures both investor and broker-dealer confidence in the securities industry; rather, they argue that the 1 percent capital charge is excessive and therefore unwarranted, particularly with respect to those firms for which the Wien letter was designed.

The Commission, however, is not persuaded by these agruments. First, the Commission has recently reduced by one-half, from 4% to 2%, the minimum percentage of net capital required under the alternative method. This represents a very substantial reduction in the "capital cushion" required to be maintained by broker-dealers who compute net capital under the alternative method. Since under the alternative method, a broker-dealer's net capital requirement is a function of its customer debit items, to permit broker-dealers to exclude fails to deliver (a debit item) which allocate to fails to receive (a credit item) from the Reserve Formula without the additional 1% capital charge could allow many firms to be dangerously overleveraged.

Second, firms which do business primarily with other professionals have the highest percentage of matched fails to deliver. While these firms generally have the least direct customer exposure, they should, nonetheless, maintain sufficient net capital to meet their obligations to other broker-dealers, thereby ensuring continued confidence in the integrity of the securities industry. It is, therefore, not determinative whether the 1% capital charge will provide additional incentive to close-out fails to deliver, though it appears that it will provide such an incentive to some degree. Moreover, broker-dealers with relatively few matched fails will not be significantly affected by the additional 1% capital charge.[41] Upon review, after experience, the Commission believes that the Wien letter fails to provide adequate net capital requirements for broker-dealers on the alternative method. Therefore, the Wien interpretation should be and is withdrawn.[42] Finally, the Commission agrees with the SIA's suggestion that the interpretation should be amended to exclude from the Reserve Formula securities borrowed (that presumably have been used to clear a fail to deliver) that allocate to a fail to receive.[43]

For purposes of the allocation procedure under Rule 15c3–3, the Commission announces the amendment of the Division of Market Regulation's interpretation in Securities Exchange Act Release No. 11497. The new interpretation is as follows:

(1) Fails to receive which are allocable to long positions in the proprietary or other accounts of the broker or dealer or to fails to deliver of the same quantity and issue may be excluded from the computation of the Reserve Formula;

(2) Fails to deliver which are allocable to short positions in the proprietary or other accounts of the broker or dealer or to fails to receive of the same quantity and issue may be excluded from the computation of the Reserve Formula;

(3) Securities borrowed which are allocable to fails to receive may be excluded from the computation of the Reserve Formula.[44]

In addition, the Commission, for the reasons stated above, believes that the 1% charge on matched fails is appropriate and amends the rule accordingly. The change will also be imposed on securities borrowed which are excluded from the formula because of the allocation interpretation.

B. Aging Period

In Securities Exchange Act Release No. 18419, the Commission proposed that the time period for aging a fail to deliver be cut gradually from 11 business days to 5 business days (or from 21 business days to 15 business days in the case of municipal securities).[45] In addition, it proposed that the net capital rule be amended to provide authority to the designated examining authority (the "DEA") to grant, upon application, and under

net the fails and exclude them from the Reserve Formula. There was no additional capital charge on fails to deliver excluded from the formula under the Wien interpretation.

[41] According to an NASD survey, matched fails constituted only 10.3% of total fails to deliver for firms doing a general securities business. Thus, retail oriented firms include approximately 85% of their fails in the Reserve Formula.

[42] The Commission notes that M. S. Wien, Inc. failed in September 1981, and is presently being liquidated pursuant to SIPA.

[43] The Commission notes that securities failed to receive for which the broker-dealer has a receivable related to securities borrowed are excluded from aggregate indebtedness pursuant to subparagraph (c) (1) (iii) of Rule 15c3–1.

[44] Some broker-dealers complain that it is difficult to back out matched fails from the Reserve Formula. The interpretation does not, however, require them to do so. They may choose to comply with the interpretation before amended.

[45] The proposal provided that this time period be lowered in 2 nine month steps, from 11 business days (21 business days for municipal securities to 7 business days) (17 business days for municipal securities) during the first nine months after adoption and then to 5 business days (15 business days for municipal securities) after the second nine months.

appropriate circumstances, an extension of those time periods for a period up to 5 business days before requiring percentage deductions for "aged" fails under the net capital rule. Among other things, the firm must be able to show that the fail had not been disavowed in some way.

The majority of commentators generally objected to the proposal to accelerate the aging of fails to deliver. Both the NASD and the SIA questioned whether the 5 business day aging period realistically reflected the clearing period for fixed income securities and foreign securities transactions.[46] One broker-dealer stated that the aging proposal favors large trading firms doing a listed business while penalizing the small trading firms who trade over-the-counter with many non-clearing firms located across the nation. The NASD and the SIA suggested that the existing aging schedule remain in place until further study and analysis of industry practices and capabilities supports the need for specific changes.

The NYSE noted that, while much has been done to expedite the clearing process and the vast majority of deliveries are completed within 5 business days, overly restrictive time limits may be detrimental to domestic brokers and dealers vis-a-vis their foreign competition. The NYSE maintained that the 5 business day aging proposal was unnecessarily stringent and would have a particularly harsh impact on the bond business and the secondary market in new issues. The SIA and NYSE stated that the current aging period satisfactorily reflects the credit risk presented by fails and should not be changed.[47]

[46] One trading firm noted that ex-clearing house transactions resulting from customer preference and transactions in foreign securities that trade ex-clearing house are seldom resolved within 5 business days. Similarly, one retail firm stated that based on its experience in dealing with foreign correspondent banks and brokers, the existing time frames for aged fails in foreign securities were restrictive and should be lengthened to 14 business days.

[47] The NYSE suggested that the Commission state explicity in the rules that open transactions in continuous net settlement clearing systems which are marked to market daily and subject to constant clearing house supervision are not subject to the aging provisions. We agree with its statement. In addition, it suggested that the new rules specifically state the circumstances under which the DEA may extend the time period before a deduction must be taken for aged fails to deliver. For example, they asserted that the authority should be broad enough to grant appropriate relief in such instances where, for example, delays occur as a result of a customer or operational problem, a snowstorm or other acts of God, or a postal strike. The Commission, however, believes it appropriate to defer further action at this time and will instead rely on the staff to develop appropriate criteria with the industry by interpretation or by no-action letters.

A broker-dealer asserted that the reduction in the aging period for excluded fails to deliver which involve only broker-dealers is unnecessary. It argued that broker-dealer firms with relatively large percentages of matched fails do not present a concern with respect to the protection of public customers. They questioned whether the reduction in the aging period would provide any incentive or leverage to broker-dealers to obtain resolution of the fails from their retail customers. However, they suggested that, assuming some reduction in the aging period is necessary, matched fails be specifically excluded from the general reduction in the aging period. They believed that this approach would reduce the aging period on customer-related fails generally without penalizing firms which have few retail customers. Alternatively, they suggest that matched fails allocable to transactions with other broker-dealers be excepted from the general reduction in the aging period.

The municipal securities dealers asserted that a reduction in the aging period for fails to deliver of municipal securities would be punitive since most events which result in fails are beyond their control. They also pointed to the uniqueness of the municipal securities market.

The Commission believes that the 5 business day aging period realistically reflects the clearing period for most non-municipal securities. It recognizes, however, that transactions in certain types of securities, such as foreign securities, certain fixed income securities and new issues, may not generally clear within 5 business days from settlement date. Therefore, the Commission suggests that broker-dealers with fails to deliver in such securities consult with the staff which will, under appropriate circumstances, permit adjustments to the aging period on a no action basis.[48] In addition, the rules provide that, upon an appropriate showing that an extension is warranted, the DEA may grant an extension of time up to 5 business days before the required percentage deductions for "aged" fails must be taken. A second extension may be granted under unusual circumstances.

The Commission notes that the dramatic improvements in the operational condition of securities firms since the 1968–70 "Paperwork Crisis" have resulted in a marked decline in fails to deliver as a percentage of total assets and trading volume. The decline is due in part to the substantial improvements in the clearance and settlement of securities transactions.[49] The Commission believes that the acceleration of the aging period will provide additional incentives to broker-dealers to obtain prompt resolution of fails to deliver, and thereby increase the overall efficiency of the clearance and settlement systems.

We have reviewed the comments received with respect to municipal securities. The Commission notes that the Municipal Securities Rulemaking Board (the "MSRB") has taken substantial steps toward improving the overall efficiency of the municipal securities clearing systems. While the MSRB has not supported the revision, it is clear that the Board is firmly committed to the continued development of more advance systems for the comparison, clearance, and settlement of transactions in municipal securities.[50] In recognition of this commitment, the Commission has determined not to implement its proposal to shorten the time period for aging a municipal fail to deliver from 21 to 15 business days for at least six months. Thereafter, the Commission will reconsider whether the aging period should be reduced and review the progress made toward the development of an automated clearing system for municipal securities, and the improvement of the overall clearance systems for municipal securities. In furtherance of this aim, the Commission is requesting that the MSRB furnish a

[48] For example, the staff has taken a no-action position with respect to trades effected on the Associated Australian Stock Exchanges which do not clear for 15 business days.

[49] The Securities Reform Act of 1975 (the "1975 Amendments") added a new Section 17A to the Exchange Act requiring registration of entities involved in the securities handling process, including clearing corporations, securities depositories and transfer agents. Since 1975, the Commission has approved numerous rules regarding the operation of clearing agencies. This has resulted in improvements in their systems and methods of operation and increased participation by broker-dealers and other financial institutions in the clearing system.

[50] The MSRB has worked extensively with the Depository Trust Company and the National Securities Clearing Corporation to this end. It appears that the development of such systems depend heavily on the use of a CUSIP-like security identification numbering system for purposes of data entry, comparison, and generation of instructions. The MSRB recognizes that if the industry is to adapt successfully to the use of such systems, some means must be found of coordinating the industry's current trading and delivery practices with the need to identify securities by their appropriate security identification number. Therefore, trading must be conducted in a manner that is sufficiently specific to permit identification of the precise security identification number needed for proper instructions to these advanced comparison and clearance systems. Deliveries must also be made in accordance with the identification number of the specific securities.

report to the Commission by January 1, 1983 reporting on the progress it has achieved to that date and supplying an evaluation of what further steps will be required to bring the municipal securities clearance and settlement system into parity with the rest of the securities industry.

C. Municipal Bond Brokers

The Commission has received persuasive opposition to its proposed treatment of fails from a specialized type of municipal securities firm generally known as "municipal bond brokers" or "brokers' brokers." [51] The brokers' brokers maintain that their functions and operations differ significantly from those of other broker-dealers. Due to the very limited and indirect customer exposure inherent in the brokers' broker's business, they request that the Commission adopt special net capital rules for brokers' brokers which are more appropriate to their unique function.

The brokers' brokers objected to the reduction in the time period allotted for aged fails to deliver and the imposition of the 1% capital charge on excluded fails to deliver. They maintained that these proposed amendments were unwarranted and would substantially reduce the liquidity of the municipal securities trading market without materially increasing the protection of the investing public. Moreover, they asserted that the combined effect of the 1% charge and the acceleration of the aging period for fails to deliver will force a substantial number of the brokers' brokers out of business.

Brokers' brokers act exclusively as undisclosed agents in the purchase and sale of municipal securities for registered broker-dealers or registered municipal securities dealers. They have no "customers" as defined in Rule 15c3–1(c)(6). Because they act only as "agents", brokers' brokers do not maintain inventories in municipal securities. All trades by brokers' brokers are offsetting transactions which are executed simultaneously for other securities professionals. They act as middlemen for these professionals who do not want their identities disclosed. Thus, the brokers' brokers are dependent on their dealer clients to make delivery to them in order to complete the trades and close-out the fails.

Unlike the general practice in the equities securities industry, municipal securities brokers' transactions are effected by physical delivery of the certificates rather than by computerized book entries between members of a clearing agency. Brokers' brokers use a registered clearing agency or bank as agent to handle the receipt and delivery of the securities. The agent pays for the securities after receipt and verification and then redelivers them to the brokers' broker. Upon reverification, the agent is paid and the brokers' account is credited. However, because of delivery time limits, agents may be unable to redeliver all securities received for the account of a brokers' broker on the same day. In those instance, the brokers' broker must borrow funds to carry the securities overnight.

The brokers' brokers asserted that the adoption of the 1 percent capital charge on all excluded fails to deliver will force brokers' brokers to revoke their election to compute net capital under the alternative method. However, they noted that computing net capital under the basic method would impose a similar hardship on brokers' brokers because they would be required to include overnight bank loans used to carry half completed transaction in their calculation of aggregate indebtedness. Counsel to a group of brokers' brokers argued that if the 1 percent charge is adopted to include all fails and brokers' brokers are not specifically exempted, overnight bank loans for municipal securities failed to deliver should be excluded from aggregate indebtedness for one business day.[52]

Moreover, many of the brokers' brokers maintained that the 1 percent charge unreasonably affects firms that have previously relied on the Wien letter to exclude matched fails by subjecting them to an additional 1 percent capital charge. The MSRB claimed that, contrary to the expressed intent of the release, the withdrawal of the Wien letter and the adoption of the 1 percent charge on excluded fails would actually increase the capital and reserve requirements for brokers' brokers.[53]

In addition, the MSRB pointed out that fails to deliver are generally among the most secure assets of a broker-dealer.[54] The MSRB asserts that the risk that the contra-party might refuse to or be unable to honor the "fail to deliver" contract is far more theoretical than real since the incidence of dishonored fails to deliver contracts is extremely low.

The brokers' brokers maintained that the acceleration of the time period for aged fails to deliver is wholly ineffective in expediting the settlement of municipal securities transactions. Since municipal bond brokers act only as agent for the buyer and seller, both of which are securities professionals, they assert that there exists apart from Rule 15c3–1(c)(2)(ix) sufficient financial incentives for the parties to settle each trade in a timely manner.

In addition, they argued that the brokers' brokers have absolutely no control over aged fails. They pointed out that the nature of the municipal securities business, including the lack of automation in the transaction process, the cumbersome necessity for hand delivery of certificates and the difficulty of conducting buy-ins,[55] renders futile the attempts of the brokers' broker to speed the settlement of municipal securities transactions.

The Commission has reviewed the comments received and determined that, in light of the unique functions and operations of the brokers' brokers, it is appropriate to adopt special net capital requirements for municipal brokers' brokers which will require them to compute net capital pursuant to the aggregate indebtedness method. In recognition of the problem created by overnight bank loans for municipal securities failed to deliver, and in view of the high minimum net capital requirement discussed below, the Commission has determined that it is appropriate to allow brokers' brokers to exclude such loans from their aggregate indebtedness for one business day.

Because of their important role in the municipal securities business, brokers' brokers should maintain a substantial minimum net capital, as they appear to be responsible for a trade from execution through delivery and payment. They are liable for trading errors as well. In addition, brokers' brokers incur risk as a result of fails to deliver and fails to receive. High volume periods create aggravated fails and, in turn, proportionally increase risk. "When issued" municipal bonds likewise increase the brokers' brokers

[51] PSA notes that there are currently 19 brokers' brokers.

[52] Another brokers' broker suggested that brokers' brokers should use the aggregate indebtedness method for computing net capital.

[53] PSA, noting the absence of any discussion of the 1 percent charge in the Regulatory Flexibility Analysis, suggested that the Commission defer making a determination of the amount of the capital charge until it has more accurately assessed its impact.

[54] However, two brokers' brokers currently have claims with the trustee of A. E. Pearson & Co. One entity which clears and finances trades in municipal securities in the securities industry, pointed out that it had never suffered any loss from the failure of any brokers' broker or the failure of any seller to or buyer from a brokers' broker to honor their municipal securities trade obligations.

[55] It was noted by several brokers' brokers that substitute bonds are difficult to find, primarily because of the very thin floating supply and numerous serial maturities of municipal securities. The scarcity of substitute bonds makes buy-ins and borrowing of securities virtually impossible.

exposure, and consequently the risk of loss.

The Commission is adding a new elective paragraph (a)(8) to Rule 15c3–1, which will require brokers' brokers at maintain to all times net capital of not less than $150,000. Under the provisions of paragraph (a)(8), a 1% capital charge, however, will be imposed on the contract value of all failed to deliver contracts which are outstanding 21 business days or more. Brokers' brokers, however, will not be subject to the aged fail to deliver requirement of Rule 15c3–1(c)(2)(ix) nor will they be required to take a capital charge on fails to receive outstanding longer than 30 calendar days as specified in paragraph (c)(2)(iv)(E) of Rule 15c3–1.

Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (the "Analysis") in accordance with the Regulatory Flexibility Act ("RFA")(5 USC 604) regarding the proposed amendments to the net capital rule and the customer protection rule.

As indicated in the Initial Regulatory Flexibility Analysis, the amendments were proposed as part of the Commission's review of the broker-dealer financial responsibility rules. The proposed amendments, among other things, were intended to reflect changing economic and business practices in the securities industry.

The Commission received few comments specifically addressing its Initial Regulatory Flexibility Analysis. It also received a number of comments, primarily from members of the municipal securities industry, generally opposing the Commission's proposals regarding the revised net capital treatment of municipal securities and failed to deliver contracts.

Some of the comments received focused on changes in the treatment of municipal securities. The commentators contended that the increase in haircuts for municipal securities and implementation of the presumed marketability test were unwarranted and would adversely affect the municipal marketplace. They also argued that the proposed changes discriminated against smaller regional firms. With respect to the Commission's proposals regarding the revised treatment of failed to deliver contracts, many commentators, including the PSA and a specialized type of municipal securities firm known as a brokers' broker, opposed imposition of the 1% charge on failed to deliver contracts excluded from the reserve formula and contended that reduction of the time period before aged failed to deliver contracts were required to be deducted from net worth was unwarranted. More specifically, the PSA, noting that the Commission failed to assess the impact of the 1% charge on excluded fails in its Initial Regulatory Flexibility Analysis, contended that this charge will increase the capital requirements for certain broker-dealers.[54]

Aside from the revised net capital treatment of municipal securities and failed to deliver contracts (and to some extent the proposed percentage increases in the haircuts for Government securities), however, the Commission's proposals were generally well received.

As noted in the Initial Regulatory Flexibility Analysis, the Commission recognizes the need to formulate compliance and reporting requirements that take into account the economic impact on small brokers and dealers. In this regard, RFA directs the Commission to consider significant alternatives to the proposed amendments that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small brokers and dealers. As discussed in the Initial Regulatory Flexibility Analysis, however, the Commission believes that it would be inconsistent with the purposes of the Exchange Act to exempt, categorically, any small brokers and dealers from the proposed provisions of these amendments.

Nonetheless, in response to the comments received and on the basis of data developed in the course of the rulemaking process, the Commission has made a number of modifications to its original proposals which should provide net capital relief for certain broker-dealers, particularly municipal securities brokers and dealers and brokers' brokers. These alternatives include, among other things, a simplified method of computing haircuts on Government securities, certain hedging techniques for Government securities which will allow broker-dealers to utilize certain risk-reducing combinations so as to reduce their capital requirements, creation of additional haircut categories for municipal securities, modification and clarification of the presumed marketability test and creation of a separate provision for brokers' brokers.[55]

A copy of the Analysis may be obtained by contacting Michael A. Macchiaroli, Division of Market Regulation, U.S. Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 at (202) 272–2372.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3) and 23(a) thereof, 15 U.S.C. 78*o*(c) and 78w(a), the Commission is amending §240.15c3–1 in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the amendments is necessary in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate to provide safeguards with respect to the financial responsibility of brokers and dealers.

List of Subjects in 17 CFR 240

Reporting requirements, Securities.

Text of Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

1. By adding paragraphs (a)(8), (c)(2)(iv)(F) and (G) and (f)(5)(iv) to §240.15c3–1, and revising paragraphs (c)(2)(vi)(A), (B)(2), (D), (F) and (H) and (c)(2)(ix) of 240.15c3–1 to read as follows:

§240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(a) * * *

(8) *Municipal Securities Broker' Brokers.* (i) A municipal securities brokers' brokers, as defined in subsection (ii) of this paragraph (a)(8), may elect not to be subject to the limitations of paragraph (c)(2)(ix) of this section provided that such brokers' broker complies with the requirements set out in subsections (iii), (iv) and (v) of this paragraph (a)(8).

(ii) The term municipal securities "brokers' broker" shall mean a

[54] While the Commission recognized that imposition of the 1% charge on excluded fails will increase the capital requirements for certain broker-dealers (particularly, those broker-dealers operating under the alternative method which had been excluding matched fails pursuant to the Wien interpretation), it appears that the overall impact on municipal securities dealers should be small since most have elected to compute their net capital the basic method. Apparently, the 1% charge on excluded fails will severely impact brokers' brokers which compute their net capital under the alternative method. However, the Commission has created a new provision for brokers' brokers which should alleviate the problems presented.

[55] Changes have been made to that part of Appendix D dealing with "revolving subordination agreements" to correct an error in the prior release and to clarify the intent of the provision.

municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" as defined in this rule and who does not have or maintain any municipal securities in its proprietary or other accounts.

(iii) In order to qualify to operate under this paragraph (a)(8), a brokers' broker shall at all times have and maintain net capital of not less than $150,000.

(iv) For purposes of this paragraph (a)(8), a brokers' broker shall deduct from net worth 1% of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(v) For purposes of this paragraph (a)(8), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by Rule 15c3–1(c)(2)(iv)(E).

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(F)(*1*) For purposes of this subparagraph:

(*i*) The term "repurchase agreement" shall mean an agreement to sell securities subject to a commitment to repurchase from the same person securities of the same quantity, issuer and maturity;

(*ii*) The term "reverse-repurchase agreement" shall mean an agreement to purchase securities subject to a commitment to resell to the same person securities of the same quantity, issuer and maturity; and

(*2*)(*i*) In the case of a reverse-repurchase agreement, the deduction shall be equal to a percentage of the difference between the contract price for resale of the securities under a reverse-repurchase agreement and the market value of those securities (if less than the contract price), determined on the basis of the date to maturity of the reverse-repurchase agreement, as of the net capital computation date, as follows:

(*A*) 7 days or less: 0 percent.

(*B*) 8 days to 14 days: 5 percent.

(*C*) 15 days to 30 days: 10 percent.

(*D*) 31 days to 60 days: 25 percent.

(*E*) 61 days to 90 days: 50 percent.

(*F*) 91 days or more: 100 percent.

(*ii*) If the market value of the securities subject to the reverse-repurchase agreement declines to below 50 percent of the contract price for resale under that agreement, the applicable deduction shall equal 100 percent of the difference between the contract price for resale of the securities under the agreement and the market value of those securities.

(*iii*) A deduction on account of reverse-repurchase agreement may be offset by any margin or other deposits held by the broker or dealer on account of the reverse-repurchase agreement or by any excess market value of the securities over the contract price for the resale of those securities under any other reverse-repurchase agreement with the same person.

(*iv*) A broker or dealer shall deduct an amount equal to the excess of the difference between the contract prices for resale of the securities under reverse-repurchase agreements and the market value of the securities (if less than the contract prices) in any single account (or related accounts) if in the aggregate the differences exceed 5 percent of net capital before the application of paragraphs (c)(2)(vi), or (f)(3) of this section, or Appendix A to 17 CFR 240 15c3–1.

(*v*) The required deduction under this subsection (2) shall not exceed 100 percent of the difference between the contract price for resale of the securities and the market value of those securities.

(G) *Securities borrowed.* 1 percent of the market value of securities borrowed collateralized by an irrevocable letter of credit.

* * * * *

(vi) * * *

(A)(*1*) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

Category 1

(*i*) Less than 3 months to maturity—0 percent.

(*ii*) 3 months but less than 6 months to maturity—½ of 1 percent.

(*iii*) 6 months but less than 9 months to maturity—¾ of 1 percent.

(*iv*) 9 months but less than 12 months to maturity—1 percent.

Category 2

(*i*) 1 year but less than 2 years to maturity—1½ percent.

(*ii*) 2 years but less than 3 years to maturity—2 percent.

Category 3

(*i*) 3 years but less than 5 years to maturity—3%.

(*ii*) 5 years but less than 10 years to maturity—4%.

Category 4

(*i*) 10 years but less than 15 years to maturity—4½%.

(*ii*) 15 years but less than 20 years to maturity—5%.

(*iii*) 20 years but less than 25 years to maturity—5½%.

(*iv*) 25 years or more to maturity—6%.

Brokers or dealers shall compute a deduction for each category above as follows: Compute the deductions for the net long or short positions in each subcategory above. The deduction for the category shall be the net of the aggregate deductions on the long positions and the aggregate deductions on the short positions in each category plus 50% of the lesser of the aggregate deductions on the long or short positions.

(*2*) A broker or dealer may elect to deduct, in lieu of the computation required under paragraph (c)(2)(vi)(A)(*1*) of this section, the applicable percentages of the market value of the net long or short positions in each of the subcategories specified in paragraph (c)(2)(vi)(A)(*1*) of this section.

(*3*) In computing deductions under paragraph (c)(2)(vi)(A)(*1*) of this section, a broker or dealer may elect to exclude the market value of a long or short security from one category and a security from another category, *Provided,* That:

(*i*) Such securities have maturity dates:

(*A*) Between 9 months and 15 months and within 3 months of one another.

(*B*) Between 2 years and 4 years and within 1 year of one another; or

(*C*) Between 8 years and 12 years and within 2 years of one another.

(*ii*) The net market value of the two excluded securities shall remain in the category of the security with the higher market value.

(*4*) In computing deductions under paragraph (c)(2)(vi)(A)(*1*) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(A)(*1*) of this section, long or short positions in securities issued by

the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account. The provisions of Appendix B to Rule 15c3–1 (17 CFR 240.15c3–1b) will in any event apply to the positions in futures contracts.

(*5*) In the case of a Government securities dealer which reports to the Federal Reserve System, which transacts business directly with the Federal Reserve System, and which maintains at all times a minimum net capital of at least $50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) or (f)(3) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75% of the deduction otherwise computed under subparagraph (c)(2)(vi)(A).

(B)(*1*) * * *

(*2*) In the case of any municipal security, other than those specified in paragraph (c)(2)(vi)(B)(*1*), which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—1%.

(*ii*) 1 year but less than 2 years to maturity—2%.

(*iii*) 2 years but less than 3½ years to maturity—3%.

(*iv*) 3½ years but less than 5 years to maturity—4%.

(*v*) 5 years but less than 7 years to maturity—5%.

(*vi*) 7 years but less than 10 years to maturity—5½%.

(*vii*) 10 years but less than 15 years to maturity—6%.

(*viii*) 15 years but less than 20 years to maturity—6½%.

(*ix*) 20 years or more to maturity—7%.

* * * * *

(D)(*1*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets consist of cash or money market instruments and which is generally known as a "money market fund," the deduction shall be 2% of the market value of the greater of the long or short position.

(*2*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments of any maturity which are described in paragraph (c)(2)(vi) (A) through (C) or (E) of this section, the deduction shall be 7% of the market value of the greater of the long or short positions.

(*3*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraphs (c)(2)(vi) (A) through (C) or (E) and (F) of this section, the deduction shall be 9% of the market value of the long or short position.

* * * * *

(F)(*1*) In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—2%.

(*ii*) 1 year but less than 2 years to maturity—3%.

(*iii*) 2 years but less than 3 years to maturity—5%.

(*iv*) 3 years but less than 4 years to maturity—6%.

(*v*) 4 years but less than 5 years to maturity—7%.

(*vi*) 5 years or more to maturity—9%.

(*2*) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof and that have maturity dates of within—3 months, if the nonconvertible debt security has a maturity date of less than 15 months; 6 months, if the nonconvertible debt security has a maturity date of greater than 15 months but less than 2 years; 1 year, if the nonconvertible debt security has a maturity date of greater than 2 years but less than 5 years; and 5 years, if the nonconvertible debt security has a maturity of 5 years or more. The electing broker or dealer shall also exclude the hedging short or long securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of Rule 15c3–1 (240.15c3–1(c)(2)(vi)(A)), but shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(*i*) Less than 1 year to maturity—1%.

(*ii*) 1 year but less than 2 years to maturity—1½%.

(*iii*) 2 years but less than 3 years to maturity—2½%.

(*iv*) 3 years but less than 4 years to maturity—3%.

(*v*) 4 years but less than 5 years to maturity—3½%.

(*vi*) 5 years or more to maturity—4½%.

* * * * *

(H) In the case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations and which are not in arrears as to dividends, the deduction shall be 10% of the market value of the greater of the long or short position.

* * * * *

(ix) Deducting from the contract value of each failed to deliver contract which is outstanding 5 business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security which would be required by application of the deduction required by paragraph (c)(2)(vi) or, where appropriate, paragraph (f) of this section. Such deduction, however, shall be increased by any excess of the contract price of the failed to deliver contract over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the fail but not to exceed the amount of such deduction; *Provided,* however, That until January 1, 1983, the deduction provided for herein shall be applied only to those fail to deliver contracts which are outstanding 7 business days or longer (21 business days or longer in the case of municipal securities). The designated examining authority for the broker or dealer may, upon application by the broker or dealer, extend for a period of up to 5 business days, any period herein specified where it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period of up to 5 business days, any period herein specified when it is satisfied that the extension is warranted.

* * * * *

(f) * * *

(5) * * *

(iv) Deduct from net worth in computing net capital 1% of the contract value of all failed to deliver contracts or securities borrowed which were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, 17 CFR 240.15c3–3a.

* * * * *

2. By revising paragraph (c)(5) of § 240.15c–1d to read as follows:

§ 240.15c3–1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(c) * * *

(5)(i) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions, in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer, if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or, if immediately prior to entering into such subordination agreement, either (A) the aggregate indebtedness of the broker or dealer exceeds 1000 percentum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or (B) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than 5% of aggregate debits computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3–1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix D.

(ii) A broker or dealer shall be permitted to enter into a revolving subordinated loan agreement which provides for prepayment within less than one year of all or any portion of the Payment Obligation thereunder at the option of the broker or dealer upon the prior written approval of the Examining Authority for the broker or dealer. The Examining Authority, however, shall not approve any prepayment if:

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percentum of its net capital or its net capital would be less than 200 percentum of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or if registered a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or its net capital would be less than 200% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1 or

(B) pre-tax losses during the latest three-month period equalled more than 15% of current excess net capital.

Any subordination agreement entered into pursuant to this subdivision (ii) shall be subject to all the other provisions of this Appendix D. Any such subordination agreement shall not be considered equity for purposes of subsection (d) of section 15c3–1, despite the length of the initial term of the loan.

* * * * *

3. By adding paragraph § 240.15c3–3(b)(3) to read as follows:

§ 240.15c3–3 Customer protection-reserves and custody of securities.

* * * * *

(b) Physical possession or control of securities.

* * * * *

(3) A broker or dealer shall not be deemed to be in violation of the provisions of paragraph (b)(1) of this section regarding physical possession or control of fully-paid or excess margin securities borrowed from any person, provided that the broker or dealer and the lender, at or before the time of the loan, enter into a written agreement that, at a minimum;

(*i*) Sets forth in a separate schedule or schedules the basis of compensation for any loan and generally the rights and liabilities of the parties as to the borrowed securities;

(*ii*) Provides that the lender will be given a schedule of the securities actually borrowed at the time of the borrowing of the securities;

(*iii*) Specifies that the broker or dealer (A) must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable of credit issued by a bank as defined in section 3(a)(6) (A)–(C) of the Securities Exchange Act which fully secures the loan of securities, and (B) must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in proviso (iii) (A) above to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

(*iv*) Contains a prominent notice that the provisions of the Securities Investor Protection Act of 1970 may not protect the lender with respect to the securities loan transaction and that, therefore, the collateral delivered to the lender may constitute the only source of satisfaction of the broker's or dealer's obligation in the event the broker or dealer fails to return the securities.

* * * * *

By the Commission.

Dated: May 13, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13619 Filed 5–19–82; 8:45 am]

BILLING CODE 8010–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 430

Ground Water Protected Area; Pennsylvania; Amendment To Allow for Immediate Action Under Emergency Conditions

AGENCY: Delaware River Basin Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The Commission announces that it has taken final action amending its ground water protected area regulations for southeastern Pennsylvania as provided for in Commission Resolution Number 82–5. The amendment adds a new section authorizing the Executive Director, with the concurrence of the Pennsylvania member of the Commission, to take immediate action to grant a permit under emergency conditions when circumstances do not permit full review and determination in accordance with the regulations.

EFFECTIVE DATE: April 27, 1982.

ADDRESS: Delaware River Basin Commission, 25 State Police Drive, Post Office Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Gerald M. Hansler, Executive Director, Delaware River Basin Commission, Post Office Box 7360, West Trenton, New Jersey 08628, 609–883–9500.

SUPPLEMENTARY INFORMATION: On March 10, 1982, the Commission announced a proposal to amend its ground water protected area regulations for southeastern Pennsylvania so as to provide for immediate permit action under emergency conditions. The proposed amendment was disseminated widely throughout the Delaware River Basin and was the subject of a public hearing by the Commission held on March 30, 1982. Notice of the hearing and text of the proposed amendment were published at 47 FR 11763 (March 18, 1982). Testimony was received and considered by the Commission but no substantial changes in the draft resolution were made as a result of the hearing. The amendment was adopted on April 27, 1982 as Resolution Number 82–5. Copies of Resolution 82–5 may be obtained from the Delaware River Basin Commission upon written request.

List of Subjects in 18 CFR Part 430

Water supply, Ground water protection.

PART 430—GROUND WATER PROTECTION AREA; PENNSYLVANIA

Therefore the Commission's Ground Water Protection Area Regulations: Pennsylvania, 18 CFR Part 430, are amended as follows:

Add a new § 430.24 *Emergencies*, to read as follows:

§ 430.24 Emergencies.

In the event of an emergency requiring immediate action to protect the public health and safety or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit full review and determination in accordance with these regulations, the Executive Director, with the concurrence of the Pennsylvania member of the Commission or his alternate, may issue an emergency permit authorizing an applicant to take such action relating to these regulations as the Executive Director may deem necessary and proper. In such cases, the applicant shall be fully responsible for protecting existing ground water users, as prescribed in § 430.19 of these regulations. The Executive Director shall report at the next meeting of the Commission on the nature of the emergency and any action taken under this section.

W. Brinton Whitall,
Secretary.
May 12, 1982.
[FR Doc. 82-13781 Filed 5-19-82; 8:45 am]
BILLING CODE 6360-01-M

DEPARTMENT OF STATE

22 CFR Part 41

[Dept. Reg. 108.820]

Nonimmigrant Classification of Students

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department is amending its regulations on the nonimmigrant visa classification of alien students to implement section 2(a) of the Immigration and Nationality Act Amendments of 1981, 95 Stat. 1611. Section 41.65 is amended to limit F–1 classification to aliens destined to full courses of study in language training programs or at academic institutions designated in the law. A new § 41.68 establishes an M–1 classification for aliens coming to the United States for full courses of study at an established vocational or other recognized nonacademic institution (other than language training program) and an M–2 classification for an alien spouse or minor children accompanying or following to join an alien classified M–1. The new M–1 and M–2 classification symbols are added to § 41.12 and conforming amendments are made in the table of contents.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Legislation and Regulations Division, Visa Services. (202) 632–1900.

SUPPLEMENTARY INFORMATION: A proposed rulemaking was published in the **Federal Register** on March 23, 1982 (47 FR 12359). The only public comment received included a recommendation that F–1 classification be accorded to an alien not having sufficient knowledge of English to undertake a full course of study, if the accepting institution will enroll the alien in a combination of academic courses and English instruction (not necessarily tutoring) which will constitute a full course of study. This recommendation is adopted. A similar provision is added to § 41.68(a)(3) to permit M–1 classification if the accepting vocational institution will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study. Other minor technical and clarifying changes are being made.

List of Subjects in 22 CFR Part 41

Visas, Students, Aliens.

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Part 41 is amended as follows:

§ 41.12 [Amended]

1. In the list of classifiction of symbols in § 41.12, amend line 17 (Student) to read "Student—Academic or Language Training Program".

2. In the list of classification of symbols in §41.12, after line 40 (Spouse of minor child * * * L–2), insert the following:

Class	Citation	Symbol to be inserted in visa
Vocational or other recognized nonacademic student.	101(a)(15)(M); 95 Stat. 1611 (M–1.	
Spouse or minor child of alien classified M–1.	95 Stat. 1611	M–2.

* * * * *

3. Revise § 41.45 and the undesignated center heading preceding it to read as follows:

Students—Academic, Language Training Programs

§ 41.45 Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(F)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend, and has been accepted for attendance by, a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(F)(i) of the Act, as evidenced by the presentation of Form I–20A–B (Certificate of Eligibility) properly and completely filled out and signed by the alien and by an official of a designated school official the accepting school (the Form I–20A, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or institution providing language training has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide those expenses;

(3) Has sufficient scholastic preparation and knowledge of the English language (unless the alien is going to an institution exclusively to participate in an English language training program) to enable the undertaking of a full course of study given in the English language which the accepting institution is equipped to offer, or the institution (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in a combination of academic courses and English instruction which will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of the student status (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the alien's conclusion of studies, or upon the alien's failure to maintain student status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States). If the alien is otherwise qualified for classification as a nonimmigrant student under this section, but intends to study the English language exclusively while in the United States, such alien may be classified as a nonimmigrant student under the provisions of section 101(a)(15)(F)(i) of the Act even though no credits are given by the institution for such study. The approved school must be equipped to offer a full course of study in the English language and must have accepted the applicant expressly for that course.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(F)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

4. Immediately before § 41.66 add a new undesignated center heading to read **"Fiancee or Fiance"**.

5. Immediately before § 41.67 add a new undesignated center heading to read **"Executives, Managers, and Specialists"**.

6. Immediately after § 41.67 add the following new undesignated center heading and section to read as follows:

Students—Vocational

§ 41.68 Students in established vocational or other recognized nonacademic institutions, other than in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(M)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend and has been accepted for attendance solely for the purpose of pursuing a full course of study (other than a language training program) by an established vocational or other recognized nonacademic institution in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(M)(i) of the Act, as evidenced by the presentation of Form I–20M–N (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official of the accepting institution (the form I–20M, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated vocational or other recognized nonacademic institution which has issued the document has been approved by the Attorney General for the attendance of nonimmigrant students pursuant to section 101(a)(15)(M)(i) of the Act and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide for those expenses;

(3) Has sufficient knowledge of the English language to enable such an alien to undertake a full course of study in the accepting institution, or, if knowledge of the English language is inadequate to enable such alien to pursue a full course of study given in the English language, the accepting institution is equipped to offer, and (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of student status.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(M)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 66 Stat. 174 (8 U.S.C. 1104); sec. 109(b)(1), 91 Stat. 847)

Dated: May 13, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-13612 Filed 5-19-82; 8:45 am]

Billing Code 4710-06-M

Bureau of Consular Affairs

22 CFR Part 42

[Dept. Reg. 108.821]

Ineligible Classes of Immigrants—Illiterates

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department is amending section 42.91(a)(25)(ii) of its regulations relating to the eligibility of illiterate aliens to receive immigrant visas. This action is taken to reconcile the Department regulations with an opinion issued by the Attorney General's Office of Legal Counsel construing the language and intent of section 212(b) of the Immigration and Nationality Act. Technical corrections are also made in subparagraph (i) of section 42.91(a)(25).

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Services. (202) 632–1900.

SUPPLEMENTARY INFORMATION: Present regulations in section 42.91(a)(25)(ii) allow an illiterate alien, who is found to be ineligible to receive a visa under the provisions of section 212(a)(25) of the Immigration and Nationality Act, to benefit from the automatic waiver of that ground of ineligibility provided in section 212(b) of the Act if such alien is being accompanied by an admissible spouse or son or daughter whose immigrant status was conferred by the illiterate alien.

A recent review by the Attorney General's Office of Legal Counsel of the Department's interpretation of section 212(b) resulted in the issuance of an opinion by that Office. The opinion concluded that the present interpretation is erroneous and that section 212(b) should be construed as permitting a literate principal immigrant alien to use the automatic waiver provided by section 212(b) as a facilitative means to the immigration of an accompanying illiterate parent, grandparent, spouse, son or daughter, rather than as a means for an illiterate principal alien to receive an immigrant visa by virtue of a derivative accompanying literate spouse or son or daughter. Sons and daughters under age sixteen are not subject to the literacy requirement in any event. Compliance with 5 U.S.C. 553 of the Administrative Procedure Act, as to notice of proposed rulemaking and delayed effective date, and with the requirements of E.O. 12291 are not practicable in this instance because the amendment conforms the regulations with an opinion issued by the Attorney General's Office of Legal Counsel.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

List of Subjects in 22 CFR Part 42

Visas, Immigration, Illiteracy.

Accordingly, § 42.91(a)(25) is amended by:

1. Amending "212(a)(27)" in line 2 of subparagraph (i) to read "212(a)(25)";
2. Amending "resident" in line 5 of subparagraph (i)(d) to read "residence";
3. Amending "persectuion" in lines 3 and 4 of subparagraph (i)(e) to read "persecution"; and
4. Revising paragraph (a)(25)(ii) to read:

§ 42.91 Aliens ineligible to receive visas.

(a) Aliens ineligible under the provisions of section 212(a) of the Act.

* * * * *

(25) *Illiterates.* * * *

(ii) An individual who is a United States citizen, or a lawful permanent resident of the United States, or an accompanying alien independently qualified for and eligible to receive an immigrant visa, may confer upon a son or daughter, regardless of age, a spouse, parent or grandparent the benefits of the exemption from the literacy requirement provided for in section 212(b) of the Act.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

Dated: May 13, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-13609 Filed 5-19-82; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 79-31, Notice 4]

Traffic Safety in Highway and Street Work Zones; Separation of Opposing Traffic

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on traffic control design requirements for two-lane, two-way traffic on one roadway of a normally divided highway in highway and street work zones. The FHWA has decided not to stipulate further traffic control design requirements in this situation or to place stringent requirements on edge-of-pavement excavations. This will allow greater flexibility to develop traffic control detail tailored to the particular circumstances on each project. This amendment is intended to place the primary responsibility for determining the appropriate traffic control details for each project on the State and local highway agencies.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Ziems, Office of Highway Operations, (202) 426–4047, or Mr. Stanley H. Abramson, Office of the Chief Counsel, (202) 426–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are between 7:45 a.m. and 4:15 p.m., e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA modified its regulation on traffic safety in highway and street work zones on September 17, 1979 (44 FR 53739), by issuing an emergency final rule requiring separation of opposing traffic on federally-assisted construction projects where two-lane, two-way traffic is maintained temporarily on one roadway of a normally divided highway. This situation is referred to as a two-lane, two-way traffic operation and abbreviated as "TLTWO."

Discussion of Comments

Comments on the emergency rule were received from 16 States, 4 cities, 1 county, 4 organizations, and 2 citizens. Responses varied, with 3 commenters expressing agreement with the rule, the majority, 15, suggesting modification of the rule, and 9 expressing complete opposition to the rule by requesting it be rescinded or deferred. The FHWA decided not to rescind or defer application of the existing rule because of the adverse effects that such action was expected to have on highway safety (i.e., high accident rate with resulting deaths, injuries, and property damage).

The three most frequently requested modifications were prompted by: (1) problems associated with mandatory placement of positive barriers in transition zones (from one-way to two-way operation) when a positive barrier is not placed continuously throughout the TLTWO, (2) concern with the requirement for separation of opposing

traffic on other than freeway type facilities such as urban streets with low speed limits, and (3) concern with the requirement for separation of opposing traffic in short-term work zones.

A notice of proposed rulemaking (NPRM) was published on October 16, 1980, (45 FR 68663) in the Federal Register, proposing to amend the emergency final rule in response to the concerns expressed above.

In the NPRM, positive barriers would not have been required just in transition zones if not placed throughout the TLTWO. Separation of opposing traffic would not have been required for low-speed facilities, typically urban streets and arterials, as the FHWA had no evidence that head-on collisions were occurring on such facilities in these TLTWO's. Separation of opposing traffic in short-term work zones (those where two-way operations will not exist overnight) would have been required, but the use of positive barriers for separation would not have been required.

In the NPRM, positive barriers would have been used to separate opposing traffic when dictated by individual project conditions. Use of separation devices other than positive barriers would have required conditions where the added risk was considered minimal on each Federal-aid project where opposing traffic must be separated. Consideration was to include the obvious benefits of positive barriers physically preventing head-on collisions and the difficulty of maintaining separation devices other than positive barriers, especially at night. Head-on collisions have occurred where separation devices, other than positive barriers, were provided but continuing maintenance was inadequate, sometimes due to an extremely high loss rate of these separation devices overnight. Another consideration was that workers maintaining the devices must venture into the traveled lanes often, whereas positive barriers require little maintenance. The NPRM was intended to give flexibility to allow the use of separation devices other than positive barriers throughout the TLTWO, including transitions, when conditions such as time and length of exposure, type of traffic, and facility warranted. Yet the NPRM was also intended to strengthen the requirement to provide positive barriers when dictated by individual project conditions.

The NPRM stipulated that the length of a TLTWO normally should not exceed 3 miles and would have restricted the length to 5 miles. Impatience and inattentiveness of the driver are two major factors believed to contribute to head-on collisions in this situation, and these two factors tend to increase in proportion to the length of the TLTWO. The longer the segment the more difficult it is to provide proper maintenance of separation devices. Also the possibility of an accident or a disabled vehicle causing severe congestion in the restricted segment is increased with its length. The proposed 5-mile limit was considered adequate to allow contractor flexibility in various types of work activity.

Under the NPRM, the traffic control plan (TCP), required for all projects gby § 630.1010(a)(2), would have specified that the geometrics of the median crossovers for TLTWO's generally meet standards equal to or approaching the standards of the existing facility. Recent research (Identification of Traffic Management Problem in Work Zones, FHWA 1979) indicates that where crossovers are provided in a construction zone, a considerable number of injury-causing accidents occur, with substandard geometrics being the major contributing factor.

Supplemental signing has been used to some extent with good results in reducing drivers' impatience and frustration by advising of the length of TLTWO remaining in the construction zones. Therefore, the NPRM indicated that the TCP should require such signing at appropriate intervals. However, the NPRM would not have mandated such signing.

Where dropoffs are to be created at the edge of travel lanes because of construction work on a project, the FHWA believed action was needed to require protection for motorists and highway workers. The NPRM, therefore, would have required that the TCP include provisions for mitigating the hazard, such as a wedge of fill material to form a shoulder, if the dropoff was expected to cause loss of control of an errant vehicle and if the dropoff was to remain overnight.

Thirty-four States, three counties, four organizations, and three firms commented on the proposed rule. This is approximately double the response to the emergency rule and came after a year's experience with the emergency rule. Twenty-nine States, three counties, three organizations, and one firm expressed significant concerns with some part of the NPRM. Only one State and one organization were satisfied with the NPRM requirements. An additional seven commenters requested only minor revisions.

Five commenters strongly resisted the concept of addressing design details in a nationwide rule. The majority of the 44 commenters interpreted the NPRM to virtually mandate use of positive barriers for separation devices and gave many reasons why this would be too rigid. A few of the major reasons given included (1) prohibitive cost, (2) restricted width, (3) elimination of engineering judgment, (4) previous experience with other methods, (5) need to verify cost effectiveness, and (6) need for relief for such conditions as short-term work and lack of passing opportunities when warranted under unusual conditions. Twelve commenters indicated that the State or local agency responsible for the project should determine whether separation devices are needed for a TLTWO and, if so, the type of devices to be used. Eight States and one organization requested further guidance on choosing separation devices. Four States endorsed the concept of separation devices for TLTWO, but each had different interpretations of the NPRM regarding use of positive barriers.

Other items in the NPRM met with less resistance. Eleven commenters stated that exceptions are needed for the 5-mile limit on TLTWO's. Two commenters opposed the minimum design requirement for crossovers. Only minor comments were received on the suggestion for supplemental signing.

Eleven commenters opposed the edge-of-pavement dropoff requirement. Eight others agreed with the basic concept but had a wide range of interpretation. All of the latter eight requested further specific guidelines.

The concerns most frequently expressed by commenters with the NPRM were: tremendous project cost to comply, lack of flexibility needed for individual project circumstances, the inability to comply or the impracticality of complying in all cases, lack of analytical support that the problem is great enough for such stringent requirements, need for clarification and more specific guidelines if the NPRM is adopted, and the belief that State highway agencies (SHA's) may be vulnerable to litigation because of vague wording in the NPRM.

Discussion of Final Rule

Based upon the response to the NPRM and the emergency rule, the FHWA has reevaluated the need for Federal regulation in this area. In making this reevaluation, the FHWA also considered the experience of the States under the emergency rule, recent research findings, and the principles contained in Executive Order 12291, Federal Regulation.

Among the alternative approaches to protecting the safety of the traveling public and construction workers in TLTWO's on Federal-aid construction projects, the FHWA has determined that a regulation containing a general nationwide requirement with provision for exceptions in appropriate instances would involve the least net cost to society. In addition, the FHWA will provide information in the handbook portion of "Work Zone Traffic Control Standards and Guidelines" [1] to assist SHA's and FHWA field offices in the development of traffic control palns which address TLTWO's and relataed problems in an appropriate manner. The FHWA does not have sufficient information to provide technical guidance on edge-of-pavement dropoffs at this time, but currently has a study underway on this subject.

Although it is difficult to choose between the competing needs of uniformity and flexibility, the FHWA believes that this rule will mandate action in all cases where it is necessary to protect the safety of motorists and workers, and at the same time, provide an appropriate degree of flexibility which recognizes the particular needs of each locality and the ability of State and local highway officials to exercise sound engineering judgment on a project-by-project basis.

The emergency rule, the NPRM and the high profile given to the problem of traffic safety in highway and street work zones by the FHWA have focused the attention of Federal, State, and local officials on the problem, particularly with respect to TLTWO's and edge-of-pavement dropoffs. This final rule maintains that focus, but clearly places the authority for implementation at the project level.

This final rule permits TLTWO only after other available methods of traffic control have been carefully considered. The emergency rule permitted TLTWO only when other methods of traffic control were determined to be infeasible. As a result of experience with the use of separation devices in TLTWO's, the FHWA has determined that there may be instances where a properly separated TLTWO could be preferable to other feasible types of traffic control in work zones.

Under this final rule, the TCP must include provisions for the separation of opposing traffic where the TLTWO is to be used. The requirement for separation of opposing traffic may be waived in only three instances. The first is where the TLTWO is located on an urban type street or arterial where operating speeds are low. This exception was included in the NPRM. The second exception was included in the emergency rule and applies where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway. The third exception permits the FHWA to approve the nonuse of separation devices based on unusual project circumstances such as gaps for cross roads, or on narrow bridges or in narrow tunnels.

This final rule retains the FHWA's original prohibition on the use of striping and complementary signing in place of separation devices such as drums, cones, vertical panels, and positive barriers. This provision has been rewritten to make it clear that center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for the separation of opposing traffic in a TLTWO.

All other references to specific traffic control techniques and devices that were included in either the emergency rule or the NPRM have not been included in this final rule. The FHWA will provide additional information for issuing guidance on these items (except for edge-of-pavement dropoffs, where a study is underway) in the update to the handbook portion of "Work Zone Traffic Control Standards and Guidelines." The references include the following:

—Selection of types of separation devices (including positive barriers),

—Use of impact attentuation (i.e., crash cushion) devices and flared barriers,

—Determination of length of TLTWO,

—Design of crossovers, and

—Use of supplementary signing and marking.

List of Subjects in 23 CFR Part 630

Grant programs—transportation, Highway safety, Highways and roads—program administration.

PART 630—PRECONSTRUCTION PROCEDURES

In consideration of the foregoing, Subpart J of Part 630, Chapter I, Title 23, Code of Federal Regulations, is amended by revising paragraph (a)(5) of § 630.1010 to read as follows:

§ 630.1010 Contents of the agency procedures.

(a) * * *

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(a) Where the TLTWO is located on an urban type street or arterial where operating speeds are low;

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse of separation devices based on unusual circumstances.

(ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

* * * * *

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for inspection in the public docket and may be obtained by contracting Mr. Kenneth L. Ziems, Office of Highway Operations, at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

(23 U.S.C. 109(b), 109(d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: May 7, 1982.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 82-13559 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-22-M

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23 CFR Parts 771, 790, and 795

[FHWA Docket No. 82-5, Notice 2]

Environmental Impact and Related Procedures: Public Hearings and Location/Design Approval; Environmental Action Plans

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

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[1] "Work Zone Traffic Control Standards and Guidelines" is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (DPO Stock No. 050–001–00175–6). It is published by the FHWA and contains Part VI of the "Manual on Uniform Traffic Control Devices" and the "Traffic Control Devices Handbook, Part VI."

SUMMARY: This document rescinds the regulation on the development of environmental Action Plans and makes corresponding changes in the regulation on environmental impact and related procedures and the regulation on public hearings and location/design approval in order to eliminate unnecessary duplication of environmental procedures.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Ali F. Sevin, Office of Environmental Policy (202/426-0107), or Mr. Edward V. A. Kussy, Office of the Chief Counsel (202/426-0791), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 109(h) of Title 23, United States Code (U.S.C.), which was added by the Federal-Aid Highway Act of 1970, required the Secretary to promulgate guidelines designed to assure that possible adverse, economic, social, and environmental effects of highways are fully considered and that project decisions are made in the best overall public interest.

The Process Guidelines were FHWA's response to section 109(h) and are now codified in Part 795 of Title 23, Code of Federal Regulations (CFR). They are also contained in Volume 7, Chapter 7, section 1 of the Federal-Aid Highway Program Manual (FHPM 7-7-1). The guidelines call for each State to develop an Action Plan which describe the organization to be used and the processes to be followed in the development of Federal-aid highway projects.

The Process Guidelines/Action Plan approach, implemented during a period when State highway departments were gaining familiarity with the environmental analysis process, has accomplished its objective. The National Environmental Policy Act (NEPA) process, as recently revised by FHWA to incorporate the Council on Environmental Quality (CEQ) regulations (45 FR 71966, October 30, 1980), perpetuates the fundamentals of the Process Guidelines. Only in the area of public hearings and public involvement do the Process Guidelines/Action Plan provide significant additional elements to the highway decisionmaking process not presently included in the NEPA process. Therefore, the FHWA is rescinding its present regulation on Process Guidelines/Action Plans and cancelling the companion FHWA directive (7-7-1). At the same time, the regulation on environmental impact and related procedures (23 CFR Part 771) is being amended to preserve the substance of the provisions now contained in Part 795 regarding the approval of alternative public involvement procedures. The rescission of Part 795 also requires a technical amendment to 23 CFR Part 790, "Public Hearings and Location/Design Approval."

The FHWA initially sought comments on 23 CFR Part 795 through a **Federal Register** notice published at 46 FR 21620 (April 13, 1981), on the costs, benefits, issues, and degree of controversy of the Process Guidelines/Action Plan requirements. The responses indicated that costs and controversy are not significant, but that while the Process Guidelines/Action Plan program has been effective, it is no longer needed since its goals have been met. Also, comments received emphasized the need to simplify and eliminate duplicative regulations. Approximately 80 percent of the State highway agencies responded and these comments were given careful consideration in the decision to rescind 23 CFR Part 795.

On February 11, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 6267) proposing rescission of 23 CFR Part 795. A total of 28 written comments were received in the docket regarding the proposed rule. Twenty-three of these comments were from State transportation agencies with 21 of them supporting the proposed action; one expressed neutrality and one opposed the proposal. Four of the remaining 5 comments were from 3 private organizations and 1 Metropolitan Planning Organization (MPO) all opposing the proposal. One comment from a county highway department was in support of the action. The thrust of the transportation agency comments was that rescission would: (1) Permit greater flexibility to meet State operational needs, (2) Minimize red tape and duplication without essentially changing the procedures for identification, evaluation, consideration, and mitigation of social, economic, and environmental (SEE) effects of highway projects, (3) Reduce unnecessary paperwork and eliminate needless expense and unwarranted procedural delays, and (4) Consolidate sources of environmental guidance and regulation. As a result of one State transportation agency comment, several areas in the preamble and the final rule have been revised editorially to clarify the intent of the regulation regarding public hearing requirements and public involvement procedures for those States who elect to retain their approved Action Plans.

One commentor stated that the congressional intent of section 109(h) is with the specific manner in which decisions are reached for proposed projects on the Federal-aid system and that this is far different from the environmental reporting requirements in the NEPA or even the use of a systematic interdisciplinary approach.

The action to rescind Part 795 and consolidate nonduplicative requirements will not deemphasize the full intent of section 109(h) including the congressional intent regarding decisions on highway projects. Current NEPA procedures as implemented by the FHWA assure that SEE factors, including public involvement, are well integrated into the highway decisionmaking process from project planning through construction. Basically, the NEPA process provides a framework for the highway project development process. Interwoven into the entire process are extensive steps to evaluate the SEE effects. This process is now being effectively used to assure that both NEPA and section 109(h) requirements are being met throughout all the highway project development stages.

This same commentor agreed with the consolidation of the NEPA and section 109(h) regulations, but disagreed with the conclusion that the present NEPA procedures adequately capture the fundamentals of the Process Guidelines because essentially no part of the Process Guidelines is contained in the NEPA procedures. It was suggested that the Process Guidelines be incorporated as an Appendix to the NEPA procedures.

On February 24, 1982, FHWA issued explanatory, nonregulatory guidance on the NEPA process, including section 109(h), to its field offices and project applicants (47 FR 10699, March 11, 1982). Part of this guidance involves the preparation of a Record of Decision which contains an explanation and discussion of the balancing of values underlying the Federal decision on the project reviewed under NEPA. Although we do not consider it appropriate to reinstitute the Process Guidelines as an Appendix to the NEPA procedures, the Guidelines will certainly be available to those States which desire to refer to them.

The same commentor expressed concern over how FHWA will encourage States to continue to use the Action Plan approach in those instances where the States have derived benefits from this approach and would like to optionally continue to operate under such plans.

A paragraph has been added to the preamble below which describes the guidance and technical assistance which FHWA plans to provide to its field offices and the States. Additionally, a number of States commenting on the proposed rule indicated that they plan to retain the Action Plan document as part of their State operating procedures. A followup informal inquiry made by FHWA in connection with the rulemaking also confirmed that a vast majority of the State highway agencies will continue to maintain their Action Plan documents or similar documents after the Federal requirement is lifted.

This same commentor further expressed concern that in the spirit of eliminating regulations we do not seriously undermine various legal provisions passed by Congress.

In connection with this rulemaking, the legislative history of section 109(h) has been reviewed. In our opinion, the action being taken today is consistent with congressional intent and does not alter FHWA environmental policy. One State highway agency recommended adding language to clarify the final rule with respect to States operating under Certification Acceptance (23 CFR 640). Accordingly, a new paragraph (d) has been added to § 771.109 and § 790.2(a) has been revised to provide this clarification in the final rule.

The same State also recommended that the 30 days advance notice of a public hearing required by the FHWA in § 771.123(h) be revised to agree with the minimum 15 day requirement contained in the CEQ regulation (40 CFR 1506.6(c)(2)).

This recommendation is not being adopted in the final rule, but is currently under consideration for possible incorporation into future revisions of 23 CFR 771.

The comment from an MPO favored retention of the current Federal requirement for Action Plans because it is performed well by a particular State highway agency and because the Action Plan provided local officials the only opportunity available to hear, annually, the entire scope of the Federal/State highway projects in the MPO's area.

After review of this State's Action Plan, we concluded that there is no reason to believe that rescission of the Action Plan requirement will affect the way in which this particular State highway agency provides opportunities for input from the public and local planning officials to its highway system development program. Moreover, this State's current Action Plan shows that the practice of conducting annual meetings throughout the State for the public and regional and local planning directors existed prior to the Federal requirement for an Action Plan.

One commentor opposed rescission of the Action Plan regulation because it would diminish the role of citizen participation.

The rescission of Part 795 does not diminish the public participation procedures of State highway agencies. Alternative provisions for substituting public involvement/public hearing procedures in State Action Plans, in lieu of the detailed public hearing requirement in 23 CFR Part 790, have been in effect since December 30, 1974. These provisions have encouraged the adoption of a greater variety of community involvement techniques such as informal meetings, briefings, or workshops to be used together with formal public hearing procedures. The overall result has been a more complete, acceptable, and effective community involvement program. For those States that have adopted such procedures (40 States to date), the approvals made by FHWA (prior to the effective date of this amendment) remain valid. The remaining States are still required to follow 23 CFR Part 790. Changes in such procedures will require FHWA acceptance in accordance with the provisions of § 771.111 in this final rule.

Further, rescission of Part 795 does not represent a deemphasis of the identification, evaluation, consideration, and mitigation of SEE effects of highway projects. It does not eliminate the Section 109(h) requirements, but rather recognizes NEPA as the core of Federal environmental requirements and acknowledges the experience gained under NEPA, its uniform application by Federal agencies and its embodiment of the principles and spirit of 23 U.S.C. 109(h). The successful operation of State Action Plan programs is recognized and these streamlined procedures will allow States to continue to use Action Plans as a State document with greater individual flexibility for their operational needs. Those States which derive benefits from Action Plans are encouraged to continue to operate under such plans on an optional basis.

Section 109(h) will be complied with through the procedures contained in 23 CFR Part 771. Many States now use their NEPA-related procedures to comply with Section 109(h). In approving new or different public involvement procedures under the amended procedures promulgated today, FHWA will continue to assure that adequate public involvement, consistent with NEPA and 23 U.S.C. 128, will be provided.

The FHWA will also continue to provide appropriate nonregulatory guidance to FHWA field offices and to the State highway agencies on consideration of SEE impacts and on public involvement. This information will be disseminated in a variety of forms including reports, case studies, conferences, workshops, and training courses on topics such as social impacts and public involvement, noise and air quality, ecology and water quality, archeology and historic considerations, and other environmental impact areas.

This regulatory change does not require the States to take any specific action. Alternate public involvement/public hearing and other procedures approved by FHWA for use in lieu of those set forth in 23 CFR Part 790, pursuant to the provisions of 23 CFR Part 795, remain in effect and can still be utilized by the State. Further, this amendment should not be interpreted to reduce flexibility to seek and obtain acceptance of alternate procedures. If the current regulations (Part 795) permit approval of any particular procedures (such as, for example, those relating to location/design approval), the amendments being made today should also be interpreted to permit such alternative procedures to be approved in the future. For any State relying on the Action Plan as an element of its Certification Acceptance Statement, it may continue to do so or develop alternative procedures acceptable to FHWA.

Since rescission of 23 CFR Part 795 will not change FHWA environmental policy, and in view of the fact that the Action Plan regulation has been the subject of public review and comment, the FHWA has determined that this amendment should be effective on the date of issuance.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The economic impacts of this action are considered to be minimal. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. An evaluation of the Action Plan procedures is available for inspection in the public docket and may be obtained by contacting Mr. Sevin at the address provided above under the heading "FOR FURTHER INFORMATION CONTACT."

(23 U.S.C. 109(h), 128, 138, and 315; 49 CFR 1.48(b)). (Catalog of Federal Domestic Assistance Program Numbers 20.005, Highway Research, Planning, and Construction; 20.509, Public Transportation for Nonurbanized Areas;

23.003, Appalachian Development Highway System; 23.006, Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program.)

List of Subjects in 23 CFR Parts 771, 790, and 795

Environmental impact statements, Environmental protection, Grant programs—transportation, Highways and roads.

Issued on: May 11, 1982.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations, Federal Highway Administration.

In consideration of the foregoing, Chapter I of Title 23, CFR, is amended as set forth below.

PART 795—PROCESS GUIDELINES (FOR THE DEVELOPMENT OF ENVIRONMENTAL ACTION PLANS) [REMOVED]

1. Part 795, "Process Guidelines for the Development of Environmental Action Plans" is hereby removed from Chapter I.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

§ 771.101 [Amended]

2. In § 771.101, add the following sentence to the end of the section, "This regulation also sets forth procedures to comply with 23 U.S.C. section 109(h)."

3. In § 771.109, paragraph (d) is added to read as follows:

§ 771.109 Applicability and responsibilities.

* * * * *

(d) States operating under an approved certification in accordance with 23 CFR Part 640 may substitute for projects which are the subject of such certification, State laws, regulations, directives, and standards which meet the objectives in this regulation in lieu of §§ 771.113(a)(2) and 771.113(b).

4. In § 771.111, revise the title of the section to read, "Early coordination, public involvement, and project development" in the table of sections as well as in the main body of the text. Also, in § 771.111, redesignate paragraph (h) as (i) and add a new paragraph (h) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

* * * * *

(h) In lieu of the procedures required by 23 CFR Part 790, a State may, to comply with 23 U.S.C. section 128, adopt public involvement/public hearing and other procedures, subject to FHWA acceptance, which include provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for hearing(s) to be afforded, on any Federal-aid project which requires the acquisition of significant amounts of right-of-way; or substantially changes the layout or functions of connecting roadways or of the facility being improved; or has a significant adverse impact on abutting real property, or otherwise has a significant social, economic, environmental or other effect. The public involvement/public hearing procedures accepted hereunder must assure reasonable notice to the public of the hearing opportunity as well as the availability of explanatory information. These procedures must be fully coordinated with the NEPA process. Approvals made by FHWA prior to May 11, 1982, of procedures for use in lieu of Part 790 remain valid. Changes in such procedures require FHWA acceptance.

* * * * *

5. In § 771.119, revise the second sentence of paragraph (b) and revise paragraph (e) to read as follows:

§ 771.119 Environmental assessments.

* * * * *

(b) * * * The applicant will accomplish this through an early coordination process (i.e., procedures under § 771.111), or through a scoping process. * * *

* * * * *

(e) When a public hearing is required, the environmental assessment (EA) will be prepared in advance of the notice of public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). The Urban Mass Transportation Administration (UMTA) has a public hearing requirement in all applications for capital and operating assistance.

* * * * *

6. In § 771.123, amend paragraph (b) by revising the third sentence as set forth below. Amend paragraph (h) by removing the third sentence; as revised, paragaph (h) reads as set forth below:

§ 771.123 Draft environmental impact statements.

* * * * *

(b) * * * For FHWA, scoping is normally achieved through the public and agency involvement procedures required by § 771.111 and through other early coordination activities. * * *

* * * * *

(h) The draft environmental impact statement (DEIS) shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEIS's. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

* * * * *

PART 790—PUBLIC HEARINGS AND LOCATION/DESIGN APPROVAL

7. In § 790.2, existing paragraph (a) is revised to read as follows:

§ 790.2 Applicability.

(a) The provisions of this part apply to the extent that alternative procedures have not been accepted or provided for by FHWA under Part 640 or Part 771.

* * * * *

[FR Doc. 82-13762 Filed 5-19-82; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 220, 221, 222, 226, 227, 233, 235, 237, and 240

[Docket No. R-82-921]

Mutual Mortgage Insurance and Rehabilitation Loans; Negotiated Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of effective date for final rule.

SUMMARY: This document announces the effective date for the final rule published

in the Federal Register on April 20, 1982 (47 FR 16776) which amended the authority of the Secretary, pursuant to section 332 of the Housing and Community Act of 1980, to prescribe maximum interest rates for FHA programs by permitting a limited number of section 203 mortgages to be closed at a negotiated rate which may exceed the FHA ceiling. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the Federal Register.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published April 20, 1982, at 47 FR 16776, is May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 17, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-13802 Filed 5-19-82; 8:45 am]

BILLING CODE 4210-27-M

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-82-992]

List of Attorneys-In-Fact

AGENCY: Government National Mortgage Development Association, HUD.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact. Attorneys-in-fact are authorized to act for the Government National Mortgage Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs.

EFFECTIVE DATE: July 17, 1982.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

PART 300—GENERAL

1. Paragraph (c) of § 300.11 is amended by removing the following name to the current list of attorneys-in-fact:

§ 300.11 [Amended]

Name	Region
Gregory Giampetro	Philadelphia, PA.

(Sec. 309(d) of the National Housing Act, 12 U.S.C. Section 1723a(d), and Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: May 3, 1982.

Warren A. Lasko,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 82-13799 Filed 5-19-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD5-82-02R]

Marine Event; Norfolk Harborfest, Elizabeth River, Norfolk and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for the City of Norfolk Harborfest Regatta. These regulations are considered necessary to control vessel traffic within the immediate vicinity of the Regatta due to the confined nature of the waterway and the expected congestion at the time of the Regatta. The intended effect is to restrict general navigation in the area for the safety of spectators and participants in the event.

DATES: This rule is effective from 10 a.m. e.d.s.t. to 10:30 p.m. e.d.s.t. on 11 June 1982; from 10 a.m. e.d.s.t. until 10 p.m. e.d.s.t. 12 June 1982 and from 11 a.m. e.d.s.t. until 10 p.m. e.d.s.t. 13 June 1982.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ronald T. Via, Commander (b), Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804-398-6202).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days from the date of publication. The regulations are published as a final rule since there was insufficient time to publish a notice of proposed rule making prior to the event and the regulations are needed in order to protect life and property.

This regulation has been determined not to be a major rule in accordance with E.O. 12291.

Drafting information: The principal persons involved in drafting this final rule are LCDR Ronald T. Via, Project Manager, Fifth Coast Guard District, Boating Affairs Branch, and LCDR David J. Kantor, Assistant Legal Officer, Fifth Coast Guard District.

Discussion of the rule: The annual City of Norfolk Harborfest is scheduled to be held on 11-13 June 1982 at the Norfolk waterfront. Numerous water events, including ski shows, boat races, and military demonstrations, are scheduled to take place on the Elizabeth River. In addition, approximately 400 spectator craft are expected to attend the festival. As a result, it will be necessary to designate a portion of the Elizabeth River as a "regulated area" to promote safety of life during Harborfest.

List of Subjects in 33 CFR Part 100.

Marine Safety, navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows: By adding a new § 100.35-501 to read as follows:

§ 100.35-501 City of Norfolk Harborfest.

(a) The following area is designated a "regulated area" during the regatta: Those waters of the Elizabeth River and its branches from shore to shore and bounded by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) Regulation: (1) Except for participants in the Norfolk Harborfest or persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast

Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by any Coast Guard officer or petty officer.

(3) Any spectator vessel may anchor outside of the area specified in paragrph (a) of this section; or in special anchorages designated by the Patrol Commander.

(4) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the reviewing platform at Town Point; and

(5) These regulations and other applicable laws and regulations shall be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(Sec. 1, Pub. L. 80–102 Stat. 69, 46 U.S.C. 454; sec. 6(b)(1), Pub. L. 89–670, 80 Stat. 937, 49 U.S.C. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b))

Dated: May 7, 1982.

T. J. Wojnar,

Acting Captain, U.S. Coast Guard, Fifth Coast Guard District.

[FR Doc. 82–13801 Filed 5–19–82; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD0381–034]

Drawbridge Operation Regulations; Passaic River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Bergen County, New Jersey, the Coast Guard is changing the regulations governing the Union Avenue drawbridge across the Passaic River, mile 13.2 at Rutherford, NJ by requiring that 8 hours advance notice of opening be given between midnight and 8 a.m. The regulation change is being made because of a steady decrease in requests for opening of the draw during that time. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on July 6, 1982.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, Bldg. 135A, Governors Island, New York 10004 (212–668–7994).

SUPPLEMENTARY INFORMATION: On June 8, 1980 the Coast Guard published a proposed rule in the **Federal Register** for this regulation (46 FR 30354). The Commander, Third Coast Guard District also published this proposal as a Public Notice (3–453) dated August 31, 1981. Interested persons were requested to submit comments by July 23, 1981 and October 2, 1981, respectively. Two comments were received, both responding to the public notice.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ernest J. Feemster, Project Manager and LCDR Frank E. Couper, Project Attorney, Third Coast Guard District Aids to Navigation Branch and District Legal Office, respectively.

DISCUSSION OF COMMENTS: The two comments to the public notice offered no objection to the proposed regulation. Bridge opening logs have shown a steady decrease in requests for openings from midnight to 8 a.m. and in early 1980 numbered less than two openings per month. The Coast Guard decided to issue this regulation after considering all comments and available information. The regulation will not be overly restrictive to either the mariner or to vehicles and should result in no significant change to any operations.

SUMMARY OF FINAL EVALUATION: These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating § 117.200(a)(4) (v), (vi), and (vii) as paragraphs (a)(4) (vi), (vii), and (viii), respectively and adding a new § 117.200(a)(4)(v) to read as follows:

§ 117.200 Newark Bay, Passaic and Hackensack Rivers, N.J., and their navigable tributaries; bridges.

(a) * * *

(4) * * *

(v) Union Avenue Bridge, mile 13.2, Passaic River. The draw shall open on signal from 8 a.m. to midnight. From midnight to 8 a.m. the draw shall open if at least eight hours notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, Sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: April 29, 1982.

J. S. Gracey,

Vice Admiral, Coast Guard, Commander Third Coast Guard District.

[FR Doc. 82–11618 Filed 5–19–82; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[Docket No. CGD3–82–04–R]

Safety Zones: Philadelphia, PA During the Tall Ships Parade of Sail

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone regulations establishes a portion of the waters of the Delaware River, Philadelphia, PA at Penns Landing as a stationary safety zone. This zone is established to provide sufficient maneuvering room for participants of the "Tall Ships Parade of Sail". Additionally this amendment establishes a 50 yard moving safety zone around each of the participating parade vessels for the duration of the Tall Ships Parade of Sail event. These moving safety zones to be placed in effect upon each vessel taking their respective predesignated anchoraging positions in the Marcus Hook, Mantua Creek and Kaignes Point/Gloucester City anchorages of the Delaware River. Termination of the individual moving safety zones shall be effected upon each vessels' entry into the Penns Landing Park safety zone.

EFFECTIVE DATE: This amendment is effective June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Captain D. B. Charter, Captain of the Port, Philadelphia, U.S. Coast Guard Base, Gloucester City, NJ 08030, (609) 456–1370, during normal working hours 7:30 AM to 4:30 PM Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a Notice of Proposed Rule

Making as authorized by 5 U.S.C. 553(b)(3)(B), since the amount of time available makes such a procedure impracticable. Extensive local public notice has been given. This amendment is a non-significant rule under DOT Order 2100.5, dated May 22, 1980. Evaluation under that order is not warranted because the impact is expected to be minimal. This amendment is also a non-major rule under Executive Order 12291, and as such it is not subject to the regulatory impact analysis and review mandated by that Executive Order. Finally, this amendment is exempt from review by the Office of Management and Budget by the authority of OMB letter dated March 10, 1982, to the General Counsel, Department of Transportation.

Drafting Information: The principal persons involved in drafting this rule are LT F. Kevin KOOB Project Manager; Captain of the Port, Philadelphia, U.S. Coast Guard Base, Gloucester City, NJ; and LCDR James J. D'Alessandro, Project Attorney, Legal Office, Third Coast Guard District, New York, NY.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

PART 165—SAFETY ZONES

In consideration of the foregoing, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding § 165.333 to read as follows:

§ 165.333 Penns Landing Park, Delaware River, Philadelphia, PA and tall ships parade of sail participants.

The waters of the Delaware River inclusive of the area midchannel and westward to the Pennsylvania shore between the Benjamin Franklin Bridge at LAT 39°57'10"N, LONG 75°08'11"W and Pier 30 South at LAT 39°56'20"N, LONG 75°08'20"W are established as a Safety Zone from 1000 EDST to 1500 EDST on June 17, 1982. In addition a moving safety zone is hereby established for each of the Tall Ships Parade of Sails Participants extending 50 yards on each quarter of subject vessel from the time that vessel leaves its designated anchorage until it enters the stationary safety zone described above.

(86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(n)(4); 33 CFR 165.10)

Dated: April 21, 1982.

D. B. Charter Jr.,

Captain, Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 82-13019 Filed 5-19-82; 8:45 am]
BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 80-2]

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting interim amendments to §§ 201.11 and 201.17, as amended on June 27, 1978 and July 3, 1980 respectively. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Notices of Identity and Signal Carriage Complement and Statements of Account, and the submission of statutory royalty fees.

The effect of the amendments is to modify the filing requirements and royalty fee calculations necessitated by changes in the rules and regulations of the Federal Communications Commission. The amendments are issued on an interim basis in order to permit their immediate application while allowing full public comment.

DATES: The interim regulations are effective on May 20, 1982.

Comments should be received before July 1, 1982.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that the cable systems comply with provisions regarding recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

On January 5, 1978, the Copyright Office published in the Federal Register (43 FR 958) new §§ 201.11 and 201.17 of its regulations governing the form, content, and filing of the Notices, Statements of Account, and statutory roylaty fees. The Copyright Office emphasized in the preamble to the regulations that (43 FR 958):

> * * * We are dealing with an entirely new area of copyright law in which all parties concerned lack practical experience. Moreover, future actions by the Copyright Royalty Tribunal and the Federal Communications Commission can be expected to affect the theory and application of our rules. Accordingly, these regulations must be considered somewhat experimental and subject to reconsideration as circumstances and experience develop.

On June 27, 1978, the Copyright Office announced in the Federal Register (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms.

Further experience with these regulations led the Copyright Office to publish in the Federal Register on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account.

During the July 3, 1980 rulemaking proceeding, the Copyright Office received several comments suggesting substantive revisions to the regulations and Statement of Account forms (45 FR 45273):

> Based on their experience reviewing the Statements of Account submitted during the first three accounting periods, copyright owners noted in their comments particular areas where they feel further information and/or clarifications are needed. These areas principally concern the designation of local and distant stations, classification of Canadian and Mexican stations, and problems resulting from the filings submitted on behalf of joint "individual" cable systems. In addition, some copyright owners proposed changes that they contend would streamline the royalty calculation steps required on forms CS/SA-2 and CS/SA-3.
>
> Comments on behalf of the cable operators, on the other hand, suggested that a good deal of the information required on the Statements of Account for the purpose of assisting copyright owners and the Copyright Royalty Tribunal in the distribution of cable royalties

is, in fact, unnecessary. They also advocated a review of our definition of "gross receipts for the 'basic service of providing secondary transmissions of primary broadcast transmitters' " based on recent technological advances and new marketing strategies affecting the types of services now available for a single monthly fee.

Although these issues were outside the scope of that rulemaking, the Copyright Office stated that it believes "that some of these developments do warrant a review of our cable regulations and Statement of Account forms at an appropriate time." (45 FR 45273).

Since that time, several administrative actions have been taken affecting the cable television compulsory license mechanism. First, on September 11, 1980, the Federal Communications Commission [FCC] published in the Federal Register (45 FR 60186) its decision to remove the cable television distant signal limitations and syndicated program exclusivity rules from the FCC regulations. The Court of Appeals for the Second Circuit upheld the authority of the FCC to repeal these rules in *Malrite v. FCC*, 652 F. 2d 1140 (2d Cir. 1981) and the Supreme Court has denied a petition for certiorari on this issue in *National Association of Broadcasters v. FCC*, No. 81–522, 50 U.S.L.W. 3547 (Jan. 11, 1982). Second, on September 23, 1980, the Copyright Royalty Tribunal published in the Federal Register (45 FR 63026) its determination of the 1978 cable royalty distribution. The Court of Appeals for the D.C. Circuit generally upheld the Tribunal's royalty distribution in *NAB v. CRT, et al.*, No. 80–2273 (D.C. Cir. April 9, 1982); *NPR v. CRT, et al.*, No. 80–2281 (D.C. Cir. April 9, 1982) *Major League Baseball, NBA, NHL and NASL v. CRT, et al.*, No. 80–2284 (D.C. Cir. April 9, 1982); *CBC v. CRT, et al.*, No. 80–2290 (D.C. Cir. April 9, 1982); and *ASCAP v. CRT, et al.*, No. 80–2298 (D.C. Cir. April 9, 1982). Finally, on January 5, 1981, the Copyright Royalty Tribunal published in the Federal Register (46 FR 892) its adjustment of the compulsory license royalty rates. This determination presently is on appeal in the courts.

The Copyright Office decided that these administrative determinations warranted attention and provided an adequate basis for a review of the cable television regulations and Statement of Account forms. To this end, the Copyright Office, on June 10, 1981, published in the Federal Register (46 FR 30649) a Notice of Public Hearing to be held on July 28, 1981, intended to elicit comments, views, and information regarding these matters.

Over the last year, the issue of whether or not the cable television compulsory license should be retained, modified, or eliminated has been addressed during hearings in both the Senate and the House of Representatives. The Notice specified that the Copyright Office public hearing "is not intended as an alternative forum for consideration of legislative issues presently before the Congress." (46 FR 30650).

During the July 28, 1981, public hearing, the Copyright Office received testimony and written submissions from two cable television operators and representatives of the Motion Picture Association of America (MPAA), the National Cable Television Association (NCTA), and professional sports. The Copyright Office also received nine written comments from other interested parties in response to the Notice of Public Hearing. Because the Commission's actions have an immediate impact on the responsibilities of cable systems under the copyright compulsory license, the Office has decided to issue regulations concerning this impact effective today on an interim basis. This will permit cable systems to comply with their statutory obligations while permitting full public comment on the regulations. Final regulations will be issued after the close of the comment period. In addition, proposed regulations pertaining to the other issues addressed during the Office's July public hearing will be forthcoming in the near future.

Because the Commission's actions became effective June 25, 1981,[1] their impact also may affect the amount of statutory royalty fees paid by some cable systems which filed Statement of Account form CS/SA–3 for the accounting period July 1, 1981–December 31, 1981. The Copyright Office intends to adopt a supplemental form to be completed by such cable systems to determine whether or not a supplemental royalty payment should be submitted. However, the Office plans to defer issuance of a supplemental form until a judicial determination is rendered in the appeal of the CRT rate adjustment determinations which may also necessitate certain adjustments to previously submitted royalty payments. The interim regulations are based on a thorough consideration of all testimony given at the July hearing and in supplemental statements filed by interested parties. In accordance with our obligations under section 111(d), the Office has consulted with the Copyright Royalty Tribunal concerning these changes and additions. A discussion of the interim amendments and major substantive comments appears below.

1. *Summary of the 1980 FCC deregulation.* The cable television copyright compulsory license mechanism is premised on a bifurcation of responsiblities under communications and copyright law. Under this mechanism, the FCC controls signal distribution by cable systems as part of a national allocations policy and protects some exclusive rights as part of this policy. At the same time, the copyright law prescribes the degree and nature of cable operators' liability for the use of copyrighted programming that the FCC rules permit them to retransmit. When a general revision of the copyright law was enacted on October 19, 1976, the FCC had several rules and regulations which limited cable carriage of distant television signals in general and syndicated, sports, and network programming in particular. Those FCC rules and regulations pertinent to this rulemaking are:

(1) Distant signal limitations in general: 47 CFR 76.57(b)–(d); 76.59(b)–(d); 76.61(b)–(e); and 76.63 [referring to 76.61];

(2) Permissible additional carriage of distant specialty programming on a part-time basis: 47 CFR 76.57(d); 76.59(d)(1); 76.61(e)(1); and 76.63 [referring to 76.61(e)(1)];

(3) Permissible additional carriage of distant signals on a part-time late-night basis: 47 CFR 76.57(c); 76.59(d)(3); 76.61(e)(3); and 76.63 [referring to 76.61(e)(3)];

(4) Permissive deletion and substitution of a program carried on a distant signal that "is primarily of local interest to the distant community (e.g., a local news or public affairs program)": 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)];

(5) Required deletion and substitution of syndicated programming pursuant to the syndicated program exclusivity rules [47 CFR 76.151–161]: 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)]; and

(6) Required deletion and substitution of sports programming pursuant to the sports exclusivity rule: 47 CFR 76.67.

All but the last of the abovementioned rules and regulations have been deleted as part of the Commission's 1980 deregulation decision.

2. *Relationship between FCC rules and the distant signal equivalent value.* Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent" (DSE), which has been incorporated by reference in § 201.17(f)(3) of the Copyright Office regulations. The DSE is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system, in whole or in part, beyond the local

[1] On this date the judicial stay *pendente lite* of the FCC's deregulation decision was lifted by order of the court in the *Malrite* case.

service area of the primary transmitter of such programming. Cable systems that complete Statement of Account form CS/SA–3 compute their statutory royalty payment on the basis of their total number of DSE's.

Ordinarily, the DSE value of a distant independent station is one and the DSE value of either a distant network station or a distant noncommercial educational station is one-quarter. The DSE definition, however, permits certain modifications in the DSE value of a particular station to reflect limited carriage in accordance with FCC rules and regulations listed in items (2) through (6), as noted above.

In four specified situations, the ordinary DSE value of a distant television station can be reduced in accordance with certain specified formulae. Stated generally, these four situations are: (1) Part-time carriage of distant specialty programming; (2) part-time carriage of distant signals on a late-night basis; (3) part-time carriage of distant signals because of lack of activated channel capacity to retransmit on a full-time basis all signals which the cable system is authorized to carry; and (4) carriage of live non-network programming substituted for a program deleted at the option of the cable systems.

The DSE definition in section 111(f) further specifies two situations where no DSE value shall be assigned for additional carriage of distant programming. These situations are: (1) Carriage of distant programming substituted for a program which is required to be deleted under FCC rules and regulations; and (2) carriage of non-live nonnetwork programming substituted for a program deleted at the option of the cable system.

As part of our July 1981 hearing, the Copyright Office sought comments on what changes, if any, should be made in the Statement of Account forms and Copyright Office regulations concerning the calculation of DSE's as a result of the FCC deregulation. In response to this inquiry, the Copyright Office received testimony and comments from six groups: The NCTA, two major multi-system operators, a group of seven cable system operators, the MPAA and a representative of several professional sports organizations. Three of the cable groups commented generally that no immediate changes need to made in the Statement of Account forms and Copyright Office regulations. The group of seven cable system operators commented specifically on the impact of the Commission's actions. In addition, both groups of copyright proprietors suggested several changes in both the forms and regulations. A discussion of these comments with respect to the differing types of affected carriage follows.

a. *Permissive substitution and newly authorized substitution.*

(1) *Permissive substitution based on FCC rules in effect on October 19, 1976.* As noted earlier, the DSE definition permits the prorating of the DSE value for carriage of live nonnetwork programming substituted at the option of the cable system (Case I). The DSE definition further provides that if the substituted program is a non-live program, no additional DSE value shall be assigned for such carriage (Case II). The DSE definition specifies that both cases of permissive substitute carriage are governed by "the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act" (October 19, 1976). The only FCC rules in effect on that date concerning such carriage pertained to the substitution of a program primarily of local interest to the distant community. Despite the fact that this rule has been deleted, the DSE definition permits proration of a DSE in Case I, and the nonassignment of a DSE value in Case II, for such substitute carriage; this narrow rule remains effective for purposes of the Copyright Act.

(2) *New occasions for substitution based on 1980 FCC deregulation decision.* The representative of several professional sports organizations commented that the Commission's deregulation decision generally offers cable systems greater latitude in making substitutions than that allowed under the FCC rules and regulations in effect on October 19, 1976. The commentator urged the Copyright Office to emphasize in the Statement of Account forms and in its regulations that these newly authorized substitutions must be calculated at the full DSE value of the signal so carried. The Copyright Office agrees with this suggestion. In discussing possible changes in FCC rules, the Report of the Judiciary Committee of the House of Representatives [H.R. REP. NO. 94–1476, 94th Cong., 2d Sess. (1976) at 100] states:

> [W]here the FCC rules on the date of enactment of this legislation permit a cable system, at its discretion, to make such deletions or substitutions or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located [and] * * * the substituted or additional program is a "live" program (e.g., a sports event), then an additional value is assigned to the carriage of the distant signal computed as a fraction of one distant signal equivalent * * * [T]*he discretionary exception is limited to those FCC rules in effect on the date of enactment of this legislation. If subsequent FCC rule amendments or individual authorizations enlarge the discretionary ability of cable systems to delete and substitute programs, such deletions and substitutions would be counted at the full value assigned for the particular type of station provided above.* [emphasis added.]

(3) *Interim Amendments.* In order to clarify the complex computation process for permissive and newly authorized substitutions, in accordance with the House Judiciary Committee's intentions, the Office has decided to adopt, on an interim basis, a new definition (8) to § 201.17(b) of its regulations to specify that, for purposes of the cable television copyright compulsory license,

> the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and 76.63 (referring to 76.61(b)(2)), deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

The Office has also adopted interim amendments to § 201.17(f)(3). Finally, we have modified Space I of the Statement of Account forms, the DSE Schedule included in Statement of Account form CS/SA–3, and corresponding provisions in § 201.17 to reflect these decisions.

b. *Part-time carriage.* Unlike the case of permissive substitutions, the DSE definition dealing with part-time carriage pursuant to the late-night and specialty programming rules of the FCC is *not* tied to those rules in effect on the date of enactment of the 1976 Copyright Act. Despite the fact that the FCC has now deleted these rules, the NCTA suggests that cable systems should continue to be permitted to prorate the DSE values for such part-time carriage in "voluntary" compliance with the now-deleted rules. The MPAA and the group of seven cable operators, on the other hand, note that the Commission's action voids a cable system's ability to make prorated DSE adjustments for continued part-time late-night and spcialty programming carriage.

The Copyright Office has determined that the fifth sentence of the DSE definition in section 111(f) limits the prorating of DSE's for part-time carriage of late-night and specialty programming to cases where these forms of carriage are specified in FCC rules and regulations *in effect on the date of such carriage.* Therefore, although some

cable operators may wish to continue part-time carriage in voluntary compliance with the deleted FCC part-time rules, the Copyright Office has concluded that it has no statutory authority to permit the continued prorating of DSE's for part-time carriage of late-night and specialty programming.

Accordingly, the Copyright Office has decided to revise §§ 201.17 (e)(9)(vi) and (f)(3) of its regulations, on an interim basis, and modify Spaces G and J in Statement of Account forms CS/SA-2 and 3 and the DSE Schedule included in Statement of Account form CS/SA-3 to eliminate the prorating of DSE values for continued part-time carriage of late-night and specialty programming after June 30, 1981.[2]

c. *Required deletions.* Prior to the FCC's deregulation, cable systems were required generally to delete certain distant syndicated and sports programming and were permitted to substitute additional programming in its place. As discussed earlier, no DSE value is assigned for programming substituted in place of the deleted programming. As part of its 1980 deregulation, the Commission eliminated its syndicated program exclusivity rules.

The Copyright Office heard testimony from the MPAA and representatives of professional sports noting that this action withdraws one of the possible occasions for required deletion. Furthermore, the commentators suggest that, since the relevant portion of the DSE definition in section 111(f) does not refer to FCC rules and regulations in effect on October 19, 1976, cable systems may no longer avail themselves of the syndicated program exclusivity rules as a basis for substitution without calculation of a DSE for such carriage.

The Copyright Office agrees and has added a new definition (8) to § 201.17(b), on an interim basis, which states that:

> For purposes of this section, the "rules, regulations, or authorizations of the FCC", which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

This provision makes clear that required deletions, with the nonassignment of a DSE value for programming substituted in place of the deleted programming, now may only be made pursuant to the FCC's sports exclusivity rule which continues to remain in force.

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Interim Amendments

PART 201—GENERAL PROVISION

Part 201 of 37 CFR, Chapter II, is amended, on an interim basis:

1. By revising § 201.11(c)(1)(iv) (as amended on June 27, 1978) to read as follows:

§ 201.11 Notices of identity and signal carriage complement of cable systems.

* * * * *

(c) * * *

(1) * * *

(iv) The designation "Signal Carriage Complement", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the cable system. Carriage of a primary transmitter under FCC rules and regulations in effect on October 19, 1976, which permitted carriage of specific network programs on a part-time basis in certain circumstances [former 47 CFR 76.59(d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981] need not be reported.

* * * * *

2. By amending § 201.17(b) (as amended on July 3, 1980) by adding new subparagraphs (8) and (9) to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b)* * *

(8) For purposes of this section, the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and § 76.63 [referring to § 76.61(b)(2)], deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

(9) For purposes of this section, the "rules and regulations of the FCC", which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

* * * * *

3. By amending § 201.17(e)(9) by revising the introductory text of (e)(9) and (e)(9)(vi) and (viii) (as amended on July 3, 1980) to read as follows:

* * * * *

(e) * * *

(9) The designation "Primary Transmitters: Television", followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:

* * * * *

(vi) If that primary transmitter is a "distant" station, a specification of whether the signals of that primary transmitter are carried: (A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or (B) on any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

* * * * *

(viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59 (d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that basis need not be

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[2] The intent of the rule change is to clarify that the 1980 FCC deregulation decision impacts on the Statement of Account filing period beginning July 1, 1981, and on subsequent periods. Although the FCC's rule changes actually became effective on June 25, 1981, the Copyright Office has determined that, for reasons of public and administrative convenience, the impact of the FCC's 1980 deregulation decision will be considered in examining Statements of Account filed for the period July 1, 1981–December 31, 1981, and subsequent periods but not earlier. Moreover, since the relevant Copyright Office rules are interpretive of the Act, and do not regulate conduct, they can be applied to filings for an accounting period antedating the effective date of these rules.

reported, and that carriage is to be excluded in computing the distant signal equivalent of that primary transmitter.

* * * * *

4. By revising § 201.17(f)(3) (as amended on July 3, 1980) to read as follows:

* * * * *

(f) * * *

(3)(i) In computing the DSE of a primary transmitter in a particular case of carriage before July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94–553. Four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission in effect on the date of carriage;

(B) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission in effect on the date of carriage;

(C) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(D) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.

(ii) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94–553, and which remain in force under that provision. Two prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(B) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976, which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.

* * * * *

(17 U.S.C. 111, 702)

Dated: May 7, 1982.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82-13900 Filed 5-19-82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part57

[A-6-FRL-2099-3]

Approval of State Issued First Primary Nonferrous Smelter Order to the Chino Mines Company, Hurley, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final approval.

SUMMARY: EPA today announces its approval of a first Primary Nonferrous Smelter Order (NSO) issued to Chino Mines Company (CHINO), Hurley, New Mexico by the State of New Mexico Environmental Improvement Board (NMEIB) on March 20, 1981. Conditional approval of the State NSO was proposed by EPA on August 19, 1981 (46 FR 42064). The NMEIB has corrected the deficiencies noted in the proposal and submitted the corrections according to schedule.

Subsequent to the State's amended submittal, it was brought to EPA's attention that two provisions within the State NSO, sub-sections 5 (c) and (d), are inconsistent with the federal NSO regulations at 40 CFR Part 57, since the sub-sections would allow bypass of the acid plant during scheduled maintenance and during the phasing in and out of process equipment. The Agency is not approving these two provisions because they are not consistent with 40 CFR 57.304, which prohibits acid plant bypass at such times.

Today's action approves the Chino Nonferrous Smelter Order for all provisions except sub-sections 5 (c) and (d) of the Order, on which no action is taken. The NSO except for the two noted sub-sections becomes part of the New Mexico State Implementation Plan by this rulemaking.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: John Hepola, Air Branch, EPA, Region 6, at (214) 767–2742 or FTS 729–2742.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1980, CHINO submitted to the NMEIB an NSO application for its Hurley, New Mexico copper smelter. The NMEIB approved the NSO application on March 20, 1981, and submitted a complete NSO package on April 6, 1981, to EPA for review and approval.

The basic requirements for EPA approval of a NSO are outlined in Section 119 of the CAA and EPA regulations at 40 CFR Part 57. A thorough discussion of the NSO and EPA's reasons for approving it were presented in the Notice of Proposed Rulemaking, cited above, and will not be repeated here. The specific deficiencies and conditions for approval, as proposed in the August 19, 1981, notice are outlined below:

(1) The NMEIB was to include in the NSO by November 1, 1981 the reporting and recordkeeping provisions as required by 40 CFR 57.305(b) and 57.404 (b) and (c); and

(2) The NMEIB was to include in the NSO the Research and Development evaluation and reporting as required by 40 CFR 57.604. The NMEIB submitted the necessary revisions as of October 14, 1981. Based on the Agency's review, EPA has determined that the proposed conditions for approval have been met, and is hereby withdrawning conditional approval.

However, the NSO regulations at 40 CFR 57.301 require the smelter to use an interim level of sulfur dioxide (SO_2) controls (acid plants) unless a waiver of this requirement is granted under Subpart II of the NSO regulations. A smelter not operating under a waiver is required under 40 CFR 57.304 to treat all strong gas streams [1] in an acid plant. Bypassing of strong streams around the acid plant is allowed only during periods of malfunctions, and during start-up of the acid plant following supplementary control system (SCS) curtailment or following scheduled maintenance.

These two sections of the NSO regulations were promulgated to carry out the Congressional intent embodied in Section 119(d) of the Act. In enacting this provision of the Act, Congress

[1] A "strong" gas stream is a stream that contains a concentration of sulfur dioxide that is high enough to maintain the chemical reactions needed for efficient operation of an acid plant.

required the full and efficient treatment of all process strong streams. *See* 45 FR 42528 ff.25 (June 24, 1980).

EPA is not approving two subsections of the New Mexico NSO which would permit acid plant bypass during additional periods of operation. Subsection 5(c) of the state NSO would allow bypass during the "phasing in and phasing out" of process and air pollution equipment, while 5(d) would allow bypass during "scheduled maintenance." *See* 46 FR 42087 (August 19, 1981). If those subsections were to be approved, the NSO as a whole would fail to require full treatment of all strong gas streams as intended by Congress in Section 119 and mandated by 40 CFR 57.304.[2] Because subsections 5(c) and 5(d) are inconsistent with the governing regulations, today's approval does not include these two provisions.

Since no action is being taken on subsections 5(c) and (d) of the Order, they do not become part of the federally-approved NSO. Accordingly, for the purposes of federal enforcement,[3] bypass of the acid plant during scheduled maintenance and the phase-in and phase-out of equipment will be considered an excess emission in violation of the NSO and must be reported as such. Bypass will be permitted as provided in subsections 5(a) and (b) of the NSO and 40 CFR 57.304.

Public Comments

Comments were solicited on EPA's proposed action to conditionally approve this first NSO to CHINO. None were received. Therefore, pursuant to Section 119 of the Clean Air Act, EPA is approving all parts of the NSO but for subsections 5(c) and (d) on which EPA is taking no action.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this notice. This action may not be challenged later in the proceedings to enforce these requirements. (See sec. 307(b)(2).)

EPA finds that good cause exists for making this action immediately effective. The effect of this action is to lift the State Implementation Plan sulfur dioxide emission limitation for this smelter until January 1, 1983.

[2] When the Administrator promulgated 40 CFR 57.304, provisions to allow bypass during scheduled maintenance and phase-in/phase-out periods were rejected explicitly for this reason. *See* 45 FR 42528–42530.

[3] Today's action by EPA does not affect the validity of these provisions for purposes of state law.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. The reason for this finding is that this action only affects one entity. In addition, this action involves an "order," rather than a rule and therefore is not subject to the requirements of the Regulatory Flexibility Act in any event.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not Major because it only affects a single source and will not have an annual impact of over $100 million.

(Secs. 110 and 119 of the Clean Air Act (42 U.S.C. 7410 and 7419))

List of Subjects in 40 CFR Part 57

Administrative practice and procedure, Air pollution control, Metals, Research.

Dated: April 30, 1982.

Anne M. Gorsuch,

Administrator.

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Part 57 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. Part 57 is amended by adding a new Subpart J to read as follows:

Subpart J—New Mexico

§ 57.1000 Nonferrous Smelter Order for Chino Mines Company.

Authority: Sections 110 and 119 of the Clean Air Act (42 U.S.C. 7410 and 7419).

§ 57.1000 Nonferrous Smelter Order for Chino Mines Company.

(a) Pursuant to the Order Issued March 20, 1981 by the New Mexico Environmental Improvement Board and as amended October 9, 1981 in the matter of the application of Chino Mines Company for a Primary Nonferrous Smelter Order, the following requirements constitute the elements of the NSO. The NSO is not effective beyond January 1, 1983.

(b)(1) Chino is not required to comply with the provisions of the Air Quality Control Regulation ("AQC Reg.") 652.A.1 *Non-Ferrous Smelter-Sulfur,* during such period as this regulation is in effect.

(2) During the effective period of this regulation, all converter off-gases generated by Chino shall be treated by an acid plant except as provided by paragraph 5 of this regulation. Chino shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of forty (40) pounds of sulfur for every one hundred pounds of sulfur fed to the smelter, calendar quarterly average.

(3) Except as provided by paragraph 5 of this regulation, the SO_2 in the acid plant tailgas shall not exceed 0.065% by volume, 12-hour running average as measured by the continuous monitoring equipment provided for in paragraph 7 of this Regulation. Chino may not use dilution air to meet this limitation.

(4) Except as provided by paragraph 5 of this regulation:

(i) reverberatory stack SO_2 emissions from the smelter shall not exceed 29,592 pounds per hour, daily average, as measured by the continuous monitoring equipment provided for in paragraph 7 of this regulation; and

(ii) fugitive SO_2 emissions from the smelter shall not exceed 6,350 pounds per hour, calendar quarterly average, to be measured by (A) calculating the total amount of input sulfur for each quarter expressed as SO_2 (B) subtracting the amount of SO_2 captured as sulfuric acid during that period, the amount of SO_2 emitted from the acid plant tailgas and reverberatory stacks, and the amount of sulfur in the slag produced during that period expressed as SO_2, and (C) then dividing the result by the number of hours in the quarter.

(5) Bypassing of the acid plant or emissions in excess of those set forth in paragraphs 3 and 4 above shall constitute violation of this regulation, unless such emissions result from (i) equipment malfunction; (ii) the unavoidable startup and shutdown of process and air pollution control equipment.

(6) Chino shall report excess emissions to the Division in accordance with 40 CFR 57.304. The Division shall promptly transmit appropriate copies of said reports to the Board. To the extent that AQC Reg. 801 requires information which is identical to that required by 40 CFR 57.304, the Division shall promptly transmit appropriate copies of said reports to the Board. To the extent that AQC Reg. 801 requires information which is identical to that required by 40 CFR 57.304, compliance with AQC Reg. 801 shall be deemed compliance with this paragraph.

(7) Pursuant to the provisions of 40 CFR 57.305 and 57.404, Chino shall: (i) upon the effective date of this regulation, begin continuous monitoring to measure SO_2 emissions in the acid plant tailgas and reverberatory furnace

process off-gas, and (ii) by July 1, 1981, begin continuous monitoring of SO_2 emissions in the captured and vented fugitive gases from the reverberatory furnace and gases bypassed around the acid plant during conditions specified in paragraph 5 of this regulation. Certification of monitors meeting the performance specification as provided in 40 CFR Part 52, Appendices D and E, shall take place, in the presence of a Division observer within six (6) months of the dates specified above. Chino shall comply with all reporting and recordkeeping requirements contained in 40 CFR 57.305(b) and 57.404 (b) and (c).

(8) Upon the effective date of this Regulation, Chino shall operate its supplementary control system in accordance with the provisions of Chino's Supplementary Control System Operational Manual and 40 CFR 57.402. Certification of monitors meeting the performance specification of 40 CFR Part 53 shall take place, in the presence of a Division observer, within six (6) months of the entry of the Regulation. In addition to the requirements of 40 CFR 57.402, Chino shall:

(i) provide the Division with the name of the auditor (contractor) performing the quarterly audit. The 3-month primary calibration and quarterly audits shall be performed by different individuals. The audits shall be performed utilizing calibration equipment other than that used in the primary calibration;

(ii) provide the Division with audit, calibration, and maintenance information upon request;

(iii) consent to be audited by the Division; and

(iv) provide the Division with the date of purchase of the instruments, and supporting documentation.

(9) Pursuant to Section 74–2–15.1D NMSA 1978, Chino shall prevent the standards contained in AQC Reg. 201, *Ambient Air Quality Standards* ("State Standards") and the National Ambient Air Quality Standards ("NAAQS"), for SO_2 from being exceeded within the smelter's Designated Liability Area ("DLA"), which shall be defined as a circle with a center point at the smelter reverberatory stack and a radius of 7.5 miles and shall exclude any company property with no public access lying therein. A violation of the State Standards or NAAQS within the smelter's DLA shall constitute a violation of this Regulation, unless Chino can demonstrate that such violations were caused by conditions excused as violations of this Regulation, as provided in paragraph 5 of this Regulation, and that it had taken all necessary and appropriate actions to avoid and minimize such violations, including the operation of its supplementary control system.

(10) Chino shall conduct an active program to review the design and operation of its supplementary control system as provided in 40 CFR 57.402(f). During the term of this Regulation and as part of the program described above, Chino shall install and operate a minimum of two monitoring stations for SO_2 not tied to the supplementary control system. The sites for the monitors, and a schedule for their installation shall be agreed upon by Chino and the Division. Chino shall submit to the Board, with copies to the Division, quarterly reports of the data obtained detailing the results of this review. Such reports shall be due fifteen (15) days after the end of each calendar quarter. The Division shall, if necessary require Chino to relocate any of the SO_2 monitors and tie them into the supplementary control system. The monitors not tied into the supplementary control system must meet the performance specifications of 40 CFR. part 53. Siting criteria for monitors described in this paragraph shall conform to 40 CFR Part 58, Appendix E. Chino shall submit to the Board, with copies to the Division, the final report required by 40 CFR 57.405(b) no later than three (3) months following the termination of this Regulation.

(11) Chino shall meet the fugitive emission control requirements of 40 CFR 57.501 through 503 through completion of the fugitive emissions control requirements of the Schedule of Compliance Order, issued to Chino pursuant to AQS Reg. 510, *Fugitive Particulate Matter Emissions From Nonferrous Smelter*. Chino shall evaluate the impacts of the control measures required under the Schedule of Compliance Order on fugitive SO_2 and on ambient air quality in the smelter's DLA. Chino shall submit to the Board, with copies to the Division, a report of the data obtained detailing results of the evaluation within six (6) months after the effective date of this Regulation. Chino shall either make the demonstration contemplated by 40 CFR 57.502(a) or shall submit the design and study work plan provided for in that section.

(12) Chino shall conduct the research and development program set forth in its Application. Phase I of that program shall be completed within six (6) months after the effective date of this Regulation. Phase II within eighteen (18) months after the effective date, and Phase III within (30) months after the effective date. Reports summarizing the results of Phase I and II shall be submitted to the Board, with copies to the Division, within one month after the completion of Phase III. Further, Chino shall provide for an independent evaluation of the research and development program pursuant to the provision of 40 CFR 57.804. These reports shall be submitted to the Division and Environmental Protection Agency at least annually and, on any case, upon the completion of significant stages of the program.

(13) At any time during which this Regulation is in effect, the Board may hold a public hearing respecting the availability of technology sufficient to meet AQC Reg. 652. This Regulation shall be terminated if the Board determines, after notice and public hearing, that the conditions upon which this Regulation was based no longer exist. If Chino demonstrates that prompt termination of this Regulation would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result but in no event later than January 1, 1983.

(14) The following documents are hereby incorporated as part of this Regulation:

(i) Supplementary Control System Operating Manual entitled "Kennecott Minerals Company Chino Mines Division Supplementary Control System Operational Manual";

(ii) Written Consent for Designated Liability Area signed by I.G. Pickering, Senior Vice President—Operations—Kennecott Minerals Company.

(iii) Written Consent for Research and Development Program signed by I.G. Pickering, Senior Vice-President—Operations—Kennecott Minerals Company; and

(iv) "Proposed Research and Development Program" submitted by Kennecott Minerals Company.

[FR Doc. 82–12909 Filed 5–19–82; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 81

[A–3–FRL–2114–4 Docket Number 107PA–7]

Designation of Areas for Air Quality Planning Purposes, Approval of Redesignation of Attainment Status for the State of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is changing Philadelphia's air quality designation under Section 107 of the Clean Air Act to "better than national standards" for

sulfur dioxide (SO_2). EPA is changing Philadelphia's designation because no violations of SO_2 standards have been recorded in Philadelphia for over three years.

EFFECTIVE DATE: This action will be effective on July 19, 1982 unless someone serves notice within 30 days that he wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glen Hanson of EPA Region III's Air Programs and Energy Branch (address below). Copies of the request for redesignation and accompanying support materials may be examined at the following locations:

U.S. Environmental Protection Agency, Air Programs and Energy Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120.

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond D. Chalmers at the address for EPA Region III above, or telephone (215) 597–8309.

SUPPLEMENTARY INFORMATION: Peter S. Duncan, Acting Secretary of Pennsylvania's Department of Environmental Resources, requested on December 9, 1981, that EPA change Philadelphia's limited "nonattainment" designation for SO_2 to "better than national standards." Mr. Duncan requested this redesignation on behalf of Mr. William Reilly, Philadelphia's Assistant Health Commissioner for Air Management Services.

EPA is approving Pennsylvania's request. EPA's basis for approving the request is that Philadelphia's air quality monitors have reported no violations of SO_2 standards for over three years (1979 to date). In addition, EPA has determined that Philadelphia's monitoring network properly represents the City's SO_2 levels. Finally, EPA has found Philadelphia's SO_2 monitoring to have been conducted properly and the data it has generated to be accurate.

The public is advised that this action will be effective 60 days from the publication date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2)).

List of Subjects in 40 CFR Part 81:

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d), 171(2), and 301(a) of The Clean Air Act as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: May 11, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Section 81.339 of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations amended by revising the entry for City of Philadelphia in the table entitled "Pennsylvania—SO_2" as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
I. Metropolitan Philadelphia Interstate AQCR:				
(A) City of Philadelphia				X.

* * * * *

[FR Doc. 82-13582 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[Docket No. A-79-14; AMS-FRL-2074-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Amendment to High-Altitude Emission Standards for 1983 Model Year Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: This action amends the high-altitude emission standard for 1983 model year light-duty trucks (LDT's) by extending into the 1983 model year the 1982 exemption for 30 percent of each manufacturer's projected LDT sales from compliance with the high-altitude standards. This action is being taken to ease to compliance burden for the industry and should not have a significant effect on the air quality benefits arising from the high-altitude regulations. In addition, comments are requested on the appropriateness of the high-altitude performance exemption criteria for 1983 or later model year LDT's

DATES: These regulations are effective as of June 21, 1982. EPA will, however, consider comments on this amendment received within 30 days of publication of this notice.

ADDRESSEES: Copies of material relevent to this rulemaking action are contained in Public Docket No. A–79–14 at the U.S. Environmental Protection Agency, Central Docket Section, (A–130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Maureen D. Smith, U.S. Environmental Protection Agency, Office of Mobile Source Air Pollution Control (ANR–455), 401 M Street, SW., Washington, D.C. 20460, Telephone: (202) 426–2514.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Existing Regulations

Section 202(f) of the Clean Air Act, as amended, authorizes the Administrator to adopt regulations requiring 1981 and later model year light-duty vehicles sold at high altitude to meet standards that

are proportional to low-altitude standards in terms of emission reductions from the 1970 baseline. On October 8, 1980, EPA promulgated proportional standards for 1982 and 1983 light-duty vehicles sold for principal use at high-altitudes. 45 FR 66984. In those regulations, EPA also extended the proportional reduction requirement to light-duty trucks (LDT's) under its section 202(a) (1) and (2) standard-setting authority. Those provisions authorize EPA to consider cost and lead time requirements, both in establishing and amending rules.

In order to avoid high-altitude model availability problems, EPA fashioned the rules to require all vehicles to meet both low- and high-altitude standards, with modification, if necessary. EPA recognized two situations that required limited exemptions from the general rules that light-duty vehicles and trucks be certified to meet both the high- and low-altitude standards. First, the most fuel-economic vehicles that generally perform poorly at high altitude would have difficulty complying with applicable standards. Manufacturers that might otherwise have chosen to remove these models from both low- and high-altitude markets were provided with the opportunity to show unacceptable performance at high-altitude and to receive an exemption to allow certification for sales at low-altitudes only. This performance exemption was made available for passenger cars and LDT's based on performance criteria derived by EPA from data submitted by the manufacturers.

Second, while EPA concluded that adequate lead time generally existed for vehicles to comply with high-altitude standards beginning with the 1982 model year, it realized that the promulgation date of the rule left little time for truck manufacturers, especially those which also produce cars, to complete development and certification for their entire LDT fleets in 1982. There was some concern that the numerous truck configurations to be brought into compliance, as well as the possible limited resources of some truck manufacturers, would create problems for the truck manufacturers. 45 FR 66984, 66991–66992. Therefore, EPA provided a safety margin of one additional model year for each truck manufacturer to bring 30 percent of its projected high-altitude LDT sales into compliance, allowing that portion to be sold in high-altitude areas to avoid possible LDT availability problems. The 30 percent LDT sales exemption [hereinafter "volume-based exemption"] was limited to 1982 since the additional year of lead time was expected to address the uncertainties of timely 1982 LDT certification.

II. Ford Petition

Ford Motor Company has requested the Administrator to extend the 1982 LDT exemption through the 1983 model year ("Ford petition") on the basis that: (1) The high cost of developing and certifying unique high-altitude calibrations for LDT configurations with very low sales volumes at high-altitudes (50–100 units for many vehicle types that would not be exempted under the performance exemption) is an extremely cost-ineffective approach, which may force Ford to reduce model availability in order to minimize the cost impact; (2) air quality improvements at high altitudes would not be impaired since Ford will make available to its high-altitude customers who purchase an exempt LDT a performance adjustment that provides both acceptable performance and substantially the same emission control as a certified configuration; and (3) the performance exemption criteria do not apply appropriately to LDT's, so that many powertrains that were intended to qualify for exemption (due to poor performance under the high-altitude standards) must be certified to meet high-altitude requirements.

Ford later supplemented its petition with information on the estimated cost to Ford of complying with the 1983 performance exemption criteria.[1] Ford stated that it would have to spend an additional $1 million in development and testing of 10 new calibrations, in addition to $1 million in hardware costs, to meet the 1983 requirements. General Motors Corporation (GM) also submitted a request to extend the volume-based exemption to allow GM to avoid a significant part of its engineering development work, contending it would result in a negligible effect on the air quality of high-altitude cities.[2]

EPA has considered the economic and environmental impacts of denying versus granting Ford's petition, and has decided that extending the volume based exemption for an additional model year: (1) Will result in substantial savings for the industry and consumers at a time when even relatively small savings are significant; (2) will not impair significantly high-altitude air quality improvements; and (3) will allow EPA the opportunity to investigate the appropriateness of the performance criteria for LDT's and to revise them, if necessary. Therefore, the Agency is extending the 1982 volume-based exemption through the 1983 model year for the reasons discussed more fully below.

III. Basis for Decision

A. Cost Savings

When EPA extended to LDT's the "proportional reduction" requirement applied to 1982–83 high-altitude passenger cars, it recognized that there was a greater magnitude of technical problems associated with LDT compliance than for that of passenger cars. 45 FR 66991 (col. 3). A primary reason for the greater difficulty in bringing all LDT's into compliance with high-altitude standards is that there are many more configurations of LDT's than passenger cars, each requiring a unique calibration. This increases the cost of bringing the whole LDT line into compliance. Further, some LDT configurations may represent only a few hundred sales at high altitudes, so that the cost of developing calibrations and certifying separate LDT configurations cannot be spread out.

Ford has stated that without the volume-based exemption, 10 new calibrations must be developed and certified for sale at high altitudes. The ten calibrations will be used on a total of 10,000 vehicles, with individual configurations having projected volumes as low as 50–100 units at high altitudes.

According to Ford, the cost of developing and certifying each calibration is several hundred thousand dollars per calibration, resulting in a total cost of $1 million, exclusive of hardware.[3]

These development and certification costs might be more reasonable if they could be carried forward into future model years; however, more stringent low-altitude LDT standards become effective in the 1984 model year,[4] which will require new hardware calibration development and certification programs and prevent carryover of 1983 certification data. Thus, requiring the LDT manufacturers to recalibrate and to

[1] Letter from Helen O. Petrauskas, Ford, to Laszlo Bockh, Acting Director, Office of Mobile Source Air Pollution Control, EPA, December 14, 1981; letter from D. T. Weaver, Executive Engineer, Certification and Compliance Programs, Ford, to Maureen Smith, EPA, December 21, 1981; Record of January 19, 1982 meeting between Ford and EPA representatives on Ford High-Altitude LDT Petition, Attachment 1.

[2] Letter from T. M. Fisher, Director, Automotive Emission Control, GM, to the Administrator, EPA, December 22, 1981.

[3] Ford petition, p. 2; Record of January 19, 1982 Meeting, Attachment 1.

[4] 45 FR 63734 (September 25, 1980); 40 CFR 86.004–9 (1981).

certify to high-altitude requirements one-third of their 1983 LDT fleets that will be recalibrated and certified again in 1984, imposes a substantial development and testing burden.

The best approach for relieving some of this certification burden from LDT manufacturers is to continue the 30 percent sales volume exemption into 1983.

Presumably, each LDT manufacturer chose to exempt in 1982 those vehicles which would be the most costly to certify, such as those configurations representing extremely low high-altitude sales. Extending the 1982 exemption would avoid the need to undergo the costs of certifying these LDT configurations for one year; according to Ford, this would save $1 million. The additional $1 million savings in hardware costs claimed by Ford results in a total of $2 million saved for 1983. According to Ford, consumer savings would be even higher.[5]

Thus, the LDT manufacturers would not be required to develop and certify new calibrations that would be applied for only one model year to one-third of their LDT's, but instead, would be able to concentrate their efforts on demonstrating compliance with 1984 model year standards. This is a more efficient approach, especially in view of the insignificant air quality effect anticipated from extending the exemption, discussed below.

B. Environmental Impact

Emissions increase will be insignificant, due to the relatively small number of vehicles involved and the fact that the exemption will cover only one additional model year. The exemption will apply to a maximum of 30 percent of the projected 1983 high-altitude LDT sales, and since only 5.5 percent of annual LDT sales occur in high-altitude areas, this constitutes less than 2 percent of the 1983 LDT fleet.

EPA expects that a portion of the LDT's covered by the exemption will achieve some emission reductions through altitude performance adjustments. EPA has established regulations under Section 215 of the Clean Air Act, requiring manufacturers to submit to EPA instructions for the adjustment or modification of vehicles operated at elevations other than the altitude for which the vehicles were originally designed.[6] The altitude adjustment requirement was intended to reduce vehicle emissions at high altitudes, as well as improve fuel economy and driveability.

Although the air quality improvements resulting from the adjustment regulations depend upon vehicle owner participation, EPA expects that many exempt LDT owners will have the adjustments installed to improve the fuel economy and performance of their LDT's for use at high altitudes. The adjustments are generally inexpensive, ranging from $20 to $100 (45 FR 66953), and some manufacturers make them available at no additional cost.[7] While there is no requirement that the high-altitude adjustments reduce vehicle emissions by a specified amount, the adjustments generally provide varying levels of emissions improvement. This improvement, albeit less than that of a certified vehicle,[8] can be substantial, and is obtained at a much lower cost to both manufacturers and consumers.[9]

C. The Performance Exemption Criteria

Ford asserted in support of its petition that the performance exemption does not remove the need for extension of the volume-based exemption, since the criteria for the performance exemption do not accurately reflect actual LDT performance at high altitudes. In particular, Ford claimed that consideration of vehicle weight alone is meaningful only for passenger cars in determining performance, and that loaded, or "gross" weight must be considered in determining LDT performance. According to Ford, the focus of the exemption criteria for LDT's should be whether a loaded rather than unloaded truck would have acceptable performance if calibrated to meet high-altitude standards.[10]

Of course, the applicability of the passenger car performance criteria to LDT's would not be an issue for the 1983 model year if the volume exemption is available in 1983, since the volume exemption applies in lieu of the performance exemption. EPA does plan to investigate this issue, however, since the performance exemption would be available for 1984 and later model LDT's required to meet high-altitude standards. Therefore, EPA requests from manufacturers and other interested persons comments and any data or other information relevant to the issue of appropriate high-altitude LDT performance criteria. If revision of the performance exemption criteria is warranted, EPA will initiate appropriate rulemaking proceedings.

IV. Summary and Decision

Since it is possible that the performance exemption criteria preclude LDT manufacturers from avoiding the costs of high-altitude certification for 1983 LDT's with unacceptable performance at high altitudes, and in view of the high costs of certifying for 1983 those LDT's that were exempt under the volume-based exemption in 1982, EPA believes that it is appropriate to extend the volume exemption through 1983. This will avoid potential model availability problems at both low- and high-altitudes from manufacturers' efforts to minimize the costs of 1983 certification and the need for LDT manufacturers to develop in 1983 specific calibrations that must be changed again in 1984. There is no reason to believe that these problems are unique to Ford, and indeed, it appears that Ford has identified problems shared by other manufacturers. (As noted earlier, General Motors has expressed support for Ford's petition.)

This decision is based in part on EPA's concern that LDT manufacturers are being subject to additional 1983 certification burdens due to the multitude of truck configurations requiring specific calibrations. This, combined with the limited resources of some LDT manufacturers, warrants some relief from the additional burden. A negligible impact on air quality is anticipated in view of the high probability that most 1983 exempt LDT's will be adjusted to achieve acceptable performance and low emissions.

V. Public Participation

The Agency finds that good cause exists for omitting as impracticable and contrary to the public interest a notice of proposed rulemaking. This finding is based on the facts that (1) the action reduces the economic burden of the emission regulations on the regulated industry, (2) negligible environmental impacts are anticipated, and (3) immediate implementation of the amendments is essential if it is to be utilized in time to permit some cost savings for the 1983 model year. Certification for the 1983 model year already is underway for many vehicle

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[5] Ford stated that consumers would not be required to cover the $2 million engineering cost nor the variable cost of the unique hardware otherwise required on a certified vehicle. Record of January 19, 1982 Meeting, Attachment 1.

[6] 45 FR 66052 (October 8, 1980); 40 CFR Subpart Q (1981).

[7] Ford has stated that it will offer its LDT performance adjustment as a no-cost warranty item. Record of January 19, 1982 Meeting, Attachment 1.

[8] Ford estimates that 50–75 percent of the "certified" emission reductions will be achieved by the adjustments.

[9] Ford has stated that its adjustment for exempt LDT's would cost about $44 per vehicle, and that the savings to consumers achieved by avoiding certification will exceed $2 million. Record of January 19, 1982 Meeting, Attachment 1.

[10] Ford petition, pp. 2–3; Record of January 19, 1982 Meeting, Attachment 1.

lines, so that vehicle testing either is imminent or has already begun. Therefore, proposing this amendment for comment before allowing manufacturers to take advantage of the cost savings intended by this action would negate the very purpose of the action.

EPA will, however, consider comments on this rule received within 30 days after publication of this notice. In particular, EPA requests manufacturers and other interested persons to submit comments and information on the appropriateness of the current LDT performance criteria within 90 days after publication of this notice. If, as a result of those comments, additional changes to the regulations are appropriate, EPA will consider additional rule changes.

Please submit written comments to: U.S. Environmental Protection Agency, Central Docket Section (A–130), Attn: Docket No. A–79–14, Waterside Mall, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying service.

VI. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it reduces the economic burden of the exisitng regulations and will result in an annual effect on the economy of less than $100 million. Also, this regulation will not result in increased prices or costs to consumers, industries or others, nor should it have adverse effects on competition, employment, investment or productivity.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*,

EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. This rulemaking should reduce the costs of compliance with high-altitude emission requirements for all manufacturers of light trucks. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: May 17, 1982.

Anne M. Gorsuch,

Administrator.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

For the reasons set forth in the preamble, EPA amends 40 CFR Part 86, Subpart A as follows:

In § 86.083–9, (g)(2) is redesignated as (g)(4); (g)(2), (5) and (6) are added; and (g)(3) is revised, to read as follows:

§ 86.083–89 Emission standards for 1983 and later model year light-duty trucks.

* * * * *

(g) * * *

(2) The manufacturer may exempt 1983 model year light-duty trucks from high-altitude emission standards as set forth in paragraph (d) of this section. No specific justification for the exemption need be included in the application for certification. The exemptions may include up to 30 percent of the manufacturer's projected light-duty trucks sales for principal use at designated high-altitude locations for the 1983 model year. For this purpose, the sales percentage will be based on sales projections for individual vehicle configurations to be exempted. Exemptions will cover individual vehicle configurations, or groups of vehicle configurations, as specified by the manufacturer.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will not be considered a violation of section 203(a)(1) of the Clean Air Act.

* * * * *

(5) No exemptions will be granted under paragraph (g)(4) to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2).

(6) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(4) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

[FR Doc. 82–13614 Filed 5–19–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6246

[I–15360B, I–15366A, I–15380, I–16825]

Idaho; Partial Revocation of Interpretations of Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes five Secretarial Interpretations of the Executive order creating Public Water Reserve No. 107. This action will restore 200.15 acres to full operation of the public land laws including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Orders of Interpretation Nos. 120, 177, 205, 261, and 264, dated February 10, 1930, February 15, 1933, August 30, 1934, April 10, 1940 and November 23, 1940, respectively, are partially revoked insofar as they affect the following described lands:

Boise Meridian

(I–15360B)

Secretarial Order of Interpretation #177

T. 9 S., R. 29 E.,
Sec. 7, SW¼SE¼.

(I–15366A)

Secretarial Order of Interpretation #120

T. 10 S., R. 3 W.,
Sec. 1, lot 2.

(I–15380)

Secretarial Orders of Interpretation #261 #264

T. 3 N., R. 46 E.,
Sec. 6, SE¼NW¼.

(I–16825)

Secretarial Order of Interpretation #205

T. 9 S., R. 1 W.,
Sec. 31, N½NE¼.

The areas described aggregate 200.15 acres in Owyhee, Teton and Power Counties.

2. At 7:45 a.m. on June 15, 1982, the above described lands will be open to

operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1 will also be opened to location of nonmetalliferous minerals under the United States mining laws, at 7:45 a.m. on June 15, 1982. The land has been and continues to be open to location of metalliferous minerals and applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, P.O. Box 042, Boise, Idaho 83724.

Garry E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13734 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6247

[NM-45734]

New Mexico; Public Land Order 6067; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will correct an error in the date of an Executive Order referred to on Public Land Order 6067 of October 28, 1981 (46 FR 81-31230).

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Miguel M. Martinez, New Mexico State Office, 505-988-6211.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

In the notice published as Public Land Order 6067 under serial No. NM-45734 appearing as FR Doc. 81-31230 (filed October 27, 1981), in the October 28, 1981, issue of the **Federal Register**, at page 53166, paragraph 1, line 2 is corrected to read "22, 1924 * * *" instead of "22, 1964 * * *"

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13733 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6248

[M-042782]

Montana; Partial Revocation of Public Land Order No. 2924

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order as to 127.25 acres of land withdrawn for use as a Forest Service administrative site. It also restores the land to operation of the surface and mining laws. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior, by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2924 dated January 30, 1963, which withdrew certain land for an administrative site, is hereby revoked, in part, insofar is it affects the following described lands:

Principal Meridian

T. 6 S., R. 16 W.,
Sec. 1, lot 4 and W½SW¼.

The area described contains 127.25 acres located in Beaverhead County.

2. At 8 a.m. on June 15, 1982, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, provisions of existing withdrawals, and requirements of applicable laws. All valid applications received at or prior to 8 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. The public lands described above will be open to mineral location under the mining laws at 8 a.m. on June 15, 1982.

The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

May 10, 1982.

[FR Doc. 82-13732 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6305]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or

federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effectve dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Arkansas: Ashley	Hamburg, city of	050005B	Apr. 1, 1981, suspension withdrawn	May 17, 1974 and Oct. 10, 1975.
Florida: Lake	Unincorporated areas	120421B	do	May 26, 1978.
Illinois:				
Williamson	Johnston City, city of	170718C	do	June 28, 1974, Apr. 2, 1976, and Sept. 28, 1979.
Douglas	Tuscola, city of	170195C	do	Nov. 30, 1973, July 9, 1976 and Sept. 12, 1980.
Indiana: Porter	Unincorporated areas	180425B	do	Apr. 14, 1978.
Kansas: Riley	Unincorporated areas	200298B	do	Feb. 15, 1974 and Nov. 22, 1977.
Maine:				
York	Limington, town of	230152C	do	May 31, 1974, Oct. 22, 1976, and Aug. 10, 1978.
Cumberland	Naples, town of	230050B	do	Aug. 9, 1974 and Mar. 11, 1972.
Oxford	Waterford, town of	230343A	do	Feb. 14, 1975.
Massachusetts: Suffolk	Boston, city of	250286C	do	Nov. 22, 1974, Feb. 11, 1977, and June 7, 1977.
Michigan:				
Calhoun	Marshall, city of	260063B	do	May 3, 1974 and June 4, 1976.
Ingham	Williamston, city of	260094B	do	May 3, 1974 and July 30, 1976.
Minnesota: Swift	Appleton, city of	270466B	do	Nov. 16, 1973 and May 14, 1976.
Missouri:				
Harrison	Bethany, city of	290154B	do	Jan. 23, 1974 and Jan. 2, 1976.
Clinton	Trimble, city of	290510A	do	Feb. 7, 1975.
New Hampshire:				
Cheshire	Roxbury, town of	330172A	do	Feb. 14, 1975.
Coos	Lancaster, town of	335277B	do	Apr. 13, 1973, July 1, 1974, and Dec. 12, 1975.
New Jersey: Bergen	Bogota, borough of	340021B	do	May 3, 1974 and Feb. 27, 1976.
New York:				
Erie	Clarence, town of	360232B	do	July 16, 1976.
Cayuga	Weedsport, village of	360133B	do	June 7, 1974 and June 25, 1976.
North Carolina:				
Pitt	Farmville, town of	370139B	do	Apr. 12, 1974 and June 25, 1976.
Johnston	Smithfield, town of	370140B	do	Oct. 29, 1976.
Ohio:				
Ottawa	Elmore, village of	390610B	do	Oct. 18, 1974 and July 11, 1975
Ottawa	Oak Harbor, village of	390433B	do	Mar. 1, 1974 and Apr. 16, 1976.
Pennsylvania:				
Butler	Cranberry, township of	421217B	do	Sept. 20, 1974 and Apr. 30, 1976.
Blair	Greenfield, township of	421389A	do	Feb. 14, 1975.
Cumberland	North Middleton, township of	420367B	do	July 26, 1974 and May 28, 1976.
Rhode Island: Providence	Pawtucket, city of	44022C	do	July 16, 1971, July 1, 1974 and June 11, 1975.
Texas:				
Bee	Unincorporated areas	480026B	do	Oct. 18, 1974 and Aug. 16, 1977.
Dallas and Tarrant	Grand Prairie, city of	485472B	do	July 6, 1973 and Sept. 10, 1976.
Travis	Unincorporated areas	481026B	do	Mar. 7, 1978.
Wisconsin:				
Racine	Unincorporated areas	550347B	do	May 20, 1977.
Barron	Rice Lake, city of	550016C	do	Dec. 7, 1973, July 30, 1976 and Mar. 16, 1978.
Colorado: Mesa	Collbran, town of	080115B	Apr. 15, 1982, suspension withdrawn	Aug. 30, 1974 and Dec. 26, 1978.
Illinois:				
Dupage	Unincorporated areas	170197B	do	May 13, 1977.
Madison	do	170436B	do	Jan. 31, 1975 and Oct. 1, 1976.
Morgan	Meredosia, village of	170517C	do	Jan. 9, 1974, Apr. 30, 1976, and Aug. 17, 1979.
Will	Unincorporated areas	170695B	do	Apr. 22, 1977.
Kansas: Lyon	Americus, city of	200202A	do	Apr. 16, 1976.
Maine:				
Washington	Baileyville, town of	230304B	do	Jan. 24, 1974.
Cumberland	Harrison, town of	230049B	do	June 21, 1974 and Nov. 12, 1976.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Michigan:				
Kalamazoo	Charleston, township of	260426A	do	July 25, 1975.
Ingham	Williamstown, township of	260095A	do	Aug. 27, 1976.
Minnesota:				
Rice	Dundas, city of	270403A	do	Oct. 25, 1974.
Hennepin	Medicine Lake, city of	270690A	do	Dec. 17, 1976.
Winona	St. Charles, city of	270531B	do	May 24, 1974 and Apr. 4, 1975.
Missouri: Cass	Unincorporated areas	290783B	do	Mar. 14, 1978.
Nebraska: Dakota	Unincorporated areas	310429B	do	June 28, 1977.
New Hampshire:				
Rockingham	Epping, town of	330129B	do	July 19, 1974 and Nov. 15, 1977.
Do	Hampton Falls, town of	330133B	do	Dec. 6, 1974 and June 11, 1976.
Do	Raymond, town of	330140B	do	Aug. 9, 1974 and July 2, 1976.
New Jersey:				
Burlington	Bordentown, township of	340060B	do	June 28, 1974 and Mar. 19, 1976.
Hunterdon	Tewksbury, township of	340518B	do	June 28, 1974 and June 11, 1976.
Monmouth	Tinton Falls, borough of	340319C	do	Apr. 12, 1974, Apr. 23, 1976, and Dec. 31, 1976.
Hunterdon	Union, township of	3402428	do	May 11, 1973 and Aug. 1, 1978.
New York:				
Oswego	Fulton, city of	360649B	do	Oct. 18, 1974 and Nov. 28, 1975.
Ontario	Geneva, city of	360599B	do	May 17, 1974 and Sept. 10, 1976.
Monroe	Mendon, town of	360423B	do	Apr. 12, 1974 Nov. 28, 1976.
Ulster	New Paltz, village of	361544B	do	Jan. 24, 1975.
Rockland	Pomona, village of	360688B	do	Mar. 15, 1974 and July 30, 1976.
Orange	Tuxedo, town of	360631B	do	Apr. 12, 1974.
Oswego	Volney, town of	361266B	do	Nov. 1, 1974 and June 11, 1976.
Ohio: Wood	Portage, village of	390754A	do	Apr. 18, 1975.
Oklahoma:				
Le Flore	Howe, town of	400091A	do	July 2, 1976.
Cherokee	Hulbert, town of	400036B	do	Apr. 12, 1974 and Aug. 30, 1976.
Sequoyah	Moffett, town of	400196A	do	July 16, 1976.
Do	Muldrow, town of	400197B	do	June 28, 1974 and Sept. 17, 1976.
Pennsylvania: Fayette	Perry, township of	421634A	do	Dec. 13, 1974.
Vermont: Washington	Waterbury, village of	500123B	do	May 16, 1974 and Mar. 26, 1976.
Virginia: Washington	Bristol, city of	510022B	do Mar. 8, 1974 and June 25, 1976.	
Washington: Kittitas	Kittitas, town of	530098B	do	June 14, 1974 and Apr. 16, 1976.
West Virginia:				
Kanawha	Belle, town of	540071C	do	Mar. 1, 1974, Apr. 25, 1975 and Oct. 31, 1975.
Do	Marmet, town of	540079B	do	April 12, 1974 and June 11, 1976.
Wisconsin: Rock	Edgerton, city of	550365B	do	Dec. 17, 1973 and June 4, 1976.
Alabama: Tuscaloosa	Tuscaloosa, city of	010203A	Apr. 28, 1982, suspension withdrawn	Oct. 24, 1975.
Pennsylvania: Montgomery	Bryn Athyn, borough of	421899A	Mar. 10, 1976, emergency, Feb. 17, 1982, regular, Feb. 17, 1982, suspended, April 2, 1982, reinstated.	Dec. 20, 1974.
North Dakota:				
McKenzie	Watford, city of	380344A	Apr. 2, 1982, emergency	June 5, 1979.
Cass	Briarwood, city of	380851New	do	----
Missouri:				
Clark	Unincorporated areas	290782A	Apr. 6, 1982, emergency	Sept. 15, 1981.
Perry	do	290280A	do	Oct. 13, 1981.
Virginia: Giles	do	510067B	Oct. 24, 1973, emergency, June 15, 1981, regular, June 15, 1981, suspended, Apr. 9, 1982, reinstated.	Aug. 2, 1974 and Mar. 5, 1976.
Washington: Clark	Vancouver, city of	530027B	June 2, 1972, emergency Aug. 17, 1981, regular, Aug. 17, 1981, suspended, April 16, 1982, reinstated.	Aug. 2, 1974 and Nov. 14, 1975.
Minnesota:				
Fillmore and Olmsted	Chatfield, city of	270125	Apr. 15, 1982, emergency	Aug. 13, 1976.
Polk	Fisher, city of	270366A	Apr. 21, 1982, emergency	Aug. 2, 1974.
Nevada: Lyon	Unincorporated areas	320029A	Apr. 20, 1982, emergency	Jan. 31, 1978.
Ohio: Ashland	do	390759A	do	Feb. 10, 1978.
Pennsylvania:				
Columbia	Jackson, township of	421552	Apr. 26, 1982, emergency	Dec. 13, 1982
Beaver	Hanover, township of	421223A	do	Sept. 6, 1974 and Oct. 1, 1976.
Michigan: Lapeer	Lapeer, township of	260435A	do	Apr. 15, 1977.
Kansas: Marshall	Waterville, city of	200556	do	Aug. 29, 1975.
Washington:				
Pierce	Milton, town of	530294A	Apr. 26, 1982, emergency, Apr. 26, 1982, regular.	Dec. 3, 1976 and Feb. 17, 1982.
Do	Roy, city of	530262B	Apr. 26, 1982, emergency, Apr. 26, 1982, regular.	July 16, 1975, June 21, 1977 and Mar. 15, 1982.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13598 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6306]

List of Communities Eligible for the Sale of Insurance under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP) and eligible for second layer insurance coverage. These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the regular program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communites on the attached list have recently entered the NFIP, Subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100, "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area [1]	Hazard area identified
Alabama: Macon County	Macon County [2]	010146	750529 emergency, 820401 regular	750106
Arkansas:				
Ashley County	Hamburg, city of	050066	741018 emergency, 820401 regular	740517
Hempstead County	Hope, city of	050087	750703 emergency, 820401 regular	740123
Drew County	Monticello, city of	060074	750403 emergency, 820401 regular	760521
Jackson County	Newport, city of	050193	750620 emergency, 820401 regular	731116
Connecticut:				
Middlesex County	Durham, city of	090185	750715 emergency, 820401 regular	741129
Tolland County	Tolland, city of	090171	750529 emergency, 820401 regular	750191
Florida: Lake County	Lake County [2]	120421	781221 emergency, 820401 regular	780526
Georgia: Brooks County	Quitman, city of	130015	731226 emergency, 820401 regular	740329
Illinois:				
McHenry County	Holiday Hills, village of	170808	770808 emergency, 820401 regular	780428
Williamson County	Johnston City, city of	170718	750725 emergency, 820401 regular	740626
Douglas County	Tuscola, city of	170196	751017 emergency, 820401 regular	781130
Indiana:				
Porter County	Porter County [2]	180425	750905 emergency, 820401 regular	750414
Shelby County	Shelbyville, city of	180236	750414 emergency, 820401 regular	731217
Kansas: Riley County	Riley County [2]	200296	750623 emergency, 820401 regular	740215
Massachusetts: Suffolk County	Boston, city of	250286	75027 emergency, 820401 regular	741122
Maine:				
York County	Limington, town of	230152	750615 emergency, 820401 regular	740531
Cumberland County	Naples, town of	230050	750708 emergency, 820401 regular	740808
Cumberland County	New Gloucester, town of	230201	760407 emergency, 820401 regular	750321
Oxford County	Waterford, town of	230343	751212 emergency, 820401 regular	750214
Michigan:				
Calhoun County	Marshall, city of	260053	750513 emergency, 820401 regular	740614
Ingham County	Williamston, city of	260094	750724 emergency, 820401 regular	740503
Minnesota: Swift County	Appleton, city of	270468	730128 emergency, 820401 regular	731116
Missouri: [3]				
Harrison County	Bethany, city of	290154	750619 emergency, 820401 regular	740123
Nodaway County	Burlington Junction, city of	290740	760726 emergency, 820401 regular	750711
Clinton County	Trimble, city of	290510	760503 emergency, 820401 regular	750207
North Carolina:				
Pitt County	Farmville, town of	370190	741015 emergency, 820401 regular	740412
Johnston County	Smithfield, town of	370140	750120 emergency, 820401 regular	761029
New Hampshire: Cheshire County	Roxbury, town of	330172	801110 emergency, 820401 regular	750214
New Jersey: Bergen County	Bogota, borough of	340021	750707 emergency, 820401 regular	740531

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area [1]	Hazard area identified
New York:				
Erie County	Clarence, town of	360232	750325 emergency, 820401 regular	740517
Cayuga County	Weedsport, village of	360132	740607 emergency, 820401 regular	740607
Ohio:				
Ottawa County	Elmore, village of	390810	751009 emergency, 820401 regular	741018
Do	Oak Harbor, village of	390433	770426 emergency, 820401 regular	740901
Oregon:				
Jackson County	Jackson County [2]	415589	701231 emergency, 820401 regular	780411
Washington County	North Plains, city of	410270	770325 emergency, 820401 regular	780716
Pennsylvania:				
Butler County	Cranberry, township of	421217	740916 emergency, 820401 regular	740828
Blair County	Greenfield, township of	421389	750728 emergency, 820401 regular	750214
Cumberland County	North Middleton, township of	420367	730112 emergency, 820401 regular	740726
Texas:				
Bee County	Bee County [2]	480026	741106 emergency, 820401 regular	741018
Travis County	Travis County [2]	481026	780129 emergency, 820401 regular	780327
Wisconsin:				
Racine County	Racine County [2]	550347	730705 emergency, 820401 regular	770520
Barron County	Rice Lake, city of	550016	750710 emergency, 820401 regular	731207
New York: Albany County	Ravena, village of	361346	791029 emergency, 820402 regular	781022
Colorado: Mesa County	Collbran, town of	080116	750812 emergency, 820415 regular	740830
Illinois:				
Du Page County	Du Page County	170197	730502 emergency, 820415 regular	770513
Madison County	Madison County [2]	170436	730606 emergency, 820415 regular	750131
Morgan County	Meredosia, village of	170517	740313 emergency	740109
Illinois: Will County	Will County [2]	170695	740422 emergency, 820415 regular	770422
Kansas: Lyon County	Americus, city of [2]	200202	750706 emergency, 820415 regular	780416
Maine:				
Washington County	Baileyville, town of	230004	780615 emergency, 820415 regular	0
Cumberland County	Harrison, town of	230049	750501 emergency, 820415 regular	740821
Michigan:				
Kalamazoo County	Charleston, township of	260426	761220 emergency, 820415 regular	750725
Ingham County	Williamstown, township of	260095	770127 emergency, 820415 regular	780827
Minnesota:				
Olmsted County	Dover, city of	270566	820315 emergency, 820415 regular	741101
Rice County	Dundas, city of	270403	750929 emergency, 820415 regular	741025
Hennepin County	Medicine Lake, city of	270090	781221 emergency, 820415 regular	781217
Winona County	St. Charles, city of	270531	750604 emergency, 820415 regular	740524
Missouri: Cass County	Cass County [2]	290763	750421 emergency, 820415 regular	780314
Nebraska:				
Dakota County	Dakota County [2]	310429	750680 emergency, 820415 regular	770628
Lancaster County	Waverly, city of	310140	750613 emergency, 820415 regular	731217
New Hampshire:				
Rockingham County	Epping, town of	330129	750702 emergency, 820415 regular	740719
Rockingham County	Hampton Falls, town of	330133	751031 emergency, 820415 regular	741206
Rockingham County	Raymond, town of	330140	751015 emergency, 820415 regular	740809
New Jersey:				
Burlington County	Bordenton, township of	340068	750808 emergency, 820415 regular	740626
Monmouth County	Colts Neck, township of	340291	750703 emergency, 820415 regular	740412
Hunterdon County	Tewksbury, township of	340516	750116 emergency, 820415 regular	740626
Monmouth County	Tinton Falls, borough of	340218	750417 emergency, 820415 regular	740412
Hunterdon County	Union, township of	340342	750729 emergency, 820415 regular	740719
New York:				
Oneida County	Bridgewater, village of	360522	760611 emergency, 820415 regular	740517
Oswego County	Fulton, city of	360649	741120 emergency, 820415 regular	741018
Ontario County	Geneva, city of	360599	750218 emergency, 820415 regular	740517
Monroe County	Mendon, town of	360423	750414 emergency, 820415 regular	740412
New York:				
Madison County	Morrisville, village of	360406	761126 emergency, 820415 regular	740308
Ulster County	New Platz, village of	361544	760309 emergency, 820415 regular	750124
Rockland County	Pomona, village of	360668	741213 emergency, 820415 regular	740315
Orange County	Tuxedo, town of	360631	750602 emergency, 820415 regular	740412
Oswego County	Volney, town of	361266	751120 emergency, 820415 regular	741101
Ohio: Wood County	Portage, village of	390754	760506 emergency, 820415 regular	750418
Oklahoma:				
Leflore County	Howe, town of	400091	761021 emergency, 820415 regular	750702
Cherokee County	Hulbert, town of	400098	750929 emergency, 820415 regular	740412
Creek County	Kiefer, town of	400393	750709 emergency, 820415 regular	750813
Sequoyah County	Moffett, town of	400186	750902 emergency, 820415 regular	750716
Sequoyah County	Muldrow, town of	400197	750731 emergency, 820415 regular	740628
Pennsylvania: Fayette County	Perry, township of	421834	750110 emergency, 820415 regular	741213
Virginia: Independent County	Bristol, city of	510022	760212 emergency, 820415 regular	740308
Vermont:				
Washington County	Waterbury, town of	500123	750721 emergency, 820415 regular	740628
Washington County	Waterbury, village of	500122	750502 emergency, 820415 regular	740510
Washington: Kittitas County	Kittitas, town of	530096	740522 emergency, 820415 regular	740614
Wisconsin: Rock County	Edgerton, city of	550365	750617 emergency, 820415 regular	731217
West Virginia:				
Kanawha County	Belle, town of	540071	750716 emergency, 820415 regular	740301
Kanawha County	Marmet, town of	540079	750612 emergency, 820415 regular	740412
Fayette County	Smithers, town of	540033	750612 emergency, 820415 regular	740517
Lewis County	Weston, city of	540087	741101 emergency, 820415 regular	740405

Total—94.

[1] Key for reading 5th column (effective date): First two digits designate the year. Middle two digits designate the month. Last two digits designate the day.
[2] Unincorporated areas.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 26, 1968), as amended, 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13538 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Associate Director, State and Local Programs and Support, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed Special Flood Hazard Areas (SFHAs) for those communities is appropriate as a result of requests for changes in the interim and/or Proposed Rule.

DATES: These modified SFHAs are in effect as of the dates listed in the fifth column of the attached list and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified SFHA determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support has published a notification of the SFHAs in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Associated Director has received appeals from the communities requesting changes in the proposed SFHA determinations.

The numerous changes made in the SFHAs on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the SFHA changes contained on the maps. However, this notice includes the address of the Chief Executive Officer where the modified SFHA determinations are available for inspection.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.).

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These SFHAs are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These SFHAs together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified SFHAs shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

§ 65.4 [Amended]

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The changes in the SFHAs listed below are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Pennsylvania: Cameron	Borough of Driftwood (FEMA Docket No. 6225).	*Cameron County Echo*, Apr. 29 and May 6, 1981.	Honorable Bert Morton, Mayor, Borough of Driftwood, Driftwood, PA 15832.	May 6, 1981	420245C.
Virginia: Arlington	Unincorporated areas (FEMA Docket No. 6225).	*North Virginia Sun*, May 29, June 5, July 3, and July 10, 1981.	W. V. Ford, County Manager, Arlington County, 1400 North Courthouse Road, Room 204, Arlington, VA 22201.	May 8, 1981 (82-B).	515520A.
Wisconsin:					
Dane	Village of Black Earth (FEMA Docket No. 6225).	*News Sickle Arrow*, May 28 and June 4, 1981.	John R. Curtis, Village President, Village of Black Earth, 1210 Mills Street, Black Earth, WI 53515.	May 8, 1981 (82-B).	550079B.
Manitowoc	Village of Mishicot (FEMA Docket No. 6225).	*Herald Times Reporter*, May 8 and May 15, 1981.	George Krause, Sr., Village President, Village of Mishicot, P.O. Box 122, Mishicot, WI 54228.	May 15, 1981	555588C.
California: Alameda	City of Union City (FEMA Docket No. 6225).	*The Daily Review*, June 15 and June 18, 1981.	The Honorable Tom Kitayama, Mayor, City of Union City, 34009 Alvarado-Niles Road, Union City, CA 94587.	May 19, 1981 (82-B).	060014A.
Delaware: Sussex	City of Seaford (FEMA Docket No. 6225).	*The Seaford Leader*, June 10 and June 17, 1981.	Woodrow W. Crosby, City Manager, City of Seaford, City Hall, 302 East King Street, Seaford, DE 19973.	June 2, 1981 (B).	100048B.
Pennsylvania: Crawford	Borough of Conneaut Lake (FEMA Docket No. 6225).	*Meadville Tribune*, May 29 and June 5, 1981.	James E. Hubbard, President of Council, Borough of Conneaut Lake, State Street, Conneaut Lake, PA 16316.	June 5, 1981	422066C.
Wisconsin:					
Wood	City of Wisconsin Rapids (FEMA Docket No. 6225).	*The Daily Tribune*, June 12 and June 19, 1981.	Honorable James Kubiak, Mayor, City of Wisconsin Rapids, 444 West Grand Avenue, Wisconsin Rapids, WI 54494.	June 19, 1981	550297D.
Milwaukee	City of Glendale (FEMA Docket No. 6225).	*The Glendale Herald*, June 11 and June 18, 1981.	Honorable Norbert J. Hynek, Mayor, City of Glendale, 5909 North Milwaukee River Parkway, Glendale, WI 53209.	June 19, 1981	550275C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Oklahoma: Tulsa and Osage	City of Tulsa (FEMA Docket No. 6225).	*Tulsa Daily World* and *Tulsa Tribune*, June 24 and June 25, 1981.	The Honorable James M. Inhofe, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	June 15, 1981 (56-E).	405381D.
Minnesota: Anoka	City of Blain (FEMA Docket No. 6225).	*Blain-Spring Lake Park Life*, June 12 and June 19, 1981.	Lesley M. Johnson, City Manager, City of Blain, 9150 Central Avenue, Blain MN, 55434.	June 19, 1981	270007C.
Missouri: Platte	Unincorporated area (FEMA Docket No. 6625)..	*The Landmark*, July 10 and July 17, 1981.	The Honorable John M. Reineke, Presiding Judge, Platte County Courthouse, 324 Main Street, Platte City, MO 64079.	June 25, 1981 (56-E).	290475A.
Pennsylvania: Luzerne	Borough of Forty Fort (FEMA Docket No. 6225).	*Times Leader*, June 26 and July 3, 1981.	Honorable Paul Detweiler, Mayor, Borough of Forty Fort, 1271 Wyoming Avenue, Municipal Building, Forty Fort, PA 18704.	July 3, 1981	423607C.
Luzerne	Borough of Wyoming (FEMA Docket No. 6225).	*Times Leader*, June 26 and July 3, 1981.	Honorable George Metcalfe, Mayor, Borough of Wyoming, 277 Wyoming Avenue, Wyoming, PA 18644.	July 3, 1981	420833D.
California: San Luis Obispo	City of San Luis Obispo (FEMA Docket No. 6225).	*San Luis Obispo County Telegram-Tribune*, July 8 and July 9, 1981.	The Honorable Melanie Billig, Mayor, City of San Luis Obispo, P.O. Box 321, San Luis Obispo, CA 93406.	July 7, 1981	060319C.
Nebraska: Burt	City of Tekamah (FEMA Docket No. 6199).	*The Burt County Plaindealer*, Aug. 13 and Aug 20, 1981.	The Honorable Carl L. Schroeder, Mayor, City of Tekamah, P.O. Box 143, Tekamah, NE 68061.	Aug. 11, 1981	310024D.
Washington: Kitsap	City of Poulsbo (FEMA Docket No. 6199).	*Kitsap County Herald*, Aug. 12 and Aug. 19, 1981.	The Honorable Clyde C. Caldart, Mayor, City of Poulsbo, 127 Jensen Way, P.O. Box 98, Poulsbo, WA 98370.	Aug. 11, 1981	530241C.
Florida: Hillsborough	Unincorporated area (FEMA Docket No. 6225).	*The Tampa Tribune*, Aug. 27 and Sept. 3, 1981.	The Honorable Jan Platt, Chairperson, County Comm., Hillsborough Co., P.O. Box 1110, Tampa, FL 33601.	Aug. 13, 1981 (56-E).	1201128.
Kansas: Leavenworth	Unincorporated area (FEMA Docket No. 6199).	*The Leavenworth Times*, Aug. 17 and Aug. 18, 1981.	Mr. Louis A. Klemp, Chairman, Board of Commissioners, Leavenworth County Courthouse, Fourth and Walnut, Leavenworth, KS 66048.	Aug. 18, 1981	200186C.
Missouri: Clay and Jackson	City of Independence (FEMA Docket No. 6199).	*The Examiner*, Aug. 18 and Aug. 19, 1981.	The Honorable E. Lee Comer, Jr., Mayor, City of Independence, 103 North Main, Independence, MO 64050.	Aug. 18, 1981	290178B.
Florida: St. Lucie	City of Fort Pierce (FEMA Docket No. 6199.	*News Tribune*, Sept. 11 and Sept. 18, 1981.	The Honorable Buell Brown, Mayor, City of Fort Pierce, City Hall, P.O. Box 1480, Fort Pierce, FL 33450.	Aug. 18, 1981	120286C.
Iowa: Muscatine	City of Muscatine (FEMA Docket No. 6199).	*The Muscatine Journal*, Aug. 24 and Aug. 25, 1981.	The Honorable Evelyn L. Schauland, Mayor, City of Muscatine, Third and Sycamore, Muscatine, IA 52761.	Aug. 25, 1981	1902138.
Washington: King	City of Issaquah (FEMA Docket No. 6199).	*The Issaquah Press*, Sept. 9 and Sept. 16, 1981.	The Honorable H. G. Herrington, Mayor, City of Issaquah, P.O. Box M, Issaquah, WA 98027.	Aug. 25, 1981 (56-E).	5300798.
Pennsylvania: Bradford	Borough of Monroe (FEMA Docket No. 6199).	*The Daily Review*, Aug. 21 and Aug. 28, 1981.	Honorable Paul F. Thrasher, Mayor, Borough of Monroe, R.D. 1, Monroeton, PA 18832.	Aug. 28, 1981 1981.	4201709.
Texas: Tarrant	City of North Richland Hills (FEMA Docket No. 6199).	*Mid-Cities Daily News*, Sept. 21 and Sept. 22, 1981.	The Honorable Dick Faram, Mayor, City of North Richland, P.O. Box 18609, North Richland Hills, TX 76118.	Sept. 8, 1981 (56-E).	480607B.
Illinois: Rock Island	City of Rock Island (FEMA Docket No. 6225).	*Rock Island Argus*, Feb. 6 and Feb. 13, 1981.	Honorable James R. Davis, Mayor, City of Rock Island, 1528 Third Avenue, Rock Island, IL 61201.	Sept. 18, 1981	175171C.
Connecticut: Hartford	City of Hartford (FEMA Docket No. 6199).	*The Hartford Courant*, Oct. 2 and Oct. 9, 1981.	The Honorable George A. Athanson, Mayor, City of Hartford, City Hall, Hartford, CT 06103.	Sept. 24, 1981	090080A.
North Carolina: Cumberland	City of Fayetteville (FEMA Docket No. 6225).	*Fayetteville Observer*, Feb. 6, and Feb. 13, 1981.	The Honorable Beth Finch, Mayor, City of Fayetteville, City Hall, 234 Green Street, Fayetteville, NC 28301.	Sept. 25, 1981	370077C.
Connecticut: Hartford	Town of West Hartford (FEMA Docket No. 6199).	*The Hartford Courant*, Sept. 18 and Sept. 25, 1981.	The Honorable Ann Streeter, Mayor, Town of West Hartford, 28 S. Main Street, West Hartford, CT 06107.	Sept. 25, 1981	090082B.
Illinois: McLean	City of LeRoy (FEMA Docket No. 6199).	*LeRoy Journal*, Sept. 24 and Oct. 1, 1981.	Honorable Jack Moss, City of LeRoy, 111 East Center Street, LeRoy, IL 61752.	Oct. 2, 1981	170499C.
Michigan: Newaygo	City of Fremont (FEMA Docket No. 6199).	*Fremont Times Indicator*, Sept. 23, and Sept. 30, 1981.	Henry Van Dop, City Manager, City of Fremont, 101 East Main Street, Fremont, MI 49412.	Oct. 2, 1981	260157C.
Minnesota: Stearns	City of Cold Spring (FEMA Docket No. 6199).	*Cold Spring Record*, Sept. 24, and Oct. 1, 1981.	James Trusman, Clerk-Treasurer, City of Cold Spring, 27 Red River South, Cold Spring, MN 56320.	Oct. 2, 1981	270344C.
Oklahoma: Rogers	Unincorporated area (FEMA Docket No. 6199).	*The Claremore Progress*, Oct. 14, and Oct. 15, 1981.	Mr. Elmer L. McGuire, Chairman, Rogers County Commissioners, County Courthouse, 219 South Missouri, Claremore, OK 74017.	Oct. 5, 1981 (56-E).	405378A.
California: Santa Clara	City of Gilroy (FEMA Docket No. 6199).	*The Gilroy-Morgan Hill Dispatch*, Oct. 14, and Oct. 16, 1981.	The Honorable Norman B. Goodrich, Mayor, City of Gilroy, 7390 Rosanna Street, P.O. Box 66, Gilroy, CA 95020.	Oct. 6, 1981	060340C.
Florida: Hillsborough	Hillsborough County (FEMA Docket No. 6199).	*Tampa Tribune*, Nov. 6 and Nov. 13, 1981.	The Honorable Jan Platt, Chairperson, County Commissioners, Hillsborough County, P.O. Box 1110, Tampa, FL 33601.	Oct. 6, 1981	1201128.
Virginia: Independent City	City of Radford (FEMA Docket No. 6199).	*Radford News Journal*, Oct. 2 and Oct. 9, 1981.	Robert Ashbury, City Manager, City of Radford, 619 Second Street, Radford, VA 24141.	Oct. 9, 1981	510127B.
Wisconsin: St. Croix	Village of North Hudson (FEMA Docket No. 6199).	*Hudson Star Observer*, Oct. 1 and Oct. 8, 1981.	Honorable Wally Gregerson, Village of North Hudson, 309 7th Street North, North Hudson, WI 54016.	Oct. 9, 1981	555568C.
Waukesha	Village of Menomonee Falls (FEMA Docket No. 6193).	*Menomonee Falls News*, Oct. 1 and Oct. 8, 1981.	Frederick Gottlieb, Village Manager, West 156 North 8480 Pilgrim Road, Menomonee Falls, WI 53051.	Oct. 9, 1981	550483C.
California: Yolo	City of Woodland (FEMA Docket No. 6199).	*The Daily Democrat*, Oct. 14 and Oct. 15, 1981.	The Honorable Harry O. Walker, Mayor, City of Woodland, 300 First Street, Woodland, CA 95695.	Oct. 13, 1981	060426B.
Colorado: Morgan	City of Brush (FEMA Docket No. 6199).	*The Brush News-Tribune*, Oct. 14 and Oct. 21, 1981.	The Honorable Raymond M. Paulsen, Mayor, City of Brush, 600 Edison Street, P.O. Box 383, Brush, CO 80723.	Oct. 13, 1981	080130C.
Iowa: Iowa	City of Marengo (FEMA Docket No. 6199).	*The Pioneer-Republican* Oct. 15 and Oct. 22, 1981.	The Honorable Otto Maas, Mayor, City of Marengo, 153 East Main Street, Marengo, IA 52301.	Oct. 13, 1981	190157C.
Kansas: Harvey	City of Burrton (FEMA Docket No. 6199).	*Burrton Graphic*, Oct. 15 and Oct. 22, 1981.	The Honorable Brian Boston, Mayor, City of Burrton, P.O. Box 146, Burrton, KS 67020.	Oct. 13, 1981	200130C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Johnson	City of Gardner (FEMA Docket No. 6199).	*The Gardner News*, Oct. 14 and Oct. 21, 1981.	The Honorable Phyllis Thomen, Mayor, City of Gardner, 112 Scouth Elm Street, Gardner, KS 66030.	Oct. 13, 1981	200164C.
Texas: Bandera	City of Bandera (FEMA Docket No. 6199).	*The Bandera Bulletin*, Oct. 15 and Oct. 22, 1981.	The Honorable W. D. Smith, Mayor, City of Bandera, P.O. Box 896, Bandera, TX 78003.	Oct. 13, 1981	480321C.
New Hampshire: Merrimack	Town of Bow (FEMA Docket No. 6199).	*The Concord Monitor*, Oct. 9 and Oct. 16, 1981.	Ms. Sarah Swenson, Chairman, Board of Selectmen, Town of Bow, 10 Grandview Road, Bow, NH 03301.	Oct. 16, 1981	330107.
Pennsylvania: Chester	Township of Thornbury (FEMA Docket No. 6199).	*West Chester Daily Local Times*, Oct. 9 and Oct. 16, 1981.	Harold Smithson, Secretary, Thornbury Township Supervisors, P.O. Box 11, Westtown, PA 19395.	Oct. 16, 1981	420296C.
North Carolina: Carteret	Carteret County (FEMA Docket No. 6108).	*Carteret County News Times*, Nov. 19 and Nov. 26, 1981.	The Honorable Mary Sue Noe, County Commissioner, Carteret County Courthouse, P.O. Drawer 630, Beaufort, NC 28516.	Oct. 19, 1981	370043A.
Alabama: Autauga and Elmore	City of Prattville (FEMA Docket No. 6199).	*The Prattville Progress*, Oct. 15 and Oct. 22, 1981.	The Honorable C. M. Gray, Mayor, City of Prattville, P.O. Box 277, Prattville, AL 36067.	Oct. 23, 1981	010002C.
Connecticut: Hartford	Town of East Hartford (FEMA Docket No. 6199).	*The East Hartford Gazette, Oct. 14 and Oct. 21, 1981.*	The Honorable George A. Dagon, Mayor, Town of East Hartford, 740 East Main Street, East Hartford, CT 06108.	Oct. 23, 1981	090026D.
Florida:					
Orange	City of Apopka (FEMA Docket No. 6199).	*The Apopka Chief*, Oct. 16 and Oct. 23, 1981.	Mr. Thomas E. Richeson, P. E., P.O. Drawer 1229, Apopka, FL 32703.	Oct. 23, 1981	120180C.
Palm Beach	Village of Palm Springs (FEMA Docket No. 6199).	*The Evening Times*, Oct. 16 and Oct. 23, 1981.	Mr. Aurther F. Rudford, Director of Public Works, Village of Palm Springs, 226 Cypress Lane, Palm Springs, FL 33461.	Oct. 23, 1981	120222C.
Osceola	City of St. Cloud (FEMA Docket No. 6199).	*The St. Cloud Times*, Oct. 15 and Oct. 22, 1981.	The Honorable Sarah Lewis, Mayor, City of St. Cloud, City Hall, 1300 9th Street, St. Cloud, FL 32769.	Oct. 23, 1981	120191C.
Illinois: Jersey	City of Grafton (FEMA Docket No. 6199).	*Democrat News*, Oct. 13 and Oct. 20, 1981.	Honorable Gerald Nairn, City of Grafton, Box 251, City Hall, Grafton, IL 62037.	Oct. 23, 1981	170914C.
North Carolina: Cleveland	City of Shelby (FEMA Docket No. 6199).	*The Shelby Daily Star*, Oct. 16 and Oct. 23, 1981.	The Honorable George W. Clay, Jr., Mayor, City of Shelby, City Hall, P.O. Box 207, Shelby, NC 28150.	Oct. 23, 1981	430245C.
Rhode Island: Bristol	Town of Barrington (FEMA Docket No. 6199).	*Barrington Times*, Nov. 13 and Nov. 20, 1981.	Mr. Robert J. Schiedler, Town Manager, Town Hall, 283 County Road, Barrington, RI 02806.	Oct. 29, 1981 (60d).	445392C.
Minnesota: Roseau	City of Roseau (FEMA Docket No. 6199).	*Roseau Times Region*, Oct. 20 and Oct. 27, 1981.	Honorable Milton Arneson, City of Roseau, Box 307, Roseau, MN 56751.	Oct. 30, 1981	270414C.
Pennsylvania: Berks	Township of Cumru (FEMA Docket No. 6199).	*Reading Eagle Times*, Oct. 23 and Oct. 30, 1981.	Edgar I. Zerbe, President-Commissioner, Township of Cumru, R.D. 3005—Welsh Road, Mohnton, PA 19540.	Oct. 30, 1981	4201309.
Illinois:					
Cook and Lake	Village of Buffalo Grove (FEMA Docket No. 6164).	*Buffalo Grove Herald*, Nov. 3 and Nov. 10, 1981.	William R. Balling, Village Manager, Village of Buffalo Grove, 50 Raupp Boulevard, Buffalo Grove, IL 60090.	June 11, 1982	170092C.
McHenry	City of Woodstock (FEMA Docket No. 6166).	*The Sentinel*, Oct. 30 and Nov. 6, 1981.	Bennis Anderson, City Manager, City of Woodstock, P.O. Box 190, 121 West Calhoun Street, Woodstock, IL 60098.	June 11, 1982	170488C.
Indiana: Lake	Town of St. John (FEMA Docket No. 6165).	*The Times*, Oct. 30 and Nov. 6, 1981.	Hal Foltz, President of Town Board, Town of St. John, 11033 West 93rd Avenue, St. John, IN 46373.	June 11, 1982	180141C.
Minnesota: Hennepin	City of Wayzata (FEMA Docket No. 6167).	*Lake Minnetonka Sun*, Nov. 4 and Nov. 11, 1981.	Dave Bangasser, City Manager, City of Wayzata, 600 Rice Street, Wayzata, MN 55391.	June 11, 1982	270188C.
Pennsylvania:					
Dauphin	Township of Lower Swatara (FEMA Docket No. 6166).	*The Patriot*, Oct. 30 and Nov. 6, 1981.	Frank R. Siffrinn, Township Manager, Township of Lower Swatara, 1499 Spring Garden Drive, Middletown, PA 17057.	June 11, 1982	420365C.
Lancaster	Township of West Lampeter (FEMA Docket No. 6169).	*Intelligencer Journal* Nov. 2 and Nov. 9, 1981.	Gerald T. Horn, Chairman of Township Supervisors, Township of West Lampeter, 1711 Lampeter Road, Lampeter, PA 17137.	June 11, 1982	420569C.
Virginia: Rockbridge	Town of Glasgow (FEMA Docket No. 6170).	*The News Gazette*, Nov. 4 and Nov. 11, 1981.	R.E. Hostetter, Town Manager, Town of Glasgow, P.O. Box 326, Glasgow, VA 24555.	June 11, 1982	510028B.
California: Riverside	City of Indio (FEMA Docket No. 6179).	*Daily News*, Nov. 5 and Nov. 6, 1981.	Honorable Roger Harlow, Mayor, City of Indio, 100 Civic Center Mall, P.O. Drawer 1788, Indio, CA 92202.	June 15, 1982	060255C.
Oregon: Lincoln	City of Newport (FEMA Docket No. 6184).	*The News-Times*, Nov. 4 and Nov. 11, 1981.	Honorable John Brenneman, Mayor, City of Newport, 810 S.W. Alder St., Newport, OR 97365.	June 15, 1982	410131C.
Minnesota: Blue Earth	Unincorporated areas (FEMA Docket No. 6187).	*Mankato Free Press*, Nov. 6 and Nov. 13, 1981.	David W. Stevens, Chairman, Blue Earth County Board, County Courthouse, Mankato, MN 56001.	June 18, 1982	275231C.
Kansas: Barton	City of Ellinwood (FEMA Docket No. 6175).	*Ellinwood Leader*, Nov. 12 and Nov. 19, 1981.	Honorable Jerome E. Huslig, Mayor, City of Ellinwood, P.O. Box 278, Ellinwood, KS 67526.	June 22, 1982	200018C.
North Dakota: Cass	City of Riverside (FEMA Docket No. 6176).	*West Fargo Pioneer*, Nov. 11 and Nov. 18, 1981.	Honorable David L. Anderson, Mayor, City of Riverside, 106 West Main Ave., Riverside, ND 58078.	June 22, 1982	380116B.
Minnesota: Wright	City of Saint Michael (FEMA Docket No. 6193).	*Crow River News*, Nov. 18 and Nov. 25, 1981.	Honorable Elmer Eichelberg, Mayor, City of Saint Michael, Saint Michael, MN 55376.	July 2, 1982	270543C.
Ramsey	City of Saint Paul (FEMA Docket No. 6087).	*St. Paul Dispatch and Pioneer Press*, Nov. 20 and Nov. 27, 1981.	Honorable George Latimer, Mayor, City of St. Paul, 347 City Hall, St. Paul, MN 55102.	July 2, 1982	275248C.
Hennepin	City of Shorewood (FEMA Docket No. 6194).	*Lake Minnetonka Sun*, Nov. 18 and Nov. 25, 1981.	Douglas Uhrhammer, City Administrator, City of Shorewood, 5755 Country Club Road, Shorewood, MN 55331.	July 2, 1982	270185C.
Hennepin	City of Woodland (FEMA Docket No. 6202).	*Lake Minnetonka Sun*, Nov. 18 and Nov. 25, 1981.	Mrs. Louise Pattridge, City Clerk, City of Woodland, P.O. Box 656, Wayzata, MN 55391.	July 2, 1982	270189C.
Pennsylvania: Allegheny	Township of Harrison (FEMA Docket No. 6203).	*Valley News Dispatch*, Nov. 26 and Nov. 27, 1981.	George Conroy, President of Supervisors, Township of Harrison, Municipal Drive, Natrona Heights, PA 15065.	July 2, 1982	420041C.
Louisiana:					
East Baton Rouge Parish	Unincorporated areas (FEMA Docket No. 6178).	*Advocate*, Nov. 17 and Nov. 18, 1981.	Honorable Pat Screen, President, East Baton Rouge Parish Council, Room 208, Municipal Building, Baton Rouge, LA 70821.	July 6, 1982	220058B.
Arcadia Parish	City of Crowley (FEMA Docket No. 6233).	*The Crowley Post-Signal*, Dec. 22 and Dec. 23, 1981.	Honorable Robert L. Istre, Mayor, City of Crowley, P.O. Box 1469, Crowley, LA 70526.	July 27, 1982	225195C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Illinois:					
DuPage	City of Wood Dale (FEMA Docket No. 6210).	*The Voice*, Dec. 16 and Dec. 23, 1981.	Honorable Jerry Greer, Mayor, City of Wood Dale, 404 North Wood Dale Road, Wood Dale, IL 60191.	July 30, 1982	170224C.
Stephenson	Unincorporated area (FEMA Docket No. 6211).	*Freeport Journal Standard*, Dec. 11 and Dec. 18, 1981.	Don Penticoss, Chairman, Stephenson County Board, 15 North Galena Street, Freeport, IL 61032.	July 30, 1982	170639B.
Pennsylvania: Carbon	Township of East Penn (FEMA Docket No. 6212).	*The Times News*, Dec. 11 and Dec. 18, 1981.	Donald M. Ginder, Chairman, East Penn Township Board of Supervisors, R.D. 6 Box 34A, Lehighton, PA 18235.	July 30, 1982	421013B.
Louisiana: East Baton Rouge Parish	City of Zachary (FEMA Docket No. 6192).	*Advocate*, Dec. 30 and Dec. 31, 1981.	Honorable John Womack, Mayor, City of Zachary, P.O. Box 310, Zachary, LA 70791.	Aug. 3, 1982	220061B.
South Dakota: Custer	City of Custer (FEMA Docket No. 5799).	*Custer County Chronicle*, Dec. 31, 1981, and Jan. 7, 1982.	Honorable Annella Wright, Mayor, City of Custer, 622 Crook Street, Custer, SD 57730.	Aug. 10, 1982	460019C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 5, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13530 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 6307]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or June 21, 1982, whichever is later.

FOR FURTHER INFORMATION CONTACT: Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information or regarding the completed stages of engineering tasks in delineating the special flood hazard areas of the specified community. This rule imposes no new requirements or regulations on participating communities.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

EFFECTIVE DATE: MAY 7, 1982

State	Identification No.	Community name and county name	Panels printed (No. and suffix)	Inland and coastal	Hazard	60.3 code	Program status	Status of FHBM	Status of FIRM	Previous map dates FHBM	Previous map dates FIRM	Revision code(s)	Rescission	Floodways panels printed	Location of map repository
1	2	3	4	5	6	7	8	9	9	10	10	11	12	13	14
MI	260012	City of Au Gres, Arenac County.	0001B	I	FL	B	1	3	1	6/7/74, 3/5/76.	N/A	9, 10, 16.	N/A	N/A	Edward Tarnosky, Mayor, P.O. Box 121, 124 W. Huron Road, Au Gres, MI 48703, 517-867-8811.
PA	421875	Township of Shenango, Mercer County.	0001B, 0002B	I	FL	B	1	3	1	5/17/74, 5/14/76.	N/A	9, 10, 16.	N/A	N/A	K. Scott Campbell, Chairman, TWP Board of Supervisors, RD 2, Box 536, West Middlesex, PA 16150, 412-528-9571.
EFFECTIVE DATE: MAY 14, 1982															
VA	510250	Westmoreland County	0001A-0006A	I	FL	B	1	3	1	7/18/75	N/A	9, 10, 16.	N/A	N/A	Thomas V. Finan, Chief Exe., Westmoreland Co. Courthouse, P.O. Box 467, Montross, VA 22520, 804-493-8911.
WI	550576	Langlade County	0001A-0010A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	James Mabry, Zoning Adm., Courthouse, 800 Clermont Street, Antigo, WI 54409, 715-623-2417.
NY	360985	Village of Attica, Wyoming County.	0001B	I	FL	B	1	3	1	5/24/74, 6/11/76.	N/A	10	N/A	N/A	Honorable Dale Slocum, Mayor, 9 Water Street, Attica, New York 14011.
NC	370432	Town of River Bend, Craven County.	0005A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mayor Daniel T. DeBow, 50 Shoreline Drive, New Bern, NC 28560.
EFFECTIVE DATE: MAY 21, 1982															
NY	361099	Town of Cuba, Allegany County.	0005A, 0010A, 0015A, 0020A	I	FL	B	1	3	1	1/24/75	N/A	9, 10	N/A	N/A	Ernst Wadsworth, Town Supervisor, 5 Bull Street, Cuba, New York 14727.
EFFECTIVE DATE: MAY 25, 1982															
OR	410018	City of Lake Oswego, Clackamas, Multnomah, and Washington Counties	0001B-0004B	I	FL	B	1	3	1	6/14/74, 6/11/76.	N/A	8, 9, 10.	N/A	N/A	Mayor C. Herald Campbell, P.O. Box 369, Lake Oswego, OR, 503-636-2501.
OK	400496	Pottawatomie County, unincorporated areas.	0001A-0011A	I	FL	B	4	2	1	N/A	N/A	N/A	N/A	N/A	Lloyd Rogers, Chairman, County Commissioners, Pottawatomie Co. Courthouse, Shawnee, OK 74801, 405 273-4306.
EFFECTIVE DATE: MAY 28, 1982															
MI	260201	City of Marysville, St. Clair County.	0001B	I	FL	B	1	3	1	3/15/74, 4/30/76.	N/A	9, 10, 16.	N/A	N/A	Mayor Joseph S. Johns, 1111 Delaware Ave., Marysville, MI 48040, 313 364-2611.
OH	390294	Jefferson County, unincorporated areas.	0001B-0007B	I	FL	B	1	3	1	6/10/77	N/A	9, 10, 16.	N/A	N/A	Edward Swiger, Chairman, County Commissioners, 3rd & Market Street, Steubenville, OH 43952, 614-283-4111.
VA	510236	Brunswick County, unincorporated areas.	0001A-0008A	I	FL	B	1	3	1	4/11/75	N/A	9, 10, 16.	N/A	N/A	Mike Whitby, County Administrator, P.O. Box 399, Lawrenceville, VA 23868, 804-848-3107.

Community Map Actions

(Codes: Where no entry is necessary use N/A)

Column Code:

1. Two letter state designator
2. FIA Community 6-digit identity number
3. Community name, County(ies) name
4. Four digit number and suffix of each FIRM or FHBM panel printed
5. INL/coast:
   - I=Inland
   - C=Coastal
6. Hazard:
   - FL=Flood
   - MS=Mudslide
   - ER=Erosion
   - NF=Non Flood Prone
   - MF=Minimally Flood Prone
7. 60.3 Code:
   - A=Special Hazard not defined, no elevation data (No FHBM)
   - B=Special Hazard Designated, no elevation data (FHBM)
   - C=FIRM, No Floodway or Coastal High Hazard
   - D=FIRM, Regulatory Floodway Designated[1]
   - E=FIRM, Coastal High Hazard[1]
8. Program status:
   - 1=Emergency
   - 2=Regular
   - 3=Not participating, no map
   - 4=Not participating, with map
   - 5=Withdrew

[1]Dual entry is available.

6=Suspended
9. FHBM status:
1=Never mapped
2=Original
3=Revised
4=Rescinded
5=Superseded by FIRM
9. FIRM status:
1=Never mapped
2=Original
3=Revised
4=Rescinded
5=All zone C—no published FIRM
6=All zone A and C—no elevations determined
10. Dates of all previous maps
11. Revision codes:
1. 1916 BFE (Base Flood Elevation) Decrease
2. 1916 BFE Increase
3. 1916 SFHA (Special Flood Hazard Area) Change
4. Change of Zone Designation; revised FIRM
5. Curvilinear
6. 1914 Incorporation
7. 1914 Discorporation
8. 1914 Annexation
9. SFHA Reduction
10. Non-1916 SFHA Increase Without Numbered Zones
11. Non-1916 SHFA Increase with Numbered Zones
12. Drafting Correction; Printing Errors
13. Suffix Change ONLY
14. Change to Uniform Zone Designations (7/1/74)
15. Revisions Withdrawn
16. Refunds Possible
17. Letter of Map Amendment (1916)
18. Letter of Map Amendment (1916 without Federal Register publication)
19. Federal Register Ommission
20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
21. Miscellaneous
13. List of Numbered Floodway Panels Printed
14. Address of Community Map Repository (44 CFR section 64.3)

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13507 Filed 5-19-82; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 54, 56, 58, and 61

[CGD 77-147]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME U or UM Symbol Stamp for Pressure Vessels, Fittings, and Accumulators

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations require classes I, II, and III pressure vessels not containing hazardous materials to be inspected and stamped in accordance with the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code. They replace previous requirements for plan approval and shop inspection by the Coast Guard. The regulations also require (1) certification of pressure vessel design drawings and analyses by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation and (3) compliance with certain requirements that are optional under the ASME Code. Several pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans will minimize the time needed for Coast Guard pre-installation inspections.

EFFECTIVE DATE: These regulations become effective on June 21, 1982.

ADDRESS: A copy of the final evaluation for these regulations may be obtained from Commandant (G-CMC/TP24), (CGD 77-147), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Hime, c/o Commandant (G-MMT-TP12), U.S. Coast Guard, Washington, D.C. 20593 (202) 426-2160.

SUPPLEMENTARY INFORMATION: On December 29, 1980, the Coast Guard published a proposal in the **Federal Register** (45 FR 85488) concerning these regulations. Interested persons were given an opportunity to submit written comments and 12 comments were received.

Drafting Information

The principal persons involved in drafting these rules are Mr. Howard Hime, Office of Merchant Marine Safety, and Mr. William R. Register, Office of the Chief Counsel.

OMB Control Number

Information collection requirements contained in this regulation (§§ 54.01-(d)(1), -5(e), and 54.10-25(c)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2130-0161.

Discussion of Comments

General

1. Two commenters suggested that certification by the American Bureau of Shipping (ABS) be included as an alternative to ASME inspection and stamping of pressure vessels or that ABS Surveyors be allowed to perform inspections to determine compliance with ASME requirements. Several meetings have been held with ABS to discuss these possibilities. However, at present, ABS does not have procedures that are equivalent to ASME procedures for shop inspection and stamping or for examining, certifying, and monitoring the performance of inspectors. When equivalent procedures are developed, ABS will be considered for inclusion as an alternative to ASME inspection and stamping.

2. One commenter suggested that, in lieu of requiring ASME inspection and stamping, it should be made an option to Coast Guard shop inspection and stamping. Almost all U.S. pressure vessel manufacturers, (more than 99%), and many foreign manufacturers are authorized to apply the ASME stamp, and, as a result, Coast Guard inspectors would not often be used. Also, there will be few Coast Guard inspectors available to perform this function. However, specific requests to apply Coast Guard requirements in lieu of ASME requirements could be authorized by an Officer in Charge, Marine Inspection (OCMI) under other regulations in Title 46, CFR, that allow equivalencies. The Title 46 regulations that allow equivalencies include §§ 30.15-1, 70.15-1, 90.15-1, 108.105, 175.15-1, and 188.15-1.

3. One commenter suggested that the proposed regulations be extended to include cargo tanks regulated under 46 CFR Part 151. This suggestion has not been adopted. Part 151 applies to unmanned tank barges used for the transportation of liquids or liquefied gases which have dangerous characteristics or flammability or combustibility characteristics. As stated

in the preamble to the notice of proposed rule making, continued Coast Guard plan review and shop inspection is needed for these cargo tanks since ASME inspection and stamping would not verify compliance with the additional safety requirements imposed by 46 CFR Part 54 for pressure vessels containing materials regulated under Part 151.

4. One commenter recommended that Mobile Offshore Drilling Units (MODU's) be exempt from the requirements in §§ 54.01–5(d)(2), 54.01–5(d)(6), and 54.01–5(d)(7). The commenter stated that the petroleum industry is generally unfamiliar with these requirements, which poses a potential compliance problem. This recommendation has not been adopted. The requirements referenced by the commenter represent general safety measures that in large part the petroleum industry is already following voluntarily. The cost to comply with the requirements is expected to be minimal.

Specific Regulations

5. *Section 54.01–5(c)(2).* One commenter stated that the term "dangerous substances" in the proposed rules was not clear and recommended that the term "hazardous materials" be used instead. This recommendation has been adopted. The term "hazardous materials" is defined in 46 CFR 150.115 (45 FR 70264) and includes flammable and combustible liquids as defined in 46 CFR Part 30, materials regulated under 46 CFR Subchapter O, and liquids, liquified gases, and compressed gases as listed in 49 CFR 172.101. These are the same substances as those described in old § 54.01–5 as "dangerous articles, substances, or combustible liquids."

6.a. *Section 54.01–5(d) and –5(e).* One commenter questioned the need to have a registered professional engineer certify that pressure vessel design drawings comply with the ASME Code. According to the commenter, an authorized inspector under the ASME Code certifies that the pressure vessel complies with the Code. The authorized inspector is only required to assure (1) that the pressure vessel is fabricated, tested, and inspected in accordance with the ASME Code and the design drawings and (2) that, if certain options are selected such as full radiography, they meet the requirements of the Code. The authorized inspector is not required to review the design drawings to determine compliance with ASME design requirements. Likewise, the inspector is not required to check for compliance with the regulations in § 54.01–5(d) (i.e., the inspector is not responsible for judging the adequacy of the pressure vessel for its intended service nor for assuring the proper selection of the various options permitted by the ASME Code, such as, full radiography of welds in lieu of spot radiography or no radiography). Accordingly, as a check for compliance with the design requirements of the ASME Code and the requirements of section 54.01–5(d), the plans are required to be certified by a registered professional engineer.

6.b. One commenter believed that certification of design drawings by a registered professional engineer is an increase in the existing requirements for pressure vessels used on MODU's. This certification is an existing requirement, as stated in 46 CFR 58.60–11.

7. *Section 54.10–3(c).* One commenter questioned the need for a pressure vessel to be examined by a Coast Guard marine inspector prior to installation. The commenter stated that this represents a duplication of effort since the pressure vessel is also inspected by an authorized inspector under the ASME Code. As explained in paragraph 6 above, the authorized inspector is not required to verify compliance with the requirements in § 54.01–5(d). The purpose of the Coast Guard inspection is to check for general compliance with the regulations, with emphasis on verification that the pressure vessel was in fact constructed in accordance with the requirements in § 54.01–5(d). The inspection also includes a visual check on whether the pressure vessel was damaged during transportation.

8. *Section 54.10–25.* One commenter questioned the need to provide both the Coast Guard data report forms as well as manufacturer's report forms. The commenter misinterpreted the proposal. Only one set of forms is required. If a pressure vessel is shop inspected by the Coast Guard, the data report forms provided by the Coast Guard are required. If a pressure vessel is inspected by an authorized inspector under the ASME Code, manufacturer's data report forms are required in lieu of Coast Guard forms.

9. *Section 58.30–25(a).* One commenter requested that accumulators be exempt from ASME inspection and stamping. The commenter argued that the lead time to make design modifications in accordance with ASME requirements would take 12 to 18 months. As stated in paragraph 11 of the preamble to the NPRM, § 58.30–25(a) provides ASME inspection and stamping as an option to existing requirements for accumulators. Coast Guard plan approval and inspection has been retained as an option for accumulators.

10. *Section 61.10–5.* One commenter asked why § 61.10–5 requires periodic examination of Coast Guard stamped pressure vessels but not of an ASME stamped pressure vessel. The commenter misinterpreted the proposal. ASME stamped pressure vessels are also stamped with the Coast Guard symbol in accordance with § 54.10–3(c), and § 61.10–5 requires that they likewise be examined periodically.

Economic Evaluation and Record Keeping

These regulations are considered to be nonsignificant and, accordingly, a final evaluation has been prepared and placed in the public docket as required by the Department of Transportation's Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). These regulations have also been evaluated under the terms of Executive Order 12291 and have been determined not to be major rules.

As stated in the final evaluation, these rules will result in an approximate annual dollar savings of $0.59 million for manufacturers and $0.23 million for the Coast Guard. The expected benefit of these rules, in addition to the $0.82 million annual saving, will be the substantial amount of time saved by manufacturers in obtaining required inspections of pressure vessels. Also, Coast Guard inspectors will acquire more time in which to perform required inspections of other types of marine equipment that cannot effectively be inspected by independent parties.

The NPRM was published before January 1, 1981, and, accordingly, the rule making is exempt from the Regulatory Flexibility Act (Pub. L. 96–354; 94 Stat. 1164; 5 U.S.C. 601–612). However, the requirements of the Act were taken into consideration and these regulations are not expected to have a significant economic impact on a substantial number of small entities which, for purposes of this rule making, consists of small pressure vessel manufacturers. As explained in the final evaluation, most manufacturers, both large and small, already hold the ASME stamp needed to comply with these regulations. However, for the few manufacturers who are not currently authorized to apply the ASME stamp, the cost to obtain one ($5,000 for small manufacturers up to approximately $20,000 for large manufacturers) is marginal compared to overall business costs. Also, some small manufacturers who, unlike larger concerns, do not have a registered professional engineer (PE) in their organization will incur some

increased costs to hire a registered PE to review and certify design drawings in accordance with these regulations. However, the total time and dollar savings for manufacturers, both large and small, associated with these regulations should be less than the time and money involved to obtain Coast Guard plan approval and shop inspection under the old requirements.

An analysis of the record keeping requirements in these regulations was conducted under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The analysis shows that 5252 documents were required to be submitted annually to the Coast Guard under the old requirements. The requirements as revised in this rule making reduce the annual reporting burden from 5252 documents down to 1312 documents.

List of Subjects 46 CFR Parts 50, 54, 56, 61

Vessels, Marine safety. 46 CFR Part 58.

Vessels, Oil and gas exploration, Marine safety.

In consideration of the foregoing, the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, are amended as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for Part 50 is revised to read as follows:

Authority: Section 5 ,49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); section 5, Pub. L. 95–474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85–739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93–370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); section 1, Pub. L. 86–244, 73 Stat. 475 (46 U.S.C. 481); section 17, 54 Stat. 166 (46 U.S.C. 526p); section 2, Pub. L. 96–453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); section 3, 68 Stat. 675 (50 U.S.C. 198; section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 50.05–1(e) [Amended]

2. In § 50.05–1(e) remove the words "§ 54.01–16 and".

3. Revise § 50.15–5(c) to read as follows:

§ 50.15–5 ASME boiler and pressure vessel code.

* * * * *

(c) Except as required in § 54.01–5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter need not hold the applicable ASME Code symbol stamps.

* * * * *

PART 54—PRESSURE VESSELS

4. The authority citation for Part 54 is revised to read as follows:

Authority: section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); section 5, Pub. L. 95–474, 92 Stat. 1480 (46 U.S.C. 391a); section 1, Pub. L. 85–739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93–370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); section 1, Pub. L. 86–244, 73 Stat. 475 (46 U.S.C. 481); section 17, 54 Stat. 166 (46 U.S.C. 526p); section 2, Pub. L. 96–453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); section 3, 68 Stat. 675 (50 U.S.C. 198; section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 54.01–1 [Amended]

5. In § 54.01–1, remove the last sentence of paragraph (a) and remove paragraph (a)(1).

6. Revise § 54.01–5 to read as follows:

§ 54.01–5 Scope (modifies U–1 and U–2).

(a) This part contains requirements for pressure vessels. Table 54.01–5(a) gives a breakdown by parts in this subchapter of the regulations governing various types of pressure vessels, boilers, and thermal units.

(b) Pressure vessels are divided into Classes I, I–L (low temperature), II, II–L (low temperature), and III. Table 54.01–5(b) describes these classes and sets out additional requirements for welded pressure vessels.

(c) The requirements for pressure vessels by class are as follows:

(1) Class I–L and II–L pressure vessels must meet the applicable requirements in this part.

(2) Pressure vessels containing hazardous materials as defined in § 150.115 of this chapter must meet the requirements of this part or, as applicable, the requirements in 49 CFR Parts 171–177 or Part 64 of this chapter.

(3) Except as provided in paragraph (c)(4) of this section, Classes I, II, and III pressure vessels not containing hazardous materials must be designed and constructed in accordance with the requirements in Section VIII, division 1, of the ASME Code and must be stamped with the ASME "U" symbol. These pressure vessels must also comply with the requirements that are listed or prescribed in paragraphs (d) through (g) of this section. Compliance with other provisions in this part is not required.

(4) Classes II and III pressure vessels that have a net internal volume of less than 0.14 cubic meters (5 cubic feet) and do not contain hazardous materials must be stamped with either the ASME "U" or "UM" symbol. Compliance with other provisions in this part is not required.

(d) Pressure vessels described in paragraph (c)(3) of this section must—

(1) Have detailed plans that include the information required by § 54.01–16 (approved by the Office of Management and Budget under OMB control number 2130–0181);

(2) Meet § 54.01–35 and § 54.25–3;

(3) Have pressure relief devices required by subpart 54.15;

(4) Meet the applicable requirements in §§ 54.10–3, 54.10–20, and 54.10–25 for inspection, reports, and stamping;

(5) If welded, meet the post weld heat treatment and minimum joint and radiography requirement in Table 54.01–5(b);

(6) If a heat exchanger, meet § 54.01–2; and

(7) If a steam generating pressure vessel, meet § 54.01–10.

(e) The plans required by paragraph (d)(1) of this section must be certified by a registered professional engineer to meet the design requirements in paragraph (d) of this section and in section VIII, division 1, of the ASME Code. The certification must appear on all drawings and analyses. The plans must be made available to the Coast Guard prior to the inspection required by § 54.10–3(c). (Approved by the Office of Management and Budget under OMB control number 2130–0181.)

(f) If a pressure vessel has more than one independent chamber and the chambers have different classifications, each chamber must, as a minimum, meet the requirements for its classification. If a single classification for the entire pressure vessel is preferred, the classification selected must be one that is required to meet all of the regulations applicable to the classification that is not selected. For example, if one chamber is Class I and one chamber is Class II–L, the only single classification that can be selected is Class I–L.

(g) The design pressure for each interface between two chambers in a multichambered pressure vessel must be—

(1) The maximum allowable working pressure (gauge) in the chamber with the higher pressure; or

(2) If one chamber is a vacuum chamber, the maximum allowable working pressure (absolute) in the other chamber minus the least operating pressure (absolute) in the vacuum chamber.

7. Revise the heading of Table 54.01–5(b) to read as follows:

Table 54.01–5(b)—Pressure Vessel Classification

(Special heat exchanger requirements excluded, see § 54.01–2)

8. In Table 54.01–5(b) add a reference to footnotes 6 and 7 after the phrase "Minimum joint requirements[1] ". As revised, the phrase reads "Minimum joint requirements[1],[6],[7] ".

9. In Table 54.01–5(b) add a reference to footnote 7 after the phrases "Minimum radiography requirements, section VIII, ASME Code" and "Post Weld heat treatment required [5]". As revised, the phrases read "Mimimum radiography requirements, Section VIII, ASME Code [7]" and "Post weld heat treatment required [5,7]".

10. In Table 54.01–5(b) add a reference to footnote 4 after the word "yes" the first time it appears under the column entitled "Shop Inspection Required", and the first time it appears under the column entitled "Plan Approval Required", to denote that certain Class I pressure vessels are exempt from plan approval and shop inspection.

11. Add new footnotes 6 and 7 to Table 54.01–5(b) to read as follows:

[6] A butt-welded joint with one plate edge offset (see Figure UW–13.1(k) and table UW–12 of the ASME Code) may only be used in the fabrication of Class II and III pressure vessels.

[7] These requirements apply only to welded pressure vessels.

12. In Table 54.01–5(b) replace the term "dangerous substances" everywhere it appears with the term "hazardous materials."

13. Revise the heading and paragraph (a)(4) in § 54.01–15 to read as follows:

§ 54.01–15 Exemptions from shop inspection and plan approval (replaces U–1(c) (6) through (9)).

(a) * * *

(4) Class I, II, and III pressure vessels that meet the requirements of § 54.01–5(c)(3), and –5(c)(4).

* * * * *

§ 54.01–16 [Removed]

14. Remove § 54.01–16.

15. Remove the second sentence in § 54.10–3(b).

16. Add a new § 54.10–3(c) to read as follows:

§ 54.10–3 Marine inspectors (replaces UG–90 and UG–91, and modifies UG–92 through UG–103).

* * * * *

(c) Pressure vessels described in § 54.01–5(c)(3), except pressure vessels in systems regulated under § 58.60 of this chapter, must be visually examined by a marine inspector prior to installation. The marine inspector also reviews the associated plans and manufacturers' data reports. If, upon inspection, the pressure vessel complies with the applicable requirements in § 54.01–5, the marine inspector stamps the pressure vessel with the Coast Guard Symbol.

§ 54.10–17 [Removed]

17. Remove § 54.10–17.

18. Revise § 54.10–20(a) to read as follows:

§ 54.10–20 Marking and stamping.

(a) *Pressure vessels (replaces UG–116, except paragraph (k), and UG–118).* Pressure vessels that are required by § 54.10–3 to be stamped with the Coast Guard Symbol must also be stamped with the following information:

* * * * *

(4) Maximum allowable working pressure ——kPa (——psig) at ——C (——F).

(5) Class.

(6) Minimum service temperature allowed, if below —18 C (0 F)

(7) Water capacity in liters (U.S. gallons), if a cargo carrying pressure vessel.

* * * * *

§ 54.10–20 [Amended]

19. In § 54.10–20(c)(1), insert the words "Coast Guard shop" after the word "requiring".

20. Add a new § 54.10–25(c) to read as follows:

§ 54.10–25 Manufacturers' data report forms (modifies UG–120).

* * * * *

(c) If a pressure vessel is required to be inspected in accordance with § 54.10–3(c), the manufacturer's data reports required by UG–120 must be made available to the Coast Guard inspector for review prior to inspection of the pressure vessel. (Approved by the Office of Management and Budget under OMB control number 2130–0161).

21. In § 54.20–2, revise the heading and paragraphs (a) and (b) as follows:

§ 54.20–2 Fabrication for hazardous materials (replaces (UW–2(a))).

(a) Pressure vessels containing hazardous materials as defined in section 150.115 of this chapter must be of the class and construction required by Subchapters D, I, O, or, when not specified, of a class determined by the Commandant.

(b) Class III pressure vessels must not be used for the storage or stowage of hazardous materials unless there is specific authorization in Subchapters D, I, or O.

§ 54.20–3 [Reserved]

22. Remove and reserve § 54.20–3(c).

§ 54.20–10 [Removed]

23. Remove § 54.20–10.

PART 56—PIPING SYSTEMS AND APPURTENANCES

24. The authority citation of Part 56 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3,70 Stat. 152, as amended (46 U.S.C. 390b); Section 5, Pub. L. 95–474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85–739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93–370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86–244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2 Pub. L. 96–453, 94 Stat. 207 (46 U.S.C. 1295F (c)(2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 198); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

25. In § 56.15–1, revise paragraphs (e) and (f) as follows:

§ 56.15–1 Fittings.

* * * * *

(e) The following requirements apply to nonstandard fluid conditioner fittings which do not contain hazardous materials:

(1) The nonstandard fluid conditioner fittings listed below must meet the applicable requirements in § 54.01–5 (c)(3), (c)(4), and (d) of this chapter or the remaining provisions in Part 54, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

* * * * *

(f) Nonstandard fluid conditioner fittings rated above 103 kPa (15 psig), that contain hazardous materials as defined in § 150.115 of this chapter must meet the applicable requirements of Part 54 this chapter, except Subpart 54.10.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

26. The authority citation for Part 58 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3, 70 Stat. 152, as amended (46 U.S.C.

390b); Section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 196); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

27. Revise the second sentence in § 58.30-25(a) to read as follows:

§ 58.30-25 Accumulator.

(a) * * * Accumulators must meet the applicable requirements in § 54.01-5 (c)(3), (c)(4), and (d) of this chapter or the remaining requirements in Part 54.

* * * * *

§ 58.60-3 [Amended]

28. In § 58.60-3, delete the citation "§ 54.01-16" and insert in its place the words "the applicable requirements in § 54.01-5 of this chapter".

PART 61—PERIODIC TESTS AND INSPECTIONS

29. The authority citation for Part 61 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); Section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 196); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 61.10-5 [Amended]

30. In the first sentence of § 61.10-5(b), delete the words "Pressure vessels that required initial shop inspection and pressure vessels that are accepted under § 54.01-16" and insert in their place the words "Pressure vessels that are stamped with the Coast Guard symbol and pressure vessels in systems regulated under Subpart 58.60 of this subchapter".

31. Revise § 61.10-5(e)(6) to read as follows:

* * * * *

(e) * * *

(6) Pressure vessels not stamped with the Coast Guard Symbol.

* * * * *

32. In the first sentence of § 61.10-5(h)(1), remove the words "have been pneumatically tested during shop inspection" and insert in their place the words "that were pneumatically tested before being stamped with the Coast Guard Symbol".

Dated: May 14, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-13615 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MarAd) is amending its regulations relative to merchant marine training at the United States Merchant Marine Academy (Academy) to conform the regulations to the provisions of the recently effective Maritime Education and Training Act of 1980 (Pub. L. 96-453), including the requirement for a service obligation contract for students enrolled after April 1, 1982.

EFFECTIVE DATE: The regulations will be effective on May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Erich J. Bernhardt, Academies Program Officer, Maritime Administration, Office of Maritime Labor and Training, Room 7306, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Phone—(202) 426-5766.

SUPPLEMENTARY INFORMATION: The Maritime Education and Training Act of 1980 (Pub. L. 96-453) contains a number of key provisions which need to be incorporated in the Academy regulations. The following text sums up the substantive changes MarAd is making to conform the regulations to the requirements of the statute.

Section 310.53 Nominations and vacancies—This revision states that nominating officials may only nominate candidates who are residents of their States. It also reflects the fact that up to 40 additional appointments may be made by MarAd annually.

Section 31054 General requirements for eligibility—Twenty-five (25) years of age is established as the new maximum age for admission to the Academy. Also, a candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation will be subject to separation if the investigation establishes failure to meet the requirements for appointment as Midshipmen, U.S. Naval Reserve.

Section 310.55 Scholastic requirements—A new provision would give proper consideration to a candidate's post high school scholastic record.

Section 310.57 Application and selection of midshipmen—A new provision would clarify that no special preference will be granted in the selection process to individuals with family members who are alumni of the Academy.

Section 310.58 Service obligation for students enrolled after April 1, 1982—The amendments provide that, as a condition of admission, students enrolled after April 1, 1982, shall sign a service obligation contract. The obligations are: Complete the course of instruction at the Academy; fulfill the requirement for a license as a merchant marine officer in the U.S. merchant marine; maintain a license as such an officer for six (6) years following graduation; apply for, and accept if tendered, a commission in the U.S. Navel Reserve (including Merchant Marine Reserve); and serve the foreign and domestic commerce and the national defense of the United States for at least five (5) years following graduation, either as a merchant marine officer, or in a uniformed service of the United States. Failure to meet these obligations could lead to induction in the armed forces. There is a waiver provision that may apply in cases of undue hardship and impossibility of performing the service obligation due to accident, illness or other justifiable reason. Also, in exceptional cases, MarAd may grant a deferment of all or part of the service commitment for a period not to exceed two years to students enrolling in the marine or maritime-related graduate course of study approved by the Administrator. Deferments would only be granted to students with superior academic and conduct records while at the Academy.

We are defining a satisfactory year of service at sea for a merchant marine officer which is based on the approximate period of service for the industry as a whole.

Section 310.60 Foreign students—The revision reflects the fact that under Pub. L. 96-453 the President may designate twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. This section would also provide for the enrollment of an

additional thirty (30) qualified individuals from nations other than the United States. Unlike the foregoing twelve (12) appointments from the Western Hemisphere, these thirty (30) appointments would not be scholarships, and the foreign nations are required to reimburse MarAd for the costs. The thirty (30) appointments would require approval by both the Secretary of State and MarAd. This section is further revised to provide that the amount of reimbursement shall be the incremental cost of providing instruction to such foreign students, rather than the fully allocated cost. This method of reimbursement protects the interests of the U.S. Government in that it covers the total out-of-pocket costs incurred in providing instruction to these students, makes the use of training opportunity more attractive to friendly foreign nations, and advances the purpose intended by Congress.

The Maritime Administrator has made a determination, pursuant to the provisions of Executive Order 12291, that this is not a major rule that requires the preparation of a regulatory impact analysis. Pursuant to DOT Order 2100.5, this is a significant regulation for which a regulatory evaluation has been prepared and will be placed in the rulemaking docket and made available upon request. Please send request in writing to Mr. Erich J. Bernhardt, Academies Program Officer, Maritime Administration, Office of Maritime Labor and Training, Room 7302, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Phone—(202) 426–5766.

Good cause exists for publication of the revision of this regulation as a final rule, without opportunity for public comment and effective immediately, pursuant to provisions of 5 U.S.C. 553. The Congressional nomination process for the Academy has been completed. It is imperative that the final regulations be in place to reflect the requirements of Pub. L. 96–453 so that every Member of Congress and the other nominating officials may adequately inform his or her constituents of the new eligibility requirements and the service obligation. Further, it is essential to the Academy to provide guidance to nominees and make selections and notify principal candidates by May 1, 1982, the customary date for notification. Accordingly, notice and public procedure thereon are impracticable. Since there is no requirement for a notice of proposed rulemaking, the Maritime Administrator certifies that the regulation is not subject to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). MarAd will develop specific reporting requirements for Academy graduates in light of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which will be subject to approval by the Office of Management and Budget.

List of Subjects in 46 CFR Part 310

Grant programs—Education, Schools, Seamen.

Accordingly, Subpart C is revised to read as follows:

PART 310—MERCHANT MARINE TRAINING

* * * * *

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

Sec.

310.50 Purpose.
310.51 Definitions.
310.52 General.
310.53 Nominations and vacancies.
310.54 General requirements for eligibility.
310.55 Scholastic requirements.
310.56 Physical requirements.
310.57 Application and selection of midshipmen.
310.58 Service obligation for students enrolled after April 1, 1982.
310.59 Courses of instruction.
310.60 Training on subsidized vessels.
310.61 Training on other vessels and by other facilities or agencies.
310.62 Allowances and expenses; required deposit.
310.63 Uniforms and textbooks.
310.64 Privileges.
310.65 Graduation.
310.66 Foreign students.
310.67 Academy regulations.

Authority: Secs. 204(b) and 1301–1308, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114 and 1295–1295g); Maritime Education and Training Act of 1980 (Pub. L. 96–453); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842), as amended by Pub. L. 91–469 (84 Stat. 1036); Pub. L. 97–31 (95 Stat. 151); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

§ 310.50 Purpose.

The regulations in this subpart govern the nomination, admission and appointment of midshipmen to the United States Merchant Marine Academy.

§ 310.51 Definitions.

(a) "Academy" means the United States Merchant Marine Academy.

(b) "Act" means the Maritime Education and Training Act of 1980, Pub. L. 96–453, 94 Stat. 1997, 46 U.S.C. 1295–1295g.

(c) "Administration" means the Maritime Administration, Department of Transportation.

(d) "Administrator" means the Administrator of the Maritime Administration.

(e) "Citizen" means an individual who, by birth or naturalization, owes national allegiance to the United States, but the term excludes United States nationals.

(f) "Foreign student" means an individual who owes national allegiance to a country or political entity other than the United States, and the term includes United States nationals.

(g) "NOAA" means the National Oceanic and Atmospheric Administration.

(h) "USNR" means the United States Naval Reserve.

§ 310.52 General.

(a) Midshipmen are appointed to the Academy for training to prepare them to become officers in the U.S. merchant marine. The Academy, located at Kings Point, New York, is maintained by the Government as a part of the Administration. After successful completion of the 4-year course of study, a graduate of the Academy shall receive a Bachelor of Science degree and a merchant marine license as either a third officer or third assistant engineer (or both licenses upon completion of a special curriculum and passing the respective license examinations) issued by the U.S. Coast Guard. If qualified, a graduate may be commissioned as an officer in a reserve component of an armed force of the United States.

(b) Midshipmen entering the Academy after April 1, 1982, are required by the Act to sign an agreement committing them to service obligations following the date of graduation. The terms of the service obligation contract are set forth in § 310.58 of this subpart.

§ 310.53 Nominations and vacancies.

(a) *Nominating officials.* (1) Each Senator and Member of the House of Representatives (including delegates from Guam, the Virgin Islands and the District of Columbia and the Resident Commissioner from Puerto Rico), the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office) may nominate ten (1) candidates to compete for admission to the Academy.

(2) In accordance with the Act (46 U.S.C. 1295b (b)(1)), nominating officials may only nominate candidates who are

residents of the State or other geographic area which the particular nominating official represents, as follows:

The candidate must be a resident of—	To be nominated by—
The State	A Member of the U.S. Senate representing that State.
The State	A Member of the U.S. House of Representatives whose Congressional District is located in that State.
Guam	The Delegate to the U.S. House of Representatives representing Guam.
Virgin Islands	The Delegate to the U.S. House of Representatives representing the Virgin Islands.
District of Columbia	The Delegate to the U.S. House of Representatives representing the District of Columbia.
Commonwealth of Puerto Rico.	The Resident Commissioner to the United States from Puerto Rico.
American Samoa	The Governor of American Samoa (until a Delegate to the U.S. House of Representatives representing American Samoa takes office).
Any area or installation located in the Republic of Panama which is made available to the United States pursuant to the (i) the Panama Canal Treaty of 1977, (ii) the agreements relating to and implementing the Treaty signed September 7, 1977, and (iii) the Agreement between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 6, 1979; *Provided*, That no residence in the Republic of Panama is required if nomination is due to his or her parent's employment in the Panama Canal or in the Republic of Panama by the United States Government or the Panama Canal Commission.	Panama Canal Commission.
Northern Mariana Islands	Governor of the Northern Mariana Islands.
Trust Territory of the Pacific Islands.	Secretary of the Interior.

(3) Individuals must be residents of the Trust Territory of the Pacific Islands to qualify for designation by the Secretary of the Interior.

(4) Nominating officials may select nominees, and the Secretary of the Interior may select designees, by any method they wish, including a screening examination.

(5) Candidates from nations other the United States must be nominated by an official of their home government and have their applications approved by the United States Government official specified in § 310.66(a), or (c) or (d).

(b) *Vacancies.* (1) The number of vacancies in each entering class allocated to each State is in proportion to the representation in Congress from that State.

(2) In each entering class, two vacancies shall be allocated each year for individuals nominated by the Panama Canal Commission; one vacancy each to nominees from Puerto Rico, Guam, Virgin Islands, Northern Marian Islands and American Samo; and four vacancies to nominees from the District of Columbia.

(3) Not to exceed four (4) individuals at any one time may be admitted from the Trust Territory of the Pacific Islands and twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, but not more than two (2) individuals from any one of such nations shall receive training at the same time.

(4) The Administrator may permit, upon approval of the Secretary of State, not more than thirty (30) individuals at one time from nations other than the United States to receive instruction at the Academy, subject to the condition that the foreign nations reimburse the Administrator for the cost of such training.

(5) The distribution of each entering class by State is:

Alabama	6
Alaska	2
Arizona	3
Arkansas	3
California	24
Colorado	4
Connecticut	5
Delaware	2
Florida	10
Georgia	7
Hawaii	2
Idaho	2
Illinois	15
Indiana	7
Iowa	5
Kansas	4
Kentucky	5
Louisiana	6
Maine	2
Maryland	6
Massachusetts	8
Michigan	12
Minnesota	6
Mississippi	4
Missouri	7
Montana	2
Nebraska	3
Nevada	2
New Hampshire	2
New Jersey	10
New Mexico	2
New York	22
North Carolina	7
North Dakota	2
Ohio	15
Oklahoma	5
Oregon	3
Pennsylvania	15
Rhode Island	2
South Carolina	5
South Dakota	2
Tennessee	6
Texas	15
Utah	2
Vermont	2
Virginia	7
Washington	5
West Virginia	3
Wisconsin	6
Wyoming	2

(6) The distribution of each entering class otherwise provided under the Act is:

Northern Mariana Islands	1.
Puerto Rico	1.
District of Columbia	4.
Republic of Panama	2.
Guam	1.
American Samoa	1.
Virgin Islands	1.
Administrator	Not to exceed 40.

(7) The distribution of students provided for under the Act without reference to entering class is:

	Not to exceed at any one time
Trust Territory of the Pacific Islands	4
Western Hemisphere nations (other than U.S.)	12
Foreign nations	30

(c) *Request for nomination.* A person interested in admission to the Academy who feels that he or she meets the requirements in this subpart should request a nomination from his or her Senator or Representative or other appropriate nominating official listed in paragraph (a) of this section.

(d) *Date for nominations.* The nominating official will send a nomination form for each nominee to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, Long Island, New York 11024, normally between August 1 and December 31 of the school year preceding that in which admission to the Academy is desired.

(e) *Appointments.* (1) The Administrator shall make appointments to fill the vacancies allocated pursuant to paragraph (b) of this section from among qualified nominees, in order of merit, from each geographical area. The order of merit shall be established according to the procedure as specified in § 310.57(b). Such appointments first shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter, appointments shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter appointments shall be made from among remaining qualified nominees (national alternates) in order of merit regardless of the area of residence.

(2) The Administrator may appoint, without competition, not more than forty (40) qualified citizens who possess qualities deemed to be of special value to the Academy. In making these appointments, the Administrator shall give special consideration to achieving a

national demographic balance and to recognizing individuals with qualities deemed to be of special value to the Academy.

§ 310.54 General requirements for eligibility.

(a) *Citizenship.* All candidates shall be citizens of the United States except: (1) Nominees from foreign nations; (2) nominees from the Northern Mariana Islands; (3) designees from the Trust Territory of the Pacific Islands; and (4) nominees from American Samoa, who may be American nationals. No person who is not a citizen shall be entitled to any office or position in the U.S. merchant marine by reason of his or her graduation from the Academy, until such person shall have become a citizen.

(b) *Age.* A candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25th) birthday on June 15 of the year of admission to the Academy.

(c) *Character.* A candidate shall be of good moral character. The Administrator may reject the nomination of any candidate whose character is incompatible with the Academy's standards. No person who has been dismissed or compelled to resign from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, the Academy or a State maritime academy for improper conduct shall be eligible for appointment as a midshipman at the Academy. No person whose last discharge from any armed force was under conditions other than honorable or who has had a merchant mariner document removed or suspended for cause shall be eligible for appointment as a midshipman.

(d) *Investigation.* To be eligible for appointment, all candidates who are United States citizens shall be completely loyal to the United States and shall meet the requirements established by the Department of the Navy for designation as Midshipman, USNR (including the Merchant Marine Reserve, USNR). Candidates for appointment shall execute documents approved by the Administrator for the purpose of a security and suitability investigation. Appointment as a Midshipman, USNR (including the Merchant Marine Reserve, USNR) shall be a condition of admission for an individual who is a citizen. A candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation shall be subject to immediate separation should the candidate, as a result of the investigation, fail to meet the requirements established for appointment as Midshipman, USNR.

(e) *Waivers.* There shall be no waivers of general eligibility requirements.

§ 310.55 Scholastic requirements.

(a) *Academic requirements—(1) Credits.* Applicants shall have satisfactorily completed their high school education at an accredited secondary school, or equivalent, and shall present at least 15 units of credit for subjects acceptable to the Academy, comprised of:

(i) 7 required units, as follows:

(A) 3 units of Mathematics (from algebra, geometry and trigonometry);

(B) 3 units of English; and

(C) 1 unit of Physics or Chemistry.

(ii) 8 other units, preferably chosen from the following fields:

(A) Additional methematics and science;

(B) Foreign language;

(C) Economics; and,

(D) Social science.

(2) *Evidence of academic work.* Before approval of an application, each applicant shall submit evidence showing completion of high school education, or showing that such education will be completed no later than June 30 of the year in which admission is sought.

(b) *Scholastic examinations—(1) Required entrance examinations.* Applicants shall qualify in either the College Board's Scholastic Aptitude Tests (SAT) or the American College Testing Program (ACT) examinations, administered nationally on scheduled dates at convenient testing centers. A candidate electing to use the College Board shall take both the mathematics and the verbal section of the SAT. A candidate electing to use the ACT, shall take all the tests, namely, English, Mathematics, Social Sciences and Natural Sciences. Minimum qualifying scores on the entrance examinations will be determined by the Superintendent of the Academy for each entering class prior to any offers of appointment for the particular class. Any score below the minimum on any one section of an examination shall make the nominee ineligible for admission. All examination costs shall be borne by the applicant. Nominees shall take all the required examinations by the February testing date in the year for which they seek appointment, unless the Academy's Admissions Office grants special authorization to take later examinations.

(2) *Forwarding test results.* Candidates shall be responsible for requesting the testing services to submit their scores directly to the Academy.

(3) *Test information.* Information on the entrance examinations may be obtained from—

The candidate's high school guidance office; or,
College Board, P.O. Box 592, Princeton, N.J. 08540; or,
College Board, P.O. Box 1025, Berkeley, CA. 94701; or,
American College Testing Program, P.O. Box 168, Iowa City, IA 52240.

(c) *Prior Scholastic Record.* Applicants shall demonstrate scholastic achievement by having attained a relatively high standing in relation to their fellow students and by having shown proficiency in mathematics and science courses. With respect to applicants who completed high school at least one year before applying for admission to the Academy, consideration will be given to satisfactory college level study or any special study undertaken to strengthen their academic backgounds, particularly in respect to determining whether such supplementary academic activity offsets any deficiency in high school scholastic records.

(d) *Waivers.* No waivers of scholastic requirements will be granted.

§ 310.56 Physical requirements.

(a) *Physical standards.* (1) A candidate shall meet the physical requirements prescribed by the Department of the Navy for appointment as Midshipman, USNR (including the Merchant Marine Reserve, USNR) and the requirements prescribed by the U.S. Coast Guard for original licensing as a third mate and third assistant engineer. All candidates shall have color perception and refractive error within the limits prescribed by the Department of the Navy or by the U.S. Coast Guard, whichever are higher.

(2) The requirement to meet these standards is a continuing one and shall apply through graduation from the Academy. Failure to meet the standards while attending the Academy is grounds for, and may lead to disenrollment. Individuals who have completed at least two years of study and, as a result of an accident, illness or other cause (during official duty), fail to meet this requirement may be permitted to remain at the Academy at the discretion of, and under conditions set by, the Administrator. Those individuals permitted to remain through graduation will agree to fulfill aspects of the service obligation which they are capable of, as deemed appropriate by the Administrator.

(b) *Qualifying physical examinations.* All candidates for the Academy shall

have a physical and dental examination conducted by a service academy examining facility designated by the Service Academies Central Medical Review Board. The required physical examination shall occur within 1 year preceding the date of admission to the Academy. Although there is no charge for such examination, all expenses (including travel, meals and hotel accommodations) incurred in obtaining such examination shall be borne by the applicant. Candidates may be subject to reexamination upon reporting to the Academy and at any time while attending the Academy.

(c) *Physical reexamination.* A candidate who is rejected for failure to meet the physical requirements may request either a reevaluation of the examination results or a reexamination. A midshipman failing to meet the physical requirements while attending the Academy is entitled to make the same request.

(d) *Waivers.* No waivers of physical requirements will be granted.

§ 310.57 Application and selection of midshipmen.

(a) *Application.* All candidates shall submit an application for admission to the Academy's Admissions Office. Prospective candidates also should submit an application, but are not considered official candidates until their nominations are received. Candidates shall submit with their applications an official transcript and personality record from the candidate's high school and, if applicable, such records from any school attended after high school graduation. Application forms are available upon request by writing to the Admissions Office at the Academy.

(b) *Selection of Midshipmen.* Selection of midshipmen for appointment to fill vacancies allotted to the various States and other locations, as specified in § 310.53(b) (1) and (2) of this subpart, shall be in order of merit. The order of merit shall be determined on the scores of the required entrance examinations, on assessment of the academic background of the individual and on such other factors as are considered by the Academy to be effective indicators of motivation and the probability of successful completion of training at the Academy. No preference shall be granted in selecting individuals for appointment because one or more members of their immediate families are alumni of the Academy.

(c) *Notification of selection.* Results of the selection process will be made known about May 1 each year. The Academy shall advise each candidate and his or her nominating official of his or her status as a principal candidate, as an alternate candidate or as an unqualified candidate. Alternates will replace principal candidates who decline appointment or fail to meet the physical requirements or the security and suitability investigation.

(d) *Service obligation agreement.* Each candidate selected for appointment to the Academy after April 1, 1982, who is a citizen of the United States, shall sign a service obligation contract as a condition of admission. The contract is prescribed in § 310.58 of this subpart.

(e) *Reporting to the Academy.* Candidates who accept offers of appointment shall, pursuant to instructions issued by the Academy, report to the Academy on a specified date in mid-July for orientation and induction.

(f) *Oath.* Each midshipman who is a citizen of the United States shall take the following oath of office at the Academy:

"I, ————, having been appointed a midshipman to the U.S. Merchant Marine Academy, accept appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will comply with all the regulations of the U.S. Merchant Marine Academy; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

(g) *Birth Certificate.* Each candidate shall present a certificate of birth authenticated by an authorized official.

§ 310.58 Service obligation for students enrolled after April 1, 1982.

(a) *Form of service obligation contract.* The service obligation contract shall obligate each midshipman who is a citizen and who enters the Academy after April 1, 1982, to:

(1) Complete the course of instruction at the Academy, unless sooner separated by the Academy;

(2) Fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy;

(3) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from the Academy;

(4) Apply for an appointment as, accept any tendered appointment as and serve as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the United States Coast Guard Reserve, or any other Reserve component of an armed force of the United States for at least six (6) years following the date of graduation from the Academy;

(5) Serve the foreign and domestic commerce and the national defense of the United States for at least five (5) years following the date of graduation from the Academy:

(i) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Administrator), if the Administrator determines that service under paragraph (a)(5)(i) of this section is not available;

(iii) As a commissioned officer on active duty in an armed force of the United States or NOAA; or

(iv) By combining the services specified in paragraphs (a)(5)(i), (ii) and (iii) of this section; and,

(6) Submit periodic reports to the Administration to establish compliance with all the terms of the contract.

(b) *Service as a merchant marine officer.* For purposes of the service obligation, a satisfactory year of service on vessels as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

(c) *Marine-related employment.* (1) Graduates who do not meet the sea service requirement in paragraph (b) of this section and who claim employment in a United States maritime-related industry, profession or marine science as meeting all or part of the service obligation under paragraph (a)(5) of this section and the serve obligation contract shall submit evidence to the Administration that they have consientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence submitted, and other information available to the Administration, shall be considered in any finding. In view of current and projected employment opportunities afloat, the Administrator will grant the shoreside employment option infrequently and only on the basis of comrehensive evidence.

(2) The Administrator may consider positions of operational, management or

administrative responsibility, including, but not limited to, the following marine-related categories, to be under the provisions of § 310.58(a)(5)(ii) of this subpart and the service obligation contract: Civilian employment in Federal and State agencies related to maritime affairs; steamship companies; stevedoring companies; vessel chartering and operations; cargo terminal opeations; naval architecture; shipbuilding and repair; municipal and State port authorities; and port development, marine engineering, and tug and barge companies.

(d) *Reporting requirements.* Each graduate shall submit an employment report to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590, on or before July 1 of each year following his or her year of graduation for five consecutive years. Each graduate granted a deferment to engage in a graduate course of study shall submit annual reports for the extension of the five (5) year obligation period resulting from such deferment. The Administration shall provide reporting forms. However, non-receipt of such form shall not exempt a graduate from submitting employment information as required by this paragraph. The reporting requirements for graduates will not become effective until there are Academy graduates subject to this provision, no earlier than 1986. The specific form to be developed by the Administration will be subject to approval by the Office of Management and Budget.

(e) *Breach of contract.* (1) If the Administration determines that any individual who has attended the Academy for not less than 2 years has failed to complete the course of instruction at the Academy, the Secretary of the Navy may order that individual to active duty in the U.S. Navy, at a rating determined by the U.S. Navy, to serve for a period of time not to exceed 2 years. The Administration shall submit the list of those who have breached their service obligation contract to the Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508.

(2) If the Administration determines that a graduate of the Academy has broken his or her agreement under paragraphs (a)(2) through (6) of this section and the service obligation contract, such individual may be ordered to active duty to serve a period of time not less than three (3) years and not more than the unexpired portion of the service required under said subparagraph (5) and the contract. The Administrator, in consultation with the Department of Defense and the U.S. Coast Guard, shall determine in which service the graduate shall serve and the period of time. The branch of service in which the individual serves shall determine the rank or rating of the individual.

(f) *Waivers.* The Administrator shall have the discretion to grant waivers of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590.

(g) *Deferments.* In exceptional cases, the Administration may grant a deferment of all or part of the agreement under paragraph (a)(5) of this section and the service obligation contract, for a period not to exceed 2 years, only for graduates considered to have superior academic and conduct records while at the Academy and only for the purpose of entering a marine or maritime-related graduate course of study approved by the Administrator; *Provided,* That any deferment of service as a commissioned officer under paragraph (a)(5)(iii) of this section and the service obligation contract shall be subject to the sole approval of the Secretary of the department which has jurisdiction over such service (including the Secretary of the department in which the U.S. Coast Guard is operating and the Secretary of Commerce with respect to NOAA). A graduate shall make application for such deferment through the Superintendent of the Academy, who shall foward each application, togther with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590 for appropriate action.

(h) *Determination of compliance with service obligation contract; deferment; and review procedures.* (1) A designated official of the Administration shall:

(i) Determine whether a student or graduate has breached his or her service obligation contract;

(ii) Grant or deny a deferment of the service obligation, except for obligations otherwise a part of the graduate's commissioned officer status; and,

(iii) Grant or deny a waiver of the requirements of the service obligation contract in cases of undue hardship or impossibility of performance due to accident, illness or other justifiable reason.

(2) A Review Panel, consisting of a representative of the Administration serving as Presiding Official and representatives of the Department of the Navy, NOAA and the U.S. Coast Guard, shall review decisions of the designated official under paragraph (h)(1) of this section upon written request of the student or graduate.

(3) The Administrator shall adopt procedures for the Review Panel. Actual notice of such procedures will be given to each midshipman at the time of enrollment in the Academy.

(4) The decisions of the Review Panel shall be final.

§ 310.59 Courses of instruction.

(a) *At Academy.* Three major curriculums are offered: Nautical Science, for the preparation of deck officers; Marine Engineering, for the preparation of engineering officers; and the Dual License Program, a combined course which leads to licenses in both specialities. All midshipmen who are citizens shall take naval science courses prescribed by the Department of the Navy. All curriculums include general education courses and electives.

(b) *Sea year.* Midshipmen spend one-half of their sophomore (third class) year and one-half of their junior (second class) year training at sea aboard one or more merchant vessels. In addition to practical shipboard assignments, midshipmen are required to complete written study assignments incorporating material from the major segments of the Academy curriculums.

§ 310.60 Training on subsidized vessels.

All operators of subsidized merchant vessels, in accordance with contractual arrangements, are required to employ for training at least two midshipmen, as assigned by the Superintendent of the Academy, which employment shall be in accordance with the following provisions.

(a) *Work assignments.* All practical work assignments for midshipmen shall be in accordance with courses prescribed by the Superintendent of the Academy.

(b) *Working hours.* In order to permit midshipmen to complete their academic assignments, vessel employers shall not require midshipmen to work more than 8 hours each day. Midshipmen shall devote at least 3 hours of their own time each day to study.

(c) *Pay.* Midshipmen shall receive pay, while employed aboard merchant vessels, at the rate of $461.40 per month directly from their steamship company employers. The employers also shall pay the midshipmen such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel in which the midshipmen are employed.

(d) *Berthing and messing.* While aboard ship, midshipmen shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers.

§ 310.61 Training on other vessels and by other facilities or agencies.

The Administrator may arrange for training of midshipmen on Government-owned vessels, in cooperation with other governmental and private agencies, and on other vessels documented under the laws of the United States if the owner of such vessel cooperates in such use. Midshipmen may be assigned for training in shipyards, plants, and industrial and educational organizations for instructional purposes only.

§ 310.62 Allowances and expenses; required deposit.

(a) *Items furnished.* Each midshipman shall receive: free tuition, quarters and subsistence; limited medical and dental care; and certain travel expenses, in accordance with chapter 5, part A, of the Joint Travel Regulations For Members Of Uniform Services, Vol. 1 (U.S. Department of Defense publication, Serial No. 0516–LP–255–0265), while traveling under official Academy orders.

(b) *Required Deposit.* Prior to admission to the Academy, each midshipman shall make a specified deposit, as established by Academy regulations, to help defray the cost of items and services generally of a personal nature which are not provided by the Academy. Additional deposits, as prescribed in Academy regulations, are required to be made in subsequent years. Failure to make any required deposit will result in denial of admission, suspension or disenrollment.

§ 310.63 Uniforms and textbooks.

The Academy shall supply midshipmen uniforms and textbooks in accordance with Academy regulations.

§ 310.64 Privileges.

(a) Midshipmen may be granted a leave of absence of approximately four (4) weeks after completing each of the first, second and third years of training.

(b) Classes and exercises are suspended on New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and such other days as may be designated by the President as holidays for Federal employees.

(c) Midshipmen may be granted approximately 2 weeks leave during the period which includes Christmas Day and New Year's Day.

(d) Liberty and other privileges are granted to midshipmen meriting them under Academy regulations.

(e) Relatives and friends of midshipmen may visit at the Academy during such ours as the Superintendent may prescribe.

(f) There shall be a Ship's Service Store maintained as a non-appropriated fund activity at the Academy primarily to serve the needs of the midshipmen.

§ 310.65 Graduation.

(a) *Classes enrolled prior to April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the reguired course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Filing for a commission in the USNR (including the Merchant Marine Reserve, USNR); and

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be granted commissions as Ensign, USNR (including the Merchant Marine Reserve, USNR) by the Department of the Navy.

(3) In return for the education received at Government expense, each applicant shall sign an agreement to serve in one of the following categories immediately after graduation:

(i) Sail on his or her license at sea for not less than six (6) months each year for three (3) consecutive years; or

(ii) Sail on his or her license at sea for not less than four (4) months each year for four (4) consecutive years; or

(iii) Apply for and serve on active duty for training on board a U.S. Navy ship for a minimum period of thirty (30) consecutive days each year for a period of three (3) consecutive years, and be either employed ashore for the balance of each year in some phase of the maritime industry or engaged in full-time graduate studies related to the maritime field; or

(iv) Apply for and serve on full-time active duty as a commissioned officer in a uniformed service of the United States for a period of 3 consecutive years.

(b) *Classes enrolled after April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Application for an appointment, and acceptance if tendered of an appointment, as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the U.S. Coast Guard Reserve, or any other Reserve component of an armed force of the United States; and,

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be commissioned as a reserve officer in an armed force as described in paragraph (b)(1) of this section.

(3) The service obligation incurred by graduates is prescribed in § 310.58 of this subpart.

§ 310.66 Foreign students.

(a) *Appointments from the Trust Territory of the Pacific Islands.* The Administrator may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy. Not more than 4 such individuals may receive instruction at any one time. Residents of the Trust Territory of the Pacific Islands are neither citizens nor nationals of the United States.

(b) *Appointments from the Northern Mariana Islands.* The Governor of the Northern Mariana Islands may nominate individuals for one position each year allocated to residents of the Northern Mariana Islands. Such residents are neither citizens nor nationals of the United States.

(c) *Appointments from nations located in the Western Hemisphere.* The President may designate individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. Not more than 12 individuals

may receive instruction under this Subsection at any one time, and not more than 2 individuals receiving instruction under this Subsection at any one time may be from the same nation.

(d) *Appointments from nations other than the United States.* In addition to the appointments under paragraphs (a), (b) and (c) of this section, the Administrator, with the approval of the Secretary of State, may permit individuals from any nations other than the United States to receive instruction at the Academy. Not more than 30 such individuals may receive instruction at any one time.

(e) *Candidate Sponsors.* A representative of the Administration or a diplomatic representative of the United States in the candidate's country of residence will be designated as the Candidate's Sponsor. It will be the responsibility of the Candidate's Sponsor to act as liaison with the appropriate officials of the candidate's country of residence and to coordinate all activities, including funding arrangements, entrance examinations, medical examinations, country clearances, travel papers, transportation to the Academy, obtaining the necessary designation by the Department of the Interior in the case of candidates from the Trust Territory of Pacific Islands under paragraph (a) of this section, the nomination of the Governor of the Northern Mariana Islands under paragraph (b) of this section, the nomination of a designee of the President in the case of candidates from nations located in the Western Hemisphere under paragraph (c) of this section, and the approval of the Department of State in the case of candidates from nations other than the United States under paragraph (d) of this section. In addition, the Candidate's Sponsor shall furnish to the Admissions Office of the Academy a report as to the candidate's proficiency in the use of idiomatic English.

(f) *Admissions Procedure*—(1) *Applications.* Applications for enrollment of foreign students shall be processed through the appropriate diplomatic channels of the applicant's country and the appropriate offices in the United States Departments of State or of the Interior, whichever is applicable. Applications shall reach the appropriate office of the United States Government by January 1 of the year in which admission is sought. After endorsement by the authorized official of the United States Government, the application will be forwarded promptly to the Academy's Admissions Office.

(2) *Qualifications.* Each candidate shall:

(i) Be a bona fide citizen of the country transmitting the application and meet the requirements as to age and character set forth in § 310.54 of this subpart;

(ii) Possess the physical qualifications, specified in § 310.56 of this subpart, and undergo a physical examination as arranged by the Academy's Admissions Office;

(iii) Be proficient in reading, writing and speaking idiomatic English; and,

(iv) Satisfy the following scholastic requirements:

(A) Meet the minimum qualifying scores on the entrance examinations as specified in § 310.55 of this subpart. When available, special foreign language College Board examinations may be substituted for the College Board or American College Testing Program examinations. Detailed certificates covering schoolwork of foreign students are required. Transcripts shall be submitted in the English language.

(B) Submit a certificate from his or her Government that he or she is conversant with the literature of his or her native country and that he or she has completed a course in the literature of his or her native language generally equivalent to two (2) years of secondary schoolwork in literature in the United States. In lieu of this certificate, a candidate may produce evidence of having acquired the units for literature from accredited United States schools.

(g) *Cost of instruction.* Students admitted to the Academy pursuant to paragraphs (a), (b) and (c) of this section shall be subject only to the same fees as are paid by citizen midshipmen. The cost of instruction (including the same allowances as received by midshipmen at the Academy appointed from the United States) for students admitted to the Academy under paragraph (d) of this section must be reimbursed to the Administrator by the nation from which the student comes. Such reimbursement shall be the incremental cost of providing the instruction to each of such foreign students (including the cost of allowances). The amount of reimbursement shall be established by the Academy separately for each entering class and each upper class prior to January 1 of the year in which the academic year begins and will be payable annually in advance of commencement of the academic year. Instructions as to payment procedures will be provided with the statement of the amount to be reimbursed. Students admitted to the Academy pursuant to paragraph (d) of this section shall pay the same fees paid by citizen midshipmen.

(h) *Uniforms, textbooks and allowances.* The Academy shall provide to foreign students receiving instruction at the Academy all required uniforms and textbooks and allowances for transportation as are provided to citizen midshipmen.

(i) *Rules and regulations.* Subject to such exceptions as shall be jointly agreed to by the Administrator and the Secretary of the Interior with respect to individuals from the Trust Territory of the Pacific Islands, foreign students, including students from the Northern Mariana Islands, receiving instruction at the Academy shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduation as citizen midshipmen; but such persons shall not be entitled to hold any license authorizing service on any merchant vessel of the United States solely by reason of graduation from the Academy.

(j) *Oath.* In lieu of the oath of allegiance to the United States, a substitute oath shall be required of students who are not citizens of the United States, as follows:

"I, ————, a citizen of ————, aged — years and — months, having been appointed to receive instruction at the U.S. Merchant Marine Academy, do solemnly swear (or affirm) to comply with all regulations of the U.S. Merchant Marine Academy and to give my utmost efforts to accomplish satisfactorily the required curriculum with the full knowledge that I shall be disenrolled from the U.S. Merchant Marine Academy if deficient in conduct, health or studies."

§ 310.67 Academy regulations.

The Superintendent of the Academy is delegated authority to issue all regulations necessary for the accomplishment of the Academy's mission.

(Catalog of Federal Domestic Assistance Program No. 11-507 U.S. Merchant Marine Academy (Kings Point))

Dated: May 13, 1982.

By order of the Administrator of the Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82-13665 Filed 5-19-82; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 581

[Docket No. 73-19; Notice 30]

Bumper Standard; Notice of Intent

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of intent.

SUMMARY: This notice describes future actions planned by the National Highway Traffic Safety Administration under the Motor Vehicle Information and Cost Savings Act to encourage and ensure the maximum availability to individual consumers of those bumper systems, options, and innovative designs which are the most cost effective for such consumers, and to develop and collect reliable information on passenger car bumper system performance above and, by separate rulemaking actions below, the minimum requirements of the agency's bumper regulation. This notice supplements the agency's rulemaking action amending the test impact speeds and damage criteria of the Part 581 Bumper Standard, and is intended to maximize the consumer and public net benefits of bumper regulation and to develop useful information for future analysis.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Brownlee, Director, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: By separate notice issued this day, the National Highway Traffic Safety Administration (NHTSA) has amended the Part 581 Bumper Standard (49 CFR Part 581), which prescribes minimum damage resistance performance requirements for passenger cars in low speed collisions. The standard establishes test procedures in which a vehicle must withstand a series of impacts with a fixed collision barrier and a pendulum test device at specified impact speeds. The amendment modifies the impact speeds for bumper testing from 5.0 mph for longitudinal barrier and pendulum impacts and 3.0 mph for corner pendulum impacts to 2.5 mph for longitudinal and 1.5 mph for corner impacts. Damage resistance requirements are also modified to eliminate prohibitions on any damage to the bumper system itself in test impacts.

The Part 581 Bumper Standard was established under the concurrent authority of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) (15 U.S.C. 1901, *et seq.*) and the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, *et seq.*). The former statute directs the agency to set bumper standards which seek to obtain the maximum feasible reduction in costs to the public and the consumer. In furtherance of this goal, and as a supplement to the agency's action today in amending the Part 581 requirements, the agency intends to initiate two major programs to assure that cost savings to different sectors of the public and the consumer are maximized through the use and availability of cost-beneficial bumper designs providing different levels of protection.

Agency Bumper Test Program

The first major initiative contemplated by the agency would involve a new testing program to be undertaken by NHTSA to determine the extent of actual bumper protection offered by particular bumper systems on new vehicle models. Under such a program, the agency could, on its own initiative or at the request of vehicle manufacturers, perform bumper testing to determine whether particular bumper systems in fact meet the Part 581 damage resistance criteria when tested at impact speeds greater than those required by the standard.

Testing could be performed by NHTSA in accordance with the existing Part 581 test protocol, or under new procedures to be developed by the agency. However, the objective would be to assess the actual levels of performance offered by bumper systems. The testing program would, of course, not susbstitute for either the manufacturers' responsibility to certify compliance, or the agency's responsibility to conduct appropriate testing to determine compliance with the new standard.

NHTSA believes that the contemplated test program would further the objectives of Titles I and II of the Cost Savings Act. It would provide maximum incentives for innovation and the development of improved bumper technology, and maximum net benefits to the public and consumers, by encouraging the availability of systems that in fact provide higher levels of benefit, at higher levels of cost, than those which were determined to be most beneficial for all consumers and all cars in the setting of the Part 581 standard.

This program would encourage manufacturers with innovative, efficient bumper designs providing additional damage resistance performance to market those systems using government test data to support their claims of superior bumper system performance by vehicles equipped with upgraded bumper systems as either standard or optional equipment. Such a program would be proposed and considered in consultation with appropriate other regulatory agencies, including the Federal Trade Commission.

Such marketing would create the opportunity for individual consumers who place a high value on the intangible benefits of avoiding low speed collision damage, i.e., savings in time and inconvenience, to purchase bumper systems which, while not the most beneficial to consumers in general, may be preferable to the individual consumer. To the extent that some consumers are willing to pay more for greater levels of bumper protection, these payments would represent a subsidy to the insurance industry in terms of reduced claims and overhead expense. This cost savings may be passed on to consumers in general in the form of lower insurance premiums. In this way, net benefits to the public would be increased.

The program would also provide consumers with independent confirmation of manufacturers' bumper performance claims to assure that purchasing decisions are based on the most accurate information available. In this way, maximum marketplace freedom for informed selection among alternative bumper systems would be encouraged, and consumers would be provided with the opportunity to purchase addjtional bumper protection in an informed manner, should they consider such protection desirable.

Finally, the program would provide valuable assistance to insurance companies by generating information on which discounts for improved bumper performance could be based. Such discounts could in turn provide further incentives for manufacturers to develop improved bumper designs.

Alternative Requirements for Particular Vehicle Classes

The second major initiative planned by the agency would involve a program by which in separate rulemaking proceedings the agency might further amend the Part 581 Bumper Standard to establish alternative standards for particular vehicle classes. The Cost Savings Act authorizes NHTSA to promulgate bumper *standards* relating to the reduction of vehicle damage in low speed collisions. Consistent with this directive, the agency believes that standards establishing different levels of protection for different classes of vehicles may be an additional and

appropriate means of maximizing benefits to consumers.

Under the contemplated program, the agency would invite petitions for rulemaking from manufacturers with alternative bumper designs shown to be capable of providing net benefits to the public and consumers under the terms of the Act. Manufacturers would be asked to provide with their petitions the best available cost, weight and other data relating to bumper systems of particular classes of vehicles and existing and contemplated bumper system designs. Based on this information, the agency would be able to refine its own analysis of bumper system costs and benefits as it applies to particular groupings of vehicles and propose rulemaking to establish alternative bumper performance standards for those vehicle groupings. Of course, the effect on vehicle safety would be considered in any such rulemaking action. NHTSA would also determine the extent to which consumer information must be provided to advise consumers of the existence of alternative standards and the economic and other effects of compliance by particular vehicles with those alternative standards.

Such alternative standards would provide increased design flexibility and potential added cost savings for consumers. Moreover, such standards would permit the effect of economic forces, including insurance premium rate setting, to be assessed, and would provide maximum incentives for technological innovation.

Finally, by furthering technological development and maximizing economic incentives to design and offer more efficient and effective bumper systems, the agency believes that the contemplated testing and alternative standards programs would also contribute to the availability of additional and more reliable empirical data on alternative bumper systems. Such data would be of value to the agency in determining the need for possible future regulatory actions concerning the bumper standards. In this way, the objectives of the Cost Savings Act would be furthered by the contemplated programs.

This notice is not a notice of proposed rulemaking. Appropriate administrative and rulemaking actions will be separately taken to implement the plans described in this notice. In accordance with the requirements of the statutes cited above, the Administrative Procedure Act (5 U.S.C. 553) and agency regulations, notice of proposed rulemaking and opportunity for written and oral comment will be provided as appropriate with respect to any actions involving modification of NHTSA regulations.

(Sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); secs. 103, 119, Pub. L. 89-563, (80 Stat. 718 (15 U.S.C. 1392), 1407); delegation of authority at 49 CFR 1.50)

Issued on: May 14, 1982.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 82-13649 Filed 5-14-82; 3:11 pm]

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49 CFR Part 581

[Docket No. 73-19; Notice 29]

Bumper Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Bumper Standard to reduce the test impact speeds required by that standard to 2.5 mph for longitudinal front and rear barrier and pendulum impacts and 1.5 mph for corner pendulum impacts. The notice also amends the damage resistance criteria of the standard to eliminate limitations on the damage which may be incurred by the bumper face bar and associated components and fasteners in bumper testing.

The agency finds that under this action net benefits will accrue to the public and to the nation's consumers. This action is thus required by the mandate of the Motor Vehicle Information and Cost Savings Act that any bumper standard issued under that statute "seek to obtain the maximum feasible reduction in costs to the public and to the consumer," taking into account the costs and benefits of implementation, effects on insurance and legal costs, savings in consumer time and inconvenience and considerations of health and safety.

Any reduction in costs related to bumper systems, including savings from reduced fuel consumption, will exceed any reduction in benefits which may occur because of increases in damage, insurance costs, delay and inconvenience, and other matters. This action will thus increase and seek to maximize the net consumer and public benefits of the standard. The agency also finds that this action will cause no reduction in vehicle safety.

DATES: This action is effective July 6, 1982. Any petitions for reconsideration must be received by the agency not later than June 21, 1982.

ADDRESS: Any petition for reconsideration should refer to the docket number and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Michael Brownlee, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: The "Part 581 Bumper Standard" (49 CFR Part 581) specifies levels of damage resistance performance which passenger motor vehicles must provide in low speed collisions. Bumper performance is measured in test impacts with both a fixed collision barrier and a pendulum test device. Bumpers must meet damage criteria which preclude any damage at all to vehicle exterior surfaces, which ensure protection of various safety-related components of the vehicle, and which allow only minimal damage to the bumper itself.

Background

The history of the Part 581 bumper standard has been long, extremely controversial and fraught with uncertainty. The current action is the culmination of years of study, analysis and agency action and reaction.

Federal Motor Vehicle Safety Standard 215

In its initial efforts in the field of bumper regulation, the National Highway Traffic Safety Administration (NHTSA) issued Federal motor vehicle safety standard (FMVSS) 215, *Exterior Protection,* under the National Traffic and Motor Vehicle Safety Act (the Safety Act). 15 U.S.C. 1381 *et seq.* As initially implemented on September 1, 1972, that standard imposed requirements which prohibited damage to specified safety-related components and systems, e.g., headlights and fuel systems, in a series of perpendicular barrier impacts, at 5.0-mph for front and 2.5-mph for rear bumper systems.

One year later, several new requirements became effective under FMVSS 215. First, rear barrier impact speeds were increased from 2.5-mph to 5.0-mph. Second, the standard specified 5.0-mph perpendicular front and rear pendulum impacts and 3.0-mph corner front and rear pendulum impacts. Third, a bumper height requirement was in fact established by specifying that the longitudinal pendulum impacts must be made between a height of 16-20 inches. (The corner pendulum impacts were limited to a height of 20 inches until September 1, 1975, when the standard

specified that they must be made within the same 16–20 inch height range.)

Motor Vehicle Information and Cost Savings Act

On October 20, 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act, ("the Act"). 15 U.S.C. 1901 *et seq.* The stated purpose of Title I of the Act is to "reduce economic losses associated with low speed collisions of motor vehicles." 15 U.S.C. 1901(b). Section 102(a) directed the Secretary of Transportation [1] to promulgate bumper standards in accordance with the criteria of section 102(b) which requires that such standards—

> Seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:
> (A) The cost of implementing the standard and the benefits attainable as the result of implementation of the standard;
> (B) The effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;
> (C) Savings in terms of consumer time and inconvenience; and
> (D) Considerations of health and safety, including emission standards.
> 15 U.S.C. 1912(b)(1).

The Act also provides that the bumper standards must not conflict with motor vehicle safety standards issued under the Safety Act. 15 U.S.C. 1912(b)(2).

Adoption of the Part 581 Standard

Pursuant to both the new authority of the Act and that of the Safety Act, NHTSA established the Part 581 Bumper Standard in 1976. 41 FR 9346 (March 4, 1976). As adopted, this standard combined the safety features of FMVSS 215 with new damage resistance criteria intended to promote consumer cost savings.

The Part 581 standard established compliance test procedures which consist of a series of five test impacts on both the front and the rear bumper. Each test series includes one longitudinal barrier impact, two longitudinal pendulum impacts and two corner pendulum impacts.

The Part 581 standard sets forth substantive requirements in terms of damage resistance criteria which took effect in two stages. The first stage, or "Phase I" of the Part 581 standard, became effective on September 1, 1978, on which date FMVSS 215 was *ipso facto* revoked. Phase I incorporated the former FMVSS 215 safety criteria, and added new damage resistance criteria which prohibited damage to all exterior vehicle surfaces, e.g., sheet metal, *other than* the bumper face bar and related components and fasteners.

More stringent damage resistance criteria, known as the "Phase II" criteria, became effective one year later, on September 1, 1979. The Phase II criteria expanded Part 581 by also imposing limits on the amount of "dent" and "set" damage which could be sustained by the bumper face bar itself in the same series of test impacts. "Dent" refers to permanent deviation from the original contour of the bumper face bar in areas of contact with the barrier face or the impact ridge of the pendulum test device. "Set" refers to permanent deviation of the bumper from its original contour and position relative to the vehicle frame. Phase II limited allowable dent to ⅝ inch, and set to ¾ inch, each as measured thirty minutes after completion of each test impact.

Early Proprosals and Evaluations of the Bumper Standard

1973

NHTSA initially proposed a Part 581 standard in August 1973, while FMVSS 215 was in force, but after the passage of the Act. This 1973 proposal would have required protection against damage in 5.0-mph test impacts. 38 FR 20809 (August 3, 1973).

1975

NHTSA thereafter issued a second Part 581 proposal, in January 1975. This revised proposal would not only have reduced (at least temporarily) the impact speeds required by FMVSS 215, but also would have reduced the damage resistance criteria contained in the Part 581 proposal still pending from 1973. 40 FR 10 (January 2, 1975). These proposed reductions were based primarily on the results of two intervening agency-sponsored studies, which indicated that the cost and weight of many of the then-current production bumpers had made such bumpers no longer cost-beneficial. The 1975 proposal would also have reduced the number of longitudinal pendulum impacts from six front and six rear, to three front and three rear.

After considering information and arguments submitted in response to the August 1973 and January 1975 proposals, the agency issued yet another proposal in March 1975. 40 FR 11566 (March 12, 1975). At that time, the agency withdrew the January 1975 proposal regarding test speeds, and proposed instead only to amend the still pending 1973 proposal to reduce the number of longitudinal pendulum impacts to two front and two rear.

1976

The agency finally promulgated the Part 581 Bumper Standard in March 1976, specifying 5.0-mph test impact speeds and requiring a total of five barrier and pendulum impact tests for the front bumper and five for the rear.

1977

In 1977, however, NHTSA issued two further rulemaking proposals. The first would have delayed the effective date of the Phase II damage criteria one year. 42 FR 10862 (February 24, 1977). The second, which replaced the first, proposed three alternatives: (1) A one-year delay of Phase II; (2) a one-year delay with a consumer information program on bumper performance in the interim; and (3) an indefinite delay of Phase II and substitution of the information program. 42 FR 30655 (June 16, 1977). These proposals were withdrawn by the agency in November of that same year. 42 FR 57979 (November 7, 1977).

Also in 1977, NHTSA decided to undertake a series of long term studies of its existing and proposed rulemaking efforts. As a part of this initiative, it began a multi-year evaluation of the Part 581 Bumper Standard. This evaluation, which was released in April 1981, is discussed in detail below.

1978

In 1978, and after the effective date of the 5.0-mph, Phase I standard, the Senate Appropriations Committee included in its report on the fiscal year 1979 Appropriations Act for the Department of Transportation a directive that NHTSA conduct studies and analyses reevaluating to the maximum extent feasible the question of the level of bumper damage resistance which would be most cost-beneficial to the consumer. The Committee further directed the agency to modify the Part 581 standard (i.e., the standard to which this current rulemaking is addressed) in accordance with the results of such analyses. S. Rep. No. 938, 95th Cong., 2d Sess. 25 (1978).

1979

In February 1979, the agency completed a Preliminary Analysis which concluded that 2.5-mph bumpers offered approximately $77 more net benefits than 5.0-mph bumpers. In March 1979, the agency published an advance notice of proposed rulemaking seeking public comment on its February analysis. The notice indicated that the responses would be used to aid NHTSA in preparing a final report to the Senate Appropriations Committee and in

[1] The authority of the Secretary to promulgate safety standards has been delegated to the NHTSA Administrator. 49 CFR 1.51(a).

determining the possible need for changes in the Part 581 standard.

In June 1979, NHTSA published a "Final Assessment of the Bumper Standard". That document estimated the net benefits of alternative bumper standards specifying test impact speeds of 2.5 mph, 5.0 mph, and 7.5 mph. The agency at that time concluded that a standard specifying 5.0-mph impact speeds should be retained since it was believed to provide slightly more lifetime vehicle net benefits ($39) than one specifying 2.5-mph impact speeds. In December 1979, the agency updated its assessment based on comments received from the automotive and insurance industries. It concluded that the advantage of the 5.0-mph standard over the 2.5-mph standard was less than previously thought, offering only $11–$29 more lifetime vehicle net benefits than a standard specifying 2.5-mph impact speeds.

1980

In late 1980, during the final days of the 96th Congress, a House-Senate conference committee reported out a bill which would have statutorily reduced the test speed in the Part 581 standard to 2.5 mph for a two-year period. H.R. Rep. No. 1371, 96th Cong., 2d Sess. 25 (1980). Sharp differences of opinion regarding the relative merits of the agency's two 1979 bumper analyses were highlighted in the Congressional debates. See, e.g., Senate debate of September 25, 1980, 126 Cong. Rec. S13499–501. However, Congress adjourned without taking final action on the bill.

1981

In April 1981, NHTSA published a notice of intent to review the Part 581 standard and propose again to modify the requirements of the Part 581 Bumper Standard. 46 FR 21203 (April 9, 1981).

Also in April 1981, NHTSA completed and published its "Evaluation of the Bumper Standard," which it had begun in 1977. Based upon continually developing data and analyses, this report addressed in still further detail the costs and benefits of each phase of the agency's bumper requirements, beginning with the initial FMVSS 215 standard. The April 1981 Evaluation incorporated newly-developed data from various agency studies on insurance claims for vehicles manufactured since the Part 581 standard took effect, on the incidence and extent of low speed collision damage, and on bumper costs. Unlike previous studies, the Evaluation separately analyzed front and rear bumpers. It found that regulated front bumpers tended to be cost effective while rear bumpers were not. This study, in accordance with both the Senate's 1978 directive and the provisions of Executive Order 12291, formed the basis for the agency's undertaking the current rulemaking.

Current Rulemaking

October 1981 Proposal and Analysis

On October 1, 1981, NHTSA published a notice of proposed rulemaking (the NPRM) seeking comments on nine different alternatives for amending Part 581. 46 FR 48262. The proposals ranged from one reducng the test impact speed to 2.5 mph for rear bumpers only to one eliminating all test impact requirements for front and rear bumpers except as necessary to maintain a height requirement. Specifically, the nine alternatives were as follows:

Alternative IA would have reduced the test impact speeds for rear bumpers only to 2.5 mph for longitudinal impacts and to 1.5 mph for corner impacts. It would have maintained the test impact speed for front bumpers at 5.0 mph and would have maintained the Phase II damage resistance criteria. (5.0 mph front/2.5 mph rear, Phase II)

Alternative IB would have made the changes included in alternative IA and substituted Phase I damage resistance criteria for Phase II criteria for front and rear bumpers. (5.0-mph/2.5-mph, Phase I)

Alternative IIA would have eliminated the damage resistance criteria for rear bumpers only, with the exception of the criterion that is intended to ensure uniform bumper height by requiring bumper contact with a pendulum test device within a specified height range. It would have maintained the 5.0-mph test impact speed and Phase II criteria for front bumpers. (5.0 mph/height only, Phase II)

Alternative IIB would have made the changes included in alternative IIA and substituted Phase I criteria for Phase II criteria for the front bumper. (5.0 mph/height only, Phase I)

Alternative IIIA would have reduced the test impact speed for front and rear bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would have retained the Phase II damage criteria. (2.5 mph/2.5 mph, Phase II)

Alternative IIIB would have made the changes included in alternative IIIA and substituted Phase I criteria for Phase II criteria for front and rear bumpers. (2.5 mph/2.5 mph, Phase I. This alternative is referred to below as the 2.5-mph/2.5-mph alternative.)

Alternative IVA would have reduced the test impact speed for front bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would also have eliminated the damage criteria for rear bumpers with the exception of the bumper height criterion. (2.5 mph/height only, Phase I)

Alternative IVB would have made the changes included in alternative IVA and substituted Phase I criteria for Phase II criteria for front bumpers. (2.5 mph/height only, Phase I)

Alternative V would have eliminated the damage resistance criteria for front and rear bumpers, with the exception of the bumper height criterion (height only/height only).

The alternatives set forth in the NPRM were developed during the preparation of a Preliminary Regulatory Impact Analysis (PRIA) (Docket 73–19, Notice 27, No. 011).[3] The PRIA which was published for public comment simultaneously with the NPRM, built upon all of the agency's earlier evaluations and assessments. To encourage close scrutiny of the PRIA and the NPRM, and in recognition of the limited empirical data on several important issues, the agency specifically requested comment on 25 detailed questions which were set forth in the NPRM.

Using the present Part 581 standard for comparison, the PRIA estimated the changes in costs and benefits that were likely to occur if the standard were modified in each of the ways set forth in the October notice of proposed rulemaking. The PRIA concluded that the differences in probable net benefits among several alternative bumper standards were small. The results of the PRIA suggested that while 5.0-mph bumper requirements had in fact reduced lifetime repair costs for cars, they also had increased both car purchase prices and fuel consumption. The 5.0-mph bumper requirements were found to have decreased insurance company claims payments and overhead, but also to have increased the manufacturing costs of car companies.

[3] In preparing the PRIA, the agency also considered the possibility of raising, as well as lowering the required test impact speeds. The 1979 Final Assessment stated that a 7.5-mph bumper would have marginally greater net benefits than a 5.0-mph bumper. However, the Executive Summary for that document indicated that the conclusions regarding the 7.5-mph bumper were based on substantially less data than were the conclusions regarding the 5.0-mph bumper and thus that the conclusions about the 7.5-mph bumper were far less reliable. Subsequently obtained data and analyses have not provided any basis for placing more credence in those three-year old conclusions about 7.5-mph bumpers.

Public Meetings

The agency conducted two public meetings on the NPRM on October 22 and November 12, 1981, in fulfillment of the statutory requirement that all interested persons be given an opportunity to present orally data, views and arguments on the October 1981 NPRM. The agency scheduled two separate meetings instead of a single extended one in response to a request by insurance industry representatives. Those representatives requested an opportunity to introduce data relating to suggested new compliance technologies whose use would reportedly allow the existing requirements of the Part 581 standard to be retained with little if any modification, but at greatly reduced economic cost. In the notice announcing the meetings, the agency urged all interested parties to provide technical and economic data that would help focus the issues at the first public meeting, and indicated that the second meeting would be used to allow others to respond to testimony at the first meeting. 46 FR 48958 (October 5, 1981).

The views and arguments advanced by responding parties with substantial economic interests at stake, e.g., the insurance and automotive manufacturing industries, were similar to those previously expressed in response to earlier analyses, proposals, and requests for comments. However, commenters did submit significant new data on several issues, including those relating to the cost and weight of bumpers providing different levels of protection.

Postions of Interested Parties

Test impact speed. Insurance industry representatives, generally joined by consumer representatives, expressed their support for retaining the current Part 581 requirements, based upon assertions of favorable benefit and cost analyses of the current standard, safety considerations, and the legislative history of the Act. Insurance representatives further contended that the legislative history indicates a Congressional intent that bumper standards be established at a level of 5.0 mph. They strongly opposed the option of adopting Regulation No. 42 of the United Nations Economic Commission for Europe (ECE).[3]

Some insurance industry commenters contended that the record in this proceeding is insufficient to support any reduction of the damage resistance or safety requirements of the Bumper Standard below current levels. These commenters, joined by an organization presenting arguments on behalf of consumers, argued (1) that in order to amend the standard the agency must be able to establish affirmatively that any selected alternative is one which uniquely meets the statutory criteria of the Act and the Safety Act, in a manner superior to any and all others, and (2) that on the record the agency is not able to make such a finding with respect to any particular alternative.

Auto industry commenters overwhelmingly supported the alternative proposing reduction of test impact speeds to 2.5 mph in longitudinal impacts and 1.5 mph in corner impacts, and substitution of Phase I damage criteria for Phase II criteria. Among the reasons stated in support of this alternative were assertions of cost-benefit analyses for that alternative more favorable to the consumer, the results of the agency's prior analyses, the similarity of this alternative to ECE Regulation No. 42, the greater relevance of the 2.5-mph design speed to the speed of the typical parking lot collision, and the enhanced propects of gathering field data on the relative merits of 2.5-mph and 5.0-mph bumpers.

Three foreign manufacturers stated that thay favored adoption of the requirements of ECE Regulation No. 42, but that the 2.5-mph/2.5-mph alternative was their second choice because of its similarity to the European standard. Several other manufacturers, while not advocating the adoption of the ECE requirements as such, noted the desirability of harmonizing United States and European bumper requirements. Some domestic and foreign automakers expressed reservations about adoption of the ECE standard in its entirety, but advocated adopting certain aspects of that standard, such as eliminating the fixed barrier test or establishing a single permissible bumper height.

A trade association representing materials suppliers registered its support for the 5.0-mph/5.0-mph standard, asserting that the standard provides the added advantage of affording actual protection at speeds above 5.0 mph. One bumper component manufacturer proposed the additional alternative of lowering the pendulum impact speed to 2.5 mph, while retaining the 5.0-mph impact speed for barrier tests. That commenter contended that the pendulum test, which concentrates force on a particular area of the bumper, is a disproportionately severe test which prevents use of optimum 5.0-mph bumper designs.

A number of private individuals also submitted views on the proposed alternatives. The majority of those commenting favored retention of existing Part 581 requirements, although apparently some comments were based on factual representations contained in media reports of the rulemaking proceeding, instead of the data and issues actually under review. See, e.g., Docket 73-19, Notice 27, No. 209. Insurance industry and public interest commenters claimed that public opinion favors the 5.0-mph/5.0-mph standard, and that significant, if not determinative, weight should be given to such alleged preferences.

Phase I-Phase II damage resistance requirements. Several commenters specifically addressed the issue of differences between the Phase I and Phase II damage criteria. Automakers addressing the issue uniformly favored return to the Phase I criteria. Two manufacturers advocated elimination of all criteria addressed to damage to non-safety components. The insurance industry generally favored retention of the Phase II criteria, as did a component parts manufacturer, although one insurance industry commenter advocated consideration of permitting nonself-restoring energy absorbing devices.

Other test procedure modifications. Commenters discussed several other alternative approaches to the Phase I-Phase II issue, including merely amending the bumper standard test procedures. One modification discussed by several commenters would allow manual repositioning of bumper or shielding-panel components during testing. Both insurance and auto industry commenters agreed that manual repositioning would be a desirable modification of the bumper system test procedure. However, some auto industry comenters also stated that eliminating the Phase II damage criteria would serve to alleviate much of the need for manual repositioning.

Three vehicle manufacturers and one component supplier recommended limiting the number of pendulum test impacts so that the bumper standard test procedure would more closely approximate real life experience. These commenters advocated reducing the number of pendulum impacts to one longitudinal impact and one corner impact per bumper, or to one

[3] ECE Regulation No. 42 requires that a car's safety systems continue to operate normally after the car has been impacted by a pendulum or moving barrier on the front and rear longitudinally at 4 kilometers per hour (about 2.5 mph) and on a front and rear corner at 2.5 kilometers per hour (about 1.5 mph) at 445 mm (about 18 inches) above the ground under loaded and unloaded conditions. See discussion under "Harmonization," below.

longitudinal and two corner impacts per bumper.

For additional details concerning comments on the NPRM, see the appendix to this notice.

Agency Decision

Drawing on the best available data, public comments submitted in response to the October 1981 NPRM, and comments presented at NHTSA's public meetings on October 22 and November 12, 1981, NHTSA has now completed a Final Regulatory Impact Analysis (FRIA) of the bumper standard alternatives. Docket 73–19, Notice 29, No. 001. Careful consideration was given to the data and analyses contained in the FRIA and all comments received in the rulemaking proceedings. Responses to all significant comments are contained either in this notice or the FRIA. Based on its review of all of these materials, the agency has decided to adopt the 2.5-mph/2.5-mph, Phase I alternative. That alternative reduces to 2.5 mph the front and rear longitudinal barrier and pendulum impacts for testing compliance with the safety and damage resistance criteria and substitutes Phase I damage resistance criteria for phase II criteria.

In the agency's judgment, neither costs savings not nor safety considerations warrant the retention of the current standard. Indeed, the agency believes that the changes in the damage resistance criteria and the compliance test speed are necessary in order to comply with the requirements of the Act that the standard seek to provide the maximum feasible reduction in costs to the public and the consumer.

As discussed in more detail below and in the FRIA, the extensive data analyzed by the agency and the reasoned assumptions made by the agency after opportunity for public comment have led the agency to the firm conclusion that the current 5.0-mph/5.0-mph standard does not meet the statutory requirements. Stated simply, the current standard does not provide or seek to provide the maximum feasible reductions in cost. Therefore, the agency has determined that the current standard can no longer be retained in accordance with the Act. Similarly, it is clear that a standard imposing a height only requirement for front and rear bumper systems would provide fewer net benefits than other alternatives considered in this rulemaking proceeding.

The agency recognizes that no single remaining alternative is dramatically superior in terms of net benefits over the wide ranges of reasoned assumption made about the values of certain important variables. However, after careful comparison of the current standard and the specific proposed alternatives under ranges of assumptions, the agency concludes that the 2.5-mph/2.5-mph, Phase I alternative best satisfies the statutory criterion that the bumper standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer."

The agency has concluded that the alternatives involving differential front and rear impact speed requirements are less desirable because of uncertainties surrounding the effects of impacts between bumpers with different levels of aggressivity. These alternatives received no support among commenters. Alternatives involving height-only requirements for rear bumpers appeared to provide slightly less net benefits than the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives under most sets of assumptions considered.

Alternatives which have higher impact speed requirements and would produce essentially the same net benefits, differ from the selected alternative principally in that they make an even trade of additional dollars saved in avoided damage for additional dollars spent for damage protection at such higher speeds. Those alternatives would thus fail to meet the test of the statutory criteria with respect to "maximum feasible reduction of costs." The initial direct costs to consumers of the selected alternative are less than those of that alternative which would in the agency's judgment be most likely to provide comparable net benefits, the 5.0-mph/2.5-mph alternative.

The agency has also concluded that reducing the impact speed to 2.5 mph and eliminating the Phase II damage criteria will not have an adverse effect on safety. Such amendments will have no discernible effect on the number of accidents, deaths or injuries that occur annually.

The new standard adopted in this notice will provide greater latitude and incentive for car manufacturers to improve bumpers through the innovative use of new designs and materials, while conforming to the clear Congressional directive that the agency promulgate and enforce a minimum performance standard seeking maximum feasible reductions in cost. Also, the chosen alternative best advances the goal of harmonization with international standards while meeting applicable statutory requirements.

Pursuant to Executive Order 12291, the agency has concluded that there is a strong and reasonable basis in the record of this rulemaking proceeding for the factual conclusions and choices of data and methodologies underlying the selection of the 2.5-mph/2.5-mph alternative.

Agency Rationale

The sharply opposed positions of the commenters on the many complex technical, analytical and policy issues raised in this proceeding provide dramatic evidence of the difficulty which the agency has faced in reaching this decision. The primary issues involved in the agency's decision are as follows:

Resolution of uncertainty. The Act directs not only that a bumper standard be adopted and maintained, but also that such standard be set at the particular level of performance which "seeks to provide the maximum feasible reduction of costs to the public and to the consumer," taking into account specified elements of costs and benefits.

On several of the issues presented in choosing among the various alternatives, the agency was confronted with uncertainties arising either from conflicts among data or from the absence or limited nature of relevant, reliable data.

Because of the prior history of the standard and the sequence of technology used by manufacturers to comply over time, field performance data under real world conditions are sharply limited to empirical data on two types of systems, as discussed elsewhere in this notice. As a result, the combination of the specificity of the statutory language and the limited nature of the data available has left the agency certain of the need to act, but marginally less certain as to which of the available alternatives and which means of analysis of such alternatives will produce the result most in conformity with the intent of Congress.

For several years, the agency has been taking all prudent steps to obtain more data to reduce uncertainty with respect to the appropriate standard and to analyze and account for the possible effects of remaining uncertainties on certain key variables. In a number of areas, more reliable data could not be developed by the agency. In the PRIA, the agency carefully identified and explained the assumptions it made in those areas and invited public scrutiny and comment. To ensure full discussion of all of the issues presented, the agency asked detailed questions regarding those assumptions in the October 1981 NPRM.

The agency's assumptions were the subject of extensive public comment. The agency received over two hundred comments from a full spectrum of interested parties and sought to gather

all available data on the subject of this proceeding. New data, estimates and arguments were received which have assisted the agency in adjusting and refining its analysis of the standard and the alternatives.

The agency believes that sufficient information exists to make all determinations required by applicable statutory criteria. The uncertainties confronting the agency now are significantly less than those which existed when the current standard was promulgated. The agency knows far more now about the benefits and costs of bumper standards with various levels of performance requirements than it did then. In the agency's judgment, there is no reasonable prospect of obtaining more definitive data under the continued application of the existing Part 581 standard.

The record is most clear on the issue of the present standard's noncompliance with the criteria in the Act. If the agency were now setting a bumper standard for the first time, it could not justify establishing a 5.0-mph/5.0-mph standard. The existing 5.0-mph standard provides significantly less net benefit to the public and consumers than would several of the proposed alternatives with less stringent performance requirements.

The record and empirical data before the agency are less definitive with respect to some aspects of the agency's assessment of the proposed alternative standards. Some uncertainty continues to exist with respect to several issues, including the proper economic value to be assigned to delay and inconvenience, the number of relevant low-speed impacts which a car may be expected to sustain over its lifetime, the proper economic value to be assigned to damage which car owners themselves elect not to repair, the proper factor to be applied to determine the relationship between increases in bumper weight and resulting increases in the weight of other vehicle systems and structures to accommodate the heavier bumpers (secondary weight), and the extent of weight reductions which would accrue if various alternative standards were adopted.

NHTSA has explored these areas of uncertainty to the limits of available data and appropriate analytical techniques. Ultimately, the agency has relied in these areas upon inferences from available data, informed judgment about engineering, technical, economic and legal matters, and the informed and expert opinion of commenters on the issue of which alternative level of performance requirements will best achieve the policy objectives set forth in both the Cost Savings and Safety Acts.

The agency has subjected its interim findings and conclusions to sensitivity analyses, to identify and isolate the most significant (i.e., outcome determinative) variables and to determine the levels of confidence which may be placed on the values ultimately assigned to such variables. Where NHTSA could not with certainty assign a single value to a variable determined to be significant, the agency in all cases employed a range of values based upon the best available information. Those ranges generally include the values recommended by the commenters. The use of these ranges permitted the agency to examine the sensitivity of the results of its analysis and ensure the integrity of the outcome.

Finally, the agency identified the sets of assumptions it believes are most probable, and subjected each of its comparative analyses to various combinations of such values. These choices and related assumptions are discussed below in this notice and in greater detail in the FRIA itself.

Selection of test speeds, cost savings considerations—threshold factors. In its efforts to ensure the fullest consideration of the current standard and the proposed alternatives, NHTSA analyzed the net benefits of the standard and each alternative both by the use of average values and the use of extreme values for those variables about which there was either a significant measure of uncertainty or sharp and irreconcilable differences of opinion among the commenters. Some of the extreme assumptions were favorable to the current standard, while others were favorable to a reduced standard. The extreme values so analyzed represent in most cases neither a probable nor a reasonable outcome of events. Such analysis illustrates the most extreme of the possible outcomes in order to ensure the fullest consideration of the results of the agency's action.

Under the three sets of those extreme assumptions deemed to be the more reasonable by the agency, the net benefit calculation was found to favor a reduced standard. In these comparisons, all but one alternative proposal proved superior to the 5.0-mph/5.0-mph standard in terms of net benefits. See Table X–9 of the FRIA.

Only under the fourth set of extreme assumptions considered by the agency did the current standard yield more net benefits than did the alternatives. See Table X–9 of the FRIA. However, the agency considers it virtually impossible that the factual elements of that combination of assumptions could occur in reality, in large part because of inherent contradictions in economic or behavioral results that would be associated with such alignment. See Chapter XI of the FRIA.

Therefore, the agency can not, consistent with its statutory mandate, retain the existing standard.

Similarly, alternative V, which would have eliminated all but the height requirement for both front and rear bumpers, also is found to fail to maximize net benefits to the consumer under the range of combinations of assumptions considered. No set of assumptions or average set forth in Tables X–9 and X–10 of the FRIA showed superior net benefits for alternative V. Accordingly, this alternative has been rejected by the agency.

Given the relatively flat nature of the cost and benefit curves over the range between the 5.0-mph/2.5-mph and 2.5-mph/height only alternatives, the choice among the remaining alternatives is more difficult. Particular sets of assumptions would suggest the superiority of various alternatives which retain some level of front bumper impact requirements but which would eliminate all impact requirements, and retain only a height requirement, for rear bumpers. However, any such apparent superiority in each case occurs only in the unique event of one combination of assumptions. Viewed as a whole, the data and probabilities associated with all combinations of assumptions preclude any reasonable finding that an alternative is superior where the range of necessary factual preconditions is so narrow.

First, under the sets of assumptions considered by the agency to be most likely or representative, the 2.5-mph/unregulated alternative cannot be found to be the alternative which is most likely to maximize net benefits. See Table XI–4 of the FRIA. Under all three sets of assumptions in that table considered by the agency to represent the most likely or average values for disputed elements of fact, the 2.5-mph/unregulated alternative provides fewer net benefits than does the 2.5-mph/2.5-mph alternative. Under two of those sets of facts, the net benefits of the 2.5-mph/unregulated alternative are also inferior to those of the 5.0-mph/2.5-mph alternative.

Second, while the net benefits of the 5.0-mph/unregulated alternative are closer to those of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, they are still inferior. The net benefits of that alternative exceed those of 2.5-mph/2.5-

mph alternative in only one instance in Tables X–9, X–10 and XI–4. In several instances, the 5.0-mph/unregulated alternative yields less net benefits than does either the 5.0-mph/2.5-mph or 2.5-mph/2.5-mph alternative.

Finally, there is another consideration which leads to the rejection of the 5.0-mph/unregulated alternative. Any alternative not providing front and rear impact protection at the same speed raises uncertainty about the aggressivity results or other effects of differential requirements.

Among the alternatives having differential requirements, the 5.0-mph/unregulated alternative has the most extreme differential. Since there are not any hard data on the effects of this differential, those effects could not be factored into the net benefit calculations in the FRIA. However, the agency's engineering judgment leads it to the conclusion that implementing a standard with such a differential would cause front bumpers to be more aggressive than rear bumpers. This aggressivity differential would cause rear ends of cars to receive greater but presently unquantifiable levels of damage in car-to-car collisions than they would if the impact speed requirements were identical.

The amount of any such additional rear end damage would offset in whole or in part any incremental benefits derived from requiring front bumpers to comply with more stringent requirements. Since these possibilities are not reflected in the net benefit figures for alternatives with differential front and rear impact speeds in Chapters X and XI of the FRIA, such net benefit figures would have to be considered overstated in the event that differential requirements were imposed.

The agency notes that implementing a standard with different front and rear bumper requirements could tend, in a front-to-rear collision between two cars, to have the undesirable effect of subsidizing some of the damage costs of the driver of the striking vehicle, who is most likely to be deemed under law to be at fault in causing the collision.

Finally, although commenters differed on the actual effects of differential impact speed requirements for front and rear bumpers, no commenter advocated adoption of a bumper standard requiring different test impact speeds, and some manufacturers suggested that consumer expectations would make bumpers subject to height only requirements unacceptable in the marketplace.

Selection of test speeds, cost savings considerations—final decision. The considerations discussed above and the requirement in section 102 that the agency's standard seek to maximize cost reductions thus necessitated the determination by the agency of which of the remaining alternatives, i.e., the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, would seek to provide the greatest superiority in net benefits.

Based on the analysis in the FRIA, the agency concludes that the 2.5-mph/2.5-mph alternative more fully satisfies all aspects of the statutory mandate than does the 5.0-mph/2.5-mph alternative. The agency's choice between these two alternatives was reached after comparing the estimated results of implementing these alternatives under all examined sets of extreme assumptions, as well as under those sets of assumptions deemed by the agency most representative or most likely to occur. Under the sets of extreme assumptions in Table X–9 of the FRIA, an equal number of sets support the choice of each of these two alternatives.

However, when the highly unlikely fourth set of assumptions in Table X–9 is discarded, and the net benefits developed using the first three sets of assumptions in lines 1 through 3 of that table are averaged to represent equal probabilities of outcome for each of the sets of facts (See line 1 of Table XI–4), the 2.5-mph/2.5-mph alternative is clearly superior. This alternative yields $42 in net benefits relative to the current standard, compared with $33 in net benefits for the 5.0-mph/2.5-mph alternative.

The agency's direct comparison of these two alternatives in Table XI–4 under other sets (lines 2 and 3 of that table) of assumptions discloses that the 2.5-mph/2.5-mph and the 5.0-mph/2.5-mph alternatives would yield varying net benefits that do not differ greatly.

The agency has noted above the absence of hard data that would be desirable in determining precise values for some of the variables involved in projecting costs and benefits. It is important to note, however, that the variables about which the sharpest disagreements of fact have arisen in the record, e.g., the frequency of low speed accidents, the value of delay and inconvenience, and the appropriate factor to apply to arrive at secondary weight, are in fact also those variables which are the least significant to the outcome of the agency's net benefit calculations. For example, as shown in Table XI–2 of the FRIA, using the value for *each* of these variables which most favors retaining the current standard would reduce the net benefits of the 2.5-mph/2.5-mph alternative by only $4–12 over the life of the car. A shift in the values assigned to these variables would thus be least likely to produce a change in the outcome of the agency's determinative net benefit calculations. Thus, the variables about which the greatest controversy has arisen are in most cases also those which are least important in the decision-making process.

In selecting this alternative, the agency was also guided by its conclusion that where two or more alternatives yield net benefits or ranges of net benefits which are difficult to distinguish, the cost savings goal of the Act is most fully satisfied by selecting the alternative with the requirements which impose the lowest direct, immediate costs.

The 2.5-mph/2.5-mph alternative is the one which imposes the least direct, immediate costs on the consumer, i.e., the least increase in the cost of a new car. To illustrate this point, if the unregulated bumper is considered the baseline, the agency's analysis indicates that the increase in direct and immediate cost to the consumer for bumper system components alone would be $21–41 for a car equipped to comply with the 2.5-mph/2.5-mph alternative, but $30–58, or 50 percent higher, for a car equipped to comply with the 5.0-mph/2.5-mph alternative. The choice of the 2.5-mph/2.5-mph alternative over the 5.0-mph/2.5-mph alternative reduces the direct bumper component cost increases by $9–17, and the difference would be even greater if secondary weight costs were considered. See Table VII–8 of the FRIA.

Selection of the alternative with less stringent requirements, and thus lower immediate costs, avoids forcing consumers to spend more in purchasing a new car in order to obtain what would only eventually, if at all, amount to equivalent net savings or benefits.

If the agency did not select the alternative with the lower immediate costs, the consumer would be required to spend additional money in pursuit of benefits whose occurrence and amount are less certain. The agency believes that the consumer is best served by an approach which in close cases favors the more certain over the less certain equivalent net benefit. NHTSA believes that this interpretation of the Act most fully implements the objectives of the Congress and of Executive Order 12291 and represents the soundest public policy.

The agency also must recognize, and if possible implement, the apparent distinction made in the Act between obtaining the "maximum feasible reduction of costs to the *public* and to the *consumer*" (emphasis added). The legislative history of the Act does not

suggest a reason for the apparent distinction between the public at large and those who may purchase cars. One possible interpretation of this distinction is that Congress meant to seek the maximum possible benefits for the public in general, including those not purchasing cars. Once the agency has determined that the net benefits of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives are close, the agency believes that the only interpretation which would give appropriate weight to the statutory distinction between the "public" and "consumer" would be the alternative which better permits the marketplace to work efficiently and to produce innovative designs, the implementation of which will reduce overall costs to society as well as the purchasers of new cars.

Several automobile manufacturers and component suppliers commented that reduction of the test impact speed to 2.5 mph would facilitate use of new components and technologies, including plastics, ultra-high strength steel, and single-unit bumper systems. NHTSA believes that such design flexibility would be beneficial to the public at this time for several reasons. Innovation could result in more effective bumpers at lower cost to the public than would otherwise be available. Innovation and variety will allow individual consumers to apply their own individual value determinations on such important issues as the cost of delay and inconvenience, by opting to purchase more protection than would be cost-beneficial to the consuming public at large under the Act. Innovation, variety and a range of implemented choices in the marketplace will permit the agency to monitor cost and benefit trends and collect data about different performance levels of bumpers in the future.

The 2.5-mph/2.5-mph alternative will permit more innovation than the 5.0-mph/2.5-mph alternative because the former allows wider design freedom. Moreover, the 2.5-mph/2.5-mph alternative will increase the economic incentive of the manufacturers to retool because the parts for the new designs could be used on both the front and rear bumper systems of a vehicle. Without such innovation and retooling, the designs of bumpers are more likely to remain static, at least in the short run, and the benefits of innovative designs will be unrealized or significantly delayed.

There are other considerations that support the selection of the 2.5-mph/2.5-mph alternative. As noted above, any alternative specifying the same front and rear impact speed is deemed preferable to alternatives involving differential front and rear test impact speeds since an alternative with symmetrical requirements would not raise uncertainty about the effects of differential requirements. Further, a bumper standard requiring differential front and rear impact speeds would lead to increased production costs and an increase in replacement part inventories as a result of probable losses in commonality of front and rear bumper components. Reduced commonality in a mass production market would be likely to increase the consumer cost of new vehicles and replacement parts.

In view of these differences between the alternatives and the probable consequences of the selection of each, the policies and requirements of the Act favor the choice of the 2.5-mph/2.5-mph alternative. As noted later in this preamble, the goal of section 102 is not to provide maximum protection against damage in low speed collisions without regard to the cost of such protection. Instead, the goal is to reduce front and rear end damage in low speed collisions under a statutory criterion and specific considerations that, when read together, indicate the most appropriate result is the one that minimizes the total consumer and public expenditure related to such damage and its prevention. The agency believes that the distinctions it has drawn between and the choices it has made among the alternatives are fully consistent with, and required in furtherance of, the policies of the Act.

Selection of test speeds; safety considerations. As discussed in more detail later, adoption of the 2.5-mph/2.5-mph alternative will not have any measurable effect on the risk that future accidents might be caused by safety components which malfunction due to damage incurred in prior low speed collisions and which are left unrepaired. Available data indicate that very few accidents occur as a result of malfunctioning of those vehicle components which are subject to the safety criteria of the bumper standard. The agency concludes that far fewer accidents could be attributed, and only by speculation, to a failure to repair such components after they had been damaged in the only type of collision relevant to this discussion, i.e., one which might occur at an impact speed between 2.5 mph and 5.0 mph.

Similarly, the agency concludes that reducing the bumper standard test speeds will not increase the risk that safety components damaged in such low speed collisions will cause injury in subsequent accidents caused by other factors. The only safety-related system that is covered by the safety criteria of the Part 581 bumper standard and that might contribute to injury in the event of an accident is the fuel system. However, the data relied upon by one commenter addressing this issue predated the effective date of FMVSS 301, Fuel System Integrity. That safety standard provides protection, independent of and substantially superior to that of the bumper standard, against the risk that fuel leaks will create a safety hazard in an accident.

The agency concludes also that reducing the test speeds for the safety criteria will not measurably affect the high-speed crash energy management of cars. The difference in the energy management capability of 5.0-mph bumpers and 2.5-mph bumpers is negligible at crash speeds such as those (30 mph) specified in the safety standards regulating the crashworthiness of new cars.

Finally, NHTSA concludes that reducing the bumper standard test impact speeds will neither create inconsistencies with any of the safety standards nor make compliance with those standards more difficult.

Corner impact speeds. It should be noted that selection of a 2.5-mph test impact speed for longitudinal impacts also necessitates the selection of a 1.5-mph corner impact requirement. The 1.5-mph corner impact speed represents an equivalent proportional reduction in the 3.0-mph corner impact speed in the current standard as compared to the reduction from 5.0 mph to 2.5 mph for longitudinal impacts. The agency has always established corner impact speeds at lower levels due to the greater damage potential of corner pendulum impacts relative to longitudinal pendulum impacts at the same speed. The greater relative severity of the corner impact results from the concentration of crash force on a single location, which is inherent in a corner impact, and the fact that impact absorbing devices are designed to provide maximum protection in the more common longitudinal impacts. If the proportional relationship of the longitudinal and corner impact speeds were not maintained, the effort to maximize net benefits would be frustrated.

Phase I versus Phase II. Making a choice between Phase I and Phase II damage resistance criteria was also difficult because of the limited empirical data available for comparing performance under the two sets of criteria. Phase I of the Part 581 standard remained in effect for only one model

year (MY), 1979, and available information indicates that many manufacturers proceeded directly to bumper designs intended to meet the Phase II requirements prior to their effective date. The information that is available from surveys of vehicle owners and from insurance files indicates no discernible difference between the net benefits of MY 1974–78 and MY 1980 bumpers. Even if this information did reveal a difference, there are no data which the agency could use to determine the relative contributions of Phase I and Phase II to those benefits.

No compliance testing of MY 1979 models was conducted by NHTSA. The agency's compliance test results for MY 1980 suggest greater levels of protection for MY 1980 cars than is found in empirical data on real world damage experience for Phase II bumpers. The agency believes that in such cases agency decisions must be more strongly influenced by real world data since they reflect actual experience and are more reliable indicators of future real world experience. The insurance claim and survey data reflect the myriad variations in accident conditions and circumstances encountered in actual driving. In contrast, the compliance tests involve a limited and idealized set of conditions and circumstances. Those tests were necessarily chosen by the agency with the knowledge that they were imperfect surrogates from which to predict on-road experience.

Those commenters addressing the issue generally noted the cost and weight savings available by deleting the Phase II requirements. Commenters also pointed out that the increased use of non-metallic face bars has decreased the visibility of dent and set and thus greatly changed the circumstances under which such damage must be evaluated. Moreover, as suggested in the comments, deletion of Phase II would eliminate present difficulties in evaluating minor damage in compliance testing. The agency has been unable to determine that there are any net benefits associated with the Phase II damage criteria, independent of impact speed requirements.

The agency has also noted and taken into account the factual information and assertions submitted by representatives of the insurance industry concerning the possible use of more economical compliance technology such as nonself-restoring energy absorbers. The use of such technology is prevented by the current Phase II requirements. The availability of such technology on new bumper systems is a desirable result, independent of the impact speed requirement imposed by the bumper standard. Retaining the Phase II requirements would inhibit the further development of such technology.

Finally, the agency took into account the importance of distinguishing in its analyses among favorable net benefit results attributable to impact speed reduction only, those results attributable to action with respect to Phase II only, and those results attributable to both aspects of the decision. Factual data exist in the record only with respect to the first and third of these areas. Thus, any attribution of benefits to the Phase II requirements would be too speculative as a basis for agency decision. The agency believes that the probable effect of its current decision will be the introduction of bumper systems exhibiting at least some characteristics of 5.0-mph, Phase I bumpers. Bumper face bars and reinforcements designed for 5.0-mph impacts, and therefore most probably capable of affording even greater actual protection as a result of over-design to ensure compliance, will undoubtedly continue to be used in at least some new cars in the short term. Effectively, 5.0-mph, Phase I bumpers will thus be produced under the new standard, on an interim basis and for some portion of the new car fleet. The performance of these cars can and will be monitored closely by the agency to estimate the actual effects of the shift to Phase I criteria.

For all of these reasons, the agency has concluded that the Phase II criteria are not justified and that those criteria should be deleted from the standard.

Removal of optional equipment during compliance testing. Several commenters contended that existing Part 581 test procedures restrict the installation of certain optional equipment prior to sale of a vehicle to a first purchaser. Although one domestic manufacturer stated that its optional equipment sales were not restricted, other automobile and equipment manufacturers commented that existing test procedures inhibit installation of fog lamps, running lights, and headlamp washers. Commenters recommended dealing with this problem by removing such equipment prior to testing, exempting such items from the protective criteria, or limiting testing to standard equipment only.

NHTSA believes that the safety value of optional equipment such as fog lamps has yet to be demonstrated conclusively. To the extent that the equipment does serve a safety function, permitting its removal during testing would encourage its installation and thereby promote safety. Further, distinguishing between optional equipment installed before the purchase of a new car and that installed after such purchase serves little purpose, since equipment installed after purchase would be just as likely to be damaged in a low-speed collision. Moreover, such a distinction unfairly discriminates in favor of aftermarket suppliers at the expense of manufacturers and dealers wishing to attach equipment prior to the sale of new cars. The agency also notes that possible cost savings from factory installation of optional equipment are lost if such installation is discouraged by the test requirements. For these reasons, the agency has amended the standard to permit removal of fog lamps, running lights, other optional equipment attached to the bumper face bar, and headlamp washers prior to testing.

Harmonization. The Trade Agreements Act of 1979 (19 U.S.C. 2532(2)), requires that the agency consider harmonization with international standards in its regulatory actions. In the present context, ECE Regulation No. 42 is relevant.

NHTSA has formally endorsed enhanced efforts at harmonization between and among international standards in presentations to the Group of Experts on the Construction of Vehicles (Working Party 29) which operates under the ECE's Inland Transport Committee. Explicit harmonization of a United States bumper standard with the ECE regulation could have some positive economic effects since domestic manufacturers might experience lower costs due to reduced need for differentiation in design and equipment between cars for sale in this country and cars for export. In addition, European manufacturers subject to the ECE regulation could experience similar reduced costs.

This consideration, however, cannot be deemed to be controlling where United States law creates specific performance or policy criteria for regulatory action. With regard to ECE Regulation No. 42, NHTSA has concluded that the Act imposes specific criteria relating to cost savings which the ECE regulation does not address. Further, it is noted that the Act mandates the bumper standards issued thereunder be drafted so that they regulate performance instead of directly regulating bumper design. Certain provisions of the ECE regulation would impose statutorily impermissible design restrictions on vehicles produced for sale in this country. Finally, NHTSA has concluded that potential bumper

mismatch problems could result from substituting the height requirement specified in that regulation for the requirement in the Part 581 Bumper Standard. NHTSA will continue to pursue the question of harmonization in appropriate forums, but at this time merely notes that the 2.5-mph/2.5-mph, Phase I alternative selected in this rulemaking is far more compatible with the ECE regulation than the current Part 581 standard or the 5.0-mph/2.5-mph alternative.

Number of pendulum impacts. Some commenters suggested that the number of pendulum test impacts required by the standard be reduced. However, given the likelihood that some cars may incur more than two low speed bumper impacts in their lifetime, and the possibility that all such impacts may be either longitudinal or corner impacts and may involve the same bumper, the agency has concluded that the current procedure is appropriate to assure that each bumper is able to withstand the impacts to which it may in fact be subjected over its lifetime.

Public opinion survey. Some commenters alleged that public opinion strongly favors the retention of bumper requirements at current levels and should control the agency's decision in this rulemaking. As evidence of public opinion, two commenters cited a survey conducted by the Opinion Research Corporation, Inc., (ORC) for the Insurance Institute for Highway Safety.

NHTSA disagrees with the commenters' suggestion about public opinion. First, the level of bumper standards established by the agency under the Act cannot be determined merely on the basis of what members of the public understand to be the relevant facts and issues, or what they themselves would prefer. The Congress has determined the public policy which must be applied by the agency, and the agency's decision must be reached in accordance with the statutory criteria. Those criteria do not include public preferences as such, although as noted in the FRIA, adequately demonstrated public preference may be relevant to assessments of future market demand and the response options available to the auto manufacturing and insurance industries.

Second, the agency does not believe that the ORC survey provides reliable evidence on public preferences regarding economic values associated with bumper alternatives before the agency. An analysis of the text of the survey discloses that the structure and specific questions asked did not compensate for the public's general lack of detailed information concerning the costs and benefits of bumpers. Yet the survey asked a variety of questions which could be meaningfully answered only by persons knowledgeable about such matters. Also, many of the specific questions may have inadvertently encouraged respondents to give inflated estimates of the value of the current bumper standard. For these and other reasons discussed in chapter III of the FRIA, the agency regards the ORC survey as an inconclusive indicator of informed public opinion.

Legal issues. Some commenters advocating retention of the current standard have questioned the adequacy of the record in this proceeding to provide a basis for decision and have challenged in advance the legal soundness of any decision to amend the standard.

In this rulemaking proceeding, the agency has compiled voluminous materials over a period of years which have been used in analyzing competing alternatives. Through the notice and comment process and two public meetings, the agency has received over two hundred comments from a full spectrum of interested parties and has gathered all available data on the subject of this proceeding. New data, estimates and arguments have been received which have assisted the agency in refining its analysis of the standard.

As noted above, the agency recognizes that a degree of uncertainty is present in some of its calculations and conclusions by virtue of the absence of conclusive real world data relating to certain categories of benefits and costs. However, this lack of factual certainty no more absolves the agency of its duty under section 102 of the Act to ensure that a bumper standard exists which in fact complies with the requirement to seek maximum feasible reductions in cost than could similar uncertainties have arguably absolved the agency of its duty to issue a standard in the first instance. Under the Act, the agency is directed to adopt and maintain a standard. That standard is further required to meet certain statutory criteria. Implicit in this and any similar statutory mechanism is both a prohibition against rescinding an existing standard altogether, and maintaining a standard which, on the basis of a developing evidentiary foundation is found either not to have any net benefits, or to have fewer net benefits than any one or more different standards. As noted above, explicit instructions to the effect were directed to the agency in 1978.

The agency does not accept an expansive view of the limitations imposed on the agency's action in this proceeding by the Act, as inferred by some commenters from the provisions of the Act, itself. The agency is cognizant of the relevant statutory criteria imposed by this organic Act and has acted in accordance with them.

The statute does not require, and the legislative history does not support, an inference of Congressional intent that the agency be completely certain regarding the relevant factual issues before it conducts rulemaking under this Act. To the contrary, the Act, its legislative history and Congressional action to date have emphasized the presence of significant uncertainty on all of the relevant issues discussed in this notice. Recognition of the uncertainty may be seen in, for example, the wording of the criterion in section 102 governing the setting of the level of the bumper standard. The agency is not required to establish a standard that *produces* the maximum feasible reduction in costs, but one that "seeks to obtain" such a reduction. The agency has always considered itself bound to proceed with continuing review and rulemaking even in the presence of uncertainty. This conclusion and interpretation of the statute is consistent with the agency's actions since enactment, and is explicitly reasserted in this notice.

The statute also does not mandate that the standard be set so as to require the use of the most protective bumpers which can be produced. From the beginning of its action under the provisions of the Act, the agency has always recognized that such bumpers would be so expensive to produce and replace that their use would involve a net economic loss for consumers. 38 FR 20899 (August 3, 1973). As the agency also noted in that notice, rulemaking under the Act involves the balancing of many factors to determine what level of performance is most beneficial to the public and the consumer.

As the agency interprets the Act and its history, the purpose of the Act's bumper provisions is to secure cost savings for the public and the consumer. The bumper provisions address the issues of the costs of damage in low speed collisions and the costs of avoiding that damage and authorize and direct the agency to set standards that minimize the combined total of these costs to the public and the consumer. The goal of seeking cost savings is promoted by setting the standards and as appropriate adjusting them toward the level where the marginal benefits equal marginal costs. That is, if raising bumper performance from its unregulated level yields more

incremental benefits, reflected in damage reduction, than the incremental costs of increased damage protection, the standard should be raised. The impact speed requirements should be raised to the point where the incremental increase in damage avoided equals the incremental increase in costs. This is the point at which the cost savings or net benefits are maximized.

Raising the requirements above that point of equality would not provide the public and consumer with any additional cost savings. Two possibilities exist regarding the relationship of incremental benefits and costs above that point. One is that incremental benefits will be less than the incremental costs at all points above the point of equality. In that event, raising the requirements above the point of equality would reduce the cost savings achievable at that point. The other possibility is a variation on the first in that incremental benefits will equal or at least appear to equal incremental costs over some range of requirement levels immediately above the point of equality. The FRIA suggests that there may be a range over which incremental benefits and costs appear to be roughly equal. Setting requirements within such a range would not, however, increase cost savings, and would thus be of questionable validity. It would result in a simple trading of dollars, that is, receiving only as much in reduced damage as one pays for increased damage protection.

In this rulemaking action, NHTSA has determined that the 2.5-mph/2.5-mph alternative is more likely than the current standard and the other alternatives to be the point of equality, that is, where the incremental benefits first equal the incremental costs. Accordingly, the agency has selected that alternative as the new standard. As noted above, setting a higher standard would not increase the savings to the public and consumers. A higher standard would only increase the direct, immediate costs which each new car purchaser must bear.

Some commenters have asserted that a 5.0-mph test impact speed is necessary to satisfy the expectations voiced in Congress during deliberations on the Act. While these expectations are relevant, the determinative fact in all instances must be what the Congress in fact did through legislative action. In the Act, the Congress did not set a particular standard, but instead adopted the maximum feasible cost reduction criterion, and required that bumper standards be set in accordance with it. The criterion is a deliberately flexible one which permits and even requires that bumper standards be adjusted based on available information.

Some commenters suggested that the agency is legally bound to maintain the Part 581 Bumper Standard at its present level because the standard incorporates the safety criteria of former FMVSS 215. One insurer asserted that the criteria in section 103(a) of the Safety Act must form a basis for any decision to amend the Bumper Standard. Those criteria require that a safety standard be practicable, be stated in objective terms, and meet the need for motor vehicle safety. 15 U.S.C 1392(a). Another insurer cited the legislative history of the Act in support of the proposition that Congress intended safety considerations to be controlling in establishing bumper standards.

Given the hybrid nature of the part 581 Standard, this rulemaking action was initiated under the concurrent authority of the Act and the Safety Act. Without deciding whether the criteria established for safety standards under section 103 must necessarily be applied in all cases under the Act where any safety relationship can be asserted, the agency has concluded, based on the discussion in this notice and the FRIA, that its actions in this proceeding are in all respects in accordance with the applicable criteria of the Safety Act itself.

By the same token, this action does not conflict with safety standards promulgated under the Safety Act. To the extent that bumper standards may be considered to be safety standards, the 5.0-mph safety criteria of Part 581 have been determined to be unsupported, even under the Safety Act criteria, and are amended by this notice. Reducing the test speed does not make compliance with any safety standard more difficult. The changes made by this rulemaking action do not necessitate any change in efforts to comply with existing safety standards. To the degree that pedestrian impact protection is a relevant safety consideration, current agency research on the subject suggests the possibility of an adverse safety consequence from bumpers designed for impact speeds of 5.0 mph or higher.

The Final Regulatory Impact Analysis

NHTSA's FRIA estimates the changes in costs and benefits likely to result from amending the Bumper Standard. In assessing the relative merits of the alternative bumper standard amendments described in the notice of proposed rulemaking in this proceeding, NHTSA has considered all available evidence and viewpoints in order to quantify and analyze the various factors relevant to determining bumper system net benefits.

As discussed in the agency's FRIA, the primary measure of benefits of the Part 581 Bumper Standard is the economic cost of the damage avoided by use of a bumper designed to provide protection at a higher impact speed. In the agency's FRIA, this cost was determined for each alternative standard by computing the cost of repaired damage and unrepaired damage. The cost of damage was computed by first using the results of vehicle owner surveys and insurance company claim files to estimate the frequency of damage to bumper systems. This figure was then analyzed in terms of the projected effectiveness of that bumper system in preventing damage, as estimated from insurance records and by use of engineering judgment.

Reduced levels of savings representing the value of damage which the vehicle owner decides not to have repaired were determined by first estimating the repair costs for unrepaired damage described by car owners. NHTSA then reduced the repair cost by a range of values to reflect the fact that the damage was not repaired, the effect of vehicle age on the value of that damage, and the absence of any out-of-pocket expenses incurred by the car owner.

The agency's calculation of benefits also took into account insurance cost savings beyond the value of the damage avoided by the bumper system, i.e., through savings in administrative expense. Savings in consumer time and inconvenience resulting from damage avoidance at various levels of bumper damage resistance were also considered as benefits of bumper regulation. Such savings include the value of time saved at the scene of a low speed accident, reduced time and expense in obtaining repair estimates, and savings in the avoided cost of obtaining alternative transportation while collision damage is repaired. Finally, although not subject to quantification in the agency's economic analysis, the agency considered the possible beneficial or adverse effects of bumper requirements on vehicle safety.

A very important cost impact of bumper regulation is the increase in new car prices attributable to the use of bumper systems providing greater levels of damage resistance. This cost consists of the cost of the bumper system itself and the cost of upgrading other vehicle components to support the additional weight of more damage resistant systems (i.e., the cost of secondary weight). The FRIA examines the changes in such costs that would result

from adopting test speeds below those in the current standard. The costs used in the agency's FRIA represent the marginal change in costs resulting from changing from the current bumper standard to an alternative standard requiring lower levels of bumper performance. Costs are calculated in terms of actual cost to the consumer. Finance charges associated with that portion of the vehicle purchase price attributable to the bumper are considered and taken into account as appropriate.

In addition to the effect on the initial cost of purchasing a car, the added operating cost of driving a car with a heavier bumper system has been considered. The agency has estimated the additional fuel costs incurred in carrying the extra primary and secondary weight associated with bumper systems providing greater levels of damage resistance performance. Costs and benefits to be accrued in the future have been discounted to reflect their value in current dollars. Results of the FRIA have been stated in terms of positive or negative net benefits for the various alternative standards, as compared to the costs and benefits of the current 5.0-mph/5.0-mph standard. See chapters X and XI of the FRIA.

In the agency's analysis, several factual issues are of particular importance, and the data and opinion evidence relied upon by the agency are summarized in greater detail below.

Frequency of bumper-related collisions. As noted above, benefits derived from the damage avoidance properties of bumpers are computed by estimating first the frequency of bumper-related collisions, and then the ability of the bumper system to protect the car in those collisions. Levels of protection thus computed yield benefits in terms of the costs which would otherwise have been incurred in connection with the avoided damage.

In 1970, the Ford Motor Company conducted a survey of actual observed damage to Ford cars in parking lots. Based on that survey, earlier NHTSA analyses estimated that the average car experienced 3.63 low-speed collisions involving its bumpers during its lifetime.

In the PRIA, the agency estimated the frequency of unreported, low speed collisions at a lower number, based on the results of a telephone survey of principal operators of cars. That survey was conducted for NHTSA by Westat, Inc.

The agency's October 1981 NPRM specifically requested that commenters address the issue of the best method of estimating such low speed collision frequency. Responding commenters disagreed on the relative merits of the cited damage frequency estimates. While car manufacturers argued for the use of figures derived from the Westat study, insurers generally favored higher estimates. Commenters addressing this issue generally expressed the view that the actual figure for low speed collision frequency would be somewhere below the figure of 3.63 lifetime impacts estimated from the parking lot surveys by Ford.

The agency agrees with commenters that the Ford survey is inadequate for use in the current context, by virtue of various factors, including its concentration on urban areas. The agency believes that the Westat survey, and the comments to the record by interested parties represent superior, and the best available, data on low-speed accident frequency. They have been considered in the computation of this factor. NHTSA has considered the possible use of crash recorders on cars to assess accident frequency, but finds that this approach would be prohibitively expensive and not technically feasible at this time. For these reasons, the FRIA incorporates a range of values for low speed accident frequency, using as the bounds of the range the highest estimate provided in the comments and the lower estimate derived from the Westat survey data.

Bumper system effectiveness. On the question of the effectiveness of bumper systems designed to provide protection at differing impact speeds, estimates used in the PRIA were based on comparisons by agency experts between the performance of cars with Part 581 bumpers and with pre-standard cars. The agency was able in the PRIA to make extensive use of field data to determine the effectiveness of bumpers designed to provide protection in 5.0-mph impacts. NHTSA was able also to supplement insurance industry data on reported accidents with Westat survey data on damage incurred in unreported accidents.

However, no similar data on the effectiveness of bumpers designed to provide protection at other impact speeds exists. As a result, the agency was forced to rely in its PRIA on data concerning MY 1973 rear bumpers for its estimates of 2.5-mph bumper effectiveness. These were the only bumpers ever sold in this country which were required to provide 2.5-mph protection. As an alternative and cross-check, the agency also considered in the PRIA estimates which had been developed for use in the June 1979 Final Assessment of the Bumper Standard, and which were based on engineering judgment of the agency's experts regarding the relative effectiveness of various bumper systems. The use of these estimates was supported by the insurance industry in its review of the 1979 Assessment.

Using this methodology, the agency estimated that 2.5-mph bumpers would achieve 67 percent of the effectiveness of 5.0-mph bumpers in low speed collisions. That is, 2.5-mph bumpers would be two-thirds as effective in preventing damage as 5.0-mph bumpers would be.

Car and insurance industry commenters joined in arguing the unreliability of estimates based on the performance experience of MY 1973 rear bumpers. They stressed the lack of comparability between these early bumpers and the 2.5-mph bumper systems which would be produced today, citing the absence of any uniform height requirement for MY 1973 bumpers, the actual similarity of MY 1973 bumpers to unregulated bumpers of prior years, the increased uniformity among bumper designs in the present vehicle fleet, and other factors related to the vehicle fleet mix. NHTSA agrees with commenters that data on MY 1973 rear bumpers fails to provide an accurate approximation of current 2.5-mph designs. NHTSA has concluded therefore that the methodology employing MY 1973 rear bumper data should not be used in estimating current levels of bumper effectiveness.

NHTSA has considered relying upon European data relating to the performance experience of bumpers designed in compliance with ECE Regulation No. 42 to assess the effectiveness of 2.5-mph bumpers but has concluded that adequate data of that type are not available. Although alternatives data sources were specifically sought in NHTSA's October 1981 NPRM, no field data on the effectiveness of alternative systems in other countries were introduced into the record by commenters. Moreover, European bumpers are required to be designed to meet a safety standard only, and are tested under different procedures than American bumpers. Finally, differences in fleet composition and average vehicle weight, as well as the greater frequency of urban driving in Europe, would limit the relevance of data based on vehicles in use abroad to predicted vehicle experience in American driving conditions.

Insurance industry commenters presented to the record data on certain laboratory tests undertaken on production vehicles alleged to have been equipped with 2.5-mph bumpers, i.e., pickup trucks and multipurpose

passenger vehicles not subject to the Part 581 requirements. NHTSA has concluded, based on the evidence in the record, that the damage levels reported in the insurance industry tests are not sufficiently relevant to predict 2.5-mph bumper performance. The tests reported upon were of limited scope, and no data have been introduced or are known to the agency from which to conclude that the bumper systems tested were designed to, or would in fact, comply with the Part 581 requirements in 2.5-mph barrier and pendulum impacts. Moreover, a commenter from the auto industry pointed out an instance in which the insurance claim frequency for a car equipped with a Part 581 bumper was actually higher than for its counterpart, the four-wheel drive, multipurpose passenger vehicle version which was equipped with an unregulated bumper. The agency has therefore concluded that estimates based on extrapolation from field data better account for factors such as crash angle, impact speed, frequency of occurrence and vehicle fleet mix. Thus, NHTSA makes use in the FRIA of the 67 percent effectiveness figure employed in the 1979 Assessment, but now applies this factor to the superior lifetime damage estimates derived from the 1981 Evaluation.

Primary bumper costs and weight. With respect to the increase in costs associated with bumper systems providing greater levels of damage protection, many motor vehicle manufacturers submitted previously unavailable estimates of the cost and weight penalties associated with providing bumpers meeting current 5.00-mph performance requirements, as compared with the cost of complying with a 2.5-mph, Phase I requirement or with the ECE Regulation No. 42 bumper requirement.

The agency estimates in the FRIA that the primary cost differences between 5.0-mph and 2.5-mph Phase II bumper systems can be best expressed as a range from $18 to $35. The corresponding range of weight differences is estimated to be from 15 to 33 pounds. The $18 to $35 and 15 to 33 pound ranges are based on estimates submitted to NHTSA by the manufacturers and reflect the range of representative cost and weight savings estimates submitted.

In their submissions to the rulemaking docket, the manufacturers generally did not identify all changes in design or components that would take place if the bumper standard were reduced to 2.5 mph/2.5 mph. Certain changes were specifically noted, however. Manufacturers stated that such a reduction would allow the removal of self-restoring, heavy duty energy absorbers and noted that they would probably make that change. Some manufacturers also identified reducing face bar thickness and removing some reinforcements as being among the changes possible if the standard were reduced.

Although the estimates of cost and weight for 2.5-mph bumper systems included in the FRIA generally agree with current estimates of representative manufacturers, and are consistent with those confidential submissions made in response to the 1979 advance notice of proposed rulemaking, other independent estimates have been generated which indicate that even greater weight reductions are possible if the Part 581 bumper standard were reduced to 2.5 mph/2.5 mph. For example, the 1979 Final Assessment cited a weight reduction estimate of 43 pounds developed by a design engineer under contract with NHTSA. Since the 43 pound figure was developed in reference to cars averaging 3,350 pounds in weight, the appropriate value applicable to the lighter average car produced today would be less. Assuming the weight loss in primary bumper weight would be proportional to total vehicle weight, the appropriate figure for today's cars would be approximately 36–37 pounds. Notwithstanding the higher value thus represented, the upper range set forth in the FRIA is 33 pounds. If the higher figures of 36–37 pounds were used, the weight and cost differential between 5.0-mph and 2.5-mph bumpers, and thus the benefits of the lower impact speed, would be even greater.

In addition, other independent cost studies submitted as evidence in the record indicate that the actual costs for all manufacturers of components such as energy absorbers may in fact be higher than cost estimates by the car manufacturers who submitted data on this point. See, for example, Docket No. 81–07 Notice 1, No. 008. If the cost avoided by removing such energy absorbers from a car were as high as $48, instead of the $20 estimated in confidential submissions responding to the 1979 advance notice of proposed rulemaking (as updated to reflect the weight of current cars), the additional cost savings of reducing the part 581 standard to 2.5 mph/2.5 mph would be increased by $28, thereby enhancing the cost reduction attributable to that alternative. In this case, although the result may be to underestimate the benefit of the lower standard, the agency has chosen to use in the FRIA the lower cost and weight estimates submitted by the manufacturers who commented in response to the NPRM, since such lower values produce benefit calculations less favorable to the regulatory result urged by the car manufacturers involved.

Secondary weight and cost. On the subject of secondary weight, NHTSA relied in its PRIA on methodologies developed by the transportation Systems Center (TSC) of Cambridge, Massachusetts, and General Motors. The TSC methodology assumes that, in the case of vehicles with unitized bodies, the vehicle body will not be affected by changes in bumper weight. This methodology results in a secondary weight factor of .5; that is, one half pound of secondary weight will be added to the rest of the vehicle for each pound of added bumper weight. The General Motors methodology, based on actual component weights of MY 1974 General Motors products, assumes that all the weight of a unitized vehicle body is affected by secondary weight. This methodology results in a secondary weight factor of about 1.0.

The agency has concluded, based on all comments received, that the assumptions of the TSC methodology concerning vehicles with unitized bodies are extreme. One manufacturer submitted an estimate of secondary weight based on its analysis of its most efficient new car designs. That analysis indicates a secondary weight factor of 0.7 (i.e., seven-tenths of a pound added for each pound of added bumper system weight). Since all of these were new designs for which secondary weight factors may be lower than for the fleet as a whole, the agency considers that this estimate most likely represents the lower bound of secondary weight factors in the current vehicle fleet. Older, existing production car designs, which would also be affected by a reduced standard, would be likely to have a secondary weight factor of 1.0 or higher. The agency has concluded that there is no adequate basis to establish a higher value than that based upon actual component weight analysis, and accordingly the agency makes use of both the .7 and 1.0 factors in the FRIA.

Only two commenters addressed the issue of the cost of secondary weight. Both commenters suggested that NHTSA's estimate of $.72 per pound in the PRIA represents the lower bound of possible secondary weight costs, since it was based only on the cost per pound of structural components and did not include cost effects on weight dependent subsystems such as tires and

brake linings. However, the agency believes that while changes such as upgrading brake linings or marginally increasing tire size to accommodate increased bumper weight will undoubtedly occur to some extent, they are impossible to quantify in terms of dollar costs on the record before the agency. Thus, the agency continues to use only the cost of major structural materials such as cold-rolled steel and aluminum to reflect secondary weight cost more conservatively. Because of an error discovered by the agency in its original computation of the markup factor used in the PRIA, the agency has now corrected the cost of secondary weight and uses $.60 per pound in the FRIA.

Use of consumer costs instead of manufacturer variable costs. In calculating for the FRIA the cost savings available from modified bumper requirements, NHTSA considered manufacturers' variable cost savings, but not reductions attributable to savings on dealer markup, which represent some additional potential consumer savings. Several motor vehicle manufacturers endorsed NHTSA's inclusion of variable cost savings in its analysis and projected savings of 10 to 30 percent resulting from reducing the Bumper Standard impact speed level to 2.5 mph. However, the manufacturers also commented that consumer cost (which includes dealer markup), rather than variable cost, is a more realistic determinant of the cost of bumper regulation.

The agency believes that use of consumer costs is more consistent with the requirements of the Act. Using the newly submitted cost savings estimates supplied by the auto manufacturers, and the agency's independent analysis of the reasonableness of these estimates based on the use of teardown studies, NHTSA stated cost savings in terms of consumer costs in its FRIA. The FRIA employs a sensitivity analysis to assess the effect on consumer prices of various possible bumper standard alternatives.

Finance charges. In its PRIA, NHTSA added the cost of new car finance charges to the cost of current bumper systems. While several auto industry sources saw no difficulty with consideration of finance changes from the standpoint of economic theory, certain representatives of the auto and insurance industries noted that the principal of a car loan, in addition to the interest, should have been discounted to estimate true consumer savings. The agency agrees that the approach used in the PRIA overstated consumer savings because of the failure to discount the loan principal also. In estimating new car costs in the FRIA, the agency has discounted both the principal and the interest of new car loans.

Percentage of new car purchases which are financed. One commenter argued that the agency overestimated the percentage of vehicle purchases which are financed, and the duration of the financing obtained. However, the agency's figures on loan duration and percentage of new car sales financed are based on the latest available information from the Federal Reserve Board. The commenter based its alternate suggested percentage figure on data which included used car sales, which are less frequently financed. Moreover, to the extent that a small percentage of new car sales are not financed through consumer credit, e.g., fleet sales, these sales are nonetheless commonly financed through business borrowing at an even higher interest rate. Thus, the agency has not changed its analysis in response to this comment.

Retooling costs. Comments by one domestic manufacturer at NHTSA's public meeting on bumpers indicated that that company would incur a one time retooling cost of one million dollars if the present bumper standard were amended to reduce the test impact speed. Another major domestic manufacturer contended that this cost is irrelevant because, if it were not economically favorable to manufacturers to retool, such expenses would not be incurred. The agency has concluded that in computing overall societal costs of the regulation, this expense is relevant and should be considered. However, retooling costs have already been included in the agency's estimates of new car cost and thus are not addressed as a separate item in the FRIA.

Fuel consumption. In addition to the initial expense of purchasing a bumper system providing increased damage resistance performance, more stringent bumper standards which require heavier systems increase vehicle operating expenses. The added weight of the bumpers causes an increase in fuel consumption. As discussed above, projected weight savings from reduction of the bumper standard test impact speed to 2.5 mph would be significant, even for smaller cars. In its PRIA, NHTSA estimated that each additional pound of weight adds 1.1 gallons to the lifetime fuel consumption of a passenger vehicle. Some commenters accepted this fuel penalty figure as a reasonable approximation. One manufacturer advocated use of a higher figure. However, the source of the 1.1 gallon estimate, a major domestic auto manufacturer, revised its estimate downward to 1.0 gallons per pound, based on testing and simulation studies on new, lighter weight cars. The agency is using this revised lower figure to be conservative in its estimates of benefits associated with the proposed alternatives to the current 5.0-mph standard.

NHTSA in its PRIA used a projected 1982 fuel cost in 1981 dollars of $1.60 per gallon in calculating the cost of the fuel consumed in carrying additional bumper weight, with small additional real price increases (in terms of 1981 dollars) in subsequent years. The four major domestic automakers concurred in the use of this figure in comments on the notice of proposed rulemaking. However, figures in the latest Department of Energy (DOE) and Data Resources, Inc. (DRI) forecasts suggest that an estimate of $1.28 per gallon more accurately reflects current pricing trends. Accordingly, the agency has used this figure as the 1982 average price in the FRIA.

Discount rate. For purposes of its PRIA, NHTSA used a discount rate of 10 percent in assessing the current value of future costs and benefits. This rate has been established by the Office of Management and Budget for use in Government analyses. Since, however, it is arguable that a statutory mandate to consider actual costs and benefits would require the agency to at least analyze the actual discount rate as well in reaching its conclusions, such an analysis was undertaken. See Table III-6 of the FRIA. Although one commenter suggested a lower figure, NHTSA has concluded that, given the insensitivity of net benefits to changes in the discount rate, the 10 percent rate is appropriate at this time. This figure represents a compromise between competing schools of thought as defined in economic literature, and has been used in past agency regulatory analyses. Its continued use facilitates the comparison of costs and benefits of different regulatory actions. Thus, the 10 percent figure has been retained as the basis for the discount rate used throughout the FRIA, in estimating the current value of both costs and benefits.

Lifetime distribution of accident frequency. NHTSA based its discounting in the PRIA on the assumption that accident frequency is distributed over a vehicle's lifetime, in proportion to the number of miles traveled each year by the vehicle. Car manufacturers differed on the validity of this assumption, with some contending that accident rates are higher for older vehicles. If this were

true, then the net benefits of reducing the bumper standard would be even greater than estimated by the agency in the FRIA. However, NHTSA has concluded that the evidence presented on actual distribution of accidents over vehicle lifetime is not sufficiently reliable to attempt more specific yearly estimates, because, among other things, it includes both high and low speed accidents and the correlation between these types of accidents has not been established. Thus, the agency continues to use its original assumption on this point.

Effect of non-bumper related design changes on repair costs. A member of the insurance industry contended that not all increases in damage-per-claim figures occurring since implementation of the bumper standard should be attributed to the standard. According to that commenter, new components, such as rectangular headlamps and one-piece plastic front-end panels, which have come into use since implementation of Federal bumper standards, have added to damage-per-claim figures used by NHTSA to assess the effect of the bumper standard. Commenters made no showing regarding the costs of the various front end components, the extent of their use in given model years, or the frequency and extent of their damage. Further, as several auto industry commenters noted, the increased complexity of the 5.0-mph bumper system makes that system more expensive to repair or replace when damaged in an impact above its design speed of 5.0 mph. Thus, the record provides no objective basis for the agency to modify its analysis.

Value of unrepaired damage. In the PRIA, NHTSA valued the cost of unrepaired damage at the full cost to repair that damage. However, several auto manufacturers commented that such damage should be valued at some lesser figure or should not be counted at all. One manufacturer placed the figure at not more than 50 percent of the cost to repair the damage. The agency's 1979 Final Assessment placed the figure at 75 percent. NHTSA has concluded that unrepaired damage clearly imposes some cost. The value of this cost, however, would necessarily vary with the age of the car, other cumulative damage, whether or not bumper-related, and other factors. NHTSA believes that a range of 50 to 75 percent of the full cost of repair represents a reasonable balancing of competing considerations and has used such a range to approximate the value of unrepaired damage in the FRIA.

One commenter suggested that consumer tolerance for cosmetic vehicle damage increases, and the value of such damage should therefore decrease, with vehicle age. However, the agency has no way of assessing this effect and therefore considers it too speculative to include in the FRIA. Therefore, the agency has not amended its calculations in response to this comment.

Current versus future technology. Throughout the consideration of bumper effectiveness, cost, and weight, the agency has been faced with the alternatives of relying on historical data based on the experience of previous model year vehicles, or on calculations based on present or future technologies. The difficulty of the choice is apparent. The former approach has the advantage of greater and superior empirical data, but may not fully account for the most recent advances in design or materials technology. The latter approach may more fully reflect state current and future conditions, but the absence of any empirical or field data introduces significantly greater elements of uncertainty.

Insurance industry and consumer representatives criticized the agency's analysis for relying on bumper designs used in the late 1970's instead of the best bumper technology available today. These commenters contended that state-of-the-art bumpers in use on the latest vehicle models are lighter, more efficient, and cost less than bumpers on earlier models and are more representative of bumpers which will be used in the future. An insurance industry representative and one component supplier commented that new technologies involving use of plastics could positively affect the net benefits of 5.0-mph bumpers. Motor vehicle manufacturers countered that use of a representative current bumper system as the basis for cost and weight estimates is more realistic, because it is more reflective of immediate cost/benefit impacts and because styling considerations frequently limit the use of the most efficient bumper design available.

The agency believes that analysis of the bumper regulation should be based on real-world conditions and that it is unrealistic to assume that the most advanced technology will be used in all cases. While the use of alternative technologies could affect costs and benefits if such technologies were widely adopted, no evidence has been presented that cost, styling, production or other constraints would permit universal acceptance of these new technologies. More important, even if designs more efficient in terms of costs and weight were chosen to represent 5.0-mph bumpers in the FRIA, the effect of this change on the FRIA outcome would be negated in large part by the necessary parallel assumption that bumper systems offering lower levels of protection would also be designed and implemented at the most efficient levels possible. Therefore, NHTSA has concluded that projections of bumper net benefits must continue to be based on data relating to real world bumper systems.

Insurance premium increases. Many comments submitted by insurance industry sources and others noted that insurance premiums would increase if the bumper standard impact speed were lowered from its current levels. Insurers generally concurred that the level of such collision insurance premium increase would be 10 percent if the bumper standard test impact speed were reduced to 2.5 mph. The agency has reviewed in detail the cost of increased collision damage costs and the increased administrative overhead burden that would be incurred. Based on this analysis and on the assumption that only actual cost increases would be approved by state regulatory bodies for pass through and recovery in the form of rate increases the agency can not agree that such estimates are accurate. NHTSA accounts for insurance cost increases through estimates in the FRIA of increased collision damage costs and administrative overhead.

Effect on insurance companies, bumper component suppliers, and new car dealers. The agency's October 1981 notice of proposed rulemaking requested comments on the effect which amendment of the bumper standard would have on the insurance industry and bumper component suppliers. Members of these industries did not respond to this inquiry, except with regard to the insurance premium estimates noted above. Motor vehicle manufacturers addressing this point generally concluded that effects on related industries would not be major. Although one source predicted a reduction in the dollar sales volume of bumper component parts, increased sales of replacement parts would tend to offset to some extent the lower per unit cost of bumper replacement parts.

One industry which did claim a major interest in this proceeding was the automobile retail sales industry, as represented by the National Automobile Dealers Association. That organization pointed out the devastating effects on its membership of the recent depressed automotive retail sales market and

provided data indicating the effect on car sales of price increases similar in magnitude to those resulting from the Part 581 Bumper Standard.

Consumer time and inconvenience. Several commenters addressed issues relevant to the consideration by NHTSA, as mandated by the Act, of the value of consumer time and inconvenience related to damage incurred in low speed collisions. NHTSA's PRIA incorporated a figure of $26 per incident as the value of consumer time and inconvenience associated with assessment and repair of low speed collision damage. Insurance industry and consumer representative commenters presented results of a survey conducted for that industry by Opinion Research Corporation which seemed to suggest that a much higher per accident value should be placed on time and inconvenience. However, NHTSA has concluded that the results of this survey do not require revision of the agency's estimates of the value of delay and inconvenience.

Commenters citing the Opinion Research survey placed values of $150 to $200 per incident on the delay and inconvenience resulting from low speed accidents, in contrast to NHTSA's PRIA estimate of $26. However, review of the survey results suggests that these estimates may include the value of repair costs to be borne by consumers, i.e., the deductible amount of the consumers' collision insurance, usually $100, a cost accounted for elsewhere in NHTSA's analysis.

Also, the Opinion Research survey focused attention on the delay and inconvenience involved in having collision damage repaired. NHTSA's estimates are based on average time loss for all accidents, including those in which damage was minimal and/or not repaired. The survey included questions which could be accurately answered only by persons with detailed knowledge of the costs and benefits of bumper systems. Moreover, apparent biases in some of the survey questions may have inflated survey respondents' estimates of the value of damage avoidance. When the effect of the above noted factors is accounted for, the insurance industry and consumer representative commenters' estimates and the NHTSA estimate do not differ greatly.

Some automobile industry and consumer representatives commented that the agency's estimate of $10 per incident for the cost of alternate transportation while low speed collision damage is repaired may be too low. A consumer organization commented that the agency underestimated the time lost at the scene of an accident and in obtaining repair estimates. It suggested that NHTSA had also understated the expense of being without a car while collision damage is repaired. It should be noted that the agency's Analysis counts savings in delay and inconvenience for all accidents, whether or not damage is actually repaired. Since damage is not always repaired, the agency's figures translate into a higher per accident savings for those accidents where repairs are actually made. Nevertheless, after consideration of the comments on these issues, the agency has now used, and has performed a sensitivity analysis using, a range of costs for time and inconvenience of $26 to $50 in the FRIA.

Safety issues. Insurance industry and other commenters expressed concern that reduction of the test impact speed requirements of the standard would pose a risk to vehicle safety due to increased damage to safety related components. As evidence of the safety impact of bumper regulation, one insurance industry commenter cited a study in which it examined accident claims involving rear impacts to MY 1973 and 1974 vehicles. According to this commenter, the results of this study indicate reductions in trunk lid and taillamp damage on certain models when the bumper standard for rear bumpers was upgraded in MY 1974. This commenter also noted reductions in trunk lid, trunk latch and tailpipe damage on some models in data from NHTSA's driver survey, although the commenter concluded that the survey was of such limited scope as to preclude the drawing of significant conclusions. The commenter asserted that components of the type protected by the Bumper Standard do affect safety in that, even if their malfunction does not actually cause an accident, it increases the risk to occupants once an accident occurs, e.g., through leaking fuel from a damaged fuel system.

Several auto industry sources commented that current bumper requirements do not provide significant safety benefits. One major domestic manufacturer cited studies conducted by Westat and Indiana University's Institute for Research in Public Safety (Docket No. 73–19, Notice 27, No. 041) in support of its assertion that only one percent of accidents are caused by safety component malfunctions which could have resulted from low speed collision damage. This commenter contended, moreover, that the nature of these malfunctions (e.g., lamps not working) does not permit the inference that even this low incidence of contribution to accident causation is attributable to collisions, but is instead more commonly experienced as a result of maintenance neglect (e.g., failure to replace burned-out bulbs). As a result, the commenter argues that low speed collision damage is a minuscule factor in motor vehilce safety. Another major manufacturer also commented that the bumper standard's connection to safety is tenuous, and that there is no evidence that safety would be compromised by amendment of the bumper standard requirements. Other automakers commented that a 2.5-mph bumper standard would be adequate in any event to protect vehicle safety components.

Other commenters asserted that 5.0-mph bumper requirements may in fact have a net adverse effect on vehicle safety. An auto industry trade association commented that the extra weight and rigidity of more damage resistant bumpers could adversely affect crash deformation characteristics and rates of crush and energy absorption so as to reduce potential levels of occupant protection in higher speed collisions. Another auto industry commenter argued that while 5.0-mph bumpers do not contribute significantly to safety through protection of safety components, the added weight of those bumpers necessarily reduces accident avoidance capability by adversely affecting braking and cornering performance.

Finally, the agency's own developing research into pedestrian impact protection indicates a clear possibility of conflict between affording enhanced safety protection in this area and increasing or even maintaining the current bumper standard.

After consideration of the extensive discussion of this issue in the record of this procéeding, including the Indiana University study referenced above, NHTSA has concluded both that no safety based justification exists for the current 5.0-mph bumper requirements, and that relaxation of the impact speed requirements would not compromise any known safety consideration. In the agency's judgment, a safety need for 5.0-mph bumpers has never been demonstrated, either before issuance of the FMVSS 215 and Part 581 standards or by subsequent experience. Moreover, the argument that protection of safety systems in low speed collisions is important for purposes of vehicle crashworthiness as well as crash avoidance is not convincing in view of the fact that only Part 581 criterion which contributes significantly to crashworthiness, i.e., the criterion

relating to the fuel system, is now protected much more effectively by FMVSS 301.

NHTSA has also considered the energy management consequences of this action with respect to compliance with the applicable FMVSS requirements relating to occupant crash protection and fuel system integrity. Insurance industry commenters noted that the crash energy of a 2.5-mph collision is one quarter that of a 5.0-mph collision. Thus, it was suggested that 2.5-mph bumpers would be less effective in managing crash energy than 5.0-mph bumpers. However, a number of motor vehicle manufacturers commented that in the 30.0-mph barrier impact used to determine compliance with various crashworthiness FMVSS, the vehicle bumper absorbs only a small percentage of the crash energy, generally less than 5 percent. Moreover, some manufacturers commented that reduction of the bumper test impact speed requirements would permit removal of space consuming and aggressive energy absorbers and stiff frame rails which may actually inhibit design of vehicles for efficient high speed energy management. Also, reduction of bumper test impact requirements could lead to reduced aggressivity of the impacting vehicle in side collisions.

After review of comments received, NHTSA has concluded that reduction of bumper test impact requirements would not have a negative effect on high speed crash energy management. The amount of energy generated in a 5.0-mph barrier impact is less than three percent of that generated in a 30.0-mph barrier crash. The energy generated in 2.5-mph barrier impact is one percent of 30.0-mph crash energy. Thus, although 5.0-mph bumpers may absorb more energy than 2.5-mph bumpers, the difference is negligible in a 30.0-mph barrier impact. Moreover, as suggested by commenters, the 5.0-mph bumper requirements may inhibit efficient vehicle energy management design. NHTSA has concluded that 5.0-mph bumpers make no significant contribution to occupant crash protection or to protection of fuel system components which may be damaged in high speed crashes.

Thus, the agency's action does not conflict with any existing safety standards.

Other Issues

Accounting for vehicle size in testing. NHTSA requested that commenters consider whether the test procedure adequately accounts for vehicle size differences. While some commenters suggested that car size is a factor in damage resistance, those commenters expressing an opinion on the issue commented that the existing test requirements adequately account for these effects. Those requirements adjust test pendulum weight to the mass of the vehicle tested. Commenters also noted that size and weight differences among cars are decreasing as downsizing progress. Thus, change in the test procedures to account for vehicle size differences does not appear to be warranted.

Manual repositioning of bumper system components during testing. Several commenters suggested the desirability of allowing manual repositioning of bumper or shielding-panel components during testing. These commenters suggested that such a procedure would reduce costs, increase design flexibility, promote the use of new technologies, and reduce the subjectivity now inherent in the evaluation of shielding panel damage. However, some auto manufacturers also stated that eliminating the Phase II damage resistance requirements would alleviate much of the need for manual repositioning. Since the Phase II criteria are being replaced by Phase I criteria, and manual repositioning might introduce uncertainties into the test procedure, the agency has decided not to permit manual repositioning.

Bumper height. On the issue of bumper height, several auto manufacturers commented that the height requirements of the standard account for a substantial portion of the benefits of the standard. One automaker referred to matching heights as the single most important requirement of the standard. A major insurer, however, contended that a matching requirement associated with an "ineffective" impact speed of 2.5 mph would be meaningless. This commenter also contended that only 49 percent of reported accidents are bumper-to-bumper accidents.

Of course, a significant proportion of reported accidents would be side impacts, rollovers, and single vehicle collisions rather than bumper-to-bumper impacts. Therefore, it does not necessarily follow that damage incurred in non-bumper-to-bumper accidents is attributable to bumper mismatch. Moreover, unreported accidents would be expected to include a higher proportion of bumper-to-bumper accidents than would reported accidents because bumper-to-bumper contact would prevent significant damage in a number of cases. Thus, a number of bumper-to-bumper accidents would not appear in the figures for reported accidents.

Finally, the agency notes that the height of some vehicle structural components may be determined by the height of the bumper. To the degree that uniform bumper heights may tend to result in uniform side structural members, additional levels of protection may result in side impact collisions from matching of bumpers and frame rails. NHTSA concludes that the height requirement is a useful component of the bumper regulation. Height standardization is maintained under the amendment announced in this notice.

One commenter advocated lowering the prescribed bumper height to less than 16 inches, the current low bound for pendulum testing. This commenter contended that low bumpers would optimize pedestrian protection characteristics, minimize aerodynamic drag, and reduce injuries in side impacts. NHTSA will consider the contribution of bumper height in connection with ongoing research in the areas of pedestrian protection and side impacts. However, until such time as the effects of bumper height in these areas can be fully evaluated, the very high transition cost of converting existing vehicle designs and the desirability of consistency with bumper heights of the existing vehicle fleet makes it preferable that the present height requirements be maintained.

Effective date. Some automobile manufacturers commented on the need for expeditious action to amend the standard. One manufacturer noted that final action by March 1982 would permit bumper system modifications to be made in time for introduction of model year 1983 vehicles. Another commented on the long leadtimes necessary for introduction of product changes. Yet another stated that an effective date for bumper standard amendments in the near future would permit incorporation of bumper system changes in a new vehicle model currently in the design stage. In view of these considerations, and because this action relieves a restriction, NHTSA has determined that good cause exists to make this amendment effective June 21, 1982.

Requirements for Analyses

NHTSA has determined that this proceeding involves a major rule within the meaning of Section 1, paragraph (b)(1), of Executive Order 12291 in that it is likely to result in an annual effect on the economy of $100 million or more. The agency estimates that current bumper requirements add between $140 to $200 to the cost of a new car compared to the cost of a car with unregulated bumpers. The reduction of test impact speed requirements for each of the roughly 11 million vehicles

expected to be sold in this country annually is likely to result in an impact on the economy far exceeding $100 million. For this same reason, this action is considered significant for purposes of Department of Transportation procedures for internal review of regulatory actions. The agency's FRIA for this action has been placed in the public docket. Copies may be obtained by contacting the Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Pursuant to the Regulatory Flexibility Act, the agency has considered in its FRIA the impact of this rulemaking action on small entities. The agency certifies that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. The agency has concluded that few, if any, manufacturers of motor vehicles and bumper components or vehicle insurers are small entities. New car dealers will not be significantly affected because this action is unlikely to significantly affect new car sales levels for individual dealerships. To the extent that such sales may be affected, the effect would be positive. While increased car collision damage repairs may result from this action, the impact on individual repair shops is not expected to be significant. Again, the effect would be positive.

The economic effects of this action on small organizations and governmental units will generally be the same as those on the general public. As purchasers of new cars, these organizations and units will experience the same increase in net benefits. While this action could result in a minor increase in police time spent at the scene of some low speed accidents, this effect is not expected to be significant.

In developing this final rule, NHTSA considered the bumper standard promulgated by the International Standards Organization and adopted by the ECE. However, the agency found that standard to be inappropriate for use in this country since it does not adequately deal with consumer cost savings considerations as required by the Act.

NHTSA has prepared an Environmental Assessment of the likely environmental consequences of this proposal. This Assessment has been placed in the public rulemaking docket (Docket 73-19; Notice 27, No. 004). Based on this Assessment, the agency has concluded that this action will not have a significant effect on the human environment and that; for this reason, an Environmental Impact Statement will not be prepared for this action.

List of Subjects in 49 CFR Part 581

Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration.

PART 581—BUMPER STANDARD

In consideration of the foregoing, 49 CFR Part 581, is amended as follows:

§ 581.5 [Amended]

1. Section 581.5(a) is revised to read:

(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b), under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of § 581.6, at 2.5 m.p.h.

* * * * *

2. Section 581.5(b) is removed and reserved.

3. Section 581.5(c)(8) is amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the".

4. Section 581.5(c)(10) and 581.5(c)(11) are removed and reserved.

§ 581.6 [Amended]

5. Section 581.6(a)(5) is revised to read:

(a) * * *

(5) Trailer hitches, license plate brackets, running lights, fog lamps, other optional equipment mounted on the bumper face bar and headlamp washers are removed from the vehicle.

* * * * *

(Sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on May 14, 1982.

Raymond A. Peck, Jr.,

Administrator.

Appendix

The following is a summary of the more major comments submitted in response to the notice of proposed rulemaking and discussed in more general terms in the preamble of this notice. This summary is organized in broad terms according to the interest groups from which the comments were received. Responses to these comments are set forth in the preamble to the final rule and in the FRIA.

Insurance Industry and Consumer Representative Comments

In commenting on the issue of low speed damage frequency, insurance industry and consumer representatives criticized the Westat survey on a number of grounds. The Insurance Institute for Highway Safety (IIHS) and Consumers Union contended that the survey understates damage frequency due to memory weaknesses on the part of survey respondents. IIHS also noted that nonprincipal drivers were not surveyed directly and cited discrepancies between the original Westat survey and a follow-up survey emphasizing operators of later model vehicles. Allstate Insurance Company contended that the Westat survey cannot be used to make judgments about the effects of changing the bumper standard on the frequency of damage to safety components because the sample size is to limited, and that the survey is not representative because it covers only unreported damage. Allstate advocated use of a higher estimate, although not as high as that suggested by the Ford survey results. IIHS also suggested that use of the Westat survey improperly accounts for accidents reported to police. State Farm Mutual Automobile Insurance Company contended that the study understates the number of low speed impacts due to the probable existence of impacts with parked vehicles, and of accidents not reported to the person interviewed.

On the issue of bumper effectiveness, IIHS and the Highway Loss Data Institute (HLDI) supplied results of laboratory tests on current vehicles not required to meet the Part 581 standard, *i.e.*, pickup trucks and multipurpose passenger vehicles. These commenters reported substantially poorer bumper performance on these vehicles, which, according to these commenters, would comply with a 2.5-mph bumper requirement.

IIHS also argued that vehicle size is a major determinant of the amount and frequency of crash related property damage. Thus, IIHS contended NHTSA's assessment of bumper effectiveness is biased in favor of older, unregulated vehicles because the more recent vehicle mix includes greater numbers of more damage prone smaller vehicles. Moreover, IIHS argued, imports are more frequently involved in property damage accidents than are domestically produced vehicles, further biasing the analysis against later model years

which include a larger percentage of imported vehicles.

The American Insurance Association and State Farm contended that the discount rate of 10 percent applied by the agency to determine the present value of future expenditures is to high. Since bumpers represent an investment which displaces other consumption, these commenters argued that a more accurate discount rate would be 4 percent. Allstate commented that the discounting factor should be applied to inflated costs rather than current costs.

On the subject of delay and inconvenience, the Center for Auto Safety (CFAS) placed the cost of a rental vehicle, which may be required while low speed collision damage is repaired, at $24 to $30 per day. CFAS estimated that consumers use 1.6 gallons of gasoline in obtaining a single damage repair estimate and that each such estimate now costs $35 on the average. CFAS alo contended that the agency underestimated the time lost at the scene of an accident and in obtaining repair estimates.

An insurance industry representative submitted data from a public opinion poll which, according to the commenter, demonstrates overwhelming public support for the 5.0-mph bumper standard. The commenter also asserted that this poll indicates people are willing to pay for the higher levels of protection provided by the 5.0-mph bumper standard. CFAS also argued that the public supports the 5.0-mph bumper requirements.

The insurance industry argued that ECE Regulation No. 42 is irrelevant and inappropriate to requirements of the Cost Savings Act, primarily because it does not address the issue of protection against economic damage. According to the insurance industry, the ECE requirements amount to merely a weaker version of FMVSS 215. Moreover, this source contended the ECE standard focuses in part on design rather than performance characteristics, and thus is not in accordance with United States statutory requirements for issuance of performance standards.

Liberty Mutual Insurance Company commented that the current Part 581 requirements do not adequately account for vehicle dive, which can contribute to bumper underride in accident situations. Presumably, dive-induced mismatch damage would be increased under ECE requirements.

On the issue of new technologies, IIHS argued that new materials, *i.e.*, polycarbonite plastics, which could significantly reduce the weight of bumpers meeting current 5.0-mph requirements are available at this time. State Farm advocated the possible use of sacrificial components, *i.e.*, components which must be adjusted or replaced after a collision, as a means of reducing bumper cost and weight.

Auto Industry Comments

In addressing the question on the issue of low speed collison frequency, General Motors Corporation and Ford Motor Company commented that studies conducted by Ford overstate damage frequency, principally due to their emphasis on vehicles used in urban areas. These commenters suggested that the Westat survey is a more reliable source of data because it is more current and is based on a more representative sampling system.

Chrysler Corporation, American Motors Corporation, and Volkswagen of America, Inc. commented that neither the Ford or Westat data provide an adequate means of assessing low speed collision frequency. These commenters suggested that use of crash recorders or other controlled tests is necessary to generate data.

In questioning the value of MY–1973 bumpers in assessing 2.5-mph bumper effectiveness, several commenters pointed out that MY–1973 bumpers were not subject to a pendulum impact test and thus were not required to be of a uniform height. Commenters noted that MY–1973 rear bumpers were essentially the same as MY–1972 bumpers, but with stronger mounting brackets. This comment is consistent with State Farm's comment that its research revealed no difference in performance between MY–1973 and 1972 rear bumpers. Some commenters also concluded that new 2.5-mph bumpers would perform better in the current vehicle mix than did MY–1973 bumpers in previous years, due to the increased uniformity of current bumper designs. General Motors, Ford, and Chrysler joined in attacking the relevance of laboratory tests as a means of assessing the relative performance of bumpers, stating that such tests have never been correlated to real world conditions.

American Motors suggested that NHTSA consider the European experience with 2.5-mph bumpers under ECE Regulation No. 42. However, General Motors commented that its German subsidiary reported an absence of field data on the effectiveness of 2.5-mph bumpers in Europe. Moreover, General Motors contended that the European bumper standard is purely a safety standard and that bumpers designed to meet that standard would not be representative of future American 2.5-mph designs. In General Motors' opinion, the estimates used in NHTSA's 1979 Final Assessment provide the best available information on bumper effectiveness at alternative design speeds.

Several auto industry sources argued that unregulated bumpers produced in the future would provide greater levels of damage resistance performance than pre-standard bumpers. The factor most commonly cited in support of this contention was that consumer expectations would require that bumpers provide higher levels of performance. Insurance cost considerations, international harmonization, and experience in designing improved bumpers were also cited as contributing to the prospects for improved performance from future unregulated bumpers. Certain auto industry sources estimated that unregulated bumpers would exceed 1.5-mph performance and, at least initially, provide performance approximating that available under a 2.5-mph Phase I standard or ECE Regulation No. 42.

In discussions of bumper cost and weight savings from use of 2.5-mph bumpers, estimates of overall weight savings ranged from 8 lbs. for Volkswagen to over 38 lbs. for Volvo of America Corporation. Ford reported weight savings of 34 lbs. for its European Escort model compared to its American counterpart as a result of differing bumper requirements. Associated cost savings of roughly $35 were estimated by several manufacturers.

On the related issue of secondary weight, a recent General Motors analysis of seventeen late model front-wheel drive vehicles produced a secondary weight factor of .72. General Motors stated that this factor was used in the design process of its recent "X" and "J" car models. Toyota Motor Company also estimated a secondary weight factor of .7 for its current models. Renault agreed that the correct secondary weight factor is greater than .5. Comments received from Ford, Chrysler, and American Motors all contended that a secondary weight factor of 1.0 would be appropriate for NHTSA's analysis.

The fuel penalty factor of 1.1 gallons of fuel consumed for each additional pound of bumper weight, used in NHTSA's Preliminary Regulatory Impact Analysis, was based on testimony presented by General Motors before Congress. General Motors, in its comments on the notice of proposed rulemaking on bumper standard amendments, revised its estimate downward to 1.0 gallon of fuel per pound of vehicle weight. However,

several other motor vehicle manufacturers commented that the 1.1 gallon figure is reasonable. Chrysler noted that a higher figure could be used.

Chrysler estimated the increased cost to repair 5.0-mph bumpers as compared to 2.5-mph bumpers at between $70 and $90. BMW of North America, Inc. cited an analysis prepared by a West German technical institute which found that at impact speeds of 18 kph (approximately 11 mph) and higher, repair costs for American-made bumpers are greater than for European bumpers due to more expensive bumper shock absorbers and body components. BMW also noted a West German insurance study reporting that the great majority of all collisions occur at speeds above 11 kph.

General Motors and Ford commented that NHTSA's figure for the hourly value of lost time is too high, General Motors contending that the figure should be somewhere between the average hourly wage rate and the minimum wage. Ford argued that a figure of $3.50, roughly half the average hourly earnings figure, would be more accurate. This figure is consistent with a Consumers' Research report which concluded that commuters are willing to pay 42 percent of an hour's wage to save one hour of travel time. Regarding the cost of alternate transportation while collision damage is being repaired, Ford concurred in the agency's estimate of $10 per incident. Volkswagen commented that the figure seemed too low, and General Motors suggested that the agency consider the actual cost of rental vehicles.

Chrysler expressed the opinion that insurance premiums would decrease due to a reduction in bumper repair costs if the performance requirements of the standard were lowered. Ford commented that insurance industry premium discounts and surcharges based on vehicle damage claims experience provide a significant marketplace incentive to manufacturers to design vehicles providing better damage resistance performance.

Daimler-Benz AG, Renault, and Peugeot S.A. cited cost and consistency considerations as the basis for their positions in support of the ECE standard. Other commenters suggested that cost savings, *e.g.*, savings in tooling and testing costs, would result from harmonization. Renault estimated weight savings of 14–15 kg. for its vehicles equipped with bumpers designed to meet the ECE standard.

Volkswagen and American Motors discussed at length their position that the fixed-barrier impact test should be dropped from the standard. ECE Regulation No. 42 does not require a fixed-barrier test. According to Volkswagen, elimination of the barrier test would reduce testing costs, promote international harmonization, and make the standard more equitable. Volkswagen criticized the barrier test as unreliable, unsophisticated, and adding nothing to the standard. American Motor contended that the pendulum test alone would be sufficient, since it assures height standardization and proper bumper geometry to minimize override, and the versatile positioning of the pendulum permits testing of the entire bumper system. American Motors suggested that the pendulum test could be run with the vehicle idling to provide a test relevant to dynamic situations. Volvo suggested the alternative of employing the ECE test procedure with damage criteria taken from the Part 581 standard.

Volkswagen and BL Technology Ltd. pointed out that the ECE standard provides for pendulum impact at a single height rather than within a height range as is the case with the Part 581 standard. BK Technology contended that the ECE height requirement should be adopted in this country to promote harmonization and reduce costs. BL Technology also noted that the single height requirement permits reduced vertical bumper width thereby improving engine cooling. However, Volkswagen argued there is little difference between the European and United States' height requirements in terms of benefits and that the Part 581 requirement should be retained to avoid possible mismatch with vehicles already in use.

On the subject of Phase I versus Phase II damage criteria Ford and General Motors questioned the cost-effectiveness of the Phase II requirements. General Motors argued that NHTSA's analysis overstates the benefits of the Phase II standard because the agency overestimates the effectiveness of Phase II bumpers in impact at speeds of 5.0 mph or below. General Motors added that NHTSA must consider the 5 lbs. of additional weight and resulting $6 additional fuel cost imposed by the Phase II requirements. Information supplied by Volvo and the Bureau of Labor Statistics suggests that initial consumer costs of between $10 and $15 result from the Phase II requirements. Ford contended that no true Phase I bumpers have ever been produced because model year 1979 vehicles represented a transition period between FMVSS 215 and Part 581, Phase II.

Ford contended that the pendulum test is not appropriate for assessing damage resistance properties of the bumper itself due to its concentration of force in particular locations. This test, in combination with the Phase II criteria may, according to Ford, require use of expensive energy absorbers even if the test impact speed were lowered to 2.5 mph. Although Davidson Rubber Division commented that the Phase II criteria posed no problem for soft face systems, that manufacturer at the same time advocated reduction of the pendulum impact speed to 2.5 mph. BL Technology and General Motors commented that return to Phase I criteria would encourage design innovation and the use of new, lighter weight materials. Mitsubishi Motors Corporation favored the Phase I criteria because bumper deformation would improve the crash energy management characteristics of the bumper system.

Ford also noted objectivity problems in evaluating bumper damage under the Phase II criteria. Finally, Ford argued that the increased use of rubber and polymeric bumper materials has changed consumer perceptions and reduced the visibility of and concern about minor dents and similar damage which was inherent in the use of chrome-plated bumpers.

Two auto manufacturers advocated dropping not only the damage criteria applicable to the bumper system itself, but all criteria limiting damage to the exterior surfaces of the vehicle. Saab-Scania of America, Inc. made this suggestion in the context of a possible decision to retain the 5.0-mph test impact speed requirement. Toyota's comment noted vehicle cost and weight could be reduced by eliminating the exterior surface protection requirements.

Commenters addressing the issue differed on the extent of manual repositioning which should be permitted. Ford recommended permitting manual repositioning which could be preformed without special equipment or experience. Volkswagen favored manual repositioning without tools, while Chrysler suggested that manual repositioning without "special" tools be permitted.

On the question of new technologies, Ford and Volkswagen commented that relaxation of the bumper standard requirements would permit use of fiberglass bumpers, plastic face bars, rubber mountings, and ultrahigh strength steel components which could result in cost and weight savings, increased styling flexibility and improved aerodynamic characteristics. Davidson Rubber offered compressible plastics, *i.e.*, foam or honeycomb materials, as examples of materials which could be used if the standard requirements were lowered. C&F Stamping Company, Inc.

cited plastics and single-unit bumper systems. American Motors commented that return to Phase I would increase useage of SMC Components. Chrysler noted the potential for cost and weight savings from ultrahigh strength steel if Phase II criteria were eliminated. One component supplier, Molnar Industries, Inc. noted the availability of fiber reinforced plastic bumpers which it contended may make lowering the bumper standard requirements unnecessary.

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1063 and 1064

Ex Parte No. MC-95 (Sub-No. 1)

Practices of Motor Common Carriers of Passengers-Checked Baggage Prohibitions and Liability Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission adopts regulations which define the groups of articles that motor common carriers of passengers (bus lines) may refuse to transport in checked baggage and for which bus lines may limit or disclaim liability for loss or damage. These regulations clarify how bus lines may limit their liability and what articles they may lawfully refuse to carry. The regulations reduce the regulatory burden on the traveling public and the carriers which serve them.

DATE: This decision shall become effective June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7656.

SUPPLEMENTARY INFORMATION: By notice served April 22, 1981 (46 FR 22911, April 22, 1981) the Commission proposed modification of regulations appearing at 49 CFR 1063 and 1064. The public comments generally support the modifications. However, in response to some objections the Commission modified the original proposal. The rules as adopted reflect this modification. The complete decision is available from the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. The adopted rules are reproduced below.

This decision will not have a significant effect on the quality of the human environment or conservation of energy resources nor, as certified in the notice of proposed rulemaking, a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1063:

Motor carriers, Freight, Buses, Passenger baggage service, Baggage liability.

PART 1063—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

1. 49 CFR Part 1063 is amended by redesignating the existing paragraph (C) in 49 CFR 1063.4 as paragraph number (c)(1) and adding the following paragraphs § 1063.4(c) (2) and (3):

§ 1063.4 Baggage service.

* * * * *

(c) Baggage liability.

(1) * * *

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, to disclaim any liability for loss or damage to the following articles:

(i) articles whose transportation as checked baggage is prohibited by law or regulation;

(ii) fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials which have a disagreeable odor.

(iii) those other articles that the Commission decides, on a case-by-case basis on petition by the carrier, may be transported with no liability or may be refused as part of checked baggage.

(3) All other articles must be accepted as checked baggage and liability for them may not be eliminated. However, carriers need not offer excess value coverage on valuable articles. "Valuable articles" include money, negotiable instruments, valuable papers, manuscripts, irreplaceable publications, documents, jewelry, and other articles of extraordinary value.

2. 49 CFR Part 1064 is amended by adding the following paragraph (a)(3) to the existing regulations at 49 CFR 1064.1:

§ 1064.1 Minimum permissible limitations for baggage liability.

(a) * * *

(3) Carriers need not offer excess value coverage on articles listed in 49 CFR 1063.4(c)(3).

(49 U.S.C. 10321, 5 U.S.C. 553)

Decided: May 12, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13476 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 265

United States Standards for Grades of Fresh or Frozen Shrimp

AGENCY: National Oceanic and Atmospheric Administration Commerce.

ACTION: Interim final rulemaking.

SUMMARY: The National Marine Fisheries Service, National Oceanic and Atmospheric Administration of the U.S. Department of Commerce proposes to establish general grading standards for all non-breaded forms of fresh or frozen shrimp. These grading standards will provide for the systematic differentiation of the quality of shrimp into four categories—U.S. Grades A, B, C, and substandard. The proposed standards will be applied to all commerical species of fresh or frozen shrimp, in raw or cooked states, in all non-breaded market forms. The adoption of grading standards is expected to facilitate trade in shrimp of all commercial species, as consumers will be able to select shrimp on the basis of idenitified quality. The standards are based on the Codex Alimentarius Standard for Frozen Shrimp as approved by the Codex Alimentarius Commission.

DATES: Effective May 20, 1982. Written comments will be accepted on or before August 18, 1982.

ADDRESS: Send comments to: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Brooker, Standards, Specifications and Labeling Branch, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7456.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, desires to amend Title 50, Code of Federal Regulations, Part 265, by deleting the present Subpart A in its entirety and substituting a new Subpart A. The purpose of this amendment is to provide

general standards for grading all non-breaded forms of fresh or frozen shrimp (See 50 CFR Part 265 Subpart B for U.S. Standards for Grades of Frozen Raw Breaded Shrimp). The general standards will apply to all non-breaded market forms of all commercial species of fresh or frozen shrimp, raw or cooked. Under these standards, the quality of shrimp will by systematically differentiated as U.S. Grade A, B, C, or substandard. Identification of quality levels on the product label will benefit the consumer and industry.

The quality standards for raw headless frozen shrimp which currently constitute Subpart A of 50 CFR Part 265 were developed in the early 1960's. Since the promulgation of those regulations, a number of industry-wide changes have taken place necessitating their revision and the development of standards covering other market forms:

1. Market forms have shifted significantly to peeled and deveined shrimp, both raw and cooked, for which there are no standards (quality or regulatory).

2. There have been numerous technological changes in the handling and processing of shrimp products.

3. The Codex Alimentarius Commission has approved a Recommended International Standard for Quick Frozen Shrimp and has invited countries to adopt it; this standard provides a framework for a general standard covering all forms of shrimp.

4. An Advisory Code of Practice for shrimp has been approved by the Codex Commission.

To provide an early opportunity for interested persons to contribute to development of the proposed standards, the NMFS published an Advance Notice of Proposed Rulemaking at 45 FR 51858 on August 5, 1980. The ANPR invited public comment and was mailed to interested persons. The comments received have been evaluated and considered in the preparation of this rulemaking.

This rulemaking relates to agency contracts for the voluntary inspection of all non-breaded forms of fresh or frozen shrimp and, therefore, is exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553 (a)). Although this rulemaking is effective upon publication, comments on its content will be accepted by the agency before or within 90 days of publication.

This rulemaking has been reviewed by the agency in accordance with the specifications of Executive Order 12291, "Federal Regulation," and the Department guidelines implementing that order; the agency has determined that it is not a "major rule" in that the promulgation of such standards will have no effect on the economy, investment or productivity. Accordingly, no regulatory impact analysis is required. Further, no regulatory flexibility analysis is required, since the rule is exempt from the notice and comment requirements of the Administrative Procedure Act.

The promulgation of these regulations will establish the standards by which all non-breaded market forms of fresh or frozen shrimp can be graded under the NMFS Seafood Inspection Program. Participation in the Seafood Inspection Program is strictly voluntary. The use of these proposed standards and procedures to ascertain a grade will require Department of Commerce inspectors to observe and record data in those plants that wish to participate in the Inspection Program. This data recording process is neccessary for the proper performance of the agency in determining the appropriate grade of shrimp. The Office of Management and Budget has determined that this data recording process is an observer function and therefore exempt from the provisions of the Paperwork Reduction Act of 1980.

The Acting Assisting Administrator for Fisheries has determined that these regulations do not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 50 CFR Part 265

Seafood.

(7 U.S.C. 1621–1630)

Dated: May 17, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Accordingly, 50 CFR Part 265 Subpart A is amended as follows: By removing the existing Subpart A in its entirety, and inserting in lieu thereof the following Subpart A:

Subpart A—U.S. General Standards for Grades of Fresh and Frozen Shrimp

Sec.

265.101 Scope and product description.
265.102 Product forms.
265.103 Grades.
265.104 Ascertaining the grade.
Table 1 Defect Table.
Table 2 Tolerance for Various Defects.
265.105 Hygiene.
265.106 Appendices.
Appendix 1. Procedure for cooking samples in sensory evaluation of cooked flavor and odor.
Appendix 2. Defect action levels.
Appendix 3. Determination of net weight of contents.

Subpart A—United States General Standards for Grades of Shrimp

§ 265.101 Scope and product description.

These standards shall apply to clean, wholesome shrimp of the regular processed commercial species that are fresh or frozen, raw or cooked. Such shrimp are processed and maintained in accordance with good commercial practice at temperatures necessary for the preservation of the product. The provisions of 50 CFR Part 260, "Inspection and Certification" shall apply to this subpart.

§ 265.102 Product forms.

(a) *Types.* (1) Fresh.

(2) Frozen Individually (IQF) glazed or unglazed.

(3) Frozen Solid Pack, glazed or unglazed.

(b) *Styles.* (1) Raw (uncoagulated protein).

(2) "Parboiled"—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) "Cooked"—heated for a period of time such that the thermal centre of the shrimp reaches a temperature adequate to coagulate the protein.

(c) *Market forms.* (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, round, tail off (all shell and tail fins removed with segments unslit and vein not removed).

(4) Peeled, round, tail on (all shell except last shell segment and tail fins removed, with segment unslit and vein not removed).

(5) Peeled and deveined, round, tail off (all shell and tail fins removed with segments shallowly slit to last segment and vein removed to last segment).

(6) Peeled and deveined, round, tail on (all shell removed except last shell segment, and tail fins, with segments shallowly slit to last segment and vein removed to last segment).

(7) Peeled and deveined, fantail or butterfly tail off (all shell and tail fin removed with segments deeply slit to last segment and vein removed to last segment).

(8) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last

segment and vein removed to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split completely to last segment and vein removed to last segment).

(10) Shell on pieces (head removed, shell and tail fins when existing not removed).

(11) Peeled and deveined, round pieces (all shell removed with segments shallowly slit except last segment when existing; vein removed except last segment when existing).

(12) Peeled and deveined butterfly pieces (all shell removed with segments deeply slit except last segment when existing; vein removed except last segment when existing).

(13) Peeled undeveined pieces (all shell removed).

(14) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

Each sample unit inspected shall be graded in accordance with the following specifications. Grades shall be assigned to lots in accordance with § 265.104(f).

(a) U.S. Grade A shrimp shall:

(1) Possess good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade B quality set forth in § 265.104, Table II.

(b) U.S. Grade B shrimp shall:

(1) Possess reasonably good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade A quality set forth in § 265.104, Table II.

(c) U.S. Grade C shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics ofthe species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade C quality set forth in § 265.104, Table II.

(d) Substandard shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) exceed the tolerance level for physical defects for U.S. Grade C quality as set forth in § 265.104, Table II.

(e) *Ungraded shrimp.* Shrimp which do not possess minimum flavor and odor characteristics of the species as defined in § 265.204(d) will not be graded. If any condition constituting a defect action level (as defined in § 265.106, Appendix 2) is found to exist, the product shall be classified as "decomposed" and shall be retained as unfit for human consumption.

§ 265.104 Ascertaining the grade.

The grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Inspection and Certification, Regulations Governing Processed Fishery Products).

(a) *General procedures.* The grade shall be determined by evaluation of fresh shrimp in the fresh and cooked states, and by evaluation of frozen shrimp in the frozen, thawed and cooked states, as appropriate for each evaluation. Shrimp shall be evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp shall be evaluated for physical characteristics, defects and uniformity of size in accordance with paragraph (e) of this section. Deviation from normal characteristics, extent of defects, and lack of uniformity are classified as to relative severity as minor, major or serious in accordance with § 265.104, Table I; tolerance levels for the various characteristics and defects are set forth for each grade classification in § 265.104, Table II.

(b) *Sampling.* Lot size, number of sample units and acceptance numbers shall be in accordance with the regulation governing processed fishery products, 50 CFR 260.61, Table II, V, or VI, whichever is applicable. Unless otherwise specified, the sample unit shall consist of a package or packages sufficient to provide two pounds declared net weight. In evaluation for uniformity of size, the sample unit shall be one entire package.

(c) Count. "Count", or number of shrimp per pound, is determined by dividing the number of shrimp in the adjusted sample unit by the adjusted weight in pounds. Shrimp marketed as "pieces" shall not be subject to this evaluation.

(1) "adjusted weight" means the weight of all of the whole, unbroken, undamaged shrimp in the sample unit. It is determined by deleting the weight of shrimp pieces, broken and damaged shrimp, inadvertently or improperly peeled shrimp, improperly deveined shrimp, and unuseable material (all as defined in Section 265.104(e)) from net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(2) "adjusted sample unit" means the number of shrimp comprising the adjusted weight.

If the count so ascertained does not conform with the declared count, the sample unit shall be considered a deviant. A lot shall be considered to be of the declared count if the number of deviant units in the sample does not exceed the acceptance number prescribed for the sample size in Part 260 of this chapter. If the number of deviant units in a lot exceeds the acceptance number for deviant units, it shall be marked as a mixed lot and shall not be graded.

(d) *Evaluation of flavor and odor.*—(1) *Procedure.* Sensory evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For raw odor evaluation, frozen shrimp shall be thawed. Fresh or thawed shrimp are broken and the broken flesh is held close to the nose immediately to detect off odor. Cooked style shrimp shall be evaluated for flavor and odor as is, thawed if frozen. For evaluation of flavor and odor fresh or frozen uncooked style shrimp after cooking, use the procedure in Appendix 1, § 265.106 for cooking all samples. Sensory evaluation of cooked samples shall be completed as soon as practical after cooking while the samples are still warm.

(2) *Definitions of flavor and odor.*

(i) Good flavor and odor (minimum requirements for Grade "A" shrimp) means that the product has the normal, pleasant flavor and odor characteristic of freshly caught shrimp that is free from off-flavors and odors of any kind. A natural odor or flavor reminiscent of iodoform is acceptable unless excessive.

(ii) Reasonably good flavor and odor (minimum requirements for Grade "B" shrimp) means that the product may be somewhat lacking in good flavor and odor characteristic of freshly caught shrimp but is free from objectionable off-flavors and off-odors of any kind.

Within a sample unit, each shrimp shall be Class 1 as defined in Appendix 2, § 265.106.

(iii) Minimum acceptable flavor and odor (minimum requirements of a Grade "C" or "substandard" product) means that the raw product and the cooked product have a moderate storage-induced odor (for the raw product) and flavor and odor (for the cooked product) but the product is reasonably free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

Reasonably free means that within a sample unit, less than 5 percent of the shrimp may show class 2 decomposition as defined in Appendix 2, § 265.106. None of the shrimp shall show Class 3 decomposition.

(e) Evaluation of physical characteristics and defects. Each sample unit shall be evaluated as to physical characteristics and defects in accordance with the following definitions and methods of analysis. If examining frozen shrimp that have been glazed, remove the glaze using

Procedure 18.001 of the Association of Official Analytical Chemists immediately before starting the examination. (Appendix 3, § 262.106.)

(1) Dehydration. Dehydration refers to a general desiccation of the shrimp flesh that is noticeable after the shell and glaze are removed. It is evaluated by noting any detectable change from the normal characteristic, bright appearance of freshly caught, properly iced or properly processed shrimp.

(i) Slight dehydration means scarcely noticeable desiccation of the shrimp flesh that will not affect the desirability and/or eating quality of the shrimp.

(ii) Moderate dehydration means conspicuous desiccation of the shrimp flesh that will not seriously affect the desirability and/or eating quality of the shrimp.

(iii) Severe dehydration means conspicious desiccation that will seriously affect the desirability and/or eating quality of the shrimp.

(2) Deterioration is evaluated by noting any detectable change in the normal good odor of freshly caught, properly iced or properly processed shrimp.

(i) Slight deterioration means that overall the sample unit lacks the normal characteristic pleasant odor of freshly caught, properly iced or properly processed shrimp; the desirability and/or eating quality of the shrimp is not affected.

(ii) Moderate deterioration means that overall the sample unit has scarcely noticeable odors of prolonged storage and/or off-odors that materially affect the desirability and/or eating quality of the shrimp.

(iii) Severe deterioration means that overall the sample unit has definite odors of prolonged storage and/or spoilage odors that seriously affect the desirability and/or eating quality of the shrimp.

(3) Presence of broken or damaged shrimp. Fresh or thawed shrimp (glaze removed) shall be visually examined. Broken or damaged shrimp, identified as follows, are grouped together and evaluated by noting the percent by weight of such broken or damaged shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Broken" means a shrimp having a break in the flesh greater than ⅛ of the thickness of the shrimp measured where the break occurs.

(ii) "Damaged" means a shrimp that is crushed or mutilated so as to materially affect its appearance and/or useability.

(4) Presence of shrimp pieces. (Shrimp marketed as "pieces" will not be subject to this evaluation.) Fresh or thawed shrimp shall be visually examined. "Piece" means:

(i) For a count of 70 or fewer unglazed shrimp per pound, any shrimp that has fewer than 5 segments, with or without tail fins attached; or

(ii) For a count of more than 70 unglazed shrimp per pound, any shrimp that has fewer than 4 segments; or

(iii) Any whole shrimp with a break in the flesh greater than ⅜ of the thickness of the shrimp measured where the break occurs.

Shrimp pieces so identified are grouped together and evaluated by noting the percent by weight of such pieces in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(5) Presence of unuseable material (legs, flippers, loose shell, antennae, heads, swimmerets, extraneous material and unacceptable shrimp). The product shall be visually examined in the fresh or thawed state. Unuseable materials, defined as follows, are separated from the shrimp and evaluated by noting the percent by weight of such unuseable material in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Legs" refers to walking legs only (heads-on market form excepted); if attached should be detached and weight thereof evaluated.

(ii) "Loose shell" and "antennae" refer to any piece of shell or antennae which is completely detached from the shrimp.

(iii) "Flipper" refers to the tail fin with or without the last shell segment attached, with or without flesh.

(iv) "Head" refers to any portion of the head (cephalothorax). (Heads-on shrimp excepted).

(v) "Extraneous material" means any material in the sample unit which is not shrimp material.

(vi) "Unacceptable shrimp" refers to abnormal or diseased shrimp.

(6) "Black spot and improperly cleaned ends" refer to presence of any objectionable black or darkened area that affects the desirability and/or eating quality of the shrimp. Affected shrimp are grouped together and evaluated by noting the percent by weight of such shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106). Shrimp with black spot and/or improperly cleaned ends shall, if they are considered defective in other categories, also be evaluated in such other categories.

(7) Presence of inadvertently or improperly peeled, or improperly deveined shrimp. Fresh or thawed shrimp shall be visually examined to determine whether the particular market form being examined has been properly peeled and/or deveined (i.e. head, shell segments, swimmerets, tail fins, and alimentary canal have been removed) in accordance with the description of that market form as set forth in § 265.102(c). Inadvertently peeled, improperly peeled and improperly deveined shrimp, identified as follows, are grouped together (one class of defect) and evaluated by noting the percent by weight of such shrimp in the total sample unit. (Inadvertently peeled, improperly peeled, or improperly deveined shrimp that are also considered broken, damaged, or pieces, shall be evaluated only as broken, damaged, or pieces, accordingly).

(i) "Inadvertently or improperly peeled" refers to a shrimp with any shell or shell fragments missing or intact other than as outlined under § 265.102(c). (Shell-on shrimp with tail fins and/or telson missing is inadvertently peeled, but if the last segment of flesh is missing, the shrimp is damaged).

(ii) "Improperly deveined" refers to a shrimp with any attached black or dark vein other than as outlined under § 265.102(c).

(8) Uniformity of size. The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(i) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit except that if marketed as "pieces", evaluation shall be of uniformity of size of undamaged pieces) visually select and weigh not more than 10 percent by count, but not less than one of the largest shrimp;

(ii) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp;

(iii) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(9) Texture. "Texture" refers to an undesirable toughness and/or dryness and/or mushiness of shrimp. The product is examined in the cooked state (if uncooked style, cooked in accordance with procedures specified in Appendix 1, § 265.106) and evaluated by noting deviations from the normal characteristics of the species when freshly caught, properly processed, and cooked. The texture of the cooked shrimp should be firm, slightly resilient, but not tough, moist but not mushy. Deviations are classified as:

(i) Slight. Fairly firm, moist, but not mushy.

(ii) Moderate. Moderately tough, moist, but not mushy.

(iii) Severe. Excessively tough, very dry, or very mushy.

(f) Grade Assignment. Physical characteristics and defects of each sample unit shall be classified and points assigned in accordance with Table I; the tolerance level for each grade shall be in accordance with Table II. Each sample unit shall be assigned the grade into which it falls in accordance with the evaluation of flavor and odor and tolerance level for characteristics and defects as specified in section 265.103. The grade assigned to a lot is the grade assigned to the majority of the sample units; provided that if

(1) the number of sample units which fall one grade below the majority grade (by reason of flavor and odor evaluation or physical characteristics and defects) exceeds the acceptance number prescribed for the sample size (number of sample units) as specified in section 260.61; or

(2) the grade of any one of the sample units falls more than one grade below the majority grade in flavor and odor evaluation or by reason of physical characteristics and defects,

the grade assigned to the lot shall be one grade below the majority grade.

§ 265.105 Hygiene.

Shrimp shall be processed and maintained in accordance with §§ 260.98 to 260.104 of this Chapter and of the Good Manufacturing Practice regulations contained in 21 CFR Part 110.

TABLE I.—CLASSIFICATION OF DEFECTS

Defect	Points Assigned		
	Minor	Major	Serious
1. Dehydration: Slight	1		
Desiccation:			
Moderate		2	
Severe			4
2. Uniformity ratio of weight as defined in section 265.104(e)(6):			
1.75 to 1.99	1		
2.00 to 2.25		2	
Over to 2.25			4
3. Deterioration:			
Slight	1		
Moderate		2	
Severe			4
4. Black spot and improperly cleaned ends:			
From 1% to 4% (by weight)	1		
From 4% to 6% (by weight)		2	
More than 6% (by weight)			4
5. Pieces:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
6. Damaged and broken:			
From 2% to 4% (by weight)	1		
From 4% to 10% (by weight)		2	
More than 10% (by weight)			4
7. Legs, loose shell, antennae, flippers, extraneous material heads, or unacceptable shrimp:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
8. Improperly peeled, inadvertently peeled, and improperly deveined:			
From 1% to 6% (by weight)	1		
From 6% to 10% (by weight)		2	
More than 10% (by weight)			4
9. Texture:			
Slight	1		
Moderate		2	
Severe			4

TABLE II.—TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major Defects	Serious defects
U.S. Grade A:	
Up to and including 5 points	None
U.S. Grade B:	
Over 5 points, up to and including 9 points	None
U.S. Grade C:	
Over 9 points, up to and including 13 points	Up to 4 points

§ 265.106

Appendix 1

Procedures for cooking samples in sensory evaluation of cooked flavor and odor.

"Cooked in a suitable manner" (Cooked style excepted) means that a portion of the thawed product has been cooked as follows:

Place 2 to 4 ounces of shrimp in a sauce pan with 1 pint of water and 1 teaspoon of salt. (Salt optional.) Cook until internal temperature reaches 160 degrees F (70 degrees C). Drain and cool without rinsing and check for flavor, odor, and texture.

Appendix 2

Defect Action Levels

These defect action levels apply to sample units of fresh or frozen shrimp.

A defect action level occurs if at least one of the following conditions is present:

If 5 percent or more of the shrimp in a sample unit show Class 3 decomposition; or

If 20 percent or more of the shrimp in a sample unit show Class 2 decomposition; or

If the percentage of shrimp showing Class 2 decomposition plus four times the percentage of those showing Class 3 decomposition equals at least 20 percent of the shrimp in a sample unit.

The classes are defined as follows:

Class 1—Passable

This category includes fishery products that range from very fresh to those that contain fishy odors or other odors characteristic of the commercial product, not definitely identifiable as decomposition.

Class 2—Decomposed (Slight but Definite)

The first stage of definitely identifiable decomposition. An odor is present that, while not really intense, is persistent and readily perceptible to the experienced examiner as that of decomposition.

Class 3—Decomposed (Advanced)

The product possesses a strong odor of decomposition which is persistent, distinct and unmistakable.

Appendix 3

Determination of Net Weight

Regulatory tolerances for new weight are established under the provisions of the Federal Food Drug and Cosmetic Act, as amended.

The following procedures are based on the Thirteenth Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists.

18.001 New Weight of Frozen Seafoods. Procedure.

Set scale, 32.050, on firm support and level. Adjust zero load indicator or rest point and check sensitivity.

(a) *Glazed seafoods.*—Remove package from low temperature storage, open immediately, and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8") diameter for product less than or equal to 0.9 kg (2 lb.) and 20 cm (12") for product greater than 0.9 kg (2 lb.). Without shifting product, incline sieve at angel of 17–20° to facilitate drainage and drain exactly 2 minutes (stop watch). Immediately transfer product to tarred pan (B) and weigh (A). Weight product = A − B.

Modified AOAC 18.016 and 13.017 method for determining the net weight of frozen peeled shrimp blocks and packages.

(a) *Equipment needed.*

(i) Container of sufficient size and capacity so as to completely submerge the product. Wire mesh basket large enough to contain contents of package and with opening small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully line with standard 16 mesh per linear inch insect screen, mesh bags or other suitable containers are also satisfactory.

(ii) Balance. Sensitive to 0.01 ounce or 0.25 g.

(iii) Sieve. U.S. standard #8 wire sieve 12" diameter (30 centimeters).

(iv) Thermometer.

(v) Stop Watch.

(2) *Procedures.*

Place contents of individual package in wire mesh basket and immerse in container of fresh water so that top of basket extends above water level. Introduce water at 60°±5°F (26°C2†3°C) at bottom of container at flow rate of 1–3 quarts or liters per minute. As soon as the product thaws so that the glaze can be removed and the shirmp separated easily, transfer all material to 12" (30 centimeters) No. 8 sieve, distributing

evenly. Tilt the sieve to above 20 degrees and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

"Drained weight" of cooked shrimp is determined by the following AOAC 18.016 method modified.

Procedure

(i) Weigh product free all wrapping and record weight. Place product in a container containing an amount of fresh potable water 80°±5°F [26°G2†3°C) equal to 8 times the declared weight of the product. If product is block frozen, turn block over several times during thawing. If frozen shrimp are caked together they may be parted manually provided they are not injured in the process. When all the ice has melted, empty the shrimp into a 12†† [30 centimeters) 8 sieve, distributing evenly. Tilt the sieve to about 20° and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

[FR Doc. 82-13808 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-06-M

Proposed Rules

Federal Register
Vol. 47, No. 98
Thursday, May 20, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool plants and still be priced under the order. The proposed suspension would remove the limits on such movements of milk during the months of June through August 1982. The action was requested by a cooperative association to assure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for dairy farmers regularly associated with the market. The closing of a fluid milk plant supplied by the cooperative association prompted the request.

DATE: Comments are due not later than May 27, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4824.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures and the inclusion of June 1982 in the suspension period if this is found necessary. The initial request for this action was received on May 11, 1982.

It has also been determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois marketing area is being considered during the months of June through August 1982:

1. In § 1032.13(b)(2), the language "during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In § 1032.13(b)(3), the language "for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section".

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than May 27, 1982. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include June 1982 in the suspension period.

The comments that are sent will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limits on the amount of milk that may be diverted from pool plants to nonpool plants during the months of June through August 1982. The order now provides that during the months of January through April and September through November not more than 8 days' production of a producer may be diverted to nonpool plants that are not other order plants. Such diversions are limited to not more than 12 days' production of a producer during August and December. Diversions to nonpool plants that are also other order plants are limited each month of the year to not more than the number of days of production of a producer that is received at pool plants.

The suspension was requested by a cooperative association that supplies milk to handlers regulated under the order. The cooperative association received notification that a pool distributing plant it supplies will cease operations on May 29, 1982. The cooperative stated that other pool distributing plants have supply arrangements that run through August but that tentative arrangements have been made to place the plant's milk supply in such other pool distributing plants in September. As a result, milk of the cooperative's members will be temporarily in excess of fluid milk needs and will have to be moved to nonpool plants for surplus disposal during June through August.

Outlets for the displaced milk include manufacturing plants located in the production area and distributing plants in the St. Louis area that are regulated under the adjacent St. Louis-Ozarks order. The cooperative contends that suspension of the diversion limitations is necessary so that the milk can be moved to such plants in the most economical manner. Without the suspension, the cooperative contends, costly and inefficient movements of milk would have to be made to continue to pool the milk of dairy farmers who have been regularly associated with the market. Also, without the suspension, some of the milk would become pooled under the St. Louis-Ozarks order, thereby lowering returns to producers supplying that market. The cooperative

contends that St. Louis-Ozarks producers should not have their returns reduced as a result of carrying a reserve supply of milk that has regularly been associated with the Southern Illinois order.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 14, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-13754 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-30]

Council on Energy Independence; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of petition for rulemaking filed by the Council on Energy Independence.

SUMMARY: In a **Federal Register** notice published on December 17, 1981 (46 FR 61484), the Commission announced the receipt of and requested comments on a petition for rulemaking (PRM-50-30) filed by the Council on Energy Independence. The petition, which was dated September 11, 1981, requested that the Commission amend its regulations in 10 CFR Part 50 to extend the operating life of nuclear power plants by beginning the 40-year Operating License (OL) term at the date of issuance of the OL. By letter dated May 4, 1982, the petitioner has withdrawn its petition for rulemaking and requested that the Commission cease work on its proposed amendments to 10 CFR Part 50.

ADDRESSES: A copy of the petitioner's letter of withdrawal is available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC. A copy of the letter of withdrawal may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free: 800-368-5642.

Dated at Bethesda, Maryland this 12th day of May 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-13610 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Products and Leather Clothing

AGENCY: Federal Trade Commission.

ACTION: Notice of opportunity to file objections to the participation of Chairman James C. Miller III in the rulemaking proceeding.

SUMMARY: The purpose of this document is to notify interested parties of statements about this proceeding regarding care labeling of textile products and leather clothing made by Chairman James C. Miller III prior to his appointment to the Commission and to afford interested parties an opportunity to file objections to Chairman Miller's participation in the proceeding if they wish.

DATE: Objections may be filed on or before June 4, 1982.

ADDRESS: Objections should be addressed to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, and should be labeled "Chairman Miller's Participation in Care Labeling Amendments."

Copies of the Chairman's prior statements are available in Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW. ((202) 523-3598).

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3487.

SUPPLEMENTARY INFORMATION: Prior to his appointment to the Commission, Chairman Miller made certain statements concerning the amendments to the Trade Regulation Rule governing Care Labeling of Textile Products and Leather Clothing that the Commission had proposed on January 26, 1976 (41 FR 3747). Mr. Miller made the statements in 1976 in his capacity at that time as Director, Government Operations and Research of the Council on Wage and Price Stability ("Council"). The statements appear in: (1) A Council press release reporting Mr. Miller's remarks before the National Conference on Care Labeling in Washington, D.C., on July 20, 1976; (2) comments of the Council which Mr. Miller joined in submitting for the rulemaking record on September 24, 1976; and (3) a Council press release concerning the September 24, 1976 comments of the Council.

Notwithstanding his prior statements, Chairman Miller intends to participate in any future Commission deliberations in the proceeding unless, after consideration of any objections to his participation that may be filed in response to this notice, he or the Commission determines otherwise. Interested parties may file such objections on or before June 4, 1982.

Copies of Chairman Miller's prior statements are available in Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580 ((202) 523-3598).

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552))

By direction of the Commission, dated May 12, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-13706 Filed 5-19-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

Proposed Customs Regulations Amendments Relating to Currency Rates of Exchange

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations provide a list of foreign countries whose currencies are converted into equivalent United States currencies and certified on a quarterly basis. Each time a new country is to be added to this list, the regulations must be amended. This is a burdensome procedure which Customs believes should be simplified. This document proposes to amend the regulations by (1) removing the list of countries from the regulations, and (2) providing that Customs would establish, and publish as a Treasury Decision in the Customs Bulletin for each calendar quarter, a list of foreign countries for which quarterly currency rates are certified, and for the currency of each of

the countries, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter.

DATE: Comments must be received on or before July 19, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: G. Scott Shreve, Duty Assessment Division (202–566–5307), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 31 U.S.C. 372, it is necessary to convert foreign currency into equivalent United States currency for the purpose of assessing and collecting duties upon merchandise imported into the United States. To do this, Customs must use the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York ("FRB").

The FRB provides rates of exchange by two methods: (1) responses to special requests by Customs, and (2) daily rate sheets.

Special requests by Customs are utilized for those currencies for which rate information is needed infrequently either because of low trade volume or due to the fact that most transactions are in U.S. dollars.

For currencies for which there is a high demand for rate information, certified rates of exchange are provided by the daily rate sheets. The daily rate sheets list (1) countries set forth in § 159.34(a), Customs Regulations (19 CFR 159.34(a)), whose currencies are converted into equivalent United States currencies and certified on a quarterly basis, and (2) countries not set forth in § 159.34(a), but for which there is a demand for currency rate information. The FRB finds it more efficient to provide information about this second group on the daily rate sheets as opposed to responding to numerous special requests.

For those countries listed in § 159.34(a), certified quarterly rates of exchange are used. For these countries, Customs publishes in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the FRB for the respective foreign currency for a day in that quarter.

The certified quarterly rate of exchange is used for Customs purposes for any date of exportation within the quarter unless a certified daily rate, as determined by the FRB and certified to the Secretary of the Treasury, for the date of exportation varies by 5 percent or more from the certified quarterly rate. In that event, Customs publishes in the Customs Bulletin a notice of the variation (popularly called a "variance"), and the rate certified on that date for the applicable country listed in § 159.34(a). The certified daily rate then is used for Customs purposes in connection with merchandise exported on that date.

For those countries appearing on the daily rate sheets but not on the list of countries in § 159.34(a), a different procedure is used. The rates of exchange for those countries are converted and certified on a daily basis, rather than on a quarterly basis, as is the case of the countries listed in § 159.34(a). Therefore, to inform the importing community of the daily rates of exchange of those countries, it is necessary for Customs to publish a separate Treasury Decision each week in the Customs Bulletin.

Customs believes that when trade practices change so as to warrant the addition of a country to the daily rate sheets, that country also should be placed on the quarterly list and subject to the benefit of the quarterly rate procedure. In this regard, Customs published a final rule in the Federal Register on May 4, 1981 (T.D. 81–117; 46 FR 24944), amending § 159.34(a), by adding eight countries to the quarterly list. Since that amendment, other countries appearing on the daily rate sheets should be added to the quarterly list. Under existing procedures, it would be necessary to amend § 159.34(a) to add these new countries to those already listed in that section. Further, as other countries are added to the daily rate sheets, it would be necessary to amend § 159.34(a) again. Customs believes this is a burdensome procedure which should be simplified.

Rather than commence the amendatory process each time a country is to be added to the list of countries, this document proposes to amend § 159.34(a) by removing the list of countries and, in its place, advise the public that Customs would establish, and publish as a Treasury Decision in the Customs Bulletin for each calendar quarter, a list of foreign countries for which quarterly rates of exchange are certified and for the currency of each of the countries, the rate or rates first certified by the FRB for such foreign currency for a day in that quarter. This means that a country, added to the daily rate sheets between calendar quarters, would be added to the quarterly list of countries at the time of publication of the Treasury Decision in the Customs Bulletin at the next calendar quarter. In the interim, to inform the importing community of the daily rates of exchange of those countries added to the daily rate sheets, Customs would continue to publish a separate Treasury Decision each week in the Customs Bulletin. The advantage of this approach is that § 159.34(a) need not be amended repeatedly each time another country is added to the daily rate sheets.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

The Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, (5 U.S.C. 601, *et seq.*), it is hereby certified that the proposed regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices particpated in its development.

List of Subjects in 19 CFR Part 159

Customs duties and inspection, Imports, Foreign currencies.

Authority

This document is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 25, 28 Stat. 552, as

amended (31 U.S.C. 372), section 624, 46 Stat. 759 (19 U.S.C. 1624).

PART 159—LIQUIDATION OF DUTIES

It is proposed to revise § 159.34(a), Customs Regulations (19 CFR 159.34(a)), to read as follows:

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* Customs shall establish on the 1st day of January, April, July, and October of each year, a list of foreign countries for which a quarterly currency rate is certified. Customs shall publish quarterly as a Treasury Decision in the Customs Bulletin the list of foreign countries and for the currency of each of the countries, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter.

* * * * *

Approved April 30, 1982.

William Raab.

Commissioner of Customs.

John M. Walker, Jr.

Assistant secretary of the Treasury.

[FR Doc. 82-13807 Filed 5-19-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 211, 221, 231, 250, and 270

Notice of Intent To Require the Use of a Payor Information Form

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Minerals Management Service (MMS), formerly the Conservation Division of the U.S. Geological Survey (USGS), proposes the use of a Payor Information Form (PIF) to identify all parties holding interests in Federal lands, Outer Continental Shelf (OCS) lands, or Indian lands leases on which royalties are being paid on minerals extracted and sold. The Payor Information Form will be required to be submitted by each party who pays rentals and/or royalties to the MMS, identifying the percentage of production/sales for each specific lease or property. The proposed PIF will enable MMS to determine all of the payors responsible for making payments on Federal and Indian leases to the Royalty Management Accounting Center. This form fulfills the recommendation of the Commission on Fiscal Accountability of the Nation's Energy Resources that:

* * * the Department immediately require all lessees of revenue producing leases or their agent (the operator or some other agent) to submit a payor plan signed by all payors indicating the payment responsibilities of each party. In the payor plan, the lessee should identify the payors for 100 percent of the royalty obligation. Modified payor plans must be submitted whenever any payor responsibilities change * * *.

DATE: Written comments and recommendations on this proposed rulemaking must be received on or before June 21, 1982.

ADDRESS: Written comments may be mailed or delivered to Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Room 6A220, Mail Stop 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091, telephone (703) 860-7331.

Authority: The Director of the Minerals Management Service has the authority to prescribe the manner in which royalty production and sales data are remitted to the Federal Government in accordance with the pertient provisions of the minerals operating regulations (30 CFR Parts 211, 221, 231, 250, 270) and the terms of the minerals leases and contracts issued pursuant to the Mineral Leasing Act, the Act of February 25, 1920 (30 U.S.C. 181 et seq.); the Acquired Lands Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.); the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.); the Allotted Lands Leasing Act of 1909 (25 U.S.C. 396); the Tribal Lands Leasing Act of 1938 (25 U.S.C. 396a); and Executive Order 12291 (46 FR 13193).

SUPPLEMENTARY INFORMATION: On January 19, 1982, the Secretary of the Interior established the Minerals Management Service and transferred thereto all functions previously exercised by the Conservation Division, U.S. Geological Survey, including administration of the regulatory programs cited herein. Secretarial Order No. 3071 (47 FR 4751, February 2, 1982).

Purpose

The Royalty Management Program (RMP) of MMS is developing a new data base to identify properties and parties paying rentals and royalties on Federal and Indian leases. Rentals paid to the Bureau of Land Management are not included. To develop and maintain this automated data base, the RMP proposes utilizing a Payor Information Form. The Payor Information Form will be required to be submitted by each party who pays rentals or royalties to MMS. This form will be required for each lease on which a payment is made to MMS, specifying what percentage of the production is covered by the payment.

Payors will be required to file amended PIFs, within 30 days, when any change in the information previously provided occurs.

From the information provided on the PIF, the RMP will assign unique accounting identification codes. Payors will use the assigned codes for reporting and paying rentals and royalties on the Report of Sales and Royalty Remittance (Form 9-2014).

Explanation

The new accounting identification numbering system has been designed to provide the flexibility needed to allow reporting and paying at the Federal or Indian lease level or below. This flexibility is needed to deal with ownership and operational arrangements which may not be consistent across an entire Federal or Indian lease.

Ownership and operating rights are routinely assigned on part of a lease rather than for an entire lease. As a result of this ownership division on a Federal or Indian lease, industry will usually identify their leases based upon common ownership or operators which, most of the time, are not consistent with the Federal or Indian lease boundary. Thus a Federal or Indian lease usually consists of more than one company "lease."

In the future, a new element in the Federal royalty accounting system will be what is called the "revenue source." The revenue source from the Government or Indian lessor's point of view is a producing entity on a lease from which the lessor expects to receive revenues.

A revenue source will be one or more wells or zone completions on a Federal or Indian lease which have:

- A common royalty rate
- A common operator
- A common ownership or division of interest

For Federal or Indian royalty accounting identification purposes, the revenue source will be further separated by products produced.

The products are identified by the party (payor) who will be paying the royalties for each of the products.

If the royalty payor has more than one marketing outlet for the same product, such as sales to more than one

purchaser, then the payment will be further subdivided into "selling arrangements."

At the selling arrangement level, the percentage of the total product being sold at that level is identified. This percentage represents that portion of the product (i.e., fraction of 100 percent) that is being sold by a payor from that revenue source.

Thus for Federal and Indian royalty accounting identification purposes, a unique identification numbering system is developed which consists of the following components:

- Lease number
- Revenue source
- Product
- Payor
- Selling Arrangement

Detailed instructions for completing the proposed Payor Information Form have been developed and are available upon request from Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service—MS660, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

List of Subjects in 30 CFR Parts 211, 221, 231, 250, and 270

Dated: May 17, 1982.

S. Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

BILLING CODE 4310-31-M

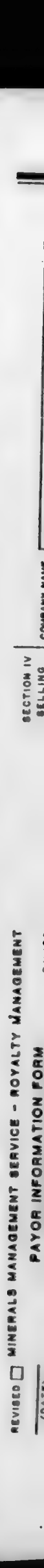

REVISED ☐ (DATE)

MINERALS MANAGEMENT SERVICE - ROYALTY MANAGEMENT

PAYOR INFORMATION FORM
ACCOUNTING IDENTIFICATION SHEET

3/1/82

SECTION I PAYOR INFORMATION

COMPANY NAME ____ CO. CODE ____
PERSON TO CONTACT ____ AREA CODE ____ TELEPHONE NUMBER ____ EXTEN. ____
AUTHORIZED SIGNATURE ____ DATE ____

SECTION II LEASE INFORMATION

LEASE NO. ____ PRODUCING ☐ RENTAL/MINIMUM ROYALTY ONLY ☐ GAS STORAGE ☐
WHO PAYS RENT? ____ CO. CODE ____
WHO PAYS MIN. ROYALTY? ____ CO. CODE ____

SECTION III REVENUE SOURCE INFORMATION

__ OF __ FOR THIS LEASE. R/S CODE ____
YOUR INTERNAL ID (NAME/NO.) ____

A.) REVENUE SOURCE OPERATOR (IF DIFFERENT FROM PAYOR)

NAME ____ CO. CODE ____
PERSON TO CONTACT ____ AREA CODE ____ TELEPHONE NUMBER ____ EXTEN. ____

B.) REVENUE SOURCE TYPE

IF POOLED PRODUCTION:
1 ☐ UNITIZED PRODUCTION ALLOCATION
2 ☐ COMMUNITIZED PRODUCTION ALLOCATION
(COMPLETE (C) UNIT/COMM. AGREEMENT DATA)

IF LEASE PRODUCTION:
3 ☐ SINGLE WELL
4 ☐ GROUP OF WELLS
(COMPLETE (B) WELL DATA)
5 ☐ ALL WELLS ON THIS LEASE

OTHER:
6 ☐ COMPENSATORY ROYALTY
(COMPLETE (C) UNIT/COMM. AGREEMENT DATA, IF NEEDED)

C.) UNIT/COMM AGREEMENT DATA

UNIT NAME (COMM. WELL NAME) ____
PARTICIPATING AREA (COMM. FORMATION) ____
UNIT NO. (COMM. NO.) ____ TRACT NO. ____ TRACT% ____

B.) WELL DATA

1.) WELL NAME ____ FORMATION ____
API WELL NO. ____ OR LOCATION ____
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

2.) WELL NAME ____ FORMATION ____
API WELL NO. ____ OR LOCATION ____
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

SECTION IV SELLING ARRANGEMENTS

COMPANY NAME ____
LEASE NO. ____
REVENUE SOURCE __ OF __ FOR THIS LEASE.

A.) OIL

1.) GENERAL: SELLING ARRANGEMENT __ OF __ FOR THIS REVENUE SOURCE. S/A CODE __
PRODUCT DESCRIPTION ____ PROD. CODE ____
THE BUYER ☐ SELLER ☐ IS ____ CODE ____
(IF RIK, ENTER REFINER'S NAME)

2.) PURCHASE INFO.: OIL BULLETIN CATEGORY ____ CODE ____ ROYALTY-IN-KIND? YES ☐ NO ☐ RIK ____

3.) WPT: WINDFALL PROFITS TAX:EXEMPT? YES ☐ NO ☐ TIER 1 ☐ 2 ☐ 3 ☐
DESCRIPTION ____ CODE ____
BASE PRICE - INTERM ____ OCT. 1, 1980 ____

4.) ALLOWANCES: TRANSPORTATION ALLOWANCE YES ☐ NO ☐ GATHERING CHARGE YES ☐ NO ☐

5.) PAYOR PERCENT: PERCENT OF TOTAL VOLUME FOR THIS PRODUCT ____

B.) GAS

1.) GENERAL: SELLING ARRANGEMENT __ OF __ FOR THIS REVENUE SOURCE. S/A CODE __
PRODUCT DESCRIPTION ____ PROD. CODE ____
THE BUYER ☐ SELLER ☐ IS ____ CODE ____
(IF RIK, ENTER REFINER'S NAME)

2.) PURCHASE INFO.: ____ CODE ____ ROYALTY-IN-KIND? YES ☐ NO ☐ RIK ____

3.) ALLOWANCES: TRANSPORTATION ALLOWANCE YES ☐ NO ☐ GATHERING CHARGE YES ☐ NO ☐

4.) PAYOR PERCENT: PERCENT OF TOTAL VOLUME FOR THIS PRODUCT ____

C.) OTHER PRODUCT

1.) GENERAL: SELLING ARRANGEMENT __ OF __ FOR THIS REVENUE SOURCE. S/A CODE __
PRODUCT DESCRIPTION ____ PROD. CODE ____
THE BUYER ☐ SELLER ☐ IS ____ CODE ____
(GAS PLANT NAME)

2.) PAYOR PERCENT: PERCENT OF TOTAL VOLUME FOR THIS PRODUCT ____

3.) ALLOWANCE: MANUFACTURING ALLOWANCE ____

UMI 2 3 2 Y M 8 6 1 7 4 V

MINERALS MANAGEMENT SERVICE – ROYALTY MANAGEMENT

PAYOR INFORMATION FORM
WELL DATA CONTINUATION SHEET – 3/1/82

COMPANY NAME
LEASE NO.
REVENUE SOURCE ___ OF ___ FOR THIS LEASE.

B.) WELL DATA

1.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

2.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

3.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

4.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

5.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

6.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

7.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

8.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

9.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

10.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

11.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

12.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

13.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

14.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

15.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

16.) WELL NAME FORMATION
API WELL NO. OR LOCATION
ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

[FR Doc. 82-13919 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-31-C

Mineral Management Service
30 CFR Part 206
Site Security, Oil Accounting, and Indian Royalty Oil
AGENCY: Minerals Management Service, Interior.
ACTION: Proposed rule; extension of comment period.
SUMMARY: This notice announces an extension of the comment period on a notice of proposed rulemaking published on March 22, 1982 (47 FR 12134) for revisions to the regulations governing gas valuation, royalty reporting, and Regulation 15-C. The comment period is extended to allow interested parties additional time to submit comments.
DATES: Written comments must be received by June 21, 1982.
ADDRESS: Comments should be addressed to Director, Minerals Management Service, 12201 Sunrise Valley Drive, MS 658, Reston, Virginia 22092.
FOR FURTHER INFORMATION CONTACT: Mr. Robert Dalrymple, Minerals Management Service, (FTS) 343-6512, (703) 860-6512.

Dated: May 14, 1982.
Edward Hanley,
Acting Director, Minerals Management Service.

[FR Doc. 82-13918 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement
30 CFR Part 917
Public Review Meeting on Proposed Reclamation Plan Amendment Texas Program
AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Notice of public review meeting.
SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) announces a public review meeting to receive comments on a proposed amendment to the Texas permanent regulatory program (hereinafter referred to as the Texas program) submitted by Texas under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to certain provisions of the Texas surface coal mining and reclamation regulations concerning solid waste disposal, backfilling and grading, and revegetation. The proposed amendment is intended to revise the Texas program to be consistent with the corresponding provisions of the Federal regulations and SMCRA.

Minerals Management Service

30 CFR Part 221

Site Security; Onshore Federal and Indian Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period on a notice of intent to propose rulemaking.

SUMMARY: In response to requests for an extension of time to comment on a notice of intent to propose rulemaking on minimum site security requirements for onshore Federal and Indian oil and gas leases published in the Federal Register April 21, 1982 (47 FR 17076), a 15-day extension is hereby granted. This extension will give the public more time to study and comment on the notice of intent to propose rulemaking.

DATE: Comments on this notice of intent to propose rulemaking must be received by June 7, 1982.

ADDRESS: Comments may be mailed to Director, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 656, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860–7535 (FTS) 928–7535; or Mr. Cecil Feeney, (703) 860–6259, (FTS) 928–6259.

Dated: May 13, 1982.

Eddie R. Wyatt,

Acting Chief, Onshore Minerals Management Division.

[FR Doc. 82–13737 Filed 5–19–82; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Public Disclosure of Comments Received From Federal Agencies on Proposed Bonding Amendment to the Texas State Program

AGENCY: Office of Suface Mining Reclamation and Enforcement, Interior.

ACTION: Disclosure of comments.

SUMMARY: Before the Director of the Office of Surface Mining Reclamation and Enforcement, (OSM) may approve state regulatory program amendments submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Director has solicited comments from these agencies on the Texas program, and is today announcing their public disclosure.

ADDRESSES: See "**SUPPLEMENTARY INFORMATION**" for addresses where copies of the comments received from Federal Agencies and the administrative record on the proposed bonding amendment to the Texas State program are available.

FOR FUTHER INFORMATION CONTACT: Robert L. Markey, Director, Oklahoma State Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth St., Tulsa, Oklahoma 74103, Telephone: (918) 581–7929.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the comments received from Federal agencies and administrative record on the proposed bonding amendment to the Texas program are available for public inspection and copying during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Oklahoma State Office, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240, Telephone: (202) 343–7896.

Texas Railroad Commission, Surface Mining and Reclamation Division, 105 West Riverside Drive, Austin, Texas 78711, Telephone: (512) 475–8751

Background

The Director, OSM is evaluating the proposed bonding amendment submitted by Texas for his review on September 18, 1981. See the **Federal Register**. In accordance with section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), this amendment to Texas' program may not be approved until the Director has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment as proposed. In this regard, the following Federal agencies were invited to comment on the Oklahoma program:

Department of Agriculture:
- Soil Conservation Service
- Forest Service
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation

Department of Labor:
- Mine Safety and Health Administration

Environmental Protection Agency

Water Resources Council

Council on Environmental Quality

Department of Energy

Department of the Interior:
- Bureau of Indian Affairs
- Bureau of Land management
- Bureau of Mines
- Bureau of Reclamation
- Fish and Wildlife Service
- National Park Service
- Geological Survey

U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received acknowledgement and/or comments from the following offices.

Department of Agriculture:
- Soil Conservation Service
- Forest Service
- Agricultural Stabilization and Conservation Service

Environmental Protection Agency

Department of the Interior:
- Bureau of Reclamation
- Fish and Wildlife Service
- National Park Service
- Minerals Management Service

Dated: May 14, 1982.

Arthur W. Abbs

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 82–13737 Filed 5–19–82; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

32 CFR Ch. I

Guidance for the Determination and Reporting of Nuclear Radiation Dose for DOD Participants in the Atmospheric Nuclear Test Program (1945–1962)

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Request for comments on proposed guidelines.

SUMMARY: We propose to establish guidance to DOD components for the determination and reporting of ionizing radiation dose for DOD participants in the atmospheric nuclear test program (1945–1962). These proposals are based upon a review of the existing film badge dosimetry data base and established scientific principles. The methodology by which a film badge dose or an absorbed radiation dose may be established for individual test participants is outlined. The use of individual film badge data as well as records existing for other individuals, radiological surveys, weapons effects data, and modeling techniques based on

the laws of the physical sciences form the basis of the guidance.

DATES: All written comments in response to this request are welcome and must be received by July 15, 1982 in order to be considered.

ADDRESS: Written comments should be addressed to the Director, Defense Nuclear Agency, ATTN: NTPR, Washington, D.C. 20305

We will send a copy of the Fact Sheet on the Nuclear Test Personnel Review Program to anyone requesting it. This fact sheet describes the background and scope of the program and some of the findings to date. Please send requests to Col. Thomas J. Haycraft at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittigan, Defense Nuclear Agency, ATTN: GC, Washington, D.C. 20305 (Telephone 202–325–7681).

SUPPLEMENTARY INFORMATION:

Authority

On March 26, 1982, the United States District Court for the District of Columbia filed a Memorandum Order in the case of *Gott* v. *Nimmo*, Civil Action No. 80–906. The order requires the Defense Nuclear Agency to promulgate "rules which establish methodologies and standards to calculate radiation exposure." A notice of appeal has been duly filed and, in the event the decision of the District Court is reversed, this proposed rule will be withdrawn.

Previous Actions by the Department of Defense

Between 1945 and 1962 the Atomic Energy Commission (AEC) carried out some 235 atmospheric nuclear tests, principally in Nevada and the Pacific Ocean. An estimated 220,000 Department of Defense (DOD) personnel, military and civilan, were involved in this testing, and many were exposed to low levels of ionizing radiation in the performance of various activities. The doses generally were well within established radiation dose limits.

DOD in December 1977 began a program of wide-ranging actions on behalf of the atmospheric nuclear test participants. The Defense Nuclear Agency (DNA) was appointed the DOD Executive Agency for this effort. The Nuclear Test Personnel Review (NTPR) program was established by DNA to carry out these responsibilities.

DOD has made a commitment to Congress to provide the recorded exposure, or to estimate the most probable exposure, for each test participant. The principal issue addressed herein is the method for calculating the nuclear radiation dose for the individual participants.

Radiation Dose Determination

The basic means by which to measure dose from exposure to ionizing radiation is the film badge. Of the estimated 220,000 Department of Defense participants in atmospheric nuclear weapons tests, about 145,000 have film badge dose data available. The records have been converted to a standard format and are being provided to each military service, which can use the film badge dose data to obtain a radiation dose for a particluar individual from that service. This is done upon request from the individual, the individual's representative, the Veterans' Administration, or others as authorized by the Privacy Act.

From 1945 through 1954, the DOD and Atomic Energy Commission (AEC) policy was to issue badges only to a portion of the personnel in a homogeneous unit such as a platoon of a battalion combat team, Naval ship or aircraft crew. Either one person was badged in a group performing the same function, or only personnel expected to be exposed to radiation were badged. After 1954, the policy was to badge all personnel. But, some badges were unreadable and some records were lost or destroyed, as in the fire at the Federal Records Center In St. Louis. For these reasons the NTPR Program has focused on determining the radiation dose for those personnel (about 75,000) who were not issued film badges or for who film badge records are not available.

In order to determine the radiation dose to individuals for whom film badge data are not available, alternative approaches are used as circumstances warrant. All approaches require investigation of individual or group activities and their relationship to the radiological environment

First, if it is apparent that personnel were not present in the radiological environment and had no other potential for exposure, then their dose is zero. Second, if some members of a group had film badge readings and others did not—and if all members had a common relationship with the radiological environment—then doses for unbadged personnel can be calculated. Third, where sufficient badge readings or a common relationship to the radiological environment does not exist, dose reconstruction is performed. This involves correlating a unit's or individual's detailed activities with the quantitively determined radiological environment.

The three approaches are described as follows: A. Activities of an individual or his unit are researched for the period of participation in an atmospheric nuclear test. Unit locations and movements are related to areas of radiation. If personnel were far distant from the nuclear detonations(s), did not experience fallout or enter a fallout area, and did not come in contact with radioactive samples or contaminated objects, they were judged to have received no dose.

B. Film badge data from badged personnel may be used to estimate individual doses for unbadged personnel. First, a group of participants must be identified that have certain common characteristics and a similar potential for exposure to radiation. Such characteristics are: individuals must be doing the same kind of work, referred to as activity, and all members of the group must have a common relationship to the radiological environment in terms of time, location or other factors. Identification of these groups is based upon research of historical records, technical reports or correspondence. A military unit may consist of several groups or several units may comprise a single group.

Using proven statistical methods, the badge data for each group is examined to determine if it adequately reflects the entire group, is valid for use in statistical calculations, or if the badge data indicate the group should be subdivided into smaller groups.

For a group that meets the tests described above, the mean dose, variance and confidence limits are determined. An estimated dose equal to 95% probability that the actual exposure did not exceed the estimate is assigned to unbadged personnel. This procedure is statistically sound and will insure that unbadged personnel are assigned doses much higher than the average/mean for the group.

C. Dose reconstruction is performed if film badge data are unavailable for all or part of the period of radiation exposure, if film badge data are partially available but cannot be used statistically for calculations, special activities are indicated for specific individuals, or if other types of radiation exposures are indicated. In dose reconstruction, the conditions of exposure are reconstructed analytically to arrive at a radiation dose. Such reconstruction is not a new concept; it is standard scientific practice used by health physicists when the circumstances of a radiation exposure require investigation. The underlying method is in each case the same. The radiation environment if characterized in time and space, as are the activities

and geometrical position of the individual. Thus, the rate at which radiation is accrued is determined throughout the time of exposure, from which the total dose is integrated. An uncertainty analysis of the reconstruction provides a calculated mean dose with confidence limits. The specific method used in a dose reconstruction depends on what type of data are available to provide the required characterizations as well as the nature of the radiation environment. The radiation environment is not limited to the gamma radiation that would have been measured by a film badge, but also includes neutron radiation for personnel sufficiently close to a nuclear detonation, as well as beta and alpha radiation (internally) for personnel whose activities indicate the possibility of inhalation or ingestion of radioactive particles.

The first approach in subparagraph A above is straightforward; the second in subparagraph B uses standard statistical procedures; the third approach in subparagraph C is discussed in more detail in the section titled, *Dose Reconstruction Methodology.*

General Procedures

The following procedures govern the approach taken in dose determination:

a. Use individual film badge data where available and complete.

b. Identify group activities and locations for period(s) of possible exposure.

c. Qualitatively assess the radiation environment in order to delineate contaminated areas. If no activities occurred in these areas, and if no other potential for exposure exists, a no dose received estimate is made.

d. If partial film badge data are available, define group(s) of personnel with common activities and relationships to radiation environment.

e. Using standard statistical methods, verify from the distribution of film badge readings whether the badged sample adequately represents the intended group.

f. Calculate the mean dose with variance and confidence limits, for each unbadged population. Assign a dose equal to 95% probability that actual exposure did not exceed the assigned dose.

g. If badge data is not available for a statistical calculation, conduct a dose reconstruction.

h. For dose reconstruction, define radiation environment through use of all available scientific data, e.g., measurements of radiation intensity, decay, radioisotopic composition.

i. Quantitatively relate activities, shielding, position, and other factors to radiation environment as a function of time. Integrate dose throughout period of exposure.

j. Where possible, calculate mean dose with confidence limits; otherwise calculate best estimate dose or, if data are too sparse, upper limit dose.

k. Compare calculations with available film badge records to verify the calculated doses.

l. Where identified as a contribution to total dose, calculate initial or internal radiation dose.

Dose Reconstruction Methodology

A. Concept

The specific methodology consists of the characterization of the radiation environments to which participants, through all relevant activities, were exposed. The environments, both initial and residual radiation, are correlated with the activities of participants to determine accrued doses due to initial radiation, residual radiation and/or inhaled/ingested radioactive material, as warranted by the radiation environment and the specific personnel activities. (*5, 6*) Due to the range of activities, times, geometries, shielding, and weapon characteristics, as well as the normal spread in the available data pertaining to the radiation environment, an uncertainty analysis is performed. This analysis quantifies the uncertainties due to time/space variations, group size, and available data. Due to the large amounts of data, an automated (computer-assisted) procedure is often used to facilitate the data-handling and the dose integration, and to investigate the sensitivity to variations in the parameters used. The results of the calculations are then compared with film badge data as they apply to the specific period of the film badges and to the comparable activities of the exposed personnel, in order to validate the procedure and to identify personnel activities that could have led to atypical doses. Radiation dose from neutrons and dose commitments due to inhaled or ingested radioactive material are not detected by film badges (*5, 6*) Where required, these values are calculated and recorded separately.

B. Characterization of the Radiological Environment

This step describes and defines the radiological conditions as a function of time for all locations of concern, that is, where personnel were positioned or where personnel activities took place. The radiation environment is divided into the two standard categories—initial radiation and residual radiation.

The initial radiation environment results from several types of gamma and neutron emissions. Prompt neutrons and gamma radiation are emitted at the time of detonation, while delayed neutrons and fission-product gamma, from the decay of radioactive products in the fireball, continue to be emitted as the fireball rises. In contrast to these essentially point sources of radiation, there is gamma radiation from neutron interactions with air and soil, generated within a fraction of a second. (*8*) Because of the complexity of these radiation sources and their varied interaction properties with air and soil, it is necessary to obtain solutions of the Boltzmann radiation transport equation. (*9*) The radiation environment thus derived includes the effects of shot-specific parameters such as weapon type and yield, neutron and gamma output, source and target geometry, and atmospheric conditions. The calculated neutron and gamma radiation environments are checked for consistency with existing measured data, as available. In those few cases displaying significant discrepancies that cannot be resolved, an environment based on extrapolation of the data is used if it leads to a larger calculated dose. (*7*)

The residual radiation environment is divided into two general components—neutron-activated material that subsequently emits, over a period of time, beta and gamma radiation; and radioactive debris from the fission reaction or from unfissioned materials that emit alpha, beta, and gamma radiation. (*8*) Because residual radiation decays, the characterization of the residual environment is defined by the radiation intensity as a function of type and time. Radiological survey data are used to determine specific intensities at times of personnel exposure. Interpolation and extrapolation are based on known decay characteristics of the individual materials that comprise the residual contamination. (*5,7*) In those rare cases where insufficient radiation data exist to adequately define the residual environment, source data are obtained from the appropriate weapon design laboratory and applied in standard radiation transport codes (*10, 11, 12*) to determine the initial radiation at specific distances from the burst. This radiation, together with material composition and characteristics, leads to a description of the neutron-activated field for each location and time of interest. In all cases, observed data, as

obtained at the time of the operation, are used to calibrate the calculations.

C. Activities of Participants

This step uses official historical records, augmented by personal interviews where gaps exist, to depict a scenario of activities for each individual or definable group. For military units, whose operations were closely controlled, the scenario is usually well defined. The same is true for observers, (*7*) who were restricted to specific locations both during and after the nuclear bursts. Ships' locations and activities are usually known with a high degree of precision from deck logs. Aircraft tracks and altitudes are also usually well defined. Personnel engaged in scientific experiments often kept logs of their activities; moreover, the locations of their experiments are usually a matter of record. Where the records are insufficiently complete for the degree of precision required to determine radiation exposure, participant's, comments are used and reasonable judgements are made to further the analysis (*13*). Possible variations in the activities, as well as possible individual deviations from group activities, with respect to both time and location, are considered in the uncertainty analysis of the radiation dose calculations.

D. Calculation of Dose

The initial radiation doses to close-in personnel (who were normally positioned in trenches at the time of detonation) are calculated from the above-ground environment by simulating the radiation transport into the trenches. Various calculational approaches, (*10, 14*) standard in health physics, are employed to relate in-trench to above-trench doses for each source of radiation. Detailed modeling of the human body, in appropriate postures in the trench, is performed to calculate the gamma dose that would have been recorded on a film badge and the maximum neutron dose. (*15*) The neutron, neutron-generated gamma, and prompt gamma doses are accrued during such a short time interval that the posture in a trench could not be altered significantly during this exposure. The fission-product gamma dose, however, is delivered over a period of many seconds. (*8*) Therefore, the possibity of individual reorientation (e.g., standing up) in the trench is considered. (*7,16*)

The calculation of the dose from residual radiation follows from the characterized radiation environment and personnel activities. Because radiation intensities are calculated for a field (i.e., in two spatial dimensions) and in time, the radiation intensity is determinable for each increment of personnel activity regardless of direction or at what time. (*5, 7*) The dose from exposure to a radiation field is obtained by summing the contribution (product of intensity and time) to dose at each step. The dose calculated from the radiation field does not reflect the shielding of the film badge afforded by the human body. This shielding has been determined for pertinent body positions by the solution of radiation transport equations as applied to a radiation field. (*5*) Conversion factors are used to arrive at a calculated film badge dose, which not only facilitates comparison with film badge data, but serves as a substitute for an unavailable film badge reading.

The calculation of the dose from inhaled or ingested radioactivity primarily involves the determination of what radioisotopes entered the body in what quantity. Published conversion fractors (*17, 18*) are then applied to these data to arrive at the radiation dose and future dose commitments to internal organs. Inhalation or ingestion of radioactive material is calculated from the radioactive environment and the processes of making these materials inhalable or ingestible. Activities and processes that cause material to become airborne (such as wind, decontamination or traffic) are used with empirical data (*19, 20*) on particle lofting to determine airborne concentrations under specific circumstances. Volumetric breathing rates and durations of exposure are used to calculate the total material intake. Data on time-dependent weapon debris isotopic composition and the above-mentioned conversion factors are used to calculate the dose commitment to the body and to specific body organs. (*6, 22*)

E. Uncertainty Analysis

Because of the uncertainties associated with the radiological data or calculations used in the absence of data, as well as the uncertainties with respect to personnel activities, confidence limits are determined where possible for group dose calculations. The uncertainty analysis quantifies the errors in available data or in the model used in the absence of data. Confidence limits are based on the uncertainty of all relevant input parameters, and thus vary with the quality of the input data. They also consider the possible range of doses due to the size of the exposure group being examined. Typical sources of error include orientation of the weapons, specific weapon yields, instrument error, fallout intensity data, time(s) at which data were obtained, fallout decay rate, route of personnel movements, and arrival/stay times for specific activities. (*5, 7*)

F. Comparison with Film Badge Records

Calculations of gamma dose were compared with film badge records for two military units at Operations PLUMBBOB to initially validate this methodology. Where all parameters relating to radiation exposure were identified, direct comparison of gamma dose calculations with actual film badge readings was possible. Resultant correlations provided high confidence in the methodology. (*5, 6*)

Film badge data may, in some cases, be unrepresentative of the total exposure of a given individual or group; nevertheless, they are extremely useful for direct comparison of incremental doses for specific periods, e.g., validating the calculations for the remaining, unbadged period of exposure. Moreover, a wide distribution of film badge data often leads to more definitive personnel grouping for dose calculations and to further investigation of the reason(s) for such distribution. (*5*) In all cases, personnel film badge data are not used in the dose calculations, but rather are used solely for comparison with and validation of the calculations. For dose reconstruction accomplished to date, comparison has been favorable and within the confidence limits of the calculations. (*5, 5*)

References

(*1*) Headquarters, Camp Desert Rock, "Final Report, Exercise Desert Rock V," Las Vegas, Nevada, July 16, 1953.

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(*3*) National Council On Radiation Protection and Measurements, "Basic Radiation Protection Criteria," NCRP Report No. 39, January 15, 1971

(*4*) National Council on Radiation Protection and Measurements, "Instrumentation and Monitoring Methods for Radiation Protection," NCRP Report No. 57, May 1, 1978.

(*5*) Science Applications, Inc.,"Analysis of Radiation Exposure for Task Force WARRIOR, Shot SMOKY, Exercise Desert Rock VII–VIII, Operation PLUMBBOB," DNA 4747F, Defense Nuclear Agency, May 31, 1979.

(*6*) Science Applications, Inc.,"Analysis of Radiation Exposure for Task Force BIG BANG, Shot GALILEO, Exercise Desert Rock VII–VIII, Operation PLUMBBOB," DNA 4772F, Defense Nuclear Agency, April 9, 1980.

(*7*) Science Appplications, Inc., "Analysis of Radiation Exposure for Troop Observers, Exercise Desert Rock VI, Operation Teapot,"

DNA 5354F, Defense Nuclear Agency, July 15, 1980.

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(9) K. Huang, *Statistical Mechanics*, John Wiley & Sons, Inc., New York, 1963.

(10) Oak Ridge National Laboratory, "The DOT III Two Dimensional Discrete Ordinates Transport Code," ORNL–TM–4290, September 1973.

(11) Union Carbide Corporation, "A User's Manual for ANISN, A One-Dimensional Discrete Ordinates Transport Code with Anisotropic Scattering," 1967.

(12) Science Applications, Inc., "Version 4 of ATR (Air Transport of Radiation)," DNA 3995, Defense Nuclear Agency, January 1976.

(13) Science Applications, Inc., "Analysis of Radiation Exposure, 4th Marine Corps Provisional Atomic Exercise Brigade, Exercise Desert Rock VII, Operation PLUMBBOB," DNA 5774F, Defense Nuclear Agency, June 15, 1981.

(14) Oak Ridge National Laboratory, "The MORSE Monte Carlo Radiation "Transport Code System," ORNL–4972, February 1975.

(15) National Council on Radiation Protection and Measurements, "Protection Against Neutron Radiation," NCRP Report No. 38, January 4, 1971.

(16) Science Applications, Inc., "Analysis of Radiation Exposure for Troop Observers, Exercise Desert Rock V, Operation Upshot-Knothole," DNA 5742F, Defense Nuclear Agency, April 28, 1981.

(17) Battelle Pacific Northwest Laboratories, "Age-Specific Radiation Dose Commitment Factors for a One-Year Chronic Intake," NUREG–0172, U.S. Nuclear Regulatory Commission, November 1977.

(18) Oak Ridge National Laboratories, "Estimates of Internal Dose Equivalent to 22 Target Organs for Radionuclides Occurring in Routine Releases from Nuclear Fuel-Cycle Facilities," ORNL/NUREG/TM–190, U.S. Nuclear Regulatory Commission, June 1978.

(19) K. Steward, "The Resuspension of Particulate Matter from Surfaces," pp. 63–74 of *Proceedings of a Symposium on Surface Contamination*, (B.R. Fish, editor), Pergamon Press, New York, June 1964.

(20) L. R. Anspaugh, et al., "Resuspension and Redistribution of Plutonium in Soils," *Health Physics*, Vol 29, pp. 571–582, October 1975.

(21) Oak Ridge National Laboratory, "ORIGEN Isotope Generation and Depletion Code—Matrix Exponential Method," CC–217, June 1977.

(22) Science Applications, Inc., "Fallout Inventory and Inhalation Dose to Organs (FIIDOS)," 1981.

Dated: May 17, 1982.

M. S. Healy,

OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-13799 Filed 5-19-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD12-82-01]

Drawbridge Operation Regulations; San Joaquin River, Calif.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the California Department of Transportation, the U.S. Navy, and the Atchison, Topeka and Santa Fe Railway Company, the Coast Guard is considering changing the regulation governing the Navy Drive, Highway 4, and Santa Fe bridges over the San Joaquin River near Stockton, California, to exempt the bridges from the requirement to open for vessels. The bridges are now required to open upon twelve hours advance notice. This proposal would relieve the bridge owners of the burden of maintaining the machinery and of having a person available to open the draw. Exempting these bridges from the requirement to open for vessels should not interfere with the reasonable needs of navigation as there have not been any bridge openings since 1978 except for tests. As a precaution to avoid foreclosing future navigational access, a part of the proposed regulation would require the bridges to be restored to service upon six months notice from the Coast Guard.

DATE: Comments must be received on or before July 6, 1982.

ADDRESS: Comments should be submitted to and are available for examination from 7 a.m. to 4 p.m., Monday through Friday, except holidays, at the office of the Commander (oan), Twelfth Coast Guard District, 630 Sansome Street, Room 936, San Francisco, California 94126. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Bridge Administrator, at (415) 556–6668, or at the above address.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Twelfth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Rose E. Guerra, Bridge Administrator, and Lieutenant Commander W. A. Cassels, Project Attorney, District Legal Office, Twelfth Coast Guard District.

Discussion of The Proposed Regulation

The Navy Drive swing bridge, at mile 39.8, was built in 1938 and is the only vehicular access to Rough and Ready Island near Stockton, CA. The bridge has had few openings in recent years, except for maintenance.

The single leaf bascule railroad bridge, at mile 40.6, was built in 1931. Since 1974 to date the bridge has been opened a total of 16 times. Eight of the openings were in 1978 due to a construction project, and there have not been any openings since that time.

The Highway 4 swing bridge at mile 41.6 was built in 1930. The bridge has not been opened for a vessel passage since November 1976. Logs dating back to 1943 show several intervals of up to six years between openings for marine traffic. Under the existing classification as a fully operational swing bridge, the structure does not meet CAL/OSHA standards in several areas. The estimated cost for upgrading the mechanical and electrical features to comply with CAL/OSHA minimum standards is $75,000. The expense appears unwarranted given the infrequency of use.

There is no commercial navigation on the waterway and little recreational use. The proposed regulation would provide for restoration of service should future navigation require it.

This proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, the proposed regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of the proposed regulation is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if

promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects In 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.714(a) to read as follows:

§ 117.714 San Joaquin River and its tributaries, California.

(a) San Joaquin River. (1) Port of Stockton railway bridge at Stockton. The draw shall open on signal if at least twelve hours notice is given to the Port Director.

(2) U.S. Navy Drive bridge, Atchison, Topeka and Santa Fe raiload bridge, and California Highway 4 bridge (Garwood Bridge). The draws need not be opened for the passage of vessels. The owners or agencies controlling the bridges shall restore the draws to full operation within six months of notification to take such action from the Commander, Twelfth Coast Guard District.

(3) Drawbridges above the Old River junction need not open for the passage of vessels.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: May 5, 1982.

J. P. Stewart,

Vice Admiral.

[FR Doc. 82-13017 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Miscellaneous Amendments

Correction

In FR Doc. 82–11658 appearing on page 18375 in the issue of Thursday, April 29, 1982 make the following corrections:

1. On page 18377, third column, in § 401.12(a), there should have been a line of five asterisks between paragraphs (2) and (3), signifying that the rest of paragraph (2) was not changed.

2. On page 18379, first column, in § 401.68(a)(4), in the third line, "explosives and ship" should have read "explosives and shop".

3. On page 18379, center column, in § 401.69(c)(7), "50 tonnes or corrosive" should have read "50 tonnes of corrosive".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Claims Based Upon Ionizing Radiation Exposure

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The VA (Veterans Administration) proposes a regulation to comply with a court order of the United States District Court for the District of Columbia. The proposed regulation will codify current practice by which VA requests information in disability claims based upon alleged exposurer to ionizing radiation in military service. It states that VA will inquire of DoD (Department of Defense) as to the degree and circumstances of exposure, if any, of the veteran involved. This regulation may be subject to change or rescission following appellate review of the underlying litigation.

DATE: Comments must be received on or before June 21, 1982. We propose to make this regulation effective the date of final approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 30, 1982.

Persons visiting the Veterans Administration Central Office in Washington, D.C., for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: A. J. Mullen (202 389–3068).

SUPPLEMENTARY INFORMATION: The subject litigation, *Gott v. Nimmo*, No. 80–0908 (formerly styled *Gott v. Cleland*), was initially filed as a challenge to three internal documents which had been prepared in an effort to facilitate the processing and evidence-gathering in ionizing radiation disability claims. The three documents were: a June 15, 1979, Memorandum of Understanding by which DVB (Department of Veterans Benefits) of the Veterans Administration and DNA (Defense Nuclear Agency) of the Department of Defense agreed to formalize and improve existing procedures to ensure the most complete investigation of veterans' ionizing radiation injury claims; section 0–20 of DVB Program Guide 21–1, containing general information for reference of adjudication personnel relating to such claims; and paragraph 22.05.1 of DVB Manual 21–1, which set forth procedures for obtaining information from claimants as to any possible exposure to radiation from nuclear detonations.

Because these documents were considered not to be rules or regulations subject to the promulgation procedures required for rulemaking by the Administrative Procedure Act (APA) at 5 U.S.C. 553, to which procedures the VA is bound by a regulation at 38 CFR 1.12, notice-and-comment rulemaking was not undertaken in their issuance. The program guide section, however, has been published in the Federal Register on several occasions, as a matter of public information. *See* 44 FR 49090 (1979); 45 FR 29161 (1980); 45 FR 86605 (1980).

By an order of September 30, 1981, the district court declared the three challenged documents invalid for failure to have been promulgated under APA rulemaking procedures, and ordered that any future "radiation rules" of VA or DNA be so promulgated before being used. In compliance with that order, use of all three of the challenged documents was terminated. No radiation claim rules have been issued, because statutory and regulatory authority already exists for determining whether a claimed disability is "service-connected." *See* 38 U.S.C. 101(16), 301–362, 410; 38 CFR Part 3. Claims for service-connected disability benefits based upon ionizing radiation exposure are being developed and processed, as before, using the longstanding claim procedures applicable to all disability claims.

Although the Government believed it was in full compliance with the court order by disposing of the invalidated documents which were the subjects of the lawsuit, the court issued a suppplemental memorandum opinion on February 17, 1982, indicating that its concern was with the "introduction of new methodology to calculate radiation exposure." According to the court, the invalidated memorandum of

understanding was the "document which contained the new methodology." Further, "the new methodology referred to in the (memorandum) was the key feature that jeopardized the rights and interest of plaintiffs." The court specifically ordered

That within ninety days the defendants cause to be published in the **Federal Register** notice of proposed rulemaking to replace the documents invalidated by this Court's order of September 30, 1981, the rules to include but not be limited to, the establishment of methodologies and standards to calculate radiation exposure and harm which are used by the Veterans Administration in deciding veterans' claims of radiation injuries, and interested parties shall be invited to submit comments and proposed changes in said rules.

In its opinion the court explained that the "notice of rulemaking should disclose the methodology the defendants propose to follow, set forth specific areas of inquiry, and request relevant information."

VA has no methodology for the calculation of ionizing radiation exposure data with respect to claimants for disability benefits. As in all claims presented to VA where it is alleged that a veteran's present disability had its cause or origin in military service, the process of adjudication of a radiation claim generally includes a request to DoD for information relevant to the claim. VA relies on DoD to provide such information, and expects that DoD, coordinating through DNA, will employ whatever methods it deems appropriate to develop the necessary data. Because VA believes the methodology used by DNA to generate data for VA's use in radiation claims lies solely within DoD's discretion and expertise in the area of nuclear weapon research and monitoring, the invalidated memorandum of understanding between the two agencies, contrary to the court's subsequent conclusion, did not prescribe such methodology. Nevertheless, we are informed that DoD is currently undertaking notice-and-comment rulemaking on its radiation exposure data development methodology, pending the resolution of the appeal in this litigation. Further guidance as to the what the proposed rulemaking should contain was provided by the court in a memorandum order of March 26, 1982.

With regard to the use VA makes of radiation exposure data provided by DoD, the court acknowledged, in its September 30, 1981, opinion, that the statutory prohibition of judicial review of VA benefit claim decisions, at 38 U.S.C. 211 (a), "bars review of individual adjudications." The court held that, because "(p)laintiffs do not seek any judicial action regarding the merits of individual claims," the court has jurisdiction to invalidate the challenged documents. In the February 17, 1982, opinion the court again noted that plaintiffs "neither challenge the merits of any individual decision nor the nature of the data in this action." Finally, in the March 26, 1982, memorandum order the court assured defendants that it "did not prohibit exchange of information between the Veterans Administration and the Department of Defense." Accordingly, VA continues, as in the past, to request information from DoD for use in claims, under authority of 38 U.S.C. 3006, and DoD continues to comply with the law by responding. Once received from DoD, any radiation exposure data is considered by VA adjudication personnel, in conjunction with all other evidence of record in each particular claim, under the laws and regulations applicable to service-connected disability benefits, at 38 U.S.C. Chapter 11 and 38 CFR Part 3.

To comply with the court order to which reference has been made above, VA is proposing to add § 3.161 to Title 38, Code of Federal Regulations. The proposed § 3.161 will codify, within VA's adjudication regulations, the Agency's practice of requesting DoD reports in radiation disability claims.

The proposed § 3.161 is set forth below.

The Administration hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact, in terms of compliance costs, paperwork and recordkeeping, or any other regulatory burden, on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this regulation affects individuals applying for VA disability benefits. Pursuant to 5 U.S.C. 605 (b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed regulation change is nonmajor for the following reasons:

(1) It will not have an effect on the economy of $100 million of more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program number is 64.109)

Approved: May 11, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

The Veterans Administration is proposing to amend 39 CFR Part 3 as follows:

Section 3.161 is added to read as follows:

§ 3.161 Claims based upon ionizing radiation exposure.

If it becomes necessary to determine whether claimed exposure to ionizing radiation in service has contributed to causation of death or current disability, a request will be made of the Department of Defense for a report concerning the circumstances under which exposure, if any occurred, and the degree of such exposure. (38 U.S.C. 3006)

[FR Doc. 82-13666 Filed 5-19-82; 9:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2107-6]

Approval and Promulgation of Implementation Plans; South Carolina: Revisions in Bubble and Incinerator Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Following public hearing on November 17, 1981, the South Carolina Board of Health and Environmental Control approved two revisions in its implementation plan on January 8, 1982, and forwarded them to the State Legislature for approval. Legislative approval is expected by June 1982.

A revision in the South Carolina "bubble" regulation will allow the State's industrial community opportunities to use this provision of the State Implementation Plan (SIP) without requiring each alternative emission limit to undergo the SIP approval process. The second revision involves changes in the State's incinerator regulation. EPA proposes to approve both revisions, under the new Emissions Trading Policy

Statement (47 FR 15076 (April 7, 1982)), provided the State adopts them in a form that is substantially equivalent in effect to the provisions described in this notice. The public is invited to comment on the proposed action.

DATE: To be considered, comments must be received on or before June 21, 1982.

ADDRESSES: Written comments should be addressed to Douglas Cook of EPA, Region IV's Air Programs Branch (see EPA, Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Douglas Cook, EPA Region IV Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: EPA is today proposing these revisions concurrently with South Carolina's proceedings. EPA normally proposes action on a State Implementation Plan revision after formal State adoption and submittal to EPA. EPA is using a more expeditious process in this case to minimize delays and enhance the economic benefits associated with the "bubble" approach. Many companies in South Carolina are contending with specific compliance dates. Quick action on this proposal could afford substantial savings on design and purchase cost associated with add-on controls.

Alternative Emission Limitation Options ("Bubble")

These revisions to South Carolina's bubble regulations provide a framework for encouraging the most economically efficient way to meet the emission levels mandated by the State's SIP. The revised bubble procedure encourages companies to seek innovation in control technology. Further, these revisions shorten the time needed for approval of a company's control strategy because most bubbles will not require explicit EPA action. EPA's review confirms that the State's revision will continue to ensure attainment and maintenance of ambient air quality standards as expeditiously as practicable, will ensure reasonable further progress, and will use enforceable procedures.

The regulations prohibit the bubble as a means to supersede requirements of prevention of significant deterioration, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, or any other requirements mandated by the Clean Air Act (CAA). It also provides that hazardous air pollutants must be reduced in any trade with nonhazardous pollutants. Provisions are made for the "bubbling" of total suspended particulate (TSP), sulfur dioxide (SO_2) volatile organic compounds (VOC), nitogen dioxide (NO_2), carbon monoxide (CO), and lead emissions. These provisions insure that attainment of national ambient air quality standards will not be jeopardized. Some of the requirements are legal enforceability; quantifiability of emissions; trade restrictions to same pollutant category; equivalence to or improvement over air quality impact of the existing regulatory requirements; public participation.

Section II-A outlines specific modeling requirements for TSP and SO_2 trades. Specifically, no modeling is required if actual emissions do not increase, bubbled emission points are within 100 meters of each other, and stack heights are within 10% of each other. A SIP revision and limited modeling will be required if the bubble causes some impact, but does not cause a significantly different air quality impact. Diffusion modeling considering all sources in the area and a SIP revision is required under other conditions.

Section II B outlines provisions for VOC bubbles. Some specific provisions are: total emissions must not increase; a bubbled source must comply with any future emission limits; process information must be supplied by the applicant. The state may approve an alternative limitation if the proposed emission sources to be traded are within 50 kilometers of each other; the sum of the alternative limitations does not exceed the sum of the emission rates contained in the SIP; actual emissions do not exceed allowed growth in the SIP; and all general provisions of the regulation are satisfied. Further, under specific conditions, TSP, SO_2 and VOC trades may take place without SIP revisions, but trades involving nitrogen dioxides, carbon monoxide and lead and those involving fugitive emissions of TSP and SO_2 must have EPA approval prior to becoming effective.

Section II D applies to pollutants that are subject to regulation under § 111(d) of the Clean Air Act. This provision must be reviewed and approved by EPA as part of a § 111(d) plan, and not as a SIP revision. Therefore, EPA will review Section II D in conjunction with South Carolina's § 111(d) plan, and will be taking action on it in a separate **Federal Register** notice.

Emissions From Incinerators

The state proposes to revise Section B of its incinerator regulation. The old section reads: "Emissions shall not produce smoke which exceeds twenty (20) percent opacity for an aggregate of more than three (3) minutes in any one hour or fifteen (15) minutes in a twenty-four hour period." The new section will read "emissions * * * of more than six (6) minutes in any one hour or twenty-four (24) minutes in a twenty-four hour period."

Action: EPA is today proposing to approve the South Carolina regulations that revise South Carolina's SIP, provided the regulations are adopted as described in this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this regulation from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: April 8, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-13707 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-8-FRL-20682]

Approval and Promulgation of State Implementation Plans; Revision to the Montana Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the Montana State

Implementation Plan (SIP), relating to that plan's requirements for the permitting of new major sources and major modifications to sources in attainment areas. Montana is revising its SIP in accordance with the requirements for the Prevention of Significant Deterioration (PSD) of air quality (40 CFR 51.24), as those sections were amended on August 7, 1980 (45 FR 52729–52735). In conjunction with the approval of this plan, EPA would remove the Federal PSD program as it applies to lands under State jurisdiction.

EPA's review is being conducted concurrently with public review of the same revisions at the State level. This concurrent review, prior to final State regulatory action, which EPA refers to as "parallel processing," is designed to reduce the time necessary for EPA approval of SIP revisions.

DATE: Comments must be received on or before June 21, 1982.

ADDRESSES: Comments should be directed to: Max H. Dodson, Director, Montana Office, Environmental Protection Agency, Federal Building, Drawer 10096, 301 S. Park, Helena, Montana 59626.

Copies of the materials submitted by the Governor and comments received on this proposal may be examined during normal business hours at:

Environmental Protection Agency, Montana Office, Federal Building, Room 292, 301 S. Park, Helena, Montana 59626.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, D.C. 20460.

Environmental Protection Agency, Region VIII, Air Program Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Alkema, Chief, Air, Pesticides and Hazardous Wastes, Environmental Protection Agency, Federal Office Building, 301 S. Park, Drawer 10096, Helena, Montana 59626, (406) 449–5414.

SUPPLEMENTARY INFORMATION: On March 3, 1982, the State of Montana held a public hearing to consider revisions to its State Implementation Plan for the Prevention of Significant Deterioration of air quality (PSD).

Section 110(a)(2)(D) and Part C of the Clean Air Act establish specific requirements for the Prevention of Significant Deterioration of air quality in areas where ambient levels are lower than the national standards. The Act defines the amount of deterioration that can be tolerated in an area in terms of maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program: (a) Class I where the increments are very stringent and practically no deterioration is allowed, (b) Class II where moderate, well-controlled growth is allowed, and (c) Class III where a greater amount of growth is allowed. While the Act established several mandatory Class I areas, most of the nation is now Class II. The Act gives redesignation authority to State Governors and Indian governing bodies.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth and the periodic review of increment consumption. At present, EPA is implementing the program by a Federal permit system designed to meet the requirements of Part C. In that program, operators of major new sources and major modifications must obtain a permit before commencing construction. The permit will be granted only if, among other things: (a) The increments for the area are protected, and (b) best available control technology will be employed.

This program is presently implemented in Montana by EPA through regulations promulgated in 40 CFR 52.21. In addition EPA promulgated requirements for State PSD programs at 40 CFR 51.24. The regulations developed for public hearing by the State of Montana are designed to meet the requirements of 40 CFR 51.24 through the review of major stationary source growth. The Montana regulations will prohibit new source construction in clean areas unless best available control technology is employed and a demonstration is made that the increments and air quality related values are being protected.

EPA has evaluated these proposed amendments to the Montana plan's requirements for preconstruction permitting of new major sources and major modifications, and found them to be equivalent to the requirements of 40 CFR 51.24 with some minor exceptions.

Proposed Action

EPA is proposing to approve this Montana SIP revision which revises Subchapter 9 of the Administrative Rules of Montana (ARM) applicable to new major sources and major modifications of sources in attainment areas consistent with 40 CFR 51.24. The State is modifying its regulation to correct some minor deficiencies which are identified in the "Technical Support Document" prepared by EPA. These changes will be included in the final version of the regulation, which will be adopted by the Montana State Board of Health at its meeting on May 21, 1982. The "Technical Support Document" may be examined at the addresses and times listed in the "Summary" portion of this notice.

EPA is proposing approval of these revisions prior to its final adoption by the State because the revisions are not expected to be controversial and few, if any, comments are expected. If significant comments are received and the proposed revisions are substantially changed prior to their adoption at the State level, EPA will publish a revised notice of proposed rulemaking. If no substantive changes are made to the proposed revisions, EPA will issue a notice of final rulemaking on the proposed revisions discussed herein. The final rulemaking action by EPA will be published only after the revisions have been adopted in final form by the State. The procedure is termed "parallel processing" and is estimated to reduce the time necessary for final approval of SIP revisions by an average of three to four months.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. Section 605(b)), I hereby certify that the proposed action will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it imposes no new requirements. It only proposes to approve requirements adopted by the State.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: March 10, 1982.

Steven J. Durham,

Regional Administrator.

[FR Doc. 82-13703 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 121

National Guidelines for Health Planning—Rescission of Computed Tomographic Scanner Standards

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to recind the standards for computed tomographic (CT) scanners with respect to the approprate supply, distribution and organization of health resources. Concern has been expressed that the standards are to rigid and inflexible, and that they don't take into account recent advances in the state-of-the-art in scanning technology. This action will give states and local communities the fullest possible discretion and flexibility in health systems planning. Non-regulatory technical information materials concerning CT scanners are being made available to the public.

DATES: Comments must be received not later than July 6, 1982.

ADDRESS: Written comments and recommendations should be submitted to: Ofice of Planning, Evaluation, and Legislation, Health Resources Administration, Center Building, Room 10–22, 3700 East West highway, Hyattsville, Maryland 20782. All materials received in response to this notice will be available for public inspection and copying at the above location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lyman Van Nostrand, Acting Associate Administrator for Planning, Evaluation and Legislation, Health Resources Administration, Center Building, Room 10–22, 3700 East West Highway, Hyattsville, Maryland 20782, (301) 436–7270.

SUPPLEMENTARY INFORMATION:

A. Overview

Section 1501 of the Public Health Service Act (the Act) requires the Secretary to issue by regulation guidelines concerning national health planning policy. The guidelines must include standards respecting the appropriate supply, distribution, and organization of health resources which reflect the unique circumstances of medically underserved populations in isolated rural communities.

On March 28, 1978 the Secretary published as final regulations the first issuance of National Guidelines for Health Planning (42 CFR Part 121; 43 FR 13040). Those regulations, which consist of Subpart A—General Provisions, and Subpart C–Standards Respecting the Appropriate Supply, Distribution, and Organization of Health Resources, include specific standards respecting computed tomographic (CT) scanners.

Under the standards, new scanners should not be added in a health service area unless all the existing scanners are operating above an established rate measured in medically necessary patient procedures per year. The preamble to the final regulations, in discussing the CT scanner standards (see 43 FR 13043–4), recognized that CT scanning is a rapidly changing field and stated that developments would be carefully and continually monitored.

Since publication, a number of objections have been raised to the standard. Concern is expressed that they do not adequately take into account recent advances in the state-of-the-art of CT scanning technology which have resulted in an increased proportion of body scans being performed. These scans take longer to complete than head scans. The standards are seen also as rigid and inflexible because they do not specifically require that the different scan types and times or factors relating to local circumstances be considered. In addition, objections have been raised that inflexibility in application of the standards has acted in some cases to obstruct the sale and distribution of needed scanners, thus inhibiting access to necessary CT scanning services and preventing the public from deriving the full benefit of their potential. This may actually increase costs due to the substitution of more costly and invasive procedures. In addition, because many sparsely populated rural areas lack the population base to reach the existing standard of 2500 patient procedures per year, objections were raised that the standard inhibited access to necessary CT scans in rural areas.

An important contribution to monitoring of changes in this field was the recent Consensus Development Conference, held by the National Institutes of Health on November 4–6, 1981. The Conference was held in order to seek a position on issues involving CT scanning of the brain. Among the conclusions of that Conference were that: (a) CT scanning may not be sufficiently available for the public to derive the full benefit of its potential; and (b) the costs resulting from the use of CT in diagnoses are substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment needed to carry them out.

Three years' experience with the standards has led the Department to conclude that these concerns are well founded and that the standards are inappropriate and should be rescinded. This position is consistent with the Department's policy that states and local communities should have the fullest possible discretion and flexibility in determinng when and how to act. Rescission of the standards will help ensure that decisions on the distribution of CT scanners are made at the State and local level.

In view of current developments regarding the Federal health planning program, the Department has no present intention of issuing revised CT scanner standards in regulatory form. The Department has developed, however, nonregulatory up-to-date technical information materials concerning CT scanners, based on previous extensive consultation and consensus development with a wide range of individual experts and outside organizations. These materials are available to the public on request. State and local planning agencies and others will be free to use the information as they see fit in developing or implementing their health plans.

B. Process of Consultation

Section 1501(c) of the Public Health Service Act requires that:

> (c) At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such guidelines, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B, the State health planning and developing agencies designated under part C, the Statewide Health Coordinating Councils established under part C, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by section 1503.

Accordingly, a draft Notice of Proposed Rulemaking to rescind the existing CT standards was sent to a selected list of reviewers on December 8, 1981. This included Health Systems Agencies, State Health Planning and Development Agencies, Statewide Health Coordinating Councils, and members of the National Council on Health Planning and Development. Copies were also sent to a selected list of associations and specialty societies, most particularly those which had participated in a previously established workgroup: The Technical Workgroup on CT Scanning Standards. This included representation from such

groups as the American College of Radiology, the National Electrical Manufacturer's Association, and the Consumer Coalition for Health.

Although the comment period was 45 days, the summary of comments provided below reflects all the comments received through February 3, 1982. As of that date, 19 written responses had been received.

C. Summary of Comments

Fifteen of the nineteen respondents favored rescinding the CT standards, while four were opposed.

Commonly cited reasons for support of rescission were:

(1) The regulations do not reflect recent technological advances.

(2) The regulations are inflexible and make insufficient provision for exception to the minimum usage guidelines.

(3) The regulations inhibit access to scanners for rural residents.

(4) The regulations do not foster a competitive market for scanners.

Each of these reasons is expanded on below. Specific comments are included.

1. Recent technological advances: Since 1978, advances in the state-of-the-art of CT scanning technology have resulted in an increasing proportion of body scans being performed, which take a longer amount of time to complete than head scans. A weighted system would respond to these advances by taking into account the increasing number of body scans performed and the longer scan time necessary to complete each scan.

On respondent commented that rapid technological advances make regulation changes obsolete before they occur. When first developed, CT scanners were limited to usage in the diagnosis of head pathology. However, the images produced by these early models provided insufficient definition for clearcut unequivocal diagnosis. In the years to follow, technological improvements in image definition coupled with the concomitant development of body scanners rapidly established the scanners as a primary radiological diagnostic tool. The use of CT currently is the diagnostic procedure of choice in a wide variety of human pathology. Regulatory measures designed to establish minimum usage standards to prevent a rapid proliferation in the number of scanners purchased were based on early model performance and logically have little applicability to modern scanners. Another respondent addressed the issue by calling the current guidelines restrictive and not in keeping with the state-of-the-art of CT scanner technology.

2. Inflexibility of the current standard: Objections have been raised to the existing standard which is expressed in terms of a single uniform number of patient procedures to be reached annually. It is seen as rigid and inflexible, because it does not take into account the different scan types and times nor additional circumstances which should be taken into account in using the standard. In addition, objections have been raised that the inflexibility of the standards acts in some cases to obstruct the sale and distribution of needed scanners, inhibits access to necessary CT scanning services, and thus affects the quality of patient care.

One respondent contended that areawide facilities must have the flexibility to set their own standards. Another called the current standards rigid and claimed that the HSA's have been inflexible in enforcing them. As a result, large segments of the population have been denied access to CT scanners. Minimum usage standards for existing scanners which may restrict the purchase of additional scanners within a particular delivery area preclude many localities from adequately meeting their own diagnostic medical needs. For example, many densely populated counties in and around large cities are restricted from the purchase of needed scanners by an underutilized machine in a large city hospital within the same delivery area. Consequently, many large populations do not have adequate access to a major medical diagnostic tool. One respondent stated that the regulations severely restrict the rational allocation and distribution of a significant, and necessary to modern medical practice, diagnostic tool.

3. Access in rural areas: The present standard impairs access to CT scanning services in sparsely populated rural areas, because these areas generally lack the population base to reach the existing standard of 2500 patient procedures per year.

One respondent contended that it is impossible to meet Federal guidelines in his western state's vast underpopulated largely rural areas. The available population is inadequate to sufficiently utilize a scanner in order to meet the regulatory minimum requirement. As a result, new scanner purchases are precluded, and the residents travel prohibitive distances to have access to those already in place. Many rural district health planners, however, have chosen to interpret Federal regulations broadly and have develped their own more suitable individual standards.

4. Lack of a competititve market: One respondent contended that the elimination of the Federal CT standard and the subsequent adoption of planning methodologies and guidelines by the individual States would serve to foster a competitive market in health care.

Four of the nineteen respondents opposed rescinding the standards. Their reasons included:

1. Concerns that this would contribute to cost escalation.

2. Concern that rescission will cause overpurchasing.

3. Doubt concerning the accuracy of the perceived inflexibility.

Each of these reasons is expanded on below. Specific comments are included.

1. Cost concerns: The concern was expressed that the rescission of the Federal standard would lead to a proliferation of these services far beyond the needs of the population, and that the costs for delivering these services would subsequently rise. Depending on what projections are used for additional purchases of CT scanners, and given operating cost for each machine, it was contended that this could add substantially to medical care costs.

2. Concern with overpurchasing: The concern was expressed that market forces would not rationalize the purchasing system, but rather would be destructive of rational planning, proper allocation of health resources, and efforts to contain unnecessary costs.

Elimination of the standard might lead to significant excess, underused scanning capacity, and a passage of the costs on to the consumer.

3. Doubt about perceived inflexibility: One respondent felt that the current regulations were not as inflexible as perceived by some. Reflecting congressional intent, the National Guidelines specifically allow flexibility in their application due to local circumstances. Consequently, this respondent felt that the perceived inflexibility of the standard was not actual.

The Department does not agree with the comments related to cost escalation. As discussed further below, there is evidence that the costs of CT in diagnosis have been substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment to carry them out.

A few other comments were neither positive nor negative, but reflected on other issues. These include the following:

1. The experience with CT technology was cited as an example of how

technology assessment and control ought to work. Early proliferation was controlled until the technology was refined and its viability proven. The result was better quality and avoidance of unnecessary cost. Although rescission of the CT scanning standards is timely, there should be a continued Federal role in technology assessment and control.

2. It was noted that the CT scanning standards currently require data collection and utilization review programs to be established before approval for a scanner is given. It was proposed that these requirements should be encouraged at State and local levels.

D. Determinations of Applicability of Certain Impact Analyses

The Department has determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This determination is based on a number of considerations.

Perhaps most important is the emerging view that the costs of installation and continued use of CT units in a diagonstic radiology department are compensated for by the savings achieved by a reduction in other procedures, including exploratory surgery and angiography.

The National Institutes of Health held a Consensus Development Conference on November 4-6, 1981, in order to seek a position on issues involving computed tomographic scanning of the brain. Among some of the conclusions of that Conference are the following:

CT is a remarkable new development in radiographic imaging which, in only 8 years, has transformed the diagnosis and much of the management of structural disease of the brain and its surrounding tissue. Presentations by experts from a variety of fields indicated that CT is a safe, accurate, and powerful tool in the primary diagnosis of, among other conditions, brain tumors, brain hemorrhages, effects of major head injury, and certain infections of the brain. Given its speed, accuracy, and low radiation dose, CT has displaced a number of other radiologic diagnostic procedures, many of which are, in comparson, more uncomfortable, more dangerous, and more costly to the patient.

The panel considered the geographic distribution of CT scanners and the current patterns of diagnostic usage. Two important considerations emerged. It appears that in the U.S. today, CT may not be sufficiently available for the public to derive the full benefit of this diagnostic tool. Evidence points to an insufficient number of instruments in several large metropolitan areas, in medically underserved areas, and in some sparsely populated regions where the prevalence of head trauma is high.

In some instances, however, the indiscriminate use of CT has occurred in patients unlikely to have structural disease, resulting in displacement of patients for whom this technology is critical. Accordingly, this consensus report suggests appropriate criteria for the use of CT in present medical practice.

The Conference also addressed the issue of whether the availability of CT brain scanning has influenced the use of other methods of imaging. The consensus was that such availability had strongly influenced the use of other imaging techniques, and that this had resulted in substantial costs savings. This discussion is summarized in the Conference Statement as follows:

The superior ability of the CT examination in the detection of intracranial and intracerebral disease processes has profoundly altered the use of several pre-existing radiographic methods for examining the brain. Some of these examinations, notably the most invasive, those causing significant patient discomfort, or those with nonspecific diagnostic results have been affected more than others.

The developments enumerated above have had a favorable impact upon healthcare delivery. CT scanning has often reduced risk and discomfort for patients. Data indicate that the costs of CT in diagnosis have been substantially offset by a reduction in costs resulting form discontinued procedures and the elimination of equipment needed to carry them out. In some cases net costs of diagnoses have even been reduced. The panel heard evidence that the use of CT in outpatient diagnosis holds the potential for reducing hospital admissions and shortening hospital stay.

Selected efforts have been made to determine more precisely to what degree utilization of CT scanners is compensated for by the savings achieved by the reduction in other procedures.

One recent effort in this regard was published by Ronald G. Evens, M.D., in the August 1980 issue of *Radiology*. In his article on "The Economics of Computed Tomography: Comparison with Other Health Care Costs," he noted that "The net cost of CT is its annual cost minus that of any reductions in diagnostic procedures and hospital or therapeutic services." Dr. Evens estimated that for 1978, when there was a base of 1,042 CT installations, this net cost figure for the total set of existing scanners was less than $150 million.

Since the latest estimate of CT scanner sales by OTA is in the range of 17 per month (204 per year), the annual incremental net costs would be substantially less.

Other considerations in making this determination include recent changes in the certificate of need legislation. Amendments included in the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) have raised the threshholds for determining when capital expenditures must be reviewed. For major medical equipment, the threshhold was raised from $150,000 to $400,000. For the annual operation cost threshhold, this was raised from $75,000 to $250,000. Both changes have saved to exempt a number of CT scanner purchases from review, particularly brain scanners.

In addition, under the Health Planning Amendments of 1979, a certificate of need is not required for the acquisition of major medical equipment which will not be owned by or located in a health care facility, unless the equipment will be used to provide services for inpatients of a hospital. Recent data from the January, 1981 Background Paper on CT Scanners by the Office of Technology Assessment indicate that 18.9 precent of scanners are now in offices and clinics.

Provided below is table of the estimated distribution of the 1,471 CT scanners available in May, 1980:

DISTRIBUTION OF CT SCANNERS BY TYPE OF FACILITY (MAY 1980)

Type of facility	Facilities with CT scanners		CT scanners	
	Number	Percentage of total	Number	Percentage of total
All hospitals	1,041	78.7	1,175	79.9
Mobile scanners	18	1.4	18	1.2
Office and clinic	264	19.9	278	18.9
Total	1,323	100.0	1,471	100.0

Source: Office of Technology Assessment.

Furthermore, the 1979 amendments resulted in the exemption of certain

health maintenance organizations from the certificate of need process.

These various amendments have all tended to limit the scope of coverage of the certificate of need process, and consequently the CT standard in the National Guidelines, as they relate to the purchase of CT scanning equipment.

The Department has also determined that this proposed rule will not have a significant impact on small business and therefore does not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act. Public Law 96-354.

List of Subjects in 42 CFR Part 121

Health Planning, CT Scanner standards.

Accordingly, it is proposed that § 121.210 of 42 CFR Part 121 be removed.

Dated: March 10, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: April 22, 1982.

Richard S. Schweiker,

Secretary.

PART 121—NATIONAL GUIDLINES FOR HEALTH PLANNING

Subpart C—Standards Respecting the Appropriate Supply, Distribution, and Organization of Health Resources

For the reasons set out in the preamble, Part 121, Chapter 1, of Title 42 of the Code of Federal Regulations is proposed to be amended as follows:

§ 121.210 Computed tomographic scanners [Removed].

Part 121 is amended by removing § 121.210.

[FR Doc. 82-13726 Filed 5-19-82; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6311]

Proposed Special Flood Hazard Areas, Base Flood Elevations, and Zone Designations for the City of Newark, Alameda County, California Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas, base flood elevations, and zone designations as described below.

The proposed special flood hazard areas, base flood elevations, and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed special flood hazard areas, base flood elevations, and zone designations are available for review at the Office of the City Engineer, City Administration Building, 37101 Newark Boulevard, Newark, California.

Send comments to: Honorable David W. Smith, Mayor, City of Newark, 37101 Newark Boulevard, Newark, California 95400.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas, base flood elevations and zone designations for the City of Newark, California in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These special flood hazard areas, base flood elevations, and zone designations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas, base flood elevations, and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, base flood elevations and zone designations have been added due to recently annexed areas. Along Mowry Slough, between the limit of detailed study and a point approximately 1050 feet downstream of Station Road, the proposed base flood elevations range from 8 feet National Geodetic Vertical Datum (NGVD) to 10 feet NGVD, and the proposed zone designations are Zones A6 and A8. The salt evaporators, located in the northwestern portion of the City, are being identified as Zone A1 with a proposed base flood elevation of 7 feet NGVD. In the southernmost portion of the City, the proposed special flood hazard area for the salt evaporators is being identified as Zone A.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 26, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13643 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6313]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the Village of Tinley Park, Cook County, Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 17355 South 68th Court, Tinley Park, Illinois.

Send comments to: Edward J. Zabrocki, Village President, Village of Tinley Park, 17355 South 68th Court, Tinley Park, Illinois 60477.

FOR FURTHER INFORMATION CONTACT:
Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Association Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the Village of Tinley Park, Illinois, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum (feet)	Zone designation
Flossmoor Ditch	Portions of the area bounded on the north by Interstate 80, and on the east, south, and west by the corporate limits.	805	A4,B.
Midlothian Creek	South of Redwood Lane		C.
	Within recent annexation between 68th Street and 84th Avenue		A,B,C.
Tinley Creek	Portions of the area bounded on the north by 159th Street, on the east by 84th Avenue, on the south by 163rd Street, and on the west by the corporate limits.		C.
76th Avenue Ditch	Portions of the area bounded on the north by Bremenstowne Road, on the east by Manchester Street, on the south by 167th Street, and on the west by Harlem Avenue.	805	A3.
	Portions of the area bounded on the north by a line parallel to and approximately 100 feet north of 160th Place, on the east by the corporate limits, on the south by a line parallel to and approximately 100 feet south of 163rd Place, and on the west by Olcott Avenue.		C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13539 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6315]

National Flood Insurance Program Proposed Zone Designation Determinations for the City of Hugo, Washington County, Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 5524 Upper 146th Street North, Hugo, Minnesota.

Send comments to Honorable Marvin LaValle, Mayor, City of Hugo, 5524 Upper 146th Street North, Hugo, Minnesota 55038.

FOR FURTHER INFORMATION CONTACT:
Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed zone designations for the City of Hugo, Minnesota, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations are as follows:

Source of flooding	Location	Zone designation
Two unnamed lakes.	Portions of the area bounded on the north by 122nd Street North, on the south and east by the corporate limits, and on the west by Janero Avenue North..	A.
Clearwater Creek.	Portions of the area bounded on the north by a line parallel to and approximately 5400 feet north of Frenchman Road, on the east by Everton Avenue North and a line proceeding north from the northern end of Everton Avenue North, on the south by Frenchman Road, and on the west by the corporate limits..	B.
Standing water.	Portions of the area bounded on the north by 170th Street North, on the east and west by lines parallel to and approximately 1200 feet east of and 400 feet west of Ingesoll Avenue North, respectively, and on the south by a line parallel to and approximately 1700 feet south of 170th Street North..	A,C.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support).

Issued: April 20, 1982.

Lee M. Thomas

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13569 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6314]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the City of Sartell, Stearns and Benton Counties, Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 310 Second Street South, Sartell, Minnesota.

Send comments to: Honorable Robert Bogard, City of Sartell, P.O. Box 140, Sartell, Minnesota 56377.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472. (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Sartell, Minnesota, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum	Zone designation
Mississippi River	Southern corporate limits in Benton County	1001 feet	A8, C.
	Sartell Street	1003 feet	A8, C.
	Portions of the area bounded on the north and east by the corporate limits, on the south by a line directed due west from the junction of Scenic Drive and First Avenue NE, and on the west by the Mississippi River.	1020 feet	A8, B, C.
Watab River	Portions of the area bounded on north by Third Street North, on the east by a north-south line located approximately 500 feet west of the junction of Sartell Street and Second Street South, and on the south and west by the corporate limits.	1019 through 1031 feet.	A4, A5, B, C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; and delegation of authority to Associate Director, STate and Local Programs and Support)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13541 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR PART 67

[Docket No. FEMA-6316]

Proposed Special Flood Hazard Area and Base Flood Elevations for the City of Gearhart, Clatsop County, Oregon Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard area and base flood elevations as described below.

The proposed special flood hazard area and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazard area and base flood elevations are available for review at the Office of the City Administrator, 698 Pacific Way, Gearhart, Oregon.

Send comments to: Honorable Leo Sayles, Mayor, City of Gearhart, Drawer "D", Gearhart, Oregon, 97138.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Divison, Federal Emergency Management Agency, Washington, DC 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard area and base flood elvevation for the City of Gearhart, Oregon in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968, (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These special flood hazard area and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard area and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contests.

The proposed special flood hazard area, identified as Zone A, is being added along Neacoxie Creek, north of 10th Street. In addition, the areas of flooding identified as Zone AO with designated base flood elevations, are being revised to depth 1 foot.

Pursuant to the provisions of 5 U.S.C. 605 (b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood Plains.

National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: Apr. 26 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc 82-13542 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-343; FCC 82-206]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Pacific Telecommunications Needs During the Period 1981–1995

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing for public comment a number of alternative, proposed facilities construction and use plans for the Pacific Ocean Region submitted by the United States international service carriers and the Communications Satellite Corporation. The plans were submitted in response to the Commission's Inquiry into the development of the policies and guidelines it shall apply in acting upon requests for authorization to construct and operate cable and satellite facilities for service in the Pacific region during the period 1981 to 1995. The rulemaking here instituted will concern proposals by the U.S. service carriers to acquire IRU (Indefeasible Right of Users) interest in circuits in the ANZCAN cable to be constructed for introduction into service in 1984.

DATES: Comments on the plans are due June 1, 1982 and reply comments on June 14, 1982.

ADDRESS: Comments should be submitted to: The Secretary, Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects

Telecommunications, Pacific region.

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet Pacific Telecommunications needs during the period 1981–1995, CC Docket No. 81-343.

Adopted: April 29, 1982.

Released: May 7, 1982.

1. On May 15, 1981, the Commission adopted a Notice of Inquiry [1] in the above-captioned proceeding which initiated a comprehensive planning process in the Pacific Ocean region for the 1981–1995 time period. The Notice reviewed past Commission policies in authorizing facilities in the Pacific Ocean region and outlined recent developments. The Notice also set forth the scope of issues to be considered in the proceeding and the criteria to be used in the evaluation of alternatives. Finally, the Notice proposed a procedure to be followed in undertaking the Pacific planning effort.

2. It has been our stated policy to promote pro-competitive structural policy initiatives and reliance on marketplace forces to the fullest extent practicable in our regulatory oversight of the international telecommunications industry. To the extent these structural policies may be successful in introducing effective competition into the international marketplace, we may be able to commensurately reduce our direct involvement in the authorization and use of international telecommunication facilities by the U.S. international service carriers and Comsat. However, until such time as effective competition is deemed to be present in international telecommunications markets, we must continue to insure the fulfillment of Section 214 of the Communications Act of 1934 by direct authorization and oversight of the construction and use of international telecommunications facilities based upon a public interest finding of the need for such facilities.

3. As stated in the Notice of Inquiry, we believe that a comprehensive review of long range regional needs and facilities options, rather than an *ad hoc* review of individual facilities applications, is necessary to meet the primary public interest objective of attaining efficient utilization of the lowest cost combination of facilities which can satisfy valid traffic needs and service quality objectives. Policy guidelines based upon a comprehensive planning effort reduces the regulatory risk to U.S. carriers and their foreign correspondents. There is also a substantial reduction in the time and resources required to process facility authorization applications conforming to the guidelines; this improves the efficiency and reduces the time required to complete the entire facility licensing process.

4. As set forth in the Notice of Inquiry, the scope of the proposed planning effort includes an assessment of facilities currently operating in the region; this entails a comparison of actual use relative to available capacity and design life. The scope also includes the development and analysis of a full range of facilities alternatives capable of meeting projected traffic demands in the Pacific region through year-end 1995. This Notice of Proposed Rulemaking will focus upon near-term facility requirements—those facilities expected to be operational by the mid-1980's. However, these near-term issues will be examined within the context of data and information encompassing the entire planning period.

5. The Notice indicated that the first phase of the proceeding would consist of a series of public meetings of all interested parties as a means of expeditiously obtaining relevant planning information and data necessary to compile a full and complete record. This record is to consist in part of the planning information developed jointly by the United States international service carriers (USISCs) and their foreign correspondents in the Pacific region. It also was to include additional relevant information supplied by the USISCs, Comsat, and other interested parties. Upon completion of the record compilation process, the rulemaking stage of this proceeding was to be initiated.

6. In keeping with the procedure outlined in the Notice of Inquiry, a series of public meetings have been held for the purpose of generating the basic planning data and information used to formulate and evaluate alternative facilities plans designed to meet traffic demands in the Pacific region during the planning period. The task of assembling a comprehensive planning data base along the lines outlined in the Notice of Inquiry is complete and alternative facilities plans have been developed. Therefore, in accordance with procedures outlined in the Notice of Inquiry, we are hereby entering the rulemaking phase of this proceeding.

7. The purpose of this Notice of Proposed Rulemaking (NPRM) is to evaluate the proposed facilities alternatives available for service in the mid-1980's in the Pacific region within the context of plans encompassing the entire planning period, to issue tentative guidelines regarding the acquisition and use of such facilities, and to request public comment on these tentative findings and the record compiled. Section I contains a summary of comments and reply comments received in response to the Notice of Inquiry (NOI). Sections II and III summarize the record compiled and the carriers' and Comsat's evaluation of the alternative plans. Section IV and V contain a discussion and analysis of the record and a statement of tentative findings. Finally, section VI contains the ordering clauses.

I. Summary of Comments and Reply Comments

8. In the Notice of Inquiry, we requested comments from interested parties on: (1) The need for a planning process, (2) the appropriateness of the mechanism outlined in the Notice of Inquiry for carrying out such a process, and (3) other mechanisms that should be considered. Comments were received from the following entities: AT&T, ITT World Communications Inc., RCA Global Communications, Inc., Western

[1] Notice of Inquiry, released June 1, 1981, FCC 81-243, 46 FR 31288 (June 15, 1981).

Union International, Inc., Comsat, Hawaiian Telephone Company, FTC Communications, Inc., The Department of Defense (DOD), the State of Hawaii, and the Joint Council on Educational Telecommunications. In addition, the State of Hawaii, Alascom, Inc., FTC Communications, Inc., TRT Telecommunications Corporation, and the DOD petitioned to be made parties to this proceeding.

9. The comments from the various parties overwhelmingly endorsed the need for a planning process for the Pacific region and the mechanism outlined by the Commission for carrying out the various stages of the process. In addition to stating their agreement with the planning process, several parties raised issues which they believe might impact the process. The Hawaiian Telephone Company is concerned about the usefulness of the information requested in the context of developing general policy guidelines. Comsat believes that due to the dissimilarities in the Atlantic and Pacific regions, a different evaluative approach needs to be developed for the Pacific. Comsat believes that a new approach is warranted because of the greater number of foreign cable routes, the lack of an identifiable core group of administrations in the Pacific, and the question of how U.S.-Hawaii and U.S.-Alaska traffic will be treated. Comsat also notes that the desire for expedition in this matter may jeopardize the development of an adequate record, particularly since Comsat has only recently received the basic planning data and information that has been available to the USISCs for some time.

10. ITT World Communications Inc. believes that the Commission should ensure that domestic satellite capacity will continue to be made available to the International Record Carriers (IRCs) on an IRU (indefeasible right of user) or cost basis to meet service requirements between the Mainland and off-shore U.S. points. RCA Global Communications, Inc. states that it is unnecessary for the Commission to engage in meetings with foreign administrations to develop a facilities plan. The State of Hawaii states its belief that the Commission has failed to adequately recognize the importance of the various domestic satellite systems capable of serving Hawaii. In addition, the State of Hawaii feels that the Commission should address the policy issue of the appropriateness of granting foreign administrations whole circuit ownership in transmission facilities between Hawaii and the U.S. Mainland. The DOD indicates that from a national defense and security standpoint the level of service quality during the period following a facility failure and before restoration is extremely important. Thus, the DOD believes that cost and technology should not be the only significant factors used in assessing the desirability of any facility plan. The DOD also notes its view that the maximum possible diversity and redundancy of transmission paths is essential to the security of the DOD's and other critical U.S. Government and private sector communications.

11. The Joint Council on Educational Telecommunications stresses the need for the Commission to consider the need for domestic and regional communications (within countries and related island groups). In order to bring about this goal, the Joint Council on Educational Telecommunications sees a need for innovative approaches to services and rate structures so that existing facilities can be used to facilitate island development. Western Union International, Inc. raises several policy issues which it feels must be decided in the context of the planning process. According to Western Union International, Inc., the Commission should: (1) Reaffirm its Authorized User Policy; (2) grant direct access to INTELSAT to those international service carriers who desire such access; (3) insist upon continued IRU/cost based sublease access to the second generation of the Comstar domestic satellite system for all eligible carriers; and (4) terminate prescribed use formulas for satellite and cable circuits.

12. Reply comments were received from AT&T, Comsat, ITT World Communications, Inc., Western Union International, Inc., and Alascam, Inc. AT&T and Camsat believe that the policy questions cited by WUI are outside the scope of the planning process, and any consideration of these questions would unduly delay the planning process. With respect to the State of Hawaii's comments, AT&T contends that its proposed plans already incorporate the State of Hawaii's concerns. AT&T points to the fact that approximately 88% of its domestic message telephone traffic to and from Hawaii is provided over a single satellite route. AT&T also notes that a second satellite path will be introduced in 1982, resulting in approximately 94% of its Mainland-Hawaii traffic being routed via two deverse COMSTAR/TELSTAR satellite paths by 1985. According to AT&T, any greater reliance on domestic satellites for Mainland-Hawaii traffic will deny customers the benefits of its new lightwave cable technology. AT&T and ITT World Communications believe that the Commission's policy of allowing foreign ownership of whole circuits in the Mainland-Hawaii cables is in the public interest, since it reduces the cost to U.S. ratepayers. ITT World Communications views reliance on domestic satellite systems to the exclusion of cable facilities for Mainland-Hawaii service as adversely affecting users by destroying the benefits of media diversity and new cable technology.

13. In addition to reiterating its view that complex policy questions must be decided in the context of this proceeding, Western Union International stresses the need for service, operational, economic and competitive flexibility. It also believes this can only be achieved through implementation of the Commission's expressed policies and goals and through appropriate action taken on the four policy issues identified by WUI. Alascam believes that the Commission should address the following issues in designing a specific regional policy: (1) The treatment of traffic involving Hawaii and Alaska; (2) The role of domestic satellites in serving these points; and (3) The needs of Alaska and other rural and remote areas in the Pacific region.

II. Summary of the Record Compiled

14. The information compiled for the record (listed in Appendix 1) is based upon a list of questions (reproduced as Appendix 2) distributed at the first public meeting of the interested parties. The record compiled contains three major segments: basic planning data and information (i.e., demand, facility capacities, cost elements, etc.), alternative facilities plans, and carrier analysis and evaluation of the plans.

15. The basic planning data is then used by the carriers and Comsat to generate alternative facilities plans designed to meet traffic demands throughout the planning period. These plans consist of various combinations of new facilities introduced in the Pacific region at various times. The plans also contain detailed distributions of circuits routed over these new facilities for each year of the planning period.

16. These alternative facilities plans are then subjected to a detailed analysis and evaluation. The plans are evaluated and compared on the basis of the technological risks associated with the various facilities and their configurations, the quality of service characteristics of each plan, the demand flexibility provided by each plan (i.e, the spare capacity available to meet

unexpected increases in circuit demand), and on the basis of the estimated cost of each plan.

17. The alternative facilities plans developed by the carriers and included in the record are designed to depict three general scenarios.[3] The first scenario is a baseline plan (Plan I) characterized by introducing no new facilities into the region during the planning period. This plan is not designed to be a workable alternative, but is intended to indicate critical capacity shortages within the planning period indicating where new facilities are likely to be needed. The second scenario is a plan with two variations (Plans IIA and IIB) designed to rely on the (largely) temporary use of a foreign owned cable system between the Mainland/Hawaii and permanent use of a foreign owned cable between Hawaii and Australia, Fiji and New Zealand to relieve a capacity shortage in the mid-1980's. This temporary use of foreign cable capacity paves the way for an early introduction of optical fiber cable technology into the region (1988) to meet the needs of the late 1980's and early 1990's. The third scenario is a plan (Plan III) relying on construction of additional analog cables between the mainland and Hawaii and between Hawaii and Japan as well as permanent use of a foreign owned cable between Hawaii and Australia, Fiji and New Zealand to alleviate a cable capacity shortage in the mid-1980's. This results in delaying the introduction of optical fiber cable systems in the region until the latter part of the planning period (1991). A more detailed description of the features and assumptions of the three scenarios are set forth below and in Appendix 3, and the major facilities are shown on the map.[3]

A. Plan I

18. Plan I assumes no new cable or satellite facilities are introduced during during the planning period. The carriers characterize this plan as a "baseline" plan which is not workable, since it does not permit traffic demands to be met for the entire planning period. Indeed, as existing satellites and cables are retired, Plan I results in no service being available to a number of pacific points. The purpose of generating Plan I is to provide a frame of reference and point of comparison for the other plans.

B. Plans IIA and IIB

19. Plans IIA and IIB both assume U.S. carrier use of circuits in the Canada-Hawaii segment of the ANZCAN cable system (ANZCAN North) and in the Hawaii-Fiji-Australia-New Zealand segments of that cable system (ANZCAN South). [4] Plan IIA assumes temporary use of approximately 656 whole circuits and 545 half circuits and the permanent use of 203 half circuits in ANZCAN North. Plan IIB assumes temporary use of 656 whole circuit and 538 half circuits and permanent use of 203 half circuits. [5] The temporary circuits would be acquired on an indefeasible right of user (IRU) bais for use during the 1984–1988 period, and then they are to be resold to the ANZCAN owners at depreciated net book value at the end of the period. All 648 half circuits obtained by U.S. carriers in ANZCAN South would be acquired on a permanent basis.

20. Plans IIA and IIB both assume introduction of digital optical fiber cables of AT&T's SL design between the Mainland and Hawaii (8000 voice circuits) and between Hawaii and Japan (4000 voice circuits) in 1988. Both plans assume the use of INTELSAT IV, IV-A, V, V-A and VI-A satellites at various times in the Pacific Ocean region. Other than the INTELSAT VI AND VI-A satellites, which may be launched directly into the Pacific Ocean region, all satellites used will be transferred from other ocean regions upon replacement by new satellites. Both plans assume the use of only the 6/4 GHz capacity provided by the various satellites. Plan IIA assumes the use of only a primary path satellite in the region between 1981 and 1987; a second satellite path (major path) is introduced in 1987. Plan IIB assumes use of only a primary path satellite until 1984. Between 1984 and the 1987 introduction of a major path satellite, satellite traffic is divided between the primary path satellite and the Pacific Ocean region in-orbit spare statellite (i.e., an operational spare). This provides an additional independent satellite path, but adds no additional statellite capacity.[6] Both Plans IIA and IIB assume that two independent satellite paths between the U.S. Mainland and Hawaii are provided by AT&T's domestic satellite system throughout the planning period.

C. Plan III

21. Plan III assumes the use of 161 half circuits acquired on a permanent basis in ANZCAN North (160 by the Hawaiian Telephone Co. and 1 by ITT World Communications Inc.) and 648 half circuits acquired on a permanent basis in ANZCAN South. The plan assumes introduction of an analog cable of AT&T's SG design (4200 voice circuits)[7] between the U.S. Mainland and Hawaii in 1984 and introduction of a digital optical fiber cable of AT&T's SL design (8000 voice circuits) on that route in 1991. It also assumes introduction of an analog cable of Japanese design (1600 voice circuits) between Hawaii and Japan in 1986 and the introduction of a digtal optical fiber cable of AT&T's SL design (8000 voice circuits) between Hawaii and Guam in 1991. The INTELSAT and AT&T domestic satellite facility assumptions of Plan III are the same as those made in Plan IIB.

D. Factors Common to Multiple Plans

22. All plans contemplate AT&T's maximum use of circuit multiplication equipment to approximately double the number of circuits used to provide message telephone service on all analog cables. Plans IIA, IIB, and III all contemplate AT&T's maximum use of digital circuit multiplication equipment to approximately triple the number of circuits used to provide message telephone service on all digital fiber

[3] The plans submitted were actually constructed by the United States International Service Carriers with Comsat providing detailed information included in the generation of the plans.

[3] The actual detailed plans and the data upon which these plans are constructed are available in the Docket in this proceeding and for public inspection in Room 538 of the Commission's headquarters. A comprehensive list of the assumptions and features of each plan is contained in Appendix 3. The map is filed as part of the original document.

[4] The ANACAN cable will be constructed and owned by telecommunications entities in Australia, Canada, France, the Federal Republic of Germany, New Zealand, the Independent State of Papua, New Guinea, the Philippines and the United Kingdom. This system is designed to replace the current Compac cable system serving most of the same points; it reaches the end of its design life in 1984. On September 30, 1981 we granted Teleglobe, Canada a license to land the ANZCAN Cable in Hawaii pursuant to the provisions of the Act entitled "An Act relating to the landing operation of submarine cables in the United States" 47 U.S.C. 34-39 (1980) *See* Cable Landing License, FCC 81-439, released October 8, 1981.

[5] Of 203 permanent half circuits, 202 would be used by the Hawaiian Telephone Co. and 1 by ITT World Communications, Inc. AT&T indicates in its December 10, 1981 submission to the record (last page of Tab 14) that further developments in the ANZCAN project subsequent to the development of the detailed plans, provide for approximately 300 of the original temporary 538 half circuits (Plan B) to be obtained on a permanent basis.

[6] The concept of an operational space satellite requires that the sum total of traffic on both spacecraft is not to exceed the capacity on a single spacecraft, since a failure of one would require that all satellite traffic would have to be carried on the single remaining spacecraft.

[7] The stated assumptions set forth in Plan III indicate that this cable would be configured to provide 3150 - 4kHz voice circuits. However, all AT&T's cost information pertaining to this cable as well as the circuit distribution assume this cable is configured to provide 4200 - 3kHz circuits. We expect AT&T to clarify this point in the comments filed in this proceeding.

optic cables.[8] Plans IIA, IIB and III also assume use of TDMA/DSI multiplication equipment on the Pacific Ocean region satellite beginning in 1991.[9] Plans IIA, IIB and III also assume U.S. carrier acquisition of interests in the foreign owned cables terminating in Okinawa, the Philippines, Guam and Australia to extend circuits in the ANZCAN South and Hawaii-Guam and Guam-Japan (Transpacific) cables to other countries. All plans distribute circuits among available routes in accordance with the balance loading method.[10]

III. The Parties' Evaluation of the Alternative Plans

23. The U.S. international carriers and Comsat analyzed the alternative plans from the standpoints of demand flexibility, technological risk, service quality, acceptability to foreign correspondents, and costs. Plan I is not analyzed, as the parties indicate it is merely a baseline plan and not a workable alternative.

A. Demand Flexibility

24. The particular geography of the Pacific Ocean region and the configuration of transmission facilities therein require use of a method to calculate the ability of a given plan to satisfy unexpected increases in traffic which differs from that used for North Atlantic facilities plans. Noth Atlantic facilities are used predominantly between the North American and European continents, and both of these continents possess highly developed domestic networks. Consequently, circuits from any North Atlantic cable can be extended to any country in the North Atlantic region. As a result, the demand flexibility provided by a given plan for the North Atlantic can be calculated by adding the total number of cable and satellite circuits provided by that plan's facilities and subtracting the total forecasted demand for circuits in each year of the planning period. The number of spare circuits thus calculated, divided by the total forecasted circuit demand, yields the percent demand flexibility provided by the plan in each year.

25. While satellite circuits can reach any point in the Pacific Ocean region equipped to access the Pacific Ocean region INTELSAT satellites, circuits in each Pacific Ocean region cable cannot be used to all points in that region. Consequently, a somewhat different approach to calculation of demand flexibility must be used. The method chosen by the parties is to calculate satellite and cable demand flexibility separately for each plan. For satellites, the demand for circuits on the INTELSAT satellite system in the region from the Mainland and Hawaii to all other Pacific points is derived from each plan.[11] These demand figures are subtracted from the capacity provided by the satellites. The number of spare circuits thus derived, divided by the total demand for circuits on the satellites, yields the demand flexibility measure for the satellite medium.

26. Demand flexibility for cables is calculated separately for three cable routes: U.S. Mainland—Hawaii—Guam/Japan, and Hawaii—Australia. For each of the three separate routes, the total capacity provided by all cables serving the appropriate points is calculated and compared to the demand for cable circuits to these points to detemine the spare capacity as a percentage of projected demand. AT&T did not provide a satellite demand flexibility calulation for its domestic satellites used between the U.S. Mainland and Hawaii.

27. AT&T's comparison of cable capacity and cable circuit demand for the three routes separately indicates that cable circuit demand flexibility is substantially the same on each of the routes for both Plans IIA and IIB except for the 1984–1989 period. During this period, plan IIB provides a greater cable circuit demand flexibility on all three cable routes because of the greater use of satellite circuits in Plan IIB during that period. This is due to the availability of a second satellite path during that period and use of a balanced loading distribution of circuits among facilities. Plan III provides greater cable circuit demand flexibility on the U.S. Mainland—Hawaii and Hawii/Guam/Japan routes than either Plans IIA or IIB because of the availability of a greater number of cable circuits and a larger number of independent cable paths. The cable circuit demand flexibility on the Hawaili-Australia route provided by Plan III is slightly better than that provided by Plan IIB between 1985 and 1988 and the same as Plans IIA and IIB between 1989 and 1995.[12]

28. Comsat's satellite demand flexibility analysis shows that demand flexibility differs for Plan IIA and IIB only between the 1984–1989 period. During this period, Plan IIB exhibits a smaller statellite demand flexibility. This is because the operational spare satellite (included in IIB, but not in IIA) provides a separate additional satellite path, but no additional satellite capacity.[13] Under the balanced loading

[8] Circuit multiplication equipment exploits the fact that pauses occur in normal conversation between persons. This equipment senses these pauses and routes portions of other calls to the momentarily idle circuits so as to derive the most efficient use of all available circuits. Existing equipment operating on analog cable circuits used for message telephone service normally permits 240 separate calls to be routed over 120 basic circuits. This, in effect, doubles the number of available telephone circuits. Equipment to be used on digital fiber optic cable circuits used for message telephone service is expected to triple the number of such circuits.

[9] TDMA and DSI are acronyms for time division multiple access equipment and digital speech interpolation equipment, respectively. Use of TDMA, rather than frequency division multiple access currently used, increases the number of circuits a given satellite transponder can carry by approximately 50–60 percent. DSI equipment operates in much the same fashion as circuit multiplication equipment used on cables and approximately doubles the number of circuits used for message telephone services.

[10] The balanced loading method distributes circuits among transmission facilities on paths with unused capacity with a goal of having each separate transmission path carrying equal numbers of circuits. When one of the transmission facilities reaches the limits of its capacity, circuits are equally distributed among the remaining facilities which have unused capacity. When a new transmission facility is introduced, all additional circuits are placed on that facility until it is carrying as many circuits as the other balanced facilities. Thereafter, circuits are distributed equally among all available paths.

[11] The portion of total demand assigned to each medium for the purpose of calculating demand flexibility is based upon the loading algorithm (i.e., balanced loading) used to distribute traffic among facilities in each plan.

[12] In AT&T cable demand flexibility analysis, a much lower circuit capacity for the optical fiber cable systems is used than the capacity shown for the same system in the actual plans. This leads to several instances where cable demand appears to exceed cable capacity (negative demand flexibility) in the later part of the planning period. These negative demand flexibility numbers disappear if the capacities of the optical fiber cable systems indicated in the plans are subetituted for those used in AT&T's demand flexibility anlaysis. Similarly, AT&T's demand flexibility analysis for the Hawaii—Australia cable route assumes use of fewer ANZCAN South circuits than assumed in the plan's distribution. This again produces in a negative flexibility.

[13] Under a blanced loading principle, growth circuits are equally distributed among available transmission paths. For example, implementation of Plan IIA would result in a single cable path (the ANZCAN North and South cables) and a single satellite path (the INTELSAT Pacific primary path satellite) on which growth cricuits to Australia could be placed during the 1984–1986 period. Equal diribution of growth circuits between these two paths would result in 50 percent of those circuits being placed on the cable and 50 percent on the satellite. Under Plan IIB, however, two satellite paths would be available to Australia because of the use of the INTELSAT Pacific in-orbit spare satellite as an operational spare satellite. Equal distribution of growth circuits to Australia among the one cable and two satellite paths would result in two-thirds of those circuits being placed on satellites and one-third being placed on the cable. Since more circuits would be placed on satellites under Plan IIB while the inial available satellite capacity remains the same as in Plan IIA, there are fewer unused satellite circuits available under Plan IIB between 1984 and 1985. This results in Plan IIB exhibiting a lower satellite circuit demand flexibility than Plan IIA.

method used to distribute traffic in the plans, the satellite medium having two paths in IIB will be loaded more heavily; thus, leaving less excess satellite capacity than shown in IIA. This demand flexibility difference due to loading disappears in the later part of the planning period as more new facilities are introduced into the region. Plan III shows more satellite demand flexibility than either Plans IIA or IIB after 1987, because of the greater number of cable circuits and independent cable paths.

B. Service Quality

29. AT&T analyzed the service quality provided by the alternative plans in terms of media (cable and satellite) diversity, route diveristy, network management and redundancy/restoration. AT&T states that because of economic considerations (i.e., the cost of cable facilities), at least during the first half of the planning period, it has established a minimum acceptable media diversity objective of 67 percent satellite and 33 percent cable circuit use to major traffic points in the Pacific Ocean region. It notes that none of the three viable alternative facilities plans (Plans IIA, IIB, and III) meet this objective throughout the planning period. Specifically, all plans route less than 33 percent to total Pacific region traffic via cable in 1982 and 1983. Plans IIB and III also fail to meet the 33 percent cable objective in 1984 and 1985. This is because of the use of the Pacific Ocean region in-orbit spare satellite as an operational spare, together with the use of a balanced loading method for distributing circuits among available facilities. AT&T states that Plan III achieves the best balance from a media diversity point of view. Plans IIA and IIB are deemed to be less acceptable on a media diversity basis and need to be modified in the actual circuit activation plan to reach acceptability.

30. AT&T analyzed the alternative plans in terms of route diversity and the percentage of circuits which would survive a failure of the heaviest loaded facility on a given route for Australia, Hong Kong, Japan, Korea, the Philippines, Singapore and Taiwan. These points represent nearly 80 percent of U.S. international traffic in the Pacific Ocean region. AT&T indicates that Plan III provides the largest number of diverse routes during the planning period because it introduces more cables and assumes use of an operational spare satellite in 1984. Plan IIB provides better route diversity between 1984 and 1987 than Plan IIA because of the introduction of the operational spare satellite as a new independent path. However, none of the three plans provide sufficient route diversity to maintain a level of surviving circuits upon failure of the heaviest loaded facility between two points that is sufficient to meet CCITT recommendations for quality of service. Consequently, all plans require restoration of failed circuits via spare capacity in another transmission system in order to maintain an acceptable level of service while the failed transmission path is being repaired. AT&T indicates that all plans assume the availability of a spare satellite to provide restoration capacity for any failed cable or satellite facility during the planning period. Comsat's analysis also indicates that all plans require restoration in the event of a major facility failure to maintain adequate service quality. AT&T also indicates that all of the alternative plans provide approximately the same ability to employ network management methods to minimize network congestion following facilities failures, since the plans do not provide significantly different numbers of diverse routes to the major Pacific traffic points.

C. Technological Risk

31. The principal technological risks identified by the carriers and Comsat are: (1) The possibility that development of the SL digital optical fiber cable will not be completed in time to permit its introduction in the period assumed by the plans; (2) the possibility of delay in the introduction of the INTELSAT satellites planned for the Pacific Ocean region; (3) delay in the availability of the necessary earth stations needed to access the operational spare and major path satellites; and (4) the possibility of delay in the implementation of overall capacity enhancement techniques on satellites. The technological risks of delay in the availability of the SL Digital optical fiber cable system is greater for Plans IIA and IIB, since these plans introduce such cables three years earlier than does Plan III. The risks indicated in (2), (3) and (4) above are the same for all plans, since all plans make the same assumptions concerning these elements. The risk associated with the availability of the operational spare satellite and the necessary earth stations to access that satellite is not present in Plan IIA, since that plan does not assume use of such a satellite configuration. None of these risks are found to be unacceptable by the carriers or Comsat.

D. Cost Analysis

32. The cost of each of the alternative facilities plans is estimated by AT&T and Comsat. Both parties express the individual cost of a plan in terms of the discounted present worth of expenditures. However, the parties employ different methods and assumptions for estimating the cost of the various plans. AT&T uses two methods for estimating cost—a "use" and an "investment" method. The AT&T "use" method includes the USISC portion of the total investment and operating cost outlays for new cable systems introduced during the planning period, together with the estimated annual per circuit Comsat (tariff) lease charge for international satellite circuits. The AT&T "investment" method also includes the USISC portion of total investment and operating cost outlay for new cable systems. For satellites, an allocated portion of the total investment and operating cost associated with all the satellites of the various satellite series introduced into the region during the planning period is included. The portion of total INTELSAT satellite costs allocated to the U.S. in the Pacific region is determined by the planned use of a given satellite facility by the U.S. carriers in the Pacific region relative to its use by the foreign entities in the Pacific and its use in other ocean basin regions. Both the use and investment method employed by AT&T include all cable costs associated with providing U.S. Mainland/Hawaii service for those cable systems that are newly introducted into the Pacific region during the planning period.

33. Comsat's cost estimates for the plans are based upon a single investment related methodology. The Comsat approach includes the USISC portion of total investment and operating costs for new cable systems in a similar manner to that employed by AT&T in both its methods. In calculating the satellite portion of the cost associated with an individual facility plan, Comsat includes an allocated portion of only the total incremental investment and operating costs associated with satellite facilities serving the Pacific region. Comsat assumes that the only relevant incremental satellite costs are those associated with satellite facilities for which investment decisions by INTELSAT have not already been made as of the beginning of the planning period. This means that any satellite series prior to the INTELSAT VI (scheduled to be introduced in the Pacific region in 1991) is not included in the Comsat cost analysis. This differs significantly from the AT&T investment method approach in that AT&T includes an allocated portion of INTELSAT satellite costs (based upon relative use)

for the INTELSAT series IVA, V, VA, and VI in its analysis. For the INTELSAT VI satellite series that is included in the Comsat analysis, an allocation mechanism based upon relative use of the satellite by U.S. carriers in the Pacific region is employed by Comsat to allocate a portion of the overall satellite system cost to the Pacific plans. Finally, in contrast to both the AT&T use and investment methods, Comsat excludes from its cost analysis all cable costs associated with providing U.S. Mainland/Hawaii service.[14]

34. The AT&T and Comsat cost analysis results are presented in Table 1. Even though the various cost methodologies differ considerably, the estimates in the table indicate that Plan III is significantly more costly than either variation of Plan II, regardless of the cost method used. The table also shows that Plan IIB is cheaper than Plan IIA under both the AT&T and Comsat investment method. The two variations of Plan II are relatively close in total cost under all of the cost methods employed.Table 1 also includes a breakdown of the cost for each plan by media (cable/satellite). The estimates indicate that, for any given plan, total costs for satellite facilities are less than total costs for cable facilities for both the AT&T and Comsat investment methods. However, the AT&T use method yields a total cost for satellite facilities that is greater than the total cost for cable facilities for each plan. The estimates show that the expected total cost outlay for the USISC for the range of plans under consideration is in the 400 to 600 million dollar range (1982 present value dollars).

E. Overall Evaluation of the Plans

35. All the U.S. international carriers select Plan IIB as the most desirable of the alternatives presented. While Plan III provides somewhat better media and route diversity, it delays introduction of the digital optical fiber cable technology into the Pacific basin, is more costly. Plan IIB is preferred to IIA because it provides better route diversity through the use of an operational spare satellite, which is not included in IIA. Comsat does not indicate a specific preference for any of the proposed plans.

IV. Discussion

36. The overall goal of a proceeding for the review of facilities options such as this is to develop guidelines for the use of the U.S. international carriers and Comsat in their negotiations with their foreign correspondents which will lead to agreement to construct and use the lowest cost combination of facilities which can satisfy projected demand for service at adequate levels of service quality. The mechanism used by the U.S. carriers, Comsat, other interested parties and by the Commission is to subject a range of alternative facilities configurations to analyses to determine each plan's ability to satisfy forecasted demand for service and provide adequate levels of service quality. Each plan is also analyzed to determine its costs. The results of these analyses are subjected to an overall evaluation to determine which plan or plans best meet these criteria. In the following sections we will discuss the parties analysis of each of these factors. This will be followed by discussion of the application of these factors to the alternative plans.

A. Demand Forecast

37. The circuit demand forecast for message telephone service used in the Plans was prepared by AT&T. The international record carriers prepared the forecast of circuit demand for international telegraph, telex and alternate voice/data private line services. All of these forecasts employ the best information available, and AT&T in particular, uses advanced statistical methods in generating the message telephone circuit demand forecast. AT&T's forecast of traffic between the U.S. and the major Pacific countries utilizes individual country econometric models to forecast traffic annually three years out from the present period. An extrapolation of growth trends obtained from the econometric models is used as the basis for the forecast for the remaining years of the planning period. For the smaller countries in the region, AT&T extrapolates historical growth trends in traffic to obtain the forecast for the planning period. Comsat independently forecasts international television traffic demand, but does not do any forecasting of message telephone or record traffic. The forecast of traffic demand on international satellites is obtained by Comsat and INTELSAT directly from the carriers and their foreign correspondents annually at the INTELSAT global traffic meeting. Comments filed on behalf of the State of Hawaii suggest that forecasted facilities requirements for Mainland-Hawaii television and for Mainland-Hawaii and U.S. foreign Pacific points wide band services should also be considered.

38. The forecasts clearly drive the whole planning process and constrain the available facilities alternatives. It is the demand forecast that determines the capacity needed and the time period in which facilities to provide that capacity must be introduced into the region. Even though advanced techniques and the most up-to-date information are employed in developing these forecasts, it is important to recognize that the need for individual facilities is quite sensitive to variations in this forecast. Therefore, a frequent update of these forecasts is essential and the individual facilities plans should be revised to reflect changes in the forecast.

B. Cost Analysis

39. The number of different cost estimates supplied by AT&T and Comsat and the range over which these estimates vary reflect unresolved methodological controversies concerning the appropriate way to measure cost. In addition comments filed on behalf of the State of Hawaii suggest use of another method for comparing the cost of the alternative plans. Even though it is unlikely that these controversies will be resolved in the near future, it is important to be aware of the differences in the underlying assumptions employed in the different cost methods and the sensitivities of the cost estimates themselves to these differing assumptions.

40. One of the major differences in approach is the method used to measure the cost of satellite facilities to be incorporated in the plans. AT&T uses two methods to estimate satellite costs: a use related approach, which estimates annual Comsat lease (tariff) rate charges for the use of international satellite circuits; and an investment related method, which allocates a portion of the total investment and operating cost for satellite facilities to the Pacific region plans. Comsat employs a different investment related method, which incorporates only an allocated portion of the total investment and operating cost for any satellite series expected to be introduced into the Pacific during the planning period for which INTELSAT has not yet made a final investment commitment decision (i.e., the INTELSAT VI series). The major difference in approach between the two investment methods concerns the appropriate application of the economic concept of "sunk" cost and incremental decision-making.

41. Comsat's cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. Comsat defines as new satellite

[14] Other relatively minor differences in cost assumptions also exist between the AT&T and Comsat methods. See the respective cost submissions of the carriers in the record for details.

facilities only those satellites for which INTELSAT has not made a final investment commitment. The costs associated with all other satellites are treated as sunk costs and not included in Comsat's cost analysis. Comsat views the INTELSAT VI satellites as being the first satellites projected for use in the Pacific Ocean region for which INTELSAT has not made a final investment decision. Since the INTELSAT VI satellites are not introduced into Pacific Ocean region use before 1991 in any of the alternative plans, Comsat's cost analysis does not include any costs for use of INTELSAT satellite capacity for the 1981–1990 portion of the planning period.[15] However, it must be noted that Comsat's investment in INTELSAT satellites is not fixed. Pursuant to the INTELSAT agreement, the investment of Comsat and all other signatories to that agreement is proportional to the use each makes of INTELSAT satellites. Consequently, Comsat's investment in all INTELSAT satellites, existing and new, is not fixed but varies with relative U.S. use of these satellites.[16]

42. AT&T submitted two cost analyses. Its investment based cost analysis also uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. However, AT&T accounts for the fact that Comsat's investment in INTELSAT satellites varies with use by including an allocated portion of the investment and operating costs for all INTELSAT satellites used in the Pacific Ocean region during the planning period. The costs AT&T allocates to the U.S. are based on the planned U.S. use of each Pacific Ocean region satellite relative to its use by foreign entities in the Pacific and to its use in other ocean regions.

43. AT&T's use related cost analysis also uses the investment and operating cost of new cable facilities to compare cost of the alternative plans. However, AT&T uses its projections of Comsat's future tariff charges to the U.S. carriers for lease of satellite circuit as the measure of satellite costs for the plans. Use of projected Comsat tariff charges is based on the fact that it is these charges which the carriers pay for satellite circuits and it is these costs which are reflected in the charges the ratepayers must pay to the carriers for service. However, looked at from the perspective of the overall system, keeping in mind that the objective is to minimize the cost of the combination of facilities required to meet forcasted demand, AT&T's use related cost analysis distorts the choice between cable and satellites. This method reflects only the investment and operating costs for new cable facilities. It does not include return on investment or taxes for cable facilities. Since Comsat's tariff rates must meet its revenue requirements, including return on investment and taxes, this approach makes satellite use appear more costly in relation to cable use.[17]

44. The State of Hawaii asserts that cost comparisons of the alternative plans should be based on revenue requirements at a stated rate of return for both cables and satellite facilities. The State does not indiciate whether it is suggesting comparison of revenue requirements for only new facilities or total revenue requirements for all facilities, new and existing.

45. Both AT&T and Comsat supplement their overall total cost estimates with a measure of average unit cost for satellite and cable faciliuties incorporated in the individual plans. This average unit cost is obtained by taking the total cost for satellite and cable facilities, respectively, for a given plan and dividing these total costs by the total number of half circuit-years that these facilities are able to generate.[18] Therefore, the average unit cost measure obtained for a given plan is the cost per half circuit-year for both cables and satellite facilities used throughout the planning period.

46. We request the parties to comment on these various costing methods and to indicate the advantages and disadvantages they perceive with each method. We further request the parties to specifically address the proposal advanced by the State of Hawaii that a comparison of the revenue requirement impact of the alternative plans be made a part of our overall assessment.

C. Loading Criteria

47. Each of the plans developed employs a balanced loading formula for allocating traffic among the various facilities included in the plans. As indicated by the carriers, pure balanced loading serves to optimize the service quality attributes of a given facilities configuration in that it minimizes the period of time over which there is an imbalance of traffic among the available facilities on a given route. Balanced loading also minimizes the percent of lost circuits in the event of a facilities failure between two geographical points. There seems to be little dispute concerning the service quality attributes of the balanced loading circuit distribution method.

48. AT&T and Comsat have reached a consensus that a specific master loading plan is the best approach for the actual allocation of traffic among facilities. The master plan allows for individual deviations from a given formula which would accommodate the wishes of individual foreign correspondents and provide an opportunity to maintain some growth on either satellite or cable facilities during periods in which a strict balanced loading method would call for all additional traffic to be loaded on one medium. The international record carriers argue that individual customer requirements for leased channel services necessitates that they have total flexibility with respect to loading traffic on a particular medium, and this extends even to the choice of individual facilities between two geographic points. The IRCs feel that due to these special customers demands they should be exempt from any loading formula used to allocate traffic. Given that individual private line customer demand may dictate particular facility choices, and recognizing that international record carriers circuit requirements are small relative to the total circuits in use, it seems unlikely that record carrier choice of facilities chould upset any overall balance in facilities use required to either optimize service quality or to minimize cost to the ratepayer. Therefore, we tentatively conclude that the international record carriers should be exempt from any particular loading criteria. In addition, we generally find the arguments made by the carriers and Comsat in favor of a master plan approach to be persuasive. We further conclude: (1) A master plan approach to actual loading is acceptable, if the plan generally reflects the optimal service quality properties of balanced loading and gives due consideration to the cost to the ratepayer; and (2) the master plan includes some specific mechanism to deal with deviations from the given plan if traffic levels differ from those projected in the forecast. We ask the parties to specifically address these

[15] Incremental investment and operation for U.S. earth stations are included in Comsat's cost analysis for the entire planning period.

[16] While Comsat's investment in INTELSAT satellites varies with U.S. use, INTELSAT's investment in those satellites is fixed. Since the use made of those satellites by Comsat and the other INTELSAT signatories contributes the vast majority of INTELSAT's revenue requirements, changes in U.S. use of the satellites could affect the rates INTELSAT charges for satellite capacity.

[17] AT&T indicates that it did not include taxes or the effects of inflation in its projection of future Comsat tariff charges.

[18] A half circuit-year is the capacity of one half circuit in a facility for a period of one year. For example, a cable system with a 1000 circuit capacity and a design life of 25 years to be used totally for international service would provide 25,000 half circuit-years of service capacity to U.S. carriers.

loading considerations in their comments.

49. Given the projected timetable in this proceeding and the necessity to issue policy guidelines regarding facilities expected to be operational in the mid–1980's expeditiously, we ask the parties to file a master loading plan for facilities expected to be operational in the mid 1980's (i.e., introduced in the region in the 1984–1986 time period) as part of the comments on this NPRM. This will permit public comment on the proposed plan during the reply comment period, with guidelines for a final loading plan adopted in the First Report and Order. We will consider the master loading plan for the latter period facilities (those introduced into the region after 1986) in the next phase of this proceeding when more detailed information can be compiled regarding the actual configuration of these facilities and the timing of their introduction.

D. Demand Flexibility Analysis

50. Though we recognize the difficulties inherent in developing demand flexibility measures for evaluating the Pacific Ocean region plans regarding capacity available to meet unexpected demand requirements, we question the usefulness of the actual demand flexibility measures developed separately for cable and satellite facilities. We agree with the carriers that it makes little sense to attempt to simply aggregate cable capacity over the entire region when individual cable facilities are only adequate to serve particular points in the region and not all other points. We also agree that it is not possible to meaningfully allocate INTELSAT satellite capacity among the various subregions within the Pacific Ocean Basin. Yet, the results obtained from separately estimating demand flexibilities for cable and satellites for a given plan do not really provide a good indication of the available capacity relative to the expected demand in terms of meeting fluctations or deviatios in traffic demand throughout the planning period. In particular, the cable demand flexibility analysis developed by the carriers compares cable capacities available with a so-called cable demand. This cable demand is based upon the allocation of a portion of total demand to available cable facilities through the balanced loading formula. This is not a rigid demand requirement for cable facilities in the event that sufficient cable capacity is not available, for some (or maybe all) of this traffic could be routed via satellite. Similarly, the satellite demand flexibility analysis compares overall available satellite capacity with satellite demand. The satellite demand figure is obtained from the balanced loading formula applied to each of the plans and is not a rigid requirement. Should circumstances dictate, at least some of the so-called satellite demand could be satisfied with available cable facilities. Therefore, the demand flexibility estimates for each medium separately do not give a true indication of the capacity in the region that is available to meet overall traffic requirements.

51. We developed a demand flexibility analysis to supplement that of the U.S. international carriers and Comsat. Our goal was to develop a method which would determine the total demand flexibility provided by the alternative plans. The method developed relies on the fact that INTELSAT satellite capacity available to the U.S. can be used to any point in the region equipped to access those satellites. Consequently, any increase in INTELSAT satellite capacity for U.S. services can be assumed to be available to any Pacific point. Increases in cable circuit capacity on one cable route cannot be used to provide service to points served by other cabel routes (*e.g.*, cabel circuits on the Hawaii-Australia route cannot be used ot serve points on the Hawaii-Guam-Japan cable route). However, because of the ability to use INTELSAT satellites to serve any Pacific point, increases of cable capacity on one route does increase the availability of circuits on other cable routes. It does so by making it possible to transfer traffic from satellite circuits to the additional cable circuits. The vacated satellite circuits can then be used to satisfy circuit demands to points served by other cable routes.

52. Using these facts, tótal demand flexibility can be calculated for Pacific Ocean region west of Hawaii by adding the total number of satellite and cable circuits available and subtracting the result from the total forecasted circuit demand to countries served by those facilities. The number of circuits resulting from this subtraction divided by the total forecasted demand determines the percent demand flexibility. However, one more step is required to refine this result. As noted above, the number of cable circuits added to one cable route are not the number of circuits which become available on other cable routes. It is the number of satellite circuits used to points seved by the augmented cable route which become available because of the ability to transfer the traffic they carry to the additional cable circuits which define the capacity available to other cable routes. This will not always be the same as the number of additional cable circuits. Consequently, a check must be made in each instance. This procedure is demonstrated in our analysis of the effect on demand flexibility of U.S. use of ANZCAN South cabel circuits set forth later in this document.

53. With due consideration given to the qualifications and concerns set for the above, we generally are in accord with the analysis of the plans presented by the carriers and Comsat (summarized in Section II above). Given our preference to focus on the mid–1980's facilities in the first round of this proceeding, we will not indicate even a tentative preference regarding the facilities to be introduced into the region in the latter 1980's and early 1990's until the next round of this proceeding. Additional information is likely to be available then concerning the specific configuration, cost, technological risk, etc., associated with these facilities.

E. Analysis of Mid-1980's Facilities

54. In keeping with the focus set forth in the Notice of Inquiry, we will devote the remainder of our evaluation and analysis to those facilities which are being considered for introduction into the region during the mid 80's period. However, the analysis and evaluation of these facilities will encompass the time frame 1984 through 1988. The initial question that must be answered is the extent to which additional facilities are needed in the Pacific region for the mid-1980's time frame. The base-line Plan I developed by the carriers provides a comparison of overall circuit demand with currently available facilities. Examination of the details of that plan show that currently operational cable facilities will be essentially fully utilized by 1983, and all traffic growth beyond 1983 will be placed on the satellite system.[19] Comsat's analysis based upon PLan I assumptions of no additional facilities added during the planning period set forth in Table 2, shows a shortage of satellite capacity (and total capacity, since the cables are full) to other Pacific Region countries in 1986 of 182 circuits. This corresponds to a 4% negative satellite demand flexibility in 1986. The table also shows that, without the addition of the major path international satellite in 1987, the shortage of available circuits will get worse as indicated by the 12% negative satellite demand flexibility in 1987 and a negative 27% in 1988, the result of

[19] See USISC Plan I in Tab 9 of AT&T December 10 submission in the record.

Comsat's analysis indicates that there will be insufficient capacity to meet demand in the 1986 to 1988 time period without the addition of new facilities. Application of our demand flexibility analysis to Plan I indicates total international circuit demand will exceed available capacity by 41 circuits in 1986.

55. Therefore, the results of the analyses clearly indicates that there is likely to be a sortage of capacity available for U.S. Pacific Region international traffic beginning in 1986 unless new facilities are added. The earliest that additional satellite capacity could be made available under current plans is in 1987 with the introduction of an INTELSAT major path satellite. Consequently, additional cable circuit capacity is needed if total U.S. Pacific international circuit demands are to be satisfied in 1986.

56. The information contained in Plan I indicates that all circuits (both basic and those which can be derived by circuit multiplication techniques) in existing cables available for U.S. Mainland—Hawaii services will be fully utilized by 1983. However, that plan also indicates that the AT&T domestic satellite system will have enough capacity to satisfy U.S. Mainland—Hawaii traffic growth at least to the end of 1987.[20] There are also a number of U.S. domestic satellite systems in addition to AT&T's which are or will be technically able to provide services between the U.S. Mainland and Hawaii during the mid-1980's. RCA American Communications, Inc. and the Western Union Telegraph Company currently operate domestic satellite systems with that capacity.[21] In addition, GTE Satellite Corporation, Hughes Communications, Inc. and SPC Communications have been authorized to construct and operate domestic satellite systems which will have the capability of providing service between the U.S. Mainland and Hawaii in the mid-1980's. Letters were sent to these entities inquiring whether they expected to have capacity available in their domestic satellite systems they would be willing to make available to the U.S. international carriers for their provision of U.S. Mainland—Hawaii services during the mid-1980's. A number of these entities indicated that they expected to have such capacity available but did not indicate the number of circuits which could be so used. However, RCA American Communications, Inc. indicated that it could provide a minimum of 200–300 circuits to the U.S. international carriers for U.S. Mainland—Hawaii services during the mid-1980's

57. Comsat also indicated in its submission in this proceeding that there are transponders available in the Pacific Ocean INTELSAT primary satellite which could be leased to provide services between the U.S. Mainland and Hawaii. It states that three and one half transponders could be made available in 1984 and at least seven and one half transponders would be available in 1985 through 1988.[22] Thus, in contrast to the U.S. international Pacific traffic routes, it appears that there will be sufficient transmission capacity available in existing and already authorized facilities to meet Mainland—Hawaii traffic demands with some margin of safety through 1987.

58. We will now consider various options for dealing with the capacity shortages identified for the mid-1980's period. The alternative facilities plans developed by the carriers and submitted in the record provide several new facilities options available for introduction in the Pacific region in the mid-1980's: ANZCAN North and South, an analog Hawaii–4 Cable (HAW–4), an analog TPC–3 cable (TPC–3), the operational spare INTELSAT satellite, and the additional use of domestic satellite capacity to Hawaii. We will consider first a comparison of USISC participation in the northern segment of the ANZCAN cable system versus construction of an analog HAW–4. For the U.S. Mainland—Hawaii traffic stream, we will also consider the option of additional domestic satellite use in lieu of participation in the ANZCAN North system and the construction of an analog HAW–4 cable. In addition, the need for an analog TPC–3 cable system between Hawaii and Japan in 1986 will be compared with the alternative of delaying implementation of such a system until a fiber optic TPC–3 can be obtained in 1988. For purposes of comparison (except for the evaluation of the operational spare option), we will base our analysis on Plans IIB and III, since both plans contain the operational spare satellite and differ only with regard to the participation in the ANZCAN North cable system in lieu of an analog HAW–4 and TPC–3 cable system in the 1984–88 period, and the assumed lifetime of COMPAC cable.

F. Application of Demand Flexibility Analysis to Mid-80's Facilities

59. Table 3a shows a cable demand flexibility comparison between plans IIB and III for the 1984 to 1988 time period for the three major cable segments in the Pacific region. The differences between the two plans during this period of time are the extended use of COMPAC cable and the substantial USISC participation in the ANZCAN North system under Plan IIB instead of early retirement of COMPAC cable and constructing an analog HAW–4 in 1984 and an analog TPC–3 between Hawaii and Japan in 1986, as called for in plan III. The table indicates that the analog systems introduced in the mid-1980's in Plan III provide significantly more demand flexibility in the North America/Hawaii link until 1988. The analog HAW–4 cable in Plan III provides slightly better demand flexibility for the Hawaii/Australia segment for the years 1985 through 1988. The analog TPC–3 cable in Plan III provides much better demand flexibility in the 1986 to 1987 period on the Hawaii/Guam/Japan segment.

60. Table 3b shows satellite demand flexibility for the 1984 to 1988 period for Plans IIB and III. The higher demand flexibility figures for 1986 to 1987 in Plan III are due to the analog TPC–3 system introduced in 1986 freeing up additional capacity on the INTELSAT system. However, there does appear to be sufficient available capacity in the INTELSAT satellite system in the Pacific to accommodate traffic demands in the Hawaii/Guam/Japan traffic stream even if the analog TPC–3 system is not introduced in 1986. This is demonstrated by the satellite demand flexibility shown in the 1986 through 1988 time frame under Plan IIB, which does not include the analog TPC–3.

61. These results are more clearly demonstrated by application of our demand flexibility analysis to plans IIB and III to determine the overall demand flexibility those plans provide. For Plan IIB, the total number of cable circuit on the Hawaii-Japan cable route was added to the total number of cable circuits available on the Hawaii-Australia route. In calculating the available cable capacity on the latter route, account was taken of the fact that the number of

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[20] In Plan I, the U.S. record carriers indicate a deficiency of U.S. Mainland—Hawaii cable circuits beginning in 1984 which grows to a total of 51 circuits in 1987. It appears that this deficiency does not indicate a shortage of domestic satellite circuits but rather a lack of cable circuits to meet projected customer demands which can only be satisfied by cable circuits.

[21] American Satellite Company and Alascom, Inc. lease capacity capable of providing U.S. Mainland—Hawaii services in the Western Union and RCA satellite systems, respectively.

[22] *See*, Comsat's December 10, 1981 submission to the record, Tab F, Table 10. Comsat indicates that the INTELSAT Pacific Ocean satellite transponders to which it refers are only capable of providing service in the eastern (U.S.) portion of this satellite's coverage zone. Consequently, these transponders could be made available for U.S. Mainland-Hawaii services without affecting the capacity of the satellite to provide service between the U.S. and other Pacific points.

ANZCAN North circuits available under the plan to extend the ANZCAN South circuits to the U.S. Mainland would not permit utilization of the total number of ANZCAN South circuits during the 1986–87 period. Consequently, only 632 rather than the total of 1128 basic and TASI derived ANZCAN South circuits were assumed to be available during this period. The total number of cable circuits thus derived was added to the capacity available for U.S. services in the INTELSAT satellites and the result divided by the total demand for circuits from the U.S. Mainland and Hawaii to Pacific points to determine overall demand flexibility. As shown in Table 3c, use of ANZCAN South circuits interconnected with the ANZCAN North circuits acquired by the carriers under Plan IIB would provide an overall demand flexibility of 15.4 percent in 1986, increasing to 78 percent in 1987 with the introduction of an INTELSAT major path satellite.

62. This demand flexibility analysis was examined to determine if the number of satellite circuits which could be vacated by transfer of traffic to U.S. ANZCAN South circuits equaled or exceeded the number of available U.S. ANZCAN South cables. In 1986 and 1987, there are more satellite circuits used to points on the Hawaii-Australia cable route than there are available U.S. ANZCAN South circuits. Consequently, the demand flexibility figures calculated above for those years are equally valid for the Hawaii-Japan cable route.

63. The demand flexibility figures calculated for Plan III pursuant to our methodology are also displayed in Table 3c. The overall demand flexibility numbers for 1986 and 1987 are significantly higher than those for Plan IIB reflecting the fact that the analog HAW–4 cable introduced in 1984 in Plan III permits all 1128 basic and TASI derived ANZCAN South circuits projected by the U.S. carriers to be used during that period, and the introduction of an analog TPC–3 cable in 1986.[33]

[33] For these demand flexibility calculations, we assume the availability for U.S. use of the 646 ANZCAN South basic circuits which the distributions for both Plans indicate the U.S. carriers will acquire. AT&T's cable demand flexibility analysis, which does not include HTC or IRC ANZCAN South circuits originating in Hawaii, assumes acquisition of only 454 ANZCAN South circuits. This assumes fewer ANZCAN South circuits used from the Mainland than is assumed by the circuits distributions of Plans IIB and III. We used the cable capacity shown by AT&T's cable demand flexibility analysis to be available for Hawaii-Japan cable route. AT&T's analysis assumes 1500 TPC–3 circuits available for U.S. use rather than the 1600 assumed by the distribution of Plan III. Consequently, the demand flexibility calculated is somewhat understated.

64. Therefore, it seems reasonable to conclude that even though an analog HAW–4 and analog TPC–3 introduced in the mid-1980's are able to generate greater demand flexibility in some years for some parts of the region, the USISC participation in the ANZCAN North and South cables proposed in Plan II provides sufficient capacity to meet U.S. international traffic demands during the mid-1980's and still maintain a reasonable capacity safety margin throughout the Pacific Region.

65. A demand flexibility analysis is not undertaken separately for the U.S. Mainland-Hawaii route because no actual maximum satellite capacity figures were made available under Plans IIB and III. However, it seems reasonable to conclude that the addition of either the ANZCAN North cable system or the analog HAW–4 system would increase the overall demand flexibility between the U.S. Mainland and Hawaii. The greater circuit capacity of the analog HAW–4 would certainly add more demand flexibility than the USISC participation in the ANZCAN North system. But Plan I would seem to indicate that forecasted U.S. Mainland-Hawaii demand can be satisfied through 1987 without use of either an analog HAW–4 cable or use of ANZCAN North circuits. However, if no additional capacity is available in AT&T's domestic satellite system, demand flexibility would be zero in 1987. Some demand flexibility could be obtained by use of capacity in other domestic satellite systems or transponder capacity leased from INTELSAT as well as by use of ANZCAN North circuits or construction of an analog HAW–4 cable.

G. Quality of Service Evaluation of the Mid-80's Facilities

66. We turn now to an evaluation of the mid-1980's facilities on the basis of quality of service factors: media diversity, route diversity, and the percentage of surviving circuits. The results of AT&T's analysis for Plans IIB and III for the years 1984 through 1988 are contained in Table 4. Media diversity is measured in terms of the percentage of total circuits carried on cable systems. The first section of Table 4 compares the cable percentage for each plan for the entire region in the aggregate. The results show that Plan III has a significantly higher cable percentage in the years 1986 and 1987, but the gap closes in 1988. This is due largely to the introduction of the analog TPC–3 in Plan III in 1986. The remainder of the table contains media diversity percentages calculated for the three major international Pacific traffic streams with the U.S. and for the U.S. Mainland-Hawaii route. The results indicate that the percentage of total circuits on cable facilities to Australia is somewhat higher for Plan IIB from 1985 through 1988 because of the fact that the COMPAC South cable remains in service until 1989 under Plan IIB. The cable percentage is significantly higher for Plan III (with the analog HAW–4 and TPC–3) only to Japan and the Philippines in the years 1986 and 1987.

67. In considering the traffic stream between the U.S. Mainland and Hawaii, three plans are compared with regard to quality of service factors, since it was shown above that an additional feasible option available in serving Hawaii, which is not available for international routes, is to place all growth traffic on the domestic satellite system during the period of the mid-1980's. Therefore, the table also includes Plan I for the U.S. Mainland-Hawaii route. the table shows that under Plan I, with no new cable systems, media diversity declines from 12% cable in 1984 to 6% in 1988. Plans IIB and III, which introduce the ANZCAN North system and the HAW–4 analog system in 1984, respectively, bring the cable percentage into the 20 to 30% range during the 1984 to 1988 period. The cable percentage is higher for the analog HAW–4, as compared to the ANZCAN North system from 1985 to 1988, but this difference diminishes in 1988.

68. Plan III, with the analog HAW–4 and TPC–3, provides greater overall media diversity for the Pacific region in the aggregate and for the U.S. Mainland-Hawaii traffic stream. However, Plan III actually provides less media diversity to Australia than does Plan IIB during the 1985–1988 period because of the 1984 retirement of COMPAC South assumed in Plan III. The greater media diversity shown between the U.S. Mainland and Japan and the Philippines between 1986 and 1988 provided by Plan III is due to the introduction of the analog TPC–3 Cable in 1986, and the analog HAW–4 Cable in 1984.

69. Table 4 also compares route diversity for Plans IIB and III for the three major traffic streams in the Pacific region. The table indicates that the implementation of Plan III (analog HAW–4 and TPC–3) creates additional independent cable routes to Japan and the Philippines for the years 1986 and 1987 that are not present in Plan IIB. The additional independent route to the Philippines and Japan under Plan III is due to the introduction of the analog TPC–3 in 1986. This additional route for Plan III provides additional diversity for only two years, as Plan IIB introduces an optical fiber TPC–3 in 1988, giving IIB

and III an equal number of independent routes to Japan and the Philippines beyond 1988. The number of independent routes between the U.S. Mainland and Hawaii is the same for both plans.[34] Examination of the circuit distributions for Plans IIB and III indicates that during 1986 and 1987, AT&T proposes to use 4 and 3 independent routes, respectively, to Australia and other Southern Pacific points.[35]

70. Table 4 also contains a measure of the percentage of total circuits that would survive a failure of the largest facility on any given route prior to restoration of the failed facility. The percent of surviving circuits measure is another quality of service indicator that demonstrates the vulnerability of a given facility configuration to an unplanned outage or failure of a major facility. The higher the percentage of surviving curcuits, the better the quality of service. The table shows that there is no significant difference between Plan IIB and III in the percentage of surviving circuits between the U.S. and Australia and between the U.S. and Japan. In contrast, there is a significant improvement in percentage of surviving circuits to the Philippines between 1986 and 1986 under Plan III due to the analog TPC–3 introduced in 1986. Between the U.S. Mainland and Hawaii, the analog HAW–4 yields a higher percentage of surviving circuits than the ANZCAN North system in the 1985 to 1987 time period. Both the ANZCAN North system and the analog HAW–4 significantly improve the percentage of surviving circuits to Hawaii over the alternative of no new cable systems (Plan I).[36]

71. This analysis suggests that the analog HAW–4 provides a higher percentage of surviving circuits than the ANZCAN North system only for the U.S. Mainland-Hawaii traffic stream, while the analog TPC–3 cable system in Plan III improves the percentage of surviving circuits to the Philippines by about 10 to 15% for the period 1986 through 1988. However, none of the alternative plans result in enough circuits surviving a major facility failure to avoid the need to restore service via spare capacity pending repair of the failed facility.

H. Cost Analysis of Mid–80's Facilities

72. As indicated in section II and the cost analysis section above, the cost issues are very complex and comparisons are very difficult. These difficulties are magnified when attempting to focus on individual facilities outside the context of an overall facilities plan. For example, different facilities being compared may have different useful lives, different degrees of uncertainty associated with the individual cost estimate, and one facility may be obtained on an annual lease basis, while the other may be purchased on a permanent capital investment basis. The cost analyses submitted by the carriers comparing the individual plans shows that Plan II (both versions A and B) is less expensive than Plan III. Table 5 presents measures of individual facility average unit cost for the various facilities introduced during the mid-1980's in Plans IIB and III. The average unit cost for the various facilities is presented in two different ways in the table. The first is the dollar cost per one half circuit-year. This is obtained by taking the dollar investment (excluding operating and maintenance) cost per half circuit in the facility and dividing by the number of years for which the facility is expected to deliver service. This measure is an attempt to adjust the unit cost for varying useful lives of the various facilities. The other measure is a simple dollar investment cost per half circuit in the facility, or equivalently, the IRU cost per half circuit.[37] Care should be taken in comparing facilities on the basis of the one half circuit-year unit cost measure, since facilities with longer useful lives will tend to appear less expensive than otherwise comparable facilities with shorter lives. A simple direct comparison of two facilities with different useful lives does not take into account the potential for lower unit cost available with a follow-on generation of facilities that would replace the current facility having the shorter useful life. Therefore, an appropriate cost comparison should include both an average unit cost measure for individual facilities and a comparison of overall plan costs, so that full consideration can be given to the follow-on facilities and the economies that may be achieved from their early implementation.[38]

73. Table 5 shows that the cost of an ANZCAN North temporary half circuit is more expensive than the permanent ANZCAN North circuit on a one half circuit-year basis. However, the ANZCAN North permanent half circuit is less than a temporary half circuit on an IRU investment outlay basis; this is clearly due to the difference in the five year temporary period (with the buyback provision at net book value) versus the 24 year useful life of the permanent circuit.[39] The table shows that the analog HAW–4 cable is cheaper than the ANZCAN North (both Temporary and permanent) on both a one half circuit-year basis and on a straight half circuit IRU investment basis. Nevertheless, it should be noted that the analog HAW–4 involves a 24 year commitment to outdated cable technology. Moreover, a comparison of the costs of the optical fiber version of the HAW–4 cable system with its analog counterpart indicates that on both a cost per half circuit-year basis and on a half circuit IRU basis, the optical fiber system is almost one half the cost of the analog version. Similarly, the TPC–3 analog system between Hawaii and Japan is shown to be more expensive on a unit cost basis (both one half circuit-year and half circuit IRU) than the digital TPC–3 Cable.

74. In order to try to capture the cost impact of follow-on facilities replacing initial facilities introduced in the mid-1980's, Table 6 presents average unit cost measures by media (satellite and cable) separately for Plans IIB and III on a one half circuit-year basis. The results presented in the table reinforce the notion that the average unit cost for cable facilities are cheaper in Plan II than in Plan III. This implies that lower half circuit-year costs are obtained by

[34] The table shows that an additional independent route between the U.S. Mainland and Hawaii is created under Plan IIB in the year 1988. This extra route disappears in 1989, since it is the result of an overlap in phasing out ANZCAN North temporary circuits and introducing the fiber optic HAW–4 cable in 1988. The number of independent routes to Hawaii drops to five in 1989.

[35] If AT&T used all cable routes available during the 1986–1987 period, Plans IIB and III would provide 5 and 4 independent routes respectively.

[36] It should be noted that the calculation of percentage of surviving circuits in Plan I, which assumes no new cable system, does not include a third satellite path such as the use of capacity leased in other domestic satellite systems or transponders leased from INTELSAT would provide.

[37] Both of these average unit costs are in 1981 present value dollars.

[38] For example, a simple comparison between the dollar cost per one half circuit-year for the ANZCAN North temporary facility and the HAW–4 analog facility show that the HAW–4 analog is significantly less expensive than the ANZCAN North system. However, the analog HAW–4 circuit will be in use for 24 years, while the ANZCAN North temporary circuit will be replaced at the end of five years. If the replacement is a HAW–4 optical fiber system, the follow-on cost per one half circuit-year is substantially reduced. This suggests that merely looking at the average unit cost of one facility compared with another can lead to erroneous conclusions unless the full implications of the follow-on facilities and differentials in useful lives are fully considered.

[39] The cost of the one half circuit IRU in ANZCAN North on a temporary basis is computed by taking the initial permanent IRU cost for a half circuit in ANZCAN North, and then computing the net present value cost for the entire five year period, including the buyback of the ½ circuit at net book value.

utilizing analog cable facilities on a temporary basis in the mid-1980's and replacing these facilities with the newer, more economical, optical fiber technology as soon as it is available in 1988, rather than investing in the less efficient analog cable technology on a permanent 24 years basis.[30]

75. Finally, Table 5 shows that the COMSTAR domestic satellite system is less expensive on an average unit cost basis (both on a one half circuit-year and on a one half circuit IRU basis) than either the ANZCAN North temporary or permanent circuits. The COMSTAR circuits are also less expensive than the analog HAW–4 circuits on an IRU basis, but slightly more expensive on a one half circuit-year basis. This latter difference is due to the longer useful life of the analog HAW–4 system of 24 years, as compared with the COMSTAR satellite useful life of 7 years.

76. To complete the cost comparison among individual facilities being considered for the mid-1980's, it is useful to compare the total cost outlay of the USISC for various configurations of these individual facilities indicated in Plans IIB and III. Table 7 presents this comparison. The first row of the table indicates the total USISC facility investment cost outlay for the proposed number of circuits in the ANZCAN North system as set forth in Plan IIB. The outlay is estimated at 34 million dollars, and presumes the purchase of 536 half circuits for international use on a temporary basis, 203 half circuits purchased by the Hawaiian Telephone Company and ITT World Communications Inc. on a permanent basis for use to Canada and beyond to Europe, and 656 whole circuits for use on a temporary basis between the U.S. mainland and Hawaii. This is contrasted with the total USISC investment cost outlay for the HAW–4 analog system, as proposed in Plan III, of approximately 92.3 million dollars. This is a difference of 58.3 million dollars.

77. Further developments in the ANZCAN cable projects following the initial development of the proposed facilities plans indicate that the USISCs may ultimately wish to convert 300 of the proposed 536 ANZCAN North half circuits in Plan IIB for international traffic from temporary to permanent status.[31] No reason is given for this possible change from temporary to permanent acquisition of these circuits. Row two of Table 7 contains an estimate of total USISCs investment cost outlay for a modified Plan IIB purchase of ANZCAN North circuits, which replaces the original 536 half circuit temporary purchases for international use with 300 permanent circuits and 236 temporaries. This results in an estimate of total USISC investment cost outlay of 41.8 million dollars, an increase of 7.8 million over the original Plan IIB proposal.

78. Table 7 also shows that a further USISCs total investment cost savings can be obtained in ANZCAN North circuits if the proposed 203 permanent half circuits in ANZCAN North being used by the Hawaiian Telephone Company and ITT are converted to temporary circuits. The estimated USISC investment cost outlay for ANZCAN North circuits in which all are obtained on a temporary basis is approximately 29.7 million dollars. This is an additional savings of 5.3 million dollars over the original proposal in Plan IIB (first row of Table 7).[32]

79. We also calculated the effect on the USISC's cost for ANZCAN North circuits of assuming that AT&T's domestic satellite system has sufficient capacity to adequately meet all growth in demand for U.S. Mainland-Hawaii telephone service between 1984 and 1987 thus making unnecessary the acquisition of the 600 ANZCAN North circuits proposed for use in providing that service. Deleting these 600 ANZCAN North whole circuits, and assuming all other ANZCAN North circuits are acquired on a temporary basis, results in a capital cost to the USISCs of $11.9 million for ANZCAN North circuits.[33] We further considered the possibility that reducing the USISCs' use of ANZCAN North circuits from the proposed total of 1397 to 797 might cause the owners of that cable to configure it to provide 1380–4kHz circuits rather than the 1840–3kHz circuits now planned. We calculated the cost to the USISCs of the 797 ANZCAN North circuits they would temporarily acquire under this scenario as if those circuits were 4 kHz circuits.[34] This resulted in a cost of $15.9 million.[35] No cost analysis could be performed assuming lease of circuits in other domestic satellite systems or in INTELSAT transponders since insufficient cost information was provided for those facilities.

80. Table 7 also shows the total USISC outlay for the proposed TPC–3 cable system included in Plan III. This investment cost outlay is estimated at approximately $66.8 million. The average unit cost measures presented in Table 5 show that the optical fiber version of the TPC–3 is much less expensive on a unit cost basis. Therefore, waiting an additional two years to obtain the optical fiber version of the TPC–3, as called for in Plan IIB, will result in a significant cost per circuit savings.

81. The general conclusions of this cost analysis are that the ANZCAN North cable system is more expensive on an average cost per circuit basis than the analog HAW–4 alternative, but given the use of temporary circuits in the ANZCAN system, the total USISCs outlay for the ANZCAN North package is less expensive than a comparable outlay for the HAW–4 cable system. Moreover, the optical fiber versions of HAW–4 and TPC–3 are much cheaper on a unit cost basis than their analog counterparts. Therefore, use of this temporary ANZCAN North package would permit the early introduction of these economical optical fiber facilities and would reduce the overall cost for

[30] The cost per half circuit-year presented in Table 6 is obtained by taking the total present value costs for cable and satellite systems separately for a given plan and dividing by the number of half circuit-years of capacity generated by each medium in the given plan. This results in an average unit cost measure for a given medium over the entire planning period.

[31] AT&T December 10 submission to the record, Tab 14, "AT&T cost analysis addendum: Plan IIB sensitivity."

[32] The total cost savings of utilizing all temporary circuits in ANZCAN North, as opposed to the 203 permanent half circuits, will likely be somewhat less than the investment cost savings alone due to differences in transit, operations, and maintenance costs. It should also be noted that permanent circuits in ANZCAN North would provide some enhancement of route divesity (over the all temporary package) between the U.S. Mainland and Hawaii in the post 1988 period if the optical fiber HAW–4 is introduced.

[33] We assumed the ANZCAN North circuits proposed for U.S. record carrier use would be required to meet customer demands which could be satisfied only by cable circuits. Consequently, we included the cost of those circuits in our analysis.

[34] We derived the cost of the 4 KHz ANZCAN North circuits by multiplying the $40,000 per half 3 KHz circuit IRU cost submitted by the parties by 2 to obtain the per whole circuit cost and then by 1840 to derive the total cost of the ANZCAN North cable. We then divided this result by 1380 (the number of 4 KHz circuits the cable would provide) and then by 2 to derived the IRU cost per half 4 KHz circuit. The resulting $53,333 per half 4 kHz circuit IRU cost was then subjected to the same procedure described for temporarily acquire 3 kHz circuits to obtain the discounted present value. It should be noted that this method of deriving the cost of 4 KHz ANZCAN North circuit costs may somewhat overstat those costs since it does not account for the fact that fewer units of cable multiplex equipment would be required to configure the cable to provide 4 KHz circuits.

[35] There may be some additional costs (e.g., for additional earth station equipment) involved in use of AT&T's domestic satellite system to provide the circuits necessary to satisfy all growth in demand for U.S. Mainland-Hawaii telephone services between 1984 and 1987. However, the filings in this proceeding did not provide sufficient information to permit us to determine the existence or amounts of any such costs.

the entire planning period (Table 7). A comparison of the cost of the various options considered for the ANZCAN North package of circuits indicates that the permanent circuits are less expensive on a per circuit-year basis, but more expensive on a straight IRU investment outlay basis. The least expensive ANZCAN North package in terms of the USISCs' total investment cost outlay involves the use of all temporary circuits. However, shifting AT&T's U.S. Mainland-Hawaii traffic to the COMSTAR system appears to result in the lowest USISC investment cost outlay even considering the possible downsizing of the ANZCAN North cable system.

I. Technological Risk

82. The historical record of facilities outages in the Pacific region indicates that both cables and satellites are quite reliable. The Pacific Ocean Basin cable systems are in deeper water than the Atlantic system, and there is less likelihood of breakage or failure caused by fishing trawler accidents. The international satellite facilities used in the Pacific region are introduced after having been deployed in other ocean basin regions first. The system problems have generally been corrected before these facilities enter the Pacific for operation. In addition, INTELSAT satellites are engineered to meet full performance requirements at the end-of-life period; consequently, there is no evidence of a significant risk of facilities failure due to technological problems in the international satellite system.

83. The North Atlantic planning proceeding, Docket No. 79–184, documented the technological risk associated with the development and availability of the optical fiber submarine cable. These risks are very difficult to quantify, but it can be safely assumed that they are significantly greater than the technological risks associated with the proven analog cable system design. The new generation of INTELSAT satellites being developed at the present time is not scheduled for deployment in the Pacific region until the latter part of the planning period.

84. Comsat assessed the overall risk of a delay in the availability of the optical fiber system for deployment in the Pacific region. The analysis measured the demand flexibility for the satellite system, given an unplanned delay in the fiber optic cable for up to two years (until 1990) in the context of Plan IIB.[36] Comsat's analysis shows a satellite demand flexibility of 31 percent in 1989. Comsat's analysis assumes that the ANZCAN North circuits obtained by the USISC in Plan IIB are retained until after the introduction of the fiber optic system in 1990. The results show sufficient overall capacity available in the system to accommodate at least a two year delay in the introduction of the optical fiber technology in the region. Comsat's analysis ameliorates to some degree the technological risks associated with the development and implementation of the optical fiber system, since it demonstrates that a reasonable delay in implementation of this system could be accommodated with the capacity available in the region.

85. Our demand flexibility analysis was used to determine the effect of delay in the availability of an INTELSAT major path satellite on Plan IIB. Should the major path satellite not become available in 1987, Plan IIB would permit U.S. international traffic demands to be satisfied with a 5.3 percent demand flexibility. If the major path satellite and the digital optical fiber HAW–4 and TP–3 cables are delayed beyond 1988, Plan IIB capacity would fall short of satisfying traffic demand by approximately 911 circuits at year-end 1988.[37]

86. Therefore, it seems reasonable to conclude that the technological risk associated with the current generation of satellites and the cable systems proposed for introduction in this region in the mid-1980s is not significant. Only in the event of a delay of 2 years in the availability of a major path satellite and a delay of the fiber optic cable would there be insufficient capacity to meet demand in 1988.

J. Analysis of ANZCAN South

87. The southern portion of the ANZCAN cable system, connecting Hawaii with Australia, New Zealand and Fiji, is a replacement for the retiring COMPAC cable sytem. All three facilities plans developed by the carriers include roughly the same USISCs participation in the ANZCAN South cable system. Plan IIB includes the USISCs procuring 646 half circuits in a cable whose total capacity is 1380 whole circuits. This means that 47 percent of the total circuits in the ANZCAN South cable will be used by the USISCs in conjunction with their foreign correspondents.

88. Table 5 shows the cost of a half circuit IRU in the ANZCAN South cable to be 105,000 dollars and 130,000 dollars for the Hawaii/Australia and Hawaii/New Zealand lengths, respectivley. This is equivalent to a cost of 4375 dollars and 5417 dollars on a one half circuit-year basis, respectively. The total USISC investment cost outlay for ANZCAN South participation, as shown in Plan IIB, is 71.2 million dollars. However, given the indications that some of the U.S. carriers may not have made a final determination of the number of ANZCAN South circuits they require, this amount may change.

89. The quality of service impact of not participating in the ANZCAN South cable is significant. Examination of the baseline Plan I (modified to assure that the INTELSAT primary path spacecraft in the Pacific region is replaced by the projected follow-on series at the end of its life) demonstrates that the percentage of total circuits on cable (the cable ratio) to Australia will steadily decline to zero by 1991 without participation in ANZCAN South. This will leave the United States with no cable route to Australia and other southern Pacific points. The only currently operating direct cable path between Hawaii and Australia, the COMPAC system, is due to be replaced by the new ANZCAN cable and retire in 1989 under Plan IIB. The only other cable route to Australia from the United States is via Guam and other southern Pacific points through the SEACOM system. However, SEACOM is due to reach retirement in 1991 and no replacement for it is indicated by the plans submitted by the carriers. In contrast, the participation of the U.S. carriers in ANZCAN South as shown in Plan II or III results in a cable ratio between the U.S. and Australia of 30 to 35 percent in the mid-1980's, declining to 25 percent in 1995.[38] Moreover, as demonstrated by the previously discussed flexibility analyses, U.S. carrier use of ANZCAN South circuits permits U.S. Pacific Region international traffic demand during the 1986–1988 period to be satisfied without the need to construct an analog TPC–3 cable system.

K. The Operational Spare Satellite

90. The concept of an operational spare satellite is designed to provide additional path diversity with no increase in overall satellite capacity.

[36] Comsat's December 10 submission to the record, Tab G, Table 1.

[37] If the total number of ANZCAN South circuits proposed to be acquired by the U.S. carriers in Plan IIB could be used by extending more of those circuits to the Mainland by use of either additional ANZCAN North circuits or additional domestic satellite circuits, Plan IIB could provide demand flexibilities of 23.8 percent in 1986 and 12.4 percent in 1987, if required.

[38] See AT&T submission of December 10, Tab 18, Table B–1, and Table 4 in this NPRM.

This results in an overall increase in quality of service. With the traffic split equally between a primary path and operational spare satellite, the failure of one of these facilities implies that one half the traffic flow continues to be maintained during the period in which an antenna points over to the remaining satellite to restore full service. Without the operational spare, all satellite traffic would be lost during the period of point over to the backup spare satellite.

91. Comsat states that the latest INTELSAT plans call for the operational spare satellite to be utilized starting in 1984 by four countries in addition to the U.S. (Australia, Taiwan, Japan, and New Zealand). The operational spare is obtained at minimal additional facilities cost for the United States.[39]

V. Summary and Tentative Conclusions

92. The foregoing analyses demonstrates that existing Pacific Ocean Region facilities inplace in 1986 will be unable to provide sufficient capacity to satisfy forecasted demands for international services between the U.S. and Pacific points in that year. U.S. acquisition and use of circuits in the ANZCAN South cables could provide sufficient additional capacity to permit predicted demands for U.S. international services to be satisfied at adequate levels of service quality during the mid-1980's to points on both the Hawaii-Australia and the Hawaii-Guam-Japan cable routes. Moreover, U.S. carrier acquisition and use of circuits in the ANZCAN South cable are required to provide media diversity to southern Pacific points between 1991 and 1995 since that facility is the only direct cable route between the U.S. and those points now projected to be available during the period. Consequently, we tentatively conclude that U.S. interests would be served by U.S. carrier investment based acquisition and use of half interest in circuits in the ANZCAN South cable system. However, since there are indications that some U.S. carriers may not have yet reached a final determination of number of ANZCAN South circuits they may require, we shall not express a tentative preference for the number of such circuits which should be acquired.

93. We tentatively conclude that U.S. carrier acquisition and use of half interests in the 538 ANZCAN North cable circuits proposed in Plan IIB to be interconnected with ANZCAN South and TPC–2 circuit and in the 198 ANZCAN North circuits [40] proposed to be used for service between Hawaii and Canada and Europe would serve U.S. interests. We also tentatively conclude that U.S. carriers would be served by the U.S. record carriers' acquisition and use of whole interests in the 56 ANZCAN North circuits proposed in Plan IIB. However, in view of the additional costs of the proposed permanent acquisition of some of the ANZCAN North half circuits and the fact that no reasons for such permanent acquisition has been provided, we further tentatively conclude that all of the above ANZCAN North circuits should be acquired on a temporary indefeasible right of user basis. We shall also request AT&T, the Hawaiian Telephone Company and ITT World Communications Inc., to apprise us of the reasons supporting permanent acquisition of the ANZCAN North half circuits they propose.

94. We are unable to tentatively conclude on the basis of the record before us that the temporary acquisition of 600 ANZCAN North whole circuits proposed for use in providing U.S. Mainland-Hawaii telephone services would serve U.S. interests. Given the indications that the AT&T domestic satellite system may have sufficient capacity to satisfy demands for that service during the mid-1980's and the apparent availability of capacity in other U.S. domestic satellite systems, acquisition of these circuits may not be warranted. However, because the record before us does not furnish adequate information pertaining to the amount of capacity available for U.S. Mainland-Hawaii services in the AT&T and other U.S. domestic satellite systems or the costs for use of capacity in those systems, we are also unable to tentatively conclude that acquisition of the 600 ANZCAN North whole circuits would not serve U.S. interests. Consequently, we shall make no tentative finding on these circuits and will require the parties to provide the information necessary to allow us to make this determination in our Report and Order in this rulemaking.

95. While construction and use of the analog HAW–4 and TPC–3 cables proposed in Plan III would provide increased demand flexibility and route and media diversity to some points in the Pacific Ocean region, we tentatively conclude that these cables are not essential to satisfy projected demands for service at adequate levels of service quality during the mid-1980's. U.S. carrier temporary use of ANZCAN North circuits in conjunction with their permanent use of ANZCAN South circuits can adequately satisfy these service demands at less cost. Moreover, such use of ANZCAN North and South cable circuits would be more compatible with the early introduction of the more cost effective digital optical fiber cable technology into the Pacific Ocean region. Therefore, we tentatively conclude that construction and use of the analog HAW–4 and TPC–3 cables proposed in Plan III would not serve U.S. interests.

96. Given the additional route diversity which would be provided and the minimal U.S. costs which would be incurred, we tentatively conclude that configuration of the INTELSAT Pacific Ocean region in-orbit spare satellite as an operational spare satellite during the mid-1980's is desirable.

97. We tentatively conclude that the master plan approach to development of a circuit distribution methodology for the mid-1980's is acceptable if the plan developed (1) generally reflects the optimal service quality properties of a balanced loading circuit distribution; (2) gives due consideration to the costs to the ratepayers; and (3) includes a specific mechanism to deal with deviations for forecasted traffic levels. We also tentatively conclude that the U.S. record carriers should be exempted from a specific circuit distribution methodology because of the existence of customer preferences for cable or satellite circuits.

A. Additional Information To Be Supplied by the Carriers and Comsat

98. In addition to the various responses required earlier in this document, we request the U.S. carriers and Comsat to provide us with any updated information they now have which is relevant to this proceeding. Specifically, we request that these parties indicate any changes in the interests they propose to acquire in the ANZCAN North and ANZCAN South cable systems or in the costs for acquisitions of interests in those cables. We further request AT&T to indicate the maximum number of circuits which will be available in its domestic satellite system for U.S. Mainland-Hawaii use between 1984 and 1988. We further request AT&T to indicate any additional costs it would incur because of such use of those domestic satellite circuits. Operators of other U.S. domestic

[39] While AT&T's cost analysis includes an additional U.S. Mainland earth station antenna in 1984 for use with the operational spare satellite, Comsat's cost analysis does not. However, Comsat does assume construction of a complete third West coast earth station in 1987 to work with the major path Pacific satellite.

[40] The original number of circuits in Plan IIB for service to Europe and Canada was 283. In a December 15, 1981 supplemental filing, the Hawaiian Telephone Company reduced the number of ANZCAN North circuits it proposes to acquire for use to Europe from 42 to 35.

satellite systems which are willing to make U.S. Mainland-Hawaii capacity in their systems available to the U.S. international carriers should specify the number of circuits available, the period during which those circuits could be made available and the charges for use of those circuits. These operators should also indicate if new earth stations will have to be constructed to provide this capacity to the international carriers and the cost of any such earth stations. Changes in the costs for or availability of any other facilities being considered in this proceeding should also be submitted as well as any other relevant information. The effects of any changed information submitted on the parties' analyses and evaluation of the alternatives plans should also set forth. We further request AT&T, Hawaiian Telephone Company and ITT World Communications Inc. to indicate the reasons for, and the benefits accruing from, their proposal to acquire some ANZCAN North cable circuits on a permanent rather than a temporary basis. We also request the carriers and Comsat to file a master loading plan for the mid-80's facilities with their comments on this NPRM.

99. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

VI. Ordering Clauses

100. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1970), and pursuant to Section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1970), that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Pacific Ocean region during the 1981–1995 period is hereby instituted.

101. It is further ordered that Alascom, Inc., the American Telephone and Telegraph Company, the Communications Satellite Corporation, the Department of Defense, FTC Communications, Inc., the Hawaiian Telephone Company, the State of Hawaii, ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation and Western Union International, Inc. are made parties respondent to the rulemaking initiated herein.

102. It is further ordered that the U.S. international service carriers and Comsat shall, and the other entities named as parties herein and other interested persons may, by June 1, 1982 file comments pertaining to the record and various alternative facilities construction and use plans discussed above and to the Commission's tentative conclusions set forth above, and by June 14, 1982 shall file reply comments. In reaching its decisions, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

103. It is further ordered that the petitions to intervene filed by the Department of Defense and the State of Hawaii and the requests to be made a party by Alascom Inc., FTC Communications, Inc. and TRT Telecommunications Corporation are hereby granted.

104. It is further ordered that the U.S. international service carriers and Comsat shall include in their comments the additional planning information requested by paragraph 98 above.

105. It is further ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1980), that the Chief, Common Carrier Bureau is hereby delegated authority to meet with the U.S. international service carriers, Comsat, other parties to this Docket, and other interested persons to facilitate acquisition of the information requested in paragraph 98.

106. It is hereby certified, pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*, that sections 603 and 604 of that Act do not apply to this rulemaking since the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary economic impact of these rules, if promulgated, will be on the U.S. international carriers and the Communications Satellite Corporation.

107. It is further ordered that the Secretary shall provide a copy of the above ceritification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

TABLE 1.—PARTIES TOTAL PLAN COSTS

[1982 Dollars in Millions]

Method	Plan	Cable	Satellite	Total
AT&T: [1]				
Use	IIA	274.2	356.1	629.3
Related	IIB	263.9	367.2	631.1
	III	321.8	351.8	673.3
Investment	IIA	274.2	202.4	476.6
Related	IIB	263.9	205.9	469.8

TABLE 1.—PARTIES TOTAL PLAN COSTS—Continued

[1982 Dollars in Millions]

Method	Plan	Cable	Satellite	Total
	III	321.8	202.8	524.6
Comsat:[2]				
Investment	IIA	267.0	146.2	413.2
Related	IIB	262.7	145.2	408.9
	III	366.7	140.1	506.8

[1] AT&T response of December 10, 1981, tab 14.
[2] Comsat response of December 10, 1981, tab G.

TABLE 2.—DEMAND FLEXIBILITY FOR PACIFIC SATELLITE

[Assumes no new cables]

	1984	1985	1986	1987	1988
Spare satellite capacity in circuits (no MP)[1]	1417	691	(182)	(877)	(1603)
Satellite demand flexibility in percent (no MP)[1]	46	18	(4)	(12)	(27)

[1] Comsat response of 12710/81, tab G, table 2.

TABLE 3A.—INTERNATIONAL CABLE DEMAND FLEXIBILITY, U.S. MAINLAND-PACIFIC, A.T. & T. AND RECORD CARRIERS

[Derived From A.T. & T. Response of December 10, 1981, Tab 18—in Percent]

	North America-Hawaii		Hawaii-Australia		Hawaii-Guam-Japan	
	IIB	III	IIB	III	IIB	III
1984	90	290	414	393	32	32
1985	71	281	288	321	24	24
1986	45	141	254	222	7	157
1987	31	107	144	153	(3)	124
1988	162	76	110	114	230	91

TABLE 3B.—INTERNATIONAL SATELLITE DEMAND FLEXIBILITY

[Comsat Response of December 10, 1981, Tab G, Tables 4a and 5a]

	Percentage			Percentage	
	IIB	III		IIB	III
1984	53	62	1987	98	120
1985	27	26	1988	81	87
1986	7	18			

TABLE 3C.—COMBINED CABLE AND SATELLITE DEMAND FLEXIBILITY, INCLUDES A.T. & T. HTC AND IRCS, FOR HAWAII-SOUTHERN PACIFIC AND HAWAII-WESTERN PACIFIC REGION

[Derived from A.T. & T. and Comsat Response of December 10, 1982 and Supplement of A.T. & T. Dated January 21, 1982]

	Percentage			Percentage	
	IIB	III		IIB	III
1986	15.4	76.4	1987	76.9	129.9

TABLE 4.—QUALITY OF SERVICE

[For MTS Circuits Only]

		1984	1985	1986	1987	1988
Percent of total international MTS circuits on cable[1]	IIB	29	27	27	25	31
	III	29	26	34	33	38
Australia:						
Percent of MTS circuits on cable [2]	IIB	29	32	35	37	36
	III	29	27	31	33	33
Number of independent routes [3]	IIB	4	4	4	4	4
	III	3	3	3	3	3
Percent of surviving circuits [4]	IIB	45	54	61	67	66
	III	45	54	61	67	66
Japan:						
Percent of MTS circuits on cable [2]	IIB	38	31	34	38	44
	III	35	31	42	45	45
Number of independent routes [3]	IIB	4	4	4	4	5
	III	4	4	5	5	5
Percent of surviving circuits [4]	IIB	60	66	66	66	71
	III	50	56	66	71	72
Philippines:						
Percent of MTS circuits on cable [2]	IIB	AE	37	32	27	32
	III	AE	37	46	36	36
Number of independent routes [3]	IIB	3	3	3	4	5
	III	3	3	4	5	5
Percent of surviving circuits [4]	IIB	42	37	31	42	51

TABLE 4.—QUALITY OF SERVICE—Continued

[For MTS Circuits Only]

		1984	1985	1986	1987	1988
Hawaii [1]	III	42	36	46	54	61
Percent of MTS circuits on cable	I	12	9	8	7	6
	IIB	20	26	22	20	21
Number of independent routes	III	26	36	37	36	37
	I	4	4	4	4	4
	IIB	5	5	5	6	6
Percent of surviving circuits	III	5	5	5	5	5
	I	56	54	54	58	53
	IIB	63	63	61	60	65
	III	70	69	68	68	

[1] AT&T response of 12/10/81, Table 16, talbe A–1
[2] Derived from AT&T response of Sept./Nov. 81–circuits distribution.
[3] AT&T response of 12/10/81, Tab 16, table B–1.

TABLE 5.—INDIVIDUAL FACILITY UNIT COSTS [1]

[1981 Dollars]

	Period of use—years	Dollars per one-half circuit-year [2]	Dollars per one-half circuit IRU
ANZCAN (N)—Temporary	5	$2,794	[3] $13,972
ANZCAN (N)—Permanent	24	1,667	40,000
HAW–4 (Analog)	24	850	20,400
HAW–4 (Fiber Optic)	24	325	7,800
TPC–3 (Analog)	24	2,108	46,900
TPC–3 (Fiber Optic)	24	536	12,900
ANZCAN (S)—Australia	24	4,375	105,000
ANZCAN (S)—N. Zealand	24	5,417	130,000
COMSTAR—Domestic Satellite [4]	7	1,071	7,500

[1] Except as otherwise noted, source is AT&T Response of December 10, 1981, Tab 13.
[2] The cost per ½ cir.-yr. is obtained by dividing the cost per ½ cir. IRU by the expected period of use (i.e. column 3÷column 1).
[3] Assumes an initial purchase at $40,000/½ cir., sell back at net book value at the end of 5 years, and obtaining a discounted present value cost (with a 4% discount rate).
[4] Source: AT&T letter of February 8, 1982 included in the record.

TABLE 6.—AVERAGE UNIT COST BY MEDIA

[Dollars Per One-Half Circuit-Year]

Method	Plan	Cable	Satellite
AT&T use related [1]	IIB	$1,639	$3,199
	III	1,993	3,249
AT&T investment related [1]	IIB	1,639	1,794
	III	1,693	1,875
Comsat investment related [2]	IIB	4,610	1,470
	III	6,010	1,520

[1] AT&T Response of December 10, 1981, Tab 14.
[2] Comsat Response of December 10, 1981, Tab G.

TABLE 7.—TOTAL US/SC FACILITY INVESTMENT COST OUTLAY [1]

[Millions of Dollars]

ANZCAN (N)—Plan IIB	34.0
ANZCAN (N)—Modified IIB: replacing 300 temporary international circuits with 300 permanents	41.8
ANZCAN (N)—Modified IIB: all temporary	28.7
ANZCAN (N)—Modified IIB: all international circuits [2] temporary, no domestic circuits for AT&T–HTC	11.9
HAW–4 (Analog)—Plan III	92.3
TPC–3 (Analog)—Plan III	66.8

[1] Based upon the number of circuits shown in the Plans IIB and III circuit distribution as being purchased by the USISC in the given facility using the IRU costs in Table 5.
[2] Assumes that AT&T's 600 bearer and 504 TASI derived whole circuits are taken off ANZCAN North and all 1104 circuits are placed on AT&T's domestic satellite as bearer circuits. We also calculate the investment cost outlay will be increased to $15.9 million if the ANZCAN North cable is reconfigured as 1380 (4 KHz) circuits cable.

Appendix 1

This appendix consists of a list of all documents which have been made a part of the record. The actual documents constituting the record are incorporated by reference in this proceeding and copies are available for public inspection in Room 230 (Dockets Branch) and Room 538 (International Facilities Planning Division) of the Commission's headquarters at 1919 M Street, NW, Washington, D.C. 20554.

Document Description

1. Comments on the Commission's Notice of Inquiry and Reply Comments of Interested Parties:

(a) Includes Comments from American Telephone and Telegraph Company (AT&T), ITT World Communitations Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), Western Union International, Inc. (WUI), Comsat, Hawaiian Telephone Company (Hawtel), FTC Communications, Inc., The Department of Defense, The State of Hawaii, and the Joint Council on Educational Telecommunications (submitted on July 15, 1981).

(b) Reply Comments From AT&T, Comsat, ITT Worldcom, WUI, and Alascom, Inc. (submitted on July 30, 1981).

2. Staff's Questionnaire: Part 1—Planning Information. Part 2—Alternative Plans and Analyses.

3. Responses to Staff's Questionnaire:

(a) AT&T submissions of September, 1981 (including some amendments of November, 1981) and December 10, 1981—the alternative plans.

(b) Comsat submission of December 14, 1981.

(c) Actual use of current facilities: Hawtel, ITT Worldcom, RCA Globcom and WUI (submitted on July 2, 1981).

(d) IRCs joint response on the subject of Demand Forecast mthodology (submitted on July 28, 1981).

(e) IRCs joint contribution on evaluation of the plans (submitted on December 10, 1981).

(f) IRCs joint contribution of Facility Loading Criteria (submitted on December 10, 1981).

(g) Hawtel submission of December 15, 1981.

4. A letter dated December 10, 1981 from Mr. Fred W. Morris, Telecommunications Consultant to the State of Hawaii, to Mr. J. Michael Cummins.

5. A letter dated December 23, 1981 from Mr. Willard L. Demory to Domestic Satellite Carriers.

6. Responses to Mr. Demory's letter from Domestic Satellite Carriers.

7. A letter dated January 21, 1982, with attachments, from Mr. J. A. McEntee, Jr. of AT&T to core group members.

8. A letter dated February 8, 1982 from Mr. J. A. McEntee, Jr. of AT&T to core group members.

Appendix 2

Note—Because of the ongoing effort to minimize publishing costs, Appendix 2, which contains a series of questions developed by the Commission's staff and tabled at the first

public meeting in connection with this docket, will not be printed herein. However, it may be reviewed in the FCC Dockets Branch, Room 239, 1919 M St., N.W., Washington, D.C.

Appendix 3.—Facility Plan Features and Assumptions

PLAN I

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
None				HAW–1 (Main.-Haw.)	51	1984
				COMPAC (North) (Can.-Haw.)	81	1981
				COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.).	81	1981
				HAW–2 (Main.-Haw.)	143	1980
				TP–1		1980
				(Haw.-Guam)	142	
				(Guam-Japan)	136	
				SEACOM–1 (Guam-Hong Kong-Malaysia-Singapore).	82	1980
				SEACOM–2 (Guam-Papua, N.G.-Aust.)	196	1991

SATELLITE FACILITIES

Hawaii-Mainland			International			
Satellite capacity[1]	COMSTAR (3386)	No satellites	Satellite FM capacity[2]	IV[4]	IV–A (2700)	No satellites
Path 1	[3] 1981	1967	Primary path	[5] 1951	1982	1983
Path 2	[3] 1981	1957	Major path			
			Spare	[5] 1981	1982	1983

[1] AT&T does not provide a maximum capacity available for U.S.-Mainland-Hawaii services on its domestic satellites. The capacity figure shown is the maximum number of Mainland-Hawaii circuits placed on each satellite of the COMSTAR satellite paths under this plan.
[2] The COMSTAR satellites are already in place at the beginning of the planning period.
[3] The capacity shown is the capacity Comsat indicates is available for U.S. traffic from the Mainland and Hawaii to other Pacific points.
[4] No capacity figure was provided for the INTELSAT IV satellites.
[5] The INTELSAT IV satellites are already in place at the beginning of the planning period.

PLAN IIA

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.).	[1] Analog STC	[2] 688 Whole	1984	Haw–1 (Main.-Haw.)	51	1984
		748 Half		COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.).	81	1984
ANZCAN (South)	[1] Analog			COMPAC (North) (Can.-Haw.).	81	1989
(Haw.-Fiji)		[2] 24	1984			
(Haw.-Aust.)		496				
(Haw.-N. Zealand)		128				
				Haw–2 (Main.-Haw.)	143	1980
Haw–4 (Main.-Haw.)	Digital Optical Fiber AT&T.	[3] 8,000	1986	TP–1		1989
				(Haw.-Guam)	142	
				(Guam-Japan)	136	
TP–3 (Haw.-Japan)	Digital Optical Fiber AT&T.	[3] 4,000	1985	SEACOM–1 (Guam-Hong Kong-Malaysia-Singapore).	82	1986
				SEACOM–2 (Guam-Papua N. G.-Aust.).	196	1991

SATELLITE FACILITIES

Hawaii-mainland			International						
Satellite capacity	COMSTAR [7]	TELSTAR [7]	Satellite FM capacity [10] with TDMA/DSI [11]	IV [12]	IV–A (2700)	V (4600) (5400)	V–A (5100) (6000)	VI (8700) (11000)	VI–A [13]
Path 1	[8] 1981	(9)	Primary Path	[10] 1981	1982	1984	1987	1991	1994
Path 2	[8] 1981	(9)	Major Path				1987	1992	1995
			Spare	[10] 1981	1982	1984	1987	1991	1994

[1] The Canada-Hawaii segment of the ANZCAN cable will utilize a Standard Telephone and Cables, Ltd. design and will be configured to provide 1840 3 kHz voice circuits.
[2] These figures indicate only the number of voice circuits the U.S. carriers propose to acquire in the Canada-Hawaii segment of the ANZCAN cable. The figures for 1984 reflect the carriers proposal to acquire 688 whole and 545 half circuits on a temporary basis for use during 1984-1986 inclusive in addition to 203 half circuits to be acquired on a permanent basis. The 688 whole circuits temporarily acquired will be used for U.S. Mainland-Hawaii traffic. The 545 temporarily acquired half circuits will be used for service between the U.S. Mainland and Australia, Fiji, New Zealand and other Pacific points. Of the remaining

203 permanently acquired half circuits, Hawtel will use 160 for Hawaii-Canada traffic and 42 for Hawaii-Europe traffic. ITT Worldcom will use the remaining half circuit for its Hawaii-Canada traffic.

[3] The ANZCAN cable south of Hawaii will consist of four segments—Hawaii-Fiji, Fiji-Norfolk Island, Norfolk Island-Australia and Norfolk Island-New Zealand. The first three segments will utilize the same STC design as ANZCAN North but will be equipped to provide 1,380 4 kHz circuits. The Norfolk Island-New Zealand segment will utilize a different STC cable design equipped to provide 480 4 kHz circuits.

[4] These figures indicate the number of circuits in the ANZCAN South cable segments between Hawaii and Australia, Fiji and New Zealand being acquired by U.S. carriers on a one-half circuit permanent basis.

[5] This cable will utilize AT&T's SL digital optical fiber cable design now being developed to provide two optical fiber paths; each one is capable of providing the equivalent of 4,080 basic voice grade circuits.

[6] This cable will utilize AT&T's SL digital optical fiber cable design to provide one optical fiber path capable of providing the equivalent of 4,080 basic voice grade circuits.

[7] AT&T did not indicate the maximum capacity available for U.S.-Mainland-Hawaii traffic in either the COMSTAR or TELSTAR satellites. It states that adequate capacity on these satellites was available for growth throughout the planning period. However, it also states that the availability of AT&T domestic satellite for service to offshore points (Hawaii, the U.S. Virgin Islands and Puerto Rico) has been planned and the maximum utilization of that capacity is reflected in the alternative facilities plans. It further states that because of increased demand requirements on AT&T's domestic satellite capacity, no additional planned capacity is available for use to offshore points.

[8] The COMSTAR satellites are already in use for Mainland-Hawaii service.

[9] AT&T does not indicate when the TELSTAR satellites will be introduced on the Mainland-Hawaii route.

[10] The capacity shown for each satellite is Comsat's estimate of the capacity available for U.S. services from the Mainland and Hawaii to Pacific points utilizing only the 6 and 4 GHz capacity of the satellites. The INTELSAT V, V–A, VI and VI–A satellites will have the capability to provide additional capacity in the 14 and 11 GHz frequency bands. However, Comsat indicates that, because of the geography of the Pacific Ocean region and the constraints on the design of those satellites imposed by the requirements they must meet in other ocean basins, the 14/11 GHz capacity could only be used from the U.S. to one of the following Pacific points—Hong Kong, Japan, Korea or Taiwan. Comsat indicates that it is possible that both Japan and Korea might be able to access the 14/11 GHz capacity of the satellite if their 14/11 gHz earth stations are optimally located.

[11] The satellite capacity shown is that available for U.S.-Pacific services assuming no use of the 14/11 GHz capacity of the satellites.

[12] No capacity figures are given for these satellites.

[13] The INTELSAT IV satellites are already in service in the Pacific Ocean region.

PLAN IIB

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.)	Analog STC	656[12] Whole	1984	HAW–1 (Main.-Haw.)	51	1984
		741 Half		COMPAC (North) (Can.-Haw.).	81	1989
ANZCAN (South)	Analog [3]			COMPAC (South)	81	1989
(Haw.-Fiji)		[4]24	1984	(Haw-Fiji N. Zealand-Aust).		
(Haw.-Aust.)		486				
(Haw.-N. Zealand)		128				
HAW–4 (Main.-Haw.)	Digital, Optical, Fiber, AT&T.	[5]8000	1988	HAW–2 (Main.-Haw.)	143	1989
				TP–1		1988
				(Haw.-Guam)	142	
TP–3 (Haw.-Japan)	Digital, Optical, Fiber, AT&T.	[6]4000	1988	(Guam-Japan)	188	
				SEACOM–1 (Guam-Hong, Kong-Malaysia-Singapore).	82	1989
				SEACOM–2 (Guam-Papua, N. G.-Aust.).	166	1991

SATELLITE FACILITIES

Hawaii-Mainland			International						
Satellite capacity	COMSTAR [8]	TELSTAR [9]	Satellite FM capacity [10] with TDMA/DSI [11]	IV [12]	IV–A (4700)	V (4650) (5400)	VI–A (5100) (6000)	VI (6700) (11000)	VI–A [13]
Path 1	61000	[9]	Primary Path	121961	1982	1984	1987	1984	1984
Path 2	61000	[9]	Major Path				1987	1988	1985
			Spare	121961	1982		1987	1981	1994
			Operational Spare [14]			141920			

[1] See footnote 1 for Plan IIA.

[2] These figures indicate only the number of voice circuits the U.S. carriers propose to acquire in the Canada-Hawaii segment of the ANZCAN cable. The figures for 1982 reflect the carriers' proposal to acquire 656 whole circuits and 536 half circuits on a temporary basis for use during 1984–1988, inclusive. The 656 whole circuits temporarily acquired will be used for U.S. Mainland-Hawaii traffic. The 536 temporarily acquired half circuits will be used in service between the U.S. Mainland and Australia, Fiji, New Zealand and other Pacific points. The remaining 203 acquired half circuits are permanent; Hawtel will use 160 of them for Hawaii-Canada traffic and 42 for Hawaii-Europe traffic. ITT Worldcom will use the remaining half circuit for its Hawaii-Canada traffic.

[3] See footnote 3 for Plan IIA.

[4] See footnote 4 for Plan IIA.

[5] See footnote 5 for Plan IIA.

[6] See footnote 6 for Plan IIA.

[7] See footnote 7 for Plan IIA.

[8] See footnote 8 for Plan IIA.

[9] See footnote 9 for Plan IIA.

[10] See footnote 10 for Plan IIA.

[11] See footnote 11 for Plan IIA.

[12] See footnote 12 for Plan IIA.

[13] See footnote 13 for Plan IIA.

[14] Use of the in-orbit spare satellite as an operational spare entails dividing the traffic on the primary path satellite between that satellite and the in-orbit spare satellite. This provides two independent satellite paths in the Pacific Ocean region. However, use of the in-obit spare satellite as an operational spare does not increase the total satellite capacity available in the region because of the need to maintain the capability to place all satellite traffic on a single satellite in the event of a satellite failure. Comsat indicates in its December 10 submission that the operational spare is expected to be used by the U.S., Taiwan, Japan, Australia, and New Zealand in 1984. Satellite capacity will be increased by the introduction of a major path satellite into the region in 1987.

PLAN III

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.)	Analog [1] STC	[2]181	1984	HAW-1 (Main.-Haw.)	81	1984
				COMPAC (North) (Can.-Haw.).	81	1984
				COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.).	81	1984
ANZCAN (South)	Analog [3]					
(Haw.-Fiji)		[4]24	1984			
(Haw.-Aust.)		496				
(Haw.-N. Zealand)		128				
HAW-4 Main.-Haw.)	Analog AT&T	[5]4200	1984	HAW-2 (Main.-Haw.)	143	1989
TP-3	Analog	[6]1800	1986	TP-1		1989
(Haw.-Japan)	Japan XL			(Haw.-Guam) (Guam-Japan)	142 156	
HAW-5	Digital Optical Fiber AT&T [7]	[8]3000	1991	SEACOM-1 (Guam-Hong Kong-Malaysia-Singapore).	82	1989
TP-4 (Haw.-Guam)	Igital Optical Fiber AT&T	[9]3000	1991	SEACOM-2 (Guam-Papua, N. G.-Aust.).	156	1991

SATELLITE FACILITIES

Hawaii-Mainland			International						
Satellite capacity	COMSTAR [9]	TELSTAR [9]	Satellite FM capacity [10] with TDMA/DSI [10]	IV [10]	IV-A (2700)	V (4600) (5400)	V-A (5100) (6000)	VI (8700) (11000)	VI-A [10]
Path 1	[11]1981 to 1985	([12])	Primary Path	[11]1981	1982	1984	1987	1991	1994
Path 2		([12])	Major Path				1987	1992	1995
			Spare	[11]1981	1982		1987	1991	1994
			Operational Spare			[11]1984			

[1] See footnote 1 for Plan IIA.
[2] The figure reflects 100 half circuits Hawtel proposes to acquire on a permanent basis for the provision of Hawaii-Canada services and one half circuit ITT Worldcom proposes to acquire on a permanent basis for the provision of its Hawaii-Canada services.
[3] See footnote 3 for Plan IIA.
[4] See footnote 4 for Plan IIA.
[5] This cable will utilize AT&T's SC analog design to provide 4200 3 KH, circuits.
[6] This cable will utilize a Japanese analog design to provide 1800 3 KH, circuits.
[7] See footnote 5 for Plan IIA.
[8] See footnote 6 for Plan IIA.
[9] See footnote 7 for Plan IIA.
[10] See footnote 8 for Plan IIA.
[11] See footnote 9 for Plan IIA.
[12] See footnote 10 for Plan IIA.
[13] See footnote 11 for Plan IIA.
[14] See footnote 12 for Plan IIA.
[15] See footnote 13 for Plan IIA.
[16] See footnote 14 for Plan IIB.

Additional U.S. Earth Station Facilities Assumed by the Alternative Plans

AT&T Assumptions

Plan IIA

One U.S. Mainland 6/4 GHz antenna—1987

One Guam 6/4 GHz antenna—1987

Plans IIB and III

One U.S. Mainland 6/4 GHz antenna—1984

One Guam 6/4 GHz antenna—1984[1]

Comsat Assumptions

Plans IIA, IIB and III

One Guam 6/4 GHz antenna—1984[2]

One additional West Coast—1987 Earth Station with 2 6/4 GHz antennas

Note:—While none of the plans or cost study assumptions include it, the circuit distributions for at least some of the carriers (*e.g.*, Hawaiian Telephone Company) appear to contemplate an earth station on Midway beginning in 1989 when Transpac 1 is retired, since existing cable circuits are transferred to satellite.

[1] The stated plan assumptions as well as those stated for the cost analysis indicate construction of the additional Guam antenna in 1984. However, the distribution of AT&T circuits to Guam in these plans does not indicate use of the second satellite path to Guam until 1987.

[2] Comsat does not identify this antenna by name in its cost assumptions. However, its description of the assumptions indicates that this is indeed the Guam antenna.

[FR Doc. 82-13240 Filed 5-19-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 2

[Gen. Docket No. 82-242; FCC 82-200]

Amendment of the Commission's Rules To Simplify the Equipment Authorization Procedures

AGENCY: Federal Communications Commission.

ACTION: proposed rule.

SUMMARY: This document proposes the implementation of a simplified equipment authorization that would reduce the time spent by applicants in obtaining approval of their equipment. This item is being issued to reduce the paperwork requirements placed on the public and this Commission.

DATES: Comments must be filed on or before July 6, 1982 and Reply Comments on or before July 21, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Science and Technology, (202) 653-6288.

SUPPLEMENTARY INFORMATION:

List of Subjects 47 CFR Part 2

Administrative practice and procedure, Communications equipment, Disaster assistance, Federal Communications Commission, Imports, Radio, Wiretapping and electronic surveillance.

In the matter of amendment of Part 2 of the Rules to simplify the equipment authorization procedures, Gen. Docket No. 82-242.

Adopted: April 29, 1982.

Released: May 7, 1982.

1. Notice is hereby given that we are considering the use of a simple method of notificaton to augment our equipment authorization procedures. This action, as contemplated, will reduce the regulatory requirements for the authorization of some of the equipment now covered under our equipment authorization programs. The matter of which equipment will be included under the new procedure is not contained in this proposal but will be the subject of future proceedings.

2. The current equipment authorization procedures that are used to determine if specific equipment is capable of complying with the applicable technical standards consist of the following: Type approval, where the actual equipment is tested at our laboratory prior to the issuance of an authorization; type acceptance, where test data and information submitted by the manufacturer concerning the equipment are evaluated by us, prior to the issuance of an approval; and other procedures, such as certification and registration, which apply to other categories of equipment but are similar to the type acceptance procedures.[1] The

[1] Usually, type acceptance applies to transmitters that require a license to operate, certification applies to receivers and transmitters that do not require a license to operate, and registration applies to equipment connected to the telephone lines.

remaining procedure, verification, simply requires that the equipment supplier make the appropriate measurements to determine that the equipment complies with the necessary technical standards prior to marketing and keep records of that test data. Verification requires no report to the Commission and no submission of data unless specifically requested.[3] Under all of the equipment authorization programs, including the notification procedure being proposed, the rules provide authority for us to require a samply of the equipment to be sent to our laboratory for evaluation.[3]

3. Some types of equipment may not require the detailed review processes specified under the present equipment authorization procedures. We are currently reviewing our existing evaluation practices and any interference-related problems which may be associated with the equipment so evaluated. If we find the matter of interference control being effectively addressed through some other mechanism, such as licensing review (including required proof-of-performance testing), the equipment may be considered suitable for evaluation under a simpler authorization procedure than those currently required by our rules. Likewise, equipment that presents a low probability of causing interference problems or that has been demonstrated through our past evaluation experience to have a minimum of difficulty in complying with the current regulations could also be included. The latter situation could be considered to represent the "technical maturity" of the equipment design where the type of equipment has been manufactured for so many years as to no longer experience any substantial design problems (standard broadcast AM receivers, while not requiring any form of Commission approval, would be a good example of this concept). For such equipment, we may find that there is no need to continue the burden of either having equipment sent to us for testing or of having detailed measurement data and detailed information sent to us for review.

4. We believe under our mandate of interference control that in some cases a procedure which is less burdensome than the existing authorization procedures would be appropriate. According, we are considering the use of a notification procedure under which the applicant files a brief description of the equipment and a statement attesting that the equipment has been tested and found to comply with the applicable FCC technical standards. This action would be taken in lieu of expanding the verification program under which no information is filed with the Commission.[4] We have already determined that most of the equipment discussed in paragraph three of this item, especially higher powered licensed transmitters, can not be brought under verification without increasing the risk of interference problems to an unacceptable level, yet this same equipment may not be so prone to causing interference as to require its inclusion under our existing authorization procedures. Notification would be more stringent than verification but less burdensome than the existing authorization procedures with regard to the amount of data required to be submitted for an equipment authorization. The notification will provide a minimal amount of information to let us know what equipment is being marketed and who is marketing the equipment so that appropriate action may be taken in the event the equipment fails to comply with the regulations or radio frequency interference occurs. We will also have specific assurance from the party responsible for the equipment that it has been tested for compliance with our technical requirements.

5. Because of the above, we are proposing a procedure of notification, as detailed in the Appendix. Under this procedure, the equipment authorization applicant would notify us, in writing, that the equipment complies with the applicable standards and would also provide, on a standard form, certain minimal information concerning the equipment. A modified Form 731 is attached [5] as an example of such a possible form. This application would be evaluated for completeness, consistency and the stated compliance with the appropriate regulations. The successful completion of this evaluation would result in the issuing of an authorization grant, similar to a grant of type acceptance. As with the type acceptance program, marketing of the equipment could commence upon the issuance of the grant.

6. Under the notification procedure, the delay experienced by an applicant for receiving the authorization would be greatly reduced. The applicant would be required to make all of the tests to insure that the equipment complies with the applicable rules and would simply notify us to that effect. There would be no need to submit any measurement data, unless specifically requested to do so (for instance, in those cases where the equipment type has shown a greater tendency to causing interference than was anticipated before inclusion under the notification program or in cases where there is some question regarding the ability of the specific equipment to meet the applicable standards.) Since, in most cases, no measurements, schematics, or similar data would have to be evaluated, we anticipate that, ultimately, a grant of equipment authorization would be issued within a period of a few days instead of the current 30 to 90 days. This new procedure does not impose any additional costs on industry since the manufacturers seeking an equipment authorization under the existing procedures are required to bear the cost of their own equipment testing (under type approval, the equipment is tested by this Commission; however, a responsible manufacturer would test the equipment regardless of our testing requirements). By issuing the grant of authorization within a few days of the receipt of the application for notification, we would reduce the cost to the manufacturer by reducing the waiting time between the filing of the application and the allowed marketing of the equipment.[6]

7. In this proceeding, we are merely establishing a new equipment authorization procedure to be known as notification. We are not applying this notification procedure to any particular type of equipment. Specific proposals for moving a particular type of equipment from an existing equipment authorization procedure to the notification procedure will be made under one or more separate rule making proposals.[7] These rule making proposals would reevaluate our equipment authorization procedures as they apply to various classes of equipment. Since this proceeding addresses only the establishment of a new notification procedure for authorizing equipment and not the technical standards which must

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[3] Verification is a new procedure currently applied to all Class A (commercial, industrial or business environment) and some Class B (marketed for residential environment) computing equipment.

[3] Such sampling is currently allowed under §§ 2.936, 2.943, 2.945, 2.956 and 2.957 of our rules.

[4] Under verification, information is submitted to the Commission only when specifically requested pursuant to § 2.956 of our regulations.

[5] Not printed herein, but available for review in the FCC Docket Branch, Room 239, 1919 M St. N.W., Washington, D.C., and filed as a part of the original document.

[6] In accordance with § 2.803 of our regulations, equipment which requires an authorization from this Commission may not be marketed before that authorization is issued.

[7] At this time, we are considering the inclusion of both licensed and Part 15 unlicensed devices under notification. This would remove the distinction between certification and type acceptance.

be met nor the equipment to which it is applied, suggestions for changes in the technical standards or the inclusion under notification of specific types of equipment are beyond the scope of this proceeding and will not be considered herein. Comments are, however, requested on the matter of retaining the existing equipment authorization procedures. As the notification procedure, and, possibly, the verification procedure become increasingly utilized, it is expected that the existing procedures would be needed for fewer types of equipment. Since the Commission could continue to request pre-grant or post-grant samples for any interference-prone equipment, could some of the existing authorization procedures be deleted?

8. In consideration of these proposals, it must be recognized that there are real risks that undesired radiation from inadequately tested equipment may cause more interference than would be the case were the equipment to remain under our existing authorization procedures. This possibly increased level of electromagnetic interference could affect U.S. Government operations as well as spectrum users licensed by the Commission, other U.S. citizens and operations in other countries. The danger of interference is particularly acute in the case of entirely new products, especially where test methods for the emission type utilized have not been well established, and in the case of consumer products produced in large quantities by foreign manufacturers outside the reach of FCC enforcement authority. As we have noted above, we do not propose in this document what type of equipment will fall under the new notification procedure, yet depending on the extent to which we utilize this procedure, these interference concerns must be factored into our considerations as to what types of equipment should be covered and whether this new authorization procedure should be finally adopted.

9. In order to minimize interference risks, we anticipate the extension of our program of spot checking to include equipment evaluated under notification. We plan to maintain detailed records of equipment placed on the market under the new program in order to facilitate enforcement efforts and to aid the public in determining what types of equipment may be utilized in a radio service that requires the use of approved equipment.[8] Also, in the event that some of the equipment eventually included under this program has a greater potential for causing interference or if some equipment submitted for notification appears to be designed for applications other than those contemplated, sampling of the product may have to be made prior to the issuance of a grant of authorization.

10. Because the rules proposed herein are merely procedural and we have not yet proposed their implementation with respect to any specific equipment, there is, by definition, no impact on any entity, large or small. Therefore, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, an initial regulatory analysis is not required.

11. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contracts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time that a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is issued by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation, addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which is relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

12. The proposed amendments to the regulations as set forth in the Appendix below are issued pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended. In accordance with the applicable procedures set forth in § 1.415 of the regulations, interested persons may file Comments on or before July 6, 1982 and Reply Comments on or before July 21, 1982. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of these Commission procedures governing *ex parte* presentations in informal rule making is available from the Commission's Consumer Assistance Office, Washington, D.C. 20554.

13. In accordance with the provisions of Section 1.419 of the regulations, an original and five copies of all comments, reply comments, briefs and other documents shall be furnished the Commission. To obtain the widest possible response in this proceeding, informal comments (without extra copies) will be accepted, but these comments should make specific reference to this proceeding. Responses will be available for public inspection during regular working hours in the Commission's Public Reference Room located at its headquarters at 1919 M Street, NW., Washington, D.C. 20554. For further information contact John A. Reed at (202) 653-6288.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

1. Section 2.803 is revised as follows:

§ 2.803 Equipment requiring Commission approval.

In the case of a radio frequency device, which, in accordance with the rules in this chapter must be type approved, type accepted, certificated or notified prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any such radio frequency device, unless, prior thereto, such devices shall have been type approved, type accepted, certificated or notified as the case may be: *Provided,*

[8] Most of the licensed radio services require the use of approved equipment. It is envisioned that such equipment will continue to be published in the Commission's "Radio Equipment List, Equipment Acceptable for Licensing" even if the equipment is brought under the notification program.

however, That the advertising or display of a device, which has not been granted type approval, type acceptance, certification or notification, will not be deemed to be an offer for sale if such advertising contains, and the display is accompanied by, conspicuous notice worded as follows:

This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained.

This provision does not apply to radio frequency devices that could not be granted an equipment authorization or be legally operated under our current rules. Such devices shall not be advertised or displayed or offered for sale or lease or sold or leased.

Provided further, That any non-approved device displayed under the terms of the above proviso may not be activated or operated.

2. Section 2.901 is revised as follows:

§ 2.901 Basis and purpose.

(a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be verified by the manufacturer or importer, or that such equipment receive an equipment authorization from the Commission by one of the following procedures: Type approval, type acceptance, certification, registration or notification.

(b) The following sections describe the verification procedure and the procedures to be followed in obtaining type approval, type acceptance, certification or notification from the Commission and the conditions attendant to such a grant.

3. A new § 2.904 is added to read as follows:

§ 2.904 Notification.

(a) Notification is an equipment authorization issued by the Commission where the applicant makes measurements to determine that the equipment complies with the appropriate technical standards and reports that such measurements have been made and demonstrate the necessary compliance. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission pursuant to §§ 2.936, 2.943 or 2.945.

(b) Notification attaches to all items subsequently marketed by the grantee which are identical, as defined in § 2.908, to the sample(s) tested and found acceptable by the grantee.

(c) Permissive changes or other variations authorized by the Commission to equipment under the notification procedure shall be made in accordance with the restrictions contained in § 2.977.

4. The undesignated subheading after § 2.908 is revised to read as follows:

Application Procedures for Equipment Authorizations

5. Paragraphs (a) and (c) of § 2.915 are revised as follows:

§ 2.915 Grant of application.

(a) The Commission will grant an application for type approval, type acceptance, certification or notification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that:

* * * * *

(c) Neither type approval, type acceptance, certification or notification shall attach to any equipment, nor shall any equipment authorization be deemed effective, until the application has been granted.

6. Section 2.931 is revised, as follows:

§ 2.931 Responsibility of the grantee.

In accepting a grant of an equipment authorization the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) determined by the grantee for notification, filed with the application for type acceptance or certification, or measured by the Commission is the case of type approved equipment, continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

7. Paragraph (a) of § 2.932 is revised and a new paragraph (e) is added, as follows:

§ 2.932 Modification of equipment.

(a) A new application for an equipment authorization shall be filed whenever there is a change in the design, circuitry or construction of an equipment or device for which an equipment authorization has been issued, except as provided in paragraphs (b), (c), (d) and (e) of this section.

* * * * *

(e) Permissive changes may be made in equipment subject to notification pursuant to § 2.977.

8. A new paragraph (b)(8) is added to § 2.933 and paragraph (c) is revised as follows:

§ 2.933 Change in identification of equipment.

* * * * *

(b) * * *

* * * * *

(8) In the case of equipment subject to notification, only the information required by §§ 2.971 and 2.975 shall be filed.

(c) If the change in identification also involves a change in design or circuitry which falls outside the purview of a permissive change described in §§ 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to § 2.909.

9. A new paragraph (a)(3) is added to § 2.938 to read as follows:

§ 2.938 Retention of records.

(a) * * *

* * * * *

(3) For equipment covered under the notification procedure, a record of the test results that demonstrate compliance with the appropriate regulations.

* * * * *

10. Paragraph (a) of § 2.941 is revised as follows:

§ 2.941 Availability of information relating to grants.

(a) Grants of equipment authorization, other than receiver certifications and equipment authorized for use under Parts 15 or 18 of this chapter, will be publicly announced in a timely manner by the Commission. Information about a receiver certification or about the authorization of a specific model of equipment under Parts 15 or 18 of this chapter may be obtained by contacting the Commission's Office of Science and Technology.

* * * * *

11. Paragraph (a) of § 2.943 is revised as follows:

§ 2.943 Submission of equipment for testing.

(a) The Commission may require an applicant for type acceptance, certification or notification to submit one or more sample units for

measurement at the Commission's laboratory.

* * * * *

12. A new undesignated heading is added after § 2.969 and new §§ 2.971–2.979 are added to read as follows:

Notification

Sec.
2.971 Cross reference.
2.973 Limitations on notification.
2.975 Application for notification.
2.977 Changes in notified equipment.
2.979 Information required on identification label for notified equipment.

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).

Notification

§ 2.971 Cross reference.

The general provisions of this subpart, § 2.901, *et seq.*, shall apply to applications for and grants of notification.

§ 2.973 Limitations on notification.

Notification is a grant of equipment authorization issued by the Commission that signifies that the applicant has determined that the equipment has been shown to be cable of compliance with the applicable technical standards in the Commission's rules if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the applicant with respect to matters not encompassed by the Commission's rules.

§ 2.975 Application for notification.

(a) Subsequent to the determination by the applicant that the equipment complies with the applicable standards, the applicant, who shall retain the responsibility for ensuring that the equipment continues to comply with such standards, shall file a request for the issuance of an equipment authorization on FCC Form 731 for each FCC Identifier with all questions answered. Where a form item is not applicable, it shall be stated. The application shall be filed in the name of the party to whom the grantee code is assigned (see § 2.926 concerning the assignment of identifier codes). The following information shall be included in the filing, either in answer to the questions on the form or as attachments thereto:

(1) Name of the applicant indicating whether the applicant is the manufacturer of the equipment, a vendor other than the manufacturer, a licensee or a prospective licensee. Where the applicant is not the manufacturer of the equipment, the name of the manufacturer shall be stated;

(2) Identification of the equipment for which notification is sought;

(3) A technical description of the equipment sufficiently complete to develop all of the factors concerning compliance with the technical standards of the applicable rule part(s). The description shall include the following items:

(i) Type or types of emission (if applicable);

(ii) Frequency range;

(iii) Rated frequency tolerance (if applicable); and

(iv) Rated radio frequency power output, if applicable (if variable, give the range);

(4) A statement concerning the intended use of the device including both the type of use for which the device has been designed and the part(s) or subpart(s) of the rules governing the device;

(5) The FCC Identifier for the device and a photograph or drawing of the equipment identification plate or label showing the information to be placed thereon in accordance with § 2.925;

(6) If required under the specific rule section(s) under which the equipment is to be operated, photographs of the equipment of sufficient clarity to reveal its external appearance and size, both front and back; and

(7) A signed statement attesting to the following or its equivalent:

This equipment has been tested in accordance with the requirements contained in the appropriate Commission regulations. To the best of my knowledge, these tests were performed using measurement procedures consistent with industry or Commission standards and demonstrate that the equipment complies with the appropriate standards. Each unit manufactured, imported or marketed, as defined in the Commission's regulations, will conform to the sample(s) tested within the variations that can be expected due to quantity production and testing on a statistical basis.

(b) The statement required in paragraph (a)(7) of this section shall be signed in a manner consistent with § 2.909(c).

(c) Upon the satisfactory completion of the necessary testing to determine that the applicable standards are met, the submission of the material required in paragraph (a) of this section and the issuance by this Commission of a grant of equipment authorization, marketing, as defined in § 2.803, is permitted.

(d) The authorization of the equipment through the notification procedure may be revoked by this Commission in a manner consistent with § 2.939.

§ 2.977 Changes in notified equipment.

(a) Under the notification procedure, the grantee warrants that each unit of equipment marketed will conform to the unit(s) tested and found acceptable by the grantee and that data on file with the grantee, as required in § 2.938, continues to be representative of the equipment being produced under such notification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) Permissive changes in the design of equipment subject to notification can be performed only under the conditions detailed in §§ 2.1001(a) and 2.1001(b)(1).

§ 2.979 Information required on identification label for notified equipment.

Each equipment for which a notification application is filed shall bear an identification plate or label pursuant to §§ 2.925 and 2.926. The FCC Identifier for such equipment will be validated by the grant of notification issued by the Commission.

[FR Doc. 82-13738 Filed 5-19-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Importation or Shipment of Injurious Wildlife; Raccoon Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to amend 50 CFR Part 16—Injurious Wildlife, Subpart B—Importation or Shipment of Injurious Wildlife, by adding the raccoon dog (*Nyctereutes procyonoides*), a nonindigenous predatory mammal of the Family Canidae, to the list of injurious mammals. The best available information indicates that this action is necessary to protect existing fish and wildlife resources from potential adverse effects which may result from purposeful or accidential introduction and subsequent establishment of the raccoon dog into existing ecosystems of the United States.

DATES: Public comments must be submitted on or before July 6, 1982 to be assured consideration.

ADDRESSES: Written comments may be mailed or delivered in person to: Chief, Division of Wildlife Management, Mail Code 355, U.S. Fish and Wildlife Service, 1717 H Street, NW., Room 512, Washington, D.C. 20240. Comments and

materials received in response to this proposal will be available for public inspection at the above address during normal working hours of 7:45 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION CONTACT:
Mr. James F. Gillett, Chief, Division of Wildlife Management, 202–632–7463.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1981, the Service announced in the **Federal Register** (46 FR 58348) its intention to review available information on the raccoon dog (*Nyctereutus procyonoides)* for possible addition to the list of injurious wildlife within 50 CFR Part 16 as the means to prohibit importation of live animals. The notice solicited biological, economic, or other information concerning the raccoon dog to aid in determining if a proposed rule was warranted. The 45 day comment period ended on January 15, 1982. Copies of the notice were sent to all State clearinghouses and approximately 60 individuals, organizations, and Federal agencies which were considered to have knowledge of raccoon dogs or a vested interest in the outcome of the Service's review process. The mailing included zoos currently maintaining raccoon dogs, fur industry associations, professional wildlife management associations, universities, the U.S. Department of Health and Human Services, and agencies within the U.S. Department of Agriculture and the U.S. Department of the Interior. Written comments were received from thirteen respondents as follows:

Government (State)—3
Government (Foreign)—1
Universities—3
Animal welfare organizations—1
Zoos and aquariums—2
Professional wildlife societies—3

Ten respondents recognized the potential for harm to native fauna resulting from raccoon dog introductions and expressed support for listing the species as an injurious mammal.

Of the three other respondents, one recognized that the release of large numbers of raccoon dogs would probably lead to "* * * the establishment of a population on this continent as it did in Europe," but felt it unncessary to list raccoon dogs as injurious unless a very serious concern existed that substantial numbers of the species would be released into the environment. Another respondent opposed listing the raccoon dog as an injurious species unless the Service conclusively demonstrated " * * * that the species was posing a threat to the ecosystems of the United States." The last respondent stated that listing the species was not in conflict with their agency plans, goals and objectives.

Service involvement with the raccoon dog occurred as the result of an exchange of letters in September 1981 between the Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior and the Canadian Ministry of the Environment. The letters constituted a cooperative arrangement requiring both Governments "* * * to use their best efforts under existing * * * legal authority to effect prohibition of the importation of raccoon dogs into the * * *" respective countries.

Raccoon dogs are indigenous to eastern Asia including Japan, Korea, parts of the eastern Soviet Union, Mongolia, mainland China, and northern Indochina. From 1929 to 1955 nearly 9,000 raccoon dogs were introduced into the western and central Soviet Union and Siberia in efforts to establish the species for fur harvest purposes. The introductions in the western region of the Soviet Union proved successful, and from these areas the species has migrated steadily northward and westward and now is reported to be established in Finland, Sweden, Romania, Hungary, Czechoslovakia, Poland, and East and West Germany. They have also been observed in Austria, Bulgaria, and Greece.

The species appears capable of adapting to a wide range of vegetational and climatic conditions. They are the only canids known to hibernate during extreme winter weather, and they readily inhabit areas occupied by humans. Studies have shown them to be highly omniverous with their diet including small mammals, birds and bird eggs, amphibians, reptiles, fish, insects, mollusks, carrion, human garbage and vegetable matter including fruits, berries, and grains. They are known to prey on, and have been identified as important enemies of, waterfowl and upland game birds, including eggs, nestlings, and brooding adults. They are also known to be predators of muskrats (*Ondatra zibethica*), weasels (*Mustela* spp.), and other small furbearing mammals, and, in the absence of control efforts, may adversely effect populations of these species. In terms of interspecific competition, raccoon dogs are known to utilize muskrats den sites. Available biological evidence suggests that the species would compete for den sites and prey animals with native predators such as red and gray fox (*Vulpes fulva* and *Urocyon cinereoargenteus*) and raccoons (*Procyon lotor*). A number of parasites and diseases are known to infect the species, which also presents a threat to the health of native wildlife and perhaps humans if they were introduced into the U.S.

During 1979, three pairs of raccoon dogs were imported to a mink ranch in Wisconsin Rapids, Wisconsin. Six additional animals were imported to a mink ranch in Freeport, Illinois. Available information indicates that these animals have increased through breeding to 35 (13 in Wisconsin and 22 in Illinois). No other raccoon dogs are known to exist on fur farms in the United States, and none are believed to exist in the wild.

Description of the Proposed Rule

The regulations contained in 50 CFR Part 16 implement the Lacey Act (18 U.S.C. 42), as amended. Under the terms of the Lacey Act, the Secretary of the Interior is authorized to prescribe by regulation those nonindigenous wild mammals which are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interest of forestry, agriculture, and horticulture, or to the welfare and survival of the wildlife or wildlife resources of the United States. If it is determined that the raccoon dog is injurious or potentially injurious, then, as with all injurious wildlife, its acquisition, importation into, or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the district Director of Customs at the port of entry. In addition, no live raccoon dogs acquired under permit or progeny thereof may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the Director of the Service.

The need for the rule is based on currently available biological evidence which suggests that importation and introduction of the raccoon dog into the natural ecosystems of the United States or any territory or possession of the United States would pose a threat to migratory waterfowl, upland game birds, and other native wildlife species due to predation, interspecific competition for food and den sites, and introduction of exotic diseases or parasites. Adverse impacts from raccoon dog introductions would transcend State lines and become regional or national in scope.

The extent to which raccoon dogs, if introduced, could or would supplant native wildlife is not known. However, the Service has determined that importation and subsequent release of raccoon dogs into the natural ecosystems of the United States, whether accidental or intentional, would be injurious or potentially injurious to the welfare and survival of some species of native wildlife. Addition of the raccoon dog to the list of injurious mammals in 50 CFR Part 16 is the only means that has been identified which provides long-term protection to native wildlife from raccoon dog competition or predation resulting from introductions of this species.

An assessment of the environmental effects of this proposed rule has been prepared and a determination has been made that such proposal is not a major Federal action under the National Environmental Policy Act. It has also been determined that this proposal is not a major rule under Executive Order 12291. In addition, the best available information indicates that a total of 35 raccoon dogs exist on two fur farms in the U.S. Based on an average pelt price of $80.00, the total value of these animals in the fur market should not exceed $2,800. Adverse effects on small entities as a result of the rule would be minimal and restricted to two fur farm operations. Pelts produced at these locations could be transported in interstate commerce within the conterminous U.S. excluding the District of Columbia without restrictions. Consequently, it has has been determined that the proposed rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Environmental Assessment and the Determination of Effects of Rule are available for public inspection, as are all supporting documents, during regular business hours at the Service's Division of Wildlife Management, Room 512, 1717 H Street, NW., Washington, D.C.

List of Subjects in 50 CFR Part 16

Imports, Transportation, Wildlife, Animal diseases, Freight.

PART 16—INJURIOUS WILDLIFE

In consideration of the foregoing, and under authority of the Lacey Act, 18 U.S.C. 42, it is proposed to amend 50 CFR Part 16—Injurious Wildlife, Subpart B—Importation or Shipment of Injurious Wildlife, § 16.11 paragraph (a)—Importation of live wild mammals, to read as follows:

§ 16.11 Importation of live wild mammals.

(a) The importation, transportation, or acquisition is prohibited of live specimens of (1) Any species of so-called "flying fox" or fruit bat of the genus *Pteropus;* (2) any species of mongoose or meerkat of the genera *Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos,* and *Suricata;* (3) any species of European rabbit of the genus *Oryctolagus;* (4) any species of Indian wild dog, red dog, or *dhole* of the genus *Cuon;* (5) any species of multimammate rat or mouse of the genus *Mastomys;* and (6) any raccoon dog, *Nyctereutes procyonoides: provided,* That the Director shall issue permits authorizing the importation, transportation, and possession of such mammals under the terms and conditions set forth in § 16.22.

The principal author of this proposed rule is Jeffrey L. Horwath, Wildlife biologist, Division of Wildlife Management, U.S. Fish and Wildlife Service.

Dated: May 13, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-13759 Filed 5-19-82; 8:45 am]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Proposed Young Volunteers in ACTION (YVA) Guidelines

AGENCY: ACTION.

ACTION: Notice of proposed Young Volunteers in ACTION (YVA) Guidelines.

SUMMARY: The following proposed Notice sets out the guidelines under which the Young Volunteers in ACTION (YVA) program will operate in the future. The Guidelines are divided into nine sections which deal with the overall program philosophy, responsibilities of the YVA sponsor, staff, advisory council, volunteers, and volunteer stations. It also includes basic data on administration of a YVA project.

DATE: Written comments should be submitted no later than June 21, 1982, to Barbara P. Wyatt, Director of YVA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Barbara P. Wyatt, Director of YVA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 800–424–8580; extension 229; or 202–254–8458.

SUPPLEMENTARY INFORMATION: YVA is a program of limited term and scope designed to mobilize the efforts of youth, ages 14–22, in a focused, effective way in serving the needs of their community by volunteering to work on a part-time, non-stipended basis.

Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551 et seq.), may, in whole or in part, be required by our Act to be published in proposed form for comments.

ACTION has determined that the YVA Guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule.

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I. Introduction

These Guidelines have been developed for the use of Young Volunteers in ACTION Program (YVA) project sponsors, project staff, Advisory Council members and ACTION staff. It contains material for the management and operation of YVA projects. (For definitive guidance on fiscal matters consult ACTION Handbook 2650.2, *Grant Management Handbook for Grantees.)*

1. Purpose and Objective

To involve youth: In serving the needs of their community; in efforts to eliminate poverty and poverty-related problems; in developing a sense of civic pride; in providing opportunities for career exploration; in encouraging youth to assist others, thereby creating a sense of selfworth and pride in being a young American; and in learning through community service.

To mobilize the efforts of full or part-time students, ages 14–22, in a focused, effective way to respond to community needs by volunteering to work on a part-time, nonstipended basis.

2. Legislative Authority

The Young Volunteers in ACTION Program (YVA) will operate under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). Its purpose is to provide for a program of part-time or short-term service-learning to meet general community needs and to strengthen and supplement efforts to eliminate poverty and poverty-related problems.

3. Definition of Terms

Act is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Advisory Council is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

Agency is the Federal ACTION agency.

Budget Period is the time interval for which the project grant is awarded, usually one year.

Director is the ACTION headquarters YVA Director.

Guidelines is the Young Volunteers In ACTION Program Operations Guidelines.

In-Kind Contribution refers to budgeted amounts which represent the value of non-cash contributions that shall be provided to the project. They represent values of real property, equipment, goods, maintenance and services that directly benefit the project. They are specifically identifiable and allowable.

Local Share refers to contributions to the budget from non-federal resources in cash or allowable in-kind contributions or a combination of both.

Memorandum of Understanding (M/U) is a statement prepared and signed by the administrator of a volunteer station and the Young Volunteers in ACTION project sponsor which identifies working relationships and mutual responsibilities.

Project is the locally planned and implemented YVA Program as agreed upon between ACTION and the sponsor.

Service Area is a geographically defined area in which YVA Volunteers are recruited, enrolled, and placed on assignments.

Sponsor is a public agency or private nonprofit organization which is responsible for the operation of the local YVA Program.

Volunteer Station is a public agency or private non-profit organization that accepts the responsibility for assignment and supervision of the volunteers under a M/U with the sponsor.

YVA refers to the Young Volunteers In ACTION Program, which includes full or parttime students ages 14–22 who are enrolled as full or part-time students in secondary, secondary vocational, or post secondary schools.

4. Grant Application Procedures

Grants will be awarded for a one year period with a renewal option for the second year based on factors for selection (I.5. below); compliance with YVA guidelines and grantee performance during the first year, particularly in the number of volunteer hours generated; and any other factors which may be relevant or appropriate to the Director's exercise of discretion in the allocation of YVA resources among competing uses. YVA funding will not exceed two years.

All YVA grant applications must consist of:

a. ACTION Project Narrative which include a Project Work Plan, specifying projected number of volunteer hours by quarter and a minimum of 10 volunteer work stations.

b. Application for Federal Assistance.

c. CPA certification of accounting capability.

d. Articles of Incorporation.

e. Proof of non-profit status, which may be made through an IRS certification.

f. Resume of proposed project director candicate(s), if available.

g. List of governing board members and their relationship to the community.

5. Factors For Selection

Grant applicants will be reviewed for selection according to the following factors:

a. For their replicability in other situations without the need for federal funding.

b. Compliance with ACTION and YVA Guidelines, regulations and legislation:

c. Project demonstrates a program design which allows maximum volunteer opportunities for youth to address community needs, especially those that are poverty related.

d. Project identifies development of volunteer service assignments which will generate a minimum of 13,000 hours of volunteer service during a 12 month period and provide for growth and learning opportunities for youth.

e. Proposal reflects a commitment from cooperating local agencies and organizations, including educational institutions, where such could be expected to contribute to the value or success of the project.

f. Proposal identifies adequate financial in-kind and public relations support from the community which will enhance the project and allow for contribution after federal funding ceases.

g. Proposal must contain a realistic work plan for project completion with measureable goals and objectives, and a feasable method for achievement.

h. Proposal must contain a feasible plan for volunteer recruitment from all segments of the community and appropriate events for recognition.

i. Applicant organization has a governing body or agency board and staff which understands and endorses the nature and purpose of the project and capability to implement the program.

j. Applicants must be able to demonstrate sufficient administrative and fiscal expertise to manage the YVA grant as well as the capability of providing adequate orientation, training and supervision to the work stations and volunteers.

k. The proposal must contain a realistic and adequately justified budget.

l. The sponsor must demonstrate that it has those characteristics set forth at II.2.

6. Review Process

Acceptable applications will be reviewed based upon the following process. Grant budget size will be based upon the availability of funds and ACTION's objective to achieve equitable geographic program resource distribution.

a. Applications are submitted through the appropriate ACTION State Office which will review, and assess for compliance with YVA Guidelines, regulations, ACTION laws and established factors for selection. All applications then will be submitted by the State Office to the Regional Office.

b. Regional Offices will similarly review and assess applications for compliance before submission to the YVA Director in Washington, D.C., who shall make the final decision.

c. The grant award will be made by the Regional Grants and Contracts Officer based upon notification from the Director of those projects selected for funding.

7. Refunding of Grants

Applications for renewal of grant awards will be processed using the factors identified in selecting initial grants as well as the grantee's compliance with YVA guidelines and grantee performance during the first year, particularly in the number of volunteer hours generated; and any other factors which may be relevant or appropriate to the Director's exercise of discretion in the allocation of YVA resources among competing uses. YVA funding will not exceed two years. Final determination for renewal will be by the YVA Director, upon such recommendations as the State and Regional offices may make.

II. The YVA Sponsor

1. Sponsor Eligibility

ACTION will award YVA grants to Federal, State, or local agencies, and to private, non-profit organizations or foundations in the United States which have the authority to accept and the capability to administer such grants. Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to Agency objectives—for example, achieving equitable geographic program resource distribution.

A grant applicant is not assured of selection or approval and may have to compete, based on established ACTION criteria for grant applications, with other solicited or unsolicited applicants.

2. Sponsor Characteristics

Evidence of the following shall be a factor in the decision to award and refund YVA grant applications:

a. A dedicated interest in or involvement with efforts to resolve community problems.

b. A good working relationship with a variety of community agencies and organizations.

c. Experience in developing volunteer service opportunities.

d. A strong base of local financial support and the capacity to develop additional sources of local funding.

e. A capability of designing and implementing a program which allows maximum volunteer opportunities for youth to address community needs.

f. A commitment to or past experience in providing opportunities for growth and learning for youth.

g. The capability to employ project staff with the initiative, skill, and experience to assume direct responsibility for project management.

h. A governing body or agency board and staff which understands and endorses the nature and purpose of the project.

i. An acceptable management and fiscal capability.

3. Sponsor Responsibility

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer stations as discussed in Section VI. The sponsor shall also abide by any relevant laws, Executive Orders, or regulations. The sponsor has the responsibility to:

a. With the prior concurrence of ACTION, employ the YVA project director within 30 days of the notice of grant award. Résumés of candidate(s) for project director should be included, where possible, in the application package.

b. Provide direction and support to the YVA project director, who is directly responsible to the sponsor for the management of the project, including training and supervision of project staff.

c. Provide for the recruitment, assignment, supervision, and support of volunteers. All qualified youth from the community should be encouraged to participate.

d. Provide for appropriate recognition and incentives for YVA Volunteers and their activities.

e. Provide financial and/or in-kind support at a minimum level of 10% of the federal project budget.

f. Establish, orient and support a YVA Project Advisory Council as discussed in Section III.

g. Provide YVA orientation to volunteer station supervisors and/or station representatives.

h. Provide the YVA volunteers with appropriate accident and personal liability insurance. (Refer to Appendix for details on insurance.)

i. Ensure that appropriate automobile liability insurance is maintained on all vehicles owned or leased by the sponsor which are used in the project. (Refer to Appendix for details on insurance.)

j. Develop volunteer stations for placement of YVA volunteers.

k. Negotiate a written Memorandum of Understanding (M/U), acceptable to ACTION, with each volunteer station, prior to assignment of YVA Volunteers, identifying sponsor responsibilities, station responsibilities, and joint responsibilities.

l. Provide pre-service orientation to the volunteers on YVA goals and activities and the responsibilities of the volunteers to their stations and the community.

m. Establish lawful and nondiscriminatory performance standards and service policies for YVA Volunteers, consistent with the policies and purposes of the YVA program.

n. Ensure compliance with the Special Limitations as outlined in Section II.4 of this Handbook.

o. Provide for maintenance of project records in accordance with generally accepted accounting practices and prepare and submit reports on a timely basis as required by ACTION. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three (3) years following the completion of the grant.

p. Arrange for in-service orientation for the volunteers by volunteer stations and other sources of training as needed.

q. Ensure that volunteer stations meet safety standards.

r. Develop and maintain community support through a planned program which would include community communication as well as recognition events.

s. Seek to identify resources to permit continuance of the YVA program upon the conclusion of federal funding.

4. Special Limitations on YVA Sponsors

a. Political Activities. (1) Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

(2) No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the YVA program with:

(a) Any partisan or non-partisan political activity associated with a candidate, or contending faction or group, in an election, or for public or party office.

(b) Any activity to provide voters with transportation to the polls or similar assistance in connection with any election.

(c) Any voter registration activity.

(3) No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(a) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a YVA Volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or

(b) In connection with an authorization or appropriation measure directly affecting operation of the YVA program.

Regulations found at 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities", apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each sponsor is obligated to know, and communicate to staff and volunteers, the prohibitions included therein.

b. Special Restriction on State or Local Government Employees. If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in Chapter A of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff

member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. While the staff member so covered may be a member of a political party, express views or partisan matters privately, and display his or her views through the wearing of buttons or the use of bumper stickers, he or she may not be an official of any partisan political organization, or run for partisan office, except in very few cases. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, D.C. 20525.

c. Non-Discrimination. No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap or political affiliation.

d. Religious Activities. Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization, as part of their duties.

e. Labor and Anti-Labor Activity. No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organizations or related activity.

f. Non-Displacement of Employed Workers. A YVA Volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties.

g. Non-Compensation for Services. No volunteer or other person, organization or agency shall request or receive any compensation for services of YVA Volunteers. No work station nor any member or cooperating organization of a sponsor, shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the sponsor or the YVA project for legitimate charitable purposes.

h. Volunteer Status. YVA volunteers are not considered employees while YVA volunteers, but their experience in volunteer work should be taken into account in the consideration of future applications for employment.

i. Nepotism. Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by the YVA Advisory Council and notification to ACTION.

III. YVA Project Advisory Council

1. Roles and Functions of Advisory Council

ACTION considers the Advisory Council to be an important and integral part of the YVA Volunteer Program. The Advisory Council is to advise and assist the project staff and sponsor in project planning, development, implementation, and monitoring as well as to provide assistance in developing local financial and in-kind resources.

The Advisory Council:

a. Is appointed by the sponsor within 30 days of the date of the grant award.

b. Should establish written by-laws and operating procedures.

c. Meets on a regularly scheduled basis (usually quarterly) and provides the YVA sponsor with copies of the minutes from each meeting.

d. Assists the sponsor by promoting community support for the project, particularly by providing ideas and contacts with regard to volunteer recruitment and volunteer stations.

e. Conducts an annual appraisal of project operations and submits a report to the sponsor. Areas of project operation to be appraised include volunteer stations and assignments, general project management, and the extent to which project goals and objectives are being met.

f. Develops and participates in recognition programs for YVA volunteers.

2. Composition of Advisory Council

a. Should be large enough to represent a cross section of the community and small enough to ensure its effectiveness as a working body.

b. Should include representatives of such groups as local government, business, labor, education, youth, religious, and service groups. The Advisory Council should include at least one YVA volunteer as a voting member. The sponsor's chief executive or designee, one member of its governing board, and the project director should be non-voting members, but not officers of the Advisory Council.

c. The YVA Advisory Council must be a separate body from the sponsor's Board of Directors.

d. A youth advisory council may be established to assist with recruitment and work station selections. Members from this group may be chosen to serve on the senior Advisory Council.

IV. YVA Project Staff

1. Relationship to Sponsoring Organization

a. Project staff are employees of the sponsor and are subject to its personnel policies and practices.

b. ACTION reserves the right to concur in writing with the sponsor's selection of any project director before such person is employed.

c. Hiring of project personnel must be in compliance with applicable federal, state and local government laws and ordinances.

2. Roles and Responsibilities

a. Project Director.

The sponsor delegates to a project director the day-to-day management of the project. The project director shall be knowledgeable about young people, their motivations and concerns, the community's problems, resources and leadership (both public and private). By his or her enthusiasm and creativity, the director will be the catalyst for the program. Advice and support of the Advisory Council are sought by the project director on program planning, major program issues and resource mobilization.

If there is cause for dismissal of a project director, the sponsor shall immediately notify ACTION, stating the reason(s) for the action. Provisions for temporarily continuing operations without a project director shall also be submitted to ACTION in writing.

The project director's duties include, but are not limited to:

(1) Assessing volunteer needs of the community;

(2) Selecting, training and supervising project staff;

(3) Selecting appropriate work assignments and volunteer stations;

(4) Recruiting, orienting, and placing YVA volunteers;

(5) Arranging for pre-service orientation, in-service instruction, and overall supervision of volunteers by volunteer stations;

(6) Maintaining required fiscal and program records and preparing reports and preserving records for submission to the grantee and to ACTION;

(7) Maintaining close coordination with volunteer stations and monitoring their use of volunteers, including orienting volunteer station supervisors to the YVA program;

(8) Developing active involvement with community organizations, school systems, youth and community service programs;

(9) Keeping YVA Advisory Council members informed and soliciting advice

on matters affecting project operation, as well as providing staff assistance to the Advisory Council;

(10) Providing advice and information to YVA volunteers;

(11) Assessing YVA volunteers and volunteer stations' performance;

(12) Attending training conferences conducted by ACTION.

3. Relationship to ACTION Staff

a. The ultimate responsibility for the national YVA program is housed in ACTION headquarters located in Washington, D.C. This office, in consultation with ACTION Regional and State offices, determines policies, goals, objectives and budgetary requirements for effective program operation and monitors progress toward achievement of national program goals and priorities. The national office allocates YVA resources among the Regions and ensures that ACTION field staff and sponsors adhere to YVA policies and procedures. Sponsors are responsible for implementation of the YVA project in their community. ACTION field staff has responsibility for assisting prospective sponsors in developing new projects, for monitoring, and for providing assistance to existing YVA sponsors, and for serving as project grant managers.

b. ACTION's Evaluation Division is responsible for developing an evaluation instrument to collect data, in order to provide a means for measuring the impact of volunteer activity on each area identified.

c. ACTION's Office of Communication, Washington, D.C., assists in national YVA publicity and recruitment of volunteers through development of brochures, posters, and public service radio and TV spots. Any recruitment or publicity materials developed by the YVA sponsor require prior approval from the YVA national Director. The State and Regional offices will also provide recruitment and assistance to YVA sponsors.

V. YVA Volunteers

Each volunteer will serve an average of eight (8) hours per month. Recruitment and placement of volunteers should begin within the first month of the grant award. Sponsors are expected to generate a minimum of 13,000 hours of volunteer service during the twelve month grant period; proof thereof will be an important factor in applications for renewal.

1. Eligibility

Enrollment as a YVA Volunteer is regarded as an honor and as an opportunity for youth to make significant contributions to their community.

Eligibility to be a YVA volunteer may not be denied on the basis of race, creed, color, national origin, sex, handicap or political affiliation.

YVA volunteers will not receive stipends.

YVA's may be reimbursed for reasonable travel expenses at the discretion of the project director within the limitation established by the travel line item in notice of grant award.

In order to be eligible for the YVA Program, volunteers must be:

a. Between the ages of 14 and 22.

b. Students, taking at least one course in secondary, secondary vocational or post-secondary school.

c. Reflective of high standards of personal conduct and willingness to accept supervision as required.

d. Willingness to serve on a regular basis for an average of eight (8) hours per month on the basis of an agreement drawn up between the sponsoring organization and volunteer station.

2. Recruitment and Selection of YVA Volunteers

a. Before YVA volunteers are recruited, a sponsor shall have a signed Memorandum of Understanding with a volunteer station. A variety of assignments shall be available to meet community needs.

b. Recruitment of eligible YVA volunteers is a project director responsibility. Recruitment assistance may come from the YVA sponsor, YVA Advisory Council, volunteer stations, or other volunteers.

c. Planning for YVA volunteer recruitment should include consideration of the following factors:

- Location and number of youth in the service area.
- Distance between the potential YVA volunteer and places of assignment.
- Modes and estimated costs of available public or private transportation.
- Number and types of schools in service area.

d. Potential YVA volunteers should be recruited through schools, youth organizations, places of worship and other ACTION volunteer programs. Notification about the project should also include adult groups to attract parental interest. The media—newspaper, radio, and television—should be alerted to the program. Every effort to provide broad exposure for YVA shall be made.

e. Assignments shall be matched to the interests, abilities, preferences and availability of volunteers. Assignments should provide opportunities for growth, learning through community service, or improvement for YVA volunteers and may be changed in response to the needs of the volunteers.

f. It is important that this program add to the number of young people in volunteer activity and not compete for support with existing volunteer organizations.

3. Orientation and Training of YVA Volunteers

The sponsor and volunteer station will provide pre-service orientation to all YVA volunteers as an introduction to their assignments. Projects have found that a combination of formal orientation and on-the-job experience with volunteer stations works well.

4. Advantages of Volunteer Service

A variety of personal advantages accrue to YVA volunteers. These include an opportunity to think through career choices, gain learning experiences about various professions, or occupations and gather information about public, private and social organizations.

5. Termination and Separation of Volunteer Service

The project staff and volunteer stations should be alert to problems which may lead to assignment terminations. If the assignment is unsatisfactory, there should be a termination between the volunteer and the station.

If a volunteer fails to serve the required minimum number of hours of service because of reasons within the volunteer's control, that individual should be considered inactive. However, termination should not occur for one or two infractions. A volunteer should be given counseling and a written warning that continued failure to serve the required number of hours could result in termination.

If the volunteer is prevented from serving because an assignment concludes or the station fails to provide a suitable assignment, efforts should be made to transfer the volunteer, rather than immediately terminate him or her. If a transfer is unavailable, termination from the YVA program should follow.

Terms of removal should be stated in the Memorandum of Understanding.

6. Procedures for Appealing Termination and Separation of Volunteer Service

Sponsors must in conjunction with the Advisory Council establish a procedure that allows the volunteer an opportunity

to appeal any adverse actions—reprimands, suspensions, termination, or separation.

7. Parental Consent

Writte parental consent for participation in the program must be obtained from parents of volunteers age 16 or under.

VI. Volunteer Stations

All YVA volunteers are recruited for and placed with or through volunteer stations. A volunteer station is a public agency or private nonprofit organization that accepts the responsibility for assignment and supervision of volunteers. A list of all volunteer stations must be submitted for initial prior review to the ACTION State Director.

1. Roles and Responsibilities

Responsibilities of YVA volunteer stations are to:

a. Develop written and mutually signed individualized volunteer assignment agreements with each YVA covering the terms of his/her service.

b. Provide volunteers with orientation, in-service training, and supervision as necessary.

c. In conjunction with the project director, provide or help to arrange for volunteer transportation as necessary.

d. Keep records and prepare reports as required by the sponsor.

e. Prior to placement of volunteers, sign a Memorandum of Understanding with the sponsor, establishing working relationships and mutual responsibilities and provide for administrative support necessary for volunteers to perform assignments.

f. Assist in appropriate volunteer recognition events.

g. Assist in the recruitment of volunteers.

2. Volunteer Assignments

a. Several assignments are to be developed prior to the recruitment of initial YVA volunteers. Consideration should be given to possible interests, abilities, preferences, and availability of volunteers with opportunities for meaningful community service. As the need for more work stations arises, new ones can be identified.

b. Assignments and terms of service, including service hours, should reflect individual YVA volunteer preference. Project and volunteer station staff should assure that a range of service opportunities is available to provide a choice.

3. Orientation of Volunteer Station Supervisors

Orientation of volunteer station supervisors may vary among projects. However, characteristics of orientation include, but are not limited to:

a. Obligations of volunteer station to the sponsoring organization and project.

b. YVA program goals and objectives.

c. Guidance on working with young volunteers.

d. Advantages to volunteers.

e. Selection of appropriate volunteer assignments.

f. Supervision of volunteers.

g. Motivation, incentives, and recognition of volunteers.

h. Evaluating volunteer service.

4. Memorandum of Understanding

A Memorandum of Understanding (M/U) is signed by the administrator of a volunteer station and the YVA sponsor, identifying working relationships and mutual responsibilities. It includes special conditions applicable to the volunteer station and the YVA project. Revisions may be made by mutual agreement of the parties at any time. See Appendix for M/U that should be used. Revisions from this standard M/U must receive the approval of the ACTION State Director.

VII. Project Management

Sponsors shall manage grants awarded to them in accordance with ACTION Handbook 2650.2 entitled *Grants Management Handbook for Grantees* and the provisions of this Handbook. A copy of 2650.2 will be furnished the sponsor at the time the intitial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

1. Local Support and Contributions

The YVA sponsor is responsible for generating a minimum of 10% of the federal cost from local, non-federal sources in cash or in-kind contributions. For example, if ACTION provides $20,000, the sponsor must provide $2,000, which equals a total project cost of $22,000.

The YVA sponsor will supplement the ACTION grant with local support to the fullest extent possible. Ten percent of the total federal costs can be identified as cash or in-kind contributions such as office space, office equipment, vehicles, printing supplies or services. The need for additional funds will be dependent on the design of individual projects. Soliciting of additional medns of support will broaden the program.

2. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in Handbook 2650.2, and with the following quarterly program report items:

a. A comparison of actual accomplishments with the goals established for the period.

b. The number of volunteers actively participating in the program during the quarter by volunteer station and activity.

c. Number of volunteer hours generated during the quarter.

d. Reasons why established goals were not met.

e. A listing of volunteer training events during the quarter.

f. Participation and activities of the Advisory Council.

g. Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives.

h. Listing of recognition events held during quarter.

The quarterly report shall be submitted to the ACTION State Director no later than 30 days after the end of each program quarter. The State Director will forward a copy to the YVA Director.

(In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.)

3. Insurance

Upon assignment YVA Volunteers must be provided with ACTION specified minimum levels of accident, and personal liability insurance. Excess automobile liability insurance is an *optional* coverage for volunteers. (Refer to Appendix for details.)

4. Transportation

a. Many YVA volunteers will not own, or have access to cars or may prefer not to drive. Projects must ensure that all volunteers are afforded an opportunity to participate in the program through the development of other arrangements and modes of transportation as necessary. Sponsors should attempt to structure assignments to minimize transportation expenses and requirements.

b. When transportation is not provided, volunteers may be reimbursed for actual costs within the limitation prescribed by the local project, ACTION transportation policies, and the availability of funds. Transportation reimbursement should be provided on the basis of need, at the discretion of the project director.

VIII. Community Relations

1. Public Awareness

A strong community relations program ensures public awareness of start-up activities and continuing project development. It is essential for the successful recruiting of volunteers and for the recognition of volunteers' good work. Both the project sponsor and the project director should inform all sectors of the community, city and county officials, and the media about development, growth and the success of the project.

a. Public awareness of the nationwide program and of the local project should be promoted regularly through local media. Systematic contacts with newspapers, radio and TV should be established and maintained. Announcments of local news value should be prepared and forwarded to the media.

b. Public awareness can be advanced through public speaking appearances before service clubs, youth organizations, church groups and meetings with local, county and state governmental units.

c. Active YVA Advisory Council support enhances community interest in project acitivities. Some Advisory Councils have formed community relations committees which assist the project in coordinating and speaking about YVA volunteers before organizations they represent.

2. Volunteer Recognition

There are many possible ways to give recognition to volutneers, such as at least annually to plan and arrange for formal public recognition of YVA volunteers for their service to the community. Projects are also authorized to provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

IX. Appendix

Insurance

YVA volunteers must be provided with the ACTION specified minimum levels of accident and personal liability insurance. Excess automobile liability insurance is an *optional* coverage for volunteers.

1. Accident Insurance

Protection shall be provided against claims in excess of that provided by other insurance. This covers the volunteer for personal injury arising from volunteer activities. The insurance applies where the volunteer is participating in an activity sponsored by YVA. The sponsor shall provide YVA volunteers with the following insurance coverage:

a. Minimum coverage of $20,000 for accidental medical expenses;

b. For eyeglasses, a benefit of $25.00 for repair or replacement of damaged frames and $25.00 for replacement of broken eyeglasses lenses or contact lenses;

c. A benefit of $500.00 for injury to teeth and repair of dentures;

d. $1,000 for accidental death or desmemberment.

2. Personal Liability Insurance

Protection shall be provided against claims in excess of protection provided by other insurance. The sponsor shall provide third party protection for volunteers against injury or property damage claims arising out or their volunteer service activities.

Notes.—Personal liability insurance does not include, nor is it a substitute for, malpracatice insurance which some volunteer stations need for their professional staff and for some volunteers who assist profesionals. The amount of protection shall be $1,000,000 for each occurrence o:f personal injury or property damage and shall be in excess of any other valid and collectible insurance.

3. Excess Automobile Liability Insurance

This is optional insurance coverage. To avoid a gap in coverage between that provided by the YVA volunteer's personal vehicle insurance and claims in excess of that coverage, the sponsor has the option of providing Excess Automobile Liability Insurance coverage to a minimum numer of volunteers of not less than $500,000 per accident for bodily injury and/or property damage for volunteers carrying out project assignments.

Other

1. Automobile Liability Insurance

The sponsor shall have adequate automobile insurance coverage for vehicles used by the project whether sponsor owned, privately owned, or leased. This shall include liability insurance with minimum limits of $100,000 each person and $300,000 each occurrence for bodily injury, and $50,000 each occurrence for property damage or, if a single limit policy is isued, $300,000 each accident. Cost of liability insurance to the project must be prorated where applicable to reflect percentage of time each vehicle is actually used by the project. The insurance may be obtained from any reputable source.

2. Liability Insurance on Personal Vehicles of Volunteers

This insurance is a personal expense of the volunteer. YVA volunteers who use their personal vehicles to drive from home to their place of assignment or in connection with project-related activites must keep their automobile liability insurance in effect for their own protection.

Memorandum of Understanding between

_____

Sponsoring Organization Name
Address _____
Telephone ( ) _____
Project Director/Coodinator:

_____

_____

Volunteer Station Name
Address _____
Telephone ( ) _____
Volunteer Station
Coordinator name _____
Telephone ( ) _____
Number of volunteers requested _____
Telephone ( ) _____

This Memorandum identifies the responsibilities of the Young Volunteers in ACTION (YVA) sponsoring organization and the Volunteer Station to which YVA volunteers will be assigned. Volunteer stations are required to conform to YVA program guidelines, and federal laws.

I. The volunteer Station will:

a. Assist the sponsoring organization in the development and monitoring of volunter assignments.

b. Provide the project director with a list of planned volunteer assignments.

c. Interview each YVA volunteer before placement.

d. Keep a record of YVA volunteer hours and report them to the sponsoring organization as required.

e. Provide on-the-job training and supervision to all volunteers assigned.

f. Confer regularly with the sponsoring organization to assess the program and needs of the program.

g. Designate a coordinator to serve as liaison with the sponsoring organization.

h. Have the right to request the sponsor to remove a volunteer from the work station assignment.

II. The Sponsoring Organization will:

a. Recruit, interview, select and enroll volunteers in the project.

b. Develop volunteer assignments, orientation, training and other project related activities with assistance from the volunteer station.

c. Refer volunteers to the volunteer station for placement upon review and acceptance of volunteer assignment.

d. Furnish adequate accident and liability insurance coverages as required by the YVA Guidelines.

e. Retain full responsibility for the management and fiscal control of the project.

f. Regularly monitor project activities at the volunteer station to assess and/or discuss the needs of volunteers, and the project.

g. Provide YVA orientation to volunteer station supervisors.

h. Review any changes in volunteer assignments.

III. Other:

a. Volunteer Transportation:

Will/will not be provided by the YVA volunteers.

Will/will not be provided by the volunteer station.

Will/will not be reimbursed by the sponsoring organization.

b. Separation from Volunteer Service:

The volunteer station may request the removal of a volunteer at any time. The sponsoring organization may recall a volunteer at any time. A volunteer may resign from service to a volunteer station or from the program at any time. (Terms of removal from service must be stated).

c. Restricted Activities:

The sponsoring organization and the volunteer station will not request, assign or permit volunteers to conduct or engage in religious, sectarian or political activity or instruction, or other restricted activities as stated in the YVA Guidelines.

d. Displacement of Employees:

The sponsoring organization and volunteer station will not assign volunteers to any assignment which would displace employed workers or impair existing contracts for services.

e. Prohibition of Discrimination:

The sponsoring organization and volunteer station will actively comply with provisions of Title VI of the Civil Rights Act of 1964.

f. Amendments:

This Memorandum of Understanding may be amended at any time in writing by concurrence of both parties.

Sponsoring Organization
By _____
(signature)
Title _____
Address _____
Date _____
Volunteer Station
_____
(signature)
Title _____
Address _____
Date _____

(42 U.S.C. 4974; 5042(14))

Dated in Washington, D.C. on April 20, 1982.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 82-13781 Filed 5-19-82; 8:45 am]

BILLING CODE 6050-01-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Public Access and Information; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-163), notice is hereby given of a meeting of the Committee on Public Access and Information of the Administrative Conference of the United States, scheduled to be held at 9:30 a.m., Friday, May 21, 1982, in the Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, D.C.

The Committee will meet to discuss further the scope and substance of comments by the Committee on a proposed recommendation of the ACUS Committee on Regulation of Business regarding treatment of confidential business information under the FOIA. Specifically to be discussed are areas of disagreement with the Committee on Regulation of Business' revised recommendation.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers (202-254-7065). Minutes of the Committee meetings will be available on request.

Richard K. Berg,

General Counsel.

May 17, 1982.

[FR Doc. 82-13780 Filed 5-19-82; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Monday, June 21, 1982, at 10:00 a.m. at the Lion's Hall, 311 Church Street, Bayfield, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of effects of the Draft San Juan National Forest Land and Resource Plan on allotment management plans and utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend and participate should notify H. E. Bond, San Juan National Forest (303-247-4874) prior to the meeting. The public may participate in discussions during the meeting or may file a written statement following the meeting.

P. C. Sweetland,

Forest Supervisor.

May 11, 1982.

[FR Doc. 82-13699 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 10, 1982, at the Connecticut Education Association Building, 21 Oak Street, Second Floor, Hartford, Connecticut, 06106. The purpose of this meeting will be to review the current projects and discuss future program activities with the newly rechartered Committee.

Persons desiring additional information should contact the Chairperson, Richard Brown, 151 Farmington Avenue, Hartford, Connecticut, 06156, (203) 275-6369 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13774 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 2:00 p.m. on June 4, 1982, at the JCK Federal Building, 230 South Dearborn Street, in Room 3280, Chicago, Illinois, 60604. The purpose of this meeting will be a staff report on the status of the housing project and the Special Education Handbook.

Persons desiring additional information should contact the Chairperson, Thomas J. Pugh, 500 West Melbourne Avenue, Peoria, Illinois, 61604, (309) 686–3121 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–13775 Filed 5–19–82; 8:45 am]

BILLING CODE 6335–01–M

Indiana Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 7, 1982, at the Board of Public Works, County and City Building, 227 West Jefferson Boulevard, on the 13th Floor, South Bend, Indiana, 46601. The purpose of this meeting will be to discuss the status of the Housing Discrimination Study in Indiana, current and future projects, and a subcommittee report on new federalism.

Persons desiring additional information should contact the Acting Chairperson, Lotte Meyerson, 650 North Tippecanoe Street, Gary, Indiana, 46403, (219) 938–1933 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–13776 Filed 5–19–82; 8:45 am]

BILLING CODE 6335–01–M

Maine Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m., on June 24, 1982, at the University of Southern Maine, Luther Bonney Building, 96 Falmouth Road, in Room 208, Portland, Maine 04106. The purpose of this meeting is to discuss the Legal Services Corporation and access to the legal system, program plans for Committee projects and activities for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Lois G. Reckitt, 38 Myrtle Avenue, South Portland, Maine 05106, (207) 775–1415 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–13777 Filed 5–19–82; 8:45 am]

BILLING CODE 6335–01–M

Minnesota Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee will convene at 7:00 p.m. and will end at 9:00 p.m., on June 25, 1982, at the Radisson Downtown Duluth Hotel, 505 West Superior Street, Duluth, Minnesota 55802. The purpose of this meeting will be to report on the Duluth desegregation plan; discuss police training in the Minnesota college system and a new short term project; and introduce and orient the new members of the Committee.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Lupe Lopez, 2105 Stillwater, White Bear Lake, Minnesota 55101, (612) 227–8954 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–13778 Filed 5–19–82; 8:45 am]

BILLING CODE 6335–01–M

Rhode Island Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 3:30 p.m., on June 14, 1982, at the Gilbane Construction Company, Seven Jackson Walkway, in Room number 3, Providence, Rhode Island 02903. The purpose of this meeting is to conduct a subcommittee discussion on affirmative action in the State of Rhode Island.

Persons desiring additional information or planning a presentation to the Committee, should contract the Chairperson, Dorothy D. Zimmering, 12 Chapin Road, Barrington, Rhode Island 02806, (401) 245–3515 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–13779 Filed 5–19–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before June 9, 1982.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81–00153. Applicant: University of Utah, Salt Lake City, UT 84112. Article: Nanosecond Excitation Lamp. Manufacturer: Photochemical Research Associates, Canada. Intended use of article: The article is intended to be used for the investigation of the static

and dynamic nature of the solute orienting mechanism in uniaxial media, in particular, stretched polyethylene. Another investigation will determine whether biaxial solute orientation could be achieved using "single crystal texture" polyethylene as a substrate. Specific aims of these investigations are:

(1) Characterize the static aspects of the anisotropic global orientation distribution of several selected aromatic solutes by determining all five of its second and fourth moments, using relatively broad-band excitation of fluorescence (bandwith ca. 10A°).

(2) Characterize the anisotropic molecular rotation of the solutes as a function of temperature by means of time-resolved fluorescence polarization and dielectric as well as mechanical relaxation measurements.

(3) Explore the potential of vibrational spectroscopy (IR, Raman) for measurements on solutes in stretched sheets.

(4) Explore the potential of stretched sheet-photoacoustic spectroscopy combination.

(5) Investigate the potential of "single crystal texture" polyethylene as a substrate.

(6) Determine the location of solute relative to polymer morphology.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00154. Applicant: University of Wisconsin, Hospital and Clinics, 600 Highland Avenue, Madison, WI 53792. Article: Automated Ultrasonic Body Imager. Manufacturer: Ausonics Pty., Ltd., Australia. Intended use of article: The article is intended to be used for clinical and scientific research in the field of human ultrasonic diagnosis. The precise reproductibility of scan planes and scanning geometry permits computer-based ultrasound data acquisition and development of a reconstructive allegro rhytm for human soft tissue imaging and tissue signature research. In addition, the extra ordinarily wide field of view of this instrument permits large image reconstruction of body parts for precise organ volume calculation. The water path feature of the article is ideal for imaging certain organs not well studied by contact B-scanning techniques. The article will also be utilized in extensive educational programs of both physicians and technologists in which trainees from multiple disciplines are exposed to the state of the art of imaging capabilities of various instrumentation types. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00155. Applicant: North Carolina State Unviserstty, Purchasing Deparment, Box 5035, Raleigh, NC 27650. Article: Impulse Generators. Manufacturer: Avtech Electro-Systems Ltd., Canada. Intended use of article: The articles are intended to be used to generate ultra short optical pulses from semiconductor laser. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00156. Applicant: University of Wisconsin, School of Veterinary Medicine, 333 North Randall Avenue, Madison, WI 53715. Article: Electron Microscope, Modal EM 410 and Accesseries. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article is intended to be used for studies of biological materials or infective agents of significance to the study of the biology and health of domesticated animals, primiarly animals of economic significance in American animal agriculture. The article will allow veterinary scientists to study the ultrastructural morphology of animal cells and tissues in health and in disease and thereby increase understanding of the disease process. Experiments to be conducted will include the following:

(1) Documenting that each normal articular chrondrocyte has 1 cilium and that each cilium is highly oriented in 3-dimensional space.

(2) Study of the cells of the growth plate in growing swine and to compare the ultrastructure of cells in the growth plate of domestic swine in similar cells in miniature swine.

(3) Focuses on the cells of the growth plate and particularly some amorphous electron dense material surrounding the hypertrophying cells in the growth plate, and

(4) Characterization of retinal terminals of the superficial and intermediate layers of the superior colliculus and retinal terminals within the intralaminar zones of the dorsal lateral geniculate.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00157. Applicant: Sandia National Laboratories, Albuquerque, New Mexcio 87185. Article: Dye Laser, Model FL 2000 with FL-43 Pump System. Manufacturer: Lambda Physik GmbH & Co., West Germany. Intended use of article: The article will be used to study kinetic processes in explosions and the products of shock dissociation of explosive and high energy materials. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00158. Applicant: University of Georgia, Central Electron Microscopy Lab., Barrow Hall, Athens, Georgia 30602. Article: Electron Microscope, Model EM 400 with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article is intended to be used to study ultrastructual features of microbiological organisms and a wide variety of plant and animal tissues. Most tissues will subjected to fixation, embedment, ultrathin sectioning and staining. Some specimens will be exmained by freeze etch replication and others by negative staining. Geological specimens will be prepared by dispersing fine particles onto thin plastic or carbon support films and examining them in the transmission electron microscope. The article will also be used in the courses Biology 701, Theory of Electron Microscopy and Biology 703, Electron Microscopy Laboratory to train graduate students and some technicians in techniques of electron microscopy sufficient to enable them to understand and to professionally perform all aspects of electron microscopy, including tissue preparation, operation of the microscope and interpretation of the scientific data revealed by the electron micrographs and the analytical data obtained from energy dispersive X-ray analysis. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00159. Applicant: Northwestern University/Medical School, Department of Cell Biology and Anatomy, 303 East Chicago Ave.—Ward 7-315, Chicago, IL 60611. Article: Electron Microscope, Model JEM 100CX/ SEG and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used for studies of the molecular architecture of tissues, cells, and isolated molecules obtained as part of the experimental data derived from biomedical research projects. The experiments to be conducted will revolve around determining structural alterations in cells during different physiological activities. Ultimately it is hoped that new light will be shed on the function of cells and their organelles in both normal and diseased cells. The article will also be used for the instruction of graduate students, postdocutoral fellows, medical students and dental students. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00160. Applicant: Helen Haynes Hospital, Route 9W, West Haverstraw, NY 10993. Article: Electron Microscope, Model JEM 1200 EX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies on the ultrastructure and chemical

composition (using x-ray microanalysis) of bone. These experiments will include:

Morphlogical and microanalytical studies on the process of bone mineralization and of mineralization disorders, e.g. anticonvulsant-induced osteomalacia in children.

Studies on the response of bone cells and matrix to novel treatments for a variety of bone disorders, such as Paget's disease and osteoporosis.

Studies on the interaction between prosthetic devices and bone tissue.

Studies on the localization and function of trace elements in bone.

Studies on the origin and fate of bone cells, using tritium labeled amino acids.

Cytochemical studies on bones formation and resorption.

The article will also be used in the training of graduate students requiring fine structural work in their masters and doctoral thesis research. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00161. Applicant: University of Medicine and Dentistry of N.J., N.J. School of Osteopathic Medicine, 300 Broadway, Camden, New Jersey 08103. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in a wide variety of experiments in support of studies in anatomy, endocrinology, biochemistry, physiology, pharmacology, pathology, microbiology, immunology, cell biology, medicine, and surgery (and their subspecialties). The materials to be studied will include human and laboratory animal tissues, fluids, and secretions obtained from studies of man and laboratory animals in health and disease. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00162. Applicant: University of Michigan, Department of Naval Architecture & Marine Engineering, N.A.M.E. Building, Ann Arbor, MI 48109. Article: Propeller Dynamometer R45. Manufacturer: Kempf & Remmers GmbH, West Germany. Intended use of article: The article is intended to be used to measure torque and thrust charcteristics of model propellers in open water. The article is also intended to be used to teach fundamental hydrodynamics to students of Naval Architecture. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00163. Applicant: University of Hawaii at Manoa, Procurement and Property Management Office, Bachman Hall Annex No. 3, 2444 Dole Street, Honolulu, Hawaii 96822. Article: Ship Motion Meter. Manufacturer: Osaka Design Model Kabushiki, Kaisha, Japan. Intended use of article: The article will be used in the laboratory by Ocean Engineering students in their studies of harbor and offshore engineering for the measurement of motions of ships and platforms. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00164. Applicant: Stanford University, Procurement Department, AEL-109, Stanford, CA 94305. Article: Infrared Gas Analyzer. Manufacturer: Binos, West Germany. Intended use of article: The article is intended to be used for the measurement of photosynthesis and transpiration of plants. The gaseous state of water vapor and CO_2 will be studied. Experiments will be conducted to determine the effects of temperature, light and humidity on photosynthesis and transpiration. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00165. Applicant: University of Utah Medical Center, Department of Surgery, 50 No. Medical Drive, Salt Lake City, Utah 84132. Article: Neodymium YAG Surgical Laser. Manufacturer: M.B.B.-A.T. G.M.B.H, West Germany. Intended use of article: The article is intended to be used in a research process to control bleeding, especially from the gastrointestinal tract and obliteration of tumors of the gastrointestinal tract. The absorption of the mucosa of the stomach and gastrointestinal tract by the article and depth of penetration is to be investigated. Several experiments are to be utilized using chronic and acute specimens of the gastrointestinal tract subjected to Neodymium YAG irradiation measuring the ability to control bleeding and depth of penetration into the muscularis and serosa by laser. The objectives pursued are those of developing a safe, reliable technique for hemostasis and tissue obliteration of the gastrointestinal tract by endoscopic means. The article will also be used in the course Surgical Gastroenterology. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00166. National Radio Astronomy Observatory, 2010 N. Forbes Blvd., Suite 100, Tucson, AZ 85745. Article: Repair of Klystron VRB21130A40, SN 0803G8. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00167. Applicant: Louisiana State University Medical Center, Biochemistry Dept., Medical Education Building, 1901 Perdido Street, New Orleans, LA 70112. Article: Custom Synthesis of Air Incubator for Tissue Culture Observation on Nikon Microscope Stage. Manufacturer: A. A. Rafflen Science Workshops, Carleton University, Canada. Intended use of article: The article is intended to be used for the study of growth, division, movement, etc. of heart cells in long-term culture, using a phase contrast microscope. Experiments will be conducted to determine the effects of drugs, gases, and other cell types on heart cells. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00168. Applicant: Massachusetts Institute of Technology, Department of Ocean Engineering, Room 1-207, Cambridge, MA 02139. Article: Elements of a Cavitation Susceptibility Meter. Manufacturer: Delft Hydraulics Laboratory, The Netherlands. Intended use of article: The article is intended to be used for studies of sources of hull vibration induced by propeller cavitation sponsored by the U.S. Maritime Administration. The properties of the phenomena being investigated are cavity volume velocity, water temperature, density, pressure, velocity, viscosity, total gas content, free gas content, bubble concentration, bubble size distribution, and cavitation susceptibility. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00169. Applicant: Memorial Medical Center, 800 North Rutledge, Springfield, IL 62781. Article: Electron Microscope, Model H-600-3. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article is intended to be used for the study of the ultrastructural pathology of glomeruli, skeletal muscles, peripheral nerves and malignant and benign tumors. In addition, the article will be used for the training of Pathology residents, medical students and technicians. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00170. Applicant: Department of the Army, Tripler Army Medical Center, Department of Pathology, Honolulu, Hawaii 96859. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for the examination of specimens of human biological material (biopsies and surgical tissue specimens).

Experiments to be conducted will consist of ultrastructural examination of tissue demonstrating a variety of diseases by transmission electron microscopy. Fine details of disease processes will be photographed and these photographs will become permanent records for teaching, diagnosis and research. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00171. Applicant: Central State University, 100 University, Edmond, Oklahoma 73034. Article: Period Meter. Manufacturer: Science Workshop—Carleton University, Canada. Intended use of article: The article is intended to be used for detection of bat ultrasonic cries in a descriptive study to determine foraging areas and times of various bat species in Oklahoma. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00172. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, NY 14853. Article: Excimer Laser Model TE-861M-2 with 505FX and 503RX Quartz Optics and Dye Laser. Manufacturer: Lumonics Research, Ltd., Canada. Intended use of article: The article is intended to be used to investigate the storage and transfer of energy in gaseous materials. Of special interest here will be the elucidation of mechanisms leading to the formation and destruction of electronically excited species in the gas phase. Special emphasis will be placed on the oxygen/iodine system currently being exploited for use as a chemical laser as well as other potential candidates for optical gain. These include metal vapor/rare gas mixtures and complexes of volatile lanthanides. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00174. Applicant: U.S. Department of Energy, Laramie Energy Technology Center, P.O. Box 3395, Laramie, WY 82071. Article: Model MMZAB1F Ultra High Resolution Mass Spectrometer with Accessories. Manufacturer: VG Instruments, United Kingdom. Intended use of article: The article is intended to be used in the study and characterization of fuel and waste materials produced from alternative fossil fuel sources—oil shale, tar sands, and coal products. The makeup of these materials consists of a complex mixture of many different types of chemical compounds. The material have a very broad range of chemical and physical properties. The primary application of the article will be towards analyzing the above materials under ultra-high resolution conditions, for the types and amounts of compounds present. Undergraduate and graduate students will have the opportunity to use this instrumentation as part of their training when they work at the Laramie Energy Technology Center as Associated Western Universities fellowship recipients. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00175. Applicant: The University of Chicago, 950 East 59th Street, Chicago, Illinois 60637. Article: Electron Microscope, Model H-600-2 and Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article will be used to perform ultrastructural studies on plasma membranes and gap junctions isolated from rat and rabbit hearts and prepared for electron microscopy by three methods: thin sectioning, negative staining, or freeze fracture. The purpose of these studies is to determine the changes produced in the internal structure of the membranes by experimental conditions that alter membrane permeability or ion transport. Immunelectron microscopy using ferritin-labeled primary or secondary antibodies against membrane proteins will be used to trace the assembly and degradation of these proteins. Changes in structure will be measured where appropriate by optical diffraction of the electron microscopic negatives and image reconstruction techniques will be applied to maximize the information obtained from optical diffraction of gap functional membrane channel arrays. Graduate students and post-doctoral fellows participate in this research and thereby receive training in the use of this electron microscope for investigating the cell biology of heart muscle and its diseases. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00177. Applicant: Calhoon MEBA Engineering School, 9 Light Street, Baltimore, MD 21202. Article: Self Cleaning Purifier with Accessories. Manufacturer: Alpha-Laval, Sweden. Intended use of article: The article is intended to be used in diesel engineering training conducted on two levels—licensed engineers diesel course and an apprentice diesel course. In addition to presenting general diesel engineering principles, both courses deal extensively with the associated fuel systems. Particular emphasis is placed on the handling and treatment of heavy residual fuels currently being burned in large low speed propulsion diesels. Application received by Commissioner of Customs: April 19, 1982.

Docket No. 82-00178. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Monochromator Crystals. Manufacturer: Cristal Tec, France. Intended use of article: The article is intended to be used in a research program involving the study of the properties of solids using neutrons from the Brookhaven High Flux Beam Reactor. The neutrons emerge from the pile with a smooth distribution of energies, neutrons of a single energy may be selected from the pile spectrum and then used in study of the properties of solids. Application received by Commissioner of Customs: April 19, 1982.

Docket No. 82-00179. Applicant: Brigham Young University, Department of Chemistry, 226 ESC, Provo, UT 84062. Article: Kelvin AC Double Bridge & Automatic Switch Unit. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is an essential component in a system being designed to make precision adiabatic heat capacity measurements. This article will be used to measure very accurately the resistance and thence, the temperature of a platinum resistance thermometer. The temperature changes caused by the input of a known amount of electrical energy will be determined and used to calculate the heat capacity. The temperature and changes in temperature are two of the most important quantities in this research and must be determined as accurately and with the highest precision possible. The article will be used by graduate students conducting thermodynamic research for their dissertations etc., and by undergraduate students working in the reseach group. Application received by Commissioner of Customs: April 19, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13744 Filed 5-19-82 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Circular Dichroism Spectrophotometers

The following is a consolidated decision on applications for duty-free entry of circular dichroism spectrophotometers pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as

amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00367. Applicant: University of California, Berkeley, Department of Chemistry, 529 Latimer Hall, Berkeley, CA 94720. Article: Circular Dichroism Spectrophotometer, Model J-500-C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: See Notice on page 49280 in the Federal Register of October 1, 1981. Advice submitted by: National Bureau of Standards—March 15, 1982 and Department of Health and Human Services—December 16, 1981.

Docket No. 82-00028. Applicant: Stanford University, Stanford, CA 94305. Article: Circular Dichroism Spectrophotometer, J-500C and Attachment. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: See Notice on page 60044 in the Federal Register of December 8, 1981. Advice submitted by: National Bureau of Standards—March 18, 1982 and Department of Health and Human Services—March 17, 1982.

Comments: No comments have been received with respect to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: Each foreign article to which the foregoing applications relate provides circular dichroism measurement and high frequency switching. The Department of Health and Human Services, and the National Bureau of Standards advise in their respectively cited memorandums that (1) the capabilities of the foreign articles, described above are pertinent to the purposes for which each article is intended to be used and (2) they know of no domestic instrument or apparatus of equivalent scientific value to either of the foreign articles for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to either of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13743 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Cornell University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00387. Applicant: Cornell University, Department of Agricultural Engineering, 218 Riley-Robb Hall, Ithaca, New York 14853. Article: Falling Weight Deflectometer. Manufacturer: A/S Dynatest Engineering, Denmark. Intended use of article: See Notice on page 51629 in the Federal Register of October 21, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purpose as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article can generate a variable amplitude (500 to 12,000 pounds) pulse load of approximately 28 milliseconds duration. The National Bureau of Standards advises in its memorandum dated April 13, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13744 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Paris Processing Corporation, 543 West 43rd Street, New York, New York 10036, producer of women's coats and jackets (accepted April 28, 1982); (2) Colorado Forge Corporation, 327 West Vermijo, Colorado Springs, Colorado 80903, producer of "C" clamps and other forgings (accepted April 28, 1982); (3) The Egging Company, 1000 Egging Boulevard, Gurley, Nebraska 69141, producer of tractor cabs and agricultural equipment (accepted April 28, 1982); (4) Strydes, Inc., 969 South Village Oaks Drive, Covina, California 91724, producer of women's jackets, pants and skirts (accepted April 29, 1982); (5) F.K. & K., Inc., 1236 E. Joppa Road, Towson, Maryland 21204, producer of skateboards and sports protective equipment (accepted May 3, 1982); (6) MXR Innovations, Inc., 740 Driving Park Avenue, Rochester, New York 14613, producer of sound equipment (accepted May 4, 1982); (7) Essex Plastics Finishing Company, Inc., 135 Tonawanda Street, Buffalo, New York 14207, producer of plastic containers, tables, bushings, and other products (accepted May 6, 1982); (8) Carus Corporation, 1500 Eighth Street, LaSalle, Illinois 61301, producer of chemicals, magazines and books (accepted May 5, 1982); (9) William Atkin Company, Inc., 350 Fifth Avenue, New York, New York 10118, producer of men's shirts (accepted May 7, 1982); (10) The Glass Crafters, Ltd., P.O. Box 304, Lebanon, New Jersey 08833, producer of lighting fixtures (accepted May 7, 1982); (11) Aetna Shirt Corporation, 8801 Kelso Drive, Baltimore, Maryland 21221, producer of men's shirts and women's blouses and dresses (accepted May 10, 1982); (12) K.W.B. Manufacturing Company, 1801 South Main Street, Los Angeles, California 90015, producer of uniforms and linens (accepted May 10, 1982); (13) Kommit Industries, Inc., 1114 N.E. 28th Avenue, Portland, Oregon 97232, producer of coolers, freezers and store fixtures (accepted May 10, 1982); (14) King Laboratories, Inc., 127 Solar Street, Syracuse, New York 13204, producer of electronic components

(accepted May 11, 1982); and (15) Frank Maddocks, Inc., 10933 Camarillo Street, North Hollywood, California 91602, producer of display and exhibit materials (accepted May 13, 1982).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 82-13745 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Pig Iron From Canada; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pig iron from Canada. The review covers the three known manufacturers and two known exporters of this merchandise to the United States presently covered by the finding and the period July 1, 1980 through June 30, 1981.

As a result of the review, the Department has preliminarily determined to assess dumping duties for certain firms equal to the calculated differences betweeen United States price and foreign market value on each of their shipments during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Betsy E. Stillman or David R. Chapman, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4633/2657).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1981 the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 39871–39872) the final results of its first administrative review of the antidumping finding on pig iron from Canada and announced its intent to conduct the next administrative review by the end of July, 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, currently classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA). This review covers the three known manufacturers and two known exporters of pig iron to the United States presently covered by the finding and the period July 1, 1980 through June 30, 1981.

One exporter did not ship pig iron to the United States during the period. The estimated duty deposit rate for this non-shipping firm shall be the most recent information for the firm.

One exporter, a new shipper, did not respond to our questionnaire. The rate for assessment and for deposit of estimated duties for this non-responsive firm not previously investigated shall be the highest rate calculated during the original fair value investigation, since it is higher than current rates for responding firms with shipments in the current period.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772(b) of the Tariff Act. Purchase price was calculated on the basis of the ex-mill price to an unrelated United States purchaser. Where applicable, deductions were made for freight equalization and commissions to unrelated parties. Freight equalization is a price adjustment that allows a manufacturer to sell at the same price to customers located at different distances from that manufacturer. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773(a) of the Tariff Act. Home market price was based on the ex-mill price and adjusted, where applicable, for freight equalization. In the case of Stelco, we used price list prices as the basis for foreign market value for certain months in the absence of sales in those months. These price lists were adhered to for sales in all other months. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Abex Industries, Limited	7/1/80–6/30/81	[1]0
Algoma Steel Corporation, Ltd	7/1/80–6/30/81	0
Dofasco Inc.	7/1/80–6/30/81	2.08
Stelco Inc.	7/1/80–6/30/81	0
Philipp Brothers (Canada), Ltd.	7/1/80–6/30/81	7.3

[1] No shipments during period.

Interested parties may submit written comments on these preliminary results on or before June 21, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first working day thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the time period involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement

instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the margins stated above shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53 of the Commerce Regulations (19 CFR 353.53)

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 14, 1982.

[FR Doc. 82-13790 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Solar Energy Research Institute; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00362. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Article: MBX, X-Ray Microanalysis System. Manufacturer: Cameca, France.

Intended use of article: See Notice on page 56855 in the Federal Register of August 28, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (December 31, 1979).

Reasons: The foreign article provides both cathode luminescence spectroscopy and selected area diffraction. The National Bureau of Standards advises in its memorandum dated March 30, 1982 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or appartus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13760 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Steel Wire Strand for Prestressed Concrete From Japan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers the 13 known manufacturers and exporters of this merchandise to the United States presently covered by the finding, generally for the period April 1, 1978 through November 30, 1980. This review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review the Department has preliminary determined to assess dumping duties for those firms equal to the calculated difference between United States price and foreign market value on each of their shipments during the period of review.

The Department also has tentatively determined to revoke the finding with respect to Sumitomo Electric Industries, Ltd. All of the firm's sales were made at not less than fair value during the period April 1, 1978 through December 31, 1980. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Philip Gallas or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4022/2923).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978, a dumping finding with respect to steel wire strand for prestressed concrete ("strand") from Japan was published in the Federal Register as Treasury Decision 78-457 (43 FR 57599). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antitdumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for admininstering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the Federal Register of March 28, 1980 (45 FR 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on steel wire strand for prestressed concrete from Japan. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

The imports covered by the review are shipments of steel wire strand, other than alloys steel, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under item 642.1120 of the Tariff Schedules of the United States Annotated (TSUSA).

This review covers the 13 known firms engaged in the manufacture or exportation of Japanese steel wire strand for prestressed concrete to the United States presently covered by the finding. One company, Kawatetsu Wire Products Co., Ltd., was discontinued during the original fair value investigation. In general, this review covers the period April 1, 1978 through November 30, 1980.

Sumitomo Electric Industries, Ltd. ("SEI") has requested a revocation of the finding with regard to its sales of strand. Our review indicates that all of the SEI's sales were made at not less than fair value during the period April 1, 1978 through December 31, 1980. As provided for by § 353.54(e) of the Commerce Regulations, SEI has agreed in writing to an immediate suspension of

liquidation and reinstatement of the finding if circumstances develop which indicate that strand manufactured by SEI and thereafter imported into the United States is being sold by SEI at less than fair value.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act.

Purchase price was based on the packed delivered price, either to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Where applicable, deductions were made for inland freight, F.O.B. charges, ocean freight, and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, or prices to a third country (Kuwait for the period April 1, 1978 through March 31, 1979, and Iraq for the period April 1, 1979 through November 30, 1980) when home market sales were insufficient, both as defined in section 773 of the Tariff Act or section 205 of the 1921 Act.

During our review, the petitioner alleged sales below the cost of production with respect to four of the Japanese manufacturers. Also during the review but prior to the submission of these allegations, the Department has requested and verified cost data from the two largest Japanese manufacturers of strand, Shinko and Sumitomo. Our analysis of this verified cost data had revealed sufficient sales above the cost of production to proceed on a sales price basis of comparison for these two firms. The Department has compared petitioner's allegations with the verified cost data and finds that no further cost of production investigation is warranted.

Where applicable, adjustments to foreign market value were made for inland freight, rebates, technical services, differences in interest costs, packing differentials, and differences in merchandise (differences in diameter, lead patenting, and billet grinding), in accordance with §§ 353.15 and 353.16 of the Commerce Regulations and §§ 153.10 and 153.11 of the Customs Service Regulations. No other adjustments were claimed or allowed.

In its fair value determination, the Department of the Treasury denied any adjustment for billet grinding. Billet grinding is a process employed in the production of strand for home consumption to assure compliance with Japanese standards, which process is not used on strand sold for export. In now allowing the adjustment, the Department has verified that billet grinding is part of the home market production process only, and that higher production costs are incurred in the home market than in the export market, thereby warranting adjustment.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Kokoku Steel Wire, Ltd./ all exporters.	4/1/78–3/31/79	0
	4/1/79–11/30/80	0
Shinko Wire Company, Ltd./all exporters.	4/1/78–3/31/79	0
Shinko Wire Company, Ltd./Mitsubishi Corporation/ Freyssinet International.	4/1/79–11/30/80	0
Shinko Wire Company, Ltd./all other exporters.	4/1/79–11/30/80	0
Sumitomo Electric Ind., Ltd./all exporters.	4/1/78–3/31/79	0
	4/1/79–12/31/80	0
Suzuki Metal Industry Co., Ltd./all exporters.	4/1/78–3/31/79	0
Suzuki Metal Industry Co., Ltd.	4/1/79–11/30/80	0
Suzuki Metal Industry Co., Ltd./Mitsubishi Corp.	4/1/79–12/31/79	0.29
	1/1/80–11/30/80	0
Suzuki Metal Industry Co., Ltd./Mitsui & Co., Ltd.	4/1/79–12/31/79	0.17
	1/1/80–11/30/80	0
Suzuki Metal Industry Co., Ltd./Nissho-Iwai Co., Ltd.	4/1/79–12/31/79	0.09
	1/1/80–11/30/80	0
Teikoku Sangyo Co., Ltd./all exporters.	4/1/78–3/31/79	0
Teikoku Sangyo Co., Ltd./Nissho-Iwai Co., Ltd.	4/1/79–11/30/80	0.10
Teikoku Sangyo Co., Ltd./all other exporters.	4/1/79–11/30/80	0
Toyko Rope Mfg. Co., Ltd.	4/1/78–3/31/79	0
	4/1/79–11/30/80	0
Toyko Rope Mfg. Co., Ltd./all exporters.	4/1/78–3/31/79	0
	4/1/79–11/30/80	0

Tentative Determination

Also as a result of our review, we tentatively determine to revoke the finding on steel wire strand for prestressed concrete from Japan with regard to Sumitomo Electric Industries, Ltd. If this revocation is made final it will apply to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results on or before June 21, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins above shall be required on all shipments of steel wire strand for prestressed concrete by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 12, 1982.

[FR Doc. 82-13739 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

University of Hawaii; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81–00216. Applicant: University of Hawaii, 2444 Dole Street,

Honolulu, Hawaii 96822. Article: Electron Spectrometer, ESCLAB 5. Manufacturer: VC Scientific Instruments, Ltd., United Kingdom. Intended use of article: See Notice on page 31465 in the Federal Register of June 16, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is equipped with a monochromatized AlKa X-ray source. The National Bureau of Standards advises in its memorandum dated April 5, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13741 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Land Remote Sensing Satellite Advisory Committee; Open Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Committee was established on August 12, 1981, to advise the Secretary of Commerce on management of the U.S. civil operational land remote sensing satellite program to be administered by NOAA beginning January 1983, and on proposals for transfer of the program to the private sector. Initial members were appointed April 27, 1982.

Time and Place: An open meeting will be held on June 7, 1982, from 1:00 to 4:00 p.m., and June 8, 1982, from 8:30 to 11:30 a.m., and 1:30 to 4:30 p.m. at Main Commerce Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, D.C. (Public entrance to the building is on 14th Street, between Constitution Avenue and E Street.)

Tentative Agenda

(1) Orientation for New Members on the U.S. Civil Operational Land Remote Sensing Program (first day).

(2) Discussion of Program Management Issues (second day, a.m.).

(a) Data Acquisition Plans and User Requirements.

(b) Data Distribution Plans, Pricing Structure, and the Market.

(3) Discussion of the Decisions of the Cabinet Council on Commerce and Trade and Steps leading to Commercialization (second day, p.m.)

Public Participation

The meeting will be open to public attendance, and approximately 60 seats will be available for the public, including 10 seats reserved for media representatives on a first-come, first-served basis.

The last 30 minutes of each half-day session will be set aside for comments from the floor. Written statements may be submitted by the public at any time before or after the meeting, and should be directed to Dr. John H. McElroy, Assistant Administrator for Satellites, NOAA, Washington, D.C. 20233.

Minutes of the meeting will be available for public reference after certification by the Committee Chairperson 30 days following the meeting.

FOR FURTHER INFORMATION:

Contact the Committee Control Officer, Ms. Jennifer Clapp at (301) 763-5904 or the Committee Staff Officer, Ms. Peggy Harwood, at (301) 763-7822. They are located in the Office of External Relations, National Earth Satellite Service, NOAA, (Sx3) Washington, D.C. 20233.

Dated: May 14, 1982.

Francis J. Balint,

Director, Office of Information and Management Services.

[FR Doc. 82-13704 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Radian Corp.; Grant of Limited Exclusive Patent License

Notice is hereby given that the National Technical Information Service (NTIS), U.S. Department of Commerce, granted to Radian Corporation a limited exclusive right in the United States and in certain foreign countries for the manufacture, use and sale of the products embodied in U.S. Patent Application No. 6-261,415 (dated May 7, 1981), "Echometry Device and Method for Remote Measurement of Temperature Utilizing Interferometric Principles."

The limited exclusive license granted by NTIS is a royalty-bearing license for a term of five years from the date of the first commercial sale. The license may be revoked in accordance with 41 CFR 101-4.104.5.

Dated: May 13, 1982.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service.

[FR Doc. 82-13699 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-04-M

National Bureau of Standards

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the Federal Register on February 23, 1982 (47 FR 7872), the National Bureau of Standards (NBS) announced proposed changes to the exclusion list pertaining to Federal Information Processing Standards Publication 60-1, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems; and Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems. Interested parties were allowed until April 9, 1982, to submit written comments regarding the proposed changes to the exclusion list.

As a result of a review and analysis of comments received, NBS has made a determination that the following additions will be made to the exclusion list:

Manufacturer	Model
Apple Computer Inc.	Apple II Plus Series.
Apple Computer Inc.	Apple III Series.
IBM Corp.	IBM System/23 Datamaster.
Vector Graphic, Inc.	VIP 1800.
Vector Graphic, Inc.	System B.
Vector Graphic, Inc.	Vector 3105.
Vector Graphic, Inc.	Vector 2900.
Vector Graphic, Inc.	Vector 3005.
Vector Graphic, Inc.	Vector 2600.
Vector Graphic, Inc.	Vector 5005.

Interested parties are invited to submit written comments or recommendations identifying candidate systems which should be added or removed from the exclusion list to the Director, Institute for Computer Sciences and Technology, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Comments should include

information supporting any proposed additions (or removals) to that list according to the criteria described in the Federal Register notice of March 19, 1979 (44 FR 16486), which announced the availability of a proposed initial exclusion list. Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS maintains a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments or recommendations regarding the exclusion list.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: May 14, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-13782 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-CN-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Monday, June 7, 1982, from 9:30 a.m. until 4:00 p.m., and Tuesday, June 8, 1982, from 8:30 a.m. until 1:00 p.m. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Susan Guenette, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; 301-492-6957.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is an established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978, under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631).

On June 6-7, 1982, the board will consider new information pertaining to its previous review of zinc and magnesium silicofluorides and resolve the recommended labeling for these substances. The sensitization potential of a number of compounds discussed at the April 1982 meeting will be reviewed in greater depth. The board will attempt to determine only if sufficient presumptive evidence of strong sensitization exists to suggest the substance for further study by the Commission. The following compounds will be discussed: ethylenediamine, diethylenetriamine, benzethonium chloride, benzoyl peroxide, castor beans, and nickel salts. The balance of the board's time will be spent in discussing the format and narrative content of its final report.

The two-day meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations should notify Susan Guenette (see address above) or Dr. Fred Marozzi (same address, Rm. 724) by Tuesday, June 1, 1982. The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requestors will be informed of the decision before the meeting.

Sadye E. Dunn,

Secretary.

May 18, 1982.

[FR Doc. 82-13697 Filed 5-19-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Airlift in Force Projection will meet at the National Academy of Sciences Study Center, Woods Hole, Massachusetts on June 28-July 9, 1982. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The committee will consider all facts presented to them and outline, draft, and prepare a report recommending new or improved technology which will enhance the Military Airlift Command's current capability to meet and sustain a surge operation. The briefings and discussions will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-13740 Filed 5-19-82; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group, Air Force Systems Command, will hold meetings on July 14, 1982, from 8:30 a.m. to 5:00 p.m., and on July 15, 1982, from 8:30 a.m. to 12:00 p.m., at Hanscom Air Force Base, Massachusetts, in the Command Management Center, Building 1606.

The group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications programs.

The meetings concern matters listed in section 522b(c) of Title 5, United States Code, specifically subparagraph (1) thereof and, accordingly, the meetings will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-13747 Filed 5-19-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Revise Transmission Policy; Outline of Future Procedures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to revise transmission policy; outline of future procedures. File No.: TrP-1.

SUMMARY: On February 17, 1981 (46 FR 12658), BPA announced its intention to revise its transmission policy. On March

30, 1981 (46 FR 19296), BPA extended the period within which it would accept recommendations concerning transmission policy from March 31, 1981, to the later of April 30, 1981, or the last day of BPA's hearings on its proposed transmission rate adjustment.

By this notice, BPA is reopening the period in which recommendations concerning transmission policy will be accepted and requesting that all documents which become part of the Official Record compiled in the process of developing the transmission policy contain the file number designation TrP–1. This notice also identifies the Responsible Official, amends the tentative schedule previously announced, and describes the proposed scope of issues to be treated in the final policy in light of comment which has already been made a part of the Official Record.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Gordon H. Brandenburger, Kalispell District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Thomas M. Noguchi, Acting Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Roy Nishi, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

1. *Documents Comprising the Official Record.* In response to BPA's notices of February 17, 1981 (46 FR 12858) and March 30, 1981 (46 FR 19296) comments have been received from the following sources:

Coos Curry Electric Coop, Inc., David A. Smith—04/20/81
Culham, William B., Portland, Oregon—02/26/81
Eugene Water & Electric Board, Harold S. Worcester—05/01/81
Grant County PUD, R. O. Ingebrigtson—05/15/81, 04/20/81
ICP, Robert H. Hartley—11/05/81, 05/22/81
ICP, Merrill Schultz—11/09/81
League of Women Voters, Ellen Knight—04/20/81 (rcv'd)
McMinnville, City of; Jack L. Nicholls—02/20/81
Montana, State of; Leo Berry, Jr.—05/04/81
Oregon DOE, Michael W. Grainey—08/21/81
Pacific Gas & Electric, A. Kirk McKenzie—05/04/81
Pend Oreille County PUD No. 1, James E. Sewell—04/29/81
PPC, Robert M. Greening—04/29/81
Seattle, City of; Arthur T. Lane—05/04/81
Seattle City Light, Gerald R. Garman—05/22/81, 05/08/81, 04/17/81, 03/31/81
Seattle City Light, Dennis M. Gray—04/29/81
Washington Water Power Co., Gregory Prekeges—05/14/81

All of the above-listed comments are part of the Official Record in the TrP–1 file, even though some were filed after the specified deadlines. In addition, the entire record of the transmission rate adjustment hearing which began in February 1981 is part of the Official Record in the TrP–1 file.

Persons wishing to add documents to the Official Record should file such additional documents with BPA's Public Involvement Coordinator, clearly marked with the TrP–1 file designation. If such additional documents are voluminous and are already on file with BPA, interested persons need only indicate their date and where they are on file, and the Coordinator will make them part of the TrP–1 file.

Documents which become part of the TrP–1 file by September 1, 1982, will be considered in the formulation of the proposed transmission policy. Documents received after this date will not be considered in the formulation of the proposed transmission policy, but will be considered in the formulation of the final transmission policy.

2. *Responsible Official.* James L. Jones, Deputy Power Manager, is hereby designated as the Responsible Official for the development of the proposed transmission policy.

3. *Amended Schedule.* BPA will hold preliminary discussions on the proposed transmission policy. All customers and interested parties will be advised of meeting schedules once they are set.

October 1982—publication of proposed transmission policy with generic draft contract or contracts and request for public comment. Public hearings will be held during which public comments will be received.

January 1983—publication of notice of final transmission policy with generic draft contract or contracts.

4. *Scope of Issues for Proposed Transmission Policy.* The final transmission policy will address issues arising in the following areas:

a. BPA's objectives for wheeling services,

b. the types of transmission services BPA intends to offer and their major features, and

c. compensation methodology for transmission losses.

While development of this policy will require parallel development of certain rate concepts, the final transmission policy will not contain those rate matters which will, instead, be addressed in the next transmission rate adjustment following the publication of the final transmission policy.

Issued in Portland, Oregon, May 12, 1982.

Marvin Klinger,

Acting Administrator.

[FR Doc. 82-13771 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

T.W. Oil, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with T.W. Oil, Inc. (formerly JOC OIL, INC.) as a final order of the Department.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Robert J. McKee, Director, Philadelphia Field Office, Economic Regulatory Administration, 1421 Cherry Street, Philadelphia, Pa. 19102 (215/597–2633).

SUPPLEMENTARY INFORMATION: On February 8, 1982, Vol 47, FR 5759–5760, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with T.W. Oil, Inc. (formerly JOC OIL, INC.) on October 13, 1981 which would not become effective sooner than 30 days

after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the Proposed Consent Order.

As the notice of February 8, 1982 stated, the period during which the alleged violations occurred was November 1, 1973 through June 30, 1974 and the products involved were No. 2 and No. 6 oil. As that notice also stated, under the Consent Order T.W. Oil, Inc. is required to refund to an identified end-user customer, the Commonwealth of Virginia, the amount of $294,739.00 while the remaining sum of $313,069.00 together with any applicable installment interest is to be remitted to the Department of Energy which will "determine the ultimate disposition of these monies." Specifically, until such ultimate disposition is determined, the money is to be held in escrow.

No comments were received questioning any of the terms and conditions of the Consent Order.

Two comments were received, one from the State of Maine and the other from the New York State Energy Office, making suggestions with regard to the ultimate disposition of those funds currently being paid into escrow. Both agreed, as does the ERA, that an effort must first be made to determine whether there are identified end-users who were overcharged to whom the funds can properly be returned, and both suggest that the remaining amount be distributed to the states in which the overcharges purportedly occurred for use in energy related programs.

Accordingly, both comments will be properly considered at the time ERA makes a determination with regard to the disposition of the escrow fund, but neither suggests any reason why the ERA should not proceed to make the proposed Consent Order final.

The proposed Consent Order is therefore made final and effective on the date of publication of this Notice issued in Philadelphia, PA on 6th day of May, 1982.

Robert J. McKee Jr.,

Director, Philadelphia Field Office, Economic Regulatory Administration.

[FR Doc. 82-13799 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Thomas P. Reidy, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration hereby gives notice of a Proposed Remedial Order which was issued to Thomas P. Reidy, Inc. of Houston, Texas.

This Proposal Remedial Order charged Thomas P. Reidy, Inc. with pricing violations in the amount of $8,463,808.04, plus accrued interest in sales of motor gasoline and fuel oil during the time periods of November 1, 1973 through May 31, 1975.

A copy of the Proposal Remedial Order, with confidential information deleted, may be obtained from David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106–2406. On or before June 4, 1982, any aggrieved person may file a Notice of Objections with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri on the 7th day of May 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

Concurrence:

Jeanmarie Homan,

Office of General Counsel.

[FR Doc. 82-13770 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission [FERC] computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1982. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, Room 4121, Washington, D.C. 20461, Telephone: (202) 633–8710.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per BTU's
Alabama [1]	[illegible]
Arizona [1]	[illegible]
Arkansas [1]	3.22
California [1]	[illegible]
Colorado [1]	[illegible]
Connecticut [1]	[illegible]
Delaware [1]	[illegible]
Florida	3.49
Georgia	[illegible]
Idaho [1]	[illegible]
Illinois [1]	[illegible]
Indiana [1]	3.59
Iowa [1]	3.39
Kansas [1]	[illegible]
Kentucky [1]	3.59
Louisiana [1]	3.22
Maine	3.72
Maryland [1]	3.60
Massachusetts [1]	3.61
Michigan	3.43
Minnesota	3.26
Mississippi [1]	3.60
Missouri [1]	3.35
Montana [1]	3.91
Nebraska [1]	3.39
Nevada [1]	3.50
New Hampshire [1]	3.72
New Jersey	3.37
New Mexico	2.96
New York [1]	3.60
North Carolina [1]	3.60
North Dakota [1]	3.39
Ohio	3.55
Oklahoma	3.16
Oregon [1]	3.50
Pennsylvania [1]	3.60
Rhode Island [1]	3.72
South Carolina [1]	3.60
South Dakota [1]	3.39
Tennessee [1]	3.60
Texas [1]	3.13
Utah [2]	3.91
Vermont [1]	3.72
Virginia [1]	3.60
Washington [1]	3.50
West Virginia	3.45
Wisconsin [1]	3.59
Wyoming [1]	3.91

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79–21.

[2] Region based price and State based price are the same.

Section II Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1982 was $35.69 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1982, is $8.00 per million BTU's.

Section III Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of January 1982, February 1982, and March 1982.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective June 1, 1982 (shown in Section I), are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1982, February 1982, March 1982. Reported prices for sales in January 1982 were adjusted by the percent change in the nationwide volume-weighted average price from January 1982 to March 1982. Prices for February 1982 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1982 to March 1982. The volume-weighted 3-month average of the adjusted January 1982 and February 1982, and the reported March 1982 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oligram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oligram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 sulfur residual fuel oil for the ten trading days ending May 13, 1982, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of March 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C., May 18, 1982.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 82-13817 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-10-FRL-2127-5]

Notice of Issuance of Prevention of Significant Deterioration (PSD) Permit to Tacoma City Light

Notice is hereby given that on May 11, 1982, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Tacoma City Light for approval to construct a mixed fuel cogeneration facility at Tacoma, Washington.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location:

EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 524, Seattle, Washington 98101

May 11, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-13758 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket 79-184]

Meeting of Interested Parties To Prepare for Senior Level Meeting of North Atlantic Consultative Process

May 12, 1982.

Members of the Common Carrier Bureau staff will convene a meeting of all interested parties to prepare for the Senior Level Meeting of the North Atlantic Consultative Process in Rome, Italy (July 6, 7, 8, 1982) in Room A-110, 1229 20th Street, NW, Washington, D.C. (FCC Annex) at 10:00 a.m. on Thursday, May 26, 1982.

The agenda of the meeting will include: (1) The circulation of final reports to update the Montreal record; (2) the finalization of plans for the Rome meeting.

This meeting will be open to the public and anyone who wishes to attend and express views is invited. For additional information, contact Margot Bester (202) 632-4047.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-13783 Filed 5-19-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service; Performance Review Board Updated Membership

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are D. James Croft (Chairman), Richard L. Petrocci, Charlotta A. Chamberlain, Richard C. Pickering, Rebecca H. Laird, and John S. Buchanan.

For Further Information Contact: Doris H. McGhee, Director of Personnel, Federal Home Loan Bank Board, (202) 377-6050.

J. J. Finn,

Secretary to the Board, Federal Home Loan Bank Board.

[FR Doc. 82-13723 Filed 5-19-82; 8:45 am]

Billing Code 6720-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for the application. With respect to the application, interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *The Sumitomo Bank, Limited,* Osaka, Japan; to acquire 13.7 percent of the voting shares of CPB, Inc., Honolulu, Hawaii. Comments on this application must be received not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13718 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for the application. With respect to each application, interested persons may express their views in writing to the address indicated for the application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis,** (Delmer P. Weisz, Vice President) 411 Locust street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares or assets of The Harpeth National Bank of Franklin, Franklin, Tennessee. Comments on this application must be received not later than June 13, 1982.

Board of Governors of the Federal Reserve System, May 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13720 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 11, 1982.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island (formerly Industrial National Corporation; mortgage banking activities; Massachusetts): To engage, through its subsidiary, Mortgage Associates, Inc., in the origination, sale and servicing of residential and commercial mortgage loans and loans secured by junior liens on residential real estate. These activities would be conducted from offices located at 175 Andover Street, Danvers, Massachusetts and 34 Willard Street, Quincy, Massachusetts, serving the Commonwealth of Massachusetts.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13716 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Citibank International; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Citibank International, Miami, Florida, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a *de novo* branch in Fort Lauderdale, Florida. Citibank International operates as a subsidiary of Citibank, New York, New York.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 2114.(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 11, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact aht are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 12, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc 82-13715 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any aquestions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Shively Bancshares Corporation*, Shively, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of the Bank of St. Helens, Shively, Kentucky. Comments on this application must be received not later than June 12, 1982.

B. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *CPB, Inc.*, Honolulu, Hawaii; to become a bank holding company by acquiring 100 percent of the voting shares of Central Pacific Bank, Honolulu, Hawaii. Comments on this application must be received not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13717 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application.

Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Minneapolis** (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gale Bank Holding Company, Inc.*, Galesville, Wisconsin; to become a bank holding company by acquiring 86 percent of the voting shares of Bank of Galesville, Galesville, Wisconsin. Comments on this application must be received not later than June 13, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Group, Ltd.*, Fort Dodge, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The State Bank, Fort Dodge, Iowa. Comments on this application must be received not later than June 13, 1982.

2. *McLean County Bancshares, Inc.*, Bloomington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to McLean County Bank, Bloomington, Illinois and 80 percent of the voting shares of Stanford State Bank, Stanford, Illinois. Comments on this application must be received not later than June 13, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Highland Bancshares, Inc.*, Highlands, Texas; to become a bank holding company by acquiring 93.5 percent of the voting shares of Highlands State Bank, Highlands, Texas. Comments on this application must be received not later than June 9, 1982.

2. *Lometa Bancshares, Inc.*, Lometa, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The Citizens State Bank of Lometa, Lometa, Texas. Comments on this application must be received not later than June 13, 1982.

3. *Stamford Bancshares, Inc.*, Stamford, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Stamford Financial Corporation, Stamford, Texas, and thus indirectly acquiring The First Natonal Bank in Stamford, Stamford, Texas. Comments on this application must be received not later than June 13, 1982.

4. *USBancshares of Texas, Inc.*, Benton, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of USBank, Denton, Texas. Comments on this application must be received not later than June 13, 1982.

5. *Wilson Bancshares, Inc.*, Wilson, Texas; to to become a bank holding company by acquiring 80 percent of the voting shares of Wilson State Bank, Wilson Texas. Comments on this application must be received not later than June 13, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *American Bancorp of Nevada*, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Commerce, Las Vegas, Nevada. Comments of this application must be received not later than June 13, 1982.

Board of Governors of the Federal Reserve System, May 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13721 Filed 5-19-82; 8:45am]

BILLING CODE 6210-01-M

Northwest Bancorporation; Proposed Acquisition of Dial Corporation

Northwest Bancorporation, Minneapolis, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2))), for permission to acquire voting shares of Dial Corporation, Des Moines, Iowa.

Applicant states that the proposed subsidiary would engage in the activities of consumer and commercial finance, leasing, agricultural lending, data processing, and the offering of time and savings deposits and thrift certificates. These activities would be performed from offices of Applicant's proposed subsidiary in 37 states: Alabama; Arizona; California; Colorado; Connecticut; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Massachussetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Jersey; New Mexico; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Rhode Island; South Carolina; Tennessee; Texas; Utah; Washington; Wyoming. Applicant's proposed subsidiary does business through the following direct and indirect subsidiaries; Dial Financial Corporation; Mid-States Enterprises, Inc., DialPlan, Inc.; DialPlan Corporation, Inc.; The Money Center, Inc.; Dial Leasing Corporation; Dial Leasing Corporation of Iowa; Dial Leasing Corporation of Des Moines; Dial Computer Systems Corporation; Centurion Casualty Company; Dial Loan and Investment Company (also, "of Omaha"); Dial Industrial Finance Company of Minnesota; Centurion Life Insurance Company; Dial Mortgage Company of Nevada; Dial Consumer Discount Company; Dial Finance Acceptance Company; Dial Industrial Loan Company.

A complete list of the locations of all of the offices involved is contained in the application filed by Northwest Bancorporation, and this list is available for inspection at offices of the Board of Governors and at the Federal Reserve Bank of Minneapolis.

With respect to certain of these activities the area to be served is the county/city in which such subsidiary is located and contiguous counties or cities or portions thereof. With respect to other activities the market is regional or national in scope. It appears that such activities are permissible for bank holding companies, within the meaning of section 225.4(a) of Regulation Y, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reaonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13719 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

Audit of Transportation Payment Documents by Commercial Firms; Pre-Solicitation Conference

Notice is hereby given of a conference, prior to solicitation of bids, to address considerations relevant to a proposed procurement by contract of the identification of overcharges on Government paid transportation bills during FY 1983 (October 1, 1982 to September 30, 1983). It will be held at the Office of Transportation Audits, Transportation and Public Utilities Service, on June 3, 1982, at 10 a.m., Room 2006, Chester A. Arthur Building, 425 I Street, NW., Washington, D.C. The conference will be devoted to an open discussion concerning the scope and method of the proposed procurement. Those desiring further information may contact Mr. Kenneth G. Leib, Chief, Special Projects, Transportation Audits Division, Transportation and Public Utilities Service, General Services Administration (202-275-1077).

Dated: May 3, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-13703 Filed 5-19-82; 8:45 am]

BILLING CODE 6820-AM-M

[E-82-15]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving electric rates, Docket No. ER82-423.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving the application of the Virginia Electric and Power Company for changes in rates and charges to its resale, cooperative, and municipal wholesale customers, Docket No. ER82-423. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: May 6, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-13702 Filed 5-19-82; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13648-821]

Child Welfare Services Training Grants Program; Availability of Grant Funds

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Grant Funds for the Child Welfare Services Training Grants Programs.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for *Teaching Grants* authorized under Section 426 of the Social Security Act (part B of title IV, 42 U.S.C. 626).

DATES: Closing date for receipt of applications is July 6, 1982.

Scope of this Announcement

This Program Announcement is one of two for the Child Welfare Services Training Grants Program and covers Teaching Grants to be awarded for Fiscal Year 1982. All Teaching Grants are awarded and administered by the regional Administration for Children, Youth and Families Program Offices.

Program Purpose

The purpose of this program is to develop, expand, and improve educational programs and resources for preparing students for work in the field of child welfare.

Program Goals and Objectives

The goal of this program is to provide education and training opportunities for persons who are committed to entering the field of child welfare services, or who are already working in the field of child welfare services, to enable them to more effectively achieve the following outcomes for children and families:

- To provide support to families in their own homes in order to prevent separation of children from their families.
- Where separation is necessary, to develop permanent plans and provide support services to enable children to be returned to their families.
- Where these options are inappropriate, to provide quality services which enable the children to become adopted or where it is the plan of choice in exceptional circumstances to be placed in a permanent foster home.

Applications for projects should specify that the proposed project will achieve or is capable of achieving one of the following specific program objectives:

- To develop and implement practice-oriented demonstration training institutes in one or more states which address critical child welfare issues and problems as identified by the states, and which can be continued or integrated into on-going staff development activities conducted by the appropriate state or local public and voluntary agencies; or
- To provide technical assistance to one or more states to improve their capacity to provide on-going practice-relevant child welfare training, and related staff development functions.

Eligible Applicants

Teaching grants are awarded to public or nonprofit private colleges and universities accredited by an appropriate accrediting authority (e.g. national or regional associations of colleges and secondary schools;

National Council for Accreditation of Teacher Education; Council on Social Work Education; American Assembly of Collegiate Schools of Business; Council on Education for Public Health; Association of American Law Schools, et al.).

Available Funds

Of the total appropriation of $3,473,000 available in Fiscal Year 1982, the Administration for Children, Youth and Families expects to award approximately $2,150,000 for new teaching grants. A new grant is the initial award made in support of a project. The project period is of one year duration. An indirect cost of 8% of the direct costs (or the institution's actual indirect cost if less than 8%) is allowable for this grant program.

In Fiscal Year 1982, $1,150,000 will be awarded to support 10–16 child welfare training institutes at funding levels ranging from a minimum of $70,000 to a maximum of $145,000. An additional $1,000,000 will be awarded to support ten child welfare technical assistance projects at a maximum funding level of $100,000 per project.

Funding allocations showing the total level of support available to each Region for Training Institutes and Technical Assistance Projects are as follows:

Allocations Per Region

Child Welfare Services Teaching Grants

Region I, $170,000
Region II, $245,000
Region III, $245,000
Region IV, $245,000
Region V, $245,000
Region VI, $245,000
Region VII, $170,000
Region VIII, $170,000
Region IX, $245,000
Region X, $170,000

Grantee Share of the Project

There is no cost sharing or matching requirement for grants under this program.

The Application Process

Availability of Forms

Application for a grant under the Child Welfare Training Grants Program must be submitted on standard forms provided for this purpose. Application kits which include the forms, instructions and program information, including the complete Program Guidance for Fiscal Year 1982 may be obtained by writing to the "Project Officer, Child Welfare Services Training Grants" in the appropriate regional office listed in Appendix I.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the Regional Office address indicated in Appendix II. In order to facilitate processing of a grant application, please submit one signed original and six copies. Applications must be submitted to the Regional Office in the region in which the applicant institution is located. *The applicant must clearly identify the program announcement for which the application is to compete.* The application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations imposed by the terms and conditions of the grant award.

A–95 Notification Process

This program does not require the A–95 notification and review process.

Application Consideration

The Regional Program Director, Administration for Children, Youth and Families, determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. The results of the review assist the Regional Program Director, Administration for Children, Youth and Families, in considering competing applications. If the Regional Program Director has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period for which project support is contemplated. Final decisions on grant awards are expected to be completed by the end of August, 1982.

Criteria for Review and Evaluation of Teaching Grant Applications

Completed grant applications will be reviewed and evaluated against the following criteria:

(1) That the project objectives are identical with or are capable of acheiving one of the specific program objectives listed in this announcement under Program Goals and Objectives. (Points 10.)

(2) That the applicant identifies the specific child welfare issues which the state plans to address, and describes how the project will improve the child welfare resources and training capability of the state. (Points 10.)

(3) That the applicant provides documentation on the nature and extent of consultations held in planning this project with state and/or local administrators of public social service agencies including, where appropriate, voluntary agencies or organizations. The application *must include* written verification from the State Commissioner of Social Services, State Commissioner of Human Resources (or the equivalent) or his designee that its content addresses child welfare service needs of the state. (Points 10.)

(4) That the application includes a viable work plan designed to achieve the results required by the program objectives. The work plan should include: (Points 25.)

(a) The proposed methodolgy for collaborating with an affiliated state or local public child welfare agency (including, where appropriate, voluntary agencies) to conduct specific state/local child welfare training or technical assistance projects.

(b) Timetables for accomplishing program goals, objectives, and sub-objectives as identified and further defined by the applicant in the proposal;

(c) A management plan which describes how the project will be implemented, and insures continued collaboration between the affiliated state or local child welfare agency and project staff; and

(d) The proposed process and procedures that will be used to coordinate training and technical assistance projects with the activities of the Regional Resource Centers, to be established in FY '82.

(5) That the applicant describes the state's or local public and voluntary agencies' plans projected to implement successful training institutes or successful results of the technical assistance projects into an on-going training program within the state or local agency. Agency plans should include projected information about the qualifications of staff who will conduct the training or technical assistance activities, the courses to be offered, and the types of students and/or practitioners who will be eligible or required to participate. (Points 15.)

(6) That the curriculum currently offered by the applicant demonstrates that the applicant has the organizational, professional and educational capacity to address the

critical child welfare training issues facing states, with particular emphasis on the program goals of this announcement, including but not limited to such critical areas as prevention, foster care, case review, adoptionof special needs children, etc. (Points 10.)

(7) That the project personnel are or will be well qualified to provide child welfare training or technical assistance and the applicant agency has or will have adequate resources to conduct the project. (Points 10.)

(8) That the estimated cost to the government and to the project is reasonable considering the anticipated results, and that the applicant has included funds to send at least one key person to a state-wide or regional meeting on child welfare training issues. (Points 10.)

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is July 6, 1982. An application will be considered received on time if:

- The application was sent by registered or certified mail not later than July 6, 1982 as evidenced by the U.S. Postal Service Postmark, or the original receipt from the U.S. Postal Service; or
- The application is received on or before close of business (COB) July 6, 1982 in the Department of Health and Human Services Regional Office mailroom. In establishing the date of receipt, consideration will be given to the time date stamp of such mailrooms or the documentry evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline or sent address other than the regional office in the region in which the applicant institution is located will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13.648, Training Grants in the Field of Child Welfare)

Dated: April 13, 1982.

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Approved: May 14, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Appendix I—Regional Project Officers, Child Welfare Services Training Grant Program, Administration for Children, Youth and Families, Office of Human Development Services, Department of Health and Human Services, Regions I–X

Region I

Regional Project Officer, Administration for Children, Youth and Families, Room 2011—JFK Federal Building, Government Center, Boston, Massachusetts 02203, (617) 223–6450

Region II

Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 26 Federal Plaza—Room 4149, New York, New York 10007, (212) 264–4118

Region III

Regional Project Officer, Administration for Children, Youth and Families, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101, (215) 596–6763

Region IV

Regional Project Officer, Administration for Children, Youth and Families, 101 Marietta Tower—Suite 903, Atlanta, Georgia 30323, (404) 221–2128

Region V

Regional Project Officer, Administration for Children, Youth and Families, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (312) 353–8065

Region VI

Regional Project Officer, Administration for Children, Youth and Families, 1200 Main Tower Building—Room 2025, Dallas, Texas 75202, (214) 729–6596

Region VII

Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 601 E. 12th Street—3rd Floor, Kansas City, Missouri 64106, (816) 374–5401

Region VIII

Regional Project Officer, Administration for Children, Youth and Families, 1961 Stout Street, Denver, Colorado 80294, (303) 327–3106

Region IX

Regional Project Officer, Administration for Children, Youth and Families, Federal Office Building, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–8155

Region X

Regional Project Officer, Administration for Children, Youth and Families, Mail stop 622—Arcade Plaza Building, 1321–2nd Avenue, Seattle, Washington 98101, (206) 399–0658

Appendix II—Directors, Office of Fiscal Operations, Regions I Thru X

Region I

Mr. St. Clair Phillips, Director, OFO/HDS, Room 2000—JFK Federal Building, Boston, Mass. 02203, (8) 223–1107

Region II

Mr. Nicholas Cordasco, Director, OFO/HDS, Federal Building, 26 Federal Plaza, New York, N.Y. 10007, (8) 264–4117

Region III

Mr. William Chesser, Director, OFO/HDS, 3535 Market Street, Box 13716, Philadelphia, Pa. 19101, (8) 596–6565

Region IV

Mr. Ed Shulz, Acting Director, OFO/HDS, 101 Marietta Tower, Atlanta, Georgia 30323, (8) 242–2211

Region V

Mr. Russell Armstrong, Director, OFO/HDS, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (8) 886–3378

Region VI

Mr. Marvin Layne, Director, OFO/HDS, 1200 Main Tower Building, Dallas, Texas 75202, (8) 729–6235

Region VII

Mr. William Howard, Director, OFO/HDS, 601 East 12th Street, Kansas City, Mo. 64106, (8) 758–2911

Region VIII

Mr. Masaru Yoshimura, Director, OFO/HDS, 1961 Stout Street, Room 7440, Denver, Colorado 80202, (8) 327–2011

Region IX

Mr. Al Huerta, Director, OFO/HDS, 50 United Nations Plaza, San Francisco, California 94102, (8) 556–5480

Region X

Mr. Gary Griffith, Director, OFO/HDS, 1321 Second Avenue, Mail Stop 613, Seattle, Washington 98101, (8) 399–1105

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BILLING CODE 4130-01-M

[Program Announcement No. 13648–822]

Child Welfare Services Training Grants Program; Availability of Grant Funds

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Grant Funds for the Child Welfare Services Training Grants Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for *Traineeship Grants* authorized under Section 426 of the Social Security Act (part B of title IV, 42 U.S.C. 626).

DATE: Closing date for receipt of application is July 6, 1982.

Scope of This Announcement

This Program Announcement is one of two for the Child Welfare Services Training Grants program and covers Traineeship Grants to be awarded for Fiscal Year 1982. All Traineeship Grants are awarded and administered by the regional Administration for Children, Youth and Families Program Offices.

Program Purpose

The purpose of this program is to develop the skills and qualifications of full- and part-time students who have as their career objective the provision of services to children and their families by providing financial support through accredited schools of social work.

Financial support is provided: (a) For part-time degree (at graduate level) or non-degree candidates already employed by public or voluntary agencies with responsibility for providing services to children and families;

(b) For full-time baccalaureate degree students in their senior year only;

(c) For full-time degree students in their first or second year at the Master's of Social Work Level; and

(d) For full-time Doctoral candidates.

Program Goals and Objectives

The goal of this program is to provide education and training opportunities for persons who are committed to entering the filed of child welfare services or who are already working in the field of child welfare services to enable them to more effectively achieve the following outcomes for children and families:

- To provide support to families in their own homes in order to prevent separation of children from their families.
- Where separation is necessary, to develop permanent plans and provide support services to enable children to be returned to their families.
- Where these options are inappropriate, to provide quality services which enable the children to become adopted or where it is the plan of choice, in exceptional circumstances, to be placed in a permanent foster home.

Applications should specify that the proposed project will achieve or is capable of achieving one of the following program objectives:

- To enable workers currently employed by public and voluntary child welfare agencies to upgrade the practice skills and to acquire specialized information and expertise related to the delivery of services to children and families; and
- To enable full-time students who have child welfare as a career objective to gain special knowledge and experience in providing services to children and their families.

For both objectives the content of the child welfare curriculum and field placement experience should focus on the critical child welfare issues of prevention of separation, foster care, case review, adoption of special needs children, etc.

Eligible Applicants

Traineeship Grants are awarded to public or nonprofit private colleges and universities offering baccalaureate or graduate degree programs in social work which are accredited or have been granted candidacy status by the Council on Social Work Education, including any school of continuing education affiliated with the applicant school of social work. Applications submitted by applicants not accredited or not granted candidacy status by the Council on Social Work Education will not be accepted for review.

Preference will be given to institutions offering traineeships to part-time degree and/or non-degree students participating in programs structured to provide training or educational opportunities specific to child welfare for persons already employed by public or voluntary agencies with responsibility for providing services to children and families.

Available Funds

From the total appropriation of $3,473,000 available in Fiscal Year 1982, the Administration for Children, Youth and Families expects to award approximately $1,323,000 for new traineeship grants. A new grant is the initial award made in support of a project. The project period is of one year duration. Awards are made for student costs only. In Fiscal Year 1981, 126 traineeship grant applications were received for competitive review and 67 awards were made, averaging approximately $22,851 each.

Funding allocations for Fiscal Year 1982 showing the level of support available to each Region for Traineeship Grants are as follows:

Allocations per Region

Child Welfare Services Traineeship Grants

Region I—$66,079.
Region II—$160,612.
Region III—$134,614.
Region IV—$222,661.
Region V—$266,980.
Region VI—$153,997.
Region VII—$66,679.
Region VIII—$43,130.
Region IX—$158,760.
Region X—$46,702.

Additional Requirements

Part-Time Students (Degree or Non-Degree)

1. Traineeship grants which are awarded to part-time students who are already employed by public or voluntary child welfare agencies may pay for the cost of tuition, educational fees and books.

2. A candidate for a child and family service traineeship in a part-time degree or non-degree program must meet the following requirements:

(a) Be currently employed by an agency or organization providing child welfare services;

(b) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(c) Take the training at the educational institution designated in the traineeship award;

(d) Be duly enrolled for part-time study at the grantee institution, either for credit or non-credit;

(e) Express a commitment to a career in the field of child and family services and to continue employment in child welfare services; and

(f) Meet requirements established by the grantee institution for part-time students which do not negate federal requirements.

Full-Time Degree Students

1. Traineeship grants which are awarded to *full time*, degree oriented students enrolled in a *graduate* program may pay for stipends, tuition and educational fees, and dependency allowances. Traineeship grants which are awarded to *full time*, degree oriented students enrolled in an *undergraduate* program shall not exceed $1,000 for a full academic year, which may be used for tuition, fees, stipends and travel expenses.

2. No other direct or indirect costs are allowable except for the following: If a separate field placement unit is established in a state or local public welfare agency, which has an identifiable child welfare service unit, for the sole purpose of supervising trainee field placement, those costs directly attributable to the field supervision of the students will be allowable as a direct cost to the institution. An indirect cost rate not to exceed 8% of the direct costs (excluding

traineeship costs) may be charged to the program (or the institution's actual indirect cost if less than 8%). The unit must consist of at least five students but not more than eight, to qualify for payment of costs for one full-time supervisor. A maximum of 7% of the total Regional Traineeship allocation may be used for field supervisory costs. Funding for this cost, however, is at the option of the Regional Office.

3. A candidate for a child and family service traineship in a full-time degree oriented program must meet the following requirements:

(a) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(b) Take the training at the educational institution designated in the traineeship award;

(c) Not be an employee of the federal government;

(d) Not currently receiving educational allowances from any other federal, state, or local public or voluntary agency when that allowance is conditional on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances of benefits payable under the Veterans Education and Training Amendment Act of 1977: As limited by Section 213 of said Act;

(e) Be enrolled for full-time study in the grantee institution;

(f) Be in the senior year if enrolled in a program leading to a baccalaureate degree;

(g) Express a commitment to a career in the field of child and family services;

(h) Express a commitment to return to or to seek employment in a state or local social service agency or in another child and family service agency or facility from which the state or local agency secures services. There should be reasonable assurance of his employment in a child and family service program, public or private, upon completion of training;

(i) Meet requirements established by the grantee institution which do not negate federal requirements; and

(j) For Doctoral students, provide evidence that they have selected or will select dissertation subjects clearly related to the field of child welfare.

Grantee institutions will select the candidates to whom traineeships will be awarded on the basis of their qualifications and will document the files to reflect the eligibility of candidates. To the extent possible, the awarding of traineeships should give special attention to recruiting and selecting eligible, qualified minority candidates, and should give preference to students with limited financial resources.

4. *Stipends and Allowances for Full-Time Students.* At the undergraduate level, the total perstudent cost shall not exceed $1,000 for an academic year which may include stipends, tuition, fees or other costs. At the graduate level, costs which may be covered include tution, fees, stipend, dependency allowances and travel expenses. Traineeship grants may be awarded for partial support of students at the discretion of the institution.

Dependency allowances for the dependents of graduate level students will be $600 per support year for each eligible dependent. Dependents are as defined in the Internal Revenue Code. Dependency allowances are not available to baccalaureate level trainees.

Domestic travel allowances for students from their residence to the training institution will not be provided except, in those cases of extreme need or hardship for individual students where a one-way travel allowance may be granted at the rate of up to 20 cents per mile. A travel allowance for reimbursement for travel to field instruction may be paid when it is the policy of the institution to pay such costs.

The chart below should be used in calculating graduate level stipends and allowances for full-time students.

STIPENDS AND ALLOWANCES

Year of training	Annual rate	Monthly rate
STUDENTS WITH LITTLE OR NO RELATED PROFESSIONAL EXPERIENCE—MASTER'S LEVEL		
First post-baccalaureate year	$2,400	$200
Years between first and terminal year	2,600	217
Terminal year[1]	2,800	233

Previous related professional experience master's level	Year of training					
	1		2		3	
	Annual	Monthly	Annual	Monthly	Annual	Monthly
STUDENTS WITH RELATED PROFESSIONAL EXPERIENCE—MASTER'S LEVEL[2]						
6 to 11 months	$3,000	$250	$3,300	$275	$3,600	$300
12 to 23 months	3,300	275	3,600	300	3,900	325
24 to 35 months	3,600	300	3,900	325	4,200	350
36 to 47 months	4,200	350	4,200	350	4,200	350
48 or more months	4,200	350	4,200	350	4,200	350

Previous related professional experience doctoral-level	Year of training					
	1		2		3	
	Annual	Monthly	Annual	Monthly	Annual	Monthly
STUDENTS WITH RELATED PROFESSIONAL EXPERIENCE—DOCTORAL-LEVEL						
6 to 11 months	$4,100	$342	$4,400	$367	$4,700	$392
12 to 23 months	4,400	367	4,700	392	4,700	392
24 to 35 months	4,700	392	4,700	392	4,700	392
36 to 47 months	4,700	392	4,700	392	4,700	392
48 or more months	4,700	392	4,700	392	4,700	392

[1] Applicable only to programs extending beyond 2 years. The second year of Master's Degree Program is at the $2,600 rate.
[2] A trainee, who is awarded a "Master's Level Experience Student" Stipend, must have had professional experience in a field relevant to the professional training to be undertaken. A complete and detailed record of the trainee's employment must be maintained by the grantee institution so that the stipend level can be properly justified.

Grantee Share of the Project

There is no cost sharing or matching requirement for grants under this program.

The Application Process

Availability of Forms

Application for a grant under the Child Welfare Services Training Grants Program must be submitted on standard forms provided for this purpose. Application kits which include the forms, instructions and program information, including the complete Program Guidance for Fiscal Year 1982 may be obtained by writing to the "Project Officer, Child Welfare Services Training Grants" in the appropriate Regional Office listed in Appendix I.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the Regional Office address indicated in Appendix II. In order to facilitate processing of a grant application, please submit one signed original and six copies. Applications must be submitted to the appropriate Regional Office in the region in which the applicant institution is located.

The applicant must clearly identify the program announcement number for which the application is to complete. The application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations imposed by the terms and conditions of the grant award.

A–95 Notification Process

This program does not require the A–95 notification and review process.

Application Consideration

The Regional Program Director, Administration for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. The results of the review assist the Regional Program Director for Children, Youth and Families in considering competing applications. If the Regional Program Director has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period for which project support is contemplated. Special consideration will be given to applicants who offer traineeship grants to part-time degree or non-degree students participating in programs structured to provide training or educational opportunities specific to child welfare for persons already employed by public or voluntary agencies, and to applicants who identify and select minority students who will be awarded traineeship grants. In making decisions about grant awards, the Regional Program Director will take into consideration the applicant's plan to recruit minority students. Final decisions on grant awards are expected to be completed by the end of August, 1982.

Criteria for Review and Evaluation of Traineeship Grant Applications

Completed grant applications will be reviewed and evaluated against the following criteria:

- That the project objectives are identical with or are capable of achieving one of the specific program objectives listed in this announcement under "Program Goals and Objectives". (Points 10.)
- That proposed procedures of the work program, if well executed, will be capable of achieving the results required by the program and further defined and elaborated by the applicant including assurance that all student eligibility requirements for full or part-time students specified in the Program Announcement are met. (Points 20.)
- That the application includes a viable plan designed to recruit program eligible minority candidates into the traineeship program, especially those who have limited financial resources. This plan must specify activities and timetables by which the school will seek out, identify, and, when implemented, *focus* traineeship selection on minority candidates. (Points 15.)
- That the applicant documents that for part-time students it will provide a program of study which is specially designed to develop or update practice oriented skills required for effective delivery of services to children and families in subject areas related specifically to the program goals and objectives identified in this announcement; and that for all full-time students (except Doctoral candidates) it will provide a field placement program in which they will have an opportunity to integrate academic and field placement experiences into a more comprehensive understanding of the field of child welfare including the following: (Points 20.)

(a) The type of schedule the field placement follows and the number of hours a week, month, semester, etc., it entails; or

(b) For each traineeship requested, specific description of and commitment in writing from an agency for a full academic year of field placement as defined by the institution, in a child welfare setting which will enable the undergraduate or Master level trainee to, (1) carry a caseload or participate in the management of a caseload primarily involving child welfare services, and, (2) work under the direction of a trained social work supervisor; or

(c) A description of the policies and procedures the applicant will follow in the supervision of the students' field placements including, (1) whether there is a supervisor or director of field placement and that person's role and responsibility; (2) who provides direct supervision (the school or the field placement agency); (3) the criteria for the selection of field placements in child welfare; (4) the nature and quality of the supervisory contact required; and (5) the relationship between the field placement and the classroom instruction; or

(d) In the case of doctoral programs, the applicant provides a specific list of criteria for selection of Doctoral students and documentation to insure that (1) they have well established interest and experience in child welfare and will work in a child welfare setting upon completion of the degree program; and, (2) they have selected or will select dissertation subjects clearly related to the field of child welfare.

- That the application include the following documentation: (Points 10.)

(1) In the case of part-time students, documentation that the applicant will obtain from each agency employing participating students that the student is working in a position related to providing services to children and their families and that this employment is intended to continue during the time of the traineeship and for at least one year following. Where course work will take place during the work hours, the documentation should include agreement by the agency to release the employee for the required time. The applicant has stated that it will submit this documentation for each participating student with the first quarterly report.

(2) In the case of full-time students, the applicant documents that it has sought to obtain a letter of intent or commitment from a public or voluntary social service agency to release employees for the pursuit of a graduate or undergraduate degree in social work. The letter of intent or commitment must specify the number of employees to be released and enrolled, describe efforts made by the agencies to select minorities and employees with limited financial resources, and indicate that the person(s) released will be providing services, teaching, conducting research or administering programs in child welfare when they return to work.

- That project personnel are or will be well-qualified to provide direction and supervision to students specializing in child welfare, and the applicant organization has or will have adequate

facilities and resources to conduct the project. (Points 10.)

• That the estimated cost to the government of the project is reasonable considering the anticipated results. (Points 5.)

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is July 6, 1982. An application will be considered received on time if:

• The application was sent by registered or certified mail no later than July 6, 1982 as evidenced by the U.S. Postal Service postmark, or the original receipt from the U.S. Postal Service; or

• The application is received on or before close of business (COB) July 6, 1982 in the Department of Health and Human Services Regional Office mailroom. In establishing the date of receipt, consideration will be given to the time date stamps of such mailrooms or other documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline or sent to any address other than the Regional Office in the region in which the applicant institution is located will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13.648, Training Grants in the Field of Child Welfare)

Dated: April 13, 1982.

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Approved: May 14, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Appendix I—Regional Project Officers Child Welfare Services Training Grant Program, Administration for Children, Youth and Families Office of Human Development Services, Department of Health and Human Services, Regions I–X

Region I

Regional Project Officer, Administration for Children, Youth and Families, Room 2011—JFK Federal Building, Government Center, Boston, Massachusetts 02203, (617) 223–6450

Region II

Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 26 Federal Plaza—Room 4148, New York, New York 10007, (212) 264–4118

Region III

Regional Project Officer, Administration for Children, Youth and Families, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101, (215) 596–6763

Region IV

Regional Project Officer, Administration for Children, Youth and Families, 101 Marietta Tower—Suite 903, Atlanta, Georgia 30323, (404) 221–2128

Region V

Regional Project Officer, Administration for Children, Youth and Families, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (312) 353–6665

Region VI

Regional Project Officer, Administration for Children, Youth and Families, 1200 Main Tower Building—Room 2025, Dallas, Texas 75202, (214) 729–6598

Region VII

Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 601 E. 12th Street—3rd Floor, Kansas City, Missouri 64106, (816) 374–5401

Region VIII

Regional Project Officer, Administration for Children, Youth and Families, 1961 Stout Street, Denver, Colorado 80294, (303) 327–3106

Region IX

Regional Project Officer, Administration for Children, Youth and Families, Federal Office Building, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–6153

Region X

Regional Project Officer, Administration for Children, Youth and Families, Mail Stop 622—Arcade Plaza Building, 1321–2nd Avenue, Seattle, Washington 98101, (206) 399–0838

Appendix II—Directors, Office of Fiscal Operations Regions I Thru X

Region I

Mr. St. Clair Phillips, Director, OFO/HDS, Room 2000—JFK Federal Building, Boston, Mass. 02203, (8) 223–1107

Region II

Mr. Nicholas Cordasco, Director, OFO/HDS, Federal Building, 26 Federal Plaza, New York, N.Y. 10007, (8) 264–4117

Region III

Mr. William Chesser, Director, OFO/HDS, 3535 Market Street, Box 13716, Philadelphia, Pa. 19101, (8) 596–6565

Region IV

Mr. Ed Shulz, Acting Director, OFO/HDS, 101 Marietta Tower, Atlanta, Georgia 30323, (8) 242–2211

Region V

Mr. Russell Armstrong, Director, OFO/HDS, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (8) 886–3378

Region VI

Mr. Marvin Layne, Director, OFO/HDS, 1200 Main Tower Building, Dallas, Texas 75202, (8) 729–6235

Region VII

Mr. William Howard, Director, OFO/HDS, 601 East 12th Street, Kansas City, Mo. 64106, (8) 758–2911

Region VIII

Mr. Masaru Yoshimura, Director, OFO/HDS, 1961 Stout Street, Room 7440, Denver, Colorado 80202, (8) 327–2011

Region IX

Mr. Al Huerta, Director, OFO/HDS, 50 United Nations Plaza, San Francisco, California 94102, (8) 556–5480

Region X

Mr. Gary Griffith, Director, OFO/HDS, 1321 Second Avenue, Mail Stop 813, Seattle, Washington 98101, (8) 399–1105

[FR Doc. 82-13795 Filed 5-19-82; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Granting of Waivers of Payment Under Section 334(b) of the Public Health Service Act; Delegation of Authority to Director, Bureau of Health Personnel Development and Service, HSA and Regional Health Administrators

Notice is hereby given that the following delegations of authority have been made regarding the granting of waivers for the National Health Service Corps assignees under section 334(b) of the Public Health Service Act (42 U.S.C. 254g), as amended by Pub. L. 94–484.

1. Delegation from the Acting Administrator, Health Services Administration (HSA), to the Director, Bureau of Health Personnel Development and Service, HSA, of the authority under section 334(b) of the Public Health Service Act (42 U.S.C. 254g) to waive loans approved under section 335(c) of the Public Health Service Act.

2. Delegation from the Acting Administrator, Health Services Administration, to the Regional Health Administrators, without authority to redelegate, all of the authorities under section 334(b) of the Public Health Service Act (42 U.S.C. 254g), excluding the authority to waive loans approved under section 335(c) of the Public Health Service Act.

The July 15, 1977, delegation is hereby superseded insofar as it pertains to the authority under section 334(b) of the Public Health Service Act.

The above delegations were effective on April 30, 1982.

Dated: April 30, 1982.

John H. Kelso,

Acting Administrator, Health Services Administration.

[FR Doc. 82-13600 Filed 5-19-82; 8:45 am]

BILLING CODE 4810-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenence Charges

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: General notice.

SUMMARY: The purpose of this general notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from $15.53 to $23.37 per acre per year.

EFFECTIVE DATE: This general notice shall become effective July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Walt Parks, Acting Project Engineer, San Carlos Irrigation Project, P.O. Box 456, Collidge, Arizona 85228, telephone: (602) 723-5439.

SUPPLEMENTARY INFORMATION: An analysis of the costs of operation and maintenance of the Joint Works of the San Carlos Irrigation Project was made and on November 24, 1981, was presented to the fact finding Committee which is made up of represenatives from the San Carols Irrigation Drainage District, San Carlos Irrigation Project, Gila River Indian Community, Pima Agency, and the Phoenix Area Office. Objections to three budget items were received. After careful consideration, it was determined to eliminate one item, to reduce one item, and to leave the third item unchanged.

Pursuant to § 191.1(e) Part 191, Chapter 1, subchapter R of Title 25 of the Code of Federal Regulations, this general notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

The principal author of this document is Thomas W. Neumann, Bureau of Indian Affairs, Phoenix, Arizona 85011, telephone (602) 241-2285. The authority to issue this regulation is vested in the Secretary of the Interior by 5 U.S.C. 201 and 25 U.S.C. 385.

The General Notice shall read as follows:

San Carlos Irrigation Project Assessment, Joint Works

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476 and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and the San Carlos Irrigation and Drainage District, and in accordance with applicable provisions of the order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for the Fiscal Year 1984 is estimated to be $2,336,705 and the rate of assessment for the said fiscal year and subsequent fiscal years until further order, is hereby fixed at $23.37 for each acre of land.

Note.—It is hereby certified that the economic and inflationary impacts of this general notice have been evaluated in accordance with Executive Order 12291.

Vernon Palmer

Acting Assistant Area Director.

[FR Doc. 82-13758 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-01-M

Bureau of Land Management

Alaska; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is hereby given that the Port of Anchorage has submitted a proposal for a lease to construct a cargo storage and intermodal cargo transfer system on Federal lands. The location of the proposed lease area is adjacent to the existing Port of Anchorage Terminal facilities north of Ship Creek in Anchorage, Alaska.

The land use proposal submitted by the port of Anchorage may be authorized under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2762).

The proposed lease area lies within:

Seward Meridian, Alaska

T. 13 N., R. 3 W.,
Sec. 6, lot 5 (fractional).
Containing 9.87 acreas.

The Bureau of Land Management is responsible for administration of the above described lands which are withdrawn for use by the Air Force under E.O. 8102 (April 29, 1939) and PLO 2962 (March 5, 1963).

A non-competitive lease was requested to enable the Port of Anchorage to develop the cargo storage and systems handling area. The lot will be filled and leveled, with subsurface and hillside drainage systems installed. Paving and fencing will be completed after a one year fill settling period. Railroad track and railcar ramps may be included to complete an intermodal transfer facility in the future.

The Port of Anchorage has submitted a letter of non-objection from the Alaska Railroad as well as an Envorinmental Analysis of the proposal completed by the U.S. Air Force. This analysis indicates there are no significant environmental or other adverse impacts associated with this proposal.

DATE: Comments will be accepted on or before July 10, 1982.

ADDRESS: Send comments to: John W. Merrick, Peninsula Area Manager, Bureau of Land Management, Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Joette Storm, Public Information Officer, Bureau of Land Management, Anchorage District, (907) 267-1284.

Richard J. Vernimen,

Associate District Manager.

June 10, 1982.

[FR Doc. 82-13731 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[U-50514]

Utah; Proposed Withdrawal and Opportunity for Public Hearing

On January 7, 1982, the Richfield District Manager requested a petition-application for approposed withdrawal for the Hanksville Office and Housing Complex from operation of the public land laws and from location and entry under the mining laws, subject to valid existing rights as to the following described lands:

Salt Lake Meridian, Utah

T. 28 S., R. 11 E.,
Sec. 21, NW¼NE¼.

Also the following two parcels:

Parcel #1—Beginning at the NE corner of SW¼NE¼ of said Section 21; thence south 1°18'39" west 45.14 ft. along the ⅛ section line to fenceline; thence south 89°55'48" west 335.47 ft. along said fenceline; thence north 1°16'36" east 49.99 ft. to the northwest corner of the E½NE¼SW¼NE¼ of said Section 21; thence south 89°14'35" east 335.42 ft. to the point of beginning. Containing 0.37 acres.

Parcel #2 Beginning at the NE corner of the W½NE¼SW¼NE¼ of said Section 21; thence south 1°16'39" west 49.99 ft. to a fenceline; thence south 89°55'48" west 670.92 ft. along said fenceline and its extension; thence north 1°12'29" east 59.67 ft. to the NW corner of the E½NW¼SW¼NE¼ of said Section 21; thence south 89°14'35" east 670.83 ft. to the point of beginning. Containing 0.84 acre.

The areas described aggregate 41.21 acres in Wayne County.

The purpose of the withdrawal is to protect the Hanksville Office and Housing Complex containing approximately $952,000 in improvements consisting of an office, warehouse, seven (7) homes, a water system, paved streets, tennis courts, and other improvements.

On or before August 16, 1982, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

In accordance with Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned at the address shown below. Upon determination by the authorized officer that a public hearing will be held a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register** the lands will be segregated from operation of the public land laws and from location and entry under the mining laws as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those consistent with the proposed withdrawal.

The temporary segregation of the lands in connection with this proposed withdrawal shall not affect administrative jurisdiction over the lands.

All communication in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: May 11, 1982.

Darrell Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13752 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[PHX 075454, etc.]

Arizona; Order Providing for Opening of Public Lands; Correction

May 7, 1982.

In FR Doc. 81-37222 appearing at pages 63398 and 63399 in the issue of December 31, 1981, make the following changes:

On Page 63399, second column, 3rd paragraph is changed to read as follows:

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open to operation of the public land laws, generally. All valid applications received at or prior to February 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

On February 15, 1982, the lands referred to in paragraph 2 shall be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-3685 Filed 5-19-81; 8:45 am]

BILLING CODE 4310-84-M

Casper District Office; Applications for Coal Lease Exchanges in the Powder River Basin, Wyoming

Public Law 95-554 authorized the Secretary of the Interior to exchange specific federal coal leases in Wyoming that were affected by construction of Interstate Highway 90. Several lease holders have applied for exchanges, which are being processed in accordance with Title 43 of the Code of Federal Regulations, Subpart 3435.

Lands that the applicants have requested in exchange for existing lease areas are described below.

Lands Selected for the I-90 Exchanges

Belco Petroleum Corporation

T. 52 N., R. 72 W.,
Sec. 7, All;
Sec. 8, W½, W½E½, NE¼NE¼;
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 21, All.
T. 52 N., R. 73 W.,
Sec. 12, N½, SE¼, E½SW¼;
Sec. 13, NE¼, NE¼NW¼;
Sec. 24, SE¼.

Carter Mining Company

T. 48 N., R. 71 W.,
Sec. 9, E½SE¼;
Sec. 10, All;
Sec. 13, NE¼, SW¼;
Sec. 21, NW¼;
Sec. 23, W½;
Sec. 24, E½NW¼, NE¼SW¼.
T. 51 N., R. 72 W.,
Sec. 8, E½, SE¼SW¼, NE¼SW¼, NW¼SW¼, NW¼.
T. 52 N., R. 72 W.,
Sec. 31, S½SW¼, NE¼SW¼, N½SE¼.

Gulf Oil Corporation

T. 52 N., R. 73 W.,
Sec. 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 4, NE¼SW¼.
T. 53 N., R. 73 W.,
Sec. 34, SE¼NE¼.

Kerr-McGee Coal Corporation

T. 43 N., R. 70 W.,
Sec. 4, All;
Sec. 5, All;
Sec. 8, All;
Sec. 9, All.
T. 44 N., R. 70 W.,
Sec. 28, All;
Sec. 29, All;
Sec. 32, All;
Sec. 33, All.

Wyodak Resources Development Corporation

T. 50 N., R. 71 W.,
Sec. 27, E½SW¼, SW¼SE¼;
Sec. 34, NE¼NW¼, N½NE¼.

Big Horn Coal Co.

T. 57 N., R. 84 W.,
Sec. 28, SE¼SW¼, SW¼SE¼.

Public participation is requested during the processing of the exchange applications. Please send any data concerns, or issues to the Casper District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601. Information received before 1 July will be considered during the further processing of the lease exchange applications.

If you have any questions please contact Chuck Wilkie in the BLM-Casper District Office at (307) 261-5597.

Paul W. Arrasmith,

District Manager.

[FR Doc. 82-13693 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 23733-PS]

Colorado; Notice of Conveyance

May 10, 1982.

Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), Clarence E. Canterbury, 412 Orchard, Canon City, Colorado 81212, has purchased by noncompetitive sale public lands in Fremont County described as:

New Mexico Principal Meridian, Colorado

T. 48 N., R 10 E.,
Sec. 10, Lot 2.
The lot contains 0.85 acres.

The purpose of this Notice is to inform the public and interested state and local governmental officials of the issuance of conveyance documents to Mr. Canterbury.

Ronald J. Cole,
Chief, Division of Technical Services.

[FR Doc. 82-13691 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-84-M

[Colorado 34289]

Colorado; Realty Action Non-Competitive Lease of Public Lands in Grand County

The following described land has been examined and identified as suitable for lease under Section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat 2762; 43 U.S.C. 1732) at no less than the appraised fair market rental:

Sixth Principal Meridian

T. 1 N., R. 76 W.,
Sec. 22, portions within W½NW¼.

The area within the above-described lands that will actually be used is approximately 15 acres in Grand County, Colorado. This area is shown on a map titled "Conceptual Mountain Plan, Silver Creek, Granby, Colorado" filed with the Kremmling Area Office, Bureau of Land Management of March 12, 1982.

Lease of the above-described land has been proposed by the Val Moritz Investment Group of Granby, Colorado. The land is proposed for use to locate a skier unloading terminal, operator's cabin, ski patrol ready station, snowmaking hydrants, access roads and skier trails.

Information concerning the proposed use is in the final Environmental Assessment (CO-018-82-09) and associated land report completed by the Bureau of Land Management on April 30, 1982. The lease of these lands will serve important public and private objectives which cannot be achieved on lands other than public lands administered by the Bureau of Land Management. These values outweigh alternative land uses such as timber harvesting, dispersed recreational opportunities, and forage production.

The Bureau of Land Management is considering a 30 year, direct, non-competitive lease to Val Moritz Investment Group; dependent upon the company filing an application for lease and including information required by Title 43 Code of Federal Regulations, Part 2920.5-2. The terms and conditions applicable to any lease issued under this notice are those in 43 CFR 2920.7. Special stipulations that would be included in a lease, as well as other information about the proposal can be reviewed in the Bureau of Land Management Kremmling Resource Area Office, 1116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459 (303-724-3437).

On or before July 6, 1982, interested parties may submit comments to the District Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 6, 1981.

Lee Carlo,
District Manager.

[FR Doc. 82-13689 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-84-M

[M 20539]

Montana; Termination of Proposed Withdrawal and Reservation of Land

May 13, 1982.

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from operation of the public land laws, including location and entry under the mining laws. The Notice of Proposed Withdrawal was published in the **Federal Register** on February 1, 1972, Volume 37, No. 21, page 2459, and republished on August 4, 1977, Volume 42, No. 150, page 39480. The applicant agency has cancelled its application as to the following:

Principal Meridian

Lewis and Clark National Forest Wood Lake Campgrounds

Unsurveyed, but probably will be when surveyed:

T. 19 N., R. 9 W.,
Sec. 6, W½NW¼SW¼, NE¼, SW¼SW¼NE¼, E½SW¼NE¼NW¼, SE¼NE¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, N½SE¼SE¼NW¼, S½NW¼NE¼SE¼, N½SW¼NE¼SE¼, NE¼NW¼SE¼, N½NW¼NW¼SE¼ and N½SE¼NW¼SE¼.

The area described contains 80 acres in Lewis and Clark County.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1), at 8 a.m. on July 5, 1982, such land will be relieved of the segregative effect of the above mentioned application.

Roland F. Lee,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13694 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-84-M

Nevada; Airport Lease Application

May 11, 1982.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), Lincoln County Board of County Commissioners has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 4 S., R. 63 E.
Sec. 24, E½E½(within).
T. 4 S., R. 64 E.
Sec. 7, S½(within);
Sec. 18, Lots 3 and 4, N½, E½SW¼ (within);
Sec. 19, Lot 1(within).

The area under application involves a 500 foot wide airstrip located in Lincoln County, Nevada. The application was filed on April 8, 1982, and on that date the land was segregated from all other forms of appropriation under the public land laws.

Interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126.

Charles E. Hancock,
Acting Chief, Division of Operations.

[FR Doc. 82-13690 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-84-M

Office Hours; Eastern States Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Office Hours.

In accordance with 43 CFR 1821.2-1(a), this notice confirms that the office hours for use of the public room, filing applications and other documents, and other public services at the Bureau of Land Management, Eastern States Office are 7:30 a.m. to 4:00 p.m., Monday

through Friday, except for those days when the office may be closed for a national holiday or by administrative order. In order to allow additional time for records maintenance, however, the hours for inspection of case files are now 9:00 a.m. to 3:45 p.m.

The Bureau of Land Management Eastern States Office is located at 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 235–2830.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 82-13613 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Planning Criteria for South Sierra Foothills Planning Area Category D Transition Management Framework Plan in the Caliente Resource Area, Bakersfield District, California

May 12, 1982.

In accordance with 43 CFR 1601.3, notice is hereby given of the availability of the Planning Criteria to direct the South Sierra Foothills (SSF) Planning Area Category D Transition Management Framework Plan (MFP) in the Caliente Resource Area.

The Bakersfield District of the Bureau of Land Management has prepared the initial Planning Criteria to direct this planning effort in the Caliente Resource Area. The Plan will involve the public lands located in Kern and Tulare Counties and will carry out the requirements of the Federal Land Policy and Management (FLPMA) of 1976.

As new information surfaces during the planning process, and/or from public input, additional planning criteria will be developed for future guidance of this planning effort.

This initial planning criteria is available for review at the following locations: Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California, 93301, (805) 861–4191; and Caliente Resource Area Office, 1430 Truxtun Avenue, Room 456, Bakersfield, California 93301, (805) 861–4236.

For further information contact Glenn A. Carpenter, Caliente Resource Area Manager, 1430 Truxtun Avenue, Room 456, Bakersfield, California, 93301, (805) 861–4236.

H. Edward Lynch,

Acting District Manager.

[FR Doc. 82-13783 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Initial Land Classifications

Correction

In FR Doc. 82–10280, appearing at page 16212, in the issue of April 15, 1982, make the following corrections:

On page 16214, in land description I–2375, the second line should read; "Section 27: W½NW¼, NW¼SW¼;"

On page 16214, in land description I–6506, the third line should read; "NE¼SW¼, S½SW¼; Section 28:"

On page 16214, in the third column, in the land description I–6820, the second line should read; "E½SW¼, NW¼SE¼, S½SE¼; Section"

On page 16216, after the second line in the first column, insert the following:

Section 19: Lot 4, N½NE¼, SE¼NE¼, E½NW¼, SE¼SW¼, SW¼SE¼
Section 30: Lot 3, NW¼NE¼, S½NE¼, E½NW¼, NE¼SW¼, SE¼
Section 31: Lots 3 and 4, NE¼, SE¼NW¼, E½SW¼, W½SE¼
1,255.28 acres."

On page 16217, in the first column, in the land description for T. 7S., R. 3E., B.M., the line beginning Section 11: should read; "Section 11: SE¼NW¼, S½SW¼; Section".

BILLING CODE 1505-01-M

[OR 26326 and OR 26328]

Public Lands in Lake County Oregon; Realty Action—Noncompetitive Sale

The following described land has been identified as suitable for disposal by noncompetitive sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at the fair market value shown:

Parcel No.	Legal description	Acres
1	T. 25 S., R. 14 E., W.M., Lake County, OR.	
	Sec. 32: W½, SE¼, SE¼	20
	Sec. 33: W½, SW¼, SW¼	20
Total acres		40
2	T. 25 S., R. 14 E., W.M., Lake County, OR.	
	Sec. 33: S½, SE¼, SE¼, SE¼.	5
Total acres		5

The appraised fair market value of parcel number 1 is $14,000.00 ($350.00 per acre).

The appraised fair market value of parcel number 2 is $1,875.00 (375.00 per acre).

The sale will be made on or after August 1, 1982. The lands are being sold to Lake County, Oregon because of the need for land by the community of Fort Rock for community expansion.

The proposed direct sale has been found to be in the public interest. The need for these parcels for community expansion has been identified in both County and Bureau of Land Management land use plans.

The terms and conditions applicable to the sale are:

Parcels 1 and 2

1. The total purchase price for the lands will be paid at the time of the sale.
2. The patent will contain a reservation for ditches and canals.
3. All minerals will be reserved to the United States.
4. The patent will be subject to all existing rights.

Parcel 2 Only

5. At the Bureau of Land Management's request, the purchaser shall relocate all boundary fences to include only the 5 acre parcel as described. All expense of relocating the fences shall be borne by the purchaser.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public discussions, is available for review at the Lakeview District office, 1000 Ninth Street S., P.O. Box 151, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Lakeview District Manager. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become a final determination of the Department of the Interior and the required payment requested of Lake County. Such payment, in full, shall be in accordance with 43 CFR 1822.1–2.

Richard A. Gerity,

District Manager.

May 12, 1982.

[FR Doc. 82-13666 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Twenty-Percent Set-Aside of Production From Outer Continental Shelf (OCS) Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice Pertaining to 20 Percent Set-Aside of Production From Outer Continental Shelf (OCS) Leases Issued After September 18, 1978.

SUMMARY: Section 205(a) of the OCS Lands Act Amendments of 1978 provides that oil and gas leases issued

pursuant to that section include a requirement that the lessee offer 20 percent of the crude oil, condensate, and natural gas liquids produced, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners. In order to assist interest refiners, the Minerals Management Service will make available in the Public Records Office of each OCS Region a listing of producing leases issued after September 18, 1978. At the present time, only the Gulf of Mexico OCS Region will have a listing of production from such leases. It is anticipated that the Pacific OCS Region will not list production from such leases until late 1984. It is not known when the Alaska or Atlantic OCS Regions will be able to list production from such leases.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, U.S. Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 640, Reston, Virginia 22091, telephone (703) 860–7564.

SUPPLEMENTARY INFORMATION: The regional OCS offices' addresses are as follows:

Minerals Management Service, Alaska OCS Region, 800 A Street, Suite 201, Anchorage, Alaska 99501.
Minerals Management Service, Gulf of Mexico OCS Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.
Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.
Minerals Management Service, Pacific OCS Region, 1340 West Sixth Street, Los Angeles, California 90017.

Dated: May 14, 1982.

James N. Parrish,

Acting Chief, Offshore Minerals Management Division.

[FR Doc. 82-13713 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4463, Block 192, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 11, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13772 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Unit Operator of the Ship Shoal Block 113 Federal Unit Agreement No. 14–08–001–2931, submitted on May 5, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 11, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13773 Filed 5-19-82; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Reclamation

[INT-FES 82-15]

Proposed Creston Steam Electric Station, Creston, Wash.; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement jointly with the State of Washington Energy Facility Site Evaluation Council on the proposed Creston Steam Electric Station to be constructed and operated by the Washington Water Power Company. The Creston Steam Electric Station Project is intended to assist in meeting regional energy supply deficiencies projected to occur in the years following 1987.

Copies are available for inspection at the following locations:

Department of the Interior, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Washington, DC 20240, Telephone (202) 343–4991
Grand Coulee Project Office, Bureau of Reclamation, P.O. Box 620, Grand Coulee, Washington 99133, Telephone (509) 633–1360
Energy Facility Site Evaluation Council, Building 1, Row 6, 4224 6th Avenue, Lacey, Washington 98504, Telephone (206) 753–7384
Office of Regional Director, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, Telephone (208) 334–2100
Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, Telephone (503) 234–3361

Single copies of the statement may be obtained upon request to the Commissioner or Regional Director,

Bureau of Reclamation, or Executive Secretary, Energy Facility Site Evaluation Council. Copies will also be available for inspection in libraries in the project vicinity. Please refer to the statement number above.

Dated: May 14, 1982.

R. N. Broadbent,

Commissioner of Reclamation.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 82-13751 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 41.8.1]

Director, Office of Commodity Management; Redelegation of Authority Regarding Furnishing of Commodities

Pursuant to the authority delegated to me by Redelegation of Authority No. 41.8, dated January 22, 1982 (47 FR 7346) from the Assistant to the Administrator for Management, I hereby redelegate to the Director, Office of Commodity Management the following authority:

To execute transfer or transfer/trust agreements with respect to the furnishing of commodities to international organizations having a membership consisting primarily of foreign governments, the American Red Cross, and voluntary nonprofit agencies registered with and approved by the Advisory Committee on Voluntary Foreign Aid pursuant to determinations made under section 607(a) of the Foreign Assistance Act of 1961, as amended.

The authority herein redelegated to the officer named above may not be redelegated further by that officer, but may be exercised by persons authorized by that officer to perform the functions of that office in an "Acting" capacity.

This Redelegation of Authority amends and supersedes Redelegation of Authority No. 41.7, dated August 16, 1979 (44 FR 50667).

This Redelegation of Authority shall be effective immediately.

Dated: April 22, 1982.

John F. Owens,

Deputy Assistant to the Administrator for Management, Program and Management Services.

[FR Doc. 82-13748 Filed 5-19-82; 8:45 am]

BILLING CODE 8116-01-M

[Redelegation of Authority No. 99.1.96, Amdt. No. 3]

Principal AID Officers, Africa; Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant to the Administrator for Management of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.96, dated October 31, 1978, to change the post of concurrence in executing operational program grants for Sierra Leone from Director, USAID/Monrovia to Director, REDSO/WA.

Except as provided herein, the Redelegation of Authority remains and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: April 28, 1982.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 82-13749 Filed 5-19-82; 8:45 am]

BILLING CODE 8116-01-M

Director, Defense Security Assistance Agency, Department of Defense; Amendment to Delegation of Authority No. 1

I. By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.) (hereinafter referred to as the Act), title IV of the International Development Cooperation Act of 1979 (22 U.S.C. 3501 et seq.), Executive Order No. 12163 of September 29, 1979 entitled "Administration of Foreign Assistance and Related Functions" (hereinafter referred to as the Executive Order), and Reorganization Plan No. 2 of 1979 (44 FR 41165), it is ordered that IDCA Delegation of Authority No. 1 be amended as follows:

II. By adding the following new section 1-7:

1-7. *Functions Delegated to the Director, Defense Security Assistance Agency, Department of Defense*

1-701. Exclusive of the functions otherwise delegated, or reserved to the Director of IDCA herein, there is hereby delegated to the Director, or in his absence, the Deputy Director, Defense Security Assistance Agency, Department of Defense, authority to waive the provisions of Section 636(i) of the Act as they apply to procurement under programs administered under the Act by the Department of Defense.

III. By renumbering sections 1-7, 1-8, 1-9, 1-10, and 1-11 as "1-8", "1-9", "1-10", "1-11", and "1-12", respectively and by renumbering subsections of such sections accordingly.

IV. The effective date of this Amendment shall be the date of signature.

Dated: May 7, 1982.

M. Peter McPherson,

Acting Director.

[FR Doc. 82-13701 Filed 5-19-82; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[MC-F-14708]

Motor Carriers, A & A Transfer and Storage Co., Inc., et al.; Pooling

AGENCY: Interstate Commerce Commission.

ACTION: Modified procedure decision.

SUMMARY: The Commission is unable at this time to make the necessary statutory findings as to whether a pool of 61 carriers (including the 49 additional carriers who have sought entry into the pool) will be of major transportation importance and whether there is substantial likelihood that such agreement or combination will unduly restrain competition. In lieu of the information required under 49 CFR Part 1139 we are requesting certain specific information of the parties to this proceeding (and other interested parties) to enable us to make these statutory findings with regard to the original pool and the expanded pool. The original 12 members of the pool and those that seek entry are parties in interest. Any other interested parties may seek to intervene within 30 days of the date of publication of this notice and simultaneously submit a verified statement containing the requested information addressing the issues raised in this document. The Department of Defense and GSA are particularly urged to participate in this proceeding because of their interest in the transportation of government traffic.

DATES: Petitions for intervention and verified statements containing the requested information and addressing the issues raised in this document must be filed within 30 days of the publication of this notice in the **Federal Register**. Any reply statements must be filed within 15 days after the date verified statements are due.

ADDRESSES: The original and one copy of each submission should be sent to: Interstate Commerce Commission, Section of Finance, Washington, D.C. 20423. Copies of the full decision can be purchased by contacting TS

Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423, or by calling 289–4357 in the Washington area or toll free 800–424–5403.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245. Bruce Kasson, (202) 275–7655.

SUPPLEMENTARY INFORMATION: A decision in this proceeding contains additional information. Copies of the decision may be obtained from the Secretary of the Commission. Parties to this proceeding should supply the following information and address the following issues in their verified statements:

Information To Be Supplied

1. Explain from an operations standpoint how Government agencies or government contractors ship government traffic and select motor carriers for such movements.

2. The original applicants are requested to submit specific information as to how the pool will operate (i.e. what are the variety of quality and price options to be offered to the government; how will the pool promote economical, efficient and competitive service).

3. Affected governmental agencies (i.e., Defense Department; General Services Administration) are requested to submit any available market analyses of overall government traffic flows and such flows between specific points or areas, including evidence pertaining to the top twenty five carriers participating in such traffic in 1981, further including their traffic volumes and revenues as compared to the total. If such analyses and market studies are not available, state why such information cannot be submitted in another form.

4. Please submit copies of the government traffic authority or proof thereof if not previously given.

5. What is the volume of government traffic that you have transported or shipped during 1981; from and to what points did the traffic move?

6. What were the revenues or costs of the government traffic that you transported or shipped during 1981?

7. What is the projected volume and revenue (costs) for the transportation or shipment of such government traffic during 1982? Where is the traffic expected to be moved?

8. For governmental agencies: State the government's position on approval of a pool involving the original 12 applicants, or of an expanded pool.

Issues To Be Addressed

A. What would be the effect on the competition for government traffic by allowing the original 12 applicants or all requesting authorized carriers to join the pool? Would a denial of additional carriers (beyond the original 12 applicants) to enter the pool improve the competitive balances between such authorized carriers? Comment on the appropriateness of denying the entry of additional carriers into the pool but permitting the independent formation of additional pools for such traffic. Would pooling substantially injure or disadvantage nonpool carriers for such traffic?

B. Will pooling increase or decrease rates on government traffic and, if so, the amount thereof?

C. Government traffic is said to be sporadic and directionally imbalanced. Would pooling improve the efficiency of carrier services or create a more productive use of equipment and energy resources?

D. Would a pool of the original 12 applicants or an expanded pool disadvantage small or minority enterprises or carrier employees in any way?

E. What would be the effect of the original or expanded pool on the level of service to rural and small communities?

Decided: April 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13708 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers, Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1110.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments, (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Vol. No. OP2–85A

Decided: May 13, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC–F–14841, filed April 15, 1982. GENERAL ELECTRIC COMPANY (GEC) (Applicant), 3135 Easton Tpke, Fairfield, CT 06431—continuance in control—Product Distribution Company, 4715 Pinewood Dr., Louisville, KY, 40232. Representative: Michael F. Morrone, 1150 17th St., NW., Suite 1000, Washington, D.C. 20036. Applicant seeks authority to continue in control of Product Distribution Company upon the institution by Product Distribution Company of operations, in interstate or foreign commerce, as a contract carrier. Applicant seeks to acquire control of said rights and property through the transaction. Applicant, a non-carrier, is a publicly traded corporation, not controlled by any person, GEC is the sole stock holder of East Erie Commercial Railroad, a Class III switching and Terminal Railroad.

Note.—(1) Applicant has filed a Petition for Exemption from the requirements of 49 U.S.C. 11348 so that, despite having acquired control of a Commission regulated rail carrier and motor carrier, it may hereafter issue securities and/or assume obligations and liabilities without first having to seek the Commission's prior consent to such transactions as otherwise required by the provisions of 49 U.S.C. 11301 and 11302. GEC also requests a waiver from any requirement that it file ICC Form M Annual Reports (49 CFR 1249.3).

(2) Product Distribution Company has filed as a directly related application its initial contract carrier application docketed MC–161523, published in this same **Federal Register** issue.

The following finance applications are dated May 7, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–F–14851, filed April 29, 1982. BOB'S TRANSPORT & STORAGE CO., INC. (BTS) (7081 Oakland Mills, Columbia, MD 21046)—purchase—Intercity Transportation Company (Intercity) (600 Turnpike Street, Route 138, So. Easton, MA 02375). Representatives: Michael R. Werner, 241 Cedar Lane, Teaneck NJ and John A. Glasson, 86 Weybosset St., Providence, RI 02903.

BTS seeks authority to purchase the interstate operating rights of Intercity. Robert J. Pfeffer, Sr., sole stockholder of BTS, also seeks authority to acquire control of said rights through the transaction.

The operating rights to be purchased are contained in Intercity's certificate No. MC–47904 (Sub-No. 7) which authorizes the transportation of *general commodities* (usual exceptions) between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI and VT.

BTS is a motor common carrier pursuant to certificates issued in MC–148624 and sub numbers thereunder.

Note.—(1) An application for temporary authority has been filed. (2) A directly related gateway extension application has been filed, MC–148624 (Sub-No. 3), published this same **Federal Register** issue.

No. MC–F–14844, filed April 19, 1982. TROJAN FREIGHT LINES LIMITED (Trojan), 5280 Maingate Drive, Mississauga, Ontario, Canada L5A 3S3—Purchase (Portion—J. M. McMAHON TRUCKING, INC. (McMahon), P.O. Box 6767, 360 Dingens Street, Buffalo, NY 14240. Representatives: Jack Goodman, Axelrod, Goodman, Steiner & Bazelon, 29 South La Salle Street, Chicago, IL 60603; Michael Beilewech, Jr., 20 Cathedral Park, Buffalo, NY 14202; and William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202.

Authority is sought by Trojan to purchase a portion of the interstate operating rights of McMahon. Trojan is controlled by a carrier, TNT Canada, Inc. (TNT), which, in turn, is controlled by a non-carrier, Alltrans Canada, Inc. (ACI), which, in turn, is controlled by a non-carrier, Thomas Nationwide Transport Limited (TNTL), whose stock is widely held. TNT is also in control through stock ownership of a carrier, Overland Western International, Inc., and a non-carrier, Champlain Sept-Iles Express, Inc., which, in turn, is in control of a carrier, Maheu Transport, Inc., and a 49% ownership of a non-carrier, Cowansville Express, Inc., which, in turn, is in control of a carrier, Champlain Transport (International). TNTL is also in control of a non-carrier, Alltrans Holdings, Inc., which, in turn, is in control of a carrier, Alltrans Express U.S.A., Inc., which, in turn, is in control of carriers Alltrans Alaska Trucklines, Inc.; and All Trans Roadfast, Inc. (formerly MMar Transportation, Inc.); and a freight forwarder, Alltrans Alaska Feight, Inc. Alltrans Holdings is also in control of a non-carrier, Alltrans Pilot Inc., which is, in turn, in control of a carrier, Pilot Freight Carriers, Inc. TNTL corporate-system carriers hold operating rights generally authorizing the transportation of general and specified commodities in all of the contiguous 48 states.

Trojan proposes to purchase operating rights covered by Certificate of Registration No. MC–68098 (Sub-No. 2) which is supported by a Certificate of Public Convenience and Necessity granted in No. 1392, dated December 1, 1968, transferred and reissued June 6, 1968, as corrected August 13, 1968, and again reissued May 12, 1976 by the New York Public Service Commission, generally authorizing the transportation of general commodities generally between New York, NY, and points in Chautauqua, Erie, Genesee, Monroe, and Niagara Counties, NY.

Note.—(1) Trojan has filed an application for temporary authority to lease a portion of the operating rights of McMahon, (2) A directly related application seeking a certificate of public convenience and necessity has been filed in No. MC–148095 (Sub–No. 4) in lieu of the certificate of registration issued to McMahon in No. MC–68906 (Sub-No. 2) and (3) Trojan also seeks an extension of authority as supported by certain shipper support statements.

MC–F–14849, filed April 27, 1982 SOUTH RIVER BUS COMPANY, INC. (South River) (148 Whitehead Ave., South River, NJ 08882)—Purchase (Portion)—STARR TRANSIT COMPANY, INC. (Starr) (2531 East State St., Trenton, NJ 08619). Representative: Edward F. Bowes, 7 Becker Farm Rd., P.O. Box Y, Roseland, NI 07068.

South River seeks to purchase a portion of the interstate operating rights to Starr. Elliott Hodges and Betty L. Hodges seek authority to acquire control of said rights through the transaction.

South River is purchasing the rights contained in Starr's certificate in MC–111504, which arthorizes the transportation of passengers and their baggage and newspapers, in the same vehicle with passengers, over regular routes, between Hightstown and Trenton, NJ and between Hightstown and New Brunswick, NJ, with service at all intermediate points.

South River, a contract carrier by motor vehicle is authorized under MC–144833 (Sub-No. 1).

DECISION–NOTICE

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10928, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Person wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with

applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the applicant under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later become unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Dated: May 7, 1982.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC 148095 (Sub-4), filed April 19, 1982. Applicant: TROJAN FREIGHT LINES LIMITED—CONVERSION AND EXTENSION, 5280 Maingate Drive, Mississauga, Ontario, Canada L5A 3S3. Representative: Jack Goodman, 29 South La Salle Street, Chicago, IL 60603. Transporting (1) *general commodities* (except classes A and B explosives, commodities in bulk and household goods, as defined by the Commission), (a) between all points in Erie County, NY; (b) between points in Erie County, NY, on the one hand, and, on the other, all points in Chautauqua, Genesee, Monroe, Niagra Counties, NY, and New York City, NY; (2) *store, office, restaurant and kitchen fixtures and equipment,* (a) between all points in Cattaraugus, Chautauqua, Genesee, Wyoming Counties, NY; (b) between points in Erie County, NY, on the one hand, and, on the other, points in Allegany, Orleans, Ulster, Westchester, Genesee, Cattatuagus and Wyoming Counties, NY.

Note.—This application is directly related to MC–F–14844, filed concurrently herewith wherein Trojan Freight Lines Limited seeks to purchase a portion of the operating rights of J. M. McMahon Trucking, Inc., contained in a certificate of registration, MC–68098 as summarized in number one above. The purpose of this application is to convert said certificate of registration to a certificate of public convenience and necessity. In number two above applicant seeks an extension of authority as supported by certain shippers.

MC 148624 (Sub-3), filed April 29, 1982. Applicant: BOB'S TRANSPORT & STORAGE CO., INC., 7081 Oakland Mills, Columbia, MD 21046. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *such commodities* as are used in and dealt by gorcery stores, between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI and VT, on the one hand, and, on the other, points in VA, WA, WV and DC.

Note.—This application is directly related to MC–F–14851, published in this same Federal Register issue.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13709 Filed 5–19–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79716. By decision of May 7, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to Isadora Spiegel d/b/a Spiegel Trucking Co. of Permit No. MC–125770 (Sub-No. 8) issued February 12, 1925 to Spiegel Trucking, Inc. authorizing the transportation of Steel ammunition boxes and steel office and library furniture, from the facilities of and metal-U.S.C. of Newark, NJ to points in the United States (including AK but excluding HI) under authority contract or contracts with Artic Metal

U.S.S., of Newark, NJ. Applicant's representative is: Harold L. Reckson, 33–28 Halsey Road, Fair Lawn, NJ 07410.

MC–FC–79751. By decision of May 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to REDIEHS EXPRESS, INC. of Lake Station, IN of all the authorities contained in certificate No. MC–128270 issued November 27, 1968, and subsequently issued sub-numbered certificates to REDIEHS INTERSTATE, INC. also of Lake Station, IN, evidencing a right to engage generally in transportation in interstate commerce over irregular routes transporting generally (1) *such commodities as are dealt in or ysed by wholesale metal dealers, wholesale metal processors, and automobile crushers, jobbers, and distributors and wholesalers of metal products, building materals, plastic products, lumber and wood products, clay, concrete, glass, or stone products and machinery* generally between points in the United States in and west of OH, KY, TN, GA, and FL (except AK and HI) and (2) *general commodities,* (with the usual exceptions) between the Bethleham Steel Corp. plantsites at Burns Harbor, Porter County, IN on the one hand, and, on the other, points in IL north of U.S. Highway 40, and points in MO (except St. Louis).

MC–FC–79765. By decision of May 7, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to James A. Hiers d/b/a Hiers Trucking Co., of Ocean Springs, MS of Certificate No. MC–151551 (Sub-No. 1F) issued to All American Freight Lines, Inc., of Birmingham, AL authorizing the transportation of (1) *machinery* and (2) *building materials* between points in AL, AR, FL, GA, LA, MS, NC, SC, TN and TX, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Applicant's representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. TA lease is sought. Transferee is not a carrier.

MC–FC–79778. By decision of May 7, 1982, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Mortorano Transport Systems, Inc., d/b/a K.C.S. Express Company, of Poughkeepsie, NY, of Certificate of Registration No. MC–98068 (Sub-No. 2F) issued 5/5/61, to K.C.S. Express Co., Inc., of Poughkeepsie, NY corresponding in scope to state certificate No. 1920 dated 3/28/61 issued by the New York State Department of Transportation. The certificate authorizes general commodities between all points in the Counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, NY. Applicant's representative is: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410.

MC–FC–79780. By decision of 5/11/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to LTL DISTRIBUTION, INC. d/b/a/ LEAVENWORTH–TONGANOXIE LINES, of Tonganoxie, KS of Certificate No. MC–60178 and MC–60178 (Sub-No. 5) issued June 4, 1969 and May 22, 1974, respectively, to TONGANOXIE MOTOR FREIGHT, INC., of Tonganoxie, KS, authorizing the transportation by regular routes of *general commodities* (with the usual exceptions) between Tonganoxie, KS and McLouth, KS, serving intermediate points and Oskaloosa, KS as an off-route point and between points in KS and MO, and *livestock* from Tonganoxie, KS to Kansas City, MO, serving intermediate and off-route points within 20 miles of Tonganoxie, over U.S. Highway 24. Applicant's representative: Arden R. Waters, Route #1, Tonganoxie, KS 66086.

MC–FC–79781. By decision of May 7, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Western Liquid Transport, of Pittsburg, CA, of Permit No. MC–144798 (Sub-No. 3F), (Sub-No. 4F), and (Sub-No. 6F) issued, respectively, December 26, 1979, August 12, 1980, and November 10, 1980, to James W. Berg and John W. Berg, d/b/a/ the Dutch Line authorizing the transportation of (A) *liquid paraffin wax,* in bulk, in tank equipment, (1) between South San Francisco, CA, and Scappoose, OR, under continuing contract(s) with Paragon Wax Refining Company, of South San Francisco, CA, (2) between Richmond, CA, and Scappoose, OR, under continuing contract(s) with Neu-Glo Candles, Incorporated, of Scappoose, OR, and (B) *lubricating oils, used lubricating oils, oil additives, and drain oil* between points in Alameda, San Mateo, Ventura, and Los Angeles Counties, CA, and points in ID, NV, OR, UT, and WA, under continuing contract(s) with Ekotek Lube, Inc. Representative is: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. Transferee is not a carrier.

MC–FC–79782. By decision of May 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to RONALD KRAMER, d.b.a. Kramer & SONS TRUCKING, of Lima, OH, of Permit Nos. MC–113429 and Sub-Nos. 3 and 6, issued to MIKE CONTRIS, d.b.a. CONTRIS TRUCKING, of Harrod, OH, which authorize the transportation of *specified and general commodities* (with exceptions), between points in the U.S., under continuing contract(s) with Clark Equipment Company, of Lima, OH. Representative: James Duvall, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017.

Note.—Transferee is not a carrier.

MC–FC–79785. By decision of May 11, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to BLUE GRASS TRANSPORTATION, INC. of Nashville, TN Certificate No. MC–41064 and all subs issued to KENT EXPRESS, Inc. of Aurora, IN authorizing: general commodities, with exceptions, regular and irregular routes in OH, KY, and IN authorizing: general commodities, with exceptions, over regular and irregular routes in OH, KY and IN. Representative: Roland M. Lowell, 5th FL 501 Union Street, Nashville, TN 37219. TA lease is not sought. Transferee is not a carrier.

MC–FC–79790. By decision of decision of May 6, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1133, Review Board Number 3 approved the transfer to Barbara J. and Leo J. Wachter, d.b.a. of License No. ROTHRAUFF WORLD TRAVEL SERVICE, issued to Richard M. Rothrauff, d/b/a Rothrauff World Travel Service authorizing the transportation of *passengers and their baggage* in special and charter operations, beginning and ending at points in Blair, Cambria, Huntingdon, and Bedford Counties, PA, and extending to points in the United States including AK an HI. Applicants' representative: John F. Sullivan, 2229 Broad Avenue, Altonna, PA 16602.

Notes.—Transferee presently holds no authority from the ICC.

MC–FC–79794. By decision of 5/11/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to REALCO ENTERPRISES, INC., of Arcadia, IN, of Permit No. MC–136718 (Sub-No. 2X), issued to GLENN'S INC., of Sheridan, IN, which authorizes the transportation of *furniture and fixtures,* between points in the U.S., under continuing contract(s) with The Harris Pine Mills, of Pendleton, OR. Representative: Donald W. Smith, P.O. Box 40240, Indianapolis, IN 40240.

Note.—Transferee is not a carrier.

Agatha L. Mergenovich

Secretary.

[FR Doc. 82-13711 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Vol. No. OP2-95]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: May 13, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier. Member Parker not participating.

Agatha L. Mergenovich,

Secretary.

MC 161523, filed April 15, 1982. Applicant: PRODUCT DISTRIBUTION COMPANY, 4715 Pinewood Dr., Louisville, KY 40232. Representative: Michael F. Morrone, 1150 17th St., N.W., Suite 1000, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by manufacturers of electrical equipment, electrical products, energy systems, and plastic items, between points in the U.S., under continuing contract(s) with General Electric Company, of Fairfield, CT.

[FR Doc. 82-13710 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effecive notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP3-075

Decided: May 13, 1982.

By the Commission, Review Board No. 2. Members Carleton, Fisher, and Williams.

MC 111045 (Sub-195), filed April 20, 1982, previously noticed in the **Federal Register** on May 5, 1982. Applicant: REDWING CARRIERS, INC., P.O. Box 30063, Tampa, FL 33630. Representative: Stephen F. Wilkens (same address as applicant), (813) 621–2046. Transporting *steel and steel products*, between points in AL, on the one hand, and, on the other, points in AR, AL, FL, GA, LA, MS, NC, SC, TN, and TX.

Note.—This republication corrects the docket number and the territorial description.

MC 120924 (Sub-14), filed April 30, 1982. Applicant: B & W CARTAGE CO., INC., 2932 West 79th Street, Chicago, IL 60652. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MN, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, LA, MA, MD, ME, MS, NC, NJ, NH, NY, OK, PA, RI, SC, TN, TX, VA, WV and DC.

MC 127955 (Sub-10), filed April 30, 1982. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. & Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *foodstuffs and related products*, (1) between points in Monroe County, NY and Oswego County, NY, on the one hand, and, on the other, Monmouth County, NJ; and (2) between points in Baltimore County, MD and Westmoreland County, PA, on the one hand, and, on the other, Atlantic City, NJ.

MC 127955 (Sub-11), filed April 30, 1982. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. & Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *foodstuffs and related products*, (1) between points in Hudson and Cumberland Counties, NJ, on the one hand, and, on the other, points, points in the U.S. (except AK and HI), and (2) between points in Houston County, GA, on the one hand, and, on the other, points in NJ.

MC 134134 (Sub-106), filed May 4, 1982. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Ave., Omaha, NE 68107. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of floor and wall covering, between those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 136635 (Sub-71), filed May 3, 1982. Applicant: WHITEFORD TRUCK LINES, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Archie B. Culbreth, Suite 202, 2200 Century Pkwy, Atlanta, GA 30345, (404) 321–1765. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of (1) pulp, paper and related products, (2) rubber and plastic products, (3) lumber and wood products, (4) chemicals and related products, (5) home improvement centers, (6) photocopying machinery and equipment and parts, (7) advertising materials and supplies and advertising specialty items and accessories (including key holders, wallets, card cases, desktop accessories and clocks), and (8) film and film products, between points in the U.S. (except AK and HI).

MC 140475 (Sub-10), filed April 30, 1982. Applicant: S & P TRUCKING INC., R. R. No. 3, Kennett, MO 63857. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102, (314) 636–2321. Transporting *fertilizer and fertilizer ingredients*, between points in Pemiscott and Scott Counties, MO, on the one hand, and, on the other, points in AR, IL, KY and TN.

MC 142935 (Sub-27), filed April 30, 1982. Applicant: PLASTIC EXPRESS, 2301 E. Francis St., Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, (714) 738–3889. Transporting *rubber and plastic products and chemicals and related products*, (a) between those points in and west of LA, AR, MO, IL, IA and MN, and (b) between points in NJ, on the one hand, and, on the other, those points in and east of MS, TN, KY, IA and WI.

MC 142935 (Sub-28), filed April 30, 1982. Applicant: PLASTIC EXPRESS, 2301 E. Francis St., Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, (714) 738–3889. Transporting *building materials*, between those points in and west of LA, AR, MO, IA and MN.

MC 143185 (Sub-7), filed April 30, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., P.O. Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting (1) *foodstuffs* and (2) *such commodities* as are utilized in the manufacture and distribution of foods, between points in St. Landry Parish, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145935 (Sub-1), filed May 3, 1982. Applicant: ALL STATES TRANSPORTATION, INC., Route 1, Box 27, Fort Worth, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112, (817) 457–0804. Transporting (1) *insulators and parts*, and (2) *wiring*, between Washington County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147695 (Sub-2), filed April 26, 1982. Applicant: ONAHU TRANSPORTAITON COMPANY, INC., P.O. Box 39, Bethune, CO 80805. Representative: Winston A. Hollard, P.O. Box 1169, Arvada, CO 80001, (303) 425–0384. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between Lenexa, KS and Denver, CO, (b) between Denver and Longmont, CO, on the one hand, and, on the other, Salina, Wichita and Kansas City, KS and (c) between Lenexa, KS, on the one hand, and, on the other, Commerce City and Denver, CO.

MC 149014 (Sub-7), filed May 3, 1982. Applicant: EAGLE LINES, INC., P.O. Box 902, Merrimack, NH 03054. Representative: Henry Sepessy, 10 Canterbury Way, Merrimack, NH 03054, (603) 434–2400. Transporting *food and related products*, between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the eastern boundary of Itasca County, MN, thence northward along the eastern boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada.

MC 154714, filed April 30, 1982. Applicant: APACHE EXPRESS CORPORATION, P.O. Box 45, Great Valley, NY 14741. Representative: James E. Brown, 36 Brunswick Rd. Depew, NY 14043, (716) 681–7190. Transporting (1) *new office furniture*, (2) *office equipment* and (3) *transportation equipment*, between Leroy, Ellicottville and Jamestown, NY, on the one hand, and, on the other, points in AL, AR, CO, DE, FL, GA, IL, IN, KS, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, WI and DC.

MC 157074, filed April 30, 1982. Applicant: BREMEN TRANSFER & STORAGE, INC., 1403 West Dewey Street, Bremen, IN 46506. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204–3491, (317) 636–1301. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in LaPorte, St. Joseph, Elkhart, Starke,

Marshall, Kosciusko, Pulaski, Fulton and Allen Counties, IN.

MC 157595 (Sub-1), filed May 3, 1982. Applicant: PM TRANSPORT, INC., 2459 Campbell Ave., Lynchburg, VA 24501. Representative: Terrence D. Jones, 2033 K St., N.W., Washington, DC 20006, (202) 429–0090. Transporting (1) *petroleum, natural gas and their products,* and (2) *chemicals and related products,* (a) between Charleston, SC, and points in Johnston and Guilford Counties, NC, and Delaware County, PA, on the one hand, and, on the other, points in VA, and (b) between Charleston, SC, and points in Roanoke and Bedford Counties, VA, on the one hand, and, on the other, points in WV.

MC 158625 (Sub-2), filed April 30, 1982. Applicant: REMICK TRUCKING LTD., 215 E. 37th, Boise, ID 83704. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with E. E. Greer Ltd. of Edmonton, Alberta, Canada.

MC 159995, filed April 26, 1982. Applicant: SILVER DOLLAR CORP., 89 W. Main St., Suite 12, Vernal, UT 84078. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 160784, filed May 3, 1982. Applicant: A.T.L., INC., 3865 West Wells St., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 West Wisconsin Ave., Milwaukee, WI 53203, (414) 276–2260. Transporting (1) *automotive parts,* and (2) *magazines, periodicals, and other dated materials,* between points in WI, on the one hand, and, on the other, points in the Upper Peninsula of MI, under continuing contracts with Seewhy, Inc., of Milwaukee, WI, and NAPA Distribution Center, of Stevens Point, WI.

MC 161634, filed April 30, 1982. Applicant: SUNDANCE EXPRESS CORPORATION, Suite 460, 400 Wendell Court, P.O. Box 43366, Atlanta, GA 30336 Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340, (404) 491–1696. Transporting (1) *textile mill products,* (2) *rubber and plastic products,* and (3) *clay, concrete, glass or stone products,* between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Pykettes Manufacturing Company of Salt Lake City, UT, (2) Delta Tire Corporation of Forest Park, GA, and (3) Buchtal Corporation USA of Atlanta, GA.

MC 161734, filed April 29, 1982. Applicant: RICHARD R. IDING, d.b.a. IDING TRUCKING, 846 S. 77th St., West Allis, WI 53214. Representative: William P. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of abrasives, between points in the U.S. (except AK and HI), under continuing contract(s) with Sancap Abrasives, Inc., of Alliance, OH.

MC 161755, filed April 30, 1982. Applicant: ROBERT G. SPRANDO, 3010 SE 36th Ave., Portland, OR 97202. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *general commodities* (except household goods, Classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Handyman of San Diego, CA.

MC 161755, filed April 30, 1982. Applicant: CLARK & SNIVELY TRUCKING LIMITED, P.O. Box 512, Leamington, Ontario, Canada N8H 3W8. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962–6492. Transporting *lumber and wood products,* between ports of entry on the International Boundary line between the U.S. and Canada, in MI, between points in the U.S., under continuing contract(s) with MacMillan Bloedel Limited, of Thunder Bay, Ontario.

MC 161764, filed April 30, 1982. Applicant: NEWTON BUS SERVICE, INC., Route 1, Box 77, Gloucester, VA 23061. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. Transporting *passengers and their baggage,* when moving in the same vehicle with passengers, in charter and special operations, beginning and ending at points in VA, and extending to points in the U.S.

MC 161814, filed May 3, 1982. Applicant: TRI-STATE CARRIERS, INC., 1616 South 14th St., P.O. Box 300, Leesburg, FL 32748. Representative: Norman J. Bolinger, Suite 225, 3100 University Blvd., So., Jacksonville, FL 32216, (904) 724–7539. Transporting *dry commodities in bulk,* between points in AL, FL, and GA.

MC 161815, filed May 3, 1982. Applicant: JEWEL FOLIAGE COMPANY, a corporation, 9035 Aero Lane, San Antonio, TX 78217. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 725–2177. Transporting *such commodities* as are dealt in or used by florists, manufacturers and distributors of floral and floral accessories, between points in the U.S., under continuing contract(s) with Smithers-Oasis, Division of the Smithers Company, of Kent, OH.

MC 161824, filed May 3, 1982. Applicant: ARIES TRANSPORTATION COMPANY, INC., 13932 E. Valley Blvd., City of Industry, CA 91744. Representative: James Bowers (same address as applicant), (213) 968–9648. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY, AK and HI, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, UT, WA, WY, AK and HI.

Volume No. OP4–172

Decided: May 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 48937 (Sub-2), filed May 6, 1982. Applicant: (John) CLARK TRUCKING & RIGGING CO., 7685 Fields Ertel Rd., Cincinnati, OH 45241. Representative: Norbert B. Flick, 2250 Beechmont Ave., Cincinnati, OH 45230, (513) 231–4831. Transporting *machinery and machinery parts,* between points in the U.S. (except AK and HI).

MC 149067 (Sub-2), filed May 6, 1982. Applicant: SUN VALLEY TRUCKING, INC., 149 Franklin St., Oakland, CA 94607. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986–8696. Transporting *food and related products,* between points in AZ, CA, ID, NV, OR and WA.

MC 156417 (Sub-1), filed May 4, 1982. Applicant: GREAT SMOKIES FREIGHT LINES, INC., P.O. Box 253, Cherokee, NC 28719. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949–7756. Transporting *such commodities* as are dealt in, used or distributed by retail department stores between points in GA, NC, SC and TN, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, OK and TX.

MC 161857, filed May 6, 1982. Applicant: FLORIDA CONTAINER EXPRESS, INC., 1532 Kingsley Ave., Suite 105, Orange Park, FL 32073. Representative: Norman J. Bolinger, 3100 University Blvd., S, Suite 225, Jacksonville, FL 32216, (904) 724-7539. Transporting *general commodities* (except classes A and B explosives,

household goods and commodities in bulk), between points in FL, on the one hand, and, on the other, points in AL, FL, GA, MS, NC, SC, and TN.

Volume No. OP4–173

Decided: May 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 36556, (Sub-51), filed May 6, 1982. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, Somers, WI 53171. Representative: Fred H. Figge (same address as applicant), (414) 859–2223. Transporting *food and related procucts,* between points in IL, IN, IA, KS, KY, MI, MN, MO, OH, and WI.

MC 61396 (Sub-403), filed May 6, 1982. Applicant: HERMAN BROS., INC., 2565 St Mary's Ave., Omaha, NE 68101. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh PA 15219, (412) 471–1800. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Penn-West Cement Company, Inc., of Cabot, PA.

MC 136786 (Sub-5), filed May 6, 1982. Applicant: CARL DITTFIELD, 33 Drake St., Pittston, PA 18640. Representative: Joseph A. Keating, Jr,. 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *general commodities* (exept classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bleyer, Industries, Inc., of Mt. Union, PA.

MC 145396 (Sub-9), filed May 6, 1982. Applicant: BOYCE HOWARD, d.b.a. HOWARD TRUCKING, Hwy 67 North, P.O. Box 165, Newport, AR 72112. Representative: John Paul Jones, P.O. Box 3140, Front St. Station, 189 Jefferson Ave., Memphis, TN 38103, (901) 527–2482. Transporting *metal products,* between points in AL, CT, FL, GA, IL, IN, IA, KS, KY, MI, MO, MN, NC, NY, OH, OK, PA, SC, VA, and WV.

MC 152546 (Sub-1), filed May 6, 1982. Applicant: GRIMM TRANSPORT CO., 1801 Morton Ave., Morton, IL 61550. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Hiram Walker & Sons, Inc., of Ft. Smith, AR, and Midwest Solvents Co. of Illinois, of Pekin, IL.

MC 153696 (Sub-1), filed May 6, 1982. Applicant: LONNIE POWELL, d.b.a. PACIFIC TANK LINES, 825 W. Olympic Blvd., Montebello, CA 90640. Representative: Lonnie Powell (same address as applicant), (213) 726–1251. Transporting *lacquers, paints, resins, and related products,* between points in the U.S., under continuing contract(s) with McCloskey Varnish, of Commerce, CA.

MC 154026 (Sub-2), filed May 7, 1982. Applicant: ADVANCE EXPRESS, INCORPORATED, 1200 S. State St., Girard, OH 44420. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities,* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hynes Industries, Inc., of Youngstown, OH, Sharon Tube Company, of Sharon, OH, and Syro Steel Company, of Girard, OH.

MC 156706 (Sub-1), filed May 7, 1982. Applicant: G.A.L. & S. TRUCKING, INC., P.O. Box 709, Enumclaw, WA 98022. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *lumber and wood products, hardware, building materials,* and *paint and paint supplies,* between points in AR, AZ, CA, CO, IA, ID, IL, IN, KS, LA, MI, MN MS, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, and WY.

MC 160016, filed May 6, 1982. Applicant: ROMA TRANSPORT SERVICE, INC., 2201 Baker Dr., Allentown, PA 18103. Representative: Joel Tanis, Jr., River and Range Rds., Fair Lawn, NJ, (215) 791–0483. Transporting *dry cement,* between points in Lehigh and Northampton Counties, PA, on the one hand, and, on the other, Newark and Trenton, NJ, and points in Bergen, Passaic, Middlesex, Burlington, Sussex, and Monmouth Counties, NJ.

MC 161866, filed May 6, 1982. Applicant: KENNETH H. FLAGG, P.O. Box 213, Belfast, ME 04915. Representative: Kenneth H. Flagg (same address as applicant), (207) 338–2300. Transporting *printed matter,* (1) between points in Waldo County, ME and Merrimack County, NH, and (2) between points in Waldo County, ME, on the one hand, and, on the other, Boston, MA, Hartford and Bridgeport, CT, and New York, NY, under continuing contract(s) with Rumford National Graphics, Inc., of Belfast, ME, d.b.a. Jounal Press.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13714 Filed 5–19–82; 8:45 am]

BILLING CODE 7035–01–M

[AB 18 (SDM)[1]]

Chessie System; Amended System Diagram map

Notice is hereby given that, prusuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the the Chessie System has filed with the Commission its amended color-coded system diagram map in docket No. AB 18 (SDM). The Commission on May 3, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 18 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–13705 Filed 5–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-No.130)]

Missouri Pacific Railroad Co.; Exemption for Contract Tariff ICC–MP–0039

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff may become effective on one day's notice. this exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The Missouri Pacific Railroad Company (MP) filed a petition on April 27, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioners request that we permit supplement 1 to contract tariff ICC–MP–0039 to become effective on one day's notice. It provides for the transportation of motor vehicles.

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[1] AB 18(SDM), The Chesapeake and Ohio Railway Company; AB 19(SDM), The Baltimore and Ohio Railroad Company; and AB 69(SDM), The Western Maryland Railway Company.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. One of the primary rail routes utilized by the shipper to ship its motor vehicles was inadvertently omitted from the underlying contract. The exclusion of the traffic over the omitted route has prevented the shipper from receiving the financial incentives provided in the contract. We find this to be the type of circumstances which warrants a provisional exemption.

Petitioners' contract tariff ICC–MP–0039 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission has permitted the amended contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposesof 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, or review this contract and to disaprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 13, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc 82-13700 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

[Sec. 5b Application Nos. 2, 3, and 6]

Western, Eastern, and Southern Railroads; Agreements

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of prior decision.

SUMMARY: The Commission in its decision served April 24, 1981 (46 FR 23829, April 28, 1981) found that proposed government rates should be treated as single-line rates for the purpose of the voting prohibitions of 49 U.S.C. 10706(a)(3)(A)(i). This decision, however, should not be construed as prohibiting a change in car allowances submitted as a section 10721 quotation from being handled collectively under existing rate bureau procedures where the car allowances are not particularized and involve broad tariff changes.

FOR FURTHER INFORMATION CONTACT:

Donald J. Shaw, Jr., (202) 275–7656.

SUPPLEMENTARY INFORMATION: Railroad subscribers to section 5b Application No. 7 (petitioners) seek clarification of the application of single-line voting prohibitions of 49 U.S.C. 10706 [1] to proposed mileage allowances tendered for government freight cars under 49 U.S.C. 10721. [2] This clarification is sought to assist petitioners in responding to a request from the Military Traffic Management Command (MTMC) for increased car or mileage allowances for flatcars owned by the Department of Defense.

In our 1981 decision [3] we stated that car compensation demurrage and car allowance would not be considered single-line rates in the context of the voting prohibitions of Section 10706(a)(3)(A)(i), but that surcharges and contract rates would be. In a latter decision, served April 24, 1981, we found that government rates under Section 10721 correspond to contract rates and should also be treated as single-line rates. We emphasized that, as with contract rates, permitting a carrier's competitors to participate, discuss, or vote on its government rate proposal thwarts effective competition.

The question arises whether a change in car allowances submitted as a section 10721 quotation may continue [4] to be handled collectively under existing rate bureau procedures, in view of our April 24, 1981, decision. We conclude that it may be, under certain circumstances.

A single-line rate is "a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier." 49 U.S.C. 10706(a)(1)(B). Car compensation, demurrage and car allowances, however, are not to be considered single-line rates. H.R. Rep. No. 1430, 96th Cong., 2d Sess. 114 (1980). This is because of their nationwide importance and the need for a high degree of coordination.

It is particularly significant that Congress excepted car compensation, demurrage, and car allowances from the new restrictions on rate bureau activity imposed by the Staggers Act. In so doing, Congress recognized that car allowances are not analogous to single-line rates, but rather are equivalent to broad tariff changes which are nationwide in effect. The character of these items would not change merely because section 10721 tenders are involved. These exceptions should, therefore, supercede our general finding that section 10721 activity is to be considered single-line.

In view of the above, we conclude that the April 24, 1981, decision should not be construed to preclude all collective consideration of car allowances for the government pursuant to section 10721. However, collective consideration is precluded where the allowance, demurrage, or car compensation is particularized and does not fall within the definition of a broad tariff change.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

(949 U.S.C. 10706 and 10721)

Dated: May 12, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13707 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

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[1] Section 10706(a)(3)(A)(i) prohibits a rate bureau from permitting a member carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another carrier.

[2] Section 10721 (formerly section 22) provides that a common carrier may transport property for the United States Government, or a state or municipal government without charge or at reduced rates.

[3] 364 I.C.C. 635 (1981) at 644.

[4] The current practice with regard to car allowances submitted as section 10721 quotations originated in 1954 at the request of the Department of the Army. In Ex Parte No. 297, *Rates Bureau Investigation*, 349 I.C.C. 811, 834–837 (1975), the Commission found that in the absence of approved special collective section 22 procedures, antitrust immunity would not be available. Petitioners thereafter amended their Agreement to specifically provide Section 10721 quotation procedures. See Section 5B Application No. 7, Article IX.

DEPARTMENT OF JUSTICE

Proposed Consent Decree In Action To Enjoin Discharge of Air Pollutants

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 30, 1982, a proposed consent decree in *United States of America* v. *Central Illinois Light Company*, Civil No. 82–1099, was lodged with the United States District Court for the Central District of Illinois. The proposed decree requires modifications to pollution control equipment and other measures to assure compliance with the Clean Act New Source Performance Standard for nitrogen dioxide emssions from fossil fuel-fired steam generating units at defendant's Duck Creek Generating Station in Canton, Illinois, and payment of a civil penalty.

The proposed consent decree may be examined at the office of the United States Attorney, Room 271, U.S. Post Office & Federal Building, 100 N.E. Monroe Street, Peoria, Illinois, 61601; at the Region V office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530 and should refer to *United States of America* v. *Central Illinois Light Company*, DOJ Reference #90–5–2–1–424.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–13780 Filed 5–19–82; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel (Residencies); Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Residencies) to the National Council on the Arts will be held on June 3–4, 1982, from 9:00 a.m.–5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 4, from 4:30 p.m.–5:30 p.m. to discuss policy.

The remaining sessions of this meeting on June 3rd, from 9:00 a.m.–5:30 p.m. and June 4th from 9:00 a.m.–4:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommedation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Officer of Council and Panel Operations, National Endowment for the Arts.

May 13, 1982.

[FR Doc. 82-13700 Filed 5-19-82; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Information Science and Technology; Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, it is hereby determined that the renewal of the Advisory Committee for Information Science and Technology is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, GSA, as required by the Federal Advisory Committee Act and other applicable regulations.

Authority for this Advisory Committee shall expire on May 16, 1984, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

Dated: May 17, 1982.

John B. Slaughter,

Director.

[FR Doc 82-13799 Filed 5-19-82; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the **Federal Register** by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives in the National Transportation Safety Board: Patricia A. Goldman, John R. Wheatley, Robert W. Pyle, Lloyd F. Miller, B. Michael Levins, Frank T. Taylor, S. Walter Sweet, John M. Stuhldreher, Barbara Dixon.

Robert W. Pyle,

Chief, Personnel and Training Division.

May 14, 1982.

[FR Doc. 82-13791 5-19-82; 8:45 am]

BILLING CODE 4910-58-M

Recommendations, Responses; Availability

Safety Recommendations to:

Federal Aviation Administration, May 5, A–82–42: Amend 14 CFR 135 by incorporating a 90-day recency of experience requirement of three takeoffs and landings for pilots conducting operations in aircraft required by certificate to have more than one pilot.

Research and Special Programs Administration, May 13, P–82–12: Emphasize to field personnel and State agents the importance of requiring natural gas operators to establish hydrostatic test procedures to comply with 49 CFR 192.751.

State of New York, May 4, H–82–14: Adopt an "Operation Lifesaver" program as a foundation for a statewide effort to reduce train/highway vehicle accidents at grade crossings in New York.

American Gas Association and Interstate Natural Gas Association of America, May 13, P–82–16: Notify member companies of the circumstances of the accident at Flatwoods, West Virginia on Nov. 30, 1981 and urge them to develop detailed safety procedures for each hydrostatic test project.

Columbia Gas Transmission Corp., May 13, P–82–13 through–15: Develop procedures prescribing precautions to be taken while hydrostatically retesting pipelines, including the initial and continuing testing requirements for the presence of natural gas, particularly when work is being performed while pipelines remain connected to a source of gas.

Recommendation Responses from:

Secretary of Transportation, May 7, A–81–17: Considers the FAA's present overall aircraft weight and balance program and spot checking of cargo weights adequate and safe; does not concur in need for joint agency guidelines specifying responsibilities for shippers, freight forwarders, and air carrier certificate holders in determining unit weights.

Federal Aviation Administration, Apr. 27, A–81–163 through–169: Will ask regional offices to remind air traffic service facilities of their incident reporting responsibilities, especially regarding violations of 14 CFR 105; revised Handbook 7210.3F, paragraph 650 to include more guidelines for personnel coordinating nonemergency parachute jumping; does not concur with recommendation to establish special transponder code for parachute jump operations; will revise Advisory Circular 90–48B to include detailed information regarding the psychophysiological factors affecting pilot ability to see and avoid other aircraft; has modified Handbook 7110.10F, paragraphs 690 and 691 to ensure that traffic information is provided directly to the jump aircraft by the appropriate controller; does not concur that traffic advisories should be mandatory to transitioning jump aircraft; Handbook 7110.65, paragraph 1490 already requires controllers to coordinate jump information with other affected ATC facilities/sectors. *May 3, A–81–147:* Will incorporate change to Handbook 7210.3F to ensure qualified personnel are available for assistance when a first-line supervisor is working on operating positions involving the direct control of air traffic. *May 3, A–82–4 and –5:* An Aerospatiale Service Letter will be issued for Aerospatiale Lama Model 315B and Lama Series helicopters recommending identification of the rear support by measurement and marking "315" with paint and verification of the turbo shaft powerplant and main gear box alignment after certain work is performed. *May 7, A–82–16:* To minimize possible damage to aircraft landing gear from inadvertent excursions off the runway, the aboveground portion of the arresting barrier will be modified. *May 11, A–81–12 and –13:* Research program will provide a comprehensive reevaluation of the concept and regulatory standards for the Class D cargo compartment. *May 12, A–81–35:* Believes that adherence to the FAR, following the guidance provided in Advisory Circular 00–24A on thunderstorms, and appropriate use of "Flight Watch" and "Hazardous Inflight Weather Advisory Service" programs will allow an aircraft without a weather detection device to operate safely. *May 12, A–81–92:* Has issued an amended Type Inspection Authorization to evaluate electrical system test under variable loads, noise assessment of the electrical system, and verification of electrical portions of the Airplane Flight Manual and Supplementals; the Supplemental Type Certificate will be amended per revised data submitted by the holder.

Federal Highway Administration, May 4, H–81–72 through –77: Is considering the formation of a multidisciplinary advisory group in each State to deal with problem of accidents involving hazardous materials carriers at rail-highway crossings; will issue an On Guard bulletin alerting drivers of trucks carrying bulk hazardous materials to the dangers of crossings; is studying the role of rail-highway crossings in hazardous materials routing; agrees that the feasibility of requiring drivers to have additional licensing or endorsements to transport bulk hazardous materials is of significant importance; accident data gathered by the BMCS and the FRA do not support modifying Section 392.10 of the FMCSR at the present time.

Federal Railroad Administration, May 5, R–81–39 and –40: Will determine if rulemaking should be initiated concerning the reflectorization of railroad rolling stock upon review of a Transportation Systems Center study currently underway to evaluate the benefits and costs of reflectorization as a means of improving rail-highway crossing safety.

U.S. Coast Guard, May 8, M–81–93 and –94: Believes there are sufficient regulatory requirements and policy statements to adequately maintain safety standards aboard "laid-up" and "idle" vessels; agrees in the need to promulgate guidelines regarding the connection of engineroom bilge spaces with the cargo tanks; does not believe a review of approved plans of vessels which have been modified to permit retention of engineroom bilge water in cargo tanks is necessary. *May 4, M–78–39 and –38, and M–80–91:* Has studied the problem of providing means of escape from tankers by gangways or brows; will propose no changes to the regulations for waterfront facilities or for vessels.

Association of American Railroads, May 3, I–80–3: AAR report R–510 concluded that there is no reason to believe that the current welding practices used in the fabrication of tank car tanks are deficient.

American Public Works Association, May 5, P–82–10: Sent a copy of the recommendation to each member of the Utility Location and Coordination Council's Executive Committee for review and comment.

National Association of Regulatory Utility Commissioners, May 6, I–82–5: Sent a copy of the recommendation to each member of the Committee on Railroads for review and comment.

The Construction Specifications Institute, May 3, P–82–11: May publish the recommendation in newsletter and also place it on the next meeting agenda of the Engineering Joint Contract Documents Committee for consideration of its impact on the standard engineering documents currently under development.

The Kansas City Southern Railway Company, May 11, R–81–62: Believes that the presence of a radio would encourage the lax attitude that was displayed in the instance in question; Missouri Pacific crews are not under our control, and we are unable to enforce correct rule observance on that property.

Note.—Single copies of recommendation letters (identified by recommendation number) and responses are free on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

May 20, 1982.

[FR Doc. 82–13792 Filed 5–19–82; 8:45 am]

BILLING CODE 4910–58–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–498 OL and STN 50–499 OL]

Atomic Safety and Licensing Board; Order Cancelling Hearings

May 14, 1982.

In the matter of Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Dockets Nos. STN 50–498 OL, STN 50–499 OL; Order (Cancelling Hearings).

On May 6, 1982, the Commission issued an Order in which it decided to review on an expedited schedule the Appeal Board's disqualification of Judge Ernest Hill from this proceeding. The briefing schedule adopted by the Commission indicates that its decision on this matter could not issue prior to the next scheduled hearing dates (June 2–5, 1982). As a result of the continuing outstanding questions concerning Judge Hill's further participation in this proceeding, it is, this 14th day of May, 1982

Ordered

That the evidentiary hearings scheduled for the June 2–5, 1982 are hereby cancelled.

Future hearings remain scheduled (to the extent necessary) for June 15–19, June 21–26, and July 6–10, 1982. These hearings will be held in Houston, Texas, beginning at 9:00 a.m. each day, at the Joe M. Green, Jr. Auditorium, South Texas College of Law, 1303 San Jacinto Street.

Dated at Bethesda, Md., this 14th day of May, 1982.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 82–13797 Filed 5–19–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–237]

Commonwealth Edison Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 71 to Provisional Operating License No. DPR–19, issued to

Commonwealth Edison Company (the licensee), which revised the Technical Specifications for operation of the Dresden 2 Station (facility) located in Grundy County, Illinois. This amendment is effective as of its date of issuance.

The amendment authorizes an increase in the set point of the main steam line radiation monitor trip level during the Hydrogen Addition Test scheduled for May 1982 and June 1982.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 11, 1982, (2) Amendment No. 71 to License No. DPR-19, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois.

A single copy of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of May, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-13793 Filed 5-19-82 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc; Issuance of Amendment of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications relating to operational and surveillance requirements for the installed post-accident engineered safeguards feature (ESF) atmosphere cleanup system air filtration and absorption units.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior to public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 4, 1980, (2) Amendment No. 77 to License No. DPR-26, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of May, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-13794 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061]

Kerr-McGee Chemical Corp.; Availability of Draft Environmental Statement for the Rare Earths Facility, West Chicago, Du Page County, Ill.

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (DES) prepared by the Commission's Office of Nuclear Material Safety and Safeguards, related to the decommissioning of the Rare Earths Facility located in West Chicago, Illinois, is available for inspection by the public in the Commission's Public Documents Room at 1717 H Street NW., Washington, D.C. 20555. The DES is also available for inspection at the Commission's Local Public Document Room in the West Chicago Public Library, 332 E. Washington Street, West Chicago, Illinois 60185. Kerr-McGee's proposed decommissioning and stabilization plan involves demolition of the existing buildings, removal of building rubble and contaminated soil to an adjacent disposal site, and stabilization of building rubble, contaminated soil, ore tailings and ore residues on the disposal site. The Kerr-McGee proposed plan and alternatives to the plan are discussed in the DES. The DES is being provided to the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Springfield, Illinois 62706. The DES is also being sent to the Metropolitan Clearinghouse, Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60606.

Requests for copies of the Draft Environmental Statement (indentified as NUREG-0904) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTEN: Division of Technical Information and Document Control.

The licensee's stabilization plan and subsequent documents are also available for public inspection at the above-designated locations. Notice of the availability of the applicant's stabilization plan and the Commission's intent to prepare a DES was published in the **Federal Register** on December 13, 1979 (44 FR 72246).

Interested persons may submit written comments on the DES for the Commission's consideration to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Uranium Fuel Licensing Branch. Federal, State and local agencies are being provided with copies of the document.

All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Local Public Document Room in West Chicago, Illinois. Comments are due by July 6, 1982. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the Federal Register.

Dated at Silver Springs, Md., this 5th day of May 1982.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 82-13705 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric & Gas Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modifies the Technical Specifications to provide an alternative sampling method for steam generator tube inspections during the refueling outage for Cycle 4.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. Thew Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 5, 1982, as supplemented March 5, 1982, (2) Amendment No. 43 to License No. DPR-70, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addresed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 13th day of may 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-13706 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review

Forms under Review by Office Management and Budget, Agency Clearance Officer—George G. Kundahl—(202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Revision

Form ADV, for application for registration of investment adviser, and for amendments to such registration statement.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance the proposed revision of Form ADV (17 CFR 279.1) the form for application for registration of investment adviser, and for amendments to such registration statement.

The potential respondents are new applicants for registration of investment advisers, and registrants who required to file an amendment to Form ADV. The effects of the amendments to the form include relieving applicants and registrants of the obligation to file certain information with the Commission.

Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814.

George A Fitzsimmons

Secretary.

[FR Doc. 82-13708 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18740; File No. S7-787]

Order Granting Extension Of Temporary Exemption

May 14, 1982.

On February 25, 1982, the Commission issued an order granting the National Association of Securities Dealers, Inc. ("NASD") a temporary exemption until May 15, 1982 from providing to vendors of securities transaction information last sale reports for national market system ("NMS") securities over NASDAQ Level I service[1] as required by Rule 11Aa3-1[2] under the Securities Exchange Act of 1934 ("Act").[3] On May 6, 1982, the NASD informed the Commission that due to unanticipated delays in installation of communications circuits at vendors' sites, the necessary two to three week testing schedules were in turn delayed.[4] As a result of these delays the NASD indicated that an additional two weeks after May 15th would be necessary to ensure that vendors will be able to receive the enhanced NASDAQ Level I service for NMS securities. Accordingly, the NASD has applied to the Commission for an extension of the temporary exemption until June 1, 1982 from the requirement of Rule 11As3-1 that it provide vendors with transaction reports over its NASDAQ Level I service for NMS securities.[5]

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[1] NASDAQ Level I service currently makes available the best bid and offer ("BBO") with respect to each security quoted in the NASDAQ system.

[2] 17 CFR 240.11As3-1.

[3] Securities Exchange Act Release No. 3418514 (February 25, 1982), 47 FR 8366. In that release, the Commission stated that the temporary exemption was appropriate in light of the NASD's indication that Vendors of securities transaction information had not acquired the requisite communications facilities nor effected the software modifications needed to receive this information by April 1, 1982, the start-up of Tier 1.

[4] Letter to George A. Fitzsimmons, Secretary, SEC, from S. William Broka, Secretary, NASD, dated May 6, 1982.

[5] The NASD indicated that it will begin disseminating last sale information for NMS securities over its NASDAQ Level I service on June 1, 1982 since the major vendors for the broker-dealer industry will be capable of accessing this information by that date. In this connection, the Commission encourages other interested vendors and the wire services to start or continue developing their access capabilities for this information even though they might not acquire actual access thereto until after June 1, 1982.

While the Commission believes that it is important for investors to receive access to the last sale information for NMS securities available from NASDAQ Level I service as soon as possible, the Commission believes that the NASD is warranted in seeking an extension of the temporary exemption as a result of the unforseeable delays experienced by the vendors in accessing this information. Moreover, the Commission believes that it is desirable for, at least, all of the major vendors to commence disseminating last sale information for NMS securities at the same time. The Commission therefore determines that granting the NASD its requested exemption from the requirements of Rule 11Aa3–1 is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanism of, a national market system.

Accordingly, the NASD is granted an extension of the temporary exemption until June 1, 1982 from providing last sale data with respect to its NASDAQ Level I service for NMS securities. This exemption is subject to modification or revocation at any time if the Commission judges that such action is necessary or appropriate in light of progress made toward a national market system or otherwise in furtherance of the purposes of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13786 Filed 5–19–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12436; 812–5057]

Dean Witter Reynolds InterCapital Inc., et al.; Filing of Application

May 14, 1982.

In the Matter of Dean Witter Reynolds Intercapital Inc., Dean Witter Reynolds Inc., Intercapital Dividend Growth Securities Inc., InterCapital High Yield Securities Inc., InterCapital Income Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Liquid Asset Fund Inc., InterCapital Natural Resource Development Securities Inc., InterCapital Tax-Exempt Securities Inc., InterCapital Tax-Free Daily Income Fund Inc., Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets Government Securities Trust, Sears U.S. Government Money Market Trust, Dr. Irwin Friend, John R. Haire, John J. Scanlon, Albert T. Sommers, Five World Trade Center, New York, New York 10048; Dean Witter Reynolds Organization Inc., 45 Montgomery Street, San Francisco, California 94104; Sears, Roebuck and Co., Sears Tower, Chicago, Illinois 60684.

Notice is hereby given that InterCapital Dividend Growth Securities Inc., InterCapital High Yield Securities Inc., InterCapital Income Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Liquid Asset Fund Inc., InterCapital Natural Resource Development Securities Inc., InterCapital Tax-Exempt Securities Inc., Inter-Capital Tax-Free Daily Income Fund Inc., Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets Government Securities Trust, and Sears U.S. Government Money Market Trust (collectively, the "Funds"), each of which is a management investment company registered under the Investment Company Act of 1940 ("Act"); Dean Witter Reynolds InterCapital Inc. ("InterCapital"), a registered investment adviser and manager of the Funds; Dean Witter Reynolds Inc. ("DWR"), distributor of certain of the Funds; Dr. Irwin Friend, John R. Haire, John J. Scanlon and Albert T. Sommers, directors or trustees of the Funds; Dean Witter Reynolds Organization Inc. ("DWRO") and Sears, Roebuck and Co. ("Sears"), a New York corporation (collectively, the "Applicants"), filed an application on December 22, 1981, and an amendment thereto on April 28, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting from the definitions of "interested person" of an investment company and its investment adviser and principal underwriter under Section 2(a)(19) of the Act certain nautral persons who might otherwise come within such definitions solely by reason of their holding interests in securities of Sears or certain of its subsidiaries. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicants state that InterCapital and DWR a wholly-owned subsidiaries of DWRO, which in turn is wholly-owned subsidiary of Sears. Sears acquired DWRO in late 1981 in a two-step transaction involving a cash tender offer and subsequent merger of DWRO into a subsidiary of Sears. Applicants represent that, accordingly, Sears can now be deemed to be a "controlling person" of InterCapital and DWR.

Section 2(a)(19)(B)(iii) of the Act defines an "interested person" of an investment adviser of or principal underwriter for any investment company to include any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter. Section 2(a)(19)(A)(iii) of the Act defines an "interested person" of an investment company to include any interested person of any investment adviser of or principal underwriter for such company.

Applicants represent that Sears and its consolidated subsidiaries comprise one of the world's largest publicly held companies, with total operating revenues of over $25 billion and net income of over $609 million for the fiscal year ended December 31, 1980, and total operating revenues of over $19 billion and net income of over $297 million (both unaudited) for the nine month period ended September 30, 1981. Applicants state that revenues from all operations of DWRO and consolidated subsidiaries for the fiscal years ending on August 31, 1981 and 1980 were approximately $902 million and $707 million, respectively. Applicants represent that, in this context, the investment company-related activities of InterCapital and DWR would have represented an extemely small portion of Sears total business.

Applicants submit that securities of Sears and its subsidiaries are and will likely continue to be held and traded widely throughout the domestic and international economy. On February 26, 1982, Sears had outstanding 344,792,442 shares of common stock, as well as eight issues of long-term debt which aggregated $1.520 billion. All such issues are traded on the New York Stock Exchange. On February 16, 1982, Sears subsidiaries had an additional 12 issues of long-term debt which aggregated $1.602 billion.

Applicants also represent that on February 19, 1982, Sears had 360,822 shareholders and that, as of that same date, individuals owned approximately 34.5% of Sears outstanding shares, bank nominees held another 35.3% thereof, investment organizations and brokers together held 7.0% and most of the remaining shares (approximately 21.6%) were held by The Savings and Profit Sharing Fund of Sears Employees (the "Profit Sharing Fund"), which at December 31, 1981, had 233,446 employee members, each of which is entitled to direct the voting of the shares held in his or her account. Applicants represent that, other than the Profit Sharing Fund, they are not aware of any

person who beneficially owns more than 5% of Sears shares. Debt securities of Sears and its subsidiaries are also held widely by individuals and institutions.

Applicants submit that Section 2(a)(19) of the Act may cause to be classified as interested persons of the Funds, and any other investment companies for which Sears or any of its subsidiaries may serve as investment adviser or principal underwriter in the future (hereinafter referred to with the existing Funds as the "Funds"), or their investment adviser or principal underwriter a large group of individuals who generally would have no direct interest in Sears securities but who might own such securities indirectly through interests in mutual, pension or profit sharing funds, or because of their ownership, employment, directorship or other ties with banks, insurance companies, other corporations or charitable endowments. Applicants contend that it may, therefore, be extremely difficult for the Funds to maintain boards of directors and trustees which continue to meet the requirements of the Act.

Applicants therefore believe it necessary and appropriate for the Commission to grant an order which would provide an exemption from Section 2(a)(19) so that persons may serve as disinterested directors and trustees of the Funds if their holdings in Sears securities come within certain limitations. Although Applicants believe that Section 2(a)(19)(B)(iii) would not apply to ownership of securities issued by Sears subsidiaries which do not serve as investment adviser or principal underwriter for any of the Funds and are not controlling persons of any investment adviser or principal underwriter, Applicants are concerned that at some future time Section 2(a)(19)(B)(iii) may be interpreted to apply to such securities.

Accordingly, Applicants have requested an order of the Commission pursuant to Section 6(c) of the Act exempting from the definitions of "interested person" as defined in Section 2(a)(19) of the Act any director or trustee of any of the Funds (including any director or trustee elected in the future) who would otherwise be deemed to be an interested person of one or more of the Funds, Sears, DWRO, InterCapital or DWR (or any other subsidiary of Sears which may serve as investment adviser or principal underwriter for one or more of the Funds) solely by reason of such person having an indirect beneficial interest in, or being designated a trustee, executor or guardian of a legal interest in, any security issued by Sears or any subsidiary of Sears (other than DWRO, InterCapital, DWR or any other subsidiary of Sears which serves as investment adviser or principal underwriter for one or more of the Funds or which controls any such subsidiary), provided:

(1) Such person's knowing indirect beneficial interest in such securities (other than interests held through or on behalf of any pension, profit sharing, retirement, dividend reinvestment, stock accumulation, stock appreciation or employee benefit plan or fund other than plans or funds designed primarily for, or involving participation primarily of, employees of Sears or its subsidiaries), including such indirect beneficial interests of such person's spouse and dependents, does not in total exceed any of the following: (a) 5% of such person's net worth; (b) 0.1% of the outstanding shares of any class of equity security involved or 0.1% of the outstanding principal amount of any class of debt security involved; or (c) 0.1% of the aggregate market value of all classes of such debt and equity securities; and

(2) Such person has no knowing beneficial interest in such securities arising from his or her acting as a director or trustee or in any other fiduciary capacity for any business corporation or any trust (including a business trust) other than the Funds, or any nonprofit organization or pension, profit sharing, retirement, dividend reinvestment, stock accumulation, stock appreciation or employee benefit plan or fund which either (a) holds interests in such securities which in the aggregate represent more than 5% of the net assets of such entity, or (b) derives income from interests in such securities which in the aggregate represents more than 5% of the net income of such entity.

For purposes of the application, including the tests set forth in paragraphs (1) and (2) above, a person shall be deemed to hold an indirect, but not a direct, beneficial interest in a security by virtue of his or her being designated a trustee, executor or guardian of a legal interest in such security. The application further states that, as a means of complying with the requested order, the Funds undertake to solicit from their directors and trustees such appropriate information regarding (i) their ownership of securities of Sears and its subsidiaries, and (ii) the ownership of such securities by entities referred to in paragraph (2) above, as is available on December 31 of each year and at any other time at which a material change in such information occurs, and the Funds intend to evaluate compliance with such order on the basis of such information.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants believe that the exemptions requested are fair and reasonable ways to preserve the protective purposes of the Act while at the same time recognizing the unique circumstances created by the relationship of the Funds and their adviser and distributor to a company like Sears. Applicants assert that the exemptions generally would apply to individuals who through indirect ownership hold securities of Sears in amounts which are not significant from the standpoint either of control of Sears or of the individual's personal finances. They would not exempt from the definitions of interested person any person who would come within these definitions by reason of any provision of the Act other than Section 2(a)(19)(B)(iii). According to Applicants, the exemptions would thus apply only to persons whose independence is not impaired by virtue of their relationship with any of the Funds' investment advisers or principal underwriters and are fashioned specifically to meet the Congressional concern that the persons responsible for providing "an independent check on management" and "a means for a representation of shareholder interests" are truly capable of doing so. Applicants submit that the requested exemptions are both necessary and appropriate so that the significant investment vehicles provided by the Funds now and in the future remain under the guidance of the most capable boards of directors and trustees possible.

Notice is further given that any interested person may, not later than June 8, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed:

Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–13787 Filed 5–19–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18741; File No. SR–NASD–82–6]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating To Proposed Subscriber Fees for Computer Assisted Execution System and Elimination of Transaction Reporting Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1) notice is hereby given that on May 12, 1982, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates a current charge of $.10 per transaction report of trades in listed securities and proposes subscriber fees for users of the Computer Assisted Execution System ("CAES").

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The proposed CAES subscriber fee is designed to recover the costs of developing and operating CAES. This rule change is being submitted under Section 15A(b)(5) of the Act.

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The Association believes these proposals do not impose a burden on competition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 10, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1982.

George A. Fitzsimmons

Secretary.

[FR Doc. 82–13788 Filed 5–19–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–82–052]

Ship Structure Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ship Structure Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I, section 10 (a)(2)).

DATE: June 8, 1982, 9:15 a.m. to 11:30 a.m.

ADDRESS: U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., Room 3201.

FOR FURTHER INFORMATION CONTACT: LCDR D. B. Anderson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G–MTH–4), Washington, D.C. 20593, (202) 426–2197.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is as follows: To approve research projects of the Committee for fiscal year 1983 and to review ongoing research projects of the Committee. Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify LCDR D. B. Anderson, Secretary, Ship Structure Committee not later than the day before the meeting. Any member of the public

may present a written statement to the Committee at any time.

Dated: May 11, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-13556 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committeee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-2 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of concepts for airspace and procedures in the terminal environment, including criteria, design, complexity, and application.

DATE: Beginning June 7, 1982, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference rooms 9 A/B, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1004, Federal Aviation Administration, 800 Independence avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space avaialble. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Dirctor, National Airspace Revidew Advisory Committee, Air Traffic Servcie, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 4, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisory Committee.

SUPPLEMENTARY INFORMATION:

[FR Doc. 82-13763 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-1 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of the Military Training Route (MTR) program, including existing procedures, requirements, depiction, and dissemination.

DATE: Beginning June 7, 1982, at 11:00 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference rooms 5 A/B, 800 Independance Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendence is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 4, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued at Washington, D.C., on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisory Committee.

[FR Doc. 82-13764 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-5 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: Development of a formal Memorandum of Agreement between the United States Federal Aviation Administration and the Canadian Air Transportation Administration on matters that affect transborder operations.

DATE: Beginning June 21, 1982, at 11:00 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed one week.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9 C, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 18, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisor Committee.

[FR Doc. 82-13765 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective June 1, 1981, First National Bank of Oregon, Portland Oregon, changed its name to First Interstate Bank of Oregon, N.A.

Dated: May 14, 1982.

By Order of the Maritime Administrator.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82-13679 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-81-M

Maritime Advisory Committee; Meeting

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice.

SUMMARY: The Maritime Advisory Committee will hold its first meeting on June 7, 1982, at 9:30 a.m. in Room 4234, Department of Transportation, 400 7th Street, S.W., Washington, D.C. This meeting will be of an organizational nature and will be open to the public.

Dated: May 18, 1982.

By order of the Maritime Administrator.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82-13813 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-81-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement (EIS) is being prepared for a group of potential highway and transit improvements in the San Francisco metropolitan area. These substitute transportation projects would receive funding as a result of the withdrawal of the incomplete segment of I–280 in San Francisco. UMTA will work in cooperation with the California Department of transportation (CALTRANS), the Metropolitan Transportation Commission, and the City and County of San Francisco to prepare the EIS.

The I–280 Transfer Concept Program was adopted by the three local agencies in January 1981. Potential projects that could be implemented within the available funding are:

1. *I–280 Touchdown Ramps:* To link the elevated structure of the I–280 freeway to the local street system in San Francisco.

2. *Embarcadero Freeway and Embarcadero Surface Roadway:* Removal of the existing Embarcadero Freeway viaduct from Beale Street to Broadway; a new off-ramp from the Bay Bridge; reconstruction of the surface Embarcadero roadway, with associated traffic control and pedestrian access improvements.

3. *Muni-Metro Extension:* Subway extension from the Embarcadero Station (incorporating a turnback capability), coming to grade at Steuart Street and continuing at grade to the Southern Pacific Depot. An alternative to be considered is an extension of Southern Pacific commuter trains to downtown San Francisco.

4. *E-Line Connection:* A light rail facility from Fort Mason, along Jefferson/Beach Streets, then along the Embarcadero, tying into Muni-Metro Extension just south of Mission Street.

5. *Intercept Parking:* Parking areas near freeway access, connecting to rail and shuttle transit services serving the downtown core and the northeastern waterfront.

6. *Transportation Systems Management (TSM):* Low-cost improvements along major arterials to improve the flow of traffic and transit in the area between the Embarcadero projects and the Golden Gate Bridge.

The EIS will consider a number of alternative projects. These may consist of combinations of elements in the Transfer Concept Program or substitute proposals for one or more of the elements which are developed during the EIS study process. Information describing the proposed alternatives and soliciting comments will be sent to appropriate federal, state, regional and local government agencies, as well as to private organizations and citizens who have expressed interest in the proposed projects or will be affected by them. A public scoping meeting to encourage early public input to the project will be held on June 1, 1982, at the State Building on 350 McAllister Street, San Francisco, from 4 p.m. to 7 p.m.

For further information on the I–280 Transfer Concept Program or to comment on the scope of this EIS, contact: Mr. Russell Sayre, California Department of Transportation, 150 Oak Street, San Francisco, California 94102, telephone (415) 557–0968 or Mr. Stuart Eurman, Urban Mass Transportation Administration, 2 Embarcadero Center, Suite 620, San Francisco, California 94111, telephone (415) 556–0368. In Washington, contact Mr. Abbe Marner, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590, telephone (202) 426–2360.

Dated May 11, 1982.

Charles H. Graves,

Director, Office of Planning Assistance.

[FR Doc. 82-13407 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period May 7 through 13, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634–2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; and to the OMB reviewer listed at the end of each entry.

Date Submitted: May 7, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: 1545–0134

Form Number: 1128

Type of Submission: Revision

Title: Application for Change in Accounting Period

Purpose: Used by taxpayers when prior approval of a change of accounting period is required. The information requested is used to determine whether the application should be approved

OMB Reviewer: Karen P. Sagett (202) 395–6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 10, 1982
Submitting Bureau: Internal Revenue Service
OMB Number: 1545–0015
Form Number: 706
Type of Submission: Revision
Title: United States Estate Tax Return
Purpose: Internal Revenue Service uses the information to enforce this tax by verifying that the tax has been properly computed.
OMB Reviewer: Karen P. Sagett (202) 395–6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,
Departmental Reports Management Officer.
May 14, 1982.
[FR Doc. 82–13730 Filed 5–19–82; 8:45 am]
BILLING CODE 4810–25–M

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Sunshine Act Meetings

Federal Register
Vol. 47, No. 98
Thursday, May 20, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Reserve System	7
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Railroad Retirement Board	9

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, June 11, 1982.

PLACE: 2033 K Street NW., Washinton, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-751-82 Filed 5-18-82; 12:45 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, June 4, 1982.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION:
Jane Stuckey, 254-6314.

[S-750-82 Filed 5-18-82; 12:41 pm]
BILLING CODE 6351-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Additional Item to be Considered at Commission Open Meeting, Thursday, May 20, 1982.

The Federal Communications Commission will consider this additional item on the subject listed below at the Open Meeting scheduled for Thursday, May 20, 1982, starting at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Broadcast—2—*Title:* Waiver of Section 73.1510(c)(6). *Summary:* The Commission will consider the requests of Teleco Indiana, Inc., (licensee of TV Station WTTV) and the Board of Trustees of the University of Illinois (licensee of noncommercial, educational Stations WILL-AM/FM/TV) to charge for services provided on a TV aural subcarrier under an experimental authorization.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 17, 1982.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S-750-82 Filed 5-18-82; 2:56 pm]
BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 24, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for consent to merge and establish two branches:

Bank of Dothan, Dothan, Alabama, for consent to merge, under its charter and with the title "AmSouth Bank of Houston County," with The Farmers & Merchants Bank of Ashford, Ashford, Alabama, and to establish the two offices of The Farmers & Merchants Bank of Ashford as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,210-L—East Gadsden Bank, Gadsden, Alabama
Case No. 45,220-SR—Bank of Lake Helen, Lake Helen, Florida

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Doval, Munoz, Acevedo, Otero & Trias, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce Puerto Rico.

Reports of committees and officers:

Minutes of the actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Director, Office of Corporate Audits:
Audit Report re: Securities Analysis Activities—Division of Bank Supervision, dated April 5, 1982.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan J. Kaplan, Deputy Executive Secretary of the Corporation, at (202) 389-4446.

Dated: May 17, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,
Deputy Executive Secretary.

[S-748-82 Filed 5-18-82; 11:20 am]
BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

at 2:30 p.m. on Monday, May 24, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings, (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Metropolitan Industrial Bank, Denver, Colorado, an operating noninsured industrial bank.

Application for consent to establish a branch:

First Mutual Savings Bank, Bellevue, Washington, for consent to establish a branch at 10430 N.E. 8th Street, Bellevue, Washington.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan J. Kaplan, Deputy Executive Secretary of the Corporation, at (202) 389–4425.

Dated: May 17, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S–749–82 Filed 5–18–82; 11:36 am]

BILLING CODE 6714–01–M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 25, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Litigation. Audits, Personnel.

* * * * *

DATE AND TIME: Thursday, May 27, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Advisory Opinion 1982–37: Don Edwards, Member of Congress
Legislative recommendations (continued from May 20, if necessary)
Revision to debt settlement procedures
Letter from Senator Mathias re Citizens' Research Foundation and request from CFR re Waiver of Fees
Appropriations and budget: FY 82 Management Plan
Routine Administrative Matters: Distribution of Agency Publications Agency Personnel Security

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S–753–82 Filed 5–18–82; 2:48 pm]

BILLING CODE 6714–01–M

7

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, May 26, 1982.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: May 18, 1982.

James McAfee,

Associate Secretary of the Board.

[S–752–82 Filed 5–18–82; 2:43 pm]

BILLING CODE 6210–01–M

8

NUCLEAR REGULATORY COMMISSION

DATE: Week of 3 and 10 May, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: Thursday, May 6:

3:00 p.m.:
Affirmation of SECY–82–179 "Review of ALAB–672 (In the Matter of Houston Lighting and Power Co. Et. al.) (public meeting) (Replaced scheduled item)

Thursday, May 13:

4:00 p.m.
Affirmation of SECY–82–190 *"Approval Under Section 145 b. Of The Atomic Energy Act Of* 1954, As Amended, For The Employment Of Mr. James P. Jordan As A Consultant To Commissioner Thomas M. Roberts And For Access To National Security Information And Restricted Data" (public meeting)

Thursday, May 13:

9:30 a.m.:
Discussion of Management-Organization and Internal Personnel Matters. (closed)

ADDITIONAL INFORMATION:

The briefing on Cold/Hot Shutdown was postponed from May 12 to May 19.
The Commission determined by votes of 3–0 (Comm. Gilinsky absent), 4–0 and 3–0 (Comm. Ahearne absent), respectively, that Commission business required that the three meetings listed above be held on less than one week's public notice.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

May 17, 1982.

Walter Magee,

Office of the Secretary.

[S–747–82 Filed 5–18–82; 3:54 pm]

BILLING CODE 7905–01–M

9

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 10 a.m., May 27, 1982.

PLACE: Board's meeting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public.

(1) Revision of Board Order 75–3 concerning the Board's agency grievance procedure.

(2) Appeal of Itel Corporation.

(3) Appeal of Rail Car Corporation.

(4) Detection and prevention of fraud, waste, and abuse at the Board—Bureau of Audit and Investigation.

(5) Survey of the division of disability benefits.

(6) Suggestion re shortening public service hours in district offices.

(7) OMB Circular A–76 study of the Board's print shop.

Portion closed to the public:

A. Appeal from referee's denial of disability annuity, George Perry.

B. Appeal from referee's denial of disability annuity, Alvin E. Romaker.

CONTACT PERSON FOR MORE INFORMATION: Beatrice Ezerski; COM No. 312–751–4920; FTS No. 387–4920.

[S–747–82 Filed 5–18–82; 9:45 am]

BILLING CODE 7905–01–M

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federal register

Thursday
May 20, 1982

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

National Poultry Improvement Plan and Auxiliary Provisions on National Poultry Improvement Plan

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket 82-021]

National Poultry Improvement Plan and Auxiliary Provisions on National Poultry Improvement Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends portions of the provisions governing the National Poultry Improvement Plan and Auxiliary Provisions to incorporate new provisions for the control of certain poultry diseases. Duties of the General Conference Committee are also revised.

The changes are being made in an effort to reduce the cost of the testing programs and to use more reliable laboratory techniques in evaluating specimens which have had a positive or suspicious blood test. New programs will permit the participating breeding flocks to be blood tested and officially classified as to their freedom from the diseases for which they were tested. Certain portions of the present provisions are being deleted because recent scientific findings show they are no longer pertinent or because there is no longer any interest on the part of the poultry industry in them. The intended effect of these amendments is to continue providing valid tests for the different diseases at lower cost to the owner, to provide more definitive techniques to confirm suspected reactors, and to offer new testing and classification programs which permit prospective buyers to know the health status of products before making a purchase.

EFFECTIVE DATES: These rules are effective on May 20, 1982 except for paragraph (d) of § 145.43 which is effective on January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond D. Schar, USDA, APHIS–VS, Building 265, BARC-East, Beltsville, MD 20705 (301) 344–2227.

SUPPLEMENTARY INFORMATION:

Classification

The amendments reduce the maximum size of the sample of breeding chickens to be blood tested for *Mycoplasma gallisepticum* and *Mycoplasma synoviae* (MG and MS) under the official control program for the diseases caused by these two organisms. They provide for a new program to identify flocks of started poultry which have had a negative test for MG, and change certain criteria for determining the MG and MS classification of breeding flocks. Two new procedures, bacteriological examination and in vi vo bio-assay, are included to further evaluate the status of mycoplasma reactors. A program to blood test and classify turkey breeding flocks for *Mycoplasma meleagridis*, to be effective January 1, 1983, is being added for the first time. Waterfowl which are located on the same premises, but are not part of the participating flock of breeding chickens, turkeys, or other fowl will no longer have to be blood tested for *Salmonella pullorum* or *S. gallinarum* as a condition for the classification of a participating flock. Recommended procedures for the bacteriological examination of salmonella reactors are being amended to include new techniques and diagnostic materials.

This final action has been reviewed in conformance with Executive Order 12291, and has been classified as not a "major rule." The Department has determined that this action will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the amendments will only affect owners of hatcheries who are voluntarily participating in the National Poultry Improvement Plan (NPIP) programs. Presently there is a total of 1062 hatcheries in the NPIP, of which 90 commercial egg- and meat-type chicken hatcheries and 13 turkey hatcheries are considered to be small entities which could be affected. However, only three of these small entities have ever blood tested for the particular diseases with which these amendments are concerned. Thus, a substantial number of small entities will not be affected. Futhermore, it is considered unlikely that the balance of the small entities which participate in the NPIP will blood test for *Mycoplasma gallisepticum, M. synoviae,* or *M. meleagridis* in the foreseeable future. Additionally, it is not anticipated that this action will have a significant economic impact on small organizations or small governmental jurisdictions.

Background

The National Poultry Improvement Plan (NPIP) is a cooperative State-Federal program through which new technology can be effectively applied to the improvement of poultry breeding stock and hatchery products through the control of certain hatchery-disseminated diseases. The provisions of this voluntary program are changed from time to time to conform with the development of the industry and to utilize new information as it becomes available. These changes are based on recommendations initiated at the biennial National Plan Conference by the official delegates representing participating flockowners, breeders, and hatcherymen from all cooperating States. Since this is a voluntary program, these provisions apply only to those who wish to participate in the program. On June 20, 1980, there was published in the **Federal Register** (45 FR 41683) a notice of the July 7–10, 1980, meeting of the General Conference Committee and the biennial National Plan conference. The recommended amendments contained in this final rule were made by the delegates to that conference.

Proposed amendments to the regulations (9 CFR Parts 145 and 147) concerning the provisions of the National Poultry Improvement Plan were published in the **Federal Register** (46 FR 50965) on Friday, October 16, 1981. A 60-day comment period was provided for receipt of comments.

COMMENTS: Four letters were received which endorsed all or certain amendments published in the proposed rulemaking. Two commenters were opposed to the "U.S. M. Meleagridis Clean" program for turkeys. One of the commenters did not specify why he opposed this program. The other commenter believed that there were too many unanswered questions about how to eradicate *M. meleagridis* and then remain free of the disease. The Department disagreed with this comment because data compiled by the Department reveals that the disease has been eradicated from certain turkey flocks and premises and that these flocks and premises have remained free of the disease. However, two additional comments were submitted which stated that the industry was not ready or capable of undertaking a testing program at this time and recommended

the program be delayed for at least 1 year. Since this would be a voluntary program and since a delay of 1 year would assist other turkey breeders in being able to attain this classification, the Department is delaying the effective date of this voluntary program for the control of *M. meleagridis* until January 1, 1983.

Two commenters were opposed to the "U.S. M. Meleagridis Tested" classification. They believe that there was very little to be gained by this classification since a "U.S. M. Meleagridis Tested" flock would actually be infected with *M. meleadgridis*, as compared to a "U.S. M. Meleagridis Clean" flock which was negative when tested for the *M. meleagridis* organism. These commenters felt the classification "U.S. M. Meleagridis Tested" would be misleading as to the actual disease status of the flock. The Department agreed with these commenters and the paragraph providing for the "U.S. M. Meleagridis Tested" classification was deleted from this final rulemaking.

One comment was received which questioned the procedure for the bacteriological examination of pullorum-typhoid reactors which suggested collecting 10–15 grams of a tissue or organ for analysis. The commenter stated that occasionally 10–15 grams would not be available from certain organs. The Department agrees. Therefore, the proposed regulations in § 147.11(d) and (e) have been changed by adding the words "or whatever lesser amount is available."

Comments were received from six nationally-recognized mycoplasma experts who questioned parts of the amendments relating to the examination of mycoplasma reactors. Four of these experts were members of the technical committee that assisted with the drafting of the amendments. These comments were as follows: Three letters suggested changes for rearranging the phrases used in the sentences in a more orderly manner without changing the meaning. Another commenter recommended deleting the reference to a 1:10 dilution in the *M. meleagridis* testing provision since interpretation of tests is more accurately defined in § 147.6 for mycoplasma reacting flocks. In order to be more assured of finding mycoplasma organisms in infected birds, a fifth commenter suggested that additional organs, tissues, and sites be analyzed in the in vivo procedure for mycoplasma reactors, as found in § 147.16(d). In this regard, trachea mucosa and lung exudates were added as material to be used in the inoculation of test birds. The sixth commenter suggested that three specific airsacs, the cervical, thoracic, and abdominal airsacs, be specified as sites from which to collect material for injecting into the test birds. Also one scientific commenter suggested that the period for the birds under test in the in vivo bio-assay, as outlined in § 147.16(c)(3), be extended from 28 days to 35 days, since some of the less pathogenic mycoplasmas take longer to develop antibodies and lesions. The Department favorably considered all of these suggestions and has changed the amendments accordingly.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, National Poultry Improvement Plan.

Accordingly, Parts 145 and 147, Title 9, Code of Federal Regulations will be amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. In § 145.1, paragraphs (ee) and (ff) are added to read as follows:

§ 145.1 Definitions.

* * * * *

(ee) *Equivalent or equivalent requirements.* Requirements which are equal to the program, conditions, criteria, or classifications with which compared, as determined by the Official State Agency and with the concurrence of the Service.

(ff) *Sexual Maturity.* The average age at which a species of poultry is biologically capable of reproduction.

§ 145.4 [Amended]

2. Section 145.4, paragraph (d) is amended by removing the following:

(d) * * * except turkey breeding stock, hatching eggs, and poults produced in a State qualified for phase 1 or 2 of the pullorum-typhoid eradication program described in the November 6, 1972, Memorandum Number 565.1 of the Veterinary Services of the Animal and Plant Health Inspection Service of the Department.

3. In § 145.4, paragraph (e) is added to read as follows:

* * * * *

(e) Each participant shall be assigned a permanent approval number by the Service. This number, prefaced by the numerical code of the State, will be the official approval number of the participant and may be used on each certificate, invoice, shipping label, or other document used by the participant in the sale of his products. Each Official State Agency which requires an approval or permit number for out-of-State participants to ship into its State should honor this number. The approval number shall be withdrawn when the participant no longer qualifies for participation in the Plan.

§ 145.9 [Amended]

4. Section 145.9 is amended by removing the 2nd, 3rd, and 4th sentences.

§ 145.10 [Amended]

5. In § 145.10, paragraph (f) is added to read as follows:

* * * * *

(f) *U.S. M. Meleagridis Clean*—(See § 145.43(d)).

Figure 7

§ 145.13 [Amended]

6. Section 145.13 is amended by removing paragraph (a) and redesignating paragraph (b) as paragraph (a).

§ 145.14 [Amended]

7. Section 145.14 is amended by adding the following sentence to the end of the introductory paragraph:

* * * For those programs where a sample of the poultry may be tested in lieu of the entire flock, the poultry tested shall be a representative sample drawn from all pens or units of the flock.

* * * * *

8. Section 145.14, paragraph (a)(5) is amended by removing the 2nd sentence and by removing the following from the 4th sentence:

(a) * * *

(5) * * * except that when the flock involved is turkeys, the period during which all birds must be tested shall be 2 years.

§ 145.23 [Amended]

9. Section 145.23 is amended by adding to paragraph (b)(3)(ii) the phrase ", except waterfowl," between the words "domesticated fowl" and "are maintained"

10. In § 145.23, paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(ii)(*a*) are revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 150 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 150 birds per flock has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 75 birds, with a minimum of 30 birds per pen, whichever is greater, shall be tested; or

* * * * *

11. In § 145.23, paragraph (c)(1)(ii)(*c*) is removed.

12. Section 145.23, paragraph (d)(1)(v) is amended by deleting the semicolon and the word "and" from the end of the paragraph and adding the following in lieu thereof:

* * * * *

(d) * * *

(1) * * *

(v) * * * or handled in a sanitary manner equivalent to §§ 147.22 and 147.25(a) of this part, which has been approved by the Official State Agency with the concurrence of the Service; and

* * * * *

13. In § 145.23, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

* * * * *

(e) * * *

(1) * * *

(i) It is a flock in which a minimum of 300 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a sample of at least 150 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. *M. synoviae* Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a sample of 50 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period.

* * * * *

14. In § 145.23, paragraph (f) is added to read as follows:

(f) *U.S. M. Gallisepticum Clean Started Poultry. (1) A flock which originated from U.S. M. Gallisepticum Clean breeding flocks and was hatched in a hatchery approved by the Official State Agency for the production of U.S. M. Gallisepticum* Clean chicks.

(2) All other poultry on the premises of the candidate flock must originate from U.S. M. Gallisepticum Clean sources.

(3) The flock is maintained in compliance with the provisions of § 147.26.

(4) The flock's freedom from *M. Gallisepticum* is demonstrated by a negative blood test, as provided in § 145.14(b), of a sample of 75 birds, with a minimum of 50 birds per poultry house, between 15–20 days prior to the flock being moved to laying quarters.

(5) Started poultry shall be delivered to and from the farm premises in crates and vehicles which have been cleaned and disinfected as described in § 145.24(a) of this chapter.

§ 145.33 [Amended]

15. Section 145.33 is amended by adding to paragraph (b)(3)(ii) the phrase ", except waterfowl," between the words "domesticated fowl" and "are maintained."

16. In § 145.33, paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(ii) (*a*) are revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a simple of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 150 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 150 birds per flock has been tested for *M. gallisepticum* as provided in §145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(*a*) At intervals of not more than 90 days, a sample of 75 birds, with a minimum of 30 birds per pen, whichever is greater shall be tested; or

* * * * *

17. Section 145.33, paragraph (d)(1)(v) is amended by deleting the semicolon and the work "and" from the end of the paragraph and adding the following in lieu thereof:

* * * * *

(d) * * *

(1) * * *

(v) * * * "or handled in a sanitary manner equivalent to §§ 147.22 and 147.25(a) of this part, which has been approved by the Official State Agency with the concurrence of the Service; and"

18. In § 145.33, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

* * * * *

(e) * * *

(1) * * *

(i) It is a flock in which a minimum of 300 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a sample of at least 150 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 150 birds may be tested at any one

time, with the approval of the official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided,* That to retain this classification, a sample of 50 birds shall be tested at intervals of not more than 90 days: *And provided further,* That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period.

* * * * *

§ 145.43 [Amended]

19. Section 145.43 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained".

20. In § 145.43, paragraph (d) is added to read as follows:

* * * * *

(d) *U.S. M. Meleagridis Clean.*[1] (1) A block in which freedom from *M. meleagridis* has been demonstrated under the following criteria:

(i) A sample of 60 birds from each flock has been tested for *M. meleagridis* when more than 4 months of age: *Provided,* That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28–30 weeks of age and at 4–6 week intervals thereafter.

(2) The official blood tests for *M. meleagridis* shall be the serum plate agglutination, the tube agglutination, or the microagglutination tests. The hemagglutination inhibition tests, serum plate dilution test, and microagglutination tests may be used as supplemental tests to determine the status of the flock, in accordance with § 174.6(b).

(3) The tests shall be conducted using *M. meleagridis* antigens and the protocols for testing approved by the Department or the Official State Agency.

(4) When reactors to the official test are found and can be identified, 10 tracheal swabs and/or vaginal or phallus swabs and their corresponding blood samples shall be submitted to a laboratory for serological and cultural examination. If reactors cannot be identified, at least 30 tracheal swabs and/or vaginal or phallus swabs and their corresponding blood samples shall be submitted. In a flock with a low reactor rate (less than 5 reactors) the reactors may be submitted to the laboratory within 10 days for serology, necropsy, and thorough bacteriological examination.

(5) If a mycoplasma is isolated, the organism must be serotyped. If *M. meleagridis* is isolated, the block shall be considered infected.

§ 145.53 [Amended]

21. Section 145.53 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained".

22. Section 145.53 is amended by adding to paragraph (b)(5) the words "or serological examination monitoring program for game birds" between the words "bacteriological examination monitoring program" and "acceptable" and by adding the word "annual" between the words "in lieu of" and "blood testing."

23. In § 145.53, paragraph (c)(1)(i) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: *Provided,* That to retain this classification, a sample of at least 5 percent of the birds in the flock, with a minimum of 100 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 5 percent may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 5 percent of the birds in the flock, with a minimum of 100 birds, is tested within each 90-day period; or

* * * * *

24. Section 145.53, paragraph (c)(1)(ii) is amended by changing the figure "300" to "200" and by inserting after the phrase "4 months of age" and before the first colon, the phrase "or upon reaching sexual maturity".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

25. Table of Contents: Part 147, Subpart B is amended by revising the heading of § 147.11 to read as follows:

Subpart B—Bacteriological Examination Procedure

Sec.

147.11 Laboratory procedure recommended for the bacteriological examination of salmonella reactors.

* * * * *

26. Table of Contents: Part 147, Subpart B is further amended by adding the heading for two new sections, § 147.15 and § 147.16, to read as follows:

Sec.

* * * * *

147.15 Laboratory procedure recommended for the bacteriological examination of mycoplasma reactors.

147.16 Procedure for the evaluation of mycoplasma reactors by in vivo bioassay (enrichment).

27. Table of Contents: Part 147, subpart D is amended by removing §§ 147.31, 147.32, 147.33, and 147.34 and changing the heading of subpart D to read [Reserved].

§ 147.6 [Amended]

28. Section 147.6 is amended by adding at the end of the last sentence in the introductory statement the phrase "and §§ 147.15 and 147.16 of this part."

29. In § 147.6, the introductory portion of paragraph (b) is amended by removing, from the last sentence, the words "supplemental serological" and interesting in lieu thereof the phrase "additional agglutination and hemagglutination inhibition (HI)."

30. Section 147.6 is amended by adding to paragraph (b)(2) the words "and/or the Serum Plate Dilution (SPD) test" between the words "inhibition (HI) test" and "shall be."

31. Section 147.6, paragraph (b)(3) is revised to read as follows:

* * * * *

(b) * * *

(3) If the tube agglutination or serum plate tests are positive and HI and/or the SPD tests are negative, the flock shall be retested in accordance with paragraph (b)(6) of this section.

* * * * *

32. Section 147.6 is amended by adding to paragraph (b)(4) the words "or SPD titers of 1 : 5" between the words "titers of 1 : 40" and "are found."

33. Section 147.6 is amended by adding to paragraph (b)(5) the words "or

[1] Effective Date: January 1, 1983.

SPD titer of 1 : 10" between the words "titers of 1 : 80" and "or higher."

34. In § 147.6, the first sentence of paragraph (b)(6) is amended by removing the words "5 percent of the birds in the flock, with a minimum of 100, whichever is greater," and inserting in lieu thereof the words "75 birds."

35. Section 147.6 is amended by adding to paragraph (b)(8) the words "and/or SPD" between the words "the HI" and "test shall."

36. Section 147.6(b)(9) is revised to read as follows:

* * * * *

(b) * * *

(9) On the retest, if the tube agglutination or serum plate tests are positive at the same or higher rate and the HI or SPD tests are negative, the flock shall be considered suspicious and shall be retested in accordance with paragraph (b)(6) of this section.

* * * * *

37. Section 147.6(b)(10) is amended by adding the words "and/or SPD titers of 1 : 10" between the words "titers of 1 : 80" and "or higher."

38. Section 147.6 is amended by adding to paragraph (b)(11) the words "and/or SPD titers of 1 : 10" between the words "titers of 1 : 80" and "or higher."

39. Section 147.6, paragraph (b) (12), (13), (14), and (15) are added to read as follows:

* * * * *

(b) * * *

(12) If the tube agglutination or serum plate tests are found on the second retest to be positive at the same or higher rate and the HI and/or SPD tests are negative, the flock should be considered infected: *Provided,* That if the status of the flock is considered to be equivocal, the Official State Agency may examine reactors by the in vivo bio-assay and/or culture procedures before final determination of the flock status is made.

(13) If the in vivo bio-assay and culture procedures are both negative, the Official State Agency may qualify the flock for the classification for which it was tested.

(14) If the in vivo bio-assay or culture procedures are positive, the flock shall be considered infected: *Provided,* That if only the bio-assay is positive, additional in vivo bio-assay or cultural examinations may be conducted by the Official State Agency before final determination of the flock status is made.

(15) If the in vivo bio-assay or cultures are positive on retest, the flock shall be considered infected for the mycoplasma for which it was tested.

§ 147.11 [Amended]

40. Section 147.11 is amended by revising the section title to read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella reactors.

* * * * *

41. In § 147.11, paragraph (a) is revised to read as follows:

(a) Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, pancreas, peritoneum, drained gall-bladder, oviduct, misshapen ova, testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces), should be directly cultured by means of a flamed wire loop or with sterile swabs.[1] Careful aseptic technique must be utilized throughout the process of collecting tissues. Selective media should not be relied upon to deal with contaminants, since some strains may not dependably survive and grow in certain selective media. Inoculate veal infusion (VI) and brilliant green (BG) agar plates. Incubate the plates for 24 and 48 hours at 37°C. The digestive system should always be cultured separately (see paragraph (f) of this section) after other anatomical organs and systems have been collected and cultured.

* * * * *

42. In § 147.11(b)(5) is revised to read as follows:

* * * * *

(b) * * *

(5) Pancreas and kidneys; and

* * * * *

43. Section 147.11(c) is revised to read as follows:

* * * * *

(c) Aseptically collect 10–15 g or whatever lesser amount is available of each organ or site listed in paragraph (b) from each reactor, and grind or blend them completely in 10 times their volume of VI broth. Organs may be processed individually or in combinations where appropriate. Suspensions should be transferred in 10-ml aliquots to 100-ml of both VI and tetrathionate brilliant green (TBG) broth and incubated at 37°C for 24 hours. Plate the VI broth on VI and BG agar and plate the TBG broth on BG agar and incubate at 37°C. Examine these plates after 24 and 48 hours of incubation. The contents of the gallbladder can be cultured separately by inoculating 10-ml of VI and TBG broth with cotton swabs and incubating at 37°C for 24 hours. Plate on BG agar and incubate at 37°C. Examine these plates after 24 and 48 hours of incubation. If contamination with pseudomonas or proteus is a problem, make platings on BG sulfapyridine (BGS) agar.

* * * * *

44. Section 147.11(d) is revised to read as follows:

* * * * *

(d) Where field samples are directly inoculated into enrichment broths and a delay of several days occurs before they reach a laboratory, or if recovery of low numbers or organisms is expected from a primary culture, a secondary enrichment culture should be prepared. Subculture a week-old primary culture by transferring 1-ml of inoculum into a fresh tube 10-ml of enrichment broth. This secondary enrichment should be incubated at 37°C for 24 hours before plating. (See paragraph (a) of this section.) TBG broth is recommended for this procedure.

* * * * *

45. Section 147.11, paragraph (e) is revised to read as follows:

* * * * *

(e) Make a composite sample of the following parts of grossly normal or diseased tissues from the digestive tract: Crop wall, duodenum, jejunum (including remnant of yolk-sac attachment), both ceca, cecal tonsils, and rectum-cloaca. Aspetically collect 10–15 g of each organ or tissue, or whatever lesser amount is available, and grind or blend them completely in 10 times their volume of TBG broth. Transfer 10-ml of a composite sample of a suspension from the digestive tract into 100-ml of TBG broth, and incubate flasks at 42°C for 24 hours. Cultures may be incubated at 37°C if 42°C incubators are not available. The higher incubation temperatures for TBG broth reduce populations of competitive contaminants common in gut tissue. Plate on BG agar and incubate at 37°C. Examine the plates after 24 and 48 hours of incubation. If contamination with pseudomonas or proteus is a problem make platings on BGS agar.

* * * * *

46. Section 147.11(f) is revised to read as follows:

* * * * *

(f) If preferred, individual cotton swab samples may also be taken from the upper, middle, and lower intestinal tract (including both ceca and the rectum-

[1] Culture media preparation and biochemical identification charts can be obtained from *Culture Methods for the Detection of Animal Salmonellosis and Arizonosis,* Committee on Salmonellosis and Arizonosis, AAVLD, 1978 Iowa State University Press, Ames, IA 50010.

cloaca). Deposit swabs in 10-ml of TBG broth and incubate and plate as described in paragraph (e) of this section.

47. Section 147.11(g) is revised to read as follows:

* * * * *

(g) Transfer suspect colonies to triple-sugar-iron (TSI) agar and lysine-iron (LI) agar and incubate at 37°C for 24 hours.

48. Section 147.11(h) is revised to read as follows:

* * * * *

(h) Cultures revealing typical reactions of salmonellae or arizonae on TSI and LI agar slants should be transferred to any of the following appropriate biochemical tests for final identification: Dextrose, lactose, sucrose, mannitol maltose, dulcitol, malonate, gelatin, urea broth, citrate, lysine decarboxylase, ornithine decarboxylase, methyl red and Voges-Proskauer, KCN, salicin broths, indole, and hydrogen sulfide. Motility or non-motility is demonstrated by inoculating a suitable semisolid medium.[2] The Analytical Profile Index for Enterobacteriacae (API) system may be utilized for identification if feasible. For arizonae identification, make readings daily up to 10 days. An O-nitrophenyl-beta-D-galactopyranside (ONPG) disc may be used to identify slow lactose fermenters.[3]

49. In § 147.11, paragraph (i) is added to read as follows:

(i) All salmonella cultures should be serologically typed.

50. Part 147, Subpart B, is amended by adding §§ 147.15 and 147.16 to read as follows:

§ 147.15 Laboratory procedure recommended for the bacteriological examination of mycoplasma reactors.[4]

(a) Turbinates, trachea, air sacs, sinuses, nasal passages, respiratory exudates, synovial fluid, eggs (including yolk, yolk sacs, membranes and allantoic fluid), should be directly sampled with sterile swabs. Aseptic techniques are very important as some organisms may not be suppressed by the antimicrobial agents used in this procedure. Tissue suspensions from large volumes are sometimes desirable from the sites listed above and occasionally from the oviduct and cloaca. Tissues should be ground or blended completely in 10 times their volume of Mycoplasma Broth Medium (MBM). (See paragraph (e) of this section.) Specimens submitted to referral laboratories in order of preference for recovery of the mycoplasma organisms are: (1) live birds, (2) refrigerated fresh tissues, (3) tissue specimens packed with dry ice.

(b) Inoculate 5–10 ml of MBM with a swab, wire loop or 0.1 ml of the tissue suspension. When evidence of growth is observed (lowered pH or turbidity of broth) transfer each broth culture as needed to maintain the original isolates. Incubate tubes at 37°C for at least 21 days before discarding as negative. When growth is first observed or if no growth occurs by the *4th or 5th* day of incubation, inoculate broth culture onto a plate of Mycoplasma Agar Medium (MAM). (See paragraph (f) of this section.) Several cultures may be inoculated on one plate by using a wire loop or a cotton swab. Incubate plates 3–5 days at 37°C in a high humidity chamber. If preferred, 5 percent CO_2 may be added or a candle jar may be used. Tiny circular and translucent colonies with elevated centers are very suggestive of mycoplasma. Indirect lighting and a low power or dissecting microscope are recommended for observation of the colonies as they are rarely more than 0.2–0.3 mm in diameter.

(c) Isolates must be serotyped.

(1) Isolates may be shipped in MBM with ice packs if shipment will be in transit less than 2–3 days. Longer shipments require freezing of the MBM with dry ice, or shipping MAM slants at room temperature. Isolates must have indications of growth before shipment is made.

(2) Isolates may be stored in MBM at −20°C for 2–3 weeks, or they may be stored at −68°C for several years.

(d) Alternate method of culture: An overlay enrichment culture for fastidious and sensitive mycoplasma, especially for *M. meleagridis* should be included.

(1) Pour 2–3 ml of MAM into a test tube and tilt the tube until a slant (approximately 45°) is obtained. Other containers are acceptable.

(2) Overlay the slant with sufficient MBM, so that the media (including inoculum) covers the agar slope.

(3) Inoculate the culture as indicated in paragraph (b) of this section.

(4) Incubate and examine the overlay as indicated in paragraph (b) of this section.

(e) Preparation of media components:[5]

(1) Deionized distilled water suitable for cell culture fluids should be used.

(2) All glassware should be carefully washed with a nonresidue detergent such as Alcojet and rinsed three times in tap water and twice in deionized distilled water.[6]

(3) Thallium acetate in a 10 percent solution is added to an approximate final concentration of 1:4000; however, highly contaiminated specimens may require a final concentration of 1:2000.[7] Thallium acetate is added to deionized distilled water first, except as noted in paragraph (e)(4) of this section, to prevent the precipitation of proteins.

(4) Mycoplasma Broth Base, dextrose, phenol red, and cysteine hydrochloride are added to deionized distilled water first if autoclave sterilization is used.[8] Thallium acetate and then the remaining components are added aseptically after cooling the autoclaved media to 45°C or less.

(5) Use sterile deionized distilled water to reconstitute penicillin.

(6) Sterile serum should be inactivated by heating at 56°C for 30 minutes. Swine serum may be used for *M. gallisepticum*, *M. synoviae*, *M. gallinarum*, and *M. meleagridis* isolation; however, horse serum is usually recommended for *M. meleagridis* isolation.

(7) Phenol red should be prepared as a 1 percent solution.

(8) NAD (beta nicotinamide adenine dinucleotide or coenzyme I) should be prepared as a 1 percent solution.[9]

(9) Cysteine hydrochloride, prepared as a 1 percent solution, is used to reduce the NAD for *M. synoviae* growth.

(10) A purified agar product such as Nobel (Special agar) is used in the MAM.[10]

(11) Adjust the pH with NaOH.

(12) Sterilization may be accomplished by two methods:

(i) Filtration sterilization through a 0.20 micron filter is the recommended

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[2] Formulation for the semisolid motility medium can be obtained from: *Isolation and Identification of Avian Pathogens*, American Association of Avian Pathologists, Texas A&M University, College Station, TX 77843, 1980.

[3] ONPG discs are available from: Baltimore Biological Laboratories, Cockeysville, MD 21030.

[4] Yoder, H. W., Jr., "Mycoplasmosis." In: Isolation and Identification of Avian Pathogens. (Stephen B. Hitchner, Chairman, Charles H. Domermuth, H. Graham Purchase, James E. Williams.) 1980, pp. 40–42, Creative Printing Company, Inc., Endwell, NY 13760.

[5] Trade names are used in these procedures solely for the purpose of providing specific information. Mention of a trade name does not constitute a guarantee or warranty of the product by the U.S. Department of Agriculture or an endorsement over other products not mentioned.

[6] Alcojet is available from: Alconox, Inc., New York, NY 10003.

[7] Thallium acetate may be obtained from Fischer Scientific Company.

[8] Mycoplasma Broth Base may be obtained from: (a) Product #M 33600, Gibco Diagnostics, 2801 Industrial Drive, Madison, WI 53711. (b) Product #3900–3212, Scott Laboratories, Inc., 8 Westchester Plaza, Elmsford, NY 10523.

[9] NAD Grade III may be obtained from: Sigma Chemical Company, P.O. Box 14508, St. Louis, MO 63178.

[10] Noble Agar may be obtained from: Difco Laboratories, Box 1058–A, Detroit, MI 48201.

method. Aseptic techniques must be utilized.

(ii) Autoclave sterilization at 120°C, 15 pounds pressure (103 kPa), for 15 minutes may be used, if preferred, when following the procedure described in paragraph (e)(4) of this section.

(13) Phenol red, dextrose, and NAD may be omitted when culturing for *M. meleagridis* and *M. gallinarum.*

(14) When culturing for *M. meleagridis* from contaminated samples include 100 units/ml of Polymyxin B in MBM.

(f) Mycoplasma Broth Medium (Frey) is prepared as follows: To 850–880 ml of deionized distilled water;

Add:
Thallium acetate (ml)—2.5 (1:4000)
Potentially contaminated samples (ml)—5.0 (1:2000)
Mycoplasma Broth Base (g)—22.5
Aqueous penicillin (units)—500,000
Sterile serum (ml)—120 to 150.0
Phenol red plus (ml)—2.5
NAD (ml)—12.5
Cysteine hydrochloride (ml)—12.5
Dextrose (g)—1.0–1.5
Adjust pH to 7.8
Filter sterilize

(1) Broth may be stored at 4°C for at least 2 weeks or at −40°C for longer periods.

(g) Mycoplasma Agar Medium (Frey) is prepared as follows: To 850–880 ml of deionized distilled water;

Add:
Mycoplasma Broth Base (g)—22.5
Adjust pH to 7.8
Purified agar (g)—18.0
Autoclave and cool in 45°C water bath
Thallium acetate (ml)—2.0; (1:4000)
Sterile serum at 45°C (ml)—150.0
Aqueous penicillin (units)—400,000
NAD (ml)—12.5
Cysteine hydrochloride (ml)—12.5

(1) Rotate flask gently and pour about 15 ml of media into each petri dish.

(2) Stack petri dishes only 2–3 high in a 37°C incubator up to 2 hours to remove excess moisture.

(3) Wrap inverted plates in sealed bundles and store at 4°C for not more than 15 days.

(h) New component or media batches should be monitored to compensate for changes in formulation due to alterations of purity, concentration, preparation, etc. A known series of titrations from a single culture should be made on both new and old media. The media should be compared on the basis of growth, colony size, and numbers of colonies which develop.[11]

[11] "Laboratory Procedures and Medium For The Isolation Of Mycoplasma From Clinical Materials." *Laboratory Diagnosis of Mycoplasma in Food Animals.* Proceedings of Nineteenth Annual Meeting, The American Association of Veterinary Laboratory Diagnosticians, 1976, pp. 106–115, AAVLD, 6101 Mineral Point Road, Madison, WI 53705.

§ 147.16 Procedure for the evaluation of mycoplasma reactors by in vivo bio-assay (enrichment).

This procedure has been shown to be sensitive enough to detect less than 100 mycoplasma organisms under proper conditions.[12] Proper conditions are defined in this section.

(a) Obtain chickens or turkeys (test birds) which are at least 3 weeks of age and are free of *M. gallisepticum, M. synoviae,* and *M. meleagridis* and transport them in a manner to prevent their being contaminated by any infectious avian disease.

(1) Maintain test birds in an area that has been effectively cleaned and disinfected.

(2) The area should be isolated from other birds or animals.

(3) Personnel caring for the test birds should take the necessary precautions (see § 147.26(b)) to prevent the mechanical transfer of infectious avian diseases from other sources.

(b) Test birds to be used for inoculation with contaminated tissues should be serologically negative by the serum plate agglutination test.

(1) Inoculated test birds should be isolated from non-inoculated control birds for the length of any experiment.

(c) Aseptically obtain tracheal, turbinate, and sinus mucosa, lung and sinus exudates, cervical, thoracic, and abdominal airsac tissues (including lesions), and portions of oviduct and synovial fluid from at least four suspect, donor birds. In a sterile device, blend the tissues completely in four times their volume of Mycoplasma Broth Medium (Frey), (see § 147.15(e)). Suspensions may be made from tissue pools. Inoculate test birds within 30 minutes for preparation of suspensions.

(1) Inoculate at least four test birds for each suspension pool via the abdominal air sac and infraorbital sinus, with up to ½ ml of inoculum per site.

(2) Test birds should be bled every 7 days for 35 days to identify sero-converters.

(3) At 35 days, test birds should be sacrificed and bacteriologic isolation and identification of mycoplasma attempted (see § 147.15). Note especially the sites of inoculation for typical gross or microscopic mycoplasma lesions.

[12] Research results are described in the following two publications: (a) Bigland, C. H. and A. J. DaMassa, "A Bio-Assay for Mycoplasma Gallisepticum." In: United States Livestock Sanitary Association Proceedings, 67th, 1963, pp. 541–549. (b) McMartin, D. A., "Mycoplasma Gallisepticum in the Respiratory Tract of the Fowl." In: The Veterinary Record, September 23, 1967, pp. 317–320.

(d) Donor birds are considered infected when:

(1) Test birds have serum plate antibodies for the mycoplasma for which the donor birds were tested, regardless of HI test results, *and* control birds stay serologically negative; or

(2) Mycoplasma organisms are isolated from the test birds and serotyped positive for the mycoplasma for which the donor birds were tested, *and* control birds stay serologically and culturally negative.

(e) Laboratory findings may be verified by direct cultures of material from sick birds or by inoculating seronegative birds from the suspect flock and comparing serological findings with those from the test birds.

§ 147.26 [Amended]

51. In § 147.26, paragraph (b) is amended by adding subparagraph (15) to read as follows:

§ 147.26 Procedures for establishing isolation and maintaining sanitation and good management practices for the control of salmonella and mycoplasma infections.

* * * * *

(b) * * *

(15) Use only crates and vehicles that have been cleaned and disinfected in accordance with the provisions of § 147.24(a) to haul live poultry to and from the premises.

§§ 147.31–147.34 (Subpart D) [Removed and Reserved]

52. Part 147 is amended by removing subpart D and redesignating it [Reserved] and by removing §§ 147.31, 147.32, 147.33, and 147.34.

53. Section 147.43, paragraph (d) is revised to read as follows:

§ 147.43 General Conference Committee.

* * * * *

(d) The duties and functions of the General Conference Committee shall be as follows:

(1) Assist the Department in planning, organizing, and conducting the biennial National Poultry Improvement Plan Conference.

(2) Recommended whether new proposals (i.e., proposals that have not been submitted as provided in § 147.44) should be considered by the delegates to the Plan Conference.

(3) During the interim between Plan Conferences, represent the cooperating States in:

(i) Advising the Department with respect to administrative procedures and interpretations of the Plan provisions as contained in 9 CFR.

(ii) Assisting the Department in evaluating comments received from interested persons concerning proposed amendments to the Plan provisions.

(iii) Recommending to the Secretary of Agriculture any changes in the provisions of the Plan as may be necessitated by unforeseen conditions when postponement until the next Plan Conference would seriously impair the operation of the program. Such recommendations shall remain in effect only until confirmed or rejected by the next Plan Conference, or unitl rescinded by the committee.

(4) Serve as a forum for the study of problems relating to poultry health and as the need arises, to make specific recommendations to the Secretary of Agriculture concerning ways in which the Department may assist the industry in solving these problems. (Sec. 101(b), Pub. L. 425, 78 Cong. 58 Stat. 734, as amended 7 U.S.C. 429)

Done at Washington, D.C. this 13th day of May 1982.

J.K. Atwell,

Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 82-13470 Filed 5-19-82; 8:45 am]

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Thursday
May 20, 1982

Part III

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: The Bureau of Prisons is publishing its rules for the control, custody, care, treatment, and instruction of inmates. This installment contains the Bureau of Prisons revised rule on its Central Inmate Monitoring System. The rule gives Bureau procedures to monitor and control the transfer, temporary release, and community activities of certain inmates who present special needs for management. As revised, the rule narrows the definition of who may be classified a central inmate monitoring (CIM) case, and establishes a time period for deciding whether an inmate's interim CIM assignment is based on substantive information. The amendments to this rule are a result of the Bureau's efforts to refine the policies and procedures that govern the CIM system. To continue towards this goal, the rule on the CIM System is published as an interim rule with public comments invited.

EFFECTIVE DATE: June 1, 1982. Public comments on the interim rule will be considered if received on or before July 30, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534. Public comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202–724–3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing an interim rule on its Central Inmate Monitoring System. This subject was published in the **Federal Register** as a final rule December 19, 1980 (at 45 FR 83920 et seq.).

In the months since publication of the final rule, the Bureau of Prisons has striven to refine and improve the CIM system. A major improvement occurred August 1981 when the Bureau of Prisons automated its Central Inmate Monitoring System. SENTRY is the Bureau of Prisons' on-line, real-time computer system. SENTRY makes information immediately available to staff. It gives the Bureau a more effective way to operate the CIM system and provides staff support never before available.

In making the conversion to SENTRY, the entire CIM process was examined. This review resulted in a revision of the CIM System. The existing 12 CMC categories were reduced to 8 CIM assignments. Criteria considered in giving an inmate a CIM assignment is better defined. Another change concerns an inmate's tentative CIM classification. Under the existing rule, an inmate can receive a tentative central inmate monitoring classification and not know when a final decision would occur. The interim rule revises this procedure. Certain inmates, by the nature of their status (e.g., state prisoner), are classified CIM cases without further review. Other inmates may receive an interim classification, not to exceed 60 days. If the inmate is not notified of a change in this status within 60 days, the inmate may consider the CIM classification a final decision.

The amended rule makes several other changes. These revisions are not intended to place a burden on either the inmate or the public. The rule is not intended to preclude inmates from transfer, temporary release, or participation in community activities, when the inmate is otherwise eligible, but is intended to provide protection for all concerned and to ensure the safe and orderly operation of federal institutions. The revisions are intended to refine and improve the process by which an inmate is given an CIM assignment, provided a review of that assignment, etc. The amended rule is intended to more effectively implement and operate the Central Inmate Monitoring System. For these reasons, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. The Bureau of Prisons is interested, however, in receiving public comment and suggestions on the CIM system and has decided to publish this document as an interim rule. Public comments and suggestions received will be considered during an assessment of the CIM system to be conducted later this year.

Interested persons may participate in this rulemaking by submitting data, views, or agruments in writing to the Bureau of Prisons, Room 760, 320 First Street, N.W., Washington, D.C. 20534. Comments received on or before July 30, 1982, will be considered before final action is taken. The interim rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and the regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes.

1. Section 524.70—Section 524.70 is reworded. For clarity, the phrase "temporary release (e.g., on writs)" is added as the Bureau of Prisons monitors and controls the transfer, temporary release, and community activities of certain inmates who present special needs for management. Throughout the interim rule, the term "central inmate monitoring" case is used interchangeably with "CIM" (was "CMC" in existing rule).

2. Section 524.71—The phrase "Central Inmate Monitoring Network" is substituted for "Central Inmate Monitoring System". The interim rule states that Community Programs Managers are designated CIM coordinators for inmates at contract facilities.

3. Section 524.72—This section is retitled "Central Inmate Monitoring Assignments." Throughout the interim rule, the term "assignment" is substituted for the term "category". As revised, § 524.72 reduces the existing 12 CMC categories into 8 CIM assignments. For each assignment, information is provided identifying factors considered in making the CIM classification.

Existing § 524.72(a)(1) becomes new § 524.72(a). Deleted is a reference to where these inmates are housed. The interim rule describes who may be placed in this assignment (person whose safety is in jeopardy because of cooperation with the government). Placement in this assignment is made only upon authorization of the Office of Enforcement Operations, Criminal Division, Department of Justice.

Section 524.72(a)(2) is deleted. The Bureau of Prisons no longer identifies inmates as Bureau of Prisons witness security cases.

Section 524.72(a)(3) becomes interim § 524.72(b). Subsection (b) is expanded to include criteria considered in making this assignment. A RICO conviction (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961–1968) or a Continuing Criminal Enterprise conviction (21 U.S.C. 848) will

automatically result in assignment as sophisticated criminal activity. Also included is an elected or appointed public official at a local, county, state, or federal level who violated the trust of that position as shown by conviction for a felony offense related to that position.

Examples of sophisticated criminal activity which may require further review include drug offenses, property offenses, white collar offenses, or a criminal history of involvement in such offenses. To be classified sophisticated criminal activity in one of these areas, three conditions must be met: (1) That the offense was planned and organized and geographically operated on a municipal, county, state, national, or international scale; (2) that the offender occupied a position of management for the criminal organization or activity from which substantial income or resources could be obtained; and (3) that the monetary value of the offense totaled $500,000 or more for drug offenses, and $250,000 or more for property or white collar offenses. These provisions identify the stringent criteria required for this assignment. The interim rule raises the monetary amount from $100,000 and deletes a previous provision that an individual did not need to be part of the leadership structure to qualify as sophisticated criminal activity.

Section 524.72(a)(4), now interim § 524.72(c), is titled "Threats to Government Officials." The interim rule adds the phrase "in writing" to show how the information is given. Section 524.72(a)(5) becomes interim § 524.72(d). An example of the criteria used for making this assignment is national media coverage or continued news coverage by the local media.

Section 524.72(a)(6) becomes final § 524.72(e). The interim rule now includes those persons who may not be confined in the same institution with specified disruptive group members.

Section 524.72 (a)(7) and (a)(8) are deleted as other Bureau policy gives the needed supervision. Section 524.72(f), "State Prisoners," is new. This assignment includes persons, other than witness security cases, accepted into the Bureau of Prisons for service of their state sentences. This assignment provides the Bureau with a management tool to quickly identify state prisoners. The information is necessary for several reasons, including, where appropriate, to separate state prisoners. Section 524.72(a)(9), now interim § 524.72(g), is reworded. The interim rule identifies factors that the Bureau of Prisons considers (for example, geographic location) in making this assignment. This assignment may be given to a person whose previous position (for example, in the criminal justice field) might subject that person to indiscriminate retaliation from unknown persons. Section 524.72(g) also includes those persons, other than witness security cases, whose safety might be in jeopardy because of their cooperation with the government. Section 524.72(a)(10)–(a)(12) are now included within interim § 524.72(h). The interim rule identifies factors that should be considered in making this assignment. Such factors include, but are not limited to, testimony or information provided by or about an individual, demonstrated aggressive behavior, etc.

Section 524.72 (b) and (c) is deleted. Later sections of the interim rule discuss this aspect.

4. Section 524.73—The phrase "tentative classification" is deleted from the entire interim rule. Under the revised procedure, an inmate is given an "interim classification" (discussed in § 524.75) as a CIM case. This classification ordinarily does not exceed 60 days. After 60 days, the classification is either removed or considered final.

Section 524.73(a) is revised by deleting the requirement that the CIM classification takes effect when notification is made to the Central or Regional Office. To take effect, the institution where the inmate is confined or is designated for confinement is notified. For consistency with § 524.71, the interim rule recognizes that a Community Programs Manager may classify an inmate as a CIM case.

Section 524.73(b) is reworded. The word "ordinarily" is deleted from the interim rule because staff are not expected to place the names of separatees on the notification form. The interim rule adds language stating that the inmate signs for and receives a copy of the notification form. The original of the form is placed in the inmate privacy file. The rule also gives staff procedures to follow when the inmate refuses to sign the notification form.

Existing § 524.73(c)–(e) is deleted from interim § 524.73. The deleted sections pertain to the confirmation procedure. This procedure has been revised in the interim rule and is now discussed in interim §§ 524.74–75. Existing § 524.73(f), now interim § 524.73(c), is revised. The interim rule requires that CIM information either be removed from the central inmate file or, where part of a larger document, be amended (to avoid the unnecessary cost of retyping the larger document) to show removal of the CIM assignment. The interim rule identifies that information which may be retained (for example, the notification form) in the inmate privacy file.

5. Section 524.74—§ 524.74, "Final CIM classification," is new. This section recognizes that certain CIM assignments do not require further review. For example, a witness security case (a voluntary placement) or state prisoner does not require an interim CIM assignment because the basis for placement is clear. If substantive information exists, the Central or Regional Office may directly classify an inmate to any other final CIM assignment which that respective office is authorized to make. This procedure benefits both the Bureau of Prisons and the inmate. The Bureau eliminates an unnecessary review. The inmate, if desired, is able to use the Administrative Remedy Procedure more effectively because the CIM decision is a final as opposed to interim decision.

6. Section 524.75—§ 524.75, "Interim CIM classifications," is new. It improves procedures previously given in final § 524.73(c)–(e). As revised, the interim rule allows staff to classify an inmate to an interim CIM assignment. This interim status ordinarily may not exceed 60 days. Section 524.75(a)(1)–(3) identifies the reviewing authority for interim CIM assignments. Section 524.75(b)–(d) revises existing § 524.73(c)–(e). The interim rule continues to require that the inmate be notified of the interim CIM assignment. Staff shall advise the inmate that objections to the interim CIM assignment are submitted directly by the inmate to the reviewing authority (as opposed to "confirming authority" in the final rule). This procedure allows the inmate to present his own material and rationale for objecting to the CIM assignment. Staff responsibility is to forward to the reviewing authority information regarding the interim CIM assignment. The reviewing authority has 60 days from the date the inmate was notified of the interim CIM assignment to make a final decision on the CIM assignment. The reviewing authority is to notify the institution's CIM coordinator of the final decision.

If no final decision is reached within 60 days the inmate may consider the CIM classification a final decision. The inmate who disagrees with the classification may appeal that decision through the Administrative Remedy Procedure. While an appeal of an interim CIM classification may also be made, staff are to encourage the inmate to submit objections to an interim assignment to the reviewing authority, rather than file an appeal through the Administrative Remedy Procedure.

7. Section 524.76—Final § 524.74 becomes interim § 524.76. Section 524.76(a)–(b) is reworded but its basic

intent is unchanged. Because the interim rule is revised to more clearly identify exceptions, the exception language in existing § 524.74(b) is deleted. Section 524.76(b)(3) substitutes the more expansive word "temporary" for "writ" release.

Section 524.76(c) identifies the Regional Director or designee as the clearance authority on transfers, temporary releases, and participation in community activities for inmates identified as CIM cases. Exceptions to this authorization are given in § 524.76(d)–(i). These exceptions generally correspond to final § 524.74(c)–(f). Interim § 524.76(d) identifies the Central Office as the clearance authority (confirming authority in the existing rule) for witness security cases. Section 524.76(e) authorizes the Warden to transfer a CIM inmate (other than witness security) to the satellite camp of the Warden's institution. Existing § 524.74(e) is now contained within § 524.76 (f) and (h), as these sections discusses both non-medical and medical escorted trips. The clearance authority for each CIM assignment is identified within these sections. Section 524.76(g) is new and authorizes the Warden to transfer a CIM inmate to a local hospital for emergency medical care not available at the institution. Final § 524.74(f) is revised and now becomes interim § 524.76(i). The interim rule still requires both Central and Regional Office approval for community activities for sophisticated criminal activity, broad publicity, and threats to government officials but deletes the previously included disruptive group assignment.

8. Section 524.77—Final § 524.75, now interim § 524.77, is expanded. The new rule states that except for witness security and state prisoner cases, staff are to consider an inmate's CIM status at each program review (ordinarily held every 90–180 days). The existing rule required this review semi-annually. The revised rule also discusses the procedures for removing or modifying a CIM assignment as the result of this review. Briefly, these include notifying the institution CIM coordinator and appropriate reviewing authority. Only the reviewing authority may determine if the CIM assignment should be removed or modified. The interim rule recognizes that an inmate classified as a witness security case may request removal from this assignment at any time. It also states that an inmate classified as a state prisoner will retain this assignment while that inmate is solely in service of the state sentence.

9. Section 524.78—§ 524.78, "Appeals of central inmate monitoring classification", is new. This section states that an inmate may appeal the CIM assignment at any time. An inmate objecting to an interim assignment, however, is encouraged to submit objections directly to the reviewing authority because this person will make the final CIM decision. An interim assignment appealed through the Administrative Remedy Procedure is not likely to be granted prior to a final decision on the inmate's interim CIM status.

Another aspect of § 524.78 addresses the status of federal inmates housed in non-federal facilities. These inmates are advised that an appeal of their CIM assignment is to be forwarded by private correspondence to the appropriate Regional Office.

10. Section 524.79—§ 524.76, now interim § 524.79, is revised. The revised rule includes the inmate who is recommitted on the basis of a new conviction. The rule states that, for other than witnesses security cases, the required review is ordinarily conducted as part of the unit classification process. For witness security cases, the review is conducted by the Inmate Monitoring Branch, Central Office.

Interim § 524.79(a) discusses the removal procedures contained in existing § 524.76(b). Interim § 524.79(b) is new and discusses procedures to follow (contact reviewing authority for final decision) when staff determine that a modification of the inmate's CIM assignment is appropriate. Interim § 524.79(c) expands the notification requirements contained in existing § 524.76(a). The interim rule requires that an inmate be notifed when removal from, modification of, or continuation as a CIM case is indicated, or when an interim CIM classification is initiated. The inmate is also notified, where appropriate, of any subsequent decision by the reviewing authority to either remove or modify that inmate's CIM assigment. The first sentence of existing § 524.76(b) is deleted with its intent included in the first paragraph of interim § 524.79.

List of Subjects in 28 CFR Part 524

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter B, Part 524, Subpart F is revised.

Dated: May 12, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

Subchapter B, Part 524, Subpart F is revised, to read as follows:

PART 524—CLASSIFICATION OF INMATES

* * * * *

Subpart F—Central Inmate Monitoring System

Sec.

524.70 Purpose and scope.
524.72 Central inmate monitoring assignments.
524.73 Procedures.
524.74 Final CIM classifications.
524.75 Interim CIM classifications.
524.76 CIM activities clearance.
524.77 Review of CIM status.
524.78 Appeals of central inmate monitoring classification.
524.79 CIM classification of parole/mandatory release violators.

Subpart F—Central Inmate Monitoring System

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, P.L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95–0.99.

§ 524.70 Purpose and scope.

The Bureau of Prisons monitors and controls the transfer, temporary release (e.g., on writs), and community activities of certain inmates who present special needs for management. Such inmates, known as central inmate monitoring (CIM) cases, require Central Office and/or Regional Office approval for transfers, temporary releases, or community activities recommended by the Warden. This monitoring is not for the purpose of precluding inmates classified as central inmate monitoring cases from transfers, from temporary releases, or from participation in community activities, when the inmate is otherwise eligible, but rather is to provide protection for all concerned and to contribute to the safe and orderly running of Federal institutions.

§ 524.71 Responsibility.

Authority for actions relative to the Central Inmate Monitoring Network is delegated to the Assistant Director, Correctional Programs Division, to Regional Directors, and to Wardens. Each of these persons shall designate a CIM coordinator (for the Central Office, each Regional Office, and each institution, respectively). Community Programs Managers are designated CIM

coordinators for inmates confined at contract facilities.

§ 524.72 Central inmate monitoring assignments.

Central inmate monitoring cases are classfied according to the following assignments.

(a) *Witness Security Cases:* Inmates who are identified by the Department of Justice as witness security cases. This assignment includes persons whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment may be made only upon authorization of the Office of Enforcement Operations, Criminal Division, Department of Justice.

(b) *Sophisticated Criminal Activity:* Inmates who have been involved in sophisticated criminal activity. A RICO conviction (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961–1968) or a Continuing Criminal Enterprise conviction (21 U.S.C. 848) will automatically result in a classification to this assignment. An elected or appointed public official at a local, county, state, or federal level who violated the trust of that position as evidenced by conviction for a felony offense will automatically be classified "sophisticated criminal activity." Other examples of sophisticated criminal activity include drug offenses, property offenses, white collar offenses, or a criminal history of involvement in such offenses. An inmate may be classified to this assignment when all the following minimum criteria are met:

(1) The offense was planned and organized and involved criminal activity that geographically operated on a municipal, county, state, national, or international scale;

(2) The offender occupied a position of organizer, a supervisory position, or any other position of managment for the criminal organization or activity from which substantial income or resources could be obtained; and

(3) The monetary value of the offense totaled $500,000 or more for drug offenses, and $250,000 or more for property offenses or white collar offenses.

(c) *Threats to Government Officials:* Inmates who have made threats to government officials or have been identified in writing by the U.S. Secret Service as requiring special surveillance.

(d) *Broad Publicity:* Inmates who have received widespread publicity (for example, national media coverage or continued news coverage by the local media) as the result of their criminal activity.

(e) *Disruptive Groups:* Inmates who belong to or are closely associated with disruptive groups (e.g., prison gangs), which have a history of disrupting institution operations and security in either state or federal penal facilities. This assignment also includes those persons who may not be confined in the same institution with specified disruptive group members.

(f) *State Prisoners:* Inmates, other than witness security cases, who have been accepted into the Bureau of Prisons for service of their state sentences. This assignment includes cooperating state witnesses, contractual boarders, and court-ordered federal placements of state prisoners.

(g) *Special Supervision:* Inmates who require monitoring for their protection from *unknown* inmates who are identified only by geographic location, i.e., institution, region, or correctional system. This assignment may include persons (for example, former criminal justice personnel) who may be subject to indiscriminate retaliation from individuals who cannot be identified. This assignment may also include those persons, other than witness security cases, whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment because the inmate cooperated with the government may be made only upon authorization of the Assistant Director, Correctional Programs Division.

(h) *Separation:* Inmates who may not be confined in the same facility with other specified individuals regardless of their location. This includes federal inmates boarded in state facilities for separation and protection purposes, and those who may come into federal custody in the future. Factors to consider in classifying an individual to this assignment include, but are not limited to, testimony provided by or about an individual (in open court, to a grand jury, etc.), and whether the inmate has exhibited aggressive behavior towards other specific individuals either in the community or within the institution. This assignment also includes those inmates who have provided authorities with information concerning the unauthorized or illegal activities of others and those inmates who may be affected by any other event or circumstance which could result in a physical confrontation between at least two persons or which could jeopardize the orderly operation of the institution.

§ 524.73 Procedures.

Staff shall use the following procedures in making central inmate monitoring classifications:

(a) An inmate may be classified at any time as a central inmate monitoring case by a Community Programs Manager or by appropriate staff at the Central Office, Regional Office, or institution. This classification takes effect when proper notifications are made to authorities at the institution where the inmate is confined or is designated for confinement.

(b) The institution's CIM coordinator shall ensure that the affected inmate is notified in writing as promptly as possible of the classification and the basis for it. The notice of the basis may be limited in the interest of security or safety. For example, in separation cases under § 524.72, notice will not include the names of those from the inmate must be separated. On the other hand, in sophisticated criminal activity cases under § 524.72, adequate notice shall include specific reference to the sophisticated criminal activity, that is, the crime or crimes for which the inmate was convinced, or explicit and reliable information of other sophisticated criminal activity. The inmate shall sign for and receive a copy of the notification form, with the original form placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this fact on the notification form and then sign the form.

(c) When an inmate's name is ordered removed for any reason from the Central Inmate Monitoring System (for example, because the reviewing authority either disapproves the interim CIM classification or approves removal of a final CIM classification based on new information), the CIM coordinator shall ensure that the relevant portions of the inmate central file are either removed or, when part of a larger document, are amended to clearly reflect removal of the CIM assignment. The form providing for notification of the central inmate monitoring classification, the summary sheet, supportive documentation, and the written basis for removal are to be retained in the inmate privacy file. Staff shall notify the inmate in writing of the removal of a specific CIM classification. The inmate shall sign for and receive a copy of this notification form, with the original placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this refusal on the notification form and then sign the form.

§ 524.74 Final CIM classifications.

A final CIM classification may be made where the basis for the classification is well established at the

time of the initial review. The inmate is to be notified of the CIM classification and of the right to appeal the classification through the Administrative Remedy Procedure.

(a) Witness security cases are designated by the Central Office. An inmate's participation in this program is voluntary. A pre-commitment interview and an admission and orientation interview are to be conducted with the witness security inmate to ensure that the inmate understands the conditions of confinement within the Bureau of Prisons. Central Office classification of an individual as a witness security case does not require additional review. Classification of an inmate as a witness security case overrides any other CIM assignment.

(b) State prisoners accepted into the Bureau of Prisons from state or territorial jurisdictions are designated by appropriate staff in the Central Office or Regional Office. All state prisoners are automatically included in the Central Inmate Monitoring System to facilitate designations, transfers, court appearances, and other movements. Central Office or Regional Office classification of an individual as a state prisoner does not require additional review.

(c) Designated staff in the Central Office or Regional Office may assign an inmate to any other CIM classification which they are authorized to make, without an interim classification, based upon substantive information at staff disposal. Staff in the Central Office or Regional Office shall notify the appropriate institutional CIM coordinator of the final classification.

§ 524.75 Interim CIM classifications.

(a) An interim classification, ordinarily not to exceed 60 days, may be made at any level to achieve the immediate effect of requiring prior clearance for an inmate's transfer, temporary release, or participation in community activities. An interim classification is appropriate when additional review is required to determine whether a sound basis exists for the classification. Reviewing authorities for interim CIM classifications are:

(1) Designated staff in the Central Office Inmate Monitoring Branch who reviews interim CIM classification decisions for all future separation assignments and for any combination of assignments involving a witness security case;

(2) The Warden who reviews interim CIM classification decisions for all separation assignments other than future separation; and

(3) Designated staff in the Regional Office who reviews interim CIM classification decisions for all other central inmate monitoring assignments and for any combination of assignments, except for those involving a witness security case.

(b) The inmate is to be notified of the interim CIM classification. The inmate is to be advised that any objections to the interim CIM classification may be submitted by the inmate directly to the reviewing authority. If the inmate is not notified of a change in the interim CIM classification within 60 days from the date of initial notification, the inmate may consider the CIM classification a final decision. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

(c) The Warden shall forward to the reviewing authority complete information regarding the inmate's interim CIM classification.

(d) The reviewing authority shall make a final decision on the appropriateness of the CIM classification, ordinarily within 60 days of the date the inmate was initially notified of the interim classification. The reviewing authority shall notify the institution's CIM coordinator in writing of the final decision.

§ 524.76 CIM activities clearance.

(a) An inmate classified as a central inmate monitoring case may not be transferred (except for medical emergencies), may not be given a temporary release, and may not participate in community activities without prior approval from the appropriate authority.

(b) Clearance by the Central Office or Regional Office (depending upon CIM classification) is required prior to the inmate's participation in the following activities:

(1) Transfer to another Federal facility;

(2) Transfer to non-Federal facilities or contract community treatment centers (for continued service of federal sentence);

(3) Temporary release (e.g., on writs) to federal, state, and/or local jurisdictions;

(4) Furloughs;

(5) Escorted trips outside commuting distance of the institution; and

(6) Work or Study Release.

(c) Except as provided in the following paragraphs of this section, the Regional Director or designee shall be the clearance authority on all transfers, temporary releases, and participation in community activities for inmates assigned central inmate monitoring status.

(d) The Central Office Inmate Monitoring Branch shall be the clearance authority on all transfers, temporary releases, and participation in community activities for witness security cases.

(e) The Warden may approve the transfer of a CIM inmate (other than a witness security case) to the satellite camp of the Warden's institution.

(f) The Warden may approve non-medical escorted trips within the local community for separation cases. Witness security cases are to be cleared through the Central Office. All other CIM assignments are to be cleared through the appropriate Regional Office.

(g) The Warden may approve the transfer of a CIM inmate to a local hospital for emergency medical care not available at the institution.

(h) The Warden may approve local escorted medical trips for all CIM assignments except witness security cases. The Warden may approve only emergency local escorted medical trips for witness security cases.

(i) Except as provided in paragraphs (e)–(h) of this section, the Central Office Inmate Monitoring Branch will clear all community activities for inmates in the following assignments: witness security, sophisticated criminal activity, broad publicity, and threats to government officials. Except for witness security cases, final clearance from the Central Office shall be requested only if the activity is first reviewed and recommended by the Regional Director or designee. Requests for community activities for witness security cases are to be submitted directly by the institution to the Central Office Inmate Monitoring Branch.

§ 524.77 Review of CIM status.

(a) Except for witness security and state prisoner assignments, the Warden shall ensure that the status of an inmate's CIM assignment is considered at each program review in respect to any new information, or change in behavior or status which might affect the inmate's central inmate monitoring classification. When staff believes that removal or modification of a CIM classification is appropriate, the institution's CIM coordinator and the appropriate reviewing authority are to be notified. Only the reviewing authority shall determine if removal or modification of the CIM classification is appropriate. The institution's CIM coordinator shall ensure that the inmate

is notified of any decision made by the reviewing authority.

(b) Participation of an inmate in the witness security program is voluntary. An inmate classified as a witness security case may request removal from this assignment at any time.

Staff shall forward to the Central Office Inmate Monitoring Branch a request by a witness security inmate for removal from the witness security program. An inmate may not be removed from the CIM assignment as a witness security case without the acknowledgement of the Department of Justice, Office of Enforcement Operations.

(c) A state prisoner accepted into the Bureau of Prisons from a state or territorial jurisdiction shall keep the CIM assignment "state prisoner" while solely in service of the state sentence.

§ 524.78 Appeals of central inmate monitoring classification.

An inmate may at any time appeal (through the Administrative Remedy Procedure) the inmate's classification as a central monitoring case. While this means that an inmate may appeal an interim classification through the Administrative Remedy Procedure, staff shall advise the inmate that any objections to an interim CIM classification are more appropriately submitted to the reviewing authority because it is the reviewing authority who makes the final decision on an inmate's CIM assignment. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

Federal inmates housed in non-federal facilities do not have access to the Administrative Remedy Procedure. Inmates in this status who wish to appeal their CIM status may forward their complaints by private correspondence to the appropriate Regional Office.

§ 524.79 CIM classification of parole/mandatory release violators.

An inmate who is recommitted to federal custody because of a parole/mandatory release violation, or a new conviction, and who, at the time of release was classified as a CIM case shall retain this classification pending a review of the CIM status by appropriate staff. Except for witness security cases, this review ordinarily is completed as a part of the unit classification process. Review for witness security cases is completed by the Inmate Monitoring Branch at the time that an institution is designated for recommitment.

(a) When staff determines that the inmate's removal as a CIM case is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on removal of the CIM classification. The inmate retains the CIM classification pending a decision by the reviewing authority.

(b) When staff determines that a modification (addition or deletion of one or more CIM assignments) of the CIM classification is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on modification of the CIM classification. The inmate retains the existing CIM classification pending a decision by the reviewing authority.

(c) When removal from, modification of, or continuation as a CIM case is indicated, or when an interim classification is effected, the institution's CIM coordinator shall ensure that the inmate is provided notification of the initial action. The institution CIM coordinator shall also ensure that an inmate is provided notification of any subsequent decision by the reviewing authority to either modify or remove the inmate's CIM assignment.

[FR Doc. 82-13734 Filed 5-19-82; 8:45 am]
BILLING CODE 4410-05-M

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28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document amends a final rule relating to the Bureau of Prisons policy on Correspondence. The amendment substitutes the phrase "Threats, extortion, obscenity, or gratuitious profanity" for "Clear harassment of a member of the public, including invasion of privacy." The revised rule is intended to more narrowly define this particular basis for rejecting general correspondence.

DATE: Effective date: June 1, 1982.

ADDRESS: OFFICE OF GENERAL COUNSEL, BUREAU OF PRISONS, ROOM 760, 320 1ST STREET, NW., WASHINGTON, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is amending its final rule relating to "Correspondence." The present amendment places no increased burden on either the inmate or the public and is intended to clarify the scope of the Bureau's present rule. For these reasons, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

Members of the public may submit comments concerning this amendment by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this amendment does not constitute a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354) does not have a significant impact on a substantial number of small entities.

Summary of Change

Section 540.13—For clarity, § 540.13(e)(4) is amended by substituting the phrase "Threats, extortion, obscenity, or gratuitous profanity" for "Clear harassment of a member of the public, including invasion of privacy." This language more narrowly defines the conditions that must be present to reject general correspondence under this particular subsection. The amendment adopts language suggested by a recent judgment in the case of *Samuels, et al. v. Smith, et al.* (United States District Court Southern District of Indiana, TH 79-124-C).

List of Subjects in 28 CFR Part 540

Prisoners.

Conclusion

Accordingly pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V, is amended by revising Part 540, Subpart B.

Dated: May 12, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

The authority citation for Part 540 reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

In Subchapter C, Part 540, Subpart B is amended by revising § 540.13(e)(4) to read as follows:

§ 540.13 General correspondence.

* * * * *

(e) * * *

(4) Threats, extortion, obscenity, or gratuitous profanity;

* * * * *

[FR Doc. 82-13725 Filed 5-19-82; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains the Bureau of Prisons final rule on its Adult Basic Education (ABE) Program. The final rule requires that an inmate in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level attend an adult basic education program for a minimum of 90 calendar days. This rule recognizes the importance for each individual to function at a minimum academic grade level of 6.0. The sixth grade level is considered a basic standard for measuring functional literacy in our society. Persons functioning below that level often encounter serious difficulties in obtaining employment and in carrying out their day-to-day responsibilities. Upon its effective date, this rule on Adult Basic Education (ABE) Program replaces the Bureau of Prisons existing rule on Optional Programming (Part 544, Subpart H).

EFFECTIVE DATE: June 21, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Adult Basic Education (ABE) Program. This subject was published in the **Federal Register** as a proposed rule January 26, 1982 (at 47 FR 3752 et seq.). This rule on Adult Basic Education (ABE) Program replaces the Bureau of Prisons existing rule on Optional Programming (Part 544, Subpart H).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. Sections 544.70–544.70 has been reworded. The final policy clarifies language in the proposed rule stating that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 grade level is required to attend an adult basic education (ABE) program for a minimum of 90 calendar days. The final rule substitutes the word "shall" for "may," as the Warden must now establish incentives to encourage an inmate to complete the ABE program.

2. Section 544.71—Proposed § 544.75, "Exceptions," becomes final § 544.71, "Applicability." The first paragraph of proposed § 544.75 is reworded and becomes final § 544.71(a). Exceptions identified in proposed § 544.75(a), (b), (c) and (e) are now contained in final § 544.71 (a)(1), (a)(3), (a)(4), and (a)(5). The example given in proposed § 544.75(e) is removed from the final rule since a physical or mental handicap does not always mean that an inmate cannot participate in the ABE program. Section 544.71(a)(2) is new and states that an inmate committed for purpose of study and observation under 18 U.S.C. 4205(c) is not required to participate in the ABE program. The second paragraph of proposed § 544.75(e) is reworded and becomes final § 544.71(b). Proposed § 544.75(d), now final § 544.71(c), is reworded to clearly state that ABE involvement is appropriate for the inmate who functions below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act).

A commenter to proposed § 544.75(c) believes a required academic grade level of 6.0 is insufficient and suggests raising it to 8.0. The commenter states that the lower grade level keeps a person working with his hands, instead of learning what he can do with his mind, and that the minimum 8.0 academic grade level better prepares the inmate for the "High School Equivalency Test". The 6.0 academic grade level was chosen because it clearly separates the Adult Basic Education (ABE) program from the General Education Development (GED—high school equivalency degree) program. The Bureau of Prisons encourages, and provides opportunity for an inmate to continue academic involvement beyond the ABE level.

3. Section 544.72—Proposed § 544.71 becomes final § 544.72. Section 544.72(a)–(b) is reworded but the basic intent is unchanged. Section 544.72(c) substitutes the phrase "90 calendar days" for "90 consecutive days in class" and the phrase "without disciplinary action occurring" for "without negative consequences." The term "without negative consequences" is deleted because some constraints (for example, pay) apply when the inmate does not achieve the 6.0 academic grade level.

A commenter suggested that the Bureau of Prisons award an inmate "good time" for academic achievement. However, statutory limitations (18 U.S.C. 4162) do not allow the Bureau to give good time for academic efforts. Each Warden will establish other types of incentives to encourage an inmate to complete the ABE program.

4. Section 544.73—Proposed § 544.72, now final § 544.73, is expanded. The final rule allows an inmate to work at the fourth grade of compensation in a UNICOR or Inmate Performance Pay (IPP) position, contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. The inmate who fails to show adequate progress in the ABE program may be removed from the UNICOR or IPP work assignment. Internal staff instructions suggest that an inmate in a UNICOR assignment has six months to achieve the 6.0 academic grade level. The six-month requirement is waived for an inmate who has a documented disability. The inmate with a documented disability may remain in the UNICOR or IPP work assignment and is eligible for a work position above the fourth grade of compensation.

5. Section 544.74 and § 544.75—Proposed §§ 544.73–74 become final §§ 544.74–75.

List of Subjects in 28 CFR Part 544

Prisoners, Education, Libraries, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C 552(a) and

delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter C, Part 544, Subpart H is revised.

Dated: May 11, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

In Part 544, revise Subpart H to read as follows:

PART 544—EDUCATION

Subpart H—Adult Basic Education (ABE) Program

Sec.

544.70 Purpose and scope.
544.71 Applicability.
544.72 Procedures.
544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.
544.74 Incentives.
544.75 Disciplinary action.

Subpart H—Adult Basic Education (ABE) Program

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.70 Purpose and scope.

The Bureau of Prisons requires that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability.

(a) The provisions of this subpart on the adult basic education program apply to all inmates in federal institutions *except:*

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c);

(3) Sentenced aliens with a deportation detainer;

(4) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grades 1, 2, and 3 at the time of implementation of this rule who do not presently function at the 6.0 academic grade level;

(5) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ABE program.

(c) Inmates who function below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act) shall be required to participate in the adult basic education program, as educational involvement is considered within the general scope of treatment.

§ 544.72 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below a 6.0 academic grade level in reading, writing, and mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator shall interview each inmate involved in the ABE program at least once every 30 days to review and record the inmate's progress in this program. The ABE coordinator shall place documentation of this interview in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other authorized absences from scheduled classes, the inmate's unit team shall meet with the inmate in respect to the inmate's continued involvement in the ABE program towards attainment of the 6.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, without disciplinary action occurring.

§ 544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

Inmates who wish to secure a UNICOR or IPP work assignment above the fourth grade of compensation must be able to demonstrate achievement of at least a 6.0 academic grade level. An inmate may be assigned to the fourth grade of compensation in the UNICOR or IPP WORK assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progresss in the ABE program may be considered basis for removal of the inmate from the UNICOR or IPP assignment.

§ 544.74 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 6.0.

§ 544.75 Disciplinary Action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 6.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

[FR Doc. 82-13728 Filed 5-19-82; 8:45 am]
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federal register

Thursday
May 20, 1982

Part IV

Environmental Protection Agency

Real Property Acquisition and Relocation Assistance; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[OA-FRL-2054-1]

Real Property Acquisition and Relocation Assistance

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This document proposes changes to EPA's regulation implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Relocation Act). The proposed regulation assists regulation users, primarily State and local governments, by making the regulation clearer and by eliminating unnecessarily burdensome requirements. The changes, including a complete reorganization of the regulation, are designed to simplify the implementation of the Uniform Relocation Act, as well as reduce the cost of administration.

DATE: Comments must be received on or before July 6, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section (A–130), Attention: Docket No. G–80–2, Environmental Protection Agency, Washington, D.C. 20460. The public may inspect the comments received on the proposed rules at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. between 8 a.m. and 4 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM–216), Environmental Protection Agency, Washington, D.C. 20460 [202] 755–2830.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation and to promote more efficient governmental operations, EPA is proposing changes in its regulation implementing the Uniform Relocation Act. The proposed regulation reflects EPA's experience with the Uniform Relocation Act and includes provisions based on comments received from State and local governments who have conducted programs under the Act's requirements. Some of these comments were in response to an Advance Notice of Proposed Rulemaking which EPA published in the **Federal Register** on September 15, 1980; others were conveyed to EPA by various EPA program participants.

In March of 1974 EPA published regulations at 40 CFR Part 4 implementing the Uniform Relocation Act. Those regulations were based on government-wide guidelines for implementing the Act, which have been found either in OMB Circular A–103 or GSA's Federal Management Circular (FMC) 74–8. Currently, those government-wide requirements are located at 41 CFR 101–6.1. These revisions are the first changes EPA has made to Part 4 since its 1974 publication.

The proposed regulation conforms to the current government-wide guidelines with one exception. EPA's regulation does not allow the use of schedules of replacement housing prices in computing replacement housing payments (see §§ 4.710 and 4.720 in the proposed regulation), while the guidelines permit the use of schedules. EPA believes that such schedules should not be used in its programs because:

- The development of schedules of replacement housing is a lengthy process. Given rapidly changing housing prices, schedules tend to be outdated by the time they are completed or soon thereafter.
- Since most EPA-assisted displacement is a one-time occurrance for the affected community, a schedule will have limited applicability. It is easier and more economical for the displacing agency to establish replacement housing prices by making comparisons with comparable housing units as needed.

EPA is making these changes for several reasons. First, as indicated, Executive Order 12291 mandates reductions in the burden of government regulation and the promotion of more efficient government operations. The proposed regulation includes no reporting requirements, prescribes no special forms for regulation users, and eliminates a detailed appendix listing recordkeeping requirements. It is considerably shorter than its predecessor and is organized in a more logical fashion for EPA program participants. These improvements, as well as others (such as changes in the treatment of multiple occupancy situations) will result in cost savings for EPA and State and local governments while maintaining the Act's protections for real property owners and displaced persons.

Secondly, legal decisions since the regulation's 1974 publication need to be integrated into its provisions. For example, our treatment of easements (§ 4.300) and appraisals (§ 4.302) was affected by a May 23, 1979 decision of the Comptroller General of the United States (#B–192863). Similarly, various court decisions had an impact on the proposed regulation's requirements concerning advance acquisition of land (§ 4.300) and the scope of the Act's coverage (§ 4.300).

Since the proposed regulation is much less detailed than the existing one, State and local agencies, rather than EPA, increasingly will determine procedures for implementing its requirements. EPA currently provides guidance for regulation users in Parts 12 and 15 of the Grants Administration Manual and will issue changes to the Manual appropriate to the proposed regulation following its final adoption. However, the provisions of the Manual are discretionary; other procedures which accomplish the same purposes are acceptable.

EPA believes that revision of its Uniform Act regulations is necessary to implement Executive Order 12291 and to incorporate legal decisions subsequent to the regulations' publication. However, EPA fully supports and intends to participate in the process now underway under OMB leadership of updating the Uniform Act itself and of creating implementing regulations which reduce the duplication inherent in separate Uniform Act regulations for each Federal agency.

Description of Major Changes

Reorganization

EPA has reorganized the regulation. The new structure is more is keeping with the way EPA and its assistance recipients use the regulation. A new general administrative requirements section, located near the beginning of the regulation, consolidates all basic administrative requirements such as State agency assurances of compliance, recordkeeping, and cost sharing. In addition, the proposed regulation reverses the existing order of material concerning the subject areas of relocation and acquisition. Acquisition material now will precede relocation for two reasons. First, acquisition, or at least the imminent prospect of acquisition, almost always precedes relocation in the sequence of project activities. Second, in EPA or EPA-assisted projects, acquiring real property interests is a far mor frequent and costly occurrence than relocating occupants and, thus, has a correspondingly greater impact on EPA activities.

We reorganized the relocation requirements to make them easier for EPA and State and local governments to use and to help persons displaced by projects better understand the benefits available to them and the requirements which accompany those benefits. To

accomplish these purposes, we established a basic relocation requirements section at the beginning of the relocation material in Subpart C and grouped requirements for moving expense payments according to the type of person displaced rather than by the method of computing payments.

Following is a table which cross-references the section numbers of the current regulation with those of the proposed 40 CFR Part 4.

Current section and title	Proposed section
4.100 Purpose and policy.	4.100
4.101 Applicability.	4.101
4.102 Definitions.	4.103
4.103 Displaced person; qualifications.	4.102, 4.300
4.104 Appeals.	4.470
4.105 Records.	4.203
4.106 Application for benefits.	4.440
4.107 Payment not to be considered income.	4.450
4.200 Moving and related expenses: general.	4.600
4.201 Payment of actual moving and related expenses.	4.611, 4.621 4.622, 4.623
4.205 Payment of fixed moving expense allowance.	4.612, 4.623
4.206 Computing average annual net income; businesses and farm operations.	Deleted
4.210 Application for payment.	4.440
4.301 Determinations or assurances required before displacement.	4.201
4.302 Replacement housing unavailable.	4.420
4.303 Decent, safe, and sanitary housing requirements.	4.740
4.310 Replacement housing payment for homeowners.	4.710
4.311 Computation of payment—180-day owners.	4.710
4.320 Replacement housing payments for tenants and certain others.	4.720
4.321 Computation of rental replacement housing payments.a	4.720, 4.721
4.322 Computation of replacement housing down payment—tenants and 90-day owners.	4.722
4.330 Determination of cost of replacement dwelling.	4.710, 4.721
4.331 Rules for considering land values.	Deleted
4.332 Partial use of home for business or a farm operation.	Deleted
4.333 Multiple occupants of a single dwelling.	4.613, 4.730
4.334 Multifamily dwelling.	Deleted
4.335 Application and payment.	Deleted
4.336 Certificate of eligibility pending purchase of replacement dwelling.	Deleted
4.337 Inspection of replacement dwelling required.	4.700
4.400 Requirements for relocation assistance advisory programs.	4.500, 4.510, 4.520
4.401 Extension of service.	4.500
4.402 Displaced person declining to accept relocation services.	Deleted
4.403 Information for displaced persons.	4.410
4.404 Public information.	4.201
4.405 Coordination of relocation activities.	Deleted
4.406 Contracting for relocation services.	4.202
4.500 State agency assurances.	4.201
4.501 Monitoring.	4.204
4.502 EPA share of costs.	4.205
4.503 Use of EPA financial assistance.	4.206
4.600 Applicability.	4.300
4.601 Acquisition.	4.301
4.602 Statement of just compensation.	4.302
4.603 Equal interest in improvements to be acquired.	4.301
4.604 Notice to occupants.	4.510
4.605 Acquisition of improvements.	4.304
4.606 Transfer of title expenses.	4.305
4.607 Litigation expenses.	4.305
4.608 Real property provided by State agency for EPA project.	Deleted
Appendix A Records.	Deleted
Appendix B Directory: Regional and Area Offices, Department of Housing and Urban Development	Deleted

Simplification

EPA has simplified the regulation by eliminating unnecessary or duplicative provisions and by consolidating requirements which apply to more than one portion of the regulation. For example, EPA has eliminated Appendices A and B. Appendix A contained detailed recordkeeping requirements for State agencies. In the future, EPA will expect State and local governments implementing the Uniform Relocation Act to keep appropriate records based on the requirements of 40 CFR Part 30. Appendix B contained a list of addresses of Department of Housing and Urban Development offices. This list was necessary so that EPA and State agencies could contact those offices for information and coordination purposes. The proposed regulation eliminates the provisions which created the need for this list. Other provisions of the existing regulation which the Uniform Relocation Act does not mandate and which EPA has eliminated include recommendations for using central relocation agencies, a series of duplicative requirements concerning State or local agency third party contracts to carry out relocation responsibilities, and a list of nonallowable moving expenses and losses.

Provisions which EPA has consolidated include a long set of qualifications for displaced persons, detailed instructions for computing average annual net income for businesses and farms, and a number of scattered requirements relating to computing replacement housing payments.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing these changes to reduce the burden of regulation and to improve the efficiency of government operations. The changes will not have a substantial impact on the economy. Therefore, I have determined that this is not a major regulation and that it is not subject to the impact analysis requirements of Executive Order 12291. In addition, I have determined that:

- The publication of this regulation is not a major federal action significantly affecting the quality of the human environment; and
- The EPA programs to which the proposed regulation will apply and for which assistance recipients must compy with OMB Circular A–95 are those listed in 40 CFR Part 30, Appendix A.

EPA submitted this regulation to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 4

Relocation assistance, Real property acquisition.

Dated: May 14, 1982.

John E. Daniel,

Acting Administrator.

We are proposing to revise 40 CFR Part 4 to read as follows:

PART 4—REGULATIONS FOR REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

Table of Sections

Subpart A—General

Sec.
4.100 Purpose and policy.
4.101 Applicability.
4.102 Summary of this part.
4.103 Definitions.
4.200 General administrative requirements.
4.201 State agency assurances.
4.202 Contract services.
4.203 Records.
4.204 EPA review.
4.205 EPA share of costs.
4.206 Use of EPA financial assistance.

Subpart B—Acquisition

4.300 Applicability of acquisition requirements.
4.301 Basic acquisition policies.
4.302 Determination of just compensation.
4.303 Acquisition procedures.
4.304 Tenant interests.
4.305 Expenses incidental to acquisition.
4.306 Litigation expenses.

Subpart C—Relocation

4.400 Basic relocation requirements.
4.410 Availability of comparable replacement housing.
4.420 Housing of last resort.
4.430 Ninety days notice of move date.
4.440 Relocation payments.
4.450 Prohibition of deductions from relocation payments.
4.460 Relocation payments not considered income.
4.470 Relocation payment and replacement housing appeals.
4.500 Relocation assistance advisory services.
4.510 Informational program.
4.520 Assistance and services.
4.600 Payment for moving and related expenses.
4.610 Residential payments.

4.611 Actual cost method for residential payments.
4.612 Formula method for residential payments.
4.613 Multiple occupancy and moving expense payment.
4.620 Non-residential payments.
4.621 Actual cost method for non-residential payments.
4.622 Search costs.
4.623 Formal method for non-residential payments.
4.630 Self-moves.
4.700 Replacement housing.
4.710 Replacement housing payment for homeowners.
4.720 Replacement housing payment for tenants and 90-day homeowners.
4.721 Rental assistance payment.
4.722 Downpayment assistance.
4.730 Multiple occupancy and replacement housing payments.
4.740 Standards for comparable housing.

Authority: Section 213 of the Uniform relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894)

Subpart A—General

§ 4.100 Purpose and policy.

(a) This part implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Act). The Act provides for the uniform and fair treatment of persons displaced from their homes, businesses, or farms by federal and federally-assisted projects and establishes uniform and fair acquisition policies for federal and federally-assisted programs.

(b) In implementing the Act, the Environmental Protection Agency's (EPA) policy is to deal consistently and fairly with all persons whose property is taken or who are displaced from their homes, businesses, or farms by EPA or EPA-assisted projects.

§ 4.101 Applicability.

This part applies to EPA projects and to EPA-assisted projects which cause the acquisition of real property or the displacement of persons because of acquisition after January 1, 1971.

§ 4.102 Summary of this part.

The Act provides benefits and protections to persons affected by federal projects or federally-assisted projects carried out by State agencies; Part 4 implements the Act. Subpart A defines key terms and sets forth general administrative provisions. Subpart B contains requirements and procedures concerning the acquisition of real property. Subpart C contains requirements and procedures relating to displacement caused by acquisition. Subpart C describes eligibility requirements for relocation payments, how to compute those payments, requirements for helping displaced persons to relocate, and standards for relocation housing.

§ 4.103 Definitions.

Key terms used in this part are defined as follows:

Ability to pay. The largest amount a displaced person can afford to pay for housing. This amount includes various housing costs such as rent, mortgage payment, utilities, insurance, property taxes, and other reasonable, recurring housing expenses. For the purposes of this Part, the upper limit is 25 percent of gross income.

Acquiring agency. The governmental agency causing acquisition, either EPA or a State agency receiving EPA financial assistance.

Acquisition. Acquisition by EPA or a State agency of any interest in real property for a project undertaken by EPA or with EPA financial assistance.

The Act. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894) approved January 2, 1971.

Average annual net income. Average annual net earnings before taxes during the two years immediately before displacement, or, in the displacing agency's judgment, during a more representative period.

Business. A lawful activity, other than a farm operation, conducted solely or primarily:

(a) For the purchase, sale, lease, or rental of personal and real property, or the manufacture, processing or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) By the erection and maintenance of an outdoor advertising display or displays, except that these businesses may receive benefits only under § 4.621.

Displaced person. (a) A person in occupancy on or before the date of receipt of notice of intent to acquire, initiation of negotiations, or acquisition who moves from real property or moves his personal property from real property because of:

(1) The acquisition of this property; or

(2) The written order of the acquiring agency to vacate this property for a project undertaken by EPA or with EPA financial assistance; or

(3) The acquisition of other real property or the written order of the acquiring agency to vacate other real property on which such person conducts a business or farm operation, except that these persons may receive benefits only under §§ 4.500 and 4.621.

(b) A business which discontinues operations because of acquisition.

Displacing agency. The governmental agency causing displacement, either EPA or a State agency receiving EPA financial assistance.

Dwelling. Any residential unit that serves as a person's primary place of habitation. Dwellings include houses, apartments, condominiums, cooperatives, rooming units, mobile homes, and any other residential units.

Economic rent. The amount of rent, including utilities and other recurring housing costs, a displaced homeowner or tenant would have to pay for a comparable dwelling in an area similar to the neighborhood in which the acquired dwelling is located.

Effective moving date. The date of a displaced person's move or, for a displaced owner, the date on which he received the last payment of the acquisition price, if later than his move date.

Family. Two or more individuals living together as a household, either by mutual consent or related by blood, marriage, adoption, or legal guardianship.

Farm operaton. Any activity conducted solely or primarily to produce agricultural products or commodities (including timber) for sale or home use, provided that this production customarily contributes significantly to the operator's support.

Gross income. The combined annual income from all sources of all members of a household. For families, the first $1,000 of income earned by each family member (other than heads of households or their spouses) who is less than 19 years of age or who is less than 22 years of age and a full-time student, is not included in gross income.

Initiation of negotiations. The date on which the seller receives the acquiring agency's first written offer to purchase his property at a specified price.

Mortgage. A lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which real property is located, together with any credit instruments the lien secures.

Notice of intent to acquire. A written notice from the acquiring agency stating its intent to acquire specified real property for an EPA-assisted project.

Owner. Any person who holds any of the following interests in real property:

(a) Fee title, life estate or a 99-year lease;

(b) An interest in a housing cooperative which includes the right to occupy a dwelling unit;

(c) A contract to purchase any of the above interests or estates; or

(d) Any other interest which in the judgment of the State agency or EPA warrants consideration as ownership.

Person. Any individual, family, partnership, corporation, or association.

State agency. (a) Any department, agency or instrumentality of:

(1) A State or a political subdivision of a State; or

(2) Two or more States or two or more political subdivisions of a State or States.

(b) The National Capital Housing Authority and the District of Columbia Redevelopment Land Agency.

Tenant. A person who rents, leases, or otherwise temporarily possesses an interest in real property owned by another.

§ 4.200 General administrative requirements.

The requirements in §§ 4.201 through 4.206 apply to the administration of the Act by EPA and by State agencies or their agents.

§ 4.201 State agency assurances.

EPA may not execute any instrument providing federal financial assistance to a State agency without written assurances from the assistance recipient that:

(a) For projects resulting in the acquisition of real property:

(1) It will fully comply with the requirements of Subpart B of this Part; and

(2) It will adequately inform the public of the acquisition policies, requirements, and payments which will apply to the project.

(b) For projects resulting in the displacement of any person:

(1) It will adequately inform the public of the relocation payments and services which will be available as set forth in Subparts B and C of this Part;

(2) It will provide fair and reasonable relocation payments to displaced persons as required by Subpart C of this Part;

(3) It will provide a relocation assistance program for displaced persons offering services described in Subpart C of this Part; and

(4) It will assure that comparable replacement dwellings (as described in § 4.740) will be available to a displaced person for a reasonable period before that person is displaced.

§ 4.202 Contract services.

In order to provide more efficient and effective relocation services, a displacing agency may enter into a written contract for such services with another public agency or with a private contractor. The contractor must have an established capability to provide relocation services as required by the Act. The displacing agency remains responsible for insuring that relocation activities meet the requirements of the Act and EPA regulations if it uses a contractor.

§ 4.203 Records.

Each displacing agency must maintain records which demonstrate that it conforms with the Act's requirements relating to real property acquisition, relocation assistance, and relocation payments.

§ 4.204 EPA review.

EPA will review performance under this Part in order to insure that the State agency conforms with the assurances it provided.

§ 4.205 EPA share of costs.

The percentage of allowable relocation and acquisition costs which EPA will pay for EPA-assisted projects is the same as the EPA share for the project as a whole. EPA may advance funds to State agencies for acquisition or relocation payments if the advance is necessary for expeditious completion of the project.

§ 4.206 Use of EPA financial assistance.

EPA financial assistance may not be used for a payment under this Part if the displaced persons receives a separate payment from any Federal, State or local agency with substantially the same purpose and effect.

Subpart B—Acquisition

§ 4.300 Applicability of acquisition requirements.

The requirements in §§ 4.301 through 4.303 apply to all acquisitions of real property by EPA or by State agencies for projects undertaken by EPA or with EPA financial assistance. These requirements apply to the acquisition of easements and to acquisition made in anticipation of EPA financial assistance. These requirements apply if the real property interest is acquired using EPA funds alone, State agency funds alone, or a combination of EPA and State agency funds.

§ 4.301 Basic acquisition policies.

In acquiring real property, the acquiring agency must:

(a) Make every reasonable effort to acquire real property promptly through negotiation;

(b) Avoid any actions to compel an owner to agree to a price for his property. Such actions include advancing the time of condemnation or deferring negotiations, condemnation, or the deposit of funds with a court;

(c) Institute formal condemnation proceedings, if the power of eminent domain is to be used, and not intentionally make it necessary for an owner to institute legal action to prove that his property is being taken;

(d) Offer to acquire the entire property if acquiring only a portion would leave an uneconomic remnant (i.e., a property with little or no utility);

(e) Charge rent not to exceed that paid in the local market for comparable real property, if the displacing agency rents acquired real property to the former owner or tenant. In the case of a former residential tenant, rent may not exceed his ability to pay;

(f) Schedule project activities so that all persons required to move from real property because of the project will have at least 90 days written notice of the date by which they must move;

(g) Acquire at least an equal interest in all buildings, structures, or other improvements which are located on that property and which will be removed or adversely affected by the completed project; and

(h) Adequately inform the public of the acquisition policies, requirements, and payments which apply to the project.

§ 4.302 Determination of just compensation.

Before the initiation of negotiations to acquire any real property interest, EPA or the State agency must comply with paragraphs (a) and (b) of this section.

(a) EPA or the State agency must obtain at least one appraisal of the fair market value of the property interest to be acquired and provide the owner (or his representative) the opportunity to accompany the appraiser while he inspects the property. Appraisals must conform to the current Uniform Appraisal Standards for Federal Land Acquisition, published by the Interagency Land Acquisition Conference. When land is acquired with EPA funds, the appraisal of the land must be done by a certified appraiser.

No action may be taken to compel a seller to waive his right to an appraisal. However, for acquisitions whose market value appears to be less then $1,000, based on an appraisal of similar property, the appraisal requirement shall be considered to be met if:

(1) Both of the following conditions exist:

(i) The seller is informed of his right to an appraisal and waives that right in writing; and

(ii) The acquisition is not carried out under eminent domain; or

(2) The acquisition is a donation, i.e., voluntarily given at no cost.

(b) The acquiring agency must establish an amount which it believes to be just compensation for the real property interest acquired, including damages, and make a prompt offer to acquire for that amount. The determination of just compensation must:

(1) Be based on the fair market value of the property;

(2) Not be less than the approved appraised value of the property;

(3) Disregard any decrease or increase in the fair market value of the property caused by the contemplated project; however, for acquisitions of other than fee simple interests, any benefit to the remainder of the property may be set off against the value of the acquisition price.

(4) In the case of separately held interests in the real property, include an apportionment of the total just compensation for each of those interests.

§ 4.303 Acquisition procedures.

In acquiring real property EPA or the State agency must follow the procedures in paragraphs (a) and (b) of this section.

(a) *Offer to acquire.* Promptly following the determination of just compensation, EPA or a State agency must make a written offer to acquire for the amount so determined. This offer must be accompanied by a written statement of the basis on which the agency determined just compensation. The statement must:

(1) Identify the property and the type of interest being acquired;

(2) Certify, where applicable, that any separately held interest in the real property is not being acquired in whole or in part;

(3) Identify buildings, structures, and other improvements (including fixtures, removable building equipment, and any trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made;

(4) Identify any real property improvements, including fixtures, not owned by the owner of the land;

(5) Identify the types and approximate quantity of personal property located on the premises; and

(6) Separate compensation paid for the property interest being acquired and that paid for damages to remaining real property interests, if applicable.

(b) *Requirements for taking possession.* Before requiring any owner to surrender possession of real property, EPA or the State agency must:

(1) Pay the agreed purchase price; or

(2) Deposit with the local court of jurisdiction, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property.

§ 4.304 Tenant interests.

(a) When a tenant owns a building, structure, or other improvement to real property acquired under this Part, the displacing agency, subject to paragraph (b) of this section, must pay the tenant the larger of:

(1) The fair market value of the improvement, if it were removed from real property; or

(2) The enhancement of the fair market value of the real property resulting from the improvement.

(b) A payment may not be made to a tenant under this Subpart unless:

(1) The tenant, in consideration for the payment, releases to the displacing agency all his rights in the improvement; and

(2) The payment is not duplicated by any other payment authorized by federal, State, or local law.

§ 4.305 Expenses incidental to acquisition.

As soon as possible after real property has been acquired, the displacing agency must reimburse the owner for:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;

(b) Penalty costs for prepaying any mortgage which encumbers the acquired property; and

(c) The pro-rata portion of any prepaid property taxes which are allocable to a period after title is vested in the agency or after the agency takes possession of the real property, whichever is earlier.

§ 4.306 Litigation expenses.

(a) In any commendation proceeding brought by the State agency to acquire property, the State agency must reimburse the owner of any interest in the property for actual reasonable expenses of the proceeding (including attorney, appraisal, and engineering fees) incurred if:

(1) The final judgment is that the State agency cannot acquire the real property by condemnation; or

(2) The State agency abandons the proceeding.

(b) In any inverse condemnation (in which an owner must institute legal proceedings to bring about condemnation) where an owner receives an award of compensation by judgment or settlement, the State agency must reimburse the plaintiff for actual reasonable expenses incurred because of the proceeding (including reasonable attorney, appraisal, and engineering fees).

Subpart C—Relocation

§ 4.400 Basic relocation requirements.

Sections 4.410 through 4.470 describe basic protections and benefits which the Act provides for displaced persons.

§ 4.410 Availability of comparable replacement housing.

No person shall be required to move from his dwelling because of the acquisition of real property for an EPA or EPA-assisted project unless comparable replacement housing, as described in § 4.740, and within his ability to pay, is available to that person.

§ 4.420 Housing of last resort.

If displacement due to acquisition for an EPA or EPA-assisted project cannot proceed due to the unavailability of comparable replacement housing, and the displacing agency determines that such housing cannot otherwise be made available, the displacing agency may take such appropriate action as is necessary to provide comparable replacement housing through the use of funds authorized for the project.

§ 4.430 Ninety days' notice of move date.

No person may be required to move from his dwelling, business or farm because of the acquisition of real property for an EPA or EPA-assisted project, unless, at least 90 days before the move is required, he received from the displacing agency written notice of the date by which such move is required.

§ 4.440 Relocation payments.

(a) *General.* Displaced persons are eligible for relocation payments for the reasonable cost of moving and related expenses (see § 4.600). In addition, certain displaced persons are eligible for payments to help with the cost of replacement housing (see § 4.700). In order to receive either payment, displaced persons must file a written application with the displacing agency no later than 18 months after their effective date of displacement. Applications must contain sufficient information, adequately documented, for computing payments in accordance with this part.

(b) *Advance relocation payments.* Displacing agencies may consider requests for relocation payments in advance of a displaced person's move. However, advance payments may be

made only if, in the displacing agency's judgement, a hardship otherwise would result. Advance payments should be limited to the amount necessary to avoid the hardship and should not exceed the amount the displacing agency estimates the applicant will receive in relocation payments.

§ 4.450 Prohibition of deductions from relocation payments.

The displacing agency may not deduct or withhold any amount from a relocation payment except as required by court order or IRS attachment.

§ 4.460 Relocation payments not considered income.

No relocation payment made under the Act may be considered income for federal, State, or local tax purposes, nor may such payments be used in determining basic eligibility or extent of eligibility under the Social Security Act or any other Federal law.

§ 4.470 Relocation payment and replacement housing appeals.

The displacing agency must provide an appeals process. This process must enable a displaced person to obtain a review by the head of the displacing agency (or his designee) of agency decisions concerning eligibility for or the amount or a relocation payment, or concerning comparability of replacement housing.

(a) *EPA-assisted projects.* For EPA-assisted projects this process must provide:

(1) *State agency review.* The displaced person must file a request for review with the State agency no later than 90 days after he receives written notice of the decision being appealed. Review by the State agency must include:

(i) The opportunity for the appellant to make oral and written presentations, including the right to have counsel present;

(ii) Prompt action on the request for review, including payment of any amount determined to be due the appellant; and

(iii) A written response to the appellant explaining the decision and the basis on which it was made.

(2) *EPA review.* If an appellant is dissatisfied with the decision of the State agency, he may request a review by EPA. This review is limited to an examination of the correctness of the State agency's decision. Requests for review must be filed with the award official no later than 30 days after the displaced person receives written notice of the decision being appealed. EPA must issue its decision promptly, in writing, with a copy provided the displaced person. The decision must state the facts and law which form its basis. The decision on the matter reviewed shall be final within EPA and shall not be subject to the disputes provision of 40 CFR Part 30, Subpart J.

(b) *EPA projects.* For EPA projects, displaced persons may request a review by the Administrator or his/her designee. This review is limited to an examination of the correctness of the original decision. Requests for these reviews should be directed to the Assistant Administrator for Administration. These requests must be filed within 90 days of the date the displaced person receives written notice of the decision he is appealing. EPA must issue its decision promptly, in writing, and provide a copy to the displaced person. The decision must state the facts and law which form its basis. The decision shall be final within EPA.

§ 4.500 Relocation assistance advisory services.

Sections 4.510 and 4.520 describe minimum standards for relocation assistance and services. The displacing agency must offer basic assistance and services to all displaced persons. It may offer similar assistance and services to any person occupying property adjacent to the acquired property if it determines that the acquisition will cause him substantial economic injury.

§ 4.510 Informational program.

As soon as practicable after the Notice of Intent to Acquire, before the initiation of negotiations, the displacing agency must inform everyone to be displaced of the relocation assistance and services it will offer. Informational materials must be written so that displaced persons will understand them. Where appropriate, these materials must be available in languages other than English. This information must be delivered to each person to be displaced, either in person or by certified mail, return receipt requested, and must include:

(a) An explanation of the services and relocation payments available to the displaced person including eligibility requirements for the relocation payments.

(b) A statement of his right to appeal decisions on payments or replacement housing which he feels do not meet the requirements of this part.

§ 4.520 Assistance and services.

The displacing agency must make available staff and other resources to:

(a) Explain the nature of payments and services available;

(b) Determine displaced persons' replacement housing, business and related needs;

(c) Provide information on the availability of replacement housing and business locations;

(d) Provide information about relevant federal, State, and other housing or assistance programs (e.g., Small Business Administration, Veterans Administration or Department of Housing and Urban Development programs);

(e) Help complete claims for relocation payments or applications for other assistance programs;

(f) Provide help needed to arrange for the displaced person's relocation, such as transportation to examine replacement housing; and

(g) Provide other services needed to insure a successful move, such as financial counseling.

§ 4.600 Payment for moving and related expenses.

Section 4.610 through 4.630 describe the payments for moving and related expenses for which displaced persons are eligible. However, payments for businesses, farms, and non-profit organizations (non-residential payments) may include elements not available under payments for persons displaced from a dwelling (residential payments).

§ 4.610 Residential payments.

Payments for persons displaced from a dwelling may be computed either on the basis of actual costs, as described in § 4.611 or, at the displaced person's option, according to the formula described in § 4.612.

§ 4.611 Actual cost method for residential payments.

A person displaced from a dwelling may receive payment for the actual, reasonable cost of:

(a) Transportation of household members and personal property from the acquired site to the replacement site. When a move exceeds 50 miles, the displacing agency must approve the need for a move of such distance.

(b) Packing, unpacking, crating and uncrating of personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household applicances and other personal property;

(d) Storage of personal property for a period generally not to exceed 12 months;

(e) Insurance premiums covering loss and damage of personal property while in transit or storage;

(f) Personal property lost, stolen, or damaged (except where this is the fault of the displaced person, his agent or his employees) in the process of moving, where insurance to cover the loss is unavailable; and

(g) Any other expenses that the displacing agency determines to be necessary and directly attributable to displacement.

§ 4.612 Formula method for residential payments.

A person displaced from a dwelling may receive payment based on the sum of:

(a) A dislocation allowance of $200, and

(b) A fixed payment, not to exceed $300, based on the most recent moving allowance schedule issued by the Federal Highway Administration.

§ 4.613 Multiple-occupancy and moving expense payments.

The occupants of an acquired dwelling may choose to move to separate replacement housing, or a combination of families and/or individuals may share an acquired dwelling. In these cases, payment for moving expenses may be based either on the actual cost of moving and related expenses or, if any or all of the displacees choose the formula method of computation, on the amount which would have been paid had the occupants moved together to replacement housing. In either case, payments must be prorated among the displaced persons according to the amount of space actually occupied at the acquired dwelling.

§ 4.620 Non-residential payments.

Payments for persons displaced from businesses, farms, or non-profit organizations may be computed either on the basis of actual costs as described in §§ 4.621 and 4.622 or, at the displaced person's option, according to the formula described in § 4.623.

§ 4.621 Actual cost method for non-residential payments.

(a) A person displaced from a business, farm, or non-profit organization may receive payment for the actual reasonable cost of expenses similar to those identified in § 4.611.

(b) It may be advantegeous to a displaced business not to move certain items of tangible personal property. In those cases, for items not moved and compensated under paragraph (a) of this section, the displacing agency may make a payment under either paragraph (b)(1), (b)(2), or (b)(3) of this section. A displacing agency may not make this payment until the owner of a displaced business has made a good faith effort to sell the property.

(1) *Direct loss of tangible personal property.* The displacing agency may make a payment for direct loss of tangible personal property. That payment must be for the lesser of:

(i) The difference between the fair market value of the property for continued use at the acquired site and the proceeds of the sale; or

(ii) The estimated cost of moving this property.

(2) *Substitute equipment.* The displacing agency may make a payment for substitute equipment. That payment must be for the lesser of:

(i) The cost of comparable equipment installed at the new location less the proceeds of the sale; or

(ii) The estimated cost of moving the equipment.

(3) *High bulk, low value.* Personal property such as stockpiles of sand or gravel or the contents of salvage yards may be costly to move in relation to its value. In such cases, moving expense costs should be based on the reasonable cost of replacing the item less its liquidation value.

§ 4.622 Search costs.

The displacing agency may pay actual, reasonable expenses which the displaced person incurs in searching for a replacement business location. Total compensation for search costs is limited to $500.

§ 4.623 Formula method for non-residential payments.

In place of the amount computed under § 4.621(a), the displaced person may receive payment equal to average annual net income, but not less than $2,500 nor more than $10,000.

(a) *Requirements for using the formula method.* The displacing agency may use the formula method only if it determines that:

(1) The displaced entity cannot be relocated without a substantial loss of its existing patronage; and

(2) The displaced entity is not part of a commercial enterprise having another establishment which is engaged in the same or similar business but which is not being acquired for the project.

(b) *Formula method payments for non-profit organizations.* Displaced non-profit organizations received $2,500 under the formula method.

§ 4.630 Self-moves.

A displaced person may move himself. If he chooses the actual cost method of computing his payment, the displacing agency must obtain at least three bids or estimates from commercial movers for the cost of relocating the displaced person. Payment up to the amount of the low acceptable bid may be made without documentation. Payment exceeding the low acceptable bid must be documented and justified.

§ 4.700 Replacement housing.

Sections 4.710 through 4.722 describe replacement housing payments for displaced persons. In addition to a payment for moving and related expenses, certain persons displaced from a dwelling are eligible for a replacement housing payment. There are two kinds of replacement housing payments: payments for homeowners and payments for tenants and 90-day homeowners (i.e., an owner/occupant for at least 90 days but less than 180 days). Except in hardship situations, displacing agencies may not make a replacement housing payment unless and until the displaced person occupies relocation housing which the displacing agency has inspected and found to be comparable.

§ 4.710 Replacement housing payment for homeowners.

(a) *General.* A payment under this section may be made only to a homeowner displaced from a dwelling which he owned and occupied for at least 180 days prior to the initiation of negotiations for the property. An owner/occupant must purchase and occupy a comparable replacement dwelling (§ 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of replacement housing payment for homeowners.* The replacement housing payment for homeowners may not exceed a total of $15,000. That total includes the following elements:

(1) *Price differential.* The difference between the acquisition price of the acquired dwelling and the lesser of the actual cost of the replacement dwelling which the displaced person purchased or the cost of a replacement dwelling which meets comparable housing standards (as described in § 4.740). The cost of comparable housing must be based on the cost of at least three comparable dwellings which are available for sale on the private market. Schedules of replacement housing costs (i.e., pre-established lists of unit sizes and prices) shall not be used.

(2) *Increased interest.* The amount of increased interest, reduced to present value, which the displaced person must pay for financing the lesser of the actual cost of the replacement dwelling or the cost of a comparable replacement

dwelling. All of the following requirements apply to the calculation of the increased interest element:

(i) Increased interest includes the interest to be paid on the replacement dwelling's mortgage plus other debt service costs, including points. The amount which may be paid is limited to the increase in interest costs payable on the balance of the acquired dwelling's mortgage (at acquisition) over the remaining term of the mortgage of either the acquired or the replacement dwelling, whichever is less.

(ii) Present value shall be based on the prevailing interest rate paid on passbook (or similar) savings deposits by commercial banks in the area in which the replacement dwelling is located.

(iii) For purposes of computing increased interest, the interest rate on the new mortgage may not exceed the prevailing rate charged by mortgage lending institutions in the area.

(iv) The acquired dwelling must have been encumbered by a mortgage for at least 180 days before initiation of negotiations.

(c) *Incidental expenses.* Actual reasonable costs which the displaced person incurs as a part of the purchase of the replacement dwelling. Prepaid expenses (such as insurance premiums and tax escrows) may not be reimbursed. Incidental expenses include:

(1) Customary legal, closing and related costs;

(2) Lender's, FHA or VA appraisal fees;

(3) FHA or VA application fees;

(4) Credit report, title policy, escrow fee; and

(5) Revenue stamps or transfer taxes.

§ 4.720 Replacement housing payment for tenants and 90-day homeowners.

A payment under this section may be made to a renter or to a homeowner who was an owner/occupant for less than 180 days. The renter or homeowner must be displaced from a dwelling which he rented or owned, as appropriate, and which he occupied for at least 90 days prior to the initiation of negotiations to acquire the property. Displaced renters or 90-day homeowners (see § 4.700) are eligible to receive one of two types of payment, either a rental assistance payment (§ 4.721) or a payment for downpayment assistance (§ 4.722).

§ 4.721 Rental assistance payment.

(a) *General.* A homeowner or renter must rent and occupy a comparable replacement dwelling (see § 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of rental assistance payment.* A rental assistance payment is computed using the difference between the displaced person's base monthly housing costs (see paragraph (b)(1) of this section) and the lesser of similar costs for a comparable replacement dwelling or the actual replacement dwelling to which the displaced person moves. That difference multiplied by 48 equals the payment, up to a maximum of $4,000. The following limitations apply to the calculation of this payment:

(1) Base monthly housing cost is the greater of the actual costs which the displaced person paid for the acquired unit or 25% of the displaced person's gross monthly income.

(2) If the actual housing cost for the acquired dwelling is less than the economic rent, or if the displaced person is a homeowner moving to rental housing, base monthly housing cost shall be computed as the economic rent.

(3) A displaced homeowner's payment may not exceed the amount he would receive if he were eligible for a replacement housing payment for homeowners.

(4) The cost of comparable rental housing must be based on the rental price of at least three comparable dwellings available on the private market. Schedules of replacement housing costs shall not be used.

§ 4.722 Down payment assistance.

(a) *General.* Only a tenant or a 90 day homeowner (as described in § 4.720) who occupied the dwelling from which he was displaced for at least 90 days prior to the initiation of negotiations for the acquired property and who purchases a comparable replacement dwelling within one year of his effective date of displacement may be eligible for this payment.

(b) *Computation of down payment assistance payment.* The down payment assistance payment may not exceed a total of $4,000. The payment includes:

(1) The amount necessary to make a down payment on the lesser of the actual replacement dwelling or a comparable dwelling, not to exceed the amount which would be required on a conventional loan at prevailing interest rates in the area; and

(2) Incidental expenses as described in § 4.710(c).

(c) *Limitations.* The following limitations apply to this payment:

(1) Any portion of this payment over $2000 must be matched by the tenant.

(2) The full amount of this payment including the matching amount must be applied to the down payment (including incidental expenses).

§ 4.730 Multiple occupancy and replacement housing payments.

When the occupants of an acquired dwelling choose to move to separate replacement housing, or when a combination of families and/or individuals shares a dwelling, the displacing agency may prorate replacement housing payments for persons who did not constitute separate households before the move.

§ 4.740 Standards for comparable housing.

Replacement housing is comparable if it meets the standards for living space and for quality of living conditions in this section.

(a) *Living space.* Replacement housing must provide the greater of:

(1) Living space equivalent to that of the dwelling from which displacement occurred, or

(2) Living space equal to the need of the displaced person as required by local housing codes.

(b) *Living conditions.* Replacement housing must provide the greater of:

(1) State or local housing codes; or

(2) EPA minimum standards:

(i) Sound, clean, and weathertight;

(ii) Has an adequate and safe wiring system for lighting and other electrical services;

(iii) Provides heating or cooling as required by climatic conditions;

(iv) For dwelling (housekeeping) units, includes a sink, stove or connection for same, a complete bathroom, and hot and cold running water in the bath and kitchen; and

(v) For rooming (non-housekeeping) units, provides the use of a complete bathroom which has hot and cold running water and which affords privacy to a person within it.

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Part V

Department of Education

College Housing Program; Final Regulations and Application Notice for New Projects for Fiscal Year 1982

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Housing Program

AGENCY: Education Department.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the College Housing Program with the exception of the part dealing with loan management, which will be issued separately. These regulations establish selection criteria for the award of low-interest loans to assist eligible institutions in (1) providing housing and other educational facilities for students and faculty members and (2) conserving energy and reducing related operating costs.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a future date, the Secretary will publish a notice in the **Federal Register** stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Charles I. Griffith, (Room 3058, ROB–3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–9868.

SUPPLEMENTARY INFORMATION: Final regulations with comments invited were published in the **Federal Register** on July 29, 1981. Interested persons were given 45 days in which to submit written comments. Several comments were received suggesting changes. Those comments, the Secretary's responses to them, and other substantive changes are summarized below:

Summary of Changes

The original regulations with comments invited, published in July, 1981, are reissued to incorporate technical amendments and minor changes that—

(1) Simplify and clarify regulations;

(2) Eliminate duplication with the provisions of the Education Department General Administrative Regulations (EDGAR);

(3) Reflect procedural modifications resulting from the new administration of this program by the Department of Education;

(4) Incorporate amendments of a minor nature resulting from comments and suggestions received in response to the invitation for comment.

As a result of several deletions, §§ 614.36 through 614.62 have been renumbered.

A. Summary of Technical Revisions

§ 614.3 Limitations of eligibility.

In the interest of diligent credit management practices, the regulations are revised to exclude from eligibility for College Housing loans, institutions in default of loans made under the Higher Education Act as well as the Housing Act.

§ 614.5 What definitions apply to the College Housing Program?

The definition of "construction" is clarified in these regulations, to state that College Housing loans may be used for the purchase of existing facilities.

§ 614.32 Selection criterion for housing loans.

A fourth element is added to the criterion of housing deficiency to include students residing in facilities leased by colleges with terminating leases as an eligible factor in the calculation of housing deficiency.

§ 614.36 Determination of economical construction.

This section is eliminated because it is redundant with the provisions for construction in EDGAR (34 CFR 75.607).

§ 614.50 Prior determination of eligible costs.

This section is deleted bacause its provisions are inconsistent with the current administrative practices of the Department.

§ 614.52 Additional ineligible cost.

A provision is added to exclude from eligibility, costs for purchases of land incurred more than two years prior to application, and costs for acquisition of existing structures incurred more than one year prior to application. This provision is included to ensure valid allocation of Federal funds and to limit Federal support to costs directly attributable to current housing shortages. In view of limited Federal resources, the provision serves to contain eligible costs so that a greater number of projects may be supported.

§ 614.56 Investment of idle construction funds.

A provision is added to protect the Federal interest by requiring that any interest earned on Federal funds shall revert back to the Federal government through a credit to the Federal loan account.

§ 614.67 Procedures for loan disbursement.

Paragraphs (a), (c), and (d) are deleted, because the provisions are inconsistent with the current administrative practices of the Department.

B. Summary of Comments and Responses

General

Comment. One commenter suggested that loan recipients be granted some recourse in the event of undue delays caused by the administering office.

Response. No change has been made. The recent transfer of the program to the Department of Education has served to reduce administrative delays in the operation of the program. As the new administering office, the Department is utilizing its every resource to expedite the processing of applications.

Comment. One commenter cited typographical errors in §§ 614.3, 614.27, and 614.35.

Response. Corrections have been made in §§ 614.3, 614.27, and 614.35.

§ 614.2 Who is eligible to apply for a loan?

Comment. One commenter suggested that the eligibility criteria discriminated against two-year institutions by stipulating that (a) the institution must offer at least a two year program acceptable for full credit toward a bachelor's degree and (b) the institution must be administered by an accredited college or university.

Response. No change has been made. The definition and criteria for an eligible institution are taken directly from Section 404(b) of the statute. These regulation requirements are therefore consistent with the statute. It should be noted that the stipulation under paragraph (a) requires only that at least a two year program creditable toward a bachelor's degree be offered. The provision under paragraph (b) regarding administration of institution by an accredited college or university is only one of the six possible conditions for eligibility.

§ 614.5 What definitions apply to the College Housing Program?

Comment. Two commenters felt that the current definition of "reasonable commuting distance" had an unfair impact on urban institutions. The recommendation was made that the definition be changed to the distance a student can travel in forty-five minutes from his or her residence to the applicable institution by automobile or public transportation, rather than the existing one-hour time frame.

Response. No change has been made. The Secretary feels that the one- hour time frame is a reasonable limit for commuting distances for both urban and

rural contexts. Urban institutions may have the advantage of public mass transit thereby counter-balancing any negative impact.

Comment. Two commenters indicated the need for a definition of "assignable square feet."

Response. A change has been made. The definition has been added.

§ 614.21 OMB Circular A–95 requirements.

Comment. One commenter recommended that State postsecondary education coordinating agencies be given the opportunity to review and comment on the applications for College Housing Loans, similar to the A–95 review process.

Response. The change has been made. The section on A–95 requirements has been expanded to include a provision for the submission of applications to the appropriate State agency for postsecondary education for review and comment. In his report on the College Housing Program, the Comptroller General recommended that State education officials be consulted on proposed college housing projects so that they may provide the administering office with relevant information to support the awarding of valid loans. The provision is added to provide these agencies the opportunity for comment on the College Housing applications. This provision does not require the approval of State postsecondary education agencies.

Comment. One commenter recommended that applicants be required to submit applications to areawide A–95 clearinghouses as well as State A–95 clearinghouses.

Response. A change has been made. Inclusion of areawide clearinghouses was inadvertantly omitted in the original regulations. These regulations are amended to require submission of applications to areawide clearinghouses as well as State clearinghouses in order to comply with the purposes and requirements of OMB Circular A–95.

§ 614.32 Selection criteria for housing loan.

Comment. One commenter recommended including the number of students on waiting lists with paid deposits in the calculation of housing deficiency.

Response. No change has been made. The use of waiting lists and housing deposits is not a universal practice. The need for accountability would create an undue burden on institutions for verification of data.

Comment. One commenter recommended that a specific allowance be made for institutions housing students in temporary, off-campus situations such as motels and hotels. The commenter suggested that older institutions with smaller rooms are disadvantaged in that they can not temporarily house students in excess of design capacity and thus cannot qualify under this criterion element.

Response. No change has been made. The Secretary feels that the existing criteria sufficiently account for housing deficiency on the bases of overcrowding and residence in substandard housing. The claim that older insitutions are disadvantaged due to smaller dorm rooms is a broad and possibly unjustified generalization. Older institutions may in fact have an advantage under the criterion of substandard housing in that aging housing structures are more likely to fail building codes.

Comment. One commenter recommended that a scaling system be utilized in the awarding of loans in order to equitably distribute awards among large and small institutions.

Response. No change has been made. The criteria of "relative deficiency" and "relative impact" were designed specifically to account for institutional size differentials. An analysis of fiscal year 1981 loan recipients revealed an equitable distribution of awards among small, moderate, and large institutions.

Comment. One commenter recommended the modification of selection criteria to allow for planned expansion of services as a basis for funding. Another commenter objected to the criterion of previous residential history and use of existing dormitories as bases for funding.

Response. No change has been made. The Secretary feels that the intent of the program, as expressed by Congress in the appropriations report, is to remedy existing housing deficiencies and relieve severe, localized housing shortages as demonstrated on campuses, rather than to support first-time or expansion oriented housing construction. The Comptroller General supports this position in his report on the College Housing Program.

Comment. One commenter recommended that preferential consideration be given to institutions engaged in cooperative activities aimed at relieving operational costs in housing facilities.

Response. No change has been made. The Secretary does not wish to grant preference based on a specific means of maintenance. The only regulatory requirement with respect to maintenance is that a recipient agree to repair and maintain its project facilities.

§ 614.33 Apportionment of loan funds.

Comment. One commenter proposed that an allocation based on postsecondary enrollment would be more equitable than the existing 12½ percent limitation per State.

Response. No change has been made. The 12½ percent limitation per State is set by statute.

§ 614.42 Limitation on loan amounts.

Comment. One commenter questioned the minimum limit on loan amounts.

Response. No change has been made. The minimum limit was established in the interest of administrative cost-effectiveness.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major regulations because they do not meet the criteria for major regulations established in the order.

Invitation to comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burden found in these regulations, especially with regard to paperwork and compliance requirements.

List of Subjects in 34 CFR Part 614

Colleges and Universities, Education, Grant programs—housing and community development, Housing, Loan programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: May 12, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.142—College Housing Program)

The Secretary revises Part 614 of the Code of Federal Regulations to read as follows:

PART 614—COLLEGE HOUSING PROGRAM

Subpart A—General

Sec.

614.1 College Housing Program.
614.2 Who is eligible to apply for a loan?

Sec.

614.3 Limitations on eligibility.
614.4 What regulations apply to the College Housing Program?
614.5 What definitions apply to the College Housing Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

614.10 Eligible projects.
614.11 Conditions for eligibility of project.

Subpart C—How Does One Apply for a Loan?

614.20 Submission of application.
614.21 OMB Circular A–95 requirements and other clearance procedures.
614.22 Evidence and assurances.
614.23 Demonstration of need for an energy conservation loan.
614.24 Demonstration of need for a housing loan.
614.25 Application by a nonprofit student housing cooperative.
614.26 Application by a nonprofit corporation.
614.27 Facilities located in jurisdiction without applicable building code.
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Subpart D—How Does the Secretary Make a Loan?

614.30 How does the Secretary rank application for loans?
614.31 Selection criteria for energy conservation loans.
614.32 Selection criteria for housing loans.
614.33 Apportionment of loan funds.
614.34 Reservation of funds for applications from historically black colleges and universities.
614.35 Determination of non-availability of equally as favorable terms and conditions.
614.36 Loan agreements.
614.37 Security for the loan.
614.38 Evidence of approved debt instrument.
614.39 Loan closing.
614.40 Interim financing.
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Subpart E—What Conditions Must Be Met by a Borrower?

614.50 Eligible development costs.
614.51 Ineligible development costs.
614.52 Additional ineligible costs.
614.53 Fee for government field expense.
614.54 Construction account.
614.55 Investment of idle construction funds.
614.56 Procedure for loan disbursement.
614.57 Disposal of balance remaining in the Construction Account.
614.58 Determination of final approved development costs.
614.59 Application of pledged revenues.
614.60 Length and maturity of loan.
614.61 Borrower's non-financial obligations.
614.62 Deferments.

Appendix A—Guides for Determining Minimum Energy Savings.

Authority: Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81–475; (12 U.S.C. 1749–1749d). Sec. 306 of the Department of Education Organization Act, Pub. L. 96–88; (20 U.S.C. 3446).

Subpart A—General

§ 614.1 College Housing Program.

The College Housing Program provides low-interest loans to institutions of postsecondary education for the construction, rehabilitation, or purchase of hosuing or other educational facilities for students or faculty members.

(12 U.S.C. 1749–1749d)

§ 614.2 Who is eligible to apply for a loan?

The following are eligible to apply for a loan under the College Housing Program:

(a) Any public or nonprofit private educational institution that offers, or will offer within a reasonable time after completion of the proposed project, at least a two-year program acceptable for full credit toward a bachelor's degree.

(b) Any public educational institution that—

(1) Is administered by an accredited college or university;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students.

(c) Any public or nonprofit private hospital that operates—

(1) A school of nursing beyond the level of high school and approved by State authority; or

(2) An internship program approved by a recognized authority.

(d) Any public body, established for the purpose of providing or financing housing or other educational facilities for students and faculty members at any institution referred to in paragraphs (a) or (b) of this section.

(e) Any nonprofit student housing cooperative established for the purpose of providing housing for students at any institution referred to in paragraphs (a) or (b) of this section.

(f) Any nonprofit corporation established for the sole purpose of providing housing or other educational facilities for students or faculty of one or more institutions referred to in paragraphs (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the nonprofit corporation all title to any property built or purchased with proceeds of the loan will go to the institutions or for some other nonprofit educational purpose.

(12 U.S.C. 1749c; 1749(g))

§ 614.3 Limitations on eligibility.

(a) An institution may not apply for a reservation of funds for a housing loan under the Act sooner than the fourth year in which Congress makes funds available for the program subsequent to the last reservation of funds for that institution. This does not apply to energy conservation loans. In calculating this interval, the Secretary includes only reservations of funds made after fiscal year 1981.

(b) An institution may not apply for a reservation of funds for any loan under the Act if it is in default on a loan previously made under the Act or the Higher Education Act— whether or not the Secretary has agreed to any deferment—until the default has been removed.

(12 U.S.C. 1749a (c) (1); 1749a (c) (8); 20 U.S.C. 3474 (b))

§ 614.4 What regulations apply to the College Housing Program?

The following regulations apply to the College Housing Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR 75.170 through 75.173 (Clearinghouse Procedures) and 75.600 through 75.615 (Construction), 34 CFR 77.1 (Definitions), and 34 CFR Part 74 Subpart P.

(b) The regulations in this Part 614.

(20 U.S.C. 3474)

§ 614.5 What definitions apply to the College Housing Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR	Public
Nonprofit	Secretary
Private	State

(20 U.S.C. 3474)

(b) *Definitions that apply to this part.* "Act"means Title IV of the Housing Act of 1950, as amended.

(12 U.S.C. 1749–1749d)

"Assignable square feet" means the square footage of floor-space in facilities designed and available for assignment to specific functional purposes, such as student sleeping rooms, apartments and related dining areas, and including purposes that are ineligible for assistance under Title IV, such as instruction, research, administration, and religious worship.

"Branch campus"means, within an educational institution, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution; and

(3) Has its own Federal Interagency Committee on Education (FICE) identification number.

"Construction" means—

(1) Erection of new structures; or

(2) Rehabilitation, conversion, or improvement of existing structures.

(3) Purchase of existing facilities.

"Design capacity" of housing means the number of occupants a building was designed to house, or, if that information is not available, the maximum number of occupants residing in the facility in any of its first three years of use as student housing.

"Development cost"—

(1) This term means the costs of construction of the housing or other educational facilities and the land on which they are located, including necessary site improvements to permit the use of the land for housing or other educational facilities;

(2) However, in the case of the purchase of facilities, the term means the cost as approved by the Secretary.

"Full-time enrollment" means the number of full-time undergraduate and graduate, resident and non-resident students, as reported by the educational institution—for the fall semester of the year prior to that in which the application is filed—to the National Center for Educational Statistics (NCES) of the Department of Education for its annual survey entitled "Fall Enrollment in Institutions of Higher Education."

"Historically residential institution" means an educational institution that prior to 1976 provided on-campus housing for at least 10 percent of its full-time enrollment.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or faculty, including (i) single-room dormitories and (ii) apartments; and

(2) Dwelling facilities for student occupancy provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for—

(i) Use as cafeterias or dining halls, student centers or student unions, infirmaries, or other inpatient or outpatient health facilities; and

(ii) Other essential service facilities; and

(2) Structures—

(i) Suitable for the uses in paragraph (1) of this definition; and

(ii) Provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for those uses.

"Reasonable commuting distance" means the distance a student can travel in one hour from his or her residence toward the applicant educational institution by automobile or public transportation, whichever is more expeditious.

"Substandard housing" means student housing, either on campus or off campus, that—

(1) Is owned, leased, or subsidized by an eligible institution under § 614.2; and

(2) Fails substantially to meet applicable State or local building code requirements.

(12 U.S.C. 1749c, 1749a(c)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 614.10 Eligible projects.

The Secretary makes loans for two categories of projects:

(a) Projects to reduce fuel consumption or related operating costs of existing housing and other educational facilities as defined in §614.5. These loans are referred to in these regulations as "energy conservation loans."

(b) Projects to alleviate severe student or faculty housing shortage. These loans are referred to in these regulations as "housing loans."

(12 U.S.C. 1749, 1749a(c)(1))

§ 614.11 Conditions for eligibility of project.

The Secretary considers a project eligible to receive assistance only if—

(a) After October 1, 1981 the applicant has not contracted for construction before filing its application, and has not begun construction prior to execution of loan agreement.

(b) The facility will not be used—

(1) For religious worship;

(2) In connection with a school or department of divinity; or

(3) For a school providing either training for religious purposes or principally sectarian instruction.

(12 U.S.C. 1749a(c)(1); *Tilton* v *Richardson*, 403 U.S. 672 (1971))

Subpart C—How Does One Apply for a Loan?

§ 614.20 Submission of application.

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information specified in the application notice.

(b)(1) An applicant may submit only one application for a reservation of funds for each category of project described in § 614.10.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(12 U.S.C 1749a(c)(1) and 1749c)

§ 614.21 OMB Circular A-95 requirements and other clearance procedures.

(a) An applicant shall submit a copy of its application to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95.

(b) When the applicant submits its application to the Secretary, the applicant shall forward to the Secretary all State and areawide clearinghouses comments.

(c) An applicant shall submit one copy of its application to the appropriate State agency for postsecondary education to give the agency the opportunity to make comments or recommendations on the application. The applicant shall forward any comments it may receive to the Secretary.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

§ 614.22 Evidence and assurances.

An applicant shall submit to the Secretary, as part of its application, the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the site, including the right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, rehabilitate, purchase or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The

security may be one or a combination of procedures listed in §614.37.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan the facility constructed with the aid of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.23 Demonstration of need for an energy conservation loan.

In order to be considered for an energy conservation loan, an applicant must demonstrate in its application that the proposed project will provide savings in fuel consumption and related costs above those achieved by implementation of the measures similar to those described in Appendix A of this part.

(12 U.S.C. 1749a(c)(1))

§ 614.24 Demonstration of need for a housing loan.

(a)(1) In order to be considered for a housing loan, an applicant must demonstrate in its application a housing shortage in excess of the greater of 50 students or five percent of full-time enrollment.

(2) The percentage of full-time enrollment affected by a housing shortage is determined by dividing the applicant's housing shortage computed in accordance with paragraph (b) of this section, by the applicant's full-time enrollment.

(b) Housing shortage is measured as the sum of—

(1) The number of students in on-campus facilities in excess of the design capacity of the facilities;

(2) The number of students living in substandard housing both on and off campus;

(3) The number of students commuting to the campus from beyond a reasonable commuting distance; and

(4) The number of students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the date of application.

(12 U.S.C. 1749a(c)(1)

§ 614.25 Application by a nonprofit student housing cooperative.

A nonprofit student housing cooperative—as described in § 614.2(e)—that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The educational institution the proposed project is intended to serve has agreed to cosign the loan; or

(b) If State law in effect on September 7, 1964, prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.26 Application by a nonprofit corporation.

(a) The provisions of paragraph (b) of this section apply to a nonprofit corporation—

(1) As described in § 614.2(f); and

(2) That has not been established by the institution or institutions for whose students or faculty the loan is intended to provide housing or other educational facilities.

(b) If a nonprofit corporation that meets the description of paragraph (a) of this section applies for a reservation of funds for a loan, it must assure the Secretary at the time of its application that—

(i) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan; or

(ii) If State law in effect on September 7, 1964, prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.27 Facilities located in jurisdiction without applicable building code.

(a) The provision of paragraph (b) of this section applies to an application for a reservation of funds for a housing loan if—

(1) One of the factors supporting the claim of a housing shortage is the existence of substandard housing; and

(2) The facilities that the loan is intended to replace or rehabilitate do not meet the terms of paragraph (2) of the definition of "substandard housing" in § 614.5(b) because the State or local jurisdiction in which those facilities are located—

(i) Has no building code; or

(ii) Has no building code that applies to the facilities or to the applicant.

(b) An applicant affected by the condition described in paragraph (a)(2)(i) or (ii) of this section shall submit to the Secretary, together with its application, evidence that the facilities would not meet the building code of the geographically nearest jurisdiction with a building code pertinent to the deficiency noted in the application.

(12 U.S.C. 1749a(c)(1))

§ 614.28 Opinion of bond or legal counsel.

(a) An applicant shall submit—or arrange to have submitted—to the Secretary, either by bond counsel, as described in paragraph (b) of this section, or legal counsel, as described in paragraph (c) of this section, legal opinions with respect to—

(1) The legality of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legality of the debt instrument and collateral on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction or rehabilitation of housing through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) As used in this section, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction or rehabilitation of housing; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(12 U.S.C. 1749a(c)(1))

Subpart D—How Does the Secretary Make a Loan?

§ 614.30 How does the Secretary rank applications for loans?

(a) The Secretary ranks applications for energy conservation loans according to the criteria in § 614.31.

(b) The Secretary ranks applications for housing loans according to the evaluation criteria in § 614.32.

(12 U.S.C. 1749a(c)(1))

§ 614.31 Selection criteria for energy conservation loans.

For projects designed to conserve energy, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Savings in annual operating costs.* (1) The Secretary examines each application for information that shows the extent to which the proposed project will result in savings in fuel consumption and other energy costs on an annual basis.

(2) The estimated savings in annual operating costs are the difference between—

(i) Average annual routine expenses for heating and cooling and related

energy costs for the previous three years; and

(ii) Projected annual operating costs based on current prices of fuel and related services for the same purposes for the proposed project.

(3) The Secretary awards up to 50 points for this criterion.

(b) *Extent of savings compared with assistance.* (1) The Secretary examines each application for information that shows the extent to which the savings projected for the proposed project will recoup the assistance received under this program.

(2) The Secretary awards up to 50 points for this criterion, and assigns the highest score to projects requiring the least number of months.

(12 U.S.C. 1749a(c)(1))

§ 614.32 Selection criteria for housing loans.

For construction projects, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Previous residential history.* (1) The Secretary examines each application for information that shows whether the applicant qualifies as a historically residential institution.

(2) The Secretary awards 6 points for this criterion.

(b) *Use of existing dormitories.* (1) The Secretary examines each application for information that shows the extent to which the applicant makes effective use of dormitory space that it owns or leases.

(2) Use of dormitory space is measured by the number of assignable square feet per occupant.

(3) The Secretary awards up to 20 points for this criterion, and assigns the highest scores to applicants with the smallest amount of space per occupant.

(c) *Housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a housing deficiency.

(2) Housing deficiency is measured by the number of student accommodations required to—

(i) Eliminate overcrowding; that is, occupancy in excess of design capacity;

(ii) Provide accommodations for students living in substandard housing; and

(iii) Provide accommodations for students living beyond a reasonable commuting distance.

(iv) Provide accommodations for students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the application date.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the greatest housing deficiency.

(d) *Relative housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a relative housing deficiency.

(2) Relative housing deficiency is measured as a percentage obtained by dividing the total housing deficiency in § 614.32(c) by the institution's full-time enrollment.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the highest relative housing deficiency.

(e) *Impact of the proposed project.* (1) The Secretary examines each application for information that shows the impact of the proposed project.

(2) Impact is measured by the number of necessary student accommodations the applicant proposes to add.

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to the applicants proposing the largest number of necessary accommodations.

(f) *Relative impact of the proposed project.* (1) The Secretary examines each application for information that shows the relative impact of the proposed project.

(2) Relative impact is measured as a percentage obtained by dividing the number of necessary accommodations to be provided by the project by the total housing deficiency obtained under § 614.32(c).

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to applicants with the highest relative impact.

(12 U.S.C. 1749a(c)(1))

§ 614.33 Apportionment of loan funds.

(a) The Secretary indicates in the application notice published in the **Federal Register**, the amount of funds available in any fiscal year that will be awarded for projects in each category.

(12 U.S.C. 1749(a)(c)(1))

(b) The Secretary awards to educational institutions in any one State not more than 12.5 percent of the total funds available for loans under this program in any fiscal year.

(12 U.S.C. 1749b)

§ 614.34 Reservation of funds for applications from historically black colleges and inversities.

(a) Subject to the restriction in § 614.33, the Secretary, as necessary, may deviate from the rank order of applications for energy conservation loans and for housing loans to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans that the Secretary makes are reserved for applications from historically black colleges.

(b) The purpose of this reservation of funds is to assist historically black colleges in remedying the adverse effects of past or present discrimination on the adequacy of those colleges' housing facilities or other educational facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.35 Determination of non-availability of equally favorable terms and conditions.

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including—if bonds are to be issued—public advertising for bids.

(12 U.S.C. 1749a(1))

§ 614.36 Loan agreements.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(12 U.S.C. 1749a)

§ 614.37 Security for the loan.

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, or project revenue, or any combination thereof.

(b) If the Secretary determines that additional security is needed to reasonably assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) Securities or other revenue sources.

(3) A mortgage on other facilities.

(4) A guarantee of the payment of principal and interest by a third party.

(12 U.S.C. 1749a(c)(1))

§ 614.38 Evidence of approved debt instrument.

(a) After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary a debt instrument in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(b) The approved debt instrument referred to in paragraph (a) of this section shall include as appropriate—

(1) A recorded copy of the executed trust indenture between the borrower and the trustee institution or other paying agent; and

(2) The bond, note, or other security approved by the Secretary.

(12 U.S.C. 1749(a); 1749a(c)(1))

§ 614.39 Loan closing.

Loan closing occurs at a time determined by the Secretary.

(12 U.S.C. 1749a(c)(1))

§ 614.40 Interim financing.

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) If the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(12 U.S.C. 1749a(c)(1))

§ 614.41 Limitation on loan amounts.

(a) The maximum loan that the Secretary makes to an eligible applicant is $3,500,000.

(b) The minimum loan that the Secretary makes to an eligible applicant is $100,000.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

Subpart E—What Conditions Must Be Met by a Borrower?

§ 614.50 Eligible development costs.

Eligible development costs under this program include architectural and engineering services, construction, legal and administrative services, interest during construction, built-in or installed kitchen equipment, such as ranges and refrigerators, and equipment for food service in central dining facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.51 Ineligible development costs.

Ineligible development costs are the cost of furnishings, other than kitchen and food service equipment, such as beds, dressers, and tables, whether built-in or movable.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§ 614.52 Additional ineligible costs.

(a) If, under the Act, an applicant files for assistance for a proposed project after the effective date of these regulations, the Secretary excludes from eligible development costs any cost for construction, or for otherwise eligible equipment, if the contract was entered into—

(1) Before the date the applicant filed the application; and

(2) Before the Secretary concurred in the award of the contract.

(b) The Secretary excludes from eligible development costs—

(1) Any costs for land incurred more than two years prior to application date; and

(2) Any costs for the acquisition of an existing structure incurred more than one year prior to the application date.

(12 U.S.C. 1749(c); 1749a(c)(1))

§ 614.53 Fee for government field expense.

(a) For each approved loan, a borrower shall pay a fixed fee that is sufficient to cover the cost to the Government for the site inspections and reviews.

(b) The fixed fee shall be an amount equal to one-eighth of one percent (.00125) of the loan amount, with a minimum charge of $500 and maximum charge of $1,500.

(c)(1) The borrower shall compute the fixed fee on the loan amount at the time of the original loan agreement.

(2) After the execution of the loan agreement, the borrower may not make an adjustment in the specified fixed fee.

(12 U.S.C.1749d)

§ 614.54 Construction account.

(a) A borrower shall deposit in a separate bank account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loans; and

(3) All other money that the borrower will use in paying for the construction, of the approved project.

(b) If the borrower is expending funds of its own on the project, it shall deposit those funds in the Construction Account and expend those funds prior to obtaining any advances from the Secretary.

(c) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(d) Accounting for this account shall be in accordance with generally accepted accounting principles.

(12 U.S.C. 1749a(c)(1))

§ 614.55 Investment of idle construction funds.

(a) If the money on deposit in the Construction Account exceeds the estimated disbursements for the next 90 days, the Secretary encourages the borrower to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An inestment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(d) Any interest earned on the investment of idle funds in the Construction Account during the construction period shall be deposited in the Construction Account. Any such interest shall be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess shall be used to reduce the outstanding principal amount of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.56 Procedure for loan disbursement.

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.57 Disposal of balance remaining in the Construction Account.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(12 U.S.C. 1749a(c)(1))

§ 614.58 Determination of final approved development costs.

(a) For the purpose of determining the final approved development costs, the

Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development cost prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, organizational, and offside costs and other items of expense approved by the Secretary.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§ 614.59 Application of pledged revenues.

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues into a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(12 U.S.C. 1749a(c)(1)

§ 614.60 Length and maturity of loan.

(a)(1) The maximum repayment period for a housing loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, renovated or purchased with the proceeds.

(b) The repayment period for an energy conservation loan shall normally be the time required for projected operating savings to equal the costs of the project, plus 2 years.

(c) Loans shall bear interest at a rate not to exceed three percent per annum.

(d) Unless the Secretary authorizes otherwise—

(1) The borrower shall repay the loan in not less than annual nor more than semiannual equal installments of principal and interest.

(2) However, for a reasonable period of time—normally not exceeding two years following the date of the loan—a borrower may make payments of interest only.

(12 U.S.C. 1749(c))

§ 614.61 Borrower's non-financial obligations.

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities; and

(d) Repair and maintain the project facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.62 Deferments.

(a) A borrower may request—and the Secretary may grant—deferment of any repayment due on a loan under this program if the borrower has—

(1) Complied with—

(i) The terms and conditions of the loan agreement; and

(ii) All nonfinancial obligations under § 614.61;

(2) Properly applied and accounted for all assets pledged as security under the loan agreement; and

(3) Submitted a financial plan that satisfies the Secretary that the borrower is remedying the conditions that caused the request for deferment.

(b) If the Secretary agrees to a deferment, that deferment normally does not exceed one year unless the borrower provides evidence, and the Secretary agrees, that a longer deferment is necessary.

(c) The Secretary does not grant a deferment if the borrower proposes to do any of the following:

(1) Use pledged revenues for any purpose or purposes other than that provided in the loan agreement.

(2) Create another lien on the facilities assisted under this program.

(3) Release obligors, co-obligors, or guarantors under the loan.

(4) Request a reduction of principal or interest.

(12 U.S.C. 1749a(c)(8))

Appendix A.—Guides for Determining Minimum Energy Savings

In connection with projects intended to conserve energy, the applicant indicates its compliance with minimum energy conservation measures through completion of the following checklist:

Code: 1=No (no considerable involvement in this activity).
Code: 2=Yes (considerable involvement in this activity).
Code: 3=N.A. (not applicable).

Specific temperature ranges and thermostat settings:
- ☐ 65°–68° Winter
- ☐ 75°–80° Summer

☐ Reduction in illumination levels and lamp wattage
☐ Substantial night and weekend building shutdowns
☐ Consolidation of activities into fewer buildings, particularly during evenings and weekends
☐ Development of energy efficient space allocation practices
☐ Scheduling of institutional vacations during energy intensive periods
☐ Restrictive policy on appliance usage
☐ Restrictive policy on air conditioning installation
☐ Reduction of domestic hot water temperature
☐ Manual reduction of fresh air makeup
☐ Manual monitoring of buildings
☐ Work schedule adjustments to maximize daylight working hours
☐ Reduction of building heat leakage by using blinds and drapes
☐ Maintenance review of existing energy systems:
- ☐ Inspection and regularized maintenance of steam traps

☐ Inspection and correction of valve functions and air filtration systems where needed
☐ ORSAT analysis of flue gases
☐ Total involvement of institutional community:
- ☐ Faculty, staff, and student energy committee
- ☐ Appointment of building energy monitors
- ☐ Energy briefing sessions with building occupants
- ☐ Campus-wide energy awareness programs

If the answer to any of the above is "no," please attach a brief explanation.

[FR Doc. 82-13612 Filed 5-19-82; 8:45 am]
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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Application Notice for New Projects Under the College Housing Program for Fiscal Year 1982

Applications are invited for new projects under the College Housing Program.

Authority for this program is contained under Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81–475; 12 U.S.C. 1749–1749d, and under Section 306 of the Department of Education Organization Act (Pub. L. 96–88).

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for student and faculty members, and (2) in conserving energy, and reducing related operating costs.

Closing Date for Transmittal of Applications: Applications for awards must be mailed (post-marked) or hand-delivered by June 30, 1982.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, College Facilities Branch, 400 Maryland Avenue, SW., (ROB–3, Room 3717), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, College Facilities Branch, Room 3717, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday, or Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The College Housing Program provides low-interest 3 percent long-term loans to postsecondary educational institutions for the construction, rehabilitation or acquisition of student and faculty housing and related facilities and for conserving energy and reducing related operating costs.

Regulations for this program are published in the regulations section in this issue of the **Federal Register**. The regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in §§ 614.31 and 614.32 of the program regulations.

Available Funds: There is authorized $75,000,000, or the amount of income less expenses, whichever is less, to be made available for College Housing Loans. Funds available for commitment for new loans in fiscal year 1982 are estimated to be approximately $10,000,000. However, the total amount available will not be known until the end of the fiscal year. Gross commitments for the principal amount of direct loans may not exceed $75,000,000. If the amount of available funds is greater than $30,000,000, twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. If the amount of available funds is $30,000,000 or less, the total amount will be used for energy conservation loans.

Application Forms: Application forms and program information packages are available.

Application packages will not automatically be mailed to all institutions of higher education. Copies may be obtained by writing to the College Facilities Branch, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB–3, Room 3717), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the criteria, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations applicable to this program are—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.179—75.173; and

(b) The final regulations governing the College Housing Program, 34 CFR Part 614, published in this issue of the **Federal Register**.

Special Procedures: On or before the deadline for submitting its application to the Secretary, the applicant shall submit a copy of its application, with a letter asking for comment, to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A–95. The applicant shall also submit a copy of its application to the appropriate State agency for postsecondary education. Comments, if any, are to be addressed to the College Facilities Branch, U.S. Department of Education, 400 Mary land Avenue, SW., (ROB–3, Room 3717), Washington, D.C. 20202. Comments must be received within 20 days after the deadline date if they are to be considered. The applicant shall attach to its application to the Secretary a copy of its letter requesting the State and areawide clearinghouses to comment on the application.

FOR FURTHER INFORMATION CONTACT:

Charles I. Griffith, College Facilities Branch, Department of Education, 400 Maryland Avenue, SW., (ROB–3, Room 3717), Washington, D.C. 20202. Telephone: (202) 245–3253.

(12 U.S.C. 1749–1749d)

Dated: May 12, 1982.

(Catalog of Federal Domestic Assistance No. 84.142, College Housing Program)

Thomas P. Melady,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82-13511 Filed 5-19-82; 8:45 am]

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federal register

Thursday
May 20, 1982

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Conditional Approval of the Permanent Regulatory Program Submission From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Conditional Approval of the Permanent Regulatory Program Submission From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On January 11, 1982, the State of Alabama resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) 30 U.S.C. 1201 *et seq.* This resubmission follows an initial disapproval which was published in the **Federal Register**, on October 16, 1980 (45 FR 68665–68673). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. Since the original submission was disapproved, the resubmission consists of the entire program which will be considered in its entirety on this decision. This rule grants conditional approval of the Alabama permanent program. A new Part 901 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective May 20, 1982. This conditional approval will terminate as specified in 30 CFR 901.11 unless the deficiencies below have been corrected in accordance with the dates specified in 30 CFR 901.11.

ADDRESSES: See "Supplementary Information" for addresses where copies of the Alabama Program and administrative record on the Alabama program are available.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone: 202/343–5351.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Alabama program and the administrative record on the Alabama program are available for public inspection and copying during regular business hours at:

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, TN 37902.

Office of Surface Mining, Administrative Record Room, Room 5315, 1100 L Street, N.W., Washington, D.C. 20204.

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, AL 35501.

In addition, copies of the full text of the program are available for inspection during regular business hours at the following locations:

Office of Surface Mining, Administrative Record Room, Room 5315, 1100 L Street, N.W., Washington, D.C. 20204.

Alabama Surface Mining Commission, 100 Third Street, Fort Payne, AL 35967.

Background

The general background on the permanent program, the program approval process, and the Alabama program submission were discussed in the **Federal Register**, October 16, 1980 (45 FR 68665–68673). Subsequent to that **Federal Register** notice, amendments to the Federal regulations were published December 12, 1980 (45 FR 82084); July 17, 1981 (46 FR 37233); September 29, 1981 (46 FR 47720); October 8, 1981 (46 FR 50018); October 28, 1981 (46 FR 53376) and December 7, 1981 (46 FR 59934). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended pending further rulemaking August 19, 1981 (46 FR 42063).

Also, in the October 16, 1980, **Federal Register** notice the Secretary announced his disapproval of the Alabama program and specified the reasons for disapproval.

Background on the Alabama Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), The State of Alabama originally had 60 days from the date of publication of the Secretary's disapproval decision on October 16, 1980, to resubmit a revised program for consideration. On November 12, 1980, the Circuit Court of Walker County, Alabama, enjoined the Alabama Surface Mining Reclamation Commission from submitting or resubmitting to the Office of Surface Mining (OSM) the Alabama Permanent State program. By order of the court dated January 8, 1982, the injection was dissolved and the State was ordered to submit the State program on or before January 11, 1982. The State submitted its revised program for consideration on January 11, 1982. Announcement of Alabama's resubmission was made in newspapers of general circulation within the State of Alabama and published in the **Federal Register** on January 15, 1982 (47 FR 2338–2340). That **Federal Register** notice also announced a public comment period extending to February 16 , 1982, and a public hearing which was held on February 11, 1982, in Jasper, Alabama. Alabama submitted modifications to the resubmission on April 9, 1982, and a public comment period was opened on these modifications April 20 through April 30, 1982 (47 FR 16797, April 20, 1982).

Public disclosure of comments by Federal agencies was made on May 13, 1982 (47 FR 20631.) On May 13, 1982, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Alabama program.

The Regional Director completed his program review on May 6, 1982, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On May 11, 1982, the Director recommended to the Secretary that the Alabama program be conditionally approved

The basis and purpose statement for the Secretary's decision to conditionally approve Alabama's consists of this notice. The Alabama program consists of the formal submission of January 11, 1982, (Administrative Record No. AL–326A), as clarified in a meeting with OSM on April 9, 1982. (See AL–347.)

Throughout the remainder of this notice, "Alabama program," "Alabama submission," or "Alabama resubmission" is used to mean the documents cited above. The term "original submission" is used to mean the submission of March 3, 1980, which was subsequently disapproved by the Secretary. The terms "Alabama Surface Mining Reclamation Commission" and "Alabama Surface Mining Commission" are synonymous, the word "Reclamation" having been dropped recently from the former term.

The Secretary's Findings below are organized to follow the order set forth in section 503 of SMCRA and 30 CFR 732.25, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

Secretary's Findings

Section 503(a) of SMCRA Findings: In accordance with section 503(a) of SMCRA, the Secretary finds that Alabama has the capability to carry out the provisions of SMCRA. Findings

made in accordance with section 503(a) of SMCRA are set forth in Findings 1 through 7 below.

Finding 1

The Secretary finds that the Alabama Surface Mining Control and Reclamation Act of 1981, Act No. 81–435 (Alabama SMCRA), and the regulations adopted thereunder provide, except as noted below, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Alabama in accordance with SMCRA. This finding is based on the requirements of section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). The issues underlying this finding are anlyzed in finding 1.1 and 1.2 below.

1.1 In section 10(f), the Alabama SMCRA provides that appeals to circuit court from Commission decisions are to be tried *de novo*. Section 526(b) of SMCRA provides that when decisions of the Secretary are reviewed judicially in Federal Court, the review is "soley on the record made before the Secretary." Section 526(e) also states that "Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law * * *". The practice of *de novo* appeals is acceptable provided seven specific conditions or criteria are met.

In an executive session at OSM Headquarters in Washington, D.C. on April 9, 1982, duly authorized representatives of Alabama committed the State to the seven specific criteria as indicated under the following individual items (a) through (g). (Administrative Record No. AL–347).

(a) Insure preservation of the administrative record, including all exhibits and transcripts of all testimony taken at the proceeding. Alabama referenced section 10(e) of the Alabama SMCRA which assures compliance with the criterion.

(b) Guarantee that the party to a *de novo* review proceeding has the right to use any evidence contained in the administrative record whenever such evidence cannot otherwise be practicably obtained. Alabama explained that, under its case law, prior sworn testimony may be used if a witness is unavailable. Additionally, such testimony may be used at any time for impeachment.

(c) Insure that any money paid into escrow is held until there is a final binding resolution of the controversy. Alabama referenced section 26(c) of ASMCRA to satisfy the criterion.

(d) Demonstrate that the provisions for trial *de novo* will not result in undue delay so as to undermine the effectiveness of the enforcement program. Alabama referenced section 10(f) of ASMCRA to satisfy the criterion.

(e) Make trial *de novo* review available to any party to the administrative proceeding, including the regulatory authority and any intervening parties. Alabama referenced section 10(f) of ASMCRA to satisfy the criterion.

(f) Insure that review by trial *de novo* is not available to a person who has failed to appear at or waived his right to an administrative hearing. Alabama referenced section 10(d)(2) of ASMCRA to satisfy the criterion.

(g) Provide for representation of the regulatory authority by a licensed attorney at law at every stage of the judicial review proceeding. Alabama referenced section 10(d)(1) of ASMCRA and assured that the regulatory authority will be represented at every stage of the judicial review proceeding by the Alabama Attorney General's Office.

In view of these commitments, the Secretary finds that Alabama's procedure for trial *de novo* under the prescribed conditions is no less effective than the Federal review procedure.

1.2 In section 27(f) the Alabama SMCRA fails to provide for "reasonable attorney and expert witness fees" as required by section 520(f) of SMCRA. Since the Federal Act imposes this requirement, the State program is not in accordance with that Act. Therefore, approval of the Alabama program is conditioned upon a statutory amendment to the Alabama SMCRA to provide for reasonable attorney and expert witness fees.

Finding 2

The Secretary finds that the Alabama SMCRA provides sanctions for violations of Alabama laws, regulations or conditions of permits, and these sanctions meet the minimum requirements of SMCRA. This finding is based on the requirements of section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)).

Finding 3

The Secretary finds that the Alabama Surface Mining Commission has sufficient administrative and technical personnel and sufficient funds to enable Alabama to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)).

Finding 4

The Secretary finds that the Alabama SMCRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA. This finding is based on the requirements of section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)).

Finding 5

The Secretary finds that Alabama has established an adequate process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 of SMCRA, 30 U.S.C. 1271. This finding is based on the requirements of section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)).

Finding 6

The Secretary finds that Alabama has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations. This finding is based on the requirements of section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)).

Finding 7

The Secretary finds that Alabama has fully enacted regulations which, except for minor deficiencies discussed in the Findings, are no less effective than 30 CFR Chapter VII. This finding is based on the requirements of section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). The issues underlying this finding are analyzed in Findings 12 through 30, below.

Section 503(b) of SMCRA Findings

As required by section 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below.

Finding 8

The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Alabama program.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Alabama program which

relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151–1175) and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

Finding 10

The Secretary held a public hearing in Jasper, Alabama on February 11, 1982, on the adequacy of the Alabama program submission.

Finding 11

The Secretary finds that the State of Alabama has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA. This finding is based on the requirements of section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Alabama program resubmission, public comments and testimony, written representations at the public hearings, and other relevant information in the administrative record. At a meeting on April 9, 1982, at OSM Headquarters, Washington D.C. (Administrative Record No. AL–347) Alabama agreed to certain regulation changes and interpretations, and to certain policies to be implemented by the State. In the following findings the term "the State has agreed" or similar terms refer to agreements reached at that meeting.

Finding 12

In accordance with § 732.15(a), the Secretary finds that, except as noted below, the program provides for Alabama to carry out the provisions and meet the purposes of SMCRA. The State legislative authority is discussed in Findings 1, 2 and 4. State regulations and narrative descriptions are discussed in Findings 12 through 30. Issues which are general in nature and do not apply to individual sections are analyzed as follows:

12.1 In the definition of *"Extraction of Coal as an Incidental Part"* at section 700.5, the State has omitted from its definition all except the first sentence of the Federal definition (30 CFR 700.5). The omitted part contains language stating that extraction of coal from areas outside the right of way or boundaries of the area affected by the construction of a government financed project shall be subject to regulation. The intent of SMCRA and the Federal regulations is to exempt only the area directly affected by construction of the project, not some larger area being mined. Approval of the Alabama program is conditioned upon a change to the Alabama regulations to include provisions no less effective than the Federal definition. Alabama has agreed that until a regulation change is accomplished, the State will interpret the present wording to include regulation of all areas included by the Federal definition. The Secretary finds this solution to be no less effective than the Federal definition.

12.2 The State's definition of "Federal Lands" at section 700.5 states: "any land, including mineral * * *". The Federal definition at 30 CFR 700.5 states: "any land, including mineral interests * * *". This is a typographical error and the word "interests" should be included. Approval of the Alabama program is conditional upon a revision to the regulation to correct the typographical error by inserting "interests" after "mineral". The Secretary finds that the insertion will render the State definition no less effective than the Federal definition.

12.3 The State's definition of "Groundwater" at section 700.5 states: "Groundwater means subsurface water that fills available openings in rock or soil materials below the zone of saturation". The Federal definition at 30 CFR 701.5 states: "Groundwater means subsurface water that fills available openings in rock or soil material to the extent that they are considered water saturated." Further, Alabama's definition of water table is inconsistent with its own definition of groundwater. The Federal definition includes the water table (irregular), capillary water (if appropriate) and the zone of saturation (groundwater). The State's definition includes only that water below (the bottom of) the zone of saturation. Consequently, much water included in the Federal definition is omitted from the State definition. As a condition of approval, Alabama must revise its regulations to correct the deficiency by substituting "in" for "below". The Secretary finds that the substitution will render the definition no less effective than the Federal counterpart.

12.4 In its definition of "Surface Coal Mining Operations" at section 700.5, the State has omitted language stating that extraction of coal from refuse piles is covered. Remining coal refuse piles is an activity contemplated by SMCRA as requiring regulation. The Federal definition of "surface mining activities" at 30 CFR 701.5 makes it clear that such activity is covered. Alabama has agreed, as a matter of policy to interpret its regulations to include within the scope of the regulatory program remining of coal refuse piles. Based on this assurance, the Secretary finds that this interpretation will render the definition no less effective than the Federal counterpart.

12.5 The Federal definition of "Historic Lands" at 30 CFR 762.5 includes important language relative to: (1) "Sites having religious or cultural significance * * *" and (2) "sites for which historic designation is pending." This language is omitted from the State definition at section 700.5. The Secretary finds that the omitted or comparable provisions should be included in the State's definition so as to define those sites which the regulatory authority must consider in the designation of lands unsuitable process. Therefore, as a condition of approval, Alabama must amend its unsuitability regulations to provide for lands having religious, cultural or historic significance. The Secretary believes the present language, while lacking desirable details, is sufficiently specific to enable the Regulatory Authority to offer the necessary protection to valuable sites until a regulation change can be accomplished.

Finding 13

The Secretary finds that the Alabama program submission demonstrates, except as noted below, that the Alabama Surface Mining Commission has authority under Alabama laws to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the Alabama program includes provisions adequate to do so. Special provisions comparable to 30 CFR Parts 820, 822 and 825 for anthracite mines and operations in alluvial valley floors are not applicable to or included in the Alabama law or regulations. This finding is made under the requirements of 30 CFR 732.15(b)(1). Alabama incorporates provisions corresponding to sections 515 and 516 of SMCRA in Title III, Alabama SMCRA sections 22 and 23 and in the Alabama Regulations Subchapter K.

Discussion of significant issues raised during the review of the Alabama environmental performance standards follows.

13.1 Section 815.15(a) of 30 CFR states that wildlife habitats "shall not be disturbed during coal exploration." Alabama's section 815.15(a) qualifies this prohibition by stating that such habitats "shall not be *unnecessarily* disturbed." Therefore, as a condition of approval, Alabama must amend its regulation to delete the word "unnecessarily". The Secretary has

agreed to Alabama's suggestion that "significantly" may be substituted for "unnecessarily". Alabama has further agreed that until a regulation change is accomplished, any significant disturbance will be considered to be unnecessary.

13.2 Alabama section 819.11(c) requires that auger holes be plugged and sealed "contemporaneous" with the mining. Section 819.11(c) of 30 CFR requires sealing within 72 hours in some instances. Although a review of the preamble of the Federal regulations failed to produce support for the specific time period listed (72 hours), support is found for requiring that auger holes be plugged quickly after they are drilled. The State uses the phrase "contemporaneous with the augering operation". It was unclear what amount of time the State contemplates in the use of the word "contemporaneous". Alabama has agreed that it will interpret "contemporaneous" to mean seventy-two (72) hours when an acid coal seam is encountered or other hazardous or potentially harmful conditions are present. Based on this interpretation, the Secretary finds Alabama section 819.11(c) to be no less effective than the Federal counterpart.

13.3 Part 823 of Alabama's regulations does not include a proper "Scope" section comparable to 30 CFR 823.1. Instead of a "Scope" section which sets out what the part regulates, Alabama has stated what is not regulated. Alabama has indicated that a large part of the Scope section was omitted through typographical error and has agreed to include an appropriate Scope section. As a condition of approval Alabama must revise its regulations to include an appropriate Scope section.

13.4 Section 823.12 of the State's prime farmland regulations allows the C horizon or a combination of horizons to be substituted for the A horizon. No provision is made for a like substitution in 30 CFR 823.12. Alabama's regulations state that when C horizon or a combination of horizons is substituted for the A horizon, the substitute shall "be equal or more favorable for plant growth than the A horizon". The State, however, fails to specify that any tests be made to provide that the substituted horizons are sufficient. Alabama has agreed that it will obtain a recommendation from the U.S. Soil Conservation Service (SCS) and that the Regulatory Authority will not approve the substitution unless said substitution is approved by SCS. Based on this policy, the Secretary finds that Alabama section 823.12 is no less effective than the Federal counterpart.

13.5 The State language at section 823.15 is less effective than 30 CFR 823.15. State section 823.15 reads "* * * shall meet the following revegetation requirements of section 816.116(c) and * * *". By inclusion of the word "following" it is implied that only those parts of section 816.116(c) which appear thereafter need be adhered to. If interpreted in this way, a good part of section 816.116(c) would be voided. Therefore, as a condition of approval, Alabama must revise its regulations to omit the word "following" or place it after "and". The Secretary believes that the above change will render State section 823.15 no less effective than the Federal counterpart.

13.6 State section 824.11(a)(3) includes "forestry" as an approved postmining land use for mountain top removal areas. Section 824.11(a)(3) of 30 CFR omits "forestry" as an approved postmining land use for such areas. Section 515(c)(3) of SMCRA also does not allow "forestry" as a land use when the mountain top removal exception to the approximate original contour (AOC) is used. SMCRA allows only "industrial, commercial, agricultural, residential or public facility" uses. Alabama has agreed to limit its interpretation of forest land or forestry to encompass only land used for, or the process of tree farming or silviculture. The planting of trees as ground cover only or to establish woodlands is not included. Based on this interpretation, the Secretary finds Alabama section 824.11(a)(3) no less effective than the Federal counterpart.

13.7 Sections 816.42 (a) and (c) and 817.42 (a) and (c) of 30 CFR require that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. OSM has determined that sedimentation ponds represent the best technology currently available. The State regulations at 816.42(a) and 817.42(a) direct that such drainage be passed through sedimentation ponds "or a treatment facility".

Therefore, as a condition of approval Alabama must revise its regulations or otherwise amend its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama has agreed not to use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

Additionally, the State regulations contain no counterpart to the Federal regulations at 30 CFR 816.42 (a) and (b) and 817.42 (a) and (b). These Federal regulations require that where drainage from the disturbed area and drainage from areas not currently disturbed are mixed in the same sedimentation pond or ponds, the specified effluent limitations must be met by the ponds' total discharge. The State has agreed that all discharges from ponds, whatever the source, will be required to meet the specified effluent limits. Based on this interpretation, the Secretary has determined that the above policy statement renders the State regulations regarding sediment ponds no less effective than 30 CFR 816.42 (a)–(c) and 817.42 (a)–(c).

13.8 Sections 816.49(b) and 817.49(b) of 30 CFR reference 30 CFR 816.46(e)–(u) and 817.46(e)–(u) respectively. State sections 816.49(b) and 817.49(b) reference only State sections 816.46(c)–(h) and 817.46(c)–(h), respectively because other sections have been omitted from the State sections 816.46 and 817.46. As a condition of approval, Alabama must revise its regulations to include criteria no less effective than those at 30 CFR 816.46(e)–(u) and 817.46(e)–(u) and to reference all appropriate sections in Alabama regulations 816.49(b) and 817.49(b). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits that are inconsistent with Federal requirements of 30 CFR 816.46 (e)–(u) and 817.46(e)–(u). The Secretary believes that the above regulation change and policy statement render the State regulations no less effective than the Federal counterparts.

13.9 Alabama sections 816.49(c) and 817.49(c) specify a static safety factor of 1.5 and perimeter slopes that are stable. Sections 816.49(c) and 817.49(c) of 30 CFR specify slopes not steeper than 1v:2h and stable. The State leaves the design to the engineer. Some slopes would not be stable at grades flatter than 1v:2h. The issue is not a matter of 1.5 safety factor vs 2:1 slope. The Federal regulations require a minimum slope in addition to stability which provides an additional degree of safety. Therefore, as a condition of approval, Alabama must revise its regulations to include the 1v:2h slope limit requirement. Alabama has agreed that until a regulation change is accomplished, the State will not issue

any permanent program permits that permit a slope greater than 1v:2h. The Secretary finds that the agreed upon regulation change and policy statement render the above State sections no less effective than the Federal counterparts.

13.10 Sections 816.49(f) and 817.49(f) of 30 CFR provide that all dams and embankments meeting criteria for regulation under 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216–3. The State sections 816.49 and 817.49 contain no counterpart and should be amended. Additionally, the State sections 816.49(g) and 817.49(g) require that dams and embankments be certified by a qualified registered professional engineer only immediately after construction while sections 816.49(h) and 817.49(h) of 30 CFR also require annual certification. Therefore, as a condition of approval Alabama must revise its regulations to include provisions for routine inspections meeting the standards of 30 CFR 77.216–3 and requiring that all inspection reports thus generated be kept available for inspection at the mine site, and to provide that all appropriate dams and embankments shall be routinely inspected in accordance with 30 CFR 77.216–3 and that all resulting reports be kept on the minesite. In addition, all certifications, reports, and statements required by MSHA must be filed with the Regulatory Authority. Alabama agreed that until a regulation change was accomplished, it would implement the new language as a matter of policy. The Secretary finds that the agreed upon regulation change and policy statement render the above State sections no less effective than the Federal counterparts.

13.11 Alabama sections 816.311(c) and 817.313(c) enable interruption of operations due to events of *"force majeure"*, including labor disputes not to be considered temporary cessations. Section 816.131 of 30 CFR does not contain a comparable provision. Labor "dispute" is too broad a term. Alabama has agreed to define *"force majeure"* as applying only to actual labor strikes. The Secretary agrees that this clarification of this provision renders the State regulations no less effective than the Federal regulations.

13.12 Alabama sections 816.71(o) and 817.71(o) allow disposal of coal processing waste in head-of-hollow and valley fills. This is contrary to 30 CFR 816.71(k) and 817.71(k) which specifically forbid such disposal. As a condition of approval, Alabama must revise its regulations to the effect that disposal of processing waste in head-of-hollow and valley fills is not allowed. Alabama has further agreed that until a regulation change is accomplished it will, as a matter of policy, not allow disposal of coal processing waste in head-of-hollow and valley fills. The Secretary finds that the agreed upon regulation change and policy statement render Alabama sections 816.71(o) and 817.71(o) no less effective than the Federal counterparts.

13.13 Sections 816.71(f) and 817.71(f) of 30 CFR require the spoil to be placed in horizontal lifts. The corresponding State sections 816.71(c) and 817.71(c) omit this requirement. Horizontal lift placement is essential to ensure proper compaction. As a condition of approval, Alabama must revise its regulations to the effect that spoil will be placed in 4' horizontal lifts unless other placement is specifically agreed to by OSM. Alabama has agreed that, until a regulation change is accomplished, the State will issue no permits which are at variance with existing Federal regulations. The Secretary finds that the agreed upon regulation change and policy statement render Alabama sections 816.71(f) and 817.71(f) no less effective than the Federal counterparts.

13.14 Sections 816.71(i) and 817.71(i) of 30 CFR contain provisions for slopes greater than 36% and reference other sections for additional requirements (referenced are 30 CFR 780.35(c) and 784.18, respectively). The corresponding State sections are missing and no equivalent references are included. Consequently, Alabama regulations contain no special provisions for handling slopes greater than 36%. As a condition of approval, Alabama must revise its regulations to include counterparts to 30 CFR 816.71(i) and 817.71(i) with appropriate inclusion and references to counterparts of all sections referenced in 30 CFR 816.71(i) and 817.71(i). Alabama has further agreed that until a regulation change is accomplished the State would, as a matter of policy, require adherence to the provisions of 30 CFR 816.71(i) and 817.71(i). The Secretary finds that the agreed upon regulation change and policy statement render the above mentioned State sections no less effective than the Federal counterparts.

13.15 The State has omitted sections comparable to 30 CFR 816.72, 816.73, 817.72 and 817.73. The omission completely deletes specific requirements for head-of-hollow and valley fills from the State regulations. Specific criteria required by present Federal regulations include underdrain sizing criteria and lift thickness limitations. As a condition of approval, Alabama must revise its regulations to include the omitted sections regarding specific requirements for head-of-hollow and valley fills. Alabama has agreed that until a regulation change is accomplished it will, as a matter of policy, require compliance with applicable provisions of 30 CFR 816.72, 816.73, 817.72 and 817.73. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

13.16 State sections 816.46 and 817.46 do not provide a minimum sediment storage volume. Certain criteria required for the design of sedimentation structures in 30 CFR 816.46 and 817.46 were suspended. (See 44 FR 77447 (Dec. 31, 1979).) However, the portions of 30 CFR 816.46(b) and 817.46(b) requiring some minimum sediment storage volume have not been remanded. In addition, both Federal and State sections 780.25(b) and 784.25(b) require that the design plan conform to 816.46 and 817.46, respectively. Therefore, the basic criteria for a minimum storage volume should be included in State sections 816.46 and 817.46 so that some minimum storage volume will have to be included in the design, even though the specific criteria of 816.46(b)(1) & (2) and 817.46(b)(1) & (2) are not required. Such minimum storage criteria can be determined by the regulatory authority on a blanket basis or a case by case basis or left to the engineer with the approval of the regulatory authority.

Therefore, as a condition of approval, Alabama must revise its regulations to include the basic criteria for minimum storage volume no less effective than the Federal requirements. Alabama has further agreed that until a regulation change is accomplished, the State will as a matter of policy adopt the new language. The Secretary finds that the agreed upon regulation revision and policy statement render the above State section no less effective than the Federal counterparts.

13.17 Sections 816.46(u) and 817.46(u) of 30 CFR require that after the pond is removed, revegetation be conducted in accordance with 816.100–816.106 and 817.101–817.106, respectively. Alabama regulations require compliance with 816.101–816.106 and 817.101–817.107 respectively. Sections 816.100 and 817.100 require reclamation as contemporaneously as practicable with mining operations. As a condition of approval, Alabama must correct the typographical errors to read "816.100 and 817.100" instead of "816.101 and 817.101". Alabama has agreed that until such corrections are made the State will require adherence to 30 CFR 816.100 and

817.100. The Secretary finds that the proposed corrections and policy statement render the State regulations no less effective than the Federal counterparts.

13.18 State sections 816.46 and 817.46 do not contain design criteria for sedimentation ponds found at 30 CFR 816.46 (e)–(u) and 817.46 (e)–(u). As a condition of approval, Alabama must revise its regulations to include in State sections 816.46 and 817.46 design criteria no less effective than those found in 30 CFR 816.46(e)–(u) and 817.46(e)–(u). Alabama has agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with the Federal requirements of 30 CFR 816.46(e)–(u) and 817.46(e)–(u). The Secretary finds that the agreed upon regulation change and policy statement render the State regulation no less effective than the Federal counterparts.

13.19 State section 816.64(b)(2)(ii) does not contain the Federal requirement at 30 CFR 816.46(b)(2)(ii) that blasting periods shall not exceed an aggregate of four hours in any one day. Section 515(b)(15)(A) of SMCRA requires blasting according to a schedule. The State's regulations would allow time periods to be listed which would cover almost all hours of daylight and this could not be construed as a schedule. Therefore, Alabama's rule is not in accordance with SMCRA. Therefore, as a condition of approval, Alabama must revise its regulations to provide a requirement consistent with the four-hour aggregate provision of 30 CFR 816.64(b)(2)(ii). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits that are inconsistent with 30 FR 816.64(b)(2)(ii). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

13.20 Sections 816.65(i) and (k) of 30 CFR require the maximum ground vibrations from an explosion detonation not to exceed 1.0 inch per second. The State counterpart allows the maximum peak particle velocity to be as high as 1.4 inches per second. Also, the formula and table in the State's 816.65(1) and (2) do not comply with the Federal counterpart. The U.S. District Court for the District of Columbia did not invalidate or remand 30 CFR 816.65(i) in its May 16, 1980, decision on the permanent program rules (*In re: Permanent Surface Mining Regulation Litigation*, (D. D.C. May 16, 1980) CA No. 79–1144 (Round 2)). Therefore, as a condition of approval, Alabama must revise its regulations to reflect the 1.0 inch per second criterion and to adopt a scale distance of 60 in the formula in section 816.65(k)(1) with appropriate corrections to the table in section 816.65(k)(2). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits which are inconsistent with 30 CFR 816.65(i), (k), and (1). The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulation no less effective than the Federal counterpart.

13.21 At section 817.101 the State has added to its regulations which require that surface areas which are disturbed incident to underground mining be backfilled and graded the approximate original contour, Subsection (c) which gives the Regulatory Authority discretion not to require operators to redistribute fills which have become settled, stabilized and revegetated. SMCRA requires that areas which have been disturbed by surface coal mining (including surface impacts incident to underground mines) shall be backfilled and graded to restore AOC. Section 516 of SMCRA does not exempt any part of an underground operation from this requirement. While the addition could be as effective as the Federal regulation and has merit in that it would prevent redisturbance of partially recovered land, additional safeguards are necessary to prevent misuse of the provision.

Alabama has agreed to interpret existing regulations for the permit reclamation plan to not allow irregular or incongruent contours as a result of long-term spoil disposal. Based on this interpretation, the Secretary finds the State's addition, together with this policy statement, to be no less effective than the Federal counterpart.

Finding 14

The Secretary finds, except as noted below, that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G. This finding is made under the requirements of 30 CFR 732.15(b)(2). Alabama incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Title III, Alabama SMCRA Sections 13, 14, 15, 16, 17, 18 and 20 and in the Alabama regulations Subchapter G. Discussion of significant issues raised during the review of the Alabama permitting provisions follows.

14.1 The map scale of 1"-1000' required by the State regulations at 780.14(b) for permit maps was originally considered inadequate for technical review and less effective than the scale required by 30 CFR 771.23(e)(1). Alabama has explained that Alabama Section 780.14 establishes a minimum scale of 1"-1000'. Alabama stated this latitude is necessary because of the three distinctly different types of coal deposits found in Alabama: the Appalachian Plateau, the Valley and Ridge, and the Gulf Coast lignite. Each of these coal deposits when covered under a multi-year permit could cover very large or highly elongated tracts of land. To be limited to a single scale of 1"-500' could create situations that would be less accurate than would be found on a map of a larger scale. Drainage patterns and area may not be adequately represented, and critical physical features could be omitted. It also gives the Regulatory Authority discretion to require a larger scale when needed to clearly show all critical natural and man-made features. The Secretary finds that with proper exercise of discretionary power by the Regulatory Authority, Alabama section 780.14, is no less effective than 30 CFR 771.23(e)(1).

14.2 State Regulations 780.14(a) and 784.14(a) omit the requirement to identify the current use of the buildings which is included in 30 CFR 780.14(a) and 784.14(a) and is needed to ensure public health and safety and to allow the Regulatory Authority to apply the requirement of section 522(e)(5) of SMCRA. This requirement is necessary to identify occupied dwellings or other occupied structures that are within 300 feet of the mining operation. The blasting section does not clearly require the operator to identify the use of buildings; consequently, the blasting sections (State sections 816.65(f)(3) and 816.65(i)) are inadequate to cover or substitute for the omitted material identified in this issue. As a condition of approval, Alabama must revise its regulations to correct the deficiency. Alabama has agreed to require that the "current use of buildings" be indicated on an appropriate map until a regulation change can be accomplished. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.3 The corresponding sections 780.14 and 784.14 of the Alabama program are less effective than 30 CFR

779.25(k) and 783.25(k). These Federal sections require "sufficient slope measurements to adequately represent the existing land surface configuration * * *" and give criteria for such measurements including (1) angle of inclination, (2) extent, and (3) natural variations. Such measurements are necessary in order to determine the adequacy of the mining plan and to confirm the validity of other data presented. The Secretary finds that the omitted or comparable provisions should be included in the Alabama program. As a condition of approval, Alabama must amend its regulations to include the following language: "* * * sufficient slope measurements to adequately represent the natural premining land surface of the proposed permit area expressed in degrees or percent of slope. Such measurements shall take into consideration natural variations in the land surface". Alabama has further agreed that it will interpret its regulations to include the above language until a regulation change is accomplished. The Secretary finds the above proposed regulation change and interpretation to be no less effective than the Federal counterpart.

14.4 It was originally thought that several essential requirements found in 30 CFR 780.14 and 784.23 had been omitted from the corresponding Alabama Part 780 and 784. The State has pointed out through explanation and presentation of new material at the April 9 meeting that these requirements or their equivalent can be found in other sections and paragraphs of State Parts 780 and 784. Sections 30 CFR 780.14(a) and 784.23(a), "Lands Affected", are covered by State sections 780.14(a)(3) and 784.14(a)(3). Sections 30 CFR 780.14(b)(1) and 784.23(b)(1), "Existing Facilities", are covered by State sections 780.25 and 784.25. Sections 30 CFR 780.14(b)(2) and 784.23(b)(2), "Sequence of Operations", are covered by 780.11(b) and 784.11(b). Sections 30 CFR 780.14(b)(4), 780.14(b)(8), 784.23(b)(4) and 784.23(b)(8), "Coal-Storage, Cleaning and Loading Areas" and "Source of Waste", are covered by State sections 780.14(a)(15) and 784.14(a)(15). After considering the explanations and additional material presented by the State at the April 9 meeting, the Secretary finds the above State sections no less effective than the Federal counterparts.

14.5 Section 708.35(a) of the Federal regulations references sections 816.71–816.74. 30 CFR 816.71 covers general requirements for excess spoil disposal. Sections 816.72–.74 cover excess spoil disposal in specialized cases (Valley Fills, Head-of-Hollow Fills and Durable Rock Fills). the Alabama regulations contain only section 816.71, and consequently this is the only reference given in State section 780.35(a). 30 CFR 816.72 includes underdrain sizing criteria and lift thickness limitations which are not included under Alabama section 816.71. State sections 816.72 and .73 were improperly omitted (omission of section 816.74 is proper since it is an option). Therefore, as a condition of approval, Alabama must revise its regulations to include provisions comparable to 30 CFR 816.72–.73 and to reference these provisions at State section 780.35(a). Alabama has agreed that until such time that a regulation change is accomplished, the State will not issue permanent program permits at variance with the excess spoil disposal requirements of the Federal rules (See Finding 13.15 for sections 816.72.–73). The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.6 State sections 778.13(a) and 782.13(a) omit the requirement to include "equitable owners of record" as provided in 30 CFR 778.12(a)(2) and 782.13(a)(2). As a condition of approval, Alabama must revise its regulations to the effect that equitable owners of records found in a standard title search of the standard chain of title will be included. Alabama has agreed that until a regulation change is accomplished, the State will interpret its present regulations to mean that equitable owners of record found in a standard title search of the standard chain of title will be included. The Secretary finds that the agreed upon regulation change and policy statement render the above State regulations no less effective than the Federal counterparts.

14.7 In State section 778.13(d) the refererence to "paragraph (b)(3) of this section" is incorrect since there is no (b)(3). The correct reference should be Regulation 13.14(d). Therefore, as a condition of approval, Alabama must correct this typographical error. The Secretary finds that this correction will render State section 778.13(d) no less effective than the Federal counterpart.

14.8 State section 786.11(d) provides an exclusion of permit information "pertaining to the coal seam itself" which is not found in 30 CFR 786.11(d). This exclusion could be interpreted broad enough to preclude public participation and identification of vital information relative to potential environmental harm. Therefore, as a condition of approval, Alabama must revise its regulations to grant to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam. The Secretary finds the agreed upon regulation change will render the above State regulation no less effective than the Federal counterpart.

14.9 State sections 785.16(c)(7) and (d)(7) do not contain references to related State sections comparable to 30 CFR 816.72 thru 816.74 dealing with disposal of excess spoil in valley fills, head-of-hollow fills, and durable rock fills. The omission of section 816.74 is proper since this is an alternative. However, without proper reference to sections 816.72 and 816.73, which have been omitted from the State regulations, specific requirements outlined for head-of-hollow and valley fills regarding underdrain, filter and lift thickness requirements have been omitted. Therefore, as a condition of approval, Alabama must revise its regulations to reference the reincluded sections 816.72.73 in State section 785.16(c)(7). (See Finding 13.15 for reinclusion of section 816.72-.73.) Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with the Federal requirements of 30 CFR 816.72.73. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.10 State sections 786.21(a)(1) and (2) do not provide that the permit applicant demonstrate to the Regulatory Authority that the use of existing structures will not result in significant harm to the environment or public health or safety as do 30 CFR 786.21(a)(1)(ii) and (a)(2)(i). Under State section 701.11 the Regulatory Authority may grant an exemption from design standards of Subchapter K, providing performance standards are met, only if they make the findings required by section 786.21. Otherwise, the structure must be reconstructed or modified to meet standards pursuant to a compliance plan as part of the permit application. Consequently, the omission from section 786.21 leaves other section(s) deficient. Therefore, approval of the Alabama program is conditioned upon Alabama amending its regulations to include the equivalent of language in 30 CFR 786.21(a)(1)(ii) and (a)(2)(i)(B). Alabama has agreed that until a regulation change is accomplished, the State will require surface coal mine operators to demonstrate that the use of

existing structures will not result in harm to the environment or impair public health or safety in accordance with 30 CFR 786.21. The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterparts.

14.11 Sections 786.19(a) and (b) of 30 CFR require that permit applications to comply with all requirements of SMCRA and the regulatory program. Alabama's section 786.19(a) and (b) require that applications comply only with requirements of its Act. The permit requirements listed in Alabama SMCRA have been detailed by its regulations. Permit applications should obviously meet all of the requirements of the whole program, those set out in the Act and those more fully detailed in the regulations. Alabama has agreed to adhere to and enforce all applicable requirements found in both its Act and regulations. The Secretary finds that the agreed upon policy statement renders the above State regulations no less effective than the Federal counterparts.

14.12 Section 785.21 of 30 CFR and State section 785.21 concern the requirement that coal processing plants and other support facilities be permitted. Alabama's section 785.21 limits this requirement to those facilities located "at or near the mine site" while 30 CFR 785.21 covers all facilities not within the permit area of a specific mine. The U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation*, CA 79-1144 (May 16, 1980)) and the Sixth Circuit Court of Appeals (Shawnee Coal Co. v. Andrus, 661 F.2d 1063 (6th Cir. 1981) have both construed SMCRA to cover processing facilities whether or not they are located at or near a mine site. As a condition of approval, Alabama must amend its regulations to eliminate the requirement that such facilities must be "at or near the mine site" before being required to be permitted. Alabama has agreed that until a regulation change is accomplished, the State will exert jurisdictional authority over all coal processing facilities including those not at or near the mine site. (Alabama stated that it reserves the right to litigate this issue). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

14.13 Section 785.18(d)(9) of 30 CFR requires that before a variance to contemporaneous reclamation requirements may be granted, a permit contain three specified conditions. These specific conditions deal with (i) delineation of the area authorized for variance (ii) identifying substitute requirements and (iii) providing a detailed schedule for compliance. Alabama section 785.18(d) only requires the permits to be granted a variance to have conditions "such as" the three listed conditions. Alabama's Section is less effective than the Federal provision because it does not absolutely require the three conditions specified but allows a permit to contain conditions "such as" the necessary conditions. Therefore, as a condition of approval, Alabama must revise its regulations to require that all three of the specific conditions of section 785.18(d)(9) be met prior to the granting of the variance. Alabama has agreed that until a regulation change is accomplished, it will as a matter of policy not issue any permanent program permits that are inconsistent with the 30 CFR 785.18(d)(9). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

14.14 State section 786.19 does not include the provision that a determination be made by the Regulatory Authority that the activities proposed by the permit will not adversely affect endangered species. Section 30 CFR 786.19(o) includes such a provision and the Secretary has determined that, under primacy, the endangered species provision is the responsibility of the State. Alabama has stated that, as a matter of policy, it will consult with the appropriate State or Federal agencies to assure that activities would not affect the continued existence of endangered species or result in the destruction or adverse modification of their critical habitats. Based on this policy statement, the Secretary finds that the policy statement renders the above State regulation no less effective than the Federal counterpart.

Finding 15

The Secretary finds that, except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority to regulate or prohibit coal exploration consistent with 30 CFR Parts 776 and 815, and that the Alabama program includes provisions adequate to do so. This finding was made under the requirements of 30 CFR 732.15(b)(3). The Alabama program incorporates provisions corresponding to section 512 of SMCRA and 30 CFR Parts 776 and 815 in Title III, Alabama SMCRA section 19 and in the Alabama Regulations, Parts 776 and 815. Discussion of significant issues raised during the review of the Alabama program follows.

15.1 Section 776.17(b) of 30 CFR prescribes specific conditions necessary for information relative to coal exploration to be considered and treated as confidential. These conditions include (b)(1) Regulatory Authority determination that the information is indeed confidential; (b)(2)—specific guidelines for this determination and; (b)(3)—provisions for both the person desiring confidentiality and the person desiring disclosure to be heard by the Regulatory Authority. State section 776.17 contains no conditions except that the operator submit the request for confidentiality in writing and clearly mark the material confidential. The Secretary finds that conditions comparable to 30 CFR 776.17 (b)(1) and (b)(2) are needed and, while not essential, (b)(3) should also be included in fairness to the operator. It would not be necessary for the Regulatory Authority to determine at the time of submittal whether or not the "marked" information was indeed confidential. It could be placed directly in the "confidential" file. Then, if such information was requested the Regulatory Authority would make the decision. If the Regulatory Authority determined that the information was confidential, it would not be disclosed. If the Regulatory Authority were to doubt its legitimate "confidential" status, a meeting would be held with the operator at which time the operator would have the opportunity to defend the claim of confidentiality. Should the operator refuse the opportunity to meet or otherwise defend the claim to confidentiality or should the operator otherwise fail to successfully convince the Regulatory Authority of the legitimate confidentiality of a given parcel of information, that parcel of information would no longer be considered confidential. The Secretary believes that such conditions as the above may be included in the regulation, but that the final discretionary power as to the legitimacy of a "confidential" claim must rest with the regulatory authority. It is also important that if release or divulgence is forthcoming it should be within a reasonable length of time after the request for the information. The matter of access to confidential information by OSM personnel is not discussed since the Secretary assumes that all authorized OSM personnel will have total access to all State permit exploration, inspection and enforcement related information, whether or not it is labeled confidential.

Therefore, as a condition of approval, Alabama must revise its regulations to include provisions no less effective than the Federal provisions.

Finding 16

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to require that persons extracting coal incidential to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding was made under the requirements of 30 CFR 732.15(b)(4). The Alabama program incorporates provisions corresponding to section 528 of SMCRA and 30 CFR Part 707 in Title III, Alabama SMCRA section 31 and the Alabama Regulations Part 707.

Finding 17

The Secretary finds, that except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L and that the Alabama program includes provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(a)(5).

Provisions corresponding to section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Title III, Alabama SMCRA sections 24 and 25 and in the Alabama Regulations, Subchapter L. Discussion of significant issues raised during the review of the Alabama program follows.

17.1 Sections 843.11(a) of 30 CFR requires that when a cessation order has been issued because an authorized representative has discovered a situation where a condition creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources, but the ceasing of operations will not completely abate the danger or harm, the authorized representative shall impose affirmative obligations on the operator as a part of the cessation order requiring abatement of the condition in the most expeditious manner physically possible. Section 843.11(b) of 30 CFR requires that when an authorized representative issues a cessation order for an operator's failure to abate a violation within the time prescribed, the authorized representative shall require, in the order, that the operator perform certain actions necessary to abate the violation in the most expeditious manner physically possible. These requirements are based on sections 521(a)(2) and (3) of SMCRA which require the aforementioned conditions be ceased or abated "immediately", that unabated violations be remedied "in the most expeditious manner possible", and that "affirmative obligations" be imposed upon an operator to take whatever steps necessary to abate the imminent danger or significant environmental harm.

State sections 843.11(a)(2) and 843.11(b)(2) require that when a cessation order has been issued for whatever reason, "the State Regulatory Authority" shall impose affirmative obligations on the operator. The State believes that an authorized representative may not be eminently qualified to determine in the field what affirmative steps should be imposed.

While the Secretary believes that the State's position has merit, SMCRA requires that a cessation order be issued immediately for imminent dangers or significant environmental harm and that unabated violations be remedied "in the most expeditious manner possible" upon issuance of the order. The State's plan could result in delays in imposing the necessary affirmative obligations. Since consultation with experts before imposing affirmative obligations is desirable, the State may institute internal policies regarding consultation when possible. However, if the supervisor is unavailable or the consultation cannot be otherwise arranged, the authorized representative must be authorized to, and shall impose the affirmative obligations at the time the cessation order is issued. Therefore, as a condition of approval, Alabama must change its regulations, to be consistent with 30 CFR 843.11(a)(2) and (b)(2). Alabama has agreed that until a regulation change is accomplished it will, as a matter of policy, give authorized representative the necessary authority to, and require that authorized representatives impose affirmative obligations and to require the necessary actions to abate violations or the effect of violations in the most expeditious manner possible. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations consistent with the Federal counterparts.

Finding 18

The Secretary finds that, except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations and the Alabama program includes program provisions for implementation, administration and enforcement of a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. This finding was made under the requirements of 30 CFR 732.15(b)(6). The performance bond and liability insurance provisions of sections 507(f), 509, 510, and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII are incorporated in Title III, Alabama SMCRA sections 15, 17, and 21 and in the Subchapter J of the Alabama regulations. Discussion of significant issues raised during the review of the Alabama program follows.

18.1 30 CFR 805.11(a) requires that a factor should be included in the bond amount representing the cost of additional work to be performed by the Regulatory Authority to achieve compliance with revegetation standards in the event the permittee fails to implement the approved alternative postmining land use plan within two years. The State regulations section 807.12(d)(3) do not include this factor. Alabama has agreed to interpret State section 807.12(d)(3) to take into consideration and meet the two-year delay requirement. Based on this interpretation, the Secretary finds that with such an agreement the State program regarding the two-year delay, is no less effective than the Federal counterpart.

In addition the State section 805.11 contains a subsection (d) not found in the Federal § 805.11. This addition consists of a section concerning disposal of excess spoil generated by a current operation on areas which have been previously disturbed but not adequately reclaimed. The previously disturbed area must be included within the currently permitted area, but an additional bond amount is not required. In an attempt to ensure the reclamation of the entire area in the event an operator defaults on his obligations and abandons the job, the State regulation states that the condition of the entire area will be considered before full bond release is granted. Since Federal regulations require that all areas to be used for excess spoil disposal must be bonded, the Secretary is concerned that the State's plan might spread bond amounts too thin, resulting in less rather than more reclamation. However, since the plan has possibilities for increased reclamation activities, the Secretary proposes to allow its implementation on a controlled basis for an appropriate trial period. For a one year trial period,

the State will be allowed to put its plan into effect under the following conditions: (1) Prior to approval of any application involving the above described spoil disposal plan, the State Regulatory Authority must notify the OSM State Office and submit to that Office a report stating the relevant particulars concerning the request indicating that the State approves; (2) the OSM State Office will then review the matter and notify the State within 30 days of its approval or objection; (3) at the end of one year, the State shall submit to the OSM State Office a report on the project; (4) the OSM State office will then review the State report, add data or material as needed and transmit the material to OSM Headquarters; (5) a decision will then be made concerning the success or failure of the trial. It is recognized that a one year trial period may not be sufficient to adequately evaluate the initial results. Consequently the Office may extend this period as needed until sufficient data for appropriate evaluation is obtained. Alabama has agreed to the conditions specified above. Based on this understanding, the Secretary finds that Alabama's commitment to the above conditions renders the Alabama regulation no less effective than the Federal regulation.

Finding 19

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama law and provides regulations for civil and criminal sanctions for violations of Alabama law, regulations and conditions on permits and exploration approval in accordance with Sections 518 of SMCRA and consistent with 30 CFR VII, Part 845. This findings was made under the requirements of 30 CFR 732.15(b)(7).

The Alabama program incorporates provisions corresponding to section 518 of SMCRA and 30 CFR Part 845 in Title III, Alabama SMCRA section 28 and in Part 845 of the Alabama Regulations.

Finding 20

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws to issue, modify, terminate and enforce notices of violations, cessation orders and show cause orders in accordance with section 521 of SMCRA (30 U.S.C. 1271) and with 30 CFR Chapter VII, Subchapter L, and that the Alabama program includes provisions, adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(8).

The authority to issue, modify, terminate and enforce notices of violations, cessation orders and show cause orders in contained in Title III, Alabama SMCRA Section 25 and in the Alabama Regulations Subchapter L.

Finding 21

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with section 522 of SMCRA and 30 CFR Chapter VII, Subchapter F. This finding is made under the requirements of 30 CFR 732.15(b)(9).

Alabama incorporates provisions corresponding to section 522 of SMCRA and 30 CFR Chapter VII, Subchapter F in Title III, Alabama SMCRA section 28, and in the Alabama Regulations Subchapter F.

Finding 22

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program contains provisions for public participation in the development, revision and enforcement of the Alabama regulations and program. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Alabama provides authority for public participation in the development, revision and enforcement of the Alabama program throughout the Alabama SMCRA and Coal Surface Mining Regulations.

Finding 23

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program includes provisions to monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Alabama Surface Mining Commission consistent with 30 CFR Part 705. This finding is made under the requirements of 30 CFR 732.15(b)(11).

Alabama incorporates provisions which prohibit financial interests in coal mining operations in Title I, Alabama SMCRA section 7, in the Alabama Regulations Part 705, and in section 731.14(g)(12) of the Alabama Systems Section.

Finding 24

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under the Alabama SMCRA section 5 to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with section 719 of SMCRA until such time as the Federal rules on blaster certification are promulgated.

Finding 25

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under the Alabama law and regulations to provide for a Small Operator Assistance Program (SOAP) consistent with section 507 (c) of SMCRA and 30 CFR Part 795. This finding is made under the requirements of 30 CFR 732.15(b)(13).

The Alabama program incorporates provisions corresponding to section 507(c) of SMCRA and 30 CFR Part 795 in Title III, Alabama SMCRA section 15(c) and in the Alabama Regulations Part 705.

Finding 26

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to provide for protection of its employees in accordance with the protection afforded Federal employees under section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

The Alabama program incorporates provisions corresponding to section 704 of SMCRA in Title III, Alabama SMCRA section 26(j).

Finding 27

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama law and the Alabama regulations provide for administrative and judicial review of State program actions in accordance with sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(15).

The Alabama program incorporates provisions corresponding to sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L in Title II, Alabama SMCRA section 10 and in Subchapter L of the Alabama Regulations.

Finding 28

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws, and the Alabama program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. There is nothing in the Alabama Legislation or regulations which would prohibit dissemination of information to the Office, and the Secretary assumes that all authorized OSM personnel will have total access to all State permit exploration, inspection and enforcement related information, whether or not it is labeled confidential. This finding was made under the requirements of 30 CFR 732.15(b)(16).

Finding 29

The Secretary finds that neither Alabama SMCRA and regulations adopted thereunder nor other laws and regulations of Alabama contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

Finding 30

The Secretary finds that the Alabama Surface Mining Commission and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and funds to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(d) and other applicable State and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

Agency and Public Comments for First Comment Period

January 16, 1982–February 16, 1982

Comments have been accepted and considered on Alabama's program resubmission of January 11, 1982 (Administrative Record AL–326A) and information provided by Alabama in connection with a reopened public comment period. Comments from groups or agencies are identified by name but names of individuals have not been used. Comments are organized into seven groups as follows: (I) General, (II) Alabama Law, (III) Definitions, (IV) Designating Lands Unsuitable, (V) Permitting, (VI) Bonding and Insurance, (VII) Performance Standards, and (VIII) Inspection and Enforcement.

I. General

1. the Fish and Wildlife Service (FWS) furnished a Biological Opinion pursuant to section 7 of the Endangered Species Act which stated that the program would not likely jeopardize the continued existence of Endangered or Threatened species or result in the adverse modification of their critical habitat. However, the FWS recommended that the OSM work with Alabama to develop procedures for on-site inspections of the area with regard to endangered, species since the Federal regulations requiring a fish and wildlife plan (30 CFR 779.2 and 780.16) were remanded. FWS also advised that its Biological Opinion extended only to the approval of the program and that another Biological Opinion was needed for OSM's oversight program.

OSM is presently developing regulations to replace the remanded 30 CFR 779.20 and 780.16 and full promulgation along with the subsequent amendment to Alabama's program may eliminate some of the FWS's concern. Pending this revision, the Secretary will request that OSM work with Alabama to ensure that the State is meeting its responsibilities for protection of Endangered and Threatened Species as set out in the Alabama Program. The FWS comments will also be considered in the development of an oversight plan.

2. The Minerals Management Service, United States Department of the Interior, commented that Alabama's general applicability provisions at Part 700.11 would include provisions for State regulation of coal exploration on Federal lands outside a permit area. This requirement, asserts the commenter, has no legal basis because Federal regulations at 30 CFR 730.1 only authorize States to develop a program for Non-Indian and Non-Federal lands. Further, the commenter points out that 30 CFR 700.11(g) clearly states that Chapter VII regulations do not apply to coal exploration on Federal lands outside permit areas.

The Secretary agrees that the scope (i.e., lands covered) of Alabama's regulations is not clearly defined. This lack of clarity may cause some confusion among persons intending to explore for coal on Federal lands. It is not, however, perceived as a major issue nor does the Secretary find that Alabama intended to attempt to contravene Federal regulations at 30 CFR Subchapter D. On the contrary, communications with State Officials indicate an awareness that, upon the Secretary's decision to grant primacy, the State will only have regulatory responsibility on State and private lands, unless the State requests and consummates a State/Federal cooperative agreement under 30 CFR Part 745. Even under an agreement permitting the State to regulate operations on Federal lands, the State would not assume responsibility over certain functions reserved by the Secretary, such as the review and approval of exploration operations on Federal coal lands subject to leasing under the Mineral Leasing Act of 1920, as amended.

3. Drummond Coal Company expressed concern that the Alabama Surface Mining and Reclamation Commission did not consider various proposed changes to the Federal regulatory program. Overlooking these changes could place the Alabama coal industry in a competitively disadvantageous position.

The Secretary maintains that State regulations must be evaluated relative to current Federal regulations and not with proposed or draft regulations. As changes to the Federal requirements are approved, States having primacy will be notified of the changes and will be authorized or directed, as appropriate, to revise their own programs. This will ensure that uniform rules and regulations will exist nationwide providing, to the extent possible, a competitive balance in the coal mining industry.

4. Citizens for Responsible Resources Development (CRRD) commented that Alabama's permanent program submission at section 731.14(d)(1) identifies those agencies to receive notices and copies of new, revised, or renewed permit applications. Absent from this list is the Alabama Water Improvement Commission (AWIC). Because this agency has jurisdiction over NPDES permits needed by most surface mining operators, it seems essential that AWIC be included in the list of recipients.

As pointed out by CRRD, Alabama has omitted reference to the AWIC at the State's 731.14(g)(1). The Secretary finds, however, that Alabama's description at the State's 731.14(g)(9) specifically addresses the role of AWIC in the surface mining program. In particluar, the Alabama Surface Mining Commission (ASMC) will be required to work closely with the AWIC to ensure that all water pollution control programs and plans meet the Federal and State water quality standards.

5. CRRD asserts that the State has failed to demonstrate, in State sections 731.14(j) and 732.15(d), that it has adequate legal staff to ensure that surface mining and reclamation will be

regulated in accordance with State and Federal laws and regulations.

The Secretary finds that the commenter has made some erroneous assumptions in presenting its contention that Alabama does not have sufficient legal staff. The commenter, for example, assumes that 139 operations per year will involve failure to reclaim. This would represent nearly 30 percent of the estimated number of annual violations and involve over 55 percent of the permits issued annually. The Secretary believes that this is far too high for a permanent program which will have bonding requirements encouraging contemporaneous reclamation. Some estimates of the time required to handle some of the legal aspects of enforcement will undoubtedly be high, while others will be low. The State and the Secretary have considered the resulting need for flexibility in the reallocation of attorney time to those areas having time budget deficits.

6. The Sierra Club, Environmental Policy Institute (EPI) and Legal Environmental Assistance Foundation (LEAF) stated that Alabama's regulation 10.109 fails to incorporate the Federal standards for mandatory intervention in administrative review proceedings. Federal regulations at 43 CFR 4.1110 state that a petitioner shall be granted intervention if the petitioner demonstrates that he or she has a statutory right or an interest which is or may be adversely affected. Since a statutory right to initiate or intervene in an administrative action under SMCRA is based upon a person having an interest which is or may be adversely affected, these two tests are actually the same. Discretionary intervention may be granted if other criteria are met. The State's regulation, 10.109, states that a petitioner shall assert that he or she has a statutory right to intervene, or the hearing officer may consider other relevant circumstances (which match the Federal discretionary criteria) in deciding whether or not to grant intervention.

The Secretary assumes that State hearing officers and other State administrative personnel are bound by the State statute. Those petitioners who assert a statutory right of intervention shall be allowed to intervene in the action. Other petitioners may be granted intervention if the hearing officer finds it to be appropriate after considering the criteria listed.

7. The Sierra Club, RPI, and LEAF assert that the State requires interested parties to seek an appeal of a "decision" within thirty days of the date it is mailed, while parties to the "decision" are allowed forty days to seek an appeal. The commenter states that this procedure is contrary to Federal regulations and is unfair.

The Secretary finds the commenter has misunderstood the regulations. While Federal regulations at 43 CFR 4.1162 do allow persons who have been cited for violations to apeal within thirty days of receipt of the enforcement documents and other persons not served with copies of such documents forty days, the Secretary finds that Alabama's plan of allowing everyone thirty days is no less effective than the Federal plan. The intent of the regulations is to allow interested persons and parties sufficient time in which to decide to appeal and draft the necessary documents. Since the documents required to perfect an administrative appeal are not lengthy or detailed in nature, thirty days is sufficient time. The State's regulations allow only thirty days for all persons to appeal enforcement action and to appeal the decision of a hearing officer to the Commission. Thus, the Secretary concludes that the commenter was mistaken concerning the forty days time period mentioned.

8. The Sierra Club, EPI, and LEAF stated that Alabama has not adopted standards for the award of costs and expenses, including attorney and expert witness fees, as required by SMCRA and Federal regulations at 43 CFR 4.1290 *et seq.*

The Secretary agrees with the comment and is requiring that the State amend its statute and regulatory program appropriately See Finding Number 1.2.

9. The Sierra Club, EPI, and LEAF stated that the Alabama regulations are unclear concerning who administrative hearing officers will be and who they will be supervised by. The commenter believes that hearing officers should not be supervised by the Director of the State Regulatory Authority.

The State statute and regulations create a Division of Hearings and Appeals. This Division is supervised by the Director; however, a Chief Hearing Officer will be responsible for the direct supervision of the other hearing officers. The line of authority runs from the Commission to the Director, from the Director to the Chief Hearing Officer and from the Chief Hearing Officer to the individual Hearing Officers. The Division is thus a separate branch within the Regulatory Authority; its employees come under the State Merit System; and section 26(j) of the Alabama SMCRA makes it a criminal offense to willfully resist, prevent, impede, or interfere with any agent of the Regulatory Authority in the performance of the agent's duties. The Secretary finds that Alabama's plan is no less effective than the Federal requirements in ensuring that Hearing Officers are fair and impartial.

10. The Sierra Club, EPI and LEAF commented that the State's program is unclear concerning whom the hearing officer will be in an adjudicatory administrative hearing and that the State program provides for a *de novo* review of agency decisions, which the commenter believes to be contrary to the type of review required by SMCRA.

Section 8 of the Alabama SMCRA creates a Division of Hearings and Appeals within the Alabama Surface Mining Commission. This Division is empowered to hear and determine appeals from regulatory, enforcement or other activities of the Commission. It is further provided that the Director of the Commission shall appoint one or more hearing officers to preside over such appeals. The State's program submittal shows at pages V–128, 131, 136 and 156 that it intends to implement these provisions of the Alabama SMCRA by organizing the Division directly under the Director with a Chief Hearing Officer and three Hearing Officers, all of whom will be attorneys licensed to practice in Alabama.

As to *"de novo"* review, the Alabama SMCRA does authorize a *"de novo"* review of agency actions while SMCRA requires a review on the record for appeals of OSM decisions. As the result of litigation concerning the permanent program regulations, the Secretary proposed and the court accepted a plan whereby *"de novo"* review might be structured so that it is in accordance with SMCRA. The Secretary developed seven criteria which a State must demonstrate that its procedures meet. At a meeting held between OSM and State officials on April 9, 1982, the State demonstrated that its *"de novo"* review procedures satisfy the seven criteria required by the Secretary; therefore, the Secretary finds that Alabama's *"de novo"* review procedures are in accordance with SMCRA. See Finding No. 1.1.

11. Citizens for Responsible Resource Development (CRRD) assert that the Alabama submission did not contain the required legal opinion from the Attorney General or the Chief Legal Officer of the State Regulatory Authority. Instead, the legal opinion provided was signed by an Assistant Attorney General. Further, the commenter pointed out that the required side-by-side comparison of State and Federal regulations was not mentioned in the legal opinion provided and it did not fully explain the legal effect of

differences between the State and Federal requirements.

The Secretary finds that the legal opinion provided by the State correctly reflects the opinion of the Attorney General's Office, even though not personally signed by the Attorney General. The Assistant Attorney General who signed the opinion is assigned to and in charge of the legal affairs of ASMC. Consequently, the Secretary regards him as the Chief Legal Officer of the Regulatory Authority. Further, the side-by-side comparison of State and Federal requirements together with other material available for review was sufficiently developed to permit an evaluation of all of the State requirements to determine if they satisfied Federal law and regulation.

II. Alabama Law

Citizens for Responsible Resources Development (CRRD) provided several comments on the Alabama SMCRA. Following is a synopsis of each of the comments along with the Secretary's response.

1. CRRD asserts that section 2 of the Alabama SMCRA contains language which tends to promote the development of coal resources. Such language, contends the commenter, is inconsistent with comparable wording at section 102 of SMCRA, which emphasizes protection of the environment from the adverse effects of surface mining and provides for a balance between protection of the environment and the nation's need for coal.

The Secretary finds that the commenter's concern results from a misinterpretation of the Alabama SMCRA. For example, the commenter suggests that the language "the extraction of coal by surface mining * * * is an essential and necessary activity which contributes to the economic and material well-being of the State" promotes coal development over protection of the environment. The Secretary does not agree with this view. On the contrary, in reading the full text of section 2 of the Alabama SMCRA it is clear, in his opinion, that the Alabama Legislature recognized and provided guidance for balancing the need for coal mining with protection of the environment.

2. CRRD indicates that section 21(c) of the Alabama SMCRA permits the State Regulatory Authority to approve an alternative bonding system. This, asserts the commenter, is inconsistent with section 509(c) of SMCRA which requires that an alternative system may be adopted only upon approval by the Secretary of the Interior.

The Secretary does not find that Alabama's provision under section 21(c) of the Alabama SMCRA for an alternative bond system is inconsistent with the section 509(c) of SMCRA. An alternative bonding system is authorized by section 509(c) of SMCRA. Before such system may be implemented, however, it must be approved by the Secretary of the Interior, as well as the Regulatory Authority. Since Federal law provides that the Secretary must approve alternative bonding systems, it is unnecessary for State law to repeat this requirement.

3. CRRD asserts that the language of section 21(k) of the Alabama SMCRA is inconsistent with section 519(f) of SMCRA. Sepcifically, the State language provides for public hearings at Jasper, Alabama (Office of the State Regulatory Authority), instead of the State Capitol, as required by SMCRA.

The Secretary agrees that the Alabama wording does not "track" the Federal language exactly. However, the State requirement is believed to be in accordance with SMCRA in providing for opportunity for public hearing and public participation. In fact, because Jasper is closer to the coal mining region, the State requirements may be more effective in providing the public with an opportunity to participate in bond release proceedings. The Alabama provision is in accordance with SMCRA.

4. CRRD points out that section 519(h) of SMCRA requires that a transcript be made available on the motion of any party or by order of the Regulatory Authority. Section 9 of ASMCRA, on the other hand, directs that a transcript be made only when an appeal is taken. The commenter asserts that this is inconsistent with the Federal requirement.

The Secretary does not find that the language differences pointed out by the commenter render Alabama's provision less effective than the Federal requirement. Although section 9 of the Alabama SMCRA specifies that transcripts will only be made available upon appeal, Alabama's implementing regulation at section 10.120 provides much greater flexibility. Here, the transcript must be made available upon appeal or at the direction of the State Regulatory Authority. This discretionary authority, which "tracks" the Federal requirements, provides for reasonable access to transcripts without appeal, while at the same time, protecting the State Regulatory Authority from having to unnecessarily bear the cost of transcribing some hearing records.

5. CRRD notes that section 515(b)(15)(A) of SMCRA requires daily notice to residents and occupiers living within one-half mile of a blasting area prior to blasting. In contrast, comparable provisions of section 22(b)(15)(A) of the Alabama SMCRA allow for a daily notice or audible warnings. In order that the State requirements be equally effective, the commenter suggests that the audible warnings must be heard up to one-half mile distance and persons within range must understand the meaning of the warnings.

The Secretary points out that section 816.66(c) of Alabama's implementing regulations requires that warnings and all clear signals must have an audible range of at least one-half mile from the point of blast. Also this same section specifies that the permittee must notify affected persons of the meaning of the signals through appropriate instructions. The Secretary finds these regulatory procedures consistent with the Federal requirements.

6. CRRD asserts that section 22(b)(15)(E) of the Alabama SMCRA would allow the State Regulatory Authority to promulgate provisions for pre-blasting surveys different from those promulgated by the Secretary.

The Secretary believes that although the Alabama SMCRA at section 22(b)(15)(E) is somewhat more general that the Federal counterpart at section 515(b)(15)(E) of SMCRA, it does not relieve the State of the responsibility for publishing a program that will be no less effective than the Federal requirements. In this regard the State has drafted implementing regulations at Part 816.62 for "Pre-blasting Surveys" which fully recognize the Secretary's provisions mentioned at section 515(b)(15)(E) of SMCRA and published at 30 CFR 816.62. Because Alabama's program satisfies the intended purpose of SMCRA, the Secretary finds the language of the Alabama SMCRA in accordance with SMCRA.

7. CRRD notes that delayed reclamation is authorized by section 515(b)(16) of SMCRA. Such delay, however, is limited only to operations which combine surface and underground mining operations. Alabama SMCRA contains language which would extend delayed reclamation provisions to "other types of mining operations". This, contends the commenter, is inconsistent with SMCRA, because it would permit reclamation delays for operation which involve only surface mining activities.

The Secretary recognizes that the wording "where the applicant proposes to combine surface mining operations with such other operations" (Section 22(b)(16) of the Alabama SMCRA), is somewhat ambiguous. Reasonable interpretation of this wording, however,

would suggest that Alabama intended "other operations" to mean underground mining for the following reasons: First, the term "surface (coal) mining operations" is defined at section 3(t) of the Alabama SMCRA to include the various forms of surface operations. It would, therefore, be redundant to also include such activities, within the meaning of "other operations". Also, the Seretary finds that the terms "surface mining operations" and "other operations", as used in the same sentence, were intended to have opposite meanings, i.e., "surface mining operations" encompasses all stripping activities while "other operations" includes underground mining. For these reasons, the Secretary finds that the Alabama SMCRA is consistent with the Federal requirement.

8. CRRD suggests that the construction of the Alabama SMCRA at section 22(c)(5) is ambiguous as to whether or not the State Regulatory Authority (SRA) has authority to impose certain requirements beyond those specified in Alabama's regulations. If the SRA cannot do so, then the State law, according to the commenter, is less effective than SMCRA.

The Secretary believes the commenter has misinterpreted the provisions of section 515(c)(5) of SMCRA. The Secretary does not believe Congress intended that the SRA must have authority to unilaterally impose permit requirements which do not have basis in law or regulations and are without Secretarial approval. Rather, section 515(c)(5) of SMCRA intends that the State Regulatory Authority develop, have approved, and promulgate regulations which implement the minimum permit requirements of the section 515. In addition, the SRA may (at its discretion) develop, have approved, and promulgate *other* permitting regulations which it deems are necessary to effectively implement and administer a permitting program in the State. The Secretary believes that the State's discretionary authority to promulgate additional requirements is reflected in the State's language and, therefore, provides requirements in accordance with the Federal counterpart.

III. Definitions

1. Citizens for Responsible Resource Development (CRRD) asserts that Alabama's definition of the term "valid existing rights" (VER) is inconsistent with the Federal definition at 30 CFR 761.5. The commenter points out that the State has included language which would only require the permit applicant to demonstrate a "good faith effort" to obtain all permits, instead of having obtained all permits prior to August 3, 1977, as required by the Federal definition. In addition, the State has extended the "good faith effort" test to the haul-roads portion of the VER definition. The commenter contends that these less stringent criteria for determining VER result in less effective protection for the Non-Federal and Non-Indian lands listed under Alabama regulation 761.4.

The Secretary points out that the U.S. District Court, District of Columbia, ruled in Civil Action No. 79–1144 that under the all permits test required under the Federal definition of VER an operator need only demonstrate a "good faith effort" to have obtained the necessary permits and ordered OSM to revise its definition accordingly. (*In Re: Permanent Surface Mining Regulation Litigation*, 14 ERC 1083 (D.D.C. Feb. 20, 1980) (Round 1).)

On Tuesday, November 27, 1979, following the Court's ruling, OSM published notice in the **Federal Register** (44 FR 67942) that the definition of VER had been remanded. Until a revised definition is published, OSM will rely on existing State law to interpret whether the document relied upon establishes valid existing rights and will interpret its definition as requiring a "good faith effort" to obtain all permits. Alabama has exercised this option in drafting its regulations. The Secretary finds that the State requirement is in accordance with the requirements intended by SMCRA in providing equal protection for all categories of land covered by Sections 761.4 of the State and Federal regulations.

2. CRRD stated that Alabama's definition of the term "historic lands" omits the Federal wording "eligible for listing on a State or National Register of Historic Places". Also, the definition does not contain the Federal language "sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending". These omissions, contends the commenter, do not provide protection comparable to the Federal requirements.

OSM suspended the language, "eligible for listing * * *." (**Federal Register**, November 27, 1979 (44 FR 67942–67943)) in accordance with its concession in *In Re: Permanent Surface Mining Regulation Litigation*, Round 1, supra. Regarding the omission of the language "sites having religious or cultural significance * * *", the Secretary has notified Alabama (on April 9—Administrative Record Number AL–347), that similar or equally effective language must be included in the State program before full approval can be granted. See Finding 12.5.

3. Drummond Coal Company indicated that the definition of roads should be consistent with SMCRA. The commenter suggests using the "Interim definition".

It is unclear to the Secretary what the commenter means by "interim definition" of (public) roads. It should be pointed out, however, that the U.S. District Court for the District of Columbia, announced in Civil Action No. 79–1144 that the government conceded that the Federal definition of the term "public road" was inconsistent with SMCRA. (See *In Re: Permanent Surface Mining Regulation Litigation*, Round 2, May 16, 1980, pp. 32–36.) Specifically, the concession was that the Federal definition was found to be too broad, encompassing too many thoroughfares open to the passage of vehicles. A new definition is being drafted. Until promulgated, the Secretary will rely on section 522(e)(4) of SMCRA to interpret the definition of "public road". The Secretary finds that Alabama's proposed definition is consistent with both the Court's ruling and section 522(e)(4) of SMCRA.

IV. Designating Lands Unsuitable

1. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Fund commented that Alabama's submission does not show any evidence of the establishment of a data base and inventory system, as required by 30 CFR 760.4 and 764.2. According to the commenters, this process should commence prior to program approval. Alabama indicates at section 731.14(g)(11) that ASMC has in-house data banks covering biological, hydrological, historical, and geological information. ASMC also has access to other literature and registers maintained and/or cataloged by other State agencies. The Secretary, therefore, finds that the State has inventoried and established a data base for processing lands unsuitable petitions.

2. CRRD believes that State regulation 762.11(a) is less effective than the Federal counterpart at 30 CFR 762.11(a) because the State's determination of reclamation feasibility will be done only under the Alabama SMCRA, while the Federal requirement specifies that it must be done under SMCRA, Federal regulations, and the State program.

The Secretary finds that inclusion of the language "Federal regulations and the State program", although clarifying, would be somewhat redundant and, therefore, unnecessary. Further, the

Secretary believes that Alabama's reference to State law necessarily implies that it must also comply with the implementing State regulations. See Finding No. 14.11.

V. Permitting

1. Citizens for Responsible Resource Development (CRRD) stated that Alabama has omitted from the State program, Federal provisions at 30 CFR 776.11(b) and 30 CFR 776.12(a) which would require, among other data, the submission of certain information about the company representative who has on-site responsibility for conducting exploration operations. This, according to the commenter, will place the SRA at a disadvantage in monitoring exploration operations. The Secretary finds that Alabama's requirements concerning information on the exploration operation will be no less effective than the Federal requirement even though there is no provision for giving specific data concerning the company representative who has on-site responsibility for conducting the operation. Further, Alabama believes, and the Secretary finds, that such a requirement could be unnecessarily cumbersome and may be difficult to monitor because of frequent changes in company personnel responsibilities. The State does require the name and other specific data properly identifying the entity responsible for the exploration operation, and will thus know whom to contact if enforcement action is necessary.

2. CRRD points out that Alabama regulations 776.12(a)(3)(i) and 783.12(b) do not address the Federal requirement to include identification of "districts, . sites, building, structures or other objects eligible for listing on the National Register of Historic Places". Also, the commenter indicates that the State's use of the language "known significant" may compromise the level of protection for some archeological resources, because it leaves it to the discretion of the operator to determine what is significant.

The Secretary contends that Alabama's regulation, as it concerns National Register sites, accurately reflects the ruling of the U.S. District Court, District of Columbia, of February 1980 (Civil Action No. 79–1144) in which the Federal language "eligible for listing" was suspended. With regard to the terminology "known significant", as used by Alabama, the Secretary does not believe this language gives the operator any discretionary authority to determine significance. Rather, it obligates the operator to include, in his application, sites which have been judged significant by historians and archeologists. Viewed in this context, the Secretary finds that Alabama's regulation provides protection no less effective than to the Federal rule.

3. CRRD stated that Federal regulations require the SRA to disapprove a coal exploration application if the operation will adversly affect sites that are eligible for listing on the National Register of Historic Places. State regulations do not contain a comparable requirement.

The Secretary points out that, as previously indicated, the February 1980 Court ruling in Civil Action No. 79–1144 resulted in the suspension of the Federal wording "eligible for listing". Therefore, the Secretary finds that Alabama's requirement at section 776.13(b)(3) is no less effective than the Federal counterpart, as modified by the Court's decision.

4. According to the CRRD, ASMC 776.17(b) will be less effective than 30 CFR 776.17(b) in providing information to the public. The commenter stated that the Federal rule requires the SRA to determine that data marked confidential is deserving of the classification. State regulations do not require a similar determination.

The Secretary agrees with the commenter and is requiring the State to make program revisions which satisfy the Federal requirement. The Secretary has advised the State that it will not object to permitting the operator to mark information confidential. However, if such information is requested by the public and the SRA suspects that the data is in fact not of confidential nature, the SRA will have to contact the operator who must clearly demonstrate that the data should be withheld from the public. If the operator cannot so demonstrate, then the RA may release the information. See Finding 15.1.

5. CRRD argues that State requirements for permit applications to identify and describe cultural and historic features will not effectively protect these resources, and that Federal regulations are more stringent because they include sites eligible for listing and do not require the significance "test" imposed by the State program.

The Secretary points out that, in February 1980, OSM suspended the Federal language "eligible for listing". Therefore, the Secretary finds that Alabama's regulatory language is consistent with the Court's ruling. Further, Alabama's significance "test" for archeological features is not intended to permit the applicant to determine significance. Rather, the applicant will be required to report those features which have been recognized by appropriate experts and authorities to be important sites.

6. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama in section 778.14 of its regulations limits the information required in permit applications on prior mining activities to five years, since the Federal rules require information on permits subsequent to 1970.

The State rule is identical to 30 CFR 778.14 which requires information on any permits suspended or revoked in the last five years. The Secretary finds, therefore, that the Alabama rule requiring information on permits held during the previous five years requires sufficient information to be no less effective than the Secretary's regulations in meeting section 507(b) of SMCRA.

7. CRRD indicates that Federal regulations at 30 CFR 779.13 and 783.13 require a broader area of environmental study and description than the comparable State regulations, 779.13 and 783.13. Specifically, the State requires study only "on the permit area and off-site areas which may be affected". Federal requirements, on the other hand, include "the permit area, adjacent area, and the general area prior to mining".

The Secretary finds that Alabama's language "* * * permit area and off-site areas that may be affected or impacted" will provide a level of protection no less effective than to the Federal requirement; the State wording "off-site areas that may be affected or impacted" is quite broad and, is no less effective than the Federal language "adjacent area, and the general area prior to mining".

8. CRRD asserts that unlike the Federal requirement at 30 CFR 779.14, State regulation 779.13(b) does not require a description of the physical properties of each stratum within the overburden, Additionally, the commenter points out that there is no State regulation comparable to 30 CFR 779.14(b)(2).

The Secretary points out that a comparison of State regulation 779.13(b) with 30 CFR 779.14 indicates near dentical construction. Both require description of each stratum within the overburden, and the stratum immediately below the lowest coal seam to be mined. With regard to the omission of a State regulation comparable to 30 CFR 779.14(b)(2), it is noted that this requirement is permissive, i.e., the State is not required to adopt a comparable provision.

9. CRRD commented that State regulations 779.13(c)(1) and 783.14(c) do not require a permit applicant to describe the horizontal extent of the water table and aquifers for the proposed permit and adjacent area; Federal regulations at 30 CFR 779.15(a)(1) and 783.15 do.

The Secretary contends that the use of the terminology"horizontal extent of the water table and quifers" is ambiguous and redundant. Federal requirements 30 CFR 779.15(a) and (a)(1) and 30 CFR 783.15(a) and (a)(1) are intended mean that the applicant must describe the horizontal extent of water resources within the proposed permit area and adjacent area. Alabama's regulation satisfies this intent by requiring a description for "the permit area and off-site areas"

10. CRRD contends that the State does not require that a permit application contain a description of the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground waters as do Federal regulations 30 CFR 779.15(b) and 783.15(b).

The Secretary finds that State regulations at sections 779.3 (c), (d), and (e) and 783.13 (c), (d), and (e) will effectively satisfy the information needs concerning recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water. Sections 779.13(c)(5) and 783.13(c)(5), for example, require rather specific data on ground water quality. Similarly, sections 779.13(e) and 783.13(e) will make it necessary for the applicant to have data on recharge, storage, and discharge characteristics in order for him/her to reach a determination on hydrologic consequences.

11. CRRD pointed out that ASMC 779.13(d) and 783.13(d) require that a permit application describe only important impoundments within the proposed permit area and off-site areas. The commenter stated 30 CFR 779.16 and 783.16(a) have much broader coverage, requiring the description and location of all ponds within the proposed permit and adjacent areas.

The Secretary contends that Alabama's use of the term "important" clarifies ambiguities in the Federal requirement. That is, literal interpretation of 30 CFR 779.16 and 783.16(a) would mean that the applicant would have to describe every pond, regardless of size, located in the proposed permit and adjacent area. The Secretary intends only that those ponds or impoundments which have functional uses be identified and described. The Secretary finds that Alabama's requirement to specifying that only "important impoundments" be included, is no less effective than the Federal provision.

12. CRRD asserts that Federal requirement at 30 CFR 779.16(b)(2)(vii) and 783.16(b)(2)(vii) allow the SRA to request "other relevant data from a permit applicant". The State does not include a comparable provision.

The Secretary does not agree with the comment and points out that Alabama has exercised its option to include additional requirements. Paragraph 779.13(d)(3)(vi) and 783.13(d)(3)(vi), which concern baseline acidity, are State requirements which have no direct Federal counterpart. Likewise, 779.13(d)(4) and 783.13(d)(4) of the Alabama regulations are additional requirements, authorized by 30 CFR 779.16(b)(2)(vii), and 783.16(d)(2)(vii), respectively.

13. CRRD stated that Federal regulations at 30 CFR 779.20 and 783.20 require that the permit contain information on fish and wildlife resources. Alabama's regulations do not. In a related comment, Drummond Coal Company stated that the fish and wildlife section should be modified to be more consistent with SMCRA. Drummond did not provide further detail.

The Secretary points out that the U.S. District Court, District of Columbia, in *In Re-Permanent Surface Mining Regulation Litigation Round 1, Sup.* ruled that the permit and bonding sections of SMCRA did not authorize the Secretary to require applicants to submit the fish and wildlife information at 30 CFR 779.20, 780.16, 783.20, and 784.21. In that the Federal regulations have been suspended, it is not necessary for Alabama to include such provisions in the State Program.

14. CRRD, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation noted that Federal regulations at 30 CFR 779.21 and 783.21 require permit applicants to provide adequate soil survey data for the proposed permit area; State regulations do not contain this requirement.

The Secretary points out that Federal regulations 30 CFR 779.21 and 783.21 were remanded by the Court in *Re: Permanent Surface Mining Regulation Litigation*, Round 1, supra.extend they require soil survey information for lands not qualifying as prime farmland. For soil investigation and survey of prime farmland, see Alabama regulation 779.27.

15. CRRD commented that State regulations 780.11 (c) and 784.11 (c) do not include requirements that a permit application contain a narrative explaining the construction, modification, use, maintenance, and removal of dams, embankments, and other impoundments; overburden and topsoil handling and storage areas and structures as do Federal regulations at 30 CFR 780.11 (b) and 784.11 (b).

The Secretary finds that the State has deleted the requirement regarding dams, embankments, and other impoundments, because it would be redundant with State regulations 780.25 and 784.25. The Secretary agrees with this deletion and believes the State's format is no less effective than the Federal counterpart. Also, the Secretary agrees with Alabama that "overburden and topsoil handling and storage areas and structures" are not "facilities", as implied by the Federal provision. They do not require design criteria and very little, if any, maintenance. Plans for their "removal" would be in accordance with section 816.24 and 817.24 of Alabama's regulations.

16. CRRD pointed out that 30 CFR 779.24(i) requires a map showing the boundaries of any cultural or historic resources eligible for listing in the National Register of Historic Places. The State program excludes this provision. CRRD further commented that a map showing the boundaries of all known archeological sites should be included in the permit application. State regulations only require the mapping of known significant archeological sites. Finally, the commenter notes that 30 CFR 779.24 (g) specifies that the location of water supply intakes must be mapped and included in the permit application. The State program has no comparable requirement.

The Secretary points out that the Federal wording "eligible for listing" was suspended by OSM. Therefore, Alabama's regulation at 780.14(7) is consistant with the Court's decision. Regarding the commenter's concern that Alabama omitted the requirement to show locations of water intakes, the Secretary points out that Alabama's regulation 780.14(a)(5) combines Federal requirements 30 CFR 779.24(e) and 779.24(g). Although Alabama's wording is different, the Secretary finds that it effectively covers the requirement for showing the location of water supply intakes.

17. CRRD commented that the State program does not contain requirements for maps and cross-section drawings of measures to be taken to ensure the protection of the hydrologic balance, as required by 30 CFR 780.21.

The Secretary points out that Alabama has recombined several parts and sections in an apparent effort to

consolidate and improve organization. The requirements of 30 CFR 780.21 are found in State section 779.13 with most of the requirements contained in 779.13 (g). The Secretary finds that although reorganization has occurred, all necessary requirements are included and that the applicable Alabama sections are no less effective than the Federal counterparts.

18. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama omitted certain mapping requirements for transportation facilities that are required by 30 CFR 780.37 and 784.37.

Alabama regulation 780.14 provides for an operation plan permit map(s). Item (a)(25) of this section specifically requires, among other things, the mapping of haul roads within the permit area. The Secretary finds that these mapping requirements are no less effective than the provisions of Federal regulations at 30 CFR 780.37 and 784.37.

19. CRRD noted that the State program completely omits the information required to be submitted by 30 CFR 783.14(a)(1) with an underground mining permit application.

The Secretary points out that Federal regulation 30 CFR 783.14(a)(1) was suspended December 31, 1979 (44 FR 77455) insofar as it requires a geologic description of the strata down to and including the strata immediately below any coal seam for areas to be affected only by "surface operations and facilities", where no removal of overburden down to the level of the coal seam will occur. Geologic descriptions will, however, continue to be required for areas where overburden is being removed to the level of the coal seam and for certain specified "surface operations and facilities" where required by other regulatory requirements. See 30 CFR 783.25, 784.16(e) and 784.24(b). Considering the above suspension, the Secretary finds that Alabama's requirements are no less effective than the Federal rules.

20. CRRD indicated that 30 CFR 784.14 requires a reclamation plan to contain a detailed description of the measures to be taken during and after underground mining to ensure protection of the hydrologic balance. State regulations do not require the reclamation plan to include such a description.

The Secretary points out that Alabama has recombined several parts and sections in order to consolidate and improve organization. The requirements of 30 CFR 784.14 are found in State section 783.13, with most of the requirements contained in 783.13(g). The Secretary finds that although reorganization has occurred, all necessary requirements are included and that the applicable Alabama sections are no less effective than the Federal counterparts.

21. CRRD contended that Alabama's regulations at 784.23(c) allow an underground mining operator to first address the proposed postmining land use of an area in a permit revision while Federal regulations contain no similar provisions. The commenter states that Alabama's plan would preclude consideration of the economic and technical feasibility of alternative postmining land uses which, according to the commenter, must precede mining to ensure the viability of the project.

The comment is incorrect in several respects. this issue was litigated as a part of the exhaustive review of the Federal permanent program regulations conducted by the U.S. District Court, District of Columbia. The Court held that, under Federal regulations, an underground mining operator could, near the end of the coal extraction phase of the operation, apply for an alternative postmining land use via the permit revision procedure. The court, therefore, ruled, quoting from a brief filed by the Secretary, "Hence, for underground, as for surface mining, the operator may wait until a reasonable time prior to the end of the coal extraction before applying for the alternative postmining land use."

Alabama's regulations require that a reclamation plan be filed as a part of the permit application and that the plan contain, inter alia a detailed estimate of the cost of reclamation with supporting calculations and a description of measures to be used to maximize the use and conservation of the coal resource. Thus, during the permit review process, the SRA will be able, by reviewing the reclamation plan and the operations plan, to make determinations of the economic and technologic feasibility of the operation and ensure that the site will be reclaimed to the levels required by law. If during the life of the operation, which often is many years in the case of underground mining, an alternative postmining land use becomes available, the operator may apply for a permit revision. At that time, the SRA will determine the viability of the alternative postmining land use. The Secretary, therefore, finds that Alabama's plan is no less effective than Federal requirements.

22. CRRD commented that Alabama regulation 785.10 would authorize off-site placement of spoil in abandoned mine lands with no bond coverage being required. According to the commenter, this will encourage operators to spoil on abandoned mine areas without providing for erosion control or other mitigating measures.

The Secretary finds that Alabama's provision would provide added incentive for operators to reclaim abandoned lands. Indiscriminate spoiling and lack of environmental protection, as suggested by the commenter, can be controlled through the permit terms and conditions and a diligent inspection and enforcement program. It is unlikely that an operator would jeopardize continued operations by knowingly and willfully violating permit provisions. This provision will also be implemented under a controlled plan with OSM oversight, further insuring that sound reclamation is enhanced rather than inhibited. See Finding 18.1.

23. CRRD commented that 30 CFR 785.13(h) requires the SRA to make several written findings before permitting an experimental practice. The State's regulations at 785.13(h) require only that the applicant make certain demonstrations; there is no requirement that the SRA make written findings. The Secretary agrees that the SRA is required to make the written findings. However, the Director of OSM must approve all experimental practices. The Director of OSM will not approve experimental practices prior to written findings by the SRA. Since the written finding by the SRA must be made prior to approval by OSM, the Secretary finds that the Alabama regulation is no less effective than the Federal counterpart.

24. CRRD noted that Federal regulation 30 CFR 785.16(c)(4)(iii) requires approval by the appropriate State Environmental Agency of an applicant's plan which demonstrates that a variance from approximate original contour will improve the watershed. State regulations do not require approval by an appropriate State Environmental Agency.

Although not specifically stated, the appropriate agency is the Alabama Surface Mining Commission; therefore, since the SRA must approve every variance the necessary approval is implicit.

25. CRRD commented that 30 CFR 785.18(d) requires the SRA to make specific written findings before issuing a permit which contains a variance from contemporaneous reclamation. The commenter further stated that the State regulations at 785.18(d) require only that the applicant make certain demonstrations; there is no requirement that the SRA make written findings.

The Secretary agrees that the SRA is required to make the above mentioned

written findings. However, written concurrence from MSHA is required before the variance can be approved. MSHA will not approve variances without written findings from the SRA. Since the written finding must be made by the SRA prior to the concurrence by MSHA, the Secretary finds that the Alabama regulations are no less effective than the Federal counterpart.

26. CRRD commented that 30 CFR 785.20(c) requires that the SRA to make a written finding that in addition to meeting all other applicable requirements, an augering operation will be conducted in compliance with Part 819. The State's regulations at 785.20(c) require only that no permit shall be issued unless the operation will be conducted in compliance with Part 819; there is no requirement that the SRA make a written finding.

The Secretary points out that the State regulations require compliance with Part 819 and all applicable requirements of Subchapter G prior to permit approval. This requirement is considered no less effective than the Federal counterpart. With regard to the written finding, the Secretary finds that the SRA's approval of the application constitutes a written finding that all provisions of Part 819 and Subchapter G have been or will be met; and that State regulation 785.20(c) is no less effective than 30 CFR 785.20(c).

27. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation suggested that Alabama's rules at 786.12 be changed to assure the public of a minimum thirty day comment period after the RA determines that a permit application is complete.

Based on the wording of Alabama regulation 786.11(a), newspaper notices will not be published until a complete permit application is filed with the SRA. Therefore, the Secretary interprets the State rules to mean that the public will have thirty days from the last newspaper notice to file comments on a complete application.

28. CRRD commented that 30 CFR 786.17(a)(2) requires the RA to determine the adequacy of the fish and wildlife plan submitted by the applicant in consultation with State and Federal fish and wildlife management agencies. The State program does not include a comparable requirement.

The Secretary points out that, because of the Courts decision in *In Re: Permanent Surface Mining Regulation Litigation*, Round 1, supra, a fish and wildlife plan is not required by Federal regulations. Therefore, Alabama is not obligated to require such plans from permit applicants, unless otherwise required by State law.

29. CRRD contended that Federal regulation 786.19(o) specifies that no permit or revision application will be approved unless the RA finds in writing that endangered and threatened species will not be adversely affected. There is no similar provision in the State's program.

The Secretary points out that in developing an operating plan, the applicant will be obliged to comply with the performance standards for protection of fish and wildlife and related environmental values (State rule 816.97). The applicant's operating plan must also include maps locating any threatened or endangered species (State rule 780.14(11)). Information in the operating plan, which is part of the permit application, will be used by the SRA to determine if the mining operation will affect threatened and endangered species. Approval or denial of the permit will be based on whether "the applicant has demonstrated that * * * operations * * * can be feasibly accomplished under the * * * operations plan contained in the application." (See State regulation 786.19(b)). The Secretary finds that the latter provision adequately includes the more specific Federal requirement at 30 CFR 786.19(o), and assumes that permits will not be issued which will adversely affect threatened or endangered species.

30. According to CRRD, Alabama's definition of self-bonding (State rule 700.5) is less comprehensive than the Federal definition at 30 CFR 800.5. State wording requires only the permittee to execute the indemnity agreement.

The Secretary finds that Alabama has adequately satisfied the Federal requirement through its definitions of the terms "permittee" and "person". See State regulation 700.5. Specifically, Alabama's definition of "permittee" is quite broad, effectively including (through the use of the term "person") individuals, partnerships, associations, etc. Thus, execution of the indemnity agreement by the "permittee", as used in Alabama's program, would have broader meaning and is no less effective than the Federal requirement.

31. CRRD asserts that State regulation 785.10, which permits off-site spoil placement on abandoned surface mine lands without additional bond coverage, will not promote reclamation and may result in spending bond money on lands outside the permit area.

As previously noted (*Permitting* Comment Number 22), the Secretary finds that Alabama's provision for placement of spoil on abandoned mine lands will encourage reclamation of these areas, thus relieving the burden on abandoned mine land reclamation funds. Assurance that operators will reclaim such areas which are required to be included in their permits, will be provided through rigid inspection and enforcement of the permit terms and conditions. This provision will be implemented under a controlled plan, with OSM oversight, further insuring that sound reclamation is enhanced, rather than inhibited. See Finding 18.1.

32. According to the Sierra Club, Environmental Policy Institute, and Legal Environmental Foundation the Federal rules at 30 CFR 788.12(a)(1) require the State Regulatory Authority (SRA) to set parameters in the program for determining what constitutes a significant departure from the approved mining methods.

The Secretary finds that the State has established the required parameters in State sections 788.12(a)(3), (b)(2), and (d), and finds the regulations no less effective than the Federal provisions.

VI. Bonding and Insurance

1. CRRD stated that several of Alabama's bonding requirements, specifically those at State sections 806.12(e)(6)(iii); 806.12(f)(8)(vi)(c); 806.12(g); 806.12(g)(3); 807.11(c); 807.11(h); and 807.12(e) are less effective than their Federal counterparts.

With some exceptions, the Secretary finds that Alabama's program includes provisions for implementation, administration, and enforcement of a system of performance bonds and liability insurance no less effective than 30 CFR Chapter VII, Subchapter J. See Finding 18.1.

2. Drummond Coal Company suggested that bond forfeiture should be based on the failure of reclamation and not on all the performance standards.

The commenter's concern is not clear to the Secretary because they do not focus on specific sections of Alabama programs. In reviewing section 808.13(a) of Alabama's program, however, the Secretary finds that the "criteria for (bond) forfeiture" listed are nearly identical in wording to those required by the Federal regulations at 30 CFR 808.13. Those criteria listed would require forfeiture because the permittee has indicated an inability to comply with State and Federal surface mining laws.

3. CRRD asserts that Alabama's program would entitle the Alabama Water Improvement Commission (AWIC) to make comments on proposed bond releases. The requirements at State regulation 807.11(b) and (c) however, do not provide that the AWIC receive notice of such pending actions,

except for the newspaper notice which is inadequate to provide AWIC with an opportunity to comment.

The Secretary finds that the newspaper notice required under section 807.11 along with the RA's obligation to coordinate and consult with AWIC (See State section 731.14(g)(9)) will ensure that AWIC has opportunity to comment on bond release actions.

VII. Performance Standards

1. CRRD asserts that the State has no statutory authority to "strike a balance between the protection of the environment and agricultural productivity and the nations need for coal", as stated at ASMC 810.2(j).

The Secretary finds that the State has rightfully recognized an obligation to enhance the economic well-being of the State by contributing to the nation's coal needs, and that sufficient statutory authority exists to support this regulation (See the Alabama SMCRA section (2)(a) and (b)). In Section 810.2(j), the State merely provides notice that its obligations to the people of Alabama to protect the State's environment and agricultural productivity will be balanced with economic interests and the development of its coal resources.

2. CRRD argued that the State restriction at sections 815.11 and 815.13 on disturbing more than one-half acre of land in exploration operations should be an alternative limitation, not an additional one. The commenter, therefore, suggests replacing the word "and" with the word "or".

The Secretary points out that the corresponding Federal wording at 30 CFR 815.11 and 815.13 uses "and" rather than "or". However, by adding the one half (½) acre condition, the State has made possible two cases which are not covered by either State section 815.11 or 815.13. These are cases in which: (1) Less than ½ acre is disturbed and more than 250 tons of coal are removed and (2) more than ½ acre is disturbed and less than 250 tons of coal are removed. The first of these two cases is not considered likely to occur. The thickness of coal seams in Alabama indicates that removal of more than 250 tons would involve disturbance of more than ½ acre. The second case is more substantive since it would be possible that more than ½ acre could be disturbed without removing 250 tons. The Secretary assumes that the two cases were not covered by Alabama due to an oversight. The Secretary further assumes that should either of the above cases occur the SRA will regulate the situation as coal exploration or as a surface coal mining operation, as appropriate. Thus, the Alabama regulation is not less effective than its Federal counterpart.

3. CRRD pointed out that 30 CFR 815.15(a) requires that habitats of unique value for fish, wildlife, and other related environmental values shall not be disturbed. The commenter noted that State regulation 815.15(a) is more permissive, requiring that habitat not be "unnecessarily" disturbed.

The Secretary agrees with the comment that the word "unnecessarily" renders the section less effective than the Federal counterpart. The Secretary is conditioning approval of the program upon a revision to the State regulations to replace the word "unncessarily" with the term "significantly". This change will eliminate the permissiveness suggested by the commenter. See Finding 13.1.

4. CRRD noted that 30 CFR 816.11(c)(1) requires the posting of signs at each point of access to a permit area from public roads. State regulation 816.11(c)(1), on the other hand, only requires the posting of signs at each "primary" point of access to the permit area.

The Secretary finds that Alabama's use of the term "primary" clarifies which access points need to be posted with signs. Literal interpretation of the Federal rule, for example, would require posting signs at all paths, trails, fire breaks, roads, etc. that provide access from public roads. The Secretary did not intend that access, not used by the public, should be so marked. Rather, the posting of signs is necessary only on roads, trails, paths, etc. which are commonly used by the public. Such access points are logically designated as "primary" access points by Alabama.

5. CRRD contends that Alabama regulation 816.22(e) would allow a permit applicant to determine acceptability of a soil substitute, rather than the SRA, as required by 30 CFR 816.22(e). The Secretary does not find the State has relieved itself of any responsibility for approving suitable soil substitutes. Although the State has placed the burden of proof on the applicant, it remains the sole responsibility of the SRA to review the material submitted by the applicant and to make a final determination to approve or disapprove the soil substitute proposal; the applicant cannot reach a unilateral determination nor can he proceed with the proposal without proper authorization from the SRA.

6. CRRD made several comments which suggested that State rules 816.41(d)(3); 816.42(a)(2); 816.42(a)(3)(ii); and 816.46(h) address only a limited number of pollutant parameters for water quality. The commenter suggested that State and Federal effluent limitations are more comprehensive and should be required in the State's program. The Secretary believes that the commenter has interpreted the State's regulations too narrowly. The Secretary points out that the general requirements of Alabama regulation 816.41(c) expressly prohibit violation of any Federal and State water quality laws, regulations, standards, or effluent limitations. Although worded differently, the Secretary finds that Alabama's regulation will be no less effective than 30 CFR 816.41(d)(3); 816.42(a)(2); 816.42(a)(3)(B) and 816.46(u) in protecting water resources.

7. CRRD indicated that 30 CFR 816.42(a)(6) requires a permittee to meet specific effluent limitations, regardless of the origin of the drainage entering the permittee's sediment pond. There is no comparable State provision. The Secretary finds that Alabama regulation 816.42(a)(6) is no less effective than the Federal requirement. Alabama's rule states that "Discharges of water disturbed by mining activities shall be made in compliance with all applicable effluent limitations guidelines for coal mining". The State takes the position that all point source discharges, including "mixed source" discharges, must meet the applicable provisions of State and Federal laws and regulations.

8. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation commented that Alabama's reference to compliance with State and Federal effluent limits is unclear. The commenters asked that Alabama regulations 816.42(a)(6) and 817.42(a)(6) be clarified to ensure that the numerical limits established by 30 CFR 816.42(a)(7) be met.

The Secretary finds that Alabama's requirements will be no less effective than the Federal rules. State compliance with the minimum State and Federal effluent standards will be monitored in the Secretary's oversight program and defects will be corrected accordingly.

9. CRRD noted that 30 CFR 816.44(a)(1) requires that stream diversions be approved by the RA and the State regulations do not have a similar provision.

The Secretary points out that Alabama's regulation 816.44(a)(1) specifies that the diversion must meet the requirements of State regulation 816.57(a). This section, in turn, indicates that no land within 100 feet of a perennial stream or intermittent stream shall be disturbed by surface mining activities unless approved by the RA. The Secretary, therefore, finds that the

content of Alabama's regulations provides protection no less effective than the Federal requirement.

10. CRRD pointed out that Federal regulation 30 CFR 816.45(b)(2) includes the sediment control method, stabilization of backfill material, to promote a reduction in the "volume" of runoff. State regulations, in contrast, address "velocity" of runoff.

The Secretary finds that the intent of 30 CFR 816.45(b)(2) is to identify sediment control measures which can be employed to prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The reduction in "velocity" of runoff will achieve this by: (1) Reducing the sediment carrying capacity of flow and (2) reducing the volume of water and total sediment passing over the permit area. For these reasons, the Secretary finds that Alabama's wording at section 816.45(b)(2) will be no less effective than the Federal requirements in achieving the goal of reducing the amount of sediment reaching water bodies off the permit area.

11. Several CRRD comments and a Sierra Club (et al.) comment pointed out that the State program omits Federal requirements for sedimentation pond sediment storage, minimum detention time, dewatering devices that meet certain criteria, and sediment removal. These commenters contend that the omissions result in a State program that is less effective than Federal regulations at 30 CFR 816.46(b); 816.46(c); 816.46(d); and 816.46(h).

The Secretary points out that, as a result of the Court's decision in *In Re: Permanent Surface Mining Regulations Litigation*, Round 2, supra, OSM published notice at 44 FR 77452, December 31, 1979, that portions of the Federal requirements noted above, concerning sediment pond design capacity and pond size, detention capacity, dewatering, and sediment removal, were temporarily suspended. Certain portions of the Federal pond design requirements, however, have not been suspended. To the extent than Federal requirements remain in effect, State programs must contain requirements that are no less effective that the Federal requirements. The Secretary agrees with the comment and is requiring the State program to contain the prerequisite pond design criteria. See Finding 13.16.

12. CRRD and the Tennessee Valley Authority (TVA) commented that Alabama's section 816.48(c) does not require a 30 day time limit for burying or treating all acid-forming or toxic-forming spoil. The commenters indicated that this will result in less effective protection than that provided by 30 CFR 816.48(c).

The Secretary does not find that the 30 day limit for burying or treating acid-forming or toxic-forming spoil is paramount to achieving a high-level of environmental protection. More important is the physical isolation of these materials from the elements. Alabama's program adequately satisfies this latter requirement through its provisions at State section 816.48(c) that any problem spoils which are to be stored, must be placed on impermeable material and protected from erosion and contact with surface water.

13. CRRD asserted that permanent impoundments should not be allowed unless the discharge from the impoundment meets effluent limitations, not water quality standards, as provided by State rule 816.49(a)(1) and 30 CFR 816.49(a)(1).

The Secretary suggests that the commenter is interpreting the State and Federal requirements too narrowly, particularly the language "water quality standards". This wording has much broader connotation when considered in conjunction with other regulations at Part 816. Specifically, section 816.41(c) of the State and Federal rules state that "in no case shall Federal and State water quality statutes, regulations, standards or effluent limitations be violated."

14. CRRD pointed out that 30 CFR 816.49(h) requires a qualified, registered professional engineer to certify all dams and embankments annually. The State does not include a comparable requirement in its program. In a related comment, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama's program does not require that some dams and embankments be inspected by a qualified professional engineer.

The Secretary agrees with the comments. As a condition of approval, Alabama is required to amend its program to provide that all dams and embankments meeting the criteria for regulation under 30 CFR 77.216(a) shall be routinely inspected as provided in 30 CFR 77.216–3 and that all inspection reports be kept available for inspection at the mine site. Additionally, the State is to amend its program to require that dams and embankments be certified annually by a qualified registered professional engineer and that such reports and certifications be filed with the State Regulatory Authority. See Finding 13.10.

15. CRRD contends that State rule 816.52(b)(2) and 30 CFR 816.52(b)(2) should allow for coordinating the approval to remove water quality or flow control systems with agencies other than the SRA.

The Secretary finds that the coordination suggested by the commenter is not precluded by the referenced requirements. On the contrary, these requirements merely identify an option to the SRA for removing certain systems. Before exercising such an option, however, the SRA will need to observe its responsibilities under its regulations to coordinate these activities with other affected agencies.

16. CRRD commented that discharges to ground water in underground mine workings require a permit from the Alabama Water Improvement Commission (AWIC) and must meet the permit limits of the AWIC. Alabama's regulation 816.55(b) should, therefore, provide that the SRA must coordinate with the AWIC when approving any discharges to underground mine workings.

The Secretary points out that State section 731.14(g)(9) requires that the AWIC be responsible for issuing NPDES permits. The ASMC will work closely with the AWIC to ensure that all water pollution control programs and plans meet the Federal and State quality standards.

17. CRRD commented that Federal regulation 30 CFR 816.64(b)(2)(ii) limits blasting to a maximum of four hours per day. State rule 816.64(b)(2)(ii) does not contain a similar limitation.

The Secretary agrees with the commenter. As a condition of approval, the State is required to amend its program so that blasting may be performed only for an aggregate of four (4) hours of any given day. See Finding 13.19.

18. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama has omitted the requirement contained in Federal rules that blasting not be conducted to within 500 feet of certain facilities.

The Secretary points out that on August 4, 1980, 30 CFR 816.65(f) and 817.65(f) were suspended insofar as they restrict blasting at distances greater than 300 feet from a dwelling or other structure, or from flammable facilities and water lines (See 45 FR 51549, August 4, 1980). Alabama's program submission "compensates" for the suspended language by requiring a blasting plan. The Secretary, therefore, finds that Alabama's requirements are no less effective than the Federal regulations.

19. CRRD, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation noted that 30 CFR 816.65(i) allows a 1.0 inch per second particle velocity. Comparable State rule 816.65(i) would permit a 1.4 inch per second velocity. Also, the weight of allowable explosives under ASMC 816.65(1) is greater than under 30 CFR 816.65(1). These less stringent requirements, argue the commenters, will increase the risk of blasting damage.

The Secretary agrees with the comment. As a condition of approval Alabama is required to revise its program to provide for a maximum peak particle velocity of 1 in/sec and to make appropriate adjustments in the scale distance formula and resulting table. Finding 13.20.

20. CRRD argues that ASMC 816.68(a) is less effective than 30 CFR 816.68 because the State requirement does not make blasting records available to the public.

The Secretary agrees that Alabama's regulations are silent with regard to the availability of blasting records. The Alabama SMCRA at section 22(b)(15)(B), however, provides that blasting logs will be maintained for at least three years and will be made available for public inspection upon request. The Secretary finds that since the State's statute specifically provides for the public availability of blasting records and the State regulations do not conflict, the statutory provision governs, and Alabama's program is in accordance with SMCRA.

21. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation assert that Alabama fails to adopt standards for the disposal of excess spoil consistent with 30 CFR 816.71. In particular, point out the commenters, Alabama allows disposal of coal processing wastes in head-of-hollow fills. Assuring compaction and stability of these materials may, therefore, be a serious problem.

The Secretary agrees with the comment. As a condition of approval, the State is required to revise its regulations to disallow disposal of processing wastes in head-of-hollow and valley fills. See Finding 13.12.

22. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama's rules fail to incorporate standards required by Federal regulations 30 CFR 816.72–74 for various types of fills.

The Secretary agrees with the comment that Alabama's regulations are less effective than the Federal requirements, as they relate to spoil disposal. As a condition of approval, the State is required to make regulatory revisions which ensure compliance with SMCRA and the implementing regulations. See Finding 13.15, 14.5 and 14.9.

23. CRRD and TVA commented that State rule 816.97(d) omits the fencing and other requirements designed to protect wildlife from hazardous areas.

The Secretary points out that section 816.97(a) of Alabama's regulations require use of the best technology currently available to minimize disturbances and adverse impacts of coal mining activities on fish and wildlife and related environmental values. The Secretary finds that this general requirement will provide protection no less effective than the fencing and other provisions of 30 CFR 816.97(d)(2) and (d)(3), while providing the State with a more flexible program to meet conditions unique to Alabama wildlife and its related environment.

24. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation indicate that Alabama regulations 816.103 and 817.103 allows the covering of coal and acid and toxic-forming materials with less than four feet of non-toxic material if approved by the Regulatory Authority. The commenters assert that even in view of suspended Federal rules, Alabama's regulations will be less effective because the State fails to ensure that alternative treatment will provide the necessary protection.

The Secretary does not agree with the comment. Assurance that the alternative treatment will work will be determined at the time an operator submits the proposal. The SRA's determination that the alternative treatment will be effective will be based on a technical review of the applicant's engineering and design data. Where the proposal is defective or deficient, the SRA may require additional measures or it may require covering the problem materials with four feet of "clean" materials.

25. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama has omitted the word "and" between paragraphs 816.112(c) and (d). According to the commenter, this suggests that the requirements are not cumulative, as they are under 30 CFR 816.112.

The Secretary does not agree with the comment. The construction of Alabama's regulations allows use of commercial and introduced species only when *all* of the conditions of section 816.112 are satisfied.

26. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation point out that Alabama omitted the provisions at 30 CFR 816.115 that require land approved for grazing use after mining be used for grazing according to certain standards.

The Secretary points out that 30 CFR 816.115 and 817.115 were suspended to the extent they require that land must be used for livestock grazing when the approved postmining land use is range or pasture. See **Federal Register**, Monday, August 4, 1980 (45 FR 81549). The Secretary, therefore, finds that if actual grazing use cannot be required, it would not serve any useful purpose to establish grazing standards.

27. TVA, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation pointed out that Alabama has elected to omit the "reference area" and/or "technical standards" requirements at section 816.116(b)(1). Instead, the State specifies that revegetation, with certain restrictions, must cover 80 percent of the affected soil surface area. According to the commenters, this will be less effective than the Federal reference area approach, which requires a productive capacity equivalent to 90 percent of the reference ara.

The Secretary points out that the Federal rule provides alternatives for measuring revegetation success. One of these alternatives is the reference area approach. The other is the use of technical guidance procedures approved for use in the State's regulatory program. Alabama has opted for the letter and the Secretary finds the standards and guidelines published in Alabama's program will be as effective as the Federal requirement in measuring revegetation success.

28. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama regulation 819.11 omits certain Federal performance standards for auger mining.

The commenters do not specifically identify that omitted performance standards. Therefore, the Secretary assumes that commenters are referring to the apparent omission of sealing or plugging auger holes within 72 hours, as required by Federal regulations in some instances. Assuming this is the omitted Federal requirement, the Secretary points out that Alabama requires "contemporaneous" plugging and sealing. The State interprets "Contemporaneous" to mean within 72 hours when an acid coal seam is encountered. The Secretary believes this interpretation is no less effective than

the Federal requirements. See Finding 13.2.

29. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation commented that 30 CFR 826.12(a)(1)(i) contains a blanket prohibition on placing spoil on the down slope. Alabama's corresponding rules appear to allow for an exemption from this requirement.

The Secretary does not agree with the comment. Alabama's provisions at 826.12(a)(1)(i) would merely permit use of excess spoil in road embankments located on the down slope. Such use would have to meet engineering and design requirements for road embankments. The Secretary, therefore, finds that Alabama's requirements are no less effective than the Federal rules.

30. CRRD commented that Federal regulations at 30 CFR 828.11(e) require restoration of quality of affected ground water while the State program does not have a similar provision.

Since restoration of the quality of affected ground water is required, the Secretary assumes that Alabama will not issue any in situ processing permits without having first amended its regulations to include this provision.

31. According to Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation, Alabama does not provide regulations for evaluating the growth of trees and shrubs in wildlife management areas.

The Secretary finds that Alabama's requirements for revegetation success for fish and wildlife management areas are no less effective than Federal rules at 30 CFR 816.116. Alabama has elected not to use the reference area approach for measuring revegetation success. Instead, the State will use "technical guidelines" which will be developed in consultation with appropriate State and Federal agencies and approved by the Secretary. Using technical guidelines to measure revegetation success will produce results similar to the reference area approach.

VIII. Inspection and Enforcement

1. Sierra Club, Environmental Policy Institute and Legal Environmental Assistance Foundation commented that Alabama's regulations allow for a partial inspection to be an on-site inspection. The commenter stated that Alabama's requirements also suggest that aerial inspections may be counted toward the partial inspection requirement.

The Secretary finds that both on-site and aerial inspection methods can be effectively used to assure permit compliance. Alabama section 842.11(a) specifies that no aerial review may be counted as a partial inspection unless it is appropriately documented with observable factors noted. The Secretary finds that inspection results and follow-up action are more important to administering an efficient and effective program than the method of inspection.

Public Comments for Second Comment Period

April 22, 1982–April 30, 1982

1. Alabama By-Products Corporation expressed concern that its coke plant would be regulated by the State Regulatory Authority as a "processing facility". The Secretary has concluded that the commenter's concerns are unfounded. The provisions of SMCRA, the Federal rules at 30 CFR Chapter VII, and the Alabama program are applicable to the suppliers of coal, not coal consumers.

2. The Environmental Policy Institute (EPI) noted that the ten (10) days allowed for public comments on the forty-five (45) issues identified by a the April 20, 1982, **Federal Register** notice (47 FR 16797) did not afford an adequate opportunity for review. The commenter further asked OSM to explain how it justified the addition of new material into the record beyond the time the Secretary was statutorily obligated to reach a decision on the Alabama program. OSM established the ten (10) day public comment period because the materials were not lengthy and because they related to clarifying previously submitted information which was afforded a much longer comment period. The Secretary was also attempting to proceed with the review process without "undue delay" which is explicitly spelled out in the legislative history of the Act. With respect to the commentor's second concern, the Secretary finds that it would be inappropriate to discuss the matter of the adminstrative record relative to SMCRA Section 503 at this time because of pending litigation.

3. EPI objected to OSM's agreement to allow Alabama to permit smaller scale maps since such latitude in the commenter's opinion would ignore the public's right to the detail called for by 30 CFR 771.23(e)(1) and 780.14(b).

The Secretary very diligently considered the view of the commenter in reaching his decision. Alabama has assured the OSM that the flexibility it is afforded will only be used where greater detail is not essential to protect the public and afford implementation of the full intent of Federal regulations and SMCRA. The Secretary, therefore, finds that the public will be provided the opportunity to review maps which depict adequate detail.

4. EPI commented that OSM's suggestion to the State regarding prohibiting "significant" disturbances to unique wildlife relative to coal exploration was less effective than the provisions of 30 CFR 815.15(a). The Secretary finds that the word "significant" is no less effective than the intent of the word "any" used in the Federal regulations. Taken literally, the word "any" could be interpreted to mean a sound wave or cutting of a single bush. The Secretary finds that such an overly restrictive interpretation is not intended and that the term "significant" will be interpreted properly to provide for a State regulation no less effective than the Federal regulation.

5. EPI noted that OSM's recommendation to the State that the State Regulatory Authority include "silviculture" in its definition of "agriculture" or "commercial" contravened OSM's preamble statement excluding silviculture as an appropriate post mining land use for mountaintop removal operations. The Secretary has considered carefully the commentor's concern. See Finding 13.16, for an explanation of the Secretary's disposition of this matter.

6. EPI cited that OSM's reference to sections 816.42(a)(b) and 817.42(a)(b) in the notes of the April 9, 1982 meeting (AL–345) relative to pound water quality discharges resulting from drainage from both disturbed and non-disturbed areas was unclear and requested clarification. OSM simply intended to state that if a sedimentation pond contained water from both a disturbed area i.e. an area off-site with poor water quality and a non-disturbed area, probably with good water quality; any effluent discharge would still have to be monitored according to state regulations no less effective than their Federal counterpart. The Secretary believes that the commenter's concern has been addressed adequately.

7. EPI commented that OSM should require Alabama to amend State regulations 786.19(a) and (b) requiring permit applications to comply with all requirements of the regulatory program as well as the State Act. Alabama informed OSM on April 9, 1982, in executive session that it would as a matter of policy, require compliance with all applicable requirements of both its Act and regulations. For further discussion of this matter, see Finding 14.11.

8. EPI noted that the State program should provide criteria no less effective than the provisions of 30 CFR 786.19(o)

denoting that proposals do not adversely affect endangered species. OSM was informed by the State Regulatory Authority on April 9, 1982, that it will consult with appropriate state agencies to assure that the proposed activities will not affect the continued existence of endangered species or result in the destruction or adverse modification of their critical habitat. See ALA 347. The State will not need a regulation amendment for implementation of this consultation. For further discussion on this issue, see Finding 14.14.

9. Drummond Coal Company (DCC) commented that the omission in the Alabama Statute (Act No. 81–435) of the provision for "reasonable attorney and expert witness fees" is in accordance and consistent with other laws of the State, even though the omission is not in accordance with 30 CFR 840.15. DCC further states that fees and court costs should be awarded by the courts on the basis of the outcome and merit of the suit, and asserts that inclusion of the Federal provision will perpetuate frivolous suits which will be burdensome to taxpayers and coal miners. The subject of this comment has been discussed previously. See Finding 1.2.

10. DCC expressed concern that the terms "having religious or cultural significance" and "sites for which historic designation is pending", which are contained in the definition of "Historic Lands", are not adequately defined. DCC believes this may lead to abuse of the process for designating lands unsuitable for mining by allowing areas to be called historic lands without criteria or evaluation in order to stop or delay mining for reasons other than those intended by SMCRA and the Federal regulations. DCC suggested that specific criteria be established for these two terms along with an evaluation of specific sites against those criteria by a qualified party. For a discussion of the commentor's concern, see Finding 12.5.

11. DCC recommends that if OSM requires the State to include a requirement in regulation 780.14(a)(4) to show the "current use of buildings", the regulation also be revised to reduce the distance requirement from 1000 feet to 300 feet as required by Federal regulations. The State has agreed to require the "current use of buildings" to be shown on an appropriate map, as required. (See Finding 14.2.) The distance requirement of 1000 feet is the same as that required by the Federal regulations at 30 CFR 780.14(a) thru reference to 30 CFR 779.24 and 779.25.

12. DCC states that it is not clear what is meant by the term "equitable owner" since the term is not defined. DCC further contends that requiring the applicant for a permit to investigate in order to determine all the interest in the property to be permitted is nonsensical and places both the applicant and the regulatory authority in the position of inquiring and reviewing private contractual agreements. "Equitable owner" is a standard legal term for any person with an equity interest in a property. The Secretary finds that such owners may be affected by surface mining of their property as much as the "legal owner" who holds the title to the property. The State has agreed to require a showing of the equitable owners of record found in a standard title search of the standard chain of title. The investigation, which concerned the commenter, is limited to a title search and the identification of interests in the property is limited to "legal and equitable owners of record". Such information is a matter of public record through property transfer records. The Secretary does not find obtaining this information to require lengthy investigation or involve reviewing private contracts. See Finding 14.6.

13. DCC stated that it could see no practical or environmental benefit in sealing auger holes in some instances within the arbitrary time limit of 72 hours since all drainage from auger holes can only be discharged after meeting appropriate effluent limits. DCC contends that the Alabama regulations are "as effective as" the Federal regulation in this regard. The Secretary disagrees. The State regulations without the 72 hour time limit in some instances are less effective than the Federal regulations. The 72 hour time limit applies to plugging auger holes with discharges containing toxic-forming or acid-forming material as a practical means of stopping harmful discharges before damage is done and more elaborate discharge control and treatment measures are required. See Finding No. 13.2.

14. DCC contends that the only determination that sedimentation ponds are the best technology currently available has been made by OSM without substantiation, rather than by EPA as OSM claims. DCC asserts that Alabama's regulations are as effective as the current Federal regulations since drainage from a disturbed area must meet effluent limits. DCC claims that State regulations are more effective in preventing environmental problems than the Federal regulations by allowing "treatment facilities", which considers that sediment ponds may cause more environmental degradation than treatment facilities in some areas and which provides for the use of improved technology in the future. DCC states that Alabama presently allows treatment facilities in small drainage areas which results in less environmental degradation. This subject has been discussed previously. See Finding 13.7.

15. DCC believes that sediment pond design should be left to the discretion of the design engineer to meet effluent limitations set forth in the regulations. DDC states that if design criteria are to be specified, they should be limited to the construction of the embankment only and not directed to hydrologic design. DCC further states that embankment slopes should not be specified, but a static safety factor of 1.5 used instead. The Secretary finds that certain basic design criteria must be specified to ensure a minimum safety standard while simultaneously giving flexibility to the engineer to design a structure for a specific situation. The Secretary finds this is accomplished in the current Federal regulations and therefore disagrees with the commenter. For further discussion of this point, see Finding 13.16.

16. DCC commented that OSM should not require Alabama regulations to be consistent with the current 30 CFR 816.72–73 and 817.72–73 dealing with spoil disposal since OSM has proposed new regulations to replace the current regulations. The Secretary can not agree with the comment that it is unwise policy to require the State to promulgate regulations consistent with a current Federal regulation when a less stringent regulation is being proposed. State regulations comparable to current 30 CFR 816.72–73 and 817.72–73 must meet the "no less effective than" criteria as applied to current Federal regulations. The Secretary further concludes that simply because a regulation is proposed to be changed it is not automatically as effective as a current regulation toward meeting the intent of the SMCRA. Public comments could indeed reflect that the proposed regulation did not satisfy the intent of SMCRA and could likewise necessitate a substantial change in such proposed regulation. For further discussion on spoil disposal, see Finding 13.15.

17. DCC noted that current Federal regulations 816.71 and 817.71 do not require spoil placement in four (4) foot lifts and therefore the proposed condition to the Alabama program should be removed. The OSM comment to which DCC has responded, item 8c of AL–347, related to sections 816.72 and 817.72, disposal of excess spoil for valley fills. 30 CFR 816.72(c) and 817.72(c) do reference a four (4) foot lift

maximum which is deemed essential to ensure stability. 30 CFR 816.71 and 817.71 incorporate the provisions of 816.72 and 817.72 making the recommended Alabama regulation no more stringent than Federal regulations. For further discussion, see Finding 13.13.

18. DCC further stated that the Secretary's proposed condition, 10a of AL–347, requiring Alabama's four (4) hour aggregate blasting regulation to be consistent with 30 CFR 816.64(b)(2)(ii) was incompatible with OSM's proposed rule of March 24, 1982. DCC also noted that the four (4) hour limitation also increased the risk of accident and public property damage due to holes left loaded overnight.

The Secretary disagrees with this comment for the reason previously stated under comment 16 of this section. All State revisions to the Federal programs must be analyzed relative to existing regulations, not proposed rules.

Relative to increasing the risk of accident and personal property damage the Secretary finds that this interpretation is not valid, since the loading operation is not initiated until the appropriate amount of time remains prior to scheduled detonation. The Secretary further concludes that existing regulations do provide latitude to the four (4) hour detonation period if in rare instances safety would be involved. For further discussion, see Finding 13.19.

19. DCC commented that the Secretary should not require Alabama to revise its regulation to require a blasting peak particle velocity of 1.0 inches per second and a scale distance of 60 feet because no technical justification for the criteria was identified. DCC went on to say that such a requirement appeared counterproductive since the regulation will probably change in the future.

The Secretary notes that the commenter pointed out the fact that the U.S. District Court for the District of Columbia in its May 16, 1980, decision did not invalidate the 1.0 inch per second criterion in the permanent program. For additional discussion, see Finding 13.20. Also, the Secretary must evaluate the State program in accordance with existing regulations and has no latitude for evaluation based on probable future changes for the reasons set forth under the discussion for comment 16 of this section.

20. DCC and Alabama By-Products Corporation disagreed that the Secretary should impose a condition on Alabama's program necessitating that the State exert jurisdictional authority over all coal processing facilities including those not near or at the mine site. DCC also stated that the objective of the condition was to clarify what the courts had been unable to do—i.e. determine what the phrase "at or near the mine" actually modifies. DCC went on to note that OSM had been selective in its court citations relative to the issue and had ignored a similar case of the United States District Court for the Northern District of Alabama, Southern Division.

The Secretary finds that the ruling by the D.C. District Court very clearly concluded that the phrase "at or near the mine" modifies only the loading of coal. The Secretary also notes that the cited case by the District Court for the Northern District of Alabama, dealt specifically and entirely with OSM interim regulations promulgated under section 501(a) of SMCRA not the permanent program regulations promulgated under section 510(b) *et seq.* of SMCRA. Consequently the D.C. District Court and Sixth Circuit Court proceedings specifically addressed the Act and the permanent program regulations. For further discussion, see Finding 14.12.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM and the states to test new ideas and for OSM to explain portions of the Federal requirements and how the states might meet them.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their program, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to ensure that communication between him and the states remained open and uninhibited at all times (44 FR 54444; September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a state after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a state program. Under 30 CFR 732.13 of the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 301(c), 502(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to conditionally approve a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision. It results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. It also avoids the costly and cumbersome problem of implementing Federal programs where the state submittal was deficient in only minor respects. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile,

historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First, the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by SMCRA and these regulations" (44 FR 14961; March 13, 1979). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete, because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. The Federal regulations 30 CFR 732.13(i), give the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist states in achieving compliance with SMCRA, not to excuse them from compliance.

The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Alabama program which the Secretary requires be corrected. In all other respects, the Alabama program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why each deficiency is minor, as required by 30 CFR 732.13(i). In those cases where agreement by the State (to a regulation change, policy statement or other action) is indicated, such agreement was reached between OSM and State officials in an executive session at OSM Headquarters in Washington, D.C., on April 9, 1982 (Administrative Record Number AL-347).

1. As discussed in Finding 1.2, the Alabama SMCRA fails to specifically provide for reasonable attorney and expert witness fees as required by Section 520(f) of SMCRA. This deficiency is minor since few, if any, cases are expected where these fees would be a factor prior to the projected legislative change. Further, while the Alabama SMCRA does not specifically provide for such fees, neither does it preclude them.

2. There are two definitions in the Alabama regulations which require that approval be conditioned upon a regulation change. These definitions are discused below under (a) and (b).

(a) As discussed in Finding 12.1, Alabama's definition of "Extraction of Coal as an Incidental Part" is deficient in that it could be construed to exempt areas intended to be covered by SMCRA. This deficiency is minor since Alabama has agreed to a regulation change to remove this exemption and has agreed that until a regulation change is accomplished it will, as a matter of policy, interpret the present wording to include as subject to regulation all areas included by the corresponding Federal definition.

(b) As discused in Finding 12.5, Alabama's definition of "Historic Lands" is deficient since it does not specifically delineate sites of religious, cultural or historic significance. This deficiency is minor since Alabama has agreed to change its regulation to provide for lands having religious, cultural or historic significance. In addition, while the present language omits desirable details, it is believed to be sufficiently specific to enable the Regulatory Authority to offer the necessary protection to valuable sites until a regulation change can be accomplished.

3. As discussed in Finding 13.1, Alabama's regulations do not provide sufficient protection for wildlife habitats. This deficiency is minor since Alabama has agreed to a regulatory change to substitute "significantly disturbed" for "unnecessarily disturbed"; and Alabama has further agreed that the State will, as a matter of policy, consider any significant disturbance to be unnecessary until a regulation change is accomplished.

4. Alabama's regulations regarding sedimentation ponds and other impoundments and embankments are less effective than the Federal counterparts.

Individual deficiencies requiring correction are discussed below under (a) through (e).

(a) As discussed in Finding 13.7, Alabama's regulations do not provide sufficient protection to the environment from surface mine drainage since "treatment facilities" are permitted as an alternative to sedimentation ponds. This deficiency is minor since Alabama has agreed to a regulation change or otherwise amends its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama has agreed not to use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

(b) As discussed in Findings 13.8 and 13.18, Alabama's regulations fail to provide for sufficient sedimentation pond design criteria since portions of the counterpart to 30 CFR 816.46(e)–(u) and 817.46(e)–(u) have been omitted from the corresponding State sections, 816.46 and 817.46. Consequently, essential references have been omitted from State sections 816.49(b) and 817.49(b). This deficiency is minor since Alabama has agreed to a regulation change to include the missing criteria and to reference the appropriate section in 816.49(b) and 817.49(b). Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with applicable Federal requirements 30 CFR 816.46(e)–(u) or 817.46(e)–(u).

(c) As discussed in Finding 13.9, Alabama's regulation regarding impoundments is deficient in that it does not prohibit slopes greater than 1v:2h.

This deficiency is minor since Alabama has agreed to a regulation change to include the 1v:2h slope limit requirement and has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that allow a slope greater than 1v:2h.

(d) As discussed in Finding 13.10, Alabama's regulation regarding inspection of dams or embankments is deficient in that it does not clearly provide for adequate inspection procedures. This deficiency is minor since Alabama has agreed to a regulation change to provide that all appropriate dams and embankments be inspected in accordance with 30 CFR 77.216–3 and that all resulting reports be kept at the minesite. In addition, Alabama has agreed that all certifications, reports and statements required by MSHA must be filed with the Regulatory Authority. Alabama has further agreed that until a regulation change is accomplished it will implement the new language as a matter of policy.

(e) As discussed in Finding 13.16, Alabama's regulation do not provide for a minimum sediment storage volume. This deficiency is minor since the portion of the Federal regulations which provides for a specific minimum storage volume has been remanded and Alabama has agreed to a regulation change to cover that portion of the regulations which has not been remanded and which requires the basic criteria for a minimum sediment storage volume. Albama has further agreed that until a regulation change is accomplished the State will, as a matter of policy, adopt the new language.

5. Alabama regulations regarding spoil and waste placement are not as effective as the Federal counterpart. Individual deficiencies requiring correction are discussed below under (a) through (d).

(a) As discussed in Finding 13.12, Alabama regulations do not prohibit disposal of coal processing waste in head-of-hollow and valley fills. This deficiency is minor since Alabama has agreed to a regulation change to the effect that disposal of processing waste in head-of-hollow and valley fills is not allowed; and Alabama has further agreed that until a regulation change is accomplished the State will, as a matter of policy, not allow such disposal.

(b) As discussed in Finding 13.13, Alabama regulations do not provide for horizontal lift placement of spoil. This deficiency is minor since Alabama has agreed to a regulation change to the effect that spoil will be required to be placed in 4' horizontal lifts unless other placement is specifically authorized by the Regulatory Authority; and Alabama has further agreed that until a regulation change is accomplished, the State will issue no permits which are at variance with the corresponding existing Federal regulations.

(c) As discussed in Finding 13.14, Alabama regulations do not contain criteria for slopes greater than 36 percent in spoil disposal areas. This deficiency is minor since Alabama has agreed to revise its regulations to include criteria for such disposal area slopes which are no less effective than the Federal counterparts and to reference these sections as indicated in Finding 13.14. Alabama has further agreed that until a regulation change is accomplished, the State will, as a matter of policy, require adherence to the Federal regulations covering slopes greater than 36 percent.

(d) As discussed in Findings 13.15, 14.5 and 14.9, Alabama regulations do not contain adequate criteria with regard to specific requirements for head-of-hollow and valley fills, as do 30 CFR 816.72–.73 and 817.72–.73, and that the references at State sections 780.35(a) and 785.18(c)(7) and (d)(7) are consequently deficient. This deficiency is minor since Alabama has agreed to regulation changes to include the missing sections and to reference the included sections as appropriate. Alabama has further agreed that until such regulation changes are accomplished the State will, as a matter of policy, require compliance with applicable provisions of 30 CFR 816.72–.73 and 817.72–.73.

6. Alabama regulations relative to blasting are not as effective as the Federal counterparts. Individual deficiencies requiring correction are discussed below under (a) and (b).

(a) As discussed in Finding 13.19, Alabama's regulations do not limit blasting periods to an aggregate of four hours per day. This deficiency is minor since Alabama has agreed to revise its regulations to provide a requirement consistent with the four hour aggregate provision of 30 CFR 816.64(b)(2)(ii). Alabama has further agreed that until a regulation change is accomplished it will not issue any permanent program permits that are inconsistent with 30 CFR 816.64(b)(2)(ii).

(b) As discussed in Finding 13.20, Alabama's regulations allow a higher peak particle velocity than does the Federal counterpart, with corresponding adjustment to the scale distance formula and accompanying table. This deficiency is minor since Alabama has agreed to revise its regulations to reflect the 1.0 in/sec. peak particle velocity of the Federal regulations and to correspondingly adopt a scale distance of 60 with appropriate adjustments to applicable tables. Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits which are inconsistent with 30 CFR 816.65 (i), (k), and (l).

7. Alabama's regulations relative to requirements for information on maps and plans in permit applications are not as effective as the Federal counterparts. Individual deficiencies requiring correction are discussed below under (a) through (c).

(a) As discussed in Finding 14.2, Alabama regulations omit the requirement to identify the current use of buildings. This deficiency is minor since Alabama has agreed to a regulation change to require identification of the current use of buildings; and Alabama has further agreed to require that the current use of buildings be indicated on an appropriate map until a regulation change can be accomplished.

(b) As discussed in Finding 14.3, Alabama's regulations do not require either sufficient slope measurements to adequately represent the existing land surface configurations or criteria for such measurements. This deficiency is minor since Alabama has agreed to a regulation change to provide for appropriate slope measurements. Alabama has further agreed that until a regulation change is accomplished, the State will interpret its existing regulations to provide for adequate slope measurements as indicated in Finding 14.3.

(c) As discussed in Finding 14.6, Alabama's regulations do not require that information concerning equitable owners of record be included in the permit application. This deficiency is minor since Alabama has agreed to a regulation change to the effect that equitable owners of record found in a standard title search of the standard chain of title will be included. Alabama has further agreed that until a regulation change can be accomplished the State will interpret its regulations to require inclusion of such equitable owners of record.

8. Alabama regulations are not as effective as the Federal counterparts since they contain provisions which could be used to prevent legitimate public access to certain information. Individual deficiencies requiring correction are discussed below under (a) and (b).

(a) As discussed in Finding 14.8, Alabama regulations improperly provide

that permit information pertaining to the coal seam may be excluded from public disclosure. This deficiency is minor since the information will be available to the Regulatory Authority so that inspection and enforcement activities will not be hampered. In addition, Alabama has agreed to a regulation change to grant to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam, and few public requests for "confidential" information are anticipated prior to the regulation change.

(b) As discussed in Finding 15.1, Alabama's regulations allow the operator rather than the Regulatory Authority to determine what exploratory information shall be regarded as confidential. The State regulations also omit specific guidelines for determining confidentiality. These conditions are minor since the necessary information will be available to the Regulatory Authority. In addition, Alabama has agreed to a regulation change to incorporate provisions consistent with 30 CFR 776.17(b)(1–3); and few public requests for "confidential" information are anticipated prior to the regulation change.

9. As discussed in Finding 14.10, Alabama's regulations do not provide that the applicant demonstrate that the use of existing structures will not result in significant harm to the environment or impair public health or safety. This deficiency is minor since Alabama has agreed to a regulation change to include such a provision. Alabama has further agreed that until a regulation change is accomplished the State will require such demonstration in accordance with 30 CFR 786.21.

10. As discussed in Finding 14.12, Alabama's regulations do not require permitting of coal processing plants and other support facilities unless they are located at or near the mine site. This deficiency is minor since Alabama has agreed to a regulation change which will include for permitting and regulation of these facilities whether or not they are located at or near the mine site. Alabama has further agreed that until a regulation change is accomplished, the State will exert jurisdictional authority over all coal processing facilities including those not at or near the mine site.

11. As discussed in Finding 14.13, Alabama's regulations do not clearly require the meeting of three specific conditions prior to the granting of a variance. This deficiency is minor since Alabama has agreed to a regulation change to require specific adherence to all three distinct conditions, and until a regulation change is accomplished, to grant no variance without the three specific conditions having been met.

12. As discussed in Finding 17.1, Alabama's regulations fail to provide the authorized representatives with the necessary power in order that they shall impose affirmative obligations on the operator. This condition is minor since Alabama has agreed to change its regulations to be consistent with 30 CFR 843.11(a)(2) and (b)(2), and until a regulation change is accomplished will as a matter of policy, give authorized representatives the necessary authority in order that they shall impose affirmative obligations.

13. Alabama's regulations are not as effective as the Federal counterparts since there are several typographical or clerical errors and minor omissions which could lead to serious misinterpretation of the regulations. These deficiencies are minor since Alabama has agreed to regulation changes in accordance with the following corrections. Alabama has further agreed that until such regulation changes are accomplished, the State will interpret the regulations consistent with the following changes.

(a) As discussed in Finding 12.2, the word "interests" has been erroneously omitted from the definition of "Federal Lands". Alabama has agreed to a regulation change to insert the word "interests" after "mineral".

(b) As discussed in Finding 12.3, the word "below" has been erroneously substituted for the word "in" in the definition of "Groundwater". Alabama has agreed to a regulation change to replace the word "below" with the word "in."

(c) As discussed in Finding 13.3 Part 823, the Alabama regulations do not include an appropriate "Scope" section. Alabama has agreed to a regulation change to correct this oversight.

(d) As discussed in Finding 13.5, the word "following" has been erroneously inserted in State section 823.15. Alabama has agreed to remove the word "following".

(e) As discussed in Finding 13.17, important references have been omitted from State sections 816.46(u) and 817.46(u). Alabama has agreed to a regulation change which will include the missing references.

(f) As discussed in Finding 14.7, there is an erroneous reference in State section 778.13(d). Alabama has agreed to replace the erroneous reference with the correct one.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Alabama program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Alabama program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be corrected in a timely manner, will not directly affect environmental performance at coal mines;

4. Alabama has initiated and it activity proceeding with steps to correct the deficiencies; and

5. Alabama has agreed, by Letter dated May 14, 1982, to correct the regulation deficiences by December 1, 1982, and the statutory deficiencies by September 1, 1983.

Accordingly, the Secretary is conditionally approving the Alabama program. If regulations correcting the deficiencies are not enacted by December 1, 1982, or if State legislation correcting the statutory deficiencies is not enacted by September 1, 1983, the Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program. This conditional approval is effective on May 20, 1982. Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama and all Alabama surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Alabama shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Alabama, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with section 523(c) of SMCRA, Alabama may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

The Secretary's approval of the Alabama program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I have certified that this rule will not have a significant

economic effect on a substantial number of small entities.

Indexing Requirements

List of Subjects in 30 CFR Part 901

Coal mining, intergovernmental relations, surface mining, underground mining.

Therefore, 30 CFR Chapter VI is amended by adding a new Part 901 as set forth herein.

Dated: May 14, 1982

James G. Watt,

Secretary of the Interior.

PART 901—ALABAMA

Sec.

901. Scope.

901.10 State regulatory program approval.

901.11 Conditions of State regulatory program approval.

Authority: Public Law 95–87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 901.1 Scope.

This Part contains all rules applicable only within Alabama that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 901.10 State regulatory program approval.

The Alabama State program, as resubmitted on January 11, 1982, and clarified in a meeting with OSM on April 9, 1982, [See Administrative Record No. AL–347] and in a letter to the Director, OSM, of May 14, 1982, is conditionally approved, effective (date of publication). Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alabama permanent regulatory program. Copies of the approved program, together with copies of the letter of the Alabama Surface Mining Commission agreeing to the conditions of 30 CFR 901.11, are available for inspection at:

Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, AL 35501

Alabama Surface Mining Reclamation Commission 100 Third Street, Fort Payne, AL 35967

Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, TN 37902

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

§ 901.11 Conditions of State regulatory program approval.

The approval of the Alabama State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as approrpriate, to the statute, the regulations, the program narrative, or by an Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary requires the change be made.

(a) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by September 1, 1983, copies of enacted legislation providing for attorney and expert witness fees in accordance with Section 520(f) of SMCRA.

(b) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations limiting the definition of "Extraction of Coal as an Incidental Part" to only those areas included in the Federal definition and,

(2) Copies of promulgated regulations redefining "Historic Lands" to include properly designated sites of religious, cultural and historic significance.

(c) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations changing the term "unnecessarily disturbed" to "significantly disturbed" in order to provide sufficient protection for wildlife habitats.

(d) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations or otherwise amends its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama may not use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

(2) Copies of promulgated regulations providing for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)–(u) and 817.46(e)–(u) and referencing these criteria in appropriate sections.

(3) Copies of promulgated regulations which will limit impoundment slopes to not greater than 1v:2h;

(4) Copies of promulgated regulations providing for the inspection of all appropriate dams in accordance with 30 CFR 77.216–3, for all resulting reports to be kept at the mine site, and for all certifications, reports and statements required by MSHA to be filed with the Regulatory Authority and;

(5) Copies of promulgated regulations providing for minimum sediment storage volume for sedimentation ponds.

(e) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations which prohibit the disposal of coal processing waste in head-of-hollow and valley fills;

(2) Copies of promulgated regulations which provide for the placement of spoil in 4' horizontal lifts unless other placement is specifically authorized by the Regulatory Authority;

(3) Copies of promulgated regulations providing for slopes greater than 36% with proper reference to such provisions where applicable throughout the Alabama rules in accordance with the Federal counterparts and;

(4) Copies of promulgated regulations which contain adequate criteria with regard to specific requirements for head-of-hollow and valley fills as effective as 30 CFR 816.72 and 816.73 and which contain references to the added sections as appropriate.

(f) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations which limit blasting periods to an aggregate of four hours per day and;

(2) Copies of promulgated regulations limiting maximum peak particle velocity to 1 in/sec at the location of certain structures and adjusting the scaled distance factor and accompanying tables accordingly.

(g) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations requiring identification of the current use of buildings on maps and plans in permit applications;

(2) Copies of promulgated regulations requiring sufficient slope measurements to adequately represent the existing land surface configuration and;

(3) Copies of promulgated regulations requiring that equitable owners of record found in a standard title search of the standard chain of title be included in the permit application.

(h) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982.

(1) Copies of promulgated regulations granting to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam and;

(2) Copies of promulgated regulations granting to the Regulatory Authority, rather than the operator, the discretionary power to determine the confidentiality of information relative to exploratory activities, and containing specific criteria for such determination.

(i) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which require the applicant to demonstrate that the use of existing structures will not result in significant harm to the environment or impair public health or safety.

(j) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which require the permitting of coal processing plants and other support facilities including those not at or near the mine site.

(k) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which require the meeting of all three specific conditions contained in 30 CFR 785.16(d)(9) prior to the granting of a variance.

(l) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations granting authorized representatives the power to and requiring that the authorized representatives shall impose affirmative obligations on the operator in situations of imminent danger or significant environmental harm or when an operator fails to abate the violation in the most expeditious manner physically possible.

(m) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations in which the word "interest" has been inserted after mineral in the definition of "Federal Lands".

(2) Copies of promulgated regulations in which "in" has been substituted for "below" in the definition of "Groundwater".

(3) Copies of promulgated regulations in which an appropriate scope section has been included in Part 823.

(4) Copies of promulgated regulations in which the word "following" has been removed from section 823.15.

(5) Copies of promulgated regulations which include appropriate references in sections 816.46(u) and 817.46(u).

(6) Copies of promulgated regulations which include the correct reference at section 778.13(d).

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May 20, 1982

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Approval of Abandoned Mine Land Reclamation Plan for State of Alabama Under Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

30 CFR Part 901

Approval of Abandoned Mine Land Reclamation Plan for State of Alabama Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On May 29, 1981, the State of Alabama submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Alabama Abandoned Mine Reclamation Land Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Alabama Plan.

Final promulgation of this rule has been delayed because Alabama did not have an approved State regulatory program under Title V of SMCRA and was enjoined from submitting its program. Under section 405(c) of the SMCRA, the Department cannot approve a State abandoned mine land reclamation program unless that State has an approved State regulatory program pursuant to section 503 of the SMCRA. The State of Alabama received such approval on May 14, 1982.

EFFECTIVE DATE: This rule is effective May 20, 1982.

ADDRESSES: Copies of the full text of the Alabama Reclamation Plan are available for review during regular business hours at the following locations:

Alabama Department of Industrial Relations, Montgomery, Alabama 36101

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Reclamation Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State reclamation plan demonstrating its capability for administering an abandoned mine land reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947–49949, October 25, 1978). Under these regulations the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office, on an annual basis, a grant application for funds to be expended in that State on specific reclamation projects. These funds are necessary to implement the State reclamation plan as approved. The annual grant requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950. Provisions relating to Alabama are found in 30 CFR Part 901.

Background on the Alabama Abandoned Mine Land Reclamation Plan Submission

On August 31, 1979, a cooperative agreement between the Alabama Department of Industrial Relations and OSM was approved. The purpose of this agreement was to assure that information required for the preparation of the Alabama Abandoned Mine Land Reclamation Plan would be assembled.

On May 29, 1981, the State of Alabama submitted its proposed Abandoned Mine Land Reclamation Plan to OSM.

On July 21, 1981, representatives of the Alabama Department of Industrial Relations met with OSM to discuss amendments and modifications to the proposed Plan.

On July 29 and 31, and August 4, 5 and 7, 1981, the Alabama Department of Industrial Relations held public meetings in Guntersville, Fort Payne, Tuscaloosa, Haleyville, and Birmingham, Alabama for comments on the proposed Plan.

On August 13, 1981, the Alabama Department of Industrial Relations submitted revised pages to the Alabama Plan. These revised pages contain several amendments and modifications to the original Plan resulting from public comments and the discussion between representatives of the Alabama Department of Industrial Relations and OSM. These amendments and modifications are specifically identified in a letter from Robert E. Weller, Administrator of State Programs, Department of Industrial Relations, to Ralph H. Cox, Assistant Regional Director for Abandoned Mine Land Reclamation, dated August 13, 1981. the necessary changes have been incorporated into the Alabama Plan. These revisions and amendments were considered in OSM's review process and are available as part of the administrative record.

Notice of receipt of the submission initiating the Plan review was published August 6, 1981 (45 FR 40049–40050). The announcement requested public comments. A public hearing was not held because the OSM Regional Director determined that the public was provided

adequate notice and opportunity to comment on the Plan and that the record did not reflect any major unresolved controversy.

On September 21, 1981, the OSM Regional Director and on December 22, 1981, the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Alabama Reclamation Plan.

The administrative record on the Alabama Plan is available for review at the Office of Surface Mining and the Alabama Department of Industrial Relations at the addresses listed above under "Addresses."

Assistant Secretary's Findings

1. In accordance with section 405 of SMCRA the Assistant Secretary finds that Alabama has submitted a Plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14 that: (a) the Department of Industrial Relations has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) the Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) the State has an approved regulatory program; and

(d) the Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary finds that the Alabama Reclamation Program lacks the requisite legal authority to carry out certain noncoal related reclamation activities consistent with Section 409 of SMCRA and 30 CFR 882.13(a) because it lacks lien authority on noncoal projects. Accordingly, until the necessary authority is obtained, the Office will not approve grants for noncoal reclamation activities where liens would be placed.

4. The Assistant Secretary has solicited and considered the views of other Federal agencies having an interest in the Plan, as required by CFR 30 884.14(a)(2). These agencies include the U.S. Army Corps of Engineers (COE), the U.S. Forest Service (USFS) and the Soil Conservation Service (SCS).

Disposition of Comments

The following comments received on the Alabama Reclamation Plan during the public comment period were considered in the Assistant Secretary's evaluation of the Alabama Plan as indicated.

1. The SCS commented that the Secretary of Agriculture is responsible for coordination of the Rural Abandoned Mine Program (RAMP) rather than the Alabama Department of Industrial Relations. OSM's response is that while the Secretary of Agriculture is responsible for coordinating the RAMP program with the State and OSM, the State, under 30 CFR 884.12(c)(3) has the responsibility to determine the procedures to be used by OSM and RAMP in carrying their respective responsibilties with the State. OSM finds that the provisions on page 43 of the Alabama Plan are within the authority of the State and no modification of the Plan is necessary.

2. The USFS commented that coordination is needed between the State and the USFS in relation to acquistion of private land and rights of entry for intermingled lands within the national forest boundary. OSM recognizes this need. However, such coordination is adequately provided for in the first paragraph of page 43 of Alabama's Plan which authorizes the development of policies with Federal agencies under the State's approved Plan. OSM, therefore, finds that no modification of the Plan is necessary to accommodate this comment.

3. The USFS commented that a discussion of the forest industry in Alabama should include reference to the importance of increasing productivity on private, non-industrial forest land. OSM does not agree that any one industry in the State of Alabama should be stressed, as far as importance is concerned, over any other. Forest land of all types are given equal consideration throughout the land use section of the Alabama Plan, and therefore, no modification of the Plan is required to accomodate this comment.

4. The USFS commented that the list of U.S. Department of Agriculture agencies does not include the Forest Supervisor, National Forests in Alabama, who is the designated coordinator for the USFS for the Abandoned Mine Land Program in the State. OSM agreed and notified the Department of Industrial Relations of the mailing address of the Forest Supervisor and advised the Department to make contacts with that office when national forest coordination is necessary.

5. The COE commented that the term "General Welfare" should be defined on pages iv and 18 of the Plan, and the term "Human Health" should be evaluated separately from "General Welfare." OSM does not agree since the terms in question are general concepts. The terms "General Welfare" and "Human Health" are used in the Plan as general descriptions and synonymously with the term "Public Health and Safety." The term "Public Health and Safety" is a legal concept which is continuously defined as the State deals with matters concerning the health and safety of its citizens. Since the term has a flexible meaning, it is not appropriate to explicitly define it in the Plan.

6. The COE commented that the Plan is written in the future tense and therefore does not sufficiently recognize the severe impacts of the past. OSM disagrees that the Plan does not sufficiently recognize the impacts of past mining. The purpose of the Plan is to provide for reclamation of lands and water adversely effected by past mining and left or abandoned in an unreclaimed or inadequately reclaimed condition prior to August 3, 1977. The reason why most of the Plan is written in the future tense is that it describes reclamation work that will be done in the future to remedy the environmental impacts of past mining.

7. The COE commented that it should be noted on page 3, paragraphs B and C that hazards that are in close proximity to the public may be caused by abandoned mine lands located miles up stream. OSM's response is that the definition of eligible lands and water includes the downstream effects on lands or water affected by mining. This definition is included on page iv of the Plan. Therefore, the Plan does not need to be modified to include the definition on page 3.

8. The COE commented that "stream aggradation, including adverse affects to navigation," should be added as an additional item on page 3 of the Plan's examples of hazards associated with abandoned mine lands. The reason is that severe problems have occurred due to sediment deposition long before flooding is a possibility. OSM agrees that stream aggradation may be a problem and has therefore requested that the State contact the Mobile District, Corps of Engineers, for information regarding occurrences of navigational impediments resulting from the adverse effects of past mining. The State will incorporate any known occurrences of impediments into its program through the AML inventory and will note the presence of such hazards in the appropriate section of the Plan.

9. The COE commented that the total acreages shown in the Plan for various creeks do not agree with previously published figures. OSM recommended that the State contact the Mobile District, Corps of Engineers, and request this data to update the information in the Plan.

10. The COE commented that perhaps general permits for action undertaking clean-up type activities requiring "404" permits would be appropriate. OSM agreed and has recommended that the State contact the Corps of Engineers for more information concerning such general "404"-type permits and consider using these permits if appropriate.

11. The Tennessee Valley Authority, Division of Land and Forest Resources, commented that the list of fishes of the northern half of Alabama should be rearranged in phylogentic order and errors in spelling and nomenclature should be corrected. OSM notes that the U.S. Fish and Wildlife Service and Alabama Wildlife Resources Agency store data on the fauna of Alabama, including fishes in alphabetical order by common name. The phylogentic order recommended by TVA is scientifically preferred. However, because of the method of storage, the data is more readily retrievable in the form presented by the Plan. Errors in the taxonomic nomenclature have been forwarded to the State and have been corrected by errata to the Plan.

12. The Geological Survey of Alabama made numerous technical comments on the mineral and hydrologic data in the Plan. OSM forwarded these comments to the Alabama Department of Industrial Relations with a recommendation that they contact the Geological Survey of Alabama for assistance in revising the mineral and hydrological data of the Plan and for incorporating the data into the program data base. The State was also informed that cartographic assistance might be obtained through consultation with the Geological Survey of Alabama.

Additional Findings

The Office of Surface Mining has examined this rulemaking under section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. approval will not have an effect on the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Alabama Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Plan. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Alabama Plan is categorically excluded from the National Environmental Policy Act's requirements. As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an EA or an EIS will be prepared for the approval of grants for abandoned mine land reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective upon date of publication is: (1) the Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation programs; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 901

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 1982.

J. Steven Griles,

Director, Office of Surface Mining.

Dated: May 14, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary-Energy & Minerals.

PART 901—ALABAMA

Therefore, Part 901 is amended by adding § 901.20 to read as follows:

§ 901.20 Approval of the Alabama Abandoned Mine Land Reclamation Plan.

The Alabama Abandoned Mine Land Reclamation Plan as submitted on May 8, 1981, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region II, 503 Gay Street—Suite 500, Knoxville, Tennessee 37902

Alabama Department of Industrial Relations, Montgomery, Alabama 36101

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315 1100 "L" Street, NW., Washington, D.C. 20240

[FR Doc. 82-13681 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-05-M

federal register

Thursday
May 20, 1982

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Lands Reclamation Program; Alabama; Availability of Findings of No Significant Impact

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) for development of 56 abanoned mine land projects under the State of Alabama Reclamation Plan.

SUMMARY: OSM has prepared EAs on projects included in the Federal Grant Application submitted by the State of Alabama to the Office of Surface Mining.

A FONSI has been prepared for the 56 reclamation projects indicated below and included in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231–1234.

ADDRESSES: Copies of the EAs and FONSI are available for inspection or may be obtained at the following locations between the hours of 8:00 a.m. and 4:00 p.m.:

Office of Surface Mining, 530 Gay Street, Suite 500, Knoxville, Tennessee

and

State of Alabama, Department of Industrial Relations Building, Greenspring Highway, Birmingham, Alabama 35205.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Acting Regional Director, (615) 971–5213.

SUPPLEMENTARY INFORMATION: Reclamation Projects included in FONSI, location and description:

1. Eddings Town Reclamation Project, Bibb County, Alabama, Seal mine shafts.
2. Little Ugly Creek Reclamation Project, Bibb County, Alabama, Seal shafts and portals, extinguish refuse fire.
3. Red Eagle Reclamation Project, Bibb County, Alabama, Seal shafts and portals, eliminate hazardous impoundment and highwall.
4. West Blocton Reclamation Project, Bibb County, Alabama, Seal portals, eliminate highwall.
5. County Line, East, Reclamation Project, Blount County, Alabama, Eliminate highwall.
6. Nyota, East, Reclamation Project, Blount County, Alabama, Seal portals, remove refuse pile.
7. Philadelphia Church Reclamation Project, Blount County, Alabama, Eliminate highwalls and impoundment.
8. Chesterfield Reclamation Project, Cherokee County, Alabama, Seal portals, eliminate tipple, reclaim strip mine.
9. Leesburg, West, Reclamation Project, Cherokee County, Alabama, Reclaim surface mine.
10. Bailey Mountain, South, Reclamation Project, Cullman County, Alabama, Reclaim mine spoils.
11. Adamsburg Reclamation Project, DeKalb County, Alabama, Eliminate highwalls and revegetate mine spoils.
12. Hammond Gap Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils.
13. Mahan Crossroads Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, repair silt pond.
14. Mentone Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, repair silt ponds.
15. Sylvania, East, Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, eliminate highwall.
16. Stevenson Reclamation Project, Jackson County, Alabama, Seal portals and shafts.
17. Blossburg Reclamation Project, Jefferson County, Alabama, Eliminate Highwall.
18. Blue Creek Reclamation Project, Jefferson County, Alabama, Flood abatement.
19. Brookside, West, Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.
20. Coalburg Reclamation Project, Jefferson County, Alabama, Seal shafts.
21. Crocker Junction, South Reclamation Project, Jefferson County, Alabama, Seal portals and airshaft.
22. Easterwood Mountain Reclamation Project, Jefferson County, Alabama, Seal shafts and portals, correct subsidence.
23. Kimberly Reclamation Project, Jefferson County, Alabama, Seal portals.
24. Lola City, East, Reclamation Project, Jefferson County, Alabama, Seal shafts and portals.
25. Maxine Reclamation Project, Jefferson County, Alabama, Seal shafts, eliminate hazardous structures.
26. Nichols Shoals, South, Reclamation Project, Jefferson County, Alabama, Seal portals.
27. Pinkney City Reclamation Project, Jefferson County, Alabama, Seal portals.
28. Royal Oaks Reclamation Project, Jefferson County, Alabama, Seal portals.
29. Seloca Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.
30. Warrior, South, Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.
31. Brookside Reclamation Project, Marion County, Alabama, Seal portals and shafts.
32. Rock City, East, Reclamation Project, Marion County, Alabama, Seal portals and shafts, reclaim refuse areas.
33. Dogwood Reclamation Project, Shelby County, Alabama, Seal shafts and portals.
34. Helena, Southwest, Reclamation Project, Shelby County, Alabama, Seal portals.
35. Inverness Reclamation Project, Shelby County, Alabama, Seal portals and shafts.
36. Riverchase Reclamation Project, Shelby County, Alabama, Seal portals.
37. Beulah Reclamation Project, St. Clair County, Alabama, Seal portals and shafts.
38. Copper Springs Reclamation Project, St Clair County, Alabama, Seal airshaft.
39. Blair Mine Reclamation Project, Tuscaloosa County, Alabama, Seal portal, reclaim refuse area.
40. Cedar Cove Reclamation Project, Tuscaloosa County, Alabama, Seal portals.
41. Aldridge Reclamation Project, Walker County, Alabama, Seal portals and shafts.
42. Barney, West, Reclamation Project, Walker County, Alabama, Seal airshaft.
43. Copeland Ferry Reclamation Project, Walker County, Alabama, Eliminate highwall and embankment.
44. Cordova, South, Reclamation Project, Walker County, Alabama, Seal portals and shafts.
45. Cordova, West, Reclamation Project, Walker County, Alabama, Seal portals.
46. Dogtown Reclamation Project, Walker County, Alabama, Correct highway subsidence.
47. Goodsprings, South, Reclamation Project, Walker County, Alabama, Seal portals and shafts, eliminate hazardous structures.
48. Holly Grove Reclamation Project, Walker County, Alabama, Seal portals and shafts.
49. McCollum Reclamation Project, Walker County, Alabama, Seal portal, eliminate hazardous highwall, structure and impoundment.
50. Mount Hope Reclamation Project, Walker County, Alabama, Seal portals.
51. Mulberry Fork Reclamation Project, Walker County, Alabama, Eliminate hazardous structure.
52. Nauvoo, East, Reclamation Project, Walker County, Alabama, Seal portals and shafts, eliminate embankment.

53. Oakman Reclamation Project, Walker County, Alabama, Seal portals, eliminate hazardous structure.

54. Twilley Town Reclamation Project, Walker County, Alabama, Seal portals, eliminate highwall.

55. Kaiser Bottom Reclamation Project, Winston County, Alabama, Eliminate embankment, reclaim mine spoils.

56. Natural Bridge Reclamation Project, Winston County, Alabama, Seal shafe, reclaim surfact mine.

Dated: May 14, 1982.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 82-13682 Filed 5-19-82; 8:45 am]

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federal register

Thursday
May 20, 1982

Part IX

Department of Transportation

Federal Aviation Administration

Environmental Protection Agency

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn; Aerial of Application of Pesticides; Denial of Petition for Rulemaking and Policy Changes

V 47/98 MY 2 0 8 2 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-82-5]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on May 10, 1982.

John H. Cassady,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Disposition of petition denied or withdrawn
19448	Friends of the Earth	The petitioner's proposed amendments essentially would: (1) impose certain additional restrictions on aerial application of pesticides; (2) require written permission to spray pesticides within 1,000 feet of a person or another person's property; (3) establish a much more stringent enforcement program, including the creation of a system of "penalty points" to be levied against a pilot's certificate for certain offenses involving pesticide spray drift onto persons or property; (4) make various other additions, deletions, and substitutions to Part 137. *DENIED 4/27/82.*

[FR Doc. 82-13422 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[PH-FRL-2127-8; OPP 30036A]

Aerial Application of Pesticides; Denial of Petition for Rulemaking and Policy Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice.

SUMMARY: This notice announces that the Agency has denied a petition submitted May 30, 1979, by Erik Jansson, Research Associate of the Friends of Earth, requesting changes in EPA policies and procedures regarding labeling and enforcement activities with respect to aerial pesticide applications.

ADDRESSES: A supporting document giving the reasons for the Agency's denial is available for review at the Agency's Headquarters from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays, and Regional Offices at the following addresses:

Environmental Protection Agency Headquarters, Office of Pesticides and Toxic Substances, Rm. E-107, 401 M St. SW., Washington, D.C. 20460.

EPA—Region I, John F. Kennedy Building, Boston, MA 02203, (617-223-5128).

EPA—Region II, 26 Federal Plaza, New York, NY 10007, (212-264-8359).

EPA—Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, PA 19106, (215-597-9869).

EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30308, (404-881-3621).

EPA—Region V, Federal Office Building, 230 Dearborn St., Chicago, IL 60604, (312-353-2192).

EPA—Region VI, First International Building, 1201 Elm St., Dallas, TX 75270, (214-767-2739).

EPA—Region VII, 324 East 11th St., Kansas City, MO 64106, (303-837-3926).

EPA—Region VIII, 1860 Lincoln St., Suite 900, Denver, CO 80295, (303-837-3926).

EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415-556-3352).

EPA—Region X, 1200 6th Ave., Seattle, WA 98101, (206-442-1090).

FOR FURTHER INFORMATION CONTACT: Robert Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-8292).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency and the Federal Aviation Administration (FAA) issued for comment two petitions submitted by the Friends of the Earth which were published in the **Federal Register** of January 17, 1980 (45 FR 3316). These petitions requested that each agency adopt procedures to alleviate certain problems associated with aerial application of pesticides. In the **Federal Register** of April 21, 1980 (45 FR 26722), EPA extended its comment period. The FAA also extended its comment period in the same issue of the **Federal Register**. After consideration of all comments submitted in response to the petition, EPA has denied the petition. The reasons for denial are set out in the supporting document available for review at the locations given above. Elsewhere in today's issue of the **Federal Register**, the FAA is denying the petition addressed to it.

Dated: May 6, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-13600 Filed 5-19-82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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Now Available 1980-1981 Microfilm Editions of the Federal Register

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federal register

Friday
May 21, 1982

Selected Subjects

Administrative Practice and Procedure
Agriculture Department

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Coal Mining
Surface Mining Reclamation and Enforcement Office

Disaster Assistance
Farmers Home Administration

Equal Access to Justice
Small Business Administration

Equal Employment Opportunity
Equal Employment Opportunity Commission

Food Additives
Food and Drug Administration

Food Labeling
Food Safety and Inspection Service

Government Employees
Personnel Management Office

Grant Programs—Education
Food and Nutrition Service

Hazardous Materials
Environmental Protection Agency

Imports
Animal and Plant Health Inspection Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Indians—Law
Indian Affairs Bureau

Lawyers
Justice Department

Loan Programs—Housing and Community Development
Housing and Urban Development Department

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Mine Safety and Health
Mine Safety and Health Administration

Over-the-Counter Drugs
Food and Drug Administration

Polychlorinated Biphenyls
Environmental Protection Agency

Postal Service
Postal Service

Radio
Federal Communications Commission

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Rules and Regulations

Federal Register
Vol. 47, No. 99
Friday, May 21, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Reimbursement of Participants in Rulemaking Proceedings

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is rescinding its regulations governing the reimbursement of individuals and groups for certain costs of participation in USDA rulemaking proceedings. This action is being taken because no applications for reimbursement under these regulations have ever been received and because a recent decision of the United States Court of Appeals for the Fourth Circuit on similar regulations has raised questions about USDA's authority to implement such a program absent express statutory authorization.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Elizabeth Webber, Office of Budget and Program Analysis, Room 147–E, United States Department of Agriculture, Washington, D.C. 20250, Phone (202) 382–1270.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 24, 1980 (45 FR 6020) USDA published final regulations governing the reimbursement of certain costs of participation in its rulemaking proceedings. These regulations provided that, to the extent funds were available, reimbursement could be authorized at the discretion of the head of a USDA agency to applicants who met certain specific selection criteria. To qualify for funding applicants were required to demonstrate that their participation could be expected to contribute substantially to a full and fair determination of the issues; that they were otherwise financially unable to participate; that they were from the area affected; and that they sought to represent an interest not adequately represented.

Because of the strict standards for qualification for reimbursement and the discretion allowed to heads of USDA agencies to approve reimbursement to the extent funds were available, this program was never expected to generate a substantial number of awards. Reimbursement was not available under this program to units of state or local government. In the period since these regulations were promulgated, USDA has not received any requests for reimbursement and no USDA agency has solicited applications for reimbursement in connection with any rulemaking.

Recently the Department's authority to implement these regulations was called into question by a decision on similar regulations by the United States Court of Appeals for the Fourth Circuit. In *Pacific Legal Foundation* v. *Goyan*, No. 80–1854 (Nov. 27, 1981) the Court held a Food and Drug Administration (FDA) regulation invalid on the grounds that it lacked express authorization to provide reimbursements to participants in rulemaking proceedings. In reviewing the FDA regulation, the Court relied on *Greene County Planning Board* v. *Federal Power Commission*, 559 F. 2d 1227 (2d Cir. 1976) *cert. denied*, 434 U.S. 986 (1976). In that case, a Comptroller General's finding that the Federal Power Commission had implied authority to reimburse legal fees of intervenors was held to be insufficient without "appropriate Congressional action," 559 F. 2d at 1240. The FDA (and USDA) regulations were based on the Conference Committee Report on their appropriations bill for fiscal year 1979 (House Report No. 1579, 95th Cong., 2d sess. 29 (1978)) in which both agencies were directed to disburse no funds for this purpose until regulations were put into effect which complied with rulings by the Comptroller General. The Court deemed this directive insufficient to meet the requirements of *Greene County*, drawing a distinction between substantive legislation and appropriations bills. Slip op. at 11–12.

USDA has determined that this rule is not a major rule as defined in Executive Order 12291. It is not likely to result in any significant effect on the economy; any major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Stephen B. Dewhurst, Director, Office of Budget and Program Analysis, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). In view of the lack of utilization of these regulations and the questions as to USDA's authority to implement them without specific statutory authority, it is found pursuant to 5 U.S.C. 553 that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 12

Administrative practice and procedure, Legal services, Travel and transportation expenses.

PART 12—[RESERVED]

Accordingly, Part 12 of Title 7, Code of Federal Regulations is hereby removed and reserved.

Dated: May 8, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-14057 Filed 5-20-82; 8:45 am]
BILLING CODE 3410-30-M

Food and Nutrition Service

7 CFR Part 227

Nutrition Education and Training Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Nutrition Education and Training (NET)

Program regulations which requires State agencies to submit participation report Form FNS–42 to FNS on a quarterly basis. This rule reduces the recordkeeping requirement and, therefore, decreases the administrative burden on State agencies at a time of limited resources. The amendment changes the submission of Form FNS–42 from a quarterly report to an annual report, thereby reducing the reporting burden on State agencies.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Henry S. Rodriguez, Director, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, 703/756–3585.

SUPPLEMENTARY INFORMATION: The NET Program is authorized by section 19 of the Child Nutrition Act, as amended. Final program regulations were published on May 15, 1979, (44 FR 28280), with only one amendment being added on March 7, 1980, (45 FR 14841). The Department does not consider this second amendment to be a "major rule" under the definition established in Executive Order 12291. This amendment will have no monetary effect on the economy, nor will it cause a major increase in costs or prices for any sector of the domestic economy. The amendment will not negatively affect the ability of United States-based enterprises to compete with foreign-based enterprises.

List of Subjects in 7 CFR Part 227

Education, Grant programs-education, Grant programs-health, Infants and children, Nutrition.

PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

In accordance with the Administrative Procedures Act, 5 U.S.C. 553(6)(3)(B), the Department finds that public rule making procedures would be contrary to the public interest.

Accordingly, 7 CFR Part 227 is being amended as follows:

1. The authority citation for Part 227 reads as follows:

Authority: Section 15, Pub. L. 95–166, 91 Stat. 1340 (42 U.S.C. 1788).

2. In § 227.30 paragraph (f)(3) is revised to read as follows:

§ 227.30 Responsibilities of State agencies.

* * * * *

(f) * * *

(3) Each State agency shall submit an annual performance report (Form FNS–42) to FNS within 30 days after the close of the Fiscal Year.

* * * * *

Dated: May 12, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82–13473 Filed 5–20–82; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 360; Lemon Reg. 359, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period May 23–29, 1982, and increases the quantity of lemons that may be shipped during the period May 16–22, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation (§910.660) becomes effective May 23, 1982 and the amendment (§910.659) is effective for the period May 16–22, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on May 18, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. Section 910.660 is added as follows:

§ 910.660 Lemon Regulation 360.

The quantity of lemons grown in California and Arizona which may be handled during the period May 23, 1982, through May 29, 1982, is established at 300,000 cartons.

2. Section 910.659 Lemon Regulation 359 (47 FR 20743) is revised to read as follows:

§ 910.659 Lemon Regulation 359.

The quantity of lemons grown in California and Arizona which may be handled during the period May 16, 1982, through May 22, 1982, is established at 310,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 19, 1982.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc 82–14164 Filed 5–20–82; 12:44 pm]

BILLING CODE 3410–02–M

7 CFR Parts 911 and 915

Limes Grown in Florida, and Avocados Grown in South Florida; Amendment of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment of the Florida lime and avacado regulations permits the use of additional containers for shipments of fresh limes and avocados. This action is designed to promote orderly marketing and to standardize packing practices.

DATES: Effective on and after May 18, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreements, as amended, and Orders No. 911 and 915, as amended (7 CFR Parts 911 and 915), regulating the handling of limes grown in Florida and avocados grown in South Florida. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Florida lime and avocado administrative committees and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This rule amends § 911.329, effective under 7 CFR Part 911—Subpart—Container Regulation, and § 915.305, effective under 7 CFR Part 915—Subpart—Container and Pack Regulations, by authorizing the use of additional containers to be used for shipments of fresh limes and avocados. The additional container being authorized for limes has inside dimensions of 12¾ inches x 15¼ inches x 10¾ inches. The rule specifies that such a container have not less than 38 pounds nor more than 40 pounds net weight of limes. Three additional containers are being authorized for avocados. These containers have inside dimensions of: (1) 12¾ inches x 15¼ inches x 10¾ inches; (2) 12¾ inches x 15¼ inches, with depth varying from 7½ to 8¼ inches; and (3) 12¾ inches x 15¼ inches, with depth varying from 3½ to 5 inches. The rule specifies minimum net weight requirements for particular varieties handled in such containers. This amendment permits the use of containers specially designed for use in packinghouses with fully mechanized palletizers, which automatically hold and stack containers on pallets. Palletization of containers of limes and avocados facilitates efficient handling and aids in the distribution of the fruits to market. This action is necessary to promote the efficient handling of limes and avocados and to maintain orderly marketing conditions.

To minimize disruption as much as possible and still bring these marketing orders into compliance with the Secretary's Guidelines for Fruit, Vegetables, & Specialty Crop Marketing Orders, issued January 25, 1982, these regulations are being issued with the understanding that the Florida lime and avocado administrative committees will initiate certain actions during 1982. These actions are necessary so that operations under these programs will conform with the guidelines. The guidelines state that orders containing quality provisions, like the Florida lime and avocado orders, should not be used as a form of supply control. In evaluating quality control programs, emphasis is placed on (1) whether quality controls have varied significantly from season to season or within seasons, (2) whether the percentage of product meeting minimum quality standards has been declining, or (3) whether the standards have been tightened over the years. In addition, to conform with the guidelines, marketing orders should contain limitation on committee tenure and provide for periodic referenda.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553), in that (1) the handling of Florida limes and avocados is now in progress subject to container and pack regulations effective under the order, (2) the committees recommended the amendment at a public meeting at which all interested parties were afforded an opportunity to express their views, and (3) the amendment relieves restrictions on the handling of Florida limes and avocados.

List of Subjects in 7 CFR Parts 911 and 915.

Marketing agreements and orders, Limes, Avocados, Florida

PART 911—LIMES GROWN IN FLORIDA

1. Accordingly, § 911.329 is revised to read as follows:

Subpart—Container Regulation

§ 911.329 Lime Regulation 27.

(a) *Order.*

(1) On and after May 18, 1982, no handler shall handle between the production area and any point outside thereof any variety of limes, grown in the production area, in individual bags having a capacity of more than 4 pounds net weight of limes.

(2) Except as provided in paragraph (a)(4) of this section on and after the effective date hereof no handler shall handle between the production area and any point outside thereof any variety of limes, grown in the production area, in containers having a capacity of more than 4 pounds of limes unless such limes are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

(i) Containers with inside dimensions of 11⅜ by 16¼ by 10 inches: *Provided,* That any such containers shall contain not less than 38 pounds nor more than 40 pounds net weight of limes.

(ii) Containers with inside dimensions of 11⅜ by 16 by 11 inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 40 pounds net weight of limes.

(iii) Containers with inside dimensions of 13½ by 16½ by 9 inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 40 pounds net weight of limes.

(iv) Containers with inside dimensions of 11⅜ by 16 by 6 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(v) Containers with inside dimensions of 11 by 16¾ by 6 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(vi) Containers with inside dimensions of 13½ by 16½ by 5 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(vii) Containers with inside dimensions of 12 by 9¾ by 3¾ inches: *Provided,* That any such container shall

contain not less than 10 pounds net weight of limes.

(viii) Containers with inside dimensions of 12 by 9⅝ by 5 inches: *Provided,* That any such container shall contain not less than 10 pounds nor more than 12 pounds net weight of limes.

(ix) Containers with inside dimensions of 12¾ x 15¼ x 10¾ inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 40 pounds net weight of limes.

(x) Such other types and sizes of containers as may be approved by the Florida Lime Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided,* That the handling of each lot of limes in such test containers shall be subject to the prior approval, and under the supervision of, the Florida Lime Administrative Committee.

(3) Except as provided in paragraph (a)(4) of this section, the limitations set forth in paragraph (a)(2) of this section shall not apply to master containers of individual packages, including individual bags of limes: *Provided,* That the individual packages within such master container are of a capacity not exceeding 4 pounds net weight of limes and the marketing or labels, if any, on such packages do not conflict with the markings or labels on the master container.

(4) During the period May 14, 1973, through June 17, 1973, no handler shall handle any variety of limes, grown in the production area, in individual bags unless such bags are packed in:

(i) Master containers, with inside dimensions of 11 by 16¾ by 10 inches: *Provided,* That any such master container shall contain not less than 31 pounds nor more than 37 pounds net weight of limes; or

(ii) Master containers, with inside dimensions of 11⅜ by 16 by 11 inches: *Provided,* That any such master container shall contain not less than 31 pounds nor more than 37 pounds net weight of limes; or

(iii) Master containers, with inside dimensions of 11⅜ by 16 by 6 inches: *Provided,* That any such master container shall contain not less than 15½ pounds nor more than 16½ pounds net weight of limes; or

(iv) Master containers, with inside dimensions of 11 by 16¾ by 6 inches: *Provided,* That any such master container shall contain not less than 15½ pounds nor more than 16½ pounds net weight of limes.

(5) Not more than a total of 5 percent, by count, of master containers of individual bags in any lot of such master containers may fail to meet the applicable net weights specified therefor in paragraph (a)(4) of this section.

(b) The terms "handler," "handle," "limes," and "production area" when used in this section shall have the same meaning as when used in the amended marketing agreement and this part.

2. Section 915.305 (46 FR 43953) is revised to read as follows:

Subpart—Container and Pack Regulation

§ 915.305 Florida avocado container regulation 5.

(a) On and after May 18, 1982, no handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless such containers meet the requirements specified in this section: *Provided,* That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c).

(1) Containers with inside dimensions of 11⅜ x 16 x 11 or 11 x 16¾ x 10 or 13½ x 16½ x 9 inches or 12¾ x 15¼ x 10¾ inches: *Provided,* That (i) the net weight of the avocados in such a container shall be not less than 34 pounds, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, and Trapp varieties, such weight shall be not less than 32 pounds; (ii) with respect to each lot of such containers, not exceed 10 percent, by count of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight, and (iii) each avocado in such container in a lot shall weight at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot.

(2) Containers with inside dimensions of 14⁹⁄₁₆ x 11⁹⁄₁₆ x 4⁹⁄₁₆ inches: *Provided,* That such containers shall only be used for export shipments.

(3) Containers with inside dimensions of 13½ x 16½ x 3¼ inches.

(4) Containers with inside dimensions of 13½ x 16½ x 3¾ inches.

(5) Containers with inside dimensions of 13½ x 16½ x 4½ inches.

(6) Containers with inside dimensions of 13½ x 16½ x 5 inches.

(7) Containers with inside dimensions of 13½ x 16½ x 6 inches.

(8) Containers with inside dimensions of 12¾ x 15¼ with depth varying from 3½ to 5 inches.

(9) Containers with inside dimensions of 13½ x 16½ and depth varying from 6½ to 8 inches.

(10) Containers with inside dimensions of 12¾ x 15¼ with depth varying from 7½ to 8¼ inches.

(11) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided,* That the handling of each lot of avocados in such test containers shall be subject to the prior approval, and under the supervision, of the Avocado Administrative Committee.

(12) With respect to the containers prescribed in paragraph (a)(2) of this section, all avocados packed in such containers shall be placed in one layer only and the net weight of all avocados in any such container shall be not less than 8.8 pounds: *Provided,* That not to exceed five percent, by count, of such containers in any lot may fail to meet such weight requirement.

(13) With respect to the containers prescribed in paragraph (a)(3) through (a)(8) of this section, all avocados packed in such containers shall be placed in one layer only and the net weight of all avocados in any such container shall be not less than 12½ pounds: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement.

(14) With respect to the containers prescribed in paragraphs (a)(9) and (a)(10) of this section, all avocados in such containers shall be placed in two layer and the net weight of the avocados in any such container shall be not less than 25 pounds: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet the applicable net weight requirement: *Provided further,* That the requirement as to placing avocados in two layers only shall not apply to such container if each of the avocados therein weighs 14 ounces or less.

(b) The limitations set forth in paragraph (a) of this section shall not apply to master containers for individual packages of avocados: *Provided,* That the individual packages within such master container are of a capacity not exceeding four pounds and the markings or labels, if any, on such

packages do not conflict with the markings or labels on the master container.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 18, 1982.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-14016 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 915 and 944

[Florida Avocado Regulation 25; Avocado Import Regulation 31]

Avocados Grown in South Florida and Imported Avocados; Grade and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations specify minimum grade and maturity requirements for shipments of fresh avocados grown in south Florida, and for avocados imported into the United States. Such action is necessary to assure the shipment of ample supplies of mature avocados of acceptable quality in the interests of producers and consumers.

DATES: Interim rule effective May 24, 1982, through August 22, 1982; comments which are received by June 21, 1982 will be considered prior to issuance of a final rule to become effective on August 23, 1982.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

The Florida avocado regulation is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in south Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The avocado import regulation is issued under section 8e (7 U.S.C. 608e–1) of this act. The grade and maturity requirements applicable to Florida avocado shipments were recommended by the Avocado Administrative Committee, which locally administers this marketing order program.

The regulations establish U.S. No. 3 as the minimum grade, and prescribe minimum weights or diameters by specified dates as the maturity requirements for the various varieties of avocados. Minimum weights or diameters and picking dates are used as indicators during harvest to determine which avocados are sufficiently mature to complete the ripening process. Skin color is also authorized as a method of determining maturity, for those varieties which turn red or purple when mature. The requirements are designed to assure that the various varieties of avocados will be of suitable quality and maturity so they provide consumer satisfaction, which is essential for the successful marketing of the crop. They are also designed to provide the trade and consumers with an adequate supply of mature avocados of acceptable quality, in the interest of producers and consumers pursuant to the declared policy of the act.

The import requirements are issued under section 8e of the act, which requires that when specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

To minimize disruption as much as possible and still bring this marketing order into compliance with the Secretary's guidelines for fruit, vegetable, and specialty crop marketing orders, issued January 25, 1982, this regulation is being issued with the understanding that the Avocado Administrative Committee will initiate certain actions during 1982. These actions are necessary so that operations under the program will conform with the guidelines. The guidelines state that orders containing quality provisions, like the Florida avocado order, should not be used as a form of supply control. In evaluating quality control programs, emphasis is placed on (1) whether quality controls have varied significantly from season to season or within seasons, (2) whether the percentage of product meeting minimum quality standards has been declining, or (3) whether the standards have been tightened over the years. In addition, to conform with the guidelines, marketing orders should contain limitation on committee tenure and provide for periodic referenda.

For the 1982–83 season, the Avocado Administrative Committee estimates fresh shipments at a record 1,300,000 bushels (55 pounds), 33 percent more than the estimated 976,872 bushels shipped fresh in 1981–82, and 17 percent more than the 1,113,951 bushels shipped fresh in 1980–81. Shipments of fresh avocados from California are expected to reach 6,100,000 bushels and during the California season ending October 31, 1982. Relatively small amounts of avocados are imported into the United States, mostly from the Dominican Republic. Shipment of this season's crop is expected to begin with light shipments of early varieties in late May, with volume shipments beginning in late June or early July.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date of these regulations until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which these regulations are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the Florida avocado regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and Florida avocado handlers have been apprised on the provisions and effective date of the Florida avocado regulation. The avocado import requirements are mandatory under section 8e of the act, and 3 days notice is provided as required.

List of Subjects in 7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

Therefore, new §§ 915.325 and 944.23 are added to read as follows: (§§915.325 and 944.23 expire August 22, 1982, and will not be published in the annual Code of Federal Regulations).

§ 915.325 Florida Avocado Regulation 25.

(a) During the period May 24, 1982, through August 22, 1982, no handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S. No. 3, except for avocados handled

within the production area in containers other than those authorized in § 915.305.

(2) Such avocados have any portion of the skin of the individual fruit changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety.

(3) Such avocados, except as provided in paragraph (a)(2) of this section, meet the minimum weight and diameter requirements for the specified effective periods for each variety listed in the following Table I: *Provided,* That avocados may not be handled prior to the earliest date specified in column 2 of such table for the respective variety: *Provided further,* That up to a total of 10 percent, by count, of the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further,* That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE 1

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
Kosel	5-24-82	5-06-82	16	
	5-07-82	5-20-82	13	
Arue	5-24-82	5-06-82	16	
	5-07-82	7-11-82	14	3 1/16
Roland 2-2	5-07-82	5-20-82	22	
	6-21-82	7-11-82	20	
J. M. Poropat	5-14-82	5-20-82	20	
	5-21-82	7-11-82	18	
	7-12-82	7-25-82	16	
Fuchs	5-14-82	5-27-82	14	3 1/16
	5-28-82	7-11-82	12	3
Dr. Dupuis #2	6-14-82	5-27-82	16	3 1/16
	5-28-82	7-11-82	14	3 1/16
	7-12-82	7-25-82	12	3 1/16
K-5	6-21-82	7-04-82	18	3 1/16
	7-05-82	7-18-82	14	3 1/16
Katherine	5-28-82	7-11-82	16	
	7-12-82	7-25-82	14	
Halls	5-28-82	7-11-82	20	
	7-12-82	7-18-82	18	
	7-19-82	8-08-82	14	
West Indian Seedling[1]	5-29-82	7-25-82	18	
	7-26-82	8-29-82	16	
	8-30-82	9-26-82	14	
Pollock	5-28-82	7-11-82	18	3 1/16
	7-12-82	7-25-82	16	3 1/16
	7-26-82	8-08-82	14	3 1/16
Simmonds	5-29-82	7-11-82	16	3 1/16
	7-12-82	7-25-82	14	3 1/16
	7-26-82	8-08-82	12	3 1/16
Hardee	5-28-82	7-04-82	16	3 1/16
	7-05-82	7-25-82	14	2 15/16
Nadir	5-28-82	7-04-82	14	3 1/16
	7-05-82	7-11-82	12	3 1/16
	7-12-82	7-25-82	10	2 15/16
Donnie	7-05-82	7-18-82	16	3 1/16
	7-19-82	8-15-82	14	3 1/16
Dawn	7-12-82	7-25-82	12	3 1/16
	7-26-82	8-08-82	10	3
Webb-2	7-12-82	7-25-82	18	
	7-26-82	8-08-82	16	
Cash	7-12-82	8-25-82	16	
Gretchen	7-12-82	7-25-82	14	
	7-26-82	8-08-82	12	
Rushie	7-12-82	7-18-82	18	3 1/16

TABLE 1—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
	7-19-82	7-25-82	16	3 1/16
	7-26-82	8-08-82	14	3 1/16
	8-09-82	8-15-82	12	3 1/16
	8-16-82	8-22-82	10	3 1/16
Peterson	7-19-82	7-25-82	14	3 1/16
	7-26-82	8-01-82	12	3 1/16
	8-02-82	8-15-82	10	3 1/16
Biondo	7-19-82	8-22-82	13	
Alpha	7-19-82	8-08-82	16	3 1/16
Bernecker	7-26-82	8-22-82	18	3 1/16
232	7-26-82	8-08-82	14	
	8-09-82	8-22-82	12	
Chapple	7-26-82	8-22-82	16	
B & B	7-26-82	8-29-82	16	3 1/16
Pinelli	7-26-82	8-08-82	18	3 15/16
	8-09-82	8-22-82	16	3 15/16
Trapp	7-26-82	8-08-82	14	3 15/16
	8-09-82	8-22-82	12	3 1/16
Miguel (P)	7-26-82	8-08-82	22	3 15/16
	8-09-82	8-22-82	20	3 15/16
	8-23-82	9-05-82	18	3 15/16
Nesbitt	7-26-82	8-08-82	22	3 15/16
	8-09-82	8-15-82	16	3 1/16
	8-15-82	8-29-82	14	3 1/16
Beta	8-09-82	8-15-82	18	3 1/16
	8-16-82	9-05-82	16	3 1/16
Mills-D	8-09-82	9-05-82	16	
K-9	8-09-82	8-29-82	16	
Gorham	8-09-82	8-22-82	29	4 1/16
	8-23-82	9-05-82	27	4 1/16
Shula	8-09-82	8-29-82	22	
Tower-2	8-09-82	8-22-82	14	3 1/16
	8-23-82	9-12-82	12	3 1/16
Christina	8-09-82	8-29-82	11	2 15/16
Tonnage	8-09-82	8-22-82	16	3 1/16
	8-23-82	8-29-82	14	3 1/16
	8-30-82	9-05-82	12	3
Waldin	8-09-82	8-22-82	16	3 1/16
	8-23-82	9-05-82	14	3 1/16
	8-06-82	8-19-82	12	3 1/16
The Franvee	8-16-82	9-12-82	23	
Lisa (P)	8-16-82	8-22-82	12	3 1/16
	8-23-82	8-29-82	11	3
Catalina	8-23-82	9-05-82	24	
	9-05-82	9-26-82	22	
Fairchild	8-23-82	9-05-82	16	3 15/16
	9-06-82	9-19-82	14	3 1/16
	9-20-82	9-26-82	12	3 1/16
Nirody	8-23-82	9-05-82	18	3 15/16
	9-06-82	9-19-82	16	3 15/16
Loretta	8-23-82	10-03-82	28	4 1/16
Blair	9-06-82	9-19-82	16	3 1/16
	9-20-82	10-10-82	14	3 1/16
Black Prince	9-06-82	9-19-82	20	3 15/16
	9-20-82	10-10-82	18	3 1/16
Booth 8	9-06-82	9-26-82	18	3 1/16
	9-27-82	10-10-82	14	3 1/16
	10-11-82	10-24-82	10	3 1/16
Booth 7	9-06-82	9-19-82	18	3 15/16
	9-20-82	10-03-82	10	3 15/16
	10-04-82	10-17-82	14	3 1/16
Booth 5	9-13-82	9-26-82	14	3 1/16
	9-27-82	10-10-82	12	3 1/16
Ceonka	9-13-82	10-10-82	22	
Guatemalan Seedling[2]	9-13-82	10-10-82	15	
	10-11-82	12-12-82	13	
Marcus	9-13-82	9-26-82	32	4 15/16
	9-27-82	11-07-82	24	4 1/16
Brooks 1978	9-13-82	9-19-82	12	3 1/16
	9-20-82	9-26-82	10	3 1/16
	9-27-82	10-17-82	8	2 15/16
	9-20-82	10-03-82	12	3 1/16
Chica	10-04-82	10-17-82	10	3 1/16
	9-20-82	10-17-82	16	3 15/16
Collinson	9-20-82	9-26-82	30	4 1/16
Rue	9-27-82	10-10-82	24	3 15/16
	10-11-82	10-24-82	18	3 1/16
Hickson	9-20-82	10-03-82	12	3 1/16
	10-04-82	10-17-82	10	3
Vaca	9-27-82	10-17-82	16	3 1/16
Sherman	9-27-82	10-10-82	16	
	10-11-82	10-24-82	14	
	10-25-82	11-14-82	10	
Simpson	9-27-82	10-17-82	16	3 1/16
Choquette	9-27-82	10-10-82	24	4 1/16
	10-11-82	10-24-82	20	3 15/16
	10-25-82	11-07-82	16	3 1/16

TABLE 1—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
Winslowson	10-04-82	10-24-82	18	3 15/16
Booth 10	10-04-82	10-31-82	18	3 15/16
Avon	10-04-82	10-24-82	15	3 15/16
Booth 11	10-04-82	10-24-82	16	3 15/16
Leona	10-04-82	10-17-82	16	3 15/16
Nelson	10-04-82	10-17-82	14	3 1/16
	10-18-82	10-31-82	12	3 1/16
	11-01-82	11-21-82	10	3 1/16
Heil	10-04-82	10-17-82	26	3 15/16
	10-18-82	10-31-82	20	3 1/16
	11-01-82	11-14-82	18	3 1/16
Herman	10-11-82	10-24-82	18	3 1/16
	10-25-82	11-07-82	14	3 1/16
Murphy	10-11-82	10-24-82	16	
	10-25-82	11-07-82	14	
	11-08-82	11-28-82	11	
Lula	10-11-82	10-24-82	18	3 15/16
	10-25-82	11-07-82	14	3 1/16
	11-08-82	11-21-82	12	3 1/16
Ajax (B-7)	10-18-82	11-07-82	18	3 15/16
Taylor	10-18-82	10-31-82	14	3 1/16
	11-01-82	11-14-82	12	3 1/16
Booth 3	10-18-82	10-24-82	16	3 1/16
	10-25-82	11-07-82	14	3 1/16
Dunedin	11-01-82	11-14-82	16	3 15/16
	11-15-82	11-28-82	14	3 1/16
	11-29-82	12-19-82	10	3 1/16
Byars	11-08-82	11-28-82	16	3 1/16
Linda	11-08-82	11-28-82	18	3 15/16
Nabal	11-08-82	11-28-82	14	3 1/16
Monroe	11-08-82	11-21-82	24	4 1/16
	11-22-82	12-05-82	20	3 15/16
	12-06-82	12-19-82	16	3 1/16
Booth 1	11-15-82	11-28-82	18	3 15/16
	11-29-82	12-12-82	12	3 1/16
Marclin	11-22-82	12-19-82	28	4 1/16
Zio (P)	11-22-82	12-5-82	12	3 1/16
	12-6-82	12-19-82	10	2 15/16
Wagner	11-29-82	12-12-82	12	3 1/16
	12-13-82	12-26-82	10	3 1/16
Schmidt	11-29-82	12-26-82	16	
Brookslate	12-13-82	12-26-82	16	3 15/16
	12-27-82	1-16-83	14	3 1/16
	1-17-83	1-30-83	12	3 1/16
	1-31-83	2-13-83	10	
Meya (P)	12-20-82	1-02-83	13	3 1/16
	1-03-83	1-16-83	11	3
Itzamna	2-07-83	2-13-83	12	

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewere in Table I.

[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

(b) The term "diameter" shall mean the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit, and the term "U.S. No. 3" shall mean the same as in the U.S. Standards for Grades of Florida Avocados (7 CFR 51.3050–3069).

§ 944.23 Avocado import regulation 31.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any avocados is prohibited during the period May 25, 1982, through August 22, 1982, unless:

(1) Such avocados grade at least U.S. No. 3, as defined in § 915.325.

(2) Such avocados of the Pollack, Trapp, and Catalina varieties meet the maturity requirements specified in paragraph (a)(2), or in paragraph (a)(3)

and Table 1 of § 915.325, for these varieties.

(3) Such avocados of the West Indian type varieties and West Indian type seedlings, except for the Pollack and Trapp varieties, meet the maturity requirements specified in paragraph (a)(2), or in paragraph (a)(3) and Table 1 of § 915.325, for West Indian Seedlings.

(4) Such avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings, except for the Catalina variety, meet the maturity requirements specified in paragraph (a)(2), or in paragraph (a)(3) and Table 1 of § 915.325, for Guatemalan Seedlings.

(b) It is hereby found that avocados imported into the United States shall meet the same grade and maturity requirements specified in § 915.325 for avocados grown in South Florida under M.O. 915 (7 CFR Part 915), except that all varieties of avocados, other than the Pollack, Catalina, and Trapp varieties, shall meet comparable weight and diameter maturity requirements, because it is not practicable to apply the same requirements due to the variations in characteristics between avocados grown in Florida and avocados imported into the United States.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 400).

(d) The term "importation" means the release from custody of the United States Customs Service.

(e) *Minimum quantity exemption.* Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section, except for avocados which have been inspected and found not to meet such requirements.

(f) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, May 18, 1982, to become effective May 24, 1982.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-13973 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1004

[Docket No. AO–160–A58; Milk Order No. 4]

Milk in the Middle Atlantic Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts on an emergency basis an amendment to the Middle Atlantic milk order. The change will provide handlers with limited transportation credits from the marketwide pool for certain Class II milk transferred or diverted to unusually distant outlets for surplus disposal. The change, which will apply only through June 30, 1982, was considered at a public hearing held on March 16–17, 1982, in East Point, Georgia. The order change was proposed by a cooperative association that represents dairy farmers who supply milk to the market.

The change is necessary to reflect current marketing conditions and to insure that all producers in the market share more equitably in the cost of disposing of unusually large supplies of surplus milk that are expected this spring. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and the opportunity to file exceptions thereto were omitted. Cooperative associations representing more than two-thirds of the producers in the market have approved the issuance of the amended order.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447–4829).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 4, 1982; published March 10, 1982 (47 FR 10230).

Emergency Final Decision: Issued April 19, 1982; published April 23, 1982 (47 FR 17530).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication in the Federal Register. Any delay beyond that date would tend to

disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued April 19, 1982 (47 FR 17530). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.60, paragraph (f) is added to read as follows:

§ 1004.60 Pool obligation of each pool handler.

* * * * *

(f) With respect to milk marketed on an after the effective date hereof through June 1982, subtract the amount obtained by mulitiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II milk pursuant to § 1004.42(d) or § 1004.42(e)(3) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 200 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Philadelphia, Pennsylvania; the zero milestone in Washington, D.C.; the city hall in Baltimore, Maryland; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: May 21, 1982.

Signed at Washington, D.C., on May 17, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-13910 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1888

Special Assistance to Drought Stricken Areas

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is removing from the Code of Federal Regulations (CFR) its regulations pertaining to special assistance to drought stricken areas. This regulation is removed because it is no longer needed. Applicants eligible under this FmHA regulation must have had funds obligated on or before December 31, 1977. All special assistance to drought stricken areas funds that were obligated under the water and waste and emergency programs have been expended.

The removal of this regulation will have no effect on the public. The intended effect of this action is to remove an unneeded regulation from the CFR.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Yoonie MacDonald, Loan Specialist, Water and Waste Disposal Division, USDA, FmHA, Room 6316, South Agriculture Building, Washington, DC 20250. Telephone: (202) 382–9586.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements. The reason for this decision is that the action involved is an internal agency management practice to remove an unneeded regulation from the CFR. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of the action is administrative in nature and publication for comment is unnecessary.

The FmHA programs and projects which are affected by this instruction are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

Catalog of Federal Domestic Assistance (CFDA) Nos. include: 10.418—Water and Waste Disposal Systems for Rural Communities; and 10.404—Emergency Loans.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1888

Disaster assistance, Rural areas, Water supply.

PART 1888—SPECIAL ASSISTANCE TO DROUGHT STRICKEN AREAS

Therefore, Chapter XVIII, Title 7, CFR is amended by removing and reserving Part 1888 as follows:

§§ 1888.1–1888.20 [Removed and Reserved]

(7 U.S.C. 1989, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under

Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: April 30, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-14007 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 82-050]

Importation of Animals Through the Harry S Truman Animal Import Center; Cooperative and Trust Fund Agreement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document (1) amends the regulations in 9 CFR 92.41(a)(1) by providing an importer the opportunity to use a letter of credit as an additional method of paying the $1,000 per animal deposit that is required when applying for special authorization to import animals into the United States through the Harry S Truman Animal Import Center (HSTAIC) and by providing that this fee will be nonrefundable if special authorization is granted; and (2) revises the Cooperative and Trust Fund Agreement ("Agreement"), which provides for importation of animals into the United States through the HSTAIC, so that an importer will be released from any financial liability for the fixed costs of operating the USDA-approved embarkation facility or the HSTAIC, if none of his animals qualify to enter the USDA approved embarkation facility and so that the Federal Bond is deleted as a means of paying the costs of importation under the Agreement. The first action provides the importer an additional, probably less expensive and easier, means of paying the $1,000 per animal deposit and gives notice to the importer that this money is nonrefundable if special authorization is granted. The second action is adopted because the method of operating the USDA-approved embarkation facility and the HSTAIC has been changed and it is no longer necessary to obligate an importer to pay a portion of the fixed costs of quarantining animals in these facilities if his animals do not successfully qualify for entrance into the USDA-approved embarkation facility. Further, the Department has found that the earlier policy of asking all importers, whether their animals qualified for entrance into the USDA-approved embarkation facility or not, to pay the costs of quarantine in these facilities was so undesirable with importers that they were not applying to use the HSTAIC. Therefore, this policy is changed so that only those importers who actually quarantine animals in these facilities shall pay quarantine costs. The Cooperative and Trust Fund Agreement is modified to conform with these changes. The intended effect of this rule is to provide an additional method of paying the costs of importation and to relieve the financial burden on an importer if his animals do not pass the first stage of importation, i.e., that of qualifying the animals for entrance into the USDA-approved, embarkation facility.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, USDA, APHIS, VS, Room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." This rule will not result in any significant effect on the economy; any major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The final rule would only affect those importers interested in importing animals into the United States through the HSTAIC. This is a relatively small number of entities when compared with the total number of entities which import animals into the United States through other ports annually. Specifically, conservative figures maintained by the Department show that between 10,000 and 15,000 entities import animals annually into the United States through ports other than the HSTAIC. These figures are compared with a much smaller number of importers who have applied for special authorization to import animals through the HSTAIC. Specifically, 79 individuals applied for the first importation, 6 individuals applied for the second importation, and no applications were received for the third importation, although one individual applied for and was granted use of the HSTAIC on an exclusive use basis.

Alternatives

The alternatives considered in making this decision were: (1) Not to change the regulations; and (2) to amend the regulations as outlined above.

Alternative No. 1 was rejected because it has been shown, historically, that importers are unwilling to import animals through the HSTAIC if they must assume the full cost of operating the quarantine facilities even when their animals do not qualify for entry into the USDA-approved embarkation facility. Further, the Department has been able to modify its operating procedures such that it is no longer necessary to obligate an importer for costs of quarantining animals at the approved embarkation facility or at the HSTAIC when the importer's animals do not enter the USDA-approved embarkation facility.

Alternative No. 2 was selected because the Department believes that allowing an importer to use a letter of credit to pay the $1,000 application deposit per animal is a more beneficial and less costly alternative than requiring the importer to pay the $1,000 by a money order or certified check. It is unrealistic to expect an importer to pay $1,000 for each animal for which special authorization is requested when (1) several months may pass before it is known for certain that special authorization will be granted and (2) the Department can be guaranteed that the money can and will be paid through a letter of credit. Further, revision of the Cooperative Agreement is necessary to reflect the changes being made in the way of operating the quarantine facilities. It would be unnecessary to hold importers liable for costs not actually incurred.

Background

On March 24, 1982, a document was published in the **Federal Register** (47 FR 12633-12639) which proposed to (1) amend the regulations in 9 CFR 92.41(a)(1) by providing an importer the opportunity to use a letter of credit as an additional method of paying the $1,000 per animal deposit that is required when applying for special authorization to import animals into the United States through the HSTAIC and by providing

that this fee will be nonrefundable if special authorization is granted; and (2) to revise the Cooperative and Trust Fund Agreement ("Agreement"), which provides for importation of animals into the United States through the HSTAIC, so that an importer is released from any financial liability for the fixed costs of operating the USDA-approved embarkation facility or the HSTAIC, if none of his animals qualify to enter the USDA-approved embarkation facility and so that the Federal Bond is deleted as a means of paying the costs of importation under the Agreement.

The document of March 24, 1982, provided that written comments were to be received on or before April 13, 1982. The proposal was published with the shortened comment period of twenty days because, as explained in the proposal, Dr. J. K. Atwell, Deputy Administrator, VS, APHIS, USDA, had determined that, in accordance with the provisions of 5 U.S.C. 553, good cause was found to do so. Specifically, the Department wished to have the proposed amendments in effect before the next lottery for special authorization to use of the HSTAIC was held. The next lottery is to be held May 24, 1982.

No comments were received in response to the proposal. Based on the reasons set forth in the proposal, the provisions have been adopted as proposed except for minor editorial changes. Further, Dr. J. K. Atwell has determined, in accordance with the provisions of 5 U.S.C. 553, that good cause exists to make this final rule effective upon publication, namely, so that these amendments can be in effect before the May 24, 1982, lottery is held.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. In § 92.41(a)(1), the fourth sentence is revised to read:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center.

(a) * * *

(1) * * * Each application shall be accompanied by a certified check, money order, or letter of credit, consistent with the terms of this section and with the Cooperative and Trust Fund Agreement (9 CFR 92.41(c)), as determined by the Deputy Administrator, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of one thousand dollars ($1,000), for each animal for which special authorization is requested on the application: *Provided,* That if special authorization is granted, the $1,000 per head is nonrefundable: *Provided further,* That if a letter of credit is utilized, the effective date on such letter of credit must run to the date the animals are scheduled to be released from the HSTAIC or billings made by the Service have been paid.

2. Section 92.41(b)(7) is revised to read:

* * * * *

(b) * * *

(7) Fees in Part I of the Agreement shall be based on the number of special authorizations to import animals through the HSTAIC that have been granted to all importers. Fees in Part II of the Agreement shall be based on the number of animals, for which special authorizations were granted to all importers, which have been qualified to enter the USDA-approved embarkation facility.

3. In § 92.41(c), footnote 15 is removed and footnotes 16 and 17 are renumbered 15 and 16, respectively.

4. In § 92.41, paragraph (c), the Cooperative and Trust Fund Agreement is revised to read as follows:

Cooperative and Trust Fund Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services

This Agreement is made and entered into by and between (Name and address of importer) hereinafter referred to as the Cooperator, and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, hereinafter referred to as the Service.

Whereas, the Service is authorized pursuant to section 2 of the Act of February 2, 1903, as amended, and section 1 of the Act of May 6, 1970 (21 U.S.C. 111 and 135, respectively) to regulate the introduction of animals into the United States in order to prevent the introduction of animal and poultry diseases into the United States; and

Whereas, the Cooperator is interested in the importation of animals into the United States through the Harry S Truman Animal Import Center (HSTAIC), established by the Service pursuant to 21 U.S.C. 135, for a quarantine period scheduled to begin on or about ——; and

Whereas, the Cooperator has requested the Service to conduct inspections, perform laboratory procedures, complete examinations, and supervise the isolation, quarantine, and care and handling of animals to insure that they meet the Department's requirements to enter a USDA-approved embarkation facility in the country of origin; and

Whereas, the Cooperator has requested the Service to conduct inspections, perform laboratory procedures, complete examinations, and supervise the isolation, quarantine, care and handling of animals to insure that they meet the Department's quarantine requirements at the USDA-approved embarkation facility in the country of origin and at the HSTAIC before release into the United States; and

Whereas, It is the intention of the parties hereto that such cooperation shall be for their mutual benefit and the benefit of the people of the United States.

Now, therefore, for and in consideration of the promises and mutual covenants herein contained, the parties do hereby mutually agree with each other as follows:

Part I—Provisions Relating To Qualifying Animals for Entry Into the USDA-Approved Embarkation Facility

A. *The Cooperator Agrees:*

1.a. To deposit with the Service upon execution of this Agreement the amount of ——[1] by certified check or money order to cover the cost to the Department for qualifying his animal(s) in the country of origin for entry into the USDA-approved embarkation facility; or

b. To deposit with the Service upon execution of this Agreement a letter of credit from a commercial bank to the Service in the amount of ——[1] consistent with the terms of this Agreement, as determined by the Deputy Administrator, to cover the cost to the Department for qualifying his animal(s) in the country of origin for entry into the USDA-approved embarkation facility.

c. Payment for the costs in Part I incurred by the Cooperator will be due one month (30 days) prior to the day the animals are scheduled for release from the HSTAIC. The letter of credit shall be in effect from the date special authorization is granted to the date the animals are sheduled to be released from the HSTAIC or billings by the Service have been paid. The letter of credit shall be irrevocable for that period except through the mutual consent of the Service and the Cooperator. Billings will be made to the issuer of the letter of credit.

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[1] This sum represents the Cooperator's maximum prorata share of the fixed and variable costs to the Department for qualifying the animal(s) into the USDA-approved embarkation facility. This sum was arrived at by applying the following formula:

1. Determine the total number of animal(s) for which special authorization to enter the HSTAIC is being granted to all importers;

2. Determine the established fee per animal, from the applicable published schedule, for the fixed and variable costs of qualifying the number of animal(s) (determined by paragraph 1) into the USDA-approved embarkation facility; and

3. Multiply the established fee per animal (determined by paragraph 2) by the specific number of animal(s) which the Cooperator has received special authorization to enter into the HSTAIC.

d. Upon execution of this Agreement the Cooperator shall become liable for —— (which represents his prorata share of the fixed costs for qualifying his animal(s) for entry into the USDA-approved embarkation facility) regardless of the disposition of the Cooperator's animal(s). These monies are necessary to qualify the animal(s) for entry into the USDA-approved embarkation facility and to prepare the USDA-approved embarkation facility for receiving animals. The Cooperator shall also be liable for the variable costs and the costs of testing additional animal(s) (see paragraph 2 of Part I) which are actually incurred by the Cooperator in qualifying his animal(s).

2. To pay the actual cost of testing each animal in excess of the number of animals for which special authorization was issued. If these costs exceed the amount of money deposited or covered by letters of credit, a bill for the extra costs incurred, based on official Service accounting records, will be issued to the Cooperator by the Service and is payable upon receipt.

3. To pay for all laboratory tests deemed necessary by the Department to determine freedom from communicable animal diseases in addition to those identified in the Veterinary Services protocol for qualifying the animal(s) for entry into the USDA-approved embarkation facility.

4. To obtain from foreign Government officials any permits or permission required so that the Service's personnel will have free access to the approved farm of origin isolation facilities in the country of origin so they can properly assess the safety of the animal(s) regarding exposure to communicable animal diseases during the period the animal(s) are in the country of origin.

5. To obtain from the transporting company any necessary permission for the Service's personnel to accompany the animal(s) from the approved farm of origin to the USDA-approved embarkation quarantine facility.

6. That the eligibility of the animal(s) offered for entrance into the USDA-approved embarkation facility shall be determined by the Service.

B. *The Service Agrees:*

1. To furnish the services of technical and/or professional personnel needed to conduct inspections, perform laboratory procedures, complete examinations, and supervise the isolation, quarantine, and care and handling of the animal(s) being qualified to ensure that they meet the Department's requirements before entering the USDA-approved enbarkation facility.

2. To refund to the Cooperator any part of the fees, above the $1,000 per animal deposit required by 9 CFR 92.41(a)(1), not expended in qualifying the animal(s) to enter the USDA-approved embarkation facility.

Part II—Provisions Relating to the Quarantining of Animals in the UDSA-Approved Embarkation Facility and in the HSTAIC

A. *The Cooperator Agrees:*

1.a. To deposit with the Service upon execution of this Agreement the amount of ——[2] by certified check or money order to cover the cost to the Department for quarantining the Cooperator's animal(s) at the USDA-approved embarkation facility and the HSTAIC before their release in the United States, or;

b. To deposit with the Service upon execution of this Agreement a letter of credit from a commercial bank to the Service in the amount of ——,[2] consistent with the terms of this Agreement, as determined by the Deputy Administrator, to cover the cost to the Department for quarantining the Coperator's animal(s) at the USDA-approved embarkation facility and at the HSTAIC.

c. Payment for the costs in Part II incurred by the Cooperator will be due one month (30 days) prior to the day the animals are scheduled for release from the HSTAIC. The letter of credit shall be in effect from the date special authorization is granted to the date the animals are scheduled to be released from the HSTAIC or billings by the Service have been paid. The letter of credit shall be irrevocable for the period except through the mutual consent of the Cooperator and the Service.

d. Upon qualification of any of the Cooperator's animal(s) to enter the USDA-approved embarkation facility, the Cooperator shall become liable for his prorata share[3] of the total fixed costs incurred in quarantining all animals at the USDA-approved embarkation facility and at the HSTAIC, regardless of the disposition of any of the Cooperator's animal(s) at either facility. In no instance shall the Cooperator's liability for the fixed costs per animal at the USDA-approved embarkation facility and at the HSTAIC exceed——(equal to the fixed cost portion of the established fee for quarantining an animal at the USDA-approved embarkation facility and the HSTAIC if only 50 animals qualify for such quarantine). These monies are necessary to prepare the animal(s) for entry into the HSTAIC and to prepare the HSTAIC for receiving and quarantining these animals. The Cooperator shall also be liable for the variable costs actually incurred in quarantining his animal(s).

2. To pay for all laboratory tests deemed necessary by the Department to determine freedom from communicable animal diseases in addition to those identified in the Veterinary Service protocol for qualifying animals in the USDA-approved embarkation facility.

3. To pay the actual cost of treatment of any of the Cooperator's animal(s) which require treatment to be cured of a communicable disease of livestock or poultry while at the USDA-approved embarkation facility or at the HSTAIC. Such payment shall be due upon receipt by the Cooperator of a bill for such treatment from the Service.

4. To obtain from foreign Government officials any permits or permission required to ensure that the Service's personnel will have free access to the USDA-appproved embarkation facility so they can properly assess the safety of the animal(s) regarding exposure to communicable animal diseases during the period the apimal(s) are in the USDA-approved embarkation facility.

5. To provide for the maintenance and operation of the USDA-approved embarkation facility in the foreign country in accordance with approved standards and handling procedures for importation of animals as provided in Part 92 of 9 CFR.

6. All animals which enter the USDA-approved embarkation facility and the HSTAIC will be handled on an "all-in all-out" basis. If any animal in the USDA-approved embarkation facility or the HSTAIC is determined by the Service to be infected with any communicable disease of animals, the remaining animals will be considered to be exposed to such communicable disease.

7. If the Service determines that any of the animals in the USDA-approved embarkation facility are infected with or exposed to foot-and-mouth disease, rinderpest or pleuropneumonia, all animals in that facility shall be refused entry into the HSTAIC and shall be disposed of at the Cooperator's expense. If the Service determines that any of the animals in the HSTAIC are infected with or exposed to foot-and-mouth disease, rinderpest or pleuropneumonia, all such animals in the facility shall be refused entry into the United States and be destroyed in accordance with such conditions as the Deputy Administrator of the Service believes necessary to prevent the dissemination of communicable diseases of animals into the United States.

8. If the Service determines that any of the animals are infected with or exposed to any other communicable disease of animals, such animal shall be treated, if possible, and if cured, become eligible for entry into the United States provided all other requirements under 9 CFR Part 92 are met. However, if it is not possible to treat such animal or if such animal is not cured, then such animal shall be refused entry into the United States and shall be removed from the USDA-approved embarkation facility or the HSTAIC to a country other than the United States within 10 days of the date that the Cooperator is notified by the Service that such animal has been refused entry into the United States. However, at the option of the Cooperator, such animal may be disposed of in accordance with such conditions as the Deputy Administrator of the Service believes

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[2] This sum represents the Cooperator's maximum prorata share of the fixed and variable costs to the Department for quarantining the Cooperator's animal(s) at the UDSDA-approved embarkation facility and at the HSTAIC. This sum was arrived at by applying the following formula:

1. Determine the established fee per animal from the applicable published schedule, for the fixed and variable costs of quarantining 50 animals in the USDA-approved embarkation facility and in the HSTAIC;

2. Multiply this established fee per animal by the specific number of animal(s) for which the Cooperator has received special authorization to enter into the HSTAIC.

[3] The Cooperator's prorata share is a percentage figure to be determined as follows:

1. Determine the number of special authorizations awarded to the Cooperator which have been filled with animal(s) qualified to enter the USDA-approved embarkation facility; and

2. Divide that number (paragraph 1) by the total number of special authorizations that have been filled by all the importers with animals qualified to enter the USDA-approved embarkation facility.

necessary to prevent the dissemination of communicable diseases of animals into the United States.

9. The Cooperator is responsible for the risk of loss for the destruction of any animal subject to this Agreement because of being infected with or exposed to any communicable disease of animals or any other loss or damage to the animal.

10. That the eligibility of the animal(s) offered for entrance into the HSTAIC shall be determined by the Service.

11. To obtain from the transporting company any necessary permission for the Service's personnel to accompany a shipment of animal(s) to the HSTAIC.

12. That the eligibility of the animal(s) offered for import into the United States shall be determined by the Service.

B. *The Service Agrees:*

1. To furnish the services of technical and/or professional personnel needed to conduct inspection, perform laboratory procedures, complete examination, and supervise the isolation, quarantine, and care and handling of animals being imported to ensure that they meet the Department's quarantine requirements at the USDA-approved embarkation facility and the HSTAIC before release into the United States.

2. To refund to the Cooperator any part of the fees not expended at the USDA-approved embarkation facility and the HSTAIC on a per animal basis.

Part III

C. *It Is Mutually Understood and Agreed That:*

1. During the performance of this cooperative work, the Cooperator agrees to be bound by the Equal Opportunity and Nondiscrimination provisions as set forth in Exhibit B and Nonsegregation of Facilities provisions as set forth in Exhibit C, which are attached hereto and made a part hereof.

2. No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom; but this provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

3. Part I of this Agreement shall become effective upon date of final signature and shall continue until final settlement of all matters relevant to the period for qualifying animal(s) on the premises of origin in the country of export for entry into the USDA-approved embarkation facility, as determined by the Service.

4. Part II of this Agreement shall become effective upon date of final signature and shall continue until final settlement of all matters relevant to the quarantine periods at the USDA-approved embarkation facility and the HSTAIC, as determined by the Service; *Provided however,* That if less than a total of 50 animals qualify for entry into the USDA-approved embarkation facility, the quarantine period for all animals shall be cancelled at the USDA-approved embarkation facility and at the HSTAIC and both parties shall be released from the provisions in Part II.

5. This Agreement may be amended by agreement of the parties in writing. It may be terminated by either party upon 30 days' written notice to the other party.

Date _____

Cooperator,

Date _____

Director, NPPS, VS.

(Sec. 2, 32 Stat. 792, as amended; sec. 1, 84 Stat. 202; (21 U.S.C. 111 and 135); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 17th day of May 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-14004 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 132

Implementation of the Equal Access to Justice Act

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule.

SUMMARY: The Equal Access to Justice Act authorizes the award of attorneys fees and other expenses to certain parties who prevail against the United States in Administrative and judicial proceedings. These regulations concern the procedures for making awards under the Act. These regulations are intended to implement the provisions of the Equal Access to Justice Act, Title II of Pub. L. 96-481. That Act was effective October 1, 1981, and therefore these regulations are final upon the date of this publication. However, the SBA will accept public comments upon these regulations subsequent to publication, and will amend these rules from time to time as necessary. These rules will constitute a new Part 132 of Title 13 of the Code of Federal Regulations.

DATES: These rules are effective May 21, 1982.

ADDRESSES: Comments should be submitted to: Martin D. Teckler, Assistant General Counsel, 1441 L Street NW., Room 700, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Assistant General Counsel, (202/653-6662).

SUPPLEMENTARY INFORMATION: On October 21, 1980, the President signed the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325, authorizing the award of attorneys fees and other expenses to certain parties who prevail against the United States in administrative and judicial proceedings. Under the Act, eligible parties are entitled to an award of fees and expenses unless the United States can demonstrate that its position in the litigation was substantially justified, or other circumstances make an award unjust. The Act applies to civil court actions (other than tort actions) brought by or against the United States and to "adversary adjudications" conducted by Federal agencies, defined as administrative adjudications under section 554 of the Administrative Procedure Act, 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise. Four categories of parties are eligible for fee awards: (1) Individuals whose net worth is no more than $1 million; (2) businesses (including sole owners of incorporated businesses), associations and organizations with a net worth of no more than $5 million and no more than 500 employees; (3) organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with no more than 500 employees, regardless of net worth, and (4) agricultural cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with no more than 500 employees, regardless of net worth.

The Act assigns to agencies the responsibility to make fee awards in their own covered proceedings. Under section 203 of the Act (which is codified in 5 U.S.C. 504), each agency is to establish uniform rules for the submission and consideration of applications for awards, after consultation with the Chairman of the Administrative Conference of the United States.

The Administrative Conference has prepared model regulations in order to facilitate this process. SBA believes they are workable guidelines and proposes to adopt them almost completely as drafted.

In general, these rules concern the procedures for making awards. They are not intended to establish substantive standards for determinations, such as whether the government's proceeding is substantially justified, except to the extent that such standards have been clearly suggested by Congress in the Act or in legislative history. They also include provisions which define or explain the terms used in the statute. We invite comment on whether the rules go too far, or not far enough, in fleshing out the substantive provisions of the Act.

The regulations include five subparts covering the following subjects: (1) General provisions explaining the Act and its standards and eligibility requirements; (2) the fees and expenses

allowable under the Act; (3) the contents of applications for awards; (4) procedures for considering applications, and (5) payments of awards. A detailed explanation of the rules follows.

The rules contain a few terms that require a brief explanation. The Act assigns certain responsibilities for making fee determinations to the "adjudicative officer," defined in 5 U.S.C. 504(b)(1)(D) as "the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication." In the vast majority of cases, of course, this will be an administrative law judge, but it may not always be. We have used the statutory term throughout to refer to this official. In drafting the rules, we have also sought some way of distinguishing between the agency as a deciding or award-paying body and the agency as a party to the proceeding. The rules generally use "counsel representing the agency" or "agency counsel" to indicate the agency as a party to the proceeding, and "the agency" to indicate the agency in its other roles. The terms are used only for convenience since the Act applies whether or not the person representing the agency in a proceeding is an attorney.

Subpart A—General Provisions

Subpart A contains general provisions explaining the Equal Access to Justice Act and its coverage and some miscellaneous provisions. Several of these are simple and require no extended explanation. Other provisions deal with the proceedings covered, eligibility, the standards for awards, and proceedings involving more than one agency.

Covered Proceedings: Section 132.103 identifies the types of proceedings subject to the Act. The section describes what is meant by an adversary adjudication and states that certain proceedings are not covered by the Act.

The Act applies to adversary adjudications "under section 554" of the Administrative Procedure Act. Paragraph (b) of § 132.103 would permit the award of fees and expenses when SBA voluntarily uses the formal procedures of section 554 as well as when those procedures are required. We believe this approach will avoid extended debate whether particular proceedings are "under" section 554. If the proceeding otherwise qualifies as an "adversary adjudication" and involves issues complex enough, or individual rights important enough, to justify the use of formal procedures, we think it is within the intendment of the Act. We encourage comment on this question, however.

Eligible parties: Section 132.104 deals with eligibility for awards under the Act. The section recites the categories of parties eligible for awards and the applicable limitations on net worth and number of employees. The Act states that eligibility should be determined as of the time adversary adjudication was initiated, and the rules reflect a literal interpretation of this provision. In some cases, however, an eligible party may intervene in, or be joined in, a proceeding well after it begins.

We propose to define "employees" to include all persons regularly providing services for remuneration for the applicant as of the date the proceedings began.

Paragraph (f) would make it clear that when an applicant has apparently disposed of assets or incurred financial obligations in order to meet the net worth limitations of the Act, the transfers of assets or the obligations will be disregarded in calculating the applicant's net worth. Transactions for less than reasonably equivalent value would be presumed to be for this purpose.

In paragraph (g), the rule deals with the problem of affiliates, such as wholly-owned subsidiaries or businesses under common control. Some or all of these affiliates might be eligible for awards if treated separately, but not if considered together. The provision requires aggregation of the net worth and number of employees of affiliated individuals or entities. Although the Act does not explicitly authorize this type of treatment for affiliated entities, permitting such entities to receive awards seems logically inconsistent with the eligibility provisions of the Act. We invite comment on whether this approach is permissible under the statute.

Assuming it is permissible, additional questions remain. The rule defines "affiliates" as individuals or entities connected to an applicant by a chain of ownership or control of a majority interest. Many other definitions are possible, and commenters are invited to suggest alternatives.

Finally, paragraph (h) of § 132.104 provides that parties will not be eligible for awards when it appears they have participated in proceedings only on behalf of other persons or entities that are ineligible. The rule is designed to prevent ineligible parties planning litigation with the government from using other organizations, which are eligible, to conduct their litigation in order to qualify for fee awards. We note that the Act does not intend to exclude intervenors on behalf of the "public interest" from eligibility; the legislative history indicates that the Congress considered this question and specifically declined to do so. Rather, it is intended to reach the situation in which an ineligible entity solicits and finances participation by an eligible one.

Standards for awards: Section 132.105 sets out the Act's standards for making fee awards. The applicant is ordinarily entitled to an award if the agency's position in the proceeding (or on a significant, separable issue) was not substantially justified, the rule's definition of "substantially justified" reflects the legislative history's explanation that the standard is "reasonableness in law and fact."

Under paragraph (b) of § 132.105, awards could include fees and expenses incurred before the date a proceeding begins, if they are reasonably necessary to prepare for the proceeding. Paragraph (c) explains the Act's provision that awards may be reduced or denied if applicants unduly protract proceedings, or if special circumstances make an award unjust.

Subpart B—Allowable Fees and Expenses

This subpart states generally the fees and expenses that may be awarded under the Act. Section 132.201 covers the fees and expenses of attorneys, agents and expert witnesses. The provision restates the Act's direction that awards should be based on prevailing market rates for services, applying this principle even where the services are provided by employees of the party or at a reduced rate.

The provision also includes the Act's ceilings on fees: $75 per hour for attorneys or agents and, for expert witnesses, the agency's maximum rate for the payment of such experts.

The provision identifies some factors to be used in determining the reasonableness of the fee request—the customary fee of the attorney or agent for similar services, the actual time spent on the case, and the time reasonably spent in light of the difficulty or complexity of the issues in the proceeding. These factors are based loosely on those used by courts in awarding attorneys fees. They differ from those standards, however, in that greater emphasis is placed on the "regular rate" of the attorney, agent or expert witness, when that person is in the business of acting as an attorney, agent or expert witness.

Section 132.201 provides that reasonable expenses of attorneys,

agents and witnesses may be itemized separately from hourly charges, but does not identify the types of expenses covered. "Reasonable expenses" is intended to include the types of expenses customarily charged to clients, such as travel expenses or photocopying, but not items ordinarily included in hourly fees, such as secretarial services. It is intended, moreover, to include only the reasonable portion of such expenses, not items such as first class airfare or duplicating costs above prevailing rates.

Section 132.202 covers awards for the cost of studies, reports and tests. The rule restates the Act's provision that awards may include the reasonable cost of these items when they are necessary for the preparation of the party's case. If the charge for an item exceeds a reasonable cost for the preparation of similar items, the applicant could recover the reasonable portion of the cost. Parties may sometimes enter evidence that is cumulative or studies that are far more elaborate than necessary to make their points. The phrase "reasonable cost" is also intended to be a safeguard against the possibility that SBA would have to pay for such unnecessary items.

Subpart C—Form of Application

Subpart C identifies the information to be included in an application for an award of fees and expenses. The Act itself requires submission of "an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." 5 U.S.C. 504(a)(2). The Act also requires the applicant to allege that the position of the agency was not substantially justified.

The goal of these provisions is to solicit sufficient information on these subjects for agency personnel to make an informed determination on the application without unduly burdening the applicant. The provisions divide the application into three parts.

In the basic application, the applicant is to identify itself, the proceeding, and the issues on which it believes it has prevailed and as to which the agency's position was not substantially justified. The applicant then states its type (e.g., individual, agricultural cooperative, etc.) and provides basic information on eligibility: The number of employees on the date the proceeding began, for applicants other than individuals; a description of affiliated individuals or entities, if any, for applicants other than individuals and sole owners of unincorporated businesses; and a statement that the applicant's net worth when the proceeding began did not exceed the ceiling for its type, for all applicants except tax exempt organizations and agricultural cooperatives. In lieu of the net worth declaration, a tax exempt organization would be required either to state that it was included in the current edition of IRS Bulletin 78 (which identifies most qualified tax exempt organizations) when the proceeding began, or, if the organization is a religious organization which is not required to seek IRS approval of its tax exempt status, to submit a description of the organization and an explanation of its belief that it is exempt. An agricultural cooperative would have to include a copy of its charter or articles of incorporation and bylaws to demonstrate its eligibility. The application is to be signed by the applicant or a responsible official of the applicant, who must state that it is true and complete and that he or she is aware that making a false statement in the application is a felony under 18 U.S.C. 1001. The applicant would not be required to include documentary proof of its statements as to number of employees, affiliated corporations, or tax-exempt status. We believe the statement, subject to the penalties of 18 U.S.C. 1001, should be adequate in the first instance.

All applicants except tax exempt organizations and agricultural cooperatives would also have to file a statement of net worth under § 132.302. The statement would list the applicant's assets and liabilities, grouped as described in the rule. We solicit comments on whether the groups identified in the rule will provide sufficiently detailed information to permit an informed decision on eligibility, and also on whether they will be convenient and workable for applicants.

For the convenience of applicants who may have prepared a financial statement for another purpose (such as to obtain a bank loan or to file with an income tax return) near the time the proceeding started, the rule would permit the filing of net worth information in any other form that is sufficient to make an eligibility determination. The applicant would have to include a statement describing any adjustments necessary for the material to reflect net worth on the date the proceeding began. The optional form is designed primarily for applicants whose net worth is well below the ceiling. For these applicants a precise figure is obviously irrelevant, and, consequently, there is need for less detail on this point. This provision is, in effect, a form of "tiering" of the kind encouraged by the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601-612.

Finally, the net worth statement is to include either a description of any transfers of assets or obligations incurred within the three months before the beginning of the proceeding that reduced the applicant's net worth below the applicable net worth ceiling, or a statement that none occurred.

The applicant may request confidential treatment for its statement of net worth by submitting it in a sealed envelope. Under the rule, a statement so submitted would not be disclosed to the public except to enforce 18 U.S.C. 1001 (if the applicant is prosecuted for making a false official statement) or as required by law. In practical terms, "as required by law" means an agency would not disclose the information unless it received a request under the Freedom of Information Act, 5 U.S.C. 552, and then determined that the material could not be withheld under the exemptions to that Act. (In this case, the one most likely to apply would be Exemption 4, 5 U.S.C. 552(b)(4), which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential.") We have included this provision because we believe applicants should not have to forfeit their privacy to any greater extent than is legally required in order to receive an award. It is unclear, however, whether these statements can usually be withheld under the Freedom of Information Act, and we solicit comment on this issue.

The third section in the subpart explains what must be included in statements of fees and expenses. The provision would require a separate itemized statement of work performed, and fees and expenses claimed, for each attorney (or firm) witness, or agent for whose services an award is requested, verified by the person (or representative of the firm) who performed the services. The application would not have to include documentation of expenses incurred, but records of those expenses would have to be kept in accordance with the Internal Revenue Service's requirements for documentation of business expenses, so that the expenses could be verified on request by the agency. We invite comment on whether the section is specific enough to elicit the information necessary to determine the reasonableness of a request for a fee award.

Subpart D—Procedures for Considering Fee Applications

Proposed subpart D contains the procedures that would govern the consideration of applications for awards. The proposed rules provide for two responsive pleadings: counsel representing SBA may answer the application, and the applicant may reply to the answer. The application and responsive pleadings are to be filed and served under the agency's usual rules. The rules would encourage decision on a written record whenever possible. Responsive pleadings that rely on facts not in the record would have to be accompanied by affidavits or by requests for further proceedings to develop the necessary evidence. On request or on his or her own initiative, the adjudicative officer could order such proceedings, including informal conferences, oral argument, additional written submissions, or evidentiary hearings, when necessary to provide an adequate record for decision.

The rules direct the adjudicative officer to issue a decision on the fee application as soon as possible after the conclusion of the proceedings conducted, including written findings in accordance with the mandate of the Act. When applicable, the decision is also to include an allocation of responsiblity for payment of an award among other agencies participating in the proceeding. The rules do not include specific standards for such allocation, since we believe the adjudicative officer should make this determination based on the history of the particular proceeding.

The rules contain various deadlines for the filing of pleadings. The time allowed in many cases is somewhat short; even with these deadlines, however, a deserving applicant might have to wait a long time before obtaining an award. The 30-day deadline for filing an application is set by the statute, and the rules reflect our belief that we cannot legally extend this deadline. We intend, however, that the other deadlines could be extended as necessary.

The rules would strongly encourage settlement on awards. They provide that counsel representing the agency may defer filing an answer objecting or consenting to an award for 30 days if he or she has agreed with the applicant to negotiate a settlement. This provision is not intended to limit settlement negotiations to 30 days, but only to provide that amount of time for informal discussions before the agency must take a formal position on the merits of the application.

The rules also state that awards may be settled either in connection with a settlement of the underlying issues in the proceeding or separately. Simultaneous settlement of the merits of a proceeding and of related attorneys' fees claims may potentially create a conflict of interest between parties and their attorneys. We believe, however, that when an award of fees is a likely possibility in a proceeding, attorneys' fees will inevitably be a consideration in settlement negotiations. Permitting a settlement of both aspects of the proceeding at once will be more direct and efficient than requiring a two-part settlement. We invite comments on the advisability of this approach.

Subpart E—Payment

This subpart explains how an applicant who has received a favorable determination on an application may obtain payment. To avoid any appearance of foot dragging or unnecessary delay by the agency, it would commit the agency to pay within 60 days after the applicant shows it is entitled to payment. The rule also states that an agency will not pay an award if any party has sought court review of the agency's action on the award or in the underlying proceeding. This appears to be required by the Act (5 U.S.C. 504(c)(1)), which provides that if a court reviews the agency's decision in the underlying proceeding, *only* the court may make an award. Note that this statutory provision seems to withhold from SBA the ability to make any payment to an applicant if any party to the proceeding asks for judicial review of the underlying decision, even if the applicant has not initiated the appeal.

It is hereby certified that these regulations do not constitute major rules for the purposes of Executive Order 12291. It is further certified pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that these rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part

Equal access to justice, Claims, Lawyers.

Accordingly, pursuant to section 5(b)(7) of the Small Business Act, 15 U.S.C. 634(b)(7), and section 504 of the Administrative Procedure Act, 15 U.S.C. 504, the following rules are hereby adopted.

Part 132 is added to 13 CFR to read as follows:

PART 132—RULES FOR IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.
132.101 Purpose of these rules.
132.102 When the Act applies.
132.103 Proceedings covered.
132.104 Eligibility of applicants.
132.105 Standards for awards.
132.106 Awards against other agencies.

Subpart B—Allowable Fees and Expenses

132.201 Attorney, agent and expert witness fees.
132.202 Studies, analyses, engineering reports, tests and projects.

Subpart C—Form of Application

132.301 Contents of basic application.
132.302 Statements of net worth.
132.303 Statements of fees and expenses.

Subpart D—Procedures for Considering Applications

132.401 Filing and service of documents.
132.402 When applications can be filed.
132.403 Answers to applications.
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132.405 Comments by other parties.
132.406 Settlements.
132.407 Further proceedings.
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132.409 Finality; agency review.
132.410 Judicial review.

Subpart E—Payments

132.501 Payments of awards.

Authority: 5 U.S.C. 504 and 504 note.

Subpart A—General Provisions

§ 132.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, provides for awarding attorney fees and other adjudication expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Agency. Parties may be able to receive awards when they prevail over the Agency, unless the Agency's position in the proceeding was substantially justified. These rules define eligible parties and identify the kinds of proceedings covered. They also explain how to apply for awards, and the procedures and standards that this Agency will use to make them.

§ 132.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Agency at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Agency action has not been taken before that date, and proceedings pending on September 30, 1984,

regardless of when they were initiated or when final Agency action occurs.

§ 132.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this Agency. An adversary adjudication is an adjudication required to be conducted under 5 U.S.C. 554 in which the position of this or any other agency, or any component of any agency, is represented by an attorney or other representative who enters an appearance and participates in the proceedings. For this Agency, cases ordinarily covered are:

(1) Matters conducted pursuant to section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9), and

(2) Matters conducted pursuant to sections 309 and 313 of the Small Business Investment Act, 15 U.S.C. 687a and e.

(b) If this Agency orders a particular matter to be determined as an adversary adjudication under the procedures set out in 5 U.S.C. 554, the Act will apply, and this Agency will so state in its order designating the matter of hearing.

§ 132.104 Eligibility of applicants.

(a) In order to be eligible for an award of attorney fees or other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). For the purpose of determining eligibility, the "party" shall be the person or entity identified in the order or notice initiating the proceeding or permitting intervention in it. All conditions of eligibility set out in this subpart and in Subpart C must be satisfied.

(b) The types of eligible applicants are as follows:

(1) Individuals with a net worth not more than $1 million;

(2) Sole owners of unincorporated businesses if the owner has a net worth of $5 million or less and not more than 500 employees;

(3) Charitable or other organizations exempted from taxation by section 501(c) (3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) having not more than 500 employees;

(4) Cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)) having not more than 500 employees; and

(5) All other partnerships, corporations, associations or public or private organizations having $5 million or less net worth than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) Whether an applicant who owns an unincorporated business will be considered as an "individual" or a "sole owner of an unincorporated business" will be determined by whether the applicant's participation in the proceeding is related primarily to individual interests or business interests.

(e) The employees of an applicant include all those persons regularly providing work at the time the proceeding was initiated, whether or not at work on that date.

(f) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. "Affiliates" are other individuals, corporations or other entities directly or indirectly connected to the applicant by a chain of ownership or control of a majority of the voting shares or other interests.

(h) An applicant is not eligible if it appears from the facts and circumstances that it has participated in the proceeding only on behalf of other persons or entities that are ineligible.

§ 132.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses unless the position for an agency during the proceeding, or with respect to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit, was substantially justified. To avoid an award, the agency must carry the burden of proof that its position was reasonable in fact and law. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a given proceeding.

(b) Awards for fees and expenses incurred before the date on which a proceeding was initiated are allowable only if the applicant can demonstrate that they were reasonably incurred in preparation for the proceeding.

(c) Awards will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if other special circumstances make an award unjust.

§ 132.106 Awards against other agencies.

No other agency may intervene or otherwise participate as a party in proceedings in this agency covered by this part unless it has agreed that it will pay any fee awards for which this agency determines it is liable under these rules, subject to judicial review.

Subpart B—Allowable Fees and Expenses

§ 132.201 Attorney, agent and expert witness fees.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses. Awards will be calculated on this basis for all fees and expenses actually incurred. If the services were provided by an employee of the applicant or were made available free or at a reduced rate, fees and expenses will be calculated at such reduced rate.

(b) Under the Act, an award for the fees of an attorney or agent may not exceed $75.00 per hour, regardless of the actual rates charged by the attorney or agent. An award for the fees, of an expert witness may not exceed $25 per hour, regardless of the actual rate charged by the witness.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudication officer shall consider factors bearing on the request, such as:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for like services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant, and

(4) The time reasonably spent in light of the difficulty and complexity of the issues in the proceedings.

§ 132.202 Studies, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the services does not exceed the prevailing rate payable for similar services, and

(b) The study or other matter was necessary to the preparation of the party's case.

Subpart C—Form of Application

§ 132.301 Contents of basic application.

(a) Applications shall be in writing and shall contain (1) the name of the applicant and the identification of the

proceeding, (2) a declaration that the applicant believes that it has prevailed, and an identification of each issue as to which the position of an agency or agencies in the proceeding was not substantially justified, (3) a statement of the applicant's type (in terms of the types of applicants described § 132.104), (4) for each applicant other than an individual as defined in § 132.104, a statement of the numbers of its employees on the date on which the proceeding was initiated, (5) for each applicant other than an individual or a sole owner of an unincorporated business, a description of any affiliated individuals or entities, as the term "affiliated" is defined in § 132.104, or a statement that none exist, (6) where applicable, a statement that the applicant had a net worth not more than the ceiling established for its type, as of the date which the proceeding was initiated, and (7) any other matters that the applicant believes appropriate.

(b) Applications filed by a tax exempt organization described in § 132.104 shall also contain either (1) a statement that the applicant was listed, on the date of the initiation of the proceeding, in the then-current edition of IRS Bulletin 78, "Organizations qualified under section 170(c) of the Internal Revenue Code of 1954," or (2) if the applicant is a tax exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a brief description of the organization and statement of the basis for its belief that it is exempt. Qualified tax exempt organizations are not required to file a statement of net worth.

(c) Applications filed by a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) shall also include a copy of the cooperative's charter or articles of incorporation and of its bylaws. Qualified cooperatives are not required to file a statement of net worth.

(d) All applications shall be signed by the applicant, or a responsible and knowledgeable official of an applicant that is not an individual. The individual signing the application shall state that the application and the statement of the net worth (if any) are true and complete to the best of his or her information and belief, and that he or she understands that the application and statement are official statements subject to section 1001 of the United States Criminal Code (18 U.S.C. 1001), which provides that making a false official statement is a felony punishable by fine and imprisonment. The individual signing the application shall also provide the address and telephone number at which he or she can be contacted to verify or explain any information in the application.

§ 132.302 Statement of net worth.

(a) Each applicant except a qualified tax exempt organization or a qualified cooperative must submit with its application a detailed exhibit showing its net worth at the time the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of voting shares of other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates. The exhibit may be in any form convenient to the applicant, provided that it makes full disclosure of the applicant's and any affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards of 5 U.S.C. 504(b)(1)(B)(i). The adjudicative officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall be included in the public record of the proceeding.

§ 132.303 Statements of fees and expenses.

(a) All applications shall be accompanied by an itemized statement or statements of the fees and expenses of the attorneys, expert witnesses, and agents, incurred in connection with the proceeding, for which an award is sought out.

(b) A separate itemized statement, showing the hours spent in work in connection with the proceeding by each individual and a description of what was accomplished, the rate at which fees were computed, the total amount claimed, and the total amount agreed to be paid by the applicant, must be submitted for each person, firm or other entity for which the applicant seeks an award.

(c) The rules governing the allowance of fees and expenses, set forth in Subpart B of this part, shall be followed. Expenses must be verifiable in accordance with the standards published by the Internal Revenue Service for the documentation of business expenses.

(d) Each separate statement must be verified by the person, firm or other entity performing services for which an award is sought, in accordance with the requirements set forth in paragraph (d) of § 132.301.

Subpart D—Procedures for Considering Applications

§ 132.401 Filing and service of documents.

All Applications for an award of fees, answers, or replies, comments, and other pleadings and documents related to applications shall be filed in the same manner as other pleadings in the proceeding and served on all parties to the proceeding, except as provided in § 132.302(c) for Confidential Statements of Net Worth.

§ 132.402 When applications can be filed.

(a) The Act provides that an application for an award may not be made later than thirty days after final Agency action on the proceeding. This Agency does not have the power to allow exceptions for later filings, and thus the applicant must file and serve the application no later than 30 days after the later of (1) the date which this agency declines to review an initial decision or other proposed disposition of the proceeding by an adjudicative officer, or (2) the date on which the Agency issues an order disposing of petitions to reconsider the Agency's final action, or (3) if no petitions for reconsideration were filed, the date on which they were due.

(b) An application may be filed any time, before the last filing date as determined under paragraph (a) of this section, that the applicant believes that it has prevailed. An applicant has prevailed when the Agency has taken favorable action of one of the types specified in paragraphs (a) (1) through (3) of this section with respect either to the entire proceeding or to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit.

§ 132.403 Answers to applications.

(a) *General.* Within 15 days after service of the application, counsel representing the agency from which an award is sought shall file an answer of one of the types described in paragraphs (b) through (d) of this section. Unless counsel requests and is granted an extension of time for filing, failure to file an answer within the 15-day period will

be treated as a consent to the award requested.

(b) *Counsel.* If the agency counsel does not object to the award requested, he or she shall file an answer consenting to the award.

(c) *Negotiation.* If the agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file an answer stating their intent to negotiate a settlement. Within 30 days thereafter the agency counsel shall file an answer consenting or objecting to an award, or a proposed settlement on the application.

(d) *Objection.* If the agency counsel objects to the award requested, he or she shall file an answer objecting, which shall explain in detail the agency counsel's position and identify the facts relied on in support. If the objection is based on any alleged facts not already in the record of the proceeding, the agency counsel shall include with the objection either supporting affidavits or a request for further proceedings under § 132.407.

§ 132.404 Replies.

Within 15 days after service of an objection, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 132.407.

§ 132.405 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application or an answer. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires additional exploration of matters raised in the comments.

§ 132.406 Settlements.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the issues in the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 132.407 Further proceedings.

(a) *General.* Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, including an informal conference, oral argument, additional written submissions or an evidentiary hearing, as provided in this section. Further proceedings should not be considered routine and, where necessary, will be conducted as promptly as possible.

(b) *Informal conferences; oral argument.* The adjudicative officer may schedule an informal conference to discuss an application or an oral argument on any issues related to the application whenever he or she believes the conference or argument may be helpful in resolving or in encouraging settlement of the issues.

(c) *Written submissions.* The adjudicative officer may order an applicant, agency counsel, or a party filing comments under § 132.405 to make additional written evidentiary submissions whenever he or she believes they are necessary to provide a record adequate to decide the issues related to the application. A request that the adjudicative officer order written submissions shall specifically identify the information sought and shall explain why the information is necessary to decide the issues.

(d) *Hearings.* The adjudicative officer shall hold an evidentiary hearing only on disputed issues of material fact that cannot be adequately resolved through written submissions. A request for hearing shall specifically identify the disputed issues and the evidence to be presented at the hearing and shall explain why an oral evidentiary hearing is necessary to resolve the issues. The procedures for the hearing are those that apply to the underlying proceeding.

§ 132.408 Decisions.

The adjudicative officer shall issue a decision on the application as promptly as possible after the filing of the last document or the conclusion of the hearing. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, but shall not disclose the net worth of the applicant. The decision on the reasonableness of the amount requested shall include an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings or whether other special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 132.409 Finality; agency review.

(a) *Finality of adjudicative officer's decision.* Unless the applicant or agency counsel seeks it under paragraph (b) of this section or the agency issues an order taking review of the decision on its own initiative, the adjudicative officer's decision on the application shall become a final decision of the agency 30 days after it is issued.

(b) *Agency review.* The applicant's counsel may seek review of the adjudicative officer's decision on the fee application by filing and serving a petition for review within 20 days after issuance of the decision. The agency may also decide to review an adjudicative officer's decision on its own initiative. Whether to review a decision is a matter within the discretion of the agency. The standard of review will be that ordinarily applied to initial decisions, except that an adjudicative officer's determination on the justification of the agency's position as a party, on whether the applicant unduly prolonged the proceeding and on whether other special circumstances make an award unjust will be reversible only for abuse of discretion. The agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 132.410 Judicial review.

Judicial review of final agency decisions on awards may be obtained as provided in 5 U.S.C. 504(c)(2).

Subpart E—Payment

§ 132.501 Payment of awards.

An applicant seeking payment of an award shall submit to the Controller of SBA a copy of the Agency's final award along with a statement that it will not seek review (or further review) of the agency decision, or on the award, in the United States courts. The Agency will pay the applicant the amount awarded within 60 days after receiving the applicant's submission, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: May 17, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-14066 Filed 5-20-82; 8:45 am]

BILLING CODE 6525-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 81F-0168]

Indirect Food Additives: Polymers; Rubber Articles Intended for Repeated Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyester elastomers produced by the condensation of dimethyl terephthalate, 1,4-butanediol, and α-hydro-*omega*-hydroxypoly(oxytetramethylene), as components of rubber articles intended for repeated use in contact with food. The substances are limited to use in contact with food that contains not more than 8 percent alcohol at temperatures not greater than 150° F. This action is in response to a petition filed by Springborn Institute Bioresearch, Inc., Spencerville, OH 45887, the parent company of SL Testing Institute, on behalf of Toyobo Co., Ltd., Japan.

DATES: Effective May 21, 1982; objections by June 21, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 7, 1981 (46 FR 35192), FDA announced that a petition (FAP 8B3417) had been filed by SL Testing Institute, Enfield, CT 06082, on behalf of Toyobo Co., Ltd., Japan, proposing that the food additive regulations be amended to provide for the safe use of polyester elastomers produced by the condensation of dimethyl terephthalate, 1,4-butanediol, and α-hydro-*omega*-hydroxypoly(oxytetramethylene) as articles intended for repeated use in contact with food containing not more than 8 percent alcohol.

FDA has evaluated the data in the petition and other relevant material, and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the documents FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for public inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore need not be prepared. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives; Polymeric food packaging.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 177 is amended in § 177.2600(c)(4)(i) by alphabetically inserting a new item in the list of elastomers to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Polyester elastomers derived from the reaction of dimethyl terephthalate, 1,4-butanediol, and α-hydro-*omega*-hydroxypoly(oxytetramethylene); for use only in contact with foods containing not more than 8 percent alcohol and limited to use in contact with food at temperatures not exceeding 150° F.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 21, 1982 submit to the Dockets Management Branch (HFA-305) (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 21, 1982.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 11, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13900 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 177 and 178

[Docket No. 80F-0029]

Indirect Food Additives: Polymers; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of azodicarbonamide as a blowing agent for polyethylene foam articles that contact food and as an adjuvant in the production of polyethylene sealing gaskets for food containers. Voltek, Inc., filed a petition requesting such uses.

DATES: Effective May 21, 1982; objections by June 21, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 11, 1980 (45 FR 24921), FDA announced that a food additive petition (FAP 7B3260) had been filed by Voltek, Inc., 100 Shepard St., Lawrence, MA 01843, proposing that the food additive regulations be amended to provide for the safe use of azodicarbonamide as a blowing agent for polyethylene foam articles that contact food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive is safe and that the regulations should be revised as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

FDA is amending § 178.3010 (21 CFR 178.3010) to add a new substance, azodicarbonamide, for use as a blowing agent in foamed polyethylene complying with item 2.1 of 21 CFR 177.1520, is retitling the regulation as "Adjuvant substances used in the manufacture of foamed plastics," and is making some editorial changes in the regulation. These editorial changes do not change the scope or substance of the existing regulation, but simply permit it to list blowing agents and other adjuvants used in the production of foamed plastics when future regulations permitting such uses are promulgated. Azodicarbonamide is currently regulated under § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) for general use in sealing gaskets at a level of 2 percent. Although the new use of azodicarbonamide specified in § 178.3010 would be included in § 177.1210 by cross reference, FDA is amending § 177.1210 to specifically include the use of azodicarbonamide in foamed polyethylene at a level of 5 percent. This amendment will prevent confusion over the possible applicability of the current 2-percent limitation on azodicarbonamide as it might apply to foamed polyethylene.

The agency previously considered the potential environmental effects of this rule as announced in the notice of filing published in the **Federal Register**. No new information or comment has been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR

Part 177: Food additives; Polymeric food packaging.

Part 178: Food additives; Food packaging; Sanitizing solutions.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 177 and 178 are amended as follows:

1. Part 177 is amended in § 177.1210(b)(5) by revising the entry for "Azodicarbonamide", to read as follows:

§ 177.1210 Closures with sealing gaskets for food containers.

* * * * *

(b) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Azodicarbonamide	1. 2 percent. 2. 5 percent; for use only in the manufacture of polyethylene complying with item 2.1 in § 177.1520(c) of this chapter.
* * * * *	

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

2. Part 178 is amended by revising § 178.3010, to read as follows:

§ 178.3010 Adjuvant substances used in the manufacture of foamed plastics.

The following substances may be safely used as adjuvants in the manufacture of foamed plastics intended for use in contact with food, subject to any prescribed limitations:

List of substances	Limitations
Azodicarbonamide	For use as a blowing agent in polyethylene complying with item 2.1 in § 177.1520(c) of this chapter at a level not to exceed 5 percent by weight of finished foamed polyethylene.
Isopentane	For use as a blowing agent in polystyrene.
n-Pentane	Do.
1,1,2,2-Tetrachloroethylene	For use only as a blowing agent adjuvant in polystyrene at a level not to exceed 0.3 percent by weight of finished foamed polystyrene intended for use in contact with food only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, III, VI, and VIII.
Toluene	For use only as a blowing agent adjuvant in polystyrene at a level not to exceed 0.35 percent by weight of finished foamed polystyrene.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 21, 1982 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 21, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13901 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0092]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended to contact food. This action is in response to a petition filed by Sandoz Colors and Chemicals, Division of Sandoz, Inc.

DATES: Effective May 21, 1982; objections by June 21, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 14, 1981 (46 FR 21828), FDA announced that a petition (FAP 1B3546) had been filed by Sandoz Colors and Chemicals, Division of Sandoz, Inc., 59 Route 10, Hanover, NJ 07936, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended to contact food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
Di-tert-butylphenyl phosphonite condensation product with biphenyl produced by the condensation of 2,4-di-tert-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 mg KOH/gm, and a melting range of 85° C to 110° C (185° F to 230° F).	For use only at levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 2.1, 2.2, 3.1, or 3.2, and used in contact with food only under conditions of use B through H described in table 2 of § 176.170(c) of this chapter.
* * *	* *

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 21, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 21, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13900 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Fluprostenol Sodium Injection; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for fluprostenol sodium injection from ICI Americas, Inc., to Bayvet Division of Cutter Laboratories, Inc. The firm filed a supplemental new animal drug application (NADA) providing for the change.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bayvet Division of Cutter Laboratories, Inc.,

P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 111-529 providing for its sponsorship of Equimate, a fluprostenol sodium injection. By letters, ICI Americas, Inc., the former sponsor, and Bayvet Division of Cutter Laboratories, Inc., confirmed the transfer of sponsorship.

The supplemental NADA for the change of sponsor is approved and the regulations are amended to reflect the approval.

Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), the intracorporate transfer of an NADA is a Category I change that does not require reevaluation of the safety and effectiveness data in the parent application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.995 *Fluprostenol sodium injection* in paragraph (b) by removing drug sponsor code "011511" and inserting in its place "000859".

Effective date. May 21, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 5, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-13736 Filed 5-20-82 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Old Monroe Elevator & Supply Co., Inc., providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworms, nodular worms, and whipworms; and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369, is the sponsor of NADA 128-834 providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworms, nodular worms, and whipworms. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. This NADA was filed by Elanco Products Co. for the sponsor. Elanco authorized use of the safety and effectiveness data contained in their approved NADA's 10-918 and 11-948 to support this application. This approval does not change the approved use of the drug. Consequently, approval of the NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 128-834 does not require reevaluation of the safety and effectiveness data in NADA's 10-918 and 11-948. NADA 128-834 is approved, and the regulations are amended to reflect the approval. Satisfactory chemistry, manufacturing, and control information were also submitted.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug sponsor code "026948" to paragraph (a)(4) and to the "sponsor" column in paragraph (e)(1) (i) and (ii).

Effective date. May 21, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 7, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-13845 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Good-Life, Inc., providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and

sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Good-Life, Inc., Good-Life Drive, P.O. Box 687, Effingham, IL 62401, is the sponsor of NADA 128–411 submitted on its behalf by Elanco Products Co. This NADA provides for use of a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibrionic), and control swine pneumonias caused by bacterial pathogens *(Pasteurella multocida* and/or *Corynebacterium pyogenes).*

Approval of this NADA is based on safety and effectiveness data contained in Elanco's approved NADA's 12–491 and 41–275. Elanco has authorized use of the data in NADA's 12–491 and 41–275 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplemental NADA and does not require reevaluation of the safety and effectiveness data in NADA 12–491 or NADA 41–275.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither and environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMALS FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine* by adding, in numerical sequence, drug sponsor code "021810" to paragraph (b)(9).

Effective date. May 21, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 7, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-13346 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations

May 14, 1982.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the listing of Courts of Indian Offenses under section 11.1(a) by adding the Red Lake Court of Indian Offenses to the list. This amendment is necessary to reflect the true status of the Red Lake court which was inadvertently omitted from the listing when it was first published in the **Federal Register** in 1978. This amendment will effectively update the listing and eliminate the confusion concerning the status of the Red Lake Court of Indian Offenses.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Patrick A. Hayes, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Washington, D.C. 20245. Telephone number: (202) 343–6857.

SUPPLEMENTARY INFORMATION: The Red Lake Court of Indian Offenses is added to the listing because the Red Lake Tribal Council has, by Resolution No. 70–81, dated June 4, 1981, stated its position that it has never intended to change the status of the Red Lake Court of Indian Offenses since its creation in 1884, and that, therefore, the court had wrongfully been omitted from the listing. The Red Lake Tribe is not organized under the Act of June 18, 1934, 25 U.S.C. 461 *et seq.*, and is therefore not subject to 25 CFR 11.1(d). This addition will clarify the status of the court for the members of the tribe, and will enable the court system to effectively administer justice on the Red Lake Reservation. It is contemplated that the Red Lake Court of Indian Offenses will be able to entertain any potential challenge to decisions of the Red Lake Election Board if the tribal election ordinance permits judicial review.

This amendment is made under the authority contained in 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

Since the purpose of this amendment to § 11.1(a) is to correct a previous omission to the listing of Courts of Indian Offenses by adding the Red Lake Court of Indian Offenses to reflect the true status of the court, advance notice and public procedure are dispensed with under the exception provided in subsection (b)(B) of 5 U.S.C. 553 (1970). In addition, the usual 30 calendar days deferred effective date period is dispensed with under the exception provided in subsection d(3) of 5 U.S.C. 553 (1970) because it is essential that a clarification of the status of the Red Lake Court of Indian Offenses not be delayed to avoid any further confusion concerning the jurisdiction of the court and to ensure the effective administration of justice.

The principal author of this document is Patrick A. Hayes, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 11

Courts; Indian law; Law enforcement; and Penalties.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Section 11.1 of Part 11 of Subchapter B, Chapter 1 of Title 25 of the Code of Federal Regulations is amended by adding (a)(31) to read as follows:

§ 11.1 Application of regulations.

(a) Except as otherwise provided in this part, §§ 11.1–11.87 of this part apply to the following Indian reservations:

* * * * *

(31) Red Lake (Minnesota)

* * * * *

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 82-13976 Filed 5-20-82; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Order No. 977–82]

Procedures To Be Followed by Government Attorneys Prior To Filing Recusal or Disqualification Motions

AGENCY: Justice Department.

ACTION: Final rule.

SUMMARY: The issue of the government requesting that a judge not participate in a particular case is a sensitive question, requiring the assessment of all facts and circumstances. This notice sets forth the Department's rules to be followed by government attorneys who during the course of litigation seek to recuse or disqualify a justice, judge, or magistrate. According to the procedures, no motion to recuse or disqualify can be made without prior authorization by the Assistant Attorney General or his appropriate designee.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis Linder, Civil Division, Room 3744, 10th & Pennsylvania Avenue, NW., Washington, D.C., 20530 (202–633–3314).

SUPPLEMENTARY INFORMATION: The requirements of Executive Order No. 12291 (improving government regulations) do not apply to these procedures because they do not constitute a "major rule" within the meaning of Section 1(b) of E.O. 12291. Additionally, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply because these procedures are not a "rule" under Section 601(2) of that Act.

List of Subjects in 28 CFR Part 50

Courts, Judges, Law, Lawyers.

PART 50—STATEMENTS OF POLICY

Accordingly, by the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, and 516, a new § 50.19 to be read as follows, is added to Chapter I of Title 28, Code of Federal Regulations:

§ 50.19 Procedures to be followed by Government attorneys prior to filing recusal or disqualification motions.

The determination to seek for any reason the disqualification or recusal of a justice, judge, or magistrate is a most significant and sensitive decision. This is particularly true for government attorneys, who should be guided by uniform procedures in obtaining the requisite authorization for such a motion. This statement is designed to establish a uniform procedure.

(a) No motion to recuse or disqualify a justice, judge, or magistrate (*see, e.g.*, 28 U.S.C. 144, 455) shall be made or supported by any Department of Justice attorney, United States Attorney (including Assistant United States Attorneys) or agency counsel conducting litigation pursuant to agreement with or authority delegated by the Attorney General, without the prior written approval of the Assistant Attorney General having ultimate supervisory power over the action in which recusal or disqualification is being considered.

(b) Prior to seeking such approval, Justice Department lawyer(s) handling the litigation shall timely seek the recommendations of the United States Attorney for the district in which the matter is pending, and the views of the client agencies, if any. Similarly, if agency attorneys are primarily handling any such suit, they shall seek the recommendations of the United States Attorney and provide them to the Department of Justice with the request for approval. In actions where the United States Attorneys are primarily handling the litigation in question, they shall seek the recommendation of the client agencies, if any, for submission to the Assistant Attorney General.

(c) In the event that the conduct and pace of the litigation does not allow sufficient time to seek the prior written approval by the Assistant Attorney General, prior oral authorization shall be sought and a written record fully reflecting that authorization shall be subsequently prepared and submitted to the Assistant Attorney General.

(d) Assistant Attorneys General may delegate the authority to approve or deny requests made pursuant to this section, but only to Deputy Assistant Attorneys General or an equivalent position.

(e) This policy statement does not create or enlarge any legal obligations upon the Department of Justice in civil or criminal litigation, and it is not intended to create any private rights enforceable by private parties in litigation with the United States.

Dated: May 12, 1982.

William French Smith,

Attorney General.

[FR Doc. 82-13907 Filed 5-20-82; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the York (PA.) Human Relations Commission as a 706 Agency.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Franklin F. Chow, Equal Employment Opportunity Commission, Office of Field Services, State and Local Division, 2401 E. St., N.W., Washinton, D.C. 20506, telephone 202/634–6905.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

In Title 29, Chapter XIV of the Code of Federal Regulations, § 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * *

York (PA.) Human Relations Commission

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e—12(a))

Signed at Washington, D.C. this 17th day of May, 1982.

For the Commission.

John E. Rayburn,

Director, State and Local Division.

[FR Doc. 82-13072 Filed 5-20-82; 8:45 am]

BILLING CODE 6570-06-M

POSTAL SERVICE

39 CFR Part 111

Effective Date for Requester Rule for Alternative II (Formerly Controlled Circulation) Publications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On March 2, 1982, the Board of Governors of the Postal Service set an effective date of October 1, 1982, for the requirement that controlled circulation type publications have a legitimate list of persons who request the publications to be eligible for mailing as second-class mail. Accordingly, postal regulations are being changed to specify that the effective date of the requester rule will be October 1, 1982.

EFFECTIVE DATE: June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Jerry Lease (202) 245-4657.

SUPPLEMENTARY INFORMATION: On January 25, 1982, a change to section 422.6d of the Domestic Mail Manual (DMM) was published in the Federal Register to correct an erroneously set effective date. The effective date implemented a requirement that alternative II (formerly controlled circulation) second-class publications be circulated primarily to persons requesting the publication (47 FR 3352). In the January 25 notice, the Postal Service stated that the Board of Governors had not yet acted to set an effective date for the requester requirement, and that notice of any action taken would be published in the Federal Register.

Also on January 25, 1982, the Postal Service published a solicitation of comments regarding the possible elimination of both the subscriber and requester requirements for all regular-rate second-class publications (47 FR 3377). Public comment was invited in order to determine whether the Postal Service should file a request with the Postal Rate Commission to eliminate the paid subscriber and requester requirements.

On February 24, 1982, the Postal Service published notice of a meeting of the Board of Governors to be held on March 1 and 2, 1982 (47 FR 8121). The published agenda for that meeting included an item on the requester requirement. The notice stated:

* * * * *

The Board will consider whether to authorize a filing with the Postal Rate Commission for a change in the Domestic Mail Classification Schedule to eliminate the requirement in section 200.0110f that publications must have a legitimate list of persons who request the publication to be eligible as second-class mail *or,* in the alternative, to set an effective date for this requirement. The Classification Schedule currently states that subsection f will not be effective prior to March 20, 1982; the Board has not previously determined the date on which this subsection shall become effective.

A majority of the comments received in response to the January 25, 1982, solicitation of comments favored retention of the subscriber and requester requirements for second-class publications. After reviewing the comments, the Board of Governors decided to set an effective date of October 1, 1982, for the requester requirement. In accordance with that decision, section 422.6d of the Domestic Mail Manual (DMM), amended on January 25, 1982, to state that the requester rule would not be effective before March 20, 1982, is now further revised to specify that the effective date of the requester rule will be October 1, 1982.

The title of 422.6 is also being revised to reflect the Governors' decision merging second-class and controlled circulation mail. The title "Controlled Circulation Publications" is changed to "Alternative II Publications (formerly Controlled Circulation)."

List of Subjects in 39 CFR Part 111

Postal Service.

In view of the above considerations, the Postal Service hereby adopts the following changes to the Domestic Mail Manual, which is incorporated by reference in the Federal Register (39 CFR 111.1).

PART 422—TYPES OF AUTHORIZATIONS

In 422.6, revise the heading and paragraph d. to read as foll ws:

422.6 Alternative II Publications (formerly Controlled Circulation).

* * * * *

d. Effective October 1, 1982, the publication must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for including those at or below a nominal rate may be included in the determination of whether the 50 percent requester requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration. Requests which are more than three years old will not be considered to meet this requirement.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of this change will be published in the Federal Register as provided in 39 CFR 111.3.

(39 U.S.C. 401(2), 404(a)(2), 3625(f))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-13069 Filed 5-20-82; 8:45 am]

BILLING CODE 7715-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-6-FRL-2129-6]

Delegation of Additional Authority to the State of Arkansas for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency.

ACTION: Information notice.

SUMMARY: On September 14, 1981, EPA delegated the authority for implementation and enforcement of existing New Source Performance Standards and National Emission Standards of Hazardous Air Pollutants (except demolition and renovation of buildings containing asbestos) to the State of Arkansas.

On March 11, 1982, the Arkansas Department of Pollution Control and Ecology (ADPCE) requested delegation of authority to implement and enforce future NSPS and NESHAP requirements. On March 25, 1982, EPA granted this additional authority to ADPCE by modifying Condition 4 of the NSPS/NESHAP delegation agreement.

EFFECTIVE DATE: March 25, 1982.

ADDRESS: Copies of the State request and State/EPA agreement for delegation of authority are available for public inspection at the Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, First International Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: William H. Taylor, Jr., Chief, Technical Section, Air Branch, address above, telephone (214) 767–1594 or (FTS) 729–1594.

SUPPLEMENTARY INFORMATION: On March 11, 1982, the State of Arkansas submitted to EPA, Region 6, a request for delegation of additional authority to the ADPCE for the implementation and enforcement of future NSPS and NESHAP programs. After a through review of the request and information submitted, the Regional Administrator determined that the State's pertinent laws and the rules and regulations of the ADPCE were adequate and effective to implement and enforce future NSPS and NESHAP requirements. Therefore, Condition 4 of the NSPS/NESHAP agreement letter was amended on March 25, 1982, as follows:

4. The Arkansas Department of Pollution Control and Ecology is authorize to implement and enforce all future NSPS and NESHAP requirements without making a written request to EPA, subject to the delegation conditions and terms as set forth in the delegation agreement letter dated September 14, 1981.

Under Executive Order 12291, EPA must judge whether a publication is "major" and therefore subject to the requirements of a regulatory impact analysis. The delegation of authority is not "major", because it is an administrative change, and no additional burdens are imposed on the parties affected.

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

This delegation is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: April 29, 1982

Frances E. Phillips,

Regional Administrator.

[FR Doc. 82-13998 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[A&WM-4-FRL 2128-1]

Hazardous Waste Management Programs; Georgia: Authorization for Interim Authorization Phase II Components A and B

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: The State of Georgia has applied for Interim Authorization Phase II Components A and B, which allows the State rather than the Environmental Protection Agency to issue or deny permits regulating the operation of facilities that treat and store hazardous waste. EPA has reviewed Georgia's application for Phase II Components A and B and has determined that Georgia's hazardous waste program is substantially equivalent to the Federal program covered by Components A and B. The State of Georgia is hereby granted Interim Authorization for Phase II Components A and B to operate the State's hazardous waste program covered by Components A and B, in lieu of the Federal program.

EFFECTIVE DATE: Interim Authorization Phase II Components A and B for Georgia shall become effective on May 21, 1982.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone (404) 881–3016.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous wastes, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1981, **Federal Register** (46 FR 7965), the Environmental Protection Agency announced that States could apply for components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802) contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123, Subpart F (46 FR 8298), January 26, 1982.

The State of Georgia received Interim Authorization for Phase I on February 3, 1981.

Draft Application

The State of Georgia submitted its draft application for Phase II Interim Authorization on August 21, 1981. After detailed review, EPA identified several areas of major concern and transmitted comments to the State for its consideration. After reviewing these comments, State Officials determined that the issues raised by EPA could be resolved without changes in State regulations or legislation. Georgia subsequently made revisions to the Program Description, Memorandum of Agreement, and Attorney General's Statement to answer those questions or issues that had been raised during the review of the draft application.

Final Application

On February 22, 1982, Georgia submitted to EPA a Final Application for Interim Authorization, Phase II

Components A and B under RCRA. An EPA review team consisting of both Headquarters and Regional Office personnel made a detailed analysis of Georgia's Hazardous Waste Management Program.

One major question raised in the comments submitted to the State was whether the State had the authority to grant exemptions from the hazardous waste permitting requirements. Other issues included: (1) The need to clarify procedures for issuing emergency permits, (2) the need for the Authorization Plan to include a commitment to amend the State's regulations with respect to public participation in the permitting process, (3) the need to explain the procedures for granting trial burn and incineration permits, and (4) the need to explain whether hazardous waste managment facilities that have been operating under short term variances could continue to operate when the variances expire.

By letters dated April 6, 1982, and April 12, 1982, the State responded satisfactorily to the issues raised by EPA. In those letters the State clarified certain issues and amended portions of the State's application. It is evident that the State statutes and regulations which give authority to grant exemptions relate only to the universe of waste regulated by the State. They do not allow the State to grant exemptions from permitting requirements. Georgia has agreed in the MOA, with regards to the State procedures for issuing emergency permits, to follow the procedures outlined in 40 CFR 122.27.

The State amended its Authorization Plan to include a commitment to amend section 391–3–11 of its regulations to clarify that the public participation provisions EPA promulgated at 46 FR 36704–36706, July 15, 1981, govern the permitting process for hazardous waste management facilities. Further, the State has agreed in the MOA to hold a public hearing if the Director receives written notice of opposition to issuance of a permit and a request for a public hearing within 45 days of the notice of intent to issue a permit.

The State explained that trial burn and incineration permits will be subject to the public participation requirements of section 7004(b) of RCRA.

The State amended the Program Description to make it clear that hazardous waste management facilities that have been operating under short term variances could continue to operate when the variances expire only if the facility enters into a legally binding Consent Agreement with the State.

One issue that has arisen in connection with Phase II interim authorization is whether authorization will extend to the permitting of existing storage surface impoundments and existing incinerators. EPA has proposed to temporarily suspend the regulations for existing storage surface impoundments and existing incinerators pending EPA review of their cost effectiveness. Pending a final decision, EPA has tentatively decided to authorize States to permit all facilities covered by components A and B. If EPA does suspend the regulations for these facilities, the State's ability to issue State RCRA permits for those facilities (existing storage surface impoundments and existing incinerators) will automatically be suspended. Accordingly, the State's MOA has been amended adding a statement explaining what effect a suspension of the EPA regulations for existing storage surface impoundments and existing incinerators would have on the State's program.

Public Hearing and Comment Period

As noticed in the Federal Register on March 12, 1982 (47 FR 10861), EPA gave the public until April 19, 1982, to comment on the State's application. EPA held a public hearing in Atlanta, Georgia on April 12, 1982.

No oral comments were received at the public hearing; written comments submitted directly to EPA are summarized below along with EPA's responses. Region IV received four written comments on the Georgia application by the close of the comment period on April 19, 1982.

Comments 1–3: Three of the written comments favored EPA granting Georgia Phase II authorization. One commenter contended that the State has done an outstanding job in carrying out Federal and State environmental regulations. Another emphasized that the State government should have the major responsibility for waste management since the State is more familiar with local problems and would be more responsive to local concerns, and Georgia EPD has an excellent reputation in managing other environmental programs. The third commenter favored authorization because Georgia has demonstrated it has the necessary resources to manage the Hazardous Waste Program.

EPA Response: No response needed.

Comment 4: Georgia also applied for authorization to implement the temporary Federal permitting program for new land disposal facilities contained in 40 CFR Part 267. This written comment opposed EPA delegating authority to the State for this program.

EPA Response: Temporary regulations which allow EPA to permit new land disposal facilities were promulgated on February 13, 1981 (46 FR 12414–12433). The preamble for the temporary regulations explained that EPA would *not* authorize State land disposal permit programs based upon temporary regulations.

Decision

EPA has reviewed the State Georgia's complete application for Interim Authorization Phase II Components A and B and has determined that the State program is substantially equivalent to the Phase II Components A and B of the Federal program as defined in 40 CFR Part 123, Subpart F. In accordance with section 3006(c) of RCRA, the State of Georgia is hereby granted Interim Authorization for Phase II Components A and B to operate the State's hazardous waste program governed by Components A and B, in lieu of the Federal program.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Certification: Georgia Application for Interim Authorization, Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: May 4, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-13091 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62025; TSH-FRL 2131-3]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Incorporations by Reference Update

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In conformance with 1 CFR Part 51 EPA is establishing the necessary section to include incorporations by reference in 40 CFR Part 761.

DATES: This final rule is effective May 21, 1982.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Office of Pesticides and Toxic Substances (TS-788), Rm. E-125, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460, (202-382-3637).

SUPPLEMENTARY INFORMATION: In conformance with the requirements of 1 CFR Part 51, EPA is establishing the necessary section to include 40 CFR Part 761 incorporations by reference. Information needed to meet incorporation by reference requirements has been consolidated in § 761.19. Specific test references contained in §§ 761.60 and 761.75 (formerly §§ 761.10 and 761.41, respectively) are being amended to provide citations to this material.

This regulation is a nonsubstantive redesignation and as such requires no opportunity for comment or public participation.

(Sec. 6, 90 Stat. 2020, (15 U.S.C. 2065))

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements.

Dated: May 14, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE AND USE PROHIBITIONS

Therefore, Subpart A of 40 CFR Part 761 is amended by adding § 761.19 to read as follows:

§ 761.19 References.

(a) [Reserved].

(b) *Incorporations by reference.* The following material is incorporated by reference, and is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St. NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Office of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Environmental Protection Agency Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, EPA, Rm. 106, 401 M St., SW., Washington, D.C. 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

	CFR Citation
ASTM D93-77 Standard Test Method for Flash Point by Pensky-Martens Closed Tester.	§ 761.60(a)(3)(ii)(B)(6); § 761.75(b)(8)(iii).
ASTM D129-64 (Reapproved 1978) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D240-76 (Reapproved 1980) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuel by Bomb Calorimeter.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D482-74 Standard Test Method for Ash from Petroleum Products.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D524-76 Standard Test Method for Ramsbottom Carbon Residue of Petroleum Products.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D808-63 (Reapproved 1976) Standard Test Method for Chlorine in New and Used Petroleum Products (Bomb Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D923-74 Standard Test Method for Sampling Electrical Insulating Liquids.	§ 761.60(g)(1)(ii); § 761.60(g)(2)(ii).
ASTM D1266-70 (Reapproved 1975) Standard Test Method for Sulfur in Petroleum Products (Lamp Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D1796-68 (Reapproved 1977) Standard Test Methods for Water and Sediment in Crude Oils and Fuel Oils by Centrifuge.	§ 761.60(a)(3)(ii)(B)(6).
ASTM D2158-65 (Reapproved 1975) Standard Test Method for Residues in Liquefied Petroleum (LP) Gas.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D2709-66 (Reapproved 1977) Standard Test Method for Water and Sediment in Distillate Fuel by Centrifuge.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D2784-70 (Reapproved 1975) Standard Test Method for Sulfur in Liquefied Petroleum Gases (Oxyhydrogen Burner or Lamp).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D3178-73 (Reapproved 1979) Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coke and Coal.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D3278-73 Standard Test Methods for Flash Point of Liquid by Setaflash Closed Tester.	§ 761.75(b)(8)(iii).
ASTM E258-67 (Reapproved 1977) Standard Test Method for Total Nitrogen Inorganic Material by Modified KJELDAHL Method.	§ 761.60(a)(3)(iii)(B)(6).

[FR Doc. 82-13089 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-776; RM-3958]

Radio Broadcast Services, FM Broadcast Station in Gallup, N.M.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 256 to Gallup, New Mexico, in response to a petition filed by John R. Catsis. The assignment could provide a third FM service to Gallup.

DATE: Effective July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Gallup, New Mexico), BC Docket No. 81-776, RM-3958.

Report and Order (Proceeding Terminated)

Adopted: May 12, 1982.
Released: May 17, 1982.

1. The Commision herein considers the Notice of Proposed Rule Making, 46 FR 39561, published December 7, 1981, proposing the assignment of Class C Channel 256 to Gallup, New Mexico. The Notice was issued in response to a petition filed by John R. Catsis ("petitioner"). Supporting comments were filed by the petitioner, restating his intention to apply for the channel, if assigned. Comments in opposition to the proposal were filed by Road Runner Radio, Inc. ("RRR"), to which petitioner responded.[1]

2. Gallup (population 18,161),[2] seat of McKinley County (population 54,950), is located approximately 192 kilometers (120 miles) west of Albuquerque, New Mexico. It is served by two full-time AM stations (KGAK and KYVA) and two FM stations (KQNM and KOVO). The AM and FM stations are co-owned.

3. The petitioner incorporated by reference the information in the Notice which demonstrated the need for an additional FM assignment to Gallup. He also noted Gallup's continuing growth pattern, which he says justifies a third assignment. In the Notice we stated that all seven channels would be affected as a result of the proposed assignment. However, numerous other channels are said to be available throughout the precluded area.

4. Road Runner Radio, in opposition to the proposal argues that the petitioner has failed to show good cause for a departure from the Commission's population guidelines governing FM allocations. It contends that Gallup has adequate service, provided by local stations and neighboring communities. One of the stations providing service to Gallup is said to be KYKN(FM), Grants, New Mexico, of which the petitioner (and his wife) is a 29% stockholder. RRR asserts that under the Commission's multiple ownership rules, petitioner would be prohibited from applying for the channel he seeks to have assigned. RRR claims that Gallup's population has been static in recent years. Since most of the area is owned by either the Navajo Tribe or the Federal Government and is undeveloped, RRR alleges that growth in the area will continue to be restricted. Adding to those factors is the sluggish economy (primarily the uranium industry) and a major decline in tourist trade. The opposition also contends that market conditions in the Gallup-McKinley County area strongly dictate against another FM station in the area. It therefore urges the Commission to dismiss the proposal for a third FM allocation to Gallup.

5. In reply comments, the petitioner argues that Gallup should not be denied a third assignment based on declining tourism, adequate service, static population and a depressed economy. Petitioner alleges that the opponent is a licensee who does not wish to be subject to additional competition. It adds that the population has shown significant growth between 1970 and 1980 (approximately 29%) and continues to increase. While McKinley County is said to be suffering economically from employment cutbacks in the uranium industry, petitioner asserts that the uranium mines are located at Grants, New Mexico, some 60 miles away, with little impact on Gallup's economy. Gallup's main industry is really coal, which is experiencing significant growth as the uranium industry declines. Petitioner characterizes RRR's allegation regarding a decline in the tourist trade as erroneous. Finally, petitioner responded that the multiple ownership issue should not present an obstacle to the assignment since several options are present. Petitioner states that it may have an ownership interest in both stations or it may sell it interest in the Grants station. However, it does not foresee an overlap problem because the mountainous terrain between the two communities would prevent an actual 1 mV/m overlap.

6. The main issue here appears to be the need for an additional assignment at Gallup, in view of the Commission's general policy which calls for assigning two stations to communities with a population under 50,000. This criteria has been employed as a guideline, not a rigid formula, and has not limited itself solely to numerical distribution. Here, we note that Gallup's population has shown a substantial increase in the past decade (+24%) and this gain allegedly will continue in the foreseeable future. The fact that Gallup has adequate local service and receives the signals of nearby cities should not necessarily foreclose an additional assignment to that community. Where, as here, the preclusion impact is considered to be insignificant due to the availability of channels in the area, the guidelines are applied with flexibility and assignments can be made in excess of the criteria. See, *Waycross, Georgia*, 47 R.R. 2d 319 (1980). We feel that the issues raised by the opposition have been satisfactorily answered by the petitioner. The issues regarding economic impact are of a competitive nature, and should be considered at the application stage. Thus, in view of the expressed interest in a third commercial FM assignment to this growing community and the fact that the preclusion impact is insignificant, we believe that the public interest would be served by granting the requested assignment. The potential multiple ownership problem is more appropriately dealt with at the application stage where an actual coverage area for the proposed station can be evaluated.

7. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective July 19, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to Gallup, New Mexico, as follows:

City	Channel No.
Gallup, N. Mex.	229, 233, and 256

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau. (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-13977 Filed 5-20-82; 8:45 am]
BILLING CODE 6712-01-M

[1] Road Runner Radio, Inc. is the licensee of Stations KYVA(AM) and KOVO(FM), Gallup, New Mexico.

[2] Population figures are taken from the 1980 U.S. Census, Advance Report.

Proposed Rules

Federal Register
Vol. 47, No. 99
Friday, May 21, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed Rulemaking.

SUMMARY: The Office of Personnel Management is proposing regulations to implement the results of a study which it conducted of blue collar supervisory pay practices in private industry. The study results would be implemented by making certain changes in the grades of wage supervisors, and in the current pay formula which is used to compensate employees in these positions.

DATE: Comments must be received by July 20, 1982.

ADDRESS: Send or deliver written comments to Mr. Jerome D. Julius, Assistant Director for Pay Programs, Compensation Group, Room 3353, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Mr. David Weisberg, (202) 632–5454.

SUPPLEMENTARY INFORMATION: The current pay plan for supervisors of Federal trade, craft and labor occupations was established in December 1968, following a comprehensive study of supervisory practices in private industry. The formula which was adopted for setting Federal supervisors' pay closely followed the patterns of supervisory pay practices and pay differentials which were disclosed by the industry study.

The Federal wage system law (Pub. L. 92–392) requires that Government compensation practices be kept consistent with those which prevail in the private sector. A new supervisory study was therefore conducted in 1979 to determine whether the Government-wide system for supervisors was still reflective of industrial practices.

All industry data collected in the study were converted to equivalent grades under the Federal supervisory structure. The pay differentials of the industry positions were then compared with the differentials the positions would receive if they were paid from the average wage schedule in the Federal Government. The average Federal schedule was constructed in a manner which assured that the present restrictions on Federal pay which have been adopted as a matter of public policy would be applied to blue collar supervisors in the same fashion as they are applied to all other Federal employees. Differences between the Federal and industry pay differentials were weighted by the number of industry samples obtained at each grade. The comparison of these Federal and industry differentials is as follows:

Comparison of Survey Results With Federal Supervisory Differentials

(In percent)

	Survey results	Federal differentials	Adjustment indicated[1]
Grade:			
WS–1[2]	53	39	+14
WS–2[2]	37	44	−7
WS–3[2]	21	36	−15
WS–4[2]	34	40	−6
WS–5[2]	37	37	None
WS–6[2]	28	36	−8
WS–7[2]	39	38	+1
WS–8[2]	30	31	−1
WS–9[2]	32	33	−1
WS–10[2]	33	31	+2
WS–11[3]	47	40	+7
WS–12[3]	51	42	+9
WS–13[3]	39	37	+2
WS–14[3]	56	50	+6
WS–15[3]	74	51	+23
WS–16[3]	70	59	+11
WS–17[3]	79	63	+16

[1] Adjustment to average Federal schedule to reflect survey results.
[2] Weighted average difference WS–1—WS–10: −.8%.
[3] Weighted average difference WS–11—WS–17: +7.6%.

Differential results for positions in grades WS–1 through WS–10, and WS–11 through WS–17, respectively, were analyzed separately because both current Federal pay setting procedures and the survey results differ significantly for positions in grades WS–1 through WS–10, compared with those in grades WS–11 through WS–17. The preceding Table indicates that positions in the Federal Government in grades WS–1 through WS–10 through WS–10 receive pay differentials over their nonsupervisory subordinates which exceed private sector differentials by a little less than one percent. Positions in the Federal Government in grades WS–11 through WS–17, however, trail private industry differentials by approximately 7.6 percent. In the Federal Government most Foreman positions are in grades WS–1 through WS–10, and most General Foreman positions are in grades WS–11 through WS–17.

OPM Proposes to achieve overall comparability with private industry for the range of supervisory positions in grades WS–11 through WS–17 by raising all General Foreman positions one grade, and changing the linkage point for WS–19 in the current supervisory pay formula from GS–14/1 to GS–14/3. For economic reasons, this will be accomplished over a two-year period on a wage area-by-wage area basis. During the first year, the WS–19 linkage point will be changed from GS–14/1 to GS–14/2. In the second year of implementation, all General Foreman positions will receive a one grade increase concurrent with the completion of the WS–19 linkage adjustment from GS–14/2 to GS–14/3. The Staffing Services Group of OPM will raise the General Foreman grades by revising the wage supervisor job-grading standard; the linkage change will be accomplished by changing the reference to "minimum" rate in regulation 5 CFR 532.203(d)(2) to the "second" rate in the first year of implementation, and to the "third" rate to the second year of implementation. No changes are proposed for Foreman positions in grades WS–1 through WS–10 whose current pay differentials correspond closely to industry practice.

The General Foreman—GS–14/3 linkage adjustment which OMP is proposing will, when competed, eliminate the lag observed in the supervisory study for all positions in grades WS–11 through WS–17. The increases which would result from the OPM proposal are targeted primarily to the General Foreman positions in those grades. General Foremen in grades WS–11 through WS–17 currently receive pay differentials which are 15 percent less than private industry. The OPM proposal would reduce the pay differential lag for General Foreman positions in these grades to 2 percent.

OPM wishes comments on its proposal to change the current WS–19 linkage point in conjunction with increasing the grade of General Foreman positions. We will also consider any other suggestions for implementing the supervisory study results. These could take the form of a new or revised supervisory pay formula, or some

different approach which would serve to carry out the survey findings. If this proposed regulation is ultimately issued as a final regulation, it will be revised after one year to complete the WS–19 linkage adjustment from GS–14/2 to GS–14/3.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wage.

U. S. Office of Personnel Management.

Donald J. Devine,

Director.

PART 532—PREVAILING RATE SYSTEM

Accordingly, the Office of Personnel Management proposes to revise 5 CFR 532.203(d)(2) to read as follows:

§ 532.203 Structure of regular wage schedules.

* * * * *

(d) * * *

(2) For grades WS–11 through WS–19, based on a parabolic curve linking the WS–10 rate to the WS–19 rate, which latter rate is equal to the second rate in effect for General Schedule grade GS–14 at the time of the area wage schedule adjustment.

(5 U.S.C. 5343, 5346)

[FR Doc. 82-13883 Filed 5-20-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 306, 317, and 381

[Docket No. 81-038 P]

Prior Labeling Approval System

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to implement a nationwide program to delegate limited labeling approval authority to its inspectors-in-charge (IIC) of official establishments and to establish, by regulation, limited categories of generically approved labeling. The types of labels or other labeling to be approved by the IIC would include: (1) Modifications of previously approved labeling which fall into certain specified categories; (2) shipping containers bearing or referencing the product name; (3) labeling not previously approved for products containing a single ingredient and which do not contain information, statements, or claims, such as quality claims, negative claims, geographic claims, nutritional claims, guarantees, or foreign language; and (4) all final labeling having a sketch approval from the Standards and Labeling Division (SLD) in Washington when the final labeling is consistent with the approved sketch.

The types of generically approved labeling would include modifications of previously approved labeling which fall into certain specified categories. The use of the IIC to approve labels or other labeling and the use of generically approved labeling would be voluntary, and official establishments would retain the option of submitting applications for approval of these types of labels or other labeling to SLD. The effects of field delegation and generic approval would be decreased turnaround time for labeling approvals and more efficient utilization of Agency resources.

DATE: Comments must be received on or before: August 19, 1982.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Food Safety and Inspection Service, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. (For additional information on comments, see "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Ms. Joan Moyer Schwing, Deputy Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4293.

SUPPLEMENTARY INFORMATION:

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Executive Order 12291

The Agency has determined that the proposed rule is not a major rule under Executive Order 12291. The proposal would provide greater flexibility to meat and poultry processors in obtaining label approvals. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The costs and benefits of the proposed changes are discussed at the end of the supplementary information.

Several options were considered by the Department before proceeding with this proposal.

Option 1 would make no changes to the current labeling approval program. This option was rejected because it is unresponsive to criticisms that the present program is burdensome, costly, and inefficient.

Option 2 would delegate to the IIC the authority to approve simple labeling and all final labeling if it is consistent with sketches previously approved by SLD. This option in conjunction with some aspects of Option 5 was chosen because it would provide a more rapid turnaround for labeling approvals and would make more efficient use of FSIS resources. A version of this option was

tested in a pilot program and proved successful.

Option 3 would delegate labeling approval authority to the area offices for all simple labeling and for final labeling having SLD sketch approval. This option was rejected because it would increase field office workload without providing a significant decrease in turnaround time for approvals.

Option 4 would delegate authority to both the IIC and the area offices. The IIC would have the authority to approve simple labeling and final labeling that are consistent with sketches that have been approved by SLD. The area offices could approve labeling of "medium" complexity, while "complex" labeling would go directly to SLD for approval. This option was rejected because of the difficulty in defining the differences between "simple", "medium", and "complex" labeling.

Option 5 would create, by regulation, broad categories of generically approved labeling. Labeling which fell within such defined categories would be deemed to be approved by the Administrator. This option was rejected in part because of the difficulty in fully defining broad categories of approved labeling and the unavoidable elements of judgment involved in determining whether a specific labeling would or would not fall within such a category. Generic approval is being proposed on a limited basis, however, in areas where these problems do not appear substantial.

The Agency has designated Prior Label Approval as an area of regulation to be reviewed as part of its Fiscal Year 1982 Regulatory Review activities in accordance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act. This proposal constitutes one aspect of this review. During the pendency of this proposal, the Agency also intends to continue to assess the possibility of other regulatory changes to its prior label approval program, in keeping with those authorities. This review effort may contribute to additional proposals during Fiscal Year 1982.

Effect on Small Entities

The Administrator, FSIS, has made a tentative determination that this proposal would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA), Pub. L. 96–354 (5 U.S.C. 601).

It is probable that on-site labeling approvals by the IIC and generic labeling available to inspected firms at their option will be viewed by the regulated industry to be a benefit. This would permit each firm to obtain approvals for certain prescribed labeling changes at the plant or through prescribed regulations rather than having to submit applications to Washington, D.C. A recent pilot program permitting optional on-site label approvals indicates that many firms will find it advantageous to rely on the IIC in this fashion.

Under the proposal, establishments would have the flexibility to use all, some, or none of the labeling approval authority delegated to the IIC or to use generic approval of certain types of labeling. Use of the IIC for labeling approvals and generic labeling approval would be optional with the inspected establishment. Further, any application receiving a negative determination by an IIC could be resubmitted directly to SLD for a new review. Thus, each establishment would have the ability to use the proposed procedures only to the extent those procedures provide benefits to that plant. As a consequence, it is presumed that only benefits will accrue to the regulated industry by promulgation of the proposed regulation.

The Administrator has also tentatively concluded that there will not be "significant" effects requiring a Regulatory Flexibility Analysis under the RFA. The extent of the anticipated benefits is not clear due to the variables involved. Therefore, comments are solicited on whether the proposed regulation might result in some costs to small entities and, if so, the weight such costs should be given in determining the net benefits of the proposed regulation.

The Agency is aware of the possibility of some opposition to this proposal by several small service firms based in the Washington, D.C. area. These firms service the regulated industry by handcarrying their clients' label applications to SLD for approval. These labeling consultant firms may be concerned that their business will decrease to the extent regulated businesses avail themselves of on-site labeling reviews by the IIC. The kinds of labeling applications which the IIC would be authorized to approve or which would quality for generic approval are the routine, noncontroversial kinds that are not frequently likely to require personal representation in Washington in order to obtain approval. Nonetheless, labeling consultants may experience a decline in business if most establishments avail themselves of the new procedures, as expected by the Agency.

Assuming there is a correlation between use by the industry of on-site labeling approval and generic labeling and a reduction in business for labeling consultants, it is not clear how much weight should be given to the latter. Although such a decline in business might be termed a "cost" of these proposed regulations, such use of the term "cost" results in an anomaly: A cost to regulated industry caused by regulations, that is, the perceived need for use of consultants to get labels approved, is treated as a countervailing benefit to those third parties, arguing against such a reduction in the costs to the regulated industry.

The Administrator has tentatively concluded that the benefits to the regulated industry of having available on-site labeling approvals by IIC's and of having generic labeling outweigh the costs, if any, to firms which service the industry by expediting label approvals in Washington, D.C. The Agency solicits information and comments on the impact of the proposed regulations on the labeling consultant firms and on the weight such impact should be given in ascertaining the costs and benefits of the proposed regulation.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be submitted in duplicate to the Regulations Office. Comments should reference the docket number located in the heading of this document. Any person desiring opportunity for oral presentation of views must make such request to Ms. Schwing so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this proposal will be available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m. Monday through Friday.

Background

1. *Introduction.* The Food Safety and Inspection Service is proposing to amend the Federal meat and poultry products inspection regulations (9 CFR Parts 317 and 381) concerning the manner in which it provides prior approval of product labels and other labeling. This document outlines the current review process, the problems associated with it, the various initiatives undertaken by the Agency to determine the best possible alternative to the present system, and the concerns expressed by the regulated industry. It explains the changes being proposed, most significantly the delegation of authority to inspectors in official establishments to grant Agency approvals for certain labels and other

labeling. By delegating limited labeling approval authority to inspectors-in-charge and by creating a limited category of generic labeling approval, the Agency believes that meat and poultry processors would be provided greater flexibility, faster label review and processing, and consequently, a saving of time and money. Also, the Agency believes that the proposed changes would result in increased efficiency and better utilization of Agency resources.

2. *Statutory responsibilities.* The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged.

As Congress has specified in section 2 of the FMIA (21 U.S.C. 602) and Section 2 of the PPIA (21 U.S.C. 451), unwholesome, adulterated, or misbranded meat or meat food products or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary broad authority to protect consumers' health and welfare. Specifically, section 7(d) of the FMIA (21 U.S.C. 607(d)) and section 8(c) of the PPIA (21 U.S.C. 457(c)) read as follows:

> No article subject to this title shall be sold or offered for sale by any person [, firm, or corporation,]* in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.
>
> *Bracketed portion is not in Section 8(c) of the PPIA.

Under this provision, the Secretary of Agriculture or his representative has the responsibility to approve all labels or other labeling which are to be used on federally inspected meat and poultry products prior to the marketing of the products. Without such approved labeling, products may not be sold or offered for sale in commerce. The term labeling, as defined in the Acts, refers to all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article (section 1(p) of FMIA, 21 U.S.C. 601(p), and Section 4(s) of PPIA, 21 U.S.C. 453(s)).

Consistent with this provision, the meat and poultry products inspection regulations provide that, with few exceptions, no labeling shall be used on any product bearing any official inspection mark until it has been approved in its final form by the Administrator (9 CFR 317.4 and 9 CFR 381.132). Foods containing more than 3 percent fresh meat or at least 2 percent cooked poultry meat are generally deemed amenable to USDA inspection requirements.

Section 1(m)(8) of the FMIA (21 U.S.C. 601(m)(8)) and section 4(g)(8) of the PPIA (21 U.S.C. 453(G)(8)) provide that any carcass, part thereof, meat or meat food product or any poultry product is adulterated "* * * if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefore; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is * * *." Furthermore, any carcass, part thereof, meat or meat food product or poultry product is considered misbranded if its labeling is false or misleading in any particular (section 1(m)(1) of FMIA, 21 U.S.C. 601(m)(1), and section 4(h)(1) of PPIA, 21 U.S.C. 453(h)(1)).

In order to prevent adulteration and/or misbranding as defined in the Acts, the FMIA and the PPIA further authorize the Secretary to prescribe, whenever he determines such action is necessary for the protection of the public, (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling, and (2) definitions and standards of identity or composition for some meat and poultry products (section 7(c) of the FMIA, 21 U.S.C. 607(c), and section 8(b) of the PPIA, 21 U.S.C 457(b)).

3. *Regulatory requirements.* The labeling provisions of the meat and poultry products inspection regulations, issued pursuant to the FMIA and the PPIA, specify the required features of meat and poultry product labels (9 CFR Part 317 and 9 CFR Part 381, Subpart N). These include: (1) The standardized, common or usual, or descriptive name of the product; (2) an ingredients statement containing the common or usual name of each ingredient listed in descending order of predominance; (3) the name and place of business of the manufacturer, packer, or distributor; (4) an accurate statement of the net quantity of contents; (5) the USDA inspection legend; and (6) special handling instructions if product is perishable (i.e., "Keep Frozen," "Keep Refrigerated," etc.). These essential labeling features must be prominently and informatively displayed on the label (9 CFR 317.2 and 9 CFR 381.116).

The regulations contain other provisions to ensure that no statement, word, picture, design, or device which is false or misleading in any particular or conveys any false impression or gives any false indication of origin, identity, or quality, shall appear in any marking or other labeling (9 CFR 317.8 and 381.129). For example, terms having geographic significance with reference to a locality other than that in which the product is prepared may appear on the label only when qualified by the word "style," "type," or "brand," as the case may be, and accompanied with a prominent qualifying statement identifying the country, State, territory, or locality in which the product is prepared (9 CFR 317.8(b)(1)). Further, coverings for meat or meat food products shall not be of such color, design, or kind as to be misleading with respect to color, quality, or kind of product (9 CFR 317.8(b)(5)).

Any marking or labeling which is determined to be false or misleading within the meaning of the Acts and the implementing regulations causes the article to which it relates to be misbranded and, pursuant to the authority contained in section 7(e) of the FMIA (21 U.S.C. 607(e)) and section 8(d) of the PPIA (21 U.S.C. 457(d)), and §§ 335.12 and 381.233 of the meat and poultry products inspection regulations (9 CFR 335.12 and 381.233), the Administrator, FSIS, may withhold use of such marking or labeling.

In addition to providing substantive labeling requirements and prohibitions, the meat and poultry products inspection regulations provide specific information regarding permitted and nonpermitted uses of various substances (9 CFR 318.7 and 381.147). These provisions prohibit the use in official establishments of any food additive, color additive, pesticide chemical, or other added poisonous or deleterious substance, or any other substance in or on meat or poultry products that would cause such articles to be adulterated or misbranded within the meaning of the Act. These provisions are designed to ensure that ingredients aimed at improving physical qualities of a product, such as flavor, color, and shelf-life, meet a specific justifiable need in the product and do not promote

deception as to product freshness, quality, weight, or size.

The regulations further prescribe definitions and standards of identity or composition for certain meat and poultry products (9 CFR Part 319 and 9 CFR Part 381, Subpart P). Standards of composition identify the minimum amount of meat and/or poultry required in a product's recipe. For example, the standard of composition for "Chicken a la King" requires that, if a product bears this name on its label, at least 20 percent cooked poultry meat must be used in the recipe (9 CFR 381.167).

Standards of identity set specific product requirements for a food's makeup. These standards often specify (1) the kind and minimum amount of meat and/or poultry; (2) the maximum amount of nonmeat ingredients, such as fat or moisture; and (3) any other ingredients allowed or expected in the final product.

Meat and poultry product standards provide a simple and direct means by which consumers can learn what to expect from a product if it is labeled with a particular name. Thus, these requirements help to ensure that consumers' expectations are met.

4. *The current label review process.* In order to assure that meat and poultry products are in compliance with the Acts and the regulations promulgated thereunder, FSIS presently conducts a prior approval program for labels and other labeling as specified in 9 CFR 317.4, 317.5, 381.132, and 381.134 to be used on federally inspected meat and poultry products. This program is administered in Washington, D.C.

To apply for labeling approval, meat and poultry packers or processors, or their representatives, submit label sketches, final labels, or other labeling to SLD, along with the Agency's application form. Through this procedure, applicants submit detailed processing and handling information, including the following:

(1) Product name (i.e., the standardized, common or usual, or descriptive name of the product).

(2) Formulation information (i.e., list of ingredients in descending order of predominance) and method of preparation.

(3) Firm name and address.

(4) How the label is to be used (i.e., consumer size, institutional capacity, or shipping container).

(5) Size and type of container (i.e., wrapper, casing, carton, etc.).

(6) Size of the principal display panel.

This information is reviewed by an FSIS label reviewer who is responsible for assuring that all labeling on meat and poultry products accurately and appropriately reflects the products' contents. Currently, the IIC also has the authority to approve some labeling modifications as specified in the meat and poultry products inspection regulations (9 CFR 317.4(c), 317.4(d), 317.5, 381.134, and 381.135). This authority, however, is rarely exercised.

Many applicants consult with SLD during development of new labeling to ensure their labeling will be in compliance with the Acts and the regulations. In fact, nearly 30 percent of the labeling currently submitted to SLD for prior approval are sketches or proofs of proposed labeling materials. Through this process, applicants may have their labeling materials reviewed and modified, if necessary, before they prepare final labeling materials. This service appears to be particularly valuable to small firms which may lack the resources to keep fully informed regarding current labeling policy and regulations.

The maintenance and operation of the current prior approval system is a difficult task. Technological innovations in food processing and increased public awareness and concern about the presence of various substances in foods often lead to complex issues which SLD must resolve as part of the prior labeling approval process. Moreover, the expanded use of the label and other labeling as a marketing tool designed to encourage a product's sale has generated difficult questions for SLD in evaluating, on an individual basis, what types of labeling will not be false or misleading, or otherwise render the product misbranded. Although a substantial percentage of the labeling applications submitted to SLD can be routinely approved or denied by applying the relevant portions of the Acts and the regulations, some of the more difficult questions require interpretation of the Acts or regulations and the development or modification of the Agency's policy.

In an effort to increase the uniformity of decisionmaking in this area, label review determinations are recorded for nearly 1,000 products, for which there are common or usual names, and published in an internal manual known as the "Policy Book." These provisions often specify minimum meat and/or poultry content requirements for various meat and poultry products. For example, "Ham Salad" must contain at least 35 percent ham (cooked basis) and "Chicken and Noodle Au Gratin" must contain at least 18 percent chicken meat (cooked, deboned basis). The provisions found in the "Policy Book" have developed over time, usually in response to industry members or consumers showing particular interest in increasing uniformity among products using the same product name, and are based on recipe information gathered from cookbooks, old formulas, and other reliable cooking sources. The "Policy Book" is widely recognized by the meat and poultry industry and is available to the public upon request.

In recent years when particularly novel, complex, or significant questions arise, the label reviewers also have relied on SLD policy memoranda as the basis for their labeling determinations. These memoranda are issued periodically in a uniform format which specifies the issue, SLD's application or determination, and the basis for the decision. Any policy specified in a memorandum is uniformly applied to all relevant labeling applications unless modified by future memorandum or more formal Agency action, and all memoranda are also available to the public upon request.

FSIS currently receives approximately 2500 labeling applications for review each week. Labels and other labeling are forwarded by applicants in one of two ways. Some applications are sent through the mail, while others are hand-delivered to SLD in Washington, D.C., by the applicants or their representatives. At the present time, approximately 60 percent of the labeling applications are presented in person; the remaining 40 percent are sent through the mail. Under the current procedure, mailed-in applications are sorted and delivered to the label reviewers on the day they are received. These labels or other labeling are returned through the mail after they are reviewed.

Daily assignments to the label reviewers are made so that they handle both the mailed-in and the hand-carried submittals. However, when label reviewers are absent, the remaining reviewers' workload is increased in order to accommodate the visiting applicants. When such increases occur, work on the mailed-in applications is often delayed. Backlogs of mailed-in labeling applications occasionally occur, and delays of 2 or 3 days are not uncommon. In some instances, there are surges of mail and this, coupled with staffing limitations, can cause delays in reviewing applications of up to 10 days from the date of receipt. Delays in mailing out approved labels also occur, and this can add up to an additional 3 days to the process. The entire process of mailing-in, reviewing, and returning the labeling to processors can, in some instances, take up to 3 weeks.

Hand-carried labeling applications are usually reviewed on the day of delivery.

Appointments are scheduled daily with the applicants, or their representatives, and these individuals go through the review process with the label reviewer. The results of the review are known immediately and this information is often phoned back to the applicant on the same day.

5. *Criticisms of the current program.* Several criticisms of the label approval program have been made in recent years. The Senate Committee on Governmental Affairs reviewed the prior approval program in 1977 and found it "costly, inefficient, and ripe for change." Similarly, the General Accounting Office (GAO), in its March 1980 study on Federal paperwork burdens, titled "Department of Agriculture: Actions Needed to Enhance Paperwork Management and Reduce Burden" criticized the program, maintaining that it imposes unnecessary cost and red tape upon the regulated industry. GAO also recommended that FSIS review applications on a first-come, first-served basis.

In December 1979, a report was prepared by the USDA Office of the Inspector General (OIG) titled "Food Safety and Quality Service Compliance Program Standards and Labeling Division" in which the OIG indicated that there were serious problems in the program which the OIG concluded required corrective action to bring consistency, uniformity, and integrity to the label review process.

In recent months, a number of groups including the National Food Processors Association, in testimony before the Senate Committee on Agriculture, Nutrition, and Forestry, have recommended that the current program be dismantled. The major criticism is that USDA is imposing a procedure on industry that is too burdensome, costly, and time-consuming for the consumer protection that it affords. Specifically, processors complain that the present system causes inordinate delays in product introduction schedules and problems for those seeking to accommodate customer needs.

A recent request for other changes in the prior label approval program has been advanced in the form of a petition from the American Meat Institute (AMI), a national trade association of meat packing and processing companies, on behalf of its members. This petition, received in August 1981, argues that the time delays, costs, rigid procedures, and uncertain outcome of the current system serve to stifle the marketing process and, consequently, the growth of the meat industry. Therefore, AMI has requested that the current prior label approval process be modified by limiting the types of labels which must be submitted to the Agency for prior approval. Furthermore, AMI has suggested that prior "generic" or "blanket" approval, subject to SLD audit and enforcement, could be given by the Agency to several categories of labels. In addition, AMI has suggested that an expedited appeals system be established to facilitate review of denied applications or restrictive approvals.

Specifically, AMI has suggested that the submission of labels to SLD for prior approval should only be required for final labels of "new" products. A "new" product, as defined in this petition, is a product for which a label has not previously been approved for that processor. Exempt from this definition of a "new" product are the following formula changes (addition, deletion, increase, or decrease of an ingredient) for a previously approved label:

(1) For product subject to a specific Definition and Standard of Identity or Composition, a formula change which does not take the product out of the specific standard would not be considered a "new" product.

(2) For non-standardized product, i.e., product not subject to a specific Definition and Standard of Identity or Composition, a formula change involving an ingredient present at less than 5 percent of the product or not requiring a change in the order of predominance of the ingredients would not be considered a "new" product.

In addition to the above mentioned formula changes, the following categories of product labeling would also be exempt from prior approval:

(1) A product with a formula identical to a product for which a label has been previously approved, but with a different net weight or size.

(2) A product with a formula identical to a product for which a label has been previously approved, but for a different establishment of the same or affiliated company.

(3) Labels placed on product shipped between establishments of the same company.

(4) Products shipped to food service establishments, provided the labels do not contain quality claims nutritional claims, or geographical claims.

(5) Single ingredient products, provided the labels do not contain quality claims, nutritional claims, or geographical claims.

(6) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter.

(7) Stencils, labels, box dies, and brands used on shipping containers.

AMI has further suggested:

Labels for products outside the definition of 'new' would be presumed in compliance with statutory and regulatory requirements. * * * These labels would not have to be submitted for (prior) approval; however, the establishment would be required to provide the label to the IIC and send it to (SLD) *prior* to the time the label was applied to the product * * * All alleged misbranding violations would be reported by the IIC to (SLD).

AMI has also proposed that an approved "sketch" may serve as a final label approval, provided that sketch is approved without modification or with only minor modifications. Minor modification, as defined in the AMI petition, include the following:

(1) Any change in the color/contrast of label material, provided all mandatory material is sufficiently prominent as required by the regulations.

(2) The addition, deletion, or amendment of a coupon.

(3) The addition, deletion, or amendment of a "cents-off" statement.

(4) The deletion of a "new" flag.

(5) The addition, deletion, or amendment of a recipe on the package.

(6) A change in the type size, type style, or wording for material not required under the Acts or regulations.

(7) The addition of a new establishment number or a change in the establishment number, provided the change is consistent with § 317.2(i) of the regulations.

(8) A change in the name or place of business of the manufacturer, packer, or distributor, provided the change is consistent with § 317.2(g) of the regulations.

(9) A change in the net contents or size of the product, provided all other material required by the regulations remains the same, and the change is consistent with § 317.2(h) of the regulations.

(10) A change in the vignette or label design which does not affect label material required by the regulations.

(11) The addition, deletion, or amendment of cooking instructions.

(12) The addition, deletion, or amendment of information not required by the regulations other than quality claims, geographical claims, or nutritional claims.

(13) The addition, deletion, or amendment of packer code, open-dating, or UPC product code information.

(14) The addition, deletion, or amendment of handling instructions, provided the change is consistent with § 317.2(k) of the regulations.

(15) A change in punctuation.

(16) Minor variations in the configuration of inspection legends (graphics and wording), provided they are legible, readable, and contain all information required by the regulations.

Labeling presumed to be in compliance with general requirements and on file with SLD would be subject to an audit, according to the petition. AMI states "where there is reason to believe a label is found to be false or misleading, (SLD) may take the following action:

(1) Notify the establishment of label modifications to be made at the next printing in situations not involving product safety or significant economic fraud; or

(2) Seek administrative detention under Part 329 of this chapter in situations involving product safety or significant economic fraud."

AMI has further suggested that the establishment have the right to an expeditious appeal to the FSIS Administrator after receiving notice of a denial of a labeling application or upon notice of an audit defect. SLD would have the burden of proof to demonstrate that the labeling is false or misleading, and would have 5 days within which to file its response. The Administrator, separate and apart from the label review staff, would then have 5 days from the date the SLD response is filed to render a written decision. This appeal would precede the applicant's right to request a hearing before an Administrative Law Judge.

AMI contends that these recommended changes would eliminate many of the burdensome and duplicative aspects of the current prior label approval program, while maintaining SLD's ability to monitor compliance with product standards. Furthermore, AMI argues that these changes would assure that only approved ingredients and additives are used, and would ensure compliance with the labeling requirements imposed by the Acts and the applicable regulations.

Another request for changes in the current prior label approval program came from the National Association of Margarine Manufacturers (NAMM). On August 19, 1981, NAMM, on behalf of its members, petitioned the Administrator, FSIS, to, among other things, exempt animal fat margarine labels from the mandatory prior label approval program. NAMM argues that the regulation of animal fat margarine by FSIS is far more extensive, burdensome, and costly than that of its vegetable counterpart regulated by the Food and Drug Administration. NAMM contends that adoption of this petition would, therefore, bring consistency to the regulation of all margarine products, i.e., vegetable oils and animal fat margarines. Furthermore, NAMM believes that such action would result in a saving of time and expense to the government, the animal fat industry, consumers, and taxpayers, without compromising the quality or wholesomeness of animal fat margarines.

On September 18, 1981, the National Food Processors Association (NFPA), on behalf of its meat and poultry processing members, also petitioned the FSIS Administrator. NFPA has requested prompt revision of the meat and poultry inspection regulations to include any informal labeling policies currently enforced by the Agency. Consistent with this request, NFPA has urged that all future labeling decisions be based solely on published regulations. NFPA has further asked the Agency to publish its intentions in the **Federal Register**, and to issue as food standards of identity any informal product name restrictions that the Agency intends to rely upon. NFPA contends that adoption of its petition would reduce the time required to obtain USDA approval of new product names and would eliminate unfair and inconsistent USDA regulation of product names. NFPA further suggests that adoption of its proposed changes would stimulate competition and innovation by providing meat and poultry processors greater freedom to choose distinctive and nonmisleading product names.

The latest request for modifications of the prior label approval program has been made by James V. Hurson Associates, Inc., a private firm of labeling consultants. A petition was submitted on behalf of the company's employees and clients requesting that all labels be processed and returned withn 24 hours of receipt by USDA. To accomplish a 24-hour turnaround time, this Petitioner has specifically requested an increase in the present label review staff, elimination of the two groups of label reviewers (one reviewer group processes all sausage labeling and a second reviewer group processes all other labeling), and a more efficient distribution system. The Petitioner contends that these changes would eliminate the delays in the current prior label approval program.

The proposed rule contained in this document reflects the Agency's analysis of all the issues raised by these critics and also constitutes the Agency's specific response to the AMI and Hurson petitions and those aspects of the NAMM and NFPA petitions which discuss label review procedures. The AMI petition received particularly careful consideration since it included a fairly detailed analysis of the process and included a number of specific suggestions. These are discussed in greater detail below. The overall thrust of the discussion of labeling issues contained in the NAMM petition is similar. (The Agency's responses to other issues raised by the petitioner were specified in a letter of November 20, 1981.) However, the NAMM petition adopts the view that an entire class of product labels, i.e., margarine containing animal fat above the 3 percent level, be exempted from certain procedural requirements. The proposal which follows would classify labels not within product categories but by their complexity. To the extent that margarine labels fit within this broader scheme of regulatory relief, they would be affected. However, the Agency does not feel that it has the basis to single out one class of product for special treatment under its regulations. Therefore, this aspect of the NAMM petition is not included in the proposal.

6. *The February 1980 proposal.* The Agency had been reviewing several of the issues discussed in the various petitions and raised by other critics of the current program prior to the submission of the petitions themselves. In fact, cost effectiveness and equitable processing of labeling applications have specifically been addressed in a proposal published in the **Federal Register** on February 28, 1980 (45 FR 12442). This proposal provides for the review and processing of label sketches, final labels, and other labeling to be used on meat and poultry products in the order received, regardless of the manner of delivery. Presently, hand-delivered label approval requests are given priority over those applications mailed to Washington for approval. Thus, this proposal attempted to establish a more equitable system for processing label applications.

The proposal received 165 comments, most of which were negative. A large number of these negative comments, however, were not responsive to the procedures actually proposed. However, several important points were emphasized and the Agency has attempted to address them in the current proposal.

Fifty-three of the comments addressed the issue of efficiency or cost effectiveness. In support of their position, most of these commenters mentioned a fear of long delays as their main reason for opposing the proposal, and cited delays they had previously encountered with mail-in labeling applications.

Equitable processing of labeling applications was another important issue underlying many of the comments. Several commenters pointed out that explicit guidelines had not been established for implementation of the proposed procedure for expedited processing and, therefore, thought that inequitable treatment would result.

Many commenters also indicated that expedited approvals were essential to securing private contracts or filling special production requests. Several commenters recommended increasing the number of label reviewers on the SLD staff as a means of expediting labeling approvals.

FSIS recognizes that there are occasions when expedited approvals are necessary to avoid economic loss to applicants. The Agency also recognizes the importance of timely and equal processing of all labeling requests. However, the Agency is not convinced that an increase in the number of label reviewers can be justified from the standpoint of either efficiency or cost effectiveness. More importantly, after carefully considering the issues and concerns presented above, it appears that the label approval process, as a whole, requires changes that are more fundamental in nature than are called for in the February 1980 proposal. The Agency is proposing to make some basic changes in the prior label approval process in an effort to increase the efficiency and effectiveness of FSIS personnel and to decrease the turnaround time for label review and processing. For this reason, it intends to defer further action on the former proposal. At the completion of the present proceeding, the narrower issue of hand-carried as opposed to mailed-in labels will be reexamined.

7. *The Agency's pilot program.* Along with a number of other initiatives to streamline the label approval process, the Agency decided in 1980 to explore the feasibility of delegating certain labeling approval authority to field personnel.

An Agency Task Force was organized to examine the feasibility of such delegation. The Task Force was assigned to review the overall concept of delegating authority; identify the various options available; explore the ramifications of such delegation; and estimate its potential effect upon the truthfulness and accuracy of labeling.

The Task Force members concluded that there appeared to be a number of labeling approval actions that could be taken by the field personnel without adversely affecting the accuracy of labels or other labeling. A more detailed discussion of these actions is contained in the Task Force's report titled, "Delegation of Label Approval Authority to the Field", which is available for review by the public in the Regulations Office, Food Safety and Inspection Service, Room 2637, South Agriculture Building, Department of Agriculture, Washington, DC 20250. The Task Force considered the following three options:

(1) Inspector-in-Charge proposal.

(2) Area office proposal.

(3) Combination inspector-in-charge/area office proposal.

The first two options involved delegating authority to MPI field levels to approve "simple" labels (both sketches and finals), which are defined below, and all final labels and other labeling that are consistent with sketches previously approved by SLD. In the first option (the option which was later tested in the pilot program), the inspector-in-charge would approve the labeling while in the second option, specialists in the area office would approve the labeling specified. The third option discussed built upon the inspector-in-charge proposal by adding authority for the area office to approve an additional category of labeling which involved more complex issues. After discussing and evaluating the pros and cons of each option, the Task Force recommended that a pilot program be initiated to test the feasibility and effectiveness of the first and third options prior to any regulatory change.

The Agency considered the Task Force recommendations and decided to test the first option, the inspector-in-charge option, through a 120-day pilot program. The Agency announced this pilot program in the **Federal Register** of October 31, 1980 (45 FR 72197). The pilot program was conducted in three areas: Missouri, Kentucky and the Hyattsville, Maryland area, which includes Washington, D.C., Maryland and Delaware. After several months of operating the pilot program, which began December 1, 1980, it was apparent that a longer test period was needed to obtain additional information and experience. Therefore, the program scheduled to end March 31, 1981, was extended until July 29, 1981, by notice in the **Federal Register** of March 27, 1981 (46 FR 18990).

The objective of the pilot program was to test the feasibility of delegating authority to the IIC to make certain labeling approval decisions without adversely affecting the accuracy of the labeling. The IIC is the meat and poultry inspection program employee in charge at an official establishment. The IICs in the designated areas could approve all simple labeling (sketches and finals) and all final labeling which had a sketch previously approved by SLD. Simple labels or other labeling were defined for the purposes of the pilot program to include the following:

1. Previously approved labels or labeling where the modifications fall into one of the following categories:

(a) Those labels and other labeling identified in 9 CFR 317.4(c), 317.4(d), 317.5, 381.134, and 381.135,[1]

(b) Meat and poultry inspection legends, or

(c) Meat carcass and meat food product brands.

2. Labels or other labeling not previously approved for products containing a single ingredients and which do not contain information, statements, or claims, such as:

(a) Qualifying statements,

(b) Quality claims, including, but not limited to such things as: Blue Ribbon, Choice, Prime, etc.,

(c) Negative claims,

(d) Geographical claims,

(e) Nutritional claims,

(f) Guarantees, or

(g) Foreign language.

The IIC was also authorized to approve all final labels or other labeling having a sketch approval by SLD when the final labeling exactly matched the approved sketch. The management of any federally inspected establishment located within these geographic boundaries had the option of submitting proposed labels or other labeling covered by the program to the IIC serving the establishment or continuing to send its labels or other labeling to SLD. Participation in the program was voluntary.

To help the IICs in reviewing labeling, they were given a self instructional guide. In addition, circuit and area supervisors were given an orientation briefing. Decision were to be based upon the appropriate regulations, instructions in the guide, and their knowledge of the products concerned. Labels or other labeling that were beyond their

[1] The authority provided in the current meat inspection regulations includes the approval of inserts, tabs, liners, pasters, stencils, labels, box dies, and brands. This also includes the following modifications to previously approved labeling: Enlargements, abbreviations, name and address changes, holiday wrappers, directions, and ingredient quantity changes.

The authority provided in the current poultry products inspection regulations includes the approval of labels for Federal contract products, shipping containers, product not intended for human consumption, and product for export for processing. This also includes the following modifications to previously approved labeling: Enlargements, abbreviations, name and address changes, holiday wrappers, directions, name or class of poultry, and ingredient quantity changes.

authority to approve or that were questionable in any respect were to be forwarded to Washington without action. A copy of each label and other labeling acted upon and any supporting information were to be forwarded to Washington for review and audit.

Before the pilot program began, nine data elements were identified by the Task Force to be used in evaluating the program. These data elements were as follows:

1. Total number of labels and other labeling acted upon by the IICs, separated into two categories—simple labeling and final labeling with previously approved sketches; number and percentage of labeling decisions upheld and number overruled.
2. Ratio of IIC-submitted labeling to all labeling submitted by each participating plant.
3. Errors—separated into simple labeling and final labeling with previously approved sketches.
4. Turnaround time required.
5. Workload impact upon IICs.
6. Participation of plants in the program.
7. Comments received from IICs, plant management, trade organizations and others.
8. Ratio of labels processed by IICs to those processed from the three areas by SLD.
9. Number and kinds of appeals made on labeling decisions.

The Task Force conducted a detailed analysis of each of these data elements. This analysis was presented in the Task Force's Final Report, which is available for review by the public in the Regulations Office. A summary of this analysis evaluating the results of the pilot program and a review of the comments received in response to the October 31, 1980, **Federal Register** and to participation in the pilot program are discussed below.

8. *Comments on the pilot program.* In general there were two groups of comments received at two different times. The first and largest group were those received in response to the October 31, 1980, **Federal Register** notice. The second group consisted of comments from individuals or organizations involved in or having direct knowledge of the pilot program, which were received after the first 120-day test period in response to a letter from the Administrator that was sent to all firms located in the three pilot program areas. The two groups of comments are discussed separately below.

a. **Federal Register** notice comments. There were 36 comments received on the October 31, 1980, **Federal Register** notice. Many of these dealt with issues raised by the February 1980 proposal. These issues were discussed in an earlier section of this document and, therefore, only those comments and issues dealing directly with the field delegation program will be discussed below. Several commenters requested that the original comment period be extended. The comment period was extended until February 23, 1981, in the **Federal Register** of January 23, 1981 (46 FR 7387).

Several commenters suggested that the area of decision for the IIC should be broadened to include such situations as: Removal of non-essential ingredients from the label; change in order of ingredient predominance; pressure sensitive labels that contain reference to product; multi-plant label sketch approval; and minor changes in approved complex labels.

The pilot program has demonstrated the competence of the IIC to make a variety of labeling approval decisions. The Task Force considered this suggested widening of authority and recommended that the proposed delegation of authority be considerably broadened to include many of these situations.

Since IIC-approved labels are subject to review and cancellation by SLD, one commenter stated that, "Packers, relying on these approvals will invest thousands of dollars in printing plates, advertising, labels, etc., only to be tarred and sandbagged by rotating inspectors, circuit, area and regional bosses plus the Washington label reviewers. Packers will never know if they have a true approval."

The Task Force recognized that this potential for uncertainty may exist; however, the pilot program demonstrated tha the error rate of IIC approvals is low. Even if an error was made, immediate cancellation of labeling approval is generally restricted to those labels and other labeling having errors that could affect public health or to those that are determined to be misleading. The Task Force recommended that the authority to cancel approved labeling be reserved for SLD. Less serious errors that have been overlooked in the review process could be corrected by placing the label in a temporary status for a given time period to allow for the use of current stock. The Task Force also recommended that the authority for temporary approvals be reserved for SLD. The issue of temporary approvals is discussed in greater detail in a subsequent section of this document.

Another issue raised by the commenters was that uniformity in labeling decisions would be affected because some IICs are not as experienced as others, nor are all judgments the same.

The pilot program demonstrated that, if the types of labeling that could be delegated were chosen selectively, uniformity could be maintained. Clearly defined rules and procedures and an adequate training program would assist IICs in their day-to-day duties and, finally, audit by SLD is designed to reveal inconsistencies. The Task Force recommended that a direct line of communication with the SLD staff be maintained.

One commenter stated that there have been no definitions published as to what constitutes a simple, medium, or complex label. These broad categories were tentatively considered by the Task Force, but the pilot program only addressed "simple" labeling (except for final labeling with previously approved sketches). The definition of "simple" labeling is discussed in greater detail later in this document. The instructional guide and the October 31, 1980, notice defined the labeling that the IIC could act upon in the pilot program. No attempt was made, or is currently being contemplated, to define "medium" and "complex" labeling since these categories were not adopted.

One commenter suggested that some IICs would decline to review labeling submitted to them. The Task Force believed that this comment was probably based on the current wording in the regulations where there has been some concern as to what the IIC is authorized to approve and recommended that this wording be changed to define clearly the authority and responsibility of the IIC. The Task Force pointed out that adequate training would also help eliminate this problem.

One commenter stated that multi-plant corporations do not want to submit their labels to IICs at each of their plants. Although the Task Force did recommend that each IIC only be allowed to approve labeling for use in his or her particular plant, a multi-plant corporation which wanted one approval for use in several plants could submit its labeling to SLD for approval for use in those plants. Copies of the SLD-approved labeling would then be sent to each IIC at each plant involved. An official copy of SLD-approved labeling would provide a sufficient basis for an IIC in any plant to approve that labeling, within the framework of the regulation proposed below.

Another commenter asked how an appeal would be processed—Meat and Poultry Inspection or the Standards and

Labeling Division? The Task Force recommended that labeling decisions be appealed directly to SLD. Questions regarding appeals are discussed in greater detail below.

Several commenters stated the continuing need for a central labeling and numbering system and the Task Force recommended that labeling approved locally by the IIC be incorporated into the SLD central labeling file. A numbering system was developed that would permit identification of each label by a specific number.

Another commenter was concerned about how labels would be processed during the absence of the IIC. The Task Force recommended that provisions for processing labeling applications during the absence of the IIC should be coordinated between management and the IIC or his acting replacement. There is an IIC assigned to every official establishment. Except where one inspector serves two or more smaller plants on a patrol basis, there should be an IIC at the plant, most of the time. Plants that share an individual IIC and are served on a patrol basis must communicate plant needs to the IIC, who will attempt to accommodate individual plant needs to the extent possible. In any event, labels may always be sent to SLD for approval.

One commenter stated that the delegation of authority is in violation of 9 CFR 317.4(a). The Task Force recommended that the regulation be changed in order to permanently delegate this authority.

One commenter stated that the IIC may have problems with approving final labeling from Washington-approved sketches. The Task Force did not establish firm guidelines for sketch submissions to describe exactly how detailed they should be since sketch submissions are voluntary. The Task Force believed, however, that guidelines would be needed and that applicants should submit printers' proofs for sketch approvals which would clearly show all labeling material, size, location, and some indication of final color to avoid such problems. If the sketch was not clear or was too "vague" and the IIC had trouble comparing the new final labeling to the SLD approved sketch, the Task Force recommended that the IIC be instructed to forward the labeling application to SLD without action.

b. Pilot program comments. There were five letters from plant management. All had used the program and all were pleased with the results. Savings of time and money were cited as advantages of the program, as evidenced by the following:

1. "The procedure * * * gave us an economic advantage in that new materials could be utilized much faster * * * With the rate of inflation being what it is, and the industry as a whole being financially tight, I'm sure you can appreciate our position when savings can amount to even a few hundred dollars."

2. "It has definitely reduced management time devoted to label approval."

3. "We found * * * that our inspector-in-charge could approve the labels * * * within a matter of minutes, thus saving us the time we needed to make a firm sales commitment."

Comments from the National Meat Association (NMA), a trade organization, were somewhat mixed. "* * * members participating in the pilot program have found it workable and favor its continuation * * * One member participating in the pilot program told us it saves 4 days if he uses an expeditor and 3 weeks if he used the mails." On the other hand, NMA did advise that "* * * they have found one glaring problem. Either through a lack of information or not taking the initiative to find out for themselves, some IICs are not certain just what label approval authority they have."

The Task Force believed that better dissemination of information and improved training would eliminate this problem. This would be accomplished through a more detailed training guide, an in-depth orientation briefing, and increased superviory support and communication.

There were nine comments from Agency field personnel. Several of these commenters had suggestions for broadening the IIC's authority and suggestions to authorize them to act upon labels that had several ingredients, such as, "Beef Steak with Salt," or "Beef and Pepper Steak."

Although the Task Force did not recommend that these specific types of labeling be delegated, it did recommend that the delegation of authority be considerably broadened, as discussed below.

9. *Pilot program analysis.* The pilot program began December 1, 1980, and ended July 29, 1981. By its end, 806 labels from 136 plants had been processed under the provisions of the program. In its 100 percent audit of these labels SLD confirmed as correct approximately nine out of 10 field labeling decisions. Thus, issue was taken with only about one labeling decision in 10 made under the delegation of authority.

Where issue was taken, the discrepancy was usually so minor that it had no effect upon the truthfulness of the label nor was it misleading to the consumer. In studying the nature of these issues, the Task Force concluded they could be avoided in most part through development of a more comprehensive instructional guide and a short period (5 to 10 hours) of preparatory training of IICs.

In addition to the audit of all lables that was cited above, a detailed analysis was made of the 233 pilot program labels submitted during its first 3 months. This analysis revealed the following:

1. Labels were submitted to IICs by management in 82 plants. This represented approximately half the plants (159) submitting any labels during the period. The remainder of the 625 plants in the three areas submitted no labels at all. These 82 plants submitted approximately half of their labels to the IIC; the other half going directly to Washington. Of those sent directly to SLD, 97 could have been acted upon by the IIC. These results led the Task Force to believe that if the pilot program was implemented nationwide, at least half of all labels submitted could be acted upon locally if only the limited authority granted in the pilot program were extended nationwide. As the advantages in terms of time and money became apparent, the Task Force felt that many more labels would be submitted to the IIC.

2. More than 90 percent of the labels were acted upon and returned to plant management within 2 days, with almost half being returned the same day as they were received. A concurrent sample survey of labels received at SLD revealed that a minimum of 3 days elapsed from the date a label approval application was signed by a plant official until it was received in Washington, much less acted upon. Plant officials' comments revealed their appreciation of this time saving.

3. There was little impact upon the IIC's workload. Few IICs processed more than one label a month and almost nine out of 10 labels were processed within an hour; two-thirds within a half hour.

After reviewing the experience gained during the first 3 months of the pilot program, the Task Force recommended that field delegation be adopted. A copy of the Task Force's Final Report is available for review by the public in the Regulations Office. The findings of that report were confirmed during the last 5 months of the pilot program, and these

data are also available for review in the Regulations Office.

As a result of suggestions from industry and inspection personnel, and the demonstrated competence of IICs, the Task Force, in its recommendations, added several labeling types to those the IIC could act upon in the pilot program. The total list of labeling decisions the Task Force recommended be delegated are as follows:

1. Previously approved labels or labeling where the modifications fall into one of the following categories:

a. Those labels and other labeling identified in 9 CFR 317.4(c), 317.4(d), 317.5, 381.134 and 381.135.

b. Meat and poultry inspection legends.

c. Meat carcass and meat food product brands.

d. Color changes, provided they are contrasting and legible.

e. A "simple" change to a previously approvel label which contains nutrition labeling, provided there is no change to the nutrition labeling.

f. Previously approved product packaged under different brand names, provided there are no design changes and the brand name is not false or misleading.

g. Hotel, restaurant, and institutional products that are repacked from other federally inspected establishments and, therefore, have approved labels.

h. Company name and address changes in the signature line.

i. Reduced sizes of approved labels, provided all minimum size requirements specified in the regulations are met and the label is legible.

j. Same product packed in different weights where one label has been previously approved, provided the net weight size complies with the regulations.

k. Changes in recipe information about how the product could be used which are often given on the side or back panels of the label.

l. Removal of expired coupons from previously approved labels.

m. Establishment number changes, provided there is no change to the rest of the approved label.

n. Previously approved labels with cents off claims.

2. Shipping containers bearing or referencing the product name.

3. Labels or other labeling not previously approved for products containing a single ingredient and which do not contain information, statements, or claims, such as:

a. Quality claims including but not limited to such things as: Blue Ribbon, Choice, Prime, etc.;

b. Negative claims (e.g., "no preservatives");

c. Geographic claims;

d. Nutrition claims;

e. Guarantees; or

f. Foreign language.

4. All final labels or other labeling having a sketch approval from SLD when the final labeling exactly matches the approved sketch.

The Agency has considered all of the Task Force recommendations discussed above, as well as the industry petitions and comments received. Based on this body of data, the Agency is proposing to delegate permanently certain labeling approval authority to the IIC. The use of IICs to approve labels or other labeling would be voluntary and official establishments would have the option of submitting applications for approval of these types of labels or other labeling to the IIC or to SLD. In this proposal, the Agency is drawing heavily on the Task Force recommendations and the experience gained from the pilot program because this alternative program successfully maintained an appropriate level of regulatory control in the labeling area while accommodating many of the concerns raised by critics of the present program. The Agency is also proposing a third category of labeling that could be generically approved. This approach was suggested in several of the industry petitions. The Agency believes that an appropriate level of regulatory control of generic labeling is also possible if the category is narrowly and explicitly defined.

This Proposal

1. *Introduction.* If adopted, this proposal would provide for the following:

1. The authority of the IIC to approve a variety of labels and labeling changes would be greatly expanded (the specific categories of labeling are discussed in detail below).

2. Participation in the IIC approval program would be voluntary. Official establishments would retain the option of obtaining SLD approvals for any and all labels or other labeling changes.

3. Labeling which did not have to be submitted to SLD would be subdivided into two groups: Those which would be approved by the IIC and subject to an SLD audit and those which would qualify for generic approval, i.e., those which would not need to be prior approved by the IIC; however, the establishment would be required to provide a copy of the labeling to the ICC prior to the time the labeling is used.

4. Written authorization from the Agency would continue to be required as a precondition to the use of any labeling except for generic approvals submitted to the IIC.

5. A denial of a labeling application by the IIC or of the use of labeling alleged by the establishment to be generically approved would preclude the use of the labeling unless and until the appropriate authorization were obtained from the SLD staff.

From the Agency's perspective, this proposal should provide a means of better utilizing the Agency's existing resources, and in turn, should improve the efficiency and effectiveness of the current labeling approval system. There are several reasons for this. Inspectors-in-charge have a much closer view of the actual capabiiity and processing procedures of the individual plants. Therefore, they are in a good position to review and evaluate the accuracy of a plant's labeling. Furthermore, increased IIC involvement is likely to result in greater concern on the part of the IIC that the labeling accurately describes the product and process. Since only final labeling with previously approved sketched and "simple" labeling could be approved by the IIC, a minimum amount of training would be necessary. Moreover, uniformity and consistency in labeling policy would be maintained since, by definition, policy issues would not fall in the category of "simple" labeling and, therefore, would have to be resolved by SLD.

This proposal also seems beneficial to industry. A decrease in lag time could be expected for those labels and other labeling which now have both a sketch and final approval in Washington. Rapid identification of errors in labeling could also result due to the availability of plant procedures and operations to the IIC. Furthermore, industry stated a preference for face-to-face contact on labeling approval in its comments to the February 1980 proposal. The IIC provides this personal contact with plant representatives. Again, these advantages are supported by the Task Force's Final Report which establishes the success of the field delegation pilot program and supports the Agency's determination that active IIC participation in the labeling approval process is both reasonable and desirable. Alternative approaches have not been subjected to this type of experimentation and detailed analysis.

Reviewing its experiences under the pilot program, the Agency has recognized that it may be unnecessary to establish an affirmative approval and auditing requirement for all labeling submitted to the IIC. Some formulation or labeling changes are so minor that specific prior approval by SLD

represents an unnecessary regulatory activity. Moreover, since SLD is generally not in the best position to monitor directly compliance with an approved formulation for a product, its ability to audit the accuracy of a label or other labeling change which simply reflects a variance in the approval formulation is very limited. For example, if an establishment wished to introduce a new 2-pound package of frankfurters, it may wish to use a label which would be identical in every respect to one already being utilized on a 1-pound package. Under these circumstances, the only change would be a different specification of the number of ounces in the package. If SLD had a copy of the original 1-pound label which would be subject to audit, the only remaining question would be that of compliance with the stated quantity of contents, and this could only be monitored by the IICs.

In an effort to lessen the regulatory burden on industry without compromising the truthfulness and accuracy of meat and poultry product labeling, the Agency is proposing to approve generically certain types of labeling. In such cases, the establishment would only be required to submit a copy of the labeling to the IIC prior to use. Thus, the responsibility for ensuring that the labeling is in compliance with the Federal regulations would rest with the establishment. Such labeling would be monitored by the IIC and could be withheld from use by the IIC if found to be out of compliance with the regulations. Due to the experimental nature of this procedure the category of generic labeling approvals is narrowly defined in this document. However, the types of labeling or labeling modifications included in this category could be expanded in the future if this procedure proves successful.

This proposal would create three categories of labeling. The first category—labeling requiring central approval—would be reserved for labeling involving complex issues or issues where consistency would be both important to maintain and difficult to achieve if delegated to the local level. The second category of labeling—those the IIC could approve with a later audit by SLD—would involve labeling or labeling modifications which the IIC is fully capable of approving, but because of the nature of the change, it would be advisable to double-check the approval for the detection of possible errors, the monitoring of consistent application of Agency policy, and the maintenance of a central labeling approval file. The third category of labeling—those generic approvals which the IIC could simply keep on file for his or her records—would involve labeling or labeling modifications for which prior approval by SLD or the IIC is unnecessary and/or, as in the above example, labeling for which SLD does not appear to be in a good position to audit, and the labeling is such that a copy of it would not have to be included as part of the central labeling file. No audit would be conducted by SLD.

If adopted, this aspect of the proposal should reduce paperwork while providing for a more meaningful utilization of auditing resources by this Agency. In this context, additional comment on the concept of generic labeling approval and the broader question of auditing procedures under the proposed regulation is particularly welcomed.

2. *The Role of the Inspector.* Some critics of the present system have suggested that the changes being proposed would be insufficient to deal with the problems cited earlier. Those who hold this view advocate either a total or partial elimination of the basic requirement that labels and other labeling be approved prior to its use. The AMI petition, for example, suggests elimination of the requirement that most labeling be submitted to the Department for approval prior to its use. Copies of labeling would be supplied to the IIC and to the SLD staff for auditing purposes, but the IICs role in denying the use of any labeling would be substantially limited.

The arguments against a continuation of the present system of prior approval of labeling have been considered in the development of this proposal and, to a certain extent, they have been adopted. In the Administrator's opinion, however, those who characterize the prior label approval process as an unnecessary regulatory burden may have failed to give sufficient consideration to both the specific language and the overall intent of both the FMIA and the PPIA.

Section 7(a) of the FMIA (21 U.S.C. 607(a)) requires the person, firm, or corporation preparing any meat or meat food product for commerce in an establishment which maintains inspection under the provisions of this Act to attach a label to the package, under the supervision of an inspector, stating that the contents have been "inspected and passed."

This provision further specifies that no inspection and examination of such products shall be deemed complete until such meat or meat food products have been sealed or enclosed in a receptacle or covering under the supervision of an inspector. In addition, section 7(b) of the FMIA (21 U.S.C. 607(b)) and section 8(a) of the PPIA (21 U.S.C. 457(a)) provide that all carcasses, parts of carcasses, meat, meat food products, and poultry products inspected at any establishment under the authority of these Acts and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Secretary may require, the information required under the misbranding provisions of these Acts (21 U.S.C. 601(n) and 21 U.S.C. 453(h)).

Support for these provisions can be found by examining the legislative history of the original meat inspection legislation. On June 14, 1906, the Committee on Agriculture submitted a report to the House of Representatives discussing the provisions of the Act. This report provides the following relevant passage:

> * * * the inspection shall be maintained upon the meat-food products until the can or receptacle is actually sealed, and for the propoer and careful labeling of the same.

The language of the original legislation has remained fundamentally unchanged. Both the FMIA and the PPIA, require, among other things, the inspection of the processing, including the marking, labeling, and packaging of meat and meat food products and poultry products. Products which are misbranded may not be marked as "inspected and passed", removed from an official establishment, sold, or otherwise distributed. It is the responsibility of the IIC to assure compliance with these requirements. Such actions constitute violations of the FMIA and the PPIA, and subject the violators to criminal and civil sanctions under the Acts.

More specifically, section 7(d) of the FMIA (21 U.S.C. 607(d)) and section 8(c) of the PPIA (21 U.S.C. 457(c)) prohibit the distribution of any article under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but permits the use of established trade names and other marking or labeling and containers which are not false or misleading and which are *approved by the Secretary.* Additionally, section 7(e) of the FMIA (21 U.S.C. 607(e)) and section 8(d) of the PPIA (21 U.S.C. 457(d)) provide the Secretary with the authority to withhold the use of any marking, labeling, or container *in use or proposed for use* with respect to any article subject to the Acts if there is reason to believe that the marking or labeling or size or form of the container is false or misleading in any particular.

These provisions, coupled with the Department's mandate to prevent the distribution of meat and poultry products which are unwholesome, adulterated, and not properly marked, labeled, and packaged, establish the need for a system of "prior label approval." All other systems fail to recognize the Secretary's statutory responsibility to withhold labeling "proposed for use" that is false or misleading.

While these provisions of the Acts require the Department to approve labeling prior to its use, they do not dictate that the approval system be centralized or decentralized to any degree. They also do not dictate the establishment by regulation of any particular system for the granting of such approvals. One option would be a system under which all labeling or certain classes of labeling which met specified regulations would be approved; i.e., they would be given prior "generic" or "blanket" approval. As delineated more fully elsewhere in this document, the authority of the Agency's representatives to withhold the use of any labeling that was considered to be false or misleading or otherwise not in accordance with the Act or the regulations would be maintained.

AMI appears to have recognized this point in its petition by specifically recommending that inspection personnel not be allowed to withhold the use of any labeling. Under the AMI proposal, such action could only be initiated by the SLD staff as part of its auditing program. Moreover, this Petitioner asks that labeling modifications found to be necessary during the SLD audit should only be made after the existing supply of labels is exhausted, as long as the misbranding does not involve product safety or significant economic deception. It appears that under this proposal, the IIC could not reject the use of a label or other labeling unless and until such a negative auditing determination was made, even if he or she believed that it would misbrand the product, and in so doing was in clear violation of the Acts and the implementing regulations.

AMI's views in this area were further stated in a letter of November 24, 1981, which served to supplement its earlier petition. In the November 24, letter, AMI specifically recommended that:

1. Specific categories of labels be subject to blanket or generic approval rather than specific premarket approval;

2. Question raised by an inspector regarding labeling of a minor or routine nature would be routed to SLD for consideration as part of its auditing function;

3. Questions of a more serious nature raised by an inspector regarding labeling would be immediately referred to SLD for an immediate determination as to whetehr there was a basis for detention of product labeled in this fashion; and

4. Appeals of such decisions to detain could be referred to the Director of SLD who would be required, within 3 working days to reach a decision.

The Administrator has tentatively concluded that any regulation which would place such broad, ongoing restrictions on the IIC's authority and responsibility to take action against misbranded product would be contrary to the requirements of the FMIA and the PPIA. In addition, such an approach would appear to dictate an inefficient use of Agency personnel, since the in-plant Agency employees, those most able to monitor a plant's actual labeling practices, would be unnecessarily restrained from carrying out one of the Agency's central enforcement responsibilities.

In analyzing this issue, it is useful to examine the IIC's authority and responsibility in the misbranding area under current regulations and procedures. At the present time, except in the limited areas noted above, the IIC's role in the actual approval of labeling is severely limited, since virtually all labeling applications are reviewed by SLD. When an approved label or other labeling with accompanying formulation information is retruned to the IIC, both the IIC and plant management will ordinarily assume that the labeling, if properly used, is in full compliance with all applicable regulations. In some instances, however, the IIC may not agree with the determination and may bring concerns to the attention of supervisors or the SLD staff. Errors in the approval process are identified through just such a process, and corrective action is taken. This would generally involve some direct reevaluation of a previous decision by the SLD staff; absent special circumstances the IIC is not in a position to ignore or directly overturn an SLD labeling decision.

It is important to emphasize, however, that there are distinct limitations which are inherent in the centralized approval process. The SLD staff has ordinarily not had the opportunity to review the product itself, only a description of its ingredients and its formulation. Its judgments can therefore only be considered definitive for questions which do not extend beyond the labeling itself, such as the inclusion of a required establishment number designation, and are only valid when the processing and formulation procedures do not vary from those reviewed. The IIC must still monitor compliance with this agreed-upon processing procedure and must withhold the use of approved labeling when certain variances have occurred. For example, a processor may obtain SLD approval of a label for a "beef stew" product. His application would indicate the product is formulated with a minimum of 25 percent beef, in accordance with the applicable standard, and the label, if otherwise correct, would be approved. However, if the establishment were to attempt to apply this approved label to a product containing only 20 percent beef, its use should be withheld by the IIC, even though the original review determination was the correct one. In other words, the application and approval process creates an agreement between the Agency and the establishment that a given label may be used if a product is formulated in a given way. However, the SLD staff has no means of assuring the continued adherence to the formulation agreement. This remains the IIC's responsibility.

In this context, it is very difficult to think in terms of a regulatory process which would deny inspectors the right to withhold the use of a label or other labeling or to retain and to take other actions with respect to misbranded product, and still be consistent with the language of the FMIA and PPIA. As long as this basic inspection authority is retained the question of how the IIC must "approve" a given label, whether through an affirmative act such as signing a form or more indirectly through not withholding its use, would appear to be an issue of mechanics, an issue entirely within the discretion of the Administrator. In order to maintain proper records and to minimize confusion when IIC's change assignments in various plants, the Agency is proposing that all applications for labeling be submitted to the IIC prior to use. Labeling requiring prior approval by the IIC would, in fact, be signed by the IIC while generic labeling approvals would not require the IIC's signature. No one, however, would be forced to utilize the IIC in this fashion; an establishment would always retain the option of submitting any and all of its labeling applications to SLD.

This proposal would have the folowing effects on the authority of the IIC to approve labels and labeling modifications under the meat and poultry inspection regulations:

The language of § 317.4(a) would be changed to clarify the delegation of

labeling approval authority. The proposed amendments permitting approval of labeling by the IIC would be a legal delegation of authority. Hence, such approvals constitute the Administrator's approval just as SLD's approval does. In addition, the requirements for quadruplicate submissions of labeling would be changed to triplicate because an extra internal control copy of the labeling would no longer be required.

Section 381.132 of the poultry products inspection regulations (9 CFR 381.132) would be changed. This would be done to increase the uniformity between the meat and poultry products inspection regulations and because the language of the poultry products inspection regulations appears to require that both sketches and final labeling be approved. In fact, the Agency has never enforced the requirement that sketches be approved, and the proposed language would reflect the actual practice.

Section 317.4(e) of the meat inspection regulations (9 CFR 317.4(e)) and § 381.132(c) of the poultry products inspection regulations (9 CFR 381.132(c)) would deal with those instances in which the IIC could permit modification of certain labeling and approve certain types of labeling. Section 317.5 of the meat inspection regulations (9 CFR 317.5) and § 381.134 of the poultry products inspection regulations (9 CFR 381.134) would deal with those types of modifications to previously approved labeling which would be generically approved.

3. *Categories of Labeling to be Approved by the IIC.* The first category in which labeling could be approved by the IIC (proposed § 317.4(e)(3)(i) of the meat inspection regulations and proposed § 381.132(c)(3)(i) of the poultry products inspection regulations) would be in situations in which the labeling has been approved by SLD in sketch form and the final labeling is prepared without modification or with only minor modification. Minor modifications will be discussed in greater detail below. In the pilot program IICs were found fully competent to approve all final labeling having a sketch approval by SLD. This proposed delegation of authority goes somewhat beyond that tested in the pilot program, where the final labeling was required to be exactly the same as the approved sketch, and would permit IICs to approve final labeling with minor modifications from the approved sketch. Sketches would be defined to include printers' proofs or other comparable copies which clearly show all labeling material, size, location, and some indication of final color. "Minor modifications" to an approved sketch would be defined as those modifications outlined in the proposed regulations in 9 CFR 317.4(e)(3)(iii) or 317.5(b) or 9 CFR 381.132(c)(3)(iii) or 381.134(b), which could otherwise be approved by the IIC. The AMI petition proposed this more expanded approach and the Agency agrees that it should be proposed.

It appears that industry would benefit from such delegation of authority, with no adverse effect upon labeling quality, through elimination of the mail time required for approval of the final labeling. Further, plant management could still make those minor modifications to the final label or labeling that the IIC is authorized to approve elsewhere in 9 CFR 317.4 or 9 CFR 381.132 or that are generically approved in 9 CFR 317.5 or 9 CFR 381.134. Copies of the final approval would have to be sent to SLD by the IIC for auditing and filing.

The next category relates to "simple labeling" (proposed § 317.4(e)(3)(ii) and § 381.132(c)(3)(ii) of the meat and poultry products inspection regulations). This "simple labeling" would consist of single ingredient labeling which does not make any special claims (i.e., quality, negative, geographic, nutritional) or contains any guarantees or foreign language.

It is, perhaps, apparent that guarantees and foreign language add complexity to labeling. It may be less readily apparent that claims add complexity. For example, one manufacturer may try to make a claim that a product has a novel feature, such as "no preservatives". Such a claim can be an important buying aid especially for a consumer with a special dietary problem and is not misleading if applied to a product which does not include such substances although their use is generally expected in that type of product. For this reason, the Agency is proposing a system which will allow it to examine claims closely to assure that they are neither rejected if they are truthful and not misleading, nor approved if their use would constitute misleading labeling.

There were no problems encountered with the approval of "simple labeling" in the pilot program, and its adoption was recommended by the Task Force. AMI also recognized in its petition that "simple" labeling to which claims had been added placed the labeling in a different category where the uniformity and consistency of SLD was required. Copies of the final approval would have to be sent to SLD by the IIC for auditing and filing.

The next category, proposed § 317.4(e)(3)(iv) and § 381.132(c)(3)(iv) of the meat and poultry products inspection regulations, would cover labeling for products sold to the Federal Government on contract. Products prepared for the Government are usually manufactured to particular Government specifications, so that many of the concerns associated with misleading consumers are absent. Although this was not tested in the pilot program, recommended by the Task Force, or contained in the AMI petition, this provision has been in the poultry products inspection regulations for a long time and has worked well; therefore, it has also been proposed for the meat inspection regulations. Copies of these approvals would have to be sent to SLD by the IIC for auditing and filing.

Proposed § 317.4(e)(3)(v) and § 381.132(c)(3)(v) of the regulations would provide for IIC approval of labeling for shipping containers which contain fully labeled immediate containers. Since IICs already have this authority regarding poultry products under the current regulations and no problems have arisen with the delegation of authority, it seems logical to extend this authority to cover meat products. Copies of these approvals would have to be sent to SLD by the IIC for auditing and filing. The changes to the current poultry products inspection regulations in this connection are essentially editorial to retain the format of this proposal.

Proposed § 317.4(e)(3)(vi) and § 381.132(c)(3)(vi) of the regulations would cover products not intended for use as human food (used as animal feed or for inedible purposes) and also products, such as chicken feet, which are used for human food in countries other than the United States. In the case of products not used for human food, the Agency's sole interest, under its legislative mandate, is to identify sufficiently the product so that it would not be used as or become mixed with product that is intended for use as human food. This does not require a complex or sophisticated labeling approval function. Since IICs already have this authority regarding poultry products under the current regulations and no problems have arisen with this delegation of authority, it seems logical to extend this authority to cover meat products. Copies of these approvals would have to be sent to SLD by the IIC for auditing and filing.

Proposed § 317.4(e)(3)(vii) of the meat inspection regulations and § 381.132(c)(3)(vii) of the poultry

products inspection regulations would permit the IIC to approve meat and poultry products inspection legends, respectively. This authority was delegated to the IICs in the pilot program and revealed no significant problems. The Task Force recommended that this authority be permanently delegated. There appears to be little chance for error since examples of these legends appear in the regulations for exact comparison. In addition, minor differences, such as a legend being slightly out of round in final printing, would not have the effect of being misleading. Copies would have to be sent to SLD by the IIC for auditing and filing.

Proposed § 317.4(e)(3)(vii) of the meat inspection regulations would permit the IIC to approve the ink brands used on meat and meat food products and the hot brands used on meat food products. The approval of these brands was also tested in the pilot program, worked well, and was recommended by the Task Force as a function to be delegated to the IIC. Traditionally, brands have not been used in poultry products insepction, so the IIC would not be delegated this approval authority regarding poultry products. There appears to be little chance for error since examples of thee brands appear in the regulations for exact comparison. In addition, minor inconsistences or changes do not seem to have the potential of being misleading. Copies would have to be sent to SLD by the IIC for auditing and filing.

Proposed § 381.132(c)(3)(viii) would add to the poultry products inspection regulations a provision that has long been in the meat inspection regulations relating to the IIC approving inserts, tabs and similar labeling material, which contain no reference to product name. Copies would have to be sent to SLD by the IIC for auditing and filing.

Proposed § 317.4(e)(3)(iii) and § 381.132(c)(3)(iii) of the regulations would deal with those "minor modifications", in category two described above, to previously approved labeling that the IIC may approve. The IIC would have to submit a copy of the modified approval to SLD for auditing and filing. Each of these "minor modification" will be discussed individually below. The proposal that these modifications be included is based on the Task Force recommendations and the AMI petition.

The IIC could approve labeling for previously approved product packaged under different brand names, providing there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the descriptive name of the product. This would provide more flexibility to industry. Changing only the brand but not the label design would appear to have no potential for misleading the consumer, provided the brand name itself is not misleading. For example, a name such as "Prime Brand" might be misleading as to the grade of the product. Such a possibility should be obvious to the IIC. The Task Force recommended that this authority be delegated. To assure consistency, however, the IIC would have to send copies of these label modifications to SLD for auditing and filing.

The IIC could also approve the deletion of the word "new," which is often used in a flag or sunburst on the labeling of new products when they are first introduced, from the labeling after the time period permitted by the Agency for its use has expired. This modification was an AMI petition recommendation, and it appears to the Agency that this authority should be delegated. This should provide industry with the ability to obtain speedy local approval with little possibility of misleading the consumer. Copies of the labeling approval would have to be sent to SLD for auditing and filing because the original approval from SLD would have been a temporary approval because of the use of the word "new" and the temporary nature of its accurate meaning to the consumer.

The IIC could also approve the addition, deletion, or amendment of handling instructions, provided the change is consistent with 9 CFR 317.2(k) and 381.125. This modificaiton was an AMI petition recommendation, and it appears to the Agency that this authority should be delegated. This change could also provide industry with the ability to obtain speedy local approval with little possibility of misleading the consumer. Copies of the labeling approval would have to be sent to SLD for auditing to assure consistency and uniformity.

Another type of labeling modification could also be approved by the IIC. This modification includes color changes, but the IIC would be required to decide if the color change is contrasting and legible. The change, although not tested by the pilot program, was recommended as one of the areas for expansion by the Task Force and the AMI petition. The current poultry products inspection regulations permit the IIC to approve such changes when there is also a proportionate enlargement. Because this limited authority to approve color changes has caused no problem, it appears logical to expand this authoirty to cover all color changes to the label for both meat and poultry, provided the change results in similar legibility and contrast as the originally approved label. It is believed the limitation "contrasting and legible" would prevent essential and required information from being buried by a color change. The IIC would have to forward a copy of the label to SLD for auditing and filing.

The IIC can currently approve a change in the quantity of an ingredient shown in the formula without a change in the order of predominance which is shown on the label (9 CFR 317.5(f)) and (9 CFR 381.135(a)(7)). The IIC could continue to approve this type of modification with the proposed regulation. A copy would be submitted to SLD by the IIC for audit and filing.

Finally, the IIC would also be given the authority to approve the addition, substitution, or deletion of an official USDA grade shield. This delegation was a recommendation of the AMI petition, and it appears to the Agency that delegation of such authority is desirable. Copies of the labeling approval would be audited by SLD.

4. *Generic Labeling Categories.* Proposed § 317.5(b) and § 381.134(b) of the regulations would deal with minor modifications, in the third category of labeling which was described above, to previously approved labeling that could be considered generically approved. The establishment would simply have to submit a copy to the IIC for his or her records prior to actual use of the labeling. Each of these "minor modifications" will be discussed individually below.

The IIC, in both the current meat and poultry products inspection regulations, may approve the proportionate enlargement of all features of the label. The current regulations also deal with color scheme. However, in this proposal the color scheme provision would be dealt with separately. The current modification would be expanded to allow generic approval of both proportionately enlarged and proportionately reduced labeling. The approval of proportionate reduction, although not tested in the pilot program, was recommended by the Task Force.

This modification would give industry more flexibility in coping with technical printing or equipment changes that might dictate reduction in labeling size. Because no problems have arisen in the currently authorized IIC approval of labels being proportionately enlarged, it seems logical to expect the same results could be anticipated through generic approval of these modifications. It is

expected that retention of specified minimum size requirements and legibility in the regulations would prevent the consumer from being misled. A copy of this labeling would have to be submitted to the IIC prior to its use.

The other labeling modifications which the IIC can currently approve would remain essentially unchanged from their present wording in the meat and poultry products inspection regulations (9 CFR 317.5 (b) through (e) and 9 CFR 381.135(a) (2) through (5)) except that these modifications would now be in the third category—generic approval. Under 9 CFR 381.135(a)(6), IICs have been approving modifications regarding poultry products where the appropriate name or class of the poultry is added to a master or stock label which was approved without this information. This modification would be deleted from the poultry products inspection regulations because all of the labels under this modification would be covered under the broader modification of single ingredient labels that is being proposed. The specific modification, therefore, would no longer be necessary and would be deleted.

Other modifications that could be generically approved include the addition, deletion, or amendment of a coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information. These changes were recommended in the AMI petition. It appears to the Agency that these changes could be generically approved, and thus, the Agency has proposed their inclusion. The quality of the labeling would not seem to be hampered, provided the addition or amendment of such information does not crowd or obscure the mandatory information in any way.

Company name and address changes in the signature line could also be generically approved. This would provide for speedy labeling printing whenever a firm changed its name or there was an address or zip code change. Such changes seem to have little potential for misleading the consumer. A copy of the modified labeling would have to be submitted to the IIC for filing prior to its use. This change was recommended by both the AMI petition and the Task Force.

Changes in the net weight statement where the same product is simply being packed in different weights and one label had been previously approved, provided the net weight print size complies with the regulations could also be generically approved. This change was recommended in the AMI petition. This would provide greater flexibility to industry and would substantially reduce the number of labels submitted to SLD. It appears that the accuracy of the label would not be hampered in any way since the original label would have been reviewed and approved by SLD or the IIC. With that approval, industry could produce product in any other weight desired. A copy of the labeling would have to be submitted to the IIC for filing prior to its use.

The addition, deletion, or amendment of recipe information about how the product could be used, which is usually given on the side or back panels of the label, would be eligible for generic approval. Such changes should have no effect on the approved label, and thus, have little potential for misleading the consumer. This change would provide industry the opportunity of either adding of changing a recipe or printing a variety of recipes. The AMI petition recommended this approach. A copy of the labeling would have to be submitted to the IIC for filing prior to its use.

In addition, all changes in punctuation would also be eligible for generic approval. The AMI petition recommended this modification. It appears that such change would enable industry to modify labels faster without misleading the consumer. A copy would have to be submitted to the IIC for filing prior to its use.

The final modification that could be generically approved would be newly assigned or revised establishment numbers for a particular plant, provided there would be no change to the rest of the approved label. A copy of the label would have to be submitted to the IIC for filing prior to its use. The change in an establishment number for a particular plant would not basically affect the already approved label. The AMI petition extended this to include any establishment number change The Agency is not proposing that all establishment number changes on a label would be generically approved.

Specifically, the change of an establishment number on previously approved labeling which would be eligible for generic approval would only be for the particular establishment which obtained the previous approval from SLD or the IIC in that establishment. An IIC in a California plant would have no quick and effective method of determining whether or not a label shown for that company's plant in New York was actually approved as presented or whether it had been rescinded or modified, i.e., the label purportedly being used in New York may not in actuality be used. The best and most efficient way to approve such establishment number changes to previously approved labeling is through central approval. Therefore, when an establishment number shown on a label changes simply because the product is being produced at two or more different plants owned by the same company or because the product is being packed by two or more different establishments for the same company, the labeling approval must still be obtained from SLD. It should be noted, however, that only one such application is necessary. The labeling application can simply indicate all establishments which would be producing the product (with a copy of the application attached for each IIC at each establishment). When the labeling is approved, SLD will send a copy to each IIC at each establishment.

5. *Appeals.* As part of the overall review of the prior labeling approval process, FSIS has considered various options for change in the areas of appeals of label review decision. This proposal does not include provisions for substantial changes in the area of such appeals, although the increase in IIC involvement in the labeling process contemplated by the proposal and the establishment of generically approved categories will obiviously dictate some degree of change in this general area.

At the present time, appeals of informal decisionmaking in the label review area are controlled by § 308.5 of the meat inspection regulations and § 381.35 of the poultry products inspection regulations which state that any appeal from a decision of any program employee shall be made to his or her immediate supervisor having jurisdiction over the subject matter of the appeal, except as otherwise provided by the applicable rules of practice. In an effort to avoid any confusion which may result from the proposed delegation of label approval authority to the IIC, the Agency is proposing to amend these provisions to clarify that denial of a labeling application by the IIC would not constitute a basis for an appeal under the appeal provisions of the regulations.

A related question concerns the possibility of an establishment submitting a label to the IIC which has been rejected by SLD. This practice would be specifically prohibited in the proposal. To provide otherwise would permit a mechanism whereby the IIC could "overrule" the SLD labeling experts. In addition, an establishment would assume a high degree of risk in proceeding with such an approval which would be subject to audit and modification consistent with the original SLD decision.

Both sets of regulations also specify more formal procedures for the review of final decisionmaking by the Agency in the labeling area. Under the applicable rules of practice (9 CFR 335.12 (meat) and 9 CFR 381.233 (poultry)), an applicant may, upon written notice of the denial of a labeling application by the Administrator, seek a hearing before an Administrative Law Judge of the Department. Under these circumstances, the Administrator's denial becomes the complaint, and the applicant's response the answer, in the administrative proceeding which follows. A decision of an Administrative Law Judge following an evidentiary hearing may be, in turn, appealed to the Department's Judicial Officer, who retains the authority to make the Department's final judgment on the matter. An applicant who disagrees with the Judicial Officer also retains a further right of appeal to the appropriate Federal court.

At both the formal and informal level, the appeals process has an important policymaking function. Novel issues not specifically addressed by regulation or precedent frequently arise, and the initial decision of the label reviewer, who generally functions under a great deal of time pressure, may very well be a legitimate subject for further policy consideration within the Agency. Obviously, there is also a relationship between the economic impact of a label review decision and the tendency of an applicant to utilize the appeals process. The more financially important obtaining an approval is to an applicant, the more persistent he or she is likely to be in attempting to obtain it.

Under these circumstances, unnecessary delays in the appeals process may have significant consequences, particularly when the use of labeling is being withheld pending a resolution of the issue. In its petition, the AMI has emphasized its concern in this area by suggesting that a 5-day limit be imposed upon decisionmaking at the staff (SLD) level. This would be coupled by another 5-day limit to be imposed upon the Administrator acting "separate and apart" from the Agency staff. At that time, a final Agency decision would be issued, subject to the same appeal to an Administrative Law Judge. However, during the pendency of this formal appeal, the applicant would retain the right to use the labeling in question.

The greater involvement of the IIC would obviously have an impact upon this process. However, the proposal to make IIC approvals and generic approval an option to be exercised at the discretion of the applicant may actually serve to effect less change in this area than one might expect. Since any labeling applications could still be submitted to SLD, if the proposal were finalized, the applicants would have the option to seek SLD review of any IIC labeling decision with which they might disagree. The Agency currently believes that there would be no particular value, for recordkeeping purposes, in delineating such an action as an "appeal," since the application could simply become a routine application upon submission to SLD. This approach would appear to be responsive to those who have expressed concerns about the possibility of inconsistent and/or unfair decisionmaking at the IIC level. The applicant who has such a concern is in the position to submit the labeling in question to SLD and have it reviewed in the traditional manner. However, the Agency is particularly requesting comments on this "appeal" issue since the potential does exist for an establishment to submit identical applications to both the IIC and SLD in the hopes of gaining approval through possible inconsistent treatment.

While additional comment on the issue is encouraged, the Agency does not see any compelling reason for proposing additional changes in its regulations regarding appeals. A variety of controversial and economically significant issues are considered by Agency personnel both inside and outside of the labeling area, and the general "chain-of-command" approach as specified in §§ 300.5 and 381.35 has proved workable. The 10-day limit suggested by AMI appears to be unrealistic. While such a period of time may prove more than sufficient to dispose of a relatively simple issue, labeling applications may generate complex issues in areas such as food safety and consumer perceptions, and in such instances decisionmaking within such a period of time might prove precipitous and irresponsible. The establishment of such a 10-day limit might, therefore, establish an artificial mechanism which would dictate premature decisionmaking on a broad range of issues by the Administrator. The Agency is also quite reluctant to establish a mechanism through which the Administrator could be inundated with problems which can generally be resolved at a lower level of the organization.

In addition, FSIS has, in recent months, taken specific steps to improve and clarify the informal appeals process. In an internal memorandum dated April 30, 1981,[2] the Division Director instructed SLD to observe certain procedures in the processing of appeals. The responsibilities of various individuals in the Division for making, supporting, and reviewing decisions are clarified, and a simple process which includes the voluntary submission by the applicant of a form, titled "Request for Label Reconsideration" (OMB No. 0583-0048) is discussed. The procedures outlined in the memorandum appear to have been successfully implemented, and the forms have been useful to both applicants and their agents and Agency personnel in identifying and tracking all the relevant information regarding a labeling dispute. In many instances, this has led to a faster turnaround on specific appeals.

This experience has served to reinforce the basic notion that the Agency and the public would not be best served by the establishment of a more rigid and inflexible appeals system. Additional improvements and innovations in this area, particularly those generated by comments to this proposal, are, of course, highly desirable. However, the Administrator believes that this can best be accomplished within the framework of the current regulations.

At the more formal level, no regulatory changes are being proposed. The suggestion that any label or other labeling which is the subject of a formal appeal be utilized pending the resolution of the dispute by the Administrative Law Judge is not being proposed. As discussed earlier, the Agency believes the establishment of any mechanism whereby an applicant would automatically be permitted to utilize labeling which the Agency believes to be false and misleading would be inconsistent with the Agency's statutory responsibilities and would not be in the public interest. FSIS does recognize that its authority to withhold the use of particular labeling can have significant impact and should be carefully administered. Under appropriate circumstances, such concerns may also be somewhat mitigated by utilization of the temporary approval process discussed below.

6. *Temporary approvals.* Although not specifically authorized by current regulations, the practice of granting temporary approvals of labeling has developed under the present system as an important tool which may be used to assure equity and minimize the

[2] A copy of the memorandum is on file with the FSIS Hearing Clerk, Regulations Office, Food Safety and Inspection Service.

economic hardship which could otherwise result from certain labeling decisions. Temporary approvals permit limited use of labeling which may otherwise be deemed deficient in some particular. Under the proposal, this practice would be specified in the regulations and general guidelines for its application would be established.

In employing temporary approvals, the Agency has simply attempted to inject an appropriate level of flexibility into its labeling review decisionmaking. Temporary approvals are frequently granted after a sketch application has been reviewed and approved in error. Under these circumstances the applicant may have relied upon the earlier representation of an Agency representative and incurred printing costs and other related expenses. If the review of the final application reveals a minor error which was apparent, but not noted at the time of the sketch application, the final approval will ordinarily be granted for a specified period of time.

Requests for temporary approval are also made for a variety of other reasons, such as closings of plants, slight changes in formulation, and shifting of company operations. Such requests are handled routinely by SLD staff who consider the seriousness of the problem, the specific circumstances of the applicant, and the potential consequences of both granting and denying the request.

The Agency believes that the practice is a valuable one which should be preserved. However, its use, absent specific regulatory authorization, has been questioned. This proposal therefore includes a provision which would authorize the use of temporary approvals provided certain criteria are met.

More specifically, if this proposal were finalized, the practice of authorizing temporary approvals for a period not to exceed 180 days would be included in the regulations. This time limitation is proposed since it is generally consistent with past and present practice and would appear to establish sufficient time for applicants to make necessary adjustments. Whenever appropriate, shorter time periods would be specified. As presently proposed, however, no extension of the 180-day temporary approvals would be permitted. In some circumstances, this would be a departure from current practices. It appears that 180 days should provide sufficient time for applicants to make the necessary adjustments, but is particularly requesting further comment on this issue.

The proposed criteria for temporary approvals include a demonstration by the applicant that: (1) The proposed labeling would not misrepresent the product; (2) use of the labeling would not present any potential health, safety, or dietary problems to the consumer; (3) denial of the request would create undue economic hardship; and (4) an unfair competitive advantage would not result from the granting of the temporary approval.

In delineating these elements, the Agency is attempting to propose criteria which are specific enough to provide some additional clarity to the temporary approval process and are consistent with past practices. As is the case in the appeals area, the Agency has been reluctant to attempt to propose highly specific, inflexible criteria in an area where individual judgment remains an essential element of the overall process. Comments on the proposed criteria and on the general questions of their specificity are encouraged.

Temporary approvals could not be granted by the IIC under the proposal since they present, by their nature, complex labeling issues and since the Agency needs to maintain a fairly high level of centralized control over this aspect of the approval process. Decisions on temporary approvals would be treated just as any other labeling decision for the purposes of appeal.

An additional point should be made about the relationship between generically approved labeling and temporary approvals. As noted above, the establishment would have responsibility for the accuracy of generically approved labeling. As discussed, one factor behind the traditional willingness of the Agency to grant temporary approvals has been the recognition that a practice in need of correction may have been initially sanctioned by the Agency. Since no specific approvals would be issued by SLD for labeling in the generic approval categories, this would not be the case in this area. If a problem arises with a generically approved label, it is highly unlikely that a temporary approval would be granted.

7. *Costs and benefits of proposed changes.* The changes to the prior labeling approval system discussed above would have the greatest impact on three segments of the economy: the Federal Government (USDA/FSIS), the meat and poultry industry, and a segment of the business community known as meat and poultry labeling consultants. This section will briefly discuss the costs and benefits to each of these groups.

There would be two basic impacts on FSIS that could occur as a result of the proposed modifications. The first impact, the cost of training, would not be excessive for the FSIS program. It would be a one time cost initially to train the approximately 3,200 IICs. After the initial training, labeling approval would be incorporated into future IIC training and refresher courses. The initial costs would include the development of a training guide, and more extensive training of five program assistants from the Regional offices in Washington. These program assistants would then train circuit and area supervisors as part of a regularly scheduled meeting of these program officials to avoid additional travel costs. These supervisors would then individually train IICs during their regularly scheduled visits to the establishments.

The second impact on FSIS would be the shift in costs of reviewing labeling from SLD to IICs. Currently, SLD employs eight label reviewers, who review approximately 100,000 meat and poultry labels and other labeling each year. The experience of the pilot program, which tested the feasibility of delegating certain approvals of labeling, enables FSIS to estimate that 50 to 75 percent of the labeling currently submitted could be approved by IICs or be generically approved. Thus, between 50 and 75 thousand labels and other labeling might be submitted to the 3,200 IICs. This would result in an average of 15 to 24 labels and other labeling per IIC per year. The pilot program experience showed that 67 percent of the approvals of labeling were completed by the IICs in less than ½ hour and that 90 percent were completed in less than 1 hour. Thus, the Agency concludes that the average IIC would spend less than 2 hours per month on approvals and review of labeling. Some variance around this average time allowance of 2 hours per month would be expected. The time allotted for IIC labeling approvals and review would depend on several factors including size of establishment, number of products processed, and types of products processed.

The Agency would benefit from the proposed action by operating a more streamlined and efficient labeling approval system. This more efficient system might eventually lead to either a more efficient use of, or a reduction in, SLD staff. The Agency might also benefit from a better industry understanding of the labeling approval system through increased

communication between plant management and the IIC during the approval process.

The major cost of the proposed changes to the meat and poultry industry would be the potential risk that IIC approved labeling or generically approved labeling would be rejected by a label auditor in Washington or by the IIC in the establishment. Of the 233 labels that were approved by IICs in the pilot program, 22 were overruled by SLD. It is expected that through a permanent program, improved training, and expanded instructional aids for the IICs, this error rate could be substantially reduced. This same problem occurs in the present system when a label has been approved in sketch form and then is found to be in error when the final labeling application is received or during audits of approved labeling. The SLD now handles these situations, and would plan to handle situations that arise under new regulations, in a reasonable manner. When use of these labels or other labeling that were approved in error by IICs would not present a health hazard or be misleading to the public, temporary approvals could be granted to allow already printed labeling to be used.

Utilization of the IIC's more extensive approval authority and generically approved labeling would be voluntary. Therefore, theoretically, there would be no additional costs to the industry that the industry would not agree to bear. If industry perceived that the costs outweighed the benefits, participation in the program would decline. Industry would benefit from the proposed action through a faster turnaround time for approval of labeling. Benefits may also be accrued through less burdensome paperwork and a better understanding of labeling decisions by plant management.

If these proposed changes are adopted, a significant economic impact would be likely to be realized by labeling consulting firms. These firms have established themselves as industry aids in handling meat and poultry product labeling approval applications. The firms provide consultation to industry, obtain forms and label sketches or final labeling and walk these through the approval process with the SLD label reviewers. Labeling consultants may also handle appeal procedures when industry formally disagrees with the Agency's label review. FSIS program personnel have information that indicates there are fewer than 15 high-volume labeling consulting firms, which have a total employment of fewer than 25 people. The firms currently handle between 50 and 65 percent of the labels and other labeling being reviewed by the Agency. Many of these firms are one-person operations, although a few are connected with trade associations as a service department for their members.

Changes to the prior label approval system as proposed in this document could significantly affect these firms. Labeling consultants may have to adapt their services to fit the amended system in order to continue their function. For this reason, the Department particularly invites comments on the potential costs to be imposed upon these labeling consultants if the proposal is adopted.

List of Subjects in 9 CFR

Part 309

Appeals, Meat inspection.

Part 317

Food labeling, Meat inspection.

Part 381

Appeals, Food labeling, Poultry.

Accordingly, the meat and poultry products inspection regulations would be revised as follows:

1. The authority citation for Parts 306 and 317 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 35 U.S.C. 1171(b), unless otherwise noted.

PART 306—ASSIGNMENT AND AUTHORITIES OF PROGRAM EMPLOYEES

2. The text of § 306.5 (9 CFR 306.5) would be revised as follows:

§ 306.5 Appeals.

Any appeal from a decision of any Program employee shall be made to his immediate supervisor having jurisdiction over the subject matter of the appeal, except as otherwise provided in the applicable rules of practice and denial of a labeling application by the inspector-in-charge shall not constitute a basis for an appeal under this section.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

3. The section title and paragraphs (a) and (d) of § 317.4 (9 CFR 317.4(a) and (d)) would be revised and paragraph (e) would be added as follows:

§ 317.4 Labeling to be approved by the Administrator.

(a) No labeling shall be used on any product until it has been approved in its final form by the Administrator. For the convenience of the establishment, sketches or proofs of new labeling may be submitted in triplicate to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Washington, D.C., for approval, and the preparation of final labeling deferred until such approval is obtained. "Sketch" labeling is a printer's proof or other comparable copy which clearly shows all labeling material size, location, and some indication of final color. All final labeling shall be submitted in triplicate to the Standards and Labeling Division for approval, except where such approval may be obtained from the inspector-in-charge as specified in this section or where generic approval is granted as specified in § 317.5. Any establishment that wishes to submit any labeling to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Washington, D.C., for approval may do so.

* * * * *

(d) Application may be made, consistent with the requirements of this section, for a temporary approval for the use of a label or other labeling that may otherwise be deemed deficient in some particular. Temporary approvals may be granted for a period not to exceed 180 days, and may not be extended. Such an approval may be granted if (1) the proposed labeling would not misrepresent the product; (2) use of the labeling would not present any potential health, safety, or dietary problems to the consumer; (3) denial of the request would create undue economic hardship; (4) an unfair competitive advantage would not result from the granting of the temporary approval.

(e) Inspector-in-charge may approve labeling in certain cases.

(1) At the request of the official establishment, the inspector-in-charge may approve labeling listed in paragraph (e)(3) of this section which has not been submitted to the Standards and Labeling Division: *Provided*, That the labeling is so used as not to be false or misleading, and that all approvals are issued in writing in response to applications, and that copies of the approved applications are forwarded for filing and possible audit by the inspector-in-charge to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) Denial of a labeling application by the inspector-in-charge precludes use of the labeling unless and until

authorization is obtained under paragraph (a) of this section.

(3) The inspector-in-charge may approve: (i) Final labeling, if the Standards and Labeling Division has already approved the labeling in sketch form and the final labeling is prepared without modification or with only minor modification as described in paragraph (e)(3)(iii) or as described in § 317.5;

(ii) Labeling for single ingredient products (such as steak or lamb chops) which do not contain quality claims (such as "blue ribbon" or "choice"), negative claims (such as "no sugar added"), geographical claims, nutritional claims, guarantees, or foreign language;

(iii) Any label or other labeling which has already been approved but which contains one or more minor modifications, as set forth in this subparagraph, provided, in the opinion of the inspector-in-charge, all mandatory information remains sufficiently prominent and the labeling as modified is so used as not to be false or misleading:

(A) Brand name changes: *Provided* there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

(B) The deletion of the word "new" on new product labeling;

(C) The addition, deletion, or amendment of handling instructions: *Provided,* the change is consistent with § 317.2 of this subchapter;

(D) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label: *Provided,* That the change in quantity or ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in Parts 318 and 319 of this subchapter;

(E) Changes in the color of the labeling: *Provided,* the inspector-in-charge is satisfied that sufficient contrast and legibility remain; or

(F) The addition, deletion, or substitution of the official USDA grade shield;

(iv) Labeling for containers of meat and meat food products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public: *Provided,* That the contract specifications include specific requirements with respect to labeling, and are made available to the inspector-in-charge;

(v) Labels for shipping containers which contain fully labeled immediate containers;

(vi) Labeling for products not intended for human food, provided they comply with Part 325 of this subchapter;

(vii) Meat inspection legends, which comply with Parts 312 and 316 of this subchapter; or

(viii) Meat carcass ink brands, and meat food product ink and burning brands, which comply with Parts 312 and 316 of this subchapter.

4. The title and contents of § 317.5 (9 CFR 317.5) would be revised to read as follows:

§ 317.5 Generically approved labeling.

(a) Labeling which is generically approved under paragraph (b) of this section is approved for use without additional authorization from Agency personnel, provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular. Any determination by the inspector-in-charge that labeling being used in accordance with paragraph (b) of this section is false or misleading or that labeling alleged by an establishment to be approved under paragraph (b) of this section which the inspector-in-charge determines is not so approved, shall preclude the use of the labeling and said determination shall remain in effect unless and until an alternative decision is made by the Standards and Labeling Division. A copy of any labeling to be used in accordance with paragraph (b) of this section shall be supplied to the inspector-in-charge prior to its use.

(b) Labeling which has previously been approved but which contains the following modifications is generically approved and may be used in conformity with the requirements of paragraph (a) of this section:

(1) All features of the labeling are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

(2) There is substitution of such abbreviations as "lb." for "pound," or "oz." for "ounce," or the word "pound" or "ounce" is substituted for the abbreviation;

(3) A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

(4) During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

(5) There is a change in arrangement of directions pertaining to the opening of containers or the serving of the product;

(6) The addition, deletion, or amendment of a coupon, cents-off statement, cooking instructions, packer product code information, or UPC product code information;

(7) Any change in the name or address of the packer, manufacturer, or distributor that appears in the signature line;

(8) Any change in the net weight or size: *Provided,* That the net weight size complies with § 317.2 of this subchapter;

(9) The addition, deletion, or amendment of recipe suggestions for the product;

(10) Any changes in punctuation; or

(11) Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by SLD or the inspector-in-charge assigned to that establishment.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for Part 381 reads as follows:

Authority: Sec. 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962, (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Pub. L. 91–224 and by other laws (33 U.S.C. 1171(b)) unless otherwise noted.

6. The text of § 381.35 (9 CFR 381.35) would be revised as follows:

§ 381.35 Appeal inspections; how made

Any person receiving inspection service may, if dissatisfied with any decision of an inspection relating to any inspection, file an appeal from such decision: *Provided,* That such appeal is filed within 48 hours from the time the decision was made. Any such appeal from a decision of an inspector shall be made to his immediate superior having jurisdiction over the subject matter of the appeal, and such superior shall determine whether the inspector's decision was correct. Review of such appeal determination, when requested, shall be made by the immediate superior of the employee of the Department making the appeal determination. The cost of any such appeal shall be borne by the appellant if the Administrator

determines that the appeal is frivolous. The charges for such frivolous appeal shall be at the rate of $9.28 per hour for the time required to make the appeal inspection. The poultry or poultry products involved in any appeal shall be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection. Provided further, That denial of a labeling application by the inspector-in-charge shall not constitute a basis for an appeal under this section.

7. The section title and the text of § 381.132 (9 CFR 381.132) would be revised as follows:

§ 381.132 Labeling to be approved by the Administrator.

(a) No labeling shall be used on any product until it has been approved in its final form by the Administrator. For the convenience of the establishment, sketches or proofs of new labeling may be submitted in triplicate to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Washington, D.C., for approval, and the preparation of final labeling deferred until such approval is obtained. "Sketch" labeling is a printer's proof or other comparable copy which clearly shows all labeling material, size, location, and some indication of final color. All final labeling shall be submitted in triplicate to the Standards and Labeling Division for approval, except where such approval may be obtained from the inspector-in-charge as specified in this section or where generic approval is granted as specified in § 381.134 of this subchapter. Any establishment that wishes to submit any labeling to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Washington, D.C., for approval may do so.

(b) Application may be made, consistent with the requirements of this section, for a temporary approval for the use of a label or other labeling that may otherwise be deemed deficient in some particular. Temporary approvals may be granted for a period not to exceed 180 days, and may not be extended. Such an approval may be granted if (1) the proposed labeling would not misrepresent the product; (2) use of the labeling would not present any potential health, safety, or dietary problems to the consumer; (3) denial of the request would create undue economic hardship; and (4) an unfair competitive advantage would not result from the granting of the temporary approval.

(c) Inspector-in-charge may approve labeling in certain cases. (1) At the request of the official establishment, the inspector-in-charge may approve labeling listed in subparagraph (3) of this section which has not been submitted to the Standards and Labeling Division: *Provided,* That the labeling is so used as not to be false or misleading, and that all approvals are issued in writing in response to applications, and that copies of the approved applications are forwarded for filing and possible audit by the inspector-in-charge to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(2) Denial of a labeling application by the inspector-in-charge precludes use of the labeling unless and until authorization is obtained under paragraph (a) of this section.

(3) The inspector-in-charge may approve:

(i) Final labeling, if the Standards and Labeling Division has already approved the labeling in sketch or proof form and the final labeling is prepared without modification or with only minor modification as described in paragraph (c)(3)(iii) of this section or as described in § 381.134 of this subpart;

(ii) Labeling for single ingredient products (such as chicken or turkey thighs) which do not contain quality claims (such as "blue ribbon" or "choice"), negative claims (such as "no sugar added"), geographical claims, nutritional claims, guarantees, or foreign language;

(iii) Any label or other labeling which has already been approved but which contains one or more minor modifications, as described below, provided, in the opinion of the inspector-in-charge, all mandatory information remains sufficiently prominent and the labeling as modified is so used as not to be false or misleading:

(A) Brand name changes: *Provided,* there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

(B) The deletion of the word "new" on new product labeling;

(C) The addition, deletion, or amendment of handling instructions: *Provided,* the change is consistent with § 381.125 of this subchapter; or

(D) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label: *Provided,* That the change in quantity or ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in § 381.147;

(E) Changes in the color of the labeling: *Provided* the inspector-in-charge is satisfied that sufficient contrast and legibility remain;

(F) The addition, deletion, or substitution of the official USDA grade shield;

(iv) Labeling for containers of poultry products sold under contract specifications to Federal governmental agencies when such product is not offered for sale to the general public: *Provided,* That the contract specifications include specific requirements with respect to labeling, and are made available to the inspector-in-charge;

(v) Labels for shipping containers which contain fully labeled immediate containers. Such labels shall comply with § 381.127;

(vi) Labeling for products of poultry not intended for human food if they comply with § 381.152(c), and labels for poultry heads and feet for export for processing as human food if they comply with § 381.190(b);

(vii) Poultry inspection legends, if they comply with Subpart M of this part;

(viii) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within, containers and coverings of product provided such devices contain no reference to product and bear no misleading feature;

8. The title and contents of § 381.134 (9 CFR 381.134) would be revised to read as follows:

§ 381.134 Generically approved labeling.

(a) Labeling which is generically approved under paragraph (b) of this section is approved for use without additional authorization from Agency personnel, provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular. Any determination by the inspector-in-charge that labeling being used in accordance with paragraph (b) of this section is false or misleading or that labeling alleged by an establishment to be approved under paragraph (b) of this section which the inspector-in-charge determines is not so approved, shall preclude the use of the labeling and said determination shall remain in effect unless and until an alternative decision is made by the Standards and Labeling Division. A copy of any labeling to be used in accordance with paragraph (b) of this section shall be supplied to the inspector-in-charge prior to its use.

(b) Labeling which has previously been approved but which contains the

following modifications is generically approved and may be used in conformity with the requirements of paragraph (a) of this section:

(1) All features of the label are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

(2) There is substitution of such abbreviations as "lb." for "pound," or "oz." for "ounce," or the word "pound" or "ounce" is substituted for the abbreviation;

(3) A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

(4) During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such design will not make necessary the application of labeling not otherwise required);

(5) There is a change in arrangement of directions pertaining to the opening of cans or the serving of the product;

(6) The addition, deletion, or amendment of a coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

(7) Any change in the name or address of the packer, manufacturer, or distributor that appears in the signature line;

(8) Any change in the net weight or size: *Provided,* the net weight size complies with § 381.121 of this subchapter;

(9) The addition, deletion, or amendment of recipe suggestions for the product;

(10) Any changes in punctuation; or

(11) Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by SLD or the inspector-in-charge assigned to that establishment.

§ 381.135 [Reserved]

9. Section 381.135 (9 CFR 381.135) would be removed and the section number would be reserved.

Done at Washington, D.C., on May 12, 1982.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 82-13804 Filed 5-19-82; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 715, 780, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; Extension of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: On March 24, 1982 (47 FR 12760), OSM published proposed rules for public comment which would amend existing rules in 30 CFR Chapter VII relating to the use of explosives. Since the publication OSM has received a number or requests to extend the public comment period. In order to ensure all interested persons are afforded an adequate opportunity to comment, OSM is extending the comment period.

DATES: Written Comments: The comment period on the proposed rules will extend until 5:00 p.m. (Eastern time) on June 14, 1982.

Public Meetings: Scheduled on request only.

ADDRESSES: *Written Commments: Hand-delivered* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.06), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR 14.06), Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public Meetings: OSM offices in Washington, D.C.; Charleston, West Viriginia; Knoxville, Tennessee; Indianapolis, Indiana; Pittsburgh, Pennsylvania; and Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–7881.

Public Meetings: Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "**ADDRESSES**"). Comments received after the time indicated under "**DATES**" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "**ADDRESSES**" by contracting the person listed under ""**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L Street). A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects

30 CFR Part 715

Coal mining, Environmental protection, Surface mining, Underground mining.

30 CFR Part 780

Coal mining, Reporting requirements, Surface mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Dated: May 18, 1982.

Dean Hunt,

Assistant Director, Office of Surface Mining.

[FR Doc. 82-14005 Filed 5-20-82; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Parts 779, 783, 785, and 823

Surface Coal Mining and Reclamation; Permanent Program Regulations; Prime Farmlands; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rulemaking—correction.

SUMMARY: The notice of proposed rulemaking regarding the special permanent program permit application and performance standard rules for operations on prime farmland, published in the **Federal Register**, 47 FR 19076–19084 on May 3, 1982 inadvertently scheduled the public hearing at Springfield, Illinois for the wrong date.

DATES: The date for the public hearing in Springfield, Illinois on the above parts will be June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Division of Technical Assistance, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–5954.

Dated: May 17, 1982.

Dean Hunt,

Assistant Director, Office of Surface Mining.

[FR Doc. 82-14006 Filed 5-20-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Florida; Bubble Action for General Portland, Inc., in Tampa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On August 11, 1981, the State of Florida submitted as a revision to their State Implementation Plan (SIP) an alternative emission control plan (bubble) for the General Portland, Inc. facility in Tampa, Florida. Under the revision, the facility would be allowed to increase the particulate emission rates of one kiln and one clinker cooler. The increased particulate emissions would be offset by a complete and permanent shutdown of two kilns, two clinker coolers, and supplemental storage and transfer sources. The State adopted emission limitations that apply to the General Portland, Inc., facility on April 7, 1981, as part of the State's SIP revision for nonattainment areas. The State has not yet submitted a complete control strategy for attaining secondary standards for particulate matter.

EPA is today proposing to approve the bubble for the General Portland, Inc. facility. EPA is also proposing to approve the portion of Florida's nonattainment SIP which limits particulate emissions from Portland cement plants as reasonably available control technology (RACT) for the General Portland facility. The General Portland bubble is consistent with EPA's new Emissions Trading Policy Statement, which allows the use of source shutdowns in bubbles and which allows bubbles in areas that lack attainment demonstrations for secondary standards.

DATES: To be considered, written comments must be submitted on or before June 21, 1982.

ADDRESSES: Written comments should be addressed to Denise W. Pack of EPA, Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulations, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Ms. Denise W. Pack, EPA Region IV, at the above listed address, telephone number 404/881–3286 (FTS–257–3286).

SUPPLEMENTARY INFORMATION: On April 7, 1981, the Florida Department of Environmental Regulation (DER) adopted the current emission limitations for General Portland as part of Florida's revised SIP for nonattainment areas. On August 11, 1981, Florida submitted an alternative emission control plan (bubble) for the General Portland facility. The bubble involves particulate emissions from Kilns Nos. 4, 5, 6, and Clinker Coolers Nos. 4, 5, and 6. Each of these emissions points has been permitted according to the applicable emission limitation of Florida's SIP. Under the bubble, the No. 6 Clinker Cooler and Kiln will operate at an emission limit higher than that permitted under the current emission limitations. Operations at the Nos. 4 and 5 Kilns and Clinker Coolers will be permanently discontinued.

Specifically, particulate emissions from Kiln No. 6 will increase from 74 pounds per hour to 95 pounds per hour when determined by EPA reference method 5. On the Kiln, the 95 pounds per hour emission limit will be verified by a stack test utilizing EPA test method 5. An additional test will also be required with an emission limit of 40 pounds per hour measured by EPA method 17. The existing procedure only requires EPA method 5 for both kilns and coolers. The reason for requiring the additional test is to measure the amount of particulates generated as a secondary formation. Allowable particulate emissions from Clinker Cooler No. 6 will increase from 20 pounds per hour to 45 pounds per hour. These emission increases will be offset by the discontinued use of Kilns Nos. 4 and 5, for which the current emission limit is 50 pounds per hour, and by the discontinued use of Clinker Coolers Nos. 4 and 5, for which the current emission limit is 7.5 pounds per hour each. The ambient air quality impact of the revised emission limitations was evaluated using the CRSTER model.

In sum, air quality improvements are projected as a result of the proposed changes. The use of this alternative set of emission limitations will result in a net decrease in emissions of particulates as compared to the current limitations. Also, the company will cease operation of the supplemental storage and transfer systems for the Nos. 4 and 5 Kilns. General Portland is not seeking credit for eliminating the fugitive particulates generated at these supplemental systems.

Action: EPA is today proposing to approve: (1) Florida's current emissions limitations, adopted by DER on April 7, 1981, as reasonably available control technology (RACT) for the General Portland facility; and (2) the General Portland bubble.

The General Portland bubble is fully approvable under EPA's new Emissions Training Policy Statement. 47 FR 15076 (April 7, 1982). The bubble plan, located at Florida Administrative Code 17–2.13(3)(a)(3), contains enforceable and quantifiable emission limitations. The emission reductions are permanent because they result from a source shutdown. Using the CRSTER model, an EPA-approved model, General Portland has demonstrated that the bubble will result in an ambient air quality impact equivalent to, if not less than, the current emission limitations.

The General Portland bubble implements two new provisions of EPA's Emissions Trading Policy Statement. First, the General Portland bubble uses emission reduction credits (ERCs) created by a source shutdown. EPA has already approved the use of shutdown credits in a Union Carbide Corporation bubble in Texas City, Texas (47 FR 21533, May 19, 1982). Second, the General Portland facility is located in an area that is designated as nonattainment for the secondary national ambient air quality standards (NAAQS) for particulate matter. Although a SIP-

demonstrating attainment and maintenance is being developed, the area currently lacks a demonstration of attainment of the secondary particulate standards. The RACT limitations being proposed for approval today comprise one portion of Florida's future attainment demonstration.

Under EPA's new Emissions Trading Policy Statement, a source may use a bubble in limited circumstances when it is located in a nonattainment area lacking an attainment demonstration. In areas that are only nonattainment for secondary standards, a source can create surplus ERCs in either of two ways: (1) the source can use actual emissions as the baseline for trading increases and decreases in the bubble; or (2) the source can set RACT as the baseline. RACT can either be defined in the SIP or by agreement with the State and EPA. The General Portland bubble uses a RACT baseline, as adopted by DER and proposed for approval today.

States that exercise the option of using bubbles in areas where the applicable SIP fails to demonstrate attainment of ambient air quality standards are not relieved of their duty under the Clean Air Act to attain these standards by the statutory deadline. Thus, sources that use a bubble in these circumstances may be required to further reduce their total emissions if the State determines that attainment of ambient air quality standards, as consistent with reasonable further progress, cannot be achieved without such supplementary reductions. However, EPA encourages States not to reexamine agreed-upon emission levels where sources, such as General Portland, voluntarily agreed to RACT levels, unless it is necessary to satisfy the Clean Air Act.

Pursuant to the provisions of 5 U.S.C. Section 605(b) the Administrator has certified (46 FR 8709) that the proposed rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. In addition, it applies only to a single entity.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it imposes no new burden on sources. The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: October 5, 1981.

John A. Little,

Acting Regional Administrator.

[FR Doc. 82-13928 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS-62024; TSH-FRL 2131-2]

Polychlorinated Biphenyls; Incorporations by Reference Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Certain test methods of the American Society for Testing and Materials (ASTM) that are incorporated by reference in EPA's Polychlorinated Biphenyls (PCB's) regulations have been revised. EPA is proposing to adopt these revisions as the new methodology to be used in meeting the requirements of these regulations.

DATES: Comments on this proposed amendment should be submitted by June 21, 1982.

ADDRESS: Address written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

EPA requests that written comments be submitted in triplicate. Comments should include the docket number OPTS-62024. Comments on this proposed amendment will be available for review from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register** complete incorporation by reference citations are being added to 40 CFR Part 761. The American Society for Testing and Materials (ASTM) has revised nine of these tests. The revised tests are:

Old	New
ASTM D93-77	ASTM D93-80
ASTM D482-74	ASTM D482-80
ASTM D524-76	ASTM D524-81
ASTM D808-63	ASTM D808-81
ASTM D923-75	ASTM D923-81
ASTM D1266-70	ASTM D1266-80
ASTM D2158-65	ASTM D2158-80
ASTM D2784-76	ASTM D2784-80
ASTM D3278-73	ASTM D3278-78

EPA invites comment on the revised material, copies of which are available from the Document Control Officer (see ADDRESS reference above).

(Sec. 6, 90 Stat. 2020, (15 U.S.C. 2065))

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements.

Dated: May 14, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Therefore, it is proposed that Part 761 of Chapter I of Title 40, Subchapter R, be amended as follows:

1. In § 761.60, paragraph (a)(3)(iii)(B)(*6*) and paragraph (g)(1)(ii) and (2)(ii) are revised as follows:

§ 761.60 Disposal requirements.

(a) * * *
(3) * * *
(iii) * * *
(B) * * *

(*6*) The concentration of PCBs and of any other chlorinated hydrocarbon in the waste and the results of analyses using the American Society of Testing and Materials (ASTM) methods as follows: carbon and hydrogen content using ASTM D-3178-73 (reapproved 1979), nitrogen content using ASTM E-258-67, sulfur content using ASTM D-2784-80, D-1266-80, or D-129-64, chlorine content using ASTM D-808-81, water and sediment content using either ASTM D-2709-68 or D-1796-68, ash content using D-482-80, calorific value using ASTM D-240-76 (reapproved 1980), carbon residue using either ASTM D-2158-80 or D-524-81, and flash point using ASTM D-93-80.

* * * * *

[g] * * *
(1) * * *

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common containers or the individual tranformers to determine the PCB concentration, *Except that* if any PCBs at a concentration of 500 ppm or greater have been added to the container then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this subpart. For purposes of this paragraph, representative samples of mineral oil dielectric fluid are either samples taken in accordance with American Society of Testing and Materials method D–923–81 or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

(2) * * *

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common container or individual containers to determine the PCB concentration *Except that* if any PCBs at a concentration of 500 ppm or greater have been added to the container then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this subpart. For purposes of this subparagraph, representative samples of waste oil are either samples taken in accordance with American Society of Testing and Materials D–923–81 method or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

2. In § 761.75, paragraph (b)(8)(iii) is revised to read as follows:

§ 761.75 Chemical waste landfills.

* * * * *

(b) * * *

(8) * * *

(iii) Ignitable wastes shall not be disposed of in chemical waste landfills. Liquid ignitable wastes are wastes that have a flash point less than 60 degrees C (140 degrees F) as determined by the following method or an equivalent method: Flash point of liquids shall be determined by a Pensky-Martens Closed Cup Tester, using the protocol specified in ASTM Standard D–93–80, or the Setaflash Closed Tester using the protocol specified in ASTM Standard D–3278–78.

* * * * *

[FR Doc. 82–13070 Filed 5–20–82; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82–261; RM–4079]

FM Broadcast Station in Soldotna, Alaska; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of a Class A FM channel to Soldotna, Alaska, in response to a petition filed by Peninsula Communications, Inc. The proposed assignment could provide a first FM broadcast service to Soldotna.

DATES: Comments must be filed on or before July 1, 1982, and reply comments on or before July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations (Soldotna, Alaska), BC Docket No. 82–261, RM–4079.

Adopted: May 10, 1982.

Released: May 17, 1982.

1. The Commission herein considers a petition for rule making filed March 10, 1982, by Peninsula Communications, Inc. ("petitioner") proposing the assignment of FM Channel 269A to Soldotna, Alaska, as that community's first FM channel.

2. Soldotna (population 2,320),[1] in the Kenai Peninsula Borough (population 25,282) of Kenai-Cook Inlet County, is located approximately 96 kilometers (60 miles) southwest of Anchorage, Alaska. It is served by a daytime-only AM station (KSRM).

3. Petitioner states that the economy is based on the oil and gas industry, sport fishing and tourism. It further states that Soldotna is a growing commercial center served by one daily newspaper, *The Peninsula Clarion.*

[1] Population figures are taken from the 1980 U.S. Census.

4. A site restriction of 2.2 miles southwest of Soldotna must be imposed to meet the mileage separation for existing Station KGOT (Channel 267), Anchorage, Alaska.

5. Since the proposed assignment could provide Soldotna with its first local FM broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Soldotna, Alaska		269A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix below before a channel will be assigned.

7. Interested parties may file comments on or before July 1, 1982, and reply comments on or before July 19, 1982, and are advised to read the Appendix below for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment

which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303))

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 82-261, RM-4079]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-14000 Filed 5-20-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-262; RM-4066]

FM Broadcast Station in Kingman, Ariz.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposed the substitution of Channel 297 for Channel 224A at Kingman, Arizona, and modification of the license for Station KZZZ(FM) accordingly, in response to a petition filed by Mohave Sun Broadcasting.

DATES: Comments must be filed on or before July 1, 1982, and reply comments on or before July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations (Kingman, Arizona), BC Docket No. 82-262, RM-4066.

Adopted: May 10, 1982.
Released: May 17, 1982.

1. A petition for rule making was filed on February 19, 1982, by Mohave Sun Broadcasting ("petitioner"), proposing to substitute Class C FM Channel 297 for Channel 224A at Kingman, Arizona, and modify the license for Station KZZZ(FM) (Channel 224A) to specify operation on Channel 297.

2. Kingman (population 9,257),[1] seat of Mohave County (population 55,693), is located approximately 264 kilometers (165 miles) northwest of Phoenix. It is served by fulltime AM Station KAAA and FM Station KZZZ (Channel 224A).

3. In support of the proposal, petitioner contends that Kingman has experienced an increase in its population of approximately 26 percent in the past decade. The nearest community of appreciable size (Needles, Arizona) is said to be some 40 miles away. Because of its isolation from major population centers, Kingman has become the regional trade and service center for ranchers, tourists and residents of the outlying communities. Petitioner adds that a Class C facility would substantially increase its coverage area, thereby providing service to the areas surrounding Kingman, which are beyond the primary service contour of a Class A station.

4. The information submitted by petitioner indicates that the assignment of Channel 297 to Kingman will cause preclusion on Channels 295, 296A, 297, 298, 299 and 300. The study was based on communities with a population in excess of 2,000. Petitioner lists twenty-one communities precluded by the proposal, eight of which have no FM service. A list of alternative available channels for these communities was also provided.

5. In accordance with our established policy, we shall also propose to modify the license of Station KZZZ(FM), Channel 224A, to specify operation on Channel 297. However, should another party indicate an interest in the Class C assignment, the modification could not be implemented. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

6. Mexican concurrence in the proposal must be obtained.

7. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, as it pertains to Kingman, Arizona, as follows:

City	Channel No.	
	Present	Proposed
Kingman, Ariz.	224A	297

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

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[1] Population figures are taken from the 1980 U.S. Census.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix below before a channel will be assigned.

9. Interested parties may file comments on or before July 1, 1982, and reply comments on or before July 19, 1982, and are advised to read the Appendix below for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered it the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303))

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 82–262, RM–4066]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 3.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-14001 Filed 5-20-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82–263; RM–4069]

FM Broadcast Station in Chinook, Montana; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes a first FM assignment to Chinook, Montana, in response to a petition filed by Rick D. Davies.

DATES: Comments must filed on or before July 1, 1982, and reply comments on or before July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Chinook, Montana), BC Docket No. 82–263, RM–4069.

Adopted: May 10, 1982

Released: May 17, 1982.

1. The Commission herein considers a petition for rule making filed February 26, 1982, by Rick D. Davies ("petitioner"), seeking the assignment of Class C Channel 267 to Chinook, Montana, as its first FM channel. Petitioner stated his intention to apply for the channel, if assigned.

2. Chinook (population 1,660),[1] seat of Blaine County (population 6,890), is located approximately 200 kilometers (125 miles) northeast of Great Falls, Montana. It is without local broadcast service.

3. Petitioner asserts that Chinook's principal industries are farming and ranching. A nearby natural gas field and oil exploration are considered as possible contributors to the economy. Chinook is a somewhat isolated community, as the nearest large city (Harve, population 10,500), is said to be more than 20 miles away. Davies claims that a wide coverage area station is needed to meet the demands of the sparsely populated area and provide a sufficient economic base for financial viability.

4. Petitioner's engineering study indicates that the proposed assignment will preclude thirteen communities on

[1] Population figures are taken from the 1980 U.S. Census.

Channels 264, 265A, 266, 267, 268, 269A, and 270, five of which have no local FM service.[2] Alternate channels are available to each of the precluded communities. Petitioner states that a portion of the area is already precluded by the recent assignment of Channel 266 to Helena, Montana (BC Docket No. 80-523), 46 FR 43169, published August 27, 1981.

5. In the absence of a *Roanoke Rapids/Anamosa*[3] showing, Davies stated that the proposed assignment of Channel 267 to Chinook will provide service to a wide area, presently without FM service and nighttime AM service. Due to the isolated location of this community, it would appear that large unserved and underserved areas could indeed receive the proposed FM station.

6. Since Chinook, Monana, is located within 420 kilometers (250 miles) of the U.S.-Canadian border, concurrence from the Canadian Government must be obtain.

7. In view of the first local broadcast service that could be provided to Chinook, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, as it relates to the following community:

City	Channel No.	
	Present	Proposed
Chinook, Montana		267

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix below before a channel will be assigned.

9. Interested parties may file comments on or before July 1, 1982, and reply comments on or before July 19, 1982, and are advised to read the Appendix below for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comments which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303))

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 82-263 RM-4009]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-14082 Filed 5-20-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-264; RM-4004]

FM Broadcast Station in Watertown, New York; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes a second FM assignment to Watertown, New York, in response to a petition filed by 790 Communications Corporation.

DATES: Comments must be filed on or before July 1, 1982, and reply comments on or before July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

[2] Roundup, Fort Benton, Harlowton, Conrad and Harlem, Montana.

[3] See *Roanoke Rapids, North Carolina*, 9 F.C.C. 2d 672 (1967); *Anamosa, Iowa*, 48 F.C.C. 2d 539 (1974).

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Watertown, New York), BC Docket No. 82–264. RM–4064.

Adopted: May 10, 1982.

Released: May 17, 1982.

1. A petition for rule making was filed on February 16, 1982, by 790 Communications Corporation ("petitioner"),[1] proposing the assignment of Channel 228A to Watertown, New York, as its second FM assignment. Petitioner stated its intention to apply for the channel, if assigned.

2. Watertown (population 2,786),[2] seat of Jefferson County (population 88,151), is located approximately 104 kilometers (65 miles) north of Syracuse, New York. It is served by fulltime AM Stations WATN, WOTT and WTNY, and FM Station WNCQ (Channel 248).

3. In support of the proposal, the petitioner asserts that Watertown has a diversified economic base. Its primary source of revenue is a shipping center for industry and for the large agricultural interest in Watertown. Tourist trade and several manufacturing firms are also said to be supportive of the economy. It is the petitioner's contention that a second FM station at Watertown would provide its residents with an opportunity for additional local oriented programming and provide expanded services to the many tourists who make substantial contributions to the economy.

4. According to the information submitted by the petitioner, the assignment of Channel 228A to Watertown will cause preclusion on the co-channel only. However, it did not list the communities affected by the proposal. It is requested to do so in comments to this proposal, listing the communities with a population greater than 1,000 precluded by the proposed assignment, and indicate whether alternate channels are available to those communities.

5. The assignment of Channel 228A to Watertown, New York, would result in an intermixture of a Class A and a Class C channel (248). The Commission has a policy permitting such intermixture where no other Class C channels are avaiable for assignment and where, as here, the petitioner is willing to apply for the Class A channel in spite of the unfavorable competitive situation.

[1] 790 Communications Corporation is the licensee of AM Station WTNY, Watertown, New York.

[2] Population figures are taken from the 1980 U.S. Census.

Yakima, Washington, 42 F.C.C. 2d 548, 550 (1973); *Key West, Florida,* 45 F.C.C. 2d 142, 145 (1974).

6. Channel 228A can be assigned to Watertown in conformity with the mimimum distance separation requirements provided the transmitter site is located approximately 6 miles northwest of the city.[3] Canada has given its preliminary consent to a special negotiated short spacing in the assignment of Channel 228A to Westertown.

7. In view of the fact that the proposal could provide a second local broadcast service to Watertown, comments are invited on the proposal to amend the FM Table of Assignments, § 73.202(b) of the rules as follows:

City	Channel No.	
	Present	Proposed
Watertown, New York	248	228A, 248

8. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix below before a channel will be assigned.

9. Interested parties may file comments on or before July 1, 1982, and reply comments on or before July 19, 1982, and are advised to read the Appendix below for the proper procedures.

10. The Commission has detemined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed consitutes an *ex parte* presentation and shall not be considered in the proceeding.

[3] This restriction is necessary to avoid short spacing to Channel 228A at Remsen, New York (construction premit issued).

Federal Communications Commission.
(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 82–264 RM–4064]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations,

interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is direted. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-14003 Filed 5-19-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 99
Friday, May 21, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Mini-Grants; Proposed Revision of Guidelines for Mini-Grants

SUMMARY: The following notice sets forth a proposed revision to the guidelines under which applications for Mini-Grants will be accepted. This revision, when published in final, will replace the current Mini-Grant Guidelines which were published in the **Federal Register**, Volume 46, No. 19 on Thursday, January 29, 1981. This Notice describes the program purpose, applicant eligibility, grant scope, application procedures and criteria for Mini-Grants. Both those mini-grants funded by the ACTION agency and those mini-grants funded through either non-federal contributions or Federal Inter-Agency Agreements are covered.

DATE: Written comments should be submitted no later than June 21, 1982, to Beverly Poitras Fuentes, OVL, ACTION, 806 Connecticut Avenue, N.W., Room 907, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Office of Volunteer Liaison (OVL), ACTION, Room M–907, 806 Connecticut Avenue, N.W., Washington, D.C. 20525, or telephone toll-free 800–424–8867.

SUPPLEMENTARY INFORMATION: Amendments reflected in these proposed guidelines affect the scope of the grants, procedures for awarding grants, and reporting requirements. Specifically, these procedures now explicitly include those mini-grants funded either through non-federal contributions or Federal Inter-Agency Agreements. In addition, there is no longer special language to refer to the type of basic human needs Mini-Grants are intended to serve; the maximum allowable Federal share of the grant has been increased; and section 3, subsection (c), that the use of Federal funds must be directly related to supporting the project volunteers, has been dropped. Reference to Agency funding priorities has been changed. Specific percentage set asides are no longer required. Those instructions regarding where application forms will be sent, which office will set deadlines, and who will provide project Close Out Reports have been changed only in the area of mini-grants funded by ACTION. Those other mini-grants funded either through non-federal contributions or Federal Inter-Agency Agreements may require applications to be submitted to ACTION State Offices or to the appropriate ACTION Program Office, Washington, D.C.

ACTION has reviewed these Guidelines and have determined that they are not a major rule as defined in E.O. 12291. The reason underlying this determination is that both the size and purpose of these grants are such that they will not have the economic ramification envisioned by E.O. 12291's definition of a major rule.

1. *Program Purpose.* a. The ACTION Mini-Grant Program is intended to initiate, strengthen and/or supplement volunteer efforts and to encourage broad-based volunteer citizen participation which will develop and enhance community self-reliance. Mini-Grants are intended to be directed to meet a broad range of basic human needs.

b. Mini-Grants should be considered and used as a means to establish or strengthen activities, mechanisms, and programs which may be one-time or on-going in nature, but which must demonstrate a solid potential for long-term effect.

2. *Eligibility.* Public or private non-profit organizations, including, for example, hospitals, institutions of higher learning, and local units of government, which utilize, or will utilize, volunteers as an integral part of their provision of services may apply for grants.

3. *Scope of Grant.* The Mini-Grant Program provides funds on a one-time, non-renewable basis for a budget period not to exceed one year under the following conditions:

a. The Federal share of the grant award shall not normally exceed $10,000 to organizations for a local project or $15,000 to organizations for a project that relates to an entire state or Federal region.

b. All grants of $3,500 or more in ACTION Federal funds require a minimum matching share of 10% of the total grant cost. The matching share can be cash or an in-kind contribution, e.g., project director's salary and fringe benefits, space or equipment used by the project, or meals provided to project volunteers.

c. Mini-Grants will be awarded for projects which have measurable goals achievable in a specified time frame not to exceed one year.

d. Mini-Grants are basically a vehicle by which volunteers can be mobilized to help alleviate community problems. It is expected that for each Federal dollar awarded, at least one (1) hour of volunteer service will be generated. If the project is of a nature where numbers of volunteers and volunteer hours cannot be documented, then the grantee is asked to describe the impact of the project on the larger issue of volunteer activity in the organization/community.

e. ACTION reserves the right to establish funding priorities each year in order to meet national needs and Agency goals. For further information regarding current priorities contact the Office of Volunteer Liaison at the above address.

4. *Procedures.* a. Applications for those mini-grants funded by ACTION will be submitted to the ACTION Office of Volunteer Liaison (OVL) on ACTION Form A–1017 (OMB 3001–0069), Application for Federal Assistance, and ACTION Form A–1036 (OMB 3001–0036), Title 1, Part C Program Narrative.

A–1017:

(1) Part I Face Sheet—Complete all items in Sections I and II. Do not make any entries in Section III.

(2) Part II Project Approval Information—Complete all items as requested.

(3) Part III Budget Information—Submit budget information as requested.

Include a narrative justification for each line item in the budget.

A–1036:

(4) Part IV Project Narrative—The Program Narrative Statement should be brief, showing the need, objectives, approach, anticipated number of volunteers and volunteer hours, geographic location of the project, and the benefits expected.

(5) Part V Assurances—Submit with A–1017 and A–1036.

b. Demonstration Mini-Grant applications which are funded either through non-Federal contributions or

Federal Inter-Agency Agreements should be submitted to the appropriate ACTION Program Office on the ACTION forms listed in 4.a. above.

5. *Deadlines.* Deadlines for submission of applications are established by the Office of Volunteer Liaison.

6. *Reports and Records.* a. Reports Requirements. Grantee should maintain sufficient records in order to validate required financial and program reporting. Grantee will make financial reports on ACTION Form A–451 (OMB 3001–0068), Financial Status Report, within ninety (90) days after the end of the budget period. Grantee will submit a program progress report one-half of the way through the budget period and a final program report at the conclusion of the project in a form to be prescribed by the ACTION Office of Volunteer Liaison.

The final program report should reflect degree of achievement towards goals as outlined in the program narrative, including the actual number of volunteers and volunteer hours generated.

b. Records Retention. Grantee must retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of three (3) years after submission of the final Financial Status Report. If any litigation, claim or audit is begun before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

(42 U.S.C. 4993)

Signed in Washington, D.C. on May 17, 1982.

Thomas W. Pauken,

Director.

[FR Doc. 82–13935 Filed 5–20–82; 8:45 am]

BILLING CODE 6050–31–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; First Meeting

The Flue-Cured Tobacco Advisory Committee will meet at the offices of the Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation, located at 1306 Annapolis Drive, Raleigh, North Carolina 27605, at 1:00 p.m., on Monday, June 7, 1982.

The meeting will commence with an orientation of the newly reconstituted membership, distribution of informational materials and an explanation of the responsibilities of Committeee members.

Immediately following the orientation session will be the election of officers, review of various regulations and proposed regulations issued under the Tobacco Inspection Act, 7 U.S.C. 511–511q, and discussion of the quantities of tobacco designated to warehouses in each marketing area for the 1982 flue-cured season.

The meeting is open to the public, though space and facilities are limited. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committeee Chairperson. Persons, other than members, who wish to address the Committee at the meeting should contact J. T. Bunn, Deputy Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street, SW., United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7235.

Dated: May 19, 1982.

Wiliam T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82–14015 Filed 5–20–82; 8:45 am]

BILLING CODE 3410–02–M

Soil Conservation Service

Logan County Road 43 R.C. & D. Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the County Road 43, RC&D Measure, Logan County, Ohio.

FOR FURTHER INFORMATION CONTACT: Robert R. Shaw, State Conservationist, Soil Conservation Service, Room 522 Federal Building, 200 North High Street, Columbus, Ohio 43215, telephone (614) 469–6964.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert R. Shaw, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns flood prevention along a county road. The planned works of improvement include catch basins, subsurface drains, an outlet structure and critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert R. Shaw.

No administrative action on implementation of the proposal will be taken until June 21, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 7, 1982.

Robert R. Shaw,

State Conservationist.

[FR Doc. 82–13501 Filed 5–20–82; 8:45 am]

BILLING CODE 3410–16–M

Mill Creek Watershed, Indiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Mill Creek Watershed project, Hendricks, Morgan, Owen and Putnam Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Corporate Sq.-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317–248–4350.

Mill Creek Watershed, Indiana: notice of intent to deauthorize federal funding

SUPPLEMENTARY INFORMATION: A determination has been made by Robert L. Eddleman that the proposed works of

improvement for the Mill Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Robert L. Eddleman, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert L. Eddleman,

State Conservationist

Dated: May 12, 1982.

[FR Doc. 82-13755 Filed 5-20-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Maryland Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:00 p.m., on June 7, 1982, at the Fallon Federal Building, 31 Hopkins Plaza, in Room G-30, Baltimore, Maryland 21201. The purpose of this meeting is to discuss Montgomery County school closings, Braddock Heights response to hate group activities, and plan for an advisory committee forum on Maryland's migrant workers.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Martha E. Church, Hood College, Frederick, Maryland 21701, (301) 663-8083 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Washington, D.C. 20027, (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 18, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13943 Filed 5-20-82; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:30 p.m. and will end at 4:00 p.m., on June 15, 1982, at the William S. Moorehead Federal Building, 1000 Liberty Avenue, in Room 2214, Pittsburgh, Pennsylvania 15222. The purpose of this meeting is to discuss current projects, identify new issues, and orient new members.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Joseph Fisher, 166 B Croskey Court, Philadelphia, Pennsylvania 19103, (215) 351-0776 or the Mid-Atlantic Regional Office, 2120 L Street, North West, Suite 510, Washington, D.C. 20037, (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 18, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13944 Filed 5-20-82; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 9:00 p.m., on June 24, 1982, at the Outlet Broadcasting, 110 Dorrance Street, Providence, Rhode Island 02903. The purpose of this meeting will be a report on the Affirmative Action and Police Practices project from the subcommittee members, discuss the program plans for voter redistricting followup and a forum on civil rights issues in education for 1982 and 1983 in Rhode Island.

Persons desiring additional information should contact the Chairperson, Dorothy Davis Zimmering, 12 Chapin Road, Barrington, Rhode Island, 02806, (401) 245-3515 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13945 Filed 5-20-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Stainless Steel Sheet and Strip Products From the Federal Republic of Germany; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping investigation to determine whether certain stainless steel sheet and strip products from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of certain stainless steel sheet and strip products are materially injuring, or are threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before June 10, 1982, and we will make ours on or before October 4, 1982.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Petition

On April 28, 1982, we received a petition filed by counsel on behalf of eleven U.S. specialty steel producers and on behalf of the United Steeworkers of America. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports from the Federal Republic of Germany of certain stainless steel sheet and strip products are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the "Act") and that these imports are materially injuring, or are

threatening to materially injure, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain stainles steel sheet and strip products and have found that it meets these requirements.

Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether certain stainless steel sheet and strip products from the Federal Republic of Germany are being, or are likely to be, sold in the U.S. at less than fair value. If the investigation proceeds normally, we will make our preliminary determination by October 4, 1982.

Scope of the Investigation

The products covered by this investigation are certain stainless steel sheet and strip products. For a further description of these products see the appendix appearing with this notice.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided that the ITC confirms it will not disclose such information either publicly or under an administrative protective order without the writtten consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 10, 1982, whether there is a reasonable indication that imports of certain stainless steel sheet and strip products from the Federal Republic of Germany are materially injuring, or are threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, the investigation will proceed according to statutory procedures.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 18, 1982.

[FR Doc. 82-14012 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

Foreign Traders Index; Expanded Data Tape Service

The Foreign Traders Index is an automated file which contains the names of about 140,000 foreign companies. In the past, the Office of Trade Information Services (OTIS) has supplied to the U.S. business community magnetic tapes containing the entire Foreign Traders Index or entire country portions of the Index. Now, in addition to these standards tapes, OTIS can produce custom-made tapes using criteria supplied by the tape purchaser. U.S. Firms can have tapes made which contain only the names of foreign firms which are of interest of them. Fees for this service vary according to the number of names put on tape. The $400 basic fee entitles the tape purchaser to 1000 names. For every name over 1000, and additional fee of 12¢ will be charged. Estimates of total tape cost can be made at the time the tape is ordered. This service will become available on July 1, 1982. For more information contact Gerson Brusowankin at (202) 377-2988.

Dated: May 3, 1982.

Stephen B. Strauss,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 82-13946 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

FTI Data Tape Service; Change in Price

FTI Data Tapes contain information on foreign organizations which is of interest to U.S. exporters for list-building purposes. They are made available by the International Trade Administration's Office of Trade Information Services. Effective July 1, 1982, the schedule which is used to determine the selling price of these tapes will be changed. The new schedule is as follows:

All Information in the Foreign Traders Index (FTI)

Selling Price: $5,000

FTI Information by Countries

Selling Price: $300 per country

Dated: May 3, 1982.

Stephen B. Strauss,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 82-13949 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

TOP Data Tape Service; Change in Price

TOP Data Tapes contain listings of representational or direct purchase offers on the part of foreign firms or government organizations. They are made available by the International Trade Administration's Office of Trade Information Services. Effective July 1, 1982, the schedule which is used to determine the selling price of these tapes will be changed. The new schedule is as follows:

Weekly Compilations

Selling Price: $4,200 per year

Bi-Weekly Compilations

Selling Price: $2,100 per year

Dated: May 3, 1982.

Stephen B. Strauss,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 82-13950 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

Trade Lists; Change in Price

Trade Lists are lists of foreign organizations which may be of interest to U.S. exporters. They are published by the International Trade Administration's Office of Trade Information Services. Effective July 1, 1982, the schedule which is used to determine the selling price of these Trade Lists will be changed. The new schedule is as follows:

Number of pages in trade list	Selling price
1 to 125	$12.00
126 to 350	25.00
351 or more	40.00

Trade Lists dated January 1, 1982, or later, will be priced according to this schedule. For more information, contact Gail Brooks at 202-377-2988.

Dated: May 3, 1982.

Stephen B. Strauss,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 82-13947 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

High Power Microwave Amplifiers and Components Thereof From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We have determined that radio-frequency power amplifier assemblies and components thereof ("HPA's") specifically designed for uplink transmission in the C, X and Ku bands from fixed earth stations to communications satellites and having a power output on one kilowatt or more are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission ("ITC") will determine within 45 days of the publication of this notice whether these imports are materially injuring, or threatening to materially injure, a U.S. industry.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202) 377–3965.

SUPPLEMENTARY INFORMATION:

Case History

On July 24, 1981, we received a petition in proper form from Aydin Corporation, Ft. Washington, Pennsylvania. MCL, Inc., of LaGrange, Illinois subsequently requested and was granted co-petitioner status. The petition alledged that HPA's from Japan were being sold in the United States at less then fair value and that such sales were materially injuring a U.S. industry. To support its allegations of less than fair value sales, the petitioner compared the purchase price of the goods in question with a value constructed from petitioner's costs. The petitioner also claimed that this case presented "critical circumstances" (19 U.S.C. 1673b).

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. Therefore, we notified the U.S. International Trade Commission of our action and on August 17, 1981, we announced the initiation (46 FR 41542) and served the Nippon Electric Company, Ltd. ("NEC Ltd.") with a questionnaire in Tokyo on the same day. On September 16, 1981, the ITC published its preliminary finding that there was a reasonable indication that an industry in the United States was threatened with material injury by imports of HPA's from Japan (46 FR 46021).

Although the response was due on September 17, 1982, the respondent requested and received extensions of time to respond. The response was received on October 9, 1981. We conducted a verification of this response in the beginning of November, 1981. It revealed substantial variation in parts and materials costs from the data in the response to the Department of Commerce's questionnaire. Labor hours were not verified because they were estimates and NEC Ltd. could not support them by company records associated with the HPA's under investigation. (Since production had not been completed at the time that the original response was due, it was based on cost estimates by NEC Ltd.) At this first verification we requested revised submissions of parts and materials costs for both the Klystron and Traveling Wave Tube ("TWT") HPA's. On December 1, 1981, NEC Ltd. submitted a revised response on parts and materials costs for the TWT HPA's, but refused to supply a revision for the Klystron HPA's as we had requested.

On December 24, 1981, we preliminarily determined that HPA's from Japan are being sold in the United States at less then fair value and a notice of this determination was published on December 31, 1981 (46 FR 63364). In that determination we relied on the December 1, 1981 submission for TWT parts and materials, and the estimated labor hours from that response for both the TWT and Kystron HPA's

In the preliminary determination we stated that the petitioner had not alleged all the facts that were necessary to support a finding of critical circumstances according to the statute (19 U.S.C. 1673b), nor did it submit evidence pertaining to the omission. We therefore determined that critical circumstances did not exist. No new information has been submitted which would factually support a different determination on this matter.

On January 8, 1982 we sent NEC America, Inc. ("NECAM") a questionnaire. NECAM is a wholly-owned subsidiary of NEC Ltd. They submitted a response on January 27, 1982. A verification was conducted in March, 1982 at both NECAM's corporate headquarters division in Melville, N.Y., and at the division in Fairfax, Virginia, which was directly responsible for the sale and liaison of the merchandise which is the subject of this investigation. NECAM submitted an amended response dated March 17, 1982, which changed estimated data in its original response to reflect actual cost experience in the intervening time.

A second verification of NEC Ltd. was conducted in March 1982, after the Department of Commerce had issued its preliminary determination. During this verification the Department discovered that the information submitted by NEC Ltd. varied greatly from the financial date in the company records. Information relied on in this final determination is based on the verified data from NEC Ltd.,'s records and not on NEC Ltd.'s submitted data. The labor hours supplied by NEC Ltd. were estimated and these estimates could not be verified from company records. Therefore, the Department has used the best information otherwise available which in this case is the verified information with the exception of the number of labor hours for assembly. With respect to assembly labor hours, the Department used the petitioner's labor hour estimates and adjusted for extra testing procedures and design costs.

The respondent submitted a request for postponement of the public hearing and for extension of time for the final determination. In a Federal Register notice dated January 25, 1982 (47 FR 3393), we postponed the public hearing until April 7, 1982, and the final determination until May 17, 1982.

Scope of Investigation

For purposes of this investigation, HPA's are radio-frequency power amplifier assemblies and components thereof specifically designed for uplink transmission in the C, X, and Ku bands from fixed earth stations to communication satellites and having a power output of one kilowatt or more. HPA's may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). They are currently classified under item 685.29 of the *Tariff Schedules of the United States.*

Since NEC Ltd. is the only known manufacturer of all the HPA's that were exported from Japan to the United States during the period of investigation, we limited our investigation to that company. There were two distinct types of HPA's exported to the United States during the period: Klystron amplifiers, which include a Klystron output tube; and TWT amplifiers, which include a traveling wave output tube.

The period of this investigation covers the HPA's sold by NEC Ltd. and NECAM in the period March 1, 1981 through August 31, 1981. These were manufactured, tested and delivered in the period March through December, 1981. These consisted of 9 Klystron

HPA's and 20 TWT HPA's sold to the Communications Satellite Corporation ("Comsat") under contracts ESOC–1263 and ESOC–1264 respectively.

Methodology for Fair Value Comparison

In making fair value comparisons, we compared United States price with foreign market value.

U.S. Price

To determine the United States price of the merchandise, we used purchase price, as defined in section 772(b) of the Tariff Act of 1930, as amended ("the Act"), because the merchandise was sold to an unrelated U.S. customer at a price agreed upon before it was imported into the United States. Adjustments were made by deducting charges specified under section 772(d) of the Act. These included the following expenses incurred in Japan: inland freight, airport usage, handling, airport storage, and cartage. Deductions for expenses of importation of this merchandise into the United States were made for storage, handling and related items incorporated into U.S. broker charges and U.S. inland freight.

Foreign Market Value

To arrive at the foreign market value of the merchandise, we used constructed value, as defined in section 773(e) of the Act, because there were no sales of HPA's in the home market or to third countries.

We constructed the foreign market value of HPA's by adding the material and fabrication costs, the normal general expenses of the manufacturer (which exceeded the statutory minimum), the proportional direct and general expenses of NECAM, which sold the HPA's under investigation (and other products) in the United States, letter of credit commissions and fees for discounting these letters of credit for advance payment, the statutory profit of 8% of the foreign market value except for packing, and the cost of packing. The fabrication costs were a composite of data from the best information available, including the data in the petition, where applicable.

Finding of Less Than Fair Value Sales

Based on a comparison of purchase price to constructed value of both the Klystron HPA's and the TWT HPA's, we have found less than fair value margins for both products. The margins are:

25.4%	TWT high power amplifiers.
41.4%	Klystron high power amplifiers.
41.4%	For parts of high power amplifiers unless such parts are dedicated exclusively for use in TWT high power amplifiers in which case the margin is 25.4%.

Since many parts of Klystron HPA's are interchangeable with TWT HPA's, the security deposit for HPA parts shall be the same as for Klystron HPA's, unless the importer can demonstrate that the parts are dedicated solely for use in TWT HPA's.

Issues

Major issues in this investigation are presented below.

Petitioner's Statement of Issues

Issue: Petitioner requests that an adjustment be made for license fees to be assessed under a technical know-how agreement between NEC Ltd., and a U.S. manufacturer, not a party to these proceedings, pertaining to certain Klystrons and TWT tubes.

DOC position: We confirmed the existence of such an agreement during verification. NEC Ltd. states that the tubes used in the Comsat contract did not come under the technical know-how agreement. NEC Ltd. stated that no royalties were due under the licensing agreement and that none would be paid for the tubes used in the Comsat HPA's. We called the U.S. manufacturer (licensor) and it confirmed that no royalties were due for the tubes used by NEC Ltd. for the Comsat HPA's. Therefore, we made no adjustment for the petitioner's claim for license fees.

Respondents' Statement of Issues

Issue: The respondent asserted that the expense incurred by NEC Ltd. for immediate payment of money sent to it from NECAM via a letter of credit with delayed payment terms was simply a short term method of financing its U.S. operations by the parent company, and therefore the Department should not add this expense to foreign market value of the HPA's. It said that there was not basis for treating these transactions differently than any other short term financing arrangement. It also argued that if the Department did add the letter of credit expense to the constructed value it should also subtract all interest expenses from the G, S & A calculation (to avoid double counting the same expense).

DOC position: The internal transfer of funds to NEC Ltd. was made by letter of credit and telegraphic transfer of funds. Such transfers were specifically required by the purchase order between NECAM and NEC Ltd. for Comsat contracts ESOC 1263 and ESOC 1264. These transfers of funds are not a general financing of the U.S. subsidiary. They are a specific arrangement directly applicable to the financing of the sale of the specific merchandise which is the subject of this investigation.

NEC Ltd. did not establish the magnitude of the impact that such letter of credit interest charges had on G, S & A, if any. They did not document that such charges were included in their G, S & A. During the second verification of NEC Ltd. in March, 1982 financial information for the October through December, 1981 quarter was requested. NEC Ltd. did not provide it. Most of the expense for discounting these letters of credit associated with the Comsat contracts occurred during this quarter. Since NEC Ltd. has failed to establish to what extent, if any, the letter of credit interest charges are included in G, S & A, the Department has not made any adjustment to G, S & A for these interest charges even though it has added them to the foreign market value as a circumstance of sale adjustment.

Issue: The respondent asserted that the Department of Commerce erred in the calculation methodology for G, S & A expenses of NEC in the preliminary determination.

DOC position: In its original response, NEC Ltd. calculated its G, S & A expense as a percentage of "cost of sales". The Act, (19 U.S.C. 1677b(e)), indicates that G, S & A calculations should be expressed as a percentage of materials and fabrication or processing costs. At the time that the preliminary determination was made, we understood the term "cost of sales" as used by NEC Ltd. in its response to the Department's questionnaire to mean materials, fabrication and G, S & A. If this were the situation, then the G, S & A calculated by NEC Ltd. would have been understated. Based on an affidavit with supporting documentation and information obtained during the second verification of NEC Ltd., it has been determined that the term "cost of sales" as used by NEC Ltd. in the original response, did not include its G, S & A. Therefore, the calcuation of G, S & A has been revised as suggested by respondent.

Issue: The respondent argues that the G, S & A expense of one of seven groups within a division of NECAM was primarily responsible for all aspects of the Comsat contracts in the United States and that such expense should be apportioned over the division's entire sales in determining the total G, S & A as a percentage of sales allocated to the Comsat contracts.

DOC position: In its response to the Department's questionnaire, NECAM proposed that the contribution of the Radio and Transmission (R&T) division to NECAM's G, S & A be based on the

ratio of the R&T division's Administrative Group expenses divided by all of R&T division's sales. The Administrative Group is the one group (of seven) in the R&T division which markets and performs services for NEC Ltd. on the products under investigation. The Department's view is that it would not be a proper allocation method to use only Administrative Group expenses; rather they should be apportioned on the basis of expenses of the R&T Division. The entire R&T division had G, S & A expenses in connection with most of these sales, not included in the Administrative Group's expense. The Department has made its proration based on comparing expenses and sales from the same unit, namely the G, S & A expense of the entire R&T division, divided by the sales of the entire R&T division.

Issue: Respondent argues that the overall G, S & A expenses of NECAM's Headquarters division should not be allocated as overhead costs to the products under investigation. They state that the only involvement of NECAM's Headquarters in the sale of products under investigation are in terms of arranging shipping documentation and letters of credit. Respondent claims that the Department should prorate the time and related expenses of personnel involved in these activities to allocate G, S & A expenses of NECAM.

Alternatively, the respondent argues that the Department should use their internally formulated management fee for the NECAM G, S & A calculation. Their management fee is principally based on the amount of interest expenses incurred and the number of employees directly working on a contract.

DOC position: NECAM's expenses for operating in the United States include establishing policies, facilities, providing centralized functions such as accounting and financing, and general coordination with the parent company in Japan. In addition, the Headquarters division arranged for shipping and documentation distributions for the Comsat contracts.

We determined that the management fee by which the Headquarters division taxes its operating divisions is weighted to tax this expense based on outstanding interest expenses and the number of people involved in the activity. The Comsat merchandise was not subjected to this interest expense and had few people directly working on it. We have determined that a more reasonable method of allocating the cost of operating NECAM through its headquarters should be based on the value of the transactions which benefit from this supervisory control. Therefore, we calculated G, S & A for Headquarters division as a percentage of total NECAM sales.

Issue: The respondent claims that commissions and service revenues should be added to total sales in apportioning NECAM Headquarters G, S & A expense.

DOC position: The proposed adjustment has no measureable effect on the dumping margins calculated, unless such margins are computed to two more decimal places of accuracy. We determined that we will not consider such as adjustment under section 773(f) of the Act, which allows us to disregard insignificant adjustments.

Issue: The respondent claims a conversion rate should be used other than the one used by the Department in its preliminary determination in calculating foreign market value. The respondent argued that the Department's regulations require such as adjustment under 19 CFR 353.56(b). That rule states in part: "Where prices under consideration are affected by temporary exchange rate fluctuations, no differences between prices being compared resulting solely from such exchange rate fluctuations will be taken into consideration."

DOC position: Based upon examination of the exchange rate data, we have determined that there were no temporary exchange rate fluctuations around the date of sale. Our selection of the date of contract to determine the rate of exchange is required by DOC's regulations. The rate of exchange used, as required by 19 CFR 353.56(a), is based on the date of sale (1 Yen = $.004938).

Issue: The respondent has argued that a discount allowed for the Klystron HPA contract price should not be substracted entirely from the U.S. price for the equipment.

DOC position: During the first verification, it was determined that during final negotiations of the two contracts, NEC Ltd. granted a discount to Comsat which was entirely subtracted from the contract line price for "documentation" in the Klystron HPA contract. The discount was described as being based on the fact that NEC Ltd. was also awarded the TWT contract. For purposes of our calculation the discount was applied to the Klystron equipment price since there would have been no contract without the purchase of the equipment.

Issue: Respondent maintains that the price comparisons should include testing costs in addition to equipment costs.

DOC position: Based on verified representations by respondent, it was determined that equipment and testing costs were combined and not able to be segregated on the books and financial records of NEC Ltd. Therefore, we added contract line items for equipment and for testing when calculating the U.S. price to make it comparable to the respondent's financial data used in determining foreign market value.

Issue: Respondent alleges that it is improper to subtract U.S. freight and U.S. broker charges from the line items for equipment.

DOC position: During the investigation, it was determined that the United States price for equipment included inland freight and charges relating to processing, handling and storage which constitute the brokerage fees. These charges were subtracted from the U.S. Price for equipment and testing as required by 19 U.S.C. 1677a to determine an ex factory comparison to the constructed value. The items indicated above, which were incorporated into the calcualtion of U.S. price, are not part of the separate contract line items for duty or intercontinental air freight in the two Comsat contracts. The determination of U.S. price is not adjusted for U.S. duty or intercontinental air freight.

Issue: Respondent alleges that the Klystron HPA packing costs were correctly stated in its questionnaire response. They argue that the verification report indicates that the packing costs as indicated in the response are reasonable and that no adjustment is warranted.

DOC position: NEC Ltd.'s response to the Department's questionnaire contained estimated packing costs for the Klystron and TWT HPA's in yen. The conversion from yen to dollars was miscalculated in the preliminary determination, but only for the Klystron HPA's. Although the same amounts in yen were used in both determinations, the dollar amount, after converting the currency, is higher in this final determination. The only change to packing costs from those used in the preliminary determination is to correctly calculate the dollar value of packing costs with respect to Klystron HPA's using the respondent's estimated costs in yen.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination. In a few instances the best information available was used for items which could not be verified from company books and records. We were granted access to the books and records of the

foreign manufacturer. However the respondent, after the first verification, temporarily refused to give the Department custody of copies of records which we requested. We used standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents containing relevant information.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that HPA's from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act.

Continuation of Suspension of Liquidation

The liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended. The U.S. Customs Service will continue to require posting of a cash deposit, bond, or other security in the amounts listed below, expressed as a percentage of the F.O.B. value of the high power microwave amplifiers from Japan for transmission in the C, X, or Ku bands as follows:

25.4%	TWT high power amplifiers.
41.4%	Klystron high power amplifiers.
41.4%	for parts of high power amplifiers unless such parts are dedicated exclusively for use in TWT high power amplifiers, in which case the rate is 25.4%

ITC Notification

We are notifying the ITC and making available to it all non-privileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on all HPA's from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Gary N. Horlick,

Acting Assistant Secretary for Trade Administration.

May 17, 1982.

[FR Doc. 82-14013 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

Prestressed Concrete Steel Wire Strand From South Africa; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of suspension of investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving prestressed concrete steel wire strand (PC strand) from South Africa. The basis for the suspension is an agreement by Haggie Limited, the only known South African manufacturer and exporter of PC strand, to renounce all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-1774.

SUPPLEMENTARY INFORMATION: On November 9, 1981, we received a petition from counsel for American Spring Wire Corporation, Bethlehem Steel Corporation, Florida Wire & Cable Company and Shinko Wire America, Inc. The petition alleged that the government of South Africa provides bounties or grants to its producers and exporters of PC strand through the following programs: preferential railroad rates, reduced harbor rates, reduced ocean freight rates, export credit insurance, pre- and post-shipment financing, Export Incentive Programs, the Iron/Steel Export Promotion Scheme, employee training allowances, beneficiation allowances for base mineral processing, homeland development and other indirect benefits.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. Therefore, on November 25, 1981, we announced our initiation (46 FR 59283).

We presented a questionnaire concerning the allegations to the government of South Africa. On February 25, 1982, we received a response to the questionnaire which covers the period of calendar years 1980 and 1981. Between March 9 and March 17, we verified this information by a review of government documents and company books and records of Haggie Limited, the only known manufacturer and exporter in South Africa of the subject merchandise. We stated in our notice of initiation of the investigation that we expected to issue a preliminary determination by February 2, 1982. However, we postponed the preliminary determination on January 12, 1982, to no later than April 8, 1982, and published a notice in the Federal Register (47 FR 2789). The reason for the postponement was that we determined, in accordance with section 703(e)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), that the investigation was extraordinarily complicated.

Counsel for Haggie Limited, in a letter dated February 26, 1982, proposed entering into a suspension agreement pursuant to section 704 of the Act and § 355.31 of the Commerce Regulations. On April 8, 1982, we preliminarily determined that the government of South Africa is providing bounties or grants to manufacturers, producers, and exporters of PC strand under three export programs. The programs preliminarily found to be countervailable were the railroad rate differential; the Export Incentive Programs, categories B, C and D; and the Iron/Steel Export Promotion Scheme. On the same date, April 8, 1982 Haggie and the Department of Commerce initialed a proposed suspension agreement, which was based upon Haggie's agreement to eliminate completely all benefits which we preliminarily found to be bounties or grants on exports of the subject merchandise to the United States.

Notice of the affirmative preliminary countervailing duty determination was published in the Federal Register on April 14, 1982 (47 FR 16060). We directed the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after April 14, 1982, and to require a cash deposit or bond in the amount of 27.1 percent of the f.o.b. value of the merchandise.

On April 8, 1982 we provided copies of the proposed suspension agreement between Haggie Limited and the Department of Commerce to the petitioners for their consultation and to other parties to the proceeding for their

comments. Notice of the proposal concerning suspension of the investigation was published in the **Federal Register** on April 28, 1982 (47 FR 18162).

The Department consulted with the petitioners and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement eliminates the bounties or grants completely with respect to the subject merchandise exported directly or indirectly to the United States, can be monitored effectively, and is in the public interest. We, therefore, find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of entries, or withdrawals from warehouse, for consumption of PC strand from South Africa effective April 14, 1982, as directed in the Preliminary Affirmative Countervailing Duty Determination is hereby terminated. Any cash deposits on entries of PC strand from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds or other security shall be released.

The Department intends to conduct an administrative review within twelve months of the publication of this suspension as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation, if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 17, 1982.

Annex I—Strand From South Africa Agreement

Prestressed Concrete Steel Wire Strand From the Republic of South Africa Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 (the Act) and § 355.31 of the Commerce Regulations, the United States Department of Commerce (the Department) enters into the following Suspension Agreement with Haggie Limited (Haggie), Head Office, Lower Gremiston Road, Jupiter, Johannesburg 2093, South Africa. On the basis of this Agreement, the Department shall suspend its countervailing duty investigation with respect to prestressed concrete steel wire strand from the Republic of South Africa in accordance with the terms and provisions set forth below:

A. Product Coverage

The Suspension Agreement is applicable to all prestressed concrete steel wire strand manufactured by Haggie Limited and directly or indirectly exported to the United States (hereinafter referred to as the subject product). Prestressed concrete steel wire strand is used to compress concrete to provide active resistance to loads in such items as girders, beams, pilings and other building products. It is currently provided for in item number 642.1120 of the *Tariff Schedules of the United States Annotated.*

B. Basis of the Agreement

1. Haggie is the only known manufacturer/exporter of the subject product. Haggie voluntarily agrees not to apply for or receive any benefits from the South African Transport Service's railroad freight rates for export, the Export Incentive Programs administered by the South African Department of Industries, Commerce & Tourism, and the Iron/Steel Export Promotion Scheme on exports of the subject product. Specifically:

(a) Haggie will pay the domestic container rate on the subject product described in paragraph A above, for all shipments destined for the United States leaving Haggie's factory on or after April 1, 1982.

(b) Haggie will not apply for or receive the tax credit allowed on the value-added component of the subject product for all shipments entering the United States, or withdrawn from warehouse, for consumption on or after September 1, 1982.

(c) Effective April 1, 1982 the Finance Charges Aid Scheme has been terminated by the Republic of South Africa. Haggie will not apply for or receive benefits under this program if it is reinstated.

(d) Haggie will not apply for or receive a tax deduction on market development expenses under the Export Marketing Assistance Program with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after September 1, 1982.

(e) Haggie will not participate in the Iron/Steel Export Promotion Scheme with respect to shipments of the subject product entering the United States, or withdrawn from warehouse, for consumption on or after September 1, 1982.

Renunciation of the receipt of these benefits does not constitute an admission by Haggie that such benefits are bounties, grants or subsidies within the meaning of the U.S. countervailing duty law or any other U.S. law.

Haggie certifies that no new benefits will be applied for or received for the subject product as a substitute for any benefits eliminated by this Agreement.

2. In accordance with the provisions of the Act and applicable regulations, this Agreement applies to the product described in Paragraph A which is produced in the Republic of South Africa and exported directly or indirectly to the United States.

3. Haggie agrees that during the six-month period following the effective date of the suspension of the investigation the quantity of the subject product exported directly or indirectly to the United States from the Republic of South Africa, will not exceed the quantity of such exports during the six-month period of June through November 1981.

4. The Department will monitor all exports of the subject product to the United States during the six-month period following the effective date of the suspension of the investigation and will issue instructions to deny entry, or withdrawal from warehouse, for consumption of the subject product exported in excess of the quantity exported during the period June through November 1981.

C. Monitoring

Haggie agrees to supply to the Department such information as the Department deems necessary to demonstrate that it is in full compliance with this Agreement. Haggie will notify the Department if it: (1) Transships the subject product through third countries, (2) alters its position with respect to any terms of the Agreement, (3) applies for or receives directly or indirectly the benefits of the programs described in Paragraph B for the manufacture of the subject products exported to the United States.

Furthermore, Haggie agrees to undertake the obligation to report to the Department within 15 days of the beginning of each calendar quarter (April, July, October, January) the volume of prestressed concrete steel wire strand it has exported to the United States. Haggie also agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement. The Department shall request such

information and perform such verifications periodically pursuant to administrative reviews conducted under section 751 of the Act.

D. Reopening of the Investigation

The Department shall terminate this Agreement and will reopen the investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Commerce Regulations, with respect to prestressed concrete steel wire strand from the Republic of South Africa described in Paragraph A above and exported to the United States by Haggie Limited if the Department determines pursuant to section 704(i)(1) of the Act, that Haggie has altered or terminated its renunciation of all benefits described in Paragraph B above or has not otherwise honored its obligations under this Agreement. The Department will also terminate this Agreement and will reopen the investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Commerce Regulations, if it determines that the suspension of this investigation is no longer in the public interest or that effective monitoring is no longer practicable as required by section 704(d)(1) (A) and (B), or if this Agreement has been violated.

Additionally, should Haggie's annual imports account for less than 85% of the prestressed concrete steel wire strand imported to the United States from the Republic of South Africa, the Department on its own initiative or at the request of the petitioner, may terminate this Agreement and reopen the investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Commerce Regulations. If reopened, the investigation will be resumed for all prestressed concrete steel wire strand exporters as if the affirmative preliminary determination was made on the date that the Department terminates this Agreement.

Signed on this 17th day of May, 1982.

For Haggie Ltd.

By Larry E. Klayman,

Special Counsel, Haggie Ltd.

I have determined that the provisions of Paragraph B completely eliminate the bounties or grants that the Republic of South Africa is providing with respect to prestressed concrete steel wire strand exported directly or indirectly to the United States and that the provisions of Paragraph C ensure that this Agreement can be monitored effectively pursuant to section 704(d) of the Act. Furthermore, I have determined that this Agreement meets the requirements of section 704(b) of the Act and is in the public interest as required in section 704(d) of the Act.

U.S. Department of Commerce.

By Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-14014 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

Notice is hereby given that the 67th Annual Meeting of the National Conference on Weights and Measures will be held July 12–16, 1982 at the Atlanta Marriott Hotel, in Atlanta, Georgia.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States as well as associated Federal, industry, and consumer representatives. The annual meeting of the Conference brings together the enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations for the purpose of hearing and discussing subjects that relate to the fields of weights and measures technology and administration.

Pursuant to authority in its Organic Act (15 U.S.C. 272(5)), the National Bureau of Standards acts as a sponsor of the National Conference on Weights and Measures in order to provide the technical basis for uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

The meeting is open to the public. A registration fee of $85 per person has been established by the Conference Executive Committee to pay for expenses of the meeting. Additional information concerning the Conference program and arrangement may be obtained from Mr. Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, National Bureau of Standards, Washington, D.C. 20234; telephone—301/921–2401.

Dated: May 17, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-13618 Filed 5-20-82; 8:45 am]

BILLING CODE 3510-13-M

Proposed Revision to Federal Information Processing Standard 86; Additional Controls for Use With ASCII

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards.

On January 29, 1981, a notice was published in the **Federal Register** (46 FR 9687–9688), announcing the approval of Federal Information Processing Standards Publication (FIPS PUB) 86, Additional Controls for Use with ASCII. On February 5, 1982, a notice was published in the **Federal Register** (47 FR 5450) indicating that the Secretary of Commerce had amended FIPS PUB 86 by changing the effective date from January 29, 1982 to September 30, 1982, and indicating that a proposed revision to the applicability section of FIPS PUB 86 would be forthcoming. This notice gives that proposed revision and solicits comments.

In FIPX PUB 86, section 11 on Implementation Schedule contains the expression "in conformance with this standard." As a result of comments received in response to the January 29, 1981 notice, it is proposed to revise section 8, Applicability, and section 10, Qualifications, to clarify the meaning of "conformance" in the context of FIPS PUB 86, by replacing sections 8 and 10 with the following paragraphs:

8. *Applicability.* This standard is applicable to the acquisition and use of all ADP equipment and services that involve character imaging which: (1) Employ the character set and encoding conventions prescribed by FIPS PUB 1–1 (ASCII) and FIPS PUB 35 (Code Extension in 7 or 8 Bits); (2) employ character-oriented controls; and (3) are consistent with the device architectural assumptions given in Appendix B of ANSI X3.64–1979. All ADP terminal devices containing alphanumeric keyboards and either CRT displays or printers that may be used in any form of on-line interactive applications (such as data entry) or stand-alone off-line data preparation, and which satisfy all three of the conditions above, are covered by this standard. A waiver must be requested in accordance with the waiver provisions in section 12 below for the acquisition of ADP terminal equipment having control functions defined by this standard (or their operational equivalents) which are performed by means that do not conform with the provisions of this standard.

10. *Qualifications.* Terminals conforming with this standard need not implement all of the control functions defined by this

standard, and they may implement supplemental character-oriented control functions not defined by this standard. However, when any of the control functions defined by this standard (or their operational equivalents) are implemented, they must be implemented in accordance with the provisions of this standard. Additionally, computer resident control software may be, or may not be, required to implement all features of this standard, at the option of the procuring agency.

Note.—Announcement of a planned related FIPS on bit-oriented controls in the **Federal Register** is currently being processed; its publication is anticipated to occur in the near future. This note is explanatory and is not part of FIPS 86.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval as an amendment to a Federal Information Processing Standard, it is essential to assure that proper consideration is given to the views of Federal departments and agencies, the public, State and local governments, and to offerors of applicable equipment and services. The purpose of this notice is to solicit such views.

Interested parties may obtain a copy of FIPS PUB 86 from, and submit comments in writing to, the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, ATTENTION: Proposed Revision to FIPS PUB 86 on Additional Controls. To be considered, comments relating to this announcement must be received on or before August 18, 1982.

Written comments received in response to this notice will be made part of the public record and be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6078, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, DC 20230.

Persons desiring further information about this proposed revision to FIPS PUB 86 may contact Mr. John L. Little, System Components Divison, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, telephone: 301/921–3723.

Dated: May 17, 1982.

Ernest Ambler,

Director.

[FR Doc. 82–13615 Filed 5–20–82; 0:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Western Geophysical Co., et al.; Issuance of Letters of Authorization

Notice is hereby given that the National Marine Fisheries Service issued Letters of Authorization under the authority of the Marine Mammal Protection Act of 1972, as amended, to conduct activities allowed under 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to on-Ice Seismic Activities to the following:

Western Geophysical Company, 351 E. International Airport Road, Anchorage, Alaska 99502. Issued on May 18, 1982.

Consolidated Georex Geophysics, 699 Hampshire Road, Suite 203, Westlake Village, California 91361. Issued on May 18, 1982.

Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502. Issued on May 18, 1982.

These letters of Authorization are valid for the remainder of 1982 and are subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B). These Letters of Authorization are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: May 18, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–13674 Filed 5–20–82; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Naval Ocean Systems Center; Modification of Permit

On August 12, 1977, Notice was published in the **Federal Register** (42 FR 40962) that a Permit had been issed to the Naval Ocean Systems Center, Department of the Navy, San Diego, California. The Permit is modified as follows:

Section B–10 is modified by substituting the following: "B–10. This Permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification is effective on May 21, 1982.

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 14, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–13675 Filed 5–20–82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1982 military resale commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 21, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On December 18, 1981 and February 22, 1982, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (46 FR 61694 and 47 FR 7721) of proposed additions to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the relevant matter presented, the Committee has determined that the military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following military resale commodities and service are hereby added to Procurement List 1982:

Military Resale Item Nos. and Names

No. 541 Scrubber, Bathroom, with handle
No. 542 Scrubber, Kitchen, with handle
No. 543 Scrubber, Grill and Garage, with handle
No. 965 Cover, Ironing Board, Color Coated

SIC 7331

Mailing Service, Department of Treasury, Bureau of Engraving and Printing, 14th and C Streets, S.W., Washington, D.C.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-13936 Filed 5-20-82; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1982; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1982 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 23, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1982, November 12, 1981 (46 FR 55740):

Class 6532

Gown, Hospital, 6532-00-104-9695
Gown, Patient, Examining, 6532-00-421-7828

Class 8455

Holder, Identification, Personnel, 8455-00-[illegible]-9730

SIC 7349

Custodial Services, Smithsonian Institute, Service Center, North Capitol Street, Washington, D.C.

Janitorial, Mechanical Service, Federal Building, Courthouse, Bowling Green, Kentucky
Janitorial/Custodial, Federal Building and U.S. Courthouse, 4th and Market Street, Camden, New Jersey
Janitorial Service, U.S. Courthouse, 68 Court Street Entrance, Buffalo, New York
Janitorial Services, Federal Building, Bonneville Power Administration, 1002 N.E. Holladay Street, Portland, Oregon
Janitorial Service, Salem District Office of BLM, 1717 Fabry Road, S.E., Salem, Oregon

SIC 7399

Part Sorting, Hill AFB, Utah

C. W. Fletcher,

Executive Director.

[FR Doc. 82-13937 Filed 5-20-82; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Date of Meeting: Wednesday, June 9, 1982
Time: 0830-1700 hours, June 9, (Closed)
Place: U.S. Army Medical Research and Development Command, Fort Detrick, MD
Agenda: The Army Science Board 1982 Summer Study Group on Chemical Warfare will meet to receive classified briefings and hold discussions on the Biological Threat and Army Medical Research, Development, Test and Evaluation (RDTE) Program and Chemical/Biological Defense. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or [illegible]-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-13961 Filed 5-20-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)
Date of meeting: Tuesday, June 15, 1982
Time: 0830-1700 hours, June 15, (Closed)
Place: U.S. Army Missile Command (MICOM)/NASA, Huntsville, Alabama
Agenda: The Civilian Physical Life and Social Scientists Working Group of the Army Science Board 1982 Summer Study on Science and Engineering Personnel will meet for briefings, discussions, and assessment of science and engineering personnel needs, and for classified briefings by MICOM and NASA personnel addressing that subject. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or [illegible]-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-13962 Filed 5-20-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commitee Meeting:

Name of the Committee: Army Science Board [ASB]
Dates of Meeting: Monday, June 21, 1982; Tuesday, June 22, 1982
Times: 0830-1600 hours on June 21, 1982 (Closed); 0830-1600 hours on June 22, 1982 (Closed)
Place: The Pentagon, Washington, D.C. in Room 2E715B
Agenda: The Army Science Board Ad Hoc Subgroup conducting a study on Ballistic Missile Defense will meet to receive classified briefings, present progress briefings, and hold discussions of same. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-13963 Filed 5-20-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commitee Meeting:

Name of the Committee: Army Science Board (ASB)
Date of Meeting: Thursday, June 24, 1982; Friday, June 25, 1982

Times: 0630–1700 hours on June 24, 1982 (Closed); 0630–1600 hours on June 25, 1982 (Closed)
Place: The Pentagon, Washington, D.C. (exact location to be determined)
Agenda: The Army Science Board 1982 Summer Study Group on Science and Engineering Personnel will meet for a Plenary Session of classified briefings and discussions and then break up into the three working groups for this effort: 1) Civilian Engineers, 2) Civilian Scientists, and 3) Uniformed Scientists and Engineers. The Summer Study addresses the Army's problem of recruiting, retaining, and maintaining a reasonably balanced age profile of civilian S&E personnel. This meeting wil be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contracted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

FR Doc. 82–13884 Filed 5–20–82; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Morris Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Morris Oil Company, P.O. Box 1029, Columbia, Mississippi 39429. This Proposed Remedial Order charges Morris Oil Company with pricing violations in the amount of $166,005.88 connected with the sales of motor gasoline during the period July 1, 1979 through September 30, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Altanta Office, Economic Regulatory Administration, 1655 Peachtree Street, NW., Atlanta, Georgia 30309, Telephone (404) 881–2861. On or before June 7, 1982 any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 12th day of May 1982.

Leonard F. Bittner,

Director, Atlanta Office, Economic Regualtory Administration.

Concurrence:

Susan P. Tate,

Deputy Regional Counsel.

[FR Doc. 82–13884 Filed 5–20–82; 8:45 am]
BILLING CODE 6450–01–M

[Case No. 64OC 00390]

Signal Petroleum; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Signal Petroleum and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: June 21, 1982.

ADDRESS: Send comments to: Thomas A. Fry, III, Director, Houston Office, Economic Regulatory Administration One Allen Center, 500 Dallas Avenue, Suite 660, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Thomas A. Fry, III, Director, Houston Office, Economic Regulatory Administration, One Allen Center, 500 Dallas Avenue, Suite 660, Houston, Texas 77002, (713) 226–5421.

Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On April 29, 1982, the ERA executed a proposed Consent Order with Signal Petroleum of Metairie, Louisiana. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Signal Petroleum, with its home office located in Metairie, Louisiana, is a firm engaged in the production and sale of domestic crude oil, and was subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212 during the period covered by this Consent Order. To resolve certain potential civil liability arising out the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211, and 212 in connection with Signal's transactions involving domestic crude oil during the period of federal price controls, the ERA and Signal Petroleum entered into a Consent Order, the significant terms of which are as follows:

A. During the period covered by the Consent Order, Signal produced and sold domestic crude oil. ERA has asserted that Signal was a producer, as that term was defined in the Regulations.

B. The ERA has alleged that Signal sold crude oil at prices in excess of the applicable ceiling or maximum lawful selling prices in violation of the Regulations.

C. The execution of this Consent Order constitutes neither an admission by the company nor a finding by DOE of any violation by the company of any statute or regulation.

II. Refunds

Disposition of Refunds

Under this Consent Order, Signal will pay within 30 days of the effective date of this Consent Order the sum of $1,500,000.00 including interest to DOE for deposit in the U.S. Treasury for ultimate disposition by DOE in accordance with applicable laws and regulations. Upon full satisfaction of the terms and conditions of this Consent Order by Signal Petroleum, the DOE releases Signal from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on Signal Petroleum Consent Order". The ERA will consider all comments it receives by 4:30 p.m. local time, June 21, 1982. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 10th day of May 1982.

Thomas A. Fry, III,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 82-13963 Filed 5-20-82; 8:45 am]

BILLING CODE 6450-01-M

Spencer Companies, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to The Spencer Companies, Inc., P.O. Box 45, Huntsville, Alabama 35804. This Proposed Remedial Order charges The Spencer Companies, Inc., with pricing violations in the amount of $126,755.48 connected with the sales of refined petroleum products during the period January 18, 1979 through December 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Atlanta Office, Economic Regulatory Administration, 1655 Peachtree Street, NW., Atlanta, Georgia 30309, Telephone (404) 881-2661. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 12th day of May 1982.

Leonard F. Bittner,

Director, Atlanta Office, Economic Regulatory Administration.

Concurrence:

Susan P. Tate,

Deputy Regional Counsel.

[FR Doc. 82-13966 Filed 5-20-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Change of Public Hearing

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of change of date of Public Hearing.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicited comments concerning proposed changes to the Petroleum Supply Data Collection forms. In an effort to maximize public participation in the revision of these forms, EIA proposed to conduct a public hearing on Thursday, May 27, 1982, and continued on Friday, May 28, 1982, if necessary, in the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, beginning at 9:00 a.m. (e.s.t.). This public hearing has been changed to Thursday June 10, 1982, beginning at 9:00 a.m. (e.s.t.) and will be held in the Forrestal Building, Room 1E-245. The reason for this change is to allow the various concerned individuals more opportunity to adequately respond to this request.

Correction

In **Federal Register** notice Volume 47, number 79, Friday, April 23, 1982, on page 17614 make the following changes.

1. On page 17614, third column the date for the public hearing of May 27 and 28, 1982, is changed to June 10, 1982.

2. On page 17614, third column the date to provide oral testimony is changed from May 7, 1982, to May 27, 1982, and a copy of the presentation will be due no later than 4:30 p.m. on June 7, 1982.

3. On page 17614, third column the date to provide only written comments is change from May 21, 1982, to June 7, 1982. The following are the correct dates:

DATES: Those wishing to provide oral testimony at the public hearing must request to speak at the hearing no later than 4:30 p.m. Friday, May 27, 1982 and must submit a copy of their presentation to the Energy Information Administration by 4:30 p.m. Monday, June 7, 1982 at the latest.

Those wishing only to provide written comments must submit a copy of these comments to the Energy Information Administration by 4:30 p.m. Friday, June 7, 1982 at the latest.

ADDRESS: Send comments, requests to speak at the hearing, and written presentation to: Special Projects Manager, EI-422, Mail Stop 2H-058, Office of Oil and Gas, Energy Information Administration, Washington D.C. 20585.

FOR FURTHER INFORMATION OR COPIES OF REVISED FORMS AND INSTRUCTIONS CONTACT:

Gary L. Oleson or Paul Chapman, EI-422, Mail Stop 2H-058, Office of Oil and Gas, Energy Information Administration, Washington, D.C., 20585, Telephone: 202-252-9884.

Issued in Washington, D.C. on May 18, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82-14021 Filed 5-20-82; 8:45 am]

BILLING CODE 6450-01-M

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) the Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the office of Management and Budget (OMB). Following this notice is a list of DOE proposals sent to OMB for approval between April 23, 1982, and May 20, 1982.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory; voluntary, or required to obtain or retain benefit; (6) Type of responsent; (7) An estimate of the number of responsents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the forms; (9) A Brief abstract describing the proposed collection.

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 7413, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633-9464.

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-7340.

Anita Ducca, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503. (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer: comments should also be provided Mr.

Goss. If you anticipate commenting on a form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer of you intent as early as possible.

Issued in Washington, D.C., May 17, 1982.

Yvonne M. Bishop,

Director, Statistical Standard, Energy Information Administration.

DEPARTMENT OF ENERGY FORMS UNDER REVIEW BY OMB

Form No.	Form title	Type of request	Response frequency	Response description	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA								
● EIA-412	Annual report of publicly owned electric utilities.	New	Annual	Mandatory	Publicly owned electric utilities.	210	9566	Form EIA-412 will collect information on investments, costs, facilities, planning, and operations of publicly owned electric utilities. The data are used in Department of Energy publications, studies and analyses. Data collection will begin upon OMB approval.
● EIA-767(2)[1]	Steam-electric plant air and water quality control data.	New	Annual	Mandatory	Steam-electric powerplants.	779	28823	Data are used to identify environmental impacts of energy policy plans, to evaluate water usage, to perform environmental assessments and as input in the survey of current business.
ERA								
● ERA-766R	Recordkeeping requirements applicable to the general allocation and price rules.	Extension no change.	N/A, record-keeping requirements.	Mandatory	Firms subject to petroleum allocation and price rules.	350	7000	Companies subject to the General Allocation and Price Rules (10 CFR 211 and 212) must maintain in their records information sufficient to demonstrate their compliance with these regulations.
FERC								
● FERC-533	Gas producer rates: special relief petition.	Reinstatement	On occasion.	Mandatory	Natural gas producers.	70	5600	To allow FERC to review producer claims for special relief to facilitate production of natural gas.
● FERC-542	Purchased gas adjustment audits/initial rate/rate change and tracking report.	Extension, no change.	On occasion.	Mandatory	Natural gas pipeline and local gas distribution companies.	60	371200	Required to monitor compliance with Sections 4, and 16 of the Natural Gas Act.
● FERC-547	Gas pipeline rates: refund obligation.	Extension, no change.	On occasion.	Mandatory	Natural gas pipeline companies.	97	40000	Reports all filed to ensure compliance with the Natural Gas Policy Act and the correct refunding of amounts which were paid in the interim collection process.
● FERC-549	Natural Gas Policy Act (NGPA) title III transactions.	Extension, no change.	On occasion.	Mandatory	Natural gas pipelines and local distribution companies.	125	2400	Data are required to assure compliance with regulations concerning transportation and sales transactions in accordance with Title III of the NGPA.
● FERC-576	Report by certain natural gas companies of emergency conditions.	New	On occasion.	Mandatory	Natural gas companies.	16	48	Used to monitor emergencies and potential supply interruptions.
● EIA-767(1)[1]	Steam-electric plant air and quality control data.	Reinstatement	Annual	Mandatory	Steam-electric powerplants.	779	27265	Data are collected to monitor air emission and water quality data to evaluate fuel use in rate proceedings.

[1] EIA-767 is a form jointly sponsored by the Energy Information Administration, the Federal Energy Regulatory Commission and the Environmental Protection Agency. The forms are shown separately in order to reflect the burden shares of the sponsors. The total burden for the EIA-767 is 72,000 hours. EPA will submit a separate request to OMB for its share of the respondent burden (15,912 hours).

[FR Doc. 82-13918 Filed 5-20-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST80-260-001]

Transok Pipe Line Co.; Extension Reports

May 17, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before June 9, 1982 file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or

1.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST80-260-001	Transok Pipe Line Co., P.O. Box 3006, Tulsa, OK 74101.	Michigan Wisconsin Pipe Line Co	Apr. 16, 1982	C	July 21, 1982
ST80-270-001	Michigan Consolidated Gas Co., One Woodward Avenue, Detroit, MI 48226.	United Gas Pipe Line Co	Apr. 21, 1982	G(HS)	Do.
ST80-272-001	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139.	Colorado Interstate Gas Co	Apr. 30, 1982	G	July 29, 1982.
ST80-308-001	Michigan Wisconsin Pipe Line Co., One Woodward Avenue, Detroit, MI 48226.	Michigan Consolidated Gas Co	Apr. 22, 1982	B	July 3, 1982.
ST80-311-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77252.	Transcontinental Gas Pipe Line Corp	Apr. 29, 1982	G	July 31, 1982.
ST81-14-001	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139.	Colorado Interstate Gas Co	Apr. 30, 1982	do	Oct. 13, 1982.
ST81-35-001	do	do	Apr. 29, 1982	do	July 26, 1982.
ST81-414-001	do	do	Apr. 26, 1982	do	Aug. 13, 1982.

[FR Doc. 82-13833 Filed 5-20-82; 8:45 am]
BILLING CODE 6717-01-M

UMI 2 8 1 2 M 6 9 4 7

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 17, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** TEXAS RAILROAD COMMISSION **********									
-A G HILL									
8228648	F-7C-039661	4246131673				RECEIVED: 04/22/82 JA: TX			
			103			HALFF ESTATE #1	AMACKER TIPPETT (DEVO	120.0	EL PASO NATURAL G
-AMERADA HESS CORPORATION						RECEIVED: 04/22/82 JA: TX			
8228938	F-8A-049395	4216532138	103			SEMINOLE SAN ANDRES UNIT #3523	SEMINOLE SAN ANDRES	0.0	PHILLIPS PETROLEU
8228937	F-8A-049394	4216532140	103			SEMINOLE SAN ANDRES UNIT #3531	SEMINOLE SAN ANDRES	0.0	PHILLIPS PETROLEU
8228939	F-8A-049396	4216532033	103			SEMINOLE SAN ANDRES UNIT #710	SEMINOLE SAN ANDRES	0.0	PHILLIPS PETROLEU
-AMOCO PRODUCTION CO						RECEIVED: 04/22/82 JA: TX			
8228789	F-06-048069	4240131261	102-4	107-TF		BILLY NEAL ROGERS GAS UNIT #1	HENDERSON NORTH/COTTO	300.0	VALERO TRANSMISSI
8228999	F-7C-049593	4241330401	108			DORIS MAYER ROUSSELOT "A" #4	SAWYER (CANYON)	18.2	LONE STAR GAS CO
8228996	F-7C-049590	4243530762	108			EDWIN S MAYER JR "6" #5	SAWYER (CANYON)	16.5	LONE STAR GAS CO
8228995	F-7C-049589	4243531271	108			GERALD NICKS #3	SAWYER (CANYON)	20.4	LONE STAR GAS CO
8228997	F-7C-049591	4243531240	108			MINNIE H MAYER "C" #1	SAWYER (CANYON)	19.9	LONE STAR GAS CO
8228998	F-7C-049592	4243531017	108			MINNIE H MAYER "D" #3	SAWYER (CANYON)	18.2	LONE STAR GAS CO
-APEX PETROLEUM INC						RECEIVED: 04/22/82 JA: TX			
8228739	F-7B-046464	4208332087	102-4			MCFARLAND #1 (97602)	MCFARLAND (JENNINGS)	35.8	LONE STAR GAS CO
-ARCO OIL AND GAS COMPANY						RECEIVED: 04/23/82 JA: TX			
8228686	F-01-043584	4231131514	102-4			E M BAKER 16#1	RHODE RANCH EAST (WIL	365.0	HOUSTON PIPELINE
8228637	F-10-038873	4229530890	103			GINTER #1	KIOWA CREEK (L MORROW	73.0	PHILLIPS PETROLEU
8228727	F-7C-045975	4223531785	103			J R SCOTT ESTATE "50" #1	SPRABERRY TREND AREA	18.0	J L DAVIS
8228942	F-10-049411	4206500000	108			J W MCCONNELL "A" #5	PANHANDLE WEST	11.0	KERR-MCGEE CORP
8228797	F-10-048265	4239335178	108			WILLIAM R COWAN TRACT "A" #2	QUINDUNO (ALBANY DOLO	14.6	NATURAL GAS PIPEL
-ASPEN PETROLEUM INC						RECEIVED: 04/22/82 JA: TX			
8228809	F-10-048588	4217930919	103			FIELDS #4 04899	PANHANDLE GRAY COUNTY	72.0	NORTHERN NATURAL
-AZTEC GAS SYSTEMS INC						RECEIVED: 04/22/82 JA: TX			
8228606	F-7C-013226	4210500000	108			SHANNON ESTATE #1-P	NW TODD/SAN ANDRES	15.0	EL PASO NATURAL G
-BAR M PETROLEUM CO INC						RECEIVED: 04/22/82 JA: TX			
8228807	F-03-048560	4228731050	103			LAAKE #1	GIDDINGS (AUSTIN CHAL	36.0	PERRY PIPELINE CO
-BLUESKY OIL & GAS INC						RECEIVED: 04/22/82 JA: TX			
8228626	F-03-037107	4214930519	102-2			ARNIM "C" #3	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-BORDER EXPLORATION CO						RECEIVED: 04/22/82 JA: TX			
8228699	F-7B-044312	4214330734	103			D A SHELBY G U #2-P	X-RAY (MARBLE FALLS)	140.0	VALERO TRANSMISSI
-BRITISH AMERICAN PETROLEUM CORP						RECEIVED: 04/22/82 JA: TX			
8228735	F-03-046310	4248132162	103			PRIESMEYER #1	EL CAMPO (5900) FIELD	59.5	DOW CHEMICAL CO
-C E JACOBS CO						RECEIVED: 04/22/82 JA: TX			
8228844	F-7B-048905	4241732304	102-4			HENDRICK 77A #1 (15822)	C E J (STRAWN)	22.0	DELHI GAS PIPELIN
8228843	F-7B-048904	4241732573	102-4			HENDRICK 77A #2 (15822)	C E J (STRAWN)	20.0	DELHI GAS PIPELIN
8228842	F-7B-048903	4241732819	102-4			HENDRICK 77A #3 (15822)	C E J (STRAWN)	5.0	DELHI GAS PIPELIN
8228838	F-7B-048899	4241734172	102-2			HENDRICK 77A #4 (17918)	SHACKELFORD COUNTY RE	5.0	DELHI GAS PIPELIN
8228841	F-7B-048902	4241734182	102-4			HENDRICK 77A #5 (15822)	C E J (STRAWN)	10.0	DELHI GAS PIPELIN
8228840	F-7B-048901	4241734199	102-4			HENDRICK 77A #6 (15822)	C E J (STRAWN)	20.0	DELHI GAS PIPELIN
8228839	F-7B-048900	4241733361	102-4			HENDRICK 808 #1 (16329)	C E J STRAWN	5.0	DELHI GAS PIPELIN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-C F LAURENCE & ASSOC INC				RECEIVED:	04/22/82	JA: TX			
8228946	F-08-049425	4237100000		102-4		IRT "73" #1 RRC ID#97348	MAYLAW (WOLFCAMP BASA	0.0	ADOBE GAS CO
-CAG PETROLEUM CORP				RECEIVED:	04/22/82	JA: TX			
8228675	F-03-042350	4205131668		102-2		CHAD #1	GIDDINGS AUSTIN CHALK	365.0	PHILLIPS PETROLEU
-CARTER ENERGY CORP				RECEIVED:	04/22/82	JA: TX			
8228779	F-09-047877	4249732233		103		OATES #2-T	BOONSVILLE (BEND CONG	100.0	NATURAL GAS PIPEL
-CARTER FOUNDATION PRODN CO				RECEIVED:	04/22/82	JA: TX			
8228983	F-08-049534	4249531430		103		PURE-WALTON #38	KEYSTONE (COLBY)	18.0	SID RICHARDSON GA
8228984	F-08-049535	4249531431		103		PURE-WALTON #39	KEYSTONE (COLBY)	98.0	SID RICHARDSON GA
8228985	F-08-049536	4249531429		103		PURE-WALTON #40	KEYSTONE (COLBY)	109.0	SID RICHARDSON GA
-CHAMPLIN EXPLORATION INC				RECEIVED:	04/22/82	JA: TX			
8228756	F-03-047039	4214930571		102-2		EUGENE HASCHKE #1	GIDDINGS (AUSTIN CHAL	284.0	PHILLIPS PETROLEU
8228757	F-03-047101	4214930958		102-2		RICHTMER "D" #1	GIDDINGS (AUSTIN CHAL	1.0	PHILLIPS PETROLEU
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/22/82	JA: TX			
8228683	F-8A-043219	4221933238		103		ANNICE POPE #1	ANITA (CLEARFORK)	0.0	
8228749	F-06-046762	4240130764		107-TF		BAILEY SHEPPARD #2	E EASON	362.0	HYDROCARBON TRANS
8228724	F-03-045761	4205100000		102-2	103	C D HENRY #2	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228639	F-03-039219	4205100000		102-2	103	CARRIE PAYNE #1	GIDDINGS	0.0	FERGUSON CROSSING
8228652	F-06-038267	4236500000		103	107-TF	CARTHAGE GAS UNIT 10 #5	CARTHAGE	0.0	TENNESSEE GAS PIP
8228723	F-03-045759	4205100000		102-2	103	FRANCES MATCEK #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228951	F-24-049441	4227331552		102-4		G P WARDNER #153	STRATTON (G-17)	300.0	TENNESSEE GAS PIP
8228754	F-08-046947	4243131072		102-2	103	J E WATSON #3	CONGER SW (PENN)	0.0	NORTHERN NATURAL
8228652	F-06-039865	4236500000		108		MCNEE UNIT #20	CARTHAGE	17.4	TENNESSEE GAS PIP
8228753	F-8A-046944	4221933184		103		W E MCLAUGHLIN JR #1	ANITA (CLEARFORK)	40.0	
-CHEVRON U S A INC				RECEIVED:	04/22/82	JA: TX			
8228993	F-8A-049581	4241532074		103		SACROC UNIT #140-3	KELLY-SNYDER	44.0	EL PASO NATURAL G
8228994	F-8A-049582	4241532100		103		SACROC UNIT #61-6	KELLY-SNYDER	17.0	EL PASO NATURAL G
8228694	F-8A-044197	4241531964		103		SACROC UNIT 20-12	KELLY-SNYDER	48.0	EL PASO NATURAL G
8228718	F-08-045470	4249531385		103		VEST RANCH #17	ARENOSO (STRAWN DETRI	55.0	PHILLIPS PETROLEU
-CITIES SERVICE COMPANY				RECEIVED:	04/22/82	JA: TX			
8228792	F-05-048161	4234931732		102-2	107-TF	DAVIDSON A-1	CHENEYBORO (COTTON VA	20.0	CAMPEON PIPELINE
-CLAYTON W WILLIAMS JR				RECEIVED:	04/22/82	JA: TX			
8228703	F-03-044548	4205100000		102-2		FRANK MATCEK UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
8228696	F-03-044220	4205100000		102-2		GOLD-PIWONKA UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
8228715	F-03-045387	4205100000		102-2		PIWONKA-MATCEK UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
-CONOCO INC				RECEIVED:	04/22/82	JA: TX			
8228752	F-08-046912	4230130222		102-2		CONTINENTAL TXL #1 ID #95492	CENTRAL PINAL DOME (W	310.6	TRANSCONTINENTAL
8228925	F-01-049375	4232331662		103		N J CHITTIM #4359	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228923	F-01-049373	4232331660		103		N J CHITTIM #615	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228924	F-01-049374	4232331661		103		N J CHITTIM #616	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228926	F-01-049376	4232331663		103		N J CHITTIM #6940	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228922	F-01-049372	4232331664		103		N J CHITTIM #6941	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228911	F-01-049346	4232331665		103		N J CHITTIM #6942	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8228910	F-01-049345	4232331669		103		N J CHITTIM #6943	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
-CORDOVA RESOURCES INC				RECEIVED:	04/22/82	JA: TX			
8228781	F-78-047914	4213333097		103		EAKIN "B" #1	EASTLAND COUNTY REGUL	0.0	SOUTHWESTERN GAS
-COTTON PETROLEUM CORPORATION				RECEIVED:	04/22/82	JA: TX			
8228738	F-08-046362	4231732257		103		STANDEFER #1	SPRAYBERRY (TREND ARE	16.0	PHILLIPS PETROLEU
8228737	F-08-046352	4231732256		103		STEWART-ALLAR #1	SPRAYBERRY (TREND ARE	14.0	PHILLIPS PETROLEU
-COURSON OIL & GAS INC				RECEIVED:	04/22/82	JA: TX			
8228713	F-10-045311	4235731159		103		DIAL 1-58	FARNSWORTH S E (MORRO	72.0	PHILLIPS PETROLEU
-CROWN CENTRAL PETROLEUM CORP				RECEIVED:	04/22/82	JA: TX			
8228820	F-09-048702	4249700000		103		R R CRAWFORD #2	BOONSVILLE	50.0	NATURAL GAS PIPEL

JD NO	JA DAT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-D H HUNT				RECEIVED:	04/22/82	JA: TX			
8228653	F-02-039871	4212331111		102-4		JOSHLIN DIEBEL GAS UNIT #2	ARNECKEVILLE (FRIO 26	205.0	TEXAS EASTERN TRA
-DALCO PETROLEUM U S LTD				RECEIVED:	04/22/82	JA: TX			
8228617	F-06-035722	4218330457		103	107-TF	WILLIE MAE ATKINSON #1 RRC #094134	WILLOW SPRINGS/COTTON	100.0	UNITED GAS PIPE L
-DALECO RESOURCES				RECEIVED:	04/22/82	JA: TX			
8228633	F-03-038396	4205131067		102-2	103	MABEL WILKINS #3	CLAY N E (AUSTIN CHAL	0.0	CLAJON GAS CO
8228710	F-03-044924	4204100000		102-4	103	TERRELL #1	CLAY N E (AUSTIN CHAL	0.0	CLAJON GAS CO
8228610	F-03-032707	4205100000		102-2	103	WILKINS #1-U	CLAY NE (EDWARDS LIME	365.0	CLAJON GAS CO
-DAVIS OIL COMPANY				RECEIVED:	04/22/82	JA: TX			
8228618	F-04-035960	4213134796		102-4		BRAVO "A" #1	BRAVO WILCOX (9750)	365.0	VALERO TRANSMISSI
8228636	F-08-048867	4217331107		102-4		LOIS BLALOCK #1	DEWEY LAKE (FUSSELMAN	600.0	EL PASO NATURAL G
-DEEP RIVER GAS & OIL EXPL CO INC				RECEIVED:	04/22/82	JA: TX			
8228680	F-78-042771	4236332154		102-4		ANNIE WALKER #1	WILDCAT	23.0	SOUTHWESTERN GAS
-DELTA DRILLING CO				RECEIVED:	04/22/82	JA: TX			
8228650	F-7C-039818	4210500000		103	107-TF	HENDERSON "A" #2	OZONA	0.0	NORTHERN NATURAL
8228682	F-06-043161	4242300000		102-2	103	WASHINGTON #1	SUNSHINE FIELD (RODES	0.0	ETEXAS PRODUCERS
-DELTA OIL & GAS CO				RECEIVED:	04/22/82	JA: TX			
8228914	F-78-049356	4242900000		108		A R KNIGHT "A" RRC #67573	STEPHENS COUNTY REGUL	2.7	WARREN PETROLEUM
8228920	F-78-049369	4242900000		108		A R KNIGHT "B" RRC #72262	BRITTANY SE (STRAWN)	2.2	WARREN PETROLEUM
8228919	F-78-049368	4242900000		108		JOE JACKSON RRC #75748	STEPHENS COUNTY REGUL	6.8	WARREN PETROLEUM
8228974	F-78-049494	4242900000		108		ROBERTA TUTTLE RRC #80799	UNION HILL (STRAWN)	18.0	WARREN PETROLEUM
8228988	F-78-049648	4242900000		108		ROBERTA TUTTLE RRC #92543	UNION HILL (STRAWN)	3.0	WARREN PETROLEUM
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	04/22/82	JA: TX			
8228733	F-08-046212	4222732403		102-2		M T BIRKHEAD #2-14	NEARBURG	96.0	
8228716	F-08-045417	4222732439		103		ROYCE WALKER #1-2	BIG SPRING	115.0	
8228772	F-10-047664	4229531042		103		VIOLA M STALLINGS #3-813	BRADFORD	128.0	
-DIVERSE ENERGY INC				RECEIVED:	04/22/82	JA: TX			
8228835	F-78-048865	4244732676		102-4		HARGROVE #1	DIVERSE (CONGL)	9.0	DELHI GAS PIPELIN
8228834	F-78-048860	4244732852		102-4		TEINERT-HARDIN "A" #1	WATSON (CONGL)	10.0	DELHI GAS PIPELIN
-DORCHESTER GAS PRODUCING CO				RECEIVED:	04/22/82	JA: TX			
8228604	F-10-001308	4217900000		108-ER		PINNELL #1 (24381)	WEST PANHANDLE	31.0	NORTHERN NATURAL
-DOUBLE EAGLE DRILLING CO				RECEIVED:	04/22/82	JA: TX			
8228816	F-09-048676	4207700000		103		W B FULGHAM #2 (RR #21540)	TALLY (STRAWN)	0.0	FAGADAU ENERGY CO
8228815	F-09-048675	4207700000		103		W B FULGHAM #3 (RR #21540)	TALLY (STRAWN)	0.0	FAGADAU ENERGY CO
8228814	F-09-048674	4207732469		103		W B FULGHAM #4 (RR 21803)	TALLY (STRAWN)	0.0	FAGADAU ENERGY CO
-DUKE OIL & GAS CO				RECEIVED:	04/22/82	JA: TX			
8228663	F-06-040930	4228300000		108		BELL DANIELS "G" #4	LONGWOOD (GOODLAND LI	48.0	ARKANSAS LOUISIAN
-DURANGO OPERATING CO INC				RECEIVED:	04/22/82	JA: TX			
8228813	F-78-048654	4205933331		102-4		FRANK WINDHAM #1	DURANGO (COOK)	182.0	LONE STAR GAS CO
-DYNAMIC PRODUCTION INC				RECEIVED:	04/22/82	JA: TX			
8228646	F-03-039441	4205131655		102-2		COWEN "B" UNIT #2	GIDDINGS (AUSTIN CHAL	36.8	FERGUSON CROSSING
-E D ANDERSON				RECEIVED:	04/22/82	JA: TX			
8228821	F-09-048703	4223700000		108		L H CRANFORD #1	PERRIN RANCH (4890 CO	0.0	LONE STAR GAS CO
8228822	F-78-048704	4223700000		108		W L WOODWARD "A" #3	GRAFORD (BEND CONGL)	0.0	LONE STAR GAS CO
-EASTLAND WELL SERVICE INC				RECEIVED:	04/22/82	JA: TX			
8228802	F-78-048403	4213330773		103		W L CURTIS #3 (13726)	FOSTER (MARBLE FALLS)	51.0	ODESSA NATURAL CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/22/82	JA: TX			
8228991	F-10-049578	4217930794		108		BROWN B #1	PANHANDLE EAST	14.5	EL PASO NATURAL G
8228992	F-7C-049580	4243532039		108		DAVIS B #3	SONORA (CANYON UPPER)	18.0	EL PASO NATURAL G
8228636	F-10-038633	4208730169		108		WISCHKAEMPER H #1	PANHANDLE EAST	13.0	EL PASO NATURAL G
8228990	F-10-049575	4208730169		108		WISCHKAEMPER H #1	PANHANDLE EAST	24.3	EL PASO NATURAL G
-ENRE CORP				RECEIVED:	04/22/82	JA: TX			
8228755	F-78-046957	4213333219		103		MITCHAM "E" #3	DRS (ELLEN)	3.0	BENGAL GAS TRANSM

JD NO	JA JKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROL	PURCHASER
-ENSERCH EXPLORATION INC				RECEIVED: 04/22/82 JA: TX					
8228966	F-02-049459	4212300000		108		FLORA PURCELL #1	ARNECKEVILLE	15.0	LONE STAR GAS CO
8228982	F-16-049533	4220300000		108		LEDBETTER-JONES #1	WHELAN/TRAVIS PEAK PR	20.0	TEXAS EASTERN TRA
8228968	F-04-049461	4247900000		108		T MIDDLETON F-3	LAS TIENDAS/E (OLMOS)	21.0	LONE STAR GAS CO
-EXCELSIOR OIL CORP				RECEIVED: 04/22/82 JA: TX					
8228967	F-06-049460	4245900000		103	107-TF	B F HUMPHREYS HEIRS GAS U #1 97208	ROSEWOOD (COTTON VALL	30.0	WESTERN GAS CORP
-EXXON CORPORATION				RECEIVED: 04/22/82 JA: TX					
8228751	F-0B-046897	4249500000		103		BROWN-ALTMAN B #22	EMPEROR EAST (CLEAR F	12.0	
8228830	F-10-048776	4221131389		103		FLOWERS TRUST A #5	MENDOTA NW (DOUGLAS L	20.0	TRANSWESTERN PIPE
8228765	F-0B-047552	4200332946		103		FULLERTON CLEARFORK UNIT #2433	FULLERTON	15.0	PHILLIPS PETROLEU
8228805	F-0B-048466	4200332964		103		FULLERTON CLEARFORK UNIT #2539	FULLERTON	15.0	PHILLIPS PETROLEU
8228916	F-0B-049360	4236100000		108		J B TUBB A/C 1 #15	SAND HILLS (JUDKINS)	5.0	EL PASO NATURAL G
8228856	F-0B-049167	4210300000		108		J C TUBB A/C 1 #2	SAND HILLS (JUDKINS)	7.0	EL PASO NATURAL G
8228684	F-0B-045498	4200332781		103		MEANS/SAN ANDRES/UNIT #362	MEANS	15.0	PHILLIPS PETROLEU
8228791	F-8A-048146	4216532227		103		ROBERTSON CLEARFORK UNIT #7303	ROBERTSON N (CLEARFOR	15.0	PHILLIPS PETROLEU
8228804	F-8A-048465	4216531226		103		ROBERTSON CLEARFORK UNIT #9501	ROBERTSON N (CLEARFOR	15.0	PHILLIPS PETROLEU
*8228793	F-06-048170	4234730519		103		TRAWICK GAS UNIT 60 1L	TRAWICK (TRAVIS PEAK)	150.0	ARMCO STEEL CORP
*8228823	F-06-048717	4240131262		102-4		V TURNER "A" OIL UNIT #1-1	OVERTON NE (PETTIT)	36.5	ARMCO STEEL CORP
*8228975	F-03-049504	4220100000		103		WEBSTER FIELD UNIT #0160	WEBSTER	56.0	HOUSTON PIPELINE
8228909	F-03-049343	4220131284		103		WEBSTER FIELD UNIT #1320	WEBSTER	360.0	HOUSTON PIPELINE
-FAGADAU ENERGY CORP				RECEIVED: 04/22/82 JA: TX					
8228936	F-7B-049390	4242933084		102-4		CURRY ESTATE "A" #1 RRC #18103	FOUR J (CONGL 3650')	60.0	WARREN PETROLEUM
8228935	F-7B-069389	4236332804		103		D L HART 15-S RRC #97459	PALO PINTO CO REG (GA	50.0	BRAZOS FUEL CO IN
-FAIN & MCGAHA				RECEIVED: 04/22/82 JA: TX					
8228697	F-09-044231	4250300000		102-4		GRAHAM P STEWART "B" 1	CARGIF (STRAWN)	2316.0	MID-STATES GAS CO
-FARGO ENERGY CORP				RECEIVED: 04/22/82 JA: TX					
8228940	F03-049401	4205131953		102-2		DAVIS #1 RRC #15217	GIDDINGS (AUSTIN CHAL	36.5	FERGUSON CROSSING
-FLOYD ISON				RECEIVED: 04/22/82 JA: TX					
8228740	F-7B-046499	4204932382		103		A MILLS #1	BROWN COUNTY REGULAR	53.0	ODESSA NATURAL CO
-FRANKS PETROLEUM INC ETAL				RECEIVED: 04/22/82 JA: TX					
8228833	F-06-048793	4236531228		102-4		GAYLE L RICHARDSON #1	BETHANY (PETTIT-FURRH	190.0	UNITED GAS PIPELI
-G C HERRMANN CO				RECEIVED: 04/22/82 JA: TX					
8228825	F-10-048736	4217931052		103		DAVIDSON 1-A 04973	PANHANDLE	0.1	CABOT PIPELINE CO
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED: 04/22/82 JA: TX					
8228712	F-0B-045296	4210332643		103		CENTRAL DUNE #3020	DUNE	0.0	WARREN PETROLEUM
8228711	F-0B-045295	4210332641		103		CENTRAL DUNE #3021	DUNE	0.0	WARREN PETROLEUM
-GENESIS PETROLEUM CORP				RECEIVED: 04/22/82 JA: TX					
8228750	F-03-046871	4232100000		103		STATE TRACT 309 #1-L (UNASSIGNED)	OLIVER POINT S (3950'	365.0	DOW CHEMICAL
-GETTY OIL COMPANY				RECEIVED: 04/22/82 JA: TX					
8228677	F-04-042546	4249732693		102-4	107-TF	EL GATO #1	EL GATO	382.0	TRANSCONTINENTAL
8228962	F-7B-049453	4243331281		103		FLOWERS CANYON SAND UNIT #199	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8228965	F-7B-049457	4243331282		103		FLOWERS CANYON SAND UNIT #201	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228964	F-7B-049456	4243331328		103		FLOWERS CANYON SAND UNIT #202	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228963	F-7B-049455	4243331337		103		FLOWERS CANYON SAND UNIT #203	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8228961	F-7B-049452	4243331345		103		FLOWERS CANYON SAND UNIT #204	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228959	F-7B-049450	4243331338		103		FLOWERS CANYON SAND UNIT #205	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228958	F-7B-049449	4243331344		103		FLOWERS CANYON SAND UNIT #206	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8228957	F-7B-049448	4243331371		103		FLOWERS CANYON SAND UNIT #207	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228956	F-7B-049447	4243331374		103		FLOWERS CANYON SAND UNIT #208	FLOWERS (CANYON SAND)	1.0	CITIES SERVICE CO
8228960	F-7B-049451	4243331373		103		FLOWERS CANYON SAND UNIT #209	FLOWERS (CANYON SAND)	5.0	CITIES SERVICE CO
8228955	F-7B-049446	4243331392		103		FLOWERS CANYON SAND UNIT #210	FLOWERS (CANYON SAND)	3.0	CITIES SERVICE CO
8228954	F-7B-049445	4243331397		103		FLOWERS CANYON SAND UNIT #211	FLOWERS (CANYON SAND)	2.0	CITIES SERVICE CO
8228953	F-7B-049444	4243331403		103		FLOWERS CANYON SAND UNIT #212	FLOWERS (CANYON SAND)	4.0	CITIES SERVICE CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228689	F-03-043716	4205100000		102-2		H C LEWIS #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228700	F-03-044448	4205100000		102-2		J L HALL #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228679	F-03-042716	4205100000		102-2		J M ORSAG #1	GIDDINGS (AUSTIN CHAL	90.0	FERGUSON CROSSING
8228706	F-03-044737	4205100000		102-2		M G HOLUBEC #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228738	F-03-046171	4205100000		102-2		W H GIESENSCHLAG "E" #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8228705	F-03-044734	4205100000		102-2		W H GIESENSCHLAG "F" UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
-GO OIL CORP				RECEIVED:	04/22/82	JA: TX			
8228798	F-09-04R122	4223700000		108		SALTER #1-T (ID NO 28517)	DEES (ATOKA CONGLOMER	0.0	LONE STAR GAS CO
-GO-TEX OIL & GAS CO				RECEIVED:	04/22/82	JA: TX			
8228624	F-04-036950	4224931170		102-4		OTTO J SEIDEL #1	WADE CITY (1550')	120.0	UNITED GAS PIPE L
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/22/82	JA: TX			
8228662	F-05-040907	4228900000		102-4		BLAZEK GAS UNIT #1	BEARGRASS	0.0	
-GRAHAM PRODUCTION CO				RECEIVED:	04/22/82	JA: TX			
8228976	F-03-049516	4248132231		102-4		HODGES ESTATES #1	WHARTON E (FRIO 6100)	180.0	HOUSTON PIPE LINE
-GULF COAST OIL & MINERALS				RECEIVED:	04/22/82	JA: TX			
8228631	F-02-038157	4246931459		103		MILTON E BEALE #1-A	PROPOSED VICTORIA N (	90.0	TENNESSEE GAS PIP
-GULF ENERGY PRODUCING COMPANY				RECEIVED:	04/22/82	JA: TX			
8228741	F-78-046501	4236332795		102-4		HART RANCH #877-2 (97367)	GRAFORD EAST (STRAWN	0.0	TEXAS UTILITIES F
-GULF OIL CORPORATION				RECEIVED:	04/22/82	JA: TX			
8228796	F-7C-048230	4210500000		108		F R HENDERSON #1	OZONA NORTHWEST (CANYO	9.0	SHELL OIL CO
8228952	F-08-049443	4247532082		103		HUTCHINGS STOCK ASSN #1091	WARD-ESTES NORTH	10.0	CABOT CORP
8228668	F-09-041572	4218130620		102-4		MONTGOMERY #1	N E SOUTHMAYD	144.0	LONE STAR GAS CO
8228667	F-09-041570	4218130600		102-4		N H PICKENS #1	SOUTHMAYD N E	9.0	LONE STAR GAS CO
8228787	F-08-048035	4230100499		108		TXL -AV- /NCT-A/ #1	TUNSTILL EAST (DELAWA	1.0	PHILLIPS PETROLEU
8228784	F-08-047971	4230100500		108		TXL -AV- /NCT-A/ #3	TUNSTILL EAST (DELAWA	1.0	PHILLIPS PETROLEU
8228785	F-08-047974	4230100501		108		TXL -AV- /NCT-A/ #4	TUNSTILL EAST (DELAWA	0.0	PHILLIPS PETROLEU
8228786	F-08-047997	4230100502		108		TXL -AV- /NCT-A/ #5	TUNSTILL EAST (DELAWA	1.0	PHILLIPS PETROLEU
8228944	F-08-049424	4210332643		103		W N WADDELL #1155	DUNE	5.7	
8228945	F-08-049425	4210332720		103		W N WADDELL ET AL TR H #1176	LEA (SAN ANDRES)	6.6	
-H D C VENTURES INC				RECEIVED:	04/22/82	JA: TX			
8228795	F-01-048212	4217700000		103		J M DUBOSE #1	PEACH CREEK (AUSTIN C	0.0	VALERO TRANSMISSI
-H L R INC				RECEIVED:	04/22/82	JA: TX			
8228817	F-78-048682	4204932858		103		AMALENE ISAACKS #2	BROWN COUNTY REGULAR	36.0	SIOUX PIPELINE CO
-H-R OIL CO				RECEIVED:	04/22/82	JA: TX			
8228788	F-03-048037	4248132238		102-4	103	F E APPLING #1	HELEN (FRIO 5520)	0.0	NATURAL GAS PIPEL
8228777	F-03-047807	4248132239		103		JOSEPH F MACH #1	MACH (6700)	0.0	UNITED GAS PIPELI
8228808	F-02-048574	4246931766		102-4	103	NANCY SHELTON #2-T	PALO ALTO (6980)	0.0	UNITED TEXAS TRAN
-HAMILTON BROTHERS OIL CO				RECEIVED:	04/22/82	JA: TX			
8228657	F-10-040248	4239330826		103		LOCKE CATTLE CO #1-15	SHRIEKY	75.0	PIONEER CORP
-HANOVER MANAGEMENT CO				RECEIVED:	04/22/82	JA: TX			
8228654	F-06-040079	4200131081		102-4		HANOVER MANAGEMENT COMPANY-CADY #3	PRAIRE LAKE SW (RODES	738.0	SEAGULL PIPELINE
-HARKEN OIL & GAS INCORP				RECEIVED:	04/22/82	JA: TX			
8228900	F-7C-049319	4239931491		103		J H JONES (BATTERY #1)	EREWS SOUTH (DOG BEND	0.0	LONE STAR GAS CO
8228845	F-7C-048913	4239931828		102-4		J H JONES (BATTERY #2)	MCDONNELL (FRY LOWER)	7.5	LONE STAR GAS CO
-HENRY PETROLEUM CORP				RECEIVED:	04/22/82	JA: TX			
8228763	F-8A-047500	4211500000		103		THORP #2	TEX-HAMON (DEAN)	8.0	GETTY OIL CO
-HILLIN PRODUCTION CO				RECEIVED:	04/22/82	JA: TX			
8228771	F-08-047627	4237133575		103		IRT "29-A" #3	PECOS VALLEY (YATES)	86.4	INTRATEX GAS CO
-HNG OIL COMPANY				RECEIVED:	04/22/82	JA: TX			
8228783	F-7C-047970	4243532562		103	107-TF	JONES "120" #5	SAWYER (CANYON)	0.0	INTRATEX GAS CO
8228848	F-7C-048932	4243500000		107-TF		REINHARDT "6" #2	SAWYER (CANYON)	50.4	INTRATEX GAS CO
8228861	F-08-049243	4237100000		108		TEXAS AMERICAN SYNDICATE "20" #1	PERRY BASS (DEVONIAN)	40.0	INTRATEX GAS CO
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	04/22/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228702	F-03-044521	4229131447		103		CHARLES WILSON FEE #29
8228666	F-03-041348	4228730973		103		DELBERT GERSCH #2
8228846	F-08-048925	4231732396		103		NAIL B 1 #1
-HUGHES & HUGHES				RECEIVED:	04/22/82	JA: TX
8228701	F-04-044466	4235500000		102-4		R PHILIP SCHULZE #3
-HUMBLE EXPLORATION CO INC				RECEIVED:	04/22/82	JA: TX
8228628	F-03-037536	4228700000		102-2	103	MARCELLA SNELL #1
8228627	F-03-037534	4228700000		102-2	103	MARIAN WEST #1
-INDEPENDENT EXPLORATION CO				RECEIVED:	04/22/82	JA: TX
8228659	F-01-040762	4250731488		102-4		PERKINS #1-C
8228660	F-01-040763	4250731488		102-4		PERKINS #1-T
-INDIAN WELLS OIL CO				RECEIVED:	04/22/82	JA: TX
8228855	F-7C-049166	4223531808		103		CRAWFORD 6-1
-INEXCO OIL COMPANY				RECEIVED:	04/22/82	JA: TX
8228794	F-03-048182	4214931220		102-2		LOIS #1
8228949	F-03-049437	4214931246		102-2		TOMMIE E O BREWER #2
-INLAND OCEAN INC				RECEIVED:	04/22/82	JA: TX
8228762	F-02-047468	4217500000		102-4		RALPH N GILLAN ET AL
-INTEGRAL ENERGY CORP				RECEIVED:	04/22/82	JA: TX
8228641	F-03-039309	4232100000		103		NANCY HEFFELFINGER #1 94203
-INTRAMERICAN ENERGY CORP				RECEIVED:	04/22/82	JA: TX
8228625	F-02-037008	4253147300		102-4		BEGO RANCH #1 (93784)
-J CLEO THOMPSON & JAMES CLEO THOMPS				RECEIVED:	04/22/82	JA: TX
8228726	F-7C-045949	4210533445		103	107-TF	UNIVERSITY 29-30E #2
8228847	F-7C-048928	4210533709		102-4		UNIVERSITY 31-21W #2
-J E M RESOURCES				RECEIVED:	04/22/82	JA: TX
8228989	F-08-049557	4249531444		103		CAMPBELL "A" 2
-J M HUBER CORPORATION				RECEIVED:	04/22/82	JA: TX
8228854	F-10-049163	4223331286		103		SOUTH HERRING #166
-JACK N BLAIR				RECEIVED:	04/22/82	JA: TX
8228858	F-08-049172	4213533831		102-4		VEST RANCH #5
-JAMES O RICE				RECEIVED:	04/22/82	JA: TX
8228692	F-7B-044003	4208300000		102-4		FEATHERSTON #4
-JIM B CURRY				RECEIVED:	04/22/82	JA: TX
8228931	F-7B-049383	4208331878		102-4		D F WINFREY #1 (87591)
8228930	F-7B-049382	4208332106		102-4		D F WINFREY #2 (89017)
8228929	F-7B-049381	4208332164		102-4		D F WINFREY #3 (91477)
-JOHN A NEWMAN				RECEIVED:	04/22/82	JA: TX
8228717	F-7B-045445	4208330080		102-4		SEALY RANCH 2-B
-JOHN C VOIGHT				RECEIVED:	04/22/82	JA: TX
8228721	F-03-045755	4248100000		102-4		J RUNNELS #3
-JOHN L COX				RECEIVED:	04/22/82	JA: TX
8228630	F-7C-037990	4238331912		103		ROCKER B "O" #2-X (#05289)
-J3 OIL CO INC				RECEIVED:	04/22/82	JA: TX
8228722	F-02-045756	4223931696		102-4	103	CARRIN M PATMAN #1
-KEITH WELLS				RECEIVED:	04/22/82	JA: TX
8228927	F-01-049378	4205900000		103		HAL PENDER #1 17933
8228928	F-7B-049379	4205933088		103		WENDELL FOREMAN #2 16649
-KERR-MCGEE CORPORATION				RECEIVED:	04/22/82	JA: TX
8228971	F-08-049486	4213533514		103		GIST "A" #24
-KIRKPATRICK OIL INC				RECEIVED:	04/22/82	JA: TX
8228695	F-02-044215	4246931807		102-4		BECK #1 NUMBER 2 53324 300
-LOUIS A NEWITT				RECEIVED:	04/22/82	JA: TX

FIELD NAME	PROD	PURCHASER
LIBERTY SOUTH	0.0	HOUSTON PIPE LINE
GIDDINGS (BUDA)	8.0	PGP GAS PRODUCTS
SPRABERRY (TREND AREA	0.0	
AGUA DULCE (7850)	0.0	HOUSTON PIPE LINE
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
PRYOR EAST (OLMOS)	511.0	
PRYOR EAST (SAN MIGUE	310.0	
HERTZON (CANYON)	189.5	NORTHERN NATURAL
GIDDINGS (AUSTIN CHAL	60.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	9.0	PHILLIPS PETROLEU
CARTER THOMAS (COOK M	0.0	UNITED GAS PIPELI
TIDEHAVEN (8450 GAS)	0.0	VALERO TRANSMISSI
ALKEK (BUFORD SAND)	220.0	HOUSTON PIPELINE
OZONA (CANYON)	150.0	PHILLIPS PETROLEU
UNIVERSITY 31 (STRAWN	180.0	PHILLIPS PETROLEU
KEYSTONE (COLBY)	22.0	
PANHANDLE	51.0	COLORADO INTERSTA
HOLLIJACK	100.0	PHILLIPS PETROLEU
PROLER (BRENEKE)	11.0	ODESSA NATURAL CO
DIRKS (CROSS CUT)	247.0	SIOUX PIPELINE CO
DIRKS (CROSS CUT)	255.0	SIOUX PIPELINE CO
DIRKS (CROSS CUT)	151.0	SIOUX PIPELINE CO
CONSER MURPHY	75.0	LONE STAR GAS CO
HOLLYWOOD SOUTH (FRIO	0.0	TENNESSEE GAS PIP
SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
LITTLE KENTUCKY N (65	180.0	TEXAS EASTERN TRA
ELMDALE (PALO PINTO)	365.0	FORT CHADBOURNE C
ELMDALE (PALO PINTO)	547.5	FORT CHADBOURNE C
FOSTER	2.0	ODESSA NATURAL CO
LEROY BECK (FRIO 3570	0.0	FLORIDA GAS TRANS

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228656	F-03-040173	4208900000		102-4		EDGAR J POPP 1-T	LYDIA 3600	90.0	LONE STAR GAS CO
-M J G INC				RECEIVED:	04/22/82	JA: TX			
8228764	F-02-047536	4217500000		103		POEHLER #1A	J FIFER A-120	6.0	UNITED GAS PIPELI
-MARATHON OIL COMPANY				RECEIVED:	04/22/82	JA: TX			
8228732	F-7C-046178	4210533664		103		UNIVERSITY "O" #8	AMIGO (SAN ANDRES)	33.0	BIG LAKE GAS CORP
-MCCORD EXPLORATION				RECEIVED:	04/22/82	JA: TX			
8228747	F-04-046676	4235531830		102-4		MCCORD - C N COOKE #1 - T	DOUGHTY	275.0	HOUSTON PIPELINE
8228746	F-04-046675	4235531830		102-4		MCCORD-C N COOKE #1 C	DOUGHTY	275.0	HOUSTON PIPELINE
-MCKENZIE OPERATING CO INC				RECEIVED:	04/22/82	JA: TX			
8228623	F-78-036889	4236300000		102-4		WIGGINTON #1	MINERAL WELLS S (CONG	2044.0	SOUTHWESTERN GAS
-MEWBOURNE OIL COMPANY				RECEIVED:	04/22/82	JA: TX			
8228810	F-7C-048593	4238331872		103		CHRISTY "C" #2 WELL MRC ID #08527	SPRABERRY (TREND AREA	10.0	UNION TEXAS PETRO
8228655	F-10-040112	4235731133		102-4		MEKEEL #1 ID #96353	TURNER SE (UPPER MORR	50.0	DIAMOND SHAMROCK
8228903	F-10-049325	4229500000		102-4		SCHULTZ "117" #1 MRC ID #84991	HARMON (MARMATON)	20.0	NORTHERN NATURAL
8228688	F-10-043714	4229531045		102-4		SCHULTZ "117" 2 ID#93586	HARMON (MARMATON)	30.0	NORTHERN NATURAL
8228815	F-7C-048700	4238300000		103		WELCH #2	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
8228818	F-7C-048699	4238300000		103		WELCH 1	SPRABERRY (TREND AREA	10.0	EL PASO NATURAL G
-MEYER MORITZ & CO INC				RECEIVED:	04/22/82	JA: TX			
8228629	F-7C-037647	4243500000		103	107-TF	BEHLING #2	SAWYER (CANYON)	60.0	INTRATEX GAS CO
-MILES PRODUCTION CO				RECEIVED:	04/22/82	JA: TX			
8228770	F-09-047625	4223700000		102-4		M P HOEFLE "B" #1	ANTELOPE SE (MARBLE F	137.0	SOUTHWESTERN GAS
-MITCHELL ENERGY CORPORATION				RECEIVED:	04/22/82	JA: TX			
8228647	F-09-039538	4236700000		108-ER		BENNIE PHILLIPS #1 71570	BOONSVILLE (BEND CONG	11.3	NATURAL GAS PIPEL
8228612	F-09-034518	4249700000		108-ER		E M BAUGH UNIT #1	BOONSVILLE (BEND CONG	9.0	SOUTHWESTERN GAS
8228947	F-09-049430	4249700000		108		J D HOOKER #1 ID #28682	BOONSVILLE (BEND CONG	2.6	NATURAL GAS PIPEL
8228605	F-09-034114	4249700000		108-ER		J O CASTLEBERRY #1 28593	BOONSVILLE BEND CONG	6.1	NAT GAS PIPELINE
8228860	F-09-049189	4223700000		108		RICHARDS 472 #2 #66202	JACKSBORO (S ATOKA CO	10.9	SOUTHWESTERN GAS
8228607	F-09-017318	4249700000		108-ER		RUFUS GARRETT #1 42362	RHOME (CADDO)	12.0	SOUTHWESTERN GAS
8228709	F-09-044858	4249700000		108		TARRANT COUNTY WATER BRD #25 17160	CAP YATES (CONSOLIDAT	2.9	NATURAL GAS PIPEL
8228673	F-09-042232	4249700000		108-ER		W L MACKEY #2 34121	BOONSVILLE BEND CONG	14.2	NATURAL GAS PIPEL
8228608	F-09-025291	4223700000		108-ER		Z H BORDEN #2	CROFTON WEST	0.0	CITIES SERVICE CO
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED:	04/22/82	JA: TX			
8228901	F-08-049320	4237133571		103		FRED SCHLOSSER ESTATE B #4	ROJO CABALLOS (DELAWA	24.5	EL PASO NATURAL G
8228644	F-03-039353	4214900000		102-2	103	MILDRED MAY #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8228645	F-08-039384	4230130261		107-DP		W D JOHNSON UNIT #1	SLASH RANCH (FUSSELMA	2.0	INTRATEX GAS CO
-MONSANTO COMPANY				RECEIVED:	04/22/82	JA: TX			
*8228773	F-08-047695	4247531728		103		JUAREZ #1	RODGERS	100.0	LONE STAR GAS CO
-MOODY ENERGY CO				RECEIVED:	04/22/82	JA: TX			
8228780	F-10-047901	4221131319		103		WRIGHT #4 ID NO 93632	CANADIAN SE (DOUGLAS)	0.0	NORTHERN NATURAL
-MORROW RESOURCES INC				RECEIVED:	04/22/82	JA: TX			
8228921	F-7C-049371	4245130852		102-2	103	BROWN "A" #1	K W B (STRAWN)	64.8	LONE STAR GAS CO
-MV STEWART/EAGLE PETROLEUM				RECEIVED:	04/22/82	JA: TX			
8228908	F-02-049337	4246931771		102-4		WARREN HEINOLD #1	WEBER E (1310)	0.0	DELHI GAS PIPELIN
-NATURAL GAS ANADARKO INC				RECEIVED:	04/22/82	JA: TX			
8228775	F-10-047715	4235731183		102-4		DIXIE 1-390	TURNER E (MORROW UPPE	450.0	TRANSWESTERN PIPE
-NELSON & TUCKER OPERATING CO				RECEIVED:	04/22/82	JA: TX			
8228704	F-03-044704	4248132113		103		SORRELL #12	SPANISH CAMP 4800' FR	120.0	UNITED TEXAS TRAN
-NICO ENERGY CORP				RECEIVED:	04/22/82	JA: TX			
8228642	F-03-039330	4205131386		102-2	103	WHITENER "D" UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8228640	F-03-039276	4205131576		102-2	103	WHITENER "L" UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
-NORTHERN PUMP COMPANY				RECEIVED:	04/22/82	JA: TX			
8228941	F-04-049404	4235500000		108		W C OCKER #1 77174	RIVERSIDE SOUTH (FRIO	11.0	TENNESSEE GAS PIP
-ORIGINALA PETROLEUM CORP				RECEIVED:	04/22/82	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228643	F-78-039339	4236332311		102-4		PADGETT RANCH #4
8228831	F-78-048782	4236332688		103		PADGETT RANCH #5
8228832	F-78-048783	4236332689		103		PADGETT RANCH #6
-P C BURNS						
8228969	F-09-049476	4207732470		103		VIOLA MYERS #11 17583
-PANHANDLE PRODUCING COMPANY						
8228987	F-10-049551	4223300000		108		MERCHANT "B" 5-A
8228902	F-10-049321	4206500000		103		VIDA LEWIS "B" - 10
-PATRICK D FEAGIN OIL & GAS						
8228678	F-02-042574	4246931701		102-4		SCOTT GEORGE E #1
-PAUL STEPHEN FUQUA						
8228720	F-78-045642	4236732098		102-4		FUQUA - BILLY R MURRELL #1
-PENINSULA RESOURCES CORPORATION						
8228661	F-04-040765	4227331550		103		KAUFER #1 UPPER
-PHILLIPS PETROLEUM COMPANY						
8228988	F-08-049553	4213502716		108		(21193) GOLDSMITH ANDECTOR #U-14
8228731	F-06-046177	4236531306		102-2	103	BEASLEY 3 #4
8228615	F-10-035049	4217900000		108		DOSS #3
8228766	F-08-047597	4222732377		103		JOHNIE-B #3 (09811)
-PREMIUM OIL & GAS INC						
8228664	F-7C-041126	4239900000		103		W O MIDDLETON #2
-PRINGLE PETROLEUM INC						
8228685	F-03-043501	4229100000		102-4		S RIVES #1
-QUINTANA PETROLEUM CORP						
8228634	F-32-038578	4239131356		103		CLEMENT HEARD 23-L
8228635	F-32-038579	4239131248		103		THOMAS O'CONNOR "C" 79-U
-RALPH L WAY INC						
8228857	F-7C-049169	4238331891		103		UNIVERSITY "8" #16
-RANGER PETROLEUM						
8228883	F-10-049279	4206531059		103		BURNETT-ROSEBUD #1020
8228884	F-10-049280	4206531061		103		BURNETT-ROSEBUD #2020
-RANKIN OIL CO						
8228616	F-08-035232	4200332207		103		STUCKERT #2
-RED TOP OIL INC						
8228761	F-78-047433	4236331826		103		ROSS #1-AR
-RENDOVA OIL CO						
8228769	F-7C-047622	4241300000		103		VIRGIL J POWELL "B" #3
-REO INDUSTRIES INC						
8228977	F-10-049518	4223300000		103		WHITTENBURG A 8-19
8228934	F-10-049386	4223300000		103		WHITTENBURG 1-1
8228859	F-10-049173	4223300000		103		WHITTENBURG 1-10
8228978	F-10-049519	4223300000		103		WHITTENBURG 1-20
8228933	F-10-049385	4223300000		103		WHITTENBURG 1-3
8228932	F-10-049384	4223300000		103		WHITTENBURG 1-5
8228906	F-10-049334	4223300000		103		WHITTENBURG 2-3
8228907	F-10-049335	4223300000		103		WHITTENBURG 2-5
8228905	F-10-049333	4223300000		103		WHITTENBURG 33-10
8228981	F-10-049522	4223300000		103		WHITTENBURG 33-12
8228979	F-10-049520	4223300000		103		WHITTENBURG 5-1
8228980	F-10-049521	4223300000		103		WHITTENBURG 5-11
8228904	F-10-049332	4223300000		103		WHITTENBURG 5-13
-RICHOME OIL & GAS CO						
8228748	F-10-046722	4219500000		108		THORESON "1-A" 92585

FIELD NAME	PROD	PURCHASER
TJB (CONGL 4200)	0.0	SOUTHWESTERN GAS
J V T STRAWN (2400')	140.0	SOUTH WESTERN GAS
J V T STRAWN (2400')	140.0	SOUTHWESTERN GAS
CLAY COUNTY REGULAR	11.0	SANFORD P FAGADAU
WEST PANHANDLE	18.0	COLORADO INTERSTA
PANHANDLE CARSON COUN	31.0	GETTY OIL CO
SE SALEM (2400' SAND)	0.0	TEXAS EASTERN TRA
SHARPE (ATOKA)	140.0	EMPIRE PIPELINE C
S MAY (A-MIDDLE 4)	65.0	TEXAS EASTERN TRA
GOLDSMITH (CLEARFORK)	0.0	EL PASO NATURAL G
CARTHAGE COTTON VALLE	360.0	UNITED GAS PIPELI
PANHANDLE GRAY	0.0	
BIG SPRING (CANYON LI	6.0	GETTY OIL CO
BALLINGER WEST (JENNI	0.0	LONE STAR GAS CO
HARDIN FIELD AREA (NE	100.0	MOYNOR CORP
TOM O'CONNOR (5900' S	78.0	UNITED TEXAS TRAN
TOM O'CONNOR (5900' S	47.0	UNITED TEXAS TRAN
FARMER (SAN ANDRES)	17.6	NORTHERN NATURAL
PANHANDLE - CARSON CO	90.0	PANHANDLE EASTERN
PANHANDLE - CARSON CO	108.0	PANHANDLE EASTERN
FUHRMAN MASCHO	13.0	PHILLIPS PETROLEU
PALO PINTO COUNTY REG	14.0	LONE STAR GAS CO
TILLERY (STRAWN LIME)	300.0	ARCO OIL & GAS CO
PANHANDLE HUTCHINSON	270.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
PANHANDLE HUTCHINSON	72.0	TRANS-PAN PIPELIN
TEXAS-HUGOTON	4.2	PANHANDLE EASTERN

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JD NO	DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-HOMAC OIL CO INC									
8228672	F-7B-042105	4244732872		RECEIVED:	04/22/82	JA: TX			
-HYCOL EXPLORATION INC				102-4		MCKNIGHT-H M #1	WILDCAT	15.0	GREAT WESTERN GAS
8228718	F-04-045359	4247932737		RECEIVED:	04/22/82	JA: TX			
-S C OPERATING CO				102-2	108	RAYMOND L HARTMAN #1	TOM WALSH	15.0	TEJAS GAS CORP
8228829	F-7B-048763	4213300000		RECEIVED:	04/22/82	JA: TX			
-S K ROGERS OIL CO				108		CHAMBERS #1	FOSTER (MARBLE FALLS)	2.5	SIOUX NATURAL GAS
8228918	F-8A-049365	4221933284		RECEIVED:	04/22/82	JA: TX			
8228917	F-8A-049363	4221933289		103		LEVELLAND TOWNSITE "C" #1	LEVELLAND	15.0	AMOCO PRODUCTION
8228913	F-8A-049355	4221933262		103		LEVELLAND TOWNSITE "D" #1	LEVELLAND	0.0	AMOCO PRODUCTION
-SABINE PRODUCTION COMPANY				103		REEVES #3	LEVELLAND	0.0	AMOCO PRODUCTION
8228778	F-04-047869	4235531761		RECEIVED:	04/22/82	JA: TX			
8228649	F-04-039746	4235531761		102-4		DOUGHTY #1-L			
-SAN PATRICIO CORP				102-4	103	DOUGHTY #1-U	DOUGHTY (FRIO 9811) F	182.5	HOUSTON PIPE LINE
8228850	F-04-048994	4240931599		RECEIVED:	04/22/82	JA: TX	DOUGHTY (FRIO 9376) F	182.5	HOUSTON PIPE LINE
-SANCHEZ-OBRIEN OIL & GAS CORP				103		WHITE POINT DEVELOPMENT CO "A" #1			
8228687	F-02-043638	4229732657		RECEIVED:	04/22/82	JA: TX	WHITE POINT (2450')	0.0	UNITED GAS PIPELI
-SANTA FE-WINDSOR PRODUCING CO				102-4		PAWLIK GAS UNIT #1 #2			
8228798	F-01-048281	4217730705		RECEIVED:	04/22/82	JA: TX	GEORGE WEST W (11,400	500.0	UNITED TEXAS TRAN
8228800	F-01-048283	4217730765		103		BYRON #1			
8228801	F-01-048284	4217730733		103		JANIE #2	GONZALES (AUSTIN CHAL	36.5	TIPPERARY CORP
8228745	F-03-046612	4228731087		103		JANIE UNIT #1	GONZALES (AUSTIN CHAL	36.5	TIPPERARY CORP
8228806	F-03-048541	4228731089		102-2	103	JULIA UNIT #1	GONZALES (AUSTIN CHAL	36.5	TIPPERARY CORP
8228799	F-01-048282	4217730558		103		NEWTON #1	GIDDINGS (AUSTIN CHAL	219.0	PERRY PIPELINE CO
-SAXON OIL COMPANY				103		SCHRADER UNIT #1	GIDDINGS (AUSTIN CHAL	36.5	PERRY PIPELINE CO
8228782	F-8A-047923	4211500000		RECEIVED:	04/22/82	JA: TX	GONZALES (AUSTIN CHAL	36.5	TIPPERARY CORP
8228774	F-7C-047708	4238309000		103		BECKMEYER #2			
8228651	F-7C-039819	4238331929		103		BRANCH "A" #1	ACKERLY (DEAN SAND)	0.0	ADOBE OIL & GAS C
-SCANDRILL CO				103		UNIVERSITY "14-2" #3	SPRABERRY (TREND AREA	0.0	NORTHERN NATURAL
8228619	F-09-036069	4223733456		RECEIVED:	04/22/82	JA: TX	SPRABERRY (TREND AREA	51.1	PHILLIPS PETROLEU
8228622	F-09-036868	4250334442		103		HENDERSON #2			
-SEABO OIL INC				103		PEARL T KURK #27	WILDCAT	247.5	SUN GAS GATHERING
8228912	F-7B-049349	4215131297		RECEIVED:	04/22/82	JA: TX	YOUNG COUNTY REGULAR	262.4	SUN GAS GATHERING
-SHELL OIL CO				103		MOORE #1			
8228728	F-04-046086	4221531040		RECEIVED:	04/22/82	JA: TX	CLAYTONVILLE SE (5000	75.0	TIPPERARY CORP
8228889	F-08-049296	4213500000		103		BOSTON-TEXAS LAND TRUST #18			
8228890	F-08-049297	4213500000		108		E HARPER UNIT #13	JAVELINA (VICKSBURG L	200.0	NATURAL GAS PIPEL
8228948	F-04-049435	4221538870		108		E HARPER UNIT #419	HARPER	1.3	PHILLIPS PETROLEU
8228895	F-08-049302	4200300000		102-4		JONES RANCH "A" #3	HARPER	0.6	PHILLIPS PETROLEU
8228898	F-08-049305	4210300000		108		LOGSDON C W E #4	MCALLEN RANCH N (VICK	750.0	VALERO TRANSMISSI
8228899	F-08-049306	4210300000		108		MCCLINTIC UNIT #12	UNION	14.6	PHILLIPS PETROLEU
8228892	F-7C-049299	4210500000		108		MCCLINTIC UNIT #50	MC ELROY	0.5	PHILLIPS PETROLEU
8228893	F-8A-049300	4216500000		108		MIDWAY LANE 1100 UNIT #124	MC ELROY	0.5	PHILLIPS PETROLEU
8228734	F-02-046210	4228531561		108		NEWBERN #11	MIDWAY LANE (PERMIAN)	0.9	JAMES C BURNETT
8228897	F-08-049304	4213500000		103		PROVIDENT CITY GAS UNIT #13	ROBERTSON N (SAN ANDR	1.1	PHILLIPS PETROLEU
8228891	F-08-049298	4213500000		108		TXL -D- #1	PROVIDENT CITY (WILCO	400.0	TEXAS EASTERN TRA
8228894	F-08-049301	4200300000		108		TXL NORTH UNIT #262-L	TXL (DEVONIAN)	4.2	SHELL OIL ET AL
8228759	F-3R-047321	4203332563		103		UNIVERSITY -A- #2	TXL (TUBB)	15.6	SHELL OIL ET AL
8228896	F-10-049303	4229500000		103		UNIVERSITY -J- #4	ANDREWS SOUTH (DEVONI	13.1	EL PASO NATURAL G
-SIGMA EXPLORATION CORP				108		WHEAT #1-732	ANDREWS SOUTH (WOLFCA	12.8	EL PASO NATURAL G
8228837	F-10-048898	4223300000		RECEIVED:	04/22/82	JA: TX	PERRY (MARMATON)	0.4	TRANSWESTERN PIPE
-SNOW OIL CO				108		G A WHITTENBURG #1-RRC 57534			
8228853	F-7B-049155	4213333449		RECEIVED:	04/22/82	JA: TX	WEST PANHANDLE	18.0	PHILLIPS PETROLEU
				102-4		ALEXANDER #1 (17907)	CISCO (CONGL 3600)	183.0	LONE STAR GAS CO

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JD NO	DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SOUTHERN PETROLEUM EXPLORATION									
8228788	F-01-048279	4217730704		RECEIVED:	04/22/82	JA: TX			
8228789	F-01-048280	4217730704		103		BYRON #1			
-SOUTHLAND ROYALTY CO				103		BYRON #2			
8228844	F-04-048995	4240931600		RECEIVED:	04/22/82	JA: TX			
-SOUTHWEST ENERGY CORP				103		WHITE POINT DEVELOPMENT CO "A" #2			
8228845	F-04-048996	4240931601		RECEIVED:	04/22/82	JA: TX			
-SOUTHWESTERN ENERGY CO				103		WHITE POINT DEVELOPMENT CO "A" #3			
8228846	F-04-048997	4240931602		RECEIVED:	04/22/82	JA: TX			
-SPARTAN OIL CO				103		WHITE POINT DEVELOPMENT CO "A" #4			
8228847	F-04-048998	4240931603		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #5			
8228848	F-04-048999	4240931604		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #6			
8228849	F-04-049000	4240931605		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #7			
8228850	F-04-049001	4240931606		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #8			
8228851	F-04-049002	4240931607		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #9			
8228852	F-04-049003	4240931608		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #10			
8228853	F-04-049004	4240931609		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #11			
8228854	F-04-049005	4240931610		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #12			
8228855	F-04-049006	4240931611		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #13			
8228856	F-04-049007	4240931612		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #14			
8228857	F-04-049008	4240931613		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #15			
8228858	F-04-049009	4240931614		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #16			
8228859	F-04-049010	4240931615		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #17			
8228860	F-04-049011	4240931616		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #18			
8228861	F-04-049012	4240931617		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #19			
8228862	F-04-049013	4240931618		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #20			
8228863	F-04-049014	4240931619		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #21			
8228864	F-04-049015	4240931620		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #22			
8228865	F-04-049016	4240931621		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #23			
8228866	F-04-049017	4240931622		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #24			
8228867	F-04-049018	4240931623		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #25			
8228868	F-04-049019	4240931624		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #26			
8228869	F-04-049020	4240931625		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #27			
8228870	F-04-049021	4240931626		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #28			
8228871	F-04-049022	4240931627		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #29			
8228872	F-04-049023	4240931628		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #30			
8228873	F-04-049024	4240931629		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #31			
8228874	F-04-049025	4240931630		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #32			
8228875	F-04-049026	4240931631		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #33			
8228876	F-04-049027	4240931632		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #34			
8228877	F-04-049028	4240931633		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #35			
8228878	F-04-049029	4240931634		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #36			
8228879	F-04-049030	4240931635		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #37			
8228880	F-04-049031	4240931636		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #38			
8228881	F-04-049032	4240931637		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #39			
8228882	F-04-049033	4240931638		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #40			
8228883	F-04-049034	4240931639		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #41			
8228884	F-04-049035	4240931640		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #42			
8228885	F-04-049036	4240931641		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #43			
8228886	F-04-049037	4240931642		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #44			
8228887	F-04-049038	4240931643		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #45			
8228888	F-04-049039	4240931644		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #46			
8228889	F-04-049040	4240931645		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #47			
8228890	F-04-049041	4240931646		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #48			
8228891	F-04-049042	4240931647		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #49			
8228892	F-04-049043	4240931648		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #50			
8228893	F-04-049044	4240931649		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #51			
8228894	F-04-049045	4240931650		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #52			
8228895	F-04-049046	4240931651		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #53			
8228896	F-04-049047	4240931652		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #54			
8228897	F-04-049048	4240931653		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #55			
8228898	F-04-049049	4240931654		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #56			
8228899	F-04-049050	4240931655		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #57			
8228900	F-04-049051	4240931656		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #58			
8228901	F-04-049052	4240931657		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #59			
8228902	F-04-049053	4240931658		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #60			
8228903	F-04-049054	4240931659		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #61			
8228904	F-04-049055	4240931660		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #62			
8228905	F-04-049056	4240931661		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #63			
8228906	F-04-049057	4240931662		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #64			
8228907	F-04-049058	4240931663		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #65			
8228908	F-04-049059	4240931664		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #66			
8228909	F-04-049060	4240931665		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #67			
8228910	F-04-049061	4240931666		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #68			
8228911	F-04-049062	4240931667		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #69			
8228912	F-04-049063	4240931668		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #70			
8228913	F-04-049064	4240931669		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #71			
8228914	F-04-049065	4240931670		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #72			
8228915	F-04-049066	4240931671		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #73			
8228916	F-04-049067	4240931672		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #74			
8228917	F-04-049068	4240931673		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #75			
8228918	F-04-049069	4240931674		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #76			
8228919	F-04-049070	4240931675		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #77			
8228920	F-04-049071	4240931676		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #78			
8228921	F-04-049072	4240931677		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #79			
8228922	F-04-049073	4240931678		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #80			
8228923	F-04-049074	4240931679		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #81			
8228924	F-04-049075	4240931680		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #82			
8228925	F-04-049076	4240931681		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #83			
8228926	F-04-049077	4240931682		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #84			
8228927	F-04-049078	4240931683		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #85			
8228928	F-04-049079	4240931684		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #86			
8228929	F-04-049080	4240931685		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #87			
8228930	F-04-049081	4240931686		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #88			
8228931	F-04-049082	4240931687		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #89			
8228932	F-04-049083	4240931688		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #90			
8228933	F-04-049084	4240931689		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #91			
8228934	F-04-049085	4240931690		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #92			
8228935	F-04-049086	4240931691		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #93			
8228936	F-04-049087	4240931692		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #94			
8228937	F-04-049088	4240931693		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #95			
8228938	F-04-049089	4240931694		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #96			
8228939	F-04-049090	4240931695		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #97			
8228940	F-04-049091	4240931696		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #98			
8228941	F-04-049092	4240931697		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #99			
8228942	F-04-049093	4240931698		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #100			
8228943	F-04-049094	4240931699		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #101			
8228944	F-04-049095	4240931700		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #102			
8228945	F-04-049096	4240931701		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #103			
8228946	F-04-049097	4240931702		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #104			
8228947	F-04-049098	4240931703		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #105			
8228948	F-04-049099	4240931704		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #106			
8228949	F-04-049100	4240931705		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #107			
8228950	F-04-049101	4240931706		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #108			
8228951	F-04-049102	4240931707		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #109			
8228952	F-04-049103	4240931708		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #110			
8228953	F-04-049104	4240931709		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #111			
8228954	F-04-049105	4240931710		RECEIVED:	04/22/82	JA: TX			
-STEPHENS & JOHNSON OPERATING				103		WHITE POINT DEVELOPMENT CO "A" #112			
8228955	F-04-049106	4240931711		RECEIVED:	04/22/82	JA: TX	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SONIO PETROLEUM CO				RECEIVED:	04/22/82	JA: TX			
*8226986	F-08-049537	4232931035		103		SPRABERRY DRIVER UNIT #877	SPRABERRY (TREND AREA	21.0	EL PASO NATURAL G
-SOUTHERN CRUDE OIL RESOURCES INC				RECEIVED:	04/22/82	JA: TX			
8228744	F-7B-046572	4236332792		102-4		KALINA #1	TOMERLIN (CONGL)	0.0	SOUTHWESTERN GAS
-STRATA ENERGY INC				RECEIVED:	04/22/82	JA: TX			
8228849	F-03-048956	4205131934		102-2		S M HUTCHISON #2	GIDDINGS (AUSTIN CHAL	25.0	CLAJON GAS CO
-SUGARBERRY OIL & GAS CORP				RECEIVED:	04/22/82	JA: TX			
8228768	F-7C-047610	4241331134		102-4		CASE #3	VELREX (WOLFCAMP)	2335.0	CRA INC
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	04/22/82	JA: TX			
8228873	F-7B-049264	4213300000		108		A L DUFFER #6	RANGER WEST	1.0	SUN GAS TRANSMISS
8228867	F-7C-049253	4209500000		108		ANNIE MARIE ELLIS #1	S SPECK (STRAWN C-1)	1.0	LONE STAR GAS CO
8228874	F-7B-049266	4213300000		108		BRASHEARS #1	RANGER	9.0	LONE STAR GAS CO
8228863	F-08-049245	4232900000		108		C W LAY #1	AZALEA (DEVONIAN)	18.0	PHILLIPS PETROLEU
8228868	F-03-049257	4237300000		108		DR H J PRATT #14	LIVINGSTON	14.0	CHANNEL INDUSTRIE
8228870	F-7B-069260	4213300000		108		E H LAYNE #2	RANGER-EASTLAND	3.0	SUN GAS TRANSMISS
8228872	F-7B-049262	4242900000		108		F J BURKE #2	NECESSITY	5.0	SOUTHWESTERN GAS
8228866	F-7C-049250	4209500000		108		FLORENCE HALL #1	SOUTH SPECK (STRAWN C	11.0	LONE STAR GAS CO
8228871	F-7C-049261	4209500000		108		FLORENCE HALL #3	SOUTH SPECK (STRAWN C	4.0	LONE STAR GAS CO
8228869	F-7C-049258	4209500000		108		FLORENCE HALL #4	SOUTH SPECK ESTRAWN C	4.0	LONE STAR GAS CO
8228865	F-04-042947	4242700000		108		FROST NATIONAL BANK "C" #2U	CORTEZ (CORTEZ)	3.0	
8228878	F-04-049272	4242700000		108		I V MONTALVO "B" #3	SUN N (VICKSBURG 6530	7.0	
8228877	F-7C-049273	4208131058		103		J BRANNAN #36	JAMESON SE	101.0	LONE STAR GAS CO
8228812	F-03-048601	4237132800		103		JOSEPHINE CONNERLY #2	WILLOW SLOUGH	1.8	UNITED TEXAS TRAN
8228862	F-7B-049244	4236300000		108		JULIA R STUART #4	STRAWN NW	18.0	SOUTHWESTERN GAS
8228876	F-7B-049268	4236300000		108		JULIA R STUART #5	PALO PINTO COUNTY REG	8.0	SOUTHWESTERN GAS
8228864	F-08-049246	4232900000		108		O H MCALISTER "E" #1	AZALEA (DEVONIAN)	3.0	PHILLIPS PETROLEU
8228882	F-7B-049277	4236700000		108		ROCK CREEK UNIT #4	LAKE MINERAL WELLS	18.0	SOUTHWESTERN GAS
8228880	F-7B-049275	4236300000		108		S S LANIER #1	RECTOR (MARBLE FALLS)	15.0	SOUTHWESTERN GAS
8228811	F-04-048596	4242731508		103		SULEMA GARZA #1	LOCKHART (UPPER GUERR	90.0	
8228879	F-7B-049274	4213300000		108		T J NASH #2	EASTLAND COUNTY REGUL	5.0	SUN GAS TRANSMISS
8228881	F-08-049276	4233532109		103		V T MCCABE #42	JAMESON N	22.0	LONE STAR GAS CO
8228875	F-7B-049267	4236300000		108		W H DYCHES #4	STRAWN	7.0	SOUTHWESTERN GAS
-SUPERIOR OIL CO				RECEIVED:	04/22/82	JA: TX			
8228707	F-8A-044740	4203330716		103		C D JONES 580 #14	FLUVANNA	0.0	SUN OIL CO
8228674	F-04-042259	4247932872		102-2	103	DANIEL FLORES #4	SCHWARZ	0.0	
8228708	F-03-044807	4205131919		102-2	103	J D EDWARDS #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8228614	F-03-034691	4201530469		107-TF		OTTO BASTIAN G U #1	NEW ULM (EDWARDS)	0.0	
8228690	F-03-043757	4271500018		102-4	103	STATE OF TEXAS BLK 14-L UN #10-L	HIGH ISLAND BLK 14-L	912.5	NATL GAS PIPELINE
-T A D ENERGY				RECEIVED:	04/22/82	JA: TX			
8228719	F-09-045503	4223733854		103		L M CRANFORD	JACK COUNTY REGULAR	0.0	LONE STAR GAS CO
-T O & G EXPLORATION COMPANY				RECEIVED:	04/22/82	JA: TX			
8228611	F-06-032716	4236531021		103		JOHNSON GAS UNIT #3	BETHANY-TRAVIS PEAK	0.0	ARKANSAS-LOUISIAN
8228621	F-06-036849	4236500000		108		LUCY C HOLT GAS UNIT #1-T	BETHANY-TRAVIS PEAK	11.0	ARKANSAS LOUISIAN
-TENROC CORP				RECEIVED:	04/22/82	JA: TX			
8228638	F-7B-039058	4208331892		103		ELSIE C LAVELLE #1 (15009)	LAVELLE (GRAY)	40.0	LONE STAR GAS CO
-TEXACO INC				RECEIVED:	04/22/82	JA: TX			
8228887	F-10-049294	4223300000		108		B FRED HOLT #1	HUTCHINSON NORTH (CLE	8.9	NORTHERN NATURAL
8228851	F-7B-048995	4235331058		103		C W LAMKIN MCT-2 #2	WHITE (GARDNER)	2.6	CORONADO TRANSMIS
8228886	F-10-049293	4219500000		108		E E VANDERBURG #1	HANSFORD (MISSOURI LO	19.0	PANHANDLE EASTERN
8228729	F-08-046156	4232930998		102-4		FIRST UNITED METHODIST CHURCH "C" 1	BRADFORD RANCH (ATOKA	460.7	EL PASO NATURAL G
8228888	F-10-049295	4206500000		108		J C MCCONNELL "A" #9	PANHANDLE WEST	12.4	GETTY OIL CO
8228885	F-10-049291	4242100000		108		M DORTCH #1	STRATFORD (CISCO LIME	12.7	TRANSWESTERN PIPE
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	04/22/82	JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228978	F-06-049478	4240131312		103		TATUM CRANE UNIT #22
-TEXAS OIL & GAS CORP				RECEIVED:	04/22/82	JA: TX
8228743	F-05-046540	4228930470		102-4		GUEST "A" #1
8228671	F-06-041971	4240131233		103	107-TF	HOLCOMB "C" #1
8228665	F-02-041129	4202531526		103		ROSE J-1
-THE DOW CHEMICAL COMPANY				RECEIVED:	04/22/82	JA: TX
8228758	F-03-047278	4224531589		103		HÉBERT-BROUSSARD #14
-TIPPERARY OIL AND GAS CORP				RECEIVED:	04/22/82	JA: TX
8228691	F-01-043874	4216532649		103		HARRIS "B" #1
8228670	F-03-041778	4214931116		103		HYDROCARBON GATHERING #1
8228698	F-03-044288	4214931244		103		KRAKOSKY #1
8228676	F-03-042404	4214931157		103		MOHLER #1
-TRANSCONTINENTAL OIL CORPORATION				RECEIVED:	04/22/82	JA: TX
8228693	F-06-044092	4236531286		103	107-TF	CARTER ESTATE #2
8228658	F-06-043878	4236531266		103	107-TF	WIENER ESTATE #2
-TSPI INC				RECEIVED:	04/22/82	JA: TX
8228725	F-10-045827	4206500090		103		JON ANN E
-TXO PRODUCTION CORP				RECEIVED:	04/22/82	JA: TX
8228768	F-10-047367	4205731219		102-4		DANIELS "C" #2
8228736	F-08-046345	4216130689		103	107-TF	HUFFMAN "B" #1
-U S HYDROCARBONS ENG & EXPLOR INC				RECEIVED:	04/22/82	JA: TX
8228803	F-04-048444	4235931807		102-4		J M GAGLIANO #2
-U S OPERATING INC				RECEIVED:	04/22/82	JA: TX
8228748	F-03-046531	4228730854		102-2		MARY HELEN #1 RRC ID N/A
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/22/82	JA: TX
8228689	F-08-041712	4216130646		103	107-TF	M E PRUIETT GAS UNIT #2
-UNION TEXAS PETROLEUM				RECEIVED:	04/22/82	JA: TX
8228767	F-08-047608	4230130333		102-4		RED BLUFF "B" #2
-UNITED PETROSEARCH INC				RECEIVED:	04/22/82	JA: TX
8228681	F-10-042859	4240330820		103		CARPENTER 96-01 "A"
-VORTT EXPLORATION CO INC				RECEIVED:	04/22/82	JA: TX
8228620	F-78-036848	4236332604		102-4		M M BRANSON UNIT I #1 (93495)
-W A MONCRIEF JR				RECEIVED:	04/22/82	JA: TX
8228972	F-78-049491	4236730270		108		J M RANCH #1
8228973	F-78-049492	4236731170		108		MONCRIEF RANCH #5
-W EARL ROWE				RECEIVED:	04/22/82	JA: TX
8228613	F-02-034686	4231100000		107-PE		BAKER #1
-W L BRUCE OPERATOR				RECEIVED:	04/22/82	JA: TX
8228824	F-16-040719	4206531030		103		MCCONNELL RRC#04954
-W M LAUGHLIN				RECEIVED:	04/22/82	JA: TX
8228915	F-04-049308	4213100000		108		V S DE GONZALEZ #1
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	04/22/82	JA: TX
8228826	F-08-046749	4210332726		103		M L BARNSLEY "C" #11
8228827	F-08-046747	4210332727		103		M L BARNSLEY "C" #12
8228943	F-08-049419	4210332783		103		P J LEA #LO-113
8228828	F-08-046746	4210332744		103		P J LEA #LO-116
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED:	04/22/82	JA: TX
8228776	F-10-047731	4248330050		102-4		CIRCLE DOT RANCH INC #2
8228958	F-7A-049448	4203330786		102-4		SHAFER #2
-WILLIAM PERLMAN				RECEIVED:	04/22/82	JA: TX
8228609	F-7C-029894	4243532413		102-2	107-TF	IDA CAUTHORN 139-4
-WY-VEL CORP				RECEIVED:	04/22/82	JA: TX
8228858	F-10-049090	4206531054		103		BURNETT (84270) #9

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FIELD NAME	PROD	PURCHASER
TATUM (PETTIT LOWER)	54.0	UNITED TEXAS TRAN
BEAR GRASS (TRAVIS PE	0.0	
OAK HILL NW (COTTON V	0.0	
CAESAR SOUTH (5650')	0.0	UNITED GAS PIPELI
GUM ISLAND N (HACKBER	1498.0	UNITED TEXAS TRAN
PEARSALL (AUSTIN CHAL	0.0	TIPPERARY CORP
GIDDINGS (AUSTIN CHAL	100.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
CARTHAGE (COTTON VALL	219.0	UNITED GAS PIPELI
CARTHAGE (COTTON VALL	275.0	UNITED GAS PIPE L
PANHANDLE CARSON	50.0	PANHANDLE EASTERN
FARRAR N (BOSSIER SAN	180.0 0.0	DELHI GAS PIPELIN
BALZAR (1600)	146.0	GASTRANS INC
GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
WEST TEAGUE	369.0	LONE STAR GAS CO
RED BLUFF (WOLFCAMP)	1095.0	TEXAS GAS TRANSMI
EAST PANHANDLE GAS	6.3	PHILLIPS PETROLEU
SANTO E (3800' CONGLO	0.0	SOUTHWESTERN GAS
BUCK RANCH	15.0	SOUTHWESTERN GAS
WEATHERFORD (STRAWN)	14.7	SOUTHWESTERN GAS
BAKER RANCH	36.0	VALLEY PIPE LINES
PANHANDLE CARSON	144.0	GETTY OIL CO
INDEPENDENCE (3150 GA	18.9	VALLEY GAS TRANSM
LEA (SAN ANDRES)	2.5	EL PASO NATURAL G
LEA (SAN ANDRES)	5.8	EL PASO NATURAL G
LEA (SAN ANDRES)	12.1	EL PASO NATURAL G
LEA (SAN ANDRES)	3.8	EL PASO NATURAL G
GAGEBY CREEK W (HUNTO	1100.0	
GRAVEL PIT (STRAWN)	0.0	SUN GAS CO
SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
PANHANDLE CARSON COUN	74.0	GETTY OIL CO

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8228970	F-06-049478	4240131312		103		TATUM CRANE UNIT #22
-TEXAS OIL & GAS CORP				RECEIVED:	04/22/82	JA: TX
8228743	F-05-046540	4228930470		102-4		GUEST "A" #1
8228671	F-06-041971	4240131233		103	107-TF	HOLCOMB "C" #1
8228665	F-02-041129	4202531526		103		ROSE J-1
-THE DOW CHEMICAL COMPANY				RECEIVED:	04/22/82	JA: TX
8228758	F-03-047278	4224531589		103		HÉBERT-BROUSSARD #14
-TIPPERARY OIL AND GAS CORP				RECEIVED:	04/22/82	JA: TX
8228691	F-01-043874	4216532649		103		HARRIS "B" #1
8228670	F-03-041778	4214931116		103		HYDROCARBON GATHERING #1
8228698	F-03-044288	4214931244		103		KRAKOSKY #1
8228676	F-03-042404	4214931157		103		MOHLER #1
-TRANSCONTINENTAL OIL CORPORATION				RECEIVED:	04/22/82	JA: TX
8228693	F-06-044092	4236531286		103	107-TF	CARTER ESTATE #2
8228658	F-06-043878	4236531266		103	107-TF	WIENER ESTATE #2
-TSPI INC				RECEIVED:	04/22/82	JA: TX
8228725	F-10-045827	4206500090		103		JON ANN E
-TXO PRODUCTION CORP				RECEIVED:	04/22/82	JA: TX
8228768	F-10-047367	4205731219		102-4		DANIELS "C" #2
8228736	F-08-046345	4216130689		103	107-TF	HUFFMAN "B" #1
-U S HYDROCARBONS ENG & EXPLOR INC				RECEIVED:	04/22/82	JA: TX
8228803	F-04-048444	4235931807		102-4		J M GAGLIANO #2
-U S OPERATING INC				RECEIVED:	04/22/82	JA: TX
8228748	F-03-046531	4228730854		102-2		MARY HELEN #1 RRC ID N/A
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/22/82	JA: TX
8228689	F-08-041712	4216130646		103	107-TF	M E PRUIETT GAS UNIT #2
-UNION TEXAS PETROLEUM				RECEIVED:	04/22/82	JA: TX
8228767	F-08-047608	4230130333		102-4		RED BLUFF "B" #2
-UNITED PETROSEARCH INC				RECEIVED:	04/22/82	JA: TX
8228681	F-10-042859	4240330820		103		CARPENTER 96-01 "A"
-VORTT EXPLORATION CO INC				RECEIVED:	04/22/82	JA: TX
8228620	F-78-036848	4236332604		102-4		M M BRANSON UNIT I #1 (93495)
-W A MONCRIEF JR				RECEIVED:	04/22/82	JA: TX
8228972	F-78-049491	4236730270		108		J M RANCH #1
8228973	F-78-049492	4236731170		108		MONCRIEF RANCH #5
-W EARL ROWE				RECEIVED:	04/22/82	JA: TX
8228613	F-02-034686	4231100000		107-PE		BAKER #1
-W L BRUCE OPERATOR				RECEIVED:	04/22/82	JA: TX
8228824	F-16-040719	4206531030		103		MCCONNELL RRC#04954
-W M LAUGHLIN				RECEIVED:	04/22/82	JA: TX
8228915	F-04-049308	4213100000		108		V S DE GONZALEZ #1
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	04/22/82	JA: TX
8228826	F-08-046749	4210332726		103		M L BARNSLEY "C" #11
8228827	F-08-046747	4210332727		103		M L BARNSLEY "C" #12
8228943	F-08-049419	4210332783		103		P J LEA #LO-113
8228828	F-08-046746	4210332744		103		P J LEA #LO-116
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED:	04/22/82	JA: TX
8228776	F-10-047731	4248330050		102-4		CIRCLE DOT RANCH INC #2
8228958	F-7A-049448	4203330786		102-4		SHAFER #2
-WILLIAM PERLMAN				RECEIVED:	04/22/82	JA: TX
8228609	F-7C-029894	4243532413		102-2	107-TF	IDA CAUTHORN 139-4
-WY-VEL CORP				RECEIVED:	04/22/82	JA: TX
8228858	F-10-049090	4206531054		103		BURNETT (84270) #9

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FIELD NAME	PROD	PURCHASER
TATUM (PETTIT LOWER)	54.0	UNITED TEXAS TRAN
BEAR GRASS (TRAVIS PE	0.0	
OAK HILL NW (COTTON V	0.0	
CAESAR SOUTH (5650')	0.0	UNITED GAS PIPELI
GUM ISLAND N (HACKBER	1498.0	UNITED TEXAS TRAN
PEARSALL (AUSTIN CHAL	0.0	TIPPERARY CORP
GIDDINGS (AUSTIN CHAL	100.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
CARTHAGE (COTTON VALL	219.0	UNITED GAS PIPELI
CARTHAGE (COTTON VALL	275.0	UNITED GAS PIPE L
PANHANDLE CARSON	50.0	PANHANDLE EASTERN
FARRAR N (BOSSIER SAN	180.0 0.0	DELHI GAS PIPELIN
BALZAR (1600)	146.0	GASTRANS INC
GIDDINGS (AUSTIN CHAL	0.0	PGP GAS PRODUCTS
WEST TEAGUE	369.0	LONE STAR GAS CO
RED BLUFF (WOLFCAMP)	1095.0	TEXAS GAS TRANSMI
EAST PANHANDLE GAS	6.3	PHILLIPS PETROLEU
SANTO E (3800' CONGLO	0.0	SOUTHWESTERN GAS
BUCK RANCH	15.0	SOUTHWESTERN GAS
WEATHERFORD (STRAWN)	14.7	SOUTHWESTERN GAS
BAKER RANCH	36.0	VALLEY PIPE LINES
PANHANDLE CARSON	144.0	GETTY OIL CO
INDEPENDENCE (3150 GA	18.9	VALLEY GAS TRANSM
LEA (SAN ANDRES)	2.5	EL PASO NATURAL G
LEA (SAN ANDRES)	5.8	EL PASO NATURAL G
LEA (SAN ANDRES)	12.1	EL PASO NATURAL G
LEA (SAN ANDRES)	3.8	EL PASO NATURAL G
GAGEBY CREEK W (HUNTO	1100.0	
GRAVEL PIT (STRAWN)	0.0	SUN GAS CO
SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
PANHANDLE CARSON COUN	74.0	GETTY OIL CO

JD NO	JA CKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROC	PURCHASER

OTHER PURCHASERS VOLUME NO 0648

R228773 TRANSWESTERN PIPELINE CO
R228793 E I DUPONT DE NEMOURS & CO INC
R228823 E I DUPONT DE NEMOURS & CO INC
R228975 E I DUPONT DE NEMOURS & CO INC
R228988 PHILLIPS PETROLEUM CO

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission by June 4, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13913 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

V 47 / 99 MAY 21 1982 UMI

JD NO	JA CAT	API NO	C	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-CAPITAL GAS INC				RECEIVED:	04/23/82	JA: LA			
8229113	81-2894	1707321818		103		WILLIAMS #1	MONROE	3.2	IMC PIPELINE CO I
-DAMSON OIL CORPORATION				RECEIVED:	04/23/82	JA: LA			
8229171	82-1026	1710121248		107-DP		AVOCA INC #6	WYANDOTTE	3500.0	TEXAS GAS TRANSMI
-GAS RESOURCES INC				RECEIVED:	04/23/82	JA: LA			
8229110	81-2889	1706720621		108		LEVEQUE HEIRS #1	MONROE GAS	3.5	CENTRAL TRANSMISS
8229111	81-2890	1706720623		108		LEVEQUE HEIRS #2	MONROE GAS	3.5	CENTRAL TRANSMISS
8229087	81-2892	1706720628		108		LEVEQUE HEIRS #4	MONROE GAS	3.5	CENTRAL TRANSMISS
-GATOR HAWK GAS CO				RECEIVED:	04/23/82	JA: LA			
8229075	81-2859	1707321785		103		BANKS #1	MONROE	2.3	IMC PIPELINE CO I
8229076	81-2860	1707321817		103		HEMPHILL #3	MONROE	3.2	IMC PIPELINE CO I
-GLENDA PETROLEUM CORP				RECEIVED:	04/23/82	JA: LA			
8229074	81-2325	1707321499		103		PENNZOIL 28 #1 S/N 170616	MONROE	16.0	UNITED GAS P L CO
-HIBBARD-FROST-SMITH				RECEIVED:	04/23/82	JA: LA			
8229114	81-2895	1707300355		108		MOBIL OIL E & P SE INC #12	MONROE GAS	4.0	MID LOUISIANA GAS
8229115	81-2896	1707300354		108		MOBIL OIL E & P SE INC #13	MONROE GAS	4.0	MID-LOUISIANA GAS
8229116	81-2897	1707300353		108		MOBIL OIL E & P SE INC #14	MONROE GAS	4.0	MID LOUISIANA GAS
8229117	81-2898	1707300356		108		MOBIL OIL E & P SE INC #15	MONROE GAS	4.0	MID LOUISIANA GAS
-IMC EXPLORATION COMPANY				RECEIVED:	04/23/82	JA: LA			
8229084	81-2872	1711123230		108		EXXON 29 #8	MONROE	7.0	IMC PIPELINE CO I
8229098	81-2874	1711123217		108		EXXON 31 #11	MONROE	18.0	IMC PIPELINE CO I
8229099	81-2875	1711123229		108		EXXON 31 #12	MONROE	18.0	IMC PIPELINE CO I
8229085	81-2873	1711123107		108		EXXON 31 #8	MONROE	17.0	IMC PIPELINE CO I
8229081	81-2869	1711123173		108		SMITH #15	MONROE	9.0	PETRO-LEWIS CORP
8229082	81-2870	1711123184		108		SMITH #16	MONROE	3.0	IMC PIPELINE CO I
8229083	81-2871	1711123185		108		SMITH #17	MONROE	7.0	PETRO-LEWIS CORP
-K D LANKFORD JR & L&N DRLG CO				RECEIVED:	04/23/82	JA: LA			
8229154	81-2914	1711101763		108		HSU #13A UNION PRODUCING CO #1	MONROE	6.0	IMC PIPELINE CO I
8229155	81-2915	1711101764		108		HSU #167 UNION PRODUCING #2	MONROE	4.0	IMC PIPELINE CO I
-L A WEST				RECEIVED:	04/23/82	JA: LA			
8229077	81-2861	1707321731		108		L A WEST #4	MONROE	9.1	IMC PIPELINE CO I
8229078	81-2862	1707321732		108		L A WEST #5	MONROE	9.1	IMC PIPELINE CO I
-L&N DRILLING CO & K D LANKFORD JR				RECEIVED:	04/23/82	JA: LA			
8229164	81-2916	1711121033		108		K D LANKFORD #4	MONROE	4.0	IMC PIPELINE CO I
-LANKFORD & NANCE				RECEIVED:	04/23/82	JA: LA			
8229161	81-2663	1711123234		108		FROST #15	MONROE	12.0	TEXAS GAS TRANSMI
8229159	81-2661	1711123193		108		FROST #3	MONROE	5.0	TEXAS GAS TRANSMI
8229160	81-2662	1711123231		108		FROST #7	MONROE	10.0	TEXAS GAS TRANSMI
8229157	81-2659	1711123162		108		HAILE #6	MONROE	8.0	TEXAS GAS TRANSMI
8229158	81-2660	1711123163		108		HAILE #7	MONROE	5.0	TEXAS GAS TRANSMI
8229156	81-2658	1711123159		108		J M EDWARDS #2	MONROE	18.0	TEXAS GAS TRANSMI

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229162	81-2664	1711123244		108		K D LANKFORD #7	MONROE	12.0	TEXAS GAS TRANSMI
-LOUISIANA CRUDE OIL & GAS CO INC		RECEIVED: 04/23/82 JA: LA							
8229109	81-2888	1706720975		108		ARCHIE BROTHERS #1	MONROE GAS	11.0	IMC PIPELINE CO I
8229163	81-2682	1711120289		108		HUMBLE-ARCO #1	MONROE GAS	9.0	MID-LA GAS CO
8229165	81-2683	1711120342		108		HUMBLE-ARCO #2	MONROE GAS	9.0	MID-LA GAS CO
8229166	81-2684	1711120298		108		HUMBLE-ARCO #3	MONROE GAS	9.0	MID-LA GAS CO
8229167	81-2686	1711120300		108		HUMBLE-ARCO #5	MONROE GAS	9.0	MID-LA GAS CO
8229169	81-2687	1711120301		108		HUMBLE-ARCO #6	MONROE GAS	9.0	MID-LA GAS CO
8229168	81-2688	1711120302		108		HUMBLE-ARCO #7	MONROE GAS	9.0	MID-LA GAS CO
8229091	81-2853	1711120647		108		LA GAS LANDS #2	MONROE GAS	13.0	IMC PIPELINE CO I
8229092	81-2854	1711120648		108		LA GAS LANDS #3	MONROE GAS	7.0	IMC PIPELINE CO I
8229089	81-2851	1711120341		108		MONTEREY #1	MONROE GAS	13.0	IMC PIPELINE CO I
8229090	81-2852	1711120413		108		MONTEREY #2	MONROE GAS	2.0	IMC PIPELINE CO I
8229093	81-2855	1706720832		108		ROBINSON #1	MONROE GAS	8.0	UNITED GAS P L CO
8229094	81-2856	1706720828		108		ROBINSON #2	MONROE GAS	8.0	UNITED GAS P L CO
8229104	81-2883	1706720829		108		ROBINSON #3	MONROE GAS	8.0	UNITED GAS P L CO
8229105	81-2884	1706720831		108		ROBINSON #4	MONROE GAS	8.0	UNITED GAS P L CO
8229106	81-2885	1706720832		108		ROBINSON #5	MONROE GAS	8.0	UNITED GAS PL CO
8229107	81-2886	1706720833		108		ROBINSON #6	MONROE GAS	8.0	UNITED GAS PL CO
8229108	81-2887	1706720834		108		ROBINSON #7	MONROE GAS	8.0	UNITED GAS PL CO
-MID LOUISIANA GAS COMPANY		RECEIVED: 04/23/82 JA: LA							
8229135	81-2933	1711122820		108		MLGC FEE GAS #1003	MONROE GAS FIELD	8.8	MID LOUISIANA GAS
8229141	81-2668	1711122852		108		MLGC FEE GAS #1005	MONROE GAS FIELD	19.2	MID LOUISIANA GAS
8229136	81-2934	1711123024		108		MLGC FEE GAS #1007	MONROE GAS FIELD	13.3	MID LOUISIANA GAS
8229138	81-2935	1711123025		108		MLGC FEE GAS #1008	MONROE GAS FIELD	13.2	MID LOUISIANA GAS
8229142	81-2669	1711123060		108		MLGC FEE GAS #1014	MONROE GAS FIELD	13.2	MID LOUISIANA GAS
8229079	81-2863	1711123306		103		MLGC FEE GAS #1088	MONROE GAS	36.5	MID LOUISIANA GAS
8229080	81-2864	1711123307		103		MLGC FEE GAS #1089	MONROE GAS	36.5	MID LOUISIANA GAS
8229125	81-2922	1711121679		108		MLGC FEE GAS #759	MONROE GAS FIELD	15.8	MID LOUISIANA GAS
8229126	81-2923	1711121834		108		MLGC FEE GAS #772	MONROE GAS FIELD	19.8	MID LOUISIANA GAS
8229127	81-2924	1711121863		108		MLGC FEE GAS #776	MONROE GAS FIELD	21.3	MID LOUISIANA GAS
8229144	81-2670	1711121847		108		MLGC FEE GAS #781	MONROE GAS FIELD	20.1	MID LOUISIANA GAS
8229143	81-2671	1711121853		108		MLGC FEE GAS #787	MONROE GAS FIELD	19.2	MID LOUISIANA GAS
8229128	81-2925	1711121857		108		MLGC FEE GAS #791	MONROE GAS FIELD	18.1	MID LOUISIANA GAS
8229145	81-2672	1711121919		108		MLGC FEE GAS #807	MONROE GAS FIELD	18.9	MID LOUISIANA GAS
8229129	81-2926	1711121922		108		MLGC FEE GAS #810	MONROE GAS FIELD	20.3	MID LOUISIANA GAS
8229146	81-2673	1711121949		108		MLGC FEE GAS #819	MONROE GAS FIELD	19.3	MID LOUISIANA GAS
8229147	81-2674	1711121957		108		MLGC FEE GAS #827	MONROE GAS FIELD	6.7	MID LOUISIANA GAS
8229149	81-2676	1711122536		108		MLGC FEE GAS #908	MONROE GAS FIELD	17.3	MID LOUISIANA GAS
8229173	81-2917	1711122539		108		MLGC FEE GAS #911	MONROE GAS FIELD	17.6	MID LOUISIANA GAS
8229172	81-2918	1711122550		108		MLGC FEE GAS #918	MONROE GAS FIELD	6.1	MID LOUISIANA GAS
8229122	81-2919	1711122552		108		MLGC FEE GAS #920	MONROE GAS FIELD	5.1	MID LOUISIANA GAS
8229123	81-2920	1711122553		108		MLGC FEE GAS #921	MONROE GAS FIELD	17.1	MID LOUISIANA GAS
8229124	81-2921	1711122561		108		MLGC FEE GAS #923	MONROE GAS FIELD	12.9	MID LOUISIANA GAS
8229150	81-2677	1711122584		108		MLGC FEE GAS #929	MONROE GAS FIELD	15.3	MID LOUISIANA GAS
8229151	81-2678	1711122587		108		MLGC FEE GAS #930	MONROE GAS FIELD	13.8	MID LOUISIANA GAS
8229130	81-2927	1711122650		108		MLGC FEE GAS #939	MONROE GAS FIELD	14.8	MID LOUISIANA GAS
8229131	81-2928	1711122651		108		MLGC FEE GAS #940	MONROE GAS FIELD	14.6	MID LOUISIANA GAS
8229152	81-2679	1711122652		108		MLGC FEE GAS #941	MONROE GAS FIELD	12.9	MID LOUISIANA GAS
8229153	81-2680	1711122653		108		MLGC FEE GAS #942	MONROE GAS FIELD	14.5	MID LOUISIANA GAS
8229137	81-2665	1711122676		108		MLGC FEE GAS #953	MONROE GAS FIELD	6.4	MID LOUISIANA GAS
8229133	81-2929	1711122678		108		MLGC FEE GAS #955	MONROE GAS FIELD	19.5	MID LOUISIANA GAS
8229132	81-2930	1711122686		108		MLGC FEE GAS #963	MONROE GAS FIELD	21.4	MID LOUISIANA GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229134	81-2931	1707321445		108		MLGC FEE GAS #969	MONROE GAS FIELD	26.0	MID LOUISIANA GAS
8229140	81-2666	1707321465		108		MLGC FEE GAS #977	MONROE GAS FIELD	14.3	MID LOUISIANA GAS
8229139	81-2667	1711122748		108		MLGC FEE GAS #999	MONROE GAS FIELD	20.0	MID LOUISIANA GAS
8229148	81-2675	1707321391		108		MLGC GTC #K1	MONROE GAS FIELD	18.8	MID LOUISIANA GAS
-PELICAN PRODUCING CO				RECEIVED:	04/23/82	JA: LA			
8229103	81-2882	1711123414		103		HANDY HEIRS #2	MONROE	11.3	PETRO LEWIS FUNDS
8229102	81-2881	1711123407		103		STUBBS #2	MONROE	11.3	PETRO-LEWIS FUNDS
8229100	812879	1711123402		103		UNION PRODUCING CO NO 1	MONROE	24.7	PETRO-LEWIS FUNDS
8229101	81-2880	1711123406		103		UNION PRODUCING COMPANY #3	MONROE	21.3	PETRO LEWIS FUNDS
-PRIMOS-TOMLINSON				RECEIVED:	04/23/82	JA: LA			
8229112	81-2893	1707321787		103		CORDELL #1	MONROE	1.5	IMC PIPELINE CO I
-RELIANCE TR-JV				RECEIVED:	04/23/82	JA: LA			
8229097	81-2808	1711123029		102-2	107-TF	H D GREEN #6	MONROE	13.0	TEXAS GAS TRANSMI
8229088	81-2810	1711122920		102-2	107-TF	HOPKINS #9	MONROE	11.0	TEXAS GAS TRANSMI
8229086	81-2809	1711122840		102-2	107-TF	HOPKINS ESTATE #8	MONROE	11.0	TEXAS GAS TRANSMI
-RICELAND PETROLEUM CO				RECEIVED:	04/23/82	JA: LA			
8229120	81-2834	1708100230	D	103		RAYMOND KLUMPP #1	NORTH TEPETATE	360.0	SUGAR BOWL GAS CO
-TEXACO INC				RECEIVED:	04/23/82	JA: LA			
8229096	81-2694	1710922013		103		BSE U-31 #30 13500 RK VUA	BAY ST ELAINE	803.0	KAISER ALUMINUM &
8229118	81-2695	1707522361		103		SL 214 GARDEN ISLAND BAY #845	GARDEN ISLAND BAY	7.0	SOUTHERN NATURAL
8229095	81-2693	1710922119		103		SL 301 #349 UPR 70-B R060 VUA	CAILLOU ISLAND	366.0	KAISER ALUMINUM &
8229119	81-2696	1710921894		103		SL 301 TERREBONNE BAY #334	CAILLOU ISLAND	8.0	KAISER ALUMINUM &
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	04/23/82	JA: LA			
8229121	81-2503	1772720110		103		STATE LEASE 2220 #58-D	ELOI BAY	54.0	SOUTHERN NATURAL
-THE STONE OIL CORPORATION				RECEIVED:	04/23/82	JA: LA			
8229170	82-654	1711321140		107-DP		STELLA & KARLAN GREEN #1	PARCPERDUE	2685.0	TEXAS GAS TRANSMI
**********									
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
**********									
-AMOCO PRODUCTION CO				RECEIVED:	04/22/82	JA: MI			
8229232		2107935005		103		STATE KALKASKA /B/ #3-25	KALKASKA 25-27N-6W	265.0	CONSUMERS POWER C
-CRYSTAL OIL COMPANY				RECEIVED:	04/22/82	JA: MI			
8229235		2108734592		102-4		KERN #1-22	MARATHON	7.3	CONSUMERS POWER C
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/22/82	JA: MI			
8229233		2111333536		103		ENTERPRISE UNIT #3-7	ENTERPRISE	11.0	DOW CHEMICAL CO
8229234		2108734116		103		RICH FIELD UNIT TRACT 21 #2	RICH	23.0	SOUTHEASTERN MICH
**********									
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
**********									
-AMOCO PRODUCTION CO				RECEIVED:	04/22/82	JA: NM			
8229011		3004509134		108		DUFF GAS COM "C" #1 (3RD)	BASIN DAKOTA	15.0	EL PASO NATURAL G
8229001		3004510203		108		STATE GAS COM "BC" #1 (2ND)	BASIN DAKOTA	18.0	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/22/82	JA: NM			
8229013		3002505718		108		NELDA B BORDAGES #1	EUNICE MONUMENT/GRAYB	4.4	WARREN PETROLEUM
8229026		3004525147		103		STATE A COM #1E (DK)	BASIN DAKOTA	1500.0	SOUTHERN UNION GA
-BTA OIL PRODUCERS				RECEIVED:	04/22/82	JA: NM			
8229009		3002527486		102-2		STATE 2 8006 JV-P #1	ANTELOPE RIDGE (ATOKA	1825.0	UNITED GAS PIPE L
-C & E OPERATORS INC				RECEIVED:	04/22/82	JA: NM			
8229021		3004524695		103		AZTEC #8	AZTEC PICTURED CLIFFS	100.0	EL PASO NATURAL G
8229022		3004524679		103		AZTEC #9	AZTEC PICTURED CLIFFS	125.0	EL PASO NATURAL G
8229025		3004524089		103		FEE #12	AZTEC PICTURED CLIFFS	90.0	EL PASO NATURAL G
8229023		3004524693		103		FEE #8-A	AZTEC PICTURED CLIFFS	125.0	EL PASO NATURAL G
8229024		3004524040		103		FEE #9-Y	AZTEC PICTURED CLIFFS	100.0	EL PASO NATURAL G

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-CASING PULLERS INC						
8229019		3002527326				RECEIVED: 04/22/82 JA: NM
-CITIES SERVICE COMPANY				103		YATES "A" #6
8229028		3002509481				RECEIVED: 04/22/82 JA: NM
-COQUINA OIL CORPORATION				108		STATE O #1
8229020		3001523752				RECEIVED: 04/22/82 JA: NM
-CORPENING ENTERPRISES				103		MARRA #1
8229012		3001500000				RECEIVED: 04/22/82 JA: NM
-DOYLE HARTMAN OIL OPERATOR				108		EXXON STATE #1
8229018		3002527664				RECEIVED: 04/22/82 JA: NM
-ELK OIL COMPANY				103		JUSTIS-CHRISTMAS #1
8229006		3000561184				RECEIVED: 04/22/82 JA: NM
-FLAG-REDFERN OIL CO				102-2	107-TF	VIKING STATE COMM #1
8229004		3000561268				RECEIVED: 04/22/82 JA: NM
-GETTY OIL COMPANY				103	107-TF	MCELVAIN & STATE COM #1 #LG-0252
8229014		3002527378				RECEIVED: 04/22/82 JA: NM
8229016		3002527385		103		MYERS LANGLIE MATTIX UNIT #12
8229015		3002527346		103		MYERS LANGLIE MATTIX UNIT #193
-HEXAGON OIL & GAS INC				103		STATE "AP" #2
8229027		3002527324				RECEIVED: 04/22/82 JA: NM
-MESA PETROLEUM CO				103		HEXAGON NM 28 STATE #1
8229007		3000561113				RECEIVED: 04/22/82 JA: NM
-PHILLIPS PETROLEUM COMPANY				102-2	107-TF	MCDERMETT #1
8229017		3002527119				RECEIVED: 04/22/82 JA: NM
-QUANAH PETROLEUM INC				103		E VAC GB/SA UNIT TR 2801 #016
8229003		3002502760				RECEIVED: 04/22/82 JA: NM
-SANTA FE ENERGY PRODUCTS CO				103		REEVES STATE #1
8229029		3002527567				RECEIVED: 04/22/82 JA: NM
8229030		3002527241		102-4		STATE NM "11" #2
-TRANSWESTERN GAS SUPPLY CO				102-4		STATE NM "2" #1
8229005		3000561044				RECEIVED: 04/22/82 JA: NM
8229010		3000561044		107-TF		WOLF STATE #1
-UNION OIL COMPANY OF CALIF				102-2		WOLF STATE #1
8229002		3004524399				RECEIVED: 04/22/82 JA: NM
-WEXPRO CO				103		MONTOYA #1-A34
8229008		3^04320585				RECEIVED: 04/22/82 JA: NM
				102-2		ARMIJO RESERVOIR #1
OKLAHOMA CORPORATION COMMISSION						
-AMOCO PRODUCTION CO						RECEIVED: 04/23/82 JA: OK
8229272	13723	3515321175		103		ARBOGAST UNIT #2
8229241	16714	3503920384		102-2		EVA ASHBY #1
8229273	13722	3515321174		103		HOPKINS UNIT "B" #2
-AN-SON CORPORATION						RECEIVED: 04/22/82 JA: OK
8229229	13624	3508700000		103		BAILEY #1
8229221	13759	3508300000		108		HERREN #1
-AN-SON CORPORATION						RECEIVED: 04/23/82 JA: OK
8229277	13672	3505121103		103		SCHENK #1
-ANDOVER OIL COMPANY						RECEIVED: 04/23/82 JA: OK
8229201	13660	3501721990		103		ZUM MALLEN #8-4
-APACHE CORPORATION						RECEIVED: 04/23/82 JA: OK
8229268	13728	3512920484		103		DEAL #1
8229271	13725	3500920371		103		GRETHEN-JOHNSON #1

FIELD NAME	PROD	PURCHASER
NORTH SAN SIMON YATES	15.3	PHILLIPS PETROLEU
JALMAT TANSILL YATES	19.0	EL PASO NATURAL G
MALAGA MORROW	365.0	EL PASO NATURAL G
SQUARE LAKE QUEEN	3.8	PHILLIPS PETROLEU
JALMAT (GAS)	35.0	EL PASO NATURAL G
UNDESIGNATED ABO	150.0	TRANSWESTERN PIPE
UND (ABO)	146.8	TRANSWESTERN PIPE
LANGLIE MATTIX	4.4	EL PASO NATURAL G
LANGLIE MATTIX	55.1	EL PASO NATURAL G
VACUUM ABO REEF	36.9	PHILLIPS PETROLEU
MALJAMAR ATOKA	125.0	CONOCO INC
UNDESIGNATED PECOS SL	360.0	
VACUUM GB/SA	37.0	EL PASO NATURAL G
REEVES PENNSYLVANIAN	124.0	NORTHERN NATURAL
SOWELL MORROW	200.0	WARREN PETROLEUM
WILDCAT	445.0	WARREN PETROLEUM
WILDCAT - ABO	182.0	TRANSWESTERN PIPE
WILDCAT	182.0	TRANSWESTERN PIPE
BASIN-DAKOTA	180.0	NORTHWEST PIPELIN
WILDCAT	18.3	
NORTHEAST CEDARDALE-C	100.0	MICHIGAN WISCONSI
WEATHERFORD (ATOKA)	198.0	SOUTHERN NATURAL
NE CEDARDALE	146.0	MICHIGAN WISCONSI
S BLANCHARD	186.2	SUN GAS CO
SW CRESENT	13.6	MUSTANG FUEL CORP
SW CHICKASHA	127.8	PHILLIPS PETROLEU
	180.0	DELHI GAS PIPELIN
WILDCAT	873.0	
WILDCAT	184.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8229270	13726	3503920411		103		RENISON #1
8229269	13727	3514920120		103		TOLLE #1
				RECEIVED:	04/23/82	JA: OK
-APOLLO PRODUCTION LTD						
8229259	13822	3507322795		103		REHERMAN #15-1
				RECEIVED:	04/23/82	JA: OK
-ARCO OIL AND GAS COMPANY						
8229258	16386	3504321223		102-4		PETREE UNIT #1-35
				RECEIVED:	04/23/82	JA: OK
-ATLAS OIL INC						
8229238	16730	3508321930		102-2		EDWARDS 2-4 LEASE
				RECEIVED:	04/23/82	JA: OK
-BOBBY J DARNELL						
8229276	13675	3508321631		103		ROUT #2
				RECEIVED:	04/22/82	JA: OK
-BOGERT OIL CO						
8229231	13614	3507323143		103		MATTI #1-21
8229187	11652	3508321671		103		WAYNE #2-18
-CHAMPLIN PETROLEUM COMPANY						
				RECEIVED:	04/22/82	JA: OK
8229218	13659	3509322310		103		W A MORRIS #2
				RECEIVED:	04/22/82	JA: OK
-CLARK RESOURCES INC						
8229199	13565	3507323207		103		CHRISTIANS 9-2
				RECEIVED:	04/22/82	JA: OK
-CONTINENTAL RESOURCES CORP						
8229212	13607	3509300000		103		WOLFE #1
				RECEIVED:	04/22/82	JA: OK
-COOK OPERATING CO						
8229227	13642	3511720481		103		WOODRELL #1
				RECEIVED:	04/22/82	JA: OK
-CUMMINGS OIL CO						
8229216	13653	3508321822		103		BLEVINS "A" #1-1
				RECEIVED:	04/22/82	JA: OK
-DARSON OIL CORPORATION						
8229224	13647	3515121154		103		GUM 2-25
				RECEIVED:	04/22/82	JA: OK
-DOME PETROLEUM CORP						
8229215	13605	3513722585		103		COFFER #1
8229214	13604	3513722743		103		COFFER #12-33
				RECEIVED:	04/23/82	JA: OK
-DYCO PETROLEUM CORPORATION						
8229260	13422	3512120635		103		WILLIE BUMPUS #1
				RECEIVED:	04/22/82	JA: OK
-EDWIN L COX						
8229183	13545	3515321173		103		DRISKELL #1-17
				RECEIVED:	04/23/82	JA: OK
-ENERGY RESERVES GROUP INC						
8229255	13788	3504520697		108		MARK MILLER #1
8229251	13768	3500320621		108		MAXEY #2
8229253	13765	3509120152		108		PRATER 1-13 #1
8229252	13766	3515320864		108		SMART "A" #1
				RECEIVED:	04/22/82	JA: OK
-F C D OIL CORP						
8229226	13644	3507323127		103		THEIMS 1-27
				RECEIVED:	04/23/82	JA: OK
-FLINT & ASSOCIATES						
8229274	13699	3512320886		103		LITIGATION #1
				RECEIVED:	04/22/82	JA: OK
-FUSULINA PETROLEUM CORP						
8229190	13384	3504722466		103		MARSOLF 1-14
				RECEIVED:	04/22/82	JA: OK
-GEORGE E FEARS						
8229219	13730	3508321132		103		NEWMAN #2
				RECEIVED:	04/22/82	JA: OK
-GEORGE RODMAN INC						
8229217	13657	3505121105		103		BARRINGTON #1-2
				RECEIVED:	04/23/82	JA: OK
-GUARDIAN OIL CO						
8229265	13577	3507920392		103		DAVIES #1-27
				RECEIVED:	04/22/82	JA: OK
-HARPER OIL COMPANY						
8229193	13570	3501120955		103		EDNA #1
8229192	13569	3507323210		103		EDWIN #1
				RECEIVED:	04/23/82	JA: OK
-INEXCO OIL COMPANY						

FIELD NAME	PROD	PURCHASER
NW ANTHON	73.8	
SIXTY SIX	198.0	EL PASO NATURAL G
NE OKARCHE	0.0	SID RICHARDSON CA
PUTNAM	365.0	
WEST GUTHRIE	36.5	EASON OIL CO
CRESCENT-LOBELL	109.5	EASON OIL CO
SOONER TREND	425.0	PHILLIPS PETROLEU
SOONER TREND	165.0	EASON OIL CO
E CHANEY DELL	0.0	CHAMPLIN PETROLEU
SOONER TREND	70.0	CONOCO INC
CAMPBELL	0.0	MICHIGAN-WISCONSI
NORTH TERLTON	36.5	H J D CATTLE CO
NW GUTHRIE	0.0	EASON OIL CO
N W AVARD	30.0	DELHI GAS PIPELIN
EAST DUNCAN	50.0	GETTY OIL CO
EAST DUNCAN	40.9	GETTY OIL CO
	35.0	ARKANSAS LOUISIAN
SOUTH FARGO	189.0	PRODUCERS GAS CO
SOUTH PEEK	17.6	PANHANDLE EASTERN
CHANEY DELL	8.1	UNION TEXAS PETRO
PIERCE	16.0	PHILLIPS PETROLEU
WEST CHESTER	16.5	PANHANDLE EASTERN
SOONER TREND	76.7	ONG WESTERN INC
ALLEN	5.9	SUN GAS CO
SOONER TREND	36.0	CRA INC
	0.0	EASON OIL CO
SW GOLDEN TREND	0.0	TRANSOK PIPE LINE
KINTA	275.0	ARKANSAS LOUISIAN
S E FAY	75.0	EL PASO NATURAL G
E KINGFISHER	55.0	MUSTANG FUEL CORP

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JD NO	JA CAT	API NO	SEC(1)	SEC(2)	WELL NAME
8229236	17953	35[illegible]3920561	107-DP		NOBLE #1-20
-J L THOMAS ENGINEERING INC			RECEIVED:	04/22/82	JA: OK
8229223	13650	3507323070	103		EMIL #1
8229222	13651	3507323054	103		FRANK #1
8229196	13597	3507323132	103		MEYER #1
-KAISER-FRANCIS OIL COMPANY			RECEIVED:	04/23/82	JA: OK
8229264	13449	3505920993	103		WILMOT #1
-L & N EXPLORATION INC			RECEIVED:	04/23/82	JA: OK
8229263	13428	3508321603	103		MERLE WILSON #1-7
-LAGUNA PETROLEUM CO			RECEIVED:	04/23/82	JA: OK
8229204	13561	3504722307	103		REGIER #1
-LANCER ENERGY CORP			RECEIVED:	04/22/82	JA: OK
8229213	13672	35[illegible]8300003	103		REDMAN #1
-LAUMASTER DRILLING CO			RECEIVED:	04/22/82	JA: OK
8229211	13610	3505121181	103		FARWELL #2
-LEMA PETROLEUM INC			RECEIVED:	04/23/82	JA: OK
8229261	13346	3506321354	103		HUGHES #1-A
-LINCOLN PETROLEUM RESOURCES CORP			RECEIVED:	04/23/82	JA: OK
8229266	11495	3504720692	103		PAULINE #1
-M FRANK & BETTY L WATSON			RECEIVED:	04/22/82	JA: OK
8229197	13600	3503722025	103		HOWARD LEASE #4
8229198	13601	3503722103	103		HOWARD LEASE #5
-MAY PETROLEUM INC			RECEIVED:	04/23/82	JA: OK
8229243	16667	3510321646	102-4		VANN #2 (103-73609)
8229244	16668	3510321653	102-4		VANN "C" #1 (103-73608)
-MUSTANG PRODUCTION CO.			RECEIVED:	04/23/82	JA: OK
8229280	13662	3504321253	103		JACKSON #1-14
8229278	13664	3504321286	103		JACKSON #2-14
8229279	13663	3507723234	103		YOUNG & COOPER #1-28
-OKLAND OIL CO			RECEIVED:	04/22/82	JA: OK
8229181	13548	3501721760	103		SMRCKA
-PETRO-LEWIS CORPORATION			RECEIVED:	04/23/82	JA: OK
*8229262	13424	3509300000	103		CLARA 12-2
-PHILLIPS PETROLEUM COMPANY			RECEIVED:	04/23/82	JA: OK
8229282	13626	3513900000	108		STAMPS #1
-RICHARD W THOMPSON INC			RECEIVED:	04/23/82	JA: OK
8229239	16727	3508322002	102-4		SEABROOK NO 1
-RICK BUCK			RECEIVED:	04/22/82	JA: OK
8229210	13612	3501721987	103		DICKERSON #1-3
-RICKS EXPLORATION CO			RECEIVED:	04/23/82	JA: OK
8229237	17542	3501521116	107-DP		PICKARD 1-29
-SEARCH DRILLING CO			RECEIVED:	04/22/82	JA: OK
8229189	13383	3515321116	103		CHASTEL #1-35
-SENECA OIL COMPANY			RECEIVED:	04/23/82	JA: OK
8229246	16141	3501722073	103		BENNETT #2-20
8229247	16143	3504321214	103		BURNETT #1-23
8229250	14516	3501721923	103		EVERY #1-31
8229248	12174	3501721814	103		EVERY #1-32
8229245	15304	3501721931	103		EVERY #1-6
8229249	13696	3501121575	103		GARVEY #1-8
8229242	16716	3513921517	102-2		MIKLES #1-17
-SHELL OIL CO			RECEIVED:	04/23/82	JA: OK
8229267	13588	3508700000	103		HESTER #1-5

FIELD NAME	PROD	PURCHASER
UNDESIGNATED	73.0	PANHANDLE EASTERN
SOONER TREND	144.0	EXXON USA
SOONER TREND	31.0	EXXON USA
SOONER TREND	120.0	PHILLIPS PETROLEU
MOCANE LAVERNE	30.0	MICHIGAN WISCONSI
SOONER TREND	128.0	
	58.0	CHAMPLIN PETROLEU
SOUTH MULHALL	36.0	EASON OIL CO
	0.0	ARKANSAS LOUISIAN
NORTH HORNTOWN	60.0	TRANSOK PIPELINE
WILD CAT	0.0	ARCO OIL & GAS CO
CUSHING NE SE NE SEC	36.5	KERR-MCGEE CORP
CUSHING SW NE NE OF S	18.0	KERR-MCGEE CORP
	109.5	AMINOIL USA INC
	109.5	
NORTHEAST OAKWOOD	300.0	DELHI GAS PIPELIN
NORTHEAST OAKWOOD	425.0	DELHI GAS PIPELIN
RED OAK	350.0	ARKANSAS LOUISIAN
	0.0	CONOCO INC
WAUKOMIS	89.4	PARTNERSHIP PROPE
GUYMON HUGOTON	0.0	PANHANDLE EASTERN
LAKE GUTHRIE SOUTH	200.0	WESTERN STATES GA
N E PIEDMONT	43.2	CONTINENTAL OIL C
S GRACEMONT	676.0	TENNESSEE GAS PIP
NW QUINLAN	33.0	DELHI GAS PIPELIN
PIEDMONT	25.9	
	693.5	DELHI GAS PIPELIN
PIEDMONT	264.0	
PIEDMONT	25.0	
PIEDMONT	24.6	
S E FAY	803.0	EL PASO NATURAL G
	133.2	PANHANDLE EASTERN
DIBBLE NE	52.9	SUN GAS CO

JD NO	JA DAT	API NO	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SITCO INC			RECEIVED: 04/22/82 JA: OK					
8229230	13623	3508321607	103		WHORLEY #1	CRESCENT	0.0	EASON OIL CO
-SOUTHWEST EXPLORATION INC			RECEIVED: 04/22/82 JA: OK					
8229188	11914	35[illegible]	102-2		PHILLIPS #1	WILDCAT	78.0	SERVICE DRILLING
-SPELLER OIL CORP			RECEIVED: 04/22/82 JA: OK					
8229185	00849	3507321896	103		KATHY "34" #1	SE SE SECTION 34-16N-	36.0	CONOCO INC
-ST JOE PETROLEUM (US) CORP			RECEIVED: 04/22/82 JA: OK					
8229184	13544	3510321418	103		TURNER #3	UNDESIGNATED	9.5	CITIES SERVICE GA
-SUN OIL COMPANY (DELAWARE)			RECEIVED: 04/23/82 JA: OK					
8229257	13797	35.4722473	103		EDDIE G MORAVEC "A" #3	SOONER TREND	35.0	EXXON CO USA
8229254	13796	3505121125	103		NORGE MARCHAND UNIT #63-2	N W CHICKASHA	179.0	PUBLIC SERVICE CO
-SUNBELT EXPLORATIONS INC			RECEIVED: 04/23/82 JA: OK					
8229240	16696	3512521137	102-2		SMITH #1	N W TECUMSEH	229.0	BETHEL GAS CO
-TESTCO PRODUCTION CO			RECEIVED: 04/22/82 JA: OK					
8229182	13546	3501120965	103		GREENE #1	WATONGA TREND	8.0	DELHI GAS PIPELIN
-TEXAS AMERICAN OIL CORP			RECEIVED: 04/22/82 JA: OK					
8229191	13421	35[illegible]322851	103		MELVIN HILL #1	SOONER TREND	197.1	PHILLIPS PETROLEU
-TEXAS OIL & GAS CORP			RECEIVED: 04/22/82 JA: OK					
8229220	13741	3515321468	108		COX #1	N E SEILING	11.0	DELHI GAS PIPELIN
-THE GMK COMPANY			RECEIVED: 04/23/82 JA: OK					
8229283	13620	3514921057	103		ALLISON 1-3	CANUTE	1379.0	SOUTHERN NATURAL
-TRANSIERRA EXPLORATION CORP			RECEIVED: 04/22/82 JA: OK					
8229194	13590	3510321395	103		VIOLA VANBEBBER #1	LUCIEN FIELD	65.0	AMINOIL USA INC
-UNION OIL COMPANY OF CALIF			RECEIVED: 04/22/82 JA: OK					
8229228	13625	3509520284	103		ALLEN #1-24	CUMBERLAND	40.0	
-UNIVERSAL OIL & GAS SYSTEMS			RECEIVED: 04/23/82 JA: OK					
8229265	16506	3508321916	102-2	103	FITZPATRICK #1		34.7	EASON OIL CO
-VULCAN ENERGY CORP			RECEIVED: 04/22/82 JA: OK					
8229186	11425	3508321580	103		TUCKER #1	CRESENT	90.0	EASON OIL CO
-VULCAN ENERGY CORP			RECEIVED: 04/23/82 JA: OK					
8229256	13801	3507322685	103		GLENDALE #1	SOONER TREND	36.5	PHILLIPS PETROLEU
-WANN OIL CO INC			RECEIVED: 04/22/82 JA: OK					
8229208	13560	3510500000	103		ROBBINS - MAPLES #1	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229209	13561	3510525178	103		ROBBINS - MAPLES #10	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229207	13559	3510500000	103		ROBBINS - MAPLES #2	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229206	13558	3510500000	103		ROBBINS - MAPLES #3	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229205	13557	3510500000	103		ROBBINS - MAPLES #4	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229204	13556	3510500000	103		ROBBINS - MAPLES #5	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229203	13555	3510525175	103		ROBBINS - MAPLES #6	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229202	13554	3510525176	103		ROBBINS - MAPLES #7	DELAWARE-CHILDRES	1.0	R & M PIPELINE CO
8229201	13553	3510500000	103		ROBBINS - MAPLES #8	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
8229200	13552	3510525177	103		ROBBINS - MAPLES #9	DELAWARE-CHILDERS	1.0	R & M PIPELINE CO
-WHITMAR EXPLORATION CO			RECEIVED: 04/22/82 JA: OK					
8229225	13645	3504921585	103		GOODSON #2-18	EAST ANTIOCH	8.0	BUCKEYE NATURAL G
-WILLIAM H DAVIS			RECEIVED: 04/22/82 JA: OK					
8229195	13594	3510321393	103		STEICHEN #2	E POLO	15.0	ARCO OIL & GAS CO
-WOODS PETROLEUM CORP			RECEIVED: 04/23/82 JA: OK					
8229275	13684	3501700000	103		BARRETT "A" #2	NORTH EDGAR	680.0	MUSTANG FUEL CORP
**********								
VIRGINIA DEPARTMENT OF LABOR & INDUSTRY								
**********								
-ASHLAND EXPLORATION INC			RECEIVED: 04/23/82 JA: VA					
8229176		4502720444	103		LON B ROGERS #24-092661	VIRGINIA GAS FIELD	81.0	CONSOLIDATED GAS

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JD NO	JA DKT	API NO	C	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PHILADELPHIA OIL CO				RECEIVED:	04/23/82	JA: VA			
8229175		4505120431		103		SAMUEL E ROSE #P-111	NORA	187.3	KENTUCKY WEST VIR
8229177		4505120430		107-TF		SAMUEL E ROSE-#P-110	NORA	43.5	KENTUCKY WEST VIR
8229178		4505120431		107-TF		SAMUEL E ROSE-#P-111	NORA	33.7	KENTUCKY WEST VIR
8229179		4505120400		107-TF		STEINMAN DEVELOPMENT CO #P-120	NORA	285.9	KENTUCKY WEST VIR
8229174		4505120401		103		STEINMAN DEVELOPMENT CO #P-121	NORA	156.7	KENTUCKY WEST VIR
8229180		4505120401		107-TF		STEINMAN DEVELOPMENT CO-#P-121	NORA	23.9	KENTUCKY WEST VIR
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO									
-AMERICAN RESOURCES MANAGEMENT CORPO				RECEIVED:	04/23/82	JA: CO 1			
8229041	CD 0059-82ER	0504506061		108-ER		SC 1-1 (1-E-1) C-4434	SOLDIER CANYON	54.0	NORTHWEST PIPELIN
-BEARTOOTH OIL & GAS CO				RECEIVED:	04/23/82	JA: CO 1			
8229038	CD 0062-82	0504506335		103		NORTHWEST FEDERAL #13-7	ROCK CANYON	20.0	NORTHWEST PIPELIN
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	04/23/82	JA: CO 1			
8229032	CD 0099-82	0511306033		102-2		HAMM CANYON 14-26 #1	HAMM CANYON	347.0	NORTHWEST PIPELIN
-CONOCO INC				RECEIVED:	04/23/82	JA: CO 1			
8229036	CD 0512-81	0510308628		103		DRAGON TRAIL UNIT #58	DOUGLAS CREEK	183.0	WESTERN SLOPE GAS
8229031	CD 0064-82	0510307300		108		TEXAS MOUNTAIN #7	TEXAS MOUNTAIN	16.3	MOUNTAIN FUEL SUP
-COSERA RESOURCES (USA) LIMITED				RECEIVED:	04/23/82	JA: CO 1			
8229055	CD 0078-82	0504506297		102-2		ARCO-FEDERAL #11-4-5-103	WILDCAT	167.8	SOUTHWEST GAS CO
8229049	CD 0071-82	0510308295		102-2		FEDERAL #11-8-1S-103	TAIGA MOUNTAIN	23.2	MONO POWER CO
8229047	CD 0101-82	0510308839		102-2		FEDERAL #12-13-3-104	WILDCAT	700.0	NORTHWEST PIPELIN
8229045	CD 0069-82	0510308549		102-2		FEDERAL #13-16-1S-103	TAIGA MOUNTAIN	91.8	NATURAL GAS CORP
8229044	CD 0073-82	0510308545		102-2		FEDERAL #13-25-4-104	COLUMBINE SPRING	169.9	NATURAL GAS CORP
8229046	CD 0075-82	0504506323		102-2		FEDERAL #15-9-5-103	COLUMBINE SPRING	344.9	NATURAL GAS CORP
8229050	CD 0070-82	0510308660		102-2		FEDERAL #2-15-1S-103	TAIGA MOUNTAIN	438.0	NATURAL GAS CORP
8229048	CD 0072-82	0510308566		102-2		FEDERAL #3-14-4-104	COLUMBINE SPRING	204.5	NATURAL GAS CORP
8229059	CD 0049-82	0510308513		107-TF		FEDERAL #3-32-4-101	WILDCAT	23.4	SOUTHWEST GAS COR
8229042	CD 0074-82	0510308341		102-2		FEDERAL #8-23-1S-103	TAIGA MOUNTAIN	42.3	MONO POWER CO
8229054	CD 0305-81	0510308568		107-TF		FEDERAL #9-34-4-101	WILDCAT	534.0	SOUTHWEST GAS COR
8229043	CD 0077-82	0510308611		102-2		FEDERAL 5-25-4-104	COLUMBINE SPRING	52.6	NATURAL GAS CORP
-IMPERIAL OIL COMPANY				RECEIVED:	04/23/82	JA: CO 1			
8229071		0508106499		103		MOUNTAIN FEDERAL #1-12	POWDER WASH	275.0	MOUNTAIN FUEL SUP
-JOSEPH B GOULD				RECEIVED:	04/23/82	JA: CO 1			
8229066	CD0121-81	0510307309		108		LOWER HORSE DRAW 10-11	LOWER HORSE DRAW	13.8	MOUNTAIN FUEL SUP
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	04/23/82	JA: CO 1			
8229039	CD 0105-82	0506705719		108		IGNACIO 33-7 10	IGNACIO BLANCO DAKOTA	21.0	NORTHWEST PIPELIN
8229034	CD 0104-82	0506705420		108		IGNACIO 33-7 11	IGNACIO DAKOTA/MESAVE	2.5	NORTHWEST PIPELIN
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/23/82	JA: CO 1			
8229073		0510308441		102-2		SAGEBRUSH HILLS UNIT 2 #36D-1-100	CORRAL CREEK	329.0	NORTHERN NATURAL
-TENNECO OIL COMPANY				RECEIVED:	04/23/82	JA: CO 1			
8229037	CD 0084-82	0507708344		103		TENNECO FEES B USA #24-13	BAR X	25.0	
-TWIN ARROW INC				RECEIVED:	04/23/82	JA: CO 1			
8229060	CD 0082-82	0510308039		107-RT		CONTINENTAL 1-28	CATHEDRAL	54.6	NORTHWEST PIPELIN
8229057	CD 0061-82	0510308234		107-TF		CONTINENTAL 1-9	CATHEDRAL	9.4	NORTHWEST PIPELIN
8229063	CD 0066-82	0510308000		107-TF		CONTINENTAL 2-16	CATHEDRAL	26.0	NORTHWEST PIPELIN
8229062	CD 0013-82	0510308489		107-TF		CONTINENTAL 2-20	CATHEDRAL	8.4	NORTHWEST PIPELIN
8229064		0510308186		107-RT		CONTINENTAL 2-28	CATHEDRAL	64.9	NORTHWEST PIPELIN
8229058	CD 0067-82	0510308490		107-TF		CONTINENTAL 3-8	CATHEDRAL	50.5	NORTHWEST PIPELIN
8229061	CD 0081-82	0510308430		107-TF		RAINBOW-CONTINENTAL 1-21	CATHEDRAL	57.0	NORTHWEST PIPELIN
8229056	CD 0080-82	0510308641		107-TF		TERRA 1-26	CATHEDRAL	0.0	NORTHWEST PIPELIN
-WEXPRO CO				RECEIVED:	04/23/82	JA: CO 1			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229040	CD 0047-82	0510308774	103			MFS FEDERAL #7-1	WILDCAT	139.6	MOUNTAIN FUEL RES
-KANSAS-NEBRASKA NATURAL GAS CO INC			RECEIVED: 04/23/82 JA: KS 1						
8229067		1509320687	103			KRIETE 2-2	PANOMA	87.0	KANSAS-NEBRASKA N
-ARCO OIL AND GAS COMPANY			RECEIVED: 04/23/82 JA: UT 1						
8229068		4304730765	103			BLACK HORSE CANYON #31-1	BLACK HORSE CANYON	36.5	MESA PIPE LINE CO
-COASTAL OIL & GAS CORP			RECEIVED: 04/23/82 JA: UT 1						
8229052	UD 0060-82	4304730724	103	107-TF		NATURAL BUTTES UNIT #37XP	NATURAL BUTTES	0.0	COLORADO INTERSTA
8229051	UD 0096-82	4304730534	103	107-TF		NATURAL BUTTES UNIT #47N2	NATURAL BUTTES	547.0	COLORADO INTERSTA
-CONOCO INC			RECEIVED: 04/23/82 JA: UT 1						
8229053	UD 0457-81	4304740667	107-TF			CONOCO UTE TRIBAL 6 #1	OURAY	150.0	MOUNTAIN FUEL SUP
-ENSERCH EXPLORATION INC			RECEIVED: 04/23/82 JA: UT 1						
8229070	UD 0159-81	4304730524	103			BITTERCREEK FEDERAL #1-3	ASPHALT CREEK	328.0	
-EXXON CORPORATION			RECEIVED: 04/23/82 JA: UT 1						
8229069		4304730386	102-2			CROOKED CANYON UNIT #2L	TWO WATER CREEK	15.0	
8229065		4304730386	102-2			CROOKED CANYON UNIT #2U	TWO WATER CREEK	22.0	
-J C THOMPSON			RECEIVED: 04/23/82 JA: UT 1						
8229033	UD 0083-82	4301915658	108			WESTWATER E-2	WESTWATER	1.8	NORTHWEST PIPELIN
-TEXACO INC			RECEIVED: 04/23/82 JA: UT 1						
8229072		4303730715	103			ANETH UNIT #H-335	ANETH	22.9	EL PASO NATURAL G
-WEXPRO CO			RECEIVED: 04/23/82 JA: UT 1						
8229035	UD 0097-82	4303730610	102-2			BUG #13	BUG	412.0	MOUNTAIN FUEL RES

OTHER PURCHASERS	VOLUME NO 649
8229262	CITIES SERVICE GAS CO

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission by June 4, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–2: New well (2.5 mile rule)
- 102–3: New well (1000 ft rule)
- 102–4: New onshore reservoir
- 102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
- 107–GB: Geopressured brine
- 107–CS: Coal seams
- 107–DV: Devonian shale
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13914 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-ANDERMAN OPERATING COMPANY			RECEIVED:	04/27/82	JA: AL				
8229419		0107520396		102-2		COATS 4-1 #1	NORTH BLOWHORN CREEK	18.0	
8229418	4-16-828PD	0107520401		102-2		FRANCES THOMAS 7-1 #1	STAR	182.0	
8229417	4-16-827PD	0107520404		102-4		ODOM 18-12 #1	STAR	730.0	
8229414		0107520399		102-2		ODOM 29-3 #1	FERNBANK	547.0	
8229416	4-16-826PD	0107520397		102-4		OGDEN 9-3 #1	BEAVERTON	365.0	
-CARLESS RESOURCES INC			RECEIVED:	04/27/82	JA: AL				
8229409	3-5-8212PD	0112520046		102-2		J R TIERCE 1-11	LEXINGTON	155.0	SOUTHERN NATURAL
-ENHANCED OIL RECOVERY INC			RECEIVED:	04/27/82	JA: AL				
8229404	1-29-8218PD	0112520059		107-CS		U S PIPE & FOUNDRY 10-6 #4A	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229399		0112520031		107-CS		U S PIPE & FOUNDRY 11-11 #9	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229402	1-29-8214PD	0112520037		107-CS		U S PIPE & FOUNDRY 11-12 #17	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229403		0112520041		107-CS		U S PIPE & FOUNDRY 11-13 #18	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229401	1-29-8213PD	0112520034		107-CS		U S PIPE & FOUNDRY 11-14 #10	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229400		0112520033		107-CS		U S PIPE & FOUNDRY 11-15 #8	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8229406		0112520060		107-CS		U S PIPE & FOUNDRY 11-7 #19	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
-GETTY OIL COMPANY			RECEIVED:	04/27/82	JA: AL				
8229407	3-5-821PD	0109720199		107-DP		CREOLA MINERALS 18-11 #3	HATTER'S POND	0.0	UNITED GAS PIPELI
8229412	4-16-821PD	0109720201		107-DP		CREOLA MINERALS 35-11 #3	HATTER'S POND	460.0	UNITED GAS PIPELI
-GRACE PETROLEUM CORPORATION			RECEIVED:	04/27/82	JA: AL				
8229408	3-5-824PD	0107520050		108		DELANEY 11-6	EAST DETROIT	0.0	NORTHWEST ALABAMA
8229410		0105720265		102-4		LANINGHAM 2-15	STUDHORSE CREEK	0.0	CORONADO TRANSMIS
8229411	3-5-8216PD	0105720265		103		LANINGHAM 2-15	STUDHORSE CREEK (GILM	0.0	CORONADO TRANSMIS
8229415	4-16-825PD	0105720247		102-4		TUCKER 35-11	NORTHEAST DAVIS CHAPE	0.0	TENNESSEE GAS PIP
8229413	4-16-822PD	0107520212		102-2		WHEELER-BOYETTE 25-7	HELLS CREEK	0.0	TENNESSEE GAS PIP
-TERRA RESOURCES INC			RECEIVED:	04/27/82	JA: AL				
8229420	4-16-8212PD	0105720262		102-4		NEWTON #27-3	MUSGROVE CREEK	250.0	WARRIOR DRILLING
-WARRIOR DRILLING & ENG CO INC			RECEIVED:	04/27/82	JA: AL				
8229405		0105720207		102-4		CANNON 29-3	MCCRACKEN MOUNTAIN	235.0	SOUTHERN NATURAL
8229421	4-16-8213PD	0105720272		102-2		FULLERTON 25-13	MUSGROVE CREEK	500.0	WARRIOR DRILLING
CALIFORNIA DEPARTMENT OF CONSERVATION									
-TENNECO OIL COMPANY			RECEIVED:	04/26/82	JA: CA				
8229381	82-4-0081	0402965277		103		YOWLUMNE UNIT "A" 77X-3	YOWLUMNE	82.0	ARCO OIL & GAS CO
MONTANA BOARD OF OIL & GAS CONSERVATION									
-AMINOIL USA INC			RECEIVED:	04/27/82	JA: MT				
8229390	5-81-76-A	2508321432		103		WHITNEY #1	RIDGELAWN	75.2	MONTANA DAKOTA UT
8229393	5-81-76	2508321432		102-4		WHITNEY #1	RIDGELAWN	75.2	MONTANA-DAKOTA UT

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JD NO	JA DKT	API NO	C	SEC(1)	SEC(2)	WELL NAME
-MIDLANDS GAS CORPORATION				RECEIVED:	04/27/82	JA: MT
8229394	8-81-169	2527121636		108		0360 HELLIE 1
-SHELL OIL CO				RECEIVED:	04/27/82	JA: MT
8229389	5-81-74	2508321328		102-4		ANDERSON 14-13
8229391	5-81-75	2508321408		102-4		SORENSEN 42-14
-SOUTHLAND ROYALTY CO				RECEIVED:	04/27/82	JA: MT
8229388	5-81-73	2509121339		102-2		ADA G NASH #1-5
-SUPERIOR OIL CO				RECEIVED:	04/27/82	JA: MT
8229392	5-81-77	2508321447		103		VANDERHOOF #2-A
NORTH DAKOTA INDUSTRIAL COMMISSION						
-COASTAL OIL & GAS CORP				RECEIVED:	04/27/82	JA: ND
8229386	495	3308900244		102-2		COGC/ALAG 27-140-98 BN #1
8229387	496	3302500193		102-2		COGC/ALAG 25-147-95 RN #1
-TEXAKOTA INC				RECEIVED:	04/27/82	JA: ND
8229383	492	3310500926		103		H BORSTAD #3-2 PERMIT #8606
8229384	493	3310500938		103		H BORSTAD #3-4 PERMIT #8719
8229385	494	3310500956		103		H BORSTAD #3-5 PERMIT #8909
8229382	491	3310500946		103		H BORSTAD #34-2 PERMIT #8822
OHIO DEPARTMENT OF NATURAL RESOURCES						
-AMERICAN PETROEL INC				RECEIVED:	04/26/82	JA: OH
8229280		3416726729		103		FD & LF ENGLE #1
8229286		3411122738		107-DV		MANSFIELD #1
8229287		3416726651		103		ROE #2
8229289		3416727097		107-DV		USA/B&D #1
-APPALACHIAN ENERGY INC				RECEIVED:	04/26/82	JA: OH
8229290		3401320340		103		J E GONOT #1 AE-177
-ASHCRAFT PETROLEUM INC				RECEIVED:	04/26/82	JA: OH
8229291		3408924368		103		HAROLD A WISE #1
-BELDEN & BLAKE & CO #79				RECEIVED:	04/26/82	JA: OH
8229292		3401921536		103	107-TF	G JUWELL -2-3#1179
-BERWELL ENERGY INC				RECEIVED:	04/26/82	JA: OH
8229293		3408323018		103		BERWELL ENERGY #4
-CALLANDER & KIMBREL INC				RECEIVED:	04/26/82	JA: OH
8229295		3403124512		107-TF		B GORBY #1
8229294		3403124511		107-TF		BOWERS #2
-CUYAHOGA EXPLORATION & DEVELOPMENT				RECEIVED:	04/26/82	JA: OH
8229296		3411122606		103		HERMAN RITCHIE #4
-DERBY OIL & GAS CORP				RECEIVED:	04/26/82	JA: OH
8229297		3407523325		103	107-TF	S STUTZMAN #1
-DWIGHT MARTIN				RECEIVED:	04/26/82	JA: OH
8229317		3408322841		103		HARRY & VIRGINIA TEMPLE #ONE
-EDCO DRILLING & PRODUCING INC				RECEIVED:	04/26/82	JA: OH
8229298		3408522256		103		GREEN WB-2A
8229299		3408322983		103		SMITH WB-1A
-GASEARCH INC				RECEIVED:	04/26/82	JA: OH
8229303		3413325808		103	107-TF	TIMMONS #4
-GNC ENERGY CORP				RECEIVED:	04/26/82	JA: OH
8229300		3411522437		103		ELEANOR MASSEY #1
8229301		3411522438		103		ELEANOR MASSEY #2

FIELD NAME	PROD	PURCHASER
UNNAMED	22.0	KANSAS-NEBRASKA N
MONDAK WEST	4.0	MONTANA DAKOTA UT
MONDAK WEST	5.0	MONTANA DAKOTA UT
MIDDY	20.0	PHILLIPS PETROLEU
FAIRVIEW	0.0	MONTANA-DAKOTA UT
EAST ZENITH	543.0	NORTHERN GAS PROD
CORRAL CREEK	410.0	AMOCO PRODUCTION
WEST TIOGA	515.7	AMINOIL USA
WEST TIOGA	111.7	AMINOIL USA
WEST TIOGA	584.0	AMINOIL USA
WEST TIOGA	105.9	AMINOIL USA
ADAMS	3.6	
BENTON	11.0	
ADAMS	8.0	
GRANDVIEW	10.0	
PEASE TOWNSHIP	25.8	COLUMBIA GAS TRAN
MADISON	3.0	NATIONAL GAS & OI
BROWN	36.5	
UNION	30.0	COLUMBIA GAS TRAN
COSHOCTON	5.0	
COPPERDALE	4.0	
STAFFORD	23.0	
SALT CREEK	12.0	COLUMBIA GAS TRAN
GREER	150.0	
HARRISON	18.0	COLUMBIA GAS TRAN
MARTINSBURG	18.0	
GARRETTSVILLE	20.0	AMERICAN ENERGY S
ROKEBY LOCK	15.0	
ROKEBY LOCK	15.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229302		3411522443		103		ELEANOR MASSEY #7	RINGGOLD	15.0	
-HOPEWELL OIL AND GAS DEVELOPMENT CO RECEIVED: 04/26/82 JA: OH									
8229305		3411924657		103	107-TF	FUSNER #2	WASHINGTON	2.5	COLUMBIA GAS TRAN
8229306		3412724987		107-TF		M WHEELER #1	HARRISON	7.0	COLUMBIA GAS TRAN
8229304		3412724595		107-TF		ZINK #1	HARRISON	11.0	COLUMBIA GAS TRAN
-JERRY MOORE INC				RECEIVED: 04/26/82 JA: OH					
8229319		3407523338		107-TF		EMANUEL A NISLEY #1	NEW BEDFORD	4.0	COLUMBIA GAS TRAN
8229320		3407523340		107-TF		NOAH N YODER #1-17	CHARM	6.0	COLUMBIA GAS TRAN
8229318		3403124551		107-TF		RICHARD JOHNSON UNIT #1	COSHOCTON	3.0	COLUMBIA GAS TRAN
-K S T OIL & GAS-CO INC				RECEIVED: 04/26/82 JA: OH					
8229307		3415320917		103	107-TF	PAPA #1	NORTHAMPTON	0.0	
-KENOIL				RECEIVED: 04/26/82 JA: OH					
8229310		3416922214		107-TF		ARLEENE JACKSON #1	CANAAN	5.0	COLUMBIA GAS TRAN
8229308		3416922194		107-TF		DORIS MCILVAINE #1	CANAAN	5.0	COLUMBIA GAS TRAN
8229309		3416922213		107-TF		FARMERS SPORTSMAN ASSOC INC #1	CANAAN	5.0	COLUMBIA GAS TRAN
8229311		3416922297		107-TF		TERRENCE EWING #1	CANAAN	5.0	COLUMBIA GAS TRAN
-KRAMER EXPLORATION CO				RECEIVED: 04/26/82 JA: OH					
8229312		3405320693		103		KANAUGA GUN CLUB - JIVIDEN #1	ADDISON	12.0	COLUMBIA GAS TRAN
-LAUDERMAN OIL & GAS DRILLING				RECEIVED: 04/26/82 JA: OH					
8229313		3416725231		103		CLAUDE KESTERSON #1	PALMER	11.0	COLUMBIA GAS TRAN
-LEADER EQUITIES INC				RECEIVED: 04/26/82 JA: OH					
8229314		3411926177		103	107-TF	KLEIN-BRADFORD #1	MONROE	13.0	
-M B OPERATING CO INC				RECEIVED: 04/26/82 JA: OH					
8229316A		3415123468		103		FLINTKOTE CO UNIT #21	MARLBORO	22.0	REPUBLIC STEEL CO
82295168		3415123468	D	107-TF		FLINTKOTE CO UNIT #21	MARLBORO	22.0	REPUBLIC STEEL CO
8229315		3401921443		103	107-TF	FOLTZ #1	BROWN	14.6	REPUBLIC STEEL CO
-O E D CO				RECEIVED: 04/26/82 JA: OH					
8229321		3407322249		103	107-TF	C L POSTON HEIRS #4	WARD	9.1	COLUMBIA GAS TRAN
-OHIO NATURAL FUEL CO				RECEIVED: 04/26/82 JA: OH					
8229322		3408322784		103		HARLETT #1	UNION	12.0	OHIO CUMBERLAND G
8229323		3408322785		103		HARLETT #2	UNION	12.0	OHIO CUMBERLAND G
8229324		3408322788		103		HARLETT #5	UNION	6.0	OHIO CUMBERLAND G
8229325		3408322789		103		HARLETT #6	UNION	12.0	OHIO CUMBERLAND G
8229326		3408322790		103		HARLETT #7	UNION	12.0	OHIO CUMBERLAND G
8229327		3408322791		103		HARLETT #8	UNION	12.0	OHIO CUMBERLAND G
-PREMIER ENERGY CORP				RECEIVED: 04/26/82 JA: OH					
8229328		3407522929		107-TF		MOSE YODER #1	BERLIN	12.0	COLUMBIA GAS TRAN
-ROVI RESOURCES CORP				RECEIVED: 04/26/82 JA: OH					
8229337		3411924729	D	108		J & V MCINTIRE #2		5.0	COLUMBIA GAS TRAN
8229338		3411924730	D	108		J & V MCINTIRE #3		5.0	COLUMBIA GAS TRAN
8229339		3411924731	D	108		J & V MCINTIRE #4		5.0	COLUMBIA GAS TRAN
8229330		3411924373	D	108		R LYONS #1		5.0	COLUMBIA GAS TRAN
8229333		3411924392	D	108		R LYONS #2		5.0	COLUMBIA GAS TRAN
8229331		3411924374	D	108		R LYONS #3		5.0	COLUMBIA GAS TRAN
8229329		3411924372	D	108		R LYONS #4		5.0	COLUMBIA GAS TRAN
8229332		3411924391	D	108		R LYONS #5		5.0	COLUMBIA GAS TRAN
8229340		3411924735	D	108		W DINGEY #1		5.0	COLUMBIA GAS TRAN
8229335		3411924423	D	108		WODC #2		5.0	COLUMBIA GAS TRAN
8229334		3411924418	D	108		WODC #3		5.0	COLUMBIA GAS TRAN
8229336		3411924431	D	108		WODC #5		5.0	COLUMBIA GAS TRAN
-SANDHILL ENERGY INC (OH)				RECEIVED: 04/26/82 JA: OH					
8229341		3416726982		103	107-DV	FLOYD E EARLEY #4	NEW MATAMOROS	73.0	
-SUNSET PETROLEUM INC				RECEIVED: 04/26/82 JA: OH					

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229342		3407523014		103	107-TF	ABE MILLER #1	PRAIRIE	10.0	COLUMBIA GAS TRAN
8229343		3407523015		103	107-TF	ELI C MILLER #1	SALT CREEK	10.0	COLUMBIA GAS TRAN
8229344		3407523017		103	107-TF	HENRY HERSHBERGER #1	PRAIRIE	10.0	COLUMBIA GAS TRAN
8229346		3407523021		103	107-TF	JONAS A MILLER #1	SALT CREEK	10.0	COLUMBIA GAS TRAN
8229345		3407523018		103	107-TF	WILLIAM F MILLER #1	PRAIRIE	10.0	COLUMBIA GAS TRAN
-WHITMAN OIL & GAS CORP				RECEIVED:	04/26/82	JA: OH			
8229347		3410522043		103		D ADAMS #1	OLIVE	10.0	
**********									
OKLAHOMA CORPORATION COMMISSION									
**********									
-AN-SON CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229497	16752	3512920607		102-2		PERRYMAN #1-31	DEMPSEY	234.0	
-ANDOVER OIL COMPANY				RECEIVED:	04/26/82	JA: OK			
8229361	13781	3503920242		103		LINDA MARIE #31-I		300.0	DELHI GAS PIPELIN
8229371	16878	3501722127		102-2		ROTHER #3-S		180.0	DELHI GAS PIPELIN
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/26/82	JA: OK			
8229363	13550	3513300000		108-ER		ANDERSON-MAYHUE UNIT #1U & IL	DURANT EAST	5.0	LONE STAR GAS CO
-ARKOMA PRODUCTION CO				RECEIVED:	04/26/82	JA: OK			
8229496	16613	3507920444		102-4		HOPE #1-C	KINTA	150.0	ARKANSAS LOUISIAN
8229495	16612	3507920444		102-4		HOPE #1-T	KINTA	150.0	ARKANSAS LOUISIAN
-BASS EXPLORATION CO				RECEIVED:	04/26/82	JA: OK			
8229504	13665	3505921048		103		DNISKELL #1	W W FORT SUPPLY	500.0	MICHIGAN WISCONSI
-CHARLES HILL JR				RECEIVED:	04/26/82	JA: OK			
8229370	16858	3506321453		102-2		LAWSON #2	CITRA	180.0	ARKANSAS LOUISIAN
-COLOMA PETROLEUM INC				RECEIVED:	04/26/82	JA: OK			
8229351	13197	3504722572		103		TURNER #1	SOONER TREND	36.5	OKLAHOMA GAS & EL
-DYCO PETROLEUM CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229509	13721	3505120991		103		BASSETT #1-24	BUTLER CREEK	125.0	MOBILE OIL CO
-ECC OIL CO				RECEIVED:	04/26/82	JA: OK			
8229494	14117	3510523264		102-2		GLASS #2 NW/4 NW/4 NE/4 14-28N-15E	LENAPAH	35.0	OKAN GAS CO
-EL PASO NATURAL GAS COMPANY				RECEIVED:	04/26/82	JA: OK			
8229374	18060	3512923675		107-DP		MILLINGTON SHIELDS #1	UNDESIGNATED ATOKA	275.0	EL PASO NATURAL G
-ELF AQUITAINE INC				RECEIVED:	04/26/82	JA: OK			
8229490	13816	3501120985		103		MASONHALL #2	CANTON	0.0	
8229489	13815	3501121544		103		MASONHALL #3	CANTON	0.0	
-EXXON CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229364	13482	3501922144		103		STATE DIXON #2	JOINER CITY	1.0	
-F C D OIL CORP				RECEIVED:	04/26/82	JA: OK			
8229352	13809	3507323203		103		HAYMAKER 1-9	SOONER TREND	282.9	EXXON CO USA
-FLINT & ASSOCIATES				RECEIVED:	04/26/82	JA: OK			
8229507	13700	3512321098		103		MOBIL #6	WEST ALLEN	354.0	SUN GAS CO
-FUNK EXPLORATION INC				RECEIVED:	04/26/82	JA: OK			
8229368	11140	3500722007		102-4		DELK #1-6	E BALKO	8.0	NORTHERN NATURAL
-GRACE PETROLEUM CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229348	13745	3515120172		108		KING 1-13	TEAGARDEN	0.0	PANHANDLE EASTERN
-HARPER OIL COMPANY				RECEIVED:	04/26/82	JA: OK			
8229355	13793	3508321810		103		ERGENBRIGHT #1	SOONER TREND	175.0	EASON OIL CO
-HELMERICH & PAYNE INC				RECEIVED:	04/26/82	JA: OK			
8229498	16641	3504321404		102-2		WARD #4-4	EAST SEILING	150.0	MICHIGAN WISCONSI
-HERMAN ROBERTS				RECEIVED:	04/26/82	JA: OK			
8229357	13791	3511100000		103		ROBERTS #1		0.0	PHILLIPS PETROLEU
8229358	13790	3511100000		103		ROBERTS #2		0.0	PHILLIPS PETROLEU
8229359	13789	3511100000		103		ROBERTS #3		0.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	04/26/82	JA: OK			
8229501	2689	3505935234		108		LEWIS A #1	MOCANE LAVERNE	19.0	NORTHERN NATURAL
8229356	13792	3500721998		103		LONG #2	MOCANE LAVERNE	250.0	MICHIGAN WISCONSI
-KIRBY EXPLORATION CO				RECEIVED:	04/26/82	JA: OK			
8229375	18067	3501521247		107-DP		MINDEMANN 1-30	FLETCHER FIELD SEC 30	4300.0	PANHANDLE EASTERN
-KLINE & PITTENGER EXPLORATION				RECEIVED:	04/26/82	JA: OK			
8229353	13798	3511921661		103		LAFON #1	ORLANDO	29.0	AMINOIL USA INC
-M M RESOURCES INC				RECEIVED:	04/26/82	JA: OK			
8229506	13677	3504722610		103		POSEY #7-1		73.0	CHAMPLIN PETROLEU
-MACKELLAR INC				RECEIVED:	04/26/82	JA: OK			
8229492	13892	3510320854		103		COLE #3	EAST GREEN VALLEY	0.0	ARCO OIL & GAS CO
8229493	13893	3510320866		103		COLE #4	EAST GREEN VALLEY	0.0	ARCO OIL & GAS CO
8229491	13890	3510320868		103		STERMER #4	EAST GREEN VALLEY	0.0	ARCO OIL & GAS CO
-MAHAN-ROWSEY INC.				RECEIVED:	04/26/82	JA: OK			
8229360	13787	3502720474		103		TANAKA #1	S W MOORE	730.0	SUN GAS CO
-MARLIN OIL CORPORATION				RECEIVED:	04/26/82	JA: OK			
*8229502	12546	3500700000		108		STEVENS #1	MOCANE-LAVERNE	15.0	EL PASO NATURAL G
-MARSHALL OIL CORP				RECEIVED:	04/26/82	JA: OK			
8229367	17700	3503120650		107-DP		GODLOVE #1	N E FLETCHER	0.0	PANHANDLE EASTERN
-MAY PETROLEUM INC				RECEIVED:	04/26/82	JA: OK			
8229372	16892	3510321653		102-4		VANN "C" #1 (103-73608)		365.0	
-MIDWEST ENTERPRISES INC				RECEIVED:	04/26/82	JA: OK			
8229503	13527	3508321451		103		RISING #2	SOONER TREND	30.0	CONOCO INC
-MONSANTO COMPANY				RECEIVED:	04/26/82	JA: OK			
8229380	13812	3504722674		103		S E SALT FORK SKINNER SAND U #19-2	S E SALT FORK	400.0	CRA INC
-OTEX ENERGY INC				RECEIVED:	04/26/82	JA: OK			
8229499	16664	3501520877		102-2		REBA COWSER #1-31		180.0	MICHIGAN WISCONSI
-PARKER BROTHERS OIL CO				RECEIVED:	04/26/82	JA: OK			
8229365	16788	3513122763		102-2		PARKER #1A		5.0	DIAMOND "S" GAS S
-PETRO-LEWIS CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229366	13543	3513722578		102-4		KIRK #4	WEST MANLOW	912.5	ARKANSAS LOUISIAN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/26/82	JA: OK			
8229362	13690	3515335206		108		ROBERTS C #1	N W QUINLAN	17.4	CITIES SERVICE CO
-RAINEY OIL CO				RECEIVED:	04/26/82	JA: OK			
8229487	13764	3503722800		103		HAMILTON #1	ARNO	94.0	KERR-MCGEE CORP
8229511	13763	3503723023		103		MCCAMMON #1	ARNO	198.0	KERR-MCGEE CORP
-RESOURCES INVESTMENT CORPORATION				RECEIVED:	04/26/82	JA: OK			
8229505	13674	3502720582		103		LAW #1	N W NORMAN	138.7	SUN GAS CO
-RICKS EXPLORATION CO				RECEIVED:	04/26/82	JA: OK			
8229376	18084	3501520604		107-DP		DUNN 1-33	S W VERDEN	148.0	TENNESSEE GAS PIP
-SAMSON RESOURCES COMPANY				RECEIVED:	04/26/82	JA: OK			
8229508	16666	3505121187		102-3		HUMPHREY HEIRS #2	S W POCASSET	141.4	ARKANSAS LOUISIAN
-SAXON OIL COMPANY				RECEIVED:	04/26/82	JA: OK			
8229349	13616	3504721353		103		TOWELL NO 3	PAWHUSKA SAND	188.5	AMINOIL USA INC
-ST JOE PETROLEUM (US) CORP				RECEIVED:	04/26/82	JA: OK			
8229510	7667	3510300000		103		RICE #2		82.0	CITIES SERVICE GA
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	04/26/82	JA: OK			
8229354	13795	3512321305		103		MOUNT GILCREASE UNIT #3-14	ALLEN	365.0	ARKANSAS LOUISIAN
-TENNECO OIL COMPANY				RECEIVED:	04/26/82	JA: OK			
8229373	16899	3512120831		102-2		DAKIL #1-13	FIELD IS UNNAMED	150.0	
-TEXACO INC				RECEIVED:	04/26/82	JA: OK			
8229488	13786	3507323051		103		ROLLIN DREW #3	SOONER TREND POOL	81.9	EASON OIL CO
-TEXOMA RESOURCES INC				RECEIVED:	04/26/82	JA: OK			

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JD NO	DA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229379	13823	3511921599		103		FRANCIS "A" #1-4	SOONER TREND	108.0	AMINOIL USA
-THE WIL-MC OIL CORP				RECEIVED:	04/26/82	JA: OK			
8229378	14579	3513721520		102-4		BEN SAYE ESTATE #1 (112-13)	COMANCHE	15.0	
8229377	16728	3513700000		102-4		EDWARDS "B" #2 (154-6)	COMANCHE	136.4	
8229369	16729	3513721527		102-4		EDWARDS "E" #2 (151-7)	COMANCHE	254.5	
8229350	13567	3505320712		103		RAPP #1	WAKITA	7.8	EL GRANDE PIPELIN
-UNION TEXAS PETROLEUM				RECEIVED:	04/26/82	JA: OK			
8229508	13720	3509322314		103		JOHN HESS #2	HODGE AREA 1-SE NW SE	109.5	PANHANDLE EASTERN
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER,CO									
-CHANDLER & ASSOCIATES INC				RECEIVED:	04/23/82	JA: CO 1			
8229396	CD0087-82PB	0510308081		108-PB		FORK UNIT 12-11	MANCOS B	0.0	NORTHWEST P L COR
-RESOURCES INVESTMENT CORPORATION				RECEIVED:	04/27/82	JA: KS 1			
8229395	KN 64-0	1505320531		103		KANOPOLIS FEDERAL #1	S E KANOPOLIS	150.0	
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, LOS ANGELES,CA									
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/27/82	JA: CA 2			
8229398	OCS-P 1-82	0431120472		102-5		SANTA CLARA UNIT 5-1	CALIFORNIA OFFSHORE	41.0	PACIFIC LIGHTING
8229397	OCS-P 2-82	0431120481		102-5		SANTA CLARA UNIT 5-2	CALIFORNIA OFFSHORE	41.0	PACIFIC LIGHTING
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/28/82	JA: LA 3			
8229473	G1-2491	1772140127		102-5		OCS G-1612 C-29A	SOUTH PASS BLOCK 61 F	70.0	SOUTHERN NATURAL
8229428	G2-2633	1770540374		102-1		OCS G-3980 VERMILLION BLK 104 #1	VERMILLION	1400.0	TENNESSEE GAS PIP
8229460	G1-2415	1772140852		102-5		OCS-G 1612 C-33A	SOUTH PASS BLOCK 61 F	36.0	SOUTHERN NATURAL
-CHEVRON U S A INC				RECEIVED:	04/28/82	JA: LA 3			
8229459	G1-2370	1770040368		102-5		OCS-G-1971 #9	WEST CAMERON	1440.0	NATURAL GAS PIPEL
8229422	G1-2224	1772240055		102-5		OCS-G-2184 A-9	SOUTH PASS	1278.0	TENNESSEE GAS PIP
-CNG PRODUCING COMPANY				RECEIVED:	04/28/82	JA: LA 3			
8229458	G1-2371	1771240261		102-5		B-5S1	SHIP SHOAL	650.0	CONSOLIDATED GAS
8229447	G1-2404	1771240261		102-5		B-5S2	SHIP SHOAL	1400.0	CONSOLIDATED GAS
8229477		1771240264		102-5		B-6S1	SHIP SHOAL	800.0	CONSOLIDATED GAS
8229483		1771240264		102-5		B-6S2	SHIP SHOAL	800.0	CONSOLIDATED GAS
8229482		1771240267		102-5		B-9S1	SHIP SHOAL	500.0	CONSOLIDATED GAS
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	04/28/82	JA: LA 3			
8229442	G1-2438	1770540419		102-1		VERMILION BLK 57 - #5	VERMILION	575.0	TRANSCONTINENTAL
-EXXON CORPORATION				RECEIVED:	04/28/82	JA: LA 3			
8229438	G1-2456	1771040928		102-5		OCS-G 2111 #C-1	EUGENE ISLAND	100.0	COLUMBIA GAS TRAN
8229439	G1-2424	1771040920		102-5		OCS-G 2111 #C-2	EUGENE ISLAND	300.0	COLUMBIA GAS TRAN
8229435	G2-2576	1771043941		102-5		OCS-G 2111 #C-5	EUGENE ISLAND	200.0	COLUMBIA GAS TRAN
-KERR-MCGEE CORPORATION				RECEIVED:	04/28/82	JA: LA 3			
8229429	G2-2605	1771140589		107-DP		OCS 0347 #3	SHIP SHOAL	913.0	TRANSCONTINENTAL
8229446	G1-2333	1771140540		102-5		OCS-0828 #K-2	SHIP SHOAL	0.0	TRANSCONTINENTAL
-MARATHON OIL COMPANY				RECEIVED:	04/28/82	JA: LA 3			
8229479	G2-2567	1772440165		102-5		MAIN PASS BLK 306 F-11	MAIN PASS	73.0	SOUTHERN NATURAL
8229485	G2-2568	1772440157		102-5		MAIN PASS BLK 306 F-15	MAIN PASS	365.0	SOUTHERN NATURAL
8229478	G2-2569	1772440137		102-5		MAIN PASS BLK 306 F-3	MAIN PASS	23.0	SOUTHERN NATURAL
-MESA PETROLEUM CO				RECEIVED:	04/28/82	JA: LA 3			
8229474	G1-2500	1770640335		102-5		VERMILION BLK 397 A-1	VERMILION	5000.0	MICHIGAN WISCONSI
8229476	G1-2502	1770640453		102-5		VERMILION BLK 397 A-12	VERMILION	5000.0	MICHIGAN WISCONSI

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229443	G1-2311	1770640341		102-5		VERMILION BLK 397 A-2	VERMILION	2520.0	MICHIGAN WISCONSI
8229448	G1-2312	1770640341		102-5		VERMILION BLK 397 A-2D	VERMILION	2520.0	MICHIGAN WISCONSI
8229454	G1-2313	1770640373		102-5		VERMILION BLK 397 A-4	VERMILION	2520.0	MICHIGAN WISCONSI
8229475	G1-2501	1770640384		102-5		VERMILION BLK 397 A-5	VERMILION	5000.0	MICHIGAN WISCONSI
8229424	G1-2479	1770640435		102-5		VERMILION BLK 397 A-9	VERMILION	2520.0	MICHIGAN WISCONSI
8229453	G1-2314	1770640406		102-5		VERMILLION BLK 397 A-6	VERMILION	2520.0	MICHIGAN WISCONSI
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED:	04/28/82	JA: LA 3			
8229462	G1-2392	1771340023		102-5		SOUTH PELTO 9 #2 A	SOUTH PELTO	130.0	TRANSCONTINENTAL
8229436	G1-2465	1771340078		102-5		SOUTH PELTO 9 #7B (ALTERNATE)	SOUTH PELTO	912.5	TRANSCONTINENTAL
-ODECO OIL & GAS				RECEIVED:	04/28/82	JA: LA 3			
*8229450	G1-2346	1770940453		102-5		OCS-0317 #9A	EUGENE ISLAND BLK 47	1020.0	SOUTHERN NATURAL
8229426	G1-2471	1771140575		102-5		OCS-064 #48A	SHIP SHOAL	200.0	TRANSCONTINENTAL
8229425	G1-2472	1771140575		102-5		OCS-064 #48C	SHIP SHOAL	255.0	TRANSCONTINENTAL
8229463	G1-2391	1771140579		102-5		OCS-065 #2B	SHIP SHOAL 113 FIELD	1400.0	TRANSCONTINENTAL
8229457	G1-2412	1771140552		102-5		OCS-1526 #E-13A	SHIP SHOAL 222 FIELD	75.0	TRANSCONTINENTAL
-SHELL OIL CO				RECEIVED:	04/28/82	JA: LA 3			
8229445	G1-2420	1762720133		102-5		OCS-G 1193 C-12A	SOUTH MARSH ISLAND	100.0	MICHIGAN WISCONSI
8229437	G1-2249	1770920002		102-5		OCS-G 1220 15A	EUGENE ISLAND	150.0	MICHIGAN WISCONSI
8229434	G2-2578	1770440489		102-1		OCS-G 4101 JA-3	EAST CAMERON	5475.0	SOUTHERN NATURAL
8229433	G2-2579	1770440528		102-1		OCS-G 4101 JA-6	EAST CAMERON	5500.0	SOUTHERN NATURAL
8229452	G1-2339	1770900591		102-5		OCS-0478 B-8E	EUGENE ISLAND	36.0	TRANSCONTINENTAL
-SUPERIOR OIL CO				RECEIVED:	04/28/82	JA: LA 3			
8229464	G2-2600	1770940450		107-DP		OCS-0247 #11	WEST CAMERON	5000.0	MICHIGAN WISCONSI
-TENNECO OIL COMPANY				RECEIVED:	04/28/82	JA: LA 3			
8229480	G2-2549	1771140486		102-1		SHIP SHOAL 170 A-1	SHIP SHOAL	1095.0	TENNESSEE GAS PIP
8229481	G2-2548	1771140518		102-1		SHIP SHOAL 170 A-7	SHIP SHOAL	6.0	TENNESSEE GAS PIP
-TEXACO INC				RECEIVED:	04/28/82	JA: LA 3			
8229456	G1-2413	1770340359		102-5		E C BLK 229 OCS-G-0966 #A-12	EAST CAMERON	8375.0	SEA ROBIN PIPELIN
8229455	G1-2414	1770340360		102-5		E C BLK 229 OCS-G-0966 #A-13	EAST CAMERON	0.0	SEA ROBIN PIPELIN
8229448	G1-2401	1770940296		102-5		EUGENE ISLAND BLK 72 #1	EUGENE ISLAND	128.0	NATURAL GAS PIPEL
-TEXOMA PRODUCTION CO				RECEIVED:	04/28/82	JA: LA 3			
8229484	G1-2348	1771540352		102-5		OCS-G2626 #2	SOUTH TIMBALIER	2000.0	
-TRANSCO EXPLORATION COMPANY				RECEIVED:	04/28/82	JA: LA 3			
8229427	G2-2641	1770540498		102-1		#5	VERMILION	730.0	TRANSCONTINENTAL
8229441	G1-2430	1770840430		102-5		A-11	SOUTH MARSH ISLAND	730.0	TRANSCONTINENTAL
-UNION OIL COMPANY OF CALIF				RECEIVED:	04/28/82	JA: LA 3			
8229430	G1-2429	1770540468		102-5		OCS 0205 #E-7	VERMILION	37.0	TENNESSEE GAS PIP
8229451	G1-2342	1770540457		102-5		OCS 0559 #2	VERMILION	365.0	
-CNG PRODUCING COMPANY				RECEIVED:	04/28/82	JA: TX 3			
8229461	G1-2396	4270940650		102-5		A-9S1	HIGH ISLAND	7200.0	CONSOLIDATED GAS
-CORPUS CHRISTI OIL AND GAS CO				RECEIVED:	04/28/82	JA: TX 3			
8229486	G1-2481	4270440034		102-1		BA-437 #1-L	BRAZOS	6.0	TRANSCONTINENTAL
8229423	G1-2480	4270440034		102-1		BA-437 #1-U	BRAZOS	0.0	TRANSCONTINENTAL
8229466	G1-2483	4270440037		102-1		BRAZOS AREA 437 #2-L	BRAZOS	6.0	TRANSCONTINENTAL
8229465	G1-2482	4270440037		102-1		BRAZOS AREA 437 #2-U	BRAZOS	0.0	TRANSCONTINENTAL
8229471	G1-2488	4270440045		102-1		BRAZOS AREA 437 #4-L	BRAZOS	0.0	TRANSCONTINENTAL
8229472	G1-2489	4270440045		102-1		BRAZOS AREA 437 #4-U	BRAZOS	0.0	TRANSCONTINENTAL
8229469	G1-2486	4270440068		102-1		BRAZOS AREA 437 #5-L	BRAZOS	0.0	TRANSCONTINENTAL
8229470	G1-2487	4270440068		102-1		BRAZOS AREA 437 #5-U	BRAZOS	0.0	TRANSCONTINENTAL
8229467	G1-2484	4270440174		102-1		BRAZOS AREA 437 #6-L	BRAZOS	0.0	TRANSCONTINENTAL
8229468	G1-2485	4270440174		102-1		BRAZOS AREA 437 #6-U	BRAZOS	0.0	TRANSCONTINENTAL
-EXXON CORPORATION				RECEIVED:	04/28/82	JA: TX 3			
8229449	G1-2400	4270840099		102-5		OCS-G 3237 #A-7	HIGH ISLAND	1500.0	TRANSCONTINENTAL

UMI 28 12 YM 6617 4V

VOLUME 650 PAGE 008

JD NO	JA DKT	API NO	T	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8229434	61-2422	4271140512		102-5		OCS-G 3313 #A-8	HIGH ISLAND	4000.0	COLUMBIA GAS TRAN
-SHELL OIL CO				RECEIVED:	04/28/82	JA: TX 3			
8229432	62-2590	4270440051		102-1		OCS-G 3472 A-2	BRAZOS	8500.0	TRANSCONTINENTAL
8229431	62-2591	4270440059		102-1		OCS-G 3472 A-3 (S/T1)	BRAZOS	8000.0	COLUMBIA GAS TRAN

OTHER PURCHASERS VOLUME NO :65

8229456 UNITED GAS P L CO
8229502 MICHIGAN WISCONSIN PL CO

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission by June 4, 1982.

Categories within each NPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1000 ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease
Section 107-DP: 15,000 feet or deeper
107-GB: Geopressured brine
107-CS: Coal seams
107-DV: Devonian shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13915 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP-82-37-000]

Natural Gas Policy Act; New Mexico Department of Energy and Minerals; Request for Withdrawal of Final Eligibility Determination

May 17, 1982.

In the matter of New Mexico Department of Energy and Minerals, Oil Conservation Divison, NGPA Section 108 Determination, Mexico "D" Well No. 1, Cooper Jal-Jalmat Pool, Lea County, New Mexico (FERC JD 78-12361).

On March 15, 1982, Getty Oil Company P.O. Box 1404, Houston, Texas 77001 (Getty) filed a copy of a request to withdraw an application for a Natural Gas Policy Act of 1978 (NGPA) final section 108 eligibility determination for the Mexico "D" Well No. 1, located in the Cooper Jal-Jalmat Pool, Lea County, New Mexico. Getty states that the Oil Conservation Division of the New Mexico Department of Energy and Minerals (New Mexico) issued a favorable determination on July 9, 1979, in Docket No. 79-12361 NM. Getty further states that notice of the determination was received by the Federal Energy Regulatory Commission (Commission) on July 12, 1979, and, after lapse of the 45-day review period, became final on August 26, 1979.

Getty states that a review of its records for this well indicates that the well had completions in more than the formation upon which the determination was based and that, accordingly, production data used to qualify the well under section 108 was not total daily well production as required by § 271.804(a) of the Commission's regulations.

Finally, Getty states that a refund payment will be made to El Paso Natural Gas Company, the purchaser of this natural gas, and that the refund report required by § 273.202 of the Commission's regulations will be filed with the Commission.

With respect to the question of refunds arising out of Getty's request for withdrawal of final well category determination, notice is hereby given that whether refunds will be required is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to protest this request should file, by June 21, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a protest or a petition to intervene in accordance with § 1.8 or 1.10 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered, but will not not make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13946 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2912-001]

Alabama Electric Coop., Inc., Application for License (Over 5 MW)

May 18, 1982.

Take notice that Alabama Electric Cooperative, Inc. (Applicant) filed on July 6, 1981, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for construction and operation of a water power project to be known as Demopolis Hydroelectric Development Project No. 2912. The project would be located on the Tombigbee River near Demopolis, in Sumter County, Alabama. Correspondence with the Applicant should be directed to Mr. Charles R. Lowman, General Manager, Alabama Electric Cooperative, Inc., Andalusia, Alabama 36420.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Demopolis Lock and Dam and consists of: (1) A proposed intake channel approximately 160 feet wide and 500 feet long; (2) a proposed tailrace approximately 300 feet wide and 1,700 feet long; (3) a proposed powerhouse containing two turbine generators with a combined rated capacity of 37.5 MW; (4) a proposed 115 kV transmission line interconnected with an existing transmission line and resulting in a total transmission length of approximately 4.5 miles; and (5) appurtenant facilities. The project will be operated as a run-of-river plant. The expected average annual energy production is 153 GWh.

Purpose of Project—Power at the proposed project would be used by the Alabama Electric Cooperative for member cooperatives, municipalities, and consumers.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 30, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d)) or a notice of intent (See 18 CFR 4.33(b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c), or §4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE

COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13820 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

Project location	Capacity (kW)	Stream	Height of diversion (ft)
Larsen Bay	270	Humpy Creek	5.
Old Harbor	340	Unnamed tributary to Midway Bay	5.
Togiak	238, 290, or 430.	Quigmy River	28, 36, or 52.
King Cove	575	Delta Creek	5.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Docket Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB, at the above address. A copy of any petition of intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13821 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL82-10]

Alaska Power Authority; Declaration of Intention

May 18, 1982.

Take notice that on March 12, 1982, the Alaska Power Authority filed a declaration of intention to construct and operate four hydroelectric facilities in Alaska. The declaration of intention was filed under section 23(b) of the Federal Power Act, 16 U.S.C. 817(b), and requests that the Federal Energy Regulatory Commission commence an investigation to determine if the FERC has jurisdiction over the projects. Correspondence with the Alaska Power Authority should be directed to: Eric Yould, Executive Director, Alaska Power Authority, 334 West 5th Avenue, Anchorage, Alaska 99501.

The four projects are as follows:

[Docket No. CP82-310-000]

Algonquin LNG, Inc., and Algonquin Gas Transmission Co.; Application

May 14, 1982.

Take notice that on April 30, 1982, Algonquin LNG, Inc. (ALNG) and Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP82-310-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new liquefied natural gas (LNG) storage service and related transportation-exchange service for a limited ten-year term ending May 31, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ALNG proposes herein to render a ten-year service involving the receipt, storage, and redelivery, in liquid and gaseous phase, of LNG for certain distribution companies at its facilities located in Providence, Rhode Island. Algonquin Gas proposes to deliver regasified LNG through its existing pipeline to the participating resale customers.

It is stated that 348,000 barrels of ALNG's tank's capacity would continue to be used by Providence Gas Company (Providence Gas) pursuant to a long-term arrangement to supply its local distribution system. After allowance for tank heel, ALNG states it has 248,000 barrels of capacity available for service to other companies. Service utilizing undedicated capacity has been rendered to certain customers over the past eight years on a short-term basis. The last such short-term service was authorized for three years and terminates on May 31, 1982, it is explained.

Applicants explain that as the current limited-term service was approaching its conclusion certain customers requested a new, long-term service to facilitate longer range planning and stability. In this regard, it is asserted that New England suffered a severe cold period in the 1980-81 winter which compounded by an interruption of foreign LNG supplies comtemplated to be delivered by Distrigas of Massachusetts Corporation caused a serious shortage of nonpipeline peak shaving gas in New England and emphasized the need for long-term service to all of the sales customers served by Algonquin Gas as well as to previous short-term purchasers of LNG storage service. It is asserted that seven companies accepted the offered service and apportioned the available 248,000 barrels of capacity as follows:

	Barrels of storage capacity	
	June 1, 1982 through May 31, 1987	June 1, 1987 through May 31, 1991
NEW SERVICE		
Bay State Gas Company	28,700	33,700
Boston Gas Company	127,000	127,000
Bristol and Warren Gas Company, et al. Cape Cod Gas Company	10,500	12,000
The Connecticut Gas Company	56,800	52,000
City of Norwich, Connecticut Valley Gas Company	15,000	15,000
Total	248,000	248,000
CONTINUING SERVICE		
Providence Gas Company	348,000	348,000
Tank Heel	4,000	4,000
Total	600,000	600,000

It is asserted that ALNG has executed letter agreements with each of the customers which desire new LNG storage service from its storage facility and Algonquin Gas has executed letter agreements for customers desiring delivery of regasified LNG. As represented in the letter agreements authorization is for limited-term service for ten years expiring May 31, 1992.

Applicants assert that this LNG storage service would allow the seven customers to store LNG during off peak seasonal periods when it is not needed to meet high-priority requirements and would provide an added protection to help assure maintenance of service to such high-priority users.

It is stated that deliveries by a customer to ALNG's storage facility would be made by truck or alternate means mutually agreed to. It is submitted that redelivery of stored LNG to customers may be either in liquid form by truck or in gaseous phase by pipeline. It is asserted that redeliveries of LNG may also be accomplished in gaseous phase. ALNG would gasify the LNG and physically deliver it to Providence Gas; Algonquin Gas, in turn, would deliver thermally equivalent quantities to the customer under proposed Rate Schedule T–LG, it is explained. The customer would assume the burden of making all necessary arrangements with Providence Gas should it desire redelivery of LNG in gaseous phase, it is stated.

Applicants have tendered for filing proposed tariff sheets which are necessary to effectuate the services for which authorization herein is requested. Applicants request that the Commission in its order approving the proposed services also except and make effective Applicant's related tariff sheets filed herein. Applicants request that the Commission waive, to the extent necessary, Part 154 of the Commission's Regulations to permit the filing and acceptance of the proposed tariff sheets.

ALNG would charge the customers of long-term LNG storage service an initial rate of $1.0417 per barrel per month. This initial rate is also included in ALNG's FERC Gas Tariff, Original Volume No. 1. Applicants request Commission acceptance of such rate for filing without condition, so as to provide an initial revenue assurance to ALNG for the rendition of the LNG storage service. Applicants state that such unconditioned authorization of the initial rate is a condition precedent to ALNG's acceptance of a certificate.

Algonquin Gas has also tendered a new Rate Schedule T–LG for its proposed service at a rate of 14.7 cents per million Btu transported which rate, Algonquin Gas states, is identical to the established, effective rate for similar services.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13662 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CF82-121-000]

Alton Packaging Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 13, 1982.

On April 21, 1982 Alton Packaging Corporation of 1915 Wigmore Street, Jacksonville, Florida 32201, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is located in Jacksonville, Florida. Pulverized coal, wood bark and kraft black liquor are used as the primary energy sources to fuel a double extraction, condensing turbine generator and boilers. The electric power production capacity of the facility is 44,200 kilowatts. Installation of the facility began in March 1981. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13666 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-482-000]

American Electric Power Service Corp; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation on behalf of its affiliates, Ohio Power Company and

Kentucky Power Company, tendered for filing on April 30, 1982 the following:

1. Agreement between City of Vanceburg, Kentucky and Kentucky Power Company.
2. Agreement among City of Hamilton, Ohio, American Municipal Power-Ohio, Inc., and Ohio Power.
3. Facilities Agreement among Kentucky Power Company, Ohio Power Company and City of Vanceburg.
4. Notice of Cancellation or Termination of Kentucky Power Company's FERC Rate Schedule No. 12.

The filings principally provide for Backup Power to Vanceburg and Transmission Service to Hamilton and for termination of full requirements servcie by Kentucky Power Company to Vanceburg.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13836 Filed 5-20-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-501-000]

Central Hudson Gas & Electric Corp.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on May 6, 1982, tendered for filing as a rate schedule an executed agreement dated April 28, 1982 between Central Hudson and Philadelphia Electric Company. The proposed rate schedule provides for the sale of firm capability and associated energy by Central Hudson.

Central Hudson states that the rate schedule provides for a capability charge of $100 per megawatt per day of capability made available by Central Hudson and an energy charge equal to Central Hudson's incremental steam electric generating costs, including operation and maintenance costs and the incremental cost of transmission losses.

Central Hudson requests waiver of the notice requirements of § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective on May 3, 1982 in accordance with the terms thereof.

Copies of the filing by Central Hudson were served upon Philadelphia Electric Company and the Public Service Commission of New York.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-13837 Filed 5-20-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6146-000]

Gary C. Chiara; Application for Preliminary Permit

May 19, 1982.

Take notice that Gary C. Chiara (Applicant) filed on March 30, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C.791(a)–825(r)] for Project No. 6146 to be known as the Tower House Ditch Water Power Project located on Crystal Creek near City of Redding in Shasta County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Gary C. Chiara, 2760 Henderson Road, Redding, California 96002.

Project Description—The proposed project would consist of: (1) A 6-foot high diversion structure; (2) a one-mile long diversion ditch; (3) a 10-inch diameter, 500-foot long penstock; (4) a powerhouse with total installed capacity of 50 kW; (5) a 75-foot long, 12-kV transmission line interconnecting with an existing PG&E transmission line. the Applicant estimates that total annual output would be 300 MWh.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a preliminary permit for 24 months during which he would conduct engineering, enviornmental and economic studies and prepare an FERC Minor license application. These studies are estimated to cost $4,400 by the Applicant.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 29, 1982, the competing application itself, or a notice of intent to file such an application [see; 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 29, 1982, and should specify the type of application forthcoming. Any applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 27, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING

APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13649 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-43-001]

Cities Services Gas Co.; Proposed Changes in FERC Gas Tariff

May 14, 1982.

Take notice that Cities Service Gas Company (Cities Service) on May 12, 1982, tendered for filing Substitute Twelfth Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1. Cities Service states that this filing is being made in compliance with Ordering Paragraphs (B) and (D) of the Commission's order issued April 21, 1982, in this docket and Cities Service's rates are reduced 9.37¢ per Mcf thereby.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. TA82-2-43 and RP81-78.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before May 25, 1982. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13694 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-88-000]

Columbia Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

May 12, 1982.

Take notice that on May 7, 1982, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

January 1, 1982

Twenty-Second Revised Sheet No. 64

March 1, 1982

Twenty-Third Revised Sheet No. 64

Columbia states that the sole difference in the two revised tariff sheets is that Twenty-Second Revised Sheet No. 64 reflects the Base Average Rates of Purchased Gas Cost which became effective on September 1, 1981, and Twenty-Third Revised Sheet No. 64 reflects the Base Average Rates of Purchased Gas Cost which became effective on March 1, 1982.

Columbia states that the aforesaid tariff sheets reflect a change in the Purchased Gas Adjustment (PGA) clause set forth in section 20.3(b) of the General Terms and Conditions of Columbia's tariff. The change reflected in the tariff sheets is designed to permit Columbia to value certain of its pipeline production, presently valued on a cost of service basis, at the applicable ceiling prices under the Natural Gas Policy Act of 1978 (NGPA). Columbia further states that the filing is being made as a result of the United States Court of Appeals for the Former Fifth Circuit's December 23, 1981 decision in *Mid-Louisiana Gas Company* v. *FERC*, Nos. 80-3804 and 80-4010.

Columbia states that it presently values its "old gas" pipeline production on a cost of service basis and such cost is reflected in its base sales rates. Columbia states that said pipeline production cost of service component of Columbia's base sales rates is 1.82¢ per dth.

Columbia proposes to implement the change from cost of service to NGPA pricing for its old gas production as of January 1, 1982 by effectively reducing its base sales rates for the period January 1, 1982 through August 31, 1982 by crediting to its Account 191, by a separate monthly entry, an amount determined by multiplying the aforesaid 1.82¢ by the quantity of gas sold during such period. In addition, the company proposes to debit its Account 191, by a separate monthly entry, by an amount determined by applying the appropriate NGPA price levels to its old gas production for this interim period. Columbia states that the net of the above entries to Account 191 for the period January 1, 1982 through June, 1982 shall be reflected in its PGA surcharge to become effective September 1, 1982. The impact of the entries for July and August, 1982 will be reflected in the surcharge to become effective March 1, 1982.

Columbia further states that in its September 1, 1982 PGA filing it shall reduce its base sales rates by the aforesaid 1.82¢ per dth. In addition, Columbia shall increase its base sales rates to appropriately reflect the valuing of its old gas production at the March 1, 1982 Commodity Base Average Rate of Purchased Gas Cost.

Columbia states that its filing is not intended as a waiver of any rights it may have to make a subsequent filing or filings to collect NGPA prices for its pipeline production retroactive to December 1, 1978.

Lastly, Columbia requests the Commission to grant the necessary waivers to permit its filing to become effective as proposed, stating that such is required to permit the timely implementation of the Court's December 23, 1981 decision in *Mid-Louisiana*.

Copies of the filing were served by the company upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia's filing

are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13869 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-301-000]

Connecticut Light & Power Co.; Order Accepting for Filing and Suspending Revised Rates, Denying Motions for Rejection, Summary Disposition, and Waiver of Notice, Granting Interventions, and Establishing Hearing and Price Squeeze Procedures

Issued: May 14, 1982.

On March 16, 1982, Connecticut Light & Power Company (CL&P) completed [1] the filing of a wholesale rate increase applicable to four partial requirements customers.[2] Based on a calendar 1982 test year, the proposed rates would increase jurisdictional revenues by approximately $6,200,000 (24.3%). CL&P requests an effective date of April 10, 1982.

Notice of CL&P's filing was issued on February 16, 1982, with responses due on or before March 2, 1982. Untimely protests in opposition to CL&P's proposed increase were received from Mr. George Soltesz, Mr. and Mrs. William Robbins, and Mrs. Robert Gillis and family, each of whom requests that the Commission reject the filing as excessive.

Timely petitions to intervene were filed by Bozrah Light & Power Company (Bozrah) and by the Connecticut Municipal Electric and Gas Association (CMEGA), acting on behalf of the Town of Wallingford and the Second and Third Taxing Districts of Norwalk, Connecticut. Bozrah requests that CL&P's filing be suspended for five months. In support of its request, Bozrah alleges that the requested return on equity is excessive, and that CL&P's cost of service inclusion of investment in cancelled nuclear generating units is improper.

CMEGA requests that the filing be rejected in its entirety, or in the alternative, be suspended for five months. CMEGA contends that: CL&P's has failed to provide the requisite cost support data under the Commission's regulations; CL&P's stratified rate design and 100% demand ratchet are unsupported, inconsistent with prior Commission decisions, and anticompetitive; the rates are excessive and unduly discriminatory; and the proposed rates create a price squeeze. In the event that CL&P's filing is not rejected, CMEGA requests that the Commission summarily deny the company's amortization of investment in its cancelled Montague Nuclear Plant. Construction of the project was suspended in 1978 and cancelled in 1980, and CL&P's proposes to amortize its $14.5 million investment (of which $576,000 would be allocated to the wholesale customers' cost of serive) over a three year period. CMEGA contends that amortization is improper because CL&P's customers never had and never will receive any benefit from the project. Further, CMEGA claims that recovery by CL&P of expenses incurred in 1978 would be imprudent and inconsistent with the concept of a forward looking test year. In addition, CMEGA requests that the company's proposed amortization over three years of $348,000 for expenses incurred as a result of abnormal outages occurring between December, 1980, and April, 1981, at CL&P's Millstone Nuclear Unit No. 1, be summarily rejected on the ground that they occurred prior to the 1982 test year.

On March 16, 1982, CL&P filed an answer to CMEGA's petition to intervene. While not opposing intervention by the three municipalities represented by CMEGA, the company does oppose participation by CMEGA itself on the ground that it is not a legal entity entitled to intervene under the Commission's Rules of Practice and Procedure. CL&P further disputes the allegations raised in CMEGA's petition and requests that the various motions be rejected. The company renews its request for an effective date of April 10, 1982; CL&P, thus, requests waiver of the notice requirements to the extent necessary. In the event that its filing is suspended, the company requests that the suspension period be limited to one day.

On March 22, 1982, CMEGA filed an amendment to its pleading with respect to certain calculations presented. In addition, CMEGA has moved to strike an appendix to CL&P's answer, asserting that the factual allegations raised are inaccurate and improper unless offered as testimony given under oath at an evidentiary hearing.

Discussion

Initially, we find that participation by Bozrah and CMEGA is in the public interest and we shall therefore grant their petitions to intervene.[3]

We find that CL&P's submittal substantially complies with the Commission's filing regulations; [4] further, we note that the stratified rate design and demand ratchet, of which CMEGA complains, were approved by the Commission in *Connecticut Light & Power Co.*, Opinion No. 114, 14 FERC ¶61,139 (Feb. 19, 1981), and Opinion No. 114-A, 15 FERC ¶61,056 (Apr. 20, 1981). Thus, the concerns currently expressed by CMEGA do not constitute a sufficient basis on which to summarily reject CL&P's filing.

In view of the issues raised by the petitioners and our preliminary review, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We shall therefore accept CL&P's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, (February 26, 1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed rates may be unjust and unreasonable but may not produce substantially excessive revenues, as defined in *West Texas*. In the instant proceeding, our examination suggests that the proposed increase may not yield substantially excessive revenues. We do not find, however, that CL&P has presented good cause to waive the notice requirements. Accordingly, we shall suspend CL&P's filing for one day from sixty days after the completion of its filing, to become effective on May 17, 1982, subject to refund.[5]

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[1] CL&P originally tendered its filing on February 9, 1982. By letter dated March 4, 1982, the company was advised that its filing was deficient; the deficiency was cured by the submittal of additional materials on March 10, 1982.

[2] *See* Attachment A for a rate schedule designations and affected customers.

[3] Under section 1.1(f)(1) of the Commission's Rules of Practice and Procedure, "persons" include incorporated and unincorporated associations. (*See* 18 CFR 1.8(b)). Any "person" may petition to intervene. We are not persuaded that CL&P has demonstrated any basis for concluding that CMEGA lacks the requisite capacity to represent its members. Accordingly, CL&P's request that intervention be limited to CMEGA's individual members will be denied.

[4] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

[5] CMEGA contends that a five month suspension is warranted in order to afford its members sufficient time to reflect CL&P's increase in their wholesale rates at the retail level. According to CMEGA, Connecticut law requires 30 days prior notice of retail rate changes and precludes the change from becoming effective thereafter until the first day of the month. The purpose of this Commission's suspension authority, however, is not to give affected customers notice. To the extent that the statute provides for notice to customers, it does so in section 205(d) of the Federal Power Act, which provides that no change in rates shall become effective, unless waiver is granted, except upon 60 days notice. In the instant docket, we note that approximately three months has passed since the company originally tendered its filing.

With respect to the issues for which CMEGA seeks summary disposition, we note that the Commission, in appropriate circumstances, has previously permitted the amortization of cancelled project and abnormal outage expenses incurred prior to the test year. *E.g., Connecticut Light and Power Co.*, Opinion No. 103, 13 FERC ¶61,155 (Nov. 21, 1980); *New England Power Co.*, Opinion No. 49 (July 19, 1979). CL&P therefore is not precluded from seeking amortization of such expenses on the basis of adequate record evidence. Because the issues present questions of law and fact most appropriately resolved on the basis of an evidentiary hearing, the motions for summary disposition will be denied. In accordance with the Commission's policy established in *Arkansas Power and Light Company*, Docket No. ER79-339 (August 6, 1979), we shall phase the price squeeze issue raised by CMEGA.

Finally, CMEGA, as noted above, has moved to strike portions of CL&P's answer which bear on CMEGA's claim that the proposed rates are discriminatory. In particular, CMEGA alleges that the company refused to offer its members an arrangement offered to others of its wholesale customers. CL&P denies the discrimination claims and has included, in its answer, a letter in support of its position. This issue is, however, more properly the subject of evidentiary proceedings. Because we do not decide the discrimination issue in this order on the basis of the pleadings, we shall deny CMEGA's motion to strike.

The Commission orders:

(A) CMEGA's motions to reject CL&P's filing, to summarily dispose of certain issues, or to strike portions of CL&P's answer are hereby denied.

(B) CL&P's motion for waiver of the notice requirements is hereby denied.

(C) CL&P's proposed rates are hereby accepted for filing and suspended for one day from sixty days after the completion of filing, to become effective on May 17, 1982, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of CL&P's rates.

(E) The petitions to intervene filed by Bozrah and CMEGA are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order of the Commission in this proceeding.

(F) The Commission staff shall serve top sheets in this proceeding on or before May 26, 1982.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding administrative law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders the initiation of price squeeze proceedings and further orders that this docket be phased so that the price squeeze proceedings begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding administrative law judge may order a departure from this schedule for good cause shown. The price squeeze claim shall be governed by § 2.17 of the Commission's regulations as it may be modified prior to the commencement of the price squeeze phase of the instant docket.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

THE CONNECTICUT LIGHT AND POWER COMPANY, DOCKET NO. ER82-301-000

(Rate Schedule Designations)

Dated: Undated

Designation	Supersedes
FPC Electric Tariff 1st Revised Volume No. 1	
3rd Revised Sheet No. 1	2nd Revised Sheet No. 1.
2nd Revised Sheet No. 2	1st Sheet No. 2.
3rd Revised Sheet No. 3	2nd Revised Sheet No. 3.
3rd Revised Sheet No. 4	2nd Revised Sheet No. 4.
2nd Revised Sheet No. 5	1st Revised Sheet No. 5.
3rd Revised Sheet No. 6	2nd Revised Sheet No. 6.

THE CONNECTICUT LIGHT AND POWER COMPANY, DOCKET NO. ER82-301-000—Continued

(Rate Schedule Designations)

Dated: Undated

Designation	Supersedes
2nd Revised Sheet No. 7	1st Sheet No. 7.
4th Revised Sheet No. 8	3rd Revised Sheet No. 8.
3rd Revised Sheet No. 9	2nd Sheet No. 9.
5th Revised Sheet No. 10	4th Revised Sheet No. 10.
5th Revised Sheet No. 11	4th Revised Sheet No. 11.
3rd Revised Sheet No. 11A	2nd Sheet No. 11A.
3rd Revised Sheet No. 12	2nd Revised Sheet No. 12.
3rd Revised Sheet No. 13	2nd Revised Sheet No. 13.
2nd Revised Sheet No. 14	1st Sheet No. 14.
2nd Revised Sheet No. 15	1st Sheet No. 15.
2nd Revised Sheet No. 16	1st Sheet No. 16.
3rd Revised Sheet No. 17	2nd Revised Sheet No. 17.

THE CONNECTICUT LIGHT AND POWER COMPANY

Designation	Supersedes
2nd Revised Sheet No. 18	1st Sheet No. 18.
3rd Revised Sheet No. 19	2nd Sheet No. 19.
3rd Revised Sheet No. 20	2nd Sheet No. 20.
2nd Revised Sheet No. 21	1st Sheet No. 21.
4th Revised Sheet No. 22	3rd Revised Sheet No. 22.
4th Revised Sheet No. 23	3rd Revised Sheet No. 23.
2nd Revised Sheet No. 24	1st Sheet No. 24.
2nd Revised Sheet No. 25	1st Sheet No. 25.
2nd Revised Sheet No. 26	1st Sheet No. 26.
3rd Revised Sheet No. 27	2nd Revised Sheet No. 27.

Service Agreements dated February 1, 1982, under FPC Electric Tariff, First Revised Volume No. 1 (Supersedes Service Agreements dated July 25, 1978, under FPC Electric Tariff, First Revised Volume No. 1).

[FR Doc. 82-13909 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-490-000]

Connecticut Light & Power Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, the Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an exchange agreement (the Agreement) between CL&P and the Hartford Electric Light Company (HELCO) (together, the NU Companies); and Fitchburg Gas and Electric Light Company (Fitchburg). The Agreement, dated as of April 6, 1981, provides for the NU Companies to exchange capacity from Middletown Unit No. 4 and Montville Unit No. 6, both oil-fired, intermediate type electric generating units, for gas turbine capacity from the Fitchburg Unit No. 7, a gas turbine type electric generating unit.

The Agreement provides that the parties will determine daily and/or weekly during the term of the Agreement whether it is economically

advantageous that an exchange shall take place.

Fitchburg will pay an hourly capacity charge to the NU Companies in an amount equal to the kilowatts of capacity exchanged times $0.003. Fitchburg will purchase energy from Middletown Unit No. 4 and/or Montville Unit No. 6 at the average cost of providing such energy. Fitchburg will pay a station service energy charge to the NU Companies for Middletown Unit No. 4 and/or Montville Unit No. 6 at the average cost of providing such energy from the NU System when such unit(s) are not operating during an exchange. The NU Companies will purchase energy from the Fitchburg Unit at the average cost of providing such energy.

CL&P requests the Commission waive its notice requirements to allow for an effective date of April 6, 1981.

CL&P states that copies of this filing have been mailed to the NU Companies and to Fitchburg.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 26, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13910 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-467-000]

Connecticut Light & Power Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an exchange agreement (the Agreement) between CL&P, the Hartford Electric Light Company (HELCO), Western Massachusetts Electric Company (WMECO) (together, the NU Companies); and Fitchburg Gas and Electric Light Company (Fitchburg). The Agreement, dated as of January 1, 1981, provides for the NU Companies to exchange capacity and related pondage from the Northfield Mountain Pumped Storage Hydro Electric Project (Project) for gas turbine capacity from the Fitchburg Unit No. 7, a gas turbine type electric generating unit.

The Agreement provides that the parties will determine weekly during the term of the Agreement whether or not it is economically advantageous that an exchange shall take place during any particular week.

Fitchburg will pay a weekly capacity charge to the NU Companies in an amount equal to kilowatts of capacity exchanged during each week times $0.211008. Fitchburg will also pay a station service energy charge to the NU Companies for Fitchburg's share of the station service energy consumed by the Project during each week in which an exchange takes place at a rate representing the average cost of providing such energy from the system of the NU Companies during the prior calendar month. The NU Companies would purchase energy from the Fitchburg Unit at the average cost of providing such energy.

CL&P requests that the Commission waive its standard notice period and allow the Agreement to become effective on January 5, 1981.

CL&P states that copies of the Agreement have been mailed to the NU Companies and to Fitchburg.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13909 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3368-001]

Continental Hydro Corp.; Surrender of Preliminary Permit

May 18, 1982.

Take notice that Continental Hydro Corporation (CH) permittee for the proposed Lavon Project No. 3368 has requested that its preliminary permit be terminated. The preliminary permit was issued on April 13, 1981, and would have expired on October 1, 1983. The proposed project would have utilized the U.S. Army Corps of Engineers Lavon Dam near Lavon, Texas. CH indicates that the project would not appear to be an economic source of energy.

CH's request is dated April 15, 1982, and the surrender of its permit for Project No. 3368 is effective as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13923 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6252-000]

East Kentucky Power Cooperative, Inc.; Application for Preliminary Permit

May 18, 1982.

Take notice that East Kentucky Power Cooperative, Inc. (Applicant) filed on April 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6252 to be known as the Grayson Project located on the Little Sandy River near Grayson, Carter County, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Richard H. Breckenkamp, East Kentucky Power Cooperative, Inc., P.O. Box 707, Winchester, Kentucky 40391. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Grayson flood control dam and would consist of: (1) A new 1700-foot long concrete lined power tunnel with intake located near the west dam abutment; (2) a powerhouse containing two turbine-generator units with a total rated capacity of 2.0 MW; (3) a 100-foot long, 69-KV transmission line; and (4) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 5,100,000 Kwh. Energy developed at the project would be utilized by the Applicant for distribution to its customers.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36

months. The work to be performed under this preliminary permit would consist of gathering necessary data, completing surveys and environmental studies, obtaining necessary Federal, State and local permits, in consultation with the Corps of Engineers and preparing necessary documentation for the Commission's licensing requirements. Applicant estimates that the cost of works to be performed under the permit would not exceed $20,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 29, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13824 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-279-000 and CP82-279-001]

El Paso Natural Gas Co., Dorchester Gas Producing Co.; Application

May 14, 1982.

Take notice that on April 8, 1982, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-279-000 an application, as amended, on April 21, 1982, by El Paso and Dorchester Gas Producing Company (Dorchester), P.O. Box 31049, Dallas, Texas 75231, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery of natural gas on an exchange basis to Dorchester in Reagan County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it and Dorchester are parties to a purchase agreement dated September 24, 1954, as amended, which provides for, *inter alia*, the sale by Dorchester and the purchase by El Paso at the outlet of Dorchester's Big Lake Texon Gasoline Extraction Plant located in Reagan County, Texas, of all volumes of surplus residue gas attributable to Dorchester's production and purchases in the vicinity of said plant. Pursuant to this agreement, Dorchester presently sells to El Paso approximately 500 Mcf of surplus residue gas per day, it is stated. Such quantities of surplus residue gas are utilized by El Paso as a part of its general system supply, it is submitted. El Paso explains that prior to the sale of surplus residue gas volumes to El Paso Dorchester in the daily operation of the Texon Plant receives raw casinghead gas from the production areas situated in close proximity to the plant, processes such raw gas and extracts natural gas liquids therefrom and concurrently uses available quantities of residue gas. Dorchester thereafter sells all surplus residue gas volumes at the outlet of the Texon Plant to El Paso in accordance with the terms and conditions of the purchase agreement.

El Paso asserts that in June 1981 Dorchester advised El Paso that it plans to cease all of its natural gas liquids processing operations at the Texon Plant inasmuch as it is no longer profitable to maintain said operations. Instead of processing raw gas and extracting natural gas liquids at the Texon Plant, Dorchester proposed to (1) only compress and treat (purify) raw gas that is currently being processed at the Texon Plant, (2) transport such gas approximately 10 miles to the Union Texas Petroleum Corporation (Union Texas) Benedum Plant in Upton County, Texas, for processing and liquids extraction, and (3) deliver all surplus residue gas under the purchase agreement to El Paso at El Paso's existing purchase meter station at the outlet of the Benedum Plant, is stated. As a part of the proposed revised operations at the Texon Plant, El Paso asserts that Dorchester advised El Paso that it would require a supply of pipeline quality gas in order to continue the operation of the remaining Texon Plant camp and compressors and for other Texon Plant operations.

In order to accommodate Dorchester's proposed cessation of its natural gas liquids processing operations at the Texon Plant and its need for pipeline quality gas at said plant, El Paso states that it and Dorchester executed an amendatory agreement dated December 1, 1981, which amends the purchase agreement and evidences the understanding and agreement between the parties respecting Dorchester's proposal. The amendatory agreement, it is stated, provides, *inter alia*, that the residue gas reserved for use by Dorchester under the Texon purchase agreement would be delivered via exchange to Dorchester through an existing tap and meter on El Paso's transmission line adjacent to Dorchester's Texon Plant.

In accordance with the provisions of the amendatory agreement and in order that Dorchester may have a constant and reliable supply of pipeline quality natural gas available for its aforementioned uses at the Texon Plant and, further, to insure the continuity of the surplus residue gas supply to be sold at the outlet of the Benedum Plant by Dorchester to El Paso, El Paso states

that it and Dorchester have entered into a gas exchange agreement dated March 19, 1982. Pursuant to the terms and conditions of the exchange agreement, El Paso states that it has agreed to deliver to Dorchester at an existing tap and meter station located immediately downstream of the Texon Plant in Reagan County, Texas, such quantity of pipeline quality gas as Dorchester may need, from time to time, not to exceed 350 Mcf per day. It is asserted that in exchange therefore, Dorchester has agreed to cause the concurrent delivery to El Paso at El Paso's existing purchase meter station located at the outlet of Union Texas' Benedum Plant in Upton County, Texas, of volumes of surplus residue gas equivalent on a thermal basis to the total volumes of pipeline quality natural gas delivered by El Paso to Dorchester at the Texon Plant. El Paso and Dorchester have agreed to perform their respective exchange obligations under the exchange agreement without monetary compensation from the other party, it is explained.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13825 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP82-36-000]

El Paso Natural Gas Co.; Application of El Paso Natural Gas Co. for Waiver of Certain Regulations Under the Natural Gas Policy Act of 1978

May 14, 1982.

Take notice that on April 20, 1982, El Paso Natural Gas Company filed an application for waiver of §§ 271.804, 271.805 and 274.206 of the Commission's regulations relating to filing of notices of disqualification and applications for requalification for certain stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301 *et seq.*).

El Paso states that the purpose of its request is to obtain the necessary waivers to permit it to retain stripper well status for a total of 102 wells for which notices of disqualification were not filed when production exceeded 60 Mcf per production day, and when eligible, were not requalified as stripper wells. El Paso claims that its failure to file notices of disqualification for the subject wells occurred during the period in which the applications for determinations of section 108 eligibility for these wells were still pending before the jurisdictional agencies. El Paso, in failing to submit the notices of disqulification, allegedly relied on a statement in the preamble to the Interim Rules (issued December 1, 1978, 43 FR 56482) which stated that § 271.805, which implements section 108(b)(2) of the NGPA, disqualifies wells which, subsequent to the jurisdictional agency determination, produce quantities of gas in excess of the amounts permitted by the law and this subpart.

El Paso maintains that the preamble supports its interpretation that a notice of disqualification need not be filed until after the jurisdictional agency acted on the application.

In order No. 44 (Docket No. RM79-73, issued August 22, 1979) the Commission clarified that the requirement of filing a notice of disqualification applied to both wells for which applications had been filed and wells which had already received jurisdictional agency determinations. El Paso claims that it revised its procedures after Order No. 44 was issued and began filing notices of disqualification for the latest 90-day production periods for applications pending before the jurisdictional agency. For the wells for which El Paso did not file notices of disqualification, El Paso proposes to classify the wells on a monthly basis as stripper or non-stripper wells based on whether production was above or below the 60 Mcf per production day level for the preceding 90-day production period.

El Paso request that, with respect to any refunds due it, the Commission notify to producer/sellers and direct such refunds. El Paso states that with respect to its own leasehold production, it will make appropriate and necessary adjustments to recoup any overpayments of royalties and production taxes made during any period when a well did not qualify as a stripper well.

El Paso further states that the affected jurisdictional agencies, operators and purchasers either concur in the waiver or have no objection thereto.

Any person desiring to be heard or to protest this request for waiver should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13826 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-33-006]

El Paso Natural Gas Co.; Revised Purchased Gas Cost Adjustment Filing

May 13, 1982.

Take notice that on April 30, 1982, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (C) of the Commission's "Order Accepting for Filing and Suspending Proposed Tariff Sheets

Subject to Refund and Conditions and Setting Matter for Hearing," issued March 31, 1982 at Docket No. TA82–2–33–000 (PGA82–2) (IPR82–2) (AP82–2) and (TT82–2), the following revised tariff sheets to become effective April 1, 1982:

Original Volume No. 1

First Substitute Thirtieth Revised Sheet No. 3–B

Third Revised Volume No. 2

First Substitute Twenty-first Revised Sheet No. 1–D

Original Volume No. 2A

First Substitute Twenty-second Revised Sheet No. 1–C

Such sheets are submitted in substitution for their respective counterparts, referred to in said order as the "alternative" or "lower proposed tariff sheets," tendered as a part of El Paso's notice of change in rates filed March 1, 1982, at Docket No. TA82–2–33–000. The revised tariff sheets, like their counterparts, exclude the impact of the implementation of the decision of the United States Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Co.* v. *FERC,* No. 80–3804, (December 23, 1981) hereinafter referred to as *Mid-Louisiana.*[1] The Commission's order issued March 31, 1982, among other things, conditionally accepted, effective April 1, 1982, subject to refund, the lower proposed revised tariff sheets tendered as a part of El Paso's March 1, 1982 notice of change in rates.

Ordering paragraphs (C)(1) through (C)(4) of the Commission's March 31, 1982 order, directed El Paso to file within thirty (30) days of the issuance of said order, revised tariff sheets to become effective April 1, 1982, reflecting:

(1) a correct Account 191 surcharge based on the appropriate subaccounts as required by the Commission's Regulations;

(2) a correct interperiod tax allocation for computing carrying charges on refunds included in Account 191;

(3) actual rates paid, as of April 1, 1982, to producers of deregulated gas, if those rates are lower than the estimates included in this filing; and

(4) actual rates in effect, as of April 1, 1982, for purchases from intrastate gas pipelines and the correct rate for purchases from Valero Interstate Transmission Company.

Accordingly, El Paso states that the tendered substitute lower proposed revised tariff sheets incorporating the aforementioned adjustments result in an overall revised net adjustment of 52.01¢ per Mcf above El Paso's currently effective rates, as compared with an increase of 50.13¢ per Mcf initially proposed in El Paso's March 1, 1982 tariff tender.[2]

Ordering paragraph (D) of the Commission's order issued March 31, 1982 stated "El Paso shall adjust its books to reflect the correct interperiod tax allocation for its LFUT refund." El Paso states that in compliance with ordering paragraph (D) it has corrected the interperiod tax allocation for its Louisiana First-Use Tax refunds, and such corrected amount is not sufficient to cause a reduction in the surcharge rate.

Ordering paragraph (E) of the Commission's order issued March 31, 1982 further conditioned the acceptance of El Paso's rates by requiring El Paso to supply additional information to demonstrate:

(1) that purchases of deregulated gas from El Paso Exloration Company staisfy the Commission's "affiliated entities" tested; and,

(2) that El Paso has properly calculated its Btu adjustments and restroactive Btu adjustments pursuant to Commission Order Nos. 93 and 93–A.

In compliance with ordering paragraph (E), El Paso has included in the instant tender the requested data (i) demonstrating that the pricing of company-owned production included in the subject PGAC adjustment does not exceed the amount paid in comparable first sales between persons not affiliated with El Paso as required by section 601(b)(1)(E) of the Natural Gas Policy Act of 1978; and (ii) to justify the calculation of its Btu adjustments pursuant to Commission Order Nos. 93 and 93–A.

El Paso respectfully requests that the lower proposed revised tariff sheets reflecting the adjusted rates be substituted for their respective counterparts tendered by El Paso on March 1, 1982, at Docket No. TA82–2–33–000 and be made effective on April 1, 1982 as directed by the Commission. Further, El Paso respectfully requests that the higher proposed revised tariff sheets reflecting the implementation of *Mid-Louisiana* be made effective on September 1, 1982, or an earlier date, as may be directed by the Commission, in lieu of their respective counterpart sheets.

El Paso further states that copies of the instant tender have been served upon all parties of record in Docket No. TA82–2–23–000, and otherwise, upon all interstate pipelines system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before May 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13870 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

[1] El Paso also tendered Second Substitute Thirtieth Revised Sheet No. 3–B, Second Substitute Twenty-first Revised Sheet No. 1–D and Second Substitute Twenty-second Revised Sheet No. 1–C, referred to by the Commission as "higher proposed revised tariff sheets," which include the impact of *Mid-Louisiana.*

[2] The higher proposed revised tariff sheets reflect a net adjustment of 64.27¢ per Mcf, above El Paso's currently effective rate, as compared with an increase of 62.39¢ per Mcf initially proposed in El Paso's March 1, 1982 tariff tender.

[Project No. 6213–000]

Energenics Systems, Inc.; Application for Preliminary Permit

May 17, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on April 15, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6213 to be known as the Calamus Dam Hydroelectric Project located on Calamus River near Burwell, in Loup County, Nebraska. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing U.S. Bureau of Reclamation Calamus River Dam and would consist of: (1) an existing conduit from the intake to a proposed 250-foot-long, 5.65-foot in diameter penstock; (2) a proposed powerhouse with generating units having an estimated installed capacity of 1,440 kW and producing an average annual energy output of 11.64 GWh; (3) a proposed 7-mile-long transmission line to connect to an existing Nebraska Public Power System line; and, (4)

appurtenant facilities. The proposed market for the power is Nebraska Public Power System.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $30,000.00

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 23, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13881 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6100-000]

Energenics Systems, Inc., Application for Preliminary permit

May 19, 1982.

Take notice that Energenics systems, Inc. (Applicant) filed on March 18, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6100 to be known as the Blackwater Dam Project located in Blackwater River in Merrimack County, New Hampshire. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., Energenics Systems, Inc., 1717 K Street, N.W., Suite 706, Washington D.C. 20006.

Project Description—The proposed project would utilize the existing Corps of Engineers' Blackwater Dam and would consist of: (1) A new powerhouse containing a single generating unit with a rated capacity of 460 kW; (2) existing 230–KV transmission lines owned by the New England Power Company; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1.86 GWh. The most likely market for the energy derived at the proposed project would be New England Power Company, Concord Electric Company, and Public Service Company of New Hampshire.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 29, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 29, 1982.

Filing and Service of Responsible Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426. An additional copy must be sent to : Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13852 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6279-000]

F & T Services Corp.; Application for Preliminary Permit

May 17, 1982.

Take notice that F & T Services Corporation (Applicant) filed on May 3, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6279 to be known as the Lake D'Arbonne Project located on Bayou D'Arbonne Lake in the town of Farmerville, Union Parish, Louisiana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: J. B. Lancaster, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

Project Description—The proposed project would consist of: (1) An existing 799-foot long, 51-foot high concrete spillway; (2) a 61-foot high, 1,000-foot long earthen dam; (3) a gate section with four 3-foot by 4-foot gates; (4) a 15,000-acre reservoir with a normal pool elevation of 80.0 feet M.S.L.; (5) a new powerhouse at the southern end of the spillway containing turbine-generators with a total rated capacity of 5 MW; (6) a transmission line; and (7) appurtenant facilities. Energy produced at the project would be sold to a local utility. The project would produce up to 20,000,000 kWh annually. The project dam is owned by the State of Louisiana Department of Public Works.

Proposed Scope of Studies Under Permit—A preliminary permit if issued, does not authorize construction. The work proposed under this preliminary permit would include economic evaluation, engineering plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $15,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 23, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13827 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-83-000]

Gas Transport, Inc.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that on April 30, 1982, Gas Transport, Inc. ("Transport") tendered for filing proposed changes in its FERC Gas Tariff to be effective on June 1, 1982, consisting of the following tariff sheets.

First Revised Sheet No. 4
Superseding Original Sheet No. 4
First Revised Sheet No. 10
Superseding Original Sheet No. 10

Transport proposes to increase the level of the rate charged for natural gas transportation service pursuant to Rate Schedule T-1 contained in Original Volume No. 1 of its FERC Gas Tariff based on twelve (12) months of actual experience ended December 31, 1981.

The application states that the principal reason for the change in rate proposed herein is that the rate has remained the same since May 1, 1949, while costs have continued to escalate. Consequently, Rate Schedule T-1 is essentially an anachronism and incongruous with present economic conditions. Transport represents, however, that the Natural Gas Policy Act of 1978 has stimulated new exploration in Transport's area of operations and that it has recently received several inquiries from potential customers concerning such transportation service.

Any person desirign to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of

Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13671 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5904-000]

Grisdale Hill Co.; Application for Preliminary Permit

May 18, 1982.

Take notice that Grisdale Hill Company (Applicant) filed on January 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5904 to be known as the Briggs Creek Hydroelectric Project located on Briggs Creek, within Siskiyou National Forest in Josephine County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Leo S. Fisher, Suite 423, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036.

Project Description—The proposed project would consist of: (1) A 7-foot high concrete diversion structure at elevation 1,360 feet; (2) either a 7,500-foot long low pressure conduit following the creek, a surge tank and a penstock dropping through 410 feet of head, or a 3,500-foot long pressure tunnel running directly toward the powerhouse and a penstock dropping through 420 feet of head; (3) a powerhouse containing a turbine generator with 5.2 MW capacity and 25.1 GWh annual energy production; and (4) a transmission line 15 miles long. The potential market for project-generated power includes the Pacific Power & Light Company and Bonneville Power Administration.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $125,000.

Competing Applications—This application was filed as a competing application to City of Grants Pass, Oregon's application for Project No. 5499 filed on October 14, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13669 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-491-000]

Hartford Electric Light Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, the Hartford Electric Light Company (HELCO) tendered for filing as an initial rate schedule an agreement (the Agreement) between HELCO, the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO, and together with HELCO and CL&P, the NU Companies) and Central Maine Power Company (CMP). The Agreement, dated as of July 23, 1981, provides for the NU Companies to sell to CMP excess power from the Northeast Utilities system (system power) that may be available on a daily basis (a "transaction"). HELCO states that the timing of transactions cannot be accurately estimated but that the NU Companies would offer to sell such system power to CMP only when it was economical to do so. CMP would only accept such offer if it was economical to do so.

CMP will pay an energy reservation charge to the NU Companies for each transaction in an amount equal to the kilowatthours of system power reserved for and supplied to CMP by the NU Companies during a transaction times $0.003 per kilowatt hour. CMP will pay any energy charge to the NU Companies for each transaction in an amount equal to the kilowatthours provided by the NU Companies during such transaction times and energy charge rate. The energy charge rate is based on the heat rate, and the replacement fuel price of the generating unit(s) which the NU Companies determine to be available to provide power at the time of a transaction.

HELCO requests an effective date of July 23, 1981, and therefore requests waiver of the Commission's notice requirements.

According to HELCO copies of the filing have been mailed to CL&P, WMECO and CMP.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13911 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-498-000]

Hartford Electric Light Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 3, 1982, the Hartford Electric Light Company (HELCO) tendered for filing as an initial rate schedule an agreement (the Exchange Agreement) between HELCO, the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO, and together with HELCO and CL&P, the NU Companies) and Public Service Company of New Hampshire (PSNH). The Exchange Agreement, dated as of September 11, 1981, provides for an exchange of excess capacity and associated energy from the Northeast Utilities system ("system power") for an equal amount of capacity from various PSNH Exchange Units, when such units are not operating. HELCO states that the timing of the exchanges cannot be accurately estimated but that the NU Companies and PSNH would enter into an exchange only when it was economical to do so.

PSNH will pay a capacity charge to the NU Companies for each exchange in an amount equal to the capacity exchange amount (expressed in kilowatts) for such exchange times $0.003 per kilowatt. PSNH will pay an energy charge to the NU Companies for each exchange in an amount equal to kilowatt hours provided by the NU Companies during such exchange times an energy charge rate. The energy charge rate is based on the heat rate, and the New England Power Exchange's replacement fuel price of the generating unit(s) which the NU Companies determine to be available to provide system power at the time of an exchange.

HELCO requests an effective date of September 11, and therefore requests waiver of the Commission's notice requirements.

According to HELCO copies of the agreement have been mailed to CL&P, WMECO and by PSNH.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13854 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6181-000]

H.M.M., Inc.; Application for Preliminary Permit

May 18, 1982.

Take notice that H.M.M., Inc. (Applicant) filed on April 7, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)) for Project No. 6181 to be known as the H.M.M. Hydropower Project located on Rush Creek and an unnamed tributary to Rush Creek near Cambridge in Washington County, Idaho. The proposed project would affect the U.S. lands within the Payette National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Helen Chenoweth, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

Project Description—The proposed project would consist of: (1) A 4-foot high diversion structure; (2) a 24-inch diameter, 6,000-foot long penstock; (3) a powerhouse with total installed capacity of 1,751-kW; and (4) a 34.5-kV, 6-mile long transmission line interconnecting with an existing 34.5-kV transmission line of Idaho Power Company. The Applicant estimates that the average annual energy output would be 6.196 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking issuance of a preliminary permit for a duration of 24 months during which it would conduct engineering, environmental and economic studies and prepare an FERC license application. The Applicant estimates the cost of conducting these studies to be $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 28, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file and application for license or exemption must be submitted to the Commission on or before July 28, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 27, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other coments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 28, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

"NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13828 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-82-000]

Honeoye Storage Corp.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that Honeoye Storage Corporation (Honeoye), on April 30, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes would increase jurisdictional storage service revenues by $501,207 per year, based on service volumes and costs for the twelve months ended December 31, 1981, as adjusted for the test period and would change the method by which the responsibility for providing compressor fuel is allocated among its customers.

Honeoye states that the principal reasons for the rate increase are necessary replacement of existing pipeline facilities, increased capital and construction costs related to storage capacity expansion, increased costs of operations and increases in the cost of capital.

Honeoye states the reason for modifying its method of compressor fuel allocation is administrative in nature, would have no effect on the company's revenues and expenses and would provide a more fair and equitable system than that presently in use.

Copies of the filing have been served upon Honeoye's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13872 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-81-000]

Inter-City Minnesota Pipelines, Ltd., Inc.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that on April 30, 1982, Inter-City Minnesota Pipelines, Ltd., Inc. (Inter-City) tendered for filing changes in its FERC Gas Tariff to be effective on June 1, 1982, consisting of the following revised tariff sheets:

Original Volume No. 1

Sixteenth Revised Sheet No. 4, superseding
Fifteenth Revised Sheet No. 4;
Original Sheet No. 4A;
First Revised Sheet No. 5, superseding
Original Sheet No. 5;
First Revised Sheet No. 12, superseding
Original Sheet No. 12; and
First Revised Sheet No. 32, superseding
Original Sheet No. 32.

Original Volume No. 2

Second Revised Sheet No. 11, superseding
First Revised Sheet No. 11; and
Second Revised Sheet No. 12, superseding
First Revised Sheet No. 12.

Inter-City states that the proposed sheets would establish rate zones necessary to allow the company's rates accurately to reflect the cost of service to distinct service areas and are required to reflect an increase in rate of return and changes in other costs of system operation. Inter-City further states that the impact of the proposed changes is to reduce the cost of gas for the majority of customers, direct and indirect, served by the pipeline.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10. All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13873 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-79-000]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that on April 30, 1982, Louisiana-Nevada Transit Company (LNT) tendered for filing a new FERC Gas Tariff, first Revised Volume No. 1 and Original Volume No. 2.

LNT states that the change in rate filed herein is to comply with § 154.38(d)(4)(vi)(a) of the Commission's Regulations and establish a new Base Tariff Rate under Louisiana-Nevada Transit Company's (LNT) purchased gas adjustment clause.

The new Base Tariff Rate amounts of 72.38¢/Mcf with a Base Cost of Gas of 54.96¢/Mcf. In addition a current purchased gas adjustment of 01.91¢/Mcf and a Deferred Cost Adjustment of 00.82¢/Mcf is applicable effective June 1, 1982 for a total rate of 75.11¢/Mcf. This is a reduction of 10.63¢/Mcf from the present rate of 85.74¢/Mcf including cumulative and deferred purchased gas cost adjustments.

LNT is concurrently restating its FPC Gas Tariff Original Volume No. 1 to reflect the change in the Commission's title from Federal Power Commission to Federal Energy Regulatory Commission and to include other changes as follows:

1. Rate Schedule X-2 has been removed from Volume I and placed in an Original Volume No. 2.

2. The availability provision of Section 1 of Rate Schedule G-1 has been revised to conform with the FERC order in Docket No. G-1440-001 issued September 30, 1981.

3. The PGA Adjustment Base Period (§ 10.4 of the General Terms and Conditions) has been revised to provide that it shall be the twelve months ended

two months (instead of three) prior to the effective date of the rate adjustment.

4. The Measurement provisions (Section 1 of the General Terms and Conditions) have been revised to reflect current industry standards and practices.

5. The quality provisions (Section 3 of the General Terms and Conditions) have been revised to conform to current practice.

6. A current Index of Purchasers has been included.

Copies of the filing were served upon LNT's jurisdictional customers, Arkansas Louisiana Gas Company and United Gas Pipe Line Company, and upon the Public Service Commissions of the States of Arkansas and Louisiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13674 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-500-000]

Louisville Gas & Electric Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that Louisville Gas and Electric Company (Louisville) on May 5, 1982, tendered for filing proposed changes in its Interconnection Agreement between Louisville and Big Rivers Electric Corporation (Big Rivers) designated FERC Rate Schedule No. 27.

Louisville states that the purpose of this filing is to increase the demand charge for short term power as set forth on Service Schedule C from 85¢ per kilowatt per week to $1.05 per kilowatt per week. This proposed revision reflects a desire on the part of both parties to attain the optimum benefit from the interconnection of their systems.

Louisville requests an effective date of July 5, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13638 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6261-000]

Madera Irrigation District; Application for Preliminary Permit

May 19, 1982.

Take notice that Madera Irrigation District (Applicant) filed on April 26, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6261 to be known as the North Fork Williow Creek Project located on the North Fork Willow Creek in the Sierra National Forest in Madera County near the Town of Bass Lake, California. The application is on file with the commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert L. Stanfield, Manager, Madera Irrigation District, 12152 Road 28¼, Madera, California 93637.

Project Description—The proposed project would consist of: (1) diversion structure on North Fork Willow Creek at approximate elevation 4,400 feet; (2) a 5-foot-diameter, 9,000-foot-long low pressure conduit; (3) a 48-inch-diameter, 7,500-foot-long penstock; and (4) a powerhouse at elevation 1,650 feet containing generating units with a total capacity of 6,500 kW. Applicant estimates that the project would have an average annual output of 17,000 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant proposes to study the engineering, environmental, economic, and financial feasibility of the project during the term of the permit. Applicant estimates that the studies and preparation of an application would cost between $60,000 and $100,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 29, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of th Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch,

Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13838 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6185-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 17, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6185 to be known as the Duffy Creek Project located on Duffy Creek, within Snoqualmie-Mt. Baker in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122-196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 36-inch wide concrete intake structure placed in the streambed at elevation 2,000 feet; (2) a diversion pipeline 8,000 feet long; (3) a powerhouse at 320 feet containing a turbine generator with 3.1 MW capacity and 13.45 GWh annual energy production; and (4) a transmission line 1 mile long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 26, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 24, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13839 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-80-000]

Michigan Wisconsin Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that on April 30, 1982, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing proposed changes in its F.E.R.C. Gas Tariff, Original Volume No. 1 and First Revised Volume No. 2 to become effective June 1, 1982. Michigan Wisconsin states that the proposed rate increase is designed to recover Michigan Wisconsin's overall cost of service developed by utilizing a base period of twelve months ended January 31, 1982, adjusted for known and measurable changes through the end of the test period, October 31, 1982. The cost of service is approximately $144 million over that underlying its presently filed rates—an increase of approximatey 5.9%.

Michigan Wisconsin further states that the principal reasons for the cost of service increase are: (1) Additional investments in gathering facilities and the development of the Central Charlton storage field; (2) take or pay obligations to be incurred during the test period; (3) increased costs of capital; (4) increased depreciation; and (5) increased levels of operation and maintenance expenses.

Michigan Wisconsin states that the proposed rates are based on a sales level of 570 million dekatherms which reflects Michigan Wisconsin's customer estimates of declining market requirements and results in an additional increase in resale rates of approximately 2.7%.

For purposes of this filing, rates are based on Michigan Wisconsin's currently effective rate design, including classification of costs in accordance with the *United* decision. However, rate design in Michigan Wisconsin's rate increase application at Docket No. RP81-61 is an open issue at this date and, accordingly, Michigan Wisconsin proposes that rates in this proceeding be based on the final disposition of rate design in the earlier docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13875 Filed 5-20-82; 8:45 a.m]

BILLING CODE 6717-01-M

[Docket No. ER82-496-000]

Mississippi Power Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that Mississippi Power Company (Mississippi) on May 3, 1982, tendered for filing Supplemental Agreement with East Mississippi Electric Power Association (EMEPA) under its FERC Electric Tariff Original Volume No. 1. This agreement provides for the establishment of a new delivery point of EMEPA near Quitman, Mississippi. To establish service at this new point, Mississippi and EMEPA have entered into a supplemental agreement under the Company's FERC Electric Tariff Original Volume No. 1 (Second Revised Sheet No. 14).

Mississippi agrees to deliver up to a maximum of 8,500 kilowatts at 115,000 volts at the connections of the customer's 115 KV line to the 115 KV bus located in Mississippi's 115 substation at Quitman, Mississippi.

Mississippi states that this supplement will become effective on or about November 15, 1982, when the required additional facilities will be energized, at which time the existing Quitman delivery point (Supplement No. 7) will be discontinued.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13856 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP80-275-002, CI80-233-002, and CI82-216-000]

Mountain Fuel Supply Co., Wexpro Co. et al.; Application and Amendment May 13, 1982.

Take notice that on April 1, 1982,[1] Mountain Fuel Supply Company (Mountain Fuel), P.O. Box 11368, Salt Lake City, Utah 84139, and Wexpro Company (Wexpro), P.O. Box 11070, Salt City, Utah 84147, filed in Docket No. CP80-275-002, Celsius Energy Company (Celsius), P.O. Box 11368, Salt Lake City, Utah 84139, filed in docket No. CI80-233-002 and Wexpro filed in Docket No. CI82-216-000 a joint application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a salt of natural gas for resale in interstate commerce by Wexpro to Mountain Fuel, for permission and approval for Mountain Fuel to abandon interests so as to transfer certain natural gas reserves to Wexpro and, if the Commission deems necessary, certain leasehold interest to Celsius, and an amendement to the application filed on March 7, 1980, in Docket No. CP80-275 and in Docket No. CI80-233, all as more fully set forth in the application and amendment which is on file with the Commission and open to public inspection.

It is stated that Applicants and certain Utah and WYoming interveners executed stipulations and agreement in the proceedings in Docket No. CP80-275 and in Docket No. CI80-233 before the state regulatory commissions. Applicants assert that the stipulations and agreement reflect an accord as to the manner in which Applicants' exploration and production operations would be conducted and how such production would be priced, the disposition of certain properties, and the allocation of benefits and obligations relating to such operations and properties. It is explained that under the provisions of the settlement agreements, Wexpro and Celsius would explore and develop their currently producing and unexplored properties while at the same time Mountain Fuel's distribution customers would receive certain benefits. It is anticipated that Wexpro would conduct production activities on all presently productive oil and gas properties and that Celsius would conduct all exploratory activities.

In accordance with the stipulations and agreement Applicants hereby amend the applications filed in Docket Nos. CP80-275 and CI80-233 in four parts First, Applicants state that the production and related facilities associated with productive gas reservoirs are no longer proposed to be transferred to Celsius. Applicants aver that instead Wexpro would acquire the operating rights subject to Mountain Fuel's retention of the ownership of certain production therefrom and the facilities in place necessary to effect such production. Applicants state that title to the underlying leaseholds and operating rights would be transferred to Celsius. Because Mountain Fuel would retain ownership of the natural gas reservoirs there would be no sale for resale in interstate commerce within the meaning of the Natural Gas Act and Applicants do not seek any authorization from the Commission in connection with such gas, it is submitted.

Second, Applicants aver that the production and related facilities associated with productive oil reservoirs would not be transferred to Celsius. It is stated that Wexpro would own such facilities and all hydrocarbons produced therewith. Applicants state that natural gas production from existing and developmental oil wells in these productive oil reservoirs is proposed to be sold by Wexpro to Mountain Fuel at cost-of-service as set forth in Exhibit A of the agreement.

Third, Applicants explain that Mountain Fuel would transfer to Celsius title to all unexplored leasehold and/or operating rights held by Mountain Fuel in Account 105 of the Uniform System of Accounts as of July 31, 1981. It is stated that consistent with the agreement hydrocarbons produced from exploratory properties would be sold at applicable market prices subject to a 7 percent overriding royalty reserved to Mountain Fuel. Applicants also assert that Mountain Fuel or a designated affiliate would have a first right to purchase any natural gas produced by Celsius from exploratory properties, subject to certain conditions. Applicants submit that in view of the stipulations and agreement, Mountain Fuel and

[1] The amendment was initially tendered for filing on April 1, 1982, however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 21, 1982; thus filing was not completed until the latter date.

Celsius are no longer seeking Commission authorization for the transfer of these properties.

Fourth, Celsius withdraws its application in Docket No. CI80–233. It is averred that under the terms of the stipulations and agreement Mountain Fuel would transfer to Celsius all leasehold interests associated with productive gas reservoirs identified as "Account 101 Leaseholds" on Schedule 4(a) to the agreement. Applicants submit that in view of the settlement reflected in the stipulations and agreement, it would be appropriate for the Commission to disclaim jurisdiction over the transfer of such leases to Celsius. Should the Commission conclude otherwise, Mountain Fuel requests that it grant such authorization as it deems required to transfer such leases to Celsius.

Wexpro proposes to sell all gas produced from existing developmental oil wells in defined productive oil reservoirs to Mountain Fuel at a cost-of-service as described in Exhibit A to the agreement. To implement the sale, Mountain Fuel requests such abandonment authority as the Commission deems necessary for the transfer to Wexpro of the ownership interest in such natural gas reserves. It is stated that except for the natural gas reserved to Mountain Fuel in the subject formations, Wexpro presently owns all leasehold and production properties related to these productive oil reservoirs.

Applicants assert that consistent with the settlement agreement any such gas produced from existing or developmental oil wells would be priced on a cost-of-service basis subject to monthly adjustment. To avoid the need to make monthly rate change filings pursuant to Section 4 of the Natural Gas Act, Wexpro requests specific Commission approval of the monthly cost-of-service formula contained in Exhibit A to the agreement and Commission waiver of Section 154.94 of its Regulations and any other applicable regulations. Wexpro proposes to submit an annual report setting forth each of the monthly rates charged during the previous year.

Applicants state that upon commencement of the sale to Mountain Fuel, Wexpro may become a natural gas company under the Natural Gas Act. To comply with § 157.24 of the Commission's Regulations, Applicants state that:

(1) The gas proposed for sale to Mountain Fuel would be produced from the wells listed in Exhibit A appended to the instant application or from future developmental drilling in productive oil reservoirs.

(2) Wexpro neither owns nor operates any transmission lines for the transportation of gas in interstate commerce.

(3) No communities were served by Wexpro on June 7, 1954, nor are they proposed to be served.

(4) No main line industrial customer would be served by Wexpro pursuant to this sale.

(5) The sale proposed herein does not involve the use of any major appurtenances of Wexpro subject to the jurisdiction of the Commission.

(6) None of the gas attributable to the applications has been, nor would it be, used to discharge refund obligations or to trigger contingent escalations within the meaning of Section 2.56(a)(i) of the Commission's General Policy and Interpretations.

Any person desiring to be heard or to make any protest with reference to said application and amendment should on or before June 4, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons having heretofore filed in Docket Nos. CP80–275 and CI80–233 need not so again.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its review of the matter finds that a grant of the certificates is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13676 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP82–87–000]

National Fuel Gas Supply Corp.; Proposed Tariff Change

May 13, 1982.

Take notice that on April 30, 1982, National Fuel Gas Supply Corporation ("National Fuel") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Thirty-seventh Revised Sheet No. 4 proposed to be effective June 1, 1982.

National Fuel states that the purpose of this revised tariff sheet is to implement the recent decision of the United States Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Company* v. *Federal Energy Regulatory Commission*, 664 F.2d 530 (1981). The proposed increase in cost of gas purchased sold results from pricing National Fuel's pipeline production at the applicable NGPA prices.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protstants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13677 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–293–000]

Natural Gas Pipeline Co. of America; Application

May 17, 1982.

Take notice that on April 20, 1982, Natural Gas Pipeline Company of

America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP82–293–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Transcontinental Gas Pipe Line Corporation (Transco), Columbia Gas Transmission Corporation (Columbia Gas), Columbia Gulf Transmission Company (Columbia Gulf) and Michigan Wisconsin Pipe Line Company (Mich Wis) and the construction and operation of natural gas facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport the Project Central Texas Loop (PCTL) gas supplies of Transco, Columbia Gas, Columbia Gulf and Mich Wis from Texas for redelivery into their mainline systems in Louisiana. It is stated that Transco, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Columbia Gulf, Mich Wis and Northern Natural Gas Company, Division of InterNorth, Inc. filed in Docket No. CP82–158–000 an application for a certificate of public convenience and necessity to build the PCTL. Applicant explains that the application filed in Docket No. CP82–158–000 was intended to expand the capacity of Transco's Central Texas Gathering System from 369,000 Mcf per day to a total capacity of 1,119,000 Mcf per day to handle gas expected to be available and dedicated to the applicants in Docket No. CP82–158–000 in the Brazos, Galveston, Mustang Island and Matagorda Island areas, offshore Texas. Applicant states that the proposed transportation would enable the movement of significant quantities of gas without the need for the construction of extensive new or expanded pipeline facilities by Transco, Columbia Gulf, Columbia Gas and Mich Wis to move their gas from PCTL into their mainline systems.

To assist Mich Wis prior to receipt of the authorization sought in the instant application, Applicant states it has agreed to transport the gas on a best-effort basis pursuant to Applicant's blanket transportation certificate in Docket No. CP80–125, Section 284.221 of the Commission's Regulations, and the terms of a limited term gas transportation agreement dated February 18, 1982, with Mich Wis.

Applicant asserts that on February 16, 1982, April 1, 1982, and March 30, 1982, it entered into individual transportation agreements with Mich Wis, Transco and jointly with Columbia Gas and Columbia Gulf, respectively. Applicant submits that the volume, receipt points and redelivery points for each agreement are summarized as follows:

Shipper	Receipt point	Interim: Demand volume million Btu per day			Long term: Best-efforts volume million Btu per day	Redelivery point
Transco	Refugio, Tex	50,000		100,000	33⅓ pct of demand volume	Utos, La.
	Wharton, Tex	[1] 100,000		[2] 200,000	33⅓ pct of demand volume	Cameron, La.
Columbia Gulf and Columbia Gas	Refugio, Tex		40,000		25 pct of demand volume	Pecan Lake, La.
	Wharton, Tex		80,000		25 pct of demand volume	
Mich Wis	Refugio, Tex		16,500		25 pct of demand volume	Lake Arthur, La.
	Wharton, Tex		33,500		25 pct of demand volume	

[1] Before Jan. 1, 1983. [2] After Jan. 1, 1983.

Applicant proposes to charge for the proposed transportation the following rates:

Shipper	Receipt point	Monthly demand rate per million Btu	Overrun rate per million Btu (cents)
Transco	Refugio, Tex	$4.32	14.2
	Wharton, Tex	3.01	9.9
Columbia Gulf and Columbia Gas	Refugio, Tex	5.20	17.1
	Wharton, Tex	3.92	12.9
Mich Wis	Refugio, Tex	5.08	16.7
	Wharton, Tex	3.80	12.5

As summarized above, Applicant proposes initially to charge the shippers a monthly transportation demand charge equal to the demand quantities times the monthly demand rate. Applicant states that during the interim period and long-term period Transco would be charged a fee based on the interim demand quantity and the long-term demand quantity, respectively. Applicant asserts that in addition to the transportation demand charges, the shippers would pay Applicant the commodity charges for each million Btu of overrun gas delivered at Applicant's receipt points. Applicant explains that these initial rates are based upon Applicant's onshore transmission charge set forth in Docket No. RP8149. It is averred that such initial rates are subject to adjustment to reflect final resolution of rate proceeding and are also subject to further adjustment by virtue of other Section 4 rate filings of Applicant.

Applicant states that pursuant to the transportation agreements it would construct any and all facilities necessary to provide and maintain firm service.

It is stated that Applicant sought authorization in Docket No. CP82–50–000 to construct 37.38 miles of 36-inch pipeline loop on the Louisiana Line to transport up to 300 billion Btu of natural gas per day. Applicant states that the transportation services proposed in the instant application and that proposed in Docket No. CP82–50–000 are totally independent but each requires additional facilities to move additional gas to the east on the Louisiana Line. Applicant explains that the combined additional facilities proposed and the combined transportation volumes are as follows:

Docket No. and shippers	Louisiana Line facilities (36-in loop) (miles)	Million Btu per day
CP82-50-000 Trans-Anadarko	37.38	300,000
CP82-293-000 Columbia Gas, Columbia Gulf and Mich Wis	8.16	170,000
Total	45.54	470,000

Applicant asserts that if the Commission does not authorize construction of the facilities proposed Docket No. CP82–50–000 before the facilities proposed in the instant application are authorized the facilities required to provide the proposed transportation would be as follows:

Docket No. and shippers	Louisiana Line facilities (36-in loop) (miles)	Volumes million Btu per day
CP82-293-000 Columbia Gas and Mich-Wis	27.50	170,000
CP82-50-000 Trans-Anadarko	18.04	300,000
Total	45.54	470,000

Applicant therefore proposes to construct and operate 8.16 miles of 36-inch diameter pipeline loop on Applicant's Louisiana Line extending eastward from the east end of the 37.38 mile pipeline loop proposed in Docket No. CP82–50–000 to permit the firm redelivery of 120 billion Btu per day to

Columbia Gas and 50 billion Btu per day to Mich Wis. Applicant also proposes to construct a meter station at Pecan Lake including two 12-inch meter runs and one 12-inch side tap to make adjustments at Station 343 to reverse the direction of flow, and to construct such other appurtenant facilities as may be required. Applicant states that the cost for the proposed facilities would be $7,550,000.

In the event that Applicant's application in Docket No. CP82–50–000 is not approved before the granting of the certificate in the instant application, Applicant proposes in the alternative to construct and operate 27.5 miles of 36-inch pipeline loop. Furthermore, Applicant proposes to modify Station 342 but not Station 343. Applicant states that the construction of a meter station at Pecan Lake would still be required. It is asserted that the cost for the proposed facilities would be $31,021,000.

In the Gulf Coast South End area, Applicant proposes to construct 3,525 feet of 20-inch diameter pipeline to connect Applicant's system to Transco's system in Refugio County, Texas. Applicant also proposes to install eight 12-inch meter runs (three at Refugio County and five at Wharton County), four taps, including two 10-inch taps at Refugio County and one 12-inch tap and one 10-inch tap at Wharton County, and such appurtenant facilities as may be required to facilitate the receipt of the Brazos gas. Applicant assumes that the facilities proposed in Docket No. CP82–50–000 would be certified before the proposed facilities in the instant application and therefore proposes to modify Station 302 to flow gas into the Louisiana Line. It is stated that the estimated cost of these receipt facilities would be approximately $2,012,000. In the event the facilities for which authorization is requested in Docket No. CP82–50–000 are authorized after the proposed construction in the instant application is approved, Applicant states that Station 302 would not require modification. However, all other proposed facilities in the Gulf Coast South End area would still be required, it is averred. The cost of these facilities would then be approximately $1,808,000, it is submitted.

Applicant states that all financing in the instant application would be achieved initially with funds on hand, issuance of commercial paper, use of existing bank lines of credit or other interim financing arrangements as may be negotiated. Applicant explains that permanent financing subsequently would be undertaken as part of Applicant's overall long-term financing program.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13667 Filed 5–20–82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82–492–000]

Pacific Gas & Electric Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 3, 1982, Pacific Gas and Electric Company (PG&E) tendered for filing revised copies of Volumes 2, 3, 4, 5, 6 and 7 filed on February 1, 1982, in Docket No. ER82–271 requesting permission to reduce from $5 million to a level of $3.2 million the September 5, 1982 Phase II increase authorized by the Commission in its March 30, 1982 order.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13668 filed 5–20–82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5828–000]

Pacific Gas & Electric Co.; Application for License for Transmission Line Only

May 18, 1982.

Take notice that on December 28, 1981, Pacific Gas and Electric Company (PG&E) filed an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] to construct, operate, and maintain a transmission line to be known as Monticello PH 115-kV Tap Project, FERC No. 5828, which would connect Solano Irrigation District's Monticello Power Plant Project (FERC No. 2780) to PG&E's Fulton Junction to Fulton, 115-kV transmission line. The project would be located in the Counties of Napa and Yolo, near Winters, California. Correspondence with the Applicant on this matter should be addressed to: Mr. W. M. Gallavan, Vice President, Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, Room 1087A, San Francisco, California 94106, with a copy to Mr. Louis E. Vincent, Attorney, Pacific Gas and Electric Company, Law Department, P.O. Box 7442, San Francisco, California 94120.

Project Description—The proposed project would consist of 0.6-mile long, 115-kV, single-circuit wood pole transmission line, extending from Monticello Power Plant to PG&E's Fulton Junction—Fulton line at tower No. 5/28.

Purpose of Project—The transmission line would transmit power from the proposed Monticello Power Plant Project to PG&E's system.

Estimated Cost—The cost of the project is estimated by the Applicant to be about $110,000.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 8, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13859 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6149–000]

Douglas B. Parkinson; Application for Preliminary Permit

May 19, 1982.

Take notice that Douglas B. Robinson (Applicant) filed on March 31, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6149 to be known as the Griffin Creek Power Project within Plummas National Forest located on Griffin Creek near towns of Paradise, Chico and Oroville in Butte County, California. The Application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Edward Schillinger, 6460 Fickle Hill Road, Arcata, California 95521.

Project Description—The proposed project would consist of: (1) A 4-foot high diversion structure; (2) a 24-inch diameter, 1,300-foot long low pressure steel conduit; (3) an 18-inch diameter, 1,000-foot long penstock; (4) a powerhouse with a total installed capacity of 300 kWh and (5) a 3,000-foot long, 12.5-kV transmission line interconnecting with an existing PG&E transmission line. The Applicant estimates that average annual energy output would be 2.6 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a preliminary permit for a period of 36 months during which he would conduct engineering, environmental and economic studies, and prepare an FERC exemption application. The Applicant estimates that the cost of conducting these studies would be $20,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 29, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 29, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 27, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A

copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13860 filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-502-000]

Pennsylvania Power & Light Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 6, 1982, Pennsylvania Power & Light Company (PP&L) tendered for filing Supplements to Power Supply Agreements which relate to certain electric resale schedules presently on file with the Commission. Those rate schedules are designated PP&L Rate Schedule FERC Nos. 28, 32, 45, 50, 51, 54, 56, 57, 58, 61, 63, 65, 69, 70 and 71.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13840 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-494-000]

Pennsylvania Power & Light Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that Pennsylvania Power & Light Company (PP&L), on May 3, 1982, tendered for filing proposed changes in its Rate Schedule FERC Nos. 28, 32, 45, 50, 51, 54, 56, 57, 58, 63, 65, 69, 70, 71 and 61, applicable to the Boroughs of Watsontown, Duncannon, Blakely, Weatherly, Schuylkill Haven, Perkasie, St. Clair, Catawissa, Ephrata, Lehighton, Olyphant, Hatfield, Mifflinburg, Quakertown and to Citizens' Electric Company of Lewisburg, respectively. The proposed changes would increase revenues from jurisdictional sales and service by $3,298,412 or 17.8 percent, based on the 12-month period ending December 31, 1982.

The proposed increase is required by the increase in the cost of providing service to said jurisdictional customers which PP&L has experienced since the base rates of these customers became effective on August 9, 1981.

Copies of the filing were served upon PP&L's jurisdictional customers named above and upon the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13841 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-493-000]

Pennsylvania Power & Light Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 3, 1982, the Pennsylvania Power & Light Company (PP&L) tendered for filing proposed changes in the fuel adjustment clauses applicable to its Rate Schedule FERC Nos. 28, 32, 45, 50, 51, 54, 56, 57, 58, 63, 65, 69, 70, 71 and 61, applicable to the Boroughs of Watsontown, Duncannon, Blakely, Weatherly, Schuylkill Haven, Perkasie, St. Clair, Catawissa, Ephrata, Lehighton, Olyphant, Hatfield, Mifflinburg, Quakertown and to Citizens' Electric Company of Lewisburg, respectively. The proposed changes would modify the fuel adjustment clauses so that the fuel adjustment charges will not be affected by energy produced by facilities undergoing test operation.

PP&L states that the proposed modification is required to ensure that the value of test power produced by the Company's Susquehanna nuclear power plant during its test operation in late 1982 and early 1983 will be accounted for properly.

Copies of the filing were served upon PP&L's jurisdictional customers and upon the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13861 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-495-000]

Public Service Company of New Mexico; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 3, 1982, Public Service Company of New Mexico (PNM) tendered for filing a Letter Agreement dated April 26, 1982, amending the Contingent Capacity Sales Agreement (Agreement) between PNM and San Diego Gas & Electric Company (SDG&E) for sale of 236 MW of contingent capacity from PNM's San Juan Generation Station Unit 4.

PNM requests an effective date of May 1, 1982, and therefore requests waiver of the Commission's notice requirements.

According to PNM copies of the filing have been served upon SDG&E and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests

should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13943 filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-389-000 and ER82-80-000]

Public Service Company of Oklahoma; Order Accepting for Filing and Suspending Revised Rates, Granting Interventions, Consolidating Proceedings, and Establishing Hearing Procedures

May 14, 1982.

On March 16, 1982, Public Service Company of Oklahoma (PSO) tendered for filing increased rates for firm power service to ten full requirements and eleven partial requirements customers and for transmission service and thermal energy provided to the Southwestern Power Administration (SWPA).[1] The proposed rates would result in an increase in revenues of approximately $1,940,000 (5.0%) above the level produced by PSO's rates which are currently being collected subject to refund in Docket No. ER82-80-000.[2] PSO states that the rate increase in this proceeding is intended to supplement the rate increase in Docket No. ER82-80-000, in order to recover PSO's proportionate share of the investment and cancellation costs associated with the recently cancelled Black Fox Nuclear Plant.[3] PSO requests that these rates be made effective on May 15, 1982. PSO also requests that this proceeding be consolidated with the proceeding in Docket No. ER82-80-000.

Notice of PSO's filing was issued on March 23, 1982, with responses due by April 9, 1982. On April 6, 1982, Mr. Tom Crider, Mayor of the City of New Cordell, Oklahoma, filed a protest, alleging that PSO's rate increases create a hardship on the citizens of New Cordell and that PSO's rate levels hamper New Cordell's ability to compete for new industries. Mr. Crider has not, however, petitioned to intervene in this proceeding.

On April 5, 1982, the Secretary of the Army, on behalf of the Department of Defense (DOD), filed a protest, motion, and petition to intervene. DOD is a SWPA preference customer affected by PSO's rate schedule RE-6. DOD challenges several aspects of the proposed rates, including (1) the level of revenue credits relating to off-system sales; (2) the appropriateness of estimated costs relating to cancellation of the Black Fox Plant and the amortization period for such costs; (3) the proposed inclusion in rate base of CWIP-related deferred taxes; (4) calculation of accumulated deferred income taxes pursuant to Internal Revenue Service Regulation 167(1); and (5) the requested return on equity. DOD moves for a five month suspension.

On April 9, 1982, a petition to intervene, protest, motion for maximum suspension, and answer supporting motion to consolidate was filed by the Oklahoma Municipal Power Authority, the Municipal Electric Systems of Oklahoma, and the Municipal Wholesale Customers of PSO (Municipalities).[4] The Municipalities raise several of the issues raised by DOD. In addition, they state their intention to explore the implications for this proceeding of a PSO capacity transfer agreement recently noticed in Docket No. ER82-420-000. The Municipalities request a five month suspensio and support PSO's motion to consolidate this docket with Docket No. ER82-80-000.

On April 9, 1982, an additional protest, petition to intervene, and petition for suspension and hearing was filed by the Western Farmers Electric Cooperative and Kamo Electric Cooperative, Inc. (Cooperatives). The Cooperatives, as part owners of the Black Fox Plant, state that they have a substantial interest in PSO's proposed write-off of its investment in the plant. The Cooperatives request a one day suspension and agree that it is appropriate to consolidate the instant docket with the pending PSO rate case.

An untimely petition to intervene and a motion for leave to file out of time were filed by the Attorney General of the State of Oklahoma (Attorney General). The Attorney General is an intervenor in proceedings involving the PSO before the Oklahoma Corporation Commission and the Nuclear Regulatory Commission concerning the cancellation of the Black Fox project. The Attorney General states that his late filed petition was occasioned by a heavy workload and personal illness. The Attorney General questions: (1) the prudence of PSO's expenditures for Black Fox and the recovery of those expenditures in proceedings before this Commission; (2) the propriety of maintaining a stockpile of coal; and (3) the effects of certain transactions involving PSO's wholly-owned subsidiary, Transok Pipeline Company, on PSO's cost of service.

On April 26, 1982, PSO filed an answer to the various petitions to intervene in which it supported intervention by the petitioners and responded to matters raised in the pleadings.

Discussion

The Commission finds that good cause exists to accept the late filed intervention of the Attorney General. The Commission further finds that participation in this proceeding by each of the petitioners is in the public interest. Accordingly, their petitions to intervene will be granted.

Our preliminary examination of PSO's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

We recently addressed the Commission's suspension policy in *West Texas Utilities Company*, Docket No. ER82-23-000 (February 26, 1982). In that order, we noted that the rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. In the instant proceeding, our preliminary review suggests that the proposed rates may yield substantially excessive revenues. Accordingly, we shall suspend PSO's rates for five months, to become

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[1] *See* Attachment A for rate schedule designations.

[2] By order dated January 8, 1982, in Docket No. ER82-80-000, the Commission accepted PSO's submittal for filing to become effective after a one day suspension on January 10, 1982. PSO concurrently filed an application to collect rates based on construction work in progress (CWIP); the CWIP application was set for hearing and phased to follow the Commission's action on the proposed rulemaking on CWIP in Docket No. RM81-38-000.

[3] According to PSO, the sponsors of the Black Fox station (including PSO) informed the Nuclear Regulatory Commission of the cancellation on February 12, 1982.

[4] The individual municipal customers of PSO include the Cities of Duncan, Comanche, Cordell, Altus, Copan, Hominy, Walters, Mario, Frederick, Wetumka, Pawhuska, and Kaw, and the Towns of Granite, Ryan, Olustee, Manitou, and Eldorado, and the Anadarko Public Works Authority. The Oklahoma Municipal Power Authority is a joint action power agency created by the Oklahoma legislature to develop sources of electric power supply for public systems. The Municipal Electric Systems of Oklahoma constitutes an association of certain of the municipal electric utilities in Oklahoma.

effective, subject to refund, on October 16, 1982.

With the exception of the Black Fox cancellation costs, the costs of service at issue in Docket Nos. ER82–80–000 and ER82–389–000 are substantially the same. Because common questions of law and fact may be presented, we shall consolidate those dockets for purposes of hearing and decision.

We note that PSO has requested an opportunity to address in this proceeding the question of whether CWIP-related deferred tax balances must be deducted from rate base in light of the Commission's limited holding in *Northern States Power Company (Minnesota), et al.*, Docket No. ER79–616, Opinion No. 134 (December 3, 1981), that the subject utility need not deduct from rate base accumulated deferred tax balances (ADIT) associated with abandoned plant. We have already ruled on this issue in *Union Electric Company*, Docket No. ER81–450–000 (March 18, 1982). In that order, the Commission denied Union Electric's request for rehearing of an earlier order [5] that required deduction of CWIP-related deferred taxes from rate base. We stated that CWIP represents investment that is intended ultimately to be included in rate base and is expected to generate a return and create a tax liability. The generic distinction between the rate and tax consequences applicable to abandoned plant and plant under construction is significant, rendering the approach followed in Opinion No. 134 [6] inapposite to a case involving CWIP-related ADIT. As a result, this issue is not appropriate for further consideration.[7]

The Commission orders:

(A) PSO's revised rates are hereby accepted for filing and are suspended for five months from sixty days after filing, to become effective on October 16, 1982, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of PSO's rates.

(C) Docket Nos. ER82–80–000 and ER82–389–000 are hereby consolidated for purposes of hearing and decision.

(D) The petitions to intervene in this proceeding are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order of the Commission in this proceeding.

(E) The Commission staff shall serve top sheets in this proceeding on or before May 28, 1982.

(F) The administrative law judge designated to preside in Docket No. ER82–80–000 shall determine the procedures best suited for consideration of these consolidated proceedings.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A—PUBLIC SERVICE COMPANY OF OKLAHOMA DOCKET NO. ER82–389–000 RATE SCHEDULE DESIGNATIONS

Designation rate schedule	Supplement No.	Supersedes supplement No.	Other party	Discription
FPC No. 168	8	7	Altus	RE-5.
FPC No. 169	8	7	Frederick	Do.
FPC No. 170	8	7	New Cordell	Do.
FPC No. 171	8	7	Kaw City	Do.
FPC No. 188	8	7	Anadarko	Do.
FPC No. 189	6	5	So. Coffeyville	Do.
FPC No. 190	7	6	Marlow	Do.
FPC No. 192	8	7	Pawhuska	Do.
FPC No. 196	5	4	SWPA	Rev. p21–4.
FERC No. 197	7	6	WFEC	RE–5.
FERC No. 198	7	6	KAMO	Do.
FERC No. 212	4	3	Hominy	RE–6.
FERC No. 213	4	3	Copan	Do.
FERC No. 214	4	3	Manitou	Do.
FERC No. 215	4	3	Waters	Do.
FERC No. 216	4	3	Granite	Do.
FERC No. 217	4	3	Eldorado	Do.
FERC No. 218	4	3	Olustee	Do.
FERC No. 219	4	3	Comanche	Do.
FERC No. 220	4	3	Ryan	Do.
FERC No. 221	4	3	Wetumka	Do.
FERC No. 222	4	3	Duncan	Do.

[FR Doc.82-13812 Filed 5-20-82; 8:45am]

BILLING CODE 6717-01-M

[5] *Union Electric Company*, Docket No. ER81–450–000 (July 7, 1981).

[6] For a discussion of the distinctions between Opinion No. 134, and this situation, including the limitations of and rationale underlying Opinion No. 134, *see* Order No. 144, Final Rule, Docket Nos. RM80–42, *et al.*, at 114–15, 15 FERC ¶ 61,133 (1981), and Order No. 144–A, "Order Denying Rehearing, Lifting Stay, And Clarifying Order," Docket Nos. RM80–42, *et al.*, 16 FERC ¶ 61,163 (February 22, 1982).

[7] PSO has requested that the Commission refund a portion of the filing fee submitted in this docket based on the "supplemental" nature of its submittal. Authority to act on such requests has been delegated to the Acting Director of the Office of Electric Power Regulation (18 CFR § 375.308(hh)) and we believe that he is in the best position to consider the merits of the company's position.

[Project No. 4490–001]

Richvale Irrigation District; Application for Exemption of Small Conduit Hydroelectric Facility

May 17, 1982.

Take notice that on March 19, 1982, Richvale Irrigation District (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Sutter-Butte Project (FERC Project No. 4490) would be located on the Sutter-Buttle Canal in Butte County, California. Correspondence with the Applicant should be directed to: Mr. Loyd E. Horn, Richvale Irrigation District, P.O. Box 147, Richvale, California 95974.

Project Description—The proposed project would consist of: (1) Installation of a steel lining in the four existing Sutte-Butte Canal outlet culverts; (2) a 400-foot-long, 13-foot-diameter penstock connected to the outlet structure; and (3) a powerhouse located in the canal containing two 1,500 kW generating units and a bypass conduit. Applicant estimates that the project would have an average annual energy production of 10,000 MWh.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California

Department of Fish and Game are requested, for the purposes set forth in Section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and reponsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 6, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capita letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13892 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-499-000]

Southern California Edison Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 6, 1982, Southern California Edison Company (Edison) tendered for filing a correcting supplement to its Rate Schedule FERC No. 117.

Edison requests that the Commission's prior notice requirements be waived and that the correcting supplement be permitted to become effective as of January 1, 1981.

Copies of this filing were served upon Pacific Gas and Electric Company and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13893 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6135-000]

Michael Earl Springer and James Baynard Boulden; Application for Preliminary Permit

May 17, 1982.

Take notice that Michael Earl Springer and James Baynard Boulden (Applicant) filed on March 29, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6135 to be known as the New Age Water Power Project located on the Lower Lost Cannon Creek in Mono County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James B. Boulden, 729 Sexton Road, Sebastopol, California 95472.

Project Description—The proposed project to be located within the boundaries of Toiyabe National Forest, would consist of: (1) A 3-foot high by 8-foot long diversion structure; (2) a 1.2-mile long water conduit; (3) a powerhouse with an installed capacity of 300 kW; and (4) a 3-mile long transmission line to connect to an existing Sierra Pacific Power Company line.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of the project and to prepare an FERC license application. No new road would be required to conduct the studies.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 26, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 24, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13643 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-497-000]

Southwestern Electric Power Co.; Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on May 3, 1982, Southwestern Electric Power Company (SWEPCO) tendered for filing Service Schedules ES (Emergency Service), RE (Replacement Energy) and EC (Economy Energy) to the Interconnection Agreement between SWEPCO and Oklahoma Gas and Electric Company (OG&E) which was accepted for filing in Docket No. ER81-689.000 and designated as Rate Schedule FERC No. 78 and 112 for SWEPCO and OG&E respectfully.

SWEPCO requests waiver of the prior notice requirements to allow for an effective date of March 30, 1982.

A copy of the filing was furnished to the Oklahoma Corporation Commission, the Arkansas Public Service Commission and Oklahoma Gas and Electric Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are avaliable for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13644 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-15-000]

Thriftway Co.; Filing of Petition for Review

May 17, 1982.

Take notice that Thriftway Company, Inc. on March 31, 1982 filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before June 1, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before June 1, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13602 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-56-000]

Valero Interstate Transmission Co.; Purchase Gas Cost Adjustment Filing

May 13, 1982

Take notice that on April 30, 1982, Valero Interstate Transmission Company ("Vitco") tendered for filing Original Supplement No. 37 (purchase gas cost adjustment) to Rate Schedule 1 superseding previous purchased gas cost adjustments. Vitco states that Exhibit A to Original Supplement No 37 reflects the six months change in purchased gas costs based on the six months ended February 28, 1982. Vitco requests waiver of any Commission regulation which would prohibit implementation of Supplement No. 37. The change in rate provided in Exhibit A to Original Supplement No. 37 includes an increase in purchased gas costs of 2.86 cents/Mcf and a negative surcharge of 31.74 cents/Mcf designed to eliminate the balance in deferred purchased gas account. It is stated that these rates include no incremental pricing feature because Vitco was granted an exemption from certain filing and accounting requirements in Docket No. SA80-42.

The proposed effective date for Original Supplement No. 37 is June 1, 1982. Vitco states that copies of the filing have been served to the only customer served under Rate Schedule 1, Natural Gas Pipeline Company of America.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13685 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6122-000]

Timothy A. Ward; Application for Preliminary Permit

May 17, 1982.

Take notice that Timothy A. Ward (Applicant) filed on March 22, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6122 to be known as the Champlain Feeder Canal Project located on Champlain Feeder Canal in Washington County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Timothy A. Ward, Box 342, White Hall, New York 12887.

Project Description—The proposed project would consist of the following: (1) Reconditioning an existing series of five abandoned locks owned by the New York State Department of Transportation; (2) reconditioning the canal above and below the locks; (3) a proposed 100-foot long raceway; (4) a proposed 500-foot long steel penstock; (5) a proposed powerhouse containing one 350-kW turbine/generator unit; (6) a proposed tailrace; (7) a proposed transformer and 800-foot long, 13.2-kV transmission line; and (8) appurtenant facilities. The average annual generation of 1.25 million kWh would be sold to Niagara Mohawk Corporation.

Proposed Scope of Studies Under Permit—A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of studies under permit would be $5,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 23, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13684 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-85-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

May 14, 1982.

Take notice that on April 30, 1982 Western Gas Interstate Company ("Western") tendered for filing proposed changes in its FERC Gas Tariff to be effective on June 1, 1982, consisting of the following tariff sheets.

Original Volume No. 1

Title Page
First Revised Sheet No. 2
Twentieth Revised Sheet No. 3A
Second Revised Sheet No. 4
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9
Second Revised Sheet No. 14
Second Revised Sheet No. 15
Second Revised Sheet No. 16

Original Volume No. 2

Title Page
Sixth Revised Sheet No. 1A
First Revised Sheet No. 9
Third Revised Sheet No. 22

Western requested in its filing that the Commission suspend such changes in rates for a period of one day rather than for a five month period as permitted under Section 4(e) of the Natural Gas Act.

The proposed changes would increase revenues from jurisdictional sales and transportation by $1,608,928, based upon the calendar year 1981, as adjusted. Such revenue increase is exclusive of increases in purchased gas costs which will occur prior to the rates involved becoming effective and which would otherwise be recovered through the purchased gas adjustment clause provisions of Western's tariff.

Western states that the principal reasons for the proposed rate increase are: (1) increase in overall rate of return necessary to maintain its financial integrity; (2) increases in plant and related cost of service items; (3) increases in cost of materials, supplies, wages, services, and other operating expenses necessary to maintain and operate its pipeline system and appurtenances; (4) increases in taxes;

and (5) recent significant decreases in the volumes of gas sold by Western.

Western further states that in light of current uncertainties of the costs for transmission and compression by others, Western has included in the instant Notice of Rate Change "Alternative Tariff Sheets" which include 37.92¢/Mcf average transmission and compression by others cost under its Rate Schedule G–R. Pro Form Tariff Sheets are also included to reflect proposed Section 21, "Transmission and Compression of Gas by Others Aadjustment Provision" under General Terms and Conditions contained in Original Volume No. 1. Western requests that the "Alternative Revised Tariff Sheets" be made effective subject to the express condition that, thereafter, Western be permitted to file revisions to such tariff sheets from time to time to reflect changes in the cost of transmission and compression of gas by others resulting from variations in the volume of gas transported and from changes in the tariff prices of other natural gas companies for transmission and compression of gas. This provision applies to all rate schedules, although the base cost of transmission and compression of gas for Rate Schedules G–N, G–S, T–1, T–2 and T–3 is presently zero.

Western also proposes to implement a demand charge in each of its three Volume I rate schedules: G–N, G–R, and G–S, based on the contract demands contained in the service agreements with each of its customers. Western proposes that the demand-related costs to be included in the demand charge determined by application of the Atlantic Seaboard Formula.

Western states that there are other changes in its tariff in the sheets tendered but that these changes are either minor word changes for clarification, updating of required information, or changes required to bring such sheets into conformity with the proposed rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 21, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13866 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-57-000]

Western Transmission Corp.; Proposed Changes

May 13, 1982.

Take notice that Western Transmission Corporation (Western), on April 30, 1982, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Seventeenth Revised Sheet No. 3–A, superseding
Sixteenth Revised Sheet No. 3–A

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is June 1, 1982.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13867 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4538-000]

Wisconsin Public Power Incorporated System; Surrender of Preliminary Permit

May 17, 1982.

Take notice that Wisconsin Public Power Incorporated System (WPPIS), Permittee for the Mississippi River Lock and Dam No. 6, Project No. 4538, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4538 was issued on September 3, 1981, and would have expired on November 1, 1983. The project would have been located on the Mississippi River in Winona County, Minnesota.

WPPIS feasibliity studies indicated that the projects limited head and flow characteristics were not sufficient to develop hydroelectric power. In addition, WPPIS concluded that the expenses to conduct a full scale feasibility analysis are not supported by the potential development of the site.

WPPIS filed its request for Project No. 4538 on April 26, 1982, and the surrender of Project No. 4538 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13868 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1968-004]

Wisconsin Public Service Corp.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 18, 1982.

Take notice that on April 1, 1982, Wisconsin Public Service Corporation (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 1968) would be located on the Wisconsin River near the town of Crescent, in Oneida County, Wisconsin. Correspondence with the Applicant should be directed to: Mr. D. A. Bollom, Treasurer, Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, Wisconsin 54301.

Project Description—The proposed project would consist of: (1) an existing reservoir with a surface area of 640 acres and a storage capacity of 260 acre-feet; (2) two existing powerhouses containing a total of 970 kW and two proposed units rated at 455 kW and 440 kW, respectively, to be added; (3) an existing reinforced concrete dam approximately 22 feet high; and (4) appurtenant facilities.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or

license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Wisconsin Department of Natural Resources are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 8, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(d) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (b) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTEVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13983 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6156-000]

Milton M. Zack and Morris M. Zack; Application for Preliminary Permit

May 18, 1982.

Take notice that Milton M. Zack and Morris M. Zack (Applicant) filed on April 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 6156 to be known as the Pellisier Creek/Middle Canyon/Birch Creek Hydroelectric Project located on Pellisier, Middle Canyon and Birch Creeks near Bishop in Mono County, California. The proposed project would affect U.S. lands administered by the U.S. Forest Service and Bureau of Land Management. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Milton M. Zack, 3530 Brookside Drive, Bishop, California 93514.

Project Description—The proposed project would consist of: (1) three existing collection basins, one each on Pellisier, Middle Canyon and Birch Creeks; (2) a 10-inch diameter, 4,000-foot long penstock conveying water from Pellisier Creek; (3) a 10-inch diameter, 2,600-foot long penstock conveying water from Middle Canyon Creek; (4) a 12-inch diameter, 5,200-foot long penstock conveying water from Birch Creek; (5) a 16-inch diameter, 7,500-foot long penstock conveying the combined flow of all three creeks to the powerhouse; (6) a powerhouse with a total installed capacity of 420-kW; and (7) a 5,000-foot long, 12-kV transmission line interconnecting with an existing SCE transmission line. The Applicant estimates that the average annual energy output would be 3.65 million kWh.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking issuance of a preliminary permit for 24 months during which it would conduct engineering, environmental and economic studies and prepare an FERC license application. The cost of conducting these studies are estimated by the Applicant to be $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 2, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 2, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 1, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13847 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6120-000]

McDowell Forest Products, Inc., Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 18, 1982.

Take notice that on March 23, 1982, the McDowell Forest Products, Inc. (Applicant) filed an application under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6120) would be located on Camp Creek near the town of Pulga in Butte County, California. The proposed project would affect the United States lands within the Plumas National Forest. Correspondence with the Applicant should be directed to: Mr. Bruce McDowell, McDowell Forest Products, Inc., P.O. Box 131, Taylorsville, California 95983.

Project Description—The proposed project would consist of: (1) a 4-foot high diversion structure; (2) 34-inch diameter intake pipe diverting water from a natural pool of water at the base of a 40-foot high waterfall; (3) a fish screen; (4) a 34-inch diameter, 1,200-foot long penstock; (5) a powerhouse with a total installed capacity of 990 kW; (6) a concrete tailrace; and (7) a 600-foot long, 12-kV transmission line interconnecting with an existing PG&E transmission line.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project. The Applicant estimates that the average annual output would be 4,778 MWh.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 9, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13829 Filed 5-20-82; 8:45am]

BILLING CODE 6717-01-M

[Project No. 6180-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

May 17, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 7, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6180 to be known as the Sibley

Creek Project located on Sibley Creek and East Fork, within Snoqualmie-Mt. Baker in Skagit County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) 36-inch wide concrete intake structures placed in the streambeds at elevation 2,900 feet; (2) diversion pipelines totaling 6,000 feet long; (3) a powerhouse at 1,340 feet containing a turbine generator with 2.98 MW capacity and 13.08 GWh annual energy production; and (4) a transmission line 7 miles long. The potential market for project-generated energy includes Puget Sound Power and Light, the Bonneville Power Administration and the Intalco Aluminum Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before July 26, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 26, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than September 24, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13880 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82–199–002 and CP82–199–003]

National Fuel Gas Supply Corp., Amendment

May 14, 1982.

Take notice that on April 30, 1982, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP82–199–002 and on May 6, 1982, Applicant filed in Docket No. CP82–199–003 amendments to its pending application filed February 11, 1982, in Docket No. CP82–199–000 pursuant to section 7(c) of the Natural Gas Act so as to reflect increased sale of natural gas, all as more fully set forth in the amendments which are on file with the Commission and open to public inspection.

Applicant asserts that in addition to interruptible gas sales already proposed it proposes to sell up to 800,000 Mcf of gas to The Connecticut Gas Company, up to 1,200,000 Mcf of gas to Orange and Rockland Utilities, Inc., and up to 40,000 Mcf of gas to The Berkshire Gas Company all under Applicant's Rate Schedule I–1. It is stated that the subject gas would be delivered for storage by Penn York Energy Corporation during the summer injection period ending no later than October 31, 1982.

Any person desiring to be heard or to make any protest with reference to said amendments should on or before June 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13881 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82–284–000]

Northwest Pipeline Corp.; Application

May 13, 1982.

Take notice that on April 15, 1982, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP82–284–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new sales delivery point for Northwest Natural Gas Company (Northwest Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate one tap on its 12-inch O.D. Eugene Lateral in Marion County,

Oregon, to be used for the sale and delivery of natural gas to Northwest Natural. Applicant submits that the maximum daily delivery volume requirements would be 100 Mcf with an estimated annual requirement of 7,590 Mcf.

It is stated that the proposed tap would be used to supply gas service to the Cascade High School, Marion County, Oregon. Applicant explains that Northwest Natural would install metering and regulating facilities along with any additional facilities necessary to effectuate the delivery of natural gas from the Cascade High School tap. It is asserted that the volumes of natural gas to be sold and delivered to the Cascade High School tap would be taken from volumes of natural gas which Applicant has heretofore been authorized to sell and deliver to Northwest Natural under Applicant's existing Rate Schedule ODL–1. Applicant submits that there would be no increase in the daily contract quantity of natural gas which Applicant is authorized to sell and deliver to Northwest Natural.

The cost of constructing the proposed facilities is estimated to be $5,800. Applicant states that northwest Natural would reimburse Applicant for all out-of-pocket costs incurred in constructing the tap, excluding labor.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13878 Filed 5–20–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP82–73–000]

Ohio River Pipeline Corp.; Proposed Changes

May 13, 1982.

Take notice that Ohio River Pipeline Corporation (Ohio River) on April 29, 1982, tendered for filing proposed changes in the revised tariff sheets as listed on the attached Appendix A.

These revised tariff sheets implement a general rate increase to Ohio River's jurisdictional sales of $3.2 million annually based on a test year ending December 31, 1981, adjusted for charges known and measurable to September 30, 1982.

Ohio River states that the increased rates are necessitated by increased costs at all levels including operating costs, increased capital costs, and a 15.54% rate of return. The proposed effective date of the tendered sheets is June 1, 1982.

Copies of this filing were served on Ohio River's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishihng to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–13879 Filed 5–20–82; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. RP82–76–000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

May 13, 1982.

Take notice that Ringwood Gathering Company (formerly Oklahoma Natural Gas Gathering Corporation), on April 30, 1982, tendered for filing proposed changes in its FERC Tariff, Original Volume No. 1, consisting of the following tariff sheets:

Twenty-Seventh Revised Sheet PGA–1
Eighth Revised Sheet No. 4
Seventh Revised Sheet No. 59

The proposed changes would increase the level of its jurisdictional rates by .0468 cents per Mcf, which would provide an increase in revenues from jurisdictional sales of $567,030 based on the 12-month period ending December 31, 1981, as adjusted. Ringwood Gathering Company states that this increase amounts to a 2.3 percent increase over revenues which would result from annualized effective rates that are in effect at this time.

Ringwood Gathering Company states that this filing is being made in compliance with § 154.63(b)(3) of the Commission's regulations. Ringwood Gathering Company states that increased cost of service (labor, supplies, expenses, and construction) have caused its earned rate of return to decline to 6.80 percent after adjustments. Thus, the company requests waiver of the five-month suspension period because it only serves to further erode that return and increase the risk to the company's stockholders.

Ringwood Gathering Company proposes an effective date of June 1, 1982, and states that copies of this filing were served on each of its customers and affected State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13880 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-28-001]

Transco Gas Supply Co., Tariff Filing

May 13, 1982.

Take notice that Transco Gas Supply Company (Gasco) on April 30, 1982, tendered for filing Fifth Revised Sheet No. 106 to its FERC Gas Tariff, Original Volme No. 2. Gasco states that said revised tariff sheet provides for a change in the percentage applicable to return and income taxes for Gasco's rate base from 17.91% to 15.26% and was filed to comply with Section 1B of Appendix A of Gasco's FERC Gas Tariff which requires that Gasco's rate of return and income tax factor be the same as that of its affiliate, Transcontinental Gas Pipe Line Coporation (Transco) . In that regard, Gasco states that the revised rate is in accordance with Article II, Paragraph D of Transco's Agreement as to Rates in Docket No. RP80-117 approved by the Commission on April 12, 1982, and reflects the same percentage rate accepted by the Commission in docket No. RP76-24 effective January 1, 1979. Gasco states that it will commence collecting effective April 1, 1982 rates based upon the reduced factor, and upon acceptance of the revised tariff sheet, will make the necessary refunds to Transco for amounts collected in excess of the return and income tax factor of 15.26% when applied to Gasco's rate base for the period January 1, 1981 through March 31, 1982.

Gasco states that copies of the filing have been mailed to Transco and for information purposes to each of Transco's jurisdictional customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13881 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-77-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

May 13, 1982.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on April 30, 1982, tendered for filing First Revised Tariff Sheet No. 214 of Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the revised tariff sheet is June 1, 1982.

Transco states that the purpose of this filing is to reflect a change in the interest rate on late payments and overcharges from the present 5% per annum contained in section 7. (d) and (e) of the General Terms and Conditions to the prime interest rate in effect from time to time of the Citibank, N. A. or its sucessor. Such change is designed to bring Transco and its customers into accord with current financial conditions by providing realistic interest rates to be charged on late payments and paid on overcharges and to remove any incentive which may currently exist to pay late or overcharge because of an inadequate interest rate.

The Company states that copies of the filing are being mailed to each of its customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10).

All such petitions or protests should be filed on or before May 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-13882 Filed 5-20-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-4-FRL-2128-8]

Approval of PSD Permit to the Kentucky Utilities Company

Notice is hereby given that on April 15, 1982, the Environmental Protection Agency issued a Prevention of Significant Deterioration permit PSD-KY-137 to the Kentucky Utilities Company for approval to construct two 650 megawatt electric power generating units near Hawesville, Kentucky.

On October 12, 1979, the Kentucky Division of Air Pollution Control made a Preliminary Determination that the proposed source could be approved with conditions. Many citizens, after having reviewed the document, requested that a public hearing be held to discuss the Determination and on July 22, 1980, a public hearing was held by EPA in Lewisport, Hancock County, Kentucky.

After having reviewed all of the materials relative to the Kentucky Utilities application, EPA issued its Final Determination on April 15, 1982, to grant Kentucky Utilities authority to construct subject to conditions. All comments received, both prior to and subsequent to the public hearing, pertaining to the Commonwealth's Preliminary Determination, Kentucky Utilities PSD application, the Clean Air Act, and the PSD regulations were Addressed in EPA's Final Determination. The conditions of the permit are as follows:

This authority to construct does not relieve Kentucky Utilities of its responsibility to comply with all other applicable Federal, state, and local requirements. Furthermore, this Federal permit to construct has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR § 52.21) subject to certain General Conditions (Numbers 1 through 10) as well as the Specific Conditions listed below:

1. The steam generating units (1 and 2) will be constructed and operated in accordance with the application, including a 650 megawatt generating capacity and the 6650 MMBtu/hr heat input rate for each steam generating unit.

2. Emissions will not exceed the allowable limits specified in the following table of allowable emissions for SO_2 TSP NO_x and CO. In addition, the SO_2 scrubber efficiency must be maintained at a minimum of 91% on a thirty-day rolling average.

3. Compliance with the boiler allowable emission limits required in

Condition 2 will be demonstrated with the performance tests conducted in accordance with the provisions of 40 CFR 60.46a, 48a, and 49a, including applicable tests methods, sampling periods, etc. Compliance with the opacity limits on the limestone and fly ash handling systems will be determined with EPA reference Method 9 (Appendix A, 40 CFR Part 60). These latter two systems are exempted from mass emission rate compliance tests unless opacity limits are exceeded or the administrator (or his representative) otherwise determines that such performance testing is required.

4. The applicant will install and maintain continuous monitoring and recording opacity meter, sulfur dioxide and nitrogen oxide analyzers, oxygen and/or CO_2 analyzer in accordance with the provisions of 40 CFR 60.47a.

5. The following requirements will be met to minimize fugitive emissions of particular matter from the coal storage and handling facilities, the limestone storage and handling facilities, haul roads, and general plant operations:

a. All conveyors and transfer points in the coal handling system will be enclosed and equipped with dust collection equipment. Dust pickups will be vented to bag-type dust collectors of at least 99% collection effeciency, and maximum outlet grain loading of .01 gr/dscf.

b. The active coal storage and crushing facilities will be totally enclosed and vented to bag-type dust collectors of at least 99 percent collection efficiency, and maximum outlet grain loading of .01 gr/dscf.

c. The inactive coal storage pile will be shaped, compacted, and oriented to minimize wind erosion.

d. Wet suppression will be applied to the inactive coal pile, limestone storage pile and reclaim and stock out areas during dry periods and as often as the piles and these areas are disturbed to minimize emissions.

e. The limestone and lime handling equipment will be provided with a dust collection system designed to prevent dust emissions at all dust producing points. Dust pickups used in the dust collection system will be vented to bag-type dust collectors of a 99 percent collection efficiency.

f. The fly ash handling system (including transfer and silo storage) will be maintained at negative pressures and vented to bag-type dust collectors.

g. All unpaved access and haul roads will be oiled or watered during dry periods to reduce fugitive dust emissions.

6. Within 90 days of commencement of operations, the applicant will determine and submit to EPA the pH level in the scrubber effluent that will ensure 91% removal of the SO_2 in the flue gas. Moreover, the applicant is required to operate a continuous pH meter equipped with an upset alarm, to ensure that the pH level of the scrubber effluent does not fall below this level. The minimum value pH may be revised at a later date provided notification to EPA is made demonstrating the minimum percent removal will be achieved on a continuous basis.

7. The applicant will perform post-construction continuous ambient air monitoring of sulfur dioxide and TSP in accordance with EPA Region IV policies and procedures and the guidance offered in "Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)", EPA–450/4–80–012, November 1980). Such monitoring will be continued for a period of at least one year and until determined by the Administrator (or his representative) that the effects of the construction on ambient air quality have been quantified.

8. The applicant must submit to EPA Region IV's Air Facilities Branch within five (5) working days after its becomes available, copies of all technical data pertaining to the selected control devices, including formal bids from vendors and guaranteed efficiencies or emission rates. Although the type of control equipment described in the application has been determined by EPA to be adequate, EPA may, upon review of the data, disapprove the application if EPA determines the selected devices to be inadequate to meet the emission limits specified in this conditional approval.

9. The total coal throughput (annual volume) for each unit shall not exceed 2,776,920 tons.

10. The auxiliary boiler emissions shall not at any time exceed:

.52 lb/MMBtu for SO_2.

.1 lb/MMBtu for NO_x.

.03 lb/MMBtu for TSP.

11. The auxiliary boiler will only be used to supplement startup steam requirements.

12. The applicant will comply with all requirements and provisions of the New Source Performance Standards for electric utility steam generating units (40 CFR 60 Part Da, promulgated June 11, 1979).

13. The applicant will not use the existing railroad line at the plant site, for coal supply or unloading.

This PSD permit may now be considered final Agency action reviewable under 40 CFR 124.19 (Consolidated Permit Regulations). Within 30 days after issuance of this final PSD permit decision, any person who filed comments on the draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision.

Copies of the permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region IV, Air Facilities Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Kentucky Division of Air Pollution Control, Bureau of Environmental Protection, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Dated: April 15, 1982.

Charles R. Jeter,

Regional Administrator.

TABLE OF ALLOWABLE EMISSION LIMITS

Facility	SO_2		NO_x		TSP		CO		Opacity (percent)
	Pound per million Btu	Pound per hour	Pound per million Btu	Pound per hour	Pound per million Btu	Pound per hour	Pound per million Btu	Pound per hour	
Units 1 and 2 30-day rolling average	0.54	3,600	0.6	3,990					
Continuous limit					0.03	199.5	0.048	319	20
Fugitive emissions						[1] 3.8			10

[1] Total fugitive emissions calculated on an annual basis.

[FR Doc. 82–13960 Filed 5–20–82; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2131-5]

Availability of Environmental Impact Statement Filed May 10 Through May 14, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson (202) 245-3006.

Corps of Engineers:
- EIS No. 820302, Draft, COE, IN, Little Calumet River Multipurpose Project, Lake County, Due: July 6, 1982
- EIS No. 820285, Draft, COE, LA, Louisiana Coastal Area, Freshwater Diversion for Saltwater Reduction, Due: July 6, 1982
- EIS No. 820304, Final, COE, CA, Bodega Bay Navigational Improvements, Sonoma County, Due: June 21, 1982
- EIS No. 820306, Final, COE, CA, Richmond Harbor Deep-Draft Navigation Improvements, Contra Coasta Co., Due: June 21, 1982
- EIS No. 820305, Final, COE, LA, Red River Backwater Flood Control, Sicily Island, Due: June 21, 1982
- EIS No. 820289, Final, COE, NY, Gowanus Creek Channel Navigation Improvement, King County, Due: June 21, 1982
- EIS No. 820303, Final, COE, NY, Conesus Lake Flood Damage Reduction Plan, Livingston County, Due: June 21, 1982
- EIS No. 820282, Final, COE, RI, Big River Reservoir Water Resources Development, Kent County, Due: June 21, 1982
- EIS No. 820284, DSuppl, COE, MN, Minnesota River, Flood Control at Chaska, Carver County, Due: July 6, 1982

Department of Energy:
- EIS No. 820300, Draft, DOE, WA, PUREX/Uranium Oxide Facilities, Operation, Hanford, Benton, County, Due: July 6, 1982
- EIS No. 820308, Final, DOE, PA, Shippingport Atomic Power Station, Decommissioning, Beaver County, Due: June 21, 1982

Department of Interior:
- EIS No. 820301, Draft, BLM, ID, Challis Planning Unit (MFP), Wilderness Designation, Custer County, Due: August 2, 1982
- EIS No. 820286, Draft, BLM, MT, Dillion Resource Area, Wilderness Designation, Beaverhead and Madison, Due: July 26, 1982
- EIS No. 820297, Draft, BLM, MT, Missouri Breaks Area, Wilderness Designation, Due: July 26, 1982
- EIS No. 820293, Draft, BLM, CA, Sierra Planning Area Livestock Grazing Management Plan, Due: July 6, 1982
- EIS No. 820290, Final, BLM, MT, Big Dry Resource Area Vegetation Allocation and Grazing Management, Due: June 21, 1982
- EIS No. 820298, Draft, NSP, UT, Capitol Reef National Park General Management Plan, Due: July 6, 1982

Department of Transportation:
- EIS No. 820287, Draft, FHW, IN, I-164 Improvement, IN-66 to U.S. 41, Evansville, Vanderburg and Warrick, Due: July 6, 1982
- EIS No. 820288, Draft, FHW, NY, NY-55 Relocation/Ilion and Mohawk Bypass, Herkimer County, Due: July 6, 1982
- EIS No. 820299, Draft, FHW, WA, 1-5/220th Street Interchange Improvement, Snohomish County, Due: July 6, 1982

Department of Housing and Urban Development:
- EIS No. 820294, Draft, HUD, CA, Victoria Community Plan, Mortgage Insurance, San Bernardino County, Due: July 6, 1982
- EIS No. 820292, Final, HUD, CT, Summitwood Planned Community, Mortgage Insurance, Meriden, Due: June 21, 1982
- EIS No. 820307, Final, HUD, NC, Kildaire Farms Development, Mortgage Insurance, Wake County, Due: June 28, 1982

Nuclear Regulatory Commission:
- EIS No. 820296, Draft, NRC, IL, Rare Earths Facility, Decommissioning, License, Du Page County, Due: July 6, 1982
- EIS No. 820295, Draft, NRC, NH, Seabrook Station Units 1 and 2, Startup and Operation, Licenses, Due: July 6, 1982

Department of Agriculture:
- EIS No. 820291, Final, SCS, CA, Llagas Creek Watershed Flood Control Project, Santa Clara County, Due: June 21, 1982
- EIS No. 820283, Final, SCS, SEV, CO, UT, Lower Gunnison/Uintah Basin Units, Water Quality, Due: June 21, 1982

Amended Notice:
- EIS No. 820066, Draft, AFS, NM, Santa Fe National Forest Land and Resource Management Plan. *Published FR 4-19-82—Review Extended, Due: June 1, 1982

Dated: May 19, 1982.

Louis J. Cordia,

Acting Director, Office of Federal Activities.

[FR Doc. 82-14063 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140010; TSH FRL 2129-1]

Office of Management and Budget; Disclosure of Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) has requested that EPA provide a designated OMB employee access to confidential business information submitted to EPA under the Toxic Substances Control Act (TSCA) and the Federal Insecticide, fungicide, and Rodenticide Act (FIFRA). OMB has informed EPA that its employee requires access in connection with OMB's role in reviewing EPA's budget.

DATE: Access to confidential business information will be provided to the OMB employee no sooner than June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 401 M St. SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington D.C.: (554-1404), Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB), Executive Office of the President, is responsible for reviewing EPA's budget. In connection with that role, the Environment Branch of OMB requires a thorough understanding of EPA's programs operating under TSCA and FIFRA. OMB has requested that a designated employee of its Environment Branch be granted access to confidential business information submitted to EPA under TSCA and FIFRA so that that employee may from time to time attend meetings and review background materials which involve such confidential information.

EPA will provide the designated OMB employee access to confidential business information in accordance with 40 CFR 2.209(c), which applies to information submitted under TSCA by 40 CFR 2.306(h) and under FIFRA by 40 CFR 2.307(h).

As required by 40 CFR 2.209(c), this is a notice to inform submitters of TSCA and FIFRA information that OMB's employee will have access to confidential business information no sooner than ten days after publication of this notice.

The designated OMB employee will be cleared for access to confidential business information in accordance with the provisions of the TSCA and FIFRA confidential business information security manuals and required to sign confidentiality agreements. Confidential business information will be reviewed by the OMB employee only at EPA, and so such information will be permitted to be removed from EPA's premises. OMB and its employee will be notified that this confidential information was acquired by EPA under authority of TSCA and FIFRA and that any knowing disclosure of the information may subject the officers and employees of OMB to the penalties in section 14(d) of TSCA and section 10(f) of FIFRA.

Dated: May 12, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-13921 Filed 5-20-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51414; TSH-FRL 2131-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 82-340, 82-341, 82-342, 82-343 and 82-344, August 5, 1982.

PMN 82-345, August 8, 1982.

PMN 82-346, 82-347 and 82-348, August 9, 1982.

PMN 82-349, 82-350, 82-351 and 82-352, August 10, 1982.

PMN 82-353, 82-354, 82-355 and 82-356, August 11, 1982.

Written comments by:

PMN 82-340, 82-341, 82-343 and 82-344, July 4, 1982.

PMN 82-345, July 9, 1982.

PMN 82-346, 82-347 and 82-348, July 10, 1982.

PMN 82-349, 82-350, 82-351 and, 82-352, July 11, 1982.

PMN 82-353, 82-354, 82-355 and 82-356, July 12, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51414]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532.)

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729.)

SUPPLEMENTARY INFORMATION: The following notices contain information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the public reading room E-107.

PMN 82-340

Importer. Confidential.

Chemical. (G) Complex quaternary ammonium chloride.

Use/Import. (S) Dyeing aid for textiles. Import range. Confidential.

Toxicity Data. Acute oral: 1.3 g/kg; Skin: Moderate irritant; Eye: Severe irritant;

Exposure. Import and disposal: a total of 64 workers, up to 3 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 1,000-10,000 kg/yr released to water. Disposal by publicly owned treatment works (POTW).

PMN 82-341

Manufacturer. Confidential.

Chemical. (G) Unsaturated hydrocarbons modified rosin.

Use/Production. (S) Industrial hot melt and pressure-sensitive adhesives. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, 2 workers, 1 hr/da, 110 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land 24 hrs/da, 110 da/yr. Disposal by biological treatment system.

PMN 82-342

Manufacturer. Confidential.

Chemical. (G) Unsaturated hydrocarbons modified rosin.

Use/Production. (S) Industrial hot melt and pressure-sensitive adhesives. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, 2 workers, 1 hr/da, 110 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land 24 hrs/da, 110 da/yr. Disposal by biological treatment system.

PMN 82-343

Manufacturer. Confidential.

Chemical. (G) Unsaturated hydrocarbons modified rosin.

Use/Production. (S) Industrial hot melt and pressure-sensitive adhesives. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, 2 workers, 1 hr/da, 110 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and landd 24 hrs/da, 110 da/yr. Disposal by biological treatment system.

PMN 82-344

Manufacturer. Confidential.

Chemical. (G) Unsaturated hydrocarbons modified rosin.

Use/Production. (S) Industrial hot melt and pressure-sensitive adhesives. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, 2 workers, 1 hr/da, 110 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land 24 hrs/da, 110 da/yr. Disposal by biological treatment system.

PMN 82-345

Manufacturer. Confidential.

Chemical. (G) Polyhalo alkoxyaryl nitrile.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 46.8 mg/kg; Acute dermal: >0.5 ml/kg; Skin: Negative; Eye: Slight; Inhalation: > 8.34 mg/1; Ames Test: Negative.

Exposure. Manufacture: dermal and inhalation, 2 workers, 24 hrs/da, 14 da/yr.

Environmental Release/Disposal. Negligible. Disposal by incineration.

PMN 82-346

Manufacturer. Confidential.

Chemical. (G) Reaction product of a substituted benezene, formaldehyde and inorganic acid.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82-347

Manufacturer. Confidential.

Chemical. (G) Polyurethane of a diisocyanate and a substituted alkanediol.

Use/Production. (G) Open use. Prod. range: 1,000-100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and eye, a total of 93 workers, up to 6 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-1,000 kg/yr to land. Disposal by incineration, landfill or sold as fuel.

PMN 82-348

Manufacturer. Spencer Kellogg Division of Textron Inc.

Chemical. (G) Urea/carbamate elastomer.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Skin: Mild irritant; Eye: Irritant; Inhalation: No special hazards.

Exposure. Manufacture: dermal, 6 workers, 6 hrs/da, 20 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration and approved landfill.

PMN 82–349

Manufacturer. Confidential.

Chemical. (G) Polycyclic sulfonic acid salt.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 6 workers, 8 hrs/da, 15 da/yr.

Environmental Release/Disposal. No release.

PMN 82–350

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Titanium (4) mixed alcohol complex.

Use/Production. (G) Energy production industry additive. Prod. range: Confidential.

Toxicity Data. Acute oral: 3,310 mg/kg; Skin: Mild irritant; Eye: Severe irritant.

Exposure. Dermal, inhalation and ingestion, a total of 2 workers, up to 8 hrs/da, up to 8 wks/yr.

Environmental Release/Disposal. Minimal. Disposal by incineration.

PMN 82–351

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Titanium (4) mixed alcohol complex.

Use/*Production.* (G) Energy production industry additive. Prod. range: Confidential.

Toxicity Data. Acute oral: 9,437 mg/kg; Skin: Slight irritant; Eye: Severe irritant.

Exposure. Dermal, inhalation and ingestion, a total of 2 workers, up to 8 hrs/da, up to 20 wks/yr.

Environmental Release/Disposal. Minimal. Disposal by incineration.

PMN 82–352

Importer. Confidential.

Chemical. (G) Napthalenedisulfonic acid, [[aminosulfohydroxy naphthalenyl]azo]-, trisodium salt.

Use-Import. (S) Textile use. Import range: 5,000–20,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Skin: Slight irritant; Eye: Minimal irritant; TL_{m} 96 hrs (zebra fish): < >1,000 mg:1; BOD_5: Og/gO_2; COD: 1.06 g/gO_2, Treatment plant bacterial inhibition: No inhibition at 300 mg/l.

Exposure. Import: a total of 200–400 workers, 720 manhrs/yr.

Environmental Release/Disposal. Less than 200 mg/l released as a dilute aqueous solution. Disposal by water treatment system and National Pollution Disposal Elimination System (NPDES).

PMN 82–353

Manufacturer. Confidential.

Chemical. (G) substituted phenyl-pyrimidine.

Use/Production. (G) Site-limited intermediate. Prod. range: 0–30 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 4 workers, 8 hrs/da, 2 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–354

Manufacturer. Confidential.

Chemical. (G) Substituted phenyl-pyrimidine.

Use/Production. (G) Site-limited intermediate. Prod. range: 0–30 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 4 workers, 8 hrs/da, 2 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 82–355

Manufacturer. Confidential.

Chemical. (G) Substitued phenyl-pyrimidin bicyclic azo heterocyclic merocyanine.

Use/Production. (G) Enclosed use. Prod. range: 0–30 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, 8 workers, 8 hrs/da, 6 da/yr. Use: Negligible, dermal contact.

Environmental Release/Disposal. Less than 30 kg/yr released to land. Disposal by incineration and landfill.

PMN 82–356

Manufacturer. Confidential.

Chemical. (G) Polymer of 1,4-benzenedicarboxylic acid dimethyl ester; dihydroxyalkane; 1,6-hexanedio; alpha hydro-omega hydroxy poly (oxy-1,4-butanediyl).

Use/Production. (G) Laminated panel fabrication. Prod. range: 4,500–33,750 kg/yr.

Toxicty Data. No data submitted.

Exposure. Manufacture: 10 workers, 8 hrs/da, 30 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

Dated: May 17, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82–13927 Filed 5–20–82; 8:45 am]

BILLING CODE 6560–32–M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82–274, File No. BRH–810601 VT; and BC Docket No. 82–275, File No. BPH–810604 AB]

Berryville Media Group and Bentom Enterprises, Inc.; Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: April 29, 1982.

Released: May 18, 1982.

In re applications of Berryville Media Group, Has: 105.5 MHz, 3.0 Kw, Channel 288, BC Docket No. 82–274. File No. BRH–810601 VT, For renewal of license of station WWOO(FM), Berryville, Virginia; and Bentom Enterprises, Inc., Berryville, Virginia Req: 105.5 MHz, 3.0 Kw, Channel 288, BC Docket No. 82–275, File No. BPH–810604 AB; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the application of Berryville Media Group (BMG) for renewal of license for Station WWOO(FM), Berryville, Virginia, and the application of Bentom Enterprises, Inc. (Bentom) for a construction permit for an FM station in Berryville, Virginia on the frequency occupied by BMG. [1]

2. Bentom requests that it be permitted to locate its main studio outside the city limits of Berryville pursuant to § 73.1125(a)(3) of the Commission's Rules. [2] In support of its

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[1] On September 1, 1981, BMG and Apple Valley Broadcasters, Inc. (Apple Valley) filed an application to assign the license of Station WWOO from BMG to Apple Valley. On October 15, 1981, Bentom filed a petition to deny the assignment application. Subsequently, the assignment application was dismissed pursuant to the request of the parties. Since the petition to deny the assignment application makes allegations concerning the licensee-seller, it is, in essence, a pre-designation petition to specify issues. Because such petitions are no longer permitted, it will be dismissed. *Processing of Contested Broadcasting Application*, 72 FCC 2d 202 (1979). Bentom, however, will have an opportunity to raise the issues contained in the petition post designation pursuant to § 1.229 of the Commission's Rules.

[2] Section 73.1125(a) states in pertinent part:

"(a) Each * * * FM * * * broadcast station shall maintain a main studio in the station's principal community which it is licensed to serve, except:

* * * * *

(3) * * * FM * * * stations, when good cause exists for locating the main studio outside the principal community to be served and that to do so would be consistent with operation of the station in the public interest.

request, Bentom states that its proposal would locate the main studio at the site of its proposed transmitter and that such co-location would result in operating cost savings which could then be spent on programming and beautification. In addition, Bentom states that the site is 2.9 miles east-northeast of Berryville and is easily accessible from three directions. Finally, Bentom claims that land for a studio/transmitter site is virtually unobtainable within the city limits of Berryville, and that even if it were obtainable, it would be unaffordable. In view of the above, we believe that Bentom has demonstrated good cause for locating its main studio outside of Berryville and that operation thereof at the proposed site would be consistent with the public interest. Accordingly, if the Bentom application is granted, it will be permitted to locate its main studio outside of the city limits of Berryville at the site specified in its application.

3. Review of the applications indicates that both applicants are qualified to operate as proposed. However, because the applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order within 20 days of the mailing of this Order pursuant to § 1.221(c) of the Commission's Rules.

6. It is further ordered, That the applicants herein shall give notice of the hearing pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, either individually or jointly, if feasible and consistent with the Rules, within the time and in the manner prescribed in Rule 73.3594, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

7. It is further ordered, That the Secretary of the Commission shall send, by *Certified Mail—Return Receipt Requested*, a copy of this *Memorandum Opinion and Order* to each of the parties named herein.

Laurence E. Harris,

Chief, Broadcast Bureau.

By: **Roy J. Stewart,**

Chief, Renewal and Transfer Division.

[FR Doc. 82-13969 Filed 5-20-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-259, File No. BPCT-790928KI; BC Docket No. 82-260, File No. BPCT-800516KO]

Focus Television Co., A Joint Venture and Community Action Communications, Inc.; Applications For Construction Permit For a New Television Station; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: May 10, 1982.

Released: May 18, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Focus Television Co., A Joint Venture, (Focus) Kannapolis, North Carolina and Community Action Communications, Inc. (Community), Kannapolis, North Carolina, for a new commercial television station to operate on Channel 67[4], Kannapolis, North Carolina; and a petition to deny filed by WCCB–TV, Inc., licensee of WCCB–TV (WCCB) Channel 18, Charlotte, North Carolina.

2. WCCB claims standing as a party in interest under Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d), on the grounds that because Focus would be within the proposed principal city grade contour of WCCB–TV, the two stations would compete for audience and revenues and operation as proposed would cause economic injury to WCCB. We find that WCCB has standing. *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008 (1940).

Background

3. On September 28, 1979, Cabarrus Television Corporation (Cabarrus),[1] filed its application seeking a construction permit for a new commercial television station to operate on Channel 64, in Kannapolis, North Carolina, and sought subscription television authority (STV) on that channel. Subsequently, on May 16, 1980, the "A" cut-off date, a) WCCB filed a Petition to Deny against Cabarrus' application, b) Focus Broadcasting of Kannapolis, Inc. (FBK) and Community filed mutually exclusive applications to operate on Channel 64 and Cabarrus amended its application to reflect the transfer of control of Cabarrus to Kannapolis Broadcasting Company (KBC). Thereafter, Cabarrus and KBC became joint venturers in Kannapolis Television Company, a Joint Venture (Kannapolis TV). On September 8, 1980, Kannapolis TV and FBK submitted a settlement agreement for Commission approval. Under the proposed agreement, Kannapolis TV's interest would be 70% and FBK's interest would be 30%. The resulting joint venture would be a merged applicant, known as Focus, and the existing Kannapolis TV and FBK applications would be dismissed. Focus would adopt portions of both the FBK and Kannapolis TV applications and adopt FBK's file number.[2] Additionally, FBK and Kannapolis TV would form Carolina Subscription Television Corporation (CTV) to be an STV franchisee on Channel 64. On September 23, 1980, WCCB filed a Petition to Deny Focus' application.[3]

Preliminary Matters

4. Focus alleges that WCCB's pleading was not timely, and therefore does not constitute a petition to deny. Focus notes that the "B" cut-off for FBK was September 8, 1980. On that date, a minor amendment (See § 73.3572(b) of the Commission's Rules), reporting the formation of Focus, was also filed. Therefore, Focus asserts that the deadline for WCCB's petition to deny

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[1] The application of Cabarrus also contemplated operating subscription television (STV) over its proposed facilities. However, the STV application (BSTV–790928KI) will not be consolidated for hearing with the television application. This is in keeping with the Commission's policy with regard to mutually exclusive applications for a new station where one contemplates STV operation and the other a conventional facility as stated in Paragraph 15, *Second Report and Order*, FCC 81–13, adopted January 8, 1981.

[2] On that same date, WCCB filed an Opposition to Joint Petition for Approval of Agreement. Since WCCB raises similar issues in its May 16, 1980 Petition to Deny against Cabarrus and its September 23, 1980 Petition to Deny and Opposition to Joint Petition filed against Focus Television Co. (formerly Cabarrus, KBC and FBK), these and related pleadings will be considered herein jointly, unless otherwise indicated.

[3] On May 3, 1982, Focus submitted an amendment revising the merger agreement between FBK and KTC. Pursuant to the revised agreement KTC's interest will be 70% and Focus' interest will be 30%. Additionally, Focus will adopt KTC's file number.

against FBK and its successor, Focus, remained September 8, 1980.

5. In opposition, WCCB states that when FBK and Kannapolis TV first notified the Commission on September 8, 1980, of their intent to merge and served WCCB, this was the first notice to WCCB. Subsequently, within 15 days, WCCB petitioned to deny Focus' application and opposed the merger. WCCB contends that its original May 16 petition against Focus' predecessor, Cabarrus, has not been dismissed or denied. Therefore, when Cabarrus became Kannapolis TV, the May 16 petition became applicable to Kannapolis TV's application. Now that Focus has been formed, WCCB's May 16 petition, as supplemented and incorporated into its September 23 petition, also lies against Focus' application.

6. Inasmuch as the original petition has not been denied or dismissed, the Commission agrees that the original petition as amended, is not rendered moot by subsequent reorganizations of Cabarrus, since WCCB supplemented it as circumstances warranted, to reflect changes in the original application.

Finances

7. Generally, WCCB alleges that Focus' financial showing is insufficient. Specifically, Petitioner notes that prior to the formation of Focus, FBK and Kannapolis TV agreed that Focus would adopt Section III (financial qualifications) of FBK's application. The application showed that approximately $2.7 million would be required to construct and operate the proposed facility, itemized as follows: [3]

Equipment	$2,435,000
Land/Buildings	50,000
Other (inc. legal and eng.)	47,000
Miscellaneous	25,000
Operating Costs (3 months)	208,057
Total	2,765,057

WCCB contends that since Focus has only $10,000 in available funds to finance the cost of construction and operation of the proposed facility, the applicant is not qualified.

8. Focus concedes that it is aware of the deficiency in the financial resources of its joint venturer, FBK. In this connection, FBK states that it intends to acquire the requisite financing from a yet to be determined source. Therefore, FBK and, consequently, Focus, have not shown their ability to meet the proposed expenditures. Accordingly, an appropriate issue will be specified.

Real Party in Interest

9. WCCB contends that it cannot be determined who the ultimate operator of Channel 64 will be if Focus' application is granted. In support of the above, Petitioner cites various provisions from the joint petition submitted by FBK and Kannapolis. In opposition, Focus contends that the joint venture agreement clearly sets forth the ownership interest, and any appurtenant conditions with regard to the respective parties. Moreover, Focus notes that any potential changes in ownership pursuant to these conditions would have to be consistent with Commission Rules.

10. The test for determining whether a third party is a real party in interest is whether that party has an ownership interest, or is or will be in a position to actually or potentially control the operation of the station. *KOWL, Inc.*, 49 FCC 2d 982, 984 (1974). While supplying the major source of financing does not necessarily cause a third party to become a real party in interest, *Medford Broadcasters, Inc.*, 16 FCC 2d 684, 15 RR 2d 780 (1969), "it is well known that one of the most powerful and effective methods of control of any business, organization or institution and one of the most potent causes of involuntary assignment of its interest is the control of finances." *Heitmeyer v. FCC*, 68 U.S. App. D.C. 180, 188, 95 F. 2d 91, 99 (1937). The Commission is of the opinion that sufficient allegations have not been made to warrant inquiry into a real party in interest question, i.e., whether there is an undisclosed principal. The agreement clearly sets forth the terms, conditions and the proposed relationship between the two merging parties. There is no evidence that the applicant is attempting to conceal a controlling party, nor does it apear that any financial arrangements exist which will permit a third party to exert control over the applicant.

De facto Reallocation [4]

11. Generally, WCCB alleges that the applicant's proposal is inconsistent with section 307(b) of the Communications Act and the Commission's TV Table of Assignments, 47 CFR 73.606. Specifically Petitioner argues that grant of Focus' application would effectuate a *de facto* reallocation of Channel 64 from Kannapolis to Charlotte. In support of its argument, WCCB cites the following: Focus has selected a transmitter site five miles outside of Kannapolis; applicant proposes to operate at 977 kW effective radiated visual power, with an antenna height 1459 feet above average terrain; no white or gray areas will be eliminated; the applicant divided its ascertainment efforts between Charlotte and Kannapolis and proposes a city grade contour which would completely encompass Charlotte.

12. In opposition, Focus notes that the transmitter site selected by the applicant is closer to Kannapolis than to Charlotte, the facilities proposed will provide the requisite city grade service to Kannapolis; the tower has been approved by the FAA; and the power and height proposed are well within the limits prescribed by the Commission's Rules.

13. The Commission considers a variety of factors in deciding whether a hearing is necessary to determine whether an applicant's proposal is an attempt to serve communities other than the city of license. See, *Communications Investment Corporation*, 641 F 2d 954 (D.C. Cir. 1981). We have reviewed Focus' application in light of *CIC, supra*, and conclude that no substantial and material questions of fact have been raised to warrant a hearing on this issue. Focus would place the requisite city grade signal over its community of license. Although Focus' proposed city grade contour will also encompass Charlotte, there is no evidence that Focus intends to serve Charlotte at the expense of its community of license. Moreover, Focus proposes to locate its main studio in Kannapolis, not in Charlotte. Finally, there has been no prior interest evinced on the part of Focus to locate in Charlotte. Consequently, we agree with Focus that WCCB has provided no basis to warrant the designation of a *de facto* reallocation issue.

Economic Impact

14. WCCB contends that Focus' application should be denied or designated for hearing under *Carroll Broadcasting Company v FCC*, 258 F 2d 440, 17 RR 2066 (1958). WCCB's pleading is concerned solely with the impact which Focus would have on WCCB's ability to survive and compete effectively if Focus were granted STV authority. Focus' STV application, however, is not before the Commission in this proceeding. Since Focus is mutually exclusive with Community

[3] Focus intends to rely on the estimated cost of construction and operation of the proposed facility from its joint venturer, Kannapolis TV Co. Therefore, the above figures are taken from BPCT-790926KL.

[4] The Commission recently has indicated that it intends to revisit its current *de facto* reallocation policy. The staff has been directed to prepare an item for Commission consideration for the purpose of reexamining that policy. *Sun Broadcasting, Inc.*, 88 FCC 2d, 635 (1981). If and when the Commission's *de facto* reallocation policy is changed, the new policy will be applied to all pending applications, including any then in hearing.

and, therefore, must go into comparative hearing, there is no assurance that Focus' application for a construction permit will be granted. Because no action can be taken on the STV application unless Focus wins a construction permit, matters pertaining to the STV application are premature and will not be considered in this proceeding. Since STV applications are not subject to cut-off procedures, WCCB may subsequently file whatever it wishes against the STV application if Focus is the permittee as the result of the hearing.

Motion To Dismiss Community's Application

15. Focus alleges that, on September 5, 1980, four months after the May 16, 1980 "A" cut-off date, Community filed an amendment reflecting a transfer of control within the meaning of §§ 73.3573(b) and 73.3540 of the Commission's Rules. Focus contends that § 73.3573(b) of the Rules requires the dismissal of Community's application. In opposition, Community notes that at least 83.6% of its stock has, at all times, been owned by Truth Temple, Inc., a non-stock religious organization. Since the church corporation was formed in 1972, the Board of Directors has consisted of the same three persons who now constitute the board. The Board makes the day-to-day decisions for the church, although the Articles of Incorporation provide that "the Directors of the Corporation shall consist of all persons included on the membership roll of the church who are eighteen years or older," i.e., the entire adult congregation. Notwithstanding this provision, it is clear that the body which makes church policy and implements that policy is the Board of Directors and, although there has been a change in the officers, there has been no change in the Board of Directors. Since, in a non-stock corporation, control is considered to be in the body which is responsible for day-to-day management, the Commission finds that there has been no change in control of Truth Temple and the motion to dismiss Community's application will, therefore, be denied.

Community's Application

16. The financial data submitted by Community reveals that approximately $320,973 will be required to construct and operate the proposed station for three months, estimated as follows:

Equipment cash purchases	$35,000
Equipment down payment	147,034
Equipment payments (with interest 3 months)	27,789
legal/Engineering (includes installation)	23,500
Miscellaneous	1,000
Operating Costs, 3 months	86,650
Total	320,973

To meet these expenditures, Community relies upon a bank loan of $700,000 (less payments of interest, $650,500 net) and additional loans totalling $54,000. As a condition to the loan, the bank is requiring a lien on all of the tangible assets of the applicant. Community proposes to lease its broadcast equipment from Comark, an equipment manufacturer, who also wants to retain a security interest in the equipment as a condition to its lease agreement. Since, under the present circumstances, the equipment lease agreement is not assignable, we are unable determine whether the loan will be available if the bank is unable to acquire a secured interest in the equipment. Likewise, we are unable to determine whether the proposed $54,000 in additional loans is available since the balance sheets of the investors were not submitted pursuant to the instructions contained in Paragraph 4(b), Page 3, Section III, Form 301. In one instance, liabilities were not included, nor were receivables and payables properly segregated. Therefore, an appropriate issue will be specified.

Petition for Reconsideration

17. On June 3, 1980, Kannapolis TV, sought reconsideration of the Broadcast Bureau's denial of its petition for extension of time in which to respond to WCCB's May 16 petition to deny, filed against Kannapolis TV's joint venturer, Cabarrus. Subsequently, Kannapolis TV merged with FBK to form Focus. WCCB then filed a supplemental pleading against Focus, incorporating its May 16 petition against Focus' predecessors, which had remained unopposed. Thereafter, Focus filed an opposition to WCCB's petition, making no reference to the prior proceedings between Kannapolis TV and WCCB. Consequently, we believe that Kannapolis TV has had enough time to file an opposition if it intended to do so. Therefore, in light of the above, we will consider the petition for reconsideration moot.

Conclusion and Order

18. Except with respect to the issues specified below, we find that the applicants are qualified to construct and operate as proposed. We are, however, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity and the applications must be designated for hearing.

19. Accordingly, it is ordered, That the petitions to deny and supplements thereto, file herein, are granted to the extent indicated and otherwise ARE DENIED.

20. It is further ordered, that the Joint Petition For Approval of Agreement filed by Kannapolis Television Co., a Joint Venture and Focus Broadcasting of Kannapolis, Inc. IS GRANTED.

21. It is further ordered, that the applications of Kannapolis Television Co., a Joint Venture, and Focus Broadcasting, are dismissed.

22. It is further ordered, that the Motion to Dismiss filed by Focus Television Co., a Joint Venture, against Community Action Communications, is denied.

23. It is further ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of Focus Television Co., a Joint Venture, and Community Action Communications, Inc. are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues.

1. To determine with respect to Focus:

(a) Whether the applicant has $2,765,057 available to construct and operate the proposed station for three months.

(b) Whether, in light of the evidence adduced pursuant to (a) above, applicant is financially qualified;

2. To determine with respect to Community:

(a) Whether the applicant has $320,973 available to construct and operate the proposed station for three months.

(b) Whether in light of the evidence adduced pursuant to (a) above the applicant is financially qualified;

3. To determine, on a comparative basis, which of the applications would better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

24. It is further ordered, that WCCB–TV, Inc., licensee of WCCB–TV, Charlotte, North Carolina is made a party respondent in this proceeding, with respect to ISSUE 1.

25. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (20) days of the mailing of this Order, shall file with

the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

26. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934 as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(d) of the Rules.

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-13980 Filed 5-20-82; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Harry W. Huning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire 100 percent of the voting shares or assets of The Chardon Savings Bank Company, Chardon, Ohio. Comments on this application must be received not later than June 9, 1982.

B. **Federal Reserve Bank of Minneapolis** (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dacotah Bank Holding Co.,* Aberdeen, South Dakota; to acquire 100 percent of the voting shares or assets of Faulk County State Bank, Faulkton, South Dakota. Comments on this application must be received not later than June 16, 1982.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Midwest Bancorp, Inc.,* St. Joseph, Missouri; to acquire 100 percent of the voting shares or assets of Bank of Tuscumbia, Tuscumbia, Missouri. Comments on this application must be received not later than June 16, 1982.

2. *Pioneer Bancorporation,* Denver, Colorado; to acquire 99.4 percent of the voting shares of City Center National Bank, Aurora, Colorado. Comments on this application must be received not later than June 16, 1982.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Bancshares of Texas, Inc.,* Longview, Texas; to acquire 100 percent of the voting shares of Tyler National Bank, Tyler, Texas. Comments on this application must be received not later than June 16, 1982.

2. *Grand Bancshares, Inc.,* Dallas, Texas; to acquire 100 percent of the voting shares of Grand Bank Woodall Rodgers at Pearl, N.A., Dallas, Texas. Comments on this application must be received not later than June 16, 1982.

3. *Grand Bancshares, Inc.* (formerly GAB Company), Dallas, Texas; to acquire 100 percent of the voting shares or assets of Grand Central Bank at Fitzhugh, N.A. (in organization), Dallas, Texas. Comments on this application must be received not later than June 16, 1982.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BSD Bancorp, Inc.,* San Diego, California; to acquire 51 percent of the voting shares or assets of Borrego Springs Bank, (in organization), Borrego Springs, California. Comments on this application must be received not later than June 16, 1982.

Board of Governors of the Federal Reserve System, May 17, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13985 Filed 5-20-82; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Resere Bank not later than June 10, 1982.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation,* Boston, Massachusetts (formerly New England Merchants Company, Inc.) (Leasing activities; nationwide): To engage, through its subsidairy, NEMCO Leasing Corporation, in the leasing of real and personal property. These activties would be conducted from an office located at 50 Milk Street, Boston, Massachusetts, serving the entire United States.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp,* New York, New York (consumer lending activities; Maryland, Pennsylvania, Delaware, Virginia, and the District of Columbia): To engage *de novo* through its wholly-owned subsidiary, Citicorp Financial, Inc., in

the making of consumer loans secured by second mortgage or second trust liens. Such activities would be conducted from offices located in Towson, Maryland; Baltimore, Maryland; Hyattsville, Maryland; and Glen Burnie, Maryland, serving the states identified in the caption above.

2. *Citicorp*, New York, New York (consumer finance and insurance activities; Indiana, Michigan): To expand the service area of an office of its subsidiary, Citicorp Acceptance Company, Inc., located in Columbus, Ohio and engaged in the following previously approved activities: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agent or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Acceptance Company, Inc., to the extent permissible under applicable state insurance laws and regulations; and the servicing, for any person, of loans and other extensions of credit. The previously approved service area for the aforementioned activities encompasses the States of Kentucky, Ohio, Pennsylvania, and West Virgnina. The proposed expanded service area for all activities, with the exception of the sale of credit related property and casualty insurance, which is not included in this notification, shall be the entire States of Indiana and Michigan. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Acceptance Company, Inc.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia (insurance activities; Tazewell and Loudoun Counties, Virginia, and Mercer, West Virginia): To engage through its subsidiary, Dominion Bankshares Services, Inc., in acting as insurance agent or broker with respect to the following types of insurance related to or arising out of loans made or credit transactions involving The First National Exchange Bank of Virginia and Dominion National Bank of Northern Virginia, affiliates of Dominion Bankshares Corporation: credit life insurance, credit accident and health insurance credit disability insurance; mortgage accident redemption insurance and mortgage and health insurance; nonconvertible term life insurance; and physical damage insurance on motor vehicles, mobile homes, motor homes, boats, trailers and other kinds of personal property or attachments designed for use in connection therewith. The activities covered by this proposal will be conducted through the offices of The First National Exchange Bank of Virginia established through merger with southwest Virginia National Bank, Bluefield, Virginia, and through the offices of Dominion National Bank of Northern Virginia established through merger with Commonwealth Bank and Trust Company of Virginia, Sterling, Virginia, and serving the counties of Tazewell and Loudon, Virginia, and Mercer, West Virginia.

2. *Southern Bancorporation, Inc.*, Greenville, South Carolina (consumer finance lender; Texarkana, Texas): To engage through its subsidiary, World Acceptance Corporation, in making extensions of credit as a licensed consumer finance lender. These activities would be conducted from an office at 222 W. Broad Street, Texarkana, Texas, serving the city limits of Texarkana and other parts of Bowie County.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *InterFirst Corporation*, Dallas, Texas (financing activities; United States): To engage through its subsidiary, InterFirst Funding Corporation, in making or acquiring for its own account or for the account of others, loans and other extensions of credit. These activities would be conducted from Dallas, Texas, serving the United States.

2. *South Texas Bancshares, Inc.*, Beeville, Texas (credit reinsurance activities; Texas): To engage through its subsidiary, South Texas Bankers Life Insurance Company, in credit reinsurance activities, including the assumption of credit life and disability insurance directly related to its extensions of credit. These activities would be conducted from offices located in Beeville and Mathis, Texas, serving Bee County and San Patricio County, Texas. Comments on this application must be received not later than June 3, 1982.

Board of Governors of the Federal Reserve System, May 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13894 Filed 5-20-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bolivar Capital Corporation*, Cleveland, Mississippi; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank of Bolivar County, Cleveland, Mississippi. Comments on this application must be received not later than June 16, 1982.

2. *Gateway Capital Corporation*, Hernando, Mississippi; to become a bank holding company by acquiring 99.3 percent or more of the voting shares of The Hernando Bank, Hernando, Mississippi. Comments on this application must be received not later than June 16, 1982.

3. *Summersville Bancshares, Inc.*, Summersville, Missouri; to become a bank holding company by acquiring 85 percent of the voting shares of Summersville State Bank, Summersville, Missouri. Comments on this application must be received not later than June 16, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Guaranty, Inc.*, Beloit, Kansas; to become a bank holding company by

acquiring at least 80 percent of the voting shares of The Guaranty State Bank and Trust Company, Beloit, Kansas. Comments on this application must be received not later than June 16, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas:

1. *First Amarillo Bancorporation, Inc.*, Amarillo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Amarillo, Amarillo, Texas. Comments on this application must be received not later than June 16, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Community Bancorporation*, Pullman, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Pullman, Pullman, Washington. Comments on this application must be received not later than June 16, 1982.

2. *First Northwest Bancorporation*, Seattle, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Bank, Seattle, Washington. Comments on this application must be received not later than June 16, 1982.

3. *Napa Valley Bancorp*, Napa, California; to become a bank holding company by acquiring 100 percent of the voting shares of Napa Valley Bank, Napa, California. Comments on this application must be received not later than June 16, 1982.

E. **Secretary, Board of Governors of the Federal Reserve System**, Washington, D.C. 20551:

1. *Charter Bancorporation, Inc.*, Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Stoughton State Bank, Stoughton, Wisconsin. Comments on this application must be received not later than June 16, 1982.

2. *Security Holding Company*, Fredericksburg, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Financial Corporation of Fredericksburg, Fredericksburg, Texas. Comments on this application must be received not later than June 16, 1982.

Board of Governors of the Federal Reserve System, May 17, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13686 Filed 5-20-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Anesthetic and Life Support Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on May 1, 1984, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 14, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13688 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0102]

CooperVision, Inc.; Premarket Approval of Cooper™ 38 (Polymacon) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for pemarket approval under the Medical Device Amendments of 1976 of the Cooper™ 38 (Polymacon) Hydrophilic Contact Lens, sponsored by CooperVision, Inc., San Jose, CA. The lens is to be manufactured under an agreement with National Patent Development Corp., New Brunswick, NJ, which has authorized CooperVision, Inc., to incorporate by reference information contained in its approved premarket approval application for the Hydron ® (polymacon) Hydrophilic Contact Lens. FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petition for administrative review by June 21, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 4, 1981, CooperVision, Inc., San Jose, CA, submitted to FDA an application for premarket approval of the Cooper ™ 38 (polymacon) Hydrophilic Contact Lens. The application included authorization from National Patent Development Corp., New Brunswick, NJ, to refer to its approved premarket approval application for the Hydron ® (polymacon) Hydrophilic Contact Lens (Docket No. 79M-0244). On March 18, 1982, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft (hydrophilic contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft (hydrophilic) contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft (hydrophilic) contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's

approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of an approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act [21 U.S.C. 352] as well as the Federal Trade Commission Act [15 U.S.C. 41-58], as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or any at other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and subetantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 21, 1982, file with the Dockets Management Branch (HFA-305) (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-13885 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0095]

Headquarters Laboratory Facilities, State of Maryland, Prince Georges County; Availability of Record of Decision Following Environmental Impact Analysis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the record of its decision to build new headquarters laboratory and support facilities, in a phased construction program, on government-owned land at Beltsville, MD. The record of decision identifies the alternatives considered and the environmental and other relevant factors balanced by the agency in reaching its decision.

ADDRESS: The record of decision, the final environmental impact statement, and historic preservation and archeological investigation reports for the Beltsville site are available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. A limited number of free copies of the record of decision and of the final environmental impact statement are available at the same address.

FOR FURTHER INFORMATION CONTACT: William H. Hoffman, Chief, Long Range Facilities Planning Staff (HFA-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4432.

SUPPLEMENTARY INFORMATION: FDA evaluated a number of alternative sites in the Washington metropolitan area for the construction of a new facility for laboratories, laboratory support, animal testing, and related offices. Following that evaluation, a 244-acre site in Beltsville was selected for construction of the facility. Because the proposed site appeared to be environmentally valuable due to its rural character and ecological diversity, the agency conducted an intensive evaluation of the potential environmental impact of the proposed facility.

The agency invited community and professional participation in a "scoping" meeting held September 12, 1979, at Beltsville. The meeting was intended to give all interested parties the opportunity to comment on the proposed FDA plans and to determine the scope of the issues to be addressed before development of a draft environmental impact statement (EIS). Notice of this meeting was published in the Federal Register (44 FR 47619, August 14, 1979) and in local newspapers circulated in the area of the proposed construction site. Individuals and organizations who might be expected to be interested in the proposed action were personally invited.

A document entitled "Draft Environmental Impact Statement—Headquarters Laboratory Facilities" was made available to the public (Docket No. 80N-0095, 45 FR 29413, May 2, 1980) and officially filed for public review by the Environmental Protection Agency (FRL 1500-3, 45 FR 35004, May 23, 1980).

A final EIS was issued under the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190) (sec. 102(2)(c), 83 Stat. 853 (42 U.S.C. 4321-4347)), January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975 and the Council on Environmental Quality regulations published in the Federal Register of November 29, 1978 (43 FR 55978 to 56007, 40 CFR Parts 1500-1508), Executive Order 11514, Protection and Enhancement of Environmental Quality, (March 5, 1970 as amended by Executive Order 11991, May 24, 1977), and FDA's environmental regulations implementing the National Environmental Policy Act (21 CFR Part 25). The final EIS was made available to the public (Docket No. 80N-0095, 46 FR 38142, and ER-FRL-1893-8, 46 FR 38139, July 24, 1981).

As required by the Council on Environmental Quality regulations (40 CFR Part 1505), FDA has prepared a record of its decision to build replacement laboratory and support facilities, in a phased construction program, on government-owned land at Beltsville, MD. The record of decision explains the basis for the agency's decision and the alternatives and factors which were balanced by the agency in making that decision.

The record of decision is issued under the National Environmental Policy Act of 1969 (sec. 102(2)(c); 83 Stat. 853 (42 U.S.C. 4321–4327); the Council on Environmental Quality regulations (40 CFR Part 1505); and FDA implementing procedures for the National Environmental Policy Act (21 CFR Part 25).

The record of decision, the final environmental impact statement, and historic preservation and archeological investigation reports for the Beltsville site are available for review at the Dockets Management Branch (HFA–305) (address above).

Dated: May 11, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-13887 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N–0333; DESI 12813]

Ophthalmic Combination Drug Containing Sodium Sulfacetamide, Prednisolone Acetate, Phenylephrine Hydrochloride, and Antipyrine; Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption; Opportunity for Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of Blephamide Liquifilm Ophthalmic Suspension containing sodium sulfacetamide, prednisolone acetate, phenylephrine hydrochloride, and antipyrine. Under the exemption, the drug has been allowed to remain on the market for continued study beyond the time limit scheduled for implementing the Drug Efficacy Study. This notice also reclassifies this particular formulation of Blephamide to lacking substantial evidence of effectiveness, proposes to withdraw approval of those parts of the new drug application providing for this formulation, and offers an opportunity for a hearing on the proposal. This notice does not apply to Blephamide Liquifilm Ophthalmic Suspension formulated to contain only sodium sulfacetamide and prednisolone acetate as active ingredients.

DATES: The revocation of the exemption is effective May 21, 1982; requests for hearing by June 21, 1982; material to support hearing request by July 20, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N–0333 and DESI 12813, and directed to the attention of the appropriate office named below:

Request for a hearing, supporting data, and comments: Dockets Management Branch (formerly the Hearing Clerk) (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 19, 1972 (37 FR 3779), FDA classified the following drug product as possibly effective for the treatment of nonpurulent blepharitis and blepharoconjunctivitis (seborrheal, staphylococcal, allergic), and nonpurulent conjunctivitis (allergic and bacterial).

NDA 12–813; Blephamide Liquifilm Ophthalmic Suspension containing sodium sulfacetamide, prednisolone acetate, phenylephrine hydrochloride, and antipyrine; Allergan Pharmaceuticals, Inc., 2525 Dupont Dr., Irvine, CA 92713.

Subsequently, in a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), FDA exempted Blephamide from the timetable established for implementing the Drug Efficacy Study. Under the exemption no data were submitted on Blephamide. Instead, the manufacturer reformulated Blephamide to a type of ophthalmic combination drug product determined by FDA to be effective—containing only sodium sulfacetamide and prednisolone acetate as active ingredients. The conditions for marketing and approval of this type of ophthalmic combination drug were announced in the **Federal Register** of August 29, 1980 (45 FR 57780). On September 25, 1981, FDA approved the reformulation of Blephamide.

Accordingly, the temporary exemption granted to Blephamide by the December 14, 1972 notice is revoked. In addition, because no data have been submitted demonstrating the contribution of phenylephrine hydrochloride and antipyrine to the effect of the combination drug, the Director of the Bureau of Drugs proposes to withdraw approval of those parts of NDA 12–813 that provide for Blephamide formulated to contain sodium sulfacetamide, prednisolone acetate, phenylephrine hydrochloride, and antipyrine, and offers an opportunity for a hearing on the proposal. This notice does not apply to Blephamide formulated to contain only sodium sulfacetamide and prednisolone acetate as active ingredients.

On the basis of all data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355, 21 CFR 314.111(a)(5), and 21 CFR 300.50), demonstrating the effectivenss of Blephamide as a fixed-combination drug containing sodium sulfacetamide, prednisolone acetate, phenylephrine hydrochloride, and antipyrine.

Therefore, notice is given to the holder of the new drug application, and to all other interested persons, that the Director of the Bureau of Drug proposes to issue an order under section 505(e) of the act, withdrawing approval of those parts of the new drug application and all amendments and supplements thereto that provide for Blephamide formulated to contain sodium sulfacetamide, prednisolone acetate, phenylephrine hydrochloride, and antipyrine on the ground that new information before him with respect to the drug product, evaluated together with the evidence available to him whem the application was approved, shows there is a lack of substantial evidence that the drug product will have the effect it purports or is represented to have under the conditions of use prescribed, recomended, or suggested in the labeling.

In addition to the holder of the new drug application specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to the drug product named above, as defined in 21 CFR

310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for a hearing to determine whether it covers any drug product that the person manufacturers or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug product subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, contained in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act and the regulations promulgated under it (21 CFR Parts 310, 314), the applicant and all other persons subject to this notice under 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the pertinent parts of the new drug application should not be withdrawn and an opportunity to raise, for administrative determiation, all issues relating to the legal status of the drug product named above and of all identical, related, or similar drug products.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before June 21, 1982, a written notice of appearance and request for hearing, and (2) on or before July 20, 1982, the data, information, and analysis relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analysis to justify a hearing, other comments, and a grant or denial of hearing are contined in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses, in the request for hearing that there is no genuine and substnatial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings an conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This noice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70, 5.82).

Dated: May 5, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-13684 Filed 5-20-82 8:45 am]

BILLING CODE 4150-01-M

[Docket No. 82N-0150]

Antibiotic Drugs and Antibiotic Susceptibility Medical Devices; Interim Certification Procedures

Correction

In FR Doc. 82-12885, appearing at page 20186, in the issue of Tuesday, May 11, 1982, make the following changes:

On page 20186, in the third column, in the DATES paragraph, change "June 11" to "June 10";

On page 20187, in the second column, change the second word in the 16th line of the second paragraph to "bathces".

BILLING CODE 1505-01-M

[Docket Nos. 80P-0501 and 81P-0115]

Coherent, Inc. and Cooper Medical Devices Corp.; Microsurgical Argon Laser Intended for Use in Otology; Panel Recommendations on Petitions for Reclassification

Correction

In FR Doc. 82-12680, appearing at page 20188, in the issue of Tuesday, May 11, 1982, make the following change:

On page 20189, in the third column, the last paragraph, the last sentence should read

Accordingly, FDA referred both petitions to the Ear, Nose, and Throat Device Sectioin of the Opthalmic; Ear, Nose, and Throat; and Dental Devices Panel (the Section), and in accordance with section 513(f)(2) and § 860.134(b)(6) of the regulations will, after reviewing the Section recommendations and any public comments received, approve or deny both petitions by orders in the form of letters to the petitioners.

BILLING CODE 1505-01-M

Radiological Health and Safety Advisory Committee; Request for Nominations of Voting Members

Correction

In FR Doc. 82-12571, appearing at page 21087, in the issue of Tuesday, May 11, 1982, make the following change:

On page 20188, in the first column, the first paragraph, the 5th line, change "July 9" to "July 12".

BILLING CODE 1505-01-M

MFA Milling Co.; MFA Dog Food Medicated (Diethylcarbamazine); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) providing for the use of MFA Dog Food Medicated (diethylcarbamazine) for control of large roundworms in dogs. The sponsor, MFA Milling Co., has requested the withdrawal.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV-216), Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: MFA Milling Co., MFA, Inc., 506 Boonville, Box 757–Jewell Station, Springfield, Mo 65801, is the sponsor of NADA 14–683 which provides for the use of MFA Dog food Medicated (diethylcarbamazine) containing 0.0066 percent diethylcarbamazine. The product was approved on January 10, 1964, for use as an aid in the control of large roundworms (ascarids) in dogs. In response to an FDA letter, the firm informed the agency that the product is no longer manufactured or marketed. The firm subsequently requested withdrawal of approval and waived opportunity for hearing. Approval of this NADA had not been codified in the CFR.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e). 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 14–683 and all supplements for MFA dog Food Medicated (diethylcarbamazine) is hereby withdrawn, effective June 1, 1982.

Dated: May 7, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-13605 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office Of The Assistant Secretary For Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (38 FR 18571, July 12, 1973, as amended in pertinent part at 44 FR 23130, April 18, 1979) is amended to reflect the deletion of program support functions for the President's Council on Physical Fitness and Sports (PCPFS) from the Office of Health Information, Health Promotion, Physical Fitness and Sports Medicine and the Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health. These functions will be relocated and carried out in the immediate Office of the Assistant Secretary for Health. This new focus will provide PCPFS staff with greater autonomy in support of critical relationships with various constituencies outside PHS.

Section HA–20, Functions, is amended as follows: Under the heading entitled *Office of Disease Prevention and Health Promotion (HA8)* amend item (7) to read: "receives advice on matters related to physical fitness from the President's Council on Physical Fitness and Sports;" and under the heading entitled *Office of Health Information, Health Promotion, Physical Fitness and Sports Medicine* (HA81) amend item (19) to read: "receives advice from the President's Council on Physical Fitness and Sports on matters related to physical fitness."

Dated: May 13, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-13060 Filed 5-20-82; 8:45 am]

BILLING CODE 4160-17-M

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 14.

Public Health Service

Food and Drug Administration

Subject: Measuring Timeliness and Responsiveness of Letters to Consumers—Extension
Respondents: Individuals
Subject: Notice of Claimed Investigational Exemption for a New Drug—Revision
Respondents: Drug manufacturers
Subject: Intraocular Lens Investigational Device Exemption Application—Extension
Respondents: Manufacturers of intraocular lenses
Subject: Request for certification or Testing of an Antibiotic Batch—Extension
Respondents: Antibiotic manufacturers, OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Quality Control Negative Case Action Worksheet/Review Schedule—Table I (SSA–8401)—Extension
Respondents: Individuals or households/state or local governments
Subject: Application for Special Age 72 or Over Monthly Payments (SSA–19–F6)—Revision
Respondents: Individuals or households, OMB Desk Officer: Richard Eisinger

Health Care Financing Administration

Subject: Medicaid Quality Control Corrective Action Plans—Extension/No Change
Respondents: States
Subject: Request for Termination of Medicare Hospital Insurance and/or Supplementary Medical Insurance—Extension/No Change
Respondents: Individuals, OMB Desk Officer: Fay S. Indicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524. F, Washington, D.C. 20201.
OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: May 18, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-13069 Filed 5-20-82; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

Cancer Control Grant Review Committee; National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, June 7–8, 1982, Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. This meeting will be open to the public on June 7 from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 7, from 9:00 a.m. to adjournment and on June 8, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Robert F. Browning, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 806, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7413) will furnish substantive program information.

(Catalog of Federal Domestic Assistance number 13.399, project grants and contracts in cancer control, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular)

Dated: May 18, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82–14134 Filed 5–20–82; 10:53 am]

BILLING CODE 4140–01–M

National Advisory Eye Council; National Eye Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, June 3 and 4, 1982, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately noon on Thursday, June 3, for opening remarks by the Director, National Eye Institute; a discussion of *Vision Research, a National Plan: 1983–87;* a discussion regarding a proposed conference on the subject of Improved Tissue Preservation for Diagnosis; discussions of procedural matters; and presentations by the extramural staff of the Institute.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately noon for the remainder of the day on Thursday, June 3, and all day on Friday, June 4, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaboarative Programs, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will furnish substantive program information.

Dated: May 18, 1982.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 82–14135 Filed 5–20–82; 10:53 am]

BILLING CODE 4140–01–M

National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council; National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on June 2, 3, and 4, 1982 in Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on June 2 from 8:30 a.m. to approximately 12:00 noon, and on June 3 from 1:00 p.m. to 1:30 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, on June 3 the meetings of the following subcommittees will be closed to the public from 8:30 a.m. to approximately 1:00 p.m.: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on June 2 from 1:00 p.m. to adjournment, June 3 from 1:30 p.m. to adjournment, and on June 4, from 8:30 to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. George T. Brooks, Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesday, Maryland 20205, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A46, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5765.

(Catalog of Federal Domestic Assistance Program No. 13.846–849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 82–14136 Filed 5–20–82; 10:53 am]

BILLING CODE 4140–01–M

Board of Scientific Counselors Division of Cancer Treatment; National Cancer Institute Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National

Cancer Institute, June 3–4, 1982, to be held at the Sheraton Potomac Inn, Shady Grove Road at Route 270, Rockville, Maryland 20205. This meeting will be open to the public on June 3, 1982, from 8:30 a.m. until approximately 5 p.m., and again on June 4, 1982, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 3, 1982, from approximately 5 p.m. to adjournment, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Acting Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20205 (301/496–4291) will furnish substantive program information.

Dated: May 13, 1982

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82-14133 Filed 5-20-82; 10:53 am]

BILLING CODE 4140-01-M

Board of Scientific Counselors, NEI; National Eye Institute, Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 7 and 8, 1982, Building 31, Room 6A–35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 7 8:30 a.m. until approximately 4:00 p.m. for general remarks by the Institute's Scientific Director on matters concering the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 7 from approximately 4:00 p.m. until adjournment on June 8 for review, discussion, and evaluation of individual projects conducted by the Section of Experimental Biology and by the Section of Experimental Anatomy of the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of the meeting and rosters of committee members.

Substantive program information may be obtained from Dr. Jin Kinoshita, Scientific Director, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland 20205 (telephone) (301) 496–7483.

Dated May 3, 1982.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 82-14137 Filed 5-20-82; 10:53 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PHX–081900]

Arizona; Order Providing for Opening of Public Lands

Correction

In FR Doc. 82–11271, published at page 17867, on Monday, April 26, 1982, on page 17867, in the first column, under "T. 19 N., R. 21 W.," in the eleventh line "S½N½;" should be corrected to read "S½N½,S½;"

BILLING CODE 1505-0-M

Draft Challis Plan Amendment and Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of and public hearing on the Draft Challis Plan Amendment and Wilderness Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 603(a) of the Federal Land Policy and Management Act of 1976, the Department of the Interior has prepared a Draft Plan Amendment and Wilderness Environmental Impact Statement for four Wilderness Study Areas (WSAs) in the Challis Planning Unit, Salmon District, Idaho. The four WSAs contain 110,110 acres. The proposed action recommends 48,500 acres as non-suitable for wilderness and 59,680 acres as suitable for wilderness. A recommendation for 1,930 acres has been deferred to allow joint study with an adjacent U.S. Forest Service RARE II Further Planning Area.

Copies of the Draft Challis Plan Amendment and Wilderness Environmental Impact Statement are available for review at the following locations:

Salmon District Office, Bureau of Land Management, Highway 93 South, Box 430, Salmon, Idaho 83467. Telephone (208) 756–2201.

Idaho State Office, Bureau of Land Management, Federal Building, 500 W. Fort Street, Boise, Idaho 83724. Telephone (208) 334–1770.

Public Affairs, Bureau of Land Management, Interior Building, 18th and C Street, NW, Washington, D.C. 20240. Telephone (208) 343–5717.

DATES: Written comments on the Draft statement are invited and should be submitted by August 2, 1982. A public hearing as required by section 3(d) of the Wilderness Act will be held on June 30, 1982 at 7:00 p.m. at the Northgate Inn in Challis, Idaho.

ADDRESSES: Written comments should be submitted to: District Manager, Bureau of Land Management, Box 430, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: David Wolf, Bureau of Land Management, Box 430, Salmon, Idaho 83467. Telephone (208) 756–2201.

or

George Weiskircher, Bureau of Land Management, Idaho State Office, Box 042, Federal Building, 550 W. Fort Street, Boise, Idaho 83724. Telephone (208) 334–1748.

SUPPLEMENTARY INFORMATION: Individuals wishing to testify may do so by appearing at the hearing place previously specified. Persons wishing to give testimony will be limited to 10 minutes with written submissions invited. Prior to giving testimony at the

public hearing, individuals or spokespersons are requested to contact the Salmon District Manager at the above address.

Dated: May 10, 1982.

Clair M. Whitlock,

State Director.

[FR Doc. 82-13557 Filed 5-20-82; 8:45 am]

BILLING CODE 4310-84-M

Issuance of Disclaimer of Interest to Lands in Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Disclaimer of Interest in Lands in Nevada.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), does hereby give notice of its intention to disclaim and release all interest to the owners of record for the following described property, to-wit:

Those lands in Elko County, Nevada, situated between the westerly boundary of Franklin Lake as evidenced by the meander line as shown on the plats approved by the U.S. Surveyor General for Nevada on March 29, 1870, and the lines designated as Partition Lines A and B and Center Line of Franklin Lake on the plats accepted by the Assistant Commissioner of the General Land Office on July 2, 1926, said plats being the survey of Townships 28 and 29 North, Range 58 East, and Townships 28, 29 and 30 North, Range 59 East, Mount Diablo Meridian, Nevada: and said lands being more particularly described using the bearings and distances from the official General Land Office plats and field notes as follows:

Commencing at the east quarter corner of Section 15, T. 28 N., R. 58 E., Mount Diablo Meridian, Nevada, thence north, 7.00 chains distance to the meander corner of Sections 14 and 15 which is the true point of beginning;

Thence with the 1870 meander line of Franklin Lake in T. 28 N., R. 58 E., through Section 15;
N. 28°00′ W., 18.25 chains,
N. 19°45′ W., 18.00 chains, to the meander corner of Sections 10 and 15;
Thence through Section 10;
N. 43°00′ W., 19.10 chains,
N. 32°30′ W., 27.00 chains,
N. 42°30′ W., 55.00 chains, to the meander corner of Sections 9 and 10;
Thence through Section 9;
N. 33°00′ W., 3.80 chains, to the meander corner of Sections 4 and 9
Thence through Section 4;
N. 10°00′ W., 41.10 chains,
N. 04°00′ W., 39.00 chains, to the meander corner of Section 4, T. 28 N., R. 58 E., and Section 33, T. 29 N., R. 58 E.;
Thence with the 1870 meander line of Franklin Lake in T. 29 N., R. 58 E., through Section 33;
N. 02°15′ W., 13.00 chains,
N. 83°00′ W., 12.00 chains,
N. 38°30′ E., 23.00 chains,
N. 02°00′ W., 22.00 chains,
N. 01°00′ E., 25.20 chains, to the meander corner of Sections 28 and 33;
Thence through Section 28;
N. 21°30′ W., 55.00 chains,
N. 40°45′ E., 24.00 chains,
N. 78°00′ E., 15.60 chains, to the meander corner of Sections 27 and 28;
Thence through Section;
N. 66°15′ E., 19.70 chains, to the meander corner of Sections 22 and 27;
Thence through Section 22;
N. 22°45′ E., 17.00 chains,
N. 74°15′ E., 30.00 chains,
N. 55°30′ E., 12.00 chains,
N. 04°30′ W., 22.00 chains,
N. 24°00′ W., 7.00 chains,
N. 71°15′ W., 4.00 chains,
N. 22°00′ E., 21.60 chains, to the meander corner of Sections 15 and 22;
Thence through Section 15;
N. 15°30′ E., 12.00 chains,
N. 71°00′ W., 8.00 chains,
N. 20°15′ W., 38.00 chains,
N. 41°30′ E., 36.00 chains,
N. 01°00′ W., 3.40 chains, to the meander corner of Sections 10 and 15;
Thence through Section 10;
N. 02°00′ E., 21.00 chains,
N. 57°00′ E., 12.40 chains, to the meander corner of Sections 10 and 11;
Thence through Section 11;
N. 57°15′ E., 43.00 chains,
N. 40°30′ E., 9.00 chains,
S. 79°30′ E., 16.00 chains,
N. 88°45′ E., 22.70 chains, to the meander corner of Sections 11 and 12;
Thence through Section 12;
N. 70°15′ E., 71.35 chains, to the meander corner of Sections 1 and 12;
Thence through Section 1;
N. 36°30′ E., 22.44 chains, to the meander corner of Sections 1, T. 29 N., R. 58 E., and Section 6, T. 29 N., R. 59 E.;
Thence with the 1870 meander line of Franklin Lake in T. 29 N., R. 59 E., through Section 6;
N. 48°15′ E., 18.00 chains,
N. 44°15′ E., 25.00 chains,
N. 05°30′ E., 9.00 chains,
N. 41°15′ E., 31.42 chains, to the meander corner of Sections 6, T. 29 N., R. 59 E., and Section 31, T. 30 N., R. 59 E.,
Thence with the 1870 meander line of Franklin Lake in T. 30 N., R. 59 E., through Section 31;
N. 14°00′ W., 6.00 chains,
N. 50°00′ E., 10.00 chains,
N. 65°00′ E., 22.30 chains, to the meander corner of Sections 31 and 32;
Thence through Section 32;
N. 55°30′ E., 19.00 chains,
N. 65°00′ E., 17.00 chains,
N. 63°00′ E., 55.00 chains, to the meander corner of Sections 32 and 33;
Thence through Section 33;
N. 20°15′ E., 13.00 chains,
N. 77°00′ E., 12.70 chains, to the meander corner of Sections 28 and 33;
Thence through Section 28;
N. 55°00′ E., 16.00 chains,
N. 70°00′ E., 17.00 chains,
N. 32°00′ E., 13.00 chains,
N. 41°45′ E., 23.00 chains,
N. 29°30′ E., 23.20 chains, to the meander corner of Sections 27 and 28;
Thence through Section 27;
N. 72°30′ E., 13.00 chains,
N. 45°00′ E., 18.70 chains, to the meander corner of Sections 22 and 27;
Thence with the 1870 meander line as adjusted and shown on the plat of T. 30 N., R. 59 E., accepted July 2, 1926, through Section 22;
N. 43°48′ E., 9.65 chains,
S. 87°20′ E., 3.00 chains,
S. 56°44′ E., 5.95 chains, to the intersection with the meridional section line of Section 22 which point is the northerly line of Partition Line B as shown on said plat of T. 30 N., R. 59 E., accepted July 2, 1926;
Thence along said Partition Line B
S. 6°15′ W., 138.70 chains, to AP 15 on the Center Line of Franklin Lake.
Thence along said Center Line of Franklin Lake as shown on the Plats of Ts. 28 and 29 N., R. 58 E., and Ts. 29 and 30 N., R. 59 E., accepted July 22, 1926;
S. 53°30′ W., 59.00 chains, to AP 14,
S. 66°00′ W., 45.00 chains, to AP 13,
S. 51°00′ W., 39.50 chains, to AP 12,
S. 58°00′ W., 40.00 chains, to AP 11,
S. 32°30′ W., 37.30 chains, to AP 10,
S. 48°45′ W., 50.40 chains, to AP 9,
S. 56°30′ W., 36.00 chains, to AP 8,
S. 50°45′ W., 85.10 chains, to AP 7,
S. 14°30′ W., 95.80 chains, to AP 6,
S. 24°30′ W., 76.90 chains, to AP 5,
S. 38°45′ W., 35.40 chains, to AP 4,
S. 29°45′ W., 88.40 chains, to AP 3,
S. 06°15′ W., 45.00 chains, to AP 2,
S. 51°00′ E., 64.00 chains, to AP 1,
Thence along Partition Line A as shown on said plat of T. 28 N., R. 58 E.;
S. 20°30′ W., 108.30 chains, to the meander corner of Sections 14 and 15, T. 28 N., R. 58 E., and the point of beginning.

After review of the official records and the original public land survey, it is the position of the Bureau of Land Management that:

1. Franklin Lake is now a dry lake bed and it has been since the early 1900s.

2. The original meanders of Franklin Lake were properly run.

3. Franklin Lake was non-navigable.

4. The lowering of the water by natural or artificial means did not change ownership of the lands uncovered.

5. The Government's title to the upland entitles it to accretion and reliction of the bed of the lake as far as the center but not beyond.

6. The land on the west of Franklin Lake was patented and the land on the east remained public land.

7. There is no Federal interest in the west half of Franklin Lake.

Any person wishing to submit a protest or comments on the above disclaimer should do so by writing before the expiration of August 19, 1982. If no protest(s) is received, the disclaimer will be effective on the date set out below.

EFFECTIVE DATE: Disclaimer of title and release of all interest of the United States shall issue on August 19, 1982.

ADDRESS: Information concerning these lands and the proposed disclaimer may be obtained from the protest filed with: Director (320), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Henry Beauchamp, (202) 343–8693.

D. Dean Bibles,

Assistant Director.

[FR Doc. 82–13955 Filed 5–20–82; 8:45 am]

BILLING CODE 4310–84–M

Wilderness Protest Decision

A total of six protest letters were received during the period specified to protest the December 1981 decision on the Stateline area wilderness inventory. This decision was published in the December 18, 1981, issue of the **Federal Register**. The following three Wilderness Study Areas (WSA's) had been identified totalling 304,129 acres:

		Acres
ID–16–48c	Little Owyhee River	24,677
OR–3–195/ID–16–48b	Owyhee River Canyon	229,100
ID–16–53/NV/010–103A.	South Fork Owyhee River.	50,352

The remaining 321,866 acres in the inventory area were dropped as lacking in wilderness characteristics.

The six letters included protests against the WSA decision as well as against the decision to drop acreage. Several letters dealt with only one unit, while one letter included comments on eight units. Only three areas included in the December 1981 decision were not covered in any of the protests—the Juniper Basin and Little Goose Creek Units (dropped in entirety), and the dropped portion of the South Fork Owyhee River Unit.

Analysis of the statements in the protest letters revealed a variety of comments on wilderness characteristics, particularly on the naturalness and the solitude-recreation evaluations.

Many of the statements made in these protest letters had already been conveyed to BLM during earlier comment periods and thus had been taken into account prior to the final decision. New information, in many instances, expressed differences of opinion on highly subjective factors used to determine wilderness characteristics, but did not point out inaccuracies in the BLM data or in the method used to conduct the inventory.

The only change that was warranted as a result of the protests is in the northwestern portion (in Oregon) of the Owyhee River Canyon Unit, where 300 additional acres are being dropped in response to comments in one protest letter. This change is based on new information provided on the cumulative impacts that man-made intrusions have on the wilderness characteristics in an extremely narrow portion of the unit.

This change reduces the WSA acreage in the three units with 303,829 acres now identified as WSA's. Dropped acreage now totals 322,166 acres.

Upon publication in the May 21, 1982, issue of the **Federal Register**, this decision on the protests will be subject to appeal. Any person adversely affected by the decision may appeal under the provisions of Title 43, Code of Federal Regulations (CFR), Part 4, and as amended in 45 FR 5713.

Although portions of the areas involved in the protest are in three states—Idaho, Oregon, and Nevada—to simplify the appeal procedure, please file correspondence related to appeals with the Idaho State Office at the following address: Bureau of Land Management, Idaho State Office, Federal Building, Box 042, 550 W. Fort Street, Boise, ID 83724.

John S. Davis,

Acting Chief, Division of Resources.

[FR Doc. 82–13956 Filed 5–20–82; 8:45 am]

BILLING CODE 4310–84–M

Alabama; Call for Expressions of Leasing Interest in Coal

AGENCY: Bureau of Land Management, Interior, Eastern States Offfice.

ACTION: Call for Expressions of Leasing Interest in Coal.

SUMMARY: This call for expression of coal leasing interest is to integrate potential lessees' data and needs into the coal activity planning phase of the federal coal management program in the Southern Appalachian Coal Region. The data received from this call will be used along with existing data to delineate tracts which would be considered for possible competitive leasing.

DATE: Responses to this notice may be received until July 19, 1982.

ADDRESS: Responses should be sent to Robert Todd, Manager, Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, AL 35401 and to George Brown, Minerals Manager, Minerals Management Service, Eastern Region, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180.

FOR FURTHER INFORMATION CONTACT: Robert M. Wilson, Tuscaloosa Office, Bureau of Land Management, (205) 759–5441 or Jeff Williams, Eastern States Office, Bureau of Land Management, 350 S. Pickett, Alexandria, VA 22304, (703) 235–3630.

SUPPLEMENTARY INFORMATION: In FR Vol. 47, No. 88, page 19586, published May 6, 1982, an advance notice of intent to call for expressions of interest in coal leasing was published.

This notice is to advise you than the official call for expressions of leasing interest for the area acceptable for futher consideration for coal leasing located within the North Central Alabama Land Use Analysis is now in effect. Expressions of interest under this call may be submitted until July 19, 1982, to the Manager, Tucaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama 35401, telephone (205) 759–5441.

Maps and other detailed information on the above mentioned areas found acceptable for further consideration for coal leasing may be obtained from the Tuscaloosa Office at the address given above.

This call for expressions of interest is the first step in activity planning under the coal management program. It is being made before any tract boundaries are delineated within an area found acceptable for further consideration for coal leasing through conducting the coal screening/planning process, including the application of the Department of the Interior's final coal unsuitability criteria. The results of this call will provide significant information that will be employed in delineating tracts that might be put up for lease sale after tract ranking, selection, scheduling, and analysis processes that are integral parts of the Federal coal program defined in 43 CFR Subpart 3420.

Expressions of interest from small business and public bodies are actively invited in accordance with the provisions of 43 CFR 3420.1–4 which state that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal and mining businesses. Entitities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for

possible public body set-asides. Proof of public body status and evidence of qualification as required by 43 CFR 3420.1–4(b)(1)(ii) shall be submitted with the expression of interest.

An expression of interest is not an application. The major purpose of this call for expression of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units which will be considered prior to a lease sale. Examples of the types of concerns that may influence the delineation of tracts as proposed in expressions of interest include: The competitive nature of the tract, access needs, mining efficiency, future coal development potential, resource conservation, and State preference and priorities. BLM hopes to gain sufficient information from this call, as well as from its own site specific analysis, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination of specific tracts.

The expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users;

2. Quality needs (types and grades for coal) for both producers and users.

3. Coal reserve or drilling data of a proprietary nature that the company may have pertaining to the expression of interest area should be submitted to the Minerals Management Service. This request is made based on lack of total coal reserve data by the MMS at this time. Lack of reserve data may eliminate areas for tract delineation.

4. Location.

a. Tracts desired by mining companies (narrative description with delineation on a minerals status map, available from the BLM Tuscaloosa Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will still be considered. In the joint BLM/MMS delineation team will locate the tract.

5. Type of Mine.

a. Surface or underground.

b. Technique of mining (i.e. longwall, room and pillar, dragline, etc.)

6. Proposed Uses of Coal.

a. By mining companies.

b. By public and private industries.

7. Where coal is consumed (includes extra-regional markets).

8. Transportation Needs (i.e. railroads, pipelines, etc.).

a. Existing facilities.

b. Proposed facilities and development timing.

9. Available Sources of Coal.

a. Presently operative.

b. Contingency or other resources.

10. Information Relating to Mineral Ownership.

a. Information on surface owner consents previously granted; e.g. a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee owners of associated non-Federal coal.

11. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 3471.1–5.

An individual, business entity, governmental entity or public body may participate and submit expressions of leasing interest under this call.

In addition, at this time BLM would like to invite participation by public interest groups or individuals that have interest in the second-round coal activity planning and the Alabama Sub-region of the Southern Appalachian Coal Production Region and affected environment. For further information in this regard, please contact Environmental Impact Statement Team Leader Edwin Roberson at the Tuscaloosa Project Office.

Denise P. Meridith,

Acting Eastern States Director.

[FR Doc. 82-13941 Filed 5-20-82; 8:45 am]

BILLING CODE 4310-84-M

[UT-060-138]

Utah; Proposed Wilderness Inventory Decision on the Reassessment of Negro Bill Canyon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As directed by the Interior Board of Land Appeals (IBLA) in a decision dated March 15, 1982, the Utah BLM has made a reassessment of the outstanding opportunities for solitude and primitive and unconfined recreation wilderness characteristics within the Negro Bill Canyon intensive inventory unit (UT–060–138). The reassessment of these wilderness characteristics concludes that both characteristics are present and that 7,620 acres should be identified as a wilderness study area (WSA). The remainder of the 9,420 acre unit (1,800 acres) contains human imprints which creates an apparent loss of naturalness within the unit. A small boundary adjustment is also included in this acreage as per Organic Act Directive 78–61, Change 3, 1.f.(2)(b) and (c). Therefore, the proposed decision is to identify a 7,620 acre portion of the unit as a wilderness study area (WSA).

Persons are invited to submit information to BLM by June 20, 1982 on the above described wilderness characteristics within intensive inventory unit UT–060–138. After examination and consideration of the information submitted the final wilderness inventory decision on this unit will be announced. Information should be submitted to Gene Nodine, District Manager, 125 West 2nd South Main, P.O. Box 970, Moab, Utah 84532.

The reassessment of the outstanding opportunities criteria was brought about as a result of an administrative appeal to IBLA by the Utah Chapter Sierra Club. IBLA set aside the earlier decision and remanded the case for further action by BLM. This reassessment is consistent with the action of IBLA.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, BLM Utah State Office, (801) 524–4257.

Dated: May 14, 1982.

Roland G. Robison,

State Director.

[FR Doc. 82-13993 Filed 5-20-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application; Stanley D. Fejta, et al.

Applicant: Stanley D. Fejta, Metairie, Louisiana; PRT 2–9149

The applicant requests a permit to purchase four (4) nene geese (*Branta sandvicensis*) in interstate commerce from Ladywood Game Farm, Poulsbo, WA for enhancement of progagation.

Applicant: Milwaukee County Zoo, Milwaukee, Wisconsin; PRT 2–9150

The applicant requests a permit to import one female captive-bred bactrian camel (*Camelus bactrianus*) from the Toronto Zoo, Ontario, Canada for enhancement of propagation.

Applicant: E.G. & G. Energy Measurements Group, Goleta, California; PRT 2–4573

The applicant requests an amendment to their permit to allow for radio-tagging blunt-nosed leopard lizards (*Crotaphytus silus*) and to expand their location where authorized activities can be conducted to include the entire known range of blunt-nosed leopard lizards and the San Joaquin kit fox (*Vulpes macrotis mutica*). These activities are being carried out for the purpose of scientific research.

Applicant: Cincinnati Zoo, Cincinnati, Ohio; PRT 2–9128

The applicant request a period to export one female captive-bred Ocelot (*Felis pardalis*) to the Japan Felinae Research Institute, Tokyo, Japan, for enhancement of progagation.

Humane care and treatment during transport has been indicated by the applicants.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on this application on or before June 21, 1982 by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: May 14, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82–13978 Filed 5–20–82; 8:45 am]
BILLING CODE 4310–55–M

Office of the Secretary

Prohibition of Federal Flood Insurance on Undeveloped Coastal Barriers; Preliminary Identification

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Additional Draft Maps.

SUMMARY: This Notice announces the availability of a draft environmental impact statement (DEIS) prepared with regard to the Secretary of the Interior's responsibility to (1) designate undeveloped coastal barriers, as reflected in a draft document entitled "Undeveloped Coastal Barriers: Definitions and Delineation Criteria" (January 15, 1982—47 FR 2283), and (2) to report to Congress with recommendations (if any) regarding changes to the term "coastal barriers".

The Notice also announces the availability of additional draft delineations developed as a result of public response to the January 15, 1982, draft maps. A list of the new maps is included below.

DATES: Comments on the draft environmental impact statement should be received no later than July 14, 1982. Comments on the additional draft maps should be received on or before June 11, 1982.

ADDRESSES: Comments on all materials should be sent to Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, DC. 20240.

FOR FURTHER INFORMATION CONTACT: *Draft Environmental Impact Statement:* Mr. Hardy Pearce, Manager; Coastal Barriers Task Force; the National Park Service—780; United States Department of the Interior, Washington, D.C. 20243. (202) 272–3566. *Draft Maps:* Mr. Robert A Peoples, U.S. Fish and Wildlife Service—250, United States Department of the Interior, Washington, D.C. 20240. (202) 343–6307.

SUPPLEMENTARY INFORMATION: As enacted on August 13, 1981, section 341 of the Omnibus Budget Reconciliation Act of 1981, established a two-fold responsibility for the Secretary of the Interior with regard to the designation of undeveloped coastal barriers. Under this provision, the Secretary s directed to:

- Conduct a study for the purpose of designating undeveloped coastal barriers and to provide a report to Congress concerning the conclusions of such study and any recommendations regarding the definition of the term "coastal barriers"; and,
- To designate undeveloped coastal barriers.

Consistent with these responsibilities, the secretary of the Interior established a Coastal Barriers Task Force. The Task Force has now completed a series of important steps in implementing this provision.

On December 1, 1981, a "Notice of Intent" to issue a proposed rule was published in the **Federal Register**, 46 FR 58346. This notice outlined the steps to be taken consistent with the Reconciliation Act. In essence, it indicated the Department's intention to provide for public review of a pre-proposed set of draft definitions and associated draft maps—providing a preliminary identification of areas being studied as possible undeveloped coastal barriers.

On December 8, 1981, this notice was amended, 46 FR 60022, to make the pro-proposed draft definitions available for an intial intergovernmental reveiw. As indicated in our January 15, 1982, release, *infra*, initial comments on the pre-proposed draft of the definitions were solicited from concerned Members of Congress and Governors of coastal States in letters from the Secretary of the Interior dated December 9 or 10, 1981.

On December 21, 1981, a "Notice of Intent to Prepare an Environmental Impact Statement" was published, 46 FR 61929. That notice again expressed the Department's intention to make the draft definitions and designations available for public review on or about January 15, 1982. The notice also provided that the "draft EIS should be available at the time, or shortly thereafter". While the DEIS being released today is later than had been anticipated, this document is designed to serve the purposes outlined in that notice of intent: i.e., to assess the environmental implications of alternative actions the Secretary of the Interior may take or recommend pursuant to his two-fold responsibilities under the Reconcilation Act.

On January 15, 1982, 47 FR 2382, the Department did release its draft definitions and draft maps, as it had indicated previously. These documents were available for comment through March 22, 1982. Extensive comments were received.

At this point, the Department of the Interior is taking two additional steps in the implementation of its Reconciliation Act responsibilities. The release of the DEIS will permit the public to review and comment upon a range of alternatives that are available to the Secretary—either as a part of his report to the Congress or as a basis for his proposed designations of undeveloped coastal barriers, although not all of the alternatives under consideration are authorized by the Reconciliation Act. Some of these alternatives would require legislative changes. Only in this manner, however, can a full range of alternatives be analyzed. In this regard, the presentation of a range of alternatives has benefited significantly from public comments. While it was not the Department's original intent to delay release of the DEIS until after March 22, the public comments on the January 15 release have been of significant value in identifying issues and impacts. These comments have been carefully considered in the scoping of the alternatives for the DEIS and evaluating their environmental impacts.

The second step being announced today is the release of additional draft maps. The same public comments that have been helpful with regard to the development of the proposed action and its alternatives and their impacts in the DEIS have also served to recommend that many new areas be included. These areas are now being evaluated by the Coastal Barriers Task Force. As with the January 15 release, it has been determined that drafts maps of these additional areas initially considered to be undeveloped coastal barriers should be made available for public review and comment at the pre-proposed or draft stage. Once again, consistent with the January 15 release, these areas are

herein identified on a list attached hereto. Further, a draft map of each unit will be mailed to other levels and branches of government with a known interest and are now available to others upon request. Comments on these additional drafts maps must be received on or before June 11, 1982.

Completion of the DEIS and the new draft maps will permit the Task Force to begin preparation of the proposed maps to be provided to the Congress on August 13, 1982. It will also enable greater attention to preparation of the Report and the proposed rule. The Department will continue development of these tasks while the DEIS is being reviewed by the public.

Based upon the public comments already available from the January 15 release, and the comments on the new draft maps, it is the Department's intent to complete a set of interim proposed definitions and interim proposed designations by the end of June. In addition, the Department intends to make these interim proposed definitions and maps available for intergovernmental review by letters to be sent to the Governors and Congressmen of the affected states prior to July 1, 1982. Comments will then be accepted through July 14, 1982.

In this manner, all comments from all sources will be available to the Coastal Barriers Task Force on or before July 14, 1982. Thereafter, all of these comments will be carefully considered and all interim proposed definitions and designations will be carefully reevaluated in light of those comments. No final decision on proposed definitions or designations will be made, and no irrevocable steps will be taken, until that final evaluation period is completed.

The Department's proposed designations and Report will be provided to the Congress on or before August 13, 1982, as required by the Reconciliation Act, and the public will again be invited to comment. The Final Environmental Impact Statement with regard to the Secretary's report responsibilities will also be made available at that time. Final designations, however, will not occur until after the close of that Congressional and public comment period which will not be less than 60 days—or October 13, 1982. Final designation will occur pursuant to a final rulemaking.

Dated: May 18, 1982.

Bruce Blanchard,

Director, Office of Environmental Project Review.

Additional Draft (Pre-preproposed) Undeveloped Coastal Barriers

Following is a list of 55 new draft (pre-proposed) undeveloped coastal barrier units or additions to existing units. These resulted from comments on the draft definition and delineation criteria documents, maps and information summaries circulated for public review beginning on January 15, 1982.

Nearly 200 areas were recommended for inclusion by respondents. The 55 draft areas listed here represent those initially considered by the Department of the Interior to be undeveloped coastal barriers based upon the nature of the area as of March 15, 1982, consistent with the January 15, 1982, draft definitions document. As with the previous January 15 draft, comments received on these draft units will be considered by the Department prior to providing proposed designations to the Congress on or before August 13, 1982, as required by the Reconciliation Act.

Unit Number and Unit Name

Maine

A05A 700 Acre Island
A05B Head Beach

Massachusetts

C01A Good Harbor Beach
C01B Brace Cove
C09 Sandy Neck Unit Addition
C11A Boat Meadow
C18A Falmouth Ponds
C23A Fishers Landing
C28 South Beach Unit Additions
C29A James Pond
C29B Mink Meadows
C31 Elizabeth Islands Unit Additions
C31A West Sconticut Neck

Rhode Island

D02 Fogland Marsh Unit Addition

Connecticut

E01A Ram Island
E03A Niantic Bay
E03B Lynde Point
E08 Fayerweather Island
E09 Norwalk Islands

New York

F06 Shelter Island Barriers Unit Addition
F08A Sammys Beach
F08B Acabonack Harbor
F13 Tiana Beach

Virginia

K01 Assawoman Island Unit Addition

North Carolina

L01A Duck Research Center
L03A Shackleford banks

South Carolina

M04 Debidue Beach Unit Addition
M10 St. Helena Sound Unit Addition

Georgia

N01A Wassaw Island
N04A Little Cumberland Island
N04B Cumberland Island

Florida

P02 Bird/Talbot Islands Unit Addition
P02A Wards Bank
P05 Conch Island Unit Addition
P08 Ponce Inlet Unit Additions
P09A Coconut Point
P10A Blue Hole Unit Addition
P11 Hutchinson Island Unit Addition
P15 Cape Romano Unit Addition
P17A Bodwitch Point
P19 North Captiva Island Unit Additions
P20A Gasparilla Island
P21A Manasota Key Unit Additions
P23 Longboat Key Unit Addition
P24 The Reefs Unit Addition
P24A Mandalay Point
P27A Ochlockonee Complex
P30 Cape San Blas Unit Addition
P31 St. Andrew Complex Unit Addition
P31A Four Mile Village

Alabama

Q00 Perdido Key
Q01 Mobile Point Unit Additions
Q01A Pelican Island

Mississippi

R01A Belle Fontaine Point

Texas

T11 South Padre Island Unit Addition

[FR Doc. 82-13934 Filed 5-20-82; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Brands, Inc., 245 Park Avenue, New York, New York 10167.

2. Wholly-owned subsidiaries which will participate in the operations, and their respective states of incorporation:

Delaware

Acme Visible Records, Inc.
Acushnet Company
The Andrew Jergens Company
James B. Beam Distilling Co.
Sunshine Biscuits, Inc.
Bell Brand Foods, Inc.
Swingline, Inc.
Wilson Jones Company

Michigan

Sugar Beet Products Company.

1. Parent corporation and address of principal office: Beatrice Foods Co., Two North LaSalle St., Chicago, IL 60602.

2. Wholly-owned subsidiaries and addresses of their principal place of business:

Allison Manufacturing Co., 350 Fifth Avenue, New York, NY 10001
Arrowhead Puritas Waters, Inc., 1334 S. Central Avenue, Los Angeles, CA 90021
Aunt Nellie's Foods, Inc., P.O. Box 67, Clyman, WI 53016
Bloomfield Industries, 4546 W. 47th Street, Chicago, IL 60632
Brookside Enterprises, Inc., 9900 Guasti Road, Guasti, CA 91743
Cal-Compack Foods, Inc., P.O. Box 265, 4906 W. First Street, Santa Ana, CA 92702
Certified Transportation Co., 2068 Lapham Drive, P.O. Box 845, Modesto, CA 95353
Citrus Bowl, Inc., 7-02 154th Street, Whitestone, NY 11357
D. L. Clark Company, 503 Martindale Street, Pittsburgh, PA 15212
Coca-Cola Bottling Co. of Cedar Rapids
Coca-Cola Bottling Co. of (Dubuque, IA)
Coca-Cola Bottling Co. of Honolulu, Inc.
Coca-Cola Bottling Co. of Los Angeles
The Coca-Cola Bottling Co. of Madison-Rockford
The Coca-Cola Bottling Co. of Mid-America, Inc.
Coca-Cola Bottling Company of Omaha
County Line Cheese Co., Route 2, Auburn, IN 46706
Culligan International Co., One Culligan Parkway, Northbrook, IL 60062
Dahlgren & Company, P.O. Box 609, 1220 Sunflower Street, Crookston, MN 56716
Day-Timers, P.O. Box 67, East Texas, PA 18046
Diamond Head Beverages, Inc., 949 Mapunapuna Street, Honolulu, HI 96819
Peter Eckrich and Sons, Inc., P.O. Box 388, Ft. Wayne, IN 46801
Fiberite Corporation, 501 W. Third Street, Winona, MN 55987
Fiberite West Coast Corporation, 645 N. Cypress, Orange, CA 92666
Fisher Nut Company, P.O. Box 3434 (55165), 2327 Wycliff Street, St. Paul, MN 55114
James J. Gallery, Inc., 555 Pleasant St., Watertown, MA 02172
Harmon Automotive, Inc., P.O. Box 329, Bolivar, TN 38008
Industrial Glass Co., Inc., 1001 Thirteenth Avenue, East, Bradenton, FL 33506
International Container Corp. 1001 Thirteenth Avenue, East, Bradenton, FL 33506
Kaaawa Farms, Ltd., 949 Mapunapuna Street, Honolulu, HI 96819
Kelley Manufacturing Co., South Industrial Park, P.O. Drawer 1467, Tifton, GA 31794
E. W. Kneip, Inc., P.O. Box 161, Forest Park, IL 60130
KSS Transportation Corp., c/o Webcraft, P.O. Box 185, Route 1 and Adams Station, North Brunswick, NJ 08902
LaChoy Food Products, P.O. Box 220, 901 Stryker Street, Archbold, OH 43502
LouverDrape, Inc., 1100 Colorado Avenue, Santa Monica, CA 90401
Market Forge, 35 Garvey Street, Everett, MA 02149
Martha White Foods, Inc., P.O. Box 58, Room 900-110 21st Avenue South, Nashville, TN 37202
Melnor Industries, Inc., One Coral Place, Noonachie, NJ
Mid-America Container Corporation
Minnesota Valley Engineering, 407 7th Street NW., New Prague, MN 56071
E. R. Moore Company, 7230 N. Caldwell Avenue, Niles, IL 60648
Mother's Cookie Co., P.O. Box 16159, 2287 Ralph Avenue, Louisville, KY 40216
National Packaging Corp., 1001 Thirteenth Avenue, East, Bradenton, FL 33506
Northeast Cold Storage Corp., 165 Read Street, Portland, ME 04104
Poultry Foods Industries, Inc., P.O. Box C, Russellville, AR 72801
Quality Beverages, Inc., 1334 S. Central Avenue, Los Angeles, CA 90021
Quincy Market Cold Storage and Warehouse Co., 555 Pleasant St., Watertown, MA 02172
Rainbo Foods, Inc., P.O. Box 23603 (70183), 5635 Powell Street, Harahan, LA 70123
Refreshment Vending Service Co., 1334 S. Central Avenue, Los Angeles, CA 90021
St. John's Inc., 130 Gunn St., Cadillac, MI 49601
Samsonite Corporation, 11200 E. 45th Avenue, Denver, CO 80239
Sanna, Inc., 6501 Grand Teton Plaza, Madison, WI 53705
John Sexton & Co., P.O. Box JS (60690), 222 S. Riverside Plaza, Chicago, IL 60606
Taylor Freezer, Blackhawk Blvd., Rockton, IL 61072
Tindle Mills, Inc., M.P.O. Box 733, 701 E. Chestnut, Springfield, MO 65801
Tropicana Products Sales, Inc., 1001 Thirteenth Avenue, Bradenton, FL 33506
Tropicana Transportation Corp., 1001 Thirteenth Avenue, Bradenton, FL 33506
Tropicana Products, Inc., 1001 Thirteenth Avenue, Bradenton, FL 33506
Waterloo Industries, Inc., 300 Ansborough Avenue, Waterloo, IA 50704
Webcraft Games, Inc., Route 1 and Adams Station, North Brunswick, NJ 08902
Zero Transport, Inc., P.O. Box 22666, Tampa, FL 33622

Culligan International Company Subsidiaries

CWC, Inc., 2047 U.S. Highway 22 (West), Union, NJ 07083
Culligan Dayton, Inc., P.O. Box 2328, Kattering Branch, Dayton, OH 45429
Culligan Desplaines Valley, Water Conditioning, Inc., 1111 E. Washington Street, Joilet, IL 60433
Culligan Dutchess-Putman Water Conditioning, Inc., 860 Route 9 South Wappingers Falls, NY 12590
Culligan Peninsula Industrial Water Conditioning Co., P.O. Box 547 (1785 Russell Avenue), Santa Clara, CA 95052
Culligan Soft Water Service of Santa Barbara, Inc., 1026 Santa Barbara Street, Santa Barbara, CA 93101
Culligan Soft Water Service of Whittier, Inc., 12221 East Hadley, Whittier, CA 90601
Culligan Water Conditioning, Inc., 350 W. Sunset Drive, Waukesha, WI 53186
Culligan Water Conditioning, Inc., 7801 Menaul, Blvd., Albuquerque, NM 87110
Culligan Water Conditioning of Battle Creek, Inc., 485 Dickman Rd., Battle Creek, MI 49015
Culligan Water Conditioning of Butler, Inc., 300 New Castle Street, Butler, PA 16001
Culligan Water Conditioning of Greater Detroit, Inc., 5510 Cooley Lake Road, Pontiac, MI 48054
Culligan Water Conditioning of Greater Pittsburgh, Inc., 4941 Cambells Run Road, Pittsburgh, PA 15205
Culligan Water Conditioning of Houston, Inc., 12235 Robin Blvd., Houston, TX 77045
Culligan Water Conditioning of the Inland Empire, P.O. Box 5016, Riverside, CA 92517
Culligan Water Conditioning of Jacksonville, Inc., 615 Dellwood Avenue, Jacksonville, FL 32204
Culligan Water Conditioning of Los Gatos, 611 University Avenue, Los Gatos, CA 95030
Culligan Water Conditioning of Orange County, 1911 S. Manchester Avenue, Anaheim, CA 92802
Culligan Water Conditioning of South Bend, Inc, 2218 S. Main Street, South Bend, IN 46613

Culligan Water Conditioning of Tidewater, Inc., P.O. Box 647, Hertford, NC 27944
Culligan Water Conditioning of Tippecanoe County, Inc., 3450 Kossuth Street, Lafayette, IN 47095
Culligan Water Conditioning of Torrance, 20730 Earl Street, Torrance, CA 9050
Everpure, Inc., 660 N. Blackhawk Drive, Westmont, IL 60559
Greater Chicago Culligan Water Conditioning, Inc., 6619 Lincoln Avenue, Lincolnwood, IL 60645
Greater Kansas Culligan Water Conditioning, Inc., 2805 W. 47th Street, Shawnee Mission, KS 66205
Indiana Soft Water Service, Inc., 3335 N. Keystone, Indianapolis, IN 46218
St. Louis Soft Water Service, Inc., 10947 Manchester Road, St. Louis, MO 63122
Soft Water Service, Inc., 270 W. Palatine Road, Wheeling, IL 60090

Subsidiaries Located in Ontario, Canada

Beatrice Foods Canada, Ltd., 259 Kingstreet East, Suite 510, P.O. Box 1503, Kingston, Ontario, Canada K7L 3B1
Beatrice Foods Ontario, Ltd., 185 Dunlop Street, East, Barrie, Ontario, Canada L4M 1B2
Colonial Cookies, Ltd., 135 Otonabee Drive, Kitchener, Ontario, Canada N2C 1L7
Converters Ink Co. (Canada), Ltd., 133 Cartwright Avenue, Toronto, Ontario, Canada M6A 1V4
Culligan of Canada, Ltd., Sheridan Park, Mississauga, Ontairo, Canada L5K 1A5
Day-Timers of Canada, Ltd., 4875 Kent Avenue, Niagara Falls, Ontario, Canada L2E 6X6
Metallic Lubricants, Ltd., 24 Jefferson Avenue, Toronto, Ontario, Canada M6K 1Y4
Melnor Manufacturing, Ltd., 80 Morton Avenue, East, Brantford, Ontario, Canada N3J 5T3

1. Parent Corporation and address of principal office: Black Hills Packing Co., P.O. Box 2130, Rapid City, South Dakota 57701.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: Black Hills Trucking Co., P.O. Box 2130 Rapid City, South Dakota 57701, Incorporated in the State of South Dakota.

1. Parent corporation and address of principal office: Columbian Cutlery Co., Inc., a Pennsylvania corporation, P.O. Box 123, 440 Laurel St., Reading, PA 19603.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Columbian Express Co., Inc. (Pennsylvania).

1. Parent corporation and address of principal office: Dixico Incorporated, 1415 South Vernon, Dallas, Texas 75224.

2. Wholly-owned subsidiaries and divisions which will participate in the operations and address of their respective principal offices:

(a) Flexible Packaging Division, 1300 South Polk, Dallas, Texas 75224
(b) Ink/Coating Division, 4525 Joseph Hardin Drive, Dallas, Texas 75236
(c) Capitol Plastics of Ohio Division, 333 Van Camp Road, Bowling Green, Ohio 43402
(d) Richmond Division, Colton and Opal, Redlands, California 92373
(e) Plastic Industries Division, 12400 Industry Street, Garden Grove, California 92373
(f) Polytube Division, 275 Welton Street, Hamden, Connecticut 06501

1. The parent croporation is Giant Eagle Markets, Inc., 101 Kappa Drive, Pittsburgh, Pennsylvania 15238.

2. The wholly-owned subsidiaries which will participate in the operations and their states of incorporation:

a. The Tamarkin Company—Ohio
b. Project Six Inc.—Ohio
c. Valu King Drugs—Ohio

1. Parent corporation and address of principal office: Great Lakes Canning, Inc., 1882 East Highland Road, Twinsburg, OH 44087.

2. Wholly-owned subsidiaries which will participte in the operations, and state(s) of incorporation: (i) Soft Drink Carriers, Inc., Ohio.

1. Parent corporation and address of principal office: West Point, Pepperell, Inc., 400 West Tenth St., West Point, GA 31833.

2. Wholly-owned subsidiary which will participate in the operations, and address of principal office: West Point Pepperell Transportation Company, 400 West Tenth St., West Point, GA 31833.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13906 Filed 5-20-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 311 (Sub-4)]

Motor Carrier Fuel Surcharge Program; Modification

AGENCY: Interstate Commerce Commission.

ACTION: Decision responding to various petitions.

SUMMARY: The Commission denies petitions for modification or exemption, relief from compliance and reconsideration, and grants, in part, a petition seeking relief from the more stringent accounting burdens associated with avoiding dual compensation as authorized in the decision served October 8, 1981. (46 FR 50070, October 9, 1981).

EFFECTIVE DATE: Because this decision is interpretive, it shall become effective on May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lee Alexander (202) 275–7723, Ted Kalick (202) 274–6446, Alan Rothenberg (202) 275–7597, Richard Shullaw (202) 275–7639.

SUPPLEMENTARY INFORMATION: On December 14, 1981, Contract Courier Services, Inc. filed a petition for extraordinary relief seeking a modification of or exemption from the uniform application of the Commission's mileage reimbursement factor. On February 16, 1982, National Association of Specialized Carriers, Inc., filed a petition seeking clarification concerning avoidance of dual compensation. The Owner-Operator Independent Driver's Association of America (OOIDA) filed a petition for reconsideration. On March 25, 1982, Kendrick Trucking Corp. filed a petition seeking relief from compliance with the mileage reinbursement method.

Exceptions to Reimbursement Formula

Contract Courier Services uses passenger-type vehicles to deliver small packages of primarily pharmaceuticals to hospitals. All of its couriers are owner-operators. Vehicles average 30 to 35 miles-per-gallon. Petitioner requests that the Commission reconsider present interpretations to authorize the use of a 25 MPG factor rather than the mandatory 5 MPG factor, or to publish alternative miles-per-gallon factors for a variety of vehicle sizes.

Kendrick uses ordinary pick-up trucks in a portion of their operation. They average 10 miles-per-gallon and request authority to reimburse owner-operators at one-half the amount prescribed by the Commission.

As noted in the October 8, 1981, decision and clarified on October 30, we are aware that owner-operators occasionally are involved in operations where average fuel efficiency exceeds 5 miles-per-gallon. The petitions fail to respond to our earlier conclusion that it is a practical impossibility to give effect to the diverse forms of transportation, many with fuel efficiencies above or below the Commission average. Although the proposal to publish alternative MPG factors for a variety of vehicle sizes has superficial appeal, it does not address the case of owner-operators who purchase fuel at prices above or below the Commission

average, or heavy haulers and others who may get less than 5 MPG. We reiterate our earlier conclusion that the current method of mandatory uniform averages is essential to assure that owner-operators are adequately reimbursed for their increased cost of fuel. We also refer petitioner to page 5, footnote 2 of the October 8th decision where we indicated that carriers may avoid the mileage reimbursement system by, in effect, paying for fuel costs above 63.5 cents per gallon. This remedy may be appropriate for petitioner, given the high mileage factor.

Dual Compensation

In their petition, National Association of Specialized Carriers questions whether carriers who take the initial fold-in may avoid dual compensation by subtracting fuel reimbursement payments, rather than the fold-in amount, from the gross revenue to determine owner-operator compensation.

In our decision of October 8, 1981, we identified the dual compensation problem and offered possible solutions. The fold-in, which is permissive, generates revenue which may be retained by the carrier to reimburse owner-operators for increased fuel costs. The method used by carriers to accomplish this result has not been mandated. At the time, we specifically rejected the proposal of the Common Carrier Conference—Irregular Route, to subtract the fuel payments from the gross revenue subject to the split. Our reasoning was that this method could discourage carriers from taking the fold-in, thus, in effect, depriving owner-operators of a percentage of the fuel payment.

After further consideration, we find that carriers whose rates have been subject to the surcharge, who folded in enough of the surcharge to cover fully the per mile payment and who update their rates based on future increases in the reimbursement factor may deduct the fuel payment to the owner-operator from the gross revenue subject to the split. This amount would, on average, be equivalent to the fold-in amount.

These precautions will insure against the problem identified in our October 8, 1981 decision. The Office of Compliance and Consumer Assistance will monitor closely the carrier's method of avoiding dual compensation to assure that owner-operators are adequately reimbursed. If there are complaints, the burden will be on the carrier to establish that they have met the above conditions for using the simplified accounting procedures.

OOIDA Petition

OOIDA proposes an immediate moratorium on the decision to modify the fuel surcharge program for one year. The revenue-based surcharge would be maintained during this period. The arguments raised by OOIDA have been fully addressed in numerous decisions. We continue to believe that the mileage-based reimbursement factor equitably balances the interests of owner-operators, carriers, and shippers. The mileage-based program is in effect and shall remain in effect.

It is ordered: The petitions filed by Contract Courier Services, Kendrick Trucking Corp., and OOIDA are denied. The petition by the National Association of Specialized Carriers is granted to the extent discussed above.

Because this decision is interpretive, it shall become effective on May 21, 1982.

Decided: May 14, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-13604 Filed 5-20-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendmends to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment not a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regualated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office (202) 275-7326.

Volume No. OP 2-87

Decided: May 12, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF-252 (Sub-10), filed April 27, 1982. Applicant: CHI-CAN FREIGHT FORWARDING, LTD., 3600 S. Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, 312-263-1600. *As a freight forwarder,* in connection with the transportation of *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between ports of entry on the international boundary line between the U.S., and Canada in MN, MT, and ND, on the one hand, and, on the other, points in CA.

MC 16513, (Sub-30), filed April 30, 1982. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NJ 08110. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312, 703–750–1112. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lever Brothers Company, of New York, NY.

MC 71772, (Sub-8), filed April 2, 1982. Applicant: MT. PLEASANT TRANSFER, INC., P.O. Box 267, Columbia Hwy, Mt. Pleasant, TN 38474. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35103, 205–2513–223. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Mt. Pleasant and Memphis, TN: (1) from Mt. Pleasant over U.S. Hwy 43 to Lawrenceburg, TN, then over U.S. Hwy 64 to Memphis, and return over the same route, serving Lawrenceburg, TN for purposes of joinder with applicant's existing regular route authority, (2) from Mt. Pleasant over TN Hwy 20 to junction Interstate Hwy 40, at or near Jackson, TN, then over Interstate 40 to Memphis and return over the same route, and (3) serving all intermediate points on routes (1) and (2) above.

Note.—Applicant may tack with existing authority.

MC 107522, (Sub-9), filed April 30, 1982. Applicant: PEAK TRANSFER CO., 57 Hathaway St., Wallington, NJ 07057. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. (212) 239–4610. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with United Ebony Trans., Inc., of Wallington, NJ.

MC 108633, (Sub-19), filed April 30, 1982. Applicant: BARNES FREIGHT LINE, INC., P.O. Box 800, Carrollton, GA 30117. Representative: Larry M. Treadaway, (same address as applicant), 404–832–3561. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, MS, LA, TN, and GA, on the one hand, and, on the other, points in CA.

MC 111672, (Sub-20), filed April 30, 1982. Applicant: R & M TRUCK LINE, INC., P.O. Box 422, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *malt beverages*, between points in Franklin County, MO, on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 147402, (Sub-13), filed April 19, 1982. Applicant: WACO DRIVERS SERVICE, INC., 138 Atando Ave., Charlotte, NC 28206. Representative: Carl L. Helms, (same address as applicant), 704–377–5410. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hanover Brands, Inc., of Hanover, PA.

MC 147692 (Sub-1), filed April 15, 1982. Applicant: SUMMIT EXPRESS, INC., d.b.a. SUMMIT TRANSPORTATION, 101 N. Seaside Ave., Terminal Island, CA 90731. Representative: Rodney Joseph Roy, (same address as applicant), 213–519–1252. Transporting *petroleum and petroleum products*, between points in CA and AZ.

MC 161392, filed April 6, 1982. Applicant: A & C TRUCKING, INC., P.O. Box 54, Griffithville, AR 72060. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with C & A Enterprises, Inc., of Griffithville, AR.

MC 161522, filed April 15, 1982. Applicant: BIL-MAC EXPRESS, INC., 735 Oriole Ave., Park Ridge, IL 60068. Representative: William H. Shawn, Suite 501, 1730 M St. NW, Washington, DC 20036, 202–296–2900. Transporting *general commodities* (except classes A and B explosives and household goods), between points in (1) IL, IN, MI, WI, IA, MN, OH, and MO, and (2) IL, IN, MI, WI, IA, MN, OH, and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161563, filed April 19, 1982. Applicant: A E CONSOLIDATED, INC., 184 Franklin Turnpike, Mahwah, NJ 07430. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212–239–4610. Transporting *household goods*, between points in NJ and NY.

MC 161572, filed April 19, 1982. Applicant: RIVER LINE TRANSPORT COMPANY, P.O. Box 426, Hennepin, IL 61327. Representative: Peter A. Greene, 1920 N St. NW, Suite 700, Washington, DC 20036, 202–331–8800. Transporting *fertilizer*, between points in the U.S. (except AK and HI), under continuing contract(s) with Mobil Chemical Company, of Richmond, VA.

MC 161642, filed April 23, 1982. Applicant: J & M DELIVERY & CAR SERVICE, INC., 465 Barell Ave., Carlstadt, NJ 07072. Representative: A. David Millner, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Pryor Corporation, of Carlstadt, NJ.

MC 161672, filed April 26, 1982. Applicant: BONNIE BURKE, d.b.a. BURKE GRAIN COMPANY, Box 241, Isabel, SD 57633. Representative: Thomas J. Simmons, 1000 East 41st. St., Box 480, Sioux Falls, SD 57101, 605–339–3629. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Corson, Dewey, Harding, and Perkins Counties, SD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161812, filed May 3, 1982. Applicant: DIXIELAND EXPRESS, INC., Airport Cargo Terminal, Birmingham, AL 35212. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, (205) 254–3880. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, MS, TN, GA, FL, NC, and SC.

MC 161813, filed May 3, 1982. Applicant: WAYNE & MARILYN MITCHELL, d.b.a. MITCHELL TRUCKING, P.O. Box 921, Bogalusa, LA 70428. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting (1) *building materials* between points in Pearl River County, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MO, OK, TN, and TX; and (2) *those commodities* which because of their size or weight require the use of special handling or equipment between points in MS, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MO, OK, TN, and TX.

Volume No. OP4–175

Decided: May 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 147218 (Sub-7), filed May 7, 1982. Applicant: CARL KLEMM, INC., 1126 Terry Lane, De Pere, WI 54115. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *petroleum and petroleum products*, between points in WI, on the one hand, and, on the other, points in MI.

MC 153518 (Sub-3), filed May 7, 1982. Applicant: INTERSTATE EXPRESS,

INC., P.O. Box 37144, Millard, NE 68137. Representative: William J. Boyd, 2021 Midwest Rd., Suite 205, Oak Brook, IL 60521, (312) 629–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Packerland Packing Company, Inc., of Green Bay, WI, Spencer Beef Division of Land O'Lakes, Inc., of Arden Hills, MN, American Stores Packing Co., of Lincoln, NE, and Hillshire Farm Co., of New London, WI.

MC 157836 (Sub-1), filed May 6, 1982. Applicant: JIM SCHAUER, d.b.a. BASELINE COMPANY, 5660 Gregory Rd., Dexter, MI. Representative: Paul M. Ross, 3104 S. Cedar, Lansing, MI 48910, (517) 394–4220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in U.S., under continuing contract(s) with Aeschliman Equipment Co., of Whitmore Lake, MI, Equipment Brokering Specialists Co., and Sweepsters Equipment Co., both of Dexter, MI, Universal Hydro-Test Corp., American Broach and Machine Co., and Bennett Installation Corp., all of Ann Arbor, MI.

MC 160466 filed May 6, 1982. Applicant: FOLSOM TRUCKING COMPANY, INC., 101 Folsom Rd., P.O. Box 98, McCalla, AL 35111. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Parkway, Birmingham, AL 35209–4786, (205) 942–9116. Transporting (1) *pipe*, (2) *metal and metal products*, (3) *fabrications*, (4) *chemicals*, (5) *machinery*, (6) *building and construction materials*, and (7) *those commodities* which because of their size or weight require the use of special handling or equipment, between points in Jefferson, Shelby, Walker, Blount, and St. Clair Counties, AL, on the one hand, and, on the other, those points in the U.S. in and east of NM, CO, WY, and MT.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 13906 Filed 5–20–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from Applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–96

Decided: May 12, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161692, filed April 27, 1982. Applicant: CARLTON JOSEPH BEDDOWS, 2201 Windsor Lake Drive, Minnetonka, MN 55343. Representative: Carlton Joseph Beddows (same address as applicant), 612–545–3899. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161723, filed April 28, 1982. Applicant: MID-MICHIGAN FREIGHT BROKERS, INC., P.O. Box 290, Portland, MI 48875. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., N.W., Washington, DC 20036, 202–223–5900. As a broker of *general commodities*, (except household goods), between points in the U.S. (except AK and HI).

MC 161772, filed April 30, 1982. Applicant: ROBERT ASHWORTH, 29447 Oakley, Livonia, MI 48154. Representative: Robert R. S. Ashworth (same address as applicant), 313–427–2245. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP 3–074

Decided: May 14, 1982.

By the Commission, Review Board No. 2 Members Carleton, Fisher, and Williams.

MC 130654 (Sub-1), filed May 4, 1982. Applicant: PACIFIC RELOCATING SERVICES, INC., 1415 W. Torrance Blvd., Terrance, CA 90501. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036, (202) 785–0024. As a *broker of general commodities*, (except household goods), between points in the U.S. (except Ak and HI).

MC 161724, filed April 29, 1982. Applicant: CECIL A. WOOD, d.b.a. C. A. WOOD TRUCKING CO., 621 E. 5th Ave., Denver, CO 80203. Representative: Cecil A. Wood (same address as

applicant), (303) 458–1220. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 161784, filed April 30, 1982. Applicant: TIM HOERLER, DAN MAJESKI and K. S. HOERLER, d.b.a. K. S. HOERLER & SONS, 1501 Commerce Avenue, Lot 183, Haines City, FL 33844. Representative: James Robert Evans 145 W. Wisconsin Avenue, Neenah, WI 54956, (414) 722–2848. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditions*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161804, filed May 3, 1982. Applicant: BEST DELIVERY SERVICE, INC., 298 Bennington St., East Boston, MA 02128. Representative: Mary E. Kelley, 22 Stearns Ave., Medford, MA 02155, (617) 396–4090. Transporting *shipments weighing 100 pounds or less*, if transported in a vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161805, filed May 3, 1982. Applicant: LEE SIMPSON, d.b.a. SIMCO TRANSPORTATION SERVICES, INC., P.O. Box 100, I–80 and Hwy 50, Papillion, NE 68046. Representative: Lee Simpson, 1117 Delmar St., Papillion, NE 68046, (402) 331–6807. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 161844, filed May 5, 1982. Applicant: J. T. DUNN & ASSOCIATES INC., 556 East 2100 South, Salt Lake City, UT 84106. Representative: Harvey Dunn (same address as applicant), (801) 486–3719. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Volume No. OP4–174

Decided: May 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 152896 (Sub-1), filed May 6, 1982. Applicant: WHEELER & SONS TRUCKING, 1607 Oro Dam Blvd., West, Oroville, CA 95965. Representative: Robert G. Harrison, 4298 James Dr., Carson City, NV 89791, (702) 882–5849. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States (except AK and HI).

MC 158286 (Sub-8), filed April 15, 1982. Applicant: M.T. TRUCK LINE, INC., 4947 W 173rd St., Country Club Hills, IL 60477. Representative: James C. Hardman, 33 N LaSalle St., Chicago, IL 60602, (312) 236–5944. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Plainfield, Cartersburg, Clayton, Amo, Coatesville, and Fillmore, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be addressed to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail carrier service.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–13807 Filed 5–20–82; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-285N)]

Rail Carriers; Conrail Abandonment Between Dana and Paris, IL

AGENCY: Interstate Commerce Commission.
ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts SIRS, Inc., which will operate over 2 miles of railroad in the City of Shelbyville, Shelby County, IL from 49 U.S.C. Subtitle IV.

DATES: Exemption effective on May 21, 1982. Petitions to reopen must be filed by June 10, 1982.

ADDRESSES: Send pleadings to:
(1) Section of Finance, Room 5414, Interstate Commerce, Commission, Washington, D.C. 20423
(2) Petitioner's Representative, Dove & Dove, 151 South Morgan Street, Shelbyville, IL 62565.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact: TS Infosystems, Inc. Room 2227, 12th & Constitution Avenue NW., Washington, DC 20423, 289–4357—DC Metropolitan Area, (800) 424–5403, toll free for outside the DC area.

Decided: May 13, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–13805 Filed 5–20–82; 8:45 am]
BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 4121, Department of the Treasury, 15th Street and Pennsylvania Avenue, Washington, D.C. on June 22, 1982 beginning at 1:00 p.m. and on June 23, 1982 beginning at 8:00 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1982 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, there will be a discussion concerning the Joint Board's examination program.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–462) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and the review of the May 1982 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination program will commence at 1:30 p.m. on June 23, 1982, and will continue as long as necessary to complete the discussion but not beyond 5 p.m. of that day. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make

statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Office in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 15, 1982 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, D.C. 20220.

Dated: May 18, 1982.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 82-14008 Filed 5-20-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 5-82]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify an existing system of records entitled "Freedom of Information Act/Privacy Act (FOIA/PA) Records, JUSTICE/JMD-019," which was most recently published on January 10, 1980 in Federal Register Volume 45, page 2231.

The system notice is being revised to reflect that disks will be used to store and retrieve certain summary data extracted from FOIA/PA request files. The data, i.e., date of request, requester's name, Justice Management Division (JMD) staff assigned the request, etc., will be used to track and follow up on the assignment of requests for JMD records. Appropriate sections of the notice have been revised to reflect the automation of this summary data. They are: "Categories of records in the system," "Storage," "Retrievability," and "Safeguards."

Further, certain clarifying and editorial changes have been made to other sections of the notice. They are: "System name," "Categories of individuals covered by the system," "Routine uses of records * * *," "Retention and disposal," "System manager(s) and address," and "Record access procedures." In addition, the paragraph which indicates the system is an exempt one has been reinstated. The paragraph was inadvertently dropped from the notice when it was republished as part of an annual publication.

The Office of Management and Budget (OMB) requires a 60-day period to review certain changes to records systems. Accordingly, OMB has been provided a report on this proposal. In addition, a copy of the report has been provided to the President of the Senate and the Speaker of the House of Representatives in accordance with 5 U.S.C. 552a(o).

Comments may be addressed to the Administrative Counsel, Justice Management Division, Department of Justice, Room 6239, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received, the modified system will be adopted without further notice in the Federal Register. No oral hearings are contemplated.

Dated: May 12, 1982.

Kevin D. Rooney,

Assistant Attorney General for Administration.

Justice/JMD-019

SYSTEM NAME:

Freedom of Information Act/Privacy Act (FOIA/PA) Records.

SYSTEM LOCATION:

U.S. Department of Justice, Justice Management Division, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made a request to access any Justice Management Division (JMD) record relating to JMD functional responsibilities and activities; individuals who have made a request to access or correct records pertaining to themselves which they believed to be in JMD systems of records; and persons who, on behalf of another individual, have made a request to access or correct that individual's records which they believed to be in JMD systems of records. Such requests were made pursuant to the Freedom of Information Act, the Privacy Act, or both.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual records contain Freedom of Information Act and Privacy Act requests for JMD records, responses thereto and, where applicable, a copy of the records requested and any other correspondence or internal memoranda related to the processing of these requests. Automated records (stored on disks) contain summary data such as the date of request, name of requester, addressee, subject of request, date request was received, JMD staff to which request was assigned, date request was assigned, date response was due, control number, and date of response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et. seq. and 28 CFR 16.40 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use of such record as follows: (1) A record may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) a record may be disseminated to any appropriate federal, state, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in a system of records maintained by the Justice Management Division.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:

A record from a system of records may be disclosed as a routine use to the

National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests records are stored in locked safes. Automated requests records are stored on disks.

RETRIEVABILITY:

Requests records are filed and retrieved under the names of those persons and individuals identified under the caption "Categories of individuals covered by the system." These records are retrieved by Department personnel to perform their duties, e.g., when subsequent requests are made by the public for copies of their previous requests and responses thereto, or when the requester submits a supplemental request or information clarifying a previous request.

SAFEGUARDS:

Access to requests records is limited to Department of Justice personnel who have need for the records to perform their duties. Request files (manual records) are stored in locked safes. All records are stored in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with items 16 through 18 and 25 through 28 of General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General for Administration, U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

A request to access a record in this system shall be made in writing to the system manager named above with the envelope and letter clearly marked "Freedom of Information Act request" or "Privacy Act request." The requester shall include the full name of the person who made a request, date of that request, name of official to whom the request was addressed, and subject of the request. Where applicable (Title 28 of the Code of Federal Regulations, § 16.41(b) (2) and (3)), the requester shall also include the current address, date and place of birth, and notarized signature of the individual requesting a copy of his/her previous request and response thereto. Where applicable (Title 5 of the United States Code, section 552a(b)), the requester shall also include a written statement authorizing the Department to release these records to a third party. In addition, the requester shall provide his return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Justice Management Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other systems of records have been exempted from the Privacy Act provisions to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register.**

[FR Doc. 82-13942 Filed 5-20-82; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-82-38-C]

Angela Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Angela Mining Company, P.O. Box 87, Kingwood, West Virginia 26537 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 46-02215) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The normal mining height of the Upper Freeport coal seam ranges from 44 to 48 inches from roof to pavement. Undulating roof conditions reduce the mining height in many areas to 38 inches.

3. Petitioner states that the installation of cabs or canopoes on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies:

a. Are striking, dislodging and damaging roof bolts, steel plates and wooden headers;

b. Impair the visibility of the equipment operator, increasing the chances of an accident;

c. Reduce the size of the operating compartment, causing operator fatigue and uncomfortable working positions.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1982. Copies of the petition are available for inspection at that address.

Dated: May 14, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13992 Filed 5-20-82; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-82-43-C]

Bartley & Bartley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bartley & Bartley Coal Company, Box 142, Rockyhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 4 Mine I.D. No. 15-12650) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that methane monitors be installed on any electric face cutting equipment, continuous miner, longwall face equipment or loading machine.

2. Petitioner states that methane has not been detected, monitored or sampled by anyone in excess of normal

air inside this non-gassy mine compared to outside air. This is a hillside mine located above the water table.

3. Petitioner further states that malfunctions, false indications and defects commonly occurring in the methane monitors due to power fluctuations, vibrations, etc. tend to give employees a false sense of security.

4. As an alterative method, petitioner proposes that detection for methane will be done by qualified persons using methane detectors, flame safety lamps, air samples and detectors for other gases.

5. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1982. Copies of the petition are available for inspection at that address.

Dated: May 12, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13093 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-40-C]

Brown Badgett Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Brown Badgett Coal Company, Inc., P.O. Drawer 617, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Busick Mine (I.D. No. 15-09311) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The minimum coal height is approximately 51 inches with undulating top and bottom conditions.

3. Petitioner states that application of the standard would result in a diminution of safety for the miners affected because:

a. The equipment operator's compartment is restricted by the canopy and the operator cannot use his or her arms and legs in a proper manner to safely operate and control the machine; and,

b. The operator's vision is hampered by the canopy, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1982. Copies of the petition are available for inspection at that address.

Dated: May 14, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13094 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-44-C]

Carbon Fuel Co.; Petition for Modification of Application of Mandatory Safety Standard

Carbon Fuel Company, 1300 One Valley Square, Charleston, West Virginia 25301 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Morton Mine (I.D. No. 46-01329) located in Chesapeake County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that application of the standard to the intake airways of the North Shaft Mains starting at the No. 2 Shaft Fan and extending to the mouth of the First West Section would result in a diminution of safety because deterioration of the roof and roof support system in this area has rendered these intake airways unsafe to travel. Petitioner believes that there is no safe or reasonable way to resupport the deteriorated roof.

3. As an alternative method, petitioner proposes to danger off all accesses to the North Shaft entries and establish check points at the mouth of the First West Section where the North Shaft intake airways connect with the Number Three North Intake Escapeway to determine that the air is traveling in the proper direction and to test the quality and quantity of the intake air. Petitioner further states that the proposed alternative will provide the same degree of safety for the miners affected as that afforded by the standard and that the modification requested will not affect the fresh air intake or track escapeway.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1982. Copies of the petition are available for inspection at that address.

Dated: May 12, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13095 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-35-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.1704-2(a) (escapeway routes; examination; escapeway maps; drills) to its Mathies Mine (I.D. No. 36-00963) located in Washington County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all travelable passageways designated as escapeways be located to follow the safest direct practical route to the nearest mine opening suitable for the safe evacuation of miners.

2. As an alternative method, petitioner proposes an escapeway plan that calls for the primary (intake) escapeway to be routed to the Linden Portal and for the secondary (return) escapeway to be directed to the Kerr Shaft. This proposal adds the Thomas Portal to the escapeway plan to be used in the event the Linden Portal becomes unsuitable or

unavailable, such as when the Linden elevator malfunctions.

3. Petitioner states that the alternative method outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 21, 1982. Copies of the petition are available for inspection at that address.

Dated: May 12, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-13998 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-89 Exemption Application No. D-2684]

Exemption From the Prohibitions for Certain Transactions Involving the Frederick E. Fried, M.D., P.C., Profit Sharing Plan, Located in Medfore, Oreg.

AGENCY: P&WBP, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the sale of certain items of artwork (the Artworks) by the Frederick E. Fried, M.D., Profit Sharing Plan (the Plan) to Frederick E. Fried, M.D. (Fried), a disqualified person with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5510) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(a)(1)(A) through (E) of the Code, for the transaction described in an application filed by Fried. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. Because Fried is the sole owner of Frederick E. Fried, M.D., P.C., the sponsor of the Plan, and is the sole participant of the Plan, it was determined that the publication of the notice of pendency would serve as notice to interested persons. No requests for a hearing were received by the Department, however, one unfavorable comment was received. The commentator stated that to grant the exemption would mean that taxpayers in general would underwrite a plan loss caused by a plan sponsor's own decision. The applicant represents that a profit for the Plan will be realized on the sale of the Artworks and that the value of the Artworks has been determined by an independent appraiser. The Department has considered the comment received together with the applicant's representations and has determined that the exemption should be granted as proposed. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of the Artworks by the Plan to Fried, provided that the sales price is at least the fair market value of the Artworks at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 18th day of May, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13999 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-88; Exemption Application No. D-2311]

Exemption From the Prohibitions for Certain Transactions Involving the Commerce Southwest, Inc. and Subsidiaries Employees Retirement Plan Located in Dallas, Tex.

AGENCY: P&WBP, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption would permit: (1) The sale of real property (the Land) and improvements (the Building) to the Commerce Southwest, Inc. and Subsidiaries Employees Retirement Plan (the Plan) by the National Bank of Commerce of Dallas, Texas (the Bank), a

party in interest with respect to the Plan; and (2) the subsequent leaseback of the Land and Building by the Plan to the Bank.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 20, 1981, notice was published in the **Federal Register** (46 FR 57178) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for transactions described in an application filed by the Commerce Southwest, Inc., the sponsor of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification to interested persons provisions as set forth in the notice of pendency. No requests for a hearing were received by the Department, however, the Department received one comment. The commentator claimed that the entire transaction could be viewed as a loan by the Plan to the Bank at below market rates, that the Plan would be concentrating a high percentage of its assets (21.6%) in one investment, that the rate of return on the investment was low compared to other investments and that the expected appreciation of the Land and Building is highly speculative as the Land and Building comprise special purpose properties with limited market appeal.

The Bank was asked by the Department to respond to the comments of the commentator. In response the Bank stated that the transaction is not in the form of a loan as the Plan is receiving a valuable asset rather than a promise to pay from the Bank. In addition, the Bank will arrange for a $25,000 deposit to secure its rental obligations as well as guarantee that the Plan will receive a certain minimum amount in the event of a sale of the Land and Buildings. The Bank also stated that the investment of 21.6% of the assets of the Plan in the transaction is not excessive and that in coming years because of additional Employer contributions to the Plan the percentage of the assets of the Plan involved in the transactions should decrease. With respect to the comment that the rate of return to the Plan is low compared to other investments available to the Plan, the Bank stated that the rate of return given in the notice of pendency of 10% is based on the rental income to the Plan and does not take into account the expected appreciation of the Land and Building. With respect to the comment that the expected appreciation of the Land and Building is highly speculative because of the special purpose nature of the properties, the Bank stated that office and warehouse facilities are among the most adaptable types of properties to be found anywhere. Furthermore, the Bank stated that historical data with respect to investments of this type and the geographic area in which the Land and Building is situated indicates that the property will appreciate. In addition, Joe Foster Appraisal Services, Inc., an independent appraiser from Dallas, Texas, represented that the Land and Building is located in one of Dallas' most attractive industrial parks and the Land and Building is readily adaptable to the needs of other prospective tenants and buyers.

Mr. Lovell M. Turner (Turner), a licensed real estate broker, who is independent of the parties to the transactions, has examined the proposed sale of the Land and Building to the Plan by the Bank and subsequent lease of the Land and Building by the Plan to the Bank and has determined that the proposed transactions are protective and in the interests of the Plan and at least as favorable to the Plan as the Plan could obtain in a similar transaction with an unrelated party. Turner will also monitor the lease of the Land and Building by the Plan to the Bank to ensure compliance with all terms and conditions of the lease. Furthermore, rentals will be adjusted every five years to reflect the fair market rental value of the Land and Building. Because of these independent safeguards, the Department believes the Plan is adequately protected and that the proposed transaction are in the best interests of the Plan. Therefore, the Department has decided to grant the exemption as proposed. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(10)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the

entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the sale of the Land and Building by the Bank to the Plan, provided that the sales price is not greater than the fair market value of the Land and Building; and (2) the lease of the Land and Building by the Plan to the Bank, provided the terms and conditions of the lease are at least as favorable to the Plan as the Plan could obtain in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13987 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2630]

Proposed Exemption for Certain Transactions Involving the Alaska Electrical Pension Fund Located in Anchorage, Alaska

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) Retroactively and prospectively the leasing of office space by the Alaska Electrical Pension Fund (the Plan) to various tenants who provide a wide range of services to the Plan (the Service Provider(s)), and (2) retroactively the extension of credit between the Plan and Steve Noey and Associates, Ltd. (Noey) one of the Service Providers. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Service Providers, Noey and other persons participating in the transactions.

DATE: Written comments must be received by the Department on or before July 7, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption involving the leasing arrangements would be effective from July 1, 1976 and the exemption involving the extension of credit would be effective between the dates July 22, 1981 and August 14, 1981.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2630. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set fort in ERISA Procedure 75-1 (40 FR 18471, April 18, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multiemployer, jointly-trusted, defined benefit plan with approximately 3,100 participants all of whom are engaged in electrical construction trades. Contributing employers to the Plan include the National Electrical Contractors Association (NECA) members and non-members who have executed letters of assent to the main bargaining agreements between the Alaska Electrical Union (the Union) and the NECA. In addition, other major employers include certain municipalities and utilities who have separate agreements with the Union. The Plan has ten (10) trustees (the Trustees) divided equally between management and those representing the Union. As of December 31, 1980, the Plan had total assets of $95,000,000. The assets were invested in a diversified portfolio consisting of the following major categories: land and commercial office buildings (22%), mortgages (19%), common stocks (15%) and long/short term fixed income securities (42%). Included among the Plan assets are two commercial office buildings (the Buildings) located in a growing business and shopping area of Anchorage, Alaska. Denali Towers South (Denali South) is a seven story office building in which some of the space is occupied by the other Alaska Electrical Trust Funds in accordance with the provisions of Prohibited Transaction Exemption 76-1 (41 FR 12740, March 26, 1976) and Prohibited Transaction Exemption 77-10 (42 FR 33918, July 1, 1977). Denali Towers North (Denali North) is a seventeen (17) story building located adjacent to Denali South. Denali North was completed and tenant occupancy commenced approximately March 1, 1980. The Buildings are owned solely by the Plan and neither building is subject to an outstanding mortgage or other indebteness. The Buildings are considered by the Trustees to be an excellent investment because of the rate of return to the Plan generated by rental income and the increase in the appraised value of the Buildings with the passage of time.

2. The Plan has actively sought to lease space in both of the Buildings to unrelated tenants although several of the leasing arrangements have been with firms providing a wide range of services to the Plan—the Service Providers. Those existing service provider relationships include the provision of: architectural services, security services for the Buildings, real estate brokerage services, insurance

brokerage services, occasional legal services, sales and servicing agreements relating to mortgage investments by the Plan, occassional advertising and printing services, occasional real estate appraisal services and the writing and servicing of insurance policies required in the operation of the Plan. Some of the Service Providers are retained on an ongoing basis while others provide services which are of an intermittent or limited duration. The Service Providers currently occupy approximately five percent of the available rental floor space of the Buildings. With respect to each of the Service Providers the applicant makes the following representations: (1) Neither the Trustees nor the Plan Administrator has business or family relationships with any of the Service Providers; (2) both the service provider agreements and the leases are based on arm's-length negotiations and reflect fair market values for such usual and customery services in the local area; (3) the Trustees have independent control over the service provider relationships and may terminate such services where they are found inadequate; (4) while the terms of the leases are fixed, in the event of a default in rental payments prompt action would be taken by the Trustees through counsel or the property manager to terminate the leases and collect the rental in default. In summary, the applicant represents that the two transactions of leasing and the provision of services have been and will be treated independently of one another.

3. Originally the Plan had its own in-house staff property manager who negotiated leasing arrangements with prospective tenants. The Plan soon realized the need for professional assistance; therefore, it retained Ben Marsh Realty a/k/a Ben Marsh and Associates and Alaska Planning and Management, Inc. (Marsh) as an exclusive leasing agent on January 24, 1980. The leasing agreement was expanded to permit renegotiation and renewal of all existing leases when Marsh was retained under a formal property management agreement dated July 15, 1981. Marsh has been engaged in property management for six years and manages a number of other properties for clients unrelated to the Plan. Neither Marsh nor its employees have any business or family relationships with the Trustees or the Plan Administrator.

Marsh is one of the Service Providers currently leasing office space from the Plan in Denali North. The lease with Marsh was negotiated at a time in which the Plan had its own in-house staff property manager. The Trustees represent that such lease was negotiated at arm's-length and on terms no less favorable to the Plan than terms available in an arm's-length transaction with an unrelated third party. The Trustees further represent that future lease negotiations with Marsh, or any future property manager, will always be negotiated by them, or their representative, and will be as favorable as an arm's-length transaction with an unrelated party.

4. Since the Trustees anticipate that future tenants of the Buildings may be or may become a service provider with respect to the Plan, they have requested that the relief afforded under this exemption cover unspecified future lease transactions. In addition, the Trustees represent that all future lease transactions would always be on terms no less favorable to the Plan than an arm's-length transaction with an unrelated third party. Therefore, for purposes of this exemption the term "the Service Provider(s)" includes any prior or future tenant which had, has or would have a party in interest relationship to the Plan based solely on the provision of services to the Plan.

5. Noey leased space from the Plan at Denali South on October 15, 1976 (the 1976 Lease) for a five-year term. Noey is in the business of providing real estate appraisals and estate appraisals and conducting feasibility studies for commercial office space. Prior to the expiration of the 1976 Lease, economic conditions caused Noey to restrict its operations and seek a modification of such lease with the Plan. A second lease was executed on October 3, 1980 in which the Plan also agreed to take in consideration for cancelling the 1976 Lease a promissory note (the Note) for the remaining rent due under the provisions of the 1976 Lease. The amount of the Note was $19,398.12 plus twelve (12) percent interest. This action was considered to have been in the interest of the Plan since the alternative under the 1976 Lease would have been to evict Noey and institute suit. Such action is also represented to be customary and in the usual course of rental business under the circumstances. Subsequently, Noey was requested by the Plan to provide a feasibility study for a third office building to be located in the same area as the Buildings. Plan records disclose that Noey provided the services between July 22, 1981 and August 14, 1981 at a cost to the Plan of $15,200. During this period Noey continued to make payments on the Note. Payments on the Note have at all times remained current and the final payment was made November 1, 1981.

6. The applicant represents that the past and future leasing arrangements with the Service Providers and extension of credit transaction involving Noey satisfy the statutory criteria of section 408(a) of the Act because:

a. The representations that the rental rates and terms charged to the Service Providers were and would be the same as those available to unrelated tenants are easily verified from the lease records of the Plan;

b. The negotiation of all future leases and the monitoring of existing leases has been delegated to a professional property manager who is independent of all officials of the Plan and the Service Provider tenants;

c. The types of services provided by the Service Providers (some of which are intermittent or of a limited duration) and the types of commercial leasing activities involved in this request are customary and usual in the marketplace;

d. The extension of credit transaction between Noey and the Plan was inadvertent, existed for only a short period of time, did not constitute any type of self dealing, and has now extinguished itself; and

e. The Plan Trustees represent that both transactions have been and will remain in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

On or before June 7, 1982, notice of the proposed exemptions will be publicly posted in each employee organization hall and hiring hall where Plan participants and potential employees of employers who are obligated to make contributions to the Plan normally congregate, and will be mailed, postage prepaid to each employer association, the members of which make contributions to the Plan, and to each employee organization whose members are participants in the Plan. The notice will include a copy of this notice of pendency and will inform interested persons of their right to comment on the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply: (1) Effective July 1, 1976 to the leasing of office space in the Buildings to the Service Providers; and (2) between July 22, 1981 and August 14, 1981 to the extension of credit between Noey and the Plan, provided:

(a) That the extension of credit transaction and each lease transaction which has taken place or will take place was and/or will be on terms no less favorable to the Plan than terms available in an arm's-length transaction with an unrelated third party.

b. The Plan maintains or causes to be maintained during the period of any leasing arrangement such records as are necessary to enable the persons described in paragraph (c) to determine whether the conditions of this exemption have been met except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such period and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (c) below.

c. Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) are unconditionally available at their customary location for examination during normal business hours by: (i) the Department or the Internal Revenue Service, (ii) Plan participants and beneficiaries, (iii) any employer of Plan participants and beneficiaries, (iv) any employee organization any of whose members are covered by the Plan, (v) any trustee of the Plan, or (vi) any duly authorized employees or representatives of a person described in subparagraphs (i) through (v) of this paragraph.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions that are the subject of the exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13980 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3364]

Proposed Exemption for Certain Transactions Involving the RREEF Fund-II, Inc. Located in San Francisco, Calif.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase of a shopping center by the RREEF Fund-II, Inc. (the Fund) from an unrelated party, and the assumption by the Fund of an existing lease to Von's Grocery Company (Von's), a party in interest with respect to one of the employee benefit plans participating in the Fund. The proposed exemption, if granted, would affect Von's, the Household Finance Corporation Pooled Investment Trust (the Plan) and other plans that have invested in the Fund.

DATE: Written comments must be received by the Department of Labor on or before July 2, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective September 12, 1977.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3364. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of the RREEF

Corporation (RREEF), the Fund's investment manager, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Von's is an employer whose employees are covered by the Plan. The Plan is a qualified pension plan with approximately 24,519 participants. The Plan is one of several plans that invests in the Fund. As of July 1, 1981, the Plan had total assets with an estimated market value of approximately $198,000,000.

2. The Fund is a corporation created on June 24, 1970, under the laws of the State of Delaware, that is exempt from income tax under the provisions of section 501(c)(2) of the Code. It is designed to afford plans, qualified under section 401(a) of the Code and thereby exempt from federal taxation under section 501(a) of the Code, the opportunity to diversify their portfolios by investing, through the Fund, in real properties. The Fund is engaged primarily in the business of acquiring, improving, operating and holding for investment income-producing property (as well as personal or mixed property connected therewith), including commercial, office and industrial property dispersed geographically throughout the United States.

3. The Fund is designed for investment by pension or profit-sharing plans, and the minimum investment in the Fund is $150,000. At the present time, seven plans have subscribed to invest in the Fund. The total value of assets of the Fund determined as of December 31, 1981, was $53,961,000, of which $1,050,000 was invested by the Plan.

4. The powers of the Fund are exercised by or under the authority of the directors. The directors of the Fund are Messrs. Claude N. Rosenberg, Jr., Paul Sack, Alander F. Hogland and Johnson S. Bogart. Discretion over the investments of the Fund, within the limits of the investment objectives and criteria of the Fund, has been assigned to RREEF, a corporation organized in January, 1975, under the laws of the State of California, primarily for the purpose of managing and operating real estate investment programs such as that of the Fund. RREEF is a registered investment adviser under the Investment Adviser's Act of 1940. Its address is 650 California Street, Suite 1800, San Francisco, California 94108.

5. The directors of RREEF are Messrs. Rosenberg, Sack, Hogland, Bogart, John D. Leland, Jr. and Joseph A. Mark. Investment decisions with respect to real properties for the Fund are made by an investment committee of the Board of Directors of RREEF which consists of all of the directors of RREEF.

6. RREEF is affiliated with RREEF MidAmerica, RREEF USA Partners and RREEF America Partners, all of which are registered investment advisers for other real estate funds having investment objectives similar to those of the Fund. RREEF acts as the investment manager for four RREEF Funds in addition to the Fund (RREEF Fund–I, Fund–III, Fund West–IV and Fund West–V). RREEF MidAmerica acts as the investment manager for RREEF MidAmerica Fund–I, Fund–II and Fund–III. RREEF USA Partners acts as investment manager for RREEF USA Fund–I. RREEF America Partners acts as investment manager for RREEF USA Fund–II. In addition to the $1,050,000 that the Plan has invested in the Fund, the Plan has invested $1,050,000 in each of the following funds: RREEF Fund–I, RREEF Fund–III, RREEF Fund West–IV, RREEF MidAmerica Fund–I and RREEF MidAmerica Fund–II. The Plan has also subscribed to invest $1,000,000 in both RREEF Fund West–V and RREEF MidAmerica Fund–III. This aggregate Plan investment of $8,300,000 constitutes only 0.64% of the total assets of all RREEF Funds, which are valued at $1,300,000,000.

7. None of the individuals mentioned above is an officer, director or employee of Household Finance Corporation (HFC) or its subsidiary, City Products Corporation (CPC) or CPC's subsidiary, Von's, nor do such individuals hold an equity interest in HFC, CPC, or Von's. Neither HFC, CPC, nor Von's, nor any officer, director or employee of such companies, has any ownership interest in, or employment capacity with, RREEF or any entity affiliated with RREEF.

8. On August 11, 1977, the Fund entered into an agreement to purchase the Loehmann's Plaza Shopping Center (the Shopping Center), located at the corner of Victory Boulevard and Tampa Avenue in Los Angeles, California, from Tampa Plaza Associates (the Seller). Virtually all of the 147,827 square feet of leasable area in the Shopping Center is currently leased. Von's leases 29,920 square feet. The current lease agreement between the Fund and Von's was entered into on December 21, 1950. The lease terms were agreed upon through arm's-length negotiation by W. G. Smith, Inc., as lessor, and Shopping Bag Food Stores, Inc. (SBFS), as lessee. The Seller and the Fund are successors in interest to W. G. Smith, Inc.'s rights and obligations under the lease. Von's is the successor in interest to the rights and obligations of SBFS under the lease as a result of a merger of Von's and SBFS in which Von's was the surviving corporation. At no time have the Seller and Von's, or any of their predecessors in interest, been in any way affiliated. The applicant has requested relief from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. The Department sees no apparent violation of section 406 (b)(1) and (b)(2) of the Act and section 4975(c)(1)(E) of the Code. Accordingly, no exemptive relief is being proposed with respect to those sections.

9. The subject sales transaction was closed on September 12, 1977. The purchase price for the Shopping Center was $4,773,422. The Fund paid the full purchase price in cash at closing. At closing, the Seller assigned all existing leases to the Fund, including the lease with Von's.

10. The Seller is a limited partnership organized under the laws of the State of California. It is not affiliated with, in control of, or controlled by HFC, Von's, or RREEF, except as lessor to Von's and seller of property to the Fund.

11. The investment in the Fund by the Plan constitutes less than 2% of the Fund's total current assets, and less than 0.06% of the total assets in the Plan. The purchase price of the Shopping Center itself represents 8.84% of the Fund's total current assets, and within the entire Shopping Center, the subject lease represents about 20% of the rentable space.

12. The purchase price was arrived at by the parties through arm's-length negotiation. Because of its expertise in transactions involving commercial real estate, RREEF, consistent with its normal practice, did not have the property appraised by a third party. In accordance with the terms of the Agreement of Purchase and Sale, RREEF made a review of the property prior to closing and determined that the purchase price was appropriate. On

December 31, 1981, the value of the Shopping Center was appraised by an independent appraiser unaffiliated with any of the RREEF organizations at $8,000,000.

Neither the Fund, RREEF, nor any of RREEF's affiliates is participating in any commission in connection with this transaction, nor do RREEF and its affiliates have any obligation to the Seller.

13. The applicant represents that the transactions meet the statutory criteria of section 408(a) of the Act because: (1) The Shopping Center was considered by RREEF to be an excellent investment opportunity for the Fund, and it has appreciated considerably in value since its purchase; (2) the terms of the sale were arrived at by RREEF and the Seller through arm's-length negotiation; and (3) the terms of the lease with Von's had been negotiated long before the purchase of the Shopping Center by the lessees and parties totally unrelated to, and independent of HFC, Von's and RREEF.

Notice to Interested Persons

Within 10 days of the publication of this notice of proposed exemption in the **Federal Register**, RREEF will send by mail a copy of this notice to the appropriate fiduciary of each plan or trust that has subscribed to invest in the Fund. The notification will also include a statement advising interested persons of their right to comment within the time period specifed.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective September 12, 1977, the restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale of the Shopping Center by the Seller to the Fund, and the lease of a portion of the Shopping Center to Von's, which began on December 21, 1956, provided the sale and lease terms are no less favorable to the Fund than those available in arm's-length transactions with unrelated parties.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–13984 Filed 5–20–82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D–3186]

Proposed Exemption for Certain Transactions Involving the Anderson's Employees Profit-Sharing Trust, Located in Newport, Minn.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of an unimproved parcel of real property by the Anderson's Employees Profit-Sharing Trust (the Trust) to Mr. Dale G. Anderson (Mr. Anderson), a disqualified person with respect to the Trust. Because Mr. Anderson is the sole owner of Dale G. Anderson Construction, Inc. (the Employer), the sponsor of the Trust, and is the only participant in the Trust, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. This notice of pendency proposes exemptive relief for the transaction described herein from only the sanctions imposed under Title II of the Act. The proposed exemption, is granted, would affect the Trust, Mr. Anderson and any other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 23, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–3186. The application for exemption and the comments received will be

available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Mr. Anderson, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Trust was created to hold assets in the Anderson's Employees Profit-Sharing Plan and the Anderson's Employees Retirement Plan (the Plans). Mr. Anderson is the sole participant in the Plans and pursuant to the Trust documents exercises discretion with respect to the investment of the Plan's assets. As of June 30, 1981, the Trust held assets totaling $314,414.

2. The Employer is a corporation solely owned by Mr. Anderson engaged in the business of home construction. As of June 30, 1981, the Employer had total assets of $84,338 and Mr. Anderson had a net worth in excess of $540,000.

3. On July 12, 1974, the Trust purchased an unimproved parcel of real property (the Property) from an unrelated party for $20,000. The Property consists of approximately thirteen (13) acres, is located in Washington County, Minnesota and is known as the Timberlea Estates. Since acquisition, the Property has been used by unrelated parties as a sand and gravel pit and has generated a net income, as of June 30, 1981, of approximately $23,000.

4. The applicant seeks an exemption to allow the Trust to sell the Property to Mr. Anderson. Mr. H. Earl Beltz, an independent appraiser located in Hastings, Minnesota, determined that, as of January 15, 1982, the Property had a fair market value of $195,000. The sale will be at the Property's appraised value for cash and no sales commission or other closing costs will be paid by the Trust. The sale of the Property will enable the Trust to invest in more diversified investments.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code because (a) the trustee of the Trust, Mr. Anderson, represents that the proposed transaction is in the best interests of the Trust; (b) the only participant who will be affected by the proposed transaction will be Mr. Anderson and he requests that the transaction be consummated; and (c) the Trust will receive the fair market value of the Property in cash as determined by an independent appraiser.

Notice to Interested Persons

Because Mr. Anderson is the only participant in the Plans it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of the Property by the Trust to Mr. Anderson for $195,000, provided that this amount is not less than the fair market value of the Property on the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–13995 Filed 5–20–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-3262]

Proposed Exemption for Certain Transactions Involving the Building Trades United Pension Trust Fund, Milwaukee and Vicinity Located in Milwaukee, Wis.

AGENCY: P & WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $305,000 (the Loan) by the Building Trades United Pension Trust Fund, Milwaukee and Vicinity (the Fund) to Fred E. and Elizabeth Warden (the Wardens), parties in interest with respect to the Plan; and the personal guarantee of repayment by the Wardens. The proposed exemption, if granted, would affect the Wardens and the participants and beneficiaries of the Fund.

DATE: Written comments must be received by the Department on or before July 12, 1982.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-3262. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Alan H. Levitas of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by the trustees (Trustees) of the Fund, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Fund is a collectively bargained multiemployer pension plan established in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. As of May 31, 1981, the Fund had approximately 23,800 participants and total assets of approximately $167,646,000. The Board of Trustees consists of 19 employer-appointed and 19 union-appointed Trustees. Because of the size of the full Board, standing committees have been established to conduct administration and management functions for the Fund. Of the standing committees, only the Investment Committee and the Mortgage Committee make decisions with respect to management of assets.

2. The Mortgage Committee has exclusive authority to act on applications for investment of Fund assets in commercial real estate mortgage financing. Such financing replaces the borrower's short-term construction financing. No application for commercial real estate mortgage financing may be considered by the Mortgage Committee unless it meets the written criteria for acceptance of mortgages.

3. The Mortgage Committee has three employer-appointed and three union-appointed members, with power to cast an equal aggregate number of votes on all matters. A tie vote results in a rejection of an application for financing. Decisions of the Mortgage Committee become final without review or approval of the full Board of Trustees. Nonetheless, the Mortgage Committee reports all of its decisions to the Board of Trustees.

4. The Mortgage Committee invites independent mortgage bankers to present appropriate commercial real estate mortgage opportunities. Five mortgage bankers present such mortgage opportunities to the Mortgage Committee on a regular basis. One of the responsibilities of such mortgage banker is to recommend to the Mortgage Committee what an appropriate interest rate would be, given all of the other negotiated terms and conditions of the mortgage and the existing prevailing interest rates for comparable projects.

5. The transaction for which an exemption is sought involves the Loan which is to be made by the Fund to the Wardens. More than 50% of the stock of Fred E. Warden, Inc. (Warden) is owned by Mr. Warden. Warden is a contributing employer to the Fund. Neither the Wardens nor any director, officer or employee of Warden is now or has ever been a Trustee of the Fund, a member of the Mortgage Committee or of any other Fund committee, or associated with the Fund in any other capacity.

6. The Loan would be in the amount of $305,000 which constitutes less than 0.18% of the Fund's total assets. The Loan would be secured by a first mortgage on certain real property located in the Heritage Ridge Shopping Centre (the Centre). The subject property is known as Parcel 3B in the Centre. The sole purpose for the Loan would be to reimburse the Wardens, to the extent of the Loan, for land acquisition, construction, equipment, furnishings, professional fees, taxes, and other out-of-pocket expenses actually incurred or paid by the Wardens with respect to such real estate. The total disbursements made by the Fund would not exceed the lesser of (i) the sum of actual expenditures, or (ii) 75% of the independently determined appraised value of the improved real estate.

7. The Wardens submitted an application for the Loan and said application has been approved by the Fund's Mortgage Committee, subject to receipt by the Fund of the proposed exemption. Such application was found by the Mortgage Committee to meet the criteria for acceptance of mortgages and is represented to constitute the type of "blue chip" mortgage financing suitable for Fund investment.

8. The loan would be for a term of 10 years with level payments of principal and interest (based upon a 30-year amortization) to be paid monthly throughout the term of the Loan. The initial rate of interest throughout the term of the Loan would be fixed at 15⅛% per annum, which was determined by the Mortgage Committee to be the market rate at the time the loan application was negotiated. The interest rate can be increased at the Fund's option every three years by up to ½% per annum. The Mortgage Committee determines the interest rate for a given mortgage based upon the rate recommended by the presenting mortgage banker, the prevailing

experience and knowledge of the Mortgage Committee members and prevailing market conditions. The interest rate, as determined above, would be the same whether the mortgagor is a party in interest (such as the Wardens) or an unrelated party.

9. The indebtedness created by the Loan would be evidenced by a promissory note executed by the Wardens. Payment of the note would be personally guaranteed by the Wardens, whose net worth is in excess of $750,000. In addition to a first mortgage on the improved real estate and the Wardens personal guarantee, payment of the note would be further secured by a general assignment to the Fund of the leases between the Wardens and the person or persons occupying the improvements constructed on the real estate. The first mortgage would be insured by mortgage title insurance guaranteeing that the mortgage is a valid first lien against the improved real estate. The Loan would be made on the same terms, pursuant to the same conditions, and would be treated in all respects in the same manner as loans made to persons who are unrelated to the Fund.

10. Prior to the closing of the Loan, Warden will construct an Ace Hardware store on the parcel of real estate. Richter-Schroeder Company, Inc. (Richter) provides mortgage servicing to the Fund. Richter will service the Loan on behalf of the Fund for a specified servicing fee of ⅛ of 1% of the declining principal balance of the Loan, pursuant to a servicing agreement between the Fund and Richter.[1]

11. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Mortgage Committee has determined that the proposed transaction is in the best interests of the Fund and its participants and beneficiaries;

(b) The Loan contains the same terms and conditions as similar loans that the Fund has made to unrelated parties; and

(c) only a small portion of Fund assets would be involved in the Loan.

Notice to Interested Persons

On or before June 10, 1982, notice of the proposed exemption will be sent by bulk mailing to all contributing employers to the Fund, and to each collective bargaining unit, members of which are participants in the Fund, for conspicuous posting. Such notice shall include a copy of the notice of pendency as proposed in the **Federal Register** and shall inform interested persons of their right to comment within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before and exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the Loan by the Fund to the Wardens, provided that the terms and conditions of the Loan are at least as favorable to the Fund as those it could obtain from an unrelated party; and to the personal guarantee of repayment by the Wardens.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13983 Filed 5-20-82; 8:45 am]
BILLING Code 4510-29-M

[Application No. D-3119]

Proposed Exemption for Certain Transactions Involving Little Rock Diagnostic Clinic, P.A., Profit Sharing Plan Located in Little Rock, Ark.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed lease by the Little Rock Diagnostic Clinic, P.A. Profit

[1] The Department is not proposing an exemption in this notice beyond that which is provided by section 408(b)(2) of the Act.

Sharing Plan (the Plan) to LRDC Land Company (Land Company), a party in interest with respect to the Plan; and the subordination of the Plan's interest in the leased premises. The proposed exemption, if granted would affect the participants and beneficiaries of the Plan, the Land Company and any other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before July 1, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3119. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan, a defined contribution profit sharing plan, was adopted April 12, 1971. As of April 30, 1981, there were 45 Plan participants. The Plan trustees are Dr. James H. Abraham, Dr. Ernest H. Harper and Mr. Roger J. St. Onge (the Trustees). As of April 30, 1981, the Plan had total assets of $3,011,343.

2. The Land Company was created by a written agreement dated May 8, 1974. The partners in the Land Company (the Partners) are Plan participants and include the Trustees. The Partners own approximately 94% of the stock of Little Rock Diagnostic Clinic, P.A. (the Employer). The Land Company is a general partnership whose sold purpose is to lease real property to the Employer for operation of a medical clinic.

3. The Plan owns 4.368 acres of land in Little Rock, Pulaski County, Arkansas. The Plan entered into a ground lease (the Lease) with the Land Company on May 8, 1974. The Lease is divided into two parts, a temporary term beginning April 1, 1974, and ending July 31, 1975, and a permanent term of 25 years beginning August 1, 1975, and ending July 31, 2000. The rent for the termporary term was equal to the 1974 real estate taxes and any other taxes assessed against the premises. During the temporary term, the Land Company constructed a medical clinic on the land. The rent for the permanent term was equal to $27,000 per year subject to an adjustment every five years based on the Cost of Living Index published by the Department. The current rental being paid to the Plan is $41,196. The Lease between the Plan and the Land Company is a triple net lease and the Plan has no obligation to make any payment in connection with the leased premises. Under the Lease, the Plan agreed to subordinate its title to the leased premises to the mortgage lien holder on the medical clinic. The Land Company pursuant to an agreement dated May 8, 1974 and commencing August 1, 1975 for a period of twenty-five years is leasing the medical clinic to the Employer. The Trustees and the Land Company propose to amend the Lease (New Lease) to provide for annual cost of living adjustments. The Partners, pursuant to an indemnification agreement executed on April 8, 1982, agree to indemnify the Plan from all loss, damage and expense which the Plan may sustain by the subordination of its title. The Partners have a net worth in excess of $8,000,000. No other material modification to the terms or provisions of the Lease are proposed.

[1] The applicants represent that the lease executed in 1974 is covered by the transitional rules of section 414(c)(2) of the Act. In this proposed exemption the Department expresses no opinion as to whether the lease executed in 1974 is within the scope of section 414(c)(2) of the Act.

The term of the New Lease would end July 31, 2000.

4. The fair market rental value of the New Lease, as determined in an appraisal dated August 28, 1981 performed by Ronald E. Bragg (Mr. Bragg) of Barnes, Quinn, Flake & Anderson, Inc., an independent M.A.I. appraiser was $3,161.67 per month or $37,940 annually. Mr. Bragg also determined that the fair market value of the land owned by the Plan was $271,000 as of August, 1981.

5. On September 10, 1981, Twin City Bank of North Little Rock, Arkansas, was appointed as an independent real estate investment manager (Real Estate Manager) with sole responsibility and discretion to direct the Trustees regarding management of real property held by the Plan. The Real Estate Manager represents that it has no relationship with the Land Company, the Employer, any employee of the Land Company or the Employer, or the Plan except as Real Estate Manager. The Real Estate Manager, who is responsibile for making an independent determination that the New Lease is appropriate and suitable for the Plan, has determine that the new lease is appropriate and suitable for the Plan and in the best interests of the Plan's participants and beneficiaries. The Real Estate Manager will again reconsider the New Lease prior to the time of its execution to ensure that the New Lease is still in the best interests of the Plan's participants and beneficiaries. The Real Estate Manager will be responsible to enforce the terms of the New Lease, including making demand for timely payment, bringing suit in the event of a breach of terms of the New Lease, keeping accurate records regarding computing the annual cost-of-living adjustment and reporting annually to the Trustees.

The Real Estate Manager has reviewed Article VII of the New Lease which provides that the Plan will continue to subordinate its title on the leased premises to the mortgage lien holder on the medical clinic. The Real Estate Manager represents that such subordination provisions are in accordance with normal business practices and the requirements of lenders in the area and does not alter its favorable opinion of the proposed transaction. The original loan for the construction of the medical clinic was $1,350,000 and the current loan balance is $1,217,312.54. Since the Real Estate Manager estimates the fair market value of the building was $2,280,213 as of July 1, 1980, the Real Estate Manager represents that there is sufficient equity

present to protect the Plan and its participants.

6. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because

(1) The New Lease will be monitored by an independent Real Estate Manager;

(2) The Plan will receive a return in excess of that which an independent appraiser has determined is fair market rental value;

(3) The Plan will be indemnified by the Partners against any loss, damage or expense incurred as a result of subordinating its title in the land; and

(4) The independent Real Estate Manager has determined that the transactions are appropriate for the Plan and are in the best interests of the Plan's participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Within ten days after the notice of pendency is published in the **Federal Register** notice will be given to all Plan participants, beneficiaries, and other interested parties by mail, personal delivery, or by posting on a bulletin board which regularly contains notices for employees of the Employer. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an adminstrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lease of land by the Plan to the Land Company, including the subordination of the Plan's interest in the leased premises, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13982 Filed 5-20-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-3270]

Proposed Exemption for Certain Transactions Involving the Basic Steel Corporation Employees' Profit Sharing Plan Located in Riverdale, Ill.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan (the Loan) by the Basic Steel Corporation Employees' Profit Sharing Plan (the Plan) to Basic Steel Corporation (the Employer) of 40 percent of the total assets of the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the trustees, the Employer and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 6, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–

4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3270. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(1)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer corporation, which is located in Riverdale, Illinois, is engaged in the manufacture of steel products. The Employer maintains the Plan as a profit sharing plan which on December 30, 1980 provided coverage to 37 participants and had $1,248,758 in total assets. The trustees of the Plan are Messrs. Thomas Clark, Abdul Hamid and Morrie Much. Messrs. Clark and Hamid are officers of the Employer. Mr. Much is an attorney in private practice. These individuals also make investment decisions for the Plan.

2. The Employer proposes to enter into a loan arrangement with the Plan in order to finance the installation of new equipment for use in its business. The Employer is requesting an exemption in order to borrow 40 percent of the assets of the Plan (approximately $499,500). The Loan will be evidenced by a promissory note signed by the Employer. The Loan will bear interest at the rate of 16½ percent per annum and will be repaid in quarterly installments of principal and interest over a seven year term.

3. The Loan will be secured by a one year irrevocable letter of credit (the Letter of Credit) issued by Woodfield Bank (Woodfield) of Schaumburg, Illinois, an unrelated entity. The Letter of Credit will be in an amount at least equal to the outstanding Loan balance including any accrued interest, and will also cover any interest which may accrue during each one year period it is in effect. The Letter of Credit will be renewable annually unless Woodfield gives the independent fiduciary designated to oversee the Loan written notice thirty days prior to any renewal date that it will not re-extend the Letter. In this event, the independent fiduciary will call the Loan and draw upon the Letter of Credit before it lapses.

4. LaSalle National Bank (LaSalle) of Chicago, Illinois has been designated as the independent fiduciary for the proposed Loan. LaSalle represents it has a negligible commercial relationship with the Employer since less than 1 percent of the total loans carried on its books are with the Employer. According to LaSalle, the Employer has a $2.5 million revolving line of credit with $1.8 million outstanding and also a $1 million term loan with the bank which matures in August 1988. As for average demand deposit balances, LaSalle indicates the Employer maintains average demand deposit balances of low six-figures. LaSalle considers this relationship immaterial since the Employer's demand deposits represent less than 1 percent of the total deposits held by LaSalle.

5. As the independent fiduciary, LaSalle considers the proposed Loan transaction an appropriate and suitable investment for the Plan and its participants and beneficiaries. In addition to reviewing the specific terms and conditions of the proposed Loan, LaSalle has: (1) Examined the overall Plan investment portfolio; (2) considered the cash flow needs of the Plan; (3) given consideration to the necessity of a sale of any Plan assets; (4) examined the diversification of Plan assets in light of the proposed Loan investment; and (5) reviewed the terms of the proposed Loan as such terms comport with the Plan's investment scheme. LaSalle will also monitor the Loan to ensure repayment and take appropriate actions in the event of an Employer default. LaSalle will be further empowered to call the Loan at any time and will draw on the Letter of Credit in the event Woodfield gives appropriate written notice that the Letter will not be renewed or the Employer defaults on Loan payments.

6. In summary, the applicant represents that the proposed Loan will satisfy the criteria of section 408(a) of the Act because: (a) Its terms and conditions will be monitored by LaSalle; (b) the Loan will be secured by a Letter of Credit from Woodfield which can be called at any time, and must be called if Woodfield notifies LaSalle that it will not renew the Letter or the Employer defaults on Loan payments; and (c) LaSalle, as independent fiduciary to the Plan, has determined the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries.

Notice to Interested Persons

Notice of the pending exemption will be given to all interested persons within ten (10) days of the publication of the notice of pendency in the **Federal Register**. Notice will be given to present employees of the Employer as well as those former employees with an interest in Plan assets. The notice will include a photocopy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Notice will be provided to current employees of the Employer by posting copies of the pending exemption at locations customarily used for giving notice to employees. Notice to former participants and other interested persons will be given by first class mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and benfeficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the

employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogartion of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments recieved will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application the Department is considering granting the requested exemption under the authroity of section 408(a) of the act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the Loan by the Plan to the Employer of 40 percent of the total assets of the Plan, provided the terms of Loan are at least as equal to those which the Plan could receive in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washinggton, D.C., this 18th day of May, 1982.

Alan D. Lebowitz,

Assistant Adminstrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13980 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D–3126]

Proposed Exemption for Certain Transactions Involving Marsh & McLennan Real Estate Advisors, Incorporated Located in Boston, Mass.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would allow collective investment funds (together, the Funds) that are managed by Marsh & McLennan Real Estate Advisors, Incorporated (REA), in which employee benefit plans participate, to engage in certain transactions provided specified conditions are met. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans, employers of employees covered under such plans, the Funds, and other persons engaging in the described transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 6, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3126. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the Managed Property Trust (Trust I) and the Participating Properties Trust (Trust II), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with

on an individual rather than a class basis.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. REA, a registered investment adviser under the Investment Advisers Act of 1940, is the investment manager for the Funds, including Trust I and Trust II (together, the Trusts). REA was formed on March 17, 1980, to provide to various parties, including real estate funds such as the Funds, advice and investment management services with respect to real estate investments. Fifty-one percent of REA is owned by Marsh & McLennan Asset Management Company and forty-nine percent is owned by the trustees of Trust I and Trust II.

2. Trust I was created on October 31, 1980, and Trust II on October 1, 1981. The Trusts are group trusts described in Rev. Rul. 81–100, 1981–13 I.R.B. 32 (which superseded, without substantial change, Rev. Rul. 56–267, 1956–1 C.B. 206), and were created to provide pension and profit-sharing plans which are described in section 401(a) of the Code and exempt from federal income taxation under Code section 501(a) with a medium for pooling a portion of their funds for investment in real estate. The trustees of the Trusts are Messrs. Richard F. Burns, John W. Kessler, Donald B. Shackelford, and Craig R. Stapleton (the Trustees). All of the Trustees are shareholders and officers and/or directors of REA. The Trustees are not compensated by the Trusts.

It is anticipated that real estate investment will provide plans participating in the Funds (Participating Plans) with attractive investment returns and also assist fiduciaries in achieving the diversification required by the Act. The Trusts will hold title to real estate (Trust I primarily directly and Trust II primarily through joint ventures), receive income therefrom, and turn over the entire amount of such income, less expenses, to the Participating Plans. To avoid holding uninvested cash pending investment in real property, subscription proceeds may be temporarily invested in short-term investments including, but not limited to, government securities, government-insured first mortgage loans, commercial paper, interest-bearing deposits, certificates of deposit, and bankers' acceptances.

It is contemplated that one or more additional Funds similar to the Trusts will be organized from time to time. The Trustees may serve in the same capacity for some of the additional Funds, without compensation from the Funds. Other persons, who also would be officers and/or directors of REA or their affiliates and would serve without compensation from the Funds, may also be appointed as trustees. In any event, REA will be the investment manager for each of the additional Funds to be covered by the requested exemption. The applicants state that such additional Funds will, in all material respects, be similar to the Trusts. Some may be open-end and some closed-end, and the minimum investment by a Participating Plan may vary, but in no event will such minimum investment be less than $1 million.

3. Trust I is open-end, and Trust II is closed-end. Presently, there are no pension or profit-sharing plans subscribed to either of the Trusts. Under the current Offering Memorandum, the initial offering period for Trust I will expire on December 31, 1982.

All plans subscribing to Trust I must make a minimum initial investment of $2,500,000, but no interests will be sold unless prospective participants have subscribed for at least an aggregate of $10 million. Any subscription may be rejected by Trust I in whole or in part at its discretion if acceptance of the subscription would result in a subscriber owning more than ten percent of the outstanding units.

No interest in Trust II will be sold after December 31, 1982, and the maximum size of Trust II will be $150 million. Unless $50 million have been subscribed by June 30, 1982, or such later date (not later than December 31, 1982) to which the offering is extended, all subscription agreements will be cancelled, and the offering will terminate.

All plans subscribing to Trust II must make an initial minimum investment of $5 million. As with Trust I, any subscriptions to Trust II may be rejected in whole or in part if acceptance would result in the subscriber owning more than ten percent of the outstanding units.

4. Trust I may be terminated at any time by the Trustees at their sole discretion or by the affirmative vote of the holders of two-thirds of the number of units outstanding. Trust II may be terminated on December 31, 1992, or any December 31 thereafter, by an affirmative vote of Participating Plans holding at least 70 percent of the outstanding units, or on any date determined by the Trustees in their sole discretion, whichever is earlier.

As required by Rev. Rul. 81–100 (and its predecessor, Rev. Rul. 56–267), the interest of any Participating Plan in the Trusts is not transferable or assignable to third parties. Fiduciaries desiring to invest plan assets in the Trusts have been fully advised that only long-term investment in the Trusts must be considered, and an acknowledgment to that effect is contained in each Subscription Agreement. If, however, any Participating Plan wishes to dispose of its investment, it may apply to the Trustees for redemption of its units. Redemption will be made at the unit value as of the valuation date preceding the date on which redemption occurs.

Redemption of units of Trust I may take place over a period of up to two years at the discretion of REA. REA may, but need not, sell properties in order to redeem units, except as may be necessary to redeem units within the two year period. If a request for redemption remains unsatisfied for two full calendar quarters, no new commitments to purchase property which are anticipated to require disbursements of funds will be entered into.

Redemption of units of Trust II will occur when the amount required for redemption is contributed by remaining or new Participating Plans or a combination thereof.

5. The Offering Memoranda by which interests in the Trusts will be offered to qualified pension and profit-sharing plans which are potential investors describe the management, operation, investment objectives, and income tax consequences of the Trusts, and the compensation received by REA from the Trusts.

Within 120 days after the close of the fiscal year, each Participating Plan will receive a balance sheet, profit and loss statement, and a statement of changes in financial position for the fiscal year audited by an independent certified public accountant. The accountant's report will include a summary of the fees paid by the Trusts to REA. Participating Plans will also receive a narrative describing the activities of the Trusts during the fiscal year.

Within 60 days after the end of each of the first three quarters of each fiscal year, each Participating Plan will receive a balance sheet, an income statement, a statement of changes in financial position, and reports on investments, including a complete description of acquisitions and dispositions of real property and the terms thereof, the amount and date of

appraisals, and the Trusts' cash investments. REA will provide whatever other reasonable information is, from time to time, requested by any Participating Plan.

Approximately six months after the acquisition of any real estate investment by either Trust, REA will obtain a comprehensive evaluation of the property by an independent appraiser. Each property will be fully reappraised at least once each three years, and the most recent full appraisal will be reviewed every six months to determine if there has been a significant change in value necessitating a new complete appraisal. Such six month reviews will be performed alternately by REA and an independent appraiser.

Books and records of the Trusts will at all times be maintained at the principal offices of the Trusts and will be open to inspection and examination during reasonable business hours by the fiduciaries or other authorized representatives of the Participating Plans.

6. No individual holds any equity interest in the Trusts. None of the individual Trustees of the Trusts, nor any of the employees, officers, directors, or shareholders of REA will serve as a fiduciary of any Participating Plan (except to the extent that they will be fiduciaries by reason of the plan's investment in the Trusts) or as a director or officer of any sponsor of a Participating Plan.

7. As investment manager for the Trusts as defined in Act section 3(38), REA will, on behalf of the Trustees, exercise discretion regarding acquisition and disposition of all property. REA will also operate the Trusts on a day to day basis, including authorizing and supervising on-site property management. Generally, except for on-site property management, REA and its affiliates will directly provide all services to the Trusts. REA may, however, at its own expense, retain unrelated parties to assist in providing services.

REA receives a single fee from each Trust for services provided which is based on the value of the assets of the Trusts. The quarterly fee for Trust I will be 0.3 percent of net assets (1.2 percent per year). The quarterly fee for Trust II will be 0.3 percent of net real estate assets and 0.0625 percent of net temporary investments. No fees are generated on the basis of any particular investment or transaction of either Trust I or Trust II. REA charges no sales or brokerage fees on property transactions and no lease renewal or negotiation fees with respect to management of the property. Direct expenses incurred by REA in connection with the Trusts, including salaries for on-site management personnel, will be charged to the Trusts.

8. The applicants, on behalf of the Trusts and similar subsequent funds, seek the same relief granted to bank collective investment funds in PTE 80-51. The subject transactions have not yet been entered into by the Trusts and will not be entered into until an exemption is granted.

9. The Trusts will lease real estate. Prospective tenants include employees and their affiliates whose plans invest in the Trusts, persons providing services to such plans, and fiduciaries of such plans. Any given lease will typically account for a small percentage of rental income to the Trusts and the participation of any single tenant who may be a party in interest will be proportionately small. Nonetheless, without an exemption, it will be necessary to verify that every prospective tenant of any property owned by the Trusts is not a party in interest with respect to any Participating Plan. If the requested exemption is not granted, the Trusts may be faced with the prospect of denying leases to the best tenants available or with the prospect of failing to purchase attractive properties, either of which could result in a failure to obtain the best investment return for the Participating Plans.

10. In assuring that adequate property management services, including property maintenance and repair, rent collection, and bookkeeping, are provided to Trust I, REA will rely primarily on outside managers. For Trust II, REA intends to rely primarily on the services of joint venturers. In situations where REA determines that outside managers cannot efficiently provide adequate services, it will rely on its own resources and those of its affiliates. Any such direct property management services will be provided at cost. In any case, REA will monitor the performance of the property managers as part of its day to day management of the Trusts.

11. The applicants represent that the Trusts and similar subsequent Funds will meet all the conditions imposed in PTE 80-51, except that the Trusts are, and similar subsequent Funds will be, privately organized and maintained.

12. Because REA is a registered investment adviser under the Investment Advisers Act of 1940, certain of its activities and operations are regulated by the Securities and Exchange Commission and subject to periodic examination.

13. Each of the Trusts will be regularly audited by an independent national accounting firm. The independent accountant will audit all financial aspects of the Trusts, including, without limitation, verification of REA's fees, confirmation and monitoring of all sale and lease agreements, and preparation of regular financial reports. The auditors will have access to all of the Trusts' records and will have the authority to review and verify the details of all transactions of the Trusts, including compliance with the Act and any applicable prohibited transaction exemptions.

14. In summary, the applicants represent that the subject transactions meet the criteria of Act section 408(e) because: (1) The Trusts and similar subsequent Funds will provide Participating Plans with the best possible real estate investments and a broader selection of appropriate real estate investment vehicles; (2) each of the protections provided to Participating Plans and their participants and beneficiaries by PTE 80-51 will be satisfied for the subject transactions, except that the Funds are privately maintained; and (3) the decisions to invest in any of the Funds are made by knowledgeable fiduciaries of large employee benefit plans on the basis of a detailed Offering Memorandum. Furthermore, such fiduciaries are unrelated to REA or any of its affiliates. In addition, the proposed exemption imposes limitations which are designed to prevent the potential for abuse while permitting the relief requested by the applicants.

Notice to Interested Persons

Within 14 days of the publication of this notice of proposed exemption in the Federal Register, the applicants will send by mail a copy of such notice to the fiduciaries of any Participating Plan which may have subscribed to either or both of the Trusts. The notice will also inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act,

which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and reqeuests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representatives set forth in the application, the Department is considering granting tghe following exemption under the authority of section 408(a) of the Act and section 4975(c) (2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties In Interest and the Fund: General.* Any transactions between a party-in-interest with respect to a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not REA or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the plan, together with the interests of any other plans maintained by the same employer or employee organization in the Fund, does not exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiple Employer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan that is a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiple employer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act), or

(B) The interest of the multiple employer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(3) *Acquisitions, Sales or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to REA or to the employer, or any affiliate of REA or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither REA nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. REA, its affiliates and any collective investment fund maintained by REA or its affiliates shall be considered to be persons independent of the issuer if REA is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which REA or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which REA or its affiliate has such investment discretion.

(C) For purposed of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14)(E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1)(A), (B), (C), and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Transactions with Persons Who Are Parties in Interest With Respect to a Participating Plan Solely By Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.* Any transaction between the Fund and a person who is a party-in-interest with respect to a Participating Plan if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G) (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund, and

(B) The person is not an affiliate of REA.

(2) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not REA, any affiliate or REA, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.* Any services provided to the Fund by REA or by an affiliate of REA in connection with the management of the real property owned by the Fund, if the compensation paid to REA or its affiliate does not exceed the cost of the services to REA or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accomodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a), 406 (b) (2) and 407 (a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c) (1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of REA or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) REA or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occured if, due to circumstances beyond the control of REA or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502 (i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) (1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of REA or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

For the purposes of this exemption.

(a) The term "the Fund" shall include Trust I, Trust II and any collective investment fund that may hereafter be established, operated and managed by REA or its affiliate in essentially the same manner as Trust I and Trust II.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A) (i), (ii) and (v) of the Act

and section 414(f) (1) (A), (B) and (E) of the Code.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated.

If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assessts allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availabilty to this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

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BILLING CODE 4510-29-M

[Application No. D-2692]

Proposed Exemption for Certain Transactions Involving the Boyles Furniture Employees Profit Sharing Plan and Trust Located in High Point, N.C.

AGENCY: P&WBP, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The proposed sale (the Sale) of real property (the Property) to the Boyles Furniture Profit Sharing Plan and Trust (the Plan) by L.E. Boyles, Jr. and his wife, Rida I. Boyles (the Boyles); (2) the subsequent lease (the Lease) of the Property by the Plan to Boyles Furniture Sales, Inc. (the Employer), the sponsor of the Plan; and (3) certain guarantees by L.E. Boyles, Jr. with respect to the Property. The proposed exemption, if granted, would affect the Employer, the Boyles, the participants and beneficiaries of the Plan and other persons participating in the transactions.

DATE: Written comments are requests for a public hearing must be received by the Department on or before July 1, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2692. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with approximately 47 participants and total assets, as of July 2, 1981, of $750,000. High Point Bank and Trust Company of High Point, North Carolina is the trustee (the Trustee) of the Plan. The Employer has been in the business of retail furniture sales for twenty years with total sales for 1980 of $7,622,230. L. E. Boyles, Jr. is the president, director and owner of 67% of the outstanding stock of the Employer.

2. The Property consists of land and a building located on Main Street, High Point, North Carolina. The Employer considers the location of the Property ideal for a new store. In March of 1981, the Boyles purchased the Property for $250,000 from persons unrelated to the Employer. This purchase of the Property by the Boyles was made on an interim basis to prevent the sale of the Property to another purchaser and in contemplation of the Property being sold to the Plan by the Boyles conditioned upon the grant by the Department of this exemption request.

3. The applicants are requesting an exemption for the proposed Sale of the Property by the Boyles to the Plan and the subsequent Lease of the Property by

the Plan to the Employer. The Sale will be for a sum of $250,000 in cash. This value was determined to be the fair market value of the Property, as of May 19, 1981 by Calvin White and Associates, Inc. (White) of High Point, North Carolina, an independent real estate appraiser. All expenses related to the Sale of the Proprety will be paid by the Employer. The Lease will be a triple net lease for one term of ten years. Initially rentals under the Lease will be $3,000 per month. This value was determined by White to be the fair market rental value of the Property, as of May 19, 1981. Every three years rentals will be adjusted to reflect the then fair market rental value of the Property as determined by an independent appraiser, but in no event will the rentals be less than $3,000 per month. The applicant represents that rental income of $3,000 per month will provide the Plan with a return of approximately 15% per annum.

4. If the Trustee decides to sell the Property at any time during the period ten years subsequent to the date of the grant of this exemption and is unable to obtain an offer for $250,000, Mr. L. E. Boyles would guarantee the repurchase of the Property at $250,000. Mr. L. E. Boyles also personally guarantees for a period of five years subsequent to the date of grant of this exemption that in the event of a default under the Lease the Plan will receive monthly rentals of the greater of $3,500 or the fair market rental value of the Property. Mr. L. E. Boyles' net worth, as of November 19, 1981, was approximately $1,383,655. The Employer represents that because the Property is in a prime commercial area in High Point, North Carolina, if the Property is ever sold by the Plan or vacated by the Employer a purchaser or lessee would be easily obtainable.

5. Mr. Edward Price (Price), a licensed real estate broker in the area for the past ten years and vice president of Chambers and Price Realtors of High Point, North Carolina, has accepted appointment as special trustee with respect to this transaction. Price is independent of the parties to the transaction. Price has reviewed the transaction and represents that the Sale and Lease are in the best interests of the Plan and its participants and beneficiaries. Also, Price will monitor the rental payments made to the Plan and will be responsible for enforcing the rights of the Plan under the terms and conditions of the Lease.

6. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Price, an independent party, has determined that the Sale and the Lease are in the best interests of the Plan; (2) Price will monitor the terms and conditions of the Lease; (3) the Sales price and rentals to be paid under the Lease have been determined by an independent appraiser; (4) the rentals to be received by the Plan will be adjusted every three years to reflect the fair market rental value of the Property; (5) if the Trustee decided to sell the Property at any time during the period ten years following the date of the grant of this exemption and is unable to obtain an offer for at least $250,000, Mr. L. E. Boyles would guarantee the repurchase of the Property at $250,000; and (6) Mr. L. E. Boyles also guarantees the payment of monthly rentals to the Plan in the event of a default under the Lease for a period of five years following the grant of this exemption of the greater of $3,500 or the fair market rental value of the Property.

Notice to Interested Persons

Notice will be given to all participants and beneficiaries of the Plan within 10 days of the publication of the notice of pendency in the **Federal Register.** Notice will be made by mail or by posting on bulletin boards customarily used for notices to employees of the Employer. Such notice will include a copy of the notice of pendency and a statement informing interested persons of their right to comment or request a hearing on the proposed exemption within the period set forth inthe notice of pendency.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4875(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The Sale of the Property by the Boyles to the Plan provided the Sales price is not greater than the fair market value of the Property at the time of the Sale; (2) the Lease of the Property by the Plan to the Employer provided the terms and conditions of the Lease are at least as favorable to the Plan as the Plan could obtain in a similar transaction with unrelated parties; and (3) certain

guarantees of L. E. Boyles with respect to the Property as described herein.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of May 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-13961 Filed 5-20-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endownment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: June 14, 1982.

Time: 8:30 a.m. to 5:30 p.m.

Room: 1134.

Program: This meeting will review applications submitted for Research Materaials: Publications Panel, Division Research Programs, for projects beginning after October 1, 1982.

Date: June 18, 1982.

Time: 8:30 a.m. to 5:30 p.m.

Room: 1134.

Program: This meeting will review applications submitted for Research Materials: Publications Panel, Division Research Programs, for projects beginning after October 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call 202-724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc 82-13940 Filed 5-20-82; 8:45 am]

BILLING CODE 7536-01-M

Folk Arts Advisory Panel; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council on the Arts to be held on June 10-12, 1982, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 12th from 11:00 a.m.-12:30 p.m. to discuss policy.

The remaining sessions of this meeting on June 10th and 11th from 9:00 a.m.-5:30 p.m. and June 12th from 9:00 a.m.-11:00 a.m. and 12:30 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Oficer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 14, 1982.

[FR Doc. 82-13957 Filed 5-20-82; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel: Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub.L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

Date: June 8-9, 1982.
Time: 9:00 a.m. to 5:30 p.m. on June 8, 1982; 9:00 a.m. to 12:00 noon on June 9, 1982.
Room: 807.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of Public Programs, for projects beginning after September 1, 1982.
Date: June 10-11, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 911.
Program: This meeting will review applications submitted for the Youth Projects Program, Division of Special Programs, for projects beginning after October 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the ageny by grant applicants. Because the proposed meetings will consider information that is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings,

dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call 202–724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–13839 Filed 5–20–82; 8:45 am]

BILLING CODE 7536-01-M

Music Advisory Panel (Policy); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Policy) to the National Council on the Arts will be held on June 10–11, 1982, from 9:00 a.m.–5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 10th from 9:00 a.m.–5:30 p.m. and on June 11th from 9:00 a.m.–1:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on June 11th from 1:00 p.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 14, 1982.

[FR Doc. 82–13958 Filed 5–20–82; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Behavioral and Neural Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Behavioral and Neural Sciences Subpanel for Anthropology (Radiocarbon competition).
Date and Time: June 14, 1982; 9:00–6:00 p.m.
Place: National Science Foundation, 1800 G Street, N.W., Room 628.
Type Meeting: Closed.
Contact Person: Dr. John E. Yellen, Program Director for Anthropology NSF, Room 320, Washington, D.C. 20550.
Summary of Minutes: May be obtained from the Contact Person, at the above address.
Purpose of Committee: To provide advice and recommendations concerning NSF support for radiocarbon laboratory development for archaeological application.
Agenda: The purpose of the closed meeting is to review and evaluate radiocarbon dating proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature—including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c) Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

May 18, 1982.

[FR Doc. 82–13890 Filed 5–20–82; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Arkansas Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. NPF–6 issued to Arkansas Power and Light Company (the Licensee), which changed the list of conditions in the body of the license for operation of Arkansas Nuclear One, Unit No. 2, located in Pope, County, Arkansas. The amendment is effective as of its date of issuance.

The amendment modifies the body of the license by deleting conditions which have been satisfied by the completion of verification testing relating to the operation of the reactor protection system's core protection calculator system.

The Commission has made appropriate findings as required by Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, (1) see Amendment No. 31 to License No. NPF–6, and (2) the Commission's related Safety Evaluation. Both of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Arkansas Tech University , Russellville, Arkansas. A copy of these items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director of Licensing.

Dated at Bethesda, Maryland this 12th day of May 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82–14009 Filed 5–20–82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–366]

Georgia Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. NPF–5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric

Authority of Georgia, and City of Dalton, Georgia, which revised Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (the facility) located in Appling County, Georgia. The amendment is effective as of the date of issuance.

These changes to the TSs involve a surveillance requirement related to the safety-relief valve tail-pipe pressure switch setpoint, implementation of inerting of Unit No. 2, and replacement of the recirculation pump fire protection sprinkler system by the inerted drywell atmosphere.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 515(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated April 23, 1982, and April 29, 1982, as supplemented May 3, 1982, (2) Amendment No. 29 to License No. NPF–5, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of May 198.

For The Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing

FR Doc. 82–14010 Filed 5–20–82; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., et al; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 73 to Facility Operating License No. NPF–1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licenesees), which revised Technical Specifications for operation of Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment revises the surveillance requirements for the pressurizer power-operated relief valves.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 10, 1982, (2) Amendment No. 73 to License No. NPF–1 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Multnomah County Library, Social Science and Science Department, 801 SW. 10th Avenue, Portland, Oregon 97205. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of May 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82–14011 Filed 5–20–82; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–443/444]

Public Service Co. of New Hampshire, et al.;[1] Availability of the Draft Environmental Statement for Seabrook Station, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (NUREG–0895) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Seabrook Station, Units 1 and 2, located in Rockingham County, New Hampshire.

This Draft Environmental Statement (DES) addresses the aquatic, terrestrial, radiological, social and economic costs and benefits associated with normal station operation. Also considered are station accidents, their likelihood of occurrence and their consequences.

This DES is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C., and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883. The DES is also being made available at the Office of the Coordinator of Federal Funds, Room 124, State House, Concord, New Hampshire 03301 and at the Strafford Rockingham Regional Council, 1 Water Street, Exeter, New Hampshire 03833. Request for copies of the DES should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Technical Information and Document Control.

Interested persons may submit comments on this DES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the DES

[1] The current applicants for the operating licenses for Seabrook Station are: Bangor Hydro-Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Commonwealth Energy Systems, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light & Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, The United Illuminating Company, and Vermont Electric Cooperative Inc.

(other local agencies may obtain these documents upon request).

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Exeter Public Library. Comments are due by July 6, 1982. After consideration of the comments submitted on the DES, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the **Federal Register.**

Comments on the Draft Environmental Statement from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of May 1982.

For the Nucear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-13790 Filed 5-20-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., et al. (Beaver Valley Power Station, Unit No. 1); Exemption

Correction

In FR Doc. 82-12783 appearing on page 20228 in the issue of Tuesday, May 11, 1982, make the following correction:

On page 20230, first column, second complete paragraph, in the fifth line. "will relieve" should have read "will not relieve".

BILLING CODE 1505-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on June 7, 1982, at EPRI (Electric Power Research Institute), 3412 Hillview Avenue, Palo Alto, CA in the Conference Center behind Building No. 1. The Subcommittee will review the status of the steam generator problems and its probable resolutions with the Steam Generators Owners Group and Industry. In addition, the Subcommittee will review the TMI-1 steam generator concerns.

In accordance with the procedures outlined in the Federal Register on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to the public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information and industrial security. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4.) To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Monday, June 7, 1982—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., DST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necesssary to close some portions of this meeting to protect proprietary information and industrial security. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 18, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-14113 Filed 5-20-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 18744; (SR-NSCC-82-5)]

National Securities Clearing Corporation ("NSCC"); Order Approving Proposed Rule Change

May 17, 1982.

On March 26, 1982, NSCC filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that amends NSCC's current rules concerning admission, participants, and issues of securities, and specifies standards and procedures under those rules. More specifically, these rules and the standards and procedures thereunder include (i) minimum financial and operational standards for applicants to, and participants in, NSCC; (ii) guidelines for requiring applicants and participants that do not meet those minimum standards to provide NSCC with specified further assurances; and (iii) guidelines for monitoring securities issues that NSCC believes are volatile or otherwise present greater than normal financial risk to NSCC and its participants. NSCC made minor editorial changes to the proposal in a letter dated May 14, 1982.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of a Commission Release (Securities Exchange Act Release No. 18619, April 5, 1982) and by publication in the **Federal Register** (47 FR 15471, April 9, 1982). No letters of comment were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13986 Filed 5-20-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2039]

Arkansas; Declaration of Disaster Loan Area

Faulkner County in the State of Arkansas constitutes a disaster area as a result of damage caused by severe storms and tornadoes which occurred on April 2, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 9, 1982, and for economic injury until February 10, 1983, at the address below:

Small Business Administration,
District Office,
320 West Capitol Ave.,
Suite 601,
Little Rock, Arkansas 72201.

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere, 15⅝%
Homeowners without credit available elsewhere, 7⅞%
Businesses with credit available elsewhere, 16½%
Businesses without credit available elsewhere, 8%
Businesses (EIDL) without credit available elsewhere, 8%
Other (Non-Profit Organizations including Charitable and Religious Organizations), 11½%

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96–302.

Information on recent statutory changes (Pub. L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 10, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82–13986 Filed 5–20–82; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 05/05–0164]

SBC Resources, Ltd.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of SBC Resources, Ltd. (SBC), 203 Huron View Boulevard, Ann Arbor, Michigan 48103, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The officers, directors and more than 10% owners of the corporate general partner and the individual general partners are as follows:

Name and address	Title and relationship	Percent of profits and losses
SBC Management, Inc., 230 Huron View Blvd., Ann Arbor, Michigan 48103.	Corporate General Partner.	1.00.
Richard M. Wood, 230 Huron View Blvd., Ann Arbor, Michigan 48103.	General Partner of Applicant, President, Treasurer, Director and 50 percent owner of SBC Management, Inc.	9.50.
L. J. Johnson, 2705 Lowell Road, Ann Arbor, Michigan 48103.	General Partner of Applicant, Chairman, Director and 50 percent owner of SBC Management, Inc.	9.50.
Rex E. Jensen, 2209 South Circle Drive, Ann Arbor, Michigan 48103.	Secretary of SBC Management, Inc.	None.

SBC Management, Inc. (SBC Management), is a Michigan Corporation which was formed August 13, 1981, for the sole purpose of serving as a Corporate General Partner to SBC. SBC Management has no operating history and currently has no substantial assets.

It is anticipated that the Applicant will begin operations with an initial private capital ranging from $1,585,000 to $2,175,000 depending upon the success of a private placement of limited partnership units to be offered in units of $50,000 each. Subject to waiver by the General Partners, the minimum required investment will be three (3) units for a total of One Hundred Fifty Thousand Dollars ($150,000) and the maximum allowable investment will be confined to less than ten percent (10%) of the Partnership's private capital.

The Applicant will conduct its operations in the State of Michigan.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accord with the Act and Regulations.

Notice is hereby given that any person may (not later than 15 days from the publication of this Notice) submit written comments on the proposed company to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Ann Arbor, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 12, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82–13987 Filed 5–20–82; 8:45 am]

BILLING CODE 8025–01–M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The list is broken into 2 categories listing a new form, and a revision. Each entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington DC, 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Gwen Pla, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–6880.

DATES: Comments on forms should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 7, 1982.

Robert P. Nimmo,

Administrator.

New

(1) Department of Medicine and Surgery.

(2) Agent Orange Follow-up Activities.

(3) VA Forms 10–0021 (NR) and 10–0021.

(4) Nonrecurring.

(5) Individuals—veterans who have received an Agent Orange examination at VA medical centers.

(6) 70,000.

(7) 17,500.

(8) Not applicable under section 3504(h), Pub. L. 96–511. The Agent Orange Registry form, consisting of an address update and follow-up questionnaire, will secure information (current address and examination follow-up questions) to be utilized relative to the review of possible adverse health impact of exposure to Agent Orange on those veterans with service in Vietnam who voluntarily reported to the VA for examination and medical follow-up.

Revision

(1) Department of Veterans Benefits.

(2) Monthly Report on Number of Inspection, Approval and Supervisory Visits to Schools and Training Establishments Furnishing Courses of Education and Training Under Chapter 36, Title 38 U.S.C.

(3) VA Form 22–7398.

(4) Monthly.

(5) States—agencies of the States authorized to approve courses of education and training of veterans.

(6) 900.

(7) 900.

(8) Not applicable under section 3504(h), Pub. L. 9–511. Authorized by 38 U.S.C. section 1774c. This form is used by the State approving agencies to report work performed in accordance with provisions of yearly reimbursement contracts.

[FR Doc. 82-13826 Filed 5-20-82; 8:45 am]

BILLING CODE 8320-01-M

Barrington Recreation Center—Expansion by the City of Los Angles on Land Leased From the Brentwood Veterans Administration Medical Center, Los Angles, California; Finding of No Significant Impact

The Veterans Administration has assessed the potential environmental impacts that may occur as a result of the development of a public recreation area by the City of Los Angles on 12 acres leased from the Brentwood Veterans Administration Medical Center. The project site is located in Brentwood Community, just east and parallel to the 400 block of Barrington Avenue. The action will include: two multipurpose sports fields, jogging trails, 140 space parking area and portable restroom facilities.

The findings of the assessment conclude that the development of this property will not generate significant and/or adverse impacts on the environment.

With respect to traffic impacts, mitigation measures have been incorporated into the project scope of work to accommodate park patrons and neighborhood residents.

Noise, a concern of residents living in the vicinity of the site, will be generated during scheduled uses of the fields. However, any noise resulting from activities at the site will not exceed ambient noise levels, and will fall within the range of human tolerance.

Past disposal of wastes, consisting of low level medical radioisotopes, such as those used in radiology, nuclear medicine and laboratory research projects is an issue of concern among community and public officials. This issue was given extensive coverage in the environmental assessment. In evaluating the radiation hazards associated with converting a disposal site into a public recreation area the following groups or agencies conducted extensive testing specific to their area of expertise: 1. American Board of Health Physics. 2. Nuclear Regulatory Commission. 3. City of Santa Monica Water Company. 4. Hazardous Materials Management Section of the California Department of Health Services. 5. Nuclear Regulatory Commission's Uranium Fuel Licensing Branch. The results of the radiological assessment indicate that the overriding consensus among experts in the fields of nuclear medicine and radiation health and safety was that the site will not require any land use or public use restrictions. As added safety, major excavation activities will not occur during site preparation. Soil will be brought onto the site and spread, thereby increasing the depth of the buffer zone over the buried wastes.

In addition, construction dust and visual impacts will exist during development. These will be mitigated as necessary to insure minimal impacts on the human and natural environment.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Environmental Affairs Staff (005B), Room A14, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Environmental Affairs Staff (005B), 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: May 14, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-13861 Filed 5-20-82; 8:45 am]

BILLING CODE 8320-01-M

Department of Veterans Benefits; Revised Schedule of Cost Reviews

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular A–76, Policies for Acquiring Commercial or Industrial Products or Servcies Needed by the Government, the Veterans Administration established on page 41869 of the **Federal Register** of August 18, 1981, and amended on page 52475 of the **Federal Register** of October 27, 1981, a schedule of cost comparison reviews for services required by various field stations within the Department of Veterans Benefits. This notice temporarily delays implementation of the previously published review schedules with the exception of seven studies specified herein.

The delay is to allow reevaluation of government requirements for the functional areas indicated. The studies cited herein are in progress and will continue to completion.

FOR FURTHER INFORMATION CONTACT: Robert A. Jones, Chief, Records Management and Supply Liaison Division, Department of Veterans Benefits (232B), VA Central Office, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–2972.

Dated: May 14, 1982.

Robert P. Nimmo,

Administrator.

Functional area: Keypunch.
Field station: White River Junction, VT. Review date: December 15, 1981.
Functional area: Centralized Transcription Activities.

Field Station and Review Date

Albuquerque, NM; December 15, 1981.
Houston, TX; December 15, 1981.
Manchester, NH; December 15, 1981.
Reno, NV; December 15, 1981.
Seattle, WA; December 15, 1981.
Togus, ME; December 15, 1981.

[FR Doc. 82-13982 Filed 5-20-82; 8:45 am]
BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 47, No. 99
Friday, May 21, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, May 25, 1982.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed Contract Market Designation of Leaded and Unlead Gasoline—Chicago Board of Trade
Foreign Traders Discussion

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-758-82 Filed 5-19-82; 12:41 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Tuesday, May 25, 1982.

PLACE: 2033 K Street NW., Washington, D.C., Fifth floor hearing room.

STATUS: Closed.

MATTER TO BE CONSIDERED:

Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-759-82 Filed 5-19-82; 8:45 am]

BILLING CODE 6351-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Emergency Special Open Meeting, Tuesday, May 18, 1982

The Federal Communications Commission held an Emergency Special Open Meeting on Tuesday, May 18, 1982 on the subject listed below, in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda Item No. and Subject

Common Carrier—1—Processing of Pending Space Station Applications in the Domestic Fixed Satellite Service.

The Prompt and orderly conduct of Commission business did not permit announcement of this matter prior to the meeting.

Action by the Commission May 18, 1982. Commissioners Fowler, Chairman; Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item with less than 7-days notice.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 18, 1982.

William J. Tricarico,

Secertary, Federal Communications Commission.

[S-760-82 Filed 5-19-82; 2:59 pm]

BILLING CODE 6712-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 21676, Wednesday, May 19, 1982.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGE IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled for Thursday, May 20, 1982.

Perfecting of Security Interest in U.S. Government Securities Collateralizing Retail Repurchase Agreements

[No. 35, May 19, 1982.]

[S-757-82 Filed 5-19-82; 10:10 am]

BILLING CODE 6720-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Week of May 10, 1982 (Changes) and Week of May 17, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, May 20* (Additional item):

9:00 a.m.:
Discussion of Management-Organization and Internal Personnel Matters (closed—Exemptions 2, 6)

Tuesday, May 25:

10:00 a.m.:
Briefing on Human Factors Society Report (public meeting)

Wednesday, May 26:

10:00 a.m.:
Analysis of Licensing Board Decision for Susquehanna-1 Operating License (Tentative) (closed—Exemption 10)
1:30 p.m.:
Briefing on Investigatory Matters (closed—Exemption 5)

Thursday, May 27:

10:00 a.m.:
Discussion of Management-Organization and Internal Personnel Matters (closed—Exemptions 2 and 6)
1:30 p.m.:
Analysis of Licensing Board Decision for San Onofre Units 2 and 3 (Seismic) (closed—Exemption 10)
3:00 p.m.:
Affirmation/Discussion Session (public meeting)
Affirmation and/or Discussion and Vote:
a. Final Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations Relating to Low Power Operation
b. Proposed Rulemaking Accreditation of Qualification Testing Organizations

Friday, May 28:

10:00 a.m.:
Discussion of Enforcement Action (closed—Exemption 5) (postponed from May 21)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

May 18, 1982.

[S-761-82 Filed 5-19-82; 3:27 pm]

BILLING CODE 7590-01-M

6

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Close Meeting

During its May 11, 1982 meeting, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting. The portion to be closed was to involve a discussion concerning the procurement of services to study Postal Service EEO practices.

The Board determined, pursuant to 5 U.S.C. 552b(c)(9)(B), that the portion of the meeting to be closed was exempt from the open meeting requirement of the Sunshine Act on the grounds that the public interest did not require otherwise and that the portion to be closed was likely to disclose information whose premature disclosure was likely to significantly frustrate the negotiation of the proposed contract.

The members of the Board voting in favor of closing this portion of the meeting were: Messrs. Babcock, Benson, Bolger, Camp, Hardesty, Mrs. Hughes, Messrs. Jenkins, McKean, and Sullivan.

Prior to the May 11 meeting, the Board of Governors gave due notice ot its intention to hold the meeting, the notice and the proposed agenda for the meeting having been published in the **Federal Register** on May 4, 1982 (47 FR 19286). On May 11, the Board determined by a unanimous vote that a change in the earlier plan to conduct this portion of the meeting in the open was required and that no earlier announcement of the change was possible.

In accordance with 5 U.S.C. 552b(f)(1), the Acting General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting to be close might properly be closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B).

The persons who attended this closed portion of the meeting were Board members Babcock, Benson, Bolger, Camp, Hardesty, Hughes, Jenkins, McKean, and Sullivan; Assistant Secretary to the Board Sanders; and counsels to the Board Califano and Geolot.

W. Allen Sanders,

Assistant Secretary.

[S-756-82 Filed 5-19-82; 9:57 am]

BILLING CODE 7710-12-M

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federal register

Friday
May 21, 1982

Part II

Department of Labor

Mine Safety and Health Administration

Criteria and Procedures for Proposed Assessment of Civil Penalties

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) existing procedures for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Act). These changes restructure the civil penalty system to permit MSHA and the mining community to refocus their safety and health efforts on more serious mine hazards. MSHA believes that these revisions also provide more effective incentives for the prevention of conditions and practices that may result in injury or illness to the Nation's miners.

EFFECTIVE DATE: May 21, 1982.

Effect on prior regulations: The prior regulations (30 CFR Part 100) remain in effect for the processing of all citations and orders where an initial review under § 100.5(b) has been issued before May 21, 1982.[1]

FOR FURTHER INFORMATION CONTACT: Lawrence Beeman, Acting Director, Office of Assessments, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1484.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Under sections 105(a) and 110 of the Federal Mine Safety and Health Act of 1977 (Act), MSHA is required to assess a civil penalty for all violations of the Act and mandatory safety and health standards.

On May 30, 1978 (43 FR 23514), MSHA published a final rule which governed the proposed assessment of civil penalties under the Act. This final rule included a "formula system" for determining most proposed penalties.

At the time of promulgation of the 1978 final rule, MSHA stated that the rule would be reevaluated to determine the need for possible changes. This review process was initiated during July 1979 when MSHA announced the first phase of its evaluation by soliciting public comments and recommendations. After evaluating the comments, MSHA developed and published on November 7, 1980, a proposed rule to revise 30 CFR Part 100 (45 FR 74444). The proposal represented an effort to provide more effective incentives for the prevention of conditions and practices that may result in injury or illness to miners. Following the publication of the proposed rule, interested persons were given 90 days to submit written comments and objections, and to request public hearings.

On January 15, 1982 (47 FR 2335), MSHA published a notice of public hearing which outlined the major issues raised during the rulemaking. In the notice, MSHA included refinements to the proposed single penalty [2] and good faith provisions to permit the mining community to refocus its resources on the more serious safety and health hazards and to provide increased incentives for mine operators to correct hazardous conditions.

During February 1982, public hearings were held in Pittsburgh, St. Louis, and Salt Lake City. All three hearings were well attended by representatives from all segments of the mining community. Transcripts of the proceedings were taken and made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements or data until March 5, 1982, when the record was closed. During this rulemaking process, MSHA has received and reviewed over two hundred written comments and statements from interested parties.

II. Discussion and Summary of the Final Rule

A. General Discussion

In the legislative history of the Act, Congress expressed its belief that mandatory civil penalties were one of the mechanisms necessary to obtain maximum inducements for compliance with the Act. The statutory civil penalty system establishes six criteria for consideration in determining appropriate penalties for violations of the Act. They are:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

A formula system for proposing civil penalties was first established in 1974 for use by MSHA's predecessor agency, the Mining Enforcement and Safety Administration (MESA). For each violation, the formula system assigns specific numerical point values to the statutory criteria which are then converted to a dollar amount, using a prescribed penalty conversion table. The resulting dollar amount constitutes the proposed penalty. In 1978, revisions were made which reflected the expressed intention of Congress in the Act. As a result of those revisions, the formula was adjusted and the assessment procedures were modified to improve the timeliness of administrative decisions.

In the preamble to the 1978 rules, MSHA stated that once experience had been gained under the Act, the rules would be evaluated to determine the need for possible changes. On July 30, 1979, MSHA announced that such an evaluation had begun and solicited public comments and recommendations. Many written comments were received and several informal meetings with interested persons were held to discuss possible revisions to the rules. After carefully considering this public input, a proposal was developed.

In this rulemaking, MSHA has sought to accomplish four basic objectives: Improved fairness in the application of the statutory criteria; increased incentives for operators to comply with the Act; a refocusing of safety and health efforts toward the more serious mine hazards; and a streamlining of the civil penalty process. MSHA believes that the final rule achieves these goals.

The major elements of the final rule are:

(1) The creation of a $20 single penalty for less serious violations;

(2) The awarding of greater good faith credit for timely abatement;

(3) A potential for increased penalties for more serious violations; and

(4) The establishment of separate formula tables for independent contractors who violate the Act.

MSHA received a broad range of comments on the proposal. While many commenters supported the proposal, others objected. Those who raised objections were primarily concerned that it would result in a lessening of MSHA's commitment to safety and

[1] Section 100.5(b) of the prior rule: "The Office of Assessments shall make an initial review of the citation or order and shall immediately serve, by regular mail, a copy of the results of the initial review, including the formula computations made by the Office, upon the party to be charged and the miners or their representatives at the mine."

[2] In the proposal, § 100.4 was designated as the "minimum penalty assessment" procedure.

health. MSHA has carefully evaluated all of the concerns and objections to the proposal. The Agency's primary purpose will continue to be the reduction of injuries, illnesses and fatalities in the mines, including the prevention and early correction of hazardous conditions. MSHA has refocused safety and health efforts on those hazards which have the greatest impact on the safety and health of miners, and has established more serious consequences for actions associated with noncompliance.

MSHA believes that this final rule is responsive to the commenters' concerns. MSHA has adjusted the proposal to reflect many of those concerns, and has clarified elements of the proposal with respect to the obligations and responsibilities of both MSHA and the mining community. The final rule focuses attention toward more serious violations while still requiring abatement of all violations. MSHA believes that this final rule will result in improved miner safety and health.

In an effort to improve safety and health through cooperative efforts, MSHA is reorganizing its management responsibilities. One aspect of this reorganization is to provide District Managers with all the resources necessary to develop a comprehensive safety and health program. Part of this process involves a safety and health conference which is intended to provide an opportunity for full discussion by all parties on the issues related to the safety and health inspection.

B. Section-By-Section Analysis of the Final Rule

The following section-by-section analysis discusses the final rule and the major issues raised by the comments and objections.

Section 100.1 Scope and Purpose. This section explains that Part 100 sets forth the criteria and procedures used in the proposed assessment of civil penalties. The section also establishes that the purpose of this rule is to provide fair and equitable procedures for the application of the statutory criteria indetermining proposed penalties, and to maximize the incentives for mine operators to prevent and correct hazardous conditions. The final rule for this section is consistent with the proposal, while retaining the prior rule's commitment to the prompt and efficient processing and collection of civil penalties.

Commenters questioned whether this reorientation would result in a lessening of safety and health enforcement. MSHA's use of the phrase "fair and equitable" in this section is intended to convey and approach to enforcement which reflects an appropriate response to the seriousness of the violation.

Section 100.2 Applicability. This section outlines the application of the rule. The proposal made a wording change which eliminated unnecessary language. The final rule differs from the prior rule in that editorial changes have been made to conform to the Agency's reorganized management functions.

Several commenters suggested that MSHA include a statement in the final rule which would limit to two years the time MSHA would have to apply the civil penalty regulations to violations. MSHA believes it is unnecessary to incorporate such a limitation provision into the final rule. All citations for violations of the Act will be processed as quickly as possible and without undue delay.

Section 100.3 Determination of Penalty; Regular Assessment. 100.3(a) General. This provision establishes the basic elements in the formula for the application of the statutory criteria to those violations which are not processed under the single (minimum) penalty assessment (§ 100.4) or special assessment (§ 100.5) procedures. The formula is an administrative mechanism used by MSHA to determine the appropriate penalty by applying the statutory criteria to the particular facts surrounding a violation. When a proposed penalty is contested, neither the formula nor any other aspect of these regulations applies. If the proposed penalty is contested, the Mine Safety and Health Review Commission exercises independent review, and applies the six statutory criteria without consideration of these regulations.

The proposal made no changes to the prior rule nor were any significant changes suggested by public comments. Therefore, the general provisions of the regular assessment section remain unaltered except for an editorial change in the last paragraph making the good faith criterion (§ 100.3(f)) computation consistent with other changes in the final rule.

100.3(b) Appropriateness of the Penalty to the Size of the Operator's Business. The purpose of this criterion is to assure that the size of a business is appropriately considered when determining the amount of a proposed penalty.

The prior rule contained separate size tables for coal mines, metal and nonmetal mines, and controlling companies. Metal and nonmetal mines were measured by annual hours worked, while coal mines were measured by tonnage produced. Up to 10 points could be assigned for individual mine size; and five points could be assigned based on the size of the controlling entity. MSHA proposed retaining the prior rule's measure of size. However, a separate size table was proposed for independent contractors.

Several commenters opposed the use of controlling entity to determine mine size stating that each operating mine should be considered regardless of ownership control. Further, they stated that this approach would result in a more equitable computation of size since each mine would be considered on its own merit. Other commenters believed that the size of the controlling entity is an appropriate aspect of mine size.

MSHA believes that business judgments affecting health and safety may be made at various levels of a business structure and that civil penalties should encourage management at all levels to respond positively to health and safety concerns. In the legislative history of both the Act and its predecessor statute, Congress expressed an intent to place the responsibility for compliance with the Act on those who control or supervise the operation of mines as well as on those who operate them. S. Rep. No. 91–411, 91st Cong. 1st Sess. 39 (1969); S. Rep. No. 95–181, 95th Cong. 1st Sess. 40 (1977). Upper level management decisions such as those affecting capital expenditures, the basic nature and scope of a corporate safety and health program, the hiring of top mine management officials, and other policy matters have a profound effect upon safety and health conditions at individual mines. MSHA believes that civil penalties should therefore be structured to influence all levels of decisionmaking. Accordingly, the final rule retains the concept of controlling entity as an aspect of the size criterion of the formula.

MSHA has changed the term "controlling company" to "controlling entity" to clarify that this aspect of the size criterion can be applied to anyone who has a substantial interest in a mine, including an individual.

Another issue raised by the comments was whether total hours worked or tonnage produced is a better indicator of coal mine size. Several commenters suggested that the use of hours worked would more accurately measure coal mine size and would be consistent with the method for determining the size of metal and nonmetal mines. Other commenters believed that tonnage produced should continue to be used to determine coal mine size. The principal purpose of the size criterion is to aid in assuring that the amount of the penalty

is an appropriate economic incentive for future compliance by the operator. Over the past several years, the size of coal mining companies has been measured by tonnage produced, and MSHA has found this method to be a reasonable indicator for the size of coal operations. After review of the Agency's experience and public comments, the final rule retains tonnage produced as the method of measuring the size of coal operations.

For metal and nonmetal mining operations, tonnage produced is not usually a useful indicator of size because of the vast differences in the commodities mined within that segment of the mining industry. In some instances, large volumes of material are mined for only a few ounces of a marketable commodity; in others, nearly one hundred percent of the mined material is marketable. In addition, the costs of production and the market prices may vary markedly within the metal and nonmetal industry. MSHA believes that an annual tonnage measurement of metal and nonmetal operations would not enable the Agency to fairly evaluate the economic impact of the proposed penalty on each operator. It is MSHA's experience that annual hours worked is the best guide for measuring the size of metal and nonmetal operations and that this guide can be applied fairly in this segment of the mining industry. Therefore, the final rule retains hours worked as a measure of metal and nonmetal mine size.

Under the prior rule, violations involving independent contractors were handled through the special assessment procedure. The final rule retains the proposed new size table for independent contractors, consistent with MSHA's jurisdiction over independent contractors (30 CFR Part 45). Most commenters favored this aspect of the size criterion, which enables MSHA to more effectively integrate independent contractors into the entire penalty assessment process. The new table measures the size of independent contractors by annual hours worked at all mining operations, regardless of the commodity being mined. MSHA believes that the annual hours worked at mines appropriately reflect the comparative size of independent contractors.

100.3(c) History of Previous Violations. This criterion is designed to assure that appropriate consideration is given to an operator's prior safety and health record.

Under the prior rule, up to 15 points could have been assessed based upon the average number of violations assessed at the mine per inspection day during the preceding 24-month period. An additional five points could have been assigned based upon the average number of violations assessed at the mine per year in the preceding 24 months. The mine operator's history of previous violations consisted of all assessed violations which had not been vacated or dismissed, and included those under appeal.

The proposal established two schedules which assessed a maximum number of 20 points for violation history. For mine operators, the schedule measured a mine's average violations per inspection day during the preceding 24-month period. For independent contractors, a separate schedule measured the average number of violations assessed per year in the preceding 24 months. In addition, the proposal deleted the prior rule's schedule which allocated up to five penalty points for the average number of violations per year. The proposal also provided that only violations which have become final would be included in the computation of history. However, violations which received the single assessment under § 100.4 and were paid in a timely manner would not be included as part of history.

Many commenters agreed that MSHA should not include as part of history those violations which are still in the adjudicatory process and may ultimately be dismissed or vacated. Other commenters stated that all violations including those under appeal should be included in history. MSHA believes that a greater measure of fairness is attained if history points are based only upon those violations which have been finally adjudicated. Some commenters suggested that such a change would cause operators to litigate more citations for the purpose of creating a more favorable history record. The Agency does not expect that this change in the rule will result in an increased number of contested citations. Therefore, under the final rule, only violations which have been paid or finally adjudicated will be considered in determining the operator's history of violations.

Some commenters supported and others objected to the exclusion of single penalty violations from the operator's history. MSHA believes that only violations which involve a reasonable likelihood of reasonably serious injury or illness should be included in an operator's history of violations. This would allow the history criterion to more accurately reflect the frequency of violations which involve greater hazards to miners. Single penalty violations have minimal impact on safety and health and should not be included in the operator's history. Therefore, the final rule excludes violations which receive the single penalty and which are paid in a timely manner from consideration in determining history of violations.

There are numerous comments with respect to the term "inspection day." Some commenters urged MSHA to base the determination of an inspection day not only on the time spent by the Authorized Representative of the Secretary (AR), but also by all other persons accompanying an AR who may identify violations, such as inspector-trainees or miners' representatives. Since an AR has received the requisite training to conduct inspections and identify violations and is the only individual who may issue citations or orders, it is MSHA's view that it would be inappropriate to consider the time of other persons accompanying an AR. Therefore, MSHA will consider only the time of Authorized Representatives of the Secretary when computing the number of inspection days.

Points assigned under this criterion are based upon a review of the average number of assessed violations at a mine during a preceding 24-month period. Several commenters suggested that in evaluating history of previous violations, MSHA should review a period of 12 months instead of 24 months. These commenters maintained that considering a shorter period of 12 months would better reflect changes in a mine's safety and health performance. MSHA has considered these comments and believes that such an approach would not be appropriate, particularly for mines which are inspected on a less frequent basis. Information accumulated over a shorter period may not provide sufficient data to accurately reflect safety and health trends in many mining operations. Therefore, MSHA has retained 24 months as the period to be reviewed for both history tables.

Some commenters objected to the proposed deletion of the schedule which would allocate five points based on the average number of assessed violations per year when determining history of violations. Others agreed that it should be eliminated, indicating the schedule tended to produce higher penalty points for large mines because of their size without fairly correlating to their relative overall safety. Commenters who suggested that the five point schedule be dropped also recommended that these points be added to the 15-point schedule for the average number of violations per inspection day in the preceding 24 months. The final rule includes a 20-point table for average number of violations per inspection day as the

basis for determining a production operator's history of previous violations. MSHA believes that this change reflects a more accurate picture of a mine's history of violations and represents a more consistent method for determining history points.

Under the proposed schedule for evaluating a mine's average number of violations per inspection day in the preceding 24-month period, the maximum of 20 points would be assigned for an average of over 2.1 violations per inspection day. This average is a statistical extension of the 1.7 violation average used as a maximum in the prior 15 point schedule. Several commenters suggested that 2.1 violations per inspection day is an unrealistically low average and should be increased. MSHA has considered the potential impact of this aspect of the size criterion, and believes that the revised table will be a fair and effective method of evaluating a production operator's history of violations for purposes of civil penalty assessments.

In contrast to production operators, the nature of most services performed by independent contractors at mines does not lend itself to a violations per inspection day table. As a result, this rule establishes a 20-point table based upon the average number of violations assessed per year for independent contractors. There were no significant objections to this aspect of the proposal. Since MSHA inspections often encompass both operations at the same time, the complexities of separating inspection time for purposes of computing days are substantial. While independent contractor activities are often closely integrated into the overall mining operation, they frequently involve only a fraction of the time spent in an inspection day. Therefore, MSHA believes that the violation per inspection day table would not be fair and equitable for independent contractors.

Some commenters believed that an operator's safety and health performance record should also be incorporated as a factor in determining a proposed penalty. While this concept has some merit, MSHA believes that a more complete evaluation is necessary to determine its appropriate role in the assessment of civil penalties. Therefore, this concept is not adopted at this time.

100.3(d) Negligence. The negligence criterion is designed to evaluate an operator's actions relative to the existence of a violation. Under the prior rule, a total of up to 25 points could be assessed for negligence; from one to 20 points for ordinary negligence, and from 21 to 25 points for gross negligence.

In the proposed rule, MSHA revised the language of this section to clarify the concept of negligence and identify some of the factors to be considered. The proposed rule also stated that an operator's exercise of care should increase with the risk posed to the miners. Therefore, the negligence of an operator would be evaluated based on the degree of care exercised by the operator and the danger to miners. Both the prior rule and the proposal provided for the assignment of one to 20 penalty points for negligence if the operator failed to take reasonable measures to prevent or correct a condition or practice which was known or should have been known to exist. Extremely serious instances of negligence received from 21 to 25 points.

Some commenters objected to the proposal's consideration of gravity in evaluating the negligence criterion. These commenters stated that the risk posed by a violation was already accounted for under the gravity criterion, and that the proposal unfairly considered the gravity of the violation a second time.

For purposes of evaluating the negligence of an operator, MSHA believes that a general recognition of the risk involved in a violation is relevant to determining the care to be exercised by the operator in preventing the violation and protecting the miners from the hazard posed. MSHA does not believe that further consideration of the gravity involved in a violation is necessary for evaluating negligence. The regular assessment procedure is generally applicable only to violations which involve a reasonable likelihood of a reasonably serious injury or illness. MSHA believes that mine operators must exercise the highest degree of care in preventing these serious violative conditions or practices and in protecting miners from safety and health hazards.

Commenters also desired to see a more even division of the potential 25 penalty points. Other commenters expressed the view that the concept of negligence for purposes of civil penalty assessment needed to be clarified.

The final rule provides five categories for evaluating the degree of negligence involved in a violation. The five categories are: "No negligence," "low negligence," "moderate negligence," "high negligence," and "reckless disregard." In developing these categories, MSHA has responded to the concerns of commenters that further clarification of the allocation of negligence points was necessary and that due consideration be given to all factors bearing on the operator's negligence.

Each category reflects the operator's efforts with respect to preventing the violation and assigns negligence points on this basis. "No negligence," which contributes no points to a civil penalty assessment, is defined as conduct characterized by diligence, when the operator neither knew nor should have known of the violative condition or practice. "Low negligence" is defined as circumstances where the operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances. This category is assigned ten points in recognition of the seriousness of the violation and the absence of diligence. Generally, only violations which are reasonably likely to result in a reasonably serious injury or illness are subject to the regular assessment process and specific application of the negligence criterion. Negligence which is accompanied by some mitigation is classified as "moderate" and would receive 15 points. Negligence without mitigating circumstances is classified as "high" and would receive 20 points. Where an operator recklessly disregards compliance, 25 penalty points would be assigned.

MSHA has developed these categories of negligence, which include mitigating circumstances, to allow the inspector the flexibility to consider all of the facts and circumstances surrounding a violative condition or practice. For example, an inspector may determine that the negligence involved is low or moderate where there is a reasonable likelihood of a reasonably serious injury occurring from the condition or practice because the operator, although negligent, has taken measurable steps to prevent the violation or protect miners from exposure to the hazard. Mitigating circumstances may include, but are not limited to, actions which an operator has taken to prevent, correct or limit exposure to a violative condition or practice. An operator's action could be taken into consideration to the extent that it directly relates to the specific violation cited. In making decisions with respect to the nature or existence of mitigating circumstances, inspectors will exercise independent judgment based on the circumstances surrounding the violation. MSHA believes that this allows flexibility to assess the degree of negligence within the context of the individual facts and circumstances of any particular situation.

The "reckless disregard" category, for which the maximum number of points would be assigned, is characterized by

conduct which exhibits the absence of even the slightest degree of care.

MSHA believes that this approach to the negligence criterion is responsive to the comments recommending more definite criteria for the assignment of penalty points within the prior rule's range of one to 20 points for ordinary negligence. In addition, this aspect of the final rule is consistent with MSHA's overall goal of refocusing safety and health efforts on serious mine hazards and encourages operators to take necessary actions to prevent miners' exposure to such hazards.

100.3(e) Gravity. This section of the formula contains three tables which are used to evaluate the gravity of a violation. It is designed to assure that the amount of the penalty takes into consideration the seriousness of a violation. Under the prior rule, the tables measured three aspects of gravity: (1) Probability of occurrence; (2) the seriousness of an injury if it occurred or were to occur; and (3) the number of persons affected. Each table accounted for up to 10 penalty points. A total of 30 penalty points could be assigned under this criterion. These tables were applied to both safety and health violations.

The proposal attempted to refine the formula's ability to measure the gravity associated with a violation by developing additional tables to evaluate the gravity of health violations. The proposed health tables were designed to evaluate employee exposure to toxic substances or harmful physical agents by examining the risk to human health and the magnitude of overexposure. An additional health table was included which was based upon the number of personnel potentially affected.

Commenters to the proposal identified several practical problems with the proposed health tables. The major difficulties pertained to the proposal's absence of a basis for determining whether a risk effect was high, medium, or low and the lack of a distinction between high dosage with short-term exposure situations, and those involving a low dosage with long-term exposure. Commenters were also concerned about the assignment of points for the degree by which the threshold limit value was exceeded, regardless of the relative toxicity of the substance involved. MSHA sought additional comments in the notice of hearings regarding whether the proposed health schedule should be amended to correct these difficulties. Alternatively, MSHA requested comment as to whether the existing gravity schedule, applying to both safety and health violations, should be retained.

Testimony and comments received during the hearings continued to emphasize the difficulties of developing a separate health schedule for gravity which would not be excessively complex or cumbersome. Commenters noted that the task of evaluating each individual health violation is also often complicated by the fact that immediate harm may not be detectable. Further, they stated that exposures to health hazards often affect the health of miners over extended periods of time with the measurable health impact of an isolated incident being difficult to assess.

For these reasons, most commenters favored the retention of the single gravity schedule for both safety and health violations. Although some commenters did suggest that a separate health schedule be included in the final rule, MSHA believes that the issues surrounding the establishment of an independent gravity schedule for health violations would be better addressed through a separate review. Therefore, the final rule retains gravity tables which are very similar to those in the prior rule.

In an attempt to provide additional clarification, the proposal modified the gravity table relating to the likelihood of occurrence. In the proposal, the table measured one aspect of gravity according to whether the occurrence of the event against which a standard is directed poses "no likelihood," is "unlikely," "likely," "highly likely," or "occurred," with assigned penalty points of zero, two, five, seven, and ten, respectively. In the final rule, "reasonably likely" is substituted for "likely" to be consistent with the rule's distinction between serious and less serious violations.

Under the final rule, the classification of "no likelihood" generally refers to technical type violations which pose no risk to miners. An "unlikely" probability of occurrence applies to those situations where the occurrence of injury or illness is remote but possible. Some commenters noted that under the prior rule the term "probable" referred to injuries or illnesses which were likely to occur and received three penalty points, while under the proposed rule the term "likely" in the same gravity table receives five penalty points. Under the final rule, violations processed through the regular formula would be assigned five penalty points where the occurrence of the event is "reasonably likely," compared to three points in the prior rule where the likelihood was "probable." This change was supported by some commenters and is consistent with MSHA's objective to refocus attention on more serious mine safety and health hazards. The second gravity table, assessing the severity of injury or illness normally expected, describes and allocates penalty points in the same manner as in the prior rule. The third table, measuring the number of persons potentially affected if the event occurred or were to occur, also retains the prior rule's language and point allocation for this aspect of gravity.

A violation involving no reasonable likelihood of a reasonably serious injury or illness occurring may be eligible for the single penalty assessment provided that the violation is abated within the time set by the inspector. A full discussion of this provision follows in § 100.4 (single penalty assessment).

100.3(f) Demonstrated Good Faith of the Operator. The purpose of the good faith criterion is to provide credit to operators for timely correction of mine safety and health hazards.

Under the prior rule, negative points from minus one to minus 10 could have been assigned for rapid compliance, zero points for normal compliance, and positive points from one to 10 could have been added for lack of good faith. (Negative points are those which are subtracted from the point total in determining the number of penalty points attributable to a particular violation).

The proposal identified and defined three categories which addressed the timeliness of the operator's actions to abate the violations and would have assigned points ranging from minus 10 to plus 10 penalty points. In the proposal, minus three points would have been assigned for good faith compliance. The proposal retained the prior rule's range for lack of good faith.

In the notice of hearing, MSHA refined the proposal to consider a fixed percentage reduction in the proposed penalty amount for violations processed through the regular formula system which are abated within the time set by the inspector. MSHA specifically requested comments with respect to an appropriate percentage reduction. Some commenters supported the proposal as refined in the public hearing notice, while others objected. Those who supported the fixed percentage reduction generally believed this revision would increase operator incentives to correct violations as quickly as possible. Further, they suggested a range of 20–50% as an appropriate percentage reduction. However, some of these commenters did suggest that an additional 10–20% reduction be awarded for extraordinary abatement efforts. Commenters who

opposed a fixed percentage reduction generally believed that this would not provide incentives for operators to comply with the Act, but would instead encourage operators to let hazardous conditions go unabated until cited.

After full review and evaluation of all comments, MSHA believes that a reduction in the proposed penalty based on operator efforts to abate safety and health hazards promotes the goal of providing increased incentives for operators to comply with the Act. Since the civil penalty system by its very nature addresses existing hazards, timely abatement is most critical to miner safety and health. The good faith criterion is the principal mechanism within the civil penalty formula for recognizing abatement, and MSHA believes that this revision encourages the early correction of hazardous conditions. Therefore this section of the final rule has been revised to provide a fixed 30% reduction in a proposed penalty amount when an operator corrects the hazard within the time set by the inspector, and the assignment of 10 penalty points when there is lack of good faith abatement.

The 30% reduction would apply to all citations processed through the regular formula system where the operator abates the hazard in the time set by the inspector. Under this approach, gravity, negligence, size and history would be assessed points under the formula and a monetary penalty determined. This amount would then be reduced by 30% where the violation is abated within the time set by the inspector. When abatement occurs after the time period allowed has elapsed, 10 points would be added.

100.3(g) Penalty Conversion Table. This provision sets out the table to be used to convert the total penalty points to a dollar amount which will comprise the proposed penalty.

The table in the prior rule set out individual dollar amounts from $2 to $10,000 corresponding to penalty points of from one to 100. The proposal eliminated dollar values below $20 in recognition of the single penalty provision. All other values remained the same.

Some commenters suggested that a separate penalty table should exist for small mine operators. MSHA believes that small mine operators are given adequate consideration under the size criterion. However, if an operator believes that a proposed penalty would adversely affect the ability to continue in business, additional information may be submitted which could result in further reduction. See following discussion on § 100.3(h). MSHA believes that one penalty conversion table will provide adequate consideration of all factors relating to violations which are processed through the regular formula system.

The final rule differs from the table in the proposal in that violations with 15 or fewer points will be assessed $30 while the proposal provided that violations with 10 or fewer points would have been assessed a $20 penalty. This adjustment was made to reflect a more appropriate distinction between single penalty and regular assessments. This section applies only to those violations which are processed through the regular formula system and, therefore, does not apply to single penalty violations or those processed through special assessments.

100.3(h) Effect on Operator's Ability to Remain in Business. This criterion involves consideration of the effect of the proposed penalty on the operator's ability to continue in business. A penalty may be reduced under this criterion where its imposition will adversely affect an operator's ability to continue in business. The proposed rule retained the language of the prior rule for this section. Commenters did not suggest changes to this criterion and MSHA believes that it is being applied equitably and effectively. Therefore, the prior rule remains unchanged except for editorial changes to conform to the Agency's reorganized management functions.

Section 100.4 Determination of Penalty; Single Penalty Assessment. This is a new section. It provides for the assessment of a $20 single penalty for violations which are not reasonably likely to result in reasonably serious injury or illness. Single penalty violations which are paid in a timely manner will not be included in the operator's history. MSHA developed this provision to permit the mining community to focus its resources on those violations which have the greatest impact on miner safety and health. Under the proposal, this section was designated as the "minimum penalty" assessment procedure. In the final rule, MSHA has substituted the term "single penalty assessment" to clarify that $20 is the only penalty an operator could receive under this section.

As proposed, this section provided for the assessment of a fixed single penalty of $20 for violations involving low level gravity and no negligence. In the notice of public hearing, MSHA included a refinement of the proposed single penalty provision which would apply the single penalty to those violations which are not reasonably likely to result in a reasonably serious injury or illness.

Some commenters supported and others objected to the single penalty proposal as refined in the hearing notice. Those who supported this provision stated that it would permit a refocusing of resources on serious safety and health hazards. Specifically, they believed that it would reduce the time and resources associated with processing less serious violations and foster a more cooperative and productive environment for achieving safety and health in the mines. Those who opposed the proposal stated that it would not result in improved efficiency nor would it result in a reallocation of resources toward the most hazardous conditions. Further, they stated that the single penalty provision would not assure maximum operator compliance but would instead encourage operators to violate MSHA regulations.

After consideration of the comments, MSHA believes that the single penalty concept advances the objectives of this rule, and therefore has included this provision in the final rule. This provision permits the assessment of a $20 penalty for violations which are not reasonably likely to result in reasonably serious injury or illness. A critical element in this provision is a requirement that the hazard be abated within the time set by the inspector. If the hazard is not abated within the time set by the inspector, the violation will not be eligible for the $20 single penalty and will be processed through the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5), which will result in a higher penalty. In addition, unabated nonserious violations will subject mine operators to more stringent enforcement sanctions, such as closure orders for failure to abate. This new provision will not alter compliance responsibilities of either MSHA or the mine operator. Accordingly, all violations will continue to be cited, all hazards must be abated and all penalties must be paid. MSHA does not believe that this new provision will either encourage operators to violate the Act, or allow hazards, once identified, to remain uncorrected. Abatement remains an integral part of the inspection process. Industry representatives who participated in this rulemaking acknowledged the critical role of abatement, and urged the Agency to continue its efforts to assure that all hazards are abated as quickly as possible.

Some commenters requested clear guidelines for defining the class of violations to which the single penalty will be applied. These commenters further requested that the definition of "significant and substantial" violations

as stated in a decision of the Federal Mine Safety and Health Review Commission, *Secretary of Labor* v. *Cement Division, National Gypsum Co.*, 3 FMSHRC 822,825; 2 MSHC 1201 (1981), should be incorporated into the final rule. Under the final rule, a $20 single penalty may be assessed for those violations which "are not reasonably likely to result in a reasonably serious injury or illness." Although this definition is consistent with the Commission's decision on "significant and substantial" violations in the *National Gypsum* case, it is independently established in this rulemaking and represents the Agency's rule with respect to the single penalty provision. MSHA does not believe that further specific language governing the inspector's evaluation of hazardous conditions should be incorporated into the final rule.

Several commenters were concerned about the Agency's existing guidelines for determining "significant and substantial" violations. MSHA will carefully review its policy for uniform application and consistency with this rulemaking.

MSHA inspectors already make a determination as to which violations of the Act are of a serious nature. In making this determination, inspectors first evaluate whether an injury or illness is reasonably likely to occur if the violation is not corrected. Next, the inspector must evaluate whether the injury or illness, were it to occur, would be reasonably serious. In these areas, inspectors use their experience, background and training together with an evaluation of the actual circumstances surrounding the violation to arrive at an independent judgment. Where a violation is not reasonably likely to result in a reasonably serious injury or illness, a summary review and analysis of the condition or practice is conducted. However, when the gravity factor is low and good faith is established through abatement, MSHA does not believe that an individualized analysis of the negligence, size and history criteria is appropriate or necessary. As a result, inspector time would be saved, permitting MSHA to focus additional resources on more serious mine hazards.

Under the proposed single penalty provision, opportunity for a safety and health conference would be preserved, but the scope of the conference would be limited to issues related to the existence or type of violation. In addition, the statutory right to contest a proposed penalty to the Commission would continue to apply to all assessments under these regulations. The final rule does not alter these concepts.

MSHA believes that the single penalty provision will help achieve improved health and safety for miners by eliminating the need to spend disproportionate amounts of time reviewing and processing violations whose impact on safety and health is minimal. The primary focus of both MSHA and the mining community must be on the prevention and correction of conditions which pose a serious risk to the safety and health of miners. Therefore, the final rule retains the $20 single penalty concept.

MSHA will carefully review the experience gained in applying this provision to assure that no diminution to miner safety or health results.

Section 100.5 Determination of Penalty; Special Assessment. This section will be used for those violations which MSHA believes should not be processed through the regular assessment formula (§ 100.3) or single penalty provision (§ 100.4). Although MSHA will use the single penalty provision in § 100.4 and the formula system to process the great majority of citations and orders, the Agency believes that there will be some circumstances in which these provisions would not provide an appropriate assessment. For this reason, the final rule retains the special assessment provision.

The prior rule set forth certain categories or types of violations which, due to their nature or seriousness, might not be appropriate for regular formula assessment. In the proposed rule, these categories were clarified to specifically notify persons of those classes of violations which may be individually examined to determine whether a special assessment is necessary. MSHA also proposed to delete three categories of special assessments review contained in the prior rule: Discrimination violations under Section 105(c); the failure to abate a violation within the prescribed period; and violations by independent contractors. The Agency proposed this action because it believed that these categories of violations would be adequately assessed under other provisions of this rule.

Several commenters desired to see the special assessment provision eliminated or restricted to situations involving an extraordinarily high degree of negligence. Other commenters believed that the categories, as proposed, were reasonable. After reviewing the comments, MSHA believes that there are certain categories of violations for which an individual review process is necessary. Where a special assessment is made, it should be noted that it is still based upon the facts and circumstances surrounding the particular violation. Narrative findings are issued in support of the consideration given to the six criteria.

In the final rule, MSHA has deleted the proposed special assessment category for a pattern of violations. If a mine were determined to have a pattern of violations, the Agency believes that an appropriate assessment could be made using one of the remaining special assessment categories. MSHA has also retained discrimination violations under Section 105(c) as a special assessment category because the single penalty and regular assessment provisions would not adequately evaluate these violations. The rule permits certain discrimination violations to be processed under the special assessment provision. The following categories have been adopted in the final rule:

(1) Violations involving fatalities and serious injuries;

(2) Violations involving an unwarrantable failure to comply with mandatory health and safety standards;

(3) Operation of a mine in the face of a closure order;

(4) Failure to permit an authorized representative of the Secretary to perform an inspection or investigation;

(5) Violations for which individuals are personally liable under Section 110(c) of the Act;

(6) Violations involving an imminent danger;

(7) Discrimination violations under Section 105(c) of the Act; and

(8) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances.

In making determinations with repect to special assessments, the final rule differs from the prior rule in that neither the nature nor the seriousness of a particular violation will automatically result in a special assessment. When a violation falls within one of the enumerated categories, MSHA will conduct an individual review to determine whether a special assessment is proper. If this review reveals that the violation can be appropriately assessed under another provision of the rule, it will be processed under that provision.

Whenever MSHA elects to waive the use of the formula in § 100.3 on the basis that unique aggravating circumstances are involved, the parties will be fully informed as to the basis for this action.

Section 100.6 Procedures for Review of Citations and Orders. The

requirements and administrative procedures for review of citations and orders by MSHA were contained in § 100.5 of the prior rule. Through this process, MSHA evaluated all citations and orders. The review process also provided the parties an opportunity to submit additional information and to request a conference regarding a violation.

The final rule redesignates this Section as 100.6 and makes changes in the administrative procedures of this review process to reflect MSHA's reorganized management functions. A major purpose of this realignment of management responsibilities is to better focus the process for review of citations and orders on the safety and health issues involved. MSHA believes that it will improve safety and health to more directly involve those who issue the citations and orders in the process established for review of these actions. Therefore, mine operators and the miners or their representatives at the mine will be afforded an opportunity to discuss safety and health issues after the inspection. MSHA District Managers will now be fully responsible at all phases of the process for the review of all citations and orders. This transfer of functions will permit the mining community to address in a more effective manner all of the relevant safety and health factors related to a violation. In addition, MSHA intends to make the inspector's evaluation regarding factors bearing on each violation available to mine operators and the miners or their representatives at the mine. These evaluations will be made available at the time of the issuance of the citations and orders.

Some commenters questioned the effect of MSHA's reorganization on the rights and opportunities afforded the parties under the prior rule. The final rule deletes the administrative procedures for review of citations and orders used by the MSHA Office of Assessments which were contained in the prior regulation. This revision permits MSHA District Managers to develop and implement procedures for the review of citations and orders. Neither the final rule nor the Agency's transfer of functions for the review of citations and orders alters the principles of the prior regulation. The final rule retains the requirement for prompt MSHA review of all citations and orders. This initial level of review will be conducted during the inspection closeout conference or at a time reasonably convenient to the parties. The final rule also retains the right of any party to submit additional facts or to request a safety and health conference within 10 days of notice by MSHA of the right to a conference. As existed under the prior rule, the mine operator and the miners or their representatives at the mine may request a conference. A conference request may also include a request to be notified of, and to participate in, a conference initiated by another party. The safety and health conference request is to be made with the MSHA District Office. Where a request is granted, conferences will be promptly conducted. Therefore, under the final rule there is no change in the substantive rights and opportunities of the parties.

Several commenters objected that the transfer of the citation and order review process to the MSHA District Offices, and the involvement of MSHA inspectors in the process, could result in less time available for conducting inspections. With the transfer of responsibility, MSHA inspectors will participate in the review of the citations and orders issued in the manner considered necessary by the District Manager for the resolution of issues. However, MSHA believes that involvement of inspectors in the review process will lead to better communication and improved cooperation between MSHA and the mining community. In addition, MSHA believes that this final rule together with the realignment of MSHA functions will result in greater efficiency and effectiveness, facilitating MSHA's compliance inspection activities. Under the prior rule, MSHA inspectors, upon request, provided additional information to assessment conference officers with respect to clarification of issues concerning a citation. The reorganization of the conference function should reduce the administrative and paperwork requirements associated with this function and result in a more timely and effective process.

Section 100.7 Notice of Proposed Penalty; Notice of Contest. This section sets out the circumstances under which a notice of proposed penalty will be served on the parties, the procedures for contesting a notice of proposed penalty, and when a proposed penalty becomes final.

The prior rule set forth the instances which resulted in the issuance of a proposed penalty. All are retained in the final rule, except the provision for the issuance of a proposed penalty upon the expiration of 33 days from the service of the results of the initial review. This has been deleted to be consistent with the revisions made to the final rule's procedure for review of citations and orders (§ 100.6). In addition, the final rule makes changes in nomenclature.

Section 100.8 Service. This section differs from the prior rule in that a third category is added providing for service of proposed civil penalties upon operators who fail to file under 30 CFR Part 41 (Notification of Legal Identity). Operators within this category will receive service at their last known business address recorded with MSHA. Also, for the reasons outlined in this preamble discussion of §§ 100.6 and 100.7, two nonsubstantive wording changes were necessary to conform the rule to MSHA's reorganized management functions.

III. Drafting Information

The principal persons responsible for preparing this final rule are: Patricia W. Silvey, Office of Standards, Regulations and Variances, Mine Safety and Health Administration; and M. Peter Garcia and William B. Moran, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291

This regulation is not a "major rule" under the terms of the Executive Order. The final rule streamlines the civil penalty process and reduces administrative requirements associated with processing violations.

V. Regulatory Flexibility Act

The final rule is exempt from the requirements of this Act because the proposal was published prior to January 1, 1981. However, MSHA has considered the economic impact of this rule on small businesses and believes that the rule will have a favorable impact on small businesses because it reduces administrative efforts and costs associated with processing violations.

VI. Paperwork Reduction Act

This regulation does not contain paperwork requirements for mine operators. However, this final rule is expected to reduce internal paperwork requirements for MSHA, through the reduction of administrative efforts where "single penalty" assessments are made.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: April 29, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

This final rule revises Subchapter P, Part 100 of Chapter I, Title 30 of the Code of Federal Regulations as set forth below:

SUBCHAPTER P—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

Sec.

100.1 Scope and purpose.
100.2 Applicability.
100.3 Determination of penalty; regular assessment.
100.4 Determination of penalty; single penalty assessment.
100.5 Determination of penalty; special assessment.
100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.
100.7 Notice of proposed penalty; notice of contest.
100.8 Service.

Authority: Secs. 105, 110, 508 of the Federal Mine Safety and Health Act of 1977 Pub. L. 91–173, as amended by Pub. L. 95–164, 91 Stat. 1303 and 1311, 83 Stat. 803 (30 U.S.C. 815, 820 and 957).

§ 100.1 Scope and purpose.

This part sets forth the criteria and procedures for the proposed assessment of civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, to maximize the incentives for mine operators to prevent and correct hazardous conditions, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability.

The criteria and procedures contained in this part are applicable to all evaluations and proposed assessments of civil penalties for violations of the Act, and the standards and regulations promulgated pursuant to the Act. The Mine Safety and Health Administration (MSHA), United States Department of Labor, shall review each citation and order and shall make proposed assessments of civil penalties.

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The amount of the civil penalty proposed shall be based upon the formula set forth in this section. The formula is based on the general criteria described in sections 105(b) and 110(i) of the Act. These criteria are:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

The penalty amount in a regular case shall be determined by first assigning the appropriate number of penalty points to the violation by using the appropriate criteria and tables set forth in this section. The number of penalty points assigned for all criteria will then be totaled, and the point accumulation converted into a dollar amount by using the penalty conversion table in paragraph (g) of this section. Where appropriate, this penalty amount will be adjusted for demonstrated good faith in accordance with § 100.3(f).

(b) *The appropriateness of the penalty to the size of the operator's business.* The appropriateness of the penalty to the size of the production operator's business is calculated by using both the size of the mine cited and the size of the controlling entity of which the mine is a part. This criterion may account for a maximum of 15 penalty points for production operators. The size of an independent contractor will be measured by the amount of hours worked in all mining activities and may account for a maximum of 10 penalty points. The size will be evaluated by selecting the appropriate number of penalty points from Tables I to V. As used in the Tables below, the terms "annual tonnage" and "annual hours worked" mean tonnage produced and hours worked in the previous calendar year, or, in the case of a mine opened or owned less than one full calendar year, the tonnage and hours worked prorated to an annual basis.

TABLE I.—SIZE OF COAL MINE

Annual tonnage of mine	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 to 2 million	9
Over 2 million	10

TABLE II.—SIZE OF CONTROLLING ENTITY—COAL MINE

Annual tonnage	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

TABLE III.—SIZE OF METAL/NONMETAL MINE

Annual hours worked at mine	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

TABLE IV.—SIZE OF CONTROLLING ENTITY—METAL/NONMETAL MINE

Annual hours worked	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

TABLE V.—SIZE OF INDEPENDENT CONTRACTOR

Annual hours worked at all mines	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

(c) *History of previous violations.* History is based on the number of assessed violations in a preceding 24-month period. Only violations that have been paid or finally adjudicated will be included in determining history. However, violations which receive a single penalty assessment under § 100.4 and are paid in a timely manner will not be included in the computation. The history of previous violations may account for a maximum of 20 penalty points. For mine operators, the penalty points will be calculated on the basis of the average number of assessed violations per inspection day (Table VI). For independent contractors, penalty points will be calculated on the basis of the average number of violations

assessed per year at all mines (Table VII).

TABLE VI.—MINE OPERATORS

Violations per inspection day	Penalty points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0.7	4
Over 0.7 to 0.9	6
Over 0.9 to 1.1	8
Over 1.1 to 1.3	10
Over 1.3 to 1.5	12
Over 1.5 to 1.7	14
Over 1.7 to 1.9	16
Over 1.9 to 2.1	18
Over 2.1	20

TABLE VII.—INDEPENDENT CONTRACTORS

Number of violations	Penalty points
1 to 5	0
6 to 10	2
11 to 15	4
16 to 20	6
21 to 25	8
26 to 30	10
31 to 35	12
36 to 40	14
41 to 45	16
46 to 50	18
Over 50	20

(d) *Negligence.* Negligence is committed or omitted conduct which falls below a standard of care established under the Act to protect persons against the risks of harm. The standard of care established under the Act is that the operator of a mine owes a high degree of care to the miners. A mine operator is required to be on the alert for conditions and hazards in the mine which affect the safety or health of the employees and to take the steps necessary to correct or prevent such conditions or practices. For purposes of assessing a penalty under this Part, failure to do so is negligence on the part of the operator. The negligence criterion gives appropriate consideration to the factors relating to an operator's failure to exercise a high degree of care to protect miners from safety or health hazards. When applying this criterion, MSHA considers actions taken by the operator to prevent or correct conditions or practices which caused or allowed the violation to exist. In determining the operator's diligence in protecting miners in any given hazard situation, due recognition is given to mitigating circumstances which explain the operator's conduct in minimizing or eliminating a hazardous condition. Mitigating circumstances may include, but are not limited to, actions which an operator has taken to prevent, correct, or limit exposure to mine hazards. This criterion may contribute a maximum of 25 penalty points, based on conduct evaluated according to Table VIII.

TABLE VIII—NEGLIGENCE

Categories	Penalty points
No negligence (The operator exercised diligence and could not have known of the violative condition or practice.)	0
Low negligence (The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)	10
Moderate negligence (The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)	15
High negligence (The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.)	20
Reckless disregard (The operator displayed conduct which exhibits the absence of the slightest degree of care.)	25

(e) *Gravity.* Gravity is an evaluation of the seriousness of the violation as measured by the likelihood of the occurrence of the event against which a standard is directed, the severity of the illness or injury if the event occurred or were to occur, and the number of persons potentially affected if the event occurred or were to occur. This criterion may contribute a maximum of 30 penalty points, with up to 10 points derived from each of the following tables (Tables IX to XI):

TABLE IX.—LIKELIHOOD

Likelihood of occurrence	Penalty points
No likelihood	0
Unlikely	2
Reasonably likely	5
Highly likely	7
Occurred	10

TABLE X.—SEVERITY

Severity of injury or illness if the event occurred or were to occur	Penalty points
No lost work days (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.)	0
Lost work days or restricted duty (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	3
Permanently disabling (Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)	7
Fatal (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	10

TABLE XI.—PERSONS POTENTIALLY AFFECTED

Number of persons potentially affected if the event occurred or were to occur	Penalty points
0	0
1	1
2	2
3	4

TABLE XI.—PERSONS POTENTIALLY AFFECTED—Continued

Number of persons potentially affected if the event occurred or were to occur	Penalty points
4 to 5	6
6 to 9	8
More than 9	10

(f) *Demonstrated good faith of the operator in abating the violation.* This criterion provides a 30% reduction in the penalty amount of a regular assessment where the operator abates the violation in the time set by the inspector. Where the operator does not abate within the time set by the inspector, 10 penalty points will be assigned.

(g) *Penalty conversion table.* The penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate proposed monetary assessment.

PENALTY CONVERSION TABLE

Points	Penalty
15 or fewer	$30
16	32
17	34
18	36
19	38
20	40
21	44
22	48
23	52
24	56
25	60
26	66
27	72
28	78
29	84
30	90
31	96
32	106
33	114
34	122
35	130
36	140
37	150
38	160
39	170
40	180
41	195
42	210
43	225
44	240
45	255
46	275
47	295
48	305
49	325
50	345
51	370
52	395
53	420
54	445
55	470
56	500
57	530
58	560
59	590
60	620
61	655
62	690
63	725
64	760
65	800
66	840
67	880
68	920
69	960
70	1,000
71	1,050
72	1,100
73	1,150
74	1,200
75	1,250

PENALTY CONVERSION TABLE—Continued

Points	Penalty
76	1,300
77	1,400
78	1,500
79	1,600
80	1,700
81	1,900
82	2,100
83	2,300
84	2,500
85	2,700
86	3,000
87	3,400
88	3,800
89	4,200
90	4,600
91	5,000
92	5,500
93	6,000
94	6,500
95	7,000
96	7,500
97	8,000
98	8,500
99	9,000
100	10,000

(h) *The effect on the operator's ability to continue in business.* It is initially presumed that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may submit information to the District Manager concerning the business financial status to show that payment of the penalty will affect the operator's ability to continue in business. If the information provided by the operator indicates that the penalty will adversely affect the ability to continue in business the penalty may be adjusted.

§ 100.4 Determination of penalty; single penalty assessment.

An assessment of $20 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness, and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $20 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

§ 100.5 Determination of penalty; special assessment.

MSHA may elect to waive the regular assessment formula (§ 100.3) or the single assessment provision (§ 100.4) if the Agency determines that conditions surrounding the violation warrant a special assessment. Although an effective penalty can generally be derived by using the regular assessment formula and the single assessment provision, some types of violations may be of such a nature or seriousness that it is not possible to determine an appropriate penalty under these provisions. Accordingly, the following categories will be individually reviewed to determine whether a special assessment is appropriate:

(a) Violations involving fatalities and serious injuries;

(b) Unwarrantable failure to comply with mandatory health and safety standards;

(c) Operation of a mine in the face of a closure order;

(d) Failure to permit an authorized representative of the Secretary to perform an inspection or investigation;

(e) Violations for which individuals are personally liable under Section 110(c) of the Act;

(f) Violations involving an imminent danger;

(g) Discrimination violations under Section 105(c) of the Act; and

(h) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances.

When MSHA determines that a special assessment is appropriate, such special assessment shall take into account the criteria enumerated in § 100.3(a). All findings shall be in narrative form.

§ 100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.

(a) All parties shall be afforded the opportunity to review with MSHA each citation and order issued during an inspection.

(b) Upon notice by MSHA, all parties shall have 10 days within which to submit additional information or request a safety and health conference with the District Manager or designee. A conference request may include a request to be notified of, and to participate in, a conference initiated by another party.

(c) It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference.

(d) When a conference is conducted, the parties may submit any additional relevant information relating to the violation, either prior to or at the conference. To expedite the conference, the official assigned to the case may contact the parties to discuss the issues involved prior to the conference.

(e) MSHA will consider all relevant information submitted in a timely manner by the parties with respect to the violation. When the facts warrant a finding that no violation occurred, the citation or order will be vacated.

(f) All citations which have been abated and all orders will be promptly referred by the District Manager to the Office of Assessments.

(g) The Office of Assessments will use the citations, orders, and inspector's evaluation as the basis for determining the appropriate amount of a proposed penalty.

§ 100.7 Notice of proposed penalty; notice of contest.

(a) A notice of proposed penalty will be issued and served by certified mail upon the party to be charged and by regular mail to the representative of miners at the mine after the time permitted to request a conference under § 100.6 expires, or upon the completion of a conference, or upon review by MSHA of additional information submitted in a timely manner.

(b) Upon receipt of the notice of proposed penalty, the party charged shall have 30 days to: (1) Pay the proposed assessment (acceptance by MSHA of payment tendered by the party charged will close the case); or, (2) notify MSHA in writing of the intention to contest the proposed penalty. The Office of Assessments shall provide a return mailing card with each notice of proposed penalty to be used by the party charged to request a hearing before the Federal Mine Safety and Health Review Commission under Section 105 of the Act. Such a request must be sent to the address listed on such notification. When MSHA receives the notice of contest, it shall immediately advise the Commission of such notice, and shall promptly forward the case to the Office of the Solicitor. No proposed penalty which has been contested before the Commission, shall be compromised, mitigated or settled except with the approval of the Commission.

(c) The failure to pay or to contest the proposed penalty within 30 days of receipt of notice thereof shall result in the proposed penalty being deemed a final order of the Commission and not subject to review by any court or agency.

§ 100.8 Service.

(a) All operators are required by 30 CFR Part 41 (Notification of Legal Identity) to file with MSHA the name and address of record of the operator. All representatives of miners are required by 30 CFR Part 40 (Representative of Miners) to file with MSHA the mailing address of the person or organization acting in a representative capacity. Proposed penalty assessments delivered to those addresses shall constitute service.

(b) If any of the parties choose to have proposed penalty assessments mailed to a different address, the Office of Assessments must be notified in writing of the new address. Delivery to this address shall also constitute service.

(c) Service for operators who fail to file under 30 CFR Part 41 will be upon the last known business address recorded with MSHA.

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Friday
May 21, 1982

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa:	
IA81–4088	Nov. 13, 1981.
IA81–4089	Nov. 13, 1981.
IA81–4090	Dec. 11, 1981.
IA81–4091	Nov. 13, 1981.
IA81–4092	Nov. 27, 1981.
IA81–4093	Nov. 27, 1981.
IA81–4094	Nov. 27, 1981.
IA81–4096	Nov. 27, 1981.
IA81–4097	Nov. 27, 1981.
IA81–4098	Nov. 27, 1981.
IA81–4101	Dec. 11, 1981.
District of Columbia: DC81–3040	June 5, 1981.
Maryland: DC81–3040	June 5, 1981.
Virginia: DC81–3040	June 5, 1981.
Kansas: KS82–4013	Apr. 16, 1982.
Louisiana: LA82–4020	May 7, 1982.
LA82–4021	May 7, 1982.
LA82–4022	May 7, 1982.
Oklahoma: OK81–4056	July 17, 1981
Texas:	
TX80–4088	Nov. 7, 1980.
TX81–4006	Jan. 6, 1981.
TX81–4044	June 26, 1981.
TX81–4052	July 10, 1981.
TX81–4064	Aug. 7, 1981.
TX81–4074	Oct. 2, 1981
TX81–4075	Oct. 2, 1981.
TX81–4078	Oct. 2, 1981.
TX81–4079	Oct. 2, 1981.
TX82–4001	Jan. 29, 1982.
TX82–4005	Jan. 29, 1982.
TX82–4019	May 7, 1982.
Pennsylvania:	
PA82–3006	Feb. 26, 1982.
PA81–3090	Dec. 18, 1981.
PA82–3007	Feb. 26, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Illinois: IL81–2026 (IL82–2032)	June 19, 1981.
Ohio: OH81–2067 (OH82–2037)	Dec. 18, 1981.

Please note that we are changing the format for Federal Register wage decisions to coincide with the provisions

of All Agency Memorandum No. 132 dated January 29, 1980 which provides that the Department of Labor will discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which can not be stated in monetary terms will be shown in footnotes. This procedure will be phased in gradually.

Signed at Washington, D.C. this 14th day of May 1982.

Dorothy P. Come,

Assistant Administrator Wage and Hour Division.

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Modification Page 1

DECISION NO. IA81-4088 - MOD. #5 (46 FR 56121 - 11/13/81) Black Hawk County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE: Bldg., water treatment & sewage disposal plants: Sprinkler fitters	$16.47	2.83
DECISION NO. IA81-4089 - MOD. #6 (46 FR 56122 - 11/13/81) Clinton County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plants: Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4090 - MOD. #5 (46 FR 60752 - 12/11/81) Des Moines County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plants: Sprinkler fitters	16.47	2.83
DECICION NO. IA81-4091 - MOD. #5 (46 FR 56123 - 11/13/81) Dubuque County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plants: Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4092 - MOD. #6 (46 FR 58025 - 11/27/81) Johnson County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plants: Carpenters:		
Carpenters	14.59	1.90
Millwrights	16.29	2.00
Piledrivermen	15.09	1.90
Sprinkler fitters	16.47	2.83

DECISION NO. IA81-4093 - MOD. #6 (46 FR 58018 - 11/27/81) Linn County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE: Bldg., water treatment & sewage disposal plant: Carpenters:		
Carpenters	$14.59	1.90
Millwrights	16.29	2.00
Piledrivermen	15.09	1.90
Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4094 - MOD. #6 (46 FR 58019 - 11/27/81) Polk County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plant: Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4096 - MOD. #5 (46 FR 58023 - 11/27/81) Woodbury County, Iowa		
CHANGE: Laborers:		
Group 1	10.62	2.11
Group 2	10.77	2.11
Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4097 - MOD. #5 (46 FR 58016 - 11/27/81) Cerro Gordo County, Iowa		
CHANGE: Bldg., water treatment & sewage disposal plant: Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4098 - MOD. #3 (46 FR 58021 - 11/27/81) Scott County, Iowa		
CHANGE: Cement masons	14.37	1.80
Glaziers	15.71	1.77
Painters:		
Brush, roller	13.77	2.44
Spray, structural steel	14.27	2.44
Plumbers & steamfitters	16.65	2.32
Roofers	15.30	2.31
Sprinkler fitters	16.47	2.83

Modification Page 2

DECISION NO. IA81-4101 - MOD. #3 (46 FR 60754 - 12/11/81) Pottawattamie Co., Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE: Bricklayers & stonemason	$13.99	1.95 /
Sprinkler fitters	16.47	2.83
DECISION NO. DC81-3048 - MOD. #8 (46 FR 30290 - June 5, 1981) District of Columbia; Maryland - Montgomery and Prince Georges; and D.C. Training School; Virginia Independent City of Alexandria; Arlington and Fairfax Counties		
CHANGE: PAINTERS (EXCLUDING FAIRFAX COUNTY)		
Brush, spray, paperhangers, tapers	15.22	2.46
Steel, sandblasting, swing stage, power brushing	15.72	2.46
Wording on Sewer and Water Line Construction Projects to read: (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND ONLY)		
DECISION #KS82-4013-MOD. #3 (47 FR 16519-April 16, 1982) LEAVENWORTH COUNTY, KANSAS		
CHANGE: Roofers	$14.13	2.01

DECISION NO. LA82-4020 - MOD. #1 (47 FR 19880 - 5/7/82) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE: Ironworkers - Zone 4	$14.05	2.31
Plumbers & pipefitters: Zone 4	13.94	3.04
Sprinkler fitters	14.57	2.83
DECISION NO. LA82-4021 - MOD. #1 (47 FR 19877 - 5/7/82) Bossier & Caddo Parishes, Louisiana		
CHANGE: Plumbers & pipefitters	13.94	3.04
Sprinkler fitters	14.57	2.83
DECISION NO. LA82-4022 - MOD. #1 (47 FR 19877 - 5/7/82) Calcasieu Par., Louisiana		
CHANGE: Sprinkler fitters	14.57	2.83
DECISION NO.OK81-4056 - Mod. #10 (46 FR 37209 - July 17, 1981) Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma		
CHANGE DESCRIPTION OF WORK TO READ: BUILDING PROJECTS (Excluding single family homes and apartments up to and including 4 stories) and EXCLUSION OF Water and Sewer Treatment Plants in Tulsa County ONLY."		

Modification Page 3

DECISION NO. TX80-4088 - MOD. #3 (46 FR 60754 - 12/11/81) Pottawattamie Co., Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE: Bricklayers & stonemason	$13.99	1.95 /
Sprinkler fitters	16.47	2.83
DECISION NO. DC81-3048 - MOD. #8 (46 FR 30290 - June 5, 1981) District of Columbia; Maryland - Montgomery and Prince Georges; and D.C. Training School; Virginia Independent City of Alexandria; Arlington and Fairfax Counties		
CHANGE: PAINTERS (EXCLUDING FAIRFAX COUNTY)		
Brush, spray, paperhangers, tapers	15.22	2.46
Steel, sandblasting, swing stage, power brushing	15.72	2.46
Wording on Sewer and Water Line Construction Projects to read: (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY, MARYLAND ONLY)		
DECISION #KS82-4013-MOD. #3 (47 FR 16519-April 16, 1982) LEAVENWORTH COUNTY, KANSAS		
CHANGE: Roofers	$14.13	2.01

DECISION NO. TX81-4075 - MOD. #5 (46 FR 58016 - 11/27/81) Cerro Gordo County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE: Bldg., water treatment & sewage disposal plant: Sprinkler fitters	16.47	2.83
DECISION NO. IA81-4098 - MOD. #3 (46 FR 58021 - 11/27/81) Scott County, Iowa		
CHANGE: Cement masons	14.37	1.80
Glaziers	15.71	1.77
Painters:		
Brush, roller	13.77	2.44
Spray, structural steel	14.27	2.44
Plumbers & steamfitters	16.65	2.32
Roofers	15.30	2.31
Sprinkler fitters	16.47	2.83

Modification Page 4

DECISION NO. TX82-4005 - MOD. #5 (47 FR 19880 - 5/7/82) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE: Ironworkers - Zone 4	$14.05	2.31
Plumbers & pipefitters: Zone 4	13.94	3.04
Sprinkler fitters	14.57	2.83
DECISION NO. LA82-4021 - MOD. #1 (47 FR 19877 - 5/7/82) Bossier & Caddo Parishes, Louisiana		
CHANGE: Plumbers & pipefitters	13.94	3.04
Sprinkler fitters	14.57	2.83
DECISION NO. LA82-4022 - MOD. #1 (47 FR 19877 - 5/7/82) Calcasieu Par., Louisiana		
CHANGE: Sprinkler fitters	14.57	2.83
DECISION NO.OK81-4056 - Mod. #10 (46 FR 37209 - July 17, 1981) Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma		
CHANGE DESCRIPTION OF WORK TO READ: BUILDING PROJECTS (Excluding single family homes and apartments up to and including 4 stories) and EXCLUSION OF Water and Sewer Treatment Plants in Tulsa County ONLY."		

DECISION NO. PA81-2000 - MOD. #5 (46 FR 56124 - 11/13/81) Allegheny County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE: Bricklayers	$14.50	2.50
Carpenters	14.50	2.50
Cement masons	14.50	2.50
Electricians	15.50	2.50
Ironworkers	14.50	2.50
Laborers: Common	13.50	2.50
Mason tenders	13.50	2.50
Millwrights	14.50	2.50
Painters	14.50	2.50
Plasterers	14.50	2.50
Plumbers & pipefitters	14.50	2.50
Roofers	14.50	2.50
Sheetmetal workers	14.50	2.50
Sprinkler fitters	14.50	2.50
Terrazzo workers	14.50	2.50
Tile setters	14.50	2.50
Truck drivers	14.50	2.50
Welders	14.50	2.50
DECISION NO. PA81-2001 - MOD. #5 (46 FR 56125 - 11/13/81) Beaver County, Pennsylvania		
CHANGE: Bricklayers	$14.50	2.50
Carpenters	14.50	2.50
Cement masons	14.50	2.50
Electricians	15.50	2.50
Ironworkers	14.50	2.50
Laborers: Common	13.50	2.50
Mason tenders	13.50	2.50
Millwrights	14.50	2.50
Painters	14.50	2.50
Plasterers	14.50	2.50
Plumbers & pipefitters	14.50	2.50
Roofers	14.50	2.50
Sheetmetal workers	14.50	2.50
Sprinkler fitters	14.50	2.50
Terrazzo workers	14.50	2.50
Tile setters	14.50	2.50
Truck drivers	14.50	2.50
Welders	14.50	2.50

DECISION NO. TX80-4088 - MOD. #7 (45 FR 74364 - 11/7/80) Harrison County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Sprinkler fitters	$16.17	2.83

DECISION NO. TX81-4008 - MOD. #6 (46 FR 1550 - 1/6/81) Smith County, Texas		
CHANGE:		
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4044 - MOD. #6 (46 FR 33194 - 6/26/81) Bowie County, Texas		
CHANGE:		
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4052 - MOD. #4 (46 FR 35903 - 7/10/81) Cameron, Hidalgo, Starr & Willacy Cos., Texas		
CHANGE:		
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4064 - MOD. #3 (46 FR 40487 - 8/7/81) El Paso County, Texas		
CHANGE:		
Bricklayers	9.75	1.27
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4074 - MOD. #9 (46 FR 48861 - 10/2/81) Travis County, Texas		
CHANGE:		
Bricklayers & stonemason	13.54	2.21
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4075 - MOD. #10 (46 FR 48863 - 10/2/81) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Roofers:		
Composition	$13.86	1.58
Slate & tile	14.61	1.58
Kettlemen	12.90	1.58
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4078 - MOD. #8 (46 FR 48865 - 10/2/81) Bexar County, Texas		
CHANGE:		
Sprinkler fitters	16.17	2.83

DECISION NO. TX81-4079 - MOD. #6 (46 FR 48867 - 10/2/81) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas		
CHANGE:		
Building Construction:		
Plumbers & pipefitters:		
Zone 1	12.51	.99
Zone 2	13.01	.99
Zone 3	14.01	.99
Incidental Paving & Utilities:		
Plumbers (Bell & Coryell):		
Zone 1	13.01	.99
Zone 2	14.01	.99

DECISION NO. TX82-4001 - MOD. #2 (47 FR 4463 - 1/29/82) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas		
CHANGE:		
Bricklayers & stonemason	13.95	.80
Marble masons(exterior)	13.95	.80
Sprinkler fitters	16.17	2.83

DECISION NO. TX82-4005 - MOD. #5 (47 FR 4465 - 1/29/82) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Roofers:		
Composition	$13.86	1.58
Slate & tile	14.61	1.58
Kettlemen	12.90	1.58
Sprinkler fitters	16.17	2.83

DECISION NO. TX82-4019 - MOD. #1 (47 FR 19935 - 5/7/82) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palto Pinto, Rockwall, Tarrant & Wise Cos., Texas		
CHANGE:		
Painters:		
Zone 1 - Group 1	14.31	1.62
Group 2	14.56	1.62
Group 3	14.435	1.62
Group 4	14.685	1.62
Sprinkler fitters	16.17	2.83

DECISION NO. PA82-3008 - MOD. NO. 3 (47 FR 8487 - February 26, 1982) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
TRUCK DRIVERS:		
Heavy and Highway Truck Drivers:		
Including Site Preparation, Paving and Utilities on Building Construction		
Class 2	$11.30	2.5425
Class 3	11.50	2.5425

DECISION NO. PA81-3090 MOD. NO. 2 (46 FR 61813 - December 18, 1981) Lycoming County, Pa.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement Masons	$11.30	
Bricklayers & Stonemasons	12.25	2.265
LABORERS:		
General Laborers	8.75	1.40
Operator of jackhammer, paving and other pneumatic electrical and mechanical tools, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pile and the making of joints for same, wagon drill operator, cofferdam (below 10'). tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders, scaffold builders and removal of power buggies	8.90	1.40
Painters		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+a
Group 2	14.56	25.6%+a
Group 3	13.69	25.6%+a
Group 4	12.92	25.6%+a
Group 5	12.45	25.6%+a
Group 6	11.54	25.6%+a
Group 7	15.10	25.6%+a
Group 7-A	15.35	25.6%+a
Group 7-B	15.59	25.6%+a
Sprinkler Fitters	16.92	2.83
Soft Floor Layers	11.69	1.95
Sheet Metal Workers	14.62	1.85

DECISION NO. PA82-3007 - MOD. NO. 2	Basic Hourly Rates	Fringe Benefits
(47 FR 8529 - February 26, 1982)		
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
Bricklayers:		
New Residential:		
Under 4 stories	$13.72	2.32
Carpenters:		
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not n more than (4) stories which is intended for predominently residential use	12.52	4.41
Residential Under 4 stories		
Bucks, Delaware and Montgomery Counties	11.38	2.91
All other work	13.52	4.16
Drywall Finishers:		
All other work	12.03	1.38
Electricians:		
Zone 1		
Commercial	17.14	1.40+3%
Residential up to and including 4 stories	18.14	.36+3%
Zone 9		
Commercial	13.35	.64+3%
Ironworkers:		
All Other Work		
Zone 3		
Structural & Ornamental	15.00	4.05
Reinforcing	14.21	4.00
LABORERS:		
*All Other Work:		
Class 1	12.30	2.00
Class 2	12.40	2.00
Class 3	12.45	2.00
Class 4	12.60	2.00
Class 5	12.70	2.00
Lathers		
Zone 1	13.52	4.41
LINE CONSTRUCTION:		
ZONE 1		
Linemen	$17.60	.60+4%
Groundmen	10.56	.60+4%
Winch truck operator	12.32	.60+4%
Marble Setters	13.20	3.12
Marble Finishers	10.59	3.75
Millwrights	14.02	4.41
Painters:		
All Other Work:		
Zone 1		
Brush	14.20	2.38
Spray, steel & swing	14.65	2.38
Roller	14.20	2.38
Zone 2		
Commercial, Brush	14.08	2.49
Commercial, spray	14.58	2.49
Zone 4		
Brush	14.34	3.10
Steel	15.09	3.10
Plumbers:		
All Other Work:		
Zone 1	18.73	2.88
Roofers:		
Residential structure of not more than 4 stories re-roofing		
Zone 1	12.10	1.90
Sheet metal workers		
Zone 1(Commercial)	18.28	2.94
Soft Floor Layers:		
All Other Work	18.63	3.86
Sprinkler Fitters		
Zone 1	16.91	2.83
Steam Fitters		
Zone 1	17.81	3.56
Stone Masons		
Zone 1	13.10	2.48
POWER EQUIPMENT OPERATORS:		
Group 1	15.16	25.6%
Group 2	14.90	25.6%
Group 3	14.83	25.6%
Group 4	13.82	25.6%
Group 5	13.51	25.6%
Group 6	13.34	25.6%
Group 7	12.83	25.6%
Group 8	12.09	25.6%

DECISION NO. PA82-3007 MOD. NO. 2, CONT'D	Basic Hourly Rates	Fringe Benefits
Terrazzo Workers	$12.86	3.12
Terrazzo Finishers	10.57	3.75
Tile Setters:		
All Other Work	11.50	3.89
Tile Setters Finishers	10.36	3.75
TRUCK DRIVERS:		
BUILDING CONSTRUCTION		
Class I	11.35	2.5425
Class II	11.45	2.5425
Class III	11.65	2.5425
HEAVY & HIGHWAY INCLUDING SITE PREPARTION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
Class 1	11.20	2.5425
Class 2	11.30	2.5425
Class 3	11.50	2.5425
OMIT:		
Roofers:		
All Other Work:		
Zone 1		
Commercial		
Roofers Assistant	7.75	2.38+e
ADD:		
Roofers:		
All Other Work		
Zone 1		
Commercial (To read Mechanic II (Handle and transport all materials tools, and equipment; clean-up debris)	7.75	2.38+e
CHANGE:		
LABORERS:		
*All Other Work		
Class 6	12.85	3.00

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SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTIES: *See Below

DECISION NO. IL82-2032

SUPERSEDEAS DECISION

STATE: ILLINOIS
DECISION NUMBER: IL82-2032
Supersedes Decision No. IL81-2028 dated June 19, 1981 in 46 FR 32183
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

COUNTIES: *See Below
DATE: Date of Publication

*Boone, DeKalb, DuPage, Kane, Kendall, Lake, McHenry & Will

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; Piledrivermen:		
Boone & DeKalb Cos.	$15.58	2.52
DuPage & Lake Cos.	15.50	2.61
Kane, Kendall, & McHenry Cos.	14.00	2.35
Will Co.	15.88	2.35
CEMENT MASONS:		
Boone Co.	11.78	1.55
DeKalb, Kane (S. Part), & Kendall Cos.	15.75	2.56
DuPage Co.	15.40	2.92
Kane (N. Part) & McHenry Cos.	16.45	1.86
Lake Co.	15.00	3.30
Will Co.	15.55	3.11
ELECTRICIANS:		
Boone & DeKalb (Except Sandwich Twp.) Cos.	15.63	2.10
DeKalb (Sandwich twp.', Kane (Aurora, Sugar Grove, Big Rock, Kaneville, Blackberry, Batavia, Geneva Twps. & City of St. Charles), & Kendall Cos.	17.95	3.50
DuPage Co.	17.65	4.06
Kane (Rem. of Co.) & McHenry Cos.	18.10	3.42
Lake Co.	16.75	3.85
Will Co.	17.68	2.72
IRONWORKERS:		
Boone, DeKalb (Except S.E. 2/3 of Co.), & McHenry (N.W. ¼ of Co.) Cos.	15.85	2.775
DeKalb (Rem.of Co.), DuPage (Except Argonne & Vic.), Kane, Kendall (N. Part), & McHenry (S.E. ¼ of Co.) Cos.	18.40	1.705
DuPage (Argonne & Vic,), Kendall (S. Part), & Will Cos.	14.77	4.955
Lake & McHenry (Hebron, Woodstock & E. Thereof) Cos.	16.80	3.71

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Boone, DeKalb, DuPage, Kane, Kendall, Lake, & McHenry Cos.:		
Linemen; Digger Op.; & Crane (15 Tons or above)	16.30	1.02+a
Equipment Op.; Semi-Truck Drivers	13.84	.93+a
Groundmen Truck Drivers	11.03	.95+a
Groundmen	10.67	.82+a
Will Co.:		
Linemen; Equipment Ops.	17.05	2.86
Groundmen	12.10	2.03
PAINTERS:		
Boone Co.:		
Brush; Roller	13.95	1.92
Open Structural Steel	14.20	1.92
Spray	14.50	1.92
Sandblasting	14.95	1.92
DeKalb, DuPage, Kane, Kendall, & McHenry Cos.:		
Brush; Spray; Sand-Blasting	13.55	1.91
Lake Co.:		
Brush	14.00	1.485
Will Co.:		
Brush	14.05	1.85
Bridges with:		
Butt Plates & Hand-rails	14.05	1.85
W/Superstructures	15.05	1.85
WO/Superstructures	14.55	1.85
TRUCK DRIVERS:		
Boone Co.:		
2-3 Axles	12.00	1.55
4 Axles	12.15	1.55
5 Axles	12.35	1.55
6 Axles	12.55	1.55
Remainder of Counties:		
2-3 Axles	12.25	62.00b
4 Axles	12.40	62.00b
5 Axles	12.60	62.00b
6 Axles	12.80	62.00b

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Boone, Kane, Kendall, & McHenry Cos.:		
Class 1: Common Laborers; Asphalt Laborers; Asphalt Plant Laborers; Stripping Laborers; Concrete Saw; Self-Propelled Saw; & Laser Beam	12.25	1.92
Class 2: Air Tampers & Vibrators	12.30	1.92
Class 3: Mortar Concrete Mixers	12.35	1.92
Class 4: Stringline & Form Setters; Torchmen; Sheeting & Cribbing Men; Black Top Rackers; Lutemen; & Machine Screwmen	12.40	1.92
Class 5: Chain Saw Men; Jackhammermen; Drillmen; Concrete Breaker; & Air Spade	12.50	1.92
Class 6: Tunnel Men; Tile Layers & Bottom Men	12.60	1.92
Class 7: Caisson Diggers; & Dynamiters	12.75	1.92
LABORERS:		
DuPage and Will Cos.:		
Common; Plasterer Tenders; DuPage and Will Cos.; Pumps for Dewatering & other unclassified Laborers	12.40	1.92
Cement Gun Laborers	12.475	1.92
Scaffold Laborers & Chimney Laborers over 40 ft.	12.50	1.92
Windlass & Cement Gun Nozzle Laborers - Gunnite	12.55	1.92
Stone Handlers & Derrickmen	12.60	1.92
Jackhammermen	12.625	1.92
Concrete Vibrator; Plumbers' Tenders; & Chain Saw Operators	12.65	1.92
Firebrick & Boiler Setters' Tenders	12.725	1.92
Chimney Tenders on Firebrick; Caisson Diggers & Well Point System Men	12.75	1.92
Boiler Setter Plastic Tenders	12.85	1.92
Jackhammer on Firebrick only	12.975	1.92

	Basic Hourly Rates	Fringe Benefits
LANDSCAPE WORK (DuPage, Kane, Lake, McHenry & Will Cos.		
Plantsmen	8.18	c&d
Truck Driver; Tractor Trailer (3 Axles or more) and Equipment Operator	8.66	c&d
Truck Drivers - Single Axle	8.24	c&d
LABORERS: Lake County		
SEWER & WATER MAIN EXTENSIONS		
Class 1: General Laborers & Top Laborers	12.40	1.92
Class 2: Second Bottom Men	12.625	1.92
Class 3: Well Point System-Jackhammer Men (Tampers & Vibrators); Bottom Men; Pipelayer on Drains & Pipelayer Men; all Tunnel Work	12.75	1.92
STREET PAVING & GRADE SEPARATION		
Class 1: General, Asphalt Plant Laborers	12.40	1.92
Class 2: Laborers on Apsco, Birch Overman & Similar Spreader Equipment, Machine Screwmen, Mitre B Spreaders	12.675	1.92
Class 2: Form Setters; Well Point; Jackhammer (Tampers & Vibrators); Bottom Men; Pipelayers on Drains; Catch Basin Diggers & Manhole; Power Driven Concrete Saw	12.75	1.92
LABORERS:		
DeKalb County:		
Class I	12.30	2.00
Class II	12.50	2.00
Class III	12.60	2.00
POWER EQUIPMENT OPERATORS:		
Class 1	15.45	2.70
Class 2	14.90	2.70
Class 3	13.90	2.70
Class 4	12.65	2.70
Class 5	11.55	2.70

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FOONOTES:

a. 4 Paid Holidays: Memorial Day; July 4th; Labor Day; & Thanksgiving Day
b. Per Week Per Employee
c. Six Paid Holidays; New Years' Day; Memorial Day; July 4th; Labor Day; Thanksgiving Day; & Christmas Day
d. 1 year service - 1 week paid vacation - 2 or more years service - 2 weeks paid vacation

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

CLASSIFICATION DEFINITIONS - LABORERS:
DeKalb County

CLASS I - Common Laborers; Carpenters' Tenders; Tool, Cribmen, Firemen, or Salamander Tenders; Gravel Box Men; Dumpmen & Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Dispatchers; Landscapers; Unloading Explosives; Laying of Sod; Planting of Trees; Removal of Trees; Asphalt Plant Laborers; Wrecking Laborers; Fireproofing Laborers; Driving of Stakes; Stringlines for all Machinery; Asphalt Workers with Machines and Layers; Grade Checker; Signal Man on Crane; Coring Machine Operator; Concrete Workers (wet), on Concrete Paving; Placing, Cutting and Tying of Reinforcing Steel Form Setters-Street and Highway

CLASS II - Scaffold Workers; Handling of Materials Treated with any Foreign Matter Harmful to Skin or Clothing; Bulk Cement Handlers; Unloading of Re-Bars; Tunnel Tenders in Free Air; Batch Dumpers; Mason Tenders; Kettle and Tar Men; Tank Cleaners; Plastic Installers; Motorized Buggies or Motorized Unit Used for Wet Concrete or Handling of Building Materials; Vibrator Operators; Mortar Mixer Operators; Cement Silica; Clay Fly Ash; Lime and Plasters Handlers (Bulk or Bag); Deck Hand; Dredge Hand and Shore Laborers; Bankmen on Floating Plant; Power Tools; Material Selector (Firebrick or Castable Material); Chain Saw Operators; Air Tamping Hammerman; Concrete Saw Operator; Front End Man on Chip Spreader; Luteman; Asphalt Raker

CLASS III - Jackhammer and Drill Operator; Laborers with De-Watering Systems; Bottom Sewer Workers Plus Depth; Cofferdam Workers Plus Depth; Caisson Workers Plus Depth; Gunnite Nozzle Men; Leadman on Sewer Work; Welders, Cutters, Burners, & Torchmen; Layout Man and/or Tile Layer; Screenman on Asphalt Pavers; Laborers Tending Masons with Hot Material; Multiple Concrete Duct-Leadman; Curb Asphalt Machine Operator; Ready-Mix Scalemen; Permanent, or Temporary Plant; Laser Beam Operator; Concrete Burning Machine Operators; Underpinning and Shoring of Building; Pump Men

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:
Sewer, Heavy & Highway Construction:

CLASS 1 - Asphalt Plant; Asphalt Heater & Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End Loader Machine (1. cu. yd. Backhoe Bucket or over or with Attachment); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes, Hammerhead, Linden, Peco & Machines of a like nature; Creter Crane; Crusher, Stone, etc.; Derricks; Derrick Boats; Derricks, traveling; Dredges; Field Mechanic-Welder; Formless Curb & Gutter Machine; Gradall & Machines of a like nature Grader, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form

CLASSIFICATION DEFINITIONS (CONT'D)

Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, 1, 2, & 3 Drum; Hydraulic Backhoes; Locomotives; Mucking Machine; Piledriver & Skid Rig; Pre-stress Machine; Pump Cretes Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck Mounted; Roto Mill Grinder (36" & Over); Roto Mill Grinder (Less than 36"); Slip Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Tractor Drawn Belt Loader with or w/o attach. Pusher; Tractor with Boom; Tractaire with attachments; Trenching Machine; Truck mounted Concrete Pump with Boom; Underground Boring and/or Mining Machines under 5 ft.; Wheel Excavator; & Widener (Apsco)

CLASS 2 - Batch Plant; Bituminous Mixer; Bobcats (Over 3/4 cu. yd.); Boiler & Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front End Loader Machine (Less than 1 cu. yd. Backhoe Bucket or over with attachments); Compressor & Throttle Valve; Compressor, Common receiver (3); Concrete Breaker or Hydrohammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S series to & incl. 27 cu. ft.; Concrete Spreader; Concrete Curing Machine, Burlap Machine, Belting Machine & Sealing Machine; Conveyor Muck Cars (Haglund or Similar type); Finishing Machine - Concrete; Greaser Engineer; Highlift Shovels or Front End Loader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinkey; Pumpcretes; Squeeze Cretes - Screw type Pumps, Gypsum Bulker & Pump; Roller, Asphalt; Rotory Snow Plows; Rototiller, Seaman, etc., Self-propelled; Scoops - Tractor Drawn; Self-propelled Compactor Spreader - Chip - Stone, etc.; Scraper; Scraper - Prime mover in Tandem (regardless or size); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc, Compactor, etc.; & Tug Boats

CLASS 3 - Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common Receiver (2); Concrete Mixer (2 Bag & Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Firemen on Boilers; Forklift Trucks; Grouting Machine; Hoists, Automatic; Hoists, all Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Seed & Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper - Form-Motor Driven

CLASS 4 - Air Compressor - Small 170 & Under (1 to 5 not to exceed a total of 300 Ft.); Air Compressor - Large over 170; Asphalt Spreader Backend Man; Combination- Small Equipment Operator; Generators - Small 50KW & Under; Generators - Large over 50KW; Heaters, Mechanical; Hydraulic Power Unit (Piledriving or extracting); Light Plants, (1 through 5); Pumps, Over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4-small Electric Drill Winches; & Bobcats (up to & incl. 3/4 cu. yd.)

CLASS 5 - Oilers

SUPERSEDEAS DECISION

STATE: Ohio COUNTIES: Ashtabula, Cuyahoga

SUPERSEDEAS DECISION

STATE: Ohio

COUNTIES: Ashtabula, Cuyahoga Lake, Lorain, Portage, Stark, and Summit

DECISION NUMBER: OH82-2037

DATE: Date of Publication

Supersedes Decision No.: OH81-2067, dated December 18, 1981 in 46 FR 61807

DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Ashtabula (Cities of Ashtabula & Geneva), Cuyahoga, Lake & Lorain Cos.	$16.29	2.24
Ashtabula (Rem. of Co.)	15.64	2.42
Remaining Cos.	16.10	2.04
BOILERMAKERS	15.755	2.805
BRICKLAYERS; Stonemasons:		
Ashtabula Co.	16.42	2.45
Cuyahoga Co.	15.97	2.74
Lake Co.	16.72	2.05+a
Lorain Co.	18.05	.81+b
Portage and Summit Cos.:		
Commercial Construction	15.52	2.22
Residential Construction	13.92	1.82
Stark Co.	15.74	2.57
CARPENTERS; Millwrights; Piledrivermen; Soft Floor Layers:		
Ashtabula, Cuyahoga, & Lake Cos.:		
Carpenters; Soft Floor Layers	15.67	3.14
Millwrights	15.20	3.61
Piledrivermen	15.50	3.31
Portage & Summit Cos.:		
Commercial:		
Carpenters	15.35	2.29
Millwrights	15.20	3.61
Piledrivermen	15.50	3.31
Soft Floor Layers	14.50	2.70+a
Residential:		
Carpenters	11.31	1.27
Stark Co.:		
Carpenters	15.93	1.77
Millwrights; Piledrivermen	16.41	1.77
Soft Floor Layers	15.76	1.77
Lorain Co.:		
Carpenters; Soft Floor Layers	15.37	2.23+d
Millwrights	15.20	3.61
Piledrivermen	15.50	3.31
CEMENT MASONS:		
Ashtabula Co.	16.42	2.45
Cuyahoga Co.	16.72	1.62
Lake Co.	16.72	2.05+a

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS (CONT'D)		
Lorain Co., Portage, Stark, & Summit Cos.:	18.05	.81+b
Commercial Construction	15.19	1.72
Residential Construction	14.22	1.72
ELECTRICIANS:		
Cuyahoga & Lorain (Twp. of Columbia) Cos.	16.84	3%+ 1.75
Lake Co.:		
Commercial Construction	18.73	3.2% +1.55
Residential Construction	9.15	4%+ .85
Lorain (Except Columbia Twp.):		
Commercial Construction	16.75	3.1% +1.85
Residential Construction	9.98	3.1% +.85
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shelbyville, Streetsboro, & Suffield), & Summit Cos.:		
Commercial Construction	16.67	3.2% +1.58
Residential Construction	10.78	3.2% +1.14
Stark County:		
Commercial Construction	15.70	3.3% +2.00
Residential Construction	10.94	3.3% +1.80
Ashtabula Co. (Twps. of Colebrook, Wayne, Williamsfield, Orwell, & Windsor) & Portage (Remainder of Co.) Co.	16.62	9.702% +1.00

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D)		
Ashtabula Co. (Rem of Co.):		
Commercial Construction	17.25	3.5% +.275
Residential Construction	8.10	3.002% +1.00
ELEVATOR CONSTRUCTORS:		
Ashtabula Co.:		
Mechanic	14.88	2.465 +e+f
Helpers	70%JR	2.465 +e+f
Helpers (Prob.)	50%JR	
Cuyahoga, Lake, & Lorain Cos.:		
Mechanic	16.13	2.33+ e+f
Helpers	70%JR	2.33+ e+f
Helpers (Prob.)	50%JR	
Portage, Stark, & Summit Cos.:		
Mechanic	15.645	2.33+ e+f
Helpers	70%JR	2.33+ e+f
Helpers (Prob.)	50%JR	
GLAZIERS:		
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	16.28	2.36
Portage, Stark & Summit Cos.:		
Commercial	14.08	2.66
Residential	8.62	1.91
IRONWORKERS:		
Ashtabula (NE ¼ of Co.) Co.	14.50	3.52
Ashtabula (NW ¼ Cuyahoga, Lake, Lorain, Portage (exclu. Ravenna Ordnance Depot), & Summit cos.	16.22	2.58
Ashtabula (S ½ of co.) & Portage (Ravenna Ordnance Depot) Cos.	15.26	2.39
Stark Co.	14.43	2.92
LATHERS:		
Lorain (Western ½)	16.30	
LINE CONSTRUCTION:		
Ashtabula Co. (Twps. of Colebrook, Orwell, Wayne, Williamsfield & Windsor), Portage Co. (Twps. of Charleston, Edinburgh,		

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Freedom, Hiram, Nelson, Palmyra, Paris, & Windham):		
Cable Splicer Op.; Linemen; Pole Digging Equipment Op.	17.08	8%+ .70
Groundmen	13.66	8%+ .70
Ashtabula Co. (Rem. of Co.):		
Cable Splicer; Equipment Op.; Line Truck Driver; Linemen	13.05	3%+ 1.75
Groundmen	9.80	3%+ 1.75
Cuyahoga & Lorain (Columbia Twp.) Cos.:		
Cable Splicers; Equipment Ops.; Linemen	17.93	3%+ .60
Truck Drivers (winch) Groundmen	11.65	3%+ .60
Lorain (Rem. of Co.) Co.:		
Cable Splicers; Equipment Ops.; & Linemen	16.75	3%+ 1.75
Groundmen	10.89	3%+ 1.75
Lake Co.:		
Cable Splicers; Equipment Operators; Linemen	18.73	3%+ 1.55
Groundmen	12.17	3%+ 1.55
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro, Suffield, & Summit Cos.:		
Linemen	16.67	3%+ 1.58
Cable Splicers	17.72	3%+ 1.58
Groundmen; Truck Drivers	8.34	3%+ 1.58
Equipment Operators	12.50	3%+ 1.58
Stark Co.:		
Cable Splicers	14.59	3.3% +2.00

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LINE CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits
Linemen	15.70	3.3% +2.00
Truck Drivers; Groundmen	9.84	3.3% +2.00
Line Equipment Ops.	13.44	3.3% +2.00
MARBLE SETTERS; Terrazzo Workers; Tile Setters:		
Ashtabula Co.	16.42	2.45
Cuyahoga Co.:		
Marble Setters; Terrazzo Workers	15.97	2.74
Tile Setters	15.905	2.25
Lake Co.	16.72	2.05+a
Lorain Co.	18.05	.81+b
Portage & Summit Cos.	14.77	1.81
Stark Co.:		
Marble Setters	13.52	2.10
Terrazzo Workers	13.44	2.10
Tile Setters	13.35	2.10
MARBLE SETTERS' FINISHERS:		
Ashtabula Co.	14.405	
Cuyahoga, Lake & Lorain Cos.	14.51	2.50
Portage & Summit Cos.	14.27	1.81
PAINTERS:		
Ashtabula, Cuyahoga, Lake, Portage (No. of East West Turnpike), & Summit (No. of East West Turnpike), Lorain (NE part):		
Brush; Rollers; Paperhangers	15.06	2.62
Sandblasting; Spray; Closed Steel below 55 ft.	15.46	2.62
Tapers	15.76	2.62
Lorain (except NE part):		
Commercial Construction:		
Brush	12.25	2.05+g
Roller	12.75	2.05+g
Taping	13.00	2.05+g
Residential Construction:		
Brush	11.60	2.05+g
Taping	12.35	2.05+g
Portage Co. (Ravenna Ordnance Depot):		
Brush; Rollers; Waterproofing; Paperhanging; Wallwashing; Hydro Jet Cleaning; Steam Cleaning	14.45	2.25
Spray; Epoxy-mastic (brush or roller)	14.95	2.25
Swing; Interior Scaffold Over 30 ft.); Window Jacks & Safety Belts	14.62	2.25
Drywall Taping	14.60	2.25
Open Structural Steel	14.66	2.25
Dipping (when permitted)	14.80	2.25
Epoxy - mastic (spray	15.45	2.25
Paperhangers (furnishing own tools)	14.70	2.25
Portage & Summit Cos. (up to & incl. Ohio Turnpike):		
Brush; Roller; & Paperhanger	14.65	1.67
Structural Steel; Drywall Finishers & Tapers	15.40	1.67
Spray	15.50	1.67
Stark Co. (Commercial):		
Brush; Roller	13.26	2.10
Paperhangers	13.36	2.10
Drywall	13.66	2.10
Spray	13.76	2.10
Drywall with machines	14.01	2.10
Stark Co. (Residential)	10.00	2.10
PIPEFITTERS; Steamfitters; Ashtabula, Cuyahoga, Lake, Portage (N of #303), & Summit (N. of #303 exclu. city of Hudson) Cos. and the C.E.I. Power House in Avon Lake	15.92	2.90
PIPEFITTERS; Plumbers; & Steamfitters:		
Lorain co.	16.75	2.28
Portage & Summit Cos. (S. of #303, except corporate limits of Hudson) Cos.:		
Commercial Building	15.24	2.56
Stark Co.	14.67	2.15+h
PIPEFITTERS; Plumbers (Residential):		
Lorain, Portage, Stark, & Summit (S½) Cos.	10.10	1.08
PLASTERERS:		
Ashtabula Co.	16.42	2.45
Cuyahoga Co.:		
Commercial Building	18.74	.01
Residential	13.00	.01
Lake Co.	16.72	2.05+a
Lorain Co.	18.05	.81+a
Portage, Stark & Summit Cos.	15.06	1.71

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	Basic Hourly Rates	Fringe Benefits
PLUMBERS:		
Ashtabula, Cuyahoga, Lake, Portage (N. of #303), & Summit (N. of #303) Cos.	16.03	2.62
ROOFERS:		
Ashtabula, Cuyahoga, Lake, & Lorain Cos.	17.78	.83
Portage, Stark, & Summit Cos.	14.89	2.46
SHEET METAL WORKERS:		
Ashtabula, Cuyahoga, & Lake Cos.	14.69	2.64
Lorain Co.	13.91	2.11
Portage, Stark, & Summit Cos.:		
Commercial Building	15.17	2.14+i
Residential	9.55	2.14+i
SPRINKLER FITTERS:		
Ashtabula, Cuyahoga, Lake, Portage (N. of #303), Summit (N. of #303, excl. city of Hudson) Cos. & C.E.I. Power House in Avon Lake	15.92	2.90
Remaining Counties	16.11	2.43
TERRAZZO WORKERS' FINISHERS:		
Ashtabula Co.	14.405	
Cuyahoga, Lake, & Lorain Cos.	15.07	2.50
Portage & Summit Cos.	14.27	1.81
Stark Co.	12.06	2.10
TILE SETTERS' FINISHERS:		
Ashtabula Co.	14.405	
Cuyahoga, Lake, & Lorain Cos.	15.04	2.50
Portage & Summit Cos.	14.27	1.81
Stark Co.	11.94	2.10
LABORERS:		
Ashtabula Co.:		
Stonemason Tenders	14.60	
Sheeting & Shoring Men; Asphalt Rakers & Tampers; Dumpmen (Batch Truck); Concrete Workers; Building Wreckers; Tool Checkers; Carpenters Tenders; Construction Laborers; All work not mentioned in classifications below to be paid at the rate of Construction Laborers	14.95	
Spreader Box Men Asphalt); Plasterers or Mortar Mixers; Squeegee man	15.15	
Air & Machine Driven Tool Op.; Industrial Sewer Cleaning; Sewer Pipe Layers; bottom Men (6' & over); Power Driven Wheelbarrows & Sweepers; Brick Hatter & Droppers; Burning & Cutting Torches; Mud Jacking of Floors	15.15	
Stackmen; Swinging Scaffold Men	15.25	
Tunnel Laborers	15.35	
Gunnite Ops.	15.45	
Powder Blasters	15.50	
Cuyahoga County:		
Construction; Tenders	13.49	3.55
Sewer & Utility; Power Driven Tools & Vibrators	13.64	3.55
Jackhammer; Acetylene Burners; Muckers	13.69	3.55
Swinging Scaffolds	13.74	3.55
Gunnite Ops.; Blasters; Shooters; Caisson; Well Cylinder; Mine Workers w/o Air; & Cofferdams	13.97	3.55
Topman on Free Standing Radial Stack	14.14	3.55
Lake County:		
Building & Construction Gunnite Op.; Blasters & Shooters; Caissons; Wells; Cylinder Cofferdams; Mine Workers w/o Air; Swing Scaffolds; Acetylene Burners; Vibrators; Top Man on Free Standing Radial Stacks; Slip Forms Higher than 30'; Fire Brick Tenders	13.15	2.30
Lorain County:		
Building & Construction; Tool Crib; Carpenter Tender; Finishers Tender; Concrete Tenders; Concrete Handler; Guard Rail Erector; & Utility Construction	13.78	2.50
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipelayers; Air		

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	Basic Hourly Rates	Fringe Benefits
Air & Machine Driven Tool Op.; Industrial Sewer Cleaning; Sewer Pipe Layers; bottom Men (6' & over); Power Driven Wheelbarrows & Sweepers; Brick Hatter & Droppers; Burning & Cutting Torches; Mud Jacking of Floors	15.15	
Stackmen; Swinging Scaffold Men	15.25	
Tunnel Laborers	15.35	
Gunnite Ops.	15.45	
Powder Blasters	15.50	
Cuyahoga County:		
Construction; Tenders	13.49	3.55
Sewer & Utility; Power Driven Tools & Vibrators	13.64	3.55
Jackhammer; Acetylene Burners; Muckers	13.69	3.55
Swinging Scaffolds	13.74	3.55
Gunnite Ops.; Blasters; Shooters; Caisson; Well Cylinder; Mine Workers w/o Air; & Cofferdams	13.97	3.55
Topman on Free Standing Radial Stack	14.14	3.55
Lake County:		
Building & Construction Gunnite Op.; Blasters & Shooters; Caissons; Wells; Cylinder Cofferdams; Mine Workers w/o Air; Swing Scaffolds; Acetylene Burners; Vibrators; Top Man on Free Standing Radial Stacks; Slip Forms Higher than 30'; Fire Brick Tenders	13.15	2.30
Lorain County:		
Building & Construction; Tool Crib; Carpenter Tender; Finishers Tender; Concrete Tenders; Concrete Handler; Guard Rail Erector; & Utility Construction	13.78	2.50
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipelayers; Air		

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	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
Air & Power Driven Tools; Burner on Demolition Work; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blasters; Creosote Workers; Mortar Mixers; Form Setter; Mason Tenders; Plasterers' Tenders; Hod Carrier; Laser Beam Set Up Man	13.98	2.50
Gunnite Operator	14.38	2.50
Portage & Summit Cos.:		
Residential Construction Common Laborers; Welders' Tenders; Carpenters' Tenders; Landscape Laborers; Mason Tender; Concrete Bucket Tender	11.72	2.56
	13.27	2.56
Air Driven Boring Machine; Tamper Ops.; Asphalt Raker; Paving Bed Maker; Material Mixer; Wire Mesh Handler; Hook-up Man on Demolition Work; Scaffold Erector; Structural Precast Erector; Power Tools, Air, Gas, or Electric	13.42	2.56
Pipe Layers; Rock Drillers; Muckers-Tunnel; Burners; Form Setters; Power Saws; Jackhammer; Barco Type Tampers; Bottom Man; Hod Carrier; Power Buggy or Power Wheelbarrow	13.42	2.56
Gunnite Nozzlemen; Tunnel Miners; Water Line Caulkers; Dynamite Men; Pump Hose Nozzlemen	13.27	2.56
Stark Co.		
Building & Construction; Tool Cribman; Carpenters' Tenders; Finishers Tenders; Concrete Handler; Utility Construction Laborer; Guard Rail Erector	12.81	2.50
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipe Layers; Air & Power Driven Tools; Burner on Demolition; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blaster; Creosote Workers		
Form Setter; Hod Carrier; Laser Beam Setup Men	13.01	2.50
Mason Tenders; Mortar Mixers; & Stonemason Tenders	13.11	2.50
Gunnite Operator	13.41	2.50
POWER EQUIPMENT OPERATORS:		
Well & Pump Work (Incl. Drilling & Repair of All Water Wells; Test Holes & Wells; & Installation & Repair of Deep Well Type of Shallow Well Pumps on Water Wells) Well Driller & Pump Installer	8.10	.61+a+b
POWER EQUIPMENT OPERATORS:		
Ashtabula, Cuyahoga, Lake, & Lorain Cos.:		
GROUP A	17.52	3.02
GROUP B	17.37	3.02
GROUP C	17.02	3.02
GROUP D	16.24	3.02
GROUP E	15.92	3.02
GROUP F	13.74	3.02
Portage, Stark, & Summit Cos.:		
GROUP A	17.24	3.02
GROUP B	17.08	3.02
GROUP C	16.73	3.02
GROUP D	15.92	3.02
GROUP E	15.59	3.02
GROUP F	13.38	3.02

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CLASSIFICATION DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

GROUP A - A-Frames; All Rotary Drills used on Caisson Work for Foundations & Sub-structure Work; Boiler Op. or Compressor Op. when Compressor or Boiler is mounted on Crane (piggyback operation); Boom Trucks; Cableways; Cherry Pickers; Combination Concrete Mixer & Tower; Concrete Pumps; Cranes; Derricks; Draglines; Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Op. (hoisting builders materials); Helicopter Winch Op. (hoisting builders materials); Hoes; Hoisting Engines (two or more drums); Lift Slab or Panel Jack Op.; Locomotives; Maintenance Engineer (mechanic or welder); Mixer Paving (multiple drum); Mobile Concrete Pumps with Boom; Panelboard (all types on site); Pile Driver; Power Shovels; Side Booms; Slip Form Pavers; Straddle Carriers (building construction site); Tower Derricks; Trench Machines (over 24" wide)

GROUP B - Asphalt Paver; Bulldozer; CMI Type Equipment; Endloaders; Kohlman Type Loaders (dirt loading); Mucking Machines; Power Graders; Power Scoops; Power Scrapers; Push Cats

GROUP C - Air Compressor (pressurizing shafts or tunnels); All Asphalt Rollers; Fork Lifts; Hoist (one drum); House Elevators; Man Lift; Power Boiler (over 15 lbs., pressure); Pump Op. Installing or Operating Well Points or other Types of Dewatering System; Pumps (4" & over discharge); Submersible Pumps (4" & over discharge); Trenchers (24" & under)

GROUP D - Compressors on Building Construction; Conveyors (building material); Gunnite Machines; Mixers (cap., more than on bag); Mixers (one bag cap., side loader); Post Driver; Post Hole Digger; Pavement Breaker (hydraulic or cable); Road Widening Trencher; Rollers; Welder Operator

GROUP E - Backfillers and Tampers; Batch Plant; Bar & Joint Installing Machine; Bull Floats; Burlap & Curing Machines; Clefplanes; Concrete Spreading Machines; Crushers; Drum Fireman (asphalt); Farm Type Tractors (pulling attachments); Finishing Machines; Form Trenchers; High Pressure Pumps (over 4" discharge); Hydro Seeders; Self-propelled Power Spreader; Self-Propelled Subgrader; Tractors (pulling sheep foot roller or grader); Tire Repairmen; Vibratory Compactors (with Integral power)

GROUP F - Oiler; Light Plant Op.; Power Driven Heaters (oil fired); Power Boilers (less than 15 lbs. pressure); Submersible Pumps (under 4" discharge); Pumps (under 4" discharge); Tenders

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PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. $75.00 per year
b. 2 paid holidays: C & D
c. $150.00 per year
d. 2 paid holidays: C & D
e. 7 paid holidays: A through F, & Day after Thanksgiving
f. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
g. 2 paid holidays: C & D
h. 1 paid holiday: D providing the employee has worked 5 consecutive days before and after the holiday.
i. 3% of gross earnings to SASMI

FOOTNOTES FOR POWER EQUIPMENT OPERATORS:

a. 9 Paid Holidays: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Eve Day; & Christmas Day
B. Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 wks' paid vacation; 11th continuous calendar year - 3 wks' paid vacation.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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BILLING CODE 4510-30-C

federal register

Friday
May 21, 1982

Part IV

Department of Housing and Urban Development

Office of the Secretary

Comprehensive Improvement Assistance Program; Low Income Housing

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 868

[Docket No. R-82-909]

Comprehensive Improvement Assistance Program; Low-Income Housing

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule revises the requirements for the modernization of existing public housing projects by setting forth simplified, more flexible requirements as a result of the Department's consideration of the public comments received on the Comprehensive Improvement Assistance Program (CIAP) interim rule, published April 14, 1981, and the Department's own efforts to reduce burdensome requirements.

EFFECTIVE DATE: July 19, 1982.

FOR FURTHER INFORMATION CONTACT: Pris Peake, Office of Public Housing, Department of HUD, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5595. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On April 14, 1981, the Department published an interim rule (46 FR 21932), setting forth the requirements for the CIAP. Under the CIAP, the Department is authorized to provide financial assistance to Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public housing projects to assure that such projects continue to be available to serve low-income families. Comments were invited until June 15, 1981.

Comments were received from 15 organizations and individuals. Each comment was carefully considered. The following is a summary of the comments received and of the changes made to the interim rule by major subject area.

A. Comprehensive Modernization

Four commentors advocated greater flexibility in the use of two-stage funding for Comprehensive Modernization because of the large modernization needs of some PHAs and projects in relation to the small fund allocations of some HUD offices. The Department agrees that greater flexibility is desirable and, therefore, requires two-stage funding for PHAs that lack modernization capability and permits two-stage funding for PHAs that lack management capability. The Department also permits two-stage funding where the magnitude of the total funds required for the Comprehensive Modernization is such that one-stage funding is precluded by the HUD office's allocation of funds. The Department believes that the routine use of two-stage funding is not consistent with the statutory intent to fund modernization in a comprehensive, rather than a piecemeal, manner and that such routine use will discourage PHAs from comprehensive planning of the physical and management improvements at specific projects.

Two commentors recommended annual funding of piecemeal modernization within the context of a comprehensive modernization plan for the projects involved, e.g., partial funding of five projects every year for five years rather than total funding of one project every year. Another commentor recommended that the CIAP be made responsive to variations from the comprehensive modernization approach where those variations are reasonably responsive to the amount of funds available and the individual PHA's modernization needs. Again, the Department does not believe that these approaches are consistent with the statutory intent and, therefore, did not accept these comments. The statute clearly requires comprehensive modernization of projects with the limited exceptions of special purpose and emergency needs.

Another commentor questioned why the implementation period for Comprehensive Modernization was limited to three years when the statutory maximum was five years. The Department believes that a three-year implementation period is adequate for the vast majority of Comprehensive Modernization programs, but will approve up to five years on an exception basis.

Another commentor expressed concern about the timing of the funding of the second stage of Comprehensive Modernization. For example, delay in second stage funding may cause the design to be outdated or the cost estimates to be off. The Department concurs that the timing is important and will work with PHAs to mimimize any adverse effects. However, second stage funding is contingent upon the availability of funds and PHA compliance with HUD regulatory and statutory requirements.

B. Special Purpose Modernization and Energy Audits

Five commentors requested that PHAs be allowed to apply for special purpose modernization beyond the first year of their five-year plans. The Department acknowledges the difficulties this may have created and has decided to provide greater flexibility since the energy audit procedures will not be published until late-Federal Fiscal Year (FFY) 1982. PHAs that were approved for modernization in FFY 1981 are now eligible to apply for special purpose modernization through FFY 1983. PHAs that were not approved for modernization in FFY 1981 are now eligible to apply for special purpose modernization in the first two years of their five-year plans. This allows an extra year for all PHAs to respond satisfactorily to the energy audit requirements and to receive funding for cost-effective energy conservation work items.

Three commentors requested clarification on the timing of energy audits and their relationship to special purpose modernization. All PHAs are required by 24 CFR Part 865, Subpart C, to conduct PHA-wide energy audits by May 27, 1983. As indicated above, during FFY 1982, the Department will issue guidelines for PHAs on how to conduct energy audits. This rule clarifies that before approval of Comprehensive Modernization or special purpose modernization, a project must have undergone an energy audit.

C. Emergency Modernization

Two commentors recommended that the definition of emergency modernization be expanded to include the protection of the physical integrity of the structures. Since the statute limits emergency modernization to correcting conditions which threaten the health or safety of the tenants, emergency modernization funds may be used only when protection of the integrity of the structures is necessary to protect tenant life, health and safety or for improvements related to fire safety. If an application which includes emergency modernization and other items does not satisfy the funding preference for cost savings, the other items may be eliminated and the emergency modernization items funded.

D. Proration of Administrative Salaries

Six commentors recommended that PHAs be allowed to charge to modernization a portion of the salaries of non-technical and technical personnel assigned part-time to the modernization program, regardless of whether the positions were in existence before the PHA's Performance Funding System base level was established. This comment was accepted. However, such

salaries are eligible costs only where the scope and volume of the modernization-related work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their normal duties. Any proration of salaries must be justified by the PHA and authorized by the HUD office and must be reflected by an appropriate revision to the PHA's operating budget.

E. Selection of PHAs

Two commentors expressed concern that the CIAP was a program to reward poor management and that PHAs with serious physical and management problems would have a better chance for funding than PHAs with serious physical problems, but good management. It is not the intent of the CIAP to reward poor management or to exclude from participation PHAs with management problems. The statute directs the Department to give preference to PHAs which have demonstrated a capability of carrying out the activities proposed in their comprehensive plans. On the other hand, one of the statutory purposes of the CIAP is to upgrade the management and operation of public housing projects. The Department does not believe that a rigid rating system is appropriate and prefers to retain flexibility by allowing HUD offices to exercise judgment in making funding decisions. HUD offices are authorized to disqualify any PHA from funding consideration if its lack of management or modernization capability is so serious that it would be unable to use the funds in a timely and effective manner or if the PHA has not demonstrated an effort to improve its management as a result of past HUD reviews or technical assistance.

One commentor recommended that the method for selecting PHAs to participate in the CIAP be reevaluated to insure participation by small PHAs. The Department wishes to emphasize that all sizes of PHAs are eligible and that the current method of selection does not preclude small PHAs from participation. The statute also directs the Department to give preference to PHAs with projects having conditions which threaten the health or safety of the tenants or having a significant number of vacant, substandard units. Therefore, the extent of physical need will be a selection factor, regardless of the size of the PHA.

For a number of years, the Department has emphasized the need for economy and efficiency in modernization. By requiring that PHAs undertake management improvements as part of programs for the physical improvement of projects, the Department anticipated that after modernization the projects could be operated in a more economical and efficient manner. Today's high operating costs and the resulting need for large operating subsidies are the most serious issues facing the Public Housing Program. The reality of limited budget resources makes it essential that PHAs take effective action, through modernization, to achieve operating cost savings. Therefore, in addition to the two factors for funding preference previously described, i.e., project physical need and PHA capability, the Department believes that the degree of cost savings should also be a factor in funding selection. Accordingly, the Department is adding an additional factor, giving funding preference to PHAs which demonstrate that the modernization will result in the greatest cost savings. This additional funding preference for cost savings is not applicable to physical improvements of an emergency nature affecting the life, health and safety of tenants or related to fire safety.

An additional concern raised during the review of the rule was the approval of Comprehensive or special purpose modernization where modernization was not financially feasible and would not result in long-term physical and social viability. Under the CIAP, the PHA is required to undertake a thorough analysis of its particular problems and design a comprehensive strategy for remedying those problems. Therefore, the Department has determined that it is appropriate to require PHAs, before developing their Preliminary Applications in consultation with local officials, to determine that the proposed Comprehensive or special purpose modernization is financially feasible and will result in long-term physical and social viability. When such a determination cannot be made, the PHA must consider alternatives to improvement of all existing units, such as changes in project density, basic design, unit distribution and/or household type, as well as demolition or disposition under 24 CFR Part 870, and include the selected alternative in the Preliminary Application. Where such a determination can be made, the PHA shall consider every possible approach to reducing operating costs and include the selected approaches in the Preliminary Application.

In view of the anticipated funding of modernization programs from development funds, a provision has been added to the rule which requires PHAs using such funds to comply with the requirements and procedures for application approval, except that they are not subject to competitive selection criteria. The rule further provides that the availability of development funds may be taken into account in making modernization funding decisions.

In addition, section 14(f) of the statute states that where an application for modernization proposes partial or total demolition of a project, the Department may not approve the application unless timely replacement of the units will be undertaken by the PHA, the total cost of providing replacement housing is less than the total cost of rehabilitation, except where waived by HUD, and low-income familes displaced by demolition will be provided with decent, safe, sanitary, and affordable housing. This statutory requirement is consistent with the requirements of 24 CFR Part 870, with which the PHA must comply (see Section 868.4(a)).

F. Consultation with Local Officials/ Tenants

One commentor questioned how the degree of local government and tenant support for proposed modernization would be measured by the HUD office, particularly since the method of consultation is not specified. The degree of local government support may be measured by written support from the locality, which may include evidence that the locality has provided or will provide additional funding for the project or its surrounding neighborhood. The degree of tenant support may be measured by the tenant comments and recommendations secured by the PHA before the Joint Review.

Another commentor stated that the tenant participation requirements should be strengthened and expanded to include emergency modernization. The Department believes that the requirements, as written, are adequate to secure meaningful tenant participation and are inappropriate where correction of physical deficiencies of an emergency nature is involved. Therefore, the comment was not accepted.

G. Replacement Reserves

Five commentors urged that the replacement reserves be established and funded at the earliest possible date to assure that future needs will be met. The Department is currently developing its criteria and procedures for funding these reserves with the objectives of funding them at the earliest possible date. Another commentor requested clarification of the requirement that PHAs provide gross estimates of future

replacement costs at the projects to be comprehensively modernized. The Department has this issue under consideration and will provide further guidance at a future date.

H. Selection of Architects/Engineers

Two commentors questioned why it was necessary to obtain professional services through the competitive negotiations process. The Department believes that this process, which is advocated by various professional organizations, will enable the PHA to select the most highly qualified architect/engineer to provide the required services at a fair and reasonable cost.

I. Contracting Requirements

Two commentors stated that the contracting requirements should be reduced and six commentors advocated greater flexibility in PHA issuance of change orders without prior HUD approval. The Department agrees that the contracting requirements were burdensome and has reduced them significantly. The Department has adopted a basic approach which relies on certification where the PHA has demonstrated satisfactory past performance in modernization contracting and has adequate in-house technical capability. However, where there are deficiencies in the PHA's performance or capability, the Department reserves the authority to impose additional requirements.

J. Modernization and Energy Conservation Standards

In order to carry out the directives under section 14(j)(2) of the United States Housing Act of 1937, as amended, to issue rules and regulations establishing standards which will provide decent, safe and sanitary living accommodations in public housing projects and for energy conserving improvements in such projects, the general criteria for such standards are set forth in § 868.18. The Modernization Standards and the Energy Conservation Standards will be published separately and an opportunity will be afforded for public comment.

K. Miscellaneous

One commentor requested more information on the definition of an eligible project. The Department is unclear what additional information is required beyond what is provided in § 868.2. The same commentor requested a more detailed explanation of the application and reporting process. Additional guidance is provided in the CIAP Handbook 7485.1 REV–1 which will be printed and available at HUD offices.

One commentor noted that estimating planned expenditures by quarter is difficult. The Department has reduced its requirements to require only that PHAs estimate planned expenditures by year, one year at a time. The same commentor requested clarification of the minority business enterprise (MBE) goal. Additional guidance is provided in the CIAP Handbook 7485.1 REV–1.

One commentor stated that HUD funding of preventive maintenance would protect the public housing stock and increase the effectiveness of programs such as the CIAP. This comment reflects a concern which is outside the realm of the CIAP.

One commentor requested guidance on how to handle a scattered site project and two contigous projects. The CIAP Handbook 7485.1 REV–1 provides guidance in this area. Scattered site projects are treated the same as non-scattered site projects, i.e., the entire scattered site project is funded in one stage. Two or more separate, but contiguous, projects may be funded together for Comprehensive Modernization.

One commentor stated that the planning costs of non-financially distressed PHAs should be reimbursable in cases where the PHAs are not funded. Due to limited fund availability, this is not possible.

One commentor recommended that the Department establish management standards against which PHA management improvement needs could be measured. The Department believes that this comment has merit and is pursuing this matter for future implementation.

One commentor recommended that the Davis-Bacon wage rate requirement be eliminated. Since this requirement is statutory, the Department cannot accept this comment.

One commentor recommended that all products, programs and computer software developed through management improvements funded by the CIAP remain in the public domain. Although the Department believes that this comment has merit, the feasibility of imposing such requirements requires further study.

Another commentor advocated raising the dollar threshold from $10,000 to $100,000 as to when bid bonds and performance and payment bonds are required in order to encourage greater participation from minority and women's business enterprises. The Department did not accept this comment because it does not believe that a higher threshold would afford PHAs adequate protection against frivolous bids and contractor defaults.

One commentor maintained that the requirements for prior HUD approval of budget revisions were burdensome and that budget revisions should be processed on a quarterly basis. The CIAP Handbook provides for minor changes to be approved without PHA submission of formal budget revisions. This procedure provides adequate flexibility to both HUD and PHAs.

One commentor recommended that the provisions concerning eligibility for funding of certain staff to provide social services were confusing and should be deleted. These provisions have been deleted.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers. The applicable regulatory sections and OMB control numbers are listed below:

CFR citation	OMB control No.
§ 868.5(b)	2502-0218.
§ 868.5(c)	2502-0206.
§ 868.5(e)	2502-0206.
§ 868.5(i)	2502-0206.
§ 868.7	2502-0218.
§ 868.8	2502-0218.
§ 868.12(e)	2502-0157 and 2503-0216.
§ 868.12(f)	2502-0157.
§ 868.12(g)	2502-0157.
§ 868.12(h)	2502-0157.
§ 868.12(i)	2502-0219.
§ 868.13(b)	2502-0168.
§ 868.13(c)	2502-0164 and 2502-0219.
§ 868.14(a)	2502-0164 and 2502-0219.
§ 868.14(b)	2502-0219.
§ 868.15	2502-0164 and 2502-0206.
§ 868.17	2502-0218.

A Finding of No Significant Impact with respect to the environment was

made in accordance with HUD regulations 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, for the interim rule and is applicable to the final rule. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 5218, 451 Seventh Street, SW., Washington, D.C. 20410.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item (B) 13 H–21–80 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41713) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title are 14.158, Public Housing—Modernization of Projects.

OMB Control Numbers: 2502–0157; 2502–0164; 2502–0188; 2502–0208; 2502–0216; 2502–0218; and 2502–0219.

List of Subjects in 24 CFR Part 868

Loan programs: Housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 868 is revised to read as follows:

PART 868—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

Sec.

868.1 Purpose.
868.2 Applicability.
868.3 Definitions.
868.4 Eligible costs.
868.5 Procedures for obtaining approval of a modernization program.
868.6 Modernization Project.
868.7 Tenant participation.
868.8 Homebuyer participation.
868.9 Other program requirements.
868.10 Special requirements for homeownership projects.
868.11 Special requirements for Section 23 Leased Housing Bond-Financed projects.
868.12 Contracting requirements.
868.13 Modernization financing.
868.14 Progress reporting.
868.15 Budget revisions.
868.16 On-site inspections.
868.17 Fiscal closeout of a modernization program.
868.18 Modernization and Energy Conservation Standards.

Authority: United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 868.1 Purpose.

Section 14 of the United States Housing Act of 1937, as amended, establishes the Comprehensive Improvement Assistance Program (CIAP), authorizing the Department of Housing and Urban Development (HUD) to provide financial assistance to Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public housing projects to assure that such projects continue to be available to serve low-income families. These physical and management improvements are financed by annual contributions provided under section 5(c) of the Act. The purpose of this Part is to prescribe requirements and procedures for the CIAP. In the case of modernization programs funded from contract authority made available under section 5(c)(3)(C) of the Act, as amended by the Housing and Community Development Amendments of 1981, the PHA shall comply fully with the requirements and procedures under § 868.5, but shall not be subject to competitive selection criteria thereunder so that any application meeting the regulation requirements will be funded. The availability of such additional contract authority may be considered in making the preliminary funding decisions under § 868.5(h).

§ 868.2 Applicability.

This Part applies to PHA-owned low-income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to section 23 Leased Housing Bond-Financed projects, for which PHAs request assistance under the CIAP in Federal Fiscal Year (FFY) 1981 and thereafter. This Part also applies to the implementation of modernization programs which were approved before FFY 1981. This Part does not apply to projects under the Section 23 Leased Housing Non Bond-Financed Program, the section 10(c) Leased Housing Program, and the Section 23 and Section 8 Housing Assistance Payments Programs.

§ 868.3 Definitions.

As used in this Part:

"Act" means the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.).

"Annual Contributions Contract (ACC)" means a contract under the Act between HUD and the PHA, containing the terms and conditions under which the Secretary makes loans and annual contributions to assist PHAs in providing decent, safe and sanitary housing for families of low-income and provides modernization funds to PHAs to improve existing public housing projects.

"Comprehensive Modernization" means a modernization program for a project which provides for all needed physical and management improvements. Under the CIAP, all modernization programs are Comprehensive Modernization, except those defined as special purpose, emergency or homeownership.

"Emergency modernization" means a modernization program for a project that is limited to physical work items of an emergency nature, affecting the life, health and safety of tenants or related to fire safety. Under emergency modernization, management improvements are not eligible modernization costs.

"Financial feasibility" means that the cost (excluding the cost of management improvements) of a modernization program does not exceed the prototype cost of a new project.

"Financially distressed PHA" means a PHA that has an operating reserve level of 20 percent or less of its authorized maximum or other level as determined by HUD, as shown on the latest year-end financial statement.

"Force account labor" means labor directly employed by the PHA on either a permanent or a temporary basis.

"Homebuyer Agreement" means a Mutual Help and Occupancy Agreement or a Turnkey III Homebuyer's Ownership Opportunity Agreement.

"Homeownership modernization" means a modernization program for a project that is under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program. Under homeownership modernization, limited physical improvements are eligible modernization costs, but management improvements are not eligible modernization costs.

"HUD office" means the HUD Area Office of Multifamily Service Office with which the PHA normally transacts its low-income housing business.

"Lack of management capability" means that the PHA has inadequate management practices, as determined by the HUD office on the basis of regular monitoring and performance of on-site reviews, audits and surveys and that the PHA has not taken appropriate corrective action. Management practices which are to be considered include, but are not limited to: management, financial and accounting controls; tenant selection and eviction; occupancy levels; rent collection; and maintenance.

"Lack of modernization capability" means that the PHA has previously approved, but unobligated, modernization funds that are over three years old and that the HUD office has determined that the failure to obligate such funds is due to reasons within the PHS's control. "Unobligated" means that the PHA has not awarded contracts or started force account work for use of the funds. "Funds that are over three years old" mean funds approved in a FFY which is three or more FFYs before the current FFY. For example, if the PHA is applying for FFY 1982 funds, then "funds that are over three years old" are those from FFY 1978 and prior FFYs. "Reasons within the PHS's control" mean that the PHA did not take every feasible action toward completion and excludes lengthy delays outside of the PHA's control, such as litigation, environmental reviews, strikes, and other reasons determined to be valid by the HUD office.

"Major repairs" means work items that are usually not recurrent, are substantial in scope, involve expenditures that would otherwise materially distort the level trend of maintenance expenses, and may include replacement of structural elements and nonexpendable equipment due to normal wear and tear by items of substantially the same kind.

"Modernization funds" mean funds derived from an allocation of annual contributions contract authority under Section 5(c) of the Act for the purpose of financing physical and management improvements under an approved modernization program.

"Modernization program" means a PHA's program for carrying out modernization, as set forth in the proposed or approved Final Application for modernization funds.

"Modernization Project" means the improvement of one or more existing public housing projects. The term "project" means a development project with a unique project number.

"Special purpose modernization" means a modernization program for a project that is limited to cost-effective energy conservation work items which will not be adversely affected by any subsequent Comprehensive Modernization and that is approved only on a one-time basis for a project. For such projects, management improvements are not eligible modernization costs. PHAs that were approved for modernization in FFY 1981 are eligible for special purpose modernization through FFY 1983. PHAs that were not approved for modernization in FFY 1982 are eligible to apply for special purpose modernization only in the first two years of their five-year plans. Special purpose modernization also means the approval of additional contract and/or budget authority to effect the transfer of modernization funds between projects of modernization programs approved before July 1, 1978 or to meet increased interest costs.

"Work item" means any separately identifiable unit of work constituting a part of a modernization program.

§ 868.4 Eligible costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding may include alterations, betterments, additions, replacements and major repairs that are necessary to meet the Modernization and Energy Conservation Standards prescribed in § 868.18 for decent, safe and sanitary living conditions in public housing projects. These Standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the PHA shall comply with 24 CFR Part 870.

(b) *Management improvement costs.*—(1) *Eligibility.* Management improvements that are project specific of PHA-wide in nature are eligible modernization costs subject to the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the project to be modernized.

(ii) The management improvements require additional funds for implementation and the funds are not available from other sources.

(iii) The combined costs for management improvements and planning under paragraph (d) of this section shall not exceed 10 percent of the approved physical improvement costs for a PHA in a particular FFY, unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed five percent of the funds available to the HUD office in a particular FFY.

(iv) Management improvement costs shall be fundable only for the implementation period of the physical improvements. In rare cases, the HUD office may approve a longer period, up to a maximum of five years, where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements.

(v) Where an approved modernization program includes management improvements which involve ongoing costs, HUD will not be obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The PHA shall be responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible management areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial and accounting control systems of the PHA which are related to the project to be modernized;

(ii) Adequacy and qualifications of personnel employed by the PHA in the management and operation of the project to be modernized for each category of employment; and

(iii) Adequacy and efficacy of the following for the project to be modernized:

(A) Tenant programs and services;
(B) Tenant and project security;
(C) Tenant selection and eviction;
(D) Occupancy;
(E) Rent collection; and
(F) Maintenance.

(c) *Tenant moving costs.* Moving costs for tenants who have to be moved, either temporarily or permanently, to accommodate the modernization, including the move back to the modernized project or units where necessary, are eligible modernization costs. The PHA shall provide temporary or permanent housing at comparable cost for affected tenants on a nondiscriminatory basis.

(d) *Planning costs.* Planning costs necessary for developing the Preliminary and/or Final Applications (i.e., costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after Final Application approval. Financially distressed PHAs, as defined in § 868.3, may request approval from HUD for up-front funding of planning costs where the HUD office determines that developing the Preliminary and/or Final Applications would otherwise present an undue financial hardship. Not more than five percent of the funds available to the HUD office in a particular FFY shall be used for planning costs.

(e) *Administrative costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (i.e., costs to be incurred after modernization program approval)

are eligible modernization costs, as follows:

(1) *Non-technical and technical salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the PHA, authorized by the HUD office and reflected by an appropriate revision to the PHA's operating budget.

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of non-technical and technical PHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Replacement reserves.* (Reserved).

(g) *Homeownership projects.* For homeownership projects only, eligible physical improvements are limited to work items which are not the responsibility of the homebuyer families and which are related to health and safety, correction of development deficiencies and cost-effective energy conservation. Major repairs or replacements, additions, items which are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

§ 868.5 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the Preliminary Applications.

(b) *PHA consultation with local officials and tenants/homebuyers.* The PHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in § 868.7 and § 868.8. Before developing the Preliminary Application, the PHA shall consult with local officials as to whether the proposed Comprehensive or special purpose modernization is financially feasible and will result in long-term physical and social viability at the project.

(Approved by the Office of Management and Budget (OMB) under OMB control number 2502-0218.)

(c) *Preliminary Application.* Based on an initial comprehensive assessment of its improvement needs, including a determination of the financial feasibility of the proposed modernization and the long-term viability of the project(s) after Comprehensive or special purpose modernization, the PHA shall submit to the HUD office a Preliminary Application, in a form prescribed by HUD, which shall contain:

(1) A five-year plan, which is the PHA's initial comprehensive assessment of the moderization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects, including any special purpose and homeownership needs, as well as any emergency needs in the current year. The plan provides for gross estimates of the total needs of the project(s) for which Comprehensive Modernization is requested and for gross estimates of the specialized needs of the project(s) for which special purpose, emergency or homeownership modernization is requested.

(2) A brief explanation of the priority order of the projects for which modernization funding is requested in the current FFY (see paragraph (h) of this section).

(Approved by the OMB under OMB control number 2502-0208.)

(d) *HUD screening.* The HUD office shall screen the Preliminary Application on the basis of the appropriateness of the priority order of the projects, comprehensiveness of the project listing, reasonableness of estimated costs and cost savings, and PHA management and modernization capabilities as defined in § 868.3.

(e) *PHA preparation for Joint Review.* The PHA shall prepare for the Joint Review by:

(1) Reaching agreement with the HUD office on the specific project(s) to be covered during the Joint Review;

(2) Completing a detailed comprehensive assessment, in a form prescribed by HUD, of the total physical and management improvement needs of the project(s) for which the PHA is requesting Comprehensive Modernization and of the specialized needs of the project(s) for which the PHA is requesting special purpose, emergency or homeownership modernization in the current FFY. For each project proposed for Comprehensive Modernization, the comprehensive assessment shall include: the current physical condition and the physical improvements necessary to meet the standards (see § 868.4(a)); the improvements needed to upgrade the management and operation so that decent, safe and sanitary living conditions will be provided; and an identification of management needs related to items set forth in § 868.4(b)(2).

(3) Reviewing the other points to be covered during the Joint Review as prescribed by HUD.

(Approved by the OMB under OMB control number 2502-0208.)

(f) *Joint Review.* The PHA and the HUD office shall conduct an on-site review to discuss the proposed modernization program, as set forth in the Preliminary Application and the detailed comprehensive assessment, and reach tentative agreement on PHA needs. The Joint Review shall include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive Modernization approach.* The proposed Comprehensive Modernization shall be funded in one stage, unless the HUD office determines, based upon the criteria set forth in paragraph (g)(2) of this section, that it shall be funded in two stages.

(1) *One-stage funding.* In general, Comprehensive Modernization will be funded in one stage. Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, out of funds for a single FFY, under one Final Application. The PHA and the HUD office shall agree on the length of the implementation period that is appropriate for the particular modernization program. The entire modernization program for the project shall generally be completed within a period of not more than three years. However, if it is shown to the satisfaction of the HUD office that the scope of the improvements is unusually extensive or the nature of the improvements necessitates a longer implementation period, a longer implementation period not to exceed five years may be approved. See § 868.4(b) on the implementation period of management improvements.

(2) *Two-stage funding.* On an exception basis, Comprehensive Modernization will be funded in two stages. Under two-stage funding, the total amount of the modernization funds for all required physical and management improvements at the project shall be approved at two different times.

(i) *Mandatory.* Where the HUD office determines that the PHA lacks modernization capability, as defined in § 868.3, the HUD office shall fund Comprehensive Modernization in two stages. At the first stage, approval is limited to funds for architectural/engineering work and a portion of the management improvements.

(ii) *Optional.* Where the HUD office determines that the PHA lacks management capability, as defined in § 868.3, or that the magnitude of the total funds required for Comprehensive Modernization is such that one-stage funding is precluded by the HUD office's allocation, the HUD office may fund Comprehensive Modernization in two stages. At the first stage, approval may include funds for architectural/engineering work and a portion of the physical and management improvements.

(iii) *First stage.* The first stage shall be approved out of funds for single FFY, under one Final Application. The Final Application shall address all required improvements at the project, except that the modernization plan under paragraph (i)(2) of this section shall pertain only to work items to be completed during the first stage. When approving the first stage, the HUD office will indicate the approximate balance of the modernization funds to be approved for the project at the second stage and its intent to approve that balance, subject to the availability of future funds, satisfactory progress by the PHA in obligating first stage funds, PHA submission of additional documents and PHA compliance with HUD regulatory and statutory requirements.

(iv) *Second stage.* Where the PHA is requesting funding for the second stage of a two-stage Comprehensive Modernization at a project, the HUD office will determine whether the PHA has met the conditions stated in paragraph (g)(2)(iii) of this section. If not, the HUD office may not approve the second stage for funding at this time. The PHA submission for the second stage is limited only to the items as deemed necessary by HUD.

(v) *Implementation period.* The entire modernization program for the project shall be completed within a maximum five-year period. The PHA and the HUD office shall agree on the length of the implementation period of each stage. The first stage shall be completed within a maximum two-year period and the second stage within a maximum three-year period.

(h) *HUD preliminary funding decisions.* After all of the Joint Reviews, the HUD office will determine whether the PHA will be invited to submit the Final Application for the identified project(s) by considering whether the PHA has adequately addressed all the relevant issues, as determined by HUD, and giving preference to PHA's which:

(1) Request assistance for projects having conditions that threaten tenant health or safety, including elimination of lead-based paint hazards in public housing family units built before 1950, or a significant number of vacant, substandard units;

(2) Have demonstrated a capability of carrying out the activities proposed in the plan and approved by HUD; and

(3) Demonstrate that the modernization will result in the greatest cost savings, except for physical improvements of an emergency nature affecting the life, health and safety of tenants or related to fire safety.

(i) *Final application.* Upon notification from HUD, the PHA shall submit to the HUD office a Final Application which shall contain:

(1) For each project, an identification of and an estimate of the total costs of replacement of the equipment, systems or structural elements which would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the Final Application, whichever period is longer. This estimate shall include an estimate of such costs accrued for the period which ends upon the date on which the Final Application is made and an estimate of the costs which will accrue during each 12-month period subsequent to the Final Application;

(2) A comprehensive assessment of physical and management improvement needs, described in paragraph (e)(2) of this section, and a plan for making the improvements and replacements and for meeting the needs. The plan shall include: (i) A schedule of actions to be completed over a period of not greater than five years from the date of approval of the application, within each 12-month period covered by the plan, and which are necessary to make the physical improvements and to upgrade the management and operation (see paragraph (g)(1) of this section); (ii) The estimated cost of each action; (iii) A project operating budget for each 12-month period covered by the plan, excluding modernization costs; and (iv) an estimate of the financial resources to be available from all sources and the amounts of modernization funds to be requested for each 12-month period covered by the plan.

(3) An organization and staffing plan, stating the proposed organization, staffing and inspection of the modernization program.

(4) A PHA report on compliance by the local governing body with the terms of the Cooperation Agreement, or as embodied by Article VIII of the Tribal Ordinance as applicable for certain IHAs, and any additional services or facilities that the PHA plans to request from the local governing body.

(5) A civil rights compliance certification, in a form prescribed by HUD.

(6) A resolution by the PHA Board of Commissioners, approving the Final Application and certifying that:

(i) The PHA will comply with all policies, procedures and requirements prescribed by HUD for the modernization, including implementation of the modernization in a timely, efficient and economical manner;

(ii) The estimated costs of the modernization program cannot be funded from current operating funds;

(iii) The proposed physical work meets the Modernization Standards;

(iv) The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during the subsequent FFY, to minority business enterprises;

(v) The PHA has complied with tenant/homebuyer participation requirements under § 868.7 and § 868.8;

(vi) The PHA has furnished a copy of the flood insurance policy to HUD or determined that flood insurance is not required under § 868.9(d);

(vii) The PHA will comply (where applicable) with requirements for the physically handicapped under § 868.9(f); and

(viii) Where the proposed modernization involves the temporary or permanent rehousing of tenants, the PHA will ensure nondiscrimination in the selection of tenants to be rehoused, determination of which tenants require temporary and permanent rehousing, assignment of tenants within the PHA, and provision of assistance to tenants being rehoused.

(7) *Special provisions for excepted categories.*—(i) *Special purpose modernization.* For a project under special purpose modernization, the PHA shall limit the items required in paragraph (i)(2)(i) of this section to only those special purpose work items.

(ii) *Emergency modernization.* For a project under emergency modernization, the PHA shall omit from the Final Application the items required in paragraphs (i)(1), (i)(2) (iii) and (iv), and (i)(3) and (4) of this section and limit the items required in paragraph (i)(2)(i) of this section to only those emergency work items.

(iii) *Homeownership modernization.* For a project under homeownership modernization, the PHA shall omit from the Final Application the items required in paragraphs (i)(1) and (i)(2) (iii) and (iv) of this section and limit the items required in paragraph (i)(2)(i) of this

section to only those homeownership work items. The PHA shall include in the Final Application a listing of the units to be included in the modernization program and the estimated cost attributed to each home.

(Approved by the OMB under OMB control number 2502–0208.)

(j) *ACC amendment.* After HUD approval of the Final Application, the PHA shall enter into an ACC amendment to obtain modernization funds.

§ 868.6 Modernization Project.

(a) For purposes of financing modernization, each modernization program approved for PHA shall be treated as a separate Modernization Project. The Modernization Project may include improvements to one or more projects. Improvements to a single project may be included in more than one Modernization Project.

(b) HUD and the PHA shall enter into ACC amendment, for each Modernization Project. The ACC amendment shall provide for the payment of annual contributions sufficient to amortize the modernization cost over a period of no more than 20 years, and shall require low-income use of the housing for not less than 20 years (subject to sale of homeownership units in accordance with the terms of the ACC).

§ 868.7 Tenant participation.

For a rental project only, before submission of the Preliminary Application, the PHA shall consult with the tenants regarding its intent to submit an application for modernization funds. Before the Joint Review, the PHA shall notify the tenants of the project to be modernized and the tenant organization, if any, of the proposed modernization program, afford tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. At the Joint Review, the PHA shall provide the tenants and HUD with a copy of and an evaluation of tenant recommendations, indicating the reasons for PHA acceptance or rejection, consistent with HUD requirements and the PHA's own determination of efficiency, economy and need. The PHA also shall provide a copy of this evaluation to the tenants and the tenant organization, if any. After HUD approval of the modernization program, the PHA shall inform the tenants and the tenant organization, if any, of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature, affecting the life, health and safety of tenants. However, the PHA shall inform tenants of approved emergency work items.

(Approved by the OMB under OMB control number 2502–0218.)

§ 868.8 Homebuyer participation.

(a) For a homeownership project only, before the Joint Review, the PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and advise them of the effect of the modernization on the terms of the Homebuyer Agreements. The PHA shall afford the homebuyer families a reasonable opportunity to present their views on the proposed program and give full and serious consideration to their recommendations consistent with HUD requirements and the PHA's own determination of efficiency, economy and need.

(b) The PHA shall inform each homebuyer family that:

(1) To participate, it must be in substantial compliance with the terms of its Homebuyer Agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 868.10;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to the HUD office, the estimated cost of the proposed modernization program, and the amount of this cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its Homebuyer Agreement will be amended upon approval of the Final Application to provide that, as result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 868.10.

(e) Any homebuyer family may decline to participate without risk to its homebuyer status.

(f) Before submission of the Final Application, the PHA shall obtain a signed agreement from each participating homebuyer family that it will amend its Homebuyer Agreement upon approval of the Final Application. The PHA shall retain copies of the signed agreements and the amended Homebuyer Agreements in its files for inspection by the HUD office.

(g) The provisions of paragraphs (b) through (f) of this section do not apply where modernization work is limited to correction of development deficiencies.

(Approved by the OMB under OMB control number 2502–0218.)

§ 868.9 Other program requirements.

The PHA shall comply with the following program requirements for a HUD allocation of modernization funds:

(a) *Civil rights compliance.* In the case of PHAs other than Indian Housing Authorities (IHAs), the PHA shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619), Executive Orders 11063, 11246 and 12138 (Women's Business Enterprise), Section 3 of the HUD Act of 1968 (12 U.S.C. 1701u), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (For IHAs, see 24 CFR 805.105, Applicability of civil rights statutes, and 24 CFR 805.106, Preferences, opportuntities, and nondiscrimination in employment and contracting.)

(b) *Minority and women's business or Indian enterprise opportunity.* In the case of PHAs other than IHAs, in conformance with Executive Order 11625, the PHA shall take every action to meet Departmental goals for awarding modernization contracts to minority business enterprises. For IHAs, see 24 CFR 805.106(a) regarding preference in the award of modernization contracts to Indian organizations and Indian-owned economic enterprises. Both PHAs and IHAs shall take appropriate affirmative action to assist women's business enterprises.

(c) *Environment and historic preservation.* The PHA's Final Application is subject to any applicable requirements under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), Executive Order 11593 on Protection and Enhancement of the Cultural Environment (including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800), the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution

Control Act (33 U.S.C. 1251 et seq.), Executive Orders 11988 and 11990 (Floodplain Management and Protection of Wetlands), and HUD environmental regulations (24 CFR Part 50).

(d) *Flood insurance.* The PHA shall comply with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(e) *Lead-based paint poisoning prevention.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) and HUD implementing regulations (24 CFR Part 35).

(f) *Accessibility for physically handicapped.* The PHA shall comply with the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and HUD implementing regulations (24 CFR Part 40).

(g) *Energy conservation.* The PHA shall comply with 24 CFR Part 865, Subpart C, regarding the conduct of an energy audit and the undertaking of cost-effective energy conservation measures, before HUD approval of Comprehensive Modernization or special purpose modernization for a project. The cost of performing an energy audit is an eligible modernization cost.

(h) *Wage rates*—(1) *HUD-determined wage rates.* Under Section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, to all laborers and mechanics employed by the PHA or its contractors in carrying our major repairs as defined in § 868.3.

(2) *Davis-Bacon wage rates.* Under section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor, under the Davis-Bacon Act (42 U.S.C. 276a et seq.), to all laborers and mechanics employed by the PHA or its contractors for modernization work or contracts over $2,000, except major repairs as defined in § 868.3.

(3) *Technical wage rates.* The PHA and its contractors shall pay HUD-determined prevailing wage rates to all architects, technical engineers, draftsmen and technicians employed in the modernization of a project.

(i) *Insurance.* The PHA shall carry insurance, as prescribed by HUD, to cover the additional exposures created by the modernization activities and reflect the increased value of the buildings after modernization.

§ 868.10 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the Final Application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies.

(b) For Turnkey III projects and for Mutual Help projects placed under ACC from March 9, 1976 or converted in accordance with 24 CFR 805.428:

(1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved Final Application, shall be added to the homebuyer's purchase price as initially determined (under 24 CFR 804.113(a) or 804.115(b) for Turnkey III projects or under 24 CFR 805.422 (b) or (c) for Mutual Help projects).

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule.

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the provisions of paragraphs (b) (1) and (2) of this section.

(c) For Mutual Help projects placed under ACC before March 9, 1976, and not converted in accordance with 24 CFR 805.428 and for Turnkey III projects that do not have purchase price schedules:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved Final Application.

(2) The PHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the Minimum Loan Interest Rate specified in the ACC for the Modernization Project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.

(ii) Multiply this amount by 25, round the result to the next higher number and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule at the time of settlement.

(3) The calculation provided in paragraph (c)(2) of this section shall apply retroactively to modernization programs approved from FFY 1980 funds. Therefore, the PHA shall recalculate the homebuyer's amortization schedule to reflect the provisions of paragraph (c)(2) of this section.

§ 868.11 Special requirements for Section 23 Leased Housing Bond-Financed projects.

A Section 23 Leased Housing Bond-Financed project is eligible for modernization only if HUD determines that the project has met the following conditions:

(a) The project was financed by the issuance of bonds;

(b) Clear title to the project will be conveyed to or vested in the PHA at the end of the Section 23 lease term;

(c) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year amortization period of the modernization;

(d) After completion of the modernization, the project will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the project; and

(e) The project is covered by a Cooperation Agreement between the PHA and local governing body during the 20-year amortization period of the modernization.

§ 868.12 Contracting requirements.

(a) *Compliance with State, tribal, and local law and Federal requirements.* The PHA shall comply with State, tribal and local laws and Federal requirements applicable to bidding and contract award.

(b) *Competitive bidding requirements.* For each construction or equipment contract over $10,000, the PHA shall conduct competitive bidding, except for procurement under the HUD Consolidated Supply Program.

(c) *Bonding requirements.* For all construction or equipment contracts of $10,000 or more, the contractor shall furnish a performance and payment bond for 100 percent of the contract price or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow or a 25 percent letter of credit.

(d) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process, except where: (1) FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract; or (2) FFY 1980 or prior year funds are being used to finance a contract not yet executed, but for which the PHA has initiated discussions with an architect/engineer before the effective date of this rule. The PHA shall comply with HUD requirements either to submit for HUD approval the contract before execution or to certify that the scope of work is consistent with any agreements reached with HUD, that the fee is appropriate and does not exceed the HUD-approved budget amount, and that, if applicable, the competitive negotiation process was used.

(Under section 13(b) of OMB Circular A–40, OMB has waived the requirement that the information collection requirement contained in this paragraph must be reviewed and assigned an OMB control number.)

(e) *Construction and bid documents.* The PHA shall comply with HUD requirements either to submit for HUD approval complete construction and bid documents before inviting bids or to certify to receipt of the required architect's/engineer's certification, that the construction documents accurately reflect HUD-approved work, and that the bid documents are complete and include all mandatory items.

(Approved by the OMB under OMB control numbers 2502–0157 and 2502–0216.)

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or the PHA receives a single bid. In all other instances, the PHA shall comply with HUD requirements either to submit the proposed award for HUD approval or to make the award without HUD approval after the PHA has certified that the bidding procedures and award were conducted in compliance with State, tribal or local laws and Federal requirements, that the award does not exceed the approved budget amount and is not being made on the basis of a single bid, and that HUD clearance has been obtained for the award under previous participation procedures, including absence from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(Approved by the OMB under OMB control number 2502–0157.)

(g) *Change orders.* Except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to submit the proposed contract changes for HUD approval or to certify that the proposed work is not within the scope of the contract, that the proposed work cannot be postponed and is necessary and economical, and that the additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(Approved by the OMB under OMB control number 2502–0157.)

(h) *Construction requirements.* The PHA shall submit to the HUD office periodic progress reports and shall submit all contract settlement documents for HUD approval.

(Approved by the OMB under OMB control number 2502–0157).

(i) *Management improvement contracts.* The PHA shall obtain consultant services through the competitive negotiation process. The PHA shall submit both proposals and contracts for management improvements, as well as contract changes, for prior HUD approval.

(Approved by the OMB under OMB control number 2502–0219.)

§ 868.13 Modernization financing.

To request modernization funds against the approved modernization program, the PHA shall:

(a) Consult informally with the HUD office as to the amount of modernization funds needed for the time period in question, the immediacy of need, and the method of financing. Direct advances shall be approved only where the PHA has an immediate cash need that cannot be delayed until the next possible note sale and if the total amount of the PHA's outstanding direct advances, when added to the amount of direct advances currently requested, does not exceed $200,000.

(b) Submit a request to the HUD office for only the amount of modernization funds needed for the time period in question and support the request with a written justification, in a form prescribed by HUD. The amount of financial assistance made available for any one fiscal year may not exceed the sum of the amounts determined necessary by HUD to:

(1) Undertake the actions specified for the year in the schedule submitted under § 868.5(i)(2);

(2) Fund the replacement costs identified under § 868.5(i)(1), which have accrued for the period ending at the beginning of such year, but have not been previously paid;

(3) Reimburse the PHA for the cost of developing the plan described in § 868.5(i)(2), less any amount provided the PHA with respect to such year under paragraph (b)(4) of this section, subject to the limitation set forth in § 868.4(d); and

(4) Enable a financially distressed PHA, as defined in § 868.3, to develop a plan, subject to the limitation set forth in § 868.4(d).

(Approved by the OMB under OMB control number 2502–0188.)

(c) Submit the latest required progress reports under § 868.14, unless the first required report is not yet due.

(Approved by the OMB under OMB control numbers 2502–0164 and 2502–0219.)

(d) No financial assistance shall be made available to a PHA for any year subsequent to the first year unless HUD determines that the PHA has made substantial efforts to meet the objectives for the preceding year under the plan described in § 868.5(i)(2).

§ 868.14 Progress reporting.

For each quarter until completion of the modernization program, the PHA shall submit, in a form prescribed by HUD, to the HUD office:

(a) A report on modernization fund expenditures; and

(Approved by the OMB under OMB control numbers 2502–0164 and 2502–0219.)

(b) A narrative report on management improvement progress, where applicable.

(Approved by the OMB under OMB control number 2502–0219.)

§ 868.15 Budget revisions.

The PHA shall not incur any modernization cost in excess of the total approved budget. The PHA shall submit a revision of the budget, in a form prescribed by HUD, for prior HUD approval if the PHA plans (within the total approved modernization budget) to:

(a) Delete or substantially revise approved work items;

(b) Add new work items; or

(c) Incur modernization costs in excess of the approved budget amount for:

(1) A work item; or

(2) Any project.

(Approved by the OMB under OMB control number 2502–0164 for modernization undertaken with pre-FFY 1982 funds and OMB control number 2502–0206 for modernization undertaken with FFY 1982 and subsequent year funds.)

§ 868.16 On-site inspections.

The PHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to assure work quality and progress.

§ 868.17 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the guidelines prescribed by OMB Circular A–102, Attachment P-Audit Requirements. If the audited modernization cost certificate indicates that excess funds have been approved, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the OMB under OMB control number 2502–0219.)

§ 868.18 Modernization and Energy Conservation Standards.

(a) All improvements funded under this Part, which may include alterations, betterments, additions, replacements or major repairs, shall meet the HUD Modernization Standards, described in paragraph (c) of this section and established to provide decent, safe and sanitary living conditions in PHA-owned public housing projects, and the HUD Energy Conservation Standards for cost-effective energy conserving improvement in such projects, described in paragraph (d) of this section.

(b) The Modernization Standards and the Energy Conservation Standards are being published separately.

(c) The Modernization Standards prescribe standards which will provide decent, safe and sanitary living conditions in public housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to deferred maintenance, in order to meet the intent of HUD's Minimum Property Standards as they could reasonably be applied to existing housing. In addition, these standards cover improvements relating to site and building security. The Modernization Standards are contained in HUD Handbook 7485.2, Public Housing Modernization Standards, and other documents cited therein.

(d) The Energy Conservation Standards prescribe standards for the installation of cost-effective energy conserving improvements, including solar energy systems. The Energy Conservation Standards provide for the conducting of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost effective in conserving energy. The Energy Conservation Standards will be contained in HUD Handbook 7485.3, Public Housing Energy Conservation, and other documents cited therein.

Dated: May 18, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 82–13808 Filed 5–20–82 8:45 am]

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May 21, 1982

Part V

Department of Health and Human Services

Food and Drug Administration

Alcohol Drug Products for Topical Antimicrobial Over-the-Counter Human Use; Establishment of a Monograph; and Reopening of Administrative Record

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 75N–0183]

Alcohol Drug Products for Topical Antimicrobial Over-the-Counter Human Use; Establishment of a Monograph; and Reopening of Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking and reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which over-the-counter (OTC) alcohol drug products for topical antimicrobial use are generally recognized as safe and effective and not misbranded. This notice relates to the development of monograph for topical antimicrobial drug products in general, which is part of the ongoing review of OTC drug products conducted by FDA. This notice also reopens the administrative record for OTC topical antimicrobial drug products to allow for consideration of recommendations on alcohol drug products that have been received from the Advisory Review Panel on OTC Miscellaneous External Drug Products.

DATES: Written comments by August 19, 1982 and reply comments by September 20, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on October 6, 1980 a report on OTC alcohol drug products for topical antimicrobial use from the Advisory Review Panel on OTC Miscellaneous External Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC alcohol drug products for topical antimicrobial use are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

Because alcohol ingredients are marketed in OTC drug products for topical antimicrobial use, FDA has determined that the Miscellaneous External Panel's recommendations on OTC alcohol drug products should be included as part of the proposed rulemaking for OTC topical antimicrobial drug products. Development of this rulemaking has been ongoing for some time.

In the **Federal Register** of September 13, 1974 (39 FR 33103), FDA issued an advance notice of proposed rulemaking to establish the monograph for OTC topical antimicrobial drug products. In the **Federal Register** of January 6, 1978 (43 FR 1210), FDA issued a tentative final monograph (notice of proposed rulemaking) for OTC topical antimicrobial drug products. In the **Federal Register** of March 9, 1979 (44 FR 13041) FDA reopened the administrative record and announced its intent to publish an updated (amended) tenative final monograph (amended notice of proposed rulemaking) for OTC topical antimicrobial drug products. FDA advises that it is again reopening the administrative record for OTC topical antimicrobial drug products only as it pertains to alcohol drug products in order to allow for the consideration of the Miscellaneous External Panel's recommendations on alcohol drug products. An amended tentative final monograph (amended notice of proposed rulemaking) will be published in a future issue of the **Federal Register**. At that time, comments received on this advance notice of proposed rulemaking concerning alcohol drug products will be addressed. Also, the proceeding to develop a monograph for alcohol drug products will be merged with the general proceeding to establish a monograph for OTC topical antimicrobial drug products. Because the Panel recommended Category I conditions for alcohol drug products, three new sections which would amend Part 333 are being included in this advance notice of proposed rulemaking (§§ 333.3(k), 333.55, and 333.98).

The unaltered conclusions and recommendations of the Panel relating to OTC alcohol drug products for topical antimicrobial use are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the Panel's recommendations. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** an amended tentative final monograph for OTC topical antimicrobial drug products, including alcohol drug products, as an amended notice of proposed rulemaking. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC topical antimicrobial drug products will be restated when the amended tentative final monograph is published in the **Federal Register**. In that amended notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered in the amended notice of proposed rulemaking. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any impact that this rulemaking would have on OTC alcohol drug products for topical antimicrobial use. Types of impact may include, but are not limited to, the following: increased costs due to relabeling, repackaging, or reformulating; removal of unsafe or ineffective products from the OTC market; and testing, if any.

Comments regarding the impact of this rulemaking on OTC alcohol drug products for topical antimicrobial use should be accompanied by appropriate documentation. Comments will not be accepted at this time on any portion of the OTC topical antimicrobial rulemaking other than that relating to alcohol drug products.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC alcohol drug products for topical antimicrobial use submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after June 21, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD–510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 6 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous external drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31697). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.'" In the **Federal Register** of August 27, 1975 (40 FR 38179) a notice supplemented the initial notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous external drug products to be considered in the OTC drug review. The list, which included "alcohol" active ingredients, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973, and August 27, 1975, informed OTC drug product manufacturers of their opportunity to submit data to the review at that time and of the applicability of the monographs from the the OTC review to all OTC drug products.

Under § 330.10(a) (1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these OTC miscellaneous external drug products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1976. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D., Thomas D. DeCillis, R.Ph., Served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D., Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large

number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents in this document its conclusions and recommendations on OTC alcohol drug products for topical antimicrobial use. The Panel's findings on other categories of miscellaneous external drug products are being published periodically in the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on June 27 and 28, August 15 and 16, November 9 and 10, 1975; February 20 and 21, April 2 and 3, May 16 and 17, June 11 and 12, October 8 and 9, 1976; September 30 and October 1, 1977; January 14 and 15, May 18 and 19, 1979; April 20 and 21, June 22 and 23, August 3 and 4, and October 5 and 6, 1980.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

No individuals requested to appear before the Panel to discuss alcohol drug products for topical antimicrobial use, nor was any individual requested to appear by the Panel.

The Panel has thoroughly reviewed the literature and data submissions, and has consisdered all pertinent information submitted through October 5, 1980 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations set forth in § 330.10, the Panel reviewed OTC alcohol drug products for topical antimicrobial use with respect to the following three categories:

Category I. Conditions under which OTC alcohol drug products for topical antimicrobial use are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC alcohol drug products for topical antimicrobial use not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed four alcohol active ingredients for topical antimicrobial use. Two ingredients were placed in Category I and two ingredients were placed in Category II.

I. Submission of Data and Information

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as alcohol active ingredients. Seven ingredients were identified as follows: absolute alcohol 70 percent, denatured alcohol, ethyl alcohol 92 percent, isopropyl alcohol 70 percent, isopropyl alcohol 90 percent, isopropyl alcohol 91 percent, and isopropyl alcohol with ethylene oxide. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC alcohol drug products.

A. Submissions

Pursuant to the above notices, the following submissions were received:

Firms	Marketed products
Bowman Pharmaceuticals, Inc., Canton, OH 44702.	Isopropyl Alcohol, 91 percent; Isopropyl Alcohol, 70 percent.
Eli Lilly and Co., Indianapolis, IN 46206.	Isopropyl Alcohol-Lilly 91 Percent.
Holland Rantos Co., Inc., Piscataway, NJ 08854.	Steri-Wipe/Alcohol Swab.
Cramer Products, Inc., Gardner, KS 66030.	Fung-O Spray, Iso-Quin, Nitrofilm.
Marion Health and Safety, Inc., Rockford, IL 61101.	70/10 Isopropanol Seppa, 70 percent Isopropanol.
Parke Davis & Co., Detroit, MI 48232.	Lavacol.
Sea Breeze Laboratories, Inc., Pittsburgh, PA 15244.	Sea Breeze.
Vestal Laboratories, Saint Louis, MO 63100.	Alcare.
Whitehall Laboratories, Inc., New York, NY 10017.	Anbesol.

In addition, Holland Rantos Co., Inc. made a related submission on ethylene oxide.

B. Ingredients Reviewed by the Panel

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Alcohol 30 percent
Alcohol 43 percent
Alcohol 50 percent
Alcohol 70 percent
Benzyl alcohol 3 percent
Ethyl alcohol 54 percent
Ethyl alcohol 70 percent
Isopropanol 91 percent
Isopropyl alcohol 7.5 percent
Isopropyl alcohol 12.5 percent
Isopropyl alcohol 20 percent
Isopropyl alcohol 24 percent
Isopropyl alcohol 31 percent
Isopropyl alcohol 35 percent
Isopropyl alcohol 50 percent
Isopropyl alcohol 70 percent

2. *Other ingredients reviewed by the Panel.*

Absolute alcohol 70 percent
Cetyl alcohol
Chlorobutanol
Denatured alcohol
Ethyl alcohol 92 percent
Ethylene oxide
Isopropyl alcohol 90 percent
Isopropyl alcohol 91 percent
isopropyl alcohol with ethylene oxide
Stearyl alcohol

C. Classification of Ingredients

The Panel is aware that the "United States Pharmacopeia" (USP) contains standards of quality and purity for several specific concentrations of the alcohols discussed in this document (Ref. 1); however, the Panel has concluded, based on the available data, that concentrations other than those specified in the USP can be generally recognized as safe and effective for the OTC market.

1. *Active ingredients.*

Benzyl alcohol (benzyl alcohol 3 percent)
Chlorobutanol
Ethyl alcohol (absolute alcohol 70 percent, alcohol 30 percent, alcohol 43 percent, alcohol 50 percent, alcohol 70 percent, denatured alcohol, ethyl alcohol 54 percent, ethyl alcohol 70 percent, and ethyl alcohol 92 percent)
Isopropyl alcohol (isopropanol 91 percent, isopropyl alcohol 7.5 percent, isopropyl alcohol 12.5 percent, isopropyl alcohol 20 percent, isopropyl alcohol 24 percent, isopropyl alcohol 31 percent, isopropyl alcohol 35 percent, isopropyl alcohol 50 percent, isopropyl alcohol 70 percent, isopropyl alcohol 90 percent, and isopropyl alcohol 91 percent)

2. *Inactive ingredients.*

Cetyl alcohol
Ethylene oxide
Stearyl alcohol

Reference

(1) "United States Pharmacopeia," 20th Revision, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 18 and 428, 1980.

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All of the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after June 21, 1982, in the Dockets Management Branch (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Discussion

The skin, as the protective covering of the body, is frequently subjected to injuries. Microorganisms, both resident and transient, dwell on the surface of the skin, and when the skin is broken, there is always the possibility that harmful microorganisms might spread from the site of injury to the deeper tissues or into the bloodsteam, producing a serious infection.

The Panel believes that decreasing the number of microorganisms on the surface of the skin is rational OTC therapy when the skin surface has been broken by a minor cut or scrape, prior to breaking the skin for removal of a splinter, or prior to injection. Ethyl and isopropyl alcohol possess many desirable features as antimicrobial agents in such therapy. The antimicrobial effectiveness of ethyl and isopropyl alcohol is not impressive against fungi and viruses. However, these alcohols are bactericidal; that is, they kill bacteria instead of preventing their growth and immobilizing them, which would be a bacteriostatic action. In addition, these alcohols evaporate readily and remove dirt and grime. Because ethyl and isopropyl alcohols are colorless, they do not stain the skin and thus would not mask inflammation, a warning sign of infection.

The Panel does not recommend that a consumer attempt to use an alcohol to self-treat a deep, extensive wound, or a puncture wound, or attempt to remove a large or deeply embedded splinter. Professional treatment should be sought immediately for such injuries. Alcohols are not recommended in these instances, as they have an irritant effect on damaged, deeply cut tissue (Ref. 1). The irritant action of alcohols is particularly marked on mucosa. The more concentrated the alcohol, the more pronounced are its irritant effects (Ref. 2). The Panel recommends caution in the use of topical alcohols on the mucous membranes in concentrations recommended for antimicrobial use in this document.

References

(1) Zanowiak, P., "Topical Anti-Infective Products," *in* "Handbook of Nonprescription Drugs," 16th Ed., American Pharmaceutical Association, Washington, p. 371, 1979.

(2) Ritchie, J. M., "The Aliphatic Alcohols," *in* "The Pharmacological basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 137–146, 1975.

III. Categorization of Data

A. Category I Conditions

These are conditions under which alcohol active ingredients for topical antimicrobial use are generally recognized as safe and effective and are not misbranded.

1. *Category I ingredients.*

Ethyl alcohol
Isopropyl alcohol

a. *Ethyl alcohol.* Ethyl alcohol (ethanol) has been used in beverages for centuries, and its medicinal, pharmacological, and nutritional properties have been studied extensively. Alcohol is an established name for ethyl alcohol (Ref. 1); however, the Panel will refer to the ingredient as ethyl alcohol in this document in order to distinguish clearly between it and isopropyl alcohol. Ethyl alcohol has an astringent action, precipitating protein; it cools the skin surface by rapid evaporation and, therefore, has been used topically to lower the body temperature; it produces mild redness and a burning sensation when rubbed on the skin and can be used as a counterirritant and rubefacient; and it cleans the skin by its solvent action on oils and greases.

Because of its solvent action, ethyl alcohol is also frequently used in a diluted form as a vehicle for other topical medications. It is capable of altering the stratum corneum (skin surface) and enhancing its permeability, thus facilitating the penetration through the skin of any ingredient that is dissolved in it (Ref. 2). This has been demonstrated with corticosteroids (Ref. 3), salicylic acid (Ref. 4), and iodine (Ref. 5).

Ethyl alcohol rubs have been used in hospitals for many years, and ethyl alcohol is also used frequently on bedridden patients as an adjunct to prevent decubitus ulcers (bedsores) (Ref. 6). However, washing the skin with a 74-percent concentration of ethyl alcohol has been reported to result in the recovery of increased numbers of surface inoculated *Staphylococcus aureus* 5 hours later. The assumption was that an increase in bacteria occurred as a result of removing antibacterial organic matter through the defatting action of the alcohol (Ref. 7).

Ethyl alcohol that is marketed for topical OTC use contains denaturants which are added to make it unsuitable for drinking purposes.

(1) *Safety.* The long use of ethyl alcohol in beverages attests to its relative nontoxicity when ingested in small quantities. It is readily absorbed from the stomach, small intestine, and colon, and vapors may be absorbed from the lungs. After absorption, ethyl alcohol is fairly uniformly distributed through the tissues and fluids of the body, and 90 to 98 percent is slowly and completely oxidized (Ref. 6).

Regardless of how ethyl alcohol enters the body, its greatest effect is on the central nervous system, and it acts as a primary and continuous depressant (Ref. 6). A concentration of 50 milligrams (mg) ethyl alcohol per 100 milliliters (mL) blood may impair muscular coordination and judgment, and a concentration of 200 mg per 100 mL of blood may produce a state of mild-to-moderate intoxication. A concentration of 300 mg per 100 mL blood will cause severe alcoholic intoxication, and a fatal concentration is estimated to be about 400 mg per 100 mL blood (Ref. 6).

Contact allergy to the lower primary aliphatic alcohols (methyl, ethyl, and propyl) has been reported, but is rare (Refs. 8 and 9). Because ethyl alcohol has been reported to be 7.5 times more toxic to white blood cells in vitro than to staphylococci (Ref. 10), its use is not recommended for open, extensive wounds. The application of antimicrobial concentrations of ethyl alcohol to such wounds might possibly do more harm than good by interfering with the body's basic defense mechanisms. The Panel therefore limits its recommendation for OTC use of this ingredient to application to minor cuts and scraps, application to the skin prior to breaking it for the removal of small splinters that are not deeply embedded, and for preparation of the skim prior to an injection.

(2) *Effectiveness.* Ethyl alcohol has been shown by in vitro and in vivo tests in kill bacteria. Some interesting early work on the antibacterial effectiveness of ethyl alcohol was conducted by Prombo and Tilden (Ref. 11) and Nungester and Kempf (Ref. 12). The most plausible explanation for this action is the denaturing of proteins by this ingredient. The most concentrated form of ethyl alcohol (100 percent), however, is less bactericidal than mixtures of ethyl alcohol and water. (See tables below.) This is probably because proteins are not denatured so readily in the absence of water as when water is present (Ref. 13).

THE EFFECT OF VARIOUS CONCENTRATIONS OF ETHYL ALCOHOL TEST ORGANISM: PSEUDOMONAS AERUGINOSA (REF. 14)

Ethyl alcohol		Exposure of test organism to germicide													
Percent by volume	Percent by weight	Seconds					Minutes								
		10	20	30	40	50	1	2	3	4	5	10	15	25	30
100	100	–	–	–	–	–	–								
95	92	–	–	–	–	–	–								
90	85	–	–	–	–	–	–								
80	73	–	–	–	–	–	–								
70	62	–	–	–	–	–	–								
60	52	–	–	–	–	–	–								
50	42	–	–	–	–	–	–								
40	33	–	–	–	–	–	–	–	–	–	–	–	–		
30	24	–	–	–	–		–	–	–	–	–	–	–	–	–
25	20						+	+	+	–	–	–	–	–	–
20	16						+	+	+	+	+	+	+	+	–
(1)	(1)						+	+	+	+	+	+	+	+	+

[1] Dist. water (control).
[2] + = growth. – = no growth.

THE EFFECT OF VARIOUS CONCENTRATIONS OF ETHYL ALCOHOL TEST ORGANISM: STAPHYLOCOCCUS AUREUS (REF. 14)

Ethyl alcohol		Exposure of test organism to germicide															
Percent by volume	Percent by weight	Second					Minutes								Hours			
		10	20	30	40	50	1	2	3	4	5	10	15	45	1	1½	2	3
100	100	+	±	+	±	–	–	–	–	–	–	–	–					
95	92	–	–	–	–	–	–	–	–	–	–	–	–					
90	85	–	–	–	–	–	–	–	–	–	–	–	–					
80	73	–	–	–	–	–	–	–	–	–	–	–	–					
70	62	–	–	–	–	–	–	–	–	–	–	–	–					
60	52	–	–	–	–	–	–	–	–	–	–	–	–					
50	42	+	–	–	–	–	–	–	–	–	–	–	–					
40	33	+	+	+	+	+	+	+	+	±	–	–	–					
30	24										+	+	+	+	–	–	–	–
25	20										+	+	+	±	+	–	–	–
20	16										+	+	+	+	+	+	+	–
(1)	(1)										+	+	+	+	+			

[1] Dist. water (control).
+ = growth. – = no growth.

When exposed to the air, ethyl alcohol (100 percent) takes up water vapor and establishes an equilibrium of 95 percent ethyl alcohol, by volume, and 5 percent water.

Bacteria in a dry environment are more resistant to a bactericidal action than in a moist environment (Refs. 15 and 16). *Mycobacterium tuberculosis*, when suspended in water and in sputum, was killed more rapidly by 95 percent than by 70 percent ethyl alcohol; but in dried sputum smears, 70 percent and 50 percent ethyl alcohol killed the tubercle bacilli more rapidly than the 95-percent solution (Ref. 17).

In general, fungi are more resistant than bacteria to the antimicrobial action of ethyl alcohol. Many fungi are dimorphic, exhibiting tissue (yeast) and culture (spore) phases, with the spore phase being particularly resistant to the action of ethyl alcohol. *Blastomyces dermatitidis, Coccidioides immitis*, and *Histoplasma capsulatum* in aerosol containers were sprayed and allowed to dry on the surfaces of such materials as asphalt tile, painted wood, glass, and stainless steel. The sprayed surfaces were then treated with various concentrations of ethyl alcohol, and it was noted that the most rapid killing of both phases of the three fungi was obtained with concentrations of approximately 70 percent ethyl alcohol; (Ref. 18) with the spore phase requiring the longer exposure period (Ref. 19). The age of the fungal spores was found to be a significant factor in determining the length of time required for different concentrations of ethyl alcohol to effect a killing action. Ten-day-old conidia (spores) of *Penicillium expansum* were killed in 8 minutes of exposure to a 90-percent concentration, whereas 438-day-old conidia of *P. expansum* required 60 minutes of exposure to this concentration. For a 70-percent concentration of ethyl alcohol the time required to kill the 10-day-old conidia of *P. expansum* was 15 minutes, whereas 14 hours were required to kill the 438-day-old conidia of *P. expansum* (Ref. 20).

That ethyl alcohol is less effective against spores than against vegetative forms of bacteria was also demonstrated by immersing pieces of sterile wire in a culture of gas-producing, sporulating anaerobic bacilli and exposing the pieces of wire to 70 percent ethyl alcohol for time periods ranging from 5 to 60 minutes. Each wire then produced, after 24 hours of incubation, an abundant growth of the test microorganism, indicating that the spores adhering to the wire at the time of culturing had been undisturbed by the ethyl alcohol. Because of the resistance of spores to ethyl alcohol; it is no longer used in hospitals for sterilizing surgical instruments (Ref. 18).

Concentrations ranging from 30 to 70 percent ethyl alcohol inactivated each of seven representative viruses in an exposure period of 10 minutes (Ref. 21). Those viruses with a lipid envelope (herpes simplex, Asian influenza, and vaccinia) were inactivated by 30 to 40 percent concentrations of ethyl alcohol. The other viruses (adenovirus; Coxsackie B, type 1; echo, type 6; and poliovirus, type 1) required concentrations of 50 to 70 percent (Ref. 21). Influenza virus, type A, was completely inactivated by 70 percent ethyl alcohol, whereas a 35-percent concentration had only a weakly inactivating activity (Ref. 21). Seventy percent ethyl alcohol produced a strong but not complete inactivation of vaccinia virus (Ref. 22).

Ethyl alcohol acts relatively quickly to decrease the number of microorganisms on the skin surface. Each minute that scrubbed hands and arms were

immersed in approximately 77 percent ethyl alcohol by volume was found to be equivalent to 6.5 minutes of scrubbing in water; if the skin was scrubbed with the alcohol, the rate was further increased (Ref. 23)

The Panel finds ethyl alcohol safe and effective for use as a topical antimicrobial preparation in concentrations of 60 to 95 percent by volume in an aqueous solution. It is denatured for topical use according to formulas approved by the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms and specified in 27 CFR 212.

(3) *Labeling.* The Panel recommends Category I labeling for alcohol drug products for topical antimicrobial use. (See part III. paragraph A.2 below—Category I labeling.)

(4) *Directions.* "Apply to skin directly or with clean gauze, cotton, or swab."

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(11) Prombo, M. P., and E. B. Tilden, "Evaluation of Disinfectants by Tests In Vivo," *Journal of Dental Research*, 29:108–122, 1950.

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(14) Morton, H. E., "The Relationship of Concentrations and Germicidal Efficiency of Ethyl Alcohol," *Annals of The New York Academy of Sciences*, 53:191–196, 1950.

(15) Hare, R., E. Raik, and S. Gash, "Efficiency of Antiseptics When Acting on Dried Organisms," *British Medical Journal*, 1:496–500, 1963.

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(17) Smith, C. R., "Alcohol as a Disinfectant Against the Tubercle Bacillus," *Public Health Reports*, 62:1285–1295, 1947.

(18) Kruse, R. H., et al., "Disinfection of Aerosolized Pathogenic Fungi on Laboratory Surfaces: I. Tissue Phase," *Applied Microbiology*, 11:438–445, 1963.

(19) Nye, R. N., and T. B. Mallory, "A Note on the Fallacy of Using Alcohol for the Sterilization of Surgical Instruments," *Boston Medical and Surgical Journal*, 189:561–563, 1923.

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b. *Isopropyl alcohol.* Isopropyl alcohol is an isomer of propyl alcohol. It is prepared from propylene, which is obtained in the refining of petroleum or by reduction of acetone (Ref. 1). Isopropyl alcohol forms an azeotrope with water that contains 91.3 percent isopropyl alcohol by volume with a boiling point of 80.4° C (Ref. 2). It has no beverage use, because it is roughly twice as toxic as ethyl alcohol (Ref. 3).

(1) *Safety.* After ingestion, isopropyl alcohol is rapidly absorbed from all portions of the intestinal tract. It is metabolized more slowly than ethyl alcohol, and extracorporeal hemodialysis proved effective in treating two patients who had consumed an amount that would otherwise probably have proved fatal (Refs. 4 and 5). As little as 10 mg isopropyl alcohol per 100 mL blood have produced a noticeable effect in an adult (Ref. 6), and a comatose condition in children has been observed when the level of isopropyl alcohol in the blood was 128 to 130 mg per 100 mL (Refs. 7 and 8). Symptoms of toxic ingestion of isopropyl alcohol are flushing, headache, dizziness, mental depression, nausea, vomiting, narcosis, anesthesia, and coma. One hundred mL taken orally can be fatal (Ref. 1).

Isopropyl alcohol is sometimes used for bathing to reduce body temperatures, as it evaporates rapidly and cools the skin. The vapors, however, may be absorbed through the lungs, and cases of acute poisoning by this means have occurred when excessive amounts of alcohol have been used for bathing in poorly ventilated areas (Refs. 6 through 9). Garrison (Ref. 7) notes that sponging with cool or cold water can accomplish the same effect without risk of inhaling toxic vapors.

There is a report of one individual who had an allergic reaction to isopropyl alcohol and no reaction to the primary alcohols, methyl, ethyl, butyl, and amyl (Ref. 10). Other individuals have been observed to be allergic to isopropyl alcohol and to ethyl and methyl alcohols as well (Refs. 11, 12, and 13), while an eczematous type of allergic reaction has been reported in still another individual to methyl, ethyl, and propyl alcohols, but not to isopropyl or benzyl alcohols (Ref. 14).

The application of an antimicrobial concentration of isopropyl alcohol to open, extensive wounds could be very irritating and more harmful than beneficial. The Panel, therefore, limits its recommendation for OTC use of this ingredient to application to minor cuts and scraps, application to the skin prior to breaking it for the removal of small splinters that are not deeply imbedded, and for preparation of skin prior to an injection.

(2) *Effectiveness.* As with ethyl alcohol, water must be present in order for isopropyl alcohol to exert its antibacterial action. In one study, sterile metal strips were partially immersed in bacterial cultures, removed, allowed to dry, and then completely immersed in isopropyl alcohol solutions of different strengths for varying periods of time. When the metal strips were dried in a current of sterile air and transferred to tubes of culture medium, it was shown that 100 percent isopropyl alcohol did not kill *Staphylococcus aureaus*, whereas a 50-percent concentration killed *S. aureus* in less than 10 seconds (Ref. 15).

In a study employing a more conventional in vitro technique, 0.5 mL of bacteria cultures were added to 5 mL of isopropyl alcohol in varying concentrations and subcultured after varying periods of time (Ref. 16). It was shown that 50 to 91 percent

concentrations of isopropyl alcohol killed *S. aureus* in an exposure of 1 minute, whereas 10, 20, and 30 percent concentrations did not kill in 5 minutes. *Escherichia coli* was killed by concentrations of 30 to 91 percent isopropyl alcohol in a 5-minute exposure but not by 10 and 20 percent concentrations. Concentrations of 30 to 91 percent killed four non-spore-forming microorganisms, *S. aureus*, hemolytic streptococcus, *E. coli*, and *Salmonella typhosa* in a 30-minute exposure, but 10 and 20 percent concentrations did not.

Against tubercle bacilli in dried sputum smears, 100 percent isopropyl alcohol did not kill in a 60-minute exposure, while 91 percent killed in 10 minutes, 70 percent killed in 1 minute, and 50 and 30 percent killed in 2 minutes (Ref. 17).

Influenza, type A, and vaccinia viruses were inactivated by 48.5 and 99 percent isopropyl alcohol during an exposure period of 10 minutes (Ref. 18). Against the lipophilic viruses, Asian influenza; adenovirus, type 2; vaccinia; and herpes simplex, 20 to 50 percent concentrations of isopropyl alcohol had an inactivating effect in a contact period of 10 minutes. Against the hydrophilic viruses, poliovirus, type 1; Coxsackie B, type 1; and echo virus, type 6, results were mixed. Echo virus, type 6, was inactivated by a 10-minute exposure to 90 percent isopropyl alcohol, but poliovirus, type 1, and Coxsackie B, type 1, were not inactivated by 95 percent isopropyl alcohol (Ref. 19).

Isopropyl alcohol, like ethyl alcohol, is poor in sporicidal activity and therefore not appropriate for use in sterilizing surgical instruments. Concentrations of isopropyl alcohol ranging from 20 to 91 percent failed to kill spores of *Bacillus subtilis* and *Clostridium novyi* in an exposure of 60 minutes, and commercial isopropyl alcohol has been reported to have been contaminated with a saprophytic spore former (Ref. 16).

Based on the available data, the Panel concludes that isopropyl alcohol is safe and effective for use as an OTC topical antimicrobial agent in aqueous solutions ranging from 50 to 91.3 percent by volume.

(3) *Labeling.* The Panel recommends Category I labeling for alcohol drug products for topical antimicrobial use. (See part III. paragraph A.2. below—Category I labeling.)

(4) *Directions.* "Apply to skin directly or with clean gauze, cotton, or swab."

References

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(19) Klein, M., and A. Deforest, "The Inactivation of Viruses by Germicides," Proceedings of the 49th Midyear Meeting of the Chemical Specialties Manufacturers Association, pp. 116–118, 1963.

2. *Category I labeling.* The Panel recommends the following labeling for Category I alcohol drug products for topical antimicrobial use:

a. *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) "For first aid use to decrease germs in minor cuts and scrapes."

(2) "To decrease germs on the skin prior to removing a splinter or other foreign object."

(3) "For preparation of the skin prior to an injection."

b. *Directions.* "Apply to skin directly or with clean gauze, cotton, or swab."

c. *Warnings.* (1) *For all alcohol-containing drug products for topical antimicrobial use.* (i) "For external use only. Do not use in or near the eyes. In case of deep or puncture wounds, consult your doctor."

(ii) "Flammable, keep away from fire or flame."

(2) *For products containing isopropyl alcohol.* "Use only in a well-ventilated area; fumes may be toxic."

The Panel notes that in accordance with § 201.10(d)(2) (21 CFR 201.10(d)(2)) the concentration of ethyl alcohol in alcohol drug products must be expressed as the percentage by volume of absolute alcohol. The Panel recommends that the concentration of isopropyl alcohol also be expressed in terms of percentage by volume.

B. *Category II Conditions.* These are conditions under which alcohol active ingredients for topical antimicrobial use are not generally recognized as safe and effective or are misbranded.

1. *Category II ingredients.*

Benzyl alcohol.

Chlorobutanol.

a. *Benzyl alcohol.* Benzyl alcohol is a primary alcohol with a very faint odor. It is a clear liquid with a boiling point of 206° C at a pressure of 760 mm mercury, and it is only slightly soluble in water (1 part in 25 parts). It possesses local anethetic properties; a 1-percent solution applied to the tongue or lips produces an anesthetic effect that may persist for half an hour or longer. Its anesthetic effect on a rabbit's cornea is noticeable 1 or 2 minutes after instillation. Injected intravenously into dogs or rabbits, benzyl alcohol produces a drop in blood pressure due to dilation of the periperal blood vessels.

(1) *Safety.* The minimum lethal dose of benzyl alcohol per kilogram (kg) of body weight for mice was found to be 1.6 to 2.5 mL, for rats it was 1 to 3 mL, and for guinea pigs it was 1 to 2.5 mL. The subcutaneous injection of 2 mL benzyl alcohol per kilogram body weight (mL/kg) of rabbits usually was not fatal, and 2 mL/kg body weight of dogs was never fatal (Ref. 1).

Benzyl alcohol for the most part is excreted in urine in the form of hippuric acid, which may account for its low toxicity for mammals. The subcutaneous or intramuscular injection of benzyl alcohol is irritating and produces necrosis of the tissue. Aqueous or saline

solutions of benzyl alcohol in 1 to 4 percent concentration were reported never to proudce irritation or destruction of the tissues into which they were injected (Ref. 1). However, when 4 mL pure benzyl alcohol was accidentally injected in connection with a circumcision operation, complete anethesia was produced, followed by local necrosis of the tissues and complete recovery. Aqueous solutions of benzyl alcohol are not very efficient for surface anesthesia because of their poor power of penetration into the tissues. The main use of benzyl alcohol in anethesia is for infiltration anesthesia. If surface anethesia is desired, the pure chemical should be used (Ref. 2).

It is not uncommon for benzyl alcohol to be present as a preservative or bacteriostatic agent in solutions intended for parenteral administration, and, as such, it is absorbed into the bloodstream (Ref. 3). However, it appears to be well-tolerated at low concentrations (Ref. 4).

Although it was not possible to demonstrate any lethal toxicity for dogs when benzyl alcohol was administered by stomach tube (Ref. 5), the single oral LD_{50} for rats has been stated to be 3.10 g/kg (Ref. 6).

No instances of hypersensitivity to benzyl alcohol have been found in the literature.

(2) *Effectiveness.* Benzyl alcohol has a definite but weak antimicrobial action. Against *S. typhosa* it has been reported to have a phenol coefficient (measurement of the killing power of a substance compared to that of phenol) of 0.76 (Ref. 7).

In an infection-prevention test using mice (36 to 50 mice for each disinfectant) and *S. pneumoniae* (Type 1) there was a mortality rate of 42 percent among the mice when the *S. pneumoniae* were treated with 4 percent benzyl alcohol. The technique employed was to swab the last 1 to 2 centimeters (cm) of the tail of an anesthetized mouse with a virulent culture of *S. pneumoniae,* type 1, using 5 firm strokes. The tail was then immersed in different disinfectant solutions for 2 minutes. A 1-cm portion was snipped from the end of the tail and placed in a small, sterile Petri dish, the small portion of the tail was then placed in the peritoneal cavity of the same mouse, and the incision was closed. The entire procedure took about 4 minutes per mouse (Ref. 8).

The mortality rate was 13 percent after treatment with 70 percent ethyl alcohol (by weight), 14 percent after treatment with 99 percent isopropanol, 17 percent after treatment with 70 percent ethyl alcohol (by volume), and 18 percent after treatment with a mixture of 70 percent ethyl alcohol and 4 percent benzyl alcohol (both by weight). There was a 24-percent mortality rate among the mice exposed to a mixture of 0.04 percent nitromersol and 4 percent benzyl alcohol, compared to 96 percent mortality when nitromersol was used alone, and 42 percent mortality when benzyl alcohol was used alone. When *S. pyogenes* was used as the challenging microorganism, there was a mortality rate of 97 percent among the mice after the microorganisms had been exposed to 0.04 percent nitromersol, a 17-percent mortality rate after exposure to 4 percent benzyl alcohol, and a 12-percent mortality rate after the microorganisms had been exposed to a mixture of 0.04 percent nitromersol and 4 percent benzyl alcohol.

Benzyl alcohol was tested for its bacteriostatic activity using a sodium chloride solution (0.9 percent) as a control, and sodium chloride solution (0.9 percent) containing 0.9 percent benzyl alcohol. To verify the bacteriostatic action, 1 mL of a 1-to-100 dilution of an overnight broth culture of *P. aeruginosa* was added to 150 mL of a 0.9-percent sodium chloride solution (control). This immediately produced a concentration of 62,000 *P. aeruginosa* per mL. After 24 hours at room temperature, the bacterial count had increased to 18,000,000 *P. aeruginosa* per mL. However, when some of the same diluted culture was added to 150 mL of a 0.9-percent sodium chloride solution containing 0.9 percent benzyl alcohol, the immediate concentration was 75,000 *P. aeruginosa* per mL. After 24 hours at room temperature, the concentration of microorganisms had decreased to 5,000 *P. aeruginosa* per mL, a 92.5 percent kill. After 48 hours at room temperature, the concentration was 52 microorganisms per mL, a 99.9 percent kill. After 72 hours at room temperature, the saline-benzyl alcohol solution was sterile. The action of 0.9 percent benzyl alcohol in the saline was shown to be bactericidal rather than bacteriostatic, but the killing action was slow as would be expected at that low concentration (Ref. 9).

The antimicrobial action of benzyl alcohol was also shown to be bactericidal rather than bacteriostatic when it was added to a drug preparation intended for parenteral administration (injection). *E. coli, P. aeruginosa, S. aureus,* and *Candida albicans* were not killed after an exposure of 1 week, but were killed after an exposure of 2 weeks at room temperature. *Aspergillus niger* was not killed after an exposure of 3 weeks, but was killed after 4 weeks (Ref. 4).

The Panel concludes that although benzyl alcohol at a concentration of 0.9 percent maybe useful in pharmaceutical preparations as a preservative, its bactericidal action is so slow that it cannot be recommended for use as a topical antimicrobial agent.

(3) *Evaluation.* The Panel concludes that benzyl alcohol is safe but not effective for OTC topical antimicrobial use.

References

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(7) Schaffer, J. M., and F. W. Tilley, "Further Investigations of the Relation Between the Chemical Constitution and the Germicidal Activity of Alcohols and Phenols," *Journal of Bacteriology,* 14:259–273, 1927.

(8) Prombo, M. P., and E. B. Tilden, "Evaluation of Disinfectants by Tests In Vivo," *Journal of Dental Research,* 29:108–122, 1950.

(9) Morton, H. E., "Alcohols" *in* "Disinfection, Sterilization, and Preservation," 2d Ed., S. S. Block, editor, Lea & Febiger, Philadelphia, p. 301–318, 1976.

b. *Chlorobutanol.* Chlorobutanol is a substituted tertiary butyl alcohol. It is a colorless-to-white crystalline substance having a camphor-like odor and taste. One gram dissolves in about 125 mL water, 10 mL glycerin, and 1 mL alcohol. It is readily soluble in chloroform, ether, acetone, and oils (Refs. 1 and 2).

The stability of aqueous solutions of chlorobutanol is influenced by pH of the solution, temperature, and chemical nature of the container. It is more stable in an acid than in an alkaline medium. At a pH of 3 and a temperature of 25° C, the half-life of chlorobutanol has been calculated to be 90 years, but at a pH of 7.5 and a temperature of 25° C, the half-life was estimated to be 0.23 year. The main degradation products of

chlorobutanol in aqueous solution are acetone and carbon monoxide (Ref. 3).

(1) *Safety.* Chlorobutanol is a central nervous system depressant and has been used clinically as a hypnotic drug. The oral lethal dose for humans is estimated to be 50 to 500 mg/kg (Ref. 4). It is claimed to have a local anesthetic action and has been shown in vitro to decrease the ability of uterine muscle strips to contract (Ref. 5).

One drop of a 2-percent solution of chlorobutanol applied to both eyes of nine rabbits twice each day for 7 days produced no conjunctival or corneal reaction (Ref. 6).

(2) *Effectiveness.* Chlorobutanol has been found to be a slow-acting bactericidal agent. A contact time of 12 hours was required for a 0.5-percent solution to kill *P. aeruginosa,* and a concentration of 0.7 percent killed this species of bacteria in 9 hours (Ref. 7). In testing 26 strains of *P. aeruginosa,* the time required for 0.5 percent chlorobutanol to kill the microorganisms when they were supsended in a phosphate buffer varied from 1 to 48 hours, and the killing times of chlorobutanol in this concentration for 5 strains of *Proteus* species varied from less than 30 minutes to 3 hours (Ref. 8). Concentrations of 0.25 to 0.26 percent were found to kill 50 percent of *E. coli* cells in an exposure period of about 3½ hours (Ref. 9).

Because chlorobutanol has some bactericidal properties and is not irritating to the eye, it has been used extensively in topical ophthalmic drugs as a preservative (Ref. 10).

(3) *Evaluation.* The Panel concludes that chlorobutanol in concentrations up to 5 percent is safe, but its bactericidal action is too slow for it to be considered effective as a topical antimicrobial agent.

References

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(10) Vaughn, D. G., "The Contamination of Fluorescein Solutions," *American Journal of Ophthalmology,* 39:55–61, 1955.

2. *Category II labeling.* The Panel recommends that the following label claims be placed in Category II:

a. "For application to mucous membranes."

(b) "As a local antiseptic in such conditions as simple sunburn, hand iron burns, mouth burns caused by hot food, kitchen burns caused by hot pots, etc."

c. "Useful for preparation for surgical procedures."

d. "For use in sterilizing (preparing) needles and syringes for hypodermic injection."

C. *Category III Conditions.* None.

D. *Combination Policy.* The Panel recommends that any combination of ethyl alcohol or isopropyl alcohol with other antimicrobial ingredients should be in accordance with § 330.10(a)(4)(iv) (21 CFR 330.10(a)(4)(iv)) which states:

An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The Panel does not believe that the combination of isopropyl and ethyl alcohol is rational

List of Subjects in 21 CFR Part 333

Over-the-counter drugs.

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended in Part 333 (as set forth in the notice of proposed rulemaking for topical antimicrobial drug products that was published in the **Federal Register** of January 6, 1978 (43 FR 1210)) as follows:

1. In Subpart A, § 333.3 is amended by adding a new paragraph (k), to read as follows:

§ 333.3 Definitions.

* * * * *

(k) *Alcohol drug product.* A drug product containing an alcohol ingredient that is applied topically for antimicrobial use.

2. In Subpart B, § 333.55 is added to read as follows:

§ 333.55 Alcohol active ingredients.

(a) Alcohol (ethyl alcohol) 60 to 95 percent by volume in an aqueous solution denatured according to the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms regulations at 27 CFR 212.

(b) Isopropyl alcohol 50 to 91.3 percent by volume in an aqueous solution.

3. In Subpart D, § 333.98 is added to read as follows:

§ 333.98 Labeling of alcohol drug products.

(a) *Statement of indentity.* The labeling of any product containing an ingredient identified in § 333.55 contains the established name of the drug, if any, and identifies the product as an "alcohol for topical antimicrobial use."

(b) *Indications.* The labeling of any product containing an ingredient identified in § 333.55 contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) "For first aid use to decrease germs in minor cuts and scrapes."

(2) "To decrease germs on the skin prior to removing a splinter or other foreign object."

(3) "For preparation of the skin prior to an injection."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading, "Warnings":

(1) *For products containing any ingredient identified in § 333.55.* (i) "For external use only. Do not use in or near the eyes. In case of deep or puncture wounds, consult your doctor."

(ii) "Flammable, keep away from fire or flame."

(2) *For products containing isopropyl alcohol identified in § 333.55(b).* "Use only in a well-ventilated area; fumes may be toxic."

(d) *Directions.* The labeling of any product containing an ingredient identified in § 333.55 contains a statement of the directions for use under the heading "Directions" that is limited to the phrase, "Apply to skin directly or with clean gauze, cotton, or swab."

Interested persons may, on or before August 19, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before September 20, 1982. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: May 6, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-13903 Filed 5-20-82; 8:45 am]

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Friday
May 21, 1982

Part VI

Department of the Interior

Bureau of Land Management

Navarin Basin Outer Continental Shelf Sale 83; Call for Nominations and Comments for Oil and Gas Leasing

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Navarin Basin Outer Continental Shelf
Sale 83

Call for Nominations and Comments for Oil and Gas Leasing

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1343), as amended (92 Stat. 629). Potential bidders are requested to outline broad areas where they believe hydrocarbons may occur or where they have an interest in leasing in the Navarin Basin. The Secretary is also requesting comments from all interested parties--Federal, State and local Government, environmental groups, the general public, and potential bidders--on possible environmental effects and use conflicts in the Call area, and on the appropriateness of initial lease terms longer than five years and lease blocks larger than 5,760 acres (2,331 hectares).

Use of Information from Call

Information submitted in response to this Call will be considered along with areas of hydrocarbon potential identified by the U.S. Geological Survey (USGS) and the Minerals Management Service (MMS) in selecting the areas to be proposed for leasing and analyzed in the EIS as the proposed Federal action. This information will also be used in identifying alternatives to the proposed action. Comments received on possible environmental effects and use conflicts may be used in the analysis of local environmental conditions within the Call area so that the potential effects of oil and gas exploration and development, other than the benefits accruing to the Nation as a result of inventorying and producing oil and gas, can be assessed. These comments may also be useful in developing special lease terms and conditions designed to assure safe offshore operations. Comments submitted regarding length of lease term and size of lease block may be used in the assessment of the appropriate initial lease term and appropriate tract size, pursuant to Section 8 of the OCS Lands Act, as amended (43 U.S.C. 1337).

Description of Area

The area of this Call generally lies between 58° N. latitude and 63° N. latitude; and is bounded on the west by the U.S./Russia 1867 Convention Line; and is bounded on the east by 174° longitude. Its general location is the Central Bering Sea, offshore the State of Alaska. Nominations and comments may be considered for any area within the boundaries of the Call.

The following list identifies the Official Protraction Diagrams included in this Call. The diagrams may be purchased for $2.00 each from the Manager, Alaska OCS Office, P.O. Box 1159, 620 E. 10th Ave., Anchorage, Alaska 99510.

NP 1-3 (Approved February 25, 1981)
NP 1-4 (Approved February 25, 1981)
NP 1-5 (Approved February 25, 1981)
NP 1-6 (Approved April 30, 1981)
NP 1-7 (Approved February 25, 1981)
NP 1-8 (Approved December 13, 1976)
NO 1-1 (Approved December 17, 1980)
NO 1-2 (Approved February 3, 1977)
NO 1-3 (Approved December 17, 1980)
NO 1-4 (Approved February 18, 1977)

Instructions on Call

Nominations from potential bidders should be limited to the areas included in the Official Protraction Diagrams described above. Those

Nominations and comments must be submitted no later than 30 days following

included in the Official Protraction Diagrams described above. Those making nominations are requested to do so on a standard Call for Nominations Map, available free from the Manager, Alaska OCS Office, at the above address; telephone (907) 276-2955. This map shows the Call area and highlights the area identified by the USGS and MMS as having potential for the discovery of deposits of oil and gas. Respondents may suggest areas of potential interest within or beyond those identified by USGS and MMS. Although individual nominations are considered to be privileged and confidential information, the names of persons or entities making nominations or submitting comments will be of public record. Respondents are encouraged to rank areas according to priority of interest (e.g. priority 1, 2, or 3).

In addition to nominations, we are seeking comments from all interested parties about particular geological, environmental, biological, archaeological, socioeconomic conditions or problems, or other information which might bear upon potential leasing and development of particular areas, where available. Comments should preferably address broad areas but may be restricted to designated blocks of particular concern.

Comments are also being sought from all interested parties on the appropriateness of initial lease periods longer than the normal five years, and on the need, if any, for lease blocks larger than the normal size of 5,760 acres (2,331 hectares). Such comments should describe why such modifications would be appropriate and identify where such modifications should be applied.

Those making comments are requested to mark the area on the Call for Nominations Map, discussed above.

Nominations and comments must be submitted no later than 30 days following publication of this document in the Federal Register, in envelopes labeled "Nominations for Leasing in the Outer Continental Shelf, Navarin Basin" or "Comments on Leasing in the Outer Continental Shelf, Navarin Basin", as appropriate. They must be submitted to the Manager, Alaska OCS Office, at the above address. A copy should be sent to Director (621), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240, and to the Minerals Manager, Minerals Management Service, P.O. Box 259, Anchorage, Alaska 99510.

Final delineation of the area for competitive bidding will be made only at a later date after compliance with established Departmental procedures, all requirements of the National Environmental Policy Act of 1969, and the Outer Continental Shelf Lands Act, as amended. A Final Notice of Sale, detailing areas to be offered for competitive bidding, will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

APR 30 1982

Arnold E. Petty

Acting Associate Director, Bureau of Land Management

Date: 5/10/82

Approved

Secretary of the Interior

OCS Sale No. 83 Call for Nominations and Comments

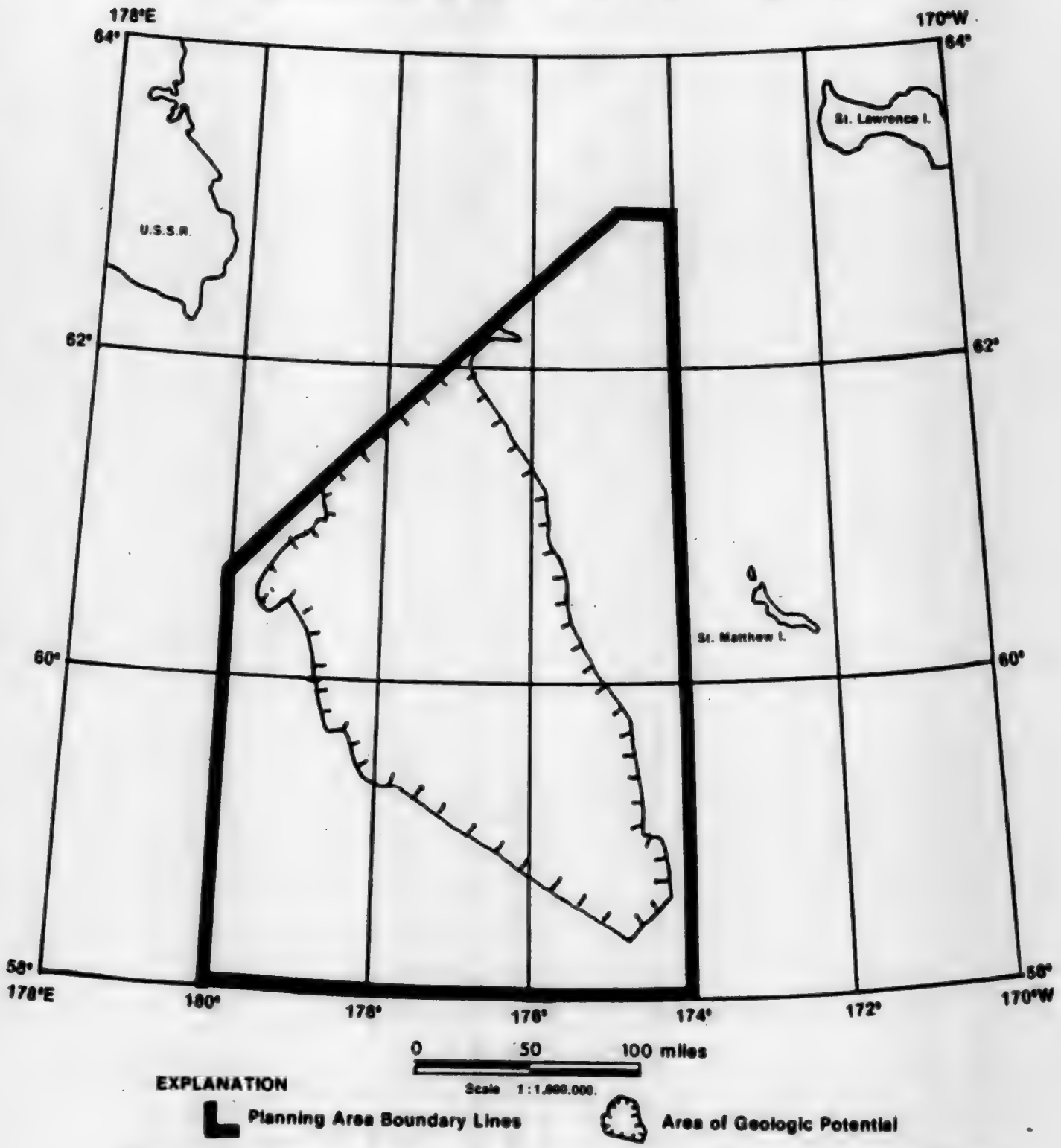

This map is for information only, and should not be used in place of the standard response map.

[FR Doc. 82-13971 Filed 5-20-82; 8:45 am]
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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List of CFR Sections Affected

(1964 through 1972)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Securities and Exchange Commission

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Small Business Administration

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Water Pollution Control
Environmental Protection Agency

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Monday, May 24, 1982

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The President

Proclamation 4943 of May 20, 1982

Amelia Earhart Day, 1982

By the President of the United States of America

A Proclamation

On May 20, 1932, Amelia Earhart set out from Harbour Grace, Newfoundland, to conquer the airlanes across the Atlantic Ocean. Fifteen hours later, she landed safely in Ireland to become the first woman to pilot an airplane across the Atlantic.

Pioneer aviatrix, adventurer, journalist, and nurse, Amelia Earhart captured the hearts of the American people with her daring exploits. She encouraged the development of commercial aviation, then a fledgling industry, and paved the way for women to enter the field of aviation. She set many speed and altitude records in airplanes and autogiros, the forerunner to the helicopter, and was the first woman to be awarded the Distinguished Flying Cross.

In June 1937, Amelia Earhart attempted the first round-the-world flight near the equator with her co-pilot, Frederick J. Noonan, in a twin-engined Lockheed Electra. On July 2, during their flight from New Guinea to Howland Island in the Central Pacific, trouble developed aboard the aircraft. Radio contact was lost, and no trace of either the plane or its crew was ever found.

Recognizing the great accomplishments of Amelia Earhart, the Congress has by joint resolution (H.J. Res. 412) called upon the President to designate May 20, 1982, as "Amelia Earhart Day" as a tribute to the most daring and celebrated of the pioneer women aviators.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 20, 1982, as Amelia Earhart Day.

I call upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-14234
Filed 5-21-82; 10:33 am]
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Rules and Regulations

Federal Register
Vol. 47, No. 100
Monday, May 24, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 3]

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations 7 CFR 1421.5551 *et seq.*, governing the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. This rule would: (1) Require warehousemen desiring to continue their Uniform Grain Storage Agreement (UGSA) and Uniform Rice Storage Agreement (URSA) with Commodity Credit Corporation (CCC), to pay contract fees to CCC in advance of the annual renewal date to partially defray warehouse examinations and administrative costs incurred by CCC in administering the UGSA and URSA; and (2) require warehousemen requesting initial warehouse approval by CCC under the UGSA and URSA to pay contract fees to CCC to partially defray CCC's costs in examining and approving such facility.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Paul W. King or Tyrus Matsuoka, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, Transportation and Storage Division, P.O. Box 2415, Washington, D.C. 20013; (202) 447–7433.

The Final Regulatory Impact Analysis describing the options considered is available from the above named individuals.

SUPPLEMENTARY INFORMATION: The final rule has been reviewed under USDA procedures established in accordance with Secretary's Memorandum 1512–1 and Executive Order 12291, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of rulemaking with respect to the subject matter of this rule.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. Section 4(h) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth standards of approval which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Section 156 of the Omnibus Budget Reconciliation Act of 1981 amended the United States Warehouse Act to require that the Secretary of Agriculture or his designee assess user fees with respect to all warehouse licensed under the United States Warehouse Act. The user fees would be paid by federally licensed warehousemen to the Agricultural Marketing Service (AMS) in order to defray the costs of (1) warehouse examinations; (2) licenses issued to classify, inspect, grade, sample, or weigh agricultural commodities stored; and (3) warehouse licenses issued, amended, modified, extended, or reinstated. Since CCC contracts with federally licensed warehouses in the conduct of its business and thereby benefits from the services under the United States Warehouse Act, it has been determined that CCC should pay a portion of the costs of their services.

The major service of AMS used by CCC is the report of periodic examinations of warehouses under the United States Warehouse Act. CCC, for its own protection, also requires the periodic examinations of warehouses not licensed under the United States Warehouse Act. Under an agreement with AMS, the warehousemen and CCC will together pay the cost representing user fees as mandated by the Omnibus Budget Reconciliation Act of 1981 for those warehouses which are licensed under the United States Warehouse Act and which also have Uniform Grain or Rice Storage Agreements.

CCC now pays a portion of the costs incurred in the examination of warehouses which are performed by States under Federal/State Cooperative Agreements. In addition, CCC now pays AMS all of the examination costs for those warehouses which have UGSA/URSA's but which are not federally licensed or licensed by States having a Federal/State Cooperative Agreement. As a result of the assessment of user fees by AMS, the difference in costs among the three groups of warehouses under contract with CCC, which are specified above, could result in some warehouses withdrawing from the United States Warehouse Act program without any subsequent loss of their ability to remain on the list of CCC approved warehouses. Since CCC now pays 100 percent of the costs of

examining some warehouses operating under the UGSA or URSA, such warehousemen could withdraw from the United States Warehouse Act program and still receive the advantages of AMS examinations with CCC paying the entire cost of such examinations.

Accordingly, a notice of proposed rulemaking was published in the **Federal Register** (46 FR 63075) on December 31, 1981, proposing that effective July 1, 1982, CCC would pay a portion of the total costs of warehouse examinations under the UGSA and the URSA. The remaining cost of examining UGSA and URSA warehouses would be obtained from the collection of contract fees from the warehousemen who are not licensed under the United States Warehouse Act or by States having a Federal/State Cooperative Agreement. Contract fees for UGSA and URSA warehouses would be determined using the same formula as the formula which is used to assess fees for federally licensed warehouses.

This final rule would establish parity between federally licensed warehouses and warehouses approved under the UGSA and URSA and distribute administrative costs more equitably.

A copy of the proposed rule was sent to all warehousemen approved under the UGSA and URSA. Thirty-six (36) responses were received on the proposed rule during the comment period.

One comment was supportive of the proposed rule. This respondent was from the State of Illinois and would not be assessed contract fees since Illinois has a cooperative examination agreement with the Department. Thirty-five comments were received opposing the implementation of contract fees. Their basic objection to the proposed rule and our responses are as follows:

1. *Comment:* The cost of contract fees would have to be passed on to the producer.

Response: We concur that some warehousemen may pass the cost of contract fees on to the depositors storing grain in their facilities. However, the contract fee on a per bushel basis is minimal and the average cost, which is less than one-tenth of a cent per bushel per year, should not present a hardship to any depositor.

2. *Comment:* Country elevators will be forced out of business.

Response: Since the costs of contract fees may be passed on to depositors storing commodities in UGSA and URSA warehouses, we do not feel any warehouseman will be forced out of business.

3. *Comment:* Warehouse examination costs (contract fees) are too high and storage rates too low.

Response: The contract fees were determined in part from actual warehouse examination costs from previous years and will not exceed actual costs incurred by CCC resulting from such examinations. CCC reinstated the Offer Rate System on July 1, 1981, to contract with UGSA and URSA warehousemen. Under the Offer Rate System, warehousemen determine their own storage and handling rates in accordance with their actual costs of operation.

4. *Comment:* Contract fees should not be based on storage capacity.

Response: No comments were received which set forth an alternative method for computing contract fees other than the method using storage capacity.

5. *Comment:* Contract fees are unfair for approved warehouses that are not storing CCC-owned grain. Lesser fees should be charged for the examination of approved warehouses which are not storing CCC-owned commodities.

Response: Since all warehouses approved under the UGSA and URSA will be examined annually, it would be unfair to assess contract fees only on those warehouses storing CCC-owned grain.

All comments have been taken into consideration and it has been determined that the proposed amendments to the regulations should be adopted as a final rule.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Price support programs, Surety bonds, Warehouses.

Final Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Accordingly, the regulations at 7 CFR Part 1421 are amended by adding a new § 1421.5558 to read as follows:

§ 1421.5558 Contract fees.

For each warehouse which is neither licensed under the United States Warehouse Act nor licensed by a State having a Federal/State Cooperative Agreement for examination of warehouses for Commodity Credit Corporation:

(a) There shall be charged to and collected from the warehouseman for each warehouse approved under the Uniform Grain Storage Agreement and the Uniform Rice Storage Agreement an annual contract fee in accordance with the schedule in paragraph (c) of this section;

(b) There shall be charged to and collected from the warehouseman for each warehouse requesting approval under the Uniform Grain Storage Agreement and Uniform Rice Storage Agreement an initial contract fee in accordance with the schedule in paragraph (c) of this section; and

(c) Contract fees collected from warehouses under this section shall be in accordance with the following schedule:

Grain Capacity (bushels)	Annual contract fees (dollars)
1 to 150,000	$250
150,001 to 250,000	350
250,001 to 500,000	450
500,001 to 750,000	550
750,001 to 1,000,000	650
1,000,001 to 1,200,000	750
1,200,001 to 1,500,000	850
1,500,001 to 2,000,000	950
2,000,001 to 2,500,000	1,050
2,500,001 to 5,000,000	1,150
5,000,001 +	1,250

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c))

Signed at Washington, D.C. on May 17, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-14161 Filed 5-21-82; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 5 and 9

[Docket No. 82-7]

Organization of a National Bank Limited to Trust Powers; Fiduciary Powers; Applications; Consideration of Applications

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Comptroller is amending 12 CFR Parts 5 and 9 to correct technical errors, inadvertent omissions, redundancies, inconsistent cross-references and other discrepancies that resulted from the consolidation of Parts 4, 5, 13, 14 and 15 with portions of Parts 8 and 28 to form the present Part 5. That consolidation occurred on October 15, 1980 (45 FR 68586), as supplemented on March 13, 1981 (46 FR 16656) and December 4, 1981 (46 FR 59232).

DATE: The amendments are effective June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Bill Pate, Trust Examinations Division,

(202) 447–1184; Robert Criswell, Bank Organization and Structure Division, (202) 447–1184; Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The Comptroller is amending § 5.22 to correct a reference in the authority section of the rule, and thereby include 12 U.S.C. 92a.

The Comptroller is deleting the term "existing" in § 5.26(a)(2) to clarify that the subparagraph applies to new as well as existing national banks, except for new banks limited to trust powers which apply for trust powers pursuant to organization under § 5.22.

The Comptroller amends § 9.2 to correct cross-references to other sections previously amended.

Finally, the Comptroller is deleting 12 CFR 9.3 because the substance of the regulation has been previously transferred to 12 CFR Part 5.

These amendments are not substantive, and therefore do not require review and comment. These technical amendments will not have a substantive cost effect on the national banking system or the public.

Neither a Regulatory Flexibility Analysis nor a Regulatory Impact Analysis has been prepared for this regulation. Pursuant to 5 U.S.C. 603(a) and 604(a), a Regulatory Flexibility Analysis is only required when an agency publishes a general notice of proposed rulemaking. Therefore, a Regulatory Flexibility Analysis is not required because no general notice of proposed rulemaking is required by 5 U.S.C. 553. The Comptroller of the Currency believes that the amendments will ease the application of the existing regulation and will not have any particular effect on small entities. The effect of the amendments is expected to be beneficial and small entities are generally expected to share the benefits of the amendments equally with larger institutions.

A Regulatory Impact Analysis is not required because the Office of the Comptroller of the Currency has determined that the proposal is not a "major rule" as defined by Executive Order 12291. The amendments will not have an annual effect on the economy of $100 million or more, and will not result in a major increase in the cost of bank operations or government supervision. The amendments will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

List of Subjects in 12 CFR Parts 5 and 9

Trust powers, Fiduciary powers, National banks.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

A. For the reasons set forth in the preamble, the Comptroller amends 12 CFR Part 5 as follows.

1. The authority citation for Part 5 reads as follows:

Authority: 12 U.S.C. 1 et seq.

2. Section 5.22(a)(1) is revised to read as follows:

§ 5.22 Organization of a national bank limited to trust powers.

(a) * * *

(1) Authority. 12 U.S.C. 1, 21, 22, 26, 27, 92a, 93a, 1814(b) and 1816.

* * * * *

3. Section 5.26(a)(2) is revised to read as follows:

§ 5.26 Fiduciary powers.

(a) * * *

(2) *Scope.* This section applies to applications for fiduciary powers by national banks. An application for fiduciary powers by a national bank limited to trust powers is governed by § 5.22 of this part.

* * * * *

PART 9— FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

B. For the reasons set forth in the preamble, the Comptroller amends Part 9 to read as follows:

(1) The authority citation for Part 9 reads as follows:

Authority: Sec. 1, 76 Stat. 668; 12 U.S.C. 92a; and R.S. 5240 as amended (12 U.S.C. 481), unless otherwise noted.

2. Section 9.2 is revised to read as follows:

§ 9.2 Applications.

A national bank desiring to exercise fiduciary powers shall file an application with the Comptroller of the Currency pursuant to 12 CFR 5.26, but an application to exercise fiduciary powers by a national bank limited to trust powers shall be filed pursuant to 12 CFR 5.22.

§ 9.3 [Reserved]

3. Section 9.3 is revoked and reserved.

Dated: May 4, 1982.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 82-14085 Filed 5-21-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

Management Official Interlocks; Final Amendment

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation on management official interlocks to clearly provide that the exception to the general prohibitions of the regulation concerning institutions that face conditions that endanger their safety or soundness is available when one of the interlocked depository organizations is not supervised by a federal financial institution regulatory authority. As presently worded, the exception would seem not to be available in instances where the institution seeking the management official's services is solely State insured and State supervised. These amendments will insert language where appropriate so as to clearly make the exception available in such cases.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Attorney, Legal Division, (202–389–4171), Room 4126–E, 550–17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Part 348 of FDIC's regulations (12 CFR Part 348) implements the Depository Institution Management Interlocks Act ("Interlocks Act", 12 U.S.C. 3201 *et seq.*). In general the Interlocks Act and Part 348 prohibit management official interlocks between depository institutions, depository holding companies, their affiliates and unaffiliated depository institutions, depository holding companies, and their affiliates depending upon the size and location of the organizations. Section 348.4(b) of the regulation sets out five exceptions to the general prohibitions that are available with the prior approval of the Board of Directors. The exceptions require that certain determinations as to the "necessity" of an individual's service, and in one case, the overall condition of the organization seeking that individual's service, be determined by the "appropriate" or "primary" *Federal* supervisory agency.

Section 348.4(b)(3) permits an interlock between two depository institutions where one of the institutions faces conditions that endanger its safety or soundness. As presently worded, the exception would seem not to be available in instances where the institution seeking the management official's services is solely State insured and State supervised. These amendments will insert language where appropriate so as to clearly make the exception available in such cases.

The amendment is being published as a final rule under authority of 5 U.S.C. 553(b)(B) which provides that opportunity for public comment is not required where it is impracticable, unnecessary, or contrary to the public interest. Public comment is unnecessary because the amendment merely recognizes that management official interlocks involving solely State supervised organizations do occur and extends the availability of the exceptions to such interlocks. The amendment is made immediately effective under authority of 5 U.S.C. 553(d)(1) which allows waiver of the thirty-day delayed effective date where an amendment grants or recognizes an exemption or relieves a restriction.

It has been determined that the amendment is not subject to the Paperwork Reduction Act because it does not establish any recordkeeping or reporting requirement. The amendment is not expected to have any differing effect upon financial institutions due to their size nor is it anticipated to have any detrimental impact on existing competitive structures.

List of Subjects in 12 CFR Part 348

Antitrust Banks, Banking, Holding companies, Management official interlocks.

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

Accordingly the Federal Deposit Insurance Corporation amends 12 CFR Part 348 as follows.

1. The authority citation for Part 348 reads as follows:

Authority. Sec. 209, Pub. L. No. 95-630, 92 Stat. 3675 (12 U.S.C. 3207).

§ 348.4 [Amended]

2. Subparagraph 348.4(b)(3) is amended by inserting "(or its State supervisory agency if it has no Federal supervisory agency)" after the word "organizations" and before the word "believes".

By order of the Board of Directors this 17th day of May 1982.

Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Deputy Executive Secretary.

[FR Doc. 82-14139 Filed 5-21-82; 8:45 am]
BILLING CODE 6714-01-M

12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations on disclosure of information to permit insured nonmember banks to directly disclose copies of FDIC examination reports to their parent holding companies and individual shareholders without prior FDIC approval if certain conditions are met. The intent of this document is solely to eliminate the administrative burden the FDIC has encountered in processing disclosure requests.

EFFECTIVE DATE: June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Attorney, Legal Division (202-389-4171) Room 4126-E, 550 17th Street, NW., Washington, D.C. 20429 or Kevin M. Murphy, Review Examiner (202-389-4415) Room 780-D, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On December 14, 1981, the FDIC published for comment a proposed amendment to Part 309 of its regulations dealing with disclosure of information (46 FR 60827). The comment period closed on February 12, 1982. The amendment as proposed was designed to authorize insured nonmember banks to copy and release their examination reports to their parent holding companies or majority shareholders without prior approval from the FDIC where (1) the holding company or individual shareholder owned in excess of 50 percent of the voting stock of the bank, (2) the board of directors of the bank authorized the release of each report, and (3) a receipt was obtained from the parent holding company or individual shareholder acknowledging that (a) the report had been received, (b) it would be retained for the exclusive use of the parent or shareholder, and (c) the report remained the property of the FDIC and no further disclosure would be made without prior FDIC approval. The disclosing bank was required to retain the receipts for three years.

The only extent to which the proposed amendment would have altered existing disclosure procedures was to allow the bank to directly transmit examination reports rather than having FDIC transmit the reports at the bank's request. Such requests are currently processed under § 309.6(c)(6) of FDIC's regulations and are handled as follows. Disclosure by the FDIC occurs on a routine basis once a written request is received. Conditions on release may be imposed in order to protect the confidentiality of the reports, the financial integrity of the bank, and the privacy interests of any individual named in the report. The board of directors of the bank must adopt a resolution approving the request that the FDIC release the report. When the report is released, it is accompanied by a transmittal letter reminding the parent holding company or shareholder that the report is being furnished solely for the purpose of assisting the FDIC in the supervision of the bank, that the report is still the property of the FDIC, and that the report is confidential. A charge of $10 is imposed for each disclosure.

As indicated when the proposal was originally published for comment, the intent of a change in procedure is solely to eliminate the administrative burden the FDIC has encountered in processing disclosure requests under § 309.6(c)(6). Each time a report is disclosed it takes approximately 2-3 hours to process the request. It is estimated that in 1981, 800 reports were furnished to parent holding companies and individual shareholders at a substantial cost to the FDIC in personnel time and materials.

Twenty-six comments were received during the comment period. All of the comments supported the concept of allowing insured nonmember banks to release examination reports to parent holding companies or individual shareholders without FDIC's prior approval when the parent holding company or individual shareholder owns more than 50% of the voting stock of the bank. All but seven of the comments objected to the requirement that the disclosing bank (1) authorize the release of each specific report, (2) obtain a receipt containing the information described above, and (3) retain the receipts for three years, on the basis that the requirements as proposed were overly burdensome. In contrast, a large trade association indicated that in its view, a change in procedure as proposed would not cause a large increase in the recordkeeping of its member banks. The American Bankers Association strongly supported the proposal citing the need to condition disclosure in order to safeguard the confidentiality of examination reports.

Having fully weighed the objections to the conditions on release as originally proposed, the FDIC has determined only to require an annual resolution authorizing release. The FDIC is also making several other changes from the proposal in deference to the comments that found the proposal to be burdensome. The changes are being made to address the comments but at the same time certain conditions are being imposed in recognition of the need to preserve the confidentiality of examination reports to the greatest extent possible and to provide the FDIC with accurate information on the location and number of examination reports that have been released. Those conditions are described below.

The final amendment requires that the annual authorization for disclosure specifically name the individual shareholder or parent holding company to whom the reports will be sent and the address to which reports will be sent. The authorization must also recite that any report furnished pursuant to the authorization remains the property of the FDIC, is to be retained for the exclusive use of the recipient, and is not to be disclosed without the FDIC's prior written approval. A copy of the authorization must be sent to the shareholder or parent holding company. Each time that a bank discloses a report of examination, disclosure must be noted in the minutes of the board of directors meeting immediately following disclosure. The minutes must also reflect the date of the report which has been disclosed, the date of disclosure, and to whom disclosure was made.

Combining the information that would have been obtained in the receipt with the one-time resolution authorizing disclosure and requiring notation of disclosure, etc. in the board's minutes significantly reduces the paperwork from that which would have been involved under the proposal. By utilizing the minutes of the board of directors as a vehicle for recording information rather than a receipt, the need to retain any additional documentation beyond that already maintained by the bank is eliminated. Sending a copy of the annual resolution which recites the need for FDIC approval before further disclosure may occur apprises the recipient of the confidentiality of the reports on a one-time basis thus eliminating additional paperwork.

In making the above changes from the proposed amendment, the FDIC rejected a suggestion that banks be permitted to disclose copies of their examination reports without prior approval to affiliates that perform services for the bank such as providing guidance on regulatory compliance. A suggestion that a bank be permitted to release its reports of examination to groups of shareholders who, acting in concert, control more than 50% of the voting stock of the bank was also rejected. The latter was rejected in that (1) it would not seem to further the ultimate goal of disclosing the reports to an individual or parent holding company that is in a position to help the FDIC achieve its supervisory goals and (2) release on that scale would seem to drastically increase the number of potential recipients thereby possibly affecting the confidentiality of FDIC reports of examination on a large scale. Release to affiliates was rejected primarily because the situation where affilates provide services of the sort that may be enhanced by release of examination reports does not often arise. When it does, release can be accomplished with FDIC's approval. For the most part, a bank should be able to provide sufficient information to the affiliate from sources other than its report of examination.

The amendment will shift the burden of reproduction, distribution, and recordation of disclosure to insured nonmember banks. While the FDIC cannot quantify the costs associated with that shift, it is not expected to differ depending upon the size of the disclosing bank. The FDIC's Board of Directors certified at the time of the original proposal that the amendment would not have a significant economic impact on a substantial number of small entities. That determination was based upon the following: (1) The impact produced by the amendment should affect each institution differently, depending not upon the size of the institution, but upon the efficiency with which it handles administrative matters, (2) any impact would seem to be limited to a one time cost outlay per year in amounts that could not be described as significant, and (3) the cost of retaining the necessary receipts would be minimal. The third item has been eliminated altogether.

List of Subjects in 12 CFR Part 309

Banks, Banking, Credit, Foreign banking, Freedom of information, Privacy, Disclosure requirements.

PART 309—DISCLOSURE OF INFORMATION

In consideration of the foregoing, 12 CFR Part 309 is amended as follows:

1. The authority citation for Part 309 reads as follows:

Authority: Sec. 2(9) "Seventh" and "Tenth," Pub. L. No. 797, 64 Stat. 881 as amended by Title III, sec. 309, Pub. L. No. 95-630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth").

2. In Part 309, § 309.6(c)(7)(iii) is redesignated § 309.6(c)(7)(iv) and a new § 309.6(c)(7)(iii) is added to read as follows:

§ 309.6 Disclosure of exempt records by Corporation personnel.

* * * * *

(c) *Disclosure authorized.* * * *

(7) *Reports of examination and other exempt records—disclosure by banks or other third parties.* * * *

(iii) Any subsidiary bank of a bank holding company may reproduce and furnish a copy of any report of examination of the subsidiary bank to the parent holding company without prior approval by the Director of the Division of Bank Supervision and any bank may reproduce and furnish a copy of any report of examination of the disclosing bank to a majority shareholder if the following conditions are met: (A) The parent holding company or shareholder owns in excess of 50% of the voting stock of the bank or subsidiary bank; (B) the board of directors of the bank or subsidiary bank at least annually by resolution authorizes the reproduction and furnishing of reports of examination (the resolution shall (*1*) specifically name the shareholder or parent holding company, (*2*) the address to which the reports are to be sent, (*3*) indicate that all reports furnished pursuant to the resolution remain the property of the Federal Deposit Insurance Corporation and are not to be disclosed or made public in any manner without the prior written approval of the Director of the Division of Bank Supervision as provided in § 309.6(c)(7)(ii) of the Corporation's regulations); (C) a copy of the resolution authorizing disclosure of the reports is sent to the shareholder or parent holding company; and (D) the minutes of the board of directors of the bank or subsidiary bank for the meeting immediately following disclosure of a report contain a notation that (*1*) disclosure was made, (*2*) the date of the report which was disclosed, (*3*) to whom the report was sent, and (*4*) the date the report was disclosed.

* * * * *

By Order of the Board of Directors, 17th day of May 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 82-14080 Filed 5-21-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563c

Accounting for Gains and Losses From Dispositions and for Discounts From Acquisitions of Mortgage Loans and Certain Securities

Dated: May 17, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board has determined to amend the effective date of paragraph (c) of § 563c.14 to make the regulation effective as of the date of its adoption on January 8, 1982. The Board also is taking this opportunity to clarify that the term "mortgage loans" was intended to include loans secured by manufactured home chattel paper and to expand coverage of the regulation to include redeemable ground rent leases and redeemable preferred stock.

EFFECTIVE DATE: May 21, 1982.

FOR FURTHER INFORMATION CONTACT: Michael S. Joseph, Office of Examinations and Supervision (202–377–6994), or David J. Bristol (202–377–6461) or Kenneth F. Hall (202–377–6468), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On January 8, 1982, the Board adopted a clarifying amendment to § 563c.14, which was promulgated effective September 30, 1981, and authorizes the deferral and amortization of gains and losses from the sale of mortgage loans, mortgage-related securities and qualifying debt securities (12 CFR 563c.14; 46 FR 50048 (1981)). The amendment, made effective retroactively to September 30, 1981, provides that an institution that acquires a long-term mortgage loan or qualifying security at less than 90 percent of its par value within six months prior or subsequent to the sale at a loss of a mortgage loan or qualifying security must amortize the discount from the acquisition using the same amortization method and period used to amortize a like amount of the matching loss. The stated purpose of the amendment was to "make clear that the authority to defer and amortize gains and losses may not be used as an accounting mechanism to artificially inflate an institution's earnings" (47 FR 2857 (1982)). The Board requested public comment on the amendment through March 5, 1982.

Summary of Comments

The Board received a total of 23 comment letters on the amendment. Every comment letter expressed opposition to making the amendment retroactive, although most agreed with the substance of the amendment. Several commenters, including one law firm, expressed the view that retroactive application of the amendment is improper. In addition, some commenters suggested changes to the amendment, such as requiring matching only for dispositions and purchases that occur within the same fiscal year or within 30 days of each other, or determining whether to waive retroactive application on a case-by-case basis.

Discussion

The authority to defer and amortize gains and losses from the disposition of qualifying assets was not intended to permit institutions to account for transactions involving swaps of similar low-yielding assets in a manner that would suggest that extensive profits had been generated. As it noted in adopting paragraph (c) on January 8, 1982 (*see* 47 FR 2857 (1982)), the Board believes this intent was reflected both in the regulatory language adopted on September 30, 1981, which requires institutions using deferral accounting to "demonstrate an intent to use the sale proceeds so as to improve the institution's future profitability and/or reduce interest-rate risk" (12 CFR 563c.14(b)(1); 46 FR 50053 (1981)), as well as in the Supplementary Information accompanying the regulatory text (*see* 46 FR 50048–49 (1981)).

The Board recognizes, however, that the regulatory language as adopted on September 30, 1981, was ambiguous and that some institutions may have entered into transactions not comtemplated by the Board when the amendment was adopted in September. The Board believes that retroactive application of the January 8, 1982, amendment, while clarifying the Board's position, may have produced inequitable results for those institutions that entered into transactions that appeared to literally comply with the regulation adopted on September 30. The Board has therefore determined to rescind the retroactive application of the amendment. That rescission is accomplished by amending subparagraph (c)(2) of the regulation.

In addition to urging rescission of the retroactive application of the amendment, commenters suggested three other changes. The suggested changes were (1) to require matching of amortization methods and periods only for dispositions and acquisitions that occur in the same fiscal year or within 30 days of each other, (2) to tie the definition of a deep-discount loan or security to its interest rate, and (3) to define "deep-discount" as applying only to acquisitions at less than 70 percent of par value. The Board is of the view that adoption of these changes would undermine the objective of the amendment, which is to prevent institutions from accounting for transactions that result in little or no change in an institution's true economic value in a manner that indicates large earnings have been generated. The Board has determined, therefore, not to make these or any other changes to the amendment adopted on Jaunuary 8, 1982.

Redeemable Ground Rents; Redeemable Preferred Stock

The Board also has determined to permit the deferral and amortization of gains and losses from the disposition of redeemable ground rent leases; and of preferred stock that at the time of issuance: (1) Provides for redemption on a fixed date in a fixed dollar amount, or for redemption pursuant to a fixed schedule of periodic payments; and (2) has a remaining term to maturity of at least five years. Typically, a redeemable ground rent lease is a perpetual lease that provides for the payment to the lessor of the real property an annual or semi-annual fee (the ground rent), non-payment of which gives the lessor the right to re-enter and void the lease. 38 CJS *Ground Rents* 2, 3 (1943; Supp. 1981). In this type of arrangement, the lessee generally purchases structures located on the real estate, though not the underlying real estate itself. The maximum amount of the ground rent is either fixed by statute or by the lease agreement, and the lessee may redeem the lessor's interest by paying the capitalized value of the lease, thus obtaining fee simple ownership of the property. Generally, the lease is freely assignable by the lessee. *See, e.g., Pronzato* v. *Guerrina*, 400 Pa. 521, 163 A.2d 297, 298 (1960); *Moran* v. *Hammersla*, 188 Md. 378, 52 A.2d 727, 728 (1947). Thus, the position of the lessee may be compared to that of a mortgagor who may repay the loan balance at any time in a single balloon payment. *See also Commisssioner* v. *Simmers*, 231 F.2d 909 (4th Cir. 1956); *Jones* v. *Magruder*, 42 F. Supp. 193 (D. Md. 1941). A redeemable ground rent is treated as a mortgage for Federal income tax purposes (IRC 1055).

The purpose of § 563c.14 is to assist institutions to balance the maturities of their assets and liabilities and to

improve the yields of their mortgage and securities portfolios. In the Board's view, this purpose would be equally well-served by permitting the deferral of gains and losses from the disposition of redeemable ground-rent leases, as described above, and of mid-to long-term redeemable preferred stock, which, when redeemed on a pre-set date in a pre-set dollar amount or through pre-set periodic payments, possesses yield and repayment characteristics similar to those of debt securities. (The Board notes that loans secured by ground-rent leases currently qualify as mortgage-loans under the Board's lending regulations (12 CFR 541.14 (1981)) and thus as mortgage loans under § 563c.14.) Because redeemable ground-rent leases typically are perpetual, the Board has determined to require that any gain or loss from the sale of a redeemable ground-rent lease must be amortized over a period not to exceed forty years, which is the maximum permissible term for a home loan under 12 CFR 545.6–2(a) (1981).

The Board also notes that § 563c.14 authorizes the amortization of gains and losses from the sale of loans secured by manufactured homes regardless of whether the loans are secured by the property on which the homes are located. *See* opinion of the General Counsel, dated February 11, 1982.

The Board finds that notice and public procedure with respect to the amendment pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 are unnecessary because (1) the amendments relieve restriction, and (2) it is in the public interest to immediately make available to insured institutions the expanded authority, which will assist them to improve profitability and reduce future interest-rate risk. The Board also finds that the 30-day delay of the effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary for the same reasons.

List of Subjects in 12 CFR Part 563c

Accounting, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563c, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, to read as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563c—ACCOUNTING REQUIREMENTS

Amend the title, paragraphs (a) and (d), and subparagraphs (b)(3)(ii), (c)(1)(i) and (c)(2) of § 563c.14, to read as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An institution, by resolution of its board of directors at the board's first meeting of the fiscal year, may elect to defer and amortize all gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) on any sale or other disposition occurring in that fiscal year of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17–4(a)(4) of this Subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) of this Chapter because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets.

(b) *Amortization.* * * *

(3) Account for such gains and losses as follows:

* * * * *

(ii) Such gains or losses shall be amortized by the straightline method, as described in § 563.23–1(g)(10)(i) of this Subchapter, or by the level-yield method, as described in § 563.23–1(g)(10)(iii), over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.

(c) *Matching the amortization of discounts and losses.*

(1) For purposes of this paragraph (c) only:

(i) The term "long-term, deep-discount security" means any loan, lease or security identified in paragraph (a) of this section that has a remaining term to maturity, at the time of purchase, or ten years or more, and is purchased at a price of less than 90% of its stated (par) value or principal balance.

* * * * *

(2) On or after January 8, 1982, when long-term, deep-discount securities * * *

* * * * *

(d) For purposes of this section, "disposition" includes, but is not limited to, (1) prepayment at a discount of an institution's mortgage loans by existing borrowers, (2) sales of loans (including participation interests therein), leases and securities identified in paragraph (a) of this section, and (3) exchanges of assets eligible for disposition under this section.

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943–48 Comp., P. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 82-14073 Filed 5-21-82; 8:45 am]
BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

[Revision 1, Amendment 1]

Procurement Assistance; Eligibility Requirements for Certificate of Competency Applicants

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This amendment revises the wording of the Certificate of Competency (COC) regulations regarding program eligibility, parts of which have been subject to misinterpretation by some applicants. Additionally the amendment now permits contracting agencies the discretion to determine if contracts valued less than $10,000 should be referred to the Small Business Administration (SBA) under the COC requirements. This revision will provide a clear understanding of the requirements of the COC Program.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Director, Office of Industrial Assistance, (202) 653–7035.

SUPPLEMENTARY INFORMATION: SBA has recently discovered that the wording of 13 CFR Part 125.5(f) and (g), COC regulations, is being misinterpreted by COC applicants. In its present form, paragraph (f) reads as follows:

(f) A small business concern shall not be eligible for a COC unless it performs a significant portion of the contract with its

own facilities and personnel to assure SBA that the bidder is simply not an agent.

Some applicants have interpreted this paragraph as a test to determine the existence of an "agency relationship" between the bidder and other firms. Although we understand how this interpretation may be made from the current wording, SBA's intent was solely to insure that the benefits of the COC program passed to the small bidder directly rather than as an intermediary.

The requirement that the bidder perform a significant portion of the contract with its own facilities and personnel is adequate to assure that result. The words at the end of § 125.5(f), "to assure SBA that the bidder is not simply an agent," are not needed; thus, are being eliminated from this paragraph. Section 125.5 paragraph (f) is now set forth as § 125.5 paragraph (b) in the revised regulation.

The application of § 125.5(g) has also been the basis of confusion to some COC applicants. The portion of the paragraph which has created the problem is as follows:

§ 125.5(g) * * * The product of a large business may only be supplied on a non-set-aside procurement and that product and the responsibility of the manufacturer must be acceptable to the procuring activity.

This regulation was added to allow small non-manufacturers (dealers) to receive COC's on unrestricted procurements regardless of the size of the original manufacturer. Prior to this regulation, a small business dealer was required to supply the product of a small business manufacturer. SBA felt that this requirement was unduly burdensome and restrictive upon small business, and that small business firms bidding on unrestricted Government procurements and requiring a COC should not be held to a more restrictive standard than the solicitation imposes on the field of bidders.

In most instances, the current wording of § 125.5(g) has not posed any problems; however, some small business dealers have inferred that the current regulation allows the supply of foreign manufactured products and still remain eligible to receive a COC.

COC procedures require an extensive review of the applicant's ability to perform prior to an affirmative COC action and, although we do not certify the responsibility of the large manufacturer, an evaluation of its ability is considered. In situations where a foreign manufacturer is the source of supply, this evaluation becomes impossible.

SBA did not intend for this paragraph to permit the supply of foreign manufactured products, nor do we feel it can be interpreted as such; however, rather than continue with the possibility of such misinterpretation, a rewording of § 125.5(g) will clarify the matter. Paragraph 125.5(g) is now set forth as § 125.5(c) and contains the revised wording.

Additionally, the COC Program has experienced dramatic growth in the last four or five years without corresponding increases of resources. Consequently, it has reached the point where the agency must use the existing resources in the most cost effective way. Consequently, it has been determined that contracts valued less than $10,000 do not have to be referred by the contracting agency unless so desired. SBA feels that the cost incurred by both the small business concern in applying for a COC, and the Federal Government in processing the application, outweighs the possible benefits derived from the award of a COC on contracts less than $10,000.

SBA hereby certifies that this regulation, if promulgated in final form will not have a significant economic impact on a substantial number of small businesses. In addition, SBA also certifies that this rule, if promulgated in final form, would not constitute a major rule for the purpose of Executive Order 12291.

These regulations are not issued for proposed rulemaking because such delay would be contrary to the public interest. Interested parties are encouraged to submit written comments regarding these regulations. Materials submitted will be evaluated and acted upon in the same manner as if this document were a proposal.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Small businesses, Technical assistance, Certificates of competency.

PART 125—PROCUREMENT ASSISTANCE

Therefore, 13 CFR 125.5 is revised to read as follows:

§ 125.5 Certificate of Competency Program.

The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small concern (or a group of such concerns) named therein possesses a responsibility and/or eligibility to perform a specific Government procurement (or sale) contract.

(a) To be eligible for the program, a firm must be:

(1) A "small business concern" using the size standard as of the date of the determination and the SIC Code contained in the solicitation; or

(2) A "group of such concerns" in the form of a small business pool approved under the Small Business Act.

(b) A manufacturing, construction, or service concern shall not be eligible for a Certificate unless it performs a significant portion of the contract with its own facilities and personnel.

(c) A non-manufacturing concern which submits a bid or offer on a set-aside contract shall not be eligible for a COC unless the end items to be furnished under the contract will be manufactured by a small business concern in the United States; when an unrestricted procurement or a procurement utilizing small purchase procedures, an otherwise qualified non-manufacturer may supply any domestically produced or manufactured product. The responsibility of the small non-manufacturer is certified, not the large manufacturer. In the event of a tie bid, preference shall be given to the concern supplying the product of a small business. Tool kit assemblers are required to provide items manufactured by small business concerns amounting to more than 50 percent of the kit material value.

(d) Government procurement officers, and officers engaged in the sale and disposal of Federal property, upon determining and documenting that a small business lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, perseverance, and tenacity, shall notify SBA of such determination where the contract value is $10,000 or greater. It is within the discretion of the contracting officer to determine if a referral should be made when the contract value is less than $10,000. Award is withheld by the contracting officer for a period up to 15 working days following the date of receipt by SBA of notice of such determination (with appropriate documentation) in order to permit SBA to investigate and certify as to the bidder's responsibility.

(e) Upon receipt of this notification, SBA personnel then contact the company concerned to inform it of the impending decision, and to offer the opportunity to apply to SBA for a Certificate. A concern wishing to apply advises the SBA regional office for the geographic region within which the concern is located. Upon timely receipt of required documentation, SBA

personnel may be sent to the firm to review the responsibility of the applicant and make recommendations to the Regional Administrator.

(f) If the Regional Administrator's decision is negative, the COC is denied and both the firm and procuring agency are notified. If the Regional Administrator's decision is affirmative and the procurement is less than $500,000, the Regional Administrator issues a Certificate. Contracting officers will be informed in advance of issuing. For procurements in excess of $500,000, if the Regional Administrator recommends issuance of the Certificate, the Associate Administrator for Procurement and Technology Assistance, SBA Central Office, causes a review to be made and either issues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the responsibility of the firm as to the elements of responsibility referred (the COC) is sent to the procuring activity and the applicant informed of such issuance by the regional office.

(g) The notification to an unsuccessful applicant concern will briefly state the reason for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. However, such conference will be for the sole purpose of enabling the applicant to improve or correct deficiencies and will not constitute a basis for reopening the case in which the Certificate was denied.

(h) After a Certificate is issued and the contract is let to the applicant, SBA keeps a close watch on the progress. Progress reviews are made by SBA field personnel who report to the Central Office on the status of the contract. In this way, SBA assistance is constantly available to the contractor.

(i) A Government procurement officer documenting that a small concern is ineligible due to the provisions of section 35(a) of Title 41, U.S.C. (the Walsh-Healey Public Contracts Act) must notify SBA of such determination. SBA shall either certify that the concern is eligible for the specific contract or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition.

(j) By terms of the Small Business Act, as amended, the COC is conclusive as to responsibility. Contracting officers are directed to award a contract without requiring the firm to meet any other requirement with respect to responsibility and eligibility.

Dated: May 17, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-14118 Filed 5-21-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 72-CE-13-AD; Amendment 39-4385]

Airworthiness Directives; Beech Models 99, 99A, A99, A99A and B99 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; revision of existing airworthiness directive (AD).

SUMMARY: This amendment further revises Airworthiness Directive (AD) 72-10-04, Amendments 39-1445 and 39-1888, which applies to all Beech Model 99 series airplanes including the Model C99 airplane. The AD requires electromechanical landing gear retraction systems to be maintained in accordance with the latest revision of the Beech Part Number (P/N) 99-590015-B Maintenance Manual. Since the Model C99 airplane is equipped with a hydraulic system, the requirements of the AD are neither required nor appropriate on these airplanes. Accordingly, the AD is being revised to make it applicable to only those Beech Model 99 airplanes manufactured with electromechanical landing gear retraction systems.

EFFECTIVE DATE: May 13, 1982.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Ross R. Spencer, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7005.

SUPPLEMENTARY INFORMATION: Amendment 39-1445 (37 FR 9209, 9210), as amended by 39-1888 (39 FR 24502), requires maintenance of the Beech Model 99 series airplane landing gear retraction systems not modified per Beech Kit No. 99-8010-1 in accordance with the current Beech Maintenance Manual. Subsequently, Beech Model C99 airplanes were designed to incorporate the hydraulic landing gear retraction system of the same design as Kit No. 99-8010-1.

Accordingly, the requirements of AD 72-10-04 are not applicable to Model C99 airplanes and the FAA is revising the applicability statement of the AD to exempt these airplanes.

Since this amendment is relieving in nature and imposes no aditional burden on any person, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 72-10-04, Amendments 39-1445 (37 FR 9209 and 9210) and 39-1888 (39 FR 24502), § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended as follows:

Revise the applicability statement so that it now reads:

> **Beech**—Applies to Models 99, 99A, A99, A99A and B99 airplanes, except airplanes equipped with a hydraulic-operated landing gear per Beech Kit No. 99-8010-1.

This amendment becomes effective on May 13, 1982.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.89, Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation involves revision of a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and certifies that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves maintenance procedures on only a few aircraft owned by small entities.

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on May 13, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-14088 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-NM-31-AD; Amdt. 39-4383]

Airworthiness Directives: British Aerospace Model HS 125 Series 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive which requires reorientation of the elevator pitch trim switch on the control wheel on certain British Aerospace Model HS-125 airplanes. This reorientation is to align the trim switch so that it will rotate about an axis in a way which corresponds to the resultant rotation of the aircraft. This is a requirement of the airworthiness rules under which the aircraft was certified and is necessary to prevent a pilot from possibly operating the trim system in the wrong direction.

DATE: Effective date May 31, 1982. Compliance required within the next 100 hours time-in-service after the effective date of this AD.

ADDRESSES: The service bulletin specified in this Airworthiness Directive may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. This document may also be examined at the FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Foreign Aircraft Certification Branch, ANM-150S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2530.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace Corporation HS-125 Service Bulletin 27-124-(2705) mandatory. This service bulletin requires that the elevator trim switches, located in the control column handwheels, be rotated so as to obtain a vertical "up/down" movement for the trimming operation on certain HS-125 airplanes. There is a possibility that the pilot will inadvertently operate the trim switch in the wrong direction. In order to prevent this from occuring, the CAA, which is the civil airworthiness authority of the United Kingdom, is requiring that the elevator trim switches be reoriented in accordance with HS-125 Service Bulletin 27-124-(2705) dated January 1, 1979, on certain HS-125 airplanes.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist on airplanes of this model registered in the United States, an AD is being issued which requires that the trim switches be reoriented in accordance with HS-125 Service Bulletin 27-124-(2705) dated January 1, 1979, as mentioned above on certain HS-125 airplanes.

Since a situation exists that requires the immediate adoption of this regulation it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

British Aerospace: Applies to Model HS 125-700A series airplanes and all variants, serial numbers 25/7001, 25/7007, 25/7010, 25/7013, 25/7020, 25/7022, 25/7025, 25/7028, 25/7031, 25/7034, 25/7037, 25/7040, and 25/7046 certificated in all categories.

Compliance required within the next 100 hours time in service after the effective date of this AD. To prevent improper operation of the elevator pitch trim switch located in the control column handwheel accomplish the following, unless already accomplished.

1. Remount the elevator pitch trim switch in accordance with the accomplishment instructions of British Aerospace Service Bulletin HS-125 27-124(2705) dated January 1, 1979.

2. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

3. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

The manufacturer's specifications and procedures indentified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

This amendment becomes effective May 31, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington, on May 11, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-13680 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-NM-40-AD; Amdt. 39-4384]

Airworthiness Directives; Gulfstream American Corporation Models G-1159 and G-1159B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) which requires inspection and replacement of the elevator outboard trim tab hinge fitting and attaching rib, and inspection, and repair if necessary, of the elevator rear spar on Gulfstream American Models G-1159 and G-1159B airplanes. The AD is prompted by reports of cracks in the elevator outboard trim tab hinge fitting and elevator rear spar which could result in the possible severe flutter of the elevator and/or elevator trim tab.

DATES: Effective date May 31, 1982. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Gulfstream American Corporation, P.O. Box 2206, Savannah, Georgia 31402. This information also may be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, C68966, Seattle, Washington 98168, or the Atlanta

Aircraft Certification Office, FAA, 3400 Norman Berry Drive, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, ACE-120A, Federal Aviation Administration, Atlanta Aircraft Certification Office, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Cracks have been found in the elevator outboard trim tab hinge fitting and elevator rear spar on Gulfstream American Models G-1159 and G-1159B airplanes which could result in the possible severe flutter of the elevator and/or elevator trim tab.

Since this condition is likely to exist or develop on other airplanes of the same type design, an Airworthiness Directive is being issued which requires replacement of the elevator outboard trim tab hinge fitting and attaching rib, and inspection, and repair if necessary, of the elevator rear spar on Gulfstream American Models G-1159 and G-1159B airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviations safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, §39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Gulfstream American Corporation (formerly Grumman American Corporation, Grumman Aerospace Corporation): Applies to Gulfstream American Models G-1159 and G-1159B series airplanes, certificated in all categories. Compliance required as indicated unless previously accomplished.

To prevent possible severe flutter of the elevator and/or elevator trim tab, accomplish the following:

A. Within the next 50 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time in service until repairs are acomplished in accordance with paragraph B, inspect the left and right outboard elevator trim tab hinge fittings and left and right elevator rear spar for cracks in accordance with Gulfstream American Customer Bulletin No. 325, Amendment 1, dated March 26, 1982. If cracks are found, repair or replace the failed parts before further flight in accordance with Gulfstream American Customer Bulletin No. 3125 dated April 15, 1982.

B. Within 150 hours time in service after the effective date of this AD, unless already accomplished, accomplish the following in accordance with Gulfstream American Service Change No. 315 dated April 15, 1982: (1) Remove the left and right elevator outboard trim tab hinge fittings, P/N 1159CSM20105-1, and replace with P/N 1159CSM20637. (2) Remove the left and right elevator ribs, P/N 1159CS20420-1 and -2, and replace with ribs, P/N 1159RDC300-919 and -920. (3) Inspect and repair, if necessary, the elevator rear spar.

C. Perform a mass balance inspection of the elevator in accordance with Gulfstream American Model G-1159 Maintenance Manual upon completion of repairs and installation of replacement parts.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Chief, Atlanta Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Gulfstream American Corporation, P.O. Box 2206, Savannah, Georgia 31402.

These documents may be examined at the Atlanta Aircraft Certification Office, FAA, 3400 Norman Berry Drive, East Point, Georgia 30344.

This amendment becomes effective May 31, 1982.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under section 1006(a) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1486(a)), it is subject to review by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Seattle, Washington on May 11, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-13999 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-27]

Alteration of Control Zone: Clovis, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the control zone at Clovis, NM. This amendment will discontinue the provision of part-timing the control zone by use of Notice to Airmen (NOTAM). The amendment is necessary since the control zone has been a continuous control zone for the past several months. This amendment will eliminate the necessity for the Air Force to publish a NOTAM to advertise the hours of the control zone.

DATES: Effective date—September 2, 1982. Comments on the rule must be received before August 1, 1982.

ADDRESSES: Send comments on the action in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 82-ASW-27, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F, § 71.171, as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the description of the control zone at Clovis, NM, will necessitate an amendment to this subpart.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of the Clovis, NM, control zone. Because this action is administrative in nature, I find

that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR 71) as republished in Advisory Circular AC 70–3 dated January 29, 1982, is amended, effective 0901 G.m.t., September 2, 1982, by deleting:

Clovis, NM Amended

This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on May 12, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc 82-13691 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending certain of its minimum financial and related reporting requirements for futures commission merchants ("FCMs"). These amendments are intended to conform the Commission's minimum financial requirements to those of the Securities and Exchange Commission ("SEC"). This action is a continuation of previous cooperative efforts between the Commission and the SEC which are intended to eliminate, to the extent practicable, duplicative or undue regulatory burdens on FCM/broker-dealers.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 23, 1982, the Commission published proposed amendments to certain provisions of the minimum financial and related reporting requirements for FCMs, and permitted thirty days for public comment thereon (47 FR 12353). The Commission received four written comments on the proposals, each of which supported the proposals. The commentators included two FCMs, one contract market and one trade association. Based upon the comments received and its own review of the issues involved, the Commission has determined to adopt the amendments as proposed.

II. Amendment to Minimum Adjusted Net Capital Requirement

Although the Commission eliminated all references to aggregate indebtedness in its minimum financial and related reporting requirements for FCMs effective December 31, 1980, the SEC has maintained six and two-thirds percent of aggregate indebtedness as the basic net capital requirement for brokers and dealers. Further, the SEC recently adopted an amendment to its alternative net capital computation which reduces the amount of net capital required for a broker or dealer electing to operate under the SEC's alternative net capital computation from four percent of aggregate debit items to two percent.[1]

If the Commission did not amend its rules, there could be FCM/broker dealers with adjusted net capital which would meet the minimum financial requirement of the SEC but would not meet the Commission's minimum financial requirement, even though the firm's adjusted net capital is in excess of the Commission's principal requirement, which is four percent of the funds required to be segregated under the Commodity Exchange Act, as amended (Act") (7 U.S.C. 1 *et seq.* (1976 & Supp. IV 1980)) and the Commission's regulations.

The Commission believes that such a result is not needed to achieve the essential purpose of the minimum financial requirement for FCMs, which is to require FCMs to maintain at all times adjusted net capital equal to the greater of the required minimum dollar amount, or four percent of the funds required to be segregated. The Commission also believes that such a result would be contrary to one of the Commission's stated goals, which is to prevent the imposition of excessive financial requirements on FCM/broker-dealers so as to put such firms at a competitive disadvantage to other FCMs.[2] Further, if the Commission did not amend its regulations, FCM/broker-dealers could be required to maintain adjusted net capital according to two different methods, necessitating duplicative computational and recordkeeping requirements.

The Commission has determined, therefore, to adopt amendments to the minimum financial and related reporting requirements for FCMs to allow those FCMs which are also registered as brokers or dealers to comply with the Commission's minimum adjusted net capital requirement by maintaining the amount of net capital required by the regulations of the SEC, so long as the amount of net capital required to be maintained under the SEC's rules exceeds the amount required to be maintained if the FCM were not also registered as a broker or dealer.

The Commission is amending § 1.17(a)(1) of its regulations by eliminating the words "4 percent of aggregate debit items computed in accordance with the formula for determination of reserve requirements (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3)" and substituting in their place "the amount of net capital

[1] 47 FR 3512 (January 25, 1982). The SEC also amended its net capital definition with respect to two items unique to the securities business: (1) receivables arising out of "free shipments" of mutual fund shares (*see* 47 FR 3512, at 3517, 3518) and (2) "short securities differences" (*see* 47 FR 3512, at 3515–16, 3518). No changes are needed in the Commission's regulations as a result of those two amendments because all deductions which a broker or dealer must make from its net worth in computing net capital under SEC regulations are incorporated by reference in the Commission's financial rules (in the Commission's terminology, such items constitute required adjustments to net capital).

[2] *See* 43 FR 39956, at 39962 (September 8, 1978).

required by Rule 15c3–1(a) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1(a))" as the last clause of § 1.17(a)(1). Conforming changes to other provisions of § 1.17 and to a provision of the early warning system (17 CFR 1.12) which refer to the required minimum amount of adjusted net capital have also been made,[3] as well as appropriate changes to Commission Form 1–FR, the basic financial reporting form for FCMs.[4]

Two commentators suggested that the Commission should consider reducing the minimum adjusted net capital requirement for all FCMs. This rulemaking proceeding is, as stated above, only intended to be a continuation of previous cooperative efforts between the Commission and the SEC for the purpose of eliminating, to the extent practicable, duplicative or undue regulatory burdens on FCM/broker-dealers. The Commission did not propose to change the basic minimum adjusted net capital requirement for all FCMs, and nothing which the Commission has observed in the course of its monitoring of the financial condition of FCMs, and nothing presented by the commentators, gives the Commission any reason to consider making such a major proposal as lowering the minimum adjusted net capital requirement for FCMs.

III. Other Amendments

The recent SEC amendments to its net capital requirements for brokers and dealers made two substantive changes to those requirements in addition to lowering the percentage of aggregate debit items used in the SEC's alternative net capital computation.

The first of these amendments concerns the treatment of certain current tax liabilities.[5] The Commission's regulations previously have not allowed an FCM to exclude current tax liabilities (in contrast to the treatment allowed for deferred tax liabilities) from the firm's liabilities for purposes of computing net capital, even if the current tax liability is based on income related to an asset which must be deducted from current assets for purposes of computing net capital.[6] The Commission previously has not allowed an offset for current tax liabilities because a current tax liability must be paid by the FCM regardless of whether the asset generating the income upon which the tax liability is based has been converted into cash, and the Commission believes that such treatment could continue to be justified under a strict liquidity test. The Commission further believes, however, that such treatment appears to be unnecessary to protect a firm's solvency. Accordingly, the Commission is amending its financial rules to permit an FCM to exclude from liabilities for purposes of computing net capital any current tax liability based upon accrued income which is directly related to an asset required to be deducted pursuant to § 1.17. The Commission intends, however, to interpret this provision narrowly.

The second amendment concerns subordinated debt.[7] The Commission's subordination agreement rules are contained in § 1.17(h). Agreements which are in accord with those rules are deemed "satisfactory subordination agreements" and the subordinated debts which are governed by those agreements can be excluded from liabilities for purposes of computing net capital. Section 1.17(h)(2)(vii) prohibits any prepayment of subordinated debt for one year following the date upon which the governing subordination agreement became effective, a provision which is designed to insure the adequacy and permanence of subordinated debt, and to prevent circumvention of the general requirement of a one year minimum term (see § 1.17(h)(2)(i)(A)). The SEC has now determined to permit the use of what it refers to as "Revolving Subordinated Loan Agreements," which would have no restriction as to when prepayment of subordinated debt could be made, provided certain other conditions are met. The Commission believes that revolving subordination agreements will be acceptable so long as prepayments of such agreements (deemed "special prepayments") are subject to conditions which involve higher levels of adjusted net capital than those applicable to the present prepayment provision and are subject to approval by the designated self-regulatory organization(s) involved and the Commission.

A satisfactory subordination agreement, therefore, can contain either the normal prepayment provision (after one year), the new special prepayment provision (prior to one year), both such prepayment provisions, or neither provision. A subordination agreement containing the special prepayment provision described in this release will, of course, be subject to all other provisions of the Commission's regulations regarding subordination agreements. Also, a subordination agreement containing the special prepayment provision cannot be counted as equity capital. *See* § 1.17(d)(1). This determination is consistent with the determination of the SEC in this area.

IV. Other Matters

A. Contract Market Rules. The Commission wishes to reiterate that central to the operation of the financial surveillance system for FCMs are the requirements in § 1.52(a) of the regulations (17 CFR 1.52(a)) that each contract market have in effect, and be responsible for enforcing, financial and reporting rules for their member FCMs which are at least as stringent as those contained in §§ 1.10 and 1.17 of the Commission's regulations, and that each contract market's definition of adjusted net capital be the same as that provided in § 1.17(c). Most of the contract markets' rules in this regard incorporate, by reference, the requirements of §§ 1.10 and 1.17 and, hence, the amendments to § 1.17 will be incorporated automatically into the rules of those contract markets upon the effective date of such amendments. Two contract markets do not follow this approach, however, and instead have detailed financial and reporting rules. The change in the treatment of current tax liabilities which has been adopted by the Commission will affect the definition of adjusted net capital, and the rules of those two contract markets must be amended so that their definition of adjusted net capital will remain the

[3] Paragraph (e) of § 1.17, referring to withdrawal of equity capital, and paragraphs (h)(2)(vi)(C), (h)(2)(vii), (h)(2)(viii), (h)(3)(ii) and (h)(3)(v) of § 1.17, referring to subordination agreements, have been amended, as well as § 1.12(b) of the early warning system, with appropriate references to the corresponding SEC rules.

[4] Amendments have been made in what are currently Items 24C and 27 of the Statement of the Computation of the Minimum Capital Requirements (as a result of previous amendments to Form 1–FR made in connection with the Commission's adoption of regulations to govern a pilot program of trading commodity options on domestic exchanges, those items have been renumbered as 22C and 25, respectively, 46 FR 54500, 54536 (November 3, 1981)). A change has also been made in Item 4 of the Statement of the Computation of the Minimum Capital Requirements due to a change in treatment of certain current tax liabilities discussed *infra*. Of course, FCM/broker-dealers retain the option of filing a copy of Part II of their FOCUS Report in lieu of Form 1–FR. 17 CFR 1.10(h). The changes to the Form 1–FR which have been necessitated by the amendments to the regulations discussed herein are not being published in this release since those changes are of a minor, technical nature and because Form 1–FR does not appear in the Code of Federal Regulations. Form 1–FR is available upon request from the Commission.

[5] The SEC's discussion of this issue can be found in 47 FR 3512, at 3516–17.

[6] 17 CFR 1.17(c)(2)(ii) (1981), as amended, 46 FR 54500, 54517 (November 3, 1981).

[7] The SEC's discussion of this issue can be found in 47 FR 3512, at 3516.

same as the Commission's definition. In the **Federal Register** release announcing the proposal of the amendments discussed herein, the Commission stated that those two contract markets should begin the preparations necessary to effectuate an appropriate change in their rules in the event the Commission adopts such an amendment. Since the Commission is making the amendments to its rules effective immediately, the Commission has authorized its Division of Trading and Markets to take a "no-action" position regarding the two contract markets in question for thirty days following publication of this notice to allow those contract markets to complete the process of amending their rules.

B. Certification Under the Regulatory Flexibility Act. The Commission does not believe that the rule amendments discussed herein will have significant economic impact on small entities. As discussed above, the only regulated entities which will be affected by the rule amendments are FCMs, principally FCM/broker-dealers.[8] The rule amendments are of a liberalizing nature and they will relieve burdens and restrictions heretofore imposed on FCMs. Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the rule amendments being adopted will not have a significant economic impact on a substantial number of small entities.

C. Effective Date. The Commission, in accordance with 5 U.S.C. 553(d)(3), finds good cause for making the rule amendments described herein effective upon publication in the **Federal Register**. The amendments are designed to make the Commission's minimum financial regulations consistent with those of the SEC, which were amended effective May 1, 1982. The Commission's amendments, as was the case with those of the SEC, are of a liberalizing nature and relieve certain restrictions heretofore imposed, so there is no need to delay implementation. To relieve any uncertainty in this area, the Commission's Division of Trading and Markets will not recommend that any enforcement action be taken against any FCM/broker-dealer for failure to comply with the CFTC's minimum financial requirement during the period between May 1, 1982 and the effective date of these amendments if such FCM/broker-dealer can demonstrate affirmatively that it meets the minimum financial requirement of the SEC.

[8] The Commission has determined that a registered FCM not be considered a "small entity" within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 1166 (5 U.S.C. 601(3) and (6)). *See* 47 FR 18618, 18619 (April 30, 1982).

List of Subjects in 17 CFR Part 1

Commodity futures, Financial requirements, Reporting requirements.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

In consideration of the foregoing, the Commission, pursuant to the authority contained in sections 4d, 4f and 8a of the Act, 7 U.S.C. 6d, 6f and 12a (1976 and Supp. IV 1980), hereby amends 17 CFR Chapter I in the manner set forth below.

1. 17 CFR Part 1 is amended by revising paragraph (b) of § 1.12 to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants.

* * * * *

(b) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the greatest of 150 percent of the appropriate minimum dollar amount required by § 1.17, or 6 percent of the funds required to be segregated pursuant to Section 4d(2) of the Act and these regulations, or, for securities brokers or dealers, the amount of net capital specified in Rule 17a-11(b) of the Securities and Exchange Commission (17 CFR 240.17a-11(b)), must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1-FR (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR) or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

* * * * *

2. 17 CFR Part 1 is amended further by revising paragraphs (a)(1), (c)(2)(v), (c)(4)(iv)(A) and (c)(4)(iv)(C), by redesignating paragraph (c)(4)(v) as paragraph (c)(4)(vi), by adding a new paragraph (c)(4)(v), by revising paragraphs (d)(1), (e) and (h)(2)(vi)(C), by revising paragraph (h)(2)(vii) and redesignating paragraph (h)(2)(vii) as paragraph (h)(2)(vii)(A), by adding a new paragraph (h)(2)(vii)(B), and by revising paragraphs (h)(2)(viii), (h)(3)(ii) and (h)(3)(v) of §1.17 to read as follows:

§ 1.17 Minimum financial requirements—futures commission merchants.

(a)(1) Except as provided in paragraph (a)(2) of this section, each person registered as a futures commission merchant must maintain adjusted net capital equal to or in excess of the greatest of $50,000 ($100,000 for each person registered as a futures commission merchant who is not a member of a designated self-regulatory organization), or 4 percent of the funds required to be segregated pursuant to the Act and these regulations, or, for securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

* * * * *

(c) * * *

(2) * * *

(v) Include fixed assets and assets which otherwise would be considered noncurrent to the extent of any long-term debt adequately collateralized by assets acquired for use in the ordinary course of the trade or business of an applicant or registrant and any other long-term debt adequately collateralized by assets of the applicant or registrant if the sole recourse of the creditor for nonpayment of such liability is to such asset: *Provided,* Such liabilities are not excluded from liabilities in the computation of net capital under paragraph (c)(4)(vi) of this section;

* * * * * *

(4) * * *

(iv) * * *

(A) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (C)(5) of this section the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

* * * * *

(C) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise excluded from current assets in accordance with the provisions of this section;

(v) Excludes any current tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section; and

(vi) Excludes liabilities which would be classified as long term in accordance with generally accepted accounting principles to the extent of the net book value of plant, property and equipment which is used in the ordinary course of any trade or business of the applicant or registrant which is a reportable segment of the applicant's or registrant's overall business activities, as defined in generally accepted accounting principles, other than in the commodity futures, commodity option, security and security option segments of the applicant's or registrant's business activities: *Provided,* That such plant, property and equipment is not included in current assets pursuant to paragraph (c)(2)(v) of this section.

(d) * * *

(1) Equity capital means a satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least 3 years and has a remaining term of not less than 12 months if: (A) It does not have any of the provisions for accelerated maturity provided for by paragraphs (h)(2)(ix)(A), (h)(2)(x)(A), or (h)(2)(x)(B) of this section, or the provisions allowing for special prepayment provided for by paragraph (h)(2)(vii)(B) of this section, and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section, or (B)— the partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in paragraph (h) of this section shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section, and

* * * * *

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan, either adjusted net capital of any of the consolidated entities would be less than the greatest of 120 percent of the appropriate minimum dollar amount required by § 1.17 or 7 percent of the amount required to be segregated pursuant to the Act and these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1(e) of the Securities and Exchange Commission (17 CFR 240.15c3–1(e)), or in the case of any applicant or registrant included within such consolidation, if equity capital of the applicant or registrant (inclusive of satisfactory subordination agreeements which qualify as equity under paragraph (d) of this section) would be less than 30 percent of the required debt-equity total as defined in paragraph (d) of this section: *Provided,* That this provision shall not preclude an applicant or registrant from making required tax payments or preclude the payment to partners of reasonable compensation. The Commission may, upon application of the applicant or registrant, grant relief from this paragraph (e) if the Commission deems it to be in the public interest or for the protection of nonproprietary accounts.

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant or registrant and the designated self-regulatory organization, or, if the applicant or registrant is not a member of a designated self-regulatory organization, then the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greater of 7 percent of the funds required to be segregated pursuant to the Act and these regulations, or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(B)(6)(iii) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No designated self-regulatory organization shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, adjusted net capital would be less than 120 percent of the appropriate minimum dollar amount required by this section.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greater of 7 percent of the funds required to be segregated pursuant to the Act and

these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(b)(7) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(7)), or its adjusted net capital is less than 120 percent of the appropriate minimum dollar amount required by this section. Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greater of 10 percent of the funds required to be segregated pursuant to the Act and these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)), or its adjusted net capital is less than 200 percent of the appropriate minimum dollar amount required by this section, nor shall any special prepayment be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no prepayment shall occur without the prior written approval of the designated self-regulatory organization and the Commission.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greater of 6 percent of the funds required to be segregated pursuant to the Act and these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(b)(8)(i) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(8)(i)), or its adjusted net capital would be less than 120 percent of the minimum dollar amount required by this section: *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) of this section for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accured interest or compensation, shall remain subordinate as required by the provisions of this section.

* * * * *

(3) * * *

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the designated self-regulatory organization and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than 120 percent of the minimum dollar amount required by this section, or its adjusted net capital would be less than the greater of 6 percent of the funds required to be segregated pursuant to the Act and these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(2) of the regulations of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(2)).

* * * * *

(v) *Temporary Subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than 3 occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greater of 7 percent of the funds required to be segregated pursuant to the Act and these regulations or, for securities brokers or dealers, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)), or its adjusted net capital is less than 120 percent of the appropriate minimum dollar amount required by this section, or the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

* * * * *

Issued in Washington, D.C. on May 18, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82–14072 Filed 5–21–82; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239 and 274

[Release Nos. 33–6402, IC–12434; File No. 57–919]

Revised Procedures for Processing Post-Effective Amendments Filed by Separate Accounts of Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and amendments to rules and forms.

SUMMARY: The Securities and Exchange Commission today is adopting a rule which would permit most post-effective amendments to registration statements filed by insurance company separate accounts to become effective automatically, without affirmative action by the Commission or its staff. The new rule will eliminate staff review of certain routine filings by insurance company separate accounts, and will result in such registrants assuming greater responsibility for their compliance with the disclosure requirements of the federal securities laws whether or not the filings are reviewed by the staff. The Commission is also adopting an amendment to the rule governing automatic effectiveness of post-effective amendments to registration statements filed by open-

end management investment companies and unit investment trusts other than insurance company separate accounts. This amendment provides such investment company registrants with greater flexibility in designating the effectie date of certain filings.

In connection with the foregoing, the Commission is adopting amendments to the registration statement forms for securities of open-end management investment companies and unit investment trusts and to its Rules of Organization and Program Management. The amendments to the registration statement forms provide a format for registrants to specify the rule pursuant to which their post-effective amendments will become effective automatically, and within certain limitations, to choose an effective date. Finally, the amendment to the Commission's Rules of Organization and Program management delegates to the staff the authority to advance the effective date of post-effective amendments filed pursuant to the new rule and to suspend automatic effectiveness under the circumstances specified in the rule.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Melville B. Cox, Jr., Branch Chief, (202) 272–2060, Thomas P. Lemke, Acting Special Counsel, (202) 272–2060, or Aviva L. Grossman, Law Clerk, (202) 272–2098 Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On January 11, 1982, the Commission published for comment proposed rule 486 [1] under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a et seq.).[2] The Commission also proposed an amendment to paragraph (a) of rule 485 [3] (17 CFR 230.485) under 1933 Act and related amendments to Form S–6 (17 CFR 239.16) under the 1933 Act and Form N–1 (17 CFR 239.15, 17 CFR 274.11) under the 1933 Act and the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a–1 et seq.). Concurrently, the Commission requested comment on issues related to its consideration of whether to permit the inclusion of policyholder ratings assigned to insurance companies by nationally recognized rating organizations in registration statements and post-effective amendments filed by insurance company separate accounts. Specific comment was requested on whether the disclosure of policyholder ratings in registration statements should be treated similarly to the disclosure of security ratings under rule 436(g) under the 1933 Act (17 CFR 230.436(g)).[4]

The Commission received four letters of comment regarding the proposals.[5] All of the commentators supported the proposed rule and related amendments. However, one of the commentators strongly opposed the inclusion of policyholder ratings in registration statements and post-effective amendments of insurance company separate accounts. This commentator asserted that policyholder ratings are not relevant to a decision to buy a variable annuity or variable life insurance policy funded by an insurance company separate account and, further, that disclosure of such ratings may serve to mislead investors.

The Commission believes that it should give further consideration to the questions related to whether and to what extent disclosure of policyholder ratings should be permitted in filings of separate accounts and that any action regarding this matter, accordingly, should be deferred. However, action relating to rule 486 and the other rule and form amendments should not be delayed pending consideration of this matter. Therefore, the Commission today is adopting rule 486 and the related amendments as proposed. Moreover, as stated in the release proposing rule 486, the Commission is adopting an amendment to rule 30–5 of its rules of Organization and Program Management, delegating to the Director of the Division of Investment Management the authority to advance the effective date or suspend automatic effectiveness of post-effective amendments filed pursuant to rule 486.

The new rule will permit most post-effective amendments to registration statements of insurance company separate accounts, as defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a–2(a)(37)), to become effective automatically. Under paragraph (b) of rule 486, if certain conditions are satisfied, post-effective amendments filed by separate accounts on Form N–1 or Form S–6 will become effective either immediately upon filing with the Commission or on a date within twenty days from the date of filing, as designated by the registrant. The staff will not review or comment on these filings prior to their effectiveness. All other post-effective amendments filed by separate accounts will still be subject to staff review but, pursuant to paragraph (a) of the rule, will normally become effective automatically either sixty days after filing or on a date no later than eighty days after filing, as designated by the registrant. Post-effective amendments within this category include those that contain disclosure concerning a material event affecting the registrant which has occurred since the latest of three dates: the effective date of the separate account's registration statement, the effective date of its most recent post-effective amendment containing a prospectus, or the filing date of a post-effective amendment that has not yet become effective.

Some of the events that the Commission considers material are listed in paragraph (b) of the rule. However, the list is not intended to be exhaustive, and a post-effective amendment would have to be filed under paragraph (a) of the rule if it disclosed any other event that in the judgment of the registrant was material. The events listed in paragraph (b) are similar to those included in rule 485, with some variations because of the special circumstances of separate accounts. In particular, rule 486(b)(2)(vii) includes as a material event any change, including but not limited to a change in the operations of the separate account or in the rights of security holders, that would require the registrant to apply for exemptive relief under the 1940 Act or any event for which approval by the Commission would be required under section 11 or section 26(b) (15 U.S.C. 80a–26(b)) of the 1940 Act. A second distinction is found in paragraph (B)(2)(vi) of rule 486, which specifies that any substitution of securities held by a separate account organized as a

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[1] When proposed, the new rule was designated 466. However, during the interim between the rule's proposal and adoption, Regulation C under the 1933 Act, of which the rule is a part, was revised. *See* Securities Act Release No. 6383 (March 3, 1982) [47 FR 11619, March 19, 1982]. As a result of this revision, the designation of the rule has been changed to 486.

[2] Securities Act Release No. 6378 (January 11, 1982) [47 FR 3130, January 22, 1982].

[3] This rule was previously designated 465. *See* Securities Act Release No. 6383, note 1, *supra*.

[4] As recently amended, rule 436(g) under the 1933 Act provides that certain security ratings prepared by nationally recognized statistical rating organizations are not deemed part of a registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of sections 7 and 11 of the 1933 Act (15 U.S.C. 77(g) and 77(k)). Under this provision, nationally recognized statistical rating organizations that assign security ratings to classes of debt securities, convertible debt securities and preferred stock are not required to consent to the use of such ratings under section 7 of the 1933 Act and are exempt from liability as expers under section 11 of the 1933 Act.

[5] Two additional letters regarding the proposals were filed with the Commission after the close of the comment period. These letters are not discussed herein. However, it is noted that both letters principally addressed the question of policyholder ratings and neither opposed the proposals being adopted today.

unit investment trust is a material event, whereas paragaph (b)(2)(vi) of rule 485 provides that substitutions of portfolio securities by other unit investment trusts are not automatically deemed to be material unless they involve five percent or more of the trust's net assets. Finally, while both rules contain provisions relating to the resignation of directors of and accountants for the registrant, in the case of separate accounts these provisions could, under appropriate circumstances, be triggered by the resignation of a director of or accountant for the insurance company as well.

New rule 486, like existing rule 485, provides that, if it appears to the Commission that a post-effective amendment filed pursuant to rule 486(a) may be incomplete or inaccurate in any material respect, the operation of the automatic effectiveness provision may be suspended upon written notice to the registrant. Should the automatic effectiveness provision be suspended with respect to a particular post-effective amendment, the amendment would not become effective until it was so declared by the Commission in accordance with section 8(c) of the 1933 Act (15 U.S.C. 77h(c)). A hearing would be held if the registrant so requested.[4]

The amendment to rule 485 provides registrants filing post-effective amendments pursuant to paragraph (a) of that rule with greater flexibility to set an effective date in accordance with their needs. Specifically, the amendment permits registrants filing pursuant to rule 485(a) to designate an effective date later than the sixtieth day after filing so long as such date is no later than eighty days after filing. Rule 485 will thus be identical to rule 486 in this respect. The amendments to Forms N–1 and S–6 facilitate the implementation of rule 486 and the amendment to rule 485 by requiring registrants filing post-effective amendments on either form to specify the rule pursuant to which their amendments will become effective and permitting them, at their option, to designate an effective date as permitted by those rules.

List of Subjects

Part 200

Administrative practice and procedure, Freedom of information, Privacy, and Securities.

Part 230

Reporting requirements and Securities.

Part 239

Reporting requirements and Securities.

Part 274

Investment companies, Reporting requirements and Securities.

Text of Amendment to Rule 30–5

I. Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

By revising paragraph (b–2) of § 200.30–5 to read as follows:

§ 200.30–5 Delegation of Authority to Director of Division of Investment Management.

* * * * *

(b–2) With respect to post-effective amendments filed pursuant to paragraph (a) of rule 485 under the Act (17 CFR 230.485(a)) and post-effective amendments filed pursuant to paragraph (a) of rule 486 under the Act (17 CFR 230.486(a)):

(1) To suspend the operation of said paragraphs and to issue written notices to registrants of such suspensions;

(2) To determine such amendments to be effective within shorter periods of time than the sixtieth day after the filing thereof.

Text of Rule 486 and Amendments to Rule 485 and to Form N–1 and Form S–6

II. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding new § 230.486 as follows:

§ 230.486 Effective date of post-effective amendments filed by registered separate accounts of insurance companies.

(a) Except as otherwise provided in this section, a post-effective amendment to a registration statement for an offering of securities by a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] shall become effective on the sixtieth day after the filing thereof, or such later date designated by the registrant on the facing sheet of the amendment which date shall not be later than eighty days after the date on which the amendment is filed, *Provided,* That the Commission, having due regard to the public interest and the protection of investors, may declare an amendment filed pursuant to this paragraph effective on an earlier date.

(b) Except as otherwise provided in this section, a post-effective amendment to a registration statement for an offering of securities by a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall not be later than twenty days after the date on which the amendment is filed, *Provided,* That the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered pursuant to section 24(e)(1) of the Investment Company Act of 1940 [15 U.S.C. 80–24(e)(1)];

(ii) Registering an indefinite number or amount of securities pursuant to section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(f)] and Rule 24f–2 thereunder (17 CFR 270.24f–2); and

(iii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)] and, in conjunction therewith, making such other nonmaterial changes as the registrant deems appropriate;

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a–13), is changeable only be shareholder vote;

[4] For a more detailed discussion of rule 486 and the procedures relating thereto, *see* Securities Act Release No. 6370, note 2 *supra.*

(iii) Suspension of sales or redemptions of securities issued by the registered separate account;

(iv) Resignation of any of the registered separate account's or insurance company's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the separate account's operations, policies or practices;

(v) A change in the registered separate account's or insurance company's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles or practices or financial statement disclosures pertaining to the separate account;

(vi) If the separate account is organized as a unit investment trust, any substitution of securities held by the trust; or

(vii) Any change, including, but not limited to, a change in the operations of the separate account or in the rights of security holders, that requires the registrant to apply for exemptive relief under the Investment Company Act of 1940, or an event for which approval by the Commission is required under sections 11 or 26(b) of the Investment Company Act of 1940 [15 U.S.C. 80a–11, 26(b)];

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of three dates; (i) the effective date of the separate account's registration statement, (ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective; and

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

(c) No amendment shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) (1) Except as provided in paragraph (d)(2) of this section a post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to such prospectus. *Provided,* That such subsequent amendment is filed pursuant to paragraph (b) of this section. *And further provided,* That such subsequent amendment designates as its effective date the date on which the prior post-effective amendment shall become effective pursuant to paragraph (a) of this section. If another post-effective amendment relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, neither the prior amendment filed pursuant to paragraph (a) of this section nor the amendment filed pursuant to paragraph (b) of this section shall become effective pursuant to this section.

(e) The representations of the registrant referred to in paragraphs (b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be made by certification on the signature page of the post-effective amendment that such amendment meets all of the requirements for effectiveness pursuant to paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment filed pursuant to paragraph (b) of this section, such counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures which would render it ineligible to become effective pursuant to paragraph (b).

2. By revising paragraph (a) of § 230.485 to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

(a) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)], shall become effective on the sixtieth day after the filing thereof, or such later date designated by the registrant on the facing sheet of the amendment, which date shall not be later than eighty days after the date on which the amendment is filed, *Provided,* That the Commission, having due regard to the public interest and the protection of investors, may declare an amendment filed pursuant to this paragraph effective on an earlier date.

* * * * *

III. Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations are hereby amended by:

1. Amending the facing sheet of Form N–1, and amending the signature page of Form N–1 as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8A.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

§ 274.11 Form N–1, registration statement of open-end management investment companies.

1. Amendment to facing sheet. After "Approximate Date of Proposed Public Offering" remove the following language:

☐ Check box if it is proposed that this filing will become effective (immediately upon filing or on (date)) pursuant to paragraph (b) of Rule 485.

and add:

It is proposed that this filing will become effective (check appropriate box)

☐ immediately upon filing pursuant to paragraph (b)
☐ on (date) pursuant to paragraph (b)
☐ 60 days after filing pursuant to paragraph (a)
☐ on (date) pursuant to paragraph (a) of rule (485 or 486).

2. Amendment to signature page. The first textual paragraph under "SIGNATURES" is amended as follows:

Pursuant to the requirements of the Securities Act of 1933 (and) (or) the Investment Company Act of 1940 the Registrant (certifies that it meets all of the requirements for effectiveness of this

Registration Statement pursuant to rule (485(b) or 486(b)) under the Securities Act of 1933 and) has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, and State of ————, on the —— day of ——, 19——.

3. Amending the facing sheet of Form S–6 and 4, amending the signature page of Form S–6 as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.16 Form S–6, for unit investment trusts registered on Form N–8B–2.

3. Amendment to facing sheet, After "Name and address of agent for service" remove:

☐ Check box if it is proposed that this filing will become effective (immediately upon filing or on [date]) pursuant to paragraph (b) of Rule 485.

and add:

It is proposed that this filing will become effective (check appropriate box)

☐ immediately upon filing pursuant to paragraph (b)
☐ on (date) pursuant to paragraph (b)
☐ 60 days after filing pursuant to paragraph (a)
☐ on (date) pursuant to paragraph (a) of rule (485 or 486).

2. Amendment to signature page. The first textual paragraph under "SIGNATURES" is amended as follows:

Pursuant to the requirements of the Securities Act of 1933, the registrant, * * * [certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to rule (485(b) or 486(b)) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the City of ————, and State of ————, on the —— day of ——, 19——.

Statutory Authority

The Commission hereby adopts rule 486 and amendments to rule 485, Form N–1, and Form S–6 pursuant to the provisions of sections 7, 8 and 19(a) of the Securities Act of 1933 (15 U.S.C. 77g, 77h and 77s(a)) and sections 8 and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8 and 80a–37(a)). Further, the Commission hereby amends rule 30–5 pursuant to authority contained in the Act of August 30, 1962, Pub. L. No. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2) and section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–37).

By the Commission.

George A. Fitzsimmons,
Secretary.

May 14, 1982.

[FR Doc. 82–13821 Filed 5–21–82; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 6a

[T. D. 7817]

Income tax; Modification of Regulations Relating to Mortgage Subsidy Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the tax-exempt status of interest on mortgage subsidy bonds. These regulations affect all purchasers and governmental issuers of tax-exempt housing bonds. The changes made by these regulations are necessary to modify certain provisions contained in the present temporary regulations.

DATE: These temporary regulations are effective for governmental obligations issued after April 24, 1979.

FOR FURTHER INFORMATION CONTACT: Harold T. Flanagan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to mortgage subsidy bonds under section 103A of the Internal Revenue Code of 1954. These amendments modify Treasury Decision 7780, published in the Federal Register for July 1, 1981 (46 FR 34311), which provided regulations under section 103A of the Code. Section 103A was enacted by the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499, 94 Stat. 2660). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 103A of the Internal Revenue Code of 1954 provides that a mortgage subsidy bond shall be treated as an obligation not described in section 103(a) (1) or (2). As such, the interest on a mortgage subsidy bond is not excludable from gross income. However, under section 103A(b)(2) a qualified mortgage bond and a qualified veterans' mortgage bond shall not be treated as a mortgage subsidy bond, and the interest thereon is excludable from gross income.

Presently, § 6a.103A–2(b)(5)(iii) provides that the population of all areas of chronic economic distress may not exceed 20 percent of the total State population. The amendment provided by this Treasury decision deletes this restriction.

The temporary regulations under § 6a.103A–2(b)(5)(vi) are amended so as to clarify that, other than for purposes of determining the amount of proceeds which are required to be used for residences in areas of chronic economic distress or for purposes of the extended temporary period, an area of chronic economic distress which is approved within 3 months prior to the date of issue or after the date of issue may be taken into account for an obligation.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Non-Application of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Drafting Information

The principal author of these temporary regulations is Harold T. Flanagan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 6a is amended as follows:

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Section 6a.103A–2 is amended by removing the first sentence in the flush material under subdivision (D) of paragraph (b)(5)(iii) and by adding new provisions at the end of paragraph (b)(5)(vi). The added provisions read as follows:

§ 6a.103A–2 Qualified mortgage bond.

* * * * *

(b) *Definitions and special rules* * * *

(5) *Areas of chronic economic distress.* * * *

(vi) * * * Residences located in areas designated as areas of chronic economic distress approved in accordance with this subparagraph within such 3-month period or after the date of issue, however, may be treated as targeted area residences. However, for purposes of paragraph (h)(2), relating to the specified portion of proceeds to be placed in targeted areas, and paragraph (i)(3)(ii)(A), relating to the 1½ year temporary period, only areas approved as areas of chronic economic distress in accordance with this subparagraph at the time of issue may be taken into consideration.

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 14, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82–14129 Filed 5–19–82; 4:53 pm]

BILLING CODE 4830–01–M

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations: Survey of Tangible Property in Which Iran Has An Interest

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations to require that tangible property census reports (Forms TFR–625) be filed no later than July 1, 1982 by any person subject to the jurisdiction of the United States who has an interest in, or who, between November 14, 1979, and January 19, 1981, had in his custody, control or possession, tangible property in which there was or is any interest of Iran or an Iranian entity. The purpose of this census is to provide the United States Government with information it may use in promoting the resolution of disputes with Iran, preparing submissions to the Iran-United States Claims Tribunal, and formulating appropriate policies to deal with tangible properties.

EFFECTIVE DATE: May 20, 1982. In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, the information collection requirements of Form TFR–625 which are imposed by this final rule have been or will be submitted for approval to the Office of Management and Budget (OMB). Form TFR–625 is not effective until OMB approval has been obtained.

FOR FURTHER INFORMATION CONTACT: Loren Dohm, Chief, Census Unit, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel.: (202) 376–0968.

SUPPLEMENTARY INFORMATION: Copies of Form TFR–625, "Report on Tangible Property in Which Iran Has An Interest," are being sent to persons who have submitted materials to, or made inquiries of, the Office of Foreign Assets Control indicating that they have an interest in or control over such property. Other persons required to report or otherwise interested in obtaining copies of the form and instructions may do so from the nearest regional Federal Reserve Bank or from the Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

Forms are to be completed in triplicate and two copies are to be returned in a set to Unit 625, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220 by July 1, 1982. Reporting under these sections is mandatory. Observance of the filing deadline is very important.

Persons required to report on Form TFR–625 include, but are not limited to, all persons who reported holding tangible property as of March 31, 1980, on Treasury Department Form TFR–615, "Census of Blocked Iranian Assets." Form TFR–625 should be filed not only as to tangible property currently held by U.S. persons but also as to any such property which was formerly held and has since been transferred to Iran or has been the subject of other disposition pursuant to Treasury license or otherwise.

Reports filed on TFR–625 are regarded as privileged and confidential. This census requirement is informational in nature, and the Treasury Department does not regard statements made on Form TFR–625, in and of themselves, to be determinative of ownership rights to reported property. For example, the reporting of an asserted Iranian interest in property does not constitute a recognition on the part of the reporter of the validity of such an interest. Statements made on TFR–625 are without prejudice to the reporter's right to assert or contest interests in reported property or to make claims relating to such property in an appropriate forum.

The information from the census may be used as background to discussions with the Government of Iran concerning implementation of the January 19, 1981 Algiers Accords and in preparation of United States submissions to the Iran-United States Claims Tribunal. In appropriate cases, certain information collected on this census may be shared with Iran or included in submissions to the Claims Tribunal.

Since this amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the regulation is issued with respect to a foreign affairs function of the United States, it is not subject to Executive Order 12291 of February 17, 1981, dealing with federal regulation.

List of Subjects in 31 CFR Part 535

Iran, Foreign assets control.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

31 CFR Part 535 is amended as follows:

Section 535.625 is added as follows:

§ 535.625 Reports on Form TFR–625.

(a) *Requirement for report.* Reports on Form TFR–625 are hereby required to be filed on or before July 1, 1982, in the manner prescribed herein, with respect to all tangible property subject to the jurisdiction of the United States or in the possession or control of any person subject to the jurisdiction of the United States at any time between November 14, 1979, and January 19, 1981, in which Iran or an Iranian entity has or has had any interest or asserted interest.

(b) *Who must report.* Reports on Form TFR–625 must be filed by any person, or the successor to such person, subject to the jurisdiction of the United States who has an interest in, or who, between November 14, 1979, and January 19, 1981, had in his custody, control, or possession, directly or indirectly, in trust or otherwise, tangible property in which there was or is any direct or indirect interest or an asserted interest of Iran or an Iranian entity. This includes, but is not limited to, all persons who reported holding tangible property as of March 31, 1980 on Treasury Department Form TFR–615, "Census of Blocked Iranian Assets."

(c) *Filing Form TFR–625.* Reports on Form TFR–625 shall be prepared in triplicate. On or before July 1, 1982, two copies shall be sent in a set to Unit 625, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records.

(d) *Certification.* Every report on Form TFR–625 shall contain the certification required in Part D of the Form. Failure to complete the certification shall render the report ineffective, and the submission of such a report shall not constitute compliance with this section.

(e) *Confidentiality of reports.* Reports on Form TFR–625 are regarded as privileged and confidential.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111)

Dated: May 20, 1982.

Raymond W. Konan,

Chief Counsel, Acting Director.

Approved:

John M. Walker, Jr.,

Assistant Secretary.

[FR Doc. 82–14209 Filed 5–20–82; 4:27 pm]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2115–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On August 31, 1981, the Illinois Environmental Protection Agency (IEPA) submitted a revision to the Illinois State Implementation Plan (SIP) to the EPA in the form of a July 9, 1981 Order of the Illinois Pollution Control Board (IPCB) R77–15 amending Chapter 2 of the IPCB Rules and Regulations by establishing Rule 204(c)(1)(E). Rule 204(c)(1)(E) establishes sulfur dioxide (SO_2) emission limitations for solid fuel combustion sources having actual heat input not greater than 250 million BTU's per hour owned or operated by Bemis Company, Inc., Celotex Corporation or Sherex Corporation. The limit established by Rule 204(c)(1)(E) is 5.5 lbs SO_2/MMBTU. On November 17, 1981 IEPA submitted additional information in support of the proposed revision. EPA published a notice of proposed rulemaking on this action March 5, 1982 (47 FR 9479). There were no public commetns received by the agency. Therefore, EPA today announces final rulemaking to approve this action.

EFFECTIVE DATE: This final rulemaking becomes effective on June 23, 1982.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Anne Ernstein, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On August 31, 1981, the IEPA submitted to EPA a July 9, 1981 IPCB Order (R–77–15) as a SIP revision. The Order amended Rule 204(c)(1) of Chapter 2 of the IPCB Rules and Regulations by establishing Rule 204(c)(1)(E) which reads as follows:

Rule 204(c) Sulfur Dioxide Emission for Existing Fuel Combustion Sources

(1) Solid Fuel Burned Exclusively

* * * * *

(E).

Not withstanding any other provision of this rule, no person shall cause or allow the emission of sulfur dioxide into the atmosphere in any 1-hour period from any existing solid fuel combustion source located in the Peoria major metropolitan area and having an actual heat input not greater than 250 million BTU per hour, owned or operated by Bemis Company, Inc., Celotex Corporation or Sherex Corporation to exceed 5.5 pounds per million BTU of actual heat input on or after July 20, 1981.

The Order established SO_2 emission limits for the small coal-fired boilers owned by Bemis Company, Inc., Celotex Corporation or Sherex Corporation. These boilers, under Rule 204(c)(1)(E) are now subject to an emission limit of 5.5 lbs SO_2/MMBTU.

IEPA submitted copies of several modeling analyses, a State operating permit, transcripts of State hearings and other documents on August 31, 1981 and on November 17, 1981 to support this SIP revision.

In the March 5, 1982 (47 FR 9479) **Federal Register**, EPA proposed approval of Illinois Rule 204(c)(1)(E) as contained in IPCB Order R–77–15 as a SIP revision. There were no public comments received by the Agency.

IEPA provided adequate technical support to demonstrate that the emission limitation of 5.5 lbs/MMBTU for the coal-fired boilers with actual heat input less than 250 MMBTU/hr at Bemis, Celotex and Sherex will not interfere with attainment and maintenance of the SO_2 NAAQS. Therefore, EPA approves Illinois Rule 204(c)(1)(E) as contained in IPCB Order R–77–15 as a SIP revision.

Insofar as interstate transport of SO_2 emissions is concerned, the Agency's air quality models are not considered accurate beyond 50 km from the source(s) and thus it is not possible to quantify the SO_2 impact of the Peoria sources on distant states. However, the SO_2 emissions from Bemis, Celotex and Sherex should not have an adverse impact on SO_2 air quality in any other state. The total maximum allowable SO_2 emissions from these industrial boilers are relatively small (less than 10,000 tons per year) and the emissions range transport of SO_2 from these sources should not be significant and should not have an adverse impact on the SO_2 air quality in any other State (Iowa, 120 km away, is the closest state to the Peoria area.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead,

Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 172 of the Act, as amended (41 U.S.C. 7410 and 7502))

Dated: May 11, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I Part 52 is amended as follows:

Subpart O—Illinois

Section 52.720(c) is amended by adding subparagraph (32) to read as follows:

§ 52.720 Identification of the plan.

* * * * *

(c) * * *

* * * * *

(32) On August 31, 1981, the State of Illinois submitted a revision to the Illinois State Implementation Plan in the form of a July 9, 1981, Order of the Illinois Pollution Control Board (R–77–15). This Order creates Rule 204(c)(1)(E) which establishes sulfur dioxide (SO_2) emission limitations of 5.5 lbs/SO/MMBTU for solid fuel combustion sources having actual heat input not greater than 250 million BTU's per hour owned or operated by Bemis Company, Inc., Celotex Corporation or Sherex Corporation. On November 17, 1981, the State submitted additional information in support of this revision.

* * * * *

[FR Doc. 82–14113 Filed 5–21–82; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–2125–4]

40 CFR Part 123

Approval of West Virginia's NPDES Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the State of West Virginia's application to participate in the National Pollutant Discharge Elimination System (NPDES) program.

SUMMARY: This document announces that on May 10, 1982, the Administrator for the Environmental Protection Agency (EPA) approved the State of West Virginia's request to administer the National Pollutant Discharge Elimination System (NPDES) program within the State. This approval is based on a request from the State of West Virginia to administer the program and a determination by the EPA Administrator that the West Virginia program for the control of discharges into the navigable waters within their jurisdiction satisfies the requirements of section 402(b) of the Clean Air Act.

DATE: This approval is effective May 10, 1982.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202–755–0750.

SUPPLEMENTARY INFORMATION: The Clean Water Act (33 U.S.C. 1251, et seq.) established the National Pollutant Discharge Elimination System (NPDES) under which permits are issued for the discharge of pollutants from point sources into the waters of the United States. Initially, the Environmental Protection Agency (EPA) issues these permits. States may be authorized to administer the NPDES program for discharges into navigable waters within their jurisdiction if the Administrator of EPA determines that the State program satisfies the requirements of section 402(b) of the Clean Water Act. With the passage of the 1977 amendents to the Clean Water Act, State NPDES programs must include a pretreatment program and the authority to regulate Federal facilities.

On February 16, 1982, EPA published notice of West Virginia's request to administer the NPDES program in the **Federal Register** (47 FR 6662). A public hearing was held in Charleston, West Virginia on March 18, 1982 to solicit comments on the proposed authorization of the West Virginia program. EPA has prepared a response to these comments which has been incorporated into West Virginia's submittal package and may be reviewed by the public at the West Virginia Department of Natural Resources, Division of Water Resources, 1201 Greenbrier St., Charleston, West Virginia 25305 and at the EPA, Region III Office, Water Enforcement Branch, Enforcement Division, 6th and Walnut Streets, Philadelphia, PA 19106, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Today's **Federal Register** notice is to announce the approval of the State of West Virginia's NPDES program, including its pretreatment program and Federal facilities authority.

Federal Register Notice of Approval of State NPDES Programs or Modifications

Under the Consolidated Permit Regulations (45 FR 33290, May 19, 1980), EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

	Approved State NPDES permit program	Approval to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/06/80	03/12/81
Hawaii	11/28/74	06/01/79	
Illinois	10/23/77	06/26/79	
Indiana	01/01/75	12/09/78	
Iowa	06/10/78	06/10/78	06/03/81
Kansas	06/26/74		
Maryland	09/05/74		
Michigan	10/17/73	12/09/78	
Minnesota	06/30/74	12/09/78	07/10/79
Mississippi	05/01/74		05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/78	
Nevada	09/19/75	06/31/79	
New Jersey	04/13/82	04/13/82	04/13/82
New York	10/26/75	06/13/80	
North Carolina	10/19/75		
North Dakota	06/13/75		
Ohio	03/11/74		
Oregon	09/26/73	08/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
South Carolina	06/10/75	09/26/80	
Tennessee	12/28/77		
Vermont	09/11/74		05/10/82
Virgin Islands	06/30/76		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		
West Virginia	06/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	06/10/81	

Review Under the Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The approval of the West Virginia NPDES permit program merely transfers responsibility for administration of permitting facilities from the Federal to the State government. No new substantive requirements are established by this action. Therefore, this notice does not have a significant impact on a substantial number of small entities. It does not trigger the requirement of a Regulatory Flexibility Analysis.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting requirements, waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: May 10, 1982.

John E. Daniel,

Acting Administrator.

[FR Doc. 82-13757 Filed 5-21-82; 8:45 am]

BILLING CODE 6560-50-M

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 501, 504, and 506

[Docket No. ERA-R-82-02]

Powerplant and Industrial Fuel Use Act of 1978; Proposed Revision of Final Rules for Existing Facilities

AGENCY: Economic Regulatory Administration (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to revise its final rules implementing Title III of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) to conform them to current DOE policy regarding the issuance of prohibition orders to existing major fuel burning installations (MFBIs) and to delete generally the regulations implementing the exemptions to prohibition orders for both MFBI's and certain existing electric powerplants.

If adopted, these proposals would (1) remove all substantive and procedural regulations applicable to existing MFBI's; and (2) remove the exemption provisions applicable to existing powerplants. Through this notice, DOE invites public comments on the proposed revisions.

DATES: Written comments are due on or before July 8, 1982.

ADDRESS: All comments should be addressed to Office of Hearings Management of the Economic Regulatory Administration, Department of Energy, at the address provided in the Supplementary Information section, below.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Fuels Conversion Division—Fuels Programs, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue, SW., Room GA-093, RG-62, Washington, D.C. 20585, (202) 252-1774

Henry K. Garson (Office of the General Counsel), Department of Energy, Room 6B-178, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2967

SUPPLEMENTARY INFORMATION:

I. Background and Proposals
II. Procedural Matters

I. Background and Proposals

On June 9, 1981, DOE issued a notice of proposed ruelmaking (46 FR 31216, June 12, 1981), aimed at simplifying the administrative procedures and exemption criteria applicable to owners or operators of new and existing powerplants and MFBI's subject to the prohibitions of FUA. These rules, as applicable to the new facilities regulatory program under FUA, were adopted in final form on November 30, 1981 (46 FR 59872, December 7, 1981) (final rules). Final rules were not promulgated at that time applicable to existing facilities because on August 13, 1981, the President signed into law the Omnibus Budget Reconciliation Act (Pub. L. 97-35) (OBRA), § 1021 of which substantially amended section 301 of FUA, relating to the prohibitions applicable to existing electric powerplants. Specifically, under the new section 301, the so-called "off gas" provisions of FUA were deleted and the prohibition order process was substantially amended. Therefore, DOE decided to defer consideration of existing facilities issues until a later date. In the Notice promulgating the final rules (46 FR 59872, December 7, 1981), DOE indicated that it would soon propose a rulemaking applicable to existing facilities that would be aimed toward a "reduction of regulatory burdens * * * and elimination of unnecessary regulatory intervention in fuel choice decisions by the private sector."

On November 27, 1981, DOE gave notice of its proposals to implement the OBRA amendments (applicable only to existing electric powerplants) by amending 10 CFR Parts 500, 501 and 504 to conform to the changes in the statute (46 FR 58052). These amendments were finalized at 47 FR 17037 (April 21, 1982) (the OBRA regulations).

DOE has reviewed its regulations for obtaining exemptions under FUA from prohibition orders applicable to existing powerplants (10 CFR Parts 501 and 504) in light of the following circumstances:

Under section 301 of FUA, as amended, certification of a powerplant's coal capability by the owner or operator is strictly voluntary, and DOE's issuance of a prohibition order to an existing powerplant is contingent upon the filing of such a certification, with which DOE can concur. This necessarily means that, since the order issuing proceeding is now embarked upon voluntarily, rather than, as formerly, involuntarily, only those owners or operators of powerplants who want to receive prohibition orders will obtain them.

Furthermore, § 501.52(d), consistent with OBRA, permits a certifying powerplant to amend its certification at any time prior to the effective date of the prohibitions (set out in the final prohibition order) to take account of changes in relevant facts and circumstances, so that, after the proceeding is underway or even administratively completed, the powerplant may prevent the prohibitions from taking effect by bringing to DOE's attention the existence of changed circumstances which would terminate the proceeding or bring about the withdrawal of the order.

Under these circumstances, no need exists for DOE to exercise its section 301 authority in the future to grant or deny exemption requests to certifying powerplants issued proposed prohibition orders that cannot, for valid reasons (bases for exemption), burn coal as their primary energy source. Accordingly, DOE believes that the regulations in 10 CFR Parts 501 and 504 applicable to exemption proceedings for powerplants can be properly rescinded and removed from the Code of Federal Regulations. The rescission shall not affect the rights of any party to a final or proposed prohibition order issued under the former section 301. For these cases, and these cases alone, these rules shall continue in effect (10 CFR Parts 501 and 504, as published at 45 FR 53682, on August 12, 1980). In particular, the owner or operator of an electing powerplant named in a prohibition order issued under former section 301 may use the procedures in 10 CFR Part 501, Subpart G (10 CFR 501.100 et seq.) for requesting that DOE modify or rescind such prohibition order to meet significantly changed circumstances with respect to the applicability of the prohibition to the affected facility.

Further, in keeping with the Department's announced policies it will

no longer issue involuntary conversion orders to MFBI's as authorized by section 302 of FUA. Therefore, the Department proposes to discontinue the discretionary program authorized by section 302 of FUA through rescission of the regulations implementing that program. Accordingly, the prohibition and exemption provisions of Parts 501, 504 and 506[1] applicable to existing MFBI's are proposed here to be rescinded and removed from the Code of Federal Regulations. The rescission shall not affect the rights of any party to a final or proposed prohibition order issued under section 302 of the Act. For these cases, and these cases only, the rules shall remain in effect (10 CFR Parts 501 and 504, published at 45 FR 53682, on August 12, 1980, and 10 CFR Part 506, § 506.35, published at 44 FR 43176, on July 23, 1979). DOE intends to complete its work in finalizing prohibition orders to MFBI's in receipt of proposed prohibition orders only where the owner or operator of the MFBI wishes the process to continue. If, at a future date, DOE determines that a different policy is necessary regarding the issuance of prohibition orders and exemptions to existing MFBI's, new procedural and substantive requirements will be adopted pursuant to normal rulemaking procedures.

II. Procedural Matters

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data or comments with respect to the issues addressed in this NOPR. Comments should be identified on the outside envelope and on the documents submitted with the designation: "Powerplant and Industrial Fuel Use Act Docket No. ERA–R–82–02." Fifteen copies should be submitted. All comments received will be available for public inspection in the Office of Hearings Management, Federal Building, Room 7146, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. All comments received on or before July 8, 1982 will be considered.

If you wish to submit any information or data which you consider to be confidential you must comply with DOE's freedom of information regulations (10 CFR Part 1004). DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

[1] The cogeneration exemption provision is currently in interim status at 10 CFR 506.35.

B. Section 102 of the National Environmental Policy Act (NEPA)

DOE has determined that the proposed removal of the prohibition order and exemption provisions, as described above, will not change the *status quo* and, therefore, is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. Accordingly, the preparation of an Environmental Impact Statement for this proposal is not required.

C. Executive Order No. 12291

DOE has determined that these proposed regulations are not a major rule under Executive Order No. 12291, which requires the preparation of a Regulatory Impact Analysis for proposed major regulations. These proposals will not be likely to result in an annual effect on the economy of $100 million or more. DOE foresees no major increase in costs or prices for consumers, industries, geographic regions or Federal, state or local government agencies. DOE does not consider it likely that the proposals will result in significant adverse effects on competition, employment, investment, or productivity. Therefore, no Regulatory Impact Analysis is required.

The proposals were submitted to the Office of Management and Budget (OMB) for review at least 10 days prior to publication in the **Federal Register**.

D. Regulatory Flexibility Act

DOE certifies that these proposals, if adopted, will not negatively impact firms that are "small entities" within the meaning of the Regulatory Flexibility Act, for the reasons discussed in paragraph C, above. Therefore, DOE is not required to publish an initial regulatory flexibility analysis pursuant to section 603 of that Act.

List of Subjects

10 CFR Part 501

Administrative practice and procedure, Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

10 CFR Parts 504, 506

Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

(Department of Energy Organization Act Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7107 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35; Executive Order No. 12009 (42 FR 46267 (September 15, 1977)))

Issued in Washington, D.C. on May 13, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

In consideration of the foregoing, Parts 501, 504, and 506, Subchapter E, "Alternate Fuels" of Chapter II, Title 10 of the Code of Federal Regulations, are proposed to be amended as set forth below.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

For the reasons set out in the preamble, Part 501 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as shown.

1. By revising the table of contents as follows:

* * * * *

Subpart E—Prohibition Rules and Orders

Subpart F—[Reserved]

* * * * * *

Sec.

501.51 Prohibitions by order—Existing Electing Powerplants.

* * * * *

2. By revising §§ 501.31(b) and 501.33(b) to read as follows:

§ 501.31 Written comments.

* * * * *

(b) *Existing facilities.* Except as may be provided elsewhere in these regulations, ERA shall provide a period of at least 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for a permit. In the case of a proposed prohibition rule or order issued to an existing electing powerplant, ERA shall also provide for a period of at least 45 days for submission of written comments concerning a Tentative Staff Analysis. This period shall commence on the day after publication of the Notice of Availability of Tentative Staff Analysis in the **Federal Register**. In the case of prohibition order proceedings for certifying powerplants under section 301 of FUA, as amended, ERA shall provide a period of at least 45 days, beginning the day after the Notice of Acceptance of certification is published, for submission of written comments concerning the certification and ERA's proposed prohibition order, and requests for public hearings. Prohibition order proceedings under section 301, as amended by OBRA, will have only one period of 45 days, since no Tentative Staff Analysis will be prepared. The comment period may be extended by ERA in accordance with § 501.7. See

§ 501.52(b) of this Part for further information with respect to the comment period. Written comments shall be filed in accordance with § 501.7.

§ 501.33 Requests for a public hearing.

* * * * *

(b) *Existing powerplants.* In the case of a petition for an exemption from a prohibition imposed by a final rule or order issued by ERA to an electing powerplant under former sections of Title III of FUA or a petition for a permit under § 504.1, any interested person may submit a written request that ERA convene a public hearing in accordance with section 701 of FUA within 45 days after the notice of the filing of a petition is published in the **Federal Register**. In the case of proposed prohibition rule or order issued to an electing powerplant under former section 301, the 45 day period in which to request a public hearing shall commence upon the publication of the Notice of Availability of the Tentative Staff Analysis. In the case of a proposed prohibition order to be issued to certifying powerplants under section 301 of FUA, as amended, the 45 day period in which to request a public hearing commences upon publication of the Notice of Acceptance of certification. This time limit may be extended at the discretion of ERA in accordance with § 501.7.

* * * * *

3. By amending § 501.51 by revising the title, introductory text of paragraph (a), paragraph (b)(2) and (3), and paragraph (d)(2)(ii) to read as follows:

§ 501.51 Prohibitions by order—existing electing powerplants.

(a) ERA may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an existing electing powerplant, if:

* * * * *

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of final order to an electing powerplant, ERA shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) ERA shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to suport their respective positions as to each of the findings that ERA is required to make under former section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three month period may be granted at ERA's discretion.

* * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for ERA to make the findings required by former section 301(b) of FUA.

Subpart F—[Reserved]

4. By removing and reserving Subpart F.

PART 504—EXISTING POWERPLANTS

For reasons set out in the preamble, Part 504 of Chapter II, Title 10 of the Code of Federal Regulations is amended as shown.

1. By revision the table of contents as follows:

Subpart B—Prohibitions

* * * * *

Sec.

504.7 Prohibitions against excessive use of petroleum or natural gas in mixtures—Electing Powerplants.

* * * * *

2. By revising § 504.2 to read as follows:

§ 504.2 Purpose and scope.

(a) Sections 504.5, 504.6, and 504.8, below, set forth the prohibitions that ERA, pursuant to § 301 of the Act, as amended, may impose upon existing powerplants after a review of the certification and prohibition order compliance schedule submitted by the owner or operator of a powerplant. Sections 504.5 and 504.8 are explanatory sections, and § 504.6 provides the informational requirements necessary to support the certification.

(b) Sections 504.6, and 504.7, below, also set forth the prohibitions that ERA may impose upon electing powerplants, pursuant to former section 301 (b) and (c) of FUA, where ERA can make the findings as to the unit's technical capability and financial feasibility to use coal or another alternate fuel as a primary energy source. The prohibitions may be made to apply to electing powerplants unless an exemption is granted by ERA under the provisions of the Final Rule for Existing Facilities (10 CFR Parts 500, 501, and 504) published at 45 FR 53682, on August 12, 1980. Any person who owns, controls, rents or leases an existing electing powerplant may be subject to the prohibitions imposed by and the sanctions provided for in the Act or these regulations, if ERA can make the findings required by former section 301 (b) and (c) of FUA.

3. By amending § 504.6 by revising the introductory text of paragraph (a) and of paragraphs (b), (c)(1), (d), (e), and the introductory text to paragraph (f) (retain all footnotes) to read as follows:

§ 504.6 Prohibitions by order (case-by-case).

(a) ERA may prohibit, by order, the use of natural gas or petroleum as a primary energy source in existing powerplants under certain circumstances. In the case of certifying powerplants under section 301 of the Act, as amended, the petitioner must present evidence to support the certification, required by § 504.6 (c), (d), (e), and (f). In the case of electing powerplants, ERA must make the following findings required by § 504.6 (c), (d), (e), and (f), in order to issue a prohibition order to the unit, pursuant to former section 301 (b) or (c):

(1) * * *

* * * * *

(b) In the case of electing powerplants, EPA must make a proposed finding regarding the technical capability of a unit to use alternate fuel as identified in subsection (a)(1) above prior to the date of publication of the notice of the proposed prohibition. ERA will publish this finding in the **Federal Register** along with the notice of the proposed prohibition.

(c) *Technical capability.* (1) In the case of electing and certifying powerplants, ERA will consider "technical capability" on a case-by-case basis on order to make the required finding. In the case of a certifying powerplant, the powerplant should present information to support the certification relevant to the considerations set forth below. ERA will consider the ability of the unit, from the point of fuel intake to physically sustain combustion of a given fuel and to maintain heat transfer.

* * * * *

(d) *Substantial physical modifications.* In the case of electing and certifying powerplants, ERA will make its determination on whether a physical modification to a unit is "substantial" on a case-by-case basis. In the case of certifying powerplants, ERA

will consider the following factors set forth below for the purpose of concurrence in the certification. ERA will consider physical modifications made to the unit as "substantial" where warranted by the magnitude and complexity of the engineering task or where the modification would impact severely upon operations at the site. ERA will not, however, assess physical modification on the basis of cost.

(e) *Substantial reduction in rated capacity.* In the case of electing and certifying powerplants, ERA will make this determination on the basis of the following factors. A certifying powerplant should present information to support its certification regarding these factors in order for ERA to make its review for concurrence.

* * * * *

(4) In assessing whether a unit's derating is not substantial, ERA will consider the impact of a reduction in rated capacity of the unit taking into consideration all necessary appurtenances such as air pollution control equipment required to burn an alternate fuel in compliance with environmental requirements expected to be applicable at the date the prohibitions continued in the final prohibition order become effective. However, the potential order recipient may raise in rebuttal the impact of derating on the site at which the unit is located and on the system as well as on the unit itself, if under paragraph (e) of this section or case-by-case, if under paragraph (e)(3) of this section.

(f) *Financial feasibility.* In the case of certifying and electing powerplants, ERA will make this finding based on the following considerations. A certifying powerplant should present information to support its certification relevant to these factors in order for ERA to make its review for concurrence. Conversion of a unit to burn coal or an alternate fuel shall be deemed financially feasible if the firm has the actual ability to obtain sufficient capital to finance the conversion, including all necessary land, coal and ash handling equipment, pollution control equipment, and all other necessary conversion expenditures, without violating legal restrictions on its ability to raise debt or equity capital. EPA will consider any economic or financial factors presented by the proposed order recipient in determining the firm's ability or inability to finance the conversion including, but not limited to, the following:

* * * * *

4. By removing the Note and revising the title and paragraph (a) of § 504.7 to read as follows:

§ 504.7 Prohibitions against excessive use of petroleum or natural gas in mixtures—Electing Powerplants.

(a) In the case of electing powerplants, if ERA finds that it is technically and financially feasible for a unit to use a mixture of petroleum or natural gas and an alternate fuel as its primary energy source, ERA may prohibit, by order, the use in that unit of petroleum or natural gas, or both, in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiecy of the mixture.

* * * * *

6. By removing and reserving Subparts C, D, and E to read as follows:

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

For the reasons set out in the preamble, Part 506 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 506—[RESERVED]

By removing and reserving Part 506.

[FR Doc. 82-14071 Filed 5-21-82; 8:45 am]
BILLING CODE 6450-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

10 CFR Part 1605

Proposed Council Open Meetings Procedures

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Proposed rule.

SUMMARY: The Council proposes the following procedures regarding open meetings under the Government in the Sunshine Act (Pub. L. 94-409) and invites written comment on those proposed procedures.

DATES: Comments must be submitted on or before June 23, 1982.

ADDRESSES: Send comments to: James F. Fell, General Counsel, Northwest Power Planning Council, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: James F. Fell, General Counsel, Northwest Power Planning Council, (503) 222-5161.

SUPPLEMENTARY INFORMATION: By passage of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839, *et seq.* (the "Northwest Power Act"), Congress provided for the establishment of the Pacific Northwest Electric Power and Conservation Planning Council (the "Council"), a regional agency composed of two gubernatorial appointees each from the states of Idaho, Montana, Oregon and Washington. Congress provided in section 4(a)(4) of the Northwest Power Act that with respect to "open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate." The procedures to be used by the Council were adopted from Federal Energy Regulatory Commission open meetings procedures.

List of Subjects in 10 CFR Part 1605

Sunshine Act.

(Sec. 4, Pub. L. 96-501 (16 U.S.C. 839b))

Dated: May 14, 1982.

Edward Sheets,

Executive Director.

10 CFR, Chapter XVI, is proposed to be amended by adding a new Part 1605 to read as follows:

PART 1605—PROCEDURES UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1605.101 Purpose.
1605.102 Definitions.
1605.103 Open meetings.
1605.104 Notice of meetings.
1605.105 Closed meetings.
1605.106 Procedures to close meetings.

Authority: Sec. 4, Pub. L. 96-501 (16 U.S.C. 839b).

§ 1605.101 Purpose.

The purpose of these provisions is to set forth the Council procedures for conduct of its official business in accordance with the provisions of 5 U.S.C. 552b. The Council may waive the provisions set forth in this subpart to the extent authorized by law.

§ 1605.102 Definitions.

(a) *Definitions.* For purposes of these procedures:

(1) *"Meeting"* means the deliberations of at least a quorum of the Council where such deliberations determine or result in the joint conduct of official Council business, except that such term does not include deliberations to determine whether to conduct a closed meeting.

(2) *"Portion of a meeting"* means the consideration during a meeting of a particular topic or item separately identified in the notice of Council meeting described in § 1605.104.

(3) *"Open"* when used in the context of a Council meeting or a portion thereof, means the public may attend and observe the deliberations of the Council during such meeting or portion of a meeting consistent with the provisions of § 1605.103.

(4) *"Closed"* when used in the context of a Council meeting or a portion thereof, means that the public may not attend or observe the deliberations of the Council during such meeting or portion of such meeting.

§ 1605.103 Open meetings.

(a) *General Rule.* Except as provided in § 1605.106, meetings of the Council will be open meetings.

(b) *Public Participation in Open Meetings.*

(1) Members of the public are invited to listen and observe at open meetings.

(2)(i) Subject to the provisions of this paragraph (b), members of the public may record discussions at Council meetings by means of electronic or other devices (including tape recorders, stenotype, stenomask, or shorthand). The photographing of Council meetings by still or movie camera, or by video taping is permitted so long as such activity does not interfere with Council proceedings.

(ii) Due to the limited space of some of the Council's meeting rooms and the necessity of maintaining order, use of recording or photographic equipment which would require the user to move about the room during the meeting must be limited. Recording and photographic equipment may be set up and used only in the public areas of a Council meeting room as designated by the Council's Executive Director or his designee.

(iii) No microphones may be placed on the tables used by the Council members and Staff.

(c) *Physical Arrangements.* The Director of Public Involvement shall be responsible for seeing that adequate space, sufficient visibility, and satisfactory acoustics are provided for public observation of open meetings.

§ 1605.104 Notice of meetings.

(a) *Public Announcements of Meetings.*—(1) *General rule.* Except to the extent that information described in § 1605.105(a) (involving closed meetings) is exempt from disclosure, the Director of Public Involvement shall announce at least one week before each Council meeting, the time, place, and subject matter of the meeting, whether it is an open meeting or closed meeting, and the name and telephone number of the official designated by the Council to respond to requests for information about the meeting.

(2) *Abbreviated notice.* If the Council determines by a majority of its members by a recorded vote that Council business requires that a Council meeting be called with less than one week's notice as prescribed in paragraph (a)(1) of this section, the Director of Public Involvement shall make public announcements of the time, place, and subject matter of such meeting and whether open or closed to the public, at the earliest practicable time.

(3) *Change in the time or place.* If there is a change in time or place of a meeting following the public announcement prescribed in paragraph (a) (1) or (2) of this secion the Director of Public Involvement shall publicly announce such change at the earliest practicable time.

(4) *Change in the subject matter or the determination to open or close a meeting.* The subject matter of a meeting, or the determination of the Council to open or close a meeting or portion of a meeting, may be changed following the public announcement prescribed in paragraph (a) (1) or (2) of this section only if:

(i) The Council determines by a recorded vote by a majority of the membership that Council business so requires and that no earlier announcement of the change is possible; and

(ii) The Director of Public Involvement publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(b) *Deleted items.* Notwithstanding the provisions of paragraph (a) of this section, individual items that have been announced for consideration at Council meetings may be deleted without vote or notice.

(c) *Definitions.* For the purpose of this section, "earliest practicable time", means as soon as practicable, which should in few, if any, instances be later than the commencement of the meeting or portion of the meeting in question.

(d) *Informing public of meeting announcements.* (1) The Director of Public Involvement shall use reasonable means to assure that the public is fully informed of the public announcements required by this section. For example, such announcements may be posted on the Council's public notice boards, published in official Council publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

(2) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in a preceding announcement, and the name and telephone number of the official designated by the Council to respond to requests for information about the meeting shall also be submitted by the Director of Public Involvement for publication in the **Federal Register.**

§ 1605.105 Closed meetings.

(a) Meetings will be closed to public observation where the Council properly determines, according to the procedures set forth in § 1605.106, that such meeting or portion of the meeting or disclosure of information to be considered at the meeting is likely to:

(1) Relate solely to the internal personnel rules and practices of the Council;

(2) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(3) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Involve formally censoring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including personnel and medical files and similar files;

(6) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Council action;

(7) Specifically concern the Council's issuance of a subpoena or participation in a civil action or proceeding or an arbitration.

(b) Council meetings shall not be closed pursuant to paragraph (a) of this section when the Council finds that the public interest requires that they be open.

§ 1605.106 Procedures to close meetings.

(a) *General rule.* A meeting or a portion of a meeting may be closed only when the Council votes by a majority of the membership to close the meeting. A separate vote shall be taken with

respect to each Council meeting or portion of a meeting which is proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Council member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Request for closed meeting.* Whenever any person whose interests may be directly affected by a meeting or a portion of a meeting requests that the Council close such portion to the public for any of the reasons referred to in paragraph (a) (5) or (6) of § 1605.105, the Council, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(c) *Release of vote.* Within one day of any vote taken pursuant to paragraph (a) or (b) of this section, the Director of Public Involvement shall make publicly available a written copy of such vote reflecting the vote of each member. If a portion of a meeting is to be closed to the public, the Director of Public Involvement shall, within one day of the vote taken pursuant to paragraph (a) or (b) of this section, make publicly available a full written explanation of the Council's action closing the portion together with a list of all persons expected to attend the meeting and their affiliations. The information required by this paragraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of § 1605.105(a).

(d) *Certification.* Prior to a determination that a meeting should be closed pursuant to paragraph (a) or (b) of this section, the General Counsel of the Council shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the Chair person of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Director of Public Involvement of the Council as part of the transcript, recording, or minutes required by paragraph (e) of this section.

(e) *Transcripts, Recordings, Minutes.* (1) The Director of Public Involvement shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public.

(2) The Director of Public Involvement shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Council proceeding with respect to which the meeting or portion was held, whichever occurs later.

(f) *Public availability of transcripts, or records.* (1) within a reasonable time after the adjournment of a meeting closed to the public, the Council shall make available to the public the transcript, or electronic recording, of the discussion of any item on the agenda, except for such item or items of such discussion as the Director of Public Involvement determines may be withheld under § 1605.105(a). Copies of such transcript, or a transcription of such recording, shall be furnished to any person at the actual cost of duplication or transcription.

(2) The determination of the Director of Public Involvement to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the Executive Director of the Council.

[FR Doc. 82-14083 Filed 5-21-82; 8:45 am]
BILLING CODE

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R-0406]

Home Mortgage Disclosure; Applications for Continuation of Exemption; Connecticut, Massachusetts, New Jersey, and New York

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of applications for continuation of exemption.

SUMMARY: The Board has received applications for renewal of the exemptions of Connecticut, Massachusetts, New Jersey and New York from the disclosure requirements of the Home Mortgage Disclosure Act as revised in 1980. The exemption requests are based upon the claim that state law provides for substantially similar disclosures. In accordance with Appendix B to Regulation C (12 CFR Part 203), the Board is publishing notice of the applications, with opportunity for comment.

DATE: Comments regarding the applications must be received on or before June 21, 1982.

ADDRESS: Comments should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. The applications and the comments on them may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. All comments should refer to Docket No. R-0406.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Senior Attorney, or Claudia Yarus or Clarence Cain, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

SUPPLEMENTARY INFORMATION: (1) *Introduction.* The Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as implemented by Regulation C (12 CFR Part 203), requires most depository institutions located in metropolitan areas to compile and disclose information on the geographic distribution of their mortgage and home improvement loans.

The act and regulation permit the Board to grant exemptions to state-chartered depository institutions subject to state mortgage disclosure laws that impose requirements substantially similar to those of the federal law and that contain adequate provision for enforcement. The Board has granted six such exemptions, one of which was later rescinded.

The federal act was amended in 1980 (Pub. L. 96-399, October 8, 1980), and the Board implemented the statutory amendments by revising Regulation C and publishing a prescribed disclosure form (46 FR 40679, August 11, 1981; 47 FR 750, January 7, 1982). Because of these changes, the exempt state requirements may no longer be substantially similar to the federal law. The Board has therefore requested a reapplication from each of the exempt states as a condition of continuation of the exemptions. The exemptions are subject to revocation if the Board at any time determines that state law does not impose requirements substantially similar to federal law or does not adequately ensure enforcement.

Four of the presently exempt states (or financial institutions in such states) have applied to the Board, pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and § 203.3(b) of the regulation, for continuation of the exemptions.

While the applications are pending before the Board, the exemptions remain effective. It is contemplated that any changes in requirements (for example, because of changes in any of the state laws or regulations, or because of one or more exemptions are revoked) will apply to data covering loans made in calendar year 1982.

(2) *Connecticut exemption.* The Connecticut Banking Department has applied to the Board, on behalf of state-chartered depository institutions in Connecticut, for continuation of the Connecticut exemption. The Board granted the original exemption by an order dated August 2, 1978, and effective September 11, 1978. The exemption applies to all Connecticut-chartered depository institutions subject to the Connecticut law. The application for continuation is based on the requirements of the Connecticut Home Mortgage Disclosure Act, as amended by Connecticut Public Act 81–128, and implementing regulations.

(3) *Massachusetts exemption.* The Commonwealth of Massachusetts, through its Division of Banks, has applied to the Board, on behalf of banks and credit unions in the Boston and Springfield-Chicopee-Holyoke standard metropolitan statistical areas (SMSAs), for continuation of the Massachusetts exemption. The Board granted the original exemption by an order effective December 8, 1976. The exemption applies to state-chartered institutions located in the SMSAs mentioned above that are subject to the Massachusetts disclosure requirements. The application for continuation is based on the requirements of the mortgage disclosure directives in the Massachusetts Banking Division's Administrative Bulletin 18–2C, dated February 5, 1982.

(4) *New Jersey exemption.* United Jersey Bank of Princeton, New Jersey; Heritage Bancorporation of Cherry Hill, New Jersey; and Princeton Bank of Princeton, New Jersey, have applied to the Board (on behalf of several of their subsidiary banks, in the case of the two bank holding companies) for continuation of the New Jersey exemption. The Board granted the original exemption by an order dated February 15, 1978, and effective April 1, 1978. The exemption applies to all New Jersey-chartered depository institutions subject to the New Jersey law. The applications for continuation are based upon the requirements of the New Jersey Home Mortgage Disclosure Act (N.J.S.A. 17:16F–1 *et seq.*) and the implementing regulations of the New Jersey Department of Banking.

(5) *New York exemption.* The New York Banking Department has applied to the Board, on behalf of New York-chartered depository institutions with assets over $150 million, for continuation of the New York exemption. The Board granted the original exemption by an order effective December 8, 1976, as supplemented by an order dated May 9, 1977. The application for continuation is based upon the requirements of New York Banking Law sections 10, 36, and 125, as implemented by Supervisory Procedure G 107 of the New York Banking Department.

(6) *Public comment on applications.* Copies of the applications are available for public inspection and copying during regular business hours at the Board, Room B–1122, 20th and Constitution Avenue, NW., Washington, D.C. 20551. The following Federal Reserve Banks also have copies available: Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106 (Connecticut and Massachusetts applications); Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045 (Connecticut, New Jersey, and New York applications); and Federal Reserve Bank of Philadelphia, 100 North Sixth Street, Philadelphia, Pennsylvania 19105 (New Jersey application).

Interested persons are invited to submit written comments regarding the exemption requests. The comments received will be made available for public inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information (12 CFR 261.6(a)).

Board of Governors of the Federal Reserve System, May 18, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-14130 Filed 5-21-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its regulation on the disclosure of information pursuant to the Freedom of Information Act ("FOIA," 5 U.S.C. 552). Substantive changes include a revision of the fee schedule and delegation from the Board of Directors to (1) the General Counsel for determinations of appeals of denials of initial requests and (2) the Executive Secretary for determinations of requests for waiver or reduction of fees. Other amendments reflect changes in the appropriate offices for obtaining publicly available information.

DATES: Comments must be received by July 23, 1982.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, or delivered to Room 6108 at the same address between 9:00 A.M. and 5:00 P.M., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Margaret M. Olsen, Assistant Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, (202) 389–4446.

SUPPLEMENTARY INFORMATION: The FDIC proposes to amend its regulations relating to disclosure of information pursuant to the FOIA. Three substantive changes are proposed. First, it is proposed that determinations whether to grant or deny an appeal of a denial of an initial request be delegated to the General Counsel. Presently, the Board of Directors reviews appeals and it is believed that the proposed delegation would be more efficient administratively. Second, it is proposed that determinations whether to grant or deny a requested waiver or reduction of the chargeable fees associated with a request for information be made by the Executive Secretary. Presently, the Board of Directors must make such a determination and it is believed that delegation of this function to the Executive Secretary would also promote administrative efficiency. Third, revisions in the fee schedule are proposed. The existing schedule has been in effect since 1975 and is no longer reflective of FDIC's costs of processing requests for information. Thus, increases in searching costs incurred through the use of FDIC personnel are proposed. Specifically, professional/supervisory time would be charged at the rate of $14.50/hour instead of $10.00/hour and clerical time at the rate of $7.50/hour instead of $4.50/hour. Also, costs for computer generated documents would be based on the components used and not only on the use of the central processing unit. At the same time, it is proposed that the FDIC will not charge for searching and duplication costs which do not exceed $25.00. Presently, the regulation prescribes that the minimum charge for which the FDIC sends an invoice is $2.00.

Finally, changes were made in § 309.4 in order to reflect the appropriate offices and addresses at which publicly available information may be obtained; and, the regulation was redrafted in simple English.

In accordance with the Regulatory Flexibility Act, the Board of Directors certifies that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities as the amendments do not affect any substantive legal right or duty of any small entity and as the majority of requests do not incur changes in excess of $25.00. Also, for the purposes of the Paperwork Reduction Act of 1980, the proposed amendments would not impose any recordkeeping or reporting requirements on any person. Thus, it has been determined under FDIC's statement of policy on drafting of regulations that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 309

Banks, banking, Credit, Foreign banking, Freedom of Information, Privacy.

PART 309—DISCLOSURE OF INFORMATION

Accordingly, the Board of Directors proposes that Part 309 be amended as set forth below.

1. The authority citation for Part 309 reads as follows:

Authority: Sec. 2 (9 "Seventh" and "Tenth"), Pub. L. No. 797, 64 Stat. 881, as amended by title III, Sec. 309, Pub. L. No. 95-630, 92 Stat. 3077 (12 U.S.C. 1819 "Seventh" and "Tenth"); 5 U.S.C. 552.

2. Section 309.3 is revised to read as follows:

§ 309.3 Federal Register publication.

The FDIC publishes the following information in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the FDIC;

(e) Every amendment, revision or repeal of the foregoing; and

(f) General notices of proposed rulemaking.

3. Section 309.4 is revised to read as follows:

§ 309.4 Publicly available information.

The following information is available upon request or, as noted, available for public inspection during normal business hours, at the listed offices. To the extent permitted by law, the FDIC may delete identifying details when it makes available or publishes a final opinion, final order, statement of policy, interpretation or staff manual or instruction. Fees for furnishing information under this § 309.4 are as set forth in § 309.5(b).

(a) At the Office of Information, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, Room 6074, (202) 389-4221:

(1) Documents, including press releases, bank letters and proposed and adopted regulations, published by the FDIC and pertaining to its operations and those of insured banks it supervises.

(2) Reports on the competitive factors involved in merger transactions and the bases for approval of merger transactions as required by section 18(c) (4) and (9) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c) (4) and (9)).

(b) At the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, which information is available for public inspection:

(1) All final opinions (including concurring and dissenting opinions) and all final orders made in the adjudication of cases.

(2) Statements of policy and interpretations which have been adopted by the FDIC but have not been published in the **Federal Register.**

(3) A current index of matters covered by § 309.4(b) (1) and (2) that were issued, adopted or promulgated after July 4, 1976. Copies of the index will be provided at the direct cost of duplication as set forth in § 309.5(b).

(c) At the Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429:

(1) Filings and reports required under the provisions of 12 CFR Part 335 and the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78a), by insured nonmember banks the securities of which are registered with the FDIC pursuant to section 12 of that Act (15 U.S.C. 78*l*). These filings and reports are available for public inspection as detailed in 12 CFR 335.702.

(2) At the FDIC's discretion, reports required under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) on changes in the control of an insured bank, to the extent that such reports contain (i) the name of the bank in which control has changed; (ii) the names of the sellers and purchasers of the stock; (iii) the number of shares of stock involved in the transaction; and (iv) the number of shares of issued stock of the bank that are outstanding.

(3) Manual of Examination Policies.

(d) At the regional office of the FDIC where the applicant bank is located: In the FDIC's discretion, nonconfidential portions of application files as provided in 12 CFR 303.14(c), including applications for deposit insurance, to establish branches, to relocate offices and to merge. A list of FDIC's regional offices is available from the Office of Information, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, (202) 389-4221.

(e) At the Data Base Section, Office of Management Systems and Financial Analysis, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429:

(1) At FDIC's discretion, the Consolidated reports of Income and Consolidated Reports of Condition filed by insured nonmember banks (and certain nonfederally insured banks in the case of reports of condition):[1]

(2) At the FDIC's discretion, Summary of Accounts and Deposits filed by insured banks, except that information identifiable to individual banks on the size of accounts and the number of accounts is not available:[2]

(f) At the Bank Statistics Branch, Office of Management Systems and Financial Analysis, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429: Annual Reports of Trust Assets for commercial and mutual savings banks.[3]

(g) At the Division of Liquidation, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429: Instructions to Liquidators.

4. Section 309.5 is revised to read as follows:

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[1] Reports of income and of condition are described at 12 CFR 304.3 (m-p).

[2] Summary of accounts and deposit reports are described at 12 CFR 304.3 (q) and (r).

[3] Annual Report of Trust Assets, FFIEC Form 001.

§ 309.5 Information made available upon request.

(a) *Initial request.* (1) Except as provided in § 309.5 (c), (g) and (h) the FDIC, upon request for any record in its possession or control, will make the record available to any person who agrees to pay the costs of searching and duplication as set forth in § 309.5(b). The request must be writing, provide information reasonably sufficient to enable the FDIC to identify the requested records and specify a dollar limit which the requester is willing to pay for the costs of searching and duplication, unless the costs are believed to be less than $25.00. Requests under this § 309.5(a) should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

(2) The FDIC will notify the requester within 10 business days after receipt of the initial request whether it is granted or denied. Denials of requests will be based on the exemptions provided for in § 309.5(c).

(3) Notification of a denial of an initial request will be in writing and will state: (i) If the denial is in part or in whole; (ii) the name and title of person each responsible for the denial (when other than the person signing the notification); (iii) the exemptions relied on for the denial; and (iv) the right of the requester to appeal the denial to the FDIC's General Counsel within 30 business days following receipt of the notification.

(b) *Fees.* (1) Persons requesting records of the FDIC shall be charged for the costs of searching (even though records are not found or released) and duplication unless the total costs are $25.00 or less for any request or series of requests. "Search" includes any method of extracting information from computerized record systems; and, the cost of searching may include direct costs associated with the transfer of records and the indexing and filing of records as necessary to maintain the integrity of FDIC's record systems. Where the FDIC estimates that the costs of searching and duplication will exceed the dollar amount specified in the request, or where no dollar amount is specified, the FDIC will advise the requester of the estimated costs (if greater than $25.00). Whenever it is estimated that the cost will exceed $200.00, the requester must pay in advance an amount equal to 20 percent of the estimated costs. For the purpose of computing the time in which a request must be granted or denied, a request for records will not be deemed to have been received by the FDIC until the requester has agreed in writing to pay the costs of searching and duplication, as estimated by the FDIC, and until the FDIC receives any required advance payment. Upon written request and at fees comparable to those listed in this § 309.5(b), the FDIC will undertake to compile requested information in summary, tabular or other form, unless the FDIC determines, in its discretion, that compliance with the request would be unduly burdensome or time consuming.

(2) Fees for search and duplication are:

Supervisory or professional staff—$14.50/hour
Clerical staff—$7.50/hour
Duplication—$0.10/page
Computer Generated Documents:
- Computer central processing unit (CPU)—$0.021/CPU second
- Core (Main storage)—$0.000023/1000 bytes/second
- Magnetic tape drive—$0.17/1000/tape input/output operation
- Disk storage device—$0.153/1000/disk input/output operation
- Computer paper printout—$0.16/1000 lines
- Photocopy printed output—$0.76/1000 lines
- Output on computer magnetic tape reel—$75.00
- Address labels—$5.00/1000 labels

(3) Any person may request, as part of the initial request for records, that the FDIC waive or reduce the chargeable fees for searching and duplication. Requests for a waiver or reduction of fees should state how the requested information will primarily benefit the general public. Determinations whether a waiver or reduction of fees is in the public interest because furnishing the information will primarily benefit the general public will be made by the Executive Secretary or his designee. The requester will be notified in writing of the Executive Secretary's determination whether a waiver or reduction of fees is in the public interest.

(c) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.[4] If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester.

(1) Records which are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the FDIC;

(3) Records specifically exempted from disclosure by statute (other than the Privacy Act of 1974, 5 U.S.C. 552a), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the FDIC;

(6) Personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that disclosure of the records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel; and

(8) Records contained in or related to examination, operating, or condition reports by or on behalf of, or for the use of, the FDIC or any agency responsible for the regulation or supervision of financial institutions.

(d) *Appeals.* (1) A person whose initial request for records under § 309.5(a) has been denied, either in part or in whole, has the right to appeal the denial to FDIC's General Counsel within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests must be in writing and include any additional information relevant to consideration of the appeal. Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, D.C. 20429.

(2) The FDIC will notify the appellant within 20 business days after receipt of the appeal whether it is granted or denied. Denials of appeals will be based

[4] Classification of a record as exempt from disclosure under the provisions of § 309.5(c) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of FDIC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

on the exemptions provided for in § 309.5(c).

(3) Notifications of a denial of an appeal will be in writing and will state: (i) Whether the denial is in part or in whole; (ii) the name and title of each person responsible for the denial (if other than the person signing the notification); (iii) the exemptions relied upon for the denial; and (iv) the right to judicial review of the denial under the Freedom of Information Act (5 U.S.C. 552).

(e) *Extension of time.* Under unusual circumstances the FDIC may require additional time, up to a maximum of 10 business days, to determine whether to grant or deny an initial request or to respond to an appeal of an initial denial. These circumstances would arise in cases where (i) the records are in facilities, such as field offices or storage centers, that are not part of the FDIC's Washington office, (ii) the records requested are voluminous and are not in close proximity to one another, or (iii) there is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination. The FDIC will promptly give written notification to the person making the request of the estimated date it will make its determination and the reasons why additional time is required.

(f) *FDIC procedures.* (1) Initial requests for records will be forwarded by the Executive Secretary to the head of the FDIC Division or Office which has custody of such records. Where it is determined that the requested information may be released, the appropriate Division or Office head will grant access to the information. A request for records may be denied only by the Executive Secretary or his designee, except that a request for records not responded to within 10 business days following its receipt by the Office of Executive Secretary—by notice to the requester either granting the request, denying the request, or extending the time for making a determination on the request—shall, if the requester chooses to treat such delay in response as a denial, be deemed to have been denied by the head of the Division or Office to which the request was referred for action.

(2) Appeals from a denial of an initial request will be forwarded by the Executive Secretary to the General Counsel of his designee for a determination whether the appeal will be granted or denied. The General Counsel may on his own motion refer an appeal to the Board of Directors for a determination and the Board of Directors on its own motion may consider an appeal.

(g) *Records of another agency.* If a requested record is the property of another Federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the FDIC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

(h) *Records of receiver or liquidator of assets.* If a requested record is held by the Corporation in its capacity as the receiver of a closed insured bank or the liquidator of assets acquired from an open or closed insured bank, upon receipt of a request for the record the FDIC will inform the requester of the capacity in which it holds such record and shall forward the request to the FDIC's Division of Liquidation for processing and disposition. Disclosure of such records shall be subject to appropriate Federal or State law applicable to FDIC as receiver or liquidator as well as to the determination of any Federal or State court having jurisdiction over FDIC or over such record. Denials of requests may be appealed to FDIC's General Counsel within 30 business days following receipt of notification of the denial.

5. Paragraph (a) of § 309.6 is revised to read as follows:

§ 309.6 Disclosure of exempt records by Corporation personnel.

(a) *Exempt records.* The provisions of § 309.6 apply to any records which are exempt from disclosure under § 309.5(c) regardless of the fact that such records may be subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other Federal statute, any applicable regulation of the FDIC or any other Federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

6. Section 309.6 is amended by renumbering existing footnotes 10, 11, 12, 13, 14, 15 as footnotes 5, 6, 7, 8, 9, 10, respectively.

By Order of the Board of Directors this 17th day of May 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 82-14110 Filed 5-21-82; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The regulations proposed herein are intended to conform the certification requirements for the Small Business Administration's section 503 Certified Development Company Program by eliminating the regulation that 503 development companies operating on a statewide basis be authorized by a special act of the state legislature. Furthermore, the proposed regulations would establish a standardized membership requirement and abolish the requirement that statewide 503 development companies contain a minimum of 10 corporate members.

DATE: Comments must be received on or before June 23, 1982.

ADDRESS: Submit comments to: Alan B. Abraham, Financial Analyst, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street, NW., Rm 804, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Alan B. Abraham, Financial Analyst, Office of Lender Relations and Certification, Small Business Administration, 1441 L Street, NW., Rm 804, Washington, D.C. 20416; Telephone (202) 653-9181.

SUPPLEMENTARY INFORMATION: In order to provide uniform certification requirements, a number of modifications are being proposed with regard to 503 development companies organized on a statewide basis. The existing regulations require a 503 development company organized on a statewide basis to comply with three special conditions; (1) Incorporation must be pursuant to special act of the state legislature; (2) state 503 development company must be comprised of corporate members and (3) the minimum number of corporate members must be at least 10. The proposed regulations would abolish the requirement that a statewide 503 development company be authorized by a special act of the state legislature. In addition, the proposed regulation would require that all development companies have at least 25 representative members, who needn't be corporate members.

For the purpose of compliance with the Regulatory Flexibility Act, Pub. L. 96-354, effective January 1, 1981, SBA hereby certifies that these proposed

rules, if promulgated in final form, will not have a significant economic impact on a substantial number of small entities. SBA perceives no economic consequences of this amendment. It is merely an administrative revision of programmatic guidelines. In addition these regulations, if promulgated in final form, would not constitute major rules for the purpose of Executive Order 12291.

List of Subjects in 13 CFR Part 108

Small businesses, Loan programs, Section 503 Certified Development Company Program.

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Pursuant to the authority contained in section 308(c) of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 687, it is proposed to revise the introductory text and paragraph (b) of § 108.503–1, Chapter I, Part 108 of Title 13, of the Code of Federal Regulations, as follows:

§ 108.503–1 Eligibility requirements.

SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the Untied States is pledged to the payments of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein sometimes referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA that it has:

(a) * * *

(b) *Membership.* The 503 company must be representative of the state, counties, county or city in which the company operates. Evidence of such representation shall include the following: (1) The 503 company must have at least 25 individual members or stockholders that are representative of its area of operation. No member or stockholder may own or control more than ten percent of the development company's stock or voting membership.

(2) The membership must include participation by each of the following four groups.

(i) Government: The appropriate level of government that reflects the 503 development company's area of operation. State 503 development companies must have state governmental representation; countywide or multi-county 503 development companies must have governmental representation that ensures that each county is represented; citywide 503 development companies must have representation from the local city government.

(ii) A Private Sector Lending Institution;

(iii) Community Organization;

(iv) Business Organization;

(3) The board of directors must contain representation from (b)(3(i)) and (ii) of this section.

(4) The 503 development company must demonstrate to the satisfaction of SBA the capability required by paragraph (a) of this section adequate to its area of operation.

(5) Any 503 development companies which do not meet the above requirements shall do so on or before one year from the effective date of this regulation.

* * * * *

James C. Sanders,

Administrator.

[FR Doc. 82–14019 Filed 5–21–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 82–ACE–03]

Alteration of Transition Area—Dodge City, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws the proposal to amend the Dodge City, Kansas, transition area. The amendment was proposed so as to permit an additional instrument approach procedure resulting from the installation of a Non-Directional Radio Beacon (NDB). It inadvertently indicated that an NDB instrument approach procedure would be established. There are no current plans for installing an NDB. Therefore, Notice of Proposed Rulemaking Docket No. 82–ACE–03 is being withdrawn.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Don A. Peterson, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: On March 11, 1982, the FAA proposed to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the transition area at Dodge City, Kansas. The proposal appeared in 47 FR 10592, 10593. The amendent would provide additional controlled airspace for aircraft executing a new instrument approach to the Dodge City, Kansas, Municipal Airport, utilizing the Dodge City Non-Directional Beacon (NDB) as a navigational aid. Subsequent to the issuance of the proposal, the FAA ascertained that there are no current plans for installing an NDB at Dodge City, thereby making this NPRM moot. Accordingly, it is being withdrawn. Since this withdrawal cancels a proposed rule, additional notice and public procedure hereon under 5 U.S.C. 553(b) is unnecessary and impracticable.

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, Notice of Proposed Rulemaking Docket No. 82–ACE–03 (47 FR 10592, 10593; March 11, 1982), is hereby withdrawn.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

(Sec. 307(a) Federal Aviation Act of 1958, as amended (49 U.S.C. 1348); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

Note.—This withdrawal cancels a proposal which is no longer applicable. For this reason, the FAA has determined that it involves a withdrawal of a proposed regulation which is (1) not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified under the criteria of the Regulatory Flexibility Act that the withdrawal will not have a significant economic impact on a substantial number of small entities.

Issued in Kansas City, Missouri, on May 12, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82–13686 Filed 5–21–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82-ASW-26]

Proposed Designation of Transition Area: Waller, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes designation of a transition area at Waller, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Skylake Airport, Waller, TX. This action is necessary to provide protection for aircraft executing an instrument approach procedure using the Navasota VORTAC.

DATE: Comments must be received on or before June 23, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: James L. Owens, Airspace and Procedures Branch, ASW-536, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G, § 71.181 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Designation of the transition area at Waller, TX, will necessitate an amendment to this subpart. This amendment will be required at Waller, TX, since there is a new IFR procedure to the Skylake Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Waller, TX, New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waller, TX, Skylake Airport (latitude 29°59'20" N., longitude 96°03'30" W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c).)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 12, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-13662 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-18738; File No.S7-930]

Order Exposure Rules

AGENCY: Security and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for comment two alternative Commission rules providing for increased exposure of orders in certain securities. These rules are proposed in response to concerns potentially arising from the present ability of market makers or market centers to execute orders without providing other markets access to those orders. The proposed Commission rule would require market makers or market centers to expose customer orders in certain securities to other markets before executing them internally. The Commission is also specifically requesting comment on the need for such a rule.

DATE: Comments to be received by July 23, 1982.

ADDRESSES: All comments should be submitted in triplicate and addressed to George A. Fitzsimmons, Secretary Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549. (Comments which will be received after July 15, 1982 should be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, Washington, D.C. 20549). All comments should refer to File No. S7-930 and will be available for public inspection at the Commission's Public Reference Room,

1100 L Street, N.W., Washington, D.C. (after July 3, 1982, 450 5th Street, Washington, D.C.).

FOR FURTHER INFORMATION CONTACT: Michael J. Simon, (202) 272–2889, or Robert Colby (202) 272–2886, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549 (after July 15, 1982, 450 5th Street, N.W., Washington, D.C.).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment two alternative Commission rules, Rules 11A–1[A] and [B] under the Securities Exchange Act of 1934 ("Act"), to address concerns potentially arising from the failure of market makers or market centers to expose their order flow. Proposed Rule 11A–1[A] is based on a rule proposal submitted by the New York Stock Exchange, Inc. ("NYSE") and would only apply to over-the-counter ("OTC") market makers. Proposed Rule 11A–1[B], which is based in general on principles developed by a committee of the Securities Industry Association, composed of representative segments of the securities industry, would require exchange and OTC market makers to expose customer orders to buying and selling interest of other markets before dealing with these orders as principal. The Commission is also soliciting comment on a third alternative of deferring Commission action on an anti-internalization measure for the present time.

I. Introduction

In the Securities Acts Amendments of 1975,[1] Congress charged the Commission with facilitating the development of a national market system. While not specifically defining what that system should comprise, Congress set forth a number of goals and objectives to guide the development of a national market system. Among these objectives was the enhancement of fair competition among brokers and dealers, exchange markets, and markets other than exchange markets.[2] Consistent with the Congressional desire to enhance competition through the removal of unnecessary regulatory restrictions, Congress specifically instructed the Commission to examine exchange off-board trading restrictions, which prevent exchange member firms from effecting transactions in listed securities other than on an exchange, and to remove off-board trading restrictions that have anti-competitive effects not otherwise justified by the goals or pruposes of the Act.[3]

The Commission considered exchange off-board trading restrictions in several proceedings following adoption of the 1975 Amendments, and concluded that these off-board trading restrictions impose burdens on competition.[4] However, the Commission also recognized that elimination of off-board trading restrictions with respect to principal transactions involved potential risks of internalization[5] of retail order flow by member firms, which in turn raised market fragmentation and fiduciary concerns. Consequently, the Commission has proceeded with caution in addressing off-board principal restrictions.[6] However, after thorough consideration, including six days of public hearings, the Commission in June of 1980 adopted Rule 19c–3 under the Act, precluding the application of off-board principal restrictions with respect to certain securities newly-listed on an exchange.[7]

In adopting Rule 19c–3, the Commission concluded that, at least with respect to Rule 19c–3 securities, the benefits of preserving existing OTC market making in competition with exchange markets, combined with the experiential benefits to the Commission and the industry of observing actual concurrent trading of listed securities by exchange markets and OTC market makers, outweighed the potential risks that might result from removing exchange off-board principal restrictions. In deciding to take action with respect to these principal restrictions, the Commission fully considered internalization concerns identified by commentators, including the potential problems of overreaching of customers by OTC market makers,[8] the fragmentation of order flow among market centers,[9] and adverse competitive effects on exchange market makers and small broker-dealers.[10]

Although the Commission determined to proceed with the Rule 19c–3 experiment, it recognized the significance of the potential internalization concerns raised by commentators. In response, the Commission suggested in the Rule 19c–3 Adoption Release several means by which internalization could be addressed if problems developed in the future, including a rule requiring market makers to hold out agency retail orders to other buying and selling interest for a minimum period of time before executing against that order as principal.[11] In addition, an ongoing surveillance program was established by the Commission in conjunction with the National Association of Securities Dealers, Inc. ("NASD"), to monitor the effects of Rule 19c–3 on the markets, and to detect and take action with respect to any problems that might develop. The Commission also indicated, however, that some internalization type concerns are also present in the trading of listed securities on exchanges, because orders sent to an exchange market are not necessarily exposed to other markets even where there is a superior quotation displayed by another market.[12]

At the time Rule 19c–3 was adopted, the Commission exphasized the importance of developing an effective linkage between exchange trading floors and OTC markets in Rule 19c–3

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[1] Pub. L. No. 94–29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97 ("1975 Amendments").)

[2] Section 11A(a)(1)(C)(ii) of the Act.

[3] Section 11A(c)(4)A of the Act.

[4] *See* Securities Exchange Act Release No. 11942 (December 19, 1975,) at 5–7, 4 FR 4507, 4509; Securities Exchange Act Release No. 13662 (June 23, 1977), at 36–38, 42 FR 33510, 33514 ("June Release").

[5] The Commission has defined the term "internalization" as referring to "the withholding of retail orders from other market centers, for the purpose of executing them in-house, as principal, without exposing those orders to buying and selling interest in those other market centers." *See* Securities Exchange Act Release No. 16388 (June 11, 1980) at 18, n. 31, 45 FR 41125, 41128, n. 31 ("Rule 19c–3 Adoption Release").

[6] For a more complete discussion of prior Commission action concerning off-board trading restrictions, *see* Securities Exchange Act Release No. 15769 (April 26, 1979), at 5–8, 44 FR 26688–89.

[7] Specifically, Rule 19c–3 precludes exchange off-board trading restrictions from applying to reported securities (*i.e.*, securities for which transaction reports are made available pursuant to an effective transaction reporting plan), which were listed on an exchange after April 26, 1979 (the date of the proposal of Rule 19c–3) or which were listed on April 26, 1979 by ceased to be traded on an exchange for any period of time thereafter ("Rule 19c–3 securities").

[8] "Overreaching" refers to broker-dealer firms taking advantage of their customers by executing retail transactions as principal at prices favorable to those customers than could have been obtained had those firms acted as agent. *See* June Release, *supra* Note 4, at 70–84, 42 FR at 33519–21.

[9] Commentators have argued that fragmentation of order flow among disparate market centers potentially might result in a deterioration of the depth, liquidity and continuity of the markets, and a decrease in pricing efficiency. *See* Rule 19c–3 Adoption Release, *supra* note 5, 45 FR at 41128.

[10] *Id.*

[11] Rule 19c–3 Adoption Release, *supra* note 5, 44 FR at 41129. In addition, several alternative rules, proposed in the context of the earlier Rule 19c–2 proceeding with respect to off-board trading restrictions, remain outstanding. *See* June Release, *supra* note 4, 42 FR at 3525.

[12] Rule 19c–3 Adoption Release, *supra* note 5, 45 FR at 41129. Although the ITS participants have adopted trade-through rules that limit the execution of trades at prices inferior to the displayed quotation of another market, *see* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520, it appears that orders initially directed to an exchange often are retained there as a result of the specialist's matching, for purpose of an individual order, the superior quotation of another market.

securities, in order to achieve a greater degree of order interaction between markets, enhance opportunities for best execution, and allow full and effective competition to develop exchange and OTC markets. As a result, the Commission directed the NASD and the exchange participants in the Intermarket Trading System ("ITS")[13] to renew their efforts to develop an automated linkage which would allow orders to be routed efficiently between OTC and exchange markets. The ensuing discussions between the NASD and the ITS participants over a number of months, however, did not result in agreement on implementation of linkage.

Accordingly, after providing the parties an extended opportunity to develop a linkage entirely on their own initiative, the Commission on April 21, 1981, issued an order ("linkage order") mandating the establishment of an automated interface between the ITS and the NASD's enhanced NASDAQ system (referred to as the Computer Assisted Executed System, or "CAES").[14] Although internalization concerns were once again raised by commentators in the context of the linkage order, the Commission, after thorough consideration, determined that the interface would not directly exacerbate internalization concerns as a structural matter.[15] While the Commission maintained that development of a means of addressing internalization concerns was not a prerequisite to an interface and thus should not be allowed to delay the interface's implementation, it noted with approval the willingness of members of the securities industry to attempt to address internalization concerns on their own initiative, and expressed support for the ongoing industry efforts to develop an equitable and efficient resolution of those concerns which would be acceptable to all market participants.[16]

The resulting industry discussions have taken a variety of forms, [17] including discussions sponsored by the Securities Industry Association ("SIA"). Under the auspices of the SIA, a special committee, composed of respresentatives of the OTC and exchange markets, including OTC market maker and exchange specialists, met to develop principles on which an acceptable anti-internalization rule could be based, if one were deemed necessary.[18] After a number of extensive meetings during February and March of this year, the SIA committee reached agreement on certain general principles which should govern any inter-market exposure, rule, should it be determined that such a rule is needed. As discussed below, these principles contemplate that customer orders in Rule 19c-3 securities should be publicly exposed to other market interest. The principles would be generally applicable to all market makers in these securities, whether OTC or on an exchange floor.

In addition, the NYSE has submitted to the Commission a proposed rule incorporating order exposure requirements generally consistent with the SIA committee principles, but applicable only to OTC market makers in Rule 19c-3 securities. In making this submission, the NYSE did not discount the SIA committee's conclusion that additional exposure of public orders on exchange floors as well as in the OTC market also might be desirable. However, the NYSE argued that, because of the conflict of interest inherent in an OTC market maker trading as principal with his customer, concerns raised by the removal of off-broad trading restrictions required more immediate attention.[19] Still, the NYSE did express support for continued industry discussions regarding an exposure rule applicable to all markets.

The Commission regards the development of the general principles by the SIA committee as a highly commendable demonstration of dedication and initiative on the part of the committee members individually and of the securities industry generally. The Commission believes that the principles constitute a step forward in the process of articulating practical methods of addressing generalized order exposure concerns. The Commission also believes that the NYSE's effort to articulate those principles in rule form, reflecting the NYSE's belief that concerns raised by OTC internalization are materially different from concerns raised by the lack of order exposure in exchange markets, provides an important and concrete proposal addressing one aspect of this issue and serves a useful function in focusing industry attention on the issue. Notwithstanding the fact that this progress falls short of full resolution, however, the SIA committee has indicated (in the Commission's view correctly) that, in enunciating its internalization principles, the committee has completed its initial role. The NYSE has argued that, because of the complexity of the issues and the differing interests of sectors of the industry, further progress in addressing internalization concerns requires the active participation of the Commission. In light of the current status of these internalization discussions, the Commission believes that a full public discussion of the SIA committee principles, the NYSE proposal, and the underlying issue of the feasibility of an internalization rule, taking into account its cost and effect on the trading market, can most effectively be conducted now in the context of a Commission rulemaking proceeding.[20]

Therefore, to encourage widespread consideration of these internalization proposals and to promote discussion and comment on the merits of various rule formulations derivable from the SIA

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[13] The ITS is an intermarket communications system operated jointly by certain national securities exchanges, and authorized by the Commission, on a provisional basis, as a national market system facility pursuant to 11A(a)(3)(B) of the Act. The current participants in ITS are the NYSE, and the American, Boston, Cincinnati, Midwest, Pacific and Philadelphia Stock Exchanges. In addition, the NASD has become an ITS Participant as of May 17, 1982. *See* note 14, *infra*.

[14] *See* Securities Exchange Act Release No. 17744 (April 21, 1981) 46 FR 23656 ("Linkage Order Release"). The linkage order orginally set a target date of March 1, 1982, for implementation of the interface. However, because of technical delays and the inability of the NASD and ITS participants to agree on amendments to the plan governing the operation of the ITS ("ITS Plan") necessary to include the NASD in ITS, the Commission postponed the implementation date until May 1, 1982, *see* Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10682, and proposed its own amendments to the ITS Plan. *See* Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10656. In view of the parties' continued inability to agree on the requisite amendments, the Commission has adopted its own amendments to the ITS Plan, including the NASD in ITS but generally deferring other outstanding issues until the end of the interface's six month pilot phase, in order to ensure timely implementation of the interface. *See* Securities Exchange Act Release No. 18713 (May 6, 1982). In addition, the Commission modified the linkage order by deferring the implementation date until May 17, 1982, on order to provide the ITS participants time to implement the Plan Amendments. *See* Securities Exchange Act Release No. 18712 (May 6, 1982).

[15] *See* the Linkage Order Release, *supra* note 14, at 46 FR 23661.

[16] *Id.* at 23660.

[17] *See* the discussion of the internalization negotiations contained in Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10656.

[18] The committee expressly refrained from addressing the question whether an internalization rule was necessary at the present time.

[19] *See* Memorandum Re the Urgent Need For an Anti-Internalization Rule for the Rule 19c-3 Pilot, prepared by the firm of Schiff Hardin & Waite, Special Counsel to the NYSE, contained in Letter from William M. Batten, Chairman, NYSE, to the Commissioners, Securities and Exchange Commission, dated April 8, 1982, at 13 ("NYSE memo").

[20] The Commission cannot emphasize too strongly the absolute necessity of continuing leadership from the SIA committee and other industry participants in coordinating further discussions on development of an equitable and efficient order exposure rule. The momentum created during the past few months must be sustained by immediate recommencement of these industry deliberations.

committee principles, as well as the necessity of an anti-internalization measure at the present time, the Commission has determined to propose for public comment two Commission rules under the Act. The Commission wishes to emphasize that the proposal of these rule formulations for the purpose of soliciting public comment does not constitute a determination that an anti-internalization measure is necessitated by present conditions or by implementation of the interface between the ITS and OTC markets. Indeed, the Commission is specifically requesting comment on the alternative of deferring a decision on an internalization rule, pending further study and evaluation of the results of the Rule 19c–3 experiment. In proposing these alternatives, the Commission is seeking to focus attention on the application of the order exposure principles to the existing markets, in order to further public discussion of internalization questions and to obtain the benefit of industry experience in considering the relative desirability and feasibility of each of the alternative proposals noted above.

II. Summary of Alternatives

The Commission is proposing and solicits comment on the following alternative responses to internalization concerns.

A. Deferring Action on an Anti-internalization Measure. Under this alternative, regulatory action with respect to internalization would not be taken until such time as action was warranted by some specific evidence of significant adverse effects resulting from internalization.

B. *NYSE Rule Proposal.* The NYSE rule proposal, designated proposed Rule 11A–1[A], would apply only to OTC market makers in Rule 19c–3 securities. Under the rule, prior to executing a customer order as principal, an OTC market maker would be required to "stop" (*i.e.*, guarantee the execution of) the customer order, improve his bid or offer (as the case may be) to match the proposed execution price of the customer order, and publicly offer a customer sell order or bid a customer buy order, at an eighth better than the proposed execution price. Alternatively, a market maker could route its customer orders to CAES, but only if the market maker's proprietary traders were unaware of the entry of the order in CAES, and the person handling the order were unaware of the firm's proprietary position. Crossing two or more agency orders in the OTC market would be prohibited, except in CAES.

C. *All Market Exposure Rule Proposal.* The second rule, based on the SIA committee principles, designated proposed Rule 11A–1[B], would apply the order exposure requirements of proposed Rule 11A–1[A] to all market makers in Rule 19c–3 securities, whether off-board or on an exchange floor. Like proposed Rule 11A–1[A], the rule would require all market makers to stop a customer order at the proposed price, and publicly to bid or offer (as the case may be) the order at an eighth better than that price, before executing the order as principal. However, in order to reduce potential adverse effects on market making incentives and market efficiency, the rule would not require market makers to display a principal quotation matching the proposed execution price. Furthermore, OTC agency crosses outside of CAES would be allowed in certain instances. Proposed Rule 11A–1[B] also would contain a CAES order export alternative identical to that of proposed Rule 11A–1[A].

III. Discussion

A. *Deferring Action on Internalization.* In adopting Rule 19c–3, the Commission recognized that increased opportunities for internalization of customer orders would be a collateral consequence of permitting member firms to compete as OTC marketing makers in listed securities. The Commission noted, however, that in addition to providing the benefit of OTC competition in newly listed securities, removal of off-board trading restrictions with respect to Rule 19c–3 securities would provide the Commission with a unique opportunity to evaluate the concerns relating to internalization in a limited context.[21] The Commission also emphasized that the operation of a linkage between the ITS and the OTC markets was essential to a proper assessment of the extent and potential effects of internalization in the context of fully competitive markets.[22] Therefore, the Commission concluded that, in the absence of some demonstrated adverse effects on the markets for Rule 19c–3 securities resulting from internalization by OTC market makers, it would be premature to consider a regulatory response to internalization.[23]

Commentators have raised two primary arguments in opposition to Commission action at the present time with respect to internalization. First, since the inception of Rule 19c–3 no harmful effects relating to internalization have been demonstrated as resulting from OTC trading of Rule 19c–3 securities, and consequently no anti-internalization rule is needed.[24] In this connection, the Commission notes that its surveillance of Rule 19c–3 markets has not revealed any significant negative impact on the quality of these markets resulting from OTC market making in Rule 19c–3 securities.[25] Furthermore, the instances of potential overreaching identified by the NASD's and the Commission's ongoing monitoring efforts have been negligible.[26] Given these conditions, one commentator has stated that adoption of an anti-internalization measure by the Commission, in advance of any demonstrated internalization problems, would constitute "the essence of overregulation."[27] Indeed, other commentators, including a participant in the SIA committee, have suggested that it would be premature to evaluate internalization concerns before an automated interface went into effect, because such an interface could significantly ameliorate potential internalization concerns.[28] In particular, commentators have argued that the existence of a competitive environment, in addition to existing market information systems, would help provide discipline against overreaching of customers by dealers.[29] Commentators emphasized that this competitive discipline was, of course, supplementary to the fiduciary responsibilities of best execution owed by a market maker to a

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[21] *See* Rule 19c–3 Adoption Release, *supra* note 5, 45 FR at 41130.

[22] *See Id.* at 41127; *see also* Linkage Order Release, *supra* note 14, at 46 FR 23857.

[23] *See* Rule 19c–3 Adoption Release, *supra* note 5, 45 FR at 41128; Linkage Order Release, *supra* note 14, 46 FR at 23857.

[24] *See* Letter from Elliot Smith, Bache Halsey, Stuart Shields, Inc.; William G. Morton, Dean Witter Reynolds, Inc.; Sam Scott Miller, Paine, Webber Jackson & Curtis, Inc.; and Thomas Sullivan, Smith Barney, Harris Upham & Co. Inc., to John S. R. Shad, Chairman, Securities and Exchange Commission, dated March 16, 1982 ("March 16 Letter").

[25] Securities and Exchange Commission, *A Monitoring Report on the Operation and Effects of Rule 19c–3 under the Securities Exchange Act of 1934*, August, 1981 ("Monitoring Report").

[26] *See, e.g.*, Monitoring Report, *supra* note 25, at 35.

[27] *See* Letter from Jeremiah A. Mullins, Chairman, and Morton Weiss, President, National Security Traders Association, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, dated, March 24, 1982, at 2 ("NSTA Letter").

[28] *See* Letter from H. C. Piper, President, and Kenneth J. Wessels, Senior Vice President, Piper, Jaffray, & Hopwood, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, dated, March 31, 1982, ("Piper, Jaffray Letter") at 2; NSTA Letter, *supra* note 27, at 2.

[29] *See* March 16 Letter, *supra* note 24, at 2; *See also* Rule 19c–3 Adoption Release, *supra* note 5, at 41129.

customer.[30] Commentators also have argued that, because of the efficiencies involved, internalization of order flow can result in benefits to customers, and consequently an anti-internalization rule would constitute a new artificial restraint on market making to the detriment of the public.[31]

The second argument against an anti-internalization measure is that it would have a detrimental impact on OTC market making. Commentators have argued that an anti-internalization measure, and in particular an order exposure rule such as proposed Rule 11A–1[A] or [B], would make it both expensive and cumbersome for a firm to execute customer orders from its own account.[32] These commentators assert that by imposing order exposure requirements that impair the efficiency of in-house execution of customer orders, such a rule would seriously reduce the profitability of a firm functioning as a Rule 19c–3 market maker and thus reduce incentives to make competitive markets in Rule 19c–3 securities. In addition, because the bulk of the order flow in Rule 19c–3 securities continues to be routed to the primary exchange markets, OTC market makers have had little opportunity to attract order flow other than from their own retail customers.[33] Consequently, impeding efficient execution by member firms of retail customers orders could seriously affect their ability to continue their market making function, thus reducing the potential for OTC market maker competition with exchange markets, and curtailing the Commission's experiment with concurrent OTC and exchange market making.

On the other hand, several arguments have been advanced in favor of an anti-internalization measure involving order exposure requirements, on grounds distinct from the question of whether in internalization measure is necessary to eliminate potential overreaching by OTC market makers. In particular, it appears that the changes in the manner of market making inherent in the order exposure alternatives of proposed Rule 11A–1 [A] and [B], discussed in greater detail below, could result in significantly increased opportunities for competition for order flow between markets and market makers, and in improved executions for public customers' orders.

By requiring that customers' orders in Rule 19c–3 securities be publicly bid or offered through the Consolidated Quotation System [34] before execution as principal, the order exposure requirements of the two alternative rules would provide other markets with access through ITS to the internal order flow of an OTC market maker, and, in the case of proposed Rule 11A–1[B], an exchange. As a result, market makers would for the first time be able to compete aggressively for other markets' order flow, offering the possibility of the development of vigorous intermarket competition, with possible resultant benefits for the quality of the markets.

In addition, these order exposure requirements could benefit public customers by requiring affirmative efforts on behalf of customer orders, augmenting those owned pursuant to a firm's fiduciary best execution responsibility.[35] The practical effect of the order exposure rules, in combination with the ITS participant's trade-through rules, would be to require a firm, prior to executing a customer order as principal, actively to seek a better execution than that evidenced by existing quotations. Specifically, a firm would be required publicly to bid or offer the customer order at an eighth better than its proposed execution price, which must equal the best prevailing quotation to avoid a trade-through, in order to elicit any interest at that better price from other market centers.

With respect to the alternative of deferring action on an anti-internalization measure, the Commission solicits comments (1) on whether an anti-internalization measure is necessary at the present time, and (2) on the likely effects of an anti-internalization measure on the efficiency of the operation of OTC market makers, and their willingness to continue engaging in Rule 19c–3 market making subject to an anti-internalization measure. In addressing the need for an anti-internalization rule and the effects on market makers of such a rule, the Commission requests commentators to address whether an order exposure rule would further additional national market system objectives by enhancing pricing efficiency, increasing competition for order flow, and providing better executions for public customers.

B. Proposed Rules

1. *Description of the NYSE Rule.* The NYSE's proposed rule, which is being proposed by the Commission for comment as Rule 11A–1[A], would impose certain restrictions on the manner in which OTC market makers in Rule 19c–3 securities deal as principal with customer orders.[36] Specifically, the broker-dealer would have to follow one of two alternative sets of procedures before dealing as principal.

First, the broker could expose the order to other market centers (the "order exposure" alternative) by: (i) "Stopping" the total number of shares of the order (*i.e.*, guaranteeing the execution of the order) at the intended execution price; [37] (ii) exposing the customer order at a price ⅛ better than the intended execution price for 60 seconds; and (iii) publishing a quotation at the stop price for his own account for 60 seconds, in a size equal to the customer order. After doing so, if the customer did not receive an execution at the superior price, the broker-dealer may execute the order as principal.[38] Rule 11A–1[A] would except the broker-dealer from the requirement that he expose the customer order at a price ⅛ better if his existing published quotation represents a customer order at that price and is maintained for 60 seconds.[39] Similarly, the broker-dealer would not have to publish a quotation for his own account at the stop price if

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[30] *See* March 16 Letter, *supra* note 24, at 2; Piper, Jaffray Letter, *supra* note 28, at 1.

[31] *See* March 16 Letter, *supra* note 24, at 2.

[32] *See* March 16 Letter, supra note 24, at 2; *see also* Letter from Jerry Williams, Jerry Williams Inc., to John S. R. Shad, Chairman, Securities and Exchange Commission, dated April 14, 1982.

[33] *See* Monitoring Report, *supra* note 25, at 15–17.

[34] The Consolidated Quotation System collects quotations in reported securities from all participating market centers and makes these quotations available in the form of a single consolidated data stream. The System was approved on a permanent basis on January 22, 1980. *See* Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521.

[35] *See* Rule 19c–3 Adoption Release, supra note 5, at 41130, n. 60; *see also* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 63 at n. 30.

[36] "Customer" is defined in Section (d)(13) of the rule to include, generally, (i) any person other than a broker-dealer and (ii) any person from whom an order has been accepted for execution, but only with respect to orders so accepted.

[37] In order to avoid trading through other ITS markets (*i.e.*, trading at an inferior price than available in other ITS markets), the stop price would have to be at least as good as the best price then available in any participating ITS market.

[38] For example, assume a customer sends an order to sell 500 shares of XYZ, a 19c–3 security, and the broker-dealer's quotation is 19⅞ bid, 20¼ asked (both for 100 shares), with the inside ITS market being 20 bid, 20¼ asked. The broker-dealer would have to (i) stop the order at 20; (ii) offer the 500 shares for the customer at 20⅛ (⅛ above the stop); and (iii) bid for the 500 shares at 20 as principal (the intended execution price). After publishing those quotations for 60 seconds, the broker-dealer could buy the 500 shares as principal at 20.

[39] If the quotation is for a proprietary account, the broker-dealer would have to increase the size of the quotation by the size of the customer order.

he already has published such a quotation and maintains that quotation for at least 60 second after receipt of the order.[40]

The second alternative available to the broker-dealer would be to enter the order into CAES otherwise than directing the order to himself for execution. This alternative (the "order export" alternative) also would require the broker-dealer to put in place procedures which would preclude (i) persons at the broker-dealer's firm responsible for proprietary trading in that security from having any knowledge of the customer order prior to its entry into CAES; and (ii) having persons responsible for dealing with customer orders in that security from having any knowledge of the firm's proprietary positions or trading strategy in that security (the "knowledge limitation").

In addition, the rule would require that all agency cross transactions not executed on a national securities exchange would have to be entered into CAES. Finally, Rule 11A–1[A] would exclude from its "hold out" and "order export" requirement certain types of transactions, including block transactions,[41] tender offers, certain distributions and odd lots.[42]

2. *Description of the All Market Exposure Rule.* The SIA Special Committee on the ITS–NASD Market Linkage was comprised of representatives of integrated warehouses, regional broker-dealers, block and institutional broker-dealers and exchange specialists. Although the committee has not finished its work and has not propose a specific rule, it did develop a set of principles describing an order exposure rule to address internalization, if it is determined that an anti-internalization rule is necessary. The Commission has taken those principles and applied them generally to the NYSE rule in order to proposed an alternative rule for public comment. That rule, proposed as Rule 11A–1[B], while generally based on the SIA committee principles, also includes provisions contained in the NYSE rule as well as provisions not directly addressed by the committee, but which the Commission believes may make trading pursuant to the rule more efficient.

Rule 11A–1[B] reflects the SIA committee's agreement that any rule addressing internalization should apply both to OTC market makers and exchange specialists in Rule 19c–3 securities. The rule also reflects the SIA committee's agreement that a rule should contain an order exposure alternative similar to that contained in the NYSE rule. The SIA committee principles, and thus prposed Rule 11A–1[B], differ from the NYSE rule in that the order exposure alternative would require only that the customer's order be exposed at a better price than the existing quotation, and not that the dealer expose his principle interest in the order at the intended execution price. Rule 11A–1[B], however, like Rule 11A–1[A] would require a stop at the intended execution price.

Not addressed in the SIA principles is the procedure to follow when the dealer already has outstanding a quotation at a price ⅛ superior to the intended execution price. The Commission is proposing, as an alternative to the procedure suggested by the NYSE, that the market maker need not increase the size of that quotation as long as the size of the quotation is at least that of the customer order, even if the market maker's quotation is as principal. The customer order, however, would be "deemed" to be represented by the market maker's quotation for 60 seconds after receipt of the customer order. Thus, if during that 60 second period, the market maker's quotation is executed against, the Rule would require that the customer order receive the benefit of the execution.[43]

With respect to agency crosses, the SIA committee indicates that it has not completed its deliberations on the subject but is working on the concept of a general order exposure requirement. While the Commission encourages the SIA Committee to continue its efforts to develop a more detailed description of how they expect such a requirement to work, Rule 11A–1[B] would permit OTC market makers to execute agency crosses if (i) the inside ITS market has a spread greater than ⅛ and the cross is executed between those quotations, or (ii) the inside ITS market is a ⅛ spread and the cross is executed at either the bid or the offer.

With respect to the order export alternative, although such a specific alternative was not proposed by the SIA committee, the Commission believes that such an alternative may enhance efficient compliance with the Rule for brokerage firms with a large retail business. Therefore, the Commission has included an order export alternative in proposed Rule 11A–1[B]. The Commission also has included in Rule 11A–1[B] the exemptions proposed in the NYSE rule and the authority for the Commission to grant exemptions from the rule.

3. *Discussion.* There appear to be two general issues posed by the consideration of any specific rule to address concerns regarding the lack of order exposure. First, should the rule apply only to one market as the NSYE rule does, or should the rule apply to all markets in Rule 19c–3 securities as the all market exposure rule does?[44] Second, regardless of which markets are subject to the rule, what specific restrictions should be imposed on broker-dealers before they can deal as principal with customer orders?

With respect to the markets to be covered by the rule, in proposing an anti-internalization rule addressing only the OTC market in Rule 19c–3 securities, the NYSE argues that the problems presented by OTC internalization have no true counterparts in other types of markets, and that it is not helpful to equate the OTC market for Rule 19c–3 securities with exchange markets. Generally, the NYSE argues that, while exchange specialists can deal as principal, they must follow exchange auction rules and, among other things, expose customer orders on the floor of

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[40] If a broker-dealer's proprietary quotation is accepted in whole or in part by one or more third parties, and the broker-dealer subsequently revises his quotation, superseding the quotation representing the customer order, the broker-dealer, is deemed to have met the hold out requirements and may execute the customer order at the stop price. For example, in the example in note 38, *supra*, if the broker-dealer's bid of 20 is accepted and the broker-dealer lowers his quotation to 19⅞ bid, 20 asked, the broker-dealer can execute the customer's 500 share sell order at 20.

[41] A block is defined in section (d)(17) of the rule to be 10,000 shares or a quantity of stock having a market value of $200,000 or more.

[42] The Commission has made a number of minor technical changes to the NYSE submission. These changes include exempting from the rule transactions outside normal business hours (exchange off-board trading restrictions do not apply at such time), adding definitions of "effective transaction reporting plan," "transaction report," "ITS," "CAES," "third market maker," and "broker-dealer" and giving the Commission the authority to grant exemptions from the rule.

[43] Rule 11A–1[B] also provides that, if the broker-dealer changes his quotation to the stop price during the 60 seconds that a customer's order is exposed either due to an execution at this quotation price or otherwise justified by market conditions, the broker-dealer will have satisfied his hold-out obligations and may execute his customer's order at the stop price. For example, if the broker-dealer has stopped his customer sell order at 20, and has a preexisting customer offer outstanding at 20⅛, which then is executed against in whole, the broker-dealer can lower his offer to 20, the stop price, and execute the customer's sell order at that price. Similarly, if the market moves down, and the broker-dealer wants to lower his principal offer to 20, the broker-dealer may do so if he executes the customer order at the stop price (20), even if the customer order had not been exposed for 60 seconds.

[44] In addition, the rule theoretically could apply to a designated subset of markets, such as the primary exchanges and the OTC market, but not the regional exchanges.

their respective exchanges before executing the order as principal. On the other hand, the NYSE argues that the OTC market consists of integrated broker-dealers who both make markets as principal and deal with their customer order flow on a fiduciary basis without an independent agent determining in which market the order should be executed, and without exhange-type auction trading protection.[45] This, the NYSE argues, requires special anti-internalization procedures to be imposed on the OTC market for Rule 19c–3 securities. The NYSE, however, does acknowledge that there are limitations on order exposure in other markets (although, according to the NYSE, long-standing and distinguishable) with respect to which corrective action may ultimately be desirable. Nevertheless, the NYSE does not believe that such limitations need be addressed concurrently with resolving concerns regarding OTC internalization in Rule 19c–3 securities.

The SIA committee, in contrast to the NYSE, reached the conclusion that any Commission rule should apply to all markets with respect to Rule 19c–3 securities, and not just the OTC market. Although not stated explicitly by the committee, it appears that the committee members concluded that, to the extent enhanced order exposure is a principal goal in this context, any rule should include exchange markets as well as the OTC market. While each exchange member does make an independent decision as to which market to send its customer orders, the Commission understands that the firm's decision is generally made by designating one market to which it sends all of its retail order flow. Because most brokerage firms do not route on an order by order basis to the best displayed quotation, once that firm has designated a market for receipt of its retail order flow in a particular security, in effect, the specialist in that market is in a competitive position comparable to an upstairs firm because no other market participant can successfully attract those orders from him.[46] These competitive similarities are greatest with respect to orders which are routed through the various exchange small order processing systems directly to the specialist, without an independent floor broker handling the order. The Commission also notes that expanding an order exposure rule to all markets would provide customer orders in all markets the opportunity to achieve a better execution through exposure to other market interest. In addition, such an all market rule might allow for increased pricing efficiency, and the exposure of all orders to trading interest in all markets potentially could lessen concerns about fragmentation of the markets.

The Commission specifically requests comment on these positions and arguments concerning which markets should be subject to an order exposure rule. In this regard, the Commission requests commentators to focus on the structural differences between the OTC and exchange markets and to assess how those differences affect implementation of the order exposure principle.

Finally in this regard, the Commission recognizes that those regional exchanges which have small order execution systems which price derivatively off the best ITS quotations (or certain exchange quotations) may have considerable difficulty adapting such systems to comply with either rule under consideration. Therefore, the Commission requests comment on the effects of a "hold out" requirement on regional exchanges and whether, if a rule were to be adopted for all markets, the regional exchanges should be given a certain amount of time to adapt their systems to comply with the rule, or whether any other type of relief may be appropriate.

The second general issue with respect to an order exposure rule to be addressed, is, regardless of which markets are covered by such a rule, what requirements should the rule impose on broker-dealers before they execute a customer's order as principal? In this regard, while the NYSE rule and the rule based on the SIA Committee principles have much in common, there are significant differences.

The Commission notes that while both rules contain a hold out alternative, the NYSE believes that, with respect to that alternative, it is necessary for OTC market makers not only to attempt to achieve an execution for the customer ⅛ better than the current quotation, but to expose his own intention to deal as principal at the stop price. The NYSE apparently believes that this is important to ensure that OTC market makers are publicly disseminating quotations representing the best price at which they are willing to trade. While this requirement does eliminate the possibility that OTC market makers could execute their customer orders in a "hidden market" without providing other market participants any access to that market, it also might increase market making risks by exposing OTC market makers to the risk of double executions each time they export a customer order.[47]

Rule 11A–1[B], on the other hand, requires exposure only of the customer order. While this requirement is easier to meet administratively, and eliminates the possibility of a double execution, it would not require dealers to expose directly their actual principal interest.

The Commission requests comment on which version of the hold out requirement is most appropriate. In particular, the Commission requests comment on whether the possible increased market access and competition that may result from the NYSE proposal outweigh the possible burden on market making efficiency and risk that may result from holding out principal, as well as customer, interest.

A second difference between the two hold out requirements concerns the procedures to follow when the dealer already is disseminating a bid (or, in the case of a customer buy order, an offer) as principal, at ⅛ better than the customer order, in a size at least as large as the customer order. While Rule 11A–1[A] would require that the customer order be "exposed" by increasing the size of the bid (offer) by the size of the customer order, Rule 11A–1[B] would exempt the dealer from

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[45] The NYSE recognizes that the traditional OTC market for unlisted securities is, to an extent, a "sponsored" market, based somewhat on internalization. While the NYSE does not believe that this is a desirable model for exchange-listed stocks, the NYSE believes such a market is suitable (and perhaps necessary) with respect to the vast majority of stocks traded OTC, and does not believe an anti-internalization rule should be imposed with respect to unlisted stocks. The Commission also recognizes that order exposure techniques for Rule 19c–3 securities may not be readily transferable to the OTC market for unlisted securities and that such techniques could seriously disrupt the existing competitive dealer structure for trading the vast majority of OTC stocks. While the Commission encourages the OTC community to enhance the order routing and execution capabilities in its market, the Commission has no intention of mandating any internalization rule for the OTC market in unlisted stocks, because of the different competitive structure of that market.

[46] Of course, ITS enables competing market makers to attract some orders by the display of superior quotations. However, the specialist holding the order may avoid any obligation to send that order away by matching the best bid or offer (as the case may be) in ITS.

[47] For example, if a broker-dealer wished to execute a sell order at 50, he first would have to offer that order at 50⅛ and change his own bid to 50 for a minimum of 60 seconds. If, during that 60 seconds, his bid is hit and the customer's offer is not, the broker-dealer would be required to honor his stop, thus purchasing twice as much stock as he wished. If this example occurred while the market was moving downward, the broker-dealer might be exposed to a substantial risk of trading losses.

any further requirements.[48] In this regard, the Commission requests that commentators balance the benefits of all markets participants being informed of all customer interest[49] against the administrative burdens of increasing quotation size for 60 seconds.[50]

A final difference between the two order export requirements involves agency crosses. The NYSE rule would prohibit OTC agency crosses unless firms route such transactions through CAES. Rule 11A–1(B), on the other hand, would exempt agency crosses from any requirement as long as the orders are executed between the quotations, or, if the spread is ⅛ point, at either quotation. In proposing this exemption for agency crosses, the Commission notes that if the execution is between the quotations both customers are receiving a superior price than they might otherwise receive. Moreover, it may be somewhat anomalous to impose greater restrictions on upstairs execution of agency cross transactions because (i) those transactions may not raise the same conflict of interest concerns present with respect to principal transactions, and (ii) there would appear to be limited occasions in which a customer buy and sell order would arrive together at one firm. Agency cross transactions therefore would appear to have a more limited effect on competition between marketplaces than market maker principal transactions. Finally, the Commission notes that CAES currently does not have the ability to accept agency crosses as such, but requires each side of the cross to be entered separately. Accordingly, the Commission requests comment on these differing approaches to agency cross transactions, and, in addition, invites commentators to suggest alternative means to address this issue.[51]

The Commission also requests comment on those aspects of the two rules that contain the same requirements. For example, the Commission notes that both rules would prohibit OTC market making in Rule 19c–3 securities included in the automated interface otherwise than by ITS/CAES market makers. The Commission requests comments on whether this limitation is appropriate or whether all broker dealers should continue to be allowed to trade such securities OTC, with only those broker-dealers with access to the automated interface subject to the rule.

Both rules also provide exceptions for block transactions. The Commission preliminarily believes that this is appropriate and that concerns regarding block transactions can best be addressed through the current block application of the ITS trade-through rules and through the development of mechanisms to protect away-from-the-market orders from block executions at inferior prices. The Commission specifically requests comment on the appropriateness of the block exception.[52]

The Commission also requests comment on the desirability of providing an order export alternative. If it is believed that such an alternative is appropriate, the Commission requests comment on the advisability and practicability of including the "knowledge limitation" as part of that alternative. In this regard, the Commission interprets the knowledge limitation not to require the physical separation of a firm's proprietary and agency trading activity, but that a firm would meet this limitation if it had in place procedures which ensured that coordinated agency and principal orders would not be entered into CAES. The Commission requests comment, however, on whether actual physical separation is necessary in order to ensure that OTC market makers do not enjoy inappropriate competitive advantages with respect to their customers' orders.

The Commission also requests comment on the other common aspects of the two rules. Those areas include: (i) The effect and necessity of stopping the customer order at the intended execution price, although the market may move adversely to the broker-dealer during the time of the stop, and, in particular, whether such a requirement poses an inappropriate burden on competition if only imposed on OTC market markers; (ii) whether 60 seconds is an appropriate length of time (or too long or too short) to impose the stop and disseminate the quotations; (iii) the clerical difficulty of changing only one side of a quotation or quotation size on the current NASDAQ terminals;[53] and (iv) what effect the "stop" requirement would have on existing exchange rules in the area.[54]

Finally, the Commission requests comment on whether it would be appropriate to provide an exception from any rule for small orders of 200 shares or less (or any other size commentators may believe would be appropriate). In this regard, the Commission notes that in January 1982, orders for 200 shares or less accounted for 43.7% of the transactions executed on the NYSE, but only 5.1% of the share volume executed on that exchange. Therefore, the Commission requests commentators to balance the potential increased efficiency in handling small orders that may result from such an exception against the possible adverse effects on best execution, pricing efficiency and market making competition of removing such orders from the public market place.[55]

IV. Conclusion

The Commission is requesting comment both on the need for a rule addressing internalization at the present time and, if a rule is believed necessary, on specific proposals based on industry submissions. The Commission has reached no conclusions regarding the need for such a rule or on the relative merits or shortcomings of the specific proposals. The Commission's action today should be viewed as an effort to stimulate the industry to continue their deliberations on this issue and to seek some accommodation, if not complete consensus, on an appropriate resolution of the matter for purposes of the rule 19c–3 experiment. The Commission and

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[48] As discussed above, however, the customer's order would, in effect, be substituted for the dealer's quotation and the customer would receive the benefit of any execution at that price.

[49] The Commission notes, however, that in both rules, if the broker-dealer's bid or offer already is an agency order, the broker-dealer does not have to expose any other agency order of the same or lesser size.

[50] For a further discussion of this administrative difficulty in the OTC market, *see* note 53, *infra*.

[51] Other approaches to dealing with agency crosses include variations of the hold out approach. For example, a broker-dealer could be required to hold out both the buy and sell order (presumably not simultaneously to avoid a locked or crossed market. Alternatively, the broker-dealer could be required to hold out only one side of the order.

[52] The Commission understands that the SIA committee intends to continue its deliberations with respect to the need for imposing order exposure concepts on block transactions. The Commission encourages this further consideration and invites all other prospective commentators to address this issue.

[53] Current NASDAQ terminals allow for the relatively easy changing of both of a market maker's quotations in the same direction for the same number of shares. It is significantly more cumbersome, however, to make other types of quotation changes. The Commission also notes, however, that because proposed Rule 11A–1[B] does not require exposure of principal interest, or the adjusting of quotation size if there is an outstanding principal quotation at the appropriate price, and size, that rule often would require fewer adjustments of quotations.

[54] *See, e.g.*, NYSE Rule 116.

[55] The Commission also requests comment on whether there should be a *de minimis* exception for exchanges or market makers with a minimal level of activity in the subject Rule 19c–13 securities. *Cf.* Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7399 (providing an exception from Rule 11Ac1–1 for market centers with less than one percent of the quarterly aggregate trading volume in a Rule 19c–3 security).

its staff are fully committed in their support of the industry in this endeavor.

V. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (the "Analysis") in accordance with 5 U.S.C. 603 regarding proposed alternative Rules 11A–1(A) and 11A–1(B).

The Analysis notes that although the securities industry has made progress in developing an approach to addressing concerns related to the internalization of customer orders, the difficulty of the industry groups to reach a final consensus approach on all aspects of internalization necessitates that the Commission take an active role in this area. In this connection, the objective of this rulemaking is to present three specific approaches by which the Commission can address internalization concerns at this time, including two alternative order exposure rules, and an alternative which takes no regulatory action in the absence of demonstrable harm caused by internalization.

The Analysis notes that both of the proposed rules could potentially apply to all broker-dealers who make markets in 19c–3 securities which are eligible to be traded through the ITS/CAES interface.[56] The Analysis also notes that although both rules would impose certain administrative compliance costs on broker-dealers, and could increase their market making risks, each rule offers a broker-dealer the option of competing for its own order flow by exporting its customer orders to CAES. In this connection, the analysis notes that because of the relatively small numbers of customers orders handled by a small broker-dealer, the administrative burdens of this rule on those broker-dealers would appear small. Moreover, the analysis notes that both rules also provide all market makers new competitive opportunities by permitting them to access the customer orders exposed by other markets. The Commission is soliciting comment on the precise impact of each proposed alternative, and will utilize this information in seeking to adopt the approach which minimizes the burdens on broker-dealers while still effectively addressing valid internalization concerns.

A copy of the Analysis may be obtained by contacting William W. Uchimoto, (202) 272–2906, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549 (after July 15, 1982, 450 5th Street, NW., Washington, D.C.).

[56] Proposed Rule 11A–1[B] also would apply to all national stock exchanges trading Rule 19c–3 security. The Commission notes, however, that no national stock exchange trading Rule 19c–3 security is defined as a small entity. *See* Rule 0–10(e) under the Act.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

VI. Text of Proposed Rules

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

The Securities and Exchange Commission hereby proposes to amend Part 240 of Title 17, Chapter of the Code of Federal Regulations, pursuant to its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975)), particularly Sections 2, 3, 6, 9, 10, 11, 11A, 15, 15A, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78k, 78K–1, 78*o*, 78*o*–3, 78q and 78w), by adding §§ 240.11A–1[A] and 240.11A–1[B] to read as follows:

§ 240.11A–1[A] Public exposure of customer orders.

(a) *Principal Transactions.* No broker-dealer shall buy (sell) a subject 19c–3 security from (to) a customer for a proprietary account of the member otherwise than on a national securities exchange unless:

(1) The broker-dealer (i) is registered and acting as an ITS/CAES market maker in the subject 19c–3 security; (ii) has access to, and the published bids and offers of such broker-dealer in the subject 19c–3 security can be reached through, the ITS/CAES Interface; and (iii) complies with paragraph (a)(2) of this section or, as an alternative, paragraph (a)(3) of this section is complied with.

(2) The broker-dealer completes the steps set forth in clauses (i)–(iv) of this paragraph:

(i) The broker-dealer must "stop" (*i.e.*, guarantee the execution of) the total number of shares he intends to buy (sell) at his intended purchase price from (sale price to) the customer (hereinafter referred to as the "stop price");

(ii) Subject to the provisions of paragraph (a)(2)(v) of this section, the broker-dealer must publish for at least 60 seconds an offer (bid) on behalf of the customer, in a size equal to the number of shares he intends to buy from (sell to) the customer, at an offer price which is ⅛ higher (bid price ⅛ lower) than the stop price;

(iii) Subject to the provisions of paragraph (a)(2)(v) of this section, the broker-dealer must publish for at least 60 seconds a bid (offer) for his own account, in a size equal to the number of shares he intends to buy from (sell to) the customer, at the stop price;

(iv) After completing the steps required by paragraphs (a)(2) (i), (ii) and (iii) of this section, the broker-dealer may (and under his "stop" must) immediately execute the customer's order (or whatever portion thereof remains unexecuted after publication of an offer (bid) on behalf of the customer in accordances with paragraph (a)(2)(ii) of this section) at the stop price, as principal.

(v) The following shall be applicable to clauses (ii), (iii) and (iv) of this paragraph:

(A) The requirements of paragraph (a)(2)(ii) of this section shall be deemed to be satisfied so long as the offer (bid) otherwise being published by the broker-dealer and maintained for at least 60 seconds, exclusive of any portion thereof which is for a proprietary account of the broker-dealer, meets the price requirement and meets or exceeds the size requirement of paragraph (a)(2)(ii) of this section;

(B) The requirements of paragraph (a)(2)(iii) of this section shall be deemed to be satisfied so long as the bid (offer) otherwise being published by the broker-dealer and maintained for at least 60 seconds includes a bid (offer) for the broker-dealer's own account which meets the price requirement and meets or exceeds the size requirement of paragraph (a)(2)(iii) of this section;

(C) The offer and bid (bid and offer) required to be published and maintained under paragraphs (a)(2) (ii) and (iii) of this section may each be reduced in size to the extent of any partial acceptance by one or more third parties of the customer's offer (bid) required to be published under paragraph (a)(2)(ii) of this section occurring within the 60-second period contemplated by paragraphs (a)(2) (ii) and (iii) of this section; and, apart from any reduction for that reason, the broker-dealer's bid (offer) required to be published and maintained under paragraph (a)(2)(iii) of this section may be reduced in size to the extent of any partial acceptance thereof by one or more third parties occurring within the 60-second period contemplated by paragraph (a)(2)(iii) of this section;

(D) If a bid (offer) for a proprietary account of a broker-dealer required to be published and maintained for 60 seconds under paragraph (a)(2)(iii) of this section has been accepted in whole by one or more third parties, and if the broker-dealer thereafter publishes an offer (bid) which is lower (higher) than

the offer (bid) on behalf of a customer required to be published and maintained for 60 seconds under paragraph (a)(2)(ii) of this section, he shall be deemed to have completed the steps required by paragraphs (a)(2) (ii) and (iii) of this section.

or

(3) The customer's order is entered in ITS/CAES without being directed specifically to the broker-dealer for execution and is executed in ITS/CAES under circumstances that preclude (i) all persons responsible for making bids or offers or effecting transactions for the broker-dealer's proprietary account in that security from having any knowledge of the existence of that customer's order prior to its entry in ITS/CAES, and (ii) all persons responsible for the solicitation of customers' orders or for the manner and timing of entry of such orders in that security in ITS/CAES from having any knowledge of positions or trading strategies then existing for the broker-dealer's proprietary account in that security.

(b) *Agency cross transactions.* No broker-dealer shall effect an agency cross transaction involving subject 19c–3 securities unless such transaction is executed on or through the facilities of a national securities exchange or in ITS/CAES.

(c) *Exclusions.* The provisions of this rule shall not apply to:

(1) Any principal transaction or agency cross transaction involving a block;

(2) Any transaction which is part of a primary distribution by an issuer, or a registered or unregistered secondary distribution;

(3) Any transaction made in reliance on Section 4(2) of the Securities Act of 1933;

(4) Any trade at a price unrelated to the current market for the security involved for the purpose of correcting an error or the enable the seller to make a gift;

(5) Any transaction pursuant to a tender offer;

(6) Any purchase or sale effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire a security at a pre-established consideration unrelated to the current market for such security;

(7) Any transaction for less than 100 shares; or

(8) Any transaction effected outside of the normal operating hours of the ITS/CASE interface.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker, dealer, transaction or class of transactions if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(e) *Definitions.* For purposes of this rule:

(1) The term "19c–3 security" means any security listed on a national security exchange for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, other than a "covered security" as defined in § 240.19c–3 (Rule 19c–3 under the Act).

(2) The term "effective transaction reporting plan" shall mean any plan approved by the Commission pursuant to § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) for collecting, processing, and making available transaction reports with respect to transactions in an equity security or class of equity securities;

(3) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(4) The term "subject 19c–3 security" shall mean any 19c–3 security which is eligible to be traded through the ITS/CAES Interface.

(5) The term "Intermarket Trading System" ("ITS") shall mean the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission pursuant to § 240.11Aa3–2 (Rule 11Aa3–2 under the Act).

(6) The term "Computer Assisted Execution System" ("CAES") shall mean the computerized order routing and execution system owned and operated by the National Association of Securities Dealers Inc. ("NASD") as part of the NASDAQ inter-dealer quotation system.

(7) The term "ITS/CAES Interface" shall mean the automated interface between the ITS and CAES.

(8) The term "ITS/CAES "means the linked trading systems connected by the ITS/CAES Interface.

(9) The term "ITS market" shall mean, with respect to any subject 19c–3 security, any national securities exchange which is a participant in the ITS Plan and trades such security through ITS and any ITS/CAES market maker in such security.

(10) The term "ITS/CAES market maker" shall mean, with respect to any subject 19c–3 security, any third market maker that is registered as a market maker in such security with the NASD for purposes of use of ITS/CAES.

(11) The term "third market maker" shall mean, with respect to any subject Rule 19c–3 security, any broker-dealer who holds himself out as being willing to buy and sell such security for his own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size (including any such person who also represents as agent, orders to buy and sell such security on behalf of any other person and communicates bids and offers to a national securities association pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act) on behalf of such other persons as well as for his own account).

(12) The term "broker-dealer" shall mean any brokers or dealers.

(13) The term "customer" of a broker-dealer shall mean (i) any person other than a broker or dealer, except that the term "customer" shall include a broker or dealer (A) which, directly or indirectly, controls, is controlled by or is under common control with the broker-dealer, or (B) whose customers' accounts are introduced to the broker-dealer and are carried by it on either a disclosed or undisclosed basis; and (ii) any person from whom an order has been accepted by the broker-dealer for execution as agent, but only with respect to orders so accepted.

(14) The term "proprietary account" shall mean any one or more accounts in which the broker-dealer has a direct or indirect interest.

(15) A bid or offer shall be "published" when it is made available by a national securities association to a quotation vendor pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act) and is displayed in CAES.

(16) The term "intended purchase price from (sale price to) the customer" in a principal transaction shall exclude any commission, commission equivalent, differential or comparable charge to be imposed by the broker-dealer in connection with the transaction.

(17) The term "block" shall mean a transaction of 10,000 shares or more or involving a quantity of stock having a market value or $200,000 or more.

(18) For purposes of this rule, a riskless principal transaction shall be considered to involve a purchase from or sale to a customer.

§ 240.11A–1[B] Public exposure of customer orders.

(a) *Principal Transactions.* No broker-dealer shall buy (sell) a subject Rule

19c–3 security from (to) a customer for a proprietary account of the broker-dealer unless:

(1) The broker dealer (i) is registered and acting as an exchange market maker or ITS/CAES market maker in the subject Rule 19c–3 security; (ii) has access to, and the published bids and offers of such broker-dealer in the subject Rule 19c–3 security can be reached through, the ITS/CAES Interface; and (iii) complies with paragraph (a)(2) of this section, or as an alternative, paragraph (a)(3) of this section is complied with.

(2) The broker-dealer completes the steps set forth in clauses (i)–(iii) of this paragraph:

(i) The broker-dealer must "stop" (*i.e.*, guarantee the execution of) the total number of shares he intends to buy (sell) at his intended purchase price from (sale price to) the customer (hereinafter referred to as the "stop price");

(ii) Subject to the provisions of paragraph (a)(2)(iv) of this section, the broker-dealer must publish for at least 60 seconds an offer (bid) on behalf of the customer, in a size equal to the total number of shares he intends to buy from (sell to) the customer, at an offer price which is ⅛ higher (bid price ⅛ lower) than the stop price;

(iii) After completing the steps required by paragraphs (a)(2) (i) and (ii) of this section, the broker-dealer may (and under his "stop" must) immediately execute the customer's order (or whatever portion thereof remains unexecuted after publication of an offer (bid) on behalf of the customer in accordance with paragraph (a)(2)(ii)) of this section at the stop price, as principal;

(iv) (A) The requirements of paragraph (a)(2)(ii) of this section shall be deemed to be satisfied so long as the offer (bid) otherwise being published by the broker-dealer and maintained for at least 60 seconds from the time the order is received for execution meets the price requirement and meets or exceeds the size requirement of paragraph (a)(2)(ii) of this section; *Provided, however,* that in the event a portion of such offer (bid) is for a proprietary account of the broker-dealer, the customer's order shall be deemed to be substituted for the broker-dealer's offer (bid) up to the lesser of the size of the order or the broker-dealer's proprietary interest and any executions during such 60-second period at the offer price (bid price) which, in the aggregate, are less than or equal to the size of the customer's order shall be for the account of the customer.

(B) Any offer (bid) required to be published and maintained under paragraph (a)(2)(ii) of this section may be reduced in size to the extent of any partial acceptance by one or more third parties of the offer (bid) occurring during the 60-second period contemplated by that clause.

(C) If the broker-dealer, during the 60-second period contemplated by paragraph (a)(2)(ii) of this section, lowers (raises) his offer (bid) to the stop price, that broker-dealer shall, pursuant to his "stop," immediately execute the customer's order (or whatever portion thereof remains unexecuted) at the stop price, as principal.

or

(3) The customer's order is entered in ITS/CAES on a neutral basis (*i.e.*, otherwise than by directing the order to the broker-dealer for execution) and is executed in ITS/CAES under circumstances that preclude (i) all persons responsible for making bids and offers or effecting transactions for the broker-dealer's proprietary account in that security from having any knowledge of the existence of that customer's order prior to its entry in ITS/CAES, and (ii) all persons responsible for the solicitation of customers' orders or for the manner and timing of entry of such orders in that security in ITS/CAES from having knowledge of positions or trading strategies then existing for the broker-dealer's proprietary account in that security.

(b) *Agency cross transactions.* No broker-dealer shall effect an agency cross transaction involving a subject Rule 19c–3 security unless such transaction is executed on or through the facilities of a national securities exchange or in ITS/CAES; *Provided, however,* That a broker-dealer may effect an agency cross transaction otherwise than on or through the facilities of a national securities exchange or in ITS/CAES (i) at a price higher than the best bid and lower than the best offer for the subject 19c–3 security then being disseminated by any ITS market(s) (if the spread between such best bid and best offer is ¼ or more); or (ii) at a price equal to the best bid or best offer for the subject 19c–3 security then being disseminated by any ITS market(s) (if the spread between such best bid and best offer is ⅛).

(c) *Exclusions.* The provisions of this section shall not apply to:

(1) Any broker-dealer, other than an exchange market maker, with respect to transactions on or through the facilities of a national securities exchange;

(2) A principal transaction or agency cross transaction involving a block of a subject Rule 19c–3 security;

(3) Any transaction which is part of a primary distribution by an issuer, or a registered or unregistered secondary distribution;

(4) Any transaction made in reliance on Section 4(2) of the Securities Act of 1933;

(5) Any trade at a price unrelated to the current market for the suject Rule 19c–3 security involved for the purpose of correcting an error or to enable the seller to make a gift;

(6) Any transaction pursuant to tender offer;

(7) Any purchase or sale of a subject Rule 19c–3 security effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire a subject Rule 19c–3 security at a pre-established consideration unrelated to the current market for such security;

(8) Any transaction in any subject security for less than 100 shares;

(9) Any transaction effected outside of normal operating hours of the ITS/CAES interface; and

(10) Any principal transaction effected on or through the facilities of a national securities exchange during any period when such exchange is relieved of its obligation to collect, process and make available to quotation vendors bids and offers in such security pursuant to paragraph (b)(3)(i) of § 240.11Ac1–1 (Rule 11c1–1 under the Act).

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker, dealer, transaction or class of transactions if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(e) *Definitions.* For purposes of this section, (1) The term "Rule 19c–3 security" shall mean any security listed on a national securities exchange for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, other than a "covered security" as defined in § 240.19c–3 (Rule 19c–3 under the Act).

(2) The term "effective transaction reporting plan" shall mean any plan approved by the Commission pursuant to § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) for collecting, processing and making available transaction reports with respect to transactions in an equity security of class, of equity securities.

(3) The term "transaction report" shall mean a report containing the price

volume associated with a completed transaction involving the purchase or sale of a security.

(4) The term "subject Rule 19c–3 security" shall mean any Rule 19c–3 security which is eligible to be traded through the ITS/CAES Interface.

(5) The term "Intermarket Trading System" ("ITS") shall mean the intermarket communications linkage operated jointly by certain self-regulatory organization pursuant to a plan filed with, and approved by, the Commission pursuant to § 240.11Aa3–2 (Rule 11Aa3–2 under the Act).

(6) The term "Computer Assisted Execution System" ("CAES") shall mean the computerized order routing and execution system owned and operated by the National Association of Securities Dealers ("NASD") as part of the NASDAQ inter-dealer quotation system.

(7) The term "ITS/CAES interface" shall mean the automated interface between the ITS and CAES.

(8) The term "ITS/CAES" shall mean the linked trading systems connected by the ITS/CAES Interface.

(9) The term "ITS market" shall mean, with respect to any subject Rule 19c–3 security, any national securities exchange which is a participant in the ITS and trades such security through ITS and amy ITS/CAES market maker in such security.

(10) The term "exchange market maker" shall mean, with respect to any subject Rule 19c–3 security traded on a national securities exchange, any broker-dealer registered or approved as a specialist or market maker in that security pursuant to the rules of such exchange.

(11) The term "ITS/CAES market maker" shall mean, with respect to any subject Rule 19c–3 security, any third market maker that is registered as a market maker in such security with the NASD for purposes of use of ITS/CAES.

(12) The term "third market maker" shall mean, with respect to any subject Rule 19c–3 security, any broker-dealer who holds himself out as being willing to buy and sell such security for his own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size (including any such person who also represents, as agent, orders to buy and sell such security on behalf of any other person and communicates bids and offers to a national securities association pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act) on behalf of such other persons as well as for his own account).

(13) The term "broker-dealer" shall mean any broker or dealer.

(14) The term "customer" of a broker-dealer shall mean (i) any person other than a broker or dealer, except that the term "customer" shall include a broker or dealer (A) which, directly or indirectly, controls, is controlled by, or is under common control with such broker-dealer, or (B) whose customers' accounts are introduced to the broker-dealer and are carried by it on either a disclosed or undisclosed basis; and (ii) and person from whom an order has been accepted by the broker-dealer for execution, but only with respect to orders so accepted.

(15) The term "proprietary account" shall mean any one or more accounts in which the broker-dealer has a direct or indirect interest.

(16) A bid or offer shall be "published" when it is made available by a national securities exchange or national securities association to a quotation vendor pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act) and is displayed on or through the facilities of such exchange or in CAES (as the case may be).

(17) The term "intended purchase price from (sale to) the customer" in a principal transaction shall exclude any commission, commission equivalent, differential or comparable charge to be imposed by the broker-dealer in connection with the transaction.

(18) The term "block" shall mean a transaction of 10,000 shares or more or involving a quantity of a subject Rule 19c–3 security having a market value of $200,000 or more.

(19) For purposes of this rule, a riskless principal transaction shall be considered to involve a purchase from or sale to a customer.

By the Commission.

Dated: May 13, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–14024 Filed 5–21–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–313–81]

Exempt Royalty Oil; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to exempt royalty oil.

DATES: The public hearing will be held on July 13, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by June 29, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–313–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 4994, 4995 and 4997 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, March 3, 1982 (47 FR 9016).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by June 29, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 82-14143 Filed 5-21-82; 8:45 am]

BILLING CODE 4830-01-M

[LR-201-76]

26 CFR Parts 20 and 301

Special Lien for Additional Estate Tax Attributable to Farm, Etc., Special Use Valuation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Sections of Tax Reform Act of 1976 provide that certain qualified real property may, for estate tax purposes, be valued at its special use value rather than its fair market value, and impose a special lien on the qualified real property in the amount of the estate tax savings. Later amendments extended the special lien to qualified replacement and qualified exchange property. The purpose of the proposed regulation is to implement the special lien provisions and to grant authority to district directors to allow adequate security to be substituted for the special lien. The proposed regulation affect qualified heirs of decedents whose estates elect to come within the special use valuation provisions.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 19, 1982. The regulations are effective for the estates of decedents dying after December 31, 1976.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-201-76) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention CC:LR:T 202-566-3287, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Section 2032A of the Code provides that certain qualified real property may, for estate tax purposes, be valued at its special use value rather than its fair market value. Section 6324B of the Code, enacted by section 2003(b) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1661), imposes a special lien on the qualified real property in the amount of the estate tax savings. Section 6324B was amended by section 108(d) of the Technical Corrections Act of 1979 (Pub. L. 96-222, 94 Stat. 228), which extended the special lien to qualified replacement property, and by section 421(d)(2)(B) of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 309), which extended the special lien to cover qualified exchange property. The proposed regulations are issued under the authority contained in sections 6324B (90 Stat. 1861, 26 U.S.C. 6324B) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Code.

The purpose of this proposed regulation is to implement the special lien provisions and to grant authority to district directors to allow adequate security to be substituted for the special lien.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably 6 copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying.

A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Fred E. Grundeman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 20

Estate taxes, liens.

26 CFR Part 301

Estate taxes, liens.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 20 and 30 are as follows:

PART 20—ESTATE TAX; ESTATE OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. There is inserted immediately after § 20.6324A-1 the following new section:

§ 20.6324B-1 Special lien for additional estate tax attributable to farm, etc., valuation.

(a) *General rule.* In the case of an estate of a decedent dying after December 31, 1976, which includes any interest in qualified real property, if the executor elects to value part or all of such property pursuant to section 2032A, a lien arises in favor of the United States on the property to which the election applies. The lien is in the amount equal to the adjusted tax difference attributable to such interest (as defined by section 2032A(c)(2)(B)). The term "qualified real property" means qualified real property as defined in section 2032A(b), qualified replacement property within the meaning of section 2032A(h)(3)(B), and qualified exchange property within the meaning of section 2032A(i)(3). The rules set forth in the regulations under section 2032A shall apply in determining whether this section is applicable to otherwise qualified real property held by a partnership, corporation or trust.

(b) *Period of lien.* The lien shall arise at the time the executor files an election under section 2032A. It shall remain in effect until one of the following occurs:

(1) The liability for the additional estate tax under section 2032A(c) with respect to such interest has been satisfied; or

(2) Such liability has become unenforceable by reason of lapse of time; or

(3) The district director is satisfied that no further liability for additional estate tax with respect to such interest may arise under section 2032A(c), i.e., the required time period has elapsed since the decedent's death without the occurrence of an event described in section 2032A(c)(1), or the qualified heir (as defined in section 2032A(e)(1)) has died.

For procedures regarding the release or subordination of liens or discharge of property from liens, see § 301.6325-1 of

this chapter (Regulations on Procedure and Administration).

(c) *Substitution of security for lien.* The district director may, upon written application of the qualified heir (as defined in section 2032A(e)(1)) acquiring any interest in qualified real property to which a lien imposed by section 6324B attaches, issue a certificate of discharge of any or all property subject to such lien, after receiving a bond or other security in an amount or value determined by the district director as sufficient security for the maximum potential liability for additional estate tax with respect to such interest. Any bond shall be in the form and with the security prescribed in § 301.7101–1 of this chapter.

(d) *Special rules.* The rules set forth in section 6324A(d) (1), (3), and (4), and the regulations thereunder, shall apply with respect to a lien imposed by section 6324B as if it were a lien imposed by section 6324A.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 2. Section 301.6325–1 is amended by inserting a new sentence immediately after the second sentence of paragraph (c)(1), by redesignating paragraph (d)(3) as (d)(4), and by inserting a new paragraph (d)(3). These amended and added provisions read as follows:

§ 301.6325–1 Release of lien or discharge of property.

* * * * *

(c) *Estate or gift tax liability fully satisfied or provided for—*(1) *Certificate of discharge.* * * * If a lien has arisen under section 6324B (relating to special lien for additional estate tax attributable to farm, etc., valuation) and the district director determines that the liability for additional estate tax has been fully secured in accordance with § 20.6324B–1(c) of this chapter, the district director may issue a certificate of discharge of the real property from the section 6324B lien. * * *

* * * * *

(d) *Subordination of lien.* * * *

(3) *Subordination of section 6324B lien.* The district director may issue a certificate of subordination with respect to a lien imposed by section 6324B if the district director determines that the interests of the United States will be adequately secured after such subordination. For example, *A*, a qualified heir of qualified real property, needs to borrow money for farming purposes. If the current fair market value of the real property is $150,000, the amount of the claim to which the special lien is to be subordinated is $40,000, the potential liability for additional tax (as defined in section 2032A(c)) is less than $55,000, and there are no other facts to indicate that the interest of the United States will not be adequately secured, the district director may issue a certificate of subordination. The result would be the same if the loan were for bona fide purposes other than farming.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82–14084 Filed 5–21–82; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 481

Medicare Program; Comprehensive Outpatient Rehabilitation Facility Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed regulations.

SUMMARY: This document corrects the "date" section regarding the comment period in a proposed regulation on Comprehensive Outpatient Rehabilitation Facilities that was published in the **Federal Register** on May 10, 1982.

FOR FURTHER INFORMATION CONTACT:

Donna Federman, (301) 594–4272.

SUPPLEMENTARY INFORMATION: The May 10, 1982 issue of the **Federal Register** (47 FR 20092) stated erroneously that the date by which comments should be mailed for FR Doc. 82–12591 is July 9, 1982 (a 60-day comment period). The **Federal Register** should have read June 9, 1982 (a 30-day comment period).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: May 17, 1982.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 82–14018 Filed 5–21–82; 8:45 am]

BILLING CODE 4120–03–M

Notices

Federal Register
Vol. 47, No. 100
Monday, May 24, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended May 14, 1982

Subpart Q Applications. The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
May 11, 1982	40680	United Air Lines, Inc., P.O. Box 66100, Chicago, Illinois 60666. Application of United Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authorization to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States, on the one hand, and a point or points in Antigua and Barbuda, Aruba, The Bahamas, Barbados, Curacao, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, St. Kitts, St. Maarten, and Trinidad and Tobago, on the other hand. Conforming Applications, motions to modify scope, and Answers may be filed by June 8, 1982.
Do	40683	Northwest Airlines, Inc., Minneapolis/St. Paul Int'l Airport St. Paul, Minnesota 55111. Application of Northwest Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests an amendment of its Certificates of Public Convenience and Necessity for Route 129 or for a new certificate or certificates so as to authorize it to perform scheduled foreign air transportation (of mail, passengers and property) between the following points: New York, San Francisco, Los Angeles, Honolulu, Tokyo, or another points in Japan, Shanghai, Beijing. (Or for whatever points within the People's Republic of China it is finally determined the second designated airline may serve.) Conforming Applications, motions to modify scope, and Answers may be filed by June 8, 1982.
May 13, 1982	40694	Lone Star Airways, Inc., c/o George T. Voisky, 1522 K Street, N.W., Suite 1030, Washington, D.C. 20005. Application of Lone Star Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests the Board to issue it a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between the terminal point Dallas-Ft. Worth, Texas, and the terminal point London, England. Conforming Applications, motions to modify scope, and Answers may be filed by June 10, 1982.
Do	40696	Global International Airways Corp., c/o James M. Burger, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Suite 900 South, Washington, D.C. 20036. Application of Global International Airways Corp., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority to provide scheduled foreign air transportation of persons, property, and mail as follows: Between Dallas/Fort Worth, Texas and London, United Kingdom. Conforming Applications, motions to modify scope, and Answers may be filed by June 10, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-14121 Filed 5-21-82; 8:45 am]
BILLING CODE 6320-01-M

Commuter Fitness Determination

The Board is proposing to find the following carriers fit willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-5-40	Spirit Airways, Inc.	May 27, 1982.
82-5-41	Banyan Air Service	May 27, 1982.
82-5-46	Americana Charter, Inc., d/b/a Bangor International Airline.	May 28, 1982.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Order 82-5-40, 82-5-41, and 82-5-46 with the Special Authorities Division, Room 915; 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

For further information contact: For Order 82-5-41: Ms. Patti Szrom, (202) 673-5088, and for Orders 82-5-40 and -46: Ms. Anne Stockvis, (202) 673-5198; Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428.

By the Civil Aeronautics Board: May 17, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14122 Filed 5-21-82; 8:45 am]

BILLING CODE 6320-01-M

Order Concerning IATA Agreement Relating to North Passenger Fares

Order 82-5-37, May 7, 1982, Docket 38623, approved, subject to several conditions, an agreement submitted by the International Air Transport Association (IATA). The agreement concerns North Atlantic Passenger fares, Agreement C.A.B. 28720, R-1 through R-19.

Copies of the Board's order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14123 Filed 5-21-82; 8:45 am]

BILLING CODE 6320-01-M

Order Concerning Mail Rates

Order 82-5-73, May 14, 1982, Dockets 38019 and 38961, proposes the establishment of a new rate structure and new final intra-Alaska service mail rates effective January 1, 1981.

Copies of this order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14124 Filed 5-21-82; 8:45 am]

BILLING CODE 6320-01-M

Order Concerning Mail Rates

Order 82-5-70, May 14, 1982, Docket 40650 establishes temporary intra-Alaska service mail rates for Western Air Lines, Inc. at the same level as authorized for Wien Air Alaska, Inc. by Order 80-12-152.

Copies of this order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14125 Filed 5-21-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Chain of Iron or Steel From Japan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On March 18, 1982, the Department of Commerce published in the **Federal Register** a notice of the preliminary results of its administrative review of the countervailing duty order with respect to chain of iron or steel from japan. The review covered the period January 1, 1980 through December 31, 1980. Interested parties were invited to comment on our preliminary results. We received no comments. Therefore, the final results of this review are the same as those announced in the March 18 notice.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black or Richard Moreland, Office of Compliance, International Trade Administration, Room 2096, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1774/2786).

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1978 the Department of the Treasury published in the **Federal Register** (43 FR 37685) a countervailing duty order on chain of iron or steel from Japan. On March 18, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 11740) a notice of the preliminary results of its administrative review of the order. The Department has now completed that review.

Scope of the Review

The merchandise covered by the review is chain of iron or steel, the links of which are essentially round in cross section, and parts thereof. Such chains are currently classifiable under items 652.3010 through .3040, 652.33,0 through .3330, and 652.3510 through .3530 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1980 through December 31, 1980, and is limited to the two programs cited in the final determination. These programs are: (1) Tax deferrals on funds held in the Overseas Market Development Reserve ("OMDR") and (2) export promotional assistance from the Japan External Trade Organization ("JETRO").

Final Results of the Review

Interested parties were invited to comment on our preliminary results. Since we received no comments, the final results of our review are the same as those presented in the preliminary results of the review. Accordingly, the Department will instruct the Customs Service to assess countervailing duties in the amount of 1.95 percent of the f.o.b. invoice price on merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1980 and exported on or before December 31, 1980.

As provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), a cash deposit of estimated countervailing duties of 1.95 percent of the f.o.b. invoice price shall be required on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department intends to complete the next administrative review by the end of August 1982. The amount of countervailing duties to be imposed on exports made during 1981 will be determined during that review. Consequently, the suspension of liquidation previously ordered will continue on all shipments exported on or after January 1, 1981.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-14076 Filed 5-21-82; 8:45 am]

BILLING CODE 3510-25-M

Chains and Parts Thereof, of Iron or Steel, From Spain; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On February 17, 1982, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain. The review covers the period

January 1, 1980 through December 31, 1980.

Interested parties were invited to comment on the preliminary results. We received no comments. Therefore, we have determined that countervailing duties equal to the calculated value of the net subsidy, that is, 12.95 percent of the f.o.b. invoice price of the merchandise, shall be assessed on all exports to the United States during 1980.

Further, due to a change in the Spanish banking regulations effective March 1, 1981 and affecting one of the two reviewed programs, we have determined that cash deposits of estimated countervailing duties of 14.89 percent of the f.o.b. invoice price of the merchandise shall be collected on future entries.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202, 377–1775/2786).

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 6908) the preliminary results of its administrative review of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain (T.D. 78–20, 43 FR 3258). The Department has now completed that review.

Scope of the Review

Imports covered by the review are chains and parts thereof, of iron or steel. Such imports are currently classifiable under items 652.2410 through 652.2450, 652.2710 through 652.2740, 652.3010 through 652.3040, 652.3310 through 652.3330, and 652.3510 through 652.3530 of the Tariff Schedules of the United States Annotated.

The review covered the period January 1, 1980 through December 31, 1980. The Department reviewed two programs: (1) The Desgravacion Fiscal a la Exportacion, which was the only program found countervailable in the final determination and (2) a working capital loans program, which ws found countervailable in another investigation.

Final Results of the Review

Interested parties were invited to comment on our preliminary results. We received no comments. As a result, we determine that the net subsidies conferred on chains and parts thereof, of iron or steel, by the two programs during the period of review are 12.50 percent and 0.45 percent *ad valorem*, respectively. Accordingly, the Department will instruct the U.S. Customs Service to assess countervailing duties of 12.95 percent of the f.o.b. invoice price on all unliquidated entries of this merchandise exported to the United States during 1980.

Due to a change in the Spanish banking regulations, effective March 1, 1981, we have determined for purposes of deposit of estimated countervailing duties that the net subsidy attributable to the operating capital loans program has increased from 0.45 percent to 2.39 percent.

Therefore, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), a cash deposit of 14.89 percent of the f.o.b. invoice price shall be required on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department intends to conduct the next administrative review by the end of January 1983. The amount of countervailing duties to be imposed on exports made during 1981 will be determined in that review. Consequently, the suspension of liquidation previously ordered will continue for all shipments exported on or after January 1, 1981.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82–14075 Filed 5–21–82; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel; Meeting

AGENCY: NATIONAL Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Ap. (1976), as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, notice is hereby given of a closed meeting of the Sea Grant Review Panel established in 1976 by section 209 of the National Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128.) This meeting is closed to discuss consideration of three applications for Sea Grant College designation. The three colleges are: University of Maryland, University of Michigan and the Mississippi/Alabama Sea Grant Consortium. This meeting will be closed since it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

DATE: June 9, 1982 8:30 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at the Commerce Building, Room 6802, 15th and Constitution Avenue, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration for the Department of Commerce, with concurrence of the General Counsel, formally determined on May 18, 1982, pursuant to section 10(d) of Federal Advisory Committee Act, that the entire meeting may be exempt from the provisions of the Act relating to open meetings and public participation therein because the discussion will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6). The discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination [1] is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6600, Department of Commerce.)

FOR FURTHER INFORMATION CONTACT: Arthur G. Alexiou, Executive Secretary, Sea Grant Review Panel, 6010 Executive Boulevard, Rockville, Maryland 20852, Telephone (301) 443–8894.

Robert D. Wildeman,

Acting Executive Secretary.

[FR Doc. 82–14074 Filed 5–21–82; 8:45 am]

BILLING CODE 3510–12–M

South Atlantic Fishery Management Council's Advisory Panel; Public Meeting

AGENCY: The South Atlantic Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), has established an Advisory Panel which will meet for a discussion and recommendations on the Snapper-Grouper Fishery Management Plan.

DATES: The public meeting will convene on Wednesday, June 16, 1982, at approximately 1 p.m., and will adjourn

[1] Filed as part of the original document.

on Wednesday, June 17, 1982, at approximately noon, and will take place at the Admiral Benbow Inn, 1419 Virginia Avenue, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571–4366.

Dated: May 19, 1982.

Jack L. Falls,

Chief, Administrative Support Staff National Marine Fisheries Service.

[FR Doc. 82-14120 Filed 5-21-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 17, 1982.

The USAF Scientific Advisory Board Ad Hoc Committee on EF–111A Capability Upgrade will meet at the Pentagon, Washington, DC on June 10 and 11, 1982. The purpose of the meeting will be to become familiar with the EF–111A mission, capability, and effectiveness, and review the Air Force plan for its upgrade. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 82-14093 Filed 5-21-82; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary

Defense Science Board Task Force on Electronic Warfare (Future Systems Subgroup); Advisory Committee Meeting

The Future Systems Subgroup of the Defense Science Board Task Force on Electronic Warfare will meet in closed session on June 24–25, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on June 24–25, 1982, the Task Force will discuss the application of technology to future systems designed to improve US Electronic Warfare capabilities.

In accordance with 5 U.S.C. App. 1 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 18, 1982.

[FR Doc. 82-14077 Filed 5-21-82; 8:45 am]

BILLING CODE 3910-01-M

Foreign Assistance; Determination

Pursuant to section 515(c)(1) of the Foreign Assistance Act of 1961 relating to overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, James H. Ahmann, Lieutenant General, USAF, Director, Defense Security Assistance Agency, has determined that United States national interests require that more than six members of the Armed Forces be assigned under section 515 of that Act to carry out international security assistance programs in Venezuela, and therefore waives the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specifically authorized by the Congress.

The Increase from six to nine in the total number of military personnel authorized for the United States Military Group (USMILGP), Venezuela, shall be effective 30 days after the date on which this determination is reported to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Dated: May 7, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-14078 Filed 5-21-82; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Termination of Production and Sale of Heavy Water

AGENCY: Energy Department.

ACTION: Termination of production and sale of heavy water.

SUMMARY: The U.S. Department of Energy hereby announces the termination of the production and sale of heavy water.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Roger K. Heusser (301) 353–5496.

SUPPLEMENTARY INFORMATION: The United States Department of Energy is terminating the production of new heavy water and, in order to conserve the existing inventory of hevy water, is terminating the sale of heavy water.

Issued in Washington, DC, May 5, 1982.

Herman E. Roser,

Assistant Secretary for Defense Programs.

[FR Doc. 82-14100 Filed 5-21-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Timco Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Timco Oil Company, 845 E. Willow Street, Long Beach, California 90806. This Proposed Remedial Order charges Timco Oil Company with pricing violations in the amount of $132,994.24 connected with the first sale of crude oil during the period January 1974 through December 1977 in the State of California.

A copy of the Proposed Remedial Order with confidential information deleted may be obtained from Sandra K. Webb, Director, Economic Regulatory Administration, Department of Energy, 845 South Figueroa Street, Suite 410, Los Angeles, California 90017, phone (213) 688–4014. On or before June 8, 1982, any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, 12th and Pennsylvania Avenue, NW., Room 3304, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Los Angeles, California on the 30th day of April, 1982.

Sandra K. Webb,

Director, Los Angeles Office, Economic Regulatory Administration.

[FR Doc. 82-14109 Filed 5-21-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP82-91-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1982.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on May 11, 1982, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets:

Fifth Revised Sheet No. 2
Fifth Revised Sheet No. 3
Twenty-ninth Revised Sheet No. 4
Eighth Revised Sheet No. 5

Algonquin Gas states that the revised sheets, comprising Algonquin Gas' Rate Schedule X-1, reflects the terms of a revised agreement dated May 5, 1982, between Algonquin Gas and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. ("Tennessee") which Algonquin Gas and Tennessee have executed for the purpose of expanding the flexibility of Rate Schedule X-1. The revised agreement adds as permissible delivery points for the delivery and receipt of gas to be exchanged between such parties, existing delivery points of any customer which operates an integrated distribution system served in common by Algonquin Gas and Tennessee.

Algonquin Gas requests that the Commission accept the above tariff sheets for filing effective June 11, 1982.

Algonquin Gas states that a copy of the above filing is being mailed to all of Algonquin Gas' customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14044 Filed 5-21-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-505-000]

Boston Edison Co.; Notice of Filing

May 18, 1982.

The Filing Company submits the following:

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on May 7, 1982, tendered for filing a specification of the contract demand service to be taken by the Town of Reading, Massachusetts ("Reading") under Edison's contract demand tariff. Edison states that the filing does not change the terms and conditions of service or affect the rate level charged to Reading.

Copies of the filing have been served upon Reading and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14045 Filed 5-21-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-504-000]

The Cleveland Electric Illuminating Co.; Notice of Filing

May 18, 1982.

The filing company submits the following:

Take notice that on May 6, 1982, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for tansmission by CEI of approximately 50 MW of power from the 345 kv interconnection point on CEI's Juniper—Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on May 1, 1982.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14047 Filed 5-21-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-507-000]

Cliffs Electric Service Co.; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that on May 7, 1982, Cliffs Electric Service Company (CESCO) filed an Agreement which it has executed with Upper Peninsula Power Company (UPPCO) which provides for the purchase and sale of short-term power on both a week-to-week and on a daily basis. The rate will be 0.77/kw on a weekly basis and 0.19/kw on a daily basis.

CESCO requests waiver of the Commission's notice requirements to allow for an effective date of May 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14048 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-509-000]

Consumers Power Co.; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that on May 10, 1982, Consumers Power Company (Consumers) tendered for filing Supplemental Agreement No. 2 to its contract for wholesale for resale electric service with the City of Bay City, Michigan. The aforementioned contract was dated and became effective on February 7, 1980. It was accepted for filing by letter of November 17, 1980 in FERC Docket No. ER80-765.

Consumers Supplemental Agreement No. 2 establishes a new point of delivery, at Bay City's Sidney Street Station and prescribes the conditions for line extension to the Sidney Street Substation.

Consumers Power states that copies of the filing were served on Bay City and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14046 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-90-000]

Florida Gas Transmission Co.; Notice of Tariff Filing

May 17, 1982.

Public notice is hereby given that on May 7, 1982, Florida Gas Transmission Company (FGT) tendered for filing in the above-referenced docket the following tariff sheets:

Second Revised Sheet No. 22-A
Third Revised Sheet No. 22-B

The foregoing tariff sheets were filed with the Commission in response to Commission Order Nos. 328 and 365 and were modified pursuant to Commission Order of September 29, 1971 in Docket No. CP79-181, et al. These tariff sheets reflect FGT's "lateral line" policy for both new (First Revised Sheet No. 22-A) and existing customers (Second Revised Sheet No. 22-B).

FGT proposes herein to modify its lateral line policy to require a customer requesting service in communities not receiving natural gas to bear the cost of the facilities necessary to render the requested service.

FGT also proposes that in the case of an existing resale customer requesting an "unconnected" delivery point within his service area, the requesting customer will be required to demonstrate that the end uses at the proposed new delivery point will fall within Priorities 1-4 of FGT's curtailment plan.

FGT requests that the Commission allow these tariff sheets to become effective thirty (30) days from the date of filing.

Copies of the filing were served upon FGT's jurisdictional customers and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14049 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-503-000]

Idaho Power Co.; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that on May 6, 1982, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March, 1982, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 2, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the preceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14050 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No TA82-1-60-002]

Locust Ridge Gas Co.; Notice of Proposed Change in FERC Gas Tariffs

May 17, 1982.

Take notice that on May 10, 1982, Locust Ridge Gas Company (Locust Ridge) tendered for filing Third Revised Sheet No. 21B and Third Revised Sheet No. 21C to the Company's Original Volume No. 3 and Second Revised Sheet No. 13 and Second Revised Sheet No. 14 to the Company's Original Volume No. 1. The revised tariff sheets were to be effective January 1, 1982.

Locust Ridge states that pursuant to the Commission's "Order Accepting For Filing And Suspending Proposed Tariff Sheets, Subject To Conditions And Establishing Procedures" issued on February 26, 1982 (the "Order"), Locust Ridge's filing in the captioned docket was made effective subject to refund March 1, 1982. A technical conference was to be convened within sixty days from issuance of the Order during which

Locust Ridge was to furnish Staff with any additional information necessary for the determination of the appropriateness of the filing.

Locust Ridge and the Commission Staff had a meeting in the offices of the Commission on April 20, 1982, during which all information requested by Staff was furnished. At the conclusion of the meeting and subsequent discussions, no changes in the filed rate were necessary. However, Staff directed the Company to prepare certain revised tariff sheets.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14052 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-513-000]

Mid-Continent Area Power Pool Agreement; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that on May 10, 1982, the MAPP Coordination Center (MAPP) tendered for filing an amendment to the Mid-Continent Area Power Pool Agreement which would eliminate the Pool Administrative Committee and assign its responsibilities to other existing committees, change the name of the Planning Committee to Engineering Committee, authorize MAPP to be the regional representative on the National Electric Reliability Council and update Pool membership.

MAPP requests an effective date of June 1, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10. All such petitions or protests should be filed on or before June 4, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14058 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-489-000]

Mississippi Power Co.; Notice of Filing

May 17, 1982.

The filing Company submits the following:

Take notice that on April 30, 1982, the Mississippi Power Company (Mississippi) tendered for filing on behalf of the Coast Electric Power Association a request for Mississippi to discontinue electric service to Boley (No. of Picayune) delivery point effective August 18, 1981, and to terminate Supplement No. 6 to Service Agreement under FERC Electric Tariff Original Volume No. 1.

The electric service requirements of this delivery point are now being served by Mississippi through other delivery points of Coast Electric Power Association.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14051 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-48-005]

Mississippi River Transmission Corp.; Notice of Rate Change

May 17, 1982.

Take notice that on May 11, 1982, Mississippi River Transmission Corporation ("Mississippi") tendered for filing revised tariff sheets to its FERC Gas Tariff as listed on the attached Appendix, and a Refund Report. The tariff sheets carry effective dates as indicated in the Appendix.

The purpose of the filing is to implement the applicable provisions of the Stipulation and Agreement ("Agreement") at Docket No. RP81-48, approved by Commission letter order dated April 9, 1982. The revised tariff sheets reflect settlement base tariff rates as adjusted in accordance with certain tracking provisions, and revised PGA procedures to implement the unit of sales PGA methodology. The Refund Report sets forth the cash distribution made to Mississippi's jurisdictional sales and transportation service customers affected by the Agreement.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14053 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-511-000]

Niagara Mohawk Power Corp.; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that Niagara Mohawk Power Corporation (Niagara), on May 10, 1982, tendered for filing as a rate

schedule, an agreement between Niagara and the New York State Electric and Gas Corporation (NYSEG) dated January 8, 1982.

Niagara presently has on file an agreement with NYSEG dated December 1, 1970. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. 97. This new agreement is being transmitted as a supplement to the existing agreement.

Niagara states that this supplement revises the transmission rate and leasing and reserve rates as provided for in the terms of the original agreement.

Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of July 1, 1981.

Copies of the filing were served upon the New York State Electric and Gas Corporation and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14054 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP79-68-005]

North Penn Gas Co.; Notice of Proposed Change in FERC Gas Tariff

May 17, 1982.

Take note that on April 28, 1982, North Penn Gas Company (North Penn) tendered for filing North Penn's 69th Revised Sheet No. PGA-1 to its FERC Gas Tariff, First Revised Volume No. 1 and schedules relating to the development of the rates set forth in the revised tariff sheet. This filing was made pursuant to Paragraph (B) of the Commission's order of March 29, 1982 denying rehearing.

North Penn states that in submitting the revised tariff sheet and in making the refunds required by the order of March 29, 1982, North Penn does not waive and expressly reserves its right to seek judicial review of the orders of January 18, 1981 and March 29, 1982. Additionally, in making the refunds and charging the rates specified in the revised tariff sheets, North Penn does not waive and expressly reserves the right, in the event of court review and remand or reversal of the Commission's orders in this case, to recoup through surcharges the difference between the amounts paid by North's customers at the rate levels set forth in the revised tariff sheet and the amounts the customer would have paid giving effect to the final order of the Commission pursuant to the appellate decision, together with interest, all in accordance with Commission rulings and representation to courts of appeal in opposing motions for stay.

Copies of this filing were served upon all parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 28, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14055 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-510-000]

Northern States Power Co.; Notice of Filing

May 18, 1982

The filing Company submits the following:

Take notice that Northern States Power Company (NSP) May 10, 1982, tendered for filing Supplement No. 3, dated April 28, 1982 to the Interconnection and Interchange Agreement, dated January 25, 1968, between Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Wisconsin Public Service Corporation. NSP proposes an effective date of May 1, 1982.

NSP states that Supplement No. 3 revises the rates contained in Service Schedule A, Emergency Energy Interchange Service, and Service Schedule E, Short Term Power Interchange Service, making the rates comparable to those of area power pools.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14056 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-23-000]

Oasis Petroleum Corp.; Notice of Filing of Petition for Review Under 42 U.S.C. 7194

May 18, 1982.

Take notice that Oasis Petroleum Corporation on May 11, 1982 filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participate in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before June 2, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before June 2, 1982, in accordance with the Commission's

Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14059 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-508-000]

Public Service Company of New Mexico; Notice of Filing

May 18, 1982.

The filing Company submits the following:

Take notice that on May 7, 1982, Public Service Company of New Mexico (PNM) tendered for filing a Tucson Electric Power Company (TEP) and Public Service Company of New Mexico and Transmission Agreement, dated April 26, 1982, (Agreement). PNM indicates the Agreement provides (a) for the exchange of power and energy between TEP (at the Arizona Nuclear Power Project (ANPP) Switchyard and Westwing Switching Station) and PNM (at the San Juan Generating Station Switchyard), and (b) for the assignment by PNM to TEP of certain rights in the ANPP Valley Transmission System from Westwing through the ANPP Switchyard. To enable the parties to have the assurance that the Agreement will become effective on May 1, 1982, and thereby allowing the benefits which are anticipated to be obtained for their respective customers under the Agreement, the parties have requested waiver of the Commission's notice requirements.

Copies of the filing have been served upon TEP and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14057 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP82-39-000]

Railroad Commission of Texas, Section 108 NGPA Determination; Getty Oil Co., J.M. Treadwell Well No. 5-U, Docket No. F-7C-029123, JD No. 81-33968; Request for Withdrawal of Section 108 NGPA Determination

Issued May 18, 1982

On February 16, 1982, Getty Oil Company (Getty) filed with the Federal Energy Regulatory Commission (Commission) a letter addressed to the Railroad Commission of Texas (Texas) requesting withdrawal of the final determination that gas from the J.M. Treadwell Well No. 5-U qualifies as gas from a stripper well subject to the maximum lawful price set by section 108 of the Natrual Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3318 (Supp. IV 1980). The Commission received notice of Texas' determination on June 1, 1981. The determination became final on July 16, 1981.

Getty states that a review of its records indicates that the subject well had multiple completion locations and the production data qualifying the well was not the total production as required by § 271.804(a)(1) of the regulations. It therefore asks to withdraw the application. Getty states that it has informed the reseller of the gas from the subject well, Arco Oil and Gas Company, of the petition to withdraw and of Arco's refund obligations as a reseller buying gas on a percentage-of-proceeds basis pursuant to § 270.202 of the regulations.

Notice is hereby given that the question of whether the Commission will require refunds, plus interest computed under § 154.102(d) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to protest this request, should file, on or before June 23, 1982 with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426,a protest or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 1.8 and 1.10). All protests filed with the Commission will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-14060 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-506-000]

San Diego Gas & Electric Co.; Notice of Filing

May 18, 1982

The filing Company submits the following:

Take notice that May 7, 1982, San Diego Gas & Electric Company (SDG&E) tendered for filing as an initial rate schedule an Economy Energy Agreement between SDG&E and El Paso Electric Company dated April 29, 1982.

San Diego requests waiver under the provisions of § 35.11 so that the service could commence on May 1, 1982.

Any person desiring to be heard or to protest said filing should be filed on or before protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-14061 Filed 5-21-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to members of the public $247,285 in consent order funds. The funds are maintained in escrow accounts that were established in settlement of enforcement proceedings brought by the Office of Enforcement [now the Office of Special Counsel] in the matters of Fagadau Energy Corporation ($83,985), Liquid Products Recovery, Inc. ($62,500), Wolkdwide Energy Corporation ($49,400), and Gas Engine and Compressor Service ($51,400).

DATE AND ADDRESS: Applications for Refund must be postmarked by August 23, 1982 and should be addressed to Fagadau [LPR, Worldwide Gas Engine] Consent Order Refund proceedings, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461. All applications and comments should display conspicuously a reference to the appropriate case name and number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633–8277.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the final decision and order set out below. The final decision and order relates to consent orders entered into by the Office of Enforcement of the DOE's Economic Regulatory Administration and Fagadau Energy Corporation, *see* 44 FR 40545 (1979), Liquid Products Recovery, Inc., *see* 44 FR 52882 (1979), Worldwide Energy Corporation, *see* 45 FR 18430 (1980) and Gas Engine and Compressor Service, *see* 44 FR 52880 (1979). All four firms are gas plant operators that produced natural gas liquids (NGLs). Pursuant to the consent orders, these firms have agreed to make refunds totaling over $247,000 to settle alleged violations of the DOE price regulations which occurred between 1973 and 1977.

The Office of Hearings and Appeals has previously issued proposed decisions and orders which tentatively established a two/stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The proposed decision and order discussing the distribution of funds obtained through the consent order with Fagadau Energy Corporation was issued on May 1, 1981 46 FR 25535 (1981). The proposed decision and order discussing the distribution of funds obtained through the consent order with Liquid Products Recovery, Inc. was issued on May 22, 1981, 46 FR 28029 (1981). The proposed decision and order concerning refund of consent order funds obtained from Worldwide Energy Corporation and Gas Engine and Compressor Service was issued on August 18, 1981, 46 FR 42743 (1981).

The final decision and order reflects our analysis of comments received from interested parties. As we indicate in the final decision, applications for refund from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than ninety days from the date of publication of this notice. *See* 10 CFR 205.283. We will accept applications from all claimants that can affirmatively demonstrate that they have been directly injured by the violations alleged in the consent orders. A detailed discussion of what information a party must provide in order to assert a successful claim is set forth in the final decision and order appended to this notice.

The final decision reaches no determination with regard to the disposition of any funds in the second stage of the proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stages of the proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds.

Commenting parties are requested to submit two copies of their comments. Comments should be filed by June 23, 1982, and should be addressed to the address set forth at the beginning of that notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on May 17, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy
Washington, D.C.
May 17, 1982

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Fagadau Energy Corporation, Liquid Products Recovery, Inc., Worldwide Energy Corporation, and Gas Engine and Compressor Service.

Dates of Filing: March 27, 1981, January 20, 1981, May 13, 1981, May 26, 1981.

Case Numbers: BEF–0030, BEF–0029, BEF–0049, BEF–0054.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 C.F.R. Part 205, Subpart V.

In accordance with these regulatory provisions, the OE filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with Fagadau Energy Corporation (Fagadau), Liquid Products Recovery, Inc. (LPR), Worldwide Energy Corporation (Worldwide), and Gas Engine and Compressor Service (Gas Engine). Under the terms of these consent orders, the four firms agreed to make refunds for alleged violations of the DOE price regulations in sales of natural gas liquids (NGLs) in the following amounts: $83,985 (Fagadau) (*1*), $62,500 (LPR)(*2*), $49,400 (Worldwide) (*3*), and $51,400 (Gas Engine)(*4*). The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the Doe pending receipt of instructions from the Office of Hearings and Appeals regarding their distribution.

Background

Proposed decisions and orders which tentatively established special refund procedures to be used in adjudicating claims to the settlement funds involved in this proceeding have been previously issued, and comments have been received from interested parties concerning the proper disposition of the consent order funds. (*5*) In the proposed decisions we tentatively established a two-stage special refund procedure for the consent order funds. In the first stage, those firms which purchased NGLs during the relevant period from the firms involved and who believed they were eligible for a portion of the consent order funds could file Applications for Refund pursuant to 10 C.F.R. § 205.283. Downstream purchasers would also be permitted to file Applications for Refund pursuant to 10 C.F.R. § 205.283. Downstream purchasers would also be permitted to file Applications for Refund during the first stage of the refund process. Each application would be analyzed, and individual determinations on the merits of each would be rendered. All meritorious claims would then be paid. Finally, we suggested as the second stage of the refund process that the first purchasers submit proposals which set forth appropriate mechanisms for returning moneys to the parties who likely paid increased prices as a result of the alleged overcharges. We alternatively proposed that if such plans proved infeasible, any portion of the settlement fund which, because of prohibitive

administrative costs, might otherwise go undistributed be deposited in the Treasury of the United States. *See* 10 C.F.R. § 205.287(c).

The proposed decisions and orders were published in the **Federal Register**, and copies were sent to all interested parties. The comment periods specified in the **Federal Register** have passed. The cases involving Fagadau, LPR, Worldwide, and Gas Engine (hereinafter "the four firms") have in common many legal and factual issues. All four firms are "gas plant operators " as that term is defined in 10 C.F.R. § 212.62. All have identified first purchasers who could file claims, which if properly established, might completely exhaust the consent order funds. Furthermore, all of the proposed decisions and orders issued for; these firms contained identical first-stage refund procedures. Finally, many of the commenters who responded to our request for comments filed virtually the same comments in each case. Consequently, we believe that these four cases should be consolidated for a final determination concerning the first stage of the refund procedures.

The purpose of this decision will be to establish the mechanism by which firms that purchased NGLs from the four firms may file Applications for Refund. We shall first discuss the comments which we received concerning the first-stage refund procedures which we tentatively adopted in the proposed decisions and orders in these cases. Then we shall discuss in detail the Application for Refund procedures that we have decided to adopt. We shall not, however, discuss the second-stage refund process in this decision. As noted above, if meritorious claims are filed by those parties who purchased NGLs from the four firms, the consent order funds may be thoroughly depleted. In that event no second stage would be necessary. (6) Our determination concerning the disposition of any residual funds will depend on the amount of money available after the first-stage claims procedure is completed. *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). It is therefore unnecessary at this time for us to reach the issues raised by the commenters concerning the proposed disposition of funds remaining after all meritorious claims have been paid. (7)

Jurisdiction and Authority To Fashion Refund Procedures

We previously determined that the jurisdictional requirements of Subpart V have been satisfied with regard to Fagadau and LPR. We therefore assumed jurisdiction over the distribution of the funds involved in those two cases in an Interlocutory Order issued on April 6, 1981. *See Office of Enforcement*, 8 DOE ¶82,516 (1981). With regard to Worldwide and Gas Engine, we tentatively determined that we should likewise exercise our jurisdiction to distribute the funds in those cases in the August 18, 1981 Proposed Decision and Order. *See* 46 Fed. Reg. 42743 (1981).

Some of the parties who submitted comments following the issuance of the proposed decisions and orders for these cases contend that the OHA should not have asserted jurisdictions. Some firms also countend that the OHA does not have authority to fashion refund procedures in these cases. In partiOHAcular, the commenters contend that: (i) the OHA may not assert jurisdiction at all under Subpart V where a single firm purchased 100 percent of the NGLs produced by a firm during the relevant period; and (ii) the distribution of these funds should be made by state governments rather than the OHA because the states have the inherent power to take possession of unclaimed funds belonging to their citizens. We shall discuss each of these contentions in turn.

The DOE Subpart V regulations provide that "[T]his subpart shall be applicable to those situations in which the Department of Energy is unable to readily identify those persons who are entitled to refunds specified in * * * a Consent Order, or readily ascertain the amounts that such persons are entitled to receive." 10 CFR § 205.280. After reviewing the record compiled in each of the cases involved in this proceeding, we have concluded that the implementation of Subpart V proceedings in each case is appropriate. Although the OHA once refused to exercise its jurisdiction where the OE could identify the first purchaser who was overcharged, *see, e.g., Armour Oil Co.*, 5 DOE ¶ 82,528 (1980) at 85,112 n.2, subsequent changes in the regulatory system have caused us to reconsider our position. At the time *Armour* was decided, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to persons who were adversely affected by alleged violations of the DOE price regulations. For example, the DOE could issue an order directing a firm that had overcharged its customers to roll back its prices for a period of time in order to refund overcharge amounts. (8) However, on January 28, 1981, the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 Fed Reg. 9909 (1981). As a result of decontrol, there is no maximum lawful price upon which a rollback order may be based. We find the utilization of Subpart V procedures appropriate even in instances where there is only one first purchaser, as in the Fagadau and Worldwide cases, because it is difficult to determine the extent that a first purchaser was actually injured, or may have passed on the alleged overcharges to its own customers. In order to refund money to the parties affected by the alleged overcharges, a determination must therefore be made regarding the extent to which purchasers of the NGLs involved absorbed the overcharges or passed the higher cost through to downstream customers by raising their own sales prices. Consequently, even in cases where the identity of first purchasers is known, additional factual determinations must be made to determine the persons who were injured and accordingly entitled to refunds. For these reasons, the Office of Hearings and Appeals has decided to exercise jurisdiction over the funds received by the DOE in settlement of the enforcement proceedings underlying the Petitions for Implementation of Special Refund Proceeding in all four cases.

The Controller of the State of California has commented that the state governments are better suited to adjudicate the disposition of the settlement funds than the Office of Hearings and Appeals. (9) The Controller noted that under the American common law system, states have traditionally held the sovereign right to take possession of unclaimed funds belonging to their citizens. The Controller stated that the State of California has ample procedures and expertise to assure all claimants of due process in the adjudication of their claims. The Controller therefore suggests that it would be more efficient to turn over each state's share of the settlement funds to the appropriate state governmental agency for redistribution in accordance with the national restitutionary goals and state procedures, rather than utilizing Subpart V in these cases.

Generally, we agree with the Controller that the states can serve as effective conduits for the distribution of settlement funds in appropriate cases. Indeed, in a recent case we suggested that a portion of certain settlement funds may be distributed through the states if substantial amounts remain after all meritorious claims have been satisfied. *See Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*). However, the cases presently before us involve circumstances that are materially different from those present in *Alkek*. In *Alkek* most of the settlement funds were obtained from produces or resellers of crude oil whose alleged regulatory violations fell into three major categories. The first category concerned producers' sales of "old" price-controlled crude as "new" or "stipper well" oil subject to less stringent controls. The second type of violation involved producers who allegedly miscalculated the prices of "old" oil which they sold. The third type involved resellers or brokers of crude oil who miscertified "old" crude oil. We observed that due to the nature of these violations and the operation of the Crude Oil Entitlements Program, 10 C.F.R. § 211.67, it was likely that few firms would be able to demonstrate during the first stage that they had been injured. Consequently, we predicted that there would be a large fund remaining at the conclusion of the first stage of the refund process. By contrast, the settlement fund in the present four cases totals only $247,285 and it is conceivable that meritorious claims might exhaust the entire fund.

In addition, it may be easier to ascertain the locale of injured parties in this case than it was in *Alkek*, where we determined that it was unlikely that the effects of crude oil violations could be localized due to the operations of the Entitlements Program. In particular, we noted that the operation of the Entitlements Program would have spread the effects of the violations among all refiners even if they had not purchased crude oil from any of the crude oil producers involved. Consequently, we proposed to disburse the remainder of the *Alkek* funds through a nation-wide mechanism. In the case of NGLs, tracing the effects of overcharges may be much less complex because they were not subject to the Entitlements Program.

Furthermore, it may develop that in the course of adjudicating Applications for Refund we may determine that a firm who purchased NGLs passed on the overcharges to customers in a discrete marketing area. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter referred to as *Vickers*). In that event we may conclude that distribution through the indicated states would be appropriate if the amount of money involved is substantial. However, we do not know the amount, if any, of the funds that will be available for distribution after the first stage is completed. Consequently, we have concluded that it would be premature to establish a secondstage refund mechanism and that it would be inappropriate for us to relinquish these funds to the states at this time.

Comments on the Proposed First Stage

In the proposed decisions which we issued for these cases, we tentatively concluded that as the first stage of the refund procedures we would accept Applications for Refund from parties who had purchased NGLs produced by the four natural gas processors involved. In addition ot satisfying the filing requirements of 10 CFR § 205.283, the applicant would be required to demcnstrate that it purchased during the relevant time period a specific quantity of products which were produced with or from the NGLs sold by the four firms. In addition, unless the applicant was an ultimate consumer, a party claiming that it was injured would also have to demonstrate that it absorbed any cost increase resulting from the alleged overcharges. We also stated that we would accept and evaluate on a case-by-case basis applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers. Finally, we solicited comments from all interested parties concerning our proposals.

In response to our request, we received comments from numerous parties including some of the four firms, other similarly situated firms, state governments, offices within the DOE, and public interest groups. Commenting parties suggested various modifications of the proposed procedures and expressed several concerns which we shall discuss below. They commented that: (1) The Application for Refund proceedings must be held publicly so that no potential claimnts are excluded from contesting their eligibility for a portion of the funds; (2) The proposed first stage is unfair because it would give first purchasers first priority in filing claims for the settlement funds. Those commenters also thought that the proposed decisions did not establish an adequate level of proof of injury for claimants; (3) The OHA cannot as a matter of law require that a claimant prove that it did not pass on the overcharges to its customers; and (4) Claimants who have themselves entered into DOE consent orders or are the subject of DOE enforcement proceedings for the relevant time periods should not be permitted to file Applications for Refunds. We will discuss each of these points in turn.

With regard to the conduct of the first-stage proceedings, the Controller of the State of California commented that the Application for Refund proceedings should be open to the public. He suggested that copies of all Applications for Refunds should be made available at no cost to all potential claimants and that all claimants should be permitted to participate in the initial proceedings.

We believe that the Controller's concerns are adequately met by the existing procedural regulations. The Subpart V regulations require that any application for a refund in excess of $100 be filed in duplicate and a copy of the Application, with confidential information deleted, be made available in the OHA Public Docket Room. 10 CFR § 205.283(a). It is the policy of the OHA Public Docket Room to make available to any requester a copy of any document filed with it. Copies are provided at no cost, if the requested document consists of 30 pages or less, or at a cost of 10 cents per page for each page in excess of 30 pages. In addition, the applicable regulations specify that in evaluating an Application the OHA may conduct an investigation of any statement made in an Application and may solicit and consider information from any source. 10 CFR § 205.284(b). Therefore it is clear that any party may submit information and comments to aid us in our adjudication of specific claims.

Some of the commenters complained that the proposed decisions established priority treatment of claims filed by first purchasers to the prejudice of downstream purchaser-claimants. In addition, those commenters objected to the proposed procedures because they believed the proposals would permit first purchasers to automatically recover refunds to the extent that their "banked" (unrecovered increased product) costs for the relevant period equalled or exceeded the amount claimed.

We believe that these commenters have taken unnecessarily narrow view of the proceedings envisioned by the proposed decision and the Subpart V regulations. As an initial matter, our proposed decisions clearly stated that applications for refund would be accepted from *all* claimants, including representatives of groups of consumers. *See, e.g.,* our discussion in the *Fagadau* proposed decision and order, *Office of Enforcement,* 46 Fed. Reg. at 25538. In addition, the required showing of sufficient banks is only a threshold showing to be applied in making a determination as to whether a claimant actually suffered any injury. If a claimant meets this test, it will still be necessary for the firm to proffer some type of additional evidence, depending upon the size and nature of firm, to demonstrate that it indeed was injured by the alleged overcharges. To the extent that a first purchaser can establish that it did not pass on any alleged overcharges to its downstream customers, those customers were not injured and would have no claim. We therefore disagree with commenters who believe that first purchasers are being accorded an unwarranted priority status in these proceedings.

Several commenters claim that the OHA cannot as a matter of law require a claimant to prove that it did not pass on the alleged overcharges to its customers. In support of that position, the commenters cite the antitrust case of *Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977). In *Illinois Brick,* the Supreme Court held that the "pass-on" theory could not be used offensively by a plaintiff who was not a direct purchaser from the defendant but claimed that the effects of an antitrust violation had been passed on to it by an intermediate party. The Court had previously held in *Hanover Shoe v. United Shoe Machine Corp.,* 392 U.S. 481 (1968), that "passing on" could not be used as a defense in a private antitrust action by a defendant alleging that the plaintiff had passed on the resulting overcharges to its customers and therefore suffered no injury.

We have discussed at great length the factors distinguishing private antitrust actions brought under section 4 of the Sherman Act from government enforcement actions brought under the Economic Stabilization Act and the Emergency Petroleum Allocation Act, such as the instant cases, in our recent decision in *Office of Enforcement,* 9 DOE ¶ 82,508 (1981). (hereinafter cited as *Coline*). In *Coline* we held that the considerations underlying the exclusion of pass-on evidence in private antitrust actions, as well as private actions brought by the government under the ESA and the EPAA were inapplicable to section 209 actions. Consequently, we reaffirmed our authority to require proof by a claimant that it absorbed the alleged overcharges in order to establish entitlement to a portion of the settlement fund that is to be distributed in a Subpart V special refund proceeding. No new arguments have been presented in this proceeding which would lead us to alter our position on this matter.

Some of the commenters, including enforcement officials of the DOE, have contended that claimants who have themselves entered into consent orders or who are currently the subject of enforcement proceedings should be precluded from filing Applications for Refunds. Those commenters contend that since such claimants have also violated the DOE regulations they should be excluded from these equitable proceedings because they have "unclean hands." (10) In addition, the Office of Special Counsel (OSC) observed that since it has closed its investigation of firms with which it has entered into consent orders, there is no mechanism for ascertaining the truth of a firm's allegations concerning its banks of unrecovered product costs increases. Moreover, the OSC asserts that its agreement to a consent order does not indicate that it has retreated from its position that a firm violated the DOE regulations. Finally, several parties noted that there are still numerous unresolved enforcement cases involving parties who have filed notices of claims. Consequently, the OHA has been urged to delay or deny disposition of any consent order funds to any claimant who has been or is currently the target of enforcement proceedings.

Upon consideration of the documents filed in the proceedings, we have concluded that it would be inappropriate at this time to refuse to entertain Applications for Refund from any class of claimants. The purpose of the present determination is simply to "set forth the

standards and procedures that will be used in evaluating individual Applications for Refunds." 10 CFR § 205.282(d). A determination on the merits of a particular Application for Refund is a separate process which may include an investgation of statements made by the applicant, submission of information by other sources, and the convening of a hearing. 10 CFR § 205.284. While we agree that consent order funds should not be distributed to parties who, for example, have profited from a criminal scheme to circumvent the DOE regulations, we certainly are in no position to rule on a claimant's eligibility in advance of the filing of an Application for Refund. Moreover, we think it would be undesirable to delay distribution of these funds for the period of years that may elapse before pending enforcement actions have been completed.

Instead of adopting a blanket prohibition against certain claimants, we shall require that each person filing an Application for Refund specify whether there is or has been an enforcement proceeding covering its compliance with the DOE regulations. The applicant should also state whether the matter has been concluded and provide a copy of any adjudicated order issued in the case or any consent order, or other settlement entered into by the applicant. Where appropriate, the relevant enforcement office may be informed of the application by the OHA. We shall then decide on a case-by-case basis whether the applicant was injured by the alleged overcharges in light of all the available information, including substantial evidence of its own regulatory violations.

Thus, it is possible that a firm which is the subject of an ongoing enforcement proceeding might still be eligible to receive a refund from the consent order funds. However, if a final remedial order is ultimately issued against such a firm, some adjustment might be appropriate at the conclusion of the enforcement proceeding to ensure that it does not retain any unwarranted benefits. If it ever becomes necessary, this type of determination will be made on a case-by-case basis, according to the equities involved. Where a claimant has already negotiated a consent order, we believe that it will generally be contrary to the policy encouraging settlements to exclude a claimant solely on that basis. Finally, we wish to emphasize that these refund proceedings may not be used as a substitute for private actions that might be brought under Section 210 of the ESA. The purpose of these proceedings is to provide an equitable mechanism for refunding monies to persons who may have been injured by alleged overcharges, not to provide an alternative legal forum to adjudicate the regulatory compliance of claimants.

Application for Refund Procedures

After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our Proposed Decision and Order we have concluded that: (i) the OHA has property asserted jurisdiction over these cases pursuant to 10 CFR Part 205, Subpart V; (ii) the OHA has authority to implement all of the procedures which were tentatively adopted in the proposed decisions for these cases; and (iii) Applications for Refund should now be accepted from parties who purchased NGLs from the four firms or who purchased other products made from those NGLs. We shall now discuss the specific requirements for Applications for Refund that we have decided to adopt.

We have determined to accept Applications for Refund of a portion of the four firms' consent order funds filed within 90 days after the publication of this Decision and Order in the Federal Register. *See* 10 CFR § 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR § 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify which case it pertains to, by firm name and case number. If the applicant is not a direct purchaser from one of the four firms, it should submit evidence indicating from whom the NGLs were purchased and what basis the applicant has for its belief that the NGLs which it purchased originated from a natural gas processing plant named in the consent orders.21Any application for a refund in excess of $100 must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed on intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR § 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application. All applications should be sent to: Consent Order Refund Proceeding, Case Nos. BEF–0030, –0029, –0049, –0054; Office of Hearings and Appeals, Department of Energy, 12th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20461. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR § 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following section discusses the showing that should be made by refiners, resellers, retailers and end-users of the NGLs covered by the consent orders:

A. Each applicant should report its volume of purchases of NGLs by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges;

B. Each applicant should specify how it used the NGLs—as a petrochemical producer, refiner, reseller, retailer or ultimate consumer;

C. If the applicant is a refiner or reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the violation through January 27, 1981. It should also furnish the OHA with quarterly bank calculations for the entire period;

D. The applicant must submit evidence to establish that it did not pass on the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover overcharges were infeasible; and

E. The applicant should report whether it is or has been involved as a party in other DOE enforcement proceedings or Section 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 C.F.R. § 205.9(d).

Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of the remainder, if any, of the consent order funds after all meritorious claims have been paid. Those comments can be divided into two groups. First, some comments contend that the Office of Hearings and Appeals lacks the statutory or regulatory authority to implement the proposed distribution. Secondly, some comments acknowledge that this Office possesses the authority to fashion such a restitutionary mechanism, but suggest alternatives to or modification of our original proposal. In this Decision, we are not implementing the second-stage refund procedure. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the consent order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. Moreover, in the present cases claimants could assert claims which, if meritorious, would completely exhaust the consent order funds. However, in order for members of the public to be made aware of outstanding issues and be able to comment on them, we summarized and briefly addressed the comments received concerning the proposed second-stage refund procedure in *Vickers*, 8 DOE at 85, 398–99. Many of the same parties who commented on the second-stage procedures proposed for the *Vickers* case submitted virtually identical comments in the present cases. We will not reiterate our discussion of these issues. We continue to seek additional comments on these issues. Comments regarding second-stage procedures in the present case should be submitted to the OHA Consent Order Refund Proceeding at the address listed

above within 30 days of publication of this Decision and Order in the Federal Register.

It is Therefore Ordered That:

The refund amounts provided by Fagadau Energy Corporation, Liquid Products Recovery, Inc., Worldwide Energy Corporation, and Gas Engine and Compressor Service will be distributed in the manner set forth in the foregoing decision.

Dated: May 17, 1982

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) As a part of its enforcement activities, the OE conducted an audit of Fagadau in order to determine whether the firm had complied with the DOE pricing regulations applicable to NGLs. *See* 6 C.F.R. Part 150, Subpart I, and 10 C.F.R. Part 212, Subparts E and K. In its audits of Fagadau's Bluegrove and Marietta gas processing plants, OE found possible violations with respect to first sales of NGLs during the period September 1973 through October 1976. Fagadau sold the output from those plants only to TLOK Marketing (TLOK) during the relevant time period. In order to settle all claims and disputes between Fagadau and the OE regarding the first sales of NGLs, Fagadau agreed to pay $83,985 to the DOE. The parties further agreed that this amount would be distributed by the DOE pursuant to 10 C.F.R., Part 205, Subpart V. On July 11, 1979, the Proposed Consent Order was finalized without modification and the DOE published notice in the Federal Register requesting that persons believing that they had a claim to all or a portion of the refund amount file written notification of such a claim to ERA within 30 days of publication. 44 FR 40545 (1979). No claim was filed.

(2) The DOE's audit of Liquid Products Recovery, Inc. (LPR) revealed possible overcharges with respect to first sales of NGLs during the period September 1, 1973 through June 30, 1978. In order to settle all claims and disputes between the parties regarding the firm's first sales of NGLs, LPR and the OE entered into a Consent Order in which LPR agreed to pay $62,500 to the DOE. The parties further agreed that this sum would be distributed by the DOE pursuant to 10 C.F.R., Part 205, Subpart V. Notice of the Consent Order was published in the Federal Register on September 11, 1979. See 44 FR 52862 (1979). Interested persons were provided an opportunity to comment on the terms of the Consent Order and to submit notice of potential claims against the settlement funds. No claims or comments were received by the DOE. According to the ERA, the allocation of possible overcharges among LPR's first purchasers is as follows: Wanda Petroleum—80.13%, Texas Petro Gas—18.02%, Forest Oil Co.—0.09%, Petro Lewis Corporation—0.07%, Koch Oil Company—0.83%, and Sun Production Company—0.86%.

(3) In its audit of Worldwide's Rattlesnake Creek Gas Processing Plant, which was previously owned by Worldwide's predecessor firm, Central States Gas Company, the OE found possible violations with respect to first sales of NGLs during the period April 1, 1975 through April 30, 1977. Central States sold the output from that plant to Liquid Petroleum Corporation (Liquid Petroleum) during the months of April and May 1975, and continued to sell butane and natural gasoline to that firm during June 1975. During the period June 1975 through April 1977, Central States sold all of the propane obtained at the Rattlesnake Creek plant to Pontotoc Oil Company, and sold butane and natural gasoline to the same firm from July 1975 through April 30, 1977. In order to settle all claims and disputes between the parties, Worldwide agreed to pay $49,400 to the DOE. The parties further agreed that this amount would be distributed by the DOE pursuant to 10 C.F.R., Part 205, Subpart V. On March 21, 1980, the DOE published notice of the Worldwide Consent Order in the Federal Register and requested that persons believing that they had a claim to all or a portion of the refund amount file written notification of such a claim with ERA within 30 days. 45 FR 18430 (1980). No claim was filed.

(4) In its audit of Gas Engine's Freestone gas processing plant, the OE found possible price violations with respect to first sales of NGLs during the period September 1973 through December 1976. Gas Engine sold NGLs from this plant to Wanda Petroleum and Martin Gas Sales Company. On August 28, 1979, the OE and Gas Engine entered into a consent order under which the firm agreed to pay $51,400 to the DOE in settlement of all disputes between the parties arising from the OE's audit of the Freestone plant. The parties stipulated that the funds were to be distributed by the DOE pursuant to a Subpart V proceeding. The terms of the final consent order were published in the Federal Register on September 11, 1979. *See* 44 FR 52860 (1979). Interested parties were given an opportunity to submit written notice of potential claims against the refund account, and the Consumer Energy Council of America submitted comments identifying itself as a potential claimant. No claims were filed by first purchasers of NGLs from Gas Engine.

(5) We issued a proposed decision and order discussing the distribution of Fagadau consent order funds on May 1, 1981. *See* 46 FR 25635 (1981). LPR's consent order funds were included in a May 22, 1981 proposed decision and order. *See* 46 FR 28029 (1981). We also issued a proposed decision and order discussing the distribution of the funds obtained through consent orders with Worldwide and Gas Engine on August 18, 1981. *See* 46 FR 42743 (1981).

(6) None of the identified first purchasers in this case have submitted plans for distribution of funds which might remain at the conclusion of first-stage refund procedures. As noted in the body of the Decision and Order, however, it may appear appropriate at some time in the future to distribute remaining funds through state governments in the firms' marketing areas. Alternatively, it may develop that the NGLs were distributed through cooperatives which could facilitate refunds.

(7) We have already discussed many of these comments in *Vickers*, 8 DOE ¶ 82,597 (1981).

(8) If a purchasing firm was a refiner or reseller rather than an ultimate consumer, the rolled back price would reduce its "increased product costs" and therefore reduce the maximum lawful selling price which it could charge consumers. *See* 10 C.F.R. §§ 212.83 *and* 212.93.

(9) The Assistant Attorney General for the State of Oregon submitted similar comments.

(10) We have previously held that the equitable doctrine of clean hands will be applied by the OHA in exception cases that involve requests for equitable relief. *See* Acomi Corporation, 4 DOE ¶ 82,542 (1979) and cases cited therein. Special refund proceedings are likewise equitable in nature. *See, e.g.* Office of Special Counsel, 9 DOE ¶ 82,545 (1982) (hereinafter cited as *Pennzoil*) and cases cited therein.

The Temporary Emergency Court of Appeals has recently applied the "clean hands" doctrine in determining whether a purchaser may receive refunds for violations of the DOE regulations. In Citronelle-Mobile Gathering, Inc. v. Edwards, 3 Fed. Energy Guidelines, ¶ 26,354 (Temp. Emer. Ct. App. 1982), the court held that because the purchasers of the crude oil involved "aided and abetted" the producer in its violation of the price regulations for their material benefit, "they are barred by 'unclean hands' from seeking or recovering any of the illegal profits." *Id.*, at 28,672.

[FR Doc. 82-14110 Filed 5-20-82; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Rio Grande Project; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of selection of proposed rate—Rio Grande Project, New Mexico.

SUMMARY: The Western Area Power Administration (Western) has proposed three options, based upon possible modes of future operation, regarding a rate increase for firm power generated at the Rio Grande Project, 46 FR 53774 (October 30, 1981). This notice announces the selection of option A and further proposes that the rate increase be implemented in two phases over a time period of 1 year.

DATE: Written comments on the rate selected should be submitted to Western's Area Manager at the address given below no later than June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Albert M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5493.

SUPPLEMENTARY INFORMATION: Western proposes that the new schedule of rates for wholesale firm power service would go into effect beginning with the August 1982 billing period. The proposed rate would be phased so that a capacity

charge of $4.555/kW-month and an energy charge of 10.72 mills/kWh would be in effect through the July 1983 billing period. Beginning with the August 1983 billing period, the capacity charge would rise to $5.74/kW-month and the energy charge would increase to 13.50 mills/kWh.

Issued at Golden, Colorado, May 14, 1982.

Robert L. McPhail,

Administrator.

[FR Doc. 82-14111 Filed 5-21-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AH-FRL-2130-5]

Grant of Application for a Fuel Waiver; Summary of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act (Act), the Administrator of EPA is conditionally granting a fuel waiver request, involving ethanol and a proprietary stabilizer, submitted by the Synco 76 Fuel Corporation.

PUBLIC DOCKET: Copies of all public information on this waiver application and the Administrator's decision are available for inspection in, or by request from, public docket EN-81-20 at the Central Docket Section (A-130) of the Environmental Protection Agency, Gallery I-West Tower, 401 M Street SW., Washington, D.C. 20460, (202) 755-0245, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Robert Gelman, or Winston Burt, Fuels Section, Field Operations and Support Division, (EN-397), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION: Section 211(f) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), prohibits the introduction into commerce of certain new automotive fuels and fuel additives. Section 211(f)(4) of the Act, 42 U.S.C. 7545, provides that the Administrator of EPA, upon application by a fuel or fuel additive manufacturer, may waive the prohibition established under section 211(f) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause vehicles to fail emissions standards. The Synco 76 Fuel Corporation (Synco) has submitted such an application for a fuel additive.

For reasons specified in the decision document, I have decided conditionally to grant the waiver request by Synco for a fuel additive composed of a propreitary stabilizer mixed with anhydrous ethanol and denatured by Methyl Isobutyl Ketone (MIK), provided that the proprietary stabilizer is composed of 67% hexanol, 4% pentanol, 2% octanol, and 27% (± 2%) araffinates derived from the coal liquefaction process (the precise mixture of the araffinates is proprietary information); the fuel additive, mixed in a ratio of one-fourth (¼) gallon stabilizer to five (5) gallons ethanol, will be added to forty-five (45) gallons of finished unleaded gasoline; the final fuel (i.e., stabilizer plus anhydrous ethanol, denatured by MIK, plus finished unleaded gasoline) meets the American Society for Testing and Materials (ASTM) fuel volatility specifications (ASTM) D 439-81) for the area and time of year in which it is marketed; and Synco, and any other manufacturer of the fuel additive, will inform all customers to whom the fuel additive is sold of the conditions of this waiver and provide guidance as to how those conditions will be met.

The waiver is being granted, as explained in the decision document, based on the determination that the additive, when used as specified above, will not cause or contribute to a significant failure of 1975 or subsequent model year vehicles or engines to comply with applicable emission standards under the Act.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act, or other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

This is a final Agency action of national applicability. Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of May 24, 1982. Under section 307(b)(2), today's action may not be challenged later in a civil or criminal proceeding for enforcement.

Dated: May 18, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-14112 Filed 5-21-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 140009; TSH-FRL-2030-7]

Research Triangle Institute, Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will transfer to its contractor, Research Triangle Institute (RTI) of Research Triangle Park, North Carolina, information which has been or will be submitted by manufacturers and importers under section 8(a) of the Toxic Substances Control Act (TSCA). Some of this information may be claimed to be confidential. The Research Triangle Institute will review this information and use it to produce exposure assessments of chemicals which may require testing to determine risk, chemicals which may require regulation, and chemicals for which recordkeeping has been required.

DATE: The transfer of data submitted to EPA and claimed to be confidential will occur no sooner than June 8, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, RM. E-509, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-2404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether certain chemical substances or mixtures may present an unreasonable risk of injury to health or the environment from their manufacture, processing, distribution in commerce, use, or disposal. As a component of the unreasonable risk determination, the agency must determine whether or not there is potential for human or environmental exposure to the substance or mixtures in question. To accomplish this, EPA will require the assistance of outside experts. EPA has selected the Research Triangle Institute of Research Triangle Park, North Carolina, to assist it in determining if there is potential human or environmental exposure to certain chemical substances or mixtures (Contract 68-01-5848).

In accordance with 40 CFR 2.306(j), EPA has determined that it will need to disclose confidential business information to RTI for the satisfactory performance of this contract. EPA will provide RTI with information on product formulation and specific processes used to manufacture or process chemical substances as well as other information

related to the uses, release rates, and exposure levels of chemical substances obtained from submissions under section 8(a) rules.

RTI is legally required under the terms of its contract to safeguard from any authorized disclosure the confidential business information it reviews. Any reports it prepares using this information will also be treated as confidential.

Since RTI will review information claimed to be confidential, EPA is publishing this notice to inform all submitters of section 8(a) information that RTI will receive confidential business information from EPA. After completing the assignments, RTI will return the confidential business information to EPA.

RTI's security plan and facilities have been inspected by EPA and found to be in compliance with the Contractor Requirements for the Control and Security of Confidential Business Information security manual, RTI is required to treat all TSCA confidential business information in accordance with the requirements of that manual, and its personnel will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: May 14, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-14002 Filed 5-21-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP 30064; DH-FRL 2130-5]

Pesticide Registration Guidelines; Availability of Draft for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The draft, nonregulatory pesticide registration guidelines are now available for public review at the ten EPA regional offices and EPA Headquarters. The agency is soliciting written comments. Oral comments may also be made on the draft at a public meeting to be scheduled later this year. After consideration of the comments by EPA, the guidelines will be published by the National Technical Information Service (NTIS).

DATE: Written comments and requests for time to present oral comments must be received on or before July 8, 1982.

ADDRESSES: Submit comments, identified by the control number OPP 30064, in triplicate, to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Comments are available for viewing at the EPA Headquarters in Rm. E-107, at the address given above. The draft guidelines are available for review in Rm. E-107, EPA Headquarters, and at the EPA Regional Offices listed under SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Robert K. Hitch, Hazard Evaluation Division (TS-769C), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 821, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7351).

SUPPLEMENTARY INFORMATION: EPA is soliciting comments on the draft, nonregulatory pesticide registration guidelines. The draft guidelines are available for review at EPA Headquarters and the following Regional Offices:

Region I, Environmental Protection Agency, John F. Kennedy Federal Bldg., Boston, MA 02203.

Region II, Environmental Protection Agency, 26 Federal Plaza, New York, NY 10007.

Region III, Environmental Protection Agency, Curtis Bldg., 6th and Walnut Streets, Philadelphia, PA 19106.

Region IV, Environmental Protection Agency, 345 Courtland St., NE., Atlanta, GA 30308.

Region V, Environmental Protection Agency, 111 W. Jackson St., Chicago, IL 60604.

Region VI, Environmental Protection Agency, First International Bldg., 1201 Elm St., Dallas, TX 75270.

Region VII, Environmental Protection Agency, 324 E. 11th St., Kansas City, MO 64106.

Region VIII, Environmental Protection Agency, 1860 Lincoln St., Denver, CO 80295.

Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105.

Region X, Environmental Protection Agency, 1200 6th Ave., Seattle, WA 98101.

A meeting will be held later this year at which the comments will be discussed. EPA will announce the date and location of the meeting in the Federal Register.

After the meeting and consideration of the comments, EPA will prepare the final pesticide registration guidelines for publication by NTIS. Information on the availability of the guidelines from NTIS, including the NTIS Number and price will be published in the Federal Register.

Dated: May 14, 1982.

John W. Melone,

Acting Director, Office of Pesticide Programs.

[FR Doc. 82-14009 Filed 5-21-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82-254, File No. BPCT-811019KG, etc.]

Cascade Video of Oregon, Ltd., et al.; Applications for Construction Permit; Hearing Designation Order

Adopted: May 6, 1982.

Released: May 12, 1982.

In the matter of applications of Cascade Video of Oregon, Ltd., Portland, Oregon (BC Docket No. 82-254, File No. BPCT-811019KG), TS-3 Communications, Inc., Beaverton, Oregon (BC Docket No. 82-255, File No. BPCT-811217KI), Portland Television Associates, Ltd., Portland, Oregon (BC Docket No. 82-256 File No. BPCT-811217KJ), Vinco Communications, Inc., (BC Docket No. 82-257, File No. BPCT-811217KK) and Allied Broadcasting Corp., Portland, Oregon (BC Docket No. 82-258, File No. BPCT-811217KL) For Construction Permit

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Cascade Video of Oregon, Ltd. (Cascade), TS-3 Communications, Inc. (TS-3), Portland Television Associates, Ltd. (PTA, Ltd.), Vinco Communications, Inc. (Vinco) and Allied Broadcasting Corp. (Allied) for authority to construct a new commerical television station on Channel 49, Portland, Oregon.

2. Each of the five applicants proposes a transmitter site at Skyline Boulevard Portland, Oregon. On February 1, 1982, the Division of Planning and Development (DPD) of Multnomah County, Oregon, filed a letter indicating that before any of the proposed towers could be built,[1] proposed construction must comply with the County Zoning Authority's land planning regulations which require that any new facility of this type receive a community service use approval by the Board of County Commissioners. Such community service applications, the letter indicates, must be reviewed in at least two public

[1] DPD has not indicated that a copy of this letter was sent to Cascade. However, because they plan construction in the same area, we will assume that the objections also apply to Cascade's proposed tower.

hearings. These approvals apparently have not been sought nor obtained by the applicants.[2] Because of local concerns over electromagnetic radiation, the Board of County Commissioners for Multnomah County directed the Planning Commission to establish new standards governing electromagnetic radiation emissions for radio and television transmission tower applications. The Board is scheduled to review the standards on May 25, 1982, and unitl new standards are adopted, it is not expected that construction of new radio or television towers will be permitted.

3. The letter from DPD, which we consider as an informal objection filed pursuant to § 73.3587 of the Commission's Rules, raises a question as to whether there is reasonable assurance that the site proposed by each of the applicants will be available. An appropriate issue will be specified.

4. No determination has been reached that the tower heights and locations proposed by TS–3, PTA, Ltd., and Allied would not constitute a hazard to air navigation. If it is determined that the site is available, an issue regarding this matter will be specified.

5. Since the towers proposed by Cascade, TS–3, PTA, Ltd. and Vinco are nearby to Station KYTE(AM), a grant of any one of these applications will be conditioned to require the permittee to demonstrate that its proposed tower would not alter the radiation patterns of KYTE(AM).

6. All applicants propose to operate from sites located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuate by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of any application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

7. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Cascade and Vinco have published the required local notice. To remedy this deficiency, Cascade and Vinco will each be required to file a statement of publication with the presiding Administrative Law Judge within 40 days after this Order appears in the **Federal Register**.

8. One applicant specified Beaverton as its city of license while the other specify Portland. Consequently, it will be necessary to determine, pursuant to § 307(b) of the Communications Act of 1934, as amended, whether a new station in Beaverton or Portland would best provide a fair, efficient, and equitable distribution of radio service. If the § 307(b) issue is not determative (the Applicants would serve substantial areas in common), all applicants can be considered under the comparative issue.

Vinco Communications, Inc.

9. Table 1, § II, page 3 of FCC Form 301 shows that the 100% owner of the applicant is Multi Media Communications Corporation. However, a second Table 1 shows six additional stockholders whose ownership interests total 24.96% (4.16% each). An issue will be specified to clarify the ownership of Vinco

11. Applicant estimates that it will require $1,395,302 to construct its proposed facility and operate for three months, itemized as follows:

Equipment (down payment plus monthly payments)	$721,000
Land	110,000
Building	50,000
Other items[3]	10,000
Operating Costs (3 months)	404,302
Total	$1,395,302

[3] Vinco's legal and engineering services are being provided free of charge by Mr. Firestone (legal) and Mr. Fergie (engineering).

12. Applicant has not submitted its financial plan; therefore, we cannot determine how it arrived at a figure of $404,302 for its three months operating expenses. An issue will be specified to determine the basis of its estimate of operating costs.

13. To meet its expenses, Vinco will rely on a $2,000,000 loan from Third National Bank. We have not received a copy of an agreement supporting this loan. Accordingly, an issue will be specified to determine whether applicant has at least $1,395,302 to construct and operate as proposed.

Allied Broadcasting Corp.

14. Allied estimates that it will require $6,324,250 to construct its proposed facility and operate for three months, itemized as follows:

Equipment	$5,557,000
Land	15,000
Building	40,000
Other items	360,000
Operating costs	352,250
Total	6,324,250

15. To meet these expenses, Allied intends to rely upon funds suplied by Mr. Lawrence J. Weinberg. FCC Form 301, Section III, page 3 item 4(a) requires that each person who has agreed to furnish funds submit a copy of the agreement by which each person is so obligated, showing the amount, rate of interest, terms of repayment and security, if any. The letter submitted does not meet these requirements. Further, Mr. Weinberg's current balance sheet, as required by item 4(b), has not been included. Therefore, applicant may not rely upon Mr. Weinberg as a source of funds to construct its facility. Accordingly, a financial issue will be specified to determine the availability of $6,324,250.

16. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

17. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is reasonable assurance that its specified transmitter site will be available.

2. To determine, with respect to TS–3 Communications, Inc., Portland Television Associates, Ltd. and Allied Broadcasting Corp., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine with respect to Vinco Communications, Inc.:

(a) The ownership and control of the applicant corporation.

(b) The basis of its estimates of operation costs;

(c) The availability of at least $1,395,302 to construct and operate as proposed;

(d) Whether, in light of the evidence adduced pursuant to issues (b) and (c), applicant is financially qualified.

[2] PTA, Ltd. stated that it filed notice with the County Zoning Authority simultaneously with the filing of its FCC Form 301.

4. To determine with respect the Allied Broadcasting Corp.:

(a) The availability of $6,324,250;

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is financially qualified.

5. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would provide a fair, efficient and equitable distribution of television service.

6. In the event it is concluded from Issue 6, above, that a choice between applications should not be based solely on considerations relating to Section 307(b), to determine which proposal would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

18. It is further ordered, that the Division of Planning and Development of Multnomah County, Oregon, is made a party respondent with respect to issue 1.

19. It is further ordered, that, the Federal Aviation Administration is made a party respondent with respect to issue 2.

20. It is further ordered, that, in the event of a grant of the application of Cascade, TS–3, PTA, Ltd. or Vinco, the construction permit shall be conditioned as follows:

Prior to the construction of the TV tower authorized herein, permittee shall notify AM station KYTE so that the AM station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence *Limited Program Tests.*

21. It is further ordered, that, in the event of a grant of Cascade's application, the construction permit shall contain the following condition: Operation with effective radiated power in excess of 1000 kW after December 1, 1983 is subject to a further extension of consent by Canada.

22. It is further ordered, that, in the event of a grant of either TS–3's, PTA, Ltd.'s or Allied's application, the construction permit shall contain the following condition: Operation with effective radiated power in excess of 1000 kW after January 1, 1984 is subject to further extension of consent by Canada.

23. It is further ordered, that, in the event of a grant of Vinco's application, the construction permit shall contain the following condition: Operation with effective radiated power in excess of 1000 kW after April 1, 1984 is subject to a further extension of consent by Canada.

24. It is further ordered, that, Cascade and Vinco shall file with the presiding Administrative Law Judge proof of publication of local notice of the filing of their applications within 40 days after this Order is published in the Federal Register.

25. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

26. It is further ordered, that, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Facilities Division, Broadcast Bureau.

[FR Doc. 82–14106 Filed 5–21–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10427; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, Chicago, Illinois, and San Juan, Puerto Rico. Interested parties may submit comments on the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by June 3, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

Agreement No. T–3825–2.

Filing party: Mr. David G. Abraham, Indiana Port Commission, Port of Indiana, Burns Waterway Harbor, P.O. Box 189, Portage, Indiana 46368.

Summary: Agreement No. T–3825–2, between the Indiana Port Commission (Port) and Cargill, Inc. (Cargill), modifies the basic agreement between the parties which provides for Port's construction and 30-year lease to Cargill of a dock and grain-holding facility at Burns Waterway Harbor. The purpose of the modification is to provide for the issuance of an additional $4,950,000 in Port Revenue Bonds for the completion of the project.

By order of the Federal Maritime Commission.

Dated: May 19, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–14039 Filed 5–21–82; 8:45 am]

BILLING CODE 6730–01–M

Termination of Sunday Vessel Certification Duty Officer Service

Notice is hereby given that, due to budgetary restraints, the Federal Maritime Commission is ending its vessel certification Duty Officer program on Sundays. June 13, 1982, will be the last Sunday the Commission will provide duty officer service. Saturday service will continue to be provided

between the hours of 8:30 a.m. and 5:00 p.m., Eastern time.

Duty Officers assist vessel operators and their agents who are unable to demonstrate compliance to the U.S. Customs Service and/or Coast Guard with respect to the financial responsibility requirements of the Clean Water Act, Trans-Alaska Pipeline Authorization Act, Outer Continental Shelf Lands Act Amendments of 1978 and sections 2 and 3 of Pub. L. 89-777. The latter law involves financial responsibility requirements for certain passenger vessel operators.

Due to the forthcoming termination of the Sunday service, vessel operators and all vessel agents whose duties involve the clearing of vessels with U.S. Customs should exercise due diligence to ensure that any problems involving Certificates of Financial Responsibility are corrected as soon as possible during the week. The telephone number of the Commission's Office of Vessel Certification is 202-523-5820.

Vessels which are unable to demonstrate compliance with the above mentioned financial responsibility requirements are subject to denial of clearance by Customs or detention by Coast Guard.

Dated: May 19, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-14096 Filed 5-21-82; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 16, 1982.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, *Barclays Bank International Limited*, each a bank holding company whose principal office is in London, England (consumer finance; Texas): To engage through their subsidiary, BarclaysAmerican/Financial, Inc., a Texas corporation, in making direct consumer loans, including loans secured by real estate, and purchasing, sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning); and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries. This activity would be conducted from an office of BAC located in San Antonio, Texas, serving customers in San Antonio and surrounding areas in Texas. This notification is for the relocation of an existing office at another location in San Antonio, Texas.

2. *Citicorp*, New York, New York (consumer finance, insurance, and loan servicing activities; Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia): To expand the activities of an existing office of Citicorp Acceptance Company, Inc., located in Atlanta, Georgia to include the proposed *de novo* activities of: the purchasing and servicing for its own account of sales finance contracts; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; and the servicing, for any person, of loans and other extensions of credit. The proposed service area for the aforementioned activities shall be the entire states of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harris County Bankshares, Inc.*, Houston, Texas (management consulting services; Texas): To engage through its subsidiary, Human Resource Services Corporation, in the sale of personnel consulting services to financial institutions. These activities would be conducted from an office located in Houston, Texas, serving the State of Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation*, Los Angeles, California (escrow activities; Hawaii): To engage through its subsidiary, Security Pacific Escrow, Inc., in acting as escrow agent for the purchase and sale of real property and the execution of all documents and dispersal of funds relating to loan transactions, and all other activities engaged in by an escrow company. These activities would be conducted from an office of Security Pacific Escrow, Inc. in Aiea, Hawaii, serving the State of Hawaii.

Board of Governors of the Federal Reserve System, May 17, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14095 Filed 5-21-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo (or continue to engage in an activity earlier commenced de novo)*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater

convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 15, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York, 10045:

1. *Manufacturers Hanover Corporation,* New York, New York, (relocation of office and expansion of service area; Tennessee): To continue to hold the shares of Finance One of Tennessee, Inc. ("Finance One") after Finance One engages in the activities of making or acquiring loans and other extensions of credit, secured or unsecured, such as would be made or acquired by a finance company under Tennessee state law; and offering credit, related life insurance and credit accident, health, and property insurance at 4548 Brainerd Road, Chattanooga, Tennessee. Finance One presently engages in these activities at 811 Chestnut Street, Chattanooga, Tennessee. The application is only to continue to hold the shares of Finance One after Finance One engages in these activities at a different location servicing an expanded service area; the application does not involve the commencement of any new activities at the new location. The new office will serve customers in Hamilton, Marion, Bradley, Polk, McMinn, Rhea, Bledsoe, Grundy, Warren, Van Buren, Franklin, Monroe, and Sequatchie Counties.

2. *Manufacturers Hanover Corporation,* New York, New York (consumer finance, sales finance, and credit insurance activities; California and Ohio): To engage through *de novo* offices of its indirect subsidiaries Finance One of California, Inc, to be located at 1245 Park River Drive, Sacramento, California, and at 3633 Camino del Rio South, San Diego, California, and Finance One Mortgage of Ohio, Inc., to be located at 4015 Executive Park Drive, Cincinnati, Ohio, in the activities of making or acquiring loans and other extensions of credit, secured or unsecured, such as would be made or acquired by a finance company under applicable state law; servicing such loans and other extensions of credit; and offering credit-related life insurance; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit secured by real and personal property, and offering credit-related single and joint life insurance and decreasing or level term (in the case of single payment loans) life insurance by licensed agents or brokers to the extent permissible under applicable state insurance laws and regulations directly related to extensions of credit made or acquired by the respective subsidiaries. Finance One of California, Inc., to be located at 1245 River Park Drive, Sacramento, California, will serve Sutter, southwest Yuba, southwest Nevada, southwest Placer, west El Dorado, west Amador, northwest Calaveras, north San Joaquin, Sacramento, Solano, northeast Cortra Costa, Yolo, southeast Colusa, and Napa Counties, California. Finance One of California, Inc., to be located at 3633 Camino del Rio South, South Diego, California, will serve San Diego and southwest Riverside Counties, California. Finance One Mortgage of Ohio, Inc., will serve the entire State of Ohio.

3. *Manufacturers Hanover Corporation,* New York, New York (consumer finance and credit insurance activities; Georgia and Ohio): To engage through its indirect subsidiaries Finance One of Georgia, Inc. and Finance One of Ohio, Inc. and Finance One Mortgage of Ohio, Inc., in the making or acquiring of direct loans, secured or unsecured such as would be made by a finance company under applicable state law; and acting as agent or broker for the sale of credit life insurance directly related to such lending activity. Finance One of Georgia, Inc., will conduct these activities from an office located at 245 Perimeter Guter Parkway, Atlanta, Georgia. The service area of this office will include the State of Georgia. Manufacturers Hanover corporation also wishes to expand the previously approved service area for other activities of Finance One of Georgia, Inc. at the above location to include the entire State of Georgia. Finance One of Ohio, Inc. and Finance One Mortgage of Ohio, Inc. will conduct these activities from an office located at Diamond Savings Building, 6100 Channingway Boulevard, Suite 102, Columbus, Ohio. The service area of this office would include the entire State of Ohio. Manufacturers Hanover Corporation also wishes to expand the previously approved service area for the activities of Finance One of Ohio, Inc. and Finance One Mortgage of Ohio, Inc. at the above location to include the entire State of Ohio. The previously approved activities include arranging, making, or acquiring for its own account or for the account of others, loans and other extensions of credit secured by a homeowner's equity interest in a home such as would be made by a consumer finance company, servicing such loans and other extensions of credit for any person, and acting as an agent or broker for the sale of single and joint credit life insurance which is directly related to such loans and extensions of credit; purchasing installment sales finance contracts, and acting as an agent or broker for the sale of single and joint credit life insurance and credit accident and health insurance which is directly related to such loans and extensions of credit.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Alabama Bancshares, Inc.,* Montgomery, Alabama (financing activities; Southeastern United States): To engage in making loans or other extensions of credit related to international trade transactions, including the issuance of commercial letters of credit and international finance operations; these activities will include specifically the extension of loans secured by import/export trade receivables or similar services to fully accommodate customers engaged in international trade and related activities. These activities will be conducted from offices in Mobile, Alabama; Birmingham, Alabama; and Huntsville, Alabama; serving Alabama, Mississippi, Florida and the Southeastern United States.

Board of Governors of the Federal Reserve System, May 18, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14037 Filed 5-21-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval

under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CB&T, Inc.*, McMinnville, Tennessee; to become a bank holding company be acquiring 100 percent of the voting shares of City Bank and Trust Company, McMinnville, Tennessee. Comments on this application must be received not later than June 17, 1982.

2. *Louisiana Bancorp, Inc.*, Crowley, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Louisiana Bank & Trust Company, Crowley, Louisiana. Comments on this application must be received not later than June 17, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Interstate Bancshares, Inc.*, Woodward, Oklahoma; to become a bank holding company by acquiring 81.04 percent of the voting shares of American National Bank, Woodward, Oklahoma. Comments on this application must be received not later than June 17, 1982.

2. *First Bankshares of Las Animas, Inc.*, Las Animas, Colorado; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Las Animas, Las Animas, Colorado. Comments on this application must be received not later than June 17, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Montgomery County Bancshares, Inc.*, Spring, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Montgomery County Bank, N.A., Spring, Texas. Comments on this application must be received not later than June 17, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *1st Business Corporation*, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of 1st Business Bank, Los Angeles, California. Comments on this application must be received not later than June 17, 1982.

Board of Governors of the Federal Reserve System, May 18, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14006 Filed 5-21-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vibration Transmission Characteristics of Workglove Materials; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available.

Vibration Transmission Characteristics of Workglove Materials

Date: June 18, 1982
Time: 8:30 a.m. to 4:00 p.m.
Place: Robert A. Taft Laboratories, Room 161, 4676 Columbia Parkway, Cincinnati, OH 45226

Purpose: To discuss the methodology for a proposed study of vibration transmission characteristics of workglove materials. This study will examine presently available work gloves and the protection they may offer to a worker when used with vibrating hand tools. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

ADDITIONAL INFORMATION MAY BE OBTAINED FROM: Mr. Donald Wasserman, Division of Biomedical and Behavioral Sciences, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 684-8251.

Dated: May 18, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82-14109 Filed 5-21-82; 8:45 am]

BILLING CODE 4160-18-M

Office of Human Development Services

Administration for Native Americans Program Announcement 13612-827

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Fiscal Year 1982 Financial Assistance for one Native American Project, American Indian Jobs/Skills Bank.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for financial assistance under Section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, as amended. Regulations governing this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATES: The closing date for the receipt of applications July 23, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance, and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANS as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

The Administration for Native Americans bases its program and policy initiatives on the following three program goals:

- To develop or strengthen tribal governments and Native American institutions and local leadership to assure local control and decision making over all resources.
- To foster the development of stable, diversified local economies and

economic activities which provide jobs, promote economic well-being, and reduce dependency on social services.

• To support efforts to develop local access to, and coordination of, services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

Project Goal and Objectives

The goal of this program announcement is to provide financial assistance to a non-profit American Indian organization to support a computerized jobs/skills/bank. Financial assistance will be provided for a twenty-seven month project to operate the jobs/skills/bank and provide job placements in the private sector and public sector for qualified skilled American Indian job applicants. At the end of the project period, ANA expects the Bank to be self-supporting and in permanent operation.

Applicants must indicate that the proposed project will address the following:

• Operation of the computerized jobs/skills/bank, which includes sending preliminary and comprehensive questionnaires to job applicants, entering the data into the bank, counseling and assisting applicants, obtaining skills requirements of available jobs from employers and entering such data into the bank, matching available jobs to potential applicants, with a priority emphasis on private sector job opportunities.

• Recruitment of skilled American Indian applicants for the "skills" portion of the bank through extensive promotional and information activities, including work with colleges and universities with substantial numbers of Indian students.

• Extensive recruitment of private sector users of the bank through contacts with potential employers nationwide.

• Recruitment of non-Federal public sector, and Federal agency users through contacts with personnel representatives for over 100 Federal agencies and offices throughout the country, and identification and establishment of new contacts at other Federal, state and local government agencies.

• Coordination with Federal Equal Opportunity Recruitment (FEORP) personnel in order to provide information about the bank's services for these Federal activities.

• Coordination with the Council for Tribal Employment Rights (formerly Tribal Employment Rights Planning Committee) to provide job referrals for Indian tribal governments and economic enterprises.

• Development of a plan to have the bank become self-supporting by the end of the project period.

Conditions for Funding

The applicant must:

• Be a non-profit American Indian organization. Since the bank must move toward operational self-support during the grant period, the grantee must plan for and develop the means to generate income, so as to no longer require ANA support for full operation of the bank by the end of the project period.

• Have an understanding of problems which may be encountered in the following areas:

—Identifying employment opportunities in the private and public sectors, including working with state employment services agencies

—Advocacy for increased employment for skilled American Indians

—Performing public relations activities in support of American Indians

—Expansion of recruitment activities, with priority in the private sector

—Operation of client placement and development services

—Development of the means for the bank to become self-supporting

—Operating a computerized data system, and modifying associated programs to refine or expand capabilities as required.

• Have the computer capability as detailed in the Application Kit.

More specific details about the objectives of this program announcement will be included in the Application Kit.

Notice of Meeting

ANA will hold a meeting June 14, 1982 in Washington, D.C. to discuss the objectives of the program announcement. Those who wish to attend may call Jan Phalen, ANA, (202) 245–7730 for time and place of the meeting.

Contact Person

Applicants who wish further clarification of this announcement may call Edwin Shealy, ANA, (202) 245–7714.

Eligible Applicants

Non-profit American Indian organizations are eligible to apply for a grant award under this announcement.

Available Funds

ANA expects to award a single grant in the amount of $275,000 in Fiscal Year 1982. The budget period will be 15 months and the project period will be 27 months.

Refunding after the first 15 months will depend upon the grantee's satisfactory progress, the availability of funds, the grantee's compliance with the Native American Programs Regulations, and the submission of a quality application in response to ANA's FY 1984 Funding Guidance.

Grantee Share of Project

Grantees must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contributions must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations, which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as the application kit containing the necessary forms may be obtained from:

Department of Health and Human Services, Administration for Native Americans, Room 5300, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730, Attention: No. 13612–827.

Application submission. One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the Application Kit.

The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget's Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants who request grant support must, prior to

submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review, and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and the program announcement, within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

(1) That the project objectives are identical with or are capable of achieving the specific program objectives defined in the announcement. (10 points)

(2) Applicant is well qualified in technical skills and experience to perform the work required as specified in the Conditions for Funding Section. (35 points)

(3) That the proposed activities are well developed and constitute a sound plan for implementation and operation of the jobs/skills bank, and a viable plan for making the bank self-supporting. (30 points)

(4) That (a) project personnel are well qualified and (b) the applicant organization has adequate facilities and resources. (15 points)

(5) That the budget is presented in detail, with complete explanation/justification of line items, and is of reasonable cost to the government. (10 points)

Closing Date for Receipt of Applications

The closing date for receipt of all applications under this program announcement is July 23, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet the above criteria will be considered late applications, and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 26, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 18, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 82-14000 Filed 5-21-82; 8:45 am]
BILLING CODE 4130-01-M

Administration for Native Americans Program Announcement 13612–626

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Available Fiscal Year 1982 Financial Assistance for Native American Projects.

SUMMARY: The Administration for Native Americans announces that applications are being accepted for financial assistance under Section 803 of the Native American Programs Act of 1974, Pub. L. 93–644, as amended. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATES: The closing date for receipt of all applications is July 23, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance, and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and welfare of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

The Administration for Native Americans bases its program and policy initiatives on the following three program goals:

(1) To develop or strengthen tribal governments and Native American institutions and local leadership to assure local control and decision making over all resources.

(2) To foster the development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being, and reduce dependency on social services.

(3) To support local access to, and coordiantion of, services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

Program Goal and Objectives

The goal of this program announcement is to provide financial assistance to Indian groups for community applied research to clarify their status as Indians and as tribes within their States and/or with the Federal government. Under the Social and Economic Development Strategies (SEDS), it is a program objective of ANA to support the efforts of Indian groups to clarify their legal status as Indians and as tribes in relation to the Federal and/or State government.

The principal method presently being utilized by Indian groups for status clarification is the Federal Acknowledgement Project (FAP).

However, there are other strategies available, some perhaps more appropriate, to determine the legal and sociological status of Indian groups; for example, designation under the Indian Reorganization Act as a half blood community or State recognition.

FAP guidelines provide a framework within which such research can best be accomplished.

Applications for projects should indicate that the proposed project will achieve or is capable of achieving the following objectives:

- The employment of an academic and/or legal professional(s) to undertake or assist in the community specific research necessary for status clarification.
- The completion of certain defined interrelated phases of the research necessary for an Indian group to clarify its status.
- The development of a plan for completion of community specific research for status clarification remaining at the end of the project period.

Project Consideration

The applicant is *strongly* encouraged to have an academic or legal professional involved at the beginning of the development of the application to ensure that appropriate research procedures are included in the development of project objectives.

ANA is interested in funding projects to Indian groups who have indicated a strong commitment to actively mobilize other resources, (financial, academic, human) to participate in a status clarification project.

Applicants must identify by source and amount other Federal and non-Federal resources available to the applicant for status clarification and indicate how these resources will be coordinated to accomplish the proposed project.

The applicant must not utilize ANA funds for costs to recruit researchers. ANA grants funds should be expended directly for the research initiative.

Contact Person

Applicants who wish further clarification or explanation of this announcement should call Lucille Dawson, Administration for Native Americans (202) 245–7714.

Applicants may also call or write the following two organizations for clarification or assistance in developing their application:

Native American Research Institute (NARI), 1026 Westdale Road, Lawrence, Kansas 66044, (800) 255–6317 (Toll-Free), Ms. Katheryn Staiano; Mr. James Wherry.

National Indian Luthern Board (NILB), American Indian Tribal Government and Policy Consultants, Inc., 1803 Carlisle, NE., Albuquerque, New Mexico 87110, (505) 266–0615, Charles Blackwell.

NARI and NILB are ANA grantees, funded for the purpose of mobilizing academic and financial resources for Indian groups for status clarification research.

Eligible Applicants

Any non-recognized or terminated tribe which is incorporated as a non-profit organization, residing on or near their reservation, former reservation or traditional homeland is eligible to apply for finacial assistance under this program announcement.

ANA is interested in funding Indian groups which believe they should be acknowledged as an Indian tribe under the Federal Acknowledgement Project or believe they have a right to other status recognition such as designation under the Indian Reorganization Act, State recognition or other legal designation.

Available Funds

The Administration for Native Americans expects to award $250,000 in Fiscal Year 1982 for new projects under this program announcement. It is anticipated that up to 10 grant awards will be made, ranging between $20,000 to $25,000 per grant. The budget period for each grant award will be 17 months. The project period for each grant will be 17 months.

Grantee Share of Project

Grantees must provide up to 20 percent of the approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contributions must be project related and must be allowable under the Department's applicable cost principle published in 45 CFR Part 74, Subparts G and Q.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's Regulations, which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. An application kit containing the necessary forms may be obtained from:

Administration for Native Americans, Department of Health and Human Services, Room 5300, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730, Attention: No. 13612–828.

Application submission: One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to the address specified in the application kit.

The application must be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services, implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), Applicants who request grant support must prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal Assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977)

for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner, ANA, determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Native Americans. The results of the review assist the Commissioner in consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, the ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and the program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria for Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria:

(1) That the application evidences involvement and participation by an academic or legal professional and that the identity of the author of the application is included with a statement on his or her future connection with the project objectives, if a grant is awarded. (10 points)

(2) That there are letters or material from the academic and/or legal community indicating support for the project objectives, commitment of other academic resources (e.g., university students for additional research, access to resource material, academic review and critique of research), and/or additional descriptive material on the historical and sociological aspects of the tribal community. (10 points)

(3) That the applicant provides a clear description of why it believes it has a right to status designation either through the Federal Acknowledgment Project criteria or through other status designation criteria. (20 points)

(4) That the description of the project objectives, especially the articulation of the actual research objective, is capable of achieving the specific program objectives defined in this announcement. (20 points)

(5) That the proposed procedures (activities) of the work program, if well executed, will achieve the intended results. (10 points)

(6) That the estimated cost to the government is reasonable considering the anticipated results. (10 points)

(7) That project personnel are or will be well qualified, and that the applicant has or will have adequate facilities and resources. (10 points)

(8) That the applicant has indicated how all present resources will be coordinated with this project and how new resources will be mobilized in the future. (10 points)

Closing Date for Receipt of Applications

The closing date for receipt of all applications under this program announcement is July 23, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 29, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 18, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 82-14081 Filed 5-21-82; 8:45 am]

BILLING CODE 4150-01-M

Administration for Native Americans Program Announcement 13612–829

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Fiscal Years 1982 and 1983 Financial Assistance for Native American projects.

SUMMARY: The Administration for Native Americans announces that applications are being accepted for financial assistance under Section 803 of the Native American Programs Act of 1974, Pub. L. 93–644 as amended. Regulations covering this program are published in the Code of Federal Regulations in 45 CFR Part 1336.

DATE: Closing date for receipt of all applications under this program announcement is July 23, 1982.

Program Purpose

The purpose of the Administration for Native Americans (ANA) is to promote social and economic self-sufficiency of American Indians, Alaskan Natives and Native Hawaiians through financial assistance, training and technical assistance and research, demonstration, and evaluation activities as authorized by the Native American Programs Act. The concept of self-sufficiency is defined by ANA as follows:

Self-sufficiency is the level of development and degree of ability in which a Native American community can provide for the needs of community members and pursue its own social and economic goals.

- Responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups.
- Development of self-sufficiency entails economic progress, together with establishment or improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.
- Achievement of self-sufficiency is based on the community's ability to plan, organize and direct resources to meet community needs and goals.

In order to accomplish its mission, ANA has established three broad program goals as follows:

(1) To develop or strengthen tribal and/or community institutions and Native American leadership to assure local control and decision-making over all resources.

(2) To foster development of stable, diversified local economies and economic activities which provide jobs, promote economic well-being and reduce dependency on social services.

(3) To support efforts to develop local access to and coordination of projects and services which are necessary to achieve *balanced* social and economic development, which safeguard the health and well-being of Native American people, and which are essential to a thriving self-sufficient community.

The overall strategy followed by ANA in the accomplishment of these goals is centered on supporting tribal governments and other Native American organizations in the development and implementation of community-based, long-term social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This strategy is based on two fundamental principles:

(1) That the local community and its leadership are responsible for determining their own needs, setting priorities, planning and implementing programs aimed at satisfying those needs; the unique mix of socio-economic, political and cultural factors operating in each community make this a necessity; only the local community is in a position to apply its own cultural values, and weigh the trade-offs in deciding on various strategies and programs which invariably have socio-cultural as well as economic consequences.

(2) That economic and social development are inter-related, and that development in one area should be balanced with development in the other, in order to enhance self-sufficiency. Without a careful balance of the two, serious dislocations may result that can jeopardize all of a community's development efforts. It is now an accepted premise that an expansion of social services, without a concomitant strengthening of incentives for employment and economic development, will invariably lead to greater dependency; conversely, inadequate social services can seriously impede efforts aimed at increased productivity and economic development.

The fundamental task which Native American communities face is that of building an enduring social and economic foundation in keeping with local needs, resources and cultural values. This goal is impeded by underdevelopment or inaccessibility of human, natural and financial resources at all levels of the public and private sector—as these resources relate to Native American needs. Social and economic problems are characterized by:

- Inadequate development of tribal governments, community institutions and Native American leadership to assume the roles they must play in controlling and directing development toward social and economic self-sufficiency;
- Inaccessible, fragmented and uncoordinated services at all levels of government—tribal, state and federal—resulting in a social service base for Native Americans which is insufficient to support and advance economic development;
- Non-existent or infrequent linkages with the private sector economy and social service systems; and,
- Undeveloped or underdeveloped local economies so lacking in diversification that they cannot provide the jobs, the economic stability or the foundation for economic progress which would increase individual productivity and reduce dependence on welfare services.

Background

Many Native American communities are characterized by high unemployment, low income and economic stagnation which impede economic and social progress. As a result, Native Americans rank at or near the bottom of virtually every measure of economic and social well-being, and have done so for generations. Native Americans have the highest incidence of poverty, the most unemployment, the least schooling and the poorest health when compared to other Americans. While numerous Federal efforts have been made to address these conditions, their focus in the past has generally been on the direct provision of services and income maintenance. All too often, the effect of this approach has been to increase the community's dependence on public sector assistance.

ANA recognizes that lasting social improvement can only be realized when a community has a stable economic base from which to provide support to its members. The philosophy that economic development is a prerequisite to social well being is not new. However, efforts to encourage economic development have not always been implemented in a manner which enhances social well being in the locale in which economic investments have been made. In many cases large corporations have made short-term investments in reservation communities, often to develop a natural resource. This activity may lead to higher income and employment on the reservation in the short term. However, when the resource is depleted, it becomes apparent that the community has not realized any long-term gains. Development of a continuing, self-sustaining reservation economy has not taken place.

Another factor which has inhibited the establishment of diversified local economies for many Native American communities has been the emphasis on job creation for its own sake. Many Native American communities which participated extensively in Federal jobs programs have found that, as a consequence, community employment is disproportionately reliant upon public sector financing. This approach effectively limits both the level and impact of the employment created. Future efforts to encourage community development should be concerned with establishing diversified economies through which private sector investment is a significant source of job creation.

Program Goal and Objective

The goal of this program announcement is to assist Indian tribes and Native American organizations to plan, develop and operate financial institutions to encourage and invest in the business and economic development of Native American communities.

Federal programs for Native American communities generally have not focused on establishing a resource base for community investment and development. At present, many Native American communities do not have sufficient capital or incentives to encourage business development and promote community growth.

As part of ANA's strategy to promote the creation of diversified economies which enhance community social and economic well-being and reduce individual and community dependency on social services, the financial institutions developed under this announcement are expected to provide capital investments for community enterprise and to provide technical and managerial assistance to those enterprises which they capitalize. The institutions may be tribal, regional or nationa in scope.

The development of such financial institutions is intended to help promote economic diversity both in types of enterprise and ownership and control. A wide range of financial entities may be

established under this program announcement, including, but not limited to:

- Development Funds or Banks.
- Business and Industrial Development Companies.
- Rural Loan Funds.
- Urban Development Corporations.
- Revolving Loan Funds.
- Community Credit Corporations.
- Venture Capital Funds.

In order to achieve the program objectives above, applicants must demonstrate their ability to establish financial institutions which can gain access to capital markets and leverage public and private assets for the creation of enterprises which promote social and economic self-sufficiency. Enterprises supported by these financial institutions may be of various types, including, but not limited to:

- Individual businesses (partnerships, sole proprietorships and corporations).
- Tribal Enterprises.
- Redevelopment, Community Revitalization or Economic Development projects.
- Local Development Companies.
- Community Development Corporations.
- Cooperatives and joint ventures.
- Equipment Leasing Companies.

Successful applicants will establish financial institutions which will invest in enterprises which improve the community's economic infrastructure, attract private investments, create permanent jobs, and encourage economic self-sufficiency. Successful applicants will plan to engage in projects that will produce economic growth consistent with the balanced social and economic development strategies of the communities served. Since the economic base of Native American communities varies greatly, it is anticipated that financial institutions which are established under this program will invest in a variety of enterprises, including manufacturing, commercial, construction, farming, retail and service businesses. The scope of business activity of these enterprises does not have to be limited to the geographic confines of the community. Thus, a tribal enterprise might be located on or off the reservation and may conduct its business beyond the reservation boundaries. This program is not intended to result in the establishment of financial institutions whose primary activity is the provision of consumer credit.

The applicant must address the following:

- The nature, scope and causes of capital constraints in the communities to be served by the proposed institution, and that the activities of the proposed institution relate to the overall social and economic develpment of those communities.
- The type of financial institution proposed, the method proposed to capitalize its operations and a plan for capitalization of the "fund".

Since ANA support can only be for startup and initial operating expenses, ANA funds may not be used to capitalize the loan or investment fund. Therefore, the applicant must develop a specific plan for capitalization of the "fund." Capital sources can include tribal, public, and private sector resources but the applicant should capitalize at least 50% of the proposed financial institution from private and/or tribal resources.

- The role and involvement of local banks and private industry.

Proposed method of administration, including:

- A program design which briefly describes the business and ownership types to be supported; anticipated methods of financing, including minimum and maximum levels of financing; acceptable use of proceeds; terms and conditions of financing; types of required collateral.
- The method of delivery and source of support services to the enterprises such as technical assistance, management services and training.
- How the institution will meet licensure and regulatory requirements of State and Federal government agencies.
- Proposed method of recapitalization.

Contact Person

Applicants who wish further clarification of this announcement may call Ms. Caryl Holiber, ANA, Washington, D.C. (202) 245–7727.

Notice of Meeting

ANA will hold a meeting June 14, 1982 in Washington, D.C. to discuss the objectives of the program announcement. Those who wish to attend should call Jan Phalen, ANA, (202) 245–7730 for time and place of the meeting.

Eligible Applicants

The following are eligible to apply for a grant award under this announcement:

- Indian tribes and tribal consortia.
- Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act.
- Non-profit Native Hawaiian organizations.
- Non-profit Indian organizations, urban, rural, regional or national in scope.

Available Funds

ANA expects to award $1 million in Fiscal Years 1982 and 1983 for new projects under this announcement. It is anticipated that 5–7 grant awards will be made. The project period may be up to 3 years. The initial budget period will be 15 months. Refunding after the first budget period will depend on availability of funds, the grantee's satisfactory progress, compliance with the Native American Programs Regulations and the submission of a quality application which must include:

- An operational plan which indicates the institution's lending policies, loan or investment servicing procedures and plan for recapitalization.
- A financial projection which indicates estimated income and expenses for three years, cash flow projections showing paid in capital, capital mix, loss ratios, reserves and cumulative cash flow.
- Pro forma balance sheets for the institution.

Grantee Share of Project

Grantees must provide up to 20% of the total approved cost of the project. Grantee contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services. The contribution must be allowable under the Department's applicable regulations in 45 CFR Part 74, Subparts G and Q and must be project related. Applicants are encouraged to provide a cash contribution as the non-Federal share.

Under certain circumstances, some or all of the non-Federal share of the project may be waived by ANA. Further explanation is contained in § 1336.52 of ANA's regulations which will be provided in the application kit.

The Application Process

Availability of application forms. In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. Clarification and/or explanation on the grant application process as well as an application kit containing the necessary forms may be obtained from: Department of Health and Human Services, Administration for Native Americans, Room 5360, North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, Ms. Janice B. Phalen, (202) 245–7730, Attention: No. 13612–820.

Application submission: One signed original and the appropriate number of copies of the grant application, including all attachments, must be submitted to

the address specified in the application kit.

The application shall be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including Native American Programs Rules and Regulations.

A–95 notification process. In compliance with the Department of Health and Human Services' implementation of the Office of Management and Budget Circular No. A–95 Revised (procedures at 41 FR 2052, January 13, 1976), applicants with the exception of Federally recognized tribes, who request grant support must, prior to submission of an application, notify both the State and Areawide Clearinghouses of the intent to apply for Federal financial assistance. Some State and Areawide Clearinghouses provide their own forms for the notification and others use the facesheet (SF–424) of the application form. Applicants should contact the appropriate Clearinghouses (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A–95 requirements.

Application consideration. The Commissioner determines the final action to be taken with respect to each grant application for this program. Applications which do not conform to this announcement or are not complete will not be accepted for review and applicants will be notified in writing accordingly. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons. The results of the review assist the Commissioner in the consideration of competing applications. The Commissioner's consideration also takes into account the comments of the A–95 Clearinghouse, ANA staff, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, the regulations, and the program announcement within the limits of funds available.

After the Commissioner has reached a decision either to disapprove or to fund a competing grant application, unsuccessful applicants are notified of the decision in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the amount of recipient participation. It also specifies the total project period for which support is contemplated.

Criteria For Review and Evaluation

Competing grant applications will be reviewed and evaluated against the following criteria: (100 points)

1. The overall application is consistent with the ANA program objectives as described in this program announcement. (5 points)

2. The applicant demonstrates the need for a financial institution by indicating the nature, scope and cause of capital constraints in the communities to be served and how the proposed financial institution will address those contraints. (10 points)

3. The proposed activities are well-defined and, if well executed, will achieve the intended results. If technical assistance is needed, a plan is provided which indicates the type, amount, source and cost of technical assistance to be obtained. (10 points)

4. The applicant demonstrates that the activities of the proposed financial institution are consistent with the social and economic development strategies of the communities to be served. (10 points)

5. The applicant adequately describes the type of financial institution proposed, including: (20 points)

a. The business and ownership types to be supported; anticipated methods of financing, including minimum and maximum levels of financing; acceptable uses of proceeds; anticipated terms and conditions of financing; and anticipated types of required collateral.

b. Anticipated method of delivery and source of support services to the enterprises, such as technical assistance, management services and training.

c. How the institution will meet licensure and regulatory requirements of State and Federal agencies.

6. The applicant has an acceptable plan for capitalization of the loan/investment fund. The role and involvement of local banks and private industry is explained and letters of interest from potential investors are included in the application. The proposed method of recapitalization is addressed. (20 points)

7. Proposed personnel and consultants are qualified as demonstrated by resumes and/or position descriptions. Experience should include development and/or operation of financial institutions, including commercial lending, loan packaging, delivery of business services, investments and banking. (20 points)

8. The proposed budget is fully justified and costs are reasonable to the Federal government. (5 points)

Closing Date For Receipt of Application

The closing date for receipt of all applications under this program announcement is July 23, 1982.

Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent by first class mail, postmarked on or before the deadline date, and received in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 26, 1982.

A. David Lester,

Commissioner, Administration for Native Americans.

Approved: May 18, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 82-14062 Filed 5-21-82; 8:45 am]
BILLING CODE 4130-01-M

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A Chapter AHP (Office of Personnel) of the Statement of Organization, Functions and Delegations of Authority (45 FR 72290, October 31, 1980) is amended to change the name of the Committee Management Staff to the Division of Committee Management and to redescribe the functions of the office. Beginning at Section AHPE1, substitute the following paragraph:

The Division of Committee Management formulates and oversees the implementation of Department-wide policies, regulations, and procedures governing the establishment, management, continuation or termination of all HHS Federal advisory committees and the appointment of members thereto. Provides technical advice and assistance to OPDIV and STAFFDIV staff and to Committee Management Officers with respect to committee rosters and reports required by statute or requested by the Secretary, the Congress, General Services Administration, and the Office of Management and Budget. Serves as liaison with other Federal agencies, the Congress or other outside organizations on advisory committee matters. Insures that the provisions of section 552 of Title 5, United States Code, and other applicable regulations are carried out with respect to the reports, records and other papers of advisory committees of the Department.

Dated: May 14, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-14079 Filed 5-21-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Gulf of Mexico Outer Continental Shelf Oil and Gas Leasing; Amendment to the Notice of Intent To Prepare a Regional Environmental Impact Statement for the Gulf of Mexico

In the June 8, 1981, issue of the Federal Register (Vol. 46, No. 109), there was a Notice of Intent by the Bureau of Land Management to prepare a regional environmental impact statement (EIS) for the Gulf of Mexico. The notice identified the proposed major Federal action in the regional EIS as the sale of leases for all Gulf of Mexico (GOM) sale areas included on the 5-Year OCS Oil and Gas Leasing Schedule. The notice did not identify the specific proposed lease sales involved.

The purpose of this amendment to the above mentioned Notice of Intent is to clarify specifically which lease sales will be included in the regional EIS.

The regional EIS will discuss the total development of oil and gas resources in the Gulf of Mexico which could occur as a result of all the lease sales included on the 5-Year OCS Oil and Gas Leasing Schedule. The regional EIS will also specifically address Sales 72, 74, and 79.

The proposed action in the regional EIS will be to offer for sale all unleased blocks within the Central Gulf of Mexico OCS planning area (Sale 72), the Western Gulf of Mexico OCS planning area (Sale 74), and the Eastern Gulf of Mexico OCS planning area (Sale 79). In addition to the proposed action, alternatives may include delay of the sale, no action, and modification of the proposal by deletion of certain blocks for specific reasons, such as biological, national security, etc.

The scoping process has been and will continue to be carried out in the manner noted in the June 8, 1981, Notice of Intent.

Further information about this regional EIS, or comments on the issues to be addressed therein, should be brought to the attention of Mr. Jack Holt, Regional EIS Coordinator, Environmental Assessment Division, New Orleans OCS Office, Suite 841, 500 Camp Street, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone 504-589-6541.

Dated: May 12, 1982.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 82-14040 Filed 5-21-82; 8:45 am]

BILLING CODE 4310-84-M

Southern California Outer Continental Shelf Oil and Gas; Intent To Prepare an Environmental Impact Statement for Proposed OCS Oil and Gas Lease Sale No. 80

Pursuant to § 1501.7 of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969, the Bureau of Land Management's Pacific Outer Continental Shelf Office is announcing its intent to prepare an Environmental Impact Statement (EIS) on the offshore oil and gas leasing proposal known as OCS Sale No. 80. This proposed sale is tentatively scheduled for January 1984.

A call for Nominations and Comments will soon be issued and will announce that the entire Southern California OCS Planning Area as described in the March 19, 1982 Federal Register (47 FR 54), pages 11980 through 11985, will be available for consideration for leasing. Following public response to the Call for Nominations and Comments, the Department of the Interior will identify the area proposed for leasing. The EIS analysis will focus on the area having oil and gas potential and analyze the potential environmental effects of leasing in this identified area. Possible alternatives to be considered in the environmental impact statement include options to modify, delay, or withdraw the proposed lease offering. The EIS will also include an environmental description of the entire planning area in order to provide the best available information for decisionmaking.

This announcement is being made at this time in order to take full advantage of the scoping process and to determine which issues will be treated in the EIS. The scoping process for this action will include a mailing to interested parties of a pamphlet that identifies significant issues. Scoping meetings will be conducted if responses to this mailing indicate that there is a need to further discuss possible issues and alternatives to be addressed in the EIS.

Questions concerning this proposed action and the environmental impact statement should be addressed to John Lane, Chief, Environmental Assessment Division, Pacific Outer Continental Shelf Office, 1340 W. Sixth Street, Los Angeles, California 90017, telephone (213) 688-6714.

Dated: May 12, 1982.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 82-14041 Filed 5-21-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-04218]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

May 17, 1982.

Notice of an application, serial number I-04218, for withdrawal and reservation of lands was published as Federal Register Document No. 57-8773 on page 9437 of the issue for November 26, 1957. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such land will be at 7:45 a.m., on June 22, 1982, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Clearwater National Forest

Boise Meridian

T. 34 N., R. 6 E., B.M., Idaho,
Sec. 1, lots 1, 2, SE¼NE¼, E½SE¼;
Sec. 12, E½NE¼, NE¼SE¼, E½SE¼SE¼;
Sec. 13, W½W½NW¼NW¼, (Lewis & Clark Camp and Corner Camp);
Sec. 14, E½E½NE¼NE¼, (Lewis & Clark Camp and Corner Camp);
Sec. 22, SE¼SW¼SW¼; (Cedar Grove Campground);
Sec. 27, NW¼SE¼. (Fan Creek Campground).

T. 35 N., R. 6 E., B.M., Idaho,
Sec. 10, S½SE¼NW¼NE¼, S½SW¼NE¼NE¼, NW¼SE¼NE¼, NE¼SW¼NE¼ (Dutchman Campground);

Sec. 20, W½W½SW¼SE¼, E½E½SE¼SW¼; (Dodge Campground);
Sec. 25, E½E½;
Sec. 36, E½NE¼, SW¼NE¼, SE¼.
T. 35 N., R. 7 E., B.M., Idaho,
Sec. 17, N½NE¼, SW¼NE¼, SE¼MW¼, N½SW¼, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, lot 4, NE¼, E½SW¼, NW¼SE¼;
Sec. 30, lots 1,2,3, NE¼NW¼.
T. 36 N., R. 6 E., B.M., Idaho,
Sec. 33, S½SW¼NE¼NW¼ (Snowy Summit Campground).

A strip of land 200 feet on each side of Lolo Trail Road No. 500.1 constructed through the following subdivision:

T. 34 N., R. 6 E., B.M., Idaho,
Sec. 13, W½NE¼, NE¼NW¼, E½NW¼NW¼, E½W½NW¼NW¼;
Sec. 14, W½E½NE¼NE¼, W½NE¼NE¼, SE¼NE¼, N½NE¼SE¼, NW¼SE¼SE¼, S½SE¼SE¼, SW¼SE¼, SE¼SW¼;
Sec. 17, NE¼SE¼;
Sec. 18, NE¼NE¼, SE¼NW¼NE¼;
Sec. 21, NE¼, N½SE¼, SE¼SE¼;
Sec. 22, NW¼SW¼, W½SW¼SW¼, NE¼SW¼SW¼;
Sec. 23, NW¼NE¼, NW¼, W½SW¼;
Sec. 26, W½NW¼;
Sec. 27, NE¼NE¼, S½NE¼, NW¼NW¼, S½NW¼.
T. 34 N., R. 7 E., B.M., Idaho,
Sec. 5, lots 1,2,3, S½SW¼NW¼, W½SE¼NW¼;
Sec. 6, S½SE¼NE¼, E½SE¼SW¼, SW¼SE¼SW¼, N½NE¼SE¼, NW¼SE¼, NW¼SW¼SE¼;
Sec. 7, lots 1,2,3, NE¼NE¼NW¼, W½NE¼NW¼.

A strip of land 200 feet on each side of Lolo-Weitas Road no. 103.2 constructed through the following subdivision:

T. 35 N., R. 6 E., B.M., Idaho,
Sec. 1. SW¼SE¼, NW¼SE¼SE¼, S½SE¼SE¼;
Sec. 11, E½SE¼NE¼, SW¼SE¼NE¼, W½SW¼NW¼, N½SW¼, NE¼NE¼SE¼, W½NE¼SE¼, NW¼SE¼;
Sec. 12, N½NE¼NE¼ NW¼NW¼NE¼, N½NW¼, NW¼SW¼NW¼.
T. 35 N., R. 7 E., B.M., Idaho,
Sec. 4, lot 3;
Sec. 5, N½N½SW¼, NW¼NW¼SE¼;
Sec. 6, lot 7, SE¼SW¼, NE¼SE¼, SE¼NW¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼;
Sec. 7, lot 1.
T. 36 N., R. 7 E., B.M., Idaho,
Sec. 33, SE¼NE¼NE¼SE¼NE¼, W½NE¼SE¼, W½SW¼SE¼;
Sec. 34, NE¼NE¼NW¼, W½NE¼NW¼, S½NW¼NW¼, SW¼NW¼, NW¼SE¼NW¼.

These areas aggregate 2,459.39 acres in Clearwater and Idaho Counties, Idaho.

Eugene E. Babin,

Acting Chief, Lands Section.

[FR Doc. 82-14106 Filed 5-21-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Getty Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Getty Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4494, Block 25, Chandeleur Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 14, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-14108 Filed 5-21-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79776. By decision of May 7, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to R. F. Westbury of Sandston, VA of Permit No. MC–149034 (Sub-No. 2) issued to Vernon R. Hodge, DBA Dixie Transportation Aide of Richmond, VA authorizing: operations as a contract carrier transporting (1) chimney assemblies, doors, wall sections, and insulation and (2) materials, supplies, and equipment used in the manufacture of the commodities in (1) between the facilities of General Products Company, Inc., at Fredericksburg, VA, on the one

hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with General Products Company, Inc., of Fredericksburg, VA. Representative: R. F. Westbury, P.O. Box 498, Miller Rd., Sandston, VA 23150. TA lease is not sought. Transferee is a carrier.

MC–FC–79792. By decision of May 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to George A. Wise, dba. GAW Freight Lines, of Nagales, AZ of Certificate No. MC–118397 issued to A. George Wise dba Wise Truck Line, of Nagales, AZ, authorizing: *Frozen vegetables,* From Oakland, CA., to Phoenix, AZ; From points in Los Angeles County, CA., to El Paso, TX, *Bananas,* From El Paso, TX, to Los Angeles, CA., From Long Beach Harbor, CA., to Tucson and Phoenix, AZ; From Nogales, AZ., to Los Angeles, San Diego, and San Francisco, CA. Representative: Andrew W. Baylor, 337 East Elm St., Phoenix, Az 85012. TA lease is not sought. Transferee is not a carrier.

MC–FC–79797. By decision of May 7, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Milwaukee Terminal Services, Inc. of Certificate No. MC–54444 (Sub-No. 8) issued July 11, 1978 to Main Express & Storage Co. authorizing the transportation over irregular routes of *such merchandise as is dealt in by retail radio and electric equipment stores,* from the facilities of Main Express & Storage Co., at Milwaukee, WI to points in WI. Restriction: the authority created is restricted to the transportation or terms destined to points in WI. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701.

MC–FC–79748. By decision of May 7, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to OFF TRANSPORTATION of Certificate MC–145431 issued to DANS TRUCKING & LEASING, INC. authorizing the transportation of General Commodities (except household goods and classes A & B explosives) between Detroit, MI on the one hand, and, on the other, points in the United States. Representative: Andrew Halin, 22375 Hagerty Rd., P.O. Box 400, Northville, MI 48167. Transferee is not a sought.

MC–FC–79795. By decision of May 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to C. L. Lingen Felter of Certificate No. MC–123914 (Sub-No. 4) issued November 13, 1981 to W.C. Kline, Inc. authorizing transportation of *ores and minerals* between points in Porhege, Geansga Lake, Cuyamoga and Trimbull Counties, OH, on the one hand, and, on the other, points in Blair County, PA subject to the following conditions: deletion of paragraph 9 of contrct providing that the operating rights are unique and not otherwise obtainable, and informing Commission of deletion. Representative: Thomas M. Mulroy, Esq., 1500 Bank Tower, 307 Forth Avenue, Pittsburgh, PA 15222.

MC–FC–79796. By decision of May 11, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Over-land Transportation, Inc., of Boise, ID, of certificate No. MC–143570 (Subs–4, 19, 20, 22X, 23) issued to D&G Trucking, Inc., of Meridian, ID, authorizing: *heating and air conditioning equipment, office supplies and equipment, food, scrap, building materials, chemicals, construction materials, and other named commodities,* between described points in ID, OR, WA, AZ, CO, UT, CA, MT, NV, WY, KS, MD, NM, OK, TX. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. TA lease is sought. Transferee is not a carrier.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–14025 Filed 5–21–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers, Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC–F–14853, filed May 3, 1982. ANDERSON & WEBB TRUCKING CO., INC. (Anderson) (P.O. Box 1523, 770 W. Lebanon, Mt. Airy, NC 27030–1523)—LEASE—CAL-TEX, INC., (Cal-Tex) (P.O. Box 1678, Costa Mesa, CA 92628). Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, NW, Washington, DC 20005. Anderson seeks authority to lease the operating rights of Cal-Tex. William L. Anderson and Dennis W. Moody, Jr., equal stockholders of Anderson, seek authority to acquire control of said rights through the lease. Cal-Tex holds contract carrier authority under Permit Nos. MC–141097, which generally authorize the transportation of (1) *textiles and related products*, between numerous specified points under continuing contract(s) with Pharr Yarns, Inc.; A.M. Smyre Manufacturing Company; and Allied Chemical Corporation; (2) *textiles and chemicals*, between points in the U.S., under continuing contract(s) with Badische Corporation; and (3) general commodities, between points in the U.S., under continuing contract(s) with E. I. DuPont de Nemours & Co., Inc. Cal-Tex also holds common carrier authority under Certificate Nos. MC–146041, which generally authorize the transportation of *chemicals, ceramic tile, containers, textile mill products, plastic articles, and printed matter*, between various specified points on the one hand, and, on the other, points in the U.S. Anderson is authorized to operate as a common carrier pursuant to authority issued in MC–144715 and subs thereunder. Condition: Authorization and approval of this lease will be limited to a one-year period.

Note.—TA has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14026 Filed 5-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 257]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 17, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC 157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 139457 (Sub-34)X, filed May 6, 1982. Applicant: G. L. SKIDMORE d.b.a. JELLY SKIDMORE TRUCKING CO., P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768. Sub-No. 28F permit, broaden: (1) canned foodstuffs to "food and related products", and (2) to between points in the United States, under continuing contract(s) with Owatonna Canning Company, of Owatonna, MN.

MC 144858 (Sub-49)X, filed May 5, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel (same as applicant). MC 118431 (Sub-Nos. 4, 5, 7, 15, 19, and 27F) permits: (1) broaden to "food and related products" from frozen foods, Subs 4, 5, 7, 15 and 27; (2) remove exception of named commodities and commodities in bulk, from materials, supplies, and ingredients used in the food processing industry, Sub 19 and (3) broaden to " between points in the United States," under continuing contract(s) with a named shipper, all subs.

MC 146992 (Sub-12)X, filed May 7, 1982. Applicant: PHIL-MART TRANSPORTATION, INC., P.O. Bx 126, Braselton, GA 30517. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Sub 8X certificate: broaden to: "such commodities as are used by and dealt in by restaurants, hotels, food business houses, grocery and department stores" from (1) foodstuffs, cleaning, scouring and washing compounds, napkins, tablecloths, dishes, cups, trays, and eating utensils, and (2) foodstuffs, cleaning and scouring compounds, napkins, tablecloths, dishes, cups, trays, and silverware.

MC 151027 (Sub-3)X, filed May 3, 1982, previously noticed in the **Federal Register** of May 12, 1982, republished as follows: Applicant: GRADY J. MITCHELL, d.b.a. MITCHELL TRUCKING COMPANY, P.O. Box 616, Dobson, NC 27017. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., N.W., Washington, DC 20005. Sub 2 certificate; remove the "originating at or destined to facilities of a shipping association and its members" restriction in general commodity authority radially between points in DE, NJ, NY and PA and points in CA, NV, and TX. The purpose of this republication is to correct the territorial description.

[FR Doc. 82-14029 Filed 5-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 7]

Motor Carriers; Applications, Alternate Route Deviations, and Intrastate Applications.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State

Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket A82-01041, filed January 10, 1982. Applicant: PHILIP S. BROWN d.b.a. PHILIP S. BROWN TRUCKING CO., 42641 Fontainebleau, Fremont, CA 94538. Representative: William D. Taylor, 100 Pine St., Suite 2550, San Francisco, CA 94111. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, except the following: (a) Used household goods and personal effects not packed in accordance with the crated property requirements; (b) livestock; (c) liquids, compressed gasses, commodities in semiplastic form and commodities in suspension in liquids, in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles; (d) commodities when transported in bulk in dump trucks or in hopper-type trucks; (e) commodities when transported in motor vehicles equipped for mechanical mixing in transit; (f) logs; (g) articles of extraordinary value; (h) automobiles, trucks, busses, trailer coaches and campers. Between all points and places in the counties of San Francisco, Alameda, Contra Costa, San Mateo and Santa Clara, California. In performing the service, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performances of such service. Instrastate, interstate and foreign commerce authority sought. Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the Public Utilities Commission, State of California, State Bldg., Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

New York Docket No. T-10020, filed April 27, 1982. Applicant: D.I.J. MESSENGER d.b.a. A & G MESSENGER, 210-12 Northern Blvd., Bayside, NY 11301. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General Commodities in Messenger Service.* Between all points in a territory comprised of Nassau, Suffolk and Westchester Counties and the City of New York. Intrastate, interstate and foreign commerce authority sought. Hearing: date, time and place not yet fixed. Request for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Ave., State Campus, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14031 Filed 5-21-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-172

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 161619 (Sub-1-1TA), filed May 6, 1982. Applicant: ACCA TRUCKING, INC., 194 East Kinney Street, Newark, NJ 07105. Representative: Peter Wolff, 722 Pittston Avenue, Scranton, PA 18505. *Furniture, Office Supplies and Lighting Fixtures (except household goods)* between Newark, NJ, on the one hand, and, on the other, points in CT, DE, DC, MD, NY, PA and VA. Supporting shipper: Stacor Corporation, 285 Emmet Street, Newark, NJ 07114.

MC 161678 (Sub-1-1TA), filed May 11, 1982. Applicant: CAPE TRANSIT CORP., 5501 Ocean Avenue, Wildwood Crest, NJ 08160. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. *Passengers and their baggage* between points in Cape May County, NJ, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI). supporting shipper(s): There are 15 statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 115676 (Sub-1-1TA), filed May 12, 1982. Applicant: CONWAY'S BUS SERVICE, INC., 3220 Mendon Road, Cumberland, RI 02864. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Passengers and their baggage, in special and charter operations,* beginning and ending at points in CT, MA and RI and extending to points in the U.S. (except AK and HI). Supporting shipper(s): Pawtucket Travel Agency, 1 Broad Street, Pawtucket, RI; Gaulin Travel Service, Marquette Plaza, Woonsocket, RI; Royal Travelers Association, 356 Providence Street, Woonsocket, RI 02895; Globetrotters, Inc., 116 Mt. Auburn Rd., Cambridge, MA 02138.

MC 161647 (Sub-1-1TA), filed May 11, 1982. Applicant: CORE, LTD., 336 State Street, North Haven, CT 06473. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114. *Contract carrier:* irregular routes: *Beverages, empty beverage containers and ingredients used in the manufacture of soft drinks* under continuing contract(s) with Pepsi Cola Bottling Co. of Hartford/Springfield/New Haven, Inc., Windsor, CT, between Windsor, CT, on the one hand, and, on the other, points in MA, NH, NJ, PA, and RI. Supporting shipper: Pepsi Cola Bottling Co. of Hartford/Springfield/New Haven, Inc., 1050 Kennedy Road, Windsor, CT 06095.

MC 146026 (Sub-1-9TA), filed May 5, 1982. Applicant: CROSS COUNTRY FARMING CO., INC., P.O. Box 134, Pine Island, NY 10969. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Paper and paper products, and (2) materials, equipment, and supplies used in the*

manufacture and sale of the commodities name in (1) above, between the facilities of The Chesapeake Corporation of Virginia, its subsidiaries, divisions, affiliates, and vendors at points in the US (except AK and HI), on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: The Chesapeake Corporation of Virginia, King William Ave., West Point, VA 23181.

MC 161331 (Sub-1–1TA), filed May 12, 1982. Applicant: FULMONT TRANSIT & CHARTER SERVICE, INC., 11 Church Street, Gloversville, NY 12078. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Contract carrier:* irregular routes: *Passengers and their baggage in charter operations* between points in Schenectady, Albany, Fulton, Montgomery, Saratoga, Rensselaer, Warren, Oneida, Onondaga, Hamilton, Herkimer, and Greene Counties, NY, on the one hand, and, on the other, points in the U.S. (except HI), under continuing contract(s) with Fulmont Tours & Travel, Inc., of Gloversville, NY. Supporting shipper: Fulmont Tours & Travel, Inc., 11 Church St., Gloversville, NY 12078.

MC 161967 (Sub-1–1TA), filed May 12, 1982. Applicant: WILLIAM G. MAYNARD, d.b.a. GREAT NECK TRUCKING, 107 Great Neck Trucking, Wareham, MA 02571. Representative: William G. Maynard (same as applicant). *Lumber and other commodities usually sold by building supply houses, but limited to shipments of 10,000 board feet or less. Shipments to be transported on a motor vehicle of 50,000 pounds gross weight or less;* between points in Barnstable, Plymouth and Bristol Counties, MA, on the one hand, and, on the other, points in New Haven, New London, and Hartford, CT; Providence, Pawtucket, Phillipsdale, and Newport, RI; Salem, and Manchester, NH, Pastow, VT. Supporting shipper(s): North Carver Pine Corp., Box 143, Plymouth Street, Carver, MA 02355; Grossman Division of Evans Products, Inc., 200 Union Street, Braintree, MA 02184.

MC 155937 (Sub-1–3TA), filed May 10, 1982. Applicant: INTERNATIONAL BUS SERVICES, INC., 262 Monitor Street, Brooklyn, NY 11222. Representative: Samuel B. Zinder, P.C., 98 Cutter Mill Road, Great Neck, NY 11021. *Contract carrier:* irregular routes: *Passengers and their baggage* between the Galaxy Towers Condominium, Guttenberg, NJ, and New York, NY, under continuing contract(s) with The Galaxy Towers Condominium, Guttenberg, NJ. Supporting shipper: The Galaxy Towers Condominium Association, 7000 Boulevard East, Guttenberg, NJ 07093.

MC 161963 (Sub-1–1TA), filed May 12, 1982. Applicant: JO-LIN HAULING & INDUSTRIAL SERVICES, INC., 1601 W. Edgar Road, Linden, NJ 07036. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *General commodities, (except household goods, hazardous materials, and commodities in bulk) having a prior or subsequent movement by water* between New York, NY Commercial Zone, on the one hand, and on the other, Commercial Zones of Baltimore, MD, Boston, MA, Cleveland, OH, and Philadelphia, PA. Supporting shipper(s): A.J. Fritz, Inc., 100 Church Street, New York, NY; Cape Line Limited, 90 West Street, New York, NY; Amerford International, Inc., 170 Broadway, New York, NY; Unimodal, Inc., 104 Harbor Drive, Jersey City, NJ 07305.

MC 161905 (Sub-1–1TA), filed May 10, 1982. Applicant: KETCHAM TRUCKING, INC., 5 Ketcham Avenue, St. James, NY 11780. Representative: Jack L. Schiller, 123–60 83rd Avenue, Kew Gardens, NY 11415. *Contract carrier:* irregular routes: *Gasoline and diesel fuel* between Linden, NJ, on the one hand, and, on the other, points in Suffork County beyond the New York, NY Commercial Zone, under continuing contract(s) with Rally Oil Co., Inc., Melville, NY. Supporting shipper: Rally Oil Co., Inc., 150 Broad Hollow Road, Melville, NY 11749.

MC 145338 (Sub-1–1TA), filed May 7, 1982. Applicant: MEDICAL EMERGENCY TRANSPORTATION CORPORATION, d.b.a. METCOR, Essex County Airport, 125 Passaic Avenue, Fairfield, NJ 07006. Representative: Charles Ephraim, 406 World Center Building, 918 16th Street, N.W., Washington, DC 20006. *Medical and scientific equipment, materials and supplies,* (1) From Buffalo, NY to points in NY and PA, and (2) From Newark, NJ, to points in PA, NJ, NY, CT, MA, RI, DE, MD, VA, and DC. Supporting shipper: Mallinckrodt, Incorporated, 2703 Wagner Place, Maryland Heights, MO 63043.

MC 119788 (Sub-1–1TA), filed May 10, 1982. Applicant: SINGER INTERSTATE CARRIERS, INC., 17 Passaic Avenue, Hawthorne, NJ 07506. Representative: Edward L. Nehez, 7 Becker Farm Road, P.O. Boy Y, Roseland, NJ 07068. *Contract carrier:* irregular routes: *Piece goods, and materials and supplies (except commodities in bulk) used in the dyeing, finishing or distribution of piece goods,* between Beacon, NY, on the one hand, and, on the other, points in the New York, NY Commercial Zone and Suffolk County, NY, under continuing contract(s) with Beacon Textiles Printers, Ltd., Beacon, NY. Supporting shipper: Beacon Textiles Printers Ltd., New and Front Streets, Beacon, NY 12508.

MC 161952 (Sub-1–1TA), filed May 12, 1982. Applicant: UTILITY PROPANE COMPANY, One Elizabethtown Plaza, Elizabeth, NJ 07207. Representative: Eric Meierhoefer, Joseph L. Steinfeld, Jr., Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005. *Liquefied natural petroleum gases, bulk heating oil, and diesel fuel* between points in NJ, on the one hand, and, on the other, points in MA, NH, VT, RI, CT, ME, NY, PA, and DE. Supporting shipper(s): New Jersey Natural Gas Co., 601 Bangs Avenue, Asbury Park, NJ 07712; Public Service Electric and Gas Company, 80 Park Pl., P.O. Box 570, Newark, NJ 07101; South Jersey Gas Company, Number One South Jersey Plaza, Folsom, NJ 08037.

MC 158898 (Sub-1–1TA), filed May 5, 1982. Applicant: R. WALSH TRANSPORTATION LIMITED, P.O. Box 368, Haileybury, Ontario, CD P0J IK0. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Passengers and their baggage, in the same vehicle with passengers, in round-trip charter and special operations, in sightseeing and pleasure tours,* beginning and ending at ports of entry on the International Boundary line between the U.S. and CD in MI, and extending to points in CT, DC, MA, NC, NH, NY, PA, RI, SC, TN, VT, VA, and WV, and return. Supporting shipper: Tri-Trans Services, Ltd., Main & Whitney Streets, Haileybury, Ontario, CD.

The following applications were filed in Region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 140942 (Sub-4–3TA), filed May 10, 1982. Applicant: CLOVERDALE TRANSPORTATION COMPANY, Box 578, Mandan, ND 58554. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502. *Contract:* irregular, (1) *Lumber, plywood, particle board and building materials* between points in ID, MT, OR, WA, CA, CO, WY, ND, SD, NB, MN, WI, IL, IA and MI, under contract with Viking Forest Products, a subsidiary of American International Forest Products, Portland, OR. (2) *Building materials and steel buildings, knocked-down,* between points in the U.S. in and west of MI, IN, KY, TN and MS (except AK and HI) under contract with Corscadden Steel Corporation, Glasgow, MT 59230. (3) *Building*

materials and knocked-down steel buildings and parts and accessories therefor, from points in the U.S. in and west of MI, IN, KY, TN and MS to points in ND, SD, MT, WY and MN under contract with Scherle Sales, Inc., Bismarck, ND. *ETA seeks 120 authority.* Supporting shipper: Emmer Bros, 6800 France Ave S. Minneapolis, MN 55435, Carscadden Steel Corporation, Box 532, Glasgow, MT 59230, and Viking Forest Products, a subsidiary of American International Forest Products, Portland, OR.

MC 145481 (Sub-4–10TA), filed May 10, 1982. Applicant: HOOSIER TRANSPORTATON SYSTEM, INC., 501 Sam Ralston Road, Lebanon, IN 46052. Representative: Steven K. Kuhlmann, Suite 2600, Petro-Lewis Tower, 717 17th Street, Denver, CO 80202. *Contract carrier,* irregular routes: *Furniture and fixtures, and such commodities as are dealt in by home furnishing and applicance stores,* between points in CA, on the one hand, and, on the other, points in GA, IL, IN, NJ and TX, restricted to a transportation service to be performed under contract(s) with Tatung Company of America, Inc. of Long Beach, CA. Supporting shipper: Tatung Company of America, Inc., 2850 El Presidio St., Long Beach, CA 90810.

MC 146630 (Sub-4–2TA), filed May 10, 1982. Applicant: SAWDUST SIERRA, INC., 2996 Timber Lane, Verona, WI 53593. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, P.O. Box 5086, Madison, WI 53705–006, 608–238–3119. Contract; irregular route: *Such commodities as are dealt in or used by a producer of brick and masonry products* from points in AL, IA, IL, IN, KS, MI, MN, MS, ND, NE, OH, OK, and TN to all points in WI under continuing contract(s) with Wisconsin Brick & Block Corp., of Madison, WI. An underlying ETA seeks 120 day authority. Supporting shipper: Wisconsin Brick & Block Corp., 2840 University Avenue, Madison, Wisconsin 53705.

MC 146335 (Sub-4–1TA), filed May 10, 1982. Applicant: RAIL FLITE TRANSPORTATION, INC., 7718 Stevens Road, Darien, IL 60559. Representative: Alex J. Miller, 555 S. Woodward Avenue, Suite 512, Birmingham, MI 48011. Contract *irregular general commodities* (except Classes A and B explosives, household goods and commodities in bulk) between points in IA, NE, MO, IL, KS, MN, SD, WI, MI, IN, and OH, under continuing contract with Alliance Shippers, Inc. Supporting shipper: Alliance Shippers, Inc., 8440 Archer Avenue, Willow Springs, IL, 60480.

MC 150103 (Sub-4–17TA), filed May 7, 1982. Applicant: SCHWEIGER INDUSTRIES, INC., 118 West Washington Street, Jefferson, WI 53549. Representative: Michael J. Wyngaard, 150 E. Gilman Street, Madison, WI 53703. *Pulp, paper and related products, expanded cellular products, and packaging materials* between IL, IN, KY, MN, and WI, on the one hand, and, on the other, IL, MD, NJ, OH, and PA. There are 14 supporting shippers.

MC 161420 (Sub-4–1TA), filed May 6, 1982. Applicant: AL STOVER, d.b.a. AL STOVER TRUCKING, Box 204, Webster, SD 57274. Representative: Thomas J. Simmons, Box 480, Sioux Falls, SD 57101. *Contract,* irregular; *beer and malt beverages,* between points in Brown, Day, and Codington counties, SD on the one hand, and, on the other, La Crosse, and Milwaukee, WI, Longview, TX, Memphis, TN, St. Louis, MO, and Minneapolis/St. Paul, MN, under contract with P. Monzel Company, Webster, SD. An underlying ETA seeks 120days. Supporting shipper: P. Monzel Company, Webster, SD 57274.

MC 161838 (Sub-4–1TA), filed May 4, 1982. Applicant: LOCKE TRUCKING CO., 410 Library Lane, Streamwood, IL 60103. Representative: James R. Madler, 120 W. Madison Street, Chicago, IL 60602. *General commodities* (except commodities in bulk, household goods, and Classes A and B explosives) between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Restricted to shipments between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Streamline Shippers, Baltimore, MD.

MC 161887 (Sub-4–1TA), filed May 10, 1982. Applicant: RALPH E. LOWERY, d.b.a. REL TRUCKING, 5817 S. Dock Street, Rt. 2, Newaygo, MI 49337. Representative: D. Richard Black, Jr., 285 James Street, P.O. Box 638C, Holland, MI 49423. *Contract* irregular: *such commodities, materials, supplies and equipment as are dealt with and used by manufacturers and distributors of food products* between the facilities of Bil-Mar Foods, Inc., in Zeeland, MI on the one hand and on the other points in IN, IL, MO, OK, TX under continuing contract(s) with Bil-Mar Foods, Inc. of Zeeland, MI. An underlying ETA seeks 120 days authority. Supporting shipper: Bil-Mar Foods, Inc., 8300 96th Avenue, Zeeland, MI 49464.

MC 161906 (Sub-4–1TA), filed May 10, 1982. Applicant: MATT KOCIAN, d.b.a. KOCIAN SUPPLY CO., 911 Forest Home, Francis Creek, WI 54214. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, P.O. Box 5086, Madison, WI 53705–0086. *Liquid fertilizer, in bulk, in tank vehicles* from all points in IL to all points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: (1) Land O' Lakes, Inc., P.O. Box 1355, Minneapolis, MN 55440; (2) Mid Lakes FS Cooperative, 600 Forest Home Drive, Francis Creek, WI 54214.

MC 161907 (Sub-4–1TA), filed May 10, 1982. Applicant: HELD BEEF INDUSTRIES, T.C. INC., Stockyards Road, West Fargo, ND 58078. Representative: Kyle Heidenreich (Same as above). *Contract* irregular: *Transporting meats, meat products and meat bi-products, dairy products,* articles distributed by meat-packinghouses, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers, under continuing contract with Held Beef Industries, Inc. of West Fargo, North Dakota, between points in ND, MN, WI, IL, MI, IN, OH, TN, SD, NB, KS, OK, TX, AR, MO, CO, IA. Supporting shipper: Held Beef Industries, Inc., Stockyards Road, West Fargo, North Dakota 58078.

MC 161908 (Sub-4–1TA), filed May 10, 1982. Applicant: MICHAEL A. PONTO, d.b.a. PONTO TRANSPORTATION, 571 Julius Drive, Appleton, WI 54911. Representative: William F. Mix, 21 A Muzzey Street, Lexington, MA 02173. *Contract* irregular: *Clothing, in boxes, and materials, equipment and supplies used in the sale, distribution, and manufacture thereof (except A and B explosives)* between Appleton, WI, on the one hand, and on the other, Griffin and LaGrange, GA; Martinsville, VA; Dallas, TX; Chattanooga and Dayton, TN; Hartford, CT and Los Angeles, CA. Restricted to traffic moving under continuing contract with Downers Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Downers Inc., 2425 West Packard, Appleton, WI 54911.

MC 15735 (Sub-4–15TA), filed May 6, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Dravo Corporation. Supporting shipper: Dravo Corporation, Pittsburg, PA 15222.

MC 51146 (Sub-4–61TA), filed May 13, 1982. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Charles W. Singer, P.O. Box 2545, Green

Bay, WI 54306. *Contract* irregular: *General commodities* (except household goods as defined by the Commission, commodities in bulk and Classes A and B explosives), between points in the U.S., under contract with The Mead Corporation, and its subsidiaries and affiliates. Supporting shipper: The Mead Corporation, Courthouse Plaza, N.E., Dayton, OH 45463.

MC 128837 (Sub-4–25TA), filed May 11, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Food and related products and materials, equipment and supplies (except bulk), used in the manufacture, sale and distribution of such products,* between the facilities of Heinz USA, Division of H. J. Heinz Company at Fremont and Toledo, OH, Holland, MI, Pittsburgh, PA, Muscatine, IA and Iowa City, IA on the one hand, and, on the other, points in AL, AR, FL, GA, KS, LA, OK, MS, TN, TX and WI. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 129790 (Sub-4–4TA), filed May 12, 1982. Applicant: JOSEPH A. BECKER, d.b.a. BECKER HI-WAY FRATE, Route 5, Box 10B, Albert Lee, MN 56007. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402. *Contract*; irregular; *canned food products* from Janesville and Jackson, WI and Rochester, MN to ND, SD, NE, MN, IA, WI, KS, MO, IL, MI, IN, AR, KY, TN, MS, AL, GA, and LA. Supporting shipper: Seneca Foods Corporation, 418 East Condi Street, P.O. Box 1587, Janesville, WI 5354701587.

MC 146143 (Sub-4–1), filed May 11, 1982. Applicant: JOHNIE R. JOHNSON and BETTY J. RODGERS, d.b.a. B&J TRUCKING, R.R. #3, Cisne, IL 62823. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Roofing materials,* from Memphis, TN to points in IL and IN. An underlying E/T/A seeks 120 days authority. Supporting shipper: Southern Wholesale Lumber Co., 600 So. 1st St., Fairfield, IL 62837, and The Celotex Corporation, a wholly-owned subsidiary of the Jim Walters Corporation, 1500 North Dale Mabry Highway, Tampa, FL 33607.

MC 155302 (Sub-4–2TA), filed May 13, 1982. Applicant: MACH FARMS, INC., 1020 South Superior St., Antigo, WI 54409. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Contract*; irregular; *chemicals and related products* between points in AR, CT, GA, IL, IN, LA, MI, MN, MS, NC, NY, OK, TX and VT, on the one hand, and, on the other hand, points in WI. Restriction: restricted to transportation performed under continuing contract(s) with Commerce Industrial Chemical, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Commerce Industrial Chemical, Inc., 5611 West Woolworth Avenue, Milwaukee, WI 53218.

MC 157134 (Sub-4–1TA), filed May 13, 1982. Applicant: SUPER CARRIER COMPANY, INC., 3250 South Pulaski, Chicago, IL 60623. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601. *General commodities* (except Classes A and B explosives, commodities in bulk and household goods), between the facilities of Capitol Freight Systems, Ltd. and its affiliates, at points in the US, on the one hand, and, on the other, points in the US. Supporting shipper: Capitol Freight Systems, Ltd., 1238 N. Kostner, Chicago, IL.

MC 158417 (Sub-4–2TA), filed May 13, 1982. Applicant: BADGER STATE WESTERN, INC., Route 1, Box 204, Owen, WI 54460. Representative: Michael J. Collins, Collins, Beatty & Krekeler, SC, P.O. Box 1042, Madison, WI 53701. *Contract,* irregular: *Paper and related articles* from Menasha, WI to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY. Restricted to traffic moving under continuing contract(s) with Sacs Foods, Inc. Supporting shipper: Central Paper Co., a division of Alco Standard Corporation, 741 4th Street, Box 330, Menasha, WI 54952.

MC 160348 (Sub-4–1), filed May 13, 1982. Applicant: ORCHARD TRANSPORT, LTD., P.O. Box 130, 226 1st St. West, Delisle, Saskatchewan, Canada Sol OpO. Representative: John B. Van de North, Jr., Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101, (612) 291–1215. *Potash,* between the ports of entry on the international boundary line between the U.S. and Canada in ND, on the one hand, and, on the other, points in MN, ND, SD, WI, IA, NE and MT. Supporting shipper: Cominco American, Inc., West 818 Riverside Avenue, Spokane, WA 99201.

MC 160604 (Sub-4–1TA), filed May 11, 1982. Applicant: CASTLE LEASING, INC., R.R. 4, Box 157, New Castle, IN 47362. Representative: Andrew K. Light, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract,* irregular, *Plastic products,* between Richmond, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI) under continuing contracts(s) with Product Components, Inc., Richmond, IN. An underlying ETA seeks 120 days of operating authority. Supporting shipper: Product Components, Inc., P.O. Box 967, Richmond, IN 47374.

MC 161615 (Sub-4–2TA), filed May 13, 1982. Applicant: SONN LINE TRANSPORT CO., INC., 4320 North 126th St., Brookfield, WI 53005. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203. (1) *Chemicals and related products and petroleum based products* from the facilities of Forrer Chemical Co., Inc., at Milwaukee, WI, to Lawrence, MA, Trenton, NJ, Jessup, MD, Atlanta, GA, Orlando, FL, Houston, TX, and Phoenix, AZ; and (2) *such commodities as are dealt in or used by a manufacturer or distributor of chemicals and related products and petroleum based products* from points in the Chicago, IL, Commercial Zone and Wood River, IL, to Milwaukee, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Forrer Chemical Co., Inc., 7221 West Parkland Court, Milwaukee, WI 53223.

MC 161970 (Sub-4–1TA), filed May 12, 1982. Applicant: LARRY'S CARTAGE CO., INC., P.O. Box 2009, Bridgeview, IL 60455. Representative: Larry D. Denton, 7667 W. 95th St., Hickory Hills, IL 60457. *General commodities* (except Classes A and B explosives, commodities in bulk requiring special equipment and household goods), having prior or subsequent movement by rail or water, between Chicago, IL and its Commercial Zone, on the one hand, and, on the other, points in IL, IN, MI, OH, WI, IA, and MO. Supporting shippers: Midwest Customs Service, P.O. Box 83, Schiller Park, IL 60176, Hansen & Tidemann, Inc., 2720 River Road, Des Plaines, IL 60018.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 94227 (Sub-5–1TA), filed May 12, 1982. Applicant: BALLEW TRUCKING COMPANY, INC., P.O. Box 715, Gainesville, TX 76240. Representative: J. Michael Alexander, 5801 Marvin D. Love Freeway, #301, Dallas, TX 75237–2385. *Asphalt, in bulk, in tank vehicles,* from Jefferson County, TX, to Chaves County, NM. Supporting shipper(s): Gulf States Asphalt Company, 535 Dresser Tower, 601 Jefferson, Houston, TX 77002.

MC 99464 (Sub-5–1TA), filed May 13, 1982. Applicant: IVAN W. WERNER and WILLIAM B. DOUGLAS, d.b.a. PAWNEE TRANSFER, P.O. Box 227, Pawnee City, NE 68420. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Common, regular. *General commodities, (except household goods,*

commodities in bulk, and Classes A and B explosives), between Pawnee City, NE and Falls City, NE, from Pawnee City over NE Hwy 50 to Junction NE Hwy 4, then over Junction U.S. Hwy 73, then over U.S. Hwy 73 to Falls City, NE, and return over the same route, serving the off-route Pts of Peru, Brownville, Salem, and Rulo, NE.

Note.—Applicant intends to tack and interline 15 supporting shippers.

MC 128075 (Sub-5–4TA), filed May 14, 1982. Applicant: JOHNSRUD TRANSPORT, INC., 5301 N.E. 17th Street, Des Moines, IA 50313. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. Contract; Irregular. *Commodities used in the manufacture of bakery goods* from Chicago and Joliet, IL and Cedar Rapids, Keokuk and Fort Dodge, IA to North Sioux City, SD. Supporting shipper: Interbake Foods, Inc., 900 Terminal Place, Box 27487, Richmond, VA 23261.

MC 144449 (Sub-5–5TA), filed May 14, 1982. Applicant: A & A CONTRACT CARRIERS, d.b.a. A & A MOVING & STORAGE CO., 2412 Blue Smoke Court South, Fort Worth, TX 76105. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Plastic and rubber products, pulp, paper and related products, packing materials, and such articles used in the manufacture, distribution and installation of such commodities,* between points in the U.S. under continuing contract(s) with Sealed Air Corporation, Danbury CT. Supporting shipper: Sealed Air Corporation, Old Sherman Turnpike, Danbury, CT 06810.

MC 144616 (Sub-4–12TA), filed May 13, 1982. Applicant: SOUTHWESTERN CARRIERS, INC.; P.O. Box 79495, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair R, Fort Worth, TX 76112. (1) *Materials and machinery* used in the manufacture, distribution and installation of banding, strapping, and wrapping machines, and (2) *building materials*, between points in the U.S. (except AK and HI). Supporting shippers: Weld-Loc, Inc., 5985 Richards St., Jacksonville, FL; and William M. Wood Co., P.O. Box 33, Ortega Sta., Jacksonville, FL 32210.

MC 146729 (Sub-5–6TA), filed May 12, 1982. Applicant: JAMES S. HELWIG and ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd., Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Electrical machinery, equipment and supplies* (1) from points in CA to Houston, TX and (2) from Houston to points in GA, NJ, MN, FL, IL, WI, TN, IN and CA. Supporting shipper(s): Codep International, Inc., 1730 Stebbins, Houston, TX 77043.

MC 149199 (Sub-5–10TA), filed May 13, 1982. Applicant: FRONTIER EXPRESS, INCORPORATED, d.b.a. D & M TRANSPORTATION, 905 S.W. Second, Oklahoma City, OK 73109. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. *General Commodities, (except Classes A and B explosives, household goods and commodities in bulk),* between Oklahoma City, OK, on the one hand, and, on the other, points in Comanche and Caddo Counties, OK. Applicant intends to tack the authority sought with its existing authority and proposes to interline with other motor carriers. Supporting shipper: There are 7 supporting shippers.

MC 150711 (Sub-5–3TA), filed May 13, 1982. Applicant: R.G.B. TRANSPORTATION COMPANY, INC., 6666 Gateway East, El Paso, TX 79935. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Foodstuffs* between points in El Paso County, TX, on the one hand, and, on the other, points in CA, ID, OR and UT. Supporting shippers: Emmett Foods, Inc., 3200 Duranzo Street, El Paso, TX; Hascom Frosted Foods, Inc., 2215 Myrtle, El Paso, TX; Valley Foods Co., 1515 E. Paisaco, El Paso, TX.

MC 151753 (Sub-5–6TA), filed May 12, 1982. Applicant: M.W. CYCLE HAULER, INC., 11909 Santa Fe Drive, Lenexa, KS 66215. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Plastic items and materials and supplies used in the manufacture of plastic items; fabricated metal products and equipment, materials and supplies used in the manufacture of fabricated metal products; janitorial supplies and cleaning compounds; paper products, printed materials and materials and supplies used in the printing business; building materials and related items and paper products,* between Clay and Jackson Counties, MO and Johnson and Wyandotte Counties, KS, on the one hand, and, points and places in the U.S. (except AK and HI), on the other hand. Supporting shippers: 6.

MC 152775 (Sub-5–6TA), filed May 12, 1982. Applicant: RAM ROD TRUCKING, INC., P.O. Box 1127, Marrero, LA 70073. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Contract irregular; *Building materials,* between points in AL, AR, FL, LA, MS, TN, and TX, under continuing contract(s) with Associated Dealers Supply, P.O. Box 73226, Metairie, LA 70003. Supporting shipper: Associated Dealers Supply, P.O. Box 73226, Metairie, LA 70003.

MC 154488 (Sub-5–9TA), filed May 13, 1982. Applicant: LASLEY TRUCKING COMPANY, INC., P.O. Box 1368, Conway, AR 72032. Representative: John B. Fowlkes, Jr. (same address as applicant). *Lumber and Wood Products* between points in AL, AR, FL, GA, LA, MS, MO, OK, TN and TX on the one hand and points in the U.S. (except AK and HI) on the other. Supporting shipper: American International Forest Products, Inc., P.O. Box 4166, Portland, OR 97208; Anthony Forest Products, P.O. Box 1877, El Dorado, AR 71730; Curt Bean Lumber Co., P.O. Box 9, Amity, AR 71921.

MC 156158 (Sub-5–1TA), filed May 13, 1982. Applicant: PULLEY CONTRACT CARRIERS, INC., 405 S.E. 20th Street, Des Moines, IA 50317. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200–A, Park Ridge, IL 60068. Contract irregular; *Such commodities as are dealt in by business and office supply companies,* from the facilities of United Stationers Supply Company (1) at Forest Park, IL and pts. in its commercial zone, to Des Moines, IA, Indianapolis, IN, Milwaukee, WI, Minneapolis, MN and St. Louis, MO, and pts. in their commercial zones, and (2) at Livonia, MI, and pts. in its commercial zone, to Cleveland, Cincinnati and Columbus, OH, and pts. in their commercial zones, under continuing contract(s) with United Stationers Supply Company of Maywood, IL. Supporting shipper: United Stationers Supply Company, 1701 S. 1st Avenue, Maywood, IL 60153.

MC 159766 (Sub-5–1TA), filed May 14, 1982. Applicant: G & G DRAYAGE, INC., 22 Mill Race Dr., St. Peters, MO 63376. Representative: Robert L. Graves, Jr. (same as applicant). Contract irregular; (1) *Metal products,* between St. Louis, MO, on the one hand, and, on the other, points in Franklin County, MO, under continuing contract with Maverick Tube Corp., St. Louis, MO.; (2) *Such commodities as are dealt in and used by manufacturers of printers ink,* between points in the U.S. (except AK and HI), under continuing contract with Crown Zellerbach, Inc., St. Louis, MO.

MC 160138 (Sub-5–2TA), filed May 12, 1982. Applicant: MARGARET L. STEWART, d.b.a. J. M. & F. HOTSHOT SERVICE, 3109 Chetwood, Del City, OK 73115. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Machinery, materials, equipment and supplies used in replacing, servicing and repairing machinery, equipment and supplies used in or in connection with the*

discovery, development, refining, manufacture, processing, storage and transmission of natural gas and petroleum and their products and by-products, in shipments not to exceed 18,000 pounds per shipment through utilization of single axle power units between Oklahoma County, OK on the one hand, and, on the other, points in AR, CO, KS, LA, NM, TX and WY. Supporting shippers: (1) Sovereign Supply Co., Oklahoma City, OK; (2) Red Beaver Box Co., Inc., Oklahoma City, OK; (3) Oilfield Specialty Distributors, Inc., Oklahoma City, OK; (4) Specialty Mfg., Inc., Oklahoma City, OK.

MC 160462 (Sub-5–1TA), filed May 14, 1982. Applicant: READI HOTSHOT, INC., Route #1, Roosevelt, OK 73564. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Machinery, materials, equipment and supplies used in replacing, servicing and repairing machinery, equipment and supplies used in or in connection with the discovery, development, refining, manufacture, processing, storage, and transmission of natural gas and petroleum and their products and by-products in shipments not to exceed 14,000 pounds per shipment, through utilizations of single axle power units,* between points in Beckham, Washita, Custer, Kiowa and Oklahoma Counties, OK on the one hand, and, on the other, points in AR, CO, KS, LA, NM, TX and WY. Supporting shippers: There are 7 supporting shippers.

MC 160572 (Sub-5–3TA), filed May 12, 1982. Applicant: APEX SERVICES, INC., 121 Bremen, St. Louis, MO 63147. Representative: Glen A. Coverdell (same as applicant). Contract irregular: *General Commodities (except classes A & B explosives and HHG's)* between points in the U.S. (except AK and HI) under continuing contract with ITOFCA, Inc., Downers Grove, IL.

MC 160724 (Sub-5–2TA), filed May 13, 1982. Applicant: STAR TRANPORT CO., Route 1, Wentworth, MO 64873. Representative: Kenneth Raley (same as applicant). *Liquid Asphalt, in bulk, in tank vehicles* from Madison County, IL to points in MO. Supporting shipper: Midwest Asphalt Products Co., 4602 Pearl Ave., Joplin, MO 64801.

MC 161918 (Sub-5–1TA), filed May 14, 1982. Applicant: SOUTHWEST BEDDING COMPANY, INC., 2906 North Sixth Street, Fort Smith, AR 72904. Representative: George Spencer, 7 North Block, Fayetteville, AR 72701. Contract, Irregular: *Steel Sofa Mechanisms and Wooden Household Furniture*—Between points in the U.S., under continuing contract with Ethan Allen, Inc., Danbury, CT 06810. Supporting shipper: Ethan Allen, Inc., Ethan Allen Drive, Danbury, CT 06810.

MC 161956 (Sub-5–1TA), filed May 12, 1982. Applicant: JOHN W. BIRDWELL, d.b.a. BIRDWELL TRUCKING, Gail Route, Box 200, Big Spring, TX 79720. Representative: Kenneth R. Hoffman, 1600 W. 38th Street, Suite 410, Austin, TX 78731. *Plastic materials* (other than expanded) from points in Howard County, TX to points in Webb County, TX (with subsequent movement into Mexico) and pts. in Sedgwick Co., KS. Supporting shipper: Cosden Oil & Chemical Company, Dallas, TX.

MC 161957 (Sub-5–1TA), filed May 12, 1982. Applicant: EXPRESS TRANSPORTATION CO., INC., P.O. Box 644, Rosenberg, TX 77471. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th Street NW., Washington, D.C. 20004. *Floor coverings, materials and supplies* used in the distribution and installation thereof between points in GA and PA on the one hand, and, on the other, points in TX. There are 12 shippers.

MC 161979 (Sub-5–1TA), filed May 13, 1982. Applicant: BEN C. WILLIAMS BAKERY SERVICE, INC., 6000 Denton Drive, Dallas, TX 75235. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Such commodities as are dealt in and used by wholesale and retail bakeries* from (a) Dallas, TX and (b) Hopkinsville, KY to points in TX, TN, NM, AL, AZ, AR, CO, GA, KS, KY, LA, MS, MO, OK and IL. Supporting shipper(s): Phillips Products Co., Inc., 1857 Calvin Drive, Hopkinsville, KY 42240; Mobil Chemical Company, Macedon, NY 14502; Bedford Industries, Inc., Box F—1659 Rowe Avenue, Worthington, MN 56187; Roush Products Co., Inc., Cedar Rapids, IA.

MC 161980 (Sub-5–1TA), filed May 13, 1982. Applicant: TERS, INC. d.b.a. TRANSPORT ELECTRIC, P.O. Box 2286, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. *Meat and meat by-products* between Hale, Parmer and Deaf Smith Counties, TX and points in CA, AZ, KS, MO and IA. Supporting shippers: Hereford By-Products, Inc., Hereford, TX.

MC 162005 (Sub-5–1TA), filed May 14, 1982. Applicant: MORRIS THOMPSON d.b.a. MORRIS THOMPSON TRUCKING, Box 43, Route #3, Tecumseh, OK 74873. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Iron and steel brake drums,* from Chattanooga, TN to the facilities of Kelsey Hayes Company located at or near Seminole, OK. Supporting shipper: Kelsey Axle & Brake Division, Kelsey Hayes Company, 307 "A" Street, Seminole, OK.

MC 162006 (Sub-5–1TA), filed May 14, 1982. Applicant: T & M CONSTRUCTION CO., INC., Highway 33, Box 589, Watonga, OK 73772. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Oil field commodities (except drilling rigs),* between points in AR, LA, MS, TX and WY for the account of Petco Armstrong Fishing and Rental Tools. Supporting shipper: Petco Armstrong Fishing and Rental Tools, 3500 N. Cimarron Road, Oklahoma, City, OK 73099.

MC 162006 (Sub-5–2TA), filed May 14, 1982. Applicant: T & M CONSTRUCTION CO., INC., Highway 33, Box 589, Watonga, OK 73772. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Oil field production equipment,* from the facilities of Sivalls, Inc., at or near Brownwood, TX to points in AR, KS and OK. Supporting shipper: Sivalls, Inc., 6020 State Highway 52, P.O. Box 19248, Oklahoma City, OK 73144.

MC 162006 (Sub-5–3TA), filed May 14, 1982. Applicant: T & M CONSTRUCTION CO., INC., Highway 33, Box 589, Watonga, OK 73772. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Casing and drill pipe,* from points in TX to points in OK for the account of GHK Gas Corporation. Supporting shipper: GHK Gas Corporation, P.O. Box 723, Elk City, OK 73648.

WC– (Sub- TA), filed May 12, 1982. Applicant: INLAND RIVER TRANSPORTATION CORPORATION, 10 South Brentwood Boulevard, St. Louis, MO 63105. Representative: Keith G. O'Brien, Esquire, 1729 H Street NW., Washington, D.C. 20006. Contract water *carbon (graphite) electrodes,* over all available waterways, between Pensacola, FL and Memphis, TN, under continuing contract(s) with Union Carbide Corp.

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 161056 (Sub-6–2TA), filed May 12, 1982. Applicant: AMERICAN HIGHWAYS, INC., P.O.B. 194, Moreland, ID 83256. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Lumber and lumber mill products,* between points in AZ, CA, CO, ID, KS, MT, NV, NM, ND, OR, SD, UT, WA and WY, for the account of Workmans Forest Products, Inc., for 270

days. An underlying ETA seeks 120 days authority. Supporting shipper: Workmans Forest Products, Inc., P.O.B. 361, Clackamas, OR 97015.

MC 134387 (Sub-6–32TA), filed May 11, 1982. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyon Ave., South Gate, CA 90280. Representative: Michael J. O'Neill, 601 West 1700 South, Syracuse, UT 84041. (1) *Furniture, Fixtures* and, (2) equipment, materials and supplies used in the manufacture and distribution of furniture, and fixtures between points in Los Angeles and Alameda Counties, CA on the one hand, and, on the other, points in ID, NV, UT, AZ, MT for 270 days, restricted to traffic originating at the facilities of Simmons, USA. Supporting shipper: Simmons, 1700 Fairway Ave., San Leandro, CA 94577.

MC 161976 (Sub-6–1TA), filed May 12, 1982. Applicant: LORA DALLUM, d.b.a. DALLUM TRUCKING, 1020 W. 100th Place, Northglenn, CO 80221. Representative: Lora Dallum (same as above). *Contract Carrier,* Irregular routes: *Building Materials,* from Bernalilo County, NM, and Park County, WY, to points in CO, for the account of Drywall Supply, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Drywall Supply, Inc., 60 Tejon St., Denver, CO 80223.

MC 145102 (Sub-6–18TA), filed May 11, 1982. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. *Food and related products* between Cherokee County, SC and Cleveland, OH and points within the Cleveland, OH commercial zone, on the one hand, and, on the other, points in CA, UT, AZ, CO and Portland, OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Rd., Solon, OH 44139.

MC 41098 (Sub-6–4TA), filed May 11, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. *Contract carrier,* irregular routes, *household goods,* from Greenwich, CT and a radius of 100 miles to Denver, CO and a radius of 100 miles under continuing contracts with AMAX, Inc. for 270 days. Supporting shipper: AMAX, Inc., AMAX Center, Greenwich, CT 06836. An underlying ETA seeks 120 days.

MC 41098 (Sub-6–5TA), filed May 12, 1982. Applicant: GLOBAL VAN LINES, INC. One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. *Contract carrier,* irregular routes, transporting *household goods,* between points in the U.S. under continuing contracts with Ex-Cell-O Corporation of Troy, MI, for 270 days. Supporting shipper: Ex-Cell-O Corporation, 2855 Coolidge Hwy., Troy, MI 48084.

MC 161981 (Sub-6–1TA), filed May 12, 1982. Applicant: JERRY J. LE VASSEUR, d.b.a. LE VASSEUR MOUNTAIN EXPRESS, 16542 Cedar Heights Drive, Pioneer, CA 95666. Representative: Jerry J. Le Vasseur (same as applicant). *Lumber and Lumber Mill Products* from points in OR and WA to points in San Francisco, San Mateo, Santa Clara, Solano, Alameda, Contra Costa, Marin and Monterey Counties in CA, for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Beronio Lumber Company, 2525 Marin Street, San Francisco, CA 94124; Alamo Forest Products, P.O.B. 8040–a150, Walnut Creek, CA 94596.

MC 34227 (Sub-6–6–TA), filed May 12, 1982. Applicant: PACIFIC INLAND TRANSPORTATION COMPANY, 15910 E. Colfax Ave., Denver, CO 80011. Representative: Steven K. Kuhlmann, 717 17th St., Ste. 2600, Denver, CO 80202. *Such commodities as are dealt in by construction and home improvement centers* (except commodities in bulk), and *materials, equipment and supplies used in the manufacture and distribution of these commodities,* between the facilities of Therma Tru, Div. of LST Corp., located at Toledo, OH, Colorado Springs, CO, and Van Buren, AR on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Therma Tru, Division of LST Corp., 2806 N. Reynolds Rd., Toledo, OH 43615.

MC 113271 (Sub-6–15–TA), filed May 12, 1982. Applicant: TRANSYSTEMS INC., P.O.B. 399, Black Eagle, MT 59414. Representative: Kenneth G. Thomas (same as applicant). *Foodstuffs and related articles* from Great Falls and Helena, MT to points in UT for 270 days. Supporting shipper: Waters Distributing Co., 1011 River Drive So., Great Falls, MT. An underlying ETA seeks 120 days authority.

MC 161974 (Sub-6–1–TA), filed May 12, 1982. Applicant: TRIDENT TRUCK LINE, INC., 23724 Saklan Rd., Hayward, CA 94545. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *General commodities, except classes A and B explosives, household goods and commodities in bulk, for traffic having a prior or subsequent movement via rail or vessel* moving in interstate or foreign commerce between points in Alameda, Contra Costa, Solano, San Mateo and San Francisco Counties, CA, on the one hand, and points in CA, in and north of Kern and San Luis Obispo Counties, CA, on the other, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Piggyback Consolidators, Inc., 15501 Heron Ave., La Mirada, CA 90628; Mitsui & Co. (U.S.A.) Inc., 101 California St. #3000, San Francisco, CA 94111; Pacific Gas & Electric Co., 77 Beale St., San Francisco, Ca 94106.

MC 121793 (Sub-6–1–TA), filed May 12, 1982. Applicant: JESSE EASLEY d.b.a. VAL VERDE CARTAGE, P.O.B. 302, Socorro, NM, 87801. Representative: James E. Snead, P.O.B. 2228, Santa Fe, NM, 87501. *General Commodities (excepting Class A and B explosives, household goods, commodities in bulk and commodities which because of size or weight require special equipment),* between points and places in Cibola, Valencia, Catron Sierra, Grant, Hidalgo, Luna, Dona Ana, Otero, Socorro, and Lincoln, NM, an El Paso County, TX, for 270 days and underlying ETA seeks 120 day authority. Supporting shipper: There are 6 shippers. Their statements may be examined at the regional office listed.

MC 161056 (Sub-6–3TA), filed May 14, 1982. Applicant: AMERICAN HIGHWAYS, INC., P.O.B. 194, Moreland, ID 83256. Representative: Timothy R. Stivers P.O.B. 1576, Boise, ID 83701. *Urea,* from the facilities of Reichhold Chemicals, Inc. at or near Columbia City and St. Helens, OR to points in ID south of the southern boundary of Idaho County, for 270 days. An underlying ETA seeks 120 days. Supporting shipper(s): Reichhold Chemicals, Inc., P.O.B. 810, St. Helens, OR 97051.

MC 161700 (Sub-6–1TA), filed May 14, 1982. Applicant: CANYON COUNTRY MEAT CO, 19114 Drycliff St., Canyon Country, CA 91351. Representative: Nicola R Odio (same as applicant). *Food and other related products* between points in CA, OR, WA and ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: C.H. Belt, Inc., 2151 Michelson, Suite 230, Irvine, CA 92715.

MC 162021 (Sub-6–1TA), filed May 14, 1982. Applicant: TED A. FARNSWORTH and GRACE M. FARNSWORTH, d.b.a. FAR-West CO., P.O.B. 9091, Stockton, CA 95208. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211. *Building and construction materials, supplies and equipment,* and *lumber and wood*

products, between Alameda, Amador, Sacramento, San Joaquin, Sutter, Shasta and Tulare Counties, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper(s): There are 9 shippers. Their statements may be examined at the Regional Office listed above.

MC 145102 (Sub-6–19TA), filed May 14, 1982. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Contract Irregular; Such commodities as are dealt in or used by manufacturers and distributors of building materials* (except commodities in bulk) between Medina and Westlake, OH, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OK, OR, TX, UT, WA, and WY under a continuing contract(s) with Donn Corporation for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Donn Corporation, 1000 Crocker Rd., Westlake, OH 44145.

MC 136086 (Sub-6–4TA), filed May 17, 1982. Applicant: GUILEY TRUCKING, INC., 8815 Pecan Ave., Fontana, CA 92335. Representative: Milton W. Flack, 8484 Wilshire Blvd., #800, Beverly Hills, CA 90211. *Metal products,* from the facilities of Syro Steel Company, Western Division, located at Centerville, UT, to points in ID, MT, NM, OR, WA and WY, for 270 days. Supporting shipper: Syro Steel Company, Western Division, 950 W. 400 South, Centerville, UT.

MC 162017 (Sub-6–1 TA), filed May 17, 1982. Applicant: ED OLPIN, d.b.a. OLPIN TRUCKING, 275 W. 2nd S., Pleasant Grove, UT 84062. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. *Contract carriage,* irregular routes, transporting, *cheese and cheese products,* from Dewey County, SD to Los Angeles, CA, for the account of Timberlake Cheese Co. for 270 days, ETA seeks 120 days authority. Supporting shipper: Timber Lake Cheese Co., Inc., Timberlake, SD 57656.

MC 149100 (Sub-6–11 TA), filed May 17, 1982. Applicant: JIM PALMER TRUCKING, 9730 Derby Dr., Missoula, MT 59801. Representative: Steven K. Kuhlmann, 717 17th St., Ste. 2600, Denver, CO 80202. *Lumber and wood products,* between Winslow, IN on the one hand, and, on the other, points in and west of MI, WI, IL, MO, AR, and LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: L. B. Foster Co., Wood Products Div., RR1, Winslow, IN 47598.

MC 161773 (Sub-6–1 TA), filed May 13, 1982. Applicant: REEDY ENTERPRISES, d.b.a. R.C. CARTAGE CO., INC., P.O.B. 282, Dupont, CO 80024. Representative: Ronald C. Reedy (same as applicant). *Common carrier,* regular routes. *General commodities (except hazardous waste, household goods, class A & B explosives and commodities in bulk and tank trucks,* from Boulder, Adams, Jefferson, Arapahoe, Denver counties, CO to Deith and Lincoln counties, NE via routes I–76 from Denver, CO, thence to I–80 and return over the same route for 270 days. Interlining privileges requested. An underlying ETA seeks 120 days authority. Supporting shippers: There are 44 supporting shippers. Their statements may be examined in the regional office listed above.

MC 162024 (Sub-6–1 TA), filed May 17, 1982. Applicant: ROD TRANSPORT, INC., 2848 American Ave., Sacramento, CA 95833. Representative: Steven Rodriguez (same as applicant). *pulp, paper and related products,* from Sacramento, CA, to Oakland and San Francisco, CA for 270 days. Supporting shipper: Keyes Fibre Company, 8450 Gerber Rd., Sacramento, CA 95828.

MC 161046 (Sub-6–1 TA), filed May 14, 1982. Applicant: S&B ENTERPRISES, 273 South 1375 East, Bountiful, UT 84010. Representative: Steve Facer (same as applicant). *Grain products and bakery products, equipment, materials and supplies used in the manufacture and distribution thereof,* from the facilities of Pillsbury in Weber and Davis Counties, UT to points in Tulare, Inyo, San Diego, Los Angeles, Alameda and Sacramento Counties, CA and Maricopa County, AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pillsbury Co., 2780 G. Ave., Ogden, UT 84402.

MC 124692 (Sub-6–28 TA), filed May 17, 1982. Applicant: SAMMONS TRUCKING, P.O.B. 4347, Missoula, MT 59806. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Lumber and wood products,* from points in CA on the north of Interstate Hwy. 80, OR, MT and ID, to points in NJ, for 270 days. Supporting shipper: Stitzinger Lumber Company, Box 27279, Philadelphia, PA 19118.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14030 Filed 5-21-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, See 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–86

Decided: May 12, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler and Fortier. Member Parker not paticipating in part.

MC 19311 (Sub-77), filed May 3, 1982. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Elmer J. Maue (same address as applicant), (313) 939–7000. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with General Motors Corporation of Troy, MI

MC 32570 (Sub-1TA), filed May 3, 1982. Applicant: MEIKO FREIGHT SERVICE, INC., 2220 E. Carson St., Long Beach, CA 90801. Representative: John C. Russell, 1545 Wilshire Blvd., Los Angeles, CA 90017, (213) 483–4700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 113861 (Sub-87), filed May 7, 1982. Applicant: WOOTEN TRANSPORTS, INC., 153 Gaston Avenue, Memphis, TN 38106. Representative: Dale Woodall, 6077 Primacy Parkway, Suite 209, Memphis, TN 38119, (901) 683–5400. Transporting *commodities in bulk,* between points in AR, TN, MS, AL, LA, MO, KS, OK, TX, IN, IL, and KY.

MC 114211 (Sub-509), filed May 4, 1982. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant), (319)–233–6113. Transporting *general commodities,* between points in the U.S., under continuing contract(s) with Tiger International, Inc., and its subsidiaries, of Los Angeles, CA.

MC 134060 (Sub-20), filed May 6, 1982. Applicant: DØNAM-MARPOLE TRANSPORT, LTD., 435 Trunk Rd., Duncan, B.C., Canada V9L 2P8. Representative: Henry C. Winters, 12600 SE 38th St., Suite 200, Bellevue, WA 98006, (206) 644–100. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between ports of entry on the international boundary line between the U.S. and Canada located in ID, MT and WA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY.

MC 138021 (Sub-7), filed May 3, 1982. Applicant: STAND, INC., P.O. Box 710, Gnadenhutten, OH 44629. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *general commodities,* (except classes A and B explosives and household goods), between points in OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 141590 (Sub-8), filed May 6, 1982. Applicant: NOAH E. FERRIS, d.b.a. CONTRACT FURNITURE CARRIERS, P.O. Box 7586, Roanoke, VA 24019. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, (703) 629–2818. Transporting *chemicals and related products and machinery,* between Roanoke and Salem, VA, and points in Roanoke County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142601 (Sub-10), filed May 6, 1982. Applicant: CECO TRANSPORT, INC., 1400 Kensington Rd., Oak Brook, IL 60521. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601, (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 145111 (Sub-2), filed May 3, 1982. Applicant: HASTINGS TRUCKING, INC., 907 Holland Ave., Galena Park, TX 77547. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713) 437–1768. Transporting *lime, lime slurry, and ground oyster shells,* between points in TX.

MC 148380 (Sub-23), filed May 3, 1982. Applicant: CRESCO LINES, INC., 13900 South Keeler Ave., Crestwood, IL 60445. Representative: Edward G. Bazelon, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Elcen Metal Products Company, of Franklin Park, IL.

MC 148791 (Sub-23), filed May 6, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 85116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *packaging and packaging products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Boise Cascade Corporation, of Boise, ID.

MC 149351 (Sub-7), filed May 5, 1982. Applicant: HEYMAN TRUCKING, INC., Box 97, 212 Mulberry St., Stephens City, VA 22655. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. Transporting *food and related products,* (a) between points in Berks County, PA, on the one hand, and, on the other, points in CA, OR, and WA, and (b) between points in Winchester and Frederick Counties, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150310 (Sub-4), filed May 6, 1982. Applicant: LOAD LINE, LTD., 3045 West Liberty Ave., Pittsburgh, PA 15216. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215, (614)–464–4103. Transporting *such commodities as are dealt in or used by manufacturers and distributors of plumbing products and supplies,* between points in the U.S. (except AK and HI), under continuing contract(s) with Artesian Industries, Inc., of Mansfield, OH.

MC 150440 (Sub-5), filed May 3, 1982. Applicant: UNIVERSAL EXPRESS, LTD., 3820 University, West Des Moines, IA 50265. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309, (515) 244–2329. Transporting (1) *tires, petroleum oil and grease, and agricultural implements and parts;* and (2) *tires,* between points in the U.S. (except AK and HI), under continuing contract(s) with Minnesota Farm Bureau Business Corp., in (1) above, and Safemark Division, BIC, Inc., of West Des Moines, IA, in (2) above.

MC 150490 (Sub-4), filed May 5, 1982. Applicant: CONN WEST TRUCKING, INC., 4000 East Rd., Lima, OH 45807. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting (1) *machinery and metal products,* between points in the U.S. (except AK and HI), and (2) *transportation equipment,* between points in CT, FL and ME, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150860, filed May 4, 1982. Applicant: CAL BETTEN TRUCKING, 4212 44th St., SW, Grandville, MI 49418. Representative: D. Richard Black, Jr., 285 James St., P.O. Box 638C, Holland, MI 49423, (616) 399–3400. Transporting *health and beauty aids, drugs and toilet articles,* between points in the U.S. (except AK and HI), under continuing contract(s) with L. Perrigo, Inc., of Allegan, MI.

MC 151761, filed May 16, 1982. Applicant: A. C. CARTAGE (1965) LTD.,

8958 120th St., Surrey, B.C. Canada V3V 4B4. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *lumber and wood products and building materials,* between ports of entry on the international boundary line between the U.S. and Canada in WA, on the one hand, and, on the other, points in OR and WA.

MC 151880 (Sub-3), filed May 3, 1982. Applicant: K & K TRUCKING, INC., 806 Cullum St., Carthage, TN 37030. Representative: J. Greg Hardeman, 618 United Southern Bank, Nashville, TN 37219, (615) 244–8100. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Smith County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant intends to tack this authority with its existing authority in Docket No. MC–151880 and MC–151880 (Sub 1).

MC 156960, filed May 6, 1982. Applicant: J. C. TRUCK, INC., 111 Halifax Cove, Jacksonville, AR 72076. Representative: Glen Clay (same address as applicant), (501) 982–9878. Transporting *rollers,* between points in White County, AR, on the one hand, and, on the other, points in MO, TN, TX, OK, AL, MS, KY, KS, IL, and OH.

MC 157211 (Sub-1), filed May 6, 1982. Applicant: DI-MON, INC., 9735 Braircreek Drive, Oklahoma City, OK 73132. Representative: Jim Patton, 3925 N.W. 10th St., Box 75613, Oklahoma City, OK 73147, (405) 943–2466. Transporting *Mercer commodities,* between points in NM, on the one hand, and, on the other, points in OK and TX.

MC 158230, filed May 3, 1982. Applicant: STEFANIA SEWRUK AND KRYSTYNA SCHOLTZE, d.b.a. TEMPO TRANSPORTATION, 3017 S. Kensington Avenue, Westchester, IL 60153. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plains, IL 60016, (312) 298–1094. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KY, LA, MI, MN, MS, MO, NY, OH, PA, TN, WV, and WI.

MC 161789, filed May 3, 1982. Applicant: BASRAN FREIGHT & LUMBER, 317 Wood St., New Westminster, B.C., Canada V3M 5K6. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228–3807. Transporting *lumber and wood products, forest products, building materials, and such commodities* as are dealt in or used by manufacturers and dealers of prefabricated log homes, between ports of entry on the international boundary line between the U.S. and Canada in WA, on the one hand, and, on the other, points in WA and OR.

MC 161800, filed May 3, 1982. Applicant: ALL AMERICAN BUS LINES, INC., 3744 East Anne, Phoenix, AZ 85040. Representative: Donald W. Powell, 4150 North 12th St., Phoenix, AZ 85014, (602)–241–0777. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in AZ, and extending to points in the U.S. (except HI).

MC 161830, filed May 4, 1982. Applicant: ESCANABA OIL COMPANY, INC. 2501 14th Ave., South Escanaba, MI 49829. Representative: Edward H. Schaus (same address as applicant) (906) 786–1122. Transporting *instruments, documents, currency, receipts, data processing materials, and correspondence,* between points in MI and WI.

MC 161860, filed May 6, 1982. Applicant: CHICOT TRANSPORT, INC., Highway 65 North, Lake Village, AR 71653. Representative: K. G. Norris, North Lake Shore Rd., Lake Village, AR 71653, (501)–265–2573. Transporting *petroleum products,* between points in Washington County, MS, on the one hand, and, on the other, points in Ashley, Chicot and Desha Counties, AR, under continuing contract(s) with (1) Powell Oil Company, Inc., of McGehee, AR; (2) Callaway Oil Company, of Wilmot, AR; and (3) G. A. Norris Butane Co., Inc. of Lake Village, AR.

MC 161861, filed May 6, 1982. Applicant: WJS MOTOR FREIGHT, INC., 3225 South 7th Street, Louisville, KY 40210. Representative: Daniel C. Sullivan, 180 N. Michigan Avenue, Suite 1700. Chicago, IL 60601, (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Haywood Male Company, Division of Genesco, of Nashville, TN.

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Decided: May 18, 1982.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

MC 2934 (Sub-122), filed May 7, 1982. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Control Data Corporation, of Minneapolis, MN.

MC 123405 (Sub-86), filed May 7, 1982. Applicant: FOOD TRANSPORT, INC., R. D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101, (717) 236–9318. Transporting *petroleum products* and *sound deadener compound* (except commodities in bulk, (1) between points in McKean and Venango Counties, PA, Hancock and Pleasants Counties, WV, and Warren County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) between points in Fulton County, GA, and Butler, Westmoreland and Allegheny Counties, PA, on the one hand, and, on the other, points in TX and those in the U.S. in and east of MN, IA, MO, AR, and LA, (3) between points in Harris County, TX, on the one hand, and, on the other, points in FL, and (4) between points in Erie County, NY and Beaver County, PA, on the one hand, and, on the other, points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 125535 (Sub-40), filed May 6, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Rd., St. Louis, MO 63141. Representative: Donald S. Helm (same address as applicant), (314) 569–1161. Transporting *non-ferrous metals,* between points in the U.S (except AK and HI).

MC 128114 (Sub-13), filed May 10, 1982. Applicant: SAVAGE & SONS, INC., P.O. Box 2422, Pasco, WA 99302. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting *petroleum and petroleum products,* between points in WA, OR, ID, and MT.

MC 141255 (Sub-21), filed May 6, 1982. Applicant: TANDY TRANSPORTATION, INC., 2560 E. Long Ave., Fort Worth, TX 76111. Representative: Donnie Brogdon (same address as applicant), (817) 834–0182. Transporting *general commodities* (except classes A and B, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lawson Products, Inc. of Des Plaines, IL.

MC 141255 (Sub-22), filed May 6, 1982. Applicant: TANDY TRANSPORTATION, INC., 2560 East Long Ave., Fort Worth, TX 76111. Representative: Roy Beans (same address as applicant), (817) 834–0182.

Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Big Bear Stores Co., and its subsidiaries, of Columbus, OH.

MC 142305 (Sub-6), filed May 6, 1982. Applicant: WISCONSIN EXPRESS LINES, INC., Route 2, Green Bay, WI 54301. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting (1) *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Pauly Cheese Company, a Division of Swift & Company, of Green Bay, WI, and (2) *salt and salt products,* between points in the U.S. (except AK and HI), under continuing contract(s) with International Salt Company, of Clarks Summit, PA.

MC 142305 (Sub-7), filed May 6, 1982. Applicant: WISCONSIN EXPRESS LINES, INC., Route 2, Green Bay, WI 54301. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203; (414) 273–7410. Transporting *food and related products,* between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145734 (Sub-18), filed April 27, 1982. Applicant: BD TRUCKING CO., P.O. Box 817, Ripon, CA 95366. Representative: James H. Gulseth, 100 Bush St., 21st Floor, San Francisco, CA 94104; (415) 986–5778. Transporting *general commodities* (except classes A and B explosives), between points in CA, OR, and WA.

MC 146075 (Sub-14), filed May 6, 1982. Applicant: TEXAS INTERMOUNTAIN TRANSPORTATION, INC., 6161 West 29th Pl., Wheatridge, CO 80214. Representative: Delbert Ewing (same address as applicant), (303) 429–4065. Transporting (1) *food and related products,* and (2) *alcoholic beverages,* between points in the U.S. (except AK and HI).

MC 152935 (Sub-10), filed May 6, 1982. Applicant: HILL-ROM COMPANY, INC., Highway 46, Batesville, IN 47006. Representative: Steve A. Oldham (same address as applicant) (812) 934–7169. Transporting *furniture and fixtures,* and *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Tropitone Furniture Company, Inc., of Sarasota, FL.

MC 153414 (Sub-2), filed May 6, 1982. Applicant: U.S. POLLUTION CONTROL, INCORPORATED, 2000 Classen Center, Suite 320 South, Oklahoma City, OK 73106. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Blvd., Oklahoma City, OK 73108; (405) 848–7946. Transporting *chemicals and related products,* between points in the U.S.

MC 156104 (Sub-1), filed May 6, 1982. Applicant: PAUL WATTS TRUCKING, INC., 386 Larkin Ave., Akron, OH 44305. Representative: Paul Watts (same address as applicant) (216) 784–6237. Transporting *such commodities* as are dealt in or used by ceramic or clay manufacturers, between points in the U.S. (except AK and HI).

MC 159155, filed May 6, 1982. Applicant: PULLEN BROS., INC., Route 4, Box 6H, Sikeston, MO 63801. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112; (817) 457–0804. Transporting (1) *carpet padding,* between points in the U.S. (except AK and HI), (2) *catbox filler and absorbent products,* between points in Pulaski County, IL, on the one hand, and, on the other, points in AZ, CO, NM, and those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (3) *frozen confections,* between points in the U.S. (except AK and HI).

MC 160454, filed May 6, 1982. Applicant: OWEN PRODUCE, INC., Locust Grove Rd., Elizabethtown, KY 42701. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (614) 790–2510. Transporting *such commodities* as are dealt in by retail and wholesale automotive supply houses and industrial supply houses, between points in Hardin County, KY, and Cuyahoga County, OH, on the one hand, and, on the other, points in TX, CA, and WA.

MC 160785 (Sub-1), filed May 10, 1982. Applicant: CASTAR TRUCKING, 7040 "F" St., Omaha, NE 68127. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114; (402) 397–9900. Transporting *food and related products,* between points in Pottawattamie County, IA, and Douglas and Sarpy Counties, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161025, filed May 7, 1982. Applicant: MIKE SATTERLEE & CLARK JENNER, d.b.a. CAMSCO, Box 1284, Williston, ND 58801. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502; (701) 223–5300. Transporting *Mercer commodities* (except commodities in bulk), between points in ND, SD, MT, WY, and CO.

MC 161795, filed May 7, 1982. Applicant: VANTAGE TRANSPORT, INC., 6610 Fleetwood Rd., McLean, VA 22101. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101; (703) 893–3050. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Kraft, Inc., of Glenview, IL.

MC 161854, filed May 6, 1982. Applicant: JAMES E. PATRICK, d.b.a. PATRICK'S, P.O. Box 133, Chestertown, MD 21620. Representative: William J. Bateman, 1575 Eye St., NW., Washington, DC 20005; (202) 789–1165. Transporting *motor vehicles,* between those points in DE, MD, and VA east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161865, filed May 6, 1982. Applicant: FEDTRANS, INC., 138 Fifth Ave. South, Nashville, TN 37202. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601; (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with State Industries, Inc., of Ashland City, TN.

MC 161884, filed May 7, 1982. Applicant: HARBOR VIEW TAXI OF STATEN ISLAND INC., 88 Brookfield Ave., Staten Island, NY 10308. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022; (212) 838–0600. Transporting *passengers and their baggage,* in the same vehicle with passengers, limited to the transportation of not more than 21 passengers (excluding the driver), in special operations, beginning and ending at Brooklyn, NY, and extending to points in the U.S.

MC 161895, filed May 10, 1982. Applicant: KING TRUCKING, INC., Rt. 1, Box 151, King City, MO 64463. Representative: G. C. King (same address as applicant) (816) 535–6398. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Buchanan, Gentry, Jackson, Pettis and Saline Counties, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161904, filed May 10, 1982. Applicant: ROY K. ABBOTT d.b.a ABBOTT EXPRESS, P.O. Box 399, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Dr.,

Carson City, NV 89701; (702) 882–5649. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with SCM Walton Printing Co. of Buena Park, CA and Roy E. Thomas Furniture Manufacturing, Inc. of Santa Fe Springs, CA.

Volume No. OP4–176

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams.

MC 51146 (Sub-864), filed May 10, 1982. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Charles W. Singer, P.O. Box 2545, Green Bay, WI 54306; (414) 498–5246. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with The Mead Corporation, of Dayton, OH, and its subsidiaries.

MC 146496 (Sub-14), filed May 10, 1982. Applicant: JOSEPH MOVING & STORAGE CO., INC., d.b.a. ST. JOSEPH MOTOR LINES, 5724 New Peachtree Rd., Chamblee, GA 30341. Representative: Edward J. Kiley, 1730 M St., N.W., Washington, DC 20036; (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Continental Shippers Association, Inc., of Atlanta, GA. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 151706 (Sub-4), filed May 3, 1982. Applicant: JAN-AL SALES, INC., 5321 Southwyck Blvd., Toledo, OH 43614. Representative: Joseph E. Ludden, P.O. Box 1567, LaCrosse, WI 54601; (608) 788–2000. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 156126, filed May 12, 1982. Applicant: AMERICAN TRANSPORTATION & STORAGE, INC., 817 Atherton Dr., Metairie, LA 70001. St., Forth Worth, TX 76103; (817) 332–4716. Transporting *metal products*, between points in AL, LA, MS and TX.

MC 159916 (Sub-1), filed May 11, 1982. Applicant: ROMAR, INC., P.O. Box 1843, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701; (208) 343–3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Romar, Inc.; Beauty For All Seasons; C-A-L Ranch Farm Supply, Inc.; C-A-L Stores Inc.; and Two M Distributors, Inc., all of Idaho Falls, ID, and Innovative Concepts, Inc., of San Jose, CA.

MC 161646, filed May 11, 1982. Applicant: JAMES PATTON 1570 Tarberry, Houston, TX 77088. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068; (713) 537–8156. Transporting *construction equipment and parts*, between Houston, TX and points in Brazorial County, TX, on the one hand, and on the other, points in OK, LA and AR.

MC 161896, filed May 10, 1982. Applicant: FREE STATE TRANSPORT, INC., 406 Railroad Ave., Federalsburg, MD 21632. Representative: M. Bruce Morgan, 100 Roseler Rd., Suite 200, Glen Burnie, MD 21061; (301) 761–2580. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada.

MC 161996, filed May 12, 1982. Applicant: HARRY PAYNE TRUCKING, 1317 Springbrook Rd., Medford, OR 97501. Representative: Philip G. Skofstad, 529 S.E. Grand Ave., Portland, Or 97214; (503) 239–4157. Transporting *lumber and wood products*, between points in WA and OR, on the one hand, and, on the other, points in CA, NV, AZ, TX, OK, UT, ID, NM, and AR.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14027 Filed 5-21-82; 8:45 am]

[Finance Docket No. 29915]

Consolidated Rail Corp.; Trackage Rights Exemption; Over Norfork & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the trackage rights agreement granting Consolidated Rail Corporation the right to operate over approximately 43.4 miles of Norfolk and Western Railway Company track between Muncie, and Richmond, IN.

DATES: Exemption effective on May 24, 1982. Petitions to reopen must be filed by June 14, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, room 5314, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Joel E. Mazor, Consolidated Rail Corporation, 1138 Six Penn Central Plaza Philadelphia, PA 19104

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the commission's decision. To purchase a copy of the full decision, contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423; (202) 289–4357–DC Metropolitan Area; (800) 424–5403–toll free for outside the DC area.

Decided: May 17, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14032 Filed 5-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–1 (Sub-119F]

Chicago and North Western Transportation Co.—Abandonment Between Mason City and Kesley, IA; Findings

The Commission has issued a certificate authorizing the Chicago and North Western Transportation Company to abandon its 35.6-mile rail line between Mason City, IA, milepost 104.3, and Kesley, IA, milepost 68.7, in Cerro Gordo, Franklin, and Butler Counties, IA. The abandonment certificate will

the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Decided: May 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14171 Filed 5-21-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-133)]

Chicago and North Western Transportation Co.—Abandonment in Polk County, IA; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon its rail line between milepost 3.8 near Flint Junction, IA and milepost 11.5 near Camp Dodge, IA, a total distance of 7.7 miles, in Polk County, IA, subject to conditions. A certificate will be issued authorizing abandonment unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14172 Filed 5-21-82; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the meeting of the Advisory Committee on Voluntary Foreign Aid which will be held on June 10 (from 9:00 a.m. to 5:30 p.m.), and June 11 (from 9:00 a.m. to 12:30 p.m.), at The Mayflower, 1127 Connecticut Avenue, NW., Washington DC 20036.

The Committee will discuss implementation of the "Biden-Pell" Amendment, Section 316(a) of the International Security and Development Cooperation Act of 1980, Pub. L. 96-533. The Amendment calls for encouragement of the work of private and voluntary organizations to deal with world hunger problems, and for assistance to facilitate public discussion, analysis, and review of issues relating to world hunger and poverty.

The major theme of this two-day meeting centers on the role of the media in development education. PVO and media representatives will speak on the various challenges and opportunities related to the use of media as a development education resource. In addition, there will be a panel discussion on World Food Day: A National Development Education Project for PVOs and an update on AID Development Education activities.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Committee in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty copies.

Dr. Toye Brown Byrd will be the AID representative at the meeting. It is suggested that those desiring further information contact Dr. Byrd at (703) 235-2708, or by mail c/o the Advisory Committee on Voluntary Foreign Aid, Agency for International Development, Washington, DC 20523.

Dated: May 14, 1982.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 82-14101 Filed 5-21-82; 8:45 am]
BILLING CODE 6116-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 82-28]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on General Aviation Technology.

DATE AND TIME: June 10, 1982, 8:30 a.m. to 5 p.m. June 11, 1982, 8:15 a.m. to 3:30 p.m.

ADDRESS: NASA Langley Research Center, Building 1219, Room 225, Hampton, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Harry W. Johnson, National Aeronautics and Space Administration, Code RJG-2, Washington, DC 20546 (202/755-2380).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on General Aviation Technology was established to assist the NASA in assessing the adequacy of its aeronautics research and technology program to meet the specific needs of general aviation, including commuter transport aircraft, and to recommend any modifications or augmentations of current and planned activities deemed necessary to increase their value and effectiveness in achieving commuter and general aviation program objectives. These objectives include advanced technology for increased safety, energy efficiency, utility, environmental compatibility, and economic usefulness. The program is multidisciplinary in scope, encompassing aerodynamics and flight dynamics, propulsion, materials and structures, avionics, controls and human factors. The Subcommittee, chaired by Mr. John W. Olcott, is comprised of eight members. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including Subcommittee members and participants).

Type of meeting: Open

Agenda

June 10, 1982:

8:30 a.m.—Opening Remarks
9 a.m.—Status of NASA Aeronautics Program Planning

11 a.m.—Summary of NASA FY 1982 Commuter and General Aviation Research and Technology Programs: Langley Research Center, Lewis Research Center, Ames Research Center
4 p.m.—Discussion of Issues Regarding General Aviation and Commuter Aircraft Technology
5 p.m.—Adjourn

June 11, 1982:
8:15 a.m.—Continuation of Discussion of Issues
10:30 a.m.—Subcommittee Conclusions and Recommendations
3:30 p.m.—Adjourn

Dated: May 17, 1982.

Nathaniel B. Cohen,

Director, Management Support Office, Office of External Relations.

[FR Doc. 82-14042 Filed 5-21-82; 8:45 am]
BILLING CODE 7510-01-M

[Notice 82-29]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Executive Subcommittee.
DATE AND TIME: June 17, 1982, 8:30 a.m. to 5:45 p.m.; June 18, 1982, 8:30 a.m. to 3 p.m.
ADDRESS: National Aeronautics and Space Administration, 600 Independence Ave., SW., Room 625, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Mr. C. Robert Nysmith, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/755-8550).
SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the discipline and vehicle class oriented activities of the Aeronautics Advisory Committee. The Subcommittee, chaired by Dr. Robert Loewy, is comprised of eleven members.

The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

Type of meeting: Open

Agenda

June 17, 1982:
8:30 a.m.—Chairperson's Remarks
9:15 a.m.—Review of NASA Aeronautics and Long Range Plan
1 p.m.—Subcommittee Chairperson's Reports
5:45 p.m.—Adjourn

June 18, 1982
8:15 a.m.—Continuation of Subcommittee Chairperson's Reports
10:45 a.m.—Discussion and Consolidation of Subcommittee Reports
3 p.m.—Adjourn

Dated: May 17, 1982.

Nathaniel B. Cohen,

Director, Management Support Office, Office of External Relations.

[FR Doc. 82-14043 Filed 5-21-82; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on June 3-5, 1982, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on May 19, 1982.

The agenda for the subject meeting will be as follows:

Thursday, June 3, 1982

8:30 A.M.-8:45 A.M.: Opening Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

8:45 A.M.-12:45 P.M.: Reactor Pressure Vessel Integrity (Open)—The Committee will hear the report of its Subcommittee and consultants who are presnt regarding the proposed NRC Plan of action to resolve questions relating to repressurization of reactor pressure vessels following severe cooling transients.

The Committee will hear and discuss a report from members and consultants of the NRC Staff regarding this matter. Representatives of the nuclear industry will participate as appropriate.

1:45 P.M.-3:45 P.M.: Quantitative Safety Goals (Open)—The members of the Committee will discuss the proposed ACRS report to the NRC regarding proposed Safety Goals for Nuclear Power Plants: A Discussion Paper (NUREG-0880) dated February 1982.

3:45 P.M.-5:45 P.M.: NRC Safety Research Program (Open)—The Committee will hear and discuss the report of its Subcommittee Chairman and designated members regarding the proposed NRC Safety Research Budget for FY 1984 and 1985.

Members of the NRC Staff will participate as appropriate.

Portions of this section will be closed as required to discuss information the premature release of which would be likely to significantly frustrate the performance of the Committee's statutory function.

5:45 P.M.-6:30 P.M.: NRC Regulations (Open)—The Committee members will hear and discuss reports from its Subcommittee Chairman regarding proposed NRC regulations on Application of TMI-2 Lessons Learned to Operating Reactors (10 CFR 50.34) and Applicability of License Conditions and Technical Specifications in an Emergency (10 CFR 50.54 and 50.72).

Friday, June 4, 1982

8:30 A.M.-12:30 P.M.: Midland Plant Units 1 and 2 (Open)—The Committee will hear the report of its Subcommittee and consultants who are present regarding proposed operation of the Midland Plant Units 1 and 2.

The Committee will hear and discuss presentations by representatives of the NRC Staff and the applicant regarding this matter. Portions of this section will be closed as necessary to discuss Proprietary Information related to this matter.

1:30 P.M.-2:00 P.M.: Discuss Items for ACRS meeting with NRC Commissioners (Open)—The members will discuss proposed ACRS comments regarding items to be discussed with the NRC Commissioners. These items will include: ACRS activities regarding quantitative safety goals for nuclear power plants; integrity of reactor pressure vessels; ACRS plans for review of the CRBR; the NRC Long Range Research Program Plan, and instrumentation for detection of inadequate core cooling.

2:00 P.M.-3:30 P.M.: Meeting with NRC Commissioners (Tentative) (Open)—The Committee will meet the members of the Commission to discuss items not above.

3:30 P.M.-4:15 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS Subcommittee activity and topics proposed for cosideration by the full Committee.

4:15 P.M.-5:00 P.M.: Decay Heat Removal Systems (Open)—The Committee will hear and discuss the report of its Subcommittee Chairman regarding the proposed NRC Task Action Plan A-45 to evaluate alternate decay heat removal systems.

5:00 P.M.-6:30 P.M.: Quantitative Safety Goals (Open)—The members will continue discussion of the proposed ACRS report to the NRC on proposed

Safety Goals for Nuclear Power Plants (NUREG–0880).

Saturday, June 5, 1982

8:30 A.M.–12:30 P.M. Preparation of ACRS Reports to NRC (Open/Closed)—The members will discuss proposed reports to the NRC regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information and information which will be involved in an adjudicatory proceeding.

1:30 P.M.–2:30 P.M.: Seismic Methodology Applicable to Nuclear Power Plants (Open)—The members will discuss proposed Committee comments regarding the use of revised seismic methodology for the siting and design of nuclear power plants.

2:30 P.M.–3:30 P.M.: Preparation of ACRS Reports to NRC (Open/Closed)—The members will complete discussion of proposed ACRS reports to NRC regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information and information which will be involved in and adjudicatory proceeding.

Procedures for the conduct of an participation in ACRS meetings were published in the **Federal Register** on September 30, 1981 (46 FR 47903).

In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R. F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) applicable to the matters being discussed, information which will be involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)), and preliminary information the release of which would be likely to significantly frustrate performance of the Committee's statutory function (5 U.S.C. 552b(c)(9)(B)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: May 18, 1982.

John C. Hoyle,

Advisory Committee Management.

[FR Doc. 82-14127 Filed 5-21-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguard, Subcommittees on Reactor Radiological Effects and Site Evaluation; Meeting

The ACRS Subcommittees on Reactor Radiological Effects and Site Evaluation will hold a joint meeting on June 9, 1982 in Room 1046, 1717 H Street, NW., Washington, D.C. The Subcommittees and their consultants will review NRC's FY 1984 and FY 1985 research plans in the areas of reactor radiological effects, siting and environmental impacts.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements maybe presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which may be closed to prevent premature disclosure of budgetary and other information (Sunshine Act Exemption (9)b). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Wednesday, June 9, 1982—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therfor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley or the Staff Engineer, Ms. R. C. Tang (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to prevent premature disclosure of budgetary information. The authority for such closure is Exemption (9)b to the Sunshine Act, 5 U.S.C. 552b(c)(9)b.

Dated: May 20, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-14211 Filed 5-21-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–298]

Issuance of Amendment to Facility Operating License; Nebraska Public Power District

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 79 to Facility Operating License No. DPR–46 issued to Nebraska Public Power District (the licensee) which revised the Technical Specifications for opeation of the Cooper Nuclear Station located in Nemaha County, Nebraska. The amendment is effective as of March 23, 1982.

The amendment modifies the Technical Specifications to permit operation of the facility during startup for a period not to exceed 48 hours between March 22 and March 25, 1982

with the containment deinerted and without drywell suppression chamber differential pressure.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 23, 1982, (2) the Commission's letter to the licensee dated March 23, 1982, (3) Amendment No. 79 to License No. DPR–46 and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Auburn Public Library, 118–15th Street, Auburn Nebraska 68304. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of May 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-14128 Filed 5-21-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–11654]

Pepsico, Inc.; Application and Opportunity for Hearing

May 18, 1982.

Notice is hereby given that PepsiCo, Inc. (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities Exchange Commission (the "Commission") that the following trusteeships of The Chase Manhattan Bank (National Association) ("Chase") are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under any of the following instruments: (1) Trusteeship under an Indenture dated as of January 15, 1975 (the "1975 Indenture") of the Company which was heretofore qualified under the Act; (2) trusteeship under an Indenture dated as of June 1, 1980 of PepsiCo Capital Resources, Inc. ("PCRI"), as Issuer, and the Company, as Guarantor (the "1980 Indenture"), which was heretofore qualified under the Act; (3) trusteeship under a Trust Agreement of the Puerto Rico Industrial, Medical and Environmental Pollution Control Facilities Financing Authority (the "Authority") dated as of May 1, 1981 (the "Trust Agreement") which was not qualified under the Act and under which the Authority assigned certain of its rights under a Loan Agreement (the "Loan Agreement") dated as of May 1, 1981 between the Authority and the Company, including the right to payment from the Company of amounts sufficient to enable the Authority to pay principal of, and interest and redemption payments (including redemption premium, if any) on, the bonds issued under the Trust Agreement; (4) trusteeship under an Indenture dated as of March 2, 1982 of PepsiCo Capital Corporation N.V., as issuer, and the Company, as Guarantor (the "March 1982 Indenture"), which was not qualified under the Act; and (5) trusteeship under an Indenture dated as of April 1, 1982 of PCRI, as Issuer, and the Company, as Guarantor (the "April 1982 Indenture"), which was heretofore qualified under the Act.

Section 310(b) of the Act, which is included in Section 8.08 of the 1975 Indenture and § 7.08 of the 1980 Indenture and the April 1982 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in each of such sections), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (c)(1) of each of such sections provides, with certain exceptions stated therein and with the explicit exceptions of the 1975 indenture contained in the 1980 Indenture and of the 1975, 1980, and March 1982 Indentures and the Trust Agreement contained in the April 1982 Indenture, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding.

The Company's application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in § 8.08 of the 1975 Indenture and in Section 7.08 of the 1980 Indenture and April 1982 Indenture), seeks a finding by the Commission that the trusteeships of Chase under the 1975, 1980 and April 1982 Indentures and under the Trust Agreement and the March 1982 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under any of such instruments.

The Company alleges that:

(1) May 1, 1982, it had outstanding $100,000,000 aggregate principal amount of its 8¼% Notes due 1985 issued under the 1975 Indenture (the "1975 Notes"). The 1975 Notes were registered under the Securities Act of 1933 (File No. 2–52659) and the 1975 Indenture was qualified under the Act.

(2) At May 1, 1982, PCRI had outstanding $150,000,000 aggregate principal amount of its 10⅛% Guaranteed Notes due 1986 issued under the 1980 Indenture (the "1980 Notes"). The 1980 Notes are guaranteed by the Company pursuant to Section 2.09 of the 1980 Indenture and to guarantees set forth on the 1980 Notes. The 1980 Notes and the related Company guarantees were registered under the Securities Act of 1933 (File No. 2–67794) and the 1980 Indenture was qualified under the Act.

(3) At May 1, 1982, the Authority had outstanding $16,000,000 aggregate principal amount of Industrial Revenue Bonds 1981 Series A (PepsiCo, Inc. Project) (the "Industrial Revenue Bonds") under the Trust Agreement. Under the Trust Agreement, the Authority assigned certain of its rights under the Loan Agreement, including the right to payment from the Company of amounts sufficient to enable the Authority to pay principal of, and interest and redemption payments (including redemption premium, if any) on, the Industrial Revenue Bonds. The Industrial Revenue Bonds were offered and sold in a transaction not involving any public offering, within the meaning of section 4(2) of the Securities Act of 1933, as amended, to a limited number of institutional investors who had such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment and were able to bear the

economic risks of the investment. The Industrial Revenue Bonds were therefore exempt from the registration requirements of the Securities Act of 1933 and the Trust Agreement was exempt from the qualification provisions of the Act.

(4) At May 1, 1982 PepsiCo Capital Corporation N.V. had outstanding $125,000,000 principal amount of Zero Coupon Guaranteed Notes due March 2, 1994 (the "March 1982 Notes") issued under the March 1982 Indenture. The March 1982 Notes are guaranteed by the Company pursuant to Section 304 of the March 1982 Indenture and to guarantees set forth on the March 1982 Notes. The March 1982 Notes were issued by a corporation organized and existing under the laws of a foreign government and were not offered or sold directly or indirectly in the United States of America, its territories or possessions, or areas subject to its jurisdiction, or to nationals or residents thereof. The March 1982 Notes and the related Company guarantees were therefore exempt from the registration requirements of the Securities Act of 1933 and the March 1982 Indenture was exempt from the qualification provisions of the Act.

(5) As of May 1, 1982 PCRI had outstanding $850,000,000 aggregate principal amount of its Zero Coupon Guaranteed Serial Debentures Due 1988–2012 (the "1982 Debentures"). The 1982 Debentures are guaranteed by the Company pursuant to Section 2.09 of the April 1982 Indenture and to guarantees set forth on the 1982 Debentures. The 1982 Debentures and the related Company guarantees were registered under the Securities Act of 1933 and the April 1982 Indenture was qualified under the Act.

(6) The 1975 Indenture, the 1980 Indenture, the Trust Agreement, the March 1982 Idenfure, and the April 1982 Indenture are wholly unsecured and rank *pari passu inter se.*

(7) The Company's guarantees of the March 1982 Notes are neither superior nor inferior in right of payment to the 1975 Notes or the Company's guarantees of the 1980 Notes, or the 1982 Debentures.

(8) The Company's obligations under the Loan Agreement which were assigned to the Trustee under the Trust Agreement are neither superior nor inferior in right of payment to the 1975 Notes or the Company's guarantees of the 1980 Notes, or the 1982 Debentures.

(9) The Company is not in default under the 1975, 1980, or April 1982 Indentures or the 1975 Notes, the 1980 Notes, or the 1982 Debentures, nor is it in default under the Loan Agreement, the March 1982 Indenture or the March 1982 Notes.

(10) Such differences as exist among the 1975 Indenture, the 1980 Indenture, the Trust Agreement, the March 1982 Indenture, and the April 1982 Indenture are not so likely to involve a material conflict or interst as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under any of such instruments.

The Company has waived notice of hearing and any and all rights to a hearing and to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matter of fact and law asserted, all persons are referred to said application which is on file in the office of the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after June 14, 1982, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, not later than June 14, 1982 at 5:30 P.M. Eastern Daylight Time, in writing, submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-14007 Filed 5-21-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18742; File No. SR-MSE-82-5]

Self-Regulatory Organizations, Proposed Rule Change By Midwest Stock Exchange, Inc.; Relating to MSE Automatic Execution System (MAX)

Comments requested on or before June 14, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1982, the Midwest Stock Exchange, Incorpoorated, filed with the Securities and Exchange Commission, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The characteristics of the Midwest Order Handling and Execution System ("MAX") will be the following:

1. The system will route the following kinds of orders directly to the Co-Specialist:
   a. Retail orders only.
   b. Both market and limit orders.
   c. Only orders under 400 shares.
2. Market Orders (under 400 shares) will be executed automatically by the system at the best ITS bid and offer.
3. Limit orders (under 400 shares) will be executed manually by the Co-Specialist, on the "protect the limit" basis as provided for in the trading rules. Additionally, 300 shares will be executed whenever 500 shares trades in New York at a limit price.
4. Only orders in ITS eligible issues, being traded by MSE Co-Specialists, will be able to be routed and executed by the system. It is expected that firms that decide to use the MAX system will route orderflow to the Midwest in issues they select, rather than send orders in all eligible issues.
5. Only firms that are using wire networks (their own in-house system or a system purchased from a vendor like ADP or BTSI) for transmitting their orders to exchanges will be able to hook up to the MSE Order Handling and Execution System.
6. A Specialist is able to change the trade terms, i.e. improve the price after he becomes aware of a MAX order, by depressing the hold key on his terminal which tolls the running of the 30 second automatic execution time period. The hold button, however, will only toll the automatic execution for a maximum of 5 minutes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* The proposed rule change provides MSE Floor Members with a means by which they may increase their order flow while improving the efficiency of the market through the use of fully automated communications links nationally. The Automatic Execution System (MAX) enables orders in ITS eligible issues to be routed directly to the respective Specialists and such orders are executed automatically within the parameters of MSE Article XX, Rule 34, MSE's Guaranteed Execution System (BEST System). Prior to MAX, this function was performed manually. Upon implementation of MAX, such function became automated. The proposed rule change is consistent with section 6(b)(5) of the Act in that the automated order routing and execution capabilities of MAX facilitates transactions in securities and removes impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change. Rather, it believes that it encourages the linking of all markets in the development of a national market system.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.* Comments have neither been solicited nor received from members or participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 14, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 17, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–14066 Filed 5–21–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18745; File No. SR–MSRB–81–10]

Self-Regulatory Organizations, Proposed Rule Changes by Municipal Securities Rulemaking Board; Relating to Uniform Practice

Comments requested on or before June 14, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1982, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith an amendment (the "proposed amendment") to the proposed rule changes to rule G–12 relating to uniform practice contained in File No. SR–MSRB–81–10 (the "proposed rule changes"). The proposed rule changes, as modified by the proposed amendment, are, in pertinent part, as follows:

Rule G–12.* Uniform Practice

(a) Scope and Notice. (i) All transactions in municipal securities between any broker, dealer or municipal securities dealer shall be subject to the provisions of this rule, provided, however, that a transaction submitted to a registered clearing agency for comparison shall be exempt from the provisions of section (c) and, to the extent such transaction is compared by the clearing agency, section (d) of this rule, and a transaction which is settled or cleared through the facilities of a registered clearing agency [by a means which does not involve the physical delivery of securities] shall be exempt from the provisions of section (e) of this rule.

(ii) through (iii) No change. (b) through (1) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. *Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes.* (a) Presently, Board rule G–12 on uniform practice excludes from its application transactions which are "compared, cleared and settled through the facilities of a clearing agency registered with the Commission." On June 1, 1981 the Board filed the proposed rule changes, which, among other matters, modify the existing exemption for transactions "cleared and settled" through a clearing agency to restrict it to only those transactions cleared and settled "by a means which does not involve the physical delivery of securities." The Board proposed to restrict the exemption in this fashion due to its concern that a single set of standards, those contained in rule G–

*[Brackets] indicate deletions.

12(e), should apply to all deliveries of actual municipal securites certificates.

The Board and the National Securities Clearing Corporation ("NSCC"), a registered clearing agency which offers automated comparison and clearance services for municipal securities transactions, have reached an understanding whereby both parties will consult and coordinate with each other to ensure that the delivery standards applying to municipal securities transactions under both Board and NSCC rules will be, to the extent possible, identical. Since this understanding essentially resolves the Board's concerns, the Board has adopted the proposed amendment, which would revise the proposed rule changes to broaden the exemptive provisions of proposed paragraph (a)(i) to cover all transactions which are settled or cleared through the facilities of a registered clearing agency, regardless of the actual means of delivery used.

(b) The Board has adopted the proposed amendment pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which establishes the Board's general authority

to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in municipal securities, * * *

The proposed amendment and the proposed rule changes also will facilitate implementation of automated clearing systems consistent with the objectives of Section 17A of the Act.

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The Board believes that the proposed amendment and the proposed rule changes will not impose any burden on competition since they provide technical adjustments to coordinate the standards and requirements of the Board's rule regarding clearance and settlement with the procedures normally used by registered clearing agencies.

C. *Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others.* The Board neither solicited nor received comments on the proposed amendment. Certain aspects of the proposed amendment were discussed previously with representatives of the National Securities Clearing Corporation.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

On or before June 28, 1982 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 17, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-14099 Filed 5-21-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0330]

Credito Investment Co., Inc.; License Surrender

Notice is hereby given that Credito Investment Company, Inc., Suite 1101, Banco Popular Center, Hato Rey, Puerto Rico 00918 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Credito Investment Company, Inc., was licensed by the Small Business Administration on October 1, 1969.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 4, 1982, and accordinly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: May 17, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-14114 Filed 5-21-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-82-053]

Public Meeting: Additional LORAN—C Coverage in Alaska

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and public comment period.

SUMMARY: To improve the LORAN—C signal level in the Prince William Sound, Cook Inlet, Fairweather Fishing Grounds, and inside waters of southeast Alaska, the Coast Guard is considering adding another transmitting station to the Gulf of Alaska LORAN—C chain. Meetings are being held to receive information from the public to assist the Coast Guard in identifying problems in regard to the signal area and the impact of the service on the users. Interested persons are invited to attend a public meeting and present oral and written comments.

DATES: Public meetings will be held on May 28, 1982 from 11:00 a.m. to 1:00 p.m. (PDT) and from 6:00 p.m. to 8:00 p.m. (PDT). Written comments must be received by June 28, 1982.

ADDRESSES: The public meeting will be held in Room 117, Federal Building, Juneau, Alaska. Written comments should be submitted to and will be available for inspection or copying at the Aids to Navigation Branch, Room 863, Federal Building, Juneau, Alaska 99802, between the hours of 7:45 a.m. and 4:15 p.m. (PDT), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lt. R. G. Winter, Aids to Navigation Branch, Seventeenth Coast Guard District, Room 863, Federal Building, Juneau, Alaska 99802 ((907) 586-7757). Normal office hours are 7:45 a.m. to 4:15

p.m., Monday through Friday, except holidays.

A. D. Utara,

Cdr. USCG, Regulations Officer.

May 19, 1982.

[FR Doc. 82-14128 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 148—Airborne Radio Communication Equipment Operating in the Radio Frequency Range of 117.975–137.000 Megahertz; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 148 on Airborne Radio Communication Equipment Operating in the Radio Frequency Range of 117.975–137.000 Megahertz to be held on June 15–16, 1982 in RTCA First Floor Conference Room, 1717 H Street NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of First Meeting Held on March 23–24, 1982; (3) Review of Comments on New Intermodulation Test Procedures; (4) Review of Comments on Second Draft of Committee Report on Minimum Operational Performance Standards for Airborne Radio Communication Equipment Operating in the Radio Frequency Range of 117.975–137.000 Megahertz; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; (202) 296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on May 14, 1982.

Karl F. Bierach,

Designated Officer.

[FR Doc. 82-13920 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE–82–9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions and corrections.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 14, 1982.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Indpendence Avenue, SW., Washington, D.C. 20591; telephone (200) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 18, 1982.

John H. Cassady,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
22765	Southern Gulf Helicopters, Inc	14 CFR 43.3(h)	To permit petitioner's pilots to remove, check, and reinstall magnetic chip detector plugs on BH 206 series helicopters.
22769	Mr. John A. Wallis	14 CFR 141.5(b)	To allow petitioner to renew his pilot school certificate without having trained and recommended for pilot certification and rating tests at least 10 applicants for pilot certificates and ratings. He has graduated five students in the last 2 years, all of whom have passed the flight test the first time.
22795	The Go Group	14 CFR 91.200(b)	To relieve the petitioner from the shoulder harness requirements for jump seats on its Viscount aircraft.
22821	Louisiana-Pacific Corp	14 CFR 135.89(b)(3)	To permit petitioner's Learjets and Grumman Gulfstream II airplanes to be operated at altitudes up to and including flight level 410 without at least one pilot at the controls wearing a secured and sealed oxygen mask that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude exceeds 12,000 feet mean sea level.
22819	Liberty Airlines	14 CFR 121.61(d)(2)	To allow Mr. McBride to serve as chief inspector even though he does not meet the 1-year experience requirement as maintenance inspector on large aircraft with an air carrier, commerical operator, or certificated repair station.
22827	Atlantic Aviation Corp	14 CFR 91.169	To permit petitioner to operate its helicopters under Part 91 Subpart D in the same manner as large and turbojet-powered multiengine civil airplanes.
22823	Mr. Dennis R. Anderson	14 CFR 61.155(d)(2)	To permit petitioner to credit all flight time which is logged in the rear cockpit of the USAF F–4 as second in command time toward the 1,500 hours total flight time requirement for an airline transport pilot certificate.
22693	Pennsylvania Airlines, Inc	14 CFR 135.107	To permit petitioner to operate its DeHavilland DHC–6 Twin Otter Aircraft carrying 20 passengers without a flight attendant.
22543	Jetaway Air Service	14 CFR 135.89(b)(3)	To permit operation of Learjet 35A aircraft above 35,000 feet up to and including 41,000 feet without one pilot wearing an oxygen mask.
22955	Trans-Mediterranean Airways	14 CFR 91.303	To allow petitioner to temporarily operate noncomplying Boeing 707 aircraft in the U.S. from January 1, 1985, until December 31, 1986.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
22987	Consulting Aerospace Engineers, Inc	14 CFR 21.19(b)	To permit petitioner to provide the engineering and to direct the modification of Boeing 727-200 aircraft from the existing three Pratt-Whitney JT-8D engines to two Rolls Royce RB211-535C engines. This would allow upgrading of the series by installation of the latest state of the art engines, increased thrust, simplicity in the form of system and crew duties, and environmental acceptance from both noise and emission standards under a Supplemental Type Certificate.
22988	Lockheed-California Co	14 CFR 21.19(b)	To permit petitioner to change the 727-200 series airplane from a three-engine airplane to a two-engine airplane without having to make a new application for a type certificate. This would allow upgrading of the series to a modern, fuel-efficient, quiet airplane without prohibitively high initial investment.
22898	Combined Aviation Co	14 CFR 91.32 (b)(1)(i), (b)(1)(ii) and 135.89(b)(3).	To permit petitioner to operate its Gates Learjet 35A aircraft up to flight level 450 without either pilot being required to wear their oxygen mask, providing both pilots are at the controls and each pilot has a quick-donning type of oxygen mask.
22959	Messrs. William T. Bailey, Neil McClain, Ross Grady & Ivor Oberholtzer.	14 CFR 91.27 and 91.28	To provide for the issuance of a special flight authorization for four F-51D and one F-51D Canadian registered aircraft. These aircraft would be displayed and operated at air shows and maintenance would be performed as required.
22957	Johnson & Johnson Flight Operations	14 CFR 91.169 and 91.171	To permit petitioner to operate its Sikorsky S-76A helicopter in the same manner as large turbojet-powered multiengine civil airplanes under Part 191 Subpart D.
22961	Mr. Monty S. Young	14 CFR 61.133(b)	To permit petitioner to apply for a commercial pilot certificate with a glider rating without meeting the 20 flight aeronautical experience requirements.
22958	Surburban Airlines	14 CFR 135.2(d)	To permit petitioner to operate its Shorts Model 360 aircraft under the operating rules of Part 135 in lieu of the Part 121 domestic and supplemental rules.
22872	Air Transport Association	14 CFR Part 61 Appendix A and Part 121 Appendix E.	To permit the actual static airplane preflight inspection training and checking requirements for a pilot candidate for a rating in certain airplanes to be accomplished by using an advanced and approved pictorial means.
22833	Altair Airlines, Inc	14 CFR 121.417(c)(1)	To only require one of petitioner's crewmember to operate the F-28 services door emergency exit in the "emergency mode" once during initial equipment training and require other crewmembers to physically handle the door after the emergency activation.
22952	Petroleum Helicopters, Inc	14 CFR Part 21	To permit all aircraft of nine or less passengers, that are maintained by petitioner on the approved aircraft inspection program, to utilize the special flight permit with a continuous authorization to conduct ferry flights.
20495	Midwest Piper Flight, Inc	14 CFR 135.261(b)	To permit petitioner's pilots, on helicopter emergency aerial medical evacuation service in support of the Wesley Medical Center to be assigned and to accept duty during flight time with less than 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment.
23037	Delta Air Lines, Inc	14 CFR 121.349	To permit petitioner to substitute an Omega navigation system for one of two required automatic direction finder navigation systems required for operation.
22960	Aircraft At Your Call	14 CFR 135.89(b)(3)	To permit petitioner to operate their aircraft up to and including flight level 410 without at least one pilot at the controls wearing a secured and sealed oxygen mask that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude exceeds 12,000 feet mean sea level.
22824	Piper Aircraft Corp	14 CFR 91.33	To permit petitioner to install a 360° attitude indicator in lieu of a gyroscopic turn and bank indicator in its aircraft.
22825	Aerispatiale Helicopter Corp	14 CFR 47.16(c)(3)	To allow petitioner to utilize temporary registration numbers in connection with its Dealers Registration Certificates.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
22472	Jerry T. Dennis	14 CFR 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotorcraft rating not limited to visual flight rules even though he does not have at least 1,200 hours of flight time as a pilot within the last 8 years. *Granted April 7, 1982.*
21810	Acme Aircraft Co	14 CFR 145.35(a) and 145.37(b)	Reconsideration of denial of petition to permit petitioner to obtain a repair station rating for the Convair series aircraft without meeting all of the housing and facility requirements. *Denied April 2, 1982.*
21591	Roger B. Stickney	14 CFR 61.161(b)	To allow petitioner to apply for an airline transport pilot certificate (ATPC) with a rotorcraft category rating when he does not meet the requirement to have had at least 1,200 hours of flight time as a pilot within the 8 years before the date he applies. *Granted April 7, 1982.*
22754	Arista International Airlines	14 CFR 121.311(f), and 121.318(b)(2)	To permit petitioner to operate its DC-8-62 C/F aircraft without having to install an additional public address system microphone in the cabin at an assigned flight attendant seat that is to be occupied by a flight attendant near a floor exit. The exemption would also allow the operation of that aircraft without complying with safety belt and shoulder harness requirements for cabin flight attendants. *Granted April 12, 1982.*
21961	Deere & Company	14 CFR 91.45	Reconsideration of Denial of petition 3421 to permit petitioner to conduct ferry flights with one engine inoperative, on its Lockheed Jetstar, without obtaining a special flight permit for each flight. *Granted April 12, 1982.*
22702	Northern Pacific Transport, Inc	14 CFR 91.31(a)	To permit petitioner to operate its DC-6A aircraft at a 5 percent increased zero fuel and landing weight for the purpose of hauling perishable fish of the Alaskan fishing industry. *Granted April 19, 1982.*
22697	Clinchfield Coal Co	14 CFR 91.23(a)(5)	To allow petitioner to reduce the required 45-minute IFR fuel reserve to 30 minutes for IFR operations conducted under Part 91 in a Bell 222 IFR certificated helicopter. *Granted April 19, 1982.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18623	St. Louis Helicopter Airways, Inc	14 CFR 135.261(b)	Extension of Exemption 2700A which allows petitioner to operate a helicopter in hospital emergency service without meeting the duty-time limitations. *Granted April 20, 1982.*
20040	Butler Aircraft Co. and T.B.M. Inc	14 CFR 91.211(a)(1)	To permit petitioner to conduct training for its flightcrews in its Douglas DC-6 and DC-7 aircraft without utilizing a flight engineer. *Granted April 26, 1982.*
22790	Quebecair, Inc	14 CFR Part 21, §§ 91.165, 91.169 and Part 91, Subpart C.	To permit petitioner to operate a British Aerospace BAC 1-11/200 series aircraft, N1117J/MSN 099, to Quebecair, Inc., for a 180-day term pursuant to the terms of a lease which would obligate Quebecair to maintain the aircraft pursuant to FAA-approved continuous airworthiness maintenance program. *Granted April 29, 1982.*
00044	Air Transport Association of America	14 CFR 61.63(b) and 121.437(c)	Extension of Exemption No. 2965 which permits petitioner's member pilots employed by Part 121 certificate holders to be issued additional category and class ratings based on normal upgrade training to exceed in command. *Granted April 29, 1982.*
22678	Golden West Airlines Company	14 CFR 121.311(a)	To allow petitioner to operate, until July 15, 1982, its five Short SD3-30 airplanes without being equipped at each flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements. *Granted May 11, 1982.*
22074	Lineas Aeras Costarricenses, S.A	14 CFR Portions of Parts 21 and 91	To permit petitioner to operate a leased single DC-8-55F U.S.-registered aircraft using an FAA-approved Master Minimum Equipment List. *Granted May 11, 1982.*
21257	Bendix Instruments and Life Support Division	14 CFR 21.613	To permit termination of several obsolete TSOs without the expense of reproducing and shipping files to the FAA. *Granted March 11, 1982.*
21391	Tennessee Airways	14 CFR 135.297(b)	To allow petitioner's pilots in command to conduct operations without satisfactorily demonstrating a nondirectional beacon approach during the sixth calendar month instrument proficiency check. *Cancelled April 21, 1982.*
21557	Mr. Louis J. Goesen	14 CFR 61.161(b) and 61.161(b)(3)	To permit petitioner to obtain an airline transport pilot certificate with a rotorcraft rating even though he does not have at least 1,200 hours of flight time as a pilot within the last 6 years including at least 15 hours in rotorcraft at night. *Partial grant May 5, 1982.*
22271	Michigan Wisconsin Pipe Line Company	14 CFR 91.169 and 91.181(a)	To permit petitioner to operate 12 helicopters under Subpart D of Part 91 in the same manner as large and turbojet powered multiengine civil airplanes. *Granted May 4, 1982.*
22409	Interstate Airlines	14 CFR 91.305	To allow petitioner to temporarily operate B-727 aircraft in the U.S. without the required 50 percent fleet compliance with the noise standards. *Partial grant March 8, 1982.*[1]

[1] NOTE.—This disposition was previously incorrectly published showing that it was a partial grant for a B707.

[FR Doc. 82-14634 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Washington, D.C.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental document appropriate to the selected alternative's class of action will be prepared for a proposed highway project in the District of Columbia.

FOR FURTHER INFORMATION CONTACT:

William A. Sussmann, Jr., Field Operations Engineer, Federal Highway Administration, 666 11th Street, NW., McLachlen Bldg., Room 1000, Washington, D.C. 20001, Telephone (202) 724-3379

Lynne Robinson, Project Manager, District of Columbia Department of Transportation, 415 12th Street, NW., Rm. 519, Washington, D.C. 20004, Telephone (202) 727-5766

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the District of Columbia Department of Transportation, will prepare an environmental document and 4(f) evaluation to explore, define and evaluate regional and local impacts of alternatives to modify the freeway system in the Whitehurst Freeway Corridor through Georgetown. The existing freeway facility is an elevated structure carrying four through traffic lanes above K Street between Key Bridge and Rock Creek Park. The structure is in need of major rehabilitation or replacement to accommodate present and future traffic.

Identified alternatives are a modified elevated freeway, a K Street level facility with and without a service road, and a do-nothing alternative. Modifications or refinements of these plans will be considered as additional alternatives. The alternatives to be developed in the study will be designed to provide optimum traffic service and will be based on transportation system management principles. That is, the alternatives will not create additional inducement for automobile commuting nor generate additional travel.

The EIS process will include public participation, identification of goals and evaluation criteria, and scoping meetings. Possible alternatives will be studied and screened based on determined goals and objectives, evaluation criteria, and public input. To ensure that the full range of issues related to this action are addressed, comments and suggestions are invited from all interested parties and should be directed to the Federal Highway Administration and D.C. Department of Transportation as indicated above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB circular No. A-95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects apply to this program).

Issued on: May 18, 1982.

William A. Sussmann, Jr.

Field Operations Engineer, Washington, D.C.

[FR Doc. 82-14667 Filed 5-21-82; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 14-82]

Treasury Notes of August 15, 1987; Series F-1987

May 19, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $3,750,000,000 of United States securities, designated Treasury Notes of August 15, 1987, Series F-1987 (CUSIP No. 912827 NG 3). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated June 2, 1982, and will bear interest from that date, payable on a semiannual basis on February 15, 1983, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 1987, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a latter date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, May 25, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 24, 1982, and received no later than Wednesday, June 2, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4, must be made or completed on or before Wednesday, June 2, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, May 28, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-14136 Filed 5-20-82; 10:31 am]
BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Cooperative Studies Evaluation Committee has been renewed by the Administrator of Veterans Affairs for a two year period beginning May 2, 1982 through May 2, 1984.

Dated: May 17, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-14098 Filed 5-21-82; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 100
Monday, May 24, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M–351 (Amdt. 1), May 18, 1982]

Addition to the May 19, 1982 Board Meeting and Revised List of Persons Expected To Attend

TIME AND DATE: 9:30 a.m., May 19, 1982.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

5. Discussions with Chile. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–776–82 Filed 5–20–82; 4:00 pm]

BILLING CODE 6320–01–M

2

CIVIL AERONAUTICS BOARD

[M–354, May 18, 1982]

Notice of Presentation

TIME AND DATE: 10 a.m., May 25, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: Presentation to the Board regarding Aeroamerica's activities.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–777–82 Filed 5–20–82; 4:00 pm]

BILLING CODE 6320–01–M

3

CIVIL AERONAUTICS BOARD

[M–353 (Amdt. 1), May 19, 1982]

Notice of Deletions From and Addition To the May 20, 1982 Board Meeting

TIME AND DATE: 10 a.m., May 20, 1982.

PLACE: Room 1027, 1825 Connecicut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

Addition: 8a. Discussion of the Allocation of Braniff Slots at Dallas-Ft. Worth. (OGC)
Deletion: 9. Docket 40545, CAB Recommendations to the FAA concerning the Interim Operations Plan. (OGC)
Deletion: 15. Dockets EAS–785 and EAS–792, Appeal of Berlin, New Hampshire and Newport, Vermont for inclusion in the small communities program under section 419(b) of the Act. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–778–82 Filed 5–20–82; 4:00 pm]

BILLING CODE 6320–01–M

4

CIVIL AERONAUTICS BOARD

[M–352, May 17, 1982]

Addition to the May 13, 1982 Closed Board Meeting

TIME AND DATE: 10 a.m., May 13, 1982.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: Discussions with Panama.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–779–82 Filed 5–20–82; 4:00 pm]

BILLING CODE 6320–01–M

5

CIVIL AERONAUTICS BOARD

[M–351 (Amdt. 1), May 18, 1982]

Additinal to the May 19, 1982 Board Meeting and Revised List of Persons Expected to Attend.

TIME AND DATE: 9:30 a.m., May 19, 1982.

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 5. Discussions with Chile. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–780–82 Filed 5–20–82; 4:00 pm]

BILLING CODE 6320–01–M

6

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, May 25, 1982.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: *Open:*

1. Ratification of Notation Votes.
2. Freedom of Information Act Appeal No. 82–3–FOIA–65, concerning a request for access to information contained in a Title VII charge of discrimination case file, where requestor is not a party.
3. Freedom of Infomration Act Appeal No. 82–FOIA–154–03–CH, concerning a request for four open age discrimination charge files.
4. Freedom of Information Act Appeal No. 82–03–FOIA–20–PA, concerning a request for certain documents contained in a reopened Title VII charge of discrimination.
5. Transfer of Sensitive Correspondence Control from the Office of Administration to the Executive Secretariat.
6. Report on Commission Operations by the Executive Director.

Closed:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer Executive Secretariat, at (202) 634–6748.

This Notice Issued May 18, 1982.

[S–769–82 Filed 5–20–82; 9:45 am]

BILLING CODE 6570–06–M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:40 p.m. on Saturday, May 15, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive sealed bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Community Bank of Washtenaw, Ypsilanti Township (P.O. Ypsilanti), Michigan, which was closed on May 15, 1982, by the Michigan Banking Department; (2) accept the bid for the transaction submitted by Michigan National Bank—Ann Arbor, Ann Arbor, Michigan; and (3) provide such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 18, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-765-82 Filed 5-20-82; 11:11 am]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meetings

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, May 17, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request of State Bank and Trust Company, Unadilla, Georgia, for reconsideration of a previous denial of its application for consent to merge, under its charter and title, with Bank of Pinehurst, Pinehurst, Georgia, and to establish the sole office of Bank of Pinehurst as a branch of the resultant bank.

Recommendation regarding First Pennsylvania Bank N.A., Bala-Cynwyd, Pennsylvania, and First Pennsylvania Corporation, Philadelphia, Pennsylvania.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,223-L—Franklin National Bank, New York, New York.

Case No. 45,228-L—Aquia Bank and Trust Company, Stafford, Virginia.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

By the same majority vote, the Board also voted to withdraw from the agenda for consideration in open session and to add to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, the application of Liberty Bank, a proposed new bank, to be located at 4482 West Peoria Avenue, Glendale, Arizona, for Federal deposit insurance.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C.(c)(6), (c)(8), and (c)(9)(A)(ii)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: May 18, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-766-82 Filed 5-20-82; 11:11 am]

BILLING CODE 6714-01-M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, May 17, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), concurred in by Director Irvine H. Sprague (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,205—The Greenwich Savings Bank, New York, New York.

By the same majority vote, the Board determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: May 18, 1982.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-767-82 Filed 5-20-82; 11:12 am]

BILLING CODE 6714-01-M

10

FEDERAL ENERGY REGULATORY COMMISSION

May 19, 1982.

TIME AND DATE: 10 a.m., May 26, 1982.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—751st Meeting, May 26, 1982, Regular Meeting (10 a.m.)

CAP-1. Project No. 5912-000, Moosehead Manufacturing Co.

CAP-2. Project No. 4805-003, Victor W. Page and Laverta W. Page

CAP-3. Project No. 4885-002, South Fork Resources, Inc.

CAP-4. Project No. 4893-001, City of Redding, California

CAP-5. Project No. 176-003, 176-008, 176-009 and 176-010, Escondido Mutual Water Co.

CAP–6. Project No. 4329–001, Consolidated Hydroelectric, Inc.; Project No. 4953–001, Modesto Irrigation District; Project No. 4973–000, City of Rohnert Park, California; Project No. 5374–000, Tehama County Flood Control and Water Conservation District
CAP–7. Project No. 67, Southern California Edison Co.; Project No. 2904, Cities of Anaheim and Riverside, California
CAP–8. Project No. 3322–000, Public Utility District No. 1 of Mason County
CAP–9. Project No. 4515–002, R. R. Jacobson; Project No. 5413–002, Palisade Irrigation District
CAP–10. Project No. 5312–001, J. R. Ferguson and Associateds Project No. 5337–001, Westfir Energy Co., Inc.
CAP–11. Project No. 2621–001, Milliken and Co.
CAP–12. Project No. 943–001, Public Utility District No. 1 of Chelan County, Washington
CAP–13. Project No. 4915–000, 4951–001 and 4951–002, the Public Utility Commission of the City and County of San Francisco, California
CAP–14. Project No. 5906–001, City of Dover, New Hampshire
CAP–15. Project No. 2695–001, Hydro Development Group, Inc.
CAP–16. Docket No. ER79–478–003, Public Service Co. of New Mexico
CAP–17. Docket No. ER82–257–002, Kansas Gas & Electric Co.
CAP–18. Docket No. ER82–426–000, Jersey Central Power & Light Co.
CAP–19. Docket No. ER82–412–000, Kansas Gas & Electric Co.
CAP–20. Docket No. ER82–435–000, Central Louisiana Light Co.
CAP–21. Docket No. ER82–410–000, New York State Electric & Gas Corp.
CAP–22. Docket No. ER82–427–000, Southern California Edison Co.
CAP–23. Omitted
CAP–24. Omitted
CAP–25. Docket No. ER82–424–000, The Toledo Edison Co.
CAP–26. Docket No. ER82–444–000, Michigan Power Co.
CAP–27. Docket No. ER82–536–000, Carolina Power & Light Co.
CAP–28. (a) Docket Nos. ER80–592–000, et al., Allegheny Power System, et al.; Docket Nos. ER80–595–000, ER80–599–000, ER80–603–000, ER80–606–000, ER80–627–000 ER80–661–000, ER80–674–000, ER80–675–000, and ER80–731–000, Illinois Power Co. (b) Docket Nos. ER80–592–000, et al., Allegheny Power System, et al.; Docket Nos. ER80–620–000, ER80–720–000, ER80–721–000, ER80–722–000 and ER80–726–000, Dayton Power & Light Co.
CAP–29. Docket No. ER81–426–000, el Paso Electric Co.
CAP–30. Docket No. ER82–54–000, Southern Company Services, Inc.
CAP–31. Docket Nos. ER81–187–001 and ER82–101–001, Public Service Co. of New Mexico
CAP–32. Docket No. ER78–367, Coal Strike Investigation
CAP–33. Project No. 3592–000, Fluid Energy Systems, Inc.; Project No. 4125–000, Kern County Water Agency; Project No. 4605–001, V. W. & L W. Page
CAP–34. Project No. 4842–002, 4843–001, 4845–000, 4846–001, 4847–001, 4852–001, 4858–001, 4859–001, 4861–001, 4862–001, 4863–001, 4869–001, 4870–001, 4871–001, 4872–001, 4873–001, 4874–001, 4875–001, 4876–001, 4877–001, 4878–001, 4879–001, 4880–001, 4901–001, 4936–001, 4937–001, 4938–001, 4995–001, 4996–001, 4996–001, 5007–001, 5015–001, 5036–001, 5048–001, and 5049–001, Modesto Irrigation District
CAP–35. Project No. 4840–002, 4841–000, 4842–000, 4843–000, 4844–000, 4845–000, 4846–000, 4847–000, 4852–000, 4858–000, 4859–000, 4860–000, 4861–000, 4862–000, 4863–000, 4869–000, 4870–000, 4871–000, 4872–000, 4873–000, 4874–000, 4875–000, 4876–000, 4877–000, 4878–000, 4879–000, 4880–000, 4901–000, 4936–000, 4937–000, 4952–000, 4953–000, 4987–000, 4996–000, 4995–000, 4996–000, 4997–000, 4998–000, 5007–000, 5008–000, 5009–000, 5013–000, 5014–000, 5015–000, 5036–000, 5048–000, and 5049–000, Modesto Irrigation District
CAP–36. Docket No. ER80–567–000, Wisconsin Electric Power Co.
CAP–37. Docket No. ER78–338–001, Public Service Co. of New Mexico
CAP–38. Docket No. ER77–570–000, Kansas Gas & Electric Co.
CAP–39. Project No. 5570, Richard Bean, Fred Castagna and T. Owen; Project No. 5883, Modesto Irrigation District; Project No. 5864, West Slope Power Co.

Consent Miscellaneous Agenda

CAM–1. Docket No. QF82–86–000, Consortium of Alternate Energies
CAM–2. Docket No. QF82–32–000, J. Clyde Roberson—Small Power Production and Cogeneration Facilities
CAM–3. Docket No. RM79–76 (New Mexico—8), High-cost gas produced from tight formations
CAM–4. Docket No. RM79–76 (Colorado—24), High-cost gas produced from tight formations
CAM–5. Docket No. GP82–22–000, United States Geological Survey Section 108 determinations, Getty Oil Co., A. B. Coates "C" Well No. 19, Lea County, New Mexico, MMS Docket No. NM–0830–80, FERC No. JD81–00956, A. B. Coates "C" Well No. 23, Lea County, New Mexico, MMS Docket No. NM–0828–80, FERC No. JD80–58396
CAM–6. Docket No. RO81–54–000, Kenneth H. White Co., Inc.
CAM–7. Docket No. RA81–88–000, Newhall Refining Co., Inc.
CAM–8. Docket No. RA82–11–000, Raymond Oil Co.

Consent Gas Agenda

CAG–1. Docket No. RP77–54–010 and RP77–55–000, Arkansas Louisiana Gas Co.
CAG–2. Docket No. RP82–51–001, Mid Louisiana Gas Co.
CAG–3. Docket No. TA82–2–56, Valero Interstate Transmission Co.
CAG–4. Omitted
CAG–5. Omitted
CAG–6. Docket No. RP82–14–000, Mountain Fuel Resources, Inc.
CAG–7. Docket No. RP82–87–000, National Fuel Gas Supply Corp.
CAG–8. Docket No. RP82–88–000, Columbia Gas Transmission Corp.
CAG–9. Docket No. Omitted
CAG–10. Docket No. RP81–113–000, Midwestern Gas Transmission Co.
CAG–11. Docket Nos. RM78–23 and RM81–37, El Paso Natural Gas Co.
CAG–12. Docket No. TA82–1–25–001 (PGA82–1), Mississippi River Transmission Corp.
CAG–13. Docket No. RP82–71–000, Northern Natural Gas Co.
CAG–14. Docket No. RP82–72–000, Hampshire Gas Co.
CAG–15. Docket No. RP82–74–000, Texas Gas Transmission Corp.
CAG–16. Docket No. RP82–79–000, Louisiana-Nevada Transit Co.
CAG–17. Docket Nos. RP82–60–000, and RP81–61–000, Michigan Wisconsin Pipe Line Co.
CAG–18. Docket No. RP82–81–000, Inter-City Minnesota Pipelines Ltd., Inc.
CAG–19. Docket No. RP82–82–000, Honeoye Storage Corp.
CAG–20. Docket No. RP82–83–000, Gas Transport, Inc.
CAG–21. Docket No. RP82–84–000, Montana-Dakota Utilties Co.
CAG–22. Docket No. RP82–85–000, Western Gas Interstate Co.
CAG–23. Docket No. RP82–73–000, Ohio River Pipeline Corp.
CAG–24. Docket Nos. RP82–75–000, and RP82–76–000, Arkansas Louisiana Gas Co.
CAG–25. Docket TA82–2–42–000, Transwestern Pipeline Co.
CAG–26. Docket Nos. TA81–2–11–000, (PGA81–2, IPR81–2, LFUT81–2) and TA82–1–11–000 (PGA82–1, IPR82–1, GRI82–1) (not consolidated), United Gas Pipe Line Co.
CAG–27. Docket No. RP80–145–000, Columbia Gulf Transmission Co.; Docket No. RP80–146–000, Columbia Gas Transmission Co.
CAG–28. Docket No. RP82–34–000, Michigan Gas Storage Co.
CAG–29. Docket No. ST82–55–000, Superm Pipeline.
CAG–30. Docket No. CI64–20–007, Gulf Oil Co.
CAG–31. Docket No. CI81–332–001, ANR Production Co.; Docket No. CI82–201–002, The Superior Oil Co.; Docket Nos. CI82–187–001, and CI82–162–001, Texasgulf Inc.; Docket No. CI82–147–001, Pennzoil Oil & Gas, Inc.; Docket No. CI82–150–001, Pogo Production Co.; Docket No. G–13758–000, Conoco Inc.; Docket No. CI82–180–000, Sun Exploration & Production Co.; Docket No. CI74–392–004, Exxon Corp.; Docket No. CI82–124–001, (CI67–522), Mitchell Energy Corp.; Docket No. CS72–203–003, Petro-Lewis Funds, Inc.; Docket No. CS73–158–005, Partnership Properties Co.; Docket No. CS71–656–001, A. R. Dillard, Jr. and Cobra Oil & Gas Corp.; Docket No. CI82–198–000, Transco Exploration Co.; Docket No. CI82–146–001, King Ranch Inc.; Docket No. CI71–484–001, Pomfret Production Co., Inc. (National Exploration Co.)
CAG–32. Docket No. CI82–195–000, Timerlay Petroleum Corp.
CAG–33. Docket No. CP82–101–001, Southern Natural Gas Co.
CAG–34. Docket No. CP82–112–001, Southern Natural Gas Co. and Northern Natural Gas Co., Division of Internorth, Inc.

CAG–35. Docket No. CP82–24–000, Texas Eastern Transmission Corp.
CAG–36. Docket No. RP82–165–000, Public Service Electric & Gas Co., applicant; Transcontinental Gas Pipe Line Corp., respondent hio Gas Co.
CAG–38. Docket No. CP69–328, Panhandle Eastern Pipe Line Co.
CAG–39. Docket No. CP80–527–000, El Paso Natural Gas Co.
CAG–40. Docket No. CP82–201–000, Cities Service Gas Co.
CAG–41. Docket No. CP81–473–000, Florida Gas Transmission Co.
CAG–42. Docket No. CP82–21–000, Great Lakes Gas Transmission Co.
CAG–43. Docket Nos. CP82–63–000, and CP82–63–001, Montana-Dakota Utilities Co.
CAG–44. Docket No. CP82–257–000, Arkansas Louisiana Gas Co.
CAG–45. Docket No. CP76–362–003, Texas Eastern Transmission Corp.; Docket No. CP77–568–012, Texas Eastern Transmission Corp. and Natural Gas Pipeline Co. of America; Docket No. CP81–512–000, Texas Eastern Transmission Corp., Transcontinental Gas Pipe Line Corp. and Natural Gas Pipline Co. of America
CAG–46. Docket Nos. CP82–1–000 and CP82–272–000, Texas Eastern Transmission Corp.
CAG–47. Docket Nos. CP82–34–000 and CP82–34–001, Northern Natural Gas Co., Division of Internorth Inc.
CAG–48. Docket No. TA82–2–57–000 (PGA82–1), Western Transmission Corp.
CAG–49. Docket No. RP82–78–000, Ringwood Gathering Co.
CAG–50. Docket Nos. RP81–81–004, and RP82–16–001, United Gas Pipe Line
CAG–51. Docket No. RP82–55–001, Transcontinental Gas Pipe Line Corp.
CAG–52. Docket Nos. TA82–2–33–003, 004, 005, 007, 008 and 009, El Paso Natural Gas Co.

I. Licensed Project Matters

P–1. Project No. 2612–002, Appalachian Power Co.
P–2. Project No. 5234–001, County of Calaveras, California
P–3. Omitted

II. Electric Rate Matters

ER–1. Docket Nos. ER82–200–001, and ER82–200–002, Maine Public Service Co.
ER–2. Docket No. ER80–71–000, Central Illinois Public Service Co.
ER–3. Docket No. ER77–277–002, (phase II), Pennsylvania Power Co.
ER–4. Docket No. RP77–347–000, Wisconsin Power & Light Co.
ER–5. Omitted
ER–6. Omitted
ER–7. Docket Nos. EL82–7–000 and EL82–12–000, Wheelabrator Frye, Inc.
ER–8. Docket Nos. QF82–48–000 and EL82–5–000, Nornev Demonstration Geothermal Co.
ER–9. Docket Nos. ER77–175–000 and ER78–19–000 (phase II), et al., Florida Power & Light Co.
ER–10. Docket No. ER82–414–000, Ohio Edison Co.
ER–11. Docket No. ER83–423–000, Virginia Electric & Power Co.

Miscellaneous Agenda

M–1. Docket No. QF82–80–000, Windfarms, Ltd., Small power production and cogeneration facilities qualifying status
M–2. Reserved
M–3. Reserved
M–4. Docket No. RM82– , Fees applicable to natural gas pipelines
M–5. Docket No. RM81–19, Interstate pipeline certificates for routine transactions

Gas Agenda

I. Pipeline Rate Matters

RP–1. Docket Nos. RP81–18–001 and CP75–104–024, et al., High Island Offshore System

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1. Docket No. CP74–192–005 (remand), Florida Gas Transmission Co.
CP–2. Docket Nos. CP81–107–002, CP81–107–003, CP81–107–000, CP81–108–000, Boundary Gas, Inc.; Docket Nos. CP81–296–000 and CP81–298–000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CP–3. Docket No. CP82–33–001, Northern Natural Gas Co., Division of Internorth Inc.; Docket No. CP82–101–000, Southern Natural Gas Co.; Docket No. CP82–114–000, Tennessee Gas Pipeline, a Division of Tenneco Inc.
CP–4. Omitted
CP–5. Docket Nos. CP78–123, et al., Alaskan Northwest Natural Gas Transportation Co.

Kenneth F. Plumb,

Secretary.

[S–774–82 Filed 5–20–82; 3:52 pm]

BILLING CODE 6717–01–M

11

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 47, no page number at this time. No date of publication at this time.

PLACE: Board Room, Sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Thursday, May 20, 1982, at 10:00 a.m., has been changed to 10:30 a.m.

[No. 36, May 20, 1982]

[S–764–82 Filed 5–20–82; 11:00 am]

BILLING CODE 6720–01–M

12

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, May 27, 1982.

PLACE: Board Room, Fifth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

MATTERS TO BE CONSIDERED:

Request for Modification of Insurance Condition—(Proposed) Franklin Savings and Loan Association, Southfield, Michigan
Request for Modification of Insurance Condition—(Proposed) Bloomfield Savings and Loan Association, Bloomfield Township, Michigan
Debt Application—The Leavell Company ("Leavell"), El Paso, Texas
Bank Membership and Insurance of Accounts—First American Savings and Loan Association, Yellville, Arkansas
Bank Membership and Insurance of Accounts—South Bay Savings and Loan Association, Gardenia, California

[No. 37, May 20, 1982]

[S–766–82 Filed 5–20–82; 11:28 am]

BILLING CODE 6720–01–M

13

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 19, 1982.

TIME AND DATE: 10 a.m., Wednesday, May 26, 1982.

PLACE: 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the following case:

1. Southwestern Illinois Coal Corporation, Docket No. Lake 80–216. (Issues include whether the judge erred in vacating a citation alleging a violation of 30 CFR 77.1710, dealing with the wearing of safety equipment.)

11:00 a.m., following above case, argument will be heard in:

2. Monterey Coal Company, Docket Nos. LAKE 80–413–R and LAKE 81–59. (Issues include whether judge erred in vacating a citation alleging a violation of 30 CFR 77.216(c), dealing with impoundments.)

2:30 p.m., the Commission will consider and act upon the following in a closed meeting (Pursuant to 5 U.S.C. 552(c)(10)

3. Southwestern Illinois Coal Corporation, Docket No. LAKE 80–216, and Monterey Coal Company, Docket Nos. LAKE 80–413–R, LAKE 81–59.

Vote.—Voting to close the Meeting: Chairman Collyer and Commissioners Backley, Jestrab. Commissioner Lawson voted to open.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–773–82 Filed 5–20–82; 3:52 pm]

BILLING CODE 7535–01–M

14

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11 a.m., Thursday, May 20, 1982. The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 20, 1982.

James McAfee,

Associate Secretary of the Board.

[S–775–82 Filed 5–20–82; 3:48 pm]

BILLING CODE 6210–01–M

15

INTERNATIONAL TRADE COMMISSION

[USITC SE–82–19]

TIME AND DATE: 2:30 p.m., Wednesday, June 2, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20435.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701–TA–154 (Preliminary) (Stainless Steel Bar and Wire Rod from Spain)—briefing and vote.
6. Investigation 701–TA–155/163 (Preliminary) (Certain Steel Products from Spain)—briefing and vote.
7. Investigation 731–TA–82 (Preliminary) (Stainless Steel Sheet and Strip from West Germany)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–771–82 Filed 5–20–82; 1:31 pm]

BILLING CODE 7020–02–M

16

NATIONAL MEDIATION BOARD

TIME AND DATE: 2 p.m., Tuesday, June 1, 1982.

PLACE: Board Hearing Room, Eighth floor, 1425 K. Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of May, 1982.
2. Other priority matters which may come before the Board for which notice will be given at earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523–5920.

Dated: May 20, 1982.

[S–772–82 Filed 5–20–82; 3:03 pm]

BILLING CODE 7550–01–M

17

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19507, May 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., May 20, 1982.

CHANGES IN THE MEETING: This meeting *has been rescheduled for 10 a.m. on the same date.*

Dated: May 19, 1982.

[S–762–82 Filed 5–19–82; 4:13 pm]

BILLING CODE 7600–01–M

18

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the Week of May 17, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Thursday, May 20, 1982, at 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Loomis, Evans and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, May 20, 1982, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of injunctive action and regulatory matter bearing enforcement implications.
Formal orders of investigation.
Freedom of Information Act appeals.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272–2092.

May 18, 1982.

[S–770–82 Filed 5–20–82; 12:13 pm]

BILLING CODE 8010–01–M

19

UNITED STATES RAILWAY ASSOCIATION

DATE AND TIME: May 27, 1982; 2 p.m.

PLACE: Board Room, Room 2–500, fifth floor, 955 L'Enfant Plaza North SW., Washington, D.C.

STATUS: The first portion of the meeting will be closed to the public; the second portion will be open.

MATTERS TO BE CONSIDERED BY THE USRA BOARD OF DIRECTORS: *Portion closed to the public (2:00 p.m.):*

1. Internal Personnel Matters.
2. Litigation Report.
3. Review of Conrail Confidential and Proprietary Financial Information.
4. Review of Delware & Hudson Confidential and Proprietary Financial Information.

Portion open to the public (2:30 p.m.):

5. Approval of Minutes of April 12 Board Meeting.
6. Waiver of Financing Agreement—Conrail Five-Year Plan.
7. Delaware & Hudson Loan Principal and Interest Deferrals.
8. Conrail Monitoring Indicators.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow, (202) 488–8777, ext. 505.

[S–769–82 Filed 5–20–82; 12:11 pm]

BILLING CODE 8345–01–M

20

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that the following matter is expected to be added to the "Discussion Agenda" for consideration by the Corporation's Board of Directors at its open meeting to be held at 2:00 p.m. on Monday, May 24, 1982:

Memorandum and Resolution re: Proposed new Part 350 of the Corporation's rules and regulations, to be entitled "Special Reporting Basis for Insured Savings Banks," which would provide savings banks with the ability to restructure their asset port-folios while placing a market discipline over their decisions to acquire or hold investment securities by (1) requiring insured savings banks to report all debt and equity securities acquired after January 1, 1983 on a fair value basis for purposes of preparing their Reports of Condition and Income that are filed with the FDIC, and (2) permitting insured savings banks to defer and amortize gains and losses on dispositions of financial assets acquired prior to January 1, 1983.

No earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 20, 1982.

Federal Deposit Insurance Coorporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S–782–82 Filed 5–21–82; 8:45 am]

BILLING CODE 6714–01–M

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federal register

Monday
May 24, 1982

Part II

Department of the Interior

Bureau of Land Management

Combined Hydrocarbon Leasing; Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3140 and 3150

[Circular No. 2503]

Combined Hydrocarbon Leasing; Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides the procedures that the Secretary of the Interior will use to convert existing oil and gas leases and valid claims based on mineral locations in Special Tar Sand Areas to combined hydrocarbon leases as required by the Combined Hydrocarbon Leasing Act of 1981.

EFFECTIVE DATE: June 23, 1982.

ADDRESS: Any suggestions or remarks should be sent to: Director (540), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Edward E. Coggs, (202) 343–3258, or Richard J. Aiken, (202) 343–3258, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on Combined Hydrocarbon Leasing: Conversion of Existing Oil and Gas Leases and Valid Mining Claims was published in the **Federal Register** on March 1, 1982 (47 FR 8734), with a 30-day comment period provided. On March 3, 1982, a notice of extension of the comment period was published in the **Federal Register** (47 FR 9026). Public meetings were held on the proposed rulemaking on March 18, 1982, in Salt Lake City, Utah; Vernal, Utah, and Price, Utah.

Eighteen written comments were received on the proposed rulemaking, four of which were received after the close of the comment period. However, since the four comments included those from the Governor and the Congressional representatives of the one State that would be directly affected by the rulemaking, it was decided that these and all other comments received after the close of the comment period would be considered. These 18 comments came from the following sources: 10 from industry, 1 from an industry association, 5 from Federal agencies, including 1 from a Congressional source, and 2 from representatives of State and local governments. In addition, viewpoints were expressed verbally at the public meetings. All comments, including both verbal and written, were given careful consideration.

In general, the comments were favorable to the rulemaking. Specific comments will be discussed in connection with the sections to which they refer.

Section 3140.0–5

Several comments raised questions about what constituted a complete plan of operations under subsection (b). Specifically, the comments wanted to know if an exploration plan filed under 30 CFR 231.10(b) would suffice. One of the comments contained the views of two individuals who took an active part in the passage of the Combined Hydrocarbon Leasing Act. The comment suggested that the intent of the authors of the legislation was that applicants not be allowed to convert before they are fully committed or prepared to pursue diligent development of the tar sand resource and that the mechanism for ensuring this commitment was a complete plan of operations which included both an exploration plan and a mining plan. This comment is supported by the language of the legislation; therefore, the definition of a complete plan of operations was modified to clarify that the requirements of both subsections (b) and (c) of 30 CFR 231.10 must be met before a plan can be determined to be complete.

The definition for a complete plan of operations provided in the comment discussed above was accepted in the final rulemaking but was modified in one way. Where the the suggested definition would have required that all of the required information be supplied before a plan can be determined to be complete, the final rulemaking is worded to allow for discretion with reference to minor, nonsubstantive deficiencies.

Several comments suggested that the reference to 30 CFR 231.10 be amended to include some guidance for *in situ* operations. The Minerals Management Service is amending 30 CFR Part 231 to provide a cross reference to 30 CFR Part 221. For plans of operations dealing with *in situ* projects, a plan of operations should be filed under 30 CFR Part 231, but the information that is required would be that described in 30 CFR Part 221.

Several comments suggested information that should be included in the definition of a complete plan of operations in paragraph (b). The contents of the plan of operations are the responsibility of the Minerals Management Service and are beyond the scope of this rulemaking. Therefore, these comments were not incorporated into this final rulemaking.

Several comments were received which recommended additional language be added to paragraph (e) which would limit the definition of the term "owner of an oil and gas lease" to those with a working interest. For purposes of affecting the legal title to a lease, the Department of the Interior only recognizes record title holders as responsible parties, regardless of whether they hold the full working interest or only a nonoperating working interest. It is the responsibility of the applicant to ensure that all record title holders are in agreement with the decision to convert. No change has been made in this paragraph of the final rulemaking.

One comment was received suggesting that the term "owner of a mining claim" be defined. This suggestion has been adopted in principle and the term "owner of a valid claim based on a mineral location," which more closely tracts the language of the Combined Hydrocarbon Leasing Act is defined in the final rulemaking.

One comment suggested than the term "authorized officer" be included in the definition section. The term "authorized officer" is defined in § 3000.0–5(f) of this title and applies to this subpart; therefore, the final rulemaking has not been changed to include this suggestion.

Section 3140.1–1

Several comments were received noting that the proposed regulations were silent as to the status of oil and gas leases and valid claims based on mineral locations that lie only partially within a Special Tar Sand Area. The comments felt that in those situations, the Department of the Interior should allow the entire lease or claim to be converted to a combined hydrocarbon lease. The Combined Hydrocarbon Leasing Act and paragraph (a) of § 3140.1–1 of the final rulemaking state that combined hydrocarbon leases can only be issued within a Special Tar Sand Area. The Department has no authority to issue a combined hydrocarbon lease for lands that are outside of those boundaries. Therefore, oil and gas leases and valid claims that straddle the boundary of the Special Tar Sand Area will have to be split and only that portion which lies within the Special Tar Sand Areas can be converted. This suggestion has not been adopted by the final rulemaking.

One comment was received which suggested different language for paragraph (b) as it applies to valid claim owners. The suggested language is a

better explanation of the effect of not applying for conversion on the status of a valid mining claim and was, therefore, adopted.

Section 3140.1–2

One comment noted that the "Notice of Intent to Convert" provision of the proposed rulemaking would not apply to holders of valid claims based on mineral locations who want to convert since the "Notice of Intent to Convert" only serves to preserve the right to convert for applicants whose rights will expire shortly after these rules take effect. Since a mining claim does not have a set term, there would be no danger of its expiring. Therefore, the reference to a recordation number of the mining claim in paragraph (b) has been deleted by the final rulemaking.

Section 3140.1–3

Several comments felt that paragraph (a) required that a plan of operations be completed and approved before any exploration could take place.

The intent of this section of the proposed rulemaking was to authorize exploration that might be needed for development of a plan of operations. Therefore, to clarify this paragraph, the phrase "operation plan" was changed to "exploration plan" and the reference to 30 CFR 231.10 was clarified in the final rulemaking to explain that § 231.10(b) applied.

Paragraph (b) was changed in the final rulemaking in response to a comment by the National Park Service. Paragraph (b) now requires the consent of the Regional Director of the National Park Service for an exploration plan for an oil and gas lease which is located on a unit of the National Park System rather than requiring a separate special use permit issued by the National Park Service. With this change, a separate permitting process is eliminated while still ensuring that the National Park Service concerns can be reflected during exploration.

A new paragraph (c) has been added to the final rulemaking which explains that exploration plans do not meet the requirement for a complete plan of operations.

One comment was received which suggested that owners of valid claims based on mineral locations be notified of any application for an exploration permit that might impact their holdings and that the mining claimant be entitled to share any information resulting from the exploration. This suggestion was not incorporated in the final rulemaking because it revolves around the larger question of conflicting interests which will be decided on a case-by-case basis during the adjudication of the claims.

Section 3140.1–4

One comment objected to the 5,120 acre limitation on the size of a converted combined hydrocarbon lease. The comment remarked that the Combined Hydrocarbon Leasing Act allowed conversion of all oil and gas leases in the Special Tar Sand Areas and that larger tracts may be necessary to develop the tar sand. The 5,120 acre limitation was placed in the rules to enable the oil and gas leases and/or valid claims to be combined up to the size that the Congress felt was sufficient to support the operations of combined hydrocarbon lease obtained competitively. This provision would have little effect on the conversion of existing oil and gas leases that may be larger than 5,120 acres. In those instances, the oil and gas lease would be divided into two or more combined hydrocarbon leases of no more than 5,120 acres each. There is no limit to the number of combined hydrocarbon leases that can be held. If the leaseowner preferred to operate the several combined hydrocarbon leases as one lease, he/she would, upon applying for conversion, file one plan of operations covering all of his/her leases as a unit operation. For the reasons stated above, no change has been made in the final rulemaking.

Reductions in royalty rates can be granted either after commencement of commercial operations or prior to commencement of commercial operations. However, as one comment noted, there are two separate authorities that allow royalty rate reductions and they have different standards for granting such reductions. Therefore, changes were made to paragraph (c)(3) of the final rulemaking to clarify that the royalty rate can only be reduced prior to commencement of commercial operations, if the reduced royalty rate will promote development and the maximum production of tar sand.

One comment suggested that the reduced royalty rate discussed in paragraph (c) be established at the time that the combined hydrocarbon lease is issued or that standards be set for any royalty reduction in this rulemaking. The Combined Hydrocarbon Leasing Act provides a fixed royalty rate. Only a tar sand "lessee" may apply for a royalty reduction. The Act contemplates examination and possible reduction of the royalty after lease issuance and before commercial operations begin. Standards to be used in judging royalty reduction have not been set in the final rulemaking due to the embryonic state of tar sand development. Further, any standards issued now may have the effect of preempting the development of new technologies.

The discussion in the preamble to the proposed rulemaking relating to paragraph (c) stated that the royalty would be applied to the amount or value of the crude oil removed or sold from the lease. Several comments noted that the product produced from the tar sand lease could range from ore, untreated bitumen, partially upgraded bitumen, or fully upgraded bitumen and that, therefore, assessing the royalty rate on crude oil would be presumptuous. Conversion of the tar sand resource to a useable product is likely to require substantial and costly processing and upgrading. The proposed rulemaking envisioned taking these processing and upgrading costs into account when the leaseowner applied for a reduction in the royalty rate as allowed in § 3140.1–4(c)(3). However, it is clear that this procedure would simply result in mass application for royalty reductions by all of the tar sand operators. Therefore, a better standard than crude oil is necessary. As assessing royalties is the responsibility of the Minerals Management Service, this final rulemaking defers to their regulations on this matter.

Several comments referred to aspects of the unitization provisions in paragraph (d). Some comments felt that the proposed rulemaking would only allow unit agreements prior to conversion. Others were concerned that some of the procedures in 30 CFR Part 226 would not be appropriate for tar sand operations. Several comments pointed out that following the requirements of 30 CFR Part 226 may result in unit agreements and plans of operations being reviewed by separate officers. Several comments were concerned that the plans of operations would not be given a serious review until the unit agreements were approved. Finally, one comment felt that the subsection needed to highlight the role of the National Park Service.

To clarify that combined hydrocarbon leases could be unitized after conversion as well as before, the final rulemaking divides paragraph (d) into (d)(1) and (d)(2). Paragraph (d)(1) provides guidance for unit agreements for combined hydrocarbon leases which are developed either before conversion or after conversion. It provides more flexibility in the application of the requirements of 30 CFR Part 226 and clarifies that the review of the unit agreement and plan of operations be by the same person. Paragraph (d)(2)

applies only when development of the resource as described in the plan of operations is predicated on a unit agreement. In such cases, the plan of operations and the unit agreement can be reviewed concurrently, but the plan of operations cannot be approved until the unit agreement is fully executed.

Several comments felt that the requirements of paragraph (d) of the proposed rulemaking that a unit agreement be fully executed before a plan of operations could be approved would be difficult given the November 1982 and November 1983 time constraints. They further suggested that to rectify this, the rulemaking should provide for conditional approval of the plan of operations subject to the applicant obtaining commitment of the required interest. The requirement has not been changed in the final rulemaking. The November 1982 and November 1983 time frames refer to filing dates not approval dates. The final rulemaking requires that the plan of operations may not be approved before the unit agreement is fully executed. The actual time constraints for fully executing the unit agreement are February 1984 and February 1985. If the unit agreement is not fully executed within the 15-month time frame that the Combined Hydrocarbon Leasing Act requires for the Department of the Interior to take action, then the Department would have no choice but to disapprove the conversion. The Act based the right of conversion on the ability of the applicant to produce tar sand. If the applicant does not have sufficient commitment by the necessary parties to enable the resource to be developed then the applicant does not have the right to convert. It should be noted that developing tar sand through a unit agreement is not mandatory. Unlike oil and gas development, where the resource is located in a pool, it is not necessary that every owner of a lease in a particular area be a part of a unit agreement in order for the agreement to be approved.

Several comments were received which suggested that a provision be added to paragraph (d) which would allow approval of the commitment of Federal combined hydrocarbon leases to a unit or cooperative agreement adopted under State law. The comments go on to state that such commitments are allowed for conventional oil and gas operations. The suggestion was not incorporated in the final rulemaking because it is not needed. The existing oil and gas regulations apply to tar sand development unless specifically made not applicable by this rulemaking.

Section 3140.2–3

Several comments dealt with paragraph (b). Additional language was suggested and adopted in the final rulemaking which would clarify when modifications would be required. In addition, the different standards between the proposed rulemaking and those in 30 CFR 231.10(e) for justifying a modification were noted in several comments. To rectify this situation, the procedures from 30 CFR 231.10(e) have been written into this paragraph of the final rulemaking and the citation for 30 CFR 231.10(e) dropped. Finally, two comments noted that while approval of a plan of operations dealing with a unit of the National Park System required the consent of the National Park Service, no mention of the National Park Service's role in approving modifications was provided. Therefore, this paragraph of the final rulemaking has been conformed with the procedures for approving conversions.

References were included in paragraphs (c) and (d) of the final rulemaking to make them applicable to conversions of valid claims based on mineral locations to combined hydrocarbon leases in response to one comment.

A new paragraph (f) has been added by the final rulemaking to explain that the plan of operations must demonstrate development of the resource even if additional exploration is required after conversion.

Paragraph (f) in the proposed rulemaking became paragraph (g) and a new paragraph (g)(2) has been added to the final rulemaking. Paragraph (g)(2) is intended to answer the concern of one comment that the request for additional data after the plan of operations has been determined to be complete might result in the suspension of the running of the term of the lease being revoked.

Several comments were received suggesting that time limitations be placed on the supervisor in paragraph (g) for completion of the review of the plan of operations. The suggested time frames ranged from 15 days to 30 and 90 days. Their concern was that it was possible for a lease to expire or the statutory deadline to be missed due to the failure to file a complete plan of operations even though a plan had been filed but no action had yet been taken. This was a valid concern but putting a time limit on the review could still result in the same situation and would shorten the time available for filing. In response to these comments, paragraph (g) has been modified in the final rulemaking to provide that the suspension of the oil and gas lease would be effective on the date of filing not on the date of the determination of completeness.

One comment was received which suggested that alternative development approaches and time schedules be allowed in the plan of operations. This suggestion, if adopted, would serve to lessen the need for modifications to the plan. The plan of operations must show the applicant's plans for diligently developing the tar sand resource. If after exploration, or for some other reason, the plans need to be changed, provisions exist for amending the plan. At this time, other than resulting in a larger document and thereby requiring more time for review, it was felt that alternative development plans would add little to the rulemaking and the suggestion has not been adopted in the final rulemaking.

One comment suggested language requiring that all agencies reviewing proposed plans of operations complete their review within 15 months from the date the plan is referred for review by the Minerals Management Service. Review of the plan of operations is a responsibility of the Minerals Management Service and is beyond the scope of this rulemaking. Therefore, the suggestion has not been adopted.

One comment suggested procedures for handling contest or protest procedures. This suggestion has not been adopted in the final rulemaking because sufficient regulatory guidance exists in current regulations on the handling of such matters.

Section 3140.3–1

One comment pointed out that some leases may be under suspension due to no fault of the leaseholder at the time when the plan of operations is approved and the lease is converted. The concern was that the combined hydrocarbon leaseholder would not be able to enjoy the full 10-year lease period. In those situations, existing procedures provide for the period of time lost due to the suspension to be added to the end of the lease term.

Two comments were received suggesting procedures which would require the Bureau of Land Management to notify other holders of rights to hydrocarbons except coal, oil shale or gilsonite of the receipt of an application to convert. This suggestion was rejected by the final rulemaking because it would have placed the Bureau in the position of being potentially liable if it inadvertently fails to notify the owner of a conflicting right.

One comment felt that the regulations should require a simultaneous review of proposed plans of operations by other

agencies, where appropriate. Review of the plan of operations is the responsibility of the Minerals Management Service and is beyond the scope of this rulemaking.

Section 3140.4–1

Paragraph (b) has been revised in the final rulemaking to be consistent with the mineral management regulations of the National Park Service by requiring the consent of, rather than review by, the Regional Director for plans of operations.

Several comments attempted to distinguish between partial plans in 30 CFR 231.10(f) and approving a plan in part as described in paragraph (c) of the proposed rulemaking. No distinction is intended. A plan of operations must be complete as described in § 3140.0–5(b) and must demonstrate the development of the tar sand resource as required in § 3140.2–3(a). This rulemaking allows for exploration after conversion and for modifications to a plan of operations if that exploration results in a need for changes. There should be no need for partial plans and, more importantly, the Department of the Interior has no authority for approving anything but a complete plan of operations before a lease or mining claim can be converted.

Section 3140.4–2

As suggested by one comment, this section has been modified in the final rulemaking to provide a more orderly lease issuance procedure. In addition, several comments suggested that the rulemaking provide for the issuance of one combined hydrocarbon lease which would combine one or more oil and gas leases or valid claims. Due to the administrative convenience that this authority would provide, the ability to combine oil and gas leases and/or valid claims was intended in the original proposed rulemaking as demonstrated in the 5,120 acre limitation provided in § 3140.1–4(a), but was not clearly explained. Paragraph (d)(2) added by the final rulemaking would allow the combination of noncontiguous leases or valid claims within the guidelines of section 6(a) of the Combined Hydrocarbon Leasing Act.

One comment was received which suggested that a mechanism be provided by which affected Federal land managers would be able to assure that potential adverse impacts resulting from tar sand development on adjacent lands are accounted for in the decision to convert a lease and that appropriate mitigation measures are required to ensure that no significant impacts occur on their lands. The mechanism exists in the procedures implementing the National Environmental Policy Act. The approval of the plan of operations is a decision that must undergo an appropriate environmental review. During that review, impacts on Federal and State lands will be assessed. If, after the review of the plan of operations, stipulations in the lease are deemed necessary to ensure a reasonable protection of the environment, they are authorized under paragraph (a). Since sufficient procedures exist, no change has been made by the final rulemaking.

Section 3140.5

Several comments were concerned that the 10-year primary term was too short for a tar sand operation and suggested substituting language which would include the test of substantial financial investment. The Combined Hydrocarbon Leasing Act, as codified, requires that a combined hydrocarbon lease shall have a primary term of 10 years and shall continue "* * * so long after its primary term as oil or gas is produced in paying quantities." The Act goes on to provide one 2-year extension after the primary term and that is authorized only if "* * * actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted at that time * * *." Another comment felt that a new 10-year term should not be granted as a result of the conversion. Section 6 of the Act provided the authority to convert the oil and gas lease or valid claim based on a mineral location to "a combined hydrocarbon lease for a primary term of 10 years." No change has been made in this section by the final rulemaking.

Section 3140.6

Several comments were received on this section. Most of the comments referred to an outdated version of section 2920 of Title 43 of the Code of Federal Regulations. That version referred solely to Special Land Use Permits, which had a term of 1-year. The existing section 2920, revised as of October 1, 1981, refers to leases as well as permits. Leases under § 2920.1(a) "shall be issued for a term determined by the authorized officer that is consistent with the time required to amortize the capital investment."

Another concern raised with reference to the previously existing section 2920 was the view that the permit was revocable at the discretion of the authorized officer. It was felt that an easily revocable permit would not provide the assurance necessary to make plans for such an investment. As stated, the existing version of section 2920 deals with leases as well as permits. In addition, § 2920.9–3(a) provides that leases can only be terminated: (1) If the terms of the authorization included a termination clause; (2) for noncompliance with applicable law, regulations, or terms and conditions; (3) failure to use the land for the purpose for which it was authorized; (4) by mutual agreement; or (5) for nonpayment of rent for two consecutive months, following payment due. These provisions should provide the assurances needed to allay the expressed concerns and no change has been made by the final rulemaking.

Several comments on this section also questioned the use of leasing authority under section 302 of the Federal Land Policy and Management Act rather than the authority under section 6(a) of the Combined Hydrocarbon Leasing Act. Section 6(a) will be the authority under which the leasing of additional lands to support operations of the combined hydrocarbon lease will take place. The procedures for issuing such leases are the provisions of section 2920 of this title except when the required lands are on units of the National Park System. In those cases, an application should be filed with the Regional Director of the National Park Service. The Bureau of Land Management will issue rights-of-way under Parts 2800 and 2880 of Title 43 of the Code of Federal Regulations when a right-of-way rather than a lease is more appropriate, such as a pipeline.

Section 3140.7

Two comments were received suggesting changes to this section. The section has been amended by the final rulemaking to delegate to the Regional Director of the National Park Service the requirement of making a finding of no resulting significant adverse impact.

Miscellaneous

One comment was received relative to the distinction between oil and tar sand in areas outside of Special Tar Sand Areas. The rulemaking applies only to areas within Special Tar Sand Areas. Therefore, the comment was not relevant to this rulemaking.

Issues on Valid Claims Based on Mineral Locations

In the proposed rulemaking, the Department of the Interior requested comments on whether this rulemaking should include procedures and showings that would be used for the purposes of converting valid mining claims to a combined hydrocarbon lease. One comment was received in favor of specific procedures for establishing

validity and two were received for addressing the issues involved, when and if there are conflicts between owners of valid claims and oil and gas leases covering the same lands. Verbal comments received at the public meetings came out against establishing validity procedures in these rules. As a result of the apparent lack of support for separate procedures for assessing the validity, this rulemaking does not include any such procedures. The procedures and standards will be established on a case-by-case basis in the adjudication of these applications.

Editorial and Grammatical Changes, as Needed, Have Been Made

The primary authors of this proposed rulemaking are Richard Aiken and Edward Coggs, Division of Coal, Tar Sands, and Oil Shale, Bureau of Land Management and Orval Hadley and Bob Randolf, Utah State Office, Bureau of Land Management, assisted by William Murray, Division of Energy and Resources, Office of Solicitor, Department of the Interior, and the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management, and other Bureau of Land Management and Department of the Interior staff.

The Department of the Interior has determined that this document is a major rule under Executive Order 12291, but that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The final rulemaking will not present any barriers to small business entry into tar sand development. The requirements for conversion are minimal and designed to be tailored to the size of the proposed operation. An avenue exists for small business entry to tar sand development through the use of the unit operations provisions by which the large costs of developing tar sand can be amortized over a larger resource base. By entering into a unit agreement, the small business cuts the costs of conversion as well since only one plan of operations is necessary to convert all of the oil and gas leases or valid claims included in the unit agreement.

There is little opportunity for any additional tiering of any requirements of the final rulemaking to the size of the applicant. Most of the requirements in this rulemaking were dictated by the Combined Hydrocarbon Leasing Act. Those that are not totally dictated by the Act either have been streamlined and tailored to the size of the proposal to the extent legally permissible, such as the requirements for the plan of operations, or are of a nonconsequential nature relative to the total costs of developing tar sand as exemplified by the estimated rental revenues accruing to the United States in the scenarios in section V.

A Preliminary Regulatory Impact Analysis was developed and made available to the public on March 1, 1982, and a Final Regulatory Impact Analysis and Regulatory Flexibility Analysis has been developed and is available upon request from the Division of Coal, Tar Sands, and Oil Shale, Bureau of Land Management, 1800 C Street N.W., Washington, D.C. 20240.

The Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78) directs the Secretary of the Interior, within 6 months of the effective date of the Act, to issue final regulations under which the owner of an oil and gas lease or a valid claim based on a mineral location, if he/she meets the requirements of the Act, can file an application for conversion of such lease or claim to a combined hydrocarbon lease. This final rulemaking provides the procedure by which qualified owners of oil and gas leases or valid claims based on mineral locations can apply for conversion to combined hydrocarbon leases. This rulemaking will serve the national interest by providing the procedure for development of the tar sand resources that should increase the amount of domestically produced oil.

The information collection requirements contained in 43 CFR Part 3140 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned number 1004-0118.

List of Subjects in 43 CFR Part 3140

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—mineral resources.

Under the authority of the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Group 3100, Subchapter C, Chapter II of the Code of Federal Regulations is amended by redesignating existing Part 3140 as Part 3150 and adding a new Part 3140 as set forth below.

Dated: May 7, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 3140—COMBINED HYDROCARBON LEASING

Note.—The information collection requirements contained in Part 3140 of Group 3100 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0118. The information is being collected to allow the authorized officer to determine if the applicant for conversion of an existing oil and gas lease or valid claim based on a mineral location to a combined hydrocarbon lease is qualified for such conversion. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

Sec.

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Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

§ 3140.0-1 Purpose.

The purpose of this subpart is to provide for the conversion of existing oil and gas leases and valid claims based on mineral locations within Special Tar Sand Areas to combined hydrocarbon leases.

§ 3140.0-3 Authority.

These regulations are issued under the authority of the Mineral Lands Leasing Act of February 25, 1920 (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78).

§ 3140.0-5 Definitions.

As used in this subpart, the term:

(a) "Combined hydrocarbon lease"

means a lease issued in a Special Tar Sand Area for the removal of gas and nongaseous hydrocarbon substances other than coal, oil shale or gilsonite.

(b) "A complete plan of operations" means a plan of operations which is in substantial compliance with the information requirements of 30 CFR 231.10 for both exploration plans and mining plans, as well as any additional information required in these regulations and under 30 CFR 2310.10, as may be appropriate.

(c) "Special Tar Sand Area" means an area designated by the Department of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077) referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

(d) "Supervisor" means the District Mining Supervisor of the Minerals Management Service, unless the plan of operations proposes only an in-situ process where no mining is involved in which case it means the District Oil and Gas Supervisor of the Minerals Management Service.

(e) "Owner of an oil and gas lease" means all of the record title holders of an oil gas lease.

(f) "Owner of a valid claim based on a mineral location" means all parties appearing on the title records recognized as official under State law as having the right to sell or transfer any part of the mining claim, which was located within a Special Tar Sand Area prior to January 21, 1926, for any hydrocarbon resource, except coal, oil shale or gilsonite, leasable under the Combined Hydrocarbon Leasing Act.

(g) "Unitization" means unitization as that term is defined in 30 CFR Part 226.

§ 3140.1 General provisions.

§ 3140.1-1 Existing rights.

(a) The owner of an oil and gas lease issued prior to November 16, 1981, or the owner of a valid claim based on a mineral location situated within a Special Tar Sand Area may convert that portion of the lease or claim so situated to a combined hydrocarbon lease, provided that such conversion is consistent with the provisions of this subpart.

(b) Owners of oil and gas leases in Special Tar Sand Areas who elect not to convert their leases to a combined hydrocarbon lease do not acquire the rights to any hydrocarbon resource except oil and gas as those terms were defined prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981. The failure to file an application to convert a valid claim based on a mineral location within the time herein provided shall have no effect on the validity of the mining claim nor the right to maintain that claim.

§ 3140.1-2 Notice of intent to convert.

(a) Owners of oil and gas leases in Special Tar Sand Areas which are scheduled to expire prior to the effective date of these regulations or within 6 months thereafter, may preserve the right to convert their leases to combined hydrocarbon leases by filing a Notice of Intent to Convert with the State Director, Utah State Office, Bureau of Land Management, 136 E. South Temple, Salt Lake City, Utah 84111.

(b) A letter, submitted by the lessee, notifying the Bureau of Land Management of the lessee's intention to submit a plan of operations shall constitute a notice of intent to convert a lease. The Notice of Intent shall contain the lease number.

(c) The Notice of Intent shall be filed prior to the expiration date of the lease. The notice shall preserve the lessee's conversion rights only for a period ending 6 months after the effective date of this subpart.

§ 3140.1-3 Exploration plans.

(a) The supervisor may grant permission to holders of existing oil and gas leases to gather information to develop, perfect, complete or amend a plan of operations required for conversion upon the approval of the supervisor of an exploration plan developed in accordance with 30 CFR 231.10(b).

(b) The approval of an exploration plan in units of the National Park System requires the consent of the Regional Director or the National Park Service in accordance with § 3140.7 of this title.

(c) The filing of an exploration plan alone shall be insufficient to meet the requirements of a complete plan of operations as set forth in § 3140.2-3 of this title.

§ 3140.1-4 Other provisions.

(a) A combined hydrocarbon lease shall be for no more than 5,120 acres. Acreage held under lease in a Special Tar Sand Area is not chargeable to State oil and gas limitations allowable in §§ 3101.1-5 and 3101.2-4 of this title.

(b) The rental rate for a combined hydrocarbon lease shall be $2 per acre per year and shall be payable annually in advance.

(c)(1) The royalty rate for a combined hydrocarbon lease converted from an oil and gas lease shall be that provided for in the original oil and gas lease.

(2) The royalty rate for a combined hydrocarbon lease converted from a valid claim based on a mineral location shall be 12½ percent.

(3) A reduction of royalties may be granted either as provided in § 3103.3-7 of this title or, at the request of the lessee and upon a review of information provided by the lessee, prior to commencement of commercial operations if the purpose of the request is to promote development and the maximum production of tar sand.

(d)(1) Existing oil and gas leases and valid claims based on mineral locations may be unitized prior to or after the lease or claim has been converted to a combined hydrocarbon lease. The requirements of 30 CFR Part 226 shall provide the procedures and general guidelines for unitization of combined hydrocarbon leases. For leases within units of the National Park System, unitization requires the consent of the Regional Director of the National Park Service in accordance with § 3140.4-1(b) of this title. The supervisor reviewing the proposed unit agreement shall be the same supervisor reviewing the plan of operations.

(2) If the plan of operations submitted for conversion is designed to cover a unit, a fully executed unit agreement shall be approved before the plan of operations applicable to the unit may be approved under § 3140.2 of this title. The proposed plan of operations and the proposed unit agreement may be reviewed concurrently. The approved unit agreement shall be effective after the leases or claims subject to it are converted to combined hydrocarbon leases. The plan of operations shall explain how and when each lease included in the unit operation will be developed.

(e) Except as provided for in this subpart, the regulations set out in part 3100 of this title are applicable, as appropriate, to all combined hydrocarbon leases issued under this subpart.

§ 3140.2 Applications.

§ 3140.2-1 Forms.

No special form is required for a conversion application.

§ 3140.2-2 Who may apply.

Only owners of oil and gas leases issued on or before November 16, 1981, owners of valid claims based on mineral locations are eligible to convert leases or claims to combined hydrocarbon leases in Special Tar Sand Areas.

§ 3140.2-3 Application requirements.

(a) The applicant shall submit to the State Director, Utah State Office of the Bureau of Land Management, a written request for a combined hydrocarbon lease signed by the owner of the lease or valid claim which shall be accompanied by 3 copies of a plan of operations which shall meet the requirements of 30 CFR 231.10 (b) and (c) and which shall provide for reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of development or mining.

(b) A plan of operations may be modified or amended before or after conversion of a lease or valid claim to reflect changes in technology, slippages in schedule beyond the control of the lessee, new information about the resource or the economic or environmental aspects of its development, changes to or initiation of applicable unit agreements or for other purposes. To obtain approval of a modification or amended plan, the applicant shall submit a written statement of the proposed changes or supplements and the justification for the changes proposed. Any modifications shall be in accordance with 30 CFR 231.10(e). The approval of the modification or amendment is the responsibility of the supervisor. Changes or modification to the plan of operations shall have no effect on the primary term of the lease. The supervisor shall, prior to approving any amendment or modification, review the modification or amendment with the appropriate surface management agency. For leases within units of the National Park System, no amendment or modification shall be approved without the consent of the Regional Director of the National Park Service in accordance with § 3140.7 of this title.

(c) The plan of operations may be for a single existing oil and gas lease or valid claim or for an area of proposed unit operation.

(d) The plan of operations shall identify by lease number all Federal oil and gas leases proposed for conversion and identify valid claims proposed for conversion by the recordation number of the mining claim.

(e) The plan of operations shall include any proposed designation of operator or proposed operating agreement.

(f) The plan of operations may include an exploration phase, if necessary, but it shall include a development phase. Such a plan can be approved even though it may indicate work under the exploration phase is necessary to perfect the proposed plan for the development phase as long as the overall plan demonstrates reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of mining.

(g)(1) Upon determination that the plan of operations is complete, the supervisor shall notify the authorized officer who shall then suspend the term of the Federal oil and gas lease(s) as of the date that the complete plan was filed until the plan is finally approved or rejected. Only the term of the oil and gas lease shall be suspended, not any operation and production requirements thereunder.

(2) If the supervisor determines that the plan of operations is not complete, the applicant shall be notified that the plan is subject to rejection if not completed within the period specified in the notice.

(3) The supervisor may request additional data after the plan of operations has been determined to be complete. This request for additional information shall have no effect on the suspension of the running of the oil and gas lease.

§ 3140.3 Time limitations.

§ 3140.3-1 Conversion applications.

A plan of operations to convert an existing oil and gas lease or valid claim based on a mineral location to a combined hydrocarbon lease shall be filed on or before November 15, 1983, or prior to the expiration of the oil and gas lease, whichever is earlier, except as provided in § 3140.1-2 of this title.

§ 3140.3-2 Action on an application.

The authorized officer shall, with the advise of the supervisor, take action on an application for conversion within 15 months of receipt of a proposed plan of operations.

§ 3140.4 Conversion.

§ 3140.4-1 Approval of plan of operations (and unit and operating agreements).

(a) The owner of an oil and gas lease, or the owner of a valid claim based on a mineral location shall have such lease or claim converted to a combined hydrocarbon lease when the plan of operations, filed under § 3140.2 of this title, is deemed acceptable and is approved by the supervisor.

(b) The conversion of a lease within a unit of the National Park System shall be approved only with the consent of the Regional Director of the National Park Service in accordance with § 3140.7 of this title.

(c) A plan of operations may not be approved in part but may be approved where it contains an appropriately staged plan of exploration and development operations.

§ 3140.4-2 Issuance of the combined hydrocarbon lease.

(a) After a plan of operations is found acceptable, and is approved, the authorized officer shall prepare and submit to the owner, for execution, a combined hydrocarbon lease containing all appropriate terms and conditions, including any necessary stipulations that were part of the oil and gas lease being converted, as well as any additional stipulations, such as those required to ensure compliance with the plan of operations.

(b) The authorized officer shall not sign the combined hydrocarbon lease until it has been executed by the conversion applicant and the lease or claim to be converted has been formally relinquished to the United States.

(c) The effective date of the combined hydrocarbon lease shall be the first day of the month following the date that the authorized officer signs the lease.

(d)(1) Except to the extent that any such lease would exceed 5,210 acres, the authorized officer may issue, upon the request of the applicant, 1 combined hydrocarbon lease to cover contiguous oil and gas leases or valid claims based on mineral locations which have been approved for conversion.

(2) To the extent necessary to promote the development of the resource, the authorized officer may issue, upon the request of the applicant, 1 combined hydrocarbon lease that does not exceed 5,120 acres, which shall be as nearly compact as possible, to cover non-contiguous oil and gas leases or valid claims which have been approved for conversion.

§ 3140.5 Duration of the lease.

A combined hydrocarbon lease shall be for a primary term of 10 years and for so long thereafter as oil or gas is produced in paying quantities.

§ 3140.6 Use of additional lands.

(a) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill site or waste disposal. Application for a lease or permit to use additional lands shall be filed under the provisions of Part 2920 of this title with the proper BLM office having jurisdiction of the lands. The

application for additional lands may be filed at the time a plan of operations is filed.

(b) A lease for the use of additional lands shall not be issued when the use can be authorized under Parts 2800 and 2880 of this title. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads, and railroads.

(c) Within units of the National Park System, permits or leases for additional lands shall only be issued by the National Park Service. Applications for such permits or leases shall be filed with the Regional Director of the National Park Service.

§ 3140.7 Lands within the National Park System.

Conversions of existing oil and gas leases and valid claims based on mineral locations to combined hydrocarbon leases within units of the National Park System shall be allowed only where mineral leasing is permitted by law and where the lands covered by the lease or claim proposed for conversion are open to mineral resource disposition in accordance with any applicable minerals management plan. (See § 3101.4–5 of this title). In order to consent to any conversion or any subsequent development under a combined hydrocarbon lease requiring further approval, the Regional Director of the National Park Service shall find that there will be no resulting significant adverse impacts on the resources and administration of such areas or on other contiguous units of the National Park System in accordance with § 3109.5(e) of this title.

PART 3150 [REDESIGNATED FROM PART 3140]

2. Existing Part 3140 is redesignated Part 3150.

[FR Doc 82–14033 Filed 5–21–82; 8:45 am]

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federal register

Monday
May 24, 1982

Part III

Office of Management and Budget

Budget Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report revisions to six deferrals previously reported, increasing the amount deferred by $7.5 million.

The deferrals affect programs in the Departments of Commerce, Health and Human Services, and Justice as well as the Small Business Administration.

The details of each deferral are contained in the attached reports.

Ronald Reagan.

THE WHITE HOUSE,
May 18, 1982.

BILLING CODE 3110-01-M

[FR Doc. 82-14095 Filed 5-21-82; 9:45 am]

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Department of Commerce	
	Bureau of the Census	
D82-225A	Periodic censuses and programs	1,015
	Minority Business Development Agency	
D82-226A	Minority business development	10,000
	National Oceanic and Atmospheric Administration	
D82-5A	Construction	2,000
	Department of Health and Human Services	
	Social Security Administration	
D82-237A	Limitation on administrative expenses	9,600
	Department of Justice	
	Federal Prison System	
D82-17B	Buildings and facilities	2,700
	Small Business Administration	
D82-233A	Business loan and investment fund	5,000
	Total Deferrals	30,315

SUMMARY OF SPECIAL MESSAGES
FOR FY 1982
(in thousands of dollars)

	Rescissions	Deferrals	
Twelfth special message			
New items	---	---	
Change to amounts previously submitted	---	7,500	
Effect of twelfth special message	---	7,500	
Previous special messages	7,576,998	7,972,770	
Total amount proposed in special messages	7,576,998	7,980,270	1/

1/ This amount represents budget authority except for $20,922 thousand in one general revenue sharing deferral of outlays only (D82-23A).

D82-225A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of
Public Law 93-344

This report updates Deferral No. D82-225, transmitted to the Congress on February 5, 1982.

This revision to a deferral for periodic censuses and programs in the Commerce Department increases the budgetary resources previously reported in this account from $61,333,000 to $109,082,213, an increase of $47,749,213. The increase is the result of the following actions: (1) the Fourth Continuing Resolution making further appropriations for Fiscal Year 1982 (P.L 97-161) made available an additional $43,949,000; (2) recoveries of prior-year obligations made available an additional $3,800,000; and (3) an adjustment in unobligated balances brought forward into FY 1982 made available an additional $213. The additional resources do not affect the amount deferred, which remains $1,015,000.

Deferral No: D82-225A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. 97-161): $87,898,000
Bureau: Bureau of the Census	Other budgetary resources: 21,184,213*
Appropriation title & symbol: Periodic censuses and programs 13X0450	Total budgetary resources: 109,082,213*
	Amount to be deferred: Part of year: $ ____
	Entire year: 1,015,000
OMB identification code: 13-0450-0-1-376	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This appropriation funds legislatively-mandated censuses and surveys of economic and demographic areas once or twice each decade. The current plan for the Agricultural Census will reduce FY 1982 costs by $1,015 thousand and FY 1983 data collection costs by $9 million. Savings realized in 1982 are being deferred for the balance of the fiscal year and will be used to offset program costs in FY 1983. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: This deferral action reduces the 1982 program commensurate with proposed 1983 changes in a special area sample (first introduced in 1978), special subject follow-up surveys (farm financing and farm energy, for example) and data collection for the outlying areas (Guam, the Virgin Islands and Puerto Rico, for example) but maintains the essential form data comparable to previous censuses.

Outlay Effect: This deferral action will have the effect of shifting $1,015 thousand in outlays from FY 1982 into FY 1983.

* Revised from previous report.

D82-226A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of
Public Law 93-344

This report updates Deferral No. D82-226, transmitted to the Congress on February 5, 1982.

This revision to a deferral of Minority Business Development funds in the Department of Commerce increases the amount deferred from $5,000,000 to $10,000,000. The increase in this deferral is due to the additional budget authority provided by the Fourth Continuing Resolution, making further continuing appropriations for Fiscal Year 1982 (P.L. 97-161). In addition, the duration of the deferral has been extended to the end of Fiscal Year 1982.

Deferral No: D82-226A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. 97-161): $58,641,000*
Bureau: Minority Business Development Agency	Other budgetary resources: 15,231,762
Appropriation title & symbol: Minority Business Development 1/ 1320201 * 13X0201	Total budgetary resources: 71,872,762*
OMB identification code: 13-0201-0-1-376	Amount to be deferred: Part of year: $; Entire year: 10,000,000*
Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual 2/ [ ] Multiple-year (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: The Continuing Resolution (P.L. 97-161) provided $ 57 million in budget authority through September 30, 1982, for the Minority Business Development Agency (MBDA) for the delivery of management and technical assistance to minority-owned firms. In addition to this authority, MBDA carried forward into 1982 an unobligated balance of $13.7 million -- $10 million greater than anticipated. The proposed deferral of $10 million will allow MBDA to maintain its programs for an annual level of $60 million. This level would be consistent with the level resulting from Congressional appropriation action and the planned carryover from 1981.

Estimated Effects: The deferral will maintain MBDA's programs at the planned level of $60 million. It will enable MBDA to provide services in 90 standard metropolitan statistical areas, where almost 80% of minority firms are located.

Outlay Effects: This deferral action will reduce 1982 outlays by $10 million.

1/ This account was the subject of another FY 1982 deferral (D82-99) and was the subject of a deferral in FY 1981 (D81-103).
2/ None of these funds is deferred.
* Revised from previous report.

D82-5A

Deferral No: D82-5A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of
Public Law 93-344

This report updates Deferral No. D82-5, transmitted to the Congress on October 1, 1981.

This revision to a deferral of construction funds in the National Oceanic and Atmospheric Administration increases the total budgetary resources for the account from $23,700,000 to $26,920,285. The increase of $3,220,285 is attributable to an increase of $2,945,285 over the previous estimate of unobligated balances brought forward into Fiscal Year 1982 and to the recovery of $275,000 in prior year obligations. The amount deferred remains $2,000,000.

Deferral No: D82-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. ____): $ ---
Bureau: National Oceanic and Atmospheric Administration	Other budgetary resources: 26,920,000
Appropriation title & symbol: Construction 13x1452 1/	Total budgetary resources: 26,920,000
	Amount to be deferred: Part of year: $ ____ Entire year: 2,000,000
OMB identification code: 13-1452-0-1-306	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: Public Law 96-38 included supplemental appropriations to fund NOAA's Western Regional Center (WRC) in Seattle, Washington. Due to delays in construction, the estimated date of completion has been extended into FY 1983. The above funds proposed for deferral will not be required during FY 1982. This deferral is consistent with congressional intent to provide no-year funding for this project and is taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: The funds proposed for deferral will not affect the construction progress of the WRC during FY 1982.

Outlay Effect: This deferral action will have no effect on FY 1982 outlays.

1/ This account was the subject of a similar deferral in FY 1981 (D81-4).

* Revised from previous report.

D82-237A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of Public law 93-344

This report updates Deferral No. D82-237, transmitted to the Congress on March 10, 1982.

This revision to a deferral for the Limitation on Administrative Expenses in the Social Security Administration increases the budgetary resources for this account by $14,995,375 to cover additional funds provided by the Fourth Continuing Resolution, making further continuing appropriations for fiscal year 1982 (P.L. 97-161). The amount deferred remains $9,600,000.

Deferral No: D82-237A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Health and Human Services	New budget authority (P.L. 97-92): $24,591,000 *
Bureau: Social Security Administration	Other budgetary resources: 28,650,158
Appropriation title & symbol: Limitation on Administrative Expenses 75X8704 (Construction)	Total budgetary resources: 53,241,158 *
	Amount to be deferred: Part of year: $ ____ Entire year: 9,600,000
OMB identification code: 75-8704-0-7-601	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This account provides funding for construction and renovation of the Social Security Administration's headquarters and field office buildings. During FY 1982, the Social Security Administration (SSA) expects to construct several new district offices and to expand offices that have become overcrowded. In reviewing plans for FY 1982, SSA identified $9,600,000 in funds available from prior years that cannot be obligated during FY 1982 because of the time-consuming nature of the construction process. Consequently, these funds are being deferred. This deferral action of no-year funds is a routine deferral taken under the provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: There is no programmatic or budgetary effect from this deferral.

Outlay Effect: There is no outlay effect because these funds could not be obligated if made available.

* Revised from previous report.

D82-17B

Deferral No: D82-17 B

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of
Public Law 93-344

This report updates Deferral No. D82-17A, transmitted to the Congress on February 5, 1982.

This revision to a deferral for buildings and facilities under the Federal Prison System of the Department of Justice increases the budgetary resources from $21,792,831 to $29,657,831. The increase of $6,865,000 represents additional funds made available by the Fourth Continuing Resolution, making further appropriations for fiscal year 1982 (P.L. 97-161). This change does not affect the amount deferred.

Deferral No: D82-17 B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L. 97-161): $ 13,731,000*
Bureau: Federal Prison System	Other budgetary resources: 15,926,831*
Appropriation title & symbol: Buildings and Facilities 15X1003 1/	Total budgetary resources: 29,657,831*
	Amount to be deferred: Part of year: $ ____
	Entire year: 2,700,000
OMB Identification code: 15-1003-0-1-753	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification*: This appropriation finances planning, acquisition of sites, and construction of new penal and correctional facilities as well as construction, remodeling and equipping of necessary buildings and facilities at existing penal and correctional institutions. Projects are undertaken to reduce overcrowding, close old and antiquated penitentiaries and provide a safe and humane environment for staff and inmates. The deferred funds were appropriated in the Departments of State, Justice and Commerce, the Judiciary and Related Agencies Appropriation Act of 1981 and previous years. Due to the time required for planning, site acquisition, design efforts and selection of contractors, it is not possible to complete the construction, renovation, and rehabilitation associated with all these projects during FY 1982. The amount deferred of $2,700,000 represents funding for major and minor repair projects at existing facilities. This deferral is consistent with Congressional intent to provide no-year funding for these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effect: The amount deferred for the entire year could not be economically used, if made available in FY 1982, because of the planned phased procurement, construction and installation cycle.

Outlay Effect: This deferral action has no effect on FY 1982 outlays.

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* Revised from previous report.
1/ This account was the subject of a deferral in FY 1981 (D81-188) and was also the subject of another deferral in FY 1982 (D82-192).

D82-233A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D82-233, transmitted to the Congress on February 5, 1982.

This revision to a deferral of business loan and investment funds in the Small Business Administration increases the amount deferred from $2,500,000 to $5,000,000. This increase of $2,500,000 is the result of additional funds provided by the Fourth Continuing Resolution making further appropriations for Fiscal Year 1982, and is consistent with the decision to limit guaranteed loans in this account for FY 1982 to $2.7 billion, in keeping with efforts to reduce Federal credit intervention. The duration of the deferral has also been extended to the end of Fiscal Year 1982.

Deferral No: D 82-233A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Small Business Administration Bureau:	New budget authority (P.L. 97-161): $326,000,000* Other budgetary resources: 693,309,354* Total budgetary resources: 1,019,309,354*
Appropriation title & symbol: Business Loan and Investment Fund 1/ 73X4154	Amount to be deferred: Part of year: $ ____ Entire year: 5,000,000*
OMB identification code: 73-4154-0-3-376	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification:* The Continuing Resolution (P.L. 97-161) provided $326 million in FY 1982 as a capital appropriation for the Business Loan and Investment Fund of the Small Business Administration (SBA). This amount would provide for guaranteed business loans at an annual level that is $565 million higher than the $2.7 billion level proposed by the President. These additional funds are not needed to provide an adequate credit assistance program for small businesses in FY 1982 and would undermine seriously the President's efforts to reduce Federal interference in U.S. credit markets. Accordingly, as part of the Administration's comprehensive plan to reduce Federal credit intervention, $5 million will be deferred through the end of this year.

Estimated Effects: Since demand for credit assistance is currently at an annual rate of less than $2 billion, this deferral will not adversely affect the small business community. Moreover, SBA is taking steps to target available credit assistance more effectively to deserving business.

Outlay Effect:* This deferral action will reduce 1982 outlays by $5 million and will reduce the need for budget authority in 1983.

1/ This account was the subject of a deferral in FY 1981 (D81-41A).
* Revised from previous report.

BILLING CODE 3110-01-C

federal register

Monday
May 24, 1982

Part IV

Department of Transportation

Federal Aviation Administration

Air Traffic Control System; Interim Operation Plan

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 22050; SFAR No. 44–4]

Air Traffic Control System; Interim Operations Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This Special Federal Aviation Regulation (SFAR) sets forth the procedures for temporary allocation of the arrival slots previously allocated to Braniff Airways, Inc. ("Braniff slots"). This amendment provides for a random drawing to determine priority order for allocation of capacity at all airports within the contiguous United States at which Braniff had been allocated arrival slots. This amendment is necessary to assure the efficient utilization of the navigable airspace in light of the suspension of service by Braniff on May 12, 1982.

EFFECTIVE DATE: May 20, 1982.

Comments are invited on this SFAR until June 21, 1982, unless it is withdrawn at an earlier date.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 22050, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426–3773.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this amendment is in the form of an emergency final rule which concerns the safe and efficient use of airspace throughout the United States and, thus, is not preceded by a notice of proposed rulemaking, comments are invited on this Special Federal Aviation Regulation until June 21, 1982.

The FAA invites comments on the procedures contained in this regulation. Comments are specifically invited on any aspects of the operation of the Air Traffic Control system under this amendment that suggest a need to modify the regulation, or which should be considered should additional procedures be necessary. Comments received will be reviewed on a continuing basis and this amendment may be changed in the light of comments received. Commenters wishing the FAA to acknowledge receipt of their comments in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 22050." The postcard will be date/time stamped and returned to the commenter.

Background

On Wednesday, May 12, 1982, Braniff Airways, Inc., suspended its operations and filed bankruptcy papers under Chapter 11 of the Federal Bankruptcy Code. Braniff was allocated a significant number of arrival slots at a number of facilities within the contiguous United States. SFAR 44–3 (47 FR 7816; February 22, 1982) sets forth procedures for maintaining some limitations on air traffic services at various Air Traffic Control facilities. These limitations are applicable at 22 congested airports listed in SFAR 44–3 and at all Air Route Traffic Control Centers.

On May 14, 1982, the FAA issued a notice to all carriers advising them of the availability Braniff slots and invited carriers to submit requests for these slots. The notice advised that for "emergency" reasons slots would be allocated on a temporary basis.

Under SFAR 44–3, air carriers submit requests for arrival slots at certain fixed times before each scheduling period. These requests are made after the carriers have been advised which new/additional slots are available for allocation. The FAA then conducts a random draw to determine priority for slot selection. Slots are then allocated in accordance with the carrier's individual priority. If a slot is not used during a scheduling period after slots have been allocated, it can be reallocated. This system is appropriate for allocation of a limited number of additional slots above those listed in the Appendix to the SFAR. When, however, the number of slots to be allocated is appreciably different from the number which the public was advised would be available, additional public notification is essential. This notification would enable air carriers to adjust their requests to reflect the additional capacity.

Braniff was allocated approximately 400 arrival slots, of which about 150 were at Dallas/Fort Worth Regional Airport (DFW). Approximately 50 of the slots at Dallas will not be reallocated in order to reduce air traffic delays that have developed in the Dallas area over the past few months. These delays have increased controller workload and affected traffic systemwide.

Approximately 25 percent of the Braniff slots were allocated on an emergency basis to minimize the impact of Braniff's suspension on the travelling public. On the day of the suspension, there were thousands of passengers in the Dallas and Houston areas that may have had no other way to reach their destinations and did know if their Braniff tickets were valid. They could not plan International or long-distance hub connections. Additionally, calls to other carriers could only be responded to with "we don't know who will serve that airport." Accordingly, for longer distance connections to major interchange locations, emergency allocations were made by FAA under the following criteria: (a) All such allocations were temporary, good only for 7 days and cancellable on 24-hour notice; (b) service must be instituted in 48 hours; (c) participation by the carrier was voluntary and it could request later days or reject temporary authority to operate; and (d) emphasis was on those arrival slots which would enable continuation of long-haul and international service and at airports where Braniff was sole or dominant carrier. Delay in the allocation of these slots could have resulted in the disruption of transportation needs for large segments of the public. Such a disruption may have had a major disruption on the national transportation system and international routings. Therefore, in the public interest and in order to provide for efficient and safe air transportation, the FAA, after consultation with the Chairman, Civil Aeronautics Board, allocated a limited number of slots in consideration of the above. Only a minimal number were allocated to any individual carrier at any airport.

Braniff slots, either under this SFAR or on an emergency basis, are allocated on a temporary basis only. The slots are for up to a 60-day period. During that time, Braniff's Chapter 11 proceedings will be closely monitored. If Braniff does again operate, then the slots necessary for continued Braniff operations will be returned to Braniff. The carriers should be able to use these slots for 60 days, but all parties are put on notice that the award of these slots may be revoked upon 24-hour notice. Carriers should not apply for these slots unless they will be in a position to operate under these conditions. At no later than the end of that 60-day period, this temporary approval may be extended or a longer

term allocation procedure for the particular slots may be promulgated.

Carriers must be prepared to utilize slots allocated under this SFAR within 10 days after receipt of approval from API–1 or they will lose the slots.

All carriers are reminded that slots are temporary creations of FAA emergency regulations and do not confer on any carrier a long-term right. Slots can be taken away from any carrier in accordance with the terms of any applicable regulation.

Slots allocated under this SFAR are not subject to transfer or exchange, except in exchange for other Braniff slots. As to exchanges or transfers, they must comply with previously established procedures. All future schedule submissions made to the FAA shall separately identify these slots as temporary Braniff slots as identified by the designator "DS."

Allocation Procedure

Each air carrier seeking authority to operate, on a temporary basis, an arrival slot previously allocated to Braniff, must notify the Associate Administrator for Policy and International Aviation (API–1), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, in writing, by Tuesday, May 25, 1982. The request shall be labeled as a request for Braniff slots designated by "DS," must be in the format prescribed in SFAR 44–3, and must be in the same hour as the Braniff slots. Carriers which have already submitted written requests for the Braniff slots need not submit new requests.

On Thursday, May 27, 1982, at 10:00 a.m., the FAA will hold a random draw for each airport at which time all carriers that have requested Braniff slots by 5:00 p.m. (EDT), on May 25, 1982, at that particular airport, will be included in the draw. All slots will be allocated in that draw, less the slots previously allocated on an emergency basis and the 50 slots at DFW that will not be awarded for air traffic control purposes.

The order in which capacity will be allocated to each carrier will be determined by random draw. If additional capacity still remains after each carrier has been allocated slots, the allocation sequence will be repeated based upon the order previously established by random draw. The allocating sequence will be repeated until all available or requested new/additional capacity is allocated at each airport.

Carriers submitting schedule requests shall rank their hourly requests in their order of preference for each airport. This preference list will be used in connection with random draws. The allocation of slots by the FAA under the random draw system will reflect the carrier's hourly preferences at each of the airports. First preference will be awarded where available. When not available, the next available hourly preference will be allocated.

The number of slots that will be allocated to carriers will be limited in each allocation sequence.

At an airport with 10 or fewer available Braniff slots, no carrier will receive more than 2 slots each time it comes up in the allocation sequence if requested. If 11 to 30 Braniff slots are available at an airport, no carrier will receive more than 3 slots each time it comes up in the allocation sequence if requested. If 31 or more slots are available, no carrier will receive more than 4 slots each time it comes up in the allocation sequence if requested. If a carrier requests fewer slots than the maximum it can receive in any allocation round, it will be allocated only the number requested.

In order to assure consistency with the High Density Rule (14 CFR 93.121, et seq.), Washington National Airport shall be handled slightly different. Carriers requesting those temporary arrival slots at National shall also request a departure slot in the same hour as previous Braniff departure times. An equal number of departure slots will be awarded to each carrier for each arrival slot allocated. For purposes of allocation, Dallas/Ft. Worth and Love; Houston Intercontinental and Hobby; and O'Hare and Midway will be treated as single airports. A slot allocated may be utilized at either one of the airports.

All carriers which have submitted requests for slots by the deadline set forth above will be eligible for the random draw at every airport which it requested slots. Those slots already allocated on an emergency basis can be continued to be operated at the carrier's option up to a maximum of 60 days from the date of issuance of this SFAR as that carrier so chooses. The number of slots that a carrier will be eligible for will be reduced by the number of arrivals that carrier has received, at the particular airport, from the FAA since May 12, 1982, as part of the FAA's emergency allocation of Braniff slots. A carrier's eligibility for slots will not be reduced by an "emergency" slot for which that carrier states that it would be willing to relinquish for a slot available in the draw.

Within 60 days, a determination will be made as to the procedures for allocation of all Braniff slots.

The basic rules and orders necessary for operation under the Interim Operations Plan will continue to be disseminated, in accordance with Section 91.100 of the Federal Aviation Regulations, by Notices to Airmen (NOTAM).

This SFAR does not change the procedures contained in SFAR 44–3 for the allocation of slots during the allocation periods set forth in that SFAR.

The continued operation of the National Air Traffic System in a safe and efficient manner requires the immediate adoption of this regulation in the public interest. Therefore, I find that further notice and public procedure thereon are impracticable and contrary to the public interest. I further find that good cause exists for making this regulation effective in less than 30 days after its publication in the **Federal Register.**

List of Subjects

Air traffic control.

Adoption of the Rule

Accordingly, Special Federal Aviation Regulation No. 44–4, is issued to read as follows, effective May 20, 1982 is issued and added to Part 91:

Special Federal Aviation Regulation No. 44–4

1. For arrival slots allocated to Braniff Airways, Inc. ("Braniff slots")—

(a) Each air carrier seeking authority for slots allocated to Braniff as of May 12, 1982, shall separately identify the specific arrival slot desired by airport and submit, in writing, a slot request to the Associate Administrator for Policy and International Aviation (API–1), 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone No.: (202) 426–3030; Telex No.: 892562 FAA WSH (for API–1); and ARINC No.: DCAYAXD (for API–1), by 5:00 p.m. (EDT), May 25, 1982. The flight requests shall be identified using the format prescribed in SFAR 44–3 and must be in the same hour as previous Braniff arrival times. The flight requests should be listed in order of priority. If additional capacity is available, then slots for these operations will be allocated. If capacity is not available for all such requests, then priority consideration will be given in accordance with the random draw procedures set forth below.

(b) On May 27, 1982, a random draw will be held for each of the airports (identified in the Attachment to this SFAR) at which Braniff has been allocated arrival slots. All arrival slots shall be put in that draw except for

those previously issued on an emergency basis and 50 at DFW.

(c) At an airport with 10 or fewer available Braniff slots, no carrier will receive more than 2 slots each time it comes up in the allocation sequence. If 11 to 30 slots are available at an airport, no carrier will receive more than 3 slots each time it comes up in the allocation sequence. If 31 or more slots are available, no carrier will receive more than 4 slots each time it comes up in the allocation sequence. In no event will a carrier receive more slots at any airport then it requested. The number of slots that a carrier will be eligible for will be reduced by the number of arrivals that carrier has received, at the particular airport, from the FAA since May 12, 1982, as part of the FAA's emergency allocation of Braniff slots. A carrier's eligibility for slots will not be reduced by an "emergency" slot for which that carrier states that it would be willing to relinquish for a slot available in the draw.

(d) Carriers requesting arrival slots at Washington National Airport shall also request departure slot(s) in the same hour(s) as previous Braniff departure time(s).

(e) For the purposes of slot allocation, O'Hare-Midway; DFW-Love; and Houston Intercontinental-Hobby shall be treated as a single airport. A slot allocated at one of these airports may be used at the other airport.

2. The slots allocated under this SFAR as well as those allocated on an emergency basis will be for a period of up to 60 days from May 20, 1982, and may be cancelled by the FAA at the end of that 60-day period or during that period upon 24-hour notice. The temporary approval for these slots may be extended at the discretion of the Administrator.

3. All arrival slots allocated in accordance with this SFAR must be used within 10 days of written notification from API–1 or they will be returned to the FAA for reallocation.

4. No new/additional flight requests for changes will be accepted by the FAA in a submittal made in accordance with this SFAR.

5. No person shall operate an air carrier flight unless approval for the operation has been received in writing prior to the flight from API–1.

(Secs. 307 (a) and (c), 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1348 (a) and (c), 1354(a), and 1421(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. Section 1655(c))

Note.—The FAA has determined that this rule is an emergency regulation under the provisions of Section 8 of Executive Order 12291 and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is impracticable for the FAA to follow the procedures of Executive Order 12291 applicable to regulations not issued in response to emergency situations because the safety and efficiency of the national air transportation system and the public interest require immediate implementation of the rule. Voluntary compliance with this regulation is expected. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the persons identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, D.C., on May 20, 1982.

J. Lynn Helms,

Administrator.

ATTACHMENT TO SFAR 44–4.—AVAILABLE BRANIFF AIRPORT ARRIVAL SLOTS

Airport	Number
AMA Amarillo	4
AUS Austin	8
BNA Nashville	3
CRP Corpus Christi	3
DCA National	0
DEN Denver	6
DFW Dallas/Ft. Worth	[1] 57
DSM Des Moines	3
EWR Newark	3
FLL Ft. Lauderdale	2
HRL Harlingen	3
IAD Dulles	5
IAH Houston	30
ICT Wichita	4
JFK New York	1
LAS Las Vegas	6
LAX Los Angeles	8
LBB Lubbock	5
LGA LaGuardia	6
MAF Midland/Odessa	0
MCI Kansas City	25
MCO Orlando	2
MEM Memphis	3
MIA Miami	7
MSP Minneapolis/St. Paul	3
MSY New Orleans	9
OKC Oklahoma City	11
OMA Omaha, Nebraska	2
ORD O'Hare	1
PDX Portland, Oregon	2
PHL Philadelphia	3
RNO Reno	3
SAT San Antonio	15
SEA Seattle/Tacoma	5
SFO San Francisco	3
TPA Tampa	3
TUL Tulsa	5

[1] This number reflects the 50 slots deleted for air traffic control purposes.

[FR Doc. 82–14239 Filed 5–21–82; 11:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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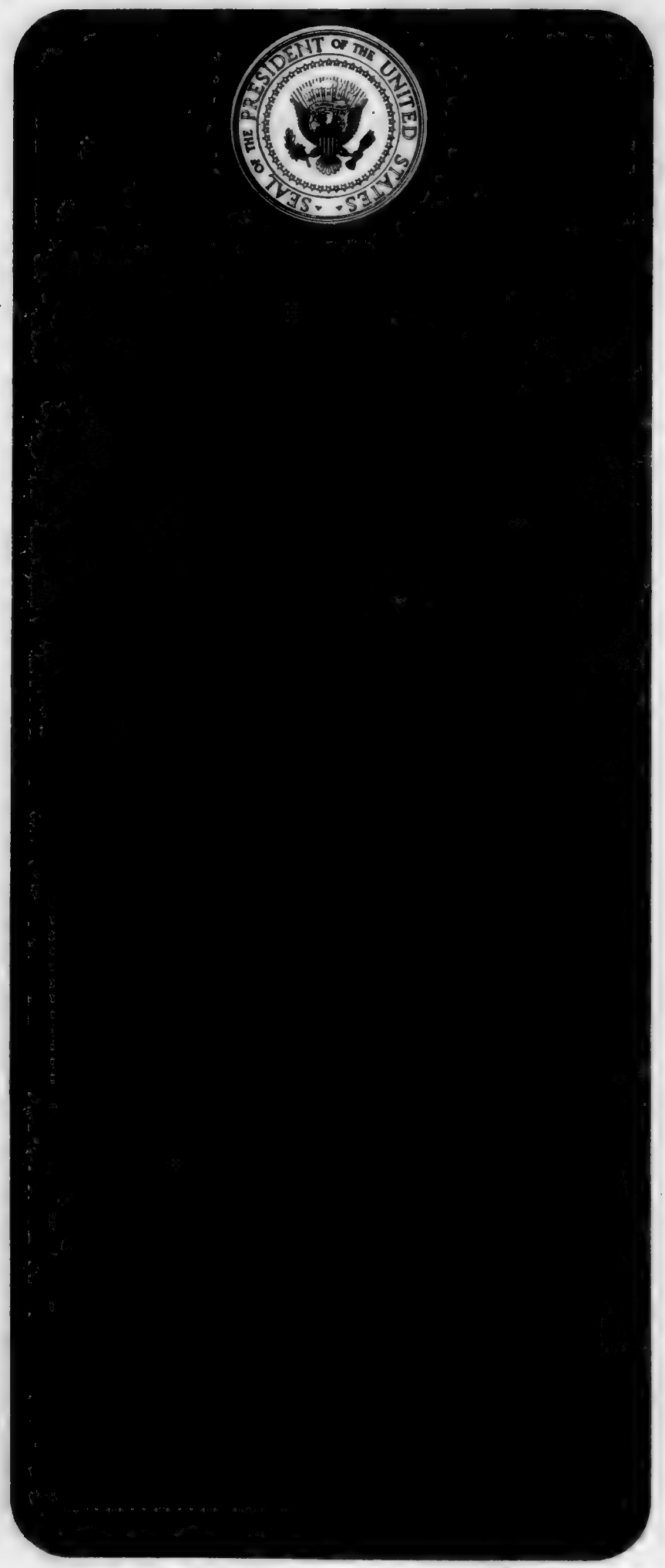

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federal register

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Tuesday, May 25, 1982

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Environmental Protection Agency
Alcohol and Alcoholic Beverages
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Fish and Wildlife Service

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Commodity Credit Corporation

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Agricultural Marketing Service

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Securities
Securities and Exchange Commission

Uniform System of Accounts
Interstate Commerce Commission

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Presidential Documents

Title 3—

The President

Presidential Determination No. 82-12 of April 8, 1982

Eligibility of Antigua and Barbuda To Make Purchases of Defense Articles and Defense Services Under the Arms Export Control Act

Memorandum for the Honorable Alexander M. Haig, Jr., the Secretary of State

Pursuant to the authority vested in me by Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and defense services to the Government of Antigua and Barbuda will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress.

This finding shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, April 8, 1982.

[FR Doc. 82-14320
Filed 5-21-82; 4:39 pm]
Billing code 3195-01-M

V 4 7 / 1 0 1 MY 25 2

Presidential Documents

Executive Order 12363 of May 21, 1982

The Foreign Service of the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Foreign Service Act of 1980 (94 Stat. 2071, 22 U.S.C. 3801 *et seq.*),* Section 202 of the Revised Statutes (22 U.S.C. 2656), and Section 301 of Title 3 of the United States Code, and in order to further provide for the administration of the Foreign Service of the United States, it is hereby ordered as follows:

Section 1. Executive Order No. 12293 of February 23, 1981 (46 FR 13969), is amended by adding the following new sections:

"Sec. 9. (a) Pursuant to Section 210 of the Act there is established in the Department of State the Board of the Foreign Service (22 U.S.C. 3930).

"(b) The Board shall be composed of the designated number of representatives of the heads of the following agencies:

"(1) Department of State, four members, at least three of whom must be career members of the Senior Foreign Service;

"(2) International Communication Agency, two members, one of whom must be a career member of the Senior Foreign Service;

"(3) United States International Development Cooperation Agency, two members, one of whom must be a career member of the Senior Foreign Service;

"(4) Department of Agriculture, two members, one of whom must be a career member of the Senior Foreign Service;

"(5) Department of Commerce, two members, one of whom must be a career member of the Senior Foreign Service;

"(6) Department of Labor, one member;

"(7) Office of Personnel Management, one member;

"(8) Office of Management and Budget, one member; and,

"(9) Equal Employment Opportunity Commission, one member;

"(c) The membership of the Board shall be selected from among officials who are knowledgeable in matters concerning the management of the Foreign Service. Except for the career members of the Senior Foreign Service from the Department of Agriculture, the Department of Commerce, the International Communication Agency, and the United States International Development Cooperation Agency, the members of the Board shall be selected from among those who have the rank of Assistant Secretary or higher or a position of comparable responsibility.

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*The correct citation is 22 U.S.C. 3901 *et seq.*

"(d) The Secretary of State may from time to time request the heads of other agencies to designate representatives to participate in the functions of the Board on a regular or occasional basis.

"(e) The Secretary of State shall designate a Chairman of the Board from among those members who are career members of the Senior Foreign Service.

"(f) The Secretary of State shall provide all necessary administrative services and facilities for the Board.

"Sec. 10. Pursuant to Section 202(a)(2)(B) and (a)(3)(B) of the Act (22 U.S.C. 3922(a)(2)(B), (a)(3)(B)), it is hereby determined to be necessary, in order to enable the Department of Agriculture and the Department of Commerce to carry out functions which require service abroad, for the respective Secretaries, in consultation with the Office of Personnel Management and the Office of Management and Budget, to be able to utilize the Foreign Service personnel system with respect to personnel of the following:

"(a) The Animal and Plant Health Inspection Service of the Department of Agriculture, not to exceed 125 positions, without the prior approval of the Director of the Office of Personnel Management;

"(b) The United States Travel and Tourism Administration, and the International Trade Administration of the Department of Commerce, not to exceed 30 positions without the prior approval of the Director of the Office of Personnel Management, and providing that assignments to such positions be administered consistent with policies of the Foreign Commercial Service established under Executive Order No. 12188.".

Sec. 2. In Section 8 of Executive Order No. 12293, the phrase "This Order" is amended to read "The first seven Sections of this Order".

Sec. 3. Executive Order No. 11264 of December 31, 1965, as amended, is revoked.

Ronald Reagan

THE WHITE HOUSE,
May 21, 1982.

[FR Doc. 82-14321
Filed 5-21-82; 4:40 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

Irish Potatoes Grown in the Southeastern States; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final continuing rule.

SUMMARY: This continuing regulation requires fresh market shipments of potatoes grown in designated counties of Virginia and North Carolina to be inspected and meet minimum grade and size requirements. It should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: June 5, 1982.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relating to this final rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 953) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0064.

This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

Marketing Agreement No. 104 and Order No. 953, both as amended, regulate the handling of potatoes grown in designated counties of Virginia and North Carolina. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Southeastern Potato Committee, established under the order, is responsible for its local administration.

Notice of rulemaking was published in the April 23, 1982, **Federal Register** (47 FR 17528). The notice afforded interested persons through May 10, 1982, to file written comments on the proposal. No comments were received.

This regulation is based upon recommendations made by the committee at its public meeting in Norfolk, Virginia, on April 1, 1982.

The grade and size requirements are the same as those which have been issued during past seasons. They are necessary to prevent potatoes of poor quality or undesirable sizes from being distributed to fresh market outlets. The regulation will benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Again this season the minimum quantity exemption will be five hundred-weight. This should relieve the burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments will be allowed to certain special purpose outlets without regard to the grade, size, and inspection requirements provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Shipments for use as livestock feed will be so exempt because requirements for this outlet differ greatly from those for fresh market. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments also will be exempt. Also, potatoes for most processing uses are exempt under the legislative authority for this part.

This regulation promotes efficiency by standardizing marketing practices and will have no measurable effect on the quantity of potatoes shipped from Virginia and North Carolina or upon U.S. retail potato prices. It should enable the Southeastern potato industry to better compete with other potato producing areas in the U.S. by ensuring the use of grades and sizes acceptable to buyers.

Therefore, after consideration of all relevant matters, including the proposal in the notice, it is found that the following handling regulation will tend to effectuate the declared policy of the act by setting the minimum grade, size and inspection requirements which the Secretary has found should be maintained for orderly marketing.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date of June 5, 1982, (2) to maximize benefits to producers, the regulation should apply to as many shipments as possible during the marketing season, and (3) handlers under this part should be able to complete by June 5, 1982, all preparations to comply with the regulation, which is similar to those of previous marketing seasons.

Requirements contained in this handling regulation, effective June 5, 1982, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were effective for a single marketing season. However, the same requirements have been imposed each season since 1969. The change to issue regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations will probably continue to change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, the change could result in a reduction in operational costs to the committee and the government. Although the final regulation will be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification,

suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 953.40 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Hearing Clerk until May 20 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Southern potatoes would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 953

Marketing agreements and orders, Potatoes, Virginia, North Carolina.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.321 [Removed]

Section 953.321 (46 FR 29453, June 2, 1981, and 46 FR 30487, June 9, 1981) is removed and a new § 953.322 is added as follows:

§ 953.322 Handling regulation.

During the period beginning June 5 and ending July 31 each season no person shall ship any lot of potatoes produced in the production area unless such potatoes meet the requirements of paragraphs (a) and (b) of this section or unless such potatoes are handled in accordance with paragraphs (c) and (d) or (e) of this section.

(a) *Minimum grade and size requirements.* All varieties U.S. No. 2, or better grade, 1⅞ inches (38.1mm) minimum diameter.

(b) *Inspection.* Except as provided in paragraphs (c) and (e), no handler shall ship any potatoes unless an appropriate inspection certificate covering them has been issued by the Federal-State Inspection Service and the certificate is valid at the time of shipment.

(c) *Special purpose shipments.* The grade, size, and inspection requirements set forth in paragraphs (a) and (b) of this section shall not apply to potatoes shipped for canning, freezing, "other processing" as hereinafter defined, livestock feed or charity, except that the handler of them shall comply with the safeguard requirements of paragraph (d) of this section.

(d) *Safeguards.* Each handler making shipments of potatoes for canning, freezing, "other processing," livestock feed, or charity in accordance with paragraph (c) of this section shall:

(1) Notify the committee of the handler's intent to ship potatoes pursuant to paragraph (c) of this section by applying forms furnished by the committee for a Certificate of Privilege applicable to such special purpose shipments;

(2) Obtain an approved Certificate of Privilege;

(3) Prepare on forms furnished by the committee a special purpose shipment report for each such individual shipment; and

(4) Forward copies of such special purpose shipment report to the committee office and to the receiver with instructions to sign and return a copy to the committee's office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for suspension of such handler's Certificate of Privilege applicable to such special purpose shipments.

(e) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed, five hundredweight of potatoes any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any portion of a shipment that exceeds five hundredweight of potatoes.

(f) *Definitions.* The term "U.S. No. 2" shall have the same meaning as when used in the U.S. Standards for Grades of Potatoes as amended (7 CFR 2851.1540–2851.1566), including the tolerances set forth in it. The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 104 and this part, both as amended.

(g) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the round white type imported during the effective period of this section shall meet the grade, size, quality, and maturity requirements specified in paragraph (a) of this section.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated May 20, 1982 to become effective June 5, 1982.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82–14230 Filed 5–24–82; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 2]

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend Commodity Credit Corporation (CCC) regulations governing Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed, which are owned by CCC or which are serving as collateral for a price support loan issued by CCC. This final rule amends the regulations: (1) To prescribe the manner by which warehousemen must submit financial statements and financial records to CCC; (2) to increase a certain rate used to calculate net worth requirements; (3) to delete the $250,000 net worth ceiling applicable to warehousemen; and (4) to permit warehousemen to furnish an irrevocable letter of credit to CCC as security to satisfy any deficiency in the net worth requirement. The purpose of this rule is to insure greater security for CCC in its use of warehouses approved by CCC for storage of commodities.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Barry W. Klein, Marketing Specialist, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, Transportation and Storage Division, Storage Management Branch, P.O. Box 2415, Washington, D.C. 20013; (202) 447–7911. The Final Regulatory Impact Analysis describing the options considered in developing the final rule and the impact implementing each option is available upon request.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures and Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major". This rule has been classified "not major" since it does not result in:

(1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad. Section 4(b) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth Standards for Approval of Warehouses which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

In the last several years, the risk to depositors of grain in warehouses has increased due to changes in the marketing operations of warehousemen who are buying and selling grain. The use of "delayed price" and "deferred payment" contracts has contributed to the possibility of increased losses to grain depositors. The increase in grain warehouse bankruptcies over the past several years has demonstrated a need to amend the Standards for Approval of Warehouses to compensate for the changes in grain marketing.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on October 13, 1981, (46 FR 50378-80) requesting comments with respect to a number of proposals regarding changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The initial comment period ended November 16, 1981. The comment period was subsequently extended to December 16, 1981.

The proposed changes in the regulations would require a warehouseman to furnish to CCC an annual financial statement which has been examined by an independent Certified Public Accountant (CPA). In addition, the warehouseman would be required to submit to CCC a copy of the CPA audit report, prepared in accordance with generally accepted auditing standards, of the financial statement of such warehouseman. Also the regulations would be amended (1) to delete the requirement that the net worth of the warehouseman need not exceed $250,000, and (2) to increase the rate used in calculating the net worth requirement of grain warehouses from 10 cents to 20 cents per bushel. Additionally, it was proposed that the Standards be amended to permit the warehousemen to furnish to CCC an irrevocable letter of credit as security to meet any deficiency in net worth provided the issuing bank was an insured commercial bank in the United States with assets of $100 million or more. The following is a discussion of the comments received with respect to the proposed changes in the regulations.

Submission of a Financial Statement Audited by an Independent Certified Public Accountant

There were a total of 273 responses to the proposed rule regarding the CPA audit. Responses were from grain commission companies, grain terminals, country elevator operators, grain and feed associations, CPA firms, licensed public accountant firms, elevator associations, cooperative marketing associations, State Departments of Agriculture, cooperative associations, and members of Congress.

Seven respondents favored the requirement that there be submitted a financial statement, examined by an independent CPA, accompanied by a copy of the CPA's audit report prepared in accordance with generally accepted auditing standards. These respondents felt that the CPA audit would: (1) Provide an independent certification of the status of the grain inventory and related storage obligation; (2) assist management of the warehouse by highlighting opportunities and problem areas; and (3) give CCC and the warehouseman an early signal of possible failures of the warehouse operation.

Respondents not favoring the CPA proposal total 265. The basic objections to requiring a CPA audit were as follows: (1) The added overhead resulting from CPA audits costs would be eventually charged to the customer (producers and CCC) without fully accomplishing the desired goal; (2) some warehousemen may not renew their Uniform Grain Storage Agreement (UGSA) if they are required to furnish a CPA audited financial statement; (3) there are not enough qualified CPA's with grain measurement, warehousing, and merchandising experience available to perform the required service; (4) requiring a CPA audit will not prevent a firm from filing for bankruptcy or ensure financial responsibility; (5) in many cases, commission houses already monitor the overall operation of the country warehouse and provide quarterly and annual audits of grain inventories and storage obligations to ensure the financial stability of the warehouse; (6) CPA audits could cause significantly less participation in the UGSA program, thus resulting in less available storage space, less competition among warehouses, and higher storage rates to the government; (7) if a large number of elevator operators discontinued their UGSA, CCC would lose much of the control it now has in reviewing elevator operations; and (8) it would be inconvenient for farmers if warehousemen cancel their UGSA thus forcing farmers to transport their grain which is serving as collateral for a regular or grain reserve loan to distant locations for storage.

Several alternatives and options were offered in lieu of a financial statement audited by an independent CPA. There were several suggestions that CCC permit the submission of an annual

review of financial conditions of a warehouseman. It was suggested the CCC permit an audit or review of a warehouseman to be completed by a licensed public accountant. Another suggestion was to increase the net worth requirement and require a performance bond from warehousemen. A third suggested alternative was to permit the warehouseman to provide a management-verified financial statement. A management-verified financial statement would be prepared in accordance with generally accepted auditing standards without independent audit verification. It was further suggested that a financial statement of the warehouseman should be filed by the chief executive officer of the warehouse who would personally verify that the financial statement accurately reflects the financial condition of the warehouse. It was also suggested that CCC accept a financial statement that has been compiled and reviewed by an agent of the warehouseman (e.g., a grain commission house). Several of those commenting suggested that CCC require that a financial statement be audited by a certified or licensed public accountant and that the audit include:

1. A balance sheet;

2. An income statement which includes annual gross sales of commodities;

3. A statement of changes in financial position; and

4. A footnote or schedule disclosure of:

a. The total bushels/pounds received annually by commodity;

b. The amount of commodity in storage at end of year;

c. The amount of each commodity held for depositors;

d. The amount of farm stored grain contracted for but not delivered;

e. The amount of each commodity sold but not shipped; and

f. Any new crop purchases and sales of a commodity.

After careful consideration of the comments presented, both written and verbal, it has been determined that the changes contemplated in the proposed rule will be modified based upon a number of the alternatives which were submitted in the comments. The financial statement requirements as presented in this final rule will give flexibility to the warehouseman, as well as providing CCC with adequate financial data of each warehouseman which already is approved or is applying for a storage contract with CCC.

Increase the Rate Used in Calculating the Net Worth Requirement of Grain Warehouses from 10 Cents Per Bushel to 20 Cents Per Bushel and Delete the Existing Requirement That a Warehouseman's Net Worth Need Not Exceed $250,000

There were seven responses to the proposed changes. Three favored the change and four were opposed. The responses were from exporting firms, grain and feed dealer associations, elevator associations, and country elevator operators.

Those in favor of the proposed changes indicated that increasing the net worth requirement from 10 to 20 cents per bushel times the maximum storage capacity and removing the $250,000 net worth ceiling would generally have no overall serious consequences on the grain industry and would provide additional protection to the public. Four respondents opposed the proposal because they believed that increasing the net worth requirement to an unlimited amount from a maximum of $250,000 is a heavy burden for the country warehouseman. They also felt that removing the $250,000 maximum net worth would place an additional cost upon some of the larger firms thereby causing them possible financial difficulties.

A suggested alternative to the proposed rule was that CCC should consider a sliding scale of rates which would be applicable as storage capacity increases rather than providing for a flat rate of 20 cents per bushel regardless of the size of the warehouse. The scale suggested was as follows: for the first one million bushels of capacity, the net worth would be calculated at 20 cents per bushel; for the second one million bushels of capacity, the net worth would be calculated at 15 cents per bushel; and for all storage capacity over two million bushels, the net worth would be calculated at 10 cents per bushel. This alternative was not accepted since it was concluded that it would not provide the desired protection for CCC.

Accordingly, the amendment to the regulation at 7 CFR 1421.5552(a)(3) will be adopted as set forth in the proposed rule.

Permit the Warehouseman To Furnish CCC an Irrevocable Letter of Credit as Security To Meet the Net Worth Requirements

There were six responses to the proposed rule. Two favored the change and four were opposed. The responses were from exporting firms, elevator associations, grain and feed dealer associations, elevator operators and banks.

Those in favor of the proposed change stated that an irrevocable letter of credit would provide an acceptable substitute security for a deficiency in net worth. The four respondents opposing the use of an irrevocable letter of credit felt the letter of credit would be impossible to obtain from local banks in smaller towns due to the $100 million dollar asset requirement. After careful consideration of the written and verbal comments, it has been concluded that the regulations at 7 CFR § 1421.5553 should be revised to require only that the irrevocable letter of credit must be issued by a commercial bank insured by the Federal Deposit Insurance Corporation (FDIC). The irrevocable letter of credit provides the warehouseman with another form of acceptable security for a net worth deficiency which may be obtained at a lower cost than the traditional deficiency bond or other substitute security.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Final Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Accordingly, the regulations at 7 CFR Part 1421 are amended as follows:

1. In § 1421.5551, paragraph (d)(2) is revised and a new paragraph (e) is added to read as follows:

§ 1421.5551 General statement and administration.

* * * * *

(d) * * *

(2) A current financial statement prepared in accordance with generally accepted accounting principles meeting the following requirements:

(i) Each financial statement shall include, but not be limited to the following: (A) A balance sheet; (B) a statement of income (profit and loss); (C) statement of retained earnings; and (D) a statement of changes in the financial position.

(ii) Each financial statement shall be accompanied by one of the following:

(A) A report of audit or review conducted by an independent CPA or an independent public accountant in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's report of audit or review shall include

the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statement, or

(B) A compilation report of the financial statement which is prepared by a grain commission firm or a management firm if such firm has been authorized by the Deputy Vice President, CCC (Deputy Administrator, Commodity Operations, ASCS) to provide a compilation report of financial statements of warehousemen.

(iii) All financial statements shall be accompanied by a certification by the chief executive officer of the warehouseman, under penalty of perjury, that the financial statement(s) accurately reflects the financial condition of the warehouseman for the period specified in such statement.

(iv) A current Form TW–51, "Financial Statement," containing organizational and general information with the warehouseman's certification shall be submitted with the scheduled financial statements or as the Agricultural Marketing Service (AMS) or CCC may request.

(v) Only one financial statement will be required for a chain of warehouses owned or operated as a single business entity, unless otherwise determined by CCC.

* * * * *

(e) The provisions of paragraph (d)(2) of this section shall also be applicable to warehousemen who have an existing storage contract with CCC. Such warehousemen with existing storage contracts shall submit their financial statements to CCC in the manner prescribed reflecting their financial condition as of the close of the warehouseman's fiscal or calendar year's operation, whichever is applicable. Thereafter, the financial statements and the audit, review or compilation reports shall be furnished annually to reflect the warehouseman's fiscal or calendar year's operation, whichever is applicable, and at such other times as may be required by the AMS or CCC.

* * * * *

2. In § 1421.5552, paragraph (a)(3) is revised to read as follows:

§ 1421.5552 Basic standards.

(a) * * *

(3) Have a net worth which is the greater of $25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity involved which the warehouse can accommodate when stored in the customary manner) under approved contract with CCC times twenty (20) cents per bushel in the case of grain, forty (40) cents per hundredweight in the case of rough rice, seventy (70) cents per hundredweight in the case of milled rice, and fifty (50) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to the product obtained by multiplying the estimated total number of pounds of seed to be stored times six (6) cents per pound. If the calculated net worth exceeds $25,000, the warehouseman may satisfy any deficiency in net worth between the $25,000 minimum requirement and such calculated net worth by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

* * * * *

3. Section 1421.5553 is amended by adding a new paragraph (e) to read as follows:

§ 1421.5553 Bonding requirement for net worth.

* * * * *

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such letter of credit shall be on Form CCC–33A, "Irrevocable Letter of Credit."

(Sec. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c))

Signed at Washington, D.C. on May 20, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-14228 Filed 5-24-82; 8:45 am]

BILLING CODE 3410-05-M

CIVIL AERONAUTICS BOARD

14 CFR Part 384

[Amdt. No. 17; Reg. OR-197]

Transfer of Office Functions

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revises its statement of organization to reflect a staff reorganization.

DATES: Adopted: May 20, 1982. Effective: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202–673–5442.

SUPPLEMENTARY INFORMATION: Effective February 1, 1982, the Board combined the functions of its Office of Community and Congressional Relations with the consumer protection functions of its Bureau of Compliance and Consumer Protection (BCCP) in a new Office of Congressional, Community, and Consumer Affairs (OCCCA). The Litigation Division of BCCP, which participated in enforcement cases, was transferred to the Office of the General Counsel and renamed as the Enforcement Division. The Investigation Division of BCCP was transferred to the Bureau of Carrier Accounts and Audits (BCAA).

In OR–190, 47 FR 5204, February 4, 1982, the Board amended its delegations of authority in 14 CFR Part 385 to reflect these changes. The Board is now amending the general statement of organization in 14 CFR Part 384 to reflect the same changes.

Since these amendments are administrative in nature, affecting agency practice and procedure, the Board finds for good cause that notice and public procedure are unnecessary and that the amendments may become effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 384

Administrative practice and procedure, Archives and records, Authority delegations.

PART 384—STATEMENT OF ORGANIZATION, DELEGATION OF AUTHORITY, AND AVAILABILITY OF RECORDS AND INFORMATION

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 384, *Statement of Organization, Delegation of Authority, and Availability of Records and Information,* as follows:

1. The authority for Part 384 is:

Authority: Secs. 204, 1001, Pub. L. 85–726, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324, 1481.

2. In § 384.7, paragraphs (a)(2) and (e) are revised, paragraph (f) is removed and reserved, and paragraph (i) is revised, to read:

§ 384.7 Organization and delegation of authority.

* * * Generally speaking, the Board's staff comprises:

(a) * * *

(2) The Office of Congressional, Community, and Consumer Affairs, which represents the Board in dealing with representatives of state and local communities and civic groups; identifies community interests and develops

recommendations of Board policies and actions relating thereto; maintains liaison between the Board and Congress; insures that the consumer perspective is represented in all matters considered by the Board; operates programs and provides services to inform and educate consumers in their contacts with the air transportation industry; handles consumer complaints and mediates them where possible.

* * * * *

(e) The Bureau of Carrier Accounts and Audits, which is responsible for serving as the principal accounting policy and program advisor to the Board on all substantive and procedural matters related to air carrier audits, internal audits, and industry accounting transactions and systems, and for providing investigative assistance to other CAB bureaus and offices. This Bureau develops and administers the Board's industry accounting systems; conducts industry audits and examinations of air carrier accounts and records; performs technical staff work in analyzing financial reports or documents used in proceedings requiring expertise in accounting or auditing matters; provides advice on accounting and auditing aspects relevant to monitoring compliance with continuing fitness requirements; and conducts investigations of alleged violations of the Act and the Board's regulations to uncover unfair consumer practices and unfair methods of competition. This Bureau also provides internal audit coverage over all funds, property, and other assets for which the Board is responsible, and provides information and advice concerning carrier compliance records and compliance disposition.

(f) [Reserved]

* * * * *

(i) The Office of the General Counsel, which is responsible for advising the Board, its staff, industry representatives, and the public on legal aspects of the Board's regulatory activities; representing the Board in litigated matters; assisting attorneys in other offices and bureaus as required; representing the Board in negotiations and at conferences where legal matters are involved; representing the Board on Government committees and committees of international organizations; and, through the Enforcement Division under the sole supervision of the Deputy General Counsel, promoting observance of the Federal antitrust laws, the economic provisions of the Federal Aviation Act, and the Board's orders, regulations, and other requirements.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR. Doc. 82-14217 Filed 5-24-82; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 385

[Reg. OR-196; Amdt. No. 124]

Delegation to the Associate General Counsel, Pricing and Entry

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: When the CAB issues a certificate to a new air carrier, it delays the effective date until 5 days after receipt of a safety report from the Federal Aviation Administration. The CAB now delegates to the Associate General Counsel, Pricing and Entry, the authority to review the FAA report, and to advance the effective date or stay it for up to 30 days, as appropriate. This rule delegates that authority with regard to any new carrier, to avoid the need for further individual delegation orders.

DATES: Adopted: May 7, 1982. Effective: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Donald H. Horn, Associate General Counsel, Pricing and Entry, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In *ALPA v. CAB*, 643 F.2d 935 (2d Cir. 1981), the U.S. Court of Appeals indicated that the Board must consider a safety report from the Secretary of Transportation, *i.e.*, the Federal Aviation Administration (FAA), before granting operating authority to any new air carrier. The Board set out procedures for this function in the *Sun Pacific Airlines Fitness Investigation*, Order 81-6-126, June 18, 1981. Under these procedures, when the Board issues a certificate to a new air carrier it delays the effective date until 5 days after it receives from the FAA copies of the carrier's FAA air carrier operating certificate and operations specifications. These detail the type of operation for which the FAA has qualified the applicant. The Board can thus compare these specifications with its own results and, if there is any discrepancy, issue a stay delaying the effectiveness of the applicant's authority.

Because the 5-day delay can be costly to a carrier that has its equipment and personnel on line and ready to operate, the Board has in two cases delegated authority by order to the Associate General Counsel, Pricing and Entry, to advance the effective date upon a satisfactory review of FAA documents (*JetAmerica Fitness Investigation*, Order 81-11-53, November 10, 1981, delegated authority exercised in Order 81-11-91, November 13, 1981; *Westair Jet Fitness Investigation*, Order 82-1-67, January 15, 1982, delegated authority exercised in Order 82-1-89, January 20, 1982). This rule delegates that authority with regard to any new carrier, to avoid the need for further individual delegation orders.

If the FAA report is unsatisfactory, a stay needs to be issued within 5 days to prevent the certificate from becoming effective. This rule also delegates to the Associate General Counsel the authority to issue such a stay, for up to 30 days, to expedite the process.

Since this amendment is administrative in nature, affecting agency practice and procedure, the Board finds for good cause that notice and public procedure are unnecessary and that the amendment may become effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegations.

PART 385—DELEGATION AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, *Delegation and Review of Action Under Delegation; Nonhearing Matters*, as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. 1302, 1324, 1381, 1372, 1373, 1377, 1386; Reorganization Plan No. 3 of 1961, 26 FR 5989.

2. In § 385.21, a new paragraph (g) is added, to read:

§ 385.21 Delegation to Associate General Counsel, Pricing and Entry.

The Board hereby delegates to the Associate General Counsel, Pricing and Entry, the authority to:

* * * * *

(g) Review Federal Aviation Administration reports on the safety of newly certificated air carriers, and

(1) Amend orders issuing certificates to advance the effective dates of the certificate if the review is satisfactory, or

(2) Stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14232 Filed 5-24-82; 9:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA-805]

Amendments To Investment Adviser Requirements Concerning Disclosure, Application for Registration and Annual Report

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to rules and forms; request for comment.

SUMMARY: The Commission is amending certain disclosure and reporting requirements applicable to investment advisers under the Investment Advisers Act of 1940. The amendments adopted on a final basis make certain changes, both substantive and technical, in the investment adviser registration, disclosure, and reporting requirements. The effect of the amendments will be to clarify and simplify the investment adviser registration and disclosure requirements. In addition, the Commission is adopting temporary amendments to other reporting requirements which will further simplify such requirements and is inviting public comments on these amendments.

DATES: Effective May 25, 1982. Comments on the temporary amendments must be received on or before July 16, 1982.

ADDRESSES: Comments should be submitted in triplicate to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-932. All comments received will be available for public inspection and copying in the Commission's public reference room, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Arthur E. Dinerman, Esq., Investment Advisers Study Group, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549; (202) 272-2079.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

On July 21, 1981, the Commission issued a release soliciting public comments on proposed amendments to certain disclosure and reporting requirements applicable to investment advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) ("Advisers Act").[1] The proposed amendments involved a number of technical and clarifying changes in the investment adviser disclosure, registration and reporting requirements. In addition, the Commission proposed to delete Item 17 of Part I of Form ADV (17 CFR 279.1), the investment adviser registration form, and related requirements which obliged certain investment advisers to file an unaudited balance sheet with the Commission and to update it annually. The release also proposed a new Item 17 for Part I pertaining to newsletter publishers.

Having considered the comments submitted, the Commission has decided to adopt the proposed amendments in all but three respects. The Commission is also adopting certain conforming amendments to reflect the deletion of Item 17 from Part I of Form ADV. In addition, the Commission is adopting certain temporary amendments relating to Part I of Form ADV and is soliciting public comments on the temporary amendments.

II. Amendments

The Commission received eleven comment letters in response to its notice of proposed rulemaking. Although several commentators expressed general support for the proposed amendments, the majority criticized some aspect of the proposal.

Seven commentators objected to the proposal to adopt new Item 17 of Part I of Form ADV requiring publishers of periodical publications to disclose annually the number of their subscribers as of the end of their last fiscal year. The principal criticisms of proposed new Item 17 were that such disclosure was unnecessary or would be burdensome, that disclosure would place smaller publishers at a competitive disadvantage, and that the information disclosed could be used by a publisher's competitors to gauge the success of the marketing techniques used by the publisher. Although the Commission questions the extent to which these results would occur, the Commission has reconsidered its need for the information that would be obtained by proposed new Item 17. As discussed in greater detail in Advisers Act Release No. 766, the Commission proposed new Item 17 in order to obtain information which would assist the Commission's staff in deciding which advisers to inspect at a particular time as well as to provide useful additional data about the advisory industry. However, the information is not essential to the inspection program. Therefore, the Commission has determined not to adopt the proposed new item.

There were two comments pertaining to the proposed change in Rule 204-3(d) (17 CFR 275.204-3(d)) which would permit an investment adviser who renders different types of advisory services to omit from its disclosure statement any information (as opposed to only certain specified information as is now the case) required by Part II of Form ADV which is not applicable to the particular client receiving the statement. Two commentators criticized the proposal for failing to set forth standards as to the meaning of the phrase "different types of investment advisory services to different advisory clients" and offered clarifying language.[2] The Commission agrees that the standards set forth in the commentators' suggestion describe circumstances in which use of a tailored disclosure statement generally would be appropriate. The Commission is concerned, however, that the specific standards suggested by the commentators might be read to limit unnecessarily the circumstances under which use of a tailored brochure would be permitted and that it is not feasible to set forth standards which would encompass all circumstances in which use of a tailored brochure would be appropriate. The Commission believes that use of the general phrase contained in the proposal is preferable to the suggested alternative in that it provides registrants maximum flexibility in determining for themselves when they can use a tailored disclosure statement. Therefore, the Commission is adopting

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[1] Investment Advisers Act Release No. 766 (46 FR 36529, July 28, 1981).

[2] The Commission proposed to amend rule 204-3(d) to read: Omission of inapplicable information. If an investment adviser renders *substantially different types of investment advisory services to different advisory clients*, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable to a type of advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

The commentators suggested substituting for the underlined language the following: " " " services that differ as among investment advisory clients classified in terms of account size, investment objective, types of permissible investments or nature of accounts involved (e.g., ERISA vs. non-ERISA). " " "

the revision to Rule 204–3(d) as proposed.

The Commission is also not adopting the proposed amendments to Items 15(iii) and 16(iii) of Part I of Form ADV which would have added an additional size category to these questions. As discussed below, the Commission has determined to delete Items 15(iii) and 16(iii) of Part I of Form ADV in their entirety.

In addition, the Commission is adopting conforming amendments to reflect the deletion of old Item 17 from Part I of Form ADV. Specifically, the Commission is amending Instructions 12 and 24 and Schedule G of Form ADV, Instruction 6 and Item 4 of Form ADV–S, and rule 204–1(b)(2) (17 CFR 275.204–1(b)(2)), by deleting reference to Item 17.

III. Temporary Amendments

The Commission, as part of a comprehensive re-evaluation of the regulatory system applicable to investment advisers,[3] has reviewed the reporting and disclosure requirements applicable to investment advisers, including Form ADV, the investment adviser registration application form. As a result of this review, the Commission has decided to adopt certain temporary amendments to Form ADV which will delete a number of items from Part I of Form ADV. These items are Items 5(b), 7(b), 13(b), 15(i) and 15(iii), and 16(i) and 16(iii).

The Commission has determined that the information contained in the items to be deleted, although generally useful to the Commission in its understanding of the investment advisory industry, may not be sufficiently important to justify continuation of the requirements. Items 15(i) and (iii) and 16(i) and (iii) are being deleted because compliance with these items, which require certain registrants to rank by size of assets under management their ten largest categories of clients and to set forth the number of clients which fall into various size categories, appears to involve substantial effort for many registrants. Collection of this information in the past has enabled the Commission to build a data base useful for developing a profile of the investment advisory industry. However, it now appears that the benefits of continuing to collect the information are insufficient in view of the apparent cost and burden to investment advisers in supplying it.

Item 13(b), which requires the investment adviser to disclose whether or not a substantial part of its business consists of rendering "investment supervisory services" as defined in section 202(a)(13) of the Advisers Act (15 U.S.C. 80b–2(a)(13)), is being deleted because it is somewhat duplicative of Item 1(a) of Part II of Form ADV, which requires the investment adviser to disclose whether it furnishes such services. Item 5(b), which requires disclosure of each class of equity security of the investment adviser, and Item 7(b), which requires the investment adviser to disclose and explain any merger with or acquisition of another registered investment adviser during the previous ten years, have been deleted in order to simplify further Part I of Form ADV, and the utility of this information to the Commission's regulatory program is marginal.

The Commission has determined to adopt these temporary amendments without affording prior notice and opportunity for comment because it finds that prior notice and opportunity for public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)(B)). All of these amendments relate to Part I of Form ADV, the part of the form which contains information required by the Commission for its own regulatory purposes. The information which registrants are required to deliver or offer to deliver to clients and prospective clients under Rule 204–3 under the Advisers Act, the "brochure rule," is contained in Part II of Form ADV. Accordingly, none of the changes made by the temporary amendments involve information regularly disclosed by registrants to clients and prospective clients. Since the deletions relieve registrants of the obligation to file certain information with the Commission and do not diminish disclosure to clients, the Commission does not believe that any person will be adversely affected by elimination of these items from Part I of Form ADV and, accordingly, has determined that soliciting public comment prior to adopting such deletions is unnecessary.

Although, as discussed above, the Commission finds that prior notice and opportunity for comment with respect to adoption of the temporary amendments are not required under Section 553(b)(B) of the APA, the Commission nonetheless has determined to adopt the amendments on only a temporary basis and is soliciting public comment as to whether the amendments should be made permanent. The temporary amendments will be effective until March 31, 1983, and, accordingly, will be applicable to all initial registrations and amendments filed prior to that date as well as all fiscal year 1982 Form ADV–S filings.

The Commission has also determined to make the amendments and temporary amendments effective immediately in accordance with section 553(d)(1) of the APA (5 U.S.C. 553(d)(1)). None of the amendments or temporary amendments imposes additional substantive requirements on investment advisers. The amendments and temporary amendments to the investment adviser registration application procedures and forms adopted today involve deletions of information previously required to be filed, simplification of procedures to be followed by investment advisers, or technical changes and clarifications of existing requirements. Accordingly, the Commission finds good cause for making the amendments and temporary amendments adopted today effective immediately, so that they will be applicable, as discussed above, to new registrants as well as current registrants meeting their annual filing requirements during fiscal year 1982.

Although the amendments and temporary amendments adopted herein are effective upon publication in the **Federal Register**, forms revised to reflect these amendments will not be available immediately. Until revised forms become publicly available, investment advisers filing initial registration applications with the Commission and registrants who are amending their investment adviser registration application on Form ADV or filing Form ADV–S should use old Form ADV and ADV–S respectively but need not respond to Items 5(b), 7(b), 13(b), 15(i) and (iii) and 16(i) and (iii) of Part I of Form ADV, or file unaudited balance sheets pursuant to Item 17 of Form ADV. Similarly, registrants should respond to Form ADV–S as if the modifications being made in this release were already reflected in the form.

Regulatory Flexibility Act

The Chairman of the Commission has certified that the amendments being adopted will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required under Section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 17 CFR Parts 275, 279

Investment advisers, Reporting requirements, Securities.

[3] In Securities Act Release No. 6323 (June 24, 1981) (46 FR 33287), the Commission stated that Advisers Act Rules 204–1 and 204–3 (17 CFR 275.204–1 and 275.204–3) would be reviewed in 1981.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Commission Action

I. The Commission hereby amends Part 275 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

1. By adding paragraphs (c) and (d) to § 275.203–1 to read as follows:

§ 275.203–1 Application for registration of investment adviser.

* * * * *

(c) A Form ADV filed by an investment adviser corporation which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

(d) A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship or other entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

2. By revising paragraphs (b)(2) and (b)(3) of § 275.204–1 to read as follows:

§ 275.204–1 Amendments to application for registration.

* * * * *

(b) * * *

(2) If the information contained in response to questions 5, 7, 8, 9 and 11 of Part I, or any question in Part II (Except question 13), or any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate but not in a material manner, or the information contained in response to questions 12(c), 13, 15 and 16 of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, the investment adviser shall file an amendment on Form ADV (Section 279.1 of this chapter) correcting such information within 90 days of the end of its fiscal year. In addition, a balance sheet, as required by question 13 of Part II, shall be filed within 90 days of the end of applicant's fiscal year.

(3) If the information contained in response to question 3 of Part I becomes inaccurate, the investment adviser shall file an amendment on Form ADV correcting such information within 90 days of the end of the applicant's fiscal year. However, if the investment adviser's registration or license in another jurisdiction has been restricted, suspended, terminated (either voluntarily or involuntarily) or withdrawn, the investment adviser shall promptly file an amendment.

* * * * *

3. By revising paragraph (d) of § 275.204–3 to read as follows:

§ 275.204–3 Written disclosure statements.

* * * * *

(d) *Omission of inapplicable information.* If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

II. The Commission hereby amends Part 279 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

§ 279.1 [Amended]

1. By amending Form ADV as follows:

(i) Instruction 12 is amended by deleting the last sentence from the first paragraph thereof and substituting the following:

In addition, a balance sheet, as required by question 13 of Part II shall be filed no later than 90 days after the end of applicant's fiscal year.

Instruction 12 is also amended by deleting the last sentence of the second paragraph thereof and substituting therefor the following:

However, if the investment adviser's license or registration has been restricted, suspended, terminated (either voluntarily or involuntarily), or withdrawn, the investment adviser shall promptly file an amendment.

(ii) Instruction 15 is amended by deleting the word "State" in the first line thereof.

(iii) Instruction 24 is amended by deleting the phrase "Item 17 of Part I and."

(iv) Item 3(b) of Part I is amended by deleting the words "or involuntarily terminated or withdrawn or voluntarily terminated" in the second line thereof and substituting therefor the words, "terminated (either voluntarily or involuntarily), or withdrawn."

(v) Item 10(i) of Part I is amended by deleting the comma between the words "desist" and "and" in the first line thereof.

(vi) Item 17 of Part I is amended by deleting such item in its entirety.

(vii) Items 6(a) and 6(b) of Part II are amended by deleting the word "age" in the first line of Item 6(a) and in the second line of Item 6(b) and substituting therefor the words "year of birth."

(viii) The unnumbered note to item 8(b) of Part II is amended to read in its entirety as follows:

Note.—Pursuant to Section 202(a)(12) of the Act (15 U.S.C. 80b–2(a)(12)), the term "affiliated person" has the same meaning as in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)), which provides that an "affiliated person" of another person means:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, co-partner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(ix) Item 9(c) of Part II is amended by adding the parenthetical phrase "(investment advisory)" immediately after the word "from" in the second line thereof.

(x) Item 9(d) of Part II is amended by adding the parenthetical phrase "(investment advisory)" immediately after the word "prospective" in the first line thereof.

(xi) Item 13 of Part II is amended by deleting the text of such item in its entirety and substituting therefor the following:

Balance Sheet. Every applicant who has custody or possession of clients' funds or securities, or requires prepayment of advisory fees six months or more in advance and in excess of $500 per client, shall provide on Schedule G a balance sheet as of the end

of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant and shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically. The If securities are included at cost, their market or qualifications and any report of an independent accountant which accompanies a balance sheet shall conform with the requirements of Article 2 of Regulation S–X (17 CFR 210.2–01 et seq.).

A sole proprietor investment adviser must show assets and liabilities related to his advisory business separately from his other business and personal assets and liabilities. However, appropriate aggregation of the other business and personal assets and liabilities is permitted except where a deficiency of assets exists in his overall financial position, in which case full details of the other business and personal assets and liabilities shall be presented on the balance sheet or included in a note referred to on the balance sheet.

Has applicant provided a balance sheet on Schedule G pursuant to this Item? Yes ☐ No ☐

(xii) Schedule D, page 2 is amended by adding a request for the name and social security number of the person for whom the schedule is being completed.

(xiii) Schedule G is amended by deleting the phrase "Item 17 of Part I or" from the description of the form.

(A copy of Form ADV, as amended, has been filed with the Office of the Federal Register as part of the original document.)

§ 279.3 [Amended]

2. By amending Form ADV–S as follows:

(i) Instruction 2 is amended by adding after the last sentence thereof the following:

Note.—The filing of Form ADV–S does not relieve a registrant of any requirement of Rule 204–1 under the Act to amend its Form ADV. Failure to amend Form ADV, as required by Rule 204–1, could result in enforcement action by the Commission. Any amendment to registrant's Form ADV, which is made at the time registrant's Form ADV–S is filed, may be filed with the Commission concurrently with the filing of Form ADV–S. However, any amendments to Form ADV so filed should *not* be attached to Form ADV–S and should include a properly completed execution page and page one of Part I of Form ADV.

(ii) Instruction 5 is amended by deleting the second and third sentences thereof and substituting therefor the following:

Any registrant which provides an affirmative answer to Item 3(a) should file the required amendment(s) with the Commission on Form ADV, pursuant to the instructions thereto, and indicate in Item 3(b) whether such amendment(s) have been filed concurrently with the filing of Form ADV–S.

Such instruction is amended further by deleting in its entirety the second note to that instruction.

(iii) Instruction 6 is amended to read as follows:

Item 4 requires a registrant to indicate whether it has filed with the Commission on Schedule G of Form ADV, as an amendment to Form ADV, a balance sheet as of the end of such registrant's most recent fiscal year, if applicable. The balance sheet must meet the requirements of Item 13 of Part II of Form ADV.

(iv) Item 4 is amended by deleting the text of such item in its entirety and substituting therefor the following:

(a) Is the registrant subject to the filing requirements of Item 13 of Part II of Form ADV? (Pursuant to Item 13 of Part II of Form ADV, every applicant who has custody or possession of clients' funds or securities or requires prepayment of advisory fees six months or more in advance and in excess of $500 per client, shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant and shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically. The qualifications and any report of an independent accountant which accompanies a balance sheet shall conform with the requirements of Article 2 of Regulation S–X (17 CFR 210.2–01 et seq.)). Yes ☐ No ☐

(b) If the answer to Item 4(a) is yes, has the registrant, pursuant to Rule 204–1(b)(2) and Item 13 of Part II of Form ADV, filed with the Commission on Schedule G of Form ADV, a balance sheet as of the end of registrant's most recent fiscal year? Yes ☐ No ☐

(A copy of Form ADV–S, as amended, has been filed with the Office of the Federal Register as part of the original document.)

III. The Commission hereby temporarily amends, until March 31, 1983, Part 279 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

§ 279.1 [Suspended in part]

1. By amending Part I of Form ADV as follows:

* * * * *

(i) Item 5 of Part I is amended by deleting part (b) in its entirety and by deleting the designation "(a)."

(ii) Item 7 of Part I is amended by deleting part (b) in its entirety and by deleting the designation "(a)."

(iii) Item 13 of Part I is amended by deleting part (b) in its entirety and by deleting the designation "(a)."

(iv) Item 15 of Part I is amended by deleting parts (i) and (iii) in their entirety and by deleting the designation "(ii)."

(v) Item 16 of Part I is amended by deleting parts (i) and (iii) in their entirety and by deleting the designation "(ii)."

Statutory Authority

The Commission (i) amends Rules 204–1 and 204–3 and Form ADV–S pursuant to the authority contained in sections 204, 206(4) and 211(a) of the Advisers Act (15 U.S.C. 80b–4, 80b–6(4) and 80b–11(a)) and (ii) amends Rule 203–1 Form ADV pursuant to the authority contained in Sections 203 (15 U.S.C. 80b–3), 204, 206(4) and 211(a) of the Act.

George A. Fitzsimmons

Secretary.

May 14, 1982.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the amendments and temporary amendments adopted herein to Rules 203–1, 204–1 and 204–3 and Forms ADV and ADV–S under the Investment Advisers Act of 1940 ("Advisers Act") will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the amendments will impose no additional burdens on investment advisers subject to registration under the Advisers Act; some of the amendments and temporary amendments adopted herein clarify existing requirements while others eliminate previously existing requirements for certain registrants; and these amendments and temporary amendments will reduce the burden on investment advisers subject to registration in complying with Rules 203–1, 204–1 and 204–3 and Forms ADV and ADV–S under the Advisers Act.

Dated: May 14, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82–14183 Filed 5–24–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0127]

D&C Red No. 30

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing D&C Red No. 30 for general use in drugs and cosmetics excluding use in the area of the eye. This rule will remove D&C Red No. 30 from the provisional list of color additives for general use in drugs and cosmetics.

DATES: Effective June 25, 1982; objections by June 24, 1982.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1968 (33 FR 17205), FDA announced that a petition (CAP 7C0058) for the permanent listing of D&C Red No. 30 as a color additive for use in ingested drugs, lipsticks, and externally applied drugs and cosmetics had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association (CTFA)), the Pharmaceutical Manufacturers Association (PMA), and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc. (CCMA)), c/o Hazelton Laboratories, Inc., Post Office Box 30, Falls Church, VA 22046 (now 9200 Leesburg Turnpike, Vienna, VA 22180).

The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376). A later notice (41 FR 9584; March 5, 1976) amended the notice of filing of the petition to include the use of D&C Red No. 30 in all types of cosmetics subject to ingestion and the additional use of D&C Red No. 30 in cosmetics intended for use in the area of the eye.

Toxicological Concerns

The provisional regulations published in the **Federal Register** of February 4, 1977 (42 FR 6992) required new chronic toxicity studies for D&C Red No. 30 as a condition of its continued provisional listing for ingested uses. FDA placed these requirements on 31 color additives, including D&C Red No. 30, because the toxicity studies the petitioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficent number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

The closing date for the provisional listing of the color additive was postponed until January 31, 1981, for the completion of required chronic toxicity studies.

Chemistry Concerns

The provisional regulations of February 4, 1977, also established a closing date of October 31, 1977, for developing chemistry data and analytical methods necessary for defining chemical specifications for certifying batches of D&C Red No. 30. FDA requires chemical specifications based on sufficiently precise analytical methods, so that the agency can certify that batches of each color additive are equivalent to the batches of the color additive used in conducting animal studies to establish the safety of the color additive.

The petitioners had been actively engaged in efforts to provide the chemistry information needed to establish specifications for the color additive since the petition was submitted to the agency. By 1977 it was evident from experimental data that D&C Red No. 30 contained unidentified components for which specifications would have to be considered by the agency. FDA expected that the chemical nature and amount of these unidentified components, which are soluble in acetone, would be resolved during the postponement of the closing date until October 31, 1977. The petitioner notified the agency that work was underway to provide the necessary information in response to the new closing date. FDA expected that the use of new analytical techniques, such as high-pressure liquid chromatography (HPLC), would lead to rapid resolution of the chemistry issues. However, this task proved to be more difficult to complete during the short postponement period than the agency expected. As a result, the petitioners, in a letter dated October 6, 1977, requested a further extension of time to complete the chemistry analysis of D&C Red No. 30. On the basis of chemistry reports showing satisfactory progress in developing the analytical methods necessary to define specifications for D&C Red No. 30, FDA allowed the continued provisional listing for the color additive until January 31, 1981, the same closing date the agency established for completion of the toxicity studies discussed above.

FDA later again extended the closing date for completing the chronic toxicity studies and submitting data. In a proposal in the **Federal Register** of November 14, 1980 (45 FR 75228), the agency outlined the reasons for the need to postpone the closing dates for 23 provisionally listed color additives under test, including D&C Red No. 30, beyond January 31, 1981.

Although the agency had decided to postpone the closing date for D&C Red No. 30 and the other color additives before expiration of the January 31, 1981 closing date, the order did not publish before President Reagan signed his Executive Memorandum of January 29, 1981, which directed Federal agencies to postpone for 60 days all pending regulations, with certain exemptions inapplicable to postponements of closing dates for provisionally listed color additives. As soon as possible after the end of the regulatory postponement, FDA issued, in the **Federal Register** of March 27, 1981 (46 FR 18958), the rule establishing new closing dates for D&C Red No. 30 and the other color additives. Therefore, the current closing date for the provisional listing of the color additive is May 30, 1982.

Resolution of Toxicological and Chemical Concerns

The agency has completed its evaluation of the color additive petition for D&C Red No. 30, including two new chronic toxicity studies in rats and mice. These new long-term chronic studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge or deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species tested significantly increase the power of these tests to detect dose-related effects. The studies were designed and conducted in full compliance with the good laboratory practices regulations and were subject to inspections by FDA officials during their course.

Based on the evaluation of the results of the two new chronic toxicity studies, the agency has determined that D&C Red No. 30 is not carcinogenic to Charles River Sprague-Dawley rats or CD–1 mice after lifetime dietary exposue of 2.0 percent and 5.0 percent, respectively. Using appropriate safety factors (see 21 CFR 70.40), the agency has also estimated a maximum acceptable daily intake for humans—1.25 milligrams per kilogram of body weight per day.

FDA has also evaluated the scientific data regarding the chemical characterization of D&C Red No. 30 and its acetone-soluble components. Modern HPLC analytical methods establish that the acetone-soluble portion of the color additive is a complex mixture consisting of several compounds, each being present in very small amounts. The batch of D&C Red No. 30 fed in the test diets of the animals in the chronic toxicity studies contained approximately 2.8 percent acetone-soluble material. Therefore, the feeding tests also served to test the toxicity of the impurities. These tests provided no evidence that the acetone-soluble material is toxic.

To ensure the safety of future batches of this color additive, however, FDA is establishing a specification limit on the amount of acetone-soluble material that it will permit in D&C Red No. 30. Analysis of batches of this color additive that have been produced in recent years reveals that the acetone-soluble material is typically present in the finished color additive at a level of 2 to 5 percent. The exaggerated doses used in the feeding studies establish the safety of the color additive when the acetone-soluble matter is present at these typical levels. Therefore, FDA is setting the specification at 5 percent for this matter.

To ensure further the safety of the color additive, the agency has determined that it is necessary to control the qualitative and quantitative character of the acetone-soluble fraction. To ensure that the quantity and quality of the acetone-soluble components in individual batches conform to current good manufacturing practice, FDA will analyze by the HPLC method samples of the color additive submitted for certification, and FDA will compare the results of that analysis to those obtained with the sample tested toxicologically. Details of the HPLC method will be provided upon request from the contract person listed above.

Conclusion on Safety

The agency concludes that D&C Red No. 30 is safe under conditions of use set forth below for general use in drugs and cosmetics, and that certification is necessary for the protection of the public health. The final toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above). They may be reviewed there during working hours, between 9:30 a.m. and 4 p.m.

FDA notified the petitioners by letters, dated May 14, 1976, August 15, 1977, and August 4, 1978, of the need for data to support the use of D&C Red No. 30 in cosmetics intended for use in the area of the eye. In the latest letter, dated October 24, 1978, FDA advised the petitioners to consider withdrawing their petition that sought approval of use of D&C Red No. 30 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies would not be readily available.

The required data for eye-area use have not been submitted to the agency. Therefore, that portion of the petition that was amended by the filing on March 5, 1976 (Docket No. 76C–0044) to include the permanent listing of D&C Red No. 30 for eye-area use is now considered by the agency to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Section 71.4 requires that such requested information be submitted within 180 days after filing of the petition, or the petition will be considered withdrawn without prejudice. Use of D&C Red No. 30 in the area of the eye has never been covered by provisional listing. Future consideration by FDA of the permanent listing of D&C Red No. 30 for eye-area use will require the submission of a new color additive petition for that use. The agency's listing of a color additive for general use in drugs and cosmetics does not encompass eye-area use.

The agency has determined under 21 CFR 25.24 (b)(12) and (d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Parts 74, 81, 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)); and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1); see 46 FR 26052; May 11, 1981), Parts 74, 81, and 82 are amended as follows:

PARTS 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

a. By adding new § 74.1330 to Subpart B, to read as follows:

§ 74.1330 D&C Red No. 30.

(a) *Identity.* (1) The color additive D&C Red No. 30 is principally 6-chloro-2-(6-chloro-4-methyl-3-oxobenzo[*b*]thien-2(3*H*)-ylidene)-4-methyl-benzo[*b*]thiophen-3(2*H*)-one (CAS Reg. No. 2379–74–0).

(2) Color additive mixtures for drug use made with D&C Red No. 30 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* D&C Red No. 30 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Volatile matter (at 135° C), not more than 5 percent.
Chlorides and sulfates (calculated as sodium salts), not more than 3 percent.
Matter soluble in acetone, not more than 5 percent.
Total color, not less than 90 percent.

Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* D&C Red No. 30 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 30 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.2330 to Subpart C, to read as follows:

§ 74.2330 D&C Red No. 30.

(a) *Identity and specifications.* The color additive D&C Red No. 30 shall conform in identity and specifications to the requirements of § 74.1330 (a)(1) and (b).

(b) *Uses and restrictions.* D&C Red No. 30 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 30 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In paragraph (b) of § 81.1 *Provisional lists of color additives* by removing the entry for "D&C Red No. 30."

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing,* by removing the entry for D&C Red No. 30 in the introductory text of paragraph (c) and in paragraphs (c)(1) and (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended by revising § 82.1330, to read as follows:

§ 82.1330 D&C Red No. 30.

The color additive D&C Red No. 30 shall conform in identity and specifications to the requirements of § 74.1330 (a)(1) and (b) of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 24, 1982, file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 25, 1982, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: May 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14004 Filed 5-24-82; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 30; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 30 for general use in drugs and cosmetics excluding use in the area of the eye. A new closing date for D&C Red No. 30 is being established to provide for receipt and evaluation of any objections submitted in response to the final regulation approving the petition for the listing of D&C Red No. 30 for this use. The regulation that lists D&C Red No. 30 is published elsewhere in this issue of the **Federal Register.** The new closing date will be July 29, 1982.

EFFECTIVE DATE: May 28, 1982.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5090.

SUPPLEMENTARY INFORMATION: The current closing date of May 30, 1982, for the provisional listing of D&C Red No. 30 was established by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18958). The May 30, 1982 closing date for D&C Red No. 30 was established to provide time for determining the applicability of the statutory standard for the listing of color additives to the results of scientific investigations of D&C Red No. 30.

After reviewing and evaluating the data, the agency has concluded that D&C Red No. 30 is safe for that use. Therefore, elsewhere in this issue of the **Federal Register,** FDA is publishing a regulation that lists D&C Red No. 30.

The regulation set forth below will postpone the May 30, 1982 closing date for the provisional listing of that color additive until July 29, 1982. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Red No. 30 for general use in drugs and cosmetics, excluding use in the area of the eye.

Because of the shortness of time until the May 30, 1982 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. Moreover, good cause exists for issuing this postponement as a final rule, because the agency has concluded that D&C Red No. 30 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until July 29, 1982. To prevent any interruption in the provisional listings of D&C Red No. 30, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on May 30, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Amendments of 1960 to the Federal Food, Drug, and

Cosmetic Act (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 81 is amended in § 81.1 *Provisional list of color additives,* by revising the closing date for "D&C Red No. 30" in paragraph (b) to read "July 29, 1982."

Effective date. This regulation is effective May 28, 1982.

(Sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: May 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14070 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 175

[Docket No. 81F-0309]

Indirect Food Additives: Adhesive Coatings and Components; Polyamide Coatings for Polypropylene Film

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide resins derived from dimerized vegetable oil or tall oil acids, azelaic acid, ethylenediamine, and piperazine as the basic resin in coatings for polypropylene film in contact with food. This action is being taken in response to a petition filed by Union Camp Corp., Chemical Division.

DATE: Effective May 25, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 10, 1981 (46 FR 55564), FDA announced that a petition (FAP 8B3384) had been filed by Union Camp Corp., Chemical Division, P.O. Box 2668, Savannah, GA 31402, proposing that the food additive regulations be amended to provide for the safe use of polyamide resins derived from dimerized vegetable oil acids, azelaic acid, ethylenediamine, and piperazine as the basic resin in coatings for polypropylene film in contact with food. Dimerized tall oil acids are included.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that § 175.320 (21 CFR 175.320) should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 175 is amended in § 175.320(b)(3)(i) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *

(3) * * *

(i) * * *

List of substances	Limitations
* * *	* *
Polyamide resins (CAS Reg. No. 68139-70-6), as the basic resin, derived from:	For use only in coatings for polypropylene films that contact food at temperatures not to exceed room temperature.
Dimerized vegetable oil or tall oil acids containing not more than 20 percent of monomer acids.	
Azelaic acid (CAS Reg. No. 123-99-9) in an amount not to exceed 3.7 percent by weight of the polyamide resin.	
Ethylenediamine (CAS Reg. No. 107-15-3).	
Piperazine (CAS Reg. No. 110-85-0) in an amount not to exceed 6.4 percent by weight of the polyamide resin.	
* * *	* *

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 24, 1982 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 25, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: April 20, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 82-14085 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0170]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-ethylidenebis(4,6-di-*tert*-butylphenol) as an antioxidant and/or stabilizer in certain polymers in contact with food. This action is being taken in response to a petition filed by Schenectady Chemicals, Inc.

DATES: Effective May 25, 1982; objections by June 24, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 30, 1981 (46 FR 33637), FDA announced that a petition (FAP 1B3559) had been filed by Schenectady Chemicals, Inc., P.O. Box 1046, Schenectady, NY 12301, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for the safe use of 2,2'-ethylidenebis(4,6-di-*tert*-butylphenol) as an antioxidant and/or stabilizer for polymers in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 178 is amended in § 178.2010(b) by alphabetically inserting a new item in the list of substances to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * * *	
2,2'-Ethylidenebis(4,6-di-*tert*-butylphenol) (CAS Reg. No. 35958-30-6).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 1.2, 1.3, 3.1, or 3.2 (where the polymers complying with items 3.1 and 3.2 contain primarily polymer units derived from propylene). 2. At levels not to exceed 0.05 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, or 2.3. The finished polymers are to be used only under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. 3. At levels not to exceed 0.075 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, or 2.3 (where the density of each of these polymers is not less than 0.94 g/cc) and item 3.1 or 3.2 (where each of these polymers contains primarily polymer units derived from ethylene). 4. At levels not to exceed 0.05 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 3.3, 3.4, 3.5, or 4. 5. At levels not to exceed 0.1 percent by weight of ethylene vinyl acetate copolymers complying with § 177.1350 of this chapter and under conditions of use C through G described in table 2 of § 176.170(c) of this chapter. 6. At levels not to exceed 0.1 percent by weight of rigid or semirigid polyvinyl chloride and under conditions of use B through H described in table 2 of § 176.170(c) of this chapter.
* * * * * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 24, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 25, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: May 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14068 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 436, 440, 442, 444, and 446

[Docket No. 82N–0136]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic regulations by updating and by making noncontroversial technical changes in the regulations providing for the certification of certain antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations that reflect current certification practices.

DATES: Effective May 25, 1982; comments, notice of participation, and request for hearing by June 24, 1982; data, information, and analyses to justify a hearing by July 26, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by updating and by making minor noncontroversial technical changes in several antibiotic drug regulations that provide for certification of antibiotic and antibiotic-containing drugs intended for human use. To aid in understanding the types of changes included in this document, the changes have been grouped into two general classes for discussion in this preamble: updating and technical changes.

Updating

1. In § 436.102, paragraphs (b) (18) and (b) (20) through (29) are removed and reserved. These paragraphs contain descriptions of media that are no longer used in any test methods currently performed in FDA's laboratories.

2. In § 436.103(a), the table is amended as follows:

a. Test organisms M, N, P, Q, R, S, and U are removed. These test organisms are no longer used in any test methods currently performed in FDA's laboratories.

b. Medium 28 listed in the second and third columns for test organism V is replaced with medium 1. Medium 1 is actually used in preparing this test organism.

c. The words oleandomycin and triacetyloleandomycin are removed from footnote "1". This dilution factor is no longer used for these antibiotic drugs.

3. In § 436.103, paragraph (b)(4) is removed and reserved. This paragraph describes a method for a preparation of a suspension of a test organism that is no longer being used in any test methods performed in FDA's laboratories.

4. In § 436.105 (a) and (b), the items chloramphenicol, cycloserine, griseofulvin, and troleandomycin are removed from the tables, wherever they appear. The test method under this section is no longer used for these drugs.

5. In § 436.106(b), a "Note" is added immediately before the table to provide for testing smaller volumes of material in the microbacterial turbidimetric assay.

6. In § 446.542(b)(2)(ii), the last sentence is revised to prevent injection of the entire filtrate of a meclocycline sample solution into the chromatograph.

Technical Changes

1. In § 436.105(b), footnote "7" is added at the end of the table and a superior figure reference "7" is added to "Not dried" in the second column of the table for the item sisomicin. Because of the loss of potency of sisomicin on drying, it is necessary to take two portions of the standard to complete the assay. One portion is used for the determination of moisture and the other portion is used for the determination of potency.

2. In § 440.241(a)(1), the pH range for nafcillin sodium monohydrate for injection (5.0 to 8.0) is revised to read 6.0 to 8.5. The quality of the product has improved resulting in a higher pH.

3. In § 442.104b(a)(1), the upper pH limit for cefaclor monohydrate for oral suspension is raised from 4.5 to 5.0. The sole manufacturer has submitted adequate stability data to support the higher limit.

4. In § 444.342b(b)(1)(ii), the use of thioglycolic acid is removed from the polymyxin potency assay for neomycin sulfate-polymyxin B sulfate-gramicidin ophthalmic solution. FDA's laboratory, the National center for Antibiotics Analysis, has determined that it is not necessary for the accuracy of the assay.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR

Part 436

Antibiotics.

Part 440

Antibiotics, penicillin.

Part 442

Antibiotics, cepha.

Part 444

Antibiotics, oligosaccharide.

Part 446

Antibiotics, tetracycline.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507,701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 436, 440, 442, 444, and 446 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended as follows:

§ 436.102 [Amended]

a. In § 436.103 *Culture media* by removing and reserving paragraph (b) (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), and (29).

§ 436.103 [Amended]

b. In § 436.103 *Test organisms*, the table in paragraph (a) is amended by removing test organisms M, N, P, Q, R, S, and U, by changing "28" to "1" in the second and third columns for test organism V, by removing "oleandomycin," and "or triacetyloleandomycin," from footnote "1", and by removing and reserving paragraph (b)(4).

c. In § 436.105, the table in paragraph (a) is amended by removing the items "chloramphenicol," "cycloserine," "griseofulvin," and "troleandomycin," the table in paragraph (b) is amended by removing the items "chloramphenicol," "cycloserine," and "griseofulvin," and by revising the item "sisomicin," to read as follows:

§ 436.105 Microbiological agar diffusion assay.

* * * * *

(b) * * *

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in § 436.200)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter (milligrams)	Storage time under refrigeration (days)	Standard response line concentrations: Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
•	•	•	•	•	•	•	•
Sisomicin [6]	Not dried [7]		3	1	14	3	0.064, 0.080, 0.100, 0.125, and 0.156 grams.
•	•	•	•	•	•	•	•

[6] Working standard should be stored below minus 20° C under an atmosphere of nitrogen. Sisomicin is hygroscopic and care should be exercised during weighing.
[7] Weigh a separate portion of the working standard and determine the loss on drying by the method described in § 436.200(c) of this chapter. Use this value to determine the anhydrous content of the working standard.

§ 436.106 [Amended]

d. In § 436.106 *Microbiological turbidimetric assay,* paragraph (b) is amended by adding the following **Note** immediately before the table:

Note.—The amount of working standard and sample solutions may be reduced as long as all other solutions used are reduced proportionately.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

2. Part 440 is amended in § 440.241(a)(1) by revising the seventh sentence, to read as follows:

§ 440.214 Nafcillin sodium monohydrate for injection.

(a) * * *

(1) * * * When reconstituted as directed in the labeling, the pH is not less than 6.0 and not more than 8.5. * * *

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended in § 442.104b(a)(1) by revising the fifth sentence, to read as follows:

§ 442.104b Cefaclor monohydrate for oral suspension.

(a) * * *

(1) * * * When reconstituted as directed in the labeling, its pH is not less than 2.5 and not more than 5.0. * * *

* * * * *

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

§ 444.342b [Amended]

4. Part 444 is amended in § 444.342b *Neomycin sulfate-polymyxin B sulfate-gramicidin ophthalmic solution* in paragraph (b)(1)(ii) by removing the third sentence.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

5. Part 446 is amended in § 446.542(b)(2)(ii) by revising the last sentence, to read as follows:

§ 446.542 Meclocycline sulfosalicylate cream.

* * * * *

(b) * * *

(2) * * *

(ii) * * * Inject the filtrate onto the column as described in § 436.329(e) of this chapter.

* * * * *

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, are effective May 25, 1982. However, interested persons may, on or before June 24, 1982, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 24, 1982, a written notice of participation and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall be effective May 25, 1982.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: May 18, 1982.

James C. Morrison,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 82-14140 Filed 5-24-82; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Diethylcarbamazine Citrate Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for safe and effective use of diethylcarbamazine citrate chewable tablets for prevention of heartworm disease and as an aid in

the treatment of ascarid infections in dogs.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 128-517 providing for use of 60-, 120-, and 180-milligram (mg) diethylcarbamazine citrate chewable tablets for prevention of heartworm disease in dogs caused by *Dirofilaria immitis*, and as an aid in the treatment of ascarid (*Toxocara canis*, and *Toxascaris leonina*) infections in dogs.

The product is similar to another tablet that was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) review which was published in the Federal Register of January 8, 1969 (34 FR 275). The NAS/NRC review stated, and the agency concurred, that diethylcarbamazine is probably not effective as a treatment against filariasis, that more information is needed regarding the dosage level to support claims for prevention of filariasis, and that the drug is effective as an aid in the treatment of ascarid infections in dogs and cats when administered at 25 to 50 mg per pound of body weight as a single dose with a repeat dose given after 10 to 20 days. Sponsors of NADA's for products which did not reflect the conclusions of the notice were required to update their applications by submitting revised labeling or adequate documentation to support the labeling used. Those sponsors whose NADA's satisfied the requirements of the NAS/NRC notice or were found equivalent to the NAS/NRC reviewed products are codified in the regulations in 21 CFR 520.620 and 520.622.

A NAS/NRC review of another dosage form, diethylcarbamazine medicated premix, was published in the Federal Register of June 16, 1970 (35 FR 9869). The review concluded that the product is probably effective, and the agency concluded that it is effective, as an aid in the prevention and elimination of large roundworms (ascarids) in dogs when given as directed. The review established the effectiveness of the drug for use in prevention of ascarid infections.

Beecham Laboratories submitted data from a controlled artificial challenge study, a palatability study, and reprints from published scientific literature to demonstrate that diethylcarbamazine is safe and effective for use, as labeled, in prevention of heartworm disease. The agency granted a waiver from the requirements of 21 CFR 514.111(a)(5)(ii) for further studies to provide substantial evidence of effectiveness for that claim. The claims for control and treatment of ascarid infections are approved on the basis of the NAS/NRC reviews. The NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR Part 5.83), Part 520 is amended in § 520.622c by adding new paragraph (b)(7) to read as follows:

§ 520.622c Diethylcarbamazine citrate chewable tablets.

* * * * *

(b) * * *

(7) For 000029 use of 60-, 120-, or 180-milligram tablets as in paragraph (c)(2)(ii) of this section.

* * * * *

Effective date: May 25, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 18, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-14000 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Levamisole Hydrochloride Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Cyanamid Agricultural de Puerto Rico, Inc., providing for safe and effective use of levamisole hydrochloride paste in cattle for treating nematode infections.

EFFECTIVE DATE: May 25, 1980.

FOR FURTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Cyanamid Agricultural de Puerto Rico, Inc. (CAPRI), Manati, PR 00701, is the sponsor of an NADA (126-237) filed on its behalf by American Cyanamid Co. The application provides for use of levamisole hydrochloride paste in cattle for treating infections of stomach worms, intestinal worms, and lung worms. Approval is based on data contained in NADA's 39-356, 39-357, and 44-015 and on well-controlled studies with this new oral dosage form. The NADA is approved, and the regulations are amended to provide for use of the new dosage form.

Under the Bureau of Veterinary Medicine's supplemental approval policy of (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would the approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in related NADA's 39-356, 39-357, and 44-015.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21

CFR 25.1 (f)(1)(iii)), may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.1242f to read as follows:

§ 520.1242f Levamisole hydrochloride paste.

(a) *Specifications.* The drug is a paste containing 11.5 percent levamisole hydrochloride.

(b) *Sponsor.* See No. 043781 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.350 of this chapter.

(d) *Conditions of use.* It is used in cattle as follows:

(1) *Amount.* Eight milligrams of levamisole hydrochloride per kilogram of body weight, as a single oral dose.

(2) *Indications for use.* Anthelmintic effective against the following nematode infections: Stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*), intestinal worms (*Trichostrongylus, Cooperia, Nematodirus, Bunostomum, Oesophagostomum*), and lungworms (*Dictyocaulus*).

(3) *Limitations.* Conditions of constant helminth exposure may require re-treatment within 2 to 4 weeks after the first treatment; do not administer to dairy cattle within 6 days of slaughter for food; do not administer to animals of breeding age; consult veterinarian before using in severely debilitated animals.

Effective date. May 25, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 18, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-14089 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Old Monroe Elevator & Supply Co., Inc., providing for use of a tylosin and sulfamethazine premix to make complete swine feeds.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369, is sponsor of NADA 128–835 for Thrifty Swine Mix Tylan 5 Sulfa Premix, a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. This NADA provides for safe and effective use of the premix for subsequent manufacture of complete swine feed to be used for (1) maintaining weight gain and feed efficiency in the presence of atrophic rhinitis, (2) lowering the incidence and severity of *Bordetella bronchiseptica*, (3) prevention of swine dysentery (vibironic), and (4) control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco's approved NADA's 12–491 and 41–275. Elanco has authorized FDA to refer to these applications to support approval of the application. Because this approval does not change the approved use of the drug, it poses no increased human risk from exposure to drug residues and does not affect the conditions of safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplement and does not require reevaluation of the safety and effectiveness data in NADA 12–491 and NADA 41–275.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 28052; May 11, 1981) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine* by adding, in numerical sequence, drug sponsor code "026948" to paragraph (b)(9).

Effective date. May 25, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 18, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-14087 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 610

[Docket No. 81N-0133]

General Biological Products Standards; Amendment of Container Label Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to reflect the requirement that the statement: "Caution: Federal law prohibits dispensing without prescription" be placed on labels of all prescription biologicals. The agency is issuing the final rule to clarify an existing licensing requirement that has been enforced for many years.

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 7, 1981 (46 FR 40212), FDA published a proposal to amend §§ 610.60 and 610.61 (21 CFR 610.60 and 610.61) to reflect the existing requirement that the statement: "Caution: Federal law prohibits dispensing without prescription" be placed on the labels of all prescription biological products. Interested persons were given until October 6, 1981 to submit written comments regarding the proposal.

Section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(4)) states that a prescription drug is misbranded unless this cautionary statement appears on its label. Section 201.100(b)(1) (21 CFR 201.100(b)(1)) currently requires this cautionary statement for all prescription drugs, including biological products intended for human use. The requirement is being added to the biologics regulations to make clear that it applies to biological products as well as other drugs.

Four comments were received on the proposal. A summary of the comments and FDA's response to the comments follows:

1. One comment from a biologic manufacturer stated that FDA has approved its labels which do not include the word "Caution", but merely the words "Federal law prohibits dispensing without prescription."

The agency acknowledges that it has inadvertently approved these labels. Because the final rule constitutes a labeling change for the manufacturer that could result in some economic hardship, the agency will permit use of the current supply of labels, providing that the next printing of labels will include the word "Caution". This action will preclude any economic hardship to the manufacturer.

2. One comment suggested that the regulation include the words "for prescription biologicals" rather than "if appropriate" after the cautionary statement. The proposed regulation required that the container and package label contain "[t]he statement 'Caution: Federal law prohibits dispensing without prescription,' if appropriate." The comment stated that the phrase "if appropriate" after the cautionary statement is vague and needs clarification.

The agency agrees with the comment and is amending the final rule by deleting the words "if appropriate" and substituting the words "for prescription biologicals".

3. One comment objected to the requirement that the cautionary statement be placed on the container label because of space limitations on small container labels.

The agency is aware that the container label for certain products is too small to contain the cautionary statement and therefore permits that statement to be deleted from such container labels provided that the package label for the product contains the cautionary statement. See § 610.60(c).

4. One comment stated that publication of the proposal was unnecessary, that the proposal should be retracted, and that the document should be published instead as a notice. The comment stated that the proposal is already a statutory requirement in the existing drug regulations because biologicals are considered drugs and therefore are subject to the provisions of the Federal Food, Drug, and Cosmetic Act. The comment further stated that the proposal would merely add volume to an overcrowded Code of Federal Regulations (CFR) without adding substance to it.

It is not the agency's policy to duplicate routinely regulations in the CFR. The agency advises that the proposal was published as a result of industry inquiries on the subject. Large corporations with a legal staff to interpret government regulations are well aware of the statutory basis for the regulation. The agency, however, also is aware that there are many small businesses that cannot afford a legal staff and may not have ready access to a comprehensive set of CFR's for drugs and biologics. For these reasons, the agency is amending the biologics regulations by adding the cautionary statement in the labeling provisions, obviating the need to cross-reference drug regulations. Consequently, the agency rejects the comment.

Accordingly, FDA is adopting the proposal with the one revision as described above.

FDA has reexamined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The final rule is merely a clarification of an existing licensing requirement that has been enforced for many years. The agency believes that the final rule will not affect manufacturers of biological products. Therefore, the agency concludes that the final rule does not warrant designation as a major rule under section 1(b) of Executive Order 12291. For the same reasons, the agency certifies that a regulatory flexibility analysis is not required because the final rule will not have a significant economic impact on a substantial number or small entities.

List of Subjects in 21 CFR Part 610

Biologics, labeling.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

Therefore, under the Federal Food, Drug, and Comestic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050-1051 as amended, 1055-1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 610 is amended as follows:

1. In § 610.60 by adding new paragraph (a)(6), to read as follows:

§ 610.60 Container label.

(a) * * *

(6) The statement: "Caution: Federal law prohibits dispensing without prescription," for prescription biologicals.

* * * * *

2. In § 610.61 by adding new paragraph (t), to read as follows:

§ 610.61 Package label.

* * * * *

(t) The statement: "Caution: Federal law prohibits dispensing without prescription," for prescription biologicals.

Effective date. June 24, 1982.

(Secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated May 3, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14142 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 660

[Docket No. 81N-0119]

Additional Standards for Blood Grouping Serum; Use of Chemically Modified Antisera

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by revising potency requirements for Blood Grouping Sera to permit marketing of chemically modified Blood Grouping Sera. Current potency test requirements are unsuitable for chemically modified Blood Grouping Sera. The agency is amending the regulations to permit, where appropriate, the use of alternative manufacturing methods, procedures, or potency tests for such products as chemically modified Blood Grouping Sera.

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 7, 1981 (46 FR 35122), FDA published a proposal to amend § 660.25 (21 CFR 660.25) of the biologics regulations to permit alternative manufacturing procedures or test methods in the manufacture of chemically modified Blood Grouping Sera. Manufacturers have developed this new class of products which does not react serologically like traditional Blood Grouping Sera. Serial dilutions of the chemically modified Blood Grouping Sera do not provide satisfactory titer values in direct agglutination assays as prescribed in § 660.25(a)(5). Manufacturers, however, have developed other test methods to ensure the effectiveness of chemically modified Blood Grouping Sera.

The proposed rule stated that alternative test methods or manufacturing procedures would be acceptable to the agency if these methods or procedures provided assurances of the specificity, potency, and effectiveness of the modified Blood Grouping Serum equal to or exceeding the assurances provided by the manufacturing procedures or test methods currently prescribed by the additional standards.

Interested persons were given until September 8, 1981 to submit written comments regarding the proposal. Three comments were received. Two comments fully endorsed the proposed rule. A third comment stated that the proposed rule was not in full compliance with the Regulatory Flexibility Act. That comment was from the Chief Counsel for Advocacy of the U.S. Small Business Administration.

The Small Business Administration's Office of Advocacy is responsible for coordinating implementation of the Regulatory Flexibility Act. The comment stated that there was not enough information presented in the proposal to determine whether the proposed action would have a neutral or beneficial effect on small businesses.

The agency advises that the proposal was a direct result of an industry request to market chemically modified Blood Grouping Sera. There are 11 licensed manufacturers of Blood Grouping Sera, not all of which are small businesses. The agency concludes that the final rule will not affect a substantial number of small entities. Moreover, the final rule places no significant economic burden on manufacturers. On the contrary, the rule is expected to be beneficial to these manufacturers because it will permit them to produce a more effective, safer, and more marketable product. As it simply gives a manufacturer greater flexibility in the techniques used to produce and test the product, the rule's economic impact is not expected to vary depending on the size of the manufacturer. Under its provisions, any manufacturer may elect to produce the new, chemically modified Blood Grouping Sera or the traditional Blood Grouping Sera. The only alternative to the rule would be to apply current potency test requirements to chemically modified Blood Grouping Serum. That approach would prevent manufacturers from marketing this new product because they would not have substitute test methods for evaluating it. Accordingly, the agency is issuing the final rule as proposed, and believes that this action will have a beneficial impact on manufacturers marketing Blood Grouping Sera.

In light of its reexamination of the economic impact of this final rule, FDA has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The decision whether to produce chemically modified Blood Grouping Sera or traditional Blood Grouping Sera remains with the manufacturer and is not imposed on industry by the final rule. The final rule will relieve a restriction on a specific segment of the biologics industry and is expected to result in the availability of a more effective, safer, and more marketable product. Therefore, the agency concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the implementation of the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 660

Biologics, labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 660 is amended in § 660.25 by adding new paragraph (d) to read as follows:

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

§ 660.25 Potency test without reference preparations.

* * * * *

(d) *Equivalent methods.* Modification of any particular manufacturing method or procedure, including modification of required potency test procedures, shall be permitted whenever a manufacturer presents evidence demonstrating that the alternative methods, procedures, or tests will provide assurances of the specificity, potency, and effectiveness of the modified Blood Grouping Serum that are equal to or greater than the assurances provided by the methods, procedures, or tests currently prescribed by such standards, and the Director, Bureau of Biologics, so finds and makes such finding a matter of official record.

Effective date. This regulation is effective June 24, 1982.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: May 3, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14141 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Secretary, Low Income Housing

24 CFR Part 888

[Docket No. R-82-922]

Sec. 8 Housing Assistance Payments Program—Financing Adjustment for Fair Market Rents

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner.

ACTION: Interim rule.

SUMMARY: This interim rule amends the financing adjustment rules for calculating Fair Market Rents to (1) increase the ceiling on interest rates from 12 percent to 14 percent, (2) extend the deadline for start of construction from June 1, 1982 to August 1, 1982, (3) permit use of the financing adjustment in connection with property disposition projects sold by HUD and (4) permit projects funded in fiscal year 1982 to use the financing adjustment. Due to current economic conditions, many project proposals to HUD have been found to be financially infeasible without use of the procedures provided in this rule.

EFFECTIVE DATES: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver. Further notice of the effective date of this interim rule will be published in the **Federal Register.**

COMMENT DUE DATE: Written comments and suggestions will be accepted until June 9, 1982.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Steve Silvert, Acting Director, Office of State Agency and Bond Financed Programs, 451 7th Street, S.W., Washington, D.C. 20410, (202) 426-7113. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: An interim rule implementing a financing adjustment to FY 1981 Section 8 New Construction and Substantial Rehabilitation Fair Market Rents was published at 46 FR 51903, on October 23, 1981, as an amendment to 24 CFR 888.101(b) and a Note to the 1981 FMRs.

Market rates for Section 8 housing bonds have increased markedly since October 1981, when the interim rule was adopted. As a result, few projects have been able to close using the financing adjustment. The Department has surveyed the pipeline of eligible projects and determined that most such projects cannot be made feasible without amendment of the outstanding rules.

The outstanding rules limit the financing adjustment to that required for a permanent debt service factor corresponding to an interest rate of 12 percent. Interest rates have been consistently above 12 percent since October 1, 1981 and at a level that makes it prohibitively costly for owners of Section 8 projects to pay the discount necessary to bring the effective rate down to 12 percent. The outstanding rules also require developers to post an escrow to reduce the mortgage after completion of the project.

The Department has decided that the ceiling on the permanent debt service factor must be increased if these projects are to be completed. The ceiling on the permanent debt service, which limits Section 8 Fair Market Rents and contract rents, is being increased from that corresponding to an interest rate of 12 percent to that corresponding to an interest rate of 14 percent. At any rate of 14⅛ percent or less, the owner will be required to pay a discount that reduces the interest cost ⅛ of one percent. Discounts required to be paid by an owner will thus be predictable and at a level that owners can afford. Present escrow requirement will not be changed. Additional interest costs resulting from a rate in excess of 14⅛ percent will be borne by the owner.

The deadline date for construction starts of June 1, 1981 imposed by the outstanding rules will be changed so that owners may obtain the benefits of the amended rule. Adjustment of Section 8 funding policies to budgetary constraints has delayed processing of some of these projects. The Department is acting to expedite these actions. A change in the deadline date from June 1, 1982 to August 1, 1982 is necessary if processing of these projects is to be successfully completed.

The Department also is seeking to reduce its inventory of HUD-owned projects and to return these projects to private ownership. It has been decided to make the financing adjustment procedure available to projects sold and substantially rehabilitated under 24 CFR Part 886 to facilitate sales where increased contract rents are necessary in view of current financing costs.

Problems associated with high financing costs also have made it infeasible for owners to proceed with projects funded in fiscal year 1982. Where an owner agrees to have the project processed using fiscal year 1981 FMRs, the amended rule permits use of the financing adjustment procedures.

The Department has determined that this amendment to the procedures for use of a financing adjustment in calculating Fair Market Rents is urgently needed if owners and State and local finance agencies are to successfully process Section 8 projects within very tight deadlines. There are now pending before the Department a number of highly desirable project proposals in which there has been a substantial investment of private and public funds. Due to current economic conditions, these project proposals have been found to be financially infeasible without use of the procedures provided in this rule.

Based on these considerations, the Secretary has determined that this amendment is urgently needed and should become effective as soon as possible. Thus, good cause exists for making this amendment effective less than 30 days after its publication in the **Federal Register.** However, the Secretary is providing 15 days for submission of public comments on this amendment prior to its effective date. If, as a result of comment, the Secretary determines that a change in the standards described in this interim rule is appropriate, either the effective date of the rule will be deferred or the rule will be withdrawn. In addition, all relevant comments and suggestions will be considered in the development of a final rule on this subject.

Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness of this interim rule for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers so that the rule can become effective as soon as practicable after completion of the 15-day comment period referred to above. At the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Accordingly, a further notice of the effective date of this interim rule will be published in the **Federal Register.**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semi-annual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance Program number and title are 14.156, Lower-Income Housing Assistance Program (Section 8).

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 24 CFR Part 888

Rent subsidies.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Accordingly, the Note to Schedule A to 24 CFR Part 888 previously published and effective November 9, 1981, is amended as follows:

1. Paragraph A is revised to read as follows:

A. Establishment of Fair Market Rents by Financing Type

1. The rents published in Schedule A establishing the fiscal year 1981 Fair Market Rents, including the 5 percent adjustment for projects designed for the elderly (base level FMRs), may be increased by use of a financing adjustment to establish Fair Market Rents reflecting the actual costs of permanent financing of the Section 8 programs for New Construction and Substantial Rehabilitation and in connection with the sale and substantial rehabilitation of HUD-owned projects. This Note provides the method for establishing Fair Market Rents for all financing types, other than loans secured by mortgages purchased under the Government National Mortgage Association Tandem Program for Section 8 projects, and direct loans under Section 202 of the Housing Act of 1959 and Section 515 of the Housing Act of 1949. These financing types are excluded since current fixed interest rates for these programs are low enough to permit the development of feasible projects within the 1981 Fair Market Rents without a financing adjustment.

2. FMRs for 1981 will be determined by adjusting for the difference between (1) rents based on estimated development and operating costs using an assumed debt service factor corresponding to an interest rate of not less than 8 percent and (2) rents based on the same costs using the debt service factor of the actual permanent financing. The actual permanent financing debt service factor may not exceed that corresponding to an interest rate which is the lesser of: (i) 14 percent or (ii) the interest cost of the obligations less ⅜ percent. The limit will not be applied to reduce the actual permanent debt service factor below that corresponding to an interest rate of 12 percent. Where an Agreement to Enter into Housing Assistance Payment Contract has been executed for a project prior to April 15, 1982, it may not be amended to increase contract rents pursuant to this regulation. To promote cost containment, the procedure for calculating the amount of the financing adjustment shall be based on the exact increase in contract rents necessary to meet a specified increase in debt service needed to cover actual interest costs. This procedure is used to assure that the increase permitted shall be available only to cover financing costs.

3. Base level contract rents shall be determined for the project based on an assumed debt service factor corresponding to an interest rate of not less than 8 percent. These base level contract rents plus any utility allowances shall meet the Fair Market Rent limitations of the base level FMRs and the rent reasonableness limitations. The financing adjustment stated in paragraph C shall then be applied to these base level contract rents to determine the actual contract rents. The resulting contract rents shall be no higher than necessary to cover the actual dollar amount of the debt service required by the actual permanent financing.

2. Paragraph B is amended by revising subparagraphs 1 through 4 to read as follows:

B. Project Eligibility

1. To obtain the benefits of the financing adjustment for Fair Market Rents, the owner (and the State Agency approved under Part 883 where it finances the projects) must submit a written request to HUD, dated after the effective date of the Note and before July 14, 1982. The request shall state that the project will be processed in accordance with this Note.

2. The project must be assisted under 24 CFR Part 880, 881, 883, or 886 and be subject to fiscal year 1981 FMRs and current HUD regulations. Projects funded in fiscal year 1982 may use the financing adjustment provided that the owner agrees that all processing shall be in accordance with the fiscal year 1981 FMRs. Projects reprocessed under this procedure after publication of the 1982 FMRs shall continue to be entitled to use the 1981 FMRs and cannot use the 1982 FMRs. All dwelling units must be Section 8 contract units.

3. The Agreement to Enter Into HAP Contract (Agreement) shall include an approved construction schedule and a provision requiring that actual construction shall commence on or before August 1, 1982 and will thereafter continue as set forth in the Agreement.

4. General or limited distribution mortgagors will be required to establish an escrow, funded with cash or by letter of credit, in an amount equal to the difference between the assumed debt service factor and the actual permanent debt service factor (but not greater than that corresponding to a 12 percent interest rate), multiplied by replacement cost for new construction or by the equivalent of replacement cost for substantial rehabilitation. * * *

* * * * *

3. Paragraph C is amended by revising subparagraph 2 to read as follows:

C. Financing Adjustment

* * * * *

2. The owner and the financing agency shall certify the actual annual debt service factor of the permanent financing. The actual annual debt service factor may not exceed the applicable limit under Paragraph A above. For projects financed by State Agencies, override (as defined in § 883.302 and including any servicing fee), which must be included in the above interest rate ceiling, shall not exceed 50 basis points. There shall be no financing cost contingency (as defined in § 883.302 and described in § 883.308(e)).

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: May 3, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 82-14193 Filed 5-24-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 211 and 213

[T.D. ATF-103, Ref: Notice No. 389]

Distribution and Use of Denatured Alcohol and Rum and Distribution and Use of Tax-Free Alcohol

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations in 27 CFR Parts 211 and 213 relating to the requirement for certain dealers and users of denatured spirits and users of tax-free alcohol to make annual application for and receive a withdrawal permit. Under this final rule, these dealers and users would no longer be required to annually reapply for and receive a withdrawal permit. All valid withdrawal permits issued on ATF Forms 1450 (5150.13), 1477 (5150.15), and 1485 (5150.12) will no longer expire on the applicable expiration dates and will continue in effect following the expiration date. New withdrawal permits will not contain an expiration date.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake or John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1981, ATF published a notice of proposed rulemaking, No. 389, in the **Federal Register** (46 FR 51929). This notice proposed to recodify 27 CFR Parts 211 and 213 into 27 CFR Parts 20 and 22, respectively. In addition, the notice proposed several modernizing and liberalizing changes and the elimination of many administrative and recordkeeping burdens. One specific proposal was the elimination of the requirement for certain permittees to annually make application for and receive a withdrawal permit. All but one of the comments submitted fully supported the notice and encouraged ATF to expeditiously implement the proposed changes.

Under the provisions of Parts 211 and 213, permittees dealing in or using specially denatured spirits and using tax-free alcohol are required to (1) initially make application for and obtain an industrial use permit, (2) initially make application for and obtain a withdrawal permit, and (3) annually renew the withdrawal permit, except that "limited users" are issued a continuing withdrawal permit. The duration of withdrawal permits issued under Part 211 is the 12 month period from November 1 through October 31, and withdrawal permits issued under Part 213 are issued for the period from May 1 through April 30.

ATF has determined that the requirement for annual renewal of withdrawal permits is unnecessary, and in an effort to reduce administrative burdens on both affected permittees and the Government, this document deletes the requirement for more than 6,300 permittees to annually renew their withdrawal permits issued on Forms 1450 (5150.13), 1477 (5150.15), and 1485 (5150.12), and allows, on a continuing basis, the withdrawal of tax-free alcohol or specially denatured spirits after the expiration date on the form. Elimination of this requirement is consistent with the Departments policy of reducing administrative burdens and paperwork.

While this final rule only addresses the elimination of the requirement to annually renew withdrawal permits, ATF is developing further significant rulemaking changes, based on notice of proposed rulemaking, No. 389, and comments received from the public in response to it.

II. Amendments to Part 211

Part 211 of 27 CFR is amended by:

(a) Removing §§ 211.133 and 211.163, Application for and Renewal of Withdrawal Permit, Form 1477 (5150.15) and 1485 (5150.12), respectively. All valid withdrawal permits for dealers and users of denatured spirits with an expiration date of October 31, 1982 will continue in effect after the expiration date.

(b) Making editorial and conforming changes to §§ 211.22, 211.131, 211.132, 211.161, and 211.162 to reflect the change in duration or renewal of the affected withdrawal permits.

III. Amendments to Part 213

Part 213 of 27 CFR is amended by:

(a) Removing § 213.111, Application for and Renewal of Withdrawal Permit, Form 1450 (5150.13). All valid withdrawal permits for users of tax-free alcohol with an expiration date of April 30, 1983 will continue in effect after the expiration date.

(b) Making editorial and conforming changes to §§ 213.22, 213.109, 213.110 and 213.173 to reflect the change in duration or renewal of the withdrawal permits on Form 1450 (5150.13).

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, published February 17, 1981, in the **Federal Register**, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, this final regulation is liberalizing in nature and will aid in reducing industry costs, with subsequent benefits to the consumer.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant impact on a substantial number of small entities. This final rule will not have significant secondary or incidental effects on a substantial number of small entities or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

This final rule relieves reporting burdens on a substantial number of small entities which is consistent with the intent of the Act.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact and, in fact, relieves recordkeeping and reporting burdens on a substantial number of small entities.

List of Subjects

27 CFR Part 211

Administrative practice and procedures, Advertising, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Reporting requirements, Surety bonds, Transportation.

27 CFR Part 213

Administrative practice and procedures, alcohol and alcoholic beverages, authority delegations, claims,

excise taxes, reporting requirements, surety bonds.

Drafting Information

The principal authors of this document are Norman P. Blake and John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Because the Department has determined that continued adherence to the annual renewal requirement is unnecessary and in order to immediately relieve both affected permittees and the Government from the requirements of filing and processing these documents it is impracticable and not in the public interest to issue this Treasury decision subject to the 30-day effective date limitation in 5 U.S.C. 553(d). Therefore, this Treasury decision is effective on its date of publication in the **Federal Register.**

Authority and Issuance

This regulation is issued under the authority of 26 U.S.C. 7805 (68A Stat. 917, as amended). Based on the foregoing, Title 27 CFR is amended as follows:

PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Paragraph 1. The table of sections for Part 211 is amended to reflect (a) the amended heading of § 211.161, and (b) the removal of §§ 211.133 and 211.163. As amended, the table of sections reads as follows:

Sec.

* * * * *

211.133 [Reserved]

* * * * *

211.161 Application for withdrawal permit and limitations on withdrawals.

211.163 [Reserved]

* * * * *

§ 211.22 [Amended]

Par. 2. Section 211.22 is amended by deleting the words "or renewal" from the undesignated paragraph which follows paragraph (a)(3).

§ 211.131 [Amended]

Par. 3. Section 211.131 is amended by deleting (a) the words "during the term of the permit" from the second sentence, and (b) the word "annual" from the third sentence.

Par. 4. Section 211.132 is revised to read as follows:

§ 211.132 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 211.131 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1477 (5150.15) and forward the original to the bonded dealer. Withdrawal permits on Form 1477 (5150.15) shall have the same duration as industrial use permits in accordance with § 211.46.

§ 211.133 [Removed]

Par. 5. Section 211.133 is removed.

Par. 6. Section 211.161 is revised to read as follows:

§ 211.161 Application for withdrawal permit and limitations on withdrawals.

(a) *Application.* A user who desires to obtain specially denatured spirits shall, unless application is filed on Form 4326 (5150.21) as provided in § 211.42a, file an application on Form 1485 (5150.12) with the regional regulatory administrator. The user shall specify in the application:

(1) The formula numbers of the denatured spirits to be withdrawn, listing only those formulas covered by Form 1479–A (5150.19) and formulas which will be used exclusively for laboratory or mechanical purposes as provided in § 211.169.

(2) The estimated average quantity, in gallons of denatured spirits of each formula that will be required in 1 month. The applicant shall specify the quantities and the formulas in accordance with business needs. A user may file applications for more than one withdrawal permit and have withdrawals divided among the permits.

(b) *Limitations on withdrawals.* A user holding a permit on Form 1485 (5150.12) may, during any month and as to each formula specified, withdraw not more than twice the number of gallons specified under paragraph (a)(2) of this section, or 55 gallons (one drum), whichever is larger. Regarding any one formula, the total quantity withdrawn annually may not exceed the number of gallons specified under paragraph (a)(2) of this section for 1 month multiplied by 12 in a calendar year. Withdrawals are futher subject to the following limitations:

(1) A user holding a withdrawal permit on Form 1485 (5150.12) authorizing withdrawals of not more than 120 gallons during a 12-month period, without bond, may not withdraw at one time a quantity which would result in there being more than 12 gallons on hand, in transit, and unaccounted for.

(2) A user (other than a State or political subdivision thereof, or the District of Columbia) holding a withdrawal permit on Form 4327 (5150.11) may not withdraw at one time a quantity which would result in there being more than 7 gallons on hand, in transit, and unaccounted for.

(3) A user who has filed bond, and a State, political subdivision thereof, or the District of Columbia, may not withdraw at one time a quantity which would result in there being on hand, in transit, and unaccounted for a quantity exceeding that stated in the application for permit under § 211.43 and § 211.43a, as applicable.

(c) *Exceptions to limitations.* (1) A user whose business is seasonal in nature, or who has other valid reasons, may request in the application for a withdrawal permit, a larger withdrawal of one or more formulas during a specific calendar month or months. The user may also request that the larger withdrawals be allowed on the basis of an aggregate quantity of two or more formulas combined; if so, the user's request shall be specific as to the amounts desired and the formulas involved.

(2) The user shall furnish sufficient information with the application to enable the regional regulatory administrator to evaluate the request for larger withdrawals.

(3) The limitations in paragraph (b) of this section on total withdrawals during the calendar year and on the quantity which may be on hand, in transit, and unaccounted for at any one time, apply to users granted larger withdrawals under this paragraph.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

Par. 7. Section 211.162 is revised to read as follows:

§ 211.162 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 211.161 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1485 (5150.12) and forward the original to the permittee. If the application submitted in accordance with § 211.42a is approved, the regional regulatory administrator shall issue the limited withdrawal permit on Form 4327 (5150.11) and forward the original to the permittee. Withdrawal permits on Forms 1485 (5150.12) and 4327 (5150.11) shall have the same duration as industrial use permits in accordance with § 211.46.

§ 211.163 [Removed]

Par. 8. Section 211.163 is removed.

§ 211.166 [Amended]

Par. 9. Section 211.166 is amended by revising the last sentence to read as follows: "When space for making entries on withdrawal permit forms is no longer

available, separate sheets, as needed, shall be attached to and made part of the form, and entries covering each shipment shall be made on them in the same manner as on the form."

PART 213—DISTRIBUTION AND USE OF TAX FREE ALCOHOL

Par. 10. The table of sections for Part 213 is amended to reflect (a) the amended heading of § 213.109, and (b) the removal of § 213.111. As amended, the table of sections reads as follows:

Sec.

* * * * *

213.109 Application for withdrawal permit and limitations on withdrawals.

* * * * *

213.111 [Reserved]

* * * * *

§ 213.22 [Amended]

Par. 11. Section 213.22 is amended by deleting the words "or renewal" from the undesignated paragraph which follows paragraph (a)(3).

Par. 12. Section 213.109 is revised to read as follows:

§ 213.109 Application for withdrawal permit and limitations on withdrawals.

(a) *Application.* A user who desires to obtain tax-free alcohol shall, unless application is filed on Form 4326 (5150.21) as provided in § 213.41a, file an application on Form 1450 (5150.13) with the regional regulatory administrator. The user shall specify in the application the estimated average quantity, in proof gallons of tax-free alcohol that will be required in 1 month. The applicant shall specify the quantity in accordance with business needs. A user may file applications for more than one withdrawal permit and have withdrawals divided among the permits.

(b) *Limitations on withdrawals.* A user holding a permit on Form 1450 (5150.13) may, during any month, withdraw not more than twice the number of proof gallons specified under paragraph (a) of this section, or 55 wine gallons (one drum), whichever is larger. The total quantity withdrawn annually may not exceed the number of proof gallons specified under paragraph (a) of this section for 1 month multiplied by 12 in a calendar year. Withdrawals are further subject to the following limitations:

(1) A user holding a withdrawal permit on Form 1450 (5150.13) authorizing withdrawals of not more than 240 proof gallons during a 12-month period, without bond, may not withdraw at one time a quantity which would result in there being more than 24 proof gallons on hand, in transit, and unaccounted for.

(2) A user (other than a State or political subdivision thereof, or the District of Columbia) holding a withdrawal permit on Form 4327 (5150.21) may not withdraw at one time a quantity which would result in there being more than 14 proof gallons on hand, in transit, and unaccounted for.

(3) A user who has filed bond, and a State, political subdivision thereof, or the District of Columbia, may not withdraw at one time a quantity which would result in there being on hand, in transit, and unaccounted for a quantity exceeding that stated in the application for permit under § 213.41 and § 213.41a, as applicable.

(c) *Exceptions to limitations.* (1) A user whose business is seasonal in nature, or who has other valid reasons, may request in the application for a withdrawal permit, a larger withdrawal during a specific calendar month or months; if so, the user's request shall be specific as to the amount desired.

(2) The user shall furnish sufficient information with the application to enable the regional regulatory administrator to evaluate the request for larger withdrawals.

(3) The limitations in paragraph (b) of this section on total withdrawals during the calendar year and on the quantity which may be on hand, in transit, and unaccounted for at any one time, apply to users granted larger withdrawals under this paragraph.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

Par. 13. Section 213.110 is revised to read as follows:

§ 213.110 Issuance and duration of withdrawal permits.

If the application submitted in accordance with § 213.109 is approved, the regional regulatory administrator shall issue the withdrawal permit on Form 1450 (5150.13) and forward the original to the permittee. If the application submitted in accordance with § 213.41a is approved, the regional regulatory administrator shall issue the limited withdrawal permit on Form 4327 (5150.21) and forward the original to the permittee. Withdrawal permits on Forms 1450 (5150.13) and 4327 (5150.21) shall have the same duration as industrial use permits in accordance with § 213.45.

§ 213.111 [Removed]

Par. 14. Section 213.111 is removed.

§ 213.114 [Amended]

Par. 15. Section 213.114 is amended by revising the last sentence to read as follows: "When space for making entries on withdrawal permit forms is no longer available, separate sheets, as needed, shall be attached to and made part of the form, and entries covering each shipment shall be made on them in the same manner as on the form."

§ 213.173 [Amended]

Par. 15. Section 213.173 is amended by deleting the words ", together with his renewal application, Form 1450, if any," from the last sentence.

Signed: May 5, 1982.

W. T. Drake,

Acting Director.

Approved: May 13, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82–14210 Filed 5–21–82; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 211, 221, 231, 250, and 270

Assessment of Late Payment or Underpayment Charges for Payments Received After Date Due or Underpaid on Federal Onshore, Offshore, and Indian Minerals Royalties

AGENCY: Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: These final rules amend the regulations regarding charges for late payments on Federal and Indian minerals royalties. These rules incorporate appropriate suggestions received as comments on the interim and proposed rules. The calculation method used in computing late payment charges has been clarified. The method will apply uniformly to all onshore and offshore Federal lands minerals leases and to Indian lands minerals leases (except Osage Indian Reservation) unless proscribed by other contractual or regulatory provisions. Late payment or underpayment charges will be assessed for the actual number of delinquent days, using the Treasury Department's "Current Value of Funds Rate" for the calculation of charges. The effect of this action is to establish late payment charges consistent with the Government's overall cash management policy.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty

Management, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091, (703) 860-7311, (FTS) 928-7311.

SUPPLEMENTARY INFORMATION:

Background

Minerals Management Service (MMS), formerly the Conservation Division of the U.S. Geological Survey (USGS), is now publishing final rules. On December 23, 1980, the USGS had previously published interim late payment regulations applicable to the mineral resource payments from leases or contracts for Federal lands and Indian lands (45 FR 84762 et seq.). An identical rule was proposed for the Outer Continental Shelf (OCS) lands to make the rule for offshore operations consistent with the final rules for onshore operations (45 FR 84824).

Effective for onshore minerals in 1981, the current rules established late payment charges that are computed on the basis of the amount past due for each 30-day period or portion thereof that the payment was late. The phrase "or portion thereof" has resulted in many lessees/operators/payors interpreting the regulations to mean the actual number of days between the date due and the date that the payment was received at USGS. However, the USGS and MMS have interpreted the language "30-day period or portion thereof" to mean that the full charge will also be applicable to periods of less than 30 days.

The confusion that has resulted from contrary interpretations of the rule has resulted in an accumulation of numerous improperly computed late payment charges, and in protests of amounts billed. The resulting disorder places an undue burden on the payors and on MMS who are both concerned with accurate determination of charges due.

Numerous comments were received by USGS from lessees/operators/payors nationwide recommending that late payment charges be computed for the actual number of days that payments are delinquent. Additional commenters questioned exactly when payments must be received in order to avoid late payment charges. After reviewing those comments and other considerations, MMS has determined that a burden can be lifted from both MMS and payors by clarifying the regulations applicable to the assessment of late payment charges.

The final rules require that charges for late payments or underpayments be calculated from (but not including) the date due until and on the day on which the payment is received in the appropriate accounting office. Payments received after 4 p.m. local time will be acknowledged as received on the following workday. When the date due for payment occurs on a non-workday, the payment will be considered timely if it is appropriately received during business hours until 4 p.m. local time on the next workday after the date due.

It is the responsibility of each payor to submit all payments with sufficient lead time for it to arrive timely in the appropriate accounting office regardless of the method used to deliver the payment. Unusual circumstances may occasionally cause the delay of the arrival of a payment by the date due even though ample time has been allowed for normal delivery. In these cases, MMS will consider the waiver of the late payment charge after reviewing the evidence of intended delivery as presented by the payor.

The payor will be required to submit independent documentary evidence to MMS that shows the payment was sent sufficiently in advance of the date due to be delivered timely. These would include (1) The lead time allowed for delivery; (2) the mode of delivery used; and (3) all other pertinent factors. Examples of acceptable evidence that might satisfy these requirements are: a dated U.S. Postal Service receipt for Express Mail, Registered Mail, or Certified Mail; a dated receipt from a commercial delivery service; or a dated receipt from a financial institution for an electronic funds transfer (EFT).

MMS may waive a late payment charge if in its judgment the evidence submitted by the payor justifies a waiver. MMS does *not* examine and *will not* consider the "postmark" on any mail.

(Note.—Mail for the Accounting Center at Denver, Colorado, is picked up from the U.S. Post Office at 6:30 a.m. each workday for delivery to the Accounting Center. Mail received at the Post Office too late to be included in the 6:30 a.m. pickup will be received by MMS on the next workday.)

In accordance with the terms of leases, contracts, and/or regulations, the failure to pay minerals royalties timely constitutes a default that could subject such leases or contracts to cancellation. The late payment charge as established herein is a lesser remedy in lieu of cancellation. The action is also consistent with the Government's overall cash management policy and is based on the authority of the Secretary of the Interior to promulgate rules needed to administer and manage the minerals resources of Federal and Indian lands.

Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease or contract provision prescribing a different rate, that percentage assessment rate is calculated by the Department of the Treasury as an average of the "Current Value of Funds to Treasury." This quarterly rate is published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value." For example, the applicable rate of 14.39% for the first quarter of 1982 (January 1-March 31) was published as a Notice on December 16, 1981 (46 FR 61383).

Whenever any amounts are past due for periods of time that overlap calendar quarters, it is necessary to calculate the late payment charges by using the quarterly interest rates that existed during the several periods within the whole late period. For example, the rate was 18.35% for the calendar quarter ending December 31, 1981, and 14.39% for the calendar quarter ending March 31, 1982. Assuming a royalty payment due on November 30, 1981, and received by 4 p.m. local time on January 11, 1982, MMS would have recorded that overdue payment as received 42 days late. Thus, calculated by the procedure herein established, the delinquent payor would be assessed late payment charges for 31 days at the rate of 18.35% per annum, and for 11 days at the rate of 14.39% per annum.

From their effective date, these regulations apply to all late payments and to most underpayments, but exceptions to this policy may be granted to payors who have set up an advance payment plan with MMS under recently developed MMS procedures. However, if any late payment charge is not received by the date due, additional late payment charges will be assessed.

Discussion of Comments

We received comments from 13 groups or individuals during the comment period for the interim, proposed rule. They included representatives of the Indian tribes, the oil and gas industry, the mining industry, and offices within the Department, as well as the public.

Several commenters suggested that adoption of a "grace period" during which late payment charges would not be assessed. These commenters felt that such a period was needed to allow for circumstances beyond the control of the payor. However, the language in the leases, contracts, and regulations is

specific on the date due. We do not agree that an automatic grace period is allowable. MMS may consider relief on a case-by-case basis because of unusual delays.

Several commenters suggested using the postmark as the date of receipt rather than the date on which payments are received by the appropriate accounting office. Some commenters stated that postmarked mail is accepted for dating the receipt of payments at other governmental agencies, such as the Internal Revenue Service. The establishment of dates due for other governmental agencies are administrative determinations by those agencies. Moreover, in keeping with the Government's overall cash management policy MMS must receive payments on or before the dates due. Therefore, MMS will not consider the postmark date as proof of timely payment.

Some commenters alleged that the current payment schedule does not allow sufficient time for gathering complex production and sales data needed to compute and remit royalty payments by the date due. They suggested that payments be scheduled to fall due at least 60 days after the end of the production month in order to avoid the assessment for unavoidable late payment charges. MMS has already addressed that issue and is considering development of a voluntary 2-month reporting and paying procedure, which is being separately proposed in a notice in the **Federal Register.**

Some commenters requested that the term "underpayment" be defined further and especially that the language in the preamble be clarified regarding "most underpayments" when referring to the assessment of late payment charges. An underpayment is any payment that is received when due but does not fully satisfy or cover the amount due. "Most underpayments" refers to those estimated payments on natural gas production that are made timely and in accordance with instructions provided by MMS to a payor but are not sufficient to cover the royalties actually due.

As was mentioned previously, many commenters recommended that the late payment charges be computed for the actual number of days that payments are delinquent. MMS is adopting that recommendation.

A few commenters suggested exempting from late payment charges those underpayments resulting from retroactive price changes by the Federal Energy Regulatory Commission or any other Federal agency. MMS agrees that a late payment charge should not be assessed retroactively. However, late payment charges will be assessed on underpayments due to retroactive price changes if adjusted payments are not received by the last day of the month after the month in which the price changes are made public and published.

A few commenters suggested extending the date due for initial payment of first production from 60 days as provided by NTL–1 and NTL–1A to 90 days. The commenters stated that although the Federal Government's share of production may be known, additional time is needed because other overriding royalties or other interests must frequently be accommodated. We do not agree that it is necessary to withhold the Federal Government's or Indians' share pending resolution of other royalty interests. We are not adopting this recommendation.

In the preamble to the interim rulemaking we stated that "* * * in the final rulemaking, consideration also will be given to revising the methodology required by 30 CFR 250.49 (rental and royalty payments, Outer Continental Shelf Lands) with respect to late payment charges so that such methodology will be consistent with that which is established with onshore minerals * * *" The current rulemaking does. It provides for the assessment of late payment charges in the same manner for both onshore and offshore operations.

Some commenters stated that interest ought to be paid by the Government to payors for overpayments at the same rate that interest is charged to delinquent payors by the Government. MMS does not agree. It is a general rule of law that in the absence of a contract or a statute to the contrary, interest cannot be paid on amounts owed by the Government.

There were numerous comments regarding various applications of late payment charges for late payments and underpayments of Indian minerals royalties. Many commenters stated that the rate established by interim regulation was too low and does not adequately reflect the current value of funds to the Indians. These commenters felt that Indian minerals owners are entitled to fair return on the use of their money and should receive at least the prime rate or the highest rate paid by most creditworthy corporate borrowers plus two points. Other commenters suggested that the "interest" to be charged for late payment of royalties for Indian minerals should be based either on the prime rate current at the time of the late payment or on the highest Certificate of Deposit rate current and being received by the Bureau of Indian Affairs for tribal investments. MMS is aware that the Department's trust responsibility to the Indians must assure that they receive a fair return on the sale of their minerals as well as a fair return on the use of their monies when payments are not made timely. MMS agrees that the Indians have a right to establish the rate to be used for assessing late payment charges on late payments or underpayments of their royalties. MMS has tentatively agreed to publish a rate separately established for the Indians in subsequent revisions to these regulations. However, until then MMS will continue to apply the rate prescribed in these regulations, except where other rates are specifically prescribed by lease or contract.

Several commenters requested that the regulatory language in 30 CFR Parts 211, 221, and 231 specify that late or underpayment charges collected by MMS be paid to the Indians. They requested that late payment charges assessed with respect to any Indian lease, permit, or contract shall be paid to the Indian or tribe to which the amount overdue is owed. We agree and have included such a provision in these rules.

Some commenters suggested that a penalty plus interest should be imposed for late payments and underpayments of Indian royalties. As we stated earlier, MMS plans to propose regulations that address such issues.

Some commenters opposed the suggestion that a future rulemaking be considered that would allow for recoupment of administrative costs incurred for securing compliance from delinquent payors. We assert however that the failure to report and pay timely, completely, and accurately results in considerable extra cost to the Government. Although we are not adopting such a recoupment rule at this time, we may in the future propose such a rule.

Some commenters suggested that the date due for annual minimum royalty payments needs to be defined. We agree and propose to develop separately a rule that will specify exactly when the minimum royalty must be paid after the expiration of the lease year.

Some commenters suggested that when a dispute arises between a payor and the Minerals Management Service regarding royalties, no late payment charge should be imposed until the dispute has been finally resolved. MMS does not agree because postponement of collection of a late payment charge would deprive the Government or Indians of the use of the monies due during the duration of the dispute. Moreover, such procedure would not be

in accordance with Federal cash management policy.

A few commenters suggested charging a fee equal to the original payment for all underpayments or late payments and/or cancellation for breach of contract if such violations continued. MMS does not agree. We believe that this regulation is an adequate deterrent and provides a lesser remedy than would cancellation.

Author: Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091 (703) 860–7311.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because during 1981 the Department collected less than $1 million in late or underpayment charges. This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Parts 211, 221, 231, 250, 270

Mineral royalties, Reporting requirements.

Under the authority of The Mineral Leasing Act, the Act of February 25, 1920, (30 U.S.C. 181 et seq.); the Acquired Lands Leasing Act of August 7, 1947, (30 U.S.C. 351 et seq.); the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); the Outer Continental Shelf Lands Act, (43 U.S.C. 1801 et seq.); the Allotted Lands Leasing Act of 1909, (25 U.S.C. 396); and the Tribal Lands Act of 1938, (25 U.S.C. 396a); and (25 U.S.C. 396a); and E.O. 12291 (46 FR 13193) Title 30 CFR Chapter II is amended as set forth below:

Dated: May 4, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary of the Interior.

PART 211—COAL MINING OPERATING REGULATIONS

Section 211.67 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 211.67 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that a lessee/operator/payor is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

PART 221—OIL AND GAS OPERATING REGULATIONS

Section 221.60 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 221.60 Late or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/permittee/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

PART 231—OPERATING REGULATIONS FOR EXPLORATION, DEVELOPMENT, AND PRODUCTION

Section 231.60 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 231.80 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the overdue amount is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include rentals; production, minimum, or advance royalties; assessments for liquidated damages; administrative fees and payments by purchaser of royalty taken-in-kind or any other payments, fees, or assessments that a lessee/operator/permittee/payor/or purchaser of royalty taken-in-kind is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Section 250.49 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 250.49 Royalties, net profit shares, and rental payments.

(a) As specified under the provisions of the lease, the lessee shall pay all rental when due, and shall pay in value or deliver in production all royalties and net profit shares in the amounts of value or production determined by the Director to be due. Payments of rental, royalties, and net profit shares in value shall be by electronic transfer of funds or by check or draft on a solvent bank or by money order drawn to the order of the Minerals Management Service (MMS).

(b) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor.

(c) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(d) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(e) This rate is available in Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(f) Late payment charges apply to all underpayments and payments received after the date due. These charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/permittee/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

PART 270—GEOTHERMAL RESOURCES OPERATIONS ON PUBLIC, ACQUIRED, AND WITHDRAWN LANDS

Section 270.81 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 270.81 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with the instructions provided by the MMS to the payor.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absense of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the **Federal Register** and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges

include production, minimum, and compensatory royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

[FR Doc 82-14227 Filed 5-24-82; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 373

[DoD Directive 5148.10][1]

Assistant to the Secretary of Defense (Review and Oversight)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant to the Secretary of Defense (Review and Oversight) (ATSD (R&O)), and has delegated specific authorities. This rule (DoD Directive 5148.10) serves as the instrument that authorizes the ATSD(R&O), to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on April 20, 1981, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Secretary of Defense (Administration), The Pentagon, Washington, D.C. 20301, Telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 373

Organization and functions (government agencies), Investigations.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 373, reading as follows:

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120 Attention: Code 301.

PART 373—ASSISTANT TO THE SECRETARY OF DEFENSE (REVIEW AND OVERSIGHT)

Sec.
373.1 Purpose.
373.2 Definitions.
373.3 Responsibilities.
373.4 Relationships.
373.5 Authorities.

Authority: 10 U.S.C., Chapter 4.

§ 373.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, the position of Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)), is hereby established with the responsibilities, functions, and authorities prescribed herein.

§ 373.2 Definitions.

The term "DoD Components" refers to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

§ 373.3 Responsibilities.

The ATSD(R&O) shall serve as the principal advisor and assistant to the Secretary of Defense for matters related to the combatting of fraud, waste, and abuse in DoD programs and operations. In carrying out these responsibilities, the ATSD(R&O) shall:

(a) Develop policy, monitor and evaluate program performance, and provide guidance to DoD Components on matters regarding criminal investigation programs.

(b) Monitor and evaluate the adherence of DoD Components to internal audit, contract audit, and internal review principles, policies, and procedures. Identify instances of non-compliance and recommend appropriate corrective actions to the Secretary of Defense or the responsible DoD Component Head.

(c) Develop policy, evaluate program performance, and monitor follow-up actions taken by DoD Components in response to GAO audit, internal audit, contract audit, and internal review reports. Identify those cases in which audit recommendations capable of significantly improving the economy, efficiency, and effectiveness of DoD programs and operations have been ignored or circumvented. Recommend corrective action to the Secretary of Defense or the responsible DoD Component Head.

(d) Advise the Secretary of Defense of any incidents of fraud, waste, or abuse in DoD programs and operations which require the Secretary's personal attention.

(e) Exercise direction, authority and control over the Defense Audit Service (DoD Directive 5105.48).[1]

(f) Perform such other duties as the Secretary of Defense may prescribe.

§ 373.4 Relationships.

(a) In the performance of assigned duties, the ATSD(R&O) shall:

(1) Coordinate actions with the ASD (Comptroller), DoD General Counsel, and other DoD organizations having collateral or related functions.

(2) Maintain liaison with DoD Components and other governmental and nongovernmental agencies for the exchange of information and advice on programs in the field of assigned responsibilities and functions.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the ATSD(R&O) on all matters relating to the functions and responsibilities cited in § 373.3.

§ 373.5 Authorities.

The ATSD(R&O) is hereby delegated authority to:

(a) Issue instructions and one-time, directive-type memoranda which carry out policies approved by the Secretary of Defense in the field of assigned responsibilities and functions. Instructions to the Military Departments will be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19,[1] "Policies for the Management and Control of Information Requirements," March 12, 1976, as deemed necessary.

(c) Communicate directly with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and the Directors of Defense Agencies. Communications with the Commanders of the Unified and Specified Commands shall be

coordinated with the Joint Chiefs of Staff.

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.
May 20, 1982.

[FR Doc. 82-14218 Filed 5-24-82; 8:45 am]
BILLING CODE 3810-01-M

32 CFR Part 374

[DoD Directive 5105.50] [1]

Defense Criminal Investigative Service

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: Under the authority of Part 373 of this title, the Defense Criminal Investigative Service (DCIS) is established to investigate criminal or fraudulent activities involving DoD Components or DoD contractors. This rule (DoD Directive 5105.50) serves as the instrument that authorizes the Director, DCIS, to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on April 28, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT:
Mr. William G. Dupree, Deputy Director, DCIS, Cameron Station, Alexandria, Virginia, 22314, Telephone 202-274-5360.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 374

Organization and functions (government agencies), Investigations

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 374, reading as follows:

PART 374—DEFENSE CRIMINAL INVESTIGATIVE SERVICE

Sec.
374.1 Purpose.
374.2 Applicability.
374.3 Definitions.
374.4 Policy.
374.5 Responsibilities.
374.6 Organization and Management.
374.7 Relationships.
374.8 Procedures.
374.9 Authority.
374.10 Delegations of Authority.

Authority: 10 U.S.C., Chapter 4.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

§ 374.1 Purpose.

Under the authority of Part 373 of this title, this part establishes the Defense Criminal Investigative Service (DCIS), assigns responsibilities, and defines functions and organization of the DCIS.

§ 374.2 Applicability.

The provisions of the part apply to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 374.3 Definitions.

(a) *DoD Contractor.* An individual, corporation, or other commercial or nonprofit entity, their employees or agents, who contract or negotiate with a DoD Component to supply goods or services.

(b) *Investigations.* Investigations of suspected criminal activities and other actions intended to detect violations of major federal criminal statutes including felonies punishable under the UCMJ, U.S.C. 10, Chapter 47; and violations of DoD Directives System issuances (DoD directives, instructions, regulations, and other policy and regulatory issuances) by civilian or military personnel assigned to the Office of the Secretary of Defense, Unified and Specified Commands, the Organization of the Joint Chiefs of Staff, and the Defense Agencies; and those individuals or contractors who are suspected of committing criminal violations against DoD personnel or property.

§ 374.4 Policy.

(a) The DCIS is established as a worldwide civilian federal law enforcement activity to investigate criminal fraudulent activities involving DoD Components or DoD contractors within the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and in other nations.

(b) To avoid duplication of efforts, DCIS will refer to the respective Military Departments' investigative jurisdiction matters involving the personnel, property, facilities, or contracts both awarded and administered by a single Military Department, unless otherwise directed by the Secretary of Defense or the Assistant to the Secretary of Defense (Review and Oversight).

§ 374.5 Responsibilities.

(a) The Assistant to the Secretary of Defense (Review and Oversight) (ATSD(R&O)) shall:

(1) Authorize the Director, DCIS, to investigate allegations of criminal activities and other suspected violations by civilian or military personnel assigned to DoD Components and conduct other investigations into suspected criminal violations against DoD personnel or property.

(2) Conduct timely investigations pertaining to matters of interest to the Secretary of Defense.

(b) The Director, Defense Criminal Investigative Service, shall:

(1) Conduct criminal investigations involving criminal activity or violations of major federal criminal offenses or major violations of the UCMJ, U.S.C. 10, Chapter 47 within the Office of the Secretary of Defense, the Organization of Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

(2) Conduct criminal investigations of those individuals or contractors suspected of committing criminal violations against DoD personnel or property.

(3) Conduct criminal investigations involving the personnel, property, or facilities of a Military Department involving multiservice awarded or administered contracts.

(4) Conduct joint investigations of criminal matters with other military or civilian investigative agencies.

(5) Refer any criminal matter principally involving a single Military Department to its investigative organization unless otherwise directed by the Secretary of Defense or the ATSD(R&O).

(6) Refer to the appropriate civilian and military investigative or intelligence agency information pertaining to intelligence or counterintelligence matters.

(7) Organize, direct, and manage the DCIS to include the selection of all personnel for appointment to DCIS.

(8) Conduct fraud and crime prevention surveys within his areas of responsibility, and as directed, for the purpose of detecting criminal activity, identifying, minimizing, or eliminating systemic weaknesses conducive to criminal activity.

(9) Provide, as necessary, programing and workload projections to the Military Departments.

(10) Perform other duties and conduct other investigations, operations, protective services, or projects as directed by the Secretary of Defense, the ATSD(R&O), or their designees.

(c) The Secretaries of the Military Departments, of designees, shall ensure that their military investigative organizations will be responsive to DCIS lead requests in geographic areas where DCIS lacks resources.

(d) Heads of DoD Components shall provide to the Director, DCIS, access to information the DCIS requires to carry out its responsibilities, and shall provide the DCIS final disposition or actions taken based upon DCIS investigations.

§ 374.6 Organization and Management.

(a) The DCIS is a separately organized activity of the Department of Defense under the direction, authority, and control of the ATSD(R&O).

(b) The DCIS is assigned to the Defense Audit Service for administrative purposes; but the Director, DCIS, shall report directly to the ATSD(R&O).

(c) The DCIS shall be headed by a civilian director, who shall also hold the position of Deputy Assistant to the Secretary of Defense (Criminal Investigations), and who shall be selected by the ATSD(R&O).

(d) The DCIS shall be authorized such personnel, facilities, funds, and other resources as determined by the Secretary of Defense and the ATSD(R&O).

(e) The Director, DCIS, shall establish, within assigned resources, subordinate organizational elements within the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and other nations.

(f) The Director, DCIS, has authority to enter into Memoranda of Understanding with appropriate DoD Components arranging investigative support in those geographical or functional areas where DCIS does not have resources available.

(g) Administrative support for the DCIS will be provided by other DoD Components in accordance with DoD interservice support agreements.

§ 374.7 Relationships.

(a) In the performance of assigned responsibilities, the Director, DCIS, shall:

(1) Maintain liaison and coordinate with DoD Components and other federal, state, and local agencies.

(b) Heads of DoD Components, except Military Departments, shall refer immediately to the DCIS all incidents of actual, suspected, or alleged criminal offenses for investigative action or for referral to the Military Department concerned, civilian investigative agency, or the Federal Bureau of Investigation (FBI).

§ 374.8 Procedures.

(a) DCIS criminal investigators, in carrying out investigations and related activities, shall be issued standardized credentials and badges designating them as "special agents." Personnel who are issued DCIS special agent credentials are cleared for access up to and including top secret and are presumed to have a need to know with regard to access to information, material, or spaces relevant to the performance of their official duties.

(b) Access to special intelligence and compartmented or similarly controlled materials, spaces, or information shall be subject to clearance by the controlling authority before the special agent pursues a matter of official concern.

(c) DCIS special agent credentials are to be given full recognition when presented upon entering or leaving DoD installations.

(d) DCIS personnel and vehicles used by them in the course of official business, and all occupants therein shall be exempt from routine search.

§ 374.9 Authority.

(a) The Director, DCIS, shall have authority for selection of personnel for appointment to the DCIS.

(b) The Director, DCIS, is specially delegated authority to:

(1) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directives 5000.19,[1] "Policies for the Managment and Control of Information Requirements," March 12, 1976 and DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964, that may be necessary for the performance of assigned mission, functions, and responsibilities.

(2) Communicate directly with appropirate personnel of other DoD Components and other government agencies on matters related to the mission and programs of the DCIS.

(3) Exercise the administrative authorities set forth in § 374.10.

§ 374.10 Delegations of authority.

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DOD policies, directives, and instructions, the Director, DCIS, or his designee, is hereby delegated authority, as required in the administration and operation of DCIS, to:

(a) In accordance with the provisions of 5 U.S.C. Section 7532; E.O. 10450, and 32 CFR 156.

(1) Designate Positions as "sensitive;"

(2) Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not terminate the service, of an employee in the interest of national security.

(b) Authorize and approve overtime work for civilian officers and employees in accordance with the provisions of 5 U.S.C. Subchapter V, Chapter 55 and applicable regulations.

(c) Authorize and approve travel for DCIS personnel in accordance with Joint Travel Regulations, Volume 2. Authorize and approve temporary duty travel only for military personnel assigned or detailed to DCIS in accordance with Joint Travel Regulations, Volume 1.

(d) Develop, establish, and maintain an active and continuing records management program, consistent with DOD Directive 5015.21, "Records Management Program," September 17, 1980.

(e) Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals, consistent with 44 U.S.C. 3702.

(f) Establish and maintain, for the functions assigned, an appropriate publications system for the issuance of regulations, instructions reference documents, and changes thereto, consistent with the policies and procedures prescribed in DOD Directive 5025.11, "Department of Defense Directives System," October 16, 1980, and DOD 5025.1–M, "DOD Directives System Procedures," April 1981.

(g) Authorize DCIS personnel to carry firearms in accordance with DOD Directive 5210.66,[1] "Carrying of Firearms by Department of Defense Personnel," May 31, 1979.

May 20, 1982.

M. S. Healy,

OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 82-14215 Filed 5-24-82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL 2121-4]

Approval and Promulgation of Implementation Plans; Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rulemaking (FRM).

[1] See footnote on page 1.

SUMMARY: Today EPA approves revised State air pollution control regulations as official parts of the Iowa State Implementation Plan. Approval means that the regulations will be enforceable against individual sources of air pollution by the federal government as well as by the state government.

The revisions include new continuous monitoring requirements for certain sources, more restrictive particulate emission limits for certain sources, and revised limits for metal finishing operations.

DATES: Effective date: July 26, 1982. This action will be effective 60 days from today unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The state submission is available at the above address and at the Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319; the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460; and the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, 816 374–3791.

SUPPLEMENTARY INFORMATION: On June 20, 1977, the Iowa Department of Environmental Quality (DEQ) submitted proposed revisions to the Iowa SIP. These revisions were not acted on at the time because of their minor nature and the press of higher priority work. They are approved today as part of the agency effort to reduce the backlog of pending actions. The specific changes submitted by the state are described below.

In State Rule 400—4.3(2)b, "Combustion for Indirect Heating," paragraph (3) is revised to provide an emission limit of .2 pounds of particulate matter-per-million-British Thermal Units (10^6 BTU) of heat input for new sources of 150 to 250 × 10. BTU per-hour-heat input. New sources of less than 150 × 10^6 BTUs per hour remain limited to .6 lb. per 10 ^{6} BTU. These limits are based on Iowa's compliance testing method which catches approximately twice as much particulate as the standard EPA test method. Therefore, Iowa particulate limits are approximately equivalent to limits allowing emissions of only half as much. The Iowa definition of "new" refers to any equipment not under construction or for which components had not been purchased on or before September 23, 1970.

A new Rule 400—4.4(6), "Sand Handling and Surface Finishing Operations in Metal Processing" has been adopted. It places a limit of .05 grains of particulate matter-per-standard-cubic foot of exhaust gas on new equipment designed for sand shakeout, milling, molding, cleaning, preparation, reclamation, rejuvenation, abrasive cleaning, shot blasting, grinding, cutting, sawing, or buffing. It applies to new foundry and metal processing operations. For purposes of this rule only, "new" refers to equipment bought and installed after August 1, 1977.

Subrule 4.4(12), "Incinerators," is revised by deleting the reference to objectionable odors.

Chapter 7, "Measurement of Emissions," is completely revised. The State now requires the continuous monitoring of opacity from coal-fired steam generators and of sulfur dioxide from sulfuric acid plants. These are among the requirements of 40 CFR 51.19 as promulgated October 6, 1975 (40 FR 46247). The state has certified that there are no existing sources in Iowa in the other categories which are required to monitor by 40 CFR 51.19.

Chapter 7 also requires record keeping and reporting of continuous monitoring results. It specifies acceptable test procedures as those in the State's "Compliance Sampling Manual." Exemptions are provided for sources whose 1974 capacity factor was less than 30 percent, sources to be retired within 5 years and sources subject to New Source Performance Standards (NSPS). The last, of course, are subject to the monitoring requirements of the NSPS.

Sources which already have continuous monitors, but which do not meet the performance specifications for such monitors, have a 5-year exemption from installing equipment meeting specifications. The Executive Director of the DEQ may provide temporary exemptions for monitoring system breakdowns.

The State has also revised Rule 3.1 "Permits," to require permits for anaerobic lagoons and added new Rule 4.5, "Odorous Substances," and subrule 14.3(3), "Odor Complaints and Violations." Rule 1.2, "Definitions," is amended by adding definitions of anaerobic lagoon, odor, odorous substance, and odorous substance source. The definition of objectionable odor is deleted and the subrules renumbered so that the definitions appear in alphabetical order. These revisions deal with the control of odor for which EPA has not adopted standards and does not require control. These revisions are unavoidably included with the SIP revisions but are not submitted by the state as part of the State plan and EPA does not take any action on them.

With the exception of the odor rules, the above rule changes constitute revisions to the Iowa SIP. The decision to approve these revisions was based on the determination that they meet the requirements of Section 110(a)(A) through (H) of the Clean Air Act and 40 CFR Part 51, "Requirements for Preparation, Adoption and Submittal of State Implementation Plans."

EPA is approving this change without prior notice and public comment because it is only approving provisions which are noncontroversial. The public is advised that this action will be effective 60 days from the date of the Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirement of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52: Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

This notice of final rulemaking is issued under the authority of Sections 110, and 301 of the Clean Air Act as amended (42 U.S.C. 7410 and 7601).

Dated: May 19, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by Reference of the State Implementation Plan for the State of Iowa was approved by the Director of the *Federal Register* on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart Q—Iowa

1. Section 52.820 is amended by adding a new paragraph (c)(26a) following paragraph (c)(26) as follows:

§ 52.820 Identification of Plan.

* * * * *

(c) * * *

(26a) Revisions of Rules 1.2, 4.3(2)b, 4.4(6), 4.4(12) and of Chapter 7 of the Iowa Administrative Code relating to Air Pollution Control were submitted June 20, 1977, by the Department of Environmental Quality.

* * * * *

[FR Doc. 82-14189 Filed 5-24-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

45 CFR Parts 1050, 1067, and 1068

Close Out of Grants Funded by the Community Services Administration

AGENCY: Office of Community Services, HHS.

ACTION: Final rule.

SUMMARY: The Office of Community Services (OCS) is amending the regulations applicable to grants funded by the Community Services Administration (CSA). Congress abolished CSA effective October 1, 1981, and OCS is responsible for closing out the programmatic activities of CSA. To facilitate the orderly close-out and final audit of CSA grants which do not contain specific termination dates, the rule provides that these grants will expire at the close of each grantee's planned minimum funding period, and that expenses may not be incurred under a CSA grant subsequent to that date. OCS is also amending the regulation to require grantees to submit all audit reports within 60 days following the funding period, thereby expediting the conclusion of the close-out process.

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Meyer, Office of Community Services, Department of Health and Human Services, 1200 19th Street NW., Washington, D.C. 20506; telephone 202-653-8233.

SUPPLEMENTARY INFORMATION:

Legislative Background

Until October 1, 1981, CSA administered community services grant programs authorized under the Economic Opportunity Act of 1964 ("EOA"). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) ("OBRA") repealed most provisions of the EOA, abolished CSA, and created several block grant programs including the new Community Services Block Grant program to be administered by the Secretary of HHS through an Office of Community Services (OCS). Regulations implementing these block grants, which transfer substantial grant-making authority from the Federal Government to the States, were published in the **Federal Register** on October 1, 1981 (46 FR 48587).

In addition to administering the Community Services Block Grant program and certain discretionary community services grants, OCS is responsible for continuing the administration of the otherwise repealed community services programs during the Fiscal Year 1982 transition period in those states which have requested that direct federal funding of such programs be continued. Through a delegation of authority from the Director of the Office of Management and Budget, OCS must also terminate the affairs of CSA, including transferring or otherwise disposing of CSA grants and grant funds as necessary to effectuate the purposes of the block grant program. Pending audits of completed CSA grants must therefore be concluded, and grants with funding periods extending beyond September 30, 1981 must be closed out and audited. In Pub. L. 97-51, Section 133, Congress appropriated funds to be used in Fiscal Year 1982 for the cost of carrying out these close-out functions.

Proposed Amendments

On March 11, 1982 there was published in the **Federal Register** (47 FR 10598) a notice of proposed rulemaking proposing to amend former Community Services Administration (CSA) rules governing continued expenditure of grant funds under "planned minimum number of months" grants and governing the time period allowed for submission of audits. These proposed amendments provided a definite termination date for all grants; they also reduced the annual audit period for grantees from 6 months to 60 days (90 days for public grantees) and the final audit period from 90 days to 60 days (unchanged for public grantees).

Interested parties were given until April 12, 1982 to submit comments. Fifteen comments were received; five addressed the conversion of planned minimum number of months grants to a definite termination date and twelve addressed the shortening of audit submission deadlines.

Although we have carefully evaluated the comments opposing the proposed rules or suggesting changes, we are adopting both rules as proposed, with the exception of one technical amendment to the termination date rule and the addition of provisions defining more clearly the circumstances under which grantees may receive an extension of the deadline for submission of audits.

The technical modification has been made to the provision stating when a planned minimum number of months grant will terminate. The purpose of this change is to make it clear that no such grant will terminate before June 24, 1982, except by exhaustion of the fund balance in the grant. A detailed discussion of the comments on these two proposed rules follows.

Termination Dates

We are revising the regulations, as proposed, to establish a termination date for those CSA grants that do not presently specify a termination date for use of funds but instead indicate a planned minimum number of months for which funding was provided. Under the rule, the end of the planned minimum number of months becomes the termination date.

The most frequent suggestion in the five comments addressing the change was that grantees having planned minimum number of months grants be permitted to continue to expend funds until September 30, 1982, even if the planned minimum number of months expires before that date. Another comment advocated allowing grant expenditures until the end of the grantee's current program year, which would in some cases run well into Fiscal Year 1983. Arguments advanced for such extensions were that they would allow programs to be continued until the Fiscal Year 1983 block grant fundings are known, that they would allow grantees to follow the Federal Fiscal Year, that they would allow grantees to

operate on the basis of a date certain for the termination of their programs, and that grantees have already budgeted expenditures of funds past the new termination dates.

We do not believe that the revised rule unreasonably restricts grantees in carrying out their planned programs. No grant is terminated before its planned minimum number of months, and that is the time in which most of a grantee's funds were expected to be expended. Many grantees affected will have had more than their planned minimum of months already, since many of their grant periods end prior to the date on which this rule goes into effect.

The argument that grantees should be allowed to continue their programs until the Fiscal Year 1983 block grant funds become available, does not demonstrate the need for extension of current grants. Out of fifty-seven eligible states and territories, forty-seven are already administering the block grant; in these forty-seven states and territories, grantees are eligible for Fiscal Year 1982 block grant funds. In the other ten states, OCS is making transition grants which serve the same purposes. Thus the block grant grant program is essentially already in effect, and no purpose would be served by extending previous CSA grants pending developments under that program. On the contrary, the advanced status of the replacement block program supports the desirability of an early conclusion of the repealed CSA program.

The public purpose served by the imposition of an early, fixed termination date is the completion of closeout by September 30, 1982 for as many former CSA grants as possible and the attainment of the greatest possible progress by that date in closeout of those grants which cannot be completely closed out. Even with the shortened audit submission deadline discussed below, complete closeout of grants terminating in accordance with this rule requires perfect compliance with all deadlines on the part of the grantees and OCS. In the event costs are disallowed and an audit disallowance appeal filed, such grants cannot be completely closed out in Fiscal Year 1982, even under optimum conditions. For any grants extended to September 30, closeout cannot even be commenced until Fiscal Year 1983.

As only very limited funds have been budgeted for administration of CSA closeout in Fiscal Year 1983, and none have been appropriated, it is essential for OCS to complete as large a percentage of closeout activities in Fiscal Year 1982 as possible. Where closeout of a grant cannot be completed by September 30, it is the intention of OCS to complete as many stages of the closeout process as possible. For example, some grants may have only an audit disallowance appeal outstanding, other grants may have questioned costs outstanding but their audit in, while still other grants may be in the audit process but have all program activities completed.

The argument, made in one comment, that extending grants to September 30, 1982 would allow coordination with the Federal Fiscal Year and would create a fixed termination date is not persuasive. Most CSA grantees do not follow the Federal Fiscal Year; moreover, the rule does establish a fixed date for the conclusion of each grant.

Two comments requested the adoption of additional standards and procedures for the granting of extensions. As the effect of this rule is to place grantees with a planned minimum number of months grant on the same basis as grantees already having a termination date, existing procedures for requesting a no-cost extension will be used. Requests for such extensions should be addressed to the responsible program official; OCS will deal with them on a case-by-case basis.

One comment was based on a misinterpretation that the termination date will be retroactive. As noted above, the language has been altered to make it unmistakably clear that no new termination date will take effect until June 24, 1982. Furthermore, any extension of a grant period already allowed by CSA or OCS remains in effect and the new termination date in such extended grants will be the last day of the extension.

Audit Submission Deadlines

Most of the comments addressing this issue questioned the feasibility of submitting audits within the 60 day deadline and advocated a longer period, typically 90–120 days instead of 60 as proposed. Many commentators argued that the accounts could not be closed immediately upon the end of grant, so the auditors would in fact have only a few weeks to audit them. Furthermore, it was said that the draft audit has to be submitted to the grantee for corrections and comments before being finalized and transmitted to the Inspector General. The difficulty in getting all the information necessary to close the grantee's accounts was seen as the most substantial obstacle to compliance with a shortened audit submission deadline.

For the reasons discussed above in connection with the termination date rule, there is an essential public purpose in expediting closeout of former CSA grants so that as much of the closeout task as possible can be accomplished in Fiscal Year 1982. The receipt of audits is perhaps the most crucial factor in the pace of closeout. It has been and is the recommendation of the Inspector General that a 60 day audit period is a feasible and desirable way to meet the objective of making audits available in time to meet OCS closeout objectives.

OCS has carefully considered the argument that accounts cannot be closed soon enough to leave sufficient time for the auditor to review them. OCS believes, however, that the auditors can carry out many of the tasks comprising an audit before the grantee's accounts are completely closed. For example, all accounting systems review and most sampling procedures can be carried out before closing the books. Although some grantees may need to adopt unusual approaches or make special efforts, OCS believes that meeting the deadline is entirely feasible.

The alternative of a general 90 day audit deadline would result in the submission of many audits (and in particular those of the grants terminating on June 24, 1982 as a result of the new termination dates discussed above) too late to complete closeout of these grants by September 30.

Some comments also argued that it is unfair to allow public grantees 90 days to submit their audit while non-public grantees receive only 60. This differential was based on the conclusion of the Office of Management and Budget that the ordinary requirement of 90 days in which to submit these reports could be waived for non-public grantees but not for public grantees. Experience has shown that public grantees typically need more time to submit audit reports, than do non-public grantees.

There is a real need for a 60 day audit submission deadline which cannot be met by a general 90 day or longer deadline. As public grantees are only ten percent of all CSA Grantees, the allowance of 90 days for them does not seriously interfere with the attainment of the public purpose of expediting closeout. While aware of the difficulty of meeting this deadline, OCS finds it essential to the timely and expeditious closeout of CSA grant activities. Nevertheless, in light of the particular circumstances that may confront particular grantees, we are revising the regulations to permit an extension of time of up to 30 days when a non-public grantee makes a reasonable showing that, despite special effort, it cannot meet the 60 day deadline. Any longer extension for a private grantee or any extension for a public grantee will

require a showing of extraordinary circumstances.

One comment suggested that, where a grantee has more than one CSA grant, the audit should not be done until the termination of its last grant. We have not adopted this suggestion because it would excessively and unnecessarily delay closeout of those grants that are capable of being concluded at an early date.

Regulatory Impact and Regulatory Flexibility Act

These changes are intended to facilitate the orderly closeout of CSA grant activities in the most efficient and expedient way possible. Executive Order 12291, which requires the preparation of a regulatory impact analysis for regulations that have an annual effect on the national economy of $100 million or more, is not applicable to these amendments. They will have no appreciable effect on the national economy and do not constitute a "major rule" as defined in the Executive Order.

Neither do the provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6) apply to these amendments. That statute requires that for each rule with a "significant economic impact on a substantial number of small entities," an economic analysis must be prepared in an effort to anticipate and reduce the impact of rules and paperwork requirements on small businesses. These regulations will have no significant economic impact upon CSA grantees, but will merely facilitate the orderly close-out and final audit process necessary to carry out the congressionally mandated termination of CSA program acitivities. Accordingly, the Secretary hereby certifies that a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Parts 1050, 1067, 1068

Community action programs, Grant programs—social programs.

For the reasons set out in the preamble, Parts 1050, 1067, and 1068 of Chapter X, Subtitle B, Title 45 of the Code of Federal Regulations are amended as follows:

PART 1050—UNIFORM FEDERAL STANDARDS

1. By revising the authority citation for Part 1050 as follows:

Authority: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); §§ 1050.112 and 1050.113 also issued under sec. 682(e), Pub. L. 97–35, 95 Stat. 519 (42 U.S.C. 9911).

2. By revising paragraph (c) of § 1050.112 to read as follows:

§ 1050.112 Standards.

* * * * *

(c) Within 60 calendar days after the completion of a grant, the grantee shall submit to the Office of Community Services (OCS) all financial, performance, and other reports required as conditions of the grant, except public grantees shall submit such required reports within 90 days of the grant's completion. (See references (7), (8), and (13) for procedures.) All audit reports must be addressed to the Office of the Inspector General, CSA/OCS, Department of Human Services, Room 548, 1200 19th Street, NW., Washington, D.C. 20506. All other required reports must be addressed to the Office of Community Services, Department of Health and Human Services, 1200 19th Street, NW., Washington, D.C. 20506. A grantee may request an extension of this deadline from the appropriate office. An extension of up to 30 days will be granted to a non-public grantee upon a showing of reasonable cause that the grantee, despite special efforts, cannot submit the required reports within 60 days. Further extensions for non-public grantees or any extensions for public grantees will be granted only in extraordinary circumstances.

3. By revising the introductory text of paragraph (b)(1)(i) of § 1050.113 to read as follows:

§ 1050.113 CSA implementing policies and procedures.

* * * * *

(b) * * * (1) *Scope of audit.*

(i) Within 60 days after the date of completion of a CSA grant, the grantee must submit a final audit of grant operations, except that the final audit for public grantees shall be submitted within 90 days after the grant's completion. Audit reports must be directed to the Office of the Inspector General, CSA/OCS, at the address specified in § 1050.112(c). Final audits shall be conducted in accordance with the Accounting System Survey and Audit Guide, CSA Manual 2410–1, except that the scope of the audit shall be adjusted as follows:

* * * * *

PART 1067—FUNDING OF CSA GRANTEES

4. By revising the authority citation for part 1067 as follows:

Authority: Secs. 213, 602, 604 of the Economic Opportunity Act of 1964, as amended; 81 Stat. 395; 78 Stat. 528; 81 Stat. 715 (42 U.S.C. 2793, 2942, 2944); § 1067.30–3 also issued under sec. 682(e), Pub. L. 97–35, 95 Stat. 519 (42 U.S.C. 9911).

5. By revising paragraph (c) of § 1067.30–3, as follows:

§ 1067.30–3 Purpose.

This subpart provides for:

* * * * *

(c) Grantees' use of funds through the program account funding period. A grantee may not incur expenses under its program account after the termination date entered in column 12 of CSA Form 314, or after the expiration of the planned number of months for which funding is provided (column 13 of CSA Form 314). Except as provided in subparagraphs 1 and 2 of this paragraph, grant funds that are not expended by the end of the program account funding period must be returned to the Office of Community Services (OCS) in accordance with 45 CFR 1050.112(b).

(1) *Exception.* Under a grant with a planned minimum number of months which expires before June 24, 1982 funds may be used until June 24, 1982.

(2) *Extensions and reprogramming.* If a grantee applies for an extension of time in which to use the funds under its approved work program, OCS may extend the program account funding period under such terms and conditions as it deems appropriate. Alternatively, OCS may reprogram unexpended funds as part of a new grant action if the grantee is awarded an OCS grant pursuant to the block grant transition provisions of 42 U.S.C. 9911.

PART 1068—GRANTEE FINANCIAL MANAGEMENT

6. By revising the authority citation for Subpart 1068.42 as follows:

Authority: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); § 1068. 42–8 also issued under sec. 682(e), Pub. L. 97–35, 95 Stat. 519 (42 U.S.C. 9911).

7. By adding new paragraph (a)(2) to § 1068.42–8 as follows:

§ 1068–42–8 Required annual audit.

(a) * * *

(2) *Audits for Periods Ending on or After October 1, 1981.* With respect to program years or grant periods ending on or after October 1, 1981, the grantee's auditor must submit five (5) copies of the audit report to the Office of the Inspector General, CSA/OCS, at the address specified in § 1050.112(c), within 60 days after the end of the audited program year or grant period, except that audit reports for public grantees shall be submitted within 90 days after the end of the audited period. A grantee may request an extension of this deadline from the appropriate office. An extension of up to 30 days will be

granted to a non-public grantee upon a showing of reasonable cause that the grantee, despite special efforts, cannot submit the audit report within 60 days. Further extensions for non-public grantees or any extensions for public grantees will be granted only in extraordinary circumstances.

* * * * *

Dated: April 26, 1982.

Robert L. Trachtenberg,

Acting Director, Office of Community Services.

Dated: May 7, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-14119 Filed 5-24-82; 8:45 am]

BILLING CODE 9010-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-819; RM-3839]

FM Broadcast Station in Colorado Springs, Evergreen Lamar, Monte Vista, and Pueblo, Colorado; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 243 to Evergreen, Colorado, and substitutes channels in four other Colorado communities to accommodate the change. Stations on two occupied channels are modified to specify operation on the newly assigned channels. The assignment would provide a first local aural service to Evergreen.

DATE: Effective July 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

Adopted: May 11, 1982.

Released: May 17, 1982.

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Colorado Springs, Evergreen, Lamar, Monte Vista, and Pueblo, Colorado).

1. Before the Commission is the *Notice of Proposed Rule Making and Order to Show Cause* in this proceeding, 46 FR 59555, published December 7, 1981. In that document, the Commission proposed the assignment of Channel 243 to either Evergreen or Denver, Colorado, with channel substitutions at Colorado Springs, Lamar, Monte Vista, and Pueblo, Colorado. Additionally, the licensees of FM Stations KKFM, Colorado Springs, and KCCY, Pueblo, were ordered to show cause why their licenses should not be modified to specify operation on the newly assigned channels. Comments were received from Carolyn Gaspard and Penny Eilersen, d.b.a. Gaspard and Eilersen ("petitioners"), and from Jerry Rhoads ("Rhoads").[1] Reply comments were filed by Kennebec-Colorado Broadcasting Corporation ("Kennebec"), licensee of Station KCCY at Pueblo, Colorado.

2. In order to accommodate the proposed assignment of Channel 243 to either Evergreen or Denver, the following channel substitutions are required to conform with the minimum distance separation requirements of § 73.207 of the Commission's Rules: Channel 251 for Channel 243 (Station KKFM), Colorado Springs; Channel 245 for Channel 250 (Station KCCY), Pueblo; Channel 237A for vacant Channel 244A at Monte Vista; and Channel 289 for vacant Channel 245 at Lamar, Colorado.

3. In their proposal, petitioners stated that Evergreen is a mountain community, located within the foothills of Colorado's Front Range. Petitioners stated that although Evergreen is located within 15 miles of Denver, it has separate needs and interests apart from that community. According to petitioners the present means of providing information to the citizens of Evergreen is through two local newspapers that are published twice weekly. Petitioners further asserted that although Evergreen receives the signals of the Denver stations, they do not provide programming responsive to the local needs and interests of their community. For this reason, petitioners stressed the requirement for a first local outlet at Evergreen, with particular emphasis placed on the need to provide public safety information emanating from a combination of potentially hazardous occurrences in the area.

4. The *Notice* requested petitioners to provide a *Roanoke Rapids/Anamosa* study to justify their proposal to assign Class C Channel 243 to Evergreen, indicating the amount of first and second service that would be provided to surrounding areas and populations. *See, Roanoke Rapids, North Carolina,* 9 F.C.C. 2d 672 (1967); *Anamosa, Iowa,* 46 F.C.C. 2d 520 (1975). We indicated therein that absent such a showing, we would assume that no first or second service would be provided in view of the nine Denver Class C stations operating nearby. We also noted that this proposal would require a transmitter site restriction of 9.6 kilometers (6.0 miles) southeast of Evergreen to avoid short spacing to Station KSBT (FM) (Channel 244A), in Steamboat Springs, Colorado. Although a Class C channel would not normally be assigned to a community the size of Evergreen, petitioner demonstrated that there were no Class A channels available.

5. As pointed out in the *Notice*, the assignment of Channel 243 to Evergreen would cause preclusion to occur on Channels 242, 243 and 244A in seven communities which have a population in excess of 1,000 persons. Five of these communities have assignments,[2] and the remaining two have assignments available.[3]

6. As noted above, as an alternative to petitioners' Evergreen proposal, we proposed to assign Class C Channel 243 to the larger city of Denver, which could be applied for at Evergreen under the 15-mile rule (§ 73.203(b) of the Commission's Rules). This option was made consistent with prior Commission precedent where the community requested is not considered large enough to warrant a Class C assignment without a special showing of need, and the community is close enough to the larger city to fall within § 73.203(b). *See, Albuquerque and Alameda, New Mexico,* 48 R.R. 2d 1327 (1981); *Anchorage and Eagle River, Alaska,* 50 R.R. 2d 215 (1981). We proposed this option due to our concern that a high-powered Class C station allocated to Evergreen would inevitably seek to attract advertising from Denver and thereby serve the larger market. The *Notice* also reflected that a Class A could conceivably be assigned to Evergreen with less substitutions than the Class C proposal would entail. However, we did not propose a Class A channel since petitioner was not interested in such an assignment with the obligation to reimburse other stations for channel substitutions.

[1] In addition, a letter of support for the assignment of Channel 243 to either Evergreen or Denver, Colorado, was filed by Peter G. Motta. This letter was received too late to be considered as comments.

[2] The five communities and their assignments are: Sidney, Nebraska (Channel 237A); Kimball, Nebraska (Channel 261A); Brush, Colorado (Channel 296A); Aspen, Colorado (Channel 249A); and Wheatland, Wyoming (Channel 269A).

[3] The two communities are Gering, Nebraska, and Holyoke, Colorado. Petitioner advised that Channel 244A is available for assignment to either community.

7. Evergreen (population 8,383),[4] in Jefferson County (population 371,741), is located approximately 24 kilometers (15 miles) southwest of Denver. It presently is devoid of local service.

8. Denver (population 491,396) is presently assigned nine FM channels, and could be assigned an additional allocation pursuant to the Commission's population guidelines. This option would also require the two permittees (Stations KKFM, Colorado Springs, and KCCY, Pueblo), to change frequencies to accommodate the proposal.

9. Petitioners' comments, while advocating support of the assignment to Evergreen, stated that due to supervening circumstances, they could not commit themselves to apply for the channel, if assigned. However, the comments filed by Jerry Rhoads expressed his interest in the proposal to assign Channel 243 to Evergreen (Option I), and expressed his determination to apply for the channel, if assigned. In a supplemental comment, Rhoads also asserted his willingness to reimburse Stations KKFM, Colorado Springs, and KCCY, Pueblo, for the reasonable costs incurred in switching frequencies to accommodate the proposal.

10. Also, in response to our request in the *Notice* to provide *Roanoke Rapids/Anamosa* data, Rhoads submitted an engineering study which indicates that no first or second service would be provided by the proposed assignment of Channel 243 to Evergreen, due to its close proximity to the Class C stations operating in Denver.

11. In reply comments, Kennebec states that it does not oppose the frequency change of its Station KCCY, provided reimbursement is made and the switch is effectuated as rapidly as possible to enable it to actively promote its new dial location. In this regard, Kennebec notes that it has expended large sums to advertise and establish its identity on Channel 250. However, in view of the proposed modification directive, it states that it could neither afford to continue advertising the frequency it must ultimately vacate, nor could it afford not to.

Conclusions

12. As a preliminary matter, we have received no expression of interest in the possibility of a Class A assignment to Evergreen. Thus, we have decided not to pursue that option. A showing of first and second FM service is generally an important prerequisite to assigning a Class C channel to smaller communities. *See, e.g., Cobleskill, New York*, 46 R.R. 2d 1406 (1981). Here, no first or second service would be provided as a result of Evergreen's proximity to Denver, which has nine FM stations. However, the Class C allocation will satisfy one of the Commission's assignment priorities [5] by providing Evergreen with its first local broadcast service. *See Freeport, Texas*, 45 FR 21638, published April 2, 1980.

13. Kennebec voiced its concern earlier that the proposal to add Class C Channel 243 to Evergreen was merely an effort to add another station to Denver. However, we find no evidence in the record of this proceeding of an intention to serve the larger community of Denver. Rather, it appears that the intention of Rhoads is truly to serve Evergreen. In fact, because the transmitter site will be restricted to an area (approximately 20 miles south) located away from Denver, such a station would be at a substantial disadvantage against other Denver stations. We believe that this substantial distance from Denver distinguishes this case from others in which we have chosen the larger city for assignment. In *Albuquerque, New Mexico, supra*, the distance involved was 7 miles. In the *Anchorage, Alaska*, case *supra*, the suburban community was approximately 13 miles away with several Class A channels available. Although no first or second service would be offered here, the proposed station could cover sparsely populated areas not now covered by the Denver stations.

14. The preclusive impact of the proposed assignment to Evergreen is insignificant since it has been demonstrated that channels are either assigned to the precluded communities, or available thereto in the event an interest should develop in the future. Thus, we do not find that preclusion is substantial enough to bar a grant of the proposal.

15. One final matter to be resolved involves Kennebec's request to proceed with its change of frequencies for Station KCCY from Channel 250 to Channel 245 prior to the selection of the eventual permittee at Evergreen. This proposal cannot be accommodated unless Station KKFM (Channel 243) at Colorado Springs is willing to change frequencies to Channel 251 simultaneously with Station KCCY's changeover.[6] Section 73.207 of the Commission's Rules requires a minimum distance separation of 65 miles between second adjacent Class C facilities, whereas the distance between Pueblo and Colorado Springs is 29 miles. As is our general policy, Station KKFM is not required to change frequencies until a permit is issued for Channel 243 at Evergreen, Colorado. Of course, it may do so sooner if it wishes.

16. In view of the above, we have determined that the public interest would be served by assigning Channel 243 to Evergreen, as proposed in Option I of the Notice. Persuasive information was submitted regarding the desirability of making an FM assignment to that community, which could also render a first local aural service.

17. Accordingly, pursuant to authority contained in §§ 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective July 19, 1982, and the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Colorado Springs, Colorado	251
Evergreen, Colorado	243
Lamar, Colorado	277, 289
Monte Vista, Colorado	237A
Pueblo, Colorado	245

18. It is further ordered, pursuant to the authority contained in § 316(a) of the Communications Act of 1934, as amended, That the outstanding license for Station KKFM, held by Ski-Hi, Inc. at Colorado Springs, Colorado, is modified effective July 19, 1982, to specify operation on Channel 251, in lieu of Channel 243, with the condition that it will be reimbursed for the reasonable costs incurred in switching frequencies from the ultimate permittee of Channel 243, Evergreen. Ski-Hi, Inc. shall inform the Commission in writing by no later than (————?————), 1982, of its consent to this modification. Station KKFM may continue to operate on Channel 243 until a permit is issued for Channel 243 at Evergreen or until its license renewal expiration date of April 1, 1983, whichever is first. Additionally, the license modification for Station KKFM is subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

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[4] This population figure was supplied by petitioner since Evergreen is an unincorporated community and thus not listed in the preliminary 1980 U.S. Census. However, all other population figures are derived from the 1980 U.S. Census, Advance Reports, unless otherwise indicated.

[5] *See, Further Notice of Proposed Rule Making*, 27 FR 7797–98, published August 7, 1967; *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520 (1970).

[6] Ski-Hi, Inc., licensee of Station KKFM (Channel 243) did not respond to the *Order to show Cause* and is therefore deemed to consent to the modification as proposed therein.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

19. It is further ordered, pursuant to the authority contained in §316(a) of the Communications Act of 1934, as amended, That the outstanding license of Keenebec-Colorado Broadcasting Corporation for Station KCCY, Pueblo, Colorado, is modified effective July 19, 1982, to specify operation on Channel 245 in lieu of Channel 250, with the condition that it will be reimbursed for the reasonable costs incurred in switching frequencies from the ultimate permittee of Channel 243, Evergreen. The license modification for Station KCCY is subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

20. It is further ordered, that the Secretary of the Commission shall send a copy of this Order by certified mail, return receipt requested, to Sky-Hi, Inc., Radio Station KKFM–FM, 225 South Academy Boulevard, Colorado Springs, Colorado 80910, and to Kennebec-Colorado Broadcasting Corporation, Radio Station KCCY–FM, c/o 315–8th Street, Pueblo, Colorado 81003.

21. It is further ordered, that this proceeding is terminated.

22. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc 82-19184 Filed 5-24-82; 8:45 am]

BILLING CODE 6712-01-M

50 CFR Part 80

Federal Aid in Fish and Wildlife Restoration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends current requirements for participation by State fish and wildlife agencies in the Federal Aid in Wildlife Restoration program and the Federal Aid in Fish Restoration program. The amendments simplify existing language, clarify requirements, and delete certain sections which are no longer applicable or are adequately covered in other regulations and policies such as OMB Circular A–102.

EFFECTIVE DATE: This rule is effective June 24, 1982. Regional directors may defer implementation upon requests by grantees if the revised rule(s) would place an undue burden on such grantees. However, final implementation may not exceed December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235–1526.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 57471–57474 of the **Federal Register** of August 28, 1980, and invited comments for 45 days ending October 14, 1980. A correction was published on page 59914 of the **Federal Register** of September 11, 1980, and the comment period extended to October 31. Comments were received from 28 sources including individuals, organizations, and State fish and wildlife agencies. The following is a summary of the major comments received and our response to each.

1. *Comment.* Several commenters stated that the groups of fish and/or wildlife species eligible for funding were too restricted and suggested broadening to include a wider range of species.

Response. The Acts and the legislative history support our interpretation that the intent of the programs should be limited to those groups of species as stated. Under the Wildlife Restoration program, the only limit on species is wild birds and mammals. One purpose of these rules was to make clear that wild birds and mammals were not restricted to hunted species. The Fish Restoration Act is specific in addressing "fish of material value for sport or recreation." We feel that the term fish is used in its normal sense as meaning fin fish.

2. *Comment.* One commenter objected to our wording changes which eliminated hunting and fishing from project purposes.

Response. There was no intent to imply that hunting and fishing were not legitimate purposes or results to be accomplished. These are included in the public uses of fish and wildlife resources.

3. *Comment.* One commenter stated that the rules should be revised to include Indian tribal governments as eligible participants.

Response. The Acts are specific in defining State fish and wildlife agencies as participants, including provisions for the allocation of funds to these agencies. The basic Acts would need to be amended before we could change the participant eligibility.

4. *Comment.* One commenter suggested a revision to § 80.4, Diversion of license fees, to clarify that the use of revenues from hunting and fishing license fees are restricted to only those functions of a State fish and wildlife agency which are related to its sport fish and wildlife management responsibilities.

Response. We agree with the suggestion to distinguish fish and wildlife agencies and their functions when such agencies are a part of a larger unit of State government. However, we do not agree with the need to further constrain the use of license revenues to sport fish management functions. Such a restriction would impose an unnecessary burden on all States without a clear indication of a problem requiring treatment.

5. *Comment.* One commenter stated that the purpose of hunter education projects, as written, does not accurately reflect the full range of project purposes.

Response. We agree with this comment and have revised § 80.5(2) to emphasize the broader purpose of the hunter education program.

6. *Comment.* One commenter suggested the inclusion of instruction in trapping as eligible under the hunter education program.

Response. The eligible project purpose as stated for the hunter education program does not exclude training related to trapping when it is an intregal part of the State's hunter education project. Such training is not, in itself, a distinct project purpose requiring treatment in these rules.

7. *Comment.* Several commenters stated that the revision of Section 80.9, Notice of desire to participate, is not clear on the process required for making such notices.

Response. Section 5 of both Acts requires that any State desiring to participate shall notify the Secretary to

this effect within 60 days after receiving the annual certificate of apportioned funds. We have required this notification of derise following the preliminary apportionment of funds. The purpose of § 80.9 is to provide two options for the States to meet the requirement of the Acts. One option is to send a letter expressing the desire to participate. The second option recognizes that a State has expressed its desire when the regional director has received or has on file, during the 60-day period, a properly executed Application for Federal Assistance. If the Application contains plans for the use of the funds apportioned, then the requirement is met.

8. *Comment.* Several commenters stated that the term "significant net revenue" as a condition for determining paid license holders in not clear.

Response. We agreed that "significant" to qualify net revenue is not necessary and confusing since the term "net revenue" is further explained. We plan to develop additional guidance on this matter to aid the States in making determinations of net revenue.

9. *Comment.* Several commenters suggested that the rules on determining paid license holders should specifically address lifetime licenses, since such licenses are common among the States.

Response. We agree that the counting of lifetime hunting and fishing licenses for license certification purposes should be covered by these rules. Section 80.10(c) is revised to provide criteria for counting licenses valid for more than one year, including lifetime licenses.

10. *Comment.* One commenter stated that the criteria of a substantial project related to cost and benefits are subject to considerable interpretation.

Response. We agree that these criteria are judgmental; however, the statement of principle is sound when taken in the context of basic project requirements. The rule cannot substitute for reasonable judgments, nor is it intended to require complex quantitative computations.

11. *Comment.* One commenter suggested a revision in § 80.14 to specify the treatment of proceeds from the sale of property no longer needed or useful for the purposes for which it was acquired.

Response. The intent of this section is to provide basic requirements rather than the procedures. Those procedures suggested are adequately covered in Attachment N of OMB Circular A–102 and the Federal Aid Manual. We have revised § 80.14(3) to reference Attachment N of Circular A–102 rather than to repeat its basic provisions in the rule.

12. *Comment.* One commenter suggested a revision to § 80.17 to clearly state that the costs for maintenance of capital improvements acquired or constructed under the programs are approvable.

Response. We agree with this comment and have revised § 80.17 to incorporate the suggestion.

In addition to changes made as a result of comments received and some editorial changes, we considered a recommendation by the Assistant Solicitor for Fish and Wildlife to clarify that the prohibition against the diversion of capital assets acquired with license fees also includes income derived from such assets. This recommendation was adopted and § 80.4(a)(2) was revised to incorporate the suggested provision. The effect of this change is to prohibit the diversion of income from capital assets in addition to those assets derived from hunting and fishing license revenues.

On December 24, 1980, Pub. L. 96–597 was enacted. Sections 302(a) and 302(b) of that Act amend Section 8(a) of the Federal Aid in Wildlife Restoration Act, 16 U.S.C. 669g–1, and Section 12 of the Federal Aid in Fish Restoration and Management Projects Act, 16 U.S.C. 777k, respectively, to provide for participation in the Federal Aid programs by the Commonwealth of the Northern Mariana Islands. Accordingly, changes have been made in §§ 80.1(b), 80.2, and 80.12 to include the Commonwealth of the Northern Mariana Islands. Because the amendments to the Federal Aid statutes became effective after the beginning of Fiscal Year 1981, the Commonwealth of the Northern Mariana Islands will receive its apportionment and participate in the Federal Aid program commencing with Fiscal Year 1982 which begins on October 1, 1981.

The Federal Aid in Fish Restoration and Federal Aid in Wildlife Restoration programs are included in the *Catalog of Federal Domestic Assistance* under numbers 15.605 and 15.611.

The principal author of this proposal is Robert N. Bartel, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703/235–1526.

Note.—The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291, nor does the rule have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Information Collection:

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1018–0007 and 1018–0048.

List of subjects in 50 CFR 80

Fish, Grant programs-natural resources, Grant administration-wildlife.

Part 80 of Title 50, Code of Federal Regulations, in revised as set forth below.

PART 80— ADMINISTRATIVE REQUIREMENTS, FEDERAL AID IN FISH AND FEDERAL AID IN WILDLIFE RESTORATION ACTS

Sec.

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80.19 Records.
80.20 Land control.
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Authority: Federal Aid in Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Act (16 U.S.C. 669i).

Note.—The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0048, except for § 80.10 which is assigned clearance number 1018–0007.

§ 80.1 Definitions.

As used in this part, terms shall have the following meanings:

(a) *The Federal Aid Acts or the Acts.* The Federal Aid in Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669–669i), and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777–777k).

(b) *State.* Any State of the United States; the territorial areas of Guam, the Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

(c) *State fish and wildlife agency.* The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife

resources of the State. Such an agency or official which is also designated to exercise collateral responsibilities, e.g., State Department of Natural Resources, shall be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

(d) *Secretary.* The Secretary of the Interior or his designated representative.

(e) *Director.* The Director of the U.S. Fish and Wildlife Service, or his designated representative. The Director serves as the Secretary's representative in matters relating to the administration and execution of the Federal Aid Acts.

(f) *Regional Director.* The Regional director of the U.S. Fish and Wildlife Service, or hs designated representative.

(g) *Federal Aid Manual.* The publication of the U.S. Fish and Wildlife Service which contains policies, standards and procedures required for participation in the benefits of the Acts.

(h) *Project.* A program of related undertakings necessary to fulfill a defined need which is consistent with the purposes of the Act.

(i) *Comprehensive fish and wildlife management plan.* A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

(j) *Federal Aid Funds.* Funds provided under Federal Aid Acts.

§ 80.2 Eligibility.

Participation in the benefits of the Acts is limited to State fish and wildlife agencies as specified below:

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the Comonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(b) Federal Aid in Wildlife Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands; except that the benefits afforded by Section 4(b) of the Act relating to hunter education projects are limited to the 50 States.

§ 80.3 Assent legislation.

A State may participate in the benefits of the Act(s) only after it has passed legislation which assents to the provisions of the Acts and has passed laws for the conservation of fish and wildlife including a prohibition against the diversion of license fees paid by hunters and sport fishermen to purposes other than administration of the fish and wildlife agency. Subsequent legislation which amends these state laws shall be subject to review by the Secretary. If the legislation is found contrary to the assent provisions, the State shall become ineligible.

§ 80.4 Diversion of license fees.

Revenues from fees paid by hunters and sports fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency. Administration of the State fish and wildlife agency includes only those functions of such an organization in exercising its authorities and responsibilities to manage the fish and wildlife resources of the State.

(a) A diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise:

(1) Loses control of the expenditure of any portion of its license revenues, or

(2) Loses control of capital assets (or income therefrom) derived from license revenues, or

(3) Expends license revenues for any purpose other than administration of the State fish and wildlife agency.

(b) If a diversion of license fees occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Control of expenditure or assets is returned, and

(2) An amount equal to license revenues or the current market value of assets diverted is returned.

(c) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

§ 80.5 Eligible undertakings.

The following are eligible for funding under the Acts:

(a) Federal Aid in Wildlife Restoration Act.

(1) Projects having as their purpose the restoration, conservation, management, and enhancement of wild birds and wild mammals, and the provision for public use of and benefits from these resources.

(2) Projects having as their purpose the education of hunters and archers in the skills, knowledges, and attitudes necessary to be a responsible hunter or archer.

(b) Federal Aid in Sport Fish Restoration Act.

Projects having as their purpose the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation.

§ 80.6 Prohibited activities.

The following are not eligible for funding under the Acts, except when necessary for the accomplishment of project purposes as approved by the regional director.

(a) Law enforcement activities conducted by the State to enforce the fish and game regulations.

(b) Public relations activities conducted to promote the State fish and wildlife agency.

§ 80.7 Appeals.

Any difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determination rests with the Secretary.

§ 80.8 Availability of funds.

Funds are available to a State for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year. For the purpose of this section, obligation of apportioned funds occurs when a project agreement is signed by the regional director.

§ 80.9 Notice of desire to participate.

Any State fish and wildlife agency desiring to avail itself of the benefits of the Acts shall notify the Secretary within 60 days after it has received a certificate of apportionment of funds available to the State. Notification to the Secretary may be accomplished by either of the following methods. In either method, the document must be signed by a State official authorized to commit the State to participation under the Act(s).

(a) Submitting to the regional director within the 60-day period a letter stating the desire of the State to participate in the Act(s); or,

(b) Having an approved Application for Federal Assistance which contains plans for the use of Federal Aid funds during the period of the apportionment.

§ 80.10 Hunting and fishing license certification (OMB approval number 1018-0007 under 44 U.S.C. 3507).

(a) Information concerning the number of persons holding paid licenses to hunt and the number of persons holding paid licenses to fish for sport or recreation in the State in the preceding year shall be furnished upon request of the Director by the fish and wildlife agency of each State on forms furnished by the Fish and Wildlife Service.

(b) This information shall be certified as accurate by the director of the State fish and wildlife agency. When requested by the Director, evidence used in determining accuracy of the certification shall also be furnished.

(c) License holders shall be counted over a period of 12 months; the calendar year, fiscal year, or other licensing period may be used provided it is consistent from year to year in each State. In determining licenses which are eligible for inclusion, the following guidelines shall be observed.

(1) Trapping licenses, commercial licenses, and other licenses which are not for the express purpose of permitting the holder to hunt or fish for sport or recreation shall not be included.

(2) Licenses which do not return net revenue to the State shall not be included. To qualify as a paid license, the fee must produce revenue for the State. Net revenue is any amount returned to the State after deducting agent or sellers fees and the cost for printing, distribution, control or other costs directly associated with the issuance of each license.

(3) Licenses valid for more than one year, either a specific or indeterminate number of years, may be counted in each of the years for which they are valid; provided that:

(i) The net revenue from each license is commensurate with the period for which hunting or fishing privileges are granted, and

(ii) Sampling or other techniques are used to determine whether the licensee remains a license holder in the year of certification.

(4) Combination fishing and hunting licenses (a single license which permits the holder both to hunt and fish) shall be included in the determination of both the number of paid hunting license holders and the number of persons holding paid licenses to fish for sport or recreation.

(5) Some licensing systems require or permit an individual to hold more than one license to hunt or to fish in a State. Such an individual shall not be counted more than once as a hunting or fishing license holder. The State fish and wildlife director, in certifying license information to the Director, is responsible for eliminating duplication or multiple counting of single individuals in the figures which he certifies. Sampling and other statistical techniques may be utilized by the certifying officer for this purpose.

§ 80.11 Submission of proposals.

A State may make application for use of funds apportioned under the Acts by submitting to the regional director either a comprehensive fish and wildlife management plan or project proposal.

(a) Each application shall contain such information as the regional director may require to determine if the proposed activities are in accordance with Acts, the provisions of this part, and the standards contained in the Federal Aid Manual.

(b) Each application and amendments of scope shall be submitted to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A–95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or the official(s) delegated to exercise the authority and responsibilities of the State's director in committing the State to participation under the Acts. The director of each State fish and wildlife agency shall notify the regional director, in writing, of the official(s) authorized to sign Federal Aid documents, and any changes in such authorizations.

§ 80.12 Cost sharing.

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the project agreement, whichever is less, except that the non-Federal cost sharing for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa shall not exceed 25 percent and may be waived at the discretion of the regional director.

(a) A minimum Federal participation of 10 percent of the estimated costs is required as a condition of approval.

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions. The allowability and evaluation of in-kind contributions are subject to the policies and standards prescribed in Office of Management and Budget (OMB) Circular A–102.

(c) The non-Federal share of project costs may not be derived from other Federal funds, except as authorized by specific legislation.

§ 80.13 Substantiality in character and design.

All projects proposed for funding under the Acts must be substantial in character and design. A substantial project (for fish and wildlife purposes) is one which:

(a) Identifies and describes a need within the purposes of the relevant Act to be utilized;

(b) Identifies the objectives to be accomplished based on the stated need;

(c) Utilizes accepted fish and wildlife conservation and management principles, sound design, and appropriate procedures; and

(d) Will yield benefits which are pertinent to the identified need at a level commensurate with project costs.

§ 80.14 Application of Federal aid funds.

(a) Federal Aid funds shall be applied only to activities or purposes approved by the regional director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal Aid funds. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have a reasonable time, up to three years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the regional director, the property shall be used or disposed of as provided by Attachment N of OMB Circular A–102.

(c) Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and disposed of as directed by the Director.

§ 80.15 Allowable costs.

Allowable costs are limited to those which are necessary and reasonable for accomplishment of approved project purposes, and are in accordance with the cost principles of OMB Circular A–87.

(a) All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject

to review by the Secretary to determine the allowability of costs.

(b) Costs incurred prior to the effective date of the project agreement are allowable only when specifically provided for in project agreement.

(c) Projects or facilities designed to include purposes other than those eligible under the pertinent Act shall provide for the allocation of costs among the various purposes. The method used to allocate costs shall produce an equitable distribution of costs based on the relative uses or benefits provided.

(d) Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and shall not exceed in any one fiscal year three percentum of the annual apportionment.

§ 80.16 Federal aid payments.

Payments shall be made for the Federal share of allowable costs incurred by the State in accomplishing approved projects.

(a) Requests for payments shall be submitted on forms furnished by the regional director.

(b) Payments shall be made only to the office or official designated by the State fish and wildlife agency and authorized under the laws of the State to receive public funds for the State.

(c) All payments are subject to final determination of allowability based on audit. Any overpayments made to the State shall be recovered as directed by the region director.

(d) The regional director may withhold payments pending receipt of all required reports or documentation for the project.

§ 80.17 Maintenance.

The state is responsible for maintenance of all capital improvements acquired or constructed with Federal Aid funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with non-Federal Aid funds are allowable costs when such improvements are necessary to accomplishment of project purposes as approved by the regional director, and when such costs are otherwise allowable by law.

§ 80.18 Responsibilities.

In the conduct of activities funded under the Acts, the State is responsible for:

(a) The supervision of each project to assure it is conducted as provided in the project documents, including:

(1) Proper and effective use of funds.

(2) Maintenance of project records.

(3) Timely submission of reports.

(4) Regular inspection and monitoring of work in progress.

(b) The selection and supervision of project personnel to assure that:

(1) Adequate and competent personnel are available to carry the project through to a satisfactory and timely completion.

(2) Project personnel perform the work to ensure that time schedules are met, projected work units are accomplished, other performance objectives are being achieved, and reports are submitted as required.

(c) The accountability and control of all assets to assure that they serve the purpose for which acquired throughout their useful life.

(d) The compliance with all applicable Federal, State, and local laws.

(e) The settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into.

§ 80.19 Records.

The State shall maintain current and complete financial, property and procurement records in accordance with requirements contained in the Federal Aid Manual and OMB Circular A-102.

(a) Financial, supporting documents, and all other records pertinent to a project shall be retained for a period of three years after submission of the final expenditure report on the project. If any litigation, claim, or audit was started before the expiration of the three-year period, the records shall be retained until the resolution is completed. Records for nonexpendable property shall be retained for a period of three years following final disposition of the property.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the State.

§ 80.20 Land control.

The State must control lands or waters on which capital improvements are made with Federal Aid funds. Controls may be exercised through fee title, lease, easement, or agreement. Control must be adequate for protection, maintenance, and use of the improvement throughout its useful life.

§ 80.21 Assurances.

The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Acts. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

Dated: June 12, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-14209 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice adjusting the beginning date from June 1 to May 25 for closure of the fishery conservation zone off Texas to trawl fishing for all species except royal red shrimp. This area will remain closed through July 14. The management action is prescribed by existing regulations. The intended effect of this action is to allow harvest of brown shrimp at optimal commercial size.

EFFECTIVE DATE: Closure effective from 30 minutes after sunset on May 25, 1982, to 30 minutes after sunset on July 14, 1982. Public notice has been issued at least 72 hours prior to closure.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, Acting Regional Director, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) provides for adjustments to the closing and opening dates for the seasonal closure of the fishery conservation zone (FCZ) off Texas. Implementing rules at 50 CFR 658.24 describe the Texas closure and specify that these adjustments be made by the Regional Director under criteria set out in that section.

Available information and estimates indicate an early closure is warranted and desirable. Biological data collected

by the Texas Parks and Wildlife Department on the size of shrimp indicate an earlier-than-usual movement of brown shrimp from the bays into the Gulf. The regulations state that the closure date must be based on a prediction of when the average size of brown shrimp leaving the bays to enter the Gulf will be 80 to 90 mm, on the strength of outgoing tides at that time, and on other ecological data. Most movement of shrimp from the bays takes place during periods of larger-than-average tidal duration, which this year occurs May 25 to 29. It is predicted that the average size of shrimp entering the Gulf of Mexico will be 90 mm on or about May 23, 1982. Based on this information, the Regional Director has determined that the customary closure dates of June 1 to July 15 will be changed to May 25 to July 14. The State of Texas will close its waters during these same days.

All trawling is prohibited between May 25 to July 14 in the area described in § 658.24(a), except that vessels may trawl for royal red shrimp beyond the 100-fathom depth contour. These vessels need no special permit or letter of authorization.

This action is taken under the authority of 50 CFR 658.24, and is taken in compliance with Executive Order 12291. (16 U.S.C. 1801 *et. seq.*)

List of Subjects in 50 CFR Part 658

Fish, Fisheries.

Dated: May 19, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc 82-14218 Filed 5-24-82; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 80N-0187; DESI 8674]

Neomycin Sulfate-Sodium Propionate Otic Solution; Termination of Stay of Effective Date of a Final Rule Revoking Certification

AGENCY: Food and Drug Administration.

ACTION: Final rule; termination of stay.

SUMMARY: The Food and Drug Administration (FDA) is terminating the stay of the effective date of a final rule revoking the provisions for the certification of neomycin sulfate-sodium propionate otic solution. The basis for the revocation was that the drug product lacked substantial evidence of effectiveness. The effective date of the final rule was stayed pending review of a hearing request which has now been withdrawn.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1974 (39 FR 33665), FDA published a final rule revoking § 444.442a (21 CFR 444.442a), which provided for the certification of neomycin sulfate-sodium propionate otic solution. The basis for the final rule was that the drug product lacked substantial evidence of effectiveness. The revocation was to take effect on October 29, 1974, unless a hearing was requested on the revocation. The final rule stated that if a hearing was requested, the effective date would be extended to allow for review of the hearing request.

In response, a hearing was requested for the following drug product:

NDA 50–364; Otobiotic Otic Solution containing neomycin sulfate and sodium propionate; Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.

Accordingly, in a notice published in the **Federal Register** of March 14, 1975 (40 FR 11870), as amended by a notice published November 4, 1980 (45 FR 73034), FDA stayed the order revoking the portion of § 444.442a that provides for neomycin sulfate-sodium propionate otic solution.

Subsequently, Schering Corp. reformulated Otobiotic Otic Solution to an effective drug product containing polymyxin B sulfate and hydrocortisone (certified under 21 CFR 448.430), received FDA's approval of the new formulation, and withdrew its hearing request concerning the revocation of § 444.442a.

Therefore, under the Federal, Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director, Bureau of Drugs (21 CFR 5.78), notice is given that the September 19, 1974 revocation, the effective date of which was extended by the March 14, 1975 notice, as amended by the November 4, 1980 notice, is effective May 25, 1982. All outstanding certificates for neomycin sulfate-sodium propionate otic solution are revoked and the regulation under which they were issued (21 CFR 444.442a) is revoked. No new certificates will be issued.

(Secs. 502, 507, 52 Stat. 1050–1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357))

Dated: April 16, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-13902 Filed 5-24-82; 8:45 am]
BILLING CODE 4160-01-M

Proposed Rules

Federal Register
Vol. 47, No. 101
Tuesday, May 25, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Oklahoma Metropolitan Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to continue for an additional month a suspension of certain provisions of the Oklahoma Metropolitan Federal milk order. The proposed suspension, which would apply to June 1982, would reduce the amount of milk that a supply plant must ship to pool distributing plants in order to qualify as a pool plant. Also, the proposed action would increase the amount of milk that may be moved directly from farms to nonpool plants for manufacturing and still be priced under the order. The continuation of the earlier suspension for April and May was requested by a producer cooperative association because it is anticipated that milk production will continue to be considerably in excess of fluid milk sales in June.

DATE: Comments are due not later than June 1, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202)-447-4824.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures in time for the suspension to be continued for June 1982 deliveries if this is found necessary. The initial request for this action was received on May 17, 1982.

It also has been determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Oklahoma Metropolitan marketing area is being considered for the month of June 1982.

§ 1106.7 [Temporarily suspended in part]

1. In § 1106.7(b), that part of the provisions that reads "until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein".

§ 1106.13 [Temporarily suspended in part]

2. In § 1106.13(e)(1), that part of the provisions that reads ", subject to the conditions of paragraph (e)(3) of this section, a total quantity of milk not in excess of total" and "received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association".

3. In § 1106.13(e)(2), that part of the provisions that reads ", subject to the conditions of paragraph (e)(3) of this section," and ", in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler".

4. In § 1106.13, paragraph (e)(3).

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than June 2, 1982. The period for filing comments is limited to 7 days because a longer period would not permit the completion of the required suspension procedures in time for the suspension to be made effective for the month of June 1982.

The comments that are sent will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue for the month of June an identical suspension that was effective for April and May 1982. Under the proposed suspension, the amount of milk that supply plants must ship to pool distributing plants to attain pool plant status would be reduced in that only one shipment to a pool distributing plant would be needed to pool a supply plant. Also, the proposed action would increase the amount of milk that may be moved directly from farms to nonpool manufacturing plants and still be priced

under the order. Without the suspension, diversions would be limited to producers who deliver not less than 15 percent of their producer milk to pool plants. In addition, diversions to nonpool plants by proprietary handlers and cooperatives could not exceed the quantity of producer milk received at pool plants.

A continuation of the suspension was requested by a cooperative association that represents producers who supply the market. The cooperative indicated that the same imbalance between fluid requirements and production that existed in April and May is expected to continue in June. The cooperative stated that, although milk production appears to have reached its peak, there appears to be no indication of a decrease in production. Consequently, the cooperative anticipates that milk production will hold close to present levels well into June while fluid milk sales in June are expected to be below April and May levels due to schools being closed. Thus, the cooperative anticipates that greater than normal quantities of milk will have to be moved to manufacturing outlets for surplus disposal. In the absence of a continuation of the current suspension for the month of June, the cooperative contends that it would be necessary to make costly and inefficient movements of milk solely for the purpose of pooling the milk of dairy farmers who have regularly supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on: May 20, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-14221 Filed 5-24-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 189

[Docket No. 81N-0292]

Cinnamyl Anthranilate; Proposed Prohibition of Use in Human Food

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to prohibit the use of cinnamyl anthranilate in human food. The proposal is based on a National Cancer Institute (NCI) study indicating that ingestion of cinnamyl anthranilate causes cancer in mice. The proposal would remove cinnamyl anthranilate from the list of food additives for direct addition to food for human consumption and would list cinnamyl anthranilate as a substance prohibited from use in food.

DATE: Comments by July 26, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna A. Dennis, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Cinnamyl anthranilate ($C_{16}H_{15}NO_2$, CAS Reg. No. 87-29-6) is the ester of cinnamyl alcohol and anthranilic acid. It has been used since the 1940's in food and cosmetics as a component of imitation grape or cherry flavors and as a fragrance ingredient. In 1977, the U.S. International Trade Commission (Ref. 1) reported that the total U.S. sales of cinnamyl anthranilate in 1976 for use as a flavoring and as a fragrance ingredient was 2,000 pounds. In 1973, the National Academy of Sciences/National Research Council (NAS/NRC) (Ref. 2) reported that in 1970 approximately 700 pounds of cinnamyl anthranilate were used for flavoring food. The use of cinnamyl anthranilate in various food categories was reported by (1) the 1970 NAS/NRC survey (published in 1973) (Ref. 3) and (2) Hall and Oser (Ref. 4) as follows:

Food category	Use level (parts per million)	
	NAS/NRC survey	Hall and Oser
Baked goods	20	5.8
Frozen dairy	14	1.7
Soft candy	29	4.3
Gelatins, puddings, and fillings	32	28
Alcoholic beverages and bases	15	(1)
Nonalcoholic beverages	7	5.8
Hard candy	7	(1)
Chewing gum	(1)	45-730
Miscellaneous, unclassified	1	(1)

[1] None reported.

Cinnamyl anthranilate is listed as a direct food additive in § 172.515 *Synthetic flavoring substances and adjuvants* (21 CFR 172.515). This regulation was published in the **Federal Register** of October 27, 1964 (29 FR 14625) as 21 CFR 121.1164. In addition, in 1965, the Flavor Extract Manufacturers Association (FEMA) published a list of flavoring ingredients (Ref. 4), including cinnamyl anthranilate, that it considered to be generally recognized as safe for addition to food for human consumption. This list was based on two preliminary lists published by FEMA in 1960 and 1961.

The evidence used in 1964 to support the safe use of cinnamyl anthranilate in food included its previous history of use in food, the presence of other cinnamyl and anthranilate derivatives naturally in food and in natural substances used to flavor food, and some toxicological data, primarily acute toxicity data, to support the safety of some of these derivatives.

Recent studies on cinnamyl anthranilate include a study by Stoner et al. (Ref. 5) reporting that intraperitoneal administration of cinnamyl anthranilate produced primary lung tumors in a 24-week mouse pulmonary tumor response system. Following publication of this study, several short-term studies were performed in which cinnamyl anthranilate exhibited (1) low acute toxicity (its LD_{50} in rats was greater than 5 g/kg body weight) (Ref. 6); (2) no mutagenicity in a bacterial assay (Ref. 7); and (3) no teratogenicity in a chicken embryo assay (Ref. 8). Cinnamyl anthranilate was selected for testing under the National Cancer Institute's Carcinogenesis Testing Program because of its use as a direct food additive and because of the results of the Stoner study. The National Institutes of Health issued a notice in the **Federal Register** of December 30, 1980 (45 FR 85832), announcing completion of the study and the public availability of the NCI bioassay report for cinnamyl anthranilate.

In the NCI report, "Bioassay of Cinnamyl Anthranilate for Possible Carcinogenicity" (Ref. 9), the results of this bioassay were summarized as follows:

A bioassay of cinnamyl anthranilate (a synthetic flavoring agent) for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice.

Groups of 50 rats and 50 mice of each sex were fed the test chemical in diets containing 15,000 or 30,000 ppm for 103 weeks and then observed for an additional 2 or 3 weeks. Controls consisted of groups of 50 untreated rats and 50 untreated mice of each sex. All surviving animals were killed and necropsied at 105 to 107 weeks.

Mean body weights of the dosed male and female rats and mice were lower than those of the corresponding controls throughout the bioassay and weight decrements were dose related. Mortality in rats or mice of either sex was not affected by administration of the test chemical.

In male rats, adenocarcinomas or adenomas of the renal cortex and acinar-cell

carcinomas or adenomas of the pancreas were found in low incidences in dosed rats but not in control rats. In direct comparisons with matched control groups, the incidences of these tumors were not significantly increased; however, because these tumors rarely occur spontaneously in aging F344 rats, they were considered to be related to compound administration. Similar pancreatic or renal tumors have not been detected among 634 historical-control male F344 rats at the same laboratory.

In the female rats, no tumors occurred at incidences that could be clearly related to administration of the test chemical.

In both male and female mice, the incidences of hepatocellular carcinomas or adenomas were dose related (P less than 0.001) and significant (P less than or equal to 0.001) in direct comparisons of dosed and control groups.

It was concluded that under the conditions of this bioassay cinnamyl anthranilate was carcinogenic for male and female B6C3F1 mice, inducing increased incidences of hepatocellular carcinomas or adenomas. The test chemical was also carcinogenic for male F344 rats, inducing low incidences of acinar-cell carcinomas or adenomas of the pancreas and adenocarcinomas or adenomas of the renal cortex. Cinnamyl anthranilate was not carcinogenic for female F344 rats.

A copy of the National Cancer Institute's report, along with other information referenced in this document, has been placed on public display in the Dockets Management Branch (address above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

The FDA Bureau of Foods' Cancer Assessment Committee (CAC) reviewed the reported NCI studies on the possible carcinogenicity of cinnamyl anthranilate in rats and mice. In its report (Ref. 10), the CAC notes that, in the mouse study, cinnamyl anthranilate induced a significant increase in the incidence of hepatocellular adenomas and carcinomas in both the male and female. The CAC concludes that these data, together with the presence of liver hyperplastic lesions in treated but not control animals, the shorter latency period for the onset of liver tumors in the treated groups, and the higher degree of malignancy of the tumors in treated groups, provide a convincing case for the carcinogenicity of cinnamyl anthranilate in mice.

The CAC notes, however, that in the rat study, there were no statistically significant increases in tumor incidence in treated groups compared to the controls. The CAC further notes that, in the high dose group, small increases occurred in the number of males bearing tumors at sites infrequently displaying spontaneous neoplastic lesions. The CAC considers that the presence of these tumors may be associated with compound treatment, but that the evidence is suggestive rather than conclusive.

As a result of this evaluation of the NCI study, the agency has concluded that cinnamyl anthranilate is carcinogenic to male and female B6C3F1 mice because it induces ademonas and carcinomas of the liver. The agency also has concluded that the small increases in the incidence of tumors of the kidney and pancreas in male F344 rats may also be related to treatment by cinnamyl anthranilate, but that conclusive evidence of this association is currently lacking.

Section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(C)) defines a food as adulterated "if it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409." Section 409(a) of the act (21 U.S.C. 348(a)) states that a food additive shall be deemed to be unsafe unless "there is in effect, and it and its use or intended use are in conformity with, a regulation issued under this section prescribing the conditions under which such additive may be safely used." In addition, section 409(c)(3)(A) of the act states that "no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *." On the basis of its analysis of the NCI report, FDA has concluded that cinnamyl anthranilate is a carcinogen when ingested by test animals. Therefore, the agency has concluded that cinnamyl anthranilate connot be approved as a food additive. Accordingly, under section 409 of the act, the agency is proposing to remove the listing of cinnamyl anthranilate in § 172.515 and is proposing a new regulation for cinnamyl anthranilate in Part 189 (21 CFR Part 189). Under this proposal, the addition of cinnamyl anthranilate to food would cause the food to be adulterated within the meaning of section 402(a) of the act and would subject the food to regulatory action. The agency expects to issue the appropriate final rule at the earliest possible date following the close of the comment period.

The agency concludes, however, that the protection of the public health does not require the recall of food (including intermediates) containing cinnamyl anthranilate from the market, or the destruction of food to which the substance has already been added. The agency has calculated an upper limit estimate of the risk presented by human ingestion of cinnamyl anthranilate at current levels of use. The agency utilized a linear proportional model, using the upper 99 percent confidence interval of the observed tumor incidence, as described in FDA's March 20, 1979 proposal, "Chemical Compounds in Food-Producing Animals" (44 FR 17070). According to this assessment, the upper limit of lifetime risk of cancer from ingestion of cinnamyl anthranilate at its previously reported levels of use is less than 1 in a million.

There are no fixed criteria for deciding whether to recall a product; each case must be judged on its own facts. The estimated risk cinnamyl anthranilate is low. Therefore, the agency believes that it is appropriate to permit the depletion of stocks of food products (including intermediates) containing cinnamyl anthranilate that were manufactured before the effective date of the final regulation.

The agency has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement is not required. The agency's findings of no significant impact and its environmental assessment may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has considered the effect that this regulation would have on small entities, including small businesses. The agency has determined that, although the proposed regulation would remove an approved additive from food, the effect of this action on small entities will be minimal. Only small amounts of cinnamyl anthranilate are currently used in food, and reformulation costs would be minimal because substitute ingredients are readily available. In addition, the agency has proposed no recall or destruction of products containing cinnamyl anthranilate that were manufactured before the effective date of the final regulation. The agency certifies that the publication of this proposal will not have a significant economic impact on a substantial number of small entities.

A decision on what, if any, regulatory

action should be taken on the use of cinnamyl anthranilate as an ingredient of drug and cosmetic products is being deferred until completion of the evaluation of skin penetration studies conducted by FDA and consideration of the total exposure to cinnamyl anthranilate from its use in these products.

References

The following information has been placed on public display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. United States International Trade Commission (1977), *Synthetic Organic Chemicals—United States Production and Sales, 1976*, USITC Publication 833, U.S. Government Printing Office, Washington, DC.
2. National Academy of Sciences/National Research Council (1973), *A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe:* Table 11: Part C—Annual Poundage Data for FEMA Questionnaire Substances Not Listed in NAS Appendix A (Group III). National Technical Information Service, Springfield, VA, Order No. PB 221-936.
3. National Academy of Sciences/National Research Council (1973), *A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe:* Table: Maximum Usage Levels Reported in NAS-GRAS Phase II Survey—by Substance, Food Category, and Technical Effects, Group B: FEMA Questionnaire Substances not in Appendix A.
4. Hall, R. L. and B. L. Oser, "Recent Progress in the Consideration of Flavoring Ingredients under the Food Additives Amendment. III. GRAS Substances," *Food Technology*, 19:151–197, 1965.
5. Stoner, G. D., M. B. Shimkin, A. J. Kniazeff, J. H. Weisburger, E. K. Weisburger, G. B. Gori, "Test for Carcinogenicity of Food Additives and Chemotherapeutic Agents by the Pulmonary Tumor Response in Strain A Mice," *Cancer Research*, 13:751–752, 1973.
6. Opdyke, D. L. J., "Cinnamyl Anthranilate," *Food and Cosmetics Toxicology*, 13:751–752, 1975.
7. Litton Bionetics, Inc. (1975), *Mutagenic Evaluation of Compound FDA 73–59 Cinnamyl Anthranilate.*
8. Food and Drug Administration (1976), "Investigations of the Toxic and Teratogenic Effects of GRAS Substances to the Developing Chicken Embryo: Cinnamyl Anthranilate."
9. National Cancer Institute (1980), "Bioassay of Cinnamyl Anthranilate for Possible Carcinogenicity," Technical Report No. 196, DHEW Publication No. (NIH) 80–1752, U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, Bethesda, MD.
10. Cancer Assessment Committee, Bureau of Foods, Food and Drug Administration (1980). Memorandum of meeting, "Cinnamyl anthranilate."

List of Subjects in 21 CFR

Part 172

Food additives; Food preservatives; Spices and flavorings.

Part 189

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Secs. 201(s), 402, 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), it is proposed that Parts 172 and 189 be amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

§ 172.515 [Amended]

1. Part 172 is amended in § 172.515 *Synthetic flavoring substances and adjuvants* by removing the entry for "cinnamyl anthranilate".

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

2. Part 189 is amended by adding new § 189. 113 to read as follows:

§ 189.113 Cinnamyl anthranilate.

(a) The food additive cinnamyl anthranilate ($C_{16}H_{15}NO_2$, CAS Reg. No. 87–29–6) is the ester of cinnamyl alcohol and anthranilate acid. Cinnamyl anthranilate is a synthetic chemical that has not been identified in natural products at levels detectable by available methodology. It has been used as a flavoring agent in food.

(b) Food containing any added cinnamyl anthranilate is deemed to be adulterated in violation of the act based upon an order published in the **Federal Register** of (insert date and reference for publication of the final rule).

Interested persons may, on or before July 26, 1982 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 13, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-14166 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 452

[Docket No. 79N-0459]

Erythromycin Estolate: Withdrawal of Proposal to Revoke Provisions for Certification of Tablets and Capsules; Response to Petition; Labeling

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commissioner of Food and Drugs announces that he has completed his review of the administrative record concerning the safety of erythromycin estolate. The Commissioner concludes that the drug is safe in that the risks of hepatotoxicity do not outweight its therapeutic benefits. Accordingly, the Commissioner withdraws a proposal to revoke provisions for certification of adult dosage forms of erythromycin estolate and in a related document published elsewhere in this issue sets forth the labeling changes. In addition, the Commissioner denies a petition requesting that all dosage forms of erythromycin estolate be removed from the market.

DATES: Withdrawal of the proposal to revoke provisions for certification is effective May 25, 1982.

ADDRESS: The transcript of the public hearing before the advisory committee, evidence and comments submitted, and all other documents listed in this notice may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: This notice withdraws the proposal of the Director of the Bureau of Drugs to revoke provisions for certification of adult dosage forms of erythromycin estolate (tablets—21 CFR 452.115a, capsules—21 CFR 452.115b). The basis of the proposal was that erythromycin estolate is unsafe because of the risks of hepatotoxicity (adverse liver effects) associated with its use, particularly in light of the availability of other erythromycins indicated for the same conditions which do not cause hepatotoxicity. The proposal described new evidence suggesting that the estolate may be less bioavailable than other erythromycins. In addition, the proposal asserted that there are no other significant therapeutic benefits peculiar

to the estolate which would justify its continued certification. Thus, the proposal asserted that the risks of the drug had been tentatively found to outweigh its benefits. The effect of the Director's proposal, if finalized, would have been removal of adult forms of erythromycin estolate from the market.

This notice also denies a petition submitted by Health Research Group (HRG), a consumer-oriented organization interested in the regulation of drugs. Using a rationale similar to the Director's, the petitioner requested that all dosage forms of erythromycin estolate be removed from the market. This request included the pediatric dosage forms: oral suspension, pediatric drops, and chewable tablets.

The Commissioner has reviewed data submitted by the manufacturers of erythromycin estolate, HRG, and the Bureau of Drugs (Bureau). He has reviewed the presentations made at a public hearing before the Ad Hoc Advisory Committee on Erythromycin Estolate (Committee). In addition, the Commissioner has considered the 763 comments that were submitted on the proposal.

The Committee found that, for adult and pediatric dosage forms of erythromycin estolate, the risks do not outweigh the benefits. The Commissioner accepts the Committee's recommendations which state that both adult and pediatric dosage forms of the estolate have a favorable risk/benefit ratio. Specifically, he concludes that the estolate is associated with a higher incidence of hepatotoxicity than other erythromycins, but this risk is offset by more reliable initial absorption, which may be important in serious infections, and by lack of significant effect of food on absorption.

I. Introduction

A. The Drug

Erythromycins belong to the macrolide group of antibiotics. They are alternative therapy for certain treatment and prophylaxis of diseases in patients allergic to penicillin. Erythromycins are also used in the treatment of Legionnaire's disease, pertussis, diptheria, intestinal amebiasis, primary syphilis, upper and lower respiratory tract infections, skin and soft tissue infections caused by susceptible organisms.

There are four types of erythromycin in solid dosage form currently available: erythromycin base, erythromycin ethyl succinate, erythromycin stearate, and erythromycin estolate. Erythromycin base, the original erythromycin formulation, was discovered in 1952. Gastric acidity has an inactivating effect on erythromycin base. Many erythromycin base products are, therefore, coated to help prevent inactivation. The stearate salt and the ethyl succinate ester of erythromycin were developed a few years later, in an attempt to overcome the problem of absorption associated with the base.

Erythromycin estolate was formulated in the late 1950's in an attempt to provide a form of erythromycin that would be more reliably absorbed than the base, stearate, or ethyl succinate. It is the lauryl sulfate salt of the propionyl ester of erythromycin base. Because of acid stability, it is not inactivated by gastric juices. After oral administration, erythromycin estolate is in the blood as free erythromycin base and as propionyl erythromycin ester. The propionyl ester hydrolyzes to the free base form of erythromycin.

Dista Products Co., Division of Eli Lilly & Co., P.O. Box 1407, Indianapolis, IN 46206 (Lilly) is the major producer of erythromycin estolate. The antibiotic forms (applications) for Lilly's adult dosage forms currently marketed tablets and capsules are numbered 61–896; 500 mg tablets, and 61–897; 125 mg and 250 mg capsules. The trade name for its erythromycin estolate products is Ilosone. Most of the studies presented and reviewed were conducted with Ilosone. This notice refers to erythromycin estolate rather than Ilosone, however, because the data pertain to all brands of estolate.

Erythromycin estolate capsules (250 mg) are also currently marketed by Danbury Pharmacal Inc., 131 West St., P.O. Box 296, Danbury, CT 06810, under antibiotic form 62–067.

Since the hearing before the Committee, FDA has approved the applications of two additional manufacturers:

1. 62–162; 125 mg and 250 mg capsules, Barr Laboratories, Inc., 265 Livingston St., Northvale, NJ 07647.

2. 62–237; 250 mg capsules, Zenith Laboratories, 140 LeGrand Ave., Northvale, NJ 07647.

B. Regulatory History

Erythromycin estolate was first approved for marketing in 1958. It was one of the drugs reviewed in the Drug Efficacy Study. In the Federal Register of August 29, 1970 (35 FR 13803), October 14, 1971 (36 FR 19868), and September 17, 1976 (41 FR 40209), the agency classified the drug as effective in the treatment of various infections.

The hepatic potential of the estolate has been of concern to the agency for many years. The first report of hepatotoxicity associated with the estolate was published in 1961. In 1962, the package insert was revised to add information about the recognized hepatotoxicity with the estolate. The firm sent two "Dear Doctor" letters to health professionals concerning the hepatotoxicity of the estolate—one in 1961, the second in 1963.

1. *The 1973 action.* In April 1973, HRG submitted a petition requesting that all dosage forms of erythromycin estolate be withdrawn from the market. The petition stated that the estolate causes serious hepatic effects not caused by other erythromycins without conferring any offsetting advantage.

In May 1973, FDA's Anti-Infective Advisory Committee met to discuss the safety and effectiveness of erythromycin estolate. The Committee found that hepatotoxicity was associated only with the estolate, not the other forms of erythromycin. It found, however, that when given in lower doses, the estolate was an effective as other erythromycins for streptococcal infections and primary syphilis (Refs. 12, 13, and 71). The Committee rejected the sore throat study submitted by HRG in which the estolate, stearate, and ethyl succinate were equally effective because no microbiological confirmation of etiology was made (Ref. 128).

Thus, the Committee concluded that the estolate's higher blood levels had been correlated with greater effectiveness, and that the estolate's risk/benefit ratio was favorable. The Committee also concluded that children appear to be immune to estolate toxicity. It recommended to FDA that the safety of adult dosage forms of erythromycin estolate did not warrant removing them from the market, but also recommended that the hepatotoxicity warning be strenghtened in the estolate labeling. The Commissioner accpeted the Committee's findings and, as a consequence, the package insert for erythromycin estolate was revised again, this time to include a boxed warning of its hepatotoxic potential.

2. *The 1979 Action.* In 1978, the Bureau obtained new data indicating that the blood levels of free erythromycin base may be actually lower than for the estolate than for other erythromycins. In addition, upon review of FDA's file of nationwide spontaneously reported adverse drug reactions (ADR reports), it appeared that of the reports of hepatotoxicity due to some oral erythromycin product, 93 percent had hepatotoxicity associated with the estolate, a proportion much greater than the estolate's market share. Further, the Bureau knew of no studies indicating that the estolate is clinically more

effective than other erythromycins. Thus, it appears that the greater hepatoxicity of erythromycin estolate was not counterbalanced by greater bioavailability of clinical effectiveness, and on a benefit/risk basis the estolate was less safe than other forms of erythromycin.

By letter of August 29, 1979, the agency requested that Lilly voluntarily remove all dosage forms of the drug from the market. The agency made the same request of Danbury by letter dated September 10, 1979. In response to the letters, Lilly asserted that erythromycin estolatge is safe and effective, and declined to voluntarily withdraw the products from the market. Danbury responded that the estolate is safe and effective, but stated that if the estolate were demonstrated to be unsafe, it would voluntarily withdrew it from the market.

On August 30, 1979, HRG submitted a second petition requesting the withdrawal from the market of all dosage forms of erythromycin estolate. Again, the basis of the petition was that the estolate causes hepatic reactions not caused by other erythromycins, and that there is no offsetting advantage to the estolate.

In the **Federal Register** of December 4, 1979 (44 FR 69670), the Director of the Bureau of Drugs proposed to revoke the provisions for certification of adult dosage forms of erythromycin estolate, stating that the drug appears to cause significantly more hepatic reactions, is less bioavailable, and is clinically no more effective than other erythromycins. The notice stated that comments would be accepted until January 3, 1980.

The pediatric dosage forms (chewable tablets, pediatric drops, and oral suspensions) were not included in the proposal. From the data available it appeared that the prevalence of hepatic reactions in young children is much less than in adults. Further, it was not clear that the number of hepatic reactions in relation to usage in young children was different for the different salts and esters of erythromycin.

The December 4, 1979 proposal stated that interested persons could submit a request for an informal conference on the proposed revocation. The agency received one request for an informal conference and two requests for an extension of the comment period. In the **Federal Register** of January 4, 1980 (45 FR 1085), the Director announced that because of the controversial nature of the proposal, he would grant the request for an informal conference. The comment period was extended to February 4, 1980.

The informal conference was held on January 18, 1980. At the conference, presentations were made by Lilly, Barr Laboratories, and two individuals. A transcript of the conference may be seen at the Dockets Management Branch under docket number 79N-0459.

C. The Ad Hoc Committee on Erythromycin Estolate

In order to assure that the factors determining the risks and benefits of erythromycin estolate were as fully developed as possible before a final determination was made, the agency decided to submit the substantive issues to an independent scientific review by an advisory committee. Because the charter of the appropriate standing advisory committee has expired, the Commissioner chartered, in the **Federal Register** of June 10, 1980 (45 FR 39340), the Ad Hoc Advisory Committee on Erythromycin Estolate (Committee) to review information pertaining to adult and pediatric dosage forms of erythromycin estolate and to advise the agency on the determination of the benefit/risk ratio of all dosage forms.

In a notice published in the **Federal Register** of February 27, 1981 (46 FR 14355), the Commissioner announced that a public hearing before the Ad Hoc Committee would be held on April 16-17, 1981. The Commissioner asked manufacturers, the Bureau of Drugs, and other interested persons to make written submissions of data for consideration by the Committee, and to be prepared to make oral presentations at the hearing. The Commissioner also set out the specific issues to be considered by the Committee:

1. Whether the prevalence of adverse liver effects from erythromycin estolate is greater for adults or children, or both, than that for other erythromycins; if so, whether the difference is clinically significant.

a. Whether voluntary adverse drug reaction reports can reliably be used to determine the relative prevalence of adverse liver effects for erythromycins; if so, what differences they show in the relative prevalence of those effects and whether the differences are clinically significant.

b. Whether data that are presented from the Kaiser-Permanente Study, or from any other retrospective study, can reliably by used to determine the relative prevalence of adverse liver effects for erythromycins; if so, what differences the data show in the relative prevalence of those effects and whether the differences are clinically significant.

c. Whether data that are presented from any prospective clinical study can reliably be used to determine the incidence of adverse liver effects for erythromycins; if so, what differences the data show in the relative incidence of those effects and whether the differences are clinically significant.

2. Whether there are any differences among erythromycins in the prevalence of adverse effects in adults or in children, or both, other than those involving the liver (for example, gastrointestinal intolerance); if so, whether those differences are clinically significant. Please state the basis for your conclusions.

3. For every bioavailability/bioequivalence study that is presented, the Committee is asked to comment on the adequacy of the design for determining bioavailability/bioequivalence, and whether the Committee believes the results of the study can be relied on to draw conclusions about comparative bioavailability of erythromycins under actual conditions of medical practice. The Committee will also address the following questions:

a. Whether tissue concentration studies of erythromycin estolate and erythromycin ethylsuccinate provide any evidence of clinically significant advantage for adults or children. Please identify the specific studies on which your conclusions are based.

b. Whether studies showing observable higher blood levels of erythromycin as the estolate indicate that erythromycin estolate is more reliably absorbed than other erythromycins and whether the studies provide any evidence of clinically significant advantage for adults or children. Please identify the specific studies on which your conclusions are based.

c. Whether erythromycin estolate, measured as the base, provides higher, the same, or lower blood levels that other erythromycins measured as the base; whether, as so measured, erythromycin estolate is more, equally, or less reliably absorbed than other erythromycins; and whether the differences, if any, are clinically significant. Please identify the specific studies on which your conclusions are based.

4. Whether the propionyl ester of erythromycin estolate, apart from its being hydrolyzed, contributes to the therapeutic effect of erythromycin estolate; if so, why. Does it, for example, have an antibacterial effect? Whether, if the propionyl ester contributes to the therapeutic effect of erythromycin estolate, it has been demonstrated to convey a clinical advantage over other

erythromycins. Please state the basis for your conclusion.

5. Whether a prospective study to determine the therapeutic effect (for example, antimicrobial) of the propionyl ester portion of the estolate molecule is feasible and needed; if so, what the design of such a study should be.

6. Whether erythromycin estolate has been shown in clinical practice to offer any therapeutic advantage in adults or children over other erythromycins.

a. Whether erythromycin estolate has been shown to be effective at lower doses than other erythromycins in the treatment of streptococcal infections and primary syphilis; if so, whether this use of lower doses offers any clinical advantage. Please state the basis for your conclusion.

b. Whether erythromycin estolate has been shown to be more effective than erythromycin ethylsuccinate in the treatment of *Haemophilus influenzae* otitis media. Please state the basis for your conclusion.

c. Whether erythromycin estolate has been shown to have any advantage over other erythromycins in the treatment of diphtheria, pertussis, Legionnaires disease, chlamydial infections, and *Campylobacter* enteritis. Please state the basis for your conclusion.

7. On the basis of the evidence presented, whether erythromycin estolate has a better, the same, or a poorer benefit/risk ratio in adults than other available erythromycins. Please state the basis for your conclusion.

8. If erythromycin estolate has a favorable risk/benefit ratio in adults, what labeling changes, if any, are recommended for adult dosage forms of erythromycin estolate.

9. On the basis of the evidence presented, whether erythromycin estolate has a better, the same, or a poorer benefit/risk ratio in children than erythromycin ethylsuccinate. Please state the basis for your conclusion.

10. If erythromycin estolate has a favorable risk/benefit ratio in children when compared to erythromycin ethylsuccinate, what labeling changes, if any, are recommended for pediatric dosage forms of erythromycin estolate.

The Committee's report was submited on July 24, 1981. In order to allow public comment on the Committee's report, the comment period was extended by notice published in the **Federal Register** of July 28, 1981 (46 FR 38536) to August 18, 1981.

II. Comments Submitted on The Proposal

The agency received 763 comments on the proposal. Comments were received from 17 State boards of pharmacy or pharmaceutical associations, 14 State medical associations, 4 State osteopathic associations, 1 local osteopathic association, 3 State dental associations, 2 State academies of family physicians, 13 county medical associations, and 7 national associations including the American Medical Association and the American Pharmaceutical Association. Lilly submitted comments on January 31, 1981. The remaining comments were from individual practitioners.

1. The American Pharmaceutical Association took no position on the substantive issues related to the proposal. Rather, the association asserted that a final rule revoking provisions for certification taking effect on the date of publication, as proposed, would lead to substantial confusion on the part of health care practitioners, with resulting disruption of patient care. The association requested that the final rule not take effect until after a reasonable period of time to establish alternative drug therapy for patients under treatment.

The provisions for certification of the estolate tablets and capsules are not being revoked. Thus, it is not necessary to consider the impact of the effective date of a final rule revoking certification provisions.

2. Many of the comments, from associations as well as individuals, requested that the agency submit the issue of the safety of the estolate to an advisory committee before making a final decision.

The issues involved in the determination of the risks and benefits of the estolate were submitted to an advisory committee for independent scientific review. The Committee's conclusions are set forth below.

3. The majority of the comments from practitioners objected to the Bureau's proposal and requested that the estolate remain on the market. The objections were based on years of personal experience with the estolate with little evidence of hepatic reaction. The agency received three comments supporting its proposal. These comments were also based on the personal experience of the commenters.

4. In its comments Lilly claimed that the proposal was based on an erroneous legal premise—that of relative efficacy. The firm charged that although the proposal was ostensibly based on a conclusion that the estolate is not safe, in actuality it is based only on comparisons of the estolate's bioavailability (essentially an effectiveness determination) with that of other erythromycins. According to Lilly, actions against drugs based on assertions that other drugs are more effective are prohibited by the Federal Food, Drug, and Cosmetic Act.

Lilly misconstrues the agency's action and the nature of a safety determination when it charges that it is engaging in a determination of relative efficacy. The determination of the safety of a drug often includes a determination of its risks and benefits. To the extent that benefits involve effectiveness, safety determinations unavoidably involve some consideration of effectiveness. Certain side effects may be judged to be acceptable when balanced against the potential benefits of a drug. Further, if the drug under consideration is one of a class of drugs indicated for the same conditions, the safety of the one drug cannot be determined without consideration of the safety of the others. A somewhat greater incidence of side effects may be tolerated in the drug under consideration, as compared the class as a whole, if those side effects are sufficiently offset by greater benefits, when compared to the class as a whole. This balancing test is improperly characterized as relative efficacy.

In this case, then, the safety of the estolate was at issue. A somewhat greater incidence of side effects (safety considerations) had been tolerated in the estolate because they were thought to be offset by greater benefits when compared to other drugs in the class. When the agency tentatively determined that the benefits were no greater than the class, it was the estolate's greater potential for harm that resulted in the proposed revocation.

III. Summary of Data Presented

At the hearing, data were presented by the Bureau of Drugs, Lilly, HRG, and 10 individuals. The most significant data presented by HRG (in its petition and at the hearing), the Bureau, Lilly, and interested persons are summarized below. Data presented by individuals are specifically described only when they differ significantly from the data presented by the Bureau, Lilly, or HRG.

HRG Petition and Presentation of Data

A. Incidence of Hepatic Reactions

HRG asserted that the risks of hepatotoxicity from erythromycin estolate outweigh its therapeutic benefits. It requested that all dosage forms be removed from the market. It cited the Bureau's figures from voluntary adverse drug reaction (ADR) reports indicating that hepatic reactions (hepatitis, jaundice, cholestatic jaundice, abnormal liver function) occur 45 times more frequently with the estolate than with generic erythromycin, 16 times

more frequently than with Erythrocin (film-coated erythromycin base, manufactured by Abbott Laboratories), and 6.9 times more frequently than with erythromycin ethyl succinate. Thus, patients who use the estolate are roughly 20 times more likely to suffer drug-associated hepatotoxicity than if they were to use another form of erythromycin. At the hearing HRG asserted that even if only one in a thousand people taking the estolate has a hepatic reaction, it would amount to over 3,500 cases a year in the United States (3.8 million prescriptions were filled in 1980).

The petitioner also described a study undertaken in 1977 said to demonstrate the toxicity of erythromycin estolate (Ref. 1). Of a group of pregnant women receiving 250 milligrams (mg) of the estolate for three weeks or longer, 14.4 percent developed subclinical, reversible hepatic toxicity. Of the 97 patients who received erythromycin stearate, only 3 percent developed abnormal SGOT levels (a test measuring hepatic dysfunction). The investigators stated that there was no convincing evidence that erythromycin estolate offered any clinical advantage.

B. Description and Effects of Hepatotoxicity

The petitioner cited the 1977 AMA Council of Drugs *Drug Evaluation Book* (3rd ed.) and Goodman and Gilman, *The Pharmacologic Basis of Therapeutics*, which state that hepatotoxicity is associated only with the estolate. The petitioner also quoted two patients who had suffered an hepatic reaction to the estolate. "These reactions are not mild; I was incapacitated for five weeks because of the liver reaction." Another said, "I became more ill than I've ever been in my entire life."

At the hearing Dr. Fenton Schaffner, Chief of the Division of Liver Disease in the Department of Medicine at Mount Sinai School of Medicine, appeared on behalf of HRG. Dr. Schaffner stated that even though there is no evidence of resulting chronic liver disease and only a few persons are affected each year, there is a significant amount of time lost and cost to the community. For these reasons, he supported removing the drug from the market.

Petitioner contended that hepatic reactions to the estolate, though reversible, are not benign. It cited five cases in the literature where unnecessary surgery resulted from a reaction to the estolate and contended that more cases of unnecessary surgery have, no doubt, occurred than are ever reported (Refs. 2 through 6).

C. Bioavailability and Clinical Effectiveness

HRG contended that the higher blood levels obtained with the estolate (free base and estolate levels combined) do not translate into therapeutic superiority. The petitioner cited several studies demonstrating that the estolate is hydrolyzed to free base only to the extent of 20 to 25 percent (Refs. 7, 8, and 9). In addition, HRG contended that the estolate is protein-bound to a higher degree than other erythromycins and, therefore, less likely to be of therapeutic benefit. By comparison, in one study the percent of nonprotein-bound and, therefore, available, drug was seven times greater with the base than with the estolate (Ref. 10). Another investigator found that the percent of free drug was approximately four times greater with administration of the base than with the estolate (Ref. 11).

HRG also contended that no substantial differences have been found in studies comparing the clinical effectiveness of the different erythromycins in the treatment of variety of infections. In 1973 the Commissioner concluded that the estolate was more effective than the base because 30 grams (g) of base were no more effective than 20 g of the estolate in treating primary syphilis. HRG noted, however, that these were not studies of clinical effectiveness, but rather of the 12 month re-treatment rate. The investigators found that the patients given the base had a re-treatment rate of 9.9 percent (Ref. 71), while the patients given estolate had a 14.8 percent re-treatment rate (Ref. 12).

Another study demonstrated that 20 mg/lb of the ethyl succinate was as effective as 7.5 mg/lb of the estolate in treating streptococcal sore throats (Ref. 13). A study comparing the effectiveness of the estolate, the ethyl succinate, and the stearate in 305 patients reported, "The microbiologic failure rates and recurrence rates in patients with Group A beta-hemolytic streptococcal infections of the upper respiratory tract did not differ significantly among three forms of erythromycin . . . ." (Ref. 14) A 1975 study of gonorrhea showed recurrences in 24 percent of the patients treated with the estolate and 23 percent of the patients treated with the base (Ref. 8). The final study presented by HRG was conducted in Australia and purported to show a lower rate of recurrence of strep throat due to estolate suspension (Ref. 15). However, the study was found by the Australian Drug Evaluation Committee not to show any "statistically significant or clinically important" differences between the estolate and stearate suspensions.

HRG asserted that there is no convincing evidence substantiating the claim that the estolate is better tolerated because fewer gastrointestinal side effects occur with it than with other erythromycins. One study compared equal doses of the estolate and the base (Ref. 8). Gastrointestinal side effects were common with both forms, though they were somewhat more common with the base.

Another study obtained opposite results in the comparison of the estolate, the ethyl succinate, and the stearate (Ref. 14). Most adverse reactions occurred in the patients who took the estolate. A third study found no major gastrointestinal adverse effects with either the estolate or the ethyl succinate in 182 patients (Ref. 16).

D. Pediatric Dosage Forms

HRG requested that all dosage forms of erythromycin estolate be removed from the market. It included the pediatric dosage forms, asserting that the amount of drug-induced liver damage in children is not insignificant. Petitioner suggested, in addition, that liver disease in children may be reported less frequently than in adults because the disease may be less frequently accompanied by jaundice in children than in adults. Thus, many children who actually suffer liver damage from the estolate may not come to medical attention.

HRG suggested that a further problem with pediatric use of the estolate is the possibility of widespread sensitization. As the children who have been treated with the drug grow to adulthood, subsequent doses could initiate a much higher percentage of toxic reactions than have occurred in today's adults, few of whom were given the drug as children.

HRG noted that the estolate has already been removed from the market in several other countries: in Australia in 1973, in Sweden in 1974, in Denmark in 1975, and in the Netherlands in 1976. No sales have been reported in Austria since February 1980.

In light of these data, HRG concluded that erythromycin estolate is a dangerous and completely unnecessary drug that has been marketed much to long already. They urged the agency to remove all dosage forms as quickly as possible.

Bureau of Drugs' and Lilly's Presentation of Data

Data supporting the Bureau's proposal to discontinue certification of erythromycin estolate are summarized

below. Data submitted by Lilly challenging the proposal are also summarized below. The summary includes data submitted by Lilly on October 25, 1979, to the FDA Advisory Committee on Anti-Infective Drugs, on January 18, 1980 at the informal conference, on January 31, 1980, in response to the December 14, 1979 proposed rule, and on March 30, 1981, for submission to the Committee and discussion at public hearing in April 1981.

A. Adverse Reactions

Information on the estimates of rates of occurrence of hepatic reactions caused by the various erythromycins was derived from three primary sources: the agency's spontaneous, nationwide adverse drug reaction (ADR) reporting system, a retrospective study of patient records at the Kaiser-Permanente Medical Care Program in Oakland, California, and a review of Medicaid claims records of the States of Michigan and Texas.

Manufacturers are required under 21 CFR 310.301 to submit reports of adverse reactions to the agency's ADR reporting system. Reports from manufacturers are augmented by direct reports from the medical community, the medical literature, contract studies, and foreign data. The reports are evaluated with respect to causality and placed into three general categories: new serious, known serious, and not serious. All reports are placed in a computer file where they can be used to tabulate events thought to be drug-associated and to develop demographic profiles of an effect on the population (Ref. 17).

The study of patient records at the Kaiser-Permanente Medical Care Program (a health maintenance organization) in Oakland, California (K-P study) was commissioned by Lilly in response to the December 4, 1979 proposal (Ref. 18). That study was completed on February 6, 1981. In the study, trained medical record analysts reviewed the records of outpatients during and following 1,078 courses of estolate therapy and 2,583 courses of non-estolate therapy for any evidence of hepatic reactions. The investigators found one probable case of cholestatic hepatitis due to the estolate, and four possible cases due to non-estolate erythromycin.

The Medicaid studies are reviews of patient records under Medicaid. State records are kept of drugs dispensed and physician diagnoses by date of service (Ref. 19). Lilly carried out a study of the Texas and Michigan Medicaid systems. In Texas, the rates of hepatic-related events were 1.9 per thousand adults exposed to the estolate, and 1.86 per thousand adults exposed to non-estolate erythromycin. In Michigan, rates were 4.3 per thousand for the estolate and 2.97 per thousand for non-estolate.

1. *The ADR Reports.*

a. *Bureau of Drugs' Position.* The Bureau made no assertions about the absolute prevalence of the hepatic reactions caused by the estolate and other erythromycins. It did contend, however, that relative prevalence may be estimated from ADR reports because the reporting reflects the actual occurrence of reactions, and on this basis found that relatively more hepatic reactions are caused by the estolate than by other erythromycins.

To estimate the differences in rates of adverse reactions between the estolate and other erythromycins, the Bureau combined ADR data with data on the market share of the drugs. These data were obtained from IMS America's National Prescription Audit and the National Disease and Therapeutic Index. The agency studied the years 1974 (the first year for which market share data were collected) to 1979 (the last year for which market share data were available).

In the 1974–1979 period the Bureau received 315 ADR reports for all salts and esters of erythromycin. If hepatoxicity were equal for estolate and non-estolate erythromycins, then the distribution of ADR reports should follow the market share. An observed/expected ratio can thereby be developed.

The Bureau found that in adults and older children (over 9 years) the average observed/expected ratio for the estolate was 5.2; that is, hepatic reactions were reported 5.2 times more frequently than would be expected based on the market share. Conversely, the average observed/expected ratio in adults for non-estolate erythromycins was 0.19. The difference in these ratios is approximately 27-fold.

In children, (under 9 years) the observed/expected ratio for the estolate was 2.8, while for other erythromycins the ratio was 0.13, a 22-fold difference. The Bureau noted that, because of the very small number of adverse reactions reported for children, these estimates are necessarily imprecise.

The Bureau acknowledged possible weaknesses in this type of data. A chronic problem is the low reporting rate. However, because of the large U.S. population, even rare events are reported a significant number of times over a period of years. Another problem is the variable quality of the data. In the past few years, however, the Bureau has been able to define the kind of information required to make inferences from these data.

The Bureau also acknowledged that the most difficult problem with ADR reports is bias. ADR reports may be used to estimate relative frequency of adverse reactions when there is no major association of an effect with one type of drug in a particular group, there is no major intrinsic bias for reporting on one demographic group as opposed to another, and there in no external biasing factor that would stimulate detection and reporting (e.g., a literature report suggesting the possibility of a previously unsuspected association—the "bandwagon" effect).

A characteristic of this latter bias is that it is not thought to be consistent over time. Therefore, the Bureau argued that if the proportion of reports attributed to the estolate were consistent over a period of years, it can be inferred that the reports reflect actual occurrences and are not due to some sort of bias. The absolute number of reports of hepatic reactions to any erythromycin between 1974 and 1979 was variable, from a low of seven reports in 1979 to a high of 72 reports in 1976. It is noteworthy, however, that the estolate observed/expected ratio (for children and adults, combined) is consistently in the range of three to four times that expected. This is in contrast to the non-estolate erythromycins, which have an observed/expected ratio consistently under unity, ranging from 0.07 in 1974 to 0.67 in 1979.

As a check on the system, the Bureau analyzed the data over time, across demographic characteristics other than the child/adult distinction. For example, in the estolate, the average sex-related observed/expected ratio for males was 0.7; the range is from a high of 1.1 in 1978 to a low of 0.5 in 1975. The average estolate observed/expected ratio for females is 1.3, ranging from a high of 2.0 in 1979 to a low of 1.0 in 1978. These figures are consistent with the hypothesis that women are somewhat more susceptible to hepatic reactions than men, but the important characteristic is the consistency of the figures over time. If the distribution between men and women were very inconsistent from year to year, it could be inferred that some factor other than actual occurrences was stimulating reports.

Similarly, the Bureau examined reports of rashes over time associated with the erythromycins as an additional check on the system. The Bureau found, in children and adults, that the distribution of reports for estolate versus non-estolate tended to

approximate market share year by year. This consistent finding suggests that there was no systematic relative over-reporting of non-hepatic adverse effects associated with erythromycin estolate.

The Bureau discussed briefly ADR data available from foreign countries. The ADR reports from Sweden and Japan corroborated the Bureau's findings: the observed/expected ratios relative to market share for the estolate were 3.7 and 1.7, respectively; and for the non-estolate erythromycins the ratios obtained in both countries were less than one.

b. *Lilly's Position.* Lilly challenged the Bureau's reliance on ADR data, stating that the quality of this information is inferior to data from the K–P and Medicaid studies. The firm stated that ADR data cannot be used to determine the relative frequency of adverse effects, and ought to serve only as warning signals about problems that should be studied by other means. The conclusions drawn from the ADA reporting system may be inaccurate as there was no assurance of an objective decision of "what is a case." Incomplete reports make it difficult to assure a cause-and-effect relationship between a drug and the adverse effect.

Lilly's most significant objection to the use of voluntary ADR reports data was based on the possibility that estolate reactions are reported more frequently than reactions from other erythromycins, in essence, that the reporting is biased. The labeling for the estolate has included information on adverse liver effects since 1961, and two "Dear Doctor" letters concerning the estolate's hepatic effects have been sent to all physicians. The warning was placed in a box in 1974, and an FDA *Drug Bulletin* reiterated the warning. No warnings at all were required for the non-estolate erythromycins until January 1979, however, and these are not boxed warnings. Lilly stated that to assert that these warnings had no effect would be to claim that the entire labeling/warning system is ineffectual.

Lilly stated that just as the number of adverse reactions for the estolate increased after the boxed warning was required in 1973, the number of reactions reported for all erythromycins increased in 1979 and 1980. Three adverse reactions to estolate and four to non-estolate were reported in 1979, and 42 to estolate and 43 to non-estolate were reported in 1980.

Dr. Marcus Reidenberg, Professor of Pharmacology and Medicine, Cornell University Medical College, an individual who spoke at the hearing, noted that any bias against the estolate that is present in the United States would also be present in foreign countries. He also noted that some manufacturers may ascertain a greater fraction of adverse reactions to their products than others. This "ascertainment bias," combined with mandatory reporting by manufacturers, could produce distortions in the data. He suggested the possibility of excluding manufacturers' reports and comparing only the reports of practitioners.

2. *The K–P study.*

a. *Bureau of Drugs' Position.* The Bureau contended that the K–P study, though elegantly conducted, generated insufficient data to allow inference as to the differences in incidence of hepatic reactions due to the various erythromycins. In the study, the investigators reviewed the records of 699 persons who had been given 1,078 courses of estolate treatment and 1,242 patients who had received 2,583 courses of the base, stearate, or ethyl succinate. The investigators found one "probable" estolate-related hepatic reaction and four "possible" non-estolate-related reactions. The Bureau notice the investigators' conclusion that these findings do not allow inference because the adverse effect is so infrequent (estimated to be less than 1 in 500 to 1 in 1,000) that the likelihood of discovering the reaction is low in such a small population.

b. *Lilly's Position.* Lilly contended that many of the problems inherent in data derived from the voluntary ADR reports are absent in data from the K–P study. Lilly stated that the strength of the K–P study lies in the qualifications and experience of the investigators, the use of quality control and standardized procedures, and the accuracy and completeness of the exposure and outcome data. The population at risk was ascertainable—all patients who took either form of erythromycin and belonged to the plan. Therefore, the adequacy of the sample size to find certain differences in treatment may be determined. Lilly believed that the K–P study was large enough to find a difference between treatments if the true difference is 25-fold—that is, if the difference is one adverse reaction per thousand patients (for non-estolate), as compared to 25 adverse reactions per thousand patients (for the estolate). Lilly conceded, however, that the K–P study might not be large enough to detect the differences under consideration in this case—that is, one adverse reaction per thousand patients (for the estolate), compared to 0.04 adverse reaction per thousand patients (for the non-estolate), also a 25-fold difference.

Dr. Reidenberg reviewed his calculation that, assuming a baseline prevalence of one adverse reaction per thousand, a study that could reliably detect a doubling of this prevalence would require the review of 18,000 non-estolate cases and 18,000 estolate cases. He questioned whether the information gained would be worth the cost of such a study.

The firm concluded its discussion of the K–P study by quoting the investigators as saying, "Our study group was too small for us to be able to demonstrate with statistical significance that the cholestatic hepatitis occurred at a greater rate among users of erythromycin estolate than users of the non-estolate forms. Neither can it be concluded from these data that there were no differences."

3. *The Medicaid Studies.*

a. *Bureau of Drugs' Position.* The Bureau stated that the review of Medicaid records is a promising tool for post-market surveillance because of the large number of patients involved, but noted that use of this type of study is still in its infancy. Because of differences in reporting practices, services covered, and refills allowed, it is difficult to compare results among States.

The Bureau found the results of two Medicaid studies to be conflicting with respect to certain age groups. For example, in Texas, hepatic reactions in children under 11, for the estolate and the non-estolate, accounted for 36 percent of all reactions (children and adults). In Michigan, children under 11 accounted for only 8.6 percent of all hepatic reactions. This suggests that the States have different methods of recording diagnoses, that a certain portion of the pediatric population is being missed, or that there is some difference in the tabulation of data between the two States. The Bureau stated that without more information it would be difficult to draw sound conclusions and, therefore, cautioned the Committee against relying too heavily on these data.

b. *Lilly's Position.* Lilly contended that the population at risk in the Medicaid studies is the patients who received either form of erythromycin in the studied States. Lilly asserted that the studies were of sufficient size to demonstrate a one-and-one-half to twofold ratio of risk with high probability. Lilly concluded that the two Medicaid studies are not inconsistent with each other in that both studies indicate similar incidence of hepatic reactions for estolate and non-estolate erythromycins.

4. *Clinical Trials of Hepatic Reactions.*

a. *Bureau of Drugs' Position.* The Bureau presented several prospective clinical trials suggesting that a higher frequency of hepatic dysfunction is associated with the estolate than with other erythromycins. A brief description of the major clinical trials presented follows.

(1) Patients with chronic pustular dermatitis were treated with erythromycin estolate in two series (Ref. 20). The first series included 80 patients; an additional 13 patients were treated in the second series. After 14 to 21 days of therapy, abnormal liver function tests were obtained in 12 percent of the patients in the first series and in 38 percent of the patients in the second series.

(2) The estolate hepatotoxity described in the preceding paragraph, was compared to the hepatotoxicity noted in one patient out of 18 (5 percent) with the stearate (Ref. 21). The investigator also reported that one patient with a history of an hepatic reaction from the estolate had no hepatic dysfunction when treated with the stearate.

(3) Women in the second half of pregnancy received the estolate, clindamycin hydrochloride, or placebo for the treatment of genital mycoplasmal infections (Ref. 1). All pretreatment SGOT levels were normal. Of the 97 women treated with clindamycin hydrochloride, 4 (4.1 percent) developed abnormal SGOT levels. Of the 97 women treated with the estolate, 14 (14.4 percent) developed abnormal SGOT levels. Of the 104 women treated with placebo, 3 (2.9 percent) abnormal SGOT levels. As soon as it was noted that women on the estolate developed a higher rate of abnormal SGOT levels than those taking clindamycin hydrochloride or placebo, incoming patients were given the stearate instead. Of the 97 patients treated with the stearate, 3 (3 percent) developed abnormal SGOT levels.

(4) of 100 patients treated with the estolate for 10 days for acute maxillary sinusitis, 1 patient developed cholestatic hepatitis (Ref. 63).

b. *Lilly's Position.* Lilly reported on six prospective clinical trials investigating hepatic reactins due to the estolate.

(1) No estolate hepatotoxicity was seen in a study of 37 patients. All were given the estolate (Ref. 25).

(2) Twenty-five patients with urinary tract infections were treated with the estolate for two weeks (Ref. 26). The authors report that "no serious toxicity was encountered."

(3) Seventy patients with purulent exacerbations of chronic bronchitis were treated with the estolate for two weeks (Ref. 27). No hepatotoxicity was noted.

(4) There were no liver function test abnormalities in a group of 21 premature infants given the estolate (Ref. 28).

(5) In a comparison of the estolate and penicillin in children, there were no statistical differences between the two groups in elevations of SGOT and bilirubin (Ref. 29).

(6) In an ongoing study of the estolate suspension, ethyl succinate suspension, and penicillin liquid in children with pneumonia, there has been no evidence of hepatotoxicity (Ref. 30).

Lilly reviewed four prospective studies reporting hepatic dysfunction in patients taking the base, stearate, ethyl succinate, or estolate.

(7) Twenty-one patients with cystic fibrosis participated in this study designed to evaluate the relationship of erythromycin prophylaxis and SGOT levels in chronically ill patients (Ref. 31). The authors concluded, "There is no demonstrable effect of erythromycin stearate or erythromycin ethyl succinate upon the SGOT level."

(8) In this study, the SGOT levels of patients receiving the base or the estolate in the treatment of gonococcal urethritis were observed (Ref. 8). The authors report that "abnormal SGOT levels were equally common among patients receiving erythromycin base and the estolate before, during, and after treatment."

(9) In a study of pregnant women given the estolate, the stearate, or placebo, 14.4 percent of the estolate group completing three weeks or more of therapy developed abnormal SGOT levels (Ref. 1; reviewed by the Bureau in paragraph 4.a.(3) above). When the high proportion of abnormal SGOT levels with the estolate was noticed, further incoming patients were given the stearate. Of these patients, 3 percent developed abnormal SGOT levels. Of the patients who received placebo, 2.9 percent developed abnormal SGOT levels.

(10) Patients with chronic pustular dermatitis were treated with the stearate or the estolate (Ref. 21; reviewed by the Bureau in paragraph 4.a. (2) above). Of the first group of estolate patients treated, 12 percent developed hepatotoxicity. Of the second group of estolate patients, 38 percent developed hepatotoxicity. Of the stearate patients, 5 percent developed hepatotoxicity.

Lilly also presented six recently published papers, each reporting one case of hepatic dysfunction due to the ethyl succinate (Refs. 32 through 37).

5. *Other Adverse Reactions.*

a. *Bureau of Drugs' Position.* The Bureau reviewed data on adverse reactions other than those involving the liver obtained from the spontaneous reporting systems of Sweden and the United States. The Bureau found the data to be inconsistent, and no clear conclusions were drawn.

The Bureau studied ADR reports of both gastrointestinal and rash hypersensitivity reactions. These reports of gastrointestinal effects were compared to market share in the same way as reports of hepatic reactions. The Bureau found that the rate of estolate reports in children was 6.7 times greater than that in the non-estolate; in adults, the rate for the estolate was 4.4 times greater than that for the non-estolate. The Bureau noted that some of the gastrointestinal side effects actually may have been subclinical hepatic reactions.

For rash and related effects, the Bureau found that the distribution of reports for the estolate versus the non-estolate tend to approximate the market share in children and adults.

The Bureau presented data from clinical trials which corroborated the inconclusiveness of the ADR reports in regard to gastrointestinal side effects.

(1) The estolate and the base were used in the treatment of gonococcal urethritis (Ref. 8). Of the patients in the base group, 73 percent reported gastrointestinal side effects. Of the patients in the estolate group, 57 percent reported gastrointestinal side effects. The number of patients with vomiting, pain, or moderately severe nausea or diarrhea was 30 percent in the base group and 13 percent in the estolate group.

(2) The base was used in 17 women in the treatment of *Haemophilus vaginalis* (Ref. 22). Therapy was discontinued in four patients due to nausea, diarrhea, and abdominal cramps. Three other patients developed nausea and/or diarrhea, but continued therapy.

(3) Propionyl erythromycin (a closely related forerunner of erythromycin estolate) was given to 134 children and adults who were contacts and carriers of staphylococci and streptococci (Ref. 23). The drug had to be discontinued in six children because of severe vomiting, abdominal cramps, and severe nausea.

(4) In a comparison of the ethyl succinate, stearate, and estolate in streptococcal infections, 156 patients were given the estolate, 102 were given the ethyl succinate, and 47 were given the stearate (Ref. 14). Of eight patients

developing gastrointestinal side effects, seven were in the estolate group. One adult taking the estolate developed loose stools and pruritus ani. Therapy was discontinued in two children taking the estolate because of nausea and abdominal cramps. Another four children treated with the estolate reported nausea, vomiting, abdominal cramps, and diarrhea, but continued therapy. One child treated with the ethyl succinate developed a moderate skin rash and vomiting, but therapy was not stopped.

(b.) *Lilly's Position.* Lilly stated that gastrointestinal side effects are dose-related and less frequent for the estolate than the non-estolate. Because of these side effects, it is usually not possible to increase the dosages of enteric-coated base, stearate, or ethyl succinate to achieve blood and tissue concentrations comparable to those obtained with the estolate.

The firm reviewed four clinical trials investigating gastrointestinal side effects.

(1) Of patients treated with the estolate, 13 percent reported severe to moderately severe effects, while 30 percent of patients treated with non-estolate reported side effects, two stopping treatment (Ref. 8; reviewed by the Bureau in paragraph 5.a.(1) above).

(2) In a study using erythromycin base, 4 of 17 patients stopped treatment because of nausea, abdominal cramping, or diarrhea (Ref. 22; reviewed by the Bureau in paragraph 5.a.(2) above). Three others experienced these side effects but continued treatment.

(3) In a comparative study of they estolate, stearate, and penicillin in treating disseminated gonococcal infections, three of five stearate-treated patients developed nausea and vomiting, therapy was discontinued in one. One of nine estolate-treated patients experienced nausea but continued treatment, while none of the nine penicillin-treated patients vomited or discontinued therapy (Ref. 38).

(4) In a study of 269 patients given the stearate, 33 percent of the patients experienced gastrointestinal disturbance (Ref. 39). Five percent of the patients discontinued treatment because of vomiting, abdominal pain, or diarrhea.

Studies in dogs indicate that erythromycin has a stimulating effect on the smooth muscle and the motility of the intestine (Ref. 40). The firm suggested that this effect might be the cause of the reported nausea, vomiting, and diarrhea. The base, stearate, and ethyl succinate being absorbed to a lesser extent than the estolate may result in higher residual erythromycin concentrations in the bowel lumen, thus causing more gastrointestinal side effects.

Lilly concluded that the lower rate of gastronintestinal effects associated with the estolate may be of clinical significance because physicians often advise that the drugs be taken with food to decrease gastronintestinal disturbances. However, food can interfere with the absorption of non-estolate erythromycins.

6. *In Vitro Data.* Dr. Hyman Zimmerman, Professor of Medicine at George Washington University, appeared at the hearing on behalf of the Bureau. He discussed the significance of biochemical abnormalities, stating that drugs that cause overt jaundice are likely to cause a higher incidence of abnormalities than those that are not associated with overt jaundice (Ref. 24). He referred to a number of in vitro studies conducted with chlorpromazine, which has about a one percent incidence of jaundice, and promazine, which has a very negligible reported rate of jaundice. Observations in Chang liver cells, rat hepatocytes, rabbit liver slices, and perfused liver indicate that chlorpromazine caused significantly more injury. This is consistent with the hypothesis that drugs that produce injury by hypersensitivity can produce injury in in vitro models.

When the estolate was compared with the base in a similar manner, Dr. Zimmerman stated that the estolate, but not the base, led to injury in Chang liver cells in suspension or culture, to suspensions of rat hepatocytes and the isolated, perfused rat liver. Dr. Zimmerman noted that translation of in vitro observations to in vivo phenomena must be made with caution, but in light of the clinical data with which the in vitro observations are consistent, these data are convincing.

B. Bioavailability

A summary of the bioavailability data presented by Lilly and the Bureau follows.

1. *Blood Levels of Free Base.* Erythromycin estolate appears in the blood as the total propionyl ester and, through hydrolysis, as free base. FDA's Anti-infective Agents Advisory Committee concluded in 1973 that the estolate is likely to be more effective than other erythromycins because of higher blood levels. However, the data reviewed by the Committee at that time did not distinguish between levels of free base and the levels of propionyl ester obtained. The estolate produces blood levels of total erthromycin three to four times higher than those obtained after administration of the base or stearate.

The Bureau's assertion that the estolate is not more bioavailable than other erythromycins is based on the results of bioavailability studies conducted by the University of Texas in Austin. These studies used as assay method that quantitatively differentiated the free base in presence of the ester.

a. *Bureau of Drug's Position.* The Bureau contended that erythromycin estolate does not possess significant antibacterial activity until it has been hydrolyzed to the base. Therefore, the Bureau asserted that a comparison of the levels of free base obtained with the different erythromycins is more meaningful than a comparison of total erythromycin levels. The Bureau discussed the results of 11 recent studies which compared the bioavailability (as indicated by blood levels) of erythromycin estolate with that of another erythromycin. Bioavailability was determined by newly developed methodology which permitted differentiation between the levels of free base and the particular salt (estolate, stearate, or ethyl succianate).

The Bureau argued that all but one of the studies indicate that, in terms of free base, the estolate is not more bioavailable than other erythromycins: the estolate was equally or less bioavailable. (Although there may be exceptions, it is generally true that if one drug in oral dosage form is 80 to 120 percent as bioavailable as the reference drug in oral dosage form, the two drugs are considered bioequivalent.) A brief description of those studies follows. The bioavailability values given are in terms of free base.

(1) The University of Texas Study—a comparison of estolate and stearate, single-dose, fasting (Ref. 41). The estolate was 45 percent as bioavailable as the stearate. The mean peak concentration for the estolate was 25 percent that obtained with stearate.

(2) The University of Texas Study—a comparison of estolate capsules, enteric-coated base tablets, and stearate tablets, multiple-dose, fasting (Ref. 41). The study employed 24 volunteers in a crossover design. A total of five doses was given every six hours.

After the first dose, the estolate was 36 percent as bioavailable as the base, and 65 percent as bioavailable as the stearate. After the fifth dose, however, there was no difference between the drugs—the estolate was 88 percent as bioavailable as the base and 135 percent as bioavailable as the stearate. Cumulative values (after doses 1, 2, and 5) indicate that the estolate is 66 percent as bioavailable as the base and 96

percent as bioavailable as the stearate. Thus, the estolate is not more bioavailable than the base or stearate.

(3) A comparison of estolate capsules and stearate tablets, single-dose, fasting (Ref. 42). Blood levels were monitored for 12 hours after dose administration. The estolate was 22 percent as bioavailable as the stearate. The mean peak concentration of free base for the estolate was 24 percent that of the stearate.

(4) A comparison of estolate capsules and stearate, single-dose, nonfasting (Ref. 42). The presence of food reduced the bioavailability of the stearate and increased that of the estolate. However, the estolate was still only 89 percent as bioavailable as the stearate. The mean peak concentration for the estolate was only 64 percent that of the stearate.

(5) A comparison of estolate capsules and stearate tablets, multiple-dose, fasting (Ref. 42). A total of five doses was given and blood samples were drawn periodically after the fifth dose for 12 hours. The bioavailability of the estolate was 47 percent that of the stearate. The mean peak concentration was higher for the stearate than for the estolate.

(6) A comparison of estolate capsules and stearate tablets, multiple-dose, nonfasting (Ref. 42). As in the previous study, a total of five doses was given and blood samples were drawn periodically after the fifth dose for 12 hours. The bioavailability of the estolate was found to be 66 percent of the stearate.

(7) A comparison of estolate capsules and enteric-coated base, multiple-dose (Ref. 43). Twelve doses were given to 16 volunteers in a crossover study. A two-hour fast was observed before and after drug administration. Samples were taken until the eighty-fourth hour. The estolate was not shown to be more bioavailable than the base. After the first two doses, the estolate was 90 percent as bioavailable as the base. After doses 9 through 12, the mean cumulative bioavailability of the estolate was 99 percent of the base. After the first and ninth doses the differences in the mean peak concentration was statistically significant in favor of the base. After all other doses, the differences in mean peak concentration were not significant.

(8) A comparison of estolate capsules and enteric-coated base tablets, nonfasting, multiple doses (Ref. 44). A total of 12 doses was given during 72 hours. Blood levels were monitored after doses 1, 2, 9, 10, 11, and 12. The estolate was not shown to be more bioavailable than the base. After the first two doses the bioavailability of the estolate was 109 percent that of the base. After doses 9 through 12, the mean cumulative bioavailability of the estolate was 85 percent that of the base. The mean peak concentration for the base was higher at each measurement than that of the estolate, but was not statistically significant.

(9) A comparison of estolate capsules and ethyl succinate tablets, multiple dose, nonfasting (Ref. 45). This was a two-way crossover study; five doses of each drug were given every six hours. Blood levels were measured at specified intervals for 36 hours. The mean peak concentration after each dose was higher for the ethyl succinate than for the estolate. After the first dose the ethyl succinate was 11 percent more bioavailable than the estolate. After the fifth dose, the estolate was 25 percent more bioavailable than the ethyl succinate. However, the hydrolysis data indicate that after the fifth dose the ethyl succinate was 75 percent hydrolyzed, rather than 50 to 60 percent. On the basis of 75 percent hydrolysis to base, the bioavailability of the estolate was only 6 percent higher than that of the ethyl succinate. The cumulative bioavailability of free base after doses 1, 2, 3, and 5 was 92 percent for the ethyl succinate in comparison with the estolate.

(10) A comparison of estolate capsules and ethyl succinate tablets, multiple dose (Ref. 46). A total of three doses of each drug was given. The first and second doses were given under fasting conditions; the third dose was given 20 to 30 minutes after breakfast. The cumulative bioavailability of the ethyl succinate was 91 percent that of the estolate. Under the nonfasting state of the third dose, the ethyl succinate was 93 percent as bioavailable as the estolate.

(11) A comparison of the estolate suspension and the ethyl succinate suspension, multiple dose, nonfasting (Ref. 47). This was a two-way crossover study using 25 volunteers. Each drug was given every six hours for a total of nine doses. In this study significantly superior blood levels were obtained from the estolate. The bioavailability of the estolate was 296 percent that of the ethyl succinate after the first dose. After the fifth and ninth doses it was 427 percent and 496 percent respectively. The mean peak concentration after the first, fifth, and ninth doses show the same trend.

The Bureau pointed out that 400 mg of the estolate and the ethyl succinate were administered, but that the normal dose of the estolate is only 250 mg while that of ethyl succinate is 400 mg. However, even after normalizing the values of 400 mg dose to 250 mg dose of the estolate, higher blood levels of free base were obtained with the estolate.

b. *Lilly's Position.* Lilly's presentation was aimed at refuting the Bureau's statement in the December 4, 1979 **Federal Register** that "The bioavailability of erythromycin estolate, in terms of free base, is, if anything, poorer than that of other erythromycins tested" and at establishing that the estolate is more reliably absorbed than other erythromycins. Lilly reviewed essentially the same studies presented by the Bureau. The firm's discussion of the studies is described below. The paragraphs referred to are in the Bureau's presentation, above. Unless otherwise noted, bioavailability is in terms of free base.

a. *Blood Levels of Free Base.* (1) Lilly criticized the University of Texas studies (Refs. 55 and 56; described in paragraphs (1) and (2) above as Ref. 41) because they did not include all forms of erythromycin and because they were conducted under fasting conditions. The firm stated that, in practice, erythromycin is often taken with food because the gastrointestinal side effects of all forms are then reduced. In addition, Lilly briefly discussed a clinical trial indicating that the presence or absence of food can greatly influence the bioavailability of erythromycin products (Ref. 57).

In regard to the single-dose University of Texas study, Lilly cautioned, as did the investigator, against drawing conclusions from a single-dose study alone, as it might lead to erroneous conclusions. Lilly also asserted that the variability among subjects was so great that differences in blood levels of free base were not statistically significant.

The firm noted that, in the multiple-dose University of Texas study, both the stearate and the base produced widely variable blood levels of free base between doses, compared with the gradual but steady rise of free base levels obtained with the estolate. In addition, the firm noted that after steady-state conditions were reached, the mean bioavailability for the estolate was greater than that for the stearate, but noted that the investigators concluded that the difference was not statistically significant.

(2) Lilly discussed the multiple-dose study of the estolate capsules with enteric-coated base under nonfasting conditions described in paragraph (7), above (Ref. 43). In that study, patients were administered 12 doses of a drug, one every six hours.

After the first dose on the third day—the ninth dose—the estolate produced

blood levels which were only 73 percent of those of the base. However, over a full day for the four steady-state doses, (doses 9 through 12) the estolate was 99 percent as bioavailable as the base. The firm concluded from this that conclusions drawn from the multiple-dose University of Texas study (in which only five doses were given over the course of the study) would unrealistically favor the base.

(3) In order to determine the relative bioavailability of the estolate under conditions closely related to medical practice, Lilly undertook a study comparing estolate capsules with enteric-coated base in volunteers immediately after meals (Ref. 44; described in paragraph (8), above). As did the Bureau, Lilly concluded that this study demonstrated that the estolate and base are essentially bioequivalent, and noted the large intersubject variability with the base.

Lilly claimed its comparison of this study and the University of Texas studies shows that the variability of blood levels in patients receiving the base increases markedly when it is administered with food. However, with the estolate, blood levels are relatively constant whether or not the drug is taken with food. After the first dose in the Texas study, the percent standard deviation of the serum erythromycin base concentrations was 109 percent (range, 43 to 275 percent) for the base, and 56 percent (range, 38 to 82 percent) for the estolate. Under pseudo-steady-state conditions, this percent standard deviation decreased to 84 percent (range, 44 to 167 percent) for the base, and 36 percent (range, 30 to 47 percent) for the estolate. When the same products were adminstered immediately after meals in the Lilly study, the percent standard deviations of the serum erythromycin based concentration for the first dose of the base was 170 percent (range, 100 to 422 percent) decreasing to 63 percent (range, 35 to 117 percent) under pseudo-steady-state conditions. For the estolate capsule, the percent standard deviation was 69 percent (range, 48 to 83 percent), decreasing under steady state conditions to 40 percent (range, 29 to 51 percent).

(4) Lilly discussed two unpublished studies comparing estolate capsules and ethyl succinate tablets (Ref. 45; described in paragraph (9) and Ref. 46 described in paragraph (10), above). In the first study, patients were given 250-mg capsules of estolate and 400-mg tablets of ethyl succinate. In the second study, patients were given 500 mg of the estolate or 800 mg of the ethyl succinate. In both studies the total erythromycin blood levels for the estolate were two to four times that of the ethyl succinate despite the 60 percent greater dosage of the ethyl succinate. Lilly stated that in the first study the estolate was hydrolyzed to free base to the extent of 23 percent, while the ethyl succinate was hydrolyzed to the extent of 57 percent. In the second study, the blood levels for the estolate were 2.2 times that of the ethyl succinate after the first dose, 3.1 times greater after the second dose, and 2.7 times greater after the third dose. Free base was present in approximately the same proportion.

(5) Lilly presented two studies comparing the estolate oral suspension with the ethyl succinate oral suspension. In the first study (not reviewed by the Bureau) the investigators found that significantly higher concentrations of total erythromycin and the free base were obtained with the estolate than with ethyl succinate when they were administered with food (Ref. 58). Although a greater proportion of the ethyl succinate is hydrolyzed to resulting free base, the free base concentration from the ethyl succinate is only about one-sixth that obtained from the estolate.

The second study of oral suspensions is described in paragraph (11) above (Ref. 47). The firm noted the Bureau's statement that even after normalizing the doses, the levels of free base for estolate were significantly higher than those of the ethyl succinate.

(6) Dr. Charles Ginsburg, Director of Ambulatory Services at the University of Texas, Southwestern Medical School, an individual who appeared at the hearing, reported on several studies he had conducted comparing liquid preparations of the estolate and the ethyl succinate administered with or without milk to children (no citation was given). He emphasized that there are only two liquid preparations of erythromycin available—the estolate and the ethyl succinate. Dr. Ginsburg's data corroborated Lilly's data. The administration of milk did not affect the bioavailability of either drug.

2. *Reliability of Absorption.*

a. *Bureau of Drugs' Position.* The Bureau noted that the intersubject variation in the absorption of the estolate appears to be smaller than that of enteric-coated base. In the multiple-dose, non-fasting study described in paragraph (8) of the Bureau's presentation, above, the coefficient of variation (an indication of intersubject variation) for the base after the first two doses was twice as large as that of the estolate (Ref. 44). After the ninth dose, the coefficient of variation of the base is 15 to 20 percent higher for the base than that of the estolate. Of the 24 patients receiving the base, seven failed to attain measurable blood levels in the first six hours after drug administration. One subject had no measurable blood level for 12 hours following the first dose of the base. All subjects who received the estolate, however, had measurable levels of free base within three hours after the first dose. However, the Bureau stated that there appears to be no clinical advantage to the greater reliability of absorption of the estolate because a patient with an infection so serious as to require immediate blood levels would likely be hospitalized and receiving antibiotics intravenously.

b. *Lilly's Position.* Lilly contended that the estolate is the most reliably and completely absorbed form of erythromycin, with total erythromycin concentrations several times those obtained following administration of other erythromycins. In addition, essentially the same total erythromycin concentrations are obtained when the estolate is administered with or without food and with different volumes of water. Four studies were cited to support these contentions (Refs. 42, 59, 60, and 61).

The absorption of enteric-coated base was said to be highly variable. In a study of fasting subjects administered enteric-coated base every six hours (not reviewed by the Bureau), steady-state blood levels of the drug were generally higher each day after the first and second doses than after the third and fourth doses (Ref. 62). This variability in concentration with time of day was repeatedly observed.

That blood levels obtained with the stearate are variable and influenced by food and fluid was confirmed in the University of Texas study. Lilly quoted the investigators: "Overall, the absorption of erythromycin stearate is markedly decreased when administered shortly after a meal and appears not to be affected if dosing occurs one hour prior to a meal."

3. *Tissue Concentration.*

a. *Bureau of Drugs' Position.* The Bureau reported on three tissue concentration studies: tonsil, aqueous humor, and middle ear exudate (Refs. 48, 49, and 50). Two studies compared the estolate with the ethyl succinate; the aqueous study compared the estolate with the base. In these studies, bioavailability was determined in terms of total erythromycin. The estolate is approximately 20 percent hydrolyzed in vivo, and the ethyl succinate is, on the average, 50 percent hydrolyzed to free

base in vivo. The Bureau, therefore, estimated the levels of free base by dividing the estolate levels by five, and the ethyl succinate levels by two. The Bureau concluded that although the estolate sometimes produced higher tissue levels of free base than other erythromycins, there appeared to be no clinically significant advantage of one erythromycin preparation over another. (See *Clinical Effectiveness* section, below.)

b. *Lilly's Position.* Lilly discussed several tissue concentration studies. Studies of erythromycin estolate concentrations in maxillary sinus exudate and tears were not comparative, and Lilly simply reported the results (Refs. 63, 64, and 65). Lilly also discussed the tonsil tissue, aqueous humor, and middle ear exudate studies presented by the Bureau (Ref. 48 described in Bureau's position above). The firm stated that the higher tonsillar levels for the estolate may have therapeutic implications because in vitro studies show that progressive increases of erythromycin concentrations above the minimum inhibitory concentration for beta-hemolytic streptococci result in an accelerated killing rate.

Dr. Ginsburg reviewed a study in which he found significant differences (in favor of the estolate) between levels of erythromycin obtained from estolate and ethyl succinate liquid preparations in the tears of children (no citation was given). (There were no significant differences in the salivary concentrations between the two drugs.) Dr. Ginsberg suggested that the higher tear levels may be of clinical significance in a diseases of the eye and lung caused by chlamydia in children.

4. *Therapeutic Effect of Propionyl Ester.*

a. *Bureau of Drugs' Position.* The Bureau contended that the propionyl ester has no therapeutic effect other than serving as a reservoir out of which active free base is hydrolyzed.

The Bureau reviewed the results of Lilly's mouse protection studies which compared the effectiveness of intravenously administered propionyl ester and erythromycin base against experimentally induced *Streptococcus pyogenes* infections (Ref. 51). (The drugs were administered intravenously in order to minimize variation due to absorption differences.)

When mice were treated 1 hour post-infection, the median effective dose of the base was 16 mg/kg, while that of the propionyl ester was 24 mg/kg. When treatment was given 2 hours pre-infection, the median effective dose of the base increased to 41 mg/kg, while that of the propionyl ester was 29 mg/kg.

The propionyl ester hydrolyzes into free base at a relatively slow rate (one half-life is 93 minutes). Thus, the Bureau argued that this single dose study is biased in favor of the propionyl ester. In normal treatment of bacterial infections, treatments must be continued for several days or relapse will occur. When the base was given after infection, the protective effect was too short-lived. The greater protection from administration of the propionyl ester was due to the prolonged effect of its continued hydrolysis long after the comparative erythromycin base dosage had been eliminated from the mice's systems.

The Bureau reviewed two in vitro studies which, it claimed, indicate that the propionyl ester is inactive and that any activity in its solutions is proportional to its hydrolysis rate.

(1) Five of the 2' esters of erythromycin were ranked in order of hydrolysis (Ref. 52). The ester with rapid hydrolysis performed with full activity as soon as it was applied to growing cultures. The propionyl ester had a slow onset of bacteriostatic activity coinciding with its slow hydrolysis rate.

This study also evaluated the ability of various erythromycin esters to inhibit radio-labeled erythromycin from binding to ribosomes. (It is through ribosomal binding that erythromycin exerts its bacteriostatic effect by inhibiting protein synthesis.) The propionyl ester was unable to displace significant amounts of the labeled erythromycin from the ribosomes—the amount of binding by the esters was proportional to their hydrolysis rates.

(2) That the antimicrobial effect of the estolate is due to hydrolysis of the propionyl ester to free base was urged by the Bureau to have been demonstrated by a second study comparing bactericidal effects at different pH levels (Ref. 53). There was a very slow and gradual appearance of activity from the propionate solutions at pH unfavorable for hydrolysis (pH 6.0). There was, however, a rapid and complete appearance of anti-bacterial activity at a favorable hydrolytic pH (pH 7.5).

The Bureau contended that there is no direct evidence of hydrolysis taking place after the propionyl ester is absorbed by bacterial cells. Strong indirect evidence, however, points to lack of hydrolysis within cells.

An unpublished study indicates, by use of radioactive tracers, that the propionyl ester is absorbed into bacterial cells to a much greater extent than is erythromycin base (Ref. 54). The Bureau stated that if the ester were hydrolyzed to an active form intracellularly, the ester would show much higher activity than the base in vitro studies. It does not.

Finally, the Bureau cited Lilly's attempts to find bacterial esterases capable of splitting the estolate. The firm was able to find esterases capable of splitting ester complexes other than the propionyl ester of erythromycin. Thus far, the search for enzymes capable of splitting the propionyl erythromycin ester within the bacterial cell has been unsuccessful.

b. *Lilly's Position.* Lilly contended that the propionyl ester has a therapeutic effect in addition to its providing a reservoir from which the base is continously hydrolyzed. It argued that the ester configuration modifies the chemical, physical, and biological characteristics of erythromycin and increases its lipid solubility. This facilitates its penetration into macrophages and tissues. Thus, the ester acts as both a reservoir and a delivery system of erythromycin.

Lilly stated that if a significant amount of the propionyl ester enters the bacterial cell and intracellular hydrolysis occurs, then an antibacterial effect should be observed. Lilly reviewed the studies evaluated by the Bureau indicating that the propionyl ester is accumulated intracellularly to a great extent than the base (Ref. 54). The firm noted that techniques have not yet been developed for determining actual intracellular hydrolytic activity. However, because there has not yet been found a medium in which the propionyl ester is not hydrolyzed to free base, it can only be assumed that the estolate within cells is a source of active free base.

Lilly reviewed studies which indicate that the uptake of antibiotics by alveolar macrophages is related to lipid solubility—the more lipid-soluble drugs being concentrated to a greater extent than the non-lipid-soluble drugs (Refs. 67 and 68). At 1 minute, the concentration of the estolate was 17 times that of the base, at 15 minutes, the difference was six times; and at 1 hour, the ester concentrations were twice that of the base. The firm suggested that this characteristic might be significant in difficult-to-treat infections caused by viable intracellular bacteria such as Legionnaire's disease and *Chlamydia trachomatis.*

Lilly reported on the mouse protection study comparing the effectiveness of intravenously administered propionyl ester and erythromycin base against experimentally induced *Streptococcus*

pyogenes infections (Ref. 51; reviewed by the Bureau above).

The median effective dose for the propionyl ester was higher than that for the base. However, chromatographic analysis indicates that the amount of active free base hydrolyzed from the propionyl ester was significantly less than the median effective dose of the base. Thus, Lilly argued that the propionyl ester itself appears to have provided the requisite additional antimicrobial activity. These results were confirmed in a second mouse protection study performed in mice infected with *S. pyogenes* and *S. aureus* (Ref. 69, noted reviewed by the Bureau).

C. Clinical Effectiveness

1. *Streptococcal Pharyngitis and Tonsillitis (strep throat).* The recommended children's dose for the ethyl succinate, the stearate, and the base is 30 to 50 mg/kg/day in the treatment of streptococcal pharyngitis. In 1978, the recommended dose for the estolate in the treatment of streptococcal pharyngitis in children was changed from 30 to 50 mg/kg/day to 20 to 50 mg/kg/day based on data submitted by Lilly (Ref. 118).

a. *Bureau of Drugs' Position.* The studies submitted by Lilly to support the labeling change investigated only the estolate. Other studies (described below) indicated that higher doses of the ethyl succinate suspension are as effective as lower doses of the estolate suspension. The difference in dosage amount is not very great and appears to be of little clinical significance as there appear to be no adverse effects (i.e., gastrointestinal) from higher doses of the ethyl succinate. In addition, there is no difference in effectiveness between low doses of the estolate capsules (23 mg/kg/day) and comparable doses of the stearate tablets (23.1 mg/kg/day) (Ref. 14—described below).

(1) Erythromycin estolate was used successfully in the treatment of children at a dosage of 20 mg/kg/day (Ref. 70). This study made no comparison with other erythromycins.

(2) In a comparison of the estolate and the ethyl succinate in children, eradication rates were similar in both groups (Ref. 16). The dosage of the ethyl succinate was 40 mg/kg/day, while that of the estolate was 20 mg/kg/day. The effectiveness of the ethyl succinate at lower doses was not studied.

(3) This study compared two dosage schedules of the ethyl succinate oral suspension with penicillin in oral suspension (Ref. 13). One regimen of the ethyl succinate was the usually recommended dosage (44 to 50 mg/kg/day) while the other was below the usual recommended dose (27.5 to 33.4 mg/kg/day). There was no significant difference between the results of penicillin and the higher, usually recommended, dose of the ethyl succinate.

The higher dosage of the ethyl succinate was then compared with penicillin and the estolate given below the usual recommended dose (10 to 20 mg/kg/day) and at the usual recommended dose (20 to 50 mg/kg/day). There seemed to be no difference in the effectiveness of the estolate and the ethyl succinate when both were given at the recommended dose. The authors concluded that the dosage of the ethyl succinate should be above 39.5 mg/kg/day, but that the estolate was as effective as penicillin at 16.5 mg/kg/day in patients under 45.4 kg.

(4) This study compared ethyl succinate suspension (51.4 mg/kg/day) and the estolate suspension (31.8 mg/kg/day) (Ref. 14). The cure rate for the ethyl succinate was 97.9 percent, while that of the estolate was 93.3 percent.

In the same study, the investigators compared ethyl succinate chewable tablets (38.7 mg/kg/day) with estolate chewable tablets (38.3 mg/kg/day). The cure rate of the ethyl succinate was 90.9 percent, while that of the estolate was 95.7 percent.

A third comparison was made in the same study, between stearate tablets (23.2 mg/kg/day) and estolate capsules (23.0 mg/kg/day). The cure rate for the stearate was 100 percent; that of the estolate was 95.8 percent.

b. *Lilly's Position.* Lilly reviewed the studies reviewed by the Bureau indicating that the estolate is effective in the eradication of streptococcal microorganisms at 15 to 20 mg/kg/day (Refs. 13, 14, 16, and 70).

Dr. Ginsburg presented preliminary results of an ongoing study comparing the effectiveness of the estolate (15 mg, twice daily) to the ethyl succinate (15 mg, twice daily) in the treatment of strep throat (Ref. 120). The author stated that no study had compared the effectiveness of the ethyl succinate with the effectiveness of the estolate when both were given at the lower dose at which the estolate is effective. It is essential to determine whether the ethyl succinate may also be effective at the lower doses. Of the 100 patients studied so far, 52 were given the estolate with an 11-percent failure rate. Of the 48 patients given the ethyl succinate, there was a 31-percent failure rate.

2. *Primary Syphilis.*

a. *Bureau of Drugs' Position.* No comparative studies of the effectiveness of the estolate and other erythromycins have been conducted. (The only studies have been of re-treatment rates. These studies clearly cannot demonstrate effectiveness.) Thus, the Bureau stated that it cannot be determined whether the estolate is more effective than othe erythromycins.

(1) This study investigated the re-treatment rates of different dosages of erythromycin estolate in the treatment of primary syphilis (Ref. 71). One year after treatment, the re-treatment rate for the 10 g schedule was 35 percent, while that of the 15 to 20 g schedule was 15 percent. Based on this study, the Public Health Service recommends 10 days of orally administered erythromycin in a total dosage of 20 g. The recommendation does not specify a particular form of erythromycin.

(2) This study compared the 12-month re-treatment rates of 20-g schedule of erythromycin base and and 30-g schedule of the base (Ref. 12). A 25-percent re-treatment rate was obtained with a 20-g schedule, while a 9.9-percent re-treatment rate was obtained with the 30-g schedule. The authors concluded that erythromycin base in a total of no less than 30 g for 10 days is an acceptable alternative to penicillin in the treatment of early syphilis.

b. *Lilly's Position.* Lilly submitted no additional studies on the effectiveness of erythromycin on the treatment of primary syphilis.

3. *Haemophilus influenzae Otitis Media.*

a. *Bureau of Drugs' Position.* The Bureau claimed that superior effectiveness of the estolate over the ethyl succinate cannot be seen from the available data. None of the studies compares erythromycin estolate with other erythromycin.

(1) The Bureau reviewed the results of two studies, which Lilly had in combining them, claimed showed that the estolate is more effective than the ethyl succinate in the treatment of *H. influenzae* otitis media (Ref. 72). In the first study, there was a cure rate of 77 percent with an ethyl succinate/sulfonamide combination, and a 50-percent cure rate with ethyl succinate alone. In the second study, there was a cure rate of 88 percent with an estolate/sulfonamide combination and an 81-percent cure rate with the estolate alone. The Bureau argued that the effectiveness of different drugs should be compared only when they are used in the same study.

(2) Contrasting results were obtained in another study comparing an estolate/sulfonamide combination and the estolate alone (Ref. 73). In this study, a 95-percent cure rate was obtained with the estolate/sulfonamide combination,

but only 63 percent of the patients treated with the estolate alone were cured.

(3) The investigators compared the effectiveness of an estolate/sulfonamide combination, and the estolate alone, among others (Ref. 74). They stated, "This study shows that the fixed combination of erythromycin estolate and triple sulfonamide suspenion is as effective in acute otitis media as the single drug ampicillin and more effective than the ingredients of the combination used separately."

(4) In another study, the effectiveness of erythromycin ethyl succinate/sulfonamide suspenion was compared with the effectiveness of the ethyl succinate alone, as well as with several other drugs (Ref. 75). The authors concluded that ampicillin, penicillin with sulfonamide, and erythromycin ethyl succinate/trisulfapyrimidine were the most bactericidal treatment.

(5) In still another study, the investigators compared the erythromycin concentration in middle ear exudate following estolate or ethyl succinate administration in eight patients with otitis media (Ref. 49). The concentration in the ethyl succinate group ranged from 0.24 to 1.02 mcg/mL with a mean of 0.84 mcg/mL. The concentration in the estolate group ranged from 1.68 to more than 8 mcg/mL, with a mean of 4.18 mcg/mL. The higher levels obtained with the estolate appear to be of little clinical significance as the patient with the highest serum and middle ear exudate levels of erythromycin had a moderate grouth of *H. influence* on the culture.

b. *Lilly's Position.* Lilly reviewed the results of the study comparing the ethyl succinate and an ethyl succinate/sulfonamide combination and its own study comparing the estolate and an estolate/sulfonamide combination (Ref. 72; described in the Bureau's paragraph (1) above). It was urged that, taken together, the studies indicate that the estolate is at least as effective in *H. influenzae* otitis media as a combination of the ethyl succinate and a sulfonamide.

4. *Diphtheria.*

a. *Bureau of Drug's Position.* The Bureau was aware of no data showing superior effectiveness of the estolate over other forms of erythromycin in the treatment of diphtheria.

(1) Many references to erythromycin therapy in diphtheria do not specify a particular form of the drug. The Report of the Committee on Infectious Diseases of the American Academy of Pediatrics (1977) states, under treatment of diphtheria, "Antimicrobial therapy is a valuable adjunct, but it is not a substitute for antitoxin. Penicillin and erythromycin are the drugs of choice." The Bureau cited nine other published articles generally recommending erythromycin in the treatment of diphtheria (Refs. 76 through 82, 115, and 119).

(2) Diphtheria carriers were treated with benzathine penicillin, erythromycin estolate, or clindamycin (Ref. 83). All treatments were successful; 92 percent of the patients in the estolate group had negative cultures at the end of treatment.

(3) Diphtheria carriers were treated with erythromycin estolate for 6 days (Ref. 84). All carriers with positive throat cultures before therapy developed negative cultures during therapy. Two weeks after the end of therapy, however, 21 percent of the patients had positive cultures again.

(4) This was a discussion of treatment in the 1970 diphtheria epidemic in San Antonio (Ref. 85). Children from 2 to 5 years old received erythromycin lactobionate intravenously or the ethyl succinate intramuscularly for 3 days, followed by the stearate for 4 days. Patients 6 years old and over received the lactobionate intravenously for 3 days and the stearate for the next 4 days. *C. diphtheriae* was eliminated from all patients.

Carriers were treated with estolate syrup for 7 days. There was a success rate of 89 percent.

(5) Of 142 carriers treated with procaine penicillin, 14 did not have the organism eliminated from the nasopharynx (Ref. 86). The patients who did not respond to penicillin were then given erythromycin ethyl succinate, which eliminated the organism in every patient.

(6) The Bureau reported on five published articles reporting on the successful use of erythromycin other than the estolate ethyl carbonate in the treatment of diphtheria (Refs. 87 through 91).

b. *Lilly's Position.* Lilly reviewed two literature excerpts (Refs. 83 and 84; reviewed by the Bureau in paragraphs (2) and (3) above) reporting on the estolate's effectiveness in eradicting diphtheria bacilli. The firm noted that other erythromycins have not been studied in the treatment of diphtheria.

5. *Pertussis.*

a. *Bureau of Drugs' Position.* The Bureau stated that there is no published evidence that one form of erythromycin is more effective than another in the treatment of pertussis (whooping cough).

(1) The Bureau reviewed nine excerpts from the medical literature which recommend erythromycin for the treatment of patients with pertussis or exposed to pertussis (Refs. 76, 78, 80, 92 through 96, and 115). No specific form of erythromycin is recommended.

(2) Erythromycin estolate eradicated *B. pertussis* from the nasopharynx in 2 to 7 days (Ref. 97). In the no antibiotic group, the organism was eliminated in 7 to 14 days. The estolate had no effect on the duration or severity of the disease, as judged by the length of hospitalization.

(3) All 131 patients treated with the estolate had negative nasopharyngeal cultures on the sixth day of treatment (Ref. 98). On the same day, 11 to 36 patients treated with ampicillin still had positive cultures.

(4) In an outbreak of pertussis, 200 patients (including 17 carriers) were treated with the ethyl succinate (Ref. 99). At the end of treatment, 118 patients (59 percent) were cured, and 62 (31 percent) were greatly improved. After 1 week of treatment, all 17 carriers had negative cultures.

(5) In this study patients received erythromycin as the ethylcarbonate or the stearate for 4 to 21 days (Ref. 100). The author simply noted that erythromycin seems to have prophylactic value in preventing or aborting whooping cough.

b. *Lilly's Position.* Lilly stated that eradication of *Bordetella pertussis* from the nasopharyngeal secretions of patients is important in reducing the occurrence of secondary cases and bacterial complications. In one study (Ref. 97; reviewed by the Bureau in paragraph (2) above) estolate treatment was superior to no treatment in reducing the length of time that nasopharyngeal cultures remain positive for *B. pertussis.*

Lilly asserted that the recent addition of the *B. pertussis* indication in the labeling of all erythromycin products was based on studies conducted only with the estolate. Through a freedom of information request, Lilly learned that the recommendation that the indication be approved was based on a review of published reports. Lilly asserts that only three of the published reports provided dosage information and identified the specific erythromycin product (Refs. 97, 98 and 99; reviewed by the Bureau in paragraphs (2), (3), and (4) above). Two of those three publications reported that the estolate was effective at a dosage of 40 to 50 mg/kg/day.

The third excerpt was a report of clinical experience with the ethyl succinate at a dose of 30 mg/kg/day. Lilly asserts that approval of the pertussis indication could not have been based on this study because, as stated by the reviewing medical officer, "It is not written in this paper how

evaluations of 'cured,' 'greatly improved' etc. were made . . . by the evaluation of clinical signs, duration of the disease or bacteriological results."

Lilly reported on a more recent excerpt stating that 7 days of ethyl succinate therapy at a dosage at 55 mg/kg/day failed to eradicate *B. pertussis* from an infant (Ref. 125; not reviewed by Bureau). A second infant who was exposed to the first patient contracted pertussis in spite of prophylactic use of ethyl succinate suspension at the same daily dose. The authors emphasized the need for further study.

6. *Legionnaire's Disease.*

a. *Bureau of Drug's Position.* The Bureau stated that different erythromycin preparations have been used in the treatment of Legionnaire's disease, but that data showing one erythromycin to be more effective than another were not available.

(1) The Bureau reviewed three literature excerpts recommending erythromycin for the treatment of Legionnaire's disease (Refs. 101, 102, and 115). Two of the articles recommend no specific type of erythromycin. One article states that the estolate should not be used because of the risk of hepatotoxicity.

(2) In this study, 15 of 16 patients treated with the lactobionate (intravenous) or stearate had a satisfactory response to therapy including seven who were administered immunosuppresive therapy concurrently (Ref. 99). One patient was not initially diagnosed as having Legionnaire's disease and was treated with penicillin, ampicillin, gentamycin, and oxacillin. He died on the tenth day of illness after receiving only two doses of erythromycin.

b. *Lilly's Position.* In severe infections or in patients with compromised host defenses, parenteral erythromycin therapy is often used in hospitalized patients. However, Lilly stated that in the management of outpatients with pneumonia that may be Legionnaire's disease, the use of an oral erythramycin product is recommended.

Studies in Detroit have demonstrated a lack of response to the stearate in spite of oral doses of 4 g or more daily (Refs. 121 and 122 not reviewed by the Bureau). One patient developed the disease while receiving the drug. Intravenous erythromycin at similar does resulted in therapeutic response.

Investigators at the University of Vermont also have emphasized the unpredictability of the stearate form in the initial treatment of Legionnaire's disease (Ref. 123; not reviewed by the Bureau).

Dr. Dolin, Professor of medicine at the University of Vermont, an individual who appeared at the hearing, noted that Legionnaire's disease is one of the few clinical situations in which erythromycin is the initial treatment of choice for a life-threatening infection.

Dr. Dolin stated that reliable absorption is a paramount consideration in selection of any oral therapy for a life-threatening disease. He reiterated the concern that absorption of oral erythromycin preparations other than the estolate is highly erratic and unreliable, particularly when taken without regard to meals, as is usually the case. He stated that he had observed several cases of Legionnaire's disease that progressed on oral base therapy, which eventually reponded to intravenous erythromycin therapy in the hospital.

Dr. Dolin stated that there are other properties of the estolate which suggest that it may have potential advantages in the treatment of Legionnaire's disease. Although it is argued that the propionyl ester is inactive, it is clear that significant antibacterial activity is associated with the ester and that hydrolysis to free base occurs continuously. In addition, the ester appears to achieve preferential penetration and concentration in macrophages, which are an important site of replication for Legionella organisms.

7. *Chlamydial Infections.*

a. Bureau of Drugs' Position. The Bureau stated there are no data demonstrating that one erythromycin is more effective than another in the treatment of chlamydial urethritis. In addition, the Bureau stated that there are no data demonstrating that one erythromycin is more effective than another in the treatment of chlamydial conjunctivitis or chlamydial pneumonia in neonates.

(1) Two literature excerpts recommend erythromycin (without specifying a particular form), to treat chlamydial pneumonia and chlamydial conjunctivitis (Refs. 105, 106, and 115).

(2) For chlamydial pneumonia, the authors suggest the use of systemic erythromycin, without specifying a particular form (Ref. 105). They suggest the use of systemic erythromycin ethyl succinate to treat chlamydial neonatal conjunctivitis.

(3) The Bureau reviewed two excerpts describing the successful use of the ethyl succinate in chlamydial pneumonia in children. (Refs. 107 and 108).

(4) A patient with chlamydial pneumonia who was treated unsuccessfully with other antibiotics responded well when the lactobionate was administered for 3 days, followed by the ethyl succinate for another 10 days (Ref. 109).

(5) Oral erythromycin estolate or topical erythromycin ointment was given to 36 infants with chlamydial conjunctivitis (Ref. 110). Of those patients, 35 had negative cultures on the seventh day. The systemic erythromycin was effective in eradicating *C. trachomatis* from the nasopharynx of six patients.

(6) This study compared the incidence of chlamydial infections in infants born to mothers with treated and untreated *C. trachomatis* cervical infections (Ref. 111). There was no infection among the infants of the 10 treated motbers treated with the base. Of the 20 infants born to untreated mothers, however, 6 developed chlamydial conjunctivitis, 2 developed chlamydial pneumonia, and 1 developed an asymptomatic nasopharyngeal infection.

b. *Lilly's Position.* Lilly stated that comparative studies of the estolate, base, and tetracycline in the treatment of nongonococcal urethritis due to *Chlamydia trachomatis* and/or *Ureaplasma urealyticum* were in progress (Ref. 124; not reviewed by the Bureau). There is not evidence that tetracycline resistance has been developing in strains of *U. urealyticum.* Therefore, it is important to establish which form of erythromycin will provide statisfactory alternate therapy.

8. *Campylobacter Enteritis.*

a. *Bureau of Drugs' Position.* The Bureau stated that there are no data comparing the effectiveness of the erythromycins in the treatment of campylobacter enteritis.

(1) Five literature excerpts recommed erythromycin treatment, but no particular form of erythromycin is specified (Refs. 112 through 116).

(2) Most of 37 children with campylobacter enteritis recovered spontaneously on conservative therapy (Ref. 117). However, seven children were treated with the estolate for relapse or persistent signs and symptoms of disease. Stool cultures became negative within 48 hours. Symptoms disappeared in five of the seven patients within 24 hours.

b. *Lilly's Position.* Lilly submitted no other data on the effectiveness of the estolate in camphylobacter enteritis.

IV. References

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V. Committee's Conclusions and Recommendations

On July 28, 1981, the Ad Hoc Advisory Committee on Erythromycin Estolate submitted written responses to the ten issues included in the February 27, 1981 notice of hearing. Some of the issues were modified by the Committee. The Committee responses are summarized below.

Before reaching specific issues, the Committee passed two resolutions: (1) "On the basis of available data, it is the conclusion of this Committee that no convincing evidence has been brought forward to indicate that the use of erythromycin estolate in children is associated with a higher incidence of cholestasis than other erythromycin formulations. As far as efficacy is concerned, the evidence clearly indicates that erythromycin estolate is as effective as other erythromycin formulations." (2) "The Committee finds the data available on erythromycin estolate hepatotoxicity adequate to estimate a risk of approximately one case per thousand exposures, but totally inadequate to determine the risk of other forms of erythromycin in adults. Serum levels with the estolate, whether evaluated as total drug or erythromycin base, are at least as good as with other dosage forms. Theoretical advantages of the estolate, such as superior tissue levels, penetration into alveolar macrophages, and perhaps initially more reliable absorption and bioavailability when the drug is taken with food (as is most likely in clinical practice) have been raised. These considerations lead the Committee to the conclusion that there is indeed a reason for the continued availability of the erythromycin estolate and the exercise of clinical judgment in evaluating the risk/benefit ratio of the particular erythromycin formulation to be used in each individual patient."

A. Adverse Reactions

The Committee concluded that the incidence of hepatotoxicity for adults was greater for erythromycin estolate than for other erythromycins. The Committee concluded that the difference in the incidence of hepatotoxicty is of clinical concern.

The Committee unanimously voted that the incidence of hepatotoxicity in children was not greater for the estolate than for other erythromycins. Accordingly, the Committee made no finding on the clinical significance of the difference.

The Committee also found that the Bureau's voluntary adverse reaction reports to date did not determine the relative incidence for erythromycin adverse liver effects.

The Committee unanimously found that the data presented from the K–P study to date cannot reliably be used to determine the incidence of adverse liver effects for erythromycins. The Committee made no finding on the clinical significance of differences shown. The Committee unanimously found that a useful historical cohort study could be devised.

The Committee answered the question "Did the data presented from prospective clinical studies provide a reliable determination of the incidence of adverse liver effects for erythromycins?" by a vote of one positive, five negative, and five abstentions. The discussion preceding the vote indicates a concern over the conflicting results of the prospective clinical studies.

The Committee unanimously concluded that there are no major differences between erythromycin estolate and other oral erythromycins in the incidence of adverse effects in adults or in children, other than those involving the liver. One committee member described "no major difference" as the situation where there was a difference in one study in one direction but there is a slight difference in another study in the opposite direction.

B. Bioavailability

The Committee unanimously concluded that it could not determine whether tissue concentration studies of the estolate and the ethyl succinate provide any evidence of a clinically significant advantage for adults or children because there is no valid interpretation of the clinical significance of bioavailability of the propionyl ester in tissue.

The Committee concluded that studies showing observable higher blood levels of erythromycin as the estolate indicate that the estolate is more reliably absorbed than other erythromycins. The Committee unanimously found, however, that it did not know whether blood levels of the estolate are related to the therapeutic response. It considered the ability of a medication to be taken without regard to meals as a clinical advantage.

The Committee unanimously agreed that all except one of the bioavailability studies in adults reviewed by the Bureau of Drugs demonstrate that blood levels of the base obtained following administration of erythromycin estolate are at least equal to those obtained after administration of erythromycin base, stearate, and ethyl succinate. For children, the unanimous response was that the erythromycin estolate suspension provides consistently higher blood levels measured as the base than does ethyl succinate suspension.

The Committee unanimously concluded it could not determine whether the propionyl ester of erythromycin estolate, apart from its being hydrolyzed, contributes to the therapeutic effect of erythromycin estolate. Accordingly, the Committee did

not determine whether the contribution of the propionyl ester to the therapeutic effect was of clinical significance.

The Committee unanimously concluded that a prospective study to determine the therapeutic effect of the propionyl ester may be needed. However, because such a study is not technically feasible at the present time, the Committee did not determine what the design of the study should be.

C. Clinical Effectiveness

The Committee concluded that erythromycin estolate has not been shown by means of randomized clinical trials to offer greater therapeutic effectiveness in adults over other erythromycins. The Committee also concluded that there is suggestive evidence that in some clinical circumstances erythromycin estolate may show therapeutic advantage in children over other erythromycins.

The Committee unanimously concluded as follows, "In the treatment of streptococcal pharyngitis in children, erythromycin estolate has been shown to be effective at a lower dose than that recommended for all other erythromycins. An ongoing prospective randomized clinical study shows superiority of the estolate over the ethyl succinate at 30 mg/kg/day given only twice a day. The lower dose and the less frequent dosing constitute a clinical advantage." The Committee made no findings on the effectiveness of various erythromycins in the treatment of primary syphilis.

The Committee unanimously concluded that neither erythromycin estolate nor erythromycin ethyl succinate is recommended alone for the treatment of *H. influenza* otitis media and that there have been no randomized, controlled clinical trials to show whether erythromycin estolate has any advantage over other erythromycins in the treatment of diphtheria, pertussis, Legionnaires' disease, chlamydial infections, or *Campylobacter* enteritis.

D. Risk/Benefit Determination

The Committee determined that the risk/benefit ratio of the estolate in adults is favorable, referring to the previously accepted resolution pertaining to adults. The Committee determined that the estolate has a favorable risk/benefit in children and referred to the previously accepted resolution pertaining to children. The Committee unanimously recommended two possible changes in labeling for adult dosage forms: (1) The wording "further, the propionyl ester contributes to the activity of the drug through additional hydrolysis to the base at the bacterial cellular level" should be deleted from the labeling, and (2) indications of other infections, such as *Chlamydia trachomatis* and *Campylobacter*, should be added if data were submitted to support the added indications. The Committee also discussed whether the indications for chronic use, such as prophylaxis of rheumatic fever, should be removed, but took no vote on this issue.

The Committee recommended that the boxed warning in pediatric dosage forms of the estolate should have "ADULTS" juxtaposed to "WARNING". This would indicate that the data at this time do not justify a boxed warning for pediatric uses. The Committee unanimously recommended that the labeling changes suggested for the adult dosage forms be included in the pediatric dosage forms as well: (1) That the sentence stating that the estolate is hydrolyzed at the bacterial cellular level be deleted from the labeling; and (2) that indications for *Chlamydia trachomatis* and *Campylobacter* infections be considered as the data are submitted.

VI. Comments on the Committee's Report

The agency received three comments on the Committee's report—one each from HRG, the American Medical Association and Lilly.

1. HRG stated that the evidentiary findings of the Committee support the Bureau's arguments that erythromycin estolate tablets and capsules are unsafe, and that this requires the revocation of provisions for certification. In particular, HRG cites the findings of the Committee that greater hepatotoxicity is associated with the estolate and that this is of clinical concern.

Next, HRG stated that under the act, evidence of effectiveness must consist of adequate and well-controlled clinical investigations, citing *Weinberger* v. *Hynson, Westcott, and Dunning*, 412, U.S. 609, 629–630 (1972). HRG then asserted that the only benefits of the estolate over other erythromycins identified by the Committee were "theoretical . . . such as superior tissue levels, penetration into alveolar macrophages and perhaps initially more reliable absorption and bioavailability when taken with food." Finally, HRG argued that unless there are adequate and well-controlled clinical investigations showing greater benefits from the estolate than from other erythromycins, the agency is required by law to revoke the provisions for certification of the estolate tablets and capsules.

HRG urged the Commissioner to disregard the Committee's recommendation that the estolate remain on the market, stating that this issue is outside the Committee's mandate (none of the ten questions posed asked whether the estolate should remain on the market) and expertise. HRG maintained that it is only the Committee's factual findings, which it contended support revocation of certification provisions, that should be given weight in the Commissioner's deliberations.

HRG is correct that the Committee was not directly asked whether erythromycin estolate tablets and capsules should remain on the market. It was believed that the Committee's judgment on that issue would be clear from the answers to the ten questions posed. However, as the Committee's recommendation that the estolate remain on the market summarizes its risk/benefit evaluation, the Commissioner believes it proper for him to consider that recommendation in making his decision.

The Commissioner disagrees that the data presented compel the conclusion that the estolate has an unfavorable risk/benefit ratio. The Commissioner concludes that it is likely that the estolate is associated with hepatotoxicity to a greater extent than are other erythromycins. However, as explained in the following section, the Commissioner also finds benefits to offset this risk.

Moreover, the Committee concluded that available data tend to suggest benefits of the estolate compared to other erythromycins. The Committee's statements about the relative risks must be considered in this context. From the Committee's recommendation that the estolate be allowed to remain on the market, it clearly recognized that the crucial issue here is a weighing of risks and benefits, not an evaluation of the risks taken in isolation.

HRG misapplies the legal requirement that effectiveness must be demonstrated by adequate and well-controlled clinical investigations. Substantial evidence of the estolate's effectiveness was established at the time of its approval, and was not questioned in this proceeding. While the act requires proof of effectiveness derived from adequate and well-controlled clinical trials for pre-market approval, it makes no such requirement for safety evaluations. This is significant because this action fundamentally has been an inquiry into whether the risks of the estolate outweigh the benefits to such an extent that the certification provisions should be revoked on grounds of lack of safety. The effectiveness of the estolate is

relevant only insofar as it demonstrates sufficiently superior benefits over other erythromycins to offset the postulated greater risks of the estolate. In this type of consideration, data that are not derived from adequate and well-controlled clinical trials are not precluded from consideration.

In addition, the Commissioner disagrees with HRG that the only benefits associated with the estolate are theoretical. The Commissioner agrees with the Committee's conclusion that "the ability of a medication to be taken without regard to meals [is] a clinical advantage." On the other side of the scale, the Commissioner concludes that under conditions of actual use, the estolate is not less bioavailable than the other erythromycins as stated in the proposal. Thus, the benefits of the estolate are at least equal to the benefits of the other erythromycins.

2. The American Medical Association expressed its concern over the agency's "increasing tendency to evaluate both approved and new drugs on the basis of 'relative' safety and efficacy." It also argued that the agency should take no action against a drug unless controlled studies and experience demonstrate that a drug is not safe or effective. On the basis of the data presented, the Association concluded that the hepatotoxicity associated with the estolate is not of sufficient clinical significance and incidence to warrant revocation of provisions for certification, regardless of the estolate's bioavailability.

The Commissioner agrees that revocation of provisions for certification of erythromycin estolate tablets and capsules is not justified at this time. It must be emphasized however, that the act places the burden of proving the safety and effectiveness of a drug on those persons wishing to market it. Thus, the act does not require the agency to wait until a marketed drug is proven unsafe or ineffective before taking regulatory action but, rather, requires it to withdraw approval when there is evidence to suggest that a drug may no longer be considered safe and effective.

Further, as explained above, this matter is fundamentally an inquiry into the safety of the estolate, and the safety of any drug must be considered in the context of other drugs indicated for the same conditions. In a safety determination, the "relative efficacy" of a drug is relevant only insofar as it offsets the drug's risks, which otherwise may be considered unacceptable.

3. Lilly contended that the Committee reconfirmed its prior position that the estolate has a favorable risk/benefit ratio and should remain available for use. The company believed that the estolate had not been shown to be associated with a higher incidence of adverse hepatic effects, and that, because of its more reliable absorption, superior bioavailability, and better penetration of tissues and infection sites, the estolate offered important therapeutic advantages over other erythromycins. The firm recommended the prompt rescission of the proposal to revoke provisions for certification.

The Commissioner has concluded that revocation of certification provisions is not warranted at this time. The basis for this conclusion is set forth below.

VII. Commissioner's Conclusions, Labeling

The Commissioner has evaluated all the data presented, weighing the risks and benefits of the estolate against the risks and benefits of other erythromycins. He has considered the recommendations of the Committee. The Commissioner accepts the Committee's recommendations that the adult and pediatric dosage forms of erythromycin estolate are safe, and that revocation of the certification provisions would be unjustified. In addition, he will take no action regarding the pediatric dosage forms. Accordingly, the December 4, 1979 proposal is withdrawn and the request made in HRG's petition is denied. The basis for the Commissioner's conclusion follows.

1. *The Risks.* In 1973, the Commissioner concluded that hepatotoxicity is associated only with the estolate. The data presented in this review of the estolate's safety indicate that all forms of erythromycin, adult and pediatric dosage forms, are associated with hepatotoxicity to some extent. Thus, the hepatotoxicity associated with the estolate may be of less significance than was thought in 1973, as it is now known that all forms of erythromycin can cause hepatotoxicity.

The Commissioner further concludes that the risk of hepatic reactions from any form of erythromycin in adults and children is quite small. In the Kaiser-Permanente study, for example, after examining the results of 3,661 courses of erythromycin therapy, the investigators were able to identify only one "probable" case and four "possible" cases of erythromycin-related hepatotoxicity.

The Commissioner is unable to determine from the data presented in this proceeding the precise relative incidence of hepatic reactions caused by the various erythromycins. Although data obtained from the Bureau's ADR reporting system may be a useful post-marketing tool to estimate the relative incidence of adverse reactions in some cases, such estimates are imprecise in the present case. Lilly has raised the possibility of bias in the reporting of reactions resulting from the warnings in the labeling, "Dear Doctor" letters, and FDA *Drug Bulletins*. The Bureau's analysis of cases of hepatotoxicity, while demonstrating an approximate 25-fold greater number of cases in adults associated with the estolate than with other forms of erythromycin, cannot exclude the possibility that some or much of this difference is due to a reporting bias rather than to a true difference in adverse reaction rates. Neither can this reported 25-fold difference be dismissed on the basis of evidence offered by Lilly; the criticism that the data are flawed by a reporting bias is potentially valid but nevertheless is itself speculative and unproven. Thus, while an accurate estimate of the relative incidence of hepatic reactions associated with the various erythromycins cannot be made from the ADR reports, the Commissioner agrees with the Advisory Committee that the incidence of hepatotoxicity in adults is greater for the estolate.

Similarly, the reports of unnecessary surgery to relieve hepatic distress not known to be caused by the estolate could be subject to the same type of bias. There is no way to estimate the frequency of surgery to relieve hepatic distress actually caused by, but never attributed to, other erythromycins.

The examination of Medicaid data is a promising tool for post-marketing surveillance, and the Commissioner encourages its use. However, further analysis into the recordkeeping differences among States and the recordkeeping practices within a State under consideration must be conducted before inferences drawn can be relied upon.

Other data presented support the conclusion that the incidence of hepatic reactions is greater for the estolate than for other erythromycins. While none of the prospective clinical trials of hepatic reactions presented studied nearly enough patients to determine the actual incidence of cholestatic hepatitis, in many of the studies abnormal liver function tests were obtained from significantly more estolate patients than from non-estolate patients.

In addition, the in vitro data presented by Dr. Zimmerman were supportive. The data indicate that the estolate, but not the base, causes injury to Chang liver cells in suspension or culture, to suspensions of rat hepatocytes, and to isolated, perfused rat liver. The

Commissioner recognizes the difficulties inherent in applying in vitro data to in vivo phenomena. However, as with the abnormal liver function tests, the Commissioner believes that use of such data as supporting evidence is appropriate.

2. *The Benefits.* In 1973, the Commissioner concluded that the estolate was more bioavailable than other erythromycins. The estolate's greater bioavailability in comparison to other erythromycins was thought to result in comparable clinical effectiveness at lower doses in the treatment of streptococcal pharyngitis and primary syphilis. In 1981, the advisory committee also concluded that the estolate's lower dose and less frequent dosing in the treatment of streptococcal pharyngitis in children constitute a clinical advantage of the estolate.

The Commissioner does not agree with either the 1973 conclusion or the current committee's conclusion that the estolate is more effective than other erythromycins in the treatment of streptococcal pharyngitis. When proper dosages are used the cure rates of all the erythromycins are similar. The fact that lower doses of the estolate can be used would be considered a benefit only if fewer adverse effects were associated with lower doses, but this has not been shown. The data on gastrointestinal side effects are contradictory and no conclusions can be drawn from them. As explained above, the incidence of hepatic reactions are greater for the estolate than for other erythromycins.

The Commissioner disagrees with the previous finding regarding primary syphilis. The studies on which the conclusion that the estolate is more effective was based examined 12-month re-treatment rates, rather than microbiological effectiveness at the end of treatment. It is obvious that a number of factors other than treatment effectiveness will affect the re-treatment rate. No other data on the effectiveness of the various erythromycins in treating syphilis were presented in this proceeding. Thus, the Commissioner concludes that no difference among erythromycins in the treatment of syphilis has been shown.

Data intended to demonstrate the greater effectiveness of the estolate in the treatment of Legionnaire's disease were also presented. However, these data were not comparative, and no conclusions can be drawn from them. The Commissioner is aware that a comparative study of Legionnaire's disease is ongoing, but whether a clinical advantage for the estolate will be shown cannot, of course, be determined at this time.

In addition, data on diphtheria, pertussis, chlamydial infections and campylobacter enteritis were presented. These data are inconclusive and inadequate to demonstrate an advantage of one erythromycin over another.

Further, the Commissioner disagrees with both the 1973 conclusion that the estolate is more bioavailable than other erythromycins as well as the Bureau's assertion in 1979 that in terms of free base, the estolate is less bioavailable than other erythromycins. Studies presented by the Bureau in this proceeding indicate that under fasting conditions the estolate achieves significantly lower blood levels than other erythromycins, particularly in the first doses. These studies also indicate, however, that under nonfasting conditions, in terms of free base, the solid dosage forms of the various erythromycins are essentially bioequivalent. The Commissioner acknowledges that in actual practice, drugs are often taken with meals. Thus, there is no evidence of any additional benefit, or any additional disadvantage, accruing to the estolate because of its bioavailability.

There has been no dispute that in terms of free base, the estolate suspension is significantly more bioavailable than the ethyl succinate suspension. No clinical benefit has been shown to result.

At this time, no conclusions can be drawn concerning the tissue levels of free base. It has not been demonstrated that the various erythromycins are hydrolyzed to free base in tissue to the same extent that they are in the blood. Thus, it is not clear that higher tissue levels of free base are in fact obtained with the estolate. Further, there has been no demonstrated clinical advantage to the presumed higher tissue levels.

In addition, the data presented are inadequate to determine the validity of the theory that the propionyl ester acts as a delivery system to the bacterial cell as well as functioning as a reservoir out of which free base is hydrolyzed. Similarly, at this time there are no data demonstrating that the propionyl ester is in fact hydrolyzed to free base within bacterial cells and alveolar macrophages.

The lack of greater clinical effectiveness or greater bioavailability does not lead to the conclusion that there are no greater benefits associated with the use of the estolate. The greater benefit is due to the estolate's reliability of absorption.

The Bureau and Lilly both stated that the estolate is more reliably absorbed initially than the base when taken with food. In addition, Lilly noted that the investigators in the University of Texas studies concluded that the absorption of the stearate is decreased when it is taken shortly after a meal. The Committee concluded, and the Commissioner agrees, that the estolate's reliable absorption when taken with food is a clinically significant advantage that cannot be overlooked, particularly in potentially fatal diseases, such as Legionnaire's disease. This characteristic of the estolate is quite striking when compared to the absorption of the base under non-fasting conditions—7 out of 24 patients failed to obtain any blood level whatsoever for 6 hours after drug administration. Free base from the estolate was present in all estolate patients three hours after drug administration. (It must also be noted that the ethyl succinate's absorption is unaffected by food.)

3. *Risk/Benefit Determination.* The Commissioner concludes, as in 1973, that the risk/benefit ratio of erythromycin estolate, in both adult and pediatric dosage forms, is favorable. Thus, the Commissioner disagrees with the Bureau's 1979 assertion that the estolate has an unfavorable risk/benefit ratio.

The risk of hepatotoxicity is greater from the estolate than from other erythromycins, but the actual risk of any one patient incurring an hepatic reaction is quite small. Further, the reaction, though unpleasant, has never resulted in a fatality.

The Bureau asserted that the estolate is less bioavailable than other erythromycins. The Bureau had tentatively concluded that this, taken with the greater hepatotoxicity associated with the estolate, was sufficient to unfavorably alter the risk/benefit ratio. The Commissioner now concludes that the erythromycins are essentially bioequivalent. Thus, while the bioavailability of the estolate compared to other erythromycins cannot be counted as a benefit as in 1973, neither can it be considered a detriment.

Similarly, the clinical effectiveness of the estolate compared to other erythromycins cannot be considered either a risk or a benefit. The data presented demonstrate no differences among the various erythromycins in clinical effectiveness.

The clearly demonstrated benefit of estolate administration is its reliable absorption when taken with food. This is of particular benefit in serious diseases. Thus, the Commissioner concludes that the estolate's relatively greater risk of hepatotoxicity is offset by its relatively greater reliability of absorption.

The data presented in this proceeding have been set forth in detail. They are voluminous and conflicting. The Commissioner believes, however, that the data support the continued marketing of the estolate, which will allow practitioners to select the most appropriate drug for each individual patient.

4. *Labeling.* Labeling changes are set forth in a related document published elsewhere in this issue of the **Federal Register**. The changes are explained in this notice for information purposes.

The Committee recommended that the pediatric dosage form (oral suspension, chewable tablets, and pediatric drops) of the estolate juxtapose the word "ADULTS" and "WARNING" above the black box warning. This would indicate that the warning box applies to adults only, not to children. The Commissioner disagrees with this recommendation because data were presented indicating that hepatic reactions do occur in children. The risk of hepatic reactions in children has been known for some time to be far smaller in children than in adults. The data presented at this hearing do not justify any change in the boxed warning. Thus, no change in the current boxed warning is required.

The Committee also recommended deletion from the labeling of all dosage forms the wording "(f)urther, the propionyl ester contributes to the activity of the drug through additional hydrolysis to the base at the bacterial cellular level." The Commissioner agrees. No data demonstrating that the propionyl ester is hydrolyzed at the bacterial cell level were presented.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 507, 52 stat. 1041, 1050–1051 as amended, 59 stat. 463 as amended, (21 U.S.C. 321(n), 352, 357)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1: see 46 FR 26052; May 11, 1981)).

Dated: May 18, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-14163 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-82-979]

Mutual Mortgage Insurance and Rehabilitation Loans

Corrections

In FR Doc. 82-12792 appearing on page 20149 in the issue of Tuesday, May 11, 1982; on page 20151, make the following changes:

(1) In column one, § 203.264(b), fifth line, "after" should read "before".

(2) In column three, the third bold face heading now reading "**§§ 203.275 through 203.309 [Removed]**". should read "**§§ 203.305 through 203.309 [Removed]**".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Receipt of the Abandoned Mine Land Reclamation (AML) Grant Application from the State of Colorado.

SUMMARY: On April 29, 1982, the State of Colorado submitted to OSM its proposed abandoned mine land reclamation grant application under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State grant application. The grant will not be approved until the Secretary has approved the Title IV Reclamation Program.

DATES: Written comments on the application must be received on or before 5:00 p.m. June 24, 1982.

ADDRESSES: Copies of the full text of the proposed Colorado grant application are available for review during regular business hours at the following location: Office of Surface Mining Reclamation and Enforcement, New Mexico State Office, 219 Central Avenue, NW., Suite 216, Albuquerque, New Mexico 87102.

Written comments shoud be sent to: Robert H. Hagen, State Director, New Mexico State Office, 219 Central Avenue, NW., Suite 216, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagan, State Director, New Mexico State Office, 505/766-1486, Same address as above.

SUPPLEMENTARY INFORMATION: On February 16, 1982, a State reclamation plan was submitted to the Secretary. The Colorado Plan is presently being reviewed by the Secretary. Under section 405(f) of the SMCRA, the Secretary cannot approve a State AMLR program grant unless that State has an approved State AMLR program pursuant to section 405(d) of the SMCRA.

On April 29, 1982, OSM received an AMLR grant application from the State of Colorado.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR Program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State and Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary a State reclamation grant application to implement the provisions of the approved State Reclamation Plan. However, grants for reclamation may be issued only to States with an approved Title V Regulatory Program for active mine reclamation and an approved Title IV Reclamation Program. The grant application received from the State of Colorado will be reviewed and held pending a final approval by the Secretary on the State's Title IV program in accordance with SMCRA.

This notice describes the nature of the proposed projects and sets forth information concerning public participation in the development of the projects. This publication does not represent any decision by the Secretary on the Title IV Reclamation Program, but is published solely for the purpose of expediting the review process and the implementation of the reclamation program if the Title IV program of the State of Colorado is approved.

All written comments must be mailed or hand carried to the State Director's Office above.

The Director has found that the State has given the public adequate notice and opportunity to comment in public hearings, and the record of such hearings does not reflect major unresolved controversies.

The comment period will close at 5:00 p.m. on June 24, 1982. Comments received after that time may not necessarily be considered. During the comment period representatives of the State Director's office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AMLR grant application.

Persons wishing to meet with representatives of the State Director's office during this time period may place such request with Robert H. Hagen, State Director, telephone 505/766–1486 at the State Director's office above.

Meetings may be scheduled at the State Director's Office between 9 a.m. and noon and 1 p.m. and 4 p.m. Monday through Friday excluding holidays.

OSM intends to continue to discuss the State's application with representatives of the State throughout the review process.

In order to comply with the requirements of the National Environmental Policy Act, OSM will assess the environmental effects of all State reclamation projects. The primary basis for this assessment will be the environmental information provided in the project grant application.

The Colorado AML Reclamation Grant Application can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The application meets all the requirements of the OSM, AMLR program provisions and the required Federal circulars.

4. The State has an approved regulatory program and an approved State reclamation plan.

The following constitutes a summary of the contents of the submission:

1. Designation of authorized State Agency to administer the program,

2. Objectives and need for the assistance,

3. Project ranking and selection,

4. Coordination with other reclamation programs,

5. Results and benefits expected,

6. Plan of action pertaining to the scope,

7. Monthly or quarterly projections of accomplishments to be achieved,

8. Kinds of data to be collected and maintained,

9. Criteria used to evaluate the results and success of the projects,

10. Key individuals to be employed,

11. Precise location of the project and area to be served,

12. Budgetary calculations for each project,

13. Description of the public's participation in planning and preparation of the grant application,

14. A complete environmental assessment for each project.

Reclamation projects included in application and location:

El Paso County

McFerran Project (McFerran Shaft)

Huerfano County

Gordon Project (Old Gordon Mine)
Solar Project (Solar Mine)

Las Animas County

Royal Project (Royal, Brodhead and Green Canyon Mines)
Cokedale Project (Cokedale Mine airshaft)

Fremont County

Bassick Project (Bassick, Mohawk, Florence Canyon, Beacon and Liberty Mines)
Wolf Park Project (Royal Gorge (Thorton) shaft and Royal Gorge #2 Mine)
Coal Creek Project (Bluff Springs and Falgien Mines)

Delta County

States Project (States, Independent, Western Star and Green Valley Mine sites)

Routt County

Oak Creek Project (Hayden #3 and #4 Mine shafts; Juniper, Edna and Milner strip mines)

Park County

Como Project (Como West and King Coal Mines)

Jefferson County

Virginia Project (Virginia Mine)

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 20, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–14233 Filed 5–24–82; 8:45 am]
BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1207

[Docket No. 36837]

Review of Accounting Rules for Class I and II Common and Contract Motor Carriers of Freight

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Interstate Commerce Commission is reviewing the accounting rules for class I and II common and contract motor carriers of freight (49 CFR Part 1207). The purpose of this review is to identify revisions necessary to make the accounting system more responsive to the Commission's data requirements.

DATES: Written responses should be filed with the Commission by June 30, 1982.

ADDRESSES: Responses should be mailed to: Bryan Brown, Jr., Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Thomas Carter, (202) 275–6755.

SUPPLEMENTARY INFORMATION: To assist in this review we are requesting carriers to submit their recommendations for revisions. The zone of consideration for this project includes the definitions, instructions, and account texts. Respondents should feel free to recommend consolidation or expansion of account groups, elimination of accounts, and addition of new accounts. Respondents are also requested to suggest revisions to the instructions if they are not clear enough or to recommend additional instructions.

List of Subjects in 49 CFR Part 1207

Motor carriers, Uniform system of accounts.

[FR Doc. 82–14174 Filed 5–24–82; 8:45 am]
BILLING CODE 7035–01–M

49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 1)]

ICC Waybill Sample, Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of meeting in proposed rulemaking proceeding.

SUMMARY: The Interstate Commerce Commission published in the **Federal Register** on February 10, 1982, at 49 FR 6040, a proposed rule to amend 49 CFR 1244 by revising the ICC rail waybill sample. A meeting is to be held to discuss the multiple car, trainload and unit train definitions (shown in item 21 of Appendix A of the rulemaking), as well as alternate definitions and their ability to differentiate the important cost factors in multiple car traffic for use in the Uniform Rail Costing System. No other matters in this rulemaking will be discussed.

ADDRESSES: Proposals and notices should be sent to: Office of Transportation Analysis, Room 4126, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

The meeting will be held in Hearing Room C at the above address.

FOR FURTHER INFORMATION CONTACT: Sidney Fine, (202) 275–7220.

SUPPLEMENTARY INFORMATION: Each party interested in participating in the meeting should send written notice to the Commission that it will attend, including names of individuals who will take part in the discussion.

We request that the railroads, as well as any of the other interested parties, submit proposed definitions with reasons why each party feels its definitions are superior or more feasible than those shown in item 21 of Appendix A of the rulemaking. All parties submitting definitions or modifications to the proposed definition shall be prepared to discuss and defend their proposals at the meeting.

DATES: Proposals of definitions, and notices to participate in the meeting must be received by June 24, 1982.

The meeting will be held at 9:30 a.m. on June 28, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14199 Filed 5-24-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Deregulation of Blue Pike

AGENCY: Fish and Wildlife, Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to remove the blue pike (*Stizostedion vitreum glaucum*) and the longjaw cisco (*Coregonus alpenae*) from the U.S. List of Endangered and Threatened Wildlife. This action is based on a review of all available data which indicates that these species are extinct. Blue pike populations declined in the late 1950's and never recovered with the last confirmed specimens taken in the 1960's. Historically, this subspecies was found in Lakes Erie and Ontario, and the Niagara River. Intensive surveys by the Fish and Wildlife Service and States where the species occurred, have failed to yield any additional specimens. In a 1977 survey, the Blue Pike Recovery Team contacted all Fish and Game agencies in the U.S. in an effort to determine if blue pike existed in their waters. After all responded negatively, the Blue Pike Recovery Team concluded that the blue pike was extinct and recommended removing it from the U.S. List of Endangered and Threatened Wildlife.

The longjaw cisco is one of several closely related species of ciscos which occur in the Great Lakes. It was known to occur in Lakes Michigan, Huron, and Erie. Despite the considerable effort of the Service's Great Lake Fishery Laboratory and States around the Great Lakes, there has been no reported collection of this species in U.S. waters since 1967. Recent research has indicated that some species of ciscos in the Great Lakes may constitute hybrid populations. The Fish and Wildlife Service believes *Coregonus alpenae* is extinct and should be deregulated.

DATES: Comments from the public must be received by July 26, 1982. Comments from Governors of affected States must be received by August 23, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Johnson, Jr., U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection by appointment during normal business hours by contacting the Region's Endangered Species staff at the above address.

SUPPLEMENTARY INFORMATION:

Background. Blue pike were abundant in the commercial fishery of the late 1800's but by 1915 landings began to fluctuate extensively. Production peaks in excess of 10,000 metric tons occurred in 1915, 1936, 1944, and 1949 and lows under 2,500 metric tons occurred in 1917–19, 1929, 1941, and 1946–47 before the fishery collapsed in 1958. During the past 10 years, the blue pike has been reported to be extinct by several fishery biologists.

Fishery biologists have evidence that an over-intensive fishery, which disrupted self-stabilizing mechanisms within the population, led to the extreme fluctuations and ultimate crash of the fishery. Since young-of-the-year blue pike inhabited the same areas as older members of the populations, they were vulnerable to cannibalism. It has been postulated that overfishing for adults caused unusual numbers of young-of-the-year to escape predation. This would lead to a short population explosion followed by several years of poor recruitment due to over-predation by abundant older fish on the young. An intensive fishery would cause increased amplitude in the fluctuations because the fish would be taken even when they were scarce. In addition, competition with and predation by the newly arrived rainbow smelt, which occupied the same habitat for part of the year, were likely detrimental to this species.

The last successful year-class occurred in 1954 and there was virtually no recruitment to the fishery after that year. Production continued at high levels for another 3 years and then collapsed. As growth rates in this period increased enormously, immature fish were readily exploited which further reduced spawning potential.

The reasons for the collapse of the fishery in 1958 have not been well defined. Summer oxygen deficiencies in the hypolimnion of the central basin probably forced the blue pike into the deeper waters of the eastern basin of Lake Erie where they were more vulnerable to an extensive fishing effort. It has also been suggested that introgressive hybridization with walleye may have been responsible for the final disappearance of the remnant stock.

The longjaw cisco, originally described in 1924, was indigenous to the Great Lakes basin and occurred only in Lakes Michigan, Huron, and Erie. The

longjaw cisco was one of several species of deepwater ciscos utilized by the smoked fish trade and was a very important species in the fishery of the Great Lakes. It was also an important prey species for lake trout and burbot before these fishes were decimated by the sea lamprey. The longjaw cisco has not been seen in Lakes Erie and Huron since the late 1950's. The most recent collection of this species in Lake Michigan was in 1967.

The ciscos, including the longjaw cisco, supported a substantial fishery until about 1950. These fishes were caught exclusively by gillnets set in deep (100–300 feet) water. As the deep water ciscos became scarce, the smaller shallow water species entered the fishery. The cisco or chub fishery of the Great Lakes ceased to exist before 1960 and presently only one cisco, the bloater (*Coregonus hoyi*), is important in the commercial fishery.

The decline of the longjaw cisco and the cisco fishery in general is usually attributed to fishery and environmental problems. The history of the cisco fishery in the Great Lakes is one of increasing exploitation and decreasing stocks. As the ciscos decreased in abundance, there was an increase in the fishery effort along with a decrease in net mesh size. This resulted in further depletion of cisco stocks. In addition to the increased fishing pressure, predation by the sea lamprey and degradation of the habitat further reduced cisco populations. In recent years, problems by hybridization between some species of ciscos has contributed to this decline.

Section 4 of the Endangered Species Act of 1973, as amended, directs the Secretary of the Interior to conduct, at least once every 5 years, a review of all species included in the list of Endangered and Threatened species to determine if any such species should be removed from the list or be changed in status from Endangered to Threatened or Threatened to Endangered. The longjaw cisco was listed in 1967 and the blue pike in 1970 and an official review of their status was initiated in 1979. The lack of recent collections indicates that these species have apparently become extinct. Based on this information, the Service proposes to deregulate the longjaw cisco and blue pike.

Summary of Factors Affecting the Species

Section 4(c) of the Endangered Species Act (16 U.S.C. 1531 seq.) directs the Secretary to review, at least once every 5 years, all listed species to determine if any species may be delisted or be eligible for a change in status. As part of this review the influence of the five factors listed in Section 4(a) of the Act must be considered. These factors and their effects on the blue pike and longjaw cisco are as follows:

Blue Pike

1. *Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.* Pollution and oxygen depletion may have contributed to the decline of this species.

2. *Overutilization for Commercial, Sporting, Scientific, or Educational Purposes.* Selective fishing by commercial interests may have been a factor in the disappearance of the blue pike.

3. *Disease or Predation.* Predation on adults by the sea lamprey may have contributed to the decline of the species.

4. *The Inadequacy of Existing Regulatory Mechanisms.* The absence of regulations sufficient to protect the fishery may have contributed to the decline of the blue pike.

5. *Other Natural or Manmade Factors Affecting Its Continued Existence.* Competition with rainbow smelt may have been one of the factors contributing to the decline of this species.

Although the exact cause of the disappearance of the blue pike is not known, it appears that the aforementioned factors were major contributing influences.

Longjaw Cisco

1. *Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* The longjaw cisco was historically recorded from Lakes Michigan, Huron, and Erie. There have been no known adverse effects on the cisco from water quality degradation or habitat elimination in Lakes Huron and Michigan. Extensive industrial and municipal wastes that contributed to an overall deterioration of water quality in Lake Erie may have led to the decline in the cisco population there.

2. *Overutilization for Commercial, Sporting, Scientific, or Educational Purposes.* An intensive commercial fishery for large ciscos in Lakes Michigan and Huron may have contributed to the decline of *Coregonus alpenae* in these lakes.

3. *Disease or Predation.* Sea lamprey predation in Lakes Michigan and Huron may account for a portion of the longjaw cisco's decline.

4. *The Inadequacy of Existing Regulatory Mechanisms.* The absence of regulations sufficient to maintain the fishery may have contributed to the decline of this species.

5. Other Natural or Manmade Factors Affecting Its Continued Existence. Competition with smaller ciscos, as well as with alewife *(Alsoa pseudoharengus)* and rainbow smelt *(Osmarus mordax)*, was a suspected contributory factor in the decline of the longjaw cisco. Hybridization with other cisco species may also have been a contributing factor in the species' disappearance.

Effects of this Proposal if Published as a Final Rule

Deregulation of the blue pike and longjaw cisco would result in the removal of these species from the U.S. List of Endangered and Threatened Wildlife. Federal agencies would no longer be required to consult with the Secretary to insure that any action authorized, funded, or carried out by them would not jeopardize the continued existence of the blue pike and longjaw cisco or result in the destruction or adverse modification of their habitat. Restrictions on taking of this species would no longer apply.

Effect Internationally

The blue pike and longjaw cisco are listed in Appendix I of the Convention of International Trade in Endangered Species of Wild Fauna and Flora. Promulgation of this proposal as final rule may influence their removal from Convention's protection.

National Environmental Policy Act

A draft Environmental Assessment was prepared in conjunction with this proposed rule. It is on file in the Regional Office, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling; Twin Cities, Minnesota 55111, and may be examined by appointment during regular business hours. This assessment is the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

Note.—The Department of the Interior has determined that this in not a major rule and does not require preparation of a Regulatory Impact Analysis under Executive Order 12291. The Department has also determined, in accordance with the Regulatory Flexibility Act, that this rule will not have a significant economic effect on a substantial number of small entities. The Service is not aware of negative impacts on small entities from the delisting.

Primary Author

The primary author of this proposed rule is Mr. Robert F. Johnson, Jr., U.S. Fish and Wildlife Service, Twin Cities, Minnesota.

Public Comments Solicited

The Director intends that the rules finally adopted be as accurate and effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. The Service particularly requests comments on the following: (1) Biological or other relevant data concerning any blue pike and longjaw cisco populations which may still exist and (2) additional information concerning the historical range and distribution of this species.

Also, the Service is requesting information on environmental and economic impacts and effects on small entities (including small businesses, small organizations, and small governmental jurisdiction) that would result from the delisting of these species. This information will aid the Service in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation, and the Regulatory Flexibility Act, and in preparing any required analyses of effect.

All comments and additional information received will be considered by the Director in the promulgation of a final rule.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture)

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, it is proposed that part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations be amended as follows:

§ 17.11 [Amended]

1. Section 17.11 is amended by removing the following from the List of Endangered and Threatened Wildlife:

Cisco, longjaw (*Coregonus alpenae*)
Pike, blue (*Stizostedion vitreum glaucum*)

Dated: April 15, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-14202 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico; Fishery Management Plan Amendment

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Availability of plan amendment.

SUMMARY: The Assistant Administrator for Fisheries has approved Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), announces its availability, and requests comments on the amendment. This amendment provides an update of the economic information in the FMP. There is no change in regulations associated with the amendment.

DATE: Written comments on the plan amendment must be received on or before July 9, 1982.

ADDRESS: Comments should be sent to Jack T. Brawner, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Copies of the fishery management plan amendment are available from Mr. Brawner.

FOR FURTHER INFORMATION CONTACT: Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was approved May 29, 1980, under authority of the Magnuson Fishery Conservation and Management Act. Final regulations implementing the FMP were published in the **Federal Register** on May 20, 1981, at 46 FR 27489. The Gulf of Mexico Fishery Management Council prepared and submitted for approval Amendment 2 to the FMP. This amendment was approved on April 21, 1982. No regulatory changes will be proposed to implement this amendment.

The amendment provides an update of the economic information in the FMP. Since the preparation and approval of the FMP, the economic condition of the shrimp fishery has undergone significant changes; this amendment provides more recent data. The Council does not believe, however, that the changed conditions require any alteration of the management measures for the fishery.

Dated: May 19, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-14238 Filed 5-24-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 101
Tuesday, May 25, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that a panel of five members of the Council will meet on June 21 and 22, 1982, to consider the proposal by the city of Memphis, Tennessee, to demolish the Memphis Street Railway Office and Streetcar Complex, a property determined to be eligible for inclusion in the National Register of Historic Places. The city proposes to use Community Development Block Grant Funds administered by the Department of Housing and Urban Development to carry out this activity.

Pursuant to § 800.6(b)(2) of the Council's regulations, the Chairman of the Council decided that a panel should consider this proposal in accordance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f, as amended).

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretary of the Interior, the Architect of the Capitol, the Secretary of Argiculture, and the heads of four other Federal agencies appointed by the President, one Governor and one mayor appointed by the President, the President of the National Conference of State Historic Preservation Officers, the Chairman of the National Trust for Historic Preservation, and seven private citizens appointed by the President.

The Council's regulations require that the panel be composed of five members, three from the private sector (with one chairing) and two Federal members. This panel will be chaired by Mr. Alexandria Aldrich of Saratoga Springs, New York. The panel will meet in the City Council Chamber in Memphis. The exact time has yet to be set and may be obtained from the Executive Director.

The panel will consider the written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by June 1910, 1982. Persons wishing to make oral statement should notify the Exective Director by June 10, 1982. Additional information concerning the meeting of the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street NW, Washington, DC 20005 (202–254–3495), Attn: Don L. Klima.

Dated: May 19, 1982.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 82-14164 Filed 5-24-82; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Proposed Determinations With Regard to the 1983 Wheat Program

AGENCY: Agricultural Stabilization and Conservation Service (ASCA), USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1983 crop of wheat: (a) The loan and purchase level; (b) the established (target) price; (c) the national program acreage (NPA); (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an Acreage Reduction Program (ARP) should be established and, if so, the percentage of such reduction and the method to be used in establishing the acreage bases; (f) whether a set-aside program should be established and, if so, the percentage of such set-aside; (g) whether to permit haying and grazing of conservation use acreage if an acreage reduction or set-aside program is established; (h) whether a land diversion program should be established and, if so, the extent of such diversion and the level of payment; (i) provisions of the farmer-owned reserve (FOR); (j) whether to require offsetting compliance if an Acreage Reduction Program is established; and (k) other provisions. These determinations are made in accordance with the provisions of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act".

DATE: Comments must be received on or before June 24, 1982, in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4146. The Draft Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance programs that this notice applies to are: Title—Wheat Production Stabilization: Number 10.058 and Title—Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

These actions will not have a significant impact specifically on area and community development. Therefore, a review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this Notice since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of

proposed rulemaking with respect to the subject matter of this notice.

Certain determinations set forth in this notice are required to be made by the Secretary for 1983-crop program purposes by August 15, 1982. In addition, it is necessary that the determinations for the 1983 crop be made in sufficient time to permit wheat producers to make adequate plans for the production of their crop. Therefore, I have determined that the public comment period is being limited to 30 days which will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

The following proposed program determinations with respect to the 1983-crop of wheat are to be made by the Secretary:

Proposed Determinations

a. *The Loan and Purchase Level for the 1983 Crop of Wheat.* Section 107B(a) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1983 crop of wheat at such level, not less than $3.55 per bushel, as the Secretary determines wil maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat. If the Secretary determines that the average price of wheat received by producers in any marketing year is not more than 105 percent of the level of loans and purchases for wheat for the marketing year, the Secretary may reduce the levels of loans and purchases for the next marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain, except that the level of loans and purchases shall not be reduced by more than 10 percent in any year nor below $3.00 per bushel. Loan and purchase levels being considered for the 1983 crop of wheat range from $3.55 per bushel to $3.80 per bushel.

Comments on the level of loans and purchase rate for the 1983 crop of wheat, along with supporting data, are requested from interested persons.

b. *The Established (Target) Price Level for the 1983 Crop of Wheat.* Section 107B(b)(1)(C) of the 1949 Act provides that the established price for wheat shall not be less than $4.30 per bushel for the 1983 crop. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

Comments are requested from interested persons as to the amount of the established (target) price for the 1983 crop of wheat along with supporting data.

c. *The National Program Acreage (NPA).* Section 107B(c)(1) of the 1949 Act requires the Secretary to proclaim an NPA for the 1983 crop of wheat not later than August 15, 1982. The NPA shall be the number of harvested acres of wheat the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the 1983 crop) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for exports during the 1983/84 marketing year. If the Secretary determines that carryover stocks of wheat are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA first proclaimed if the Secretary determines it is necessary based upon the latest information. If an acreage reduction program is implemented for the 1983 crop of wheat, the NPA shall not be applicable to such crop.

The U.S. wheat stock objective, an amount judged to be our "fair" share of world wheat stocks, has been determined to be equal to approximately 6.0 percent of the world consumption of wheat (this represents the approximate 10-year average of the ratio of U.S. stocks to world consumption) or approximately 992 million bushels for the 1982/83 marketing year.

If required, the likely NPA for the 1983 crop of wheat would be:

a. Estimated Domestic Use, 1983/84—865 mil. bu.
b. Plus Estimated Exports, 1983/84—1,735 mil. bu.
c. Minus Imports——2 mil. bu.
d. Minus Stock Adjustment [1]——267 mil. bu.
e. Divided by National Weighted Average Farm Program Payment Yield—34.0 bu/ac.
f. Equals 1983-Crop NPA—68.6 mil. ac.

[1] a. Estimated 1983/84 Beginning Stocks—1,289 mil. bu.
b. Minus 6.2 percent of 1982/83 World Consumption of Wheat—1,022 mil. bu.
c. Equals Desired Stock Adjustment——267 mil. bu.

No NPA was announced for the 1982 crop of wheat because the NPA provisions do not apply when an acreage reduction program is in effect. Comments on the NPA and the appropriate stocks level for the 1983 crop of wheat from interested persons, along with appropriate supporting data, are requested.

d. *Whether a Voluntary Reduction Percentage should be proclaimed and, if so, the level of such voluntary reduction percentage.* Under section 107B(c)(3) of the 1949 Act, the 1983 individual farm program acreage of wheat eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer reduces the acreage of wheat planted for harvest on the farm from the 1983-crop established wheat acreage base by at least the percentage recommended by the Secretary in his proclamation of the NPA for the 1983 crop. If an acreage reduction program is implemented for the 1983 crop of wheat, the voluntary reduction percentage shall not be applicable to such crop.

If required, the likely national recommended reduction percentage for the 1983-crop of wheat would be:

a. 1983 Established Wheat Acreage Base—89.1 mil. ac.
b. Minus 1983 Preliminary NPA—68.6 mil. ac.
c. Equals Acrage Acreage Reduction Needed from Acreage Base—20.5 mil. ac.
d. Divided by 1983 Wheat Acreage Base—89.1 mil. ac.
e. Equals 1983-Crop Recommended Reduction Percentage—23 percent.

Comments from interested persons with respect to the reduction percentage, if any, are requested.

e. *Whether an Acreage Reduction Program (ARP) should be established and, if so, the Percentage of such reduction and the method of establishing Acreage Bases.* Under sections 107B(e) (1) and (2) of the 1949 Act, the Secretary may establish an acreage reduction program for the 1983 crop of wheat if the Secretary determines that the total supply of wheat, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies

and prices and to meet a national emergency. The Secretary shall announce any such wheat acreage reduction program not later than August 15 prior to the calendar year in which the crop is harvested. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the form to wheat for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to wheat for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as he determines should be considered in determining a fair and equitable base. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres actually planted to wheat by (2) the number of acres authorized to be planted to wheat under a limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

The need for an acreage reduction program for wheat in 1983 will depend on the outcome of the 1982 crop of wheat. It is estimated that the 1982-crop plantings of wheat are 87.0 million acres and the 78.5 million acres of such crop will be harvested. Total production is projected to be 2,715 million bushels, down approximately 3 percent from the record 1981 wheat crop.

It is estimated that domestic use of wheat for 1982/83 will decrease from 1981/82 (867 million bushels) to about 845 million bushels. The decrease in the domestic use of wheat will be attributable to the decline in the use of wheat for feed since the wheat/feed grain ratio will favor feed grains even more than for the 1981-crops. Domestic food use of wheat is projected to increase by a small amount and will offset some of the expected decrease in the use of wheat as feed.

Total world trade is expected to remain at approximately the same level as in the preceding year, but U.S. exports for the 1982/83 marketing year are expected to decrease to about 1700 million bushels from the estimated record of 1800 million bushels in the 1981/82 marketing year. U.S. exports for 1982/83 may vary considerably depending on world wheat production as well as the 1982-crop wheat outturn in the Soviet Union, China, and India.

Given the 1982/83 outlook, ending carryover stocks of wheat may increase by about 15 percent to nearly 1.3 billion bushels. This amount is considered excessive.

Planted and harvested acreage for the 1983 crop of wheat are estimated to remain about the same as 1982 in the absence of an acreage reduction program. Given the same acreage with a trend yield of 35.0 bushels per acre, 1983 crop production of wheat would be an estimated 2,750 million bushels. With this level of production and estimated beginning stocks of nearly 1.3 billion bushels the total supply of wheat for 1983/84 is projected to be a record 4.0 billion bushels.

Domestic use in 1983/84 is projected to increase slightly. This increase will result largely because of increased use of wheat as feed. Domestic food use is also expected to increase, although only slightly.

World trade is expected to remain strong in 1983/84. U.S. exports are estimated at 1,735 million bushels, a 2 percent increase from 1982/83 but less than the record exports in 1981/82.

Therefore, total demand for the 1983/84 marketing year is projected at 2.6 billion bushels. This would result in an ending carryover level of over 1.4 billion bushels, more than 11 percent higher than the previous year. This ending carryover level exceeds the desired level of just under 1.0 billion bushels by more than 45 percent.

The above outlook suggests that an acreage reduction program will be needed for the 1983 crop of wheat. However, later crop developments throughout the world could materially change this outlook. Options under consideration at this time include: (1) No ARP; (2) a 10 percent APR; (3) a 15 percent ARP; and (4) a 20 percent ARP.

Interested persons are encouraged to comment on the need for an acreage reduction program for the 1983-crop of wheat, and the appropriate percentage. Also under consideration is the method for establishing the wheat acreage bases for those producers participating in the 1983 program. At the present time, it is contemplated that the 1983 wheat acreage base which is established for a farm will equal the 1982 wheat acreage base established for the farm if the producer participated in the 1982 ARP. In addition, the 1983 wheat acreage base established for a farm will not be reduced below the 1982 base because a producer did not plant any of the 1982 wheat acreage base established for the farm to wheat if the proper acreage reports are filed with ASCS. It is further contemplated that a 1983 wheat acreage base will be established for the farm of a producer who did not participate in the 1982 ARP based upon the average of the 1981 and 1982 crops of wheat planted to harvest on the farm. This will assure that, in determining wheat acreage bases, a producer who did not participate in the 1982 wheat program will not gain an unfair advantage over the producers who did participate.

Interested persons are requested to comment on the method for establishing acreage bases for the 1983 crop of wheat.

f. *Whether a Set-Aside Program should be established and, if so, The Percentage of such set-aside.* Under sections 107B(e)(1) and (3) of the 1949 Act, the Secretary may establish a Set-Aside Program for the 1983 crop of wheat if the Secretary determines that the total supply of wheat, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such wheat set-aside program not later than August 15 prior to the calendar year in which the crop is harvested. If a set-aside program is announced, then as a condition of eligibility for loans, purchases, and payments, the producers on a farm must set-aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the acreage of wheat plant for harvest of the crop for which the set-aside is in effect. The set-aside acreage shall be devoted to conservation uses in accordance with regulations issued by the Secretary. If a set-aside program is established, the Secretary may limit the acreage planted to wheat. Such limitation shall be applied on a uniform basis to all wheat-producing farms. The Secretary may make such adjustments in individual set-aside acreages as the Secretary determines to be necessary to correct for abnormal factors affecting production, and to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and

water conservation measures, topography, and such other factors as the Secretary deems necessary.

Interested persons are encouraged to comment on the need for a 1983 wheat set-aside program and, if so, the appropriate percentage of acreage to be set-aside.

g. *Whether to Allow Haying and Grazing of Conservation Use Acreage if an Acreage Reduction Program or Set-Aside Program is established.* Section 107B(e)(4) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acrege from weeds and wind and water erosion.

With respect to the 1982-corp Wheat Acreage Reduction Program, producers who had planted acreage to wheat before the announcement of the provisions of the 1982 wheat program on January 29, 1982, were permitted to cut such wheat acreage for hay or to graze off such wheat acreage. While producers who did no plant wheat before January 29, 1982, were permitted to graze the conservation use acreage except during the six principal growing months, such producers were not permitted to harvest their wheat acreage for hay. In addition, specific cover corps and practices were developed at the local county ASC committee level and approved by the State ASC Committee and the State Conservationist for the 1982 conservation use acreage.

If an acreage reduction or set-aside program is announced for the 1983 crop, proposals to coordinate conservation concerns with a production adjustment program include the following: (1) Expanding the definition of land which is eligible to satisfy ARP conservation use or set-aside requirements; (2) allowing 1982 conservation use acreage to be included in the cropland base for subsequent programs; (3) giving priority for cost-sharing for conservation programs for practices installed on conservation use or set-aside acreage; and (4) permitting haying and grazing within approved guidelines on conservation use or set-aside acreage.

Interested persons are invited to comment on the grazing and haying of conservation use acreage and the conservation measures applied to land removed from production under the 1982 Acreage Reduction Programs. Also, comments are requested on what changes may be necessary to provide a greater degree of compatibility and coordination between the conservation and Acreage Reduction or Set-Aside Programs.

h. *Whether a Land Diversion Program should be established and, if so, the Extent of Such Diversion and the Level of Payments.* Section 107B(e)(5) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an acreage reduction or set-aside program for wheat is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. The amount payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary deems appropriate. In the past, land diversion payments have been made based upon an offer rate system (i.e. specific rate per bushel times a farm program payment yield).

If land diversion payments are determined to be necessary for the 1983 crop of wheat, such payments will likely be based upon an offer rate system.

Diversion payment options under consideration include: (1) A 10 percent voluntary diversion with a 5 percent ARP; (2) a 10 percent voluntary diversion with a 10 percent ARP; (3) a 15 percent voluntary diversion with a 5 percent ARP; (4) a 5 percent voluntary diversion with a 10 percent ARP; (5) a 5 percent voluntary diversion with a 15 percent ARP; and (6) a 10 percent voluntary diversion with a 15 percent ARP. The range of options under consideration for the diversion payment rates are: (1) Equal to the actual deficiency payment rate; and (2) a flat rate per bushel ranging from $1.75 to $4.50, depending on the diversion percentage.

Interested persons are encouraged to address the need for a land diversion program, either in lieu of, or in conjunction with, an acreage reduction or set-aside program, and the appropriate terms and conditions of land diversion program.

i. *Provisions of the Farmer-Owned Reserve (FOR).* Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program under which producers of wheat will be able to store wheat when in abundant supply and extend the time for its orderly marketing. The Secretary shall provide for original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of support provided for under the wheat program established in accordance with Section 107B of the 1949 Act. The program may provide for (1) repayment of such loans in not less than three years nor more than five years; (2) payments to producers for storage in such amounts and under such conditions as are determined to be appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged the Commodity Credit Corporation by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for wheat has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained a specified level (trigger release level), as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcement, the Secretary shall specify the quantity of wheat to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of wheat. The Secretary may place an upper limit on the amount of wheat placed in the reserve but such upper limit may not be less than seven hundred million bushels of wheat.

The following options are under consideration for the FOR for the 1982-crop of wheat: (a) Extended loan rate for reserve entry—maintaining the loan rate at the same level as that established for 1982-crop wheat entering the reserve ($4.00) or increasing the regular loan rate which is to be established for the 1983 crop by 45 cents in order to maintain the same relationship between the extended loan rate and the regular loan rate as existed for the 1982 crop; (b) storage payments rate—maintaining the payment rate for storage at 26.5 cents per bushel or adjusting such rate to a level which will ensure adequate participation in the FOR with respect to the 1983 crop of wheat; (c) interest rate—for the first year, charging producers entering wheat in the FOR the prevailing rate of interest charged Commodity Credit Corporation for its borrowings by the United States Treasury and waiving interest for the second and third years; (d) release (trigger) level—maintaining the release (trigger) level at the 1982 level of $4.65 per bushel or increasing the release (trigger) level to reflect the costs of

production and other factors; (e) entry of wheat into the FOR—authorizing producers to enter wheat into the FOR at harvest or delaying entry into the FOR until maturity of the regular loan; and (f) quantity limit—placing no upper limit on the quantity of wheat entering the reserve program or placing an upper limit on the quantity of wheat entering the reserve program at an appropriate level above 700 million bushels.

Interested persons are encouraged to comment on these or other options dealing with the provisions of the farmer-owned wheat reserve program for the 1983 crop of wheat.

j. *Whether to require offsetting compliance if an Acreage Reduction or Set-Aside Program is established.* Under Section 107B of the 1949 Act, the Secretary may implement offsetting compliance requirements as a condition of eligibility for program benefits. If offsetting compliance is required, operators and owners of farms would have to ensure that all of their farms were either complying with program requirements such as planting within the established wheat acreage bases or the normal crop acreage established for these farms in order to be eligible for program benefits. Offsetting compliance was not in effect for the 1982 crop.

Interested persons are encouraged to comment on the need for the Secretary to require offsetting compliance for the 1983-crop of wheat if an acreage reduction program is established.

k. *Other Related Provisions.* A number of other determinations must be made in carrying out the wheat loan and purchase programs such as: (a) Commodity eligibility; (b) premiums and discounts for grades, classes, and other qualities; (c) establishment of county loan and purchase rates; and (d) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

Signed at Washington, D.C., on May 21, 1982.

Everett Rank,

Administrator, ASCS.

[FR Doc. 82-14227 Filed 5-24-82; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Big Valley Federal Sustained Yield Unit; Public Advisory Hearing

The Modoc National Forest will sponsor a public advisory hearing on Thursday, June 24, 1982 at the Adin Community Hall in Adin, California. The purpose of the public advisory hearing is to consider the advantages and/or disadvantages of continuing for the next five year period with the present policy statement for the Big Valley Federal Sustained Yield Unit.

The public is invited to attend the hearing to obtain further information and/or to participate by giving advisory testimony. Written comments will be accepted from date of hearing through August 9, 1982.

Dated: May 17, 1982.

C. A. Goughnour,

Acting Forest Supervisor.

[FR Doc. 82-14199 Filed 5-24-82; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bayou Pierre Watershed, Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Bayou Pierre Watershed, Copiah and Lincoln Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, Federal Building, 100 W. Capitol Street, Jackson, Mississippi 39269, telephone 601-960-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, and recreation. Alternatives under consideration to reach these objectives include systems for conservation land treatment, nonstructural measures, earth dams, and recreation development.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from Billy C. Griffin, State Conservationist, at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 12, 1982.

Billy C. Griffin,

State Conservationist.

[FR Doc. 82-14200 Filed 5-24-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Air Cargo, Inc.; Agreement Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: *Final Order in 82-5-106 in the Air Cargo, Inc. Agreement Show Cause Proceeding,* Docket 36592.

SUMMARY: The Board is issuing a final order in the Air Cargo, Inc. Agreement Show Cause Proceeding, Docket 36592, proposing to continue its approval of Agreement CAB No. 1041, as amended, to withdraw antitrust immunity, and to grant a motion of Air Freight Haulage Co., Inc., for leave to file a late reply. Agreement CAB No. 1041, as amended, was approved by the Board in Order No. E-1086, on December 31, 1947. The agreement established a carrier owned corporation, Air Cargo, Inc. (ACI) to provide either directly, through the use of its own vehicles and employees, or by contract, pick-up and delivery services, and other services desired by the airlines in connection with the transportation of air cargo. The original purpose of this agreement was to facilitate and coordinate the interline movement of air cargo over the lines of member carriers. ACI's services are available throughout the United States and Puerto Rico, to all certificated airlines, commuter airlines, cargo carriers authorized under section 418 of the Federal Aviation Act, as amended, shippers' associations, and air freight forwarders. ACI also maintains consolidated air freight terminals for certain member carriers which desire such services at two international airports, Dulles Airport (Washington, D.C.), and Ontario (Los Angeles) Airport. (The complete text of this order is available as noted below).

DATES: Petitions for Recommendation of this order shall be filed no later than June 14, 1982.

ADDRESSES: Documents should be filed in Docket 36592, Docket Section, Room 714, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Susan L. Blankenheimer, Competition Maintenance Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5325.

SUPPLEMENTARY INFORMATION: A complete text of Order 82–5–106 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 82–5–106 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: May 20, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14225 Filed 5-24-82; 8:45 am]

BILLING CODE 6320-01-M

Application of North American Airlines, Inc. for a Charter Certificate

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Investigation of North American Airlines, Inc. in Docket 40511 (Order 82–5–103).

SUMMARY: The Board is instituting an investigation to determine the fitness of North American Airlines, Inc. to engage in the interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file petitions for leave to intervene in the *North American Airlines, Inc. Fitness Investigation* shall file their petitions in Docket 40511 by June 4, 1982 and shall serve such filings on all persons listed below.

ADDRESSES: Petitions for leave to intervene should be filed in Docket 40511 and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on North American Airlines; the mayor and airport manager of Omaha, Nebraska; and the Nebraska Department of Aeronautics; and on any other persons filing petitions.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–5–103 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–5–103 to that address.

By the Civil Aeronautics Board: May 20, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-14226 Filed 5-24-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Birch 3-Ply Doorskins From Japan; Tentative Determination To Revoke In Part Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Tentative Determination To Rovoke in Part Antidumping Finding.

SUMMARY: The Department of Commerce has tentatively determined to revoke in part the antidumping finding on birch 3-ply doorskins from Japan. The tentative determination applies to one company, Marutama Industries Co., Ltd. Marutama has had no dumping margins from April 1, 1975, through December 31, 1979.

The Interested parties are invited to comment on this tentative determination.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Brain Kelly or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–2923).

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1976, a dumping finding with respect to birch 3-ply doorskins was published in the **Federal Register** as Treasury Decision 76–48 (41 FR 7389). The Department of Commerce ("the Department") has published the final results of its first review of the finding (46 FR 33574–5, 47 FR 1162), and, more recently, the preliminary results of its second review (47 FR 11737).

Scope of the Determination

Imports covered by this determination are shipments of birch 3-ply doorskins manufactured by Marutama Industries Co., Ltd. ("Marutama"). Birch 3-ply doorskins are currently classifiable under items 240.1420, 240.1440, and 240.1460 of the Tariff Schedules of the United States Annotated (TSUSA). The determination applies to such doorskins sold by Marutama for export to the United States.

Basis of Determination

Section 353.54 of the Commerce Regulations requires that for a company to apply for revocation, two conditions must usually be met: (1) sales at not less than fair value for at least a two year period following publication of a finding or order, and (2) an agreement by the parties subject to the revocation to reinstatement of the finding or order in the case of subsequent less than fair value sales. During the period April 1, 1975, through December 31, 1979, Marutama made all sales at not less than fair value.

In addition, Marutama has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop that indicate that the merchandise thereafter manufactured and sold by Marutama for export to the United States is being sold at less than fair value. As a result, we tentatively determine to revoke the antidumping finding on birch 3-ply doorskins with respect to Marutama Industries Co., Ltd. Such revocation, if made final, shall apply to all unliquidated entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on this tentative determination on or before June 24, 1982 notice and may request disclosure and/or a hearing on or before June 4, 1982. Any hearing, if requested, will be held 30 days after publication of this notice or the first workday thereafter. The Department will publish the results of its analysis of any such comments or hearing.

This tentative determination to revoke in part is in accordance with section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) and § 353.54 of the Commerce Regulations (19 CFR 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 19, 1982.

[FR Doc. 82-14220 Filed 5-24-82; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Additional Import Controls and Adjusting Existing Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From the Republic of the Philippines

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: (1) Controlling imports of wool gloves and mittens in Category 431 and women's, girls', and infants' trousers of man-made fibers in Category 648 (pt.), produced or manufactured in the Philippines and exported in the United States during the twelve-month period which began on January 1, 1982, at respective levels of 53,971 dozen pairs and 54,336 dozen. The level for Category 431 has been adjusted to account for 1981 overshipments amounting to 2,445 dozen.

(2) Reducing the level of restraint for women's, girls', and infants' woven cotton blouses in Category 341 (pt.) by 19,970 dozen, representing 1981 overshipments through March 31, 1982, to 46,732 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on February 26, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926) and May 13, 1982 (47 FR 20654)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines, the United States Government has decided to control imports of cotton, wool, and man-made fiber textile products in Categories 431 and 648 (pt.), produced or manufactured in the Philippines and exported to the United States during the twelve-month period which began on January 1, 1982, in addition to those categories previously designated. Overshipments from 1981 are also being charged to Categories 431 and 341 (pt.).

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61688) a letter dated December 14, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 341 (pt.), produced or manufactured in the Philippines, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. Under the terms of the bilateral agreement, the United States Government has decided also to control imports of wool and man-made fiber textile products in Categories 431 and 648 (pt.) during the same period and to adjust the levels for Categories 341 pt. and 431 to account for 1981 overshipments. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of coton, wool, and man-made fiber textile products in Category 341 (pt.), 431, and 648 (pt.) in excess of the designated, adjusted levels of restraint. The newly-established levels for Categories 431 and 648 (pt.) have not been adjusted to account for any imports after December 31, 1981. Imports in Category 431 have amounted to 845 dozen pairs and 7,500 dozen in Category 648 (pt.) through March 31, 1982 and will be charged. As the data become available, further charges will be made to account for imports during the period which began on April 1, 1982 and extends to the effective date of this action.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

May 20, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 14, 1981 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Effective on May 26, 1982, paragraph 1 of the directive of December 14, 1981 is amended to include an adjusted level of restraint for cotton textile products in Category 341 (pt.)[1] of 46,732 dozen.[2]

Also effective on May 26, 1982, paragraph 1 of the directive of December 18, 1981 is further amended to include the following levels of restraint for wool and man-made fiber textile products in Categories 431 and 648 (pt.)

Category	12-mo. level of restraint[1]
431	53,971 dozen pairs.
648 pt.[2]	54,336 dozen.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1981. Imports through March 31, 1982 have amounted to 845 dozen pairs in Category 431 and 7,500 dozen in Category 648 (pt.).

[2] In Category 648, all T.S.U.S.A. numbers except 383.1940, 383.6146, 383.2250, and 383.9071.

Wool and man-made fiber textile products in Categories 431 and 648 pt., which have been exported to the United States prior to January 1, 1982, shall not be subject to this directive.

Wool and man-made fiber textile products in Categories 431 and 648 pt., which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) and 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 26, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 489630, October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926) and May 13, 1982 (47 FR 20654)

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool, and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

[1] In Category 341, only T.S.U.S.A. numbers 383.0506, 383.4704, 383.4707, and 383.4711.

[2] The levels of restraint have not been adjusted to reflect any imports after December 31, 1981. Imports through March 31, 1982 have amounted to 845 dozen pairs in Category 431 and 7,500 dozen in Category 648 (pt.).

Sincerely,
Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-14219 Filed 5-24-82; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense (OSD) Performance Review Board

AGENCY: Defense Department.

ACTION: Notice of Membership of the Office of the Secretary of Defense Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, OSD Field Activities, the Organization of the Joint Chiefs of Staff, the U.S. Court of Military Appeals, and the U.S. Mission to NATO. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon B. Brown, Chief, Senior Executive Service Division, Directorate for Personnel & Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (202) 695-4573 or 695-9313.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Performance Review Board. They will serve a one-year renewable term, effective June 1, 1982.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.
May 19, 1982.

Office of the Secretary of Defense Performance Review Board

Immediate Office

Puritano, Vincent (NMN), The Executve Assistant to the Deputy Secretary of Defense
Dolvin, Welborn G., Deputy Negotiator for the DOD for Panama Canal Treaty Affairs and Joint Chiefs of Staff Representative, Mutual and Balanced Force Reductions Negotiations
Troia, Kathleen M., Assistant to the Secretary of Defense
Leftwich, Norma B., Director, Small and Disadvantaged Business Utilization
Crouch, Horace J., Director of Small Business and Economic Utilization Policy
Williams, Arthur F., Director, Disadvantaged Business Utilization Policy
Michel, Werner E., Inspector General for Defense Intelligence

Office of the Under Secretary of Defense for Policy

Lindstrom, Talbot S., Special Assistant to the Under Secretary of Defense for Policy
Turner, Robert F., Special Assistant to the Under Secretary of Defense for Policy

Office of Net Assessment

Marshall, Andrew W., Director of Net Assessment

Office of the Deputy Under Secretary of Defense for Policy

Stilwell, Richard G., Deputy Under Secretary of Defense (Policy)
Stivers, Ronald H., Assistant Deputy Under Secretary of Defense (Policy)
Alderman, Craig (NMN), Director, Emergency Planning
Reynolds, Herbert A., Deputy Director for Intelligence and Space Policy
Knapp, Harold A., Deputy Director, Joint Program Office
Snider, L. Britt, Director, Counterintelligence and Security Policy
Donnelly, John F., Director, Counterintelligence and Investigative Programs
Van Cook, Arthur F., Director, Information Security
Anderson, Maynard C., Director for Security Plans and Programs
Nielsen, Donald E., Director, Special Advisory Staff
Campen, Alan D., Director, Command and Control Policy

Office of the Assistant Secretary of Defense (International Security Policy)

Zakheim, Dov S., Special Assistant to the Assistant Secretary of Defense (International Security Policy)
Bryen, Stephen D., Deputy Assistant Secretary of Defense (International Economics, Trade, and Security Policy)
Lehman, Ronald F. II, Deputy Assistant Secretary of Defense (Strategic and Theater Nuclear Forces Policy)
Minichiello, Lee P., Assistant Deputy Director for Strategic Systems and Senior OSD Advisor (Salt Overseas Element)
Mobbs, Michael H., Representative of the Office of the Secretary of Defense on the Strategic Arms Reduction Talks (START) Delegation
Bader, George W., Deputy Director, European and NATO Affairs
Jefferson, Ralph H., Special Assistant to the Deputy Assistant Secretary of Defense (European and NATO Affairs)

Office of the Assistant Secretary of Defense (International Security Affairs)

Koch, Noel C., Principal Deputy Assistant Secretary of Defense (International Security Affairs)
Shilling, David M., Director, General Purpose Forces Policy
Barringer, Philip E., Director, Foreign Military Rights Affairs
Armitage, Richard L., Deputy Assistant Secretary of Defense (East Asia and Pacific Affairs)
Woods, James L., Director, Africa Region
Denoon, David B. H., Deputy Assistant Secretary of Defense (International Economic and Energy Affairs)
Gaffney, Henry H., Jr., Director, Security Assistance Plans
Groth, Carl H., Jr., Director, International Economic Affairs
Tyler, John T., Jr., Deputy Director, Security Assistance Plans and Programs
Sanchez, Nestor D., Deputy Assistant Secretary of Defense (Inter-American Affairs)

Defense Security Assistance Agency

Ligon, Walter B., Special Assistant to the Director, DSAA
Morris, Herbert K., Comptroller, DSAA
Murrell, Billy C., Deputy Comptroller, DSAA
Rudd, Glenn A., Director, Security Assistance Operations
Woods, James R., Director, Joint Financial Management Office

Office of the Under Secretary of Defense for Research and Engineering

Berenson, Paul J., Staff Specialist for Assessement and Executive Officer, Defense Science Board
Thomas, Ronald D., Director for Program Control and Administration
Wagner, Richard L., Jr., Assistant to the Secretary of Defense (Atomic Energy)
Tobriner, Matthew, W., Senior Analyst for Long Range Resource Planning
Michael, Louis G., Deputy Assistant to the Secretary of Defense (Atomic Energy) (Long Range Resource Planning)

Gold, Theodore S., Deputy Assistant to the Secretary of Defense (Chemical Matters)
Long, William A., Deputy Under Secretary of Defense (Acquisition Management)
Gordon, Harvey J., Assistant Deputy Under Secretary of Defense (Acquisition)
Fisher, Herbert L., Director, Contract Placement and Administration
Brannan, James T., Director, Defense Acquisition Regulatory System
Kendig, John L., Director, Cost, Pricing and Finance
Smith, John E., Director, Major Systems Acquisition
Martin, Edith M., Deputy Under Secretary of Defense (Research and Advanced Technology)
Millburn, George P., Special Assistant to Deputy Under Secretary (Research and Advanced Techonology)
Feinstein, Joseph (NMN), Director, Electronics and Physical Sciences
Musa, Samual A., Staff Specialist for Electronic Warfare and Target Acquisition
MacCallum, John M., Jr., Staff Specialist for Search and Surveillance
Dashiell, Thomas R., Staff Specialist for Chemical Technology
Siewert, Raymond F., Jr., Director (Engineering Technology)
Dix, Donald M., Staff Specialist for Vehicle Propulsion
Thorkildsen, Ray, Staff Specialist for Ordnance
Persh, Jerome, Staff Specialist for Materials and Structures
Kopcsak, George C., Staff Specialist, Weapons Technology
Young, Leo (NMN), Director for Research and Technical Information
Jones, Thomas K., Deputy Under Secretary of Defense (Strategic and Theater Nuclear Forces)
Butler, Gunning, Jr. (NMN), Director, Start and Arms Control Office
Gardner, John L., Director, Defense Systems
Winter, William H., Staff Specialist for Defensive Systems
Bertapelle, Arther H., Staff Specialist, Early Warning and Attack Assessment
Atkins, Marving C., Director (Offensive and Space Systems)
Ruffine, Richard S., Staff Specialist for Technology and Analysis (Offensive Systems)
Forsythe, Conrad O., Staff Specialist for Space and Advanced Systems
Bernard, Charles W., Director, Office of Land Warfare
Minneman, Milton J., Director, Mobility and Special Projects
Horton, Cyril F., Staff Specialist for Air Mobility
O'Neil, William D., III, Director, Naval Warfare
Delaney, Robert P., Staff Specialist for Anti-Submarine and Mine Systems
Anderson, David L., Staff Specialist for Naval Projection and Anti-Air Systems
King, Paul D., Staff Specialist for Interdiction/Naval Strike
Linder, Isham W., Director, Defense Test and Evaluation
Greenlee, Donald R., Staff Specialist for Strategic and Naval Warfare Systems
Richardson, William A., Deputy Director for Test Facilities and Resources
Watt, Charles K., Deputy Director, Strategic and Naval Warfare Systems
Lorenzo, Michael (NMN), Deputy Under Secretary of Defense (International Programs and Technology)
Lomacky, Oles (NMN), Director, Technology Trade
Mintz, Jeanne S., Special Assistant for Planning and Requirements
Kapper, Francis B., Director, Technology Export
Greinke, Everett D., Director for NATO/European Affairs
Sullivan, Gerald D., Director, Far East, Middle East and Southern Hemisphere Affairs
Latham, Donald C., Deputy Under Secretary of Defense (C3I)
Quinn, Thomas P., Assistant Deputy Under Secretary of Defense (Communications, Command and Control)
Facey, Albert G., Jr., Staff Specialist for Switched and Special Purpose Communications Systems
Thomas, Reynold (NMN), Jr., Staff Specialist for WWMCCS and Other C3 Systems Architecture
Cittadino, John C., Director, Theater and Tactical C3
Marquis, Dennis C., Special Assistant for NATO and European Theater Command and Control
Howe, Richard G., Staff Specialist, Tactical Command and Control
Porter, John M., Director, Electronic Warfare and C3 Countermeasures
Lewis, William J., Staff Specialist for Electronic Warfare and C3 Countermeasures
Walker, Stephen T., Director, Information Systems
Sullivan, Alden P., Director, C3 Resources
Hawkins, Charles A., Jr., Assistant Deputy Under Secretary of Defense (Intelligence)
Keller, Michael L., Senior Staff Specialist for Reconnaissance, Surveillance and Target Acquisition
Solomon, David L., Assistant Deputy Under Secretary of Defense (Technical Policy and Operations)
Salton, George L., Director, Communications Systems
Turner, Robert D., Assistant Deputy Under Secretary of Defense (Systems Integration)
Starr, Stuart H., Director, Systems Research and Evaluation
Mittino, John A., Assistant Deputy Under Secretary of Defense (Procurement Policy)
Stimson, Richard A., Director, Standardization and Acquisition Support
Grove, H. Mark, Director, Embedded Computer Resources
Donnelly, Richard E., Director, Production Resources
Hamilton, Dale L., Staff Specialist for Satellite Communications Systems

Defense Advanced Research Projects Agency

Cooper, Robert S., Director, Defense Advanced Research Projects Agency
Romney, Carl F., Deputy Director for Research
Lynn, Verne L., Deputy Director for Technology
Tether, Anthony J., Assistant Deputy Director for Technology
Charvonia, David A., Director, Darpa Regional Office, Europe
Sepucha, Robert C., Assistant Director for Space Defense Technology
Mangano, Joseph A., Assistant Director for Technology, Directed Energy Office
Tanimoto, Douglas H., Director, Directed Energy Office
Chapman, Ray E., Director, Program Management Office
Goodwyn, James C., Deputy Director, Program Management Office
Kahn, Robert E., Director, Information Processing Techniques Office
Levinthal, Elliot C., Director, Defense Sciences Office
Vanreuth, Edward C., Assistant Director, Material Sciences
Reynolds, Richard A., Deputy Director, Defense Sciences Office
Fields, Craig I., Assistant Director for Cybernetics Technology
Thomas, Carl M., Director, Strategic Technology Office
Pike, H. Alan, Deputy Director, Directed Energy Office
Tegnelia, James A., Jr., Director, Air Vehicles Technology Office
Whitman, Edward C., Assistant Director for Ocean Monitoring and Control
Cerf, Vinton G., Principal Research Manager (Information Processing Techniques Office)
Fraser, James C., Assistant Director, Surveillance
Hansen, John W., Deputy Director, Tactical Technology Office

Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)

Shaw, Dennis R., Principal Director, Office of the Deputy Assistant Secretary of Defense (Reserve Affairs)
Juliana, James N., Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)
Shorey, Russell R., Director for Acquisition and Support Planning
Groover, Charles W., Deputy Assistant Secretary of Defense (Program Integration)
Donovan, Paul (NMN), Principal Director, Office of the Deputy Assistant Secretary of Defense (Program Integration)
Tahtinen, Dale R., Director, Mobilization Planning and Requirements
Culosi, Salvatore J., Director, Force Readiness and Sustainability Requirements and Analysis
Compton, James M., Director, International Logistics and Support Analysis
Sicilia, Thomas G., Director, Research and Data
Bergmann, Walter B., II, Director, Resource Management and Analysis
Calhoun, Jerry L., Deputy Assistant Secretary of Defense (Civilian Personnel Policy)
Earich, Douglas R., Director, Management Studies
Green, David H., Director, Personnel-Management
Garnett, Thomas F., Deputy Director for Labor-Management Relations
Coakley, William F., Director, Overseas and Nonappropriated Fund Personnel Management
Haughton, Claiborne D., Jr., Director for Civilian Equal Opportunity Programs
Stone, Robert A., Deputy Assistant Secretary of Defense (Program Management)
Farbrother, Douglas D., Principal Director, Office of the Deputy Assistant Secretary of Defense (Facilities, Environment, and Economic Adjustment)
Tillson, John C., Director, Manpower Management
Fites, Jeanne B., Director, Intergovernmental Affairs
Tucker, Alvin (NMN), Director for Training and Education
Webster, Richard D., Deputy Assistant Secretary of Defense (Supply, Maintenance and Transportation)
Altizer, Harrell B., Principal Director, Office of the Deputy Assistant Secretary of Defense (Logistics and Material Management)
Rauner, Robert M., Director, Office of Installations and Economic Adjustment
Shriber, Maurice M., Director for Supply Management Policy
McCarthy, Herbert W., Deputy Director, Supply Policy and Programs
Moore, Robert J., Deputy Director, Materiel Management Systems Division
Hyman, Paul J., Director, Transportation and Distribution Policy
Moore, Robert H., Staff Director, Transportation Systems Division
Turke, Joseph G., Director for Maintenance Policy
Smiley, Orville L., Director, Automated Systems
Lanoue, Robert J., Director, NATO Programs and Foreign Construction
Buzalski, Ernest A., Assistant Director for Installations Programs
Nelson, Wayne S., Director for Safety and Occupational Health Policy
Sharkey, William J., Jr., Director for Energy Policy
Meehan, Patrick J., Director, Facility Requirements and Resources
Lynch, John E., Economic Advisor
Lord, Sharon B., Deputy Assistant Secretary of Defense (Equal Opportunity and Safety Policy)

Department of Defense Dependents Schools

Killin, Edward C., Director, Pacific Region, Dodds

Office of Economic Adjustment

Robertson, William B., Assistant to the Director, Office of Economic Adjustment, for Business and Resource Development
Winshurst, Thomas H. E., Assistant Director for Operations

Office of the Assistant Secretary of Defense (Legislative Affairs)

Garcia, Ernest E., Deputy Assistant Secretary of Defense (Senate Affairs)
Barry, Albert P., Deputy Assistant Secretary of Defense (House Affairs)

Office of the Assistant Secretary of Defense (Comptroller)

Quetsch, John R., Principal Deputy Assistant Secretary of Defense (Comptroller)
Lose, Graydon I., Special Assistant for Appropriation Liaison
Rosen, E., Deputy Assistant Secretary of Defense (Management Systems)
Kraft, Herbert H., Jr., Principal Assistant to the Deputy Assistant Secretary of Defense (Management Systems)
Crehan, John T., Director for Accounting Policy
McCarty, Thomas F., Director for Cost Accounting Policy
Saylor, James W., Director, Financial Accounting Policy
Mulcahy, Kenneth C., Director, Policy Promulgation Division
Toulme, Clarence V., Director for Banking, International Finance and Professional Development
Carabello, John M., Director for Data Automation
Leary, William H., III, Associate Director, Data Automation
Scott, Winfield S., Director for Management Information Control and Analysis
Kammerer, Joseph T., Deputy Assistant Secretary of Defense (Cost and Audit)
Glaister, Clyde O., Deputy Assistant Secretary of Defense (Program/Budget)
Harshman, Richard A., Deputy Comptroller (Program/Budget)
Dube, Lawrence P., Director for Operations
McLaughlin, Frank I., Deputy Director for Operations
Russ, John M., Director for Program and Financial Control
Hessler, David J., Director for Research and Development
Eaton, Nelson W., Deputy Director for Research and Development
South, Allen D., Director for Construction
Beach, John W., Director for Plans and Systems
Trodden, Stephen A., Director for Procurement
Davidson, Ronald A., Deputy Director for Procurement
Conte, Albert V., Director for Military Personnel
Cooke, David O., Deputy Assistant Secretary of Defense (Administration)/Director, Washington Headquarters Services
Goldberg, Alfred (NMN), Policy Analyst and Historian
Ehlers, Arthur H., Jr., Director for Organizational and Management Planning
Cavaney, William T., Director, Defense Privacy Office/Executive Secretary, Defense Privacy Board
Schmidt, Raymond E., Deputy Comptroller for Audit Policy

Office of the Assistant Secretary of Defense (Health Affairs)

Beary, John F., III, Principal Deputy Assistant Secretary of Defense (Health Affairs)
Johns, John H., Deputy Assistant Secretary of Defense (Drug and Alcohol Abuse Prevention)
Wood, Theodore D., Director, Office of the Civilian Health and Medical Program of the Uniformed Services
McKenzie, Vernon (NMN), Deputy Assistant Secretary of Defense (Health Resource Management)

Office of the Director, Program Analysis and Evaluation

Chu, David S. C., Director, Program Analysis and Evaluation
Leonard, Michael (NMN), Deputy Director (Regional Programs)
Tapparo, Frank A., Director, Asia Division
Kugler, Richard L., Director, Europe Division
Major, Philip L., Deputy Director (Strategic Programs)
Ioffredo, Michael L., Director, Strategic Defensive and Theater Nuclear Forces Division
Margolis, Milton A., Deputy Director (Resource Analysis)
Morgan, John D., Director, Cost Analysis Division
Christie, Thomas P., Deputy Director (General Purpose Programs)
Pennington, Arthur, W., Director, Naval Forces Division
Finsterle, James C., Director, Land Forces Division
Croteau, Robert J., Director, Tactical Air Division
Christie, Deborah P., Director, Mobility Forces Division
McNichol, David L., Director, Economic Analysis Division

Office of the Assistant Secretary of Defense (Public Affairs)

Welles, Benjamim (NMN), Principal Deputy Assistant Secretary of Defense (Public Affairs)
Hinkle, Charles W., Director, Freedom of Information and Security Review
Cranston, Robert (NMN), Director, American Forces Information Service
Sheils, Marylou, Special Assistant to the Assistant Secretary of Defense (Public Affairs)

Office of the General Counsel

Niederlehner, Leonard (NMN), Deputy General Counsel
Baker, Walter A., Assistant General Counsel (International)
Trosch, Dennis H., Assistant General Counsel (Logistics)
Briskin, Manuel (NMN), Assistant General Counsel (Fiscal Matters)
Gilliat, Robert L., Assistant General Counsel (Manpower and Health Affairs)
Buck, Kathleen A., Assistant General Counsel (Legal Counsel)

Office of the Assistant to the Secretary of Defense (Review and Oversight)

Sherick, Joseph H., Assistant to the Secretary of Defense (Review and Oversight)
Vander Schaaf, Derek J., Principal Deputy Assistant to the Secretary of Defense (Review and Oversight)
Bruh, Brian M., Deputy Assistant to the Secretary of Defense (Criminal Investigations)/Director Criminal Investigative Service
Lieberman, Richard D., Deputy Assistant to the Secretary of defense (Follow-Up, Reports and Management)
Maldonado, Joe P., Director, Contract Audit Follow-Up
Lieberman, Robert J., Director, Audit Resolution and Internal Audit and Investigative Follow-Up
Calais, Mary J., Director, Special Projects and Analyis
Woehrle, Charles D., Deputy Assistant (Oversight, Evaluation and Criminal Policy)

U.S. Mission to NATO

Legere, Laurence J., Defense Advisor, U.S. Mission to NATO
Calaway, Paul R., Deputy Defense Advisor for Research, Engineering and Acquisition
Phillips, Gary R. Director, Defense Plans Division
Loveland, Trafton J., Director, Infrastructure and Logistics Division
Gontarek, Stanley J., Director, Communications and Electronics Division

Washington Headquarters Services

Snider, Larry E., Director, Space Management and Services
Sungenis, Joseph R., Director, Information Operations and Reports
Becker, Karl F., Director of Personnel and Security
Cratch, Geoffrey A., Director of Budget and Finance
Colson, Janet (NMN), International Affairs Advisor

International Military Activities Staff—NATO

Smith, Homer D., Jr., Director of Logistics (International Staff)
Spaulding, Harry S., Director of Logistics (NAMSA)
Miner, Francis (NMN), Director of Finance, Central European Operating Agency (NATO Support Group)
Martin, John D., Director, Nuclear Planning (International Staff)

Organization of the Joint Chiefs of Staff

Lese, William G., Jr., Scientific and Technical Advisor to the Chief, Saga and Chief, Technical Support Division

U.S. Court of Military Appeals

Granahan, Thomas F., Clerk of the Court

Defense Audit Service

Melchner, John W., Director, Defense Audit Service
Curry, James H., Deputy Director, Defense Audit Service

Defense Communications Agency

Whealen, John T., General Counsel

Defense Contract Audit Agency

Starrett, Charles O., Director, DCAA
Brown, James E., Deputy Director
Quill, John J., Counsel

Defense Investigative Service

O'Brien, Thomas J., Director, Defense Investigative Service

Defense Logistics Agency

Kabeiseman, Karl W., Counsel, Defense Logistics Agency

Defense Nuclear Agency

Conrad, Edward E., Deputy Director (Science and Technology)

[FR Doc. 82-14201 Filed 5-24-82; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 6, 1982; Tuesday, July 13, 1982; Tuesday, July 20, 1982; and Tuesday, July 27, 1982 at 10 a.m. in Room 3D321, the Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of

Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believe to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1982.

[FR Doc. 82-14223 Filed 5-24-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 10–11, 1982.

ADDRESS: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 800, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202 (202) 472–6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernment policies and relations relating to education.

The meeting of the Council is open to the public. The meeting is scheduled for 2 p.m. to 4:30 p.m. on June 10 and will continue on June 11 from 9:00 a.m. to 4:30 p.m.

The proposed agenda includes:

—Procedural activities associated with organization of recently appointed Council.

—Identification of issues for Council attention.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue SW., Room 1079, Washington, D.C.

Signed at Washington, D.C. on Thursday, May 20, 1982.

John H. Rodriguez,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 82-14222 Filed 5-24-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Additional Public Hearings on Proposed Impact Aid Payments and Formula

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of additional public hearings on proposed impact aid payments formula.

SUMMARY: On May 13, 1982, BPA published in the **Federal Register** (47 FR 20657) its "Notice of Proposed Impact Aid Payments Formula and Opportunities for Public Review and Comment." In addition to the five public hearings cited in this previous **Federal Register** notice, BPA has scheduled three additional public hearings.

DATES: The additional dates and locations are: Tuesday, May 25, 1982, Thompson Falls Elementary School, Columbia and Haley Streets, Thompson Falls, Montana; Wednesday, May 26, 1982, Broadwater County Courthouse, Broadway Street, Townsend, Montana; and Thursday, May 27, 1982, Granite County Courthouse, Sansome and Kearney Streets, Philipsburg, Montana. All hearings will start at 1 p.m. with registration beginning at 12:30 p.m.

Any interested person wishing to discuss the proposed impact aid payments formula should contact the Area or District Manager in their locality or the office of the Public Involvement Coordinator.

Written comments may be submitted through July 13, 1982.

ADDRESSES: Writtten comments not submitted at the hearings should be submitted to the Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Coordinator, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Gordon H. Brandenburger, Kalispell District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Thomas M. Noguchi, Acting Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Roy Nishi, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Issued in Portland, Oregon, May 17, 1982.

Peter T. Johnson,

Administrator.

[FR Doc. 82-14306 Filed 5-24-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP82-84-000]

Montana-Dakota Utilities Co.; Notice of Proposed Change in Rates

May 18, 1982.

Take notice that on April 30, 1982, Montana-Dakota Utilities Company (MDU), a Delaware corporation, whose mailing address is 400 North Fourth Street, Bismarck, North Dakota 58501, filed proposed changes in rates to its jurisdictional gas sales customers.

More specifically, MDU filed the following tariff sheets to its FERC Gas Tariff in which are reflected an increase in jurisdictional rates:

Original Volume No. 4

Twenty-First Revised Sheet No. 3A

First Revised Volume No. 2

Fifteenth Revised Sheet No. 10

The proposed effective date is June 1, 1982.

Increased revenues from the rates as proposed by MDU would amount to $2,938,087 annually under MDU's Rate Schedules G–1, PR–1, X–1, I–1, X–5, and X–6.

The filing indicates that MDU has experienced increases in both purchased gas costs and most other areas of its cost of service. Consequently, MDU finds it necessary to file for an increase in its jurisdictional rates.

Any person desiring to be heard or to make any protest with reference to said filing should on or before May 25, 1982, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate in any hearing therein must file a petition to intervene in accordance with the Commission's Rules of Practice and Procedure.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–14205 Filed 5–24–82; 8:45 am]

BILLING CODE 6717–01–M

Oil Pipeline; Tentative Valuation

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier listed below:

1978, 1979, 1980 Consolidated Report

(May 20, 1982)

Valuation Docket No. PV—1450–000

Seaway Pipeline, Inc., 370 Adams Building, Bartlesville, Oklahoma 74004

On or before June 28, 1982, persons other than those specifically designated in Section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 70 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.70), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82–14204 Filed 5–24–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS 41009; TSH–FRL–2131–6]

Tenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Tenth Report to the Administrator of EPA on May 10, 1982. This report, which revises and updates the Committee's priority list of chemicals, adds four chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The four new chemicals are biphenyl, ethyltoluene, formamide, and 1,2,4-trimethylbenzene. The Tenth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals.

DATES: Written comments should be submitted by June 24, 1982. Focus meetings will be held on July 12, and 13, 1982.

ADDRESSES: Send written submissions to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm E–409, 401 M St., SW., Washington, D.C. 20460.

Submissions should bear the Document Control Number OPTS–41009. The public record supporting this action, including comments, is available for public inspection in Rm. E–107 at the address noted above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. Focus meetings will be held at Waterside Mall, in Rm. 3906, 401 M St., SW. Washington, D.C. If planning to attend one of the Focus Meetings and/or the subsequent public meetings on these chemicals, please notify the Industry Assistance Office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator—202–544–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data relevant to determining the risks that such chemical substances may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every six months as it determines to be necessary. The total number of chemicals the ITC may designate for priority consideration within 12 months of the date of designation may not exceed 50 at any one time. EPA must either initiate rulemaking or publish in the **Federal Register** reasons for not requiring testing within that 12 months. The ITC's Tenth Report was received by the Administrator on May 10, 1982, and follows this Notice.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental

exposure to these chemicals. Focus Meetings will be held to discuss relevant issues pertaining to the chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held July 12 and 13 at Waterside Mall, 410 M St., SW., Washington, D.C., Room 3906. These meetings are intended to supplement and expand upon written comments submitted in response to this notice. In addition to discussing concerns and data, the Focus Meetings will explore the issues of negotiated testing versus issuance of a test rule. The schedule for the Focus Meeting is the following: July 12, 9:00 a.m.—biphenyl, 1:00 p.m.—ethyltoluene; July 13, 9:00 a.m.—formamide, 1:00 p.m.—1,2,4-trimethylbenzene.

Persons wishing to attend one or more of these meetings should call the Industry Assistance Office at the toll free number listed above.

In addition to the Focus Meetings, EPA will hold public meetings on each chemical after preliminary decisions have been made on the types of testing that are needed, considering any additional information provided in the written comments and the Focus Meetings. These meetings will be several months in the future, but separate notice of these meetings will not be published later. Therefore, anyone wishing to attend these later meetings should contact EPA now at the address given for the Industry Assistance Office in order to be notified in advance of the public meetings.

All written submissions should bear the identifying Docket No. OPTS–41009.

III. Status of List

In addition to adding four chemicals to the priority list, the Committee also noted the removal by EPA of a number of chemicals from the list based upon actions taken by the Agency. The current list contains 34 substances or categories of substances.

Dated: May 17, 1982.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Tenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA Public Law 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to designate those chemical substances or mixtures to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section (4)(a) or publishing the Administrator's reason for not initiating such as proceeding. Every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of 4 entries and the removal of 14. The chemicals being added to the List are presented alphabetically, together with the types of testing recommended, as follows:

Chemical	Recommended studies
Biphenyl	Environmental Effects and Chemical Fate: Chronic toxicity to fish and aquatic invertebrates; toxicity to aquatic macrophytes; chemical fate.
Ethyltoluene	Health Effects: Mutagenicity; subchronic toxicity; chemical disposition and metabolism studies to determine the biological half-life in laboratory animals and the products formed. Environmental Effects and Chemical Fate: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to aquatic macrophytes and terrestrial plants; bioconcentration; chemical fate.
Formamide	Health Effects: Ganotoxic effects; carcinogenicity; other chronic effects.
1,2,4-Trimethylbenzene	Health Effects: Subchronic/chronic effects to include neurotoxicity; reproductive effects; teratogenicity. Environmental Effects and Chemical Fate: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to aquatic macrophytes and terrestrial plants; bioconcentration; chemical fate.

Each of the new recommendations is being designated by the Committee for action by EPA within 12 months of the date of this report.

The following entries are being removed from the List because the EPA Administrator has responded to the Committee's recommendations regarding these chemicals and categories: alkyl phthalates, benzidine-based dyes, benzyl butyl phthalate, butyl glycolyl butyl phthalate, chlorinated napthalenes, 2-chlorotoluene, chlorinated paraffins, o-diaisidine-based dyes, diethylenetriamine, fluoroalkenes, hexachloroethane, phenylenediamines, polychlorinated terphenyls, and o-tolidine-based dyes.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality

Gordon F. Snow, Member

Department of Commerce

Bernard Greifer, Member (1)

Environmental Protection Agency

Joseph Seifter, Member
Carl R. Morris, Alternate

National Cancer Institute

Elizabeth K. Weisburger, Member and Chairperson
Richard Adamson, Aletrnate
Jerrold Ward, Alternate

National Institute of Environmental Health Sciences

Dorothy Canter, Member

National Institute for Occupational Safety and Health

Vera W. Hudson, Member
Herbert E. Christensen, Alternate

National Science Foundation

Winston C. Nottingham, Member

Occupational Safety and Health Administration

Patricia Marlow, Member

Liaison Agencies and Their Representatives

Consumer Product Safety Commission

Arthur Gregory
Lakshmi Mishra

Department of Agriculture

Fred W. Clayton
Homer E. Fairchild

Department of Defense

Arthur H. McCreesh

Department of the Interior

None

Food and Drug Administration

Winston deMonsabert, Vice Chairperson
Allen H. Heim

National Toxicology Program

Dorothy Canter

Committee Staff

Martin Greif, Executive Secretary
Norma Williams, ITC Coordinator (acting)

Support Staff

Alan Carpien—Office of the General Counsel, EPA
Jon Cooper (2)—Office of Toxic Substances, EPA
James Dragun (3)—Office of Toxic Substances, EPA

References

(1) Dr. Greifer had previously served as an Alternate and was appointed to full-member status on December 18, 1981.

(2) Dr. Cooper was appointed on December 17, 1981, to fill the vacancy created by the resignation of Dr. Gary Dickson.

(3) Dr. Dragun resigned from the Committee on April 1, 1982.

The Committee acknowledges and is grateful for the assistance and support given to it by the staff of Dynamac Corporation (technical support contractor) and numerous personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Public Law 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be tested to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register**. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding.

Every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is comprised of representatives from eight statutory member agencies, five liaison agencies, and one national program. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and prior recommendations are described in previous reports (Refs. 1 through 10).

1.2 *Committee's previous reports.* Nine previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 2 through 10). Forty-nine entries (chemical substances and categories of chemicals) were designated by the Committee for priority consideration by the EPA Administrator. Five entries were removed (Ref. 10) after EPA responded to the Committee's recommendations for testing.

1.3 *Committee's activities during this reporting period.* The Committee has continued to review chemicals from its second and third rounds of scoring (see Ref. 2 for methodology) and completed a fourth scoring exercise. The chemicals selected in this exercise for review by the Committee were listed in the **Federal Register** (Ref. 11), and a public meeting was held April 22, 1982, to receive comments on these chemicals. The public was also invited to submit, in writing, comments and non-confidential unpublished data on exposure and biological effects of these chemicals.

The Committee made direct contact with more than 100 manufacturers of the chemicals being reviewed to rquest information that would be of value in its deliberations. Response by the industry has been excellent.

During this reporting period, the Committee has evaluated data on 109 chemicals for priority consideration. Four have been added to the section 4(e) Priority List; 75 were deferred from further consideration at this time.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding four chemicals: biphenyl, ethyltoluene, formamide, and 1,2,4-trimethylbenzene. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Fourteen chemicals and categories have been removed from the Priority List because the EPA Administrator responded to the Committee's recommendations in accordance with TSCA section 4(e) requirements. The chemicals removed are indicated in Table 2 with an asterisk (*).

With the 4 designations and 14 removals in this report, 34 entries now appear on the Priority List (Table 1). The cumulative list of entries removed from the Priority List is presented in Table 2.

TABLE TABLE 1—THE TSCA SECTION 4(e) PRIORITY LIST

[April 1982]

Entry	Date of designation
1. Acetonitrile	April 1979.
2. Acrylamide	April 1978.
3. Alkyl epoxides	October 1977.
4. Anile and bromo-, chloro- and/or nitroanilines	April 1979.
5. Antimony (metal)	April 1979.
6. Antimony (sulfide)	April 1979.
7. Antimony trioxide	April 1979.
8. Aryl phosphates	April 1978.
9. Biphenyl	April 1982.
10. Chlorendic acid	October 1981.
11. Chlorinated benzenes, mono- and di-	October 1977.
12. Chlorinated benzenes, tri-, tetra-, and penta-	October 1979.
13. 4-Chlorobenzotrifluoride	October 1981.
14. Cresols	October 1977.
15. Cyclohexanone	April 1979.
16. 1,2-Dichloropropane	October 1978.
17. Ethyltoluene	April 1982.
18. Formamide	April 1982.
19. Glycidol and its derivatives	October 1978.
20. Halogenated alkyl epoxides	April 1978.
21. Hexachloro-1,3-butadiene	October 1977.
22. Hexachlorocyclopentadiene	April 1979.
23. Hydroquinone	November 1979.
24. Isophorone	April 1979.
25. Mesityl oxide	April 1979.
26. 4,4'-Methylenedianiline	April 1979.
27. Methyl ethyl ketone	April 1979.
28. Methyl isobutyl ketone	April 1979.
29. Pyridine	April 1978.
30. Quinone	November 1979.
31. Toluene	October 1977.
32. 1,2,4-Trimethylbenzene	April 1982.
33. Tris(2-chloroethyl)phosphite	October 1981.
34. Xylenes	October 1977.

TABLE 2.—CUMULATIVE REMOVALS FROM THE TSCA SECTION 4(e) PRIORITY LIST

[April 1982]

Chemical/category	Federal Register	
	Citation	Publication date
1. Alkyl phthalates*	46 FR 53775–53777	Oct. 30, 1981.
2. Alkyltin compounds**	47 FR 5456–5463	Feb. 5, 1982.
3. Benzidine-based dyes*	46 FR 55005–55006	Nov. 5, 1981.
4. Benzyl butyl phthalate*	46 FR 53775–53777	Oct. 30, 1981.
5. Butyl glycolyl butyl phthalate*	46 FR 54487	Nov. 2, 1981.
6. Chlorinated naphthalenes*	46 FR 54491	Nov. 2, 1981.
7. Chlorinated paraffins*	47 FR 1017–1019	Jan. 8, 1982.
8. Chloromethane	45 FR 48524–48564	July. 18, 1980.
9. 2-Clorotoluene*	45 FR 18172–18175	Apr. 28, 1982.
10. o-Dianisidine-based dyes*	46 FR 55005–55006	Nov. 5, 1981.
11. Dichloromethane	46 FR 30300–30320	June 5, 1981.
12. Diethylenetriamine*	47 FR 18386–18391	Apr. 29, 1982.
13. Flourcalkenes*	46 FR 53704–53706	Oct. 30, 1981.
14. Hexachloroethane*	47 FR 18175–18176	Apr. 28, 1982.
15. Nitrobenzene	46 FR 30300–30320	June 5, 1981.
16. Phenylenediamines*	47 FR 973–983	Jan. 8, 1982.
17. Polychlorinated terphenyls*	46 FR 54482–54483	Nov. 2, 1981.

TABLE 2.—CUMULATIVE REMOVALS FROM THE TSCA SECTION 4(e) PRIORITY LIST—Continued

[April 1982]

Chemical/category	Federal Register	
	Citation	Publication date
18. o-Tolidine-based dyes*	46 FR 56005–56006	Nov. 5, 1981.
19. 1,1,1-Trichloroethane	46 FR 30600–30620	June 5, 1981.

*Removal from the section 4(e) Priority List noted in this report.
**Removal by the Committee for reconsideration.

1.5 *Availability of testing facilities and personnel.* One of the factors listed in section 4(e)(1)(A) of TSCA that the Committee must consider in making its recommendations is the reasonably foreseeable availability of facilities and personnel for performing the recommended testing. The Committee addressed this issue in its first three reports (Refs. 2 through 4). In its Third Report to the EPA Administrator, the Committee recommended that a national survey be conducted to assess the availability of personnel and testing facilities.

EPA has recently completed a national survey to assess the capacity and resources of the Nation's toxicological testing industry in relation to the demands made upon that industry with and without the additional testing requirements imposed by TSCA (Ref. 12). The report is based upon data collected during June and July 1981 and represents the latest information available on the subject. The survey found that the industry's anticipation of increased testing requirements has prompted the rapid expansion of testing facilities in recent years, and excess capacity currently exists in the toxicological testing industry.

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(3) Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1978. Published in the **Federal Register** of Wednesday, April 19, 1978, 43 FR 16684–16688. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–78/002, July 1978.

(4) Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1978. Published in the **Federal Register** of Monday, October 10, 1978, 43 FR 50630–50635. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560–10–79/001, January 1979.

(5) Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1979. Published in the **Federal Register** of Friday, June 1, 1979, 44 FR 31866–31869.

(6) Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 1979. Published in the **Federal Register** of Friday, December 7, 1979, 44 FR 70664–70674.

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(8) Seventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1980. Published in the **Federal Register** of Tuesday, November 25, 1980, 45 FR 78432–78446.

(9) Eighth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1981. Published in the **Federal Register** of Friday, May 22, 1981, 46 FR 28136–28144.

(10) Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1981. Published in the **Federal Register** of Friday, February 5, 1982, 47 FR 5456–5463.

(11) Chemicals To Be Reviewed by the TSCA Interagency Testing Committee; Notice of Public Meeting and Request for Information. Published in the **Federal Register** of Thursday, February 25, 1982, 47 FR 8244–8246.

(12) Chemical Testing Industry Profile of Toxicological Testing. Prepared for U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances. Development Planning and Research Associates, Inc. NTIS 82–140773. EPA 560–4–81/003, October 1981.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for action by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following four chemicals to the section 4(e) Priority List: biphenyl, ethyltoluene, formamide, and 1,2,4-trimethylbenzene. The designation of these entries was determined after considering the factors identified in section 4(e)(1)(A) and other available relevant information, as well as the professional judgment of Committee members.

The studies recommended for these entries and the rationales to support the recommendations are given in section 2.2 of this report. In accordance with section 4(e) of TSCA, the Committee is designating these entries for action by EPA within 12 months of the date of issuance of this Tenth Committee Report.

2.2 *Recommendations and rationales.*

2.2.a *Biphenyl.*

Summary of recommended studies. It is recommended that biphenyl be tested for the following:

A. Environmental Effects and Chemical Fate:

Chronic toxicity to fish and aquatic invertebrates
Toxicity to aquatic macrophytes
Chemical fate

Physical and Chemical Information

CAS Number: 92–52–4.
Structural Formula:

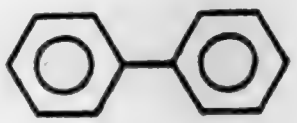

Empirical Formula: $C_{12}H_{10}$.
Molecular Weight: 154.
Melting Point: 71°C.

Solubility: Water, 7.5 mg/L; soluble in ethanol, diethyl ether, and benzene.

Log Octanol/Water Partition Coefficient: 4.02 (Hutchinson et al., 1980).

Description of Chemical: Colorless to pale yellow crystalline solid or flake.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* U.S. production of biphenyl in 1977 was reported in the TSCA Inventory to be between 126 million and 1.26 billion pounds (EPA, 1980a). Current annual production is estimated to be about 700 million pounds (Dow, 1981).

Biphenyl is used as as dye carrier (60 percent of production), as a heat-transfer fluid, and as a fungicide in

citrus fruit-wraps. Virtually all of the biphenyl used as a dye carrier is released from textile-finishing plant as air emission (about 5 percent) or in wastewater, where much of it is treated. As a heat-transfer fluid, biphenyl would be expected to be released to the environment through disposal. In fruit wrap, biphenyl would be partially volatilized or sorbed to citrus peel.

Biphenyl has been identified with: (1) Effluent from wood preservative, sewage treatment, and textile chemical plants; (2) influent to sewage treatment plants; (3) polyvinyl chloride smoke particulates; and (4) air in an aluminum reduction plant (Shackleford and Keith, 1976; Liao, 1978; Bjorseth, 1978). It has also been identified in the Thames River in England; in lakes, tapwater, and subterranean waters; in lake sediments in Zurich, Switzerland; and in the Merrimack River in Massachusetts (Commission of the European Communities, 1976; Giger and Schaffner, (1978). Measured concentrations of biphenyl have been detected: (1) in Athens, Georgia, drinking water at levels of 1–5 ng/L, (2) outside a specialty chemicals plant, (3) in river water at concentrations of 0.001–0.015 mg/L, (4) in river sediment at concentrations of 1–2 mg/kg, and (5) in tar balls found on the gravelly bottom of the river at undetermined concentrations (Thruston, 1978; Jungclaus et al., 1978; Guerin et al., 1978).

B. *Chemical fate information.* No studies on the overall environmental transport or persistence of biphenyl were found. This compound is expected to enter water and air, and sorb to soil and sediments. Biphenyl is expected to degrade under aerobic and anaerobic conditions. Biodegradation rates appear to be rapid in laboratory studies (Meylan and Howard, 1977; Willis and Addison, 1979). However, a study of the biodegradation of biphenyl in seawater indicated a persistence of greater than several months (Reichardt et al., 1981).

Biphenyl can react with chlorine in wastewater treatment plants to produce mono- and dichlorbiphenyls (Carlson et al., 1975). The extent of chlorination varies with pH, contact time, and the concentration of chlorine. At a pH of 5.5, which might might be expected at wastewater treatment plants, concentrations of 0.1–82 μg/L of mono- and dichlorobiphenyls were produced during 24–120 hours of contact.

II. *Biological effects of concern to human health*—The health effects of biphenyl have been studied, and no further health effects testing is recommended at this time.

III. *Environmental considerations*—A. *Short-term (acute) effects.* The acute toxicity (96-hr LC_{50}) reported for biphenyl is 1.5–5.3 mg/L for the fathead minnow (Kirk-Othmer, 1979; Dow, 1981). The 24-hr LC_{50}, the 48-hr LC_{50}, and the no-effect concentrations for daphnids are 27, 4.7, and 2.2 mg/L, respectively (Leblanc, 1980). The rate of photosynthesis was reduced by 50 percent in the algae *Chlamydomonas angulosa* and *Chlorella vulgaris* at 8.3 and 25 mg/L, respectively (Hutchinson et al., 1980).

B. *Long-term (subchronic/chronic) effects.* No studies on the long-term effects of biphenyl have been found for aquatic animals.

C. *Other effects (physiological/behavioral/ecosystem processes).* No studies on physiological, behavioral, or ecosystem effects of biphenyl have been found.

D. *Bioconcentration and food-chain transport.* There appears to be some bioconcentration with biphenyl. The predicted bioconcentration factor (based on the measured octanol/water partition coefficent) is 245 and agrees with the reported value of 195 for rainbow trout (Verschueren, 1977). In the two algae *C. angulosa* and *C. vulgaris,* the bioconcentration factors were 1.22 and 1.82, respectively (Hutchinson et al., 1980).

E. *Reasons for environmental effects recommendations.* The reported use/disposal pattern of biphenyl in dye-carrier applications indicates that the primary exposure of this compound is through wastewater discharge. At wastewater treatment plants, the biphenyl is expected to react with chlorine to form mono- and dichlorobiphenyls, which degrade slowly and have a high biconcentration potential. Mono- and dichlorobiphenyls are known to be toxic to aquatic organisms, and, by food-chain transport, to terrestrial organisms (EPA, 1980b). The concentrations of these chlorinated biphenyls that are produced in wastewater treatment plants are likely to exceed the EPA water quality standards for the protection of freshwater and saltwater aquatic life, which are 0.014 and 0.030 μg/L, respectively (EPA, 1980b).

The toxicity of biphenyl and its degradation products is of concern, and little is known of the fate of biphenyl in the environment. Consequently, chemical fate testing is recommended to better understand the persistence and transformations of the compound under environmental conditions. Studies of chronic toxicity to fish and aquatic invertebrates, and acute toxicity to aquatic macrophytes are recommended to further characterize the environmental effects of biphenyl.

Although biodergradation rates appear to be rapid in laboratory studies, the rate of biodegradation under environmental conditions needs to be studied more closely. In laboratory studies, acclimated cultures of microorganisms tend to degrade chemicals more rapidly than might occur in the natural environment. The study by Reichart et al. (1981) indicates that persistence of biphenyl in the environment is significantly greater than that found in the laboratory.

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2.2.b *Ethyltoluene (mixed isomers).*

Summary of recommended studies. The Committee recommends that ethyltoluene be tested for the following:

A. Health Effects:

Mutagenicity
Subchronic toxicity
Chemical disposition and metabolism studies to determine the biological half-life in laboratory animals and the products formed.

B. Environmental Effects and Chemical Fate:

Acute and chronic toxicity to fish and aquatic invertebrates
Toxicity to aquatic macrophytes and terrestrial plants
Bioconcentration
Chemical fate

Physical and Chemical Information

CAS Number: 25550–14–5 (mixed isomers of ortho, meta, and para).

Synonyms: Ethylmethylbenzene; Methylethylbenzene.

Structural Formula:

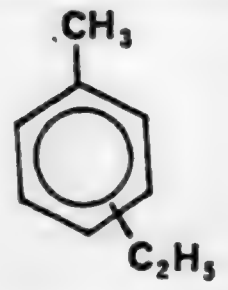

Empirical Formula: C_9H_{12}.
Molecular Weight: 120.2.
Melting Point: −85° C.
Boiling Point: 161°C.

Specific Gravity: 0.86 g/ml at 25° C (Dow, 1981).

Solubility: Water, 75 mg/L at 25° C (Dow, 1981); soluble in organic solvents.

Vapor Pressure: 3.0 mmHg at 25°(estimated; PCR, 1978).

Log Octanol/Water Partition Coefficient: 3.6 (estimated; Leo et al., 1971).

Description of Chemical: Colorless liquid.

Rationale for Recommendations

I. *Exposure information—A. Production and use information.* U.S. production of ethyltoluene (mixed isomers) was reported to be between 100 and 200 million pounds per year in 1977 (EPA, 1980). Ethyltoluene is used as a component of solvent products (Exxon USA, 1982; Koch Refining Co. 1982; Charter International Oil, 1982) and as an intermediate in the production of vinyltoluene (Dow, 1981).

The use of ethyltoluene in commercial solvent products provides the potential for substantial human and environmental exposures to this substance. For example a commercial solvent containing 25 percent ethyltoluene is used as the volatile component in paint (Charter International Oil, 1982.). Other general commercial solvents, used in the manufacture of printing inks and in cleaning solutions for industrial laundries, contain as much as 40 percent ethyltoluene (Exxon USA, 1982; Koch Refining Co., 1982). Sittig (1976) also reported that a C_9 aromatic solvent is used in wire coatings. Ethyltoluene constitutes about 2.8 percent of regular gasoline and about 1.2 percent of premium gasoline (Sanders and Maynard, 1968).

The National Occupational Hazard Survey conducted between 1972 and 1974 indicated that the number of workers potentially exposed to ethyltoluene is 16,629 (NIOSH, 1981). No threshold limit value (TLV) has been designated for ethyltoluene by ACGIH, although one manufacturer has established an in-plant exposure limit of 10 ppm (Dow, 1981).

B. *Chemical fate information.* Ethyltoluene is a moderately volatile liquid that is slightly soluble in water (75 mg/L; Mackay et al., 1980), and has been identified in water and air (Dowty et al., 1975). The isomers appear to biodegrade in water in 6–11 days in laboratory experiments (Kappeler and Wuhrmann, 1978). In the air, ethyltoluene is expected to be rapidly oxidized by hydroxyl radicals in 0.24–2.4 hours (Darnall et al., 1976). The reaction products may be major components of smog.

C. *Evidence for exposure.* The identification in air, water, food, and natural products is, at least, indirect evidence that there is environmental exposure. For instance, concentrations of ethyltoluene in air, of 1.5 and 10.0 ppb, have been found in Houston, Texas, and in Zurich, Switzerland, respectively (Bertsch et al., 1974; Grob and Grob, 1971). Ethyltoluene has been identified in white bread crust (Folkes and Gramshaw, 1977), in volatiles from the cotton plant (Hedin et al., 1975), in Australian honeys (Graddon et al., 1979), in tuna oil and turkeys fed tuna oil (Crawford and Kretsch, 1970), in the distillable organics of grenache grape oil (Stevens et al., 1967), in roast beef (Min et al., 1979), in roasted filbert nuts (Kinlin et al., 1972), and in cellulose cigarette smoke condensate (Sakuma et al., 1979).

II. *Biological effects of concern to human health—A. Acute toxicity studies.* Acute toxicity studies of ethyltoluene in rats indicated an estimated LC_{50} of 4,000 ppm (Furnas and Hine, 1958). In male albino rats an oral dose of 5 ml/kg of ortho-ethyltoluene produced 100 percent mortality. The same dose of para-ethyltoluene caused 70 percent mortality (Gerarde, 1960).

B. *Subchronic toxicity studies.* No data on the subchronic toxicity of ethyltoluene were found.

C. *Mutagenicity.* No data on the mutagenic activity of ethyltoluene were found.

D. *Metabolism.* Metabolism studies of ethyltoluene have indicated that it is absorbed by rats after inhalation. Chin et al. (1980) found that 54 percent of carbon 14 (^{14}C) ring-labeled ethyltoluene (mixed isomers) at a concentration of 1 mg/L was absorbed by rats over a 6-hour period. Forty-two hours after the termination of the exposure, about 76 percent of the absorbed radioactivity was excreted by the rats. Some 0.32 percent of the ^{14}C

label remained in the animals' bodies, but the authors did not account for the remaining 25 percent of the radioactivity (Chin et al., 1980). The biotransformation of ethyltoluene (mixed isomers) was studied in both the dog and the rat (Chin et al., 1978; 1981). Metabolites of ethyltoluene were found in the urine of both species; however, the authors did not specify the metabolic products.

E. *Reasons for health effects recommendations.* Human exposure to ethyltoluene used in commercial solvent products is of concern. Very little is known about the metabolism and health effects of the compound. Other alkyltoluenes are known to have neurotoxic effects (Hine et al., 1954). Chemical disposition and metabolism studies are recommended to determine the metabolic products of ethyltoluene, and mutagenic and subchronic toxicity studies are recommended to provide a better understanding of the toxicity of the compound. The need for chronic studies would depend on the results of the metabolic, subchronic, and mutagenic studies.

III. *Environmental considerations—A. Acute toxicity.* No studies on the short-term effects of ethyltoluene have been found for either aquatic animals or plants.

B. *Subchronic/chronic effects.* No studies on the long-term effects of ethyltoluene have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem processes).* Reduction of photosynthesis in the two algae *Chlamydomonas angulosa* and *Chlorella vulgaris* was reported by Hutchinson et al. (1980) for ortho-ethyltoluene at 155 and 340 mmol/m³ (19 and 49 mg/L), respectively, and for para-ethyltoluene at 450 and 400 mmol/m³ (54 and 48 mg/L), respectively.

D. *Bioconcentration and food-chain transport.* The log of the octanol/water partition coefficient, estimated by Leo et al. (1971) is 3.6. By the method of Veith et al. (1980), the bioconcentration factor is calculated to be 229 for ethyltoluene (mixed isomers).

E. *Reasons for specific environmental effects recommendations.* Ethyltoluene (mixed isomers) may enter aquatic systems through solvent and other industrial usage. Although ethyltoluene was found to biodegrade in laboratory tests, the rates of biodegradation under environmental conditions need to be more closely studied. In laboratory studies, acclimated cultures of micro-organisms often tend to degrade chemicals more rapidly than might occur in the natural environment. Chemical fate testing under environmental conditions is needed to better characterize the transformations and persistence of ethyltoluene in the aquatic environment.

Because of the relatively high calculated log octanol/water partition coefficient, ethyltoluene is expected to bioconcentrate in fatty tissues of living organisms. This potential for bioconcentration also increases concern for the effects of food-chain transport of ethyltoluene. For these reasons and the expected environmental entry routes, it is recommended that testing be conducted to determine the bioconcentrations of ethyltoluene.

Environmental effects testing is recommended to characterize the toxicity of ethyltoluene. No studies were found on the acute or chronic toxicity of these mixed isomers. Therefore, acute and chronic toxicity studies to fish and aquatic invertebrates and to aquatic macrophytes and terrestrial plants are recommended because of anticipated exposure and insufficient toxicity data.

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2.2.c *Formamide.*

Summary of recommended studies. It is recommended that formamide be tested for the following:

A. Health Effects:

Genotoxic effects
Carcinogenicity
Other chronic effects

Physical and Chemical Information

CAS Number: 75–12–7.
Synonym: Methanamide.
Structural Formula:

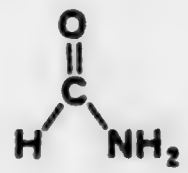

Empirical Formula: CH_3ON.
Molecular Weight: 45.04.
Melting Point 2.6° C.
Boiling Point: 210° C (decomposes).
Vapor Pressure: 1mmHg at 70.5° C.
Log Octanol/Water Partition Coefficient: −1.64 (estimated; Leo et al., 1971).

Description of Chemical: Formamide is clear, viscous, hydroscopic liquid with a faint oder of ammonia. It is soluble in water and in most polar solvents. It is a good solvent for proteins due to its high dielectirc constant (Kirk-Othmer, 1980).

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* U.S. production and importation of formamide totaled 1–11 million pounds in 1977 (EPA, 1980). Formamide has a wide variety of applications, both as a chemical intermediate and as a solvent. As an intermediate it is used in the manufacture of formic acid, hydrogen cyanide, imidazoles, pyrimidine, 1,3,5-triazine, and other compounds. As a solvent it is used in the crystallization of penicillin and dihydrostreptomycin sulfate, manufacture and processing of plastics, spinning of acrylonitrile copolymers, separation of chlorosilanes, and purification of fats and oils. It is also used as a nonaqueous electrolytic solvent, an ink solvent in felt-tipe pens, a swelling agent for cellulose, a coagulating agent for sodium silicate in grout, a softner in paper and glues, an additive in hydraulic fluids, and as a reaction medium (Kirk-Othmer, 1980; Codd, 1972; Kirk-Othmer, 1979, Merck, 1976).

The National Ococupations Hazard Survey conducted between 1972 and 1974 indicated that approximately 6,500 workers are potentially exposed to this chemical (NIOSH, 1981). The principal routes of human exposure to formamide appear to be inhalation and ingestion (Ketchen and Porter, 1979). Dermal exposure is also expected. The American Conference of Governmental Industrial Hygienists (ACGIH) recommends a threshold limit value/time-weighted average (TLV/TWA) of 20 ppm (30 mg/m³), and a threshold limit value/short-term exposure limit (TLV/STEL) of 30 ppm (45 mg/m³) (ACGIH, 1980).

B. *Chemical fate information.* Formamide hydrolyzes slowly at room temperature, Hydrolysis is accelerated by acids, bases, and elevated temperatures (Kirk-Othmer, 1980). No test data on the environmental transport of formamide have been found. It is not expected to partition to sediments or to bioaccumulate. Formamide is oxidized by activated sludge (Malaney and Gerhold, 1969), and the half-life is estimated to be less than 4 days. It has also been shown to serve as a growth medium and nitrogen source for fungi, algae, bacteria, and vascular plants (Hynes, 1970; Trotsenko and Loginova, 1973; Gresshoff, 1981; Chandra and Shethna, 1977; Fishbein, 1977).

II. *Biological effects of concern to human health*—A. *Chemical disposition/metabolism studies.* Formamide is absorbed directly through the skin of guinea pigs (Patty, 1963) and rabbits (ACGIH, 1980). Formamide hydrolyzes to its corresponding carboxylic acid both in vivo and in vitro. The site of formamide hydrolysis is the liver in the dog and rabbit, and the liver and kidneys in sheep (Bray et al., 1949).

B. *Acute toxicity.* In an acute toxicity study, the LD_{50} for rats was 6.1 g/kg (Zaeva et al., 1967). In a 2-week feeding study, six rats were fed 1.5 g/kg of formamide each day. Before the 10th dose, four of the rats had died and no further dosing was administered. Two additional rats died 2 days after the 10th day (Du Pont, 1976). Formamide is classified as slightly toxic when given by the oral route (Gosselin et al., 1976). Formamide alone has no significant effects on the central nervous system of the mouse. However, it increased by 800 percent the sleeping time induced by chloral (Chanh et al., 1972). The mechanism of this effect was undefined.

C. *Carcinogenicity.* No standard bioassays on the carcinogenicity of formamide were found.

D. *Teratogenic/reproductive effects.* Teratogenic and reproductive effects have been observed in rats, mice, and rabbits at doses ranging from 0.07 g/kg to 2 g/kg. These effects include malformation of palate and limbs, syndactyly of the toes, and reversible changes in the testes (Thiersch, 1971; von Kreybig, 1967; Chanh et al., 1973; Gleich, 1974). Formamide administered orally to pregnant rats (in 2 g/kg doses) on the 7th day of gestation led to resorption of one-half of all implanted rat fetuses, with stunting of 26 percent of the survivors (Thiersch, 1962). When formamide was administered to pregnant rabbits by gavage (70 µl/kg doses) from the 6th to the 18th day of gestation, embroyotoxic and weak teratogenic effects such as cleft palate and skeletal malformations were noted (Merkle and Zeller, 1980). In mice, after two dermal applications of 70 µg/animal, a 36 percent increase in the rate of malformation of the fetus was observed (Gleich, 1974).

E. *Mutagenicity.* Formamide was tested (as one of 14 solvents) for compatibility with the Salmonella mutagenicity test (Maron et al., 1981). The compound was nonmutagenic in the Ames assay, using the TA 100 strain. The investigators suggest that formamide may be used as a solvent in place of dimethylsulfoxide (DMSO). Other strains and concentrations were not tested. This compound has been described as "inactive in vivo" and also inactive in a cell transformation test using rat embryo cells infected with Rauscher leukemia virus (Freeman et al., 1973).

Formamide can denature and renature DNA at room temperature (Gillespie and Gillespie, 1971; McConaughy et al., 1969; Roussel and Chabbert, 1978). Exposure of roots of *Vicia faba* to the compound did not increase the chromatid aberration rate (Nicoloff, 1976). Mitotic anomalies were observed in the chick (Messier, 1976).

F. *Health effects recommendations.* Formamide is widely used as a chemical intermediate and as a solvent. Worker

exposure is likely from its use in grout, inks, glues, and paper. Although mutagenicity testing of formamide has been conducted, the data are insufficient to determine its genotoxic potential. In several studies, teratogenic effects have been observed in laboratory animals. Very little is known about the chronic toxicity, and no data were found on carcinogenicity. Based on these considerations, formamide is recommended for appropriate genotoxicity tests in conjunction with carcinogenicity and other chronic effects tests.

III. *Environmental considerations*—Because formamide is highly soluble in water and has low volatility, it is expected to partition into the aqueous compartment with no bioaccumulation. Furthermore, the compound has been shown to be readily biodegraded by activated sludge (Malaney and Gerhold, 1969) and to serve as a growth medium and nitrogen source for bacteria, algae, fungi, and vascular plants (Chandra and Shethna, 1977; Hynes, 1970; Trotsenko and Loginova, 1973; Fishbein, 1977; Gresshoff, 1981). For these reasons, formamide is not exptected to persist in the environment and no environmental testing is recommended.

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2.2.d *1,2,4-Trimethylbenzene.*

Summary of recommended studies. It is recommended that 1,2,4-trimethylbenzene be tested for the following:

A. Health Effects:

Subchronic/chronic effects to include neurotoxicity
Reproductive effects
Teratogenicity

B. Environmental Effects and Chemical Fate:

Acute and chronic toxicity to fish and aquatic invertebrates
Toxicity to aquatic macrophytes and terrestrial plants
Bioconcentration
Chemical fate

Physical and Chemical Information

CAS Number: 95–63–6.
Synonym: Pseudocumene.
Structural Formula:

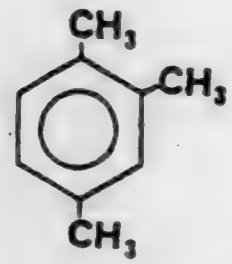

Empirical Formula: C_9H_{12}.
Molecular Weight: 120.2.
Specific Gravity: 0.889.

Freezing Point: −43.8°C.
Boiling Point: 169–171°C.
Vapor Pressure: 2 mmHg at 25°C (estimated).
Solubility: Water, 57 mg/L; soluble in ethanol, benzene, and ether.
Log Octanol/Water Partition Coefficient: 3.6 (estimated; Leo et al., 1971).
Description of Chemical: Colorless liquid.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* Current U.S. production of 1,2,4-trimethylbenzene is in excess of 10–50 million pounds per year (EPA, 1980; personal communication with manufacturers). The principal use of the isolated compound is as an intermediate in the manufacture of trimellitic anhydride, dyes, and pharmaceuticals (Hawley, 1977). The trimellitic anhydride is used in the production of plasticizers, alkyd resins, unsaturated polyesters, and other industrial chemicals (Cerf et al., 1980). Trimethylbenzene can be used as an ultraviolet stabilizer in plastics. Dyshinevich (1979) reported that trimethylbenzene is released from polymeric material, thus suggesting migration from the polymers. The isolated compound is also used as a dye-carrier solvent and as a scintillation-counter solvent (SPPC, 1982).

In addition to the amount produced as an isolated compound, as reported in the TSCA Inventory (EPA, 1980), 1,2,4-trimethylbenzene is produced as a component of the C_9 aromatic fraction of petroleum (Sittig, 1976). This fraction is used as a general solvent (e.g., in paint thinners; Cerf et al., 1980) or as a component of gasoline (SPPC, 1982; Lee et al., 1974). This increases the potential for human and environmental exposure to the compound through solvent usage and disposal, and through gasoline evaporation during transportation, storage, and spills.

The National Occupational Hazard Survey conducted between 1972 and 1974 indicated that approximately 3,000 workers are potentially exposed to this chemical (NIOSH, 1981). The most probable routes of exposure are by inhalation of the vapor or mist and by skin contact with the liquid (Lazarew, 1929; Gerarde, 1960). A threshold limit value of 25 ppm and a short-term exposure limit of 35 ppm have been recommended by ACGIH (1980).

B. *Chemcial fate information.* 1,2,4-Trimethylbenzene is slightly soluble in water (57 mg/L; Mackay et al., 1980). It appears to be biodegraded in water in 7 days in a laboratory experiment (Kappeler and Wuhrmann, 1978). 1,2,4-trimethylbenzene is expected to partition to air, where it will oxidize rapidly (Kuntz et al., 1973; Darnall et al., 1976); the reaction products can be a component in smog. It is a constitutent of the water-soluble component of crude oil (Lee et al., 1974) and refined gasoline (Sanders and Maynard, 1968).

C. *Evidence for exposure.* The identification of 1,2,4-trimethylbenzene in air is indirect evidence that there is environmental exposure. Examples of concentrations of 1,2,4-trimethylbenzene reported in air are: 9.0 ppb in Zurich, Switzerland (Grob and Grob, 1971), 1–13 ppt in a rural Australian town (Nelson et al., 1977), and unspecified concentrations in Houston, Texas (Bertsch et al., 1974), and in six Soviet cities (Ioffe et al., 1978). The compound has also been observed in cooked chicken meat volatiles (Nonaka et al., 1967); fermented eggs (Bullard et al., 1978); volatiles from roasted filberts (Kinlin et al., 1972); and volatiles from roast beef (Min et al., 1979).

II. *Biological effects of concern to human health*—A. *Acute/short term effects.* The acute toxicity of the compound has been well studied (Gerarde, 1960; Cameron, 1938; Litton Bionetics, 1976; Lazarew, 1929; Dyshinevich, 1979). It has been shown to have a moderate to low order of acute toxicity by various routes of administration; i.e., oral, intraperitoneal, inhalation, and subcutaneous in rats, mice, and guinea pigs.

Rats and mice were exposed by inhalation at 2,000 ppm for 8 hours per day for 14 days, and no adverse effects were reported (Cameron, 1938). In another study, eight rats were exposed by inhalation to the compound at 1,000 and 2,000 ppm for 15 and 12 exposures of 6 hours each, respectively (Gage, 1970). At the higher concentration, nose and eye irritation, respiratory difficulty, lethargy, tremors, and low weight increase were observed; however, at both concentrations, blood test results were normal and organs were also normal at necropsy.

B. *Subchronic effects.* Dyshinevich (1979) reported effects on the functional state of the central nervous system, blood enzyme composition, and the liver of rats exposed by continuous inhalation for 4 months to 20 mg/m³ (4 ppm) of 1,2,4-trimethylbenzene. These effects were not observed at 0.4 ppm. No histopathological end-points were reported.

C. *Carcinogenity/chronic effects.* A 2-year feeding study in rats designated to assess the carcinogenic potential of 1,2,4-trimethylbenzene was cancelled before testing was initiated (EPA, 1981). No data on carcinogenicity or other chronic effects were found in the literature.

D. *Mutagenicity.* The genetic activity of 1,2,4-trimethylbenzene was tested by microbial assay with and without addition of mammalian metabolic activation. It was tested and found negative in *Salmonella typhimurium* strains TA 1535, TA 1537, TA 1538, TA 98, and TA 100, and in *Saccharomyces cerevisiae* strain D4 (Litton Bionetics, 1977).

E. *Teratogenicity and reproductive effects.* No data on teratogenic or reproductive effects were found.

F. *Observations in humans.* Battig et al. (1958) studied 27 workers exposed for several years to the paint thinner "Fleet-X-DV-99," the hydrocarbon vapor concentration of which ranged from 10 to 60 ppm. The paint thinner contained trimethylbenzene (50 percent 1,2,4- and 30 percent 1,3,5-trimethylbenzene) and a small proportion of benzene. This exposure caused blood coagulation disturbances, asthmatic bronchitis, hypochromic anemia, headache, fatigue, and drowsiness. Dowty and Laseter (1976) reported trimethylbenzene (unspecified isomers) in eleven maternal-cord blood samples collected at birth. The purpose of the study was to identify the presence of transplacentally-acquired compounds, the source of which was not identified.

G. *Rationale for health effects recommendations.* In view of the exposure potential of 1,2,4-trimethylbenzene and the lack of sufficient information on subchronic and chronic health effects, the Committee recommends that appropriate subchronic/chronic testing, to include neurotoxicity, be conducted. In addition, teratogenic and reproductive effects should be studied.

Three trimethylbenzene isomers and a mixture of the isomers are reported to be in commerce in the United States (EPA, 1980). Of these 1,2,4-trimethylbenzene has the largest production volume and potential for exposure; therefore, it was singled out for this testing recommendation. A preliminary review of health data on the other isomers discloses that, biologically, all three isomers may behave similarly. Consequently, the Committee recommends that EPA study the testing needs of the other isomers for both health and environmental effects, while giving priority consideration to 1,2,4-trimethylbenzene.

III. *Environmental considerations*—A. *Short-term (acute) effects.* The 24-, 48-, 72-, and 96-hour CL_{50} values for an

isomer of 1,2,4-trimethylbenzene (1,3,5-trimethylbenzene) to goldfish were 20.57, 16.17, 13.65, and 12.52 mg/L, respectively (Brenniman et al., 1976). The 24-, 48-, and 96-hour LC_{50} values for 1,2,4-trimethylbenzene to the marine amphipod *Elasmopus pectenicrus* were 5.23, 4.91, and 4.35 mg/L, respectively (Lee and Nicol, 1978).

B. *Long-term (subchronic/chronic effects.* No studies on the long-term effects of 1,2,4-trimethylbenzene have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem/processes).* 1,2,4-trimethylbenzene caused complete inhibition of nitrogen fixation in arctic marine sediments, and partial inhibition of carbon dioxide production from glucose (Knowles and Wishart, 1977). Donahue et al. (1977) reported that a 15 percent saturated solution of 1,2,4-trimethylbenzene in seawater reduced the swimming activity of the larvae of the barnacle *Balanus amphitrite.* Increased levels of the microsomal enzymes were observed in the southern armyworm after oral treatment with the compound (Brattsten and Wilkinson, 1973).

D. *Bioconcentration and food-chain transport.* The log of the octanol/water partition coefficient for 1,2,4-trimethylbenzene, estimated by Leo et al. (1971), is 3.6. By the method of Veith et al. (1980), the bioconcentration factor is calculated to be 229.

E. *Rationale for environmental effects recommendations.* 1,2,4-Trimethylbenzene may enter aquatic systems through solvent and other industrial usage. Although trimethylbenzene was found to biodegrade in laboratory tests, the rates of biodegradation under environmental conditions need to be studied more closely. In laboratory studies, acclimated cultures of micro-organisms often tend to degrade chemicals more rapidly than might occur in the natural environment. Chemical fate testing under environmental conditions is needed to better characterize its transformations and persistence in the aquatic environment.

Because of the relatively high calculated log octanol/water partition coefficient, 1,2,4-trimethylbenzene is expected to bioconcentrate in the fatty tissues of living organisms. This potential for bioconcentration also increases the concern for the effects of food-chain transport. For these reasons and the expected environmental release, it is recommended that testing be conducted to determine the bioconcentration of 1,2,4-trimethylbenzene.

Environmental effects testing is recommended to characterize the toxicity of 1,2,4-trimethylbenzene. The acute studies that have been conducted on its toxicity are not adequate to make an environmental assessment. Goldfish are not considered a sensitive species, and the relative sensitivity of *Elasmopus* has not been studied. No studies on the chronic toxicity of this compound were found. Therefore, studies on the acute and chronic toxicity to fish and aquatic invertebrates, and toxicity to aquatic macrophytes and terrestrial plants are recommended because of anticipated exposure and insufficient toxicity data.

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FEDERAL COMMUNICATIONS COMMISSION

Forms Under Review by the Office of Management and Budget

May 17, 1982.

Public Information Collection Requirements Submitted to Office of Management and Budget for Review.

On May 12 the Federal Communications Commission submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

Title: Annual Report of Cable Television Systems

Form No.: FCC 325

2 forms:

Schedule 1—Community Unit Data

Schedule 2—Physical System Data

Action: Extension

Burden: 20,000 Responses; 80,000 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–14149 Filed 5–24–82; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 14, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: 9988–14.

Filing Party: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 9988–14 modifies the geographical scope of the Continental/U.S. Gulf Freight Association Agreement No. 9988 to reduce the range of U.S. ports covered from the Brownsville, Texas—Cape Canaveral, Florida range to the Brownsville, Texas—Key West, Florida range.

Agreements Nos.: 10392–2 and 10410–1

Filing Party: Ronald C. Rasmus, President, American Atlantic Lines, One World Trade Center, Suite 1067, New York, New York 10048.

Summary: Agreements Nos. 10392 and 10410 authorize discussions between American Atlantic Lines and Frota Amazonica, S.A. regarding the establishment of subsequent agreements for cargo distribution and traffic rationalization in the trades between the Brazilian Amazon Basin and the U.S. Atlantic and Gulf ranges respectively. The subject modifications extend the term of their respective agreements for a period of six months to expire with January 10, 1983, and eliminates obsolete language within the agreements. Agreement No. 10410–1 also provides for reporting the substance of all discussions to the Federal Maritime Commission within 30 days.

By Order of the Federal Maritime Commission.

Dated: May 19, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–14187 Filed 5–24–82; 8:45 am]
BILLING CODE 6730–01–M

Independent Ocean Freight Fowarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Armco International Shipping Corp., 9341 S.W. 53rd Street, Miami, FL 33165
Officers: Silvia A. Escobar, President/Sole Stockholder

By the Federal Maritime Commission.

Dated: May 19, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–14189 Filed 5–24–82; 8:45 am]
BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1620]

Trade Express, Inc.; Order of Revocation

On April 12, 1982, Trade Express, Inc., P.O. Box 91090, World Way Postal Center, Los Angeles, CA 90009 surrendered its Independent Ocean Freight Forwarder License No. 1620 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1620 issued to Trade Express, Inc. be revoked effective April 12, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Trade Express, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-14158 Filed 5-24-82; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Schiffahrtsgesellschaft MS Frankfurt GmbH & Co., Peter Deilmann-Reederei, AM Hafensteig 19, 2430 Neustadt/Holstein, West Germany.

Dated: May 20, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-14178 Filed 5-24-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Frieght Forwarder License No. 1840]

Joseph R. Elia; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Joseph R. Elia, 27 Park Row, New York, NY 10007 was cancelled effective May 19, 1982.

The letter dated April 23, 1982 addressed to Joseph R. Elia at the above address advising that Independent Ocean Freight Forwarder License No. 1840 would be automatically revoked unless a valid surety bond was filed with the Commission was returned by the post office as unclaimed.

Joseph R. Elia has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1840 be and is hereby revoked effective May 19, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1840 issued to Joseph R. Elia be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Joseph R. Elia.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-14207 Filed 5-24-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 18, 1982.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report will be published in the **Federal Register**. This information will contain the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries will be grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements. Each report description contains the following information:

—The title of the form.
—The Federal Reserve report form number, if applicable.
—How often the form must be filled out.
—Who will be required or asked to report.
—The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
—Whether small businesses or organizations are affected.
—A description of the Federal budget functional category that covers the information collection.
—An estimate of the number of responses.
—An estimate of the total number of hours needed to fill out the form.
—An estimate of the cost to the Federal Government.
—An estimate of the cost to the public.
—The number of forms in the request for approval.
—An indication of whether section 3504(h) of Pub. L. 96-511 applies.
—The name, address, and telephone number of the person or office responsible for OMB review, and
—An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The supporting documents consist of the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—William R. Jones—Financial Reports Section, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202-452-2983)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503, (202–395–6880)

New Form Under Review

1. Weekly Report of Overnight Eurodollars for Selected Money Market Mutual Funds
FR 2051d
Weekly
Money market mutual funds that have $25 million or more in overnight Eurodollar deposits
SIC: 672
Small businesses are not involved
General Government: 572 responses; 97 hours; $500 Federal cost; $1,459 public cost; 1 form; not applicable under sec. 3504(h)

This report collects information on overnight Eurodollar deposits held by money market mutual funds at foreign branches of U.S. depository institutions. These data are used by the Federal Reserve to make adjustments in components of the monetary aggregates (M2 and M3) to prevent double counting of these deposits in the aggregates.

Revised Forms Under Review

1. Survey of Terms of Bank Lending (STBL) to Business; STBL to Farmers; Prime Rate Supplement
FR 2028A, FR 2028B, FR 2028A–S
Quarterly
Sample of insured commercial banks
SIC: 602
Small business
General government: 4,060 responses; 6,507 hours; $88,314 Federal cost; $97,605 public cost; 3 forms; not applicable under sec. 3504(h)

The FR 2028A and FR 2028B reports collect information on interest rates and selected nonprice terms of lending on individual loans to business and farmers from a sample of insured commercial banks. The FR 2028A–S report collects the banks' prime interest rate for each day covered by the 2028A survey. Current analysis of the data provides a basis for monetary policy purposes.

2. Survey of Debits To Demand and Savings Deposit Accounts
FR 2573
Monthly
Sample of commercial banks that are members of the Federal Reserve System
SIC: 602pt.
Small business
General government: 3,600 responses; 1,800 hours; $88,983 Federal cost; $36,000 public cost; 1 form; not applicable under sec. 3504(h)

Report collects information on debits to demand and savings deposit accounts from a sample of member banks. Debits information is used in formulating banking and credit policies. These data are also used in conjunction with other data to interpret money-stock movements and to determine the turnover rate for various sectors of the economy.

Technical Revision to the Federal Register

It was determined that the following report was not subject to the requirements of 44 U.S.C. Chapter 35 3507 because the respondent panel size was less than ten, therefore exempting the report from OMB approval.

Agreement of Foreign Nonmember Bank in Connection With Extension of Credit to Broker-Dealers
FR T–2
As per amendment to section 6(h) of Regulation T
(12 CFR 220.6(h)), May 12, 1982.

Board of Governors of the Federal Reserve System, May 18, 1982.

Dolores S. Smith,

Assistant Secretary of Board.

[FR Doc. 82–14131 Filed 5–24–82; 8:45 am]

BILLING CODE 6210–01–M

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for the application. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Guaranty, Inc.*, Beloit, Kansas; to acquire 24.8 percent of the voting shares or assets of Delphos Inc., Delphos, Kansas. Comments on this application must be received not later than June 18, 1982.

Board of Governors of the Federal Reserve System, May 19, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82–14151 Filed 5–24–82; 8:45 am]

BILLING CODE 6210–01–M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *West Baton Rouge Bancshares, Inc.*, Port Allen, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of West Baton Rouge, Port Allen, Louisiana. Comments on this application must be received not later than June 18, 1982.

B. Federal Reserve Bank of Minneapolis (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *American Bancorporation of Danube, Inc.*, Edison, Minnesota; to become a bank holding company by acquiring an additional 76 percent of the voting shares of American State Bank of Danube, Danube, Minnesota. Applicant currently owns 24 percent of the bank shares. Comments on this application must be received not later than June 18, 1982.

2. *Headwaters Bancorp., Inc.*, Land O'Lakes, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Headwaters State Bank, Land O'Lakes, Wisconsin. Comments on this

application must be received not later than June 16, 1982.

Board of Governors of the Federal Reserve System, May 19, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14158 Filed 5-24-82; 8:45 am]

BILLING CODE 6210-01-M

National City Corp.; Acquisition of Bank

National City Corporation, Cleveland, Ohio, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5) to merge with Ohio Citizens Bancorp, Inc., Toledo, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

National City Corporation, Cleveland, Ohio, is also engaged in the following nonbank activities: underwriting credit life, accident and health insurance; performing functions that may be performed by a trust company; engaging in floor plan financing of new and used car dealers; making loans such as would be made by a finance company. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 16, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 19, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14160 Filed 5-24-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Equal Access to Justice Act; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of the Commission's Rules Implementing the Equal Access to Justice Act.

SUMMARY: Under the Equal Access to Justice Act small businesses and individuals may apply for reimbursement of attorneys fees and costs incurred during adjudicative proceedings before the Commission. The Commission's Rules implementing the Equal Access to Justice Act (46 FR 48910, Oct. 5, 1981) contain a paperwork requirement in the form of the application for benefits. Although no form is required, the applicant must submit financial information from which eligibility for, and the amount of, benefits is determined. The Commission is now seeking OMB clearance for the information collection requirement of the rules.

DATES: Comments on the application must be submitted on or before June 24, 1982.

ADDRESS: Send comments to Ms. Nell Minow, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carl D. Hevener, OMB Liaison Officer, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3373.

Carol M. Thomas,

Secretary.

[FR Doc. 82-14165 Filed 5-24-82; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 82F-0144]

Cook Paint & Varnish Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cook Paint & Varnish Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of triglycidyl isocyanurate as a component of coatings for storage tanks containing dry food.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204; 202-472-5090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B3580) has been filed by Cook Paint & Varnish Co., P.O. Box 389, Kansas City, MO 64141, proposing to amend § 177.2420 *Polyester resins, cross-linked* (21 CFR 177.2420) to provide for the safe use of triglycidyl isocyanurate (CAS Reg. No. 2451-62-9) as a component of coatings for storage tanks containing dry foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 18, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-14145 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0058; DESI 11300]

Combination Drugs Containing Chlorzoxazone and Acetaminophen; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies combination drug products containing chlorzoxazone and acetaminophen to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug application, and offers an opportunity for a hearing on the proposal.

DATE: Hearing requests due on or before June 24, 1982.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 11300 and the Docket number appearing in the heading of this notice, and addressed to the appropriate office named below.

Requests for Hearing: Dockets Management Branch, (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 11300) published in the **Federal Register** of September 11, 1969 (34 FR 14299), the Food and Drug Administration (FDA) announced its conclusion that the following drug products are possibly effective for their labeled indications.

NDA 11–529; Parafon Tablets containing chlorzoxazone 125 milligrams (mg) and acetaminophen 300 mg; previously marketed by McNeil Pharmaceutical, Spring House, PA 19477; and

Parafon Forte Tablets containing chlorzoxazone 250 mg and acetaminophen 300 mg; McNeil Pharmaceutical.

Other drugs named in the September 11, 1969 notice are not affected by this notice.

In a followup notice published in the **Federal Register** of August 14, 1974 (39 FR 29210), FDA reevaluated the drug products as less-than-effective (probably effective) as an adjunct to rest and physical therapy for the relief of discomfort associated with acute, painful musculo-skeletal conditions. The notice stated that the mode of action of chlorzoxazone has not been clearly identified, but may be related to its sedative properties and that it does not directly relax tense skeletal muscles in humans. Although the chlorzoxazone component was considered effective, the combination products were regarded as only probably effective in the absence of adequate and well-controlled studies showing that they fulfill the requirements of the combination drug policy (21 CFR 300.50).

Responding to the August 14, 1974 notice, McNeil submitted the following for Parafon Forte: (1) A 14-investigator multi-clinic study, (2) a four-investigator multi-clinic study, (3) an eight-investigator multi-clinic study, (4) five additional studies comparing Parafon Forte with other drugs, and (5) five additional studies comparing Parafon Forte with its components, These are discussed below.

Under 21 CFR 300.50, in order to show the contribution of each ingredient to the combination, Parafon Forte should be superior to chlorzoxazone and not worse than acetaminophen alone for the relief of pain; and it should be superior to acetaminophen and not worse than chlorzoxazone for the relief of spasm.

1. *Fourteen-investigator, multi-clinic study.* This study involving 14 investigators was intended to compare Parafon Forte, Paraflex (chlorzoxazone), and placebo for adjunctive treatment of lower back pain related to spasm. The treatment period was to be 5 to 10 days. Concomitant physical therapy was allowed. Patients' records were to be forwarded to the sponsor at the midpoint and at the end of the investigator's study. Physician blinding was to be carried out by having a disinterested third party remove identifying labels from each bottle and seal the labels in an envelope.

Two interim pooled analyses were made by McNeil. The first utilized only four investigators; the second utilized all 14 investigators. In the second analysis the results of the comparison of Parafon Forte and Paraflex are generally negative, with statistically significant results for only 1 of 15 comparisons—the day 4 global evaluation. After the study was complete a pooled analysis of four investigators was made by McNeil. This analysis was reanalysed by McNeil after FDA disqualified one of the four investigators. (See 21 CFR 312.1(c)). Thus, the results of only three out of 13 investigators were evaluated. The analysis measured response to medication for spasm and for pain, reduction in severity of combined symptoms and global evaluation for Parafon Forte and Paraflex at days 2, 4, and the final day. According to the sponsor, statistically significant results favored Parafon Forte over Paraflex for pain relief at day 2 ($p=0.02$) and the final day ($p=0.05$), for spasm relief at day 4 ($p=0.02$) and the final day ($p=0.01$), for combined symptoms at day 4 ($p=0.01$), and for global evaluation at days 2, 4, and the final day ($p<0.001$).

However, the statistical analysis that favors Parafon Forte over Paraflex is based on selection of some data and rejection of other data after the studies were completed, not in accordance with any prior plan. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). Given that the outcome of any analysis was known to the analyst who carried it out, it is essential that the sponsor show how bias on the part of the analyst was avoided. Moreover, there must be very powerful reasons for dropping any investigator, after the fact, from a multi-center investigation.

There is also reason for concern that there was analyst and investigator bias prior to completion of the study. As was required by the protocol, at the midpoint of the Miller study, which was planned to consist of 60 patients, the records of the 30 patients then in the group were evaluated by the sponsor and found to show that Paraflex was superior to Parafon Forte in global evaluation at all three time points. This study was terminated early, after a total of 41 patients had been treated, and the data from the study not only were never used in the sponsor's analysis, but were never even descriptively summarized. In contrast, investigator Walker, who showed Parafon Forte superior to Paraflex at the time of interim analysis, extended an already completed 30-patient study and finished with 61 patients in his investigation. The sponsor must explain how such apparently disparage treatment of the investigators does not introduce bias with the outcome. In the absence of such explanation, results from this multi-clinic study, no matter how pooled, cannot be considered acceptable.

The sponsor stated that the subgroup of three investigators for the final analysis was selected because each investigator had a sufficient number of patients to allow for individual analysis. In fact however, this is not a sufficient explanation, as several other investigators, such as Chambers, Cullen, and Gingrich had nearly as many. Moreover, the study was planned as a multi-center trial with different numbers of patients per investigator and the expected numbers were in general nearly achieved. To drop the lower number centers belatedly is unjustified, again, with the data in hand the methods used to avoid bias in such selection must be specified. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

Two of the investigators included in these analyses present unexplained contradictions in reported status and deviations from the original study plans. Carlson was reported to have finished his study with a sample size of 20 at the time of the interim analysis. In the final analysis Carlson reported results for 51 patients, thus presenting 31 unanticipated patient records. As noted earlier, Walker, who saw 28 patients before the interim analysis, with an anticipated sample size of 30, extended his study and finished with a total of 61 patients. In both cases, the circumstances that led to extensions of some investigators after an interim analysis requires explanation. The analysis of the subset of investigators provides further reasons for concern about the introduction of analyst bias.

In the final analysis, since the protocol specified a treatment period of 5 to 10 days, the sponsor excluded 22

patients who terminated treatment after 4 days. This seems to be an extreme measure for correction of this protocol violation, as the data were analyzed for days 2, 4, and the final day. Termination after day 4 cannot influence the day 2 or day 4 response. In fact, the decision to terminate may be a function of day 4 response, which should not be ignored even when it is the last observation. Twenty one of the 22 patients excluded were investigator Carlson's patients. Noting again that the exclusions were made only after the data had been analyzed and reanalyzed, it must be recognized that when the three investigators, Vernon, Walker, and Carlson, were evaluated separately, Carlson was the only investigator with no statistically significant differences in pairwise comparisons of Parafon Forte and Paraflex. The above exclusion eliminates more than one-third of Carlson's patients from the pooled analysis, diminishing Carlson's contribution to the pooled results.

2. *Four-investigator, multi-clinic study.* This study involved four investigators in a comparison of Parafon Forte, Paraflex, and acetaminophen for treatment of pain and/or spasm of the lower back. The treatment period was to be 5 to 7 days. Concomitant physical therapy was not allowed. The Paraflex tablets used contained 375 mg of chlorzoxazone instead of 250 mg as in the first study. The rest of the procedures were the same as in the first study.

Four analyses of the data were submitted to FDA. The first was a combined analysis from three investigators, one of whom FDA later disqualified. (See 21 CFR 312.1(c)). The second consisted of separate analyses of the four investigators, and the third was an analysis of the data from two investigators, including the one later disqualified. The last was a pooling of the data from the three remaining investigators, Vernon, Walker, and Cullen. This analysis measuring response to medication was evaluated in terms of pain, spasm, combined symptoms, and global evaluation on days 2, 4, and the final day. One-sided p-values favoring Parafon Forte were reported for pain at day 4 ($p=0.03$), combined symptoms at days 2 and 4 (both $p=0.02$), and global evaluation at days 2 and 4 ($p=0.01$ and 0.05 respectively). As with the previous study, none of the sponsor's statistical results favoring Parafon Forte over Paraflex can be accepted as a basis for concluding that this study demonstrates the contribution of acetaminophen to the combination of chlorzoxazone and acetaminophen. A number of points concerning study design, study implementation, and data handling make the results exploratory and conjectural rather than confirmatory and conclusive.

In the fourth analysis, only 43 of the 66 patients who participated in the Walker study were included, making the fourth analysis an interim analysis performed almost 10 years after the study was completed. The reason for such an incomplete analysis requires explanation, particulary with respect to showing how analysis bias was avoided in selecting which patients would be included. Equally important, proper analysis of the data submitted shows that results to do not favor Parafon Forte. In the sponsor analysis the only analysis adjusted for initial spasm severity was the analysis of the effects of treatment on spasm severity. FDA has reanalyzed the data, including all of Walker's patients. The analysis indicates that initial spasm severity was a determining feature for both pain relief and global evaluation. When the analysis is adjusted for both the initial pain and spasm severities, there is no statistically significant difference between Parafon Forte and Paraflex in any of the efficacy variables. In addition, the FDA analysis indicates that there were significant treatment by investigator interactions in most of the variables analyzed. Thus, results of the three investigators should be analyzed separately, as was done in the sponsor's second and third analyses.

As in the first study, since a third party removed and stored the identifying labels from each bottle of medication used, an opportunity existed for physician unblinding which could not be effectively monitored or controlled.

Because the first analysis includes an investigator who was disqualified by FDA, it cannot be used to support the sponsor's claim.

In the second and third analyses only Vernon and the disqualified investigator are reported to have provided results showing that Parafon Forte was superior to Paraflex. Vernon, however, was unable to replicate these results in the 8-investigator study discussed below, which used a smaller Paraflex dose and a larger number of patients. Since he could not replicate the results of his study despite changes in design which should have made a result favoring Parafon Forte more probable, the present study presents no basis for a conclusion that Parafon Forte is superior to Paraflex.

3. *Eight-investigator, multi-clinic study.* In this comparison of Parafon Forte, Paraflex, acetaminophen, and placebo for treatment of pain and/or spasm of the lower back, eight investigators were involved, two of whom were later disqualified by FDA. (See 21 CFR 312.1(c).) The study was double-blind, radomized, of parallel design, and all investigators used similar protocols. It was designed to meet the requirements of the combination drug policy (21 CFR 300.50) by demonstrating that each component of Parafon Forte contributes to the overall therapeutic effect claimed for the drug. The treatment period was to be no more than 7 days. Concomitant physical therapy was not allowed. Patients' records were to be forwarded to the sponsor at the midpoint and at the end of the study. Physician blinding was carried out by using tear-off sealed labels on each bottle. Four of the investigators, three of whom had participated in the previous two studies and one of whom had just completed another study on Parafon Forte, were to enter 100 patients each. The other four investigators, who were not involved in any previous Parafon Forte studies, were to enter 20 to 40 patients each. The specific objectives of the study were to determine the time required for relief of pain, stiffness, and limitation of motion associated with injury, provide comparative data on side effects, and determine the time required for patients to recover from injury and resume pre-injury activity levels. Subjects used in the studies were outpatients 16 years and older with symptoms of moderate to severe pain and/or spasm and limitation of motion associated with the lower back. These patients did not receive other adjunctive treatment during the study or other related medications within 48 hours before admission to the study. They did not have any other ailments that might have had an interfering effect and were not sensitive to any of the medications used in the studies. Patients were randomly assigned to one of the four study treatments and received two capsules four times a day, after meals and at bedtime. Dosage was not titrated to individual patient needs during the study.

Severity of symptoms was recorded at the beginning of the study, at followup office visits on days 2 and 4, and at the end of the study. The symptoms recorded were pain, spasm, tenderness over area of spasm, limitation of motion, and limitation of routine activities. These symptoms were evaluated as follows: (1) Muscle spasm and local pain and tenderness by palpation, rated on a

scale of 1 to 5 (absent to severe); (2) limitation of motion, measured by goniometry and rated as above; and (3) limitations of activities, by historical information, direct observation, or both. The patient report forms provided for recording side effects and for rating overall effects for each evaluation period (global impression).

Four pooled analyses of data were submitted. The first analysis was of all eight investigators, the second was done on seven investigators after one of the investigators was disqualified by FDA, the third analysis was done on the remaining six after another investigator was disqualified. This third analyses was evaluated by FDA and the sponsor then submitted the fourth analysis, consisting of the pooled results of three of the investigators (Cullen, Vernon, and Allen), with the pooled results of three investigators from the first study (Vernon, Walker, and Cullen). The results of the fourth analysis using one-tailed tests found Parafon Forte superior to Paraflex for pain relief at day 2 ($p=0.02$) and the final day ($p=0.05$) and for spasm relief at day 4 ($p=0.004$) and the final day ($p=0.04$).

The results of the first two analyses cannot be used to reach any conclusion because two of the investigators were disqualified by FDA as participants in clinical trials. The third analysis does not demonstrate that acetaminophen contributes to the effect in the combination product, Parafon Forte. (See below.)

The sponsor's fourth analysis is uninterpretable and cannot be used as a basis for demonstrating evidence of effectiveness. 21 CFR 314–111(a)(5)(ii)(*a*)(*5*). The sponsor has pooled the results of 3 investigators from the Fourteen Investigator Multi-Center study, previously discussed, with 3 investigators selected from the 6 investigators of this study who are eligible to be included in the analysis. When analyses are carried out that exclude a large fraction of the available data, it is especially critical for a sponsor to explain how analyst bias was avoided. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*), because it is possible to select data that will prove the desired point. Because in any series of studies, or in two multiclinic studies some clinics will favor one treatment over another simply as a matter of chance, selection of a few clinics out of many could readily produce a favorable result even if the test compound were inert.

The 6-investigator analysis (the firm's third analysis) reported no advantage of Parafon Forte over Paraflex for pain relief. Thus there is no evidence at all that acetaminophen provides its anticipated benefit; i.e., it does not do what it was added to do. It is claimed, however, that Parafon Forte was superior to Paraflex for relief of spasm on "the last day after 4" and the final day. It is of note in this context, that acetaminophen alone was not superior to placebo for relief of spasm, a finding not consistent with the reported effect of acetaminophen on spasm when in combination with chlorzoxazone. While it might be plausible to think acetaminophen could relieve spasm indirectly by relieving pain, acetaminophen did not, alone or added to Paraflex, show an effect on pain in this study. The reported effect on spasm, while not what would be expected, could nonetheless be important if it were a reproducible finding. At the outset it should be noted that the "last day after day 4 group" and the "final day" group are essentially the same, as 90 percent of the patients had their last observation after day 4. There is thus in reality only a single time point, not two, at which the reported result is statistically significant. In addition, the results obtained by different investigators were quite inconsistent. Two of the investigators, Johnson and Lekawa found placebo to be the best treatment for spasm. A third (Klegg), found placebo better than either single drug. Of the 3 investigators who found Parafon Forte and Paraflex effective, one (Vernon) found no difference at all between them.

For the single time period, and for all investigators pooled, Parafon Forte was superior to Paraflex in relief of spasm. This finding has not been replicated and, as observed above, it is not consistent with the rationale for adding acetaminophen to the combination. Moreover, two clinics that found placebo superior to the combination provided a substantial portion of the data showing the combination superior to Paraflex; there is great doubt as to whether 6 clinics with such disparate results can be pooled.

In summary, the three multi-clinic studies described above provide no evidence that there is greater pain relief when acetaminophen is part of the treatment. Each succeeding study was designed to improve the chance of detecting a difference between Parafon Forte and Paraflex. The first study utilized concomitant physical therapy. The second study did not allow concomitant therapy, though it did increase the dose of Paraflex. The third study involved increased sample sizes, a return to the original Paraflex dose, continued proscribing of concomitant therapy, and the participation of four experienced investigators. Despite the progression in study designs, the later studies did not replicate the few favorable results of early studies and produced inconsistent and inconclusive results.

To reach the most favorable analyses of these three studies, the sponsor did not use the results of all investigators but chose particular investigators out of the group. Such post-facto selection raises the possibility of analyst bias and requires detailed explanation of how such bias was avoided. The occasional favorable results must be expected given the multiple studies and multiple end-points within studies. There has been no attempt to correct the statistical analyses for multiple comparisons, a critical correction when multiple measures (pain, spasm and multiple time points) are analyzed. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

4. *Five additional studies comparing Parafon Forte with other drugs.* These were double-blind, randomized studies comparing the efficacy of Parafon Forte with Robaxisal, Soma Compound, or Norgesic—drug products used in the relief of acute musculo-skeletal pain. The five studies used the same protocol but were analyzed separately. The Gready and Miller studies and one by Clegg reported Parafon Forte to be more effective than the other muscle relaxants tested, while the Parafon study and the second Clegg study showed no significant difference between the drugs tested. The studies cannot, however, demonstrate the effectiveness of Parafon Forte as a fixed combination because they do not compare Parafon Forte with each of its components and thus cannot demonstrate what contribution, if any, acetaminophen makes to the combination product, a contribution required by 21 CFR 300.50. The other component in Parafon Forte, chlorzoxazone, has already been classified as effective.

5. *Five additional studies comparing Parafon Forte with its components.* The sponsor also submitted information on five additional studies identified as ASMS–1 to ASMS–5.

ASMS–1 study. This was discontinued in 1979 due to administrative problems. No conclusions could be derived as an insufficient number of patients were evaluated.

ASMS–2 study. This was started in early 1980 and later amended. Only 40 patients have been enrolled in the study and the sponsor has stated that until an adequate number of patients are enrolled no further analysis of the data will be done.

ASMS–3 study. This is a double-blind, multi-clinic study comparing Parafon Forte, Paraflex, acetaminophen, and placebo in patients who have moderate to severe pain and tenderness and spasm of acute origin. The protocol stated that the duration of the study is not to exceed 9 months. The protocol called for 27 investigators and 1,316 patients: each investigator was to have 48 patients, 12 on each of the four treatments.

This study began in June 1980. After 11 months only 21 investigators and 138 patients were involved in the study. The most patients enrolled by an investigator is 24 by Cullen; the next highest number is 14 by Herz. Several—Caldwell, Mehlish, Dickinson, and Murray—had as few as two. Hammerman and Williams each had no patients enrolled.

Patients were randomly assigned to one of the four treatment groups and were instructed to take a fixed dosage four times a day throughout the study. Patients were evaluated by the investigator on day 1 before taking the medication and then on the next four days. If the fifth day fell on a weekend, that evaluation was to be scheduled on the next most convenient day.

At each visit the patient was evaluated for the following parameters: Degree of pain and tenderness upon palpation, degree of muscle spasm upon palpation, degree of limitation of motion, and degree of interference with normal daily activities. The severity of each of these parameters was to be evaluated by the investigator on a five-point scale: 0=absent, 1=mild, up to 4=severe. At each visit after baseline, both the investigator and patient were to record their evaluation of the global therapeutic response using the following scale: Marked response; moderate response; minimal response; no change; worse. At each visit, the patient was to record an assessment of pain intensity using a 10-centimeter linear pain scale (i.e., Analogue scale). One end of the scale is labeled "no pain" and the other end is labeled "unbearable pain." In addition, using a questionnaire supplied by the investigator, each patient was to record their response to the first dose, and at hourly intervals thereafter was to record evaluation of pain intensity, pain relief, and whether or not the initial pain was at least half relieved. The investigator was to record all adverse reactions which occurred during treatment. There were no significant differences among the four treatment groups in sex, race, and age.

After a statistical analysis on the submitted data, FDA determined that the methods of analysis and evaluation of data were not correctly conducted. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). This study is of a sequential nature and at each interim analysis the sponsor used statistical methods appropriate only for the fixed sample case—the case where the number of investigators and patients is fixed before the experiment is begun. However, in this study there is no indication of the total (fixed) number of either patients or investigators. The sponsor has made no attempt to adjust the level of significance to accommodate the sequential approach in performing the interim analysis. In general, these adjustments entail having to demonstrate real treatment effects at significance levels lower than in the fixed sample size case for each individual test in order to maintain the significance level at the termination of the study. The sponsor has not specified how many such interim looks at the data are planned. The sponsor has ignored the experimental design in comparing treatments, only the data associated with each paired comparison being used in performing the tests.

The results of the study as reported by the sponsor for the cases evaluated do not show the real level of statistical significance required to distinquish Parafon Forte from placebo or acetaminophen from placebo. This study appears to be of an exploratory nature with investigators terminating the study, low and slow enrollments, and a failure to demonstrate a contribution of the ingredient acetaminophen to the relief of lower back pain.

ASMS–4 study. This was started in early 1981 and has only 24 patients who have completed the study. The sponsor maintains that the data will not be analyzed until a sufficiently large sample exists.

ASMS–5 study. This was cancelled due to the lack of a suitable model.

The study submitted thus fail to provide substantial evidence that acetaminophen makes a contribution to the combination product Parafon Forte. Accordingly, this combination product is reclassified to lacking substantial evidence of effectiveness for its labeled indication. Inasmuch as no data were submitted for Parafon Tablets, this drug product is also reclassified to lacking substantial evidence of effectiveness.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 300.50 and 314.111(a)(5), that demonstrates the effectiveness of the drug products.

Therefore, notice is given to the holder of the new drug application and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug application and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the application was approved, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holder of the new drug application named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug labeling Compliance (address given above).

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, contained in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962 or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicant and all other persons subject to this notice under 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug application should not be withdrawn and an opportunity to raise,

for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related or similar drug products.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 24, 1982, a written notice of appearance and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations for denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice shall be filed in four copies. Such submissions except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82))

Dated: April 30, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-14147 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0095; DESI 6514 and 11935]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Two Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy ("Paragraph XIV/Category 15"); Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for two oral prescription drug products offered for relief of symptoms of cough, cold, or allergy. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementatin of the Drug Efficacy Study. FDA reclassifies the products to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal.

DATES: Revocation of exemption effective May 25, 1982. Hearing requests due on or before June 24, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 82N-0095, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA-305), Rm. 4-62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** (DESI 6514, February 9, 1973 (38 FR 4006), formerly Docket No. FDC-D-537, and DESI 11935, July 27, 1972 (37 FR 15022)), FDA classified the drug products described below as less than effective for their labeled indications. The 1973 notice also offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications (NDA's).

Subsequently, in a notice published in the **Federal Register** of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptons. That exemption covered the drugs that are the subject of this notice and superseded the earlier February 1973 notice. The exemption was granted because of the close relationship befween drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC drug review panel in addition to any evidence submitted by NDA holders in response to various DESI notices covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the **Federal Register** of September 9, 1976 (41 FR 38312).

This notice revokes the temporary exemption announced in the **Federal Register** of December 14, 1973. It also proposes to withdraw approval of the new drug applications listed below and offers an opportunity for hearing on the proposal. Persons who wish to request a hearing may do so on or before June 24, 1982.

1. NDA 9-319: Ambenyl Expectorant containing codeine sulfate, bromodiphenhydramine hydrochloride, diphenhydramine hydrochloride, ammonium chloride, potassium guaiacolsulfonate, and menthol; Marion

Laboratories, Inc., Pharmaceutical Division, Marion Industrial Park, 10236 Bunker Ridge Rd., Kansas City, MO 64137. (DESI 6514). NDA was previously owned by Parke-Davis, Division of Warner-Lambert Co.

2. NDA 5-014: As it pertains to Pyribenzamine and Ephedrine Tablets containing tripelennamine hydrochloride and 12 mg ephedrine sulfate; Ciba Pharmaceuticals Co., 556 Morris Ave., Summit, NJ 07901 (DESI 11935).

The OTC drug review panel for CCABA drugs reached the following conclusions which are relevant to Ambenyl Expectorant:

1. There is no evidence to support the effectiveness of ammonium chloride as an expectorant. (41 FR 38359)

2. There are no well-controlled studies documenting the effectiveness of potassium guaiacolsulfonate as an expectorant. (41 FR 38367)

3. Combinations containing an antihistamine and an expectorant are irrational because an expectorant promotes the production of secretions whereas the anticholinergic activity of an antihistamine produces an opposite effect. (41 FR 38326 at paragraph II.C.9.e.(3)).

4. The combination of pharmacologic groups represented by the product was not found to be a safe and effective combination. (41 FR 38326 at paragraph II.C.8.).

The OTC drug review panel for CCABA also reached the following conclusion which is relevant to Pyribenzamine and Ephedrine Tablets, which contains 12 mg ephedrine sulfate: No conclusive data were found to support claims of effectiveness of ephedrine sulfate for doses of 8 to 12 mg. (41 FR 38408).

No person has submitted additional data on the drugs listed above. The Director of the Bureau of Drugs concludes that the holder of the NDA has not shown, for each of the products listed above, that each component makes a contribution to the claimed effects and that the dosage of each component is such that the combination is safe and effective for a significant patient population. 21 CFR 300.50. Therefore each of the products is reclassified to lacking substantial evidence of effectiveness.

In addition to the holders of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. (This notice does not apply to OTC drugs. 21 CFR 310.6(f). It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 300.50, and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have any of the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act of because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

Any applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 24, 1982, a written notice of appearance and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicants or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug product from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. It if conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from pubic disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82))

Dated April 22, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-14144 Filed 5-24-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0391; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Certain Oral Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy ("Paragraph XIV/Category 15"); Followup Notice and Opportunity for Hearing.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for three oral prescription drug products offered for relief of symptoms of cough, cold, or allergy. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of Drug Efficacy Study. FDA reclassifies the products to lacking substantial evcidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal. These products are labeled as antitussives.

DATE: Revocation of exemption effective May 25, 1982. Hearing requests due on the before June 24, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N-0391, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

Requests for the report of the National Academy fo Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA-305), Rm. 4-62.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (formerly Docket No. FDC-D-537) published in the **Federal Register** of February 9, 1973 (38 FR 4006), FDA classified the drug products described below as lacking substantial evidence of effectiveness for their labeled indications. The notice also offered an opportunity for a hearing on the proposal to withdraw approval of the new drug application (NDA) for each product.

Subsequently, in a notice published in the **Federal Register** of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms. That exemption covered the drugs that are the subject of this notice and superseded the February 1973 notice. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders in response to various DESI notice covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the **Federal Register** of September 9, 1976 (41 FR 38312).

The OTC reached the following conclusions which are relevant to Omni-Tuss Suspension:

1. Combinations containing an antihistamine and an expectorant are irrational because an expectorant promotes the production of secretions whereas the anticholinergic activity of an antihistamine produces an opposite effect. (41 FR 38328 at paragraph II.C.9.e.(3)). Omni-Tuss Suspension contains the antihistamines phenyltoloxamine and chlorpheniramine maleate, and the expectorant guaiacol carbonate.

2. The combination of an antihistamine, an expectorant, an antitussive, and a bronchodilator was not found to be a safe and effective combination. (41 FR 38328 at paragraph II.C.8.).

No person has submitted additional data on the three drugs listed below. The Director of the Bureau of Drugs concludes that the holder of the new drug applications has not shown, for each of the products listed below, that each component makes a contribution to the claimed effects and that the dosage of each component is such that the combination is safe and effective for a significant patient population 21 CFR 300.50. Therefore each of the products is reclassified to lacking substantial evidence of effectiveness.

This notice revokes the temporary exemption announced in the **Federal Register** of December 14, 1973. It also proposes to withdraw approval of the new drug applications listed below, and offers an opportunity for hearing on the proposal. Persons who wish to request a hearing may do so on or before June 24, 1982.

1. NDA 10-768: Tussionex Tablets and Suspension, each containing dihydrocodeinone and phenyltoloxamine dihydrogen sulfate (both as cation exchange resin complexes of sulfonated polystyrene); Pennwalt Corporation, Pharmaceutical Division, 755 Jefferson Rd., Rochester, NY 14623.

2. NDA 12-666: Omni-Tuss Suspension, containing codeine sulfate, phenyltoloxamine dihydrogen sulfate, chlorpheniramine maleate, ephedrine sulfate (all as cation exchange resin complexes of sulfonated polystyrene), and guaiacol carbonate; Pennwalt Corp.

In addition to the holder of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. (This notice does not apply to OTC drugs. 21 CFR 310.6(f).) It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division

of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), 21 CFR 314.111(a)(5), and 21 CFR 300.50 and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holder of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 210(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

The applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 24, 1982, a written notice of appearance and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug product from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

(Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82))

Dated: February 9, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-14146 Filed 5-24-82; 8:45 am]

BILLING CODE 4110-01-M

[Docket No. 79N-0459]

Erythromycin Estolate Revised Labeling

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: In a document published elsewhere in this issue of the Federal Register, The Commissioner of Food and Drugs announced his conclusion on the safety of erythromycin estolate tablets and capsules. Among other findings, the Commissioner concluded that the deletion of the statement "further, the propionyl ester contributes to the activity of the drug through additional hydrolysis to the base at the bacterial cellular level" from the labeling of all dosage forms is warranted.

DATES: Supplements to approve antibiotic forms 5 and 6 shall be submitted on or before August 23, 1982. Revised labeling to be used on or before September 22, 1982.

ADDRESSES: Communications in response to this notice should be directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857.

Supplements (identify with the approved antibiotic form 5 and 6 number): John J. Curtis, Division of Anti-infective Drug Products (HFD–140), 301–443–6797.

Requests for opinion of the applicability of this notice to a specific products: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Don Leggett,Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: On December 4, 1979 (44 FR 69670), the Director of the Bureau of Drugs proposed to revoke provisions for certication of erythromycin estolate tablets and capsules based on new data which suggested that, compared with other erythromycins, there was no greater benefit to offset the estolate's relatively greater risk of hepatoxicity. A

public hearing on the safety of erythromycin estolate was held before the Ad Hoc Advisory Committee on Erythromycin Estolate (the Committee) on April 16 and 17, 1981. Data were presented by Eli Lilly (the major manufacturer of erythromycin estolate), Health Research Group, 10 individuals, and the Bureau of Drugs.

The Committee recommended deletion from the labeling of all dosage forms the wording, "further, the propional ester contributes to the activity of the drug through additional hydrolysis to the base at the bacterial cell level." The Commissioner agrees that no data were presented demonstrating that the proponyl ester is hydrolyzed at the bacterial cell level.

This labeling revision is based on a review of the data submitted to the Committee. A comprehensive discussion of this review is contained in a notice published elsewhere in this issue entitled "Erythromycin Estolate: Withdrawal of Proposal to Revoke Provisions for Certification of Tablets and Capsules; Response to Petition; Labeling."

Present holders of approved applications are:

1. 61–896; Eq 500 mg base tablets, Dista Products Co., Division of Eli Lilly & Co., P.O. Box 1407, Indianapolis, IN 46206.
2. 62–807; Eq 125 mg and Eq 250 mg base capsules, Dista Products Co.
3. 62–893; Eq 125 mg base/5 mL powder for reconstitution, oral; Dista Products Co.
4. 62–894; Eq 100 mg base/mL drops, oral; Eq 125 mg base/5 mL suspension, oral; Eq. 250 mg base/5 mL suspension, oral; Dista Products, Co.
5. 62–895; Eq 125 mg base and Eq 250 mg base chewable tablet, Dista Products Co.
6. 62–087; Eq 250 mg base capsules, Danbury Pharmacal, Inc., 131 West Street, Danbury, CT 06810
7. 62–162; Eq 125 mg and 250 mg base capsules, Barr Laboratories, Inc., 285 Livingston St., Northvale, NJ 07647.
8. 62–237; Eq 250 mg base capsules, Zenith Laboratories, 140 LeGrand Ave., Northvale, NJ 07647.

These holders of approved antibiotic forms 5 and 6 shall submit supplements providing for the deletion of the sentence specified above on or before August 23, 1982. The revised labeling shall be put into use by September 22, 1982 for erythromycin estolate drug products intially introduced or initially delivered for introduction into interstate commerce. The revised labeling may be used without advance approval by the Food and Drug Administration.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 507, 52 Stat. 1041, 1050–1051 as amended, 59 Stat. 463 as amended, (21 U.S.C. 321(n), 352, 357)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)).

Dated: May 18, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc 82–14163 Filed 5–24–82; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 82M–0142]

CooperVision, Inc., Medicornea Division; Premarket Approval of J-Loop Planar (Model B–13F) and J-Loop Angular (Model B–1H) Posterior Chamber Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the J-loop Planar (Model B–13F) and J-loop Angular (Model B–1H) Posterior Chamber Lenses sponsored by CooperVision, Inc., Medicornea Division, Seattle, WA. After reviewing the recommendation of the Ophthalmic Device Section of the Opthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because these posterior chamber intraocular lenses had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by June 24, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On July 8, 1981, CooperVision, Inc., Medicornea Division, Seattle, WA, submitted to FDA an application for premarket approval of the J-loop Planar (Model B–13F) and J-loop Angular (Model B–1H) Posterior Chamber Lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application for the use of these intraocular lenses. On April 23, 1982, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of expects. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 24, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14089 Filed 5-19-82; 10:32 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0396; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Three Prescription Expectorants ("Paragraph XIV/ Category 15"); Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for three oral prescription drug products offered for relief of symptoms of cough, cold, or allergy. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA reclassifies the products to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications (or pertinent parts thereof), and offers an opportunity for a hearing on the proposal. The products are expectorants.

DATES: Revocation of exemption effective May 25, 1982. Hearing requests due on or before June 24, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N-0396, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA-305), Rm. 4-62.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 9, 1973 (38 FR 4006), FDA classified the drug products described below as lacking substantial evidence of effectiveness for their labeled indications. The notice also offered an opportunity for a hearing on the proposal to withdraw approval of the new drug application (NDA) for each product.

Subsequently, in a notice published in the Federal Register of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptons. That exemption covered the drugs that are the subject of this notice and superseded the February 1973 notice. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders in response to various DESI notices covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the Federal Register on September 9, 1976 (41 FR 38312).

The OTC review panel for CCABA drugs reached the following conclusions which are relevant to the products listed below:

1. Combinations containing an antihistamine and an expectorant are irrational because an expectorant promotes the production of secretions whereas the anticholinergic activity of an antihistamine produces an opposite effect (41 FR 38328 at paragraph II.C.9.e.(3)). (All the products listed below contain an antihistamine and an expectorant.)

2. The combinations of pharmacologic groups represented by the three products listed below were not found to be safe and effective combinations. (41 FR 38328 at paragraph II.C.8.).

No person has submitted additional data on the three drugs listed below. The Director of the Bureau of Drugs concludes that the holders of the new drug applications have not shown, for each of the products listed below, that each component makes a contribution to the claimed effects and that the dosage of each component is such that the combination is safe and effective for a significant patient population. 21 CFR 300.50. Therefore each of the products are reclassified to lacking substantial evidence of effectiveness. No conclusion as to the effectiveness of guaifenesin *per se* is made at this time.

This notice revokes the temporary exemption announced in the Federal Register of December 14, 1973. It also proposes to withdraw approval of the new drug applications listed below (or pertinent parts thereof), and offers an opportunity for hearing on the proposal. Persons who wish to request a hearing may do on or before June 24, 1982.

1. NDA 11-894: as it pertains to Dimetane Expectorant, containing brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin (formerly glyceryl guaiacolate); A. H. Robins Co. 1407 Cummings Dr., Richmond, VA 23220.

2. NDA 11-894: as it pertains to Dimetane Expectorant-DC, containing codeine phosphate, brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin; A. H. Robins Co.

3. NDA 12-575: Actifed-C Expectorant, containing codeine phosphate, triprolidine hydrochloride, pseudoephedrine hydrochloride, and guaifenesin; Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

In addition to the holders of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. (This notice does not apply to OTC drugs. 21 CFR 310.6(f).) It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and

Cosmetic Act (21 U.S.C. 355), 21 CFR 314.111(a)(5), and 21 CFR 300.50, and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

An applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 24, 1982, a written notice of appearance and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicants or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug product from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82).

Dated: February 9, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-14148 Filed 5-24-82; 8:45 am]

BILLING CODE 4110-01-M

[Docket No. 81N-0393; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Five Prescription Expectorants ("Paragraph XIV/ Category 15"); Followup Notice Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for five oral presecription drug products offered for relief of symptoms of cough, cold, or allergy. The exemption has permitted the products to remain on the market beyond the time limited scheduled for implementation of the Drug Efficacy Study. FDA reclassifies the products to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal. The products are marketed as expectorants.

DATES: Revocation of exemption effective May 25, 1982. Hearing requests due on or before June 24, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N-0393, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Request for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 12A-12.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA-305, Rm. 4-62.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (formerly Docket No. FDC-D-537) published in the **Federal Register** of February 9, 1973 (38 FR 4006), FDA classified the drug products described below as lacking substantial evidence of effectiveness for their labeled

indications. The notice also offered an opportunity for a hearing on the proposal to withdraw approval of the new drug application (NDA) for each product.

Subsequently, in a notice published in the **Federal Register** or December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms. That exemption covered the drugs that are the subject to this notice and superseded the February 1973 notice. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluation on the DESI prescription products enabled the agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders in response to various DESI notices covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allegy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the **Federal Register** of September 9, 1976 (41 FR 38312).

The OTC review panel for CCABA drugs reached the following conclusions which are relevant to the products listed below:

1. There is no evidence to support the effectiveness of ipecac fluid extract as an expectorant. (41 FR 38358)

2. There are no well-controlled studies documenting the effectiveness of potassium guaiacolsulfonate as an expectorant. (41 FR 38367)

3. There are no well-controlled studies documenting the effectiveness of sodium citrate as an expectorant. (41 FR 38367)

4. Combinations containing an antihistamine and an expectorant are irrational because an expectorant promotes the production of secretions whereas the anticholinergic activity of an antihistamine produces an opposite effect. (41 FR 38326 at paragraph II.C.9.e.(3)). (All the products listed below contain promethazine hydrochloride, and antihistamine, and components purported to be expectorants.)

5. The combinations of pharmacologic groups represented by the five products listed below were not found to be safe and effective combinations. (41 FR 38326 at paragraph II.C.8.)

No person has submitted additional data on the five drugs listed below. The Director of the Bureau of Drugs concludes that the holder of the NDA has not shown, for each of the products listed below, that each component makes a contribution to the claimed effects and that the dosage of each component is such that the combination is safe and effective for a significant patient population. 21 CFR 300.50. Therefore each of the products is reclassified to lacking substantial evidence of effectiveness.

This notice revokes the temporary exemption announced in the **Federal Register** of December 14, 1973. It also proposes to withdraw approval of the new drug applications listed below (or pertinent parts thereof), and offers an opportunity for hearing on the proposal. Persons who wish to request a hearing may do so on or before June 24, 1982.

1. NDA 8–306: as it pertains to Phenergan Expectorant with Codeine, containing promethazine hydrochloride, ipacac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and codeine phosphate; Wyeth Laboratories, Inc., Division of American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101. (This product and the four following products formerly contained chloroform. Wyeth removed chloroform from all five formulations in 1976. See 21 CFR 310.513.)

2. NDA 8–306: as it pertains to Phenergan VC Expectorant Plain, containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and phenylephrine hydrochloride: Wyeth Laboratories, Inc. (This product was incorrectly identified as NDA 8–604 in the February 9, 1973 notice.)

3. NDA 8–306: as it pertains to Phenergan VC Expectorant with Codeine, containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and phenylephrine hydrochloride, and codeine phosphate; Wyeth Laboratories, Inc.

4. NDA 8–604: Phenergan Expectorant Plain, containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, and sodium citrate; Wyeth Laboratories, Inc.

5. NDA 11–265: Pediatric Phenergan Expectorant with dextromethorphan, containing promethazine hydrochloride, ipecac fluidextract, potassium guaiacolsulfonate, citric acid, sodium citrate, and dextromethorphan hydrobromide; Wyeth Laboratories, Inc.

In addition to the holder of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. (This notice does not apply to OTC drugs. 21 CFR 310.6(f).) It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 300.50, and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holder of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have any of the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug

Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

The applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before June 24, 1982, a written notice of appearance and request for hearing, and (2) on or before July 26, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug product from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82).

Dated: February 9, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc 82-14150 Filed 5-24-82; 8:45 am]
BILLING CODE 4160-01-M

Office of the Secretary

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE) Office of the Secretary (OS), Department of Health and Human Services (DHHS).

ACTION: Notification of a New System of Records, HHS/OS/ASPE 09-90-0090.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), we are issuing public notice of our intent to establish a new system of records: "Recipient Survey of Alternative Approaches to Financing Day Care for AFDC Children". We are proposing also to include two routine uses with the system in accordance with 5 U.S.C. 552a(e)(11). The proposed new system will provide for data on the nature and extent of the effects that Federal subsidy of child care costs have on AFDC recipients and their families. Non-individually identifiable data will be used for analysis by the contractor, the Urban Institute, and sub-contractor, Westat, any agency of government, and any member of the public who wishes to conduct statistical analyses of such data.

We will collect data from seven sites on approximately 300 individuals. The public is invited to submit comments on the routine uses of this system of records on or before June 17, 1982.

DATE: We filed a report of a new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Management and Budget (OMB) on May 18, 1982. The proposed routine uses will become effective on the effective date of the system without further notice, unless we receive comments which would result in a contrary determination.

ADDRESS: Interested individuals may comment on this system of records and its routine uses by writing to the ASPE Privacy Officer, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201. We will make comments received available for public inspection in Room 436G.12 Alcove, Hubert Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Project Officer, Recipient Survey of Alternative Approaches to Financing Day Care for AFDC Children, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, S.W., Room 447F, Washington, D.C. 20201, telephone number (202) 245-2240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, proposes to initiate a new system of records. We are proposing to establish this system of records as part of an overall effort to examine the various approaches to financing child care for AFDC recipients as well as to gain a better understanding of what State policy is, how it is working and what is likely to occur.

The survey of AFDC recipients is one of several steps in the overall project to examine the effects of alternative approaches to financing day care for AFDC children and will include a system of records with personal identifiers. Other methods of collecting data for this project include telephone interviews and in-person surveys of state and local officials and day care providers, and will not constitute a system of records under the Privacy Act.

Local welfare agencies will identify AFDC recipients for participation in the survey. Interviews with recipients agreeing to participate in the survey will be conducted by the sub-contractor, Westat, in recipients' homes. Approximately 300 AFDC recipients receiving child care subsidies will be interviewed.

In order to achieve the purpose of the study, AFDC recipients will be interviewed face-to-face. An interview of this type will determine the extent of the recipients' child care arrangements, and the advantages and disadvantages of each type, especially the way in which child care arrangement interacts

with recipients' employment and/or training. Inquiries will be made into recipients' feelings about the quality of care their child receives; the extent that the program enables the recipient to seek employment, obtain necessary training or maintain a job. The interviewer will also probe into whether the program succeeds or fails to provide necessary care; and the degree to which the program provides incentives or deterrents to continue employment and/or training.

The Privacy Act allows us to disclose information without the consent of the individual for "routine uses," that is, disclosure for purposes which are compatible with the purpose for which we collect information. Accordingly, we are proposing two routine uses.

One is disclosure to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made on behalf of that individual.

Another routine use provides for disclosure to a contractor/sub-contractor of ASPE for performance of research, evaluation and statistical activities in order to accomplish the purposes for which the records are collected.

Also, disclosure may be made to the Department of Justice in the event of litigation where the defendant is the Department of Health and Human Services (HHS), any component of HHS, or any employee of HHS in his or her official capacity; HHS may disclose such records it may deem desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Survey respondents will be informed that participation is voluntary. The Privacy Act statement will be provided in printed form to all potential respondents so they may have the opportunity to read the statement and provide written consent, prior to any interviews by Westat. At that time, should the respondents have any questions about the purpose of the survey, the interviewer will answer them.

Standard procedures described below will be established by the Urban Institute with respect to the handling and use of personal identifying information which will be gathered in the course of the interview effort.

A project number will be assigned to each client's interview sheet. Thus, becoming his/her identification number. A master list which cross-indexes project numbers with names, addresses and telephone numbers will be kept under lock and key, initially by a field representative from Westat, and then by the Urban Institute's Project Director. The Urban Institute will retain all records for the life of the project with the exception of the master list of recipents' names as described below.

Next, the master list will be given to the Government Project Officer in the Office of the Assistant Secretary for Planning and Evaluation where it will be placed in a locked file. The master list will be maintained so that in the event of a followup study, additional longitudinal data from the same families may be collected. The master list will be destroyed by the Government Project Officer no later than one year after the project ends if no additional research is conducted.

During the period of time that the master list is in the possession of the Urban Institute Project Director it will be accessible only to Westat and the Urban Institute project management staff for the purposes of verifying data or arranging follow-up interviews. Data will then be entered into machine-readable tapes using only project numbers. This procedure will also assure that the respondent's confidentiality is protected. Individual respondents will never be identified in any analyses or reports submitted by the Urban Institute for this project. These data will not be disclosed nor released to any other agency, organization, or individual except under the routine uses of the Privacy Act or as otherwise permitted by law.

This system is neither designed nor intended to be used to measure the behavior of any specific individual with respect to any data that are collected as part of the evaluation.

Since we propose to establish this system in accordance with the requirements of the Privacy Act, we anticipate no adverse effect on the privacy or other personal rights of individuals.

Dated: May 18, 1982.

Robert J. Rubin,

Assistant Secretary for Planning and Evaluation.

Notification of New System of Records Required by the Privacy Act of 1974

09-90-0090

SYSTEM NAME:

Recipient Survey of Alternative Approaches to Financing Day Care for AFDC Children/HHS/OS/ASPE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Urban Institute, 2100 M Street, N.W., Washington, D.C. 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include files developed from a sample of approximately 300 recipients of Aid to Families with Dependent Children (AFDC) receiving Federal subsidy for child care at seven sites. The system will contain mostly records of current recipients, however some former recipients may be interviewed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The contractor maintains two sets of files. The master list, which contains names, addresses, and telephone numbers of participating AFDC recipients. A project number links this file with the other file. Only the number permits identification of the individual. The written consent of the recipients who agree to participate in the study will be maintained with the master list.

With the exception of the linking number attached, the other file consists of non-individually identifiable information. Non-individually identifiable information being collected includes demographic characteristics, source(s) of income or support, child care history, employment and training experience, length of time in the welfare system, specifics on type or amount of child care, type of provider and nature of child care subsidy.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 626, 42 U.S.C. 641, and 42 U.S.C. 1397e.

PURPOSE OF THE SYSTEM OF RECORDS:

The proposed new system will provide data for the purpose of examining the various approaches to financing child care for AFDC recipients as well as obtaining a better understanding of State policy, how it is working and what is likely to occur. This system will also determine:

1. Types and quality of child care arrangements under different financing approaches;
2. The effect of the type and quality of care on the employment of AFDC recipients; and
3. The relative costs of different State approaches to financing day care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry

from the congressional office made on behalf of that individual.

In addition, disclosure may be made to a contractor/sub-contractor in order to perform the duties compatible with, and necessary for the purpose for which the data were collected. The contractor shall be required to maintain Privacy Act safeguards with respect to those records.

Also, disclosure may be made to the Department of Justice in the event of litigation where the defendant is the Department of Health and Human Services (HHS), any component of HHS, or any employee of HHS in his or her official capacity; HHS may disclose such records it may deem desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

STORAGE:

Magnetic tape and disk, paper records. A non-automated master list of names will be stored in a locked file. Automated recipient records containing no personal identifiers will be stored on magnetic tape and disk.

RETRIEVABILITY:

The matching of data in recipient records with personal identifiers will only be authorized by Westat and the Urban Institute project management staff for the following reasons:

1. Verification of data; and
2. At the request of a recipient in the sample.

SAFEGUARDS:

(Access controls) Access to the non-automated master list will be limited to Westat and the Urban Institute project management staff for the two reasons cited above, and only during the data collection phase of the project as described in the Retention and Disposal Section below.

RETENTION AND DISPOSAL:

During the collection phase of this project, the master list of names and project numbers will be stored under lock and key by the sub-contractor, Westat. Westat, upon completion of the interview and any necessary follow-up will then submit the master list of names to the Urban Institute Project Director for locked storage. The Project Director will maintain the master list in locked files throughout the collection phase. Upon conclusion of the collection phase the Project Director will give the master list of names and project numbers to the Government Project Officer, where they will be placed in a locked file. In the event of a follow-up study these same families, may be contacted. The names will be destroyed by the Government Project Officer no later than one year after the project ends if no subsequent research is conducted.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Room 457F, H.H.H. Building, Washington, D.C. 20201.

NOTIFICATION PROCEDURES:

Inquiries related to information in this system should be directed to the Government Project Officer, at the address below, and should include full name and current address. Simultaneously, with requesting notification of inclusion in the system of records, the individual may request record access as described in the Record Access Procedures Section.

Project Officer, "Recipient Survey to Examine the Effects of Alternative Approaches to Financing Day Care for AFDC Children"

Office of the Assistant Secretary for Planning and Evaluation, Room 447F, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201.

RECORD ACCESS PROCEDURES:

Individuals who, through the notification procedures set forth above have established that the system of records contains information pertaining to them may request access to these records by writing the Government Project Officer at the address given above. The Government Project Officer will notify the individual as to the place and time for access to the record(s). If the requester prefers, and the information requested is not too voluminous, the material may be mailed.

CONTESTING RECORD PROCEDURES:

Contact the Government Project Officer at the address given above, give full name and address, specify the information being contested, the rationale for the challenge and supply the information proposed for substitution.

RECORD SOURCE CATEGORIES:

Information will be obtained from face-to-face interviews, client information systems and recipient case files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-14132 Filed 5-24-82; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Off-Road Vehicle Designation Decision

AGENCY: Casper District, Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

SUMMARY: The Casper District, Bureau of Land Management has completed decisions to designate 1,153,385 acres of public land in Natrona County, Wyoming as open, limited, or closed to off-road vehicle use. Designations are a result of land use planning decisions made in the 1980 Natrona Management Framework Plan. During planning, comments were received on various areas proposed for designation. In addition, information letters inviting comment were sent to 250 interested individuals and organizations.

The effect of the designation is to limit off-road vehicle use on most public lands to existing roads and vehicle routes. However, most public lands are open to oversnow vehicle use. Use on a few areas is limited to designated roads and vehicle routes and two areas are closed to all motorized vehicles.

DATES: The decisions will become final June 24, 1982.

FOR FURTHER INFORMATION CONTACT:

Jim Melton, Area Manager, Platte River Resources Area, 951 Rancho Road, Casper, Wyoming 82601, (307) 261–5556

Paul Arrasmith, District Manager, Casper District Office, 951 Rancho Road, Casper, Wyoming 82601, (307) 261–5101.

SUPPLEMENTARY INFORMATION: The authority for this decision is derived from Executive Orders 11644 and 11989 and regulations contained in 43 CFR 8340.

Specific area designation are as follows:

Open Designation

No areas were identified for open designation.

Limited Designation

1. On the majority of public lands (1,087,597 acres) use of off-road vehicles, except oversnow vehicles, is limited to existing roads and vehicle routes. The

lands will be open to oversnow vehicles. Existing roads and vehicle routes are routes constructed, or created by the frequent passage of motor vehicles, prior to October 1, 1980, and currently receiving regular and continuous use. Temporary excursions leaving existing vehicular routes are permitted only to accomplish *necessary tasks* and only if such travel does not result in resource damage such as erosion, water pollution, ruts or other long-term signs of vehicle use. Necessary tasks are work requiring the use of a motor vehicle.

Random or unnecessary travel from existing vehicle routes is not allowed. Creation of new routes, or extension or widening of existing routes, is not allowed without prior written approval by the district manager.

This designation was determined to be appropriate for a majority of the public lands because it accommodates access needs while providing for resource protection.

2. Off-road vehicle use on the following areas is limited to designated roads and vehicle routes:

A. Sand Dunes (13,560 acres) 10 miles northeast of Casper, Wyoming.

B. Jackson and Little Red Creek Canyon Area (3,880 acres) 10 miles southwest of Casper, Wyoming on the west end of Casper Mountain.

C. North Platte River (2,990 acres) between Alcova and Casper, Wyoming.

D. The Red Wall (32,295 acres) in northern Natrona County.

The Sand Dunes, North Platte River and Red Wall are open to oversnow vehicles. In the Jackson and Little Red Creek Canyon Area, oversnow vehicles are also prohibited.

Vehicle travel will be permitted on roads and vehicle routes designated by BLM. Until maps are issued and signs posted, vehicular travel is limited to existing roads and vehicle routes.

3. Off-road vehicle use, including oversnow vehicle use, on two existing recreation management areas is also limited to designated roads and vehicle routes. These areas have been signed.

A. Muddy Mountain Recreation Area (11,370 acres) located 10 miles south of Casper, Wyoming on Muddy Mountain.

B. Goldeneye Wildlife and Recreation Area (733 acres) 20 miles northwest of Casper, Wyoming.

Closed Designation

The following 950 acres are closed year long to all motorized vehicles:

1. Eastern portion of the Environmental Education Area on Muddy Mountain (630 acres) approximately 13 miles south of Casper, Wyoming.

2. Oregon Trail wagon ruts along (approximately 320 acres) the Oregon Trail Road, from Casper, Wyoming 45 miles southeast of Pathfinder Reservoir.

Any person(s) having special access needs may apply for a permit to enter an area. Any constructed access will require a right-of-way under 43 CFR 2000.

An environmental assessment describing the impact of these designations was completed and a finding of no significant environmental impact was determined. This document is available for inspection at the office listed above.

Paul W. Arrasmith,

District Manager.

[FR Doc. 82-14187 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Boundary Modification of the Weber Mountain and Menefee Mountain Wilderness Study Areas

This notice serves as an amendment to my previous intensive inventory decision for the Weber Mountain Wilderness Study Area (CO-030-252) and the Menefee Mountain Wilderness Study Area (CO-030-251) as announced by publication in the **Federal Register**, Vol. 45, No. 222, Friday, November 14, 1980 and Vol. 46, No. 2, Monday, January 5, 1981. This notice also serves to announce a protest period on my decision to amend the boundary of both the Weber Mountain and Menefee Mountain Wilderness Study Areas which begins on the date of this announcement and ends June 24, 1982.

The Weber Mountain unit was originally identified as a 6,320 acre Wilderness Study Area (WSA) and the Menefee Mountain unit was identified as a 7,360 acre WSA. A resurvey of the public land along the southeastern boundary of the Weber Mountain WSA by Cadastral Survey (Approved July 31, 1981) defines the public land as approximately one-eighth mile west of the described WSA boundary. In addition, an established irrigation ditch was identified that was not recorded during the Wilderness inventory process. This survey also defines the public land in the southwestern corner of the Menefee Mountain WSA as approximately one-eighth mile west of the described boundary.

It is my decision, therefore, to modify the existing Weber Mountain WSA boundary to parallel the west side of the established irrigation ditch within public lands, and to coincide with the recent survey lines where the public land and private land delineate the boundary. The Weber Mountain WSA would therefore contain 6,200 acres of public lands. In addition, it is my decision to modify the existing Menefee Mountain WSA boundry to coincide with the recent survey lines where the public land and private land delineate the boundary. The Menefee Mountain WSA would therefore contain 7,400 acres of public lands.

Persons wishing to protest my decision announced herein must file a written protest with the Colorado State Director, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, on or before 4:00 p.m., June 24, 1982. Only those protests received by the Colorado State Office by the time and date specified will be accepted.

The protest must include a clear and concise statement of the reasons for the protest, as well as data to support the reasons stated. The State Director will issue a written decision on any protest which is filed according to the above requirements and will publish a notice in the **Federal Register** of the action taken in response to the protest.

Any person adversely affected by the State Director's decision on a written protest may appeal such decision under the provisions of 43 CFR Part 4.

Information on the Weber Mountain Wilderness Study Area can be obtained by contacting BLM personnel at the following location: Montrose District Office, (303) 249-7791, 2465 South Townsend, P.O. Box 1269, Montrose, Colorado 81402, District Manager: Marlyn V. Jones, Wilderness Specialist: Jon Wesley Sering.

In Denver contact: Colorado State Office, 1037 20th Street, Denver, Colorado 80202; State Wilderness Coordinator: Barry Tollefson, (303) 837-3393.

Dated: May 25, 1982.

George C. Francis,

State Director, Colorado, Bureau of Land Management, Denver, Colorado.

[FR Doc. 82-13906 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-84-M

Alaska Outer Continental Shelf; Availability of Final Environmental Impact Statement Regarding Proposed Diapir Field Oil and Gas Lease Sale No. 71

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement relating to a proposed Outer Continental Shelf (OCS) oil and gas lease sale of 372 tracts consisting of approximately 744,000 hectares (1.8

million acres) of submerged Federal lands in the Diapir Field, off the northern coast of Alaska (OCS Sale No. 71).

Single copies of the final environmental impact statement can be obtained from the Office of the Manager, Bureau of Land Management, Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental impact statement will also be made available for inspection in the following public libraries: Alaska Federation of Natives, 1577 O Street, Suite 304, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resources Library, 701 "C" Street, Box 36, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim, Learning Center, Elim AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of Interior, Bureau of Mines Library, AF-F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasumseon Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

May 4, 1982.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 82-14221 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 11304]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 82-10371 appearing on page 16420 in the issue of Friday, April 16, 1982; in the first column, in the land description under T. 40 S., R. 8 W., the first line of Section 5 should read "Sec. 5, Fractional NE¼NE¼, S½NE¼, and"; first line of Section 15 should read "Sec. 15, NE¼, E½NW¼, S½NE¼, and".

BILLING CODE 1505-01-M

Fish and Wildlife Service

Louisiana; Application

Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by Pub. L. 93-153, Cities Service Company has applied for a 6-inch natural gas pipeline right-of-way that will cross the following lands:

T. 13 S. R. 13 W.,
Sec. 1.
T. 13 S. R. 12 W.,
Secs. 1, 2, 3, 4, 5, 6.
T. 13 S. R. 11 W.,
Sec. 6.

This pipeline will convey natural gas across 5.658 miles of the Sabine National Wildlife Refuge, Cameron Parish, Louisiana.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so within thirty (30) days and send their name and address to the Regional Director, United States Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303-3376.

Dated: April 28, 1982.

James W. Pulliam,

Regional Director.

[FR Doc. 82-14104 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1241, Block 52, South Timbalier Area, Offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, Open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 17, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-14109 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Union Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3327, Block 65, Vermilion Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Management, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 228.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 17, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-14158 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Bureau Forms Submitted for Review

The propolsal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: Annual Application.

Bureau Form Number: FHR–8–301 A and B.

Frequency: Annally.

Description of Respondents: State Governments.

Annual Responses: 57.

Annual Burden Hours: 2,280.

Bureau clearance officer: Russell K. Olsen–523⊖5092.

Russell K. Olsen,

Information Collection Clearance Officer.

May 18, 1982.

[FR Doc. 82-14179 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

Transfer of Alaska Native Claims Appeals Functions

Notice is hereby given that the Secretary of the Interior has issued Order Number 3078 dated April 29, 1982. The Order will consolidate the functions of the Alaska Native Claims Appeal Board into the Interior Board of Land Appeals. The Alaska Native Claims Appeal Board will be abolished. The Order is published in its entirety below.

Additional information regarding the Order may be obtained from the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone 703–557–1500.

Dated: May 14, 1982.

Joseph E. Doddridge,

Acting Deputy Assistant Secretary of the Interior.

April 29, 1982.

Order No. 3078.

Subject: Consolidation of the Alaska Native Claims Appeal Board Functions into the Interior Board of Land Appeals.

Section 1. *Purpose.* This order consolidates the functions of the Alaska Native Claims Appeal Board into the Interior Board of Land Appeals. The purpose of this action is to achieve greater economy in the use of Office of Hearings and Appeals resources in view of the declining number of appeals arising under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601–1628 (1976).

Section 2. *Authority.* This order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

Section 3. *Transfer of Function.* All of the functions and responsibilities delegated to the Alaska Native Claims Appeals Board with respect to appeals arising under the Alaska Native Claims Settlement Act are transferred to the Interior Board of Land Appeals.

Section 4. *Abolishment.* The Alaska Native Claims Appeal Board is abolished.

Section 4. *Implementation.*

(a) The Assistant Secretary—Policy, Budget and Administration is responsible for implementing this order with respect to personnel, property, records and funds.

(b) The Director, Office of Hearings and Appeals, in consultation with the Assistant Secretary—Policy, Budget and Administration, shall make such organizational arrangements for the performance of transferred functions as he deems necessary. In making these arrangements, the Director shall seek to ensure that the rights of parties bringing appeals under the Alaska Native Claims Settlement Act are protected and that no undue delay in consideration of such appeals occurs.

(c) All Alaska Native Claims Settlement Act appeals filed on or after the effective date of this order must be filed in accordance with 43 CFR Part 4, Subpart E.

(d) Changes to Departmental regulations made necessary by this order will be published in the **Federal Register.**

Section 6. *Effective Date.* This order is effective June 30, 1982. The provisions of this order will terminate on December 31, 1982.

Dated: April 29, 1982.

James G. Watt,

Secretary of the Interior.

[FR Doc. 82-14186 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-10-M

Information Collections Submitted to OMB for Review

The proposals for the collection of information listed below have been submitted to the Office of Management and Budget for approval under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the appropriate Bureau clearance officers at the phone numbers listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer

and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

May 19, 1982.

Vivian A. Keedo,

Department Clearance Officer, Office of the Secretary.

Bureau: Office of Surface Mining.
Title: 30 CFR 850, Blaster Certification.
Bureau Form Number: None.
Frequency: Nonrecurring.
Description of Respondents: State Natural Resource Agencies.
Annual Responses: 5,924.
Annual Burden Hours: 311,320.
Bureau Clearance Officer: Darlene Grose 202–343–5447.
Bureau: Geological Survey.
Title: 30 CFR 250.12 Suspension of Operations.
Bureau Form Number: None.
Frequency: Nonrecurring.
Description of Respondents: OCS Federal Mineral Lessees.
Annual Responses: 20.
Annual Burden Hours: 160.
Bureau Clearance Officer: Patrick Cunningham 703–860–7211.
Bureau: Bureau of Land Management.
Title: 43 CFR 3400, Coal Management, Federally Owned Coal.
Bureau Form Number: None.
Frequency: Nonrecurring.
Description of Respondents: Coal Mining Industry, State and Local Government.
Annual Responses: 825.
Annual Burden Hours: 12,400.
Bureau Clearance Officer: Harold Walker, 202–653–8853.
Bureau: Bureau of Land Management.
Title: 43 CFR 3600, Mineral Material Disposal.
Bureau Form Number: 3600–4, 3600–5.
Frequency: Annually.
Description of Respondents: Sand and gravel operators, construction companies, highway departments.
Annual Responses: 6,250.
Annual Burden Hours: 1,250.
Bureau Clearance Officer: Harold Walker 202–653–8853.
Bureau: Bureau of Land Management.
Title: 43 CFR 3833, Recordation of Mining Claims.
Bureau Form Number: None.
Frequency: Annually.
Description of Respondents: Owners of unpatented mining claims, mill sites, and tunnel sites.
Annual Responses: 250,000.
Annual Burden Hours: 20,833.
Bureau Clearance Officer: Harold Walker 202–653–5583.
Bureau: Bureau of Land Management.
Title: 43 CFR 2920, Leases, Permits and Easements Under the Federal Land Policy and Management Act.
Bureau Form Number: 2920–1.
Frequency: Nonrecurring.
Description of Respondents: Any person legally capable of holding lands or interests therein under the laws of the State in which the lands or the interests therein are located.
Annual Responses: 360.
Annual Burden Hours: 3230.
Bureau Clearance Officer: Harold Walker, 202–653–5583.
Bureau: Bureau of Land Management.
Title: Road Use Fees Paid Report.
Bureau Form Number: 5450–6.
Frequency: On occasion.
Description of Respondents: Timber Sale Purchasers.
Annual Responses: 900.
Annual Burden Hours: 270.
Bureau Clearance Officer: Harold Walker 202–653–5583.
Bureau: Bureau of Land Management.
Title: 43 CFR 3200.
Bureau Form Number: 3200–2, 3200–9, 3200–11, 3200–17.
Frequency: Nonrecurring.
Description of Respondents: Individuals, Small Businesses, Large Corporations, State and Local Governments.
Annual Responses: 420.
Annual Burden Hours: 1,449.
Bureau Clearance Officer: Harold Walker, 202–653–8853.

[FR Doc. 82–14185 Filed 5–24–82; 8:45 am]
BILLING CODE 4310–10–M

Office of Surface Mining

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 776 General Requirements for Coal Exploration.
Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Coal Mine Operators.
Annual Responses: 2,250.
Annual Burden Hours: 162,500.
Bureau clearance officer: Darlene Grose 202–343–5447.

Carson W. Culp,

Acting Assistant Director, Management and Budget.

4May 18, 1982.

[FR Doc. 82–14187 Filed 5–24–82; 8:45 am]
BILLING CODE 4310–05–M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 784 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.
Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Coal Mine Operators.
Annual Responses: 41,923.
Annual Burden Hours: 791,396.
Bureau clearance officer: Darlene Grose, 202–343–5447.

Carson W. Culp,

Acting Assistant Director, Management and Budget.

May 18, 1982.

[FR Doc. 82–14180 Filed 5–24–82; 8:45 am]
BILLING CODE 4310–05–M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 771 General Requirements for Permits and Permits Applications.

Bureau Form Number: None.

Frequency: Once.

Description of Respondents: Coal Mine Operators.

Annual Responses: 4,843.

Annual Burden Hours: 31,576.

Bureau clearance officer: Darlene Grose 202–343–5447.

Carson W. Culp,

Acting Assistant Director, Management and Budget.

May 18, 1982.

[FR Doc. 82-14161 Filed 5-24-82; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the services proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–87

Decided: May 12, 1982.

By the Commission, Review Board No. 1, Members Parker Chandler, and Fortier. (Member Parker not participating.)

MC 99680 (Sub-20), filed May 5, 1982. Applicant: NORTH SHORE & CENTRAL ILLINOIS FREIGHT CO., 7701 W. 95th St., Hickory Hills, IL 60457. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602; (312) 236–5944. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Uniontown, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 129420 (Sub-6), filed May 5, 1982. Applicant: LILE INTERNATIONAL COMPANIES, 15605 S.W. 72nd Avenue, Tigard, OR 97223. Representative: Wendell B. Lile (same address as applicant) (503) 620–6480. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 161580, filed April 20, 1982. Applicant: HAROLD W. LIGGETT, d.b.a. OGALLALA PRODUCE, 1305 Debra Lane, Madison, WI 53704. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge #832, Portage, WI 53901; (608) 742–3579. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161811, filed May 3, 1982. Applicant: LEASING AND MAINTENANCE, INC., 3842 West St., Landover, MD 20785. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; (301) 840–8565. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161820, filed May 4, 1982. Applicant: F & D EPPENBACH TRUCKING, INC., P.O. Box 570, Blair, NE 68008. Representative: James F. Crosby, 7363 Pacific Street, Suite 210B, Omaha, NE 68114; (402) 397–9900. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *Agricultural limestone, and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2–86

Decided: May 7, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 144122 (Sub-84), filed April 26, 1982. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076; (201) 322–5030. As a broker of *general commodities* (except household goods), between points in the U.S. (including AK, but excluding HI).

MC 157763 (Sub-1), filed April 20, 1982. Applicant: PRESTO TRANSPORTATION, INC., P.O. Box 469, Peru, IL 61354. Representative: David Earl Tinker, 100 Connecticut Avenue, NW., Suite 1112, Washington, DC 20036–5391, (202) 887–5868. (1) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI) (2) transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and (3) as a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161752, filed April 30, 1982. Applicant: TOP-TOW TOWING CORPORATION, 111 West Washington Street, Chicago, IL 60606. Representative: Charles H. Wickman, Suite 1435, 2 North Riverside Plaza, Chicago, IL 60606, (312) 454–0220. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agriculture limestone and fertilizers, and other soil conditioners* by owner of motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2–104

Decided: May 18, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 151803 (Sub-2), filed May 6, 1982. Applicant: SOUTHERN EXPRESS, INC., 860 West Main St., Spartanburg, SC 29301. Representative: Joseph M. Epting, 1338 Main St., P.O. Box 11414, Columbia, SC 29211, (803) 799–9427. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161852 (Sub-2), filed May 6, 1982. Applicant: TROPHY TRANSPORT, INC., P.O. Box 2352, Dalton, GA 30720. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8565. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161893, filed May 10, 1982. Applicant: ADVANCED WAREHOUSE AND DISTRIBUTION CORPORATION, 30 Middlesex Ave., Somerville, MA 02145. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019, 617–966–2093. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP2–101

Decided: May 14, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 139253 (Sub-9), filed April 28, 1982. Applicant: SOUTHEASTERN WAREHOUSING AND DISTRIBUTION CORPORATION, 102 Ashe St., Johnson City, TN 37061. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219, 615–255–0540. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions) and *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 147342 (Sub-1), filed May 5, 1982. Applicant: FOSTER'S TRANSPORTATION, INC., Mullica Hill Road, Box 10, R.D. 3, Woodstown, NJ 93924. Representative: Lawrence Marquette, P.O. Box 629, Carmel Valley, CA 93924, (408) 625–2031. (1) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI); (2) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI); (3) Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 148103 (Sub-2), filed April 28, 1982. Applicant: BIG JOHN TRANSPORTATION COMPANY, 5806 Greenash, Houston, TX 77081. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, 713–437–1768. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S. (except AK and HI); (2) *Shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI); (3) As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI); (4) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI); and (5) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 161543, filed April 15, 1982. Applicant: AGRICULTURAL EXPRESS OF AMERICA, 3409 West Pershing Road, Chicago, IL 60632. Representative: Charles A. Webb, 1828 L St., NW., Washington, DC 20036, (202) 822–8200. As a *broker of general commodities* (except household goods) between points in the U.S. (including AK and HI).

Volume No. OP2–103

Decided: May 13, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 129823 (Sub-6), filed April 15, 1982. Applicant: FRANK E. HUGHES, d.b.a. HUGHES MOVING & STORAGE CO., P.O. Box 5187, Huntsville, AL 35805. Representative: Ronald L. Stichweh, 727 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–5223. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 161783, filed April 30, 1982. Applicant: DALE E. HOOVER, Box 151 R.D. #3, Lititz, PA 17543. Representative: Dale E. Hoover (same address as above) (717) 626–8435. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161823, filed May 3, 1982. Applicant: LE-HI AGENCY, INC., 11

Westward Circle, Van Buren, AR 72956. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; (301) 840–8565. As a *broker of general commodities*, (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP3–077

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 161605, filed April 21, 1982. Applicant: WILLIAM D. CRITES d.b.a. RAINBOW TRANSPORTATION, 1314 Emporia St., Aurora, CO 80010. Representative: William D. Crites (same address as applicant) (303) 341–1950. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161855, filed May 6, 1982. Applicant: GEORGE REISLER d.b.a. COMMUNITY TRUCKING CO., 443 Calmosa Dr., Port St. Lucie, FL 33452. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180; (703) 442–8330. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5–109

Decided: May 12, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161629, filed April 22, 1982. Applicant: WILLIAM J. FULLER, Rt. 2, Box 392–A, West Monroe, LA 71291. Representative: William J. Fuller (same address as above.) (318) 396–2215. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161659, filed April 26, 1982. Applicant: EXCEL TRAFFIC CONSULTANTS, P.O. Box 61664, Dallas/Fort Worth Airport, TX 75261. Representative: Martin Perez, 3917 Wind River Ct., Irving, TX 75062; (214) 255–8257. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161829, filed May 4, 1982. Applicant: MARYLAND OVERPAK CORPORATION, 1301 Wicomico St., Baltimore, MD 21230. Representative: George Herzog, Jr. (same address as applicant) 301–539–6620. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–111

Decided: May 14, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161819, filed May 4, 1982. Applicant: SAVANNAH FAST FREIGHT, INC., P.O. Box 2665, Savannah, GA 31402. Representative: Richard E. Mobley (same address as applicant) (912) 236–9661. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161839, filed May 5, 1982. Applicant: TRANS AMERICA COURIER SYSTEMS, INC., 74–09 37th Ave., Jackson Heights, NY 11372. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666; 201–836–1144. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 161849, filed May 6, 1982. Applicant: J.D.L. TRUCK SERVICE, INC., 1090 Industrial Dr., Bensenville, IL 60106. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180; 703–442–8330. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161859, filed May 6, 1982. Applicant: LOAD LOCATORS LTD., P.O. Box 1906, Des Moines, IA 50306. Representative: Donald B. Strater, 1350 Financial Center, Des Moines, IA 50309; (515) 283–2411. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14173 Filed 5-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-128)]

Rail Carriers; Chicago and North Western Transportation Co.—Abandonment—Between Cannon Falls and Red Wing, MN; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon its 20.5 mile line of railroad between Cannon Falls, MN (milepost 74.3) and Red Wing, MN (milepost 94.8), in Goodhue County, MN. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) a financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for contined rail services are containued in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14173 Filed 5-24-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States of America* v. *City of Glendale, Colorado*, Civil No. 80–C–874, was lodged on May 6, 1982 with the District Court for the District of Colorado. The proposed decree would effect settlement of the United States' complaint alleging violation of the NPDES permit requirement by the City.

The Department will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Tenth and Pennsylvania Avenue, N.W.,

Washington, D.C. 20530, and should refer to *United States of America* v. *City of Glendale, Colorado*, DJ Ref. No. 90–5–1–1–1417.

A copy of the proposed consent decree may be examined at: (1) The Office of the United States Attorney, District of Colorado (Attention: Assistant United States Attorney James Winchester), 1200 Federal Building, 1961 Stout Street, Denver, Colorado 80294; (2) the Region VIII Office of the U.S. Environmental Protection Agency, (Attention: Regional Counsel) (E–8) 1860 Lincoln Street, Denver, Colorado 80203; and (3) the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice. In order to cover the reproduction costs, all requests for copies must be accompanied by a check or money order in the amount of $1.20 (10 cents per page) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-14200 Filed 5-24-82; 8:45 am]

BILLING CODE 4410-01-M

Competitive Grant Solicitation

The National Institute of Justice announces a competitive grant solicitation for research on the use and effects of laws which permit public safety to be used as a criterion in pretrial releasedecision-making. Issues to be addressed include:

1. The nature of these laws and the administrative requirements for their use.
2. The extent of their use in selected jurisdictions.
3. The effects of their use on individual defendants, the jail population, and, if possible on pretrial crime.

Applicants are encouraged to propose appropriate approaches for addressing these issues.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be received no later than July 2, 1982. A total of $300,000 has been allocated for this research, which may extend for up to two years.

Additional information and copies of the solicitation may be obtained by contacting: National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Please specify "Pretrial Release" solicitation and enclose a self-addressed mailing label.

Dated: May 12, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc 82-14198 Filed 5-24-82; 8:45 am]

BILLING CODE 4410-18-M

National Institute of Justice

Competitive Grant Solicitation

The National Institute of Justice announces a competitive grant solicitation for research on the use and effects of those sentence laws designed to increase the penalty imposed on certain convicted offenders. Among such laws are those aimed at habitual offenders and those allowing consecutive sentencing for multiple offenses. The three primary issues to be addressed are:

1. The types of such sentence enhancement laws which are available for use in the United States.
2. The extent and nature of their use in selected jurisdictions.
3. The more immediate effects of the use on individual offenders and on the courts and correctional system.

Applicants are encouraged to propose appropriate approaches for addressing these issues.

The solicitation requests submission of proposals which will then be considered by a peer review panel. In order to be considered, proposals must be received no later than July 7, 1982. A total of $250,000 has been allocated for this research, which may extend for up to two years.

Additional information and copies of the solicitation may be obtained by contacting: National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850; 301/251–5500.

Please specify "Use of Sentence Enhancement Laws" solicitation and enclose a self-addressed mailing label.

Dated: May 14, 1982.

James L. Underwood,

Acting Director, National Institute of Justice.

[FR Doc. 82-14155 Filed 5-24-82; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The Notice of Approval of Revised Developmental Schedule was further published on April 1, 1974 in the **Federal Register** (39 FR 11881).

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that "Where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated July 30, 1981 from Darrel D. Douglas to James W. Lake and incorporated as part of the plan, an amendment to revoke State standards comparable to the revocation of 29 CFR 1910.263, Bakery Equipment, as published in the **Federal Register** (43 FR 51760) dated October 24, 1978 and subsequent corrections in the **Federal Register** (43 FR 51760) dated November 7, 1978.

These State standards which were originally contained in OAR 437, Chapter 30, received OSHA approval and notice to that effect was published in the **Federal Register** (40 FR 36817) dated August 22, 1975.

The State's revocations became a final order after public notice through the State Administrative Rules Bulletin published on October 15, 1980 and by

direct mail to concerned parties. Both actions failed to elicit requests for a public hearing. As part of the amendment, the State standards have been renumbered to OAR 437, Division 77; and editorial changes, consisting of the rewording of several of the remaining standards, have been made.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards revocations are identical to the comparable Federal standards revocations. The remaining standards, which have been reworded, are at least as effective as the comparable Federal standards. There are no significant areas of differences. Accordingly the Oregon Standards, OAR 437, Division 77, Baking Equipment, should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Board, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N3613, 200 Constitution Avenue N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included opportunity for public comment and further public participation would be repetitious.

This decision is effective May 25, 1982.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 10th day of December, 1981.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 82-14214 Filed 5-24-82; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Air Traffic Controller Appeals

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Merit Sytems Protection Board intends to complete action on approximately 11,000 appeals from air traffic controllers on or before December 31, 1982. This completion date is established with the expectation that a request for supplemental funding for fiscal year 1982, currently before the Congress, will be granted soon.

This notice revokes a prior notice in 47 FR 7898 (1982) which set September 1, 1982, as the anticipated completion date of air traffic controller appeals. The prior notice was predicated on receipt of the supplemental funding early in calendar year 1982.

Due to insufficient funds with which to staff properly its regional offices and provide for hearing officers to travel to conduct hearings, the Board has been unable to adjudicate these appeals as expeditiously as it had anticipated.

This notice constitutes the public announcement of a new completion date required by 5 U.S.C. 7701(i)(1).

DATES: New completion date: December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Michael W. Doheny, (202) 653-7980.

Dated: May 21, 1982.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 82-14322 Filed 5-24-82; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-30)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act., Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Safety, Human Factors, and Operating Systems.

DATE AND TIME: June 15, 1982, 9 a.m. to 5 p.m.; June 16, 1982, 8:30 a.m. to 5 p.m.

ADDRESS: NASA Langley Research Center, Building 1244, Room 223, Hampton, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Winblade, National Aeronautics and Space Administration, Code RJT-2, Washington, D.C. 20546; (202/755-3000).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Safety, Human Factors, and Operating Systems has been established to assist the NASA in assessing the current adequacy of transport aircraft technology and recommend actions to reduce deficiencies through modification of the planned NASA research and technology program in transport safety, human factors, and operating systems. The Subcommittee, chaired by Mr. J. D. Smith, is comprised of thirteen members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and participants).

Type of Meeting: Open.

Agenda:

June 15, 1982

9 a.m.—Opening Remarks.

9:15 a.m.—Summary of NASA Budget Situation and Philosophy for Future Aeronautics Programs.

10 a.m.—NASA Aeronautics Long Range Plan.

11 a.m.—NASA Advanced Transport Operating Systems Research.

5 p.m.—Adjourn.

June 16, 1982

8:30 a.m.—NASA Human Factors Research.

2 p.m.—NASA Safety Technology Research.

4 p.m.—Discussion of NASA Research Program—Scope, Content, and Critical Issues.

4:30 p.m.—Subcommittee Recommendations on NASA Research Program and Areas for Possible Future Discussion.

Nathaniel B. Cohen,

Director, Management Support Office, Office of External Relations.

May 19, 1982.

[FR Doc. 82-14160 Filed 5-24-82; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12439; 811-2748]

Federated Option Income Fund, Inc.; Filing of an Application

May 18, 1982.

In the matter of Federated Option Income Fund, Inc., 421 Seventh Avenue, Pittsburgh, Pennsylvania 15219 (811-2748).

Notice is hereby given that Federated Option Income Fund, Inc. ("Applicant"), registered as an open-end, diversified, management investment company under the Inventment Company Act of 1940 ("Act"), filed an application on March 29, 1982, for an order pursuant to Section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under the laws of Maryland on September 15, 1975. On May 18, 1977, it registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 to register 2,000,000 shares of its capital stock. That registration statement was made effective on June 17, 1977, and a public offering of Applicant's securities commenced on that date.

On November 19, 1981, Applicant's board of directors authorized the merger of Applicant into Federated High Income Securities, Inc. ("Federated High"), and on February 19, 1982, at a meeting of Applicant's shareholders, the merger was approved by the shareholders by a vote of 768,945.585 in favor of the merger to 19,884.310 in opposition. On that date Applicant had outstanding 1,137,009.092 shares of common stock having an aggregate net asset value of $13,757,811.12, or $12.10 per share. On February 22, 1982, Applicant's assets were transferred to Federated High in exchange for shares of Federated High on the same basis as held by Applicant and subsequently distributed to Applicant's shareholders. Expenses of the merger were allocated between Applicant and Federated High in proportion to their respective net assets as February 19, 1982, of which Applicant's portion was $8,532.97.

The application states that Applicant is not a party to any litigation or administrative proceeding; and that no separate trust has been created to hold any of its assets, and that it has no assets, debts or liabilities outstanding. Applicant represents that the Articles of Merger were filed with the Maryland Department of Assessments and Taxation on February 22, 1982; that Applicant's corporate existence was terminated as of February 22, 1982; that Applicant now has no securityholders, and that it is not engaged in any business.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of that order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than June 11, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the rason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-14196 Filed 5-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12437; 812-5179]

NEL Cash Management Trust; Filing of Application

May 17, 1982.

In the matter of NEL Cash Management Trust (formerly NEL Cash Management Account, Inc.), 501 Boylston Street, Boston, Massachusetts 02117 (812-5179).

Notice is hereby given that NEL Cash Management Trust (formerly NEL Cash Management Account, Inc.) ("Applicant") an open-end diversified management investment company, filed an application on April 23, 1982, and an amendment thereto on May 10, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") amending a prior order of the Commission to exempt Applicant from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value the assets held in its U.S. Government Series and its Money Market Series using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a Massachusetts business trust which was organized to continue the business of its predecessor, NEL Cash Management Account, Inc. (the "Company"). The Commission issued an order on October 31, 1979 (Investment Company Release No. 10926), pursuant to Section 6(c) of the Act, exempting the Company from Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the Company to value its portfolio assets pursuant to the amortized cost method of valuing portfolio securities. The application states that Applicant seeks to register a second series of its shares and thereby to become a so-called series fund. In order to avoid any question as to the scope of the existing order, Applicant filed this application pursuant to Section 6(c) of the Act for an amended order to exempt Applicant from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to use the amortized cost method of valuation for the purpose of valuing the portfolio securities of each of its two series.

Applicant states that its Trustees have recently approved the creation of a new series of shares, the U.S. Government Series ("Government Series"), which will invest only in short-term obligations of the United States Government and related repurchase agreements. Its investment objective is to seek the highest current income consistent with maximum safety of capital and liquidity. The existing assets of the Applicant are to be redesignated as the Money Market Series upon the creation of the Government Series. The application states that the Money Market Series will continue to invest in high quality money market instruments in accordance with Applicant's current investment objective, which is to provide maximum

current income consistent with preservation of capital and liquidity.

The application states that assets received by the Applicant for the issue or sale of shares of each series and all income earnings, profits, losses, and proceeds derived from such assets will be allocated to that series. The application further states that the underlying assets of each series will be segregated and charged with the expenses in respect of that series and with its share of the general expenses of the Applicant. Any general expenses of the Applicant not readily identifiable as belonging to a particular series will be allocated by the Trustees in such manner as the Trustees determine to be be fair and equitable. The net income of each series will be determined, and dividends will be declared and paid, separately for each series based upon the interest, discounts, gains, losses, premium, and expenses attributable to such series.

Applicant states that its Trustees have concluded that it is in the best interests of the shareholders of each series to use the amortized cost method of valuing each series' portfolio securities to maintain a constant net asset value per share for each series at $1.00. Applicant states that the continued use of amortized cost valuation for each series would, in addition, offer the shareholders of such series the convenience of being able to value their investments in any series simply by knowing the number of shares that they own of that series.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of this application, the Commission expressed its view that, among other things: (1) Rule 2a–4 under the Act requires portfolio instruments of "money market" funds which have more than 60 days remaining to maturity be valued with reference to market factors and (2) it would be inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has agreed that each of the following may be made a condition to granting the exemptive relief requested:

1. In supervising the operations of each of Applicant's series and in delegating special responsibilities involving portfolio managment to the respective investment advisers of each series, Applicant's Trustees undetake—as a particular responsibility within the overall duty of care owed to shareholders of each series—to establish procedures reasonably designed, taking into account current market conditions and the investment objectives of each series, to stabilize the net asset value per share of each of Applicant's series, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Applicant's Trustees shall be the following:

(a) Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine, with respect to each series, the extent of deviation, if any, of the net asset value per share of such series, as determined by using available market quotations, from the $1.00 amortized cost price per share of such series, and the maintenance of records of such review.

(b) In the event that the net asset value per share of any series, determined as set forth in condition 2(a), deviates from the $1.00 amortized cost price per share of such series by more than ½ of 1%, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe that the extent of any deviation from the $1.00 amortized cost price per share of any series may result in material dilution or other unfair results to investors or existing shareholders of that series, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of the relevant series; withholding dividends; or utilizing a net asset value per share of the revelant series as determined by using available market quotations.

3. Applicant will maintain for each series a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that no series will (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days. In fulfilling this condition, Applicant agrees that if the disposition of a portfolio instrument should result in a dollar-weighted average portfolio maturity in excess of 120 days for a series, such series will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve, on behalf of each series, permanently in an easily accessible place, a written copy of the procedures (and any modifications thereto) described in condition 1 above; and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition

shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit the portfolio investments, including repurchase agreements, of each series to those U.S. dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 9, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–14197 Filed 5–24–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18748; SR–PSE–82–3]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 17, 1982.

In the matter of The Pacific Stock Exchange, Inc., 618 South Spring Street, Los Angeles, CA 90014 (SR–PSE–82–3).

The Pacific Stock Exchange, Inc. ("PSE") submitted on February 26, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b–4 thereunder, to amend Rule II, Section 3(f) of the PSE rules to provide that, as a condition of an exchange member's being registered as a specialist, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market.[1] In addition, the rule change provides that, if the PSE finds any substantial or continued failure by a specialist to engage in such a course of dealings, the registration of such specialist shall be subject to suspension or revocation by the PSE in one or more of the securities in which he is registered.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18519, March 1, 1982) and by publication in the **Federal Register** (47 FR 9623, March 5, 1982). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and 11 and the rules and regulations thereunder.[2]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–14196 Filed 5–24–82; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission has traditionally interpreted a specialist's duty to maintain a fair and orderly market as requiring a course of conduct which includes dealings for the specialist's own account that are reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to minimize the effects of a temporary disparity between supply and demand or a temporary distortion of the price relationships between the exchange and other markets. In addition, a specialist's dealings should be restricted so far as possible to those reasonably necessary to permit the specialist to maintain a fair and orderly market, and transactions not part of such a course of dealings are not to be effected by a specialist for his own account.

[2] In Securities Exchange Act Release No. 18137 (October 7, 1981), 46 FR 50639 (October 14, 1981), the Commission's modified the exemptions of the regional stock exchanges, including the PSE, from Rule 11b–1 under the Act, to subject the regional exchanges, as of January 1, 1982, to the provisions of Rule 11b–1 with respect to any securities listed on one or more regional exchanges that are not also listed on either the American or New York Stock Exchange. PSE filed this rule change in response to that release. For the most part, the rule change simply reiterates the language of Rule 11b–1 without providing any detail or specifying the manner in which PSE proposes to implement the general standards in Rule 11b–1. Accordingly, although the Commission finds the proposed rule change to be consistent with the requirements of the Act, the Commission views the rule change as only an initial step to conform PSE's rules with Rule 11b–1, and awaits further amendments by PSE to its rules in connection with its compliance with the requirements of Rule 11b–1. The Commission therefore views the rule change approved herein as an interim measure, pending further amendments by the PSE to its rules relating to specialists' responsibilities. During this interim period, the Commission will deem the PSE's rules to incorporate the specialists' duties enumerated in footnote 1 above, and anticipates that future amendments by the PSE to its rules relating to requirements under Rule 11b–1 will, at a minimum, inlcude the responsibilities set forth in footnote 1.

[Release No. 34–18746; File No. SR–PHILADEP 82–4]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Depository Trust Co., Relating to New Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadelphia Depository Trust Company (PHILADEP) proposes to amend its Rule 22 (Bills Rendered) to refer to a separate published fee schedule. The PHILADEP fees, which has been included in a combined SCCP/PHILADEP rate schedule, will be published separately, although SCCP will continue to be the billing agent for PHILADEP.

In addition, certain PHILADEP fee changes are being instituted as follows:

(1) A separate PHILADEP Account Charge of $50.000 per month is being established.

(2) The fee for legal deposits is being increased from $7.50 to $8.50 per deposit.

(3) A discount on PHILADEP charges of 5% is being established for participants with more than 3,000 but less than 4,000 trades per month, and 10% for participants with 4,000 and over trades per month.

(4) The PHILADEP custody fee is being changed from $0.05 per $1,000 of market value (with a $600.00 maximum per month) to $0.50 per issue per month plus $0.01 per 100 shares (or $4,000 bonds) for holdings of 0–1 million shares; $0.005 per 100 shares (or $4,000 bonds) for holdings of 1–5 million shares; and $0.0025 per 100 shares (or $4,000 bonds) for holdings of over 5 million shares.

(5) A dividend charge of $0.25 is being instituted for each cash or stock dividend or interest payment.

(6) A research fee of $2.00 per copy for all photocopies of input forms, etc., requested by participants is being established, as well as a $15.00 per hour charge for research only on items over 1 year old.

The text of proposed rule change and fee schedule are attached to the filing as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

While SCCP will continue as the billing agent for PHILADEP, it is appropriate that PHILADEP fees be shown as a separate published schedule of charges. The rewording of PHILADEP Rule 22 refers to this published schedule.

The proposed fee changes on the whole are designed to offset increases in operating costs, especially in labor-intensive areas. The valuation of the custody fee is being changed from a market value basis to a per issue and per share basis, since safekeeping costs do not fluctuate with a rise or fall in market value. In addition, the monthly maximum charge is being eliminated in order that the fee for the larger users more accurately reflects the safekeeping costs. A new rebate against PHILADEP charges is being instituted in conjunction with a reduction in the SCCP volume discount on trade recording charges. The change is being made in order that full SCCP/PHILADEP settling participants may receive some discount on PHILADEP charges as a result of their greater trading volume and revenues generated in supporting the SCCP/PHILADEP clearing and depository system.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Securities Exchange Act of 1934 (the Act) in providing for the equitable allocation of reasonable dues, fees, and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be avialable for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1982.

Dated: May 17, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-14198 Filed 5-24-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–18747; File No. SR–SCCP 82–4]

Self-Regulatory Organizations; Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to New Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes to amend its Rule 23 (SCCP and PHILADEP Rate Schedule) to remove the Rate Schedule from the rule itself and refer to a separate published rate schedule. Further, the Philadelphia Depository Trust Company fees are being published as a separate schedule, although SCCP

will continue to be the billing agent for PHILADEP.

Two fee changes are also being made at this time:

(1) The volume discount on the $0.80 round lot trade recording fee is being reduced from $0.10 per round lot for 1,000–3,000 round lots per month and $0.20 per round lot for over 3,000 round lots per month to $0.05 and $0.10, respectively.

(2) A research fee of $2.00 per copy for all photocopies of input forms, etc., requested by participants will be assessed, as well as a fee of $15.00 per hour only for research on items over 1 year old.

The text of the proposed rule change and fee schedule are attached to the filing as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP feels that it is appropriate that the fee schedule be published separately and referred to by, but not actually a part of, its rule relating to charges. This is the customary practice among clearing corporations.

The proposed reduction in the trading volume discount is being instituted in conjunction with a credit against PHILADEP charges in proportion to a participant's trading volume. This shift is being made in order that full SCCP/PHILADEP settling participants may receive some discount in PHILADEP charges as a result of their greater trading volume and revenues generated in supporting the SCCP/PHILADEP clearing and depository system.

The research fees are being instituted for the purpose of recovering SCCP's cost in providing copies to participants and in the time consumed in researching aged items at the request of participants.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Securities Exchange Act of 1934 (the Act) in providing for the equitable allocation of reasonable dues, fees, and other charges among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any impact on competition, negative or positive, resulting from the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1982.

Dated: May 17, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-14194 Filed 5-24-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective June 1, 1982, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR Section 107.301(c) is 13.695% per annum.

Dated: May 19, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-14224 Filed 5-24-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Privacy Act of 1974; Systems of Records; Annual Publication

AGENCY: Department of the Treasury.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records. The Department of the Treasury last published the full text of the Department's systems of records on page 16469, **Federal Register** Volume 46

dated March 12, 1981. The purpose of this document is to announce the updating of notices published on March 12, 1981 and to list systems deleted, consolidated, amended, or added since that time.

DATES: This document fulfills the annual notice requirement of the Privacy Act of 1974; [5 U.S.C. 552a(e)(4)].

FOR FURTHER INFORMATION CONTACT: Phillis De Piazza, Departmental Disclosure Officer, Department of the Treasury, Room 100, 1331 G, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220; Telephone (202) 376-1577.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published its annual recompilation of system notices at 46 FR 16469, March 12, 1981. Notices concerning systems of records within the Department which were added or revised have been published in the **Federal Register** at 46 FR 6113, January 21, 1981 and 46 FR 57211, November 20, 1981. The Department has deleted 22 systems and consolidated 24 systems.

Deletions

Office of the Secretary (OS)
- OS 075—Legislative Affairs Vote Tracking System (System never implemented)
- OS 082—EEO Complaint Processing System (Maintained by EEOC)
- OS 101—International Criminal Police Organization (INTERPOL) Criminal Investigative Records (Maintained by the Justice Department, U.S. National Central Bureau)
- OS 102—Treasury Enforcement Communication System (TECS) (Same as OS 101)
- OS 141—Attorney Books (Obsolete)
- OS 157—Employee Records Cards (Duplicative)
- OS 400—Merit System Complaints (Obsolete)
- OS 503—Roster of Office of the Secretary Employees (Duplicative)
- OS 504—Summer Employees Listing (Duplicative)
- OS 505—Upward Mobility Program, Counseling Application (Obsolete)

United States Customs Service (CS)
- CS 245—Treasury Enforcement Communications System Card File (Obsolete)
- CS 016—Aircraft Ownership File (Not a Customs system. This is a Federal Aviation Agency system to which Customs has been granted access)
- CS 017—Aircraft Registers (Same as CS 016)

The following systems are covered under EEOC/Govt 1—Equal Employment Opportunity Complaint Records and Appeal Records.
- CS 060—Counseling Reports
- CS 088—Equal Opportunity Complaint Processing Records
- CS 089—Equal Opportunity Discrimination Complaint Case File
- CS 276—Equal Opportunity Informal Discrimination Complaint Files

Bureau of Engraving & Printing (BEP)
- BEP 008—Emergency Contact Records (Obsolete)
- BEP 025—Payroll Statistical Data (Duplicative)
- BEP 036—Union Dues Allotments (Duplicative)

Internal Revenue Service (IRS)
- IRS 32.004—Scholarship Program Cost Record (Obsolete)
- IRS 30.002—Employee Plans/Exempt Organization, Determination Letter Records (Not a Privacy Act System)

Consolidations

Office of the Secretary (OS)
- OS 142—Attorneys Past and Present (Covered under OS 152—General Counsel Personnel File)
- OS 148—Employment Application (Same as above)
- OS 153—Personnel: General Counsel, Deputy General Counsels and Assistant General Counsels (Same as above)

United States Customs (CS)
- CS 055—Congressional & Employment Correspondence (Covered under CS 056—Congressional and Public Correspondents File)
- CS 039—Carrier File (Covered under CS 040—Carrier File)
- CS 047—Claims Files (Region VIII) (Covered under CS 046—Claims Case File)
- CS 048—Claims for Automobile Accidents (Same as above)
- CS 266—Collection File (Same as above)
- CS 070—Customhouse Brokers, Headquarters Records (Covered under CS 069—Customhouse Brokers File, Chief Counsel)
- CS 071—Customhouse Brokers Records (Same as above)
- CS 102—Firearms Qualification Certificate Record (Covered under CS 103—Firearms Qualification Records)
- CS 142—Mail Entry Protest (Covered under CS 144—Mail Protest File)
- CS 143—Mail Protest (Same as above)
- CS 164—Overtime Earnings (Covered under CS 165—Overtime Earnings)
- CS 166—Overtime Earnings Daily Log Book (Same as above)
- CS 167—Overtime Earnings Records Customs Warehouse Officers (Same as above)
- CS 169—Overtime Log (Same as above)
- CS 171—Parking Permit File (NY Region) (Covered under CS 172—Parking Permits File)
- CS 187—Personal Search File (Covered under CS 186—Personal Search—Negative)
- CS 188—Personal Search File Report (Same as above)
- CS 221—Suspect File (Covered under CS 224—Suspect Persons Index)
- CS 240—Travel Advances (Covered under CS 243—Travel Payment System)
- CS 241—Travel Advances (Same as above)
- CS 242—Travel Advances File (Same as above)

Internal Revenue Service (IRS)
- IRS 42.025—Appraisal and Valuation Files (Covered under IRS. 42.001—Examination Administration File)
- IRS 42.018—Married Taxpayers Filing Separately and Mutiple Filer File (Same as above)
- IRS 42.023—Request and Submittal File for Technical Advice Assistance, Determination or Coordination (Same as above)
- IRS 80.004—Reference Index Digest Cards (Covered under IRS 80.003—Correpondence Control and Records)
- IRS 80.005—Reports of Significant Matters (Form M-5945) (Same as above)

Additions

Office of the Secretary (OS)
- OS 006—Building Passes

Revisions

Office of the Secretary (OS)
- OS 190—General Allegations and Investigative Records

Availability of Compilation

Members of the public may review all existing systems of records maintained by the Department of the Treasury by referring to:
- The March 12, 1981 annual publication found at 46 FR 16469;
- The additions and modifications found at the Federal Register citations set forth above; and
- The list of deleted and consolidated systems included in this notice.

Systems of records maintained by the Department of the Treasury are found in the latest compilation, "Privacy Act Issuances—1980 Compilation", at Volume II, page 552. The 1980 compilation is available from Regional Depository Libraries at 50 locations around the country and can be examined at these libraries free of charge. It is also available at the

General Services Administration Federal Information Centers, which are located at 30 central points around the country."Privacy Act Issuances—1981 Compilation" will be available at the same locations as above later this year.

Dated: May 14, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 82-14107 Filed 5-24-82; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under 38 U.S.C. 221 that a meeting of the Advisory Committee on Former Prisoners of War will be held in Room 304 at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, June 8 through 10, 1982. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war and on the needs of such veterans with respect to compensation, health care, and rehabilitation.

The sessions will convene at 9 a.m. all days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Miss Linda Gardner, Administrative Assistant to the Chief Benefits Director, Veterans Administration Central Office (phone 202/389-2455) prior to June 1, 1982.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. H. B. Mars, Deputy Director, Compensation and Pension Service, Department of Veterans Benefits, Room 400, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee. Summary minutes of the meeting and rosters of the Committee members may be obtained from Miss Linda Gardner at the aforementioned address.

Dated: May 19, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-14102 Filed 5-24-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 101
Tuesday, May 25, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 21675, May 19, 1982.

PLACE: Room 200–A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Agenda will be announced when no longer sensitive since disclosure would reveal the information that the meeting was closed to protect; as set forth in 5 U.S.C. 552b(c)(9) (A) and (B) and 7 CFR 1409.6(b)(2)(ii).

SUPPLEMENTARY INFORMATION: The General Counsel certified this meeting may be closed. Five (5) members of the Board, as follows, voted to close this meeting:

1. John R. Block, Secretary of Agriculture, Chairman
2. Richard E. Lyng, Member
3. Seeley G. Lodwick, Member
4. William G. Lesher, Member
5. Everett G. Rank, Member

CONTACT PERSON FOR MORE INFORMATION: George E. Rippel, Acting Secretary, Commodity Credit Corporation, Post Office Box 2415, Room 5714-South Building, U.S. Department of Agriculture, Washington, D.C. 20013; Telephone (202) 447–4785.

[S–783–82 Filed 5–21–82; 1:11 pm]

BILLING CODE 3410–05–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 27, 1982.

LOCATION: Third Floor Hearing Room, 1111—18th Street, N.W., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Election of Vice Chairman*
   The Commission will elect a Vice Chairman to serve from June 1, 1982 to May 31, 1983.
2. *CB Antennas*
   The staff will brief the Commission on issues related to issuance of a final consumer product safety standard for omnidirectional citizens band base station antennas.
3. *Physician Samples: Options*
   The staff will brief the Commission on issues related to the Commisson's policy regarding manufacturer's responsibility for special packaging of prescription drugs distributed to physicians.

For a recorded message on the lastest information concerning Commission agendas, call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue Bethesda, MD 20207; Telephone (301) 492–6800.

[S–700–82 Filed 5–21–82; 3:44 pm]

BILLING CODE 6355–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

The Commission has scheduled an open meeting for May 27, at 10 a.m., in Room 856, 1919 M St. NW, to receive the final report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications.

The Commission will also hold an open meeting to consider whether to issue a *Fourth Supplemental Notice of Inquiry and Proposed Rulemaking* in Docket 78–72 dealing with access charges in the Matter of MTS and WATS Market Structure at 2:00 p.m., in Room 856.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 20, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–784–82 Filed 5–21–82; 1:57 pm]

BILLING CODE 6712–01–M

4

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 2:00 p.m., Thursday, May 27, 1982 at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Complaints & Compliance—1—Democratic National Committee Fairness Doctrine complaint vs. CBS AND NBC.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: May 21, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–785–82 Filed 5–21–82; 1:57 pm]

BILLING CODE 6712–01–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–14]

TIME AND DATE: 9 a.m., Tuesday, June 1, 1982.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first item will be open to the public and the second item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Eastern Airlines Flight 935, Lockheed L–1011–385, N309EA, near Colts Neck, New Jersey, September 22, 1981.
2. *Opinion and Order:* Petition of Parker, Dkt. SM–2828; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382–6525.

May 21, 1982.

[S–787–82 Filed 5–21–82; 3:56 pm]

BILLING CODE 6310–58–M

6

PAROLE COMMISSION

[2P0401]

TIME AND DATE: 9 a.m.–5:30 p.m., Monday, June 21, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

[S–781–82 Filed 5–21–82; 11:08 am]

BILLING CODE 4410–01–M

federal register

Tuesday
May 25, 1982

Part II

Department of Labor

Employment Standards Administration

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis; Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, as Amended

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718 and 725

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis; Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: On January 1, 1982, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981 became effective. This legislation made numerous substantive changes in the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act. Those changes affect both the criteria for establishing eligibility for benefits on claims filed on and after January 1, 1982, under the Black Lung Benefits Act and the procedures for the payment of such benefits. These proposed rules are intended to implement those changes in the law and to make certain technical corrections in the implementing regulations previously promulgated in 1978 and 1980.

DATE: Written comments must be submitted on or before June 24, 1982.

ADDRESS: Send comments to James L. DeMarce, Executive Assistant to the Director, Office of Workers' Compensation Programs, Employment Standards Administration, Department of Labor, 200 Constitution Avenue, NW., Room S–3524, Washington, D.C. 20210; Telephone (202) 523–7503.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, Executive Assistant to the Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3524, Washington, D.C. 20210; Telephone (202) 523–7503.

SUPPLEMENTARY INFORMATION: The Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, Pub. L. No. 97–119, 95 Stat. 1635, became effective on January 1, 1982. This legislation amended various sections of the Black Lung Benefits Act, Title IV of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 901 et seq., and the Internal Revenue Code, 26 U.S.C. 1 et seq. Those changes affect both the criteria for establishing eligibility for benefits on claims filed on and after January 1, 1982, under the Black Lung Benefits Act and the procedures for the payment of such benefits. Major changes include the removal of restrictions previously applicable to the Secretary of Labor's use of certain X-ray evidence and the placing of new limitations on the use of certain affidavits. Three presumptions previously available in support of claims have also been eliminated. (30 U.S.C. 921 (c)(2), (c)(4), and (c)(5)). Following the death of a miner whose claim was filed on or after January 1, 1982, and who was found to be entitled to benefits under the Act, the miner's dependent survivors will now be required to file a claim and to establish that the miner's death was due to pneumoconiosis in order to be found entitled to survivors' benefits under the Act. A new excess earnings offset was also made applicable, as were changes in the rates of interest to be paid to and by the Black Lung Disability Trust Fund and to claimants. The rate of the excise tax on coal was temporarily doubled and the liability for the payment of certain claims was transferred from individual coal mine operators and/or their insurance companies to the Fund. Certain other technical changes were also made by the amendments.

The primary purpose of these proposed rules is to amend the Department of Labor's implementing regulations which were previously published on August 18, 1978, 43 FR 36772, and February 29, 1980, 45 FR 13678, to conform to the Act, as now amended. A second purpose of the proposed rules is to make certain technical corrections in the regulations as previously promulgated. These corrections are intended to correct typographical and clerical errors, correct erroneous cross-references, and to make more uniform the language of certain provisions dealing with the same or similar subject matter. Other changes to the existing regulations which may be appropriate will be considered by the Department separately at a later date.

Sections 202 and 203 of the Black Lung Benefits Amendments of 1981 require the Department of Labor to undertake two studies and report the results, together with appropriate recommendations, to the Congress. Those studies are concerned with the medical diagnosis of pneumoconiosis, the impairment attributable to it, and the benefits available to persons who receive benefits under the Black Lung Benefits Act. It is not the intent of these proposed rules to anticipate the results of those studies or of any recommendations which may result from them. Comments concerning the subject matter of those studies should be addressed to: Willis Nordlund, Division of Evaluation and Research, Office of Program Development and Accountability, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3313, Washington, D.C. 20210; Telephone (202) 523–8493.

In developing these proposed rules, Department of Labor personnel have met with representatives of coal mining and consuming organizations, insurance groups, the United Mine Workers and black lung claimants' organizations. Informal comments and suggestions have been received from these groups which have been carefully considered and have been most helpful in the preparation of these proposed rules.

The Department particularly requests the submission of detailed formal comments on two areas of the draft regulations. The first concerns the definition of "death due to pneumoconiosis". See proposed rule § 718.205. Commenters are requested to focus upon the statements of Chairmen Hatch and Perkins contained in the Congressional Record for December 16, 1981, 127 Cong. Rec. at S15494 and H9792 (daily ed.). A second area where detailed comments are especially requested concerns the definition of the cases subject to the transfer of liability provisions.

See proposed rule § 725.496. Commenters are requested to provide detailed statements, including rationale and a listing of the points and authorities relied upon, in support of the positions taken concerning whether specific groups of cases are subject to the transfer of liability provisions.

Drafting Information

This document was prepared under the direction and control of Robert B. Collyer, Deputy Under Secretary, Employment Standards Administration, U.S. Department of Labor, Room S–2321, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 523–6191.

Classification—Executive Order 12291

The proposed rules only implement the 1981 amendments to the Black Lung Benefits Act and make certain technical corrections to the regulations as previously promulgated. They do not, in themselves, impose any additional requirements. Therefore, this proposal is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a

major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The information collection requirements set forth in these rules as well as revised forms necessary to implement them are being submitted to OMB for its review and approved as required by the Paperwork Reduction Act.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the amendments are only implementing the 1981 amendments to the Black Lung Benefits Act and they do not, in themselves, impose any additional requirements upon small entities. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rules contained in 20 CFR Parts 718 and 725, described in this document, will not have a significant economic impact on a substantial number of small entities. This conclusion is reached because the proposed rules only implement the 1981 amendments to the Black Lung Benefits Act and they do not, in themselves, impose any additional requirements upon small entities. Thus no economic impact is expected with respect to small entities.

Signed at Washington, D.C. this 21st day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

The program affected by this rule and its program number in the Catalog of Federal Domestic Assistance is: Coal Mine Workers' Compensation (Black Lung), 17.307.

List of Subjects in 20 CFR Part 718

Black lung benefits, Lung diseases, Miners, Mines, Workers' compensation, X-rays.

List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Lung diseases, Miners, Mines, Workers' compensation.

For the reasons set out in the preamble, Parts 718 and 725 of Chapter IV of Title 20 of the Code of Federal Regulations are proposed to be amended as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

1. The authority for Part 718 reads as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq. 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

2. Section 718.1 is revised to read as follows:

§ 718.1 Statutory provisions.

(a) Under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, and the Black Lung Benefits Revenue Act of 1981, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally or partially disabled by pneumoconiosis. However, survivors' benefits are payable on claims filed on or after January 1, 1982, only when the miner's death was due to pneumoconiosis, except where the survivors' entitlement is established pursuant to § 718.306 of this part on a claim filed prior to June 30, 1982. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor (see 20 CFR 718.2, 1978). Amendments made to section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under Part C of Title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed on or before the effective date of this part, that is, filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in Part 727 of this title.

3. Section 718.2 is revised to read as follows:

§ 718.2 Applicability of this part.

This part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and Part 725 of this subchapter. If a claim subject to the provisions of section 435 of the Act and Subpart C of Part 727 of this subchapter cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

4. In § 718.106, paragraph (b) is revised to read as follows:

§ 718.106 Autopsy; biopsy.

* * * * *

(b) No report of an autopsy or biopsy submitted in connection with a claim shall be considered unless the report complies with the requirements of this section. Special consideration shall, however, be given to the report of a biopsy or autopsy of a miner who died before March 31, 1980, even where the report is not in substantial compliance with the requirements of this section.

* * * * *

5. In § 718.202, paragraphs (a)(1)(i) and (c) are revised as follows:

§ 718.202 Determining the existence of pneumoconiosis.

(a) * * *

(1) * * *

(i) In all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, a Board-certified or Board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the office if the X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented. However, these limitations shall not apply to any claim filed on or after January 1, 1982.

* * * * *

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony. Nor shall such a determination be made upon a claim involving a deceased miner filed on or after January 1, 1982, solely based upon the affidavit(s) of any person or persons having any financial interest in the result of the adjudication of the claim.

6. In § 718.204, paragraph (c)(5) is revised to read as follows:

§ 718.204 Total disability defined. Criteria for determining total disability.

* * * * *

(c) * * *

(5) In the case of a claim filed by the survivor of a miner, where there is no medical or other relevant evidence, the affidavits of persons knowledgeable of the miner's physical condition shall be sufficient to establish total disability. However, on such a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, where entitlement is sought to be established in accordance with § 718.306, such a determination of the existence of total or partial disability shall not be based solely upon the affidavit(s) of any person or persons having any financial interest in the result of the adjudication of the claim.

* * * * *

7. Section 718.205 is amended by adding a new paragraph (c), revising former paragraph (c) and redesignating it as paragraph (d), and adding paragraph (e) to read as follows:

§ 718.205 Death due to pneumoconiosis.

* * * * *

(c) Neither the provisions of paragraph (b)(2) nor the presumptions referred to in paragraph (b)(4) are applicable to a survivor's claim filed on or after January 1, 1982.

(d) For the purpose of this section, death shall also be considered to be due to pneumoconiosis where the cause of death is significantly related to or aggravated by pneumoconiosis, or where pneumoconiosis was substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis. For example, pneumoconiosis may have been a substantially contributing cause of death in a case where the principal cause of death was pneumonia. However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or a medical condition not related to pneumoconiosis.

(e) Where the initial medical evidence establishes that death was due to pneumoconiosis as defined in this section, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined in this section. However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence.

8. Section 718.303 is amended by adding paragraph (c) to read as follows:

§ 718.303 Death from a respirable disease.

* * * * *

(c) This section is not applicable to any claim filed on or after January 1, 1982.

9. Section 718.305 is amended by adding paragraph (e) to read as follows:

§ 718.305 Presumption of pneumoconiosis.

* * * * *

(e) This section is not applicable to any claim filed on or after January 1, 1982.

10. In § 718.306, paragraph (a) is revised to read as follows:

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner whose claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

* * * * *

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

11. The authority for Part 725 reads as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

12. Section 725.1 is amended by revising paragraphs (a) and (g), redesignating paragraph (h) as paragraph (j) and adding new paragraphs (h) and (i) to read as follows:

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal mines who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or who died due to pneumoconiosis.

* * * * *

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, Part C and section 435 of the Act for all periods of eligibility occurring on or after Janaury 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency,

or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the Fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982: (1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a means of auditing the validity of the claim; (2) the rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was due to pneumoconiosis is no longer applicable; (3) the rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable; (4) in the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons having no financial interest in determining the results of the adjudication of the claim will be considered sufficient to establish entitlement to benefits; (5) following the death of a miner whose claim was filed on or after January 1, 1982, and who was found to be entitled to benefits under the Act, dependent survivors will be required to file a claim and to establish that the miner's death was due to pneumoconiosis in order to be found entitled to survivors' benefits under the Act; (6) benefits payable under this part are subject to an offset on account of excess earnings by the miner; and (7) other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the Trust Fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The Fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the Fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the Fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part or part 727 of this subchapter. No other departure from the incorporated provisions of the LHWCA is intended.

13. Section 725.4 is amended by revising paragraphs (a) and (d) to read as follows:

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to the revised part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980. The criteria contained in subpart C of part 727 of this sub-chapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

* * * * *

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable to this part as provided in such part 727. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits shall be applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

* * * * *

14. Section 725.101 is amended by revising paragraphs (a)(1) and (a)(31) and revising paragraph (a)(10) to read as follows:

§ 725.101 Definitions and use of terms.

(a) * * *

(1) The "Act" means the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 742, 30 U.S.C. 801-960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and the Black Lung Benefits Amendments of 1981.

* * * * *

(10) "Division" or "DCMWC" means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

* * * * *

(31) "Black Lung Disability Trust Fund" or the "Fund" means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

* * * * *

15. In § 725.102, paragraph (a) is revised to read as follows:

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The Deputy Commissioner shall be the official custodian of those records maintained at a district office.

* * * * *

16. Section 725.201 is amended by revising paragraphs (a)(2), (a)(4), and (b) to read as follows:

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) * * *

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner;

(i) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982, or;

* * * * *

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner;

(i) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of minors whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of part 718 which implements this provision of the Act.

* * * * *

17. Section 725.205 is amended by revising paragraph (c) as follows:

§ 725.205 Determination of dependency; spouse.

* * * * *

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

* * * * *

18. Section 725.207 is amended by revising paragraph (c) to read as follows:

§ 725.207 Determination of dependency; divorced spouse.

* * * * *

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233 (c), (e)).

19. Section 725.208 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 725.208 Determination of relationship; child.

* * * * *

(f) * * *

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

20. Section 725.212 is revised to read as follows:

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

21. Section 725.213 is amended by revising paragraph (b)(3) to read as follows:

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

* * * * *

(b) * * *

(3) Where the individual qualifies as the surviving spouse of a miner under § 725.204(d), such individual ceases to qualify as provided in that paragraph.

22. Section 725.214 is amended by revising paragraph (d) to read as follows:

§ 725.214 Determination of relationship; surviving spouse.

* * * * *

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the surviving spouse of the miner and such other person is, or is considered to be, the surviving spouse of such miner under paragraph (a), (b), or (c) of this section at the time such individual files a claim for benefits.

23. Section 725.217 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 725.217 Determination of dependency; surviving divorced spouse.

(a) * * *

(1) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(2) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (e) and (f)); or

(3) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233(c) and (e)).

24. Section 725.218 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 725.218 Conditions of entitlement; child.

(a) * * *

(1) Was receiving benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

* * * * *

25. Section 725.219 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 725.219 Duration of entitlement; child.

* * * * *

(b) * * *

(3) * * *

(ii) Is not a student (as defined in § 725.209(d)) during any part of the month in which the child attains age 18;

* * * * *

26. Section 725.220 is amended by revising paragraph (f)(2) to read as follows:

§ 725.220 Determination of relationship; child.

* * * * *

(f) * * *

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

27. Section 725.222 is amended by revising paragraphs (a)(5)(i) and (a)(5)(ii) to read as follows:

§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) * * *

(5) * * *

(i) Was entitled to benefits under section 415 or Part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of part 718 on a claim filed prior to June 30, 1982.

* * * * *

28. Section 725.225 is amended by revising paragraph (b) to read as follows:

§ 725.225 Determination of dependency; parent, brother, or sister.

* * * * *

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

29. Section 725.367 is amended by redesignating the existing text as paragraph (a) and adding paragraph (b). As amended § 725.367 reads as follows:

§ 725.367 Payment of a claimant's attorney's fee by responsible operator.

(a) If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of the claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court as the case may be, which shall be paid promptly and directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

(b) Section 205(a) of the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the Trust Fund. The claims subject to this transfer of liability are described in § 725.496 of this part. On claims subject to the transfer of liability described above the Trust Fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code, which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the Trust Fund from reimbursing an operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

30. Section 725.420 is amended by revising paragraph (a) and revising paragraph (b) to read as follows:

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments "has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary * * *." For claims filed on or after January 1, 1982, the payment of such interim benefits from the Fund is limited to "benefits accruing after the date of such initial determination * * *."

(b) Except as provided in § 725.415 of this subpart, after the deputy commissioner has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the deputy commissioner shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

* * * * *

31. In § 725.421, paragraph (b)(1) is revised to read as follows:

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

* * * * *

(b) * * *

(1) Copies of the claim form or forms;

* * * * *

32. In § 725.456, paragraph (b)(1) is revised to read as follows:

§ 725.456 Introduction of documentary evidence.

* * * * *

(b)(1) Any other documentary material, including medical reports, which was not submitted to the deputy commissioner, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties at least 20 days before a hearing is held in connection with the claim.

* * * * *

33. In § 725.490, paragraph (a) is revised to read as follows:

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981 amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See § 725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the Fund shall pay the benefits due and seek reimbursement as is appropriate. See also § 725.420 for the Fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

* * * * *

34. Section 725.496 is added to part 725 to read as follows:

§ 725.496 Special claims transferred to the Trust Fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the Trust Fund. These provisions apply to claims which were denied before March 1, 1978, and which have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978;

(2) Claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence;

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving dependent of a miner, unless such claims were merged in accordance with the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a).

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the Trust Fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

35. In § 725.520, the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3) are revised and paragraph (a)(4) is removed to read as follows:

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS–2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

* * * * *

36. In § 725.532, paragraph (a) is revised to read as follows:

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the deputy commissioner, administrative law judge, Board, or court. No suspension, reduction or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart (see also §§ 725.533–725.546).

* * * * *

37. In § 725.533, paragraph (a)(3) is revised to read as follows:

§ 725.533 Modification of benefit amounts; general.

(a) * * *

(3) In the case of benefits payable to a parent, brother, or sister as a result of a claim filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

* * * * *

38. Section 725.536 is revised to read as follows:

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428–404.456 of this title).

39. Section 725.608 is amended by revising paragraphs (a) and (b), redesignating previous paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 725.608 Interest.

(a) If an operator or other employer fails or refuses to pay any or all benefits due under the terms of an initial determination by a deputy commissioner (§ 725.420), a decision and order filed and served by an administrative law judge (§ 725.478) or a decision filed by the Board or a United States court of appeals, including any penalty awarded in addition to benefits in accordance with § 725.607, such operator shall be liable for simple annual interest on all past due benefits computed from the date on which such benefits were due and payable, in addition to such operator's or other employer's liability as is otherwise provided in this part. On claims filed on or after January 1, 1982, in which the payment of retroactive benefits has been withheld pending final adjudication of liability in accordance with section 422(d) of the Act as amended, interest on such withheld retroactive benefit payments shall begin to accumulate 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a deputy commissioner's initial determination of entitlement, an award made by an administrative law judge or a decision issued by the Board or a court, whichever is the first such determination of entitlement made upon the claim. Except as provided in paragraph (b) of this section, interest payments owed under this paragraph shall be made directly to the beneficiary.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the deputy commissioner and the Fund undertakes such payments, such operator or other employer shall be liable to the Fund for simple annual interest on all payments made by the Fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the Fund, in addition to such operator's liability to the Fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the Fund.

(c) The rates of interest applicable to paragraphs (a) and (b) above shall be computed as follows:

(1) For all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest,

(2) For all amounts outstanding for any period during calendar year 1982 the rate shall be 15% simple annual interest; and

(3) For all amounts outstanding during any period after calendar year 1982 the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

(d) The Fund shall not be liable for the payment of interest under any circumstances.

Signed at Washington, D.C. this 21st day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

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Part III

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Monthly Reporting and Retrospective Budgeting

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amdt. No. 184]

Food Stamp Program: Monthly Reporting and Retrospective Budgeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim final rule permits State agencies to compute food stamp benefits for most recipients by using past information about them, rather than anticipated future circumstances. The rule also permits State agencies to require most food stamp recipients to report periodically their financial circumstances to the State agencies. After October 1, 1983, State agencies will be required to use these procedures in calculating household income for most households. The Food Stamp Act of 1977 (7 U.S.C. 2011, *et seq.*), as amended, authorizes the Food Stamp Program to make these changes.

DATES: Interim rule effective May 25, 1982; comments must be received on or before September 22, 1982 to be assured of consideration.

ADDRESS: Please submit comments to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302: (703) 756–3429. Comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.) at the agency's offices: Room 708, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Connor (703) 756–3429 at the mailing address listed above. Copies of the preliminary Regulatory Impact Analysis, which is summarized in this preamble, are also available to the public from Mr. O'Connor.

SUPPLEMENTARY INFORMATION:

Publication

The Department is making this rule effective upon publication because of its close relationship to a rule published by the Department of Health and Human Services (HHS) on February 5, 1982 (47 FR 5648). The HHS rule establishes a Monthly Reporting and Retrospective Budgeting system (MRRB) for the Aid to Families with Dependent Children (AFDC) Program and was to have been implemented on October 1, 1981. Some States are currently designing and preparing to implement a system for both the AFDC and the Food Stamp Program and an early effective date for this rule will expedite that process. The Department previously published a proposed rule and received public comments on many of the issues addressed in this rule.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB). (OMB approval No. 0584–0064).

Regulatory Flexibility Act

The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will mainly affect Food Stamp Program applicants and recipients, and the State and local agencies which administer the Program. Some of these agencies may automate their administrative procedures as a direct result of this rule. However, the rule does not require automation of these procedures and such automation will not significantly affect small business.

Executive Order 12291

Pursuant to section 4(c) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law. The Secretary has further determined that this rule is necessary to implement statutory changes and to improve the efficiency of the Food Stamp Program. The Department considers this rule a major rule. All State agencies are required to implement this rule by fiscal year 1984. In that year, it is estimated that this rule will reduce the Food Stamp Program's cost by about $280 million if State agencies maintain these procedures when administration of the Program passes to them. Because this is a major rule, the Department has prepared a preliminary Regulatory Impact Analysis.

Interim Rule

In the Food Stamp Act Amendments of 1980 (Pub. L. 96–249, 94 Stat. 357, May 26, 1980, referred to herein as the 1980 amendments), Congress permitted State agencies to use retrospective budgeting and periodic reporting in operating the Food Stamp Program. The Department published a proposed rule on December 5, 1980 (45 FR 80790), which would have authorized this optional system. The Department received 68 comment letters on retrospective budgeting and monthly reporting. The commenters included State and local welfare agencies, recipient groups, churches and legal assistance organizations. Before a final regulation could be issued the Congress enacted the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, 95 Stat. 358, August 13, 1981 referred to herein as the Reconciliation Act) which altered some features of the system.

The Reconciliation Act made a few specific and precise changes regarding the retrospective accounting (section 5(f)) and the periodic reporting (section 6(c)) provisions of the Food Stamp Act of 1977, as amended by the 1980 amendments. However, the Reconciliation Act did not alter the fundamental concepts of retrospective accounting and periodic reporting as established by the 1980 Amendments. The comment letters received regarding the December 5, 1980 proposal on retrospective accounting and periodic reporting (but based on the 1980 Amendments) provided useful information in these topics. In addition to the sixty-eight comment letters, a number of which were very detailed, FNS held an open meeting on retrospective accounting and periodic reporting which was attended by representatives of twenty-nine groups. Vermont noted that "the meeting on Jaunuary 13th was very helpful because it was a working session which facilitated the exchange of ideas and experience between States and the Food and Nutrition Service." This interim rulemaking is thus based on the extensive written and oral comments described above and on the statutory changes contained in the Reconciliation Act.

The Department is convinced that the public interest would not be served by delaying implementation of specific changes in the Reconciliation Act until public comment is received regarding topics already thoroughly addressed in public comment. Nonetheless, to maximize opportunity for public input the Department invites comment on these interim rules. The Department hopes to obtain comments based upon the actual experience of States and food stamp recipients with these interim rules. Those comments should prove more useful than another set of comments based on a second proposal. The Department has additionally determined to make this rule effective on publication to allow States to integrate their AFDC operation with their food stamp systems.

Reconciliation Act Changes Regarding the 1980 Amendments

Persons wishing to comment on this interim rule should be aware of the specific requirements imposed by statute since those provisions cannot be altered through the rulemaking process. To avoid confusion the precise changes made by the Reconciliation Act are described. As mentioned earlier, the Food Stamp Act as amended by the Reconciliation Act and as earlier amended by the 1980 Amendments defined prospective accounting and retrospective accounting in very similar fashions. The essential differences center on those types of households for which exceptions or modifications in retropsective accounting and periodic reporting could be made.

The 1980 Amendments required the Department to modify the retrospective accounting rules (imposed by the 1980 Amendments) for three specific classes of households. Those three classes were (1) households experiencing sudden and significant losses of income, (2) households gaining new members and (3) households with no income. Under the 1980 Amendments, the Secretary also had authority to exempt or modify the retrospective approach for "other classes of households" where retrospective procedure would "be impractical to administer or would cause serious hardships * * *." Under the 1981 Reconciliation Act version those three specific classes of households are not mentioned. Instead the Department is required to provide for increases in allotments for newly applying households which would otherwise suffer "serious hardships."

Both the 1980 Amendments and the Reconciliation Act contained essentially the same provisions regarding the computation of income for households receiving benefits under both the Food Stamp Act and Title IV–A of the Social Security Act. However, the Reconciliation Act added an explicit waiver provision that authorizes the Department to waive provisions of the retrospective accounting section of the Reconciliation Act "to the extent necessary" to permit States to calculate food stamp income "on the same basis" as income is calculated under Title IV–A of the Social Security Act.

The Department interprets that explicit statutory waiver as conferring discretion on the Department to make such waivers on a State by State basis after an examination of the appropriate circumstances. While public comment on this waiver authority will be examined, such a statutory provision is effective without rules. Additionally, the Department believes that public comment would be unnecessary to the Department's ability to carry out its provisions.

Another similarity is that under the Food Stamp Act, as amended by both the Reconciliation Act and the 1980 Amendments, income earned on a self-employment or similar basis which provides a household's annual income (even though earned in less than a year) is to be averaged over a 12 month period. For example, under both the 1980 and 1981 versions self-employed farmers would have their farm income averaged over a 12 month period. Under both versions, the same would be true of scholarship, loan or grant monies received by students except that such income would be averaged over the student's school year or semester.

The changes made by the Reconciliation Act to the periodic reporting provisions of the 1980 Amendments are precise. Those changes require that certain classes of households file periodic reports and also exempts certain specified classes of households from the reporting requirements. The Reconciliation Act also mandates that a household shall not receive benefits for periods of time for which they were required to, but did not, submit a periodic report.

Background

Two key issues in the delivery of assistance benefits to poor persons are the determination of their needs and the handling of changes in the household's circumstances. There have been two general approaches for each issue.

In determining need, household circumstances have been considered on a prospective or retrospective basis. Prospective budgeting or accounting (the terms are interchangeable) means looking ahead to the time period, for example May, when benefits will be issued, and trying to determine how much assistance the client will need in May. Under this system, the client's projected financial capacity in May plus the assistance issued in May should respond to the client's projected needs in May. However, because both the household and the State agency are anticipating circumstances, a household's needs and the assistance it receives may not match. When this happens, it is normally cost-inefficient to later determine the difference and to make up an underissuance or attempt to recover a surplus.

Retrospective budgeting means looking back in time to determine what a client's actual financial capacity was in the past (March, for example), and issuing benefits in May which, added to that capacity, should equal the client's needs. Under the retrospective approach, the client's own financial capacity in May, plus the assistance issued for May (but based on March) may equal the client's needs in May. As with prospective accounting the total may exceed the client's needs in May or fall short of them. Over the long run, however, a household's needs should be met more exactly under the retrospective approach than under the prospective budgeting approach.

Whichever approach is used there is the question of how changing circumstances are to be handled. One response is to require the reporting of changes by the household. For example, when income rises or falls the client would report it. This approach is usually used with prospective budgeting since the provider of the assistance could look forward to determine the effect of the reported change on future benefits.

The other approach, which is called periodic reporting, depends upon reports which a client submits on a regular basis. Under periodic reporting, the State agency may require a client to report even if nothing has changed. Each of these approaches has its own advantages and disadvantages.

In the 1980 Amendments as later amended by the Omnibus Budget Reconciliation Act of 1981, Congress adopted a retrospective budgeting and periodic reporting system for most food stamp households. These rules will require such a system for the first time for food stamp recipients.

Implementation

The Reconciliation Act of 1981 requires all State agencies to implement the MRRB system no later than October 1, 1983. Between now and October 1, 1983, State agencies may continue the current prospective system. In the intervening months, State agencies may phase-in this rule. This phased implementation may be done in any reasonable manner based on geographical, project area, or political boundary consideration, or on the basis of types of households—such as AFDC or General Assistance cases. This implementation rule is based on State agency comments requesting added flexibility to enable States to phase-in the MRRB approach more smoothly and efficiently.

The proposal required each State to solicit public comment prior to implementing a MRRB system. These interim final rules have dropped that requirement. In its comment letter Michigan pointed out that, in light of the regulatory comment period and the FNS

hearing on these rules, the requirements in the proposal for States to seek public input prior to implementing MRRB would not be worth the expense involved. Most public interest group comments, such as "Food Emergency Action Development" of Connecticut, supported additional public input at the State level. On the other hand a commenter noted that additional comment on "operational procedures * * * invites endless debate over details on system design which must be treated as an integrated whole rather than dealt with in isolation." The Department agrees and has eliminated the proposed requirement that States seek public input prior to implementation.

In the proposed rule the Department required State agencies to conduct a successful test before implementating MRRB. Some State agencies wanted the test requirement automatically deleted if the State agency were already running a MRRB system in its AFDC program. Interest groups generally supported the idea of a test, stating that operation of an AFDC–MRRB system should not excuse a food stamp trial run. Interest groups also stated that the test should be limited to a small geographical area so that only a few recipients would be hurt if the MRRB system proved to be inadequate.

Under these interim rules FNS approval of the State agency's MRRB system must be obtained prior to implementation. The State agency must present FNS with evidence that it can effectively operate a MRRB system that participating households can understand. This evidence must be derived from one of two sources. Unless FNS permits otherwise, the State agency must conduct a limited test of its system and submit the results to FNS. In the alternative, if a State agency operates a MRRB system in its AFDC Program, FNS may waive the test and evaluate the AFDC–MRRB system in place of the test.

The Department believes that some testing may be necesary in view of the large number of procedures which a State agency will have to implement. However, the circumstances of each State agency's implementation will be different. Some may implement MRRB statewide, others may phase it in only for certain project areas. For these reasons the final rules are not overly specific. In the event that FNS determines that a State agency's AFDC–MRRB is an adequate substitute for a test, FNS will waive the requirement for a separate test as unnecessary.

In selecting options which the Department is offering through this rule, State agencies may implement a single option across the entire State, or may choose different options for separate project areas.

Definitions

Because the MRRB system represents a departure from the prospective budgeting methodology, a new set of definitions specifically tailored to that MRRB system has been developed. Comments regarding the proposed definitions are analysed under the appropriate heading.

Adequate Notice of a Reduction or Termination of Benefits: Of all the proposed definitions, this one received the most comments. In the proposed MRRB system each State had to provide the household with written notice when the State intended to lower or to terminate the household's food stamp allotment based on the household's monthly report. Further, that notice had to advise the household of the basis for the State's action and of the household's appeal rights. The notice also had to arrive no later than the date a household would expect to receive its allotment or ATP card. Two legal assistance groups and three interest groups criticized this provision and stated that notice should always arrive before the expected allotment, rather than in place of it or accompanying it. Legal assistance groups cited *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) for that proposition.

When a household submits a monthly report, these interim rules require the State agency to process the report and then notify the household of the report's effect. As proposed, this notice must be sent to the household so that it will be received by the household by the same time it receives its allotment or in place of the allotment if the State agency has terminated the household. While this notice may not inform the household in advance of any change, it is adequate in that it details the change, its cause, explains the hearing appeal process, and provides an opportunity for the continuation of benefits.

The Department believes that due process does not require advance notice under this MRRB system. (Moreover, as explained later the mechanics of operating a reponsive MRRB system make advance notice difficult if not, at times, impossible to deliver.) These regulations require, where a household challenges its monthly benefit level within 10 days after the State mails benefit notification, that the household receive a second allotment, by the end of five business days, equal to the amount of the reduction in benefits. The Department believes that this approach is in excess of minimum due process requirements since, under the statute, retrospective accounting benefits are provided solely on a *variable basis* as determined by the household's monthly report. Households (contrary to the prospective accounting system where households normally expect the same benefit level each month during the certification period) will be clearly advised in the MRRB system that benefits will vary or be terminated based on their monthly reports. The statute thus creates an entitlement system based on "automatic" mathematical monthly adjustments in benefits determined by *household input.* Moreover, each household will be advised that benefit levels are only guaranteed for one month. In effect, each participant's property interest in a certain level of benefit is recomputed on a monthly basis and is mathematically varied according to household input.

We believe that the holding of *Goldberg* v. *Kelly* is not applicable to this situation. *Goldberg* struck down procedures allowing termination of a household's AFDC assistance based on a caseworker's judgment, without prior notice to the household, without provision for continuation of benefits, and where the recipient could be "condemned to suffer grievous loss." (397 U.S., at 263.) Under these regulations, households have an opportunity to request supplemental payments which will provide them with aid pending the resolution of the dispute. Also, the adjustments to the benefits levels are based on data provided by *the affected household.*

The household will be advised by the reporting form of the criminal consequences for intentional misrepresentation regarding that household data. The household data is then inserted into a mathematical formula for computing the household's entitlement for the next month.

In a sense, each month in a MRRB system is similar to the beginning of a certification period under the current food stamp regulations. Under the current prospective accounting system there would be no "continuation of benefits" for initial applicants, pending resolution of a fair hearing, since there is not continuing prior entitlement to a certain benefit level. Challenges, for example, to an alleged incorrect initial benefit computation would simply be resolved, under the current system, at a subsequent fair hearing without any prior notice of "adverse action" and without any "increase" in benefits pending the fair hearing resolution. (For additional analysis of related due process issues see *Mathews* v. *Eldridge*, 424 U.S. 319 (1975); *Velazco* v. *Minter*,

481 F. 2nd 573 (1973); *Harrell* v. *Harder*, 369 F. Supp. 810 (1974); and 127 *Cong. Rec.* S5911, daily ed., June 9, 1981.)

On this same point it should be mentioned that section 6(c)(2)(A) of the Food Stamp Act requires State agencies to issue an allotment within thirty days of the end of the budget month unless the Department finds that a longer period of time is necessary. This represents a very tight time limit for the millions of households that must be processed monthly. Second, section 6(c)(2)(D) of the Act requires the State agency to give a household extra time to file a complete report if it has failed to do so by the reporting deadline. Third, section 6(c)(4) of the Food Stamp Act prohibits a State agency from issuing an allotment until a household submits its monthly report.

The short time period for taking action on a report, the requirement that the State agency extend the filing period and the prohibition against issuing an allotment without a report combine to make advance notice impractical for both recipients and State agencies alike. State agencies cannot efficiently issue the increased or unchanged allotments on one schedule and the reduced allotments on a later schedule. An alternative might be to delay all issuances to the forty-fifth day after the end of the budget month. However, the House of Representatives Committee on Agriculture generally discouraged such an approach unless clearly necessary (House Report No. 96–788, 96th Congress, 2d Session, page 91). As an additional point the 96th and 97th Congresses viewed the MRRB system as a vehicle for jointly administering the AFDC and Food Stamp Programs to the greatest extent possible. The AFDC Program's regulations allow adequate, but not prior, notice (see 45 CFR 233.37(b), 46 FR 46767; September 21, 1981). The AFDC notice must be received no later than the date the household would receive its AFDC grant.

In summary of this important issue, it should be emphasized that the whole nature of the food stamp program has been changed by the MRRB approach. Instead of the typical food stamp household expecting to receive a fixed amount of monthly benefits for several months (during the certification period) recipients are now only entitled to benefit levels *as mathematically adjusted monthly* (if necessary) based on the *participant's* monthly reporting of *factual data*. The report form that the participant must file warns the household that the information provided may result in the reduction or termination of benefits. Additionally, an opportunity for the continuation of aid pending resolution of the dispute is allowed.

Beginning Month: A new definition is added by these rules for the purpose of handling special hardship cases. "Beginning month" will mean the month a household applies for stamps, and, in some cases (as explained later), will also mean the month after that month. However, a beginning month can never be any month which immediately follows a month in which a household is certified. (The Department uses a similar phrase, "initial month," for purposes of prorating a household's allotment. A particular month may be a beginning month for MRRB purposes and an initial month for proration purposes.)

Budget Month: No significant comments were received regarding the budget month concept which, as mentioned in the proposal, is an integral part of the MRRB program. As in the proposal, the budget month is the month about which a household reports. The household's circumstances from this month determine the allotment for a later month. When a household submits a monthly report to the State agency, it is reporting about the budget month. The State agency then uses this information from the budget month to calculate the household's food stamp allotment for a later month, the issuance month. The budget month may be a calendar month or a fiscal month.

Issuance Month: In the proposed as well as this final definition the issuance month is the month for which a State agency issues an allotment. In retrospective budgeting, this month's allotment is based upon a household's income, deductions, and other circumstances from a previous month, the budget month. (In the AFDC Program, the issuance month is called the payment month.) It should be noted that a State agency may issue an allotment for the issuance month after the end of the month. This will occur when either the State agency or the household is responsible for a delay. Therefore, the issuance month is not the month *in* which a State agency issues an allotment, but the month *for* which it issues an allotment to a household. Vermont suggested that this clarification be made in the final definition to avoid confusion.

Prospective Budgeting: Also called prospective accounting, this is the budgeting procedure which the food stamp program has used in recent years. Prospective budgeting means that an eligibility worker looks forward in time to anticipate what a household's circumstances will be, including its size and composition, its income and deductions, or its other circumstances. Although this interim rule subjects most households to retrospective budgeting, migrant farmworker households and household facing serious hardship will continue to have their circumstances budgeted prospectively. As an example, such a household's allotment for March would depend upon its expected circumstances in March.

An additional difference between this rule and the proposal is that this rule permits State agencies to determine *eligibility* prospectively. That is, eligibility for a household in March could be based upon March income, even though its allotment would depend upon January income. By using a prospective determination of eligibility, a State agency can terminate a household's participation rapidly when the household's economic circumstances improve to such an extent that it no longer needs food stamp assistance.

Retrospective Budgeting: As required by amendments to the Food Stamp Act of 1977, this rule permits State agencies to budget most household circumstances retrospectively. This means that an eligibility worker looks back in time to see what a household's actual circumstances were, and then uses that information to calculate a future allotment. For example, an eligibility worker would use a household's income and deductions from the budget month of March to calculate the household's allotment for the issuance month of April or May.

A difference between this rule and the proposal is that most households will now begin retrospective budgeting in the month of application. When a household applies in March, its allotment will depend upon its January circumstances (in a "two-month system" as described below). Under the proposed rule, retrospective budgeting would not have applied in a household's "beginning month" of participation. Thus, under the proposal a household could have been eligible based upon its circumstances in the month of application (even if not eligible based on a prior month's circumstances) and therefore would not have had to wait one or two months to be certified. In this interim rule, the effects of delayed participation for households determined retrospectively ineligible may be alleviated through the availability of "serious hardship" procedures described later.

Choice of Options: Sections 5(f) and 6(c) of the Food Stamp Act give the Department two important choices in designing a MRRB system. The choice

between retrospective and prospective determinations of eligibility is one. The choice between a one-month system and a two-month system is another. Because the different State agencies have a variety of MRRB systems in their AFDC programs, the Department is passing these choices on to the State agencies. In this way the State agencies can make their food stamp and AFDC programs consistent.

The choice of less consistent options could increase the administrative costs of both programs. Therefore, to keep administrative costs down, each State agency must choose the more consistent option. For example, if a State agency determines AFDC eligibility prospectively, it must determine food stamp eligibility prospectivley. If a State agency operates a one-month AFDC system it must operate a one-month food stamp system.

It is possible that State agencies will have good reasons for wanting to choose options which are less consistent with AFDC. The State agency could choose the less consistent option only if it requested a waiver from FNS. FNS will approve the waiver if it is needed to improve the Food Stamp Program's administration or to make the program more cost effective.

Included and Excluded Households

Under authority of the 1980 Amendments, the proposal stated that four categories of households would be excluded from the MRRB system in addition to migrant farmworkers. These categories were (1) strikers not certified for food stamps prior to the strike, (2) households containing elderly and disabled members without earned income, (3) households only temporarily eligible for food stamps, and (4) households requiring special assistance (such as retarded persons) in applying for food stamps. The Reconciliation Act, however, deleted the list of groups for which the Department could make MRRB "exceptions" and instead required that migrant farmworkers have their benefits calculated on a prospective basis. No other classes of households were exempted although the Reconciliation Act provided that benefit levels could be adjusted for newly applying households where "serious hardship" would otherwise result.

The Reconciliation Act also exempts households from monthly reporting but not from retrospective budgeting if they have no earned income and if all household members are sixty years of age or over or receive supplemental security income benefits or disability or blindness payments under specified titles of the Social Security Act. These regulations, for administrative convenience, also provide that the State agency may exempt from monthly reporting "households whose *adult* members are all without earned income and are at least sixty years old or receive SSI or disability and blindness payments" under specified titles of the Social Security Act. However, the State agency may not exempt these households if they file monthly reports for the AFDC program.

The December 5, 1980, proposal elicited numerous comments on the types or classes of households which should receive special treatment under the MRRB system. Those comments were carefully reviewed, but reviewed in the context of the precise requirements of the Reconciliation Act.

Many of the State commentors wanted the Department to provide them with the authority to determine the special circumstances which would allow adjustments to the normal MRRB system. Their view was that the individual caseworkers or local agencies were in the best position to determine the need for special adjustments to the normal MRRB method of computing benefits or determining eligibility. These rules provide some State flexibility regarding "serious hardship" cases as discussed later in this preamble.

Retrospective Budgeting

The Food Stamp Act, as amended by the Reconciliation Act, requires that State agencies calculate retrospectively the allotments of all households except for "migrant farmworker households." Consistent with the proposed rule and with the House Report on the Reconciliation Act (H. Rept. 97-106), the Department has excluded only those migrant households which are in the job stream. When such a household returns to its home, it ceases to migrate. At that time it becomes subject to retrospective budgeting and to monthly reporting. When the household again migrates, it becomes a migrant farmworker household and must be excluded from MRRB. The House Report focuses on the "mobility" of migrant farmworkers and the complications arising from attempting to verify income and circumstances from a past period "when they are not residing in the project area." (H. Rep. 97-106, at p. 33). The comments from the Nebraska Association of Farmworkers and the Delmarva Rural Ministries also support the distinction between migrants in the migrant stream and other migrants.

Consistent with the Act, the Department has included three other classes of households (households that derive their annual income in a period of time shorter than one year by contract or by self-employment and households receiving nonexcluded education assistance) in all facets of MRRB except with regard to the specific kinds of income which the Act mentions. Therefore, these households will have their contract income, self-employment income, or nonexcluded scholarship income proprated over the appropriate number of months. Their other circumstances, like deductions and *other* income, will be budgeted retrospectively. States urged the Department to make the new MRRB rule as universal as possible to avoid confusion and to make computer processing easier.

Monthly Reporting

As mentioned earlier, the Reconciliation Act requires State agencies which use a MRRB system to require certain categories of households to submit periodic reports of their circumstances. The Act specifies the categories which must be reported periodically. They are: all households with earned income, all households with potential earners (including individuals receiving unemployment compensation benefits), all households required to register for work in the Food Stamp Program, and all households which are required to report periodically for the AFDC Program. The 1980 amendments allowed the Department the authority to decide which categories of households had to file periodic reports. While a number of comments were received regarding the types of households that should be required to file periodic reports, these final rules carefully follow the precise requirements of the Reconciliation Act. (Nonetheless, useful information was derived even from comments superceded by the Reconciliation Act in terms of the problems which certain types of households might encounter in filing monthly reports.)

The legislative history suggests that the households excluded by the Reconciliation Act, migrants and households whose only adult members are elderly or disabled (as defined earlier) without earned income, would be burdened unfairly by submitting monthly reports. For the purposes of this rule, the Department is requiring all households to submit monthly reports except for those households which Congress has specifically excluded. Thus, each non-exempt household will submit a report for one month which will determine that household's allotment one or two months later. In the event a State agency wishes to

exclude additional households from monthly reporting it may request a waiver from FNS. However, under any State agency's system, those households which Congress has included in monthly reporting cannot be excluded.

Special Assistance

Section (6)(c)(2)(B) of the Food Stamp Act requires that State agencies make available special assistance to households which need it. Specifically, the Act requires assistance for any household whose adult members are all mentally or physically handicapped or are so lacking in reading and writing skills that they cannot complete the required reporting form. These rules indicate the State agencies are to determine who fits into those categories. The special assistance to be provided by the States could include a special telephone number for households to call to report information, home visits by eligibility workers, or special arrangements for reporting in person at the food stamp office.

Information on System Operation

Because MRRB can be a complicated system for households which are not familiar with it, State agencies must explain the system to the households. The Department is requiring the State agencies to give each household a copy of the monthly report form, along with instructions on how to complete and submit it. Included in these instructions must be an explanation of the State agency's verification requirements. Finally, the State agency must provide the household with a local or toll free telephone number. By calling this number clients will be able to ask questions about MRRB and obtain help in completing and filing their reports. Many public assistance commenters requested that such telephone assistance be made available.

One Month System

Under these interim rules a State agency may design either of two MRRB systems. In the "one-month system," the issuance month (May, for example) immediately follows the budget month (April). The one-month system thus had one "beginning month" of participation (May) during which increased allotments could be issued for households in "serious need". The term "beginning month" was developed to identify those months in which new applications in "serious need" could receive benefits based on *prospective* factors. This approach is discussed later in this preamble.

Two-Month System

The other system is the "two-month system." In this system, the budget month (March, for example) determines the allotment for an issuance month which is two months later (May). The intervening month allows the State agency more time to process the report. In this two-month system there are two "beginning months" of participation.

California strongly supported the concept that States have the option of adopting either a one-month or a two-month retrospective system to achieve greater consistency with AFDC income rules. California stated that the proposal "seem(ed) to imply * * * that a one or two-month system could be used." These final rules make clear that States have this option. The Department gives State agencies this choice based upon section 6(c)(2) of the Food Stamp Act. This provision of the Act permits the Department to determine if a two-month system is necessary. It is evident to the Department that such a system may be necessary. Therefore, State agencies have this option.

In order to keep a household from leaving the program (and MRRB) and reentering under prospective eligibility whenever it is in the household's advantage, the Department is restricting the definition of the "beginning month." A month cannot be a "beginning month" (for which supplemented allotments are allowed for households in "serious need") if the household was certified in the immediately preceding month. This is true even if the State agency has suspended or terminated the household's participation or if the household had been certified in the preceding month but did not participate.

Determining Eligibility and Allotments in the "Beginning Months"

In developing the MRRB system the Department is using retrospective budgeting to determine benefit levels for the month of application for most households. This means that a household which applies in March would, except for cases in which special procedures are applied, have its March allotment based upon its January circumstances.

However, the Reconciliation Act provides for the supplementation of allotment levels for "newly applying" households where "serious hardship" would otherwise result. The Department intends to supplement those allotments by requiring State agencies to use prospective budgeting in the "beginning months" for those households.

Under these rules, households eligible to receive enhanced allotment levels include those households which are entitled to expedited service under 7 CFR 273.2(1) (households with zero net income or households which are destitute), households gaining a new member, and other types of households as determined by the State agency. For these households the State agency would determine eligibility based upon prospective budgeting for the month of application. For example, if a household applies in March and has no net income in March, or is destitute in March, it is entitled to prospective budgeting in March (and in April if there are two beginning months). Note that these special rules only apply to "beginning months."

Included in the serious hardship situation, as mentioned above, are households gaining a new member in the month of application. For example, if a household gained a new member and applied in April it would not be fair to base the allotments for April and May on the smaller household size in February and March. This household size rule is also justified to achieve greater consistency with the AFDC Program which has a similar procedure.

It should be mentioned that comments were received on how the Department should handle cases where "serious hardship" would result from following a purely retrospective budgeting approach. As the comments made clear, households in this hardship category could often include those which had income in the prior month but which lost that source of income for the issuance month. An appropriate response to such cases is one which focuses on "current" income, that is income in the issuance month. These interim rules adopt such an approach.

For these serious hardship cases, the Department considered whether to develop procedures for a second issuance of benefits or to establish procedures for issuing a modified single allotment. Based on the administrative complications (computer processing and added workload) regarding the second allotment approach, the Department decided that it would be efficient to have States deliver a single, but modified, allotment level.

Based on the comments, these interim rules allow State agencies to expand the definition of "serious hardship" to include other categories of households as well as the two specified categories. In this way States will be given the opportunity to tailor these provisions to the needs of their caseloads. However, the Department is specifying certain categories of households which cannot receive this special prospective

budgeting. These are households which have caused their own decreases in income. The Department does not believe that these persons should be rewarded by receiving enhanced benefit levels for themselves and their families. For example, a household containing a striker would not be defined as experiencing "serious hardship" under these rules, nor would a household containing a member who had quit work or who had voluntarily reduced the number of hours worked.

Finally, these rules provide that States may not include as "serious hardship" cases those households whose assistance grants, Supplemental Security Income (SSI) payments or similar payments had been reduced to recover overpayments. Many of these households may have received overpayments because of household fraud. It is conceded that some of these households may have unknowingly received higher SSI or other payments than they should have received. Nonetheless, the Department does not feel that households which had previously received a series of overpayments would normally present a serious hardship situation. Also, it was impossible to develop an efficient rule capable of distinguishing between "innocent" households suffering recoupment of prior overpayments and households which had contributed to the situation requiring recoupments.

The First Month of Retrospective Budgeting for "Serious Hardship" Cases

These rules provide that the State agency shall not take into account the household's "noncontinuing income" (income received in a prior month from a source which will not provide additional income to the household in later months) in determining eligibility or in calculating the allotment for the *first month* in which retrospective budgeting is used. A household may lose all its income in March, apply for stamps in March, and receive benefits on a *prospective* basis for March and April. Its May benefits would then be *retrospectively* based on its circumstances in March. If noncontinuing income were included in the calculations, the special treatment accorded the household in the initial month would be negated when the noncontinuing income is subsequently counted. Therefore, noncontinuing income from the month of application will be disregarded in calculating food stamp allotments for these households.

In the AFDC program, the State agency disregards noncontinuing income for the first two months of retrospective budgeting (see 45 CFR 233.35(b); 47 FR 5679, February 5, 1982.) The food stamp provision is based upon the Department's definition of serious hardship in the beginning months. If a State agency were to use the AFDC procedure in the beginning months (prospective budgeting for all households), the State agency would also use the AFDC procedure for noncontinuing income.

Determining Eligibility

Based on the comments, this final rule gives a State agency two options for determining eligibility. In the first option, the State agency would prospectively determine *eligibility*, even though *issuance* would be determined retrospectively. For example, if March were the budget month and May were the issuance month, and a household reported a substantial increase in stable income in mid April, the State agency would terminate the household as ineligible as of the last day of April. This would be true no matter what the household's circumstances were in March, the budget month.

In the second option, the State agency would retrospectively determine eligibility. Eligibility in the issuance month (May in the example) would depend upon all eligibility factors as they existed in the budget month (March).

There are advantages and disadvantages to each option. In retrospective eligibility there is a lag time between an event which makes a household ineligible and the State agency's termination of the household. In prospective eligibility the lag time is minimized. However, a State agency which determines eligibility prospectively will have to obtain more information from the household and perform two calculations—one for eligibility based on the issuance month and one for the allotment based on the budget month.

Another issue raised by the comments is whether a State agency could compute benefits using information that is in part anticipated and in part retrospectively determined. The proposed rule required State agencies to compute benefits using information from the budget month, with the exception of certain averaged amounts. Many State agencies suggested that they be allowed to mix prospective and retrospective accounting. For example, if January were the budget month and March were the issuance month, they might compute March's allotment using January's earnings but also using medical expenses which the household anticipates for March.

The Department does not believe that the Act permits mixed accounting techniques. Moreover, mixing prospective and retrospective accounting requires anticipation of frequently unverifiable future events. MRRB is viewed as an alternative to prospective accounting and the problems which prospective accounting entail. The rule does not allow for mixing accounting methods.

Certification Period

The Reconciliation Act gave the Department the authority to waive the current limit of twelve months for certification periods where that would "improve the administration of the program." The Department is not prepared to issue waivers at this time in context of monthly reporting. The Department is cooperating with the Department of Health and Human Services and the Illinois Department of Public Aid in conducting a demonstration project. Among other aspects of MRRB, this project will test the effect of an indefinite certification period on error rates. When the Departments complete their work on the demonstration project, and based on the comments received regarding this rule, the issue of the 12 month limit on certification periods will be reexamined.

The Food Stamp Act (section 3(c)) requires State agencies to certify monthly reporting households for at least six months. The Congress set this minimum because monthly reporting is a satisfactory substitute for brief certification periods (House Report No. 96–786, 96th Cong., 2d Sess., p. 94). Short certification periods monitor households with fluctuating circumstances or households whose circumstances are expected to change. A monthly reporting system serves the same function. Therefore, this rule sets a minimum certification period of six months for these monthly reporting households.

Waivers

The Food and Nutrition Service published final regulations on January 21, 1981, concerning waivers of Food Stamp Program regulations (see 7 CFR 272.3(c)). The regulations state that FNS shall not approve any request for a waiver when the waiver would be inconsistent with the provisions of the Act.

When Congress enacted the Omnibus Budget Reconciliation Act of 1981, it recognized that an efficient Food Stamp MRRB system depended on consistency with an efficient AFDC–MRRB system. Congress also recognized that some of the statutory provisions concerning

retrospective budgeting for the Food Stamp Program might conflict with AFDC procedures. Therefore, Congress included in section 5(f) of the Food Stamp Act a precise expansion of the Department's waiver authority. The Department may, if necessary for a State agency to calculate income in the Food Stamp Program as it does in its AFDC Program, waive any of the section 5(f) provisions. Specifically, section 5(f) describes prospective and retrospective budgeting, the prorating of income, special provisions in the beginning months of participation, and the exclusion of migrant farmworker households from MRRB. In particular the Department will waive the requirement for retrospective budgeting when a household applies. The Act specifically grants this waiver authority to the Secretary who is to exercise discretion based "upon the request of a State agency."

The Department is amending 7 CFR 272.3(c) to include the waiver provided in section 107(a) of the Reconciliation Act as discussed above. The Department is not requiring public comment on each waiver. This approach will expedite the waiver process and will allow States to utilize public comment as they determine appropriate.

Calculation of Allotments

Household Composition

The household composition for which the State agency calculates an allotment must match the household which is determined eligible. If a five person household is eligible, the State agency must calculate an allotment for that same five person household. Therefore, under retrospective eligibility and as proposed in the December 5 rulemaking, household composition is determined as of the last day of the budget month.

Under prospective eligibility, the State agency will use the household's composition as it will be during the issuance month. The Department is not specifying a particular date during the issuance month. The State agency can look at the entire month and take into account whatever changes are likely to occur in the issuance month.

In a two month system, if the household gains a member in the month between the budget and issuance months, and the household reports this change, the State agency will determine eligibility using the household composition as of the issuance month. This will occur even if the State agency would usually determine eligibility retrospectively. This procedure is similar to one in the AFDC Program (see 45 CFR 233.35(a)). Its purpose is to allow the new household member to receive food stamps. The Food Stamp Program's other regulations on household composition (7 CFR 273.1) would make it impossible for many such individuals to separately receive food stamps, even for one month. So that these individuals are not excluded from the Program, the Department has adopted this procedure.

Income and Deductions

The State agency shall use the household's income and deductions from the budget month, or as they are prorated for the budget month, in this MRRB system. Under this rule, as under the prior rules and as specified in the Act, there are three forms of income which the State agency must prorate on a monthly basis. This is done to avoid alternating a household between periods of ineligibility and eligibility.

The first kind of income that must be prorated is self-employment income which is received less frequently than monthly. The State agency must average such income over a twelve month period and consider each monthly amount as one-twelfth of the annual income. The second kind of income that must be prorated is income received by contract in less than one year. The State agency will also "annualize" this income by taking the yearly total and dividing by 12. The third kind of income to be prorated is income for education, such as nonexcluded scholarships, deferred educational loans, and other education grants. The State agency will prorate this income over the period it is intended to cover, such as a semester. As mentioned earlier, these rules are required by statute.

Monthly Reporting

If a household is subject to monthly reporting, the State agency shall require the household to report its circumstances each month. The Department has discretion over the frequency of reporting. We have chosen monthly reporting for a number of reasons. First, as mentioned in the comments, monthly reporting matches the Program's system of monthly issuance. Second, monthly reporting is simple for households; they need not remember a complicated schedule. Third, the House Report on the Food Stamp Act Amendments of 1980 (House Report No. 96–788, 96th Congress, 2d Session, pages 87 to 94), repeatedly refers to monthly reporting as the basic reporting system for retrospective budgeting. Fourth, the AFDC Program uses a monthly reporting system (see, 45 CFR 233.36, 46 FR 46767, September 21, 1981).

These rules require that the State agency provide assistance to households in the completion of monthly report forms. As proposed, this must be done in two ways. First, the State agency must have available an individual or office to answer promptly questions about monthly reporting. Second, the State agency must provide a local or toll free telephone number for households to call for assistance. Many commenters felt that these requirements would be essential to the smooth operation of monthly reporting system.

As proposed, these final rules require that the monthly report form clearly indicate the information that the household is expected to report. The report must further comply with the Program's bilingual requirements (see 7 CFR 272.4(c)), specify the reporting deadline, the consequences for not filing on time, and the possibility that the household's issuance could be delayed if the household does not timely submit the report. The form must also remind the household of the Program's verification standards.

The report form must contain a statement for a responsible household member to sign showing that the household understands that the State agency may change its allotment because of the changes which the household reports. (Iowa, Texas and Nevada emphasized that it was inefficient to permit only the head of the household to sign the form.) The monthly report form must also indicate the telephone number which a household may call for assistance and the unit or agency which will provide that assistance.

The report form must contain a statement which describes the Food Stamp Act's civil and criminal penalties for fraud. This statement is required by section 6(c)(3) of the Act. The description must be prominent and appear in bold face lettering. A similar provision has appeared on the change reporting form since 1979, as required by 7 CFR 273.12(b)(1)(ii).

Finally, in accordance with the Privacy Act of 1974 (Public Law 93–579, Section 3(e)), the State agency must explain the requirement that the household must provide its members' Social Security number's (SSN's). The explanation must first contain the authority to obtain the information. That authority is Public Law 96–58 (7 U.S.C. 2025 F), the 1979 Amendments to the Food Stamp Act of 1977. The providing of SSN's is mandatory, in accordance with 7 CFR 273.6. Second, the explanation must contain the purpose of requiring SSN's. That purpose is to

ensure the accuracy of benefits for eligible households. Third, the explanation must contain the routine uses of SSN's. The routine use is computer matching to prevent duplicate participation, to check the identity of household members and to make mass changes. If a household member refuses to provide a SSN, that member is ineligible to participate in the Food Stamp Program.

Reported Information

The proposed rule required the following information on monthly reports: name, address, household composition, nonexcluded income (unless averaged), shelter costs (unless fixed costs are retained by the state agency), medical costs exceeding $35, dependent care costs, liquid resources exceeding $1,500, and the acquisition of an automobile. There were many comments on this provision.

Some State agencies wanted households to report everything in a particular category (all income, all medical expenses). In this way households would not have to decide what should be included and what should be excluded. One State agency wanted to delete the requirement that stable elements of all types be reported. Legal assistance groups and interest groups wanted a form designed to let households check "No Change" rather than completing the entire form. This would ease completion of the form, particularly for households with problems of illiteracy. One interest group wanted to require State agencies to retain fixed shelter costs. (By comparison, AFDC does not specify what information State agencies must seek.)

Additional options in this regard include the *monthly* reporting of some factors and the *periodic* reporting of other factors, the reporting of just certain factors (income and composition) or the reporting of events (changes reported within ten days). The House Report on the 1980 amendments (*H. Report.* 96–788, p 89) mentioned that the Secretary should specify the form's contents, but suggested that the form not request irrelevant information.

The least complicated requirement for most households is the reporting of all information about income and deductions. State agencies would then use that data as the specific regulations require. That reduces the likelihood that households will improperly determine what is relevant information. The problem with this approach is that households would then be gathering documentation to verify some irrelevant information. These same arguments, in favor and against, apply to the non-reporting of stable information, averaged information and fixed shelter costs. Reporting only changed information would mean easier completion of the form and easier processing. There is, however, significant value in having a recipient deliberately complete an entry for each factor of eligibility. It avoids a recipient's automatically checking "No Change" no matter what has taken place. A household in a hurry, or one having problems completing part of the report, might otherwise be tempted to report "No Change."

The interim rule on monthly reports requires that State agencies ask for certain information regarding the budget month. The State agency will require each household to report budget month income, deductions, household composition, and other household circumstances which affect food stamp allotments. The State agency will also ask about changes which can affect a household's eligibility. This information may be about the budget month or about later months. The State agency would use future information to determine eligiblity prospectively.

To increase program efficiency, these interim rules provide that the State agency can combine the food stamp monthly report form with the AFDC form. However, the State agency must indicate that non-AFDC food stamp households do not have to answer purely AFDC questions. Of course, the State agency could not reduce or terminate any household's food stamp eligibility because it did not answer a question related only to AFDC.

Household Composition Changes

A question arose regarding what information should be reported when a household's composition changes. The proposed rule would have required a household to report its composition as of the last day of the budget month. The interim rule also contains this provision. If a household member leaves the household before the end of the budget month, that member's income and deductions are not reportable and will not affect the allotment for the appropriate issuance month. Conversely, if a new member joins a household during the budget month, even at the end, that member's income and deductions are reportable and will be reflected in the appropriate issuance month's allotment. This policy increases the likelihood that the "household" about which the report is filed is also the "household" to which benefits are issued. A consistent, uniform policy is needed to insure that no individual who moves from household to household has income counted twice or not at all.

Submitting the Monthly Report Form

The State agency may set its own deadline for the household to submit its monthly report. However, this date must provide the household with a reasonable period to report after the end of the budget month. State agencies are encouraged to set this deadline as late as possible to avoid the need for sending reminder notices to households and to avoid disruption of the issuance schedule.

The proposed rule would have required State agencies to provide households with postage-paid envelopes for returning monthly reports. This requirement reflected the concerns of the House Committee on Agriculture (H.R. 96–788, 96th Cong., 2nd Sess., page 91). The Committee felt that these envelopes would insure the prompt returning of the reorts. At that time (1980) the AFDC Program had a similar requirement.

Some State agencies commented that this requirement would be a burden to them. Other commenters supported the requirement. The Department of Health and Human Services removed this requirement from AFDC on September 21, 1981 (see 46 FR 46759).

In the interest of consistency with AFDC, this Department is not requiring State agencies to provide postage-paid envelopes. However, should the State agency choose to provide them, the Department will reimburse the State agency for its administrative costs according to the usual formulae.

State Agency Action on Reports

The MRRB regulations on State agency action on household reports deal with four topics: (1) the normal processing or a report when a household submits it by the initial filing date, (2) the verification which the household must provide, (3) the nature of the notice which the State agency must send each household, and (4) the State agency's procedures for processing a report which the household does not submit on time.

Processing

When the State agency receives a monthly report, it must review it for accuracy and completeness. Under these rules, a report is incomplete if the household's head, authorized representative, or responsible member has not signed it. Second, it is incomplete if the household has not verified income. Third, a form is incomplete if the household has omitted

information which is necessary either to determine eligibility or to calculate an allotment.

The State agency must also determine if any verification is missing. In addition, the State agency must determine if it needs any additional information because the household has reported a change. For example, a household might report that it has acquired a vehicle. The State agency could not simply add that vehicle's fair market or equity value to the values of the household's other vehicles and recompute the household's total resources. The State agency would need to know if the household still had other vehicles and, if so, their current values. Therefore, the State agency would have to ask the household for the additional information.

If the household's report is complete, the State agency would determine the household's eligibility and calculate its allotment. The calculation procedures for determining eligibility and allotments are the same for MRRB households as they are for the current prospective system. Of course, as discussed earlier, the State agency could determine eligibility prospectively or retrospectively.

In retrospective budgeting, the State agency would use most circumstances from the budget month in calculating the allotment. The State agency would prorate (as described earlier) three types of income: most self-employment income, contract income, and some forms of educational grants. The State agency would have the option of converting any stable income which the household receives weekly or every two weeks to regular monthly amounts. The Department is also giving State agencies an option concerning the public assistance (AFDC) grant. In calculating the allotments, the State agency may use either the grant that the household received in the budget month or the grant the household will receive in the issuance month. The household will be able to deduct its expenses from the budget month. If shelter expenses are billed less often than monthly, the household may choose to have them averaged over the certification period. After calculating the allotment, the State agency will issue it to each eligible household and explain to the household how the agency derived the allotment.

The proposed rule of December 5, 1980, included provisions regarding proration of income which are the same as those contained in these rules. Subsections (5)(f)(1) (A) and (B) of the Act require proration for certain categories of households. Allowing proration in these cases will moderate the extreme fluctuations in circumstances which these households experience. However, State agencies may request a waiver of this requirement as allowed in section 5(f) of the Act. It should be noted that AFDC regulations now permit proration (See 45 CFR 233.20(a)(3)(iii)).

Verification

In the proposed rule, the Department set forth verification requirements that closely resembled what is now required when a household reports a change. The proposed requirements would have mandated the verification of earned income, actual utility costs, medical expenses, unearned income (which has changed by more than $25) and residency. A State would require a household to verify household composition and citizenship only if the information appeared "questionable." In addition, a State agency would exercise discretion in verifying liquid resources and loans, continuing shelter changes, entitlement to a utility standard, household size, and factors identified by an error-prone profile.

The comments on the proposal were varied. Some recommended the verification of only questionable information, some commentors wanted all information verified, and some thought that only significant changes in some factors, such as medical or utility expenses, should be verified.

For use in MRRB, the Department has adopted requirements designed to ensure that critical benefit determination factors are verified each month. The requirements also extend greater flexibility to State agencies in electing to require verification of other factors. This flexibility will allow State agencies to establish procedures consistent with their own systems and with the requirements of the Aid to Families with Dependent Children program.

The verification requirements included in this rule for information submitted in monthly reports are as follow: (1) Each month households are required to verify gross nonexempt income, utility expenses which exceed the standard utility allowance, medical expenses, and any reported information which the State agency determines is questionable. (2) When information has changed since the previous report (that is, during the budget month), the household must verify alien status, social security numbers, residency, and citizenship. (3) The State agency is allowed to require the household to verify any other information on the monthly report.

These interim rules differ from the proposed rules in three significant ways. The first difference is that in the interim rules all income must be verified. This change simplifies the rules by treating all nonexempt income alike: it all must be verified each month. The second difference is that the interim rules require that all questionable information must be verified, not just questionable household composition and citizenship. This change serves the Department's objective of ensuring program integrity. Finally, this interim rule extends administrative flexibility by allowing the State agency to require verification of any of the other information included in the monthly report. No list of factors which may be verified or conditions which must be extant is included.

These changes are consistent with proposed changes included in proposed rules published in the **Federal Register** of April 2, 1982, at 46 FR 14160. Those proposed rules deal with requirements for verification at the time of certification.

These interim rules also provide that if claimed medical expenses are not verified the household would not be given a deduction for those medical expenses. This approach protects the integrity of the food stamp processing system and yet allows households to participate based on the information which they can verify. This same approach is used regarding utility expenses except that where a household does not verify utility costs the State agency shall allow the utility standard if the household is entitled to that standard.

Also, any reported increases in income or other changes which would decrease benefits, but are not verified, will still be processed. Households which report changes that decrease benefits (for example, significant increases in income) should not be allowed to receive a higher amount of benefits solely because they failed to verify those changes. If that were the case, there would simply be no incentive to verify those changes.

Incomplete Filing

Under the proposed rule, a State agency would have been required to give a household an extension period if it filed an incomplete report or did not file by the specified filing date. Some State agencies did not like the extension period. They indicated that it would be preferable to terminate the participation of any household which failed to file properly. In the event a household later complied reinstatement would be possible.

In this interim rule the Department has retained certain requirements regarding incomplete filing. Section 6(c)(2) of the Act requires the Department to offer households an extended filing period. If a State agency were to terminate nonfiling households routinely, it is probable that many households would leave the program. An extension period allows the household to remain in the program and should result in a reduced number of new applicants. An extension period is also useful for a household which, because of an emergency or other circumstances beyond its control, is late either in reporting or in providing required verification.

As in the proposal, these interim rules provide that if a household does not file its complete monthly report by its initial filing date, the State agency must notify the household within five days. The notice must tell the household exactly what is missing, when the household must return the completed form, and must offer the household assistance in submitting a complete report. The household must be allowed at least ten days from the mailing date of the reminder notice to submit a complete report.

In the event a household does not provide required verification the State agency has a number of different courses of action to take depending upon what information is unverified. If earned income is unverified, the report is incomplete. The State agency must give the household ten additional days beyond the initial filing date to verify the change. If the income remains unverified, the State agency must terminate the household. If medical expenses are unverified, the household will not receive the medical deduction.

If the household does not verify anything else which is required, the State agency will act on the unverified information if it would decrease the allotment, and will not act on the unverified information if it would increase the household's allotment. The Department proposed this procedure in its December 5, 1980 rulemaking on this subject. By using this procedure, a State agency can process reports in more cases and timely issue more allotments.

Issuance of Benefits

Timely Issuance

The proposed rule would have required State agencies to issue benefits within thirty days of the end of the budget month. Under that proposal, FNS could have approved a longer time limit for State agencies which could not meet the one month deadline because of a longer time period for AFDC issuance, or because of the Food Stamp Program's "staggering requirements" for mail issuance. Those mail issuance rules provide that a State agency may mail benefits on different dates up until the fifteenth day of the next month.

The commenters took various positions on this provision. Some wanted all issuances to be made within thirty days of the end of the budget month. They hoped to minimize the time lag between a household's need situation and the delivery of assistance specifically calculated to meet that need. Other commenters wanted FNS to suspend the rules on staggering so that State agencies could issue benefits at any time within the first month following the budget month. Some wanted the choice between the thirty and forty-five day systems to be left completely to the State agencies.

The interim rules take into account the development of the one and two month MRRB systems, as described earlier in this preamble. The interim rules for a one-month system require that, if the household files a complete report by its scheduled filing date, the State agency must provide the household with an opportunity to participate within thirty days of the end of the budget month. In a two-month system, the State agency must provide the household with an opportunity to participate within forty-five days after the budget month. An opportunity to participate means that the household must be able to obtain its coupons by the thirtieth or forty-fifth day. It is not sufficient to mail ATP cards on the last day, or even to mail them so that they arrive on the last day of timely issuance. The household must be able to transact its ATP card by the thirtieth or forty-fifth day. In a HIR system (where benefits are issued over the counter at the local food stamp office), the household must be able to obtain its coupons at an issuance office by the thirtieth or forty-fifth day.

Delayed Issuance

As previously discussed, the State agency must extend a household's filing date by at least ten days if the household does not file its report by the original filing date. If the household files its report by this extended filing date, the State agency has ten days beyond the normal issuance date to provide an opportunity to participate. For example, a household's normal filing date may be March 5 and its corresponding issuance date may be March 20. If the household's extended filing date is March 15, and the household reports on that date, the State agency must provide an opportunity to participate by March 30. This extension of ten days serves a number of functions. It acts as an incentive to the household to report promptly. It also provides the State agency with the extra time needed to process the report. Finally, the ten-day limit guarantees that households which do comply with the reporting requirements, even if they are late, will not have to wait too long for their benefits.

The single exception to this ten day extended issuance date concerns households in a two month system. If a household files by its extended filing date, it must receive an opportunity to participate within forty-five days of the end of the budget month. For example, the household's filing date may be April 5 and its corresponding issuance date may be May 10. If the household submits a complete report on April 15, the State agency must provide an opportunity to participate by May 15. Although the State agency may extend the household's opportunity to participate, it may not do so beyond the forty-fifth day after the end of the budget month. The forty-fifth day serves as a reasonable issuance deadline for households which file before the extended filing date.

Some households may miss the extended filing date but file before the end of the issuance month. Under these rules, the State agency may choose to reinstate the household by providing it with an opportunity to participate. This reinstatement and opportunity to participate could take place within ten days of the date the complete report is filed, or by the extended issuance date. Once the issuance month has passed, however, a household which has not yet reported has lost its benefits for the issuance month.

Other Reporting Requirements

Households Which File Monthly

Section 6(c)(3) of the Food Stamp Act states that households which file monthly reports cannot be required to file any other reports of changes. Therefore, the Department is forbidding any additional reporting requirements. State agencies may not impose the current reporting requirements of § 273.12(a) in addition to the monthly reporting requirements.

Households Which Do Not File Monthly

As stated earlier, certain households which are subject to retrospective budgeting must be excluded from monthly reporting. These are households whose adult members are all elderly or disabled persons without earned

income. These households must comply with the reporting requirements of § 273.12 (a) and (b). The regulations require these households to report the following changes within ten days: 1) changes in the source of income or in the amount of income of more than $25, except for public assistance grants and some general assistance grants; 2) changes in household composition; 3) changes of residence and the resulting change in shelter cost; 4) acquisition of a nonexcluded licensed vehicle; 5) changes in liquid resources such that they reach $1,500; and 6) changes in deductible medical expenses of more than $25.

Termination

If a household's circumstances change sufficiently the State agency may need to suspend or to terminate the household. Suspension is discussed later in this preamble. The State agency will also terminate a household's participation if it does not file a complete monthly report by the extended filing date.

When the State agency terminates a household's participation, the household need not receive advance notice of termination. However, the notice must explain that the household can reinstate its participation by filing its complete monthly report during the issuance month. However, after the issuance month has passed, the household will be unable to reinstate its participation and will have to file a new application. The only exception to this is a termination which results from information from a source other than the monthly reporting system. In that case advance notice must be provided.

Suspension

The proposed rule provided that households which became ineligible because of a temporary increase in net income were to be put in a suspended status and were to continue to file reports. The State agency would then reinstate benefits when the household's report indicated eligibility.

Three State agencies opposed suspensions. For example, Nevada stated that "our computer system cannot handle suspending an issuance" and that substantial computer re-programming would be necessary. Another State wanted households to be eligible for program reinstatement for up to thirty days based upon the previous application and a written request for a supplement. Two state agencies favored suspensions, one of which noted that suspensions could be easily programmed and the files quickly reactivated. One legal assistance group and two public interest groups favored the provision since it kept the recipient in the system.

The Department has chosen to make suspension optional for State agencies. The alternatives are suspension (and reinstatement by filing a monthly report) and termination (followed by another application). The State agencies can best judge which system is most appropriate for their caseload and computer system. Thus, to avoid the difficulties of repeated application, the Department is permitting State agencies to suspend issuance to a household which becomes ineligible for one month because of a periodic increase in income from a recurring income source. This could be a situation where the household receives a fifth paycheck in a month where the household usually receives four per month.

If a State agency chooses to suspend a household's issuance it can do so for one month. The household would file an additional monthly report. The agency would continue to process the monthly report and terminate the household if it were ineligible for two months in a row.

If a State agency suspends a household's issuance, it will nonetheless consider the household to be certified. This means that the month following the suspension will not be considered a beginning month, nor would the allotment issued in that month be prorated. In this way, a household whose issuance was suspended can resume its participation without the need for any special adjustments or calculations.

If a State agency does not choose the option of suspending these households, it would instead terminate them. In providing the suspension/termination options, this interim rule responds to State agency comments on the December 5, 1980, proposal. For example, California mentioned that the "AFDC regulations do not require suspension." California recommended an optional system that "would provide State agencies with the flexibility needed to parallel the AFDC system as much as possible." As mentioned earlier, this rule will allow State agencies to choose the method which best meets their needs and capabilities.

Fair Hearings and Continued Benefits

Fair Hearings

A household which receives food stamps is entitled to a fair hearing if it is aggrieved by an action of the State agency which affects the household's participation. The regulations governing fair hearings in the Food Stamp Program appear at 7 CFR 273.15.

Continuation of Benefits

A household which requests a fair hearing also usually receives a continuation of benefits pending the outcome of the hearing, unless the household asks that its benefits not be held constant. Under subsection 11(e)(4) of the Act, households requesting a hearing are entitled to the continuation of benefits until the hearing is completed and an adverse decision rendered or until the household's certification period ends, whichever occurs earlier. As noted above, under retrospective budgeting the Department is not requiring advance notice of reductions and terminations of benefits. Households requesting fair hearings, however, will be promptly (within five working days of receipt by the State agency of the request for the hearing) restored to the level they would have been entitled to receive if the State agency had not taken the contested action. That benefit level would continue until an adverse decision is actually rendered or the household's certification period expires.

Under the prospective budgeting system, the amount of the food stamp allotment is held constant when a fair hearing is timely requested. However, the State agency continues to process reported changes under the current system. In retrospective budgeting the Department is requiring a somewhat different system. Because the household will be submitting reports on a monthly basis, the State agency will hold constant whatever factor of eligibility or benefit level is the subject of the fair hearing. This may or may not result in a continuation of the entire amount of the allotment. For example, if a household appeals a reduction in benefits that was caused by a change in dependent care costs, the State agency would hold the cost steady, but process other changes in income and deductions, and thus adjust the actual allotment as well. In each case, the reason given by the household for requesting the hearing will determine whether it is the entire allotment or a particular factor of the allotment which is held constant.

Recertification

These interim rules require that State agencies certify MRRB households at least once every twelve months, but not more frequently than every six months. As discussed earlier under the heading "Certification period," the Department does not possess enough information to allow State agencies to certify households indefinitely. The Department is attempting to integrate the monthly reporting procedure with a

recertification procedure. Therefore, as the Department proposed in its December 5, 1980, rulemaking, there are two options for recertifying monthly reporting households as discussed below.

Option One: Recertification Form

Under this option, the State agency would send the household a notice of expiration and a recertification form instead of a monthly report form. The household would then submit the recertification form at the beginning of the last month of its certification period. This recertification form would seek information about the budget month which corresponds to the first month of the new certification period. Unlike the monthly report form, the recertification form would contain questions on all factors of eligibility and allotment levels. If a State agency uses prospective eligibility, the recertification form would also contain questions about the household's future circumstances.

Option Two: Monthly Report and Addendum

This option differs from the first option only in that the State agency would send the household a notice of expiration and a regular monthly report, and an addendum, as well. The addendum would obtain all information about the factors of eligibility and the allotment level which the monthly report does not request. For example, the monthly report might not contain questions concerning real property (land and buildings), alien status, and income from educational grants. The addendum would address these matters and others not included in the monthly report. The household would then submit the report form, to the State agency at the beginning of the last month of its certification period and the addendum no later than the interview.

Interview

Under either option, the State agency must interview the household. This would be done in accordance with the current food stamp regulations, as contain in 7 CFR 273.14(c)(2). That is, the State agency would interview the household at some time during the last month of its expiring certification period and process the recertification so as not to interrupt the household's issuance schedule. Two commenters on the December 5, 1980, proposed rule suggested a third option which would allow recertification based on the interview alone without an additional form. The Department has decided not to allow this option so that a complete written record of the recipient's statement of circumstances is provided.

Households Which Do Not Report Monthly

Some households which have their allotments calculated retrospectively do not file monthly reports. These are households whose adult members are all elderly or disabled individuals without earned income. The State agency will recertify these households in accordance with 7 CFR 273.14, the Food Stamp Program's regulation on recertification. However, in the recertification process the State agency will determine eligibility and calculate the household's allotment in accordance with this rule, 7 CFR 273.21.

Regulatory Flexibility Analysis

Need for Action

The Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, requires the Department of Agriculture to implement a system of retrospective budgeting and periodic reporting (MRRB) in the Food Stamp Program. This action amends Title 7 of the Code of Federal Regulations for that purpose.

The Department is publishing this rule in interim form for three reasons, as mentioned earlier. The first reason is to fulfill promptly Congress's intent that similar accounting procedures be used in both the Aid to Families with Dependent Children (AFDC) Program and the Food Stamp Program. The second reason is that the Department has already received comments on a similar rule which was proposed on December 5, 1980. The third reason, which relates to making this rule *interim*, is that the Department would like to receive additional comments based upon the operation of MRRB in its current form.

Justification of Selected Alternatives

In writing this regulation, the Department identified the following two major problems for which there are alternative solutions. The Department has summarized the problems and alternatives below, and justified the alternative which was selected.

Prospective Eligibility

Subsection 5(f) of the Food Stamp Act of 1977, as amended, permits the Department to provide for a prospective determination eligibility for households whose allotments are calculated retrospectively. This means that a State agency could determine eligibility based upon future circumstances but would calculate an allotment based upon past circumstances.

The alternatives were to require prospective eligibility for all households, to forbid it for all households, to designate it for certain households, or to allow State agencies to decide. Prospective eligibility generally reduces the Program's benefit cost by reducing the number of months in which a household is eligible for food stamps. On the other hand, prospective eligibility increases administrative cost for on-going cases by increasing the amount of information which a State agency must obtain and the amount of work it must do to issue an allotment.

No single alternative seemed clearly preferable to the State agencies or to the recipients. The Department has chosen to give State agencies the choice because of the uncertain costs and savings of each choice and the desirability of granting State additional flexibility.

Frequency of Reporting

Subsection 6(c) of the Food Stamp Act of 1977, as amended, requires the Department to set standards for the filing of periodic reports by households. The alternatives are to require monthly reports, to require reports filed at different time intervals, or to allow each State agency to set its own frequency of reporting.

Monthly reporting exactly matches the monthly issuance of food stamps, and therefore is simple to use when calculating allotments. The AFDC program also uses monthly reporting. Finally, the Congress clearly presupposed the use of monthly reporting, as shown by both the House and Senate committee reports on this subject. Reporting at a longer interval would reduce the administrative cost of the Program, but could increase the Program's benefit costs. This would occur because of the lag time between the occurrence of a change in its effect on a household's allotment.

The Department has chosen monthly reporting based on the current food stamp and AFDC monthly issuance systems and based on the direction given by Congress in the House and Senate reports.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Amendment

For the reason set out in the preamble, Parts 271, 272, and 273 of Subchapter C, Chapter II of Title 7, Code of Federal Regulations, are amended as set forth below.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

1. In § 271.2, insert the following in alphabetical order:

"Adequate notice" in a Monthly Reporting and Retrospective Budgeting system means a written notice that includes a statement of the action the agency has taken or intends to take; the reason for the intended action; the household's right to request a fair hearing; the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the households. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level. If the 10-day period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

"Beginning month(s)" in a Monthly Reporting and Retrospective Budgeting system means either the month in which the household applies for food stamps (where the State agency has adopted a one month accounting system) or the month the household applies for food stamps and the month thereafter (where the State agency has adopted a two month accounting system). Regardless of the above, a beginning month cannot be any month which immediately follows a month in which a household is certified.

"Budget month" in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month from which the State agency uses income and other circumstances of the household to calculate the household's food stamp allotment for the corresponding issuance month.

"Issuance month" in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month for which the State agency shall issue a food stamp allotment. Issuance is based upon income and circumstances in the corresponding budget month. In prospective budgeting, the budget month and issuance month are the same. In retrospective budgeting, the issuance month follows the budget month and the issuance month shall begin within 32 days after the end of the budget month.

"Prospective budgeting" in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on an estimate of income and circumstances which will exist in that month.

"Retrospective budgeting" in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month, the "budget month."

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(36) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(36) Amendment 184. State agencies may implement this Monthly Reporting and Retrospective Budgeting rule at any time, but shall implement this rule State-wide no later than October 1, 1983. Prior to October 1, 1983, this rule may be implemented State-wide, in only part of a State (such as in certain project areas), or for only certain reasonable classifications of households (such as for only households receiving Aid to Families with Dependent Children) so long as the implementation is State-wide by October 1, 1983. State agencies shall send monthly reports to households so that they can report their October, 1983 circumstances in accordance with § 273.21(h). Before implementing this rule, each State agency shall obtain the approval of the Food and Nutrition Service (FNS), in accordance with the following requirements.

(i) To obtain the approval of FNS, the State agency shall submit the results of a pretest of its Monthly Reporting and Retrospective Budgeting (MRRB) system. The pretest shall demonstrate:

(A) The participating household's ability to understand and complete the monthly reporting form; and

(B) The State agency's ability to process the monthly report's information and to issue accurate and timely allotments.

(ii) If a State agency has operated a MRRB system in its Aid to Families with Dependent Children (AFDC) Program, and the State agency can demonstrate that its system meets the requirements of this paragraph, FNS may waive the pretest.

(iii) Unless otherwise specified in § 273.21 of this chapter, all other food stamp regulations shall apply to State agencies and to applying or participating households.

* * * * *

3. In § 272.3, paragraph (c) is revised by adding a new paragraph (7) to read as follows:

§ 272.3 Operating guidelines and forms.

* * * * *

(c) *Waivers.* * * *

(7) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 5(f) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In Part 273, new § 273.21 is added to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *Choice of options.* In choosing between a one-month and a two-month MRRB system, and in choosing between prospective and retrospective determination of eligibility the State agency shall choose the option which is more consistent with its AFDC–MRRB system. The State agency shall choose a less consistent option only if FNS grants a waiver.

(b) *Included and excluded households.* This section provides for an MRRB system for determining household eligibility and benefits. This system is an alternative to the prospective budgeting system provided in the preceding sections of this part. An MRRB system shall include all households except as follows:

(1) *Retrospective budgeting.* The State agency shall exclude migrant farmworker households from

retrospective budgeting as long as the households are in the migrant job stream.

(2) *Monthly reporting.* (i) The State agency shall exclude from monthly reporting the following households:

(A) Migrant farmworker households while they are excluded from retrospective budgeting; and

(B) Households whose members are all without earned income and are at least sixty years old or receive Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, and XVI of the Social Security Act.

(ii) The State agency may exclude from monthly reporting households whose adult members are all without earned income and are at least sixty years old or receive Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, and XVI of the Social Security Act, unless these households file AFDC monthly reports.

(3) *Special assistance.* The State agency shall provide special assistance in completing and filing monthly reports to households whose adult members are all either mentally or physically handicapped or lacking in reading and writing skills such that they cannot complete and file the required reports.

(4) *Certification period.* The household shall be certified for a continuous period of up to twelve months, but for no less than six months.

(c) *Information on MRRB.* At the certification interview, the State agency shall provide the household with the following:

(1) An oral explanation of the purpose of MRRB;

(2) A copy of the monthly report and an explanation of how to complete and file it;

(3) An explanation of what the household shall verify when it submits a monthly report and how it will verify it;

(4) The telephone number (toll free for households outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(5) Written explanations of this information.

(d) *One and two-month systems.* Each State agency shall adopt either a one-month or a two-month MRRB system. A one month system shall have one beginning month in each certification period and a two-month system shall have two beginning months. However, the State agency shall not consider as a beginning month any month which immediately follows a month in which a household is certified.

(1) *One-month system.* In the one-month system, the issuance month immediately follows its corresponding budget month. There is one beginning month of participation in this system, the month of application. The month preceding application shall be the first budget month.

(2) *Two-month system.* In the two-month system, the issuance month is the second month following its corresponding budget month. There are two beginning months of participation in this system, the month of application and the following month.

(e) *Determining eligibility and allotments in the beginning months for households suffering serious hardship.* The State agency shall use the special procedures (prospective budgeting) of this paragraph only for households who would experience serious hardship if the State agency used the budgeting procedures described in paragraphs (f) and (g) of this section. (For all other households, the State agency shall use the procedures in paragraphs (f) and (g) of this section).

(1) *Households which suffer serious hardship.* A household suffers serious hardship from retrospective budgeting if:

(i) It has gained or expects to gain a new household member in the month of application; or

(ii) It is entitled to expedited service, determined prospectively, for the month of application, in accordance with § 273.2(i); or

(iii) It would otherwise experience a serious hardship as defined by the State agency; provided that

(iv) The household has not deliberately caused a reduction in its own income through participation in a strike, quitting a job, or reducing its wages; and

(v) The household's income has not been reduced to recover prior overpayments in assistance programs such as, but not limited to, Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC) and General Assistance (GA).

(2) *Determining eligibility for serious hardship cases.* The State agency shall determine eligibility prospectively in the beginning month(s).

(3) *Calculating allotments for serious hardship cases.* The State agency shall calculate allotments prospectively in the beginning month(s).

(4) *The first month of retrospective budgeting for serious hardship cases.* The State agency shall begin to base issuances to the household on retrospective budgeting during the first month for which the State's system can use the month of application as a budget month. In a one-month system, the first month for which the issuance is based on retrospective budgeting shall be the second month of participation. In a two-month system, the first month for which the issuance is based on retrospective budgeting shall be the third month of participation. For the purposes of this paragraph any income that the household received in the month of application from a source which no longer provides income to the household (income from a terminated source) shall be disregarded.

(f) *Determining eligibility for households not certified under the serious hardship provisions of § 273.21(e).* The State agency shall determine eligibility in accordance with either of the following options:

(1) *Prospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility prospectively for each of the issuance months.

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month.

(g) *Calculating allotments for households not suffering serious hardship.*—(1) *Household composition.* (i) If eligibility is determined retrospectively the State agency shall determine the household's composition as of the last day of the budget month.

(ii) If eligibility is determined prospectively (such as for serious hardship cases or households processed under paragraph (f)(1) of this section), the State agency shall determine the household's composition as of the issuance month.

(iii) In a two-month system, if the household gains a member in the month between the budget month and the issuance month, the State agency shall determine eligibility using the household's composition during the issuance month.

(2) *Income and deductions.* For the household members as determined in accordance with paragraph (g)(1) of this section, the State agency shall calculate the allotment using the household members' income and deductions from the budget month, except as follows:

(i) The State agency shall annualize self-employment income which is received other than monthly, in accordance with § 273.11(a).

(ii) The State agency shall prorate income received by contract in less than one year over the period the income is

intended to cover, in accordance with § 273.10(c)(3)(ii).

(iii) The State agency shall prorate nonexcluded scholarships, deferred educational loans, and other educational grants over the period they are intended to cover, in accordance with § 273.10(c)(3)(iii).

(h) *The monthly report form.*—(1) *General.* (i) The State agency shall require each household in the MRRB system to report on household circumstances on a monthly basis as a condition of continuing eligibility.

(ii) The State agency shall provide an individual or agency unit which a household may contact to receive prompt answers about the completion of the form. A telephone number (toll free for households outside the local calling area) which a household may use to obtain further information shall also be available.

(2) *Monthly report form.* The State agency's monthly report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(c) of this chapter;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which the household must submit with the form, in accordance with § 273.21(j)(2);

(v) Identify the individual or agency unit available to assist in completing the form;

(vi) Include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

(vii) Advise the household of its rights to:

(A) Request a fair hearing based on any decrease or termination of benefits;

(B) File a complete, signed monthly report to be reinstated.

(viii) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud.

(ix) Include a statement of the State agency's authority to require Social Security numbers (SSN's) (including the statutory citation, the title of the statute, and the fact that providing SSN's is mandatory), the purpose of requiring SSN's, the routine uses for SSN's, and the effect of not providing SSN's.

(3) *Reported information.* The State agency shall require, and the household shall report on a monthly basis, the following information about the household:

(i) Budget month income, deductions, household composition, and other circumstances relevant to the amount of the food stamp allotment.

(ii) Any changes in income, deductions, resources or other relevant circumstances affecting eligibility which the household expects to occur in the current month or in future months, or which occurred in the budget month.

(iii) If the State agency uses a combined monthly report for food stamps and AFDC, the State agency shall clearly indicate on the form that non-AFDC food stamp households need not provide AFDC-only information.

(i) *Submitting the monthly report form.* The State agency shall give the household a reasonable period of time after the close of the budget month to submit the monthly reports.

(j) *State agency action on reports.*—(1) *Processing.* Upon receiving a monthly report, the State agency shall:

(i) Review the report to ensure accuracy and completeness.

(ii) Consider the report incomplete only if:

(A) It is not signed by the head of the household, an authorized representative or a responsible member of the household;

(B) It is not accompanied by verification of reported earned income; or

(C) It omits information necessary either to determine the household's eligibility or to compute the household's level of food stamp benefits.

(iii) Determine those items which will require additional verification, in accordance with paragraph (j)(2) of this section.

(iv) Contact the household directly, as needed, to obtain further information on specific items. These items include:

(A) The effect of a reported change in resources on a household's total resources; and

(B) The effect of a reported change in household composition on the applicability of the work registration requirement.

(v) Notify the household, in accordance with paragraph (j)(4)(ii) of this section, of the need to submit a report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(vi) Determine the household's eligibility by considering all factors, including income in accordance with paragraphs (e) or (f) of this section.

(vii) Determine the household's level of benefits in accordance with § 273.10(e) based on the household composition determined in accordance with paragraph (g)(1) of this section. For those household members the following (except as provided in paragraph (g)(2) of this section) income and deductions shall be considered:

(A) Earned and unearned income received in the corresponding budget month or that has been averaged for the corresponding budget month. The State agency has the option of converting to a regular monthly amount the income that a household receives weekly or biweekly;

(B) The public assistance (PA) grant issued in the corresponding budget month or the PA grant to be issued in the issuance month;

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average;

(viii) Issue benefits in accordance with Part 274 of this chapter and on the time schedule set forth in paragraph (k) of this section.

(ix) Provide specific information on how the State agency calculated the benefit level, either with the issuance or in a separate notification.

(2) *Verification.* The State agency shall require the household to verify information on the monthly report as follows:

(i) Each month the household shall verify gross nonexempt income, utility expenses which exceed the standard, medical expenses, and all questionable information.

(ii) The household shall verify alien status, social security numbers, residency, and citizenship, if these items have changed since the last report.

(iii) The State agency may require the household to verify any other information on the monthly report.

(3) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2.

(ii) The State ageny shall notify a household of any change from its prior benefit level and the basis for its determination. If the State agency reduces or terminates benefits, it shall send the notice so the household receives it no later than either the date the resulting benefits are to be received or in place of the benefits.

(4) *Incomplete filing.* (i) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall give the household at least ten more days, from the date the State agency mails the notice to file a complete monthly report.

(ii) The State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete.

(B) What the household must do to complete the form;

(C) What the extended filing date is;

(D) That the State agency will assist the household in completing the report.

(iii) If a household does not provide required verification, the State agency shall take the following actions:

(A) If the household does not verify earned income, the State agency shall regard the household's report as incomplete, take action in accordance with paragraphs (i)(4)(i) and (i)(4)(ii) of this section and, if appropriate, terminate the household in accordance with paragraph (m) of this section;

(B) If the household does not verify utility expenses in excess of the standard, the State agency shall allow the utility standard if the household is entitled to it;

(C) If the household does not verify medical expenses, the State agency shall not allow a deduction;

(D) If the household does not verify other items for which verification is required, the State agency shall.

(*1*) Act on the reported change if it would decrease benefits.

(*2*) Not act on the reported change if it would increase benefits.

(k) *Issuance of benefits*—(1) *Timely issuance.* (i) The State agency shall provide an opportunity to participate, within either 30 days or 45 days of the end of the budget month, to an eligible household which has filed a complete monthly report by the scheduled filing date.

(ii) The State agency shall provide each household with an issuance cycle so that the household receives its benefits at about the same time each month and has an opportunity to participate before the end of each issuance month.

(2) *Delayed issuance.* (i) If an eligible household files a complete monthly report during its extension period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date, but in no event later than the 45th day following the end of the budget month.

(ii) If an eligible household which has been terminated for failure to file a complete report files a complete report after its extended filing date, but before the end of the issuance month, the State agency may choose to reinstate the household, by providing it with an opportunity to participate.

(iii) If an eligible household files a complete report after the issuance month, the State agency shall not provide the household with an opportunity to participate for that month.

(l) *Other reporting requirements.*—(1) *Households which file monthly reports.* The State agency shall not require these households to submit any reports of changes other than the monthly reports which paragraph (h) of this section requires.

(2) *Households excluded from monthly reporting.* Households which are excluded from monthly reporting by paragraph (b)(2) of this section shall report changes in accordance with § 273.12.

(m) *Termination.* (1) The State agency shall terminate a household's food stamp participation if the household:

(i) Is ineligible for food stamps, unless suspended in accordance with paragraph (n) of this section;

(ii) Fails to file a complete report by the extended filing date; or

(iii) Fails to comply with a nonfinancial eligibility requirements, such as registering for employment.

(2) The State agency shall issue a notice to the household which:

(i) Complies with the requirements of § 271.2;

(ii) Informs the household of the reason for its termination;

(iii) Explains how the household may be reinstated;

(iv) Informs the household of its rights to request a fair hearing and to receive continued benefits.

(3) The State agency shall issue the notice to the household so that it receives the notice no later than the household's normal or extended issuance date.

(n) *Suspension.* The State agency may suspend a household's issuance in accordance with this paragraph. If the State agency does not choose this option, it shall instead terminate households in accordance with paragraph (m) of this section.

(1) The State agency may suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income.

(2) The State agency shall continue to supply monthly reports to the household for one month.

(3) If the suspended household again becomes eligible, the State agency shall issue benefits on the household's normal issuance date.

(4) If the suspended household does not become eligible after one month, the State agency shall terminate the household.

(o) *Fair hearings.*—(1) *Entitlement.* All households participating in a MRRB system shall be entitled to fair hearings in accordance with § 273.15.

(2) *Continuation of benefits.* (i) Any household which requests a fair hearing and does not waive continuation of benefits shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first.

(ii) The State agency shall provide continued benefits no later than five working days from the day it receives the household's request.

(iii) A household whose benefits have been continued shall file monthly reports until the end of the certification period.

(iv) During the fair hearing period the State agency shall adjust allotments to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(p) *Recertification.*—(1) *Timeliness.* The State agency shall recertify an eligible household which timely reapplies and provide it with an opportunity to participate in the household's normal issuance cycle.

(2) *Retrospective recertification.* (i) The State agency shall recertify the household using the information from the corresponding budget month to determine the household's benefit level for the first month of the new certification period.

(ii) If the State agency is operating a two-month MRRB system, the State agency may delay reflecting information from the recertification interview in the household's eligibility and benefit level until the second month of the new certification period.

(iii) The State agency shall recertify households according to one of the two options set forth in paragraphs (p)(3) and (4) of this section.

(3) *Option One: Recertification form.* (i) The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(ii) The State agency shall mail the form to the household, along with a notice of expiration, in place of the monthly report form.

(iii) The household shall submit the form to the State agency in accordance with paragraph (h) of this section.

(4) *Option Two: Monthly report and addendum.* (i) The State agency shall provide each household with a notice of expiration and monthly report form and an addendum to obtain all additional information necessary for recertification.

(ii) The State agency shall mail the monthly report form to the household along with the notice of expiration.

(iii) The household shall submit the monthly report to the State agency in accordance with paragraph (i)(1) of this section.

(iv) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(v) The household shall submit the addendum to the State agency no later than the time of the interview.

(5) *Interview.* (i) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency shall schedule the interview at any time during the last month of the old certification period.

(iii) If the State agency schedules the interview for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report to the interview.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalogue of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: May 18, 1982.

Mary Jarratt,

Assistant Secretary.

[FR Doc. 82-14088 Filed 5-24-82; 8:45 am]

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Part IV

Department of Agriculture

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Revised Application Procedures and Verification of Eligibility; Proposed Rules

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Revised Application Procedures

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the following changes required by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35): (1) Require additional information on applications for free and reduced price benefits in the National School Lunch, Commodity School, School Breakfast and Special Milk Programs; (2) require schools to include in their letters to parents only the *reduced price* Income Eligibility Guidelines for meals (schools participating only in the Special Milk Program must include the *free* Guidelines and public releases would still contain both Guidelines); (3) require schools to distribute applications to parents of children in attendance at school; and (4) remove both the hardship and standard deductions and the restriction that School Food Authorities may verify the information on the application solely "for cause". This rule will reduce program abuse and will result in a savings of Federal funds.

DATE: To be assured of consideration comments must be postmarked on or before June 24, 1982. Since this proposal is one of two proposals regarding the provisions of section 803 of Pub. L. 97–35, commentors should clearly indicate that comments reference the proposed rule "Revised Application Procedures".

ADDRESSES: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, at the address listed above.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified *not major*. We do not anticipate that this proposal will have an impact on the economy of more than $100 million. The proposed rule is intended to ensure that free and reduced price benefits are directed to only those children from families whose income fall within the Income Eligibility guidelines set forth by the Department by household size. No major increase in cost or prices for program participants; individual industries; Federal, State or local government agencies; or geographic regions is anticipated. This proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on State agencies and local School Food Authorities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget for approval. They are not effective until OMB approval has been obtained.

Samuel J. Cornelius has determined that an urgent need exists to limit the comment period to 30 days since the provisions of this rule directly affect the application process for school year 1982–83. Most States and School Food Authorities print their applications during the summer months in order to have applications prepared for the start of the school year in August or September. In order to meet these timeframes, an interim rule must be in place no later than July, thus necessitating the short comment period. The Department intends to solicit additional public comment on the forthcoming interim rule which will be effective for School Year 1982–83.

Background

Section 9 of the National School Lunch Act (Act) contains a provision that lunches be served free or at a reduced price to children who are unable to pay the full price of a lunch. Prior to Pub. L. 97–35, local school officials were required to determine eligibility for free and reduced price meals "solely on the basis of an affidavit executed in such form as the Secretary may prescribe by an adult member of such household." Regulations implementing section 9 require that the affidavit (application) request only that information necessary to determine eligibility, namely family size and family income. In order to determine eligibility school officials were directed to compare the Income Eligibility Guidelines issued by the Secretary to the family size and income information furnished by the parent.

Previously, section 9 of the Act also provided that school officials "may for cause seek verification of the data in such application." The "for cause" provision limited verification to those situations where school officials had actual cause to believe the information on the application was erroneous.

Changes Due to Public Law 97–35

In an effort to control Federal spending, curtail abuse, and direct Federal benefits to the most needy, Congress made fundamental changes in the child nutrition programs. Many of these changes affect the free and reduced price application process. Section 803 of the Omnibus Budget Reconcilation Act of 1981 (Pub. L. 97–35) amended section 9 of the National School Lunch Act (Act) to implement these changes. These changes require:

(1) The applicant to furnish the social security numbers of all adult household members on the free and reduced price application;

(2) Appropriate documentation of income or documentation showing that the household is participating in the Food Stamp Program;

(3) Only the reduced price guidelines be included in the letter to parents with an explanation that households with income less than or equal to the reduced price guidelines are eligible for either free or reduced price meals;

(4) Schools to distribute applications to the parents of children in attendance at school;

(5) The elimination of hardship provisions and standard deductions;

(6) The elimination of the restriction that allowed verification by School Food Authorities solely "for cause";

(7) The Department to conduct a pilot study on income verification; and

(8) That the household's annual income at the time of application be considered in the eligibility determination.

Departmental Response

In response to the provisions of section 803, Pub. L. 97–35, the Department is publishing two proposed rules.

This proposal, Revised Application Procedures, is primarily intended to

address those provisions of section 803 affecting the application process at the beginning of the school year. Many of these provisions are nondiscretionary. Normally the Department would publish nondiscretionary provisions as a final rule since public comment is unnecessary. However, this rule contains several ancillary provisions which are subject to Departmental discretion. For this reason, the Department intends to provide a 30-day comment period. This will enable the Department to analyze the comments and publish an interim rule in sufficient time to affect the 1982–83 application process.

The second proposal, Verification of Eligibility, is designed to address the verification-related provisions of section 803. A 60-day public comment period will be provided. Based on an analysis of public comments, the Department intends to set forth an interim rule early next school year for implementation during the school year.

Comments will be accepted for both interim rules. One final rule incorporating all provisions of section 803, Pub. L. 97–35 will be developed following an analysis of comments received.

This Proposed rule will implement the following changes to the free and reduced price application process in response to section 803 as follows: (Comments are solicited on those areas where the Department is able to make revisions, as described at the end of the preamble.)

(1) *Requires additional information on free and reduced price applications.* This rule proposes to revise Part 245 to expand the information required on the free and reduced price application. As required by section 803 of Pub. L. 97–35, the applicant must provide the social security numbers of all adult household members in order for the application to be considered for benefits. For purposing to define "adult" as an individual who is 21 years of age or older. Further, the Department proposes to define "household" as "family" (§ 245.2(b)).

To reduce program abuse, section 803(b) also amended section 9 of the Act to require the Secretary to prescribe adequate documentation of eligibility for benefits. The Department proposes to define documentation as completion of the following information on the application: (1) Total household income; (2) names of all household members; (3) social security numbers of all adult household members, or an indication that application for one has been made or in the case of aliens ineligible for social security numbers, an indication that none can be acquired; and (4) signature of the parent or legal guardian. This approach is intended to maintain the existing application process, thus limiting the burden on the applicant as well as on the school official. These are Federal minimums; State agencies and local School Food Authorities may require households to provide additonal information to establish eligibility for free and reduced price benefits. This proposed rule would further expand the information required on the application by including a question regarding household participation in the Food Stamp Program. This will assist in the verification process as explained in the proposed rule, Verification of Eligibility.

These provisions will affect the first performance standard of the Assessment, Improvement, and Monitoring System (AIMS). That standard requires that each child's application for free and reduced price benefits is correctly approved or denied. Prior to Pub. L. 97–35, applications were deemed complete if the total number of family members, total family income, and the parent's or guardian's signature were provided. This proposal would change the requirements for a complete application to include: (1) Social security information; (2) total household income; (3) names of all household members; and (4) the signature of the parent or legal guardian.

Commentors should be aware that the provision of information required on a free and reduced price application would be considered a condition of eligibility, as required by Pub. L. 97–35. As a result, State agencies must ensure that all School Food Authorities obtain the information prescribed by the Secretary. Applications which do not contain such information will be considered incomplete and therefore insufficient to substantiate the receipt of Federal funds. The State agency or School Food Authority must also deny benefits if the information on the application establishes ineligibility or is incomplete, and shall not claim special assistance reimbursement based on such application. The School Food Authority must notify the household in writing of a denial of benefits. The notice must advise the household of the denial and of the right to a fair hearing. The reasons for ineligibility must be properly documented and must be retained on file at the School Food Authority.

Section 7 of the Privacy Act of 1974 requires any Federal, State, or local government agency which requests an individual to disclose his or her social security number, to inform the individual whether the disclosure is mandatory or voluntary, by what authority the number is solicited, and what uses will be made of it. In this regard, the Department's Office of Inspector General intends to use social security numbers to verify income information on a sample of applications. In order to comply with section 7, the application for free and reduced price benefits must indicate that section 9 of the National School Lunch Act, as amended, requires the social security numbers of all adult household members as a condition of eligibility. In addition, the application must indicate that the social security number(s) may be used to verify the information on the application and that failure to provide the required social security information will lead to the denial of benefits.

Under this proposal, the letter or notice to parents must indicate that a completed application is a condition of eligibility for free and reduced price meals. In addition, the letter to parents must indicate that all households with children receiving free and reduced price benefits must notify the appropriate school officials of changes in household size or increases in income of over $25 per month.

(2) *Requires schools to include in their letter to parents only the reduced price Income Eligibility Guidelines,* and an explanation that households with income equal to or less than the reduced price guidelines are eligible for either free or reduced price meals. Schools participating in the Special Milk Program, where the School Food Authority exercises its option to serve free milk, must send home the free Guidelines. Public releases would continue to contain both Guidelines.

(3) *Requires schools to distribute applications to parents of children in attendance at school.* Existing program regulations already require schools to distribute applications to parents of children in attendance at school. At School Food Authority discretion, applications may be mailed or handed out in classrooms and carried home by students.

(4) *Eliminates the hardship provisions and standard deductions.* From 1973 until the passage of Pub. L. 96–499, the Department allowed a family to deduct from its stated income the cost of certain "hardships" that the family could not reasonably anticipate or control. Last school year, Pub. L. 96–499 established a standard deduction to offset the removal of hardship deductions. This school year, section 803 of Pub. L. 97–35 permanently removes both hardship provisions and standard deductions.

(5) *Eliminates the "for cause" restriction.* State agencies and School Food Authorities are now authorized under section 9(b)(2)(C) of the Act, as amended, to verify the information on the application at their discretion.The Department proposes that State agencies or School Food Authorities doing so must ensure that verification is applied without regard to race, sex, color, national origin, age or handicap. In today's **Federal Register**, the Department proposes the "Verification of Eligibility" rule to implement several verification related provisions of section 803. That proposal sets forth the Department's requirements concerning the verification of information on the application, notification of adverse action, and continuation of benefits.

(6) *Exempts pilot projects.* Section 803 of Pub. L. 97–35 also requires the Department to conduct a pilot study on verification. Schools that participate in that study will be instructed by the Department on the use of specific application forms, documentation, and techniques for verification of eligibility information.

The pilot study will utilize several different application and verification methods starting this school year. The available results of the pilot study will be carefully evaluated by the Department and will be used in the development of the final rules.

(7) *Requires use of current income.* In the past, schools could consider either the family's current rate of income or the family's income during the past 12 months to determine eligibility for free and reduced price meals.

Section 803 of Pub. L. 97–35 states that "any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level" is eligible to receive free or reduced price meals. The Department proposes to define "current income" as income at the time of application, if representative, and annualized. Current income would be determined based on the income received during the month prior to application and multiplied by 12, if such income is representative, or income received during the past 12 months in the case of farmers, the self-employed, migrant workers, or others if the past 12 months are more representative.

Recordkeeping

In addition to the above mentioned changes, the Department proposes to require State agencies to maintain records demonstrating compliance with all of the requirements of this proposal, and proposes to monitor for compliance during the management evaluation process.

Solicitation of Comments

The Department exercised its authority in the following areas and solicits comments thereon: (1) The definitions of "adult", "household", "documentation", and "current income"; (2) Requiring that verification be applied without regard to race, sex, color, national origin, age or handicap; (3) allowing schools involved in the pilot study to deviate from routine application and verification procedures; (4) Including on the application a question regarding food stamp participation for purposes of simplifying the verification process later in the school year; (5) Requiring households to report changes in circumstances; and (6) Requiring School Food Authorities to notify households of the denial of benefits.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is proposed to be amended as follows:

(1) In § 245.1 paragraph (a) is revised to read as follows:

§ 245.1 General purpose and scope.

(a) This part establishes the responsibilities of State agencies, Food and Nutrition Service Regional Offices (where applicable), and School Food Authorities in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), the Special Milk Program for Children (7 CFR Part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and Sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and, at the option of the School Food Authority for schools participating only in the Special Milk Program, free milk to eligible children.

* * * * *

(2) In § 245.2 definition (a) "Commodity only school" is redesignated as (a–1). New definitions (a) "Adult", (a–2) "Current income", and (d–2) "Household" are added.

§ 245.2 Definitions.

(a) "Adult" means any individual 21 years of age or older.

* * * * *

(a–2) "Current income" means income, as defined in § 245.6(a), received during the month prior to application, if representative, and multiplied by 12, or for farmers, self-employed persons, migrant workers, or other income received during the past 12 months, if more representative.

* * * * *

(d–2) "Household" means "family" as defined in § 245.2(b).

* * * * *

(3) In § 245.2, definition (e) "Income poverty guidelines" is amended by removing the word "poverty" and inserting in its place the word "eligibility."

(4) In § 245.3, paragraph (a) the last sentence is revised to read as follows:

§ 245.3 Eligibility standards and criteria.

(a) * * * Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the **Federal Register.**

* * * * *

(5) In § 245.3, paragraph (c) the second sentence is removed.

(6) Section 245.3 is amended by removing paragraph (d) in its entirety. That paragraph contained instructions to implement Public Law 96–499 and the paragraph is now obsolete.

(7) In § 245.5(a)(1), paragraphs (i), (ii) and (vi) are revised to read as follows. The period ending paragraph (vii) is removed and replaced with a semi-colon. New paragraphs (viii) and (ix) are added.

§ 245.5 Public announcement of the eligibility criteria.

* * * * *

(a)(1) * * * (i) The Income Eligibility Guidelines for *reduced price* meals with an explanation that households with incomes less than or equal to the reduced price criteria would be eligible for free or reduced price meals (the Income Eligibility Guidelines for free meals shall *not* be included in letters or notices to such applicants unless the applicant is applying for benefits in the Special Milk Program); (ii) an explanation that the information on the application may be verified at any time during the school year; * * * (vi) the statement: "In the operation of child feeding programs, no child will be

discriminated against because of race, sex, color, national origin, age, or handicap"; * * * (viii) an explanation that recipients of free and reduced price benefits must notify the appropriate school officials of any changes during the school year in family size and increases in level of income which exceed $25 per month; and (ix) an explanation that a completed and signed application is a prerequisite to be considered for free and reduced price benefits.

* * * * *

(9) Section 245.6(a) is amended as follows:

(a) In § 245.6(a) the introductory paragraph is amended by adding the word "current" between the words "with respect to the" and "annual income of" in the third sentence and by revising the phrase at the end of the introductory paragraph as set forth below.

(b) Paragraph (a) is further amended by revising paragraph (a)(1) and the first two sentences of paragraph (a)(2) as set forth below, and by removing the phrase "for cause" from the third sentence of paragraph (a)(2).

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * The application shall require applicants to provide the social security number of all household members 21 years of age or older, an indication that application for one has been made or in the case of aliens ineligible for social security numbers, an indication that none can be acquired. The application shall contain substantially the following statements; (1) "In certain cases foster children are eligible for free or reduced price meals or free milk regardless of your family income. If you have such children living with you and wish to apply for such meals or milk for them, please contact us." and (2) "Section 9 of the National School Lunch Act requires that the social security number of each adult household member be given as a condition of eligiblity. The social security numbers may be used for verification of the information on the application. Failure to provide social security number information shall result in a denial of benefits." In addition the application must enable the applicant to indicate whether the household is participating in the Food Stamp Program. * * *

* * * * *

(10) In § 245.6, paragraph (b) is revised to read as follows and new paragraph (b–1) is added.

* * * * *

(b) *Determination of eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced price meals or free milk, the children from that family shall be provided the benefits to which they are entitled. School officials may seek verification of the information on the application. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced price benefits, school officials shall provide written notice to each family denied benefits. At a minimum, this notice shall include: (1) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (2) notification of the right to appeal; (3) instructions on how to appeal; and (4) a statement reminding parents that they may reapply for free and reduced price benefits at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority, as appropriate.

(b-1) *Appeals of denied benefits.* A family who wishes to appeal a denied application by the School Food Authority shall do so under the hearing procedures established under § 245.7. However, prior to initiating the hearing procedure, the parent may request a conference to provide the opportunity for the parent and school officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The School Food Authority must promptly schedule a fair hearing, if requested.

* * * * *

(11) In § 245.6, an new paragraph (d) is added to read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

* * * * *

(d) School Food Authorities which are involved in the Department's pilot study on income verification may be exempted from the requirements of this section and shall obtain verification and documentation as directed by the Department.

(12) In § 245.10, a new paragraph (f) is added to read as follows:

§ 245.10 Action by School Food Authorities.

* * * * *

(f) School Food Authorities verifying the information on the free and reduced price application shall ensure that verification activities are applied without regard to race, sex, color, national origin, age, or handicap.

(13) In § 245.11, a new paragraph (g) is added to read as follows:

§ 245.11 Action by State agencies and FNSRO's

* * * * *

(g) State agencies or FNSRO's, as applicable, verifying the information on the free and reduced price application shall ensure that verification activities are applied without regard to race, sex, color, national origin, age, or handicap.

(Sec. 803; Pub. L. 97–35; 95 Stat. 521–535; (42 USC 1758))

Signed in Washington, D.C. on May 21, 1982.

John W. Bode,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 82-14386 Filed 5-24-82; 8:45 am]

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7 CFR Part 245

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Verification of Eligibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Part 245 to implement several provisions of section 803 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. Under this proposal, minimum standards are established for the verification of the information on applications for free or reduced price meals or free milk benefits served in the National School Lunch, School Breakfast, Commodity School and Special Milk Programs. This proposal is intended to prevent errors and abuse in the delivery of free and reduced price benefits.

DATES: To be assured of consideration, comments must be postmarked on or before July 26, 1982. Since this proposal is one of two proposals regarding the provisions of section 803, commentors should clearly indicate that comments reference the proposed rule, "Verification of Eligibility."

ADDRESSES: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours

(8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Garnett at the address listed above, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified *not major*. We do not anticipate that this proposal will have an impact on the economy of more than $100 million. The proposed rule is intended to ensure that free and reduced price benefits are directed to only those children from families whose income fall within the Income Eligibility Guidelines set forth by the Department by household size. No major increase in cost or prices for program participants; individual industries; Federal, State or local government agencies; or geographic regions is anticipated. This proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on State agencies and local School Food Authorities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting and recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget for approval. They are not effective until OMB approval has been obtained.

Background

Prior to the passage of Pub. L. 97–35, section 9 of the National School Lunch Act (Act) provided that school officials "may for cause seek verification of the data in such application." The "for cause" provision limited verification to those situations where school officials had actual cause to believe the information furnished on the application was erroneous. For that reason, verification of the information on free and reduced price applications has been an infrequent occurrence.

Section 803 of Pub. L. 97–35 made several changes to the Act which affected the free and reduced price meal or free milk application process. While most of the changes affect the information collected on the application, several changes concern the verification of that information. Specifically, section 803 authorizes the Secretary, States, and local School Food Authorities to seek verification of the data contained in the application. Further, local School Food Authorities are *required* to undertake such verification procedures as may be prescribed by the Secretary, and to make appropriate changes in the eligibility determinations on the basis of such verification.

In response to the provisions of section 803 of Pub. L. 97–35, the Department is publishing two proposed rules.

This proposal, Verification of Eligibility, is designed to emplement the verification provisions of section 803 that do not have an immediate impact on the application process at the beginning of the school year. This proposal addresses the verification of information on free and reduced price applications, the notification to households when benefits are reduced or terminated and State agency recordkeeping requirements. A 60-day public comment period is provided to ensure that the public has sufficient opportunity for comment. Based on an analysis of the comments, the Department intends to publish an interim rule early next school year to allow schools and States to gain operational experience with verification procedures. Comments will be solicited on that interim rule and will be considered in the development of a final rule.

Another proposed rule, Revised Application Procedures (published in today's **Federal Register**), is designed to implement those provisions of section 803 affecting the application process at the beginning of the school year. Many of those provisions are nondiscretionary. Normally, the Department would publish nondiscretionary provisions as a final rule since public comment is unnecessary. However, the Revised Application Procedures rule contains several ancillary provisions which are subject to Departmental discretion. For this reason, the Department intends to provide a 30-day public comment period for that rule. That abbreviated comment period will provide time for the Department to analyze the comments and publish an interim rule in sufficient time to affect the 1982–83 application process.

Based on an analysis of comments received for both interim regulatory actions, the Department expects to publish one final rule which would implement both the discretionary and nondiscretionary provisions. A Spring, 1983 publication date is anticipated.

Proposed Verification

In developing this proposal the Department has sought to strike a balance between two competing concerns. First, there are abuses in the current free and reduced price application system, as documented in audits and reviews, which must be addressed through a viable income verification system. Second, States and local school officials do not have unlimited resources available to perform verification. The Department believes this draft rule will provide for a viable system without over burdening States and local officials. Moreover, States which find even the minimum requirements too onerous may request a waiver so long as they can demonstrate that an alternate system can achieve the same results.

Section 803 of Pub. L. 97–35 allows the Secretary, State agencies, and local School Food Authorities to seek verification of the information provided on applications for free and reduced price meals and free milk. The Act also requires local School Food Authorities to comply with the regulations prescribed by the Secretary concerning verification of information.

The Department believes that the possibility of verification should greatly deter under-reporting of household income of falsification of household composition. Such verification should also result in increased reporting of changes of household circumstances during the school year. For these reasons, the Department proposes to require verification of some free and reduced price applications.

Under this proposal, State agencies are required to ensure that for School Year 1982–83, at a minimum, three (3) percent or 3,000 (whichever is less) of all applications on file in each School Food Authority by October 15 are verified. State agencies have the option of using State agency staff or requiring local School Food Authorities to meet this requirement. State agencies delegating the verification responsibility to local School Food Authorities must ensure that the School Food Authorities satisfy this minimum verification requirement by January 1 of the school year. State agencies may request a waiver from FNS in regard to these verification requirements. FNS may approve the waiver if the State is able to demonstrate an alternative approach that will achieve the same results. In either case, verification may occur prior to the approval of applications;

however, the pursuit of verification shall not unduly delay the issuance of benefits to eligible children.

States which decide to meet the requirements at the State level may want to consider meeting the requirement during an AIMS review or audit or during an A–102 audit. The State may want to consider using the social security number provided on the application form to verify wages earned or other benefits through computer matching of the income reported. Should the State delegate the responsibility to the School Food Authority level, a variety of approaches become feasible. These approaches include the collection of written verification such as wage stubs, collateral contacts, and cross-program exchange of information. The Department views the verification requirement as a minimum with sufficient flexibility to allow States and local School Food Authorities to implement the requirements within existing frameworks without extensive additional financial burden.

The Department expects that most schools will opt to collect written verification of income directly from the household. This option is the most universally applicable, places the burden of responsibility on the household, and creates an awareness in the community that verification of eligibility does occur. The parent should receive clearly worded notification that the household has been selected for review and must submit the requested verification to maintain eligibility for free or reduced price benefits. The notice to parents should clearly describe the types of verification acceptable to the school, e.g. wage stubs, award letters from social security, benefit statements for unemployment compensation, court orders specifying alimony or child support, etc. Further, the notice should give the name and telephone number of the school official who can answer questions and assist the household in acquiring the necessary verification.

The initiation of collateral contacts can be used in those situations where the household is unable to acquire documentary verification. Collateral contacts can be made in person, over the phone, or by mail. The results of the contact should be written on or attached to the application noting the date, person contacted, results, and the name of the school official making the contact.

Cross-program exchange of information is another method of verification that may be utilized. State agencies and School Food Authorities should contact legal counsel to ensure that cross-program exchanges do not violate any State or Federal laws.

The Department believes an abbreviated verification procedure will suffice for food stamp households. These households undergo extensive verification in order to receive food stamp benefits. A State agency or School Food Authority may require the applicant to demonstrate current eligibility for food stamp benefits by providing "notice of eligibility" or other evidence of benefits.

An abbreviated verification procedure for food stamp households should minimize the administrative burden and cost of verification efforts since most free meal recipients are also eligible for food stamp benefits.

State agencies or local School Food Authorities would be required, under this proposal, to apply the verification efforts uniformly without regard to race, sex, color, national origin, age, or handicap. Since State and local laws differ widely, each State agency and School Food Authority should contact its legal counsel to ensure compliance with applicable laws.

Proposed Notification Requirements

The State agency or School Food Authority must terminate or reduce household benefits, if (a) the household refuses to cooperate with verification efforts, or (b) the verification effort indicates the household is ineligible to receive benefits or is eligible to receive fewer benefits. The School Food Authority must immediately notify the household in writing of a reduction or termination of benefits and allow 10 days before such termination or reduction takes place. The notice must advise the household of the change, the reasons for the change, the right to appeal the action within 10 day advance notice period and provide instructions on how to appeal. The reasons for ineligibility or reduction of benefits must be properly documented and retained on file at the School Food Authority.

Proposed Continuation of Benefits

Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the *same* school year will continue to receive benefits subject to the hearing official's decision if they appeal the adverse action within the 10 day advance notice period. Households which are denied benefits upon application shall not receive benefits pending an appeal of the decision.

Proposed Recordkeeping

State agencies will be required to maintain records demonstrating compliance with these minimum documentation and verification requirements. The Department will monitor for compliance during the management evaluation process.

List of Subjects in 7 CFR Part 245

Food Assistance Programs, Grant programs—Social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is proposed to be amended as follows:

1. In § 245.2, new paragraph (k) is added as follows:

§ 245.2 Definitions.

* * * * *

(k) "Verification" means substantiation of the information provided on the free or reduced price application. Verification may include but is not limited to the use of wage stubs, award letters, letters from employers, third party contacts, and computerized wage/income matching.

2. New § 245.6a is added as follows:

§ 245.6a Verification requirements.

(a) *Verification requirements.* State agencies and FNSROs, as applicable, shall ensure that for School Year 1982–83, three (3) percent or 3,000 (whichever is less) of all applications on file in each School Food Authority by October 15 are verified over the course of the school year. State agencies may request a waiver from FNS in regard to the verification requirements; *Provided,* that an alternative approach to achieve the same results is submitted in writing to and approved by FNSRO. The State agency or FNSRO, as applicable, may verify the information on the application or it may delegate the responsibility to all or selected School Food Authorities. State agencies delegating the verification responsibility to local School Food Authorities shall ensure that the School Food Authorities satisfy this minimum verification requirement by January 1 of the school year. Verification for recipients of food stamp benefits may be limited to a review to determine that the period of eligibility for food stamp benefits is current. If the food stamp certification period is found to have expired, the household shall be subject to routine verification of eligibility. Verification may occur prior to the approval of applications;

however, the pursuit of verification shall not unduly delay the issuance of benefits to eligible children. The Department encourages State agencies to verify during the first part of the school year. School officials shall, at a minimum, undertake the verification requirements prescribed by the State agency. If an applicant refuses to cooperate with the efforts to verify, eligibility shall be terminated in accordance with § 245.6a(d).

(b) *Recordkeeping.* State agencies and FNSROs, as applicable, shall maintain on file for review, a description of the verification to be accomplished during each school year. The description shall include: (1) A summary of the verification efforts including the techniques to be used; (2) the locations where verification will take place; (3) the entity responsible for verification (e.g., State agency, School Food Authority); (4) the total number of applications on file in the State by October 15 of each school year; and (5) the percentage or number of applications to be verified in the State for the current school year.

(c) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or handicap.

(d) *Notification.* School officials shall immediately notify families of the denial of benefits as specified in § 245.6(b). Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The notice shall advise the household of: (1) The change; (2) the reasons for the change; (3) notification of the right to appeal the action within the 10 day advance notice period; and (4) instructions on how to appeal. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

3. In § 245.7, paragraph (a)(ix) is amended to add the words "and that the decision of the hearing official is binding" after the word "official" and before the semi-colon.

4. In § 245.7, new paragraph (b) is added as follows:

§ 245.7 Hearing procedures for families and School Food Authorities.

* * * * *

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing; benefits shall be continued as follows while the household awaits the hearing:

(1) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the *same* school year, shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Household which are denied upon application shall not receive continued benefits.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

Signed on May 21, 1982.

John W. Bode,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 82-14366 Filed 5-24-82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Last Listing May 19, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 1131 / Public Law 97–177 Prompt Payment Act. (May 21, 1982; 96 Stat. 85) Price: $1.75

H.J. Res. 412 / Public Law 97–178 To authorize and request the President to designate May 20, 1982, as "Amelia Earhart Day". (May 21, 1982; 96 Stat. 89) Price: $1.75

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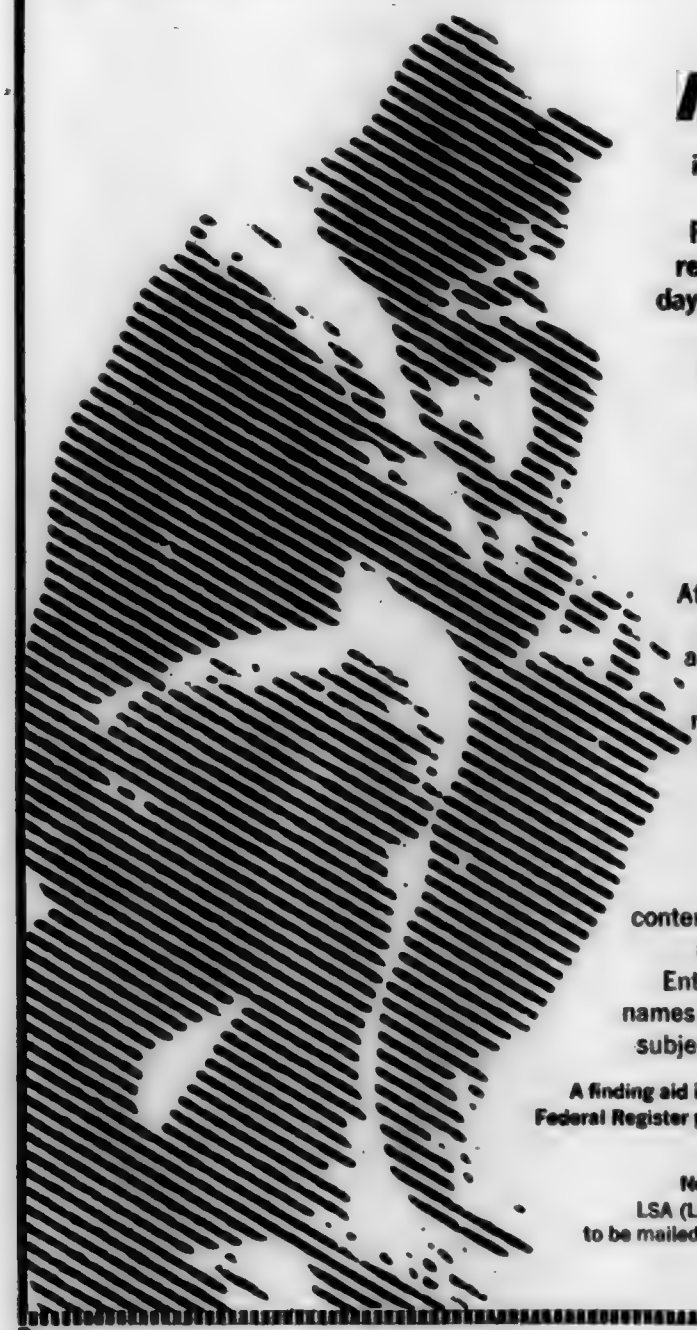

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Part V

Department of Health and Human Services

Food and Drug Administration

Over-the-Counter Oral Health Care and Discomfort Drugs; Establishment of a Monograph

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 354

[Docket No. 80N-0228]

Drug Products for the Relief of Oral Discomfort for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which over-the-counter (OTC) drug products for the relief of oral discomfort (drugs which relieve oral discomfort when applied topically to teeth and gums) are generally recognized as safe and effective and not misbranded. This notice is based on the recommendations of the Advisory Review panel on OTC Dentifrice and Dental Care Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by August 23, 1982 and reply comments by September 22, 1982.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's Office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on July 13, 1978 a report on OTC drug products for the relief of oral discomfort from the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products. This report is one of three issued by this Panel. Other reports by this Panel concerned oral mucosal injury drug products (published in the **Federal Register** of November 2, 1979 (44 FR 63270)) and anticaries drug products (published in the **Federal Register** of March 28, 1980 (45 FR 20666)). FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC drug products for the relief of oral discomfort are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC drug products for the relief of oral discomfort as a notice of proposed rulemaking. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC drug products for the relief of oral discomfort will be stated initially when the tentative final monograph is published in the **Federal Register** as a proposed regulation. In the preamble to the tentative final monograph, the agency also will announce its initial determination whether the monograph is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the tentative final monograph is published. At that time FDA also will consider whether the monograph has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979, 44 FR 71742).

The agency invites public comment regarding any impact that this rulemaking would have on OTC drug products for the relief of oral discomfort. Types of impact, may include, but are not limited to, the following: increased costs due to relabeling, repackaging, or reformulating; removal of unsafe or ineffective products from the OTC market; and testing, if any. Comments regarding the impact of this rulemaking on OTC drug products for the relief of oral discomfort should be accompanied by appropriate documentation.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC drug products for the relief of oral discomfort submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after June 24, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD–510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III durgs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 6 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, on OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in dentifrice and dental care drug products, except mouthwashes and oral antiseptics, was issued in the **Federal Register** of January 30, 1973 (38 FR 2781). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.' ")

Under § 33.10(a) (1) and (5), the Commissioner appointed the following Panel to review the data and information submitted and to prepare a report on the safety, effectiveness, and labeling of those products:

Louis P. Gangarosa, D.D.S., Ph. D., Chairman
Joseph J. Aleo, D.D.S., Ph. D. (appointed September 1, 1973)
Howard H. Chauncey, D.M.D., Ph. D. (resigned April 30, 1976)
Valerie Hurst, Ph. D.
Joy B. Plein, Ph. D.
Delos E. Raymond, D.D.S.
Roger H. Scholle, D.D.S., M.S.
Lawrence E. VanKirk, Jr., D.D.S.,. M.P.H. (appointed June 29, 1976)
Benjamin O. Watkins D.D.S. (resigned August 1, 1973)

Nonvoting liaison members served on the Panel as follows: Judy Jackson, Esq., nominated by the Consumer Federation of America, served as the consumer liaison until April 1974 followed by Mary Plaska, nominated by the American Public Health Association, until May 1976 followed by Sandra Zimmerman, nominated by the Consumer Federation of America. Lester D. Apperson, Ph. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, served as an industry liaison. Joseph L. Kanig, Ph. D., nominated by the Proprietary Assocation, also served as an industry liaison until January 1978.

The following FDA employee assisted the Panel: Clarence C. Gilkes, D.D.S., served as Executive Secretary. Michael D. Kennedy served as Panel Administrator until January 1978 followed by Thomas D. DeCillis, R. Ph. Melvin Lessing, M.S., R. Ph. served as Drug Information Analyst until June 1977. George Kerner, M.S., served as Consumer Safety Officer. Cindy Barkdull served as special assistant from July 1977 to April 1978. Elmer M. Plein, Ph. D., and Gordon H. Schrotenboer, Ph. D., served as consultants to the Panel.

The Panel was first convened on April 24, 1973, in an organizational meeting. Working meetings were held on May 24 and 25, June 21 and 22, August 15 and 16, October 10 and 11, November 29 and 30, 1973; January 17 and 18, February 27 and 28, April 3 and 4, May 9 and 10, June 19 and 20, July 24 and 25, September 19 and 20, October 16 and 17, December 4 and 5, 1974; January 15 and 16, February 26 and 27, April 2 and 3, May 7 and 8, June 24 and 25, August 12, 13, and 14, October 9 and 10, December 3 and 4, 1975; January 23 and 24, February 24 and 25, March 31 and April 1, May 11 and 12, June 30 and July 1, July 28 and 29, August 25, and 26, October 5 and 6, December 1 and 2, 1976; January 12 and 13, March 9 and 10, April 20 and 21, June 1 and 2, July 13 and 14, August 24 and 25, October 19 and 20, November 30 and December 1, 1977. January 17 and 18, March 11 and 12, April 26, 27, and 28, May 30 and 31, and June 1, and July 11, 12, and 13, 1978.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

The following individuals were given on opportunity to appear before the Panel to express their views either at their own or at the Panels' request on all issues before the Panel:

John E Alman, M.A.
Hazen J. Baron, D.D.S., Ph. D.
I. B. Bender, D.D.S.
Robert Blank, Ph. D.
Malcolm Boone, D.D.S.
R. K. Boutwell, Ph. D.
Herbert Brilliant, D.D.S.
Richard C. Brogle, Ph. D.
Finn Brudevold, D.D.S.
Lewis P. Cancro, Ph. D.
A. Chasens, D.D.S.
Neal W. Chilton, D.D.S.
Stephen A . Cooper , D.M.D., Ph. D.
D. Walter Cohen, D.D.S.
William E. Cooley, Ph.D.
Robert Ellison, D.D.S., M.S.
H. Fogels, D.D.S.
Sol Gershon, Ph. D.
William Gold, Ph. D.
Hary Gordon, Ph. D.
Hans Graf, D.D.S.
F. Healy, Ph. D.
John Hefferren, Ph. D.
L. Kenneth Hiller, Ph. D.
George F. Hoffnagle, Sc. D.
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Homer Jamison, D.D.S., Ph. D.
Marvin Kamisky, Ph. D.
Krishan Kapur, D.M.D., M. Sc.
Kenneth Kasses, Ph. D.
Phillip B. Lawson
Edgar Lazo-Wasem, Ph. D.
Donald A. M. MacKay, Ph. D.
John H. Manhold D.M.D,
Craig R. Means, D.D.S., M. Sc.
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Patrick Toto, D.D.S.
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Aaron Trubman, D.D.S.
Paul Vinton, D.D.S.
Carrol S. Weil, M.A.
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No person who so requested was denied an opportunity to appear before the Panel.

The Panel was charged to review submitted data and information for OTC dentifrice and dental care drug products.

Because all such agents are not used for the same purpose, it was not possible for the Panel to establish a single standard of requirements for effectiveness of each product. Therefore, in an attempt to simplify categorization of ingredients and labeling claims, the Panel placed the dental care drug products into the following therapeutic classifications: (1) Agents for oral mucosal injury, (2) agents for the relief of oral discomfort, (3) anticaries agents, (4) dental plaque disclosing agents, and (5) denture aids.

On May 28, 1976, the Medical Device Amendments of 1976 became law. This legislation amends the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and provides new authority to assure the safety and effectiveness of medical devices. Several products previously regulated as drugs that were under review by the Panel came within the definition of a medical device under these amendments. The FDA reviewed the products previously regarded as drugs and concluded that the following products as published in the **Federal Register** of December 16, 1977 (42 FR 63472) fall within the definition of a medical device: denture cushions, dental adhesives, dental reliners and repair kits, denture cleansers, and plaque-disclosing kits. The Panel wishes to point out that during its deliberations "kits" were not specifically addressed and that the Panel's terminology for dental devices differs from that published in the **Federal Register**. The Panel used the following terminology in evaluating these products: denture adhesives, denture reliners, denture repair products, denture cleansers, and dental plaque-disclosing agents.

In a notice published in the **Federal Register** of May 2, 1978 (43 FR 18769), FDA announced that it had transferred the responsibility for regulating OTC dental care devices from the agency's Bureau of Drugs to its Bureau of Medical Devices (BMD). In addition, the notice announced that the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products had summarized its findings and recommended that the agency transfer that portion of its report concerning products now regulated as medical devices, together with the data and information submitted in response to the January 30, 1973 notice, to BMD. A summary of the Panel's conclusions concerning the safety, effectiveness, and labeling of those products is included in the Panel's minutes for the March 11 and 12, 1978 meeting.

The Panel presents its conclusions and recommendations for drug products for the relief of oral discomfort in this document. The Panel's conclusions and recommendations for oral mucosal injury drug products were published in the **Federal Register** of November 2, 1979 (44 FR 63270) and the Panel's conclusions and recommendations for anticaries drug products were published in the **Federal Register** of March 28, 1980 (45 FR 20666).

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through July 13, 1978, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel's findings with respect to OTC drug products for the relief of oral discomfort are set out in three categories:

Category I. Conditions under which OTC drug products for the relief of oral discomfort are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC drug products for the relief of oral discomfort are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 25 ingredients for relief of oral discomfort. The Panel placed one ingredient in Category I, three ingredients in Category II, and nine ingredients in Category III for use as agents for the relief of toothache. The Panel placed three ingredients in Category I, two ingredients in Category II, and three ingredients in Category III for use as oral mucosal analgesics. The Panel placed one ingredient in Category I, no ingredients in Category II, and one ingredient in Category III for use as oral mucosal protectants. The Panel placed no ingredients in Category I, one ingredient in Category II, and five ingredients in Category III for use as tooth desensitizers. (The number of ingredient classifications does not equal the number of ingredients reviewed because some ingredients were reviewed for more than one labeled use.)

I. Submission of Data and Information

Pursuant to the notice published in the **Federal Register** of January 30, 1973 (38 FR 2781) requesting the submission of data and information on OTC dentifrice and dental care drug products, the following firms made submissions relating to the indicated products that, the Panel has further determined, contain active ingredients or labeling which may be appropriately classified as drug products for the relief of oral discomfort.

A. Submissions by Firms

Firms and Marketed Products

Abbott Laboratories, North Chicago, IL 60064, Butyn Metaphen Dental Ointment.

A-Trol Laboratories, Topeka, KA 66604, I.D. Denture Medication.

Block Drug Co., Jersey City, NJ 07302, Jiffy Toothache Drops, Poloris Poultices, Sensodyne.

Commerce Drug Co., Inc. Farmingdale, NY 11735, Ora-Jel, Baby Ora-Jel, Ora-Jel D.

C. S. Dent & Co., Cincinnati, OH 45202, Dent's Toothache Drops, Dent's Toothache Gum, Dent's Lotion-jel, Dent's Dental Poultice.

Denver Chemical Manufacturing Co., Stamford, CT 06904, Dr. Hand's Teething Gel, Dr. Hand's Teething Lotion, Pain-A-Lay.

Eaton Laboratories, Norwich, NY 13815, Chloraseptic Mouthwash and Gargle.

Eneglotaria Medicine Co., Inc., Santurce, PR 00907, Gotas Dentil, Erpen.

John Arthur Geyer Co., Bedford, NH 03102, Kank-A.

International Pharmaceutical Corp., Warrington, PA 18976, DeSense Dental Gel, Protect Dental Gel.

K. I. K. Co., Bethlehem, PA 18016, Cheramist #30.

Lorvic Corp., Saint Louis, MO 63134, Desensitizer.

McKesson Laboratories, Fairfield, CT 06430, OraFix Medicated.

Pfizer, Inc., New York, NY 10017, Thermodent Toothpaste.

Red Cross Chemical Works, Inc., Chicago, IL 60647, Toothache Outfit.

Rilox Co., Inc., New Orleans, LA 70122, Creole Toothache Wax.

Rystan Co., Inc., White Plains, NY 10605, Chloresium Toothpaste, Chloresium Dental Ointment, Chloresium Solution.

Sanlor Laboratories, Washington, DC 20006, Endoflas, F.S.

Vick Chemical Co., New York, NY 10017, Benzodent Analgesic Denture Ointment.

Whitehall Laboratories, Inc., New York, NY 10017, Anbesol.

Zelite Corp., New York, NY 10017, Dent-Zelite Toothache Remedy.

In addition, the following firms made related submissions:

Abbott Laboratories, North Chicago, IL 60064, Butyn Metaphen Dental Ointment (Additional data).

Block Drug Co., Jersey City, NJ 07302, Sensodyne, Poloris Dental Poultice (Additional data).

Commerce Drug Co., Inc., Farmingdale, NY 11735, Baby Ora-Jel (Additional data).

Eaton Laboratories, Norwich, NY 13815, Chloraseptic Mouthwash and Gargle (Additional data).

International Pharmaceutical Corp., Warrington, PA 18976, Protect Dental Gel (Additional data).

Rystan Co., Inc., White Plains, NY 10605, Chloresium Toothpaste, Chloresium Dental Ointment, Chloresium Solution (Additional data).

Sanlor Laboratories, Washington, DC 20006, Endoflas, F.S. (Additional data).
Vick Chemical Co., New York, NY 10017, Vicks Potassium Nitrate Toothpaste, Testing Method.
Whitehall Laboratories, Inc., New York, NY 10017, Anbesol (Additional data).

B. Ingredients Submitted to the Panel

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Alcohol
Beeswax
Benzocaine
Benzoin compound tincture
Benzyl alcohol
Boric acid
Butacaine
Calcium carbonate
Camphor
Capsicum oleoresin (capsicum)
Carbolic acid (phenol)
Cellulose gum
Chloroform
Citric acid
Clove oil
Creosote
Cresol
D & C Red Color 11251
Distilled water
Edetate disodium (EDTA)
Eugenol
Fluidextract myrrh
Formaldehyde
Glycerin
Hamamelis water
Hops
Hydroxyquinoline sulfate
Iodine
Magnesium aluminum silicate
Menthol
Methylparaben
Methyl salicylate
Nitrogen, compressed (propellant)
Nitromersol chloride
Oil of cassia
Oil of cloves
Oxyquinoline
Paraffin wax (paraffine)
Pellitory tincture
Petrolatum
Phenol
Pluronic F-127™ gel
Potassium nitrate
Potassium sulfate
Propylene glycol
Propylparaben
Sandarac
Sassafras root
Silica
Sodium bicarbonate
Sodium borate
Sodium chloride
Sodium citrate
Sodium fluoride
Sodium lauryl sulfate
Soduim phenolate
Sodium saccharin
Sodium sulfate
Sorbitol
Stannous fluoride
Strontium chloride
Thymol
Thymol iodide
Water

2. *Other ingredient reviewed by the Panel in addition to the submitted data.*

Sodium monofluorophosphate

C. Classification of Ingredients

1. *Active ingredients.*

Benzocaine
Benzoin preparations (benzoin tincture and compound benzoin tincture)
Benzyl alcohol
Butacaine sulfate (butacaine)
Camphor
Capsicum (capsicum oleoresin)
Citric acid
Clove oil (oil of cloves)
Creosote
Cresol
Eugenol
Formaldehyde solution (formaldehyde)
Menthol
Methyl salicylate
Myrrh, fluidextract (fluidextract myrrh)
Phenol (carbolic acid)
Phenolate sodium (sodium phenolate)
Potassium nitrate
Sodium citrate
Sodium fluoride
Sodium monofluorophosphate
Stannous fluoride
Strontium chloride
Thymol
Thymol iodide

2. *Inactive ingredients.*

Beeswax
Calcium carbonate
Cellulose gum
Chloroform
Cinnamon oil (cassia oil, oil of cassia)
D & C red color 11251
Distilled water
Edetate disodium (EDTA)
Glycerin
Hops
Magnesium aluminum silicate
Nitrogen, compressed (propellant)
Paraffin wax (paraffine)
Petrolatum
Poloxamer 407 (Pluronic F-127™ gel)
Potassium sulfate
Propylene glycol
Propylparaben
Sandarac
Sassafras root
Silica
Sodium Bicarbonate
Sodium chloride
Sodium lauryl sulfate
Sodium saccharin
Sodium sulfate
Sorbitol
Water

3. *Ingredients deferred to the Advisory Review Panel on OTC Oral Cavity Drug Products.*

Alcohol (antiseptic)
Alum (astringent)
Boric acid (astringent)
Camphor (antimicrobial)
Iodine (antiseptic)
Hamamelis water (astringent)
Hydroxyquinoline sulfate (antiseptic)
Menthol (antiseptic)
Methylparaben (preservative)
Methyl salicylate (antiseptic)
Nitromersol chloride (antiseptic)
Oxyquinoline (antiseptic)
Pellitory tincture (astringent)
Phenol (antiseptic)
Propylparaben (antiseptic)
Sodium borate (antiseptic)

4. *Ingredients deferred to the Advisory Review Panel on OTC Miscellaneous External Drug Products.*

Camphor (cold sore claim)
Benzoin preparations (benzoin tincture and compound benzoin tincture) (Herpes simplex claims).

5. *Ingredients deferred to the Bureau of Medical Devices.*

Paraffin wax (paraffine) (as a denture cushion)

6. *Indications deferred to the Advisory Review Panel on OTC Oral Cavity Drug Products.*

All antiseptic claims:
"For rapid and effective relief of minor sore throat."
"For fast temporary relief of minor throat and mouth soreness."
"For rapid relief of minor throat and mouth soreness."

7. *Indications deferred to the Advisory Review Panel on OTC Miscellaneous External Drug Products.*

All cold sore and fever blister (Herpes simplex) claims.

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of April 26, 1973 (38 FR 10306). All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after June 24, 1982, in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62 5600 Fishers Lane, Rockville, MD 20857.

II. General Statements and Recommendations

A. Definitions

The following definitions have been adopted by the Panel. These definitions reflect the Panel's intended meaning of terms as specifically used in this document in reference to drug products for the relief of oral discomfort. Some of these definitions also apply to the other drug categories reviewed by the Panel. Some degree of variation with other definitions of the same terms may exist.

1. *Agent for the relief of oral discomfort.* An agent which, when applied topically, has direct or indirect capability to relieve oral discomfort. This category of drugs includes oral mucosal analgesics, tooth desensitizers, oral mucosal protectants, and agents for the relief of toothache.

2. *Agent for the relief of toothache.* An ingredient used for the temporary relief of pain arising as a result of an open tooth cavity.

3. *Anesthetic.* A drug which causes reversible loss of feeling or sensation. Anesthetics are of two types. A "general" anesthetic is given by inhalation or by intravenous injection, and the agent causes loss of consciousness as well as loss of sensation. A "local" anesthetic is applied to the nerve tissue, in which it blocks sensory receptors and passage of nerve impulses. In a professional practice, the dentist administers local anesthetics by (1) injection into the area adjacent to the nerve(s) to be blocked, or (2) application of the agent (a "topical" or "surface anesthetic) to the oral mucosa. The term "oral mucosal analgesic" is used synonymously with "topical" or "surface anesthetic" or "topical analgesic."

4. *Analgesic (topical).* An ingredient used in drug products for surface application to provide temporary relief of discomfort by an anesthetic or analgesic effect.

5. *Anodyne.* "Anodyne" is synonymous with "topical analgesic." (See part II. paragraph A.4. above—Analgesic (topical).)

6. *Antiseptic.* A preparation which contains chemicals intended to kill or temporarily prevent multiplication of harmful germs which may be present on the skin or oral mucous membranes.

7. *Bioavailability.* The degree to which the drug is absorbed from a dosage form into the body or to its site of action.

8. *Buffering agent.* An agent or system which has the ability to resist a change in pH (hydrogen ion concentration), particularly in aqueous solution, upon the addition of an acid, alkali, or upon dilution with a solvent.

9. *Carcinogenic.* Producing cancer. Carcinogenic agents may be broadly categorized as (a) chemical, (b) physical, (c) viral, or (d) hormonal. Not all species are susceptible to every known carcinogen; it is common to find that a carcinogen which is active in one species will be inactive in another.

10. *Cementum.* The bonelike material covering the root of the tooth. Cementum contains about 45 to 50 percent organic and the balance, inorganic matter. It contains a great number of fibers which attach the tooth to the bone.

11. *Counterirritant.* An irritating drug that is applied locally to the skin or oral mucosa for relief of pain originating from a structure other than the site of application. For example, an irritant drug might be applied in a dental poultice to the oral mucosa surrounding a tooth with a painful pulpitis.

12. *Demulcent.* A protective agent which is employed primarily to alleviate irritation, particularly of mucous membranes or abraded tissues. It is also often applied to the skin.

13. *Dental calculus.* Mineralized dental plaque accumulates on the tooth surface principally at the gingival margin. One of the major fates of plaque is mineralization. Plaque serves as a matrix for calculus formation. The surface of calculus is usually covered with a nonmineralized layer of plaque. The main irritating feature of calculus is its surface plaque rather than its calcified surface or interior.

14. *Dental care agent.* Any drug or dosage form used to treat or prevent disease of the teeth or soft tissue in the oral cavity.

15. *Dental (dentin) hypersensitivity.* A term which implies that the teeth are much more reactive than normal to sensory stimuli such as heat, cold, sour, sweet, or touch. Hypersensitivity can occur when dentin is exposed to the oral environment as a result of gingival recession, abrasion, erosion, or a defect in the enamel or cementum.

16. *Dental poultice.* A topical dosage form which is confined within a porous sac and is applied to the oral mucous membrane in order to supply medication in the presence of heat and moisture.

17. *Dental rinse.* A term used to designate a liquid dosage form for rinsing between and around the teeth.

18. *Dentifrice.* In this document a dentifrice is a substance used with a toothbrush to clean the accessible surfaces of the teeth. Dentifrices are ordinarily composed of water, detergent, humectant, binder, flavoring agents, and a finely powdered abrasive as the principal ingredient. In this document a dentifrice is considered to be an abrasive-containing dosage form for delivering therapeutic agents to the teeth.

19. *Dentin.* Dentin is the calcified tissue forming the bulk of a tooth. It is composed of approximately 70 percent inorganic material, 18 percent organic material, and 12 percent water. Dentin is covered by the enamel of the tooth crown and the cementum of the root. It encloses the soft pulpal tissues of the tooth. Dentin has a tubular structure, and processes from cells in the pulp (odontoblasts) penetrate the dentinal tubules. There are three types of dentin—primary dentin, secondary dentin, and tertiary dentin.

a. *Dentin, primary.* The primary dentin is the well-structured dentin that is deposited during the original formation of a tooth. Dentin deposited later in life differs in structure and can be distinguished from primary dentin microscopically by a demarcation line that stains darkly.

b. *Dentin, secondary (reparative, irritation, adventitious, or tertiary dentin).* Dentin formed after the original primary dentin of the tooth has been deposited is termed "secondary dentin." It forms on the inner, or pulpal, surface of the primary dentin as a physiologic process or as a pathologic response to thermal, mechanical, or chemical irritants. The secondary dentin is not as well-structured as primary dentin and can be distinguished microscopically by its irregular morphologic pattern.

c. *Dentin, tertiary.* Although all dentin that is not primary dentin has traditionally been considered to be secondary dentin, some dental scientists now distinguish between secondary and tertiary dentin. The term "tertiary dentin" is used to designate dentin forming as the result of more severe injuries or insults to a tooth, such as dental caries, marked abrasion, or extensive erosion. The tertiary dentin is of very poor tubular structure and is limited to the area of irritation. In this context, secondary dentin differs from tertiary dentin in that secondary dentin forms as the result of mild biologic effects and is of a more generalized deposition.

In this document, evaluation of the active ingredients is not related to any specific type of dentin.

20. *Dentin desensitizer.* A drug which acts on the dentin to block perception of those stimuli which are usually not perceived by normal subjects but which are perceived by patients with dental hypersensitivity.

21. *Dentinal tubule.* Microscopic channels in the dentin which contain (a) the odontoblastic process (projection of the dentin-producing cells which line the pulp chamber and produce dentin), (b) tissue fluid bathing the process, and (c) varying degrees of mineral. It is controversial whether these tubules contain nerves, but there is general agreement that the tubules contain the means for transmitting pain perception.

22. *Dosage.* A schedule that includes the amount of drug that is ingested or applied at one time (the dose) and the time intervals at which the dose is given;

the schedule may include the duration of therapy.

23. *Dosage form.* The pharmaceutical preparation, e.g., solution, suspension, paste, tablet, ointment, in which the drug is administered.

24. *Dose.* The quantity of a drug that is ingested or applied at one time.

25. *Dose-response.* The relationship between the dose of a drug and the magnitude of the effect produced by that dose.

26. *Double-blind study.* A testing procedure in which neither the investigator nor the subject (patient) knows whether an experimental drug or its control has been administered.

27. *Enamel.* The compact and hard substance that covers the crown of the tooth and provides protection for the dentin. The inorganic content of mature enamel amounts to 96 to 97 percent, by weight, the remainder consisting of organic matter and water.

28. *Fluoride.* The term "fluoride" is used to denote the inorganic forms in which fluorine has combined with other elements. The term "fluoride ion" denotes the negatively charged atom of the chemical element fluorine. The deposition of fluoride in dental enamel has been shown to increase resistance to enamel solubility and, therefore, dental decay.

29. *Gingivitis.* Inflammation occurring in the marginal or papillary gingiva as a response to bacterial plaque.

30. *Hypersensitivity.* Literally means, "more sensitive than normal." In general health care, the term is almost synonymous with allergy and implies that the person has been exposed to a drug, develops antibodies to it, and then reacts adversely to the drug upon subsequent exposure, whereas the normal subject does not. (See part II. paragraph A.15 above—Dental (dentin) hypersensitivity.)

31. *Immediate dentures.* A denture is a dental prosthesis made to replace lost natural teeth in a dental arch. A partial denture replaces a few teeth; a full denture replaces all the lost teeth in an arch (upper or lower). An immediate denture is one that is fabricated prior to the extraction of a few natural teeth and placed in the mouth immediately following the extraction of the natural teeth as part of the surgical procedure.

32. *Minor gum disorders (injury).* Inflammation related to mechanical irritation or minor injury of the gingival tissues. The Panel does not consider gingivitis caused by dental plaque to be a minor gum disorder amenable to self-diagnosis or treatment by OTC preparations.

33. *Mouthwash (oral rinse).* A solution often containing breath-sweetening, astringent, demulcent, detergent, or germicidal agents which is used for freshening and cleansing the mouth, or for gargling. In some instances, such a vehicle may be used to deliver an active drug to the oral mucosa or teeth. The Panel prefers the terms "oral rinse" and "dental rinse" according to their respective areas of use (for the oral mucosa or the teeth) rather than "mouthwash."

34. *Necrosis.* Refers to circumscribed localized areas of cell or tissue death caused by almost any type of severe injury.

35. *Obtundent.* "Obtundent" is used synonymously with "topical analgesic." (See Part II. paragraph A.4 above—Analgesic (topical).)

36. *Oral mucosal analgesic.* An ingredient used in dental care drug products for topical application in the oral cavity to provide temporary relief of oral discomfort by an anesthetic or analgesic effect.

37. *Oral mucosal injury agent.* An agent which relieves oral soft tissue injury, e.g., by cleansing or promoting the healing or oral wounds (minor oral irritations).

38. *Oral mucosal protectant.* An agent which is a pharmacologically inert substance which forms an adherent, continuous, flexible, or semirigid coating when applied to the oral mucous membranes. The coating protects the irritated area from further irritation due to the activity of oral structures.

39. *Pharmacotherapeutic.* The Panel has classified ingredients into various pharmacotherapeutic groups according to the expected therapeutic effect at the intended site of action.

40. *Placebo.* An inactive substance or preparation used in controlled studies to determine the effectiveness of an agent presumed to be active. Generally, a placebo preparation will be identical to the test preparation except that the active or test ingredient will not be present.

41. *Professional labeling.* Drug usage directions for the use of a product intended for, and distributed only to, health care professionals.

42. *Prophylactic.* The term "prophylactic" indicates the prevention of disease. In this document, "prophylactic" is synonymous with "preventative."

43. *Sloughing.* A slough is a mass of dead tissue in, or cast out from, living tissue. Sloughing is the formation or separation of dead from living tissue.

44. *Systemic effect.* An effect related to the entire body as contrasted to a local effect which is an effect on one specific structure. In general, drugs which are absorbed into the blood stream can be assumed to exert systemic effects, although the desired and the observable sites of action may be fairly specific structures or organs.

45. *Teratogenicity.* The capacity of a drug to exert a harmful effect on a developing fetus. Agents which are suspected or known teratogens should not be taken during actual or suspected pregnancy.

46. *Tooth desensitizer.* "Tooth desensitizer" is synomymous with "dentin desensitizer." (See part II. paragraph A.20. above—Dentin desensitizer.)

47. *Topical analgesic (topical anesthetic).* In this report, "topical anesthetic" is used synonymously with "topical analgesic." See part II. paragraph A.4. above—Analgesic (topical).

B. General Comments

The Panel recognizes that there is a consumer population which has an occasional need for OTC preparations to treat minor trauma or irritation which casuses inflammation of a transient nature to the gums or teeth. The Panel has classified such preparations as drug products for the relief of oral discomfort. The drugs within this classification have been subclassified into the following pharmacotherapeutic groups: (1) Agents for the relief of toothache, (2) oral mucosal analgesics, (3) oral mucosal protectants, and (4) tooth desensitizers. In addition, the Panel will discuss dental poultices as a dosage form.

1. *Agents for the relief of toothache.* Agents for the relief of toothache provide temporary relief of pain arising as a result of an open tooth cavity. A counterirritant may also be an agent for the relief of toothache. All agents for the relief of toothache except counterirritants are applied into an open tooth cavity. Counterirritants are applied in a dental poultice to the gingiva surrounding a tooth with a painful pulpitis. Agents for the relief of toothache have been on the market for a long period of time; they probably had their origin in empiric medicine.

The dental profession has voiced considerable concern about the safety and effectivenes of agents for the relief of toothache (Ref. 1). The Panel reviewed complaints about various dental products from a variety of sources. In brief, many dentists and dental organizations expressed concern that agents for the relief of toothache can have harmful effects and that their effectiveness is doubtful (Refs. 1 and 2).

After studying consultants' reviews and comments, and after reviewing the submissions and other pertinent

literature, the Panel came to the conclusion that because there may be a significant target population who could obtain temporary relief from some toothache medications, it would be helpful to have such medications, it would be helpful to have such medication available to the consumer.

2. *Oral mucosal analgesics.* Oral mucosal analgesics are surface or topical application to provide temporary relief of oral discomfort. Some injectable local anesthetics have surface anesthetic properties when applied in ointment, gel, or other topical dosage form. The most commonly used surface anesthetics for OTC dental use are benzocaine and butacaine. Benzocaine (ethylaminobenzoate) is very commonly used as a surface anesthetic; slow absorption makes it safe for use on wounds and mucous membranes (Ref. 3). Various aromatic principles and alcohols also have modest to intense surface anesthetic effects. Tainter (Ref. 4) found that phenol, benzyl alcohol, menthol, and chlorobutanol have topical anesthetic activity.

3. *Oral mucosal protectants.* Oral mucosal protectants are insoluble, pharmacologically inert substances that form adherent, continuous, flexible, or semirigid coats when applied to the oral mucous membranes (Ref. 5). These coatings help to protect the irritated areas of the mouth from further irritation from chewing, swallowing, and other mouth activity. When applied locally to the oral mucous membranes, they can provide temporary relief of discomfort of minor thermal or chemical burns, irritations, or ulcerations resulting from mechanical trauma and aphthous ulcerations (canker sores).

4. *Tooth desensitizers.* Tooth desensitizers are agents used to treat "hypersensitive" (ultrasensitive) dentin. This condition can develop when dentin is exposed to the environment of the oral cavity. The dentin, which contains the sensory apparatus of the tooth, is normally covered by either enamel (crown) or cementum (root). When the latter calcified structures are absent as a result of erosion, abrasion, removal by the dentist, a defect in the tooth, or some other cause, the resultant exposed dentin can become ultrasensitive to various stimuli. Temperature change, mechanical stimuli, and certain chemicals may then induce a painful response. The dentist may make the diagnosis of hypersensitive dentin if all carious lesions have received professional treatment, if there are no restorations causing the ultransensitive response, and if there are no symptoms suggestive of pulpal pathology. Even though the consumer cannot make this diagnosis without professional advice, it is still considered useful by the Panel to have tooth desensitizers available OTC for temporary use until a dentist can be seen or after a dentist has made a diagnosis of dental hypersensitivity and recommends the use of a tooth desensitizer. It is estimated that there is a significant target population with hypersensitive dentin which would use an OTC dentifrice for desensitization (Ref. 6). Therefore, the Panel recommends that these products be made available to the public with a warning that, unless recommended by a dentist, the products are to be used for not more than 2 weeks. The labeling should include appropriate statements on the dangers of neglecting dental care. (See part II. paragraph C.4. below—Warnings).

5. *Dental poultices.* Dental poultices are topical dosage forms containing medication enclosed within a porous sack. When applied to the oral mucous membrane in the presence of moisture, the dental poultice releases the active ingredient.

Dental poultices are in many respects similar to externally applied cataplasms or poultices, one of the oldest classes of pharmaceutical preparations. These products are defined as being usually soft, mushy, or semiliquid preparations to be applied to the skin for the purpose of either stimulating a body surface or alleviating an inflamed area by supplying medicaments in the presence of moisture (Ref. 7). Poultices are reported to be applied for the purpose of drawing infectious materials from diseased tissues as a result of the absorptive qualities of the ingredients used (Ref. 8).

The Panel believes that there is a possibility of a dental poultice becoming accidentally lodged in the throat or in the respiratory tract if the user falls asleep with the poultice in place. The Panel recommends, therefore, that the label of the products carry the warning, "To avoid danger of choking do not leave a poultice in the mouth during periods of sleep."

References

(1) OTC Volume 080086.

(2) Shafer, W. G., M. K. Hine, and B. M. Levy, "A Textbook of Oral Pathology," 3d Ed., W. B. Saunders Co., Philadelphia, pp. 434–438, 1974.

(3) Swinyard, E. A., "Histamine and Antihistamines," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol et al., Mack Publishing Co., Easton, PA, p. 1065, 1975.

(4) Tainter, M. L., "Summary of Studies on the Optimal Composition of Local Anesthetic Solutions," *Anesthesiology*, 2:489–502, 1941.

(5) Harvey, S. C., "Topical Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol et al., Mack Publishing Co., Easton, PA, pp. 712–714, 1975.

(6) Everett, F. G., "Desensitization of Hypersensitive Exposed Root Surfaces," *Dental Clinics of North America*, 8:221–230, 1964.

(7) Blaug, S. M., "Medicated Applications," in "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol et al., Mack Publishing Co., Easton, PA, p. 1543, 1975.

(8) Minutes of Advisory Review Panel on OTC Dentifrices and Dental Care Drug Products, 14th meeting, December 4 and 5, 1974.

C. Labeling for OTC Drug Products for the Relief of Oral Discomfort

The Panel reviewed and concurs with the FDA's OTC drug labeling regulations (21 CFR 201.61 (a), (b), and (c) and 21 CFR 330.10(a)(4)(v)). Having reviewed all of the submitted labels of OTC drug products for the relief of oral discomfort, the Panel recommends that labeling include the following:

1. *Ingredients.* Dentifrice and dental care agents should contain only active ingredients plus such inactive ingredients as may be necessary for formulation. The label should state the name and quantity of each active ingredient in appropriate units to be specified later in each section of this document. The Panel encourages the use of metric units when possible.

The labeling must indicate the principal intended action of the active ingredient as well as the indication for use of the product. The Panel considers that the labeling for any product that contains an active ingredient for which no claim is made is misleading.

For various reasons, individuals may wish to avoid using certain inactive ingredients found in drug products. Such reasons include allergic reactions, previous idiosyncratic responses, safety concerns (whether valid or not), or personal preference. It is impossible to make a free choice in this regard unless all the components of drug products are listed on the labels. Therefore, this Panel strongly recommends that all inactive ingredients be listed on the label in descending order of quantity. However, the product should not imply or claim that its inactive ingredients have a therapeutic benefit.

The Panel recognizes that although full disclosure of flavoring and coloring ingredients is desirable, this may be impractical and confusing because of the large number of ingredients which may be involved. Thus, flavoring and coloring ingredients may be listed in accordance with present regulations for

labeling such ingredients in cosmetic products (21 CFR 701.3).

2. *Indications.* The indications for use of an oral mucosal protectant, tooth desensitizer, oral mucosal analgesic, or agent for the relief of toothache should be simply and clearly stated and should provide the user with a reasonable expectation of results to be anticipated from use of the product.

Statements of indications for use should be specific and confined to the conditions for which the product is recommended. No reference should be made, or implied, regarding the alleviation or relief of symptoms unrelated to the condition accepted as an indication for use of the product. Thus, a prominent and conspicuous statement must be made of general pharmacotherapeutic action. For example, drug products for the relief of oral discomfort should be labeled to indicate their usage, i.e., "agent for the relief of toothache," "oral mucosal protectant," "oral mucosal analgesic," etc.

The Panel concludes that drug products which have antiplaque, plaque control, or gingivitis claims are not currently appropriate for the OTC market because there is no general recognition of any such drug products as safe and effective for these indications at this time. Accordingly, the Panel recommends that such drug products and claims should be evaluated by FDA through the new drug application (NDA) procedure.

3. *Directions for use.* The directions for use should be clear, direct, and provide the user with sufficient information to permit safe and effective use of the product.

The label should include a clear statement of the usually effective minimum and, where applicable, maximum dose (or concentration if more appropriate) per time interval. If dosage varies with the consumer's age, the directions should be broken down by age groups. In appropriate instances, the usual directions may be followed by a statement recommending the supervision of a dentist or physician in the use of the product. The Panel will recommend specific directions for use under each drug statement in later sections of this document.

4. *Warnings.* Labeling of dental care products should include warnings against unsafe use, side effects, and adverse reactions. The Panel considers the following warnings necessary for the safe use of OTC drug products for the relief of oral discomfort.

a. *For all OTC drug products for the relief of oral discomfort.* (1) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(2) "Do not swallow."

(3) "Do not exceed recommended dosage."

b. *For all drug products for the relief of oral discomfort except for products containing tooth desensitizer active ingredients.*

"Not to be used for a period exceeding 7 days."

c. *For all drug products for the relief of oral discomfort except for products containing butacaine sulfate.*

"Children under 12 years of age should be supervised in the use of this product."

d. *For all drug products for the relief of oral discomfort containing butacaine sulfate.* (1) "Do not use in children under 12 years of age unless recommended by a dentist or physician."

(2) "Do not use more than one unit at a time."

(3) "Do not repeat except after 3 hours."

(4) "Do not exceed three doses daily."

e. *For all drug products for the relief of oral discomfort containing cresol.*

"Do not use in children under 6 years of age unless recommended by a dentist or physician."

f. *For all drug products for the relief of oral discomfort containing eugenol.*

"Do not use if you are allergic to eugenol."

g. *For all drug products for the relief of oral discomfort containing "caine" derivatives.*

"Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

h. *For OTC drug products containing oral mucosal analgesic active ingredients*—(1) *For oral mucosal analgesics (topical anesthetics) for teething pain.*

"Fever and nasal congestion are not symptoms of teething, and may indicate the presence of infection. If these symptoms persist, consult your physician."

(2) *For oral mucosal analgesics (topical anesthetics) in denture adhesive products.*

"See your dentist as soon as possible."

i. *For OTC drug products containing agents for the relief of toothache*—(1) *For all agents for the relief of toothache.*

(a) "A dentist must be seen as soon as possible whether or not the pain is relieved."

(b) "Toothaches and open cavities indicate serious problems which need prompt attention by a dentist."

(2) *For agents for the relief of toothache intended for use in an open tooth cavity.*

"Use only in teeth with persistent, throbbing pain."

(3) *For agents for the relief of toothache in a dental poultice dosage form.* (a) "Do not instill in tooth cavity."

(b) "Do not apply to irritated oral soft tissue. Use only on healthy tissue."

j. *For OTC drug products containing tooth desensitizer active ingredients.* (1) "Do not continue use beyond 2 weeks except under supervision of a dentist."

(2) "Sensitive teeth may indicate a serious problem which needs prompt care by a dentist."

(3) "See your dentist as soon as possible whether or not relief is obtained."

5. *Packaging.* The Panel recommends packaging restrictions for several OTC drug products for the relief of oral discomfort. Limitation of package size is recommended for the following products in view of safety considerations discussed elsewhere in this document.

a. Products containing benzoin preparations (benzoin tincture and compound benzoin tincture) should be packaged in well-closed containers of 30 mL or less and should have child-resistant caps.

b. Products containing benzyl alcohol should contain no more than 0.6 mL (30 mL of a 2-percent solution or 60 mL of a 1-percent solution) of benzyl alcohol in a container capable of maintaining stability of the product.

c. Products containing butacaine sulfate should be packaged in single-use units to contain no more than 30 mg of butacaine sulfate each with no more than six units per package.

d. Products containing capsicum for use as a counterirritant should be packaged to contain no more than eight applications.

e. Fluoride-containing dentifrices should not contain more than 260 mg total fluorine.

D. *Principles Applicable to Combination Products.*

1. *General combination policy.* The Panel believes that the interests of the consumer are best served by exposing a user of OTC drugs to the fewest ingredients and the lowest dosage that will provide a satisfactory level of effectiveness. Single-component OTC drugs are preferable because they afford a lower risk of undesirable side effects and permit more precise treatment of individual symptoms. The Panel recognizes that there may be a reason for combining active ingredients in certain OTC drugs; however, such combinations must be based on a sound

and logical scientific rationale. The Panel applied the OTC drug review regulation (21 CFR 330.10(a)(4)(iv)) in developing a combination policy for dentifrice and dental care drug products.

The Panel recommends that a product may contain no more than two Category I dentifrice and dental care agent active ingredients that meet the regulatory requirements as well as the criteria adopted by the Panel, together with suitable inactive ingredients, provided that (a) the active ingredients are safe and effective and do not antagonize the therapeutic usefulness of each other, (b) the inactive ingredients are safe and do not interact with or otherwise inhibit the effectiveness of the active ingredients, (c) there is a significant target population that has a single symptom or concurrent symptoms and can thus benefit from use of the combination, (d) use of the combination does not decrease the safety due to adverse effects over use of the single ingredient, and (e) the combination contains adequate directions for use and is labeled with adequate warnings against unsafe use.

The Panel found that some OTC dentifrice and dental care drug products contain combinations of active ingredients both from the same and from different pharmacotherapeutic groups. The Panel is not convinced that combinations containing two or more relief of oral discomfort agents from the same pharmacotherapeutic group with the same mechanism of action would be more effective than the single ingredient alone. Further, combining full therapeutic concentrations of two or more ingredients for the relief of oral discomfort from the same pharmacotherapeutic group with the same mechanism of action may incur unwarranted additional risk.

The alternative to combining two ingredients from the same pharmacotherapeutic class with the same mechinism of action at each ingredient's effective dose is to combine subtherapeutic doses of the ingredients on the theory that such a combination will reduce the risk of side effects or adverse reactions. The Panel prefers full concentrations of single ingredients because it is not aware of any data to support the use of two ingredients with the same mechanism of action in subtherapeutic doses. Combinations containing ingredients of the same pharmacotherapeutic group with the same mechanism of action at less then the minimum effective concentration for any one of the ingredients are, therefore, classified in Category II.

The Panel recognizes that relief of oral discomfort drug products have also been combined with active ingredients from other pharmacotherapeutic groups. The Panel has reviewed and classified combinations of active ingredients for the relief of oral discomfort with active ingredients for the treatment of oral mucosal injury, as discussed below.

The Panel is aware that active ingredients for the relief of oral discomfort have also been combined with oral antiseptic active ingredients, which have been reviewed by the Advisory Review Panel on OTC Oral Cavity Drug Products, and with denture adhesives, which are being reviewed by the Bureau of Medical Devices. These combination products were reviewed and classified by this Panel as to their rationale for concurrent therapy.

The same general principles apply when an active ingredient from a different pharmacotherapeutic group reviewed by another OTC drug advisory panel is combined with an active ingredient of a pharmacotherapeutic group reviewed by this Panel. The rationale for such combinations should be evaluated by FDA according to the combination policy set forth in the reports of both panels.

2. *Limitation of ingredients in combination products.* The Panel recommends that not more than two dentifrice and dental care agent active ingredients be included in any combination product because the addition or more ingredients would increase the risk to the consumer without increasing the benefit.

3. *Labeling of active ingredients.* Labeling for the combination product must conform to the recommended labeling for each active ingredient, and must specify any additional information such as drug interactions or adverse reactions that occur with the combination products, but not with the individual ingredients used alone. The labeling for a Category I combination product should stress that the product should be used only when all symptons are present. The product's labeling should not induce the consumer to take a combination drug when a single entity is appropriate and effective. The consumer should be adequately informed, through the labeling, of the total therapeutic capabilities of the product.

4. *Criteria for Category I combination products.* The Panel recommends the following general criteria for Category I combination drug products for the relief of oral discomfort.

The Panel recommend that each claimed active ingredient in a combination product must make a statistically significant contribution to the claimed effect or effects of the product.

Two Category I active ingredients from different pharmacotherapeutic groups may be combined to treat different symptons concurrently if each Category I active ingredient is present within its established dosage range; the combination is rational; there is a significant target population that suffers from the concurrent symptons; and the combination is as safe and as effective as each individual active ingredient used alone.

5. *Category I combination drug products for the relief of oral discomfort.* The Panel recommends that the following combinations be classified as Category I for the relief of oral discomfort.

a. *Combination of two agents for the relief of oral discomfort (an oral mucosal protectant and an oral mucosal analgesic).* One Category I oral mucosal protectant may be combined with one Cagetory I oral mucosal analgesic. An oral mucosal protectant protects the affected area from a pain stimulus, and an oral mucosal analgesic provides relief in pain. These two agents complement each other when used in the same dosage form, and both are intended to remain on the wound.

b. *Combinations of an agent for the relief of oral discomfort with an oral antiseptic.* (Reviewed by the Advisory Review Panel on OTC Oral Cavity Drug Products.)

(1) *Oral mucosal protectant and an oral antiseptic.* The Panel finds that this combination is rational and will provide the patient with additional protection against further irritation and infection. The oral mucosal protectant will provide a coating over the wound and hold the antiseptic agent in place where it can act most effectively.

(2) *Oral mucosal analgesic and an oral antiseptic.* The Panel finds that this combination is rational. Pain may frequently accompany minor oral wounds, and treating the discomfort and preventing possible infection concurrently is a convenient and reasonable approach to therapy.

(3) *Oral mucosal protectant, oral mucosal analgesic, and an oral antiseptic.* The Panel finds that this combination is rational. An oral mucosal analgesic provides relief of pain, the oral mucosal protectant provides a coating over the wound, and the antiseptic agent is held in place where it can act most effectively.

c. *Combination of an agent for the relief of oral discomfort and a denture adhesive.* (Under review by the Bureau of Medical Devices.)

Oral mucosal analgesic and a denture adhesive. The Panel finds that this combination is rational. Immediate dentures, particularly, may be uncomfortable or painful in some instances. Combining an oral mucosal analgesic with a denture adhesive may enable the denture wearer to benefit from the analgesic action, while the adhesive helps to secure the dentures, and both actions increase the comfort of the user.

6. *Criteria for Category II combination products.*

The Panel recommends the following criteria for Category II combination drug products for the relief of oral discomfort.

a. A combination is Category II if a Category II active ingredient or Category II labeling is present in the combination product.

b. A combination product containing Category I or Category III active ingredients from the same pharmacotherapeutic group with the same mechanism of action is classified as Category II.

c. A combination product containing active ingredients from different pharmacotherapeutic groups is classified as Category II if it includes any ingredient in less than the minimum effective concentration established by the Panel.

d. If a combination contains an active ingredient or other condition that has not been reviewed by this or any other OTC drug advisory review panel, such ingredient or condition is Category II and the resulting combination then becomes Category II.

e. A combination product is classified as Category II if it includes more than two dentifrice and dental care agent active ingredients.

f. A combination product is classified as Category II if it contains active ingredients from more than one pharmacotherapeutic group and there is not a significant target population that has a concurrent need for a drug from each of these groups.

g. A combination of two Category I active ingredients from different pharmacotherapeutic groups is Category II if the ingredients cannot be combined because of chemical or physical formulation problems that would result in decreasing the safety or effectiveness of the individual ingredients.

7. *Category II combination drug products for the relief of oral discomfort.* The Panel recommends that the following combinations be classified as Category II for the relief of oral discomfort.

a. *Combinations of two agents for the relief of oral discomfort*—(1) *Oral mucosal protectant and an agent for the relief of toothache.* The Panel finds no rationale for such a combination. These two agents are intended to be applied at different sites in the oral cavity and to treat symptoms resulting from different etiologies. Further, if administered in a combination product, the oral wound protectant might obstruct the tooth cavity and prevent the escape of gases and fluids. The Panel considers such an obstruction to be detrimental and dangerous to the health of the consumer.

(2) *Oral mucosal protectant and a counterirritant.* The Panel finds no rationale for such a combination; such ingredients are, in fact, therapeutically antagonistic. By definition, a counterirritant is irritating, and such an agent should not be applied to injured tissue either alone or in combination with a wound protectant.

(3) *Oral mucosal protectant and a tooth desensitizer.* The Panel finds no rationale for such a combination. These pharmacotherapeutic agents are intended to be applied at different sites and to treat symptoms resulting from different etiologies.

(4) *An agent for the relief of toothache intended to be used in an open tooth cavity and a counterirritant.* The Panel finds no rationale for such a combination. By definition, a counterirritant is irritating, and should never be placed in the tooth cavity. Such irritating agents therefore should not be used in combination with an agent intended to be used in an open tooth cavity to provide toothache relief.

(5) *An agent for the relief of toothache and a tooth desensitizer.* The Panel finds no rationale for such a combination. These pharmacotherapeutic agents are intended for application to different sites and to treat symptoms resulting from different etiologies.

(6) *Oral mucosal analgesic and an oral mucosal analgesic, both from the same group with the same mechanism of action.* The Panel concludes that any combination of two oral mucosal analgesics from the same group with the same mechanism of action, at full or less than full therapeutic concentrations, is Category II. This includes the combination of two "caine" or the combination of two aromatic analgesics. The weight of scientific evidence is against such combinations (Ref. 1).

(7) *Oral mucosal analgesic and a tooth desensitizer.* The Panel finds no rationale for such a combination. These pharmacotherapeutic agents are intended to be applied at different sites, and are for the relief of different types of painful symptoms with different etiologies.

(8) *A counterirritant and a counterirritant.* The Panel finds no rationale for such a combination and prefers a single-ingredient product.

(9) *A counterirritant and a tooth desensitizer.* The Panel finds no rationale for such a combination. These pharmacotherapeutic agents are intended to be applied at different sites. Irritating chemicals should not be applied to exposed dentin.

b. *Combinations of an agent for the relief of oral discomfort with an oral mucosal injury agent*—(1) *Oral mucosal protectant and an oral wound cleanser.* The Panel finds no rationale for such a combination. An oral mucosal protectant forms a protective film over the area to which it is applied. The use of an oral wound cleanser in the same dosage form with an oral mucosal protectant would result in the cleanser removing the protectant from the affected area, thus making the protectant ineffective.

(2) *An agent for the relief of toothache and an oral wound cleanser.* The Panel finds no rationale for such a combination. If an agent for the relief of toothache is administered in the same dosage form with an oral wound cleanser, the agent for the relief of toothache will be removed from its site of action when the oral wound cleanser is expectorated and, thus, before it has had an opportunity to exert its intended pharmacotherapeutic effect. These two pharmacotherapeutic agents are intended to be used at different sites in the oral cavity.

(3) *Oral mucosal analgesic and an oral wound cleanser.* The Panel finds no rationale for such a combination. If an oral mucosal analgesic is administered in the same dosage form with an oral wound cleanser, the oral mucosal analgesic will be removed from its site of action when the oral wound cleanser is expectorated. These two pharmacotherapeutic agents are intended to be used sequentially and not at the same time.

(4) *Counterirritant and an oral wound cleanser.* The Panel finds no rationale for such a combination. By definition, a counterirritant is irritating, and such an agent should not be used when cleansing a wound.

(5) Tooth desensitizer and an oral wound cleanser. The Panel finds no rationale for such a combination.

(6) *An agent for the relief of toothache and an oral wound-healing agent.* An oral wound-healing agent is intended for use on mucosal tissue, not on tooth pulp. An agent for the relief of toothache is intended for use on irreversibly damaged pulp and should only be used when there is no possibility that the pulp injury is reversible. Hence, an oral

wound-healing agent would confer no benefit when applied to tissue that has no potential for healing.

(7) *Counterirritant and an oral wound-healing agent.* The Panel finds no rationale for such a combination. By definition, a counterirritant is irritating, and such an agent should not be used on a healing wound.

(8) *Tooth desensitizer and an oral wound-healing agent.* The Panel finds no rationale for such a combination. These two pharmacotherapeutic agents are intended to be used at different sites in the oral cavity.

(9) *Oral mucosal protectant and a peroxide-containing oral wound-healing agent.* The Panel finds no rationale for such a combination. If an oral mucosal protectant is administered in the same dosage form with a peroxide-containing oral wound-healing agent, the bubbling action of the peroxide would remove the protectant from the site of action before it has had an opportunity to exert the intended pharmacotherapeutic effect.

(10) *Oral mucosal analgesic and a peroxide-containing oral wound-healing agent.* The Panel finds no rationale for such a combination. If an oral mucosal analgesic is administered in the same dosage form with a peroxide-containing oral mucosal analgesic, the bubbling action of the peroxide would remove the analgesic from the site of action before it has had an opportunity to exert the intended pharmacotherapeutic effect.

c. *Combinations of an agent for the relief of oral discomfort with an oral antiseptic.* (Reviewed by the Advisory Review Panel on OTC Oral Cavity Drug Products.)

(1) *An agent for the relief of toothache and an oral antiseptic.* The Panel finds no rationale for such a combination. The oral antiseptic will not contribute to the relief of toothache, nor is any infection within the tooth controllable by applying an antiseptic.

(2) *A counterirritant and an oral antiseptic.* The Panel finds no rationale for such a combination. A counterirritant must only be applied to normal oral mucosa. Since no infection is present at the site of use, no antiseptic is needed.

(3) *A tooth desensitizer and an oral antiseptic.* The Panel finds no rationale for such a combination. A tooth desensitizer is applied by brushing and is not applied at the site of an infection. It would be irrational either to use an antiseptic in the absence of any infection or to apply an antiseptic in a dosage form that must be brushed onto the site of application.

d. *Combinations of an agent for the relief or oral discomfort with a denture adhesive.* (Under review by the Bureau of Medical Devices.)

(1) *An oral mucosal protectant and a denture adhesive.* The Panel finds no rationale for such a combination. An oral mucosal protectant forms a film over the area to which it is applied. Such a film would interfere with the action of the adhesive. The added thickness of the oral wound protectant would also interfere with the fit of the dentures and could be expected to cause further injury or irritation as a result.

(2) *An agent for the relief of toothache and a denture adhesive.* The Panel finds no rationale for such a combination. These two agents are intended to be applied at different sites in the oral cavity.

(3) *A counterirritant and a denture adhesive.* The Panel finds no rationale for such a combination. By definition, a counterirritant is irritating, and such an agent should not be used under dentures.

(4) *A tooth desensitizer and a denture adhesive.* The Panel finds no rationale for such a combination. These two agents are intended to be applied at different sites in the oral cavity.

8. *Criteria for Category III combination products.* The Panel recommends the following criteria for Category III combination drug products for the relief of oral discomfort.

a. If a Category III active ingredient or other condition is present in a combination product containing no Category II ingredient or labeling the combination is classified as Category III.

b. If two agents for the relief of oral discomfort from the same pharmacotherapeutic group, but with different mechanisms of action, are present in a combination drug product, that combination is classified as Category III.

9. *Category III combination drug products for the relief of oral discomfort.* The Panel recommends the following combinations be classified as Category III for the relief of oral discomfort.

a. *Combination of two agents for the relief of oral discomfort*—(1) *Oral mucosal protectant and an oral mucosal protectant.* The Panel did not review any data relating to such combinations. However, the Panel believes that there may be a rationale for combining two such agents. Data must be generated to establish that each ingredient makes a contribution to the claimed effect without decreased effectiveness or safety.

(2) *A tooth desensitizer and a tooth desensitizer.* There may be a rationale for combining two such agents. However, the data reviewed by the Panel relating to such combinations did not establish that each ingredient makes a contribution to the claimed effect.

b. *Combinations of an agent for the relief of oral discomfort with certain oral mucosal injury agents*—(1) *Oral mucosal protectant and an oral wound healing agent.* These two types of agents may be combined provided testing is performed to establish that the oral mucosal protectant does not interfere with the action of the oral wound healing agent. The protectant will hold the oral wound healing agent in place at the site of the wound, and will also protect the wound from further injury and irritation.

(2) *Oral mucosal analgesic and an oral wound healing agent.* The oral mucosal analgesic will provide relief of the symptoms of pain or discomfort while the oral wound healing agent promotes healing.

(3) *Two agents for the relief of toothache acting by different mechanisms.* Agents for the relief of toothache may act by different mechanisms. For example, benzocaine and butacaine are Category III agents for the relief of toothache and would act by producing surface anesthesia, while eugenol is a Category I agent for the relief of toothache and probably obtunds toothache by a different mechanism (Ref. 2).

(4) *An agent for the relief of toothache and an oral mucosal analgesic.* Since some oral mucosal analgesics are also agents for the relief of toothache, they may be combined under the conditions described under (3) above for the relief of toothache but not for use as oral mucosal analgesics.

(5) *An oral mucosal analgesic and a counterirritant.* The only counterirritant acceptable to the Panel in Category III is capsicum. Capsicum is used to provide relief of toothache pain in a poultice dosage form applied between the cheek and the gum, and should only be applied to intact, nonirritated mucous membrane. Capsicum has been combined in poultices with the oral mucosal analgesic benzocaine.

(6) *Two oral mucosal analgesics acting by different mechanisms.* Oral mucosal analgesics may act by different mechanisms, e.g., benzocaine (a "caine") and phenol (an aromatic). Therefore, it may be rational to combine them at full or less-than full dosage.

c. *Combinations of an oral mucosal protectant with an oral mucosal analgesic claiming a prolonged duration of action.*

Oral mucosal protectants may hold an oral mucosal analgesic in contact with the affected area for a longer period of

time than if the oral mucosal analgesic were applied as a single active ingredient. This effect, however, has not been proven for any combination.

Data must be generated to establish that such a combination significantly prolongs the duration of action of the oral mucosal analgesic without decreasing the safety or effectiveness of either ingredient. Any claim of this longer duration of action due to the combination must be proven, and the Panel recommends that such a claim be classified as Category III.

References

(1) Adriani, J., and R. Zepernick, "Clinical Effectiveness of Drugs Used for Topical Anesthesia," *Journal of the American Medical Association*, 188:711–716, 1964.

(2) Bender, I. B., presentation to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, 14th meeting, October 16–17, 1974.

E. Statement on Category III Testing Procedures

1. *Comments on study design.* The Panel has agreed that the guidelines recommended in this document for the studies required to bring a Category III active ingredient into Category I are in keeping with the present state of the art and do not preclude the use of any advances or improved technology in the future.

Experimental design should take into account the need to include a sufficient number of subjects or trials so as to provide meaningful conclusions which can be supported by appropriate statistical analysis. The selection of appropriate subjects or patients can be a major importance when the effect of a drug in a specific illness or symptom is under study.

Some bias may exist in all situations wherein the subject, the observer, or both make a judgment as to the nature or magnitude of a response. Biological factors also contribute to variation in response between individuals in a given study sample. Although bias and biological variation cannot be eliminated, their effect on the outcome of an experiment can be minimized by adopting a "double-blind, placebo-controlled" or other suitably blinded design. In such a design, one group of subjects receives a placebo so that the placebo response, unmodified by the conditioning of the test, can be established. Whenever possible, neither the subjects nor the observer should be able to distinguish the identity of the preparations under test. This requires that the test preparations and placebos be indistinguishable in regard to shape, color, odor, and taste. However, in the case of preparations containing active volatile agents or substances which affect sensory perception, it is impossible to make the placebo indistinguishable from active ingredients. When a placebo is used for comparison, the medication should exert a quantitatively positive effect which is statistically significant when compared to the placebo. The level of statistical significance which is acceptable is described under each Category III protocol. (See paragraph C. of parts III., IV., V., and VI. below—Data Required for Evaluation.)

It is often desirable to include, as a positive control, a standard drug which is known to exert a significant effect against the relevant symptoms being tested. When a standard drug is used for comparison, the test medication should be at least equivalent to the standard.

Finally, the inclusion of two or more dose levels (or concentrations) of the drug under test may be desirable in order to provide an estimate of an effective therapeutic dose range which is free from undesirable side effects. If a crossover design is utilized, i.e., each subject serves as his or her own control, the sequence in which the placebo, standard, and test drugs are administered should be randomized and a sufficient "wash-out period" between tests should be permitted.

Wherever possible, objective measurements should be made in preference to subjective judgments. However, subjective measurements may be required if relevant to the symptom or symptom complex for which the drug under test is to be used.

2. *Testing period provided for Category III conditions.* The Panel has determined that the available data are insufficient (Category III) to classify some conditions either as Category I or Category II. Such conditions are permitted to remain on the market, or to be introduced into the market, after the date of publication of the final monograph in the **Federal Register**, provided that FDA receives notification of testing in accordance with § 330.10(a)(13) (21 CFR 330.10(a)(13)). The Panel recommends that Category III conditions should be tested within 2 years except as noted for specific pharmacotherapeutic groups.

3. *Testing guidelines for Category III combination products.* The Category III active ingredients for the labeling indication claims must be tested in accordance with the evaluation protocol specified for that particular pharmacotherapeutic classification. If, when tested alone, the Category III ingredient or ingredients can be shown to be safe and effective in accordance with the standards for evaluation established in the protocols, it will then qualify for Category I status. The combination will then contain only Category I active ingredients, but still must be tested to prove that each ingredient makes a contribution to the product's claimed effect(s).

An acceptable test procedure will be one in which the proposed combination and each of the individual active ingredients at the proposed dosage level in the combination are evaluated, all in the same study, and compared to a placebo for effectiveness against the relevant labeling claim. In this way it can be shown whether or not each active ingredient in the combination makes a contribution toward effectiveness without incurring an unnecessary decrease in safety.

F. Drug Misuse and Abuse

The potential for development of drug tolerance and addiction due to the use of dentifrices and dental care agents, even when the patient is on an unsupervised regimen, does not seem to exist. However, the Panel believes that misuse of dental care agents occurs when an agent tends to give the subject a false sense of security, thereby diminishing his desire to seek professional advice. When this possibility exists, the label warnings should alert the patient to this danger.

Several products, such as denture adhesives combined with oral mucosal analgesics and agents for the relief of toothache, discussed elsewhere in this document, are excellent examples of drug products which might be subject to misuse. The problem becomes especially acute when signs of an infection or other symptoms are subdued but the underlying cause is not corrected or if a subject, needing professional dental care, uses an OTC dental care drug product to enable him or her to postpone the needed care. Labeling of OTC dentifrice and dental care drug products should include warnings against possible misuse of the specific ingredients.

G. Pediatric Considerations

The Panel reviewed the conditions under which dental care products can be safely used by children. Children are defined by the Panel as persons under 12 years of age. Many of the active ingredients reviewed by the Panel as drug products for the relief of oral discomfort have different indications, dosages, and directions for different age groups. For specific information on the labeling of individual active ingredients, see the labeling discussions elsewhere in this document. (See paragraph B.1. of

parts III., IV., V., and VI. below—Category I Labeling.)

The Panel considered the acute and chronic toxic effects of fluoride ingestion in determining whether drug products containing fluoride can be safely used by children. The Panel's recommendations for the use of these products by children are included in the preamble to the proposed monograph on anticaries drug products in the section entitled "Pediatric Considerations" (45 FR 20673; March 28, 1980). The proposed monograph on anticaries drug products (hereinafter referred to as the anticaries report) was published in the **Federal Register** of March 28, 1980 (45 FR 20666). The panel's recommendation concerning package size limitations and child-resistant closures for anticaries drug products are equally applicable to fluoride drug products used as tooth desensitizers.

Package size limitations have also been recommended for benzoin preparations and benzyl alcohol. The Panel recommends that benzoin preparations, which are Category I oral mucosal protectants, be packaged in containers of not more than 30mL compound benzoin tincture or 30 mL benzoin tincture and that the packages have child-resistant closures.

The Panel recommends that benzyl alcohol, which is a Category III oral mucosal analgesic and an agent for the relief of toothache, be packaged in containers which contain no more than 0.6 mL of benzyl alcohol. Animal studies suggest that ingestion of benzyl alcohol (1 mL/kg) may be fatal (Ref. 1). Package sizes that will provide more than 30 mL of a 2-percent solution of 60 mL of a 1-percent solution are unnecessary and may be a potential risk for accidental ingestion by young children.

Benzocain was reviewed by the Panel and is recommended for classification as a Category I oral mucosal analgesic and a Category III agent for the relief of toothache. The Panel is aware that benzocaine in high doses may cause methemoglobinemia, because it can interfere with the reconversion of methemoglobin to hemoglobin (Refs. 2 and 3.) Most reported systemic reactions reviewed by the Panel were in infants under 6 months of age (Refs. 4 throught 7). Infants may be more susceptible due to a deficiency of DPNH (diphosphopyridine nucleotide)-dependent methemoglobin reductase which protects against methemoglobin-inducing foreign compounds (Ref. 7). Infants under 4 months of age, who may have not as yet developed sufficient quantities of the reductase, develop methemoglobinemia more easily than older children and adults. The Panel has, therefore, recommended that infants under 4 months of age should not be treated with benzocaine except under the advice and supervision of a dentist or physician. No specific warning concerning methemoglobinemia is considered necessary.

The Panel has also recommended that children under 12 years of age should be supervised in the use of benzocaine-containing dental products.

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H. Inactive Ingredients

The Panel is aware of the need for the inclusion of inactive ingredients in OTC drug products for the relief of oral discomfort. Preferably, these should be limited to agents that are considered necessary such as abrasives, preservatives, aromatics, vehicles, colorants, sweeteners, antioxidants, buffers, and agents required for particular dosage forms.

The Panel did not undertake an extensive review of inactive ingredients, because it is the view of this Panel that the safety and the advisability of including specific inactive ingredients in drug products should be reviewed by an appropriate Panel. Since many of these ingredients are used in the formulation of many drug products other than those reviewed by this Panel, it is not appropriate that they be dealt with specifically and solely in relation to dentifrices and dental care agents for the relief of oral discomfort.

The Panel recommends that in view of the inactive ingredients, such as sodium lauryl sarcosinate, which have caused oral mucosal irritation, the final formulation of OTC drug products for the relief of oral discomfort should be shown to be safe and nonirritating. Monitoring of consumer complaints should detect, at an early stage, irritation or allergic manifestations not detectable in animal studies.

I. Single Active Ingredient Products

The Panel has discussed dental combination products earlier in this document. (See part II. paragraph D. above—Principles Applicable to Combination Products.) The Panel believes there are some combinations which may be rational for concurrent therapy of multiple symptoms for a significant portion of the target population. However, for the individual who has only one symptom and who may need only one ingredient, single active ingredients afford the opportunity to selectively treat such a condition.

Great variability with regard to side effects induced by drugs is seen among patients. Although these effects and the drugs producing them are sometimes familiar to dentists, physicians, and pharmacists, when the ingredient is present in a combination, it may be difficult to identify the ingredient causing the side effect. Furthermore, use of fixed combinations for the treatment of a particular symptom, where a single ingredient product would be safe and effective, exposes the consumer to additional risk of side effects, idiosyncratic reactions, and allergenicity without added benefit. These difficulties are largely avoided with single active ingredients, which many dentists and pharmacists prefer to recommend. There was agreement among Panel members that the availability of products containing single active ingredients would provide increased opportunity for the public and health professionals to select products appropriate to treat the symptoms.

J. General Statements on the Determination of Safety and Effectiveness for OTC Dental Products

The Panel evaluated the safety and effectiveness of OTC dental active ingredients as well as proper dosage ranges for OTC drug use. In reviewing the scientific literature for these ingredients, the Panel evaluated the available data as to whether or not the ingredient was safe and effective. Among those agents determined to be safe and effective, the Panel did not attempt to determine the drugs of choice for any particular indication.

1. *Determination of safety.* In deciding on the safety of a drug or combination of drugs for the intended use, both animal and human studies were considered. The animal data were usually related to

levels of the drug that might cause death or serious adverse effects on vital tissues such as the bone marrow, liver, and kidneys. Also, the possibility that the drug might cause adverse effects on teeth or irritation of the oral mucosa was evaluated. Animal studies were helpful in establishing benefit-to-risk ratios for ingredients which are commonly used.

Major attention was paid to information related to adverse drug effects in humans, both adults and children. A knowledge of the toxicology of the drug or drugs under consideration both in animal studies and from human experience makes it possible to look specifically for adverse effects in one or more organs or systems. For example, manufacturers of topical anesthetics were required to show that the ingredients used in their products were safe when such ingredients were used in effective concentrations.

It was desirable that there be studies in which the drug was evaluated in its final composition and compared to its vehicle control. However, there were times when the Panel was called upon to make judgments without benefit of controlled pharmacological studies, since they were not available for some ingredients.

2. *Determination of effectiveness.* In determining effectiveness for the intended use. the Panel considered separately each pharmacotherapeutic group under review although certain general principles apply to all groups.

In terms of effectiveness, animal studies were seldom very helpful since it is difficult to find animal models which closely mimic the course of oral diseases and conditions in humans.

Major attention was paid to clinical studies, especially where the double-blind technique could be employed. The inclusion of a placebo as a comparison was considered desirable and comparison of the agent with a known standard was also considered useful.

Studies utilizing objective measurements, proper controls, and statistical analysis carried considerable weight in the Panel's decision to place an ingredient in Category I. Clinical experience of a general nature, if documented by qualified experts, added somewhat to the final decisions.

The Panel recognizes the extensive marketing history of many dental preparations. Members of the drug industry presented data to the Panel summarizing their marketing history and consumer complaint information. The effectiveness of such products may never have been subjected to scientific investigation even though the products have been marketed for many years. Apparent consumer acceptance and testimonial data used by many manufacturers as the sole evidence of effectiveness and safety were not acceptable to the Panel. When claims of effectiveness were supported solely by outdated experimental methodology, this evidence for effectiveness was also considered unacceptable.

The Panel took into account the marketing experience of manufacturers as stated in their submissions. Although the Panel found these data helpful, marketing experience neither overruled nor substituted for the Panel's other sources of knowledge of safety, effectiveness, and rationale for such products.

SUMMARY OF THE PANEL'S CATEGORIZATION OF ACTIVE INGREDIENTS

Active ingredients	Oral mucosal protectant	Agent for the relief of toothache	Tooth desensitizer	Oral mucosal analgesic	Counter-irritant
Benzocaine		III(E)		I	
Benzoin preparations (benzoin tincture and compound benzoin tincture)	I				
Benzyl alcohol		III(SE)		III(SE)	
Butticaine sulfate		III(SE)		I	
Camphor				III(SE)	
Capsicum		II(SE)			III(E)
Citric acid and sodium citrate in poloxamer 407			III(E)		
Creosote		III(SE)			
Cresol		III(SE)		III(SE)	
Eugenol preparations (85 to 87 percent eugenol in clove oil or a bland, fixed oil)		I			
Eugenol (1 to 84 percent)		III(E)			
Fluoride preparations (sodium fluoride, sodium monofluorophosphate, and stannous fluoride)			III(E)		
Formaldehyde solution			III(E)		
Menthol		II(S)			
Methyl salicylate		III(SE)		III(SE)	
Myrrh, fluidextract	III(SE)				
Phenol preparations (phenol and phenolate sodium)		III(SE)		I	
Potassium nitrate			III(E)		
Sodium fluoride, strontium chloride, and edetate disodium			II(SE)		
Strontium chloride			III(E)		
Thymol preparations (thymol and thymol iodide)		III(E)		III(E)	

(S) = placed in indicated category for safety considerations.
(E) = placed in indicated category for effectiveness considerations.
(SE) = placed in indicated category for both safety and effectiveness considerations.

III. Agents for the Relief of Toothache

A. General Discussion

Agents for the relief of toothache provide temporary relief of pain arising as a result of an open tooth cavity. All agents for the relief ot toothache, except counterirritants, are applied into an open tooth cavity. Counterirritants are applied in a dental poultice to the gingiva surrounding a tooth with a painful pulpitis. Agents for the relief of toothache have been on the market for a long period of time; they probably had their origin in empiric medicine.

1. *Agents for the relief of toothache applied into an open tooth cavity.* It is now known that the dental pulp is very susceptible to irritation. Some causes of irritation are dental caries, excessive heat, and placement of irritating chemicals or filling materials in a deep cavity. Irritation causes inflammation in the pulp which can be divided into reversible and irreversible stages. During the reversible stage, the application of medication resulting in added irritation or dehydration of dentin may cause the damage of the pulp to reach the irreversible stage, rendering the tooth nonviable. Dehydration is damaging because it increases the permeability of the dentinal tubular contents. Thus, in general, any agent which irritates or dehydrates dentin is considered unsafe if applied during the reversible stage of pulp disease.

The dental profession has voiced considerable concern about the safety and effectiveness of agents for the relief of toothache (Ref. 1). The Panel

reviewed complaints about various dental products from a variety of sources. In brief, many dentists and dental organizations expressed concern that agents for the relief of toothache can have harmful effects and that their effectiveness is doubtful (Refs. 1 and 2).

The Panel called upon two expert consultants to provide their opinions on agents for the relief of toothache. These consultants were not in complete agreement; however, their opinions, based on their own and others' research and practice, were very helpful to the Panel (Refs. 3 and 4).

After studying the consultants' reviews and comments, and after reviewing the submissions and other pertinent literature, the Panel came to the following conclusions:

a. Most toothache remedies are very caustic preparations which will burn the oral mucosa. These burns heal rapidly so the consequences of this adverse effect are not severe. Of greater concern is the effect of these irritant chemicals on dentin and viable dental pulp.

b. The systemic effect of toothache remedies is generally not considered to be of consequence since only minute amounts of the drugs are used. Corticosteroids, which do have systemic effects, are limited to use by the dentist or physician. The Panel recognizes that any drug to which the subject is intolerant or allergic may be harmful even when applied in small quantities.

c. The main effect of OTC agents for the relief of toothache is probably as a placebo. Most of these preparations have a "medicinal" taste and smell and are irritants. These properties distract the patient and may provide some psychological feeling of benefit, but the major problems of deep caries, pulpitis, and infection remain untreated.

c. Irritants or agents instilled in the tooth cavity which excessively dehydrate the tooth structure (such as high concentrations of alcohols) can do harm to any pulp which as reversible damage, but cannot do further injury to the irreversibly damaged pulp. Ethyl alcohol above 20 percent is considered to be an irritant to the dental pulp and, therefore, should not be used above 20 percent in agents for the relief of toothache which are to be used in an open tooth cavity.

It is irrational to place a substance into a tooth cavity which may occlude the opening through which an abscess may drain allowing fluid and gas to escape. Cotton soaked with medication, waxes, or gums are occulsive agents. Agents which harden and form a filling, such as sandarac, may be especially detrimental. Occulsion of the cavity may intensify pain and promote the spread of infection to deeper tissues. Agents which occlude the cavity are, therefore, unacceptable.

The Panel recognizes that the ingredients beeswax and sandarac are inactive. However, the Panel feels that the use of occlusive agents such as these in a tooth cavity for the relief of toothache pain exposes the consumer to unnecessary safety risks. The Panel recommends that agents for the relief of toothache shall not contain any agent which acts as a physical barrier and does not permit the escape of fluids and gases from a degenerating pulp (Refs. 5 and 6). Blockage of the drainage from a cavity by ingredients such as beeswax and sandarac may result in increased pain and possible spread of infection.

Beeswax can act as a physical barrier in the tooth cavity. Sandarac is a resin which is soluble in alcohol, but insoluble in water. It is utilized as a component of certain cavity varnishes for professional application in dentistry. In OTC products for the relief of toothache, sandarac in alcoholic solution is used to saturate a cotton pellet which is then placed in the open cavity of a carious tooth or a tooth with a lost restoration. In contact with water or oral fluids, the sandarac precipitates, forming with the cotton a temporary filling. Such a temporary filling would, theoretically, protect exposed dental structures from air, food, or thermal changes, thereby decreasing pain originating from these stimuli. However, alcohol used as a solvent for sandarac will denature dentinal tubules and dehydrate dentin (Ref. 5). In addition, a temporary filling applied in a tooth with acute suppurative pulpitis may increase pain by blocking escape of an inflammatory exudate and gases (Refs. 5 and 6). Since the patient cannot reliably determine whether or not there is drainage from the cavity, use a self-applied temporary dental filling is not advisable. The Panel is award that beeswax, sandarac, or other ingredients which may form physical barriers in a tooth cavity may be added as inactive ingredients; however, it is considered unsafe to use these ingredients in such a manner that they do form physical barriers in a tooth cavity for reasons stated above.

The Panel is concerned that other occlusive agents which were not submitted to the Panel for review may be on the market. In this document only beeswax and sandarac are discussed as occlusive agents, but it is the intention of the Panel to recomment that all inactive ingredients which form an occlusive filling in a tooth cavity may not be included in agents for the relief of toothache intended for use in an open tooth cavity.

Because there may be a sufficient target population who could obtain temporary relief from some toothache medication, it would be helpful to have such medications remain on the market with appropriate warnings on the label.

The requirements for safety and effectiveness of agents for the relief of toothache agreed upon by the Panel are as follows:

(a) *Safety requirements for agents for the relief of toothache.* Agents for the relief of toothache should not cause sloughing or necrosis of soft tissue, should have low potential for allergenicity, should not cause a systemic effect, and should not cause irreversible damage to tissues surrounding the end of the root (periapical). In addition, combinations of ingredients including agents for the relief of toothache may be rational if it can be shown that the criteria for combination products can be met. (See part II. paragraph D. above—Principles Applicable to Combination Products.)

(b) *Effectiveness requirements for agents for the relief of toothache.* Agents for the relief of toothache must temporarily relieve the discomfort of a toothache. Although some agents for the relief of toothache may have antiseptic activity, no claims should be made for antiseptic activity because it has not been demonstrated to contribute to the effectiveness of relieving the pain of toothache. In addition, a combination of ingredients may be rational if it can be shown that each ingredient contributes to the temporary relief of discomfort as required in the Panel's combination policy. (See part II. paragraph E. above—Statements on Category III Testing Procedures.)

The Panel concludes that agents which may provide some relief of toothache are clove oil and eugenol at an equivalent concentration (85 to 87 percent) which have an anodyne effect when applied to dentin. These appear to be the best agents for the relief of toothache available and are recommended for Category I status. The Panel felt that oral mucosal analgesics are also possible agents for the relief of toothache discomfort but more data are required. Also, more data are required to test effectiveness of eugenol at lower concentrations than found in clove oil in suitable bland vehicles.

2. *Agents used for the relief of toothache applied in a poultice dosage form.* Counterirritants are irritating drugs that are applied locally to the skin or oral mucosa for the relief of pain originating from a structure other than the cite of application. Usually the counterirritant drug is applied to an area

overlying or adjacent to the deeper site which is perceived to be the origin of the painful stimulus (Ref. 7).

The Panel believes that because of their irritant nature, counterirritants for the relief of toothache should not be utilized in dosage forms intended for instillation into a tooth. Drugs classified as counterirritants, and, in general, other agents with irritant action, if instilled into a tooth cavity will injure a viable pulp. The Panel also concludes that it is irrational to apply a counterirritant to oral soft tissues which are already irritated. However, in order to relieve toothache, an irritant drug might be applied in a dental poultice to the gingiva surrounding a tooth with a painful pulpitis. Dental poultices are topical dosage forms containing medication enclosed within a porous sack. When applied to the oral mucous membrane in the presence of moisture, the dental poultice releases the medication.

The concept of usefulness of counterirritation in relief of pain of muscles, joints, and viscera from local application is widely accepted, even though such acceptance is presently based on empirical observation rather than on rigorous scientific evaluation (Refs. 3 and 7, 8, and 9). At least one counterirritant, capsicum, has had a long history of use in dental products for the relief of toothache and of pain from irritations of the gingiva. No adequate studies are avilable to prove or disprove that a counterirritant is effective in relieving oral hard or soft tissue pain.

The first response to local irritation is an increase in circulation to the site, the vasodilation being accompanied by a feeling of warmth, comfort, and sometimes pruritis (Ref. 8). The following mechanisms of pain relief by counterirritation have been postulated, and one or more of these proposed mechanisms may apply:

Sensory nerve impulses originating from irritation of the skin or mucosa are relayed in the central nervous system (CNS) to the motor nerves of blood vessels, so that increased circulation at the site of action has its counterpart in increased circulation to deeper structures innervated from the same level of the CNS (Refs. 2 and 10).

Sensory impulses arising from irritation of the skin or mucosa produce dilation of blood vessels, such as deeper arterioles, as a result of nerve reflexes (Refs. 10 and 11).

Sensory impulses arising from irritation of the skin or mucosa by the topical application of the counterirritant may alter the characteristics of the deeper sansations perceived as pain (Ref. 2).

The peripheral impulses may occupy a pathway common to both peripheral and deep impulses, resulting in a complete or partial block of those impulses arising from the deeper structures (Refs. 2 and 11).

Pain is a subjective sensation, and if a counterirritant can provide pain relief by any of the postulated mechanisms (except placebo) such pain relief should be measurable. Pain relief would probably be more easily documented if the drug were incorporated into a dosage form such as a dental ointment than if tested in a dental poultice, a dosage form which might contribute a particularly high placebo effect.

The Panel believes that there is a possibility of a dental poultice becoming accidentally lodged in the throat or in the respiratory tract if the user falls asleep with the poultice in place. The Panel, therefore, recommends that the label of products in a dental poultice dosage form carry the warning, "To avoid danger of choking do not leave a poultice in the mouth during periods of sleep." In addition, the Panel recommends the following warnings for counterirritants in a dental poultice dosage form:

"Do not instill in tooth cavity."

"Use only on healthy tissue. Do not apply to irritated oral soft tissue."

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B. Categorization of Data

1. *Category I conditions under which active ingredients for the relief of toothache are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredient

Eugenol preparations (85 to 87 percent).

Eugenol preparations (85 to 87 percent). The Panel concludes that eugenol in a concentration of 85 to 87 percent in clove oil or any bland, fixed oil is safe and effective for use as an agent for the relief of toothache as specified in the dosage section below.

(1) *Safety.* Clinical use and marketing experience have confirmed that eugenol is safe for OTC use. Clove oil contains 85 to 87 percent eugenol; therefore, the Panel concludes that clove oil and eugenol essentially possess the same pharmacologic activity, and the term "eugenol" as used below indicates 85 to 87 percent eugenol in a bland, fixed oil or clove oil unless otherwise specified.

The Panel is fully aware that eugenol is sufficiently irritating to damage viable dental pulp and stresses that it should not be used in a tooth with intermittent pain (characteristic of pain caused by reversible pulp damage) (Ref. 2). The Panel concludes, however, that, with adequate labeling to indicate use only in throbbing, persistent pain (characteristic of irreversible pulp damage), eugenol is safe and effective as a toothache remedy for OTC use (Ref. 2).

In the dental literature there are reports dealing with the irritancy of eugenol preparations, especially tissue reactions to eugenol in periodontal dressings (Refs. 3, 4, and 5). In these studies none of the patients who showed irritation of the mucosa after exposure to eugenol preparations were subsequently examined by patch test for possible contact allergy, or for whether or not they had become hypersensitive to eugenol.

In one study, patients undergoing dental treatment in which eugenol-containing preparations were used, and who had reacted with swelling and redness, were patch-tested with eugenol (Ref. 6). Sixteen of 18 patients gave

clear-cut positive test reactions to eugenol. The history of these patients suggested that they had been sensitized to eugenol during dental treatment.

The amounts of eugenol used in dentistry are well below systemic toxicity levels. Aside from a few reports of hypersensitivity, the long history of use of eugenol as an anodyne attests to its safety for dental use when used on exposed dentin (Ref. 7). The use of eugenol is only recommended when there is persistent, throbbing pain. Intermittent pain may indicate that the pulp is still viable, and eugenol may compromise the pulp vitality in that case. A warning is recommended to describe when eugenol should not be used. (See part III. paragraph B.1. below—Category I Labeling.)

(2) *Effectiveness.* It is difficult to generalize about the effectiveness of a toothache preparation since the data on use of such preparations is difficult to interpret. Although data suggest that the effectiveness of self-medication is similar to that experienced with placebo drugs, eugenol's analgesic effects on dentin are recognized (Refs. 1 and 8). Well-controlled, published studies on the effectiveness of eugenol for the relief of toothache are not available. The Panel considered the opinions of acknowledged experts in endodontics who, however, did not agree with each other on the advisability of making eugenol available to the consumer as an OTC toothache remedy (Refs. 2 and 7), as well as published opinions of other experts that eugenol is a dental analgesic or has topical anesthetic effect (Refs. 1 and 9). Even though the opinions of the experts did not agree, the Panel feels that, based on all of the information evaluated by the Panel, eugenol can be generally recognized as effective as a dental analgesic and that it should be available to the consumer as an agent for the relief of toothache.

(3) *Dosage.* Adults and children 2 years of age and older: Place a cotton pledget moistened with 1 or 2 drops of 85 to 87 percent eugenol into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing active ingredients for the relief of toothache. (See part III. paragraph B.1. below—Category I Labeling.)

In addition, the Panel recommends the following warning for products containing eugenol:

"Do not use if you are allergic to eugenol."

References

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Category I Labeling

The Panel recommends the following Category I labeling for active ingredients for the relief of toothache:

a. *Indication.* "For the temporary relief of throbbing, persistent toothache due to a cavity until a dentist can be seen."

b. *Warnings*—(1) *For all agents for the relief of toothache.* (a) "Use only in teeth with persistent, throbbing pain."

(b) "Not to be used for a period exceeding 7 days."

(c) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(d) "Do not swallow."

(e) "Do not exceed recommended dosage."

(f) "Children under 12 years of age should be supervised in the use of this product."

(g) "A dentist must be seen as soon as possible whether or not the pain is relieved."

(h) "Toothaches and open cavities indicate serious problems which need prompt attention by a dentist."

(2) *For products containing eugenol.* "Do not use if you are allergic to eugenol."

c. *Directions.* Rinse the tooth with water to remove any food particles from the cavity. Moisten a cotton pledget with 1 or 2 drops of medication and place in the cavity for approximately 1 minute. Avoid touching tissues other than the tooth cavity. Apply the dose not more than four times daily or as directed by a dentist or physician. Children 2 to 12 years of age should be supervised in the use of this product. For children under 2 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

2. *Category II conditions under which active ingredients for the relief of toothache are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC drug products for the relief of oral discomfort effective 6 months after the date of publication of the final monograph in the **Federal Register**.

Category II Active Ingredients

Capsicum (for use in an open tooth cavity)
Menthol
Methyl salicylate

a. *Capsicum (for use in an open tooth cavity).* The Panel concludes that capsicum instilled into a tooth cavity is not safe for OTC use as an agent for the relief of toothache.

(1) *Safety.* Capsicum is an irritant dependent upon counterirritation for any therapeutic usefulness it may have in the relief of pain. Capsicum itself is very irritating to mucous membranes and even a minute quantity of the oleoresin will cause intense burning if it contacts the eyes or tender areas of the skin (Refs. 1 and 2). Capsicum is no longer described in "The United States Pharmacopeia" or "The National Formulary," and there are, therefore, no U.S. standards for its content of capsaicin, the active pungent constitutent. Commercial red peppers contain 0.1 to 1.0 percent of capsaicin (Ref. 3). "The British Pharmaceutical Codex" (BPC) specifies that capsicum contains about 0.5 to 0.9 percent capsaicin with the lower limit 0.5 percent; capsicum oleoresin (BPC) contains not less than 8 percent capsaicin weight/weight (w/w) (Ref. 3).

Toxicity of capsicum oleoresin is classified (with reservations) by Gosselin et al. (Ref. 1) as moderately toxic, the human lethal dose probably being 0.5 to 5 g/kg when ingested. It is very irritating to mucous membranes and if swallowed produces severe gastritis and diarrhea (Ref. 1).

In feeding studies a diet containing 0.014 percent capsaicin by weight was fed to rats for 28 and 56 days (Ref. 4). This diet produced ultrastructure

changes in duodenal absorptive cells. The amount of capsaicin ingested (approximately 1 mg/kg body weight daily) is approximately equivalent to the capsicum intake of people of rural Thailand. No histopathology studies of the effects of application of capsicum to skin or oral mucous membrane were found.

In general, irritating drugs instilled into a tooth cavity will injure a viable pulp, and OTC use of such agents by application into a tooth is unsafe.

(2) *Effectiveness.* No studies were found of the use of capsicum in dosage forms (toothache drops or toothache gum) to be instilled in the tooth cavity in order to relieve toothache pain.

(3) *Evaluation.* Use of a counterirritant for application to tissues that are irritated is irrational and unsafe. No clinical studies of the application of capsicum into a tooth cavity for relief of pain were found in the literature and none were submitted to the Panel.

References

(1) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, Section II, p. 145, 1976.

(2) Blacow, N. W., and A. Wade, "Martindale: The Extra Pharmacopoeia," 26th Ed., The Pharmaceutical Press, London, pp. 1235–1236, 1972.

(3) "British Pharmaceutical Codex 1973," The Pharmaceutical Press, London, pp. 72–73, 1973.

(4) Nopanitaya, W., "Effects of Capsaicin in Combination with Diets of Varying Protein Content on the Duodenal Absorptive Cells of the Rat," *American Journal of Digestive Diseases*, 19:439–448, 1974.

b. *Menthol.* The Panel concludes that menthol is not safe for OTC application as an agent for the relief of toothache.

(1) *Safety.* Although menthol does possess minimal anesthetic activity, if used in concentrations sufficient for anesthetic activity, it causes intense irritation with the possibility of local tissue destruction. The Panel concludes that menthol is not safe for instillation into a tooth as a local anesthetic.

Tainter, Throndson, and Moose (Ref. 1) applied a solution of 5 percent menthol in 95 percent ethanol to the oral mucous membranes of 36 humans. The menthol solution produced intense irritation when applied to oral mucosa and caused sloughs in 19 percent of the patients at a concentration of 5 percent menthol which is sufficient to produce local anesthesia. The 95 percent ethanol alone was also irritating and caused sloughs in 8 percent of the patients.

In young children, nasal drops containing menthol may cause spasm of the glottis, and cases of dangerous asphyxiation have been reported in infants following local application of menthol (Ref. 2).

The "United States Pharmacopoeia" (Ref. 3) categorizes menthol as a topical antipruritic and suggests that for external use it be applied topically to the skin as a 0.1- to 2.0-percent lotion or ointment. Concentrations of 0.1 to 2.0 percent are less than those found to have local anesthetic activity, and the "United States Pharmacopoeia" gives no indication for application of menthol to mucous membranes.

In a long-term study in experimental animals, 20 rabbits were treated with either 1-percent or 5-percent solutions of menthol in liquid petrolatum, sprayed daily to the nasal mucous membrances for 9 months (Ref. 4). Results showed that menthol produced sneezing and pain. The nose, bronchi, and lungs of all the rabbits showed some evidence of inflammatory changes, namely a purulent rhinosinobronchitis with numerous miliary abscesses and consolidation of lung tissue. The rabbits sprayed with a 5-percent menthol solution fared only slightly worse than those sprayed with the 1-percent solution. Liquid petrolatum as a control apparently also exerted a deleterious effect on the nasal mucosa of a rabbit when used for 9 months.

In general, irritating drugs instilled into a tooth cavity will injure a viable pulp; therefore, OTC use of menthol by application into a tooth is unsafe.

(2) *Effectiveness.* Nagira and Yao (Ref. 5) produced artificial toothaches in teeth of rabbits by electrical stimulation and tested the effectiveness of topical application of several agents in relieving the induced pain. They found phenol to be the best agent; clove oil, menthol, and eucalyptol were found to be weak anesthetics.

Yamashita (Ref. 6) studied the effectiveness of some local anesthetics dissolved in propylene glycol on the tympanum of guinea pigs. Dibucaine, cocaine, benzocaine, phenol, and menthol all exerted anesthetic actions and the intensities were in that order (menthol was the weakest).

In studies in humans, Adriani et al, (Ref. 7) found that a 3.5-percent menthol solution applied to the tip of the tongue produced anesthesia, with a mean latent period of 0.16 minutes and a mean duration of 1.5 minutes. This duration of action was the shortest of the 22 drugs to which local anesthetic activity was attributed.

Tainter, Throndson, and Moose (Ref. 1) applied a solution of 5 percent menthol in 95 percent ethanol to the oral mucous membranes of humans. The menthol solution produced complete anesthesia in 42 percent, partial anesthesia in 56 percent, and no anesthesia in 3 percent of 36 subjects. By comparison, 95 percent ethanol produced complete or partial anesthesia in 78 percent of the 156 persons tested, and aqueous placebo solutions proudced some degree of anesthesia in 43 percent of 576 tested. As noted above, the 5-percent menthol solution produced intense irritation when applied to oral mucosa and caused sloughs in 19 percent of the patients. They fond that a 5-percent concentration of menthol was necessary to produce local anesthesia (Ref. 1).

(3) *Evaluation.* Menthol possesses minimal local anesthetic activity, but if used in concentrations sufficient for this anesthetic activity, menthol causes intense irritation with the possibility of local tissue destruction. No claims can be made for menthol as a local anesthetic. Menthol should not, in any concentration, be instilled into a tooth cavity. Menthol may be included in preparations as an inactive ingredient (flavor) according to FDA regulations on flavors.

References

(1) Tainter, M. L., A.H. Throndson, and S. M. Moose, "Studies in Topical Anesthesia: II. Further Observations on the Efficacy of the More Common Local Anesthetics When Used on the Gums and Oral Mucosa, "*Journal of the American Dental Association and Dental Cosmetics*, 24:1480–1487, 1937.

(2) Blacow, N. W., and A. Wade, "Martindale: The Extra Pharmacopoeia," The Pharmaceutical Press, London, pp. 374–375, 1972.

(3) "The United States Pharmacopeia," 19th Ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 302, 1975.

(4) Fox, N., "The Effect of Camphor, Eucalyptol and Menthol on the Nasal Mucosa," *Archives of Otolargynology*, 11:48–54, 1930.

(5) Nagira, T., and T. Yao, "Biochemical and Pharmacological Investigation of Artificial Toothache in Rabbits: II. The Sedative Action of Toothache by Reagents Used on the Pulp," *Folia Pharmacologica Japonica*, 9:26–27, 1930.

(6) Yamashita, S., "Studies of Tympanic Membrane Surface Anesthetics with Propylene Glycol as a Solvent," *Folia Pharmacologica Japonica*, 47:108–114, 1951.

(7) Adriani, J., et al., "The Comparative Potency and Effectiveness of Topical Anesthetics in Man," *Clinical Pharmacology and Therapeutics*, 5:49–62, 1964.

c. *Methly salicylate.* The Panel concludes that methyl salicylate is not generally recognized as safe or effective for OTC application as an agent for the relief of toothache.

(1) *Safety.* Methyl salicylate causes irritation with the possibility of local tissue damage when applied to mucous

membranes (Refs. 1 and 2). In general, irritating drugs instilled into a tooth cavity will injure a viable pulp. Therefore, OTC use of methyl salicylate by application into a tooth cavity is unsafe. It is considered unsafe in conjunction with a tooth cavity even as a flavoring agent because of its irritating properties.

Because of the reputed systemic toxicity of methyl salicylate, the Panel recommends that any dentifrice or dental care agent containing this substance as a pharmaceutical aid (i.e., flavoring agent) be in conformity with all pertient regulations for its use as such.

(2) *Effectiveness.* Since there are no studies that methyl salicylate, when applied topically, provides an anesthetic effect, it apparently acts only as a counterirritant (Refs. 2 and 3).

(3) *Evaluation.* Methl salicylate is an irritant when applied topically, possible causing local tissue damage. It should not be instilled into a tooth cavity. The Panel concludes that there is no rational use of methyl salicylate as an agent to be instilled in a tooth cavity for the relief of toothache.

References

(1) Sollman, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 737 and 743–744, 1957.

(2) Gleason, M. N., et al., "Clinical Toxicology of Commercial Products," 3d Ed., Williams and Wilkins, Baltimore, section II, p. 96, 1969.

(3) Traut, E. F., et al., "Topical Treatment in Rheumatic Disease," *Illinois Medical Journal*, 121:257–260, 1962.

Category II Labeling

The Panel concludes that the use of certain labeling claims related to the safety or effectiveness of a product are unsupported by scientific data and, in some instances, by found theoretical reasoning. The Panel concludes that such labeling should be removed from the market.

The Panel considers the following examples of claims to be misleading and unsupported by scientific data:

"For quick temporary relief of pain and soreness due to minor irriation of teeth and gums." This type of toothache is not defined.

"For temporary relief of cavity toothache."

"Eases pain due to cavities fast."

"Quickly forms temporary filling."

"Fast relief from toothache due to cavities."

"Especially soothing after extractions or for minor gum boils."

"For rapid and effective relief of sore gums."

"For sore gums following tooth extractions."

"For use after tooth extraction."

"Hold in mouth as long and as frequently as necessary, then rinse." This is inconsistent with the directions for use proposed by the Panel.

"Temporary replacement for lost fillings."

"Gives quick relief that lasts for hours."

"For fast, temporary relief of minor mouth or gum soreness." The claim is too vague; it must be more specific.

"Subdues the throbbing ache of sore, swollen gums." The claim is too vague; gums may be infected or a deeper problem may exist.

The Panel considers that claims which imply a superiority in onset of action, such as "quicker," "more quickly," and "faster" are misleading.

The Panel considers the following terms to be vague and not definitive of the condition for which relief is sought: "sore spots," "anti-irritation," "comfortable adjustment," "helps comfortable adjustment," "stops pain," "soothes sore gums," "special," "unaccustomed use," "alleviates pain."

The following claims are for conditions that require advice of a dentist: "gum boils," "gum or gingival inflammation," and "abscesses."

For products containing a counterirritant: "Relieves irritation."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I except as noted for specific pharmacotherapeutic groups.

Category III Active Ingredients

Benzocaine
Benzyl alcohol (1 to 3 percent)
Butacaine sulfate
Capsicum (as a counterirritant)
Cresote
Cresol
Eugenol (1 to 84 percent)
Phenol preparations (phenol and phenolate sodium)
Thymol preparations (thymol and thymol iodide)

a. *Benzocaine.* The Panel concludes that there are insufficient data available to establish the effectiveness of 2 to 20 percent benzocaine as an OTC agent for the relief of toothache.

(1) *Safety.* The Panel has discussed the safety of benzocaine elsewhere in this document. (See part IV. paragraph B.1.a.(1) below—Safety.)

(2) *Effectiveness.* Benzocaine is classified by the Panel as an effective oral mucosal analgesic. (See part IV. paragraph B.1.a.(2) below—Effectiveness.) However, there are insufficient data to establish effectiveness of benzocaine after application into a tooth cavity, as an agent for the relief of toothache, at the 2- to 20-percent concentrations.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Place a cotton pledget moistened with 2 to 20 percent benzocaine into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for active ingredients for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warning for products containing benzocaine:

"Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

(5) *Evaluation.* The Panel concludes that there is insufficient evidence to establish the effectiveness of benzocaine as an agent for the relief of toothache. Data to demonstrate effectiveness as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III, paragraph C. below—Data Required for Evaluation.)

b. *Benzyl alcohol.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of benzyl alcohol at a concentration of 1 to 3 percent for OTC use as an agent for the relief of toothache.

(1) *Safety.* There are insufficient data to establish the safety of 1 to 3 percent benzyl alcohol for use as an agent for the relief of toothache.

In general, irritating drugs instilled into a tooth cavity will injure a viable pulp, and OTC use of such agents by application into a tooth is unsafe. An additional problem is that application of benzyl alcohol into a tooth cavity may increase permeability of the dentin. Application of benzyl alcohol into the tooth may, therefore, increase any adverse effects of other drugs applied concomitantly (Ref. 1). Benzyl alcohol in 100 percent concentration is irritating to tissue; injected subcutaneously or intramuscularly, the drug produces local necrosis (Refs. 2, 3, and 4).

When injected in the area of branches of the facial nerve in cats, 10 percent benzyl alcohol in almond oil produced

prolonged motor nerve block, and it caused degeneration of nerve fibers in the injected area (Ref. 5). Tested in the same way, 5 percent benzyl alcohol in almond oil produced only transient weakness of the appropriate muscles, but even this lower concentration caused degeneration of a significant number of nerve fibers. Almond oil itself has no observable effect on the nerve fibers.

Aqueous solutions in concentrations from 1 to 3 percent of benzyl alcohol may produce variable degrees of irritation to soft tissues. Aqueous preparations containing greater than 3 percent benzyl alcohol are likely to contain undissolved benzyl alcohol. The studies cited above show that undissolved benzyl alcohol is a potent irritant. Therefore, preparations greater than 3 percent may be unsafe for instillation into a tooth cavity for the relief of toothache or for application to oral soft tissues.

Because animal studies suggest that ingestion of benzyl alcohol at a rate of 1 mL/kg may be fatal (Ref. 1), and since package sizes that will provide more than 30 mL of a 2-percent solution of 60 mL of a 1-percent solution are unnecessary and may be a potential risk for accidental ingestion by young children, the Panel recommends that package size be limited to that containing a total of 0.6 mL of benzyl alcohol.

(2) *Effectiveness.* The Panel has discussed the effectiveness of benzyl alcohol elsehwere in this document. (See part IV. paragraph B.3.a.(2) below—Effectiveness.) Benzyl alcohol does have local anesthetic activity, but studies of effectivness by application into a tooth cavity for the relief of toothache are not available.

Since benzyl alcohol solutions stored in soft glass containers have been shown to increase in pH and drecrease in anesthetic ativity, the Panel believes there may be stability problems with blezyl alcohol solutions in some dosage forms or in some types of packaging. Therefore, the stability of benzyl alcohol in the particular dosage form and packaging intended for marketing should be established (Ref. 6).

(3) *Proposed dosage.* Adults and children 2 years of age and older: Place a cotton pledget moistened with 1- to 3-percent benzyl alcohol into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for active ingredients for the relief of toothache, (See part III. paragraph B.1. above—Category I Labeling).

In addition, products containing benzyl alcohol should contain no more than a total of 0.6 mL (30 mL of a 2-percent solution or 60 mL of a 1-percent solution) of benzyl alcohol in a container capable of maintaining stability of the product.

(5) *Evaluation.* The Panel concludes that there is insufficient evidence to establish the safety and effectiveness of 1 to 3 benzyl alcohol as an agent for the relief of toothache. Data to demonstrate safety and effectiveness as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

Benzyl alcohol does possess local anesthetic activity, but the concentrations (in aqueous and nonaqueous solvents) needed to provide relief of pain arising from the tooth pulp have not been established. Benzyl alcohol at a concentration of 100 percent is a potent irritant, and the maximal safe concentrations (in aqueous and nonaqueous solvents) of solutions for application to oral mucosa have not been established. Since only 1 g of benzyl alcohol is soluble in about 25 to 30 mL of water, aqueous preparations containing more than 3 to 4 percent benzyl alcohol may produce irritation as a result of some undissolved benzyl alcohol.

References

(1) Macht, D. I., "A Pharmacological and Therapeutic Study of Benzyl Alcohol as a Local Anesthetic," *Journal of Pharmacology and Experimental Therapeutics*, 11:263–279, 1918.

(2) Macht, D. I., "Further Experiences, Experimental and Clinical, with Benzyl Benzoate and Benzyl Alcohol," *Journal of Pharmacology Proceedings*, 13:509–511, 1919.

(3) Gruber, C. M., "The Pharmacology of Benzyl Alcohol and Its Esters: I. The Effect of Benzyl Alcohol, Benzyl Acetate and Benzyl Benzoate when Given by Mouth upon the Blood Pressure, Pulse and Alimentary Canal," *Journal of Laboratory and Clinical Medicine*, 9:15–33, 1923.

(4) Macht, D. I., and A. T. Shohl, "The Stability of Benzyl Alcohol Solutions," *Journal of Pharmacology*, 16:61–69, 1921.

(5) Duncan, D., and W. H. Jarvis, "A Comparison of the Actions on Nerve Fibers of Certain Anesthetic Mixtures and Substances in Oil," *Anesthesiology*, 4:465–474, 1943.

(6) Bender, I. B., presentation to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, 14th meeting, October 10, 1974. (See Appendix II to the minutes of the 15th meeting, December 4–5, 1974.)

c. *Butacaine sulfate.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 4 percent butacaine sulfate as an agent for the relief of toothache.

(1) *Safety.* Butacaine sulfate is classified by the Panel as a safe oral mucosal analgesic. (See part IV, paragraph B.1.c. (1) below—Safety.) However, the Panel concludes that there are insufficient data to establish the safety of 4 percent butacaine sulfate as an agent for the relief of toothache.

(2) *Effectiveness.* Butacaine sulfate is classified by the Panel as an effective oral mucosal analgesic. (See part IV. paragraph B.1.c. (2) below—Effectiveness.) However, there are insufficient data to establish effectiveness of 4 percent butacaine sulfate after application into a tooth cavity as an agent for the relief of toothache.

(3) *Proposed dosage.* Adults and children 12 years of age and older: Place a cotton pledget moistened with 4 percent butacaine sulfate into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for active ingredients for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warnings for products containing butacaine sulfate:

(a) "Do not use in children under 12 years of age unless recommended by a dentist or physician."

(b) "Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 4 percent butacaine sulfate as an agent for the relief of toothache. Data to demonstrate the safety and effectiveness of butacaine sulfate as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

(d) *Capsicum (as a counterirritant.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of capsicum equivalent to 0.01 to 0.02 percent of capsaicin for OTC use as an agent for the relief of toothache as a counterirritant on intact (normal) oral mucosa as specified in the proposed dosage section discussed below. Capsicum is safe for application to normal oral mucous membranes, but is considered unsafe for application into a tooth cavity or for use on irritated oral

mucosa. (See part III. paragraph B.2.a. above—Capsicum.)

(1) *Safety.* Clinical use and marketing experience have confirmed that capsicum equivalent to 0.02 percent of capsaicin is safe for OTC use on normal oral mucosa.

As used in drug products intended for application to skin or mucous membrane, the desired pharmacologic effect of dilutions of capsicum and capsicum oleoresin is a mild local irritation. Safety evaluations are related to estimation of the degree of local irritation produced by acute use of a counterirritant in a suitable dosage form and chronic irritation due to prolonged application which could theoretically have some adverse effects, but long-term use would be excluded by proper labeling. Package size should be limited to a maximum amount for eight applications so as to discourage prolonged use.

Two evaluations of dental poultices containing capsicum contribute some limited information on irritant effects, or lack thereof, of capsicum or oral mucosa. In 1936 a dental poultice stated to contain 2.3 percent capsicum, and 6 other ingredients (including aconite, which is an irritant) was evaluated by the Council on Dental Therapeutics of the American Dental Association (Ref. 1). Tests by a pharmacologist in which three subjects applied the test poultice to the buccal cavity on one side and a poultice composed of hops on the other side showed no burning or erythema at the site of application on either side. The capsicum poultice produced very mild burning on the tongue.

The poultice was reformulated and again submitted to the Council (Ref. 2). The revised formula contained 2.3 percent capsicum with 3 percent benzocaine and 4 ingredients stated by the reference to be inactive. The report states, "Laboratory and clinical studies indicate that this product will produce no harmful local effects." The report summarizes four clinical studies, only one of which mentions tissue irritation or lack thereof. In this study, reddening of the oral mucosa was evaluated after 1-hour contact with the poultice and with a control poultice. In 30 subjects the medicated poultice produced hyperemia to the same or less degree than the control poultice; in 20 subjects there was more hyperemia from the medicated poultice than from the control poultice. It must be noted, however, that the literature is conflicting in regard to whether or not capsicum is a rubefacient, and hyperemia may not be a valid measure of irritant effect (Refs. 3, 4, and 5). In addition, a local anesthetic may inhibit the local vasodilation response to a rubefacient drug (Ref. 6). (See part III. paragraph B.2.a. (1) above—Safety.)

(2) *Effectiveness.* As an active ingredient of dental poultices, capsicum is claimed to provide relief of toothache (as a counterirritant) when the poultice is applied to the gum.

A published Council on Dental Therapeutics report (Ref. 2) on the effectiveness of a capsicum-containing poultice includes the only four clincial studies that could be found. The poultice contained 2.3 percent capsicum, 3 percent benzocaine, and 4 other ingredients, including hops, labeled as inactive ingredients. In the first study, which was sponsored by the manufacturer, participating dentists alternately gave the test poultice or a hops poultice to patients suffering mild pain. The patients were asked to report (on a card) the rapidity and degree of pain relief afforded by the poultices. The company reported that the medicated poultice showed measurable superiority over the placebo, but the company also noted that the results of this first study were not particularly conclusive. The Council itself conducted a similar study, except that efforts were made to prevent the dentist and the patient from identifying which poultice was the active one. Results indicated no particular superiority of the capsicum-benzocaine poultice over the placebo. There was a very high placebo response. In a third study, a placebo "pill" was compared with the test poultice. The results were more favorable for the poultice than for the pill, but of course the control drug was an inadequate control. The fourth study was a double-blind, controlled study conducted by the Council's referee. The subjects were dental students. The medicated poultice was placed on one side of the maxilla in the bicuspid area, and the placebo was placed on the other side. After 1 hour of application the effects were evaluated, including taste (burning and bitter), hyperemia of the tissues, and tissue sensitivity. Only in taste was there a statistically significant difference between the placebo and test poultices. This fourth study did not attempt to evaluate relief of clinical pain. Measuring "tissue sensitivity" would evaluate the effects of the benzocaine component, but not the effects of capsicum.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Apply 0.01 to 0.02 percent capsicum in a dental poultice dosage form.

(4) *Labeling.* The Panel recommends the Category I labeling for agents for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warnings for products containing capsicum:

(a) "Do not install in tooth cavity."

(b) "Do not apply to irritated oral soft tissue. Use only on healthy tissue."

(c) "To avoid danger of choking, do not leave a poultice in the mouth during periods of sleep."

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the effectiveness of 0.01 to 0.02 percent capsicum as an agent for the relief of toothache (counterirritant). Data to demonstrate effectiveness as an agent for the relief of toothache as a counterirritant will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

Although capsicum appears to be a safe drug when it is used occasionally in low concentrations for topical application to oral mucous membranes, there are presently no data to indicate what concentration of capsicum is needed for effectiveness when applied in this way as a counterirritant.

If effective, capsicum will only relieve pain symptoms and may, therefore, disguise the true disease process. For this reason and because chronic irritation is unsafe, products containing capsicum should be labeled to indicate only temporary use.

Effectiveness should be established by two well-controlled clinical studies in which a capsicum dosage form affords significantly ($P < 0.05$) more pain relief than the appropriate placebo. Accepted indices of analgesic effectiveness, such as pain intensity differences (PID), total pain relief (TOTPAR), or numbers of patients with pain reduction greater than 50 percent, could be used to evaluate effectiveness of capsicum in relieving clinical pain originating from oral tissues. Two years should be allowed for such studies.

References

(1) Council on Dental Therapeutics, "Poloris Dental Poultice—Not Admissible to A.D.R.," *Journal of the American Dental Association*, 23:2174–2176, 1936.

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(3) Blacow, N. W., and A. Wade, "Martindale: The Extra Pharmacopoeia," 26th Ed., The Pharmaceutical Press, London, p. 1235, 1972.

(4) Osol, A., et al., "The United States Dispensatory and Physicians' Pharmacology," 26th Ed., J. B. Lippincott Co., Philadelphia, pp. 237–238, 1967.

(5) Peterson, J. B., E. M. Farber, and G. P. Fulton, "Responses of the Skin to Rubefacients," *Journal of Investigative Dermatology*, 35:57–64, 1960.

(6) Fulton, G. P., E. M. Farber, and A. P. Moreci, "The Mechanism of Action of Rubefacients," *Journal of Investigative Dermatology*, 33:317–325, 1959.

e. *Creosote.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 0.25 to 1.5 percent creosote as an agent for the relief of toothache.

(1) *Safety.* Creosote, beechwod creosote, is obtained by the distillation of wood tar and is composed of a large number of phenolic compounds, the greater quantities of which are guaiacol (2-methoxyphenol) and creosol or methylguaiacol (2-methoxy,4-methylphenol) (Ref. 1). These phenols have toxicities similar to, but less than, that of phenol (Ref. 2). Like phenol, creosote and guaiacol are absorbed through the skin and mucous membranes (Refs. 2, 3, and 4). Phenols are protoplasmic poisons (Ref. 5). Although stated to be somewhat less toxic than phenols, creosote and its two major constitutents, creosol and guaiacol, are irritant corrosive fluids capable of damaging tooth pulp and destroying nerves (Refs. 2 and 6). As with phenol, the maximum safe concentration of creosote for application to an open tooth cavity has not been established. The depth of the tooth cavity, and therefore its proximity to the pulp, is a major factor in the safety of placing any kind of medication into the tooth, since these medications may cause pulpal irritation, resulting in irreversible damage.

(2) *Effectiveness.* Creosote is similar to phenol in that when it is applied locally it paralyzes sensory nerves and is anesthetic as well as being irritating and germicidal (Ref. 6). Application of a droplet of full-strenth creosote to the cavity of a carious tooth usually relieves toothache temporarily (Ref. 3). However, no data were presented or found in the literature on effectiveness of solutions of creosote in the treatment of toothache, and irritant properties of creosote preclude its OTC use in full-strength.

(3) *Proposed dosage.* Adults and children 6 years of age and older: Place a cotton pledget moistened with 0.25 to 1.5 percent creosote into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for active ingredients for the relief of toothache. (See Part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warning for products containing creosote:

"Do not use in children under 6 years of age unless recommended by a dentist or physician."

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 0.25 to 1.5 percent creosote in the tooth cavity for the relief of toothache. Data to demonstrate safety and effectiveness of creosote as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—data Required for Evaluation.) These studies should be completed in a 30-month period.

References

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(2) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, Section II, p. 126, 1976.

(3) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 37th Ed., American Dental Association, Chicago, p. 209, 1977.

(4) Osol, A., R. Pratt, and A.R. Gennaro, "The United States Dispensatory" 27th Ed., J. B. Lippincott Co., Philadelphia, p. 571, 1973.

(5) Kutscher, A. H., et al., "Pharmacology for the Dental Hygienist," Lea and Febiger, Philadelphia, p. 174, 1967.

(6) Osol, A., et al., "The Dispensatory of the United States," 24th Ed., J. B. Lippincott Co., Philadelphia, p. 338, 1947.

f. *Cresol.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 0.25 to 1.0 percent cresol as an OTC agent for the relief of toothache.

(1) *Safety.* Cresol, a mixture of 2-, 3-, 4-methylphenols is obtained by fractional distillation of coal tar or petroleum (Refs. 1 and 2). Cresol is a protoplasmic poison resembling phenol in its effects although it may be slightly more corrosive than phenol, and its systemic effects may be slightly milder because of slower absorption (Refs. 3 and 4). In an in vitro test, 0.25 percent cresol, 0.54 percent phenol, 0.3 percent *m*-cresol, and 1.2 percent benzyl alcohol produced total hemolysis of erythrocytes (Ref. 5). In a study of carcinogenic activity of phenol and related compounds on mouse skin, each of the three cresols was reported to have the same order of "promoting" activity as phenol (Ref. 6).

On the skin, cresol produces erythema, burning, and numbness (Ref. 2). If ingested, cresol causes a severe burning sensation in the mouth and upper abdomen, dysphagia (difficulty in swallowing), vomiting, and diarrhea (Ref. 2). Chronic poisoning (by ingestion or by percutaneous absorption) may produce widely varied reactions such as gastrointestinal disturbances, central nervous system dysfunctions, skin eruptions, jaundice, oliguria, and uremia (Ref. 7). At least one death has been reported from topical application of cresol to a large area of the body surface of a child (Ref. 8). Irritation of periapical tissues may occur if cresol is used in root canal therapy (Ref. 1).

(2) *Effectiveness.* Early studies in experimental animals and man suggest that cresol solutions have some local anesthetic activity (Refs. 9 through 12). Gurney (Ref. 13) reports that cresols have been used as mild pulpal analgesics and that when applied under proper conditions they exhibit a demonstrable analgesia. He notes that the analgesia may be easily seen with application of cresol to irritated pulps of primary teeth but that analgesia is very difficult to demonstrate with permanent teeth. Gurney's paper did not include clinical studies.

The Panel conducted a thorough search of the scientific literature for clinical studies of cresol as a local anesthetic for use on soft oral tissue or for the relief of toothache. Such studies were not found. One submission included one unpublished clinical study of the obtundent qualities of a product containing cresol and boric acid (Ref. 14). This clinical study apparently included more than 120 patients, but it was uncontrolled, not well-documented, and evaluations were subjective.

(3) *Proposed dosage.* Adults and children 6 years of age and older: Place a cotton pledget moistened with 0.25 to 1.0 percent cresol in aqueous solution into the tooth cavity for approximately 1 minute. The total amount to be applied in a 24-hour period should not exceed 400 mg for adults or 200 mg for children 6 to 12 years of age.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing active ingredients for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warning for products containing cresol:

"Do not use in children under 6 years of age unless recommended by a dentist or physician."

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of 0.25 to 1.0 percent cresol in the tooth cavity for the relief of toothache. Data to demonstrate safety and effectiveness of

cresol as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

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(14) OTC Volume 080013.

g. *Eugenol (1 to 84 percent).* The Panel concludes that 1 to 84 percent eugenol is safe but that there are insufficient data available to permit final classification of its effectiveness for use as an OTC agent for the relief of toothache.

(1) *Safety.* The Panel has discussed the safety of eugenol elsewhere in this document. (See part III. paragraph B.1.(1) above—Safety.)

(2) *Effectivenes.* The Panel concludes that eugenol in concentrations of 1 to 84 percent may be effective as an agent for the relief of toothache since it is recognized as effective at a concentration of 85 to 87 percent. (See part III. paragraph B.1.(2) above—Effectiveness.) However, there are insufficient data to establish the effectiveness of eugenol in lower concentrations (Refs. 1 and 2). The Panel, therefore, recommends that studies be conducted within this dosage range.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Place a cotton pledget moistened with 1 to 84 percent eugenol into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing active ingredients for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

In addition, the Panel recommends the following warning for products containing eugenol:

"Do not use if you are allergic to eugenol."

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the effectiveness of 1 to 84 percent eugenol in the tooth cavity for the relief of toothache. Data to demonstrate the effectiveness of 1 to 84 percent eugenol as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

References

(1) OTC Volume 080003.

(2) OTC Volume 080061.

h. *Phenol.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of phenol in concentrations up to 1.5 percent for OTC use as an agent for the relief of toothache as specified in the proposed dosage section below.

(1) *Safety.* The Panel concludes that phenol in concentrations up to 1.5 percent in aqueous solution is safe for application to oral mucous membranes, but the maximum safe concentration for application to an open tooth cavity has not been established. The depth of the tooth cavity and therefore its proximity to the pulp is a major factor in the safety of placing any kind of medication into the tooth because these medications may cause pulpal irritation resulting in irreversible damage.

The opinions of two acknowledged research experts in endodontics cite phenol's capacity to damage odontoblasts by increasing the permeability of dentinal tubules (Refs. 1 and 2). They further state that phenol, as a protoplasmic poison, may stop pain, but its potential to produce pulp damage warrants its elimination from toothache preparations. Nevertheless, the Panel had no convincing evidence that phenol in concentrations up to 1.5 percent was unsafe and therefore placed it in Category III. (See part IV. paragraph B.1.c.(1) below—Safety.)

(2) *Effectiveness.* The local anesthetic activity of low concentrations of phenol is due to its ability to block nerve conduction, but this action is limited. High concentrations demyelinate or otherwise destroy many types of nerve endings (Refs. 3 and 4).

The effectiveness of phenol as an agent for the relief of toothache has never been demonstrated. Originally, phenol was used in dentistry for so-called "cavity sterilization"; however, because high concentrations of phenol have been shown to do more harm than good by increasing the permeability of dentin, its use is no longer advocated (Refs. 1 and 2). (See part IV. paragraph B.1.c.(2) below—Effectiveness.)

(3) *Proposed dosage.* Adults and children 2 years of age and older: Place a cotton pledget moistened with 1.5 percent phenol in aqueous solution into the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing active ingredients for the relief ot toothache. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the safety and effectiveness of phenol as an agent for the relief of toothache. Data to demonstrate safety and effectiveness of phenol as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

References

(1) Ellison, R., presentation to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, 5th Meeting, October 10–11, 1973.

(2) Bender, I. B., presentation to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, 14th Meeting, October 16–17, 1974. (See Appendix II of the minutes of the 15th Meeting, December 4–5, 1974).

(3) Adriani, J., et al., "The Comparative Potency and Effectiveness of Topical Anesthetics in Man," *Clinical Pharmacology and Therapeutics*, 5:49–62, 1964.

(4) Adriani, J., "Effectiveness and Potency of the Anesthetic Properties of Chloraseptic," draft of unpublished study incorporated in OTC Volume 080037.

i. *Thymol preparations (thymol and thymol iodide).* The Panel concludes that thymol preparations in concentrations up to 20 percent are safe

but that there are insufficient data available to permit final classification of their effectiveness for use as OTC agents for the relief of toothache as specified in the proposed dosage section below.

(1) *Safety.* The acute toxicity of thymol in a solution of propylene glycol was determined by oral administration to experimental animals (Ref. 1). Groups of 10 young adult Osborne-Mendel rats, evenly divided by sex, were fasted for approximately 18 hours and given the test material. The LD_{50} was 0.98 g/kg with a death time ranging from 4 hours to 5 days. The toxic signs with high doses consisted of depression, ataxia (failure of muscle coordination), and coma.

The minimum oral lethal dose of thymol has been reported to be 800 mg/kg in the mouse, 750 to 1,000 mg/kg in the rabbit, and 250 mg/kg in the cat (Ref. 2).

Thymol is considered to be less toxic than phenol. In humans fats and alcohol increase absorption and aggravate the toxic symptoms (Ref. 3). Thymol is completely absorbed from the intestine. It is excreted in the urine as the sulfate and glucuronide together with some thymol-quinone. About half of a dose is destroyed in the body. Thymol is an irritant to the kidneys (Ref. 3).

There are no apparent studies on thymol iodide; however, when thymol iodide was fed to rats for 5 weeks in a study designed to demonstrate iodide availability, there was considerable uptake of iodide by the thyroid (Ref. 4).

Boutwell and Bosch (Ref. 5) studied over 50 compounds related to phenol for their ability to promote the development of skin following a single initiating dose of dimethylbenzanthracene. One of the compounds tested (2-isopropyl-4-methylphenol) is closely related to thymol. When dissolved in 16 percent benzene and applied weekly for 12 weeks to mice, 19 percent developed skin tumors and 6 percent (1 and 16 mice) developed a carcinoma.

"The United States Dispensatory" (Ref. 6) states that thymol can cause nausea, vomiting, albuminuria, headache, tinnitus, dizziness, muscular weakness, a thready pulse, slow respiration, and a fall in body temperature. It further states that the heart is depressed by "therapeutic" doses. Thymol used systemically in the treatment of mycosis has been given as divided oral doses consisting of 1 to 2 g daily being administered in courses of 2 of each 3 days. It has also been used as an intestinal antiseptic, in doses up to 120 mg.

Gleason et al. (Ref. 7) state that the toxicity of thymol is believed to lie on the borderline between toxicity classes 3 and 4 (moderately toxic and very toxic).

Thymol is less toxic than phenol, and larger doses may be taken (Ref. 3). It generally irritates tissues and given orally irritates the gastric mucosa. Rashes from thymol are not uncommon (Ref. 3). It was formerly used for the treatment of hookworm infestations, but it had to be used in such large doses that there was danger of serious, even fatal, poisoning. Oral doses stimulate peristalsis and may cause diarrheal stood (Ref. 6).

Thymol should not be given by mouth to persons with gastrointestinal disorders or impaired kidney function. It should be given with care to patients with heart disease (Ref. 3). However, the amounts used topically in the oral cavity are insufficient to cause problems for these individuals.

(2) *Effectiveness.* Thymol is used chiefly as a deodorant in antiseptic mouthwashes and gargles. Mixed with phenol and camphor, thymol is used in dentistry to prepare cavities before filling, and mixed with zinc oxide it forms a protective cap for the dentine (Ref. 3).

There are reports of use of thymol or thymol iodide in products for the relief of toothache, but there are insufficient data to establish effectiveness (Refs. 1 through 7). Since eugenol and thymol are chemically similar, the possibility of effectiveness as an agent for the relief of toothache is suggested and has frequently, in fact, been associated with professional use for this purpose (Ref. 3).

(3) *Proposed dosage.* adults and children 2 years of age and older: Place a cotton pledget moistened with a maximum of 20 percent thymol or thymol iodide in the tooth cavity for approximately 1 minute not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for active ingredients for the relief of toothache. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that there is insufficient information to establish the effectiveness of thymol preparations as agents for the relief of toothache. Data to demonstrate effectiveness as an agent for the relief of toothache will be required in accordance with the guidelines set forth below. (See part III. paragraph C. below—Data Required for Evaluation.)

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Category III Labeling

None.

C. Data Required for Evaluation

The Panel has agreed that the guidelines recommended in this document for the studies required to bring a Category III drug into Category I are in keeping with the present state of the art and do not preclude the use of any advances or improved methodology in the future.

1. *Principles in the design of an experimental protocol for testing agents for the relief of toothache*—a. *General principles.* As far as the Panel could determine, no acceptable studies had been published which prove effectiveness of an agent for the relief of toothache. The recommendation of eugenol (85 to 87 percent) in oil of cloves for Category I was made on the basis of a long history of use by dental practitioners. The Panel recommends that Category III agents for the relief of toothache be tested using the following protocol. Also, the Panel would like to encourage industry to study eugenol and oil of cloves using the same protocol in order to determine the performance of such standards. Such data would be useful in either verifying the Panel's conclusions or for future amendment of the monograph.

b. *Selection of patients.* Patients are screened when they enter the program to determine whether they have severe, throbbing, and persistent toothache which is described as intolerable. Subjects should be restricted to adults 20 to 50 years of age not taking central nervous system medications or having physical illness.

c. *Study method.* Three investigators at separate institutions, preferably academic institutions, should perform these studies. The general plan should be a sequential analysis as described in

several publications (Refs. 1, 2, and 3). The medication and placebo should be coded with random numbers and supplied in pairs.

Patient A receives one of the pair of medications. The tooth cavity is gently rinsed with warm water and the medication is placed in the cavity on a piece of cotton. The cotton is removed after 5 minutes. In the case where the agent for the relief of toothache is a gel, the gel is placed directly in the tooth cavity without cotton and allowed to leach out. The investigator then asks the patient to determine whether the pain is now tolerable. If the pain is still intolerable, no relief is noted for patient A and the dentist performs his or her normal procedure on the tooth according to diagnosis. To determine the duration of tolerable pain the same inquiry is conducted every 10 minutes for 90 minutes or until the subject says the pain has become intolerable again. At that time, the dentist performs his or her normal procedure on the tooth according to diagnosis.

Patient B receives the second medication of the pair, and the same procedure is followed. The code is broken, and a point is plotted on the sequential chart as follows:

(1) The active vs. placebo no point plotted: no relief obtained with either agent, or both agents provided relief but relief did not last at least 20 minutes more for one agent than for the orther.

(2) Active better than placebo: pain becomes tolerable in the active-agent subject and remains so for 20 minutes more than for the placebo subject.

(3) Placebo better than active: Pain becomes tolerable in the placebo subject and remains so for 20 minutes more than in the active-agent subject.

d. *Interpretation of data.* Pairs of patients are repeated whenever they become available until statistical significance (p less 0.05) is reached on the sequential analysis chart. No attempt is made to pair patients other than on the basis of time of arrival. Blinding of the investigator and the subject may be difficult with aromatic substances such as eugenol and thymol. It is recommended that a third bottle be supplied with each pair of test agents. This bottle should contain 85 to 87 percent eugenol or oil of cloves. It should be opened first before opening any coded medication. Just before the test substance is applied to the tooth a small amount of eugenol is placed on the tongue. This procedure may, to some degree, mask the effect of taste and odor. In addition, placebo and test substance should resemble each other in color and viscosity.

Also, the safety of benzyl alcohol, butacaine, creosote, cresol, and phenol as agents for the relief of toothache should be demonstrated by well-designed studies in the tooth cavities of humans under conditions of proposed use.

References

(1) Bross, I., "Sequential Medical Plans," *Biometrics*, 8:188–205, 1952.

(2) Armitage, P., "Sequential Medial Trial," Blackwell, Oxford, U.K. Press, New York, 1960.

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2. *General principles in the design of an experimental protocol for testing counterirritants as agents for the relief of toothache.* Currently there are no generally accepted protocols for testing the effectiveness of counterirritant ingredients. The Panel recommends that the industry and FDA consider and develop mutually acceptable methodology.

The only counterirritants considered by the Panel were intended for application to the gum. Factors involved in the testing of agents for the relief of toothache, as discussed above, would be applicable as well to testing counterirritants and would provide a useful basis for comparison. (See part III. paragraph C.1. above—General principles in the design of an experimental protocol for testing agents for the relief of toothache.) This approach has not been previously used in testing counterirritants, but is pertinent to such ingredients which may claim to relieve toothache by the application of a poultice. (See part III. paragraph B.3.d. above—Capsicum.)

IV. Oral Mucosal Analgesics (Topical Anesthetics)

A. General Discussion

Oral mucosal analgesics are surface or topical anesthetics, and they are used as dental care agents by surface application to provide temporary relief of oral discomfort. Some injectable local anesthetics have surface anesthetic properties when applied topically in ointment, gel, or other topical dosage forms. Included in this category are lidocaine and butyl-derivatives of procaine, such as tetracaine and butacaine (Ref. 1). Benzocaine (ethylaminobenzoate) is very commonly used as a surface anesthetic; slow absorption makes it safe for use on wounds and mucous membranes (Ref. 2). Benzocaine is chemically related to procaine, but because of its lack of water solubility it is not useful as an injectable local anesthetic (Ref. 1).

The most commonly used surface anesthetics for OTC dental use are benzocaine and butacaine; for dental office use, lidocaine and tetracaine are the most commonly used (Ref. 3). Another drug, dyclonine is chemically dissimilar to commonly used surface anesthetics and may be used in dental offices for patients allergic to procaine, benzocaine, or chemically similar drugs (Ref. 1). In addition, combinations of surface anesthetics are often used in dental offices.

Various aromatic principles and alcohols also have modest to intense surface anesthetic effects. Tainter (Ref. 4) found that phenol, benzyl alcohol, menthol, and chlorobutanol have topical anesthetic activity. However, he claimed that phenol (used at 5 percent) was too caustic to be useful, while chlorobutanol at 10 percent and menthol at 5 or 10 percent were irritating. Studies by Adriani et al. (Ref. 5) indicated that classical injectable local anesthetics that are highly toxic (tetracaine, cocaine, dibucaine, and butacaine) were also highly effective surface anesthetics, while aromatic compounds (benzyl alcohol and menthol) were not nearly as effective.

1. *Adverse effects.* Adverse effects from surface anesthetics are due to overdosage, local irritation, or allergy.

a. *Overdosage.* Most anesthetic bases are rapidly absorbed when applied on the mucosal tissues (Ref. 6). Therefore, the maximum permissible dose (MPD) by intravenous injection should not be exceeded when applying the drug to the oral mucosa. Tetracaine and dibucaine have low MPD's because of high toxicity on intravenous administration (Ref. 4). These drugs are absorbed rapidly from the oral mucosa. When used as an agent to be applied topically to the oral mucosa, the dosage which is absorbed may exceed a safe dose and may cause systemic toxicity including seizures (Ref. 5). Their use should be closely supervised by a dentist.

Benzocaine appears to be an ideal surface anesthetic because, even when applied at high concentrations, overdosage is not likely to occur. Furthermore, it does not irritate the tissues at concentrations used in OTC products. Butacaine, although frequently used in dental ointments, has toxicity about equal to tetracaine. This toxicity level caused the Panel some concern, but based on safety studies provided during Panel deliberations, a long history of safe use, and a lack of adverse reaction reports, the Panel recommends butacaine for Category I classification (Refs. 1, 2, and 3).

b. *Local irritation.* As noted above, local irritation from surface application occurs only with a higher concentration of aromatic compounds or alcohols. The Panel considered local irritation as a a limiting factor in determining maximum safe concentrations of these agents.

c. *Allergy.* Although allergy to local anesthetics is considered rare, it does occur, especially with drugs related chemically to procaine. Benzocaine and butacaine are both in this category. Patients who are allergic to "caine" anesthetics should be warned on the package labeling, "Do not use this product if you are allergic to (name of local anesthetics) or other 'caine' anesthetics." These patients should use topical anesthetics only under the supervision of a dentist or physician. Since allergies to local anesthetics are quite rare, the target population for a new nonallergenic anesthetic would be extremely small; thus, there may not be an incentive to develop an OTC anesthetic which has no cross-reactivity with currently used local anesthetics.

Dental indications for use of topical anesthetics for the relief of oral discomfort include temporary relief of pain due to minor irritation or injury of soft tissues of the mouth, temporary relief of pain due to minor dental procedures, temporary relief of pain due to minor irritation of soft tissues caused by dentures or orthodontic appliances, temporary relief of pain due to canker sores when the condition has been previously diagnosed by a dentist or physician, and temporary relief of sore gums of infants and children due to teething.

2. *Carcinogenicity of phenol and phenolic compounds.* The Panel was concerned with reports of the carcinogenic and cocarcinogenic potential of phenol and phenolic substances, especially the studies of Boutwell and his coworkers and other groups (Refs. 7 through 13). Therefore, in addition to thorough study by the Panel, two experts were invited to make presentations to the Panel (Refs. 14 and 15).

These presentations were especially helpful, since they presented current views of earlier studies. The key point was that the cocarcinogenic effect of phenolic compounds is reversible and that low concentrations by themselves are not carcinogenic. Thus, if concentrations such as those recommended for mouth rinses or other OTC preparations are sufficiently low and the period of their use is restricted, there is no evidence that such use induces oral carcinoma. The Panel accepted 1.5 percent phenol in aqueous solution or in 20 percent ethyl alcohol as a dental rinse or in 70 percent ethyl alcohol for direct application to gums as the maximum generally recognized as safe (GRAS) concentration with a limit of 7 days use for any course of therapy, unless treatment is under the supervision of a dentist or physician. (See part IV. paragraph B.1.c. below—Phenol.) Under these conditions phenol and similar compounds are considered GRAS.

Cresol, a phenolic compound, is recommended for Category III requiring effectiveness studies with the safe concentration ranging from 0.25 to 1 percent. The same time limitation of 7 days is recommended for cresol and phenol labeling. (See part IV. paragraph B.3.b. below—Cresol.)

References

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(15) Weisburgur, E., presentation to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, 9th meeting, April 3–4, 1974.

B. Categorization of Data

1. *Category I conditions under which oral mucosal analgesic active ingredients are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredients.

Benzocaine
Butacaine sulfate
Phenol preparations (phenol and phenolate sodium)

a. *Benzocaine.* The Panel concludes that 5 to 20 percent benzocaine base in appropriate vehicles is safe and effective for OTC use as an oral mucosal analgesic for the relief of oral discomfort as specified in the dosage section discussed below. Appropriate vehicles are polyethylene glycol or propylene glycol water-soluble bases, ointment bases, ethyl alcohol up to 70 percent (maximum dosage 1.0 mL), and denture adhesive powders or creams.

The local anesthetic benzocaine (ethyl aminobenzoate) is the ethyl ester of para-aminobenzoic acid (Refs. 1 through 4). It has also been named anesthesin, orthesin, and parathesin. It occurs as an odorless, white, crystalline solid, which is very slightly soluble in water (1:2,500), soluble in alcohol (1:5), and soluble in almond and olive oils (1:30 to 1:50) (Ref. 2). Propylene glycol and polyethylene glycol may be used as water-miscible solvents for benzocaine.

(1) *Safety.* Clinical use and marketing experience have confirmed that benzocaine is safe for OTC use. It is one of the more widely used and safest topical anesthetics found in OTC preparations. It has been widely used since 1903. When applied, benzocaine is absorbed so slowly from oral tissues and wounds that reactions due to systemic toxic effects are virtually unknown (Refs. 1 and 5). The seizures and cardiac depressant characteristics of overdose of "caine" type drugs do not occur with benzocaine, and reports of such reactions with the use of benzocaine are nonexistent (Ref. 6).

Safety in part is due to hydrolysis of the drug by pseudocholinesterases in blood plasma which detoxifies esters of aminobenzoic acid.

Benzocaine has been administered orally to relieve stomach pain without any resulting toxic effects. The Panel is unaware of any fatalities due to oral ingestion of benzocaine and the lethal dose in man is not known.

Lethal doses have been determined in animals when benzocaine has been administered by various routes. When administered to rabbits, the LD_{50} for benzocaine was 146 mg/kg by the intratracheal route and 104 mg/kg intranasally (Ref. 7). In this study, a comparison with other commonly used anesthetics indicated that benzocaine is the safest.

Benzocaine therapy is not absolutely without adverse effects. Benzocaine in high doses may cause methemoglobinemia, because it can interfere with the reconversion of methemoglobin to hemoglobin (Refs. 1 and 5).

Cyanosis appears when 2 g or more of total adult hemoglobin have been converted to methemoglobin (the latter is incapable of carrying oxygen). Most reported systemic reactions were in infants under 6 months of age who were treated with benzocaine suppositories (Refs. 8 through 11). Infants under 4 months may be more susceptible than older infants, children, or adults because of their relative deficiency of DPNH-dependent methemoglobin reductase, an enzyme which protects against methemoglobin-inducing foreign compounds (Ref. 11). Some infants under 4 months of age may not have developed sufficient quantities of the reductase to prevent development of methemoglobinemia upon exposure to benzocaine.

A congenital deficiency of the enzyme in older children or in adults is rare. There are three cases reported in the literature of adults who developed methemoglobinemia within 3 hours of ingestion of benzocaine in 162.5-mg to 325-mg doses (Refs. 11 and 12). These reactions were of a mild nature.

When caused by the amounts absorbed from a single application of benzocaine, methemoglobinemia is not life threatening since the oxygen capacity is not significantly decreased. It is extremely unlikely that a dental application will cause methemoglobinemia if used according to proper directions.

The Panel recommends that infants under 4 months of age should not be treated with benzocaine except under the advice and supervision of a dentist or physician. No specific warning concerning methemoglobinemia is considered necessary.

Objection to the use of benzocaine as an oral mucosal analgesic is contained in reports of allergic responses and cross reaction with other anesthetics derived from para-aminobenzoic acid (Refs. 3 and 13 through 21). However, the total number of cases of allergy is small compared to the total number of applications of the drug. In the North American Dermatologic Study (Ref. 20), the incidence of benzocaine irritancy and sensitivity equals that of other commonly used drugs and is less than that of the more frequent sensitizers. The Panel recommends that a warning on allergy be included on the label.

Because benzocaine is a derivative of para-aminobenzoic acid, it may interfere with sulfonamides when taken concurrently because benzocaine would theoretically inhibit the antibacterial action of sulfonamides (Refs. 3 and 4). No warning is recommended by the Panel since there has been no demonstration that the interaction with sulfa actually occurs under conditions of dental use.

(2) *Effectiveness.* There are studies documenting the effectiveness of 5 to 20 percent benzocaine in appropriate vehicles (Refs. 22 through 26).

Benzocaine is an effective topical anesthetic which has an almost immediate onset of action and a short duration. Adriani (Ref. 23) has shown 20 percent benzocaine in polyethylene glycol ointment to have an onset of 15 seconds when applied to oral mucosa. The effect can be prolonged by keeping the preparation in contact with the mucosa (Ref. 23). The pain-relieving action of benzocaine is entirely within the mucous membranes, since the quantity circulating in the blood is insufficient to provide analgesia or anesthesia to other areas.

After application of 20 percent benzocaine ointment to the tongue, electrical stimulation produced no response (Ref. 24). Concentrations below 5 percent have not been shown to be effective after oral topical application, and concentrations above 20 percent gave no further enhancement of anesthetic activity (Ref. 25). Thus, benzocaine in the range of 5 percent to 20 percent is considered effective.

Duration of effectiveness is directly related to duration of contact with the mucosa, but effectiveness is also dependent on the formulation of the preparation (Refs. 1, 18, 26, and 27). The Panel concludes that when properly formulated, benzocaine is effective as an oral mucosal analgesic for the relief of oral discomfort.

(3) *Dosage.* Adults and children 4 months of age and older: Apply 5 to 20 percent benzocaine in appropriate vehicles to the affected oral mucosal area not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. below—Category I Labeling.)

The Panal also recommends the following warnings for benzocaine:

(a) "Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

(b) "Fever and nasal congestion are not symptions of teething and may indicate the presence of infection. If these symptoms persist, consult your physician."

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b. *Butacaine sulfate.* The Panel concludes that a dosage of 0.75 g of a 4-percent ointment of butacaine sulfate is safe and effective for OTC use as an oral mucosal analgesic for the relief of oral discomfort as specified in the dosage section discussed below.

(1) *Safety.* Butacaine has a long history of use in dentistry (mainly under the supervision of a dentist) for denture sore spots and in extraction sites. Like other local anesthetics containing butyl groups, however, butacaine is highly toxic, having an LD_{50} and a convulsant dose less than that of cocaine but greater than that of tetracaine (Ref. 1). Butacaine can be absorbed very rapidly from mucous membranes (Ref. 2); therefore, topical application is equivalent to systemic administration. Even in professional use a total dose of 10 ml of a 2-percent preparation or its equivalent (200 mg) should never be exceeded when application is made to the oral mucosa (Ref. 2).

The Panel recommends that the OTC dose should not exceed application of 30 mg of butacaine sulfate (0.75 g of 4 percent ointment), and this amount must be supplied in single-use units (no more than 6 units per package) so that the user will not exceed the safe dose. This dose and packaging are considered to be safe for OTC use on a risk-to-benefit ratio, but dosage and packaging containing larger amounts are unsafe for OTC use.

Irritancy tests in the hamster cheek pouch proved positive (Ref. 3); however, further studies of the ointment in guinea pigs and in humans demonstrated no irritancy (Refs. 3 and 4).

Although evidence is provided that butacaine has low allergenic potential, it is possible for subjects to be allergic to butacaine in rare cases (Ref. 3). Also, if a patient is allergic to procaine, he or she may show cross-allergy with butacaine because of close chemical similarities. Therefore, the patient should be warned not to use the product if allergic to procaine, butacaine, benzocaine, or other "caine" anesthetics.

(2) *Effectiveness.* Butacaine is an effective topical anesthetic with a long history of use (Refs. 5 through 15). Tainter and Moose (Ref. 6) claimed that, based upon effectiveness ratings and upon the lack of irritancy of its vehicle, butacaine was the most useful topical anesthetic in their study.

Butacaine is listed as an accepted drug in the 37th edition of "Accepted Dental Therapeutics" (Ref. 10). There is also other published evidence of the usefulness of butacaine for anesthesia in various clinical conditions of the mucosal surfaces of the eye, nose, throat, and mouth (Refs. 11 through 15).

(3) *Dosage.* Adults and children 12 years of age and older: Apply 30 mg (0.75 g of a 4-percent ointment) not more often than every 3 hours and not more than three applications daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. below—Category I Labeling.)

In addition, the Panel recommends the following warnings for butacaine sulfate:

(a) "Do not use on children under 12 years of age unless recommended by a dentist or physician."

(b) "Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

(c) "Do not use more than one unit at a time."

(d) "Do not repeat except after 3 hours."

(e) "Do not exceed 3 doses daily."

In addition, the labeling must not include the use of butacaine for teething pain.

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c. *Phenol preparations (phenol and phenolate sodium).* The Panel concludes

that 0.25 to 1.5 percent phenol in aqueous solution, up to 20 percent ethyl alcohol as a dental rinse, or up to 70 percent ethyl alcohol for direct application only, is safe and effective for OTC use as an oral mucosal analgesic for the relief of oral discomfort as specified in the dosage section discussed below.

(1) *Safety.* Clinical use and marketing experience have confirmed that aqueous phenol solutions are safe for application as an oral mucosal analgesic when used in concentrations ranging from a minimum of 0.25 percent to a maximum of 1.5 percent.

Maximum dosage should be restricted to that containing 600 mg within 24 hours for adults and children 12 years of age and older and 300 mg within 24 hours for infants and children 4 months to under 12 years of age.

The Panel reviewed reports that phenol and phenolic substances might have a carcinogenic or cocarcinogenic potential (Refs. 1 through 7). In addition to thorough study by the Panel, two experts were invited to consult with the Panel (Refs. 8 and 9).

Presentations by the consultants (Refs. 8 and 9) were especially helpful, since current views of earlier studies were presented. On the basis of data reviewed, the Panel concluded that if concentrations such as those recommended for mouth rinses or other OTC preparations are sufficiently low and the period of their use is restricted, there is no evidence that such use induces oral carcinoma (Refs. 3 and 8). The Panel determined that phenol should only be available at 1.5 percent or a lower concentration and that it should be limited to 7 days of continuous treatment, except under the supervision of a dentist or physician.

(2) *Effectiveness.* There are studies documenting the effectiveness of phenol as an oral mucosal analgesic (Refs. 10 through 14). Phenol has limited activity as a topical anesthetic. The local anesthetic activity of low concentrations is due to its ability to block nerve conductions (Refs. 10 and 11). However, if high concentrations are used, phenol demyelinates or otherwise destroys many types of nerve endings so that the ultimate action on nerve endings depends upon the concentration, contact time, and the vehicle used (Refs. 12 through 14).

(3) *Dosage*—(a) *Dental rinse.* 0.25 to 1.5 percent phenol in appropriate vehicles as directed. Dosage should not exceed 300 mg per day for children aged 6 to under 12 years. Dosage should not exceed 600 mg per day for adults and children aged 12 years and older.

(b) *Teething preparations.* 0.25 to 1.5 percent phenol in appropriate vehicles as directed. Dosage should not exceed 300 mg per day for infants and children 4 months to under 12 years of age.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. below—Category I Labeling.)

The Panel also recommends the following warnings for phenol preparations:

(a) "Fever and nasal congestion are not symptoms of teething and may indicate the presence of infection. If these symptoms persist, consult your physician."

(b) "Children between 6 and 12 years of age should be supervised in the use of this product as a dental rinse."

The labeling must also include adequate directions which will limit the dosage not to exceed 600 mg of phenol per day for adults and children 12 years of age and older and not to exceed 300 mg of phenol per day for infants and children 4 months to under 12 years of age.

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Category I Labeling

The Panel recommends the following Category I labeling for oral mucosal analgesic (topical anesthetic) active ingredients:

a. *Indications*—(1) *For all oral mucosal analgesics (topical anesthetics).* (a) "For the temporary relief of pain due to minor irritation or injury of soft tissue of the mouth."

(b) "For the temporary relief of pain due to minor dental procedures."

(c) "For the temporary relief of pain due to minor irritation of soft tissues caused by dentures or orthodontic appliances."

(d) "For the temporary relief of pain due to recurring canker sores when the condition has been previously diagnosed by a dentist."

(2) *For benzocaine and phenol used as oral mucosal analgesics (topical anesthetics) for teething pain.*

"For the temporary relief of sore gums due to teething in infants and children 4 months of age and older."

(3) *For oral mucosal analgesics (topical anesthetics) in denture adhesive products.*

"For the temporary relief of pain or discomfort of oral tissues due to dentures."

b. *Warnings*—(1) *For all oral mucosal analgesics (topical anesthetics).* (a) "Not to be used for a period exceeding 7 days."

(b) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(c) "Do not swallow."

(d) "Do not exceed recommended dosage."

(e) "Children under 12 years of age should be supervised in the use of this product."

(2) *For products containing "caine" derivatives.*

"Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacine, benzocaine, or other 'caine' anesthetics."

(3) *For products containing butcaine sulfate.*

(a) "Do not use in children under 12 years of age unless recommended by a dentist or physician."

(b) "Do not use more than one unit at a time."

(c) "Do not repeat except after 3 hours."

(d) "Do not exceed 3 doses daily."

(4) *For oral mucosal analgesics (topical anesthetics) for teething pain.*

"Fever and nasal congestion are not symptoms of teething and may indicate the presence of infection. If these symptoms persist, consult your physician."

(5) *For oral mucosal analgesics (topical anesthetics) in denture adhesive products.*

"See your dentist as soon as possible."

c. *Directions*—(1) *For products containing benzocaine.* Apply to the affected area not more than four times daily or as directed by a dentist or physician. For infants under 4 months of age there is no recommended dosage or treatment except under the advice and supervision of a dentist or physician.

(2) *For products containing butacaine sulfate.* Apply to the affected area. Do not use more than one unit at a time (each unit to contain no more than 30 mg butacaine sulfate). Do not apply more often than every 3 hours. Do not exceed three applications (90 mg) daily. Children under 12 years of age should not use this product except under the advice and supervision of a dentist or physician.

(3) *For products containing phenol.* (a) Apply to the affected area not more than six times daily. For adults and children 12 years of age and older, dosage should not exceed 600 mg of phenol per day. For infants and children 4 months to under 12 years of age, dosage should not exceed 300 mg of phenol per day. For infants under 4 months of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(b) For phenol formulated as a dental rinse, dosage should not exceed 600 mg of phenol per day for adults and children 12 years of age and older. For children 6 to under 12 years of age, dosage should not exceed 300 mg of phenol per day. For children under 6 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *For oral mucosal analgesics (topical anesthetics) in denture adhesive products.* Apply on area of denture that comes in contact with sore gums.

d. *Package limit.* Products containing butacaine sulfate should be packaged in single-use units to contain no more than 30 mg each with no more than six units per package.

2. *Category II conditions under which oral mucosal analgesic active ingredients are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC drug products for the relief of oral dicsomfort effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredients

Camphor
Methyl salicylate

a. *Camphor.* The Panel concludes that camphor is not generally recognized as safe and effective for use as an OTC oral mucosal analgesic when applied topically to oral mucous membranes for the relief of oral discomfort. A camphor and phenol combination product was reviewed by the Panel. Although camphor was submitted as an active ingredient, the Panel considers phenol to be the active ingredient in this combination product, leaving camphor as a pharmaceutical aid which is intended to allow the use of a higher concentration of phenol.

(1) *Safety.* The Panel has reviewed copies of letters from Carol R. Angle, M.D., to the Hearing Clerk, FDA (Ref. 1) and to a former Director of FDA's Division of OTC Drug Evaluation (Ref. 2), a paper by W. J. Phelan (Ref. 3) which summarizes a report on poisoning by camphor products in 1974 by the National Clearinghouse for Poison Control Centers (Ref. 4), and a copy of the report on camphor from the minutes of the 16th meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products (Ref. 5). In general, that Panel's report concurred with this Panel's review of camphor regarding a pharmacological description of the ingredient and a discussion of its ingested toxicity. In particular, the report of the Miscellaneous External Panel cited numerous case studies of toxicity from camphor ingestions, most frequently of ingestions of camphorated oil, at least one of which goes back to 1848. The report of this Panel documents poisoning by solid camphor at even earlier dates.

In a number of instances, including those in the report submitted by Dr. Angle (Ref. 1), the ingested product contained one or more of other toxic substances in combination with camphor (Refs. 1, 2, and 3). In these instances it is difficult to ascribe the symptoms reported to only one agent. Gosselin et al. (Ref. 6) give camphor a toxicity rating of 4 (very toxic). However, many of the other combination ingredients, such as menthol, thymol, eucalyptol, methyl salicylate, and phenol, have also been given a toxicity raring of 4 by Gosselin et al. (Ref. 6). The 1974 report of the National Clearinghouse for Poison Control Center includes 244 ingestions of a combination product containing camphor and phenol and 89 ingestions of camphorated oil by children under 5 years of age (Ref. 4). As little as 0.7 to 1.0 g of camphor has proved fatal in children (Ref. 7). These data indicate that the problem of toxicity due to the ingestion of camphor is of current concern.

Phenol was accepted by the Panel for use at concentrations of 0.25 to 1.5 percent. A camphor-and-phenol-in-oil combination contains about 10 percent camphor and nearly 5 percent phenol. The research of Deichmann and associates (Refs. 8, 9, and 10) established that the presence of camphor-in-oil solutions of phenol brought into contact with an aqueous phase "holds" the phenol in the oil phase. In this way, the extent of the local action of phenol and the absorption of phenol through the tissues are considerably reduced from values found when phenol alone is present in this oil solution. The activity of camphor in this particular situation is that of a pharmaceutical necessity or pharmaceutical aid. Camphor is used for the same purpose (pharmaceutical aid) in camphorated parachlorophenol.

(2) *Effectiveness.* It is stated that camphor applied locally has a mild anesthetic action and that its application to the skin may be followed by numbness (Ref. 11). Phenol, when mixed with camphor, loses a great deal of its caustic effect but retains most of its analgesic and antiseptic action (Ref. 7).

The Panel considered whether or not there is any rationale for using a mixture of 4.66 percent phenol with 10.8 percent camphor (in liquid petroleum) to be applied in the mouth. Deichmann and Miller (Ref. 12) reorted that when a similar solution was equilibrated with an aqueous phase only 22 percent of the phenol entered the aqueous phase (equal to approximately 1 percent phenol in the aqueous phase). The availability of phenol may be more or less then 22 percent when the combination product is in contact with mucous membranes of the mouth. However, if one assumes that approximately 22 percent of the phenol in the combination enters the aqueous

phase and is available, then an aqueous solution of 1 percent phenol should probably be as useful as the phenol-camphor-liquid petrolatum combination used to relieve discomfort of minor irritation of oral soft tissues.

(3) *Evaluation.* The Panel concludes that the risk of accidental ingestion of camphor as well as phenol in the combination is not balanced by any increased benefit of the combination over use of small quantities of 1 percent phenol alone. The Panel therefore recommends that camphor be placed in Category II on the basis of the risk-to-benefit ratio. As an inactive ingredient the amount of camphor allowed to impart flavor or odor should be limited to less than 0.2 percent.

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b. *Methyl salicylate.* The Panel concludes that methyl salicylate is not generally recognized as safe and effective for OTC application as an oral mucosal analgesic.

(1) *Safety.* Methyl salicylate causes irritation with the possibility of local tissue damage when applied to mucous membranes (Refs. 1 and 2). Because of the reputed systemic toxicity of methyl salicylate, the Panel recommends that any dentifrice or dental care agent containing this substance as a pharmaceutical aid (i.e., flavoring agent) be in conformity with all pertinent regulations for its use as such.

(2) *Effectiveness.* There are no studies that indicate that topically applied methyl salicylate provides an anesthetic effect. It apparently acts only as a counterirritant (Refs. 2 and 3).

(3) *Evaluation.* Methyl salicylate is an irritant when applied topically, possibly causing local tissue damage. The Panel concludes that there is no rational use of methyl salicylate as an OTC oral mucosal analgesic.

References

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(2) Gleason, M. N., et al., "Clinical Toxicology of Commercial Products," 3d Ed., Williams and Wilkins, Baltimore, section II, p. 96, 1969.

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Category II Labeling

The Panel concludes that the use of certain labeling claims related to the safety or effectiveness of a product are unsupported by scientific data and, in some instances, by sound theoretical reasoning. The Panel concludes that such labeling should be removed from the market.

The Panel considers the following examples of claims to be misleading and unsupported by scientific data:

"For quick temporary relief of pain and soreness due to minor irritation of teeth and gums."

"Especially soothing after extractions or for minor gum boils."

"For temporary relief of cavity toothache."

"For rapid and effective relief of sore gums."

"For sore gums following tooth extractions."

"For use after teeth extraction."

"Hold in mouth as long and as frequently as necessary, then rinse." This is inconsistent with the directions of use proposed by the Panel.

"Eases pain due to cavities fast."

"Fast relief from toothache due to cavities."

"Temporary relief for toothache due to cavities."

"Gives quick relief that lasts for hours."

"For fast, temporary relief of minor mouth or gum soreness." The claim is too vague; it must be more specific.

"Subdues the throbbing ache of sore, swollen gums." The claim is too vague; gums may be infected or a deeper problem may exist.

"Stops baby's tears within seconds."

"Relief of discomfort of minor gum disorders before and after gingivectomy." Gingivectomy should be treated by a dentist.

The following claim encourages the consumer to avoid dental care by promoting use beyond the 7-day limit established by the Panel for safe use: "Holds dentures comfortably in place." This claim is acceptable when a denture adhesive is combined with an oral mucosal analgesic only for short-term use.

The Panel considers claims which imply a superiority in onset of action, such as "quicker," "more quickly," and "faster," to be misleading because all oral mucosal analgesics have a rapid onset.

The Panel considers the following terms to be vague and not definitive of the condition for which relief is sought: "sore spots," "anti-irritation," "comfortable adjustment," "helps comfortable adjustment," "stops pain," "soothes sore gums," "special," "unaccustomed use," "alleviates pain."

The following claims are for conditions that require the advice of a dentist: "gum boils," "gum or gingival inflammation," and "abscesses."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I except as noted for specific pharmacotherapeutic groups.

The Panel concludes that adequate and reliable scientific evidence is not available at this time to permit final classification of the ingredients and conditions listed below. Marketing need not cease during this time if adequate testing is undertaken. If adequate effectiveness data are not obtained within 2 years, however, the ingredients and conditions listed in this category should no longer be marketed in OTC products.

Category III Active Ingredients

Benzyl alcohol
Cresol

Thymol preparations (thymol and thymol iodide)

a. *Benzyl alcohol.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of benzyl alcohol at a concentration of 1 to 3 percent for OTC use as an oral mucosal analgesic for the relief of oral discomfort.

(1) *Safety.* There are insufficient data to establish the safety of 1 to 3 percent benzyl alcohol for OTC use as an oral mucosal analgesic.

Since animal studies suggest that ingestion of benzyl alcohol 1 mL/kg may be fatal (Ref. 1), and since package sizes that will provide more than 30 mL of a 2-percent solution or 60 mL of a 1-percent solution are unnecessary and may be a potential risk for accidental ingestion by young children, the Panel recommends that package size be limited to that containing a total of 0.6 mL of benzyl alcohol.

Benzyl alcohol in a 100-percent concentration is irritating to tissue; injected subcutaneously or intramuscularly the drug produces local necrosis (Refs. 1, 2, and 3). Benzyl alcohol given to dogs by stomach tube in doses of 0.2 to 0.5 mL/kg of body weight produced vomiting and defecation. These effects were attributed to local irritation of gastrointestinal mucosa because subcutaneous and intramuscular administration of these same doses did not produce these gastrointestinal reactions (Ref. 3). Benzyl alcohol applied to the tongue or lip of humans produces a primary irritating effect (Ref. 1). Instillation of the drug into the conjunctival sac of a rabbit was followed by some necrosis of the cornea (Ref. 1).

Benzyl alcohol in a concentration of 1 to 4 percent is included in injections, for subcutaneous or intramuscular administration, for its local anesthetic and bacteriostatic actions (Refs. 4, 5, and 6). Benzyl alcohol is categorized as a pharmaceutic aid (bacteriostatic) for injections in "National Formulary XIV," but the concentration to be used is not specified. Benzyl alcohol was categorized as a local anesthetic in the 10th, 11th, and 12th editions of the "National Formulary X." Category designation was begun with the 10th edition of the "National Formulary." In an early study, aqueous solutions of 1 to 3 percent benzyl alcohol were injected, apparently by infiltration, to provide local anesthesia for surgery in 33 patients (Ref. 1). This study reported that these solutions did not "produce any marked irritation or destruction of the tissues into which they were injected."

Upon application to the human cornea, 1 percent benzyl alcohol in isotonic saline produced transient pain described as "fairly severe smarting" (Ref. 7). Studies in which 1-percent or 1- to 4-percent solutions of benzyl alcohol were applied to corneas of experimental animals showed results varying from no irritation to reddening of the conjunctiva (Refs. 1 and 8). The more severe reactions were perhaps due to some deterioration of the benzyl alcohol under the conditions of storage. Since the drug is slowly soluble in water only to the extent of 1 g in 25 to 30 mL, aqueous preparations containing more than 3 to 4 percent benzyl alcohol are likely to contain some undissolved benzyl alcohol which may produce irritation (Refs. 4, 5, and 6).

There have been a few studies that evaluated the tissue irritation potential of benzyl alcohol in nonaqueous solvents. Application of 50 percent benzyl alcohol in 95 percent ethanol to the mucosa of the mouth or gums of 61 patients produced irritation in 31 percent of the patients and hyperemia in 11 percent of the patients (Ref. 9). That 50 percent benzyl alcohol was irritating is far from conclusive, however, because concurrently with the benzyl alcohol solution tests, 95 percent ethanol was applied on the opposite side of each patient's mouth. The ethanol "control" produced irritation in 40 percent of the patients and hyperemia in 18 percent of the patients. In a subsequent report of 156 patients who were tested with 95 percent ethanol, 38 percent responded with irritation and 14 percent with hyperemia; of 506 "aqueous controls," 14 percent showed irritation and 7 percent showed hyperemia (Ref. 10). In addition to the 506 patients treated with "aqueous control" (water or 0.9-percent sodium chloride solutions with color or a flavor or "fluorescent"), 70 patients were treated with "Liquor Alkalines Aromaticus," "National Formulary V." or "National Formulary VI." Since this solution may possibly be irritating, these patients were not included in the figures stated in this document.

A preparation containing 1 percent benzyl alcohol, together with benzocaine and clove oil, in an adhesive base intended for application to the oral mucous membrane, was subjected to sensitization and irritation tests (Ref. 11). At the 24-hour and subsequent observation periods after application of the material to the skin, eyes, and oral mucous membranes of experimental animals, no irritation was observed. However, no data were presented on any observations prior to the 24-hour period. Guinea pig sensitization tests were negative.

The studies cited above show that undissolved benzyl alcohol is a potent irritant. Aqueous solutions in concentrations from 1 to 3 percent of benzyl alcohol may produce variable degrees of irritation to soft tissues.

(2) *Effectiveness.* Benzyl alcohol does possess local anesthetic activity, but the concentrations (in aqueous and nonaqueous solvents) needed to provide relief of pain of oral soft tissues have not been established. Standard reference sources attribute local anesthetic activity to benzyl alcohol and cite uses by injection, by application to mucous membrances, and by application to the skin as an antipruritic (Refs. 4, 5, and 6). For OTC dental and related use, benzyl alcohol is included in preparations for toothache, for sore mouth due to dentures, and for cold sores.

Two to 4 percent benzyl alcohol in saline produced anesthesia in dogs when injected subdurally (Ref. 13). Concentrations of 1 to 3 percent benzyl alcohol were injected to provide anesthesia for surgical procedures apparently be infiltration in 33 humans (Ref. 1).

Topical applications of solutions of benzyl alcohol are reported to be uncertain in effect (Ref. 4). In descriptive, uncontrolled studies in experimental animals and humans, benzyl alcohol applied topically in 1- to 2-percent solutions was reported to produce complete or partial anesthesia of skin (Refs. 1 and 7), motor nerves, and sensory nerves of frogs (Ref. 1); corneas of animals (Refs. 1, 7, and 8); and oral mucous membranes of humans (Refs. 1 and 7). In another uncontrolled study, a 10-percent solution of benzyl alcohol applied to the tip of the tongue of human subjects provided a short period of anesthesia (Ref. 14). Application of pure benzyl alcohol to the nostrils, skin, tongue, or lips of humans was followed by some degree of anesthesia (Refs. 1 and 7).

In the only controlled, double-blind studies of local anesthetic activity of topical benzyl alcohol which could be found in the literature, a 50-percent solution of benzyl alcohol in 95 percent ethanol was compared with placebo aqueous solutions and with 95 percent ethanol without benzyl alcohol (Refs. 9 and 10). The solutions were applied to the oral mucous membranes of humans. Complete or partial anesthesia was reported by 43 percent of the 576 patients receiving various placebo aqueous solutions, 78 percent of the 156 patients receiving 95 percent ethanol

solutions and 79 percent of the 61 patients treated with 50-percent benzyl alcohol in 95 percent ethanol (Ref. 10). In the initial study in this series, patients were concurrently treated on opposite sides of the mouth with 50 percent benzyl alcohol in 95 percent ethanol and with 95 percent ethanol (Ref. 9). Of the 61 patients tested, 67 percent experienced complete or partial anesthesia with 95 percent ethanol and 79 percent reported some anesthesia with 50 percent benzyl alcohol in 95 percent ethanol. No statistics were presented, and the benzyl alcohol concentration was very high.

Since benzyl alcohol solutions stored in soft glass containers have been shown to increase in pH and decrease in anesthetic activity, the Panel believes there may be stability problems with benzyl alcohol solutions in some dosage forms or in some types of packaging. Therefore, the stability of benzyl alcohol in the particular dosage form and packaging intended for marketing should be established (Ref. 8).

(3) *Proposed dosage.* Adults and children 2 years of age and older: Apply 1 to 3 percent benzyl alcohol to the affected area not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.)

In addition, products containing benzyl alcohol should contain no more than a total of 0.6 mL (30 mL of a 2-percent solution or 60 mL of a 1-percent solution) of benzyl alcohol in a container capable of maintaining stability of the product.

(5) *Evaluation.* The Panel concludes that there is insufficient evidence to establish the safety and effectiveness of 1 to 3 percent benzyl alcohol as an oral mucosal analgesic. Data to demonstrate safety and effectiveness as an oral mucosal analgesic will be required in accordance with the guidelines set forth below. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

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(3) Gruber, C. M., "The Pharmacology of Benzyl Alcohol and Its Esters I. The Effect of Benzyl Alcohol, Benzyl Acetate and Benzyl Benzoate when Given by Mouth upon the Blood Pressure, Pulse and Alimentary Canal," *Journal of Laboratory and Clinical Medicine*, 9:15–33, 1923.

(4) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 190, 1973.

(5) Blacow, N. W., and A. Wade, "Martindale: The Extra Pharmacoposia," 26th Ed., The Pharmaceutical Press, London, pp. 50–51, 1972.

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(7) Sollman, T., "Benzyl Alcohol: Its Anesthetic Efficiency for Mucous Membranes," *Journal of Pharmacology and Experimental Therapeutics*, 13:355–360, 1919.

(8) Macht, D. I., and A. T. Shohl, "The Stability of Benzyl Alcohol Solutions," *Journal of Pharmacology and Experimental Therapeutics*, 16:61–69, 1921.

(9) Tainter, M. L., and M. Moose, "Studies in Topical Anesthesia: I. The Efficacy of Certain Common Anesthetics when Used on the Gums," *Journal of the American Dental Association*, 23:244–250, 1936.

(10) Tainter, M. L., A. H. Throndson, and S. M. Moose, "Studies in Topical Anesthesia: II. Further Observations on the Efficacy of the More Common Local Anesthetics When Used on the Gums and Oral Mucosa," *Journal of the American Dental Association and Dental Cosmetics*, 24:1480–1487, 1937.

(11) OTC Volume 080048.

(12) Voegtlin, C., and A. E. Livingston, "Benzyl Alcohol as a Spinal Anesthetic," *Journal of Pharmacology and Experimental Therapeutics*, 13:513, 1919.

(13) Adriani, J., et al., "The Comparative Potency and Effectiveness of Topical Anesthetics in Man," *Clinical Pharmacology and Therapeutics*, 5:49–62, 1964.

b. *Cresol.* The Panel concludes that there are insufficient data available to permit the final classification of the safety and effectiveness of cresol at a concentration of 0.25 to 1.0 percent for OTC use as an oral mucosal analgesic for the relief of oral discomfort.

(1) *Safety.* Cresol, a mixture of 2-, 3-, 4-methylphenols, is obtained by fractional distillation of coal tar or petroleum (Refs. 1 and 2). Cresol is a protoplasmic poison resembling phenol in its effects, although it may be slightly more corrosive than phenol and its systemic effects may be slightly milder because of slower absorption (Refs. 3 and 4). In an invitro test, 0.25 percent cresol, 0.54 percent phenol, 0.3 percent *m*-cresol, and 1.2 percent benzyl alcohol produced total hemolysis of erythrocytes (Ref. 5). In a study of carcinogenic activity of phenol and related compounds on mouse skin, each of the three cresols was reported to have the same order of "promoting" activity as phenol (Ref. 6).

On the skin, cresol produces erythema, burning, and numbness (Ref. 2). If ingested, cresol causes a severe burning sensation in the mouth and upper abdomen, dysphagia (difficulty in swallowing), vomiting, and diarrhea (Ref. 2). Chronic poisoning (either by ingestion or percutaneous absorption) may produce widely varied reactions such as gastrointestinal disturbances, central nervous system dysfunctions, skin eruptions, jaundice, oliguria, and uremia (Ref. 7). At least one death has been reported from topical application of cresol to a large area of the body surface of a child (Ref. 8). Irritation of periapical tissues may occur if cresol is used in root canal therapy (Ref. 1).

Dilute solutions of cresol are used in therapeutics, although the Panel found no data relating to safety of such solutions. Cresol is sometimes used in concentrations of 0.25 to 0.5 percent as a bacteriostatic agent in parenteral solutions. A saponated solution containing 0.5 percent cresol has been used for application to wounds, and a saponated solution containing 0.1 percent cresol has been used as a vaginal douche (Ref. 2).

The maximum dosage for cresol should be restricted to no more than 400 mg within 24 hours for adults and children over 12 years of age and 200 mg within 24 hours for children 6 to 12 years of age.

(2) *Effectiveness.* Early studies in experimental animals and man suggest that cresol solutions have some local anesthetic activity (Refs. 9 through 12). Gurney (Ref. 13) reports that cresols have been used as mild pulpal analgesics and that they exhibit a demonstrable analgesia when applied under proper conditions. He notes that the analgesia may be easily seen with application of cresol to irritated pulps of primary teeth, but it is very difficult to demonstrate analgesia with permanent teeth. Gurney's paper (Ref. 13) did not include clinical studies.

The Panel conducted a thorough search of the scientific literature for clinical studies of cresol as a local anesthetic for use on soft oral tissue. Such studies were not found. One submission included one unpublished clinical study of the obtundent qualities of a product containing cresol and boric acid (Ref. 14). This clinical study apparently included more than 120 patients, but it was uncontrolled, not well documented, and evaluations were subjective.

(3) *Proposed dosage.* Adults and children 6 years of age and older: Apply 0.25 to 1.0 percent cresol in aqueous solution to the affected area. The total amount to be applied in a 24-hour period should not exceed 400 mg for adults and

children over 12 years of age or 200 mg for children 6 to 12 years of age.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. above—Category I Labeling).

In addition, the panel recommends the following warning for cresol:

"Do not use in children under 6 years of age unless recommended by a dentist or physician."

(5) *Evaluation.* The Panel concludes that there is insufficient evidence to establish the safety and effectiveness of cresol as an oral mucosal analgesic. Data to demonstrate safety and effectiveness of cresol as an oral mucosal analgesic will be required in accordance with the guildelines set forth below. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 37th Ed., American Dental Association, Chicago, p. 209, 1977.

(2) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 355, 1973.

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(7) Windholz, M., et al., "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 335, 1976.

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(10) Ikebe, S., "Experimental Study on Surface Anesthesia in the External Ear in the Guinea Pig: IV.," (abstract), *Chemical Abstracts*, 29:7489, 1935.

(11) Kasuga, E., "Percutaneous Anesthesia," (abstract), *Chemical Abstracts*, 34:7428, 1940.

(12) Sato, S., "Physicochemical Studies on the Anesthetic Potency of Phenolic Compounds: II. Anesthetic Potency on Sciatic Nerve of Frog," (abstract), *Chemical Abstracts*, 64:20415, 1966.

(13) Gurney, B. F., "Substituted Phenols: Part Two—Cresols, Cresylacetate, Formocresol," *Dental Digest*, 78:314–316, 1972.

(14) OTC Volume 080013.

c. *Thymol preparations (thymol and thymol iodide).* The Panel concludes that thymol preparations in concentrations up to 20 percent are safe but that there are insufficient data available to permit final classification of their effectiveness of OTC use as oral mucosal analgesics.

(1) *Safety.* The acute toxicity of thymol in a solution of propylene glycol was determined by oral administration to experimental animals (Ref. 1). Groups of 10 young adult Osborne-Mendel rats, evenly divided by sex, were fasted for approximately 18 hours and given the test material. The LD_{50} was 0.98 g/kg with a death time ranging from 4 hours to 5 days. The toxic signs with high dose consisted of depression, ataxia (irregularity of muscle action), and coma.

The minimum lethal dose of thymol when administered by the oral route has been reported to be 800 mg/kg in the mouse, 750 to 1,000 mg/kg in the rabbit, and 250 mg/kg in the cat (Ref. 2).

Thymol is considered to be less toxic than phenol. In humans fats and alcohol increase absorption and aggravate the toxic symptoms (Ref. 3). Thymol is completely absorbed from the intestine. It is excreted in the urine as the sulfate and glucuronide together with some thymol-quinone. About half of a dose is destroyed in the body. Thymol is an irritant to the kidney (Ref. 3).

There are no apparent studies on thymol iodide; however, when thymol iodide was fed to rats for 5 weeks in a study designed to demonstrate iodide availability, there was considerable uptake of iodide by the thyroid (Ref. 4).

Boutwell and Bosch (Ref. 5) studied over 50 compounds related to phenol for their ability to promote the development of skin tumors following a single initiating dose of dimethylbenzanthracene. One of these compounds tested (2-isopropyl-4-methyphenol) is closely related to thymol. When dissolved in 16 percent benzene and applied weekly for 12 weeks to mice, 19 percent developed skin tumors and 6 percent (1 of 16 mice) developed a carcinoma.

"The United States Dispensatory" (Ref. 6) states that thymol can cause nausea, vomiting, albuminuria, headache, tinnitus, dizziness, muscular weakness, a thready pulse, slow respiration, and a fall in body temperature. It further states that the heart is depressed by "therapeutic" doses. Thymol, used systemically in the treatment of mycosis, has been given as divided oral doses consisting of 1 to 2 g daily being administered in courses of 2 of each 3 days. It has also been used as an intestinal antiseptic, in doses up to 120 mg.

Gleason et al. (Ref. 7) state that the toxicity of thymol is believed to lie on the borderline between toxicity classes 3 and 4 (moderately toxic and very toxic).

Thymol is less toxic than phenol and larger doses may be taken (Ref. 3). It is generally an irritant to tissues, and given orally it is an irritant to the gastric mucosa. Rashes from thymol are not uncommon (Ref. 3). It was formerly used for the treatment of hookworm infestations, but had to be used in such large doses that there was danger of serious, even fatal, poisoning. Oral doses stimulate peristalsis and may cause diarrheal stools (Ref. 6).

Thymol should not be given by mouth to persons with gastrointestinal disorders or impared kidney function. It should be given with care to patients with heart disease (Ref. 3). However, the amounts used topically in the oral cavity are insufficient to cause problems for these individuals.

(2) *Effectiveness.* Thymol is used chiefly as a deodorant in antiseptic mouthwashes and gargles. Mixed with phenol and camphor, thymol is used in dentistry to prepare cavities before filling, and it is mixed with zinc oxide to form a protective cap for the dentine (Ref. 3).

There are reports of use of thymol or thymol iodide in oral mucosal analgesic products, but there are insufficient data to establish effectiveness (Refs. 1 through 7). Since eugenol and thymol are chemically similar, the possibility of effectiveness as an oral mucosal analgesic is suggested and has, in fact, been frequently associated with professional use for this purpose (Ref. 3).

(3) *Proposed dosage.* Adults and children 2 years of age and older: Apply a maximum of 20 percent thymol or thymol iodide to the affected area not more than four times daily.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal analgesic active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that there are insufficient data to establish the effectiveness of thymol preparations as oral mucosal analgesics. Data to demonstrate effectiveness as an oral mucosal analgesic will be required in accordance with the guidelines set forth below. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

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(7) Gleason, M. N., et al., "Clinical Toxicology of Commercial Products," 3d Ed., Williams and Wilkins, Baltimore, p. 143, 1969.

Category III Labeling

None.

C. Data Required for Evaluation

The Panel has agreed that the guidelines recommended in this document for the studies required to bring a Category III drug into Category I are in keeping with the present state of the art and do not preclude the use of any advances or improved methodology in the future.

Adriani et al. (Ref. 1) have studied surface anesthetic activity in great depth, and their research provides a methodology which the Panel recommends for testing oral mucosal analgesics. The selection of patients, study method, and interpretation of data are also included in these investigations and should serve as a model.

In addition, data to demonstrate safety of cresol and benzyl alcohol should include well-designed studies demonstrating lack of irritation of oral mucous membranes in humans under conditions of proposed use.

The Panel concludes that 3 years after publication of the proposed rules is an adequate time period for the completion of studies and the submission of data.

Reference

(1) Adriani, J., et al., "The Comparative Potency and Effectiveness of Topical Anesthetics in Man," *Clinical Pharmacology and Therapeutics*, 5:49–62, 1964.

V. Oral Mucosal Protectants

A. General Discussion

Oral mucosal protectants are insoluble, pharmacologically inert substances that form adherent, continuous, flexible, or semirigid coats when applied to the oral mucous membranes (Ref. 1). These coatings help to protect the irritated areas of the mouth from further irritation from chewing, swallowing, and other mouth activity. When applied locally to the oral mucous membranes, they can provide temporary relief of discomfort of minor thermal or chemical burns, irritations, or ulcerations resulting from mechanical trauma and aphthous ulcerations (canker sores).

Oral mucosal protectants may be applied by health professionals such as dentists or physicians in treating their patients, or they may be applied as self-medication by the patients themselves. The Panel has considered the various conditions where such protectants might be used professionaly and on a self-medication basis. The Panel concludes that oral mucosal protectants available as OTC products may be locally applied to oral mucous membranes for the temporary relief of discomfort from minor burns of the oral mucosa and minor injuries or irritations of the mouth. The Panel also concludes that the treatment of persistent aphthous ulcerations and other mouth ulcerations depends upon a professional diagnosis and that such treatment should be under the advice of a dentist or physician. Therefore, OTC labeling should include the use of a protectant for these indications only if the condition has been previously diagnosed by a dentist or physician. (See part V. paragraph B.1. below—Category I Labeling.)

It is possible that solutions of protective substances might serve as carriers of other medicinal materials. For example, an oral mucosal analgesic such as benzocaine might be included in the formulation to add its effect to the protectant in relieving pain from irritation.

Benzoin tincture and compound benzoin tincture are generally recognized as effective as oral mucosal protectants by the Panel on the basis of published observations by dental experts. (See part V. paragraph B.1. below—Benzoin preparations (benzoin tincture and compound benzoin tincture).)

The effectiveness of Category III protectants must be established by demonstrating that the agent provides a suitable coating when applied to the oral mucosa protecting minor irritations and injuries from further irritation. Effectiveness should be established by 2 well-controlled clinical studies, and 2 years should be allowed for such studies. (See part V. paragraph C. below—Data Required for Evaluation.)

Reference

(1) Harvey, S. C., "Topical Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol et al., Mack Publishing Co., Easton, PA, pp. 712–714, 1975.

B. Categorization of Data

1. *Category I conditions under which oral mucosal protectant active ingredients are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredient

Benzoin preparations (benzoin tincture and compound benzoin tincture)

Benzoin preparations (benzoin tincture and compound benzoin tincture). The Panel concludes that benzoin preparations are safe and effective for OTC use as oral mucosal protectants for the relief of oral discomfort as specified in the dosage section discussed below.

For the purpose of this review, compound benzoin tincture is considered as a single entity since the proportion of ingredients has been fixed over many decades. Also, the Panal does not differentiate the safety and effectiveness data of benzoin tincture and compound benzoin tincture. Compound benzoin tincture, which is official in the "United States Pharmacopeia" (Ref. 1), contains 10 percent benzoin, 2 percent aloe, 8 percent storax, 4 percent tolu balsam, and 74 to 80 percent ethanol (Ref. 1). Benzoin tincture contains 20 percent benzoin and 75 to 83 percent alcohol. Benzoin tincture is no longer official, but it is still available on the market in the United States.

(1) *Safety.* Clinical use and marketing experience have confirmed that benzoin preparations are safe for OTC use. There is little information in the literature on the safety and toxicity of benzoin and the other constituents that make up the compound tincture.

Gosselin et al. (Ref 2) assigns benzoin, storax, and tolu toxicity ratings of 3 (moderately toxic); aloe or aloin has a toxicity rating of 4 (very toxic) when ingested orally. Drugs with a toxicity rating of 3 are considered to have probable lethal dosage of 500 mg to 5 g/kg body weight. Drugs with a toxicity rating of 4 are considered to be probably lethal in doses of 50 to 500 mg/kg body weight.

Although the toxicity ratings are given on the basis of the ingredients of the tincture and the compound tincture, Gosselin et al. (Ref. 2) state that alcohol is expected to be responsible for the major toxic effects of ingestion of these tinctures.

No reports giving evidence of chronic toxicity of benzoin, storax, aloe, and tolu were found in the literature.

Hypersensitively and irritation from topical use of the benzoin tinctures were reported in two papers. In a study involving 413 patients with contact dermatoses, it was found that two showed allergic reactions to patch tests of compound benzoin tincture (Refs. 3 and 4). Another report states that a 22-year-old man exhibited sensitivity to benzoin and to other gums and resins when given a patch test (Refs. 3 and 5). He had previously developed acute eczematous contact dermatitis 23 days following the application of benzoin tincture to the skin under a plaster cast. A patch test also demonstrated cross-sensitivity to myrrh.

Dental clinicians have, however, been using and recommending benzoin tinctures for topical application to oral tissues for many years, and the use has apparently been without adverse effects. Furthermore, very small quantities of the tinctures are used per application when applied locally to oral mucous membranes. In spite of the high alcohol content, benzoin tincture and compound benzoin tincture are considered safe for occasional application to small areas of the oral mucosa.

Tinctures of benzoin should be packaged in well-closed containers of 30 mL or less and have child-proof caps.

(2) *Effectiveness.* There are studies documenting the effectiveness of compound benzoin tincture (Refs. 3 and 6 through 21). In the treatment of intraoral lesions, the tissues are first dried because benzoin is not water soluble, and then the tincture is applied. In this manner a protective, although transient, coating is deposited on the area of application. Although there are no double-blind, well-controlled clinical studies to support the effectiveness of the benzoin tinctures as protectants, the use of benzoin tincture and compound benzoin tincture for the treatment of lesions of oral mucous membranes has been successful for a long time in dentistry. Standard references list a number of dental uses for benzoin tinctures in providing relief from oral discomfort. The tincture or the compound tincture used full strength, though often mixed with glycerin and water, is applied locally as a protective in small cuts, cutaneous ulcers, and fissures of the lips (Refs. 2 and 6 through 9). Applied full strength, the tinctures are said to have protective, stimulating, and styptic activity (Refs. 3, 8, and 10).

Benzoin tincture has been used for pulp capping and for saturating intraoral dressings used in treatment of painful extraction wounds (Refs. 8 and 11). Application of compound benzoin tincture has been widely recommended as a protective for relief of discomfort of chemical or thermal burns (Refs. 12 through 15), of minor mechical or physical trauma (Refs. 14, 15, and 16), and of irritations of the oral mucosa (Refs. 9 and 17).

Compound benzoin tincture has also been recommended as a protective for relief of discomfort from aphthous ulcers (Refs. 3, 6, 7, 18, and 20) and of oral herpes simplex ulcers (Refs. 7, 10, and 21). The Panel has concluded, however, that recurring aphthous stomatitis (canker sores) is an OTC indication for protectives only if the condition has been previously diagnosed by a dentist or physician. Indications for oral herpes simplex ulcers were deferred to the Advisory Review Panel on OTC Miscellaneous External Drug Products.

Benxoin tincture and compound benzoin tincture should only be used as a single ingredient at full strength, because combining benzoin with another ingredient will dilute the product and reduce its effectiveness as a protectant. Literature cited has described only the use of full-strength tinctures as protectives in applications to the oral mucosa. Effectiveness of tinctures with concentrations less than full/strength remains to be shown.

(3) *Dosage.* Adults and children 6 months of age and older: Apply to the affected area undiluted not more often than every 2 hours.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral mucosal protectant active ingredients. (See part V. paragraph B.1. below—Category I Labeling.)

References

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Category I Labeling

The Panel recommends the following Category I labeling for oral mucosal protectant active ingredients:

a. *Indications.* (1) "Forms a coating over a wound."

(2) "Protects against further irritation."

(3) "For temporary use to protect wounds caused by minor irritations or injury."

(4) "For protecting recurring canker sores when the condition has been previously diagnosed by a dentist."

b. *Warnings.* (1) "Not to be used for a period exceeding 7 days."

(2) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(3) "Do not swallow."

(4) "Do not exceed recommended dosage."

(5) "Children under 12 years of age should be supervised in the use of this product."

c. *Directions.* For adults and children 6 months of age and older: Dry the affected area, saturate a cotton applicator with medication, and apply to the affected area not more often than every 2 hours. For children under 6 months of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

d. *Package limit.* Products containing tinctures of benzoin should be packaged in well-closed containers of 30 mL or less and should have child-proof caps.

2. *Category II conditions under which oral mucosal protectant active ingredients are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC relief of oral discomfort drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredients

None.

Category II Labeling

The Panel concludes that the use of certain labeling claims related to the safety or effectiveness of a product are unsupported by scientific data and, in some instances, by sound theoretical reasoning. The Panel concludes that such labeling should be removed from the market.

The Panel considers the following examples of claims to be misleading and unsupported by scientific data:

"Especially soothing after extractions or for minor gum boils."

"Gives quick relief that lasts for hours."

"For fast, temporary relief of minor mouth or gum soreness." This claim is too vague.

"For rapid and effective relief of sore gums."

"Subdues the throbbing ache of sore, swollen gums." Claim is too vague, gums may be infected or a deeper problem may exist.

"Relief of discomfort of minor gum disorders before and after gingivectomy." Gingivectomy should be treated by a dentist.

The Panel considers the following terms to be vague and not definitive of the conditions for which relief is sought: "sore spots," "anti-irritation," "comfortable adjustment," "helps comfortable adjustment," "stops pain," "soothes sore gums," "special," "unaccustomed use," "alleviates pain."

The following claims are for conditions that require advice of a dentist: "gum boils," "gum or gingival inflammation," and "abscesses."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I except as noted for specific pharmacotherapeutic groups.

Category III Active Ingredient

Myrrh, fluidextract

Myrrh, fluidextract. The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of myrrh, fluidextract for OTC use as an oral mucosal protectant for the relief of oral discomfort.

(1) *Safety.* No reports of acute or subacute toxicity of myrrh were found. In a pharmacological study, addition of myrrh to oxygenated Locke solutions containing segments of intestines from rabbits or cats resulted in paralysis of the intestinal muscle (paralysis indicated by relaxation of muscle tonicity, inhibition of contractions, and little or no response to subsequent treatment with pilocarpine) (Ref. 1). Locally, myrrh is reported to be stimulating and for this reason may excite peristalsis if ingested (Refs. 2, 3, 4, and 5). Myrrh has been used as an ingredient in certain cathartic pills, e.g., aloe and myrrh pills. (Ref. 6).

Although reports of hypersensitivity were not found, myrrh and benzoin may be cross-sensitizing. In one report, a 22-year old man developed acute eczematous contact dermatitis 23 days following the application of benzoin tincture to the skin under a plaster cast. In later patch tests, he demonstrated sensitivity to benzoin and cross-sensitivity to myrrh, locust, galbanum, gemboge and olibanum (Refs. 3 and 7).

(2) *Effectiveness.* Myrrh tincture applied locally to mucous membranes of the mouth and throat has been reported to have an astringent action, a stimulating action, or stimulating and protective action (Refs. 2 through 5, and 8). Myrrh has been used in treating various disorders of the mouth and throat including spongy gums, aphthous stomatitis, and ulceration of the mouth and throat (Refs. 2, 3, and 5). In addition to being applied in the form of the tincture, myrrh is sometimes used in mouthwashes and gargles (Refs. 2, 9, and 10).

Protectives should be designed to cover the mucous membranes in order to prevent contact with possible irritants. There are no clinical studies to support the effectiveness of myrrh as a protectant. Myrrh is usually applied locally as an alcoholic solution such as the tincture which contains 83 to 88 percent alcohol. Upon evaporation of the alcohol, a water-insoluble protective coating over the area might be left. However, myrrh is also used in the form of a lotion or gargle, prepared by mixing myrrh tincture with aqueous fluids (Refs. 2, 9, and 10). When the tincture is mixed with aqueous fluids a good portion of the myrrh will precipitate out (Ref. 9). Particulate matter from such a gargle would not serve as a protective. Any benefits would have to be derived from other constituents in the drug.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Apply 0.2 to 0.3 ml myrrh, fluidextract, directly to affected area.

(4) *Labeling.* The Panel recommends the Category I labeling above for oral mucosal protectant active ingredients. (See part V. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that there is insufficient evidence to establish the safety and effectiveness of myrrh, fluidextract, as an oral mucosal protectant. Data to demonstrate safety and effectiveness as an agent for the relief of oral discomfort will be required in accordance with the guidelines set forth below. (See part V. paragraph C. below—Data Required for Evaluation.)

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Category III Labeling

None.

C. Data Required for Evaluation

The Panel has agreed that the guidelines recommended in this document for the studies required to bring a Category III drug into Category I are in keeping with the present state of the art and do not preclude the use of any advances or improved methodology in the future.

There are no good, generally accepted protocols for testing an oral mucosal protectant. One of the major factors is that the ingredients in this pharmacologic group can be used for a number of different conditions of different etiology. Industry and FDA must cooperate on developing suitable testing methods.

One of the important indications for the use of a protectant is to protect an area of injury or disease from painful stimuli. Areas ordinarily amenable to such therapy are isolated or discrete areas rather than large areas, as one sees in acute herpetic gingivostomatitis; examples of target areas are isolated herpetic lesions and those of aphthous ulcers which occur singly and at infrequent intervals. Other indications would be allergic reactions, abrasions, burns, and oral wounds of a variety of origins.

A protectant, in any of the above conditions, must shield the area from painful stimuli for a reasonable period of time. The protectant must be easily applied to the involved area, must attach to oral mucous membranes and be resistant to saliva and salivary flow. The painful stimulus which is to be obtunded may arise from either thermal (hot or cold), chemical (acid, base, or other), or physical (abrasive foods) sources.

Although protection from painful stimuli would be one of the best measures of effectiveness, the likelihood of finding a test population with standard lesions, in similar areas, at the same stage of development, is very small. Aphthous ulcers, for example, are painful, last 7 to 10 days, and usually heal uneventfully. The amount of pain gradually decreases from the first day to the 10th day, so that the level of pain response to any stimulus would vary with the state of development, making standardization among subjects very difficult.

In view of these difficulties, methods must be developed to measure by physical means the ability of a protectant to adhere to mucous membranes and to resist solution in and by saliva. Such methods may include the use of fluorescent dyes over a minimum time period as an indicator of penetration and protection. Changes in volume displacement may be a useful indicator.

In addition, since there is very little information on either the safety or the toxicity of myrrh, it is impossible to evaluate the safety of the drug. The manufacturers should, therefore, submit data from controlled studies including:

1. Acute and subacute studies (LD_{50}) in more than one species.

2. Chronic studies involving the addition of myrrh in the diets of experimental animals for periods longer than 60 days.

3. Irritation studies involving the application of myrrh in appropriate concentrations to normal and inflamed or irritated mucosal tissues. Both acute and chronic studies should be performed.

VI. Tooth Desensitizers

A. General Discussionge

Tooth desensitizers are agents used to treat "hypersensitive" (ultrasensitive) dentin. This condition sometimes develops when dentin is exposed to the environment of the oral cavity. The dentin, which contains the sensory mechanism of the tooth, is normally covered by either enamel (crown) or cementum (root). When the latter calcified structures are absent as a result of erosion, abrasion, removal by the dentist, a defect in the tooth, or some other cause, the resultant exposed dentin can become ultrasensitive to various stimuli. Temperature change, mechanical stimuli, and certain chemicals may then induce a painful response. The interpretation of the cause of hypersensitive dentin is complex for several reasons: (1) Dental restorations may transmit temperature changes, (2) carious teeth are sensitive to similar stimuli, and (3) a tooth with pulpal degeneration may be sensitive to temperature changes. The dentist may make the diagnosis of hypersensitive dentin if all carious lesions have received professional treatment, if there are no restorations causing the ultrasensitive response, and if there are no symptoms suggestive of pulpal damage.

Even though the consumer cannot self-diagnose dental hypersensitivity and must obtain professional advice, it is still considered useful by the Panel to have tooth desensitizers available as an OTC product for temporary use until a dentist can be seen or after a dentist has diagnosed dental hypersensitivity. It is estimated that there is a significant target population with hypersensitive dentin which would use an OTC dentifrice for desensitization (Ref. 1). Therefore, the Panel recommends that these products be made available to the public with a warning that unless recommended by a dentist, the products are to be used for not more than 2 weeks. The labeling should include appropriate statements on the dangers of neglecting dental care. (See part VI. paragraph B.1 below—Category I Labeling.)

The problems involved in evaluating dentifrices which make the desensitization claim are manifold. The first problem is that of diagnosis as mentioned above. Second, the problem of the mechanism of action of dentin desensitizers is compounded by the currently limited knowledge of normal dentin sensation. Seltzer (Ref. 2) in 1971 reviewed current hypotheses of dentin sensitivity to thermal, tactile, chemical, and electrical stimuli and concluded that basic mechanisms of dentin sensitivity have not been completely elucidated. Everett, Hall, and Phatak (Refs. 1 and 3) state that while the rationale of desensitization procedures is not fully understood, some agents may depend upon denaturation of the superficial ends of Tomes' fibers or of nerve endings in dentin. Other agents may act by depositing an insoluble substance in the ends of the fibers or nerves and thus may act as a barrier to stimuli and still other agents may act by stimulating irritational dentin formation. It is apparent that evaluation of desensitizing agents must be made, at this time, without complete information on the precise mechanism of action. Third, the task of evaluating desensitizing agents is made difficult by the methods of testing which have been

employed. Both thermoelectric and mechanical stimuli have been used in attempts to objectively measure responses. It has been found in numerous studies that it is difficult to objectively measure the subjective response to pain. Other studies to evaluate dentin desensitizers are based upon the patient's subjective response. Craig (Ref. 4) made a strong point in favor of the latter evaluative method when he found that thermal and mechanical stimuli were so poorly tolerated by patients that it was felt that use of such devices may have resulted in false readings arising from anticipation of discomfort. However, Smith and Ash (Ref. 5) made no mention of lack of cooperation by patients when thermoelectrical and mechanical devices were used to measure responses and further noted no significant correlation between a subject's impression of change in sensitivity and actual change in sensitivity as determined by application of quantitative stimuli. The reporting of the degree of relief of hypersensitivity may be either in the form of improvement versus no improvement or various other qualifying statements such as complete, good, moderate, fair, or poor. Thus, comparisons between various studies are difficult.

It is also important to note that the time-course of studies varies considerably, and some agents appear to be more or less effective depending upon the period of time a patient has been using that particular agent (Ref. 6).

Some identifiable causes of tooth sensitivity which would not be relieved by desensitizing agents include microscopic cracks in teeth, inflammation of the pulp, occlusal trauma (injury due to biting), and recently placed restorations. In cases in which the dentin is definitely exposed, there are still multiple causes for the exposure, such as abrasions caused by toothbrushing or other factors, eroding chemicals, exposure due to periodontal surgery, or defective enamel formation. From these many causes, one would expect different quantitative, as well as qualitative, effects of the desensitizers under different conditions.

In view of this background of confusing data and facts, the Panel does not recommend classifying any ingredients in Category I with a claim for desensitization. Further study of tooth desensitizers is recommended utilizing the guidelines which are discussed later in this document. (See part VI. paragraph C. below—Data Required for Evaluation.)

References

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B. Categorization of Data

1. *Category I conditions under which tooth desensitizer active ingredients are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the Federl Register.

Category I Active Ingredients

None.

Category I Labeling

The Panel recommends the following Category I labeling for tooth desensitizer active ingredients:

a. *Indication.* "To aid in the reduction of painful sensitivity of the teeth to cold, heat, acids, sweets, or contact."

b. *Warnings.* (1) "Do not continue use beyond 2 weeks except under supervision of a dentist."

(2) "Do not swallow."

(3) "Children under 12 years of age should be supervised in the use of this product."

(4) "Sensitive teeth may indicate a serious problem which needs prompt care by a dentist."

(5) "See your dentist as soon as possible whether or not relief is obtained."

c. *Directions.* Apply with a toothbrush at least once a day or as recommended by a dentist or physician. Children under 12 years of age should be supervised in the use of this product. For children under 2 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

2. *Category II conditions under which tooth desensitizer active ingredients are not agenerally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC drug products for the relief of oral discomfort effective 6 months after the date of publication of the final monograph in the Federal Register.

Category II Active Ingredients

Sodium fluoride (0.44 percent), strontium chloride, and edentate disodium (in combination)

Sodium fluoride (0.44 percent), strontium chloride, and edetate disodium (in combination). The Panel concludes that the combination of sodium fluoride (0.44 percent), strontium chloride, and edetate disodium is not generally recognized as safe and effective for OTC use as a tooth desensitizer.

In the product submitted, sodium floride and strontium chloride are kept in solution by means of edetate disodium which chelates strontium and prevents formation of insoluble strontium chloride (Ref. 1).

(1) *Safety.* The Panel has recommended 0.22 percent sodium fluordie dentifrice as safe for daily use as an anticaries agent (45 FR 20682; March 28, 1980). The formula submitted has 0.44 percent sodium fluoride (Ref. 1). The Panel considers that the increased amount of fluoride gives an increased risk without proven benefit as a tooth desensitizer. Strontium chloride at 10 percent is considered safe by the Panel.

Edetate disodium has chelating properties (Ref. 2). It is considered unsafe by the Panel for use in OTC dental products because chelating properties may cause decalcification of teeth.

(2) *Effectiveness.* Sodium fluoride at 0.22 percent has been recommended for Category III as a tooth desensitizer. Strontium chloride at 10 percent has also been recommended as a Category III tooth desensitizer. There are no data on effectiveness of the combination formulation other than testimonial letters nor are there any data on the effectiveness of edetate disodium as a tooth desensitizer (Ref. 1).

(3) Labeling. The combination product is currently labeled for use by dentists in the office. The Panel takes no position on this use. Labeling the combination for OTC use would result in misbranding.

(4) *Evaluation.* The Panel considers 0.44 percent sodium fluoride unsafe for OTC use. There are no data to support the effectiveness of the combination. The Panel has serious reservations

about OTC use of sodium edetate. The Panel, therefore, recommends that the combination be classified in Category II.

References

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Category II Labeling

The Panel concludes that the use of certain labeling claims related to the safety or effectiveness of a product are unsupported by scientific data and, in some instances, by sound theoretical reasoning. The Panel concludes that such labeling should be removed from the market.

The Panel considers the following examples of claims to be misleading and unsupported by scientific data:

"Gives quick relief that lasts for hours."

"Builds increasing protection against painful sensitivity to cold, heat, sweet, sour, or contact." This claim implies a slow mechanism of action.

The Panel considers that claims which imply a superiority in onset of action, such as "quicker," "more quickly," and "faster," are misleading.

The Panel considers the following terms to be vague and not definitive of the condition for which relief is sought: "anti-irritation," "stops pain," "special," "unaccustomed use," and "alleviates pain."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I except as noted for specific pharmacotherapeutic groups.

Category III Active Ingredients

Citric acid and sodium citrate in poloxamer 407 (pluronic F–127™ gel)
Fluoride preparations (sodium fluoride, sodium monofluorophosphate, and stannous fluoride)
Formaldehyde solution
Potassium nitrate
Strontium chloride

a. *Citric acid and sodium citrate in poloxamer 407 (pluronic F–127™ gel).* The Panel concludes that a combination of citric acid and sodium citrate in poloxamer 407 is safe but that there are insufficient data available to permit final classification of its effectiveness for OTC use as a tooth desensitizer for the relief of oral discomfort.

(1) *Safety.* After reviewing the submitted data, the Panel finds that there is a marketing history of the use of citric acid, sodium citrate, and poloxamer 407 as individual ingredients but not as a combination product for use as a tooth desensitizer. Citric acid is used in the food industry in the preparation of fruit juice drinks, carbonate beverages, dairy products, and fruit jellies and preserves. Sodium citrate is used in mouthrinses, ice cream, evaporated milk, and in the curing of certain meats. Poloxamer 407 is used in mouthrinses and as a solubilizing and stabilizing agent in food products (Ref. 1). Based on these data the Panel concludes that there is general recognition of safety.

(2) *Effectiveness.* The Panel concludes that the available data are insufficient to establish general recognition of this combination as effective (Ref. 1).

(3) *Proposed dosage.* Adults and children 2 years of age and older: Brush teeth at least once a day or as recommended by a dentist or physician with 2 percent sodium citrate and citric acid in poloxamer 407 in a suitable dentifrice formulation.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing tooth desensitizer active ingredients. (See part VI. paragraph B.1. above—Category I labeling.)

(5) *Evaluation.* The Panel concludes that the published data on the combination of citric acid and sodium citrate in poloxamer 407 do establish safety, but they are insufficient to establish effectiveness of the combination as a tooth desensitizer. Data to demonstrate effectiveness of this combination as a tooth desensitizer will be required in accordance with the guidelines set forth elsewhere in this document. (See part II. paragraph E.3. above—Testing guidelines for Category III combination products. See also part VI. paragraph C. below—Data Required for Evaluation.)

Reference

(1) OTC Volume 080221.

b. *Fluoride preparations (sodium fluoride, sodium monofluorophosphate, and stannous fluoride).* The Panel concludes that fluoride preparations are safe at the proposed dosages but that there are insufficient data available to permit final classification of their effectiveness for OTC use as tooth desensitizers for the relief of oral discomfort.

(1) *Safety.* The toxicity of fluoride compounds can be attributed to the fluoride ion, which is considered to be protoplasmic poison. Studies of the recorded cases of acute fluoride poisonings indicate that a dose range of 5 to 10 g of sodium fluoride can be considered a lethal dose for a 70-kg man (Refs. 1 and 2).

Much is known of the chronic effects of fluoride because of the widespread use of dietary fluoride in drinking water to provide protection against dental caries. Presently, more than 105 million people in the United States live in areas in which the water supplies contain 0.7 parts per million (ppm) or more fluoride ion, with 94 million of these people receiving water supplemented with additional fluoride to provide a trace level of approximately 1 ppm (Ref. 2). Drinking water having a level of approximately 1 ppm of fluoride will provide a substantial reduction of about 60 percent in the incidence of dental decay without any adverse effect. Dental fluorosis has been reported from daily intake of water with 2 to 10 ppm of fluoride and crippling skeletal fluorosis with levels of 20 to 80 ppm of fluoride in the drinking water (Ref. 3). It should be noted that dental fluorosis occurs only when excessive fluorides are ingested regularly during the period of tooth development.

A number of studies have been conducted, utilizing a variety of testing procedures, to determine the fluoride ingested during toothbrushing with the fluoride-containing dentifrice (Refs. 4 through 9). These studies indicate that, even in children aged 3 to 6 years, the large majority of individuals swallow less than 0.5 g of toothpaste per brushing. The greatest amount swallowed was reported by Hargreaves, Ingram, and Wagg (Ref. 8) as being only slighty over 1 g. If the above information is used when considering a toothpaste formulation containing 0.22 percent sodium fluoride, the amount of fluoride swallowed per average brushing would be 0.25 mg or less. Studies by Ericsson (Ref. 6), Duckworth and Joyston-Bechal (Ref. 10), Barnhart (Ref. 11), and Glass et al. (Ref. 9) all showed the amount swallowed was substantially less than that shown by Hargreaves, Ingram, and Wagg (Refs. 4 and 8). This amount can be considered well below a toxic range.

It is conceivable that a child who regularly swallows excessive amounts of fluoride-containing toothpaste and also consumes fluoridated water could have a total daily fluoride intake in the range that produces dental fluorosis. However, there is a lack of any documentation that dental flurosis has increased significantly following extremely widespread use of fluoride-containing dentifrice for approximately 15 years.

Acute and subacute toxicity studies with sodium monofluorophosphate suggest that the compound on the basis of both milligrams of compound and milligrams of fluorine is less toxic than

sodium fluoride (Refs. 12, 13, and 14). Although the accumulation of fluoride in bone and teeth appears to be similar for sodium monofluorophosphate and sodium fluoride when used at the same fluoride concentration (Ref. 15), studies with radioactive fluoride suggest that the lower toxicity may result from the gradual release of the fluoride ions from the monofluorophosphate (Ref. 16).

Animal feeding studies suggest that the chronic toxicity of sodium monofluorophosphate and sodium fluoride are of the same order and have similar characteristics with the kidney being the most susceptible to pathological change (Ref. 17). Further, the two compounds seem to produce the same degree of mottling in the incisors of albino rats (Ref. 18). When the same quantities of fluoride are given to rats in the form of sodium fluoride, sodium monofluorophosphate , stannous fluoride, and stannous chlorofluoride, similar amounts of fluorine are found in the skeleton (Ref. 19). The monofluorophosphate ion (PO_3F^-) also does not appear to pass the placenta to any greater extent than the fluoride ion (Ref. 20).

There is no available information of human toxicity with sodium monofluorophosphate as there is with sodium fluoride. Although acute toxicity of sodium monofluorophosphate in animals is less than that of sodium fluoride, the chronic toxicity is similar. It would, therefore, appear suitable to consider, for human use, that the two compounds have similar toxicity in terms of the fluoride present.

Because stannous fluoride may differ in toxicity from sodium fluoride and sodium monofluorophosphate because of the tin ion, some comments on the acute and chronic toxicity of stannous fluoride may be pertinent. The LD_{50} for mice ingesting stannous fluoride in aqueous solution was found to vary from 169 mg/kg (Ref. 21) to 246 mg/kg (Ref. 22). For rats the LD_{50} was 280 mg/kg (Ref. 21). Levels of stannous fluoride providing up to 18 ppm fluoride in the drinking water or 8 ppm fluoride in the diet for a 140-day period did not inhibit growth or incisor pigmentation in rats. Levels above 9 ppm fluoride in food adversely affected growth and incisor pigmentation and at levels of 150 ppm fluoride some animals died (Ref. 23). Tin from tin salts was reported to have a no-effect level in rats at 22–23 mg/kg and guinea pigs survived on a diet containing 777 ppm tin as tin salt (Ref. 23).

The presence of the stannous ion in stannous fluoride dentifrice formulations may cause some staining of plaque and debris accumulation on the teeth. This has been reported in a number of clinical studies in which an attempt was made to determine the level of staining (Refs. 24, 25, and 26). However, the frequency and intensity of staining with the level of tin present in these formulations does not appear to present any significant problem; therefore, no warning on staining is required for stannous fluoride dentifrice formulations (Ref. 27).

(2) *Effectiveness.* In animal studies, although acute toxicity of sodium monofluorophosphate is less than that of sodium fluoride, the chronic toxicity is similar (Refs. 17, 18, and 20). It would, therefore, appear suitable to consider that the two compounds have similar toxicity for human use. Sodium fluoride, sodium monofluorophosphate, and stannous fluoride have been recommended for Category III as tooth desensitizers. Since the availability of the fluoride ion is similar in all these preparations, it would suggest that the effectiveness data are also related in a similar manner (Ref. 28). The Panel concludes that fluoride-containing dentifrices are safe and effective for OTC use as anticaries agents when marketed in packages containing not more than 260 mg of fluorine, but there are insufficient data to show effectiveness of fluorides as tooth desensitizers at the concentrations permitted in OTC drug products. Effectiveness should be tested for those fluoride compounds that meet the laboratory testing requirements for Category I anticaries fluorides and at the concentrations approved for OTC anticaries use. The laboratory testing requirements recommended by the Panel can be found in the preamble to the proposed monograph on anticaries drug products in the section entitled "Laboratory testing profiles" (45 FR 20677; March 28, 1980).

Kanouse and Ash (Ref. 28) reported favorably on a sodium monofluorophosphate containing dentifrice, but employed a calibrated thermoelectrical device for rating hypersensitivity. Shaprio et al. (Ref. 29) demonstrated reductions in hypersensitivity per individual teeth and per person. Three dentifrices were used, a control, one with sodium monofluorophosphate, and one with strontium chloride. At 4 weeks the reduction with use of the test products was significantly better than the control, but at 8 weeks the difference was no longer apparent. The areas for evaluation were carefully identified and recorded and therefore not blinded. Hernandez et al. (Ref. 30) in a similar study evaluated hypersensitivity at 6 weeks. Hypersensitive areas were not blinded. For a second 6-week period, all three groups (control, sodium monofluorophosphate, and strontium chloride dentifrices) used the control dentifrice. As reported earlier, the net improvement in hypersensitivity for the 12-week control group exceeded the original strontium chloride test group. The Panel felt that additional testing as described below was indicated. (See part VI. paragraph C. below—Data Required for Evaluation.)

In a study designed to evaluate the desensitizing effect of a dentifrice containing 0.76 percent sodium monofluorophosphate, Bolden, Volpe, and King (Ref. 31) included in addition to a nonsodium monofluorophosphate control dentifrice, one with 1.4 percent formalin and one with 0.4 percent stannous fluoride. The sodium monofluorophosphate dentifrice was the superior performer. After 2 weeks the stannous fluoride dentifrice showed the second lowest percent improvement in hypersensitivity. At 4 weeks, it was the lowest of all, including the control. Although a double-blind was established in that neither the examiner nor the patient was aware of the dentifirce assignment, all evaluations were done "in exactly the same anatomical tooth areas that had been previously evaluated" for the baseline data. This procedure may have introduced a potential bias favoring reduction in sensitivity from the use of the "blinded" dentifrices. The Panel felt the areas for evaluation should also be blinded. Hazen, Volpe, and King (Ref. 32), in a duplicate study using the same agents, found stannous fluoride second only to the dentifrice with sodium monofluorophosphate in its ability to reduce hypersensitivity in teeth. The evaluation of hypersensitive areas was not blinded.

Miller et al. (Ref. 33) in a double-blind crossover study reported improvement in hypersensitivity in 20 of 23 patients with the use of a water-free stannous fluoride-containing gel. Hypersensitive areas were not blinded, nor were the specific measures used to evaluate changes in sensitivity described. The Panel felt that additional testing as described below was indicated. (See part VI. paragraph C. below—Data Required for Evaluation.)

(4) *Proposed dosage.* Adults and children 2 years of age and older: Brush teeth at least once a day or as recommended by a dentist or physician with 0.22 percent sodium fluoride, 0.76 percent sodium monofluorophosphate, or 0.4 percent stannous fluoride in a suitable dentifrice formulation.

(5) *Labeling.* The Panel recommends the Category I labeling for products containing tooth desensitizer active ingredients. (See part VI. paragraph B.1. above—Category I Labeling.)

In addition, fluoride-containing dentifrices should not contain more than 260 mg total fluorine.

(6) *Evaluation.* The Panel concludes that OTC Category I anticarjes fluoride dentifrices are Category III with respect to claims as tooth desensitizing agents. The Panel concludes that fluoride dentifrices are safe at the proposed dosage, but there is insufficient evidence to establish effectiveness as tooth desensitizing agents. Data to demonstrate effectiveness as a tooth desensitizer will be required in accordance with the guidelines set forth below. (See part VI. paragraph C. below—Data Required for Evaluation.)

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c. *Formaldehyde solution.* The Panel concludes that 1.4 percent (w/w) formaldehyde solution is safe but that there are insufficient data available to permit final classification of its effectiveness for OTC use as a tooth desensitizer for the relief of oral discomfort.

(1) *Safety.* Clinical use and marketing experience have confirmed that 1.4 percent (w/w) of formaldehyde solution is safe for OTC use.

Formaldehyde solution is an aqueous solution containing approximately 40 percent weight to volume of formaldehyde gas with methanol added as a preservative. Formaldehyde solution is clear and colorless and has a pungent odor. The solution is incompatible with oxidizing agents and with alkali (Ref. 1).

Contact with formaldehyde solutions may lead to dermatitis producing reddening, inflammation, and necrosis if applied repeatedly by allergic or sensitive individuals (Refs. 1 and 2). A manufacturer of a 1.4-percent (w/w) formaldehyde solution-containing dentifrice reported a low incidence of consumer complaints of mouth reactions or gingival injuries from the use of this product (Ref. 3).

(2) *Effectiveness.* Although formaldehyde solution has been used for the relief of pain due to hypersensitive teeth, its effectiveness in a dentifrice for desensitizing has not been conclusive. In one study, 20 patients were selected on the basis of cervical hypersensitivity and evaluated by application of mechanical and thermal (heat and cold) stimuli (Ref. 4). Subjects were advised to brush with the dentifrice at least once daily or as many times a day as they did prior to use of the dentifrice. This study was of controlled, crossover design. At the end of a 30-day treatment period the placebo group was switched to the treatment dentifrice, and the original treatment group was continued for an additional 30 days. The conclusion was that there was no significant alteration

of cervical hypersensitivity to mechanical or thermal stimuli after use of this product for 30 or 60 days.

In another study 72 adults, all having a history of dental hypersensitivity, were selected for treatment of chronic periodontitis (Ref. 5). Forty-seven patients were instructed to brush after each meal with a desensitizing tooth paste. Twenty-four patients were placed in a placebo group using a control dentrifice. The patients used one of the dentifrices for 5 weeks during which time they received periodontal therapy (root planing and gingivectomy). This was a double-blind, subjective evaluation with no statistical analysis. The conclusion was that the product may be of some value for patients undergoing periodontal therapy.

When a formaldehyde solution-containing dentifrice was compared with one containing sodium monofluorophosphate, the desensitizing effectiveness of 1.4 percent formaldehyde was not as great as that of the sodium monofluorophosphate dentifrice (23.5 percent vs. 29.2 percent) after 2 weeks of treatment, but was slightly better than the control (50.6 percent vs. 46.0 percent) after 4 weeks of treatment (Ref. 6). These differences are not statistically significant. Another study compared sodium monofluorophosphate, a control dentifrice without sodium monofluorophosphate, and a 1.4 percent formaldehyde dentifrice. At the end of 4 weeks the control dentifrice without sodium monofluorophosphate provided 38 percent reduction of sensitivity, and the formaldehyde-containing dentifrice provided a 33.8-percent reduction. These reductions were not statistically different from each other (Ref. 7).

Several other studies gave ambiguous results (Refs. 8 through 11). Although the use of a formaldehyde-containing dentifrice appeared to give favorable results in some instances, basic defects in experimental design or lack of statistical significance left doubts concerning the effectiveness of the product.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Brush teeth at least once a day or as recommended by a dentist or physician with 1.4 percent (w/w) formaldehyde solution in a suitable dentifrice formulation.

(4) *Labeling.* The Panel recommends the Category I labeling for tooth desensitizer active ingredients. (See part VI. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that there is insufficient information to establish the effectiveness of 1.4 percent (w/w) formaldehyde solution in a suitable dentifrice formulation as a tooth desensitizer. Data to demonstrate effectiveness as a tooth desensitizer will be required in accordance with the guidelines set forth below. (See part VI. paragraph C. below—Data Required for Evaluation.)

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d. *Potassium nitrate.* The Panel concludes that 5 percent potassium nitrate is safe but that there are insufficient data available to permit final classification of its effectiveness for OTC use as a tooth desensitizer for the relief of oral discomfort.

(1) *Safety.* Nitrates are components of the normal environment. Soil bacteria are principally responsible for their presence, although compounds of nitrogen, during transport in the air, can be oxidized to nitrates. Large deposits of nitrate salts formed in this way exist in various locations on the earth.

Nitrates in the soil are the primary source of fixed nitrogen for green plants. A second source is ammonia in the soil, either from natural (bacterial action on dead plant or animal matter) or synthetic (applied fertilizer) sources. Nitrates are absorbed and may accumulate in plants at high levels, especially if the soil is rich in nitrates. Some vegetables, notably lettuce, beets, celery, radishes, and spinach contain substantial quantities of nitrates. An estimated average per capita daily ingestion of nitrate in the United States is 86 mg. This comes principally from vegetables but there is a great variation in intake depending upon the type and quantity of the vegetables consumed and the condition of the soil in which the vegetables were grown. Until elimination, cheifly via the urine, nitrate is recycled by secretion in the saliva. The nitrate-to-nitrite conversion does not take place in the 5-percent dentifrice product which was submitted to the Panel (Ref. 1). No known toxic effects are produced in man in doses of 1 to 1.5 g potassium nitrate. In light of the estimated dietary intake of nitrates (86 mg) and the relatively small amount (30 mg) available for ingestion from the use of a toothpaste, the Panel concludes that no toxicological hazard exists from use of a dentifrice with potassium nitrate at the 5-percent level.

(2) *Effectiveness.* Two published studies and two unpublished studies are reviewed below (Refs. 1 through 4). Among these four studies only limited data are presented on the 5-percent potassium nitrate toothpaste. In some instances the findings are conflicting and are always based on very small samples of persons and teeth. An 8.5-percent potassium nitrate dental prophylaxis paste available OTC has been promoted to the dental profession for office use since 1974 (Ref. 1). The Panel agreed that the marketing experience data concerning this product could not be substituted for marketing experience with an OTC dentifrice intended for use at home. The Hodosh study (Ref. 2) described this positive effect of potassium nitrate in solutions of 15, 10, 5, 2, and 1 percent when painted on hypersensitive teeth. A 10-percent potassium nitrate paste for office use was also reported. Only 35 patients used the home dentifrice (10 percent potassium nitrate by weight), but positive results were reported. However, no controls were used, no system of evaluation was described, and no statistical analysis was included.

In a report of Stark et al. (Ref. 3), on a new device for testing sensitivity, a potassium nitrate dentifrice was used successfully by 10 patients. The primary purpose of this study was to compare findings of a new electric pulp test against conventional pulp testers. The concentration of potassium nitrate in the dentifrice was not stated. Additional

study of the data reported by Stark et al. (Ref. 3) disclosed that for one group (five persons, but only three with hypersensitive teeth) a significant reduction in hypersensitivity was found immediately after application of the potassium nitrate (5-percent solution). This is contrary to Starks' published findings (Ref. 3), where there was little or no immediate reduction in sensitivity. Seven days later, sensitivity was rated again and a paste containing 5 percent potassium nitrate in kaolin and glycerin paste was burnished by the dentist against the cervical area of the teeth. Reduction in hypersensitivity was maintained at each assessment. Normal oral hygiene including brushing with a dentifrice without a desensitizing agent was followed throughout the study (Ref. 3).

In a second unpublished study potassium nitrate at 5 and 10 percent in home-use dentifrices was compared with a single application of sodium fluoride, 33⅓ percent, in a kaolin and glycerin burnishing paste (Ref. 1). The study groups were composed of 7, 14, and 6 persons, respectively. Immediate reduction in sensitivity was significant with the burnished fluoride paste but not with potassium nitrate toothpastes. Significant reduction was reported at 1 week for the 10-percent potassium nitrate paste and at 2 weeks for both the 5-percent and 10-percent pastes.

Three additional unpublished studies, one evaluating a test procedure and two others presenting data on potassium nitrate, were submitted to the Panel for review (Ref. 4). The first compares the pulp stethoscope with cold air as a procedure for evaluating hypersensitivity. The data suggest that the two test procedures are assessing the various levels of sensitivity in a comparable manner. The two other studies present data on the use of potassium nitrate in a desensitizer dentifrice. The findings indicate that the potassium nitrate dentifrice may be effective in reducing sensitivity, but the evidence is not convincing. The test groups were somewhat small in number and, in several, the levels of initial hypersensitivity were very low.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Brush teeth at least once a day or as recommended by a dentist or physician with 5 percent potassium nitrate in a suitable dentifrice dosage form.

(4) *Labeling.* The Panel recommends the Category I labeling for tooth densensitizer active ingredients. (See part VI. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that 5 percent potassium nitrate is safe but that there are insufficient data to establish effectiveness of 5 percent potassium nitrate in a suitable dentrifice formulation as a tooth densensitizer. Although the product is available without a prescription, marketing experience has been limited to use by professionals in the dental office. Data to demonstrate effectiveness as a tooth densensitizer will be required in accordancewith the guidelines set forth below. (See part VI. paragraph C. below—Data Required for Evaluation.)

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(4) OTC Volume 080259.

e. *Strontium chloride.* The Panel concludes that 10 percent strontium chloride is safe but that there are insufficient data available to permit final classification of its effectiveness for OTC use as a tooth desensitizer for the relief of oral discomfort.

(1) *Safety.* Animal studies have clearly shown that some strontium compounds are tolerated in what could be considered large amounts (Refs. 1 through 4). There is general agreement that strontium chloride hexahydrate is no more and may even be less toxic than calcium (Refs. 1, 3, 10, and 11). Reports on strontium chloride hexahydrate are limited, but are consistent in that safety does not appear to be a problem (Refs. 2 and 3). Industry-sponsored studies of strontium chloride hexahydrate at 10 percent by weight in a dentifrice produced no measurable toxic reactions (Ref. 5).

The metabolism of strontium resembles very closely that of calcium, especially with regard to developing bone and teeth (Ref. 6). Interest in its behavior as a radioactive isotope, strontium 90, heightened in recent years since it is a constituent of the fallout from atomic weapon testing (Refs. 6 and 7). The consequent hazard from the accumulation of the isotope in bones and teeth drew much attention.

One review of the toxicity of strontium states that no threshold values for human toxicity have been reported by any official agency in the United States (Ref. 7). Strontium chloride hexahydrate, present at 10 percent by weight in a toothpaste, has been marketed for 12 years with no report of adverse reactions (Ref. 5). Published clinical studies contain no reports of adverse reactions (Refs. 10 through 13). The Panel agreed that strontium chloride as the hexahydrate appears to be safe for OTC use in a dentifrice at a concentration of 10 percent.

(2) *Effectiveness.* The Panel found that the reported findings from various clinical trials of dentifrices containing strontium chloride were both conflicting and inconclusive. The required time for reducing sensitivity has been variously reported at 3 days and 20 days by Pusso-Carrasco (Ref. 11), at 6 weeks by Hernandez et al. (Ref. 14), and at 4- and 8-week periods by Shapiro et al. (Ref. 15).

Hernandez et al. (Ref. 14), after a 6-week evaluation, placed the two test groups (sodium monoflurophosphate and strontium chloride) on the control dentifrice and continued the original control group on the control dentifrice for an additional 6 weeks. Both test groups lost some of the improvement in hypersensitivity gained during the first 6 weeks. The control group improved remarkably during the second 6-week period to a level slightly better than the test group formerly using the strontium chloride dentifrice.

An unpublished study conducted at the Osaka University Dental School, Osaka, Japan (Ref. 16), was submitted to the Panel for review. A unique and surprising result of this study was very low response to the placebo product.

In a well-controlled, double-blinded clinical trial reported by Graf (Ref. 17), both the test group and the control group showed measurable reduction in hypersensitivity at 4, 8, and 12 weeks. The difference between the test and control groups was not statistically significant, however. In a second attempt, Graf (Ref. 17) found similar results at 3 months and not until 6 months could a statistical significance be established between test and control group reductions in hypersensitivity. The lack of early, consistent, favorable, and statistically significant results from clinical studies left the Panel with many doubts about the effectiveness of strontum chloride as an agent for the reduction of dental hypersensitivity.

(3) *Proposed dosage.* Adults and children 2 years of age and older: Brush teeth at least once a day or as recommended by a dentist or physician with 10 percent strontium chloride in a suitable dentifrice formulation.

(4) *Labeling.* The Panel recommends the Category I labeling for tooth desensitizer active igredients. (See part VI. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* The Panel concludes that 10 percent strontium chloride is safe but that there are insufficient data to establish the effectiveness of 10 percent strontium chloride in a suitable dentifrice formulation as a tooth desensitizer. Data to demonstrate effectiveness as a tooth desensitizer will be required in accordance with the guidelines set forth below. (See part VI. paragraph C. below—Data Required for Evaluation.)

References

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(14) Hernandez, F., et al., "Clinical Study Evaluating the Desensitizing Effect and Duration of Two Commercially Available Dentifrices," *Journal of Periodontology*, 43:367–372, 1972.

(15) Shapiro, W. B., et al., "Controlled Clinical Comparison Between a Strontium Chloride and a Sodium Monofluorophosphate Toothpaste in Diminishing Root Hypersensitivity," *Journal of Periodontology*, 41:523–525, 1970.

(16) OTC Volume 080257.

(17) Graf, H., "Sensodyne Clinical Trials," draft of unpublished study incorporated in OTC Volume 080224.

Category III Labeling

None.

C. Data Required for Evaluation.

The Panel has agreed that the guidelines recommended in this document for the studies required to bring a Category III drug into Category I are in keeping with the present state of the art and do not preclude the use of any advances or improved methodology in the future.

1. *General principles in the design of an experimental protocol for testing tooth desensitizers.* Three independent investigations will be required. An academic setting for the studies seems most appropriate since most private offices and clinics would have neither the facilities nor the volume of patients necessary for the projects.

Monitoring of the studies should be as complete as possible. Placebo samples must be indistinguishable from test samples with regard to taste, consistency, and appearance. The abrasive in the test product should be the same as that used in the placebo. Both test and placebo samples should be assigned random numbers and the code should not be broken until the completion of the study. Data may be evaluated by sequential analysis of paired test and placebo trials. This seems to be the most efficient methodology, but other recognized and accepted study designs and statistical analyses are acceptable. The two criteria for change in sensitivity described later must be met for an active ingredient to be considered effective.

2. *Selection of patients.* At an initial screening, selected patients should complain of hypersensitive teeth (or tooth) limited to either or both of the following types: (1) Postperiodontal surgery (6 weeks minimum) (Type I), and (2) cervical erosion, abrasion, or exposed dentin resulting from gingival recession (Type II).

All other types of hypersensitivity should be rejected.

Each of the investigations should include persons with the same type of sensitivity (as described above). Among the three investigations, at least one must be on persons with Type I sensitivity.

Persons selected for test and placebo trials should be of the same sex and reasonably similar in age, in number of hypersensitive teeth, and in the mean sensitivity score. Appropriate release forms should be completed, and institutional approval for human experimentation must be given.

Teeth which may be included in the study are the incisors, canines, and premolars in both arches.

3. *Study method.* In the case of postperiodontal surgery, Type I sensitivity, rating the sensitivity of an interproximal space of two adjacent teeth is not acceptable. The facial surface of the individual tooth is the assessment unit.

For persons with Type II sensitivity, sensitivity will be rated on the facial surface of all teeth present in both jaws except those teeth with pulpitis, cracked enamel, or fillings on some part of the facial surface. Rating all teeth will additionally blind the examiner and the study person. Ratings will be done on individual teeth isolated from adjacent teeth mesially and distally by the examiners' fingers, cotton rolls, or some other appropriate device.

The use of tactile stimulation as a method of evaluating tooth hypersensitivity has been traditional. It is a very familiar clinical procedure to most practicing dentists. Difficulties have been encountered by many researchers in establishing a standardized tactile procedure and in assessing the degree of standardization either among examiners at a point in time or within the same examiner over time. Therefore, other assessment procedures have been sought which have more obvious and measurable levels of reliability. The Panel encourages the further development and use of these improved procedures. The use of tactile stimulation for the evaluation of tooth hypersensitivity is acceptable but is not encouraged.

The sensitivity rating will be the subjective response of the study person to a standardized thermal stimulus according to the following scale:

0=no significant discomfort, aware of stimulus
1=discomfort but no severe pain
2=severe pain during application of stimulus
3=severe pain during and continuing after application of stimulus

One of the following standardized stimulus mechanisms may be used:

(1) 1 second or less of cold air from the air syringe making certain that the time and the air temperature and pressure are standardized for each rating.

(2) 0.2 mL of ice water on an isolated surface making certain that the time and temperature are standardized for each rating.

(3) Selected levels applied by the thermoelectric stimulator described by Smith and Ash (Ref. 1).

(4) Electrical stimulation with microcurrents at variable levels.

(5) Tactile stimulation by the dental explorer for a stated time interval and at a standard pressure.

The reduction in hypersensitivity will be measured by comparing the mean sensitivity scores at the initiation of the investigation with the mean scores at the various test intervals.

Mean sensitivity score-*initial*=Summation of 1, 2, 3 ratings divided by number of teeth so rated (exclude 0-rated teeth).

Mean sensitivity score-*test interval*=Summation of all ratings for teeth included in initial mean score divided by number of teeth scored (include 0-rated teeth).

Following the initial sensitivity ratings, evaluation for sensitivity should be completed at 2-week, 4-week, and 8-week intervals. Additional evaluations at 4 and 6 months, although not recommended by the Panel, are optional.

4. *Interpretation of data.* If sequential trial charts are used, they will be completed at the end of the 8-week trial without a break in the coding during the period. (Those persons on placebo who claim no relief of pain should be treated for hypersensitivity following the test period.) Assessment of paired sample persons will be made at the 2-, 4-, and 8-week periods.

In determining the boundaries for the analysis chart, the probabilities of errors should range from 5 to 10 percent. Paired sample persons will be entered on the analysis chart only when the active ingredient has demonstrated a reduction of 33 percent or greater in the initial mean sensitivity score. A favorable placement on the chart will be made when the active ingredient shows a 50-percent greater reduction in the mean sensitivity score than the placebo reduction.

Regardless of the study design or the statistical analysis employed, to be considered effective, the active ingredient must demonstrate the above-stated requirements, i.e., 33-percent or greater reduction in the initial mean sensitivity score and a 50-percent greater reduction than the placebo reduction.

Example first paired sample persons:

	Mean sensitivity scores	
	Active	Placebo
Initial Mean	2.5	2.4
2 Week Mean	1.5	2.0
Percent Reduction	40	17

A 40-percent reduction is greater than 33 percent; therefore, the paired sample is eligible for the analysis chart. A favorable placement on the chart is indicated since the 40-percent reduction for the active is more than 50 percent greater than the 17-percent reduction for the placebo.

The Panel has agreed that 3 years after the publication of the proposed rules is an adequate time period for completion and submission of data for these studies.

Reference

(1) Smith, B. A., and M. M. Ash, "Evaluation of a Desensitizing Dentifrice," *Journal of the American Dental Association*, 68:639–647, 1964.

List of Subjects in 21 CFR Part 354

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding new Part 354, to read as follows:

PART 354—DRUG PRODUCTS FOR THE RELIEF OF ORAL DISCOMFORT FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
354.1 Scope.
354.3 Definitions.

Subpart B—Active Ingredients

354.10 Active ingredients for the relief of toothache.
354.12 Oral mucosal analgesic active ingredients.
354.14 Oral mucosal protectant active ingredients.
354.16 Tooth desensitizer active ingredients. [Reserved]
354.18 Package size limitations.
354.20 Permitted combinations of active ingredients.

Subpart C—[Reserved]

Subpart D—Labeling

354.50 Labeling of agents for the relief of toothache drug products.
354.55 Labeling of oral mucosal analgesic drug products.
354.60 Labeling of oral mucosal protectant drug products.
354.65 Labeling of tooth desensitizer drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—General Provisions

§ 354.1 Scope.

(a) An over-the-counter drug product for the relief of oral discomfort in a form suitable for topical oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 354.3 Definitions.

As used in this part:

(a) *Agent for the relief of oral discomfort.* An ingredient which when applied topically has direct or indirect capability to relieve oral discomfort. This category of drugs includes oral mucosal analgesics, tooth desensitizers, oral mucosal protectants, and agents for the relief of toothache.

(b) *Agent for the relief of toothache.* An ingredient used for the temporary relief of pain arising as a result of an open tooth cavity.

(c) *Oral mucosal analgesic.* An ingredient used in dental care drug products for topical application in the oral cavity to provide temporary relief of oral discomfort by an anesthetic or analgesic effect.

(d) *Oral mucosal protectant.* An ingredient which is a pharmacologically inert substance which forms an adherent, continuous, flexible, or semirigid coating when applied to the oral mucous membranes. The coating protects the irritated area from further irritation due to the activity of oral structures.

(e) *Tooth desensitizer.* An ingredient which acts on the dentin to block perception of those stimuli which are usually not perceived by normal subjects but which are perceived by patients with dental hypersensitivity.

Subpart B—Active Ingredients.

§ 354.10 Agents for the relief of toothache.

The active ingredient of the product may consist of the following when used within the dosage limit established: Eugenol 85 to 87 percent.

§ 354.12 Oral mucosal analgesics.

The active ingredients of the product may consist of any of the following

when used within the dosage limits established for each ingredient:

(a) Benzocaine 5 to 20 percent.

(b) Butacaine sulfate 4 percent.

(c) Phenol preparations (phenol and phenolate sodium) 0.25 to 1.5 percent.

§ 354.14 Oral mucosal protectants.

The active ingredient of the product may consist of any of the following when used within the dosage limits established for each ingredient:

Benzoin preparations. (a) Compound benzoin tincture, USP XIX.

(b) Benzoin tincture, USP XV.

§ 354.16 Tooth desensitizers. [Reserved]

§ 354.18 Package size limitations.

(a) Products containing butacaine sulfate identified in § 354.12(b) should be packaged in single-use units to contain no more than 30 milligrams each with no more than six units per package.

(b) Products containing benzoin preparations identified in § 354.14 should be packaged in well-closed containers in a quantity of 30 milliliters or less.

§ 354.20 Permitted combinations of active ingredients.

(a) Any single oral mucosal protectant active ingredient identified in § 354.14 may be combined with any single oral mucosal analgesic active ingredient identified in § 354.12.

(b) Any single oral mucosal protectant active ingredient identified in § 354.14 may be combined with any generally recognized safe and effective oral antiseptic.

(c) Any single oral mucosal analgesic active ingredient identified in § 354.12 may be combined with any generally recognized safe and effective oral antiseptic.

(d) Any single oral mucosal protectant active ingredient identified in § 354.14 and any single oral mucosal analgesic active ingredient identified in § 354.12 may be combined with any generally recognized safe and effective oral antiseptic.

(e) Any single oral mucosal analgesic active ingredient identified in § 354.12 may be combined with any generally recognized safe and effective denture adhesive.

Subpart C [Reserved]

Subpart D—Labeling

§ 354.50 Labeling of agents for the relief of toothache drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "agent for the relief of toothache."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "for the temporary relief of throbbing, persistent toothache due to a cavity until a dentist can be seen."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 354.10.* (i) "Use only in teeth with persistent, throbbing pain."

(ii) "Not to be used for a period exceeding 7 days."

(iii) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(iv) "Do not swallow."

(v) "Do not exceed recommended dosage."

(vi) "Children under 12 years of age should be supervised in the use of this product."

(vii) "A dentist must be seen as soon as possible whether or not the paid is relieved."

(viii) "Toothaches and open cavities indicate serious problems which need prompt attention by a dentist."

(2) *For products containing eugenol identified in § 354.10.* "Do not use if you are allergic to eugenol."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": "Rinse the tooth with water to remove any food particles from the cavity. Moisten a cotton pledget with 1 or 2 drops of medication and place in the cavity for approximately 1 minute. Avoid touching tissues other than the tooth cavity. Apply the dose not more than four times daily or as directed by a dentist or physician. Children 2 to 12 years of age should be supervised in the use of this product. For children under 2 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician."

§ 354.55 Labeling of oral mucosal analgesic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral mucosal analgesic."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the following:

(1) *For products containing any ingredient identified in § 354.12.* (i) "For the temporary relief of pain due to minor irritation or injury of soft tissue of the mouth."

(ii) "For the temporary relief of pain due to minor dental procedures."

(iii) "For the temporary relief of pain due to minor irritation of soft tissues caused by dentures or orthodontic appliances."

(iv) "For the temporary relief of pain due to recurring canker sores when the condition has been previously diagnosed by a dentist."

(2) *For products containing benzocaine identified in § 354.12(a) or phenol identified in § 354.12(c) when used as oral mucosal analgesics for teething pain.* "For the temporary relief of sore gums due to teething in infants and children 4 months of age and older."

(3) *For products containing any ingredient identified in § 354.12 when used in denture adhesive products.* "For the temporary relief of pain or discomfort of oral tissues due to dentures."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 354.12.* (i) "Not to be used for a period exceeding 7 days."

(ii) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(iii) "Do not swallow."

(iv) "Do not exceed recommended dosage."

(2) *For products containing any ingredient identified in §§ 354.12 (a) and (c).* "Children under 12 years of age should be supervised in the use of this product."

(3) *For products containing "caine" derivatives identified in §§ 354.12 (a) and (b).* "Do not use this product if you have a history of allergy to local anesthetics such as procaine, butacaine, benzocaine, or other 'caine' anesthetics."

(4) *For products containing butacaine sulfate identified in § 354.12(b).* (i) "Do not use in children under 12 years of age unless recommended by a dentist or physician."

(ii) "Do not use more than one unit at a time."

(iii) "Do not repeat except after 3 hours."

(iv) "Do not exceed 3 doses daily."

(5) *For products labeled with the indication identified in § 354.55(b)(2).* "Fever and nasal congestion are not symptoms of teething and may indicate

the presence of infection. If these symptoms persist, consult your physician."

(6) *For products containing any ingredient identified in § 354.12 when used in denture adhesive products.* "See your dentist as soon as possible."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing benzocaine identified in § 354.12(a).* "Apply to the affected area not more than four times daily or as directed by a dentist or physician. For infants under 4 months of age there is no recommended dosage or treatment except under the advice and supervision of a dentist or physician."

(2) *For products containing butacaine sulfate identified in § 354.12(b).* "Apply to the affected area. Do not use more than one unit at a time (each unit to contain no more than 30 milligrams butacaine sulfate). Do not apply more often than every 3 hours. Do not exceed three applications (90 milligrams) daily. Children under 12 years of age should not use this product except under the advice and supervision of a dentist or physician."

(3) *For products containing phenol identified in § 354.12(c) when used as teething preparations.* "Apply to the affected area not more than six times daily. For infants under 4 months of age, there is no recommended dosage except under the advice and supervision of a dentist or physician." For infants and children 4 months to under 12 years of age, dosage should not exceed 300 milligrams of phenol per day.

(4) *For products containing phenol identified in § 354.12(c) when used as a dental rinse.* "Rinse the affected area not more than six times daily. For children under 6 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician." For adults and children 12 years of age and older, dosage should not exceed 600 milligrams of phenol per day. For children 6 to under 12 years of age, dosage should not exceed 300 milligrams of phenol per day.

(5) *For products containing any ingredient identified in § 354.12 when used in denture adhesive products.* "Apply on area of denture that comes in contact with sore gums."

§ 354.60 Labeling of oral mucosal protectant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral mucosal protectant."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the following:

(1) "Forms a coating over a wound."

(2) "Protects against further irritation."

(3) "For temporary use to protect wounds caused by minor irritations or injury."

(4) "For protecting recurring canker sores when the condition has been previously diagnosed by a dentist."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Not to be used for a period exceeding 7 days."

(2) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(3) "Do not swallow."

(4) "Do not exceed recommended dosage."

(5) "Children under 12 years of age should be supervised in the use of this product."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": "For adults and children 6 months of age and older: Dry the affected area, saturate a cotton applicator with medication, and apply undiluted to the affected area not more often than every 2 hours. For children under 6 months of age, there is no recommended dosage except under the advice and supervision of a dentist or physician."

§ 354.65 Labeling of tooth desensitizer drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "tooth desensitizer."

(b) *Indications.* The labeling of the product contains a statement under the heading "Indications" that is limited to the phrase "to aid in the reduction of painful sensitivity of the teeth to cold, heat, acids, sweets, or contact."

(c) *Warnings.* The labeling of the product contains the following warinings under the heading "Warnings":

(1) "Do not continue use beyond 2 weeks except under supervision of a dentist."

(2) "Do not swallow."

(3) "Children under 12 years of age should be supervised in the use of this product."

(4) "Sensitive teeth may indicate a serious problem which needs prompt care by a dentist."

(5) "See your dentist as soon as possible whether or not relief is obtained."

(6) "If irritation persists, inflammation develops, or if fever and infection develop, discontinue use and see your dentist or physician promptly."

(7) "Do not exceed recommended dosage."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": "Apply with a toothbrush at least once a day or as recommended by a dentist or physician. Children under 12 years of age should be supervised in the use of this product. For children under 2 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician."

Interested persons may, on or before August 23, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before September 22, 1982. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: May 13, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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BILLING CODE 4160-01-M

21 CFR Part 356

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of a proposed rulemaking that would establish conditions under which over-the-counter (OTC) oral health care drug products (products for use in the mouth and throat) are generally recognized as safe and effective and not misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products and is part of the ongoing review of OTC drug products conducted by FDA

DATES: Written comments by August 23, 1982, and reply comments by September 22, 1982.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's Office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilvertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 14, 1979 a report on OTC oral health care drug products from the Advisory Review Panel on OTC Oral Cavity Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed order containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC oral health care drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC oral health care drug products as a notice of proposed rulemaking. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency notes that the Panel was charged to review the use of oral health care products as drugs but recognizes that many claims for these products historically have been considered cosmetic in nature. The Panel made specific recommendations on the cosmetic use of oral health care products, e.g., products containing pharmacologically active ingredients should not be used to achieve a cosmetic effect such as reduction of mouth odors. Also, there are numerous instances in which the Panel refers to the drug or cosmetic status of certain ingredients and claims. The Panel's recommendations and conclusions, if fully implemented, would result in extensive changes in the marketing of these products. As with other Oral Cavity Panel recommendations, the agency is deferring its decision with regard to the "drug versus cosmetic" status of OTC oral health care products until publication of the tentative final rule. This issue is important and requires careful study. The agency points out that is has previously discussed the "drug versus cosmetic" status of soaps containing antimicorbial ingredints in the rulemaking proceeding to establish a monograph for OTC topical antimicrobial drug products (39 FR 33103 and 43 FR 1212) and invites specific comments on this subject with regard to the oral health care products discussed in this document.

The agency's position on OTC oral health care drug products will be stated initially when the tentative final mongraph is published in the **Federal Register** as a proposed regulation. In the preamble to the tentative final monograph, the agency also will announce its initial determination whether the monograph is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the tentative final monograph is published. At that time FDA also will consider whether the monograph has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979, 44 FR 71742).

The agency invites public comment regarding any impact that this rulemaking would have on OTC oral health care drug products. Types of impact may include, but are not limited to, the following: increased costs due to relabeling, repackaging, or reformulating; removal of unsafe or ineffective products from the OTC market; and testing, if any. Comments regarding the impact of this rulemaking on OTC oral health care drug products should be accompanied by appropriate documentation.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC oral health care drug products submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after June 24, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph had been established.

Accordingly this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the result of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug produ cts that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 6 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monogrph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially intruduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monogroph regardless of the date the product was initally intruduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC oral cavity drug products was issued in the **Federal Register** of July 20, 1973 (38 FR 19444). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure of any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other then an 'active ingredient.' ")

Under § 330.10(a) (1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of those products:

Lawrence Cohen, Ph. D., M.D., D.D.S., Chairman
John Adriani, M.D. (appointed June 1974)
Roy C. Darlington, Ph. D.
Martin J. Goldberg, D.D.S.
Valerie Hurst, Ph. D.
Walter E. Loch, M.D.
Jeanne C. Sinkford, D.D.S. (resigned June 1974)

Arthur N. Bahn, Ph. D. (resigned July 1977 to accept a sabbatical appointment to the University of Utrecht for the period August 1977 to September 1978. He was reappointed to the Panel in December 1978. The vacancy created by his resignation was not filled.)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Mary Plaska served as the consumer liaison until she resigned in June 1977, and was followed by Sandra Zimmerman. Both were nominated by an ad hoc group of consumer organizations. Christopher H. Costello, Ph. D. (nominated by the Proprietary Association), served as an industry liaison throughout the Panel's deliberations. Kenneth W. Herrman, Ph. D. (nominated by the Cosmetic, Toiletry, and Fragrance Association), served as an industry liaison until February 1975, followed by Joseph Ambrozaitis, Ph. D., who served until June 1977, followed by Barry Gibberman, Ph. D., who served until February 1978.

Six nonvoting consultants provided assistance to the Panel:

William Bowen, D.D.S.
Neal W. Chilton, D.D.S., M.P.H.
Ralph B. D'Agostino, Ph. D.
Frank B. Engley, Ph. D.
Gordon Pledger, Ph. D.
Sigmund S. Socransky, Ph. D.

The following FDA employees assisted the Panel: John R. Carr, D.D.S., served as Executive Secretary. John T. McElroy, J.D., served as Panel Administrator. Melvin Lessing, R.Ph., M.S., served as Drug Information Analyst until October 1977, followed by Cynthia Rutten, R.Ph., until December 1978, followed by Chester Trybus.

The Panel was first convened on February 26, 1974, in an organizational meeting. Working meetings were held on April 23, June 13 and 14, September 5 and 6, November 7 and 8, December 11 and 12, 1974; February 6 and 7, March 4 and 5, April 24 and 25, July 9 and 10, September 9 and 10, October 16 and 17, December 11 and 12, 1975; February 19 and 20, March 10 and 11, May 6 and 7, July 7 and 8, September 30 and October 1, December 9 and 10, 1976; February 23 and 24, April 12 and 13, June 9 and 10, July 20 and 21, 1977; June 6 and 7, October 17 and 18, 1978; January 4 and 5, August 14, and December 12, 13, and 14, 1979.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel, either at their own request or at the request of the Panel, to express their views on oral health care drug products:

Joseph F. Alexander, Ph. D.
Russell J. L. Allen, Ph. D.
Hazen J. Barron, D.D.S., Ph. D.
Robert Blank, Ph. D.
James F. Bosma, M.D.
William Bowen, D.D.S.
H. Alexander Bradford, M.S.
William Briner, Ph. D.
Richard C. Brogle, Ph. D.
Lewis P. Cancro, Ph. D.
Steven Carson, Ph. D.
Neal W. Chilton, D.D.S., M.P.H.
Sebastian G. Ciancio, D.D.S.
Joseph Clark, Ph. D.
John M. Clayton, Ph. D.
Eugene A. Conrad, Ph. D.
William E. Cooley, Ph. D.
Ralph B. D'Agostino, Ph. D.
Salvatore J. DeSalva, Ph. D.
Dennis G. Economy, M.D.
Jane F. Emele, Ph. D.
Frank B. Engley, Ph. D.
Raymond C. Erickson, Ph. D.
Malcolm H. Fine, M.D.
Arthur Flanagan, M.D.
Thomas Gerding, Ph. D.
William Gold, Ph. D.
George S. Goldstein, M.D.
Jack Goodman, Ph. D.
George F. Hoffnagle, Sc. D.

F. Allen Hofmann, D.D.S.
L. Honkomp, M.D.
Dennis Huston
Eugene R. Jolly, M.D., Ph. D.
Joseph L. Kanig, Ph. D.
J. Vernon Knight, M.D.
Gerald Kowitz, D.D.S.
Ralph R. Lobene, D.D.S., M.S.
Jean Lockhart, M.D.
Harold Loe, D.D.S.
Walter J. Loesche, D.M.D., Ph. D.
H. J. Lutz
Irwin Mandel, D.D.S.
John H. Manhold, D.M.D., M.A.
Gerald McCowen
Thomas F. McNamara, Ph. D.
Raymond A. Nelson
James W. Newberne, D.M.D.
M. W. Noall, Ph. D.
Bernard L. Oser, Ph. D.
William J. Phelan, M.D.
Gary Pitts, Ph. D.
Gordon W. Pledger, Ph. D.
Phyllis E. Riley, Ph. D.
Francis J. C. Roe, D.M., F.R.C. Path.
George W. Rogers, M.D.
Norton Ross, D.D.S., M.A.
Eugene R. Rubacky, Ph. D.
Arthur J. Saffir, D.M.D., Ph. D.
Max Samter, M.D.
Irving R. Schmolka, Ph. D.
Gordon Schrotenboer, Ph. D.
H. A. Shelanski, M.D.
Morris V. Shelanski, M.D.
Sigmund S. Socransky, D.D.S.
Robert Stafford
Anthony Volpe, D.D.S., M.S.
Murray Werner, M.D.
C. R. Willis, Ph. D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through December 14, 1979, in arriving at its conclusions and recommendations.

The charge to the Panel required the review of OTC "oral cavity" drugs. However, the Panel decided to adopt the term "oral health care" when referring to products that are used for the temporary relief of symptoms due to minor irritations, inflammations, and other lesions on the mucous membranes of the mouth and throat. The Panel concluded that "oral health care" would be a more appropriate term to describe the function of these products to the lay public. (See part II. paragraph B.1. below—Introduction, and part II. paragraph B.2. below—Oral health care.) Accordingly, these products are referred to as "oral health care drug products" throughout this document.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC oral health care drug products with respect to the following three categories:

Category I

Conditions under which OTC oral health care drug products are generally recognized as safe and effective and are not misbranded.

Category II

Conditions under which OTC oral health care drug products are not generally recognized as safe and effective or are misbranded.

Category III

Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 25 active ingredients for use as oral health care agents. The Panel placed 9 ingredients in Category I, 10 ingredients in Category II, and 3 ingredients in Category III for analgesic/anesthetic use. The Panel placed no ingredients in Category I, 10 ingredients in Category II, and 25 ingredients in Category III as antimicrobials. The Panel placed two ingredients in Category I, one ingredient in Category II, and no ingredients in Category III as astringents. The Panel placed three ingredients in Category I, one ingredient in Category II, and no ingredients in Category III as debriding agents. The Panel placed no ingredients in Category I, no ingredients in Category II, and two ingredients in Category III as decongestants. The Panel placed four ingredients in Category I, no ingredients in Category II, and no ingredients in Category III as demulcents. The Panel placed no ingredients in Category I, one ingredient in Category II, and three ingredients in Category III as expectorants. (The number of ingredient classifications does not equal the number of ingredients reviewed because some ingredients were reviewed for more than one labeled use.)

Submission of Data and Information

Pursuant to the notice published in the **Federal Register** of July 20, 1973 (38 FR 19444) requesting the submission of data and information on OTC oral health care drugs, the following firms made submissions relating to the indicated products that, the Panel has further determined, contain active ingredients or labeling which may be appropriately classified as oral health care drug products.

A. Submissions By Firms

Firms and Marketed Products

Ayerst Laboratories, New York, NY 10017; Larylgen throat spray
BASF Wyandotte Corp., Wyandotte, MI 48192; Pluronic polyols
Beecham Products, Parsippany, NJ 07054; Dyclonine hydrocloride lozenges
Blair Laboratories, Inc., Norwalk, CT 06850; Isodine concentrate
Block Drug Co., Inc., Jersey City, NJ 07302; Proxigel
Calgon Consumer Products Co., Inc., Pittsburgh, PA 15236; Sucrets cold decongestant formula lozenges, Sucrets cough control formula lozenges, Sucrets sore throat lozenges
Church and Dwight Co., Inc., Syracuse, NY 13201; Arm and Hammer baking soda
Ciba-Geigy Corp., Summit, NJ 07901; Domiphen bromide
Colgate-Palmolive Co., Piscataway, NJ 06854; Benzethonium chloride mouthrinse
Cooper Laboratories, Inc., Cedar Knolls, NJ 07927; Amosan, oral-B antiseptic drops
Cox Drugs, Biltmore, NC 28803; Formula "U"
Denver Chemical Manufacturing Co., Stamford, CT 06904; Pain-A-Lay
Endo Laboratories, Inc., Garden City, NY 11530; Benzocol, Dyclocol, Lidocol
Glenbrook Laboratories (Division of Sterling Drug, Inc.), New York, NY 10016; Campho-Phenique
Hoyt Laboratories, Needham, MA 02194; Orabase with Benzocaine
Hynson, Westcott and Dunning, Inc., Baltimore, MD 21201; Thantis lozenges
International Pharmaceutical Corp., Warrington, PA 18976; Gly-Oxide liquid
Johnson and Johnson, New Brunswick, NJ 08903; Micrin plus, gargle and rinse
K. I. K. Co., Bethlehem, PA 18016; Cheramist
LaWall and Harrison Research Laboratories, Inc., Philadelphia, PA 19146; Troutman's cough syrup
Lorvic Corp., The, St. Louis, MO 63134; Odara solution
McKesson Laboratories, Fairfield, CT 06430; Isodettes anesthetic throat lozenges
Merrell-National Laboratories, Cincinnati, OH 45215; Cepacol anesthetic troches, Cepacol mouthwash/gargle, Cepacol throat lozenges
Monsanto Industrial Chemicals Co., St. Louis, MO 63166; Methyl salicylate
Norwich-Eaton Pharmaceuticals, Norwich, NY 13815; Chloraseptic aerosol spray, Chloraseptic lozenges, Chloraseptic mouthwash/gargle
Plough, Inc., Memphis, TN 38101; Aspergum
Procter and Gamble Co., The, Cincinnati, OH 45202; Scope mouthwash and gargle
Purdue Frederick Co., The, Norwalk, CT 06856; Betadine mouthwash/gargle
Reed and Carnrick Pharmaceuticals, Kenilworth, NJ 07033; Mouthwash and gargle
Rystan Co., Inc., White Plains, NY, 10605; Chloresium Dental ointment, Chloresium solution, Chloresium tablets
Schmid Laboratories, Inc., Little Falls, NJ 07424; Potassium chlorate, Ferric chloride, Balsam tolu, Glycerite of boroglycerin
Scott Laboratories, Inc., Corpus Christi, TX 78408; Scott's certified peroxide of hydrogen
Squibb Pharmaceutical Co., Princeton, NJ 08540; Spect-T decongestant lozenges, Spect-T cough suppressant lozenges, Spect-T anesthetic lozenges, Spect-T sore throat spray

Sterling Drug, Inc., New York, NY 10016; Campho-Phenique liquid, Campho-Phenique powder
Thayer, Henry, Co., Cambridge, MA 02138; Thayer slippery elm throat lozenges
Upjohn Co., The, Kalamazoo, MI 49001; Oral pentacresol
Vick Chemical Co., New York, NY 10017; Vicks medi-trating throat lozenges, Vicks oracin throat lozenges
Warner-Lambert Co., Morris Plains, NJ 07950; Listerine antiseptic, Listerine throat lozenges
Warren-Teed Pharmaceuticals, Inc., Columbus, OH 43215; Di-O-Chrome
Whitehall Laboratories, Inc., New York 10017; Anbesol

B. Ingredients Reviewed by the Panel

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Acetanilid
Alcohol
Alum
Ammonium chloride
Anise oil
Antipyrine
Aromatics
Aspirin
Benzethonium chloride
Benzocaine
Benzoic acid
Benzyl alcohol
Borax
Boric acid
Boroglycerin
Calcium chloride
Calcium silicate
Camphor
Caramel
Carbamide peroxide
Carbolic acid
Cetyldimethylbenzylammonium chloride
Cetylpyridinium chloride
Chloroform
Chlorophyll "A" water-soluble derivatives
Cinnamon oil
Cresol
Dextromethorphan hydrobromide
Dextrose
Dibucaine hydrochloride
Domiphen bromide
Dyclonine hydrochloride
Elm bark
Essential oils
Eucalyptol
Eucalyptus oil
Ferric chloride
Gelatin
Gentian violet
Glycerin
Glycerol, anhydrous
Hexylresorcinol
Honey
Horehound
Hydrogen peroxide
Iodine
Isobornyl acetate
Lidocaine
Lidocaine hydrochloride
Menthol
Merodicein
Methylparaben
Methyl salicylate
Pectin
Peppermint oil
Phenol
Phenylephrine hydrochloride
Phenylpropanolamine hydrochloride
Phosphate buffers
Plasticized hydrocarbon gel (polyethylene in mineral oil)
Potassium chlorate
Potassium chloride
Potassium iodide
Povidone-iodine
Povidone-iodine, concentrate
Propylene glycol
Propylparaben
Pyrilamine maleate
Sage oil
Saligenin
Secondary-amyltricresols
Sodium bicarbonate
Sodium bitartrate buffer
Sodium borate
Sodium caprylate
Sodium carboxymethylcellulose
Sodium chloride
Sodium dichromate
Sodium perborate
Sodium peroxyborate monohydrate
Sodium phenolate
Sodium saccharin
Sorbitol base
Spearmint oil
Sugar
Talcum power
Thymol
Tincture of myrrh
Tolu balsam
Urea peroxide
Vegetable stearate
Water
Wintergreen oil
Zinc chloride

2. *Other ingredients reviewed by the Panel.*

Benzalkonium chloride
Dequalinium chloride
Dibucaine
Nitromersol
Oxyquinoline sulfate (8-hydroxyquinoline)
Tetracaine
Tetracaine hydrochloride
Thymol iodide

C. Classification of Ingredients.

1. *Active ingredients.*

Anesthetics/Analgesics

Antipyrine
Aspirin
Benzocaine
Benzyl alcohol
Camphor
Cresol
Dibucaine
Dibucaine hydrochloride
Dyclonine hydrochloride
Eucalyptol (eucalyptus oil)
Hexylresorcinol
Lidocaine
Lidocaine hydrochoride
Menthol
Methyl salicylate (wintergreen oil)
Phenol (carbolic acid)
Phenolate sodium (sodium phenolate)
Pyrilamine maleate
Salicyl alcohol (saligenin)
Tetracaine
Tetracaine hydrochloride
Thymol

Antimicrobial Agents

Benzalkonium chloride
Benzethonium chloride
Benzoic acid
Boric acid
Boroglycerin glycerite (boroglycerin)
Camphor
Carbamide peroxide in anhydrous glycerin (carbamide peroxide, urea peroxide)
Cetalkonium chloride (cetyldimethylbenzylammonium chloride)
Cetylpyridinium chloride
Chlorophyll (chlorophyll "A" water-soluble derivatives)
Cresol
Dequalinium chloride
Domiphen bromide
Ethyl alcohol (alcohol)
Eucalyptol (eucalyptus oil)
Ferric chloride
Gentian violet
Hydrogen peroxide
Iodine
Menthol
Meralein sodium (merodicein)
Methyl salicylate (wintergreen oil)
Nitromersol
Oxyquinoline sulfate (8-hydroxyquinoline)
Phenol (carbolic acid)
Phenolate sodium (sodium phenolate)
Potassium chlorate
Povidone-iodine (povidone-iodine, concentrate)
Secondary amyltricresols (secondary-amyltricresols)
Sodium caprylate
Sodium dichromate
Thymol
Thymol iodide
Tincture of myrrh
Tolu balsam

Astringents

Alum
Tincture of myrrh
Zinc chloride

Debriding Agents

Carbamide peroxide in anhydrous glycerin (carbamide peroxide, urea peroxide)
Hydrogen peroxide
Sodium bicarbonate
Sodium perborate (sodium peroxyborate monohydrate

Decongestants

Phenylephrine hydrochloride
Phenylpropanolamine hydrochloride

Demulcents

Elm bark
Gelatin
Glycerin
Pectin

Expectorants

Ammonium chloride
Horehound
Potassium iodide
Tolu balsam

2. *Inactive ingredients.* The Panel has classified the following as inactive ingredients or pharmaceutical necessities. The list is not intended to be exhaustive.

Acetanilid
Anise oil
Aromatics
Calcium chloride
Calcium silicate
Caramel
Cinnamon oil
Dextrose
Essential oils
Glycerol, anhydrous
Honey
Isobornyl acetate
Methylparaben
Peppermint oil
Phosphate buffers
Plasticized hydrocarbon gel (polyethylene in mineral oil)
Potassium chloride
Propylene glycol
Propylparaben
Sage oil
Sodium bitartrate buffer
Sodium borate (borax)
Sodium carboxymethylcellulose
Sodium chloride
Sodium saccharin
Sorbitol base
Spearmint oil
Sugar
Talcum power
Vegetable stearate
Water

3. *Ingredient previously reviewed by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products in the* **Federal Register** *of September 9, 1976 (41 FR 38312).* Dextromethorphan hydrobromide.

4. *Ingredient removed from all drug products.* On June 29, 1976, a notice was published in the **Federal Register** (41 FR 26845) which prohibited the use of chloroform as an ingredient (active or inactive) in drug products. Studies conducted by the National Cancer Institute demonstrated that oral administration of chloroform to mice and rats induced hepatocellular carcinomas (liver cancer) in mice and renal tumors in male rats. Section 310.513 (21 CFR 310.513) was established to remove chloroform from all drug products.

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in reponse to the call-for-data notice published in the **Federal Register** of July 20, 1973 (38 FR 19444). All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after June 24, 1982, in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Statements and Recommendations

A. Definitions

The following are definitions of terms used in this document.

1. *Antimicrobial agent.* A compound or substance that kills microorganisms or prevents or inhibits their growth and reproduction and contributes to claimed effects of the product in which it is included.

2. *Antimicrobial preservative.* A compound or substance that kills organisms or prevents or inhibits their growth and reproduction and is included in a product formulation only at a concentration sufficient to prevent spoilage or prevent growth of inadvertently added microorganisms, but does not contribute to the claimed effects of the product to which it is added.

3. *Astrigent.* An agent that causes contraction of the tissues or arrest of secretions by coagulation of proteins on a cell surface.

4. *Bioavailability.* The rate and extent to which the active drug ingredient or therapeutic moiety is absorbed from a drug product and becomes available at the site of drug action.

5. *Decongestant.* An agent that reduces congestion or swelling. In OTC use for mucous membranes the term generally refers to adrenergic drugs that act by vasoconstriction.

6. *Debriding agent.* An agent which causes the removal of foreign material or devitalized or contaminated tissue from or adjacent to a traumatic or infected lesion to expose surrounding healthy tissue.

7. *Demulcent.* A bland, inert agent that soothes and relieves irritation of inflammed or abraded surfaces such as mucous membranes.

8. *Expectorant.* An agent that promotes the expectoration (spitting) of mucus or of respiratory tract secretions by decreasing the viscosity.

9. *Gargle.* A fluid, usually flavored or medicated or both, but not necessarily so, which is intended to be used to rinse or bathe the posterior part of the oral cavity, with the additional intent to expel mucus from the throat.

10. *Germicide.* An agent that destroys microorganisms. The term includes bactericide, fungicide, virucide, and amebicide.

11. *Hydrophilic.* A substance which has a marked affinity for water.

12. *In vitro study.* A laboratory study on the physical, chemical, or therapeutic properties of an agent. Such a study is not performed in living animals or people. An in vitro study may be done in laboratory equipment with material excised from the body.

13. *In vivo study.* A study performed in living animals or people.

14. *Iodophor.* There are at least three categories of iodophors: (1) Hydroalcoholic solutions of elemental iodine and iodides, (2) elemental iodine complexed with various surfactant compounds, and (3) elemental iodine complexed with various nonsurfactant compounds such as PVP-iodine complex (povidone-iodine).

15. *Lipophilic.* A substance with a pronounced affinity for fats (lipids).

16. *Mouth odor.* A general term for an odor emanating from the oral cavity. It may or may not be offensive. When such odor is perceived as unpleasant, obnoxious, offensive, or objectionable, a term such as "malador," "halitosis," or "bad breath" is used.

17. *Mouthwash.* A solution used for rinsing the mouth, not necessarily for medicinal purposes.

18. *Oleoresin.* A natural combination of a volatile oil and a resin, such as exudes from pines and other plants.

19. *Oral cavity.* The cavity of the mouth and associated structures, including the cheeks, palate, oral mucosa, glands whose ducts open into it, the teeth, and the tongue. For purposes of this Panel, the teeth and gums are excluded since they were considered by the Advisory Review Panel on OTC Dentifrices and Dental Care Drug Products.

20. *Oral health care.* The proper care of the mouth, including the temporary relief of symptoms of the mouth and throat, for example, occasional minor sore throat or mouth soreness.

21. *Organoleptic.* A property of a substance which makes an impression upon one or more of the organs of special sense (such as taste or smell), thereby affecting the flavor, odor, or appearance of a drug product.

22. *Pharynx (throat).* The musculomembranous sac between the mouth and nostrils and the esophagus. It is continuous below with the esophagus and above communicates with the mouth, nasal passages, and auditory (Eustachian) tubes. It is subdivided into the following parts:

(a) *Nasopharynx.* The part above the level of the soft palate.

(b) *Oropharynx.* The part that lies between the soft palate and the upper edge of the epiglottis.

(c) *Laryngopharynx.* This lies between the upper edge of the epiglottis and opens into the larynx and esophagus (sometimes called hypopharynx).

23. *Sialagogue.* An agent which promotes the flow of saliva.

24. *Topical analgesic.* A substance applied to an epithelial surface (e.g., skin or mucous membrane) that relieves pain without necessarily abolishing other sensations; or one that causes partial blockade of subcutaneous or submucosal terminal nerve endings so that a minimal stimulus evokes no painful response, but a greater stimulus does. In this document the term anesthetic has been adopted to conform with established ursage. Adoption of the term "anesthetic" does not preclude the use of the term "analgesic" when appropriate or preferable.

25. *Topical anesthetic.* A substance applied that completely blocks pain receptors resulting in a sensation of numbness and abolition of responses to painful stimuli.

B. General Discussion

1. *Introduction.* The Panel was convened and charged to evaluate ingredients in OTC preparations used for oral health care. These ingredients are intended to be used for the temporary relief of symptoms due to minor irritations, inflammations, and other lesions on the mucous membrances of the oral cavity (mouth) and pharynx (throat). Ingredients intended for the relef of symptoms airising from the teenth and gums were not evaluated by the Panel because ingredients for such use were reviewed by the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products. The Oral Cavity Panel has reviewed these ingredients and evaluated them strictly from the standpoint of the symptomatic relief that they are intended to promote. The ingredients evaluated are applied directly to the mucous membranes of the mouth and throat and act locally. They are not intended to be curative, nor are they intended to be used by consumers in the self-diagnosis and treatment of afflications of the mouth and throat. Ingredients known or presumed to be absorbed and to act systemically were either deferred to other Panels for evaluation or classified as Category II. The Panel emphasizes that the ingredients evaluated by the Panel relieve symptoms that are self-limiting and that these ingredients are not for use as curative agents.

The Panel was charged to evaluate individual ingredients for safety and effectiveness for indications claimed in the labeling of OTC products in light of present-day knowledge and standards used in pharmacology, therapeutics, and toxicology. In making its evaluation, the Panel relied heavily upon factual data found in standard textbooks and scientific articles published by independent investigators in medical, dental, and other scientific journals. Some of these articles were incorporated by manufacturers into their submissions to the FDA to provide a scientific basis for claims made for the safety and effectivness of their ingredients. Data supplied by manufacturers in unpublished reports of studies performed by private laboratories under contract to the manufacturers or in manufacturers' laboratories were also used by the Panel in making judgments. The Panel also gave due consideration to data from marketing experience and widespread clincial usage. The Panel regards such data as corroborative when in agreement with basic data from controlled studies and scientific facts. The Panel placed little reliance upon such data, however, when insufficient pharmacologic, therapeutic, and toxicity studies were supplied. The Panel felt it was under no obligation to make a judgment on the safety and effectiveness of ingredients relying solely on marketing data supplied by the manufacturers in their submissions.

The Panel has considered the ingredients in the submissions and has grouped them according to their pharmacologic activity and modes of action. It has deferred to other Panels for consideration, or classified as Category II, those ingredients believed to exert their claimed effects systemically after absorption from the mucous membrances of the oral cavity or those ingredients that have no effect on the mucous membrances.

In its review of ingredients of oral health care products, the Panel has identified two groups having a general similarity based on indications for recommended use. The first group, consisting principally of mouthwashes, rinses, or sprays, is offered for cleansing of the mouth, elimination of mouth odors, and other hygienic or cosmetic purposes. In most cases products in this group are recommended for use on a continuing basis in situations in which no symptoms or evidence of disease are present. Many are recommended for use on a day-to-day basis with no specified limits on time or quantities of usage. Some are recommended for prophylaxis for oral cavity diseases.

The products in the second group are offered for short-term therapy to relieve symptoms of sore throat and sore mouth. Definite evidence of a pathologic process exists, and a limit has been placed on the time the product is recommended for use. In some cases, overlapping exists and the indications of the first group also encompass some of the indications for products in the second group. The Panel has evaluated the ingredients in each of the products in these groups on the basis of therapeutic effectiveness in relieving symptoms of pathologic processes given rise to sore mouth or sore throat or both. Claims made for ingredients in oral health care products that do not meet these criteria, i.e., relief of symptoms, are considered to be Category II claims.

Some products list active ingredients for which no claim for indications for use are made in the labeling. Products containing such ingredients are considered to be misbranded.

The Panel has identified the major pharmacologic groups as listed below from the claims made for the active ingredients in the labeling of OTC products. The active ingredients are discussed in statements, elsewhere in this document, according to this pharmacologic classification. Certain drugs have more than one action and have more than one therapeutic claim made for such actions. Therefore, such ingredients appear under two or more different pharmacolgic classes in the ingredient discussions below. Phenol, for example, is claimed to exert both a topical anesthetic effect and an antimicrobial effect. The Panel has considered the chemistry, pharmacology, toxicology, safety, and effectiveness of phenol in the discussions of this ingredient. Its safety and effectiveness are discussed first as an anesthetic in the section on anesthetics/analgesics. (See part III. paragraph b.1.g. below—Phenol.) The effectiveness of phenol as an antimicrobial agent is then described in the section on antimicrobial agents. (See part IV. paragraph B.3.r. below—Phenol.)

The Panel has identified the following pharmacologic groups of ingredients and described each one, their modes of action, and their effects, elsewhere in this document:

a. Anesthetics/Analgesics.
b. Antimicrobial agents.
c. Astringents.
d. Debriding agents.
e. Decongestants.
f. Demulcents.
g. Expectrorants.

Anesthetics may also be recognized as analygesics. It is well known and accepted that anesthetics, in low concentrations, may and will usually act as analgesics. However, not all

analgesics exert an anesthetic effect at higher doses. The Panel has adopted the term "anesthetic/analgesic" in this document for the purpose of grouping these ingredients for ease of review. Adoption of this term does not preclude the use of the terms "anesthetic" or "analgesic" in labeling, as appropriate, and the Panel leaves the choice of selecting either of these terms to the manufacturer. The Panel, however, concludes that it is not acceptable to use the term "anesthetic" in the labeling of a product which contains an analgesic, i.e. aspirin, as its only active ingredient.

An ingredient having more than one pharmacologic action, as for example phenol, may be classified in one category (Category I) as an anesthetic and in another category (Category III) as an antimicrobial agent. Other ingredients in more than one pharmacologic group for use on the mucous membranes of the mouth and throat have similarly been evaluated by the Panel for their safety and effectiveness.

The mouth and throat are continuous with the lower respiratory and gastrointestinal tract. There are many ingredients that may act on the mucous membranes of these structures. However, these ingredients are considered primarily from the standpoint of the effect that they exert on the mucous membranes of the mouth and throat.

In some cases, the action of certain drugs may be selective and exert a greater effect in some tissues than in others. In other cases, the responses of drugs and their differences are merely quantitiative and relative, and depend upon the number of cells or receptors on the cells being affected. Various degrees of predilection for certain cells may occur with changes in conditions, or dosage, or pH, etc. The mechanism and selective action of the drug may depend upon differences of penetration or upon chemical affinity of the drug for the cells or the changes in the sensitivities to the action of the drug. The drug may also act on the cell without actually penetrating into it, as for example, by exciting or depressing the nerve supplying the cell. A drug may act directly on the cell surface and alter its function by withdrawing water from the cytoplasm. As a general rule, the drug must pass into the cell or cell membrane before it can exert any action, and, in order for absorption to occur, the drug must be soluble in the constituents of the cell membrane. The solubility of a drug in the cell membrane and cytoplasm is not necessarily the same as it is in water. It may vary for each kind of cell, and consequently the penetration of drugs into the different cells may vary (Refs. 1, 2, and 3).

In some cases, a concentration of a sustance that accumulates in a cell may be greater than that present in the external environment. This concept holds true expecially if the substance undergoes selective concentration. This may be due to the fact that the ingredient binds with proteins and cell constitutents and attains a concentration that is pharmaceutically active. Some of the aforementioned principles apply to absorption from the mucous membranes of the mouth and throat and are described in more detail below.

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2. *Oral health care.* The Panel has adopted the term "oral health care" in referring to the use of products intended for the relief of symptoms due to pathologic states in the mouth and throat and refers to these products as oral health care products. The Panel is aware of the widespread use of the term "oral hygiene" and the fact that it is in some cases used to support therapeutic claims for pathologic states in the mouth in the labeling of some oral cavity products. Consumers associate the term with cleansing agents and other cosmetic products for use in the mouth on a daily basis or more often. The Panel feels that the term "oral hygiene" should be reserved exclusively for use in the labeling of cosmetic products used for cleaning and similar purposes to maintain a healthy state of the mouth and not for identifying a product as one having therapeutic claims. The Panel, therefore, considers labeling such as "for oral hygiene" a Category II claim if a product having such labeling is intended to be used for therapeutic purposes.

The mouth and nose are the portal of entry of a variety of microorganisms (Ref. 1). These may remain in the mouth, nasopharynx, and throat, or they may remain in the gastrointestinal tract or respiratory system. Normally they do not cause disease. The oral cavity is endowed with physiologic mechanisms for maintianing a healthy state of the structures contained therein. In essence, no medications are needed to achieve this end. The secretions of the salivary, mucous, and serous glands lubricate and maintain a healthy state of the mucous membrances and other structures in the mouth. The indigenous flora of the oral cavity consits of nonpathogenic microorganisms which seldom produce disease. They help maintain a balance of the microbial population and probably play an important role in maintianing a healthy state of the oral cavity.

Normally, approximately 0.25 to 1.0 milliliter (mL) of saliva is excreted per minute or about 1,500 mL per 24 hours. This, together with the secretions of the mucous glands, acts as a diluent, has a cleansing action, and moistens the mucous membrances. It cleans the mouth and teeth and may inhibit bacterial growth. The flow of saliva can be modified by various normal stimuli (Refs. 2, 3, and 4).

In addition to the above-mentioned protective mechanism, immunologic defense mechanisms, particularly those involving the action of immunoglobulin A (IgA), are also present. These interfere with adherence of microogranisms to mucosal surfaces by causing them to aggregate, rendering them susceptible to phagocytosis (Refs. 1, 5, and 6).

In fever and during certain illnesses, the flow of saliva and secretion of mucus may be decreased. Orgnic material may accumulate and decompose, and bacterial growth is no longer inhibited. A foul odor may develop, and ulcerations and inflammation of the mucous membrances may result (Ref. 2). Sore mouth, discomfort, or pain may also develop, making treatment desirable. Since a pathologic state exists in such situations, claims may be made for the use of OTC oral health care products to relieve these symptoms. However, the labeling should clearly indicate that if the symptoms persist, professional advice should be sought. It is the consensus of the Panel that claims implying that an OTC product can be used for oral health care and can prevent the development of such a pathologic state in a person who is not in good health are not acceptable. Claims that state or imply that the prophylactic use of an OTC oral health care product maintains a healthy state are misleading to a consumer.

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3. *The anatomy and physiology of the oral cavity.* The oral cavity extends from the lips to the anterior pillars of the fauces and is lined by the oral mucous membrane. The mucous membrane is composed of connective tissue covered by stratified squamous epithelium. Modifications of this basic pattern occur in different areas of the mouth and are related to differing functions. The hard palate, gingiva, and the tips of the papillae on the dorsum of the tongue are the only areas where keratinization normally occurs in the oral cavity of human beings.

a. *The oral mucous membrane.* The oral cavity is concerned with proprioception, taste, and mastication (chewing) of food. During the process of mastication, the food is mixed with saliva and the enzymes in the saliva initiate digestion. Stern (Ref. 1) divides the oral mucosa into three major types: (1) Masticatory mucosa (gingiva, hard palate); (2) lining or reflecting mucosa (lip, cheek, vestibular fornix, alveolar mucosa, floor of mouth, and soft palate); and (3) specialized mucosa (dorsum of the tongue and taste buds).

The masticatory mucosa is bound to bone and does not stretch. The lining mucosa covers the musculature and is distensible. It covers all the surfaces of the mouth except the dorsum of the tongue and the masticatory mucosa. The specialized (sensory) mucosa bears the taste buds, which have a sensory function.

The oral mucous membrane is composed of two layers, epithelium and connective tissue (lamina propria). The dermal papillae contain blood vessels and nerves and interdigitate with the epithelial ridges. At the junction of the two tissues are the basal lamina and the basement membrane. The basal lamina is not ordinarily discernible with the light microscope, but is evident at the electron misroscopic level and is epithelial in origin. The basement membrane is evident at the light microscopic level. It is a relatively cell-free zone that is 1 to 4 microns thick and found within the connective tissue, subjacent to the basal cells. This zone stains positively with the periodic acid-Schiff method, indicating that it contains neutral mucopolysaccharides (glycosaminoglycans). It also contains fine argyophilic silver staining reticular fibers, as well as special anchoring fibrils.

The lamina propria may be attached to the periosteum of the alveolar bone, or it may overlay the submucosa, which varies in thickness in different regions of the oral cavity, such as the floor of the mouth and the soft palate.

The submucosa attaches the mucous membrane to the underlying structures. Within this layer are glands, blood vessels, nerves, and adipose tissue. The sensory nerves to the mucous membrane tend to be more concentrated at the anterior part of the mouth. The nerve fibers are myelinated in the submucosa, but lose their myelin sheaths before splitting into their end arborizations. Sensory nerve endings of various types are found in the papillae. Some of the fibers enter the epithelium, where they terminate between the epithelial cells as free nerve endings. The blood vessels are accompanied by nonmyelinated visceral nerve fibers that supply their smooth muscle. In those areas of the mouth where the submucosa is lose, the mucous membrane is movable over the deeper layer. On the other hand, where the submucosa is dense the mucous membrane does not move over the deeper structures.

The epithelium of the oral mucosa is stratified squamous. It may be keratinized, parakeratinized, or nonkeratinized depending on location. In the oral cavity of humans, only the gingiva and the hard palate are normally keratinized, although in many individuals the gingival epithelium is parakeratinized. The cheek, faucial, and sublingual tissues are normally nonkeratinized.

The four cell layers which are found in keratinizing oral epithelium are the basal, spinous, granular, and cornified layers. The basal cell which ultimnately forms keratin at the surface is called the keratinocyte.

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b. *The physiology of pain.* Pain is difficult to define. There is little point in attempting to formulate a definition of a subjective sensation that is clearly known to each individual by experience and the nature of which is described by illustration. Pain is the most common symptom for which people seek relief. It is an experience that embodies both the capacity to be discriminative and the ability to interpret the nature of a stimulus by reference to present and past experiences (Ref. 1).

Obviously, it is best to determine the etiology of a pain and treat the causative factor, be it a disease process, the result of trauma, or a functional disturbance. Nonetheless, self-limited, mild to moderate pain in the mouth and throat may be treated symptomatically by self-medication.

Sensory receptors are present in the mucous membranes, the submucosal tissues, and the muscular and other structures of the oral cavity for the perception of pain, cold, warmth, touch, pressure, proprioception, and taste (Refs. 2 and 3). A discussion of receptors for pain, cold, warmth, touch, and pressure follows because they are stimulated by certain ingredients used in oral health care products such as camphor, menthol, etc. Furthermore, if subjected to greater-than-ordinary stimulation they may be sensed as pain. Receptors for taste are located in the tongue and are discussed below along with the receptors for smell, which are located in the nose. The receptors for taste and smell act in consort, since what a person interprets as taste may actually be due to smell. Since many drug preparations used in the oral cavity contain distasteful ingredients and flavors, odoriferous ingredients are added to assure patient acceptance. Therefore, the sensations of taste and smell assume importance in OTC oral health care products and are discussed below. (See part II. paragraph B.3.c. below—The physiology of taste. See also part II. paragraph B.3.d. below—The physiology of smell.)

Topical anesthetics act at the site of application of a drug after they penetrate the mucous membranes and come into contact with these sensory receptors. These receptors are connected to terminal fibers of networks of nerves that are present in the various layers of the epithelial membrane and other tissues.

Each type of receptor ordinarily perceives its own type of sensation. They can also respond to thermal, mechanical, chemical, or painful stimuli and induce the sensation of pain. Stimuli of greater intensity than normally required to activate them may produce the sensation of pain. Sensory receptors are classified as follows: (1) *Receptors for pain.* These consist of "bare" nerve endings that receive the stimuli incited by pain directly and transmit them along larger nerve trunks to the central receptors in the brain. Itching is not ordinarily perceived in the oral cavity; yet it has been perceived on rare occasions, particularly in areas covered by stratified squamous epithelium or at the mucocutaneous junctions. The sensation of itch is carried along the same receptors as that of pain. The principal difference is that the intensity of the stimulus or the frequency of impulses for inducing itch are less than the impulses for inducing pain (Refs. 3 and 4). The nerve fibers carrying the sensation of pain and itch are mostly of the small unmyelinated C type sensory nerve fibers (Ref. 1). Some delta A myelinated fibers may also play a role. Pain fibers are not uniformly distributed over the mucous surfaces. They are more concentrated on the tongue, in the pharynx, along the lips, and less so in areas such as the palate and floor of the mouth. The activity of these receptors is obtunded partially or completely by topical analgesics and anesthetics. The modes of action of analgesics and anesthetics are described below. (See part III. paragraph A.1. below—Modes of action.) The pain receptors appear to be affected more easily and readily than the receptors for other sensations listed above probably because they are small and unmyelinated nerve fibers and are thereby easily penetrated by drugs (Ref. 3).

(2) *Receptors for cold.* The end bulbs of Krause are oval sense organs that perceive the sensation of cold. These nerve endings may be blocked simultaneously with the pain receptors by topical anesthetics. Whether or not they are blocked depends upon the concentration of anesthetic that reaches them and the degree of penetration. They may be stimulated by some ingredients, such as menthol or camphor, and produce a sensation of coolness that masks the sensation of pain. Some counterirritants may act by stimulating these receptors. Counterirritants and rubefacients, however, have no place as therapeutic agents in OTC oral health care products.

(3) *Receptors for warmth.* The end organs of Ruffini are cylindrical end organs in the mucous membranes that perceive the sensation of warmth. They may also be partially or completely blocked simultaneously by anesthetic ingredients, depending upon the concentration and the duration of contact of the ingredient. These receptors are stimulated by some ingredients, such as camphor and alcohol, by some flavorants, and by some rubefacients, such as methyl salicylate, which are all present in OTC oral health care products.

(4) *Receptors for pressure.* Pacinian Corpuscles are cylindrical end organs in the skin that perceive the sensation of deep pressure. Anesthetics in concentrations exceeding those needed to block pain receptors may be needed to block these receptors.

(5) *Receptors for touch.* Meissner's corpuscles are end organs in the mucous membranes that perceive the sensation of touch and respond to tactile stimuli. They may also be partially or completely blocked by anesthetics (Refs. 2 and 3). They may be stimulated by the presence of exudates, mucous, and other secretions that collect on mucous membranes.

Pain on epithelial surfaces is well-defined and easily localized. Pain arising in structures beneath the mucous membranes may be poorly localized and is usually dull in character. It may, however, be sharp in some cases and spread or radiate in a distinct pattern. Pain is frequently "referred," i.e., felt at locations remote from its source (Refs. 3 and 4). It is not uncommon to experience deep-seated pain in structures in the oral cavity or the pharynx, Pain arising from a localized aphthous ulcer beneath the tongue, for example, may radiate along the entire lower jaw to the tongue, into the nose or even the head. Pain in the pharynx may radiate to the ear via the anterior or posterior pillars to the Eustachian tube. The oral cavity is richly supplied with sensory receptors from filaments of the fifth cranial nerve. Most structures in the mouth are extremely sensitive to painful as well as other stimuli. In addition, the ninth cranial (glossopharyngeal) nerve as well as filaments of the tenth cranial (vagus) nerve also provide a sensory supply to the posterior portion of the tongue, and oro-and hypopharynx. The ability to identify and localize pain is not inborn; it is learned from past experience.

Pain originating from bones, joints, and tendons may induce muscle spasm and cause pain in the affected muscles. Induced spasm or chronic muscle injury, with pain, is a part of an involuntry defensive mechanism whereby the patient attempts reflexively to immobilize a painful joint (Ref. 5). This is not uncommon in the oral cavity when spasm of the muscles of mastication attempt to immobilize the temporomandibular joint. The muscles of the pharyngeal wall may also go into spasm when swallowing occurs in cases of sore throat.

Relief of pain involves two components: raising the pain threshold and altering the psychologic response to pain. The pain threshold varies little from one individual to the next, but the psychological response to pain varies greatly among individuals and in the same individual under different circumstances and in different settings. What may be referred to as a slight pain by one individual may be interpreted as a severe pain by another. Time, place, environmental and social factors, cultural background and family response patterns, emotional status, age, and past experiences may all influence an individual's response to pain and interpretation of the "meaning" of the stimulus. Anxiety is an important factor in the interpretation of pain. The number of individuals who experience pain in which there is no anxiety component is few, indeed (Refs. 1, 3, and 4).

The placebo effect is an important factor to be considered in the evaluation of pain, not only in OTC self-medication, but in all aspects of the healing arts. The psychosomatic contribution of the placebo effect in the evaluation of pain and drugs that relieve pain is a mandatory consideration in any well-designed and meaningful study. The response of an individual's pain perception to a placebo effect is independent of the cause of the pain or of the mechanism inducing the pain. It is more likely that it is discernible if pain is intense. The placebo effect is not peculiar to "neurotic" individuals, and it is not predictable (Refs. 1 and 6).

The intensity of a pain is not necessarily dependent on the severity of the lesion or the pathologic process causing it. A small aphthous ulcer beneath the tongue at the frenulum may cause marked discomfort and cause the pain to radiate into the tongue and lower jaw. On the other hand, a large circumscribed lesion on the hard palate may cause little or no discomfort. Many mouth and pharyngeal (throat) lesions cause little or no discomfort while the patient is quiet, does not talk or attempt to chew or swallow. Any of these activities may incite the pain. Discomfort may result when acidic liquids are ingested and come into contact with the lesions. On the other hand, such lesions of the mouth and throat are little affected or stimulated by

bland substances. Discomfort may also be felt when lesions are covered by exudates. Such discomfort may be relieved by removal of the exudates by using rinses, debriding agents, and in some cases astringents, or by the application of demulcents. The pain ususally recurrs when the exudate reappears.

The Panel concludes that OTC anesthetic/analgesic ingredients are useful for the treatment of the symptoms of occasional minor throat and mouth pain. A pain is usually described as either mild to moderate or severe. Moderate pain may be self-limited and require no special treatment or prior diagnosis by a physician. It is usually relieved by OTC drugs. In some cases, mild pain is referred to as a "minor irritation." Diagnosis and treatment by a physician may not be required for occasional minor irritations and minor pains. Anesthetics, therefore, are often desirable to reduce their intensity and provide relief and comfort. Individuals who must maintain normal daily activities often find these agents useful in providing comfort. The Panel emphasizes that none of the ingredients used in the oral cavity to relieve pain are curative.

The Panel concludes that the most appropriate indication for the relief of pain by OTC anesthetic/analgesic agents should state "for the temporary relief of occasional minor irritation, pain, sore throat, and sore mouth." The Panel recommends the use of the term "occasional" because recurrent or chronic pain, even though of minor intensity, may require diagnosis by a physician to determine the cause.

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c. *The physiology of taste.* Smell and taste are interrelated chemical senses. Their importance in patient acceptance of a product used in the oral cavity has been mentioned above. The receptors for taste are chemoreceptors which respond to chemical stimuli. A substance must first be dissolved to arouse a sensation of taste. It may be taken either in solution or dissolved in the saliva or mixed with moistened food or other ingredients. A solid that is placed in a perfectly dry mouth generally cannot be tasted (Refs. 1 through 4).

The anterior two-thirds of the upper surface (dorsum) of the tongue has numerous minute projections of the mucous membrane called papillae. The papillae at the edges, the tip, and the most anterior portion of the dorsum of the tongue are small, conical, cylindrical, or mushroom-shaped structures. They impart a velvety character to this part of the mucosa of the tongue. They are referred to as being filiform (threadlike) or fungiform (mushroomlike) in character, depending on their shape. The most posterior part of the tongue surface is rougher than the anterior due to the presence of papillae that are considerably larger than papillae on the anterior part of the tongue surface. These are peculiar in construction since each is surrounded by a groove or trench. The whole structure has been described as resembling a squat tower surrounded by a moat. They are, therefore, called "vallate papillae", after the Latin word "vallatus" meaning walled (Refs. 1 through 4).

Imbedded in the covering of both large or small types of papillae are groups of slender cells with hairlike processes that are packed lengthwise in bundles. The cells are the receptors of taste. The bundles are called tastebuds. Each cell receives a filament from one of the nerves of taste. The tastebuds open upon the surface of the papillae through a small pore. The ends of the cell converge toward this point where their processes become massed together. Substances in solution enter the pores and act as chemical stimuli. A few scattered tastebuds are present on the extreme posterior (pharyngeal) portion of the tongue and even in the mucosa of the epiglottis.

Four fundamental sensations of taste have been delineated: Sweet, bitter, sour, and salty. Two others are sometimes mentioned, alkaline and metallic. The various other types of tastes that are described are due to a blending of some or all of the fundamental sensations or to a combination of the latter with sensations caused by stimulation of ordinary sensory receptors of pain in the mouth that have been described above. (See part II. paragraph B.3.b. above—The physiology of pain.) Ginger, for example, is not recognized by its actual taste, that is, by stimulation of tastebuds, but by the burning sensation that results from excitation of the other sensory receptors in the mouth, such as those for warmth. Oils are unpleasant to taste, especially because of their consistency which causes a peculiar feeling due to stimulation of the receptors for touch. Acetic and other acids have a sour taste, but also give rise to a burning sensation since they act on other sensory receptors. This is confused in interpretation in the mind with the sense of taste and blended with it (Refs. 1 through 4).

Many of the finer flavors interpreted as tastes are in reality sensations of smell. Smell enters largely into the many sensations attributed to taste. For this reason, when the nose is held or the nasal mucous membrane is inflamed and the nasal passages are occluded, as by an ordinary cold, the sense of taste is blunted.

On the other hand, certain substances which are thought to be detected by smell are actually recognized by the sense of taste. Chloroform is an example of such a substance. The sweetish smell of chloroform is sensed when its vapor dissolves in the saliva reaching the tastebuds. In certain situations in which the first nerve, the olfactory nerve, which carries the sensation of smell, is injured by disease, trauma, or is paralyzed, the sensations of taste are obtunded or absent and perception of different tastes is impaired (Refs. 1 through 4).

The four fundamental taste sensations are not aroused with equal intensity over all parts of the surface of the tongue. Each type of taste sensation is served by its own type of tastebud. Taste receptors sensitive to sweetness and to saltiness are most numerous at the tip and fore part of the tongue. Those responding to sourness are found along the edges of the tongue. The tastebuds sensing bitter tastes are scattered over the back of the tongue and epiglottis. Some substances, such as sodium salicylate, have a bitter-sweet taste. When sodium salicylate is first taken into the mouth it comes in contact with the fore part of the tongue and tastes sweet, then the bitter element comes into play when the substance passes the posterior part of the tongue. Little or no sensation of taste can be aroused from the central portion of the tongue surface (Refs. 1 through 4).

The sense of taste is much less sensitive than the sense of smell. Sweetness, for example, is detected in a dilution of 1 part in 200; saltiness in dilution of 1 part in 400; sourness due to acids in a dilution of 1 part in 130,000; and bitterness, such as would be induced by quinine, by 1 part in 2,000,000 (Refs. 1 and 4).

Several nerves carry taste impulses from tastebuds. Those that subserve the tongue are the chorda tympani branch of the facial nerve and the glossopharyngeal nerve. The chorda tympani nerve supplies tastebuds over the anterior two-thirds of the tongue; the glossopharynegeal nerve supplies tastebuds over the posterior third. The fibers of the chorda tympani nerve are conveyed to the tongue in a trunk of the lingual nerve which is a branch of the mandibular division of the fifth nerve. The vagus nerve carries impulses from the extreme lower posterior portion of the tongue in the hypopharynx and from the surface of the epiglottis. The center for taste lies in the lower end of the somesthetic area of the cerebral cortex.

d. *The physiology of smell.* Smell is very closely allied to taste and has been described as "taste from a distance." In many animals, the sense of smell is incredibly acute, and a large proportion of the brain is concerned with this sense. In some species, the sense of smell is of paramount importance because smell is relied upon to warn of the approach of enemies, to guide an animal in the quest of food, and to sense direction. Even in humans, in whom the sense of smell is comparatively rudimentary, certain substances, for example, some mercaptans, can be detected in a dilution of one part in 30,000,000,000 or more parts of air (Refs. 2 and 3).

An odorous material continually emits particles of molecular size which are carried in the air to the olfactory receptors. Substances which pass readily into a vapor state or exist in a gaseous state, such as turpentine, gasoline, chlorine, and some essential oils, generally have strong ordors. Nonvolatile materials, on the other hand, such as heavy metals, are ordorless. In order to be smelled, a substance must reach the nose in a gaseous form (Refs. 2 and 3).

The mucous membrane of each lateral wall (or side wall) of the nasal cavity covers three ridges which arise from the lateral bony wall of the nasal cacity (superior, middle, and inferior turbinate or conchae). The interior of the nose is thus divided incompletely on each side into four compartments or regions, each region placed above the other. The lower three of these regions serve as air passages. They communicate with the outside via the nostrils at the front and with the pharynz at the rear. The uppermost compartment consists of a narrow cleft lying immediately beneath the anterior portion of the floor of the skull. The receptors for smell (olfactory receptors) are imbedded in a small patch of mucous membrane situated on each wall of this narrow space.This narrow space is a blind pocket from which the main air currents are excluded. Air containing the odorous particles must, therefore, be carried to the olfactory mucous membrane if an odor is to be perceived. This is done either by diffusion or by convection currents that result when the cooler inspired air meets the warmer air within the nose. When, for example, one wishes to smell a particular scent, an individual makes a quick, short sniff. The sharp inhaling of the cool outside air creates ascending convection currents which are conveyed to the inside of the blind pocket, which is the sensitive area and contains the receptors. The material does not act directly on the olfactory receptors, but must first be dissolved in a layer of fluid covering the mucous membrane. The similarity between the sense of taste and the sense of smell in this regard is of interest (Refs. 2 and 3).

There is an infinite variety of odors, and it is difficult to satisfactorily classify the different types of odors. An attempt has been made to group them under eight headings: (1) Ethereal, (2) aromatic (resinous), (3) fragrant (balsamic), (4) ambrosial, (5) garlic, (6) burning, (7) goat, and (8) foul. The blending of these various types gives rise to the different degrees of a particular odor that may be sensed. The olfactory epithelium is composed of spindle-shaped nerve cells distributed evenly among elongated cells which are purely supporting in function. Each dendrite, after emerging from between the supporting cells, divides into a tuft of some six or eight straight filaments which project a short distance beyond the epithelial surface. These pass through the perforations in the floor of the skull and enter the olfactory bulb, a primary olfactory center. Olfactory receptors adapt quite rapidly, and they soon no longer respond to some particular stimulus. It is well known that an order, though strong when first perceived, becomes imperceptible after a short period of time. This phenomenon of adaptation also observed among other types of receptors is not due to fatigue. The receptors still remain active because when some particular odor is no longer perceived another odor is readily perceived when the subject is exposed to it. In some individuals there is an inability to smell certain odors at all, even though there is no impairment of the olfactory sense. For example, hydrocyanic gas, which is a poison used for the extermination of vermin, has an odor of bitter almonds which is strongly perceived by some individuals and quite odorless to a small segment of the population (Refs. 2 and 3).

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e. *Absorption through mucous membranes.* Oral health care products are applied topically to the mucous membranes of the mouth, or throat, or both to exert their therapeutic effect. They are usually applied in the form of rinses, gargles, sprays, swabs, drops, lozenges, or powders (Ref. 1) Powders ordinarily are used on the teeth; occasionally, they are used on the mucus membranes. Ointments are seldom used in the mouth and throat. When they are used, they are applied with the finger or with an applicator. With the exception of lozenges and powders, the duration of contact of most preparations, particularly those formulated in aqueous, nonviscous media, is relatively brief, unless liquid preparations are formulated in solvents that adhere to the mucous membranes. Liquid preparations mix with the saliva and are diluted and swallowed. Some drugs combine with cell proteins and exert a therapeutic effect as long as the combination persists. Lozenges permit a more prolonged contact than rinses, sprays, or swabs and are, as a rule, more effective (Ref. 1).

Many drugs are absorbed readily from the mucous membranes of the mouth and throat and promptly pass into the systemic circulation (Refs. 1, 2, and 3). Although drugs used in the oral cavity are not intended to be swallowed, invariably all or a portion of a dose passes into the stomach or intestinal tract where it may undergo complete

absorption. Lozenges and powders ultimately are swallowed, and most of their components are absorbed either in the stomach or in the intestinal tract (Refs. 3, 4, and 5).

There may be considerable absorption of oral health care preparations from the mucous membranes of the mouth even though the contact is brief. The entire gastrointestinal tract, commencing at the oral cavity including the lips and ending in the rectum, is lined by a sheath of closely packed epithelial cells that form a continuous hollow tube from the mouth to the rectum. When a substance is absorbed it must first enter epithelial cells and be transferred across them to reach the fluid in the lamina propria beneath the cells and finally pass into the blood and lymph and into the capillaries. A substance may also pass into the lymph and then into the blood. The cell membrane is essentialy a double layer of lipid molecules between the which is stretched a layer of proteins and polypeptides. The lipid materials are oriented both inward from the interior of the cell surface and outward from the exterior of the cell membrane. The cell membrane is a continuous phase. It is perforated by minute pores through which hydrophilic molecules, including water itself, may pass as well as other small molecules such as urea, glycerol, and small ions such as chloride and potassium. Certain drugs readily pass through the mucous membranes; others do so with difficulty. Nonpolar substances can pass with ease, usually by simple diffusion. This selectivity is apparent rather than actual and is due to physical, chemical, and biologic factors involving the drug, the cell membrane, or both. Passage of a drug through membranes, often referred to as transport, is accompanied by processes which are either active or passive. Passive transport, such as simple diffusion, requires no expenditure of energy. On the other hand, energy is necessary for active transport since the substances are moved against a chemical or electrical gardient. For example, during the process of restitution of the nerve membrane to its normal resting (polarized) state after passage of a nerve impulse along a nerve fiber, the sodium ions must be forced out of the interior of an axon from an area of low concentration to the exterior where the concentration is higher. Energy is required to accomplish this movement of sodium ions from an area of low density to one of higher density. The chief mechanisms of drug transfer across the membranes are described below (Refs. 3, 4, and 5).

Diffusion through the lipid phase of the cell membrane varies with each drug. Nonpolar lipophobic, hydrophilic substances dissolve in the cell membrane and cross by diffusion. Nonlipid-soluble substances that are highly ionized do not readily traverse the lipid membranes of cells. Ions cannot penetrate cell membranes since they are not lipid soluble. Lipid-soluble polar substances readily penetrate the cell membrane by diffusion. The ease of passage depends upon the lipid-water partition coeffient of a drug. The partition of a substance between a lipid and an equal volume of water is important. The greater the amount of a substance that passes from an aqueous phase of a solution when shaken with an oily substance, the greater the partition coefficient and the greater its ease of penetration through cell membranes. Penetration of a polar substance is favored by a high lipid-water partition coefficient. Certain substances are polar in an acid medium and nonpolar in an alkaline medium or vice versa. In the presence of weak acids and bases, penetration is favored by the presence of a high proportion of lipid-soluble, nonionized polar form of a drug (Refs. 3, 4, and 5).

Intravenous injection of a drug that is poorly ionized is followed by a rapid accumulation of a drug in the capillary-rich organs, such as the brain, heart, liver, lungs, etc., since penetration occurs readily through the membranes. The reverse is true in the case of highly ionized drugs. For instance, quaternary ammonium compounds, which as a rule are highly ionized, will not penetrate the blood-brain barrier due to their poor lipophilic qualities. If the pH on the two sides of a cell membrane is different, the distribution of a weak electrolyte on each side of the membrane will also be different. Only the un-ionized form is permeable and will penetrate until the concentration on each side of the membrane is the same and an equilibrium is attained. The amount of ionized form present will depend on the pH of the medium in which it is dispersed. This is the case if the ionized form and the total concentration is less on the acidic lumen side of the gastrointestinal tract than in the neutral bloodstream. A weak acid present in the lumen of the bowel is rapidly absorbed and passes into the blood, whereas a weak base present in the bloodstream rapidly leaves the bloodstream and is excreted into the lumen of the bowel. It has been shown that a weak acid, such as aspirin, which is poorly ionized in the stomach, is rapidly absorbed from the stomach. On the other hand, ephedrine, which is a weak base and readily forms a salt with the hydrocholoric acid of the stomach and is highly ionized, is not absorbed (Refs. 3, 4, and 5).

A factor which also influences the distribution of drugs across membranes is their degree of protein binding. For example, aspirin is more concentrated in blood plasma than in tissue fluids because of the greater protein content of the plasma. One of the reasons why few drugs distribute evenly between the extracellular and intracellular fluid is that there are differences in protein content in the two media, and the protein-bound fraction is unable to traverse the cell membrane. There are also differences in the nature of proteins in the two media and in the affinity of a drug for the different types of protein which also account for the differences in concentration (Refs. 3, 4, and 5).

In summary then, the following factors are involved in the transport of drugs across membranes. (1) *The filtration through pores.* Hydrophilic, lipid-insoluble substances cross membranes through water-filled pores where there is a hydrostatic or osmotic pressure difference across the membrane. Water flows in bulk through the membrane pores carrying with it small molecules whose dimensions permit passage through the pores. The evidence that supports this is obtained by measuring diffusion rates. The passage of most hydrophilic substances depends upon their molecular size or molecular radius. Pores in the membrane may allow the penetration of molecules of small size, such as those of urea, into cells. Larger molescules not permeable through pores may pass across the capillary wall into the bloodstream. For example, the water that filters across the glomerular capillary membrane of the kidney carries with it the solutes of plasma (Ref. 3).

(2) *Facilitated diffusion.* Facilitated diffusion is dependent upon the concentration gradient but does not obey simple diffusion laws. An example of facilitated diffusion is the penetration of sugars through the red cell membrane. There is evidence indicating that these are dissolved in water and inward passage thereby is facilitated (Ref. 3).

(3) *Active transport mechanisms.* These are not dependent upon diffusion and may even resist it. Sodium ions present in a nerve after an inpluse has moved along its course must be extruded to the resting exterior to restore the cell membrane to its normal resting state. These ions must be pumped out of the interior of the fiber, where the concentration is low, to the exterior, and into the extracellular fluid

where the concentration is much greater. This involves a mechanism similar to pumping water up a hill. A characteristic feature is that it can be blocked by metabolic inhibitors which interfere with enzyme activity. It can also be inhibited competitively by other substances which utilize the same type of transport mechanisms. Active transport often shows specificity for particular types of chemical structures. The transport mechanism can become saturated when the concentration of the substances exceeds a certain limit and ceases. Other examples of such active transport involving metabolic energy in addition to the extrusion of sodium ions by nerve or muscle are the secretion of hydrogen ions by the stomach, the reabsorption of glucose by the tubules of the kidney, and the secretion of penicillin by the tubules of the kidney. Active transport is often visualized in terms of carrier mechanisms. The carrier may itself be an ion with a charge opposite to that of the ion to be transported. Specific carriers are responsible for the absorption of glucose and amino acids by the intestines. There are at least two carrier mechanisms in the kidney. One is for the secretion of acid compounds, such as penicillin and phenol; the other is for secretion of basic compounds containing the quaternary ammonium group or amines. Both the acidic and the basic mechanisms are competitive, so that the transport of one substance can be blocked by an excess of another substance in the same group (Ref. 3).

(4) *Pinocytosis.* This is a type of transport mechanism that involves the movement of substances, of large aggregates of molecules, or of large particles across cell membranes such as are found in emulsions and suspensions. It is an entirely different type of transport mechanism from all the others encountered. The cells engulf small droplets of an extracellular fluid. Pinocytosis can be observed in ameobae and in tissue culture cells. This probably occurs in mammals, also. Its role is poorly understood, but it has been suggested that it might be responsible for the uptake (absorption) of protein in the gastrointestinal tract of infants or for the absorption of liquid droplets in the alveoli of the lungs. It is doubtful that it plays any role in the absorption of drugs in the oral cavity or pharynx (Ref. 3).

Bioavailability of a drug is a term used to define the rate and extent to which a drug reaches the site of action after administration. In its most general sense, bioavailability refers to all methods of administration of drugs, e.g., orally, subcutaneously, intravenously, etc., and to any site of action. In practice, the term is most frequently applied to the oral administration of drugs and to the determination of blood levels after administration (Refs. 3, 4, and 5).

Absorption of drugs through the lining of the mucous membranes of the mouth and throat is similar to that of the gastrointestinal tract. These membranes behave as lipoidal barriers for the passage of drugs. The rate of absorption is determined by the proportion of nonionized drug present at the pH of the mouth, or throat, which is about 6, and by the drug's lipid solubility. Nonionizable lipid-soluble compounds such as nitroglycerin and various steroids are readily absorbed through the oral mucosa. The buccal route is especially advantageous for the administration of certain drugs which are acid-labile and are rapidly metabolized by the liver, since the acidic stomach and the portal circulation which carriers them to the liver are bypassed. High molcular weight compounds such as proteins, for example insulin, are not appreciably absorbed and may be largely destroyed by digestive processes in the mouth. Certain workers (Ref. 3) have developed a buccal absorption test in which the subject's mouth is rinsed for 5 minutes with a buffered drug solution which is then expelled and analyzed. They found that absorption could be entirely accounted for by the lipid solubility of the undissociated molecules of a drug. For example, at pH 9.2 over 70 percent of a solution of amphetamine was absorbed, whereas, at pH 6, none was absorbed. Absorption increased linearly with the concentration of the drug. There was no selectivity in the absorption of optical isomers of amphetamine, suggesting that absorption occurs by diffusion rather than by active transport (Ref. 3).

It was formerly believed that only a few exceptional substances, such as alcohol, were absorbed from the stomach. It is now known that drugs which are weak acids are absorbed to an appreciable extent from the stomach. Aspirin is practically undissociated at a pH 1 and, therefore, absorbed from the stomach. However, it is not readily absorbed from the mouth. If the gastric contents are made alkaline with sodium bicarbonate, the aspirin is not absorbed. Bases are generally not absorbed from the stomach because they form salts with the hydrochloric acid and are ionized.

Cutaneous barriers are more easily traversed by bases of drugs such as local anesthetics, etc., than by their salts. The penetration of bases through cutaneous barriers, however, appears to be limited, and not comparable to that occurring through the epithelial cells of the mucosa in either quantity or rapidity. Salts of most drugs are poorly absorbed or not absorbed from the skin (Ref. 2). Absorption of local anesthetics from the mucous membranes may occur rapidly (Ref. 6). Resulting blood levels simulate those following slow intravenous injection. The resulting blood level depends upon the area exposed (the anatomic site), concentration, and the total quantity applied. Furthermore, salts of local anesthetic drugs are as readily absorbed as the bases by the mucous membranes and cause a blockade. The anesthetic effect on the mucous membranes persists for some time after application, unlike the cutaneous responses, which promptly disappear after the drug is wiped from the surface. Absorption from the mucous membranes varies with the type of mucous membrane. A product may act twice as long on the conjunctive as it does on the tip of the tongue (Ref. 7).

The dissimilarity in absorption of drugs from the skin and the mucous membranes can be explained by histologic differences of these two types of epithelial coverings. Epithelial cells differ from each other in having an inherent tendency to make extensive mutual contact by means of small branches without cytoplasmic continuity. This characteristic has been referred to by Farquhar and Palade (Ref. 2) as the macular adherence. The epidermis varies from 0.7 to 0.2 mm in thickness, but is entirely devoid of blood vessels. Presumably, it is nourished by capillaries in the underlying connective tissue. The tissue fluids pass from the capillaries into an extensive system of extracellular channels and into the malpighian layers by simple diffusion (Ref. 2).

The mucosal tissues differ from cutaneous epithelium in a number of ways. In the mucosa there is no apparent separation of the epithelium from the corium except for a subepithelial membrane. Mucous membranes are more permeable than skin because they have no cornified layer to form a uniform barrier. Recent studies have revealed the presence of innumerable fingerlike protrusions from the mucosal cells that interdigitate with similar structures of adjacent cells. This results in a substantial increase in the area of the cell membrane surface of the superficial oral mucosa. A greatly enlarged absorbing surface facilitates drug penetration. The projection of these

basal cell processes into the corium and the absence of capillary basement membrane likewise favor rapid absorption of drugs from the mucosa. These observations explain, to a great extent, the greater degree of absorption of drugs from the mucous membranes than from the skin (Ref. 2).

Studies on the absorption of drugs from the oral mucosa indicate that diffusion plays a dominant role in absorption and that the lipid-water solubility coefficients are less important considerations. Whether the mucus and saliva significantly enhance absorption from the mucous membranes by acting as a spreading factor has not been established. Likewise, the pH of these surfaces may influence absorption of drugs since mucus and saliva may favor liberation of the base from the salts. The base is the active form, and the form that penetrates the mucous membrane. The rapidity of absorption of local anesthetics from the mucous membrane varies with the mucous surface studied. Peak levels of local anesthetics are attained most quickly after application to the mucous membranes of the tracheobronchial tree, less quickly after the anesthetics are applied to the mucosa of the mouth and throat, and least quickly after gastric and esophageal instillation. Blood levels may rise quickly after instillation of a drug in the posterior urethra, particularly if the surface has been traumatized by instrumentation. No significant absorption occurs from the bladder. No significant quantities are absorbed from the unbroken skin (Refs. 2, 6, and 7).

Vasoconstrictors added to local anesthetics injected perineurally retard absorption. They may not influence blood levels when combined with drugs used topically. Clinicians who use topical anesthetics regularly realize that reactions occur more often after topical application than after perineural injection. The occasional user, however, is often not fully aware of the hazards of topical application and is the one who most often encounters difficulty. Some of these drugs are potent and cause severe and often fatal reactions when they are absorbed from the mucous membranes. The Panel therefore has placed certain of these in Category II from the standpoint of safety (Refs. 6 and 7).

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4. *Symptoms for which OTC oral health care ingredients are used in the mouth and throat*—a. *Sore throat.* "Sore throat" is a symptom with many manifestations and with numerous causes. The term generally denotes pain (particularly on swallowing), discomfort, burning, or a scratchy sensation of the mucous membranes of the oropharynx or hypopharynx or both. A person having the symptom and describing it to others may convey as many impressions of what is being experienced as the number of persons to whom the symptom is described. Since the term is a general one and nonspecific, various adjectives are used to attempt to define it more clearly or describe it more accurately. Such adjectives as "mild," "minor," or "severe" are often used to describe the degree of discomfort. Such terms as "minor throat irritations" and "throat irritations" are likewise used to describe a sore throat (Refs. 1 through 4).

Sore throat is, in most cases, a manifestation of some systemic, infectious, or moninfectious disease. The Panel finds that many currently marketed oral health care products with sore throat claims are related to the common cold. The Panel recognizes the accepted use of these products by the consumer for treating cold symptoms. However, sore throat may also herald the onset of a serious, possibly fatal disease. Various viral diseases, such as measles, chickenpox, smallpox, and poliomyelitis, often begin with symptoms of the common cold, influenza, or incipient pneumonia, and are often accompanied by rhinitis (runny nose), cough, nasal congestion, fever, and other symptoms. Sore throat may be a symptom of serious diseases caused by bacteria, such as diptheria, scarlet fever, Vincent's angina, oral gonorrhea, or diseases caused by other organisms, such as secondary syphilis. It may be an early manifestation of aplastic anemia, agranulocytosis, or acute leukemia. Sore throat may also be due to local causes, such as swallowing irritating foods or drugs or an accumulation of thick viscous secretions from nasal or pharyngeal infections (postnasal drip). It may be due to fungal infection, such as candidiasis, resulting from use of topical antibiotics. it may also be due to the inhalation of irritating fumes, such as smoke, of noxious gases such as chlorine, or to the ingestion of concentrated solutions of caustic chemicals. Sore throat due to streptococcal infections may be followed by rheumatic fever or acute glomerulo nephritis. The Panel emphasizes that sore throat, "mild" as it may be, may often be a symptom of a condition which is amenable neither to self-diagnosis nor to self-treatment (Refs. 1 through 6).

The severity of the discomfort caused by a sore throat often depends upon the psychological response of the individual to the condition and its implication, particularly in reference to an impending illness. A sore throat developing on the first day of a vacation may have a different psychological impact than one developing at the end of the vacation. Such an individual is usually the one who resorts to self-diagnosis and self-treatment to obtain a "quick cure."

The cause, the extent, and the type of process causing the sore throat are important considerations. A slight reddening of the pharyngeal membrane may cause a "scratching" or a burning sensation in some persons and no symptoms in others. A localized infection in the oropharynx or hypopharynx or both may often be symptomless though this is rare. A pharynx that appears fiery and red may cause only a minor discomfort in some individuals and little or no pain, while it may cause severe pain in others. The Panel emphasizes that the factors involved in causing the sore throat are often of more importance than the degree of discomfort experienced. A slightly infected throat may be accompanied by runny nose, runny eyes (tearing), sneezing, cough, muscle aches, pain, fever, and gastrointestinal disturbances indicative of some type of systemic disease, usually a viral infection and, in many cases, of the "common cold." In certain cases of sore throat, particularly those due to organisms such as *Streptococcus pyogenes*, patches of exudate are

scattered over the pharyngeal mucosa. These discrete individual areas are painful in some persons and painless in others. An inflammatory process characterized by diffuse reddening of the mucous membranes, sometimes with an edematous appearance, may be more than a superficial process in the mucosa of the pharynx. Close examination often reveals that it extends into the deeper structures of the pharynx and involves the submucosal structures or superficial layers of muscles, the anterior and posterior pillars, or the muscles of the posterior pharyngeal wall causing marked discomfort on swallowing. The pain may even be referred into the nasopharynx to the areas of the Eustachian tubes, where it may cause earache. In cases in which the tonsils have been removed, an inflammatory process with or without exudate may be present in the tonsillar fossa and cause discomfort and pain (Refs. 1 through 6).

Sore throat may be due to acutely or chronically inflamed tonsils. In some cases, the process may proceed to abscess formation. Peritonsillar abscesses cause considerable pain and discomfort and often require surgical intervention. On rare occasions, the enlargement of one tonsil, accompanied by pain, has been due to a tumorlike growth. Since the tonsils are composed of lymphoid tissue, they may become enlarged and cause varying degrees of discomfort in cases of leukemia, Hodgkin's disease, and other types of lymphomas. Exudate from infections in the paranasal sinuses passing from the nasopharynx into the oropharynx or hypopharynx may cause sore throat by acting as a foreign body. The discomfort disappears when the exudate is removed (Refs. 1 through 6).

Sore throat may be due to trauma from foreign bodies such as glass, fish bones, or sharp pieces of bone that scratch the mucosa during swallowing when ingested with food. It may follow surgical procedures, such as tonsillectomy, biopsy, intubation, insertion of pharyngeal tubes, nasogastric airways, mouth gags, dental manipulations when the mouth is opened too widely from use of mouth gags, etc.

The Panel has gone to some length to enumerate these numerous causes and manifestations of sore throat to emphasize that sore throat is merely a symptom. In most cases, it is due to a self-limiting benign condition that recedes without treatment. In other cases, it cannot be ignored and medical advice must be sought. The Panel recommends that the term "sore throat" be used without qualification, as far as indications are concerned, as to its etiology and severity. However, it should be qualified by adequate warnings in the labeling.

Sore throat due to trauma is self-limiting and requires time for the healing process to occur. Anesthetic/analgesic-containing oral health care products may be helpful in these cases. Sore throat due to the accumulation of exudates may respond to agents that liquefy the exudate, or act as debriding agents and remove the exudates from the muccous membranes. Mucoid exudates that collect and cause discomfort can be removed by using sprays, or by irrigation with alkaline solutions. Pain can be relieved by applying topical anesthetics/analgesics in the form of sprays or in the form of lozenges which provide a continuous coating over an inflamed surface. The effectiveness of gargles in relieving discomfort due to sore throat is questionable because during the act of gargling the anterior pillars of the fauces approximate, the tongue rises, and the walls of the pharynx approximate. The action of the air stream prevents the access of fluid to the posterior pharyngeal wall. The various types of ingredients mentioned above for the relief of sore throat will be discussed individually later in this document.

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b. *Sore mouth.* "Sore mouth" is a symptom which has many causes and which exhibits many manifestations. The term is used in this document to denote discomfort, a burning or scratchy sensation, or pain of the mucous membranes and other structures in the oral cavity. It may be generalized or localized. When localized it may involve the hard palate, soft palate, tongue, sublingual structures, frenulum, the buccal mucous membranes and the membranes on the inner side of the lip and the gingivae (gums). The Panel is not considering symptoms involving the teeth, periodontal structure, and gums since these have been reviewed by the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products.

The causes of sore mouth are numerous and varied and may be of a serious nature. Most of them are not amenable to self-diagnosis and self-treatment. As is the case with sore throat, sore mouth may be due to local causes or it may be a manifestation of a serious systemic disease. Sore mouth may be caused by trauma, burns, infections, neoplasia, metabolic disorders, developmental disorders, systemic diseases, and drug reactions. In addition, recurrent oral ulceration may occur including minor aphthous ulcer, major aphthous ulcer, and herpetiform ulcer (Ref. 1). The various causes of sore mouth are discussed in detail below to illustrate that few can be treated with OTC products. The following is an enumeration and discussion of the more obvious causes of sore mouth.

Trauma is one of the most common causes of sore mouth. It may result from injury from toothbrushing, from dentures, of from lacerations or abrasions from eating hard foods. Trauma may also be due to accidents from blunt force and other causes. The Panel is considering only minor trauma in this discussion and is excluding major trauma which occurs as a result of accidents in which there may be soft tissue injury and damage to teeth and jaws.

Trauma from the above causes may be mainfested by traumatic ulcers of the oral mucosa. Typically, these ulcers are linear with a gray, fibrinous exudate on the surface. Chronic ulcers of this type may show a considerable amount of induration of the surrounding tissue and may simulate squamous cell carcinoma. They may be difficult to distinguish from the latter on examination. Treatment with OTC products is usually not necessary since healing will occur following removal of the source of the trauma, e.g., dentures. A physician or dentist should be consulted when any ulcer persists for longer than 1 week.

Sore mouth may be due to chemical burns of the oral mucosa. Many chemicals and drugs may be caustic and cause burns in the mouth. Acids, antiseptics, kerosene, and numerous household substances may be ingested accidently and cause burns. There is cogulation of the surface epithelium, creating a necrotic slough with a white appearance. Healing usually occurs spontaneously without the use of drugs within 7 to 10 days. Some drugs may also cause burns. Aspirin (Acetylsalicyclic acid), phenol, trichloracetic acid, silver nitrate, and sodium perborate are examples of some that may do so.

Thermal burns of the oral mucosa are also a common cause of sore mouth. these arise from the accidental ingestion of hot foods and beverages. The anterior third of the tongue and the palate are the most common burn sites. Most of these burns are usually of little consequence and of relatively short duration. Burns may also result from inhaling flames, smoke, chemical fumes, and irritating gases, and may cause slough of the oral and pharyngeal mucosa. Fumes from ammonia, hydrochloric acid, chlorine, and other industrial chemicals may also cause burns of a similar type.

Sore mouth may be due to infections. Bacterial, viral, and fungal infections can occur in the oral cavity as well as in the throat (Ref. 2). Few of these are amenable to self-diagnosis and treatment with OTC oral health care products. The majority require diagnosis and treatment by a physician or dentist. Such infections are as follows:

(1) *Acute necrotizing ulcerative gingivitis (ANUG or NUG) (Vincent's infection).* This is one of the most common infections of the oral cavity and throat. It is characterized by the presence of interdental ulcers covered with a grayish exudate which bleed easily. Tenderness, malodor, fever, and malaise may be associated with the infection (Refs. 3, 4, and 5). Less commonly, a gingival flap overlying an erupting tooth, the palatal and buccal mucosa, or the oropharynx (Vincent's angina) may be affected. Antibiotics are usually necessary to relieve symptoms or eradicate the infections. The services of a dentist or physician are necessary for diagnosis and treatment.

(2) *Gonococcal lesions of the mouth.* These occur following orogenital contact (Ref. 6). The diagnosis and appropriate treatment can only be made by a physician.

(3) *Tuberculous lesions.* These are usually secondary to pulmonary tuberculosis, although it is possible that they can be of primary origin (Ref. 7). This type of infection is characterized by a chronic ulcer of the tongue or buccal mucosa. Self-diagnosis and self-treatment of such lesions is obviously not possible, and a physician must be consulted.

(4) *Syphilis.* Syphilis is a systemic disease caused by *Treponema pallidum.* It is most frequently acquired through sexual intercourse. An ulcer or primary lesion, known as a chancre, appears at the portal of entry. Syphilis is a systemic disease and occurs in three stages. Primary, secondary, and tertiary syphilitic lesions can occur in the oral cavity and result in a sore mouth (Ref. 8).

About 6 weeks after the chancre first appears, the secondary stage becomes manifest. It is characterized by a sore throat, and possibly sore mouth due to mucous patches. Generalized lymph node enlargement and skin rashes may also be present. The mucous patches are gray and translucent and are highly infective. Split papules at the angles of the mouth may occur that resemble angular cheilitis.

The tertiary stage of syphilis is characterized by the presence of the gumma which may occur intraorally as well as on other parts of the body. A gumma is usually characterized by a midline, punched-out lesion of the palate or tongue. Obviously this disease is not amenable to self-diagnosis and treatment with OTC oral health care products.

(5) *Primary herpetic stomatitis.* This disease is due to herpes simplex virus and is characterized by blisters on the cheeks, tongue, palate, floor of the mouth, and gingivae. The gingivae are frequently bright red, swollen, and bleed easily. These blisters rupture, leaving grayish-white ulcers with reddish borders which are painful. The infection is accompanied by fever. It is commonly seen in young children, and they may refuse to eat and drink because of pain. This type of infection requires expert care rendered by a dentist or physician.

(6) *Secondary or recurrent herpetic infections.* These infections are also due to herpes simplex virus. They are characterized by ulcerations which most commonly involve the hard palate. They may also appear on the lips. They cause discomfort characterized by a burning sensation or pain.

(7) *Herpangina.* This type of infection is caused by the Coxsackie group A virus. It is a relatively common disease of young children which occurs in mild epidemics towards the end of summer. Fever, intestinal upset, headache, and sore throat usually precede the appearance of tiny vesicles on the soft palate and pharynx. These ruptures leaving small ulcers with erythematous borders which also cause a burning sensation or pain. This type of infection requires professional attention and should be treated by a physician or dentist.

(8) *Candidiasis.* This is a fungal infection which is one of the most common afflictions of the oral cavity (Ref. 9). There are various strains of candida, but *Candida albicans* is still the most common causative organism of this type of infection (Ref. 10)

Infections due to candida may be either acute or chronic. The acute forms include acute pseudomembranous candidiasis (thrush) and acute atrophic candidiasis (Ref. 11). The chronic forms include chronic hyperplastic candidiasis and chronic atrophic candidiasis. Oral candidiasis is characterized by the presence of white plaques, or diffuse erythematous areas in the mouth. Infections due to candida can only be diagnosed by a physician or dentist using laboratory methods. Obviously candidal infections are not amenable to self-treatment with OTC oral health care products.

Angular cheilitis is an infection associated with denture stomatitis. Cohen (Ref. 9) states that the lesions of angular cheilitis are frequently infected by *Candida albicans* or coagulase-positive *Staphylococcus aureus.* In some cases both candida and staphylococcus are involved. The infection is characterized by fissures at the angles of the mouth that often heal without local medication. Obviously, the aformentioned infections are not amenable to self-treatment with OTC oral health care products.

There are several types of recurrent oral ulcerations. Among these are aphthous stomatitis, also know as recurrent aphthous stomatitis (RAS), and Behcet's syndrome. Aphthous stomatitis is not an uncommon cause of sore mouth. Lehner has applied the term "recurrent oral ulceration" to three varieties of recurrent oral ulcers (Ref. 1): minor aphthous ulcer (Recurrent aphthae of Mikulicz and Kummel, 1896) (Ref. 12), major aphthous ulcer (Periadenitis mucosa necrotica recurrens) (Ref. 13), and herpetiform ulcers (Ref. 14).

The minor and major aphthous ulcers are the most common of the three varieties. Both the minor and major aphthous ulcers are found in aphthous stomatitis and Behcet's syndrome (Ref. 15). The present evidence favors an immunological cause for both RAS and Behcet's syndrome.

These ulcerations result in various degrees of ulcers depending on their

location and extent in the mouth. They require diagnosis and treatment by a physician or dentist and are not amenable to OTC therapy.

Sore mouth may be an early symptom of oral cancer or other malignant lesions. Malignant lesions may make their first appearance as seemingly innocuous ulcerations or plaques such as leukoplakia. The lesion persists and enlarges. It may or may not be painful. Any ulceration or growth in the mouth, however small, that persists for more than several weeks should be examined by a dentist or physician. Many oral cancers are discovered by dentists. The Panel emphasizes that sore mouth may denote the presence of a serious lesion.

Anatomic aberrations due to developmental defects can result in sore mouth. Fissured or plicated tongue and erythema migrans (geographic tongue) can result in mouth soreness. Diagnosis and treatment of the disorder require the advice of a dentist or physician knowledgeable about oral diseases. Self-treatment with OTC products is not feasible.

Sore mouth may be a manifestation of certain blood dyscrasias. Blood dyscrasias include certain types of anemias (e.g., pernicious and aplastic anemia), the leukemias, agranulocytosis, and other leukopenias. These diseases are characterized by white cell deficiency and lower the resistance of the tissues and predispose to infections of the mouth which cause pain and soreness. In some anemias there is a loss of papillae on the dorsum of the tongue which induces soreness on the tongue. Lesions caused by these diseases can only be recognized and treated by a physician knowledgeable in hematology. None is amenable to self-treatment with OTC products.

Some systemic diseases are accompanied by lesions in the oral cavity that cause soreness or pain. Eruptive fevers, such as scarlet fever, smallpox, measles, and chicken pox, may cause oral lesions which cause sore mouth. The vesiculobullous diseases and certain generalized skin diseases, such as lichen planus, may also cause oral ulcers and the patient may complain of sore mouth. Obviously these diseases are not amenable to self-diagnosis, and the oral lesions are not amenable to self-treatment with OTC products.

Metabolic disorders such as chronic renal failure are characterized in their advanced stages by a rising blood urea and the clinical picture of uremia. Release of urea into the mouth via the saliva may cause stomatitis accompanied by sore mouth.

Diabetic patients are prone to develop sore mouth due to stomatitis because of the lowered resistance to infection. Self-treatment with OTC products may delay diagnosis, and the disease may progress to a serious state.

Deficiencies of certain vitamins such as vitamins C and B_{12}, minerals, and trace metals can result in sore mouth. Obviously none of these is amenable to self-diagnosis or treatment with OTC oral health care products.

Some drugs may induce systemic hypersensitivity reactions which are manifested by lesions in the mouth (stomatitis medicamentosa) and cause soreness in most patients. Some drugs used locally in the mouth can cause contact allergy (stomatitis venenata). Patients with stomatitis medicamentosa and stomatitis venenata usually complain of sore mouth. Such lesions are not amenable to self-diagnosis and treatment with OTC products.

It is obvious from the foregoing discussion of conditions that cause sore mouth that many are of a serious nature and rare and that, when compared to sore throat, the number that can be self-diagnosed and treated with OTC products is relatively small. Yet, sore mouth is common and occurs as frequently as if not more often than sore throat. In most cases it is due to minor ulcerations and other benign conditions that are self-limited and last only short periods of time. Therefore, there is ample justification for using OTC oral health care products for treating sore mouth. The anesthetics/analgesics offer temporary relief of pain and can be used as adjuncts to therapeutic regimens outlined by physicians in conditions where professional care is necessary. Debriding agents and expectorants may aid in the relief of soreness by facilitating removal of exudates which often coat these lesions. Demulcents and astringents may aid in relief of discomfort by providing a protective coating over a lesion, thereby reducing irritation due to external stimuli. As is the case with sore thorat, there is little if any evidence from controlled studies that the topical application of antiseptics is of any benefit in relieving these symptoms.

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c. *Cough.* Cough is a protective mechanism designed primarily to free the upper and lower respiratory tracts of foreign objects, secretions, pus, and other materials. Ingredients that suppress cough are called antitussives. Cough and antitussives have been considered by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products because antitussives generally act systemically and are administered orally, parenterally, and by other routes. However, receptors that incite cough are found in the hypopharynx (laryngopharynx), and the possibility that they can be suppressed by topically acting drugs should be given consideration. The Panel, therefore, is including a discussion of cough and its suppression since there is a possibility that some of the ingredients evaluated may depress the pharyngeal receptors

and act as antitussives by a local action (Refs. 1, 2, and 3).

Coughing is produced by the rapid expulsion of air from the lung at high velocity following a deep inspiration and immediate voluntary closure of the glottis which is, in turn, followed by a sudden opening of the glottis and by a rapid forced expiration. Sounds of varying intensity and pitch are produced, depending upon the rate of flow of the exhaled gas, the total volume expelled, the tension on the vocal cords, and other factors that are responsible for the vibrations of the air waves that are interpreted as sound. Impulses that initiate the cough reflex may arise from many areas both within and without the respiratory tract (Refs. 1, 2, and 3).

Normally, coughing is produced by stimulation of sensory receptors of the glossopharyngeal and vagus nerves distributed in the mucous membranes of the lower pharynx, larynx, trachea, lung, pleura, and other areas of the respiratory tract. Stimulation of these receptors can be initiated by inflammatory processes, edema, chemical irritation, the presence of retained secretions, or foreign material blocking the upper and lower airways. Localized narrowing of the air passages may play an important role in stimulating receptors that induce the cough reflex. The act of coughing is coordinated by a group of neurons in the medulla called the cough center. These neurons can be depressed by certain drugs, particularly the central nervous system depressants such as the narcotics. Their activity can also be enhanced by certain chemicals and toxins, e.g., pertussis. Cough, in most instances, is under a considerable degree of voluntary control and can be initiated and self-suppressed at will within certain limits. Cough is active as a protective mechanism in healthy individuals, as well as those who are ill, for clearing the airway of any obstructing mucous secretions, or inhaled or aspirated foreign material.

The majority of medications that suppress coughing exert their effects systemically, although it is possible that some medications act locally as topical anesthetics, or by reducing inflammation or by decreasing edema. The Panel finds that the instances where this occurs are relatively uncommon. Preparations acting systemically are administered by mouth in the form of tablets, syrups, elixirs, or lozenges. Since the lower portion of the oropharynx and the hypopharynx are supplied by the ninth (glossopharyngeal) and tenth (vagus) nerves, it is possible for stimulation in these areas to induce cough. Cough originating by such local stimulation can be suppressed by topically acting agents such as anesthetics, decongestants, or anti-inflammatory agents. These can be administered topically in the form of lozenges or sprays. As far as this Panel is concerned, their action is local and not systemic. The Panel believes, however, that in the majority of instances stimuli that incite cough are widespread in the respiratory tract and only respond to systemically acting antitussives (Refs. 1 and 3).

Cough is frequently the apparent symptom of a wide variety of pathologic conditions, ranging from mild, self-limiting conditions to a serious and even fatal illness. In many cases, it can be tiring and debilitating, and its suppression is desirable. However, the cough reflex should not be suppressed indiscriminately, because it is important in preserving the function of the lung by maintaining an open airway (Refs. 3 and 4).

The "irritative cough" associated with self-limiting pharyngeal infections is usually viral in origin. It may also follow the inhalation of irritant gases, smoke, or dusts. The manifestations of these conditions are usually associated with a dry, hacking, nonproductive cough in which no sputum is expectorated. This type of cough lends itself to rational self-medication with systemically acting OTC preparations and does not ordinarily respond to products that act locally. On the other hand, secretions from "postnasal drip" exudates from inflammatory conditions in the nose and throat may incite cough receptors in an already irritated or inflamed throat and induce cough. The removal of these secretions temporarily relieves the cough. OTC preparations that facilitate removal of these secretions may relieve this type of cough. Drugs, such as narcotics and dextromethorphan that are systemically acting antitussives, exert no significant local effect and do not come under the purview of this Panel.

Any cough which becomes progressively worse after 7 days should be investigated by a physician to exclude the presence of an underlying, potentially serious, respiratory disease (Refs. 1 through 4).

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5. *Dosage forms of oral health care products.* All the ingredients reviewed by the Panel are applied to the surface of the mucous membranes of the mouth and throat to achieve their therapeutic effects by means of surface or superficial penetration. The therapeutic effect is a local one due to direct action on the structures beneath the mucous membrances. Since mucous membranes are effective absorbing surface, systemic actions frequently develop when drugs are applied topically to their surfaces. The topical route is often utilized to obtain systemic effects. The quantity of and rapidity of absorption of a particular drug through a mucous membrane may vary widely in different areas of the body. Absorption through the mucosa of the mouth and pharynx occurs readily. Pathologic changes in the mucous membranes may impede absorption of drugs and chemicals. The oral and pharyngeal mucosa is generally sensitive to and irritated by long-lasting drugs that remain in contact with the mucosa for extended periods of time (Refs. 1, 2, and 3).

Ingredients are applied to the mucous membranes of the mouth and throat by use of drops or powders, by gargling, rinsing, irrigating, swabbing, or spraying, or by slowly releasing a film of a drug over a surface by the use of lozenges. The use of ointments in the oral cavity is generally impractical due to their viscosity and difficulty in application. Lotions are also not recommended for use in the oral cavity. Combining a drug with a demulcent which adheres to a mucous membrane may prolong its contact with that membrane. The duration of contact of an ingredient depends on its chemical nature, viscosity, its reactivity with saliva and mucus, and its mode of formulation.

Washing out the oral cavity can be accomplished by rinsing or gargling. The duration of contract of a drug after rinsing, gargling, and irrigation with aqueous solutions is generally brief, and in most cases the therapeutic effect is of short duration unless the preparation is formulated with ingredients that prolong contact.

Sprays consist of hand-operated bulb-type nebulizers or aerosols. The nozzle of an aerosol spray should be calibrated so that the dosage can be metered in terms of seconds of use or the duration of the time of delivery. Dosage of drugs

from hand sprays can be calibrated according to the number of times a bulb is squeezed or the duration in terms of the time of delivery of an aerosol. The particle size of a droplet from a spray should be uniform and between 30 and 100 um in diameter. Otherwise baffling occurs, or the droplets pass into the lung and the spray does not reach the surface for which it is intended (Ref. 4).

Swabbing may permit more prolonged topical contact of an ingredient, particularly when combined with a demulcent to prolong contact. It is also believed that swabbing, even if done very gently, may produce some abrasions of the mucosa and by doing so may increase the absorption of an ingredient. Theoretically, the contact of an agent would be the same, regardless whether it is applied by spray or swab (with the exception mentioned above). The germicidal action of topical antiseptic antimicrobial agents is confined to the surface to which the drug is applied and to the debrided tissues. They may not be effective if contact is brief; however, this depends on many factors like adherence, the vehicle, etc. Living cells resist the penetration of effective concentrations of antimicrobial agents (Ref. 5).

Topical anesthetics penetrate the mucous membranes and pass into the nerve receptors in the mucosa where they may remain for a period of time depending upon their chemical and physical properties, such as lipid solubility, protein-binding capacity, and molecular structure to exert a sustained effect.

Mucosal surfaces that do not normally come into contact with water are generally irritated by it since water is not isotonic (osmotic irritation). This irritation can be avoided by using isotonic solutions (0.9 percent) of sodium chloride. Solutions in oil are also used to avoid osmotic irritation. Their immiscibility with the moisture of the mucosa prevents direct contact with the cells, and their actions, therefore, are slower but generally more prolonged. Oils, however, are undesirable since they may be aspirated and overuse may cause pulmonary irritation and fibrosis. Ointments make poorer contact with a mucous surface because viscosity limits their spread (Ref. 5).

The mouth and throat are usually treated by use of sprays, swabbing, irrigation, or the use of lozenges. The Panel is doubtful of the effects of gargling for treating symptoms affecting the throat. Medication in a gargle will not reach the throat unless the liquid is swallowed. The airstream in gargling might help to expel mucus, similar to clearing the throat. This topic is described in more detail below.

Nose drops, sprays, and other OTC preparations instilled into the nose pass into the pharynx and may exert a therapeutic effect in some cases and an adverse effect in others. For this reason a discussion of the nasal mucosa is mentioned here (Ref. 5). The nasal mucosa differs from that of the mouth and oropharynx in its response to drugs. Hypotonic and astringent solutions are less irritating than hypertonic solutions. Burning and other disagreeable sensations in the throat may follow the use of nose drops. Absorption in the nose occurs readily so that the local effects of drugs may occur quickly (Ref. 5).

The Panel has considered the various modes of application of topical products to be used in the oral cavity. Some examples of methods of application generally appearing on the labeling include "gargle freely," "spray freely," etc. The proposed labeling denotes the methods of application that are indicated for the various active ingredients, the dosage form, and the type of vehicle employed. Some preparations may be used in several different ways, as for example in the form of sprays, incorporated in the form of a lozenge, or prepared in the form of a rinse (Ref. 5). The accepted technique and directions for use appear in the labeling of the appropriate ingredient or combination statements discussed elsewhere in this document.

a. *Gargles and mouthwashes.* A gargle is a fluid, usually flavored or medicated or both, but not necessarily so, which is intended to be used to rinse or bathe the posterior part of the oral cavity, with the additional intent to expel mucus from the throat. The gargle solution does not reach the throat unless it is swallowed. Gargling is accomplished by taking the fluid into the mouth and forcing expired air through it, while the head is tilted backward (Ref. 6). A gargle is intended for cleansing the throat, treating a diseased state, or relieving symptoms due to a diseased state of the throat. A mouthwash, or mouth rinse, also known as a collutorium, which may or may not be medicated or flavored, is a fluid used for cleaning the mouth or treating diseased states of the mucous membranes of the mouth. Actually the terms "gargle," "mouthwash," and "mouth rinse" merely denote how fluids are used in the oral cavity and give no indication as to what benefits may result from their use (Refs. 6 and 7).

Most mouthwashes are aqueous or water-alcoholic solutions in which are incorporated active therapeutic ingredients, pleasant-tasting flavorants, pleasant odoriferous materials, and various pharmaceutical necessities. The active ingredients present in these solutions are varied (Ref. 8).

The ideal solution used for a gargle, mouthwash, or mouth rinse should be one that is noninjurious to the normal tissues of the mouth and throat. It should be stable, composed of ingredients that remain in contact for the time required to exert the claimed therapeutic effect, and not be absorbed by the mucous membranes. It should be easily washed from the mucous membranes. It should be easily washed from the mucous membranes when the desired effect has been obtained and there is no longer any need for the drug to be in contact with the tissues. It should be nonirritating and nonsensitizing to tissues, pleasant tasting, pleasant smelling, and nontoxic if swallowed and absorbed from the gastrointestinal tract.

Unfortunately, the terms "mouthwashes" and "rinses" do not accurately define such preparations on the basis of composition, nor do they differentiate between therapeutic or cosmetic uses. Most mouthwashes are used for cosmetic purposes and consist of liquids with pleasant odors and tastes to rinse out the mouth.

The Panel regards gargles, mouthwashes, and mouth rinses that contain ingredients used for cleansing purposes, flavorings, or odorants, particularly those that are used on a regular basis such as one or more times daily and are not used to treat symptoms of a disease state of the mouth and throat, as cosmetics. The Panel emphasizes that OTC oral health care products for which a medicinal claim is made should be used only occasionally and for short-term therapy. This time limit should be designated on the labeling. The Panel does not regard oral health care products appropriate for use proplylactically to prevent the development of symptoms or disease states of the mouth and throat. The Panel recommends that any medicinal claims for "prevention" not be allowed.

The value of gargling in the treatment of sore throat is questionable (Refs. 8 and 9). This has been the subject of discussion in the literature for many years (Ref. 10). Tests performed with dyes and colored powders, such as charcoal black or radiopaque substances, followed by visualization by roentgenogram support the contention that in most cases, gargles may reach the anterior pillars but not the posterior pharyngeal wall or the posterior pillar (Ref. 10). They do not necessarily

establish physical contact of a medicine with a diseased surface of the pharynx. Contact is made in the oral cavity (Refs. 5, 8, and 12).

It is argued that many solutions used for gargling contain detergents that lower surface tension and enhance the ability of the liquid to penetrate into areas not accessible to water. This property facilitates penetration to convoluted areas of the tongue, mouth, and throat, aiding in debridement of these areas. It is also claimed that the physical act of gargling also creates an aerosol type of dispersion which aids in the spread of the solution and its ingredients throughout the mouth and throat.

It is the feeling of the Panel that these differences in conclusions drawn from studies concerning the effectiveness of gargles for use in the throat are due to numerous variable factors that enter into a study. During the act of gargling, the anterior pillars of the fauces approximate, the tongue rises, and the walls of the pharynx approximate. The action of the airstream prevents the access of fluid to the posterior pharyngeal wall. The gargle does not reach the throat. The airstream is directed away from the throat, preventing fluid from running back.

It is the consensus of the Panel that sprays are more effective for use in the throat, and the Panel recommends their use for products intended to reach the pharyngeal structures (Ref. 8). (See part II. paragraph B.5. below—Dosage forms of oral health care products.)

The absurd notion that antimicrobial agents in gargles, mouthwashers, and mouth rinses are necessary for daily cleansing of the mouth and throat is based upon tradition, promotional appeal by manufacturers, and misunderstandings concerning their effectiveness and safety rather than on well-documented facts (Ref. 11). The introduction of anti-infective drugs such as the chemotherapeutic agents, antibiotics, and other drugs possessing selective toxicity for a particular micoorganism or class of pathogenic microorganisms without harming the cells of the host has been responsible for relegating antiseptics for use in the mouth and throat into obsolescense. The selection of the proper antimicrobial agents manifesting selective toxicity for an offending organism can only be made by a practitioner of medicine or dentistry. The majority are administered systemically and not topically.

The Panel has reviewed and agrees with the findings of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (DESI), which pertain to uses of mouthwashes and gargle preparations. In publishing a proposed statement of policy in the **Federal Register** of August 4, 1970 (35 FR 12411), the Commissioner of Food and Drugs stated:

> that there is a lack of substantial evidence that those preparations are effective for any of their labeled claims which relate to antimicrobial, antiseptic, germicidal, and analgesic uses.
>
> In addition to mouthwash and gargle preparations for which new-drug applications are in effect, there are many similar products on the market. The Food and Drug Administration has surveyed the labeling of such products and finds that many of them make direct or implied claims for benefit relating to antimircorbial, antiseptic, germicidal, or analgesic effects. Available information has been reviewed and has not been found to substantiate such claims.
>
> (c) The Administration will not object to labeling of a mouthwash, mouth freshner, or gargle preparation which offers it for such use as an aromatic mouth freshener (provided the product contains aromatic ingredients); as a refreshing mouth rinse; as an aid to daily care of the mouth, and for causing the mouth to feel clean. The label declaration or implication that an ingredient of such an article is active, when this is used to imply that the article has a prophylactic or therapeutic effect, may cause the article to be misbranded. However, an ingredient may continue to be listed on the label if it does in fact contribute to the nonprophylactic and nontherapeutic and usefulness of the article (e.g., wetting agent, foaming agent).

It is obvious that these claims are cosmetic and not therapeutic and that both the NAS–NRC study group and FDA regard mouthwashes as cosmetics. The Panel, from its evaluation of ingredients in oral health care products discussed below, likewise concludes that there are few, if any, indications justifiying the use of OTC mouthwashes, mouth rinses, and gargles containing antimicrobial agents for self-medication or for oral health care by lay consumers.

b. *Lozenges and gums.* Lozenges or troches, as they are sometimes called, are circular or oblong in shape. They are made by cutting, punching, or molding a flavored mass consisting of sugars, mucilages, gums, or bases of fruits, in which active therapeutic ingredients are incorporated. They are intended to be sucked, gradually releasing drugs into the saliva to act topically in the mouth and throat. They are made of varying consistencies depending upon the intended dissolution rate that is required to liberate the desired quantity of drug for the indicated therapeutic purpose (Ref. 13).

The therapeutic effectiveness of lozenges is difficult to evaluate because many variable factors may alter their performance during the conditions of use. Meaningful data from well-controlled studies on the effectiveness of lozenges are lacking because such data are difficult to obtain in patients. The composition, stability, consistency, size, rate of dissolution, taste, odor, and appearance of a lozenge are all important factors that enter into determining their effectiveness. There is no set of "average" conditions under which the effectiveness of a lozenge can be determined. The size and area of the mouth and throat, the surface area the drug is intended to cover, and the amount, the pH, and viscosity of the saliva being secreted all vary widely from one individual to the next and even in the same individual from moment to moment, modifying the action of the ingredients in a lozenge. Generally, a given dose in milligrams of each ingredient is incorporated in a single lozenge. The cohesion, the ease of aborption by the mucous membrane, the stability of drugs released from a lozenge, and the cause and type of lesion being treated are also important considerations. Drugs that are not soluble and not easily absorbed by the oral and pharyngeal mucous membranes pass into the stomach and may be absorbed there, acting systemically. The duration of action of drugs released from lozenges is generally short-lived and disappears as soon as the drugs are washed away by the salvia unless they penetrate cells and bind with proteins and other cellular constituents or are incorporated with demulcents that are tenacious and not easily washed away by the saliva. Their cohesion to the mucous membranes is generally unpredictable and of short duration, particularly if they are water soluble. Thus, in many cases if lozenges are to be effective they must be used frequently, usually in succession. As one dissolves, another must replace it if the active ingredients are to be of benefit.

Claims are made by some manufacturers that the effectiveness of some drugs released from lozenges may be two- or three-fold longer than the life of the lozenge. In some cases the Panel doubts that this claim can be made because the effect of the active ingredient is of short duration. The Panel doubts that benzocaine released from a lozenge can produce anesthesia for 3 or 4 hours when it finds that aqueous solutions of the same ingredient afford relief for less than 30 minutes.

Lozenges for use in the mouth and throat usually contain antimicrobial agents, local anesthetics, astringents, expectorants, demulcents, decongestants, debriding agents, or combinations of these.

The oropharyngeal symptoms which lozenges are intended to relieve are commonly due to local infection, ulcerations, congestion, and occasionally to irritation from drying of the mucosa, due to mouth breathing or from smoking. Most local infections, particularly in the throat, are viral or bacterial in origin. They are likely to resolve spontaneously. They can also be manifestations or prodromal symptoms of serious illness, particularly those in the throat, as is the case in various fevers, systemic viral infections, agranulocytosis, leukemia, diabetes, uremia, dehydration, and other such conditions. Infections can also be of fungal origin and respond to local treatment. However, the expertise and advice of a physician is required in such situations. OTC products are not appropriate for treatment in these conditions. They may, however, give symptomatic relief.

There is no evidence based on well-controlled clinical studies to support the effectiveness of lozenges which contain antimicrobial agents for OTC use. It is doubtful that they reach the microorganisms in the infected tissues. Effective broad-spectrum antiseptic agents not only kill the microorganisms but also damage the host cell. The Panel feels that such agents may do more harm than good. Furthermore, dilution by the flow of saliva and the poor contact with infected tissue make the use of antimicrobial ingredients in lozenges an inefficient method of applying such drugs locally. The medicines, as a rule, fail to reach infections in the furrows of the tongue, tonsillar crypts, and other inaccessible areas. Even if they do reach the areas, long-term clinical use attests to the fact that they are of dubious value in overcoming infections. A low concentration of an antimicrobial agent in the mouth can also encourage overgrowth of resistent bacterial organisms and fungal agents, such as oral candida, perhaps by altering the natural flora in the mouth (Ref. 14). If an antimicrobial agent is necessary to combat an infection such as a streptococcal sore throat, then one with specific activity, such as pencillin, should be taken orally or given parenterally and used under the advice of a physician. Though certain antimicrobial agents in lozenges may be helpful in treating certain ulcerative conditions, drugs that are effective systemically are preferred to those applied locally. Some antiseptics may irritate the mucous membranes and, likewise, some drugs, when applied locally, may also cause sensitization and at a later date cause hypersensitivity reactions if there is reexposure to the agent.

Lozenges containing local anesthetics often temporarily help relieve soreness in the mouth and throat and are worth using when this symptom is troublesome, provided the agent is able to reach the affected site and penetrate through the mucous membranes to exert its action on pain receptors. Benzocaine is one of the most widely used drugs for this purpose. Benzocaine can sensitize, but is seldom known to do so when used in lozenges. When patients are already sensitized to a drug after topical use on the skin or systemically, lozenges containing that drug can cause local hypersensitivity reactions when applied to a mucous membrane.

Aromatic flavorants or odiferous substances may increase the flow of saliva. Their vapor, if they are volatile, may produce a sensation which partially masks minor pharyngeal and nasal discomfort. Menthol, for example, stimulates receptors for cold, thereby producing the sensation of coldness which temporarily masks the pain. Menthol has a local anesthetic effect with a mean duration of 1.5 minutes and a mean latency period of 0.16 minutes (Refs. 15 and 16).

Demulcents incorporated in lozenges may relieve discomfort by coating irritated or inflamed mucous membranes and acting as protectants. Astringents incorporated in lozenges may act as protectants by coagulating proteins and may relieve symptoms. Debriding agents and expectorants, when incorporated in lozenges, may aid in the removal of phlegm, mucus, and debris, thereby relieving pain and discomfort. Decongestants incorporated in lozenges may relieve symptoms by shrinking mucous membranes and relieving congestion and by reducing swelling which is stimulating pain receptors.

The stability of ingredients and their chemical interaction with the "inactive" ingredients of a lozenge or a troche is of some concern to the panel. In one particular study, a formulation containing benzocaine was found to have lost half strength after 6 months in an unopened container (Ref. 17). Aspirin in certain formulations is hydrolyzed, and the odor of acetic acid is predominant when the container is opened. Phenol may be oxidized to quinones and be rendered ineffective. The shelf life of a lozenge, also, is of concern to the Panel. Not only does the Panel feel that the tenets of good manufacturing procedures be rigorously followed, but also that the shelf life of a product be indicated together with conditions of storage and other pertinent environmental factors.

Aspirin is incorporated in chewing gum supposedly to provide a topical action. In most cases the use of the gum is intended for slow release.

The Panel feels that the weight of the drug in milligrams per lozenge should be stated along with the total weight of the lozenge so that the consumers have all data and all facts pertaining to the concentration of drug in the formulation.

The following is a brief summary of the use of lozenges. Local anesthetic-containing lozenges may temporarily alleviate discomfort and soreness of the throat and are worth using when these symptoms are present. Astringents and demulcents may act as protectants and are also worth using. Debriding agents in lozenges alleviate discomfort by removing phlegm, mucus, and other debris. Effective expectorants may do likewise. Decongestants in lozenges decrease congestion of mucous membranes and alleviate discomfort due to inflammation or irritation. They may also retard the absorption of topical anesthetics and prolong pain relief. If a bacterial throat or mouth infection requires an antimicrobial agent, one with specific toxicity that acts systemically, such as an antibiotic, should be used.

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6. *Recommended dose for oral health care products.* The Panel has defined and outlined below the general components of a dosage schedule for all products used in the oral cavity. The basis of the Panel's conclusions and recommendations are discussed in the general comments of each pharmacologic class and in the individual ingredient statements elsewhere in this document.

a. *Dosage range.* The Panel has examined the data submitted and concludes that, for purposes of clarity and accuracy, it is necessary to define the components of a dosage regimen. The components of a regimen for a particular product include a minimum effective dose, a usual single dose, a usual effective dose range, a maximum allowable single dose, and a maximum daily (24 hours) dose. These components of a dosage schedule are defined by the Panel in relation to a general OTC target population for which relief of symptoms is sought, such as minor pain due to sore throat, sore mouth, throat irritations, and antimicrobial activity.

(1) *Minimum effective dose.* The minimum effective dose is the amount of drug necessary to achieve the intended effect in some individuals in a significant OTC target population.

(2) *Usual effective dose.* The usual single dose is the amount of drug necessary to achieve the intended effect in most individuals in a significant OTC target population.

(3) *Usual effective dosage range.* The usual effective dosage range is the range between the minimum effective dosage and the maximum allowable single dose.

(4) *Maximum allowable safe dose.* The Panel finds that there may be circumstances when more than the usual single dose may be needed to provide an adequate effect. An increase in the usual single dose may be justified, for example, in individuals who, because of their age, body size or weight, or other factors, require a higher dose. The Panel defines the maximum single dose for most products as the maximum amount of drug that is safe and effective for use every 2 hours.

(5) *Maximum daily dose.* The maximum daily dose is the maximum amount of a drug that is safe and effective for use in a 24-hour period. Drugs that are sprayed or used as rinses or gargles may be absorbed through the mucous membranes or swallowed and absorbed from the gastrointestinal tract and thus produce systemic effects.

The Panel considers the adherence to a maximum daily dose necessary in the interest of safety. The clinical evaluation of some drugs clearly demonstrates side effects in the various organ systems and unwanted and sometimes dangerous symptoms. The maximum daily doses are indicated in the appropriate ingredient sections together with the adverse effects that can occur if these doses are exceeded.

C. Determination of Safety and Effectiveness

1. *Safety and effectiveness of ingredients for use in the oral cavity.* The Panel arrived at its conclusions and recommendations regarding the safety and effectiveness of all active ingredients after considering all pertinent data and information submitted. The Panel has adopted the following general guidelines:

a. *Safety.* The Panel's determination of the safety of single ingredients and combination products was based on the following criteria:

(1) The incidence and risk of adverse reactions and significant side effects when the agent was used according to adequate directions and instructions on the labeling.

(2) The potential for harm that might result from abuse or misuse under conditions of widespread OTC availability.

(3) Assessment of the benefit-to-risk ratio.

Ingredients and combination products that have been classed as Category I by the Panel require no further testing or evaluation for effectiveness or safety. Ingredients and combinations that have been classed as Category III for safety shall be subjected to testing outlined in the appropriate Data Required for Evaluation sections on Category III testing procedures. The manufacturer will be required to supply only the information that is missing and not all the information outlined in the section on testing.

b. *Effectiveness.* The Panel's determination of the therapeutic effectiveness of ingredients and combinations for use in the oral cavity was based on published and unpublished studies containing pharmacologic data considered by the Panel to be scientifically valid and pertinent. Clinical criteria for proof of effectiveness of a single agent or combination were determined by evaluating data from valid controlled studies, both subjective and objective, and by calling on the clinical expertise of the Panel members. These criteria will be discussed elsewhere in this document. (See paragraph C. of parts III., IV., V., VI., VII., and VIII. below—Data Required for Evaluation.)

Criteria for proof of effectiveness of the pharmacologic types of drugs evaluated were obtained from clinical studies which showed that an agent or combination caused a significant amelioration of the symptoms or provided a therapeutic effect for the stated indication in the labeling.

Ingredients or combinations that have been classed as Category III for effectiveness by the Panel shall be subjected to such testing as is required in the section on Category III testing procedures. Only that data which the Panel questions need be submitted unless the Panel concludes that the entire series of tests for effectiveness should be performed.

The majority of products used in the mouth and throat submitted to the Panel for review consists of combinations of active ingredients used together with pharmaceutical necessities listed as inactive ingredients. The remainder are single-entity active ingredients used with pharmaceutical necessities. The Panel recognizes that in order to be effective, the final product must be formulated properly and must conform to accepted pharmaceutical manufacturing standards. If not properly formulated, ingredients may not be bioavailable, or if they are bioavilable, they are present in less than the minmum effective dose or not in the form that exerts the intended therapeutic effects.

Important factors which the Panel considered in making its evaluations included the concentration of the active ingredients in the medium in which they are incorporated, the viscosity, the

volatility of the medium, the method by which the active ingredient maintains contact with the mucous membranes for the necessary length of time to assure a maximum therapeutic effect, the acidity or alkalinity of the medium, and the stability of the final product. Another important consideration to which the Panel gave weight was whether or not inert ingredients or active ingredients in a preparation interact or nullify the action of the principal active ingredients (Ref. 1). The designation of a pharmaceutical necessity as inactive or inert does not necessarily indicate that such an ingredient is chemically or pharmacologically inactive. An ingredient in a formulation containing more than one active ingredient could diminish the effectiveness of another ingredient by retarding its absorption in the mucous membranes or its passage into the lesion to which it is applied by altering the alkalinity or acidity of the medium and thereby changing the degree of ionization and its ability to penetrate epithelial barriers. The Panel also considered the effects of protein binding. Such binding could occur in such a manner that an ingredient would not be released to exert its claimed therapeutic effect or be absorbed (Refs. 1, 2, and 3).

The medium in which an active ingredient is incorporated not only must provide the necessary solubility and stability but also must maintain contact of the active ingredient with the surface upon which it acts.

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2. *Testing for recategorization of Category III ingredients.* When an ingredient or combination of ingredients is classfied as Category III because of insufficient data concerning its safety, effectiveness, or both, the manufacturer that produces such an ingredient or combination of ingredients must supply data to permit its reconsideration and reclassification from Category III to Category I. If such data are not available, the ingredient must undergo additional testing. The data submitted for reclassification should be available in the time period specified at the end of the description of each pharmacologic group. The Panel has indicated at the end of each section for each pharmacologic group protocols for obtaining data that are applicable to that particular pharmacologic group. General principles of the testing for reclassification applicable to all pharmacologic groups are outlined below.

The Panel considers the recommended protocols to be in agreement with the present state of the sciences of pharmacology and toxicology. The protocols suggested do not preclude the use of other newer, more refined laboratory or clinical investigative methods to establish safety or effectiveness of an ingredient. Manufacturers are expected to furnish only data relevant to unanswered questions in the ingredient sections or other sections of this document regarding the safety and effectiveness of the ingredients in their product. They are not expected to furnish all the data listed in the guidelines below.

Safety studies are required if the data submitted do not substantiate claims that an ingredient is safe when used as indicated in the labeling adopted by the Panel. Effectiveness studies likewise are required if the data submitted do not substantiate the claim that an ingredient or product is effective when used as indicated in the labeling adopted by the Panel.

a. *General considerations.* The Panel has categorized the ingredients it has evaluated in the following pharmacologic groups: (1) Anesthetics, (2) antimicrobial agents, (3) astringents, (4) debriding agents, (5) decongestants, (6) demulcents, and (7) expectorants. The ingredients of each category are grouped together, preceded by general descriptive introductory statements and followed by individual ingredient statements, labeling statements for the pharmacologic group, and data required for evaluation statements.

Certain general comments applicable to the preparation of protocols for the evaluation of all oral health care ingredients considered by the Panel are discussed below. Comments that are applicable only to a particular pharmacologic class and not to all OTC oral health care ingredients are considered at the end of the discussion pertaining to that particular pharmacologic group.

It is the consensus of the Panel that it is reasonable to allow 2 years for the development and review of evidence that will permit final classification of the safety and effectiveness of a Category III oral health care ingredient. The ingredients reviewed by the Panel and classified as Category III pose no serious problem or hazard for the consumer. Marketing need not cease during the time the product is undergoing testing. The Panel expects testing or reformulation to commece promptly. If data regarding adequate effectiveness and safety are not submitted within 2 years, the ingredients or a combination should no longer be marketed as an OTC product.

b. *Procedure for conducting studies on normal volunteer subjects and patients.* Investigational studies of a proper design should be conducted on human volunteers if reproduction of a particular lesion or oral cavity condition manifesting symptoms that are relieved as alleged in the labeling for indications is feasible (Ref. 1). Examples of experimental designs that may be appropriate and acceptable to the Panel include cross-over, double-blind, factorial, sequential trial, single-blind trial, and therapeutic equivalency studies (Refs. 2 and 3). Preference should be given to using double-blind studies with controls, so that the studies will demonstrate the effectiveness of the product. The cross-over technique should be used if possible. When used in a single-dose study, a period of 12 hours or more should elapse to allow elimination of an absorbed drug from the system. If repeated doses are used, longer periods of time should be allowed for such elimination. When the identity of an ingredient cannot be masked in performing a double-blind study and a suitable placebo is not available, control and treatment periods should be alternated if feasible. The control and treatment periods should be of sufficient duration to allow subjects to serve as their own control (Ref. 4).

A sufficient number of subjects should be use in such a study to permit statistical analysis of the data obtained (Ref. 1). The number of subjects tested should be sufficient to eliminated examiner bias, bias introduced by the placebo effect, and the effects of psychological responses to pain or to the symptoms in tested subjects. The subjects should be of both sexes and within the age groups for which use of the product is intended. The subjects should be healthy and free any ailment and should not be receiving any oral, parenteral, or topical medication. Female subjects should not be pregnant of menstruating (Ref. 4).

The study should be of sufficient duration to demonstrate effectiveness. The treatments should be performed on a random basis. The number and frequency of the applications of the preparation should be the same as

would be the case if the preparation were being used clinically. Any manifestation of local or systemic irritancy, sensitivity, or toxicity in these tests should be recorded and treatment discontinued.

When studies are performed in clinical situations, a large number of appropriate subjects with different types of oral cavity lesions or conditions presenting symptoms amenable to treatment by OTC oral health care products should be studied. Differentiation of patients should be made in accordance with the type and cause of a symptom. The randomization procedure should be used so that variables not otherwise controlled balance out (Ref. 5).

There should be detailed explanation of the criteria for assessment of the condition to be treated by the ingredient, of the method employed in testing, and of the validity of the method or methods used. Baseline demographic, medical, historical, and physical data for each subject should be obtained and recorded. Such data should include a medical history, a physical examination, laboratory studies, and other pertinent data (Ref. 6).

Studies should be performed on patients who have painful lesions, infections, or other afflictions in the mouth or throat that are amenable to treatment with OTC products. Subjects who have similar conditions and are being treated with a preparation should be divided into a treated group and a placebo group to obtain a controlled study (Ref. 7). Again, before-treatment data should be obtained and recorded. The degree of relief of symptoms, the onset of action, whether partial or complete, the duration of action, and the presence or absence of any rebound effect after the initial effect of the drugs wears off should be noted. A grading or scoring technique should be used to determine the degree of relief obtained from the symptoms being treated. The application of the product should be in accordance with the method outlined in the indication for use on the labeling. Tests should be performed using the final product formulation (Refs. 2 and 8).

The range between the minimum effective concentration and the maximal allowable (safe) concentration should be determined when lacking. This may be expressed in terms of the percent concentration of the preparation. Consideration should be given as to how the drug is absorbed or penetrates the mucous membranes, its duration of action, and its relationship to the length of time it remains in contact with a mucous membrane. Only the topical effect should be considered. The fact that a drug is absorbed and is detectable in the blood or is excreted into the urine in its pure form or as metabolites will not be accepted as evidence of effectiveness.

If not known, an attempt should be made to determine the possible mechanism of action or actions of the drug or drugs.

c. *Interpretation of data.* Detailed records should be kept. These should include legends, with specific explanation of codes, doses, mode, date, and time of application, the period of latency from the moment of application to the development of the desired therapeutic effect, the duration of the effect, the frequency of testing, and the duration of the test period. Investigative methods should be described in sufficient detail so that the experiments may be repeated by another investigator to verify and confirm results obtained from a particular investigator (Refs. 1, 2, 8, and 9).

Steps should be taken to eliminate examiner bias in both volunteer or clinical trials. Proper interpretation and explanation of the results should be provided. Whenever possible, statistical analysis should be employed to evaluate the results.

Positive evidence of drug effectiveness should be obtained from a minimum of two studies based on the results of two different investigators or laboratories.

All data submitted to FDA must present both favorable and unfavorable results.

d. *Safety evaluation.* Adequate, acceptable, controlled in vivo studies of acute and chronic toxicity in several species of animals should be supplied. The oral LD_{50} (mean lethal dose) in animals should be established and, if possible, the range of the toxic dose in man should be made available. This is important particularly since individuals, especially children, may accidently ingest an overdose or inhale excessive quantities of these medications (Refs. 1 and 10). Chronic toxicity studies of ingredients classified as Category III should be performed by two independent investigators (Refs. 11 and 12).

Tests for irritancy should be performed. These should include acute eye irritation, primary skin irritation, corrosivity, acute and subacute dermal toxicity, and sensitivity in animals (rabbits). Tests for topical irritancy on the oral and pharyngeal mucous membranes, including sensitization of the skin, and systemic sensitivity in man, should be performed if feasible. Methods for testing for irritancy and sensitivity are described below.

Data on systemic absorption, distribution, the metabolic fate, the rate of excretion, and possible cumulative effects should be supplied as discussed in the ingredient statements of this document.

e. *Recommended toxicological studies.* A variety of toxicological data can be obtained to demonstrate that a preparation is safe. Manufacturers are expected to conduct the applicable studies listed below. The Panel emphasizes that this requirement does not preclude the use of better testing methods which may be developed in the future. The Panel recommends that the following data be obtained in animals for the active ingredient(s) and for the formulation(s) intended for use on the mucous membranes of the mouth and throat.

(1) *Preclinical animal studies.* (a) Acute oral LD_{50} toxicity in rats.

(b) Acute eye irritation in rabbits.

(c) Primary skin irritation and corrosivity in rabbits or other suitable animals.

(d) Acute toxicity on the oral and pharyngeal mucous membranes in rabbits or other suitable animals (Refs. 11, 13, and 14).

(e) Acute toxicity of inhaled aerosols and sprays in rats or other suitable animals.

(f) Skin sensitization studies in rabbits and guinea pigs or other suitable animals.

(2) *Irritancy and sensitivity studies in humans.* A number of methods embodying the use of patch testing have been proven of value in determining skin irritancy and systemic sensitization. The Panel recommends that one of the following methods of patch testing be performed:

(a) The Draize human skin irritancy and sensitization tests or one of the various modifications may be used. The testing should be performed on the skin of the subject's back or arm (Refs. 1 and 15).

(b) The method of Shelanski and Shelanski (Ref. 16), in which the active ingredients or the formulation under study is applied at frequent intervals of 1 or 2 days to the test site for 3 to 4 weeks may be used. After a rest period of 2 weeks, a single dose of the drug or formulation is applied as a challenge (Ref. 16). The preliminary applications are made to detect primary skin irritants and provoke sensitization in susceptible individuals. The challenging dose detects whether or not the drug is a skin sensitizer.

(c) The maximization procedure of Kligman (Ref. 17) or one of its modifications uses an irritant which is

applied over a desquamated test site. Desquamation is performed by using a rubbing technique which facilitates penetration, thereby hastening and accentuating the skin-sensitizing potential of a substance (Ref. 17).

Solvents and other substances that are classed as inert ingredients used to formulate a finished product are indeed active in many instances and may penetrate the mucous membranes of the mouth and throat or can be swallowed. These are absorbed and detoxified or excreted in the same manner as the active ingredients. It is possible for highly lipophilic substances used daily for long periods of time to accumulate in the adipose and other lipid-rich tissues, particularly if they are not readily biodegradable. They may remain in the tissues for days, weeks, or months and produce chronic toxicity (Refs. 8, 9, and 18). However, none of the ingredients the Panel has evaluated are retained for long periods of time in adipose or lipid-rich tissues. Animal studies should be performed as a preliminary to human in vitro testing (Ref. 1).

The Panel recognizes that the clinical studies and studies on volunteers in the case of many ingredients will be subjective since objective methods are not available in many cases. This is applicable particularly to studies of preparations that relieve pain and discomfort. The Panel accepts such studies if they are performed according to the guidelines outlined above. The Panel also recognizes that certain ingredients have a dual action. An expectorant may relieve discomfort or soreness in the throat by acting both as a debriding agent and a detergent. The Panel accepts data for evaluation applicable to the principal action a drug manifests when such overlapping of action exists.

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D. Labeling of OTC Oral Health Care Products

The Panel emphasizes the importance of specific informative and truthful labeling so that the consumer can select the most appropriate product for his/her condition and use it in the prescribed manner appropriate for obtaining the claimed therapeutic effect.

The Panel reviewed the general labeling requirements previously adopted by FDA for OTC products (21 CFR Part 201). These requirements provide for labeling information on the principal display panel of the packaging form, a statement of identity, the indications for use, the identity of ingredients, directions for use, other allowable information such as product performance or attributes, and general and specific warnings. The Panel concurs that these general requirements are appropriate for labeling of OTC preparations intended for use in the mouth and throat. The labeling of individual active ingredients will be discussed elsewhere in this document.

After reviewing all submitted labeling of OTC products used in the mouth and throat, the Panel recommends the following additional requirements:

1. *The statement of identity.* The statement of identity in the labeling of the product should contain the established name of the drug, if any, and should identify the product as an "oral health care product." It should also identify the pharmacologic class(es) of ingredient(s) contained within the product, i.e., antimicrobial, anesthetic, demulcent, astrigent, expectorant, debriding agent, or decongestant. When two or more active ingredients are combines and each is listed as an active ingredient, each ingredient shall be included in the statement of identity. The therapeutic action of a pharmarcologic class of an ingredient may not be used in the labeling indications described below because these terms do not denote the symptoms or disease process for which they are intended to be used.

2. *Ingredients.* The Panel concludes that products intended for use in the mouth and throat should contain only active ingredient(s) plus such inactive ingredients (pharmaceutical necessities) as are necessary for product formulation. All such drug products should also identify the active and inactive ingredients in the labeling by their established names. Terms such as "aromatics," "essential oils," and other vague connotations give no specific description of the identity of ingredients and should not be used. The Panel will,

however, accept terms that are specific and are actively descriptive, such as "oil of lemon," "oil of cloves," etc. Since the United States is slowly converting to the metric system, the Panel recommends that metric units be used in labeling.

The Panel concludes that the exact quantity of all active ingredients should be stated on the label in percent by weight or volume, in metric equivalents, and in the amount present in a unit dose by weight if the ingredient is a solid. If the active ingredient is a liquid, delivered in a unit dose, the amounts should be stated by weight or volume.

The Panel strongly recommends that the inactive ingredients also be listed on the label. "Inactive ingredients" are not necessarily inert and inactive and may cause drug interactions if ingested with other medications or cause toxic manifestations in cases of overdosage of the product. The Panel excludes from this requirement flavorants or coloring agents which are present in insignificant quantities.

The Panel believes that consumers are entitled to full disclosure of products used for self-medication and that each inactive ingredient should be stated on the label. The purpose each inactive ingredient serves in the formulation, such as for coloring, as a flavorant, or solvent, preservative, or vehicle, should also be stated in the labeling. These data are essential when poisonings are suspected, reactions due to hypersensitivity arise, or irritations develop. A minority of the Panel believes the quantity of the inactive ingreients should also be listed on the label.

The Panel concludes that therapeutic ingredients that are pharmacologically or chemically active in therapeutic concentrations can be designated by the term "inactive ingredients" only when they are necessary for proper formulation and are present in less than therapeutic concentrations.

It is the consensus of the Panel that the term "inert ingredients" be restricted to those ingredients that are chemically inert or insoluble in vivo and not absorbed by living cells. Examples are calcium sulfate, silica gel, and activated charcoal.

3. *Indications and directions for use* The indications for use of oral health care products should be simply and clearly stated, should provide the user with enough information for effective and safe use of the product, and should include the statement that the product is for the temporary relief of symptoms. No reference should be made or implied regarding the alleviation or relief of symptoms unrelated to a condition that is not an indication of the product.

The Panel recognizes that indication statements for oral health care products could be worded in a variety of ways and convey the same meaning, but for the sake of simplicity, clarity, and in the interest of minimizing consumer confusion the Panel recommends a restriction of indications for oral health care products. In addition, the Panel believes that limiting indications would protect the consumer from unfounded, misleading, and possibly hazardous claims. It would also eliminate similar products having different indications. The Panel concludes that the consumer would greatly benefit from such labeling.

The directions for use of oral health care products should be clear and provide the user with a reasonable expection of the results the product produces. The directions should be as detailed as possible and placed conspicuously on the label. The Panel would like to emphasize that the quantity of a product that is used, its mode and frequency of application, and its duration of contact with or over the area in which the symptom is located are all important considerations and have a definite bearing on the effectiveness of a product. Therefore, the Panel recommends that careful consideration be given to development of directions for use for oral health care products.

a. *Category I indications*—(1) *For anesthestics/analgesics.* "For the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(2) *For astringents.* "Aids in the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(3) *For debriding agents.* "Aids in the removal of phlegm, mucus, or other secretions in the temporary relief of discomfort due to occasional sore throat and sore mouth."

(4) *For demulcents.* "Aids in the temporary relief of minor discomfort and protects irritated areas in sore mouth and sore throat."

b. *Category II indications.* Labeling for OTC oral health care products should be symption oriented and not disease oriented. Labeling statements should not suggest or imply a cure or amelioration of a disease process or list a disease entity for which a product is not effective. The Panel believes that consumers with specific diseases or pathologic lesions should be under the care of a physican and that labeling referring to diseases that require medical intervention may mislead the consumer. Labeling of this type could encourage self-diagnosis or self-treatment of conditions not amenable to OTC therapy. Self-medication may lead to the progression of a disease process particularly if taken in inadequate doses or intermittently for pain relief or other conditions over prolonged periods of time by individuals who have persistent symptoms. In addition, any reference to pharyngitis, glossitis, tonsillitis, gingivitis, aphthous ulcers, or Vincent's infection in OTC oral health care product labeling is unacceptable to the Panel.

The Panel concludes that claims that state or imply that the prophylatic use of an OTC oral health care product maintains a healthy state in the mouth or throat are misleading to the consumer. Therefore, the Panel recommends that any medicinal claims for "prevention" not be allowed.

The Panel recommends that indications not recognized by the medical community be placed in Category II. For example, the Panel does not know what is meant by such indications as "irritable throat," "soothing lubricant," and "relieves stomatitis" and believes that consumers would also have trouble comprehending them.

The therapeutic or pharmacologic class of an ingredient, such as expectorant, anesthetic, or astringent, should not be used in the labeling indications because they do not denote the symptoms for which they are intended to be used. Cosmetic claims are not acceptable as indications for OTC oral health care products.

The Panel has placed in Category II those indications that are not supported by scientific data or sound theoretical reasoning or are inaccurate, misleading, or make claims that exceed those allowed for OTC products. The indications that the Panel recommends be in Category II are listed in the Category II labeling sections of each individual pharmacological group of ingredients.

c. *Category III indications*—(1) *For antimicrobials.* "For the temporary relief of minor sore mouth and sore throat by decreasing the germs in the mouth."

(2) *For decongestants.* "Aids in the temporary relief of occasional discomfort due to congestion in the mouth and throat."

(3) *For expectorants.* "Aids in the removal of secretions and in the temporary relief of discomfort due to occasional sore throat and sore mouth."

(d) *Claims deferred to other Panels.* Certain labeling claims have been deferred to other panels or to FDA for review since these claims involve anatomic areas other than those defined

as the boundaries of the Oral Cavity Panel; therefore, the claims are not within the scope of this Panel. The following claims have been deferred to the appropriate panels for consideration:

"Gum massage," "Prevents infection in burns, abrasions, minor cuts, open wounds, scalds, skin irritations, and sunburn," "For soreness or discomfort caused by denture irritation following tooth extraction or other minor gum irritation," "Temporary relief of pain and discomfort following periodontal procedures and minor surgery of the mouth," "For management of body odor or repair of gum tissues," "Relief of discomfort, deodorization, and minor gum disorders," "Before and after gingivectomy or curettement," "After extractions and under immediate dentures," "To promote healing and to relieve itching and discomfort and deodorization in minor wounds," "Burns, surface ulcers, cuts, abrasions, and dentures," "Indigestion relief," "For fast temporary relief of nasal congestion," "Fast temporary relief of nasal congestion and minor throat irritation," "Relief of postnasal drip, gum irritation, and sinusitis," "Promotes needed expectoration," "For fast temporary pain relief of minor denture irritation, toothache, teething, and cold sores," "Fast pain-relieving antiseptic for sores, cuts, burns, insect bites, fever blisters, and cold sores," "Relieves irritated gums, athlete's foot, poison ivy, poison oak, and itchy bites from chiggers, mosquitoes, and flies," "Relieves pain from minor injury, such as minor cuts, burns, scratches, abrasions, razor nicks, chafed or irritated skin, and painful sunburn," "Helps to prevent the spread and reinfection of acne," "Breathe easier when nose is clogged due to cold, hay fever, sinusitis," "Pain-relieving antiseptic for athlete's foot," "Dry dressings," "Prickly heat," "Refreshing for hot, tired, perspiring feet," "For dry dressings and prickly heat," "Combats infections, soothes pain, and promotes rapid healing," "For superficial wounds, cuts, minor burns, cold sores, fever blisters, poison ivy, sunburn, and chafed skin," "Soothes, cools hot irritated skin of prickly heat."

4. *Warnings.* The Panel recommends that additional statements be included in the labeling of oral health care products for proper use and adequate consumer protection. These statements are listed under the general headings of warning statements.

The Panel agrees with the current regulation (21 CFR 330.1(g)) containing the general warning statements, "Keep this and all drugs out of the reach of children" and "In case of accidental overdose, seek professional assistance or contact a poison control center immediately." The Panel considers these to be reasonable and proper statements for all OTC medications. Specific warnings or precautions that alert potential users of possible serious side effects of therapeutic doses, drug interactions, and especially the sequence of reactions due to overdose or drug interactions will be described in the discussion of each pharmacologic class or in individual ingredient statements elsewhere in this document.

The Panel also concurs with the recommended warning in the regulations (21 CFR 369.20) pertaining to throat preparations for the temporary relief of minor sore throat which states: "Warning—Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by physician."

Because OTC products may be purchased by anyone, the Panel is concerned that the public generally does not regard OTC products as medicines which, if used improperly, might result in injurious or potentially serious consequences. The public must be made aware of the concept that these products, like all medicines, carry some risk and should be used only as directed for the temporary relief of symptoms and not indiscriminately. The Panel, therefore, concurs with the FDA and considers it prudent to include the general warning statements now required by § 330.1(g) (21 CFR 330.1(g)).

The consumer should be informed of any possible signs of known toxicity, adverse reactions, or any warning requiring discontinuation of the use of the drug so that appropriate steps may be taken before more severe symptoms become apparent or the condition worsens. For example, one of the first symptoms of iodism due to overuse of iodine-containing compounds is stuffiness of the nose. (See Part IV. B.3.n. (1) below—Safety.)

Specific warnings that pertain to an ingredient appear below and in the discussions of individual ingredients. The consumer should also be warned of possible drug interactions that might occur when a product is taken concomitantly with other OTC products or medications prescribed by physicians. Such labeling should be conspicuously placed so that it will not be overlooked by the consumer.

The following are general and specific warning statements recommended by the Panel for use in the labeling of OTC oral health care products:

a. *Statements for use in the labeling of all OTC oral health care products.* (1) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(2) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

b. *Statements for use in the labeling of OTC oral health care products as specified*—(1) *For products containing phenylephrine hydrochloride or phenylpropanolamine hydrochloride.* (i) "Do not use this product if you have thyroid disease, high blood pressure, diabetes, or heart disease except under the advice and supervision of a physician."

(ii) "Do not use if taking monoamine oxidase inhibitors. Discontinue use if dizziness, headache, fast pulse, tremors, or nervousness develop. Consult a physician if symptoms persist."

(2) *For products containing aspirin.* (i) "Do not use if you are sensitive or allergic to aspirin."

(ii) "Do not use if you have a bleeding problem or if you are on anticoagulants."

(iii) "Do not use without a physician's or dentist's advice if your mouth is highly irritated or ulcerated."

(iv) "Do not use after surgery in the mouth or throat."

(v) "Provide good fluid intake when aspirin or aspirin-containing preparations are used."

(3) *For products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

(4) *For products containing glycerin.* "Do not use full strength. Dilute with two or three volumes of water."

5. *Labeling of product attributes.* The Panel accepts the use of terms that describe certain physical and chemical qualities of OTC oral health care products that are indicative of product performance so long as none of these terms implies that it is an indication that the product exerts a therapeutic effect, e.g., "pain reliever," "astringent," "demulcent," etc. The attributes described must pertain to product performance or to the pharmaceutical attributes of the formulation. The properties described may be due to the effects of colors, taste, or smell of specific inert or inactive ingredients

included in the final product formation. Such product characteristics in the labeling must be placed apart from the "indications" but must be in a conspicuous part of the labeling so that the consumer will be fully aware of their existence. Such labeling may be intended to make the product more appealing to the consumer. The Panel stresses that the terms used in such labeling must be carefully selected so that they do not imply that they exert any therapeutic effect or relieve any symptom, temporarily or permanently, or that they ameliorate a disease process or exert a curative effect.

The use of medicinal odors has been associated with the practice of medicine and pharmacy since the art of therapeutics was first conceived. This is of particular importance in oral health care products since smell and taste are closely associated. Although many chemical and instrumental methods have been used to measure quantities of substances emanating from the body that cause specific ordors, the cosmetic and pharmaceutical industries often rely on the personal reactions of trained individuals using subjective methods in making such assessments and measurements.

More important than color and odor is the matter of the taste of a product, particularly one intended for OTC use. The listing of flavorants and essences that are used for disguising odors and the fact that flavors of certain medicines are in official compendia attest to the acceptability of the practice by the community, the pharmaceutical industry, and the consumer of using these agents. Flavors that sweeten a final product containing a bitter ingredient are especially important. Description of the flavor in the labeling is particularly important when a product is formulated with several different flavors (i.e., cherry v. orange v. lemon) because one flavor may appeal to one consumer and not to another.

The Panel concludes that the practice of using descriptive labeling is both reasonable and informative to the consumer and not objectionable because it actively reflects inherent characteristics and the performance of the marketed product. Terms such as "does not stain," "pleasant tasting," and "non-oily" are acceptable. The Panel finds any claims related to product performance that cannot be substantiated by scientific data unacceptable. Labeling containing phrases such as "acts fast," "gives quick relief," "long-acting," "remarkable," or "acts promptly" is misleading and may be confusing to the consumer and is not permitted unless such claims can be supported by adequate scientific data.

E. Adverse Reactions

Most ingredients used in oral health care preparations are absorbed from the mucous membranes of the mouth or throat and pass systemically into the blood stream. They may be swallowed deliberately, as is the case when lozenges are sucked slowly over a period of time, and pass into the gastrointestinal tract, where they are absorbed and circulate systemically. In many cases absorpotion from the mucous membranes of the mouth and throat is more rapid than from the gastrointestinal tract. Ingredients may be absorbed in sufficient quantities during even a brief rinse or during gargling to produce systemic effects (Refs. 1, 2, and 3).

Certain oral health care ingredients produce unwanted or adverse effects regardless of how they are administered. Adverse effects to drugs are generally categorized as acute overdosage, chronic overdosage, secondary effects, intolerance, idiosyncrasy, local irritancy, local hypersensitivity, and systemic hypersensitivity (allergic) reactions. Side effects are not adverse reactions but are sometimes erroneously classed as such. Adverse reactions may be local or systemic or a combination of both (Ref. 4).

1. *Overdosage.* Overdosage, often referred to as acute toxicity, may occur after taking a single dose that is in excess of the therapeutic dose, by accumulation after repeating therapeutic doses at frequent intervals, or by deliberate ingestion of massive doses. Overdosage is usually manifested as an exaggerated form of the pharmacologic action or actions typical of the drug. However, ingestion of massive quantities may produce symptoms in addition to the exaggeration of the pharmacologic action typical of the drugs. The acute manifestations and residual effects of overdosage vary with each drug. The symptoms and severity are often dose-related (Refs. 4 and 5).

Gross overdosage may result in toxic and, in some cases, fatal reactions. Ingestion of massive quantities of some drugs may produce coma, cause convulsions, paraplegia, respiratory failure, hemorrhagic states, and other effects not ordinarily characteristic of the drug (Refs. 4 and 5). Phenol, in toxic doses, may cause convulsions and respiratory failure. The manifestations of overdosage of oral health care products are described in the ingredient statements under the sections on safety.

2. *Chronic overdosage.* Chronic toxicity may result from prolonged usage of the usual recommended doses or by repeatedly using subtoxic doses. Such usage may result in cumulative effects of the drug or its metabolites in the tissues and, in most cases, will present manifestations different from acute overdosage. Chronic exposure to or prolonged usage of a drug that ordinarily causes no ill-effects after several usages may produce irreversible changes in some organs. Antiseptics containing organic mercury permanently damage the kidneys. Chronic usage of phenolic compounds may result in cellular changes, discoloration of the skin, etc. (Refs. 4 and 6).

Chronic, long-term usage or overusage and its resultant manifestations are extremely important when considering OTC oral health care preparations, particularly gargles, rinses, or sprays, containing active ingredients such as quaternary nitrogenous compounds, iodophors, and phenolic compounds which are used on a day-to-day basis for weeks, months, or years at a time (Refs. 7 and 8).

Manifestations of chronic toxicity may often be delayed. This is sometimes referred to as remote toxicity. The remote toxicity of many of the newly added drugs, such as the "quats," is not known.

3. *Side effects.* The term "side effects" refers to one or more therapeutic effects that a drug may possess in addition to the principal therapeutic effect. Few drugs have a single pharmacologic action and considerable overlapping of actions is found among drugs. For example, the "caine" type of local anesthetics, such as procaine, manifests some antihistaminic and anticholinergic activities. These side effects are not harmful, but are often unwanted. The dryness of the mouth and visual disturbances caused by anticholinergic drugs, the drowsiness caused by antihistamines, and the pressor effects caused by vasoactive adrenergic drugs used as decongestants are examples of side effects that may not be harmful but are unwanted in some instances and desirable in others (Ref. 4).

The term "side effect" actually has no specific pharmacologic connotation and is not synonymous with the term "adverse reaction." It is sometimes used deceptively to convey the impression that an adverse effect is not necessarily undesirable, unpleasant, or harmful. Dryness of the mouth is desired and sought when an anticholinergic drug is administered to prevent formation of an excessive secretion of saliva, but unwanted when an anticholinergic drug is used as an antispasmodic or bronchodilator.

A true adverse effect of a drug differs from a side effect in that the adverse effect has no therapeutic usefulness, is undesirable, and may even cause harm. Nausea caused by gastric irritation following the use of an oral antibiotic would be an example of a true adverse effect. It is neither wanted nor is it therapeutically useful (Ref. 4).

4. *Secondary effects.* Secondary effects are indirect effects that occur during or after the use of a drug and do not result from any direct action of the drug itself on a particular organ system. An example would be the use of certain antimicrobial agents in the oral cavity that alter the normal bacterial flora and cause an overgrowth of symptom-producing pathogenic bacteria, or fungi, such as candida. The antimicrobial agent itself plays no direct role in accelerating the growth of such organisms but alters the environment and favors their growth (Refs. 4 and 6).

5. *Intolerance.* "Intolerance" is a term that describes a lower-than-the-average threshold to an anticipated response to a drug. The response is one normally expected of a drug, but the dose required to elicit that response is much less than is necessary to affect a significant group of a target population. Thus, a preparation containing an ingredient in a dosage form that ordinarily produces the usually anticipated response in a target population would cause an exaggerated response in a susceptible person exposed to the usual effective dose. Since many ingredients used in oral health care products are readily absorbed through the mucous membranes, intolerance may be encountered, although this is uncommon. For example, 10 milligrams (mg) of phenylephrine in a lozenge causes no pronounced pressor effect. In an intolerant individual it could produce a pronounced hypertensive response. Tolerance to a drug is often dependent upon a patient's physical condition (Ref. 5).

6. *Idiosyncrasy.* "Idiosyncrasy" is a term used to denote a qualitatively abnormal and unanticipated reaction produced by a drug in a particular, isolated individual in a target population. The reaction is not one ordinarily anticipated from use of the drug and is not one for which the drug is used therapeutically. A decongestant causing hypotension, instead of a pressor effect, or an analgesic causing hyperanalgesia or antianalgesia (exaggeration of a pain) would be examples of idiosyncrasy or idiosyncratic reactions (Refs. 4 and 9).

The term is often used erroneously to indicate that a reaction is due to hypersensitivity or an allergic state. The mechanisms involved in producing an idiosyncratic reaction and an allergic response are distinct and separate. The distinction is discussed in detail below. Ingredients used in oral health care products occasionally cause idiosyncrasy, but such reactions are uncommon. Aspirin in gum may cause an asthamtic attack in a nonallergic individual which could be ascribed to idiosyncrasy. The response is not immunogenic but is due to some interference with prostaglandin synthesis. In others who are truly allergic, the response is immunogenic in origin. The reaction would then be classed as sensitivity. Aspirin can cause both types of adverse reactions.

7. *Local irritancy.* Some ingredients in oral health care products possess the propensity for producing local reactions. Among these reactions are "irritation" of the mucous membranes (Ref. 10). Ulceration in the mouth or throat may appear after one or more applications of an ingredient when none existed prior to its use. This type of response is due to a direct irritating effect of an ingredient on the mucosal and submucosal cells. Caustic agents, such as phenol, cresol, and certain astringents, may have locally irritating effects. Locally applied aspirin tablets or aspirin-containing gums have produced aspirin burns. In some cases, the irritating response may appear early, sometimes immediately after application of a preparation. In other cases, it may be delayed and appear after one or several applications. No immunological phenomena are involved in this type of direct irritancy. The susceptibility to this type of response is difficult to detect beforehand. Patch and other tests on the skin employed by dermatologists and allergists may give no clue that this type of reaction will occur (Refs. 6 and 11).

8. *Local sensitivity.* In addition to "irritancy," ingredients in oral health care products produce a type of sensitization involving immunological phenomena. The manifestations of such sensitization may be local or systemic. Topical sensitization may result from prolonged or repeated contact of an ingredient with the mucous membranes of the mouth and throat (Refs. 12 and 13). Under these circumstances, an ingredient may serve as a contact allergen by acting as a hapten becoming bound to the protein in the cells of the mucous membranes or submucosal structures. Stimulation of the T cell division of the lymphoid system occurs. Lymphoid cells become sensitive to the contact allergen or the hapten and accumulate in the mucosa, the submucosal layers, or even in the skin. The drug may pass through the mucous membranes, circulate in the blood, combine with proteins in the skin, and not sensitize the mucous membranes. Contact of the sensitized lymphocytes with the ingredient at a later date provokes a cell-mediated sensitivity type of reaction characterized by inflammation, burning, erythematous ulcerations, or exudation at the site of application. This type of response is cytotoxic, since it affects lymphocytes and no immune bodies are involved (Refs. 13 and 14). Topical sensitization of this type may, at times, be difficult to distinguish from direct topical "irritancy." The resulting contact sensitivity in a particular individual manifests immunological specificity for the particular ingredient (hapten). Patch-testing may be helpful in detecting this type of sensitization when the skin has been sensitized. However, since the proteins of the skin differ from those of the mucous membranes and the hapten may not have passed into the skin a negative patch skin test may be misleading because sensitization may have occurred in the mouth and throat even though the skin has not become sensitized. Contact of the agent with the mucous membranes would produce a reaction. Coombs and Gell (Ref. 13) have classified immune responses into four distinct types. They designate this type of response as Type IV (cytotoxic). It has also been called "delayed hypersensitivity." The allergen or the hapten interacts with the sensitized lymphocytes in the mucous membranes, or submucosal tissues. The lymphocytes disintegrate and produce tissue damage (Ref. 15).

9. *Systemic sensitization.* A hapten may be inhaled, injected, taken orally, come in contact with a mucous membrane of the mouth or throat, trachea, lungs, and other organ sites, or pass through damaged skin and bind with proteins in blood and other tissue fluids to produce a systemic type of sensitization. This was once referred to as the "humoral type" or immediate type of sensitization. This type of sensitization is due to circulating IgE of the blood protein fraction. Coombs and Gell (Ref. 13) designate this type of response as the Type I response. It occurs in the allergic-prone (atopic) individual and is associated with a hereditary tendency towards sensitization. Allergens (also called antigens) are usually proteins or lipoproteins of high molecular weight. Drugs of low molecular weight, often referred to as haptens, combine with proteins and act as allergens that cause a systemic type of sensitization by

stimulating the production of circulating antibodies (immune bodies) of the IgE class of globulins (Refs. 16 and 17).

Antibodies are found in the globulin fraction of blood proteins. Ordinarily, immune bodies are protective and neutralize an antigen, allergen, or a hapten on contact by forming an antigen-antibody complex which is harmless to the organism and prevents a reaction. In susceptible individuals, for unknown reasons, the antibody acts in an adverse (pathologic) manner and sensitizes certain cells in the body, referred to as target cells. IgE antibodies have a cytophilic affinity for the membranes of mast cells, blood neutrophils, and basophils in susceptible individuals (Ref. 13). These antibody-sensitized cells rupture on subsequent contact with the appropriate allergen or hapten (drug) and release vasoactive substances that dilate or constrict blood vessels. At least one or more exposures and an incubation period of at least a week are necessary for immune bodies and this type of sensitization to develop. The B cell division of the lymphoid system is involved in the systemic type of immune response (Ref. 13). It is due to circulating antigens. The presence of antibodies that sensitize cells is necessary for sensitivity reactions to occur. This type of sensitization may be manifested by anaphylaxis, extrinsic asthma (systemic), rhinitis (systemic), subcutaneous edema, laryngeal and pharyngeal edema (systemic), urticaria, or atopic dermatitis (Refs. 14 and 16).

Antigens have certain groups of amino acid complexes on their structure which determine the specificity of the antigen and the type of antibody that forms. These chemical sites are called antigenic determinants. The antibody has certain receptor sites on its molecule into which the antigen determinant fits in a lock-and-key manner to form the antigen-antibody complex. Each antigen has its own number of natural groups of antigenic determinants. When a drug acts as a hapten, an additional antigenic determinant not ordinarily found on the antigen is added to the protein. In the production of the antibody, a receptor forms on the antibody that accepts the hapten-protein antigen or the hapten itself (Ref. 17).

Drugs that are in the same chemical family may produce cross-sensitization or may cross-react in susceptible individuals if the antigenic determinant or hapten can fit into the same receptor of an antibody. However, even a slight modification of the chemical structure between two closely chemically allied drugs may negate this type of reaction. Aminobenzoic acid, for example, is closely allied chemically to its ester, ethyl aminobenzoic acid (benzocaine). Yet, it does not necessarily follow that both of these compounds, even if they bind on the same antigenic determinant of a protein, will cause cross-sensitization unless they fit into the same receptors on the antibody (Ref. 13). The Panel finds that the incidence of cross-sensitization of drugs used in oral health care preparations is low and does not consider this to be a serious problem.

Human IgE antibodies will also bind to the plasma membranes of mast cells in the skin and mucous membranes and cause sensitivity reactions when the appropriate antigen (or hapten) circulates in the blood or comes into contact with these cells following oral ingestion, parenteral injection or percutaneous absorption. The response may be local or generalized and even may be cutaneous (Refs. 9, 16, and 17).

The systemic type of sensitization differs from the topical sensitization which is due to a contact allergen. A topical sensitization causes a cell-mediated type of reaction. A systemic type of sensitization elicits an adverse response to an antigen-antibody complex acting on sensitized target cells (Ref. 13). The anaphylactic type of reaction is the most serious. It may occur suddenly, with little or no warning, and may be fatal. A trace of the offending ingredient coming into contact with the mucous membranes or administered orally or parenterally to a sensitized person may precipitate the sudden release of mediators, such as massive quantities of histamine, serotonin, slow-reacting substance (SRS–A), the eosinophilic chemotaxic factor or various kinins. These mediators, acting on the blood vessels, cause them to dilate and may cause syncope, shock, and death in a matter of minutes. These substances are released from the mast cells and white blood cells, particularly basophils and neutrophils. Fortunately, this type of reaction is rare.

Marketing experience of oral health care products indicates that the frequency of anaphylaxis from topical application on the mucous membranes has been infrequent. A drug itself may act directly, in the absence of immune bodies, on mast and other cells and cause histamine or other mediator release. This type of reaction is often called anaphylactoid. It resembles anaphylaxis except that the causative mechanism is different (Ref. 13).

Fortunately, this type of reaction also is uncommon. Testing for sensitivity, particularly for anaphylaxis in allergic patients, may be dangerous because the quantity used for testing may be fatal in susceptible individuals. An anaphylactic or anaphylactoid reaction may occur the first time a drug is applied topically to a mucous membrane or to the skin. The anaphylactic and anaphylactoid types of reactions may be delayed, but the manifestations, when fully developed, are similar to the immediate-occurring type (Ref. 16 and 17).

Other manifestations of systemic sensitization that may occur are relatively benign and disappear with proper treatment or discontinuing use of the drug. Among these manifestations are rhinitis, asthmatic attack, urticaria (hives), and atopic dermatitis. Generally, histamine is the most common offender in causing these responses, but other mediators may also be responsible (Ref. 16).

All soluble drugs can act as haptens and cause sensitization. Antihistamines, despite the fact that they are used systemically for treating allergies, can act as haptens and be sensitizers when applied topically. The "caine" types of local anesthetics and modifications of the "caine" type cause sensitization to a greater extent than the alcohol type of ingredients although the alcohols may also produce irritancy and sensitization. The quaternary nitrogenous derivatives can also act as haptens and be sensitizers when applied topically. Similarly, phenolic-type compounds and pharmaceutical necessities such as flavorants can act as haptens (Refs. 16 and 19).

People who are allergic to foods, inhalants, and other substances are high risks and are more apt to become sensitized to drugs (Ref. 10).

Data are meager on the frequency of sensitization by ingredients used in oral health care products and on the relationship of occurrences in a target population. The Panel believes that the long-term usage and marketing experience, over many years, of the majority of these ingredients justifies their continued use and that the hazards due to sensitization are minimal. The labeling of oral health care products must indicate that a product should not be used if a subject is known to be sensitive to any of the ingredients used in its formulation. The Panel recommends the following general warning in the labeling of all active ingredients in oral health care products: "Discontinue use and consult a physician if irritation persists or increases or a rash appears on the skin."

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F. Principles Applicable to Combination Products

1. *General comments.* In reviewing OTC oral health care preparations for use on the mucous membranes of the mouth and throat, the Panel was mindful of the OTC review regulations (21 CFR 330.10(a)(4)(iv)) which state:

> An OTC drug may combine two or more safe and effective ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual acting ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The Panel concurs with the basic concepts embodied in this regulation that each active ingredient in a combination product must contribute to the claimed effects and that the combination must provide rational concurrent therapy. The Panel believes that it is irrational to use a combination product unless each active ingredient contributes to the effective treatment of at least one of the labeled symptoms for which the combination of ingredients is recommended.

The Panel has outlined below the proposed standards for combinations for all the ingredients reviewed. Also included are elaborations and reasons for the rationality or irrationality of combining the various ingredients with each other and other Category I ingredients considered by other panels.

It is accepted medical practice to use only drugs that are necessary to safely and effectively treat a patient. Only single-ingredient products are used to treat a particular symptom or disease entity in most cases. The Panel believes strongly that this concept should apply to self-medication as well since the consumer is treating symptoms without the advice of a physician. OTC products containing effective single active ingredients are, therefore, preferred to those having multiple active ingredients. Products containing a single active ingredient reduce the possibility of the occurrence of toxic, allergic, and idiosyncratic reactions, and possible unrecognized and undesirable drug ineractions. This is the case when a drug is prescribed by a physician and should also be the case when a drug is used by a layman for self-treatment. It is the opinion of the Panel that in general OTC oral health care preparations should contain only one Cateogry I active ingredient of a pharmacologic class and such inactive ingredients as are necessary for pharmaceutical formulation.

The Panel recognizes that select situations may exist in which combinations of ingredients from the same pharmacologic class of Category I active ingredients or from different pharmacologic classes but exerting similar therapeutic effects may be used to treat the same symptoms or conditions. The Panel does not wish to deprive the consumer of the right to use these products if they possess a therapeutic advantage not possessed by each of the individual ingredients used alone. By "therapeutic advantage" is meant that the product provides either enhanced effectiveness, safety, consumer acceptance, or improved quality or formulation. Category I active ingredients of the same therapeutic category may be combined if each active ingredient is present in full therapeutic doses or in subtherapeutic doses where a subtherapeutic dose is appropriate. The combination product must meet the OTC drug combination policy as cited above (21 CFR 330.10(a)(4)(iv)) in all respects and must be equal to or superior to each of the active ingredients used alone at full therapeutic doses when considered from the standpoint on a benefit-to-risk ratio. When it is not known or it has not been shown and data have not been presented that the foregoing conditions exist, the combination should not be placed in Category I.

An ingredient claimed to be a pharmacologic adjuvant will be considered an active ingredient and may be included in addition to one or more principal active ingredients only if it meets the combintion policy in all respects.

When there are data available indicating that a particular ingredient in a given combination is appropriate for use only in that combination, but is not in Category I as a single active ingredient, such an ingredient will be placed in Category I for use only when used in that particular combination.

Many combinations of oral health care products intended to be used in the mouth and throat have been in the marketplace for many years. Many of

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these products continue to be used for self-medication for various clinical conditions and symptoms, even though use for these conditions has been supplanted, for the most part, by other more effective or safer drugs and methods of treatment. The Panel feels that both the OTC drug review regulations (21 CFR Part 330) and the historical evidence for the use of these combination products do not support the concept that the long-time use of an OTC product with apparent beneficial results based on impressions by consumers or without complaints of adverse reactions attest to their safety and effectiveness. The Panel is not impressed by statements appearing in some submissions, such as "marketing experience has been favorable" or "no complaints have been reported." The Panel considers marketing experience data and frequency of customer complaints to be of interest and gives them their due consideration but does not consider such data to be the type of proof that is meaningful in a scientific review of standards for existing OTC products. The paucity or lack of reports of adverse reactions are merely negative findings and are not indications or evidence of the fact that adverse reactions have not occurred. Negative findings from marketing data do not constitute a sound basis for establishing the safety and effectiveness of a product. Furthermore, most of the submissions do not describe the manner in which the data were collected from the users of these products or the instructions provided the users to facilitate and assure that all necessary meaningful data would be forthcoming in reporting adverse reactions. Very few of the submissions describe how and by whom the data were collected and interpreted or otherwise explain pertinent significant details concerning their methods of adverse reaction reporting.

The Panel, therefore, does not feel that the continued availability and use of a combination product is justified simply because such combinations have had an extensive, apparently successful marketing history.

The Panel is aware of the lack of controlled studies in the area of certain combinations used in the mouth and throat. Most studies of these types of products are of necessity of a subjective nature. Controlled clinical studies are difficult to perform, particularly for symptoms which are frequently evanescent and usually self-limited. The Panel is also aware that it is not always possible to interest investigators in such studies. The Panel agrees with FDA's conclusions of concerning difficulties in performing controlled clinical studies to determine the safety and effectiveness of these products which were published in the **Federal Register** on November 12, 1973 (38 FR 31261):

> The FDA recognizes that OTC studies are often more difficult to undertake than those involving prescription drugs. OTC drug studies are principally concerned with measuring symptomatic relief requiring methods that are more subjective than those used to measure the resolution of a diseased condition. In all cases, however, such tests are entirely feasible and indeed may have, in many cases, been conducted in the past. Nor is difficulty in performing studies sufficient justification for retaining on the market drugs, the safety and effectiveness of which are inadequately documented.

2. *Requirement of contribution.* The Panel has determined that each claimed active ingredient in a combination must make a contribution to the claimed therapeutic effect. The amount of ingredient present in a product intended for use in the oral cavity must be at least equal to the currently accepted minimum dose level for such active ingredients as required in the ingredient statements below unless data are presented to show that a lower minimum dose is adequate to achieve the intended therapeutic effect.

In its consideration of active ingredients, the Panel reviewed the safety and effectiveness of all the combinations submitted. All combinations that meet the criteria for Category I as set forth below are considered safe and effective.

The Panel considers it important that the minimum effective dose be established for each ingredient in a combination product. Where lacking, data should be developed by appropriate, well-controlled clinical studies to demonstrate the effectiveness of a dosage level.

Each claimed active ingredient in an oral health care combination product must be an ingredient that has been reviewed by the Panel. If a product contains an active ingredient having a claimed local effect on the oral and pharyngeal mucous membranes that has not been reviewed by the Panel and consequently not found in this document, such ingredient is automatically classified as a Category II ingredient and is not generally recognized as safe and effective. Appropriate animal and human testing and prior approval by FDA is required before a product containing such an ingredient may be marketed.

The Panel considered only those combination products submitted pursuant to the notice published on July 20, 1973 in the **Federal Register** (39 FR 19444). The Panel recognizes that other combination products may be in the marketplace, but it has either no knowledge of such products or insufficient data with respect to such products to make a reasonable judgment of safety or effectiveness. Accordingly, the Panel recommends that any new combination or any presently marketed combination which claims local effects on the oral and pharyngeal mucous membranes and not submitted to this Panel could be evaluated through the new drug procedures or be the subject of an appropriate petition to FDA to review or amend the OTC oral cavity drug monograph.

3. *Standards for determining Category I Combinations*—a. *Combinations of ingredients from different therapeutic categories.* Combinations of ingredients from different therapeutic categories must be limited to Category I oral health care ingredients in the dosage range specified for Category I ingredients in the ingredient satements. The following combinations are classified as Category I:

(1) One Category I topical anesthetic/analgesic may be combined with one Category I antimicrobial active ingredient. The topical anesthetic/analgesic relieves pain while the antimicrobial active ingredient is acting on the oral microorganisms. The majority of antimicrobial ingredients reviewed by the Panel are not anesthetic/analgesic ingredients and do not relieve pain.

(2) One Category I demulcent active ingredient may be combined with one Category I antimicrobial active ingrdient. The demulcent provides a soothing effect while the antimicrobial agent is acting on the oral microoganisms.

(3) One Category I decongestant active ingredient may be combined with one Category I antimicrobial active ingredient. This combination is rational because the decongestant may help reduce the edema while the antimicrobial agent is acting on the oral microorganisms.

(4) One Category I astringent may be combined with one Category I antimicrobial active ingredient because astringents provide a protective coat on ulcerated areas and aid in relieving discomfort while the antimicrobial agent is acting on the oral microorganisms.

(5) One Category I anesthetic/analgesic active ingredient may be combined with one Category I demulcent active ingredient. The anesthetic/analgesic relieves pain and the demulcent may augment this effect

by acting as a protectant and minimizing effects of external stimuli.

(6) One Category I anesthetic/analgesic active ingredient may be combined with one Category I decongestant active ingredient. The anesthetic/analgesic relieves pain by suppressing the pain receiptors, and the decongestant reduces swelling that may be stimulating pain receptors.

(7) One Category I anesthetic/analgesic active ingredient may be combined with one Category I demulcent active ingredient and with one Category I antimicrobial active ingredient. The anesthetic/analgesic relieves pain by supressing the pain receptors. The demulcent reduces the degree of stimulation of the pain receiptor on a surface lesion, while the antimicrobial ingredient is acting on the oral microorganisms.

(8) One Category I anesthetic/analgesic active ingredient may be combined with one Category I Astringent active ingredient. The anesthetic/analgesic relieves pain by supressing the pain receptors, and the astringent acts as a coagulant and provides a protective coating for a surface lesion, theregy reducing the number of stimuli affecting that area.

(9) One Category I anesthetic/analgesic active ingredient may be combined with one Category I astringent active ingredient and the one Category I antimicrobial active ingredient. The anesthetic/analgesic relieves pain by suppressing the pain receptors, and the astringent acts as a coagulant providing a protective coating for a surface lesion, thereby reducing the number of stimuli affecting that area. The antimicrobial agent acts on the oral microorganisms.

(10) One Category I anesthetic/analgesic active ingredient may be combined with one Category I decongestant active ingredient and with one Category I antimicrobial active ingredient. The anesthetic/analgesic relieves pain by suppressing the pain receptors. The decongestant helps reduce the edema, and the antimicrobial agent acts on the oral microorganisms.

b. *Combinations of ingredients from the same therapeutic category.* Category I active ingredients of the same therapeutic category but having different pharmacologic mechanisms of action and those that have the same action may be combined if each active ingredient is present in full therapeutic doses or subtherapeutic doses where a subtherapeutic dose is appropriate, but only where there is a clear demonstration that there is an improvement of safety or enhanced effectiveness or both.

4. *Standards for determining Category II combination products.* A combination is classified by the Panel as a Category II product, i.e., one that is not generally recognized as safe and effective, if any of the following apply:

a. The combination contains any Category II ingredients or any ingredient is present above the maximum dose range for that ingredient allowed in the ingredient statement in this document.

b. One or more antimicrobial active ingredients are combined with one or more expectorant active ingredients, because the expectorant would dilute or diminish the time of contact of the antimicrobial drug with the diseased surface.

c. One or more antimicrobial ingredients are combined with any debriding active ingredients because a debriding agent would dilute or wash away the agent from the diseased surface.

d. One or more antimicrobial active ingredients are combined with an expectorant and one debriding agent because the duration of contact would be decreased or the drug washed away from the mucous surface.

e. One or more anesthetic active ingredients are combined with one debriding active ingredient because the anesthetic would be washed away, diluted, or mixed with the debris.

f. One or more anesthetic active ingredients are combined with one or more expectorants because the drug would be diluted and removed from the site of action.

g. One or more anesthetic active ingredients are combined with one or more expectorants, combined with one or more debriding agents because the anesthetic agent would be diluted or removed from the diseased site.

h. One or more active astringents are combined with one or more debriding agents because the debriding agent would prevent the astringents from exerting its coagulating effect.

i. One of more active astringents are combined with one or more expectorants because the expectorant would dilute and wash away the astringent and prevent it from acting as a coagulant.

j. One or more active astringents are combined with one or more expectorants and one or more debriding agents because the astringent would be diluted or washed away or otherwise be prevented from exerting its coagulating effect.

k. One or more decongestants are combined with one or more expectorants because the expectorant would dilute or otherwise prevent the decongestant from exerting its therapeutic effect.

l. One or more decongestants are combined with one or more expectorants, combined with one or more debriding agents because the debriding agent and the expectorant would dilute or wash away the decongestant or otherwise prevent it from exerting its therapeutic effect.

5. *Standards for determining Category III combinations.* A combination is classified as a Category III combination if any of the following apply:

a. Any Category I ingredient is below the minimum effective dose set by the Panel as found elsewhere in this document for such respective ingredient, except that Category I active ingredients of the same therapeutic category but having different pharmacologic mechanisms of action, and those that have the same action, may be combined if each active ingredient is present in full therapeutic doses or subtherapeutic doses where a subtherapeutic dose is appropriate but only where there is a clear demonstration that there is an improvement of safety or enhanced effectiveness or both.

b. One or more ingredients are Category III ingredients, as set forth elsewhere in this document for single active oral health care product ingredients.

c. A combination of two or more Category I active ingredients from the same pharmacologic class or from different pharmacologic classes but exerting similar therapeutic effects has not been shown to possess a therapeutic advantage, i.e., enhanced effectiveness, safety, consumer acceptance, or improved quality of formulation greater than each active ingredient used alone at full therapeutic doses.

6. *Requirements for the reclassification of Category III combinations to Category I combinations*—a. *Combinations with ingredients below minimum effective levels.* For any Category III combination where one or more ingredients fall below the minimum effective level as set forth elsewhere in this document for such individual ingredients, tests must be performed to substantiate the effectiveness of any such ingredient. The Panel recommends a petition to the agency for appropriate modification of the monograph to permit such lower dosages, or that testing be pursued under the NDA procedures.

b. *Combinations containing Category III ingredients.* Any combination that contains one or more ingredients in Category III, as set forth elsewhere in this document, must be tested to satisfy

Category I requirements for each such ingredient.

7. *Inactive ingredients.* The Panel recommends that a review panel be appointed to review the inactive ingredients in OTC products for the purpose of determining which of these inactive ingredients should be listed on the label.

III. Anesthetics/Analgesics

A. General Discussion.

1. *Modes of action.* Topical anesthetics/analgesics act in one or a combination of the following ways:

a. They may penetrate the epithelial barriers of the mucous membranes and completely block the receptors for the perception of pain. Such ingredients penetrate the nerve endings and cause a temporary reversible change in the nerve membrane that prevents the development of the electrical current that transmits sensory impulses along a nerve. When this occurs, a complete loss of perception of stimuli such as pinprick, touch, warmth, cold, and pressure results. When the blockade is complete, the anesthetics may induce the subjective sensation of numbness. This lack of sensation and response to pain is called anesthesia (without feeling) (Ref. 1).

b. Topical anesthetics/analgesics may act by partially blocking the transmission of impulses from the receptors for pain so that subminimal stimuli that elicit the sensation are no longer able to do so. However, the receptors are still able to respond to stronger stimuli that induce pain. This type of response is noted after application of these ingredients in dilute form so that the smaller C-type pain-carrying fibers are blocked but the larger A-type fibers are not. Ingredients acting in this manner generally do not induce the sensation of numbness. The sensations of cold, warmth, touch, or pressure usually remain undisturbed. For this reason, such ingredients are called analgesics. In this report the term "anesthetic/analgesic" is used. It should be emphasized that anesthetics in smaller doses will act as analgesics and not produce numbness. An analgesic, on the other hand, will not produce anesthesia when the dosage is increased, but might produce toxic reactions.

c. Some topical anesthetics/analgesics may penetrate the mucous membranes and exert an anti-inflammatory effect when they come into contact with a disease process that is causing discomfort in the mucous membranes. Such ingredients do not act upon receptors and nerve fibers to block transmission of impulses. They may reduce swelling in tissues by acting as antagonists to agents causing inflammation, thereby eliminating noxious stimuli that cause pain. Relief from the discomfort will require time because the anti-inflammatory effects occur gradually and are not immediately apparent. The salicylates exert anti-inflammatory effects when ingested orally. Other salicyclates and other mild anesthetics/analgesics such as antipyrine do not cause a blockade in nerve tissues.

d. Topical anesthetics/analgesics may act antagonistically to biologic agents stored in certain cells in the body. When released into the tissues by trauma or some pathologic mechanism, these agents cause cellular injury. Histamine, serotonin, various kinins, prostaglandins, etc., are stored in mast cells or white blood cells. When released into tissues where they are not ordinarily found, they exert a vasoactive effect and produce an inflammatory swelling of the cells or another not clearly understood response that results in discomfort and pain. The histamine response is characterized by swelling of the tissues, engorgement of blood vessels, and escape of fluid from the blood vessels into tissue spaces. Topical anesthetic/analgesic ingredients that antagonize the effects of histamine are called antihistamines.

e. Topical anesthetic/analgesic ingredients provide temporary symptomatic relief and are not curative. Salicylates and antihistamines may ameliorate a disease process. Relief of symptoms beyond the time the medicine exerts its topical anesthetic/analgesic effect sometimes occurs from the use of agents that directly or indirectly decrease or overcome muscle spasm, reduce edema, or alter the degree of blood flow in an affected area. Exactly how this comes about is not known.

Topical anesthetics/analgesics are applied to the mucous membranes to lessen or completely abolish pain. They act by completely blocking pain receptors resulting in a sensation of numbness and abolition of responses to painful stimuli. In some instances, not all the pain fibers are completely blocked. The smaller, unmyelinated (unsheathed) C fibers that carry the sensation of dull, aching pain are more easily blocked than the large delta A myelinated (sheathed) fibers which carry the sensation of sharp pain. Only a partial reduction in the response to painful stimuli results, but it is sufficient to alleviate discomfort of the dull, aching type of pain if the C fibers are blocked. This partial relief is rightfully called "analgesia." If all the fibers in a nerve are blocked, and no response occurs to painful stimuli, the sensation of numbness results. This is rightfully called "anesthesia." In this report, the active ingredients which produce either analgesia or anesthesia are called "anesthetics/analgesics."

2. *Chemical classification of anesthetics.* Topical anesthetics used in the mouth and throat fall into two chemical groups. One group is the nitrogen-containing amino type of anesthetics, and the other group is the hydroxy or alcohol type (Ref. 2).

The nitrogenous types are closely allied to ammonia, since the hydrogen atoms of ammonia are substituted by organic radicals. They form weak bases when dissolved in water and, like ammonium hydroxide which forms when ammonia is dissolved in water, are poorly ionized.

The solubility of the bases of nitrogenous anesthetics in water varies. Aqueous solutions of amines are alkaline. These basic compounds form salts when combined with acids just as ammonium hydroxide does when it is mixed with an acid to form a salt. The salts formed when amines combined with acids are far more soluble in water than the bases. They are also more stable. The un-ionized base is the physiologically active form of the compound.

Exactly how these ingredients exert their physiological effect is not known, but it is believed that they change the pore size on the axonal membrane and distort the channels for passage of the sodium ion from the extracellular fluid around an axon (the core of the nerve fiber) and prevent depolarization of the axonal membrane. This process has been referred to as stabilization of the membrane. The electrical impulse generated proximally at an unaffected part of a nerve cannot pass the affected area. The action of topical anesthetics is reversible and no permanent change results in the membrane. Salts of topical anesthetics are ineffective in producing a blockade because they are highly ionized and do not penetrate lipid membranes easily. However, when they are injected into tissues perineurally or applied on the mucous membranes, they are converted to the basic form because of the buffering action of the tissues. The salts, therefore, are effective topically on mucous membranes unless an excess is used. If an excess is applied, enough acid is liberated to neutralize the bases in the buffers, nullifying their effects.

The nitrogen-containing topical anesthetics are subdivided into several chemical types. These are described in more detail below. A particular

chemical configuration appears in the majority of the nitrogenous type of topical anesthetics. This configuration is composed of a hydrocarbon nucleus (benzene ring) and a nitrogen atom in the form of a tertiary amine, between which is interprosed an intervening two-carbon chain, often called the pivot. These amines are the most potent, effective, and serviceable topical anesthetics. They are also the most toxic systemically if they gain access to the bloodstream. The most effective and potent drugs have an ester or amide group linking the pivot to the hydrocarbon nucleus. Benzocaine, butamben, cocaine, and tetracaine are esters. Benzocaine is the most widely used type of ester in OTC products. The amide type of this topical anesthetic consists of a benzene ring linked to the two-carbon chain by an amide group. The end of the two-carbon chain also carries the tertiary amino group, as is the case with the ester type. Lidocaine and dibucaine are other amides that have been proposed for OTC use in the oral cavity.

The nitrogenous topical anesthetics are polar substances. The benzene ring, often called the aromatic portion, is called the lipophilic pole since it is oriented toward lipid (fatty) materials in nerve cells or the axon since nerve tissues are, relatively speaking, rich in fatty materials. The water-soluble or hydrophilic amino pole is directly opposite to the aromatic pole separated by the carbon chain. This amino pole becomes oriented into the watery phase of a medium, a cell, or cell membrane. Thus, to be effective, topical anesthetics should be sufficiently lipid soluble to penetrate lipid barriers and sufficiently water soluble to be transported to the cell

The generic names of most topical anesthetics end with the suffix "caine." The "caine" type of compounds are subdivided into two types, the water-soluble (tetracaine, lidocaine) type and the "insoluble" derivatives (benzocaine, orthoform, butamben). The so-called "insoluble" anesthetics are poorly soluble in water but are lipid soluble. However, they are not totally insoluble or they would not be effective since they would not be transmitted to the cells (Refs. 2 and 3). Because of their low degree of water solubility, they have low systemic toxicity since they are not readily absorbed and do not readily pass into the blood to accumulate to toxic levels. The highly water-soluble compounds are readily absorbed from the mucous membranes. When applied in excessive quantities, they may be absorbed so rapidly that toxic plasma levels result that can cause life-threatening or even fatal reactions. The systemic effects of these topical anesthetics are unwanted. The topical effect is the desirable effect. As long as these drugs remain in the area of the nerve endings and nerve trunks and pass slowly from the tissue fluids into the bloodstream, the amount circulating in the blood is insignificant and causes no systemic reaction (Ref. 4). In some cases the amount of drug that produces diminished sensation systemically is 500 or 600 times greater than an effective topical dose. An amount of drug which is 500 or 600 times greater than that which is effective topically can be fatal. Systemic reactions are characterized initially by stimulation of the nervous system and are manifested by convulsions. The convulsions are due to depression of the inhibitory neurons in the motor cortex. The excitatory neurons remain active. If the plasma concentration is increased still more, the excitatory neurons, in turn, are depressed. The reaction that follows is cerebral depression characterized by coma, paralysis, and cessation of respiration.

In addition, "caine" type anesthetics also depress the cardiovascular system, acting on both the heart and blood vessels. They depress conduction in the heart and disturb its rhythm and also reduce cardiac output. In addition, "caine" type anesthetics relax the blood vessels resulting in a decrease in blood pressure. The effects on the heart can occur simultaneously with the effects on the central nervous system. The systemic reactions, therefore, are of two types and are referred to as the "central nervous system type" and the "cardiovascular type." Generally, the central nervous system type of reaction is the more prominent and occurs first. These two types of systemic reactions occur from time to time following the use of these ingredients as prescription products.

The Panel considers the majority of these topical anesthetic/analgesic ingredients as unsafe for OTC use and has classified most of them as Category II. Benzocaine, however, due to its low water solubility and barely detectable blood level, does not cause systemic reactions. For this reason, it is one of the safest, least toxic, and most effective of the "caine" type anesthetics (Refs. 5 and 6).

Of all the nitrogen-containing topical anesthetics used in OTC products, many are of the "caine" type; however, there are nitrogen-containing topical anesthetics used in OTC products which are not of the "caine" type. Some have structures that are modifications of this classical chemical configuration characteristic of the "caine" class of drugs (Ref. 2). The aromatic nucleus may be attached to the remainder of the molecule by a ketone, ether, or other type of linkage instead of the ester and amide type (Ref. 2). The two-carbon chain may have side chains. The names of these types of derivatives usually bear the suffix "-ine" instead of "-caine." Pramoxine and dyclonine are nitrogen-containing compounds that are examples of non-"caine" type drugs. Their molecules are modified sufficiently so that they are effective as topical anesthetics; if they are absorbed, they may produce systemic responses but not of the severity of those which are characteristic of the "caines." These non-"caine" anesthetics are irritating and may cause sloughing. They are not effective when injected perineurally, but are effective when applied topically on the mucous membranes. Therefore, they are used topically, but are not suitable for injection. They do not cause convulsions, but some non-"caine" anesthetics may cause cardiac depression.

Some antihistamines have structures that are modifications of the "caine" type of topical anesthetics. They possess, in addition to the antihistamine effect, a topical anesthetic effect as well (Refs. 1 and 2). Their names bear the suffix "-ine" also. Some antihistamines are suitable topically for anesthesia, but not for injection (Ref. 2). These are described below.

The second type of topical anesthetic mentioned above, the alcohol or hydroxy type, consists of non-nitrogenous compounds. The alcohol-type drugs, such as phenol, benzyl alcohol, hexylresorcinol, and salicyl alcohol do not cause central nervous system or cardiovascular effects characteristic of the "caine" type drugs. The alcohols may be cyclic, aliphatic, or aromatic. Some of the drugs in the volatile oil group, such as menthol, camphor, and other cyclic alcohols, have topical anesthetic action. Systemic effects, if they occur, vary with the individual compound. Alcohol-type anesthetics are effective when applied topically, but produce neurolysis when injected perineurally. The hydroxy compounds are polar substances and are believed to orient into the cell membrane in the same manner as the nitrogen-containing compounds. They possess varying degrees of lipid solubility. Their action does not depend upon pH as is the case with the nitrogen-containing compounds. They

are readily absorbed through the mucous membranes and intact skin.

The "water-insoluble" esters, such as benzocaine and butamben, which are considered to be "caine" type drugs, are not absorbed in sufficient quantities to produce plasma levels that cause systemic reactions and, therefore, are relatively safe. Convulsions and cardiac depression do not occur from the use of these types of compounds. These have been used as anesthetics in oral health care products without any serious toxic effects. They are effective on the mucous membranes, the poor water solubility notwithstanding. They are soluble in glycols and other similar water-soluble bases and are readily applied in effective concentrations, in the form of rinses or sprays, to the mucous membranes of the mouth and throat. Bioactive quantities are delivered to paid receptors when solutions prepared with these solvents are applied to a surface. The degree of anesthesia that results depends upon the quantity used.

Topical anesthetics readily traverse the epithelial barriers of the mucous membranes and pass into the tissue fluids beneath, into the venules and lymphatics and are then distributed to various tissues, particularly those that are capillary-rich. Some esters of para-aminobenzoic acid, such as tetracaine and benzocaine, are hydrolyzed by plasma esterases into the alcohol and acid from which they were formed and thereby inactivated. The portions that are not metabolized in the blood are inactivated by the liver. The amide type of topical anesthetic is not hydrolyzed by esterases, but ultimately passes from the blood and tissues to the liver when it undergoes biodegradation (detoxification) through various metabolic pathways, such as oxidation, reduction, etc. The byproducts are eliminated in the urine.

Topical anesthetics, such as dibucaine and cocaine, that are not hydrolyzed by plasma esterases are not detoxified by the liver and are eliminated unchanged by the kidney. The alcohol type of topical anesthetic is not affected by the plasma esterases. Such anesthetics are detoxified by the liver by various types of chemical reactions, such as oxidation, reduction, hydrolysis, conjugation, or transfer reactions. Unmetabolized portions are excreted in the urine. Solvents and other substances used to formulate a finished product that penetrates the epithelial barriers are detoxified in the same manner as the active ingredients. It is possible for highly lipophilic substances that are used daily, for long periods of time, particularly if they are not readily biodegradable, to accumulate in the adipose and other lipid-rich tissues where they remain for days, weeks, or months depending upon their half-lives in the body. None of the ingredients the Panel has evaluated are retained for long periods of time in adipose or lipid-rich tissues.

Antihistamines and other topical anesthetic drugs not fitting into the "caine" type or derivatives related to the "caine" categories described above are absorbed, distributed, metabolized, and excreted in the same manner as those described above. In many cases, the exact metabolic fate is not known. Antihistamines are discussed in detail below. (See part III. paragraph A.3. below—Antihistamines used as anesthetics in the oral cavity.)

When two of the "caine" type of topical anesthetics are combined, they act additively as far as systemic toxicity is concerned. Adriani and Zepernick (Ref. 7) showed that if half of a dose of lidocaine that causes central nervous system excitation manifested by seizures is combined with half of the dose of tetracaine that does the same, intravenously in a dog, the two act additively and cause seizures. They also showed that when equal volumes of aqueous solutions of lidocaine and tetracaine in concentrations that produce the maximal topical effect on the mucous membranes beyond which no further benefit is gained by increasing the concentrations are combined, the duration of action of the combination is that of the longer-lasting drug (Ref. 7). Combining the two drugs does not increase the duration of anesthesia. The latent period, i.e., the time interval between the moment of application of the drug and the moment the anesthesia is perceived, is the same as that of the shorter-acting drug.

These topical anesthetics can produce a complete blockade and anesthesia that abolish reflex activity in the pharynx and larynx. This degree of blockade is necessary for completion of endoscopic or other surgical procedures. The drug does not penetrate beyond the mucous membranes; therefore, surgery of deeper structures cannot be performed by using topical anesthesia. In the treatment of painful disorders of the mouth, this degree of blockade is not required and is undesirable since there is a possibility that loss of gag and laryngeal reflexes might lead to aspiration of secretions, food, and other foreign substances. Aspiration under these circumstances is more of a possibility in subjects who have difficulty in swallowing due to neurological diseases, muscle dystrophies, or in elderly subjects in whom the gag reflexes are decreased in activity. Doty and Bosma (Ref. 8) have shown that application of cocaine or lidocaine respectively does not alter the swallowing reflex. With drugs such as benzocaine and benzyl alcohol, the minimum effective anesthetic concentration is advocated. Only a partial blockade is sought and induced. These drugs are administered in the oral cavity in the form of lozenges which are slowly dissolved in the mouth so that a continuous bathing of the mucous membranes occurs. The quantity released from the lozenge should be sufficient to alleviate discomfort, but it should not be so great as to produce a complete loss of reflexes and numbness.

The salicylates and chemically and pharmacologically related "analgesics," such as aspirin and antipyrine, have been advocated for use topically to relieve painful conditions in the mouth and throat. Neither the salicylates nor other analgesics block the neuronal membranes as do the topical anesthetics.

3. *Antihistamines used as anesthetics/analgesics in the oral cavity.* Antihistamines are drugs that act competitively with histamine. They are polar substances that have an amino group which becomes attached to receptors for histamine. Their structural configuration resembles the nitrogen-containing topical anesthetics in many respects. They possess one or more amino groups, are bases, and form salts with acids. Some antihistamines such as tripelennamine, are derived from ethylenediamine, and other antihistamines, such as diphenhydramine are derived from ethanolamine. The salts are highly ionized, poorly water soluble, and are not lipophilic. The bases are lipophilic and poorly ionized. Their absorption through the mucous membranes is similar to that of the "caine" and related nitrogen-containing topical anesthetics. Even though the structure of antihistamines, in may respects, resembles the general configuration characteristic of the "caine" type of topical anesthetic drugs, there is sufficient modification so that they do not manifest systemic effects similar to the "caine" drugs when they pass into the circulation.

The actions of antihistamines overlap with those of other drugs. Some have anticholinergic, antinauseant, and topical anesthetic activity. They act as anti-inflammatory agents when the inflammation is due to histamine release. Antihistamines that have

topical anesthetic/analgesic activity may be useful for relieving pain in preparations used in the oral cavity. There is little evidence that they are effective topically as antihistaminics. Any beneficial effects that may result are most likely due to the systemic effect from absorption from the mucous membranes of the mouth or throat or to any part of a dose that is swallowed. The antihistamines are furmulated as salts, such as the hydrochlorides. The buffering action converts the salts to the base form which is the active form. The base penetrates the mucous membranes and is easily absorbed. Most of the effects of a histamine are systemic. Some antihistamines have pronounced sedative effects and may cause drowsiness if used topically in oral health care preparations since they are absorbed and act systemically. Some have a central stimulating action, but this is not pronounced except in cases of overdosage.

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B. Categorization of Data

1. *Category I conditions under which oral health care anesthetic/analgesic agents for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register**.

Category I Active Ingredients.

Aspirin
Benzocaine
Benzyl alcohol
Dyclonine hydrochloride
Hexylresorcinol
Menthol
Phenol
Phenolate sodium
Salicyl alcohol

a. *Aspirin.* The Panel disagreed on important issues relevant to the safety and effectiveness of aspirin. Accordingly, part III, paragraph B.1.a.—Aspirin—consists of a majority report and a minority report. The minority report reflects the opinion of one Panel member.

(1) *Majority report on aspirin.* The Panel concludes that aspirin is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Aspirin is the acetyl ester of salicylic acid (acetylsalicylic acid) (Ref. 1). Acetylsalicylic acid had been synthesized in 1899 by Dreser some years before it was introduced into medicine. It was first known as acetyl spiricum, from which the name aspirin is derived. Originally, it was obtained from a plant source, *Spiraea ulmaria.*

Aspirin is made by interacting acetic acid with salicylic acid. The acetic acid interacts with the hydroxyl group on the 2 position of salicylic acid. Aspirin is an odorless powder consisting of white, tubular or needlelike crystals (mostly monoclinic crystals, but orthorhombic and trichlinic crystals are at times encountered). It melts at approximately 135° C. In moist air, it is gradually hydrolyzed into salicylic and acetic acids and acquires the odor of acetic acid. It is stable in dry air (Ref. 2).

The dissolution of aspirin is a conditional process depending on the temperature of the water. One gram (g) dissolves in 300 mL water at 25° C, 100 mL water at 37° C (one 300-mg tablet of aspirin dissolves in 30 mL water at 37° C), 5 mL alcohol, 17 mL chloroform and 10 to 15 mL ether. When a commercially available aspirin tablet is dissolved (within the ratio mentioned above) the resulting fluid has the appearance of a suspension. Actually only the filler and binder are in suspension, while the acetylsalicylic acid is in solution. The filler can be separated by sedimentation and decantation or by filtration. When the remaining fluid is allowed to evaporate, the typical aspirin crystals will be obtained. When aspirin without filler is dissolved, the resulting fluid is clear. Evaporation will produce the typical aspirin crystals. Once the aspirin is in solution it will resist separation or crystallization when the temperature is lowered. No crystallization was observed when the aspirin solution was kept at −7° C for 16 hours (Ref. 3). It is decomposed by boiling water or when dissolved in solutions of alkali hydroxides and carbonates. Inorganic salts of acetylsalicylic acid are soluble in water, but are decomposed quickly (Ref. 4). Two polymorphic forms have been described. One form is prepared from a slow crystallization process at room temperature from a saturated solution of aspirin in 95 percent alcohol. This form melts between 143° and 144° C. The other form melts between 123° and 125° C. Tablets prepared from the product derived from the slow crystallization technique have a slower rate of dissolution than tablets prepared from the latter type of polymorph. There is evidence from the study of these two forms that aspirin crystals are converted to the less soluble form during dissolution. The study of aspirin in aqueous media has led to the suggestion that a phase change occurs on the surface of the crystals (Ref. 1).

Aspirin readily undergoes hydrolysis in aqueous solutions with the liberation of salicylic and acetic acids. In pure water complete decomposition takes place in 100 days. Acids hasten the rate of hydrolysis. The alkalis present in solutions of alkaline acetate and citrate dissolve aspirin, but the resulting solutions hydrolyze rapidly to form salts of acetic and salicylic acids. Half the aspirin decomposes in about 4 days. The decomposition may be retracted somewhat by glycerin and sugar. Liquefaction occurs when aspirin is saturated with phenyl salicylate, acetanilid, phenacetin, aminopyrine, antipyrine, and other organic products. Partial hydrolysis occurs in mixtures of aspirin and hygroscopic substances of salts containing water of hydration. Even some talcs adversely effect the stability of aspirin (Ref. 5).

(i) *Safety.* The Panel concludes that aspirin is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Aspirin applied topically to the skin is neither an irritant nor a counterirritant. However, it is irritating to the mucous membranes of the mouth and throat when the solid form is kept in contact with the mucosa for any length of time, either by design or accident. This has been known practically since the introduction of aspirin and is a well-established fact. Kawashima, Flagg, and Cox (Ref. 6) reported a case where

ulceration of the mucosa of the roof of the mouth resulted from the application of a tablet of aspirin by the patient for pain relief. The lesion healed promptly after aspirin medication was stopped. Roth et al. (Ref. 7) found that aspirin tablets remaining in contact with the roof of the mouth for one-half hour produced white, opaque buccal mucosal lesions which could be peeled off with slight pressure or by rubbing. They placed a quarter of a tablet each of plain, buffered, and combination tablets between the lower lip and the gum of 26 normal subjects for 30 to 60 minutes. The aspirin produced irregular lesions of sloughing and superficial necrosis of the mucous membranes of the mouth. In contrast to these observations, when a disc of cottonoid, 13 millimeters (mm) in diameter, saturated with a solution of aspirin without filler is placed on the mucosa of the lower lip and kept there for 60 minutes, no blanching of the mucosa or ulcerations was observed (Ref. 3). This procedure was repeated on 3 consecutive days, using approximately the same location, again without blanching or ulcerations. Reports of ulcerations with the use of aspirin-containing chewing gum could not be found. Ulcerations are, of course, also a possibility with this type of medication.

Aspirin has a free carboxyl group, but it is a weak acid. Aspirin is poorly absorbed from the mouth, but it is readily absorbed from the stomach since it is nonionized in this form. In the intestines, it is absorbed as the acetylsalicylate ion. Peak serum levels are reached in 1 to 2 hours after oral ingestion. Blood levels do not necessarily correlate with the degree of analgesia. Half or more of the blood-borne aspirin is bound to plasma proteins, especially albumin, by means of the carboxyl group. The drug is very rapidly distributed to all body tissues. It is excreted very rapidly, although traces continue to be excreted for several days. In febrile patients, a proportion is eliminated unchanged, to some extent, but most is converted to salicyluric acid. Smaller amounts of the drug are eliminated as salicylic acid and also as conjugates with glucuronic acid to form glucuronates. Some of the drug is eliminated as gentisic acid.

Aspirin is not highly toxic when taken orally or given parenterally notwithstanding the voluminous literature on poisoning by the drug. When the widespread use of aspirin is taken into consideration, the total number of cases of poisoning that occur is small when they are extrapolated to the number of doses used. A single dose of 10 to 30 g aspirin may be fatal in an adult, although less than 1 g aspirin has killed and 130 g have been tolerated (Ref. 8). Children (especially under the age of 3 years) are disproportionately more susceptible than adults to the toxic action of salicylates (Ref. 9). Impaired renal function accentuates toxicity.

A total of 12 g ingested during 24 hours usually produces symptoms of salicylism, i.e., tinnitus, vertigo, impaired hearing, and headache. More severe manifestations include hyperpnea, fever, metabolic acidosis, and, less regularly, dimness of vision, sweating, thirst, vomiting, gastrointestinal hemorrhage, diarrhea, skin rashes, tachycardia, restlessness and delirium, depression, stupor, coma, cardiovascular collapse, convulsions, and respiratory failure. Fatal cases show diffuse endothelial changes with petechial hemorrhages and congestion through the viscera (Ref. 10).

One of the untoward effects following oral administration of aspirin is its propensity to cause bleeding, particularly of the gastric mucosa. The extent of blood loss from the stomach is dose related. This effect, which reportedly occurs in 70 percent of the patients taking repeated doses of aspirin, has been studied by determining the fecal blood loss in healthy human volunteers injected with radioactive chromium-51 tagged red blood cells (Ref. 11). The radioactivity of the stools provided data which were used to plot the amount of blood loss. Prior to administration of 0.3 g aspirin, the average daily blood loss in a group of volunteers was 0.3 mL per individual. With doses of aspirin of 2.6 g daily, the average loss was increased to 2.3 mL per individual. When doses of 4.5 g aspirin were administered daily, losses increased to 6 mL per individual.

Aspirin may cause ulcerations of the mucosa of the stomach. This is believed to be due to the fact that it is un-ionized in the acid medium (pH less than 2) in the stomach and passes through the lipid barrier of the mucosal cells. Once in the cells, where the pH is close to 7, it becomes ionized and hydrolyzes to salicylic and acetic acids.

Macerations are far less frequent in the intestines because the pH is close to 7 and passage into the intestinal mucosal cells is limited, since the aspirin in the lumen is ionized. Less drug concentrates in these cells.

Since the administration of aspirin causes an increase in bleeding time from an average of 2.6 minutes during the control period to an average of 4.5 minutes when aspirin was given to the aforementioned subjects (Ref. 11), the question of whether gastrointestinal bleeding is due to the local effect on the mucosa of the stomach or to a systemic effect related in prolongation of bleeding time, has been the subject of considerable debate. That it is a local effect appears to be established by the fact that when sodium salicylate is injected intravenously, gastrointestinal bleeding does not occur. Bleeding time is prolonged to approximately the same degree whether aspirin is given orally or parenterally. The importance of recognizing this untoward effect of aspirin in patients with hemostatic abnormalities and clotting defects has been stressed and documented in many reports, although bleeding time prolongation has been ascribed to a defective vascular response. Others attribute it to a decrease in blood platelet aggregation. Following injury to a capillary, endogenous adenosine diphosphate is released from platelets causing an irreversible aggregation which results in the formation of a plug that is primarily responsible for the arrest of bleeding. Aspirin apparently inhibits the release of endogenous adenosine diphosphate, thereby prolonging bleeding time. As little as 5 g aspirin can produce this type of platelet defect, and the abnormality persists anywhere from 4 to 7 days, corresponding to the life-span of the platelets. Since aspirin is absorbed to some extent through the oral and pharygeal mucous membranes and circulates in the blood, this effect upon coagulation is of importance, particularly since it is used in mouthwashes and in chewing gum.

Late post-tonsillectomy hemorrhages have been attributed to the use of aspirin in tablet or chewing gum form, while no bleeding was seen with acetaminophen (Ref. 12).

The Panel feels that the use of aspirin orally or topically in patients who have a bleeding tendency or after dental or throat surgery may be unwarranted and recommends that a warning be placed on the label stating: "Do not use if you have a bleeding problem or after dental or throat surgery."

The exact relationship between ulcerogenic potential in the mouth and that in the stomach has not been established since the pH of saliva is below 6, while that of the gastric juice is less than 2. It is felt that the adverse reactions are basically the result of the acetyl group.

Two types of systemic adverse reactions may occur from aspirin, the idiosyncratic type and the allergic type. Idiosyncrasy to aspirin is rare. It does occur, however, and the symptoms differ from the allergic type of response. The

idiosyncratic reaction is not of the immunologic-type reaction, but is believed to be due to disturbances in prostaglandin synthesis. As is the case with any other drug, aspirin can act as a hapten and produce sensitization. Sensitization is most frequently observed in high-risk allergic (atopic) individuals, particularly in asthmatics, and especially in those with nasal polyps (Refs. 13 and 14). The manifestations of an allergic response are urticaria, erythema, desquamatative, bullous, or purpural skin lesions, angioneurotic edema, laryngeal stridor, asthma, and peripheral vascular collapse. Absorption of aspirin from mucous membranes may produce a systemic allergic response. These reactions are often serious and fatal.

In summary, then, the Panel feels that aspirin should not be used either systemically or topically following operative procedures of the mouth or throat, when the mucous membranes are highly inflamed or abraded, when there are eroded lesions that are bleeding, or when the patient is on anticoagulant medication because aspirin interferes with the clotting mechanism and bleeding may result.

(ii) *Effectiveness.* The Panel concludes that aspirin is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The Panel concludes that aspirin has a local analgesic effect in the oral cavity (Ref. 3). It is useful in relieving mild to moderate pain, not only when the pain is localized, but also when it is generalized. There is evidence that some of the pain relief obtained from orally ingested aspirin is due to a peripheral effect. Since salicylates exert an anti-inflammatory effect, part of the pain relief may be also due to preventing or reducing the inflammation and thereby removing one of the sources of the stimuli to the pain receptors. Lim et al. (Ref. 15) noted that salicylates apparently block painful stimulation of visceral receptors caused by intra-arterially or intraperitoneally injected bradykinin. They postulate that the analgesic effect is due to blockage of chemoreceptors mediating pain. Whether the salicylate effect is confined to endothelial and mesothelial structures where bradykinin may be a mediator of pain is still not known. More recent data indicate that salicylates act by preventing local inflammation not due to bradykinin (Refs. 16 through 19). Scott (Ref. 20) reports that topical application of aspirin inhibits steady-state discharge and response to a brief heat stimulus. He was able to terminate the local effect by washing the aspirin out of the dental socket.

Many diverse statements have been made regarding the mechanism of action of aspirin. This is quite understandable since aspirin has a wide range of actions. It is, therefore, necessary to state to which action reference is made. According to current knowledge, the analgesic action of aspirin is peripheral (Refs. 21 through 24) and topical (Refs. 3 and 20). The antipyretic action is central, located in the preoptic, anterior hypothalamic region (Ref. 25). The perspiration accompanying a fever is a peripheral mechanism. A local effect, in addition to the analgesic effect, is also demonstrated by desquamation and by local mucosal erosions (the so-called "aspirin burn"). Tissue damage and bleeding are significantly influenced by the general status of the patient, including such conditions as blood dyscrasia, vitamin K deficiency, anticoagulants, and alcoholism. Whether or not aspirin is actually completely dissolved will also influence tissue damage (Ref. 3). The importance of adequate fluid intake with aspirin medication cannot be stressed enough (Ref. 3).

The Panel accepts that the analgesic action of aspirin is peripheral and topical.

(iii) *Dosage.* The topical dosage of aspirin is incorporated in a chewing gum base. Adults: Chew 420 mg of aspirin as needed, not to exceed 3,360 mg in 24 hours. Children 6 to under 12 years of age: Chew 210 to 420 mg of aspirin as needed, not to exceed 1,680 mg in 24 hours. Children 3 to under 6 years of age: Chew 210 mg of aspirin as needed, not to exceed 630 mg in 24 hours. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(iv) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

In addition, the Panel recommends the following specific labeling:

Warnings. (*a*) "Do not use if you are sensitive or allergic to aspirin."

(*b*) "Do not use if you have a bleeding problem or if you are taking an anticoagulant drug."

(*c*) "Do not use without a physician's or dentist's advice if your mouth is highly irritated or ulcerated."

(*d*) "Do not use after surgery in the mouth or throat."

(*e*) "Provide good fluid intake when aspirin or aspirin-containing preparations are used."

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(2) *Minority report on aspirin.* The minority of the Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of aspirin as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The minority emphasizes that it is evaluating aspirin as an ingredient for topical use and is evaluating the ingredient per se and not any particular formulation.

Aspirin is the acetyl ester of salicylic acid (acetylsalicylic acid) (Ref. 1). Acetylsalicylic acid had been synthesized in 1899 by Dreser some years before it was introduced into medicine. It was first known as acetyl spiricum, from which the name aspirin is derived. Originally, it was obtained from a plant source, *Spiraea ulmaria.*

Aspirin is made by interacting acetic acid with salicylic acid. The acetic acid interacts with the hydroxyl group on the 2 position of salicylic acid. Aspirin is an odorless powder consisting of white, tubular, or needle-like cyrstals. It melts at approximately 135° C. In moist air, it slowly hydrolyzes to salicylic and acetic acids and acquires the odor of acetic acid. One gram dissolves in approximately 300 mL water at 25° C, in 100 mL at 37° C, 5 mL alcohol, 17 mL chloroform, and 10 to 15 mL ether at 25° C. Two polymorphic forms have been described. One form is prepared by a slow crystallization process at room temperature from a saturated solution of aspirin in 95 percent alcohol. This form melts between 143° and 144° C. The other form is obtained simply from evaporation of a hexane solution. It melts between 123° and 125° C. Tablets prepared from the product derived from the slow crystallization technique have a slower rate of dissolution than tablets prepared from the latter type of polymorph. There is evidence from the study of these two forms that aspirin crystals are converted to the less soluble form during dissolution. The study of aspirin in aqueous media has led to the suggestion that a phase change occurs on the surface of the crystals (Ref. 1).

Aspirin readily undergoes hydrolysis in aqueous solutions with the liberation of salicylic and acetic acids. In pure water, complete decomposition takes place in 100 days. Acids hasten the rapidity of hydrolysis. The alkalis present in solutions of alkaline acetate and citrate dissolve aspirin, but the resulting solutions hydrolyze rapidly to form salts of acetic and salicylic acids. Half the aspirin decomposes in about 4 days. The decomposition may be retarded somewhat by glycerin and sugar. Liquefaction occurs when aspirin is saturated with phenyl salicylate, acetanilid, phenacetin, aminopyrine, antipyrine, and many other organic products. Partial hydrolysis occurs in mixtures of aspirin and hydroscopic substances or salts containing water of hydration. Even some talcs adversely effect the stability of aspirin (Ref. 2). Aspirin decomposes when dissolved in solutions of alkali hydroxides and carbonates. It forms a methyl and phenyl ester and inorganic salts. Inorganic salts decompose readily when dissolved in water, especially the calcium salt. It forms a sodium salt (Ref. 3).

(i) *Safety.* The minority of the Panel concludes that there are insufficient data to classify aspirin as a safe OTC analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Aspirin applied topically to the skin is neither an irritant nor a counterirritant. However, it is irritating to all the surface mucosal cells lining the gastrointestinal tract including the mucous membranes of the mouth and throat (42 FR 3538). Kawashima, Flagg, and Cox (Ref. 4) in 1975 reported that aspirin tablets applied directly to the mucous membranes of the mouth for a local analgesic effect caused lesions of the mucous membranes of the roof of the mouth. Roth et al. (Ref. 5) found that aspirin tablets remaining in contact with the roof of the mouth for one-half hour produced white, opaque buccal mucosal lesions capable of being peeled off with slight pressue or by rubbing. They placed a quarter of a tablet of plain, buffered, and combination tablets between the lower lip and the gum of 26 normal subjects for 30 to 60 minutes. In every case the aspirin produced irregular lesions of sloughing and superficial necrosis of the mucous membranes of the mouth. Aspirin incorporated in chewing gum has produced severe lesions of the inner wall of the cheek which promptly healed when use of the preparation was discontinued (Refs. 4 and 6).

Aspirin has a free carboxyl group, but it is a weak acid which combines with metallic ions to form salts and with organic radicals to form esters, as mentioned above. Aluminum aspirin, used as an internal analgesic, is insoluable in water. Aspirin is poorly absorbed from the mouth, but it is readily absorbed from the stomach since it is nonionized in this form. In the small intestine, it is absorbed as the acetylsalicylate ion. Peak serum levels are reached in 1 to 2 hours after oral ingestion. Blood levels do not necessarily correlate with the degree of analgesia. Half or more of the blood-borne aspirin is bound to plasma proteins, especially albumin, by means of the carboxyl group. The drug is very rapidly distributed to all body tissues. Aspirin is excreted very rapidly, although traces continue to be excreted for several days. In febrile patients, a proportion is eliminated unchanged, to some extent, but most of it is converted to salicyluric acid. Smaller amounts of the drug are eliminated as salicylic acid and also as conjugates with glucuronic acid to form glucuronates. Some of the drug is eliminated as gentisic acid.

Aspirin is not highly toxic systemically when taken orally or given parenterally notwithstanding the voluminous literature on poisoning by the drug. Much of the poisoning is accidental and occurs in children. When the widespread use of aspirin is taken into consideration, the total number of cases of poisoning that occur is small when they are extrapolated to the number of doses used. A single dose of 10 to 30 g aspirin may be fatal, although survival has been reported when much

larger doses have been ingested. Deaths from smaller doses have been reported. Impaired renal function accentuates toxicity. A total of 12 g aspirin ingested during 24 hours usually produces symptoms of salicylism, i.e., tinnitus, vertigo, impaired hearing, and headache. More severe manifestations include hyperpnea, fever, metabolic acidosis, and, less regularly, dimness of vision, sweating, thirst, vomiting, diarrhea, skin rashes, tachycardia, restlessness, and delirium. Salicylism may resemble diabetic and renal disorders. Numerous cases of depression, stupor, coma, cardiovascular collapse, convulsions, and respiratory failure follow salicylism. Fatal cases show diffuse endothelial changes with petechial hemorrhages and congestion through the viscera (Ref. 7).

One of the untoward effects following oral administration of aspirin is its propensity to cause mucosal bleeding, particularly of the gastric mucosa. The extent of blood loss from the stomach is dose related. This effect, which reportedly occurs in 70 percent of patients taking repeated doses of aspirin, has been studied by determining the fecal blood loss in healthy human volunteers injected with radioactive chromium-51-tagged red blood cells. The radioactivity of the stools provided data for determinig the degree of blood loss. Prior to administration of 0.3 g aspirin, the average daily blood loss in one group of volunteers was 0.3 mL per individual. With doses of aspirin of 2.6 g daily, the average loss was increased to 2.3 mL per individual. When doses of 4.5 g aspirin were administered daily, losses increased to 6 mL per individual (Ref. 8).

Aspirin causes ulcerations of the mucosa of the stomach. This is believed to be due to the fact that it is un-ionized in the acid medium (pH less than 2) in the stomach and passes through the lipid barrier of the mucosal cells. Once in the cells, where the pH is close to 7, it becomes ionized and hydrolyzes to salicylic and acetic acids. Ulcerations occur less frequently in the intestines and on other mucosal surfaces because the pH is close to 7 and passage into the mucosal cells is limited, since the aspirin is ionized. Less drug concentrates in these cells.

The question of whether gastrointestinal bleeding is due to a local effect on the mucosa of the stomach or to a systemic effect related to prolongation of bleeding time has been the subject of considerable debate. That it is a local effect appears to be established by the fact that when aspirin as a sodium salt (not sodium salicylate) is injected intravenously, gastrointestinal bleeding does not occur. Apparently, the presence of the acetyl group is essential for this response (Ref. 9). The administration of aspirin caused an increase in bleeding time from an average of 2.6 minutes during the control period to an average of 4.5 minutes when aspirin was given to test subjects (Ref. 8). Bleeding time is prolonged to approximately the same degree whether aspirin is given orally or parenterally. This bleeding time increase is ascribed to a decrease in circulating prothrombin. It also occurs after the administration of sodium salicylate. Apparently the presence of the acetyl group is not necessary to cause prolongation of bleeding time due to hypoprothrombinemia. The importance of recognizing this untoward effect of aspirin in patients with hemostatic abnormalities and clotting defects has been stressed and documented in many reports.

Aspirin also causes a decrease in blood platelet aggregation. Following injury to a capillary, endogenous adenosine diphosphate is released from platelets causing an irreversible aggregation which results in the formation of a plug that is primarily responsible for the arrest of bleeding. Aspirin apparently inhibits the release of endogenous adenosine diphosphate, thereby prolonging bleeding time. As little as 5 g aspirin can produce this type of platelet defect and the abnormality persists anywhere from 4 to 7 days, corresponding to the life-span of the platelets. Inhibition of platelet aggregation does not occur when sodium salicylate is administered. Apparently the presence of the acetyl group is necessary for this adverse response to occur. Since aspirin is absorbed to some extent through the oral and pharyngeal mucous membranes and circulates in the blood, this effect upon coagulation is of importance particularly since it is used in gargles, chewable tablets, and in chewing gum.

Locally applied aspirin may produce massive hemorrhage from capillary beds of tissue other than that of the gastric mucosa, such as the tonsillar areas of the throat. Several cases of massive hemorrhage from the tonsillar bed following topical application of a gargle of aspirin-containing chewing gum have been reported (Refs. 10 and 11). Hemorrhage was observed in 8 percent of 100 posttonsillectomy patients medicated with aspirin (Ref. 12). The bleeding occurred on the sixth or seventh postoperative day. No bleeding occurred in 100 patients medicated with acetaminophen. A high incidence of posttonsillectomy bleeding was reported by Fox and West (Ref. 13) in children given an aspirin-containing chewing gum. The incidence of bleeding ceased when use of the gum was discontinued. Hersh (Ref. 14) noted more bleeding among patients undergoing dental extractions who received aspirin than those who received acetaminophen preoperatively.

The exact relationship between ulcerogenic potential in the mouth and that in the stomach has not been established. The pH of saliva is seldom below 6 and the aspirin is ionized and not absorbed, while that of the gastric juice is less than 2 and the aspirin is un-ionized and readily absorbed. Apparently the presence of the hydrogen ion is not essential for this reaction to occur.

The minority of the Panel feels that the use of aspirin topically or orally in patients with lesions in the mouth that may bleed may be unwarranted and recommends that a warning be placed on the labeling stating, "Do not use if you have bleeding problems."

Two types of systemic hypersensitivity reactions may occur from aspirin, the idiosyncratic type and the allergic type. Idiosyncrasy to aspirin is rare. It does occur, however, and the symptoms differ from the allergic type of response. The triad of idiosyncrasy, nasal polyps, and late onset of asthma are the usual manifestations. The idiosyncratic reaction is not an immunologic-type reaction, but is believed to be due to disturbances in prostaglandin synthesis. As is the case with any other drug, aspirin can act as a hapten and produce both systemic and local sensitization. Sensitization is most frequently observed in high-risk allergic (atopic) individuals, particularly in asthmatics (Refs. 15 and 16). The manifestations of a local sensitization are erythema, desquamatative, bullous, or purpural skin lesions. The manifestations of systemic sensitization are angioneurotic edema, laryngeal stridor, asthma, and peripheral vascular collapse. Absorption of aspirin from mucous membranes of the mouth and throat may produce any of the above responses. Some of these reactions are often serious and may be fatal. (See part II. paragraph E. above—Adverse Reactions.)

In summary then, the minority of the Panel believes that aspirin is not desirable and is not always safe and should not be used topically for symptomatic relief of conditions of the mouth and throat. The minority of the Panel feels it should not be used to treat conditions in which the mucous membranes are highly inflamed or abraded because aspirin is irritating to

mucosal surfaces. The minority of the Panel also believes that aspirin should not be used following operative procedures of the mouth or throat or for eroded lesions that are oozing blood, because the drug interferes with clotting mechansims, and bleeding may be enhanced.

(ii) *Effectiveness.* The minority of the Panel concludes that there are insufficient data available to permit final classification of the effectiveness of aspirin as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within in the proposed dosage limit set forth below.

Aspirin is the most widely used OTC internal analgesic ingredient in the United States (Ref. 9). In view of its immense popularity in this country, it has been extensively discussed in the medical and scientific literature. Aspirin is useful as a systemically acting analgesic to relieve mild to moderate pain, not only when the pain is localized, but also when it is generalized. Thousands of articles have been written concerning aspirin since the first pharmacologic data were reported in the literature in 1899.

Aspirin possesses no known topical anesthetic activity and does not block transmission of nerve impulses by altering the neuronal membranes as do topical anesthetics such as benzocaine, tetracaine, and lidocaine (Ref. 17). It, therefore, exerts no known anesthetic or analgesic effect on the skin or mucous membranes. Gargling with solutions of aspirin produces irritation and burning sensations, particularly if the solutions are concentrated, instead of a numbing effect which aspirin should do if it were a local anesthetic.

The chemical structure of aspirin in no way resembles the structure of the hydroxy or nitrogenous types of local anesthetics. Indeed, the introduction of a carboxyl group on a structure known to possess local anesthetic activity, as for example cocaine, nullifies its local anesthetic activity. Removal of the methyl group from ecgonine leaves a free carboxyl group on the structure of cocaine and nullifies its local anesthetic activity (Ref. 19). Aspirin is also nonionized at very low pH's such as that of the stomach. At the pH of the oral cavity it is ionized and would be less inclined to be absorbed and to pass through the mucous membranes of the mouth and throat and into the lipid sheath of a nerve fiber. Impulse conduction along peripheral nerves is not affected by salicylates (Ref. 17). The interference with absorption due to the fact that aspirin is ionized would negate any possibility that it acts directly to antagonize the effects of bradykinin or prostaglandins in the submucosal tissues.

Aspirin, as is the case with other internal analgesics, acts centrally at thalamic and subcortical areas. However, there is evidence that some of the pain relief obtained from orally ingested aspirin is due to a peripheral effect of the blood-borne drug (Ref. 17). Since salicylates exert an anti-inflammatory effect, part of the pain relief appears to be due to preventing or reducing the inflammation and removal of one of the sources of the stimuli to the pain receptors. However, this viewpoint is not substantiated by the fact that blood-borne phenacetin and acetaminophen are analgesic but lack significant anti-inflammatory properties, while phenylbutazone is an effective anti-inflammatory agent, but possesses feeble analgesic properties. Lim and associates (Ref. 19) noted that salicylates apparently block painful stimulation of visceral receptors caused by intra-arterially or intraperitoneally injected bradykinin. They postulate that the analgesic effect is due to blockage of chemoreceptors mediating pain. Whether the salicylate effect is confined to endothelial and mesothelial structures where bradykinin may be a mediator of pain is still not known. More recent data indicate that salicylates act by preventing the synthesis of prostaglandins, thereby alleviating or preventing local inflammation which is not due to antagonizing the effects of bradykinin (Ref. 9). These concepts relate to the blood-borne drug in the tissues and are not supportive evidence of a direct local action caused by penetration of the aspirin into the mucous membranes. Gastric absorption and not local transfer is mentioned in these studies. Scott (Ref. 20) reported that topical application of aspirin to dentinal receptors in cats inhibits both steady-state discharge and response to a brief heat stimulus. The minority of the Panel notes that these studies were done on dentine and not mucous membranes.

Chewing gum formulations containing aspirin in a gum base have developed supposedly to provide a greater retention and absorption of the drug and to produce a topical local effect on the surrounding tissue. One marketed preparation bears the labeling "for the relief of minor sore throat pain, muscular aches, and pain." Although the labeling does not specifically state that the effect is relief of sore throat due to the topical application of the aspirin, the user of such a product cannot help inferring that this is what is meant. Data in the submission for the product do not adequately support this contention. The minority of the Panel concurs with the sentiments of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Products which states as follows in the **Federal Register** July 8, 1977 (42 FR 35376–35377).

> Historically, aspirin has been used as a gargle for the treatment of minor sore throat pain. Chewing gum formulations containing aspirin in a gum base were developed to provide for greater retention and absorption of the drug and to produce a topical, local effect on the surrounding tissues. These formulations may also make the medication more pleasant to take. Chewing gums with aspirin are primarily used and labeled for "relief of minor sore throat pain." However, other traditional labeling is also included such as "for headache, muscular aches, and pain." The latter claims can only be attributed to the absorption of the drug into the systemic circulation.
>
> The Panel concludes that aspirin or any analgesic in a gum base, with the specific claims for the relief of sore throat, has not been adequately tested for effectiveness. This use of aspirin may not be desirable or safe particularly if the tissue is highly inflamed or abraded because aspirin is irritating to the mucosal tissue as discussed above. The Panel recommends that claims of aspirin-containing gum for the relief of sore throat or the use of aspirin as a gargle for a local effect properly belongs in a review of ingredients claimed for treatment of sore throat in general and should therefore be deferred to the Advisory Review Panel on OTC Oral Cavity Drug Products for evaulation.
>
> The Panel finds marketing of an OTC analgesic, in a chewing gum formulation, acceptable if the product contains the dosage and Category I labeling claims recommended by the Panel. However, such product formulations containing aspirin should include the warning, "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advise and supervision of a physician." As with chewable tablets discussed above, oral mucosal damage may occur from the use of chewing gum aspirin products and this effect of aspirin on blood clotting may be a factor in such situations.

The minority of the Panel has examined the data in the subjective study conducted by Bernstein and Nelson (Ref. 2). In this study 20 patients with evidence of sore throat and pharyngitis were given aspirin in a gum vehicle and a placebo. Pain was induced by having the subjects chew a cracker and swallow with water. Although the submitted data indicate that the subjects felt less pain after taking the gum containing aspirin and preferred this preparation to the placebo, the minority of the Panel does not feel that the study proves that the pain relief reported was due to a local anesthetic effect on pain receptors in the throat and not from a systemic action of the absorbed aspirin.

The minority of the Panel agrees with the OTC Advisory Review Panel on Internal Analgesic and Antirheumatic Products that aspirin in a gum base with specific claims for relief of sore throat by a topical action has not been adequately studied, and that there is much evidence indicating that it is without appreciable topical analgesic effect and that the effect is probably a systemic one due to the aspirin that is swallowed and absorbed. The topical use of aspirin may not be desirable or safe, particularly if the tissues are highly inflamed or abraded, because aspirin is irritating to the mucosal tissue. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products, in the **Federal Register** of December 4, 1979 (44 FR 69845–69847), has likewise concluded that even though percutaneous absorption of salicylate does occur, its action is systemic when topically applied and not local on the receptors for pain. Some degree of percutaneous absorption of salicylate esters occurs through the intact skin (Refs. 1, 22, and 23), but no significant cutaneous analgesic or anesthetic activity has been demonstrated. Likewise some absorption occurs from the normal mucous membranes. No controlled studies exist demonstrating that the relief of pain is due to topical application. Any analgesic effect that is obtained is due to the systemic effect that follows absorption from the stomach and oral mucous membrane after topical use. Aspirin is the best absorbed of all salicylates percutaneously from aqueous and other solutions. The percutaneous absorption of aspirin is increased 30 percent when 2 percent camphor is present. In a statement attributed to Fantus (Ref. 24), it is said that the absorption of salicylates through the skin is increased if the solution contains 20 percent alcohol. There is no indication that there is any correlation between these findings concerning absorption from the skin and the absorption of asprin from the mucous membranes of the oral cavity. Blood levels of salicylates have been demonstrated after cutaneous application using tracer elements in animals. Excretion of salicylates and metabolites into the urine have been demonstrated after percutaneous absorption and absorption from the mucous membranes. Comparison of blood levels following topical application on the oral and pharyngeal mucous membranes with those following oral ingestion of therapeutic doses have not been made.

One Panel member made an oral presentation on a particular commercial product containing aspirin in chewing gum at the August 14, 1979 meeting of the Advisory Review Panel on OTC Oral Cavity Drug Products (Ref. 25). The Panel member stated that aspirin in chewing gum is effective as a topical analgesic. No written submission was presented to the Panel. The minority of the Panel could not evaluate the data presented in such a manner. The Panel member was told to submit a report for distribution to the Panel and that the data would be analyzed statistically by FDA for validity. No submission was received by FDA or any Panel member for study and evaluation of data submitted from personal experimentation using the "Adriani Method." How the method was used, the type of subjects studied, and other pertinent data were not presented. If they were, they were unclear to the minority of the Panel.

At the final Panel meeting the subject was discussed further and the same Panel member discussed the effectiveness of the same commercial product and presented views which, to the minority of the Panel, appeared to reflect private opinions rather then scientific facts (Ref. 26).

Adriani, Minokadeh, and Naraghi (Ref. 27) have studied the analgesic effects of a saturated solution of aspirin swabbed on the forepart and tip of the tongue using the method of Adriani and Zeppernick. Pain was induced with a direct electric current of a pulsatile type of 20 cycles per second and at a voltage range of 1 to 5 volts. The study was double-blinded and performed on 10 adult healthy volunteers. Saline was used as a control (placebo). Initially, every subject complained of a stinging sensation when the aspirin was applied. This disappeared after several minutes. However, no sensation of numbness developed at any time. The aspirin was not more effective in abolishing the painful stimulus than the placebo. Benzocaine in propylene glycol was swabbed over the same area after completion of the testing. In each case, after the use of placebo and the aspirin, numbness resulted from the use of the benzocaine. A saturated solution of acetaminophen was applied in the same manner as aspirin. No burning sensation was experienced by any subject. Likewise, there was no diminution in response to pain. The response to aspirin was the same as with acetaminophen and the placebo. It is obvious from these data that aspirin possesses no local analgesic or anesthetic activity.

The minority of the Panel concludes from available data that the action of aspirin applied topically is systemic and that any analgesic effect is due to the blood-borne drug that is absorbed. The minority of the Panel finds no data to substantiate claims that blood levels following topical application of aspirin on the skin or mucous membranes are sufficient to produce topical analgesia or anesthesia.

The minority of the Panel accepts the fact that aspirin acts in a dual manner in producing analgesia; one acting centrally in the brain and one acting peripherally by the blood-borne drug acting as an anti-inflammatory agent. It does not support the assumption that is made that the drug penetrates the mucous membranes and exerts its effects topically on the pain receptors and other structures beneath the mucosa or neutralizes such substances as bradykinin or prostaglandins directly by passage through the inflamed mucous membranes.

In the **Federal Register** of July 8, 1977 (42 FR 35375–35376), the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products stated:

> Chewable tablets offer a convenient method of administering the drug to individuals who have difficulty in swallowing whole tablets. This dosage form is especially popular for use in children. There are many marketed children's chewable aspirin tablets, which are usually flavored, containing 80 mg (1.23 gr) of aspirin per dosage unit. These tablets may be chewed, crushed on a spoon, dissolved on the tongue, or even swallowed as a conventional tablet. The Panel finds these chewable, flavored tablets acceptable and recommends that all such tablets containing salicylates for children under 12 years be labeled, "Drink water with each dose." In addition, as noted elsewhere in this document, because aspirin can increase bleeding, the Panel recommends that chewable aspirin-containing tablets be labeled with the warning, "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advice and supervision of a physician."

The minority of the Panel notes that washing with water after chewing the tablets is advised presumably to avoid prolonged contact and aspirin burns.

It is consensus of the minority of the Panel that the topical use of aspirin in any form is unwarranted and unjustified. Reasons for this include the possible injury to the mucosa of the mouth and throat, the paucity of data on effectiveness as a topical analgesic, the possibility of bleeding problems, and because safer and more effective agents are available for relief of pain of sore throat and sore mouth.

(iii) *Proposed dosage.* Adults and children 3 years of age and older: 130 to 500 mg of aspirin per unit, incorporated in a chewing gum base; chew 1 gum tablet every 4 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a physician.

(iv) *Labeling.* The minority of the Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

In addition, the minority of the Panel recommends the following specific labeling:

Warnings—(*a*) "Do not use if you are sensitive or allergic to aspirin."

(*b*) "Do not use if you have bleeding problems."

(*c*) "Do not use without a physician's advice if your mouth or throat is highly irritated, inflamed, or ulcerated."

(*d*) "Do not use if you have stomach ulcers."

(*v*) *Evaluation.* Data to demonstrate effectiveness should be required in accordance with the guidelines set forth below for OTC oral health care anesthetic/analgesic active ingredients. (See part III. paragraph C. below—Data Required for Evaluation.)

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b. *Benzocaine.* The Panel concludes that benzocaine is safe and effective as an OTC anesthetics/analgesics active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzocaine is an effective topical anesthetic/analgesic that has enjoyed widespread and long-term usage. Benzocaine was also called anesthesin, orthocesin, and parathesin. It was official for many years in the "United Stated Pharmacopeia." Benzocaine is also listed in the "National Formulary XIV." Benzocaine is the ethyl ester of aminobenzoic acid. It may be prepared by reducing paranitrobenzoic acid to aminobenzoic acid and esterifying the latter with ethyl alcohol in the presence of sulfuric acid. Benzocaine is a white, crystalline, stable powder which melts at 88 to 92° C. It is odorless and has a somewhat bitter taste. The powder induces a sense of numbness when placed on the tongue.

Benzocaine is one of a group of several anesthetics/analgesics which are often referred to as the "insoluble" topical anesthetics/analgesics. This group includes the propyl ester of aminobenzoic acid (propaesin), the butyl (butamben) and two other chemically related compounds called orthocaine and orthoform new (Ref. 1). The safety of benzocaine is due to the fact that it is poorly soluble in water. One gram benzocaine dissolves in 2,500 mL water, 5 mL alcohol, 2 mL chloroform, and 4 mL ether. Benzocaine is lipophilic and is soluble in various oils, such as olive, peanut, and almond oil. It is also soluble in petrolatum, dipropylene glycol, and various polyethylene glycols. Benzocaine is stable in air. However, if boiled with hydrochloric acid, it is hydrolyzed and converted to aminobenzoic acid and ethyl alcohol. Benzocaine is a base by virtue of the amino group on the benzoic acid nucleus. Because it is lipid soluble and poorly ionized, it readily penetrates the lipid barriers of the cell membranes. Benzocaine forms salts with hydrochloric acid and other acids. The hydrochloride salt is irritating to the mucous membranes and to the skin.

Benzocaine has slight antiseptic and bacteriostatic actions, but these actions are not clinically significant. Benzocaine acts, as do other topical anesthetics, on the axonal membrane to interrupt conduction. As is the case with other local anesthetics, it stabilizes the membrane and prevents passage of sodium ions into the axonal cytoplasm, thereby preventing depolarization. Its anesthetic activity is decreased or lost when formulated in an acid medium because it forms salts by the interaction of acids with the amino group (Refs. 1, 2,

and 3). The salts are ionized and do not readily penetrate the lipid barriers of cell membranes. The buffering mechanisms of mucous membranes act to release the basic form. For this reason, the salts are effective on the mucous membranes but not on the intact skin.

(1) *Safety.* The Panel concludes that benzocaine is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzocaine is one of the most widely used and safest topical anesthetics in OTC preparations. In one year 1,300,000 pounds (lbs) were used in the United States for OTC and prescription use. Because it has a low degree of water solubility, the quantities absorbed are relatively insignificant, and plasma levels that cause systemic reactions characteristic of the soluble "caine" type drugs and their allies do not occur with benzocaine. The convulsions and cardiac depression resulting from high plasma levels of the "caine" type drugs do not occur with benzocaine and reports of such reactions with the use of benzocaine are nonexistent. Blood plasma contains pseudocholinesterases which hydrolyze and detoxify esters of aminobenzoic acid, such as procaine, butethamine, and tetracaine. The exact metabolic pathways for the biodegradation of benzocaine in man is not known (Ref. 1). However, it is likely that benzocaine undergoes hydrolysis into aminobenzoic acid and ehtanol. The aminobenzoic acid is converted to aminohippuric acid, or is conjugated with glycine, or is excrete unchanged into the urine.

Benzocaine has been administered orally to relieve stomach pain without any resulting toxic effects. It causes some discomfort by the oral route probably because it forms the hyrochloric salt which is irritating. The lethal dose in man is not known. The Panel is unaware of any fatalities due to oral ingestion of benzocaine. Lethal doses have been determined in animals when benzocaine has been administered by various routes. Astrom and Persson (Ref. 4) determined the toxicity of benzocaine in rabbits and compared it with that of several other soluble topical anesthetics/analgesics of the "caine" type. The anesthetics/analgesics were applied to various mucous surfaces by the intravesicular, intranasal, and intratracheal routes. When administered by the intratracheal route, the LD_{50} (mean lethal dose) for benzocaine was 148 mg/kg (milligrams per kilogram). For tetracaine, it was 4.4 mg/kg. For cocaine, the LD_{50} was 30 mg/kg, and for lidocaine, it was 75 mg/kg. When the drugs were administered intranasally, the LD_{50} for benzocaine was 104 mg/kg, compared to 10 mg/kg for tetracaine, 50 mg/kg for cocaine and 135 mg/kg for lidocaine. Using tetracaine as a reference unit of toxicity and designating this unit as 1, the toxic dosage relationships would be tetracaine 1, cocaine 6.8, lidocaine 17.1, and benzocaine 33.2 when the drugs were administered by the intratracheal route. In other words, approximately 33 times more benzocaine would be required to cause a fatal response than would be required if tetracaine were used. By the intranasal route, the toxic dose relationship is tetracaine 1, cocaine 5, benzocaine 10.4, and lidocaine 13.5. These comparisons indicate that benzocaine is far less toxic than the other compounds tested when administered via the intratracheal and intranasal routes. The data also indicate that when the intranasal route is used, benzocaine is far less toxic than tetracaine and cocaine but slightly more toxic than lidocaine.

Acute lethal dose studies using the oral and intraperitoneal routes of administration in mice also indicate that benzocaine manifests a low degree of toxicity. Zaroslinski (Ref. 5) studied the effects of benzocaine on the cornea of rabbits to determine its potential for producing irritation. The concentrations used ranged from 4 to 20 percent in polyethylene glycol-4,000 dilaureate. Benzocaine caused no detectable irritation of the eyes. He compared benzocaine with the effects of the hydrochlorides of dibucaine, tetracaine, and pramoxine. Dibucaine hydrochloride, 2 percent, and tetracaine hydrochloride, 2 percent, caused irritation consisting of a red, swollen conjunctival sac with copious mucous secretions surrounding the area. This condition persisted in these animals for 48 hours. Pramoxine hydrochloride, 3 to 4 percent, caused extreme swelling and inflammation at the experimental site. The irritation was accompanied by excessive mucous secretion. After 24 hours, the corneal areas became blue in appearance, suggesting blindness.

The systemic effects of benzocaine absorbed percutaneously were also studied by Zaroslinski (Ref. 6). These studies were designed to assess the effects of benzocaine on the hematopoietic system and were conducted in rabbits (Ref. 5). Benzocaine, 20 percent, in a Carbowax™ base was applied to abraded rabbit skin after which blood samples were drawn from a marginal ear vein. Hemoglobin and methemoglobin levels were determined. In addition, erythrocyte, leukocyte, and differential counts were made. The hemoglobin level decreased to the same approximate levels in both the control and experimental animals. Methemoglobin levels increased to less than 3 percent of the total hemoglobin. This response was essentially identical to that occurring in the control and experimental animals. Erythrocyte levels decreased in both the control and experimental animals while the leukocyte count was elevated in both the test and control animals. Differential counts revealed an increase in polymorphonuclear leukocytes and a decrease in lymphocytes in both the control and experimental groups. It was concluded, even though some minor change occurred in each of the parameters studied, that these changes were indistinguishable in the control and experimental groups and that these effects were apparently due to some phenomena other than that of applying the ointment to the abraded skin.

The percutaneous safety of benzocaine was reported by Zaroslinski (Ref. 5) in a study investigating the local effects of repeated application of benzocaine to the abraded skin. The experiment was designed to establish whether or not the use of benzocaine applied repeatedly to the abraded skin of rabbits caused any irritancy or allergenic responses as well as systemic adverse effects. The study was conducted in eight female albino rabbits weighing 2.2 to 3.4 kg. The back of each animal was closely clipped and then abraded in a specific area by repeatedly scraping the skin with the edges of a piece of wire screen, the teeth of which were 1 mm apart. The rabbits were divided into two groups. One group received 5 g ointment twice daily applied to the abraded surface. The second group served as a control, and no ointment was applied. Blood samples were drawn from the marginal ear vein of each animal before and after abrading and tested for the hemoglobin-methemoglobin content, changes in erythrocytes, leukocyte counts, and differential counts. The areas of the abrasion were varied, i.e., they were 3, 6, and 12 square inches, respectively. In all instances the quantity of ointment applied was constant, i.e., 5 g. The weighed amount of ointment was spread uniformly over the abraded areas. The skin was then manipulated by rubbing to cause absorption of the ointment. The entire trunk of each rabbit was protected by a light, muslin bandage.

The drug was applied twice daily, 5 days weekly over a period of 20 days. During this time 200 g of the ointment was applied to the abraded skin area of each of the rabbits. No observable local irritation or signs of allergic reaction were noted nor were there any demonstrable systemic effects as judged by observations of the hematological parameters. During this period, each test animal was inuncted with approximately 80 g/kg ointment. The variations observed in the hemoglobin and methemoglobin values were similar in both the control and the experimental animals.

Safety data in people are available. Historically, the use of benzocaine preparations for topical anesthesia, both on the skin and mucous membranes, and for use internally has been reported many times and has been associated with a high degree of safety. It is beyond the scope of this Panel to cite in detail the case reports and other references pertaining to the clinical use of benzocaine, both as a prescription drug and in OTC preparations since its introduction in 1903 by Einhorn. Many of these reports appear in the older medical literature and are not readily available, including reports of uncontrolled studies.

The Panel, however, cautions users that benzocaine therapy is not absolutely without hazard. In reviewing the literature on benzocaine, the Panel noted two types of adverse reactions. These reactions are either due to sensitization and are allergic in type or result in methemoglobinemia. The data cited in the medical literature on adverse reactions to benzocaine often focus on isolated cases or a small number of cases documenting adverse reactions. Much of these data are retrospective and cite the use of combinations containing benzocaine as one of the ingredients. It is difficult to extrapolate from the frequency of occurrences of these isolated cases the probability of occurrence of adverse reactions in the general population, since no data were furnished on the frequency of application or the number of subjects treated with the drug.

As is the case with other drugs, benzocaine can act as a hapten and combine with proteins to cause a sensitivity mediated by IgE immune globulin type of antibodies. These antibodies act on mast cells basophils, and other cells in susceptible individuals and cause anaphylaxis (allergic reactions), rhinitis (nasal inflammation), intrinsic asthma, urticaria (hives), and atopic dermatitis. Benzocaine can also activate the thymus-lymphoid system and cause local sensitization of the cytotoxic type in the skin after repeated applications. The mechanism for development of sensitization is described elsewhere in this document. (See part II. paragraph E. above—Adverse Reactions.)

Fisher, Pelzig, and Kanof (Ref. 7) studied the ability of paraphenylenediamine, a hair dye, to act as a sensitizer on the skin to produce an allergic edematous contact type of dermatitis. They found that in a group of 50 high-risk patients, 2 patients had positive patch reactions to paraphenylenediamine and that 18 patients were also found to be sensitive to benzocaine. They also found that of 24 patients sensitive to benzocaine, 10 were also sensitive to paraphenylenediamine. In a similar study, Gaul (Ref. 8) using a patch test found that in a group of 580 dermatologic patients, 50 were sensitive to paraphenylenediamine and 16 were sensitive to benzocaine. Of the benzocaine-sensitive patients, three were sensitive to benzocaine only and three were sensitive to paraphenylenediamine, procaine, and benzocaine. Patients showing sensitivity to a variety of substances were characterized as having "cross-sensitivity," "cross-and multiple-sensitivity," and "multiple-sensitivity without cross-sensitivity." The Panel emphasizes that benzocaine is chemically dissimilar to paraphenylenediamine. Since benzocaine can act as a hapten and combine with a tissue protein to form strong covalent bonds to act as an allergen, these findings are not surprising to the Panel.

In the North American Dermatologic Study (Ref. 9), the incidence of benzocaine irritancy and sensitivity was less than 5 percent and equal with other commonly used drugs and less than the more frequent sensitizers, such as neomycin. These studies were performed on high-risk allergic patients seeking treatment for dermatologic diseases. Benzocaine has often been referred to as a potent sensitizer and has been said to cause sensitization and cross-sensitization to other derivatives of aminobenzoic acid, such as procaine, butamben, butethamine, tetracaine, and related compounds. The number of reported reactions that have occurred has not been correlated with the total number of applications of the agent to individual subjects, with repeated applications, and with subjects who are not high risk (Ref. 10). Cross-sensitivity is defined as the capacity of an antibody to react not only with the antigen responsible for its production but also with other antigens that are closely allied chemically. Mathieu (Ref. 11), in reviewing the liteature on cross-sensitivity, found instances of cross-sensitivity among all the local anesthetics to be rare, irrespective of the mode of the administration.

The Panel concludes that the available epidemiologic data on allergy, irritancy, and other reactions are inconclusive and in no way support the contention that benzocaine is a "potent sensitizer." The number of adverse reactions is relatively small when one considers that benzocaine has been used since the early 1900's and has enjoyed wide marketing experience with few complaints. It has been and still is one of the most widely used and safest topical anesthetics in OTC preparations (Refs. 6, 12, and 13). The Panel also feels that such depictions as "potent sensitizers," "common cross-sensitizers," and "highly allergic," imply that these phenomena occur with greater frequency with benzocaine than with other drugs and that such statements are unwarranted. The Panel finds little or no evidence of controlled, investigative, or epidemiological studies to support these contentions. Calnan et al. (Ref. 14) evaluated sensitivity of various allergens by patch tests in 281 housewives exhibiting hand dermatitis in an effort to identify the offending allergen. Only 5 percent of these patents proved to be sensitive to benzocaine. Substances occurring in household items or in chemicals such as balsms, nickel, and rubber were more common allergens than was benzocaine. Bandmann et al. (Ref. 15) in their reevaluation of some of the same data originally reported by Calnan et al. (Ref. 14) showed that the incidence of positive patch tests with benzocaine in male and female patients with allergic dermatitis was 3.3 percent and 4.5 percent, respectively. In view of the fact that only a fraction of the population exhibits any allergic dermatitis, and in view of the fact that these tests were done on high-risk populations, the Panel is of the opinion that the incidence of benzocaine sensitivity is quite low.

One death due to anaphylactic shock immediately following the administration of throat lozenges containing 10 mg benzocaine, 1 mg tyrothricin, and chlorophyll was reported by Hesch (Ref. 16). Circumstantial evidence cited by the author suggests that the death was drug related. However, it was impossible to state which of the components in the lozenge was the causative agent. The Panel is unaware of any similar cases of

anaphylaxis that could be attributable to benzocaine or benzocaine-containing products and concludes that even though benzocaine can act as a hapten and induce an IgE-mediated anaphylactic response, particularly on damaged skin and mucous membranes, the occurrence of anaphylaxis is extremely rare. The use of a 20-percent benzocaine ointment in 132 patients suffering from 22 types of dermatologic conditions was documented by White and Modura (Ref. 17). Included among these were 10 cases of infantile eczema, both dry and weeping, and 10 cases of varicose ulcers. Of the 132 cases, the relief obtained with benzocaine was inadequate in only 2 cases of atopic dermatitis and in 2 cases of lichen simplex chronicus. There were no cases of irritation or sensitivity reactions directly attributable to benzocaine. However, there were 2 cases of aggravation of dermatitis venenata (poison ivy) but not of the atopic dermatitis. Thus, relief due to benzocaine was adequate to excellent in 126 out of 132 patients. The incidence of side effects was 2 out of 132 patients, and these were not of a serious nature. This type of study in a population selected on the basis of dermatologic disease rather than on the basis of the history of drug allergy, tends to provide a better estimate of the incidence of sensitivity in the general population.

Adriani and Campbell (Ref. 18) in a study of the absorption of tetracaine applied on the mucous membranes in various areas of the body comment that the systemic absorption of benzocaine is poor even though benzocaine was not included in this study. They attribute the absence of untoward reactions in 10,000 patients treated with 20-percent benzocaine ointment as a lubricant anesthetic for deadening of pharyngeal and tracheal reflexes during the introduction of endotracheal tubes to this lack of significant absorption. Adriani and Zepernick (Ref. 19) reported a total lack of adverse reactions in over 144,000 cases in which 20 percent benzocaine was used in hospitalized patients. The majority of these cases involved single applications for the lubrication of endotracheal tubes, oropharyngeal airways, and other instruments used in the pharynx and trachea during clinical anesthesia. The studies were performed at the Charity Hospital, New Orleans. Since that time there has been a continued use of benzocaine for the same purpose, and it is estimated that the number of usages since their report was published is an additional 200,000, all without any adverse or allergic reaction.

Prystowsky et al. (Ref. 20) did a perspective contact sensitivity study on 1,158 adult volunteers. A pretest history of previous exposure to four allergens, including 5-percent benzocaine in petrolatum, was obtained before patch testing. The patch was removed at 48 hours and read at 5 days. The prevalance of positive reactions to 5-percent benzocaine was 0.17 percent. By history, 85 percent of the volunteers had been exposed to benzocaine. The investigators point out that the 0.17-percent positive reactions to benzocaine in a study of 127 patients referred to clinics for the evaluation of contact dermatitis. They concluded that "the results of this study indicate that contact dermatitis patient populations provide exaggerated estimates of the prevalence of sensitivity to contactants; figures in a general population are preferable in decisionmaking concerning the safety of commercial products."

Methemoglobinemia has been reported following the topical application of benzocaine on both the skin and the mucous membranes. However, this is an uncommon occurrence. It has been reported to have occurred in subjects less than 1 year of age more often than in adults, but it can occur at any age (Ref. 3). Isolated reports of cases of methemoglobinemia, generally in infants following the use of benzocaine-containing products, have appeared in the literature since 1949. Haggerty (Ref. 21) reported a case of a 1-month-old infant who became cyanotic after a weeping diaper rash was treated with an ointment containing 3 percent benzocaine, 1 percent methapyrilene hydrochloride, calamine, zinc oxide, and camphor. The diagnosis of methemoglobinemia was made by spectroscopic examination of the blood. The condition was reversed with methylene blue. Goluboff and MacFadyen (Ref. 22) reported a case of methemoglobinemia in a 3-month-old patient treated for severe eczema and pruritus with several products. One of these products contained salicylic acid, colloidal sulfur, and coal tar; another product contained 1 percent hydrocortisone in an ointment base; and one product contained 1.5 percent crude coal tar, 7.5 percent titanium dioxide, 7.5 percent zinc oxide, 2.5 percent calamine, 1 percent cetyltrimethyl ammonium bromide, and 5 percent benzocaine in a special water-soluble base. In addition the patient received intramuscular terramycin and oral elixir of phenobarbital. Treatment with methylene blue successfully reversed the methemoglobinemia. Determination of the causative agent was impossible due to the multiplicity of ingredients in the preparation.

Other isolated cases of a similar nature have been reported, but the Panel feels little would be added to understanding the nature of this reaction if these cases were reported in detail. Although most reported cases of methemoglobinemia following topical use of benzocaine have occurred in infants, cases have also been reported involving older children and adults. Bloch (Ref. 23) reported a case in a 6-year-old child, and Bernstein (Ref. 24) reported three cases in adults. Hughes (Ref. 25) suggested that the susceptibility might be due to a deficiency of DPNH-dependent methemoglobin reductase, resulting in a diminished capacity to physiologically protect against methemoglobin-inducing foreign compounds. The experiences recorded by Bloch (Ref. 23) in a 6-year-old child suggest that a far less severe methemoglobinemia occurs in older children than in infants. The reactions in the three adults reported by Bernstein (Ref. 21) suggest that the reactions were of a mild nature. He found that definitive therapy was unnecessary. The reductase in the red blood cells converts the iron in methemoglobin (ferrihemoglobin) from the ferric to the ferrous state. The reconversion of methemoglobin to reduced hemoglobin that is constantly occurring does not take place and an accumulation of methemoglobin results when the enzyme is inhibited by the presence of certain drugs. The methemoglobin imparts a bluish color (cyanosis) to the skin of white and lightly pigmented individuals. In Black and heavily pigmented subjects, the cyanosis can be detected in the nailbeds or in the mucous membranes. The rapidity of development of the bluish color depends upon the rate and amount of benzocaine absorbed. In some cases, it develops within 30 minutes to 1 hour after application. Methemoglobinemia due to benzocaine is not life-threatening because only small amounts are absorbed, particularly after a single application of benzocaine. The cyanosis appears when 2 g or more of hemoglobin have been converted to methemoglobin which is incapable of carrying oxygen. In most cases of methemoglobinemia, the oxygen capacity is not signifcantly decreased. Infants under 1 year of age who have not as yet developed sufficient quantities of the reductase allegedly develop methemoglobinemia more easily than older children and adults, but this point has not actually been verified and clarified in the medical literature. On rare occasions,

older children or adults are found who have a congenital deficiency of the enzyme.

Steinberg and Zepernick (Ref. 26) reported a case of methemoglobinemia during anesthesia which occurred in a 38-month-old Black male at Charity Hospital in New Orleans. The child had been anesthetized with cyclopropane on two previous occasions. On the first occasion, anesthesia was uneventful. On the second occasion, induction of anesthesia was followed by the development of cyanosis which was detected by observing the nailbeds. Anesthesia was discontinued; the operation was deferred until a week later. On the third occasion, anesthesia was inducted in the usual manner with cyclopropane and the patient intubated. Cyanosis developed within 15 minutes and anesthesia was discontinued. He remained cyanotic even though he was awake and receiving 100 percent oxygen. There was no change in pulse or blood pressure. Within 4 hours, he regained his normal color and had no apparent ill effects from the experience. A review of the anesthetic records revealed that anesthesia in the first instance, when anesthesia was uneventful, was conducted by using an endotracheal tube that had been lubricated with petrolatum. On the second and third occasions, the endotracheal tube had been lubricated with an ointment containing 20 percent benzocaine in propylene glycol.

The child was studied further by Adriani and Zepernick (Ref. 27). Reapplication of 20 percent benzocaine to the mucous membranes of the mouth and on the tongue promptly produced cyanosis without respiratory distress and without changes in pulse and blood pressure which one would anticipate had suboxygenation been the causative factor. Blood drawn at this time was the color of chocolate. When analyzed spectroscopically, the absorption spectrum was characteristic of that produced by methemoglobin. The cyanosis cleared promptly following the intravenous administration of 1 mg/kg methylene blue in a 1-percent solution. On subsequent days, various drugs were applied to the mucous membranes and the blood analyzed for methemoglobin. Since benzocaine is chemically allied to procaine, the latter being the diethylaminoethanol ester of aminobenzoic acid, procaine was applied to the mucous membranes and the blood analyzed for the presence of methemoglobin. None was found. A saturated aqueous solution of aminobenzoic acid was likewise applied on the mucous membranes with no resultant cyanosis or evidence of methemoglobinemia. A paste consisting of propylene glycol and butamben was likewise applied without any development of methemoglobinemia. Since ethyl alcohol is used to esterify aminobenzoic acid to form benzocaine, it also was applied to determine whether or not there was cross-sensitization with the components of benzocaine. Alcohol, also, did not produce cyanosis nor did the blood show any increase in methemoglobin. The results following the use of 1 percent lidocaine hydrochloride on the mucous membranes were also negative. Propylene glycol applied to the mucous membranes also caused no methemoglobinemia. It appears obvious from these studies that the formation of the methemoglobin was due to the ethyl ester alone and that there was no cross-reactivity between aminobenzoic acid or any of its derivatives.

The majority of the reports that the Panel has reviewed concerning the formation of methemoglobinemia following the use of benzocaine are single, isolated cases of one, two, or three occurrences. It is difficult to extrapolate from these isolated cases with what incidence methemoglobinemia might occur in the general population since the occurrences have not been in any was correlated with the total number of drug applications. Adriani and Zepernick (Ref. 19) reported no cases of sensitivity nor any other adverse reactions in over 144,000 cases after the use of a preparation containing 20 percent benzocaine for lubrication of endotracheal tubes and airways in hospitalized patients. Of these 144,000 cases, there was only 1 occurrence of methemoglobinemia following the application of the benzocaine ointment as a lubricant (Ref. 27).

Methemoglobinemia is not life threatening, particularly when caused by the small amounts of benzocaine absorbed percutaneously or from the mucous membranes following a single application. Methemoglobin is also known as ferrihemoglobin and is incapable of carrying oxygen since the iron has been converted from the ferrous to the ferric state. Cyanosis becomes apparent when 10 to 15 percent of the total hemoglobin has been converted. Methemoglobinemia becomes symptomatic when 30 to 45 percent methemoglobin levels are attained if acutely induced. The symptoms are fatigue, dyspnea, weakness, tachycardia, and headache, and are due to hypoxia produced by the lowered oxygen capacity of the blood. Normally, there is an equilibrium between the concentration of ferrous and ferric components of iron in the hemoglobin. Normally, not more than 1 percent of the iron is in the ferric state. When iron is converted to the reduced state, it can carry oxygen if the globin is not altered. If the globin is altered, cathemoglobin forms. Cathemoglobin is incapable of carrying oxygen even though the iron is reduced to the ferrous state.

There are at least three recognized enzymatic processes which tend to keep the heme moiety of hemoglobin in the ferrous state and reduce the iron to the ferric state as rapidly as the ferrihemoglobin forms. The first mechanism employs an electron donor, nicotinamide adenine dinucleotide ($NAHDH_2$), which is formed from the oxidation of glucose and reduces the ferric heme to the ferrous state in the presence of the enzyme metheglobin reductase. This pathway is the most important of the three and accounts for 67 percent of the conversion of the ferric iron to the ferrous state in red blood cells.

The second pathway by which reduction of methemoglobin is accomplished involves the generation of nicotinamide adenine dinucleotide phosphate ($NADPH_2$) formed in a pentose pathway. In this reaction, methemoglobin can act as a cofactor that facilitates and accelerates the reaction. This pathway accounts for only 55 percent of the reduction of the iron in the red blood cells from the ferric to the ferrous state. The third mechanism involves a glutathione pathway. $NADPH_2$ in the presence of glutathione reductase (GR) reduces the oxidized glutathione to reduced glutathione. The reduced glutathione in the presence of glutathione peroxidase is capable of destroying oxidant compounds capable of oxidizing hemoglobin. This pathway accounts for 12 percent of the methemoglobin converted to normal hemoglobin. Ascorbic acid is a reducing agent and can also be involved in the conversion. It reduces 16 percent of the methemoglobin; however, this is a nonenzymatic process.

The etiologic factors which alter equilibrium between ferrous and ferric iron can be classed into primary and secondary factors. Primary factors are hereditary. In the hereditary states, methemoglobinemia is due to a deficiency of $NAHDA_2$-dependent methemoglobin reductase and hereditary methemoglobinemia with an abnormal hemoglobin. These conditions are rare. The secondary factors are oxidant drugs.

Concentrations of methemoglobin not exceeding 8 percent of the total hemoglobin are normally present without cyanosis. Cyanosis, as stated above, becomes apparent when the methemoglobin level exceeds 10 to 15 percent of the total circulating hemoglobin; however, levels up to 30 percent of the total hemoglobin may produce cyanosis, but not necessarily any clinical symptoms. Methemoglobinemia becomes symptomatic when 30 to 45 percent of the total hemoglobin is oxidized to methemoglobin.

Recently, Rao, Naraghi, and Adriani (Ref. 28) studied the blood levels of methemoglobin following the instillation of 1 g benzocaine in propylene glycol in the mouth of infants under 6 months of age and in adults. The methemoglobin levels in the controls ranged from 0.1 to 3.5 percent expressed in terms if diminution in oxygen-carrying capacity of the total hemoglobin in the controls. In infants there was an increase in the degree of unsaturation during the first hour to an average of 4.5. This is not as striking as one would anticipate. There was a gradual decrease in the methemoglobin content during the second hour, but it did not return to the pretreatment level in any subject until after the third hour. Surprisingly, the mean level in adults was higher than that found in infants. This is a direct opposition to what has been postulated concerning the ease of development of methemoglobinemia in infants following the use of the drug. The Panel concludes that the occurrence of methemoglobinemia following the use of benzocaine is rare. Normal infants and children are not more prone to its development than adults. Why this simple nonoxidizing chemical compound should cause this response on rare occasions is not known, but the Panel concludes it can be classified as an uncommon idiosyncratic response that is in no way injurious or life threatening.

Benzocaine differs from the drugs and chemicals, such as acetanilia, sulfanilamide, the aniline dyes, and the nitrites. These latter drugs and chemicals cause methemoglobin to form at a more rapid rate than can be reduced by the enzyme, even though the enzyme is present in adequate quantities in the red cell.

(2) *Effectiveness.* The Panel concludes that benzocaine is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzocaine is an effective topical anesthetic/analgesic on the skin and mucous membranes. There are many reports in the medical literature of its long, continued, successful use as an anesthetic and an antipruritic in the form of ointments, lotions, sprays, lozenges, and dusting powders that attest to its effectiveness (Refs. 3, 12, 19, and 29). These studies, however, are subjective and uncontrolled. Benzocaine is not suitable for infiltration or perineural injection. When properly formulated with ingredients that insure its stability and continuous contact with a cutaneous or mucous surface it provides prolonged anesthesia (Ref. 12). When incorporated in a medium that is sufficiently alkaline to release bioactive quantities of the free base it penetrates both the intact and damaged skin (Ref. 12). Percutaneous absorption and absorption from the mucous membranes occur, but the resulting blood levels are insignificant. Its pain-relieving action is entirely within the skin or mucous membranes. The quantity circulating in the blood is insufficient to provide anesthesia to parts of the body distant from the site of application.

Since the introduction of newer and more suitable solvents, such as the glycols, there has been a renewed interest in the use of benzocaine as a topical anesthetic/analgesic because of greater effectiveness of preparations formulated with these solvents compared to the oleaginous basis and dusting powders used heretofore. The concentration of benzocaine in the tissue fluids that is bioactive is insufficient to penetrate large nerve trunks. The effect of benzocaine is entirely at the terminal pain receptors in the mucous membranes.

Benzocaine is an effective topical anesthetic/analgesic on the mucous membranes. It as a short latent period on the mucous membranes of the mouth ranging from 30 seconds to 1 minute. The duration of action varies with the duration of contact. A single application of a solution that is diluted with saliva in the mouth and washed away produces anesthesia of 5 or 10 minutes duration. Continuous contact of a benzocaine-containing preparation will produce anesthetic/analgesic for as long as the drug is present in sufficient concentration at the particular test site. The minimum effective concentration to produce anesthetic/analgesic associated with numbness is 5 percent in propylene glycol. There is little to be gained in exceeding a 20-percent concentration. Adriani and Zepernick (Ref. 19) studied the effects of 40 topical anesthetics used the mucous membranes. They found that although benzocaine was effective it ranked low on the list as far as duration of action is concerned. The most effective drugs were tetracaine, cocaine, lidocaine, dyclonine, and dibucaine. These ingredients, however, are readily absorbed and are capable of producing systemic toxicity.

Benzocaine is safe because of its low water solubility; even though concentrations of 20 percent may be applied in a solvent, such as propylene glycol, the amount that dissolves in the tissue fluids remains the same. The solvent merely increases the concentration so that saturated solutions can be made which are bioactive and will pass into the nerve cells. Concentrations less than 5 percent produce the partial blockade which the Panel has termed "analgesia." Various preparations are available in the form of lozenges and rinses containing benzocaine in concentrations less than 5 percent. These are claimed to be effective for the relief of minor pain in the mouth and in the throat, and to provide temporary relief for a sore throat, ulcer pains, and other afflictions of the oral and pharyngeal mucous membranes. Topical anesthetics/analgesics do not penetrate into the deepest or submucosal structures of the mucous membranes and produce anesthesia/analgesia. They are only effective for surface anesthesia/analgesia.

Preparations designed to relieve sore throat generally consist of sugar-containing lozenges having concentrations of benzocaine from 0.1 to 5 percent. The benzocaine is slowly released and coats the mucosa providing partial anesthesia and temporary relief for sore mouth and throat. The recommended dose under these circumstances does not produce numbness and complete loss of reflex activity. There are those who feel that such a degree of pain relief as would be obtained by using concentrations that produce numbness would interfere with the gag reflex and favor the aspiration of mucus or other material which would be swallowed. On the other hand, it is well known that subjects without gag reflex have no difficult in swallowing. The act of swallowing is not interfered with by cocainization of the pharynx as Doty and Bosma (Ref. 30) were able to demonstrate. Loch et al. (Ref. 31) have confirmed these findings. Freystadtl and Morelli (Ref. 32) have shown that the sensation of touch is still preserved after the sensation of pain has been abolished, which explains the lack of problems. The Panel is unaware of any such accidents occurring with concentrations used in OTC preparations. Benzocaine used in the mouth is swallowed but causes no

systemic toxicity. It has been shown that it is safe in concentrations in solutions of glycols up to 20 percent when applied to oral and pharyngeal mucous membranes. Systemic aborption is so slight that blood levels are barely detectable. Furthermore, blood levels are insufficient to produce adverse reactions such as convulsions or cardiac depression, characteristic of the more soluble local anesthetics. It is the consensus of the Panel that 0.1 to 5 percent concentrations may be used for anesthesia in the form of rinses. Two to 15 mg may be incorporated in lozenges that allow the slow release of the product and continuous bathing of the affected area with a dilute concentration of the benzocaine. The action from sprays, rinses, and gargles is relatively short, since the duration of contact is not early so long as it would be from the slow release from a lozenge. Pain due to ulcers, inflammation of the mucous membranes, etc., may be relieved by using sprays and rinses or swabbing the affected area. The relief is of short duration, usually less than 30 minutes, but in some individuals it may persist for a longer time.

Benzocaine does not penetrate the mucous membranes of the gingiva to relieve pain in the gingiva, tooth, or other types of pain arising in submucosal structures. Benzocaine does not penetrate the mucous membranes into the muscles of the pharynx, tongue, and other structures of the oral cavity. The Panel, therefore, recommends that the labeling for benzocaine-containing products for use in the oral cavity be limited to claims for the relief of soreness or irritation or minor pains of the mucous membranes of the mouth and throat.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 5.0- to 20.0-percent concentration of benzocaine in the form of a gel or spray not more than three to four times daily. Use a 0.05- to 0.1-percent concentration of benzocaine in the form of a lozenge (equivalent to 2.0 to 15.0 mg per lozenge) every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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c. *Benzyl alcohol.* The Panel concludes that benzyl alcohol is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzyl alcohol is one of the alcoholic or hydroxy-type of topical anesthetics. Benzyl alcohol is phenyl methanol. It may also be looked upon as methyl alcohol with a phenyl group replacing one of its hydrogen atoms. It is also known as phenmethylol hydroxy toluene. It is found in nature in a free state in oil of jasmine (6 percent) and in the form of esters in Peru balsam, tolu balsam, and storax. The commercial product is synthetic, made by

hydrolyzing benzyl chloride or by reducing benzaldehyde. Benzyl alcohol is a colorless liquid with a faint aromatic odor. It has a sharp burning taste and boils at 206° C. It has a specific gravity of 1.042 to 1.047. One gram dissolves in approximately 30 g water making a solution of approximately 4 percent concentration. Aqueous solutions are neutral. Solutions may be sterilized by boiling. Benzyl alcohol is soluble in alcohol (1 g dissolves in 1.5 mL alcohol) and is soluble in ether and chloroform. It dissolves in vegetable oils. Oxidation converts it to benzaldehyde. Slow oxidation occurs if it is exposed to the air for days or weeks. It is stable in stoppered containers (Refs 1 and 2).

(1) *Safety.* The Panel concludes that benzyl alcohol is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzyl alcohol is relatively nontoxic. It has been used orally as an antispasmodic agent and rectally as a topical anesthetic/analgesic. It has been used rectally in combination with paraldehyde to anesthetize the mucosa and prevent expulsion of the drug. Benzyl alcohol is converted to hippuric acid in the body and this metabolite is excreted into the urine (Ref. 3).

The effect of large doses of benzyl alcohol was studied in animals by Macht (Ref. 4). The minimum lethal dose of pure benzyl alcohol in white mice is 1 mL/kg. The minimum lethal dose in rats ranged from 1 to 3 mL/kg. In dogs, 2 mL/kg of benzyl alcohol injected intravenously, peritoneally, subcutaneously, and intramuscularly was never fatal. Convulsions and caridiac depression, characteristic of the "caine" type of topical anesthetics, have not occurred when therapeutic or toxic doses of benzyl alcohol have been administered to man or animals. Lethal doses in mice cause respiratory failure and in some cases convulsions. Larger animals, such as dogs, do not manifest these responses. Although benzyl alcohol can, like any other drug, act as a hapten and be antigenic, cases of sensitization have not come to the Panel's attention. The potential for sensitization is lower than it is with the "caine" type of topical anesthetics (Ref. 5).

(2) *Effectiveness.* The Panel concludes that benzyl alcohol is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Benzyl alcohol belongs to the hydroxy group of topical anesthetics and differs in chemical behavior from the "caine" type drugs. Benzyl alcohol is lipophilic and penetrates the cells of the mucosa and the axonal membranes of nerve fibers. Aqueous solutions of benzyl alcohol are neutral. It does not form salts. Benzyl alcohol is not ionized, and its penetration into the skin and mucous membranes and pharmacologic activity do not depend upon pH. It blocks transmissions of electrical impulses along sensory and motor nerves. Its mode of action is believed to be similar to the "caine" type of drugs.

Macht (Ref. 4) studied the topical anesthetic effects of benzyl alcohol. He obtained anesthesia/analgesia by applying aqueous solutions to the mucous membranes of the mouth, tongue, gums, and lips of patients. The pure alcohol produces a stinging effect when first applied to the tongue followed by a sensation of numbness which may last as long as 2 hours. Macht (Ref. 4) was able to obtain anesthesia/analgesia of the skin by direct application of the pure alcohol. Aqueous solutions of 1 percent produce corneal anesthesia/analgesia in rabbits. Solutions of benzyl alcohol produce sensory and motor blockade when applied to isolated nerves of frogs. Macht (Ref. 4) obtained both motor and sensory blockade by applying 1 percent solutions of benzyl alcohol to isolated sciatic nerves of dogs. Benzyl alcohol in a 1-percent strength has been used for infiltration and perineural block. Stronger solutions are locally irritating and may cause tissue damage if injected parenterally.

Benzyl alcohol manifests varying degrees of bacteriostatic and antiseptic activity. However, this antimicrobial effect does not apply to all pathogenic bacteria and reliance cannot be placed upon it. Benzyl alcohol is effective topically in relieving pain and other discomfort due to ulcers, sore throats, and other lesions affecting mucous membranes of the oral cavity. Solutions composed of equal parts of 33 percent benzyl alcohol, water, and ethyl alcohol are effective in relieving itching and burning on the skin (Ref. 2). Ointments consisting of 10 percent banzyl alcohol in large doses have been used for topical application to the skin.

The duration of action of benzyl alcohol in the usual therapeutic doses is brief depending upon the area of application and duration of contact. The latent period on the mucous membranes is approximately 2 minutes. The duration of action of a 1-percent solution on the skin is usually less than 30 minutes. The duration of anesthetic/analgesic action on the mucous membranes is variable, usually depending upon formulation used. The effect is sustained if incorporated in lozenges and lasts as long as the mucous membranes are bathed in sufficient concentrations. The duration of action when the drug is incorporated in rinses is brief, seldom more than 5 or 10 minutes.

The pure alcohol causes smarting and burning initially when applied to the mucous membranes. Although benzyl alcohol is effective as a topical anesthetic/analgesic, Adriani and Zepernick (Ref. 6) found its effectiveness to be less than that of the "caine" type drugs. However, the Panel concludes that benzyl alcohol is safe and effective for use in drops, rinses, mouthwashes, sprays, or in lozenges on the intact mucous membranes of the mouth and throat.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 0.05- to 10.0-percent concentration of benzyl alcohol in the form of rinses, mouthwashes, drops, or sprays not more than three to four times daily. Use a 0.05- to 10.0-percent concentration of benzyl alcohol in the form of a lozenge (equivalent to 100 to 500 mg per lozenge) every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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d. *Dyclonine hydrochloride.* The Panel concludes that dyclonine hydrochloride is safe and effective as an OTC

anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Dyclonine is a base which forms a hydrochloride salt. The structure of dyclonine hydrochloride is a modification of the general structural configuration of the commonly used local anesthetics of the "caine" type of drugs, such as lidocaine and tetracaine (Ref. 1). It is a nitrogenous base; however, it is a propiophenone derivative (Ref. 2). One end of the dimethylene chain of the ketone is attached to the nitrogen atom of the piperidine group of the first carbon atom which carries the ketonic group. This is attached directly to a benzene ring which is attached to a butoxy group in the para position. Thus, unlike procaine, lidocaine and other "caine" type drugs, it is neither an amide nor an ester, nor can it be considered an ether, as is the case with pramoxine.

Dyclonine hydrochloride is a white crystalline powder. One gram dissolves in approxiamtely 50 mL water. It is soluble in acetone, alcohol, and chloroform. The crystals melt between 173° and 178° C. It is also soluble in washable cream bases. Its chemical name is 4-n-butoxy-beta piperidino-propiophenone hydrochloride (Refs. 3 and 4).

(1) *Safety.* The Panel concludes that dyclonine hydrochloride is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Although dyclonine hydrochloride is a nitrogenous base, its chemical structure is a departure from that of the "caine" type drugs (Refs. 2 and 3). For this reason, acute systemic toxicity, characterized by convulsions, myocardial depression, hypotension, etc., which are characteristic of the so-called "caine" type of drugs, does not occur.

The acute LD_{50} for dyclonine hydrochloride was studied by Abreu and associates (Ref. 5) in dogs and albino rats. In rats, the intraperitoneal LD_{50} was approximately 45.8 mg/kg; in dogs, the LD_{50} was approximately 9.5 mg/kg. Abreu et al. (Ref. 5) noted that in anesthetized dogs, intravenous doses of 2 mg/kg did not significantly affect blood pressure or pulse, nor did it reduce the cardiovascular response to acetylcholine, or increase the response to epinephrine as demonstrated by a lack of parasympatholytic activity. Doses of 5 mg/kg in anesthetized dogs may cause respiratory failure, but this is reversible, and the animals recover if artificial respiration is instituted.

The cardiovascular effects of dyclonine hydrochloride were investigated in dogs anesthetized with sodium barbital (Ref. 6). The drug was administered over a 25-second period within a dose range of 0.25 to 10 mg/kg in 10 dogs. Dyclonine hydrochloride lowered arterial pressure approximately 10 mm Hg (10 millimeters mercury) at a dose of 1 mg/kg. There was a progressive increase in response at doses of 1, 2, 3, 4, and 5 mg/kg with death being produced at a dose of 10 mg/kg. The mechanism of this reduction in blood pressure was found to be due to a decrease in cardiac output as well as to peripheral arterial dilation. Initially, dyclonine hydrochloride induces some respiratory stimulation when administered intravenously to dogs. As the dosage is increased, depression of respiration and oxygen consumption occurs. Dyclonine hydrochloride has been shown to act as an anticonvulsant, acting as a multisynaptic and spinal reflex depressant (Ref. 6).

Chronic toxicity studies were done with dyclonine hydrochloride in the albino rat and in the dog (Ref. 6). Dyclonine hydrochloride did not significantly affect the growth rate of male or female weaning albino rats as compared to controls when it was administered intraperitoneally for 30 consecutive days. A group of 48 rats were studied. They were divided into four groups. Half of the females and half of the males were given the drug and the other half of each were used as controls. Half of the animals were sacrificed and autopsied. No gross pathologic changes were noted in either group. The drug-treated survivors and controls were mated, and the drug-treated group did not differ from the controls in their reproductive capacity. Upon weaning, the offspring of the first group when subjected to the same experiment also did not differ from their controls either as to growth rate or reproductive capacity. No gross pathologic changes were observed in these animals when sacrificed. Experimental observations in dogs, likewise, showed no gross pathologic changes when given doses varying from 5 to 12 mg/kg twice daily, intramuscularly or subcutaneously. No significant changes from normal were noted in hemoglobin concentration, red and white blood cell counts, and differential counts measured at biweekly intervals (Ref. 6).

In human beings, dyclonine hydrochloride possesses a relatively low degree of toxicity. When applied topically to the skin of 3,656 patients in the form of a cream and to 2,000 additional cases in the form of a solution for topical anesthesia, only two cases of proven sensitivity were reported. It was concluded from these studies that the sensitizing potential of dyclonine hydrochloride under conditions of clinical use is low. In a study using a dyclonine hydrochloride solution, no adverse effects were found. Use of concentrated solutions of 2 percent or more have produced irritations and slough of the nasal mucosa in several cases.

In study dealing with the safety of dyclonine hydrochloride following oral administration, 35 patients were given from 300 to 600 mg daily for periods of time varying from 1 to 12 weeks (Ref. 7). No undesirable side effects occurred. It was concluded that the compound would be entirely safe for human consumption. Adriani and Campbell (Ref. 8) emphasized that the two safest anesthetics for use on the mucous membranes for endoscopic procedures are benzocaine and dyclonine hydrochloride. Each shows the least incidence of systemic reactions.

(2) *Effectiveness.* The Panel concludes that dyclonine hydrochloride is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Dyclonine hydrochloride is a highly effective anesthetic/analgesic for topical use, particularly on mucous surfaces and on abraded and damaged skin. While it is also an effective nerve-blocking agent, it is irritating if injected and may produce sloughing of tissue. It is, therefore, recommended for topical use only. Dyclonine hydrochloride blocks transmission at nerve endings in the same manner as do other topical anesthetics of the "caine" type of closely related to the "caine" type. The product is marketed as a salt (hydrochloride). Dyclonine hydrochloride is not absorbed through the intact skin in significant quantities to produce anesthesia. It is effective on the mucous membranes. In studies on the mucous membranes conducted by Adriani et al. (Ref. 9), dyclonine hydrochloride ranked fourth in effectiveness, being preceded by dibucaine, cocaine, and tetracaine. One percent dyclonine hydrochloride produced a duration of action of anesthesia of 27 minutes, preceded by a latent period of 2 to 3 minutes. The fact that dyclonine hydrochloride is effective on the mucous membranes is well established. The duration of action of dyclonine hydrochloride as an anesthetic/analgesic is considerably

longer than that of benzocaine, benzyl alcohol, and the phenol type compounds. When used in the form of a rinse or gargle, it may relieve pain in irritated mucous membranes for as long as an hour. When incorporated in lozenges that are slowly sucked, the mucous membranes are bathed continously, and it may relieve pain due to sore throat or sore mouth for several hours or as long as an effective concentration is being supplied by the lozenge.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 0.05- to 0.10-percent concentration of dyclonine hydrochloride in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a 0.05- to 0.10-percent concentration of dyclonine hydrochloride in the form of a lozenge (equivalent to 1.0 to 3.0 mg per lozenge) every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice or supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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e. *Hexylresorcinol.* The Panel concludes that hexylresorcinol is safe and effective as an OTC anesthetics/analgesics active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Hexylresorcinol, an aromatic alcohol, is a dihydroxybenzene with a normal hexyl group on position 4 and hydroxyl groups on positions 1 and 3 of the aromatic nucleus. It can, therefore, be classified as a phenol. It responds to certain specific chemical tests characteristic of phenols. Hexylresorcinol is prepared by condensing resorcinol with caproic acid in the presence of zinc chloride. The resulting intermediate product is reduced to hexylresorcinol (Refs. 1, 2, and 3).

Hexylresorcinol is a white or yellowish-white powder composed of needle-shaped crystals. It has a faint "fatty" odor and a sharp astringent taste. It produces a sensation of numbness when placed on the tongue. Hexylresorcinol melts between 62° and 67° C. It turns from a white to a brownish-pink tint on exposure to light and air due to oxidation to quinones. One gram of hexylresorcinol dissolves in approximately 2,000 mL of water. It is freely soluble in alcohol, glycerine, ether, chloroform, benzene, and vegetable oils. For many years, hexylresorcinol was considered official and was included in the "United States Pharmacopeia."

Animal studies indicate a low degree of acute and chronic toxicity (Ref. 4). In rats, the oral minimum lethal dose of a suspension is 50 mg/kg. A suspension in 5 percent olive oil solution administered subcutaneously resulted in a minimum lethal dose of 750 to 1,000 mg/kg. A similarly low degree of toxicity was found in guinea pigs, rabbits, cats, and dogs. In dogs, doses of 1 to 3 g produced no signs of toxicity. When the dogs were sacrificed, mild irritation of the stomach was noted 4 to 5 hours after ingestion of the drug. Lesions in the mucosa were superficial. If the animals were sacrificed 48 hours later, the lesions were not present. Oral administration in rats was well tolerated, revealing no signs of toxicity when 12 mg/kg was repeated six times over a 8-hour period (Ref. 4).

Pure hexylresorcinol is irritating to the respiratory tract and to the skin. A concentration of hexylresorcinol in alcohol has vesicant properties. Hexylresorcinol lacks the irritancy and caustic properties of resorcinol and phenol. Long use over 40 years and extensive marketing experience indicate that hexylresorcinol possesses a low degree of sensitization.

(1) *Safety.* The Panel concludes that hexylresorcinol is safe as an OTC anesthetics/analgesics active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

In view of the fact that hexylresorcinol was extensively used as an anthelminthic and administered orally in both adults and children, the Panel considers hexylresorcinol to be safe for topical application to the mucous membranes and skin (Ref. 5). The usual adult dose as an anthelmintic is 1 g as a single dose in a 24-hour period. For children, the usual dose is 0.1 g for each year of age up to 10 years. The drug is usually given orally after an overnight fast. The presence of food lessens the effectiveness of the drug. A saline purge is usually given the following morning to clear the bowel of dead worms. Treatment may be repeated after 3 days (Ref. 1). Hexylresorcinol has also been shown to have some antimicrobial effects. The drug has been used as a gargle and as a urinary antiseptic. Experiments by Leonard (Ref. 6) resulted in the use of hexylresorcinol as a urinary antiseptic. He found that hexylresorcinol at pH 6 to 6.4 in a 1:60,000 concentration killed microbes in the urine in 1 hour, and that at pH 7.6 to 8.2 a concentration of 1:18,000 was required for the same effect. Robbins (Ref. 7) observed that after oral administration of hexylresorcinol in humans, 18 percent was eliminated in the urine in a conjugated form, and 64 percent was eliminated in the feces in an uncombined state.

(2) *Effectiveness.* The Panel concludes that hexylresorcinol is effective as an OTC active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Hexylresorcinol is a phenol. The substitution of an aliphatic radical on the side chain of this phenol reduces the caustic activity of phenol, but retains the anesthetic qualities of phenol. Thus, the Panel is of the opinion that hexylresorcinol does have anesthetic properties.

Hexylresorcinol solution, 0.1 percent, produces topical anesthesia in the cornea of rabbits lasting up to 10 minutes or more, depending on the concentration of the hexylresorcinol. Hexylresorcinol has been incorporated in lozenges for the relief of sore throat and other painful ailments of the oral cavity.

Adriani and DiLeo (Ref. 8) found that after stimulation by an electric current the application of a commercial preparation consisting of a 1:1,000 solution of hexylresorcinol produced anesthesia on the gums and at the tip of the tongue, but did not completely abolish sensation. The duration of action of aqueous solutions used as rinses, mouthwashes, and gargles is usually short and seldom lasts more than 5 or 10 minutes. When incorporated in lozenges that slowly release the ingredients, anesthesia/analgesia lasts as long as effective concentrations are supplied to relieve the pain of sore mouth or sore throat.

The ingredient has also been recommended as an antimicrobial agent for cuts, wounds, and burns on the skin, but the submissions to the Panel do not make this claim (Refs. 9, 10, and 11). The Panel concludes that long usage and wide marketing experience in addition to animal data are adequate evidence for classifying hexylresorcinol as a Category I ingredient for use on the mucous membranes.

(3) *Dosage:* Adults and children 3 years of age and older: Use a 0.05- to 0.1-percent concentration of hexylresorcinol in the form of a rinse, mouthwash, gargle, or spray no more than three to four times daily. Use a lozenge containing 2.0 to 4.0 mg of hexylresorcinol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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f. *Menthol.* The Panel concludes that menthol is safe and effective as an OTC anesthetic/analgesic active ingredient for use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Menthol is a secondary alcohol extracted from peppermint oil or made synthetically. Chemically, it is also known as hexahydrothymol and 3-paramenthanol. Menthol exists as colorless hexagonal crystals, as needlelike crystals in fused masses, or as a crystalline powder with a peppermint-like odor. Levo menthol melts between 41° and 44° C. Natural menthol is known as peppermint camphor. It may be levorotatory [1-menthol] or racemic (d,1-menthol). Menthol may be made synthetically by the hydrogenation (reduction) of thymol. Menthol is a secondary alcohol which can be considered to have been derived from the saturated hydrocarbon p-menthanol. Menthol is very slightly soluble in water, but soluble in alcohol, ether, chloroform, mineral oil, and in fixed and volatile oils (Refs. 1 and 2). Menthol may be fatal if ingested in large quantities. Doses of 1 to 2 g/kg may be fatal (Refs. 1 and 3).

(1) *Safety.* The Panel concludes that menthol is safe as an OTC active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Menthol causes sensitization in certain individuals. Symptoms include urticaria, erythema, and other cutaneous lesions. The sensitization index is low, however. Menthol has caused asphyxia in infants when applied locally for the treatment of coryza (runny nose).

Menthol was formerly used internally as a carminative. As the active ingredient of peppermint oil, it has found wide acceptance in candy, chewing gum, and cigarettes (Refs. 4 and 5). Menthol has had extensive use in inhalant preparations for the nose and throat. Inhalers containing menthol are commonly used for the relief of nasal congestion, headache, and neuralgia (Ref. 5).

Toxic effects from excessive ingestion of mentholated products can include nausea, abdominal pain, vomiting, and symptoms of central nervous system depression, such as dizziness, staggering gait, flushed face, sleepiness, slow respiration, and coma. The fatal dose of menthol in man is about 2 g (Refs. 6 and 7). Menthol is excreted in the bile and urine as a glucuronide (Ref. 6).

Rakieten, Rakieten, and Boyd (Ref. 9) studied the effects of menthol vapor on the upper respiratory tract of rats. The rats were exposed to different menthol vapor concentrations over a period of several months. Vapor in a range of less than 0.275 ppm showed no toxic effects, and there were no significant changes in skeletal muscle, skin, brain, or internal organs. Animals did show indications of lung irritation when exposed to the highest menthol concentrations.

In an unpublished study, Thomas (Ref. 10) used an ointment containing several volatile substances, including 2.5 percent menthol. It was applied to the abraded and intact skin of 223 subjects. After 48 hours, no instances of inflammation, wheal, hives, or primary irritation were seen.

Bliss and associates (Ref. 11) studied the effects of a 20-percent oil solution of menthol vigorously applied to the skin. They noted an intense and lasting cooling sensation followed by numbness, with a slight smarting sensation and hyperemia. Irritation beyond the rubefacient stage was not observed. Repeated topical application of mentholated products on the skin has been reported to give rise to hypersensitivity reactions (Refs. 8 and 12).

In young childrem nasal drops containing menthol may bring about spasm of the glottis. Cases of dangerous asphyxiation have been reported in infants following local application of menthol (Ref. 8). However, in a survey of approximately 124,000 infants receiving nasal drops containing essential oils, including menthol, no untoward effects were noted (Refs. 13 and 14).

It is the opinion of the Panel that although the actual number of adverse effects attributed to the internal anesthetic/analgesic use of menthol is relatively low, care should be taken to assure that safety is maintained through adequate packaging, labeling, and application.

(2) *Effectiveness.* The Panel concludes that menthol is effective as an OTC active ingredient for topical use on the mucous membranes when used within the dosage limit set forth below.

There are few well-controlled studies documenting the effectiveness of menthol as a topical anesthetic/analgesic for use on the mucous

membranes of the mouth and throat. However, due to its wide use and clinical acceptance, and on the basis of published reports in the literature (Refs. 12, 15, and 16), the Panel concludes that menthol is effective for such use.

Menthol belongs in the hydroxy-type group of local anesthetics It stimulates the nerves for the perception of cold and may depress the nerves for pain on the skin and mucous membranes (Ref. 1). In some cases, it merely substitutes one sensation for another.

Menthol is used as an antipruritic on the skin in a concentration range of 0.25 to 1.0 percent (Ref. 2). It also possesses counterirritant properties. When applied to the skin and mucous membranes of the mouth and throat, menthol stimulates the nerves for perception of cold while depressing those nerves which perceive pain.

Menthol is a feeble topical antimicrobial. Menthol is absorbed through the mucous membranes and penetrates the intact as well as the damaged skin. Menthol is indicated for the temporary relief of pain of the mucous membranes of the mouth and throat.

The duration of action of aqueous solutions of menthol used as rinses, mouthwashes, and gargles is usually short and seldom lasts more than 5 to 10 minutes. When incorporated in lozenges that slowly release the ingredient, anesthesia/analgesia lasts as long as effective concentrations are supplied to relieve pain of sore mouth or sore throat.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 0.04- to 2.0-percent concentration of menthol in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 2.0 to 20.0 mg of menthol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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g. *Phenol.* The Panel concludes that phenol is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Phenol is hydroxybenzene. Phenol was discovered in 1934 in coal tar by Ringe, who named it "carbolic acid." It was also once called phenic acid (Ref. 1). Phenol is a primary alcohol of the aromatic series and as such exerts a topical anesthetic action (Ref. 2). Although it may be obtained from coal tar, most of it is now prepared synthetically. The antimicrobial effectiveness of phenol was first demonstrated by Lister in 1857. Its clinical use at present is limited to use as a topical anesthetic and for cauterization (Ref. 3). Compounds less toxic than phenol are more effective antimicrobial agents (Ref. 1). Phenol exists as colorless to light-pink, needle-shaped crystals interlaced or separated, or as a white to light-pink crystalline mass (Ref. 4). It possesses an aromatic odor which is distinctive and differs from other aromatic alcohols. It gradually darkens on exposure to light and air. Phenol is liquified by warming or by the addition of 10 percent water. It is caustic if applied directly to tissues (Ref. 1). A concentrated solution of phenol and water has a strength of approximately 6 percent at room temperature. Phenol is very soluble in alcohol, glycerin, chloroform, ether, and fixed and volatile oils (Ref. 4). It is sparingly soluble in mineral oil. Solutions of phenol are oxidized and turn brown due to the formation of quinones (Ref. 1). Phenol forms a salt, phenolate sodium, with sodium hydroxide which is ionized and highly alkaline. One gram dissolves in about 5 mL of water. Phenol boils at about 182° C. It congeals at temperatures lower than 39° C. Phenol combines with camphor to form a substance known as camphor-phenol (Ref. 5). Whether or not this is a definite chemical complex or a solution of phenol in camphor has not been established with certainty, but the consensus seems to be that it is a complex. The substance releases free phenol slowly in small quantities. The presence of moisture hastens the process (Ref. 1).

(1) *Safety.* The Panel concludes that phenol is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Concentrations greater than 1.5 percent in aqueous solutions are irritating and may cause sloughing and necrosis (Refs. 3 and 6). Phenol causes an area of blanching when applied in pure form to the skin or mucous membranes. A feeling of numbness develops. Later the area undergoes necrosis and sloughing (Ref. 1).

After oral ingestion or absorption from other sites from which it may pass into the systemic circulation, phenol is oxidized and conjugated with sulfuric, glucuronic, and other acids by the liver and excreted into the urine. Only small quantities of free phenol are excreted into the urine. Phenol is lipophilic and is readily absorbed through the intact and damaged skin and passes into the systemic circulation (Ref. 7). Absorption through the skin depends upon the area exposed rather than on the concentration (Refs. 3 and 8).

Phenol is readily absorbed after application to the mucous membranes. Concentrated solutions are toxic and cause death if ingested orally (Ref. 8). Phenol has been used for suicidal purposes. Cases of accidental poisoning have been common. The symptoms of toxicity usually develop rapidly and death has occurred within 2 or 4 hours after ingestion. Coma and collapse are the main manifestations of toxicity from large doses. After ingestion of small amounts, the most common symptoms are nausea, vomiting, collapse, pallor, cold sweats, and feeble pulse. Stupor ensues deepening into a comatose state with insensibility. Respirations are often rapid and shallow, irregular, and sometimes paroxysmal. Death results from respiratory arrest. Paralysis of both sensation and motion may occur. In some cases, violent clonic or epileptiform convulsions have occurred. The urine is generally scanty, albuminous, and greenish or black in color. The diagnosis is usually not difficult to make, since the odor of phenol can be detected on the breath and smelled in the smoky urine. White, corrugated spots are present on the mucous membranes of the mouth and throat due to the caustic action of the phenol.

The estimated fatal dose of phenol is approximately 15 g. However, death has been reported following the ingestion of as little as 1.5 g. Recovery has followed the ingestion of as much as 30 g. In the fatal cases, death usually occurs in less than 2 hours. Death usually occurs from respiratory failure, although in some instances cardiac failure has been the lethal terminal manifestation. The degree of toxicity depends upon the amount of phenol ingested. Its concentration is not an important consideration (Refs. 1 and 8). Chronic ingestion of phenol causes a dark brown discoloration of tissues most likely due to staining from quinones resulting from oxidation of phenol in the body. The cartilaginous tissues of the body appear to be affected more than other tissues (ochronosis).

(2) *Effectiveness.* The Panel concludes that phenol is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Phenol penetrates the sensory nerve endings and exerts its anesthetic effect in presumably the same manner as other local anesthetics/analgesics (Refs. 6 and 7). It is a lipophilic non-ionized polar substance and thought to act in the same manner as the "caine" type of topical anesthetics (Ref. 9). The hydrocarbon pole is lipophilic and orients into the lipid phase of the axon. The hydroxyl group is hydrophilic and orients into the water phase (Ref. 10). Phenol is acidic and forms salts with alkalis. It readily traverses epithelial barriers. Its absorption from the skin and mucous membranes does not depend upon the pH of the medium. A feeling of warmth and tingling ensues following the application of 5 percent phenol to the unabraded skin. Eventually, complete topical anesthesia/analgesia develops and the area becomes irritated. Phenol can, in concentrations exceeding 1.5 percent in water, be very irritating, and even caustic to the skin and mucous membranes and cause necrosis. Phenol possesses topical anesthetic/analgesic activity in concentrations of 0.5 to 1.5 percent. The blockade produced on the mucous membranes in concentrations of less than 1.5 percent is reversible. The latent period is short, being 1 to 2 minutes. Duration of anesthesia/analgesia on the mucous membranes of the mouth averages 5 to 10 minutes when used in the form of an aqueous solution as rinses, mouthwashes, and gargles. When incorporated in lozenges which slowly release the ingredient, anesthesia/analgesia lasts as long as effective concentrations are supplied to relieve pain of sore mouth or sore throat. As the drug is washed away by the saliva, the anesthetic/analgesia action recedes.

Duration of anesthesia/analgesia depends upon the site of application and concentration. Aqueous solutions stronger than 2 percent are too irritating for topical application. A 4-percent solution in glycerin is sometimes used and is said to be noncaustic. Because the glycerin helps retain the phenol when camphor is added to phenol, a liquid forms. Phenol forms a complex with camphor and holds it, releasing it slowly. Its rate of release depends upon the quantity of moisture present on the surface of application, temperature, and other factors. The quantity of phenol release from the mixture varies and depends upon the water content of the tissue. This apparently reduces the extent of the topical action and the absorption of phenol through its phenol-holding property (Ref. 5). The Panel questions the safety of such mixtures. Phenol is a keratolytic, neurolytic, and destructive agent in concentrations of 10 to 40 percent (Ref. 1).

Phenol is an anesthetic/analgesic to the mucous membranes. A 5–percent solution of phenol and water has definite topical anesthetic/analgesic action, but sloughing occurs in about 10 percent of the cases (Ref. 11).

A 5–percent solution of phenol in 95 percent alcohol is an efficient topical anesthetic/analgesic. Complete anesthesia results in 53 percent of the cases and partial anesthesia/analgesia in 47 percent of the cases.

However, sloughing or superficial necrosis occurred in 22 percent of cases studied. Phenol is soluble in oils and petrolatum which tend to hold it in solution and reduce its activity.

When phenol is combined with topical anesthetics/analgesics of the nitrogenous type which are active in the basic form, conversion of the nitrogenous base to the acid form occurs because phenol is an acid. This may nullify their action and not necessarily produce the anticipated effect or summation. The antimicrobial activity of phenol is due to its ability to coagulate proteins.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 0.5- to 1.5-percent concentration of phenol in aqueous solution in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 10 to 50 mg of phenol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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h. *Phenolate sodium (sodium phenolate).* The Panel concludes that phenolate sodium is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Phenolate sodium, also known as sodium phenolate, sodium phenate, sodium carbolate, sodium phenoxide, and phenol sodium, is the sodium salt of phenol (carbolic acid) (Ref. 1). Ordinarily, phenol exists in the enol form; that is, it is a benzene ring with a hydroxyl group. Phenol has high resonant energy and can revert to the keto form (Ref. 2). This keto-enol type of isomerization is encountered from time to time in various organic compounds. The keto form is less stable than the enol form. The sodium salt is formed with the keto form. One hydrogen atom on position 2 is replaced with the metalic ion. Phenols are consideed stronger acids than other alcohols or water, but are weaker acids than carboxylic acids. The dissociation constant of phenol is 1.3×10^{10} as compared to 4.3×10^{7} for carbonic acid. Phenol reacts with sodium hydroxide to form a water-soluble salt, but it will not interact with sodium carbonate to form a salt.

Phenolate sodium is a white to reddish deliquescent substance composed of rods or granules. It is readily decomposed by carbon dioxide to phenol and sodium carbonate if it stands in the air. It must be stored in tightly closed containers. Phenolate sodium is strongly alkaline and caustic. It is very soluble in water, and alcohol-aqueous solutions are strongly alkaline and caustic. Phenolate sodium releases 81 percent phenol on decomposition or acidification. Phenol is less acidic than carbonic acid. The therapeutic and toxic effects of phenolate sodium are due to the phenol released (Refs. 1, 2, and 3).

(1) *Safety.* The Panel concludes that phenolate sodium is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The safety considerations for phenolate sodium are the same as those for phenol, because it releases phenol, and its toxic effects are due to the phenol (Ref. 1). In addition, phenolate sodium may augment the caustic effects of phenol due to the presence of sodium hydroxide, from which it is formed, if concentrated solutions are ingested orally or applied topically. Phenolate sodium precipitates proteins and can, therefore, exert an antimicrobial effect, as does phenol. The Panel has considered the antimicrobial effects of phenol and phenolate sodium elsewhere in this document. (See part IV. paragraph B.3.s. below—Phenolate sodium.)

Phenolate sodium, in doses of 0.1 to 0.3 g, was formerly used to treat diarrhea.

(2) *Effectiveness.* The Panel concludes that phenolate sodium is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Aqueous solutions of phenolate sodium are alkaline and caustic, but dilute solutions can be used to obtain the same anesthetic/analgesic effect on the mucous membrane as phenol (Ref. 1). Since solutions containing phenolate sodium are alkaline, the effects of certain ingredients that are physiologically active in the form of a base are assured when they are used in combination with phenolate sodium. This is the case when phenolate sodium is combined with nitrogenous topical anesthetics/analgesics. The released phenol and alkali may enhance the effects of the latter compounds and maintain an alkaline medium. Phenolate sodium is not the sole ingredient in any of the products submitted to the Panel for consideration, but has been submitted in combination with other topical anesthetic/analgesic ingredients.

The duration of action of aqueous solutions of phenolate sodium used as rinses, mouthwashes, and gargles is usually short and seldom lasts more than 5 or 10 minutes. When incorporated in lozenges that slowly release the ingredient, anesthesia/analgesia lasts as long as effective concentrations are supplied to relieve pain of sore mouth or sore throat.

(3) *Dosage.* Adults and children 3 years of age and older: Use a concentration of sodium phenolate in aqueous solution, equivalent to a 0.5- to 1.5-percent concentration of phenol, in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge, containing a concentration of phenolate sodium which is equivalent to 10 to 50 mg of phenol, every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and suprvision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

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i. *Salicyl alcohol.* The Panel concludes that salicyl alcohol is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The chemical structure of salicyl alcohol is ortho-hydroxy benzyl alcohol. Actually, it is benzyl alcohol with a hydroxyl group on the number 2 position of the benzene ring. Salicyl alcohol occurs in plates or crystalline powder which melts at 86 to 87° C. It sublimes at 100° C. It is soluble in water, 1 part in 15, and very soluble in alcohol, chloroform, ether, and benzene (Ref. 1).

Salicyl alcohol is the hydroxy type of topical anesthetic/analgesic. It is only suitable for surface anesthesia. As is the case with other alcohols, it is not suitable for injection because it is feeble and causes neurolysis and sloughing of parenteral tissues. It is a neutral substance and does not depend upon ionization or basicity for its pharmacologic effects.

(1) *Safety.* The Panel concludes that salicyl alcohol is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

A study cited by Sollmann (Ref. 2) found that salicyl alcohol is the most effective, the least toxic, and least irritant of the phenyl carbanols. Its toxicity is much lower than that of the "caine" type drugs. Presumably, it is metabolized in the body. Toxicity data are not available. No fatalities in man have been recorded.

The Panel was unable to find any data on the acute animal toxicity and chronic human toxicity of salicyl alcohol except in certain formulations for OTC preparations because it has fallen into disuse. It appears to have no adverse effects on the mucous membranes in concentrations of 6 percent or less. It is not caustic as are the phenolic type of alcohols.

(2) *Effectiveness.* The Panel concludes that salicyl alcohol is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Salicyl alcohol is an effective topical anesthetic/analgesic on the mucous membranes in concentrations of 1 to 6 percent in aqueous solution. Its onset of action is rapid, requiring 2 to 3 minutes. The duration of action, like that of the other hydroxy-type local anesthetics/analgesics is brief. The duration of action of aqueous solutions of salicyl alcohol used as rinses, mouthwashes, and gargles is usually short and seldom last more than 5 to 10 minutes. When incorporated in lozenges that slowly release the ingredient, anesthesia/analgesia lasts as long as effective concentrations are supplied to relieve pain of sore mouth or sore throat.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 1.0- to 6.0-percent concentration of salicyl alcohol in aqueous solution in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 50 to 100 mg of salicyl alcohol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. below—Category I Labeling.)

Reference

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1079, 1976.

(2) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 7th Ed., W. B. Saunders Co., Philadelphia, p. 278, 1948.

Category I Labeling

a. *Indication.* "For the temporary relief of occasional minor irritation, pain, sore, mouth, and sore throat."

b. *Warnings*—(1) *For all drug products containing oral health care anesthetic/analgesic active ingredients.* (i) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(ii) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(2) *For oral health care anesthetic/analgesic products used in the form of gargles, mouthwashes, and mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which anesthetic/analgesic active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are mesbranded.*

The Panel recommends that the Category II conditions be eliminated from OTC oral health care anesthetic drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredients

Antipyrine.
Camphor.
Cresol.
Dibucaine.
Dibucaine hydrochloride.
Lidocaine.
Lidocaine hydrochloride.
Pyrilamine maleate.
Tetracaine.
Tetracaine hydrochloride.

a. *Antipyrine.* The Panel concludes that antipyrine is not safe and not effective for topical use as an anesthetic/analgesic on the mucous membranes of the mouth and throat.

Antipyrine is a pyrazolon derivative. Antipyrine is 2,3-dimethyl-1-phenyl-3-pyrazolin-5-one. It exists as tubular crystals or as a white powder that is odorless and has a slightly bitter taste. It is also known as phenazone. It melts at 111° C (Ref. 1). One gram dissolves in less than 1 mL water, 1.3 mL alcohol, 1 mL chloroform, and 3.4 mL of ether. Aqueous solutions are neutral. Antipyrine was introducted as a medicine in 1887 (Ref. 2).

Antipyrine was synthesized by Knorr in 1883 in an attempt to prepare a substance that would be similar to quinine. It is administered orally as an anesthetic and antipyretic. It may be synthesized by several methods. One method involves the interaction of phenyl hydrizine and ethyl acetoacetate followed by methylation.

Antipyrine is incompatible with many substances, the most important of which are acetanilid, chloral, phenacetin, phenol, thymol, phenyl salicylate, sodium salicylate, various alkalis, alum, ammonia water, resorcinol, sodium bicarbonate, tannic acid, ferric chloride, and various other compounds (Ref. 3).

(1) *Safety.* The Panel concludes that antipyrine is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The oral LD_{50} in rats is 1.8 g/kg. Large doses may cause nausea, vomiting, tremors, dizziness, weakness, diaphoresis, cyanosis, angioedema, and skin eruptions. It may produce methemoglobinemia in human beings, but this is rare. The skin eruptions may be macular, patchy, round or oval, varying in size, pink or dark purple, and persisting for a month or more after the drug has been withdrawn. Fixed pigmented areas occasionally result following its ingestion. Overdoses may produce stomatitis, drowsiness, convulsions, coma, and amaurosis (Ref. 3).

Antipyrine is absorbed from the mucous membranes of the mouth and throat. Some of its effects are systemic, although it allegedly has both local and systemic anesthetic effects. Swelling of the lips and the tongue and severe laryngeal edema interfering with respiration have occurred. A blue-grey coloration of the urine, which is green in reflected light, has been observed after large doses of antipyrine have been ingested (Refs. 2 and 3).

Antipyrine stimulates microsomal enzymes. It has been known to act additively with morphine. It combines with plasma proteins in a ratio of 1:8. Antipyrine is rapidly and completely absorbed from the gastrointestinal tract of man. Peak plasma levels are attained within 1 to 2 hours. It is slowly metabolized and disappears from the plasma at the rate of 6 percent per hour. The drug is rapidly metabolized in dogs and rabbits. The distribution depends on the water content of the tissue. It is metabolized by oxidation to form 4-hydroxy antipyrine (30 to 40 percent). This, in turn, is conjugated with glucuronic acid and excreted into the urine. Approximately 5 percent is excreted into the urine unchanged. Antipyrine does not produce euphoria, psychic or physical dependence, or withdrawal symptoms when administration is terminated. Cases of mild degrees of tolerance and habituation have been reported, but this has not been a problem. Antipyrine augments the doses of narcotics, analgesics, barbiturates, and hypnotics when ingested systemically.

Antipyrine is considered to be an unsafe drug because it produces severe cutaneous reactions. These are all believed to be due to sensitization. Of 394 cases of antipyrine poisoning reported prior to 1950, and reviewed by Greenberg (Ref. 4), 77 percent were of an allergic nature, 18 percent nonallergic, and in 5 percent the cause was undetermined. The most striking feature of the antipyrine hypersensitivity reaction is a fixed pigmented erythema. This was originally described by Brodie, et al. (Ref. 5). Ulceration of the buccal mucosa and erythematous pigmented lesions on the hands and the body have been noted. The Black race appears to be more susceptible to the stomatitis than other races. The majority of cases found in the literature concerning the toxicity of antipyrine indicate that the reported reactions are due to hypersensitivity.

The oral lethal dose of antipyrine in several species has been reported to be 1,000 mg/kg or more (Ref. 1). Thus, the main consideration of the Panel is the association between the use of antipyrine and the occurrence of fixed pigmented erythema of the skin and other types of skin reactions.

Antipyrine has fewer side effects than aspirin systemically. It does not interfere with the blood-clotting mechanisms as does aspirin. In addition, there is no evidence that antipyrine causes hepatotoxicity as does acetaminophen.

Antipyrine must not be confused with aminopyrine which, even though it is chemically allied, is known to cause irreversible agranulocytosis. Greenberg (Ref. 4) has indicated that only two cases of agranulocytosis due to antipyrine use were reported prior to 1950, and even in these it was not conclusive that antipyrine was the causative factor. No other cases have been reported since that time. Antipyrine, though closely related chemically to aminopyrine, is metabolized in a different manner, which is a possible explanation for differences in the propensity of aminopyrine to produce agranulocytosis.

The Panel has read with interest the comments of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products in which disagreement on antipyrine safety resulted in submission of both a majority and a minority report (42 FR 35436–35439). That Panel agreed that antipyrine may have merit and that, in spite of its long-term use in medicine, it has not been adequately evaluated for safety and effectiveness based on data from controlled studies. The minority felt that testing would be hazardous because of the known side effects due to sensitivity. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products referred to the position of FDA concerning the use of antipyrine as an analgesic in earwax softening preparations. That Panel, in its review of OTC topical otic drug products, published in the **Federal Register** of December 16, 1977 (42 FR 63564), recommended that such preparations be available by prescription only and not be available OTC.

(2) *Effectiveness.* The Panel concludes that antipyrine is not effective as an OTC anesthetics/analgesics active ingredient for topical use on the mucous membranes of the mouth and throat.

There are no data substantiating the fact that antipyrine acts as a stabilizer of the axonal membrane as do the topical local anesthetics. There are data indicating that antipyrine enhances the blockade caused by cocaine on isolated nerves in frogs, but in does not by itself produce a neuronal blockade.

Antipyrine is a anesthetic and a mild antipyretic systemically. Topically, antipyrine has been reported to be a feeble anesthetic and antiseptic (Ref. 3) and also to have some anesthetic effect on nerve endings (Refs. 2 and 6). It may cause constriction of the superficial blood vessels. Antipyrine has been used for the treatment of inflammatory conditions of the mucous membranes of the mouth and throat and for laryngitis in concentrations ranging from 5 to 15 percent. A solution of antipyrine composed of 5.4 percent antipyrine and 1.4 percent benzocaine in glycerin was formerly used for the treatment of acute otitis media (inflammation of the middle ear). Antipyrine has been used as a styptic for nasal hemorrhage. Antipyrine has a feeble antimicrobial effect, but this is of no consequence in considering such effects on the mucous membranes of the mouth and throat.

(3) *Evaluation.* The Panel concludes that antipyrine is not safe because it causes sensitization and adverse systemic reactions. In addition, antipyrine apparently manifests no significant topical anesthetic effects.

References

(1) Stecher, P. G., editor, "The Merck Index," 7th Ed., Merck and Co., Rahway, NJ, p. 90, 1960.

(2) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 7th Ed., W. B. Saunders Co., Philadelphia, pp. 525–527, 1948.

(3) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott, Philadelphia, p. 150, 1973.

(4) Greenberg, L. A., "Antipyrine: A Critical Bibliographic Review," Hillhouse Press, New Haven, CT, pp. 44–45, 1950.

(5) Brodie, B. B., et al., "The Estimation of Antipyrine in Biological Materials," *Journal of Biological Chemistry*, 179:25–29, 1949.

(6) Sollmann, T., "The Comparative Efficiency of Local Anesthetics," *Journal of the American Medical Association*, 70:216–219, 1918.

b. *Camphor.* The Panel concludes that camphor is not safe and not effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Camphor is a member of a cyclic group of hydroaromatic substances known as terpenes (Refs. 1 and 2). Camphor is 2-bornanone, a 2-ketone of heptane, which is naturally occurring in the camphor tree (*Cinnamum camphora*), an evergreen native to Eastern Asia. Natural camphor is obtained from all parts of the camphor tree. Camphor is also made synthetically from alpha pinene, a constitutent of turpentine. Approximately three-fourths of the camphor used is prepared synthetically. Natural camphor is optically active. Natural camphor is dextrorotatory, while the synthetic preparation is racemic and optically inactive. Both forms are pharmacologically active. Camphor melts at 174° to 177° C at atmospheric pressure. It sublimes readily. At 25° C, 1 g dissolves in 800 mL water, 1 mL ether, 1 mL alcohol, 0.5 mL chloroform, 0.4 mL acetone, and 1.5 mL turnpentine. Camphor, since it is a ketone, is converted by reduction to borneol, a secondary alcohol. Camphor has a peculiar tenacity and cannot be powdered in a mortar until it is moistened with an organic solvent. It liquifies when tribturated with menthol, thymol, phenol, and resorcinol. It is not compatible with oxidants such as potassium permanganate. Camphor forms complexes with cresol (camphor metacresol) from which both ingredients and other phenols can be released. Camphor is freely miscible with volatile and fixed oils. When applied to the skin and mucous membranes, camphor produces a feeling of warmth and provides a mild local anesthetic action that may be followed by numbness (Refs. 1 and 3).

Several camphor products are described in the official compendia. Camphor liniment, as listed in "National Formulary X", contains 20 percent camphor in cottonseed oil. This preparation is commonly called "camphorated oil." Other topical products containing camphor are camphor and soap liniment (4.5 percent

camphor) in "United States Pharmacopeia XIII", camphor spirit (10 percent camphor) in "National Formulary X", and camphor ointment (20 percent camphor) in "National Formulary IX" (Ref. N–6).

(1) *Safety.* The Panel concludes that camphor is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Camphor is absorbed from the mucous membranes and at the mucocutaneous junctions. Camphor is absorbed if injected subcutaneously. It is also absorbed from intact and damaged skin since it is nonionized and lipophilic. Excessive oral doses may be fatal (Ref. 3). Camphor is metabolized when ingested orally or assimilated by other routes. The camphor is first oxidized by the liver to campherol, and the campherol is then conjugated with glucuronic acid by the liver. The conjugate is excreted in the urine.

Camphor's minimal lethal/dose for rabbits is 2 g/kg orally. The median lethal dose (LD_{50}) subcutaneously for rats is 2.2 g/kg. The oral median lethal dose for guinea pigs is 180 mg/kg. In mice, the LD_{50} is 30 mg/100 g when administered intraperitoneally. The estimated minimal lethal dose for humans when ingested orally is 2 g. One adult survived ingestion of 1.5 g of camphor. Ingesting 0.7 to 1.0 g of camphorated oil proved fatal to a child (Ref. 5). Accidental poisoning has occured from ingesting the oil when it has erroneously been administered for castor oil. Cases of poisoning continue to be reported. The Panel considered various reports and editorials submitted to it concerning the toxicity and frequency of poisonings from camphor-containing preparations, particularly in children. The Panel has taken cognizance of these cases and those that continue to occur. However, the Panel is unaware of any case of poisoning that has occurred from topical administration on the skin in spite of the fact that camphor is known to penetrate the skin due to its lipophilic nature. The Panel is also aware of the fact that camphor is readily absorbed from the mucous membranes of the mouth, throat, and gastrointestinal tract.

Camphor is used as a component of paregoric (camphorated tincture of opium), which is widely used as an antidiarrheal in adults and children, and as a sedative and anesthetic in infants and children. However, no documented justification for its use systemically or topically on the mucous membranes has been found. The Panel, therefore, considers camphor not safe as a topical anesthetic/analgesic on the mucous membranes. Camphor in oil was once used parenterally as an analeptic, but it has long since been abandoned for this purpose. Systemically, camphor stimulates the central nervous system. Toxic doses produce convulsions which may be fatal. Camphor is not a common skin sensitizer but can, in concentrations above 3 percent, be an irritant. It is used as a counterirritant on the skin in topical antirheumatic preparations (Ref. 3). Its sensitizing potential on the mucous membranes is not known.

(2) *Effectiveness.* The Panel concludes that camphor is not effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The Advisory Review Panel on OTC External Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products has evaluated the topical use of camphor as an analgesic, an anesthetic, and as a counterirritant (44 FR 69802). That Panel's recommendations and conclusions were published in the **Federal Register** of December 4, 1979 (44 FR 69768). In concentrations of 3 percent or less by weight, camphor is an effective antipruritic and relieves the discomfort due to skin lesions characterized by itching and burning on the skin at the site of application. It is believed to act upon sensory receptors in the skin and mucous membranes in the same manner as the hydroxy or alcohol types of topical anesthetics even though it is a ketone. In concentrations exceeding 3 percent, particularly if combined with other ingredients that produce counterirritation, camphor stimulates the nerve endings in the skin and induces relief of pain and discomfort in muscles, joints, and other subcutaneous structures at a site distant to its application on the skin. The Panel does not find any data establishing camphor as an effective topical anesthetic/analgesic ingredient for topical use on the mucous membranes of the mouth and throat. When camphor is injected internally it produces a sensation of warmth. Numerous clinical reports regarding the ability of camphor to relieve cutaneous itch are available (Refs. 1, 3, and 6).

Camphor most likely exerts its anesthetic effects in a manner similar to that manifested by the hydroxy or alcohol type of compounds. When applied to the skin or mucous membranes, it produces a sense of warmth followed by a sensation of numbness. Topically, camphor is weakly antiseptic, but this attribute is of no practical significance as far as effective antimicrobial activity in the oral cavity is concerned. The odor of camphor may play a role in the relief of pain (Refs. 1, 3, and 6). The psychological component of the effect of drugs in causing pain relief by their placebo effect cannot be ignored when used topically on the skin, but it is doubtful that this mechanism operates when the drug is used on the mucous membranes.

(3) *Evaluation.* There are no well-documented studies that show that camphor is an effective active ingredient for topical use on the mucous membranes of the mouth and throat in a dosage range that does not irritate tissues. The fact that camphor is effective when used topically on the skin does not support the contention that it is equally as useful on the mucous membranes. Camphor is readily absorbed and has resulted in fatalities when taken internally and is therefore not a safe ingredient for use on the mucous membranes.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, pp. 219–220, 1976.

(2) Adriani, J., "Local Anesthetics," *in* "The Chemistry and Physics of Anesthesia," 2d Ed., Charles C. Thomas, Springfield, IL, pp. 398–473, 1962.

(3) Swinyard, E. A., "Demulcents, Emollients, Protectives and Adsorbents, Antiperspirants and Deodorants, Absorbable Hemostatics, Astringents, Irritants, Sclerosing Agents, Caustics, Keratolytics, Antiseborrheics, Melanizing and Demelanizing Agents, Mucolytics, and Certain Enzymes," *in* "The Pharmacological Basis of therapeutics," 4th Ed., edited by L. S. Goodman and A. Gilman, The Macmillan Co., New York, p. 993, 1970.

(4) Osol, A., et al., "The Dispensatory of the United States of America," 1950 Ed., J. B. Lippincott Co., Philadelphia, pp. 208–209, 1050.

(5) Smith, A. G., and G. Margolis, "Camphor Poisoning: Anatomical and Pharmacologic Study; Report of a Fatal Case; Experimental Investigation of Protective Action of Barbiturate," *American Journal of Pathology*, 30:857–869, 1954.

(6) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 249–252, 1957.

c. *Cresol.* The Panel concludes that cresol is not safe and not effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The description of cresol and its safety appears in detail in the section on antimicrobial agents described below. (See part IV. paragraph B.2.d. below—Cresol).

(1) *Safety.* The Panel concludes that cresol is not safe as an OTC anesthetic/

analgesic active ingredient for topical use on the mouth and throat.

(2) *Effectiveness.* The Panel concludes that cresol is not effective as an OTC anesthetic/analgesic active ingredient for topical use on the mouth and throat.

Since cresol is an aromatic alcohol and structurally and chemically similar to phenol, it behaves like phenol pharmacologically (Refs. 1, 2, and 3). Cresol is rapidly absorbed from the skin and mucous membranes and is somewhat less toxic than phenol, but exerts similar caustic and protein-denaturing qualities. When applied locally to the skin, cresol causes an erythema and burning sensation followed by numbness (Ref. 4). It acts in the same manner as phenol and destroys tissue, cauterizing the area of application.

Dilute solutions of cresol possess a topical anesthetic activity similar to that of the hydroxy type of local anesthetics. It is, however, not recommended or used for this purpose.

(3) *Evaluation.* Cresol is a phenolic derivative with antimicrobial and topical anesthetic activity. The Panel concludes that cresol is not safe for use as an anesthetic/analgesic on the mucous membranes of the mouth or throat.

References

(1) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadephia, pp. 809–810, 1957.

(2) Goodman, L. S., and A. Gilman, "The Pharmacological Basis of Therapeutics," 2d Ed., The Macmillan Co., New York, p. 1081, 1960.

(3) OTC Volume 130006.

(4) Osol, A., et al., "The United States Dispensatory and Physicians' Pharmacology," 26th Ed., J. B. Lippincott Co., Philadelphia, pp. 341–342, 1967.

d. *Dibucaine.* The Panel concludes that dibucaine is effective but not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Dibucaine is a synthetic topical anesthetic of the "caine" type, derived from quinoline (Ref. 1). It was introduced in 1929 by McElwain (Refs. 2 and 3). Its chemical name is butly oxychinchoninic acid diethly ethylenediamide. It is in no way related to quinine as its name may suggest. It is not an ester, as are benzocaine and tetracaine, but is an amide. It was one of the first of the amides to be adopted for clinical use. Its chemical configuration follows closely the general characteristics of the "caine" type of drugs (Refs. 2 and 4).

Dibucaine is a tertiary amine and, therfore, a base that reacts with acids to form salts, the most common of which is the hydrochloride salt. The free base is a colorless, almost odorless powder that melts at 63° to 64° C. The powder darkens on exposure to air. As is the case with other bases of the topical anesthetics of the "caine" type, it is poorly soluble in water. It is readily soluble in ether, various other organic solvents, in fatty oils and loeaginous bases.

The hydrochloride salt is a white, tasteless powder which melts at 90° to 96° C. The melting point is not sharp. It is very soluble in water (one part dissolves in 0.5 part water) and in organic solvents, such as benzene, acetone, and chloroform. It is insoluble in ethers and oils. Aqueous solutions have a pH range of 6.2 to 6.5. Alkaline substances, such as the hydroxides, carbonates, and bicarbonates, readily precipitate the base from aqueous solutions. Solutions must be prepared in distilled water and stored in alkaline-free glass; otherwise, the drug precipitates out due to the reaction with the alkali in the glass. Solutions of salts of dibucaine are stable when boiled. Dibucaine is compatible with epinephrine. The general "United States Pharmacopeia" name and the one that is accepted is dibucaine. The hydrochloride salt is more stable thant the base (Refs. 1, 2, 4, and 5). Solubility of the salt in oils or nonwater-soluble bases is poor. It is soluble in glycols.

(1) *Safety.* The Panel concludes that dibucaine is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Dibucaine is a synthetic topical anesthetic of the amide type derived from quinoline (Refs. 2 and 6). It is a base that forms salts with various acids. The most frequently used salt is the hydrochloride. Dibucaine is a "caine" type drug and closely follows the characteristic chemical configuration of this type drug in having an amino group, dimethylene chain, and aromatic nucleus. Dibucaine is approximately 15 times more potent and toxic than procaine, which has been used as the reference standard in clinical studies. Since it is more potent and more toxic on a parallel basis, only one-fifteenth would be required to achieve the same effect as procaine. The absolute toxicity is 15, but the relative toxicity compared to procaine is 1. Toxicity, of course, depends upon the site and mode of application, and the vascularity of the tissues as well as the mode and rate of biotransformation. The lethal dose in human beings, therefore, is unknown. It is one of the most potent and longest lasting of the topical anesthetics. In mice, the acute intravenous LD_{50} is 2.8 mg/kg compared to 21 mg/kg for procaine and 11 mg/kg for cocaine. In rabbits, dibucaine is six times as toxic as cocaine given intravenously (Ref. 7). Dibucaine produces central nervous system stimulation and myocardial depression characteristic of the "caine" type of drugs when recommended doses are exceeded and high plasma levels result. Fatalities have been reported from the use of the maximal tolerable dose following infiltration, perineural injection, or topical application to the mucous membranes. Fatalities have not been reported following the use of dibucaine-containing products after application to the mucous membranes as a prescription item. Ten cases of acute intoxication, five of which were fatal, have been reported after the oral ingestion of dibucaine. In nine of those cases, the drug was prescribed for rectal use; in one case intoxication followed the use of ointments and creams marketed OTC for topical use. Five fatalities due to accidental ingestion of OTC ointments by children have been reported. These cases were documented in an adverse reaction reporting system extending from 1951 to 1972 (Ref. 8).

During the long period of marketing experience, reactions on the skin and mucous membranes due to irritancy and allergy have been low. Patch testing in controlled studies in humans, and a review of the literature by Lane and Luikart (Ref. 9) reveal that the incidence of sensitization reactions is low and no greater than that observed with procaine, tetracaine, benzocaine, and cyclomethycaine. Dibucaine can act as a hapten and be antigenic. Anaphylactic and other allergic types of reactions are possible, but have not been reported after topical use on the skin or mucous membranes after rectal and oral use.

Dibucaine has been alluded to as a "highly toxic" anesthetic by physicians. Relatively speaking, however, it is no more toxic than procaine, tetracaine, lidocaine, and similarly acting drugs if used in proper dosage and with the same precautions. Its chief danger lies in its potency, since one-tenth to one-fifteenth as much would be required to produce a toxic reaction compared to lidocaine or procaine. Too liberal use of a preparation from topical application to mucous membranes or over wide areas of damaged or abraded skin from which the drug is readily absorbed could result in severe and often fatal systemic reactions. Absorption from the oral cavity can be rapid and result in high plasma levels. Systemic absorption may

result in convulsions, myocardial depression, and death (Ref. 5). Dibucaine must not be ingested orally because it is absorbed from the intestines. Sensitization can occur but is uncommon.

(2) *Effectiveness.* The Panel concludes that dibucaine is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Dibucaine is one of the most potent and longest lasting topical anesthetics. It is approximately 15 times more potent than procaine and 3 to 6 times more potent than cocaine. As is the case with other topical anesthetics, it acts by stabilizing the neuronal membrane of the pain receptors in the mucous membranes. It has been used extensively for spinal anesthesia, topical anesthesia on the mucous membranes and skin, and to a lesser extent for infiltration and nerve blocking. Its period of latency when used intrathecally may be as long as 10 minutes. Its duration of action introthecally is approximately 3 hours. This latency and long duration of action are also reflected when used by other routes (Ref. 2). The base readily penetrates the intact skin and mucous membranes. It acts superficially on the mucous membranes and not on the deeper structures below. The concentrations absorbed systemically from the mucous membranes are significant and may result in high plasma levels, which may cause fatal systemic reactions. In view of this, the Panel regards the drug as too hazardous for OTC use in the oral cavity and emphasizes that it should be administered by a physician familiar with its hazards and use.

(3) *Evaluation.* The Panel concludes that dibucaine in not a suitable OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat because of its rapid absorption which may result in fatal systemic toxicity.

References

(1) Adriani, J., "Local Anesthetics," *in* "The Paramacology of Anesthetic Druga," 5th Ed., Charles C. Thomas, Springfield, IL, pp. 131–145, 1970.

(2) Adriani, J., "Local Anesthetics," *in* "The chemistry and Physics of Anesthesa," 2d Ed., Charles C. Thomas, Springfield, IL, pp. 398–473, 1962.

(3) Swinyard, E. A., "Local Anesthetics," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al. Mack Publishing Co., Easton, PA, p. 990, 1975.

(4) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 413, 1973.

(5) Adriani, J., "Absorption and Systemic Toxicity of Local Anesthetics, *General Practitioner, 25:82–86, 1962.*

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(7) Osol, A., et al., "The Dispensatory of the United States of America," 25th Ed., J. B. Lippincott Co., Philadelphia, pp. 434–436, 1955.

(8) OTC Volume 060013.

(9) Lane, C. G., and R. Luikart, "Dermatitis from Local Anesthetics with a Review of One Hundred and Seven Cases from the Literature," *Jounral of the American Medical Association, 146:717–720, 1951.*

e. *Dibucaine hydrochloride.* The Panel concludes that dibucaine hydrochloride is effective but not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The general characteristics of dibucaine hydrochloride have been discussed elsewhere in this document. (See part III. paragraph B.2.d. above—Dibucaine.)

(1) *Safety.* The Panel concludes that dibucaine hydrochloride is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The remarks above concerning the safety of dibucaine base are also applicable to the hydrochloride. (See part III. paragraph B.2.d. (1) above—Safety.) As is the case with salts of other topical anesthetics, dibucaine hydrochloride penetrates epithelial barriers and exerts an anesthetic effect on pain receptors and other receptors with which it comes into contact and on receptors in structures immediately beneath the epithelial layers. It passes into the tissue fluids and gains access to the systemic circulation. Since dibucaine is approximately 15 times more potent and toxic than procaine, the quantity used in an OTC preparation could result in high plasma levels and serious systemic responses. Reactions from the use of therapeutic doses on the mucous membranes are uncommon but do occur (Ref. 1).

Systemic absorption can result in convulsions, myocardial depression, or death (Ref. 1). Dibucaine hydrochloride is readily absorbed from the mucous membranes. It is also absorbed from open lesions or broken or abraded skin, but not from the intact epithelial barriers (Refs. 2 and 3). The possibility that sufficient quantities may be absorbed from mucous membranes and cause fatal reactions is great. The Panel also calls attention to the greater solubility of the hydrochloride in the water of tissue fluids than the solubility of the base. However, the hazard from rapid aborption from either the salt or the base is almost equally as great.

Sensitization can occur and has been reported but is uncommon.

(2) *Effectiveness.* The Panel concludes that dibucaine hydrochloride is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Dibucaine hydrochloride is converted to the base when absorbed by mucous membranes from the buffering mechanisms in the tissues. Its mechanism of action is similar to dibucaine base.

There are well-controlled studies documenting the effectiveness of dibucaine hydrochloride as an anesthetic/analgesic for topical use of the mucous membranes of the mouth and throat. Dibucaine hydrochloride enjoys wide use and clinical acceptance. However, based upon published reports in the literature and due to the danger of fatal reactions, the Panel concludes that dibucaine hydrochloride should be used topically as an anesthetic/analgesic active ingredient on the mucous membranes as a prescription drug only and not for OTC use.

(3) *Evaluation.* The Panel concludes that dibucaine hydrochloride is not a suitable OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat because of its rapid absorption which can result in fatal systemic toxicity.

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f. *Lidocaine.* The Panel concludes that lidocaine is effective but not safe as an OTC anesthetic/analgesic for topical use on the mucous membranes of the mouth and throat.

Lidocaine is an amide type of topical anesthetic and thus differs from tetracaine, benzocaine, and procaine which are esters of paraminobenzoic acid. Lidocaine is 2-(diethylamino)-2', 6'-acetoxylidide (Ref. 1). It can also be considered an acetamide with one of the hydrogen atoms on the amino group of the amide portion of the compound replaced by a dimethyl aniline group

and one of the hydrogen atoms on the terminal carbon atom replaced by a nitrogen atom with two ethyl groups. It is a tertiary amine and is, therefore, a base that forms salts with acids (Ref. 2). The salt used clinically is the hydrochloride.

Lidocaine was synthesized by Lofgren in 1946 in Sweden (Ref. 3). Lidocaine base is a white to slightly yellow crystalline powder having a characteristic aromatic odor. It is practically insoluble in water, very soluble in alcohol and chloroform, freely soluble in ether, and dissolves in oils. Lidocaine is more lipophilic than procaine. Lidocaine base melts between 66° and 69° C (Ref. 4). Lidocaine base for use as a topical anesthetic/analgesic on the mucous membranes is incorporated in water-miscible solvents such as polyethylene glycol, propylene glycol, and methyl cellulose (Ref. 5). It may also be used in aqueous solutions.

Lidocaine salts are highly stable in vitro. The hydrochloride endures 8 hours when boiled with 30-percent hydrochloric acid, or after lengthy heating with alcohol and potassium hydroxide (Ref. 2). However, it is readily metabolized in the body. Up to 11 percent of the usual doses used for regional block in humans are recoverable in the urine within 4 hours (Ref. 6). The hydrochloride salt is not easily isolated from the solution.

(1) *Safety.* The Panel concludes that lidocaine is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Although lidocaine base is poorly soluble in water, it is readily absorbed when applied over mucous membranes. If sufficient quantities are absorbed, plasma levels may be attained that result in systemic pharmacological reactions characteristic of the "caine" type drugs which may be fatal (Ref. 7). Reactions due to systemic absorption are of the central nervous system type and the cardiovascular type. Stimulation of the cortex occurs first, followed by depression of not only the cerebral cortex, but lower centers as well (Ref. 8). Slow onset of a reaction causes stimulation followed by depression leading to drowsiness, nervousness, dizziness, blurred vision, nausea, tremors, convulsions, and respiratory arrest. When the onset is rapid, central nervous system depression occurs, leading primarily to unconsciousness which may be followed by respiratory arrest (Ref. 7). Myocardial depression and cardiac arrest may occur simultaneously. In addition, a fall in blood pressure and intercostal paralysis is regarded as a potential hazard resulting from high plasma levels (Ref. 9).

Lidocaine is used intravenously in small quantities by internists. Lidocaine has useful antiarrhythmic activity attributed to an increase of the electrical stimulation threshold of the ventricle during diastole. The antiarrhythmic action is similar to that of procainamide and quinidine but, because of its short duration of action, lidocaine hydrochloride must be given by continuous intravenous infusion if the action is to be sustained. The antiarrhythmic action usually develops within a few minutes and has a duration of 10 to 20 minutes, following a single intravenous injection of 50 to 100 mg. When it is used intravenously at the rate of 10 to 45 microgram/kilogram (μg/kg) of body weight per minute, the antiarrhythmic action begins to develop in 10 to 20 minutes. Blood levels of 1.0 to 2.5 μg/ml appear to be required for suppression of ventricular arrhythmias. These blood levels may be attained with an intravenous priming dose or by continuous infusion of the drug. Blood levels exceeding 5 μg/ml may, however, prove toxic and cause convulsions and cardiac depression. Constant electrocardiograph monitoring is used to avoid overdosage and toxicity.

Manufacturers of lidocaine indicate that its specific indication is for the drug management of ventricular arrhythmias occurring during cardiac manipulation, such as cardiac surgery. It is used for life-threatening arrhythmias, particularly those which are ventricular in origin, such as occur during acute myocardial infarction (Refs. 10 and 11).

Approximately 90 percent of a dose of lidocaine is metabolized by the enzmes in the microsomes of the liver within 4 to 5 hours, and the metabolites are excreted along with 10 percent of the unchanged drug in the urine. Lidocaine is metabolized by several metabolic pathways in the liver. The enzymes involved are oxidases and amidases. Several metabolites have recently been found which produce convulsant activity. These may account for delayed reactions due to cumulative effects. Lidocaine is not hydrolyzed by the plasma cholinesterases as are tetracaine, procaine, and other esters of aminobenzoic acid (Refs. 6 and 8).

Lidocaine base or its salts are not irritating to intact or abraded skin (Ref. 12). Lidocaine can produce sensitization after repeated contact, as do the "caine" type drugs, despite statements made to the contrary. However, the incidence of sensitization is low (Ref. 7). The statement has appeared in the medical literature that the amide type of the "caine" topical anesthetics is devoid of sensitizing potential (Ref. 8). Such a statement cannot be supported either on a theoretical or factual basis. Most soluble drugs are capable of acting as haptens and forming antigens. They can produce antigens that stimulate production of immune bodies of the IgE type which cause allergic reactions in susceptible individuals. Anaphylaxis has been reported after application of lidocaine to the mucous membranes and infiltration. One case has come to the Panel's attention in which an anaphylactic reaction occurred following application to the skin (Ref. 13). The report, however, does not state whether the quantity, which was said to be minute, was injected to raise a skin wheal or applied by a patch or scratch test. In another case (Ref. 13), a female patient who alleged that she was allergic to lidocaine was tested for this allergy by instilling one drop into the conjunctival sac. The patient developed immediate syncope, circulatory collapse occurred, and then severe shock. After 2 hours of treatment with vasopressors, antihistamines, and steroids, she recovered.

(2) *Effectiveness.* The Panel concludes that lidocaine is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

There are well-controlled studies documenting the effectiveness of lidocaine as an anesthetic/analgesic for topical use on the mucous membranes of the mouth and throat. Lidocaine enjoys wide use and clinical acceptance, and its effectiveness has been documented in published reports in the literature, the Panel concludes that lidocaine should be available by prescription, and not be used as an OTC anesthetic/analgesic.

Lidocaine is approximately twice as potent and toxic as procaine on a weight bases (Ref. 7). The onset of anesthesia is rapid, after injection, requiring less than 1 minute. The onset of action when used on mucous membranes is 1 to 2 minutes. The base is poorly soluble in water but soluble in lipid substances such as glycols and similar types of solvents. The base penetrates the intact skin and exerts an anesthetic and antipruritic action in the skin (Ref. 12). The salts do not.

Lidocaine base is an effective topical anesthetic/analgesic on the mucous membranes. When properly formulated, with ingredients that insure its stability and continuous contact with an epithelial surface, it provides prolonged anesthesia. The pain-relieving action of lidocaine, as is the case with other topical anesthetics of the "caine" type, is entirely within the mucous

membranes. The quantity circulating in the blood is insufficient to provide anesthesia to parts of the body distal to the site of application in structures beneath the mucous membranes. Lidocaine blocks transmission at nerve endings by stabilizing the neuronal membrane in the same manner as do other topical anesthetics of the "caine" type (Ref. 2). Anesthesia of the mucous membranes persists for 20 to 30 minutes after application to a mucous surface.

(3) *Evaluation.* Lidocaine is an effective anesthetic/analgesic for topical use on the mucous membranes, but is rapidly absorbed and capable of producing toxic systemic reactions that can be fatal. The Panel concludes that it should remain a prescription item and concludes it is not safe as an OTC product for self-medication by a consumer.

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g. *Lidocaine hydrochloride.* The Panel concludes that lidocaine hydrochloride is effective but not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Lidocaine hydrochloride is the salt of lidocaine base, a tertiary amine. The chemistry of lidocaine base has been described elsewhere in this document. (See part III. paragraph B.2.f. above—Lidocaine.) Lidocaine hydrochloride is a white crystalline powder with a slightly bitter taste. It melts between 74° and 79° C. It is very soluble in water, alcohol, and chloroform, but is insoluble in ether (Refs. 1 and 2). Lidocaine hydrochloride is very stable in vitro and withstands boiling in 30 percent hydrochloric acid for 8 hours or more. Aqueous solutions are acidic in reaction, the pH ranging from 5 to 6.4 (Ref. 3). The salt is highly ionized and not lipophilic. When injected into the tissues or applied on mucous membranes it is converted to the free base due to the buffering mechanisms present in the tissues. The free base is the physiologically active form of the drug. The nitrogen atom on the cation of lidocaine hydrochloride is converted from a tertiary atom to a quaternary atom (Ref. 4).

(1) *Safety.* The Panel concludes that lidocaine hydrochloride is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Lidocaine hydrochloride is very soluble in water. It is twice as potent and twice as toxic as procaine. It is readily absorbed from the mucous membranes of the mouth, pharynx, trachea, and bronchi. Absorption is followed by significantly perceptible blood levels that result in systemic toxicity if lidocaine hydrochloride is applied liberally.

Human toxicity varies with individual tolerance, age, sex, health status, and vascularity of the tissues. Convulsions and cardiac depression may occur if applied in excessive quantities (Refs. 5 and 6). The potential for sensitization exists, as with any other drugs, but it is not greater than with other topical anesthetics (Refs. 2 and 6). Topical irritancy is low, and rashes and other cutaneous lesions have not been reported. As is the case with other nitrogenous local anesthetics, lidocaine is dispensed as the hydrochloride salt because of its greater stability and ease of handling.

(2) *Effectiveness.* The Panel concludes that lidocaine hydrochloride is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The hydrochloride salt is acidic, is highly ionized, and is not strongly lipophilic; therefore, it does not readily penetrate epithelial barriers. It is active when it is converted to the base by the buffering mechanisms of the tissues. This occurs when it is injected perineurally or when it is applied to the mucous membranes.

Lidocaine acts by stabilizing the axonal membrane and preventing conduction in the nerve fibers connecting with receptors for pain and other stimuli in the skin. Adriani and Zepernick (Ref. 7) found that it rated fifth among 40 topical anesthetics tested on the tip of the tongue in deadening pain due to electrical stimulation. The free base is the physiologically active form. Additional data on effectiveness of lidocaine is described elsewhere in this document. (See part III. paragraph B.2.f. (2) above—Effectiveness.)

(3) *Evaluation.* Although lidocaine hydrochloride is an effective anesthetic, it is not safe for oral health care preparations intended for pain relief because it may be absorbed rapidly and cause tremors and often fatal toxic reactions, unless used with extreme caution.

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h. *Pyrilamine maleate.* The Panel concludes that pyrilamine maleate is safe but not effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Pyrilamine maleate is 2[(2-dimethylaminoethyl) (para-methoxybenzyl)amino pyridine bimaleate. It is an antihistaminic drug that is a derivative of ethylene diamine. Pyrilamine maleate was first synthesized in France in 1946 and introduced as an antihistamine drug. It

was one of the first antihistaminic drugs to be introduced and has actions and uses of the class of therapeutic agents known as the antihistamines.

Pyrilamine maleate is a white crystalline powder with a faint odor. One gram dissolves in 0.5 mL water, 3 mL alcohol, and 2 mL chloroform. It is only slightly soluble in ether. It melts between 99° and 103° C. Pyrilamine maleate in a 10-percent solution has a pH of approximately 5.1 (Refs. 1 and 2).

(1) *Safety.* The Panel concludes that pyrilamine maleate is safe as an anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Pyrilamine maleate is readily absorbed from the gastrointestinal tract. It is also absorbed to a variable extent, depending upon concentration and area exposed, from the mucous membranes of the mouth and throat. The absorbed drug in this manner produces systemic effects. In recommended doses, there is a remarkable lack of systemic toxicity (Refs. 3 and 4). Animal data on toxicity were not available to the Panel. The toxicity, according to Gosselin et al. (Ref. 5), is between 4 and 5. The most common side effect of pyrilamine maleate is sedation manifested by drowsiness. The sedative effect of the antihistamines is not unpleasant. In certain patients, particularly those of the ethylene-diamine type, antihistamines may have a stimulating effect. Other side effects of overdosage of pyrilamine maleate include euphoria, nervousness, insomnia, tremors, blurring of vision, diplopia, fatigue, loss of appetite, nausea, vomiting, epigastric distress, etc. If doses are increased, sedation may be replaced by irritability leading to convulsions, hyperpyrexia, and even death resulting from respiratory arrest (Ref. 6). Children are more likely to develop excitation, erythema, and marked hyperthermia with toxic doses. Milder forms of toxic reactions consist of visual disturbances, dizziness, confusion, irritability, and difficulty in coordination. Pyrilamine maleate may produce skin rashes and urticaria (hives) after oral administration or topical application (Refs. 7 and 8). Since pyrilamine maleate can act as a hapten, it can produce allergic reactions even though it is used for the treatment of patients with allergic conditions (Refs. 9 and 10). The simultaneous use of pyrilamine and alcohol or other central nervous system depressants has an additive effect which causes an enhancement of the depression (Refs. 3, 4, and 11).

(2) *Effectiveness.* The Panel concludes that pyrilamine maleate is not an effective anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Antihistamines have structures that are closely allied to structures of local anesthetics and may have anesthetic properties. This action has not been ascribed to pyrilamine (Ref. 10). The antihistamines, besides being competitive antagonists of histamine, also have, in addition to the central nervous system effect, anticholinergic and antiserotonin action (Ref. 12). Pyrilamine maleate may have a cocaine-like effect on catecholamine uptake. Pyrilamine maleate is readily absorbed from the gastrointestinal tract after oral administration. Its action is manifest within 15 to 20 minutes. The peak effect is attained in 1 hour, and it has a duration of 3 to 6 hours. Practically all the drug is metabolized and excreted in the urine unchanged (Ref. 13). It is the consensus of the Panel that any beneficial effects drived from pyrilamine maleate applied topically on the mucous membranes of the mouth and throat are due to its systemic effect after absorption, if sufficient quantities are applied, and not to any local effect on pain receptors (Refs. 3 and 13).

(3) *Evaluation.* The Panel concludes that pyrilamine maleate has no significant anesthetic/analgesic effect on the mucous membranes of the mouth and throat.

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i. *Tetracaine.* The Panel concludes that tetracaine is effective but not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Tetracaine is one of the numerous soluble aminobenozic acid esters possessing topical anesthetic activity. Tetracaine is closely allied to procaine in chemical structure (Ref. 1). It has been available since 1932 for spinal, epidural nerve blocks, and topical anesthesia. In the structure of tetracaine, a butyl group is substituted for one of the hydrogen atoms of the amino group on the benzene ring of procaine. The two ethyl groups on the nitrogen atom of the amino ethanol portion of the procaine molecule are replaced by methyl groups. The molecule of tetracaine conforms to the general configuration characteristic of the "caine" type drugs that have an aromatic nucleus, an ester linkage, an intervening dimethylene chain, and a tertiary nitrogen atom. Shortening the ethyl groups to methyl groups and replacing the hydrogen atom on the amino group with a butyl radical increases the potency and toxicity of tetracaine approximately 10 times compared to that of procaine (Refs. 1 and 3). Tetracaine manifests topical anesthetic activity both internally on the mucous membranes and externally on the skin. The duration of action is approximately two to two-and-one-half times that of procaine. This is due to the fact that the protein-binding activity and the lipid solubility of tetracaine are increased over those of procaine by the alteration in structural configuration and by the increase in molecular weight (Ref. 3).

Tetracaine is a teriary amine and, therefore, is a base. It forms salts with various acids including hydrochloric acid. It is generally used in the form of its salts. One gram of the base dissolves in approximately 1,000 mL water. Tetracaine base is much more soluble in organic solvents than water. One gram of the base dissolves in 5 mL alcohol, 2 mL chloroform, and 2 mL ether.

Tetracaine base is less stable than its salts. It is readily soluble in oils and oleaginous bases. The base may be incorporated into water-soluble creams for topical use. It is not as readily released from petrolatum bases when applied topically as it is from water-soluble bases (Ref. 4).

Aqueous solutions of the base decompose rapidly upon standing. Tetracaine hydrochloride occurs as a fine white crystalline odorless powder which has a slightly bitter taste followed by a sense of numbness. Aqueous solutions of the hydrochloride are neutral or slightly acid to litmus. Solutions of the base are alkaline. One part of tetracaine hydrochloride is soluble in 7 parts of water. It is soluble in alcohol but insoluble in ether and benzene. Tetracaine hydrochloride melts between 147° and 150° C (Ref. 1).

Tetracaine salt solutions can be sterilized by boiling for short periods of time. Tetracaine hydrochloride powder or crystals, or aqueous solutions slowly undergo a chemical change and lose their anesthetic potency. The shelf life is limited to less than 1 year. The shelf lives of ointments and other preparations containing the base used topically are not known (Ref. 3).

(1) *Safety.* The Panel concludes that tetracaine is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Although tetracaine base is sparingly soluble in water, sufficient quantities can be absorbed from extensive areas of damaged skin or from the mucous membranes in quantities that produce adverse systemic effects (Ref. 3). High plasma levels of tetracaine will produce convulsions and cardiac depression as do other topical anesthetics of the "caine" type. Adriani and Campbell (Ref. 4) have indicated that the cardiovascular type of reaction may occur without central excitation and cause syncope (fainting) and cardiac arrest. This type of reaction often occurs abruptly without warning and is usually fatal (Ref. 5).

Tetracaine is 10 times more toxic than procaine when administered intravenously in animals. Its relative toxicity is equal to that of procaine since 1 mg is equal to 10 mg procaine in potency and toxicity. Due to its potency, dosages of tetracaine preparations are more difficult to control and over dosage occurs more readily than with less potent drugs. The intraperitoneal LD_{50} of tetracaine in mice is 70 mg/kg. Data on animal toxicity are not in agreement due to different methods of studying toxicity by different investigators. Rapid intravenous injection of tetracaine preparations into animals irrespective of species, causes convulsions and circulatory system depression (Ref. 6). The differences in results obtained by different investigators are merely quantitative. Qualitatively, the responses are the same.

Tetracaine appears to manifest a greater degree of myocardial depression than do other drugs of the "caine" type when the plasma concentrations reach toxic levels (Ref. 5).

Tetracaine is hydrolyzed by pseudocholinesterase in the blood as are procaine and other esters of paraminobenzoic acid. The rate of hydrolysis, however, is approximately one-fifth the rate of procaine (Ref. 3). This slower rate of detoxification contributes to the greater degree of toxicity it manifests compared to other drugs of the "caine" type.

Tetracaine manifests no well-defined chronic toxicity. Adverse reactions from repeated use have not been reported. The action perineurally is reversible, and no histological changes have been demonstrated in nerve tissues. The toxic dose in humans is not known. The maximum limit of dosage of tetracaine hydrochloride perineurally or by infiltation is considered to be between 75 to 100 mg in healthy adults. Topically, on the mucous membranes of the pharynx, the maximum dose is considered to range between 25 to 40 mg (Refs. 3 and 5). Tetracaine manifests no appreciable degree of irritancy when injected or applied topically. Since tetracaine can act as a hapten, it is capable of producing allergic-type reactions mediated by immunoglobulin E (Ref. 3). It may also, after repeated topical applications, cause the cytotoxic type of reaction (Refs. 3 and 5).

Tetracaine base is safe when applied to limited areas of damaged skin. It is also safe when applied to intact skin because absorption and penetration occur slowly. Tetracaine base is readily absorbed from all mucous membranes. High plasma levels may result, causing fatal reactions. The sensitizing potential of tetracaine is no greater than it is with other topical anesthetics. Since tetracaine is a derivative of paraminobenzoic acid, mention is frequently made of possible cross-sensitization with other aminobenzoates, but documentation that this occurs and data substantiating this contention are sparse and not convincing. Cross-sensitization with other derivatives of aminobenzoic acid may occur, but it is rare (Ref. 5).

(2) *Effectiveness.* The Panel concludes that tetracaine is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The un-ionized tetracaine base penetrates and stabilizes the axonal membrane and causes a blockage of the pain and other receptors in the skin. Tetracaine is much more lipid soluble than procaine and has 10 times the protein-binding capacity of procaine (Ref. 3). Tetracaine, therefore, has a longer latent period due to its slower penetration and diffusibility. It is two to four times longer lasting than procaine due to this greater lipid solubility and protein-binding effect. The duration of action is variable, as is the case with other local anesthetics and depends upon the site of application. This variability of duration from one area to another is due, to a great extent, to the differences in vascularity of the tissues. Tetracaine base and tetracaine salts are effective on the mucous membranes when applied topically (Ref. 5).

(3) *Evaluation.* The Panel concludes that tetracaine base is effective topically on the mucous membranes. However, due to the fact that serious and rapidly occurring fatal reactions due to systemic toxicity can occur when used by those not familiar with the hazards, the Panel recommends that it remain a prescription item for oral health care products and not be allowed for use in OTC products.

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(5) OTC Volume 060047.

j. *Tetracaine hydrochloride.* The Panel concludes that tetracaine hydrochloride is effective but not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Tetracaine hydrochloride is the salt of the tertiary amine tetracaine which has been described elsewhere in this document. (See part III. paragraph B.2.i. above—Tetracaine). Tetracaine hydrochloride consists of a white crystalline power that is odorless and hygroscopic. Tetracaine hydrochloride is soluble, 1 part in 7 parts of water, unlike

the base which is poorly water soluble. Tetracaine hydrochloride has a slightly bitter taste followed by a sense of numbness. Tetracaine hydrochloride melts between 147° and 150° C (Refs. 1 and 2).

Tetracaine hydrochloride hydrolyzes slowly and loses its anesthetic activity with time. The shelf-life of the powder in sealed ampulses is less than 1 year. The hydrochloride is the most widely used salt. Solutions of the hydrochloride salt are more stable than the base. The hydrochloride is converted to the base when injected or applied topically to the mucous membranes by the buffering mechanisms of the tissues, and for this reason the drug penetrates very rapidly into the blood stream (Refs. 3 and 4).

(1) *Safety.* The Panel concludes that tetracaine hydrochloride is not safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Tetracaine hydrochloride is 10 times more potent and toxic than procaine (Ref. 1). It may be absorbed in large quantities from abraded and denuded areas since it is very water soluble. Tetracaine hydrochloride produces convulsions and cardiac depression similar to other local anesthetics (Ref. 5). Reactions of this type from topical application of tetracaine hydrochloride to the mucous membranes have been reported. Tetracaine hydrochloride manifests no appreciable degree of irritancy. The sensitizing potential is low, but, like all other anesthetics of its type, will cause allergic reactions. Tetracaine hydrochloride can act as a hapten and cause allergic reactions mediated by IgE immunoglobulins (Ref. 6). Repeated application can cause the cytotoxic type of sensitization mediated by the T-cell lymphocyte. Local reactions are characterized by rashes, eczema, etc. (Ref. 7).

(2) *Effectiveness.* The Panel concludes that tetracaine hydrochloride is effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

Tetracaine hydrochloride is highly ionized and does not readily penetrate lipid barriers of the cell membrane. Tetracaine hydrochloride is very slowly absorbed from the intact skin and, therefore, exerts no significant therapeutic effect (Refs. 4 and 8). Aqueous solutions are acidic (pH 5 to 6), but when injected into tissues or applied topically on the mucous membranes they are converted to the base, which is the physiologically active form. Tetracaine hydrochloride is effective when it comes into contact with the tissue fluids because it is converted to the base, the active form, penetrating the neuronal membrane and blocking conduction of nervous impulses.

(3) *Evaluation.* The Panel concludes that tetracaine hydrochloride is effective as a topical anesthetic/analgesic on the mucous membranes. Due to its potential for producing severe, obvious, and often fatal systemic reactions, however, it is not recommended for use in OTC products but should remain available by prescription.

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Category II Labeling (Anesthetics/Analgesics)

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use, or for description of product attributes for products containing anesthetic/analgesic active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statements or phrases which purport that a product exerts a pharmacologic or therapeutic action when it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Relieves dryness."

(2) "First aid for throat irritations."

(3) "Soothing to smokers throat."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms, that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "Is quick comfort to irritated throats."

(2) "Fast acting local anesthetic action."

(3) Fast acting temporary relief of minor throat pain."

(4) "Fast temporary relief of minor sore throat pain."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Superior and fast acting relief of minor throat pain, cough, or colds."

(2) Adding such terms or "plus" etc.

d. *Statements or phrases that are vague in this meaning and cannot be readily understood or are misleading.* (1) "Soothes tired throats."

(2) "Is quick to comfort irritated throats."

(3) "For temporary relief of sore throat associated with colds and excessive smoking."

(4) "Promotes healing by protecting the affected area from further irritation (oral bandage)."

(5) "Clings tenaciously to oral tissue."

e. *Statements or phrases in the indications for uses that state or imply that the product is to be used to treat a disease process or lesion, the diagnosis of which must be made by a physician.* (1) "For temporary relief of pain associated with tonsillitis and pharyngitis."

(2) "For temporary relief of pain associated with canker sores."

(3) "Temporary relief of pain of stomatitis."

(4) "Relief of pain and discomfort in pharyngitis and throat infections."

(5) "Relieve minor throat pain and pain from aphthous ulcers (canker sores)."

(6) "For acute tonsillitis."

f. *Statements, phrases, or terms in the indications for use that describe the pharmacologic effect or class of a drug or type of formulation containing the ingredients instead of designating the symptoms which the product is intended to relieve.* (1) "Anesthetic."

(2) "Analgesic."

(3) "Liquid anesthetic for mouth and throat."

(4) "As a topical anesthetic."

3. *Category III conditions for which available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I.

Category III Active Ingredients

Eucalyptol
Methyl Salicylate
Thymol

a. *Eucalyptol.* The Panel concludes that eucalyptol is safe but that there are insufficient data available to permit

final classification of its effectiveness as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Eucalyptol is a volatile oil prepared by steam distillation of the fresh leaves of *Eucalyptus globulus* (Ref. 1). The eucalyptus tree is native to Australia, Tasmania, and the Malysian regions.

Eucalyptol is colorless, or a pale yellow volatile liquid with a characteristic aromatic, somewhat camphoraceous odor, and a spicy and cooling taste (Ref. 2). Its specific gravity is 0.905 and its refractive index is 1.458 to 1.470. Approximately 70 percent of eucalyptus oil is in the form of one of its active ingredients, namely, eucalyptol (Ref. 3). Eucalyptol is also known as cineol, cineolcayeptol, and cajuptol. It is insoluble in water, but it is miscible with alcohol, chloroform, and ether. Eucalyptus oil and eucalyptol have both been characterized as flavors in the "National Formulary." They both have feeble analgesic and antiseptic effects and both have been used as stimulatory expectorants and as vermifuges (Refs. 4 and 5).

The characteristic odor of eucalyptol is considered to be a "medicinal odor" by the users of OTC products, and it acts as a placebo. Eucalyptol has been used topically for the treatment of certain forms of skin diseases. It is an active germicide, but is not as effective as many other volatile oils (Ref. 2).

(1) *Safety.* The Panel concludes that eucalyptol is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

If eucalyptol is taken internally in large quantities, toxic symptoms may occur. These symptoms include epigastric burning, nausea, vomiting, tachycardia, dizziness, muscular weakness, a feeling of suffocation, and in severe cases delirium and convulsions. Death has occurred in about one-third of the human subjects who ingested between 10 and 30 mL of the oil. Idiosyncrasy towards small doses may be manifested by skin eruptions (Refs. 6, 7, and 8). Sensitization to eucalyptol has been observed but is believed to occur infrequently (Refs. 6, 9, 10, and 11).

Jenner et al. (Ref. 12) found that the LD_{50} of eucalyptol for rats is 250 mg/kg. It is relatively safe when applied topically to the skin. Jori and Briatico (Ref. 13) studied the effects of administering eucalyptol subcutaneously to pregnant rats. It was noted that eucalyptus oil greatly increased the liver microsomal activity during and after pregnancy. It was also found that this increased activity was higher in the fetal and newborn offspring.

The question of carcinogenic activity of eucalyptol has been raised by several investigators (Refs. 14 and 15). Homburger (Ref. 15) found that eucalyptol applied to the skin of mice caused development of tumors in about 10 percent of the animals treated.

Marketing experience of a topical anesthetic product containing small amounts of eucalyptol produced no evidence of lack of safety (Refs. 16 and 17).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of eucalyptol as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Historically, eucalyptus oil has been used as a stimulating expectorant and as a locally applied antiseptic with a very mild anesthetic effect. It has also been used as a vermifuge. Eucalyptol is a mild local irritant that is used as an inhalant, especially in bronchitis. It can be administered by inhalation by adding a teaspoonful to hot water and vaporizing the water. It can be given internally by placing 5 to 10 drops on sugar. Eucalyptol is used in the treatment of the "common cold"; sprays of 3 to 5 percent solutions in liquid petrolatum have been used. The usual dose is 0.3 mL.

The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products in the **Federal Register** of September 9, 1976 (41 FR 38347) has written a great deal on the antitussive effects of eucalyptol in various currently marketed OTC topically applied preparations consisting of ointments, liquids, and tablets. The conclusions of this Panel support the conclusions discussed above; namely, eucalyptol has no analgesic effect and does not interfere with the reflex arc involved in completion of the cough reflex resulting from local stimulus in the pharynx. The data submitted consisted of combinations of volatile oils that included eucalyptol as one of the ingredients. Data were submitted concerning the effectiveness of the ingredient alone.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.025- to 0.1-percent concentration of eucalyptol in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 1 to 30 mg of eucalyptol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care anesthetics/analgesics. (See part III. paragraph C. below—Data Required for Evaluation.)

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(16) OTC Volume 060013.

(17) OTC Volume 060014.

b. *Methyl salicylate.* The Panel concludes that methyl salicylate is safe but that there are insufficient data available to permit final classification of its effectiveness as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Methyl salicylate is the methyl ester of salicylic acid which is made by esterifying methyl alcohol with salicylic acid. One milliliter methyl salicylate has a salicylate content equivalent to 1.4 g aspirin. Methyl salicylate is a volatile liquid having a density of 1.18 g/mL. At low concentrations, it is employed as an organoleptic agent for both its condimental flavor and pleasing aroma. Methyl salicylate has a counterirritant action for temporary relief of deep-seated pain when applied to the skin (Refs. 1 through 5).

Methyl salicylate penetrates the intact skin and is absorbed into the system circulation. It is also readily absorbed from the mucous membranes. Some data are available indicating that the amounts absorbed percutaneously are sufficient to have significant anesthetic activity (Refs. 6 through 9). Methyl salicylate has been used on the mucous membranes to obtain systemic effects. There are no data to substantiate that methyl salicylate blocks nerve conduction as do topical anesthetics, such as benzocaine.

Prior to the discovery of a method for chemical synthesis of methyl salicylate, it was produced by steam distillation from natural sources. The natural-source products are known as gaultheria oil, betula oil, sweet birch oil, teaberry oil, and wintergreen oil. Today, these names are used synonymously with methyl salicylate. Methyl salicylate is prepared synthetically by esterifying salicylic acid with methanol.

(1) *Safety.* The Panel concludes that methyl salicylate is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The Panel has given much consideration to the question of toxicity of methyl salicylate. The association of the odor of methyl salicylate with the odor of candy (wintergreen and teaberry flavors) has been linked by the American Medical Association to the ingestion by children of drug products containing more than therapeutic and safe amounts of methyl salicylate (Ref. 10). However, the National Clearing House of Poison Control Centers, Bethesda, Maryland, reviewed reports of poisoning due to ingestion of methyl salicylate, primarily in ointment formulations, which revealed no deaths and few cases with severe symptoms from 1970 to 1972. Recent regulations requiring the use of child-resistant containers for liquid preparations containing more than 5 percent methyl salicylate (16 CFR 1700.14(a)(3)) provide an important safeguard for small children, who have constituted a large percentage of the victims of accidental poisoning from drinking poisonous substances.

Except for severe local irritations of the mucous membranes, ingested methyl salicylate is not notably different in its toxic actions from other salicylates. Metabolic acidosis may be a more prominent complication of salicylate overdosage with the methyl ester than with other derivatives of salicylic acid (Ref. 11). The average lethal dose of methyl salicylate is approximately 10 mL for children and 30 mL for adults (Refs. 12 and 13). However, the ingestion of as little as 4 mL (4.7 g) methyl salicylate has caused fatalities in children (Ref. 14). For comparative purposes, it should be noted that the salicylate content of 4 mL (4.7 g) methyl salicylate is equivalent to 4.3 g salicylic acid, 4.96 g sodium salicylate, or 5.6 g aspirin. Death has ensued following ingestion of 3 g salicylic acid and 4 g sodium salicylate (Ref. 15). The toxic dose of aspirin is in the range of 75 to 150 mg/kg. This is equivalent to 5.3 to 10.5 g for a 154-lb adult. Methyl salicylate is generally recognized as safe (GRAS) in candy at 0.03 percent and GRAS in chewing gum at 0.33 percent.

There is adequate evidence to support the contention that ingestion of more than small condimental amounts of methyl salicylate is hazardous. However, the concentrations of methyl salicylate contained in marketed oral health care products reviewed by the Panel are within a range which the Panel considers safe for OTC use on the mucous membranes of the mouth and throat. The Panel does recommend, in the interest of safety, that a maximum concentration of 0.4 percent be used.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of methyl salicylate as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat.

The amount of salicylate absorbed following topical application of methyl salicylate is unpredictable. There are insufficient data to support the contention that salicylates stabilize the neuronal membrane as do topical anesthetics such as benzocaine or tetracaine. Conclusions that it is an anesthetic have been based largely upon the assumption that blood levels of topically administered salicylates must be of the same order as "effective blood levels" associated with orally administered salicylates. Lim and co-workers (Ref. 16) have observed that salicylates elicit their anesthetic effects peripherally, not centrally, and block pain by direct action on pain receptors by inducing an anti-inflammatory action. Recent advances in knowledge regarding the supposed role of prostaglandins causing pain syndromes and the ability of salicylates to inhibit the biosynthesis of prostaglandins may shed further light upon the role of salicylates applied topically to relieve locally painful symptoms. It has not been established that methyl salicylate applied to the mucous membranes plays any such role.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use up to a 0.4-percent concentration of methyl salicylate in the form of a rinse, mouthwash, gargle, or spray, not more than three to four times daily. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/analgesic active ingredients. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care anesthetics/analgesics. (See part III. paragraph C. below—Data Required for Evaluation.)

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c. *Thymol.* The Panel concludes that thymol is safe but that there are insufficient data available to permit final classification of its effectiveness as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol, also known as thyme camphor, is 5-methyl-2-isopropyl-1-phenol. It may be prepared synthetically or obtained from volatile oils distilled from *Thymus vulgaris* and other related plant sources. Thymol occurs as colorless crystals which are often large, or as a white crystalline powder. It melts at 51° C and boils at 233° C. One gram dissolves in 1 liter (L) of water. It is highly soluble in alcohol, chloroform, and in mineral and other volatile oils (Ref. 1). Thymol has a characteristic aromatic thyme-like odor and a pungent taste. It has appreciable volatility and can be administered with steam or in water vapor when prepared in an aqueous solution. Thymol is an alkyl derivative of phenol and has bactericidal, fungicidal, and anthelmintic properties (Ref. 2). Its antimicrobial effects have been described elsewhere in this document. (See part IV. paragraph B.3.w. below—Thymol.)

(1) *Safety.* The Panel concludes that thymol is safe as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol has a pleasant, aromatic odor. It is sometimes referred to as a volatile or essential oil. Thymol has been used for a variety of medicinal purposes but has, in many cases, fallen into disuse and been supplanted by newer, more effective drugs. It has been incorporated into mouthwashes for its antiseptic action and as a flavorant. Thymol has been used topically and orally as an antifungal agent for the treatment of actinomycosis. It also has been used internally as an intestinal antiseptic and anthelmintic, especially against hookworm (Refs. 3 and 4).

The intravenous LD_{50} of thymol in mice is 74 mg/kg (Ref. 5). Jenner (Ref. 6) studied the acute oral toxicity of thymol instilled into the stomach by intubation in the rat and guinea pig. The LD_{50} for the rat was 980 mg/kg and for the guinea pig, 880 mg/kg.

Chronic toxicity was observed in 5 male and 4 female rats given an oral dose of 10,000 parts per million for 19 weeks. No untoward effects were noted after this period of time (Ref. 7).

Oral ingestion of 1 g thymol usually does not cause any adverse symptoms except the feeling of warmth in the stomach. According to Sollman (Ref. 4):

> Larger doses [than 1 g] produce dizziness, severe epigastric pain, excitement, soon followed by nausea, vomiting, marked weakness, drowsiness, quick soft pulse, tinnitus and deafness, salivation, sweating; then collapse with cyanosis, fainting, coma, low temperature, slowed pulse and respiration. Abortion may result. Rashes are not uncommon.

A report by Barnes (Ref. 8) noted that over 1,000,000 doses of thymol averaging 1 g per dose resulted in reported deaths of 20 debilitated patients.

Samitz and Shmunes (Ref. 9) noted that dentists and other allied personnel found thymol one of the less frequent sensitizers in occupational dermatoses. Thymol irritates the mucous membranes, but when topically applied to the skin it has little effect and is virtually unabsorbed (Ref. 4). The oral toxicity of thymol is about one-fourth that of phenol and, if it is absorbed, one-half is metabolized totally. The remainder is conjugated with sulfuric acid and glucuronic acid and excreted into the urine (Ref. 4).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of thymol as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol was first introduced as a disinfectant. It has a phenol coefficient of 27.6, but its activity is greatly reduced by the presence of proteins. It also has some antiviral activity (Ref. 10). In 1891 Potter (Ref. 11) stated that thymol was a topical anesthetic when used on the skin and mucous membranes. Buckley (Ref. 12) also noted that thymol had topical analgesic properties and was considered superior to phenol as an antiseptic.

The Panel concedes that it is possible that thymol is an anesthetic when topically used on the mucous membranes of the oral cavity because of its phenolic nature, but it does not have sufficient evidence and documentation supporting this claim. Most of the literature reveiwed on the subject refers to thymol's antimicrobial and antifungal effects. Although 1 to 2 percent concentrations of thymol have been used clinically for topical analgesia, there is insufficient evidence as to the effectiveness of such concentrations.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.006- to 0.1-percent concentration of thymol in the form of rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 0.2 to 15.0 mg of thymol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervison of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care anesthetic/

analgesic active ingredients. (See part III. paragraph B.1. above—Category I Labeling.)

(5) *Evalution.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care anesthetic/analgesics. (See part III. paragraph C. below—Data Required for Evaluation.)

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Category III Labeling

None.

C. Data Required for Evaluation

The Panel agrees that the protocols recommended in this document for studies required to bring a Category III drug into Category I are in keeping with the present state of the sciences of pharmacology and therapeutics and the art of medicine and do not preclude the use of any advancements or improvements in methods for obtaining data that might be developed in the future.

1. *General principles in the design of an experimental protocol for testing topical anesthetics/analgesics for use in the oral cavity.* The effectiveness of topical anesthetics/analgesics should be determined by their ability to obtund or relieve the pain and discomfort due to acute or chronic pathologic states of the mouth and throat. The Panel recognizes that there are no established protocols for testing the effectiveness of this category of product by using objective methods and that all testing is, by and large, subjective. Tests can be made on patients who have pain or on volunteers in whom pain can be induced experimentally. All tests should involve a double-blind, placebo-controlled assessment of the ability of the drug to decrease pain due to sore mouth and sore throat.

The data should be obtained using the same drug that is present in the OTC preparation. It should be used in the same dosage and applied in the same manner recommended in the instructions in the labeling of the preparation. Since anesthetics/analgesics may be administered repeatedly during episodes of pain, dosing should be at appropriate times necessary to maintain optimal relief of symptoms. Data should also be obtained by testing the topical anesthetics/analgesics in recommended concentrations and at maximal dosage frequencies for periods of at least 5 days. This must be done in order to assess both its sustained effect and the potential for inducing irritancy or allergenicity.

Volunteers without pain may be tested using an established method of algesimetry such as that of Adriani and Zepernick (Ref. 1) which utilizes an electrical current applied to the tip of the tongue as a painful stimulus. Nebulized solutions of citric acid may also be used, particularly when obtaining data substantiating a cough claim.

2. *Selection of patients.* Selection of patients for testing should be based on the cause and established diagnosis of sore mouth or sore throat. Patients with chronic conditions causing sore mouth or sore throat usually present relatively stable conditions; consequently, subjects of this type may be selected for a cross-over, double-blind study. Such subjects can serve as their own controls. Subjects without pain being tested using algesimetric methods of assessment may be tested in this manner also. Patients with acute infections, or conditions that induce pain in the mouth and throat represent a larger portion of a patient type to self-medicate with a topical anesthetics/analgesics. Because of the relatively brief duration of these acute disorders and greater variation in type and intensity of the pain or discomfort and stability of the lesion causing the pain, a greater number of patients should be studied than when the cross-over, double-blind technique is used. They should be studied by assigning them in random fashion into two groups, a placebo group and a drug group. The placebo should be indistinguishable from the drug being tested. Each should be of equal size. Further, for comparative purposes, all groups must be matched by age, sex, and, if possible with the exception of the volunteers, the degree of pain at the time of the study.

3. *Methods of study.* Observations should include subjective response on patients with pain and the responses measuring the anesthetic/analgesic effect by a technique of algesimetry. The technique employed by Adriani and Zepernick (Ref. 1) described above, using electrical current applied to the tongue is acceptable to the Panel and has been widely used in evaluations of effectiveness of topical anesthetics/analgesics on the mucous membranes. Individual patient diaries should be kept in which is recorded all pertinent data such as date, times of testing, onset and duration of pain relief, dose, etc. Observation should include the time of onset, magnitude, and duration of the response. A scoring technique evaluating the effectiveness of the drug in relieving pain, such as indicating the response as 0 for no effect, 1 for poor, 2 for fair, 3 for good, and 4 for excellent can be used.

4. *Interpretation of the data.* The recommended dose for the test drug should induce a statistically significant reduction in mouth and throat pain when compared with a placebo response.

Evidence of a drug's effectiveness is required from 25 subjects with chronic pain and 25 volunteers. Subjects should be from a target population for whom the drug is intended to be used. Studies involving patients with acute pathologic states for whom no baseline can be obtained should include 75 to 100 subjects. A minimum of three different investigators or laboratories must be used.

All data submitted to the FDA must present both favorable and unfavorable results.

5. *Evaluation of safety.* Tests of safety should involve usual tests for acute and chronic toxicity relative to the known possible adverse effects of drugs described previously. (See part II. paragraph C.2. above—Testing for recategorization of Category III

ingredients.) Tests should be done and dose response curves be established for acute toxic effects utilizing the dose range from minimum effectiveness dose up to a maximum therapeutic effectiveness.

Reference

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IV. Antimicrobial Agents

A. General Discussion

The Panel disagreed on important issues relevant to the safety and effectiveness of antimicrobial agents and also on the types of testing methodologies to be included in the data required for evaluation of antimicrobial agents. Accordingly part IV.—Antimicrobial Agents consists of a majority report and a minority report. The minority report reflects the opinion of one Panel member.

1. *General comments.* Topical antimicrobial ingredients are applied to the mucous membranes of the mouth and throat to kill, inhibit the proliferation of, or alter the metabolic activity of all types of microorganisms, both pathogenic and non-pathogenic. This process is called "antiseptics"; agents that are used for this purpose are called "antisepsis." The term "antiseptic" implies that some therapeutic benefit results when such agents are used. Antiseptics are used in an attempt to sterilize intact cutaneous and mucous surfaces, contaminated or infected wounds, mucosal ulcerations, or other lesions caused by pathogenic microbial activity. There is considerable evidence indicating that these agents are not only ineffective but may also retard the healing of clean or infected wounds.

There is an abundance of documentation, both in older and more recent authoritative texts written by authorities on microbiology, which states that the topical application of antiseptics is of doubtful therapeutic value.

Grollman and Slaughter (Ref. 1) states as follows:

> A very large number of substances possess disinfectant properties, that is, are capable of destroying microbes when they can be applied in sufficient quantity. They have no specific action on the microbes, however, but act as general protoplasmic poisons, destroying living tissue of all kinds wherever they come in contact with it. On the other hand, drugs such as strychnine, which act on specialized parts of the vertebrate organism and have less effect on the less differentiated tissues, are equally harmless to the undifferentiated protoplasm of the microbes. It is of importance to note that the ordinary antiseptics do not act more strongly on microbes than on the tissues in which they are embedded or on the phagocytes with which the organism is combating the infection. The destruction of the septic organisms in a wounded surface entails the destruction of the surrounding cells also. Thus disinfection can only be carried out in a part in which the superficial cells are not of vital importance and may be restored by new growth. It is therefore impossible to disinfect the tissues of the body as a whole unless a drug is parasitotropic, that is, has a specific affinity for the parasite rather than for the organs in general (organotropic). Although many attempts were made to find drugs manifesting such selectivity it was only with the introduction of the sulfonamides, antibiotics and other systemic anti-infectives that this goal was attained. By the local or systemic application of these substances antisepsis may be obtained without injury to the normal tissues. The term antiseptic is now usually limited to the drugs exerting a local anti-infective action although in its broad sense it should also include the systemic anti-infectives described in previous sections.
>
> * * * If microbes were confined to the surface, the latter would be sufficient for their destruction, but in order to disinfect a wound it is necessary to penetrate more deeply and thus efficient disinfection implies a certain amount of destruction to the tissues in which the microbes are harbored. This local destruction of cells and nervous structures induces pain and irritation and many efficient disinfectants are irritants. There action as irritants arises from the same qualities as their disinfectant power, namely, from their general toxicity to living matter.
>
> When a surface has been poisoned by means of disinfectants, it heals less quickly, and this had led to the more sparing use of antiseptics and to the development of the aseptic method, in which organisms are excluded instead of being admitted and then destroyed. With the discovery of the sulfonamides and antibiotics these, in turn, displaced the previously used antiseptics in many cases for these substances not only inhibit the growth of the invading pathogens but induce only minimal or no injury to the normal tissues.
>
> In addition to their local effect, many of the antiseptic and disinfectant drugs have a further poisonous action when they are absorbed and circulate in the blood, and this has led to a further limitation of their use. This general action does not necessarily arise from the qualities which render them antiseptic, and may be avoided by care in the choice of the drug and in its use.

Sollmann (Ref. 2) states as follows:

> The field of antiseptics has become considerably restricted since they were introduced by Lister. They can be highly effective outside the body but they rarely penetrate sufficiently to kill bacteria in living tissues. When they do penetrate they are generally more effective in killing tissue cells than the bacteria. They do not really disinfect the tissues but may kill and embalm the bacteria on the surface.

Goth (Ref. 3) states as follows:

> Prior to the discovery of chemotherapeutic agents, there was much preoccupation in synthesizing new compounds that could kill bacteria rapidly in high dilutions. The new antiseptics were generally compared with phenol and the ratio of the dilution that was necessary for killing test organisms in vitro was called the phenol coefficient. These efforts were so successful that antiseptics were synthesized that were 100 times more potent than phenol in killing bacteria in less than 10 minutes.
>
> In retrospect much of this effort was misdirected. Any drug that can kill bacteria in a few minutes is bound to have a toxic effect on mammalian tissues. It is not surprising that even the most potent antiseptics were completely incapable of curing a systemic bacterial infection because the testing methods used for their development were designed for potency and not a favorable therapeutic effect. The discoverers of Prontosil decided to test every compound against systemic infection in mice. The sulphonamides and penicillin would never have been discovered by testing methods, such as the use of the phenol coefficient. Not only the phenol coefficient but all the tools for evaluation of antiseptics are poor. It is not surprising that the field is dominated by empiricism and is greatly influenced by fashion.

Esplin (Ref. 4) states:

> No group of drugs is employed more widely than the antiseptics and disinfectants. Among the agents discussed in this chapter are those germicides that are the most useful; however, some agents are mentioned not because they are particularly efficacious but because they are widely used.
>
> The concept that infectious diseases are spread by microorganisms, at first so reluctantly accepted by the medical profession, is now embraced by the layman with an enthusiasm that is exceeded in degree only by ignorance. Each decade has seen advances in the discriminate and scientific use of disinfectants in reducing dissemination of pathogenic microorganisms and in the control of systemic and local infections by antibiotics and antiseptics. Nevertheless, the layman frequently employs the readily available germicidal agents in a ritual manner that rarely produces substantial benefit and often results in serious harm.
>
> But the layman does not acquire this ritual instinctively nor does he follow it without persuasion. Those who profit from the promotion of germicidal preparations use the most advanced technics in the advertising media to induce the uniformed to purchase, through fear of infection, preparations that are usually costly, often worthless, and sometimes dangerous. The insecure layman is offered germicidal solutions, sprays, powders, and ointments for application to every surface and orifice of the body. The germophobia that drives him to this needless expense is entirely inappropriate to the present age. Information more directly serving the interests of public health would instruct in the rational prevention and

treatment of infectious disease. This "information gap" is illustrated by the common practice of using ineffective antiseptics in wounds, cuts, and abrasions in the mistaken belief that they reduce the chance of acquiring tetanus, a disease that is entirely preventable by proper immunization.

Nevertheless, there are indispensable uses of disinfectants in the household, in hospital sanitation, and in public health measures. Likewise, antiseptics find many legitimate therapeutic applications. The extent of use of antiseptics in therapy of local infections has declined with the increasing number of antibiotics and other systemic chemotherapeutic agents available. In spite of this fact, antiseptics are sometimes still of value in treating local infections caused by microorganisms refractory to systemic chemotherapy. It is the problem of the physician to choose wisely from the vast number of available drugs and to delineate the beneficial and the harmful uses of germicides.

Esplin (Ref. 4) further states as follows:

* * * Among the first uses of antiseptics in medicine were the treatment of wounds. It is now apparent that most germicides are of little value for this purpose due to their poor penetration into foci of infection, relatively low efficacy in body fluids, and their propensity for causing local tissue damage. They cannot be relied upon to prevent infection from bacterial contaminants, and they are, in general, markedly inferior to systemic chemotherapeutic agents in controlling an infection once it has developed. In the hands of experienced surgeons, selected germicides may be useful in cleansing wounds and in reducing bacterial contamination. However, the common belief that the substantial benefit is obtained from the application of antiseptics to wounds, cuts, and abrasions is not supported by the considerable evidence in this field. The various applications of surgical antiseptics have been considered in detail by Price (1968). [Price, P. B., "Surgical Antiseptics," *in* "Disinfection, Sterilization, and Preservation," edited by C. A. Lawrence and S. S. Block, Lea and Febiger, Philadelphia, pp. 401–429, 1968.]

The majority of local infections respond more dramatically to appropriate chemotherapeutic drugs administered systemically than to antiseptics. Antiseptics are sometimes useful in treating infections caused by microorganisms that are unaffected by chemotherapeutic drugs, through the development of drug resistance or otherwise. In refractory infections, antiseptics are occasionally employed in conjunction with systemic chemotherapeutic agents. Furthermore, germicidal drugs are useful in the prophylaxis against specific infections.

Jawetz, Melnick, and Adelberg (Ref. 5) state as follows:

Disinfectants. Disinfectants and antiseptics differ from systemic reactive antimicrobials in that they possess little selective toxicity. They are toxic not only for microbial parasites but for host cells as well; therefore, they can be used only to inactivate microorganisms in the inanimate environment or to a limited extent on skin surfaces but they cannot be administered systemically and are not active in tissues.

Modell, Schild, and Wilson (Ref. 6) state as follows:

The number of disinfectants and antiseptics used is large because there is no such thing as an ideal disinfectant. The properties required vary widely, according to the manner in which the drug is intended to be used. The intensity and speed with which a drug kills bacteria can be measured in a test tube, and this information is of great value for determining, for example, the relative efficiency of disinfectants when applied to inorganic material. Such measurements give little indication of the relative values of disinfectants when applied to living tissues, because in this case the important issue is whether the substance that will kill or at least prevent the multiplication of bacteria will not also injure the surrounding tissues. Indeed, some of the best antiseptics for the treatment of wounds are substances which have a relatively feeble and slow action in vitro, and there are authoritative opinions that beyond their mechanical effects of removing debris and soil they accomplish little.

Banovetz (Ref. 7) states:

Topical Medication for the Throat. Definitive topical treatment of pharyngeal disease is not possible except in monilial infections for which nystatin is used. For the most part treatment is symptomatic. Patients feeling better will continue treatment but the critical physician must regard this as art, and not science. Painting sore throats with 2% silver nitrate or Mandel's solution (iodine) is comforting but not antibacterial.

Medical troches do not deliver drugs below the epithelial surfaces but they may have some surface cleansing action.

Although silver nitrate is not an ingredient considered by the Panel for OTC use, it is a topical antiseptic. Iodine has been considered by this Panel for topical use to treat sore throat and sore mouth.

Harvey (Ref. 8) states:

Antiseptics and disinfectants are employed very widely and are thus deserving of sober consideration.

Once the germ theory of disease was accepted by the medical profession and antisepsis by chemical agents was demonstrated scientifically, topical antimicrobial drugs were employed with naive enthusiasm by both physicians and laymen. Astute physicians early learned the limitations of antiseptics, but the vast majority of physicians and laymen alike employed such drugs uncritically and often inappropriately, encouraged by promotional propaganda almost from the very beginning. Although several effective and useful antiseptics, such as iodine, were known quite early, in the first half of this century there was a rush to accept a host of lesser and even useless drugs. The euphoria surrounding the discovery of the sulfonamides and antibiotics obscured the need for a thoroughgoing appraisal of the value of antiseptics, collectively and individually. Only a few of the antiseptics have been subjected to controlled clinical comparison with other agents, and clinical standards have yet to be accepted. Both laymen and many physicians still continue to employ the topical antimicrobial drugs in a ritual manner that is often irrational, usually ineffective, and occasionally harmful.

Nevertheless, there are indispensable uses of disinfectants in the household, in hospital sanitation, and in public health measures. Likewise, antiseptics find many legitimate therapeutic applications. Even though systemic antimicrobial drugs have quite properly caused a decline in the use of topical anti-infective agents, antiseptics are sometimes still of value in treating local infections caused by microorganisms refractory to systemic chemotherapy and in the supplementation of such therapy. It is the problem of the physician to choose wisely from the vast number of available drugs and to delineate the beneficial and the harmful uses of germicides.

In this chapter [of "The Pharmacological Basis of Therapeutics"], a drug may receive special attention because of its undoubted efficacy, its toxicity, or the need to deflate an undeserved status.

Sanders and Sanders (Ref. 9) state as follows:

Antibacterial agents may adversely affect the host either directly or indirectly. Direct injury, or toxicity, is the focal point of this review. Indirect injury may result from (a) induction of an allergic or hypersensitivity reaction in which components of the immune system (antibody, activated cells, complement) mediate damage to host tissues or (b) alteration of the ecological balance of the normal microbial flora which facilitates superinfection or impairs epithelial physiology or nutrition.

Many clinicians consider the application of antiseptic solutions to contaminated wounds, ulcerations, or other lesions due to, microbial activity an unphysiologic procedure of doubtful value, and they feel that their use can be harmful. Therefore, they recommended that antiseptics not be applied to clean wounds or lesions resulting from microbial activity. Careful cleansing or irrigation of wounds and ulcerations and removal of foreign material from ulcerated surfaces by mechanical means, such as swabbing, irrigation, or use of sprays to assure free drainage, are considered more effective and less likely to injure tissues.

Most antiseptics harm both the microorganism and cells of the host. They cannot be used systemically. Except for use on the skin, they are of limited value. The introduction of anti-infective drugs such as the chemotherapeutic agents, antibiotics,

and other drugs possessing selective toxicity for particular microorganisms or classes of pathogenic microorganisms without harming the cells of the host, has caused relegation of most antiseptics for use in the mouth and throat into obsolescense. It is the consensus of the Panel that the term "oral antiseptic" not be used.

Despite these well-known concepts concerning the possible adverse effects of antiseptic agents, the practice of using these agents to attempt to relieve symptoms due to infections or to accelerate wound healing is so ingrained in the minds of both consumers and health professionals alike that attempting to discourage their use appears to be futile. In addition, the promotional practices of manufacturers of OTC products encourage rather than discourage self-medication with these products.

The ideal antiseptic should destroy all types of bacteria, fungi, viruses, and other infective organisms without harming the living tissues of the host. None, however, have been demonstrated to have this attribute, and some healthy cells are invariably injured. All effective antiseptics are general protoplasmic poisons and most have limited and varying spectra of antimicrobial activity which also limit their usefulness.

Antiseptics and antisepsis must be distinguished from disinfectants and disinfection. Disinfectants are used on inanimate objects to destroy microorganisms that are in the nonsporing state. Some disinfectants, such as phenol and the quaternary nitrogenous compounds, can be used as antiseptics if they can be diluted sufficiently to minimize injury to living tissues without loss of antimicrobial activity. Other antimicrobial agents are not suitable as antiseptics, particularly in the mouth and throat. They may require prolonged contact to be effective and this is usually difficult to achieve on oral mucosa. Futhermore, prolonged contact increases the likelihood of simultaneous injury to the pathogenic organisms as well as to the cells of the host. Sterilization is the complete and total destruction of all microbial life, including bacterial spores, vegetating bacteria, viruses, and fungi. Any agent that does not cause total destruction of microorganisms is a disinfectant when used on an inanimate object and an antiseptic when used on living tissues. The term "sanitize" is used to denote the reduction of bacterial flora on inanimate objects to an acceptable level that reduces the chance of infections. These terms are often confused, used erroneously, and sometimes interchangeably.

In summary, an "antimicrobial agent" kills or interferes with the proliferation and activity of many microorganisms, both pathogenic or non-pathogenic. A therapeutic benefit may or may not be derived from its use. An "antiseptic" is an antimicrobial agent which, when used on living tissues, produces some therapeutic benefit and acts to counteract an infection. A "disinfectant" is an antimicrobial agent used on inanimate objects to kill all types of microorganisms that are in the nonsporing state. A "sanitizing agent" is an antimicrobial agent that reduces bacterial flora on inanimate objects to a level that reduces the possibility of infections.

The virucidal effects of many antimicrobial agents have not been established with certainty. Many agents that kill bacteria, fungi, or other pathogenic organisms do not kill viruses.

References

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(9) Sanders, W. E., and C. C. Sanders, "Toxicity of Antibacterial Agents: Mechanism of Action on Mammalian Cells," *Annual Reviews of Pharmacology and Toxicology, 19:53–83, 1979.*

2. *Antimicrobial agents for use in the oral cavity.* The most widely used antimicrobal agents in OTC oral health care drug products are aliphatic alcohols, aromatic alcohols (phenolic compounds), elemental and organic iodine preparations, organic derivatives of mercury, preparations containing aluminum, zinc, or chromium, cationic agents such as quaternary nitrogenous compounds, anionic agents such as detergents and soaps, boric acid and other boron derivatives, chelating agents such as oxyquinoline, and oxidizing agents such as the peroxides. Various balsams, tars, and aromatic bodies, often referred to as volatile (essential) oils, have been used as antimicrobial agents since earliest antiquity. A general discussion of the chemical nature and therapeutic effectiveness of these agents appears below.

The ideal antimicrobial agent should possess selective toxicity, that is, it should kill or permanently inhibit the activity of pathogenic organisms without causing injury to the cells of the host harboring the pathogen. None of the antimicrobial agents used in OTC oral health care products have been demonstrated to possess this attribute. The antibiotics and various chemotherapeutic agents come closest to attaining this attribute. These, however, are not available to consumers as OTC products because the diagnosis of the clinical conditions requiring their use, determination of appropriate dosage, and the selection of the proper antimicrobial agent must be done by a dentist or physician. Furthermore, they act systemically and must be administered orally or parenterally so that they can circulate in the blood and reach the infected areas via that route.

It is the consensus of the Panel that the effective use of antimicrobial agents in OTC products for self-medication and relief of symptoms due to infections of the mouth and throat caused by pathogenic organisms has not been convincingly demonstrated. The use of these antimicrobial active ingredients appears to be unwarranted, and there is evidence that they may be harmful in some instances. The Panel recognizes that antiseptics have widespread acceptance by the lay consumer even though indisputable evidence of their effectiveness has not been documented by controlled studies or proven to be of benefit from widespread clinical experience. The Panel, therefore, feels obligated to discourage the use of antimicrobial agents in oral health care products and recommends only those that are proven to be safe and effective and can be used properly for self-medication.

The Panel concludes that there are a number of valid reasons for advocating that antimicrobial agents not be used for therapeutic purposes in OTC oral health

care preparations. First, the Panel believes that the consumer is unable to determine the identity of organisms causing the symptoms requiring treatment and would not be able to exercise proper judgement in selecting the correct agent, even if the nature of the microorganism were known. Second, topically applied antiseptics act superficially on the surface of a lesion and do not necessarily penetrate deeply into the tissues at the site of action of an inflammatory process. Thus, only the microorganisms on the mucosal surface are killed, while those deep in an inflammatory process are untouched. Third, antiseptics may also kill indigenous oral microorganisms which maintain a delicate balance between the nonpathogenic and pathogenic microbial population of the mouth. Fourth, the action of antimicrobial agent has been diluted or eliminate by salivation and swallowing, the growth of the organism resumes. Fifth, antimicrobial agents may lead to development of resistant strains of pathogens that persist in the mouth and throat and kill or injure some of the cells of the host. Sixth, they may lower the "resistance" of host tissues by nullifying the actions of immune substances in the mucosa (IgA, IgG, and IgM antibodies). Seventh, no conclusive data are available from controlled studies to show that no harm results from long-term use of antimicrobial agents on a day-to-day basis for prophylactic purposes in the absence of a pathologic process. Eighth, data on delayed toxic effects from long-term use are not available. Ninth, conclusive controlled studies are not available to show that a health benefit results from long-term use of antimicrobial agents applied to the oral cavity on a day-to-day basis for prophylactic or therapeutic purposes.

The Panel has referred to the conclusions of a previous Commissioner of the FDA on the lack of evidence of effectiveness of gargles and mouthwashes containing antimicrobial ingredients from data submitted by the NAS/NRC. (See part II. paragraph B.5. above—Dosage forms of oral health care products.)

The Panel is also mindful of the position of the Council on Dental Therapeutics (Ref. 1):

> Many germicidal claims are included in mouthwash advertising directed either to the dentists or to the public. Attention should therefore be directed to the following considerations: (1) No method is yet available to give a thoroughly satisfactory comparison of germicidal agents in a test tube with the same agents under the actual conditions of their use in the oral cavity. (2) There is no adequate evidence that the average person benefits by a nonspecific change in the oral flora. (3) Some uncertainty still exists concerning the role of microorganisms as etiologic agents of many oral diseases.

OTC oral health care products are the only products containing antimicrobial agents that are used for protracted periods of time on a day-to-day basis, perhaps even spanning a lifetime. They are used for medicinal purposes when no symptoms exist or when no obvious signs of a disease are present and without any direct advice or sanction by a physician or a dentist. The Panel, therefore, concludes that antimicrobial agents should be used for oral health care only when specific symptoms, (e.g., sore throat or sore mouth) are present justifying the need for a specific product whose effectiveness has been established.

Reference

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 38th Ed., American Dental Association, Chicago, p. 343, 1979.

3. *Mode of action.* The following discussion is based on a review of several sources (Refs. 1 through 6).

Antiseptics and disinfectants exert their antimicrobial activity in a variety of ways. They may act by coagulation or denaturation of protoplasmic proteins. The phenols and certain metallic agents, such as derivatives of mercury, zinc, and aluminum, and alcohols act in this manner. Some cause cell lysis (alteration of cell membranes that causes leakage of protoplasm). They may be "surface-acting" substances which decrease the permeability of a cell by lowering surface tension at the cell membrane and fluid interface. The quaternary nitrogenous compounds or the "quats" act in this manner. (Since "the quats" are widely used in OTC oral health care products, their mechanisms of action are described in more detail below. (See part IV. paragraph A.8. below—Quaternary nitrogenous cationic antimicrobial agents.) Others act by the denaturation and inactivation of enzymes, which interferes with the metabolic activity of the cell. Some apparently penetrate into the interior of the cell by virtue of their lipid solubility and alter the intracellular biochemical activities in the membrane and within the cell. Some are oxidizing agents that act on the cell membrane or penetrate into the cells and alter the chemical structures of cellular constituents or metabolic activities of the cell.

Penetration of antimicrobial agents into the cell usually occurs by simple diffusion. It can be facilitated by substances in the extracellular fluid that decrease their solubility in the surrounding medium. Some antimicrobial agents may accumulate on the cell surface by adsorption and surround the microorganism with a dense layer of the agent resulting in altered cell permeability which makes the cell unable to function. Mercuric chloride may act in this manner. Certain antiseptics, such as phenol, that enter the cell by simple diffusion do not necessarily accumulate in its interior. They continue to penetrate into the cell and alter its structure and physiological activity. The concentration in the cell is no greater than the concentration in the solution surrounding it, but it continues to act as it moves inward. This attribute limits the safety of phenolic compounds because they act in the same manner on tissue cells of the host.

Most chemical agents that are used for topical antisepsis do not act selectively and do not exert their adverse effects solely on the microorganism. They generally injure both the cells of the host and the microorganism. The harm that results to healthy tissue cells occasionally offsets any beneficial effects that might be obtained by the action of an antiseptic.

The effectiveness of antiseptics depends upon the concentration in the medium in which it is dissolved, duration of contact with the microorganism, pH of the surrounding medium, the environmental temperature, and the presence of inorganic or organic matter. The latter may nullify the activity of many of the effective antimicrobial ingredients.

Different species of microorganisms vary in their resistance and susceptibility to an antimicrobial agent. Different cultures of the same microorganism and even different individual microorganisms in the same culture may exhibit marked variations in susceptibility to a particular antimicrobial agent.

The efficiency of any disinfectant depends on the concentration that comes into contact with the microorganism and its duration of contact. Thus, a solution of mercuric chloride whose concentration is 1:3,000 is more efficient that one whose concentration is 1:10,000. Exposure to the more concentrated solution for 2 minutes kills more microorganisms than exposure to the more dilute solution for 5 minutes. However, germicidal activity is not necessarily directly proportional to concentration. For example, concentrations of alcohol above 95 percent kill bacteria less rapidly than the 70 percent to 95 percent concentration range. Another factor that influences efficiency is the temperature

of an antiseptic to which the microorganisms are exposed. It is known that when a portion of a culture of microorganisms is added to an antiseptic solution which is maintained at a room temperature of about 20 to 25° C, far fewer organisms are killed than if the mixture were kept at 30° C, or more importantly, at a physiological body temperature of 37° C.

The effect that a solution of an antiseptic exerts usually varies inversely with the number of microorganisms present, because each microorganism withdraws a certain amount of the antiseptic from the solution and thus reduces its overall concentration. The presence of proteins has the same influence as the microorganisms in reducing the overall concentration of the antimicrobial agent in the solution. The proteins offer the antiseptics the same surface area for adsorption or combine with some of the antimicrobial agents in the same manner as do the proteins of the microorganisms. Thus, a concentration of an antimicrobial agent which is sufficient to sterilize water infected with bacteria may have little or no effect if applied to a suppurating (pus-producing) wound. The greater part of the antimicrobial agent combines with the protein in the wound; the amount that remains in the solution may be too dilute to act on the microorganisms. Therefore, many substances which are effective antimicrobial agents in aqueous or other types of solutions lose their antimicrobial activity in protein solutions. This phenomenon was one commonly referred to as the "protective action of colloids," and is due to the formation of combinations of the antiseptic with the proteins, which usually results in precipitates. These products are not dangerous to the host but they are comparatively innocuous and exert no effect on the microorganisms in the tissues. The inhibiting action of proteins may also be due partly to the fact that they limit the diffusion of an antimicrobial agent into a cell. In fact, many antimicrobial agent act on proteins generally, and are not specifically toxic fo a given type of microorganism. The lipids, like the proteins, may also lower the potency of an antimicrobial agents by combining with the agent and reducing its effective concentration.

If an antimicrobial agent is to penetrate into the interior of an organism in an effective quantity, it must be as soluble in the protoplasm as it is in the fluid in which it is incorporated. The antimicrobial agent will not leave a medium in which it is readily soluble for one in which it is less soluble. Members of the aromatic series of antimicrobial agents are very soluble in fats and oils; however, fats and oils are not suitable media for application to the infected tissues because the drug remains in the oily menstruum and fails to penetrate into the microorganism.

Mercuric chloride dissolved in alcohol has little germicidal activity. This is due to the fact that mercuric chloride, as well as salts of other heavy metals, is not dissociated (ionized) in alcohol (95 percent). The antimicrobial activity is due to the ions of metal and not to the un-ionized molecules. In order for a salt to be active it must be dissociated (ionized), and this process requires the presence of water. If the mercuric chloride is dissolved in dilute alcohol (25 percent) its effectiveness is increased because much of it is ionized, facilitating penetration of the components of the salt into the cell. The addition of inorganic salts to an aqueous solution of phenol often increases its antimicrobial activity because the solubility of the drug in water is decreased and there is a greater tendency for it to pass from the water into the interior of the microorganism.

There is some evidence to indicate that solutions containing several antimicrobial agents are more strongly antiseptic than those containing single-entity ingredients. For example, a mixture of phenol and mercuric chloride, each at less than its minimum effective concentration, is more effective as an antimicrobial agent than more concentrated solutions of either alone. This is not a hard-and-fast rule, however, and a combination may have the opposite effect. Therefore, combinations, and the concentrations of ingredients in them, must be considered individually. It is the consensus of the Panel that these drugs are all protoplasmic poisons and may harm both the cells of the host as well as the pathogenic organism. For the sake of safety, preparations containing single-entity active ingredients are preferred.

Some OTC products contain less than the minimum inhibitory concentration of a chemical. Such solutions merely retard the growth of microorganisms. Concentrations of substances that are too dilute to kill microorganisms are bacteriostatic and may merely act as preservatives. Antiseptic claims cannot be made for them and to do so is both misleading and a misbranding of a product.

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4. *The microbiology of the oral cavity—a. Changes of the oral flora with age.* The oral flora changes from birth through the primary, mixed, and permanent dentitions. There are also differences in the oral flora following extraction of all the teeth and their replacement with dentures. The oral cavity normally supports a concentrated and varied microbial population, the heaviest concentrations being on the dorsum of the tongue, around the gingival sulcus, and on the surfaces of the teeth.

At birth, the oral cavity is usually sterile despite inoculation with the indigenous flora of the mother's genital tract, which is comprised of lactobacilli, corynebacteria, micrococci, coliforms, aerobic and anaerobic streptococci, yeasts, protozoa, and sometimes viruses. The first 8 hours following birth show a rapid increase in the number of detectable organisms. For the first few days of life, the bacterial composition varies considerably. The organisms have been reported to include several species of lactobacilli, streptococci, staphylococci, pneumococci, enterococci, veillonellae, anaerobic streptococci, coliforms, sarcina, and neisseriae. With the exception of *Streptococcus salivarius*, most of these organisms are found sporadically but not in high numbers. The newborn's mouth is highly selective even within the first few days. Practically none of the bacteria common to the general environment become established, and only a few of the microorganisms inhabiting adult mouths occur persistently at this time.

By the end of the third month, all mouths support a microbiota beginning to resemble that of the adult. At the end of the first year of life, however, only streptococci, staphylococci, veillonellae, and neisseriae are generally found in all

mouths. Actinomyces, nocardiae, lactobacilli, and fusobacteria can be cultured from about one-half of the mouths. Bacteroides, leptotrichiae, corynebacteria, and coliforms are isolated from less than half of the mouths. Streptococci still predominate numerically. Infancy is dominated by facultative species, to which are gradually added the various obligate anaerobes, but numerically the facultative types generally dominate at all ages (Refs. 1 and 2).

In preschool children, the proportions of predominant cultivable organisms from the gingival crevice area resemble those in adults, except that *Bacteroides melaninogenicus* and spirochetes are not present in all children. *Bacteroides melaninogenicus* is present in virtually all adolescents. Spirochetes also increase in incidence with age. The presence of dental caries (cavities) also influences the oral flora by providing new ecological niches for multiplication, new substrates, and a more acidic pH.

Tables 1 and 2 shows the predominant genera and species found in various sites (Ref. 2).

With the loss of teeth, spirochetes, lactobacilli, and some strains of streptococci are reduced. Shklair and Mazzarella's (Ref. 3) studies demonstrated that lactobacilli and yeasts virtually disappear during the edentulous period and that *Streptococcus salivarius* increases. During the first 2 weeks after placement of the dentures, streptococci remain at a high level while lactobacilli and yeasts gradually return, but remain at a low level. After 3 to 5 weeks the lactobacilli and yeasts increase, and the streptococci decrease to preextraction levels. During the entire period, the number of staphylococci do not fluctuate significantly.

TABLE 1.—MEAN PERCENTAGES OF CULTIVABLE ORGANISMS IN THE ADULT ORAL CAVITY (Ref. 2)

Organism	Saliva	Percentage		Tongue
		Gingival crevice area	Dental plaque	
Gram-Positive Facultative:				
Cocci	46.2	25.2	20.2	44.8
Streptococci	41.0	27.1	27.9	36.3
Streptococcus salivarius	4.6	N.D.	N.D.	8.2
Enterococci	1.3	N.D.	N.D.	7.2
Staphylococci	4.0	1.7	0.3	8.5
Gram-Positive Anaerobic:				
Cocci	13.0	7.4	12.6	4.2
Gram-Negative Facultative:				
Cocci	1.2	0.4	0.4	3.4
Gram-Negative Anaerobic:				
Cocci	15.9	10.7	8.4	16.0
Gram-Positive Facultative:				
Rods	11.8	15.3	23.8	13.0
Gram-Positive Anaerobic:				
Rods	4.8	20.2	16.4	8.2
Gram-Negative Facultative:				
Rods	2.3	1.2	N.D.	3.2
Gram-Negative Anaerobic:				
Rods	4.8	16.1	10.4	8.2
Fusobacterium	0.3	1.9	4.1	0.7
Bacteroides melaninogenicus	N.D.	4.7	N.D.	0.2
Vibrio sputorum	2.1	3.8	1.3	2.2
Other Bacteroides	2.4	5.6	4.8	5.1
Spirochetes	N.D.	1.0	N.D.	N.D.

N.D.=not detected.

TABLE 2.—PERCENT DISTRIBUTION OF ORGANISMS IN DIFFERENT SITES IN THE HUMAN ORAL CAVITY (REF. 2)

Organism	Supragingival plaque	Tongue	Gingival crevice	Cheek	Saliva
S. mutans	3.9	0.3		0.5	0.2
*S. sanguis**	75.0	5.0		29.0	47.0
*S. salivarius**	0.7	55.5	0.5	10.7	47.4
*B. melaninogenicus***	0.2	8.4	4.5	0.3	0.42
Spirochetes***	0.1		1.5		
Lactobacillus	0.0001				0.01

*Percent of facultative streptococci.
**Percent of total cultivable flora.
***Percent of microscopic count.

b. *Problems associated with the study of the oral microbial flora.* It is difficult to obtain definitive information concerning the location, kinds, and numbers of oral microorganisms because of problems of variability, sampling, cultivation, enumeration, and identification. Even in a single mouth the microbial population undergoes progressive changes until maturity, and there are wide fluctuations thereafter.

Diet plays an important role in the growth of microoganisms as do the host tissues and other microoganisms. The nature and amount of proteins and carbohydrates will determine which organisms will flourish and which will remain static. The amount of sucrose in the diet can influence the amount of plaque, the population density, and the percentage of *Streptococcus mutans* and *Streptococcus sanguis* in the plaque.

Essential metabolites for some bacteria are produced by other bacteria. For example, formic and lactic acids produced by bacteria in the oral cavity in part supply the energy sources for *Veillonella alcalescens.*

The bacteria from the human oral cavity have a wide variety of oxygen tension requirements. Obligate aerobes facultative aerobes, microaerophiles, anaerobes which tolerate oxygen exposure but multiply only in its absence, and strict anearobes which will not survive even momentary exposure to oxygen, have all been identified.

c. *The organisms comprising the oral microbiota.* The number of so-called species of bacteria indigenous to the oral cavity are innumerable since their

recovery depends greatly upon the methodology used for their cultivation. The variations from person to person and from site to site are great. The recent use of anaerobic transport solutions for the specimen and the anaerobic chamber for all manipulations during cultivation have increased enormously the number of genera and species which are associated with various areas of the mouth, especially that of the gingival crevice and periodontal pocket.

Mycoplasma species can be demonstrated in all adult mouths. They have been isolated from saliva, plaque, and calculus; they have also been isolated from samples obtained from healthy and diseased gingival crevices and various lesions. Protozoa can be demonstrated in small numbers in approximately 50 percent of clean and healthy mouths. A much higher incidence is associated with poor oral health care and periodontitis (Ref. 1).

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5. *The mircobial flora of the pharynx and upper respiratory tract.* The bacterial flora of the oral cavity and that of the pharynx and upper airways are, in most respects, not remarkably different, since there is an intermingling of the secretions of the mouth and throat. However, there is a gradual transition in composition along the pathway from the lips, gums, mouth, and throat into the trachea and bronchi. As is the case in the oral cavity, the ecology, i.e., the relationships between organisms and interrelationships between the organisms and their environment, is important (Refs. 1 through 6). In the mouth, numerous microbial species reside in the oral and hypopharynx and the upper respiratory tract of man under normal conditions. Some are regularly demonstrable as major permanent residents. These include many species of streptococci, both faculative and anaerobic, with the alpha hemolythic "viridans group" predominant, leptothrichia, several species of corynebacteria ("diphtheroids"), a variety of neisseria species (e.g. *Neisseria catarrhalis, Neisseria pharyngitidis*). as well as the potentially pathogenic *Staphylococcus aureus*. Anaerobes includes the veillonella, vibrios, spirochetes, fusobacteria, bacteroides, and many others too numerous to list here. In addition, coliform bacteria, proteus, pseudomonas, and others which are predominant residents of the normal intestinal flora may occasionally reside in the mouth and throat in small numbers. Pathogenic microorganisms may exist within the indigenous oral flora of persons who have recovered from some infectious disease process. These have established an equilibrium with the other organisms ordinarily present and exist without causing a pathologic process. Persons harboring such microorganisms may, of course, be carriers and may be a source of infection for other persons with whom they have contact (Ref. 4).

Knowledge of the composition of the indigenous microbial flora of the naso-, oro-, and laryngopharynx is just as important as knowledge of the composition of the indigenous microbial flora of the oral cavity. For instance, in evaluating laboratory reports concerning bacteriological examination of clinical specimens, the physician must often judge whether the isolated organisms are indigenous flora and can be disregarded, or are pathogenic and may cause symptoms in an individual patient. Marked differences in the composition of the indigenous microbial flora may be observed among different individuals. These differences depend upon numerous variable factors, such as pH and viscosity and composition of the saliva. Various degrees of compatibility exist among groups of bacteria, based on differences in metabolic activities and growth requirements. In addition, variable factors in the host may be equally as important, if not more important, in creating a specific ecological composition and equilibrium of the bacterial flora. Living habits, food preferences, hormonal or metabolic peculiarities, and other factors probably exert specific influences in determining the nature of the microbial flora of the naso-, oro-, and hypropharynx (Ref. 4).

The existence of an ecological balance between various types of microorganisms supports the concept that the indigenous flora serves as a strong and an effective natural barrier against invading pathogens. In many instances, the invader encounters an environment which is unfavorable to its gaining a foothold and surviving within the biosystem of the existing flora. Any disturbance of the indigenous flora, however, can create an environemnt which could give invading pathogens an opportunity to gain a foothold and establish residence in the upper air passages. Even an imbalance among microorganisms ordinarily present in the indigenous flora can lead to multiplication of their numbers and a pathological state, since some microorganisms that are normally present may be opportunistic pathogens. It is for this reason that the use of antimicrobial agents in the absence of symptoms of a pathologic state is considered irrational and possible harmful (Ref. 4).

Disturbances of the normal flora of the throat may occur from many causes. Some are due to local factors, some to general factors, and some to a combination of both general and local factors. Chemical or physical irritation, local allergic reactions, and anatomical abnormalities, such as mucosal atrophy or functional changes, may have a direct local effect on the bacterial flora. Causative factors of a systemic nature include nutritional deficiencies, avitaminosis, unbalanced metabolic disorders (diabetes), and other similar pathological states. However, the most frequent and also in most cases a dangerous cause is the unwarranted use of antimicrobial agents. All types of antimicrobial agents can be incriminated but most noteworthy are the antibiotics. For whatever reason and in whatever form antibiotics are administered to a patient, they may alter the normal bacterial flora because the drug-susceptible microorganisms will be killed or their metabolic activity inhibited. Often no overt consequence follows the use of an antibiotic and the flora shifts back to its previous composition and equilibrium when use of the drug is discontinued. In some cases, and organism develops mechanisms that overcome adverse effects of the antibiotic and continues to proliferate in its presence. This phenomenon, called drug resistance, occurs frequently. The danger of a disease process resulting from an alteration of the compositon of the indigenous bacterial flora must not be underestimated; moreover, the possibility of the occurrence of this response is of equal importance as the development of drug resistance (Ref. 4).

a. *Disease-producing properties of microorganisms.* Some organisms, especially fungi, cause disease simply by their presence in the tissue. The tissue responds by developing a foreign body reaction with the subsequent formation of granulomas. As the microorganisms multiply and consume nutrients, inadequate nourishment of the tissue may lead to irreversible damage

or even necrosis. Fungal infections are more apt to cause sore mouth than sore throat.

Many gram-negative microorganisms contain endotoxins. These are complex molecules consisting of a protein combined with a liposaccharide. When released in the tissues of a host they cause toxic manifestations. The endotoxins are usually present in the cell wall of the microorganism. They are released upon death and disintegration of the microbial cells and pass into the tissue fluids or blood. Free endotoxin causes local edema, hemorrhage, and possibly necrosis. Bloodborne endotoxins cause systemic generalized symptoms that include, fever, nausea, vomiting, diarrhea, oliguria, hematuria, and even anuria. Shock of various degrees, dependent on the amount and virulence of the endotoxin liberated into the circulation, is a common manifestation.

Other microorganisms produce exotoxins which are excreted locally into their environment where they are absorbed, become bloodborne, and act systemically. Most exotoxin producers are of the gram-positive type, including *Staphylococcus aureus*, which is often indigenous in the mouth, and *Strepotococcus pyogenes*. Minute amounts of an exotoxzin are sufficient to cause severe damage to specific organ or cell systems. These organs or cell systems may be distant from the focus of infection.

Some microorganisms release enzymes, which increase their invasiveness. A great variety of important pathogenic enzymes elaborated by microorganims have been described. The organisms involved in their production include *Strepotococcus pyogenes* and *Stapohylococcus aureus*. The enzymes elaborated include hyaluronidase, proteinases, fibrinolysins, collagenases, and numerous others, most of which may facilitate spread of infection in the tissue (Ref. 4).

(1) *Streptococci*. Streptococci are found in the throats of both human beings and animals. *Streptococcus pyogenes* may cause severe sore throat and generalized systemic manifestations, such as fever, joint pains, etc. They are grounded on the basis of antigenic properties, and these groups possess varying degrees of host specificity. Group A streptococci (*Streptococcus pyogenes*) cause 90 percent of the streptococcal infections in human beings. The natural reservoir of human pathogenic streptococci is the respiratory tract of persons who have developed an immunologic equilibrium with these bacteria and are asymptomatic carriers. Other groups of pathogenic streptococci are found under similar conditions in various animal species. Nonpathogenic streptococci are abundant among the indigenous flora of the upper respiratory tract and mouth. They inlcude the "viridans groups" of streptococci found in the mouth and throat, enterococci (including group D-streptococci) found in the mouth and oropharynx, as well as anaerobic streptococci (e.g. peptostreptococcus) found in the respiratory tract and mouth. Any of these strains can, under certain conditions, become pathogenic. Such pathogenicity may be expressed when the equilibrium of the indigenous oral flora is disturbed or when the organisms are introduced into other areas of the body which they do not normally inhabit. Typical examples of disease processes they may cause are dental pulpitis, periodontal abscesses and subacute bacterial endocarditis (usually due to the "viridans group" of streptococci).

About half the human population develops a delayed type of hypersensitivity against streptococcal substances. This can be demonstrated by skin testing with streptococcal extract (Refs. 1 through 4).

(2) *Pneumococci*. Pneumococci are closely related to streptococci and, if pathogenic, most often cause bacterial penumonia. Certain antigenic types are particularly apt to produce disease; others are seldom pathogenic and are part of the indigenous flora of the upper respiratory tract. They may become pathogenic if the bacterial flora is altered and an imbalance occurs. Such an alteration may occur from the unwarranted use of antimicorbial agents.

(3) *Staphylococci*. The important pathogenic member in this group is *Staphylococcus aureus* which causes purulent infections in animals and human beings alike. It is ubiquitously present on the skin and in the nose and throat. Usually a well-balanced equilibrium exists between the host and this type of microorganism. This equilibrum may be disturbed by mechanical irritation, allergic reactions of the mucous membranes, traumatic lesions, nutritional deficiencies or hormonal imbalances, such as occurs in diabetes, thyroid disease, and so forth. Patients may acquire antimicrobial-resistant staphylococci and incorporate them into their normal bacterial flora, especially in hospital environments. If a resident strain of *Staphylococcus aureus* is antimicrobial-resistant, application of the particular antimicrobial agent would give the organism a growth advantage by killing or inhibiting the growth of organisms that are antagonistic to the staphylococcus (Ref. 4).

(4) *Neisseria*. Several species of non-pathogenic neisseria are part of the indigenous flora in the pharynx and upper respiratory tract. Among these are *Neisseria catarrhalis* and *Neisseria pharyngitidis*. The pathogenic members of this genus, *Neisseria meningitidis* and *Neisseria gonorrhoeae*, cause disease exclusively in human beings. *Neisseria meningitidis* inhabits the throat of about 5 percent of normal persons but shows little tendency to spread to noncarriers. Restricted outbreaks of meningococcal meningitis occur in special epidemiological situations, usually among people who live in crowded conditions. The species of *Neisseria meningitidis* can be subdivided into three serological types: A, B, and C. Type B is now encountered most often in epidemics, whereas 1 or 2 decades ago type A was more prominent. Type C is occasionally found in sporadic infections (Ref. 4).

(5) *Corynebacteria*. Nonpathogenic corynebacteria (diphtheroids) constitute a large portion of the indigenous flora of the mucous membranes of the throat.

(6) *Haemophilus influenzae*. *Haemophilus influenzae* is frequently found in the respiratory tract of normal persons. If the organism lacks a capsule, it is usually avirulent. Primary infections due to capsulated strains occur, especially in children. Severe forms of the disease may also cause meningitis. *Haemophilus influenzae*, as in the case with streptococci, pneumococci, or staphylococci, may play a role in secondary bacterial infections of viral diseases such as influenza-pneumonia. In fact, it was considered by its discoverer to be the etiological agent of influenza.

(7) *Mycobacteria*. The two diseases caused by mycobacteria are tuberculosis and leprosy. Both may cause infections in the throat and larynx, although these are rare. The manifestations are usually part of a chronic pulmonary or other systemic infection (Ref. 4).

(8) *Spirochetes*. Three genera of human pathogenic spirochetes are recognized: borrelia, treponema, and leptospira. Only the first two are of special interest in oral diseases. Both genera contain species which are components of the indigenous flora. They may become opportunistic pathogens, as is the case with *Borrelia vincenti*, which is associated with Vincent's angina, cancrum oris, and gangrenous processes in the throat and other parts of the upper respiratory tract. *Treponema pallidum*, the

causative agent of syphilis, is of interest since in the secondary phase of the disease it is particularly apt to cause pharyngitis.

The Panel emphasizes that infections caused by the aforementioned bacteria are not "minor," may be serious and require the expertise of a dentist or physician, as well as a microbiologist for their recognition. The conditions they cause are not amenable to self-diagnosis and unsupervised self-treatment with antimicrobial and other health care products.

b. *Viruses causing disease of the oropharynx.* The number of respiratory tract diseases caused by viruses is indeed great. Over 250 viruses are believed to cause the common cold. Current treatment of viral infections involves active and passive immunoprophylaxis. None of the agents used for this purpose are available OTC. OTC antimicrobial agents are of no therapeutic benefit (Ref. 5).

Viruses causing disease of the throat include the coxsackie A virus, herpes virus, infectious mononucleosis virus, and mumps virus. Other viruses which primarily cause acute pharyngitis are discussed below.

(1) *Coxsackie A virus.* Several serological types of coxsackie A viruses have been associated with lesions of the mouth and oropharynx. There are at least 23 immunologically distinct coxsackie A types. The coxsackie A viruses have been shown to cause not only respiratory tract disease but also aseptic meningitis, paralysis, exanthemas, and hepatitis (Ref. 5).

Herpangina is a clinical syndrome which occurs mostly in the summer and mainly affects children. The illness is featured by an acute onset of fever, sore throat, and dysphagia. It is sometimes accompanied by abdominal pain, myalgia, headache, and vomiting. The characteristic feature of the syndrome is the presence of small, scattered vesicles in the oropharynx, each surrounded by an erythematous zone. They are located on the anterior pillars of the fauces, but can also occur on the palate, uvula, tonsils, and tongue. They do not usually occur on the gingival or buccal mucosa. The individual lesion appears first as a grayish white papule or vesicle about 1 to 2 mm in diameter which is surrounded by a red areola. After several days the areola becomes more intensely red, the vesicles enlarge and become shallow grayish ulcers. Both vesicles and ulcers may be present at the same time. Usually there are 4 to 5 lesions, but as many as 14 or 15 have been seen. The course of the illness is usually benign. There have been reports of parotitis complicating herpangina.

Coxsackie A–10 has been associated with an epidemic of acute lymphonodular pharyngitis in children. The patients had fever, headache, and sore throat from 4 to 14 days. The distinct lesions were discrete whitish or yellowish nodular papules on the uvula, anterior pillars, and posterior pharynx which did not vesicate. Histological examination of the nodules revealed the papules to be formed of tightly packed lymphocytes. There is no specific treatment for coxsackie A disease (Ref. 5).

(2) *Infectious mononucleosis.* Infectious mononucleosis (IM) is an acute infectious disease of presumed viral etiology, which causes sore throat, that occurs predominantly in children and young adults. The search for the etiology of IM is closely associated with the Epstein-Barr (EB) virus. The EB virus is a member of the herpes group and was first detected in cultures of Burkitt's lymphoma cells. The association of the virus with IM is based on a serological relationship. Individuals with IM develop antibody to EB virus in their serum (Ref. 5).

(3) *Viral upper respiratory diseases.* Although exact data are difficult to obtain, it is generally agreed by most authorities that acute upper respiratory tract infections (URI or the common cold) are the greatest cause of morbidity in the United States (Ref. 5).

Viral respiratory illnesses are caused by numerous groups of viruses. The viruses produce a variety of clinical syndromes. Any individual virus group is capable of causing a multiplicity of syndromes, and a particular syndrome can be caused by various groups of viruses.

There appears to be a difference in the morbidity caused by these viruses in children and in adults. This is probably the result of the acquired immunity, which is present in adults and not in children.

The verification that the disease is of viral etiology is wholly dependent upon laboratory tests (Ref. 5).

(4) *Adenoviruses.* The adenoviruses were first isolated in 1953 by culturing adenoid tissue from children undergoing adenoidectomy. At least 31 immunologically distinct adenoviruses have been identified, 9 of which have been associated with respiratory tract infections. Synonyms are adenoid degeneration (AD) agents, acute respiratory disease (ARD) viruses, and adenoidal-pharyngeal-conjunctival (APC) viruses.

The clinical syndromes associated with adenovirus infections include undifferentiated acute respiratory disease, pharyngoconjunctival fever, and pneumonia. Clincial signs of undifferentiated acute respiratory disease include sore throat (pharyngitis), cervical lymphadenopathy, cough, chills, fever, malaise, and headache. Coryza and fever may be present. The clinical signs of pharyngoconjunctival fever include fever, pharyngitis, conjunctivitis, and frequently gastrointestinal pain. Pneumonia or severe respiratory tract involvement occasionally occurs (Ref. 5).

(5) *Influenza viruses.* Influenza viruses, which are members of the myxovirus family have had a profound effect on people. Pandemics of influenza have taken severe tolls in morbidity and mortality throughout history. These pandemics have been due to alteration in the antigenic makeup of influenza viruses approximately every 10 years for the past 30 years.

The influenza viruses are divided into three types, A, B, and C, on the basis of their neucleocapsid and M protein antigens. Each type is further divided into antigenic subtypes, which differ from each other by the composition of their surface glycoproteins (hemagglutinin and neuraminidase). A continuous genetic shifting of the antigenic configuration of the viruses creates "new" viruses for which the population has no antibodies and, therefore, immunity most likely has resulted in pandemics of influenza (Ref. 1, 2, 3, 5, and 7).

Influenza viruses can cause a wide spectrum of respiratory tract disease, ranging from subclinical infection to fulminating pneumonia. However, the typical case of influenza is a systemic disease which is familiar to all physicians. After a short incubation period of one to three days, coryza, cough, sore throat, headache, fever, malaise, anorexia, and frequently nausea and vomiting occur accompanied by an apathetic appearance. The illness persists for a week to 120 days and is usually followed by a prolonged period of convalescence in which the patient is somewhat lethargic or "not up to par." Pneumonia, either of purely viral origin or caused by a secondary bacterial invader, or of a mixed infection of viral and bacterial etiology, is the most common complication. Other complications are meningoencephalitis and myocarditis, but these are quite rare (Ref. 5).

(6) *Para-influenza viruses.* The para-influenza viruses were first isolated during the 1950's. Four distinct serologic types have been recovered in the throat of human beings (Ref. 5).

(7) *Rhinoviruses.* The rhinoviruses are the most recently isolated viruses to be

referred to as "the common cold virus." The initial rhinovirus isolates were made in 1954 from afebrile individuals with coryza, sore throat, and cough. There are probably over 100 distinct serological strains of rhinoviruses. Currently some 80 specific serological types have been classified. No antimicrobial agents are available that exert any therapeutic effect on these viruses. The common cold is actually a misnomer since so many different viruses can afflict people and cause similar symptoms, coryza, sore throat, and systemic manifestations such as malaise, fever, etc. The term might be considered a proper one to use if the symptom complex were caused by a single virus (Ref. 5).

(8) *Coronaviruses.* The coronaviruses are a relatively newly described group of viruses which are also associated with the common cold. The name is derived from the fact that, when visualized with the electron micrograph, the human coronavirus resembles a crown (Ref. 5).

c. *Fungal infections.* Fungal infections, also known as mycoses, have been playing an increasingly important role in conditions affecting the mouth, nose, and throat for several reasons: (1) There is greater awareness of their presence; (2) better diagnostic facilities are available; (3) the incidence is increased because of therapeutic interference (antibiotics, immunosuppressive drugs, radiation); and (4) there is increased longevity in such diseases as lymphomas, other neoplasms, and hematologic disorders (Ref. 6).

Conditions favorable to the development of mycoses prevail in the mouth and throat, where a moist, warm environment, and such crevices as tonsillar crypts and periodontal spaces encourage growth. They are also found in the nasopharynx and nose where such conditions as obstructive lesions and deviated nasal septa favor the growth of fungi and related organisms. Actinomyces and nocardia are now universally accepted as bacteria, but are traditionally discussed with fungi because of the close resemblance between the symptomatology and course of the diseases they cause. A discussion of the oral and pharyngeal lesions most commonly due to fungal infections can be found earlier in this document. (See part II. paragraph B.4.b. above—Sore mouth.)

The diagnosis of mycosis depends upon the availability of a well-equipped laboratory and the use of modern immunologic and staining procedures. Contrary to widespread belief, biopsies and not cultures are the most rapid and commonly successful tools for diagnosis of fungal disease. Biopsy material should be divided into two specimens, one for cultural studies and one for staining. The selection of proper media by the laboratory is necessary since some organisms require special cultural conditions (Ref. 6).

Candidiasis, the fungal disease which occurs in the mouth most commonly, is caused by the yeast-like organism *Candida albicans.* It covers a wide range of manifestations. (See part II. paragraph B.4.b. above—Sore Mouth.) Candidiasis is most often found about the oropharynx. The small yeast (2 to 5 um) is ovoid, appears intensely blue with the Gram stain, and can be demonstrated with any of the numerous stains for fungi. Broad hyphae can be seen in association with the yeast cells. Often it is quite obvious that the hyphae are just elongated yeast cells when budding takes place at the point of constriction. The incidence of *Candida albicans* in the mouth and throat varies from country to country and depends on age, hygiene, presence of other diseases, use of broad-spectrum antibiotic therapy, and so forth (Ref. 6).

A mild form of candidiasis is thrush, a white to grayish membranous formation over tonsils or adjacent mucosae, which occurs either in discrete or confluent specks and which can often be removed with a swab. Smears of such membranes rule out diseases such as diphtheria, the ulcerations of infectious mononucleosis, or acute leukemia. Thrush is seen most often at the extremes of age, in the (often premature) newborn who acquire the disease in the maternal birth canal, and in the geriatric patient, dying of old age or from tumors. Thrush, therefore, is often a warning signal of some profound abnormality existing in the body and does not itself require energetic therapeutic measures (Ref. 6).

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6. *Evaluation of antimicrobial activity.* One of the requests made of the Panel was to recommend testing procedures whereby a Category III product could be reclassified to Category I. The Panel has made such recommendations and suggestions concerning testing for antimicrobial ingredients for oral health care products. (See part IV. paragraph C. below—Data Required for Evaluation.) The Panel has suggested a general in vitro test that may be used as a guide, but which may be modified to suit individual protocols for testing a specific ingredient for specific purposes.

It is the concensus of the Panel that it is not possible to suggest an in vivo method of a general type that would encompass all criteria necessary to evaluate the effectiveness of all antimicrobial agents claimed to be effective in relieving symptoms of sore throat and sore mouth due to antimicrobial activity. The Panel had considered an in vivo method based on plaque reduction on the teeth and periodontal tissues as a criterion for antimicrobial activity in the oral cavity, but discarded it because it became obvious that it was inexact and had no rational basis since dental plaque is not a disease per se (Ref. 1 through 4). Moreover, the Panel was not charged with reviewing products used to treat dental or periodontal diseases. Some clinicians and microbiologists specializing in dental microbiology have used plaque reduction as a criterion of effectiveness of antimicrobial agents in mouthwashes and have submitted data in support of their effectiveness of such products based on this concept. The rationality of plaque reduction as a criterion of effectiveness of antimicrobial agents for use in the mouth and throat is highly debatable, and evidence of the validity of the method is scant. Plaque reduction, therefore, is not accepted by this Panel as a criterion for determining effectiveness of antimicrobial agents for oral health care products intended to treat sore mouth or sore throat.

Dental plaque has been described as a soft and tenacious material found on surfaces of teeth readily removed by mechanical means such as brushing or flossing, but not readily removed by rinsing with water and other solutions (Ref. 5). The composition of plaque is multivaried, consisting of proteins, carbohydrates, clumps of microorganisms, and other organic and inorganic materials. The amount, as well as the microbial and biochemical composition of plaque, varies with the site of formation, the duration of accumulation, the composition of the diet, and perhaps other undetermined factors (Ref. 6). Both dental caries and periodontal disease are attributed to plaque. The Panel, however, was not charged to consider dental plaque and periodontal diseases. The Panel has never stated that plaque is not involved in causing dental caries and periodontal diseases.

It is noteworthy that the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, in its report which was published as a proposed regulation in the **Federal Register** of November 2, 1979 [44 FR 63274], states:

To supplement mechanical removal of offending agents, a number of chemical agents claiming usefulness for prevention of plaque, calculus, or gingivitis are presently under investigation. The potential value and safety of these agents, which include quaternary ammonium compounds, enzymes, organic fluorides, and various antibiotics, have not been conclusively ascertained. The specific antimicrobial compounds for which some success is claimed in clinical studies include several agents. Among them are cetylpyridium chloride and combinations of cetylpyridium chloride and domiphen bromide which achieved a 30- to 40-percent reduction in dental plaque (Refs. 7 and 8). Other potentially effective agents include thymol and eucalyptol (Ref. 9), alexidine (Ref. 10), peroxides (Ref. 11), chlorhexidine (Ref. 12), and an investigational compound CC10232 (Ref. 7). A major concern in the use of these agents is their tendency to disrupt the normal microbial ecologic balance of the host (Ref. 13).

After considering these ingredients and the theories and rationale proposed for the effectiveness of drugs used for prevention and control of plaque and gingivitis, the [Dental] Panel has concluded that such approaches are at present so controversial that there can be no general recognition of the effectiveness of these agents for these indications at this time.

The [Dental] Panel, therefore, recommends that all claims stating or implying prevention, control, or treatment of plaque or gingivitis be placed in Category II and further recommends that antiplaque and antigingivitis agents be investigated and approved through the NDA process.

Additionally, the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products stated at 44 FR 63283 that:

The [Dental] Panel concludes that drug products which have antiplaque, plaque control, or gingivitis claims are not currently appropriate for the OTC market because there is no general recognition of any such drug products as safe and effective for these indications at this time. Accordingly, the Panel recommends that such drug products and claims should be evaluated by FDA through the NDA procedure.

The rationality of plaque reduction, as a criterion of effectiveness for antimicrobial agents that are used in the mouth and throat, is highly debatable and evidence of the validity of the method is scant. There was considerable discussion of this issue in the deliberations of the Panel and in making its final determination the Panel relied upon the opinions of consultants and statisticians who are experts in this field of endeavor, in addition to relying upon the expertise of the Panel. At the January 4, 1979 meeting of the Advisory Review Panel on OTC Oral Cavity Drug Products, Dr. S. S. Socransky, Dr. W. H. Bowen, and Dr. F. B. Engley were invited as consultants to present their views on plaque reduction.

In his presentation, Dr. Socransky stated:

What does the particular [antimicrobial] agent do? What is it active against? If you are cutting down microorganisms in the oral cavity, which I gather is the claim of this particular agent, then precisely what is the effect of cutting down these microorganisms in the oral cavity? Does it have some effect on microbial infection, bites, and things like that, or does it have an effect on dental caries, periodontal disease, or anything else? Or is it merely an effect on bacterial infestation just accumulations of organisms in the mouth?

I do not think from the evidence that we have seen that you can go beyond making the claim at this moment that this is cutting down the numbers of organisms in the mouth temporarily. It is not clear that this is cutting down infections of the oral cavity, such as those induced by bites or something of that type, nor is it clear to me, at any rate, that it has an effect on caries, or periodontal diseases of any type in any striking fashion.

When one cuts down the bacterial plaque, or any bacterial accumulations on tooth surfaces, I am not sure which organisms are influenced by anything that I have seen so far, and it could be possible that one is cutting down on harmful microorganisms, which is certainly reasonable.

It is equally possible that somebody is cutting down on organisms that are potentially beneficial.

So to clarify this role, I think that despite some of the concerns with some of the statistical handling of the information there is a cutdown in bacterial plaque to a degree. The amount that is reduced varies from very little to a great deal, depending on the study one reads.

The significance of this in terms of beneficial effect, which is apparently what the public is after, is unclear to me.

What has been used has been an area measurement, primarily, in the index—a weight measurement in terms of wet weight. There have been few, if any, that I have read of, actual measurements of numbers of microorganisms.

Dr. Bowen continued the presentation by stating:

The question that [Dr. Socransky] has also raised is that even if we accept that there is an antimicrobial effect which results in the production and formation of plaque by a certain percentage, I am unclear what this means to a patient or subject who uses.

Plaque is not a disease. It is probably a potential disease-producing entity. Its presence does not invariably result in disease; and, while there may be reasons for simply removing dental plaque, certainly I would think that the general public believes that if they had a small percentage in reduction of plaque, they might, in fact, have a reduction in disease. That is not necessarily so.

Dr. Engley stated that reduction of plaque is an unclear term:

When you say reduction, you are talking about size and weight, but you are not talking about the numbers of organisms in the plaque. Sometimes you can reduce the glucan or the capsular material or the envelope material and come out with the same number of organisms but lower volume and lower weight.

Statistical data relevant to antimicrobial activity were submitted to the Panel and subsequently reviewed by a consultant statistician at the request of the Panel. The following is a summary of his comments:

Data have been presented which indicate effectiveness of domiphen bromide, the combination of CPC [cetylpyridinium chloride] and domiphen bromide, and the combination of menthol, thymol, eucalyptol, and methyl salicylate. The effectiveness relates to plaque reduction as measured by the Quigley-Hein index or the Turesky modification on the Quigley-Hein index. This index measures surface area of plaque. Before an antimicrobial claim is appropriate it must be established that the reduction in the Quigley-Hein index correlates with an antimicrobial action. None of the studies mentioned above attempt to do this. The claim that appears to be appropriate given the above studies is a claim dealing with surface area of plaque within a 7- to 21-day period.

The Panel, therefore, does not regard as valid and has not accepted data on

effectiveness of antimicrobial agents in oral health care products for treating sore throat and sore mouth based upon their ability to inhibit plaque formation.

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7. *Oral malodor.* Oral malodor, also commonly known as "bad breath," "foul breath," or "halitosis," is not new or exclusive to modern times, nor is the plethora of preparations used to overcome it. Through the ages, attempts at elimination or masking of oral malodor have ranged from the chewing of odoriferous substances such as berries, perfuming, administration of enemas, smoking flavored cigarettes, and tongue scraping, to the more recent practice of instituting hygienic measures using various cosmetic preparations, such as odoriferous mouthwashes and gargles, and lozenges. Some of the products employed contain antimicrobial and other active ingredients for which therapeutic claims are made in addition to cosmetic claims.

The universal prevalence of oral malodor indicates that to have some degree of malodor is a normal human trait and is not evidence of the existence of any pathologic state. The assumption that oral malodor is associated with certain diseases states is scientifically incorrect. The presence of oral malodor is not indicative of the existence of systemic or oral disease and of the need for unsupervised self-treatment with medicated products. Ketone-like breath of diabetes, which is sweet and pleasant, is not a true oral malodor. In much of the older medical literature, associations between oral malodor and certain systemic diseases generally have been established in hospital environments. Since such an environment does not necessarily assign much importance to oral hygienic measures, it is not surprising that many hospitalized patients may manifest foul breath irrespective of the disease for which they are confined.

Since very few, if any, individuals can self-determine whether they have oral malodor (Ref. 1), the fear that failure to promptly institute medicated mouthwash usage may delay the treatment of a serious disease entity is unfounded. Unless a social contact informs an individual that he or she has malodor, the individual may be unaware of its presence. The presence of malodor ordinarily is not indicative of the existence of a pathologic state and results in no physical harm to a subject.

The Panel concludes that claims in the labeling of many oral health care products intended to overcome mouth odors are therapeutic claims and that most mouth odors are not associated with symptoms of pathologic processes requiring the need for medicated oral health care products. It is obvious that there may be differing opinions on this point between a product's sponsor and the Panel. It is the consensus of the Panel, therefore, that a detailed discussion of oral malodor should be a part of this document. The reason for this is so that the facts and reasoning upon which the Panel's recommendations concerning the use of products for suppression of malodor are based will be understood and recorded.

a. *Factors causing oral odors.* Oral odors can be classified according to their source. They may arise from systemic or local (i.e., nonsystemic) conditions or a combination of both. Both the systemic and local conditions can be due to internal (intrinsic) or external (extrinsic) causes. Examples of intrinsic systemic causes are the ketonic breath of diabetes mellitus, the urine-like malodor of uremia, and suppurative processes of structures of the upper and lower air passages and lungs. Examples of causes of extrinsic systemic malodors include ingestion of onion, garlic, wines and other alcoholic beverages, volatile drugs, and other odoriferous substances. The term "oral malodor" is nonspecific and ordinarily implies that the mouth odor is unpleasant and offensive, irrespective of etiology. Not all mouth odors are necessarily unpleasant and a distinction should be made between those that are offensive and can rightfully be classed as malodors and those that are not.

The frequency with which mouth odors due to systemic diseases appear in the population at large is dependent on the frequency of occurrence of the disease states that produce them. The frequency of these odors could perhaps be estimated from epidemiological data. Diabetes is one of the more common systemic diseases which can taint the breath with a sweet odor, since it is due to the exhalation of ketones. The odor is not necessarily unpleasant and offensive. Other systemic disease states, such as uremia, which is accompanied by a urine-like oral breath odor, and suppurative broncho-pulmonary diseases, are relatively less common. A sweet-smelling breath, or a urine-like breath, is, therefore, not a typical oral malodor. Odor resulting from suppurative pulmonary diseases can be disagreeable and offensive and classed as a malodor.

It should be noted that persons who have mouth odor due to systemic diseases are generally aware of their disease state. Also, the appearance of mouth odor is not the first symptom of that disease state but generally ensues after the disease is established or appears simultaneously with the major disease symptoms. To the Panel's knowledge there is no plethora of reports in the medical and dental literature of any significant number of cases in which mouth odor was an early diagnostic sign that established the presence of a systemic disease entity.

The concept that stomach odors taint the breath is false. The esophagus is a collapsed tube that communicates with the oral cavity only during swallowing, belching, or regurgitation (Refs. 2 through 7). Normal lung air does not contribute to mouth odors except in smokers or in those who have consumed alcoholic beverages or ingested

odoriferous foods such as garlic or volatile drugs such as paraldehyde that yield volatile byproducts which are excreted by the lung (Ref. 8). The contribution to oral odors by systemic conditions is minimal. A review of the literature indicates that more than 90 percent of all oral malodors are due to local oral conditions in the mouths of healthy persons (Refs. 3, 4, and 9). The remaining 10 percent of cases are due to extraoral causes of nonpathologic origin. Of these, most of the odors are due to volatile aromatic compounds circulating in the blood that are excreted into the lung air (Refs. 9 and 10).

It is estimated that upon arising in the morning, at least 9 out of 10 persons have oral malodor. Reilly (Ref. 5) has written, "Following sleep, nearly everyone has an unpleasant breath. The reduced activity of the tongue and the cheeks, together with the reduction in the flow of saliva, allow the bacterial flora of the mouth to be more active, resulting in an unpleasant breath."

In the past, substances causing oral malodors have been incorrectly assumed to consist of amines, fatty acids, and indoles (Ref. 11). By use of the gas chromatograph, a highly sensitive instrument capable of detecting various volatile substances to parts-per-billion ranges, it has been established that deadspace gases of the malodorous mouth consist mainly of minute traces of highly odoriferous volatile sulfur compounds. The most common and abundant of these are hydrogen sulfide, and methyl mercaptan. Traces of dimethylsulfides are also found (Refs. 12 through 15). The presence of volatile sulfur compounds detected by using the gas chromatograph has been correlated with the presence of nose-perceptible oral malodorous substances in test subjects. For example, if the subject had nose-perceptible oral malodor, the chromatograph showed the presence of volatile sulfur compounds. Absence of nose-perceptible malodor was accompanied by the absence of volatile sulfur compounds (Ref. 16).

Studies performed on the supernatant fluid of saliva, salivary sediment, and plaque have shown that microorganisms, in the presence of appropriate substrates, produce volatile sulfur compounds (Ref. 14). Sterile saliva has been shown not to produce putrefaction (Ref. 17) and malodor. The amines and indoles present have been shown to be nonvolatile, nonodorous substances. Volatility of a compound is a sine qua non requirement for its detection as a mouth odor causative agent (Ref. 11). The Panel, however, finds no data that support the concept that traces of volatile sulfur compounds formed by the resident oral flora in mouths of healthy persons are deleterious and injurious to the health of the individual. Likewise, it finds no data that justify a therapeutic use of antimicrobial agents for suppression of the formation of volatile sulfur compounds and other substances causing malodor.

b. *Role of microorganisms in the production of mouth odors.* The body has no mechanism for producing volatile sulfur compounds. Mammalian cells apparently do not possess the metabolic machinery (enzymes) to elaborate volatile sulfur compounds. Consequently, the production of volatile substances responsible for malodors in humans is dependent largely upon microbial metabolic processes. Reports of investigations have shown that microorganisms play an essential role in the production of oral malodor (Refs. 17 and 18). The incubation of sterile saliva produces no malodor. Yet, when whole nonsteril saliva is incubated, a shift of the bacterial population from gram-positive to gram-negative occurs with attendant malodor production (Ref. 18). However, these microorganisms are part of the indigenous oral flora and are known to be nonpathogenic under ordinary circumstances.

An important metabolic characteristic of certain gram-negative microorganisms found in the mouth is their ability to produce volatile sulfur compounds. One species of microorganism with pronounced metabolic capabilities to produce volatile sulfur compounds is fusobacterium, although other species such as peptostreptococcus may also be involved. All of these microorganisms are anaerobic and thus exist in areas of the mouth where the oxidation-reduction potential favors their survival. The principle areas where this occurs are the gingival crevices, interdental spaces, tonsilar folds, and the interpapillary crypts of the tongue (Ref. 17). The tongue has long been implicated as a reservoir of malodor-producing bacterial flora (Refs. 1 and 19).

It has been shown that glucose does not favor the production of malodor in incubated saliva (Refs. 17 and 20). Glucose, like other carbohydrates, favors fermentative metabolic pathways which produce nonodoriferous organic acid end-products. Amino acids, especially those containing sulfur, and short-chain peptides composed of sulfur-containing amino acids are the substrates leading to maximal putrefactive processes by the gram-negative microorganisms.

There are many reports of studies, both controlled and uncontrolled, on the etiology of local oral malodor. Most of these point to gram-negative organisms as the causative factors. In a 1949 study conducted by Morris and Read (Ref. 21), the use of a dentifrice, mechanical tongue prophylaxis, and an antibacterial mouthwash were found to be effective in reducing oral malodor. Water rinsing, however, was ineffective. However, this finding is not in agreement with findings found in other studies that indicate that water rinsing can be effective (Refs. 22 and 23). The antibacterial mouthwash used in the study of Morris and Read produced longer-lasting breath protection than tongue prophylaxis or brushing with a dentifrice. It was also noted in this study that the masking effect produced by flavoring agents contained in the mouthwash or dentifrice did not last, or mask, for more than 20 minutes, even though the protection against malodor continued for 3 hours following mouthwashing and 2 hours following toothbrushing.

c. *Elimination of mouth odors.* The control of local oral malodor depends upon its cause and may be accomplished by one or more of the following measures: purging, masking, neutralization, or bactrial inhibition. These measures are effective in controlling malodors of local origin and are generally not of value in controlling mouth odors of systemic origin, i.e. "onion" or "garlic breath."

(1) *Purging.* Malodors can be purged temporarily from the mouth by rinsing with water, brushing the teeth, using dental floss, or by eating a meal. The malodors are eliminated completely in some cases, reduced for a short time period in others, and in some cases not affected at all. The purging is due to a physical rinse-out or dislodgement of accumulated volatile sulfur compounds, food debris, or stagnant saliva, or to a reduction in the numbers of bacteria in the mouth. Dilution effect is common to most liquid preparations or products used to attempt to eliminate malodor.

(2) *Masking.* Local oral malodors may be masked by introducing a new, more pleasant odor into the mouth. This masking effect usually lasts only as long as the masking agent remains in the mouth at perceivable levels, generally from 15 ot 20 minutes in duration (Ref. 21).

(3) *Chemical neutralization.* Some agents react chemically with malodorous volatile compounds and form insoluble nonodorous products, usually nonvolatile sulfides. Chemical

neutralization is dependent upon how long the neutralizing agent lingers in the mouth, the quantity of malodorous material to be neutralized, and how quickly the malodor-causing chemicals are being remade. Chemical neutralization provides a longer-term local antimalodor effect than purging or masking. It may be prolonged further if accomplished by bacterial inhibition.

(4) *Bacterial inhibition.* Because certain strains of bacteria may cause oral malodor, inhibiting their metabolism or enzymatic activity or killing them may result in a temporary deodorizing effect. A longer term of action is apparent when the malodor is due to bacterial action and an antimicrobial agent is used. The effect persists even after the effects of purging and masking have been dissipated if they have also been used simultaneously. (Ref. 21). However, after meals and overnight sleeping the bacteria, having been mostly inhibited, will usually return to their original numbers and metabolic activities.

Because oral malodor is caused mainly by gram-negative anaerobes, only antimicrobial ingredients known to be effective against the causative organisms are effective in suppressing the malodor. However, agents that may be effective in one person may not be effective in another due to variations in the susceptibility of the microorganisms to the agent. Theoretically agents which preferentially inhibit or kill gram-negative anaerobes should be more effective in controlling oral malodor. Whether or not this is always the case is not known. There is ample evidence that the microbicidal effects of the antimicrobial agent are partial and incomplete and all the microorganisms are not killed by one application of the antimicrobial agent. The malodor due to bacterial action returns after the antimicrobial agent loses its effect and the microorganisms again begin to proliferate. In order to obtain a sustained effect, the user would have to reapply the ingredient repeatedly over 3- or 4-hour periods as long as the malodor persists (Ref. 21). The Panel does not consider this a judicious practice and does not recommend the unsupervised use of medicated oral health care products, particularly those containing antimicrobial agents, when there are no symptoms and when there is no evidence of the presence of a pathologic process. The Panel emphasizes that mouth odors without the presence of symptoms are not indicative of the existence of pathologic states and the use of antimicrobial and other therapeutic agents for their elimination is unwarranted.

d. "*Malodor testing.*" Various techniques have been divised for malodor testing. Although there may be variations among the techniques depending upon the subject population, investigators, location, purpose of the study, etc., most "malodor tests" follow a similar general protocol. Mouthwash formulations intended to control local oral malodor are tested in populations composed of normal subjects. Since most subjects exhibit oral malodor early in the morning and before the institution of hygienic measures, testing is done at this time. The subjects rinse with a mouthwash or a water rinse as a control. Expert judges, selected for their ability and consistency in scoring the intensity of oral malodor according to a pre-determined scale, sniff the breath of the test subjects before rinsing and at selected time intervals thereafter. The results are then analyzed and compared with effects of the water control rinse. Such testing is useful for demonstrating the relative effectiveness of a mouthwash compared to a water control rinse, the time period during which the mouthwash protects the oral cavity against oral malodor, and the relative pleasantness or unpleasantness of the subjects' breath before and after rinsing. Obviously such testing is in no way related to testing of the effectiveness and safety of a product for treatment of symptoms of pathologic processes causing sore mouth or sore throat. The Panel is unaware of any valid data concerning the relationship between sore mouth, sore throat, or both, and the presence or suppression of oral malodor. The "malodor test" is included in this discussion merely to indicate that such a test is in use primarily for evaluation of cosmetics and that the Panel considers it of little or of no value in the evaluation of antimicrobial or other therapeutic activity of oral health care products used to treat sore mouth, sore throat, or both.

The concept that some microorganisms present in the oral flora may play a beneficial role and help maintain a healthy state of the mouth has not, to the Panel's knowledge, been propounded, but certainly merits mention and consideration in this document. It is not out of the realm of possibility that certain nonpathogenic microorganisms play a contributory role in the self-cleansing process with the oral cavity is naturally endowed. Should this be the case the elimination of these microorganisms with medicated products would indeed be irrational.

In summary then, a review of the literature and the Panel's experience in laboratory and clinical research on oral malodor supports a local, oral origin for most oral malodors. In the majority of cases, the odors are due to traces of highly odoriferous, volatile sulfur compounds. These compounds are elaborated by the resident bacterial flora in the mouths of health persons. The microorganisms that have the metabolic pathways to elaborate volatile sulfur compounds in the oral cavity are mostly of the gram-negative nonpathogenic anaerobic variety. No relationship between the presence of these gram-negative organisms in the mouth and throat and diseases causing sore throat and sore mouth or other local or systemic diseases has been established. Normal lung air does not contribute to true oral malodor of local origin nor does the gas in the stomach. The stomach, for anatomic and physiologic reasons, is closed to the oral environment, except during swallowing and belching. The Panel considers products intended for elimination or suppression of mouth odor of local origin in healthy persons with healthy mouths to be cosmetics unless they contain antimicrobial or other drug ingredients. The Panel is mindful of the fact that the Federal Food, Drug, and Cosmetic Act indicates that articles that are cosmetics, but which are also intended to treat or prevent disease or to affect the structures of the human body, are drugs as well as cosmetic and must comply with both the drug and cosmetic provisions of the law and regulations (Ref. 24). Claims for the suppression of mouth odors using medicated oral health care products that are linked to a drug action, i.e. antimicrobial action, are drug claims. The Panel considers such drug claims to be Category II drug claims.

It is the consensus of the Panel that the use of OTC mouthwashes to control oral malodor is simply determined by an individual's need for social acceptance or personal oral gratification and is not mandated by the need to relieve symptoms of a pathologic state.

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8. *Quaternary nitrogenous cationic antimicrobial agents.* The quaternary nitrogenous cationic agents manifesting antimicrobial activity evaluated by this Panel fall into several principal chemical groups.

a. *The quaternary ammonium compounds.* In these, the four hydrogen atoms of the positively charged ammonium ion are replaced by various organic radicals. The trivalent nitrogen atom of ammonia is converted to a pentavalent state capable of forming four covalent bonds and one positively charged ionic bond; the process is referred to as quaternization. These derivatives form bases which, when dissolved in water, yield a positively charged quaternary-substituted ion and a hydroxyl ion. These bases form salts with various acids, the most common of which in OTC products are hydrochloric and hydrobromic acid. When dissolved in water, hydrochloride or hydrobromide salts derived from substituted ammonia yield a positively charged ammonium ion and a negatively charged chloride or bromide ion. The cation manifests the antimicrobial properties. Benzethonium chloride is an example of such a compound.

b. *The pyridinium compounds.* In the pyridinium compounds the trivalent nitrogen atom in pyridine is converted to a pentavalent state with four covalent bonds and a positive ionic bond. When dissolved in water, a base forms which ionizes into a pyridinium ion and an hydroxyl ion. As is the case with substituted ammonium derivatives, the bases form salts with acids, usually hydrochloric or hydrobromic acids, and these are referred to as "pyridinium salts." The salts ionize into a pyridinium ion, which is positively charged, and a chloride or bromide negatively charged anion. Cetylpyridinium chloride is an example of such a compound. The hydrogen atom on the nitrogen atom of the positively charged pyridinium ion is substituted by an aliphatic (straight chain) or aromatic (benzene ring) radical. The cation manifests antimicrobial activity similar to the quaternary ammonium ion.

c.. *The quinolinium compounds.* In these, the trivalent nitrogen atom of quinoline is converted to a pentavalent state to form quinolinium derivatives. Substitutions with aromatic and aliphatic radicals may be made on the nitrogen atom as is the case with the ammonium and pyridinium derivatives. A methyl group on the 2 position of the quinoline nucleus yields a series of derviatives, called quinaldinium derivatives, when the nitrogen atom is quaternized. Quinaldinium is a base that dissolves in water to yield the quinaldinium ion, which is positively charged, and a hydroxyl ion. the quinaldinium bases form salts with acids which ionize into the quinaldinium ion and an anion. Dequalinium chloride is an example of an antimicrobial agent evaluated by the Panel falling into this category.

These three types of compounds all have one characteristic in common, i.e., they have one or more "quaternary" nitrogen atoms in their structures. For this reason, they are frequently called "quats." Many of them reduce surface tension and manifest various degrees of antimicrobial activity. The chemical behavior and biologic activities of the ammonium, pyridinium, and quinaldinium compounds are similar in most respects, so much so that some clinicians fail to make a distinction between the various types of compounds and refer to all of them as "quaternary ammonium compounds." All form salts with hydrochloric or hydrobromic acid, as does ammonia, and all salts are ionized when dissolved in water into "quaternary" nitrogenous positively charged cations and anions. The ability to substitute various organic radicals on the nitrogen atoms allows for the synthesis of a large group of variants. A large number of these variants has been prepared and tested for antimicrobial activity. The number that is clincially useful, which has been prepared from the large number of variants, is small. This Panel has evaluated only benzalkonium chloride, benzethonium chloride, cetyl benzalkonium chloride, domiphen bromide, cetalkonium chloride, and dequalinium chloride.

The nitrogenous cationic agents are characterized by a structural balance between one or more water-repelling (hydrophobic) groups and one or more water-attracting (hydrophilic) groups. It has been shown in the case of the substituted ammonium derivatives that in order to have pronounced antimicrobial activity one substituent must be a long alkyl (straight chain) radical of 12–16 carbon atoms, one substituent must be one short aromatic substituted alkyl group (a benzene ring on a short straight chain of several carbon atoms), and the remaining substituents must be two alkyl groups (straight chain of one or more carbon atoms such as methyl or ethyl groups). The long carbon chain may be modified by adding aromatic groups or hydrogen atoms. The long carbon chain confers lipophilic-hydrophobic properties and acts in a manner similar to a fatty acid. It is hydrophobic and oriented into a lipid phase of a water-lipid interphase.

The nitrogen atom is postiviely charged, hydrophilic, oriented into the water phase of a lipid-water interphase, and it acts like an ammonium ion. The pyridinium and quinolinium derivatives, likewise, have hydrophobic-lipophilic groups by virtue of their aromatic structures. They also have a long carbon atom chain substituted for a hydrogen atom on the nitrogen atom and a hydrophilic group that results from the ionic activity of the quationized nitrogen atom. Thus, all three types must have one fatty-acid type of radical as a substituent on the nitrogen atom.

The quaternary nitrogen cationic derivatives are capable of altering the physiochemical relationships of liquid-liquid or gas-liquid interphases. Some cause a marked reduction of surface tension. In some cases the surface tension is reduced to as low as 37 dynes per square centimeter (dyn/cm^2) at 25° C. Substances that act in this manner are also referred to as "detergents" or "surface-active" compounds.

These compounds have characteristics that are common to the entire class of quaternary nitrogenous derivatives. The exact mechanism by which quaternary nitrogenous compounds exert their antimicrobial activity is not known. A number of mechanisms of action have been suggested: (1) They may exert their antimicrobial activity by disrupting the microbial cell membrane and allowing the microbial cytoplasm, enzymes, or other substances to diffuse out of the cell; (2) they may act by dissolving the protective lipid films in the microbial cell membranes, since they are lipophilic; (3) they may act by denaturing certain proteins with which they combine on the surface of a cell; (4) they may inactivate microbial intracellular enzymes; and (5) they may interfere with the activity of enzymes involved in the transport of chemicals across cell membranes. Any one of the above or a combination of two or more mechanisms may be responsible for the antimicrobial activity. The cells of the host can also be affected by these substances, as is the case with other antimicrobial agents, but available data indicate they do so to a lesser degree in most cases. There is no well-defined correlation between the surface-tension-reducing activity of these compounds and their antimicrobial activity. Many substances that cause a pronounced decrease in surface tension possess no significant antimicrobial activity. The quaternary nitrogenous agents manifest a high degree of absorbability. They are readily absorbed by activated charcoal, silica gel, and to a lesser degree, by agar and other absorbents. A similar degree of absorbability is believed to occur on the cell surface, altering metabolic activity.

The antimicrobial activity of quaternary nitrogenous agents is due to the aforementioned physiochemical attributes. On the other hand, these same attributes also account for the inactivation of quaternary nitrogenous agents and cause them to be ineffective. They are readily absorbed or acted upon by other agents present in an infected area, wound, or culture medium. They are inactivated by proteins, pus, debrided cells, blood, rubber, cotton, wool, and even glass, plastic, and other substances capable of absorbing them. Soaps, in particular, since they are anionic detergents, deactivate quaternary nitrogenous compounds when only small traces are present. The anionic antimicrobial agents cannot be formulated with the cationic agents since each type deactivates the other. In addition, their activity is dependent upon environmental temperature and pH. They are ineffective at near-neutral pH but their activity is increased as pH increases. Many manifest their greatest activity at a pH 8 or above. This is a greater pH than that of the tissues. The pH of tissue fluids in infected areas is usually acidic and ranges from 5 to 7. The antimicrobial activity increases as environmental temperature increases.

The majority of quaternary nitrogenous compounds are bacteriostatic rather than bactericidal. They are more active against gram-positive bacteria than gram-negative organisms. This particular attribute of variation in antimicrobial activity casts doubt on their value and effectiveness as antimicrobial agents in the mouth and throat where gram-positive bacteria abound. The "quats" are nonspecifically absorbed to the cell membrane and the unprotected cell menbrane is more sensitive to their action than the protected cell membrane, which probably accounts for differences in sensitivity. The differences in sensitivity between gram-positive and gram-negative organisms is probably due to greater absorbability of the "quats" to the gram-positive organism and the ability of the agent to pass into and beneath the cell wall of the gram-positive microorganism.

Strains of *Pseudomonas aeruginosa* and *Mycobacterium tuberculosis* are particularly resistant to these antimicrobial agents. Most bacterial spores remain viable even after prolonged contact with solutions of quaternary nitrogenous compounds. Their usefulness in combating fungal infections has not been established. The fungicidal activity of the "quats" is less than their bactericidal activity. Most of the quaternary nitrogenous derivatives of this type are not virucidal. When they are used as skin disinfectants, some form a film on the skin under which bacteria remain viable.

Cationic agents appear to possess a low order of systemic toxicity in animals and humans. Poisoning from oral ingestion has been reported. The toxicity reported appears to be related to the surfactant nature of the "quats." Rabbits can tolerate 1.2 cubic centimeter (cm^3) of a 1-percent benzalkonium chloride solution subcutaneously or intraperitoneally for days without signs of adverse effects. Chronic toxicity studies or various compounds in animals reveal weight loss, loss of appetite, etc. Prolonged contact with the skin and mucous membranes produces irritation. In rabbits, the highest concentration of benzalkonium chloride that could remain in contact with the skin for 24 hours without signs of irritations was 0.1 percent. The concentrations in which the "quats" are used are low so that irritation usually is not a serious problem. As is the case with other agents, the "quats" can bind with protein and act as haptenic antigens and produce sensitization. However, this has not been a common occurrence and the incidence of sensitivity reactions has been low.

The safety of quaternary nitrogen compounds for use in the oral cavity is difficult to evaluate because the available data concerning application on the mucous membranes of the mouth and throat is scant. Data from controlled studies on the permeability through the membranes, the degree of systemic absorption, degree of irritancy, and sensitizing potential after application to the oral mucous membranes are not available, and a definitive judgement cannot be made at this time. Data on absorption through the mucous membranes, blood levels, and biotransformation likewise are not available. Toxicity studies have generally been limited to animal species; little data are available on the effects of chronic use on people. Controlled clinical toxicity studies are, in most cases, lacking. There is a need for additional data on irritation and sensitization from chronic exposure on the oral and pharyngeal mucous membranes in order to properly evaluate these ingredients, particularly with regard to safety.

The quaternary nitrogenous compounds are ionized. Ionized substances are not readily absorbed

through the lipoid barriers of the cell nor do they penetrate the blood-brain barrier; therefore, one would expect these compounds not to be absorbed in any great quantity. On the other hand, to what degree the lipophilic pole present on the molecule enhances their lipid solubility and adsorbability is not known. Were they not soluble, they would not penetrate the cell of the microorganisms or cells of the host. Quaternary nitrogenous compounds, if absorbed, could act as automatic ganglionic blocking agents. They may also manifest a curariform action. It has been suggested that a possible use for certain of these compounds would be as ganglionic blocking agents. Another possible use suggested is as anticholinergic agents. The quaternary nitrogenous compounds manifest no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

Effective cationic agents have the following advantages over other antimicrobial agents for use as antiseptics: (1) They are used in relatively low concentrations and are nonirritating to tissues in such concentrations: (2) they have a rapid onset of action; (3) they "wet" and penetrate tissue surfaces quickly and readily; and (4) they possess detergent emulsifying and keratolytic actions.

This disadvantages are (1) they are irritating in high concentrations; (2) they vary in the spectrum of antimicrobial activity; (3) they are inactivated by anionic agents, proteins, various adsorbents, etc., (4) data on toxcity, both local and systemic, and acute and chronic, in humans are scant; (5) the in vitro data do not correlate with and provide an index of in vivo effectiveness; (6) they are of limited use as virucidal and fungicidal agents; and (7) little is known of their actions on protozoan type organisms.

9. *Volatile oils.* A group of oils, obtained from botanical sources often referred to as ethereal of essential oils, contains a miscellaneous number of ingredients that have been used for therapeutic purposes. They have been used empirically and are considered to be effective antimicrobial agents in spite of inadequate data to support this contention. The volatile oils are mixtures of various types of chemicals whose composition is inconsistent and varies with their source. For this reason, a general statement is made here concerning volatile oils.

The volatile oils are obtained from various plants by distillation or by pressure. They are found in different types of fruits or flowering parts of plants, all of which are widely distributed throughout the plant kingdom. They are not obtained from one single source. Most are strongly odorous and, therefore, are used as perfumery to conceal disagreeable odors and tastes in medicine. They must be distinguished from the fatty or fixed oils which are nonvolatile.

Most volatile oils are mixtures that have terpenes as their commonest constituents. Some oils contain only terpenes, depending upon the source. Terpenes are hydrocarbons of the aromatic series that possess the general formula $(C_5H_8)_n$. Some terpenes are combinations of dihydrobenzene with propyl and methyl groups and at least a dozen terpenes of this type are known. Another group of hydrocarbons found in these oils is known as the sesquiterpenes, while a few are diterpenes. Some volatile oils consist of these hydrocarbons exclusively, but most of them contain some oxidized aromatic substances such as phenols, ketones, aldehydes, acids, and components of these substances. For instance, some contain camphor, thujone (from oil of absinthe), sabinol oil, safro, thymol, eucalyptol, myristicine, and vanillin.

Many of these oxidized products crystallize out when the volatile oils are cooled or are left standing. The resulting solids are known as stearoptens, while the remaining fluid is called eleopten. The constitutents of the oils that contain oxygen in their molecular structures are not as volatile as the pure hydrocarbons. The odor is due mainly to the oxidized substances. A few oils contain nitrogenous bodies, generally in the form of cyanides. On the other hand, the majority of volatile oils obtained from the curuciserae species contain sulfur bodies which give them a pungent, disagreeable odor quite different from that of the other oils.

The volatile oils are generally clear, colorless liquids, although some are green or blue in color. After long standing they may become discolored, decompose, and become acidic in reaction resulting from the formation of resins. Some are light, sparking fluids. Many of the plants from which the volatile oils are obtained possess other active constitutents, such as bitters. Many of the preparations used in therapeutics are formed not from the distilled oils but from crude parts of the plants. In many cases, the oil is not the only active principle present in the plant.

Strong solutions of volatile oils have a hot, burning taste and if kept in the mouth cause redness and irritation of the mucous membranes, although some of them induce a sense of coolness at first. At the same time the organs of smell are affected by these oils because most possess characteristic odors. Irritation of the mouth leads to reflex secretion of saliva which is often very profuse. When used in the mouth or elsewhere the antiseptic action of the oils may have a beneficial effect in some conditions.

In the stomach the oils cause the same sensation of warmth. The appetite may often be increased and the feeling of distension after meals is often relieved. Some cause the release of quantities of gas. Substances which produce these in the stomach are known as carminatives, and many explanations of their action have been offered. In the intestines small quantities generally increase movements while larger quantities decrease them. Sometimes the bowel is relaxed due to reflexes arising from interaction of the oils on the stomach. In practice, they often relieve intestinal flatulence and distension and lessen the spasms which cause colic.

Many of the terpenes are oxidized to phenols in the body and then excreted in the urine. For the most part, they combine with glucuronic acid and sulphuric acid. They leave by way of the expired air and impart an odor to the breath. In the course of excretion, some of the oils may cause irritation of the lungs. Some of the oils are employed as expectorants to increase bronchial secretions.

The volatile oils all possess some antimicrobial activity which is believed to be due to their volatility and solubility in liquids. This enables them to penetrate readily into the protoplasm. Many of them appear to be more germicidal than phenol under favorable circumstances. They are generally too insoluble in water to be employed easily for medicinal purposes, and this also limits their usefulness as antimicrobials in the highly aqueous environment of the mouth. When some are applied to the skin they cause redness, itching, and warmth resulting from local dilation of the vessels. This dilation may be due to penetration of the oil into the cutaneous arterioles, veins, or to local reflex effects from the irritation of the terminal sensory nerves. When painted on the mucous membranes, such as those of the eye, nose, or on wounds, the volatile oils cause a similar type of irritation which is characterized by redness, congestion, and smarting. Some are used as counterirritants on the skin. The Panel does not believe that the counterirritant effect is of any therapeutic value on the mucous membranes. It is the consensus of the Panel that individual pure ingredients such as thymol, eucalyptol,

and menthol extracted from the volatile oils are more effective, safer, and are more easily evaluated than these heterogenous mixtures of inconstant composition. The Panel feels that the volatile oils may be used as flavorants or to impart pleasant odors to a product.

10. *Absorption, distribution, and metabolism.* In addition to their local cytotoxic effects, many topically applied antimicrobial agents and disinfectants may manifest systemic toxic effects because they are absorbed from the mucous membranes, circulate in the blood, and affect susceptible target tissues and organs. Absorption readily occurs from the mucous membranes of the mouth, pharynx, and from the stomach, if these agents are swallowed. This has led to a further limitation of the use of certain effective antimicrobial agents. These systemic effects may not necessarily be due to the qualities which render such drugs antimicrobial. The systemic actions may be attributed to other pharmacologic or chemical properties of a drug. Systemic reactions may be avoided by exercising care in selecting a drug and by avoiding its misuse.

The manner in which an antiseptic is absorbed, its rapidity of absorption, distribution in the body, and systemic toxicity vary with each chemical and pharmacologic type and each individual compound. The mercurial derivatives, for example, are nephrotoxic; the chromates are likewise nephrotoxic; the phenols affect the central nervous system, etc. Antimicrobial agents, as is the case with most drugs, are metabolized by the liver or are excreted unchanged by the kidney if they are absorbed. Some are excreted into the intestine, particularly the colon. Some pass into the bile, and others pass into the sweat and into the milk of lactating women. The metabolic fate of each systemically absorbed drug is considered in the individual ingredient statements.

11. *Adverse reactions.* The adverse effects of antimicrobial agents contained in oral health care products merits consideration from two standpoints: (1) From the standpoint of short-term therapy when used to treat pathologic states that cause sore mouth and sore throat and (2) from the standpoint of long-term use for cleansing, elimination of mouth odors and other purposes when no pathologic state or symptoms of a disease exist. Most of the mouthwashes, rinses, and gargles evaluated by the Panel that contain antiseptics are recommended for long-term use on a daily basis or oftener. Some are used by consumers for years at a time. In many cases, there is a paucity of data on the remote adverse effects that may ensue from long-term use of these ingredients. It is the belief of the Panel that such ingredients should not be used until their safety, following chronic long-term use, has been established.

The general aspects of adverse reactions from use of all OTC oral health ingredients evaluated by the Panel have been discussed previously. (See part II. paragraph E. above—Adverse Reactions.) There are, however, certain specific aspects pertaining to antiseptics that have been discussed in a general manner in that section which require further discussion and elaboration.

Topically active antiseptics kill or inhibit the growth of microorganisms but are also cytotoxic and may injure normal cells of the host and cause tissue destruction. They may irritate tissues, be corrosive, and cause ulceration and even sloughing of the mucous membranes and submucosal tissues. These local, irritating reactions may occur during short-term as well as long-term use. Sloughing has resulted from the use of certain phenolic compounds, overuse of peroxides and other oxidizing agents, certain iodophors, and combinations of the volatile oils.

Recently, Bernstein (Ref. 1) has reported oral mucosal white lesions associated with excessive use of a commercial mouthwash. He found that the excessive topical application of a mouthwash containing 25 to 26.9 percent alcohol, thymol, eucalyptol, methyl salicylate, menthol, benzoic acid, and boric acid, at a pH of 4.4, produced asymptomatic diffuse white mucosal lesions in two patients. He concedes that any one or a combination of several ingredients in this mouthwash, as well as the acid pH or tonicity, must be considered as possible factors in the etiology of the white lesions. Alcohol is a likely suspect in view of a previous report by Baer and Archard (Ref. 2). Bernstein indicates in his discussion that several reports concerning the adverse effects of mouthwashes appear in the literature. He quotes two articles, one by Kowitz, Lucatorto, and Cherrick (Ref. 3) and another by Fisher (Ref. 4). In these reports it is noted that the most common adverse effect is a stomatitis due to a primary irritant effect or hypersensitivity. This adverse effect is manifested by erythema, ulceration, or ipithelial sloughing. Essential oils, astringents, and antiseptics are usually implicated in the etiology of these reactions. They occur as isolated cases in persons who have idiosyncrasies or who are sensitive to the preparations. They note that the acute symptomatic responses are not necessarily correlated with abuse of the product. The pathogenesis of this type of reaction appears to be different from the two reported cases in which prolonged contact of a chemical was associated with asymptomatic, nonallergic white lesions (Ref. 1).

Bernstein (Ref. 1) further states that very few articles have been published documenting white lesions associated with mouthwashes or ingredients contained therein. Although sloughing white patches following the use of chlorhexidine mouthwash was reported by Flotra and colleagues (Ref. 5), whom he quotes in this article, a subsequent study failed to reveal increased thickness of the stratum corneum in biopsy specimens taken from human subjects who rinsed with chlorhexidine (Ref. 6). In the cited article, Baer and Archard (Ref. 2) observed the development of white lesions of the gingiva and alveolar mucosa following the chronic and excessive topical application of isopropyl alcohol. Histologic sections revealed coagulative hyperparakeratosis and acanthosis. Discontinuation of the alcohol resulted in remission of the lesion. How many local reactions that never come to the attention of a manufacturer or sponsor of a product or the FDA will never be known because few physicians or dentists take the time or trouble to report the occurrence of such lesions, particularly if they disappear when use of a product is discontinued. The various types of lesions that have occurred and been reported from local effects of these ingredients are discussed in the description of the various ingredients.

Most ingredients in mouthwashes can be absorbed from the mucous membranes of the mouth or throat, or the stomach if swallowed. Ferguson, Geddes, and Wray (Ref. 7) recently reported that short-term therapy with a providone-iodine mouthwash had an adverse effect on 16 healthy individuals after 2 weeks of use. Significant increases occurred in the total serum iodide, protein bound iodine, inorganic iodine, T3 resin uptake, total thyroxine, and free thyroxine index. The possibility of thyroid suppression following long-term use is also mentioned in this article. The systemic effects from short-term therapy, as well as long-term use of antiseptics in oral health care products are mentioned, if known, in each ingredient section outlined below. In many cases, particularly in the case of the more recently introduced

antimicrobial agents, such as the quaternary nitrogenous compounds, there is a paucity of data on chronic systemic toxicity in humans.

Data on the tumorigenic, mutagenic, and teratogenic effects of antiseptics when used in oral health care products on a daily basis or more often for years at a time are sparse. There is some evidence that phenol may act as a cocarcinogen, but it has not been shown to do so conclusively. Phenol still is available for OTC use in mouthwashes, rinses, and sprays and will continue to be until additional data becomes available.

Weaver, Fleming, and Smith (Ref. 8) studied 200 patients with squamous cell cancer of the head and neck and compared them to patients in the general surgery group on use of tobacco, alcoholic beverages, and mouthwash. Analysis disclosed that patients with cancer of the head and neck used significantly greater quantities of tobacco and alcoholic beverages and mouthwash than the control group. However, 11 patients with cancer of the head and neck had abstained from alcoholic beverages and tobacco, but each had used significantly more mouthwash than had patients in the general surgery group. Several brands of mouthwash have an alcoholic content of 14 to 28 percent. Weaver, Fleming, and Smith (Ref. 8) feel the alcohol in the mouthwash may be a causative agent. They also indicate that other possibly irritating substances are contained in mouthwashes. These include cetylpyridinium chloride, thymol, eucalptol, phenol, methyl salicylate, and boric acid. Weaver, Fleming, and Smith (Ref. 8) quote Kowitz, Lucatorto, and Cherrick (Ref. 3) who have reported epithelial peeling, mucosal ulceration, gingivitis, and petechiae in as many as 25 percent of those dental and dental hygiene students who used 20 mL of full-strength mouthwash for 5-second intervals twice daily throughout a 2-week period. These signs of acute inflammation disappeared when use of the mouthwash was discontinued. Weaver, Fleming, and Smith (Ref. 8) feel that chronic irritation from use of mouthwashes may be carcinogenic. All but one of the previously mentioned 11 patients who developed cancer had used mouthwash several times daily for more than 20 years. Most of them used a brand of mouthwash that contained 25 percent alcohol. These data on the case histories presented in their report suggest that a history of the use of a mouthwash should be included for outpatients with premalignant or malignant lesions of the oral cavity, as mouthwash may indeed be carcinogenic for susceptible individuals. To their knowledge, no previous study has included a history of patients using mouthwash in the study of the incidence of cancer of the head and neck. Alcohol, in the absence of tobacco, appears to be a weak carcinogen. If a mouthwash is weakly carcinogenic, a susceptible person using this substance while abstaining from alcoholic beverages and tobacco might be expected to develop a carcinoma at a more advanced stage. Weaver, Fleming, and Smith (Ref. 8) also point out that it is interesting that 9 of 11 patients with cancer from excessive use of mouthwash were women and that all 11 patients had cancer involving the oral cavity. This is consistent with the site and distribution by sex for previously unexplained squamous cell cancer of the head and neck region reported from other sources by other clinicians.

Wlodkowski, Speck, and Rosenkranz (Ref. 9) have indicated that povidone-iodine is capable of specifically altering the deoxyribonucleic acid (DNA) of living cells and inducing mutations in salmonella. Because of the known potential and the ability of a mutagenic substance to induce cancer in animals, this finding raises serious questions concerning safety of iodine as a topical disinfectant. The halogens, including iodine, are capable of reacting with nucleic acids and their constituents and affect DNA. Although all of the aforementioned comments do not establish the fact that these drugs can cause cancer, this aspect of tumorigenesis cannot be ignored and requires further study. The argument that no ill-effects have been reported from long-term use is without merit and means little. Chloroform had been used as a flavorant in OTC oral health are products for years. It was not until recently that its potential for producing carcinoma was verified and its use in OTC products no longer allowed.

Topically applied antimicrobial agents may also activate the T-type lymphocytes in the tissues and cause delayed type of sensitivity. This results in allergic contact dermatitis on the skin if the drug is distributed to the skin by systemic transport. They may also act on the T-lymphocyte system in the mucous membranes and cause stomatitis and other local ulcerations of the mouth, throat, and gums. Antiseptics may also cause allergic reactions of Type I involving IgE such as anaphylaxis, rhinitis, angioedema, etc. (See part II. paragraph E. above—Adverse Reactions.) If absorbed, systemic allergic reactions may occur.

The relationship of plaque formation and production of caries has not been definitely established. Should there be a definite relationship between antimicrobial activity in plaque and development of caries and should an antiseptic be indicated for prophylaxis, it is the feeling of the Panel that preparations that can be applied locally to the teeth, such as pastes or powders, are indicated. The Panel considers the periodic flushing of the entire oral cavity, which is not involved in cariogenic activity, with an antiseptic for prophylactic purposes is a procedure of doubtful rationality and one that should be discouraged.

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B. Categorization of Data

1. *Category I conditions under which antimicrobial active ingredients for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredients

None.

Category I Labeling

a. *Indication.* The Panel did not classify any antimicrobial active ingredient in Category I, but did place some ingredients in Category III. Because additional testing is necessary to determine the actual effect these ingredients have in the mouth and throat, the Panel did not place any indication in Category I. The Panel has proposed a Category III indication for oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

b. *Warnings*(1) *For all products containing oral health care antimicrobial active ingredients.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing oral health care antimicrobial active ingredients used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which antimicrobial active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC oral health care antimicrobial drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredients

Boric acid
Boroglycerin
Camphor
Cresol
Ferric chloride
Meralein Sodium
Nitromersol
Potassium chlorate
Sodium dichromate
Tincture of myrrh

a. *Boric acid.* The panel concludes that boric acid is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Boric acid (H_3BO_3) is also known as boracic acid or orthoboric acid. It occurs as a colorless or white powder or as scales or granules with a slightly bitter taste. It has a molecular weight of 61.844 and a melting point of 184° C.

One gram of boric acid dissolves in 18 mL of cold water or in 4 mL of boiling water. It also dissolves in 18 mL of cold alcohol, 6 mL of boiling alcohol, and in 4 mL of glycerol. Boric acid is used as a pharmaceutical necessity for buffering as well as for an active ingredient (Ref. 1). It is stable in air and incompatible with alkalis, carbonates, and hydroxides. Boric acid is prepared by the action of sulfuric acid on sodium borate.

A 2.5-percent solution of boric acid is said to be bacteriostatic, but not bactericidal. It is a mild topical astringent and drying agent with anti-inflammatory and antipruritic effects. In concentrations ordinarily used clinically, boric acid does not irritate or devitalize tissues (Ref. 2). It has been found that concentrations greater than 2 percent may inhibit phagocytosis, thereby negating a primary defense mechanism of the body against bacterial invasion (Ref. 3).

Elemental boron is an essential element for plant life, but this does not appear to be the case for animal life.

(1) *Safety.* The Panel concludes that boric acid is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Absorption of boric acid occurs readily from the mucous membranes of the mouth, throat, gastrointestinal tract, and from the lining of hollow viscera. It is also absorbed from the surface of the vagina, the lining of the conjunctival sac, from abraded or denuded skin, and from wounds (Ref. 4). The absorption of toxic doses may occur rapidly, yet toxic symptoms may be delayed for hours. Intact, healthy skin apparently acts as an effective barrier for boric acid (Refs. 5 and 6); however, there are differing opinions in the literature concerning this point (Refs. 7, 8, and 9). Seventy to 90 percent of an oral dose of boric acid is excreted in the urine unchanged. Only small amounts are found in the feces, saliva, and perspiration. Excretion of boric acid is not influenced by fluid intake but is significantly delayed by renal disease. About 50 percent of a dose is excreted within the first 12 hours, and the remainder is eliminated over a period of 5 to 7 days (Ref. 10). During chronic administration, elimination is slow. A plateau in urinary excretion usually is reached after 2 weeks (Refs. 5 and 6). Thus, there is a tendency for accumulation to occur with chronic use. There is a greater amount of boron in the brain when accumulation occurs, than at the site of treatment, especially wounds (Refs. 5 and 6). Large amounts are also found in the liver and the kidney. Kidney damage occurs when toxic doses are ingested.

The oral LD_{50} for dogs is greater than 1,000 mg/kg. The subcutaneous LD_{50} for guinea pigs is 1,200±80 mg/kg. In the mouse, the oral LD_{50} is 3,450 mg/kg. In the rat, the oral LD_{50} is 5,140 mg/kg.

The exact lethal dose of boric acid in humans is not known. Death has occurred from ingestion of less than 5 g in infants and from 5 to 20 g in adults. Amounts of this magnitude can be absorbed readily when boric acid solutions are used to irrigate closed cavities (Ref. 11). In a study of 100 cases of accidental poisoning, the overall fatality rate was 55 percent, but in infants under 1 year of age, 70 percent ended fatally (Ref. 12).

The symptoms of poisoning from boron derivatives are nausea, vomiting, diarrhea, and epigastric pain. Vomiting is often persistent and the vomitus and feces may contain blood. Hemorrhagic gastroenteritis may develop irrespective of the route of administration. Both the vomitus and stools have a blue-green color. Weakness, lethargy, headache, restlessness, irritability, tremors, and intermittent convulsions with subsequent depression of the central nervous system occur. Skin eruptions and kidney and liver damage have also been reported.

In 1962, 172 cases of boric acid intoxications with 89 deaths were compiled from the literature. In 53 cases, the drug had been used externally. Death occured in 23 of 30 children with diaper rashes (Ref. 13). The American Academy of Pediatrics has condemned this drug and recommended that its use be abandoned.

It is the consensus of the Panel that all OTC products containing boric acid and recommended for topical use on the mucous membranes of the mouth and throat likewise be condemned.

(2) *Effectiveness.* The Panel concludes that boric acid is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Boric acid and its sodium salt have weak bacteriostatic and fungistatic activities. Neither the salt nor the acid is germicidal or fungicidal even in saturated aqueous solutions. A 2.5-percent aqueous solution will stop the growth of almost all forms of bacilli. They are not destroyed, however. The growth of the anthrax bacillus is inhibited, but is not halted when exposed to a 4-percent solution of boric acid. Furthermore, when removed from the boric acid solution anthrax bacilli once again begin to grow uninhibited (Ref. 14). Boric acid, therefore, is of

doubtful value as an antiseptic and is only suitable for bacteriostatic purposes. It has the advantage over other antimicrobial agents with bacteriostatic activity in that it induces very little irritation of wounds or delicate tissues such as the conjunctiva and mucous membranes of the eye, nose, mouth, throat, or even the gastrointestinal tract. Boric acid was, once upon a time, used as a preservative for foods, some medicines, and cosmetics. Its use for this purpose is now forbidden by law.

The mode of action of boric acid as a bacteriostatic agent is not known. Whether or not its effect is due to the hydrogen ion released from the acid is not known. Solutions of 0.3 percent inhibit putrefaction and decomposition, but do not inhibit the growth of pathogenic organisms.

The bacteriostatic effectiveness of boric acid varies with different types of bacterial cultures. It begins to manifest, bacteriostatic activity at approximately a 1/20 saturated aqueous solution and does not appear to increase in activity after concentrations are 1/6 saturated.

Boric acid and sodium borate have no disinfectant properties. The chemically allied salt, borax ($Na_2B_4O_7$), is alkaline and also manifests bacteriostatic activity. Borax is less active than the acid, and it acts to some extent as a debriding agent due to its alkalinity.

(3) *Evaluation.* The Panel classifies boric acid, sodium borate, and borax as Category II from both the standpoint of safety and effectiveness as a topical antimicrobial agent in the mouth and throat. The reasons for this are because of their toxicity, since they are derived from boron, and because of their questionable bactericidal and disinfectant effects.

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b. *Boroglycerin glycerite.* The Panel concludes that boroglycerin glycerite is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Boroglycerin glycerite is made by dissolving boroglycerin in glycerin. Boroglycerin is glycerin borate. It is also know as glycerite of boric acid, glyceritum boroglycerin, and glyceritum acidi borici. Boroglycerin when dry is a white, transparent, glassy, brittle, hygroscopic substance which forms a mass as it stands and absorbs water. It is soluble in hot water and, in solution, undergoes cleavage to glycerin and boric acid. Boroglycerin is not used as such, but instead, is converted to boroglycerin glycerite and used as an antimicrobial agent (Ref. 1). Boroglycerin glycerite is prepared by heating two parts of boric acid with three parts of glycerin, which is then dissolved in glycerin. Boroglycerin glycerite is a 50-percent solution of boroglycerin ($C_6H_9BO_6$) in glycerin (Ref. 2). Boroglycerin glycerite is a sweet, syrupy hygroscopic liquid. In aqueous solution, boroglycerin is more highly ionized than boric acid. As a consequence, its solutions are more irritating than those of boric acid. Boroglycerin glycerite was once, but is no longer, official in the "United States Pharmacopeia." Both boroglycerin glycerite and boroglycerin should be kept in tightly stoppered containers because they are hygroscopic.

(1) *Safety.* The Panel concludes that boroglycerin glycerite is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Boroglycerin glycerite is not safe because it is a derivative of boric acid and its action is due to the release of boric acid when boroglycerin glycerite is applied to wounds, burns, and other, lesions and on the mucous membranes of the mouth and throat. No data are available on the acute and chronic toxicity of boroglycerin or boroglycerin glycerite. Inasmuch as boroglycerin and boroglycerin glycerite are derivatives of boric acid and release boric acid during clinical use, it is the consensus of the Panel that their toxicity is similar to that of boric acid. (See part IV. paragraph B.2.a. above—Boric acid.) Glycerin, their other component, is relatively innocuous.

(2) *Effectiveness.* The Panel concludes that boroglycerin glycerite is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Boroglycerin glycerite contains 31 parts of boric acid and 96 parts glycerin. The anitimicrobial action of boroglycerin is due to the boric acid, which is slowly released when applied to burns. It is used externally, diluted with 10 parts of water. Since the active ingredient is boric acid, it can only be assumed that boroglycerin glycerite is not an effective antimicrobial agent. There are no controlled studies reported that establish it as an effective antimicrobial agent. Data on its effectiveness have not been supplied to the Panel in the submissions by manufacturers, and the Panel doubts that it is any more effective than boric acid. (See part IV. paragraph B.2.a. above—Boric acid.)

(3) *Evaluation.* The Panel concludes that boroglycerin glycerite be placed in Category II for both safety and effectiveness because it contains a boron derivative.

References

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c. *Camphor.* The Panel concludes that camphor is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The general characteristics of camphor have been described elsewhere in this document. (See part III. paragraph B.2.b. above—Camphor.)

(1) *Safety.* The Panel concludes that comphor is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The safety of camphor has been descried elsewhere in this document. (See part III. paragraph B.2.b.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that camphor is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Applied locally, camphor is alleged to be weakly antiseptic, but no controlled studies have been submitted to support this contention. Camphor is a ketone and, as is common with other ketones, lacks antiseptic activity. Furthermore, the Panel has not evaluated any ketone that is a safe and effective antiseptic. Camphor is a rubefacient when rubbed on the skin. When not applied vigorously, however, it may produce a feeling of coolness. This sense of coolness is also felt when camphor is applied to the mucous membranes. Camphor has a mild local anesthetic action, and its application to the mucous membranes in appropriate concentrations may be followed by numbness.

Camphor is absorbed through both the mucous membranes and from the skin. Camphor is also used for its local anesthetic and antipruritic effect to relieve itching of the skin. It has been used in conjunction with phenol for local application to treat fungal infections. It is believed that camphor retards the release and absorption of phenol from a mixture, but instances of ulceration from single applications of the mixture have been reported. (Ref. 1). Camphor is dispensed as camphor oil liniment, camphor in soap liniment, and spirits of camphor, which is a 10-percent solution by weight and volume, of camphor in alcohol. This mixture of camphor and alcohol is locally irritating when applied topically. Camphor water is a saturated solution of camphor in purified water. It is sometimes used for its supposed astringent effect.

(3) *Evaluation.* The evaluation of camphor has been described elsewhere in this document. (See part III. paragraph B.2.b.(3) above—Evaluation.)

References

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d. *Cresol.* The Panel concludes that cresol is not safe and that there are insufficient data to classify cresol as an effective antimicrobial active ingredient for topical use on the mucous membrances of the mouth and throat.

Chemically, cresol is phenol with a methyl group on either the ortho, meta, or para positions of the benzene ring. Thus, cresol can exist in three isomeric forms. The pure forms of each are available but generally the mixture of the three is used for general and medical purposes. The cresols are obtaind by the fractional distillation of coal tar or petroleum. The mixture is predomintely metacresol which is the most toxic of the three. When the term "cresol" is used, generally the mixture is meant. Cresol is also known as tricresol, methylphenol, or cresylic acid. Cresol may contain traces of phenol.

Cresol consists of a colorless, pinkish or yellowish to brownish liquid which is highly refractory. Not less than 90 percent by volume distills betwen 195 and 205° C. It darkens with age and on exposure to light, as does phenol (Ref. 1). One milliliter dissolves in approximately 50 mL water, usually producing a cloudy solution. It is miscible with alcohol, glycerin, ether, and other organic solvents (Ref. 2). Like other phenols, it is acidic in reaction in aqueous solutions and forms salts in soluble alkaline metal hydroxides. Cresol is also dissolved in camphor to form a complex, camphor metacresol. This complex is similar to the camphor-phenol complex and releases cresol when it comes in contact with moisture (Ref. 3).

(1) *Safety.* The Panel concludes that cresol is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Because cresol is closely allied to phenol both chemically and parmacologically, it behaves as does phenol. Fatal cases of cresol poisoning have followed the ingestion of the drug or its use as a douche. It is readily and rapidly absorbed from the skin and mucous membrances. Cresol is somewhat less toxic than phenol due to the presence of the methyl group on the benzene ring. The symptoms of cresol poisoning and the treatment are similar to those for phenol. (See part III. paragraph B.1.g. above—Phenol.) When applied locally to the skin, cresol causes a burning sensation and an erythema, followed by numbness. It acts in the same manner as phenol and destroys tissue, cauterizing the area of application. After oral ingestion, severe burning sensations in the mouth and upper abdomen are felt. Dysphagia, vomiting, and diarrhea are common. White spots are seen on the mucous membranes after ingestion, indicating that the cresol has coagulated the cellular protein. It behaves exactly as does phenol in this regard (Ref. 4). Unconsciousness and circulatory collapse follow. If the patient survives, jaundice, oliguria, and uremia may develop due to injury to the liver and kidneys. Orally 8 g or more have been fatal to man. Cresol is a general protoplasmic poison. Data on absorption from the mucous membrances of the mouth and throat were not available, but the Panel surmises that it behaves like other phenols and is absorbed and passes into the systemic circulation and, therefore, has all the drawbacks of phenol.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of cresol as an OTC antimicrobial active ingredient for tipical use on the mucous membrances of the mouth and throat.

Cresol is an antimicrobial agent that surpasses phenol in germicidal and antiseptic activity. The substitution of an alkyl (methyl) radical or other side chain on the aromatic nucleus of phenol enhances its antimicrobial activity. Cresol is about three times more active than phenol as a germicide against many bacteria. It is four times more active against *Salmonella typhi* than phenol. The ortho isomer is the most actively germicidal of the three. Since cresol is sparingly soluble in water, it is generally employed in the form of a 50-percent solution dispersed with soap (saponated cresol solutions), which forms a clear solution with purified water, but a cloudy one with tap water because a precipitation of lime soaps occurs. Cresol is used largely for sterilization and sanitization and has limited use clinically as an antiseptic. Cresol has been used for sterilization of instruments in a 3- to 5-percent solution of the saponated mixture. One percent of saponated solution has been used for application to wounds. A 2-percent solution of cresol is suitable as a handwash. Cresol is used to disinfect excreta of patients with contagious diseases. Cresol is sometimes employed in a concentration of 0.25 to 0.5 percent as a bacteriostatic agent in parenteral solutions. A 0.2-percent aqueous solution has been used as a vaginal

douche, but is not recommended because adverse effects have resulted (Ref. 5).

Dilute solutions of cresol possess a topical anesthetic effect similar to that of phenol. It is, however, not used for this purpose.

Cresol must not be confused with creosol or creosote. Creosote is a mixture of phenols obtained from wood tar. The active ingredient in creosote is creosol, which is a methoxy cresol.

(3) *Evaluation.* The Panel has classified cresol as Category II because it is a phenol derivative which is caustic when applied topically and toxic when absorbed systemically. It produces local damage to tissues even in dilute solutions. Other agents are safer.

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(5) OTC Volume 130006.

e. *Ferric chloride.* The Panel concludes that ferric chloride is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Ferric chloride ($FeCl_3$) occurs as hexagonal dark leaflets or plates. It is red by transmitted light and green by reflected light. Ferric chloride is very hygroscopic and melts and volatilizes at about 300° C. In air, it readily absorbs water to form the hexahydrate ($FeCl_3 \cdot 6H_2O$). Ferric chloride is readily soluble in water, alcohol, ether, and acetone. It has also been referred to as iron perchloride (Ref. 1).

The hexahydrate forms brownish-yellow or orange monoclinic crystals which are readily soluble in water, alcohol, acetone, and ether. Aqueous solutions are acid in reaction. The hexahydrate is described as an astringent and stypic (Ref. 1). Aqueous solutions of ferric chloride have been described in the "National Formulary." Each 100 mL of these solutions contained 37.2 to 42.7 g ferric chloride (Ref. 2). The solution was used as an astringent and styptic to arrest bleeding from cut surfaces and wounds. The tincture was also described in the "National Formulary." This was a yellowish-orange solution with an ethereal odor which is due to the formation of ethyl chloride and ethyl acetate by the action of the acid liberated from the iron chloride. It was also known as "iron perchloride tincture." The tincture consisted of 15 g ferric chloride in 100 mL of 58 to 64 percent ethyl alcohol. It was used orally but was highly irritating to the gastric mucosa.

Ferric chloride solutions and acid tinctures are incompatible with alcohols, iodides, tannin-containing solutions, and acadia mucilage.

(1) *Safety.* The Panel concludes that ferric chloride is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The oral LD_{50} in rats for iron chloride hexahydrate is 900 mg/kg. In rabbits, the intravenous LD_{50} is 7.2 mg/kg (Ref. 3).

No data were submitted to the Panel on acute and chronic toxicity studies in animals or on the teratogenicity and carcinogenicity of the compound. No data on acute or chronic toxicity in man were submitted. It is stated that the anhydrous form is an irritant (Ref. 1).

According to Gosselin et al. (Ref. 4), ferric chloride has a toxicity rating of 3 and the probable oral lethal dose in man is 0.5 to 5.0 g/kg. When given orally, both ferric and ferrous soluble compounds induce essentially the same type of toxic syndromes. The symptoms of poisoning due to derivatives of iron are severe gastritis or gastroenteritis with abdominal pain and prolonged vomiting beginning 10 to 60 minutes after ingestion. Vomitus may become bloody. Diarrhea is sometimes violent, and the feces are watery and later tarry. Dehydration becomes intense, and generalized itching may occur. Shock, pallor, cyanosis, coldness, rapid, weak, or imperceptible pulse, low blood pressure, and rapid and shallow respirations occur. Breathing is deep and rapid indicating the presence of a condition of metabolic acidosis. Drowsiness, hyporeflexia, dilated pupils, and coma may occur. Liver injury, consisting of hemorrhagic necrosis may occur, but it is usually reversible. Death from shock may occur within 4 to 5 hours. Sometimes, following apparent recovery, pneumonia with fever or secondary shock may develop and cause death 1 to 3 days later. Pyloric stenosis and mild hepatic cirrhosis may be encountered as sequelae among survivors, but recovery is usually complete without sequelae.

(2) *Effectiveness.* The Panel concludes that ferric chloride is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The tincture of iron chloride is an effective protein precipitant and was once used as a styptic. It also has been used as an astringent. The tincture has been mixed with equal parts of glycerin and water and applied to the throat by means of a swab to relieve pharyngitis. It has also been used as a gargle, but it is no longer recommended for this purpose because of its questionable effectiveness. In addition, the acidity of the solution is injurious to the teeth (Ref. 5). No data are available from controlled studies concerning the spectrum of its antimicrobial activity (Ref. 6). The antimicrobial effects tincture of iron chloride may manifest presumably are due to its protein-precipitating properties.

Ferric chloride preparations are not recommended for internal use.

(3) *Evaluation.* The Panel concludes that ferric chloride preparations are not safe for internal use. Furthermore, the Panel has no data on the antimicrobial effects of ferric chloride and concludes that preparations containing ferric chloride are not effective for topical use as antimicrobial active ingredients on the mucous membranes of the mouth or throat.

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(4) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th E., Williams and Wilkins, Baltimore, section II, p. 97, and section III, p. 156, 1976.

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(6) OTC Volume 130052.

f. *Meralein sodium.* The Panel concludes that meralein sodium (merodicein) is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Meralein soidum, better known as merodicein, is an organic mecurial antiseptic. Meralein sodium is (3'-6'-Dihydroxy-2', 7'-diiodospiro [3H-2, 1-benzoxanthiole-3, 9'-[9H]xanthen]-4-yl)-hydroxymercury 5,5-dioxide monsoidum salt; o-[6-hydroxy-5-)hydroxymercuri)-2, 7-diiodo-3-oxo-3H-xanthen-9-yl]-benzenesulfonic acid sodium salt; 2, 7-diido-4-hydroxymercuriresorcinsulfonphthalein monosodium salt (Ref. 1). Maralein

sodium is used as a topical antiseptic. It is supplied as a 1:5,000 aqueous solution for use in the mouth (Ref. 2). Meralein sodium consists of green scales that turn dark red. It is soluble in water. Aqueous solutions are slightly fluorescent.

(1) *Safety.* The Panel concludes that meralein sodium is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Gosselin et al. (Ref. 2) rate the toxicity of meralein sodium as 4 (very toxic). The probable lethal dose is 50 to 500 mg/kg. Gosselin et al. describe it as "A water-soluble germicide containing about 23 percent organically bound mercury." The minimal lethal dose parenterally in laboratory animals is 10 mg/kg. It is poorly absorbed from the gastrointestinal tract. Doses of 200 mg/kg have a laxative effect.

In an extensive study of the pharmacology and toxicology of meralein sodium, Macht and Cook (Ref. 3) showed that systemic poisioning was due to acute renal failure and found little effect on other organ systems. Gosselin et al. (Ref. 2) also showed that systemic poisoning leads to acute renal failure. When injected intravenously in a concentration of from 0.1 percent to 2.0 percent meralein sodium was carried by the circulation to the various organs where it conferred a pink color to the stomach, intestines, and other viscera (Ref. 2). Very little of the compound was deposited in the skin. Most of the meralein sodium was excreted via the intestinal tract, but small quantities were found in the urine and trace amounts in the bile. The saliva, even after pilocarpine was administered to promote the flow of saliva, contained no trace of the drug (Ref. 2).

(2) *Effectiveness.* The Panel concludes that meralein sodium is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Like many other mercurial antiseptics, meralein sodium is primarily bacteriostatic with bactericidal activity occurring slowly over a period of many hours. Bacteriostasis is readily nullified by the presence of many organic compounds, particularly those containing sulfhydryl radicals, such as thioglycollate, cysteine, and dimercaprol, and by glutathione, serum, and plasma (Ref. 4). This reversible bacteriostasis was clearly demonstrated by Engley (Ref. 5), who showed that virulent streptococci exposed to 0.2 percent meralein sodium for 10 minutes killed 10 out of 10 mice injected intraperitoneally. When the cells from the meralein sodium-treated cultures were transferred to dextrose broth, no growth occurred, but the addition of 0.1 thioglycollate or 10 percent serum to the broth enabled growth to occur in vitro just as it had in vivo.

One study indicates that the growth of *Staphylococcus aureus, Streptococcus pyogenes,* and *Pseudomonas aeruginosa* is merely inhibited when exposed to meralein sodium in a 1:5,000 concentration for 15 minutes, but that these bacteria are killed after 24 hours of exposure (Ref. 6). However, this is not of any clinical significance because it is unlikely that meralein sodium would remain in the mouth for more than 15 minutes and certainly not as long as 24 hours.

(3) *Evaluation.* The Panel concludes that the bacteriostatic effects of meralein sodium are transitory and insignificant. The bactericidal effects, likewise, are not significance since they occur slowly. Data on absorption from the mucous membranes are not supplied. Since the compound contains 23 percent mercury, it is not surprising that renal damage has been reported following its use. The Panel considers the compound toxic and not safe or effective for topical use in the mouth and throat.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 782, 1976.

(2) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, section II, p. 95, 1976.

(3) Macht, D. L., and H. M. Cook, "Pharmacology and Toxicology of Monohydroxy-mercuri-di-iodo-resorcinsulphonphthalein," *Journal of Pharmacology and Experimental Therapeutics,* 43:571–605, 1931.

(4) Lawrence, C. A., and S. S. Block, "Disinfection, Sterilization, and Preservation," Lea and Febiger, Philadelphia, pp. 362 and 366, 1968.

(5) Engley, F. B., "Evaluation of Mercurial Compounds as Antiseptics," *Annals New York Academy of Sciences,* 53:197–206, 1950.

(6) OTC Volume 130075.

g. *Nitromersol.* The Panel concludes that nitromersol is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Nitromersol is identified with the mercurial organic compounds that are used for antimicrobial purposes. Nitromersol is the anhydride of 4-nitro-3-hydroxymercuriocresol. It is prepared from orthotoluidine through a succession of steps of nitration, diazotization, and interaction with mercuric acetate resulting in a crystalline powder.

Nitromersol is considered an organic mercurial. The organic mecurials are compounds in which mercury is present in complex organic combination. As a group they are more bacteriostatic, less irritating, and less toxic than the inorganic mercurial salts. Nitromersol is composed of brownish to yellow granules or a brownish-yellow powder. It is odorless, insoluble in water, almost insoluble in alcohol and ether, but soluble in solutions of alkalis (Ref. 1).

(1) *Safety.* The Panel concludes that nitromersol is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Mercuric compounds can be absorbed and can be toxic to the renal tubules of the kidney. This action is less pronounced by organic mercurial compounds than by the inorganic mercurial compounds. Nitromersol has a slight protein-precipitating action. Like other mercurials, it has a tendency to sensitize the skin.

(2) *Effectiveness.* The Panel concludes that nitromersol is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The mechanism of action of mercurial compounds is not known exactly. It is believed that the mercuric ion inhibits the activity of enzymes containing sulfhydryl groups (SH) by combining reversibly with these groups. The inhibition of these enzymes by mercury, therefore, is reversible. When the metal is removed from the enzyme, the activity is restored. Bacteria and certain viruses inactivated by mercury compounds can be reactivated by removing the mercury with the use of thiols. Bacterial spores exposed to mercurials for many months resume multiplication when the inhibitor is removed. In the body fluids there are many sulfhydryl compounds such as glutathione, cysteine, and proteins which are capable of combining with mercury. Organisms inhibited by mercury therefore, can become reactivated when they are introduced into the body.

The mercurial antiseptics inhibit the sulfhydryl-containing enzymes of tissue cells of the host as well as those of the bacteria. Test objects such as embryonic tissue and other cells are readily injured by organic mercurial compounds. The therapeutic index of organic mercurial compounds is low. They are not considered ideal antiseptics and germicides.

The organic mercurial compounds are employed as substitutes for the more highly ionized mercury salts because they are less irritating and can be applied directly to the tissues. They have been widely used in

concentrations ranging from 1:100,000 to 1:1,000 to disinfect instruments and as antiseptics on cutaneous and mucosal surfaces. However, they are not efficient for disinfecting instruments, as is commonly believed. The organic mercurial compounds are primarily bacteriostatic and are relatively ineffective in killing spores. The organic mercurial antiseptics are available as various types of proprietary solutions, tinctures, jellies, ointments, and suppositories (Ref. 2).

Although several investigators reported sterilization of the skin with the use of an application of a 1:5,000 solution of nitromersol which is a first-aid solution, White and Hill (Ref. 3) found that this compound could not be relied upon to produce sterility when applied to the skin for 5 minutes. A 1:200 alcohol acetone solution is highly effective as an antiseptic. The solution called nitromersol tincture is used for preoperative preparation of the skin. Nitromersol is available in a 1:500 solution in water. Since nitromersol is not readily soluble in water, a mixture of sodium hydroxide and sodium carbonate are used to convert the nitromersol to a soluble compound. A 1:200 tincture in 10 percent acetone, 52.5 percent alcohol by volume, and distilled water, is available.

No data were submitted to the Panel establishing the effectiveness of nitromersol as an antimicrobial agent for the relief of sore throat and sore mouth.

(3) *Evaluation.* The Panel concludes that nitromersol is not safe because of its toxicity and sensitization potential. There are no data from controlled studies showing that nitromersol causes relief of symptoms due to sore throat or sore mouth resulting from antimicrobial activity.

References

(1) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, p. 1096, 1975.

(2) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott, Philadelphia, p. 789, 1973.

(3) White, E. C., and J. H. Hill, "Inefficiency of Metaphen as a Skin Disinfectant," *Journal of the American Medical Association*, 95:27–28, 1930.

h. *Potassium chlorate.* The Panel concludes that potassium chlorate is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Potassium chlorate occurs as colorless, lustrous crystals, as white granules, or as a white powder. It is odorless and has a cooling effect and a saline taste. One part potassium chlorate is soluble in 16.5 parts water. It is soluble in glycerin and slightly soluble in alcohol. Potassium cholorate should not come into contact with readily oxidizable substances because it forms explosive mixtures. Potassium chlorate explodes when mixed with sulfuric acid. It ignites and explodes if triturated with organic substances, such as sulfur, phosphorus, sulfite, hypophosphite salts, and other oxidizable substances. Potassium chlorate is incompatible with iodides and tartaric acid (Ref. 1).

(1) *Safety.* The Panel concludes that potassium chlorate is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Potassium chlorate is not safe for internal use. Potassium chlorate poisoning was common when the drug enjoyed widespread use therapeutically. The poisoning resulted from overdose or from variations in susceptibilities and tolerance among different individuals. Ten grams are toxic; 15 to 30 g have been fatal. The mortality rate is about 70 percent when lethal doses are ingested. The symptoms may appear shortly after ingestion or may be delayed for 5 to 6 hours. Death has occurred as early as 6 hours and as late as 7 days after ingestion. Potassium chlorate is irritating to the gastrointestinal tract and the kidneys. Symptoms include nausea, vomiting, gastroenteritis, anemia, and hematuria. Gosselin and associates (Ref. 2) rate potassium chlorate as having a toxicity of 4 (very toxic). The chlorate ion is not metabolized readily and persists in the body for a long time. It may convert an indefinite amount of hemoglobin to methemoglobin. Asphyxia may result from the methemoglobinemia. The drug also causes hemolysis. The hemolyzed cells may produce emboli, and the released hemoglobin causes hematuria. It may also cause nephritis.

Chlorates are excreted mainly by the kidney into urine. About 90 percent of a dose is eliminated unchanged. The urinary excretion of a dose begin promptly and is complete within 24 to 48 hours. Chlorates are also partly excreted by the salivary glands into the mouth. When chlorates were first introduced into therapeutics, they were considered to be innocuous and safe. This has not proved to be the case as time has passed.

(2) *Effectiveness.* The Panel concludes that potassium chlorate is not effective as an antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Potassium chlorate solutions, in concentrations ranging from 2 to 4 percent, have been used as mouthwashes and gargles for infections of the mouth and throat, even though they are potentially toxic and of questionable value (Ref. 3). The saturated solution has been used as a mouthwash to treat stomatitis, particularly when ulcerative lesions have been present. Potassium chlorate was introduced because it was believed that it would act as an oxidizing agent and exert antiseptic action by releasing oxygen. This does not appear to be its mode of action. It is eliminated largely unchanged and is not altered in the body.

Potassium chlorate is of doubtful effectiveness since there are no data from controlled studies to support the claim that it relieves symptoms of sore throat or sore mouth or both when used as an antimicrobial agent. It has been used in lozenge form. This imparts a "clean" saline taste of potassium chlorate to the mouth, which supplants the normally existing "unflavored taste." Potassium chlorate also is used in tablet form. The tablets consist of 0.25 g of the salt and are placed on or beneath the tongue two to five times daily where they slowly dissolve and exert their therapeutic affect. After using the tablets for several days, the saline taste persists due to the salt that is excreted into the mouth from the salivary and other exocrine glands (Ref. 4).

Chlorates do not manifest antimicrobial activity in cultures. How it came to be adopted as an antimicrobial agent has puzzled physicians.

Potassium chlorate has been combined with ferric chloride and balsam of tolu for use as a demulcent, and with glycerite and boroglycerin (Ref. 5).

(3) *Evaluation.* It is the consensus of the Panel that potassium chlorate is neither safe nor effective as an OTC active antimicrobial agent for topical use in the mouth and throat and that it be placed in Category II.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 990, 1976.

(2) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, section II, p. 76, 1976.

(3) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Littleton, MA, p. 891, 1977.

(4) Grollman, A., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, pp. 794–795, 1947.

(5) OTC Volume 130052.

i. *Sodium dichromate.* The Panel concludes that sodium dichromate (also bichromate) is not safe and that there are insufficient data to classify its effectiveness as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Sodium dichromate is a derivative of chromium. Elemental chromium is used in medicine in the form of sodium or potassium dichromate. Sodium chromate is the sodium salt of chromic acid. The empiric formula for sodium chromate is $Na_2CrO_4 \cdot 4H_2O$. Sodium chromate loses its water of hydration to form an anhydrous salt. It also forms a crystalline hydrate with 10 molecules of water. The anhydrous form is a yellow powder. The hydrated form is soluble, about 1 part in 1 part of water. The aqueous solution is alkaline. Sodium chromate is also slightly soluble in alcohol. It is used to prevent rusting of iron.

The potassium salt (K_2CrO_4) has similar properties as the sodium salt. Sodium dichromate ($Na_2Cr_2O_7$) and potassium dichromate ($K_2Cr_2O_7$) are prepared by reacting sodium or potassium chromate with sulfuric acid (Refs. 1 and 2). Sodium chromate forms a dihydrate which consists of copper-colored, bright orange, or yellowish crystals. Its solutions are acidic. The pH of a 1-percent solution is 4, and the pH of a 10-percent solution is 3.5. The chromates are combined with sulfuric acid for cleaning glassware in laboratories (Ref. 1).

(1) *Safety.* The Panel concludes that sodium dichromate is not safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Chromium derivatives are used in medicine in the form of chromic acid or in the form of either the sodium or potassium bichromates. They are also used in the disodium and dipotassium forms. Derivatives of chromium are active oxidizing agents. In addition, they are poisons when ingested since they form chromous oxide, CrO, which is the anhydride of chromic acid.

Gosselin et al. (Ref. 3) give sodium dichromate a toxicity rating of 4 to 5 with a mean lethal dose probably of about 10 g. It is highly corrosive to skin and mucous membranes. If ingested, violent gastroenteritis, peripheral vascular collapse, vertigo, muscle cramps, coma, hemorrhagic diathesis, fever, liver damage, and acute renal failure occur. Methemoglobinemia occurs probably due to sodium dichromate's oxidizing properties. Sodium dichromate also causes intravascular hemolysis, as is the case with chlorate salts. When dichromates are ingested orally they are reduced to chromous oxide and partly deposited as such in various organs. The remainder is excreted in the urine. Chronic nephritis is produced experimentally by intravenous injection of chromates. The toxic effects of chromium derivatives are not only due to the fact that the resulting oxide is a poison when ingested, but also because they act sumultaneously as oxidizing agents while they are undergoing the chemical changes to the oxide in the body (Ref. 4). Derivatives of chromium used in various manufacturing processes are considered to be industrial hazards since they are poisons. Extreme precautions are taken to avoid their ingestion, inhalation of powders of the salts, or cutaneous absorption when they are used for industrial purposes (Ref. 2).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of sodium dichromate as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Sodium dichromate and other derivatives of chromium have been used as antimicrobial agents because of their oxidizing effects. They have no use as therapeutic agents because of their extreme toxicity. They were formerly used as astringents for the treatment of excessive sweating of the skin and as caustic agents to remove cutaneous lesions, neoplasms, etc. They were also used internally to treat gastric ulcers. Aqueous solutions of 5 percent sodium dichromate have been used on the skin without irritation; however, 10 percent solutions are caustic. Two to 3 percent aqueous solutions have been used as astringents and antimicrobial agents (Ref. 5). The pharmacologic actions of the sodium derivative are similar to those of the potassium derivative (Refs. 2 and 4).

(3) *Evaluation.* The Panel concludes that sodium dichromate is not safe for topical use on the mucous membranes of the mouth and throat because it is absorbed, and the systemic toxicity that results is characterized by nephritis and other organic syndromes.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1112, 1976.

(2) Grollman, A., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, p. 148, 1947.

(3) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, section II, p. 76, 1976.

(4) Sollmann, T., " A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 7th Ed., W. B. Saunders Co., Philadelphia, p. 937, 1948.

(5) OTC Volume 130041.

j. *Tincture of myrrh.* The Panel concludes that tincture of myrrh is not safe and not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Myrrh belongs to the class of substances known as balsams or aromatic resins. Myrrh is categorized as an oleoresin. The oleoresins, in general, are oily substances containing largely benzoic and cinnamic acids and other constituents. They are considered to be mildly irritant and to stimulate the repair of tissues because of the substances contained in their oily components (Ref. 1). The resins furnish local protection and allegedly allay inflammation. Balsams and oleoresins are applied in cases of chronic inflammation of the mucous membranes and of the skin to promote healing of ulcers and wounds (Ref. 2).

Myrrh, also known as myrrha, is a gum resin obtained from camphora species (Ref. 3). It was used by the ancients as incense in religious ceremonies and by the Egyptians for embalming in combination with spices and other substances. Myrrh was formerly listed in the "United States Pharmecopeia." The botanical source of myrrh is *Commiphora molmol.* It is also obtained from Commiphora abyssinica and other species of camphora. The name "myrrh" is possibly derived from the Arabic and Hebrew word "mur" meaning bitter, The drug was also called "mulmul" and "ogo" by the natives of Somaliland and "herrabol" by the Indian traders. Myrrh is collected in Somaliland and Arabia by making incisions into the bark of the stems of trees. A gum-oleoresin film forms and reservoirs of the fluid collect beneath this film. These are punctured, and the myrrh is allowed to exude. The myrrh then hardens and is scraped off the bark. Most of the drug used in the United States is gathered from Somaliland and Arabia. In 1952, 19,040 pounds of myrrh were imported from British Somaliland.

Myrrh yields not less than 30 percent of alcohol-soluble extractives and not more than 5 percent of acid-insoluble ash. It contains from 3 to 8 percent of an oxygenated volatile oil, a bitter principle, about 50 to 60 percent of gum, and 25 to 40 percent of resin. The resin contains three isomeric forms of commiphoric acid, an ester of commiphorinic acid, and two isometric

forms of myrrolic acid. The volatile oil, which has been called myrrhol or myrrhenol, contains eugenol, meta-cresol, cuminaldehyde, cinnamaldehyde, pinene, dipentene, a sesquiterpene, and esters of formic, acetic, and myrrholic acids. The gum, with properties similar to arabin and acacia, yields pentosans, galactans, xylans, and arabans upon hydrolysis. The gum also contains an oxidizing enzyme (Refs. 4, 5, and 6). Myrrh has been used both in its natural form and as a tincture. The preparation reviewed by this Panel is the tincture.

(1) *Safety.* The Panel concludes that tincture of myrrh is not safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

The ancient Greek physicians used myrrh locally as well as internally. Since it is an oleoresin, it has the properties of other oleoresins in being a mild irritant (Ref. 7). Because of these irritant properties, myrrh has been used as a component of laxative preparations. It has also been used in the form of the tincture which contains an alcohol-soluble extract of 20 percent of the drug. Internally, myrrh was once used as a carminative (Ref. 2). Myrrh and tincture of myrrh were official in "United States Pharmacopeia, XIII." They were not admitted to the "United States Pharmacopeia, XIV." They were admitted to the "National Formulary IX." They maintained official status until 1965 when both were dropped and not admitted to either compendium.

Animal toxicity studies, from which the Panel could make judgment, were not available.

(2) *Effectiveness.* The Panel concludes that tincture of myrrh is not effective as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

The comments concerning tincture of myrrh's therapeutic effectiveness are merely anecdotal, and there are no controlled studies to substantiate that it is an effective active ingredient. Tincture of myrrh has been applied locllly to "stimulate" spongy gums, to treat aphthous stomatitis, and ulcerations of the throat (Ref. 6). In its diluted form, tincture of myrrh has been employed in mouth rinses, for treating stomatitis, and in other lesions of the oral cavity (Ref. 2). The dosage range of myrrh is 0.3 to 1.2 g. The dosage range of tincture of myrrh is 1 to 2 mL. It has been used as a component of aloes and myrrh pills and compound pills of rhubarb (Ref. 8). Both OTC preparations currently on the market contain myrrh as a component of a combination product of several ingredients.

The Panel concludes that, since myrrh is a mixture of many substances and that since it has fallen into disuse in general medical practice, it has no place in modern therapeutics. Obviously, myrrh has been supplanted by other medicines whose pharmacologic action has been established.

(3) *Evaluation.* The Panel concludes that myrrh is a mixture of many substances, the active principle of which has not been identified. There is a paucity of data on the pharmacologic activity and safety of myrrh, and it cannot be adequately evaluated. Myrrh has fallen into disuse, and the Panel concludes that tincture of myrrh should be placed in Category II.

References

(1) Grollman, A., and E. F. Grollman, "Pharmacology and Therapeutics: A Textbook for Students and Practitioners of Medicine and Its Allied Professions," 6th Ed., Lea and Febiger, Philadelphia, p. 49, 1965.

(2) Sollman, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 7th Ed., W. B. Saunders Co., Philadelphia, p. 147, 1948.

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(4) Lyman, R. A., "Textbook of Pharmaceutical Compounding and Dispensing," 2d Ed., J. B. Lippincott, Philadelphia, p. 283, 1955.

(5) Darlington, R. C., "Topical Oral Antiseptics, Mouthwashes and Throat Remedies," *in* "Handbook of Non-Prescription Drugs," 4th Ed., edited by G. B. Griffenhagen and L. L. Hawkins, American Pharmaceutical Association, Washington, pp. 123–134, 1973.

(6) Osol, A., et al., "The Dispensatory of the United States of America," 25th Ed., J. B. Lippincott, Philadelphia, pp. 875–877, 1955.

(7) Thienes, C. H., and T. J. Haley, "Clincial Toxicology," 4th Ed., Lea and Febiger, Philadelphia, pp. 61–68, 1964.

(8) "The National Formulary," 8th Ed., American Pharmaceutical Association, Washington, pp. 396 and 399–400, 1935.

Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use, or for description of product attributes for products containing antimicrobial agent active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statements or phrases which purport that a product exerts a pharmacologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Healing aid."

(2) "Relieves dryness."

(3) "For relief of pain and discomfort due to minor sore throat."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "For fast temporary relief of minor throat and mouth soreness."

(2) "Fast healing aid,"

(3) "Kills germs in minutes."

(4) "Kills germs by the millions on contact."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Multiaction germ killer."

(2) "Kills germs by the millions on contact."

(3) "General antiseptic application as an aid to wound healing."

(4) "Soothing cleansing antiseptic for mouth and throat."

(5) Adding such terms as "plus" etc.

d. *Statements or phrases that are vague in their meaning and that cannot be readily understood or are misleading.* (1) "Healing and for minor oral inflammations."

(2) "First aid for throat irritations."

e. *Statements or phrases in the indications for use that state or imply that the product is to be used to treat a disease process or lesion the diagnosis of which must be made by a physician.* (1) "As an aid to professional care of minor inflammation of the mouth and throat."

(2) "Healing aid for minor oral inflammations."

(3) "For temporary relief of minor sore throat due to common cold."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a symptom or disease state when proof that this occurs is lacking.* (1) "Prevents infection" (of the mouth and throat).

(2) "Helps provide breath protection."

(3) "As an adjunct for prophylaxis of Vincent's infection."

(4) "Healing and deodorizing solution."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes but imply that the product exerts a therapeutic effect.* (1) "Inhibits odor forming bacteria."

(2) "Deodorizing mouth wash and gargle."
(3) "Oral antiseptic cleanser."
(4) "For oral hygiene."
(5) "For general oral hygiene, bad breath."
(6) "Management of mouth odors, bad breath."
(7) "An aid to daily care of the mouth."
(8) "Helps provide soothing temporary relief of dryness and minor irritations of the mouth."
(9) "For causing the mouth to feel clean."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic effect or class of a drug or type of formulation containing the ingredient(s) instead of designating the symptoms which the product is intended to relieve.* (1) "Antiseptic, oral antiseptic."
(2) "Antimicrobial."
(3) "Antiseptic drops."
(4) "An effective antiseptic when undiluted."

3. *Category III conditions for which available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I.

Category III Active Ingredients

Benzalkonium chloride
Benzethonium chloride
Benzoic acid
Carbamide peroxide in anhydrous glycerin
Cetalkonium chloride
Cetylpyridinium chloride
Clorophyll
Dequalinium chloride
Domiphen bromide
Ethyl alcohol
Eucalyptol
Gentian violet
Hydrogen peroxide
Iodine
Menthol
Methyl salicylate
Oxyquinoline sulfate (8-hydroxyquinoline)
Phenol
Phenolate sodium
Povidone-iodine
Secondary amyltricresols
Sodium caprylate
Thymol
Thymol iodide
Tolu balsam

a. *Benzalkonium chloride.* The Panel concludes that benzalkonium chloride is safe, but that there are insufficient data to classify its effectiveness as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzalkonium chloride is a mixture of alkyldimethylbenzylammonium chlorides with the empiric formula $[C_6H_5CH_2N(CH_3)_2R]$ Cl. R represents alkyl groups of varying lengths beginning with n-C_8H_{17} to n-$C_{18}H_{37}$. The mixture is so composed that the average molecular weight of the final product is 360 daltons. It is emphasized that benzalkonium is not a single entity compound, but a mixture of very closely allied derivatives (Ref. 1).

Domagk, in 1935, called attention to the antiseptic and detergent properties of certain quaternary ammonium compounds and noted in particular that benzalkonium chloride was most effective (Ref. 2).

Benzalkonium chloride possesses the structural requirements for a quaternary ammonium compound having high germicidal activity, namely, the presence of a long alkyl hydrocarbon chain, one short aromatic-substituted alkyl group (benzyl), and two shorter alkyl groups (methyl). (See part IV. paragraph A.8.a above—The quaternary ammonium compounds.) The long alkyl hydrocarbon chain is obtained from the fatty acids of coconut oil; because the composition of coconut oil is reasonably constant, a uniform composition of the product is assured.

Benzalkonium chloride is usually available as a white to yellowish-white powder, but it may exist as a thick gel or as dried lumps of gelatinous pieces. It is very soluble in both water and alcohol. Aqueous solutions foam copiously when agitated.

Benzalkonium chloride is a cationic detergent, i.e., one whose antiseptic and detergent properties reside in the cation. and as such is incompatible with any anionic detergent, such as soap, in which the detergent effect resides in the anion. Soap should be completely removed from tissues to which benzalkonium chloride solution is to be applied (Ref.3).

(1) *Safety.* The Panel concludes that benzalkonium chloride is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Effective concentrations of benzalkonium chloride are relatively nonirritating to the skin. They are said to have an emollient action. A 1:1,000 solution was given orally to guinea pigs as their only source of fluid for months without apparent harmful effects. Daily intraperitoneal injections of as much as 6 mL of the 1:1,000 solution for several months also showed no apparent reaction. Single doses of 1.2 mL/kg of body weight of a 10-percent solution produced little or no effect in rabbits when injected subcutaneously or intraperitoneally. When the dose was increased to 1.5 mL/kg, death occurred within 24 hours due to local destruction of tissue rather than systemic toxicity.

In reporting the death of a woman following artificial abortion with benzalkonium chloride, Arnold and Krefft (Ref. 4) stated that in animals the substance is extremely toxic following intraperitoneal or intravenous injection. It produced, according to these investigators, a curare-like effect with paralysis of neuromuscular junctions of all striated muscles, which was similar to the effect observed in the woman. Extreme caution is advised by Arnold and Krefft in using benzalkonium chloride for washing body cavities, especially if the solution is to be kept in place for a long time. These manifestations of toxicity are consistent with the pharmacologic behavior of many quaternary nitrogenous compounds. They manifest ganglionic blocking effects and a curare-like action.

There are little data of any significance obtained from controlled studies on the absorption of benzalkonium chloride from the mucous membranes. Quaternary nitrogenous compounds are highly ionized and, therefore, do not penetrate lipid barriers of the cell membrane since they are not lipophilic. They are not readily metabolized by the microsomal reticulum of the liver and are excreted almost entirely unchanged through the kidney. The Panel cautions, however, that the presence of a lipophilic group could modify absorption and possibly enhance it.

The Panel finds no data from controlled studies on the cumulative effects resulting from absorption from the mucous membranes of benzalkonium chloride when used on a day-to-day basis in mouthwashes or rinses for years. There are no data on the tumorigenic, mutagenic, or teratogenic potential of the agent when used under similar circumstances or during pregnancy.

The human fatal dose of quaternary nitrogenous cationic agents has not been established; it is believed to be between 1 and 3 g. Concentrated solutions are primary skin irritants, but percutaneous absorption is not considered to be significant. Although these agents can be haptenogenic and cause systemic and local allergic responses, the incidence of sensitization is low. Benzalkonium chloride is less injurious to human leukocytes than are the mercurial antiseptics (Ref. 5).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of benzalkonium chloride

as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzalkonium chloride is a powerful and rapidly acting germicide for many pathogenic nonsporulating bacteria and fungi. Solutions of the substance have a low surface tension (37.4 dyn/cm for a 1:1,000 solution at 25.3° C) and possess detergent, keratolytic, and emulsifying properties. All of these qualities favor wetting and penetration into surfaces to which solutions of benzalkonium chloride are applied. In vitro tests have demonstrated that *Streptococcus haemolyticus* is killed within 10 minutes (but not in 5 minutes) by a 1:40,000 solution at 20° C, and by a 1:95,000 solution at 37° C; for *Staphylococcus aureus* the corresponding letal dilutions are 1:20,000 and 1:35,000; for *Eberthella typhosa* they are 1:20,000 and 1:70,000; and for *Escherichia coli,* 1:12,000 and 1:40,000. In the presence of serum the effective concentrations were approximately 10 times greater (Refs. 6 through 9).

On the skin, under the usual conditions of use, the disinfectant action of benzalkonium chloride is not as great as has been generally supposed, principally because residual soap on the skin inactivates the detergent (Ref. 10). (See part IV. paragraph A.8. above—Quaternary nitrogenous cationic antimicrobial agents.) Thorough rinsing to the area to which benzalkonium chloride is to be applied, with water, will materially enhance its effectiveness. Price (Ref. 10) has demonstrated that the "tincture" of benzalkonium chloride, in which the solvent is composed of 50 percent ethyl alcohol, 10 percent acetone, and 40 percent water, is not only a more effective skin disinfectant than an aqueous solution of equal concentration, but also is less affected by soap than is the aqueous solution. The strongest disinfectant action, according to Price (Ref. 10), is produced by a 1-percent iodine solution in 70 percent alcohol; the next strongest is 70 percent alcohol; the next strongest is 70 percent (by weight) alcohol by itself; third is the tincture of benzalkonium chloride.

Miller and associates (Ref. 11) reported that certain cationic antiseptics of the type of benzalkonium chloride deposit an invisible film on the skin which is difficult to remove. This film may be sterile on the outside, but underneath it the skin may hold viable bacteria; it is readily removed by alcohol or by application of an anionic detergent, such as soap.

Adsorption of benzalkonium chloride by cotton guaze sponges placed in a solution of the compound, thereby reducing the germicidal effectiveness of the solution, may have been responsible for the viability of an organism isolated from a solution that caused infection when used for skin disinfection in a hospital (Ref. 12).

Aqueous or alcohol-acetone-water solutions of benzalkonium chloride may be employed on the skin to reduce the microbial population. Where the skin has been washed with soap and water, careful rinsing with water, then with 70 percent alcohol, is to be followed by application of the "tincture" of benzalkonium chloride. Aqueous solutions of benzalkonium chloride are employed on areas where soap is not ordinarily used or where alcohol would produce irritation.

Concentrations of benzalkonium chloride recommended for topical uses are as follows: preoperative disinfection of skin, 1:750 tincture or solution; minor wounds and lacerations, 1:750 tincture; deep infected wounds, 1:20,000 to 1:3,000; denuded skin and mucous membranes, 1:10,000 to 1:5,000; vaginal douche and irrigation, 1:5,000 to 1:2,000; bladder and urethral irrigation, 1:20,000 to 1:5,000; bladder retention lavage, 1:40,000 to 1:20,000 eye irrigation, 1:10,000 to 1:5,000; ear and antrum irrigation, 1:10,000 to 1:1,000; preservation of ophthalmic solutions, 1:7,500 to 1:5,000; storage of catheters and other adsorbent materials, 1:500; storage of thermometers, and metallic instruments, 1:750 (aqueous); general hospital disinfection, 1:25,000.

Benzalkonium chloride, in 1:5,000 concentration, was found by Lawrence (Ref. 13) to be the most effective of several agents evaluated for antimicrobial activity in ophthalmic solutions; at this concentration destruction of test organisms was achieved in 30 minutes.

Benzalkonium chloride manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel believes that benzalkonium chloride is of limited clinical usefulness as a topical antimicrobial agent for the temporary relief of occasional symptoms of sore mouth or throat because its antimicrobial spectrum is limited, especially by the uncertainty imposed by environmental factors such as the presence of proteins, neutralizing anions, and organic materials in the mouth. Furthermore, the evidence is overwhelming that the topical application of antimicrobial agents to infected and inflamed areas is of doubtful therapeutic value, is not necessarily curative, may not ameliorate a disease process, and may even aggravate an inflammatory state. Certain antimicrobial agents are of value for select infections for which the agent is specifically microbicidal. Such specific conditions can only be diagnosed by a physician or dentist and are not amenable to self-diagnosis or treatment by a consumer, such as would be appropriate for using OTC products.

The Panel does not recommend mouthwashes, rinses, sprays, or lozenges containing benzalkonium chloride as an antimicrobial agent for use as deodorants, cleansing, prophylaxis, or for oral health care on a daily basis or for protracted periods of time, particularly in situations that are devoid of symptoms. (See part IV. paragraph A.2. above—Antimicrobial agents for use in the oral cavity.)

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of benzalkonium chloride as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.01- to 0.02-percent concentration of benzalkonium chloride in the form of a rinse, mouthwash, gargle, spray, or by swabbing digitally or using a nonadsorbent applicator, not more than three to four times daily. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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b. *Benzethonium chloride.* The Panel concludes that that there are insufficient data available to permit final classification of the safety and effectiveness of benzethonium chloride as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzethonium is identified with the group of surface active agents that possess antimicrobial activity belonging to the family of cations derived from pentavalent nitrogen. Four of the five bonds are covalent, and one is ionic. Benzethonium is a base derived by substituting the four hydrogen atoms of the ammonium ion with organic radicals. When dissolved in water, a base forms that is ionized into a quaternary ammonium ion and a hydroxyl jon. The base forms salts with organic and mneral acids, usually hydrochloric, in the same manner as does ammonium hydroxide. Benzethonium chloride is benzyldimethyl[2-[2-(p-1,1,3,3-tetramethylbutylphenoxy) ethoxyl]ethyl]ammonium chloride and contains, on a dry basis, not less than 97 percent of $C_{27}H_{42}ClNO_2$. In an aqueous solution it ionizes and yields a substituted ammonium cation and a chloride ion. The biologically active ion is the substituted ammonium cation. It is similar in chemical structure to the other quaternary nitrogenous bases that possess antimicrobial activity. One of the substituents on the nitrogen atom is a high molecular weight aliphatic chain that confers lipophilic properties to the compound.

Benzethonium chloride is a white powder composed of colorless crystals. It melts at approximately 162° C. It is soluble in water, alcohol, and in chloroform. The monohydrate consists of thin hexagonal plates.

(1) *Safety.* The Panel concludes that there are insufficient data to permit final classification of the safety of benzethonium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzethonium chloride has a low order of toxicity in animals and man and is probably safe in low dosages when used occasionally for short-term therapy. Herrell and Heilman (Ref. 1) tested the toxicity of benzethonium chloride to human leukocytes and found it less injurious than mercurial antimicrobial agents. The LD_{50} in rats orally is 450 mg/kg. Effective concentrations are relatively nonirritating. Ordinarily, salts of quaternary nitrogenous compounds are not lipophilic, are not ionized, and are poorly absorbed through the mucous membranes. The introduction of a highly lipophilic radical into the structure presumably increases the lipid solubility, and penetration through epithelial barriers of cell membranes is enhanced. Systemic absorption therefore is increased, and it is possible for toxic doses to be absorbed from the mucous membranes. Toxic doses can be ingested accidentally, resulting in vomiting, collapse, coma, and convulsions. Quaternary nitrogenous bases ordinarily acting systemically are ganglionic-blocking agents and have a curareform action. Toxic manifestations cause depression of the autonomic nervous system effects and also cause muscle weakness due to a blockade at the myoneural junction. Caution should be exercised when solutions are used for instillation into or irrigating hollow cavities, especially if the solution remains in place for a long time. There is a possibility of absorption of toxic quantities. Adequate data on absorption and attainment of toxic blood levels and the metabolic fate of the "quats" are not available. Data on cumulative effects from continued use on a day-to-day basis over the span of years or a lifetime as would be the case when they are incorporated in mouthwashes are not available. The human fatal dose for quaternary nitrogenous cationic agents has not been established but is believed to be between 1 to 3 g. Although concentrated aqueous solutions are irritant to the skin, percutaneous absorption does not appear to be significant. Benzethonium chloride is absorbed through the mucous membranes of the mouth and throat, but quantitative data from controlled studies are not available. As is the case with other drugs, these agents can act as haptens and cause systemic and local allergic responses. However, the incidence of sensitization is low. No data are available on the mutagenic, tumorigenic, or teratogenic effects of benzethonium chloride when used in mouth rinses or gargles for long-term use on a daily basis for oral health care. There are no data on its effect on the fetus during pregnancy when used daily as a mouthwash.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of benzethonium chloride as an OTC antimicrobial agent for use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzethonium chloride was found to be the most active of a series of chemically allied quaternary ammonium antimicrobial agents studied by Rawlins and associates (Ref. 2). Since that time the pyridinium and quinaldinium compounds have been introduced and this statement, though still correct for the substituted ammonium compounds, is not necessarily applicable to these newer drugs.

Benzethonium chloride was tested by the FDA method on 8 different species of bacteria. These were killed within 5 minutes when concentrations ranging from 1:12,000 to 1:80,000 were used at 20° C in vitro. It was also noted that benzethonium chloride was strongly fungicidal. A 1:1,000 solution killed actinomyces, trichophyton, monilia, and other fungi. Benzethonium chloride has come into rather wide usage as a general germicide and antiseptic for reducing the microbial population of the skin and as an antiseptic for minor

wounds. The most commonly used preparations are 1:1,000 aqueous solutions and a 1:5,000 tincture (alcohol-acetone solution).

The activity of benzethonium chloride, in common with other quaternary nitrogenous antimicrobial agents and in contrast to other types of antimicrobial agents, is greatly lessened or completely nullified by numerous substances. These substances include anionic agents, such as soaps, and a variety of organic substances, such as proteins including blood, pus, and chemicals that act on adsorbents such as cotton. Miller and associates (Ref. 3) observed that this type of antiseptic forms a thin, relatively tough film on skin. The film may be sterile on the exterior but may be holding viable bacteria beneath. One alleged advantage in using benzethonium chloride is that its germicidal activity increases as pH increases. At pH 10, it is several times more active against *Eubacterium typhosa* and *Staphylococcus aureus* than at pH 4.

In a study of the effectiveness of quaternary ammonium compounds on molluscacides, a concentration of 10 parts per million of benzethonium chloride (hyamine 1622) killed all australorbis species of snails (Ref. 4). This fact is of importance from the standpoint of sanitation since these snails serve as the intermediate host of schistosoma. The potential importance of this property is obvious.

A 1:1,000 aqueous solution is available as an antimicrobial agent for use on the skin and mucous membranes. Benzethonium has been recommended as an antiseptic in preoperative and postoperative care of wounds and infected areas and also for application to accessible mucous membranes such as those of the eye, mouth, throat, and the gastrointestinal and genitourinary tracts. Tincture of benzethonium chloride is a 1:500 solution of the ingredient in alcohol and acetone; it is recommended principally for preparation of skin preoperatively and for antepartum preparation of obstetrical patients. A 1:5,000 ophthalmic solution, also containing 2 percent of boric acid, is supplied for use in ocular conditions where an antiseptic is indicated.

The germicidal and detergent properties of benzethonium chloride are utilized for sanitation purposes. It is available in crystalline form for this purpose. Benzethonium chloride is recommended for sanitizing eating and cooking utensils in restaurants, for similar use in dairies, for control of obnoxious odors in public rest rooms, for disinfectant use in laundering operations, for various veterinary germicidal uses, and for controlling algae growth in swimming pools. It is essential, of course, that it be used in proper concentrations for each of these purposes.

Benzethonium chloride manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel concludes that, even though benzethonium chloride is effective as an antimicrobial agent in many situations, there are no data from controlled studies that establish it as an effective topical antimicrobial agent for the relief of symptoms of sore mouth or throat or both. Its antimicrobial spectrum is limited and made more so by the uncertainty imposed by environmental factors such as the presence of neutralizing anions, proteins, and organic materials found in the mouth and throat. Furthermore, there is no convincing evidence that the topical application of antimicrobial agents to infected and inflamed areas is of therapeutic benefit. In fact there is evidence that direct, topical application of antimicrobial agents may even aggravate an inflammatory state. (See part IV. paragraph A. above—General Discussion.) The Panel notes that there is no substantial evidence to establish the rationale for using benzethonium chloride on a continuing day-to-day basis as an antimicrobial agent in mouthwashes or rinses when no symptoms of any disease processes are present and in the absence of some obvious prophylactic or therapeutic need.

The Panel concludes that there are insufficient data to justify the use of benzethonium chloride in various mouthwashes, rinses, sprays, or lozenges and other oral health care use (Refs. 5 and 6). (See part IV. paragraph A. above—General Discussion.)

The Panel further concludes that there are insufficient data from controlled studies to establish the effectiveness of benzethonium chloride as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat when used within the proposed dosage limit set forth below.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a0.02- to 0.1-percent concentration of benzethonium chloride in the form of a rinse, mouthwash, or gargle not more than three to four times daily. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1 above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredient. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(5) OTC Volume 130102.

(6) OTC Volume 130115.

c. *Benzoic acid.* The Panel concludes that benzoic acid is safe but that there are insufficient data available to permit final classification of its effectiveness as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzoic acid is the simplest carboxy acid of the aromatic series, being a benzene ring with a carboxyl group. It is also known as phenylcarboxylic acid, phenylformic acid, flowers of benzoin, and flowers of benzamine (Ref. 1). Benzoic acid occurs in the free form and as salts in various plants, especially in balsams and resins obtained from coal tar. It also occurs as hippuric acid (benzoyl glycine) in the urine of nearly all vertebrates. Formerly, benzoic acid was obtained from benzoin and hippuric acid. In present-day manufacturing processes, it is synthesized from a variety of starting compounds, such as toluene, benzaldehyde, benzotrichloride etc. (Refs. 1 and 2).

Benzoic acid consists of white crystals, scales, or needles that have a

slight aromatic odor. It is somewhat volatile at warm temperature and in steam. One gram dissolves in about 300 mL water, 3 mL alcohol, 5 mL chloroform, and 3 mL ether. It melts at about 122° C. Benzoic acid may be found free in nature. Gum benzoin may contain up to 20 percent benzoic acid. Most berries contain about 0.5 percent benzoic acid. It has been used as a preservative for foods and cosmetics and has been also used in a concentration of 6 percent in combination with 3 percent salicylic acid as an antifungal agent. It has varying degrees of antimicrobial activity. Benzoic acid is used as a buffering agent and a pharmaceutical necessity in some OTC products. Use of benzoic acid is permitted as a bacteriostatic agent in certain foods and medicinal products (Ref. 3).

(1) *Safety.* The Panel concludes that benzoic acid is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzoic acid alone is a mild irritant to the skin, eyes, and mucous membranes. Gosselin et al. (Ref. 4) rate the toxicity of benzoic acid as 3, which is a low rating. The mean lethal dose (LD_{50}) of benzoic acid in dogs and cats is 2 g/kg. In rats the intravenous LD_{50} is 1.7 g/kg. Tremors and convulsions preceded death in poisoned animals.

In one study on toxicity, the oral daily administration of benzoic acid to rats in dosages of 70 to 80 mg/kg caused an increase in mortality, decrease in weight gain, and decrease in resistance to stress (Ref. 5). Additive toxicity was noted when sodium bisulfite, another food preservative, was combined with benzoic acid.

The toxicity of benzoic acid for man has not been established. A 67-kg man ingested doses of 50 g benzoic acid without ill effects. Large oral doses produce gastric pain, nausea, and vomiting. In nine patients treated with 1.5 g benzoic acid twice daily up to a total of 12 g, gastric burning and anorexia resulted, but no renal impairment was observed. When benzoic acid or benzoate are ingested they conjugate with aminoacetic acid (glycine) and appear in the urine chiefly as hippuric acid. This conversion takes place in the liver. The ability to form hippuric acid from benzoic acid has been used as the basis for estimating liver function, particularly the ability of the liver to detoxify chemical substances. Benzoic acid is an irritant to the mucous membranes and cannot be administered internally without manifestations of gastric irritation. The neutral benzoates, on the other hand, are well tolerated in doses of 6 g or more.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of benzoic acid as a OTC antimicrobial agent for topical use on mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Benzoic acid is effectively germicidal against certain microbial strains. Goshorn, Degering, and Tetrault (Ref. 6) found that at a pH of 3.5, a 1:800-solution of benzoic acid kills both *Escherichia coli* and certain strains of staphylococci within an hour. At a pH of 5, however, it is not certain that benzoic acid is still bactericidal. At a strength of even 1:20 and pH 5, it will kill these organisms. Benzoic acid will inhibit bacterial growth in a concentration of 1:3,000 at this pH. The antimicrobial action of benzoic acid is chiefly, if not exclusively, due to the un-ionized portion of the molecule since benzoate ions permeate living cells with difficulty. A combination of 6 percent benzoic acid and 3 percent salicylic acid in an ointment base, commonly known as Whitfield's ointment, has fungistatic and fungicidal properties. The ointment causes exfoliation of the upper layers of the skin by the keratolytic action of the salicylic acid. A hyperemia characterizes the dermatomycosis and the fungi are cast off with the stratum corneum when the cells desquamate. It is doubtful that the benzoic acid plays an active role in this action since most of the keratolysis is due to the salicylic acid.

Benzoic acid forms salts with sodium hydroxide and other bases. The sodium salt is the most common one in use. Sodium benzoate is ionized, does not penetrate living cell membranes, and is not effective as an antimicrobial agent. the antiseptic activity of sodium benzoate is practically nil. The antiseptic activity of benzoic acid is due to the fact that it is an acid, poorly ionized, lipid soluble, and penetrates living cells.

Reports in the literature published between 1933 and 1950 appear to lend questionable support to the effectiveness of benzoic acid as an individual component in certain preparations used as rinses for the oral cavity (Ref. 7). A report by Barbour and Vincent (Ref. 8) describes the inhibition of *Bacterium aerogenes* and *Aspergillus niger* by benzoic acid. Accumulation of the ingredient at the cell surface with the resultant inhibition of microbial growth was greater with benzoic acid than with phenol and other antimicrobial compounds tested. Since the inhibition is a reversible phenomenon, such drugs are unlikely to exert any lasting influence on the flora of the oral cavity. Moreover, neither of the two organisms is representative of those present in the oral cavity. *Bacterium aerogenes* is seldom found in the mouth in appreciable numbers, and *Aspergillus niger* is not recognized as a constituent of indigenous oral flora.

Another study (Ref. 9) merely suggests that benzoic acid might be more useful as a selective medium to be used to isolate fungi from the air by inhibiting growth of airborne bacteria. This comment appears irrelevant to the effectiveness of benzoic acid in the preparations for use in the oral cavity.

A third report by Baldinger and Nieuwland (Ref. 10) described a study comparing the inhibition of *Bacillus coli* by benzoic acid and a series of alpha phenylsubstituted acids. In general, the latter exerted a greater inhibitory effect. This report is irrelevant as far as data pertaining to the effectiveness of benzoic acid in preparations used as rinses in the oral cavity is concerned.

Goshorn, Degering, and Tetrault (Ref. 6) demonstrated that benzoic acid is less active at alkaline or neutral pH than at acid pH. The test organisms studied were *Escherichia coli* and *Staphlyococcus aureus.*

Wyss and Poe (Ref. 11) studied the comparative efficacy of various antimicrobial agents using the FDA phenol coefficient technique. Benzoic acid had a coefficient of 5.3 against *Salmonella typhosa,* but it was no more active than phenol against *Staphylococcus aureus.* This test procedure, in use in 1931, was modified in 1950 because it did not distinguish between bacteriostatic and bactericidal activity. The modified test is not considered applicable to gargles, mouth rinses, and other preparations used in the oral cavity because it is difficult to simulate the flora commonly found in the oral cavity in vitro.

The Panel concludes from the foregoing data that benzoic acid possesses some bacteriostatic and bactericidal antimicrobial activity.

The Panel, however, concludes that there are insufficient data from controlled studies to establish the effectiveness of benzoic acid as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use of 0.1- to 0.3-percent concentration of benzoic acid in the form of a rinse, mouthwash, or syrup not more than

three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicriobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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d. *Carbamide peroxide in anhydrous glycerin (urea peroxide).* The Panel concludes that carbamide peroxide is safe, but that there are insufficient data available to permit final classification of its effectiveness as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Carbamide peroxide is a relatively stable complex formed by the union of urea with hydrogen peroxide. The compound is also known as urea hydrogen peroxide. Urea is the diamide of carbonic acid; for this reason the compound is also known as urea carbamide. Other names that have been used for urea hydrogen peroxide in the past are hyperal, perhydrit, and perhydrol urea. Its empiric formula is $CO(NH_2)_2.H_2O_2$ and its molecular weight is 94.0. The hydrogen peroxide content of the molecule is 34 to 35 percent of its total weight. The compound is a white crystalline powder that breaks down, if allowed to stand in air, into urea, oxygen, and water. It decomposes to urea and hydrogen peroxide in aqueous solution. One part carbamide peroxide is soluble in 2.5 parts of water. It is soluble in anhydrous glycerin and the complex is stable in glycerin as long as moisture is excluded. Carbamide peroxide is partly decomposed by alcohol and ether into hydrogen peroxide and urea. It is used for the extemporaneous preparation of hydrogen peroxide in the field, for travelers, etc. (Ref. 1).

Carbamide peroxide releases hydrogen peroxide which is decomposed by hydroperoxidases, peroxidases, and catalase present in the tissues, wounds, and saliva, and in bacteria. Catalase causes the release of atomic or "nascent" oxygen, a strong oxidizing agent which is presumed to exert an antimicrobial action before its conversion to diatomic molecular oxygen (O_2). The peroxidases induce rapid conversion of urea hydrogen peroxide to peroxide. Breakdown of the hydrogen peroxide to oxygen and water causes formation of bubbles of gas and foaming. This release of oxygen foam accounts for the debriding effect of peroxides. The urea exerts no significant proven therapeutic effect. In addition to anhydrous glycerin, carbamide peroxide is also soluble in propylene glycol.

(1) *Safety.* The Panel concludes that carbamide peroxide is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Although data on the safety of carbamide peroxide is sparse, it is the consensus of the panel that carbamide peroxide is safe. There were no data available in standard textbooks references in the literature, or in Panel submissions on acute, subacute, or chronic studies in animals or humans (Refs. 2, 3, and 4). There are no available data on irritation and hypersensitivity reactions, teratogenicity, or carcinogenicity attributed to the compound. One manufacturer presented evidence from 3,000 prescriptions and claimed that there were no adverse reactions in humans from use of the preparation. This was the only human study concerning adverse or toxic reactions (Ref. 5).

The Panel acknowledges that urea is a naturally occurring substance in the body, and that hydrogen peroxide, in concentrations of less than 3 percent, is safe for use in the mouth and throat. The Panel also recognizes that as soon as the combination of urea and peroxide comes in contact with living tissues, it is decomposed into urea and hydrogen peroxide. The Panel therefore, concludes that it is safe.

Since urea hydrogen peroxide is combined with glycerin, the Panel has made its judgment on the preparation dissolved in anhydrous glycerin. Clinical use and marketing experience has confirmed that carbamide peroxide in glycerin is safe in the dosage form proposed for use in the oral cavity.

There are reportred clinical studies in which the carbamide peroxide inanhydrous glycerin was used in inflammatory and otic conditions. It was found to be nontoxic, nonirritating, and nonsensitizing, and no adverse reactions were reported. Carbamide peroxide has been used in animals with no reported toxicity or irritation. However, the Panel cautions that concentration of hydrogen peroxide are toxic to the soft tissues and the oral cavity, and that rapid release of hydrogen peroxide from urea hydrogen peroxide could be toxic locally.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of carbamide peroxide as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The proposed antimicrobial mechanism of action of carbamide peroxide is that it releases hydrogen peroxide. This is discussed in detail elsewhere in this document (See part IV. paragraph B.3.m. below—Hydrogen peroxide.)

Urea is a product of protein metabolism and allegedly aids in debriding necrotic tissues. Urea is a waste product that is found in human urine in concentrations of about 2 percent. It is a white, pure crystalline

material that is odorless and nontoxic. It was the first organic substance synthesized. A 2-percent solution has been recommended for treating external suppurating wounds. Urea allegedly prevents infections and stimulates cleansing and healing. However, data to substantiate this claim are lacking.

The Panel concludes that these are insufficient data available from controlled studies to establish the effectiveness of carbamide peroxide as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 9.0- to 15.0-percent concentration of carbamide peroxide in anhydrous glycerin or propylene glycol in the form of drops or as a swab. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B. 3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care anitmicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(1) Windhox, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1266, 1976.
(2) OTC Volume 130037.
(3) OTC Volume 130065.
(4) OTC Volume 130017.
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(6) Harvey, S.C., "Antiseptics and Disinfectants; Fungicides; Ectoparasiticides," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, Macmillan Publishing Co., New York, p. 997, 1975

e. *Cetalkonium chloride.* The Panel concludes that cetalkonium chloride is safe but that there are insufficient data available to permit final classification of its effectiveness as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Cetalkonium chloride ($C_{21}H_{38}ClN$) is also known as cetyldimethylbenzylammonium chloride, N-hexadecyl-N,N-dimethylbenzenemethanaminium chloride, benzylhexadecyldimethylammonium chloride, and hexadecyldimethylbenzylammonium chloride. Cetalkonium chloride has a molecular weight of 396.12.

Cetalkonium chloride is soluble in water, alcohol, acetone, ethyl acetate, propylene, and carbon tetrachloride. The pH of the aqueous solution is 7.2. Cetalkonium chloride is a cationic quaternary ammonium surfactant which is used as an antibacterial agent and fungicide. It is used in leather processing, textile dyeing, and as a mildew preventive in silicone-based water repellents. It is comparable with many nonionic detergents and is active in moderately alkaline solutions. Cetalkonium chloride water is odorless and practically tasteless at a 1:2,000 dilution (Ref. 1).

(1) *Safety.* The Panel concludes that cetalkonium chloride is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

Studies included in a product submission have demonstrated that cetalkonium chloride, in a dose of 5 mg/kg, had a depressor effect upon the blood pressure of three dogs anesthetized with sodium barbital (Ref. 2). The prior injection of atropine apparently had no inhibitory effect on the vasodepression produced by the drug. Single intravenous doses of cetalkonium chloride equal to 17.3 and 20 mg/kg were toxic to 50 percent of the animals when tested in mice and rats, respectively. Cetalkonium chloride was found to have an oral LD_{50} value of 725 ± 20 mg/kg in the mouse and 990 ± 91 mg/kg in the rat. Subacute toxicity tests were carried out in mice, rats, and rabbits for periods of 14 days. It was concluded that cetalkonium chloride was more toxic by repeated administration than by single dose. Chronic toxicity studies were carried out in dogs for 14 weeks. Cetalkonium chloride retarded growth slightly, but no hematologic or pathologic changes which could be attributed to medication with the drug were observed. Solutions of cetalkonium chloride of 1:1,000 were found to be nonirritating to the bladder mucosa and oral mucosa of rabbits. Dilutions of 1:2,000 to 1:4,000 instilled into the rabbit eye produced mild to moderate irritation. The following morning, the eyes were still slightly irritated. In three cases the 1:3,000 dilution produced a mild irritation, but all eyes appeared normal the following morning. The 1:4,000 dilution produced a mild irritation in one rabbit, and only a slight irritation in two other rabbits. It appeared to be normal the following morning.

Data on tumorigenic, mutagenic, and teratogenic effects after long-term use in mouthwashes, gargles, and rinses are not available. Data on teratogenic effects on daily use of mouthwashes during pregnancy are not available.

(2) *Effectiveness.* The Panel concludes that there are insufficient data to permit final classification of the effectiveness of cetalkonium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

Industry researchers in a study incorporated in a submission to the Panel performed both in vitro and in vivo testing of cetalkonium chloride (Ref. 2). Samples of saliva were collected from several normal human subjects, pooled, and warmed to 37° C. Samples of 0.5 mL of saliva were transferred to sterile culture tubes and 2mL of undiluted mouthwash, previously warmed to 37° C, were added. The final concentration of saliva was 20 percent. Subcultures were made at intervals of 15, 30, 60, 90, 120, and 300 seconds after the addition of the mouthwash. They reported that normal saliva failed to show growth of bacteria after 15 seconds exposure to the cetalkonium chloride mouthwash. These results are open to criticism in that pooled saliva cannot be standardized from laboratory to laboratory and, therefore, should not be used. In addition, no inactivating medium was used as recommended in the in vitro test suggested by the Panel. The same authors, in order to compare cetalkonium chloride to other nonquaternary mouthwashes under conditions of actual use, carried out experiments on normal subjects to measure the percentage reduction of bacteria in the mouth following the use of various mouthwashes. According to these authors, cetalkonium chloride produced a reduction of over 90 percent in the number of flora in the oral cavity for at least 30 minutes after medication. These results are also open to criticism because no inactivating medium was used as recommended in the in vitro test suggested by the Panel.

Cetalkonium chloride manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

Much of the literature forwarded to the Panel in the form of industry submissions was not pertinent to cetalkonium chloride (Ref 2).

The Panel concludes that there are insufficient data available from controlled studies to establish the effectiveness of cetalkonium chloride as

an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* The Panel is unable to determine a proposed dosage.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 253, 1976.

(2) OTC Volume 130073.

f. *Cetylpyridinium chloride.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of cetylpyridinium chloride as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Cetylpyridinium chloride is a quaternary nitrogenous compound derived from pyridine (Ref 1). Pyridine is a six-membered heterocyclic structure containing a trivalent nitrogen atom at the number one position in the ring. Conversion of the nitrogen atom to a pentravalent state permits addition of a hexadecylradical or other side chain and a hydroxyl, chloride, or bromide anion to the nitrogen atom, forming quaternary nitrogenous compounds. These are referred to as pyridinium derivatives. They have five bonds, four negative that form covalent bonds with organic radicals and one positive that results in an ionic type of bonding. (See part IV. paragraph A.8.b. above—The pyridinium compounds.)

A hexadecyl (cetyl) radical is substituted for a hydrogen atom on position one and a hydroxyl group bonds with the positive charge to form a base. When dissolved in water, it ionizes into a quaternary pyridinium ion and a hydroxyl ion. It interacts with acids such as hydrochloric to form salts. The chloride is a commonly used salt. Cetylpyridinium chloride is 1-hexadecylpyridinium chloride and contains, on the anhydrous basis, not less than 99 percent of $C_{21}H_{38}ClN$, it may be prepared by interaction of cetyl chloride and pyridine under pressure at an elevated temperature (Ref 2).

Cetylpyridinium chloride is a white powder, with a slight, characteristic odor (Ref 2). The salt is available as the monohydrate. Cetylpyridinium chloride melts at from 77 to 82° C. It is freely soluble in water, alcohol, chloroform, but it is not soluble in ether and benzene (Ref 3). A 1-percent solution is neutral to litmus, but when pH is determined with a glass electrode, it ranges between 6 and 7. The surface tension of a 0.1-percent aqueous solution at 25° C is 43 dyn/cm, a 1-percent aqueous solution is 41 dyn/cm, and a 10-percent aqueous solution is 38 dyn/cm (Ref 3).

The cetyl radical confers lipophilic qualities to the compound as is the case with multicarbon radicals in other quaternary nitrogenous compounds. This sets the balance between the lipophilic-hydrophilic attributes of quaternary nitrogenous compounds necessary for antimicrobial activity.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of cetylpyridinium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The minimum lethal does for cetylpyridinium chloride in rabbits tested by injection was 20 mg/kg, and the average lethal does was found to be 35 mg/kg (Ref. 4). It is more toxic when instilled intraperitoneally (Ref 4). The LD_{50} is 250 kg/mg subcutaneously, 6 mg/kg intraperitioneally, 30 mg/kg intravenously, and 200 mg/kg orally (Ref 5). When 50 mg/kg in water were administered daily for 60 days to rats, no toxic effects or alteration in the rate of growth of the animals were noted (Ref 5). Doses of 5 to 10 mg/kg administered through the esophagus showed no toxic effects over a 60-day period (Ref 5).

The toxic systemic effects of cetylpyridinium chloride are similar to those of other quarternary nitrogenous compounds and are described below.

A 1:3,000 solution of cetylpyridinium is irritating to the mucous membranes of the conjunctiva, but not when applied to the skin (Ref. 6). A 1:200 alcoholic or aqueous solution of cetylpyridinium does not cause skin irritation (Ref. 7). Although concentrated aqueous solutions are primarily skin irritants, percutaneous absorption is not believed to be significant (Ref. 8). Allergic manifestations have not been reported, but the Panel warns that the cetylpyridinium chloride can act as a hapten and cause sensitization.

The human fatal dose for the quaternary nitrogenous compounds has not been established, but has been estimated to be between 1 and 3 g for an adult (Ref. 8). Toxic doses of cetylpyridinium chloride manifest an autonomic (nicotinic) blocking effect on the ganglia and a curariform (muscarinic) type of response. The principal manifestations of poisoning from oral ingestion are vomiting, collapse, and coma (Ref. 8). Local gastrointestinal irritation, restlessness, apprehension, confusion, dyspnea (labored breathing), and cyanosis occur followed by convulsions, muscle weakness or paralysis, and death due to paralysis of respiratory muscles (Ref. 8). The nicotine-like effects of blocking the autonomic ganglia are most likely due to the curariform action and are similar to those manifested by many quaternary nitrogenous compounds (Ref. 9). Ordinarily, salts of quaternary nitrogenous compounds do not penetrate epithelial barriers because they are not lipophilic and are highly ionized. The presence of a high molecular weight lipophilic group on the molecule of these quaternary nitrogenous compounds increases their lipid solubility and facilities penetration through cell membranes. The lipophilic group enhances its degree of absorption.

Data on cumulative effects, metabolism, and excretion of cetylpyridinum chloride in man, particularly after long-term use, are not available. Data on tumorigenic, mutagenic, and teratogenic effects when used on a daily basis for months or years in mouthwashes and other oral health care products are not available. Data on teratogenic effects if used during pregnancy are not available. Clinical experience following prescription and OTC use of the ingredient have not thus far revealed any overt toxic manifestations.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness cetylpyridinium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Cetylpyridinium chloride has the same detergent and antiseptic actions characteristic of other quaternary nitrogenous compounds, i.e., benzalkonium chloride and benzethonium chloride, that manifest antimicrobial activity (Ref. 2). The compound was introduced for clinical

use in 1942. Cetylpyridinium chloride is bactericidal and bacteriostatic against may gram-positive and some gram-negative organisms. A 1:50,000 aqueous solution will kill staphylococci in 10 minutes, though not in 5 minutes (Ref. 10). It is also active against some fungi, including *Candida albicans*, and against *Trichomonas vaginalis* (Ref. 2). Cetylpyridinium chloride's action is uncertain or it is ineffective against spores and most viruses. Its activity is diminished by the presence of serum, tissue fluids, proteins, lipids, and phospholipids (Ref. 2). Soaps, other anionic sufactants, and detergents are incompatible with cetylpyridinium chloride and antagonize its action (Ref. 2). Cetylpyridinium Chloride lowers surface tension and has wetting and emulsifying properties similar to other quaternary nitrogenous compounds (Ref. 2).

When applied to the skin, cetylpyridinium chloride and other quaternary ammonium antiseptics form a film under which bacteria may remain viable even though the outer surface of the film is bactericidal and sterile (Ref. 2).

Cetylpyridinium chloride in a concentration of 1:100 is used topically for preoperative disinfection of intact skin. A 1:100 solution has been used for prophylactic antisepsis of superficial wounds. A 1:5,000 to 1:10,000 solution has been used for therapeutic disinfection of mucous membranes. Cetylpyridinium chloride is used as an active ingredient in mouthwashes, rinses, and gargles. It is also incorporated into lozenges with the intent of obtaining an antimicrobial action on the mucous membranes of the mouth and throat (Ref. 2).

The antimicrobial spectrum of cetylpyridinium chloride is limited. This is made more so by the uncertainty imposed by environmental factors during use, such as the presence of proteins, neutralizing anions, and organic material and debris in the mouth. Furthermore, there is sufficient evidence from long-term clinical experience that the topical application of antimicrobial agents to infected and inflamed areas is of doubtful therapeutic value, is not curative, and may even aggravate an inflammatory state. The Panel notes that there are no data to justify the use of cetylpyridinium choride in oral health care products on a continuing day-to-day basis for protracted periods of time for prophylaxis and other uses when no symptoms are present and no therapeutic benefit can be demonstrated. The Panel concludes that even though cetylpyridinium chloride does kill or inhibit certain select microorganisms found in the oral flora, there are insufficient data to demonstrate that this antimicrobial activity is of therapeutic benefit in treating sore mouth or sore throat or both.

Cetylpyridinium chloride manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel concludes that there are insufficient data available from controlled studies to establish the effectiveness of cetylpyridinium chloride as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.025- to 0.1-percent concentration of cetylpyridinium chloride in the form of a rinse, mouthwash, or gargle not more than three to four times daily. Use a 0.025- to 0.1-percent concentration of cetylpyridinium chloride in the form of a lozenge every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling).

(5) *Evaluation.* Data to demontrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(3) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 254, 1976.

(4) OTC Volume 130007.

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(6) Warren, M. R., et al., "Pharmacological and Toxicological Studies on Cetylpyridinium Chloride, A New Germicide," *Journal of Pharmacology and Experimental Therapeutics*, 74:401–408, 1942.

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(9) Gleason, M. N., et al., "Clinical Toxicology of Commercial Products," 3d Ed., Williams and Wilkins, Baltimore, section III, pp. 197–200, 1969.

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g. *Chlorophyll.* The Panel concludes that chlorophyll is safe, but that there are insufficient data available to permit final classification of the effectiveness of chlorophyll as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Chlorophyll is the green pigment and photosynthetic agent found in plants. Functionally, it is comparable to hemoglobin found in animal life in that it sustains respiration in plants. Chlorophyll is not a single entity, but is found in three forms: a, b, and c. Higher phyllogenetic orders of plants with green leaves and green algae contain chlorophyll a and chlorophyll b in the approximate ratio of 3:1. Chlorophyll c is found together with chlorophyll a in many types of marine algae.

Chlorophyll a is freely soluble in ether, ethanol, acetone, chloroform, carbon disulfide, and benzene. The alcoholic solution is blue-green with a deep red fluorescence (Ref. 1). Chlorophyll b is freely soluble in absolute alcohol and ether. The ether solution has a brilliant green color. Solutions with other organic solvents are usually green to yellowish-green with red fluorescence (Ref. 2).

The chlorophyll of commerce is an intensely dark-green aqueous, alcoholic, or oil solution. It is made from dehydrated alfalfa and broccoli leaves.

Careful alkaline hydrolysis of chlorophyll replaces the methyl and phytyl ester groups with sodium or potassium. The resulting salts are called chlorophyllins and are water soluble. Water-soluble sodium and potassium salts occur as a blue-black glistening powder having a fishy odor. They are slightly soluble in alcohol and freely soluble in water. A 1-percent solution in water is dark green and alkaline, having a pH range of 9.5 to 10.7.

Chlorophyll was introduced into clinical medicine in 1945. It is similar to hemoglobin, structurally different in that magnesium replaces iron in the complex of the pyrrole rings. Chlorophyll and its derivatives are used to color soaps, oils, fats, waxes, confectionery, preserves, liquors, cosmetics, and perfumes. It is also used as a deodorant.

The Panel reviewed a submission on a currently marketed product which contained both safety and effectiveness data on chlorophyll (Ref. 3).

(1) *Safety.* The Panel concludes that chlorophyll is safe as an OTC antimicrobial agent for topical use on mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Cholorphyll and its derivatives have little or no toxicity when applied topically, taken orally, or injected intravenously (Ref. 4). Chlorophyll is found in all green-colored plant life, and inasmuch as leaves and grasses serve as food and are consumed in large quantities in the diets of herbivorous and omnivorous animals, it is not unreasonable to assume that chlorophyll is nontoxic when used topically, orally, or intravenously. A potassium-sodium-copper complex of chlorophyll fed to rats in a concentration of 3 percent of their diets for life showed no signs of toxicity for the complex including copper (Ref. 5). Sensitization has not been reported following its use topically or when ingested orally.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of chlorophyll as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Chlorophyll has been used in aqueous solutions as a deodorant to overcome mouth odor. The mechanism of its alleged action as a deodorant has never been clearly defined, and the ingredient has fallen into disuse over recent years since it has not been demonstrated that it is an effective deodorant. In dogs, doses of 30 to 150 mg decreased halitosis; however, the ingested chlorophyll had no effect on the odor in the dogs' coat (hair) in the animals tested. It allegedly promotes wound healing, but no data were submitted or are available from controlled studies to substantiate that this occurs.

The water-soluble chlorophyllins appear to have some bacteriostatic properties in vitro. The concentration necessary for this inhibition is often 1:80 or more; however, all pathogens are not affected to the same degree. In vivo, the bacteriostatic influence of these chlorophyllins is supposedly due to the production of an unfavorable environment rather than to a direct action of the agent on the metabolic activity or cell structure of the pathogens (Ref. 4).

There is no evidence that chlorophyll derivatives are bactericidal. Insufficient data were submitted concerning the effectiveness of chlorophyll as an antimicrobial agent for the relief of symptoms of sore mouth and sore throat.

The Panel concludes that there are insufficient data available from controlled studies to establish the effectiveness of chlorophyll as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.2- to 0.5-percent concentration of chlorophyll in aqueous solution in the form of rinses, mouthwashes, gargles, sprays, or swabs not more than three to four times daily. Use a 0.2- to 0.5-percent concentration of chlorophyll in the form of a tablet or lozenge every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(3) OTC Volume 130015.

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h. *Dequalinium chloride.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of dequalinium chloride as OTC antimicrobial ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Dequalinium is a base derived from 2-methylquinoline. Methylquinoline may be quaternized to form a series of quinaldinium compounds. When the trivalent nitrogen is converted to the pentavalent form, a hydrogen atom on the nitrogen atom of the quinaldine base may be substituted by an alkyl radical. In dequalinium, a nitrogen atom is attached at each end of a decamethylene chain. Thus, the dequalinium molecule has two quaternary nitrogen atoms, one at each pole of the chain. This chain serves as the lipophilic portion of the molecule. The two quinaldinium groups at each end are ionized into quaternary cations. Dequalinium, therefore, is similar in chemical, physical, and pharmacologic properties to other quaternary nitrogenous compounds.

Dequalinium acetate is 1,1'-decamethylenebis(4-aminoquinaldinium acetate); dequalinium chloride is the chloride of the same quaternary base (Ref. 1). It is a white or pinkish-buff, slightly hygroscopic powder. One gram dissolves in about 2 mL water and in 12 mL alcohol. It melts, with decomposition, at about 280°C.

Dequalinium chloride is a creamy-white powder. It is slightly soluble in water (1 g in 20 mL). One gram dissolves in about 200 mL propylene glycol. It melts, with decomposition, at about 315°C.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of dequalinium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Dequalinium has a low degree of toxicity similar to other "quats." The lethal dose for humans is not known, but is believed to be from 3 to 5 g. No data on acute animal or chronic toxicity in humans were submitted to the Panel. The incidence of sensitization is low. Concentrated solutions can be irritating to the skin. Data on its absorption from the mucous membranes, metabolic fate, or excretion are not available. The Panel was not furnished with data from controlled studies concerning tumorigenic, mutagenic, or teratogenic effects when used on a daily basis in the mouth and throat for months or years at a time in mouthwashes and similar oral health care products. No data are

available on teratogenic effects when used during pregnancy.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of dequalinium chloride as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Dequalinium acetate and chloride are antibacterial and antifungal agents. They are active against many gram-positive and gram-negative bacteria, also against *Borrelia vincenti, Candida albicans,* and several trichophyton species. Their activity is little affected by serum.

The chloride is applied locally in a variety of preparations (Ref. 2). For infections of the mouth, gums, and throat, it is used in lozenges containing 0.25 mg, or applied as a 0.5-percent paint in propylene glycol. For monilial or trichomonal vaginitis it is employed in pessaries containing 10 g. For infected skin lesions, burns, or wounds, a cream containing 0.4 percent of dequalinium chloride is applied; 0.25 percent of prednisolone may be added. Dequalinium acetate, which is much more soluble in water, is used in medicated gauze dressings.

The dequalinium salts are incompatible with soap and other anionic surface-active agents; they are also incompatible with phenol and chlorocresol.

The Panel has no submission from any firm of any product containing either of these salts. The Panel feels that dequalinium chloride is of limited clinical usefulness as a topical antimicrobial agent for the temporary relief of occasional symptoms of sore mouth or throat because its antimicrobial spectrum is limited and made more so by the uncertainty imposed by environmental factors such as the presence of proteins, neutralizing anions, and organic material in the mouth. Furthermore, the evidence is overwhelming that the topical application of antimicrobial agents to infected an dinflamed areas is of doubtful therapeutic value, is not necessarily curative, and may even aggravate an inflammatory state. Antimicrobial agents are of value for certain infections for which the agent is specifically microbicidal. Such special conditions can only be diagnosed by a physician or dentist and are not amenable to self-diagnosis or treatment such as would be the case for OTC products.

Dequalinium chloride manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel does not recommend mouthwashes, rinses, sprays, or lozenges containing antimicrobial agents for deodorizing, cleansing, or prophylaxis, or for oral health care on a daily basis or for use for protracted periods particularly in situations that are devoid of symptoms. (See part IV. paragraph A.2. above—Antimicrobial agents for use in the oral cavity.)

The Panel concludes that there are insufficient data available from controlled studies to establish the effectiveness of dequalinium acetate and chloride as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.5-percent solution of dequalinium chloride in propylene glycol. Apply by swabbing locally to lesions in the mouth and throat not more than three to four times daily. Use a lozenge containing 0.25 mg of dequalinium chloride every 2 hours if necessary. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above-Cateogory I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care animicrobial agents. (See part IV. pargraph C. below—Data Required for Evaluation.)

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i. *Domiphen bromide.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of domiphen bromide as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Domiphen is a quaternary ammonium compound. It is a base that forms salts with acids. The bromide is the salt used for antimicrobial purposes. Chemically it is N,N-dimethyl-N-(2-phenoxyethyl-1-dodecanaminium bromide; dodecyldimethyl (2-phenoxyethyl) ammonium bromide; (beta-phenoxyethyl) dimethyldodecylammonium bromide, ($C_{22}H_{40}BrNO$) (Ref. 1). Domiphen bromide is a white crystalline substance. The crystals have a mild, characteristic odor, a bitter taste, and are freely soluble in water (100 g/mL). Domiphen bromide is soluble in alcohol, acetone, and chloroform, but only slightly soluble in benzene. At 25° C the pH of a 10.0-percent aqueous solution is 6.42, the 1.0-percent solution 5.5, and the 0.1-percent solution 6.8. As is the case with other quaternary nitrogenous compounds, salts of domiphen are surface-active agents with detergent and surface tension-reducing properties. The salts ionize when dissolved in water and the cation is the active ion. The surface tension value of the 10-percent aqueous solution at 25° C is 26.75 dyn/cm and the 0.1-percent 22.08 dyn/cm. Aqueous solutions are clear and colorless and foam profusely on shaking. Solutions are incompatible with anionic agents, particularly soaps.

Domiphen bromide is a member of a large group of quaternary ammonium surface active compounds. They were widely used as disinfectants for inanimate objects but subsequently lost popularity as their limitations became apparent. To a lesser extent, certain members of the group have been used as skin antiseptics. Benzalkonium chloride, U.S.P., is probably the "quat" most extensively employed for this purpose, especially as a preoperative skin preparation prior to minor surgical procedures. The antimicrobial activity of the "quats" has been extensively reviewed by Lawrence and Block (Ref. 2).

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of domiphen bromide as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The concentrations of domiphen bromide used in commercial lozenges and mouthwashes appear to be nontoxic. Kutscher and Budowsky (Ref. 3) stated that clinical use of a mouthwash containing 0.01 percent domiphen bromide two to six times daily for up to 52 weeks resulted in no apparent local or systemic toxicity.

There were 746 patients treated with this or other regimens of the same solution.

No local or systemic toxicity was attributable to 0.01-percent domiphen bromide when used as a mouth spray in 154 patients. The patients were all being treated for oral disease, and the duration of therapy varied from 2 to 42 days. An unspecified number of patients was placed on oral rinses 2 to 6 times per day for up to 52 weeks using 0.01 percent domiphen bromide solution. No toxicity was reported during or after this therapy (Ref. 3).

Patch-tests utilizing 1:1,000 solutions of domiphen bromide applied to the skin of 405 volunteers were negative after being in place for 24 hours. The solvent for domiphen bromide was not specified. These same individuals were retested 10 days later and again the responses were all negative (Refs. 4 and 5).

Six adverse reactions were reported between 1958 and 1970 for a lozenge product containing domiphen bromide. These included one complaint of lack of effectiveness. Other complaints included burns on the tongue (two cases), soreness of the mouth (one case), fungal growth after use (one case), and chalk-like taste (one case) (Ref. 5).

A number of animal studies have been conducted with regard to the safety of domiphen bromide. An unpublished study (Ref. 6) determined the intravenous LD_{50} for domiphen bromide to be 18 mg/kg for rats, 31 mg/kg for mice, and 11 to 12 mg/kg for rabbits. The intraperitoneal LD_{50} was 40 to 45 mg/kg for rats and 10 to 20 mg/kg for guinea pigs. The oral LD_{50} could not be determined since marked diarrhea resulted. Oral doses used were as high as 800 mg/kg with five of six unspecified laboratory animals surviving (Ref. 7). The pharmacological and toxicological effects of the various quaternary ammonium compounds are almost identical (Ref. 2). Toxic effects can be generalized and result in convulsions or produce central nervous system depression followed by death. The depression is due to the curare-like action of these compounds (Ref. 8).

The movement of frog cilia was inhibited after a 30-minute exposure to a 1:5,000 concentration of domiphen bromide. Daily instillation of a 1:5,000 solution in rabbit's eyes for 17 days resulted in no vasodilation of conjunctival vessels, no change in corneal reflex, and no histological abnormalities (Ref. 9).

Domiphen bromide was administered to white rats of both sexes by gastric intubation for 7 weeks. The dosage was 10 mg/kg daily for 5 days in each week. The animals showed an inability to gain weight comparable to litter-mate controls. No change was found in hematocrit values, red or white blood cell counts, or in the normal distribution of white blood cells. Also, no change in gut flora was found. No changes were found in the liver, kidney, adrenal, bone marrow, brain, heart, lung, spleen, thyroid, pituitary, ovaries, testes, pancreas, skeletal muscle, or retina (Ref. 7).

Six dogs were given domiphen bromide orally for 3 months. One group of three dogs was given 10 mg daily for 5 days per week. A second group of three dogs was given an escalating dosage of 5 mg/kg, then 20 mg/kg, and then 30 mg/kg. A control group was maintained. Vomiting and loss of appetite were noted at the higher doses. One dog demonstrated an atypical reduction in hemoglobin, hematocrit, and an erythrocyte count. No other toxicity or histopathologic changes were induced (Ref. 10).

There are no data from controlled studies on the tumorigenic or mutagenic effects of domiphen bromide when used in the mouth and throat on a regular basis for months and years as a mouthwash or for similar oral health care products. There are no data on its teratogenic effects if used during pregnancy.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of domiphen bromide as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

There are many reports in the medical literature on the use of domiphen bromide as a skin disinfectant, for disinfecting raw sewage, and as an antimicrobial for use in the oral cavity. These studies, however, are in many cases subjective and uncontrolled. In the studies relevant to the use of domiphen bromide in the oral cavity, the exposure time at the stated concentration is unlikely to occur in the mouth because of salivary dilution.

Sturzenberger and Leonard (Ref. 11) evaluated the effects of a mouthwash containing domiphen bromide and cetylpyridinium chloride in combination on plaque reduction. Twenty-seven adults used their own toothbrush techniques in combination with a 30-second rinse of either the experimental or placebo mouthwash after brushing. After 1 week the experimental mouthwash showed a 38-percent decrease in stainable plaque as compared to either the placebo or a third mouthwash containing the cetylpyridinium chloride only. The Panel emphasizes that it is highly debatable that there is any well-established correlation between plaque reduction and antimicrobial activity in the mouth and does not consider these studies of significance as applicable to relief of the symptoms due to sore throat and sore mouth. This study also does not support the effectiveness of domiphen bromide because domiphen bromide was not tested as a single ingredient.

Gjermo, Baastad, and Rolla (Ref. 12) found that the plaque-inhibiting effects of the quaternary ammonium compounds in vivo did not correlate with their activity against salivary bacteria in vitro.

Shern, Swing, and Crawford (Ref. 13) compared the in vitro antimicrobial effects of chlorhexidine, a quaternary ammonium compound, with other surface-active compounds. They used the in vitro plaque assay system of McCabe, Keyes, and Howell (Ref. 14) to determine the minimum concentration of drug necessary to inhibit plaque formation by *Streptococcus mutans* and gram-positive filamentous strains. The quaternary ammonium compound benzalkonium chloride was approximately equal in plaque-inhibitory ability to chlorhexidine gluconate and significantly more effective than other compounds tested. As stated above the Panel does not regard these studies as proof of effectiveness of antimicrobial activity in the mouth.

Turesky, Glickman, and Sandberg (Ref. 15) evaluated the antiplaque effects of the quaternary ammonium compounds. These substances inhibited plaque growth. Saliva or pellicle did not affect the products' antibacterial activity.

Seidenberg (Ref. 16) demonstrated that domiphen bromide was effective as a skin disinfectant when the hands were washed for a 3-minute period in a 0.1-percent aqueous solution. Domiphen bromide was bactericidal at low levels against *Escherichia coli*, salmonella species, *Shigella dysenteriae*, *Staphylococcus aureus*, *Streptococcus hemolyticus*, and *Diplococcus pneumoniae*. Gram-positive bacteria were more sensitive then gram-negative strains and proteus species were resistant. It was noted that soaps and serum proteins markedly reduced the activity of domiphen bromide. This study by Seidenberg (Ref. 16) was carried out using a 0.1-percent solution of the same product which apparently represented a 1:1,000 concentration of domiphen bromide. This is 10 times the concentration of domiphen bromide in

the lozenge product and 20 times that contained in two other mouthwash products. For this reason this study is not relevant to the effectiveness of domiphen bromide as an antiseptic contained in mouthwashes or lozenges. The concentrations of domiphen bromide tested in vitro varied from experiment to experiment with no consistent protocol. However, when protein was present in the broth medium, a concentration of 0.015 percent (1:6,666) domiphen bromide was required to kill certain gram-positive bacteria, e.g., *Diphtheria bacilli,* and 2.5 percent (1:40) was necessary to kill certain gram-negative bacteria (Ref. 16). Currently marketed mouthwashes contain 1:20,000 domiphen bromide. The findings of Seidenberg (Ref. 16) do not support the antiseptic effectiveness of domiphen bromide.

Kutscher et al. (Ref. 17) studied the effect of domiphen bromide on 18 pathogenic strains of *Candida albicans.*

After 17 hours of incubation, 3 of the 18 strains were inhibited by a 1:48,000 dilution of the compound, 2 of the 18 strains were inhibited by a 1:96,000 dilution, 12 of the 18 strains were inhibited by a 1:192,000 dilution, and 1 of the 18 strains was inhibited by a 1:384,000 dilution. The authors stated that an optimistic outlook on the possible clinical usefulness of domiphen bromide was justified on the basis of their results. The findings of Kutscher et al. (Ref. 17) of merely inhibiting *Candida albicans* by a 17-hour exposure to low concentrations of domiphen bromide has dubious signifiance relative to its generalized use as a mouthwash. While this yeast is a component of the indigenous oral flora, it is normally present in large numbers. Moreover salivary flow would certainly dilute the 0.005-percent (1:20,000) concentration of domiphen bromide found in commercially available mouthwash 10 times to 1:200,000 within 17 hours or less.

Scala and Vicari (Ref. 18) found the growth of *Stapylococcus aereus* to be inhibited for 48 hours by a 0.8 μg/mL concentration of domiphen bromide. A 1.2 μg/mL concentration inhibited the same organism for 72 hours. A concentration of 1.2 μg/mL also inhibited the growth of *Escherichia coli* for 72 hours. The inhibitory concentration indicated in this study for both organisms is approximately 1.0 μg/mL (0.001 mg/mL=1:1,000,000). Moreover, a 48- to 72-hour exposure time to such a concentration is unlikely to occur in the mouth because of salivary dilution.

Bavin, Kay, and Simmonite (Ref. 19) compared the antibacterial activity of domiphen bromide to other quaternary ammonium compounds and disinfectants. They found domiphen bromide to have a level of activity that is either equal to or better than benzalkonium chloride against *Staphylococcus aureus, Proteus vulgaris, Salmonella typhi, Klebsiella pneumoniae, Bacillus mycoides, Pseudomonas aeruginosa,* and *Clostridium tetani.* The bacterium which was least sensitive to domiphen bromide and the other quaternary ammonium compounds was *Pseudomonas aeruginosa.* The concentrations of domiphen bromide and the other quatenary ammonium compounds needed to kill the test bacteria increased when 10-percent serum was incorporated into the nutrient broth. However, the concentration of domiphen bromide needed to inhibit growth was less than benzalkonium chloride for all organisms except *Staphylococcus aureus* and *Bacillus mycoides.* In regard to these two bacterial strains, domiphen bromide was at least as active as the rest of the quaternary ammonium compounds. In a summary of their work, Bavin, Kay and Simmonite (Ref. 18) indicated domiphen bromide to be the most active of the different antiseptics which they studied. Partial inactivation occurred in the presence of soap or protein. This study, which was fairly well designed, took into account the need to utilize a large inoculation (10^7 microorganisms per test), the addition of particulate organic material to the domiphen bromide prior to exposure of the test organism and the use of an inactivator in the subculture medium employed to ascertain the bacterial activity. The use of the inactivator, polyethylene oxide, was not significant in the test results. This is not surprising because, since the paper's publication, better inactivators have been found. The addition of particulate organic material (killed yeast cells) to the test system demonstrated a reduction in the bactericidal activity of domiphen bromide of about 20- to 40-fold. With a 10-minute exposure, the bactericidal concentrations ranged from 100 mg/100 mL (0.1 percent=1:1,000) for *Staphylococcus Aureus* to 1000 mg/100 mL (1 percent=1:100 for *Proteus vulgaris.* These concentrations are greatly in excess of the 1:20,000 concentrations of domiphen bromide found in commercial mouthwashes.

The minimum inhibitory concentrations (MIC's) of domiphen bromide within 48 hours, in the absence of organic material, ranged from 1:8,000 to 1:32,000 for gram-positive bacteria and from 1:125 to 1:2,000 for the gram-negative organisms. In the presence of blood the MIC's were 1:4,000 for gram-positive organisms and 1:32 to 1:500 for gram-negative organism. These MIC's are generally much in excess of the 1:20,000 domiphen bromide concentration found in commercial mouthwashes.

Kutscher et al. (Ref. 20) tested domiphen bromide against 18 pathogenic strains of *Candida albicans.* The concentration of domiphen bromide used was 0.01 percent. It was found that all of the test organisms were killed in 5 to 10 minutes. While this paper implies killing of *Candida albicans* by 0.01 percent (1:10,000) domiphen bromide in 5 to 10 minutes, critical examination of the methodology reveals that the investigators did not distinguish between fungicidial and fungistatic activity. Moreover, 0.01 percent domiphen bromide is twice the 0.005-percent concentration employed in commercial mouthwashes.

Knusel and Loustalot (Ref. 21) compared the effect of domiphen bromide and sodium fluoride on streptococci isolated from carious lesions in the rat and on microorganisms found in the saliva and mouths of the animals. The animals used were from a caries-prone strain. When domiphen bromide and sodium fluoride were administered in the drinking water, the concentration of domiphen bromide which produced a 50-percent inhibition of caries was 20 mg percent while 8.8 mg percent of sodium fluoride produced the same effect. In a separate experiment, domiphen bromide (3 mg percent) inhibited caries in 7 percent of the animals while a level of 30 mg percent inhibited caries in 54 percent of the test animals. A concentration of 10 mg percent sodium fluoride prevented caries in 50 percent of the animals. In addition to the cariostatic effects of domiphen bromide in situ, the authors studied the compound's ability to inhibit cariogenic streptococci and other similar microorganisms in vitro. Domiphen bromide inhibited reproduction of the bacterial strains at very low levels. For the streptococcus species, the MIC ranged from 0.5 to 5μg/mL; for *Staphylococcus aureus,* the MIC was 5 μg/mL; for lactobacillus species, the MIC was 50μg/mL. Sodium fluoride, in contrast, inhibited the reproduction of the experimental bacteria only a very high doses (MIC's ranged from 100 to 1,000 μg/mL). The authors stated that the potent effect of domiphen bromide on gram-positive cocci is noteworthy. They felt that the marked effect of domiphen bromide on bacterial reproduction recommended it as a caries inhibitor. During a discussion of their

results, they concluded that domiphen bromide had a strong caries-inhibiting effect, which was only slightly inferior to that of sodium fluoride. In contrast to sodium fluoride, domiphen bromide was effective against cariogenic streptococci and other types of microorganisms found in the oral cavity. In this study the 20 mg percent (1:5,000), 30 mg percent (1:3,750) required to produce approximately 50 percent inhibition of caries in the test animal was apparently administered ad lib to the animals in their water supply. Obviously, such quantities greatly exceed what a human would receive in a domiphen bromide mouthwash used a few times daily. The methodology and results of the in vitro studies are difficult to interpret.

Adair, Geftic, and Gelzer (Ref. 22) determined the minimum inhibitory concentrations of domiphen bromide and five other quaternary ammonium compounds against *Pseudomonas aeruginosa* ATCC 9027. Domiphen bromide had an MIC equal to 50 μg/mg while alkyldimethyl-benzylammonium chloride had a MIC of 100 μg/mL, alkyldimethyl 3,4-dichlorobenzylammonium chloride had MIC of 200 μg/mL. Cetyltrimethylammonium bromide, cetyldimethylethylammonium bromide, and cetylpyridinium chloride all had MIC's greater than 1,000 μg/mL. When resistance to alkyldimethylbenzylammonium chloride was developed in *Pseudomonas aeruginosa* ATCC 9027, the organism was also cross resistant to domiphen bromide and alkyldimethyl 3,4-dichlorobenzylammonium chloride. In this study the concentration of domiphen bromide utilized (50 μg/mL (1:20,000)) is equivalent to that contained in commercially available domiphen bromide mouthwashes. However, exposure time to this concentration was 10 days, a period of time which would not be achieved with a mouthwash.

None of the clinical studies supplied by a manufacturer as a Panel submission provide acceptable evidence for the effectiveness of domiphen bromide (Ref. 23).

Further studies by Wyler, Miller, and Micik (Ref. 24), Jaconia and Eisman (Ref. 25) and Weerts and Eisman (Ref. 26) did not use domiphen bromide as a single ingredient and therefore do not support the effectiveness of domiphen bromide.

Domiphen bromide manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel concludes that there are insufficient data available from controlled studies to establish the effectiveness of domiphen bromide as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older. Use a 0.005-percent concentration of domiphen bromide in the form of a rinse, mouthwash, or gargle not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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j. *Ethyl alcohol.* The Panel concludes that ethyl alcohol is safe but that there are insufficient data available to permit final classification of its effectiveness as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

Chemically, ethyl alcohol is ethane with one hydrogen replaced by a hydroxyl group (C_2H_5OH) (Ref. 1). It is also known as hydroxyethane, ethanol, ethyl hydroxide, rectified spirit, spirits or wine, and by various other names. Pure alcohol contains not less than 92.3 to 93.8 percent by weight and 94.9 to 96 percent by volume of ethanol at 15.56° C, the remainder being water (Ref. 2). Alcohol has been made for many centuries by fermentation of various carbohydrates by yeast. Alcohol may also be produced synthetically by hydration of ethylene, which is available in abundance in natural gas and coke oven gases. Another synthetic method utilizes acetylene which is catalytically hydrated to acetaldehyde and then hydrogenated again, aided by a catalyst, to ethyl alcohol.

The term "proof spirit," as used in the United States, refers to a produce containing 50 percent by volume of alcohol. Fifty percent alcohol is sometimes designated as 100 proof. The strength of any solution of ethyl alcohol may be expressed in proof by multiplying the concentration of C_2H_5OH by volume by two.

Alcohol is very hygroscopic, and concentrations above 95 percent must be made by special processing. The 95 percent alcohol boils at 78.2° C; the anhydrous alcohol boils at 78.3° C. It is not possible to obtain anhydrous alcohol (absolute alcohol) by direct distillation, since alcohol represents a constant boiling mixture of ethanol and water at 78.2° C. Absolute or "water-free" alcohol may be made by adding chemicals, such as anhydrous copper sulfate or calcium sulfate, which form hydrates and remove the water after which the alcohol is purified by distillation (Ref. 3).

Alcohol is a transparent, colorless, mobile, volatile liquid with a characteristic, somewhat pungent, odor and a burning taste. Alcohol is flammable. Alcohol is miscible with water in all proportions. It is also miscible with ether and chloroform. The specific gravity is not more than 0.816 at 15.56° C (Ref. 2).

The U.S. government has established regulations authorizing the addition of substances to alcohol which render it unfit for beverage purposes although suitable for industrial use. These various liquids are referred to as "denatured alcohols."

Diluted alcohol is a mixture of equal volumes of alcohol and purified water. This mixture contains between 41 and 42 percent by weight (48.4 to 49.5 percent by volume) of C_2H_5OH. When alcohol is mixed with water, a contraction in volume occurs. The specific gravity of diluted alcohol is between 0.935 and 0.937 at 15.5° C. Diluted alcohol is used mainly as a solvent for various pharmaceutical purposes. Concentrations up to 35 percent are used in certain mouthwashes. Higher concentrations cause burning of the mucous membranes. Rubbing alcohol consists of 68.5 to 71.5 percent by volume of absolute ethyl alcohol combined with a denaturant.

(1) *Safety.* The Panel concludes that ethyl alcohol is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

The safety of alcohol has been established through long-term use. Alcohol is a central nervous system depressant and produces coma analagous to other depressant drugs if overdosage occurs. Extensive studies indicate that there is a correlation between the concentration of alcohol in blood, urine, or expired air and the concentration on the nervous system. Alcohol is absorbed rapidly from the gastrointestinal tract when ingested in pure form or from alcoholic beverages. About 20 percent of orally ingested alcohol is absorbed by the stomach and the remainder by the intestines. The quantity absorbed from the mouth and throat is not significant. The rate of absorption is altered by the presence or absence of food in the stomach as well as the type of food present. Protein and fat delay absorption. The alcohol diffuses easily and rapidly into the tissues. The concentration in the tissues is related to the concentration of water present in the extracellular and intracellular compartments (Ref. 4).

From 90 to 98 percent of ingested alcohol is metabolized by oxidation in the liver. Acetaldehyde forms first, then acetic acid, and ultimately CO_2 and water (Ref. 5). Unmetabolized portions are excreted chiefly in the urine and to an insignificant degree in expired air. In expired air the concentration is approximately one two-thousandths of that of the arterial blood. In an obviously intoxicated person the urine may contain as much as 5 g/L; while at the same time the expired air contains only a few mg/L. Only traces are found in sweat, milk, and bile.

The effect of alcohol on the heart and circulation is not marked. Blood pressure and cardiac output may be slightly increased after ingestion of moderate amounts of alcohol. In moderate doses alcohol causes peripheral vasodilatation. A feeling of warmth and flushing of the skin is experienced. The vasodilation probably results from the central vasomotor depression (Ref. 4).

Alcohol has a marked influence on the gastric and intestinal digestion. Dilute alcohol solutions stimulate gastric secretions. Fifteen milliliters of 7 percent alcohol has been used as a test meal to promote secretion of hydrochloric acid. Accumulation of fat in the liver in normal individuals follows the ingestion of relatively small amounts of alcohol. This response to alcohol is acknowledged by some workers to be extremely valuable as a protective mechanism. Alcohol increases the rate of synthesis of fat by the liver slices. Apparently this is caused because of the increase of the ratio of reduced nicotinamide-adenine-dinucleotide ($NADH_2$) to non-reduced dinucleotide (NAD).

The local action of alcohol is mildly irritant, feeble, very slightly anesthetic, distinctly germicidal, and astringent. Alcohol has a marked potential for abuse, and for this reason the quantity used as a solvent in oral health care products is limited to 35 percent.

The symptoms of acute alcohol poisoning are widely known and a detailed description is unnecessary in a discussion of this type. However, it must be emphasized that there is a similarity between the symptoms of alcohol overdose and injuries and diseases that induce coma. Furthermore, alcohol acts additively with narcotics, hypnotics, and other central nervous system depressants that likewise cause coma.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of ethyl alcohol as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

Alcohol, in concentrations of less than 70 percent, is ineffective as an antimicrobial agent for use in medicine. Alcohol is widely used for application to the skin as an antimicrobial agent. Alcohol acts as an irritant, anhidrotic, and as an astringent by virtue of its ability to precipitate cellular protein. Thus, it is useful in the hygienic care of the skin in bedridden patients for the prevention of ulcers. Its cooling quality when it evaporates is well known. Alcohol may be used to remove phenol, poison ivy, etc. from the skin. Alcohol is a neurolytic agent and has been used for injection into nerves for relief of intractable pain. Alcohol has also been used to treat intractable pruritus. Intravenous alcohol has been reported to be effective as an anesthetic and basal narcotic, but the margin of safety is too narrow, and it is not used for this purpose. When taken internally, alcohol tends to increase sweating by dilating

the vessels of the skin. For this reason it is frequently used as a diaphoretic in mild infections, such as coryza. A 3-percent solution has been used for inhalation as an antifoaming agent in pulmonary edema.

Alcohol kills microorganisms by denaturing and precipitating proteins. It had been assumed that 95 percent ethyl alcohol is superior in its ability to kill bacteria on the skin. It is now well-established that 70 percent alcohol is more effective because 95 percent alcohol coagulates the cytoplasm on the periphery of the cell, and, therefore, is unable to penetrate into the cell. Most bacterial spores are resistant to alcohol (Ref. 6).

Concentrations that kill bacteria cause burining and intense discomfort and are too irritating when applied to ulcerations and inflammatory lesions on the mucuous membranes of the mouth and throat.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of alcohol as an antimicrobial agent for the treatment of symptons such as sore mouth and sore throat.

(3) *Proposed dosage.* The Panel recommends no dose for alcohol because it is used as a solvent for other active ingredients that possess antimicrobial activity and such combinations may act in consort with alcohol at doses below 70 percent of the effective antimicrobial dose.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B. 3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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k. *Eucalypto.*. The Panel concludes that eucalyptol is safe, but that there are insufficient data available to permit final classification of the effectiveness of eucalyptol as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Eucalyptus oil is a volatile oil obtained from the fresh leaves of *Eucalyptus globus*. It is also a constituent of that body of miscellaneous terpenes and other organic compounds obtained from plants referred to as the "volatile oils." Eucalyptus oil and its active ingredient eucalyptol have been described elsewhere in this document. (See part III. paragraph B.3.a. above—Eucalyptol, also part IV, paragraph A.9 above—Volatile oils.)

(1) *Safety.* The safety of eucalyptol has been described elsewhere in this document. (See part III. paragraph B.3.a.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of eucalyptol as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

There are no data from controlled studies that establish eucalyptol or eucalyptus oil as an effective antimicrobial agent.

"The Merck Index" (Ref. 1) categorizes oil of eucalyptus as an expectorant, anthelmintic, and local anesthetic. Eucalyptol has been described in "United States Pharmacopeia" which states that it is used in dentistry as an antiseptic mouthwash. Eucalyptol is a mild irritant to the mucous membranes. Eucalyptol is considered a constituent of the volatile oils, and traditionally the volatile oils have been considered to have antimicrobial activity in the mouth and throat. The volatile oils have been discussed elsewhere in this document. (See part IV. paragraph A.9. above—Volatile oils.)

The Panel finds no data on eucalyptol's mode of action, spectrum of antimicrobial activity, conditions in which it acts topically, in vivo speed of antimicrobial activity, or under which conditions this occurs.

The Panel reviewed a submission in which a mixture of thymol, menthol, eucalyptol, and methyl salicylate was tested for antimicrobial activity (Ref. 2). It was allegedly found that eucalyptol possessed antimicrobial activity. The testing was not performed using the individual ingredient but by removing the eucalyptol from the mixture and determining the effectiveness of the mixture when eucalyptol was not present. The mixture, minus eucalyptol, exhibited less antimicrobial activity than when the eucalyptol was present. The Panel does not consider these data to be proof of the effectiveness of eucalyptol as an antimicrobial agent when used as a single ingredient.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of eucalyptol as and antimicrobial agent for treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.025-percent concentration of eucalyptol in the form of a rinse, mouthwash, or gargle not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervison of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, pp. 882–883, 1976.

(2) OTC Volume 130136.

1. *Gentian violet.* The Panel concludes that gentian violet is safe, but that there are insufficient data available to permit final classification of the effectiveness of gentian violet as an OTC antimicrobial active ingredient for topical use on the mucous membranes of

the mouth and throat when used within the proposed dosage limit set forth below.

Gentian violet is one of the triphenylamine (rosanaline) dyes which are derivatives of triphenylmethane. It is a mixture of several dyes, the most abundant of which is hexamethylpararosaniline chloride (Ref. 1). In addition, it contains pentamethylpararosaniline chloride and tetramethylpararosaniline chloride (Ref. 2). Chemically gentian violet must be considered a mixture of substances. Other related dyes are crystal violet and methyl violet. However, these are not absolutely identical to gentian violet, differing both in the specific methylrosaniline derivative present and in its proportions. Gentian violet is also known as aniline violet and crystal violet.

Gentian violet is a dark green powder, a crystallin mixture consisting of greenish pieces with a metallic luster, which is practically odorless. Gentian violet is soluble in water and chloroform and partially insoluble in ether. One gram dissolves in about 10 mL alcohol and approximately 15 mL glycerol (Ref. 2).

Synthetic organic dyes have been used for many years as antimicrobial agents, acting against bacteria, fungi, and protozoa. However, they have been supplanted by more effective and dependable antimicrobial agents and enjoy only limited use in treating infections. They have often been used for treating wounds. The antiseptic dyes have a marked specificity of action and each type of dye differs in its specificity. This specificity is dependent upon the staining properties of each type of bacteria. The staining properties of bacteria are largely dependent upon the physiochemical characterisitics of the constituents of the protoplasm of bacterial cells.

Antiseptic dyes fall into two groups, depending upon whether the chromogenic radical is electropositive or electronegative in the endoplasm and nucleus. The electropositive dyes have a special affinity for gram-positive organisms. They are also more active in a basic medium and, therefore, are called basic dyes. This does not mean that compounds themselves are basic, but rather that they have an affinity for chemically basic groups located in microbial cells. The acid dyes are active against gram-negative organisms and act best in an acid medium. Other factors such as species of organism, pH, concentration, and penetrability of the cell membrane also influence the activity of germicidal dyes. The antiseptic properties of dyes are greatly diminished in the presence of serum other other organic material Temperatures higher than that of the body also decrease their effectiveness.

The triphenylmethane or rosaniline dyes are basic dyes that have antiseptic properties and are effective against gram-positive organisms. The group includes, in addition to gentian violet, crystal violet, methyl violet, brilliant green, and acid and basic fuchsin. The first four are used medicinally.

Gentian violet and related dyes are particularly effective against staphylococcus. *Corynesbacterium diphtheriae,* and *Streptococcus pyogenes.* They are also effective against the causative organism of Vincent's angina, the various strains of candida, torula, epidermophyton, and trichophyton. Gram-negative bacteria are resistant to the rosaniline dyes. Rosaniline dyes form a precipitate with necrotic tissue. This property was once considered of unique value in the treatment of burns, but is not utilized in current therapeutics (Ref. 3).

The Panel reviewed one submission for a marketed product that contained labeling information but no data on the safety or effectiveness of gentian violet (Ref. 4).

(1) *Safety.* The Panel concludes that gentian violet is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Gentian violet is an antibacterial, antifungal, and anthelmintic dye. The oral LD_{50} in mice and rats is 1.2 to 10 g/kg. Locally, when applied to the mucous membranes and skin, gentian violet is nontoxic. When ingested it may cause nausea, vomiting, diarrhea, and lassitude. Intravenous injection of impure preparations may produce a servere shock-like reaction.

Gentian violet has been used by the oral route as an anthelmintic because it is active against *Oxyuris vermicularis* (pinworm). Pinworm infection was once treated by giving 50 mg in enteric-coated tablets which had a 4-hour disintegration time, three times a day before meals for 8 to 10 days. Children were given 5 to 10 mg a day for each year of age in divided doses. After an interval of a week, the course was repeated.

Severe heart, kidney, or liver disease are considered to be contraindications to the use of the dye internally. Slough of the mucous membranes of the mouth has been reported in children when gentian violet was used as an anthelmintic dye.

(2) *Effectiveness.* The Panel concludes that there are insufficient data to permit the final clasification of the effectiveness of gentian violet as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed limits set forth below.

Gentian violet is bactericidal to gram-positive organisms, particularly staphylocci, *Corynebacterium diphtheriae,* and *Pseudomonas pyocyanea.* Gram-negative bacteria and tubercle bacilli are not affected by gentian violet. Gentian violet inhibits the growth of the spirochete that causes Vincent's angina as well as the growth of fungi such as candida, torula, epidermophyton, and trichophyton.

Gentian violet forms precipitates with necrotic tissue, and this property was formerly used in treatment of burns. Gentian violet is used in aqueous solutions to treat lesions of the skin and mucous membranes in which gram-positive bacteria are the causative pathogen. These lesions require identification by a physician and are not amenable to self-diagnosis and treatment.

Topical application of a 1-percent solution is effective in the treatment of infections due to *Candida albicans,* otherwise known as thrush. Diagnosis and treatment of thrush requires the services of a physician or dentist.

For the most part gentian violet has been replaced by more effective substances. It stains certain dental restorations and the oral tissues and is no longer used in the treatment of oral infections.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of gentian violet as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Swab affected area with a 1.0-percent solution of gentian violet not more than two to three times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist of physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral healt care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth

below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(4) OTC Volume 130051.

m. *Hydrogen peroxide.* The Panel concludes that hydrogen peroxide is safe, but that there are insufficient data available to permit final classification of the effectiveness of hydrogen peroxide as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Synonyms for hydrogen peroxide (H_2O_2) are hydrogen dioxide and hydroperoxide (Ref. 1). Hydrogen peroxide is a colorless, rather unstable liquid with a bitter taste, and it is caustic to the skin. It is miscible with water, soluble in ether, and insoluble in petroleum ether. Hydrogen peroxide is decomposed by many organic solvents. Solutions of hydrogen peroxide gradually deteriorate and are usually stabilized by the addition of acetanilide or similar organic materials (Ref. 1).

Hydrogen peroxide solution 3 percent, also known as hydrogen dioxide solution or oxydol, contains 2.5 to 3.5 percent by weight of H_2O_2 which is equal to 8 to 12 volumes of oxygen. It is classified as a topical anti-infective (Ref. 1). This concentration has been widely used as a cleansing and topical antiseptic agent for suppurative wounds and inflammation of the skin and the mucous membranes. The dental profession also uses it for irrigation during root canal therapy and as a mouth rinse for acute necrotizing gingivitis. The unpleasant taste of hydrogen peroxide has been suggested to be due to the acetanilide (Ref. 2).

The 30-percent solution of hydrogen peroxide (superoxol) is a strong oxidizing agent that has been used for bleaching of vital and pulpless teeth. The soft tissues of the mouth should be protected against its irritant action by the use of a rubber dam.

The decomposition of hydrogen peroxide can be hastened by the action of enzymes, such as catalase (hydrogen peroxide oxidoreductase), peroxidases, reduced nicotinamide adenine dinucleotide phosphate (NADP), and cytochrome c.

In the decomposition of hydrogen peroxide, one molecule releases one atom of oxygen which combines with a substrate that is oxidized.

(1) *Safety.* The Panel concudes that hydrogen peroxide is safe as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

A submission to the Panel on hydrogen peroxide contains no data relating to any aspect of safety (Ref. 3). However, a submission to the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (Ref. 4) contains a literature review as well as studies with 10 percent hydrogen peroxide contained in proprietary gels.

The comparative oral irritant actions of hydrogen peroxide and sodium perborate, when these substances were used as dentifrices, have been described (Ref. 5). Sodium perborate was found to be the more irritating, although hydrogen peroxide also produced noticeable changes,such as edema and ulceration of the mucous membranes of the gingival and lingual areas. Hydrogen peroxide should not be used as a mouthwash for long periods of time. The acidity of even diluted solutions of hydrogen peroxide will result in the decalcification of tooth substance. Continued long use may also result in the development of a black hairy tongue (Ref. 6).

Relatively little information has been found in the literature regarding the acute toxicity of hydrogen peroxide, but it appears to be low. Spector (Ref. 7) states that the approximate LD_{50} for rats is 21 mg/kg if given intravenously and 700 mg/kg when applied cutaneously. Gosselin et al. (Ref. 8) also indicate a low toxicity. They comment that there are no primary effects when hydrogen peroxide is ingested because it is decomposed in the bowel before absorption. However, decomposition is associated with the release of large volumes of oxygen, a volume of oxygen equal to 10 times the volume of the solution, and esophagitis and gastritis may occur. Rupture of the colon, proctitis, and ulcerative colitis have been reported to follow hydrogen peroxide enemas.

There are studies (Ref. 4) that estimate that the LD_{50} of 10 percent hydrogen peroxide contained in various gels that were adminstered orally in six rats is over 5 g/kg. No controls were used, so the possible inactivation of peroxide toxicity by the gels is uncertain. No irritation of the stomach mucosa was observed in the rats receiving 10 percent hydrogen peroxide in gels, although only 2 rats were sacrificed. The same studies indicated that 0.2 mL of the test gels were only transiently irritating in hamster cheek pouches in 24 animals or guinea pig gingiva in 6 animals.

Martin et al. (Ref. 9) studied the irritant effect of hydrogen peroxide on the gingiva of anesthetized dogs by applying a 1-percent solution via a continuous drip onto a cotton pledget at the rate of 15 mL/hr. The number of animals used was not stated. Edema resulted which was followed by complete destruction and sloughing of the cornified layer of the epithelial cells. Other histological changes were also noted.

In a similar study, Dorman and Bishop (Ref. 10) applied 1.2 percent hydrogen peroxide by continuous drip to tongues of 10 anesthetized dogs. Edema invariably occurred within 30 minutes, reaching a peak in 3 to 4 hours.

In a study of the possible anticariogenic effects of 0.5 percent to 1.5 percent hydrogen peroxide added to the drinking water of rats, Shapiro, Brat, and Ershoff (Ref. 11) noted that growth, as determined by body weight, was retarded over an 8-week period as compared to the controls. However, the control animals were neither pair-fed nor pair-watered so this observation is not conclusive. Lisanti and Eichel (Ref. 12) also noted a weight reduction in hamsters receiving 3 percent hydrogen peroxide in the drinking water for 55 days, but there again pair-feeding and pair-watering were not done.

Eighty-eight dental students self-administered a 6- to 12.5-percent hydrogen peroxide solution (Ref. 4). They used it as a mouthwash or dipped their toothbrushes into the solution before brushing their teeth. Application of the hydrogen peroxide was 2 to 3 times per day for a period ranging from 1 to 2.5 months. Some gingival changes were noted (6.4 percent "redder," 3.4 percent "paler") and 6.8 percent of the group developed hyperkeratinized filiform papillae of the tongue. Black hairy tongue, which seems to be associated mainly with prolonged usage of carbamide peroxide and sodium perborate (Ref. 13), was not observed.

Biopsies of the attached interdental epithelium of 30 male patients were made after topical application with 30 percent hydrogen peroxide (Ref. 14). The peroxide was applied three times per week for 4 weeks to the interdental papilla. Applications were for 1 minute, followed by irrigation with water. The mitotic index was increased 5 to 8 fold.

However, single applications of hydrogen peroxide has the effect of a prolongation of mitosis suggesting that the increased rate of mitosis was more apparent than real.

In a study by Orban (Ref. 15), the application of 30 percent hydrogen peroxide twice weekly for 3 to 6 weeks was reported to result in significant changes in the epithelium and connective tissues of chronically inflamed gingival tissue. The basal cell layer became considerably thicker, an increase in mitosis was noticed, and irregular rete pegs penetrated deeply into the connective tissue. Proliferation of the connective tissue took place, and hyperkeratosis of the epithelium was observed. The author interpreted these changes as beneficial for healing. No mention was made of the number or age of the subjects used, the exact site of application of the agent (although application to the free gingiva is shown in a photograph), the method of application, or the duration of application.

One reference, without referring to any experimental data, stated "hypochlorite or peroxide solutions at concentrations above 7 percent may be regarded as toxic to soft tissue, and hence must be used prudently" (Ref. 16).

Knighton (Ref. 17), however, states that hydrogen peroxide should not be used on newly granulating surfaces because it tends to break down the new, delicate tissue growth.

The Panel concludes that concentrations up to 3 percent of hydrogen peroxide are safe for OTC use on the mucous membranes of the mouth and throat.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of hydrogen peroxide as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Most bacteria are relatively resistant to the action of peroxides. This relative resistance may be the result, in part, of the bacterial production of the enzyme catalase that is present in some cytochrome-containing aerobic and facultative anaerobic bacteria. Some anaerobic bacteria that lacks catalase produce peroxidase enzymes in lieu of the catalase. Both catalases and peroxidases are listed under the general enzyme classification "hydroperoxidases."

Hydrogen peroxide, if allowed to reach a high concentration, is toxic to bacteria in vitro. However, the concentration of the "hydroperoxidases" either by the bacteria themselves or by the tissues in vivo prevents the accumulation of this large threshold concentration.

Catalase has two activities. It decomposes hydrogen peroxide, and it oxidizes secondary substrates. Catalase activity is present in nearly all human organs and cells. The liver and kidney and the erythrocytes are rich in catalases. Oral tissues also have tissue catalases. The tissue catalases function in the same manner as microbial catalases, i.e., they prevent the accumulation of noxious H_2O_2.

Human leukocytes and erythrocytes produce peroxidases. The saliva contains salivary peroxidases. The mechanism of action of these peroxidases is similar to the action of the catalases. The released oxygen combines with a substrate to form another compound and no gas is evolved.

One molecule of catalase can deompose 44,000 molecules of hydrogen peroxide per second. This indicates that a minute amount of enzyme is able to decompose a large amount of peroxide.

It was long thought that the activity and growth of obligate anaerobes were inhibited or killed by hydrogen peroxide because they lack the catalase possessed by some aerobes, e.g., *Staphylococcus aureus*. However, aerobes and facultative anaerobes, which lack catalase, are not necessary killed by H_2O_2. Recent findings suggest that a highly reactive and very toxic superoxide formed by flavoenzymes inhibits anaerobes because they do not produce the superoxide dimutase produced by aerobes.

Alternatively, the maintenance of certain essential enzymes in an oxidized state may prevent some anaerobes from multiplying because oxygen prevents flavoproteins from functioning (Ref. 18). The potential activity of H_2O_2 is, therefore, complex and requires a knowledge of the metabolic pathways of the specific susceptible or resistant microorganisms.

In one clinical study (Ref. 19), 0.3 percent hydrogen peroxide was compared with 0.3 percent sodium peroxyborate in reducing the severity of acute necrotizing ulcerative gingivitis. Twenty-five patients were used in each group during a double-blind trial. As judged by clinical observation and patient response, both compounds were found to be effective with no statistically significant differences between the two compounds. However, since this study utilized no control, the efficacy could have been due to a mechanical effect which might be obtained by rinsing with saline solution or water.

Another study, although not designed to directly evaluate the clinical effectiveness of hydrogen peroxide, contains data which should be noted. In this study, which was designed to evaluate antiseptic activity, six subjects rinsed their mouths for 1 minute twice daily over a 5-day period with 0.5 percent hydrogen peroxide suspended in 33 percent glycerin. No irritation of the oral mucosa was noted, but when 0.75 percent hydrogen peroxide in 50 percent glycerin was used "certain subjects noted irritation of the mouth and gums as evidenced by chapping and loss of taste." No explanation for this observation is offered, but it seems probable that these effects could have been due to the humectant effect of the 50-percent glycerin rather than the 0.75-percent hydrogen peroxide (Ref. 20).

A further reference suggests that hydrogen peroxide "is one of the better agents" to discourage new tissue proliferation and promote epithelialization over the newly formed tissue (Ref. 16). The application, which is not described, was intended to be used after periodontal surgery. No substantiating data are presented.

Many bacteriological studies have been performed with more stable forms of hydrogen peroxide, such as carbamide peroxide in glycerin, but relatively few with hydrogen peroxide alone. Concentrations as low as 0.1 to 0.25 percent are said to kill *Escherichia coli* and *Staphylococcus aureus* in 1 hour, but in 5 minutes. Obviously, the 1-hour in vitro exposure time is unlikely to occur in vivo because of the rapid decomposition by tissue and salivary catalase and by tissue peroxidase. In fact, most of the early reports, circa 1940 to 1950, on the bacterial activity of hydrogen peroxide in vitro failed to take into account the conditions which exist in vivo and include rapid breakdown in the presence of tissue, blood, and saliva. It is difficult to imagine circumstances whereby hydrogen peroxide kills bacteria, but is not injurious to tissue.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of hydrogen peroxide as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use hydrogen peroxide in concentrations up to 3 percent. For children under 3 years of age, there is no recommended dosage except the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial

active ingredients. (See part IV. paragraph B.2. above—Categroy I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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n. *Iodine.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of iodine as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Iodine is an element, being one of the four halogens. All four halogens are oxidizing agents. Its moleculer is diatomic (I_2). It was first discovered in 1811 by Courtois (Ref. 1). Iodine is obtained from seaweed and certain algae, in sea water, brine, oil field brines, and from Chilean saltpeter. Elemental iodine consists of bluish-black scales or plates with a metallic luster (Ref. 2). It sublimes, giving off a violet vapor which is corrosive. Iodine melts at 113° C, but is volatile at ordinary room temperature. One gram dissolves in 2,950 mL water, 12.5 mL alcohol, 10 mL benzene, 50 mL carbon tetrachloride, and 80 mL glycerin. It is freely soluble in solutions of water-soluble iodides, such as those of sodium and potassium, and in mixtures of alcohols and aqueous iodides. These hydroalcoholic solutions are used as germicides and belong to a group of iodinated compounds called "iodophors."

Iodine is incompatible with oil of turpentine, starch, tannin, alkalis, alkaloids, and metallic salts.

Iodine is an essential element found in plant foods. Animals used for food that feed on plants containing iodine are also a source of the element. Iodine deficiency results in goiter. The minimal daily requirement of iodine has been estimated to be 100 μg in terms of elemental iodine. Iodine was first used therapeutically in 1819 for the treatment of goiter. Iodine preparations have been listed in the "United States Pharmacopeia" since 1840.

The acceptable composition for tincture of iodine is not less than 1.8 g and not more than 2.2 g of iodine, and not less than 2.1 g and not more than 2.6 g of sodium iodide in each 100 mL of 44 to 50 percent ethyl alcohol or an appropriate denatured alcohol.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of iodine as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Elemental iodine has local irritant and germicidal actions (Ref. 1). It has been used as a counterirritant in various forms of arthritis, particularly those due to trauma. Solutions of elemental iodine have been a frequent cause of poisioning. The symptoms of acute toxic reactions are pain in the epigastrium followed by nausea and vomiting. The vomitus may be brown or blue if there has been any starch in the stomach and later may become bloody. Excessive thirst, abdominal cramps, and circulatory failure may follow in severe cases. The most efficient antidote is a solution of sodium thiosulfate. When this is not available, several tablespoonsful of cornstarch stirred with water may be used. In its absence, bread or other starchy materials may be ingested (Ref. 3).

Iodine or iodine derivatives, such as sodium or potassium iodine, and organic compounds containing iodine which are given continuously over long periods of time, even in medicinal doses, give rise to a more or less serious type of chronic toxicity known as iodism. This is usually characterized by pain or heaviness in the region of the frontal sinuses. In some instances, soreness of the mucous membrane of the mouth and throat results. Skin lesions of all degrees of severity have followed internal use of iodides in sensitive persons. Absorption of iodides has caused the shrinkage of the breasts in the famale and atrophy of the testicles in the male. The protracted use of iodides may cause parotitis apparently due to plugging of the ducts of the salivary glands by dead or injured cells. In some instances, sensitivity to iodides may be responsible for vasculitis and polyarteritis.

Gleason et al. (Ref. 4) rate the toxicity of elemental iodine as 5 (extremely toxic, with a probable lethal dose of 5 to 50 mg/kg). A study of attempted suicides associated with iodine ingestion indicates that the lethal range is from a few tenths of a gram to more than 20 g (Ref. 5). The probable mean lethal dose is between 2 and 4 g of free elemental iodine. Poisoning is mainly due to its oxidizing and the corrosive action on the gastrointestinal tract. Povidone-iodine is less toxic than the iodine and other iodophors.

Iodine produces a mahogany stain when applied to the skin. Smarting, erythematous inflammation, infiltration of subcutaneous tissue, desquamation of the epidermis into large shreds, and vesication of tissues may result after repeated application.

The effects of iodine on the mucous membranes are even more severe than on the skin and may produce ulceration, corrosion, and sloughing. This action is chemical in nature since it precipitates protein. The protein dissociates the releases iodide so that its action is prolonged, as it is in skin. Iodine is absorbed, somewhat, from the skin and excreted mainly in the urine as the iodide ion. Dilute solutions in non-irritating strength are absorbed from the mucous membranes and are distributed systemically. (See part IV. paragraph B.3.t. below—Povidone-iodine.)

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of iodine as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Elemental iodine is one of the most potent germicides available. However, its effectiveness as an antimicrobial agent on the mucous membranes of the mouth and throat in the relief of the symptoms of sore throat and sore mouth has not been established.

Iodine has a long history of use as a broad-spectrum antimicrobial agent. It is recognized as having activity against fungi, viruses, and both gram-positive and gram-negative bacteria. The phenol coefficient of iodine may vary between 180 and 237 depending upon the character of the solvent and the species of bacteria tested. It is believed that all microrganisms are killed by the same concentration of iodine, but that various environmental conditions in a wound or on the skin or other surfaces cause changes in the concentration necessary for the killing effect. Albumin decreases the bactericidal action of iodine. In the presence of blood serum a 1:200,000 solution has been bactericidal to staphylococci. Most antiseptics are ineffective aganist tubercle bacilli, but iodine in concentrations as low as 0.0625 percent is bactericidal to human tubercle bacilli in cultures and suspensions. Iodine will kill anthrax spores, but solutions as strong as 7 percent of the tincture must be used, and an exposure of 2 hours is required for such an action.

Iodine is still considered by many to be one of the best wound disinfectants, but it should never be applied in concentrations greater than 2 or 3 percent. Iodine has been and, in some cases, is still used to sterilize the skin prior to surgical procedures. It may be employed in strengths of 5 to 10 percent for this purpose. Iodine is of benefit in the treatment of fungus infections of the skin such as ringworm, foveas, etc. In these conditions, it may be applied as a solution of the tincture (Ref. 6).

Elemental iodine precipitates proteins. The iodine is partly absorbed, partly loosely bound, and partly converted into iodide ions. This precipitation causes persistent irritation, usually short of corrosion. Since the iodine itself is loosely bound, it continues to penetrate into the cells so that the action extends deeply. In the process of acting as an antimicrobial agent, iodine also injures some of the host cells. The effect of this type of injury on wound healing is a matter of concern to the Panel. The iodine is used in the form of tinctures or watery (hydroalcoholic) solutions.

The official tincture contains 3.5 percent iodine and a "strong solution" (Lugol's solution) contains 7 percent iodine in potassium iodide. The potassium iodide makes the tinctures more stable and more miscible with water. Iodine ointments release their iodine slowly so their action is milder and less effective than that of solutions. A part of the iodine is chemically combined with the base in some of the proprietary ointments so that it cannot react with the proteins and is, therefore, ineffective.

The antiseptic action of iodine is used to prepare the skin for operations. A 3-percent alcoholic solution is painted over the dried skin in the operative field on the preceding day and again on the day of the operation. This is preferable to the official tincture since the potassium iodide in the latter delays drying and penetration. Severe irritation may result. The value of iodine for wound disinfection is disputable on the basis that the tissue injury may be more of a detriment and delay wound healing, offsetting the benefits of its antiseptic action. Extensive application to the skin sometimes produces nervous phenomena and fever.

These effects of iodine on the skin and minor wounds are mentioned in detail to emphasize the potency of iodine as an antimicrobial agent and to indicate that it is capable of causing injury to the host cells. The cells of the mucous membranes of the oral cavity are more delicate and are more easily injured by chemical agents than those of the skin. The Panel is concerned about the possible adverse effects of iodine in the mouth and throat. Insufficient data exist concerning such adverse effects particularly for use in rinses and mouthwashes on a daily basis for months at a time.

Iodine manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of iodine as an antimicrobial agent for the treatment of symptoms such as sore throat and sore mouth.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 1.0- to 2.0-percent concentration of iodine in aqueous-alcoholic solutions in the form of a rinse, gargle, spray, or swabbed over the affected area, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Date Required for Evaluation.)

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(3) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 886–887, 1977.

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(5) Moore, M., "The Ingestion of Iodine as a Method of Attempted Suicide," *New England Journal of Medicine*, 219:383–388, 1938.

(6) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 625–628, 1973.

o. *Menthol.* The Panel concludes that menthol is safe, but that there are insufficient data available to permit final classification of the effectiveness of menthol as an OTC antimicrobial agent for topical use on the mucous

membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Menthol is also known as hexahydrothymol and peppermint camphor (Ref. 1). It is a secondary alcohol obtained from peppermint oil and other mint oils or prepared synthetically by hydrogenation of thymol. Menthol is used as an analgesic, antipruritic, and local stimulant to the mucous membranes and as a counterirritant. The general characteristics of menthol have been described elsewhere in this document. (See part III. paragraph B.1.f. above—Menthol).

(1) *Safety.* The safety of menthol has been described elsewhere in this document. (See part III. paragraph B.l.f. (1) above—Safety).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of menthol as an OTC active antimicrobial ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Menthol is a constituent of certain volatile oils, depending upon the source of the oil. Menthol is lipophilic and, for this reason, has been regarded as an antimicrobial agent. It is actively germicidal, being more powerful than phenol (Ref. 2). Gershenfeld and Miller (Ref. 3) found that even the saturated aqueous solution, which is very dilute, has some antiseptic properties; however, there are no data to indicate the broadness of its spectrum and the degree of its antimicrobial activity. Menthol has been administered orally in the doses of 30 to 120 mg as an interal antiseptic. Menthol is used topically in a 1- to 10-percent solution. Diluted solutions have been used to control superficial infections on the skin.

A submission, in which a mixture of thymol, menthol, eucalyptol, and methyl salicylate was tested in vitro for antimicrobial activity, alleges that menthol possesses antimicrobial activity (Ref. 4). The testing was not performed with the individual ingredient alone. The testing was performed by removing menthol from the mixture and determining the effectiveness of the mixture when menthol was absent. Less antimicrobial activity was noted when the menthol was removed. The Panel does not consider this data to be proof of effectiveness of menthol as an antimicrobial agent when used as a single ingredient.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of menthol as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.04- to 2.0-percent concentration of menthol in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. Use a lozenge containing 2.0 to 20.0 mg of menthol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 757, 1976.

(2) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 697, 1973.

(3) Gershenfeld, L., R. E. Miller, "The Bactericidal Efficiency of Menthol and Camphor," *American Journal of Pharmacy*, 105:490–500, 1933.

(4) OTC Volume 130136.

p. *Methyl salicylate.* The Panel concludes that methyl salicylate is safe, but that there are insufficient data available to permit final classification of the effectiveness of methyl salicylate as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The Panel has evaluated methyl salicylate as a topical anesthetic/analgesic elsewhere in this document. (See part III. paragraph B.3.b. above—Methyl salicylate.)

(1) *Safety.* The safety of methyl salicylate has been described elsewhere in this document. (See part III. paragraph B.3.b.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of methyl salicylate as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

There are no data from controlled studies that establish methyl salicylate as an effective antimicrobial agent. Methyl salicylate is used topically on the skin as a rubefacient and counterirritant. None of the references reviewed by the Panel indicate that the individual ingredient is or has been used as an antimicrobial active ingredient in the mouth and throat (Refs. 1 through 6). A submission to the Panel presented data in support of the antimicrobial activity of methyl salicylate (Ref. 7). These data merely indicate that when methyl salicylate is removed from the tested formulation, which contained other ingredients, bacteriostatic and bactericidal activity was reduced. Data on the antimicrobial activity of the ingredient alone was not presented. The Panel does not consider a study of this type supportive of claims that methyl salicylate is an effective antimicrobial agent.

The Panel concludes that there are insufficient data to establish the effectiveness of methyl salicyclate as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use up to a 0.4-percent concentration of methyl salicylate in the form of a rinse, mouthwash, gargle, or spray, not more than three to four times daily. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) OTC Volume 130042.
(2) OTC Volume 130043.
(3) OTC Volume 130044.
(4) OTC Volume 130045.
(5) OTC Volume 130046.
(6) OTC Volume 130047.
(7) OTC Volume 130136.

q. *Oxyquinoline sulfate (8-hydroxyquinoline).* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of oxyquinoline sulfate as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Oxyquinoline sulfate is a salt made by reacting oxyquinoline with sulfuric acid.

Oxyquinoline has also been called oxine, 8-hydroxyquinoline, oxybenzopyridine, phenopyridine, 8 quinolinol, and oxychinolin (Ref. 1). The quinolines (n-quinoline and isoquinoline) are derived from naphthalene by substituting a trivalent notrogen atom for a carbon atom in one of the aromatic rings, converting the compound into a tertiary amine. The compound then possesses basic properties and reacts with acids to form salts. A hydroxyl group substituted on position 8 of the aromatic nucleus of quinoline converts it to oxyquinoline and confers phenolic properties. Oxyquinoline, therefore, is both a phenol and an amine and manifiests either acidic or basic properties depending upon the acidity or alkalinity of the solvent in which it is incorporated. Oxyquinoline is manufactured by heating *o*-aminophenol with *o*-nitrophenol, glycerol, and sulfuric acid (H_2SO_4) (Ref. 1).

Oxyquinoline base is a white crystalline powder that is almost insoluble in water and ether, but freely soluble in alcohol, acetone, chloroform, and benzene. It is also soluble in aqueous mineral acids and in glycerol (Ref. 1). Oxyquiniline melts at 76° C and boils at approximately 267° C. Oxzyquinoline is used in industry as a chelating agent to precipitate metals. Oxyquinoline is known in industry as 8-HQ. It is not used in its basic form for medicinal purposes due to its poor water solubility. Oxyquinoline is, however, used in the form of one of its water-solube salts, among which are the sulfate, citrate, tartrate, and benzoate. The most commonly used salt is oxyquinoline sulfate. Oxyquinoline sulfate is a yellow crystalline powder with a slight saffron odor and a burning taste. It melt between 175 and 178° C. It is freely soluble in water; soluble in approximately 1 part in 100 parts of glycerine; slightly soluble in alcohol; and insoluble in ether. The sulfate has been used as a bacteriostatic agent in the treatment of athletes' foot, vaginitis, and as a gargle, eyewash, and in hemorrhoidal preparations (Ref. 2). Oxyquinoline sulfate has been classified as a bactericide, fungicide (especially against candida), and a tichomonacide (Ref. 3).

Oxyquinoline benzoate is a slightly yellow crystalline substance, soluble in water, slightly soluble in alochol, and nearly insoluble in ether and alkaline aqueous sulutions (Ref. 2). It has been used for the same purposes as oxyquinoline sulfate. Oxyquinoline citrate is also a yellow crystalline powder with a saffron-like odor. It is freely soluble in water. Solutions are acid in reaction (Ref. 2).

Various iodinated and chlorinated quinoline derivatives have been or are still in use as amebicides. Among these are iodohydroxyquinoline sulfuric acid, iodochlorohydroxyquinoline, and diiodohydroxyquinoline. They are effective against amebae on the surface of the intestinal mucosa. The parasites in the submucosal tissues are unaffected. They most likely exert their antimicroboal effects by inactivating the enxymes or halogenating the proteins of the amebae.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of oxyquinoline as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Quinoline itself has been suspect for many years. In a study performed in 1881, quinoline (oxyquinoline minus the hydroxyl group) was found to be strongly antiseptic and toxic (Ref.4). It is possible that the presence of hydroxyl group diminishes its toxicity. The administration of 0.2 g/kg subcutaneously and intravenously produced retinitis (Ref. 4). The lesions noted were similar to those produced by naphthalene. Some of the more recently introduced iodo-, chloro-, or iodo- and chloro-substituted quinolines used to threat amebiasis have been found to cause optic nerve atrophy.

The acute toxicity of oxyquinoline sulfate, on the other hand, appears to be low. Gleason (Ref. 5) states that rabbits can tolerate single oral doses of 3.7 g/kg of the sulfate when mixed with posassium sulfate. Rats, guinea pigs, and dogs tolerate large quantities after oral administration. The acute LD_{50} in guinea pigs is 175 g/kg. The LD_{50} in rats is 32 g/kg after 1 week. In dogs there was no mortality. Animal and human data on chronic toxicity are not available. Long-term clinical use of oxyquinoline salts appears to indicate that these derivatives have a low degree of toxicity.

The fate of oxyquinoline in the body was first studied in 1899 and later in 1928 (Ref. 4). It is rapidly absorbed from the intestines of dogs and rapidly excreted into the urine conjugated with sulfuric acid as "ethereal sulfate." Conjugation occurs at the phenolic hydroxyl group. A small part is excreted unmetabolized in the urine and some in the bile. Its metabolic fate in man has not been reported.

Besides the salts of oxyquinoline, monoiodinated derivatives such as iodochlorhydroxyquin and diiodinated derivatives have been used as amebicides.

Skin sensitivity and severe irritation have been reported in workmen during industrial use. Irritation and sensitization have also been reported after repeated application of the salts of oxyquinoline incorporated for topical use on the skin.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of oxyquinoline sulfate as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Oxyquinoline sulfate is considered to be primarily bacteriostatic, since it is feebly bactericidal. Its exact mode of action has not been established, but it is believed to act by chelating various metals required by microorganisms for metabolism. Among these are iron, cobalt, copper, and magnesium. Other drugs believed to act in a like manner are salicylates, thiourea, thiouracil, the tetracyclines, cortisone, and penicillin. Oxyquinoline sulfate is presumed to form a copper chelate which easily passes into the cell of an invading pathogen. After the chelate enters the cell it undergoes a chemical change that releases copper which, in turn, kills the organism. Thus, the drug acts by allowing the passage of small amounts of copper chelated from the host's tissues into the invading organism (Ref. 5). It has also been suggested that it may act on the cell membrane and alter its stability and permeability. The amount chelated from the host is not sufficient to cause harm, but is sufficient to adversely effect the microorganisms.

The antimicrobial activity of oxyquinoline in vitro is subject to many influences, such as concentration, temperature, and pH, all of which make its action difficult to predict. It is the consensus of the Panel that if its action in vitro, where variables can be eliminated, is unpredictable, then its in vivo behavioir is less predictable.

Oxyquinoline sulfate has been used in a 1:1,000 solution externally on the skin, in a 1:3,000 aqueous solution as a nasal spray and as an eyewash, in a 1:2,000 aqueous dilution as a gargle, and in a 1:1,000 dilution as a vaginal douche. In dentistry, it is used as an oral antiseptic. A 1- to 2-percent solution is used to treat pus cavities either as an irrigant or soaked in a gauze pack. Oxyquinoline sulfate has also been used internally as an antimicrobial agent for dysentery. Oxyquinoline salts are said to be effective against candida and trichomonas.

Oxyquinoline sulfate manifests no known topical anesthetic properties which relieve pain due to sore throat or sore mouth.

The Panel does not have data from controlled studies on oxyquinoline sulfate's effectiveness as a broad-spectrum antimicrobial agent. Since controlled in vivo studies are not available, the Panel cannot make a judgment concerning the effectiveness of oxyquinoline sulfate as an antimicrobial agent for the treatment of symptoms of sore mouth and sore throat (Ref. 6).

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.1-percent concentration of oxyquinoline sulfate in aqueous solution in the form of a rinse, gargle, or spray not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(3) DerMarderosian, A. H., "Pesticides," *in* "Remington's Pharmaceutical Sciences," 14th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA. p. 1194, 1970.

(4) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., p. 824, 1957.

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(6) "The Merck Index," 5th Ed., Merck and Co., Rahway, NJ, p. 279, 1940.

r. *Phenol.* The Panel concludes that phenol is safe, but that there are insufficient data available to permit final classification of the effectiveness of phenol as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The Panel has classified phenol as a Category I anesthetic/analgesic and has described its general characteristics elsewhere in this document. (See part III. paragraph B.1.g. above—Phenol.)

(1) *Safety.* The Panel concludes that phenol is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The Panel has described the safety of phenol elsewhere in this document. (See Part III. paragraph B.1.g.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of phenol as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenol was the first antimicrobial agent to be used in medicine. Lister first used it in 1967 as a sterilizing agent for surgical instruments and as an antiseptic (Ref. 1). In high concentrations phenol is a protein precipitant; at lower concentrations it is a protein denaturant. Phenol exerts an antimicrobial action by denaturing the protein of living cells. An easily dissociated complex of phenol and the protein is formed. This ability to form a comlex permits the penetration of phenol through the intact or abraded skin, subcutaneous tissues, and mucous membranes with which it comes into contact (Ref. 2).

As is the case with most antimicrobial agents, phenol is not effective against all types of microorganisms. In appropriate strengths (0.5 to 1.5 percent) aqueous solutions of phenol rapidly destroy nearly all forms of bacteria. However, phenol is generally not sporicidal. Anthrax spores may not be killed even after 24 hours exposure to a 5-percent aqueous solution of phenol (Ref. 1). A 1-percent solution destroys nonsporulating organisms after a sufficiently prolonged exposure. A 2-percent solution does so more promptly.

Aqueous solutions of phenol in a proportion of 1:800 are bacteriostatic and inhibit the multiplication of bacteria. Its value as a germicide is due largely to the fact that its activity is only slightly diminished in the presence of proteins. Concentrations of phenol exceeding 1.5 percent also denature the proteins of cells of healthy tissues. For this reason phenol has been supplanted by other antimicrobial agents (Ref. 3).

Phenol has been widely adopted as a standard for comparison of the disinfectant power of antimicrobial agents. According to Harvey (Ref. 2), the concept of using it as a means of comparison of bactericidal power of antimicrobials was originally suggested by Walker and Rideal in 1903. The standard is termed the "phenol coefficient." An antimicrobial agent with a microbial activity equal to that of phenol would have a coefficient of 1.0. An antimicrobial agent killing twice the number of microbes of a particular strain under standard and identical conditions would have a phenol coefficient of 2.0. Some antimicrobial agents when tested against certain organisms have coefficients of over 1,000. For this reason other microbial agents have supplanted phenol as an antiseptic.

The nature of the medium in which phenol is dispersed or dissolved greatly influences its germicidal activity. Generally, aiqueous solutions are the most effective preparations. Phenol has a high oil/water partition coefficient and is slowly released from a lipid phase. Phenol is therefore practically ineffective in fats and animal and vegetable oils when applied topically. In addition, its antibacterial effect is greatly reduced when incorporated in petrolatum. Alcohol and glycerin both diminish its germicidal action while sodium chloride allegedly enhances it. The bactericidal effectiveness of phenol is greatly reduced at low temperatures and in an alkaline medium (Ref. 1).

Phenol is relatively ineffective as an antimicrobial agent when incorporated in soaps. Phenol was once widely used as a disinfectant, for sanitation, and as a germicide for various medical and surgical purposes, but it has been replaced largely by more effective, less toxic compounds. Phenol is fungicidal in concentrations of 1.3 percent or more (Ref. 3).

Even though phenol precipitates and denatures protein, its antibacterial activity continues in the presence of protein because it subsequently

separates from the combination and continues to penetrate into a protein mass, such as sputum, mucus, and other organic materials. Camphor added to phenol in liquid petrolatum greatly reduces the local action and absorption of phenol. Apparently the camphor "holds" the phenol by acting as a solvent or forming a complex. Moisture favors the release of the phenol from the complex. A combination containing 4 percent phenol, 60 percent camphor, and petrolatum is used topically, but the Panel emphasizes that the quantity of phenol released varies with environmental conditions and is not predictable.

Phenol vaporizes slowly, and the vapors may be inhaled. The phenol gains access to the bloodstream via the lungs.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of phenol as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.5- to 1.5-percent concentration of phenol in aqueous solution in the form of a rinse, gargle, or spray not more than three to four times daily. Use a lozenge containing 10 to 50 mg of phenol every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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s. *Phenolate sodium.* The Panel concludes that phenolate sodium is safe, but that there are insufficient data available to permit final classification of the effectiveness of phenolate sodium as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The Panel has classified phenolate sodium as a Category I anesthetic/analgesic and has described its general characteristics elsewhere in this document. (See part III. paragraph B.1.h. above—Phenolate sodium.)

(1) *Safety.* The Panel concludes that phenolate sodium is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The safety of phenolate sodium has been described elsewhere in this document (See part III. paragraph B.1.h. (1) above—Safety.)

(2) *Effectiviness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of phenolate sodium as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenolate sodium possesses antiseptic and germicidal properties that are similar to phenol (Ref. 1). These actions are due to the phenol that is released when the compound is dissolved in water. It has been applied to bandages in an aqueous solution or with linseed oil in a ratio of 1 part to 5 to 10 parts of oil for use on the skin. It has been used internally for diarrhea and dysentery, but is not recommended due to its toxic properties. The dose used was 0.1 to 0.3 g. It is no longer used for internal purposes.

The sodium salt is formed with the keto form, one of the two hydrogen atoms on position 2 of the benzine ring being replaced by a metal such as sodium (Ref. 2). Phenolate sodium possesses the same antimicrobial properties as phenol. (See part IV. paragraph B.3.r. above—Phenol.)

Phenolate sodium is used topically in oral health care products when it is necessary to have a phenol-containing preparation that is basic and can act as a buffer and still have the activity of phenol.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of phenolate sodium as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a concentration of phenolate sodium in aqueous solution, equivalent to a 0.5- to 1.5-percent concentration of phenol, in the form of a rinse, gargle, spray, or drops, or by swabbing, not more than three to four times daily. For children under 3 years there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products of oral health care containing antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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t. *Povidone-iodine.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of povidone-iodine (PVP–I) as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

There is some disagreement concerning the chemical nature of povidone-iodine. Some believe that it is a specific chemical entity; others claim that it is merely a complex. The prevailing consensus is that povidone-iodine is a complex composed of povidone and elemental iodine. Povidone is a faintly yellow solid which dissolves in water to give a plastic-like colloidal solution. Povidone is also known as 1-ethenyl-2-pyrrolidinone polymers; 1-vinyl-2-pyrrolidinone polymers; poly [1-(2-oxo-1-pyrrolidinyl) ethylene]; polyvinylpyrrolidone; polyvidone; and P.V.P. Povidone is made synthetically by interacting 1, 4 butanediol with ammonia and acetylene (Ref. 1).

Povidone was introduced in World War II by the Germans as a substitute for plasma, and as plasma volume expander. A 3.5-percent solution develops osmotic pressure of 400 mm of water. However, it is no longer used for this purpose.

Povidone is available as a series of aggregates having mean molecular weights ranging from 10,000 to 700,000 daltons. Povidone is also soluble in alcohol and chloroform. It is particularly insoluble in ether (Ref. 1). Povidone is used, however, as a solvent for drugs, as a dispersing agent, and to form complexes with various medicinal substances, one of which is iodine. Povidone-iodine is produced commercially by interacting elemental iodine with povidone.

Povidone-iodine consists of yellow flakes which are readily soluble in water. Aqueous solutions have a pH of approximately 2. The addition of sodium bicarbonate makes aqueous solutions less acidic, but also less stable. Freshly prepared solutions of povidone-iodine do not give a blue color with starch as do tinctures and other solutions of elemental iodine. Solutions that have been standing for some time do give a blue color. Aqueous solutions of povidone-iodine are colloidal in nature. Their viscosity varies with the molecular weight of the povidone used to form the complex. When an aqueous solution is applied topically, a slow release of free iodine occurs which exerts an antimicrobial action.

Povidone-iodine is a nonsurfactant type of iodophor and is the only one of this type evaluated by the Panel. Iodophors are complexes of iodine and iodine salts, proteins, and other colloidal organic molecules which release free iodine. They are less irritating to the skin than the tinctures. The iodine that can be released in its free form from povidone-iodine is approximately 10 percent of the total labeled iodine content of the complex.

Elemental iodine is among the most potent antispetics available (Ref. 2). The anticmicrobial effects of iodine are probably due to its iodinating and oxidizing effects on microbial protoplasm. (See part IV. paragraph B.3.n. above—Iodine.) The activity of iodine is reduced by alkaline substances and in the presence of organic matter. This is also true of iodine released from iodophors.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of povidone-iodine as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Povidone is practically nontoxic. Gosselin et al. (Ref 3) rate its toxicity as 1 (practically nontoxic). Povidone has been used as a colloid in salt solutions to increase blood volume in the treatment of hypovolemic shock by intravenous infusion. Povidone is not metabolized. The greatest portion is excreted unchanged by the kidney.

Renal excretion is governed by the size and molecular weight of the particles. Particles whose molecular weights are less than 25,000 daltons are excreted by the kidney. Larger molecules are not filtered by the glomerular membrane or secreted by the tubes of the kidney. Particles of intermediate molecular weight are deposited in the tissues and are slowly excreted over a period of several months to a year. The unexcreted particles are phagocytized by cells in the reticuloendothelial system and stored in the liver, spleen, lung, and bone marrow (thesaurismosis). Such storage has been associated with pathological changes in the lymph nodes. Susceptible individuals who repeatedly inhale substantial quantities, as in hair sprays, and individuals who have used large quantities over long periods of time have been affected and have developed adverse reactions.

Chronic, indiscriminate use of PVP–I has been associated with iodism, an increase in protein-bound iodine, and altered thyroid function. The toxic effects of PVP–I are due to the released free iodine, and since the release occurs slowly its toxicity and irritancy is low. This slow release also raises doubts about its effectiveness, since the active ingredient is elemental iodine.

Recently, Woldkowski, Speck, and Rosenkranz (Ref. 4) have indicated that povidone-iodine is capable of altering DNA in living cells and inducing mutations in salmonella. This is ascribed to the liberated iodine. Because of the known potential and the ability of mutagenic substances to induce cancer in animals, this finding raises serious questions concerning the safety of iodine and iodine-releasing substances used as topical antiseptics on the mucous membranes of the mouth and throat. The halogens, including iodine, are capable of reacting with nucleic acids and their constituents and affecting DNA.

Ferguson, Geddes, and Wray (Ref. 5) recently reported that short-term therapy with a povidone-iodine mouthwash had an adverse effect on 16 healthy individuals after 2 weeks of use. Significant increases occurred in total serum iodide, protein-bound iodine and inorganic iodine, total thyroxine, and free iodine index. The possibility of thyroid suppression following long-term use is also mentioned in this report. The adverse effects of long-term use of potassium iodide are mentioned below. (See Part IX. paragraph B.2. below—Potassium iodide.)

Lagarde, Bolton, and Cohn (Ref. 6) devised experimental models to study the effectiveness of intraperitoneal povidone-iodine in an established peritonitis. In both models there was 100 percent mortality in the povidone-iodine treated group. This study strongly suggests that the intraperitoneal administration of povidone-iodine can be fatal when animals are compromised by peritonitis. The mechanism of this effect is unclear. On the basis of these studies, intraperitoneal administration of povidone-iodine cannot be recommended for therapy of peritonitis.

In another study, Bolton, Bornside, and Cohn (Ref. 7) stated that in dogs with appendicitis-induced peritonitis, intraperitoneal povidone-iodine caused death more rapidly than the instillation of saline solution. The bacterial content of canine peritoneal fluid increased with time, although fewer bacteria were found in fluid from povidone-iodine treated dogs. The differences were not statistically significant. Qualitative chemical analysis of peritoneal fluid revealed iodide but not free iodine. Fifteen to 30 minutes after instillation of povidone-iodine, iodine was present in the peritoneum for 2 hours, but not 3 to 6 hours. The antibacterial effect of povidone-iodine was demonstrated in mice challenged intraperitoneally with lethal doses of *Escherichia coli.* Povidone-iodine diminished mortality, when injected immediately, but not when given 1 to 3 hours later. Immediate injection of povidone-iodine into mice lowered the number of *Escherichia coli* by 3 logs. Injection of povidone-iodine 3 hours after bacterial challenge lowered the number of *Escherichia coli* by only one-third log. This lesser bacterial effect in early treated mice is attributed to greater dispersal and sequestration of bacteria throughout the peritoneal cavity with the inactivation of povidone-iodine by reduction to iodide in vivo. In dogs with appendicitis-induced peritonitis, the more rapid death after treatment with povidone-iodine was not associated with differences in peritoneal microflora, but with peritoneal absorption of excessive amounts of iodide. The ultimate bacterial count in the early treated dogs and those treated with the antiseptic 3 hours after the peritoneal cavity was contaminated

with the same. The mortality likewise was the same.

Although the peritoneum is a serous surface, it does not differ remarkably from a mucous surface. Topical use of povidone-iodine on the peritoneum proved to be of no benefit. It is not unreasonable to assume that this further augments the argument that topical antiseptics on the mucous membranes are of doubtful benefit.

Application of elemental iodine as a tincture to the skin causes direct irritation. On rare occasions iodine gives rise to a hypersensitivity reaction characterized by fever and generalized skin eruptions (Ref. 8). Iodine is rapidly converted to the inactive iodide ion by organic material in the gastrointestinal tract when swallowed.

A study and review of the toxicity of povidone-iodine was performed by Shelanski and Shelanski (Ref. 9), who compared PVP–I to Lugol's solution and tincture of iodine. The three solutions used were formulated to contain equal quantities of free iodine. The oral LD_{50} in rats was 1,300 mg/kg of iodine for the PVP–I complex as compared to 400 mg/kg of iodine for the Lugol's solution. Solutions of PVP–I and tincture of iodine were applied to intact rabbit skin and covered with wax paper. After 24 hours, severe erthema developed, and the paper over the area to which the iodine tincture was applied had to be removed. No reaction was noted 96 hours after application of the PVP–I. The same response was obtained after reapplication 2 weeks later. When the same sequence was carried out on 200 human subjects, similar results were obtained, i.e., a severe reaction to the iodine occurred within 24 hours, and no reaction to PVP–I was observed after 96 hours. Reapplication 2 weeks later also showed no reaction to PVP–I after 48 hours. The PVP–I and Lugol's solution were also tested by daily instillation into the eyes of rabbits and guinea pigs for 2 weeks. PVP–I produced slight reddening which disappeared after 3 days while the eyes instilled with Lugol's solution showed severe erythema, edema, and progressive corneal damage. The investigators concluded from these observations that PVP–I is less toxic, less irritating, and less sensitizing than Lugol's solution or tincture of iodine.

Extensive clinical observations also indicate that PVP–I is generally nonirritating and nonsensitizing when applied to the skin and mucous membranes. For example, Connell and Rousselot (Ref. 10) studies the antiseptic effect of PVP–I applied to the skin of 345 patients either preoperatively, for the treatment of skin infections, or for burns. Additionally, surgeons and ward personnel used PVP–I as a surgical hand scrib. At no time did any patient or physician develop any sensitivity to the PVP–I. Three volunteers used the test preparation one to five times daily for over 2 years with no signs of any injurious reaction. The investigators, therefore, concluded that PVP–I was not only highly effective as an antiseptic agent, but also noninjurious to both normal skin and open wounds.

Although two cases of desquamation due to PVP–I used as a preoperative topical antiseptic have been reported by another investigator (Ref. 11), unusual and similar circumstances were noted in each case, i.e., long exposure combined with an elevated body temperature (100° F) resulting from the use of a heating blanket. When these conditions were avoided no further difficulty was encountered.

The marketing experience of industrial products also suggests that PVP–I is relatively nontoxic and nonirritating for use on the skin and mucous membranes. PVP–I has also been widely used by consumers over the past 6 to 7 years with no reports of untoward results (Ref. 12).

The fact that a single application of PVP–I is innocuous on the oral mucosa over a limited area is apparent from reports in the dental literature. However, safety following chronic, long-term use in the entire oral cavity has not been established. Well-controlled studies on the effects of repeated applications on the mucous membranes of the mouth and throat, as would be used in a daily gargle or oral rinse are not available. Six studies are cited in which PVP–I was used as a gargle by a total of over 3,000 patients without untoward effects. In two of these studies, the drug was used more than once (Refs. 12 and 13). In a study that was controlled, no irritation occurred after 2 to 3 applications in 25 patients. The other five studies were uncontrolled. There were insufficient details concerning the experimental design for an evaluation of safety to be made (Ref. 9).

In the opinion of the Panel, PVP–I may be safe for occasional application to the mucous membranes, but there are insufficient data to establish its safe use on a long-term, daily basis as a rinse, mouthwash, or spray on the mucous membranes of the mouth and throat. There is some evidence that long-term use may result in adverse effects from both the povidone and the free iodine that is released (Refs. 12 and 13).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of povidone/iodine as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Povidine-iodine, as is the case with elemental iodine, is effective against both gram-negative and gram-positive organisms. The antimicrobial effect of povidone-iodine is due to release of elemental iodine from the complex. PVP–I is, however, generally less effective than the tincture and other iodine solutions (Ref. 14).

The effectivenss of iodophors against both gram-negative and gram-positive organisms is an advantage over hexachlorophene. The iodophors do not persist in the skin to provide cumulative, continuing antibacterial activity as does hexachlorophene (Ref. 15). The dental and medical literature contains a number of studies suggesting that PVP–I is rapidly germicidal for many oral cavity microorganisms. Its application on the injection site of the oral mucosa prior to administering local anesthesia virtually eliminates all readily cultivable organisms (Refs. 16, 17, and 18). However, it must be remembered that this rapid germicidal action is achieved at an oral site having a relatively small microbial population. The possibility of a carry-over of PVP–I into the culture medium also was not considered in any of the studies reviewed by the Panel.

Three studies indicate that irrigation of the gingival sulcus and rinsing the mouth with PVP–I immediately before tooth extraction or gingivectomy markedly reduces the incidence of associated bacteremia (Refs. 19, 20, and 21). Unfortunately the results of two of these studies have been published only in abstract form, and the data presented are insufficient in detail to be properly evaluated. The third was a study in which 32 patients were treated similarly, one with the povidone-iodine and the other group with an aqueous placebo solution (Ref. 21). Bacteremia occurred in 28 percent of the PVP–I treated group as compared to 56 percent of the placebo group (P is less than 0.01 by chi-square analysis). Cultures taken from gingival sulcus before and after the preoperative treatment indicated that there was some decrease in numbers of microorganisms among the PVP-I-treated group, but since quantitative culture methods were not used, the Panel does not consider these data to be meaningful.

Despite extensive studies on PVP–I applied to the skin, its antiseptic effectiveness in controlling the microbial population was still doubted by the Advisory Review Panel on OTC

Antimicrobial Drug Products for reasons which are also of concern when evaluating it as an oral antiseptic (39 FR 33130–33131). These concerns are as follows:

(i) The rate of "slow-release" of free iodine from PVP–I is variable and not known, particularly in the presence of ill-defined organic material, which may be present on the skin in varying quantities under variable circumstances.

(ii) The germicidal activity of the preparation during the "slow-release" period has not been defined and is not known.

(iii) There is conflicting evidence as to whether PVP–I accelerates or delays wound healing.

(iv) The stability of the preparation during various conditions of storage ge a25my2.254has not yet been determined.

(v) The rate of absorption of the free iodine from the mucous membranes is now known.

(vi) The rate of absorption of the povidone complex with the iodine from the mouth and throat is now known and its potential for producing enlarged lymph nodes has not been determined. The iodine is suspect as a carcinogen, and this, combined with the effect povidone may already have in this regard, are now known.

One study utilizing 262 patients is cited in a product submission (Ref. 12). All but four patients noted symptomatic relief from throat irritation, soreness, dryness, and hoarseness. These evaluations again were subjective and do not provide the Panel with adequate data to make an evaluation.

Povidone-iodine manifests no known topical anesthetic properties which relieve pain due to sore throat and sore mouth.

The Panel-concludes that there are insufficient data from controlled studies to establish the effectiveness of povidone-iodine as an antimicrobial agent of the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 7.5-percent concentration of povidone-iodine diluted 1:14 or a 0.5-percent concentration of povidone iodine in the form of a rinse, mouthwash, gargle, spray, or as a swab, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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u. *Secondary amyltricresols.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of secondary amyltricresols as OTC antimicrobial active ingredients for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Amyltricresols are prepared by the interaction of ortho-, meta-, and para-cresols and secondary amyl alcohol at 150° C. This results in a mixture of isomeric secondary amyltricresols. The amyl radical substitutes into the ring. The substitution of alkyl groups into the aromatic ring of a phenolic compound increases the bactericidal effects of the phenol (Ref. 1). The three isomeric cresols have a phenol coefficient of 3, while secondary amyltricresols have a phenol coefficient of 100 or more, depending upon the organism tested. In one study using the FDA method, the mixture had a phenol coefficient of 14 for *Salmonella typhosus* and 100 against streptococci (Ref. 2). These amyltricresols lower surface tension, which allows them to become evenly distributed over cell membrane surfaces (Ref. 3).

The secondary amyltricresols are relatively insoluble in water, but are soluble in alcohol. They are usually dissolved in 30-percent alcohol for use as disinfectants. The presence of environmental proteins, such as blood, serum, mucus, and cellular debris, decreases the bactericidal activity of secondary amyltricresols, but their presence eliminates the bacteriostatic activity completely. Solutions of 1:30,000 inhibit the growth of molds and bacteria. The amyltricresols have been used since 1931.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of secondary amyltricresols as OTC antimicrobial active ingredients for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limits set forth below.

Oral administration of amyl metacresol in rats revealed a slight reddening of the mucosa of the intestines and stomach in doses of less than 1 g/kg. The minimal lethal oral dose in the rat is 2.5 to 4.5 mg/kg (Ref. 4). In a chronic oral toxicity study, rabbits were fed 0.6 g of anyl metacresol without manifestations of toxic symptoms (Ref. 4). The urine and feces were examined daily and no blood, albumin, pus cells, or casts were found. In a study in humans, six subjects were given the drug orally. No toxicity was noted (Ref. 5).

The only human clinical data submitted were from a study in which oral wounds were treated with a commercial preparation containing secondary amyltricresols (Ref. 5). The commercial preparation was compared with standard disinfectants. The amyltricresol preparation was shown to cause no apparent signs of toxicity to the tissues.

No data were available to the Panel concerning the rates of absorption from the mucous membranes of the mouth and throat, irritancy, potential for sensitization, or metabolic fate and elimination of these cresols. Data on tumorigenic, mutagenic, and teratogenic effects of secondary amyltricresols, when used over long periods of time, are not available. There is a paucity of data on chronic toxicity from prolonged use. Little data are available on the long-term use of the lesser known and less frequent use of such phenols. The Panel therefore recommends that they be used only for short-term use.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of secondary amyltricresols as OTC antimicrobial agents for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The secondary amyltricresols are bactericidal in a 1:4 dilution and will kill the following bacteria:

Bacterium	Time (seconds)
Salmonella typhosa	50.
Streptococcus pyogenes	20.
Staphylococcus aureus	20 to 30.
Diphtheriae pneumonia	5.
Alpha-hemolytic streptococcus	5.
Diphtheroids	20 to 40.

The same dilution kills *Escherichia coli* and *Pseudomonas aeruginosa* after a 4-minute exposure. *Streptococcus viridans* (alpha-hemolytic streptococci) is killed in 5 seconds and other gram-positive organisms in 5 seconds when exposed to dilutions used in the commercial preparation. Secondary amyltricresols are not sporicidal (Refs. 5 and 6).

The seconday amyltricresols are bacteriostatic. The growth of *Staphylococcus aureus* was inhibited in the presence of plasma after exposure for 5 minutes. The growth of *Streptococcus viridans* was inhibited after exposure for 10 minutes, and the growth of *Salmonella typhosa* was inhibited after exposure for 5 minutes. The growth of a gram-positive sporulating organism was inhibited after 21 hours at a concentration of 1:150 to 1:160 (Ref. 4).

The secondary amyltricresols will kill most gram-positive bacteria and some gram-negative bacteria. No data were submitted demonstrating their effectiveness and bactericidal or bacteriostatic activity against the flora of the oral cavity.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of secondary amyltricresols as antimicrobial agents for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.1- to 0.3-concentration of secondary amyltricresols in aqueous solution in the form of a rinse, mouthwash, or gargle, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

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(6) McClesky, C. S., and E. Swingle, "A Comparative Study of the Germicidal Activity of Certain Compounds," *Iowa State College Journal of Science*, 11:177–183, 1937.

v. *Sodium caprylate.* The Panel concludes that sodium caprylate is safe, but that there are insufficient data available to permit final classification of the effectiveness of sodium caprylate as an OTC antimicrobial active ingredient for topical use in the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Sodium caprylate is the sodium salt of caprylic acid (octanoic acid) ($Ch_3(CH_2)_6COONa$), an aliphatic, straight-chained carboxylic acid. It is the salt of a lower molecular weight fatty acid and may be considered to be a soap of an eight-carbon, fully saturated acid. Sodium caprylate may be prepared by neutralizing caprylic acid with sodium carbonate or sodium hydroxide. It is freely soluble in water and sparingly soluble in alcohol (Ref. 1). It is poorly ionized to the sodium and caprylate ions in water. Sodium caprylate is one of several fatty acids, such as undecylenic and propionic, that have been used as fungistatic agents topically.

Sodium caprylate has been used as a fungicide and fungistatic agent for the treatment of thrush, tinea pedis (athlete's foot), tinea cruris (jock itch), and other superficial fungous infections of the skin and mucous membranes, particularly those due to trichophyton, microsporon, and candida (Ref. 1). Both the acid and salt were used in the treatment of candidiasis before antibiotics became available. The salt has had limited usage in dentistry as a component of an endodontic medication advocated by Grossman and Christian (Ref. 2), Fajarda, Grossman, and McShane (Ref. 3), and Sawinksi and Gurney (Ref. 4). They reported that it inhibited the growth of *Candida*

albicans in concentrations of 0.03 to 5.0 percent.

Sodium caprylate has also been shown to be effective in the treatment of athlete's foot, when applied in the form of a 10-percent ointment (Ref. 5). It has been used as a dusting powder in a strength of 10 percent, in an inert powder, either along or with other octanoates. Aqueous solutions of 5, 10, and 20 percent sodium caprylate have been administered topically to the skin or mucous membranes. A 5-percent solution has been used as a douche and 10 to 20 percent solutions have been used in the oral cavity.

(1) *Safety.* The Panel concludes that sodium caprylate is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

There are few data on animal or human toxicity of sodium caprylate. However, since the fatty acids appear in many foods and are consumed as such, it is the consensus of the Panel that sodium caprylate, likewise, is safe.

Cohen (Ref. 6) reported using sodium caprylate in a concentration of 50 mg/mL orally and intravenously to treat albino rabbits infected with *Coccidioides immitis.* After sacrificing the animals, postmortem examinations revealed no pathologic effects in any organ in any of the animals. In the same study, 3-g doses of 5 percent sodium caprylate in 5 percent glucose were administered to human subjects intravenously every day for 3 months. The maximum dosage given was 8 g per day. As was the case in the aminal study, no adverse drug reactions occurred.

Cohen and Persky (Ref. 7) have reported treating a series of 12 cases of thrush with a 10-percent aqueous solution of sodium caprylate. The infections responded favorably to the treatment. There were no adverse reactions noted to the drug nor were there any recurrences among the 12 individuals treated. They also reported using 10 percent aqueous sodium caprylate as a routine hospital treatment in both nurseries as well as in the outpatient department.

It is the belief of the Panel that when taken internally, sodium caprylate would probably be metabolized in the same manner as other fatty acids, and that catabolic fatty acid pathways are utilized. No unique toxicity would be expected.

In marketing experience dating back to 1963, 20 nonspecified adverse reactions have been reported (Ref. 9).

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of sodium caprylate as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Like other soaps, sodium caprylate acts as a surfactant, detergent, and emulsifier. This action is due to the caprylate ion, which is an anion. Keeney (Ref. 8) overcame infection of thrush due to *Candida albicans* by local swabbing of lesions of the entire mouth three times daily with a 20-percent aqueous solution of sodium caprylate. Thrush is a mycotic disease of the mouth, throat, and upper digestive tract. (See part II. paragraph B.4.b.(8) above—Candidiasis.) It is characterized by the formation of white plaques within the oral cavity, often coalescing to form a false membrane on the mucosa. It occurs more commonly in debilitated persons.

Cohen and Persky (Ref. 7) confirmed Keeney's findings. They reported dramatic results in 12 cases using a 10-percent aqueous sodium caprylate solution rubbed on the buccal and lingual tissues four times daily. Four days was the average time required to rid the mouth of the fungus. The 10-percent solution benefited all 12 cases of thrush and appeared to cure the infection with no complications or recurrences.

Cohen (Ref. 6) studied the effects of sodium caprylate and three other fungicides on *Coccidioides immitis* using in vitro studies. The fungicidal concentration of sodium caprylate ranged between 19 and 150 mg/mL. In addition, in vivo studies on albino rabbits were performed using 50 mg/mL orally and intravenously per 2.5-kg animal. Cohen concluded that sodium caprylate is effective on the mucous membranes of the mouth and throat and also in sinuses harboring coccidioidal spherules.

A sodium caprylate ointment was shown to have fungistatic activity and possess antibacterial action against *Staphylococcus aureus* and beta-hemolytic streptococcus, though in this respect the ointment is inferior to one prepared from propionic acid and propionate (Ref. 9).

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of sodium caprylate as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 10.0- to 20.0-percent concentration of sodium caprylate in the form of a spray or by swabbing onto lesions in the mouth and throat, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Date Required for Evaluation.)

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(1) Council of the Pharmaceutical Society of Great Britain, "British Pharmaceutical Codex," The Pharmaceutical Press, London, pp. 898–899, 1954.

(2) Grossman, L. L. and C. K. Christian, "End-Point Study of Bactericidal Effect of Antibiotics Used in Endodontics," *Journal of Dental Research,* 31:42–46, 1952.

(3) Fajarda, O. P., L. I. Grossman, and J. McShane, "An In Vitro Study of Antiseptics and Antibiotics Used in Endodontics," *Journal of Dental Research,* 35:656–659, 1956.

(4) Sawinski, V. J., and B. F. Gurney, "Antifungal Evaluation of a New Endodontic Antiseptic," (abstract), *Journal of Dental Research,* 43:749, 1964.

(5) Keeney, E. L., et al., "Sodium Caprylate: A New and Effective Treatment for Dermatomycosis of the Feet," *Bulletin of Johns Hopkins Hospital,* 77:422–436, 1945.

(6) Cohen, R., "Four New Fungicides for Coccidioides immitis: 1. Sodium Caprylate. 2. Ethyl Vanillate. 3. Fradicin. 4. Thiolutin," *Archives of Pediatrics,* 68:259–264, 1951.

(7) Cohen, R., and M. Persky, "Sodium Caprylate Treatment for Thrush," *Archives of Pediatrics,* 68:33–34, 1951.

(8) Kenney, E. L., "Sodium Caprylate: A New and Effective Treatment for Monilinsis of the Skin and Mucous Membranes," *Bulletin of the Johns Hopkins Hospital,* 78:333–339, 1946.

(9) Osol, A., et al., "The Dispensatory of the United States of America," 24th Ed., J. B. Lippincott Co., Philadelphia, p. 1586, 1947.

w. *Thymol.* The Panel concludes that thymol is safe, but that there are insufficient data to permit final classification of the effectiveness of thymol as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol, also known as thyme camphor, is methyl isopropyl phenol. It is therefore an aromatic alcohol. Thymol

possesses topical anesthetic/analgesic properties and has been described elsewhere in this document. (See part III. paragraph B.3.c. above—Thymol.)

(1) *Safety.* The Panel concludes that thymol is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The safety of thymol has been described elsewhere in this document. (See part III. paragraph B.3.c.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of thymol as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The assumption has been made the because thymol is a constituent of one of the various "volatile oils" used in the mouth and throat, it is an effective antimicrobial agent. Its activity is presumably due to its lipophilic properties, which favor penetration into the cell membrane. A 1- to 5-percent solution of thymol in alcohol is used on the mucous membranes to treat herpes. Sollmann (Ref. 1) states "its actions are similar to those of phenol." Thymol's bacteriostatic efficiency is higher than that of phenol in restraining the growth of "pus organisms" in a 1:3,000 dilution. Sollmann also states that "it is not a very effective germicide" and that "thymol has a pleasant clean taste." The text also states that "a saturated watery solution makes a rather agreeable and fairly efficient antiseptic and deodorant mouthwash or gargle, and lotion for discharging wounds."

Thymol has a high phenol coefficient (25), but its antimicrobial activity is greatly impaired by the presence of organic matter (Ref. 1). For instance, the addition of dried feces to an antimicrobially active solution reduces the activity of thymol by two-thirds. It reduces that of phenol by one-third. Thymol is active against yeasts, molds, and fungi. It has been used to treat fungal skin infections with fair success.

Esplin (Ref. 2) writes that, "Thymol and its derivatives, principally chlorothymol, possess both bactericidal and fungicidal properties." Thymol is chiefly of value as a fungicide. It was formerly employed as an anthelmintic, administered orally against certain worms.

The "United States Dispensatory" (Ref. 3) states that "thymol was introduced as a disinfectant with uses similar to those of phenol but with the advantage of having a more agreeable odor. In the absence of organic matter, it is more potent than phenol, but in the presence of large amounts of proteins its activity is greatly reduced." Because of this reduction in activity and because it is a strong irritant, thymol is of little value for use on open wounds or on the mucous membranes of the mouth and throat. Thymol is fungicidal and may be used in the treatment of a variety of fungous infections of the skin. Thymol was formerly used for its antiseptic action in the stomach and intestines. It stimulates peristalsis and may cause diarrhea. Thymol is absorbed from the intestine when ingested orally. About 50 percent of it is conjugated with glycuronic and sulphuric acids, and the conjugate is excreted into the urine.

In a submission to the Panel, a mixture of thymol, menthol, eucalyptol, and methyl salicylate was tested for antimicrobial activity (Ref. 4). It was allegedly found that thymol possessed antimicrobial activity. The testing was not performed using the individual ingredient but by removing the thymol from the mixture and determining the effectiveness of the mixture when the thymol was not present. The mixture, minus thymol, had less antimicrobial activity than when thymol was present. The Panel does not consider these data to be proof of the effectiveness of thymol as an antimicrobial agent when used as a single ingredient.

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of thymol as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 0.006- to 0.1-percent concentration of thymol in the form of a rinse, mouthwash, gargle, or spray not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 227–228, 1957.

(2) Esplin, D. W., "Antiseptics and Disinfectants; Fungicides; Ectoparasiticides," *in* "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L. S. Goodman and A. Gilman, The Macmillan Co., New York, p. 1037, 1970.

(3) Osol, A., et al., "The Dispensatory of the United States of America," 1950 Ed., J. B. Lippincott Co., Philadelphia, pp. 1218–1219, 1950.

(4) OTC Volume 130136.

x. *Thymol iodide.* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of thymol iodide as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol iodide is also known as dithymol diiodide (Ref. 1). Thymol iodide was originally considered to be official and was listed in the "United States Pharmacopeia." It is a red-yellow or red-brown powder. It is made by treating a solution of thymol with potassium iodide and sodium hydroxide. Two molecules of thymol interact with one molecule of iodine, and the hydrogen atom on the hydroxyl group of each thymol molecule is substituted with an iodine atom. Thymol iodide has a slightly aromatic odor. It is insoluble in water, glycerin, carbon disulfide, and liquid paraffin; it is soluble in chloroform, ether, collodion, and oils, and slightly soluble in alcohol. Thymol iodide must be protected from light. If exposed to light it undergoes decomposition to free iodine and iodinated derivatives of thymol. Thymol iodide is incompatible with ammonia, mercury bichloride, hydroxides of potassium and sodium, and their carbonates. It gives off vapors of iodine when heated above 100° C.

(1) *Safety.* The Panel concludes that there are insufficient data available to permit final classification of the safety of thymol iodide as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

When thymol iodide is applied to tissues, it slowly releases thymol and iodine. This is the basis of its alleged antimicrobial action. It behaves like an iodoform in this respect. Data on the

LD_{50} in animals and on human toxicity were not available to the Panel. The Panel assumes that the toxic effects, if ingested orally, would be due to, and be similar to, those of free iodine. Thymol iodide contains 53 percent iodine by weight. When used externally in dusting powders, it is considered to be nontoxic. Data on systemic toxicity, particularly after long-term use, were not available to the Panel (Ref. 2). Recent evidence indicates that long-term use of iodine-releasing compounds may be mutagenic and alter thyroid function by causing increased activity at first and suppressed activity later. The Panel cautions that this may also occur with long-term use of thymol iodide.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of thymol iodide as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Thymol iodide is similar to iodoform in its properties and behavior. The compound is a water-insoluble, reddish-brown bulky powder containing 43 percent iodine. It is used as an antiseptic dusting powder. It was sometimes employed in an ether solution in which form it has been successfully used as a 25-percent concentration in ether for the treatment of chancroid ulcers. Thymol iodide is effective against *Staphylococcus aureus.*

Thymol iodide is one of the few drugs which are effective in the treatment of actinomycosis. It has been used for this purpose to treat skin lesions. Thymol iodide has also been used in ointments in concentrations ranging from 2 to 10 percent. It has been used externally as an antimicrobial agent and internally as a source of iodine.

The Panel concludes that there is insufficient evidence from controlled studies to establish the effectiveness of thymol iodide as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use a 2- to 10-percent oil solution of thymol iodide by swabbing or applying digitally to the affected area, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling).

(5) *Evaluation.* Data to demonstrate safety and effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1214, 1976.

(2) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 7th Ed., W. B. Saunders Co., Philadelphia, PA, p. 817, 1948.

y. *Tolu balsam.* The Panel concludes that tolu balsam is safe, but that there are insufficient data available to permit final classification of the effectiveness of tolu balsam as an OTC antimicrobial active ingredient for topical use on the mucous membranes of the mouth and throat.

(1) *Safety.* The Panel concludes that tolu balsam is safe as an OTC antimicrobial agent for topical use on the mucous membranes of the mouth and throat.

The characteristics and data on the safety of tolu balsam are described elsewhere in this document. (See part IX. paragraph B.3.c(1) below—Safety.)

One manufacturer (Ref. 1) submitted the premise that "tolu balsam is well known abroad in preparations for the treatment of sore throat." However, no supporting data were given.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of tolu balsam as an OTC antimicrobial ingredient for topical use on the mucous membranes of the mouth and throat.

Tolu balsam is a naturally occurring mixture of resins, volatile oils, and organic acids. It contains 12 to 15 percent free cinnamic and benzoic acids and approximately 40 percent benzyl esters of these acids (Ref. 2). It contains a concentration of 1.5 to 3 percent volatile oils. The effectiveness of these acids, esters, and volatile oils as antimicrobial agents is unknown. Benzoic acid has been evaluated by the panel and placed in Category III as an antimicrobial activity. The Panel has likewise considered the antimicrobial activity of volatile oils. In view of the fact that their composition is so variable, the Panel concludes that it is impossible to classify them as effective antimicrobial agents. (See part IV. paragraph A.9. above—Volatile oils.)

Tolu balsam has a feeble stimulating expectorant activity and formerly was used widely in the formulation of various cough syrups (Ref. 2). It is usually employed in the form of tolu balsam syrup which was once official and was included in the "United States Pharmacopeia" and "National Formulary." The balsam is an ingredient found in the compound benzoin tincture. Inhalation of the vapor generated by heating the balsam was also used for the treatment of respiratory infections. Tolu balsam has been employed occasionally in the treatment of contaminated wounds for its "stimulating and antiseptic" activity. No data are supplied indicating the spectrum and the degree of antimicrobial activity. It has also been used for scabies (Ref. 3)

The Panel concludes that there are insufficient data from controlled studies to establish the effectiveness of tolu balsam as an antimicrobial agent for the treatment of symptoms such as sore mouth and sore throat.

(3) *Proposed dosage.* The Panel is unable to determine a proposed dosage for tolu balsam.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care antimicrobial active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care antimicrobial agents. (See part IV. paragraph C. below—Data Required for Evaluation.)

References

(1) OTC Volume 130052.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 126, 1976.

(3) Swinyard, E. A., and W. Lowenthal, "Pharmaceutical Necessities," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, p. 1236, 1975.

(4) Osol, A., et. al., "The Dispensatory of the United States of America," 25th Ed., J. B. Lippincott Co., Philadelphia, pp. 1440–1441, 1955.

Category III Labeling

Proposed indication. "For the temporary relief of minor sore mouth and sore throat by decreasing the germs in the mouth."

C. Data Required for Evaluation

The Panel agrees that the protocols recommended in this document are in keeping with the sciences of pharmacology and theraupeutics and the art of medicine and do not preclude improvements in methods for obtaining data that might be developed in the future.

1. *General principles in the design of experimental protocols for testing antimicrobial agents.* The Panel has reviewed the data submitted for antimicrobial active ingredients in OTC oral health care products for topical use on the mucous membranes of the mouth and throat. The Panel has made the suggestions outlined below concerning requirements for protocols for conducting studies to obtain data for reclassifying Category III antimicrobial active ingredients to Category I for safety or effectiveness or both.

The Panel has identified and evaluated two categories of products containing antimicrobial active ingredients; those used on a short-term basis to relieve symptoms of sore mouth or sore throat or both due to microbial infections and those used on a long-term, often on a day-to-day, basis, for cleansing the mouth, suppressing mouth odors, and other related purposes in which no symptoms of an infectious process are evident but for which use antimicrobial claims are made. The ingredients in formulations evaluated in both categories of products include rinses, gargles, sprays, drops, and other solutions for local application, ointments, lozenges, troches, and powders. The method of application and usage may introduce variable factors that must be given consideration in preparing protocols for evaluation of an ingredient. The Panel recognizes that antimicrobial-containing oral health care products are intended to be used to treat and relieve symptoms due to inflammatory processes and that these pathologic states have diverse etiologies. Therefore, it is impossible to propose a single general protocol that would yield data to substantiate claims for safety and effectiveness made for all antimicrobial ingredients submitted for consideration. Obviously, appropriate individual tests must be devised or chosen that adequately establish the safety and effectiveness of an ingredient for a claimed indication or several claimed indications on the labeling.

The Panel expects that the data obtained from the chosen tests show that preparations applied to the mucous membranes of the mouth and throat act topically and reduce pathogenic microbial populations to levels that are therapeutic and that relieve symptoms caused by the infection. The Panel is aware of the fact that differences in usage may introduce uncontrollable, variable factors that make testing difficult.

In its evaluation of the clinical effectiveness of these antimicrobial ingredients, the Panel was aware of the fact that they enjoy widespread OTC use for treatment of pathologic states of the mouth and throat due to amtimicrobial activity. The Panel also recognizes that the consumer has the right to self-diagnosis and self-treatment. The Panel concedes that the average consumer may, in most cases, recognize the signs for symptoms of occasional minor infections in the mouth and throat and should therefore have the option of using an OTC medication for short-term treatment. The Panel believes this should be the case provided the consumer is fully protected by warnings in the labeling, should the symptoms be due to a serious illness not amenable to use of OTC antimicrobial agents, and that the manufacturer has clearly and convincingly demonstrated justification for the claims for such use. The Panel is willing to recommend acceptance of realistic therapeutic labeling claims for effectiveness in treatment of minor, occasional, self-limited infections for short-term use.

The Panel expects the data submitted to demonstrate that the relief of symptoms is due to the antimicrobial effects of an ingredient and that the symptoms recede and may even ultimately disappear after the recommended periods of application.

Demonstration of clinical effectiveness must include proof that the formulated topical antimicrobial product is more effective than the vehicle in which the ingredient is incorporated. The Panel recommends controlled studies that demonstrate that each active ingredient in a combination product for which an antimicrobial claim is made does indeed manifest the antimicrobial activity that is claimed and is not merely an inert vehicle or substance inducing a beneficial placebo effect in the mouth and throat. The Panel requires that evidence be submitted to verify that each antimicrobial agent is successfully released from its vehicle when applied to mucous membranes and thereby becomes available to act on microorganisms within the mucosal layers to which they are applied or with which they come into contact.

2. *Methods of study.* The Panel recognizes that three areas of effectiveness of an ingredient may have to be evaluated: (a) Effectiveness in the treatment of infections by an antimicrobial action. This is a mandatory requirement for study since these claims are made for all antimicrobial agents reviewed. (b) The effectiveness on wound management. By "wound management" the Panel is referring adverse effects on healing or beneficial effects on healing. It must be shown that delays in healing of ulcerations and sloughs of the mucosa caused by the ingredient do not occur. Claims that an ingredient promotes or accelerates wound healing must be substantiated by appropriate, convincing tests and data. (c) Effectiveness for propfhylaxis. It a prophylactic claim is made for an ingredient, the symptoms or pathologic process that are prevented from developing and the types of microorganisms that are killed or prevented from proliferating must be identified. It must be shown that the claimed prophylaxis does indeed occur.

The Panel recognizes that difficulties may be encountered in obtaining acceptable in vivo data concerning specific antimicrobial activity which can be used to establish effectiveness. Therefore, the Panel suggests that preliminary well-designed and well-controlled in vitro studies be performed, the data of which can be verified and supported by in vivo animal and human model studies. Human model studies should be followed by appropriate clinical trials. Such investigational models should simulate as closely as possible situations that would be encountered in actual clinical practice.

The recommendations outlined above and below for testing of effectiveness are not intended to be mandatory requirements. They are presented merely to indicate the types of data considered necessary and to provide suggestions for obtaining such data. It is the consensus of the Panel that the responsibility of selecting or devising reliable methods for procuring acceptable evidence of effectiveness of an ingredient rests with the individuals sponsoring or promoting the product and not with FDA.

a. *In vitro testing.* In vitro testing should include the following: A technique that insures that a carryover of the antimicrobial ingredient into the test system is eliminated by proper dilution or inactivation of the ingredient;

Determination of the spectrum of antimicrobial activity of the agent using both standard cultures and recently isolated strains of each microbial species;

Determination of the minimal inhibitory concentration (MIC) of the antimicrobial agent under standard conditions and against standard reference organisms; and

Testing freshly obtained clinical isolates from mouth or throat infections to provide updated, relevant data on susceptibility of these isolates to an antimicrobial agent.

The Panel has described below an in vitro test that may be found useful as a guide in formulating required protocols for specific ingredients submitted to this Panel for review which have been placed in Category III.

Antimicrobial oral health care products are tested to determine the ability of an active ingredient in a product to kill an axenic population of specific organisms by the following method:

(1) *Test organisms.* (i) *Streptococcus mutans,* ATCC number 25175

(ii) *Actinomyces viscosus,* ATCC number 19246

(iii) *Candida albicans,* ATCC number 18804

(iv) *Pseudomonas aeruginosa,* (optional) ATCC number 10145

(2) *Stock cultures.* Cultures of American Type Culture Collection (ATCC) origin are subdivided and lyophilized or frozen at −25° C or lower to provide standard stock cultures for future use. The optional culture may be used if it is desirable to test a gram-negative bacterium.

(3) *Test cultures.* A stock culture of each species is first revitalized and then transferred to fresh brain heart infusion (BHI) broth, in order to initiate a battery of tests. The cultures are transferred to fresh BHI broth for two successive days following the first transfer. All incubations are to be carried out at 37° C. It is suggested that the *Actinomyces viscosus* and *Streptococcus mutans* be cultured anaerobically, the *Candida albicans* cultured aerobically. It is suggested that the candida and strepotococcus cultures be incubated for 16 to 18 hours; the actinomyces culture for 32 to 36 hours, so as to be able to compare tests from one laboratory to another.

(4) *Test medium.* Letheen broth or another inactivating medium (to eliminate carry over of active components) is prepared and dispensed in 9.9-mL quantities in unlipped culture tubes, capped with closures or plugged with cotton and then autoclaved.

(5) *Reaction tubes.* Sterile, unlipped test tubes, capped with closures or plugged with cotton, are used for mixing the cultures in the mouth rinse or mouth rinse components in the test.

(6) *Temperature of the test.* The oral health care product, as commercially available, or each active ingredient at the product concentration, in a suitable inactive vehicle, and the test culture must be brought to temperature equilibrium in a water bath at 37° C and held at this temperature throughout the test.

(7) *Test method.* (i) One milliliter of the test culture and 9 mL of the product or active ingredient (as noted above) are mixed rapidly and thoroughly. A stop-watch is started at the time of mixing.

(ii) At 1 and 2 minutes, 0.1 mL of the raction mixture is aseptically removed and inoculated into the tubes of the inactivating medium and mixed.

(iii) These tubes are incubated at 37° C for 48 hours. At this time, the entire contents of the culture tubes which exhibit no growth are aseptically transferred to 90 mL of sterile inactivating medium, to further dilute any carry-over of active ingredients(s). If upon further incubation for 1 week at 37° C no growth is detectable, the test microorganisms will be considered to have been killed by the test oral health care product or its ingredients.

(iv) As a control on the viability of the test organisms, 1 mL of the test culture is diluted in 9 mL of BHI broth and 0.1 mL of this mixture is added to inactivating medium (with no test product or ingredient) and incubated at 37° C.

(v) Replicate test samples must be done and must exhibit reproducibility.

(vi) A reference (positive) standard control is necessary to validate the test procedure by assuring the consistent susceptibility of the test organisms. Chlorhexidine digluconate, 0.2 percent in sterile water, is acceptable for this purpose.

(8) *Test in the presence of biological fluids.* Antimicrobial agents are subject to dilution with secretions in the mouth and throat. Saliva, crevicular fluid, and serum are the biological fluids of the mouth and throat which may exhibit inactivating effects on antimicrobial agents. Sterile whole human saliva, i.e., membrane filter saliva, would appear to be the ideal test mouth secretion because it is the principal oral biological fluid, but it is not recommended for use because it cannot be standardized from one laboratory to another. Sterile fetal calf serum is used instead of saliva because it possesses similar proteinaceous inactivation characteristics, few antibodies or antimicrobial components, and may be obtained commercially in standardized forms. It may be necessary to omit the addition of serum to the reference standard control, e.g., chlorhexidine, because serum, in some instances, inactivates the antimicrobial agent. The effect of serum on the product or test ingredient must be demonstrated.

The oral health care product, as commercially available, and each active ingredient at product concentrations in a suitable active vehicle are tested in the presence of a standardized biological fluid as follows:

(i) Two milliliters of sterile fetal calf serum is added to 2 mL of test organism and tested. Two milliliters of the mixture is added to 8 mL of the product or active ingredient and mixed (as noted above).

(ii) The mixture is tested as previously described under "Test method."

(9) *Evaluation.* An active antimicrobial ingredient will have passed the in vitro test if it kills all the test organisms, in the presence and in the absence of serum, within 2 minutes. Results of the test at 1 minute will be provided for information only and will not be used for comparison among products or ingredients. The 2-minute exposure time reflects the contact time of the antimicrobial product or ingredient in vivo, before it is diluted by saliva and other oral biological fluids.

b. *In vivo testing.* In vivo testing should be designed to closely approximate the clinical situations for which a product is intended to be used and to substantiate claims in the labeling that the relief of symptoms of mouth and throat infections is indeed due to an antimicrobial activity of an ingredient. A well-designed study should demonstrate that the antimicrobial effect is due to the agent itself and not to the vehicle. Control groups should receive treatment with inert vehicles which are identical in appearance, color, and consistency to the test material. A double-blind procedure should be employed to minimize bias in making observations and in reporting results. An appropriate procedure to insure the random allocation of subjects to treatment and the comparison of groups should be employed. In vivo testing, including animal and human models, should be performed prior to clinical studies.

The Panel is aware of the difficulty in conducting large-scale prospective clinical trials, and, therefore, suggests that statistical methods, such as the use of sequential designs, may be used in limiting the sample size.

The Panel is aware of the fact that some microbiologists have relied upon reduction of deposits of plaque on the teeth as an index of effectiveness of antimicrobial ingredients used in oral health care products for treating symptoms of sore mouth and sore

throat. Elsewhere in this document appears a discussion of plaque reduction and its relationship to antimicrobial activity and the fact that the Panel concludes that no correlation can be established between reduction of plaque and the relief of symptoms of sore mouth and sore throat. (See part IV. paragraph A.6. above—Evaluation of antimicrobial activity.) Likewise, the Panel concludes that there is no correlation between plaque reduction and the effectiveness of antimicrobial agents in oral health care products for prophylactic use. The Panel, therefore, does not acept data on effectiveness of antimicrobial agents in oral health care products based upon their ability to inhibit plaque formation.

(1) *Human models for treatment.* It is obvious to the Panel that no reliable, satisfactory, safe, investigational models presently exist or can be devised for producing infections experimentally in the oral cavity that simulate symptoms that would be encountered clinically for testing the effectiveness of antimicrobial oral health care products. The Panel recognizes that no single protocol or test system can possibly be devised that provides proof of effectiveness for all therapeutic applications for which OTC topical antimicrobial agents are intended. Separate protocols will have to be designed to consider individual claims or groups of similar claims and to determine such factors as the antibacterial spectrum, the duration of antimicrobial action, and the effectiveness of a product or ingredient for a particualr therapeutic indication.

(2) *Wound healing.* The Panel recognizes that the determination of the effects of an ingredient on wound healing, particularly in human subjects, is difficult. Animal models with artificially contaminated wounds have been used by some investigators. However, if animals are used, these ingredients must be further tested for this attribute in human clinical trials. There is a need for the development of procedures to determine whether or not antimicrobial oral health care products topically applied to minor ulcerations and mucosal wounds exert adverse effects and delay healing in man. The Panel suggests that such protocols and study designs should be developed in consultation with FDA.

The subjects selected for such studies should have ulcerations and other open lesions in the mouth and throat that are appropriate for testing a Category III ingredient. The Panel suggests that in designing such protocols in clinical studies the characteristics of the lesion, such as color, size, amount of exudate or purulent discharge, degree of edema, and rate of epithelization should be noted at appropriate intervals. The drug should be applied in such quantities and with the same frequency as stated in the labeling. Its effects should be compared with a control. The changes in the size, color, and appearance of a wound area can be followed by serial photographs or by planimetry or both.

3. *Selection of patients.* The final appraisal of the effectivness of a topical antimicrobial agent must be undertaken in a clinical setting under circumstances conforming to actual conditions existing in a target population for which use of the product is intended. Testing must conform to accepted ethical standards. Animal and human models may lessen the need for extensive, time-consuming, expensive clinical trials on agents that are found to be effective in model systems. The Panel, however, expects that whatever clinical studies are undertaken should be adequate to confirm the resuts of model studies. Testing of the complete formulation for effectiveness will be required to judge the importance of the vehicle in the release of the active ingredients as well as the influence that the formulation exerts on effectiveness and safety.

4. *Interpretation of data.* The recommended dose of an antimicrobial agent should induce a statistically significant reduction of symptoms or a positive amelioration of a disease process when compared with a placebo response.

Evidence of drug effectiveness is required from both in vitro and in vivo testing based upon the results of two or more independent investigators or laboratories. All data submitted to FDA must present both favorable and unfavorable results.

5. *Determination of safety.* Tests for safety must be topical and systemic. These have been mentioned elsewhere in this document. (See part II. paragraph C.2. above—Testing for recategorization of Category III ingredients.) They are specifically mentioned in more detail here due to the cytotoxic nature of many of the antimicrobial ingredients. It is known that some antimicrobial drugs that kill microorganisms may in most cases injure some cells of the host. For this reason the local effects must be defined. Also, these drugs are readily absorbed from the mucous membranes and can act systemically. Systemic toxicity is therefore an important consideration particularly when they are advocated for long-term use on a day-to-day basis for years or even over the span of a lifetime as would be the case when using mouthwash and gargle preparations.

a. *Topical safety testing.* The primary irritation potential of an ingredient following acute and subacute exposures must be determined. Special attention should be devoted to the effects on the mucous membranes of the mouth and throat.

The potential for development of topical allergic reactions following short- or long-term exposure must be determined.

The potential for development of photosensitivity must be determined.

The effect on wound healing must be determined, particularly any inhibitory effect.

The effect of subsensitivity or accumulation of an ingredient on the mucous membranes must be determined.

The above tests should be performed using each ingredient in pure form, individually, if they are in a combination, as well as the final complete formulation to judge the effect of the vehicle in the release of the active ingredients.

b. *Systemic safety testing.* The Panel requires the qualitative and quantitative determination of metabolites in biologic tissues and secretions in cases where it deems the data are essential if not available. The Panel recommends the development of adequate chemical, analytic, or bioassay techniques if not available.

The determination of the degree of absorption through the mucous membranes by measurement of blood levels is required after acute exposure as well as after chronic usage and exposure. If the product is an aerosol, adequate inhalation studies should be conducted to determine the quantity inhaled and systemic effects and accumulation in blood and tissues.

The target organ or organs susceptible to the toxic effects of the drug and the quanitity causing these effects should be determined. Toxicity should be correlated with blood levels and half-life of the drug. If a toxic effect develops, the blood levels causing such toxicity should be determined in several species. The maximal lethal dose and the minimal lethal dose and the LD_{50} should be determined in animals. Tissue distribution, metabolic rates, metabolic fate, and routes of excretion should be determined in cases where the Panel so recommends, if such data are lacking and deemed essential.

The Panel is unable to comment on the tumorigenicity, mutagenicity, or teratogenicity of the ingredients it has evaluated with the data it has available. The possibility that they do exert these

effects cannot be disregarded even though many of these drugs have been in use for many years. The Panel however, does not expect the sponsor of a product to conduct studies to obtain such data if they are not available since these involve complex studies and are conducted by the National Cancer Institute (NCI) and other agencies equipped for such investigative work.

D. Minority Report on Antimicrobial Agents

The goal of the Advisory Review Panel on OTC Oral Cavity Products was to determine if drugs used in the oral cavity and purchased over-the-counter by the consumer are safe and effective. A final report was written and, because portions of it are deficient in the opinion of a minority of the Panel, the following minority report is offered.

1. *Restrictions on the scope of investigation.* The charge of the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel) was restricted to an investigation of those liquid, gel, or solid drug formulations for use in the oral cavity that were not used for symptomatic relief of colds, cough, or related upper respiratory disease. A further restriction was that the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (Dental Panel) was charged to investigate the safety and effectiveness of all oral drugs that were dentifrices, fluorides, and other antidental-plaque drugs, as well as those products used to treat oral mucosal injuries. As time passed the Dental Panel deferred consideration of the antiplaque claims. These restrictions meant that the scope of investigation of the Oral Cavity Panel was limited to the area of mouthwashes, mouth rinses, oral lozenges, gels, and other drug formulations used either to relieve symptoms of general diseases or to maintain oral hygiene.

It was an exceedingly complex problem to determine the effectiveness of mouthwashes and similar drugs, because such OTC preparations are generally not used to cure or alleviate specific oral diseases.

The antimicrobial oral cavity products, especially the antimicrobial mouthwashes, have only recently included the "antiplaque" claim in their labeling and advertising. They are used today to refresh the breath and by some consumers in an attempt to prevent the two most common and widespread diseases of the oral cavity: dental caries and periodontal disease. This use by the consumer is a recent one because of advertising and is directed toward the reduction in dental plaque by mouthwash formulations that contain antimicrobial agents.

The antiplaque activity of antimicrobial mouthwashes and mouth rinses was a parameter that the Oral Cavity Panel believed, during the first 4 years of its tenure, was a reasonable parameter to measure the antimicrobial activity of the drugs. The Dental Panel for a while considered the antiplaque claim of oral drugs, but in its later stages deferred this scope of investigation to the Oral Cavity Panel. In its last year of activity, the majority of members on the Oral Cavity Panel suddenly abandoned consideration of the antiplaque activity. The decision to abandon investigation into the antiplaque claim created a condition where none of the OTC advisory panels had jurisdiction over antiplaque claims. It may have been that the espousal of the Oral Cavity Products Panel stimulated the advance of antiplaque claims by manufacturers of antimicrobial mouthwashes. The sudden reversal of the Panel and abandonment of consideration of such claims creates an unfortunate situation in which no OTC advisory panel has jurisdiction over antiplaque claims and manufacturers of antimicrobial mouthwashes have no direction or guidelines to prove the effectiveness of their formulation in killing bacteria in the oral cavity.

2. *Guidelines to determine the effectiveness of antimicrobial mouthwashes or mouth rinses in the laboratory.* In 1977, the Oral Cavity Panel approved guidelines for the in vitro and in vivo effectiveness of antimicrobial mouthwashes. (See part IV. paragraph D.5. below—Proposal for the antimicrobial evaluation of oral cavity products.) These guidelines were established after consultation with experts in academia, in government, and in industry. The guidelines were constructed to be procedures that were in harmony with the existing body of knowledge relating to the role that bacteria play in dental caries and periodontal diseases. The in vitro procedure was based on the approved methodology employed for the general assay of antimicrobial drugs (Ref. 1). The in vivo procedure was based on reduction of plaque formation. These guidelines were intended to present general procedures that would enable drug manufacturers to reasonably demonstrate the effectiveness of antimicrobial mouthwashes.

The procedures developed by members of the Panel were intended to be guidelines, based on the present "state of the art" procedures. If advances were made in the future in the "state of the art" in either in vitro or in vivo procedures, it was expected that the newer and improved methods would be used at that time to test effectiveness of the drugs.

One consideration in designing the in vitro guidelines concerned recent evidence that in animal models, certain dental diseases involved with dental plaque have a specific bacterial component. This was reflected by the choice of *Streptococcus mutans*, ATCC number 35175, serological group C; *Actinomyces viscosus*, ATCC number 19246; and *Candida albicans*, ATCC number 18804. These test organisms are representative of the pathogenic oral bacteria and fungi. *Streptococcus mutans* and *Actinomyces viscosus* represent supragingival plaque-inhabiting bacteria that have been shown repeatedly to be caries-inducing in animal model systems, and to be associated with human dental caries (Refs. 2 through 8) and periodontal disease (Refs. 9 through 12). *Candida albicans* represents a fungus that causes oral yeast infections (Ref. 13).

The Panel considered the inclusion of anaerobic oral pathogenic bacteria, but, because of the technical difficulties involved in their culture (Ref. 14), rejected the choice. The other possible choices of oral representatives included *Veilonella alcalescens*, an anaerobic gram negative oral pathogen that was rejected because it had not been shown to cause oral diseases (Ref. 15). Spirochetes are widely regarded as being involved in periodontal disease, but they would not be suitable test organisms because they cannot be readily cultivated, if at all (Ref. 16). *Bacteroides melaninogeñicus* and *Bacteroides asaccharolyticus* have been recently implicated in periodontal disease (Refs. 17 and 18). These species are obligate anaerobes and require careful and complex anaerobic culturing. The use of these two as test organisms would represent an escalation in the cost and time necessary for the in vitro testing of antimicrobials.

In view of the difficulties in cultivating oral anaerobes, the in vitro test was limited to the three test organisms, which at present, are the most odontopathic members of the supragingival plaque. It was suggested in the guidelines that *Pseudomonas aeruginosa* be employed as representative of the gram-negative oral bacteria, should that choice prove desirable (Ref. 19). These recommendations were approved by the Panel.

A recommendation, not approved by the Panel, was that chlorhexidine be used as a positive control. Chlorhexidine is the most effective in vivo plaque agent yet described (Refs. 20 through 23). A minority of the Panel recommended the use of chlorhexidine because evidence was desired that the antimicrobial mouthwashes were bioequivalent to chlorhexidine. Although chlorhexidine is not yet available for use by the public in the United States because of several problems involved with this antimicrobial agent (Ref. 24), it remains the most effective antiplaque agent, one to which all others might ideally be compared.

These guidelines for the in vitro test were suggested as pathways to a scientific evaluation of the antimicrobial activities of oral mouthwashes.

3. *Guidelines for the clinical evaluation of antimicrobial mouthwashes or mouth rinses.* The translation of the evidence obtained by in vitro testing to measure the efficacy in the oral cavity was a challenge. It became apparent to the Panel that progress to the stage of clinical trials was inevitable, given the current data base available in dental research.

The formulation of guidelines acknowledged that dental plaque, for the most part, is a microbial aggregation or clumping of bacteria on the tooth surfaces. Numerous cultural and electron microscopic studies confirm this fact (Refs. 25 through 32). Clinical investigations have demonstrated repeatedly that cessation of oral hygiene in humans results in increases in the amount and extent of dental or bacterial plaque and leads to inflammation of the oral mucosa or gingivitis (Refs. 9, 33, and 34). Once oral hygiene is reinstituted, the amount and extent of dental plaque decrease and the gingival inflammation decreases; moreover it has been demonstrated that mechanical debridement procedures designed to reduce dental plaque are essential for optimal periodontal health (Refs. 35, 36, and 37).

This relationship also existed when chlorhexidine was used as a mouthwash by human volunteers. The use of the antimicrobial mouthwash or dentifrice gel, twice daily, at a concentration of 0.2 percent of chlorhexidine gluconate resulted in a drastic reduction in gingivitis and dental caries (Refs. 38 and 39).

It has also been demonstrated that some of the quarternary ammonium compounds, cetylpyridinium chloride and benzalkonium chloride, if used as a mouthwash show plaque-inhibiting properties approaching that of chlorhexidine (Ref. 40).

This evidence, together with submissions from industry and published papers in the literature, documenting the antiplaque activity of various mouthwashes, make it reasonable to accept that reduction in dental plaque, resulting from daily use of mouthwashes, probably reduces gingival inflammation and possibly may reduce dental caries (Refs. 41 through 49).

The Panel at first accepted this principle and recommended the clinical guidelines for antimicrobial tests based on plaque reduction. The four methods used to grade plaque were:

The Quigley Hein method (Ref. 50) including the Turesky modification (Ref. 51).

The Loe and Silness method (Ref. 52).

The Schick-Ash method (Ref. 53).

The Navy scoring method (Ref. 54).

They were freely accepted by the Panel.

At the 27th meeting, the next to the last meeting, of the Panel on August 14, 1979, the guidelines, previously accepted, were abandoned.

It is the opinion of this minority that a set of guidelines are necessary to determine the effectiveness of a drug. It may have been that the majority of the Panel went too far in trying to formulate an acceptable testing method rather than a set of guidelines. Their reasons for abandonment of these guidelines are not persuasive.

Their reasons are as follows:

The species selected for the in vitro tests were not representative; anaerobes were omitted and a gram-negative bacterium was optimal.

A reduction in dental plaque biomass does not necessarily result in a benefit to the consumer.

A reduction in plaque biomass does not necessarily mean a reduction in plaque bacteria.

Subjective methods of assessment of dental plaque are not valid.

The daily use of oral mouthwashes may cause a shift in the oral flora that may result in a proliferation of pathogenic bacteria.

The minority of the Panel dissents from these five assertions:

As was discussed previously, the oral bacteria species chosen for the in vitro tests were representative of the three leading oral pathogens. (See part IV. paragraph D.2. above—Guidelines to determine the effectiveness of antimicrobial mouthwashes or mouth rinses in the laboratory.) A fourth species, *Pseudomonas aeruginosa* was suggested as an optional representative of the gram-negative bacteria.

It would have been sufficient to select only one test organism to demonstrate antimicrobial activity because bacterial susceptibility differences to antimicrobial chemicals are usually slight. Three test organisms that were selected, the two facultative anaerobic gram-positive bacteria and the fungus, covered most of the susceptibility differences to antimicrobial activity.

As was discussed elsewhere, reduction in plaque biomass in humans who have temporarily abandoned oral hygiene practices results in reduction of gingivitis. (See part IV. paragraph D.3. above—Guidelines for the clinical evaluation of antimicrobial mouthwashes and mouth rinses.) Reduction in plaque then certainly reduces the disease potential by prophylactically reducing the visible periodontal disease, and if the antimicrobial mouthwash can penetrate the gingival crevice, it may reduce the hidden periodontal disease. It most certainly does act prophylactically by reducing the pathogenic challenge to the periodontal tissues by killing a minimum number of oral microorganisms located adjacent to and below the margins of the gingiva.

Tens of millions of United States citizens suffer from one mild form of periodontal disease, namely gingivitis caused by the presence of dental plaque. Most of these individuals are not treated for this disease and only toothbrushing, flossing, and the use of antimicrobial mouthwashes prevent in many of these individuals the extension of the gingivitis to the more severe forms of periodontal disease. The action of the mouthwashes are of short duration but this temporary reduction combined with other oral hygiene techniques benefits the consumer.

This minority of the Panel recommends that those antimicrobial mouthwashes or mouth rinses which have demonstrated the ability to reduce dental plaque and reduce or prevent gingivitis or do both be approved in Category I and be allowed the claim "temporarily reduces gingivitis-causing dental plaque when used together with toothbrushing and flossing."

There are two kinds of measurements that have been used to assay plaque biomass. These are area measurements and plaque weight measurements.

The area measurements, such as the Quigley-Hein system (Ref. 50), is a method for assessing the effectiveness of various procedures in removing dental plaque from different surfaces of the teeth. The individual takes a disclosing rinse or is subjected to a fluorescing light which will disclose

plaque on the tooth surface. The buccal (cheek) or labial (lip) surfaces are inspected and a numerical value is given depending on how much of the tooth surface area is covered by the disclosed plaque. Area measurements are subjective to a degree since they require evaluation by an examiner, and they are somewhat inexact because they may not distinguish between thin films or thick films of dental plaque.

Weight measurements of dental plaque, on the other hand, are useful in determining whether a non-mechanical agent is exerting some effect on the amount of dental plaque during a specific period of time. The method selects certain tooth surfaces and the dental plaque is thoroughly and carefully removed. The plaque is thoroughly and carefully removed. The plaque samples may be placed in preweighed capsules, to minimize water loss, and then weighed. Another method is to weigh the sample immediately; or a third method is to dry the samples, eliminating water content differences, and then weigh the samples. In this manner, the effect of an antimicrobial mouthwash can be analytically and objectively measured and a decrease can be analytically and objectively measured and a decrease in the mass of dental plaque formed during a specific time period quantified.

When weight measurements are done, it has been demonstrated that there is a reduction in the number of plaque bacteria on the tooth surface. Plaque is more than 80 percent bacteria (Ref. 56). A 100-percent reduction in dental plaque on the tooth surface would mean a more than 80-percent reduction in plaque bacteria on the same surface.

One of the bases for the decision of the majority of the Panel that a reduction in plaque biomass does not necessarily reflect a reduction in plaque bacteria was a comment by a consultant to the Panel who said that "it may be possible to reduce biomass without killing plaque bacteria." The consultant failed to indicate that this was a theory that had not yet been demonstrated to function in the human oral cavity. He cited three possible mechanisms for this nonantimicrobial plaque reduction:

Fluoride—Recent evidence suggests that the primary action of fluoride mouth rinses is antimicrobial (Ref. 57).

Phytate—Phytate acts as a chelater, removing calcium from the plaque environment. The consultant was experimenting with phytate at the time, but had not demonstrated that it removed dental plaque in the human oral cavity.

Dextranases—Dextranases are supposed to break up the extracellular glucans which consist of less than 2 percent of the dental plaque. Dextranases have been shown to be ineffective in human clinical trials (Refs. 58, 59, and 60).

There is no evidence to the knowledge of this minority that a nonmechanical agent may reduce dental plaque without reducing plaque bacteria.

There is no justification for the abandonment of the in vivo guidelines, especially since they are guidelines. The present "state of the art" is that area measurements of plaque tend to be somewhat subjective and inexact; while weight measurements are objective and more accurate but tedious. As the "state of the art" progresses there will be less tedious and more accurate methods of plaque assessment. These methods will fall within the spirit of these guidelines. The presently available methods while not ideal are adequate to assay reductions in plaque.

The possibility of a shift of the oral flora with long-term and daily use of an antimicrobial mouthwash does have a scientific basis (Ref. 6). In a year-long study on a small number of humans who used a 0.5-percent chlorhexidine-containing gel dentifrice, there was a reduction in the proportion of the more pathogenic (cariogenic) *Streptococcus mutans* and an increase in the less pathogenic *Streptococcus sanguis* from 0.002 percent of the flora prior to treatment, to 34 percent of the flora after treatment. This shift was beneficial for the subjects. None of the other pathogens, staphylococci, streptococci, gram-negative rods, or yeasts, increased.

There are no reported cases in the literature of pathology as the result of a shift in oral bacteria following daily and long-term use of antimicrobial mouthwashes.

There is as yet no evidence that a shift in oral flora, if it occurs as a result of the long-term use of mouthwashes, will result in a pathological condition in the oral cavity.

4. *Approval of cetylpyridinium chloride, domiphen bromide, and benzethonium chloride as Category I ingredients for safety and effectiveness for use on the oral and pharyngeal mucous membranes.* On August 14, 1979, at the 27th, next to last, meeting of the Panel, the Panel by a vote of four votes approving and two abstaining reversed its previous position (Category I) and changed the categorization of cetylpyridinium chloride, domiphen bromide, and benzethonium chloride from Category I to Category III for both safety and effectiveness for use on the oral and pharyngeal mucous membranes. The majority of the Panel arrived at this decision because their previous vote approving these three as Category I was based on experiments suggested by the in vivo and in vitro guidelines, which the Panel had abandoned. Their concern for safety was based on a lack of long-term studies on the carcinogenicity, teratogenicity, and pathology resulting from a shift in the oral flora. Their loss of faith in the effectiveness of these three ingredients was not as a result of new evidence demonstrating that they were not effective, but rather on their loss of faith, after 4 years, in the in vitro and in vivo guidelines which they previously had approved and then abandoned.

On December 14, 1979, at the 28th meeting, the last meeting of the Panel, a vote was taken on a motion to approve cetylpyridinium chloride, domiphen bromide, and benzethonium chloride as Category I for safety and effectiveness in oral health care for use on the oral and pharyngeal mucous membranes. There were three votes for and four votes against the motion. The following is the minority's point of view.

There have been a number of reports published in the dental literature demonstrating the clinical effectiveness of these three antimicrobial agents in reducing dental plaque (Refs. 41, 42, and 45 through 49). A journal article must undergo review by peers before it is accepted for inclusion in a scientific publication. Publication in the literature indicates scientific approval. The antiplaque claim of cetylpyridinium chloride, domiphen bromide, and benzethonium chloride can be said to be accepted by the scientific community to be effective in reducing bacterial plaque. Bacterial plaque, the scientific community agrees, is the cause of dental caries and one of the possible causes of periodontal disease.

The following is a direct quote from an article by Johnson and Rozanis (Ref. 62):

"Quarternary Ammonium Compounds"

Because the daily use of commercial mouthwashes to 'sweeten one's breath' is a common practice in many parts of the world, their potential as a valuable public health measure in the control of dental disease is enormous. Studies on two commercial brands containing quarternary ammonium compounds have shown some beneficial effects in short-term trials. Cetylpyridinium chloride and domiphen bromide have been studies, and claims of a reduction in plaque and gingival indices have been made. When cetylpyridinium chloride was tested, there was a decrease in plaque accumulation but no significant reduction in the gingival index. Perhaps the lack of gingival effect, despite the reported inhibition of supragingival plaque, is due to the fact that those bacteria effected are not the ones involved in the initiation and

progression of gingivitis or the agents are not carried subgingivally where they can "attack" those bacteria that are possibly more intimately related to the development of the disease.

Gjermo, Baastad, and Rolla (Ref. 48) demonstrated a rather good in vitro inhibition of plaque formation with a 0.2-percent solution of benzalkonium chloride. However, when tested clinically, four of the five volunteers developed painful desquamative lesions of the oral mucosa and the investigators discounted it for general use. Compton and Beagrie (Ref. 49) gained a 42-percent reduction in plaque, but not statistically significant decrease in gingivitis, with benzethonium chloride.

Aside from the elimination of benzalkonium chloride as a safe and effective mouthwash, cetylpyridinium chloride, domiphen bromide, and benzethonium chloride have been shown in the above excerpt to be effective in reducing dental plaque in short-term studies while not necessarily reducing the index of gingival inflammation. Their therapeutic value may be questioned, but their prophylactic effectivity is unquestioned.

These three are effective and should be reinstated in Category I. The minority of the Panel would also suggest that other mouthwashes that meet the criteria of the guidelines be approved as Category I for effectiveness for use on the mucous membranes of the mouth and throat.

5. *Proposal for the antimicrobial evaluation of oral cavity products*—a. *Introduction of the problem.* Standard methods are needed to determine the effectiveness of antimicrobial agents used in the oral cavity. The antimicrobial agents may be natural or synthesized chemical elements, compounds or mixtures of compounds used in antiseptics, disinfectants, astringents, gargles, lozenges, troches, or mouthwashes. The antimicrobial activity is the property of antiseptics or disinfectants to be assayed.

The present method of determining the relative antimicrobial efficiency of any of the chemical disinfectants is to compare them to another disinfectant. One of the official tests used, at present, to compare disinfectants is the phenol coeffficient test. This test is a standardized technique of determining the antimicrobial power of a given chemical compound as compared to that of a standard disinfectant, phenol.

The phenol coefficient of a chemical compound is a numerical value presumed to indicate whether, and to approximately what extent, a chemical compound is a better or poorer compound than phenol. This numerical value is obtained from a ratio of the minimal sterilizing concentration of a given compound as compared to the minimal sterilizing concentration of phenol tested under standard conditions. In the official tests used by FDA and other regulatory agencies of the U.S. government, the following standard procedure is followed. A chemical disinfectant is diluted to given concentrations. The standard disinfectant, phenol, is similarly diluted. A standard concentration of a designated bacterial culture is added. The most dilute concentration capable of killing the bacterial culture after 10 minutes of exposure is the end point for the given chemical disinfectant. Phenol is tested under identical conditions. The end point dilution of phenol is divided into the end point dilution of the given disinfectant and the ratio obtained.

In the official phenol coefficient test, the test bacterial cultures that are commonly employed include *Salmonella typhosa*, a representative of a pathogen of the intestinal tract, and *Staphylococcus aureus*, typical as a major environmental source of wound infection and some spore-forming bacteria. Occasionally, other test organisms are utilized.

The phenol coefficient provides a reasonable index for comparing various phenol derivatives which exhibit kinetics and modes of action similar to phenol. It is less than satisfactory for other antimicrobial agents which may differ in their concentration action curves, temperature coefficients, and their susceptibility to neutralization by their immediate environment. Consequently, many variations of the phenol coefficient test have been developed to evaluate the antimicrobial potency of nonphenolic compounds. These variations depend upon a sterility end point.

Microbiologists agree that this end point of sterility is questionable and a more accurate assay of antimicrobial activity would be on the rate of killing of bacteria by the chemical. The rate of killing or reaction velocity constant is exponentially related to the concentration of the disinfectants according to the following expression: $K = C^n t$, where K = the reaction velocity constant of killing, C = the concentration of the chemical, n = a constant characteristic for each chemical, and t = the time of contact.

It would be difficult technically to determine the rate or kinetics of killing; as a result, the tests utilizing the less accurate and less precise sterility end point are more commonly employed.

Generally, assays for the effectiveness of antimicrobials are made by testing known concentrations of antiseptics or disinfectants against one or more test microorganisms and comparing it to a standard or control.

b. *Proposal for an in vitro evaluation of antiseptics or disinfectants used in the oral cavity.* Two factors are necessary for the in vitro assay of the antimicrobial or disinfectants, and these are typical test microorganisms and a standard disinfectant.

(1) *Test microorganisms.* Those microorganisms known to cause disease in the oral cavity should be used as test cultures to assay the potency of oral products.

The following strains are suggested as test microorganisms:

(a) *Streptococcus mutans* is one of the gram-positive cocci microorganisms implicated in the development of dental caries. It has been directly associated with active carious lesions and in the formation of dental plaque. It is typical of the other oral streptococci. Presumably, any disinfectant that kills *Streptococcus mutans* would be equally effective against any of the other oral streptococci.

(b) *Actinomyces viscosus* is a gram-positive filamentous rod recently implicated in the triggering of experimental periodontal disease. This bacterium is typical of the filamentous bacilli found in dental plaque. If an oral product has any therapeutic value, it should inhibit this class of oral microorganism.

(c) *Candida albicans* is a yeast found in the oral cavity. It may be more difficult to inhibit than *Streptococcus mutans* or *Actinomyces viscosus*. It is involved in oral yeast infection including denture sore mouth. This organism is typical of the oral fungi.

Other test organisms may be employed as it becomes appropriate. Gram-negative bacteria constitute a minority of the oral flora, and most are anaerobes which present technical problems in cultivation. Gram-positive bacteria and yeasts present greater challenges to disinfectants than do the gram-negative bacteria.

Viruses must be cultured in cells in tissue culture and present a greater laboratory hazard and technical difficulties. Once the hepatitis virus B (Dane particle) is routinely cultured, it could be used by virucidal testing.

(2) *Standard disinfectant or antiseptic.* Ideally, a proven effective disinfectant should be used as the standard. At present, there appears to be only one compound that will inactivate *Streptococcus mutans* and other caries-inducing experimental caries, and retard or reverse incipient

periodontal disease. This disinfectant is chlorhexidine, an antibacterial bisbiguanide. Its chemical name is 1,6-*DL*-(4-chlorophenyldiguanido) hexane. It has a large antimicrobial range against a wide range of bacteria. It is being used in Europe as a topical antiseptic and as a disinfectant in genitourinary diseases as well as diseases of the eye and oral cavity. It is a potent antibacterial commercially available in Europe as the gluconate or acetate salt.

Chlorhexidine is also antimicrobial to other oral streptococci, *Staphylococcus arueus, Escherichia coli,* and *Candida albicans.* It is inhibitory to a wide variety of microorganisms, but is not sporocidal, except at temperatures approaching the boiling point of water. Viruses do not appear to be susceptible to the action of chlorhexidine.

The possible mode of action of chlorhexidine is to exert a lethal action on the cell surface of microbial cells by disorganizing permeability barriers and coagulating the cytoplasmic contents.

This disinfectant, chlorhexidine, would be an ideal standard. It is effective at 1 to 2 percent dilutions and will inhibit the three proposed test organisms: *Streptococcus mutans, Actinomyces viscosus,* and *Candida albicans.*

The chlorhexidine "coefficient test" would be used to compare any oral product against chlorhexidine. The ratio obtained would demonstrate the relative efficiency of a product as compared to chlorhexidine.

c. *Proposal for the in vivo evaluation of antiseptics or disinfectants used in the oral cavity.* An in vivo method should measure parameters that will result in improved oral health.

Three parameters are used at present:

(1) Reduction in the quantity of dental plaque.

(2) Reduction in the numbers or kinds of microorganisms in the saliva.

(3) Reduction in the numbers or kinds of microorganisms in dental plaque.

The reduction in the quantity of dental plaque is determined by the use of disclosing agents or stains. The teeth are stained with dyes, or chemical disclosing agents, and examined under white light or ultra-violet light. Photographs are taken, and the areas colored by the light or the stain are mapped, measured, and compared to the total area of the teeth. This procedure is used before and after the use of a disinfectant.

The defects in this method are that it is laborious, tedious, and difficult to reproduce. It is time consuming, but its greatest defect is that it is inaccurate.

The reduction in the number or kinds of microorganisms in saliva is another measurement of the efficacy of oral disinfectants. Saliva is only one of the sites of the microbial flora.

The late Dr. Henry Scherp compared this method to a determination of the bacterial content of the soil at the headwater of the Mississippi in Minnesota by measuring the river water at New Orleans. It does not accurately describe what is occurring on the tooth surface nor in the gingival sulcus areas where most dental disease occurs.

A more accurate general in vivo method that reflects microbial changes on the tooth surface or in the gingival sulcus is one in which plaque material is quantified for reduction in the plaque flora.

Plaque is removed from designated areas on the tooth surface or gingival crevice. It is weighed to obtain a value per milligram of plaque. It is sonicated carefully to disperse the plaque. Isolated species may be identified and quantified, or groups may be quantified. In this manner reductions in microbial counts in areas important in dental disease can be determined.

There are many variations on this in vivo technique. One such variation developed which has been used to quantify microbial reduction on the tooth surfaces by mouthwashes is the agar replica method.

In the agar replica method, an impression of the patient's teeth is taken before and after use of the mouthwash in irreversible hydrocolloid. The bacteria on the surface of the plaque are transferred to the impression material. Bacterial culture medium is poured aseptically into the hydrocolloid impression. The bacteria are transferred from the impression material to the surface of the agar. The agar shrinks slightly and is removed from the impression. A model of the patient's teeth and gingiva are obtained with colonies of bacteria growing in the exact sites they occur in the mouth. These colonies are counted after incubation and by comparing the before and after use of the mouthwash, one can quantify the reduction in microorganisms colonizing the tooth surface or upper portion of gingival sulcus.

One of these in vivo methods should be adopted, as is appropriate, to measure the antimicrobial activity of oral cavity products. This minority of the Panel suggests it be either the direct sampling from plaque and counting microorganisms or one of the variations such as the agar replica technique.

In summary, this minority of the Panel makes the following recommendations:

It is recommended that an in vitro test utilizing chlorhexidine, an effective oral disinfectant, as a standard be used and all other oral products be compared to this standard. This will serve to give an estimate of relative antimicrobial potency of oral products.

In the above test, three easily cultivable and identifiable oral organisms, *Streptococcus mutans, Antinomyces viscosus,* and *Candida albicans,* can be used as test organisms in the in vitro test.

It is recommended that, once an oral product shows promise for relative antimicrobial activity in the in vitro test, it be tested by an in vivo method. A direct sampling of dental plaque from designated areas on the tooth and gingival sulcus or one of its variations should be used.

These two approaches will make possible an accurate evaluation of the antimicrobial properties of oral products.

6. *Additional methodology for evaluating antimicrobial active ingredients*—a. *Introduction.* The objective of this report is to present a protocol of test methods which will determine the effectiveness of antimicrobial agents used in the oral cavity. These antimicrobials are antiseptics, disinfectants, astringents, gargles, lozenges, troches, or mouthwashes which are presently being sold without prescription (OTC) for use by the general public in the oral cavity. The property of these products to be evaluated in this report is their relative antimicrobial activity.

The variety of antimicrobial agents recommended for use in the oral cavity is great. No single bacteriological test method for evaluating all agents can be expected to be adequate for all. The problem of testing these agents should be resolved with the following considerations:

(1) The development of a method which will provide meaningful results.

(2) The precise application of this method.

(3) The accurate interpretation of the results based on adequate controls and a precision sufficiently accurate so that the results can be reproduced uniformly.

b. *Definitions*—(1) *Antimicrobial.* Any physical agent or chemical that destroys or inhibits the growth of any microorganism or virus.

(2) *Antiseptic.* A substance that opposes sepsis, putrefaction, or decay by inhibiting the growth or action of microorganisms or viruses or destroying them. This term is used especially for agents applied to living tissue. Mouthwashes or gargles can be called antiseptics only if they destroy microorganisms during their period of

contact in the dilutions recommended for use.

(3) *Disinfectant.* An agent that frees from infection. It is usually a chemical agent which destroys harmful microorganisms or viruses, but not usually bacterial spores.

(4) *Germicide.* A term used interchangeably with "antiseptic" or "disinfectant" but one that implies that all vegetative (non-sporing) microorganisms are destroyed.

c. *Methods*—(1) *In vitro evaluation of antiseptics or disinfectants used in the oral cavity.* Oral antiseptics or disinfectants which are applied for a short time as in gargles, sprays, or mouthwashes are tested by the following methods:

(i) *Test organism. Streptococcus mutans,* strain NCTC 10449.

(*a*) *Medium.* Calf brains, infusion from, 200 g; beef heart, infusion from, 250 g; proteose peptone, 10 g; bacto-dextrose, 2 g; sodium chloride, 5 g; disodium phosphate, 2.5 g.

This medium is brain heart infusion broth (BHI). Thirty-seven grams of the BHI is dissolved in 1,000 mL distilled water. Ten milliliters of BHI broth is added to 20 x 150 mm unlipped test tubes, plugged with cotton and sterilized in the autoclave in 15 pounds per square inch (lb/in^2) pressure at 121° C for 30 minutes. The final reaction of the medium will be pH 7.4.

(*b*) *Stock culture.* Each stock culture of *Streptococcus mutans* is transferred on agar slants of BHI twice a month and stored at refrigerator temperatures.

(*c*) *Test culture.* The test culture is prepared by transferring from the agar slant stock culture into 10 mL of the above broth medium and transferred and incubated at 37° C for 16 to 18 hours. This is done for 3 consecutive days to prepare the test culture.

(*d*) *Medication tube.* Unlipped test tubes 25 x 150 mm plugged with cotton and sterilized in the hot air oven at 170° C for 1.5 hours are used for mixing the cultures with the antiseptic or disinfectant in the test.

(*e*) *Temperature of the test.* The antiseptic and the test culture must be warmed in a warm bath at 37° C and held at this temperature during the period of the test.

(*f*) *Inoculation loop.* A 4-mm loop of platinum wire U.S. No. 23B and S gauge, 0.5 to 3 in long set in a suitable holder such as an aluminum or glass rod 0.5 cm in diameter is used to transfer the antiseptic culture mixture in a medication tube to 10 mL of the sterile broth in the subculture tubes. The loop and rod are flamed before each transfer which is made under aseptic conditions.

(*g*) *Incubation.* The subcultures are incubated at 37° C for 48 hours.

(*h*) *Dilution.* Any series of dilutions which may be required are made in sterile distilled water under aseptic conditions or the antiseptic may be tested at the dilution suggested by the manufacturers.

(*i*) *Methods of conducting tests.* Five milliliters of the antiseptic in the appropriate dilution is placed into sterile 25 x 150 mm tubes and warmed to 37° C in a water bath. The 16–18 broth culture of the test organism (and culture) after vigorous shaking is allowed to warm in the same water bath for 5 minutes. Five-tenths milliliters of this culture is removed by the means of a 1 mL graduated pipet and added to 5 mL of the antiseptic and mixed by slight agitation. Transfers are then made from the mixture of culture and antiseptic into 10 mL of sterile broth by the means of the sterile 4-mm loop at intervals of 30 seconds, 1, 2, and 5 minutes. These transfer tubes are then incubated at 37° C for 48 hours. At the end of the incubation period, these broth tubes are observed for evidence of growth.

The information desired from this method is the concentration of the germicide required to kill *Streptococcus mutans* under the conditions of the test within 5 minutes as compared to a standard or control agent. This agent is chlorhexidine, a compound shown to be effective against plaque bacteria. If the preparation does not kill without any comparison within 5 minutes, it has been considered not sufficiently germicidal to be classified as an antiseptic for use in the oral cavity.

Those preparations that do pass this test within 5 minutes can be then compared to chlorhexidine for their relative efficiency. In this test, 1 percent chlorhexidine is the germicide which is commonly considered to have some antiseptic clinical value to oral microorganisms to kill within 5 minutes. In the interest of fairness, if the concentration suggested by the manufacturer of the disinfectant is below or above 1 percent, it may be suitable to employ the same concentration of chlorhexidine as the recommended concentration of the antiseptic. For example, if an antiseptic is to be used at 0.5 percent, then chlorhexidine would be diluted to a 0.5-percent concentration. If the antiseptic failed to kill the test organism at 0.5 percent, but did kill at 2 percent, it would be judged to be 25 percent as effective as chlorhexidine.

The principal value of this method would seem to be that of determining the relative germicidal levels of oral antiseptics and disinfectants intended to provide contact germicidal action.

(ii) *Confirming tests.* There is always the possibility that enough of the germicide may be carried over into the subculture broth to inhibit the growth of test organisms, and false negative results may often occur. For this reason, it is necessary to determine whether the inhibitory concentration of the germicide is present in the broth.

The subculture is made by reinoculating these tubes into fresh 24-hour broth culture of the test organism by means of a sterile loop and reincubating at 37° C for 24 hours. If growth occurs after this inoculation, it means that no inhibitory action has occurred and that failure of growth during the first incubation shows that the test organisms have been killed. In case no growth occurred after the second inoculation, the test is repeated using 250 mL of broth in a flask in place of the 10 mL to avoid inhibitory reaction of the antiseptic to the subculture.

It may be that this germicidal action of the oral antiseptic would not be the same in applications in vivo as mouthwashes and gargles where the concentration would be reduced in actual application by the saliva and other body secretions, and the active ingredient would be exposed to the potentially inactivating effects of those same secretions. The details of the procedures here are, however, sufficiently flexible so that application dilutions and organic inactivating materials can be simulated with some degree of success. It is, therefore, suggested that if an oral germicide passes this stringent test, it should be tested in the presence of human saliva before it can be recommended in the oral cavity.

(iii) *Tests in the presence of saliva.* One milliliter of whole human saliva that has been sterilized by filtration through a membrane filter (e.g., Millipore) with a diameter of 0.45 mm is added to the modified test described above. This gives an equivalent further dilution of the antiseptic or disinfectant as well as the control disinfectant (chlorhexidine). In this manner a germicide can be screened for oral use (with saliva) for use as a mouthwash or gargle.

(*a*) *Test organism. Actinomyces viscosus,* strain ATCC 19246.

The same procedures as followed with *Streptococcus mutans* will be followed with *Actinomyces viscosus* except that 24-hour cultures of test organisms are used.

(b) *Test organism. Candida albicans,* strain ATTCC 18804.

The same procedures are followed except the culture media for this yeast is malt extract broth. Fifteen grams of Bacto-male extract broth is dissolved in 1,000 mL of distilled water. This medium is placed in tubes as described above and autoclaved for 15 minutes at 15 lb/in² pressure at 121° C. The final reaction of this medium will be pH 4.7. This medium is used in place of the BHI for the propagation of the test yeast. A 24-hour culture of this yeast is preferred to test the fungicidal action of the germicide. The tests are conducted as above.

(iv) *Gram-negative testing.* If it is necessary to test a gram-negative organism, then *pseudomonas aeruginosa,* strain ATCC 10145, is used. The above procedures are followed except culture medium.

Medium. Beef extract 5 g, peptone 10 g, sodium chloride 5 g are added to 1,000 mL of distilled water. Boil for 30 minutes to dissolve, adjust the pH to 6.8 with normal sodium hydroxide or saturated aqueous sodium carbonate (Na_2CO_3). Boil for 10 mnutes and then filter through paper and make up to original volume. Add 10 mL to the 20 x 150 mm unlipped test tubes, plug with cotton and sterilize in an autoclave at 15 .b/in² pressure at 121° C for 30 minutes. This is nutrient broth and can be purchased as nutrient broth. The final pH should be adjusted to 7.4. The same procedure as described above is used for this with 24-hour cultures of the test organism.

(v) *Summary of in vitro tests.* (*a*) Modified chlorhexidine coefficient tests using three test cultures.

(*1*) *Streptococcus mutans.*

(*2*) *Actinomyces viscosus.*

(*3*) *Candida albicans.*

(*4*) If necessary, *Pseudomonas aeroginosa.*

(*b*) Subcultures of above.

(*c*) Modified chlorhexidine coefficient test with 1 mL of sterile saliva.

(2) *In vivo evaluation of oral antiseptica and disinfectants*—(i) *Indroduction.* The efficacy of an oral antiseptic or mouthwash can be best evaluated by its ability to kill microorganisms in the oral cavity. As mentioned in the original proposal, the reduction in number of microorganisms in dental plaque per given weight of dental plaque seems to be the most accurate method to describe the germicidal properties of agents in the oral cavity. Killing of microorganisms. in saliva is inaccurate, and the germidical action on soft tissue is inconsistent. Two methods are proposed:

(*a*) *The reduction of microorganisms in plaque on disignated tooth surfaces in human volunteers.* Plaque is removed from designated areas on the tooth surface or gingival crevice. Prior to the use of the antiseptic, this may be done on every other tooth. For example, it maybe the facial area of the right central incisor, the buccal area of the right canine, the buccal area of the second premolar, and buccal area of the second molar together with a sampling from the corresponding gingival crevises. The plaque can be removed with a standard periodontal spoon, and the plaque is immediately placed in a preweighted gelatin capsule. Immediately after collection, the capsule is weighed and amount of plaque calculated. The capsule and its contents are aseptically homogenized in 5 mL of trypticase-soy broth. One milliliter of the homogenized plaque material is then added to 9 mL of sterile phosphate buffer. The dilution is mixed, and 1 mL of this dilution is then transferred to a second tube containing 9 mL of phosphate buffer (pH 6.8). This is continued for 8 more tubes until a dilution of 10^{10} is obtained.

One milliliter of each dilution is then placed in sterile standard petri dishes. This is done in triplicate so there are three petri dishes each containing 1 mL of each dilution. Over this dilution in each tube is poured 20 mL of tripticase-soy agar which has been melted and cooled to 45° C. The petri dishes are gently agitated in order to achieve a homogenous mix. These are appropriately labeled and then incubated for 48 hours in an inverted position at 37° C.

After incubation the plates are removed and the number of colonies on each plate counted. Any appropriate counting method may be used. Only those plates having between 30 and 300 colonies are counted, and the number of microorganisms per milligram of plaque is calculated. For example, if 10 mg of plaque were collected and then diluted completely, the number of milligrams per 20 mL culture medium means there was 0.5 mg per mL. The number of microbial colonies, for examplke, at the 10^6 dilution may be 40. This means that there were 80×10^6 (80,000,000) microorganisms per milligram of plaque.

The human volunteer then uses the mouthwash, gargle, or other oral antiseptic as directed by the manufacturer. The mouth is rinsed with sterile saline to remove all traces of residual antiseptic. Then plaque is collected from those teeth in the same quadrant that were not sampled before use of the mouthwash. The right lateral, first premolar, first molar and third molar may be sampled. The sample of collected plaque again is weighed and diluted as described above. The dilutions are plated and counted. For example, if now there are only 40×10^5 microorganisms per milligram (4,000,000) of plaque, then a reduction of 76×10^6 (76,000,000) was obtained by use of the mouthwash.

If a relative efficiency is necessary, then the same dilution of chlorhexidine could be tested in human volunteers against the mouthwash, and the relative efficiency could be determined using the above method simply by comparing the numbers reduced by the antiseptic against the control chlorhexidine.

The method described above is tedious, but new methods have been developed to do this rapidly, and instrumentation using laser counting has been developed in order to rapidly count colonies on the bacterial plates. This method is tedious, but would give an accurate general in vivo method that will reflect changes on the tooth surface or in the gingival crevice.

The methods for counting bacteria in the plates are varied. They can range from counting on a Quebec Colony Counter manually to the various mechanical counters available in microbiological laboratories.

(*b*) *Agar replica method.* The principle of the agar replia method is that microorganisms on the surface of teeth in plaque can be transferred to the surface of a dental impression material taken of the entire dentition. The next step is to pour up dental impression bacteriological agar culture media. The bacteria are now transferred to the surface of the agar model. The agar model is incubated, and the microbial colonies can be seen growing in the exact site that they occur in the mouth.

The patient rinses his/her mouth with sterile distilled water. A dental impression is taken in irreversible hydrocolloid. Perforated impression trays are used and Jeltrate®, an irreversible hydrocolloid containing little fluoride, is used as the impression material. It is mixed up, the surface of the material is washed, it is placed over the patient's teeth, and an impression is obtained of the patient's teeth. The impression material is carefully placed and removed so that a minimum streaking of dental plaque would occur.

The impression are boxed in wax and immediately poured with a fortified selective agar medium. The medium is melted and then cooled to 47° C so that it would solidify on contact with the hydrocolloid. The poured impressions are chilled, adn the agar medium model is carefully removed from the impression material.

At present two selected media have been used. The first is a modification of the formula of Rogosa, Mitchell, and Wiseman (Ref. 63). It consists of a

lactobacillus-selective broth containing brom cresol green, .02 g/L and 3 percent fortified agar (Ion agar #2). The pH of the media is adjusted to 5.5 with lactic acid. Agar models obtained using this impression are incubated anaerobically at 37° C for 48 hours.

A second selective media used for the isolation of oral yeasts is Sabouraud's dextrose broth containing penicillin, 20 units per mL; cyclohexamide, 0.5 mg/ml; streptomycin, 40 mg/mL; and 3 percent fortified agar. Agar models utilizing this media were incubated aerobically at 30° C for at least 72 hours.

These two media select only the lactobacillus in the first or the yeast in the second. As other selective media begin to be developed, they can be utilized to identify certain microorganisms. If total counts are desired, then media such as trypticase-soy or blood agar can be utilized to obtain those microorganisms which will grow on this media.

Agar models are obtained before the use of the mouthwash as described. The mouthwash is then used as recommended by the manufacturer, and models are taken again a second time. Colonies are then mapped on both models at the site. A disappearance of a colony from a certain site can be the result of the use of the mouthwash. The number of colonies that disappear will give evidence of the efficacy of the mouthwash in removing those microorganisms that are chosen by the experimenter. In this way the action on specific microorganisms, or, in the case of the blood agar medium, total microorganisms, can be determined, although not as accurately as the first method.

If a relative effectiveness is desired, again the concentration of the antiseptic to be tested can be compared to the same concentration of chlorhexidine, and a relative efficiency of killing as demonstrated by the agar replica method can be obtained.

d. *Discussion.* Two methods of evaluating the efficiency in vivo of the action of mouthwashes, gargles, and other oral antiseptics have been described. These are two suggested methods and are probably the best ways to obtain information as to the relative efficiency of the oral antiseptics in killing microorganisms in the mouth. Other methods such as saliva counts and scraping of the buccal tissue are less satisfactory and give less accurate and inconsistent evaluation. It should be noted that these are protocols of methods to be used and merely demonstrate the principles that counts in plaque are to be reduced by the antiseptic, and these are two methods suggested.

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V. Astringents

A. General Discussion

1. *General comments.* An astringent is a substance capable of precipitating albumins and other proteins when applied topically to living cells of the mucous membranes and other tissues.

a. *Mode of action.* Astringents precipitate proteins. They form a thin protective film on the surface of the body cells. This film lessens their sensitivity to external stimuli, such as those of mechanical origin, those due to abrupt temperature changes, and those induced by chemicals. The action on an astringent is essentially limited to the cell surface. The permeability of the cell membrane is reduced, but the cells remain viable and uninjured unless high concentrations or excessive quantities are used, in which case the cell body is affected.

b. *Types and uses of astringents.* Various nontoxic metallic ions and certain organic acids can act as astringents. Derivatives of polyhydroxybenzoic acid, tannic acid, or similar protein-coagulating acids, will precipitate albumins and other proteins. Dilute aqueous solutions of aluminum and zinc salts are commonly used as astringents. Astringents have been alleged to promote healing of superficial lesions by acting as protective agents. Actually, there is no evidence that they promote the proliferation of epithelial or other type of cells and accelerate healing. Astringents merely provide symptomatic relief and are not curative.

Astringents are generally used in the mouth and throat to provide a protective coat over ulcerations, erosions, or abrasions of the mucosa, or over irritated or inflamed surfaces. Astringents are usually used in the form of dilute aqueous solutions. Concentrated solutions may be caustic and penetrate and precipitate the proteins in the interior of the cells, thus causing further injury, irritation, or ulceration. The protective coating often relieves various types of discomfort such as burning sensations, aches, or pains by diminishing or temporarily preventing access of offending stimuli to an irritated or injured surface. They do not possess analgesic activity nor do they depress receptors for pain as do anesthetics and analgesics.

c. *Adverse effects of astringents.* Since astringents are water soluble, they may be absorbed from the mucous membranes and produce systemic effects that are undesirable. Astringents containing tannic acid have caused adverse systemic effects such as liver injury, following absorption. The excessive and repeated use of solutions of metallic ions, e.g., iron and chromium, likewise, has resulted in absorption, causing adverse systemic effects. Use of concentrated solutions may cause irreversible injury to the cells; necrosis and sloughing occur. Some astringents possess varying degrees of antimicrobial activity due to their protein-coagulating properties. The protein-coagulating activity may be enhanced to an undesirable degree when certain antimicrobial agents are combined with astringents.

B. Categorization of Data

1. *Category I conditions under which astringents for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.*

The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register**.

Category I Active Ingredients

Alum
Zinc chloride

a. *Alum.* The Panel concludes that alum is safe and effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Preparations of aluminum are widely used in medicine as antacids, antiseptics, and astringents. Aluminum solutions precipitate proteins in the same manner as do solutions of salts of many other metals. Dilute solutions of aluminum salts have an astringent action and are not irritating to the mucous membranes. More concentrated solutions act as irritants and may injure tissues. Insoluble preparations are used as antacids and adsorbents. The chief soluble preparation of aluminum used in medicine is alum or potassium aluminum sulfate ($KA1(SO_4)_2.10H_2O$). The insoluble aluminum hydroxides and phosphates are used as antacids. The acetate and chloride salts are water-soluble salts and are used as antiseptics and antiperspirants. They may also be used as astringents but are more irritating than the alums. Besides the potassium atom, the ammonium complex or sodium atom may be substituted for the potassium atom in the alum molecule. Thus, there are three types of alum-potassium, sodium, and ammonium—all with the same therapeutic effect, but with minor variations in solubilities and chemical properties. The potassium alum is the most commonly used derivative.

Potassium alum is also known as kalinite (Ref. 1). The technical product is also known as alum flour, alum meal, and cube alum. Alum is composed of colorless, odorless, hard, large transparent crystals. It has a sweetish astringent taste. Alum is stable at ordinary temperatures. It is generally available as the decahydrate, which becomes anhydrous above 200° C. One gram dissolves in 7.2 mL water, 0.3 mL boiling water, and is freely soluble in glycerol. Alum is insoluble in alcohol (Ref. 1). The aqueous solution is acidic (pH of 0.2 molar alum is 3.3). Anhydrous alum is sometimes called burnt or desiccated alum, and it attracts moisture from the air. The dodecahydrate is used for medicinal purposes.

(1) *Safety.* The Panel concludes that potassium alum is safe as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Small quantities of aluminum solutions induce no symptoms except a feeling of dryness and "astringency" (puckering) of the mucous membranes of the mouth and throat. Larger doses ingested orally pass into the stomach where they may act as gastric irritants and cause nausea and vomiting and, in extreme cases, exert a purgative effect (Ref. 2). Even when excessive quantities are ingested, no symptoms except those of gastrointestinal irritation and inflammation ensue. The continued use of alum does not result in any symptoms or result in chronic poisoning. Aluminum slats are absorbed only in small quantities from the stomach and intestine. Once they are absorbed, they are stored in the liver, kidney, muscles, and pancreas and slowly excreted into the bile and urine (Ref. 2).

Alum has been and is still used extensively in baking powders. It is estimated that in any ordinary diet seldom more than 60 mg aluminum is ingested per day. This quantity appears to be quite innocuous. Extremely large quantities of aluminum salts taken experimentally or with foods in the form of baking powders have produced diarrhea. No other adverse effects or symptoms of general poisoning have resulted from the ordinary use of such powders. The administration of large quantities of insoluble aluminum preparations to animals and man for use as antacids over long periods of time has produced no obvious symptoms of poisoning. Deaths from the ingestion of toxic doses are rare and attributable to the irritating action on the mucosa of the gastrointestinal tract.

Rats fed 2 mg alum daily did not show diminished growth or fertility or any other damage, even when these experiments were carried out for four generations (Ref. 2).

Practically no absorption occurs when insoluble aluminum-containing compounds are administered by mouth. The soluble salts and the insoluble derivatives that are solubilized by the acid in the stomach such as the hydroxide or the carbonate are absorbed, however. The entire amount of an insoluble aluminate is virtually recovered from the feces and only traces from the urine. When aluminum salt solutions are injected parenterally, they are excreted largely into the urine by the kidney. Some are excreted into the gastrointestinal tract. Organic derivatives of aluminum are used for human therapeutics, as for example, aluminum aspirin which is safe and effective.

(2) *Effectiveness.* The Panel concludes that alum is effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage section below.

The soluble salts of aluminum precipitate proteins. In view of this effect, they are astringent, styptic, and antiseptic in proper dosage. They are not corrosive to intact skin or mucous membranes of the mouth and throat. A 1-percent solution of aluminum acetate precipitates protein and most colloidal suspensions. This property is often employed for clarifying turbid water. The protein-precipitating properties are also used in the purification of toxins and antitoxins. The precipitated protein tends to redissolve in the presence of an excess protein. The precipitation of gelatin or serum proteins is maximal with 8 percent aluminum acetate. This concentration produces maximal contraction of excised rat tendon.

A 1-percent solution of aluminum acetate has been reported to be antiseptic, but the Panel does not regard this as an important therapeutic attribute of soluble aluminum salts. A 5-percent solution is germicidal. A saturated solution of potassium alum in 50 percent alcohol is employed for the prevention of bedsores (Ref. 3).

A 2-percent solution of potassium alum is used topically to suppress excessive sweating by hardening the skin. Aluminum chloride, which is more irritating than the other soluble salts since it is acidic in reaction, is sometimes used as a deodorant and to inhibit localized sweating of the feet and axilla (underarm) (Ref. 4). At first a 25-percent solution is applied twice a week and then later once a week.

Dilute solutions of potassium alum are effective astringents when applied to the mucous membranes of the oral cavity. They aid in the relief of sore throat or sore mouth or both by providing a protective coagulum over irritated or ulcerated surfaces. The relief is merely symtomatic and not due to any curative effect.

Alum is applied on the mucous membranes as an astringent in solutions of 0.5 to 1 percent. A 0.5- to 5-percent solution (Ref. 3) has been used for gargling, but is somewhat irritating and damaging to the teeth and is not recommended by the Panel.

(3) *Dosage.* Adults and children 3 years of age or older: Use a 0.2- to 0.5-percent concentration of alum in aqueous solution in the form of a rinse, gargle, spray, or by swabbing the affected area, not more than three to four times daily. For children under 3

years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care astringent active ingredients. (See part V. paragraph B.1. below—Category I Labeling.)

References

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b. *Zinc chloride.* The Panel concludes that zinc chloride is safe and effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Zinc chloride may be prepared by reacting metallic zinc with hydrochloric acid (Ref. 1). It may be molded into a pencil form. Since zinc is amphoteric, it is capable of forming acidic and basic compounds. If sodium hydroxide is added to a solution of zinc chloride, sodium zincate forms. In aqueous solution, the sodium zincate ionizes into a sodium cation and a ZnO_2 anion. Zinc chloride solution is acidic in reaction; the zincate is alkaline. Zinc salts are not compatible with alkalies and carbonates.

Zinc chloride, sometimes called "butter of zinc," is a white powder composed of deliquescent granules or fused pieces of rods. The solubility of zinc chloride in water is 432 g per 100 g at 25° C. It is soluble in 1.3 mL alcohol and 2 mL glycerol and is freely soluble in acetone. The aqueous solution is acidic on reaction (pH 4) (Ref. 1).

Solutions in water or in alcohol are generally slightly turbid, due to the presence of zinc oxychloride. Zinc chloride has been used as an astringent in mouthwashes in concentrations of approximately 1 percent. Pencils of zinc chloride and alcohol solutions containing up to 30 percent of the salt have been used for their caustic effects (Refs. 2, 3, and 4). Zinc chloride has been used in 0.5 percent concentrations as a vaginal douche for the treatment of *Trichomonas vaginalis* and also for the treatment of leukorrhea.

Numerous other preparations of zinc have been used for medicinal purposes. These may be divided into the soluble compounds such as the chloride, sulfate, or acetate, and insoluble compounds, such as the oxide, stearate, and carbonate, preparations. The insoluble preparations are used topically on the skin. Soluble preparations are used as astringents and for disinfection (Refs. 1 through 4).

(1) *Safety.* The Panel concludes that zinc chloride is safe as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Zinc is found in traces in foods and is indispensable in nutrition. Deficiencies of zinc ion in the diet may cause growth retardation, hypogonadism, skin changes, mental lethargy, and delayed wound healing. The major function of zinc in metabolism appears to be enzymatic. Zinc has been used as an antisickling agent in sickle cell disease. Zinc competes with cadmium, copper, lead, iron, and calcium for similar binding sites (Ref. 5). Various salts of zinc, such as the chloride, stearate, and sulfate, as well as the oxides, have been used externally and internally for the treatment of various dermatological conditions and inflammatory lesions of the mucous membranes of the mouth and throat (Refs. 3 and 4). Zinc sulfate has been used as an ophthalmic astringent solution at a concentration of 0.25 percent.

When taken internally, zinc salts irritate the gastric mucosa; for this reason zinc sulfate has sometimes been used internally as an emetic. It was once considered to be one of the most effective emetic agents for the treatment of poisoning, but it is not used in present day practices.

The intravenous lethal dose in rats in 60 to 90 mg/kg of zinc in a soluble salt. The lethal dose of zinc sulfate is estimated to be in the order of 15 g (Refs. 3 and 4). The oral toxicity of zinc compounds in man is low. Zinc compounds in quantities that might exceed the amount introduced in food, such as from zinc containers, appear to be innocuous. Zinc compounds caused no apparent symptoms or pathologic changes when administered daily for a year to dogs, cats, or rats. In some studies, no symptoms were noted when zinc compounds has been administered for a lifetime to several generations of animals. The zinc contents of the organs was not increased.

Systemic effects of intravenous injection of soluble zinc salts in man are mainly neurologic. Consciousness is lost without involvement of the motor areas. However, the subject is areflexic due to the comatose state. The blood pressure falls rapidly, probably as a result of the flocculation of plasma protein. Blood coagulation is retarded for approximately an hour after the injection of 5 to 50 mg/kg in rabbits, probably caused by a decrease in antithrombin. Long, continuous injection of zinc salts by catheter results in fibrotic changes in the acinar portion of the pancreas without affecting the islets. Chronic industrial zinc poisoning has been reported in workers in galvanizing plants. The symptoms in man are chiefly gastrointestinal (nausea and vomiting). Hypochromic anemia may also occur. Feeding zinc to rats produces hypochromic anemia and deficiency in growth (Ref. 4).

Inhalation of fumes of zinc oxide causes "metal fume fever." This is an industrial hazard noted among workers in plants where metallic zinc is heated. The zinc oxide is formed due to the oxidation of the metal. Inhalation of powdered zinc stearate produces the same symptoms. Presumably the crystals cause a temporary, reversible change in the epithelium of the respiratory tract.

Nasal sprays of zinc sulfate have been used to shrink the mucous membranes to allow drainage from infected accessory nasal sinuses. This type of treatment has the disadvantage in that it inhibits the activity of the cilia of the mucous membranes of the respiratory tract and favors the retention of secretions. Such decreased activity can also occur when these agents are applied to the mucous membranes of the oral cavity (Ref. 3).

(2) *Effectiveness.* The Panel concludes that zinc chloride is effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The salts of zinc are employed as astringents, corrosives, and mild antiseptics. They, most likely, owe their astringent effects to the ability of the zinc ion to precipitate protein. Soluble salts of zinc usually are almost completely ionized. Dilute solutions of zinc chloride and zinc sulfate are effective astringents. In high concentrations they are irritating to mucous membranes. The insoluble compounds, such as the oxide, or stearate, are used externally and are not irritating (calamine).

Dilute solutions of zinc chloride are effective astringents when applied to the mucous membranes of the mouth and

throat (Refs. 6 and 7). They aid in the relief of sore throat and sore mouth or both by providing a protective coagulum over irriated or ulcerated surfaces. The relief is merely symptomatic and not due to any curative effects.

The protein-precipitating properties of soluble zinc salts confer varying degrees of antimicrobial activity on these compounds, but the Panel does not recognize the use of these salts as antimicrobial agents because of the variability of their action and the fact that certain specific organisms are not affected by these agents. Zinc chloride, in concentration of 5 percent or more, has been used as an escharotic agent on granulations, ulcers, and similar lesions. The acetate and sulfate are less irritating than the chloride and are preferred when a mild astringent action is desired.

(3) *Dosage.* Adults and children 3 years of age or older: Use a 0.1- to 0.25-percent concentration of zinc chloride in the form of a rinse or mouthwash or by swabbing the affected area with a cotton applicator, not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The panel recommends the Category I labeling for products containing oral health care astringent active ingredients. (See part V. paragraph B.1. below—Category I Labeling.)

References

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(6) OTC Volume 130003.

(7) OTC Volume 130059.

Category I Labeling

a. *Indication.* "Aids in the temporary relief of occasional discomfort due to minor irritations of the mouth and throat."

b. *Warnings*—(1) *For all products containing oral health care astringent active ingredients.* (i) "Severe or persisent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For oral health care products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which astringent active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC astringent oral health care drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredient

Tincture of myrrh

Tincture of myrrh. The Panel concludes that tincture of myrrh is not safe and not effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat.

The Panel has classified tincture of myrrh as a Category II antimicrobial agent and has described its general characteristics elsewhere in this document. (See part IV. paragraph B.2.j. above—Tincture of myrrh.)

(1) *Safety.* The Panel concludes that tincture of myrrh is not safe as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat.

The Panel has described the safety of tincture of myrrh elsewhere in this document. (See part IV. paragraph B.2.j. (1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that tincture of myrrh is not effective as an OTC astringent active ingredient for topical use on the mucous membranes of the mouth and throat.

The Panel finds no controlled studies which substantiate claims that tincture of myrrh is an effective active ingredient with astringent activity (Ref. 1). Tincture of myrrh has been applied locally, allegedly to "stimulate spongy gums" and as a "protectant" for aphthous ulcers, sore mouth, and ulcerations of the throat (Refs. 2 and 3). Its effectiveness for this purpose is not substantiated with data from controlled studies. Tincture of myrrh has been employed in mouth rinses in the diluted form to treat stomatitis, but data on its effectiveness are not convincing. It has been used internally as a carminative (Ref. 3).

The Panel concludes that because tincture of myrrh is a mixture of many substances and no single ingredient has been identified in the mixture that is present in sufficient quantity to exert a therapeutic effect it has no place in modern therapeutics. Tincture of myrrh since has fallen into disuse in general medical practice and has been supplanted by other medicines whose therapeutic effectiveness as astringents has been established.

(3) *Evaluation.* The Panel concludes that tincture of myrrh is an oleoresin containing various substances which are irritating to the mucous membranes of the mouth and throat. Therefore it is not considered safe for topical application on these areas. The Panel also concludes that tincture of myrrh is a mixture of many substances, none of which appear to possess any astringent action.

References

(1) OTC Volume 130003.

(2) Osol, A., et al., "The Dispensatory of the United States of America," 25th Ed., J. B. Lippincott Co., Philadelphia, pp. 875–877, 1955.

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Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use, or for description of product attributes for products containing astringent active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statements or phrases which purport that a product exerts a pharmacologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Temorpary relief of minor mouth and throat pain of aphthous ulcers."

(2) "Helps kill mouth germs."

(3) "Works directly on throat membranes."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "Acts fast."

(2) "Quick relief of discomfort."

(3) "Has long-lasting beneficial effect."

(4) "Exerts a prolonged action."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Formula in use over ninety years."

(2) Adding such phrases as "plus," etc.

(3) "Superior new formulation."

(4) "A dentist's formula."

d. *Statements or phrases that are vague in their meaning and cannot be readily understood or are misleading.* (1) "For pain after dental work."

(2) "Relief of uncomfortable conditions of the mouth and throat."

e. *Statements or phrases in the indications for use that state or imply that a product is to be used to treat a disease process or lesion, the diagnosis of which must be made by a physician.* (1) "Relief of pain from aphthous ulcers (canker sores)."

(2) "Relieves stomatitis."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a symptom or disease state when proof that this occurs is lacking.* (1) "Helps prevent infection in burns, abrasions and minor cuts."

(2) "As an adjunct to oral prophylaxis."

(3) "Prophylaxis for Vincent's infection."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes but imply that the product exerts a therapeutic effect.* (1) "As an adjunct to oral hygiene."

(2) "Helps remove mouth odors."

(3) "Helps the mouth feel clean."

(4) "For hygienic care of the mouth and throat."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic or therapeutic action or class of a drug or the type of formulation containing the ingredients instead of designating the symptoms which the product is intended to relieve.* (1) "Astringent."

(2) "Mouthwash."

(3) "Gargle."

(4) "Provides protective coating to mouth sores."

3. *Category III conditions for which available data are insufficient to permit final classification at this time.* None.

VI. Debriding Agents

A. General Discussion

1. *General comments.* Debriding agents are ingredients that soften, loosen, and remove exudates, mucus, and other secretions from the surface of irritated mucous membranes and lesions in the mouth and throat. Among these are peroxides, aqueous solutions of salts and detergents, hygroscopic agents, and enzymatic products. Debriding agents are exogenously applied to the mucous membranes to cleanse their surfaces. They differ from expectorants, which act endogenously by increasing the output of respiratory tract fluid.

a. *Mode of action.* Debriding agents act in a variety of ways. They may act mechanically, chemically, biochemically, physiochemically, or by any combination of these mechanisms. The peroxides are useful as debribing agents because they aid in the removal of debris from the mucosal surfaces by mechanical action. This results from the release of bubbles of oxygen by enzymatic activity when peroxides come into contact with the tissues. Solutions of electrolytes, such as sodium bicarbonate and saline, likewise act as debriding agents by mechanically washing the secretions from a surface. Mucus and certain secretions are softened or made fluid by alteration in pH. There is some evidence that increasing the alkalinity plays a role in reducing the tenacity and viscosity of mucus. Sodium bicarbonate is believed to act in this manner. Agents that soften or make the mucus less viscous are usually referred to as mucolytic agents. Detergents act as debriding agents by lowering surface tension. Certain enzymes may depolymerize mucopolysaccharides and render them less viscous.

Hypertonic sodium chloride solutions have been recommended for use as debriding agents since they act by osmosis and draw fluid out of tissues and cleanse mechanically. Hygroscopic agents, such as propylene glycol and glycerine, may also be applied topically to extract water from the tissues of the mouth and throat and thus reduce the viscosity of secretions and also act mechanically as cleansing agents.

Acetylcysteine allegedly reduces the viscosity of mucus in vitro by depolymerizing mucopolysaccharides. Detergents decrease surface tension and increase the wetting of tissues, thereby acting as cleansing agents. Supposedly they increase liquefaction of mucus.

b. *Use of debriding agents.* Debriding agents are used to aid in the symptomatic relief of sore mouth and sore throat. Thick, tenacious mucus, purulent secretions, and debris from desquamated cells may stimulate pain receptors in lesions such as ulcerations or inflamed areas of the mouth and throat. The removal of such secretions eliminates the stimulation and this relieves any ensuing discomfort. Debriding agents are not curative in any sense. They possess no direct, local anesthetic activity. They aid in relieving pain primarily by their protectant action. The effects of debriding agents are usually transient and of short duration, but the resultant relief of symptoms may outlast their duration of action. The peroxides, for example, may exert their debriding effects in a matter of minutes, but the relief of symptoms may last several hours.

c. *Absorption of debriding agents.* Most of the debriding agents described above are absorbed from the mucous membranes or from the gastrointestinal tract if swallowed. All those mentioned above are safe, since they are nontoxic unless used in excess or too frequently.

d. *Adverse reactions.* Adverse reactions may occur from the use of debriding agents, particularly from overuse. Overuse of the peroxides has caused sloughing of the mucous membranes. Inflammatory reactions may also occur from long-term use since some debriding agents may be locally irritating. Gastrointestinal disturbances may occur when some debriding agents are swallowed. The desiccating agents may cause dryness and enhance the severity of inflammatory lesions. Solutions that are excessively hypertonic may also act as desiccating agents and aggravate the symptoms. Sensitization may occur, but has not been reported following use of the debriding agents evaluated by the Panel.

B. Categorization of Data

1. *Category I conditions under which debriding agents for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredients

Carbamide peroxide in anhydrous glycerin (urea peroxide)
Hydrogen peroxide
Sodium bicarbonate

a. *Carbamide peroxide in anhydrous glycerin (urea peroxide).* The Panel concludes that carbamide peroxide in anhydrous glycerin is safe and effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The general properties and safety of carbamide peroxide have been described above as an antimicrobial ingredient for use on the mucous membranes of the mouth and throat.

(See part IV. paragraph B.3.d. above—Carbamide peroxide in anhydrous glycerin (urea peroxide).)

(1) *Safety.* The Panel concludes that carbamide peroxide in anhydrous glycerin is safe as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

It is the consensus of the Panel that the comments concerning the safety of carbamide peroxide as an antimicrobial agent are likewise applicable to its use as a debriding agent on the mucous membranes of the mouth and throat. (See part IV. paragraph B.3.d.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that carbamide peroxide is an effective OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Carbamide peroxide is dissolved in anhydrous glycerin or propylene glycol (Ref. 1). It is slowly decomposed into its components, urea and hydrogen peroxide, when it comes into contact with moisture, air, or light. When applied to living tissue, ulcerations of the mucous membrane, or mixed with saliva, blood, or other body tissue fluid or exudates containing the enzyme catalase, oxygen is released from the hydrogen peroxide in the form of fine bubbles. This causes frothing and foaming which aids in the dislodgement of dead, desquamated eipthelial cells, pus, or other organic material found in infected wounds and on ulcerations which effect their removal (Refs. 2 and 3). One part of carbamide peroxide releases five volumes of oxygen. The byproducts of the breakdown of carbamide peroxide are oxygen, water, and urea (Ref. 4). Tissues that contain peroxidases also cause the breakdown of hydrogen peroxide to oxygen, urea, and water, but the oxygen combines with a hydrogen acceptor and no free oxygen is released. Under these circumstances the ingredient would not be effective. The urea exerts no known therapeutic effect since urea is a normal constituent of body tissues resulting from the metabolism of protein. It exerts no known adverse effects on the mucous membranes since the quantity released in this reaction is not significant. In aqueous solutions the compound slowly decomposes, releasing oxygen, urea, and byproducts of its decomposition. This renders the preparation ineffective.

(3) *Dosage.* Adults and children 3 years of age or older: Use a 10.0- to 15.0-percent concentration of carbamide peroxide in anhydrous glycerin undiluted by swabbing the affected area or use a 10.0- to 15.0-percent aqueous solution of carbamide peroxide in the form of a rinse, gargle, or spray, not more than three to four times daily. For children under 3 years of age, there is no dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care debriding agent active ingredients. (See part VI. paragraph B.1. below—Category I Labeling.)

References

(1) Dale, J. K., and R. E. Booth, "Physical and Chemical Incompatibilities," *in* "Dispensing of Medication," 7th Ed., edited by E. W. Martin, Mack Publishing Co., Easton, PA, p. 284, 1971.

(2) OTC Volume 130016.

(3) OTC Volume 130017.

(4) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1266, 1976.

b. *Hydrogen peroxide.* The Panel concludes that hydrogen peroxide is safe and effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The general characteristics of hydrogen peroxide have been described elsewhere in this document. (See part IV. paragraph B.3.m. above—Hydrogen peroxide.)

(1) *Safety.* The Panel concludes that hydrogen peroxide is safe as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Hydrogen peroxide is safe, when used as a 3-percent aqueous solution or when diluted with equal parts of water, for topical use on the mucous membranes of the mouth and throat.

The safety of hydrogen peroxide has been described elsewhere in this document. (See part IV. paragraph B.3.m.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that hydrogen peroxide is effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The effectiveness of hydrogen peroxide as an antimicrobial agent for use on the mucous membranes of the mouth and throat has been described elsewhere in this document. (See part IV. paragraph B.3.m.(2) above—Effectiveness.)

The usefulness of hydrogen peroxide as a debriding agent depends upon the release of nascent oxygen which presumably has a strong oxidizing effect and may chemically alter organic substances found in wounds and ulcerations of the mucous membranes and in pus.

When hydrogen peroxide comes into contact with tissues, it is converted to water and oxygen due to the action of the enzyme catalase. This reaction occurs very rapidly, and the bubbles of oxygen that are released effervesce, thereby loosening tissue, debris, mucus, pus, and other organic materials (Refs. 1, 2, and 3).

The release of oxygen occurs more rapidly in open wounds, on ulcerations, and on denuded areas of mucous membranes than it does on intact mucous membranes. It occurs in a healthy mouth since catalase is normally present in the saliva. Particles of food and debris present in the mouth and between the teeth may be dislodged. Little or no oxygen is released when hydrogen peroxide is applied to intact skin. The duration of action of hydrogen peroxide is brief because decomposition occurs very rapidly.

Removing organic debris by the mechanical action of oxygen release is probably the most important attribute of hydrogen peroxide. It is believed to be more so than its antimicrobial activity, since there is some doubt as to its effectiveness as an antimicrobial agent. This debriding action may aid in the relief of pain and discomfort due to sore throat and sore mouth. (See part IV. paragraph B.3.m.(2) above—Effectiveness.)

Hydrogen peroxide may be used full strength, but generally it is diluted with an equal volume of water. When used in closed cavities such as nasal sinuses for cleansing and irrigation, it is important that there be a vent for the escape of gas, otherwise pressure may be generated within a cavity of such magnitude to cause serious local injury. Furthermore, the unvented gas may even cause air emboli. The possibility that this may occur when hydrogen peroxide is used in the mouth or in the throat is remote, since all the spaces are free and open.

Prolonged topical use causes irritation of the buccal mucous membranes and, therefore, it should not be used more often than every 2 hours, for not more than 2 days.

(3) *Dosage.* Adults and children 3 years of age or older: Use a 3.0-percent concentration of hydrogen peroxide diluted with equal parts of water in the form of a rinse, mouthwash, gargle or spray, or apply with a swab, not more

than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care debriding agent active ingredients. (See part IV. paragraph B.1. below—Catetory I Labeling.)

References

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 36th Ed., American Dental Association, Chicago, p. 207, 1975.

(2) Darlington, R. C., "Topical Oral Antiseptics, Mouthwashes and Throat Remedies," *in* "Handbook of Non-Prescription Drugs," 4th Ed., edited by G. B. Griffenhagen and L. L. Hawkins, American Pharmaceutical Association, Washington, p. 131, 1973.

(3) Stecher, P. G., editor, "The Merck Index," 8th Ed., Merck and Co., Rahway, NJ, p. 545, 1968.

c. *Sodium bicarbonate.* The Panel concludes that sodium bicarbonate is safe and effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Sodium bicarbonate is also known as sodium hydrogen carbonate or sodium acid carbonate. Among consumers, it is known as baking soda. Its empirical formula is $NaHCO_3$ and it has a molecular weight of 84. The commercial preparation available in pharmacies and in groceries is 99.8 percent pure (Ref. 1).

Sodium bicaronate is a white crystalline powder or a powder consisting of granules. It begins to lose carbon dioxide at about 50° C (Ref. 1). At 100° C it is converted to sodium carbonate (NA_2CO_3), which is more alkaline. In a vacuum, sodium bicarbonate will release carbon dioxide. Sodium bicarbonate is readily decomposed into the salt of the acid and carbon dioxide by weak acids. In aqueous solutions, it begins to change into carbon dioxide and sodium carbonate at about 20° C and changes completely upon boiling. Sodium bicarbonate is soluble in 10 parts of water at 25° C and 12 parts of water at about 18° C. It is insoluble in alcohol (Ref. 1). Aqueous solutions of sodium bicarbonate prepared with cold water, without agitation, are slightly alkaline. Aqueous solutions slowly decompose on standing to carbon dioxide and sodium carbonate. The alkalinity increases due to this gradual conversion to sodium carbonate. The pH of solutions of sodium carbonate generally is between 8.0 and 8.2.

(1) *Safety.* The Panel concludes that sodium bicarbonate is safe as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

The fact that sodium bicarbonate has been used for such a long time in the preparation of various food products, in cooking, and medically in gastrointestinal disturbances attests to its safety. It has been used as an antacid for gastric hyperacidity, peptic ulcer, to alkalinize the urine in cases of urinary hyperacidity, and intravenously to correct the acid base balance in cases of acidosis, shock, etc. (Ref. 2).

When sodium bicarbonate is ingested, it interacts with the hydrochloric acid of the stomach. It is then converted to sodium chloride and carbon dioxide with the carbon dioxide often being released by belching. Externally, it has no irritating effect, and it has not been found to have any sensitizing effect on the mucous membranes (Ref. 3). The chief danger in the use of sodium bicarbonate lies in its overuse. This is particularly significant in the case of individuals with heart disease, hypertension, and renal disease, who must restrict their sodium ion intake. Sodium bicarbonate is not caustic to the skin or mucous membranes of the oral cavity. It is sometimes used as a paste for cleansing teeth and on the skin to relieve itching.

(2) *Effectiveness.* The Panel concludes that sodium bicarbonate is effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Sodium bicarbonate has been used parenterally to correct acidosis. It is also used externally as a cleansing agent in infections, for burns, scalds, urticaria, and various skin diseases. Sodium bicarbonate has been used as a cleansing douche in cases of vaginitis. The powder is orderless with a slightly saline and alkaline taste. The solution has a bitterish saline taste (Ref. 4).

Sodium bicarbonate soothes irritated skin and relieves the pain of minor acid burns. When used in a bath or as a dusting powder, it reduces the odor of sweat. Prompt application of moist sodium bicarbonate as a paste has helped relieve itching from nonpoisonous insect stings and bites (Ref. 4). Sodium bicarbonate, like other mild alkalies, combines with tissue proteins to form alkaline albuminates or with the cutaneous fats to form soaps. In this way it acts as an emollient and softens the epithelium of the skin.

Sodium bicarbonate has a mucolytic action due to its alkalinity. It favors the disintegration of mucus, separating the protein from the polysaccharide components of the mucoprotein chain. It has been used in inhalation therapy as an aerosol to liquidy the secretions of the tracheobronchial tree. When used as a spray, gargle, or rinse in the mouth and throat, it loosens and softens tenacious mucus so that expectoration is facilitated. This debriding action aids in the relief of pain and discomfort due to sore throat or sore mouth. Sodium bicarbonate possesses no antimicrobial activity, nor does it possess any analgesic properties. It is sometimes classed with expectorants, but it has no well defined expectorant activity. The debriding and mucolytic actions of aqueous solutions of sodium bicarbonate are primarily mechanical and chemical.

Sodium bicarbonate increases the alkalinity of the saliva of the mouth and throat, but this is temporary. Fresh saliva is constantly being secreted, and the sodium bicarbonate is washed away, restoring the original pH of the mouth.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 5.0- to 10.0-percent concentration of sodium bicarbonate combined with one-half teaspoonful of sodium chloride in a glass of warm water in the form of a gargle, not more than three to four times daily. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care debriding agent active ingredients. (See part VI. paragraph B.1. below—Category I Labeling.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1109, 1976.

(2) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Littleton, MA, pp. 1033–1034, 1977.

(3) OTC Volume 130025.

(4) Harvey, S.C., "Gastric Antacids and Digestants," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, Macmillan Publishing Co., New York, p. 966, 1975.

(5) Swinyard, E. A., "Gastrointestinal Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., p. 736, 1975.

Category I Labeling

a. *Indication.* "Aids in the removal of phlegm, mucus, or other secretions in

the temporary relief of discomfort due to occasional sore throat and sore mouth."

b. *Warnings*—(1) *For all oral health care products containing debriding agent active ingredients.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use for more than 2 days or administer to children under 3 years of age unless directed by physician."

(ii) "Discontinue use and consult a physician if irriation persists or increases, or if a rash appears on the skin."

(2) *For oral health care products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which debriding active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC oral health care drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**.

Category II Active Ingredients

Sodium perborate.

Sodium perborate. The Panel concludes that sodium perborate is not safe and not effective for use as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat.

The Panel has classified boric acid and other derivatives containing elemental boron as Category II ingredients for use in the mouth and throat. The general characteristics of boron derivatives have been described elsewhere in this document. (See part IV. paragraph B.2.a. above—Boric acid.)

Sodium perborate is a white, crystalline powder, which is odorless, has a saline taste, and is stable in cool, dry air. It is decomposed with the evolution of oxygen in warm, moist air. In aqueous solutions sodium perborate decomposes into sodium metaborate and hydrogen peroxide. The solution gradually evolves oxygen. Heating accelerates the release of oxygen. One gram of sodium perborate dissolves in 40 mL of water (Ref. 1).

Sodium perborate is prepared by the interaction of boric acid or sodium borate with sodium or hydrogen peroxide. It is generally considered to be a derivative of pentavalent boron. Actually, sodium perborate is derived from the tribalent form and has a composition believed to be $NaBO_3 \cdot H_2 \cdot 3H_2O$. It contains less than 9 percent available oxygen by weight. Sodium perborate is decomposed by water to hydrogen peroxide and sodium metaborate (Ref. 2). Its decomposition is accelerated by enzymes found in the tissues in the mouth and in saliva such as catalase.

Sodium perborate is not considered safe because it is a derivative of boron, and when absorbed it is as toxic as boric acid and other boron derivatives. The Panel found no data concerning the acute or chronic toxicity of sodium perborate in animals or in man (Refs. 3, 4, and 5). Inasmuch as sodium perborate is unstable and decomposes on standing, to sodium metaborate and sodium borate, the Panel considers the data on the toxicity of boric acid to be applicable to sodium perborate. Continued use of sodium perborate causes hypertrophy of the papillae of the tongue and damage to the gums.

(1) *Safety.* The Panel concludes that sodium perborate is not safe as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat.

The Panel has described the safety of boric acid and boron toxicity elsewhere in this document. (See part IV. paragraph B.2.a.(1) above—Safety.)

(2) *Effectiveness.* The Panel concludes that sodium perborate is not effective as an OTC debriding agent active ingredient for topical use on the mucous membranes of the mouth and throat.

Sodium perborate has been used extensively in past years as an antiseptic for wounds (Ref. 6). Its antimicrobial activity is ascribed to its oxidizing effects resulting from the release of nascent oxygen (Ref. 7). A 2-percent solution was found to be as effective as an approximately 0.4-percent solution of hydrogen peroxide. It has also been used as a dusting powder combined with talc and other inert ingredients. Sodium perborate has been most frequently used for preparations of antiseptic mouthwashes for the treatment of acute necrotic ulcerogingivitis (Vincent's infection) (Ref. 7). The alkalinity of solutions of sodium perborate assists in the removal of mucus and food residues in the mouth and throat (Ref. 7). The instability of the solution requires that it be prepared at the time of usage. A saturated solution represents 2 percent of the salt. Ten to 20 percent is mixed with chalk for use as a dentifrice.

The alleged effectiveness of sodium perborate as a debriding active ingredient is believed to be due to the alkalinity of the solution and oxygen that is released when sodium perborate comes in contact with tissues, open wounds, and ulcerations.

(3) *Evaluation.* It is the consensus of the Panel that the quantity of oxygen released when sodium perborate is applied to tissues is insufficient to act mechanically as a debriding agent. Furthermore, sodium perborate is prepared from boric acid and is therefore a derivative containing elemental boron. It is not safe for use on the mucous membranes of the mouth and throat since it can undergo systemic absorption and be toxic. Sodium perborate is therefore placed in Category II from the standpoint of both safety and effectiveness.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 1118, 1976.

(2) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, p. 843, 1957.

(3) OTC Volume 130048.

(4) OTC Volume 130071.

(5) OTC Volume 130093.

(6) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Littleton, MA, p. 802, 1977.

(7) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 1072–1073, 1973.

Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use or for description of product attributes for products containing debriding agent active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statements or phrases which purport that a product exerts a pharmacologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Healing aid for minor oral inflammation."

(2) "Cleansing antiseptic for mouth and throat."

(3) "Antimicrobial cleansing agent."

(4) "Provides temporary pain relief."

(5) "Promotes flow of saliva."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "Quickly removes phlegm and other secretions."

(2) "Fast acting."

(8) "Has long-lasting beneficial effects."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Superior cleansing agent."

(2) "Rapid acting with long lasting effects."

(3) Adding such phrases as "plus," etc.

d. *Statements or phrases that are vague in their meaning and cannot be readily understood or are misleading.* (1) "Forming, cleansing rinse for irritated throats."

(2) "Removes secretions causing sore throat caused by postnasal drip."

e. *Statements and phrases in the indications for use that state or imply that the product is to be used to treat a disease process or lesion, diagnosis of which must be made by a physician.* (1) "Helps against discomfort of canker sores."

(2) "Helps reduce inflammation."

(3) "For treatment of stomatitis."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a symptom or disease state when proof that this occurs is lacking.* (1) "Removes disease causing germs by its cleansing action."

(2) "Prevents growth of odor forming bacteria."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes but imply that the product exerts a therapeutic effect.* (1) "For mouth and gum care."

(2) "Soothing and cleansing to the mouth and throat."

(3) "A refreshing mouth rinse."

(4) "For oral hygiene."

(5) "Destroys odor forming germs."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic effect or class of a drug or the formulation containing the ingredient instead of designating the symptoms which the product is intended to relieve.* (1) "Debriding agent."

(2) "Mouthwash."

(3) "Gargle."

(4) "Cleansing agent."

(5) "Mouth rinse."

(6) "Cleansing antiseptic for the mouth and throat."

3. *Category III conditions for which available data are insufficient to permit final classification at this time.* None.

VII. Decongestants

A. General Discussion

1. *General comments.* The vasomotor integrity of the mucosa of the naso- and oro-pharnyx and mouth depends upon the proper balance between sympathetic and parasympathetic efferent impulses. Activation of the parasympathetic division of the autonomic nervous system produces vasodilatation and increases secretions from the exocrine glands. Activation of the sympathetic division produces vasoconstriction and decreases glandular secretion.

Congestion of the mucosa of the upper respiratory tract is manifested by the engorgement of the blood vessels in the mucosa and passage of fluid from the capillaries into the tissue spaces. Congestion is usually caused by microbial infection, chemical irritation, allergy, and other such factors. Treatment is usually directed toward removing the cause. The symptoms may be relieved by eliciting sympathetic responses or blocking parasympathetic responses. Drugs that produce these responses and causes constriction of the blood vessels are called decongestants.

a. *Mode of action.* Stimulation of the parasympathetic nervous dilates the blood vessels and also activates the saliva and mucous glands causing an increase in secretions of saliva and mucus from the glands of the mucous membranes. Stimulation of the parasympathetic nervous system may aggravate the congestion. Activation of the sympathetic division usually does the reverse and relieves congestion. It may cause a thick mucous secretion to be released. Some alpha adrenergic drugs also possess a mild beta-stimulating vasodilating action. This is overshadowed by the alpha effect, but lingers on when the shorter alpha action has receded. Vasodilation may occur from this beta stimulation, causing a rebound effect and a return of symptoms of congestion.

Adrenergic agents are most commonly used for the symptomatic relief of nasal congestion. Adrenergic agents act by stimulating the alpha excitatory adrenergic receptors of the vascular smooth muscle, thus constricting the network of arterioles within the mucosa and reducing the flow of blood in the engorged edematous area. Opening of the obstructed nasal passages improves nasal ventilation and facilitates the aeration and drainage of the sinuses. Most decongestants are used topically, or ingested orally, or used in both ways. The response to topical application of nasal decongestants is prompt but variable in duration, whereas the response to oral therapy is slow and generally less intense and of longer duration. The nasal mucous membrane is more turgid than the oral and pharyngeal mucous membranes, and shrinkage is more obvious when decongestant drugs are applied to the nasal mucosa. The other mucous membranes, such as those of the mouth and throat, also respond to the action of vasoconstrictors.

b. *Uses of decongestants.* The Panel has considered the decongestant active ingredients and has deferred most of them to the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products for evaluation since they are administered orally or parenterally and act systemically. Ordinarily labeling claims for topical use are made for their nasal effects. However, in evaluating certain products in the submissions, the Panel found that some decongestants were combined with other topically active ingredients in the form of lozenges. The labeling implied that the decongestant also acted locally on the mucous membranes of the throat and mouth. The Panel therefore felt obligated to evaluate the topical effects of these decongestants on the mucous membranes of the mouth and throat. The Panel noted that the quantities of decongestant ingredients incorporated in the product were less than the minimum recommended for a single dose for oral use by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products. The Panel also noted that effectiveness of decongestants that are used topically in a "slow-release" dosage form, as would be the case when incorporated in a lozenge, was not considered by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products. In view of the fact that the topical application of these products stimulates adrenergic vasoconstriction locally, the Panel felt that these products should be evaluated from the standpoint of the local effect on the mucous membranes of the mouth and throat. No data were found to support the claim that decongestants are effective topically on the mucous membranes of the mouth and throat, or that the resulting vasoconstriction, should it occur, was of therapeutic benefit. On the other hand, there were no data available contradicting the fact that this occurs. The Panel, therefore, feels that in view of this lack of data, the decongestants mentioned in the products whose labeling indicates or implies that topical activity occurs in the mouth and throat, particularly the latter, should be considered with the oral health care products. In addition the Panel notes that vasoconstrictors combined with local anesthetics may prolong the analgesic effect by retarding the absorption of the drug.

c. *Adverse effects.* The topical application of decongestants sometimes

causes temporary discomfort, such as stinging, burning, or dryness of the mucosa. Various other adverse effects can be cited. One of the major disadvantages of the use of adrenergic blocking agents is the occurrence of rebound congestion after the vasoconstrictive action disappears. This is due to the fact that the beta stimulating effect of the drug lingers after alpha stimulation disappears. Some decongestants stimulate both beta and alpha receptors, and beta stimulation causes vasodilation. Recurrence or exacerbation of the original discomfort may cause the patient to apply or inhale the drug more frequently. Overdosage with signs of toxicity may result. Irritation from prolonged and continued use produces chronic swelling of the nasal mucosa. Whether or not this occurs in the oral mucosa has not been determined.

Topical decongestants also produce systemic reactions especially in infants and children or patients with cardiovascular diseases, hyperthyroidism, or patients taking monoamine oxidase inhibitors. Significant absorption can occur from the mucosa of the nasopharynx and the oropharynx, or from the gastrointestinal tract, when an excess of the solution trickles down the throat and is swallowed. Topical application of the decongestant may be the best way to avoid systemic absorption. Use of a spray held in the upright position minimizes accumulation since the medication and secretions drip from the nostril and are swallowed.

The systemic effects from overdosage of most adrenergic drugs include transient hypertension, tachycardia, nervousness, nausea, dizziness, palpitation, and occasionally central nervous system stimulation.

Adrenergic agents should be given sparingly and with caution to patients with hyperthyroidism, hypertension, diabetes mellitus, or ischemic heart disease.

B. Categorization of Data

1. *Category I conditions under which decongestant active ingredients for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register**.

Category I Active Ingredients

None.

Category I Labeling

a. *Indication.* The Panel did not classify any decongestant active ingredient in Category I, but did place some ingredients in Category III. Because additional testing is necessary to determine the actual effect these ingredients have in the mouth and throat, the Panel has proposed a Category III indication for decongestant active ingredients. (See part VII. paragraph B.3. below—Category III Labeling.)

b. *Warnings*—(1) *For all decongestant drug products.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

(3) *For products containing phenylephrine hydrochloride or phenylpropanolamine hydrochloride.*

(i) "Do not use if taking monoamine oxidase inhibitors. Discontinue use if dizziness, headache, fast pulse, tremors, or nervousness develop. Consult a physician if symptoms persist."

(ii) "Do not use this product if you have thyroid disease, high blood pressure, diabetes, or heart disease except under the advice and supervision of a physician."

2. *Category II conditions under which decongestant active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The panel recommends that the Category II conditions be eliminated from OTC decongestant oral health care drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**.

Category II Active Ingredients

None.

Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use or for description of product attributes for products containing decongestant active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statement or phrases which purport that a product exerts a pharmocologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Quiets rasping cough due to colds which may be causing discomfort."

(2) "For temporary relief of minor sore throat pain."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of ways by consumers, rather than in definite units of time.* (1) "Fast temporary relief of minor throat irritations."

(2) "Provides long lasting relief of mouth and throat discomfort."

(3) "Promotes healing."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Superior decongestant."

(2) "Multiaction formulation."

(3) Adding such terms as "plus," etc.

d. *Statements or phrases that are vague in their meaning and cannot be readily understood or are misleading.* (1) "Soothes tired throats."

(2) "Makes breathing easier."

(3) "Fights sore throat."

e. *Statements or phrases in the indications for use that state or imply that the product is to be used to treat a disease process or lesion, the diagnosis of which must be made by a physician.* (1) "Relieves sore throat pain due to postnasal drip."

(2) "Reduces inflammation."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a symptom of disease state when proof that this occurs is lacking.* (1) "Helps prevent infection."

(2) "As an adjunct to prevent Vincent's infection."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes but imply that the product exerts a therapeutic effect.* (1) "Reduces mouth odors."

(2) "Makes mouth feel clean."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic or therapeutic action or class of a drug or type of formulation containing the ingredients instead of designating the symptoms which the product is intended to relieve.* (1) "Decongestant for use on mucous membranes."

(2) "Oral spray."

(3) "Lozenge."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I.

Category III Active Ingredients

Phenylephrine hydrochloride
Phenylpropanolamine hydrochloride

a. *Phenylephrine hydrochloride.* The Panel concludes that phenylephrine hydrochloride is safe, but that there are insufficient data available to permit final classification of the effectiveness of phenylephrine hydrochloride as an OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenylephrine is the levo isomer of 3-hydroxyphenylethanol methylamine. In essence, it is epinephrine minus one hydroxyl group on the benzene ring at position number four (Ref. 1). The existing hydroxyl group is on position three. Phenylephrine is a synthetic, optically active sympathomimetic amine. It is a white, odorless, powder consisting of bitter-sweet crystals which are freely soluble in water or alcohol. Aqueous solutions of phenylephrine hydrochloride are either slightly acidic, or they are neutral to litmus. Phenylephrine hydrochloride melts between 140° to 145° C (Ref. 2). Phenylephrine acts at the alpha receptors. It is less potent than epinephrine, but is longer lasting.

(1) *Safety.* The Panel concludes that phenylephrine hydrochloride is safe as an OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenylephrine hydrochloride is safe and has a low degree of toxicity in man. The subcutaneous LD_{50} in mice is 1 g/kg. According to Gleason and associates (Ref. 3), the toxicity rating is 5. Phenylephrine hydrochloride is absorbed from the oral and gastric mucous membranes and produces a systemic sympathomimetic effect. Mild gastrointestinal symptoms are sometimes observed when large doses are administered by the oral route.

When the drug is administered intravenously, it produces an intense vasoconstriction and an elevation in diastolic and systolic pressure and a bradycardia (Ref. 4). The bradycardia is due to reflex vagal stimulation. Phenylephrine hydrochloride lacks a positive inotropic effect on the heart, which would increase the strength of that organ's muscular contraction. In large intravenous doses, it may produce intense vasoconstriction, a reflex bradycardia, and various types of arrhythmias. In cases of heart failure, it may cause pulmonary edema. With lesser intravenous dosages, ventricular extrasystoles and short paroxysms of ventricular tachycardia may occur. A sensation of fullness of the head and tingling of the extremities, likewise, is noted. Tremor, palpitation, and insomnia may occur in some patients. The pressor effect produced by sympathomimetic amines is markedly potentiated by monoamine oxidase inhibitors. Excessive elevation in blood pressure and hypertensive crises may occur when such drugs are used simultaneously (Ref. 1).

Parenteral or oral administration or topical use of phenylephrine hydrochloride may be contraindicated in patients with cardiovascular diseases, hypertension, severe arteriosclerosis or in patients with hyperthyroidism accompanied by tachycardia (Ref. 1). Phenylephrine hydrochloride solutions are contraindicated either topically or orally in persons with narrow-angled glaucoma. Overdosage of phenylephrine hydrochloride in susceptible individuals has resulted in a marked evaluation in blood pressure followed by cerebrovascular accidents. A reflex bradycardia results from the absorption of phenylephrine hydrochloride. This may be counteracted by atropine since it is due to reflex vagal stimulating effect. Phenylephrine hydrochloride should not be used simultaneously with monoamine oxidase inhibitors.

Solutions for topical use are sometimes preserved with agents such as sodium bisulfite, chlorobutanol, or methylparaben. These agents may cause local irritation or sensitization.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of phenylephrine hydrochloride as an OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenylephrine hydrochloride is an effective alpha adrenergic drug that causes vasoconstriction and produces decongestion of mucous membranes when applied topically. Subsequently, parenteral phenylephrine hydrochloride produces an increase in arterial blood pressure and a reflex bradycardia without appreciably increasing the heart rate or cardiac output. Phenylephrine hydrochloride has little or no central stimulating action as does ephedrine and the amphetamine-type sympathomimetic drugs. Responses to phenylephrine hydrochloride are both locally and systemically more prolonged than with epinephrine.

Phenylephrine hydrochloride is used topically in a 0.25- to 1.0-percent solution as a nasal decongestant (Ref. 5). In some cases, it may produce marked local irritation. Phenylephrine hydrochloride acts by stimulating the alpha adrenergic receptors of the vascular smooth muscle of the mucous membranes of the nose, throat, and mouth, thus constricting the dialated network of arterioles and reducing the flow of blood (Refs. 6 and 7). This is most apparent in the nose since the mucous membranes are turgid in this area. Excessive use may produce congestion of the mucosa, and if sufficient quantities are absorbed, an elevation in blood pressure, dizziness, palpitations, and central nervous stimulation are sometimes observed. The secondary congestion of the mucous membranes is due to at least three factors, i.e., secondary vasodilation due to stimulation of beta adrenergic fibers by the phenylephrine hydrochloride effect which lingers beyond its alpha stimulatory action, increased capillary permeability due to vasoconstrictive ischemia, and local irritation. Phenylephrine hydrochloride has a low degree of irritancy and sensitizing potential.

Phenylephrine hydrochloride has been used in lozenges, with local anesthetics and other active ingredients to relieve sore throat (Ref. 8). There are no well-controlled studies demonstrating the effectiveness of phenylephrine hydrochloride as an effective decongestant on the mucous membranes of the mouth or throat nor is there sufficient evidence from controlled studies to indicate that decongestants provide symptomatic relief for irritation and pain or soreness of the mucous membranes of the mouth or throat. Phenylephrine retards the absorption of topically applied local anesthetics from the mucous membranes and prolongs their action.

The Panel notes that phenylephrine hydrochloride has been deferred to the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products for evaluation of its effectiveness systemically, when taken orally. The dosage recommended by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products as a Category I ingredient is 10 mg. The dose in the lozenge of the product submitted to the Oral Cavity Panel for evaluation is 5 mg (Ref. 8). The labeling for the

lozenge does not state if the ingredient acts systemically or topically. The implication is that it acts topically. The Oral Cavity Panel recommends that the mode of action be clarified in the labeling. If a topical action is meant, the labeling should so indicate. If the action is systemic the dose should conform to the recommended oral dose of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products, and the labeling should state that topical administration of this dose is effective systemically. The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products has not so stated.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use 5.0 mL of a 0.25-percent concentration of phenylephrine hydrochloride in normal saline in the form of a swab or spray, not more than three to four times daily. Use a lozenge containing 5 mg of phenylephrine hydrochloride every 2 hours if necessary. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care decongestant active ingredients. (See part VII. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care decongestant active ingredients. (See part VII. paragraph B.3. below—Category III Labeling.)

In addition, the Panel also recommends the following specific labeling:

Warnings. (i) "Do not use if taking monoamine oxidase inhibitors. Discontinue use if dizziness, headache, fast pulse, tremors, or nervousness develop. Consult a physician if symptoms persist."

(ii) "Do not use this product if you have thyroid disease, high blood pressure, diabetes, or heart disease except under the advice and supervision of a physician."

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care decongestants. (See part VII. paragraph C. below—Data Required for Evaluation.)

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b. *Phenylpropanolamine hydrochloride.* The Panel concludes that phenylpropanolamine hydrochloride is safe, but that there are insufficient data available to permit final classification of the effectiveness of phenylpropanolamine hydrochloride as an effective OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Phenylpropanolamine hydrocholoride is related structurally to the amphetamines (Refs. 1 and 2). It differs from ephedrine is having one less methyl radical and differs from the amphetamines in having a hydroxyl group on the aliphatic side chain. Thus, phenylpropanolamine hydrochloride is a sympathomimetic amine related both structurally and pharmacilogically to ephedrine and the amphetamines. It exerts most of its action on alpha adrenergic receptors.

Phenylpropanolamine hydrochloride is a white, crystalline powder with a slightly aromatic odor. It is decomposed by light. It is freely soluble in water and in alcohol, but insoluble in ether. Phenylpropanolamine hydrochloride melts between 190° and 194° C. Solutions of phenylpropanolamine hydrochloride are slightly acidic. Other names for phenylpropanolamine are norephedrine hydrochloride and propadrine hydrochloride (Refs. 1 and 3).

When applied locally phenylpropanolamine hydrochloride constricts capillaries and arterioles and shrinks the swollen mucous membranes of the mouth, the oropharynx, and particularly the nasal cavity. Systemically, it exerts a pressor effect and raises the blood pressure. Phenylpropanolamine hydrochloride has a longer duration of action and produces less central stimulation than ephedrine or the amphetamines (Ref. 1).

(1) *Safety.* The Panel concludes that phenylpropanolamine hydrochloride is safe as an OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

The toxicity rating by Gosselin and associates (Ref. 4) is 5. The lethal dose in man is approximately 50 mg/kg. The minimal lethal intraperitoneal dose in rats is 175 mg/kg. In mice acute toxicity is influenced by temperature. The LD_{50} is lower at 32° C than at 28° C (Ref. 5). The subcutaneous LD_{50} in mice is 850 mg/kg (Ref. 5). The minimal lethal dose in guinea pigs when administered subcutaneously is 600 mg/kg (Refs. 6 and 7). The intravenous LD_{50} in rabbits is 75 mg/kg, and the subcutaneous LD_{50} for the sulfate is 400 to 500 mg/kg (Ref. 6). In paired feeding experiments using oral doses of 2.4 mg/kg in rats for as long as 59 days, there was an initial decrease in food intake, but later, a return of the appetite. The rate of food passage through the gastrointestinal tract was decreased, but the digestion was not affected (Refs. 8 and 9).

Phenylpropanolamine hydrochloride is absorbed through the mucous membranes of the mouth and throat into the blood stream and causes a generalized sympathomimetic effect (Ref. 10). Large doses produce hypertension, headaches, tachycardia, restlessness, anxiety, sweating, tremor, extrasystoles, confusion, and delirium, whether taken orally or given parentally (Ref. 11). Administration of barbiturates partially relieves some of these symptoms. In general, untoward effects are minor in the majority of patients receiving therapeutic doses of the drug. Phenylpropanolamine hydrochloride causes a marked pressor effect if administered at the same time as monoamine oxidase inhibitors and is contraindicated for use in patients taking monoamine oxidase inhibitors (Ref. 12). It should be used with caution in patients with hypertension, cardiovascular diseases, hyperthyroidism, and diabetes (Ref. 13). It is contraindicated in patients with narrow-angle glaucoma and in patients with prostatic hypertrophy and in pregnancy.

Phenylpropanolamine hydrochloride has a low degree of irritancy and a low sensitizing potential. It interacts with

belladonna alkaloids and increases the incidence of side effects (Ref. 14). Phenylpropanolamine hydrochloride does not sensitize the heart to hydrocarbon anesthetics as do cyclopropane, chloroform, etc. (Ref. 15). Arrhythmias occur in nonanesthetized subjects due to its reflex vagal effects when the heart ejects blood against a constricted vascular bed, as is the case with other vasoconstrictors.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of phenylpropanolamine hydrochloride as a OTC decongestant active ingredient for topical use on the mucous membranes of the mouth and throat when used in the proposed dosage limit set forth below.

There are numerous studies, both controlled and uncontrolled, on the effects of phenylpropanolamine hydrochloride as an adrenergic agent (Ref. 12). Its action is primarily stimulation of alpha adrenergic receptors, since these are located in the arterioles and venules and not in the capillaries. Its vasoconstrictor effect is largely the result of its action upon the arterioles. Phenylpropanolamine hydrochloride acts on the mucous membranes of the mouth, nose, and throat when applied topically. It is most effective as a nasal decongestant, particularly in allergic rhinitis (Ref. 16). Phenylpropanolamine hydrochloride is also employed in bronchial asthma and as an antihypotensive agent during spinal anesthesia (Refs. 17 and 18). It is of little value as an anorexiant for control of obesity (Refs. 1 and 8).

Phenylpropanolamine hydrochloride is equally as effective, if not superior, to ephedrine as a sympathomimetic amine and as a vasoconstrictor (Ref. 2). Black (Ref. 19) compared phenylpropanolamine hydrochloride with ephedrine in 131 patients and found the symptomatic relief equal to that of ephedrine, but without the annoying side effects. Boyer (Ref. 20) used 0.75 g every 2 hours for 5 days or more and found phenylpropanolamine hydrochloride significantly more effective than other preparations. Solo (Ref. 21) found a marked vasoconstrictor effect lasting for periods up to 2 hours with a 3-percent aqueous solution in 300 patient studies. When the drug was applied topically, Murphy (Ref. 16) obtained good results with 0.75 g in adults and 0.375 g in children. Phenylpropanolamine hydrochloride is also used orally to produce systemic vasoconstriction, but is much more effective when applied topically in the nose. The vasoconstriction effect is more apparent in the nose than in the mouth and throat due to the turgidity that is characteristic of nasal mucosa compared to the oral mucosa. The duration of action of phenylpropanolamine adminstered topically is 2 to 3 hours and orally is approximately 4 hours.

There are insufficient data confirming the effectiveness of phenylpropanolamine hydrochloride as a decongestant on the mucous membranes of the mouth and throat. Furthermore, there are no studies that indicate phenylpropanolamine hydrochloride does not exert a beneficial effect in treating the symptoms, lesions, inflammations, or irritations in the oral cavity, since it is a topically acting vasoconstrictor.

Phenylpropanolamine hydrochloride has been used in the form of a lozenge with claims for relief of soreness of the mucous membranes of the mouth and throat. These lozenges contain, in addition to phenylpropanolamine hydrochloride, benzocaine and phenylephrine (Ref. 22). The quantity of phenylpropanolamine is less than the minimum effective orally administered dose recommended by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products. Furthermore, that Panel has not considered the effectiveness of this ingredient systemically in subtherapeutic doses in a slow release dosage form as would be the case when incorporated in a lozenge for topical use. It is for these reasons that the Panel feels obligated to consider this ingredient in this combination. The quantity in the lozenge, if the drug acts systemically when absorbed after swallowing, is subtherapeutic.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use 5.0 mL of a 0.25-percent concentration of phenylpropanolamine hydrochloride in aqueous solution in the form of a swab or spray, not more than three to four times daily. Use a lozenge containing 10.5 mg of phenylpropanolamine hydrochloride every 2 hours if necessary. For children under 3 years of age there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care decongestant active ingredients. (See part VII. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care active ingredients. (See part IV. paragraph B.3. below—Category III Labeling.)

In addition, the Panel also recommends the following specific labeling:

Warnings. (i) "Do not use if taking monoamine oxidase inhibitors. Discontinue use if dizziness, headache, fast pulse, tremors, or nervousness develop. Consult a physician if symptoms persist."

(ii) "Do not use this product if you have thyroid disease, high blood pressure, diabetes, or heart disease except under the advice and supervision of a physician."

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care decongestants. (See part VII. paragraph C. below—Data Required for Evaluation.)

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Category III Labeling

Proposed indication. "Aids in the temporaty relief of occasional discomfort due to congestion in the mouth and throat."

C. Data Required for Evaluation

The Panel agrees that the protocols recommended in this document for studies required to bring Category III drugs into Category I are in keeping with the present state of the sciences of pharmacology and therapeutics and the art of medicine and do not preclude the use of any advancements or improvements in methods for obtaining such data that might be developed in the future.

1. *General principles in the design of an experimental protocol for testing topical decongestant drugs.* The effects of decongestant drugs should be determined by their ability to reduce edema, dilation of capillaries and other vessels, and other manifestations of congestion of the buccal and pharyngeal mucous membranes in patients with acute or chronic stomatitis, or pharyngitis and other areas involving the mucous membranes in the mouth and throat. The Panel recognizes that there are no established protocols for testing the effectivenss of this category of product. The Panel suggests that the outline below be utilized unless the investigators have at their disposal alternate methods acceptable to the FDA. Tests should involve double-blind placebo-controlled assessment of a drug's ability to relieve the congestion. Topically applied nasal decongestants stimulate the alpha adrenergic receptors of the vessels in the mucosa and cause vasoconstriction. The normal pink color disappears, and the mucous membrane apears pale. Edema is reduced.

The Panel suggests that direct observation of the affected area be made by three independent observers after topical application of a drug by swabbing, spraying, or other methods in the proposed dosage. Precautions must be taken to avoid swallowing, because that would result in both a systemic effect as well as a local effect. Subjective assessment by the patient of the effect of the drug on symptoms present is also desirable and should be recorded. The drug should be the same as that present in the OTC preparation. It should be applied in the same dosage or concentrations as indicated on the labeling and in the same manner as that recommended in the label concerning instructions for use of the preparation. Since topical decongestants may be administered repeatedly during episodes of congestion, studies should be conducted over the appropriate time intervals recommended for dosing to maintain optimal relief of symptoms. When testing locally applied decongestants in which rebound congestion may follow repeated use, the effect of the drug must be allowed to "wear off" and observations made to note if rebound occurs. When rebound is of concern, labeling should specify that the product is for short-term use and provides only temporary relief of congestion. Specific data should be obtained by testing the topical decongestant effect in the usual recommended concentrations and also at the maximum dosage frequencies recommended for periods of at least 1 week, in order to assess the incidence of severity of drug-induced rebound congestion and possibility of sensitization. Absorption of the decongestant may occur through the mucous membranes in sufficient quantities to produce a pressor effect. Blood pressure and pulse rate should be monitored during the testing.

2. *Selection of patients.* Selection of patients for testing should be based on the diagnosis of stomatitis or pharyngitis with congestion. Patients should be grouped according to the similarity of the lesions and comparisons made between members of each group. The cross-over technique may be used for patients with chronic congestion, and they can serve as their own controls. Patients with acute infections may be studied, but the cross-over technique is not feasible because of the relatively brief course of acute disorders and the greater variation in the nature of the congestion that may be encountered. Larger numbers of these patients will have to be studied than with the cross-over group. They should be assigned in random fashion to placebo or drug groups. For comparative purposes, these groups must be matched by age, sex, and, if possible, the degree of congestion at the time of study. Smoking by test subjects should be prohibited 24 hours prior to and during the testing.

3. *Method of study.* Observations should include both subjective responses reported by the patient as well as objective data obtained by observing the congested area. If necessary and feasible, sequential colored photographs may be made for comparison before a placebo or drug is administered and at appropriate time intervals therafter to demonstrate onset, magnitude, and duration of the response. In testing the effect of decongestants upon the mucosa of the nasal passage, improvements in airflow and decrease in airway resistance are used as criteria of effectiveness of the drug in relieving congestion. The Panel suggests that such criteria may also be used for the mouth and throat in cases where the airway is compromised and the decongestant is responsible for an improvement.

4. *Interpretation of the data.* A recommended dose of the test drug should induce a statistically significant reduction in mucosal congestion when compared with a placebo response.

Evidence of drug effectiveness is required for a minimum of two positive studies based on the results of two different investigators or laboratories.

All data submitted to FDA must present both favorable and unfavorable results.

5. *Evaluation of safety.* Tests of safety should involve the usual tests for toxicity relevant to the known possible adverse effects of the drugs under testing as outlined elsewhere in this document. (See part II. paragraph C.2.d. above—Safety evaluation.)

VIII. Demulcents

A. General Discussion

1. *General comments.* The following discussion of demulcents is based on a review of several sources (Refs. 1 through 4).

Demulcents are mucilaginous substances composed of gum, mucilages, starches, high molecular weight polyners of polyhydric alcohols and esters of polyhdric alcohols, polysaccharides, certain saccharides, and related colloidal materials. They form viscous solutions in water and a cohesive, protective film when applied to surfaces such as the skin or mucous membranes.

a. *Mode of action.* Demulcents are pharmacologically inert and nonreactive with tissue cell components. Their therapeutic usefulness is due to the fact that they protect the surface mechanically. They induce no changes in the cells with which they come in contact. When used for such purposes they are classed as active ingredients on the labeling. When applied to an inflamed, ulcerated, or otherwise sensitive cell surface, they retard movement or access of various chemicals, fluids, or air, and protect the surface from noxious stimuli produced by these agents. Some demulcents possess active adsorbing power and prevent noxious agents from sensitizing an irritated surface.

b. *Use of demulcents.* Demulcents may allay inflammation mucous membranes, especially those of the mouth and throat, by acting as protectants from chemicals and irritating stimuli. The effects are strictly local and due to physical rather than chemical action. Gums and other mucilaginous materials applied to a surface may exert a protective action against an irritant or poison. They may also be precipitant chemical antidotes for salts of heavy metals and other toxic substances. Demulcents are also used to emulsify oils, to suspend insoluble powders, and to delay the aborption of drugs. When used for this purpose, they are designated as pharmaceutical necessities and not as active ingredients. When used as pharmaceutical necessities, they are classed as inert ingredients on the labeling.

Mucilages and similar drugs derived from polysaccarides were formerly considered carbohydrate nutrients, but it has been shown that they are imperfectly digested and for the most part are absorbed and eliminated unchanged. Films of demulcents diminish the characteristic taste of many substances, such as acids, salts, and sweets as well as those that are bitter. They act by enveloping the substance and forming a protective layer over the mucous membrane. In this way they prevent access of the substance to the taste buds. In the case of acids, they act chiefly by adsorbing the acid on the surface of the colloidal particles. The acidic taste is minimized due to the decrease in concentration of the free form.

Demulcents interfere with the perception of various sensations such as cold, warmth, pressure, burning, or pain by protecting the receptors that mediate these sensations from agents that produce these stimuli. They exert no depressant effect on these receptors. They do not exert any anesthetic effect.

Among the numerous substances that have been used as demulcents are starch, gelatin, acacia, pectin, etc. When starch and gelatin are boiled with water, they undergo hydration and polymerization and become hydrophilic colloids. Gelatin forms a gel, and starch forms a paste. Acacia is a dry, gummy exudate derived from *Acacia senegal.* It forms a gummy viscous mass when dissolved in water, which acts as a demulcent on mucous membranes.

In essence, demulcents are protectants. Protectants are designed to cover the surface of a mucous membrane in order to prevent contact with irritants or noxious stimuli. Some protectants are powders that are in a very fine state of subdivision. They are used for dusting to form a coating over a lesion. Some demulcents form a semirigid fine coat when applied to a surface. Collodion, gelatin, methyl cellulose, and similar semiplastic material have been used on the skin and mucous membranes for this purpose. Attempts to use such substances on the mucous membranes have met with less success than on the skin.

Demulcents act as a barrier between the external environment and the surface of the mucous membranes. In addition they provide some mechanical support, which is a therapeutic advantage. They are more useful in this respect in preparations used on the skin rather than on the mucous membranes.

c. *Absorption of demulcents.* Most demulcents are inert and not absorbed. If absorbed, they are metabolized slowly or not at all. Demulcents are generally used in combination with other active ingredients. Some demulcents used on the mucous membranes of the mouth and throat form films for a short period of time because they are washed away by the saliva and swallowed and are therefore more useful than others that form persistent films. Demulcents applied to ulcerated surfaces or wounds on the mucous membranes of the mouth and throat fill depressions on these surfaces and thus remain in contact for a longer period of time than they do on the uninjured, healthy mucous membranes.

d. *Adverse reactions.* Demulcents do not cause serious adverse reactions because they are inert, nonirritating, and as a rule not haptenogenic. Demulcents obtained from biological sources that contain proteins and that may have not been purified can act as antigens.

References

(1) Grollman, A. R., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, pp. 191–193, 1947.

(2) Swingyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, Macmillan Publishing Co., New York, pp. 946–947, 1975.

(3) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 130–131, 1957.

(4) Grollman, A., and E. F. Grollman, "Pharmacology and Therapeutics: A Testbook for Students and Practitioners of Medicine and Its Allied Professions," 6th Ed., Lea and Febiger, Philadelphia, p. 606, 1965.

B. Categorization of Data

1. *Category I conditions under which demulcent active ingredients for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

Category I Active Ingredients

Elm bark
Gelatin
Glycerin
Pectin

a. *Elm bark.* The Panel concludes that elm bark is safe and effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Elm bark (slippery elm) is the dried inner bark of *Ulmus rubra* (Refs. 1 and 2). The tree itself is indigenous to the United States and Canada. In the spring the old bark is stripped from the trees, and some of the outer and all of the inner part is removed. It is this inner part that is used for therapeutic purposes (Ref. 3). The bark has a currylike odor. Elm bark contains mucilaginous substances which are readily extractable by water. Elm mucilage consists principally of a polysaccharide which on hydrolysis yields D-galactose, D-methyl galactose, L-rhamnose, and glucose. Elm also

contains traces of tannin, which exerts no significant pharmacologic or therapeutic effect. Elm bark also contains some starch and traces of oxalate salts. The total ash content is approximately 7 to 10 percent. A warm infusion prepared by boiling the bark in water was a folk remedy used in the treatment of cough and diarrhea. The bark was also used as a poultice to treat external inflammation (Refs. 1, 4, and 5).

(1) *Safety.* The Panel concludes that elm bark is safe as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Little data were available in the literature or were provided in the submissions to the Panel concerning acute and chronic studies using elm bark in animals or in man (Ref. 6).

Elm bark is composed of polysaccharides that yield various innocuous sugars, and there have been no reports of adverse effects. It has enjoyed long-term use, and the Panel had judged elm bark to be a safe ingredient when used as a demulcent to treat symptoms of sore throat or sore mouth or both.

Elm bark was an official drug that was listed in the "United States Pharmacopeia" from 1820 to 1936 and in the "National Formulary" from 1963 until recently.

(2) *Effectiveness.* The Panel concludes that elm bark is an effective OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Ground elm bark yields a thick mucilage when digested in approximately 40 parts of cold water and incorporated into troches and lozenges. The mucilage rapidly forms a protective barrier over irritated and inflamed mucous membranes (Ref. 7).

There is no evidence that elm bark exerts any curative effects or promotes healing of lesions of the mucous membranes of the mouth and throat. Elm bark does not exert any anesthetic effect. Elm bark aids in the temporary relief of minor irritation or soreness of the mouth and throat (Ref. 6).

(3) *Dosage.* Adults and children 3 years of age and older: Use a 10.0- to 15.0-percent concentration of elm bark, incorporated in an agar or other water-soluble gum base, in the form of a lozenge every 2 hours if necessary. For children under 3 years of age, there is no recommended dosage except under the advice of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care demulcent active ingredients. (See part VIII. paragraph B.1. below—Category I Labeling.)

References

(1) Stecher, P. G., editor, "The Merck Index," 7th Ed., Merck and Co., Rahway, NJ, p. 400, 1960.

(2) Grollman, A., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, p. 193, 1947.

(3) Youngken, H. W., "Drugs of Vegetable Origin," *in* "The Textbook of Pharmacognosy," 5th Ed., The Blakiston Co., Philadelphia, p. 272, 1943.

(4) Pratt, R., and H. W. Youngken, "Agents with a Physical Basis of Action," *in* "Pharmacognosy: The Study of Natural Drug Substances and Certain Allied Products," 2d Ed., J. B. Lippincott Co., Philadelphia, pp. 107–109, 1956.

(5) Trease, G. E., and W. C. Evans, "Pharmacognosy," 10th Ed., Williams and Wilkins, Baltimore, pp. 366–367, 1972.

(6) OTC Volume 130002.

(7) Wood, H. C., et al., "The Dispensatory of the United States of America," 23d Ed., J. B. Lippincott Co., Philadelphia, pp. 1186–1188, 1943.

b. *Gelatin.* The Panel concludes that geletin is safe and effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Gelatin is a protein obtained by the partial hydrolysis of collagen derived from skinlike and other connective tissues and bones of animals. Gelatin may be derived from acid- or basic-treated precursors. When derived from an acid-treated precursor, the gelatin is known as Type A; when derived from a basic-treated precursor, it is known as Type B. Type A gelatin has an isoelectric point between PH 7.7 and 9.0; Type B has an isoelectric point between PH 4.7 and 5.0 (Ref. 1).

Gelatin is available in sheets, flakes, shreds, or as a coarse fine powder (Ref. 1). It is faintly yellow or amber with a slight bouillonlike odor and is almost insolube in cold water. When immersed in water it gradually swells, due to its hydrophilic properties, and softens to form a colloidal solution having varying degrees of viscosity. Thus, gelatin solutions are referred to as hydrophilic colloids. The viscosity of gelatin solutions decreases with increases of temperature. Dry gelatin can absorb 5 to 10 times its weight of water. It is readily soluble in hot water, but is insoluble in alcohol, chloroform, and ether.

Gelatin is used as a demulcent on the mucous membranes of the mouth, throat, and stomach. Gelatin also has many uses as a pharmaceutical nesessity such as in the preparation of jellies, suppositories, and for suspension of drugs and in the preparation of troches (Refs. 1 and 2).

(1) *Safety.* The Panel concludes that gelatin is safe as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Gelatin is easily digested and used as a food as well as for medicines. Gelatin has been used as an adjuvant protein food, but is not a complete protein because it lacks certain essential amino acids, especially tryptophan. It cannot be used as a "complete" protein food unless it is combined with other proteins (Ref. 3).

The protective colloidal action of gelatin has been utilized in preparing modified milk formulas for infants. One to 2 percent gelatin lowers the curd tension of cow's milk. Gelatin solutions are amphoteric. This action makes them valuable as a food in cases of hyperacidic gastric states or in cases of peptic ulcer and other similar conditions because they can combine with acids by virtue of the amino groups on the amino acid molecules in the proteins.

The intravenous injection of gelatin solution greatly accelerates the ability of the blood to coagulate, and for this reason gelatin solutions were once used to treat internal hemorrhages (Ref. 3). Solutions of gelatin are difficult to sterilize, and unless the gelatin is absolutely pure, antigenic substances may be present and anaphylactic reactions may occur if administered intravenously. Gelatin is not a sensitizer when used topically and is devoid of any tendency to cause irritancy.

(2) *Effectiveness.* The Panel concludes that gelatin is effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Gelatin provides a protective coating over irritated or ulcerated areas of the mouth and throat and prevents stimulation of receptors for cold, warmth, pressure, or pain by protecting these receptors in distant areas from stimulation by physical or chemical agents. There is no evidence that gelatin exerts any curative effect or promotes healing of lesions of the mouth or throat.

A special form of gelatin, known as absorbable gelatin sponge, may be used on mucous membranes. It is a sterile, absorbable, water-insoluble gelatin base sponge made by bubbling or agitating a solution of partially denatured gelatin with air and drying the foam in an oven.

Gelatin is carried away by the saliva and swallowed, making its effect only short-lived when applied to healthy

mucous membranes. Gelatin does not undergo digestion in the mouth since there are no proteolytic enzymes in the saliva.

Gelatin, by its protectant action, aids merely in the temporary relief of pain and discomfort due to sore throat and sore mouth. Gelatin is not an anesthetic. Any relief of discomfort it affords is due to its protectant effects.

(3) *Dosage.* Adults and children 3 years of age and older: Use a 5.0- to 10.0-percent concentration of gelatin in aqueous solution in the form of a rinse, gargle, spray, or by swabbing with an applicator or by applying digitally, as often as necessary. As lozenges or gels, use quantities sufficient to form a solid or semisolid state, as often as necessary. For children under 3 years of age there is no recommended dosage except under the advice of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care demulcent active ingredients. (See part VIII. paragraph B.1. below—Category I Labeling.)

References

(1) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 544, 1973.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 564, 1976.

(3) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 56–60, 1957.

c. *Glycerin.* The Panel concludes that glycerin is safe and effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Glycerin is a trihydric alcohol. It is also known as 1,2,3-propanetriol, glycerol, and trihydroxy-propane (Ref. 1). Glycerin was discovered by Scheele in 1779 in fats from which glycerin may be released by hydrolysis. It is the alcohol that esterifies the oils and fats of plant and animal origin. Glycerin is a clear, colorless, viscous, hygroscopic liquid with a sweet taste and characteristic odor (Ref. 2). It is miscible with water and alcohol and insoluble in chloroform and fixed and volatile oils. Glycerin is markedly hygroscopic and takes up and retains water in its undiluted form. Next to water, it is probably the most widely used vehicle for medicinal substances for internal or external use. In addition to glycerin's solvent properties, its value as a vehicle depends on its viscosity, its water-absorbing property, its ability to lower the surface tension of water, its osmotic effect, and its ready miscibility with water and alcohol. The inclusion of glycerin in many medicinal preparations that contain water, retards the hydrolytic decomposition of some active ingredients. Solutions of medicinal substances in glycerin are called glycerites (Ref. 3). In addition, glycerin is valuable as a preservative in liquid dosage forms containing sugar because it is nonfermentable. Glycerin is said to have antimicrobial properties due to its dehydrating and desiccating effects. Its antiseptic action, however, is of no particular consequence as far as this Panel is concerned because it is not used for this purpose on the mucous membranes of the mouth and throat. It is ineffective unless it is present in sufficient concentrations to dehydrate bacteria (Ref. 4).

Glycerin is used to alter the viscosity and other physical properties of medicinal products. It acts as a sweetening agent and as a vehicle for drugs used in or about the mouth or in the throat. Glycerin is widely used in the preparation of rinses and mouthwashes, and it helps maintain the consistency of toothpastes (Ref. 5).

Anhydrous and concentrated glycerin causes irritation when applied to the mucous membranes because its hygroscopic property may cause desiccation of tissues. This osmotic effect is also partially responsible for the laxative action of glycerin suppositories (Ref. 6). When glycerin is used in dermatological preparations, it exerts an emollient effect. Glycerin is also classified as a pharmaceutical necessity (Ref. 2).

(1) *Safety.* The Panel concludes that glycerin is safe as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Long-term clinical use and extensive marketing experience have confirmed that glycerin is safe for internal use. Glycerin has been used over 100 years as a medicament. When injected intravenously glycerin causes crenation of the red blood cells due to its osmotic effect, and hemolysis and hemoglobinuria result. Toxicity after oral administration has not been reported.

Glycerin is innocuous when taken internally. It has been ingested by adults in 100-g doses for 50 days with no ill effects (Ref. 7). Diarrhea may occur following massive oral doses, due to its osmotic effects. Undiluted glycerin has been applied to the conjunctiva of rabbits, rats, and dogs with no grossly visible ill effects. Undiluted glycerin has also been applied to the buccal mucosa of rabbits, rats, and dogs without any visible adverse local effects. However, glycerin absorbs water and can be dehydrating and irritating to the mucous membranes, particularly if inflamed. When used undiluted it may absorb water from ulcerations and open wounds and produce pain, burning, or other manifestations of irritation. Aqueous solutions of glycerin are nonirritating and act as safe protectants to the mucous membranes and skin.

Glycerin is nonantigenic. Reports of systemic sensitization are virtually nonexistent. Irritation of the mucous membranes may occur from the hygroscopic properties when used undiluted. Local sensitization and local allergic reactions have not been reported and apparently do not occur.

(2) *Effectiveness.* The Panel concludes that glycerin is effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Glycerin acts as a demulcent when applied to the mucous membranes of the mouth and throat. It coats the mucous membranes with a thin adherent film. Glycerin provides a protective coating over irritated or ulcerated areas of the mouth and throat and prevents stimulation of receptors for cold, warmth, pressure, or pain by protecting these receptors in diseased areas from stimulation by physical or chemical agents. There is no evidence that glycerin exerts any curative effect or promotes healing of lesions of the mouth or throat.

Concentrated glycerin absorbs water from tissues so that its soothing action is often preceded by smarting until it becomes diluted. It should, therefore, be diluted with two or three volumes of water or half a volume of 70 percent alcohol rather than used alone. This not only decreases its viscosity so that it is more easily applied, but also decreases its hygroscopic activity and desiccating effects (Ref. 8). Glycerin is absorbed from the mucous membranes. It is transported to the liver and transformed, to a certain degree, into glycogen and sugar.

Concentrations of 25 percent or more of glycerin manifest antimicrobial activity and are antiseptic due to its dehydrating effect. Undiluted glycerin destroys one tenth of the bacteria with which it comes in contact in 3 hours. It is not, however, useful as an antimicrobial agent. Glycerin allegedly increases the antimicrobial activity of phenol, thymol, and other antimicrobial agents (Ref. 8).

Glycerin, diluted with water, is indicated as a demulcent to aid in the temporary relief of minor irritations and

soreness of the mucous membranes of the mouth and throat. Glycerin manifests no anesthetic properties.

(3) *Dosage.* Adults and children 3 years of age and older: Use glycerin diluted with 2 or 3 volumes of water in the form of a rinse, mouthwash, spray, or by swabbing, as often as necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care demulcent active ingredients. (See part VIII. paragraph B.1 below—Category I Labeling.)

In addition, the Panel recommends the following specific labeling: "*Warning.* Do not use full strength. Dilute with two or three volumes of water."

References

(1) Swinyard, E. A., and W. Lowenthal, "Pharmaceutical Necessities," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, pp. 1254–1255, 1975.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 581, 1976.

(3) Grollman, A., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, p. 196, 1947.

(4) Grollman, A., and E. F. Grollman, "Pharmacology and Therapeutics: A Textbook for Students and Practitioners of Medicine and Its Allied Professions," 6th Ed., Lea and Febiger, Philadelphia, pp. 116–117, 1955.

(5) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 37th Ed., American Dental Association, Chicago, pp. 245–246, 1977.

(6) "United States Pharmacopeia," 19th Ed., United States Pharmacopeial Convention, Rockville, MD, p. 223, 1975.

(7) Deichman, W., "Glycerol—Behavior in the Animal Organism (A Review of the Literature)," *Industrial Medicine,* 9:60–67, 1940.

(8) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 127–128, 1957.

d. *Pectin.* The Panel concludes that pectin is safe and effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

Pectin is a polysaccharide consisting chiefly or partially of polymerized methoxylated polygalacturonic acid molecules (Ref. 1). Pectin is obtained from the inner portion of the rind of citrus fruits, apples, and other botanical sources. The greater portion of pectin in fruit is present in a form known as propectin. Propectin is insoluble in water. This is converted into water soluble pectin by heating with a weak acid. The resulting product is purified by precipitating with alcohol or salting out with electrolytes.

Pectin is a mixture of polysaccharide molecules of various sizes. Pectin is not a single entity compound. Pectin is a coarse or fine yellowish-white powder (Ref. 2). It is soluble in 20 parts of water forming a viscous, opalescent, freely flowing colloidal solution. Pectin is insoluble in concentrated or diluted alcohol and other organic solvents.

The pectin molecules are large molecules of varying sizes. The molecular weights range between 150,000 and 300,000 daltons. It is composed of galacturonic acid anhydride molecules, some of which are partially methoxylated. Three carboxyl groups are present on each molecule of pectin. Some of these are esterified. The carboxyl groups impart acid properties to the molecule. Pectin forms gels which may be standardized to "150 jelly grade" by addition of dextrose or other sugars. Pectin may contain sodium citrate or other buffering agents. The viscosity and jelly strength of pectin depend primarily on the size of the molecules while the degree of methoxylation affects the setting time, reactivity with metallic ions, and other such characteristics. Certain nongalacturonide components, such as galactan and araban, may constitute one-third or more of pectin and may also modify its characteristics (Ref. 3).

(1) *Safety.* The Panel concludes that pectin is safe as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit ser forth below.

Pectin has been used in foods for jellies and medicinally as a demulcent and a pharmaceutical necessity. Pectin has been combined with kaolin and used as a protective agent for treating diarrhea (Ref. 4). An aqueous suspension consisting of 20 percent pectin and alpha kaolin is used as an intestinal adsorbent (Ref. 5). In the diet, pectin allegedly causes a lowering of serum cholesterol levels. The Panel does not consider this to be of any significane clinically if used occasionally, topically, and in limited quantities on the mucous membranes of the mouth and throat. Pectin solutions of an approximate 1-percent concentration were once used as plasma volume expanders in the treatment of hemorrhage and shock (Ref. 5). Pectin is no longer used for this purpose. It is retained and causes degenerative changes in the tissues.

Pectin has no adverse effects on the skin or mucous membranes. It is not irritating and nonantigenic. Sensitization has not been known to occur following topical application.

(2) *Effectiveness.* The Panel concludes that pectin is effective as an OTC demulcent active ingredient for topical use on the mucous membranes of the mouth and throat when used within the dosage limit set forth below.

When suspended in water, pectin forms a sol containing negatively charged, highly hydrated particles. Pectin is strongly hydrophilic.

Pectin is nearly neutral in reaction and is amphoteric, as are proteins. Pectin is more stable in acid than in alkaline media. In the presence of alkalies the methyl groups forming the esters are saponified and the glycosidic linkages that bind the glacturonic acid units may be disrupted and render the compound ineffective. Nongalacturonide components, such as galactan and araban, normally present in pectin may modify its characteristics when present in a proportion of one-third or more of the total weight of pectin.

Pectin exerts no pharmacologic effect of its own except that it acts as a demulcent and a protectant. It forms a cohesive film that holds a drug in contact with an irritated, inflamed, or ulcerated mucous membrane. Pectin does not retard would healing. Pectin provides a protective coating over irritated or ulcerated areas of the mouth and throat and prevents stimulation of receptors for cold, warmth, pressure, or pain by protecting these receptors in diseased areas from stimulation by physical or chemical agents. There is no evidence that pectin exerts any curative effect or promotes healing of lesions of the mouth or throat. Pectin exerts no anesthetic effect. Relief of discomfort is due to its protectant effects.

The term "150 jelly grade" indicates that pectin will produce a jelly when 1 part is mixed with 150 parts of sugar in a medium containing a final concentration of 55 percent sugar adjusted to the desired acidity. Less viscous preparations may be prepared for use in the oral cavity as a gargle, a rinse, or for direct application by swabbing.

(3) *Dosage.* Adults and children 3 years of age and older: Use a solution of pectin of desired viscosity in the form of a rinse, gargle, spray, or by swabbing, as often as necessary. Use quantities sufficient to form a solid or semisolid state in the form of lozenges or gels, as often as necessary. For children under 3 years of age there is no recommended dosage except uder the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I labeling for products containing oral health care demulcent

active ingredients. (See part VIII. paragraph B.1. below—Category I Labeling.)

References

(1) Osol, A., R. Pratt, and A. R. Gennaro, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 845, 1973.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 915, 1976.

(3) Grollman, A., and E. F. Grollman, "Pharmacology and Therapeutics: A Textbook for Students and Practitioners of Medicine and Its Allied Professions," 6th Ed., Lea and Febiger, Philadelphia, p. 611, 1965.

(4) Sollmann, T., "A Manual of Pharmacology and Its Applications to Therapeutics and Toxicology," 8th Ed., W. B. Saunders Co., Philadelphia, p. 131, 1957.

(5) Swinyard, E. A., "Surface-Acting Drugs" *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, Macmillan Publishing Co., New York, p. 949, 1975.

(6) Grollman, A., and D. Slaughter, "Pharmacology and Therapeutics," 13th Ed., Lea and Febiger, Philadelphia, p. 620, 1947.

Category I Labeling

a. *Indication.* "Aids in the temporary relief of minor discomfort and protects irritated areas in the mouth and throat."

b. *Warnings*—(1) *For all oral health care products containing demulcents.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For oral health care products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which demulcent active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC oral health care drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

Category II Active Ingredients

None.

Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use or for description of product attributes for products containing oral health care demulcent active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowing for OTC products.

a. *Statements or phrases which purport that a product exerts a pharmacologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "For relief of sore throat due to smoking."

(2) "Helps reduce minor oral inflammation."

(3) "Promotes healing."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "Given quick relief."

(2) "Acts fast."

(3) "Produces a smooth coating that gives quick comfort to irritated throats."

c. *Statement or phrases that allude to the superiority or greater potency of a product when compared to another product with a similar action.* (1) "Recommended by doctors."

(2) "Multiaction."

(3) "Superior new formulation."

(4) Adding such terms as "plus" etc.

d. *Statements or phrases that are vague in their meaning and cannot be readily understood or are misleading.* (1) "First aid to throat irritation."

(2) "Works directly on throat membrane."

(3) "Soothes tired throats."

(4) "Fights sore throat."

e. *Statements or phrases in the indications for use that state or imply that the product is to be used to treat a disease process or lesion the diagnosis of which must be made by a physician.*

(1) "To relieve discomfort due to stomatitis."

(2) "For relief of pain due to canker sores."

(3) "For relief of pain due to cold sores."

(4) "For relief of pain for minor sore throat due to common cold."

(5) "Relieves smokers sore throat."

(6) "Relieves pain due to tonsillitis."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a symptom or disease state when proof that this occurs is lacking.* "Prevents dryness of mouth and throat."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes but imply that the product exerts a therapeutic effect.* (1) "Hygienic prevention."

(2) "Relieves dryness."

(3) "Reduces mouth odors."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic or therapeutic action or class of a drug or type of formulation containing the ingredients instead of designating the symptoms which the product intended to relieve.* (1) "Demulcent."

(2) "Gargle."

(3) "Mouth rinse."

3. *Category III conditions for which the available data are insufficient to permit final classification at this time.* None.

IX. Expectorants

A. General Discussion

1. *Introduction.* An expectorant is a substance that increases the output of respiratory tract fluid and promotes the expulsion of secretions from the lower and upper respiratory tract, mouth, or throat, thereby aiding in the relief of irritation or soreness of the mucous membranes of these structures. Expectorants are used to aid in the relief of symptoms due to inflammation or irritation in the lungs, bronchi, trachea, larynx, throat, and mouth. Expectorantia may actually be lifesaving when secretions are collecting in the larynx and trachea (in combination with other measures). Expectorants may indirectly facilitate the healing process by relieving these symptoms. There is no evidence that they have any direct action on the healing process.

a. *Mode of action.* Expectorants may act by one or a combination of the following mechanisms: (1) They may increase the volume of respiratory tract fluid. This results in a "thinning action" that facilitates removal of thick secretions resulting from a disease process in the mouth, throat, or respiratory tract. (2) They may promote the secretion of alkaline respiratory tract fluid in the bronchi, trachea, mouth, or throat. This reduces the viscosity of mucus and other secretions and debris in the mouth thereby facilitating their expulsion. They may reduce the viscosity of the secretions if volatilized and inhaled with steam and other propellants. This increases the secretory activity and increases expectoration. (3) They may act by promoting coughing, which mechanically dislodges the secretions in the lower respiratory tract and causes their expulsion. (4) They may stimulate the sensory endings of the vagus nerves, thereby causing an increase in watery secretion of the salivary glands and the mucous glands of the throat, esophagus,

stomach, and bronchi. This causes liquefaction and dissolution of thickened and viscous exudates and aids in the thinning of viscous mucus or purulent material in the upper air passengers or in the mouth and throat. (5) They may also increase salivation. By doing so they provide the antimicrobial activity of the saliva in addition to thinning secretions, etc.

Certain drugs, particularly those with cholinergic activity, promote the flow of saliva and are often referred to as sialogogues. Acids and small pieces of certain types of foods, such as pickles, may do likewise.

The secretions of the mucous membranes can be increased and made more fluid by various salts, such as ammonium chloride and potassium iodide. Potassium iodide increases output of various secretions, as is evident by the increase in lacrimal gland and nasal secretions in iodism. Secretions in the throat are also increased by potassium iodide.

Expectoration is actually a debriding process. There is, however, a distinct difference between expectorants and debriding agents. Expectorants Act endogenously and promote secretion of respiratory tract fluids. Debriding agents are substances that are added exogenously to mechanically assist in removal of debris from the mouth and throat.

b. *Uses of expectorants.* There is considerable doubt as to whether expectorants are of any therapeutic value. There is some evidence that expectorants may be effective in the lower respiratory tract. However, there is less evidence that expectorants are effective in the mouth and throat. Their effectiveness for relieving symptoms of sore throat or sore mouth has not been established with certainty. The term "expectorant" literally means "out of the chest," but it has been expanded to include some remedies that act in the throat. Some expectorants are excerted into the respiratory tract, throat, and mouth and act by local irritation. Expectorants acting by local irritation are termed "stimulant expectorants" because they stimulate the mucosa directly. Drug that promote expectorant activity by decreasing the viscosity of the mucus are called liquefying expectorants. Alkaline expectorants liquefy mucus by splitting the polysaccharide from mucoproteins. They may act above the larynx in the mouth and throat when used in a lozenge form. Most expectorants are swallowed.

c. *Adverse reactions.* Some expectorants in oral health care products may, if used to excess, be swallowded and cause gastric irritation. Iodides accumulate in the body and may cause iodism. Ammonium chloride may cause acidosis.

Expectorants may aggravate discomfort due to sore throat or sore mouth by inducing coughing if they increase the amount of lower respiratory tract fluid. Expectorants that cause local irritation may aggravate the symptoms of sore throat and sore mouth. Expectorants that are used systemically may be excreted in the saliva and cause a persistent, disagreeable taste which is unpleasant and may be irritating to lesions causing sore throat and sore mouth.

B. Categorization of Data

1. *Category I conditions under which expectorant active ingredients for topical use on the mucous membranes of the mouth and throat are generally recognized as safe and effective and are not misbranded.* The Panel recommends that the Category I conditions be effective 30 days after the date of publication of the final monograph in the Federal Register.

Category I Active Ingredients

None.

Category I Labeling

a. *Indications.* The Panel did not classify any expectorant active ingredient in Category I, but did place some ingredients in Category III. Because additional testing is necessary to determine the actual effect these ingredients have in the mouth and throat, the Panel did not place any indication in Category I. The Panel has proposed a Category III indication for expectorants. (See part IX. paragraph B.3. below—Category III Labeling.)

b. *Warnings*—(1) *For all oral health care products.*

(i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For oral health care products used in the form of gargles, mouthwashes, or mouth rinses.* "Try to avoid swallowing this product."

2. *Category II conditions under which expectorant active ingredients for topical use on the mucous membranes of the mouth and throat are not generally recognized as safe and effective or are misbranded.* The Panel recommends that the Category II conditions be eliminated from OTC oral cavity expectorant drug products effective 6 months after the date of publication of the final monograph in the Federal Register.

Category II Active Ingredient

Potassium iodide

Potassium iodide. The Panel concludes that potassium iodide is not safe and that there are insufficient data available to permit final classification of the effectiveness of potassium iodide as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat.

Potassium iodide is a colorless or white powder composed of cubical crystals or white granules. It is slightly deliquescent in moist air. Long exposure to light or moisture causes potassium iodide to become yellow due to liberation of iodine and small quantities of iodates. This can be prevented by the addition of small amounts of alkali. Aqueous solutions of potassium iodide are a colorless, odorless, neutral, or slightly alkaline (pH 7–9) liquid having a characteristically strong salty taste that can be masked by administering it in milk or various flavored syrups.

One gram of potassium iodide dissolves in 0.7 mL water, 0.5 mL boiling water, 22 mL alcohol, 8 mL boiling alcohol, 51 mL absolute alcohol, 8 mL menthol, 75 mL acetone, 2 mL glycerol, and about 2.5 mL glycol. Solutions of potassium iodide readily dissolve elemental iodine to form iodophors (Refs. 1 and 2).

Potassium iodide may be reduced to elemental iodide in the gastrointestinal tract. Both the elemental iodine and the salt are absorbed from all parts of the gastrointestinal tract. The kidney is the chief excretory organ for potassium iodide. Sixty-five to 80 percent of the iodide ion appears in the urine within 24 hours after the administration of a single dose of pottasium iodide. It is also found in tears, saliva, sebum, secretions from the nasal mucous membranes, sweat, feces, and milk (Refs. 3 and 4).

(1) *Safety.* The Panel concludes that potassium iodide is not safe as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat.

Potassium iodide, when used in doses considered to be therapeutically effective (300 mg every 4 to 6 hours) is not considered safe for use in OTC preparations. Although potassium iodide has been widely used in medical practice as an expectorant and for treating skin disorders and various other clinical conditions, adverse effects from its continued use are far from rare. The

action and toxic effects of potassium iodide are due to the iodide content.

Manifestations of toxicity due to iodides and iodine vary considerably not only in different individuals, but in the same individual at different times (Ref. 4). Side effects and toxic effects due to iodides are dose related. Iodism develops in practically all persons chronically treated with high doses of iodide compounds. However, some individuals are highly sensitive to iodides and react to the first few doses with serious symptoms (Ref. 5). Anaphylaxis and other allergic manifestations have been reported.

The commonest symptom of iodism is inflammation of the mucous membranes (catarrh) of the respiratory passages, especially the nose. Occasionally swelling, edema, and small ulcers in the larynx develop. Severe respiratory obstruction necessitating tracheotomy has been reported. Bronchitis has also been reported in humans following the use of potassium iodide. Profuse watery secretions often resulted in these cases. In animals, edema of the lungs and pleuritic effusions have followed the injection of iodides. Other symptoms of iodism include salivation, coryza, sneezing, conjunctivitis, headache, fever, laryngitis, stomatitis, parotitis (iodine mumps), various skin rashes (iododerma, thrombotic thrombocytopenic purpura), brassy taste, burning of the mouth and throat, chronic sore gums and teeth, and symptoms of a head cold may also result. Edema of the glottis, necessitating tracheotomy, has also been reported following the use of potassium iodide (Refs. 4 and 6).

Carswell, Kerr, and Hutchison (Ref. 7) reported iodide-induced goiters in the fetuses of pregnant women. Two cases of neonatal death, apparently resulting from congenital goiter caused by iodides compressing the trachea, were reported by Galina, Avnet, and Einhorn (Ref. 8). Continued excessive use of iodide in children and adults may produce goiter or hypothyroidism or both (Refs. 9 and 10). The "Medical Letter on Drugs and Therapeutics" (Ref. 11) discusses the hazards of drug-induced goiters and cites iodides as a frequent cause.

Iodides generally induce nausea and gastric discomfort. A single dose of potassium iodide increases the volume of gastric juice secreted and prolongs the elaboration of secretions aroused by the taste of food. Large quantities of iodides also cause irritation of the stomach due to a local salt action on the mucosa. Nausea, vomiting, and, more rarely, diarrhea result. These adverse reactions may occur with single doses and necessarily a manifestation of iodism.

Other adverse reactions have been reported by Shelly (Ref. 12). He discussed the systemic manifestations of two patients who had iodism. These included hepatitis, fever, leukocytosis, hypoproteinemia, hypocalcemia, and an elevation of serum transaminase and alkaline phosphatase. A challenge with 500 mg of orally administered potassium iodide reproduced a typical attack.

Skin eruptions occur frequently in iodism particularly after prolonged treatment. These eruptions may simulate almost all known skin diseases; however, the most common manifestations are erythematous patches, or papular eruptions. These may progress into pustules or into larger inflamed areas (Ref. 4).

Falliers et al. (Ref. 13) reportedly found a high incidence of adverse reactions in a double-blind crossover study of 52 asthmatic children on iodide therapy. One child developed a papulovesicular eruption, and treatment was discontinued. Sixteen adolescents developed acneiform lesions. Eighteen patients developed thyroid enlargement but no evidence of suppressed thyroid function. Leonardy (Ref. 14), in discussing the use of iodides in the treatment of bronchial asthma, cited a review by Peacock and Davison (Ref. 15) involvig 500 patients. In this series, 13.5 percent of the patients developed reactions of such severity that treatment was discontinued.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit the final classification of the effectiveness of potassium iodide as an OTC expectorant for topical use on the mucous membranes of the mouth and throat.

Although there is experimental evidence that indicates that potassium iodide increases the secretion of respiratory tract fluid (RTF), such evidence is from uncontrolled studies and is sparse and unconvincing. Thus, the therapeutic efficacy of potassium iodide is doubtful (Ref. 16). The presence of iodides in the RTF has been demonstrated in animals, but whether this increases the amount of RTF secreted or morely decreases its viscosity is not established (Refs. 17 and 18).

Potassium iodide is believed to increase bronchial secretions in the respiratory tract by reflex stimulation of the gastric mucosa. It is believed to act in the same manner as ammonium chloride. There are no data substantiating that this reflex stimulation causes an increase in the secretions from the glands of the mouth and throat. The use of the drug is limited by its unpleasant taste and frequency of adverse reactions.

Potassium iodide has been used as a gargle, in lozenges, troches, and "cough drops" presumably to stimulate the flow of saliva and to prevent the "drying out" of the pharyngeal mucosa.

Falliers et al. (Ref. 13), in a 3-year, double-blind study in 52 children with chronic asthma, using 300 mg, three times daily, demonstrated a statistically significant improvement in symptoms. Those receiving iodides improved, but there was a wide variation in the response. This study, however, does not lend any support to the effectiveness of potassium iodide used topically on the mucous membranes of the mouth and throat.

(3) *Evaluation.* The Panel concludes that potassium iodide is not safe and that there are insufficient data on its effectiveness as an OTC expectorant active ingredient for topical use in the mouth and throat.

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Category II Labeling

The Panel concludes that the following statements or phrases are not acceptable in the labeling as indications for use or for description of product attributes for products containing expectorant active ingredients. They are not supported by scientific data or sound theoretical reasoning or are inaccurate or make claims that exceed those allowed for OTC products.

a. *Statements or phrases that purport that a product exerts a pharmacologic or therapeutic action which it does not possess or is not an attribute of the product or which is in doubt or cannot be proven to occur.* (1) "Temporary relief of sore throat due to the common cold."

(2) "Relieves stuffed up feeling."

(3) "Subdues cough reflex."

(4) "Relieves mouth and throat pain."

(5) "Works internally to break up phlegm."

b. *Statements or phrases which indicate the time of onset or duration of action of a product in general, nonspecific terms that can be interpreted in a number of different ways by consumers, rather than in definite units of time.* (1) "Provides prompt relief of throat discomfort."

(2) "Rapidly relieves discomfort."

(3) "Fast relief."

c. *Statements or phrases that allude to the superiority or greater potency of a product when compared to another product with similar action.* (1) "Superior expectorant."

(2) "Improved formulation."

(3) Adding terms such as "plus" etc.

d. *Statements or phrases that are vague in their meaning and cannot be readily understood or are misleading.* "Provides relief by local cleansing action."

e. *Statements or phrases in the indications for use that state or imply that the product is to be used to treat a disease process or lesion, the diagnosis of which must be made by a physician.* "Healing aid for minor oral inflammations."

f. *Statements or phrases that indicate that a product acts prophylactically and prevents development of a disease state or symptom when proof that this occurs is lacking.* (1) "Soothing and cleansing to the mouth and throat."

(2) "Prevents infection."

g. *Statements or phrases that indicate that a product is used for cosmetic purposes, but imply that a product exerts a therapeutic effect.* (1) "For mouth and gum care."

(2) "Promotes oral hygiene."

h. *Statements, phrases, or terms in the indications for use that describe the pharmacologic or therapeutic action or class of a drug or type of formulation containing the ingredients instead of designating the symtoms which the product is intended to relieve.* (1) "Expectorant."

(2) "Promotes salivation."

(3) "Mouthwash."

(4) "Promotes needed expectoration."

3. *Catefory III conditions for which the available data are insufficient to permit final classification at this time.* The Panel recommends that a period of 2 years be permitted for the completion of studies to support the movement of Category III conditions to Category I.

Category III Active Ingredients

Ammonium chloride
Horehound
Tolu balsam

a. *Ammonium chloride.* The Panel concludes that ammonium chloride is safe, but that there are insufficient data available to permit final classification of the effectiveness of ammonium chloride as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Ammonium chloride is also known as muriate of ammonia and sal ammoniac. It occurs as colorless crystals, or a white, fine, or coarse crystalline powder. One gram of ammonium chloride is soluble in about 3 mL water, about 100 mL alcohol, about 8 mL glycerin, and about 1.4 mL boiling water (Ref. 1). Ammonium chloride has been used for many years as a medicinal agent.

(1) *Safety.* The Panel concludes that ammonium chloride is safe as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Clinical experience over many years of use has confirmed that the oral administration of ammonium chloride is safe when used in the dosage range recommended as an expectorant. The LD_{50} in rats of ammonium chloride given intramuscularly is 30 mg/kg. There are no controlled clinical studies documenting the safety of the drug when used topically on the mucous membranes of the mouth and throat; however, its long-term clinical use attests to its safety.

There are numerous human studies documenting the occurrence of progressive hyperchloremic acidosis when ammonium chloride is used orally, especially in patients with renal, hepatic, or pulmonary insufficiency (Refs. 2 through 5). Most of these occurred with doses in excess of 6 to 8 g per day. The drug was formerly used as a diuretic for the treatment of heart failure. Relmane, Shelburne, and Talman (Ref. 6) reported two nearly fatal cases following the ingestion of excessive amounts (82 g in a 48-hour period). Ticktin, Fazekas, and Evans (Ref. 7) have described a case of hepatic coma precipitated by an 8-g dose of ammonium chloride in a patient with congestive heart failure. When the oral dosage range of 250 to 500 mg 4 to 6 times daily has been used, the customary dose for use as an expectorant, the most common adverse reactions have been nausea and in some cases vomiting (Ref. 8).

Ammonium chloride is rapidly absorbed from the gastrointestinal tract following oral administration. Complete absorption occurs within 3 to 6 hours. Oral administration of relatively large doses of ammonium chloride may induce nausea and vomiting (Ref. 9). In patients with renal insufficiency a progressive hyperchloremic acidosis occurs. In the presence of liver disease, it may cause ammonia intoxication similar to that occurring spontaneously in hepatic coma (Refs. 5 and 10).

After oral administration, some ammonium chloride is excreted unchanged into the urine, while some is converted to urea. Transformation to urea occurs in the liver and proceeds rapidly. The end products are urea and hydrochloric acid. The latter reduces the alkaline reserve in the blood, producing acidosis.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of ammonium chloride as an OTC expectorant active ingredient

for topical use on the mucous membranes of the mouth and throat.

The ammonium ion is believed to exert an expectorant action, and its salts are extensively used for this purpose (Refs. 11), but the evidence to support this contention is not convincing. However, the ammonium salts are rarely used alone but are used in combination with other ingredients (Ref. 5). The chloride is the salt most commonly prescribed for its effect on the respiratory mucous membranes and is a common constitutent of many expectorant mixtures (Ref. 12). The lozenge is often used for treating symptoms of sore throat. The salt is believed to exert its expectorant action by reflexly stimulating the vagal nerve endings in the mucosa of the stomach. Irritation of the gastric mucosa has been shown experimentally to cause an increase in secretion of respiratory tract fluid in the mouth, throat, larynx, trachea, and bronchi (Refs. 5, 10, 13, and 14). Of all the ammonium salts, the chloride appears to be the most effective for decreasing the viscosity and diminishing the tenacity of mucus. Following the administration of ammonium chloride, traces of ammonium carbonate are formed in the bronchial mucous membrane. This is alkaline and aids in liquefying the mucus; it also stimulates the ciliary movements which facilitate expectoration of mucus and debris resulting from a disease process (Ref. 15).

Goth (Ref. 13) states that a number of expectorants are believed to stimulate production of respiratory tract fluid by a reflex action arising from vagal sensory nerve endings of the stomach. Ammonium chloride was one drug studied, but proof of effectiveness is lacking. "AMA Drug Evaluations" (Ref. 5) states that the therapeutic efficacy of ammonium chloride as an expectorant is doubtful. Evidence of effectiveness is sparse and unconvincing.

Cushny (Ref. 12) states that "ammonium chloride can be credited with rendering the mucus secretion of the stomach and bronchi more abundant and less tenacious." No data are offered in support of the contention.

The use of expectorants, including ammonium chloride, appears to be based more on tradition and the widespread clinical impression that they are effective rather than on sound scientific proof (Ref. 5). The Panel believes that ammonium chloride plays an insignificant role in the mouth and throat in the removal of secretions. The effectiveness of ammonium chloride, despite its widespread and long-time use, remains in doubt.

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use up to 150 mg of ammonium chloride in the form of a cough syrup not more than three to four times daily. Use a lozenge containing up to 150 mg of ammonium chloride every 2 hours if necessary. For children under 3 years of age, there is not recommended dosage except under the advice and supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care expectorant active ingredients. (See part IX. paragraph B. 1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care expectorant active ingredients. (See part IX. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care expectorants. See part IX. paragraph C. below—Data Required for Evaluation.)

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b. *Horehound.* The Panel concludes that horehound is safe, but that there are insufficient data to permit final classification of the effectiveness of horehound as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Horehound is an old-time medicine of botanical origin. Horehound (*Marrubium vulgare*) is also known as hoarhound, gypsy wart, harbane, and madwort (Ref. 1). It was official in the "United States Pharmacopeia" from 1820 to 1916 (Ref. 2).

The plant from which horehound is obtained is native to Europe, North Africa, and Western Asia. It has been cultivated in North America. Horehound is a mixture containing a volatile oil, resin, tannin, and a crystalline bitter principle called *Marrubiin.* It has an aromatic odor and a persistent bitter taste (Ref. 1). Hollis, Richards, and Robertson (Ref. 3), concluded that the active ingredient in horehound is a hydroditerpine lactone, whose empirical chemical formula is $C_{21}H_{30}O_4$. The molecular weight of the compound is 344.43. The crystals melt between 150 and 160° F. Horehound is slightly soluble in water, and soluble in alcohol, chloroform, ether, pyridine, phenol, and petrol ether (Ref. 2).

Horehound was once used as a domestic remedy for the treatment of colds and coughs. Earliest documentation of medicinal use cited by Bickerman (Ref. 4) dates back to a 16th century treatise on cough remedies in which horehound was mentioned along with other drugs as a "spurge through the sputa."

Horehound is classed as a stimulant, a diaphoretic, a laxative, and a diuretic (Refs. 2, 5, and 6). Horehound was formerly used as an aromatic,

stomachic, and an expectorant in various forms of bronchitis. Pages and Comte (Ref. 7) reported obtaining beneficial results in the treatment of cardiac extrasystoles using an extract of fresh horehound. The dried plant is of little clinical value.

Horehound was given in the form of a hot infusion, also called a "tea," or as a tincture for its stimulant and diaphoretic effects. The beneficial effects obtained from the use of these old fashioned remedies lie perhaps more in the large draughts of warm water rather than in the traces of volatile oil that they contained. The oil presumably prevents, to some extent, the nausea produced by the warm water alone (Ref. 6). The infusion or tincture can be given cold. It is a bitter tonic once used to treat coughs due to tuberculosis. It was also used as an expectorant in syrups.

Horehound in fusions, or tinctures in hot water sweetened with honey were reported to be beneficial for use in asthma and for treating various inflammations of the lungs and bronchial tubes. A syrup was prepared with honey and kept on hand in many households to loosen phlegm and relieve discomfort caused by coughs and colds (Ref. 5).

When treating deep-seated colds with coughs, horehound was combined with tincture of sculecap (*Scutellaria laterfolia*) and tincture of pleurisy root (*Ascelpias tuberosa*). The combination was administered in warm water.

Horehound in combination with peppermint and spearmint was used for colic and cramps. This combination was also administered in hot water and given as frequently as necessary (Ref. 5).

The above historical account of the use of horehound for treating respiratory infections is of interest, but its widespread use was based upon tradition or clinical impression. No data from controlled studies are mentioned in any of these citations.

(1) *Safety.* The Panel concludes that horehound is safe as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

No data are available on the animal and human toxicity of horehound. Adverse effects or cases of poisoning have not been reported despite the fact that it has been used as a medicinal since the 16th century (Ref. 5).

On the basis of long-term use and experience the Panel concludes horehound is safe for OTC use on the mucous membranes of the mouth and throat.

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of horehound as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

One text states that horehound, given orally, was formerly used as an expectorant in various forms of bronchitis, but its use has since "been abandoned by physicians." Another text states that it was dropped from the "Primary List" of drugs in 1910 (Ref. 8). Verbon, as cited by Clymer (Ref. 5), claims that "horehound is an effective expectorant and stimulant in 'breaking up' recent colds, bronchitis, bronchial catarrh, and certain types of asthma where the mucous expectoration can relieve dyspnea, aphonia, and laryngitis." No data from controlled studies are supplied in support of the contention.

The use of expectorants, including horehound, appears to be based more on tradition and the widespread clinical impression that they are effective, rather than on sound scientific proof. The Panel concludes that horehound plays an insignificant role in the mouth and throat in the removal of secretions. The effectiveness of horehound, despite its widespread and long-time use, remains in doubt.

The Panel feels that the available data on the expectorant effects of horehound are insufficient to make an evaluation and that additional data are necessary before it can be classified as a Category I expectorant active ingredient.

(3) *Proposed dosage.* Adults and children 3 years of age and older: For the herb, mix 1 tablespoonful of the herb into 1 or 2 cupfuls of water. Take this mixture orally every 2 to 3 hours. For the tincture, alone, add 20 to 30 drops to water and take this mixture orally ever 2 to 3 hours.

In using an infusion or "tea," 1 tablespoonful of herb is added to a cup of boiling water. Let this steep for half an hour. One tablespoonful, sweetened with honey, is administered as frequently as necessary.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care expectorants active ingredients. (See part IX. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care expectorant active ingredient. (See part IX. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care expectorants. (See part IX. paragraph C. below—Data Required for Evaluation.)

References

(1) Solis-Cohen, S., and T. S. Githens, "Pharmacotherapeutics: Materia Medica and Drug Action," D. Appleton and Co., New York, p. 1115, 1928.

(2) Claus, E. P., "Pharmacognosy," 3d Ed., Lea and Febiger, Philadelphia, pp. 217 and 220, 1956.

(3) Hollis, F., J. H. Richards, and A. Robertson, "Marrubiin, a Diterpenoid Lactone," *Nature*, 143:804, 1939.

(4) Bickerman, H. A., "clinical Pharmacology of Antitussive Agents," *Clinical Pharmacology and Therapeutics*, 3:353–368, 1962.

(5) Clymer, R. S., "Nature's Healing Agents," Dorence and Co., Philadephia, pp. 87–88, 101, 102, 111, and 123, 1963.

(6) Cushny, A. R., "A Text-Book of Pharmacology and Therapeutics," 9th Ed., Lea and Febiger, Philadelphia, p. 63, 1928.

(7) Pages, P., and M. Comte, "Un Nouveau Medicament Cardique: le Marrube Blanc, son Action sur l'arythmie Extrasystolique," *Bulletin de la Societe des sciences medicales et biologiques de Montpellier et du Languedoc mediterraneen*, 8:389–394, 1927.

(8) Lloyd, J. U., "Origin and History of All the Pharmacopeial Vegetable Drugs, Chemicals and Preparation: Volume I, Vegetable Drugs," The Caxton Press, Cincinnati, pp. 338–339, 1921.

c. *Tolu balsam.* The Panel concludes that tolu balsam (balsam of tolu, tolu preparations, tolu balsam tincture) is safe, but that there are insufficient data available to permit final classification of the effectiveness of tolu balsam as an effective OTC expectorant active ingredient for use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Tolu balsam is an exudate obtained from *Myroxylon balsamum* (linne), a South American tree. Balsams are naturally occurring mixtures of resins, volatile oils, and organic acids. Tolu balsam contains from 12 to 14 percent free cinnamic and benzoic acids, approximately 40 percent benzyl esters of these acids, and approximately 1.5 to 3 percent volatile oils. It is a yellow-brown, semisolid fluid that has an aromatic odor and taste. Tolu balsam is insoluble in water and soluble in alcohol, benzene, chloroform, ether, and almost insoluble in petroleum ether (Refs. 1 and 2).

(1) *Safety.* The Panel concludes that tolu balsam is safe as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth and throat when used within the proposed dosage limit set forth below.

Balsams have been used since antiquity for medicinal purposes. Tolu balsam is a feeble expectorant and has

been used in cough mixtures for many years. It has been administered in oral doses of 0.6 to 2 g. It is used as a tincture, as well as alone as the balsam. Tolu balsam syrup is employed as a vehicle for expectorant drugs, but it has no specific value for this purpose. Tolu balsam has been used in the treatment of tuberculosis, but it is worthless for this purpose (Ref. 2). Tolu balsam has been used by injection, apparently without any harmful effects. There are no animal and human toxicity data available, but it is not considered to have any degree of toxicity (Ref. 3). The toxicity rating, according to Gosselin (Ref. 4), is 3. Balsam tolu syrup has been included in the "National Formulary." It is no longer mentioned in any of the official compendia, the last being the 14th Edition of the "National Formulary" and the 1975 "U. S. Pharmacopeia."

(2) *Effectiveness.* The Panel concludes that there are insufficient data available to permit final classification of the effectiveness of tolu balsam as an OTC expectorant active ingredient for topical use on the mucous membranes of the mouth or throat when used within the proposed dosage limit set forth below.

Tolu balsam has been employed occasionally in the treatment of contaminated wounds for its stimulating and mild antiseptic action. It has also been used in the treatment of scabies, as an expectorant in inhalant mixtures for chronic bronchitis, and for the reduction of secretions. The Panel finds no reference to the use of tolu balsam as an expectorant in the teatment of lesions of the mouth or for treating sore throat or other afflictions of the throat (Ref. 2).

(3) *Proposed dosage.* Adults and children 3 years of age and older: Use 0.6 to 2.0 g of tolu balsam per dose in the form of rinses, mouthwashes, sprays, or drops, not more than three to four times daily. Use a lozenge containing 0.6 to 2.0 g of tolu balsam every 2 hours if necessary. For children under 3 years of age there is no recommended dosage except under the supervision of a dentist or physician.

(4) *Labeling.* The Panel recommends the Category I warnings for products containing oral health care expectorant active ingredients. (See part IX. paragraph B.1. above—Category I Labeling.) The Panel proposes the Category III indication for products containing oral health care expectorant active ingredients. (See part IX. paragraph B.3. below—Category III Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC oral health care expectorants. (see part IX. paragraph C. below—Data Required for Evaluation.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, p. 126, 1976.

(2) Osol, A., et al., "The Dispensatory of the United States of America," 25th Ed., J. B. Lippincott Co., Philadelphia, p. 1440, 1955.

(3) Boyd, E. M., "Expectorants and Respiratory Tract Fluids," Pharamacological Reviews, 6:521–542, 1954.

(4) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., Williams and Wilkins, Baltimore, section II, p. 156, 1976.

Category III Labeling

Proposed indication. "Aids in the removal of secretions and in the temporary relief of discomfort due to occasional sore throat and sore mouth."

C. Data Required for Evaluation

The Panel agrees that the protocols recommended in this document for studies required to bring a Category III drug into Category I are in keeping with the present state of the sciences of pharmacology and therapeutics and the art of medicine and do not preclude the use of any advancements or improvements in methods for obtaining data that might be developed in the future.

1. *General principles in the design of an experimental protocol for testing expectorant drugs.* The effectiveness of a topically applied expectorant is based on its ability to increase the flow of low-viscosity fluid from the salivary and other exocrine glands in the mouth and throat in order to facilitate the removal of inspissated sputum, cellular debris, purulent, and other matter from the mouth and the buccal cavity. Such purulent matter, secretions, and cellular debris often act as foreign bodies on a diseased or otherwise afflicted area and induce stimuli that cause pain and discomfort. Their presence may interfere with the normal spontaneous resolution of a disease process and interfere with healing. By aiding in the removal of such debris and secretions from irritated or ulcerated mucous membranes, expectorants may indirectly ease discomfort due to inflammatory or other pathologic processes. Determination of the increased volume of secretions induced by a topically applied expectorant is not as simple as it would seem. There are no established protocols for testing this category of product. There are no suitable objective methods for making such evaluations. This difficulty stems partly from a lack of basic knowledge concerning the biochemical and physiochemical nature of secretions in pathologic states involving the mouth and throat, as well as changes produced by expectorant drugs. It also stems from lack of knowledge concerning which property of the sputum and other fluids secreted into the mouth and throat correlates best with the ease of expectorant activity.

The volume of fluid secreted in the mouth and throat could be measured using volunteers as subjects. The subject could expectorate the secretions into a receptacle for a selected period of time and the volume, color, viscosity, density, pH, and other chemical and physical characteristics noted to obtain baseline or control data. The drug should be applied as proposed in the labeling and the subject told not to swallow. After the proper time interval necessary for the drug to act has elapsed, the subject could expectorate at selected intervals into a container and the volume, viscosity, and appearance of the fluid observed; the change in volume and other parameters resulting from the drug's action could be compared with those noted in the control. Trotti and Adriani (Ref. 1) measured secretory activity of the buccal glands and the salivary glands by applying strips of pure cotton that had been previously weighed, in the oral cavity between the cheek and the gingiva. The cotton absorbed the secreted fluids. These cotton strips were removed after 15 minutes and the gain in weight was determined to obtain the control value of normally secreted fluid. The process was repeated at 15 minute intervals after administration of the test drug until the secretory activity of the buccal and salivary glands returned to the control level. Subjects participating in a study of topical effect of expectorants must be cautioned not to swallow the drug since it may be absorbed and act systemically as well as topically. Similar techniques can be applied using patients with oral and pharyngeal pathologic states. The patient's subjective evalution of the effects of the drug must also be noted and recorded and relied upon for the assessment of expectorant activity.

2. *Selection of patients.* When patients are used as subjects, two categories of patient types may be selected. One patient type should be chosen for a cross-over study. This patient type should include subjects with a chronic condition, having a tendency to accumulate secretions in the mouth and throat due to chronic stomatitis, pharyngitis, and other conditions. The second patient type should include subjects with an acute inflammatory response, such as

pharyngitis, tonsillitis, stomatitis, or other oral disease, which produces viscous secretions necessitating the use of an expectorant. Because the production of secretions may be influenced by the diseased state of various organ systems, such as the circulatory, nervous system, or gastrointestinal system, patients with heart failure, renal and other diseases, must be excluded. All efforts should be made to maintain the same relative state of hydration throughout the study using intravenous fluids, if necessary. Patients should not be taking drugs that may affect the secretion of sputum or saliva, such as the anticholinergics, cholinergics, or antihistamines. Nonsmokers are preferable as subjects, but if smokers are used they must have abstained from smoking for at least 24 hours. The impact that environmental factors, such as temperature, humidity, and degree of air pollution might have on secretory activity should be recognized and controlled. As many variable factors as possible should be eliminated.

3. *Methods of study.* The double-blind, cross-over design may be used in patients with chronic oral or pharyngeal diseases accompanied by exudates and secretions. Suitable baseline studies must be performed over a selected period of time, prior to the administration of the test drugs. During this period, the following subjective responses should be noted: ease of expectoration, sensation experienced, effect on symptoms; objective responses such as volume, character of the fluid, color, viscosity, pH, and other parameters the investigator deems necessary should also be observed.

Following the baseline studies, similar observations should be made at appropriate time intervals after the administration of the drug and a placebo. The placebo must be indistinguishable from the test drug. Both are to be administered to subjects in a randomized fashion and at a dose and time sequence recommended in the labeling of the product for OTC use.

A randomized double-blind study, consisting of patients with acute pathologic processes with symptoms localized in the mouth and throat, should also be used. Patients with similar lesions should be considered in groups. The drug and the placebo should be applied in a dose and at a time sequence recommended for a minimum of 3 days. Similar observations as discussed above must be made to evaluate effectiveness. The Panel is aware of the fact that controlled observations made during a prior baseline period might not be obtainable with this type model and that most of the data are subjective and that little or none of it is objective. Many more subjects would be needed in such a study. Individual patient diaries should be kept in which are recorded at the time observations are made, the type of symptoms, their duration and severity, time of observation, date, and other pertinent data. Adverse reactions should be noted. The type, symptoms, duration, treatment, and disposition of the subject should be noted.

4. *Interpretation of the data.* Evidence of drug effectiveness is required from a minimum of three positive studies based on the results of three different investigators or laboratories. At least one of these three studies must be of the cross-over technique performed in patients with chronic disease of the oral cavity. Approximately 20 to 30 patients will be required for the cross-over study described above. Because of the marked variability in sputum production in acute oral or pharyngeal conditions, compared to that of chronic conditions, day-to-day observations must be made. Since spontaneous improvement of the symptoms is part of the natural history of the disease process, much larger number of patients, possibly 75 or more, must be studied in this group. The subjective indices to be evaluated can be scored and subjected to statistical analysis. A P value of 0.05 or less should be obtained. Ninety-five percent confidence level means acceptable as evidence of a drug effect when compared with a placebo. All data submitted to the FDA must present both favorable and unfavorable results.

5. *Evaluation of study.* Tests for safety of expectorant ingredients not reviewed by this Panel should involve the usual animal studies and observations in humans relevant to various organ systems, that is, cardiovascular, venous, etc., as described elsewhere. (See part II. paragraph C. above—Determination of Safety and Effectiveness.)

Reference

(1) Trotti, W., and J. Adriani, "A Comparison of the Antisecretory and Vagolytic Effects of the Belladonna Alkaloids and Certain Synthetic Parasympatholytic Drugs," *Surgery*, 44:515–519, 1958.

List of Subjects in 21 CFR Part 356

Over-the-counter drugs.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p) 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding new Part 356, to read as follows:

PART 356—ORAL HEALTH CARE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
356.1 Scope.
356.3 Definitions.

Subpart B—Active Ingredients

356.10 Anesthetic/analgesic active ingredients.
356.11 Antimicrobial active ingredients. [Reserved]
356.12 Astringent active ingredients.
356.14 Debriding agent active ingredients.
356.15 Decongestant active ingredients. [Reserved]
356.16 Demulcent active ingredients.
356.17 Expectorant active ingredients. [Reserved]
356.20 Permitted combinations of active ingredients.

Subpart C [Reserved]

Subpart D—Labeling

356.50 Labeling of anesthetic/analgesic drug products.
356.51 Labeling of antimicrobial drug products.
356.52 Labeling of astringent drug products.
356.54 Labeling of debriding agent drug products.
356.55 Labeling of decongestant drug products.
356.56 Labeling of demulcent drug products.
356.57 Labeling of expectorant drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321)p), 352, 355, 371); secs.. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

Subpart A—General Provisions

§356.1 Scope.

(a) An over-the-counter oral health care drug product in a form suitable for topical administration is generally recognied as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1.

(b) references in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 356.3 Definitions.

As used in this part:

(a) *Oral health care duug.* A drug product applied topoically for the proper care of the mouth, including the temporary relief of symptons of the mouth and throat, for example, occasional minor sore throat or mouth soreness.

(b) *Anesthetic/analgesic.* A substance applied topically to an epithelial surface (e.g., skin or mucous membrane) that relieves pain without necessarily abolishing other sensations (analgesic) or a substance applied topically that completely blocks pain receptors resulting in a sensation of numbness and abolition of response to painful stimuli (anesthetic).

(c) *Antimicrobial agent.* A compound or substance that kills microorganisms or prevents or inhibits their growth and reproduction and contributes to claimed effects of the product in which it is included.

(d) *Astringent.* An agent that causes contraction of the tissues or arrest of secretions by coagulation of proteins on a cell surface.

(e) *Debriding agent.* An agent which causes the removal of foreign material or devitalized or contaminated tissue from or adjacent to a traumatic or infected lesion to expose surrounding healthy tissue.

(f) *Decongestant.* An agent that reduces congestion or swelling. In over-the-counter use on mucous membranes the term generally refers to adrenergic drugs that act by vasoconstriction.

(g) *Demulcent.* A bland, inert agent that soothes and relieves irritation of inflamed or abraded surfaces such as mucous membranes.

(h) *Expectorant.* An agent that promotes the expectoration (spitting) of mucus or of respiratory tract secretions by decreasing the viscosity.

(i) *Gargle.* A fluid, usually flavored or medicated or both, but not necessarily so, which is intended to be used to rinse or bathe the posterior part of the oral cavity, with the additional intent to expel mucus from the throat.

(j) *Mouthwash (rinse).* A solution used for rinsing the mouth, not necessarily for medicinal purposes.

(k) *Oral cavity (mouth).* The cavity of the mouth and associated structures, including the cheeks, palate, oral mucosa, glands where ducts open into it, the teeth, and the tongue.

Subpart B—Active Ingredients

§ 356.10 Anesthetic/analgesic active ingredients.

The active ingredients of the product may consist of any of the following when used within the dosage limits established for each ingredient:

(a) Aspirin.
(b) Benzocaine.
(c) Benzyl alcohol.
(d) Dyclonine hydrochloride.
(e) Hexylresorcinol.
(f) Menthol.
(g) Phenol.
(h) Phenolate sodium.
(i) Salicyl alcohol.

§ 356.11 Antimicrobial active ingredients. [Reserved]

§ 356.12 Astringent active ingredients.

The active ingredients of the product may consist of any of the following when used within the dosage limits established for each ingredients:

(a) Alum.
(b) Zinc chloride.

§ 356.14 Debriding agent active ingredients.

The active ingredients of the product may consist of any of the following whenused within the dosage limits established for each ingredient:

(a) Carbamide peroxide.
(b) Hydrogen peroxide.
(c) Sodium bicarbonate.

§ 356.15 Decongestant active ingredients. [Reserved]

§ 356.16 Demulcent active ingredients.

The active ingredients of the product may consist of any of the following when used within the dosage limits established for each ingredient:

(a) Elm bark.
(b) Gelatin.
(c) Glycerin.
(d) Pectin.

§ 356.17 Expectorant active ingredients. [Reserved]

§ 356.20 Permitted combinations of active ingredients.

(a) An active ingredient identified in § 356.10, § 356.11, § 356.12, § 356.14, § 356.15, § 356.16, and § 356.17 may be combined with one or more active ingredients from the same section if each active ingredient is present in full therapeutic doses or subtherapeutic doses where a subtherapeutic dose is appropriate, only when there is a clear demonstration that there is an improvement of safety or enhanced effectiveness or both.

(b) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any antimicrobial active ingredient identified in § 356.11.

(c) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any astringent active ingredient identified in § 356.12.

(d) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any decongestant active ingredient identified in § 356.15.

(e) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any demulcent active ingredient identified in § 356.16.

(f) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any antimicrobial active ingredient identified in § 356.11 and with any astringent active ingredient identified in § 356.12.

(g) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any antimicrobial active ingredient identified in § 356.11 and with any decongestant active ingredient identified in §356.15.

(h) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any antimicrobial active ingredient identified in § 356.11 and with any demulcent active ingredient identified in § 356.16.

(i) Any antimicrobial active ingredient identified in § 356.11 may be combined with any astringent active ingredient identified in § 356.12.

(j) Any antimicrobial active ingredient identified in § 356.11 may be combined with any decongestant active ingredient identified in § 356.15.

(k) Any antimicrobial active ingredient identified in § 356.11 may be combined with any demulcent active ingredient identified in § 356.16.

Subpart C [Reserved]

Subpart D—Labeling

§ 356.50 Labeling of anesthetic/analgesic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as follows.

(1) For all products containing aspirin identified in § 356.10(a), the product is identified as an "oral health care analgesic."

(2) For all products containing an ingredient identified in § 356.10(b) through § 356.10(i), the product is identified an an "oral health care anesthetic" or as an "oral health care anesthetic/analgesic."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "For the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.10.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing aspirin identified in § 356.10(a).* (i) "Do not use if you are sensitive or allergic to aspirin."

(ii) "Do not use if you have a bleeding problem or if you are taking an anticoagulant drug."

(iii) "Do not use without a physician's or dentist's advice if your mouth is highly irritated or ulcerated."

(iv) "Do not use after surgery in the mouth and throat."

(v) "Provide good fluid intake when aspirin or aspirin-containing preparations are used."

(3) *For products containing any ingredient identified in § 356.10 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing aspirin identified in § 356.10(a).* The topical dosage of aspirin is incorporated in a chewing gum base. Adults: chew 420 milligrams of aspirin as needed, not to exceed 3,360 milligrams in 24 hours. Children 6 to under 12 years of age: Chew 210 to 420 milligrams of aspirin as needed, not to exceed 1,680 milligrams in 24 hours. Children 3 to under 6 years of age: Chew 210 milligrams of aspirin as needed, not to exceed 630 milligrams in 24 hours. For children under 3 years of age, there is no recommended dosage except unduer the advice and supervision of a dentist or physician.

(2) *For products containing benzocaine identified in § 356.10(b).* Topical dosage for adults and children 3 years of age and older is a 5- to20-percent solution (spray) or gel used not more than three to four times daily or a lozenge containing 2 to 15 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(3) *For products containing benzyl alcohol identified in § 356.10(c).* Topical dosage for adults and children 3 years of age and older is a 0.88- to 10-percent solution (rinse, mouthwash, spray, or drops) used not more than three to four times daily or a lozenge containing 100 to 500 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *For products containing dyclonine hydrochleride identified in § 356.10(d).* Topical dosage for adults and children 3 years of age and older is a 0.05- to 0.10-percent solution (rinse, mouthwash, gargle, or spray) used not more than three to four times daily or a lozenge containing 1 to 3 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(5) *For products containing hexylresorcinol identified in § 356.10(e).* Topical dosage for adults and children 3 years of age and older is a 0.05- to 0.1-percent solution (rinse, mouthwash, gargle, or spray) used not more than three to four times daily or a lozenge containing 2 to 4 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(6) *For products containing menthol identified in § 356.10(f).* Topical dosage for adults and children 3 years of age and older is a 0.04- to 2.0-percent solution (rinse, mouthwash, gargle, or spray) used not more than three to four times daily or a lozenge containing 2 to 20 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(7) *For products containing phenol identified in § 356.10(g).* Topical dosage for adults and children 3 years of age and older is a 0.5- to 1.5-percent aqueous solution (rinse, mouthwash, gargle, or spray) used not more than three to four times daily or a lozenge containing 10 to 50 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(8) *For products containing phenolate sodium identified in § 356.10(h).* Topical dosage for adults and children 3 years of age and older is an aqueous solution (rinse, mouthwash, gargle, or spray) containing phenolate sodium equivalent to 0.5 to 1.5 percent phenol used not more than three to four times daily or a lozenge containing phenolate sodium equivalent to 10 to 50 milligrams of phenol taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(9) *For products containing salicyl alcohol identified in § 356.10(i).* Topical dosage for adults and children 3 years of age and older is a 1- to 6-percent aqueous solution (rinse, mouthwash, gargle, or spray) used not more than three to four times daily or a lozenge containing 50 to 100 milligrams taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

§ 356.51 Labeling of antimicrobial drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral health care antimicrobial."

(b) *Indications.* [Reserved]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.11.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.11 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(d) *Directions.* [Reserved]

§ 356.52 Labeling of astrigent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral health care astringent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "Aids in the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.12.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.12 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing alum identified in § 356.12(a).* Topical dosage for adults and children 3 years of age and older is a 0.2- to 0.5-percent aqueous solution (rinse, gargle, or spray) or swab used not more than three to four time daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(2) *For products containing zinc chloride identified in § 356.12(b).* Topical dosage for adults and children 3 years of age and older is a 0.1- to 0.25-percent solution (rinse or mouthwash) or swab used three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

§ 356.54 Labeling of debriding agent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an"oral health care debriding agent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "Aids in the removal of phlegm, mucus, or other secretions in the temporary relief of discomfort due to occasional sore throat and sore mouth."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.14.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to childen under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.14 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(d) *Directions.* The labeling of the products contains the following information under the heading "Directions."

(1) *For products containing carbamide peroxide identified in § 356.14(a).* Topical dosage for adults and children 3 years of age and older is a solution (rinse, gargle, or spray) containing 10 to 15 percent carbamide peroxide in anhydrous glycerin or water used not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(2) *For products containing hydrogen peroxide identified in § 356.14(b).* Topical dosage for adults and children 3 years of age and older is a solution (rinse, mouthwash, gargle, or spray) containing hydrogen peroxide (3 percent) diluted with an equal part of water or swab used not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(3) *For products containing sodium bicarbonate identified in § 356.14(c).* Topical dosage for adults and children 3 years of age and older is a solution (gargle) prepared by combining 5 to 10 percent sodium bicarbonate with one-half teaspoonful of sodium chloride (table salt) in a glass (8 ounces) of warm water used not more than three to four times daily. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

§ 356.55 Labeling of decongestant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral health care decongestant."

(b) *Indications.* [Reserved]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.15.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.15 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(d) *Directions.* [Reserved]

§ 356.56 Labeling of demulcent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral health care demulcent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "Aids in the temporary relief of minor discomfort and protects irritated areas in sore mouth and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.16.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.16 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

(3) *For products containing glycerin identified in § 356.16(c).* "Do not use full strength. Dilute with two or three volumes of water."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing elm bark identified in § 356.16(a).* Topical dosage for adults and children 3 years of age and older is a lozenge (agar or water-soluble gum base) containing 10 to 15 percent elm bark taken every 2 hours, if necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(2) *For products containing gelatin identified in § 356.16(b).* Topical dosage for adults and children 3 years of age and older is a 5- to 10-percent aqueous solution (rinse, gargle, or spray), swab, or lozenge or gel containing a sufficient quantity to form a solid or semisolid state used as often as necessary. For children under 3 years of age, there is no recommended dosage except under the advice of a dentist or physician.

(3) *For products containing glycerin identified in § 356.16(c).* Topical dosage for adults and children 3 years of age and older is a solution (rinse, mouthwash, or spray) or swab containing glycerin diluted with 2 or 3 parts of water used as often as necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

(4) *For products containing pectin identified in § 356.16(d).* Topical dosage for adults and children 3 years of age and older is a solution (rinse, gargle, or spray), swab, or lozenge or gel in quantities sufficient to form a solid or semisolid state, used as often as necessary. For children under 3 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician.

§ 356.57 Labeling of expectorant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral health care expectorant."

(b) *Indications.* [Reserved]

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.17.* (i) "Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by a physician."

(ii) "Discontinue use and consult a physician if irritation persists or increases, or a rash appears on the skin."

(2) *For products containing any ingredient identified in § 356.17 when used in the form of gargles, mouthwashes, or rinses.* "Try to avoid swallowing this product."

Interested persons may, on or before August 23, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before September 22, 1982. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: May 13, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-13835 Filed 5-24-82; 8:45 am]

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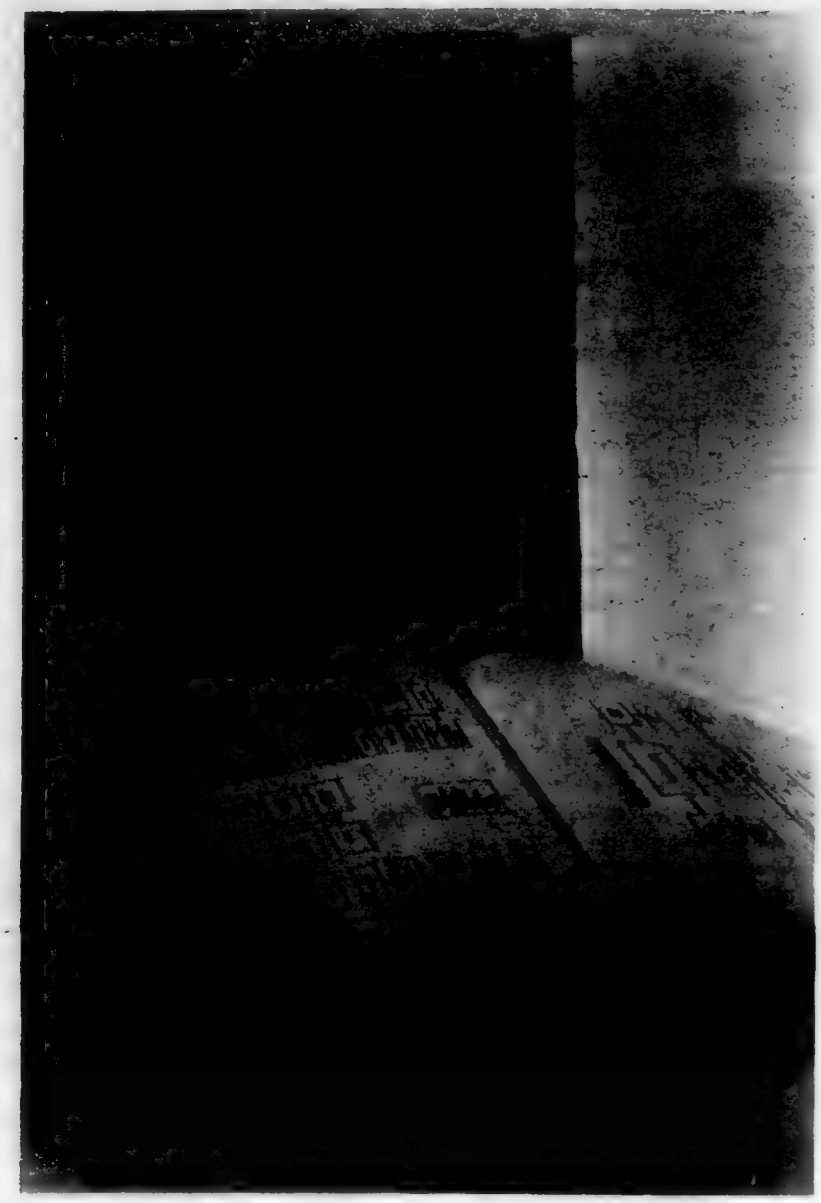

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Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished or transferred subsequent to March 4, 1933.

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Vol. 47 No. 102
Pages 22931-23134

federal register

Wednesday
May 26, 1982

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Authority Delegations (Government Agencies)
Agriculture Department

Coal Mining*
Surface Mining Reclamation and Enforcement Office

Credit Unions
National Credit Union Administration

Electric Utilities
Federal Energy Regulatory Commission

Exports
International Trade Administration

Income Taxes
Internal Revenue Service

Milk Marketing Orders
Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

Old-Age, Survivors and Disability Insurance
Social Security Administration

Organization and Functions (Government Agencies)
Customs Service

Penalties
Internal Revenue Service

Pesticides and Pests
Environmental Protection Agency

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Public Lands
Land Management Bureau

Radio Broadcasting
Federal Communications Commission

Radio Telephone
Federal Communications Commission

Railroads
Interstate Commerce Commission

Television
Federal Communications Commission

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523–5240 (not a toll free number).

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Presidential Documents

Title 3—

The President

Executive Order 12364 of May 24, 1982

The Presidential Management Intern Program

By the authority vested in me as President by the Constitution and laws of the United States of America, including Sections 3301 and 3302 of Title 5 of the United States Code, and in order to provide for the recruitment and selection of outstanding employees for careers in public sector management, it is hereby ordered as follows:

Section 1. There is hereby reconstituted the Presidential Management Intern Program. The purpose of the Program is to attract to the Federal service outstanding men and women from a variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals selected for the Program will be known as Presidential Management Interns.

Sec. 2. Eligible individuals are those who have pursued a course of study at the graduate level which demonstrates both an exceptional ability and the commitment stated above. Such individuals at the time of application must have recently received or must expect to receive soon an appropriate advanced degree.

Sec. 3. (a) The Office of Personnel Management shall provide specific guidance as to what constitutes an appropriate advanced degree.

(b) The Office of Personnel Management shall develop appropriate procedures for the recruitment, nomination, screening, placement and continuing career development of outstanding individuals possessing the qualifications described above.

(c) In developing those procedures, the Office of Personnel Management shall be guided by the following principles and policies:

(1) The number of new Presidential Management Interns selected shall not exceed two hundred in any fiscal year.

(2) Final placement of Presidential Management Interns shall be made by the head of the department, agency, or component within the Executive Office of the President in which the Intern is to be employed, or by the designee thereof.

(3) Universities and colleges participating in the Program shall make nominations for the Program. In making nominations, they shall establish competitive selection processes and procedures to ensure that all applicants receive careful and thorough review.

(4) The procedures so developed shall provide for such affirmative actions as the Office of Personnel Management deems appropriate to assure equal employment opportunity. The procedures shall also provide for the application of appropriate veterans preference criteria.

Sec. 4. (a) Successful candidates shall be appointed as Presidential Management Interns to positions in Schedule A of the excepted service. The appointment shall not exceed two years unless extended by the Federal department or agency, with the concurrence of the Office of Personnel Management, for up to one additional year.

(b) Tenure for the Presidential Management Interns shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with an Intern's educational background and career interests, and the purposes of this Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Interns throughout the internship period.

(3) Except as provided in subsection (4) of this Section, service as an Intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to Interns who satisfactorily complete their internships and meet all other requirements prescribed by the Office of Personnel Management.

Sec. 5. Those individuals who are currently undergoing the process of selection, or who were selected or appointed under the provisions of Executive Order No. 12008 and who have not at this time completed their scheduled period of excepted service, may continue their internships under the terms of this Order.

Sec. 6. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

Sec. 7. Executive Order No. 12008 of August 25, 1977 is revoked.

Ronald Reagan

THE WHITE HOUSE,
May 24, 1982.

[FR Doc. 82-14475
Filed 5-24-82; 4:39 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12365 of May 24, 1982

Foreign Assistance and Arms Control

By the authority vested in me as President of the United States of America by Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381) and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. Executive Order No. 12163, as amended, entitled "Administration of Foreign Assistance and Related Functions," is further amended as follows:

(a) At the end of Section 1-201(a) add the following new paragraphs:

"(22) Section 725 of the International Security and Development Cooperation Act of 1981;

"(23) Section 726 of the International Security and Development Cooperation Act of 1981;

"(24) Section 728(b) and (d) of the International Security and Development Cooperation Act of 1981.".

(b) In Section 1-701(d) delete "659" and "and 670(b)(1)" and insert "620E, 670(a)(2), 670(b)(2), and 670(b)(3)" between "669(b)(1)" and "of the Act.".

(c) In Section 1-102(d), delete "301(e)(3)".

(d) In Section 1-201(a)(1), delete "301(b),", "301(e)(3),", and "302(a)(3),".

(e) In Section 1-201(a)(11), delete subsections "(b)," and "(i)," of the reference to Section 620.

(f) Delete Sections 1-201(a)(17) and (19) and renumber the remaining paragraphs accordingly.

(g) In Section 1-201(b), delete "620(i),".

(h) In Section 1-501(a), delete paragraph (1) and renumber the remaining paragraphs accordingly.

(i) Delete Section 1-701(f) and reletter the remaining subsections accordingly.

(j) In Section 1-701(h), delete everything following "(h)" to the end of the section and insert in lieu thereof: "Those under section 520 of the Foreign Assistance and Related Programs Appropriations Act, 1982, with respect to findings.".

Sec. 2. Executive Order No. 11958, as amended, entitled "Administration of Arms Export Controls," is further amended as follows:

(a) In Section 1(n), add at the end thereof: "The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of the Treasury on any determination proposed under the authority of Section 42(c) of the Act.".

(b) In Section 1(o), delete everything following "(o)" to the end of the section and insert in lieu thereof: "Those under Sections 52(b) and 53 of the Act to the Secretary of Defense.".

(c) At the end of Section 1, insert the following new paragraph: "(p) Those under Sections 61 and 62(a) of the Act to the Secretary of Defense.".

Ronald Reagan

THE WHITE HOUSE,
May 24, 1982.

[FR Doc. 82-14476
Filed 5-24-82; 4:40 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 102
Wednesday, May 26, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Regional Office; Location Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(2) (45 FR 80467, Dec. 5, 1980) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, to establish a new office address for the location of the Authority's New York, New York Regional Office. The New York Regional Office's telephone numbers have not been changed.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT: Laurence M. Evans, Assistant General Counsel (202) 382–0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code. (5 CFR Part 2400 *et seq.* (1981).) These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1981). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the changed office address of the New York, New York Regional Office of the Authority. The New York Regional Office's telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(2) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1981)) is amended to read as follows:

Appendix A to 5 CFR Ch. XVI—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(2) *New York, New York Regional Office*—26 Federal Plaza, Room 24–102, New York, New York 10278. Telephone: FTS–264–4934; Commercial—(212) 264–4934.

* * * * *

(5 U.S.C. 7134)

Dated: May 20, 1982.

Federal Labor Relations Authority.

For the Authority.

James J. Shepard,

Executive Director.

For the General Counsel.

S. Jesse Reuben,

Deputy General Counsel.

[FR Doc. 82-14323 Filed 5-25-82; 8:45 am]
BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary and general officers of the Department to assign certain functional responsibilities under the Lacey Act Amendments of 1981.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782 (301–436–5591).

SUPPLEMENTARY INFORMATION: The delegations of authority by the Secretary of Agriculture and general officers of the Department are being amended to provide that the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service (APHIS), are responsible for administering the provisions of the Lacey Act Amendments of 1981 (16 U.S.C. 3401–3408), which pertain to the importation and exportation of certain plants. The plants protected by the Lacey Act Amendments of 1981 are any wild plants which are indigenous to any States which are either listed on (A) an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or (B) listed pursuant to any State law that provides for the conservation of plants threatened with extinction.

The Department believes that this delegation conforms to the mission of APHIS and that placing responsibility for the provisions of the Lacey Act Amendments of 1981 with the Assistant Secretary for Marketing and Inspection Services and with the Administrator, Animal and Plant Health Inspection Service, will enable the Department to serve the public more efficiently. Therefore, the delegations of authority by the Secretary of Agriculture and general officers of the Department are being amended to provide that the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service, are responsible for enforcing the provisions of the Lacey Act Amendments of 1981 which pertain to the importation or exportation of plants protected by these Amendments.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291.

Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b)(35) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(35) Lacey Act Amendments of 1981 (16 U.S.C. 3401–3408).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding a new paragraph (a)(36) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(36) Lacey Act Amendments of 1981 (16 U.S.C. 3401–3408).

For Subpart C:
Dated: May 20, 1982.

John R. Block,

Secretary of Agriculture.

For Subpart F:
Dated: May 20, 1982.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc 82-14292 Filed 5-25-82; 8:45 am]
BILLING CODE 3410-01-M

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7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to assign functional responsibilities for the Federal Plant Pest Act, as amended by Section 1119 of Pub. L. 97–98, and to reserve to the Secretary the authority, under specific criteria, to declare that an extraordinary emergency exists because of the presence of certain plant pests which seriously threaten crops, other plant life or plant products of the United States.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782 (301–436–5591).

SUPPLEMENTARY INFORMATION: The delegations of authority by the Secretary of Agriculture and general officers of the Department are being amended to provide that the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service (APHIS), are responsible for protecting against the introduction and dissemination of plant pests through enforcement of the provisions of the Federal Plant Pest Act, as amended, except that the authority to declare that an extraordinary emergency exists is reserved to the Secretary. There is authority for such a determination, whenever, among other things, the Secretary determines that an extraordinary emergency exists because of the presence of certain plant pests on any premises in the United States, and that the presence of such plant pests anywhere in the United States threatens the crops, other plant life, or plant products of the United States.

The Department believes that this delegation conforms to the mission of APHIS and that it will enable the Department to serve the public more efficiently. Therefore, the delegations of authority by the Secretary of Agriculture and general officers of the Department are being amended to provide that the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service, are responsible for enforcing the Federal Plant Pest Act, as amended, with the authority contained in the Act for the declaration of an extraordinary emergency reserved to the Secretary.

This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by revising paragraph (b)(5) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

* * * * *

3. Section 2.18 is amended by adding a new paragraph (b)(4) to read as follows:

§ 2.18 Reservations of authority.

* * * * *

(b) * * *

(4) Determination that an extraordinary emergency exists under the criteria in Section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

4. Section 2.51 is amended by revising paragraph (a)(5) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

* * * * *

For Subpart C:

Date: May 20, 1982.

John R. Block,

Secretary of Agriculture.

For Subpart F:

Date: May 20, 1982.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 82-14293 Filed 5-25-82; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain order provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the order. The suspension removes the limit on such movements of milk for May 1982 through August 1982. The action is taken in response to a request by four cooperative associations who represent a substantial number of producers supplying the market to prevent uneconomic movements of milk not needed for fluid use.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Suspension: Issued April 26, 1982; published April 30, 1982 (47 FR 18603).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

Also, it has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the issuance of the suspension in time to include May 1982 in the suspension period. The initial request for this action was received on April 12, 1982. A notice of proposed suspension was issued on April 26, 1982, inviting interested parties to comment on the proposed action by May 7, 1982.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Oregon-Washington marketing area.

Notice of proposed rulemaking was published in the **Federal Register** (47 FR 18603) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. The proponents of the suspension filed comments supporting the suspension. No opposing comments were received.

After considering all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of May through August 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the third sentence of paragraphs (a) and (b) of § 1124.11, the word "not".

Statement of consideration

This action removes the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants during the months of May through August 1982. The order now provides that during any month a cooperative association may divert a total quantity of producer milk not in excess of the total quantity received during the month from all member producers at pool plants. Similarly, the operator of a pool plant may divert a total quantity of producer milk not in excess of the total quantity received from producers (for which the operator of such plant is the handler during the month) at such pool plant.

The suspension was requested by four cooperative associations who represent a substantial number of producers on the market. The basis of the request was that the present diversion limitation provisions will not accommodate the efficient handling of the milk of some of their members who are regularly associated with the market. The cooperatives indicate that this is because of the present buildup in the market's milk supplies due to a substantial increase in producer deliveries while Class I sales have declined. They state that this marketing situation is expected to continue through August 1982. The cooperatives contend that suspension of the diversion limits will be needed beginning in May to prevent unnecessary and uneconomic movements of milk.

A review of current market data indicates that milk supplies available to the market have increased substantially during recent months. For example, producer receipts are up nearly 7 percent for the first 3 months of 1982 compared to the same months of 1981. At the same time, Class I sales have declined nearly 3 percent during the first 3 months of 1982 from the comparable period in 1981.

Under these supply-demand conditions, and without the suspension, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to manufacturing plants for surplus use. This would result in costly and inefficient movements of milk.

In view of the circumstances, it is concluded that the aforesaid provisions should be suspended to ensure the orderly marketing of producer milk supplies that are not needed for fluid use. This action will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions in the marketing area in that the most efficient method of handling milk not needed for the fluid market is by direct movements from producers' farms to manufacturing outlets. This suspension allows for such economical movements of milk while the dairy farmers involved retain producer status.

(b) This suspension does not require of persons affected substantial or extensive preparations prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning the suspension. There were no comments filed in opposition to the proposed suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for May 1982 through August 1982.

(Secs. 1-19, 48 Stat. 31, as amended, 7 U. S. C. 601-674)

Effective date: May 26, 1982.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 21, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-14318 Filed 5-25-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain order provisions affecting the regulatory status of a distributing plant. The suspension makes inoperative for May through August 1982 the requirement that a distributing plant must dispose of at least 50 percent of its milk receipts as fluid milk products on routes before the plant is eligible to have all of its milk pooled and priced under the order. This suspension, which is based on information considered at a public hearing in February 1982, was requested by a handler who operates two distributing plants in the market. The suspension recognizes the current marketing situation of the handler and is in the interest of producers and other handlers associated with the market as well.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202-447-7311).

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued January 4, 1982; published January 7, 1982 (47 FR 778).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Further, it has been determined that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

It is hereby found and determined that for the months of May through August 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1137.7(a)(1) the words "an amount equal to 50 percent or more of the total receipts of".

Statement of Consideration

The suspension makes inoperative for May through August 1982 the provision that at least 50 percent of the receipts of milk at a pool distributing plant be disposed of as fluid milk products on routes. The suspension was requested by Beatrice Foods Co., a proprietary handler who operates two pool distributing plants under the order.

During recent years, petitioner's Greeley, Colorado, distributing plant has had considerable difficulty in meeting the 50 percent route disposition requirement during the late spring and summer months. This was because of the loss of substantial Class I sales due to seasonal school closings and because the handler processes much of its Class II product volume for both of its distributing plants at the Greeley plant. The pooling problem has continued until September when schools reopen. Petitioner might have been able to assure itself of meeting the 50 percent route disposition requirement by moving considerable quantities of fluid milk products between its two distributing plants associated with the market, but that would have involved excessive handling and hauling costs and would have disrupted the production schedules of the two plants. To avoid the unneeded shipments, the handler requested a suspension of the 50 percent route disposition requirement for the months of July and August 1980 and May through August 1981. To accommodate this problem, the pertinent provisions of the order were suspended (45 FR 51542 and 46 FR 27627).

The handler's pooling problems were explored at a public hearing held February 2, 1982, at Denver, Colorado. At the hearing, the witness for the handler testified that the plant at Greeley probably would continue to have problems meeting a 50 percent route disposition requirement during the months when schools are closed. This testimony was in support of a proposal of the Mountain Empire Dairymen's Association, Inc., that would amend the order to provide for the unit pooling of distributing plants. There was no opposition to the proposal.

A decision on whether to adopt the proposed amendment will be issued when an evaluation of the hearing record is completed. In the interim, however, suspension of the pooling requirement that a distributing plant must dispose of at least 50 percent of its receipts on routes for the months of May through August 1982 is warranted on the basis of the hearing evidence. The suspension will enable Beatrice Foods Co. to maintain the continued pooling of its Greeley distributing plant without the handler, or the cooperative association that supplies milk to it, incurring excessive transportation costs solely to pool the Greeley distributing plant. Also, this will permit the producers regularly supplying the plant to continue to share uniformly with other producers supplying the market in the proceeds from the market's Class I sales.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that the suspension does not require of persons affected substantial or extensive preparation prior to the effective date and the marketing problems that provide the basis for this suspension were fully reviewed at a public hearing and all interested parties had the opportunity of being heard on this matter.

Therefore, good cause exists for making this order effective upon **Federal Register** publication.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of May through August 1982.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: May 26, 1982.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 21, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-14319 Filed 5-25-82; 8:45 am]
BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board is issuing a final rule on involuntary liquidations of insolvent Federal credit unions. The final rule revises former Board policy by eliminating the availability of administrative hearings for Federal credit unions found to be insolvent pursuant to 12 CFR 747.702–747.704. This action will protect the National Credit Union Share Insurance Fund and creditors of the insolvent Federal credit unions by reducing the delay and financial losses that have occurred during the hearing process. It will also reduce the costs to the National Credit Union Administration in carrying out the mandate of Section 207 of the Federal Credit Union Act (12 U.S.C. 1787).

EFFECTIVE DATE: June 25, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Anne K. Scully, Attorney-Advisor, Office of General Counsel, at the above address, telephone (202) 357–1030.

Supplementary Information

The National Credit Union Administration received twelve comments in response to the February 19, 1982 publication of its proposed rule (47 FR 7441). Generally, eight commentors favored and four commentors opposed the proposal. Those commentors who supported the elimination of the administrative hearings thought that the proposed change was in the best economic interests of all concerned, including creditors of insolvent credit unions, NCUA, the National Credit Union Share Insurance Fund (NCUSIF), all Federally insured credit unions and members of the insolvent credit union. They felt that elimination of undue financial strain on the NCUSIF as well as resultant savings to credit unions in supervision fees and insurance premiums were key arguments in favor of the proposal.

Prior Consent Decree

Two commentors who opposed the proposed rule expressed concern that the regulation proposed to be modified (concerning the administrative hearing procedure) was specifically promulgated pursuant to a consent decree, entered April 11, 1972, in *Pennsylvania Credit Union League v. Nickerson*, Civ. Action No. 71–2754 (E.D. Pa., 1972). That case involved the actions of NCUA in rejecting applications for the insurance of member accounts in federally chartered credit unions resulting in the cancellation of their Federal charters under the then existing Section 201(c)(2) and 201(d) of the Federal Credit Union Act, Pub. L. 91–468, 84 Stat. 994 (Oct. 19, 1970).

After consideration of this issue, the Board believes the consent decree is limited to those facts and distinguishable from the actions contemplated by the final rule.

First, the then existing section 201(d), 84 Stat. 994 (which required the Administrator to cancel the charter of a Federal credit union if its application for insurance was rejected) no longer exists. Section 201(d) was repealed on November 10, 1978 by section 504(c) of Pub. L. 95–630, 92 Stat. 3628.

Second, the authority to cancel a Federal charter under the then existing section 201(d) could only be exercised in the event that an existing Federal credit union's application for the then newly mandated Federal share insurance was rejected under the then existing section 201(c)(2). The situation giving rise to *Pennsylvania Credit Union League v. Nickerson* could not exist today because there are no federally chartered credit unions that are not already federally insured. The closest analogy would be to the cancellation of insurance under section 206(b) of the Federal Credit Union Act (since section 201(a) requires Federal credit unions to have Federal share insurance). Unlike the action contemplated by the final rule, the cancellation of insurance must by statute be accompanied by a hearing. The right to a hearing in the event of the cancellation of insurance is provided by Part 747 Subpart B of the National Credit Union Administration Rules and Regulations (12 CFR Part 747 Subpart B) and is left unchanged by the final rule.

Third, the action contemplated by the final rule applies only to Federal credit union found to be *insolvent* pursuant to section 120(b)(1) and 207(a)(1) of the Federal Credit Union Act. Neither provision was the subject of the consent decree in *Pennsylvania Credit Union League v. Nickerson* and neither is mentioned therein.

Constitutional Due Process Rights

All of the commentors who opposed the proposed rule believed that deprivation of the administrative hearings for insolvency in involuntary liquidation actions was not constitutionally permissible. While they recognized the need of NCUA to move swiftly to minimize time delays, expenses and the dissipation of assets, they felt that deprivation of a hearing would violate the due process rights of alleged insolvent credit unions. Further, they felt that other measures were already available under current law to the NCUA Board to enable it to move quickly in extreme cases. They cited 12 CFR 747.702(b), which authorizes the NCUA Board to immediately suspend the charter of a Federal credit union in certain appropriate cases.

It is the Board's opinion that the Constitutional requirements of procedural due process do not mandate notice and an administrative hearing prior to closing an insolvent Federal credit union. The United States Supreme Court has clearly established that a banking regulatory authority does not violate the Constitution by appointing a conservator or receiver to seize the property and assets of a banking institution without prior notice and a hearing, *Fahey v. Mallonee*, 332 U.S. 245 (1947). The Court recognized that the special and delicate character of a financial institution, coupled with the impossibility of preserving credit and the threat of potential economic disaster during an investigation by the regulatory agency, often make it necessary to invoke supervisory authority to suspend operations and to seize control of the insolvent institution's assets without a prior hearing. This exception continues to be recognized, *Fuentes v. Shevlin* 407 U.S. 67, 92 (1972); *In Re Franklin National Bank*, 381 F.S. 1390, (E.D.N.Y. 1974).

Second, the Board notes that the other alternative presently available, to immediately suspend the chapter and close the credit union during the hearing process (12 CFR 747.702(b)), enables NCUA to only partially prevent the dissipation of assets by preventing

management improprieties. However, the Board does not believe that its summary suspension authority is a viable alternative because such action will not prevent the deterioration of the credit union's loan portfolio. When a credit union's charter is immediately suspended, its doors are closed and member contact is curtailed. As a result, loan collection efforts by credit union staff are curtailed, members lose confidence, current loans become delinquent and delinquent loans become collection problems or losses. Thus, the value of the credit union's loan portfolio decreases even though no new loans are granted. This contributes to the deterioration of credit union assets. Indeed, in one insolvency involuntary liquidation action where the Board exercised its summary suspension authority, the credit union's share-asset ratio declined approximately 22 percent during the period in which the administrative hearing was held. Moreover, the Share Insurance Fund had to pay an extra $36,000 due to the deterioration of assets of the credit union. Summary suspension of a charter of a credit union works a special hardship on credit union members. Under the immediate suspension order, the credit union is closed and member accounts are frozen. Therefore, the Board does not view this procedure as a meaningful alternative to remedy the noted problems created by the time delays.

Mergers of Problem Credit Unions

One commentor who opposed the proposal felt that the regulation would allow NCUA to involuntarily liquidate an insolvent credit union without any effort to merge it or any concern for the credit union's membership. According to the commentor, the practical effect of the regulation would be to allow NCUA to eliminate smaller or problem credit unions without having to work with them to solve their problems.

The Board assures that the final rule will not eliminate any of NCUA's existing examination policies (both regularly scheduled and supervisory examinations), including the close working contacts made by the examiners and their efforts to work with problem credit unions. Further, the Board has modified and expanded its merger policies to provide viable alternative to liquidation of an endangered credit union. Under its new policies, the NCUA Board has authorized the Regional Directors to merge credit unions with different occupational and associational groups if they are located in the same area. This has the effect of providing an additional supervisory tool that the NCUA Regional Directors can use in helping troubled Federal credit unions, particularly those located in economically troubled areas.

However, if a Federal credit union becomes insolvent despite any of the remedial actions described above, then the NCUA Board is required under the Federal Credit Union Act to liquidate the credit union. (12 U.S.C. 1766(b)(1), 1878(a)(1)). It is only at this point that the proposed rule makes any changes in previous procedures by eliminating the adminstrative hearing prior to liquidation.

Problem Case/Preliminary Warning Letter

The Board stresses that those Federal credit unions exhibiting problems which may lead to insolvency will continue to be given notice and, within a reasonable amount of time, an opportunity to take the necessary corrective action, prior to initiation of the insolvency involuntary liquidation. In most cases, the credit union will, as a standard practice, be forewarned by a Problem Case/ Preliminary Warning Letter (PC–PW Letter) from the Regional Director. The PC–PW Letter indicates that unless correction of the persisting problems occurs or reasonable progress is made toward the elimination of the problems, the Regional Director will initiate the administrative action. If the credit union is unable or unwilling to remedy those conditions which cause it to be insolvent after the PC–PW letter is issued, the Regional Director, pursuant to his delegated authority, will now issue a Notice of Revocation to revoke the charter of the credit union and to place it into involuntary liquidation.

Of course, where the Regional Director determines either after a regularly scheduled examination or a supervisory contact that circumstances warrant that immediate action be taken to prevent the dissipation of the credit union's assets and to protect the interest of members, creditors and the NCUSIF, the Regional Director will authorize the immediate suspension of the insolvent credit union's charter. In this case no PC–PW letter will be issued.

By the time the Board authorizes the action of involuntary liquidation based upon insolvency, it has developed sufficient findings of fact to support the action and has also warned the credit union of its impending condition. The Board believes that its examination policies and guidelines function to protect both the agency's and the credit union's rights. This is reflected historically in that every insolvency action initiated by NCUA, when subsequently challenged by the credit union, has withstood judicial review.

Costs of Hearing Process

The Board has collected data on the twelve insolvent federal credit unions that requested a hearing and were subsequently liquidated during 1980–81. In these cases the total loss due to the deterioration of assets during the hearing period was approximately $1,056,422. This total was obtained by comparing the difference in the value of the credit union's assets and the amount of its liabilities as of the date of the notice of intent to the difference as of the actual date of liquidation. In addition, the Board has found that an insolvent credit union that requests a hearing costs NCUA approximately $9,600 in additional staff time consumed and administrative costs incurred. Staff time includes approximately 254 hours of attorney and examiner staff time spent in preparation for and participation in insolvency liquidation hearings. It also includes approximately 193 hours of regional office and examiner time consumed in supervision of these credit unions from the time the insolvency action is commenced to the date of liquidation. Total staff time averages $7,800 per insolvency liquidation action. In addition, direct administrative costs incurred by NCUA were approximately $1,800 per hearing. (This included attorney and administrative law judge travel and subsistence expenses, court costs, etc.).

Based upon these statistics, the Board believes that the costs borne by NCUA are excessive and are not outweighed by any benefits derived from a continuation of the hearing process.

Regulatory Flexibility Act

The NCUA Board certifies that these rules will not have a significant economic impact on a substantial number of small credit unions because the rules pertain only to agency practice and procedures and will minimize the risk of loss to creditors of insolvent credit unions, and reduce costs to NCUA, to the NCUSIF, and (through the impact on fees and assessments) to all federally insured credit unions. Further, based on past history, few small credit unions availed themselves of a hearing in insolvency liquidation actions. Therefore, a regulatory flexibility analysis is not required pursuant to 5 U.S.C. 605(b).

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions, Insurance

By the National Credit Union Administration Board, May 20, 1982.

Rosemary Brady,

Secretary of the Board.

(12 U.S.C. 1766, 1787)

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

Accordingly, Part 747 (12 CFR 747) is amended as follows:

1. Section 747.01 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 747.01 [Amended]

(a) * * * The administrative actions described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 206 and 304(c)(3) of the Federal Credit Union Act. * * *

* * * * * *

2. Section 747.101(a)(5) is revised to read as follows:

§ 747.101 [Amended]

(a) * * *

(5) Those held pursuant to section 120(b) of the Act, pertaining to the suspension or revocation of the charter of any solvent Federal credit union, and the placing of such a credit union into involuntary liquidation (Subpart G) and

* * * * * *

3. Section 747.701 is revised to read as follows:

§ 747.701 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to section 120(b)(1) to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation.

4. Section 747.702 is revised to read as follows:

§ 747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the Federal Credit Union Act or regulations issued under said Act.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation of credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice, the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

5. The last sentence of § 747.705(a) is revised to read as follows:

§ 747.705 Issuance of order.

(a) * * * Additionally, the Board shall appoint a liquidating agent or agents.

* * * * * *

[FR Doc. 82-14300 Filed 5-25-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 372, 373, 374, 375, 385, and 386

Simplification and Clarification of Export Administration Regulations

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This revision simplifies and clarifies several provisions of the Export Administration Regulations that have caused confusion in the past. It also expands the application of General License GTE to permit exports that were previously prohibited under this authorization. The revisions are necessary to help exporters understand the intent of the Regulations, and to allow them to take advantage of the least restrictive way to effect each export transaction.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230, Telephone 202-377-4811.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. 2401 *et seq.*) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that to the extent practicable, "regulations imposing controls on exports" be published in proposed form is not applicable because this regulation does not impose new controls on exports.

In connection with various other rulemaking requirements, the Office of Export Administration has determined that:

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

Substance of the Regulation

Section 371.2, on general provisions for General License shipments, is amended to delete an obsolete reference.

General License GLR is amended to cross-reference permissive reexport provisions of Part 374 that permit replacement of defective or unacceptable parts, or servicing of commodities, in Country Group T or V and return to the original consignee. This cross-reference is added to make the exporter aware of alternatives to servicing in the United States.

General License *GTE* is amended to—

1. Clarify title requirements on commodities exported temporarily for exhibition or demonstration; and

2. Permit exports to the exporter's representative, agent or employees, of certain levels of computers, similar to the levels exportable under the Distribution License procedure.

Section 372.4 is amended to show that the validity period of licenses obtained under emergency clearance procedures may not be extended. The information is already provided in § 372.11, and is added to § 372.4(h) to make this subsection a more complete discussion of emergency clearance procedures.

Section 372.11 on amending Export Licenses is amended to emphasize that—

1. In some cases a change in country of ultimate destination or a change in ultimate consignee may be made by amendment; and

2. Addition of a commodity may be made by amendment, provided the new commodity has the same processing code as the other commodities on the license.

Supplement No. 1 to Part 373 is amended to show that both levels of computers (Entry No. 1565) are excluded from the Project License procedure.

Section 374.3(d) is amended by deleting the last sentence, which said that the U.S. would notify the Swiss government if a reexport request is approved for commodities covered by a Swiss Blue Import Certificate. This procedure is no longer followed.

Section 375.2 is amended by adding a Note to explain that a license application with a total value exceeding $5,000 is exempt from the requirement for a Statement by Ultimate Consignee and Purchaser, as long as the value of commodities classified under *each* ECCN does not exceed $5,000.

Section 375.3 on International Import Certificates and Delivery Verification Certificates is amended to show that the government issuing the Certificate *must* be the government of the country of ultimate destination, and subsection (a), Scope, is revised for clarity.

Section 385.4 is amended to delete Canada from a listing in paragraph (b)(3), because Canada is not part of the country group being discussed.

Section 386.6, on Destination Control Statements, is amended for clarity.These changes are made in compliance with section 12(e) of the Export Administration Act of 1979.

The changes are intended to lessen the regulatory burden on exporters bypublishing more liberal interpretations of the Regulations, or by more fully explaining portions of the Regulations that have been misunderstood by exporters.

List of Subjects

15 CFR Parts 371, 372, 373, 375

Export licenses, Exports.

15 CFR Part 374

Exports, Reexports.

15 CFR Part 385

Commodity Control List,Communist countries, Country groups, Export licenses, Exports.

15 CFR Part 386

Export clearance, Exports.

Accordingly, the *Export Administration Regulations* (15 CFR Parts 368–399) are amended as follows:

PART 371—GENERAL LICENSES

1. Section 371.2 is amended by removing and reserving paragraph (c)(6) as follows:

§ 371.2 General provisions.

* * * * *

(c) * * *

(6) [Reserved]

* * * * *

2. The introductory paragraph of § 371.17 is revised to read as follows:

§ 371.17 General license GLR; return or replacement of certain commodities.

A general license designated *GLR* is established, subject to the provisions of § 371.17, authorizing the return of certain commodities to the destination from which imported into the United States or replacement of defective or unacceptable parts or equipment that were exported from the United States under a validated export license. (Permissive reexport provisions allow comparable reexports from Country Group T or V of replacements for defective or unacceptable parts or equipment (see § 374.2(a)(4)) and reexports to Country Group T or V for servicing and subsequent return to the original consignee (see § 374.2(f)).)

* * * * *

3. Section 371.22(b)(2) is revised to read as follows:

§ 371.22 General license GTE; temporary exports.

* * * * *

(b) * * *

(2) Commodities for exhibition or demonstration in Country Group T or V, provided the U.S. exporter retains title. The SED for this type of transaction shall show the U.S. exporter as ultimate consignee, in care of the person who will have custody of the commodities abroad.

* * * * *

4. Paragraphs 371.22(c) (1) and (2)(iii) are revised and sentences are added at the end of (c)(2) to read as follows:

§ 371.22 General license GTE; temporary exports.

* * * * *

(c) * * *

(1) *Destinations.* No commodity may be exported under provisions of this general license to Country Group S or Z; and except as further restricted by § 371.22(c)(2), only commodities not identified by the code letter "A," "B," or "M" following the Export Control Commodity Number on the Commodity Control List (Supplement No. 1 to § 399.1) may be exported to Country Group P, Q, W, or Y. These exceptions apply also to any vessel, aircraft, or extraterritorial point under ownership, control, lease, or charter by any of the countries mentioned in this § 371.22(c)(1) or to any national thereof.

(2) * * *

* * * * * *

(iii) Commodities listed in Supplement No. 1 to Part 373, except commodities identified in the footnotes thereto as available for shipment to certain countries under the Distribution License procedure, may be shipped to those same countries under General License GTE.

When warranted, additional exceptions to the exclusion from General License *GTE* of commodities listed in Supplement No. 1 to Part 373 will be considered. To request an exception, submit a letter to: Office of Export Administration, P.O. Box 273, Washington, D.C. 20044, describing fully the commodity to be exported, its proposed use and disposition, and the reasons an exception is warranted. The Office of Export Administration will notify the exporter of its decision on the request for exception.

* * * * *

PART 372—INDIVIDUAL VALIDATED LICENSES AND AMENDMENTS

5. Section 372.4 is amended by revising paragraph (h)(4) and adding a new paragraph (h)(5), to read as follows:

§ 372.4 How to apply for a validated license.

* * * * *

(h) * * *

(4) When a license is approved on an emergency basis by the Office of Export Administration, the applicant will be notified of the license number by phone, wire or in person, in order that shipment can be made without waiting for the arrival of the license by mail.

(5) The validity period of a license issued under this emergency procedure will end no later than the last day of the calendar month following the month in which the license is issued unless a longer validity period can be justified. The Office of Export Administration will not consider requests to extend the validity of a license that was issued under this emergency procedure.

* * * * *

6. Paragraph (d) of § 372.11 is revised; §§ 372.11(e) (6), (7), (8) and (9) are redesignated as § 372.11(e) (7), (8), (9), and (10); a new § 372.11(e)(6) is added; and § 372.11(f)(9) is revised to read as follows:

§ 372.11 Amending export licenses.

* * * * *

(d) *Changes Requiring a New License Application.* The following types of changes require a new license application:

(1) Change in country of ultimate destination or ultimate consignee (except as indicated in § 372.11(e)(2) below); or

(2) Addition of a commodity with a different Processing Code from that on the original application, except a Project License may include commodities with different Processing Codes.

(e) * * *

(6) *Change in commodity*—provided the Processing Code for any added commodity(ies) is identical to the one assigned to commodities on the existing license. A Project License, however, may show more than one Processing Code.

* * * * *

(f) * * *

(9) Change in Export Control Commodity Number, unit of quantity, unit price, or wording of the commodity description (where necessary only for the purpose of conforming to an official revision in the Commodity Control List). This does not cover an actual change in the commodity to be shipped, or an increase in the price or quantity as described in §§ 372.11(e) (4), (5) and (6), for which amendments are required.

* * * * *

PART 373—SPECIAL LICENSING PROCEDURES

7. Supplement No. 1 to Part 373 is amended by revising the first 1565 entry as follows:

Supplement No. 1 to Part 373—Commodities Excluded From Certain Special License Procedures

* * * * *

1565[2,3,4]	Electronic computers exceeding a CPU bus rate of 60 million bits per second or a processing data rate of 20 million bits per second.

* * * * * *

[2] Under the distribution License procedure, electronic computers that do not exceed either a CPU bus rate of 500 million bits per second or a processing data rate of 225 million bits per second may be exported to approved consignees in destinations listed in Supplement No. 2 to Part 373. Electronic computers that do not exceed either a CPU bus rate of 200 million bits per second or a processing data rate of 60 million bits per second may be exported under the Distribution License procedure to approved consignees in destinations listed in Supplement No. 3 to Part 373. This exception also applies to any device, apparatus or accessory that upgrades a computer within the limits defined above.

[3] Excluded from Project License procedure.

[4] Distribution licenses are not valid for the export of any computers to ultimate consignees engaged directly or indirectly in any of the following activities—

(a) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(b) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

(c) Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or

(d) Training personnel in any of the above activities.

PART 374—REEXPORTS

8. Section 374.3(d) is revised to read as follows:

§ 374.3 How to request reexport authorization.

* * * * *

(d) *Reexports from Switzerland and Liechtenstein.* If export from the United States was made, or will be made, to Switzerland or Liechtenstein under a validated export license, a request to reexport this commodity from Switzerland or Liechtenstein shall include the number and date of the Swiss Blue Import Certificate submitted in support of the license application to export the commodity from the United States.

* * * * *

PART 375—DOCUMENTATION REQUIREMENTS

9. Section 375.2(b)(2) is revised to read as follows:

§ 375.2 Form ITA–629, Statement by ultimate consignee and purchaser.

* * * * *

(b) * * *

(2) The total value of commodities classified under a single entry (ECCN) on the Commodity Control List (*as shown on the export order covering the application*) is less than $5,000. However, this total value exemption does not apply to an application supported by a Form ITA–629 covering multiple transactions.

Note.—A license application listing several Commodity Control List entries qualifies for this exemption as long as the value of commodities classified under *each* ECCN does not exceed $5,000. In this case, the total value of the license may exceed $5,000.

* * * * *

10. Section 375.3(a) is revised to read as follows:

§ 375.3 International Import Certificate and Delivery Verification Certificate.

(a) *Scope.*—(1) *International Import Certificate.* An International Import Certificate (IC) is an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the commodities covered by the IC. The governments that issue IC's are listed in § 375.3(b). The IC is obtained by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The Office of Export Administration requires an IC in support of an individual export license application to export a commodity(ies) identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List to one of the destinations listed in § 375.3(b). The IC is not required if one of the exemptions in § 375.3(d) applies. An IC may also be required for transactions not involving an export from the United States. (See § 368.2(a)(8).)

(2) *Delivery Verification Certificate.* A Delivery Verification Certificate (DV) is a document issued by the government of the country of ultimate destination after the export has taken place and the commodities have either entered the export jurisdiction of the recipient country or are otherwise accounted for by the importer to the issuing government. Governments that issue DV's are listed in § 375.3(b). The Office of Export Administration requires DV's on a selective basis as described in § 375.3(i)

(3) *Effect of IC and DV.* The control exercised by the government issuing an International Import Certificate or Delivery Verification Certificate is in addition to conditions and restrictions placed on the export by the Office of Export Administration. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an International Import Certificate or a Delivery Verification Certificate.

* * * * *

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

11. Section 385.4(b)(3) is revised to read as follows:

§ 385.4 Country group V.

* * * * *

(b) * * *

(3) Regional stability commodities and equipment. In support of U.S. foreign policy to maintain regional stability, an individual validated export license is

required to export military vehicles and certain commodities used to manufacture military equipment identified in § 376.16, to any destination in this country group except Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom. (See § 385.7 for regional stability controls on exports to Libya.)

* * * * *

PART 386—EXPORT CLEARANCE

12. Paragraph (a)(1) of § 386.6 is revised to read as follows:

§ 386.6 Destination control statements.

(a) * * *

(1) *Exports to all destinations except the Republic of South Africa and Namibia.* For exports to a destination other than the Republic of South Africa or Namibia, one of the three destination control statements described in §§ 386.6 (c) and (d) is required for an export under—

(i) A validated license;

(ii) General License *GLV, GTF–US, GTE,* or *GLR;* or

(iii) General License *G–DEST* if the commodities are under validated license control to any Group Y destination and the value of the shipment exceeds $250.

* * * * *

(Secs. 3, 5, 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.;* Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: May 3, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–14297 Filed 5–25–82; 8:45 am]

BILLING CODE 3510–25–M

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15 CFR Part 373

Additional Nuclear Restrictions to Distribution License

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This rule makes existing Distribution Licenses consistent with U.S. nuclear nonproliferation policy by excluding sales to nuclear entities in countries *not* included in either Supplement No. 2 or Supplement No. 3 to Part 373 of the *Export Administration Regulations.* This rule replaces a restrictive rider that was being sent with approved Distribution Licenses. U.S. policy for the countries described above is to review applications for nuclear entities on a case-by-case basis to prevent assistance to unsafeguarded nuclear facilities.

DATES: This rule is effective May 26, 1982. Comments must be received by the Department by July 26, 1982.

ADDRESS: Written comments (four copies) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–5247 or 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.* (Supp. III 1979) ("the Act")), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance of the issues raised by these regulations they are issued in interim form and comments will be considered in developing any final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The period for submission of comments will close on July 26, 1982. Comments received after the close of the comment period cannot be assured consideration in the development of the final regulations. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature, or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations. All public comments to be considered in any revision to these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration, Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of subjects in 15 CFR Part 373

Exports.

PART 373—SPECIAL LICENSING PROCEDURES

Accordingly, Part 373 of the Export Administration Regulations (15 CFR Parts 368–399) is amended by revising paragraphs (a) (1) and (2) of § 373.3 to read as follows:

§ 373.3 Distribution license.

* * * * *

(a) Eligible Countries. (1) The Distribution License procedure may authorize exports and reexports to:

(i) All countries in Country Group T; and

(ii) All countries in Country Group V except Afghanistan.

(2) The Distribution License procedure may not be used for export or delivery to nuclear end-users or for nuclear end-uses located in countries *not* listed in

either Supplement No. 2 or Supplement No. 3 to Part 373.

* * * * *

(Sections 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. § 2401 *et seq.;* Section 309(c), Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242); Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: April 29, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82-14295 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Parts 373 and 374

Permissive Reexports Under General License GLV

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations to clarify policy for reexports of commodities originally exported under a Distribution License and those originally exported under an individual license.

Section 373.3(i)(4) of the Regulations currently states that General License GLV cannot be used to reexport commodities originally exported under a Distribution License. However, § 374.2(a)(2) allows commodity reexports under GLV without prior written authorization from the Office of Export Administration if the value requirement on the Commodity Control List for the new country of destination is met.

This rule revises § 373.3(i)(4) to allow for reexports of commodities originally exported under a Distribution License provided that certain conditions are met. In addition, this rule amends a footnote in § 374.2 to delete the prohibition against reexport of commodities originally exported under a Distribution License. Such commodities may be reexported if the value requirement on the Commodity Control List for the new country of destination is met.

DATE: Effective May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that were practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulations."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR

Part 373

Export licenses, Exports.

Part 374

Exports, Reexports.

PART 373—SPECIAL LICENSING PROCEDURES

Accordingly, the *Export Administration Regulations* (15 CFR Parts 368–399) are amended as follows:

1. Section 373.3(i)(4) is revised to read as follows:

§ 373.3 Distribution license.

* * * * *

(i) * * *

(4) *Permissive reexports.* Approved distributors may take advantage of the permissive reexport provisions of § 374.2, provided that accurate records are maintained.

* * * * *

PART 374—REEXPORTS

§ 374.2 [Amended]

2. Footnote 4 to § 374.2(a)(2) is amended by revising the phrase "under the Distribution License or Aircraft and Vessel Repair Station Procedures" to read "under the Aircraft and Vessel Repair Station Procedure."

(Sections 5, 6, 13(b) and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980).)

Dated: April 23, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82-14294 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Part 376

Clarification of Note

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the *Export Administration Regulations,* clarifies the intent of Note 3 in § 376.12. Notes 2 and 3 of that section deal with questions that exporters should answer when determining whether prior written approval of the Office of Export Administration is required for the incorporation abroad of U.S.-origin parts or components in a foreign-made end product that will be exported. Note 3 contains a reference to Note 2, but it is unclear whether Note 3 refers to one or both questions asked in Note 2. This rule rewords Note 3 to show that it refers to both questions in Note 2.

DATE: Effective May 26, 1982.

FOR FURTHEN INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing

controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 376

Export licenses, Exports, Reexports.

Accordingly, the *Export Administration Regulations* (15 CFR Parts 368–399) are amended as follows:

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

§ 376.12 [Amended]

Note 3 to § 376.12 is amended by revising the phrase "If the answer to 2 is 'no,' " to read "If the answers to both questions in 2. are 'no',".

(Sec. 13 and 15, Pub. L. (96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980)

Dated: April 29, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–14283 Filed 5–25–82; 8:45 am]

BILLING CODE 3510–25–M

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15 CFR Part 399

Amendments to Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends Export Control Commodity Number (ECCN) 1560A on the Commodity Control List (CCL) to delete one footnote, previously incorporated by error. Also, some lithium now included in CCL entries 3607A and 4607B is decontrolled to all Country Groups except S and Z by incorporating it into ECCN 6699G.

DATES: This rule is effective May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–5247 or 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 399

Commodity Control List, Exports.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

§ 399.1 [Amended]

1. ECCN 1560A of Supplement No. 1 to § 399.1 is amended to remove footnote 2, which reads as follows:

[2]Exports of capacitors rated for operation during their specified lifetime at ambient temperatures below −55° C or above +200° C are controlled by the U.S. Department of State, Office of Munitions Control.

2. ECCN 3607A is revised to read as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV $ value limits T&V	Processing code	Reason for control
3607A Lithium, as follows:	Lb.	FQSTVWYZ	100	MG	1,4
(a) Metal, hydrides, or alloys containing lithium enriched in the 6 isotope to a concentration higher than the one existing in nature (7.5 percent on an atom percentage basis);					
(b) Any other materials containing lithium enriched in the 6 isotope (including compounds, mixtures, and concentrates), *except lithium enriched in the 6 isotope incorporated in thermoluminescent dosimeters.*					

3. ECCN 4607B is removed.

(Secs. 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: May 3, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82–14296 Filed 5–25–82; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–000 (New Mexico–10); Order No. 232]

High-Cost Gas Produced From Tight Formations; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established

procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of New Mexico Energy and Minerals Department, Oil Conservation Division that the Chacra Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued May 20, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Chacra Formation in Sandoval County, New Mexico, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued March 4, 1982 (47 FR 10424, March 10, 1982),[1] based on a recommendation by the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) in accordance with § 271.703(c) that the Chacra Formation be designated as a tight formation.

Evidence submitted by New Mexico supports the assertion that the Chacra Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the New Mexico recommendation

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342; Administrative Procedure Act, 5 U.S.C. 553)

[1] Comments were invited on the proposed rule and none were received. No party requested a public hearing and no hearing was held.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective May 20, 1982.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraph (85) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations*

* * * * *

(85) *Chacra Formation in New Mexico.* RM79–76 (New Mexico–10)

(i) *Delineation of formation.* The Chacra Formation is found in Township 21 North, Range 5 West, Sections 6, 7, 8, 16 through 22 and 26 through 36; Township 21 North, Range 6 West, Sections 1 through 18, 20 through 27, 35 and 36; Township 21 North, Range 7 West, Sections 1 through 4, and 10 through 13; Township 22 North, Range 6 West, Sections 6, 7, 8, 16 through 22, and 26 through 36; and Township 22 North, Range 7 West, Sections 1 through 36, NMPM in Sandoval County, New Mexico. The formation is on the Chaco Slope of the Southern San Juan Basin.

(ii) *Depth.* The Chacra Formation averages 300 feet in thickness and is the uppermost sand formation below the Huerfanito bentonite bed. The average depth to the top of the Chacra Formation is 1,658 feet.

[FR Doc. 82-14254 Filed 5-25-82; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 290

[Docket No. RM82–28–000; Order No. 231]

Extension of Filing Date Under Section 133 of PURPA

Issued May 19, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations (18 CFR Part 290) which implements section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 133 of PURPA requires electric utilities to file cost of service and load data with the Commission and the states, at specified intervals. The amendment extends to June 30, 1983, the date by which electric utilities with total annual electric energy sales, for purposes other than resale, of less than one billion kilowatt-hours must make an initial filing of information under PURPA. An extension of time to file is provided at this time because the Commission is reexamining whether the reporting requirements under Part 290 should be revised to be more useful and appropriate.

DATES: This rule is effective on May 19, 1982. The Commission nevertheless invites comments on this rule.

ADDRESSES: An original and fourteen copies of all comments should be addressed to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments should reference Docket No. RM82–28–000.

FOR FURTHER INFORMATION CONTACT:

Daniel G. Lewis, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 376–9227.

Michael R. Postar, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

In the matter of extension of filing date under section 133 of PURPA; Docket No. RM82–28–000, Order No. 231.

Issued May 19, 1982.

The Federal Energy Regulatory Commission (Commission) is amending its regulations (18 CFR Part 290) which implement section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] Section 133 of PURPA requires electric utilities to file cost and load data with the Commission and the states, at specified intervals. The amendment extends, to June 30, 1983, the date by which electric utilities with total annual electric energy sales, for purposes other than resale, of less than one billion kilowatt-hours must make an initial filing of information under PURPA.

[1] 16 U.S.C. 2643 (1978).

I. Background

Section 133 of PURPA requires electric utilities with annual electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours to file cost of service and load data with the Commission and the states. PURPA requires electric utilities to file the specified information with the Commission every two years. Congress directed the Commission to prescribe the methods, procedures, and format to be used by electric utilities in gathering the information described in section 133 of PURPA.

The Commission's regulations [2] implementing section 133 of PURPA require electric utilities to gather and submit a wide variety of cost of service and load data. Those regulations also require most utilities to report this cost of service information to the Commission and the states for the first time on November 1, 1980. Thereafter, these utilities are required to refile periodically.

Section 290.102(d) of the Commission's regulations, permits smaller electric utilities "having total sales of electric energy for purposes other than resale of less than 1 billion kilowatt-hours in each of the calendar years 1976, 1977 and 1978," to begin the biennial reporting program as late as June 30, 1982.

In promulgating Part 290 under section 133 of PURPA, the Commission expressed concern with "the effect of immediately imposing this new reporting requirement on small utilities." [3] In its original rulemaking, the Commission therefore extended the initial filing deadline for small utilities in order to delay the financial impact of the section 133 reporting requirements.

The cost of compliance with the PURPA section 133 reporting requirements continues to be a concern of the Commission and the Congress. In a recent report, the General Accounting Office (GAO) expresses its views on how the section 133 reports should be gathered and the cost of compliance with these reporting requirements.[4] According to the GAO, few of the potential users which were surveyed have made use of the data or foresee a use for the data in the immediate future. The GAO reports that the cost of compliance varied considerably among the utilities which it surveyed. The GAO concludes, however, "that a substantial amount of the total cost of a load research survey is relatively fixed and is not related to utility size." [5] Finally, the GAO recommends that the Commission review costs and benefits of the reporting requirements under section 133 of PURPA.

Subsequent to the GAO report, the Commission issued, on January 29, 1982, a Notice of Inquiry[6] with respect to whether the reporting requirements under section 133 of PURPA might be eased and how regulatory authorities and interested parties have used the reported data in PURPA proceedings, rate cases, and in other ways. Specifically, the Notice requests comment on (1) the use of the data collected and reported, (2) the cost of compliance, (3) the extent of duplication with other Federal and state reports, and (4) possible alternatives and revisions to the regulations.

II. Extension of Filing Date for Small Utilities

Section 133(c) of PURPA permits the Commission to extend the period of time by which any utility must make an initial filing under PURPA. An extension may be granted by the Commission "for a reasonable additional period in the case of any electric utility for good cause shown." The final rules implementing section 133 of PURPA establish a procedure for providing case-by-case filing extensions to individual utilities.[7] In addition, the Commission, in § 290.102(d), currently provides an initial filing date under section 133(c) for the class of small utilities which differs from that prescribed for larger utilities. This extension of time to file was based on a finding of good cause with respect to that class of utilities.[8]

In conjunction with the Commission's ongoing effort to ascertain the practical alternatives to the existing regulations in Part 290, the Commission has determined that an additional limited measure of regulatory relief can and should be provided to a class of utilities at this time. The Commission seeks to provide some relief from the Part 290 requirements for all small utilities, instead of only for those small utilities which have applied for an extension of the time to file. Therefore, this final rule further extends to June 30, 1983, the period in § 290.102(d) for an initial filing by any small utility, based upon the following information.

The cost of complying with Part 290 incurred by regulated utilities involves both initial investments in data collection devices and the recurrent cost of compiling the data on a biennial basis. Comments by small utilities on the Notice of Inquiry estimate that, generally speaking, their costs are as high as $400,000 for the load metering equipment and $30–50,000 for a biennial filing. Due to the nature and cost of the sampling and reporting procedures required of all utilities under Part 290, small utilities with total annual electric energy sales, for purposes other than resale, of less than 1 billion kilowatt-hours arguably have a disproportionately large financial burden under Part 290. This burden may not be significantly reduced simply due to the smaller number of ratepayers which small utilities have. As a result, the burden on small utilities, and their ratepayers, may be greater than for larger utilities.[9] Small utilities nevertheless state that, while the load research required under section 133 may yield useful information, the cost-benefit relationship of the data collection and reporting program for small utilities is unknown at this time.

Despite the extension of time to file provided in § 290.102(d), the Commission has received many requests for either an extension of time to file or exemption from specific reporting requirements, containing case-specific information on the impact of the Part 290 requirements. Forty-six of the sixty-three small utilities to which the section 133 regulations apply have sought one of these forms of relief. Generally, these applications of small utilities state that certain reporting requirements are inappropriate, inapplicable, or unduly burdensome.

The small utilities seeking relief from the section 133 reporting requirements argue that they have insufficient resources to collect the data required and to prepare adequate reports. In their applications for relief, many small

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[2] Final Regulations, "Collection of Cost of Service Information Under Section 133 of the Public Utility Regulatory Policies Act of 1978" (Docket No. RM79-8), issued June 5, 1979, 44 FR 33847 (June 13, 1979), *codified at* 18 CFR Part 290.

[3] 44 FR at 33851.

[4] "Burdensome and Unnecessary Reporting Requirements of the Public Utility Regulatory Policies Act Need to be Changed," September 14, 1981, EMD-81-105.

[5] *Id.* at 16-17.

[6] Notice of Inquiry, "Collection of Cost of Service Information Under Section 133 of the Public Utility Regulatory Policies Act of 1978," (Docket No. RM82-13), issued January 29, 1982, 47 FR 6437 (February 5, 1982).

[7] A utility may seek an extension of time to file under § 290.602 by showing good cause for the extension sought.

[8] 44 FR at 33851.

[9] A preliminary review of the comments filed in the Notice of Inquiry, Docket No. RM82-13, indicates that many small utilities believe that, based on analyses of program costs for small utilities, their ratepayers will be disproportionately burdened by the Part 290 requirements. This argument is also made in the petition of the American Public Power Association, "Motion For Stay of Filings Under Section 133 of the Public Utility Regulatory Policies Act," Docket No. EL82-13-000 (March 31, 1982).

utilities contend that data collection is especially expensive for them because they do not ordinarily collect the data required to be submitted. The cost of collecting this information, they argue, would unduly burden small utilities. The small utilities' requests for relief are therefore predicated on the belief that the reporting requirements are inappropriate for, and generally burdensome on, this class of utilities. In addition, the applications for extension and exemption claim that uniform application of the filing requirements is not justifiable in terms of the main purpose of section 133, which is to ensure that good cost of service information is available to the affected public, because the ratepayers of publicly- and cooperatively-owned utilities have ready access to this information in any case.

Several small utilities also cite the potentially anticompetitive effect of the reporting requirements. These utilities contend that the cost of complying with the reporting requirements inflates their rates and strains the ability of small utilities to remain competitive with larger utilities. Small utilities are required to spread the relatively high cost of compliance among fewer customers than larger utilities.

The Commission is reviewing the arguments presented by electric utilities, and particularly the small utilities, in the requests for extension of time to file or for exemption from certain requirements and by all commenters on the Notice of Inquiry. Reevaluation of the application and content of the requirements of Part 290 will require further study of the information obtained pursuant to the Notice. However, the imminent deadline for an initial filing by small utilities requires the Commission to act at this time, pending additional review.

The information which the Commission has obtained concerning the burden of compliance with Part 290 on small utilities presents significant issues about the suitability of the current reporting requirements. Therefore, the Commission finds that good cause exists for extending the initial filing date for small utilities under § 290.102(d). This one-year extension will defer until a later date many major expenses which small utilities would incur in association with current Part 290 requirements. In the meantime, the Commission will examine whether Part 290 might be made more useful and appropriate in terms of information that will be required from small utilities when they are required to file data under section 133 of PURPA.

III. Comment Procedure and Effective Date

The Commission finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and comment procedure is, at this time, impracticable and contrary to the public interest. Small utilities are required to make an initial filing under section 133 of PURPA and Part 290 of the Commission's regulations by June 30, 1982. To comply with the Commission's regulations, small utilities are now, or shortly will be, expending resources to gather and to prepare the data for filing. Since the Commission is reevaluating the reporting requirements in Part 290 pursuant to the Notice of Inquiry, it would unduly burden utilities and ratepayers to permit expenses to be incurred collecting data which may later be found to be unnecessary or inappropriate. In order to provide adequate advance notice of Commission action so as to prevent unnecessary expenditures by small utilities in compiling data, Commission action should be finalized at the earliest date.

The Commission nevertheless invites interested persons to comment on this final rule. Copies of all comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM82-28-000. An original and 14 copies should be filed. All written submissions will be placed in the public file which will be established in this docket and made available for public inspection during regular business hours in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

The Commission, under 5 U.S.C. 553(d), also waives the 30-day delay in the effective date of this rule since the rule relieves a regulatory obligation by providing a temporary exemption from a filing requirement for a class of utilities. In addition, the Commission finds, for the above mentioned reasons, that good cause exists for making this amendment effective immediately.

List of Subjects in 18 CFR Part 290

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform System of Accounts.

(Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 142 (1978); and the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1978))

In consideration of the foregoing, Part 290 of Chapter 1, Title 18 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 290—COLLECTION OF COST OF SERVICE INFORMATION UNDER SECTION 133 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

§ 290.102 [Amended]

Section 290.102(d) is amended by deleting "June 30, 1982" and inserting in lieu thereof "June 30, 1983".

[FR Doc. 82-14282 Filed 5-25-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5278/T90; PH-FRL 2129-3]

Chlorothalonil; Tolerances for Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation permitting the combined residues of the fungicide chlorothalonil and its metabolite in citrus oil. This regulation to permit the marketing of citrus oil while further data are being collected on the fungicide was requested by Diamond Shamrock.

EFFECTIVE DATE: Effective on May 26, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of April 21, 1982 (47 FR 17113) which announced that Diamond Shamrock Corp., Agricultural Chemicals Division, 1100 Superior Ave., Cleveland, OH 44114, had submitted food additive petition 1H5278 to the EPA proposing that 21 CFR Part 193 be amended by establishing a regulation permitting the combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-

trichloroisophthalonitrile) in citrus oil at 10 parts per million (ppm) resulting from the preharvest application of the fungicide to citrus in connection with an experimental use permit.

No comments were received in response to this notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The scientific data submitted in support of the regulation were two 2-year dog feeding studies with no-observed-effect levels (NOEL's) of 60 ppm, an 18-month rat feeding study with a NOEL of less than 500 ppm, a 2-year rat feeding study with a NOEL of 60 ppm, a 3-generation rat reproduction study with a NOEL of 5,000 ppm, a second 3-generation rat reproduction study with a NOEL of 15,000 ppm, and a series of mutagenicity studies. Based on the dog feeding studies, the NOEL is calculated to be 60 milligrams (mg)/kilogram (kg)/day. Using a 100-fold safety factor, the allowable daily intake (ADI) is 0.015 mg/kg/day and the maximum permissible intake (MPI) is 0.9 mg/day for a 60-kg person. The establishment of this regulation results in a theoretical exposure of 0.0005 mg/day and utilizes 0.05 percent of the ADI. Established tolerances and this tolerance result in a maximum theoretical exposure of 0.7685 mg for a 60-kg person and utilizes 85.39 percent of the ADI. Tolerances ranging from 0.1 to 15 ppm have previously been established for the combined residues of chlorothalonil and its metabolite in or on a variety of raw agricultural commodities (40 CFR 180.275).

It is has been determined that the fungicide may be safely used in accordance with the provisions of the experimental use permit (677-EUP-20) that is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The fungicide is considered useful for the purpose for which the regulation is sought, and it is concluded that the fungicide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.)* Therefore, the regulation is established as set forth below.

A related document (PP 1G2448/T369) establishing a temporary tolerance for the combined residues of chlorothalonil and its metabolite in or on the raw agricultural commodity citrus at 0.1 ppm appears elsewhere in this issue of the **Federal Register.**

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: May 25, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: May 10, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 193 is amended by establishing a new § 193.84 to read as follows:

§ 193.84 Chlorothalonil.

A regulation is established for the combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in citrus oil at 10 parts per million (ppm) as a result of the preharvest application of chlorothalonil to growing citrus. This regulation expires December 31, 1983.

[FR Doc. 82-13929 Filed 5-25-82; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Removal of Certain Conditions on the Approval of the Iowa Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule: removal of two conditions on the approval of the Iowa State program.

SUMMARY: The State of Iowa has satisfied two of the conditions on the approval of the Iowa program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by submitting two rules as program amendments. Iowa received conditional approval of its permanent program effective April 10, 1981, as announced in the **Federal Register** of January 21, 1981 (46 FR 5891-5892), subject to the correction of three minor deficiencies. Iowa submitted to the Department of Interior provisions satisfying two of the conditions on October 1, 1981. Approval of these two rules as program amendments will be reflected in 30 CFR Part 915.

EFFECTIVE DATE: The removal of the two conditions is effective May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343-5361.

SUPPLEMENTARY INFORMATION:

Background on the Iowa Program Submission

On February 28, 1980, OSM received a proposed regulatory program from the State of Iowa. After providing opportunity for public comment and a review of the program submission, the Secretary of the Interior approved in part and disapproved in part the Iowa program. The Secretary's decision was published in the October 16, 1980, **Federal Register** (45 FR 68673-68686).

Under 30 CFR 732.13(f) the State of Iowa had 60 days (until December 15, 1980) from the date of publication of the Secretary's partial approval in which to submit a revised program for consideration. Iowa submitted its revised program for consideration on December 15, 1980.

On January 21, 1981, following a review of the amended program the Secretary approved the program subject to the correction of three minor deficiencies (46 FR 5885–5892). The approval was made effective April 10, 1981.

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981, Federal Register (46 FR 5885–5892).

Background on the Secretary's Conditional Approval

The Secretary of the Interior determined that the Iowa program contained three minor deficiencies:

1. Iowa did not have fully enacted regulations to provide for civil and criminal sanctions for violations of the Iowa law, regulations or of the conditions on permits and exploration approvals in accordance with section 518 of SMCRA (30 U.S.C. 1268) and consistent with 30 CFR Part 845.

2. The Iowa Administrative Procedures Act required that an administrative hearing be held prior to the issuance of a cessation order. This requirement conflicts with section 521(a)(3) of SMCRA, which provides that a cessation order shall be issued immediately upon the expiration of the time for abatement if abatement has not been accomplished.

3. Iowa did not have fully enacted regulations establishing penalties to protect state employees during the performance of their duties in accordance with the protection afforded Federal employees under section 704 of SMCRA.

In accepting the Secretary's conditional approval, Iowa agreed to correct the regulation deficiencies concerning rules for proposal and assessment of civil penalties and protection of State employees by July 1, 1981, and the statutory deficiency concerning the issuance of cessation orders for failure to abate notices of violations by January 1, 1982.

Submission of Revisions and Public Comment

On October 1, 1981, OSM received from the Iowa Department of Soil Conservation, revisions to its permanent program intended to satisfy conditions "a" and "c".

OSM published a notice in the Federal Register on February 10, 1982, announcing receipt of these provisions and inviting public comment on whether the provisions submitted correct deficiencies 1 and 3 (47 FR 6029–6031). The public comment period ended on March 11, 1982. A public hearing scheduled for March 8, 1982, was not held because no one expressed a desire to present testimony (see 47 FR 9862). One written comment was submitted.

Condition number 2 specified in 30 CFR 915.11(b) will be removed when the Iowa Legislature enacts the necessary legislation. This notice today does not address that deficiency. The time allowed for the State to satisfy condition number 2 has been extended to September 1, 1982, by a final rule published February 23, 1982, in the Federal Register (47 FR 7829–7830).

Secretary's Findings

The Secretary finds the program amendments submitted by Iowa on October 1, 1981, satisfy conditions 1 and 3 of the Iowa program as follows:

1. Iowa amended rule 780–4.6(83) by adding a new sub-rule 4.6(8) for civil penalties. It commits the State to institute a civil action to recover a civil penalty whenever a violation has resulted in a cessation order. The rule also covers the amount of penalty recommended, procedures for providing notice to the operator of the penalty recommended, and a provision for a hearing. The Secretary finds this rule does satisfy condition number 1 and is consistent with the requirements of section 518(a) of SMCRA. However, in the Secretary's Findings 4(h)(3), published in the January 21, 1981, Federal Register (46 FR 5885–5892), OSM stipulated that if the requirement for prepayment of civil penalties into an escrow account under Section 518(c) of SMCRA was held constitutional by the courts then considering the issue, the Secretary would require the Iowa permanent program to comply with the requirement. The court cases on constitutionality that had prevented the Secretary from enforcing the provision have now been decided. The preliminary injunction in *Star Coal Co. v. Andrus*, 14 ERC 1325 (USDC/S.D. Ia), was dissolved on July 27, 1981, and the case was dismissed. In two cases before the U.S. Supreme Court, the issue of the constitutionality of SMCRA section 518(c) was dismissed on the grounds that the issue was not ripe for the Court to decide. See *Hodel v. Virginia Surface Mining and Reclamation Association*, 16 ERC 1027; *Hodel v. Indiana*, 16 ERC 1048. Although the Supreme Court did not rule on the constitutionality of Section 518(c), the dismissal of the *Hodel* and *Star* cases removes the legal restraints on the Secretary's statutory obligation to require Iowa to comply with the prepayment provisions of section 518(c) and existing regulations.

Because the conditional approval of the Iowa program as specified at 30 CFR 915.11(a) did not require Iowa to include the prepayment of civil penalties into an escrow account, the Secretary finds that the Iowa program satisfies condition number 1.

However, the Secretary is proceeding under 30 CFR 732.17 with steps to require Iowa to include a provision in its program for prepayment of civil penalties into an escrow account.

2. As noted above, condition number 2 is not being considered at this time because the State has until September 1, 1982, to satisfy this condition. The Secretary extended the time for Iowa to satisfy this condition from January 1, 1982, to September 1, 1982, in a Federal Register notice published February 23, 1982 (47 FR 7829–7830).

3. Condition number 3 required Iowa to include a provision in its regulations that establishes penalties to protect State employees during the performance of their duties in accordance with section 704 of SMCRA or otherwise amend its program to accomplish the same result.

In response to this condition, the State amended its rules at section 780–4.35(83A), subrule 4.35(13) to include as a condition of a permit, that a permittee shall not willfully resist, prevent, impede, or interfere with the department or its agents in the performance of their duties. The Secretary finds that this rule makes the Iowa program consistent with section 704 of SMCRA.

Public Comment

In response to the February 10, 1982, Federal Register notice announcing the hearing and comment period on the amendments submitted by Iowa, OSM received one written comment from the Environmental Policy Institute, the Dubuque Audubon Society, the Environmental Coordinating Committee of Dubuque, Iowa, and Richard Worm, White Pine Group, Iowa Chapter of Sierra Club.

The commenters noted that Iowa submitted amendments to satisfy conditions "a" and "c" three months after the July 1, 1981, deadline specified by the Secretary in the January 21, 1981, Federal Register notice of conditional approval. Because the State did not request an extension of time, the commenters asserted, the Secretary's conditional approval of the Iowa program terminated as a matter of law on July 1, 1981.

It should be noted that Iowa adopted the rule correcting condition "c" on April 9, 1981, and the rule correcting condition "a" on January 30, 1981. Hence, the State had substantively complied with the conditions by the required deadline. In light of the State's action, OSM believes that termination of the Secretary's approval of Iowa's program is not warranted.

With regard to the amendments submitted by the State to satisfy condition "a" concerning Iowa's procedures for the proposal and assessment of civil penalties the commenters stated that the Iowa's provisions failed to do the following:

a. Provide for the administrative assessment of civil penalties in accordance with section 518(a) of SMCRA;

b. Provide for daily assessments of penalties for continuing violations in accordance with section 518(a) of SMCRA and 30 CFR 845.15;

c. Insure imposition of a mandatory $750/day penalty for failure to abate orders. (The commenters asserted that Iowa requires only that the Attorney General institute an action in court seeking at least $750/day);

d. Require payment into escrow of the proposed assessment of civil penalties in accordance with section 518(c) of SMCRA;

e. Establish a rational scheme to assure that uniform assessments of civil penalties are made.With regard to point a., OSM has determined that Iowa's program does, in fact, provide for the administrative assessment of penalties. Iowa has chosen to omit an assessment conference procedure in favor of a formal administrative hearing as its first step in review of a proposed assessment. The second level of review is judicial. In the Secretary's initial decision on the Iowa program submission (Finding 4(h), 45 FR 68678), the Secretary identified five aspects of the proposed Iowa system for proposal and assessment of civil penalties found to be inconsistent with Section 518 of SMCRA and 30 CFR 845.

These deficiencies were that (i) the proposed judicial assessment system did not adequately address the five considerations identified in the preamble to the permanent regulatory program at 44 FR 15296 (March 13, 1979). These considerations are used in determining whether a judicial system is the same or similar as the administrative system for proposal and assessment of civil penalties in section 518 of SMCRA; (ii) the proposed program did not provide procedures for proposing assessments of civil penalties, informing operators of the amount of those proposed assessments and providing an opportunity for payment of the penalty prior to a formal assessment hearing; (iii) the proposed program did not provide for mandatory assessment of civil penalties for cessation orders as required by section 518(a) of SMCRA; (iv) the program lacked criteria for determining when a civil penalty or an injunction would be sought when a notice of violation is issued under sections 14(8) and 15(1) of the ISCMA; and (v) the program did not provide for prepayment of civil penalties into a escrow account as required by section 518(c) of SMCRA. Iowa's resubmission addressed those deficiencies through an attorney general's opinion and a proposed amendment to rule 4.6(8) (see Administrative Record No. IA–146, Attachments 4 and 5). The Secretary reviewed the information and determined that, with two exceptions, the problems identified in the initial decision notice would be corrected if proposed rule 4.6(8) were enacted as proposed.

Iowa rule 4.6(8) was enacted as proposed and submitted by the State to satisfy condition "a". The adopted rule addresses all of the Secretary's concerns relating to the State's system for proposing and assessing penalties with one exception. The rule does not provide for the prepayment of civil penalties into an escrow account. However, as noted under Finding 1, the Secretary is taking steps to require the State to adopt such a provision through the procedures at 30 CFR 732.17. Therefore, with the one exception noted, the Secretary finds that Iowa's procedures for the proposal and assessment of civil penalties, although not identical to the procedures set forth under the Federal rules are, nonetheless, similar to those established in Section 518 of SMCRA and 30 CFR Part 845.

Concerning the commenters' point b., OSM has determined that § 83.15 (1) and (4) of the Iowa statute do provide for daily assessments of penalties for continuing violations in accordance with section 518(a) of SMCRA and 30 CFR 845.15. Under the Federal law and regulations the regulatory authority may assess a civil penalty for any type of violation and shall assess a civil penalty for a violation which leads to issuance of a cessation order. Each day of a continuing violation may be deemed a separate violation for the purposes of penalty assessment, with a maximum penalty of $5,000 for each violation. Whenever a violation has not been abated by the operator within the period permitted for correction a civil penalty of not less than $750 must be assessed for each day during which the failure continues. Section 83.15(1) of Iowa's statute provides that the Attorney General shall, at the request of the Iowa Department of Soil Conservation Committee (hereinafter referred to as the committee), institute a civil action in the district court for the assessment of a civil penalty not to exceed $5,000 for each day of a continuing violation. The Committee must request the Attorney General to institute a civil action for the assessment of a civil penalty for a violation leading to the issuance of a cessation order. If an operator fails to correct a violation within the period allowed for abatement, then, under § 83.15(4) of Iowa's statute, the Attorney General, at the request of the Committee, is required to institute a civil action for the assessment of a civil penalty of not less than $750 for each day during which the failure to correct the violation continues.

As the Secretary interprets Iowa's provisions, the Attorney General will, in every case, institute a civil action for the assessment of a civil penalty upon the request of the Committee. Thus, the Secretary finds that Iowa's program includes penalties no less stringent than, and procedures similar to, those for continuing violations contained in section 518(a) of SMCRA and 30 CFR 845.15.

Concerning the commenters' point c., OSM has determined that Iowa's program does insure imposition of a mandatory $750/day penalty for an operator's failure to abate a violation. Under § 83.15(4) of the Iowa statute, the Attorney General, at the request of the Committee, shall institute a civil action for the assessment of a civil penalty of *not less than* $750 for each day during which the operator fails to abate the violation. The Secretary interprets this to mean that in every case in which the operator fails to abate, the Attorney General will institute a civil action for the assessment of a civil penalty for an amount not less than $750. This is the equivalent of the Secretary assessing a civil penalty of $750 per day under section 518 of the Act because, in the event of nonpayment by an operator, the Secretary would have to bring a legal action to collect the penalties assessed; in both cases, the final decision would be made by a court.

Therefore, the Secretary finds that Iowa's program includes penalties for failure to abate no less stringent than those contained in section 518 of the Act.

As stated in the commenters' point d., the Iowa program does not contain a provision requiring prepayment of civil penalties into an escrow account. However, as noted above under Finding

1, the Secretary is proceeding under 30 CFR 732.17 with steps to require Iowa to include such a provision in its program.

With regard to the commenters' point e, that Iowa's program does not establish a rational scheme to assure the uniform assessment of civil penalties, OSM finds that in providing for the proposal and assessment of civil penalties Iowa has acted within the discretion granted States by Judge Flannery (*In Re: Permanent Surface Mining Regulation Litigation,* Civil No. 79–1144, D.D.C., February 26, 1980). Iowa's program incorporates the penalties and procedures set forth under section 518 of the Act and, therefore, meets the minimum requirements for the assessment of civil penalties as interpreted by Judge Flannery.

The commenters also stated that Iowa's provision to satisfy condition "c" regarding the protection of government employees carrying out their duties, is inadequate. The commenters asserted that the State's provision imposes an additional burden of proof on the prosecutor and that Iowa fails to provide for any prison term for such violations as required by section 704 of SMCRA. The Secretary believes that although Iowa has not enacted a law identical to section 704 of SMCRA, the State has provided protection for State employees comparable to that provided Federal employees under section 704 of SMCRA. Iowa has made it a condition of each permit issued under the State program that the permittee shall not willfully resist, prevent, impede, or interfere with the Department or any of its agents in the performance of their duties. This language ties in § 83.15(2) of the Iowa Act, which provides criminal penalties for violations of permit conditions. For violation of permit conditions operators are charged with a serious misdemeanor. The maximum penalties for a "serious misdemeanor" as set forth under Iowa Code Annotated, § 903.1.2, are $10,000 or one year in prison. These penalties are applicable not only to permittees who violate permit conditions but also to "wildcatters". Section 83.15(2) provides that person shall be subject to the penalties of that section for violation of a permit condition *or* for violation of any other provision of the Iowa statute. Section 83.4 of Iowa's Act requires operators to obtain a permit to mine. If an operator fails to obtain a permit, he is violating a provision of Iowa's Act and is, therefore, subject to the penalties set forth at § 83.15(2).

With respect to persons other than the permittee or wildcatters who interfere with department employees, Iowa's program does not include a single provision which provides the same penalties as section 704 of SMCRA. However, Iowa's penal code includes several provisions that make it a crime to assault, threaten or intimidate government employees or their agents in the performance of their duties. Iowa Code Annotated § 7.18.3 (Willful Disturbance) makes it a crime to disrupt government employees in any official conduct or proceeding. The crime is considered a serious misdemeanor and the maximum penalties are a $1,000 fine, one-year in jail, or both. Another Iowa statute, Iowa Code Annotated § 7.18.4 (Harassment of Public Officers and Employees), makes it a simple misdemeanor to willfully prevent or attempt to prevent any public officer or employee from performing his/her duties. The punishment is 30 days in jail or $100 fine. In addition Iowa Code Annotated § 710.1 (Kidnapping) includes a provision that makes it a felony to kidnap (meaning to confine or move against one's will) any person engaged in the performance of a government function. Iowa Code Annotated § 902.9 sets forth the maximum penalties for felonies which range from a $1000 fine and 5 years in jail or both to a jail sentence for life. Iowa's assault statutes (Iowa Code Annotated §§ 708.1–.8 include several provisions which make it a crime to interfere with government employees in the performance of their duties. Iowa Code Annotated § 708.1 defines assault as an act "intended to place another in fear of immediate physical contact which will be painful, injurious, insulting or offensive". Section 708.6 provides sanctions for terrorism which includes discharging weapons into cars or harassment with intent to promote fear. The maximum penalties are 1–5 years in jail or $1000 or both. Iowa Code Annotated Section 708.7 imposes sanctions for harassment which is defined as an "intent to intimidate, annoy or alarm" through one of several acts which can lead to false reports. Hence, although Iowa's program does not contain a provision identical to section 704 of SMCRA, OSM believes that the State program provision which makes it a permit condition that operators not interfere with department employees, together with the various other Iowa statutes which impose criminal sanctions for interference with government employees satisfy the intent of SMCRA and provide protection to State employees comparable to that provided Federal employees under section 704 of the Act.

Concerning the commenters' assertion that Iowa's law imposes an additional burden of proof on the prosecutor to show that the person who violated a permit condition did so "willfully and knowingly", OSM believes that the burden of proof on the prosecutor is the same under Iowa's law as under SMCRA. Section 704 of SMCRA provides that any person who shall "Willfully" resist, prevent, impede or interfere with the Secretary or any of his agents in the performance of their duties shall be punished. Hence, the burden of proof under both SMCRA and Iowa's law is on the prosecutor to show that the action of the violator was "willful".

Approval of Amendments to Satisfy Conditions

Accordingly, conditions 1 and 3 are hereby removed and 30 CFR Part 915 is amended to indicate approval of the Iowa program amendments submitted to OSM on October 1, 1981.

Additional Findings

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval. On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve state regulatory programs, actions, or amendments. Therefore, these program amendments are exempt from the preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 129(d), this rule is not a major Federal action. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, for this rule OSM is exempt from the requirements of an Environmental Assessment, EIS or FONSI.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

On March 23, 1982, the Environmental Protection Agency transmitted its written concurrence on the Iowa program amendments.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 915 of Title 30 is amended as set forth herein.

Dated: May 19, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 915—IOWA

1. 30 CFR 915.10 is revised to read as follows:

§ 915.10 State Regulatory program approval.

The Iowa program as submitted February 28, 1980, and as amended and clarified June 11, 1980 and December 15, 1980 was approved effective April 10, 1981. The amendments submitted October 1, 1981, are also approved effective upon publication. Copies of the approved program, as amended, are available at:

(a) Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319

(b) Office of Surface Mining Reclamation and Enforcement, 818 Grand Avenue, 5th Floor Scarritt Building, Kansas City, Missouri 64106, Telephone (816) 374–3920

(c) Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Washington, D.C.

2. Section 915.11 is amended by removing and reserving paragraphs (a) and (c):

§ 915.11 Condition of state regulatory program approval.

(a) [Reserved]

(b) * * *

(c) [Reserved]

[FR Doc. 82-14370 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL 2117-6]

Approval and Promulgation of State Implementation Plans: Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to unconditionally approve local air pollution control ordinances for the cities of Omaha and Lincoln, and for Lancaster County as revisions to the Nebraska State Implementation Plan (SIP). Action is also being taken to revoke federally promulgated rules for visible emissions. Proposed action on these measures was published on September 15, 1977 at 42 FR 46371. No comments were received. Since publication of the proposed rulemaking the state has officially withdrawn portions of the ordinances which were either unapprovable or not appropriate for incorporation into the SIP.

DATES: Effective date: This action will be effective on July 26, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be directed to Eloise Reed, Air Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106.

The submitted SIP revisions are available for review during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, Room 2922, 401 M Street S.W., Washington, D.C. 20460

Air Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Eloise Reed, Air Planning and Development Section, Air Branch, Air and Waste Management Division, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816) 374–3791, FTS: 758–6525.

SUPPLEMENTARY INFORMATION: On May 31, 1972, the Administrator of EPA approved the Nebraska SIP, which included local ordinances for Lincoln and Omaha. On September 15, 1977, EPA proposed action on revisions to those local ordinances, the inclusion of ordinances for Lancaster County into the SIP, and the revocation of federally promulgated rules for visible emissions. No comments were received. The state has not adopted additional changes to any of these local ordinances since submittal.

The 1973 supplement of the Omaha Air Quality Control Ordinance rather than the 1974 supplement was inadvertently sent to EPA by the state and subsequently made available to the public in September 1977 at the time of proposed rulemaking. However, the state met all procedural requirements of 40 CFR 51.4 for the 1974 supplement prior to adoption. The major differences in the two supplements are summarized below:

1. The 1974 supplement includes indirect source review procedures in section 45.04.050.

2. The 1974 supplement expands section 45.05.020, "Restriction of Sulfur Compounds", to include emission rates for sulfur dioxide from fossil fuel fired burning equipment, and maximum ground level concentrations for hydrogen sulfide.

On March 26, 1982, Governor Charles Thone of Nebraska officially withdrew from consideration as SIP revisions, Prevention of Significant Deteriorations regulations in Lincoln and Lancaster County; malfuction regulations in Omaha, Lincoln, and Lancaster County; and variance provisions in Omaha. These provisions are patterned after state regulations which either have been or are expected to be revised shortly for consistency with Federal requirements. All New Source Performance Standards in the ordinances were also withdrawn, because they are not appropriate for incorporation into the SIP.

The approved revisions to the SIP would incorporate the Lancaster County Air Pollution Control Resolution (effective January 4, 1977), the City of Omaha Air Quality Control Ordinance (effective September 24, 1974), and the City of Lincoln Air Pollution Control Ordinance and Regulations and Standards (effective June 21, 1976). The changes in the ordinances for incorporation into the Nebraska SIP, and the resulting revisions required for Part 52 of Title 40 of the Code of Federal Regulations (CFR) are summarized below.

SIP Revisions

1. *Legal authority.* Under the revised Lincoln Air Pollution Control Ordinance, the Department of Health now has the authority (1) to require installation of monitoring devices, (2) to make periodic tests and inspections of sources, and (3) to require the owners or operators of stationary sources to maintain records and make periodic reports on the nature and amount of emissions. Section 52.1424 which previously found Lincoln's legal authority for source surveillance inadequate is now revoked.

2. *Source surveillance.* Section 52.1429 is revoked and reserved in its entirety for the following reasons:

a. State procedures for source surveillance which are found inadequate in § 52.1429(a) have been revised by Nebraska and approved by EPA.

Through an omission the section was not revoked in the final rulemaking on the action on June 23, 1976, (41 FR 25898). It is now revoked.

b. Because Lincoln now has legal authority for source surveillance, as described above, § 52.1429 (c) and (e) which found Lincoln's legal authority inadequate are now revoked.

c. On February 22, 1974, applicability of state emission limitations was expanded from Douglas, Lancaster and Sarpy Counties to include the entire state. EPA promulgated approval of this action on September 9, 1975 (40 FR 41778). For this reason, the federally promulgated regulation for control of visible emissions for Jefferson, Thayer and Gage Counties, § 52.1429(g), which was inadvertently not revoked at 40 FR 41778, is now revoked.

d. Sections 52.1429 (b), (d), and (f), the remainder of § 52.1429, which were formerly reserved are now revoked.

3. *Indirect source review.* EPA approves the procedures for indirect source review included in the Lincoln, Omaha and Lancaster County ordinances. Under section 110(c) of the Act, EPA retains the authority to promulgate, implement and enforce regulations for indirect source review which apply only to federally assisted highways, airports, and other major federally assisted or federally owned or operated indirect sources. It may be necessary to require revisions to the local ordinances if they are affected by future promulgations under this authority.

EPA has determined that the SIP revisions meet the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

Action

EPA approves the submitted SIP revisions and incorporates them into the Nebraska SIP.

Because considerable time has elapsed since publication of the notice of proposed rulemaking and the wrong ordinance for Omaha was made available for public review in 1977, EPA is taking final action but providing a mechanism for additional public comment. The public should be advised that this action will be effective July 26, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: May 19, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Nebraska was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart CC—Nebraska

1. Section 52.1420 is amended by adding paragraphs (c) (23) and (24) to read as follows:

§ 52.1420 Identification of plan

* * * * *

(23) Revision to the SIP concerning the adoption of the Lancaster County Air Pollution Control Resolution was submitted by the governor on April 4, 1977.

(24) Revision to the SIP concerning the adoption of the revised local air pollution control ordinances for the cities of Omaha and Lincoln was submitted by the governor on December 27, 1977.

§ 52.1424 [Reserved]

Section 52.1424 is removed and reserved.

§ 52.1429 [Reserved]

Section 52.1429 is removed and reserved.

[FR Doc. 82-14170 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-4-FRL 2114-7]

Kentucky: Plans for Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Primary Aluminum Fluorides; Negative Declaration for Phosphate Fluorides

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to section 111(d) of the Clean Air Act and EPA's implementing guidelines, the Commonwealth of Kentucky has adopted and submitted to EPA plans for the control of "designated" pollutants. The Commonwealth's Department for Natural Resources and Environmental Protection (DNREP) submitted plans for the control of sulfuric acid mist, total reduced sulfur (TRS) and primary aluminum fluorides. These plans establish emission limits for the three subject pollutants emitted by the designated facilities. The Commonwealth has also submitted a negative declaration for fluorides from phosphate fertilizer plants. EPA today announces approval of the plans and the negative declaration.

EFFECTIVE DATE: This action will be effective on July 26, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Environmental Protection Agency, EPA Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Kentucky Department for Natural Resources and Environmental Protection, Division of Air Pollution Control, 18 Reilly Road, Bldg. #2 Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Russell, EPA Region IV, Air Programs Branch, at the above listed address or, phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: In accordance with section 111 of the Clean Air Act (amended August 1977, Pub. L. No. 95-95), "Standards of Performance for New Stationary Sources," EPA has promulgated

standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and non-criteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

Paragraph (d) of section 111 requires States to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from existing sources which are regulated from the new source category. "Existing" sources were defined as those which are present prior to the date on which EPA proposed new source performance standards for that particular source category. The requirements for such plans are set forth in subpart B of 40 CFR Part 60 (November 17, 1975; 40 FR 53346).

On December 15, 1981 Kentucky submitted plans for controlling sulfuric acid mist, total reduced sulfur, and primary aluminum fluorides. The plans for sulfuric acid mist and total reduced sulfur were adopted by Kentucky on June 6, 1979, while the plan for primary aluminum fluorides was adopted on November 5, 1981. The Commonwealth submitted a negative declaration with respect to fluoride emissions from phosphate fertilizer plants on August 25, 1978. The negative declaration certified that Kentucky had no sources in this category.

Sulfuric Acid Mist Plan

The sulfuric acid mist plan establishes an acid mist emission limitation for sulfuric acid producers (0.25 kg/metric ton or 0.5 pounds per ton) consistent with the recommended emission limitation in EPA's final guideline document. This regulation specifies emission standards and test methods.

Total Reduced Sulfur Plan

The total reduced sulfur plan establishes total reduced sulfur emission limitations for existing kraft pulp mills. The plan requires:

(1) 98 percent removal of TRS emission from digester relief, blow tank relief, evaporator hot wells or multiple effect evaporators.

(2) Recovery furnace TRS emissions should not exceed 15 parts per million by volume expressed as an arithmetic average over any consecutive 24-hour period.

(3) Recovery furnace emissions should not exceed 40 parts per million by volume for more than 60 total minutes in any 24 hour period.

The plan not only includes the above emission limitations but also specifies the test methods and procedures for compliance determination.

Primary Aluminum Fluoride Plan

The plan for controlling emissions of fluorides from existing primary aluminum plants specifies the following emission limits:

(1) Total fluoride emissions from scrubbing plants are limited to 1.9 lbs./ton of aluminum produced, except that emissions between 1.9 lbs./ton and 2.5 lbs./ton will be considered in compliance. This variance will be granted if the owner or operator can demonstrate to Kentucky's satisfaction that good maintenance operating procedures were followed, and the proper control equipment was operating during the performance test.

(2) Gaseous fluoride emissions from pot room roof monitors in wet scrubbing plants are limited to 3.25 lbs./hr.

(3) Gaseous fluoride emissions from any primary control system in wet scrubbing plants are limited to 1.0 lbs./ton of aluminum produced.

The plan also specifies adequate test methods and procedures.

Action

After reviewing the plans EPA has determined that they are adequate in all areas. EPA is today approving Kentucky's 111(d) plans for control of sulfuric acid mist, total reduced sulfur and fluoride emissions from primary aluminum plants and a negative declaration for phosphate fertilizer plants. This is being done without prior proposal because the plans are noncontroversial and have limited impact and no comments are anticipated, as all affected sources are reported to be in compliance with applicable State regulations.

The public should be advised that this action will be effective on July 26, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307 (b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that 111(d) approvals do not have a significant economic impact on a substantial number of small entities. This action only approves State actions. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Secs. 111 and 301(a) of the Clean Air Act (42 U.S.C. 7411 and 7601(a))

Dated: May 19, 1982.

Anne W. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S is added to read as follows:

* * * * *

Subpart S—Kentucky

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

Sec.

62.4350 Identification of plan.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

62.4351 Identification of sources.

Total Reduced Sulfur From Existing Kraft Pulp Mills

62.4352 Identification of sources.

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

62.4353 Identification of sources.

Fluoride Emissions From Phosphate Fertilizer Plants

62.4354 Identification of plan negative declaration.

62.4355–62.4369 [Reserved]

* * * * *

Subpart S—Kentucky

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.4350 Identification of plan.

(a) Identification of plan: Kentucky Designated Facility Plan (Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist emissions from existing facilities at sulfuric acid plants, total reduced sulfur

emissions from existing facilities at kraft pulp mills, fluoride emissions from existing facilities at primary aluminum reduction plants, officially submitted on December 15, 1981.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric acid plants.

(2) Kraft pulp mills.

(3) Primary aluminum reduction plants.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

§ 52.4351 Identification of sources.

The plan applies to existing facilities at the following sulfuric acid plant: E.I. du Pont sulfuric acid plant in Wurtland, Ky.

Total Reduced Sulfur From Existing Kraft Pulp Mills

§ 52.4352 Identification of sources.

The plan applies to existing facilities at the following kraft pulp mills:

(a) Westvaco Corp., Fine Papers Division, Wickliffe, Ky.

(b) Willamette Industries, Corrugated Medium Mill and Bleached Pulp Mill, Hawesville, Kentucky.

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

§ 52.4353 Identification of sources.

The plan applies to existing facilities at the following primary aluminum reduction plants:

(a) National Southwire Aluminum, Hawesville, Ky.

(b) Anaconda Company, Aluminum Division, Henderson, Ky.

Fluoride Emissions From Phosphate Fertilizer Plants

§ 52.4354 Identification of plan—negative declaration.

The Kentucky Department for Natural Resources and Environmental Protection certified in a letter dated August 25, 1978, that Kentucky has no designated facilities in this source category.

§§ 52.4355–52.4369 [Reserved]

[FR Doc. 82-14180 Filed 5-25-82; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0E2378/R447; PH FRL 2129-6]

Nitrapyrin/ Tolerance for Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine] and its metabolite 6-chloropicolinic acid in or on strawberries. This regulation to establish a maximum permissible level for combined residues of nitrapyrin in or on strawberries was requested by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on May 26, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Emergency Response Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking in the Federal Register of March 31, 1982 (47 FR 13537) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 0E2378 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, establish a tolerance for residues of 6-chloropicolinic acid in or on strawberries at 0.2 part per million (ppm), resulting from use of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine] on the raw agricultural commodity strawberries. The petition was later amended to propose the tolerance in terms of the combined residues of nitrapyrin and its metabolite, 6-chloropicolinic acid. Residue data to support the use on strawberries are from tests conducted in California.

No comments were received in response to this notice of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the notice of proposed rulemaking (47 FR 13537, March 31, 1982). The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that establishment of the tolerance will protect the public health. Therefore, 40 CFR 180.350 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Effective on: May 26, 1982.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 12, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.350 is amended by adding and alphabetically inserting the raw agricultural commodity strawberries to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Strawberries	0.2
* * * * *	

[FR Doc. 82-13963 Filed 5-25-82; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 82-233]

Processing of Pending Space Station Applications in the Domestic Fixed Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Order establishing agency procedures.

SUMMARY: This order establishes a procedure to process, as a group, all domestic satellite space station applications on file at the time of its adoption. Due to the inter-relationships between all domestic satellites when assigning orbital locations and adopting orbital spacing criteria, pending applications must be considered as a group with presently authorized domestic satellites. This will ensure sound decisions regarding orbital spacings and a revised orbital deployment plan.

DATE: Effective May 18, 1982.

FOR FURTHER INFORMATION CONTACT: Ronald J. Lepkowski, Common Carrier Bureau, (202) 632-5930.

SUPPLEMENTARY INFORMATION:

In the matter of processing of pending space station applications in the domestic fixed satellite service.

Memorandum Opinion and Order

Adopted: May 18, 1982.

Released: May 20, 1982.

1. In CC Docket No. 81-704, we are examining the technical bases for reductions in orbital spacings between domestic satellites in the 4/6 and 12/14 GHz bands so that more satellites can be launched to satisfy growing user demand. *Domestic Fixed Satellite Service*, 88 FCC 2d 318 (1981). There we stated our intention to implement reduced orbital spacings in a revised orbital deployment plan for specific satellites at the earliest practical date. *Id.* at 323. A significant number of new domestic satellite proposals have been filed since the opening of that docket. They must be considered together with the presently authorized domestic satellites so that sound decisions regarding orbital spacings and a revised orbital deployment plan can be made. We are therefore going to process as a group all of the pending space station applications. Space station applications filed after the adoption of this order will be processed after those presently on file.

2. From the time we decided to accept applications for domestic satellite systems in *Domestic Communications Satellite Facilities*, 22 FCC 2d 86 (1970) (*Domsat I*), we have sought to fashion a flexible domestic space station authorization process that allows applicants to develop economical and innovative satellite services in a prompt and orderly manner. Potential domestic satellite operators are required to file a complete and comprehensive proposal for their system and services. *Id.* at 98. *See also, Domestic Fixed Satellite Service*, 77 FCC 2d 956 at 962-963 (1980) (*Processing Order*). We have not attempted to prescribe by rule domestic satellite designs or services in advance of the submission of construction permit applications. However, an applicant must demonstrate its financial, technical and legal qualifications and its ability to immediately proceed with the construction and operation of the proposed system. *Processing Order* at 960. Applicants also must make a sufficient showing of potential public benefit to justify the assignment of orbital locations and frequencies. *Domestic Communications Satellite Facilities*, 35 FCC 2d 844 at 850-851 (1972) (*Domsat II*). *See also, Orbital Deployment Plan*, 84 FCC 2d 584 (1981). We also expressly advised parties that, while the Commission welcomes submission of applications and gives them all serious consideration, the extension of the opportunity to file, and the expenditure involved in preparing an application, do not in any way indicate that the application will be granted in whole or in part. *Domsat I* at 94.

3. The courts have endorsed our licensing policies, and recognized the need to tailor our procedures to the specific characteristics of the satellite industry. In upholding one such licensing decision, the reviewing court stated:

> Ever since the decision in *Domsat II* the FCC has designed its procedures to minimize delay in developing the domestic satellite industry. This court has specifically approved that approach. *Network Project v. FCC*, [511 F.2d 786 (D.C. Cir. 1975)] at 797 n.13. In this dynamic and technologically innovative industry, a proposed venture may become obsolete in just a few years. Even without regulatory delay, a satellite firm is faced with the daunting prospect of time-consuming research and construction, which entail advance planning and risky lead time—and which may lead to naught. To delay a proposed project six months will increase capital cost and diminish technological advantage; to delay it a year or more may destroy its attractiveness as an investment. . . . We recognize that the need for expedition will not justify an agency's failure to carry out its statutory responsibilities, but the relative urgency of a decision is a thoroughly appropriate factor for an agency to consider when crafting its procedures.

United States v. FCC, 652 F.2d 72 (D.C. Cir. 1980) at 95 (footnotes omitted).

4. Sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. 154(i) and (j), afford the Commission wide discretion in establishing procedures to facilitate the orderly conduct of its business. For example, this authority includes our determinations of the manner and sequence in which we consider applications. *FCC v. Pottsville Broadcasting Company*, 309 U.S. 134, 138 (1940); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963). In exercising our licensing authority it is imperative that we fashion our processes in accordance with the characteristics of each service. Thus our procedures must take into account the actual characteristics of the domestic satellite industry. Many of the newly proposed satellites are planned for launch as early as 1986. With the normal 3 year construction lead time, authorizations must soon be issued if the availability of additional satellites to serve users is not to be delayed. The pending applications present a wide array of proposed services and technical designs. In some cases, conflicting requests are made by two or more applicants for the same orbital locations. Although this situation does not give rise to comparative hearing rights, the applications must be considered together so that the Commission may assign orbital locations to best serve the public interest. Thus the orbital location assigned to a satellite may or may not be the one requested by the applicant. *See Western Union Telegraph Company*, 46 FCC 2d 162 (1974); *Orbital Deployment Plan, supra; Processing Order, supra.*

5. In particular, the various system applications are inter-related with respect to the orbital spacings required between pairs of satellites to keep interference levels within acceptable limits. Our objective is to develop an orbital deployment plan that most efficiently uses the limited orbital arc capable of serving the United States. This would maximize the number of domestic satellites available to satisfy growing user demand in an increasingly competitive market. We must, however, take into account the specific parameters of each proposed domestic satellite. Only then can we effectively assign orbital locations and adopt orbital spacing criteria. This difficult and complex process requires analyses of the actual proposals under consideration. A new proposal could require that the analysis process be repeated from the start, and delay a decision on any of the pending

applications because of the inter-relationships between all domestic satellites. Thus, the most practical way to reach a determination on any of the pending applications under our current procedures is to consider all of them as a group for consolidated treatment.

6. We wish to emphasize that, in using this group approach to the applications which are presently on file, we are not precluding the filing of new applications, either in the presently used 4/6 GHz and 12/14 GHz bands, or in the currently unused 18/30 GHz bands. However, it is essential that we make most efficient use of the 4/6 and 12/14 GHz bands where the immediate demand for orbital locations is the greatest. Prompt decisions require a grouping of space station applications at this time. Later filed applications will be reviewed subsequently in light of the determinations we will reach in CC Docket No. 81-704. We do not believe this action will bar favorable action on additional applications for new domestic satellites in the future. While it may become increasingly difficult to accommodate additional satellites in the 4/6 and 12/14 GHz bands, the opportunities for applicants to file applications for new domestic satellite systems in the 18/30 GHz bands are great. Our objective is to accommodate the existing and proposed systems in a way that maximizes the opportunity for additional satellites to be launched so that our present open entry policies for the domestic satellite market can be continued.

7. This order shall become effective at the time of its adoption, i.e. at 11:15 a.m. (EDST), May 18, 1982. Because it is related to matters of agency practice and procedure, the Commission is not required to follow the public rulemaking procedure prescribed by section 553 of the Administrative Procedure Act, 5 U.S.C. 553. Furthermore, delay in implementing this procedure may well encourage a large number of speculative new filings. This would impair our ability to act expeditiously on currently pending applications. This in turn would be contrary to the public interest in the timely and orderly provision of additional domestic satellite services.

8. Accordingly, it is ordered that the policies and procedures specified herein are adopted pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, 47 U.S.C. 154(i) and (j), and that the applications whose file numbers are listed in the Appendix to this order, as well as those domestic space station applications that may be filed by the time of adoption specified above, shall be considered as a group with respect to further processing by the Commission.

9. It is further ordered that domestic space station applications filed after the time of adoption specified above shall be processed after processing is completed on the applications listed in the Appendix to this order. As an exception, action may be taken separately on requests for authority to launch satellites for which construction authority was granted prior to the date of this order.

10. It is further ordered that the Secretary of the Federal Communications Commission shall cause this order to be published in the **Federal Register** at the earliest practical date.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix—Pending Domestic Space Station Applications

Advanced Business Communications, Inc.
1361-DSS-P/LA-82
1362-DSS-P/LA-82
1363-DSS-P-82
American Satellite Company
521-DSS-P/LA-82
522-DSS-P/LA-82
523-DSS-P-82
American Telephone and Telegraph Company
234-DSS-LA-82
Hughes Communications, Inc.
2115-DSS-LA-81
Rainbow Satellite, Inc.
1453-DSS-P/LA-82
1454-DSS-P/LA-82
1455-DSS-P-82
RCA American Communications, Inc.
1810-DSS-P/LA-81
604-DSS-P/LA-82
1457-DSS-P/LA-82
1458-DSS-P/LA-82
1459-DSS-P/LA-82
1460-DSS-P-82
Satellite Business Systems
1461-DSS-LA-82
1462-DSS-P/LA-82
Southern Pacific Communications Company
889-DSS-P/LA-80
1084-DSS-P/LA-80
United States Satellite Systems, Inc.
448-DSS-P/LA-82
449-DSS-P/LA-82
450-DSS-P-82
Western Union Telegraph Company
723-DSS-P/LA-81

[FR Doc. 82-14340 Filed 5-25-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-775; RM-3942]

Radio Broadcast Services; FM Broadcast Station in Leland, Miss., and McGehee, Ark., Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns a second Class A channel to Leland, Mississippi, and substitutes one Class A channel for another at McGehee, Arkansas, in response to a petition filed by River Broadcasting Company, Inc.

DATE: Effective July 20, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Leland, Mississippi and McGehee, Arkansas); BC Docket No. 81-775, RM-3942.

Report and Order—Proceeding Terminated

Adopted: May 13, 1982.
Released: May 19, 1982.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 46 FR 58718, published December 3, 1981, proposing the assignment of Channel 272A to Leland, Mississippi, and the substitution of Channel 276A for unused Channel 272A at McGehee, Arkansas. The Notice was issued in response to a petition filed by River Broadcasting Company, Inc. ("petitioner"). Comments supporting the proposal were filed by the petitioner. Mid America Broadcasting Corporation, Inc.[1] submitted opposing comments, to which petitioner responded.

2. Leland (population 6,067),[2] in Washington County (population 72,344), is located approximately 136 kilometers (85 miles) northwest of Jackson, Mississippi. It is served by daytime-only AM Station WESY and FM Station WBAD (Channel 232A).

[1] Mid America Broadcasting Company, Inc. is the licensee of Stations WGVM (AM) and WDMS (FM), Greenville, Mississippi.

[2] Population figures are taken from the 1980 U.S. Census, Advance Report.

3. As requested by the Notice, petitioner submitted a preclusion study which indicates that only Tchula, Mississippi (population 1,729), will be affected by the assignment of Channel 272A to Leland. Channel 296A is said to be available for assignment to that community.

4. Mid America argues that another station in the Greenville-Leland area is not needed and would be seriously detrimental to the services it provides to the area. Inasmuch as Leland and Greenville are only 10 miles apart, the stations in the area compete for advertising revenues and listening audiences. Mid America further asserts that since Leland receives the signals of nine nearby stations, in addition to the local service, it could hardly be lacking in choices of programming, advertising media, or an opportunity for self-expression as claimed by the petitioner. It argues that at a time when the nation's economy (Greenville in particular) is in distress, another station in the area is unwarranted and certainly not in the public interest, and urges the Commission to rescind or set aside the rule making proposal.

5. Petitioner in reply argues that the opposition allegations that it will suffer economically and that adequate service is currently provided to Leland are unsupported. It also alleges that such a standard is not appropriate for denying an assignment. While it may be true that Leland is situated near several communities, petitioner alleges that Leland is an independent growing city with local broadcast needs and problems not addressed by the stations in those communities. Petitioner notes that contrary to the opposition's claim of a depressed economy, Leland in the last three years has had many new businesses commence operation and they have shown steady economic growth. Petitioner also refers to the Commission's FM assignment criteria, citing *Anamosa, Iowa,* 29 R.R. 2d 1700, 1706 (1974) which favors providing all communities with two local stations. Petitioner urges the Commission to deny the opposition's comments for lack of merit.

6. After evaluating the proposal and comments in this proceeding, we have concluded that the proposed assignment and substitution of channels would be in the public interest. While Leland is located in the Greenville SMSA, it still has its distinct needs, which can be better served by its own local facility. We believe that the petitioner has submitted sufficient information to warrant a second FM assignment to Leland. The issues raised by Mid America of a competitive nature should be considered at the application stage. See, *Rome, New York* 42 R.R. 2d 618 (1978). We also found that the preclusion impact is insignificant since an alternate channel is availalble to the precluded community.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective July 20, 1982, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with respect to the following communities:

City	Channel No.
Leland, Miss	232A, 272A
McGehee, Ark	276A

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Divisions Broadcast Bureau.

[FR Doc. 82-14388 Filed 5-25-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-873; RM-4003]

Radio Broadcast Services; FM Broadcast Station in Dyersville, Iowa, Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 257A to Dyersville, Iowa, in response to a petition filed by Dyersville Broadcasting Service, Inc. The assigned channel could provide a first FM service to Dyersville.

DATE: Effective July 20, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Dyersville, Iowa); BC Docket No. 81-873, RM-4003.

Report and Order—Proceeding Terminated

Adopted: May 13, 1982.

Released: May 19, 1982.

1. The Commission has under consideration a Notice of Proposed Rule Making, 47 FR 2135, published January 14, 1982, proposing the assignment of Channel 257A to Dyersville, Iowa, as that community's first FM assignment in response to a petition filed by Dyersville Broadcasting Service, Inc. ("petitioner"). Comments in support of the proposal were filed by the petitioner. No oppositions to the proposal were received.

2. Dyersville (population 3,825) [1] is located along the border between the counties of Delaware (population 18,933) and Dubuque (population 93,745), approximately 72 kilometers (45 miles) northeast of Cedar Rapids, Iowa. It has no local aural service.

3. In its comments, the petitioner restated the need for an FM assignment to Dyersville and urged the Commission to adopt its proposal. As requested by the Notice, petitioner submitted information indicating that it could comply with the Commission's technical criteria with a transmitter site located approximately 6.6 miles southwest of Dyersville. It also restated its intention to apply for Channel 257A, if assigned.

4. The Commission has determined that the public interest would be served by assigning Channel 257A to Dyersville, Iowa, since it would provide the community with its first local FM broadcast service. The transmitter site is restricted to 6.6 miles southwest of Dyersville to meet spacing requirements.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules, it is ordered, That effective July 20, 1982, § 73.202(b) of the Commission's Rules, is amended with respect to the following community.

City	Channel No.
Dyersville, Iowa	257A

6. It is further ordered, That this proceeding is terminated.

[1] Population figures were derived from the 1980 U.S. Census, Advance Report.

7. For further information, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc 82-14837 Filed 5-25-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-874; RM-3931]

Radio Broadcast Services; FM Broadcast Station in Devils Lake, N. Dak., Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns two Class C channels to Devils Lake, North Dakota. One of the Class C channels is substituted for a Class A channel, with the license modified accordingly, in response to a petition filed by KPGC Company.

EFFECTIVE: July 20, 1982.

ADDRESS: Federal Communications Commission, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order—Proceeding Terminated

Adopted: May 12, 1982.

Released: May 19, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Devils Lake, North Dakota); BC Docket No. 81–874, RM–3931.

1. In response to a petition filed by KGPC Company ("petitioner"), the Commission adopted a Notice of Proposed Rule Making and Order to Show Cause, 46 FR 62878, published December 29, 1981, proposing the assignment of two Class C channels and deletion of a Class A channel at Devils Lake, North Dakota. Additionally, we proposed to modify the Class A license for Station KDVL(FM) to specify operation on one of the Class C channels. Comments supporting the proposal were filed by the petitioner. Comments in support were also filed by KDLR, Inc. (licensee of Station KDVL(FM)).

2. Devils Lake (population 7,442),[1] seat of Ramsey County (population 13,048), is located in the northeastern part of North Dakota, approximately 570 kilometers (350 miles) northeast of Minneapolis, Minnesota. It is served by fulltime AM Station KDLR and FM Station KDVL (Channel 244A). The stations have common ownership.

3. Petitioner in its comments again noted that Devils Lake is of sufficient size and importance to warrant a second FM assignment. It also stated that the proposed assignment would provide service to a significant area, currently without FM service. Petitioner reaffirmed its intention to apply for the channel, if assigned.

4. KDLR, Inc., in comments to the proposal, states that it is willing to modify its license to operate on a Class C channel. However, it is unable to determine what the Commission considers reasonable expenses for the frequency change. It estimates the expenses it will incur for upgrading its facility (which includes relocating the tower and transmitter site) will amount to approximately $100,000 to $200,000.

5. As stated in the Notice, the assignment of Channel 278 to Devils Lake would cause preclusion in a large area. However, petitioner has shown that alternate channels are available in the affected area. We also stated that exceptions to the Commission's policy of assigning Class C channels to smaller communities have been made where the assignment would result in a large first or second FM service or where, as here, the assignment would enable a large rural area to be served. Additionally, since there are few large cities in the coverage area, the assignment would provide residents with a choice of FM service.

6. It has also been general Commission policy to avoid an intermixture result where Class C channels are available to interested parties. Since the proposed coverage area is rural in nature and largely underserved, we believe that Devils Lake would greatly benefit from two Class C channels. As for the reimbursement issue, our general policy is to order the benefiting party to reimburse where the Commission finds it equitable in the individual case. However, the proper figure is normally left to the good faith determination of the parties, subject to Commission approval in the event of a disagreement. The amount reimbursed would include only the cost of converting the operating frequency from a Class A to a Class C channel. The cost of increasing the power and antenna height to conform to the minimum requirements of a Class C operation or of relocation of the transmitter site would not be reimbursed.

7. After consideration of the proposal and comments, we believe that the public interest would be served by the proposal. Therefore, we shall assign Class C Channels 273 and 278 and delete Channel 244A at Devils Lake. We shall also (in paragraph 10) modify the license of Station KDVL to specify operation on Channel 273. Station KDVL is entitled to reimbursement for frequency change only, by the eventual permittee on Channel 278.

8. Canadian concurrence in the proposal has been obtained.

9. In view of the foregoing and pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective July 20, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to Devils Lake, North Dakota, as follows:

City	Channel No.
Devils Lake, N. Dak.	273, 278

10. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by KDLR, Inc. for Station KDVL(FM), Devils Lake, North Dakota, is modified, effective July 20, 1982, to specify operation on Channel 273 instead of Channel 244A. Station KDVL(FM) may continue to operate on Channel 244A for one year from the effective date of this action or until it is ready to operate on Channel 273, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

11. It is further ordered, That the Secretary of the Commission shall send

[1] Population figures are taken from the 1980 U.S. Census.

a copy of this Order by Certified Mail, Return Receipt Requested, to KDLR, Inc., 400 12th Avenue, Devils Lake, North Dakota 58301.

12. It is further ordered, That this proceeding is terminated.

13. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82-14339 Filed 5-25-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 81 and 83

[PR Docket No. 81-657; FCC 82-203]

Stations on Land in the Maritime Services and Stations on Shipboard in the Maritime Services; Commission's Rules To Make a Certain Frequency Available Exclusively for Vessel Traffic Service (VTS) Communications in the Houston VTS Radio Protected Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes marine VHF Channel 11 available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area. This rule making was initiated in response to an informal request by the Commandant, United States Coast Guard (USCG). These rules will enable the USCG to service the increased vessel traffic in this area.

EFFECTIVE DATE: June 14, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Linda R. Figueroa, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 81 and 83

Coast stations, Marine safety, Radio telephone, Vessels.

In the matter of amendment of Parts 81 and 83 of the rules to make the frequency 156.55 MHz available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected, area, PR Docket No. 81–657.

Report and Order—Proceeding Terminated

Adopted: April 29, 1982.

Released: May 7, 1982.

Summary

1. This action will amend Parts 81 and 83 of the Commission's rules to make marine VHF Channel 11 (156.55 MHz) available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area.

Background

2. The United States Coast Guard (USCG) has established a VTS system for a number of the largest and busiest port areas in the United States. This program was initiated in order to implement the provisions of the "Ports and Waterways Safety Act of 1972".[1] A VTS is a vessel movement reporting system which is designed to prevent damage to or loss of vessels, bridges or other structures in United States navigable waters, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. At the request of the Commandant, USCG the Commission amended the rules so as to designate up to three frequencies exclusively for VTS communications within the designated VTS radio protected areas.[2] The frequencies available for VTS communications, under specified conditions, are recorded in §§ 81.357 and 83.361 of the rules. These frequencies are 156.550 MHz (previously a commercial frequency), 156.600 MHz and 156.700 MHz (previously port operations frequencies). Sections 81.357(b)(3) and 83.361(b)(3) presently designate frequency 156.600 MHz exclusively for USCG VTS communications in the Houston VTS radio protected area.

3. On October 2, 1981, we released a Notice of Proposed Rule Making (46 FR 50573, October 14, 1981) to amend our rules to also designate VHF Channel 11 exclusively for VTS communications in the Houston VTS radio protected area.[3] This notice was issued in response to an informal request by the Commandant of the United States Coast Guard (USCG). The additional VTS channel was considered necessary to enable the USCG to better serve the increased vessel traffic in this area.

Comments

4. Comments were filed by Houston Mooring Company, Inc. and Donald C. Chayet. Both commenters opposed the proposed rule changes.

5. The Houston Mooring Company, Inc. opposes the proposal because it feels Channel 11 is heavily used and therefore, excluding it from commercial use would cause considerable inconvenience and expense. Currently, Channel 11 is a commercial channel on which there are eleven limited coast station licensees and associated ship stations. The USCG coordinated locally with user groups in Houston and determined that there is strong local support for making Channel 11 available exclusively for VTS communications in this area. As we proposed, the licensees presently operating on Channel 11 will have until their licenses expire to make any adjustments necessitated by this action. It should also be noted that in Docket No. 21370 [4] we made Channel 5 available for use in the Houston area. This action was taken to compensate, in part, for increased congestion in commercial channels resultng from VTS operation on these channels. Further, the financial burden imposed on the eleven limited coast station licensees by making Channel 11 available for VTS communications will at most entail the purchase of a new crystal. In the event that the licensees' equipment is synthesized (as most ship stations are) no expense will be incurred. Therefore, we conclude that the designation of Channel 11 as a VTS frequency in the Houston VTS radio protected area will not cause current licensees undue inconvenience and expense.

6. Mr. Chayet opposes the proposal alleging that the Commission lacks authority to designate a non-VTS frequency exclusively for VTS use. However, the Commission's authority was clearly established in Docket No. 20444.[5] In this docket the Commission amended the rules to designate up to three frequencies (156.550 MHz, 156.600 MHz and 156.700 MHz) exclusively for VTS communications within specific VTS radio protected areas. These amendments were made pursuant to authority contained in sections 4(i) and 303(b), (c), (d), (h) and (r) of the Communications Act of 1934 as amended. Consequently the Commission has clearly established the authority to designate non-VTS frequencies for VTS use.

7. We conclude that the amendments proposed in the NPRM to designate VHF Channel 11 exclusively for VTS communications in the Houston VTS radio protected area would be in the

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[1] Pub. L. 92–340, 86 Stat. 424, 46 U.S.C. 1801.

[2] *Report and Order*, Docket No. 20444, adopted December 2, 1975, 40 FR 57673, 58 FCC 2d 1089.

[3] The Houston VTS radio protected area is defined in §§ 81.357(b)(3) and 83.361(b)(3) as the rectangle between north latitude 28° 30' and 30° 30' and west longitudes 93° 30' and 96°.

[4] *Report and Order*, Docket No. 21370, adopted December 7, 1977, 67 FCC 2d 203.

[5] *Report and Order*, Docket No. 20444, *supra*, note 2.

public interest. Although the two comments filed opposed the proposed amendments, the issues they raised have no decisional significance. This amendment will promote safety and enable the USCG to meet the increased communications needs of the water transportion industry in the Houston port area. Therefore we are amending Sections 81.357 and 83.361 as proposed.

8. The Commission has determined that sections 603 and 604 of the Regulatory Flexibility Act of 1980 [6] do not apply to this rule making proceeding. The USCG VTS system is operated as part of a Congressional mandate in the "Ports and Waterways Safety Act of 1972". The effect on the licensees will be to require a frequency change at the time of license renewal. At most, this will entail a minimal cost for purchase of new crystals. Therefore, making Channel 11 available for VTS communications in the Houston VTS radio protected area will not have a significant economic impact on a substantial number of small entities.

9. Regarding questions on matters covered in this document contact Robert H. McNamara (202) 632–7175.

10. Accordingly, it is ordered, That under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) and 303(r) the Commission's rules are amended as set forth in the attached Appendix, effective June 14, 1982.

11. It is further ordered, That this proceeding is terminated.

Federal Communications Commission.
(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

William J. Tricarico,
Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

Section 81.357(b)(3) is amended by adding frequency 156.55 MHz, to read as follows:

§ 81.357 Frequencies available for use in Vessel Traffic Services Systems.

* * * * *

(b) * * *

(3) Houston: The rectangle between north latitudes 28°30′and 30°20′ and west longitudes 93°30′ and 96°; frequencies 156.6 MHz and 156.55 MHz.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICE

Section 81.361(b)(3) is amended by adding frequency 156.55 MHz, to read as follows:

§ 81.361 Frequencies available for use in Vessel Traffic Service Systems.

* * * * *

(b) * * *

(3) Houston: The rectangle between north latitudes 28°30′and 30°20′ and west longitudes 93°30′ and 96°; frequencies 156.6 MHz and 156.55 MHz.

* * * * *

[FR Doc. 82-14341 Filed 5-25-82; 8:45 am]
BILLING CODE 6712-01-M

[6] Pub. L. 96-354.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1474; Amdt. 1]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 To Eleventh Revised Service Order No. 1474.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., May 30, 1982, and continuing in effect until 11:59 p.m., July 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

In the matter of various railroads authorized to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, Trustee); Amendment No. 1 to Eleventh Revised Service Order No. 1474.

Decided May 20, 1982.

List of Subjects in 49 CFR Part 1033

Railroads.

Upon further consideration of Eleventh Revised Service Order No. 1474 (47 FR 13529), and good cause appearing therefor:

It is ordered,

§ 1033.1474 Service Order No. 1474.

(a) Various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor (Richard B. Ogilvie, Trustee). Eleventh Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional sixty (60) days, and shall expire at 11:59 p.m., July 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., May 30, 1982.

This action is taken under authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. Bernard Gaillard not participating.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-14342 Filed 5-25-82; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 102
Wednesday, May 26, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Deregulation of Liquidity Reserve Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rulemaking.

SUMMARY: NCUA proposes to remove in its entirety Part 742 of NCUA's Rules and Regulations, Liquidity Reserves. This action is deemed appropriate because the NCUA Board believes that liquidity management should be the responsibility of individual credit union boards. In addition, it should be noted that credit union liquidity is generally high.

DATE: Comments due on or before June 25, 1982.

ADDRESS: Send comments to Robert S. Monheit, Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Barbara A. Burrows, Attorney-Advisor, Office of General Counsel at the above address. Telephone: (202) 357–1030.

SUPPLEMENTAL INFORMATION: The NCUA Board believes that Federal credit unions should have the flexibility to set their own standards to safeguard against poor economic conditions. For this reason the Board proposes to repeal the liquidity reserve requirement. (It should also be noted that should the rule be repealed, NCUA Interpretive Ruling 79–7 concerning this subject would also be repealed.) Prudent liquidity levels will differ depending upon a credit union's liability structure and the location and make-up of its field of membership. Hence, any particular percentage of liquid assets should be decided by the credit union board based upon these and other factors. Of course, statutory reserve transfer requirements remain in force.

By way of history, it should be noted that until 1978, liquidity and capital trends in credit unions were relatively stable. During 1978, Federal credit unions experienced severe liquidity pressures resulting from strong loan demand coupled with a slow-down and outflow in the rate of consumer savings. To curb the then rising demands for assistance and to avert future threats to the National Credit Union Share Insurance Fund (and to insured credit unions and their members), the NCUA adopted the Liquidity Reserve Regulation. At that time the liquidity ratio was 12.85% in federally chartered credit unions. By contrast, in mid-1981, the ration was dramatically higher at 29.02%. At present the regulation binds only 5% of those federally chartered credit unions subject to the rule.

Regulatory Flexibility Act.

The NCUA Board hereby certifies that the proposed action, if adopted, will not have a significant economic impact on a substantial number of small credit unions because the restrictions contained in the present rule do not apply to credit unions with less than $1 million in assets. Therefore, its deletion would have no effect on small credit unions.

List of Subjects in 12 CFR Part 742

Credit unions

(12 U.S.C. 1762(b), 1781(b)(6), 1766(a), 1789(a)(11))

Accordingly it is proposed that 12 CFR Chapter VII be amended by removing Part 742.

PART 742—LIQUIDITY RESERVES [REMOVED]

Dated: May 20, 1982.

Rosemary Brady,

Secretary of the National Credit Union Administration Board.

[FR Doc. 82-14388 Filed 5-25-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

General Provisions: Proposed Change in Field Organization of the Customs Service

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to change the field organization of the Customs Service by consolidating the Customs districts of Bridgeport, Connecticut, and Providence, Rhode Island, under the Boston, Massachusetts, district and by consolidating the Bridgeport and Providence ports of entry in the enlarged Boston district. The proposed consolidation of the Customs districts would significantly reduce administrative salaries and expenses without impairing services to area businesses or the general public. The proposed change is part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before July 28, 1982.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Renee DeAtley, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposed to consolidate the Providence, Rhode Island, and Bridgeport, Connecticut, Customs districts under the Boston, Massachusetts, district.

The Regional Commissioner of Customs, Boston, Massachusetts (Region I), has recently completed a survey of staffing and workload for the Providence and Bridgeport districts. Based on the findings of this survey, Customs is of the opinion that the workload and manpower requirements of the Providence and Bridgeport districts do not warrant separate district organizations. For example, in Fiscal Year 1980, the Providence district processed approximately 6.0% of the Boston district formal entry workload.

During the same period, the Bridgeport district processed approximately 15.8% of the Boston workload. The volume of activity for both districts represents less than 25% of the total formal entries processed by the Boston district.

Customs believes that consolidation of the Bridgeport and Providence districts under the Boston district will result in more economical and efficient use of its personnel and resources in carrying out the Customs mission. The estimated savings to Customs in salaries and expenses is approximately $400,000. There would be no reduction in Customs service to the general public or to those organizations conducting business in the Providence or Bridgeport districts. In addition, Customs would be better able to meet the present needs and growth potential of the geographical area.

It should be noted that customhouse brokers currently licensed to transact business in Bridgeport and Providence also would be considered licensed in Boston if the consolidation is effected. Likewise, those customhouse brokers currently licensed to transact business in Boston also could do business in Providence or Bridgeport.

The proposed consolidation would place the Bridgeport and Providence ports of entry under the Boston districts. Also, the ports of entry currently under the jurisdiction of the Bridgeport and Providence districts will be placed under the Boston district. Those ports are as follows:

Providence and Newport, Rhode Island; Bridgeport, Hartford, New Haven, and New London, Connecticut.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3.(b), Customs Regulations (19 CFR 101.3(b)), would be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulation (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Services, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department No. 101–5 (47 FR 2419).

Executive Order 12291

Because this rule relates to the organization of the Customs Service it is not a regulation or rule subject to Executive Order 12291 pursuant to section 1(a)(3) of such Executive order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because the rule if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to; have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from entities through comments, either formal or informal.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Acts (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Robert Joseph Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 101

Organization and functions (government agencies).

Approved: March 26, 1982.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

William von Raab,
Commissioner of Customs.

[FR Doc. 82-14080 Filed 5-25-82; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Regulations No. 4

Federal Old-Age, Survivors, and Disability Insurance Benefits Annual Earnings Test

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations reflect recent statutory amendments which delay for one year (from January 1982 until January 1983), for all except a very small number of individuals who file their tax returns on a fiscal year basis, full implementation of section 302, Pub. L. 95–216, the Social Security Amendments of 1977. Section 302 reduced from 72 to 70 the age at which social security beneficiaries are no longer subject to an earnings test.

DATES: Comments must be received on or before July 26, 1982.

ADDRESSES: Prior to final adoption of the proposed regulations, consideration will be given to any comments received. Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Marval Cazer, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7453.

SUPPLEMENTARY INFORMATION: The proposed regulations conform existing regulations to section 2204 of Pub. L. 97–35, enacted August 13, 1981. This legislation exempts recipients of retirement and survivors benefits from an earnings test (including the 7-day foreign work test) for the months after December 1982 in which a beneficiary is age 70 or over. The January 1983 effective date is not tied to the beginning or ending date of any taxable year.

The Social Security Amendments of 1977 had made full benefits payable, with no deduction for earnings, for

months in which a beneficiary was age 70 or over in a taxable year ending after December 31, 1981. This provision became effective in calendar year 1981 for a few beneficiaries (prior to the enactment of the 1981 Amendments) whose taxable year is not on a calendar year basis. In order to avoid adversely affecting those few beneficiaries, the delay under the 1981 Amendments in implementing the age 70 provision does not apply to them nor to those beneficiaries who attain age 70 after enactment in the taxable year beginning in 1981 and ending in 1982 if the fiscal taxable year was approved by the Internal Revenue Service prior to the 1981 legislation. For example, a beneficiary with a taxable year of November 1, 1981, through October 31, 1982, who attains age 70 on July 3, 1982, would not be subject to the earnings test for months after June 1982. However, if a beneficiary had an approved taxable year June 1, 1981 through May 31, 1982, but attained age 70 after May 31, 1982, he or she would be subject to the earnings test for all months prior to January 1983 because the beneficiary is not age 70 in the taxable year that begins in 1981 and ends in 1982.

Regulatory Procedures

Executive Order 12291—These regulations merely conform the existing rules to the changes legislated by Pub. L. 97-35. The law delayed for one year putting into effect the age 70 provision after which a beneficiary is no longer subject to the earnings test. The resulting impact is solely the result of legislation and is in place and effective regardless of regulatory action on our part. Therefore, these regulations do not "result in" a cost impact of $100 million or more or otherwise trigger the criteria for a major rule established in EO 12291.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these rules only affect individual beneficiaries. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act—These proposed regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

(Secs. 203 and 1102 of the Social Security Act, as amended, 49 Stat. 623 and 647 as amended, 42 U.S.C. 403 and 1302; and sec. 2204 of Pub. L. 97-35, 95 Stat. 357)

(Catalog of Federal Domestic Assistance Program Nos. 13.803—Social Security Retirement Insurance; 13.805—Social Security Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

Dated: April 6, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: May 6, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

Part 404, Subpart E, of Title 20, Code of Federal Regulations is proposed to be amended as set forth below:

1. Section 404.415 is amended by revising paragraph (a) to read as follows:

§ 404.415 Deductions because of excess earnings; annual earnings test.

(a) *Deductions because of beneficiary's earnings.* Under the annual earnings test, deductions are made from monthly benefits (except disability insurance benefits, child's insurance benefits based on the child's disability, or widow's or widower's insurance benefits based on the widow's or widower's disability) payable to a beneficiary for each month in a taxable year (whether a calendar year or a fiscal year) beginning after December 1954 in which the beneficiary is under age 72 (age 70 after December 1982) and to which excess earnings are charged under the provisions described in § 404.434.

* * * * *

2. Section 404.417 is amended by revising all of paragraph (a) except the last sentence to read as follows:

§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 7-day work test.

(a) *Deductions because of individual's activity.* Under the 7-day work test, a deduction is made from any monthly benefit (except disability insurance benefits, child's insurance benefits based on the child's disability, or widow's or widower's insurance benefits based on the widow's or widower's disability) payable to an individual for each month in a taxable year beginning after December 1954 in which the beneficiary, while under age 72 (age 70 after December 1982), engages in noncovered remunerative activity (see § 404.418) outside the United States on seven or more different calendar days.* * *

* * * * *

3. Section 404.428 is amended by revising the parenthetical sentence at the end of paragraph (a)(1) to read as follows:

§ 404.428 Earnings in a taxable year.

(a) *General.* (1) * * *

(See, however, § 404.430 for the rule which applies to earnings of a beneficiary who attains age 72 during the taxable year (age 70 for months after December 1982))

* * * * *

4. Section 404.430 is amended by revising the parenthetical sentence at the end of paragraph (a)(3) to read as follows:

§ 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined.

(a) *Method of determining excess earnings for years ending after December 1972.** * *

(All references to age 72 will be age 70 for months after December 1982.)

* * * * *

5. Section 404.435 is amended by revising in paragraph (a)(3) the parenthetical phrase to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Monthly benefits payable for months after 1977.** * *

(3) * * * (age 70 for months after December 1982); * * *

* * * * *

[FR Doc. 82-14236 Filed 5-25-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-161-81]

Industrial Development Bonds for Residential Rental Housing; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation under section 103(b) relating to industrial development bonds the proceeds of which are used for residential rental housing. Changes to section 103(b)(4)(A) of the Internal Revenue Code of 1954 by the Omnibus Budget Reconciliation Act of 1980 has mede it possible to exclude interest on such industrial development bonds from the bondholders gross income. Interest

on such obligations is not includable in gross income.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 26, 1982. In general, the regulations are proposed to be effective with respect to obligations issued after April 24, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–161–81). Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Harold T. Flanagan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention CC:LR:T, 202–566–3294).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

This document contains proposed regulations relating to obligations issued under section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended by section 1103 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499, 94 Stat. 2669).

Generally, interest on industrial development bonds is includable in the recipient's gross income. Section 103(b)(4)(A) provides an exception for obligations which are part of an issue substantially all the proceeds of which are to be used for a residential rental project. Subject to certain additional requirements, interest on such obligations is not includable in gross income.

Proposed § 1.103–8(b)(4) would provide that a residential rental project is a building or structure or interrelated buildings or structures each containing more than one unit which are used on other than a transient basis and any facilities functionally related and subordinate to such units. Such units must be rented or available for rental on a continuous basis to members of the general public as generally required by § 1.103–8(a)(2). Further, proposed § 1.103–8(b)(5)(i) would require that, once available for occupancy, units in a project financed under this provision must be rented or available for rental on a continuous basis for a period equal to the greater of 20 years or the term of the obligation.

In addition, a specified percentage of the units in such project must be rented to individuals or families of low or moderate income. Under proposed § 1.103–8(b)–(1), 20 percent or more of the units would be required to be occupied by individuals or families of low or moderate income. However, a special rule would provide that for targeted area projects only 15 percent of such units are to be occupied by individuals or families of low or moderate income. Proposed § 1.103–8(b)(6)(iii) would provide that a "targeted area project" is a project located in a qualified census tract or an area of chronic economic distress, as defined in § 6a.103A–2(b) (4) and (5).

Proposed § 1.103–8(b)(5)(ii) would provide that the 20 percent rule (or 15 percent rule for targeted area projects) must be met for the term of the obligation (including any refundings) but, in no instance, for less than 20 years. Under proposed § 1.103–8(b)(5)(ii) a transitional rule would require that for obligations issued before January 1, 1984, such rule need only be met for 20 years, without regard to the term of the obligation.

The determination of whether an individual or family is of low or moderate income would be made only at the time the tenancy commences. Thus, even if an occupant subsequently ceases to qualify, the unit would continue to be considered as occupied by an individual of low or moderate income during the tenancy. Further, the unit generally would continue to be treated as so occupied until a new occupant occupies the unit, at which time the character of the unit would be redetermined on the basis of whether the new occupant of the unit is of low or moderate income. It should be noted, however, that the status of a unit would be redetermined at the time that a new occupant commences residency, even though such occupant possesses no legal interest or right of occupancy in the unit.

Under proposed § 1.103(b)(5)(iv) the involuntary loss or substantial destruction of a project would obviate the need to continue to comply with the occupancy and rental requirements if the obligation is retired within a reasonable period. This rule does not distinguish between losses which are compensated by insurance and those which are not.

Pursuant to § 1.103–8(b)(5)(iii) non-compliance with the requirements of section 103(b)(4)(A) and § 1.103–8(b) generally would result in the project not being treated as a project described in section 103(b)(4)(A). As such, if more than an insubstantial portion of the proceeds of an issue were used for such project, the interest on such obligations would not be excludable from gross income as of the date of issue. However, if the non-compliance results from events occurring after the issuance of the obligation and such non-compliance is corrected within a reasonable period then the tax-exempt status of the obligation would not be affected.

Further, under proposed § 1.103–8(b)(2) obligations issued after December 31, 1981, must be issued "in registered form." This requirement also would apply to obligations issued to refund obligations issued to provide residential projects under section 103(b)(4)(A), without regard to the date of the prior issue. The term "in registered form" would have the same meaning as in § 1.6049–2(d).

This notice also contains a proposed amendment to § 1.103–10 which would deny the "small issue" exception provided by section 103(b)(6) to obligations issued for residential property for family units. In general, this rule would apply to any obligation if a significant portion of the proceeds thereof are used to provide financing for owner-occupied residences or residential rental property.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request made to the Commission by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Regulatory Flexibility Act

Although this notice of proposed rulemaking solicits public comment, the Internal Revenue Service has concluded that the regulations proposed are interpretative and thus not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Non-Application of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Drafting Information

The principal author of this proposed regulation is Harold T. Flanagan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal

Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions, Industrial development bonds.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Proposed amendment to the regulations

The proposed amendment to 26 CFR Part 1 is as follows:

1. Section 1.103–8 is amended by revising the second sentence of paragraph (a) (4), by revising paragraph (b), by removing Examples (1) and (2) of paragraph (i) and redesignating Examples (3), (4), (5), (6), (7), and (8) thereof as Examples (1), (2), (3), (4), (5), and (6) respectively, and by amending redesignated Example (6) of paragraph (i). The revised and amended provisions read as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) *In General.*

* * * * *

(4) *Ultimate use of the proceeds.* * * * For example, such proceeds will be treated as used to provide residential rental property whether the State or local governmental unit (i) constructs such property and leases or sells it to any person who is not an exempt person for use in such person's trade or business of leasing such property; (ii) lends the proceeds to any such person for such purpose; or (iii) lends the proceeds to banks or other financial institutions in order to increase the supply of funds for mortgage lending under conditions requiring such banks or other financial institutions to use such proceeds only for further lending for residential rental property.

* * * * *

(b) *Residential rental property*— (1) *General rule for obligations issued after 24, 1979.* Section 103 (b) (1) shall not apply to any obligation which is issued after April 24, 1979, and is part of an issue substantially all of the proceeds of which are to be used to provide a residential rental project in which 20 percent or more of the units are to be occupied by individuals or families of low or moderate income (as defined in paragraph (b) (6) (v) of this section). In the case of a targeted area project, the minimum percentage of units which are to be occupied by individuals of low or moderate income is 15 percent. See generally § 1.103–7 (d) for rules relating to refunding issues.

(2) *Registration requirement.* Any obligation (including any refunding obligation) issued after December 31, to provide a residential rental project must be in registered form (as defined in paragraph (b) (6) (ii) of this section).

(3) *Transitional rule.* For purposes of this section, obligations issued after April 24, 1979, may be treated as issued before April 25, 1979, if the transitional requirements of section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 (94 Stat. 2670) are satisfied.

(4) *Residential rental project.* (i) A residential rental project is a building or structure or several proximate and interrelated buildings or structures—

(*a*) Each containing more than one unit (as defined in paragraph (b)(6)(i) of this section) which are to be used on other than a transient basis and any facilities which are functionally related and subordinate to such units, and

(*b*) All of the units of which are rented or available for rental on a continuous basis to members of the general public in accordance with the requirement of paragraph (a) (2).

Substantially all of the project must consist of similar units together with any functionally related and subordinate facilities. Under paragraph (a)(3) of this section, facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, parking areas, and recreational facilities. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and trailer parks and courts for use on a transient basis are not residential rental projects.

(ii) For purposes of this paragraph (b), interrelated buildings or structures are part of the same project only if owned for federal tax purposes by the same person.

(iii) In no event shall proceeds provided to a cooperative housing corporation (as defined in section 216 (b)(1)) be considered to provide a residential rental project.

(5) *Requirements must be continuously satisfied*—(i) *Rental requirement.* Once available for occupancy, each unit (as defined in paragraph (b)(6)(i) of this section) in a residential rental project must be rented or available for rental on a continuous basis during the period described in subdivision (ii)(*a*) of this paragraph (b)(5). Such requirement is not satisfied with respect to any unit occupied by the owner of such project or an individual related to the owner. An individual is related to the owner of such project if the owner is:

(*a*) A member of the individual's family, as defined in section 267(c)(4);

(*b*) A corporation more than 1 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(*c*) A partnership more than 1 percent in value of the capital interest or the profits interest of which is owned, directly or indirectly, by or for such individual; or

(*d*) A trust more than 1 percent in value of the corpus or the income of which is owned, directly or indirectly, by or for such individual.

For purposes of subdivision (*i*), the principles under section 267(c) apply to determine the constructive ownership of stock in a corporation, an interest in a partnership or the corpus or income of a trust.

(ii) *Low or moderate income occupancy requirement.* (*a*) Except as provided in paragraph (b)(5)(ii)(*b*) of this section, the occupancy requirement for individuals of low or moderate income (and the rental requirement of this paragraph (b)(5)) must be satisfied on a continuous basis, commencing on the later of the date that the project is available for occupancy, or the date of issuance of the obligations, and terminating on the later of twenty years after the commencement date, or the retirement of the obligations (including any refundings).

(*b*) With respect to obligations issued before January 1, 1984, which do not meet the requirements of paragraph (b)(3) of this section, including obligations which refund such obligations, the period for continuing compliance with the requirements of this subdivision (ii) shall be 20 years commencing from the date determined in the same manner as set forth in paragraph (b)(5)(ii)(*a*) of this section.

(*c*) A unit occupied by an individual or family who at the commencement of the occupancy are of low or moderate income shall be treated as occupied by such an individual or family during such individual's or family's tenancy in such unit, even though the individual or family subsequently ceases to have a low or moderate income. Moreover, a unit shall be treated as occupied by an individual or family of low or moderate income until occupied, other than for a temporary period, by another occupant, at which time the character of the unit shall be redetermined. In no event shall a temporary period exceed 31 days.

(iii) *Effect of non-compliance.* Non-compliance with the requirements of this paragraph shall cause the project to be

treated as other than a project described in section 103(b)(4)(A) and this paragraph (b) as of the date of issue. After an issue to provide such a project ceases to qualify, subsequent conformity with the requirements will not alter the taxable status of such obligations. However, if an issuer corrects any non-compliance arising from events occurring after the issuance of the obligation, (*e.g.*, an unauthorized sub-lease) within a reasonable period, the tax-exempt status of the issuance will not be altered. A reasonable period shall not be less than 60 days after such error is first discovered or should have been discovered.

(iv) *Involuntary and unforeseen loss.* Subdivision (iii) of this paragraph (b)(5) shall not apply in the event of non-compliance caused by an involuntary loss or the substantial destruction of a project as a result of unforeseen events (*e.g.*, fire, seizure, requisition, foreclosure or condemnation), even though compensated by insurance, provided the obligations used to provide such project are retired within a reasonable period. If the obligations are not retired, subdivision (iii) shall not apply provided any amounts received as a consequence of such loss or destruction also are used to provide a project which meets the requirements of section 103(b)(4)(A) and this paragraph (b).

(6) *Definitions.* For purposes of this paragraph—

(i) *Unit.* The term "unit" means any separate accommodation containing complete facilities for living, sleeping, eating, cooking, and sanitation. Such accommodations may be served by centrally located equipment such as air conditioning or heating. Thus, for example, an apartment containing a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from other apartments, would constitute a unit.

(ii) *In registered form.* The term "in registered form" has the same meaning as in § 1.6049–2(d). Thus, in general, an obligation is issued in registered form if it is registered as to both principal and interest and if its transfer must be effected by the surrender of the old instrument to the issuer and by either the reissuance of the old instrument to a new holder or the issuance of a new instrument to a new holder.

(iii) *Targeted area project.* The term "targeted area project" means a project located in a qualified census tract (as defined in § 6a.103A–2(b)(4)) or an area of chronic economic distress (as defined in § 6a.103A–2(b)(5)).

(iv) *Building and structure.* The terms "building" and "structure" generally mean an edifice or other manmade construction consisting of interrelated parts (*e.g.*, foundations, walls, or roofs) and constituting property which is or would, if such property were placed in service after 1980, be entitled to a separate election under section 168(b)(3)(B)(ii). Thus, if two units located on a single tract or parcel (or contiguous tracts or parcels) of land are not contained within one edifice consisting of interrelated parts, then they are separate buildings or structures for purposes of this paragraph.

(v) *Low or moderate income.* The term "low or moderate income" has the same meaning as in § 1.167(k)–3(b). The method of determing low or moderate income in effect at the time that the obligation is issued will be determinative for such issue, even if such method is subsequently changed.

(7) *Examples.* The following examples illustrate the application of this paragraph (b).

Example (1). In 1982, City A issues $10 million of registered bonds with a term of 20 years to be used to finance the construction of an apartment building to be available to members of the general public. A leases the project to Corporation X for 20 years. The lease requires annual payments sufficient to amortize the principal and interest of the bonds. Corporation X has an option to purchase the facility at the end of the 20 year period. X is the owner of the project for federal income tax purposes. The lease payments and the property secure payment of principal and interest on the bonds. Corporation X maintains 20 percent of the units in the project for low or moderate income individuals and meets all of the requirements of this section until 2002, at which time X purchases the project from A and converts the project to offices. The bonds are industrial development bonds, but because the proceeds are used for construction of residential rental property, which is an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section, section 103(b)(1) does not apply.

Example (2). The facts are the same as in example (1), except that the facility is constructed adjacent to a factory, and factory employees are to be given preference to its employees in selecting tenants. The bonds are industrial development bonds and the facility is not an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section because it is not a facility constructed for use by the general public.

Example (3). The facts are the same as in example (1), except that the proceeds of the obligation are provided to Y, a cooperative housing corporation, to finance the construction of a cooperative housing project. Y sells stock in such cooperative to individual tenant-shareholders who either occupy such units or rent such units. Such project is not a residential rental project within the meaning of section 103(b)(4)(A) and § 1.103–8(b)(4). Further, the bonds are mortgage subsidy bonds under section 103A because the proceeds are indirectly used to provide financing for residences, some of which are owner-occupied and some of which are used in the trade or business of rental.

Example (4). On February 1, 1984, County Z issues registered obligations with a term of 40 years to provide funds to construct a garden apartment project. The project is not a targeted area project. As a condition for providing such financing Z requires that a covenant be contained in the deed for the project which restricts occupancy of 20 percent of the units to individuals or families of low or moderate income. Further, the deed states, "Such covenant shall run with and bind the land, for a term of forty (40) years from the date that the project is first available for occupancy. The right to enforce the aforementioned restriction for the benefit of the low or moderate income citizens of County Z is vested in County Z." In 1990, however, less than 20 percent of the units are occupied by families or indivduals of low or moderate income and County Z fails to enforce the covenant within a reasonable time. Since 20 percent of such units are not maintained for individuals and families of low or moderate income for 40 years, such project will not be residential rental property within the meaning of section 103(b)(4)(A) and section (b)(1) from February 1, 1984.

Example (5). On January 15, 1983, State X issues registered obligations the proceeds of which are loaned to Corporation Z in order that Corporation Z can construct an apartment building. The project will be a "targeted area project" within the meaning of § 1.103–8(b)(6)(iii). Corporation Z intends to maintain 15 percent of the units in the project for individuals having low or moderate income for 20 years. Further Corporation Z converts 80 percent of the units to condominiums in 1988. Corporation Z repays the loan to State X which, in turn, redeems the obligations. The obligations are not used to provide a residential rental project within the meaning of section 103(b)(4)(A) but are indirectly used to construct condominiums which are owner-occupied residences described in section 193A.

Example (6). In 1982, State Y issues 40 year bonds the proceeds of which will be used to acquire and restore an apartment building located in a targeted area. Y leases the project to Corporation Z for 40 years. Z will rent as residences all the units in the restored apartment building. Corporation Z further contracts with Public Housing Agency W for W to subsidize the rents of low and moderate income tenants residing in the building for 20 years. Throughout 1987, Z, however, fails to maintain at least 15 percent of the units in such project for individuals and families of low or moderate income. Since 15 percent of the units are not rented to individuals of low or moderate income for 20 years, such project will not be residential rental property within the meaning of section 103(b)(4)(A) and § 1.103–8(b)(4).

Example (7). On January 15, 1984, State Z issues obligations with a term of 5 years the

proceeds of which will be used to provide a residential apartment building. Z sells the project to Corporation U and receives a 30 year mortgage. The mortgage requires that U maintain at least 20 percent of the units for occupancy by individuals of low or moderate income for the term of the mortgage. The mortgage may not be prepaid in whole or in part without the express permission of Z. On January 15, 1988, Z issues 35 year refunding bonds the proceeds of which are used to retire the obligations issued in 1984. In order to meet the requirements of § 1.103–8(b)(5)(ii), 20 percent of such units must be occupied by individuals of low or moderate income for 39 years.

Example (8). The facts are the same as in example (7) except that the mortgage permits the mortgagor to prepay the mortgage in the event of loss by fire or flood. In 1987, the apartment building is substantially destroyed by fire. The building was insured at its fair market value. U does not intend to reconstruct the building but uses a portion of the insurance proceeds to repay the unpaid balance of the mortgage, which Z uses to redeem the outstanding bonds at the first available call date. Since the project was substantially destroyed by an unforeseen event and the outstanding bonds are retired at the first available call date, the property does not need to continue to meet the requirements of section 103(b)(4)(A) of this paragraph (b).

Example (9). The facts are the same as in example (7) except that in 1987 U defaults on the mortgage and Z forecloses on the project. Z sells the project to Y and uses the proceeds to retire the outstanding bonds within a reasonable period. Y is not required to meet the requirements of section 103(b)(4)(A) and this paragraph since Y did not obtain the project with obligations described in section 103(b)(4)(A).

(8) *Obligations issued before April 25, 1979*—(i) *General rules.* Section 103(b)(1) shall not apply to obligations issued before April 25, 1979, which are part of an issue substantially all of the proceeds of which are to be used to provide residential real property for family units. In order to quality under this paragraph (b)(8) as an exempt facility, the facility must satisfy the public use requirement of paragraph (a)(2) of this section by being available for use by members of the general public.

(ii) *Family units defined.* For purposes of this paragraph (b)(8) the term "family unit" means a building or any portion thereof which contains complete living facilities which are to be used on other than a transient basis by one or more persons, and facilities functionally related and subordinate thereto. Thus, an apartment which is to be used on other than a transient basis as a residence by a single person or by a family which contains complete facilities for living, sleeping, eating, cooking, and sanitation, constitutes a family unit. Such a unit may be served by centrally located machinery and equipment as in a typical apartment building. To qualify as a family unit, the living facilities must be a separate, self-contained building or constitute one unit in a building substantially all of which consists of similar units, together with functionally related and subordinate facilities and areas. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and trailer parks and courts for use on a transient basis do not constitute residential real property for family units.

(iii) *Functionally related and subordinate facilities.* Under paragraph (a)(3) of this section, facilities which are functionally related and subordinate to residential real property actually used for family units include, for example, facilities for use by the occupants such as a swimming pool, a parking area, and recreational facilities.

* * * * *

Examples. * * *

Example (8). City G issues $20 million of its bonds and will use $8 million to finance residential rental property which qualifies as an exempt facility under section 103(b)(4)(A) and paragraph (b) of this section, $9 million to finance construction of a stadium which qualifies as an exempt facility under section 103(b)(4)(B) and paragraph (c) of this section, and $5 million for convention facilities which qualify as exempt facilities under section 103(b)(4)(C) and paragraph (d) of this section. The facilities will be used in the trades or businesses of nonexempt persons and rental payments with respect to such facilities and the facilities themselves will be the security for the bonds. The bonds are industrial development bonds, but since all the proceeds are to be used for facilities which are exempt facilities under section 103(b)(4), section 103(b)(1) does not apply unless the provisions of section 103(b)(10) and § 1.103–11 apply. The result would be the same, if, instead of using $9 million to finance construction of a stadium, the $9 million were used to finance construction of a capitol building. [Reg. § 1.103–8].

* * * * *

2. Section 1.103–10 is amended by redesignating paragraph (f) as paragraph (g) and by adding a new paragraph (f) immediately after paragraph (e). New paragraph (f) reads as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * *

(f) *Disqualification of certain small issues.* (1) Section 103(b)(6) shall not apply to any obligation issued after April 24, 1979, which is part of an issue a significant portion of the proceeds of which are to be used directly or indirectly to provide residential real property for family units. Thus, for example, an issue of obligations issued to provide financing for owner-occupied residences or residential rental property is not an exempt small issue for purposes of this section.

(2) For purposes of subparagraph (1), a significant portion of the proceeds of an issue are used to provide residential real property for family units if 5 percent or more of the proceeds are so used.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 82-14335 Filed 5-24-82; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Part 301

Penalties for Underpayment of Deposits and Overstated Deposit Claims

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the penalty for underpayment of deposits and the penalty for overstated deposit claims. The penalty for overstated deposit claims was added by the Economic Recovery Tax Act of 1981. The regulations would provide guidance to officers and employees of the Internal Revenue Service with respect to the application of these civil penalties. The regulations would also provide guidance to the public in obtaining relief from the penalty for overstated deposit claims if the overstatement was due to reasonble cause. The regulations would also remove outdated regulation provisions relating to the penalty for underpayment of deposits. The regulations would affect all taxpayers required to make deposits of any internal revenue tax with government depositaries.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 20, 1982. These regulations are proposed to be effective with respect to returns filed after August 13, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–311–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Martha E. Kadue of the Legislative and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administrative (26 CFR Part 301) under section 6656 of the Internal Revenue Code of 1954, as amended by section 724 of the Economic Recovery Tax Act of 1981 (95 Stat. 344). These amendments are proposed to be issued under the authority contained in section 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Discussion

Section 6656(a) of the Code imposes a penalty of 5 percent of the amount of any underpayment of a mandatory deposit. This penalty is imposed if a taxpayer fails to make a required deposit or makes a deposit of an amount less than the amount required to be deposited. Current regulations relating to this penalty contain rules for deposits required to be made before January 1, 1970, based on the law in effect for those deposits. The proposed regulations would delete these outdated provisions.

Section 6656(b) was amended by section 724 of the Economic Recovery Tax Act of 1981. The amendment provides a new penalty for overstated deposit claims made in returns filed after August 13, 1981. Overstated deposit claims are amounts claimed in a return to have been deposited in a government depositary that have not actually been deposited. The penalty of 25 percent of the overstated deposit claim is imposed unless the taxpayer shows that the overstated claim was due to reasonable cause and was not due to willful neglect. The penalty applies in addition to any other penalties, such as the penalty provided by section 6656(a), relating to underpayments of deposits.

The proposed regulations define an overstated deposit claim as the excess of the amount of deposits claimed on a return over the amounts actually deposited in a government depositary on or before the date the return is filed. An overstated deposit claim includes a claim of deposits when no deposits have been made as well as a claim of an amount of deposits in excess of the amount actually deposited. The proposed regulations also set forth the procedure (which is the same procedure as is available with respect to the penalty imposed by section 6656(a)) by which a taxpayer can assert that the overstated deposit claim was due to reasonable cause and was not due willful neglect.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not subject to Executive Order 12291. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Martha E. Kadue of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 301 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. Section 301.6656–1 is revised to read as follows:

§ 301.6656–1 Penalty for under payment of deposits.

(a) *General rule.* If any person is required by the Code or regulations prescribed thereunder to deposit any tax in a government depositary that is authorized under section 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor.

(b) *Assertion of reasonable cause.* To show that the underpayment was due to reasonable cause and not willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return with respect to the tax is required to be filed. If the district director or the director of the service center determines that the underpaymet was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed.

Par. 2. A new § 301.6656–2 is added immediately after § 301.6656–1, to read as follows:

§ 301.6656–2 Penalty for overstated deposit claims.

(a) *General rule.* Any person who makes an overstated deposit claim on a return is subject to a penalty equal to 25 percent of such claim, unless it is shown that the overstated deposit claim is due to reasonable cause and not willful neglect. This penalty is in addition to any other penalty provided by law, such as the penalty provided by section 6656(a), relating to underpayment of deposits.

(b) *Overstated deposit claim.* An overstated deposit claim is the excess of—

(1) The amount of any internal revenue tax that a person claims, in a return filed after August 13, 1981, to have deposited for any period in a government depositary authorized under section 6302(c) to receive the deposit, over

(2) The aggregate amount for that period the person has deposited on or before the date the return for that period is filed, in a government depositary

authorized under section 6302(c) to receive the deposit.

An overstated deposit claim includes a claim that deposits have been made when no deposits have been made in an authorized government depositary. For purposes of this paragraph (b), the date a return is considered to be filed is the later of the date the return is due to be filed (not including extensions) or the date the return is actually filed. The application of this paragraph is illustrated by the following examples.

Example 1. On the date a return is due for the taxable period ended December 31, 1982, Z files the return claiming deposits of tax in the amount of $150 for that period. Z actually made deposits of $75 for that period on or before the date the return was due and filed. Z's tax liability for that period is $150. Z has made an overstated deposit claim in the amount of $75, the excess of the amount of tax claimed on the return to have been deposited ($150), over the amount actually deposited ($75) for that period on or before the date the return was due and filed.

Example 2. On the date a return is due for the quarter ended Decembr 31, 1982, X files the return claiming deposits of tax in the amount of $200 for that period. X actually made deposits of $100 for that period on or before the date the return was due and filed. X's tax liability for that period is $100. X has made an overstated deposit claim of $100, the excess of the amount of tax claimed on the return to have been deposited ($200), over the amount actually deposited ($100) for that period on or before the date the return was due and filed.

Example 3. The facts are the same as in example 2. For the quarter ending march 31, 1983, X files a return on the date it is due, claiming $100 (the excess of the amount of tax claimed to have been deposited on the prior quarter's return, $200, over X's liability for the prior quarter, $100) as a deposit for the quarter ending March 31, 1983. X did not actually deposit any amount for the quarter ended March 31, 1983, on or before the date the return was due and filed. X made an overstated deposit claim of $100 for the quarter ended December 31, 1982, as described in example 2. For the quarter ended March 31, 1983, X made an overstated deposit claim of $100, the excess of the amount of tax claimed to have been deposited ($100), over the amount actually deposited (0) for that period on or before the date the return was due and filed.

(c) *Assertion of reasonable cause.* To show that an overstated deposit claim was due to reasonable cause and not willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return with respect to the tax is required to be filed. If the district director or the director of the service center determines that the overstated deposit claim was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-14048 Filed 5-25-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommiting, and Supervising Federal Prisoners

Correction

In FR Doc. 82-13286, appearing at page 21095, in the issue of Monday, May 17, 1982, make the following change:

On page 21095, in the third column, change the first line to read: "elimination would facilitate a more efficient";

On page 21095, in the third column, the first paragraph, the fifth line change "dicussion" to "discussion".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-103S]

Educational/Scientific Diving

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of the comment period; notice of informal public hearing.

SUMMARY: This notice extends the comment period for written responses to OSHA's notice of proposed rulemaking on educational/scientific diving (47 FR 13005, March 26, 1982). The written responses were to be postmarked by May 10, 1982.

In addition, OSHA is scheduling an informal public hearing concerning the notice of proposed rulemaking on educational/scientific diving.

DATES: Written comments must be received by June 18, 1982.

Notices of intention to appear at the informal public hearing, and testimony and all evidence which will be introduced into the hearing record must be received by June 18, 1982.

The hearing will begin at 9:30 a.m. and be held on the following dates: June 29–30, and July 7–9, 1982.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket H–103S, Room S6212, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–7894.

Notices of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3635, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The hearings will be held at the following locations:

1. June 29–30, 1982, at the Frances Perkins Department of Labor Building, Auditorium, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

2. July 7–9, 1982, at the Quality Inn Airport, Century III—Hearing Room, 5249 W. Century Boulevard, Los Angeles, California 90045, (213) 645–2200.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3635, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8024.

Proposal: Mr. Glen E. Gardner or Ms. Joanne E. Slattery, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3463, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–7225.

SUPPLEMENTARY INFORMATION: On March 26, 1982, OSHA published in the Federal Register (47 FR 13005) a Notice of Proposed Rulemaking to exempt diving "performed solely for marine scientific research and development purposes by educational institutions" (educational/scientific diving) from its standard for Commercial Diving Operations (29 CFR Part 1910, Subpart T).

OSHA recognized that some of the information and data supporting the educational/scientific exemption also pertained to the scientific diving community in general. Therefore, OSHA solicited additional information and data for determining the appropriate scope of an exemption by asking the following questions:

1. Should OSHA adopt the second exemption provided by the U.S. Coast Guard standard (§ 197.202(a)(2)) which states that the standard does not apply to any diving operation "performed solely for research and development for

the advancement of diving equipment and technology?"

2. Should OSHA exempt all scientific diving? If so, how should OSHA define those activities which constitute scientific diving?

3. Should OSHA only exempt scientific diving when such diving complies with an alternative standard which provides divers a comparable level of safety and health as OSHA's Subpart T standard?

Interested persons were given until May 10, 1982, to submit written data, views, and arguments on the proposal, to file objections, and request a hearing.

OSHA received a request to extend the comment period from the American Academy of Underwater Sciences (AAUS). AAUS noted that disseminating the notice to its members and other interested persons had been more time consuming than anticipated. In order to assure that interested parties have sufficient time to compile data and prepare responses, OSHA has decided to extend the comment period to June 18, 1982.

Additionally, OSHA received a request for a hearing from the United Brotherhood of Carpenters and Joiners. The hearing request contained objections to the proposed exemption, and to the possible extension of the exemption to other segments of scientific diving.

The United Brotherhood of Carpenters and Joiners believes that an exemption is unnecessary. They state that granting any exemption would be denying protection to divers. Further they contend that "merely the demonstration of a good safety record does not negate the need for a standard to prevent future problems and act as a safeguard."

The Carpenters Union also suggests that in lieu of granting an exemption to any scientific diving activity, the employers of the scientific diving community should seek a variance from the commercial diving operations standard under section 6(d) of the Occupational Safety and Health Act. Section 6(d) states:

> Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule of order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

Accordingly, pursuant to section 6(b)(3) of the Act, OSHA has scheduled an informal public hearing to receive testimony on whether OSHA should grant an exemption from the diving standard for educational/scientific diving, the nature of any exemption and whether the scope of the exemption should be broadened to include other segments of scientific diving.

In addition to the general issue concerning an exemption as stated above, OSHA invites testimony at the informal public hearing on the appropriateness of the section 6(d) variance mechanism.

Public Participation in Hearing

Notice of Intention to Appear: Persons desiring to participate at the hearing, must file a notice of intention to appear by June 18, 1982. The notice of intention to appear must contain the following:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The city where the person intends to appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing: Any party requesting more than 15 minutes for presentation at the hearing or who will submit documentary evidence, must provide in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs by June 18, 1982.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirements, may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket H-103S, U.S. Department of Labor, Occupational Safety and Health Administration, Room S6212, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202)523-7894.

The hearing will commence at 9:30 a.m. at the scheduled locations with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the standard will be modified or a determination will be made not to modify the standard, based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Sec 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 21st day of May 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-14287 Filed 5-25-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Surface Coal Mining Enforcement and Reclamation in Indiana; Review of State Program Submission

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of public comment period.

SUMMARY: The Office of Surface Mining (OSM) is reopening the period for review and comment on the resubmission by Indiana of its program for the regulation of surface coal mining and reclamation in the State. OSM is reopening the comment period to allow the public time to consider and comment on additional material in the administrative record.

DATE: Written comments, data, or other relevant information relating to the Indiana program must be received on or before 4:00 p.m., June 15, 1982 to be considered.

ADDRESS: Comments on the Indiana program submission should be mailed or hand delivered to: Office of Surface Mining, Attention: Indiana Administrative Record, Federal Building and U.S. Courthouse, Fifth floor, 46 East Ohio Street, Indianapolis, Indiana 46204.

See "Supplementary Information" for addresses where documents may be reviewed and copied.

FOR FURTHER INFORMATION CONTACT: Richard McNabb, State Office Director, Indiana State Office, Office of Surface Mining, Federal Building and U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, Telephone: (317) 269-2646.

SUPPLEMENTARY INFORMATION: On September 28, 1981 at 46 FR 47467-47469, OSM published notice of the public hearing and the public comment period on the resubmitted Indiana program. On November 2 and 3, 1981, and November 16 and 17, 1981, OSM and Indiana Regulatory Authority officials met in executive session in Indianapolis, Indiana to discuss the resubmitted Indiana program (Administrative Record Nos. IN-0240, 0256, 0257). On December 16, 1981, the Director of OSM delivered a letter to Indiana which outlined areas or concern with the Indiana resubmission (IN-0258). On April 28, 1982, additional information was requested from Indiana as a result of public comment (IN-0266). This letter was revised on May 10, 1982 (IN-0267), and an executive session between OSM and Indiana was held on May 18 and 19, 1982 (See the meeting notes, IN-0268). Because Indiana has submitted new material (IN-0269), OSM is reopening the comment period until 4:00 p.m., June 15, 1982, to allow the public time to review and comment on the above meeting notes and material submitted by Indiana.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the Surface Mining Control and Reclamation Act of 1977.

The documents in the Indiana Administrative Record listed below may be reviewed and copied at the following addresses:

Office of Surface Mining, Fifth Floor, Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, Phone: (317) 269-2635

Office of Surface Mining, Room 5315, 1100 L Street N.W., Washington, D.C. 20240, Phone: (202) 343-7896

Indiana Division of Reclamation, 209 West Washington Street, Room 201, Indianapolis, Indiana 46204, Phone: (317) 232-1555

Indiana Administrative Record Numbers: 0220, 0226, 0240, 0249, 0255, 0256, 0257, 0258, 0260, 0263, 0265, 0266, 0267, 0268, and 0269.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-14278 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 936

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Receipt of the abandoned mine land reclamation (AMLR) grant application from the State of Oklahoma.

SUMMARY: On April 13, 1982, the State of Oklahoma submitted to OSM its proposed AMLR grant application under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State grant application.

DATE: Written comments on the application must be received on or before 5:00 p.m. June 25, 1982.

ADDRESS: Copies of the full text of the proposed Oklahoma grant application are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Oklahoma State Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma, and

Oklahoma Conservation Commission, 20 State Capitol Building, Oklahoma City, Oklahoma 73105

Written comments should be sent to: Robert L. Markey, State Office Director, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street—Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Robert L. Markey, State Office Director, (918) 581-7927.

SUPPLEMENTARY INFORMATION: On April 13, 1982, OSM received an AMLR grant application from the State of Oklahoma. The purpose of this submission is to implement the State reclamation program as codified in 30 CFR, Chapter VII, Subchapter T Part 936 as published in the **Federal Register** 47 FR 2989 on January 21, 1982.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State and Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary a State reclamation grant application to implement the provisions of the approved State Reclamation Plan.

However, grants for mine reclamation may be issued only to States with an approved Title V Regulatory Program

and an approved State Reclamation Plan.

A State Reclamation Plan for Oklahoma was submitted to the Secretary on July 30, 1981 and approved on January 21, 1982 which demonstrated the capability of the State to administer an AMLR program in accordance with Title IV of SMCRA. In approving the State Plan the Secretary determined that the State had the necessary State legislation to implement the provisions of the Plan.

This notice lists the proposed projects and sets forth information concerning public participation in the Director's determinaiton of whether or not the submitted application should be approved.

Approval of the application would result in the implementation of approved projects for the reclamation of abandoned mine lands in Oklahoma.

All written comments must be mailed or hand carried to the State Director's Office above.

The Director has found that the State has given the public adequate notice and opportunity to comment in public hearings, and the record of such hearings does not reflect major unresolved controversies.

The comment period will close at 5:00 p.m. on June 25, 1982. Comments received after that time may not necessarily be considered. During the comment period representatives of the State Director's office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AMLR application.

Persons wishing to meet with representatives of the State Director's office during this time period may place such requests with Robert Markey, State Director, telephone (918) 581-7927 at the State Director's office above.

Meetings may be scheduled between 9 a.m. and noon and 1 p.m. and 4 p.m. Monday through Friday excluding holidays at the State Director's office.

The Director intends to continue to discuss the State's application with representatives of the State throughout the review process.

In order to comply with the requirements of the National Environmental Policy Act, OSM will assess the environmental effects of all State reclamation projects. The primary basis for this assessment will be the environmental information provided in the project grant application.

The Oklahoma AMLR grant application can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The application meets all the requirements of the OSM, AMLR program provisions and the required Federal circulars.

4. The State has an approved regulatory program and an approved State reclamation plan.

The following constitutes a summary of the contents of the submission:

1. Designation of authorized State Agency to administer the program,

2. Objectives and need for the assistance,

3. Project ranking and selection,

4. Coordination with other reclamation programs,

5. Results and benefits expected,

6. Plan of action pertaining to the scope,

7. Monthly or quarterly projections of accomplishments to be achieved,

8. Kinds of data to be collected and maintained,

9. Criteria used to evaluate the results and success of the projects,

10. Key individuals to be employed,

11. Precise location of the project and area to be served,

12. Budgetary calculations for each project,

13. Description of the public's participation in planning and preparation of the grant application, and

14. A complete environmental assessment for each project.

Reclamation projects included in application and location:

1. Title: Bryant—158, Location: Haskell County.

2. Title: Callahan—096, Location: Sequoyah County.

3. Title: Cullum—090, Location: Sequoyah County.

4. Title: Evans—007, Location: Haskell County.

5. Title: Horsepan Creek—240 Phase I, Location: Tulsa County.

6. Title: Panther Mine—190, Location: Haskell County.

7. Title: Reeves—101, Location: Sequoyah County.

8. Title: Rock Island—019, Location: Le Flore County.

9. Title: Volks—151, Location: Latimer County.

10. Title: White Creek—214, Location: Craig County.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-14373 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Permanent State Regulatory Program of Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior is considering modifying the deadline for Wyoming to meet one condition of approval of the State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pursuant to this request, the Secretary is requesting public comment on extending the deadline for the State to resolve condition (c) until May 20, 1983.

DATE: Comments must be received by June 25, 1982, at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, Administrative Record Office (SPA-361), Room 5315 L, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

Comments may be hand carried to: Office of Surface Mining, Room 239, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. or Office of Surface Mining, Room 5315, 1100 L Street, N.W., Washington, D.C.

Copies of the Wyoming request for an extension, and the Wyoming program are available for review at the following OSM office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays: Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5315, Washington, D.C., Telephone (202) 343-7896.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and

nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The correction of each deficiency is a condition of the approval. The conditional approval terminates if the conditions are not met according to the schedule. The dates are established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

The Wyoming program was conditionally approved on November 26, 1980 (45 FR 78637–78684). In that document, the Secretary published a schedule for the State to meet each of the seven conditions of the State program. That schedule called for Wyoming to submit provisions to satisfy conditions (a)–(c) and (e)–(g) by March 26, 1981, and provisions to meet condition (d) by December 26, 1980.

Since the Secretary's conditional approval of the Wyoming program, OSM has proposed several revisions to the Federal permanent program rules which served as the standard for approval of Wyoming's program. Because OSM was concerned that States with conditionally approved programs would be expending valuable time pursuing program amendments to meet Federal requirements that would be changed, OSM asked each State to identify those conditions for which it would like an extension of time to meet. Wyoming requested that the deadline for the State to meet its conditions be extended to May 26, 1982. On October 30, 1981 (46 FR 54070–54071), OSM announced its decision to grant Wyoming's request. On March 26, 1981, the State submitted revisions to the State regulations intended to satisfy conditions (a), (d), (e) and (f). On March 23, 1981, the State submitted an Attorney General's opinion intended to satisfy condition (g). On February 18, 1982 (47 FR 7218–7220), the Assistant Secretary, Energy and Minerals, announced his decision, removing conditions (a), (d), (e) and (f), and granting an extension of the time by which Wyoming must satisfy condition (g) to May 20, 1983.

This notice is for the purpose of addressing the State's request for a second extension that would establish a new deadline for the State to meet condition (c). The State offered as one reason for requesting a further extension the fact that OSM has not yet finalized amendments to the permanent program rules. Some of these amendments may directly affect Wyoming's satisfaction of this condition. Further, Wyoming referred to the petition submitted by several western states, including Wyoming, to repeal a portion of 30 CFR 840.15 concerning the requirement that each State program provide for public participation consistent with 43 CFR Part 4. Specifically, the petition seeks repeal of 43 CFR 4.1294(b) as a requirement of State programs (46 FR 54761 and 46 FR 58465–58466). In accordance with the State's request, OSM is proposing that the deadline for the State to meet condition (c) be extended to May 20, 1983, the same date that condition (g) is to be satisfied.

In making a final decision on the State's request for an extension, OSM will consider the revisions to the Federal permanent program regulations that have been or will be proposed, but have not yet been finalized. OSM will reexamine the condition to determine whether revisions to the Federal rules are likely to have a bearing on changes the State is required to make to satisfy the condition.

I have determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on these rules. I have further certified that the proposed rules will not have a significant economic effect on a substantial number of small entities as the rule is essentially a timing change with no direct or indirect impact on small entities.

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining (OSM) exempton from sections 3, 4, 6 and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this proposed extension.

List of Subject in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 950 is proposed to be amended as set forth herein.

Dated: May 20, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 950—WYOMING

* * * * *

§ 950.11 [Amended]

30 CFR 950.11(c) is proposed to be amended by substituting "May 20, 1983" for the date contained therein.

* * * * *

[FR Doc. 82-14988 Filed 5-25-82; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1984-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On June 26, 1979, Indiana submitted as a revision to its State Implementation Plan (SIP) a revised sulfur dioxide (SO_2) regulation. This regulation, in part, sets a 6 pounds of SO_2 per million British Thermal Units heat input (lbs/MMBTU) emission limitation for sources in Floyd County. EPA proposed to approve this regulation for Floyd County on March 27, 1980 (45 FR 20437). EPA has recently modeled Floyd County and has found that a 6.0 lbs/MMBTU emission limit is sufficient to protect the primary national ambient air quality standards (NAAQS) in Floyd County but that a lower emission limitation for the Gallagher power station is necessary in order to protect the secondary SO_2 NAAQS in Floyd County.

EPA is, therefore, proposing to approve Indiana's present SO_2 regulation as a plan to protect the primary standards in Floyd County, but disapprove it as a plan to protect the secondary standard. Additionally, if EPA issues a final disapproval on this regulation as a plan for the secondary standard, the Administrator will issue a notice of SIP deficiency to Indiana which will require the State to develop a plan for Floyd County which protects the secondary standard in addition to the primary.

DATE: Comments on this rulemaking are due June 25, 1982.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone the contact given below before visiting the Region V Office.)

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Send comments to Gary Gulezian, Chief, Regulatory Analysis Section (5AP–11), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On May 14, 1973, EPA approved Indiana's SO_2 SIP for Floyd County (38 FR 12698). The SIP regulation set an emission limitation for Public Service of Indiana's (PSI) Gallagher Station of 1.2 lbs. of SO_2/MMBTU of actual heat input. Final compliance with the rule was required by April 1, 1975. In 1974 Indiana adopted a new SO_2 regulation for Floyd County. Technical support submitted by the State of Indiana included ambient air quality data showing no monitored violations of the SO_2 air quality standards in Floyd County, and a modeling study which concluded that Gallagher's contribution to high SO_2 levels in Kentucky was minimal. On August 24, 1976, EPA approved this regulation for the Gallagher Station (41 FR 35676). Although this regulation did not impose an emission limitation of any kind on Gallagher, it did require the facility to install an ambient monitoring system and to maintain an emergency two week supply of fuel which is adequate to meet an emission limitation of 1.2 lbs. of SO_2/MMBTU. This fuel was to be used upon the State of Indiana's order during periods of adverse meteorological conditions.

Indiana submitted a revised SO_2 attainment strategy for certain counties and a revised statewide SO_2 regulation to EPA on June 26, 1979. This regulation is designed to demonstrate attainment of the SO_2 standards in the Lake, Marion, and LaPorte County nonattainment areas. The regulation also establishes a 6 lbs. of SO_2/MMBTU heat input emission limitation for fossil fuel fired power plants throughout most of the State (with certain condition applicable to Lake LaPorte and Marion Counties), including the Gallagher station. On March 27, 1980, EPA proposed to approve the revised APC–13 throughout most of the State, including Floyd County (45 FR 20437). The State recodified this regulation as 325 IAC 7 and resubmitted it on October 6, 1980. EPA has recently conditionally approved 325 IAC 7 as it applies to most counties in Indiana, but not as it applies to Floyd County. EPA today is reproposing action on 325 IAC 7 as it applies to Floyd County.

On May 14, 1979, EPA was petitioned by the Air Pollution Control District of Jefferson County, Kentucky to initiate proceedings, pursuant to Section 126(b) and (c) of the Clean Air Act, as amended in 1977 (42 U.S.C. 7401 *et seq.*), to determine whether the sulfur dioxide emissions from the PSI Gallagher Station In Floyd County, Indiana are causing or contributing to violations of the SO_2 standards in Kentucky and otherwise in violation of Section 110(a)(2)(E)(i) of the Act.

In order to study the issues raised by Jefferson County, EPA funded a computer dispersion modeling study of the greater Louisville area. Public comments were solicited and received on this modeling, and, in response to these comments, the modeling was slightly revised. This revised modeling was made available for public comment and review on March 9, 1981 (45 FR 15743). Two comments were received on this revised modeling. EPA responded to these comments in its Summary of the § 126 Gallagher Petition Record, Docket No. 5A–80–9, which is available at the above Region V address.

On July 30, 1981, EPA issued a proposed determination that Gallagher's emissions are not in violation of Section 110(a)(2)(E)(i) (45 FR 38937). The modeling discussed above and supplemental model runs predict that Indiana's 6.0 lbs/MMBTU emission limit will protect the primary standard in Indiana and will not allow Indiana sources to contribute appreciably to violations of the NAAQS which are predicted to occur in Kentucky, prior to the time by which sources in Kentucky are required to come into compliance with the Kentucky SIP. After compliance, no violations of the NAAQS are expected to occur in Kentucky. The modeling did predict, however, that violations of the secondary NAAQA will occur in Indiana if Gallagher emits at a rate greater than 4.7 lbs. of SO_2 MMBTU.

EPA is proposing to approve Indiana's SO_2 regulation in Floyd County as a plan to protect the primary NAAQS because the 6.0 lbs/MMBTU emission limit protects the primary SO_2 standard in Indiana, and disapprove the regulation as a plan to protect the secondary SO_2 standard because this emission limit does not assure attainment and maintenance of the secondary standard. If EPA issues final rulemaking which approves the 6.0 lbs/MMBTU emission limit as a plan sufficient to protect the primary standard but disapproves the emission limit as a plan to protect the secondary NAAQS, the 6.0 lbs/MMBTU emission limit will be enforceable by EPA until such time as EPA approves a new plan for that area. Finally, if EPA issues final rulemaking consistent with this proposal, EPA will issue a notice of deficiency to the State that its SIP is deficient in that it fails to protect the secondry standard in Floyd County.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because the proposed approval of the emission limit as a plan for the primary standards, if promulgated, only approves a State action. It will impose no new requirements. The proposed disapproval of the limit as a plan for the secondary standard will impose, if promulgated, no new requirements at that time. EPA will address with respect to Executive order 12291, any regulations adopted by the State because of this disapproval, if promulgated, at the time EPA proposed action on the newly adopted regulations.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals will not have a significant economic impact on a substantial number of small entities. 46 FR 8709 (January 27, 1981). The attached rule, if promulgated, constitutes a SIP approval. The disapproval, if promulgated, will not impose any regulatory requirement on any source.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the EPA Region V Office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 and 301 of the Clean Air Act, as amended)

Dated October 16, 1981.

Valdas V. Adamkus,

Regional Administrator.

FR Doc. 82-14298 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL 2072-3]

Approval and Promulgation of Implementation Plans; New Hampshire Revisions—Group I and Group II CTG Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this document is to propose approval of revisions to the State Implementation Plan (SIP) for the State of New Hampshire concerning regulations for the control of volatile organic compounds (VOC). EPA is proposing to: 1. Approve a new regulation for rotogravure and flexography printing and revisions to existing regulations covering cutback asphalt and applicability; 2. approve in part a new regulation controlling refinery leaks and a revision to the compliance schedules regulation; and 3. take no action on regulations concerning coating of miscellaneous metal parts, leaks from tanks trucks, test methods, and the application of the "Bubble" concept. The intended effect of this action is to reduce the amount of hydrocarbons released from stationary sources, thereby decreasing the amount of ozone (a component of "smog") formed in the atmosphere.

DATE: Comments must be received on or before June 25, 1982.

ADDRESSES: Comments may be mailed to Harley F. Laing, Chief, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

Copies of the New Hampshire submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, and Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, N.H. 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223-5630.

SUPPLEMENTARY INFORMATION: In the April 11, 1980 Federal Register (45 FR 24869) EPA conditionally approved the ozone attainment plan for the Merrimack Valley—Southern New Hampshire Interstate Air Quality Control Region. Continued approval of the ozone portion of New Hampshire's SIP depends in part on the adoption and submittal of Reasonably Available Control Technology (RACT) requirements for the sources covered by the first group of Control Technique Guidelines (CTGs) issued between January, 1978 and January, 1979. EPA published the CTGs in order to assist the states in determining RACT. The recommended emission limitations contained in the CTGs are a "presumptive norm", that is, they are emission limitations which EPA believes may be attained by applying RACT. EPA acknowledges that what is RACT for a general source category may not be reasonably available for a particular source or even several sources within a source category. It is EPA policy to accept, as part of a state's VOC control strategy, emission limitations for particular sources or source categories which are different from the EPA-recommended number, if such new emission limitations are based upon documented evaluations of what is reasonably available control technology for each source or groups of sources within the source category.

On August 17, 1981 the state submitted new rules dealing with two Group II VOC categories (coating of miscellaneous metal parts, and rotogravure and flexography printing); and revised existing rules concerning leaks at refineries and gasoline terminals, and the use of cutback asphalt.

The state did not submit regulations for the categories of perchloroethylene dry cleaners, coating of flat wood paneling, external floating roof tanks, pharmaceutical manufacturing and pneumatic rubber tire manufacturing. On January 25, 1982, however, the state submitted a letter certifying to EPA that it has no sources emitting more than 100 tons per year (TPY) in these categories. Consequently, New Hampshire will not be required to adopt regulations covering these categories. Also, for reasons explained later in this Notice, New Hampshire did not submit a regulation for leaks from gasoline tank trucks.

These current regulation submittals reflect New Hampshire's recent recondification from Regulation 22 to Air 1204 for VOC control regulation. However, the state has since further revised some of its regulation codes, and some of the code numbers referenced in this proposed rulemaking may not match the numbers presently contained in the New Hampshire Code of Administrative Rules. When the fully amended regulations are formally submitted to EPA Region I, any changes resulting from revisions or recodifications will be reflected in the final rulemaking.

EPA's proposed actions on the submitted regulations are discussed below:

I. Group II VOC Regulations

A. Coating of Miscellaneous Metal Parts

A new section Air 1204.17 was added to control emissions from the coating of miscellaneous metal parts and products. Although this regulation is consistent with the CTG recommendations, the state has indicated that it does not intend to require that a source electing to install add-on controls achieve the same reduction as would occur with a low-solvent compliance coating, because it does not interpret its regulation on a "gallons of solids applied" basis, but rather interprets it on a "gallons of coating applied" basis. As discussed in a May 5, 1980 memo from Richard Rhoads, which is available at the locations indicated in the **ADDRESSES** section of this Notice, this is not equivalent to RACT for this source category and EPA cannot approve the regulation.

Proposed Action: EPA proposes to take no action at this time on Air 1204.17 since this regulation does not represent RACT for this source category.

B. Rotogravure and Flexography Printing

A new section Air 1204.18 was added to control emissions from printing operations which employ rotogravure or flexographic processes. Emissions are limited by requiring use of inks whose liquid fraction is 75% water. This rule is RACT for this category.

Proposed Action: EPA proposes to approve Air 1204.18.

C. Leaks from Petroleum Refineries

Air 1204.11 concerning emission control methods for petroleum refineries was amended by adding subsection (d), which deals with leak tightness requirements, a Group II category covered by the CTG: *Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.* The rule is consistent with this CTG except that it does not specify any monitoring and reporting requirements. As a result, EPA proposes to approve this regulation, but to take no action on the reporting and monitoring requirements to be used.

Proposed Action: EPA is proposing to: 1) approve Air 1204.11(d), and 2) take no action on the reporting and monitoring requirements for leaks from petroleum refinery equipment.

D. Leaks from Gasoline Tank Trucks

New Hampshire did not submit a regulation for leaks from gasoline tank trucks and vapor collection systems. Northeast States for Coordinated Air Use Management (NESCAUM), which includes the six New England states plus New York and New Jersey, has identified several problems associated with developing regulations in a highly urbanized area such as the Northeast where the states are so small that there is a significant amount of interstate gasoline transport by tank trucks. NESCAUM is working with EPA to try to develop a suitable control strategy which will be consistent regionwide.

Proposed Action: EPA proposes to take no action on this matter at the present time, but will continue to work with NESCAUM so the state can develop and submit a satisfactory approach to gasoline tank truck control to EPA by July 1, 1982.

II. Revisions to Group I VOC Regulations

A. Control of Cutback and Emulsified Aspholts

The state revised Air 1204.12 controlling the use of cutback asphalt and added a new Air 1204.13 dealing with the use of emulsified asphalt. While the restrictions on cutback asphalt are consistent with EPA guidelines, the amounts of solvent allowed in emulsified asphalt exceed the EPA recommendations. The state allows 7% solvent in seal coats or chip seals when dusty or dirty aggregate is used, 8% when emulsified is mixed with open graded aggregate not well washed, and 15% when mixed with dense graded aggregate. The CTG recommends 3%, 6% and 12%, respectively. EPA is proposing approval of the slightly higher state limits and is soliciting comments on this proposed action.

Proposed Action: EPA proposes approval of Air 1204.12 and 1204.13.

III. General VOC Regulations

A. Test Methods

In New Hampshire, compliance testing for stationary sources regulated under Air 1204 is authorized by Air 802. Air 802.04 requires that test methods be approved by either the EPA or the Air Resources Agency. The state has not adopted any test methods nor made reference to the particular test methods to be utilized, and has not committed to utilizing only EPA-approved test methods. This regulation is not approvable as presently written, and was not submitted as part of the SIP. Therefore, Air 1204 lacks appropriate test methods.

Under 40 CFR 52.12(c), in cases where a state has not adopted specific test methods as part of its SIP, the appropriate test methods prescribed in 40 CFR Part 60 shall be applied.

Proposed Action: EPA proposes to take no action on test methods at the present time, but will continue to apply published EPA test methods as prescribed in 40 CFR Part 60.

B. Compliance Schedules

Air 1204.21 has been expanded to indicate compliance schedules for all categories covered under Air 1204, including Group II VOC sources. It requires a compliance date which is as expeditious as possible, but no later than December 31, 1982, except that sources may be granted further extensions for good cause until December 31, 1987. EPA has given approval to compliance schedule regulations for other Region I states which may allow compliance extensions past December 31, 1982, but no later than July 1, 1985. However, the New Hampshire regulation allows extensions to the end of 1987. EPA feels this is an unreasonably long delay considering the current availability of low solvent coatings and control technology. Therefore, EPA proposes to approve this regulation provided that compliance schedules for sources that will not be in compliance by December 31, 1982 be submitted to EPA for approval as source-specific SIP revisions.

Proposed Action: EPA proposes approval of Air 1204.21 provided that compliance schedules which extend compliance beyond December 31, 1982 are submitted to EPA as source-specific SIP revisions.

C. Bubble Concept

Air 1204.01 allows the use of a "Bubble" as detailed in Air 609 to achieve compliance. Air 609 has not been submitted to EPA for approval as a revision to the SIP. The use of any bubble must comply with the EPA criteria as contained in the April 7, 1982 **Federal Register** (47 FR 15076). The New Hampshire bubble regulation does not satisfy all those criteria, but states that individual bubble plans must be submitted to EPA as revisions to the SIP.

Proposed Action: EPA proposes to take no action on Air 1204.01, with the understanding that individual bubbles will be submitted to EPA as SIP revisions.

D. Limits to Applicability

Air 1204.03, dealing with the limits to applicability of the VOC categories, was amended to exempt solvent metal cleaning and printing sources whose combined operations total less than 100 TPY. Generally, EPA allows such exemptions for printers but not for degreasers. However, since New Hampshire is a rural nonattainment area and is expected to attain the NAAQS for ozone by December 31, 1982, all such 100 TPY exemptions are acceptable.

Proposed Action: EPA proposes to approve Air 1204.03.

All comments received will be available for inspection at EPA's Region I office, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities, 46 FR 8709 (January 27, 1981). The attached rule, if promulgated, constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27, 1981 certification. This action only approves state actions, and as such imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of the Regulatory Impact Analysis. This regulation is not major because it proposes acceptance of regulations already promulgated by the State of New Hampshire, and imposes no new requirements.

This proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)))

Dated: March 1, 1982.

Leslie Carothers,

Regional Administrator.

[FR Doc. 82-14307 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 180

[PP 6E1812/P231; PH FRL 2129-8]

Benomyl; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity avocados at 3 parts per million (ppm). The proposed amendment to establish a maximum permissible level for residues of the fungicide in or on the commodity was submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before June 25, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-7700) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 6E1812 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazole carbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity avocados at 3 ppm. This represents an increase in the existing tolerance level of 1 ppm for avocados.

A comprehensive review of the data available for the chemical was conducted in connection with the Rebuttable Presumption Against Registration (RPAR) for benomyl which was published in the Federal Register of December 6, 1977 (42 FR 61788).

This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and non-disjunction), spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms and significant population reduction in nontarget organisms. On August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of Determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In this Notice and the accompanying Position Document 2/3, the Agency weighed the risks and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risks of use to applicators.

Subsequent to these findings, data have been made available indicating that benomyl is oncogenic and additional teratogenic tests have been submitted. A re-review of the presently registered uses of benomyl in light of the oncogenic and teratogenic adverse effects is currently being performed.

EPA has established 30 mg/kg of body weight/day as the provisional NOEL (no-observed-effect level), based on the teratogenicity studies evaluated to date. The estimated daily dose to a 60-kg woman resulting from 3.0 ppm benomyl residue on avocados is 0.4 per day. This results in a safety margin of over 4500. The Agency acknowledges that dietary serving sizes may vary and that the NOEL, when finally established, may be as much as an order of magnitude lower. However, considering these variables and a more conservative NOEL, the margin of safety is anticipated to be at least 100.

The nature of the residues is adequately understood and adequate analytical procedures (fluorometric or high-pressure chromatography using ultraviolet detection) are available for enforcement purposes. Secondary residues are not expected in or on meat, milk, poultry or eggs since neither the avocado nor its plant byproducts are used in feeds.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. The pesticide is considered useful for the purpose for which the tolerance is sought. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 6E1812/P231]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.294 be amended by increasing the current tolerance level for the raw agricultural commodity avocados to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

Commodities	Parts per million
Avocados	3

* * * * *

[FR Doc. 82-13855 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E1756/6E1800/6E2103/9E2137/P219; PH-FRL 2130-1]

Methyl Parathion; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice reproposes that a tolerance be established for residues of the insecticide methyl parathion (*O,O*-dimethyl-*O-p*-nitrophenyl thiophosphate) in or on the raw agricultural commodity parsley and at the same time proposes that tolerances be established in or on certain raw agricultural commodities. These proposals, to establish maximum permissible levels for residues of methyl parathion on the commodities, were submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before June 25, 1982.

ADDRESS: Written comments to: Donald R. Stubbs, Emergency Response Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-7123).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of October 2, 1978 (43 FR 45412) that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide and food additive petitions (PP 6E1756, 6E1762, and FAP 6H5128) to EPA. Pesticide petition 6E1756, submitted on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of California, Florida, and New Jersey, requested that the Administrator propose that 40 CFR 180.121 be amended by the establishment of a tolerance for residues of the insecticide parathion (*O,O*-diethyl-*O-p*-nitrophenyl thiophosphate) and its methyl homolog in or on the raw agricultural commodity parsley at 1 part per million (ppm). This petition was later amended to limit the proposed tolerance to the methyl homolog of parathion.

IR-4 submitted petitions 6E1762 and 6H5128 on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California, requesting that the Administrator propose the establishment of a tolerance for residues of the insecticide parathion and its methyl homolog in fish at 0.2 ppm (6E1762) resulting from application of the insecticide to waters of Clear Lake, California, for the control of the Clear Lake gnat, Chaoborus astictopus Dyar and Shannon, in programs conducted by the Lake County, California, Mosquito Abatement District and in potable water derived from the Clear Lake region with a tolerance limitation of 0.01 ppm (6H5128). These petitions were later amended to propose tolerances for residues of methyl parathion only. However, at this time, the tolerances proposed in 6E1762 and 6H1528 are not being reproposed pending further scientific review.

IR-4 has also submitted pesticide petitions 6E1800, 6E2103, and 9E2137 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Idaho and Washington (6E1800); Arizona, Oklahoma, and Texas (6E2103); and New York (9E2137). Those petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide parathion or its methyl homolog in or on the raw agricultural commodities lentils at 1 ppm (6E1800); guar beans at 0.2 ppm (8E2103); and birdsfoot trefoil forage at 1.25 ppm and birdsfoot trefoil hay at 5.0 ppm (9E2137). These petitions were later amended to limit the proposed tolerances to the methyl homolog of parathion.

The data submitted in the petitions and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances were a 2-year rat feeding study with a no-observed-effect level (NOEL) of 1 ppm; a 6-month dog feeding study with a NOEL of 0.05 milligram (mg)/kilogram (kg) of body weight (bw)/day or 2ppm; a multigeneration rat reproduction/teratology study with a NOEL of 10 ppm; and a human volunteer oral ingestion study with a NOEL of 0.1 mg/kg of bw/day, which is equivalent to about 4 ppm based on the whole diet of humans.

On May 25, 1979, the NCI made available (44 FR 30448) the report on bioassay of methyl parathion for possible carcinogenicity. It was concluded that under the conditions of this bioassay, methyl parathion was not carcinogenic for the strain of F344 rats or B6C3F1 mice of either sex. On the basis of the results of the F344 rat and B6C3F1 mouse studies with methyl parathion and the fact that the non-carcinogenic methyl parathion is not expected to bioconvert to the potentially carcinogenic parathion, dietary exposure to methyl parathion-treated commodities does not appear to pose an oncogenic risk.

The National Cancer Institute (NCI) has also completed a study on the possible carcinogenicity of parathion (43 FR 55467, November 28, 1978), and it was concluded that under the conditions of this bioassay, parathion was not carcinogenic to the strain of B6C3F1 mice. In the male and female strain of Osborne-Mendel rats receiving parathion in their diet, there was a higher incidence of adrenocortical tumors than in pooled or historical controls, suggesting that parathion is carcinogenic to this strain of rat.

On the basis of the results of the Osborne-Mendel rat study with parathion, the Agency considers the lifetime cancer risk from dietary exposure of parathion-treated commodities to exceed the risk criteria of 10^{-6}. The Agency will reevaluate all the existing tolerances for parathion now that the final report and validation audit of the laboratory records on the carcinogenicity studies are available. Tolerances have previously been established for residues in or on a variety of raw agricultural commodities ranging from 0.1 ppm to 5 ppm, including parathion or its methyl homolog in or on alfalfa (fresh) at 1.25 ppm and in or on alfalfa hay at 5 ppm.

The metabolism of methyl parathion is adequately understood and an adequate analytical method (gas chromatography using either electron capture or flame photometric detection) is available for enforcement purposes. Birdsfoot trefoil is not a human food nor poultry feed item and, considering the rapid degradation of methyl parathion in rumen fluid and the absence of residues in milk from feeding of greater than 10 ppm of methyl parathion to dairy cattle, we consider the use of methyl parathion-treated trefoil hay as animal feed to fall within category 3 of § 180.6(a) in regard to meat and milk.

The acceptable daily intake (ADI) for parathion is 0.005 mg/kg of bw/day with regard to chronic effects other than oncogenicity. The ADI is based on the 2-year rat feeding study (NOEL of 0.05 mg/kg/day) and uses a 10-fold safety factor. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.3000 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.5719 mg/day. The total percentage increase added to the existing TMRC by the proposed tolerances is less than one percent.

In light of the above information, the Agency proposes to establish the requested tolerances for residues of methyl parathion only. Such tolerances established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before June 25, 1982, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 6E1756/6E1800/8E2103/9E2137/P219]." All written comments filed in response to this petition will be available for public inspection in the office of Donald Stubbs from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.121 be revised to read as follows:

§180.121 Parathion or its methyl homolog; tolerances for residues.

(a) Tolerances are established for residues of the insecticide parathion (*O, O*-diethyl-*O-p*-nitrophenyl thiophosphate) or its methyl homolog in or on the following raw agricultural commodities:

Commodities	Parts per million
Alfalfa (fresh)	1.25
Alfalfa hay	5
Almonds	0.1(N)
Almond hulls	3
Apples	1
Apricots	1
Artichokes	1
Avocados	1
Barley	1
Beans	1
Beets (with or without tops)	1
Beet greens (alone)	1
Blackberries	1
Blueberries (huckleberries)	1
Boysenberries	1
Broccoli	1
Brussels sprouts	1
Beets, sugar	0.1(N)
Beets, sugar (tops)	0.1(N)
Cabbage	1
Carrots	1
Cauliflower	1
Celery	1
Cherries	1
Citrus fruits	1
Clover	1
Collards	1
Corn	1
Corn, forage	1
Cottonseed	0.75
Cranberries	1
Cucumbers	1
Currants	1
Dates	1
Dewberries	1
Eggplants	1
Endive (escarole)	1
Figs	1
Filberts	0.1(N)
Garlic	1
Gooseberries	1
Grapes	1
Grass (forage)	1
Guavas	1
Hops	1
Kale	1
Kohlrabi	1
Lettuce	1
Loganberries	1
Mangoes	1
Melons	1
Mustard greens	1
Mustard seed	0.2
Nectarines	1
Oats	1
Okra	1
Olives	1
Onions	1
Parsnips (with or without tops)	1
Parsnip greens (alone)	1
Peaches	1
Peanuts	0.1(N)
Pears	1
Peas	1
Peas, forage	1
Pecans	0.1(N)
Peppers	1
Pineapples	1
Plums (fresh prunes)	1
Potatoes	0.1(N)
Pumpkins	1
Quinces	1
Radishes (with or without tops)	1
Radish, tops	1
Rape seed	0.2
Raspberries	1
Rice	1
Rutabagas (with or without tops)	1
Rutabaga tops	1
Safflower seed	0.1(N)
Sorghum	0.1(N)
Sorghum fodder	3
Sorghum forage	3
Soybeans	0.1
Soybean hay	1
Spinach	1
Squash	1
Strawberries	1
Summer squash	1
Sugarcane	0.1(N)
Sugarcane fodder	0.1(N)
Sugarcane forage	0.1(N)
Sunflower seed	0.2
Sweet potatoes	0.1(N)
Swiss chard	1
Tomatoes	1
Turnips (with or without tops)	1
Turnip greens	1
Vetch	1
Walnuts	0.1(N)
Wheat	1
Youngberries	1

(b) Tolerances are established for residues of the insecticide *O, O*-diethyl-*O-p*-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the following raw agricultural commodities:

Commodities	Parts per million
Birdsfoot trefoil forage	1.25
Birdsfoot trefoil hay	5
Guar beans	0.2
Lentils	1
Parsley	1

[FR Doc. 82-13891 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0000/P237-DN-FRL 2131-7]

Certain Pesticide Chemicals; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to increase and or decrease tolerance levels for the pesticide chemicals malathion; *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosporothioate; methyl 3-[(dimetoxyphosphinyl)oxy]butenoate, alpha and beta isomers; dioxathion; ethion; 2-chloro-1-(2,4-dichorophenyl) vinyl diethyl phosphate; and phosalone and to revise certain commodity descriptions. The proposed amendments to the regulations would provide conformity between U.S. tolerances and tolerances established for the above pesticide chemicals by the Codex Alimentarius Commission.

DATE: Comments must be received on or before June 25, 1982.

ADDRESS: Written comments to the designated Product Manager (PM). Mailing address of PM's: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Pesticide chemical	PM	Telephone
Malathion Methyl 3-[(dimethoxyphosphinyl)oxy] butenoate, alpha and beta isomers		
Ethion	William Miller—PM16.	(703–557–2600)
Dioxathion 2-Chloro-1-(2,4-dichorophenyl) vinyl diethyl phosphate		
O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate.	George LaRocca—PM15.	(703–557–2400)
Phosalone	Jay Ellenberger—PM12.	(703–557–2386)

SUPPLEMENTARY INFORMATION: The United States participates in the activities of the Codex Alimentarius Commission (CAC), which is concerned with the development of international food standards, including tolerances for pesticide residues in food. The purpose of this organization is, in general, to protect consumer health and ensure fair practices in the food trade while fostering the movement of agricultural products across international boundaries.

As the last step of the Codex process, countries are asked to accept the proposed tolerances. Before acceptance of a proposed tolerance by the United States, it must be determined that the proposed tolerance fully complies with the requirements of the Federal Food, Drug, and Cosmetic Act, and a regulation must have been promulgated. Accordingly, the EPA has proposed that tolerances for residues on the listed insecticides be established in or on raw agricultural commodities as follows:

Commodities	Proposed tolerances (ppm)	Existing U.S. tolerances (ppm)
A. Malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate)		
Broccoli (pre-H)	8.0	8.0
B. *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate		
Apples	0.5	0.75
Apricots	0.5	0.75
Beans, lima	0.5	0.75
Beans, snap	0.5	0.75
Beets, sugar, roots	0.5	0.75
Beets, tops	0.7	0.75
Blackberries	0.5	0.75
Blueberries	0.5	0.75
Boysenberries	0.5	0.75
Broccoli	0.7	0.75
Brussel sprouts	0.7	0.75
Cabbage	0.7	0.75
Cauliflower	0.7	0.75
Cattle, fat (pre-s appli)	0.7	0.75
Cattle, meat (fat basis) (pre-s appli)	0.7	0.75
Cattle, mbyp (fat basis) (pre-s appli)	0.7	0.75
Celery	0.7	0.75
Citrus	0.7	0.75
Collards	0.7	0.75
Corn (inc. sweet K + CWHR)	0.7	0.75
Cranberries	0.5	0.75
Dandelion	0.7	0.75
Dewberries	0.5	0.75
Endive	0.7	0.75
Figs	0.5	0.75
Kale	0.7	0.75
Lettuce	0.7	0.75
Mustard greens	0.7	0.75
Nectarines	0.5	0.75
Parsnips	0.5	0.75
Peaches	0.7	0.75
Pears	0.5	0.75
Peas with pods (determined on pods after removing any shell present when marketed)	0.5	0.75
Peppers	0.5	0.75
Pineapples	0.5	0.75
Plums (fresh prunes)	0.5	0.75
Radishes	0.5	0.75
Raspberries	0.5	0.75
Sheep, fat (pre-s appli)	0.7	0.75
Sheep, meat (fat basis) (pre-s appli)	0.7	0.75
Sheep, mbyp (fat basis) (pre-s appli)	0.7	0.75
Spinach	0.7	0.75
Strawberries	0.5	0.75
Squash, summer	0.5	0.75
Swiss chard	0.7	0.75
Turnips, roots	0.5	0.75
Watercress	0.7	0.75

U.S. tolerances are currently expressed as cattle mbyp (pre-slaughter application (pre-s appli)); cattle, meat (pre-s appli) at 0.75 ppm and sheep, mbyp (pre-s appli); sheep, meat (pre-s appli) at 0.75 ppm. For purposes of these proposed tolerances, the U.S. description for meat is being revised to incorporate the "fat basis" concept which makes it compatible with the Codex description.

Commodities	Proposed tolerances	Existing U.S. tolerances
C. Methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers		
Citrus	0.2	0.25
Cucumbers	0.2	0.25
Tomatoes	0.2	0.25

The CAC has an established 0.2 ppm tolerance in or on citrus fruit, whereas the current U.S. tolerance is for residues in or on the individual commodities grapefruit, lemons and oranges at 0.25 ppm. For consistency with the Codex group tolerance for citrus, the individual U.S. citrus tolerances are being revised to the citrus grouping pursuant to 40 CFR 180.34 (f).

Commodities	Proposed tolerances	Existing U.S. tolerances
D. Dioxathion (2,2-p-dioxanediithiol-S,S-bis (*O,O*-diethylphosphorodithioate)) incorrect from the use of the insecticide composed of a mixture of approximately 70 percent of its cis and trans isomers and approximately 30 percent of related compounds		
Stone fruits	0.1(N)	0.1(N)

Commodities	Proposed tolerances	Existing U.S. tolerances
E. Ethion (*O,O,O',O'*-tetraethyl *S,S'*-methylene bisphosphorodithioate) including its oxygen analog [*S*-[[(diethoxy-phosphinothioyl) thio] methyl] *O,O*-diethyl phosphorothioate)		
Cattle, fat	2.5	2.5
Cattle, meat (fat basis)	2.5	0.75
Cattle, mbyp	1.0	0.75
Pears	2.0	1.0

U.S. tolerances are currently established at 2.5 ppm in or on fat of cattle and 0.75 ppm in or on meat and meat byproducts of cattle. For purposes of these proposed tolerances, the U.S. description of meat is being revised to incorporate the "fat basis" concept which makes it compatible with the Codex description.

Commodities	Proposed tolerances	Existing U.S. tolerances
F. Phosalone (*S*-[6-chloro-3-(mercaptomethyl)-2-benzoxazolinone] *O,O*-diethyl phosphorodithioate)		
Nuts	0.1(N)	.05

U.S. tolerances are currently established in or on brazil nuts, bush nuts, butternuts, cashews, chestnuts, filberts, hazelnuts, hickory nuts, macadamia nuts, pecans, and walnuts at 0.05 ppm (negligible residue) and at 0.1 ppm in almonds (N). Codex tolerances are 0.1 ppm (limit of determination) for chestnuts and pecans. U.S. tolerances are being revised to the grouping nuts pursuant to 40 CFR 180.34(f).

Commodities	Proposed tolerances	Existing U.S. tolerances
Cattle, fat	0.2	0.15
Milk (on a fat basis)	0.2	0.1
Sheep, fat	0.2	0.15

Based on consideration given the data published by the CAC and other relevant material, the Agency has concluded that the residues expected to result from the use of these insecticides in or on the listed commodities will not pose a hazard when used in accordance with the label directions. It is proposed, therefore, that the tolerances be established as set forth below.

When the proposed Codex tolerances are compared with the corresponding established U.S. tolerances, it can be reasonably concluded that chemical and/or toxicological differences between the two sets of tolerances are minor and/or insignificant and that the proposed tolerances will protect the public health. Since differences between U.S. tolerances and the proposed Codex tolerances are minor and/or insignificant, the Agency considers the amendment of the U.S. regulations for the listed insecticides to conform to the Codex proposed tolerances is a nonsubstantive administrative change. However, the Agency wishes to provide an opportunity for public comment on this proposal.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, "[PP 0000/P237]". All written comments filed in response to this petition will be available for public inspection in the office of the Product Manager for the chemical from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

It is proposed therefore, that 40 CFR Part 180 be amended as follows:

1. Section 180.111 be amended by revising the established tolerance for broccoli (Pre-H) to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Broccoli (Pre-H)	[1]8.0

[1]Decrease.

2. Section 180.153 be revised to read as follows:

§ 180.153 O, O-Diethyl O-(2 isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

Tolerances are established for residues of the insecticide O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate in or on the following raw agricultural commodities:

Commodities	Parts per million
Alfalfa, fresh	40.0
Alfalfa, hay	10.0
Almonds	0.5
Almonds, hulls	3.0
Apples	[1]0.5
Apricots	[1]0.5
Bananas (NMT 0.1 ppm shall be present in the pulp after peel is removed)	0.2
Beans, forage	25.0
Beans, hay	10.0
Beans, guar	0.1
Beans, guar, forage	0.1
Beans, lima	[1]0.5
Beans, snap	[1]0.5
Beets, roots	0.75
Beets, sugar, roots	[1]0.5
Beets, sugar, tops	10.0
Beets, tops	[1]0.7
Birdsfoot trefoil	40.0
Birdsfoot trefoil, hay	10.0
Blackberries	[1]0.5
Blueberries	[1]0.5
Boysenberries	[1]0.5
Broccoli	[1]0.7
Brussels sprouts	[1]0.7
Cabbage	[1]0.7
Carrots	0.75
Cattle, fat (pre-s appl)	[1]0.7
Cattle, meat (fat basis) (pre-s appl)	[1]0.7
Cattle, mbyp (fat basis) (pre-s appl)	[1]0.7
Cauliflower	[1]0.7
Celery	[1]0.7
Cherries	0.75
Citrus	[1]0.7
Clover (fresh)	40.0
Clover, hay	10.0
Coffee beans	0.2
Collards	[1]0.7
Corn, forage	40.0
Corn (inc sweek k + CWHR)	[1]0.7
Cottonseed	0.2
Cowpeas	0.1
Cowpeas, forage	0.1
Cranberries	[1]0.5
Cucumbers	0.75
Dandelions	[1]0.7
Dewberries	[1]0.5
Endive (escarole)	[1]0.7
Figs	[1]0.5
Filberts	0.5
Grapes	0.75
Grass (NMT 40 ppm shall remain 24 hours after appl)	60.0
Grass, hay	10.0
Hops	0.75
Kale	[1]0.7
Kiwi fruit	0.75
Lespedeza	1.0
Lettuce	[1]0.7
Loganberries	0.75
Melons	0.75
Mushrooms	0.75
Mustard greens	[1]0.7
Nectarines	[1]0.5
Olives	1.0
Onions	0.75
Parsley	0.75
Parsnips	[1]0.5
Peaches	[1]0.7
Peanuts	0.75
Peanuts, forage	40.0
Peanuts, hay	10.0
Peanuts, hulls	10.0
Pears	[1]0.5
Peavine hay	10.0
Peavines	25.0
Peas with pods (determined on peas after removing any shell present when marketed)	[1]0.5
Pecans	0.5
Peppers	[1]0.5
Pineapples	[1]0.5
Pineapples, forage	40.0
Plums (fresh prunes)	[1]0.5
Potatoes	0.1
Potatoes, sweet	0.1
Radishes	[1]0.5
Raspberries	[1]0.5
Rutabagas	0.75
Sheep, fat (pre-s appl)	[1]0.7
Sheep, meat (fat basis) (pre-s appl)	[1]0.7
Sheep, mbyp (fat basis) (pre-s appl)	[1]0.7
Sorghum, forage	10.0
Sorghum, grain	0.75
Soybeans	0.1
Soybeans, forage	0.1
Spinach	[1]0.7
Squash, summer	[1]0.5
Squash, winter	0.75
Strawberries	[1]0.5
Sugarcane	0.75
Swiss chard	[1]0.7
Tomatoes	0.75
Turnips, roots	[1]0.5
Turnips, tops	0.75
Walnuts	0.5
Watercress	[1]0.7

[1]Decrease.

3. Section 180.157 be revised to read as follows:

§ 180.157 Methyl 3-[(dimethoxyphosphinyl)oxy] butenoate, alpha and beta isomers; tolerances for residues.

Tolerances are established for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers, in or on the following raw agricultural commodities:

Commodities	Parts per million
Alfalfa	1.0
Apples	0.5
Artichokes	1.0
Beans	0.25
Beets, garden (incl. tops)	1.0
Birdsfoot trefoil, forage	1.0
Birdsfoot trefoil, hay	1.0
Broccoli	1.0
Brussels sprouts	1.0
Cabbage	1.0
Carrots	0.25
Cauliflower	1.0
Celery	1.0
Cherries	1.0
Citrus	0.2
Clover	1.0
Collards	1.0
Corn, field, forage	1.0
Corn, grain, field	0.25
Corn, pop, forage	1.0
Corn, pop, grain	0.25
Corn, sweet (K + CWHR)	0.25
Corn, sweet, forage	1.0
Cucumbers	[1]0.2
Eggplant	0.25
Grapes	0.5
Kale	1.0
Lettuce	0.5
Melons (incl. canteloupes, honeydew, melon, and muskmelon, determined on the edible portion with rind removed)	0.5
Mustard greens	1.0
Okra	0.25
Onions (green)	0.25
Parsley	1.0
Peaches	1.0
Pears	0.5
Peas	0.25
Pistachios	1.0
Peppers	0.25
Plums	1.0
Potatoes	0.25
Raspberries	1.0
Sorghum, forage	1.0
Sorghum, grain	1.0
Spinach	1.0
Squash, summer	0.25
Strawberries	1.0
Tomatoes	[1]0.2
Turnips	0.25
Turnips, tops	1.0
Walnuts (determined on the nut meats with shell removed)	0.25
Watermelon	0.5

[1] Decrease.

4. Section 180.171 be amended by revising the established tolerance for stone fruits to read as follows:

§ 180.171 Dioxathion; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Stone fruits	[1]0.1(N)
* * * * *	

[1] Decrease

5. Section 180.173 be revised to read as follows:

§ 180.173 Ethion; tolerances for residues.

Tolerances are established for residues of the insecticide ethion (*O,O,O',O'*-tetraethyl *S,S'*-methylene bisphosphorodithioate) including its oxygen analog (*S*-[[(diethoxyphosphinothioyl)thio] methyl] *O,O*-diethyl phosphorothioate) in or on the following raw agricultural commodities:

Commodities	Parts per million
Almonds	0.1
Almond, hulls	5.0
Apples	2.0
Apricots	0.1
Beans	2.0
Cattle, fat	2.5
Cattle, meat (fat basis)	[1]2.5
Cattle, mbyp	[1]1.0
Cherries	0.1
Chestnuts	0.1
Citrus fruits	2.0
Corn, fodder	14.0
Corn, forage	14.0
Corn, grain	0.1
Cottonseed	0.5
Cucumbers	0.5
Eggs	0.2
Eggplants	1.0
Filberts	0.1
Goats, fat	0.2
Goats, meat	0.2
Goats, mbyp	0.2
Grapes	2.0
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Melons	2.0
Milk fat (reflecting (N) residues in milk)	0.5
Nectarines	1.0
Onions	1.0
Peaches	1.0
Pears	[1]2.0
Pecans	0.1
Peppers	1.0
Pimentos	1.0
Plums (fresh prunes)	2.0
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2
Sorghum, forage	2.0
Sorghum, grain	2.0
Squash, summer	0.5
Strawberries	2.0
Tomatoes	2.0
Walnuts	0.1

[1] Increase.

6. Section 180.263 be revised to read as follows:

§ 180.263 Phosalone; tolerances for residues.

Tolerances are established for residues of the insecticide phosalone (*S*-(6-chloro-3-(mercaptomethyl)-2-benzoxazolinone) *O,O*-diethyl phosphorodithioate) in or on raw agricultural commodities as follows:

Commodities	Parts per million
Almond, hulls	80.0
Apples	10.0
Apricots	15.0
Artichokes	25.0
Cattle, fat	0.25
Cattle, meat	0.25
Cattle, mbyp	0.25
Cherries	15.0
Citrus fruits	3.0
Goats, fat	0.25
Goats, meat	0.25
Goats, mbyp	0.25
Grapes	10.0
Hogs, fat	0.25
Hogs, meat	0.25
Hogs, mbyp	0.25
Horses, fat	0.25
Horses, meat	0.25
Horses, mbyp	0.25
Nectarines	15.0
Nuts	[1]0.1
Peaches	15.0
Pears	10.0
Plums (fresh prunes)	15.0
Potatoes	0.1 (N)
Sheep, fat	0.25
Sheep, meat	0.25
Sheep, mbyp	0.25

[1] Increase.

7. Section 180.322 be revised to read as follows:

§ 180.322 2-Chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate; tolerances for residues.

Tolerances are established for residues of the insecticide 2-chloro-1-(2,4-dichlorophencyl) vinyl diethyl phosphate in or on raw agricultural commodities as follows:

Commodities	Parts per million
Cattle, fat	[1]0.2
Eggs	0.005
Goats, fat	0.005
Hogs, fat	0.005
Horses, fat	0.005
Milk, fat (on a fat basis)	[1]0.2
Poultry, fat	0.005
Sheep, fat	[1]0.2

[1] Increase.

[FR Doc 82-14176 Filed 5-25-82; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-276; RM-4060]

TV Broadcast Stations in Billings and Miles City, Mont.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to reassign TV Channel *6 from Miles City, Montana, where it is reserved for noncommercial educational use, to

Billings, Montana, for commercial use. Also Channel 10 would replace Channel 6 in Miles City as the noncommercial educational channel.

DATES: Comments must be filed on or before July 5, 1982, and reply comments on or before July 20, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Billings and Miles City, Montana); BC Docket No. 82–276, RM–4060.

Adopted: May 13, 1982.

Released: May 20, 1982.

1. The Commission has under consideration a petition for rule making filed by Comanche Enterprises ("petitioner"). Petitioner requests that the Television Table of Assignments be amended to reassign Channel *6 from Miles City, Montana, where it is reserved for noncommercial educational use, to Billings, Montana, for commercial use and to replace Channel *6 with Channel 10 in Miles City as the noncommercial educational channel.

2. In support of its request, petitioner states that the proposal complies with all Commission rules concerning minimum mileage separation and other technical requirements. Petitioner further states that it will apply for operation on the channel, if it is assigned as requested.

3. UHF television Channels 14 and 20 are currently assigned to Billings for commercial operation but are not in use. Petitioner contends that "development of these existing allocations is impractical because of the surrounding mountainous terrain and the inherent disabilities in UHF television service which, in tandom, prevent effective signal transmission to the Billings community." For these reasons, petitioner asserts that the third major television network (NBC) has been unwilling to extend affiliation to Billings. The city now has two VHF commercial television stations: KTVQ (Channel 2) (CBS affiliate) and KULR-TV (Channel 8) (ABC affiliate). VHF-TV Station KOUS (NBC affiliate); Hardin, Montana, fifty miles east of Billings, broadcasts its signal to Billings. However, petitioner alleges that the signal is poor in quality due to a large ridge between the KOUS transmitter and receiving sets in Billings.

4. Petitioner points out that the Commission originally assigned television Channels 3, *6 and 10 to Miles City in 1952 when it first established the Television Table of Assignments. Since that time, only Station KYUS (NBC affiliate), Channel 3, has become fully operational. Channels *6 and 10 are currently used for secondary translator operations which rebroadcast the signals of the two full service television stations in Billings.

5. Petitioner emphasizes that reassignment of reserved Channel 6 from Miles City to Billings for commercial use "would neither preclude nor impair the potential development of educational service in Miles City;" that Channel 10 would be reserved for future noncommercial educational use should the demand for such service develop.

6. Billings (population 66,798),[1] the seat of Yellowstone County (population 108,035), is located in south central Montana, approximately 280 kilometers (175 miles) southeast of Great Falls, Montana. Miles City (population 9,802), the seat of Custer County (population 13,109) is located in eastern Montana approximately 215 kilometers (135 miles) northeast of Billings.

7. The assignment of an additional VHF channel to Billings could provide a third commercial network service on VHF channels. We have previously found such use of the spectrum desirable as opposed to putting one of the network affiliates on a UHF channel. See, *Medford, Oregon*, 43 FR 1503 (1977). We also note that the Miles City assignment has been vacant for some 30 years and we believe that it would be desirable to utilize the channel now that there is an interest in its use. The possibility of a noncommercial educational station at Miles City will not be affected since we also propose to switch the reservation from Channel *6 to Channel 10.

8. Inasmuch as Billings is within 250 miles of the Canadian border, the concurrence of Canada is required with respect to the proposed assignment.

9. In view of petitioner's showing herein, the Commission concludes that it is appropriate to propose the following requested amendments to the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed as follows:

City	Channel No.	
	Present	Proposed
Miles City, Montana.	3–, *6, 10	3–, *10.
Billings, Montana	2, 8, *11, 14, and 20+.	2, 6, 8, *11, 14, and 20+.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before July 5, 1982, and reply comments on or before July 20, 1982, and are advised to read the Appendix for the proper procedures.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published. February 9, 1981.

13. For further information concerning this proceeding, contact Philip S. Cross, Broadcast Bureau, (202) 632–5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[1] Population figures are taken from the 1980 U.S. Census (Advance Report).

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

PART 73—RADIO BROADCAST SERVICES

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleading, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-14344 Filed 5-25-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-253; RM-4081]

FM Broadcast Stations in Seabrook, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 221A to Seabrook, Texas, in response to a petition filed by The Spanish Aural Service Company. The proposed assignment could provide Seabrook with a first aural service.

DATES: Comments must be filed on or before June 24, 1982, and reply comments on or before July 9, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Seabrook, Texas); BC Docket No. 82-253, RM-4081.

Adopted: May 5, 1982.

Released: May 10, 1982.

1. A petition for rule making was filed by The Spanish Aural Services Company ("petitioner") proposing the assignment of Channel 221A to Seabrook, Texas, as its first FM assignment. Petitioner states that he will file an application for a construction permit, if the channel is assigned.

2. Seabrook (population 4,670), in Harris County (population 2,409,544),[1] is located on Galveston Bay approximately 40 kilometers (25 miles) east of Houston, Texas. It presently has no local aural service.

3. Seabrook is part of a community comprised of eight incorporated cities. It is a growing seaside community with a flourishing construction industry having many residential units under construction, completed or planned. This community also is said to have a growing commercial fishing industry and is located near the National Aeronautics and Space Administration and the Lunar Planetary Institute. We are also told that approximately 63% of the population is employed as professionals. There are 19 schools in the area with the University of Houston providing higher education. Petitioner believes that because of the growing economy and the expanding population, a first aural service is needed at Seabrook to satisfy the increasing needs of this cultural and intellectual community.

4. The channel can be assigned in compliance with the mileage separation rules. However, the assignment is based on Station KYND, Pasadena, Texas, changing channels from 223 to 225 (BC Docket No. 81-233), adopted October 5, 1981. In that proceeding, the license for Station KYND was modified to specify Channel 225.

5. In view of the fact that the proposed assignment could provide Seabrook with its first FM broadcast service, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b)) with regard to the following community:

City	Channel No.	
	Present	Proposed
Seabrook, Texas		221A

6. The Commission's authority to institute rule making proceeding, showings required, cut-off procedures, and filing requirements are contained in

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 24, 1982, and reply comments on or before July 9, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which they reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

PART 73—RADIO BROADCAST SERVICES

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

FR Doc. 82-14942 Filed 5-25-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-252; RM-4068]

TV Broadcast Station in Carroll, Iowa; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF television Channel 30 to Carroll, Iowa, as its first commercial television channel in response to a petition filed by Michael D. Pauley.

DATES: Comments must be filed on or before June 17, 1982, and reply comments on or before July 2, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

In the matter of amendment of § 73.606(b), table of assignments, Television Broadcast Stations. (Carroll, Iowa); BC Docket No. 82-252, RM-4068.

Adopted: May 4, 1982.

Released: May 7, 1982.

1. The Commission herein considers a petition for rule making filed by Michael D. Pauley ("petitioner"), which seeks the assignment of UHF television Channel 30 to Carroll, Iowa. Petitioner expressed an interest in applying for the channel, if assigned.

2. Carroll (population 9,705)[1] is the seat of Carroll County (population 22,951) and is located approximately 115 kilometers (72 miles) northwest of Des Moines, Iowa. It has one unoccupied noncommercial educational assignment

[1] Population figures are taken from the 1980 U.S. Census.

(Channel *18) and no local commercial television broadcast service.

3. Petitioner states that Carroll is provided local radio service from two stations, KLIM(AM) and KKRL(FM). The nearest operating commercial television station is said to be 62 miles away in Ames, Iowa.

4. A site restriction of 3.9 miles south is needed to avoid short spacing to unused Channel 30 in Marshall, Minnesota.

5. In view of the foregoing, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the city of Carroll, Iowa, as follows:

City	Channel No.	
	Present	Proposed
Carroll, Iowa	*18—	*18—, 30+

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 17, 1982, and reply comments on or before July 2, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

PART 73—RADIO BROADCAST SERVICES

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterporposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.402 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-14949 Filed 5-25-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 102
Wednesday, May 26, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

May 21, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447–6201.

New

• Forest Service
Forest Industry Productivity Survey
Nonrecurring
Businesses or other institutions: 200 responses; 50 hours; not applicable under 3504(h)
Hans Gregersen (613) 373–1754

Extension

• Animal and Plant Health Inspection Service
9 CFR 11—Horse Protection Regulations
VS 19–7
On occasion
Businesses or other institutions: 2,032 responses; 577 hours; not applicable under 3504(h)
Dr. D. Schwindaman (301) 436–7833
• Agricultural Stabilization and Conservation Service
Application for Settlement of Indebtedness
ASCS–539
Annually
Farms: 100 responses; 50 hours; not applicable under 3504(h)
Bob Taylor (202) 382–0185
• Rural Electrification Administration
Estimate Work Orders—REA Borrowers
REA 218
On occasion
Businesses or other institutions: 975 responses; 2,925 hours; not applicable under 3504(h)
Roland Heard (202) 382–8227
• Agricultural Marketing Service
Cotton Market Canvass
CN 73–1
On occasion
Businesses or other institutions: 1,750 responses; 280 hours; not applicable under 3504(h)
Loyd R. Frazier (202) 447–2147

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82–14294 Filed 5–25–82; 8:45 am]
BILLING CODE 3410–01–M

CIVIL AERONAUTICS BOARD

[Order 82–5–109; Docket 38885, et. al.]

Aeroamerica, et al.; Applications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of May 1982.

In the matter of employee protection program applications on behalf of employees of Aeroamerica for determination of qualifying Dislocation (Docket 38885); Employee protection program applications on behalf of employees of Airlift International for determination of qualifying dislocation (Docket 38418); Employee protection program applications on behalf of employees of Air New England for determination of qualifying dislocation (Docket 40201); Employee protection program applications on behalf of employees of American Airlines For determination of qualifying dislocation (Docket 38570); Employee protection program applications on behalf of emplyees of Braniff International Airways for determination of qualifying dislocation (Docket 38978); Employee protection program applications on behalf of employees of Continental Airlines for determination of qualifying dislocation (Docket 38720); Employee protection program application on behalf of employees of Delta Air Lines for determination of qualifying dislocation (Docket 39700); Employee protection program application on behalf of employees of Eastern Air Lines (Docket 38588); Employee protection program application on behalf of employees of Mackey International Airlines for determination of qualifying dislocation for determination of qualifying dislocation (Docket 39783); Employee protection program applications on behalf of employees of Overseas National Airways for determination of qualifying dislocation (Docket 34562); Employee protection program application on behalf of employees of Pan American World Airways for determination of qualifying dislocation (Docket 38883); Employee protection program applications on behalf of employees of Trans World Airlines for determination of qualifying dislocation (Docket 38184); and Employee protection program applications on behalf of employees of United Airlines for determination of qualifying dislocation (Docket 38571).

Order

The Airline Deregulation Act (ADA), Pub. L. 95–504, was enacted on October 24, 1978. Section 43 of the ADA [1] is entitled "Employee Protection Program." This program, which is to be administered by the Secretary of Labor, applies to certain employees of airlines that had been certificated as of the date of enactment of the ADA. It provides protection for airline employees (other than officers or members of the board of directors) who, as of the date of enactment of the ADA, had been employed by one carrier since October 24, 1974.

The program provides for Federal assistance payments, including

[1] 49 U.S.C. 1552.

assistance for relocation, to protected workers who have been deprived of employment or have had their compensation reduced because the air carrier employer has undergone a qualifying dislocation. A "qualifying dislocation" is defined in section 43(h) of the ADA as a bankruptcy or major contraction in employment "the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978." A "major contraction" in turn is defined as "a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period * * * [excluding] employees who are deprived of employment because of a strike or who are terminated for cause." It is the responsibility of the Civil Aeronautics Board to determine whether an air carrier has experienced a bankruptcy or a major contraction [2] and, if so, whether it has undergone a qualifying dislocation. If we determine that a carrier has undergone a qualifying dislocation, we will notify the Secretary of Labor, who will decide which employees of the carrier are eligible for monthly assistance benefits and relocation assistance, and the amounts of assistance to which they are entitled. Payments will be made by the Department of Labor.[3]

On July 17, 1980, we issued a notice of proposed rulemaking in which we proposed procedures for implementing our responsibilities under the Employee Protection Program.[4] Although we accepted applications based upon the proposed procedures, we decided not to make any determinations until we had adopted a final rule after having had a chance to consider comments to the proposed rulemaking. On November 18, 1981, we adopted a final rule and, after approval by the Office of Management and Budget (OMB), we issued it on March 3.[5]

We have received 33 applications on behalf of employees of 13 carriers: Aeroamerica (Dockets 38885 and 38979); Airlift International (Dockets 38418, 40342 and 40352); Air New England (Dockets 40201, 40251, 40349, 40529 and 40530); American Airlines (Dockets 38570 and 39115); Braniff Airways (Dockets 38978 and 40280); Continental Air Lines (Dockets 38720, 38816 and 39524); Delta Air Lines (Docket 39700); Eastern Air Lines (Docket 38586); Mackey International Airlines (Docket 39783); Overseas National Airways (ONA) (Dockets 34562 and 34711); Pan American World Airways (Dockets 38883 and 40279); Trans World Airlines (TWA) (Dockets 38184, 38193, 38196, 38884, 39013 and 39032); and United Air Lines (Dockets 38571, 38882 and 39525).[6] Since we require only one application per airline to trigger an investigation, we will consolidate into one Docket all applications on behalf of the employees of one particular carrier. Accordingly, for Aeroamerica, Docket 38979 will be consolidated into Docket 38885; for Airlift International Dockets 40342 and 40352 will be consolidated into Docket 38418; for Air New England, Dockets 40251, 40349, 40529 and 40530 will be consolidated into Docket 40201; for American, Docket 39115 will be consolidated into Docket 38570; for Braniff, Docket 40280 will be consolidated into Docket 38978; for Continental, Docket 38816 and 39524 will be consolidated into Docket 38720; for ONA, Docket 34711 will be consolidated into Docket 34562; for Pan Am, Docket 40279 will be consolidate into Docket 38883; for TWA, Dockets 38193, 38196, 38884, 39013 and 39032 will be consolidated into Docket 38184; and for United, Dockets 38882 and 39525 will be consolidated into Docket 38571.

Major Contraction Findings

According to the employment data supplied by the Financial and Cost Analysis Division of our Office of Economic Analysis for the period January 1, 1979 through December 31, 1981,[7] nine of the 13 carriers considered have experienced major contractions [8] because, since January 1, 1979, each of their reported full-time employment levels has declined 8 percent or more during at least one 12-month period.

We are using an 8-percent figure instead of the 7½ percent figure set forth in the statute. Since we require that carriers report merely the number of employees who have been paid, the reported figures do not enable us to disregard employees terminated for cause, as required by section 43(h)(4) of the ADA. In the final rule, we established a presumption that in most cases the number of terminations for cause would be too small to matter, as follows: We are treating reductions between 7 and 8 percent in already reported employment levels as "close cases," and are requiring additional information about terminations for cause from the employer-carriers before making major contraction findings.[9] In all other cases, we presume that the number of employees terminated for cause is small enough that it would not affect the outcome. Thus, any carrier showing a full-time employment decline of 8 percent or more during a 12-month period is considered to have experienced a major contraction; and any carrier showing a decline of 7 percent or less is considered not to have experienced a major contraction during that period.

We have not determined whether two of the carrier employers, Aeronamerica and Overseas National Airways (ONA), experienced major contractions. In accordance with §§ 314.2 and 314.6 as adopted in PR-245, which reflect the scheme established in section 43 of the ADA, an air carrier cannot have experienced a qualifying dislocation unless on October 24, 1978, the date of enactment of the ADA, it held a certificate issued under section 401 of the Federal Aviation Act of 1958. Since Aeronamerica did not possess such a certificate on October 24, 1978, it could not have suffered a qualifying dislocation even if it had experienced a major contraction. We therefore expect to dismiss the applications in Docket 38885.

We also expect to dismiss the application in Docket 34562 regarding

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[2] If circumstances indicate that a major contraction will occur, we may make an advance determination of a major contraction before the 7½ percent figure is actually reached.

[3] The Employee Protection Program also provides first right-of-hire protection for certain furloughed employees. Although this "Duty to Hire Protection Employees" (section 43(d) of the ADA is also administered by the Secretary of Labor, it does not require any findings by the Civil Aeronautics Board.

[4] EDR-406/PDR-72, Docket 38483; 45 FR 49291, July 24, 1980.

[5] PR-245, ER-1285, Docket 38483; 47 FR 9744, March 5, 1982. PR-245, concerning the procedures to be used to determine whether a qualifying dislocation has occurred, has an effective date of April 3. ER-1285, concerning regular monthly reporting requirements for carriers, has an effective date on May 3.

[6] The individual employee applicants are listed in Appendix D (filed as part of the original document).

[7] Appendix A. We have not analyzed any employment data since December 1981.

[8] Appendix B contains the time periods during which the major contractions have occurred. We believe that it is important to state when major contractions occurred in order to assist the Department of Labor in determining which furloughed employees will qualify for assistance. (See Appendix C for estimated periods of eligibility.)

[9] Close cases are listed in Appendix B under the "Possible Major Contraction" headings. Because of the overlap with clear cases, resolution of the close ones will at most add one month to the overall period of major contractions for each of four carriers. In some instances, we will not require additional information from carriers for close cases. For example, although Pan Am's full-time employment figures for September 1981 and November 1981 were 7.72 percent less and 7.75 percent less, respectively, than its employment figures for September 1980 and November 1980, these months are contained within other major contraction periods. Accordingly, the additional information that we would normally require for close cases will not be necessary. For Eastern Air Lines, however, the only possibility of a major contraction involves a close case, therefore requiring additional information.

ONA. Section 43(h)(2) of the ADA provides that, for a qualifying dislocation to occur, the bankruptcy or major contraction of the air carrier must take place "during the first ten complete calendar years occurring after the date of enactment of the Airline Deregulation Act," or in other words, between January 1, 1979, and December 31, 1988. Although ONA was not dissolved until 1979, it had voluntarily ceased operations and disposed of its remaining aircraft equipment in September of 1978.[10] The cessation of operations took place not only prior to the January 1, 1979 threshold date, but also before the ADA was enacted. Therefore, ONA could not have suffered a qualifying dislocation even if it had experienced a bankruptcy or major contraction.

We have examined the employment data for the other 11 carrier employers with regard to possible major contraction occurrences, and we make the following findings:

(1) *Airlift International.* Comparing the full-time employment figure for Airlift in March 1979 with its figures for the following 12 months, we find that Airlift suffered a major contraction in March 1980. Comparing the full-time employment figures for Airlift in October 1979 through April 1980, with its figures for the next 12 months, respectively, we find that Airlift suffered major contractions during each month from January 1980 through April 1981.[11] If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Airlift from March 1979 through April 1981 may eligible for assistance under the Employee Protection Program.[12]

(2) *Air New England.* Comparing Air New England's full-time employment figures in May, June, July and September 1980 with its figures from the next 12 months, respectively, we find that Air New England suffered major contractions in September and December 1979, January 1980 through July 1980, September 1980 through June 1981, and September 1981.[13] If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Air New England from May 1979 through October 1981[14] may be eligible for assistance under the Employee Protection Program. (See fn. 12.)[15]

(3) *American.* Comparing the full-time employment figures for American from December 1979 through 1980 with its figures for the next 12 months, respectively, we find that American suffered major contractions from December 1980 through October 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by American from December 1979 through October 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.)

However, we cannot yet make a finding that American also experienced a major contraction in November 1980 based upon its November 1979 employment level. Its full-time employment figure for November 1980 was 7.84 percent less than it was for November 1979. Since we view this as a close case, we will require additional data from the carrier.[16]

(4) *Braniff.* Comparing Braniff's full-time employment figures from September 1979 through December 1980 with its figures for the next 12 months, respectively, we find that Braniff suffered major contractions from September 1980 through December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Braniff from September 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.)[15a]

(5) *Continental.* Comparing the full-time employment figures for Continental from November 1979 through April 1980 with its figures from the next 12 months, respectively, we find that Continental suffered major contractions from November 1980 through April 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Continental from November 1979 through April 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12.)

However, we cannot yet make a finding that Continental also experienced a major contraction in October 1980 based upon its October 1979 employment level. Its full-time employment figure for October 1980 was 7.27 percent less than it was for October 1979. Since we view this a close case, we will require additional data from the carrier.[17]

(6) *Delta.* Based upon our employment data through December 1981, we find that Delta has not experienced a major contraction. We therefore expect to dismiss the application in Docket 39700.

(7) *Eastern.* Based upon our employment data through December 1981, we cannot yet make a finding that Eastern experienced a major contraction. Its full-time employment figure for December 1981, however, was 7.07 percent less than it was for January 1981. Since we view this as a close case, we will require additional data from the carrier.

(8) *Mackey International.* The only full-time employment figures that we have for Mackey are from January 1981 through August 1981.[18] Based upon those

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[10] Order 80-3-23, February 15, 1980, fn.1.

[11] There have been no employment figures for Airlift since April 1981. The carrier has been grounded since June 4, 1981. By Order 82-2-127, February 25, 1982, we noted that there was no reasonable likelihood of the carrier's rehabilitation, and directed all interested persons to show cause why we should not revoke its certificate authority for Route 180 to operate between the United States, Brazil and Argentina. We will require the carrier to supply the missing employment data.

[12] See Appendix C. Note, however, that we will ordinarily make only one qualifying dislocation determination in a 12-month period. Therefore, within the 12-month period following the occurrence of a qualifying dislocation, any major contraction that occurs will be announced to be a qualifying dislocation without our embarking on a full investigation to determine its major cause. It will then be the Department of Labor's responsibility to determine whether an individual employee was an eligible protected employee as set forth in section 43(a)(1) of the Airline Deregulation Act. (To be a protected employee, section 43(h)(1) of the ADA requires that the employee have been employed by a carrier certificated as of the date of enactment of the ADA, October 24, 1978, for four years prior to the date of enactment, that is, since October 24, 1974.)

[13] We do not have full-time employment figures for January, February, April, October, November 1979, or October 1981. By notice filed October 22, 1981, Air New England informed us that it was ceasing all operations and suspending all of its services as a certificated air carrier effective October 31, 1981. By Order 81-11-112, November 17, 1981, we allowed it to suspend services on October 31, 1981. We will require the carrier to supply the missing employment data.

[14] A skeleton crew may have been retained for a short period of time following the cessation of operations on October 31, 1981. Those employees, if subsequently furloughed, may also be eligible for assistance.

[15] Even though there were no major contractions in October and November 1979, August 1980 (a close case), and July and August 1981, those months were contained within other major contraction periods. Therefore, any protected employee furloughed during these months may still be eligible for assistance. Employment data reveal similar occurrences at Pan Am, TWA and United.

[16] If we find a major contraction in November 1980, there will be an overlap with the December 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in all months except November 1979.

[15a] Since a determination of qualifying dislocation is good for 12 months (see footnote 12) employees of Braniff who were furloughed in May 1982 as a result of the carrier's decision to file for bankruptcy would still be covered by any determination of qualifying dislocation of the carrier from May through December 1981.

[17] If we find a major contraction in October 1980, there will be an overlap with the November 1980 contraction with regard to possible eligibility for assistance for employees furloughed in all months except October 1979.

[18] Mackey terminated its business operations in October 1981 (Mackey International Fitness Investigation, Docket 39731, Initial Decision of

figures, Mackey suffered major contractions from March 1981 through August 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Mackey from January 1981 through August 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12.)

(9) *Pan American.* Comparing Pan Am's full time employment figures from November 1979 through May 1981 with those of the next 12 months, respectively, (up to December 1981), we find that Pan Am suffered major contractions from November 1980 through August 1981, as well as in October and December 1981. (see fn. 8.) If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Pan Am from November 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12 and fn. 15.)

However, we cannot yet make a finding that Pan Am also experienced a major contraction in October 1980 based upon its October 1979 employment level. Its full-time employment figure for October 1980 was 7.77 percent less than the combined full-time employment figures of Pan Am and National for October 1979. (see Appendix B, fn. 2.) Since we view this as a close case, we will require additional data from the carrier.[19]

(10) *TWA.* Comparing TWA's full-time employment figures in April, July, August, and September 1979, October, November and December 1980 with those of the following 12 months, respectively, we find that TWA suffered major contractions in each month from October 1979 through September 1980, and October, Novemver and December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by TWA from April 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 11 and fn. 15.)

However, we cannot yet make a finding that TWA also experienced a major contraction in February 1980 or March 1980 based upon its March 1979 employment level. Its full-time employment figures for February 1980 and March 1980 were 7.71 percent less and 7.31 percent less, respectively, than its employment figure for March 1979. Since we view this as a close case, we will require additional data from the carrier.[20]

(11) *United.* Comparing United's full-time employment figures in September, October, November and December 1979, January, November and December 1980 with its figures from the next 12 months, respectively, we find that United suffered major contractions in September, October, November and December 1980, January, November and December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by United from September 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12 and fn. 15.)

Answers

We will serve a copy of each application upon the persons listed in § 314.11(c) of our final rule—the employer-carrier of the applicant, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, the Secretary of Transportation, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

Persons filing answers may address our major contraction findings, discussed above. In cases where we find that a carrier has experienced a major contraction, however, we expect answers to focus on whether the major contraction amounted to a qualifying dislocation. Answers should therefore state whether the major cause of the major contraction was the change in regulatory structure provided by the ADA and include any information and arguments that support this conclusion. We did not define "the major cause" in the final rule. We stated instead that our interpretation of this phrase would evolve as we gained experience with actual cases involving specific carriers and employees. Persons filing answers need not restate arguments made in their comments to our proposed rulemaking, but we encourage them to provide as specific information as possible on the question of causation. Interested persons should file answers by Docket and carrier as set forth in Ordering Paragraphs 3 and 4 below.

Section 314.12 of our final rule provides that answers be filed within 15 days after the service date of an application. However, because this is the first order concerning the Employee Protection Program, and because we are asking interested persons to provide answers on a complex subject, we will allow additional time for answers. Therefore, any person may file an answer within 60 days after the service date of this order.[21]

Accordingly,

1. We consolidate the following Dockets: Docket 38979 into Docket 38885; Dockets 40342 and 40352 into Docket 38418; Dockets 40251, 40349, 40529 and 40530 into Docket 40201; Docket 39115 into Docket 38570; Docket 40280 into Docket 38978; Dockets 38816 and 39524 into Docket 38720; Docket 34711 into Docket 34562; Docket 40279 into Docket 38883; Dockets 38193, 38196, 38884, 39013 and 39032 into Docket 38184; and Dockets 38882 and 39525 into Docket 38571;

2. We find that Airlift International, Air New England, American, Braniff, Continental, Mackey International, Pan Am, TWA and United experienced major contractions for the periods set forth in this order;

3. We institute the following individual investigations to determine whether carriers that have experienced major contractions or bankruptcies have also suffered qualifying dislocations:

(a) Airlift International Employee Protection Program Investigation—Docket 38418;

(b) Air New England Employee Protection Program Investigation—Docket 40201;

(c) American Airlines Employee Protection Program Investigation—Docket 38570;

(d) Braniff International Airways Employee Protection Program Investigation—Docket 38978;

(e) Continental Air Lines Employee Protection Program Investigation—Docket 38720;

(f) Mackey International Airlines Employee Protection Program Investigation—Docket 39783;

(g) Pan American World Airways Employee Protection Program Investigation—Docket 38883;

(h) Trans World Airlines Employee Protection Program Investigation—Docket 38184; and

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Administrative Law Judge John M. Vittone, p. 10). We will, however, require that Mackey supply the missing employment data.

[19] If we find a major contraction in October 1980, there will be an overlap with the November 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in October 1979.

[20] If we find a major contraction in February 1980 or March 1980, there will be an overlap with the April 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in all months except March 1979.

[21] We have already received an answer from Eastern Air Lines concerning the application in Docket 38586 and an answer from Delta Air Lines concerning the application in Docket 38700.

(i) United Air Lines Employee Protection Program Investigation—Docket 38571;

4. Answers in those cases for which an investigation has not been instituted shall be filed by Docket and carrier as follows:

(a) Major Contraction Determination of Aeroamerica—Docket 38885;

(b) Major Contraction Determination of Delta Air Lines—Docket 39700;

(c) Major Contraction Determination of Eastern Airlines—Docket 38586; and

(d) Major Contraction Determination of Overseas National Airways—Docket 34562;

5. We will serve a copy of each "Application for Determination of Qualifying Dislocation" upon the air carrier employer of the applicant, upon each collective bargaining representative of employees of the carrier, upon the Secretary of Labor, upon the Secretary of Transportation, and upon any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program;

6. Answers to the applications and our findings, shall be due no later than July 27, 1982;

7. We direct Airlift International to file in Docket 38418 no later than June 14, 1982, its full-time employee figures for each month since April 1981;

8. We direct Air New England to file in Docket 40201 no later than June 14, 1982, its full-time employment figures for January, Feburary, April, October and November 1979, and October through December 1981;

9. We direct American Airlines to file in Docket 38570 no later than June 14, 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest November 15, 1979, and November 15, 1980;

10. We direct Continental Air Lines to file in Docket 38720 no later than June 14, 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest October 15, 1979, and October 15, 1980;

11. We direct Eastern Air Lines to file in Docket 38586 no later than June 14, 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest January 15, 1981, and December 15, 1981;

12. We direct Mackey International Airlines to file in Docket 39783 no later than June 14, 1982, its full-time employment figures for each month in 1979 and 1980, and for each month since August 1981;

13. We direct Pan American World Airways to file in Docket 38883 no later than June 14, 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest October 15, 1979, and October 15, 1980; and

14. We direct Trans World Airlines to file in Docket 38184 no later than June 14, 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest March 15, 1979, February 15, 1980, March 15, 1980, October 15, 1979, and October 15, 1980.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board.[22]

Phyllis T. Kaylor,

Secretary.

[22] All Members concurred.

APPENDIX A.—FULL-TIME EMPLOYEES

Month and year	North Int'l [2]	Air New Eng. land [3]	American	Braniff	Continental	Delta	Eastern	Mackey Int'l [3]	National [3]	Pan American [3]	Trans World	United [1]
January 1979	902		36,807	13,954	11,948	33,608	35,887		8,406	26,428	35,158	50,820
February 1979	902		36,934	13,800	11,559	33,670	35,853		8,373	26,371	35,267	50,794
March 1979	910	518	37,113	14,002	11,623	34,240	35,917		8,381	26,694	35,502	51,096
April 1979	896		37,431	14,269	11,669	34,439	35,926		8,342	26,700	36,878	51,276
May 1979	885	699	38,031	14,578	11,725	34,901	35,926		8,441	26,893	37,649	[1]51,384
June 1979	915	829	38,712	14,661	11,887	35,664	36,204		8,024	27,302	38,191	[1]51,408
July 1979	906	871	39,245	14,918	12,230	35,758	36,808		8,382	27,528	38,202	51,206
August 1979	904	995	40,705	14,932	11,992	35,599	37,287		8,481	27,838	37,511	51,375
September 1979	940	801	39,419	14,731	12,028	34,963	37,452		8,431	27,816	36,096	51,469
October 1979	952		39,276	14,762	12,123	35,290	37,662		8,449	27,796	35,139	51,818
November 1979	914		39,251	14,786	11,984	35,728	37,992		8,427	27,532	33,783	51,623
December 1979	878	550	39,327	14,753	11,363	35,290	38,206		8,427	27,479	33,639	51,543
January 1980	861	545	39,395	14,714	11,893	35,271	38,433		8,427	27,613	33,485	51,368
February 1980	842	547	39,309	14,640	11,812	35,262	38,366			35,877	33,225	51,016
March 1980	788	540	39,272	14,622	11,710	35,156	38,456			35,780	33,371	50,494
April 1980	686	536	39,115	14,676	11,648	35,266	38,668			35,785	33,571	50,247
May 1980	586	540	39,400	14,614	11,713	35,588	38,815			35,754	33,336	49,653
June 1980	398	556	39,601	14,548	11,808	35,967	38,931			35,887	33,346	49,501
July 1980	407	615	39,448	14,446	11,809	35,915	39,262			35,910	33,252	49,407
August 1980	425	815	39,560	14,321	11,674	35,753	39,361			35,400	33,114	49,028
September 1980	418	514	39,418	13,081	11,455	35,543	39,248			34,826	32,718	47,204
October 1980	412	470	37,956	12,580	11,242	29,794	39,228			33,430	32,624	47,133
November 1980	399	478	38,229	12,150	10,853	35,884	39,361			32,441	32,163	47,037
December 1980	409	501	35,091	12,092	9,857	36,081	39,575			31,914	31,900	46,910
January 1981	401	503	35,974	11,652	10,040	35,568	40,179	43		32,044	31,800	47,086
February 1981	375	500	35,004	11,460	10,104	35,874	39,460	41		31,772	31,752	47,040
March 1981	365	497	34,662	11,273	10,243	36,032	39,283	32		31,844	31,819	46,937
April 1981	347	494	34,523	11,360	10,386	36,153	39,122	24		31,984	31,773	46,812
May 1981		564	34,766	11,494	11,296	36,311	39,068	25		32,763	31,824	46,884
June 1981		564	35,276	11,563	11,160	36,560	39,186	25		32,795	32,114	46,834
July 1981		566	35,851	11,754	11,484	36,967	39,137	27		32,767	31,813	45,848
August 1981		569	35,598	10,345	11,436	36,561	39,100	29		32,965	31,625	45,604
September 1981		494	34,808	10,796	11,485	36,681	38,805			31,894	30,416	45,286
October 1981			34,218	10,724	11,520	35,850	37,519			30,669	29,581	43,753
November 1981			34,109	10,667	11,112	35,779	37,429			29,967	29,329	42,798
December 1981			34,060	10,981	11,008	35,747	37,337			30,013	29,039	42,614

[1] Due to strike, operations were suspended for United from March 31, 1979 to May 28, 1979. Although United was on full strike, little if any change was made in the number of reported employees. This would appear to represent incorrect reporting.

[2] Effective February 1980, National Airlines data was included with Pan American for reporting purposes. For purposes of determining major contractions, National and Pan American data for 1979 and January 1980 have been combined.

[3] The carrier has not provided the Board with all its full-time employment data.

APPENDIX B.—MAJOR CONTRACTIONS

Carrier	Beginning of 12-month calculation period for major contraction	Occurrence of major contraction	Close cases for which additional information will be required: Beginning of 12-mo. calculation period for possible occurrence of major contraction	Close cases for which additional information will be required: Possible occurrence of major contraction
Airlift International	(a) March 1979	(a) March 1980		
	(b) October 1979 through April 1980	(b) January 1980 through April 1981		
Air New England	(a) May 1979	(a) December 1979		
	(b) July 1979	(b) September 1979, January 1980 through July 1980.		
	(c) September 1979	(c) September 1980		
	(d) December 1979	(d) October 1980 through December 1980		
	(e) February 1980 through April 1980	(e) January 1981 and February 1981		
	(f) April 1980	(f) April 1981		
	(g) June 1980	(g) March 1981		
	(h) July 1980	(h) May 1981 and June 1981		
	(i) September 1980	(i) September 1981		
American	(a) December 1979 through October 1980	(a) November 1980 through October 1981	(a) November 1979	(a) November 1980.
Braniff	(a) september 1979 through December 1980	(a) September 1980 through December 1981		
Continental	(a) November 1979 through April 1980	(a) November 1980 through April 1981	(a) October 1979	(a) October 1980.
Eastern			(a) January 1981	(a) December 1981.
Mackey International	(a) January 1981	(a) March 1981 through Augusat 1981		
Pan Am	(a) November 1979 through August 1980	(a) November 1980 through August 1981	(a) October 1979	(a) October 1980.
	(b) October 1980	(b) October 1981		
	(c) May 1981	(c) November 1981 and December 1981		
TWA	(a) April 1979	(a) November 1979 through April 1980	(a) March 1979	(a) February 1980 or March 1980.
	(b) July 1979 through September 1979	(b) October 1979 through September 1980	(b) October 1979	(b) October 1980.
	(c) October 1980 through December 1980	(c) October 1981 through December 1981		
United	(a) September 1979 through January 1980	(a) September 1980 through January 1981		
	(b) November 1980 and December 1980	(b) November 1981 and December 1981		

Appendix C.—Estimated Periods of Eligibility for Protected Employees if Major Contractions are Determined To Be Qualifying Dislocations [1]

Airlift International: March 1979–April 1981 [2]

Air New England: May 1979–October 1981 [3]

American: December 1979–October 1981 (November 1979 is part of a close case)

Braniff: September 1979–December 1981

Continental: November 1979–April 1981 (October 1979 is part of a close case)

Eastern: The period from January 1981–December 1981 is a close case

Mackey International: March 1981–August 1981 [4]

Pan American: November 1979–December 1981 (October 1979 is part of a close case)

TWA: April 1979–December 1981 (March 1979 is part of a close case)

United: September 1979–December 1981

[1] Each qualifying dislocation determination will ordinarily be good for 12 months. Therefore, if a major contraction is found for any period within the 12 months after a month for which there was a qualifying dislocation determination, that major contraction would also be announced as being a qualifying dislocation, *i.e.*, we would not embark on a full investigation to identify its major cause. It will then be the Department of Labor's responsibility to determine whether an individual employee was an eligible protected employee as set forth in section 43(a)(1) of the Deregulation Act.

[2] We do not have employment information after April 1982.

[3] We do not have complete employment data concerning this carrier. In addition, a skeleton crew may have been retained for a short period of time following the cessation of operations on October 31, 1981. Those employees, if subsequently furloughed, may also be eligible for assistance.

[4] We do not have employment information for 1979, 1980 or after August 1981.

[FR Doc. 82-14352 Filed 5-25-82; 8:45 am]
BILLING CODE 6320-01-M

[Docket 40580]

Samoa, Inc. d/b/a Samoa Airlines, Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on June 17, 1982, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., May 20, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-14381 Filed 5-25-82; 8:45 am]
BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Nevada Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on June 23, 1982, at the Clark County Board of Education, 2832 East Flamingo Road, in the Board Room, Las Vegas, Nevada, 89121. The purpose of this meeting is to conduct a public meeting to obtain information on major civil rights issues in the State of Nevada in 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Woodrow Wilson, 625 Frederick Avenue, Las Vegas, Nevada, 89106, (702) 565–8910 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California, 90010, (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 21, 1982.

John I. Binkley,

Advisory Committee Management Office.

[FR Doc. 82-14316 Filed 5-25-82; 8:45 am]
BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m., on June 24, 1982, at the Federal Building, 200 Booth Street, in Room 4002, Reno, Nevada, 89509. The purpose of this meeting is to conduct a public meeting to obtain information on the major civil rights issues in the State of Nevada in 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Woodrow Wilson, 625

Frederick Avenue, Las Vegas, Nevada, 89106, (702) 565–8910 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California, 90010, (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 21, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–14317 Filed 5–25–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Order No. 41–3, Amdt. 1; D.O.O. Reference 10–3, 40–1]

Assistant Secretary for International Economic Policy; Organization and Function

Effective Date: May 3, 1982.

Organization and function Order 41–3 of February 15, 1982 (47 FR 16815) is amended to consolidate divisions in the Office of the European Community and eliminate divisions in the Offices of Japan and the Pacific Basin.

1. Part IV, Sections 3.02 and 3.03 are amended to read:

".02 The Director directs the following divisions:

a. European Community Countries Division; and

b. European Community Policy Division.

.03 The European Community Countries Division is responsible for the individual countries in the European Community."

2. Part VI, Sections 4.02 and 4.03 and the last sentence of Section 4.01 are deleted.

3. Part VI, Sections 5.02 and 5.03 are deleted.

4. The attached organization chart (Exhibit 1) and listing of country responsibilities (Exhibit 2)[1] supersede the exhibits attached to Organization and Function Order 41–3 of February 15, 1982.

Approved:

Lionel H. Olmer,

Under Secretary for International Trade.

Raymond J. Waldmann,

Assistant Secretary for International Economic Policy.

[FR Doc. 82–14260 Filed 5–25–82; 8:45 am]

BILLING CODE 3510–25–M

[1] Both the chart and the listing of country responsibilities are filed with the original document.

[Order No. 41–2; D.O.O. References 10–3, 40–1]

Deputy Under Secretary for International Trade

Effective: March 31, 1982.

Part I. Effect on Other Orders

This order supersedes ITA Organization and Function Order 41–2 of June 19, 1981 (46 FR 38557).

Part II. Purpose, Scope and Principal Organization

Section 1. Purpose

This order delegates authority to the Director of Administration and prescribes the organization and assignment of functions within the organizational elements reporting to the Deputy Under Secretary for International Trade (the "Deputy Under Secretary").

Section 2. Organization and Line of Authority

The internal organization structure and line of authority for functions prescribed in this order is depicted in the attached chart.[1] The Deputy Under Secretary for International Trade reports and is responsible to the Under Secretary for International Trade.

Section 3. Principal Functions

.01 The *Deputy Under Secretary for International Trade* serves as the principal deputy to the Under Secretary, performs such duties as the Under Secretary assigns, and performs the functions of the Under Secretary in the latter's absence. The Deputy Under Secretary is responsible for the day-to-day management of ITA.

.02 The Deputy Under Secretary directs the activities of the Director of Administration.

Part III. Director of Administration

Section 1. Delegation of Authority

.01 Subject to such policies, directives, and delegations of authority as may be issued by the Secretary, the Under Secretary for International Trade, and by the Deputy Under Secretary for International Trade, and in accordance with applicable Department Organization Orders and Department Administrative Orders, the Director of Administration is hereby delegated the authorities of the Deputy Under Secretary as necessary to provide for administrative management and public affairs activities for ITA.

.02 The Director of Administration may redelegate this authority to any employee subject to such conditions in the exercise of such authority as may be prescribed.

[1] Filed as part of the original document.

Section 2. Organization and Functions

.01 The *Director of Administration* is the principal advisor to the Under Secretary and the Deputy Under Secretary on administrative and management policy, and coordinates ITA administrative matters with the Assistant Secretary for Administration, the Inspector General and other Department officials.

.02 The Office of the Director includes the *Information Projects Staff* which operates an ITA-wide text processing facility, including support and training of users; manages text processing and telecommunications user groups; maintains liaison with the Department's Communication Center; resolves communication center user problems; manages the acquisition of text processing and microform equipment; manages the development of an Administrative Management Information System; plans for office automation; maintains liaison with the Office of the Assistant Secretary for Administration for development and administration of service agreements on Working Capital Fund projects; and coordinates ITA participation in the Secretarial MBO process.

.03 The Director of Administration directs the following offices:

a. Office of Personnel;

b. Office of Management and Systems;

c. Office of Budget;

d. Office of Public Affairs; and

e. Office of Administrative Support.

Section 3. Office of Personnel

.01 The *Office of Personnel* is headed by a *Director* who is the ITA Personnel Officer and who plans, coordinates and conducts the Personnel Management Program for ITA; interprets personnel policies and procedures established by higher authority; and acts as liaison with the Department's Office of Personnel.

a. The immediate office of the Director includes the *Special Programs Staff* which develops the policies, directives, and operating instructions necessary to implement personnel management activities in ITA; provides technical guidance and assistance to program areas and to other units within the Office of Personnel regarding the interpretation or impact of Federal personnel statutes, regulations and Comptroller General decisions; provides technical guidance and assistance to the Personnel Management Division on position classification and employee

relations issues to unusual complexity; plans and implements special employment programs, including employment of the handicapped, cooperative education, affirmative action, equal employment opportunity complaints, and upward mobility; processes financial disclosure statements required under the Ethics in Government Act and other conflict-of-interest regulations; in coordination with the Personnel Management Division, administers reductions-in-force; serves as liaison between the ITA Office of Personnel and the Department's Office of Personnel on matters pertaining to Senior Executive Service and Schedule C positions; and in coordination with the Personnel Management Division, is responsible for the position classification survey program.

b. The immediate office of the Director includes the *Information Systems Staff* which plans and coordinates matters relating to the development of ITA–wide personnel management information systems and procedures, including records and reports; processes all personnel actions, ensures proper documentation for legality and propriety and maintains control over the content and disposition of Official Personnel Folders; coordinates with ADP personnel concerning processing and records documentation, improvements, or needs relating to personnel management and administration; provides ADP input necessary to generate SF–113 reports and a variety of statistical, personnel and employee information reports; provides advice and assistance to serviced organizations concerning employment benefits and entitlements, such as health plans and insurance programs; arranges for National Agency checks by the Office of Personnel Management and processes employee security clearance; conducts the ITA security program; provides physical and document security orientation for employees and security briefings; maintains NATO sub-registry for Commerce; controls credentials, building passes and keys; performs the safety function for ITA; and provides paymaster services.

c. The Director directs the following organizational components:

.02 The *Personnel Management Division*, organized into teams corresponding to the major organization elements of ITA, provides a full range of sevices in the areas of recruitment, staffing, merit promotion, position management and classification, and pay determinations; advises and provides assistance regarding reorganizations, reductions-in-force, employee utilization, employee relations, adverse actions, appeals and grievances; provides retirement counseling and services involving workers' compensation claims; and serves as a liaison and primary point of contact between program areas and other units of the Office of Personnel on matters involving training, awards, and special employment programs.

.03 The *Career Development Division* is responsible for a comprehensive employee development, training and awards program encompassing supervisory, management, and executive development and the identification of training and orientation needs for employees at all grade levels; manages the incentive awards program, which includes both monetary and honorary recognition; administer systems for employee appraisals, performance and career counseling, in coordination with the appropriate team leader of the Personnel Management Division; provides administrative and technical support to the Executive Resource and Performance Review Boards; and administers the Intergovernmental Personnel Act and various other programs such as the President's Executive Exchange Program.

Section 4. Office of Management and Systems

.01 The *Office of Management and Systems* is headed by a *Director* who plans, coordinates and directs management, systems and information resource management programs for ITA; acts as liaison with the Department's Office of Information Management, the Office of Organization and Management Systems, the Office of Program Evaluation and the Office of the Inspector General; and directs the following organizational components:

.02 The *Systems Management Division* coordinates and directs the planning and evaluation of ITA information resource systems; provides management coordination and control and technical guidance to ITA elements with regard to systems engineering, data communications, data processing, data retrieval and acquisition of ADP resources; coordinates the establishment of standards and production schedules and the maintenance for operational automated systems; maintains operational support for selected automated systems; coordinates the preparation and submission of ADP planning, budgeting and evaluation information for automated systems; implements the information resource management policies and procedures of ITA, the Department and other Federal agencies; and is the point-of-contact within ITA for all information management technology questions, administrative reports and consultations.

.03 The *Management Analysis Division* conduct studies and surveys to effect improve management practices, manpower distribution organization alignments, procedures and work methods; reviews and coordinates proposed organizational changes; administers the forms management and reports management programs; performs correspondence management, including training in correspondence procedures and operation of the ITA Secretariat; receives, reviews and assigns for action Secretarial, Congressional and White House mail directed to ITA, and follows-up to ensure timely response; provides assistance on established correspondence procedures and reviews outgoing correspondence for proper format and compliance with established procedures; provides committee management and records management services; in cooperation with ITA's Office of Personnel and Offfice of Budget, operates the position management program; maintains a system for the issuance of Announcements, Administrative Instructions, Organization and Functions Orders, Delegations of Authority and other issuances prepared for the administration of ITA; coordinates the administration of the Freedom of Information Act and the Privacy Act; and provides liaison for GAO and Inspector General audit reports, surveys and inquiries.

Section 5. Office of Budget

.01 The *Office of Budget* is headed by a *Director* who is the ITA Budget Officer and who plans, coordinates and directs budget functions for ITA; serves as ITA's principal contact with the Department, OMB, the Budget and Appropriations Committees of the Congress, and other government agencies on budget and related matters, and directs the following organizational components:

.02 The *Budget Operations Division* coordinates the development of advance program guidance and plans for resource allocation, including identification of major issues to be addressed in budget proposals; examines and analyzes budget proposals in terms of effective allocation of ITA resources, conformance to policies, adequancy of justification, existence of statutory authorization, feasibility and economy of operations,

and conformity with instructions governing submission of budget estimates, out-year plans, and impacts; participates in the development of legislative proposals affecting ITA's plans and programs and reviews legislative proposals to assess budgetary impact; reviews and comments on proposed testimony of officials of ITA on plans and programs; provides technical assistance to ITA officials on budget matters; prepares Preview Estimates and Secretarial, OMB, and Congressional budget justifications; prepares witnesses to testify on budget requests and completes materials for hearing transcripts; analyzes fiscal and program plans and reprogramming proposals for conformance to ITA and Departmental policies and commitments, and reviews the status of obligations, expenditures and program progress by organization and budget structure; reviews and evaluates ITA program budget structure and recommends modifications as necessary; prepares overseas direct project budget authorizations and advice of funds availability; negotiates and prepares reimbursable agreements; assists program managers in developing operating budgets; and prepares special reports or briefings for the Under Secretary and other Secretarial Officers on significant fiscal, budget and program issues, incorporating material furnished by the Financial Management Division.

.03 The *Financial Management Division* establishes standards, criteria and procedures for preparing budget estimates and justifications and develops standards, procedures and operational instructions for resource allocation systems in ITA; prepares technical and other supporting schedules and reviews such schedules for consistency with budget justifications and Departmental and OMB instructions governing submission of budget estimates; maintains information on the status of Congressional actions on ITA's appropriation; prepares budget summaries and analyses; maintains ITA's budget history; maintains liaison, as appropriate, with OMB staff and with staffs of Budget and Appropriations Committees on technical budget matters as necessary to carry out the Divisions' responsibilities; coordinates the establishment of reporting requirements on program accomplishments and operating budgets, including monthly and quarterly plans and reports, and analyzes, consolidates or otherwise treats the reports as will best meet the needs of the Under Secretary, other Secretarial Officers, the Departmental Office of Budget and Congress, incorporating material furnished by the Budget Operations Division; prepares special reports or briefings for the Under Secretary and other Secretarial Officers on significant fiscal, budget and program issues, incorporating material furnished by the Budget Operations Division; examines and recommends appropriate action on apportionment requests; maintains control numbers on outlay estimates and employment ceilings, including Monitoring Overseas Direct Employment (MODE) ceiling; assures administrative control over the obligation and expenditure of ITA appropriative and other funds; maintains multi-year plans, ceilings, and estimates; represents ITA on the Foreign Affairs Administrative Support (FAAS) Council Working Group at the Department of State; represents ITA on the Department's Working Capital Fund Advisory Group; maintains ITA Reimbursable, Gifts and Bequests, Domestic Hospitality, and Special Foreign Currency accounts; maintains ITA Centralized Services programs; maintains Full-Time Equivalency ceiling control system; maintains up-to-date listing of appropriate statutory authorizations and appropriation language code citations, including explanation of such code citations; prepares consolidation reports as necessary, such as Federal Domestic Assistance and Legislative, Authorization, Budget and Program Information Systems (LAPIS) reports; and maintains liaison with the Department's Controller on all accounting matters.

Section 6. Office of Public Affairs

.01 The *Office of Public Affairs* is headed by a *Director* who furnishes public information and publications services to ITA elements and directs the following organizational components:

.02 The *Business America Staff* is located in the immediate Office of the Director and prepares and publishes *Business America* magazine.

.03 The *Public Information Division* develops, prepares, clears and releases press releases; develops and produces audio visual information material intended for public consumption, including slide presentations, motion pictures, television productions, audio (cassette) presentations, exhibit displays, advertising material (radio-TV-print), and scripts, drafts, speeches, public statements, and messages for the President, the Secretary of Commerce and ITA officials; writes articles for signature by Department officials and for publications in national press and journals; develops questions and answers and briefing and background papers for Presidential and Secretarial news conferences and other purposes; arranges news conferences for Departmental officials; develops speaking forums for ITA officials designed to support Departmental and Administration objectives; writes and distributes a newsletter for ITA District Offices; performs editorial services including research and editorial assistance in the preparation and publication of technical articles; maintains mailing lists, biographical data, business information and other reference material; and reviews the speeches of ITA officials for public affairs purposes, primarily the generation of publicity.

.04 The *Publications Division* assists in the development of ITA publications, including gathering of material, writing, editing and preparation for printing; promotes ITA publications; prepares and arranges for placement of display and advertising for ITA promotional events in the U.S. and abroad; and maintains liaison with the Department's Office of Information Services and the Government Printing Office and with other Government agencies concerned with ITA reports and publications. The Division Director serves as publication clearance officer for ITA.

Section 7. Office of Administrative Support

.01 The *Office of Administrative Support* is headed by a *Director* who plans and directs administrative support services for ITA; receives and processes procurement requests for furniture, furnishings, office equipment, office supplies, subscriptions, publications and printing; arranges for the repair and renovation of office equipment and furniture; vouchers all transactions to insure that the terms of purchases and contracts are fully met; maintains current inventories of office equipment and other property; monitors the use of office equipment and furniture and reviews requests for procurement of new items to insure that items are not otherwise available or underutilized; maintains a current inventory of ITA-assigned office and special-use space; monitors GSA SLUC billings to insure that charges are accurate and inaccuracies are corrected; reviews and analyzes office space utilization to insure conformity to Department and GSA guidelines; develops plans for space assignments in anticipation of changes in requirements; prepares work specifications for renovations, alterations, and telephone and electrical services; monitors contract work to

insure that standards of quality are met, work is performed within agreed timeframes, and costs do not exceed estimates; provides office design services and monitors office design and layout work performed by private design firms; reviews office space and recommends approaches to improve the physical surroundings and work environment of ITA employees; provides for the distribution of bulk materials and special messenger service; and monitors ITA mailing practices to insure that appropriate laws, rules, regulations, and guidelines are adhered to.

Lionel Olmer,

Under Secretary for International Trade.

[FR Doc. 82-14361 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-25-M

Certain Steel Pipes and Tubes From Japan; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of preliminary antidumping determination.

SUMMARY: The antidumping preliminary determination involving certain steel pipes and tubes from Japan is being postponed, as the investigation is determined to be extraordinarily complicated. We intend to issue the antidumping preliminary determination not later than August 18, 1982.

EFFECTIVE DATE: May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz or Koichi Beckwith, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202-377-1769 or 1778).

SUPPLEMENTARY INFORMATION: On February 12, 1982, we announced our initiation of an antidumping investigation to determine whether imports of certain steel pipes and tubes from Japan are being, or are likely to be, sold at less than fair value (47 FR 6457). The notice stated that we would issue a preliminary determination by June 29, 1982.

Three of the four respondents: Sumitomo Metal Industries, Ltd., Sanyo Special Steel Co. Ltd., and Kobe Steel, Ltd., requested an extension of time for response in letters dated March 16, 1982, March 31, 1982, and April 1, 1982, respectively. The manufacturers requested additional time in responding due to the great number of product categories and consequent volume of information. We granted their requests and required them to respond to the questionnaires by April 19, 1982. The fourth firm, Nippon Kokan, K.K. did not request an extension.

We have determined that the parties involved are cooperating, but that additional time is necessary for analysis of the complex and massive information from the four manufacturers and their related parties. The information which we must analyze concerns sales of a large variety of custom-made and standard items. It includes data requested from related parties and responses to the allegation that sales in the home market are being made at less than the cost of production.

For these reasons we determine that the case is extraordinarily complicated in accordance with section 733(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and we intend to issue an antidumping preliminary determination not later than August 18, 1982.

(Section 733(c)(2) of the Act (93 Stat. 164, 19 U.S.C. 1673b(c)(2)))

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 20, 1982.

[FR Doc. 82-14328 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Modification Request for Eleanor M. Dorsey

Notice is hereby given that Eleanor M. Dorsey, Friday Harbor Laboratories, P.O. Box 459, Friday Harbor, Washington 98250 has requested a modification of Permit No. 295 issued on June 19, 1980 (45 FR 42784) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to radio tag 60 minke whales (*Balaenoptera acutorostrata*) and collect skin biopsies from up to 50 minke whales over the next 4 years in addition to the activities authorized in the Permit. The activities are to be conducted in the waters of northern Washington.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 25, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modifications request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modifications request are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: May 20, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-14333 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Tel-Aviv Dolphinarium, Ltd.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Tel-Aviv Dolphinarium, Ltd. (P255A), Charles Clore Park, Herbert Samuel Blvd.

b. Address: P.O. Box 29131, Tel-Aviv 61290 Israel.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Bottlenose dolphin *(Tursiops truncatus)* 6.

4. Type of Take: To capture and maintain for public display in Tel-Aviv.

5. Location of Activity: Florida West Coast, Charlotte Harbor to Crystal River.

6. Period of Activity: 24 months.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian.

who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretry of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Ministry of Agriculture Veterinary Service & Animal Health of Israel have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 20, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-14355 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton and Man-Made Fiber Textile Products from the Dominican Republic, Effective on June 1, 1982

May 21, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported to the United States during the twelve-month period beginning on June 1, 1982.

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 7 and 8, 1979, as amended, between the Governments of the United States and the Dominican Republic established specific levels of restraints for Categories 340 (men's and boys' woven cotton shirts), 351 (cotton nightwear), 639 (women's girls', and infants man-made fiber knit skirts and blouses), and 649 (man-made fiber brassieres and other body supporting garments) during the agreement year which begins on June 1, 1982 and extends through May 31, 1983. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, under the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced, or manufactured in the Dominican Republic and exported during the twelve-month period which begins on June 1, 1982 and extends through May 31, 1983, in excess of the designated levels of restraint.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), and February 9, 1982 (47 FR 5928) May 5, 1981 (46 FR 25121), and May 13, 1982 (47 FR 20664)).

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

May 21, 1982.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 7 and 8, 1979, as amended, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on June 1, 1982 and for the twelve-month period extending through May 31, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 639, and 649, produced or manufactured in the Dominican Republic, in excess of the following levels of restraint:

Category	12-mo. level of restraint (in dozens)
340	149,455
351	345,050
639	306,667
649	1,500,000

In carrying out this directive entries of textile products in the foregoing categories, produced or manufactured in the Dominican Republic, which have been exported to the United States on and after June 1, 1981, and extending through May 31, 1982, shall, to the extent of any unfilled balances, be charged

against the levels of restraint established for such goods during the twelve-month period beginning on June 1, 1981 and extending through May 31, 1982. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of August 7 and 8, 1979, as amended, between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing; (2) specific limits may also be increased for carryover up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), and February 9, 1982 (47 FR 5926) and May 13, 1982 (47 FR 20654).

In carrying out the above directions, the Commissioner of Customs should construe entry in the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Dominican Republic and with respect to imports of cotton and man-made fiber textile products from the Dominican Republic have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-14301 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Change in Notice of Advisory Committee Meeting

The purpose of the meeting of the Defense Science Board Task Force on International Industry to Industry Armaments Cooperation scheduled for 3–4 June 1982 as published in the Federal Register (Vol. 47, No. 88, Thursday, May 6, 1982, FR Doc. 82–12362) should read as follows:

"The Task Force will review the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context, the Task Force will also analyze the effect current international cooperation policies have on the *ability* of the U.S., its friends and Allies to achieve in good order and sustain mobilization capacities."

The original notice erroneously gave the above italicized "ability" as "utility." In all other respects, the original notice cited above remains the same.

M.S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 21,1982.

[FR Doc. 82-14347 Filed 5-25-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee meeting

Working Group A (Mainly Microware Devices) of the DOD Advisory Group on Electronic Devices (AGED) will meet in closed session on 9 June 1982 at the AF Rome Air Development Center, Building 106, Rm. 4119, Rome, New York, 13441.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1, section 10(d) (1976); it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b) (c)(1) (1976), and that accordingly, this meeting will be closed to the public.

May 20, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-14312 Filed 5-25-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DOD Advisory Group on Electronic Devices (AGED) will meet in closed session 6 July at ONR—800 No. Quincy St., Arlington, Va. 22217 and 7 July at AGED, 1925 North Lynn St., Arlington, Va. 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, section 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1982.

[FR Doc. 82-14313 Filed 5-25-82; 8:45 am]

BILLING CODE 3810-01-M

Organization of the Joint Chiefs of Staff; Joint Strategic Target Planning Staff Scientific Advisory Group; Closed Meeting

The Joint Strategic Target Planning Staff (JSTPS) Scientific Advisory Group will meet in closed session August 9–11, 1982 at Offutt Air Force Base, Nebraska.

The mission of the JSTPS Scientific Advisory Group is to provide timely

technical and scientific advicxe to the Director of Strategic Target Planning during the Development of the Single Integrated Operational Plan.

A meeting of the JSTPS Scientific Advisory Group has been scheduled for August 9–11, 1982 to discuss classified issues of strategic concern related to development of future Single Integrated Operational Plans. This meeting is being held in lieu of the meeting scheduled for 10–12 May 1982, which was cancelled.

In accordance with 5 U.S.C. App. I, subsection 10(d) (1976), it has been determined that this JSTPS Scientific Advisory Group Meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 20, 1982.

[FR Doc. 82-14311 Filed 5-25-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Title I, Elementary and Secondary Education Act; Intent To Repay to the District of Columbia Public Schools Funds Recovered as a Result of a Final Audit Determination

AGENCY: Education Department.

ACTION: Notice of Intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act, the U.S. Secretary of Education intends to repay under a grantback arrangement to the District of Columbia Public Schools (SEA) an amount equal to 75 percent of the funds the U.S. Department of Education will recover as a result of a final audit determination issued on October 24, 1979 by the Deputy Commissioner for Elementary and Secondary Education (now Assistant Secretary for Elementary and Secondary Education). This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before June 25, 1982.

ADDRESS: All written comments should be submitted to James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3636, ROB–3), Washington, D.C. 20202–3305.

FOR FURTHER INFORMATION CONTACT: James Spillane. Telephone: (202) 245–9877.

SUPPLEMENTARY INFORMATION:

A. Background

On October 24, 1979, the Deputy Commissioner for Elementary and Secondary Education (now Assistant Secretary for Elementary and Secondary Education) issued a final audit determination against the District of Columbia Public Schools (SEA), finding that the SEA had improperly spent or retained $1,001,753 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA for the period July 1, 1973 through September 30, 1977 conducted by the Department of Health, Education, and Welfare Audit Agency. The audit focused primarily on the procedures used by the SEA to control grant expenditures, and the SEA's failure to expend Title I funds within the allowable two-year period for grant expenditures.

In his final audit determination, the Deputy Commissioner acknowledged that the SEA had already repaid to the U.S. Office of Education (now U.S. Department of Education) $416,019.21 in partial settlement of the claim. Accordingly, he determined that the SEA owned $585,733.79. The SEA challenged this determination in an application for review filed with the Education Appeal Board (EAB) on November 26, 1979 pursuant to the authority in Secton 452(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1234a(b)). The SEA's application for review is currently pending before the EAB.

While the SEA's application for review was pending, the parties in this case negotiated a tentative settlement of the outstanding claim. Under this agreement, the SEA would repay an additional $100,000 in non-federal funds, resulting in a total repayment by the SEA of $516,019.21. Upon receipt of the SEA's additional payment, the U.S. Department of Education (Department) would relinquish any further claims relating to the final audit determination. In addition, the U.S. Secretary of Education (Secretary) would repay to the SEA an amount equal to 75 percent of the recovered funds in accordance with the grantback provision in section 456 of GEPA.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C.1234e(a)) provides that, whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the SEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that (1) the practices and procedures of the SEA that resulted in the audit determination have been corrected, and that the SEA is in all other respects in compliance with the requirements of the applicable program; (2) the SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and (3) the funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

As part of the proposed settlement agreement discussed above, the SEA has requested that the Secretary repay to the SEA an amount equal to 75 percent of the recovered funds. The SEA also has submitted documentation showing that it has corrected the inadequate accounting practices that caused the audit violation. In addition, the SEA has indicated that it will certify that it is currently in compliance with all requirements of law, whether by statute or regulation, that apply to the administration of its Title I program.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA has submitted a plan for how the SEA proposes to use the funds that would be repaid to it under the grantback arrangement. According to its plan, the SEA intends to use the grantback funds in the summer of 1982 to operate a Title I summer school program. This program is designed to raise the achievement level in reading, language arts, and mathematics of a selected group of Title I students in grades one through six.

The SEA proposes to select approximately three thousand eligible Title I students and assign them to ten educational centers throughout the District of Columbia. The staff for each center will include reading and math teachers, educational aides, program assistants, and several parents. In addition to providing instruction for those students selected to participate, the summer school program will serve as a model for a team approach to instructional services. Following completion of the program, the SEA proposes to evaluate the effectiveness of the program in terms of the instructional objectives that were achieved, and staff and student opinions of the program.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of GEPA, the proposed settlement agreement, the SEA's assurances described in Part C above, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The SEA has corrected the practices and procedures that resulted in the final audit determination and the SEA is in all other respects in compliance with the requirements of the Title I program;

(2) The SEA has submitted a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Title I program and, to the extent possible, benefits the Title I children who were affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Title I program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least thirty days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount equal to 75 percent of the funds the Department will recover as a result of the Deputy Commissioner's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Section E of this notice and the cooperative efforts of the SEA to comply with the proposed settlement agreement of which the grantback is a part.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements, including the requirements concerning the participation of eligible children attending private schools;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, the SEA will obligate all funds received under the grantback arrangement no later than September 30, 1982.

(3) The SEA will maintain separate accounting records documenting the expenditure of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the District of Columbia Public Schools. Interested persons may send written comments to James Spillane at the address at the beginning of this notice. All comments must be received on or before June 25, 1982.

Dated: May 17, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-14002 Filed 5-25-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/EU(SW)-[illegible], from Studsvik, Sweden to Mol, Belgium, 24 irradiated fuel rods containing 10.562 kilograms of uranium enriched to 4.6 percent in U-235, and 72 grams of plutonium. These rods are being returned to Belgium following tests performed in Sweden.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been detemined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice (June 10, 1982).

For the Department of Energy.

Dated: May 20, 1982.

Harold D. Bengelsdorf,

Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-14003 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government

of Switzerland Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer: RTD/SD(EU)–40, from the Federal Republic of Germany to Switzerland, three irradiated fuel rods containing 600 grams of uranium enriched to 92 percent in U–235, 32 grams of natural uranium, and 103 grams of plutonium for post-irradiation tests. It is proposed that these fuel rods will subsequently be returned to the Federal Republic of Germany for further testing and ultimate disposition.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice (June 10, 1982).

Dated: May 20, 1982.

For the Department of Energy.

Harold D. Bengelsdorf,

Director, Office of International Nuclear and Non-Proliferation Policy.

[FR Doc. 82-14304 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of 10 CFR Part 210 and Part 212, Subpart D.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Sandra K. Webb, Department of Energy, 333 Market Street, San Francisco, California 94105, phone (415) 974–7104. On or before June 10, 1982 any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Room 3304, 12th and Pennsylvania, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in San Francisco, CA., on the 22nd day of April 1982.

Sandra K. Webb,

Economic RegulatoryAdministration.

PROPOSED REMEDIAL ORDERS

Station	Address	Date	Violation amount	Highest cents per gallon violation
Cabrillo Arco	5955 Soquel Drive, Soquel, CA 95073	4/15/82	$2,471.59	3.8
Walt Freeman Chevron	8099 Folsom Blvd., Sacramento, CA	4/15/82	10,912.51	8.2
Roy's Civic Center Mobil	1271 N. First St., San Jose, CA 95112	4/15/82	1,381.14	5.8
Robert J. Heald Shell	110 Belvedere, San Rafael, CA 94901	4/15/82	[illegible]	8.2
Bob's Chevron	805 Ocean Street, Santa Cruz, CA	4/14/82	17,161.23	11.7
Car Wash Service	15526 Hesperian Blvd., San Lorenzo, CA 94580.	4/15/82	[illegible]	9.8
Clean Machine, Inc.	1300 Travis Blvd., Fairfield, CA 94533	4/15/82	7,812.63	8.1
Clean Machine, Inc.	2701 Stroy Road, San Jose, CA 95127	4/15/82	16,897.13	10.7
St. Francis Texaco	164 Calistoga Rd., Santa Rosa, CA 95405	4/15/82	6,514.20	12.2
Cascade Chevron	1490 W. Winton Ave., Hayward, CA 94544	4/16/82	1,535.53	5.5

[FR Doc. 82-14235 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Williams Exploration Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Williams Exploration Company ("Williams Exploration"). The Consent Order resolves certain issues of compliance with the DOE Petroleum Price Regulations for the period June 1, 1979 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Williams Exploration has agreed to make a cash payment of $13,000,000.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order, has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order, attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on the thirtieth day following publication of this notice, June 25, 1982.

Address comments to: Williams Exploration Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 5109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3115, Washington, D.C. 20461, Phone: (202) 633–9165.

Copies of the Consent Order may be received free of charge by written request to: Williams Exploration Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E–190, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: Williams Exploration is a producer and marketer of domestic crude oil and is subject to the DOE Petroleum Price Regulations (Regulations). An audit conducted by DOE of Williams Exploration included a review of Williams Exploration's records relating to compliance with the Regulations during the period June 1, 1979 through January 27, 1981 (the audit period). During the audit, questions and issues were raised. This Consent Order resolves the civil issues concerning newly discovered crude oil certification matters of the T. E. Mudd #1 and Blonstein Estate #1 leases for the period covered by the Consent Order.

Conclusion of DOE Audit

The Consent Order addresses Williams Exploration's compliance with the applicable Regulations. DOE's audit reviewed Williams Exploration's pricing policies and procedures and the manner in which Williams Exploration applied the Regulations with respect to its production and marketing of newly discovered crude oil from certain properties.

At the conclusion of the audit, DOE alleged that Williams Exploration sold crude oil at prices in excess of the applicable ceiling prices. Notwithstanding DOE's position to the contrary, Williams Exploration maintains that it has correctly construed and applied the Regulations and that crude oil was not sold at prices in excess of the applicable ceiling prices. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. DOE believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and, thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Williams Exploration has agreed to the following:

Within thirty (30) days after the effective date of this Consent Order, Williams Exploration shall remit thirteen million dollars ($13,000,000) for future disposition by DOE.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties upon the discovery of information which is materially inconsistent with the information upon which this Consent Order is based.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Williams Exploration has waived its right to administrative or judicial review.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by DOE before determining whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in the opinion of DOE, significantly change the terms or impact of the Consent Order will be published for comment. After consideration of public comments by DOE, the Consent Order will be made final and effective by publication of notice to that effect in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C. May 21, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-14372 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL81-14-000 and ER81-353-000]

American Municipal Power, Ohio, Inc. and the City of St. Marys, Ohio v. The Dayton Power & Light Co., Dayton Power & Light Co.; Order Granting Intervention, Denying Motion To Dismiss Complaint, Finding That Power Delivery Agreement Requires Transmission Service, and Directing Refunds

Issued: May 19, 1982.

This proceeding involves a complaint filed by American Municipal Power-Ohio, Inc. (AMP-Ohio), which is a member of the Buckeye Member Cooperative, Inc. (BMCI), and the City of St. Marys, Ohio (St. Marys) against Dayton Power & Light Company (DP&L). The primary controversy is whether the terms of a Power Delivery Agreement, to which DP&L and Buckeye Power Incorporated (Buckeye) are parties, requires DP&L to wheel Buckeye power to a new delivery point serving St. Marys.

Background

Buckeye is a non-profit electric generation cooperative which provides wholesale service to its twenty-seven member cooperatives over the transmission lines of Ohio Power Company, and several other investor-owned utilities. Under an arrangement known as the "Buckeye Project," a group of Ohio rural electric cooperatives joined together to buy capacity in an electric generating plant. Six investor-owned utilities contracted, under the terms of a Power Delivery Agreement, to wheel power from this plant to various cooperative points of delivery.[1]

The rate under this Agreement is based solely on the Buckeye system annual peak demand. Therefore, although the collective load factor for the cooperatives began to decrease, the delivery rate remained the same. In order to improve their load factor and reduce average costs for all their customers, the cooperatives have attempted to sell off-peak power from their plant. Two of the customers to whom the cooperatives attempted to sell off-peak power were the Cities of Hamilton, Ohio (Hamilton), and St. Marys, Ohio.

The Prior Buckeye Complaint

In Docket No. EL79-20, Buckeye filed a complaint alleging that Cincinnati Gas & Electric Company (CG&E) had violated the terms of the Buckeye Power Delivery Agreement by refusing to establish a new delivery point that would enable a Buckeye member cooperative (BMCI) to supply power and energy to Hamilton under an agreement between Hamilton, BMCI, and Amp-Ohio. CG&E refused to provide the delivery point and transmission service on the grounds that the contractual requirements of the Agreement for transmission and delivery had not been met and that Hamilton was not the kind of customer intended to come within the scope of the Agreement by the parties at the time it was executed. A hearing was held and an Initial Decision found that Hamilton was a type of customer within the scope of the Agreement, but that one of the contractual requirements had not been met, *i.e.*, that BMCI was not a legitimate member of Buckeye. On January 25, 1982, the Commission affirmed the finding that Hamilton was an appropriate type of customer but reversed the finding that BMCI was not a legitimate member of Buckeye. Accordingly, the Commission ordered CG&E to establish the new delivery point to Hamilton and to provide transmission service to BMCI for the account of Hamilton under the rates, terms and conditions of the Buckeye Power Delivery Agreement.

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[1] The Power Delivery Agreement is dated January 1, 1968. The six investor-owned utilities are Ohio Power Company, Cincinnati Gas & Electric Company, DP&L, Columbus & Southern Ohio Electric Company, Monongahela Power Company, and the Toledo Edison Company. The background of the Agreement and the specific wording of the sections are set forth in the Initial Decision, in *Buckeye Power Company* v. *Cincinnati Gas & Electric Company*, Docket No. EL79-20, order issued January 9, 1981, pp. 4-8.

The AMP-Ohio Complaint

On April 16, 1981, AMP-Ohio and St. Marys filed a Complaint and Request For Interim Order against DP&L. The complainants alleged that DP&L, as a signatory to the Buckeye Power Delivery Agreement, has violated its contractual obligation under the Agreement by refusing to transmit power and energy for BMCI and AMP-Ohio for the account of St. Marys. They requested that the Commission (1) find that the Power Delivery Agreement requires DP&L to render this service, either on the basis of the *Buckeye* proceeding, which, according to the complainants, dealt with the same issue, or on the basis of extrinsic evidence presented in a hearing; (2) make any rates collected for transmission service under a separate rate schedule filed in Docket No. ER81–353–000 subject to refund in the event that complainants prevail; and (3) rule that the relief ordered should be applied in an equal and non-discriminatory manner to any other municipality in the DP&L service territory which wish to purchase power generated by Buckeye and either sold directly to such municipality by one of Buckeye's members or sold by such member to AMP-Ohio for resale to the municipality.

On June 1, 1981, DP&L filed an answer, denying that the Power Delivery Ageement requires DP&L to provide the transmission service requested and arguing that in becoming a party to the Power Delivery Agreement, DP&L never intended to provide transmission for the type of transactions sought by AMP-Ohio and St. Marys. DP&L also argued that it would be inappropriate to apply the results of the *Buckeye* proceeding to the instant complaint because St. Marys' relationship with DP&L is notably different from Hamilton's relationship with CG&E.[3] DP&L moved to dismiss the complaint on the grounds that the *Buckeye* findings cannot control the outcome here as matter of *res judicata* or collateral estoppel because DP&L did not participate in the *Buckeye* proceeding. In the alternative, DP&L requested that the complaint be set for hearing pursuant to sections 211 and 212 of the Federal Power Act, arguing that the *Penn Yan* decision of the United States Court of Appeals for the Second Circuit [3] would prohibit the Commission from expanding an existing voluntary wheeling arrangement without first holding a full hearing under sections 211 and 212. DP&L further contends that the complainants would be unable to meet their burden of demonstrating the statutory prerequisites under these sections.

On June 1, 1981, Buckeye filed a petition to intervene in support of the complainants, arguing that the issue in this docket is the same as in the recent *Buckeye* proceeding and that sections 211 and 212 are inapplicable because the relief requested would not enlarge the existing transmission rate schedule.

On June 8, 1981, the complainants filed an answer to DP&L's motion to dismiss, arguing that the complaint does not rest solely on the argument that the findings in *Buckeye* are controlling. On November 9, 1981, the complainants filed a motion seeking Commission action on the complaint.

Discussion

As a preliminary matter, the Commission finds that participation in this proceeding by Buckeye is in the public interest. Accordingly, its petition to intervene will be granted.

The Commission notes that the complaint rests one other grounds besides the *res judicata* or collateral estoppel theories. Accordingly, DP&L's motion to dismiss will be denied. We further note that DP&L's transmission service and rates to St. Marys have already been made subject to refund and subject to the outcome of this proceeding by the Commission's order of May 22, 1981, in Docket Nos. ER81–353–000, *et al.*, and by order of August 31, 1981 in Docket No. ER81–586–000,[4] as well as by the terms of a settlement agreement in Docket Nos. ER81–353–000, *et al.*[5]

The first question before the Commission is whether to (1) make a finding, based upon the findings in the *Buckeye* proceedings, that the Power Delivery Agreement requires DP&L to wheel Buckeye power to St. Marys under the rate schedule associated with the Buckeye project, or (2) to set the issue for hearing. Upon consideration of the arguments set forth in the pleadings of the parties, as well as the contents of the initial decision and the affirming order in *Buckeye*, the Commission has determined that the findings in *Buckeye* control.

The question raised in this proceeding was already litigated and decided in *Buckeye;* whether an investor-owned utility that is signatory to the Buckeye Power Delivery Agreement is obligated under the rates, terms and conditions of that agreement to transmit power and energy for a Buckeye member cooperative through AMP-Ohio for resale to municipality that is a partial requirements customer of the investor-owned utilty.[6] The only factual distinction which DP&L has drawn between the two proceedings is that Hamilton was an interconnection customer taking only backup services from CG&E, whereas St. Marys has continuously purchased a major portion of its system requirements from DP&L since 1973. DP&L has not offered any explanation why this distinction is material. The Commission determined in the *Buckeye* proceeding that the Power Delivery Agreement, when read as a whole, did not evidence any intent to exclude customers requesting only part of their requirements through a *Buckeye* member. Although Hamilton and St. Marys may vary in the degree of their reliance upon *Buckeye* for their energy needs, they are both partial requirements customers within the meaning of the evidence proferred in *Buckeye.* DP&L suggests no question of material fact as to which it might offer evidence that could yield a different result in a hearing.

Furthermore, the Commission finds no merit to DP&L's assertion that because it was not a party to the *Buckeye* proceeding, the findings in that docket cannot control the outcome of this proceeding. *Buckeye* involved an interpretation of the same provisions of the same contract that is at issue here. DP&L occupies the same position with the same rights and obligations under the terms of the Power Delivery Agreement, that respondent CG&E occupied in *Buckeye.* Moreover, St. Marys, as we have already determined, is a customer contemplated by the Agreement in the same sense that Hamilton was in *Buckeye.* There being no material factual distinction between the two proceedings, DP&L will be ordered to provide the transmission service requested under the rates and terms provided for service under the Power Delivery Agreement.

DP&L's argument that a hearing should be held on this matter pursuant to sections 211 and 212 of the Federal Power Act pursuant to the *Penn Yan* decision is not persuasive. In the *Penn Yan* proceeding, the Commission struck

[3] DP&L points out that St. Marys, which owns some generating capacity, has continuously purchased a major portion of its demand and energy requirements from DP&L on a long-term basis while Hamilton is a self-sufficient generating municipality which has purchased only backup or supplemental service from CG&E.

[3] *New York State Electric & Gas* v. *FERC,* 638 F. 2d 388 (2nd Cir. 1980), *cert. denied,* 102 S.C. 105 (1981).

[4] *St. Marys requested service under DP&L's transmission tariff in this docket.*

[5] *The settlement agreement was approved by the Commission by letter dated January 19, 1982.*

[6] Initial Decision at 18–25, affirmed by order of January 25, 1982 at 3.

down a restrictive contract provision and ordered a utility to provide service not originally covered by the terms of its agreement. In this proceeding, as in the *Buckeye* case, no expansion of a utility's commitment to wheel is being ordered, but rather a utility is being required to perform the service it voluntarily obligated itself to perform by entering into the Buckeye Power Delivery Agreement.

We find that it is appropriate pursuant to the settlement agreement between the parties in Docket Nos. ER81-353-000, *et al.*, to direct the refunds requested by complainants of revenues collected by DP&L under its transmission tariff for the delivery of Buckeye power and associated energy which are in excess of those amounts produced by application of the rates under the Buckeye Power Delivery Agreement. It is also appropriate that the findings in this complaint proceeding and in *Buckeye* be applied in an equal and non-discriminatory manner to any other municipal customer of DP&L which might wish to purchase off-peak Buckeye power through a legitimate Buckeye member cooperative.

The Commission orders:

(A) The motion of DP&L to dismiss the complaint in Docket No. EL81-14-000 is hereby denied.

(B) Buckeye's petition to intervene in this proceeding is hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; Provided, however, that participation by such intervenor shall be limited to the matters set forth in its petition to intervene; and provided, further, that the admission of such intervenor shall not be construed as recognition that it might be aggrieved by any order of the Commission in this proceeding.

(C) Pursuant to the provisions of the Buckeye Power Delivery Agreement, DP&L shall provide transmission service for the delivery of Buckeye power to the City of St. Marys under the rates, terms and conditions set forth in that Agreement.

(D) Within sixty (60) days of the date of this order, DP&L shall refund all amounts collected under the rate schedule accepted in Docket No. ER81-353-000 by our order of May 22, 1981, and the rate schedule accepted in Docket No. ER81-586-000 by our order of August 31, 1981, that are in excess of those amounts produced by application of the rates under the Buckeye Power Delivery Agreement, together with interest computed in accordance with § 35.19a of the Commission's regulations.

(E) The findings in this order shall be applied in an equal and non-discriminatory manner to any municipal customer wishing to purchase off-peak Buckeye power through a legitimate Buckeye member cooperative.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14288 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-515-000]

Appalachian Power Co.; Filing

May 19, 1982.

Take notice that American Electric Power Service Corporation (AEP) on May 11, 1982, tendered for filing on behalf of its affiliate Appalachian Power Company (APCO) Modification No. 9 dated January 1, 1982 to the Interconnection Agreement dated February 7, 1957 between Carolina Power & Light Company and APCO, APCO's Rate Schedule FERC No. 24.

AEP states that Sections 1 and 2 of Modification No. 9 provide for an increase in the demand charge for Short Term and Limited Term Power to $1.25 per kilowatt per week and $6.50 per kilowatt per month respectively when either party is the supplying party. Both schedules are proposed to become effective May 1, 1982. These APCO demand rates are substantially the same as the recently filed Short Term and Limited Term demand charges between APCO and Virginia Electric and Power Company (Docket No. ER82-298-000) which have been accepted by the Commission and made effective January 1, 1982 by Letter Order dated March 23, 1982.

Copies of this filing were served upon the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10. All such petitions or protests should be filed on or before June 4, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14289 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-516-000]

Boston Edison Co.; Filing

May 19, 1982.

Take notice that Boston Edison Company (Boston) on May 11, 1982, tendered for filing a letter as evidence of amendment by Edison and the Reading Municipal Light Department (Reading) of two power supply contracts. Edison states that one amendment cancels Edison's Rate Schedule 119 providing for a 10 MW unit sale from Edison's Medway jets for the period November 1, 1981 through October 31, 1982, and that the other amendment extends over the same period and for the same amount of power Edison's Rate Schedule 120 providing for the sale of unit power from Edison's New Boston Units 1 and 2. Edison proposes an effective date of November 1, 1981.

Copies of the filing have been served upon Reading and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14270 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-20-000]

CMC Energy, Inc., Application for Adjustment

Issued: May 19, 1982.

Take notice that on April 20, 1982,

CMC Energy, Inc. (applicant), 1626 Guaranty Bank Plaza, Corpus Christy, Texas 78475, filed with the Federal Energy Regulatory Commission (Commission) and application for adjustment pursuant to section 502(c) of the natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, (Supp. IV 1980), and § 1.41 of the Commission's regulations. Applicant seeks a waiver of § 271.805 of the Commission's regulations.

Specifically, applicant was notified by Commission staff in letters dated May 11, 1981 that applicant's Southland Life Wells No. 23 and No. 31, based upon a Staff review of production records on file with the Railroad Commission of Texas (RRC), may have in each case produced in excess of an average of 60 Mcf per day during a 90-day production period ending subsequent to the qualifying 90-day production period and pursuant to § 271.805 of the Commission's regulations the notice of disqualification had not been filed with the Commission. Applicant states that the reason the wells exceeded 60 Mcf per production day was due to compression. Subsequent to receipt of the letters dated May 11, 1982 from the Commission staff, the applicant states that it filed an application for enhanced recovery with RRC on June 17, 1982. If the waiver of § 271.805 of the Commission's regulation is not granted, applicant alleges that it will have to refund a total of $177,280.96 or the difference of the otherwise applicable maximum lawful prices and the section 108 price, to Transcontinental Gas Pipe Line Corp., the purchaser of the gas from the Southland Life Wells No. 23 and No. 31. Applicant further alleges that the cost of production for the subject wells exceeds the applicable section 104 maximum lawful price which causes the applicant to bear an out-of-pocket loss.

The procedures applicable to the conduct of this adjustment proceeding are found in section 1.41 of the Commission's Rules of Practice and Procedures, Order No. 24, issued March 22, 1979, (44 FR 19861, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41(e). All petitions to intervene must be filed on or before June 9, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14271 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER77-485-003]

Carolina Power & Light Co.; Compliance Filing

May 19, 1982.

Take notice that on May 10, 1982, Carolina Power and Light Company filed compliance rates pursuant to Opinion Nos. 132 and 132–A, as clarified by the Commission's order of April 8, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 4, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14272 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6059-000]

Hydro Development Group, Inc., Application for License (5 MW or Less)

May 19, 1982.

Take notice that Hydro Development Group, Inc. (Applicant) filed on March 8, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for continued operation of a water power project to be known as the Fowler #7 Water Power Project No. 6059. The project is located on the Oswegatchie River in St. Lawrence County, New York. Correspondence with the Applicant should be directed to: Mark E. Quallen, Vice President, Hydro Development Group, Inc., P.O. Box 58, Dexter, New York 13634.

Project Description—The existing project consists of: (1) Three concrete dams, spanning the river banks and two small islands, with dimensions of 75 feet long and 25 feet high, 192 feet long and 20 feet high, and 154 feet long and 15 feet high; (2) a flume 55 feet long, 24 feet wide, and 20 feet deep; (3) a powerhouse with an installed capacity of 900 kW; (4) a transmission line 50 feet long; and (5) other appurtenaces. Applicant owns all existing facilities. The average annual generation is 6,000,000 kWh.

Purpose of Project—Project energy is sold to Niagara Mohawk Power Corporation.

Agency Comments—Federal, State, and local agencies that recieve this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 30, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the tile "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must

also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14273 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6058-000]

Hydro Development Group, Inc.; Application for License (5 MW or Less)

May 19, 1982.

Take notice that Hydro Development Group, Inc. (Applicant) filed on March 8, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for continued operation of a water power project to be known as the Hailesboro #4 Water Power Project No. 6058. The project is located on the Oswegatchie River in St. Lawrence County, New York. Correspondence with the Applicant should be directed to: Mark E. Quallen, Vice President, Hydro Development Group, Inc., P.O. Box 58, Dexter, New York 13634.

Project Description—The existing project consists of: (1) Two dam sections which are 92 feet long and 14 feet high and 58 feet long and 5 feet high, respectivaly, joining an island to the river bank; (2) a flume 200 feet long, 50 feet wide, and 22 feet high; (3) a powerhouse with an installed capacity of 1,490 kW; (4) a transmission line 50 feet long; and (5) other appurtenances. The average annual generation is 10,000,000 kWh. Applicant owns all project facilities.

Purpose of Project—Project energy is sold to Niagara Mohawk Power Corporation.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 30, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the tile "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14274 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-512-000]

Illinois Power Co.; Filing

May 19, 1982.

Take notice that on May 10, 1982, Illinois Power Company (Illinois) tendered for filing proposed Modification No. 4, dated April 14, 1982, to the Interconnection Agreement, dated January 14, 1975 between City of Springfield, Illinois and Illinois.

Illinois states that the filing is made for an increase for Short-Term Firm Capacity, Maintenance Power and Short-Term Non-Firm Power reservation charges and an increase for Non-Displacement Energy charges.

Illinois further states that a copy of this filing was served upon the City of Springfield, Illinois and the Illinois Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 4, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14276 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-514-000]

Indiana & Michigan Electric Co.; Filing

May 19, 1982.

Take notice that American Electric Power Service Corporation (AEP) on May 11, 1982, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), Modification No. 14 dated April 5, 1982 to the Interconnection Agreement dated December 30, 1960 between Indianapolis Power & Light Company (IP&L) and I&ME, I&ME's Rate Schedule FERC No. 21.

Modification No. 14 provides for an increase in the demand charge for Short Term Power to $1.25 per kilowatt per week when I&ME is the supplying party, and to $1.05/kW-week when IP&L is the supplying party. Also included in this modification is a provision to allow Short Term Power to be sold on a daily basis at the rate of one-fifth of the supply party's weekly demand rate. A similar rate increase and provisions for Daily Short T

Ottingererm Power have recently been accepted for filing by the Commission

and made effective March 15, 1982 by Letter Order of April 14, 1982.

AEP requests an effective date of April 4, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Service Commission of Indiana, the Michigan Public Service Commission of Indiana, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 4, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14275 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6013-000]

Lewis County Public Utility District No. 1; Application for Preliminary Permit

May 19, 1982

Take notice that Lewis County Public Utility District No. 1 (Applicant) filed on February 22, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)) for Project No. 6013 to be known as the Summit/Carlton Creeks Water Power Project located on Summit and Carlton Creeks, near Packwood in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Gary H. Kalich, Manager, Public Utility District No. 1 of Lewis County, P.O. Box 330, Chehalis, Washington 98532.

Project Description—The proposed project would consist of: (1) A proposed 8-foot high, 100-foot long concrete gravity diversion dam on Summit Creek and another on Carlton Creek; (2) a proposed 10,100-foot long, 42-inch diameter steel diversion conduit on Carlton Creek; (3) a proposed 7,400-foot long, 48-inch diameter steel penstock extending from the intersection of the diversion conduits to the powerplant; (5) a proposed powerplant with dual Francis turbine/generator units having an estimated total installed capacity of 8,600 kW and producing an average annual energy output of 30.2 GWh; (6) a proposed 1.6-mile long, 115-kV primary transmission line to connect to a proposed Cortright Creek Project line; (7) 0.55 miles of proposed gravel access roads; and (8) appurtenant facilities. The power would be utilized by the Applicant with excess marketed to the Bonneville Power Administration. The proposed project would be located entirely within the Gifford Pinchot National Forest.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects fo the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $200,000.

Competing Applications—This application was filed as a competing application to Hydro Resource Company's application for Project No. 6013 filed on September 25, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for license or exemption to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practices and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a peition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITON TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20406. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14277 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1967-001]

Margery Somers Foster; Order Granting Rehearing for the Limited Purpose of Further Consideration and Granting a Stay of the Commission's Order

May 18, 1982.

By order issued on May 7, 1982, the Commission found that an interlock between Public Service Electric and Gas Company (PSEGCO) and Prudential Insurance Company of America (Prudential) was within the scope of section 305(b) of the Federal Power Act. The Commission also found that the holding of that interlock by Margery Somers Foster would not adversely affect public or private interests, subject to the condition that Prudential and its subsidiaries not underwrite or otherwise participate in the distribution and marketing of PSEGCO securities.

On May 8, 1982, Foster filed a petition for rehearing and requested a stay of the Commission's order. Foster objects to the condition placed on the Commission's approval of her

application that Prudential and its subsidiaries no longer deal in PSEGCO securities.

In order to afford additional time for consideration of the concerns raised in Foster's petition for rehearing, we shall grant rehearing of the May 7, 1982 order for the limited purpose of further consideration. This action, however, does not constitute a grant or denial of the application on its merits either in whole or in part. Furthermore, we believe that, in light of the impact of the May 7, 1982 order and the concerns raised by Foster on rehearing, including the irreparable harm that Foster contends may result from that order, it is appropriate to stay the effect of that order pending our further consideration.

The Commission Orders

(A) Rehearing of the May 7, 1982 order is hereby granted for the limited purpose of further consideration.

(B) As provided in § 1.34(d) of the Commission's Rules of Practice and Procedure, no answers to the request for rehearing will be entertained by the Commission since this order does not grant rehearing upon any substantive issue.

(C) The May 7, 1982 order is hereby stayed pending further consideration.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Hughes dissented.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14286 Filed 5-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6198-000]

North Carolina Electric Membership Corp.; Application for Preliminary Permit

May 19, 1982.

Take notice that North Carolina Electric Membership Corporation (NCEMC) (Applicant) filed on April 8, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project No. 6198 to be known as the B. Everett Jordan Dam Water Power Project located on the New Hope and Haw Rivers near Haywood and Pittsboro, in Chatham County, North Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Brian M. Flattery, Director, Construction and Alternative Project, North Carolina Electric Membership Corporation, 3333 North Boulevard, P.O. Box 27306, Raleigh, North Carolina.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' B. Everett Jordan Dam and would consist of: (1) A proposed powerhouse with a single generating unit having an estimated total installed capacity of 3,500 kW and producing an average annual energy output of 20 GWh; (2) a proposed 2.5-mile, 115 kV primary transmission line to connect to an existing Central Electric Membership line; and, (3) appurtenant facilities. The proposed market for the power is Central Electric Membership Corporation with excess power distributed to other NCEMC member corporations.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $49,876.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 2, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14278 Filed 5-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 606-001]

Pacific Gas & Electric Co.; Application for Amendment of License

May 19, 1982.

Take notice that the Pacific Gas and Electric Company (PG&E) filed on April 5, 1982, an application for an amendment of license (pursuant to the Federal Power Act and Articles 33 and 35 of its license) for its constructed Kilarc-Cow Creek Project, FERC Project No. 606. The project is located on Old Cow Creek and South Cow Creek in Shasta County, California. Correspondence with the Applicant should be directed to: Mr. W. M. Gallavan, Vice President, Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, Room 1087A, San Francisco, California 94106.

Description—PG&E filed a revised Exhibit S detailing its proposal to construct: (1) A fish ladder at the South Cow Creek Diversion Dam; and (2) a fish screening device at the South Cow Creek Canal Headworks. Below the Old Cow Creek Diversion Dam, PG&E would release 2 cfs from the Kilarc Main Canal into Old Cow Creek. Below the South Cow Creek Diversion Dam, PG&E would release, through the proposed fish ladder, 2 cfs in dry years and 4 cfs during other years.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14287 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER81-679-000; ER82-271-000]

Pacific Gas & Electric Co.; Order Granting Motion for Imposition of Interim Rates Pending Commission Action on Settlement Proposal

Issued: May 18, 1982.

On April 30, 1982, Pacific Gas and Electric Company (PG&E) filed a motion seeking Commission authorization to impose reduced interim rates in lieu of the rates originally filed in this proceeding and in lieu of the amended rates submitted by PG&E and accepted for filing by the Commission on March 12, 1982. PG&E seeks permission to collect the reduced rates, subject to refund, as of March 1, 1982. The motion states that all of PG&E's affected customers join in the company's request. For the reasons stated below, we shall grant the motion.

PG&E tendered its originally proposed rates for filing on August 12, 1981. These rates applied to firm power service to 10 municipal customers and to Sierra Pacific Power Company. By order issued on October 23, 1981, the Commission, *inter alia*, accepted the proposed rates for filing, suspended their effectiveness until January 1, 1982 (Phase I) and March 12, 1982 (Phase II), and ordered a hearing to be convened. PG&E subsequently submitted an amended filing reflecting a substantial reduction in its Phase II rate increase. Settlement negotiations among the parties have since resulted in a settlement in principle; the formal settlement agreement has not yet been executed by the parties, but PG&E states that an offer of settlement will be filed on or before May 18, 1982.

The settlement, as described by PG&E, would reduce the level of the Phase II rates substantially. PG&E's motion is designed to make the lower settlement rates immediately available. In addition, the motion requests that if the Commission ultimately rejects the settlement, PG&E be authorized to collect with interest, retroactive to March 1, 1982, the difference between the rates previously authorized to become effective on March 12, 1982, and the settlement rates. PG&E states that its customers unanimously concur in this aspect of the motion. Under the circumstances, we believe that the public interest will be served by granting PG&E's motion.

Pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, we find that good cause exists to permit the collection of the revised interim rates, subject to refund, as of March 1, 1982, until such time as the Commission acts upon the settlement agreement to be filed by PG&E. This order, however, shall be without prejudice to our subsequent determination on the merits of the proposed settlement.

The Commission orders:

(A) The motion filed by PG&E on April 30, 1982, requesting permission to collect reduced interim rates in lieu of the rates originally filed in this proceeding and in lieu of the subsequently amended rates, is hereby granted.

(B) Good cause having been shown, PG&E is hereby authorized, pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, to collect, subject to refund, the revised rates reflected in its motion from March 1, 1982, until final Commission action on the settlement. In the event that the settlement is not approved, the provisions of PG&E's motion shall apply as to rates for the interim period.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14288 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2796-001]

Siskiyou County Flood Control and Water Conservation District; Application for License (5 MW or Less)

May 19, 1982.

Take notice that Siskiyou County Flood Control and Water Conservation District (Applicant) filed on November 24, 1981, and revised on February 24 and March 8, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for construction and operation of a water power project to be known as the Lake Siskiyou Power Project No. 2796. The project would be located on the Sacramento River in Siskiyou County, California. Correspondence with the Applicant should be directed to: Mr. D. A. Gravenkamp, Director of Public Works, Siskiyou County Department of Public Works, Yreka, California, 96097.

Project Description—The proposed project would consist of: installation of power generating facilities at Applicant's Box Canyon Dam, Principal features include: (1) The existing multiple-level intake structure; (2) extension of the existing low-level outlet and spillway; (3) a plant consisting of two turbine-generator units with a total rated capacity of 5,000 kW to be constructed under the spillway extension; (4) a switchyard and short transmission line segment; and (5) appurtenant facilities. The Box Canyon Dam is a 200-foot high, 1,100-foot long gravity and rockfill structure which forms Lake Siskiyou. The lake has a total storage capacity of 26,000 acre-feet and an approximate surface area of 430 acres at a normal pool elevation of 3181 feet.

Purpose of Project—The project estimated average annual generation is

21.9 GWh. Project power would be sold to a nearby utility system.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before July 30, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 30, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14279 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6222-000 and Project No. 6242-000]

Southeastern Hydro-Power, Inc., North Carolina Electric Membership Corp.; Application for Preliminary Permit

May 19, 1982.

Take notice that Southeastern Hydro-Power, Inc. (SHP) and North Carolina Electric Membership Corporation (NCEMC) (Applicants) filed on April 19, 1982, and April 21, 1982, respectively, competing applications for preliminary permits (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project Nos. 6222 and 6242, respectively, to be known as the William O. Huske Lock and Dam Water Power Project located on the Cape Fear River near Tar Heel and Fayetteville, in Bladen County, North Carolina. The applications are on file with the Commission and are available for public inspection. Correspondence with SHP should be directed to: Charles B. Mierek, Southeastern Hydro-Power, Inc., 838 Arlington Drive, Tucker, Georgia 30084. Correspondence with NCEMC should be directed to: Brian M. Flattery, Director, Construction and Alternative Project, North Carolina Electric Membership Corporation, 3333 North Boulevard, P.O. Box 27306, Raleigh, North Carolina 27611.

Project Description—The proposed projects would utilize the existing U.S. Army Corps of Engineers' William O. Huske Lock and Dam. The projects would operate in a run-of-river mode.

Project No. 6222 would consist of: (1) A proposed powerhouse with dual bulb turbine/generator units having an estimated total installed capacity of 4,000 kW and producing an average annual energy output of 29 GWh; (2) a proposed primary transmission line whose length, size, and location are yet to be determined; and, (3) appurtenant facilities. The proposed market for the power is Duke Power Company and Carolina Power and Light Company.

Project No. 6242 would consist of: (1) A proposed powerhouse with dual generating units having an estimated total installed capacity of 3,000 kW and producing an average annual energy output of 18 GWh; (2) a proposed one-mile long, 24.9 kV primary transmission line to connect to an existing Four-County Electric Membership Corporation line; and, (3) appurtenant facilities. The proposed market for the power is Four-County Electric Membership Corporation with excess power distributed to other NCEMC member corporations.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. NCEMC seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project; SHP seeks a 24-months permit to conduct these studies. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. NCEMC estimates that the cost of the studies would be $40,876; SHP estimates their cost at $75,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 2, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14280 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-130-000]

Transwestern Pipeline Co.; Settlement Conference

May 19, 1982.

Take notice that a settlement conference in the above-captioned docket will commence at 10:00 a.m. on May 28, 1982. The conference will be held at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14281 Filed 5-25-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed Week of April 9 through April 16, 1982

During the week of April 9 through April 16, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

May 19, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 9 through Apr. 16, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 9, 1982	Atlantic Richfield Company, Washington, D.C	HRZ-0035	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery motion granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Atlantic Richfield Company, Washington, D.C	HRZ-0036	Interlocutory Order. If granted: Atlantic Richfield Company would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Gulf Oil Corporation, Washington, D.C	HRZ-0039	Interlocutory Order. If granted: Gulf Oil Corporation would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Gulf Oil Corporation, Washington, D.C	HRZ-0040	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Louisiana Land and Exploration Company, Washington, D.C.	HRZ-0041	Interlocutory Order. If granted: Louisiana Land and Exploration Company would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Louisiana Land and Exploration Company, Washington, D.C.	HRZ-0042	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Marathon Oil Company, Washington, D.C	HRZ-0043	Interlocutory Order. If granted: Marathon Oil Company would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Marathon Oil Company, Washington, D.C	HRZ-0044	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 9 through Apr. 16, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 9, 1982	Standard Oil Company of Ohio, Washington, D.C.	HRZ-0045	Interlocutory Order. If granted: Standard Oil Company of Ohio would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Standard Oil Company of Ohio, Washington, D.C.	HRZ-0046	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Texaco, Inc., Washington, D.C.	HRZ-0047	Interlocutory Order. If granted: Texaco, Inc. would be permitted to depose DOE officials in order to examine the adequacy of the search conducted by the Office of Special Counsel to identify documents responsive to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 9, 1982	Texaco, Inc., Washington, D.C.	HRZ-0048	Interlocutory Order. If granted: The Office of Special Counsel would be compelled to produce additional materials in response to the discovery granted in *Atlantic Richfield Company*, 5 DOE ¶ 82,521 (1980), 6 DOE ¶ 82,501 (1980) and 6 DOE ¶ 82,553 (1980).
Apr. 12, 1982	Phillips Puerto Rico Core, Inc., Washington, D.C.	HEE-0024	Interlocutory Order. If granted: Phillips Puerto Rico Core, Inc. would receive an exception from the provisions of the Puerto Rico Naphtha Entitlements Program, 10 C.F.R. § 211.67, which would modify its entitlements purchase obligations.
Apr. 12, 1982	Professional Analysts, Eugene, Oregon	HFA-0051	Appeal of an Information Request Denial. If granted: The March 19, 1982, Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Professional Analysts would receive access to a copy of the contract proposal submitted by Emiscophere.

[FR Doc. 82-14305 Filed 5-25-82; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding to members of the public $570,362.98 in consent order funds. The funds are maintained in escrow accounts that were established in settlement of enforcement proceedings brought by the Office of Enforcement [now the Office of Special Counsel] in the Matters of Panhandle Eastern Pipeline Company ($280,127.98), PVM Oil Associates, Inc. $215,000), Loveladdy Oil Company ($25,000), Armstrong & Associates ($35,700) and Ethyl Corporation ($14,535).

DATE AND ADDRESS: Applications for Refund must be postmarked on or before August 24, 1982, and should be addressed to Panhandle (PVM), Loveladdy, Armstrong, Ethyl) Consent Order Refund Proceedings, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Avenue N.W., Washington, D.C. 20461. All applications and comments should display conspicuously a reference to the appropriate case name and number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy director, Office of Hearings and Appeals, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633-8377.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the final decision and order set out below. The final decision and order relates to consent orders entered into by the Office of Enforcement of the DOE's Economic Regulatory Administration and Panhandle Eastern Pipeline Company, *see* 44 FR 30153 (1979), Loveladdy Oil Company, *see* 44 FR 45663 (1979), and Ethyl Corporation, *see* 44 FR 47394 (1979), and a Consent Decree entered into by PVM Oil Associates, Inc. on June 29, 1979 *see United States v. PVM Oil Associates, Inc.*, Civil Action No. 79C 1697 (E.D.N.Y., filed June 29, 1979). Armstrong & Associates is a "reseller-retailer" of petroleum products and the other firms are "resellers" of petroleum products. Pursuant to the Consent Decree and consent orders, these firms have agreed to make refunds totaling over $570,000 to settle alleged violations of the DOE price regulations which occurred between 1973 and 1975.

The Office of Hearings and Appeals has previously issued a proposed decision and order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order funds. The proposed decision and order discussing the distribution of funds obtained through the Consent Decree or consent orders with the five firms was issued on November 4, 1981, 46 FR 25535 (1981).

The final decision and order reflects our analysis of comments received from interested parties. As we indicate in the final decision, applications for refund from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than ninety days from the date of publication of this notice. *See* 10 CFR 205.283. We will accept applications from all claimants that can affirmatively demonstrate that they have been directly injured by the violations alleged in the consent orders. A detailed discussion of what information a party must provide in order to assert a successful claim is set forth in the final decision and order appended to this notice.

The final decision reaches no determination with regard to the disposition of any funds in the second stage of the proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stage of the proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds. Commenting parties are requested to submit two copies of their comments. Comments should be filed within 30 days of publication of this notice, and should be addressed to the address set forth at the beginning of that notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, between the hours of 1:00 to 5:00 p.m.,

Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 20, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

May 20, 1982.

Special Refund Procedure

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration: In the Matters of Panhandle Eastern Pipeline Company, PVM Oil Associates, Inc., Loveladdy Oil Company, Armstrong and Associates, and Ethyl Corporation

Dates of Filing: April 9, 1981, April 9, 1981, June 26, 1981, June 21, 1981, July 21, 1981

Case Numbers: BEF–0041, BEF–0042, BEF–0067, BEF–0069, BEF–0070

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Enforcement (OE) (now the Office of Special Counsel) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the OE filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with Panhandle Eastern Pipeline Company (Panhandle), PVM Oil Associates, Inc. (PVM), Loveladdy Oil Company (Loveladdy), Armstrong & Associates (Armstrong), and Ethy Corporation (Ethyl) [hereinafter "the five firms"]. Under the terms of these consent orders, the five firms agreed to make refunds for alleged violations of the DOE price regulations in sales of fuel oil or motor gasoline in the following amounts: $280,127.98 (Panhandle) (*1*), $215,000 (PVM) (*2*), $25,000 (Loveladdy) (*3*), $35,700 (Armstrong) (*4*), and $14,535 (Ethyl) (*5*). The funds have been paid to the DOE and are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the Office of Hearings and Appeals regarding their distribution.

Background

A proposed decision and order which tentatively established special refund procedures to be used in adjudicating claims to the settlement funds involved in this proceeding was issued on November 4, 1981 and published in the **Federal Register**, 46 FR 55770 (1981). In the proposed decision we tentatively established a two-stage special refund procedure for the consent order funds. In the first stage, those firms which purchased fuel oil or motor gasoline during the relevant period from one of the five firms and who believed they were eligible for a portion of the consent order funds could file Applications for Refund pursuant to 10 CFR 205.283. Downstream purchasers would also be permitted to file Applications for Refund during the first stage of the refund process. Each application would be analyzed and individual determinations would be rendered on the merits of each. All meritorious claims would then be paid. We suggested that refunds to a person who established an entitlement to a refund would be made on a volumetric basis, *i.e.*, in the same proportion as the volume of the claimant's purchases correspond to the total volume of motor gasoline or fuel oil sold by the firm from which product was purchased during the relevant consent order period. We further requested that the five firms' first purchasers submit proposals setting forth appropriate mechanisms for returning moneys to the parties who likely paid increased prices as a result of the alleged overcharges. We also proposed that during the second stage of the refund process, refunds of remaining moneys might be made to rate-regulated utilities or to state governments in those states in which the five firms originally marketed fuel oil or motor gasoline during the relevant consent order periods. We alternatively proposed that if such plans proved infeasible, any portion of the settlement fund which, because of prohibitive administrative costs, might otherwise go undistributed be deposited in the Treasury of the United States. *See* 10 CFR 205.287(c).

The proposed decision and order was published in the **Federal Register** and copies were sent to all interested parties. The comment periods specified in the **Federal Register** have passed. The cases involving the five firms have in common many legal and factual issues. Panhandle (*6*), PVM, Loveladdy, and Ethyl are "resellers" of petroleum products as that term was defined in 10 CFR 212.31. Armstrong is a "reseller-retailer" of petroleum products as that term was defined in 10 CFR 212.31. During the relevant time periods, each of the five firms was subject to the Mandatory

Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. First purchasers of each firm's product could file claims, which if properly established, might completely exhaust the consent order funds. Consequently, we believe that these five cases should be consolidated for a final determination concernig the first stage of the refund procedures.

The purpose of this decision will be to establish the mechanism by which firms or individuals that purchased fuel oil or motor gasoline from the five firms may file Applications for Refund. We shall first discuss the comments which we received concerning the first-stage refund procedures which we tentatively adopted in the proposed decision and order in these cases. Then we shall discuss in detail the Application for Refund procedures which we have decided to adopt. However, we shall not discuss the second-stage refund process in this decision. As noted above, if meritorious claims are filed by those parties who purchased product sold by the five firms, the consent order funds may be thoroughly depleted. In that event, no second stage would be necessary. Our determination concerning the eventual disposition of any residual funds will depend on the amount of money available after the first-stage claims procedure is completed. *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). It is therefore unnecessary at this time for us to reach the issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious claims have been paid.(*7*)

Jurisdication To Fashion Refund Procedures

We previously determined that the jurisdictional requirements of Subpart V had been satisfied with regard to Panhandle and PVM. We therefore assumed jurisdiction over the distribution of funds involved in those two cases in a Decision and Order issued April 9, 1981. *See Office of Enforcement*, 8 DOE ¶ 82,515 (1981). With regard to Loveladdy, Armstrong, and Ethyl, we tentatively determined that we should likewise exercise our jurisdiction to distribute the funds in those cases in the November 4, 1981 proposed decision and order. *See* 46 FR 55770 (1981).

The DOE Subpart V regulations provide that "[T]his subpart shall be applicable to those situations in which the Department of Energy is unable to readily ideentify those persons who are entitled to refunds specified in .*.*.* a Consent Order, or readily ascertain the amounts that such persons are entitled to receive." 10 CFR 205.280. After reviewing the record compiled in each of the cases involved in this proceeding we have concluded that the implementation of Subpart V proceedings in each case is appropriate. We shall therefore assume jurisdiction over the Distribution of consent order funds supplied by the five firms.

Comments on the Proposed Distribution Process

Following the issuance of the November 4 proposed decision and order, several states submitted comments contending that distribution of consent order funds should be made by state governments rather than by the OHA because the states have the inherent power to take possession of unclaimed funds belonging to their citizens.(*3*) Generally, we agree with these commenters that the States can serve as effective conduits for the distribution of unclaimed settlement funds in appropriate cases. Indeed, in a previous case, we suggested that a portion of certain settlement moneys may be distributed through the states if substantial amounts remain after all meritorious claims have been satisfied. *See Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*). However, we have concluded that it would be premature to relinquish these funds to the states at this time. Unlike the circumstances in *Alkek*, the settlement fund in the present five cases totals only approximately $570,000 and it is conceivable that meritorious claims might exhaust the entire fund. (*9*) If we find that substantial amounts of settlement moneys remain at the conclusion of the first-stage refund procedures, we might consider designing a second-stage refund mechanism utilizing state governments in the five firms' marketing areas for the distribution of unclaimed funds. However, we decline to do so at the present.

Comments on the Required Standard of Proof for Overcharge Claims

We proposed in our November 4 determination that claimants who are resellers or who are involved in the production or distribution of goods or services be required to demonstrate that, during the period covered by the consent order, they would have kept their prices for petroleum products or goods and services at the same level had the alleged overcharges not occurred. In other words, we stated that a claimant should demonstrate that when it purchased covered products from its supplier, market conditions would not permit it to pass through the additional costs associated with the alleged overcharges. In addition, we suggested that a reseller of petroleum products must have maintained until January 28, 1981 a "bank" of unrecovered product costs in order to demonstrate that it did not subsequently recover these additional costs by increasing its prices. By the terms of the proposed decision and order, a purchaser who is an ultimate consumer and who is not engaged in the sale or goods or services would not have to make a showing that it absorbed any unlawful price increases.

Some parties who submitted comments suggested certain additional classes of claimants that might be excused from showing injury. The Transportation Group, an *ad hoc* organization of trade associations whose members are regulated transportation companies, asks to be included in the class of claimants not required to proffer proof that they absorbed alleged overcharges. The Transportation Group contends that any overcharges suffered by its members would have been channeled to customers by regulatory bodies or private contractual agreements controlling prices charged. Under regulations applicable to these companies, however, refunds are factored into fuel cost aspects of the rate-making system and refund benefits to members would therefore be passed through to customers. Accordingly, the Transportation Group contends that it should be included in the class of ultimate consumer claimants who need only demonstrate that they purchased a specific quantity of product which was sold by one of the five firms during the relevant time periods in order to qualify for refunds.

We have decided that the Transportation Group's proposal is meritorious because it will assist us in distributing refunds in an efficient, cost-effective and equitable manner. *See* 10 CFR 205.282. The office of Special Counsel has reviewed the operation of the agencies which regulate transportation companies and has determined that refunds are indeed factored into rate-making systems. *See* 46 FR 29499 (1981) at 29500–01. In addition, we noted in *Office of Special Counsel*, 9 DOE ¶ 82,545 (1982) (hereinafter cited as *Pennzoil*) that refunds to regulated utilities and to agricultural cooperatives will similarly affect the prices charged to customers. Agricultural cooperatives are owned by member-customers, and ultimate consumers of petroleum products purchased by the cooperative will therefore receive the benefit of refunds either as a price reduction or as a distribution at the close of the cooperative's fiscal year. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (hereinafter cited as *Tenneco*).

Consequently, we have concluded that refund applications from firms whose prices for goods or services are regulated by a government agency or by the terms of a cooperative agreement will not be required to show that they absorbed the alleged overcharges. Instead, those applicants should supply us with a full explanation of the manner in which refunds will be passed through to their customers in the form of lower prices or better service. In addition, distribution of refunds to these applicants will be conditioned on notice to the appropriate regulatory body or membership group.

We received other comments regarding the proposed standard of proof which ranged from assertions that the standard proposed was too lenient to assertions that the standard would be too difficult to meet. We continue to believe that "this inquiry into whether a claimant was injured in fact is most appropriate in a proceeding of this type where refunding moneys obtained through DOE enforcement proceedings is the primary focus." *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) at 85,051. In establishing the standard of proof that a claimant must meet, we must strike a balance between a level so low that it would grant windfall benefits to firms who had suffered no injury and a level so high that only a few large firms would have the resources necessary to prepare an application. With that balance in mind, we turn to comments concerning what particular proof of injury should be required of remaining claimants.

We suggested in our proposed decision that another group of purchasers in addition to ultimate consumers might be excused from documenting more than the fact that they purchased products from one of the five firms during the relevant periods of time. We stated that we would consider establishing a threshold level of purchases under which applicants—primarily small firms and individuals—would not be required to make a detailed showing of actual injury. In *Vickers* we set a purchase threshold of 50,000 gallons of motor gasoline per month. Firms with purchases below that level were permitted to claim a refund based upon that level of purchases without having to submit evidence concerning their banks of unrecouped product cost increases and prevailing market conditions which prevented them from passing through the alleged overcharges. In addition, firms in the *Vickers* case who purchased more than an average of 50,000 gallons per month were excused from the required showing that the effects of the alleged violation were not passed through, provided that they were willing to limit their refund claims to the 50,000 gallons per month level.

After careful consideration we have concluded that it is in the best interests of efficient resolution of these proceedings to establish a threshold level of purchases below which a claimant need not demonstrate injury. If we were to adopt a requirement that every applicant supply full documentation of its injuries, it would discourage parties with small claims from making a refund application since the expense of documenting the injury could well exceed the refund to be eventually gained. Therefore, we believe that it is appropriate to minimize the level of proof required from small businesses who purchased relatively small amounts of product from one of the five firms. Based on our experience in the *Vickers* proceeding we have decided to set the threshold figure at 50,000 gallons per month or 600,000 gallons annually. Firms with purchases in excess of the threshold figure also may be excused from submitting evidence that increased costs attributable to the alleged violations were not passed through to customers, provided that they limit refund claims to 50,000 gallons per month or 600,000 gallons annually.

Now that we have enumerated groups of customers which will not be required to demonstrate that they absorbed unwarrented price increases, we will focus on the type of proof required of those parties not classified as ultimate consumers, rate-regulated businesses, agricultural cooperatives, or small volume purchasers. Our tentative conclusion in the proposed decision and order that a firm must demonstrate injury by showing both that it had sufficient "banks" of unrecovered costs and that it was unable to pass on the alleged ovecharges due to market conditions was objected to by Western Petroleum Company (Western) and Missouri Self Service Gas Company (MSSG) which purchased product from Panhandle. Both of these commenters claimed that a showing of market conditions at the time of the alleged overcharges would be difficult to make. These two firms maintain that even if they did pass on the overcharges to their customers, they still might have suffered injury due to lowered sales volumes that resulted from higher prices. Western contends that the burden of obtaining market data for periods in the past might well outweigh the benefits to be gained through the refund process. Moreover, Western objects to the proposed difference in standards applicable to claims submitted by large and small-volume claimants.

The concerns which have been expressed over the proposed requirement that a claimant offer evidence concerning past market conditions appear to be based upon a misconception as to how thorough and conclusive a showing will be expected.

We do not believe that the firms who file applications will find this requirement to be as difficult to apply in practice as it might appear. As we stated in the proposed decision, we would expect a more complete evidentiary showing from, for example, a large integrated refiner than from a small retailer. Despite Western's claims that it is unfair to set a higher standard for larger business enterprises, it is our experience that larger firms are more likely to have maintained detailed records which could be marshalled to show how their pricing decisions were made. Furthermore, those larger firms have greater resources and will likely be claiming larger refund amounts. Therefore, though we are not in a position to set forth all of the ways in which a claimant could make a required showing of market

conditions, we have determined that we shall retain as an element of the refund process a requirement that firms seeking sizable refunds demonstrate that they did not pass through the effects of the five firms' alleged regulatory violations to their own customers.

In summary, with respect to applicants that purchased less than an average of 50,000 gallons per month or 600,000 gallons per year of the relevant Panhandle, PVM, Loveladdy, Armstrong, or Ethyl products during the period for which a refund is claimed or that limit refund claims to that amount (hereinafter referred to as small-volume purchasers), we will require only proof of purchase of the claimed volume of products purchased from the five firms. With respect to applicants claiming a refund for purchase volume greater than that amount (hereinafter referred to as large-volume purchasers), we will require a showing that the purchaser did not pass through the price increases to its own customers. Retailers and resellers who are claiming refunds on the basis of purchases exceeding the 50,000 gallon per month small claim threshold level should submit two types of data in order to make the required showing. They should submit data summarizing the applicant's unrecouped increased product costs (bank) for each calendar quarter for which the firm claims a refund. If the applicant used its banked costs to increase its selling price at a later date, such data should be included in the application and the firm's refund may be appropriately reduced. We note that even if a firm's bank was reduced to zero during the period covered by the Consent Order, it may nevertheless be possible for the firm to establish eligibility for a refund by showing that during the period, market forces reduced its sales and compelled the applicant to purchase and consequently to sell a smaller volume of relevant product with correspondingly lessened profits. In addition, they should submit any other types of available data showing that they were not able to increase their prices to pass through the alleged overcharges due to market conditions. Although we shall not engage in a time-consuming legal and factual analysis leading to a precise measure of damages, we wish to emphasize that the burden of establishing eligibility for a refund rests on the claimant.

Allocations of Refund Money

In *Vickers* we utilized a "pure" volumetric method of allocating refunds to claimants, *i.e.*, refunds were based solely on the proportion of product purchased by the applicant to the total amount of product sold by the supplier during the relevant audit period. Based on our experience in Subpart V cases since that time, however, we now believe that the adoption of the "pure" volumetric plan of distribution would not be the best mechanism for allocating the consent order funds in the present case. There are a number of factors leading to this conclusion. First, we note that the size of the monetary settlements which are involved in Subpart V proceedings are arrived at through negotiations involving the DOE and the firms charged with alleged regulatory violations. In *Pennzoil*, we noted that the size of the settlement fund is based not only upon the magnitude of the violations alleged by the government, but also upon other factors such as each party's views as to the probable length, expense, and outcome of litigation. In *Vickers*, the settlement fund was relatively large in proportion to the volume of product covered by the consent order and would therefore yield a significant per gallon refund. In *Pennzoil*, by contrast, the settlement fund was small in relation to the total volume of products involved, and successful claimants would have recovered a refund of only $.000375 per gallon if the settlement fund were distributed on a "pure" volumetric basis.

Because the size of the refund pool derived from consent orders is a negotiated issue, the amount of money available for distribution is likely to be less than the amount needed to make full restitution to injured claimants, as in the present instance. Where a "pure" volumetric refund distribution scheme is adopted, there is in effect an additional limitation on the amount of refund which can be distributed to a successful claimant because of the per gallon refund ceiling. In the event that a significant number of applicants fails to demonstrate the merits of their claims, the total amount of refunds made to successful claimants may be far less than the amount of the settlement funds available for distribution. We therefore believe that it is fully consistent with the restitutionary objectives of the present proceeding to distribute available funds by a method other than the *Vickers* "pure" volumetric distribution scheme. Accordingly, we will adopt an alternative means of distribution based on a modified version of the "pure" volumetric refund formula. *See, e.g., Pennzoil*, 9 DOE at 85,396–8.

We shall first establish a "floor" or minimum amount a successful claimant could receive which will assist a potential applicant in deciding whether or not to apply for a refund. In this proceeding the minimum amount that a successful claimant will recover can be determined by multiplying its total product purchases (in gallons) by a factor computed using the total amount of money available for distribution (*i.e.*, the relevant consent order amount) divided by the total sales (in gallons) by the relevant firm of all products covered by the individual Consent Order. However, after the minimum refund amount has been determined for each successful claimant, the OHA will also give consideration to the following factors in determining individual refunds: (i) the amount of interest accumulated in the escrow account since the DOE received settlement funds from each of the five firms; (ii) the number of qualified claimants, and the aggregate volume of their purchases from the firms as compared to the amount of products sold by these firms during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) the market conditions prevalent during the consent order period; (v) the claimant's position in the distribution chain, *i.e.* whether it is a refiner, reseller, or ultimate consumer; and (vi) the manner in which the claimant's business is governed by federal, state or local regulatory agencies or other relevant private contractual agreements, such as those affecting agricultural cooperatives. A weighing and balancing of these factors will enable us to further the restitutionary goals of Subpart V and the underlying statutory objectives.

Application for Refund Procedures

After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our Proposed Decision and Order we have concluded that: (i) the OHA has properly asserted jurisdiction over these cases pursuant to 10 CFR Part 205, Subpart V; (ii) the OHA has authority to implement the refund procedures set forth in this decision; and (iii) Applications for Refund should now be accepted from parties who purchased No. 2 fuel oil or motor gasoline from Panhandle, PVM, Loveladdy, Armstrong, or Ethyl. We shall now discuss the specific requirements for Applications for Refund that we have decided to adopt.

We have determined to accept Applications for Refund of a portion of the five firms' consent order funds filed within 90 days after the publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify which case it pertains to, by firm name and case number. If the applicant is not a direct purchaser from one of the five firms, it should indicate from whom the relevant product was purchased and indicate what basis the applicant has for its belief that the product which it purchased originated from Panhandle, PVM, Loveladdy, Armstrong, or Ethyl.

Any application for a refund in excess of $100 must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket room of the Office of Hearings and Appeals, Room 1111, Federal Building, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for

additional information concerning the application. All applications should conspicuously display the appropriate case name and number and should be sent to: Consent Order Refund Proceeding, [Case Name and Number]; Office of Hearings and Appeals, Department of Energy, 12th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20461. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following information should be included in each application filed by a purchaser of Panhandle, PVM, Loveladdy, Armstrong, or Ethyl products:

A. Each applicant should report its volume of purchases by calendar quarter for the period of time for which it is claiming that it was injured by the alleged overcharges;

B. Each applicant should specify how it used the product purchased from one of the five firms, *e.g.*, as a reseller or ultimate consumer;

C. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation for that product through January 27, 1981. It should furnish the OHA with quarter by bank calculations for the entire period.([19]);

D. The applicant must state whether it or any of its affiliates have filed any other Applications for Refund which might affect its eligibility for a refund;

E. The applicant must submit evidence to establish that it did not pass on the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

The applicant should report whether it is or has been involved as a party in other DOE enforcement proceedings or section 210 actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of the remainder, if any, of the consent order funds after all meritorious claims have been paid. Those comments can be divided into two groups. First, some comments contend that the Office of Hearings and Appeals lacks the statutory or regulatory authority to implement the proposed distribution. Secondly, some comments acknowledge that this Office possesses the authority to fashion such a restitutionary mechanism, but suggest alternatives to or modifications of our original proposal. In this Decision, we are not implementing the second-stage refund procedure. Such a step would be difficult to take before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the consent order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-state distribution scheme. Moreover, in the present cases claimants could assert claims which, if meritorious, would completely exhaust the consent order funds. However, in order for members of the public to be made aware of outstanding issues and be able to comment on them, we summarized and briefly addressed the comments received concerning the proposed second-stage refund procedures in *Vickers*, 8 DOE at 85,398–99. Many of the same parties who commented on the second-stage procedures proposed for the *Vickers* case submitted virtually identical comments in the present cases. We will not reiterate our discussion of these issues. We continue to seek additional comments on these issues. Comments regarding second-stage procedures in the present case should be submitted to the OHA Consent Order Refund Proceeding at the address listed above within 30 days of publication of this Decision and Order in the **Federal Register.**

It is therefore ordered that:

The refund amount provided by Panhandle Eastern Pipeline Company, PVM Oil Associates, Inc., Loveladdy Oil Company, Armstrong & Associates, and Ethyl Corporation will be distributed in the manner set forth in the foregoing Decision.

Dated: May 20, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(*1*) An audit of Century Refining, a wholly owned subsidiary of Panhandle Eastern Pipeline Company, revealed possible pricing violations with respect to Century's sales of motor gasoline in the States of Missouri and Iowa during the period November 1, 1973, through December 31, 1975. Included among Century's first purchasers during that period were Missouri Self Service Company, Oskey Gas & Oil Company, Mutz Oil Company, Midwest Oil Company, I. V. Cole Petroleum Company, E. L. Bride and Kerr-McGee Corporation. In order to settle all claims and disputes between Panhandle and the DOE regarding Century's pricing of motor gasoline, Panhandle and the DOE entered into a consent order on May 15, 1979, in which Panhandle agreed to remit $280,127.98 to the DOE. Notice of the consent order was published in the **Federal Register** on May 24, 1979. *See* FR 30153 (1979). Interested parties were invited to submit written notice of potential claims against the settlement fund. Notices of claims were received from Western Petroleum Company, I. V. Cole Petroleum Company, and Mutz Oil Company.

(*2*) On June 29, 1979, the United States Attorney for the Eastern District of New York filed a civil action under section 209 of the Economic Stabilization Act of 1970, as amended, 12 U.S.C. 1904 note, against PVM Oil Associates, Inc., Pasquale V. Mazzarulli, and Joseph V. DiMauro. United States v. PVM Oil Associates, Inc., Civil Action No. 79C 1697 (E.D. N.Y., filed June 29, 1979). The complaint alleged that during the period January 1, 1974, through July 31, 1975, the defendants were involved in a scheme to violate the Mandatory Petroleum Price Regulations by charging prices exceeding maximum lawful levels in sales of No. 2 fuel oil in Westchester County, New York. In order to resolve the issues raised in the lawsuit, the parties entered into a Consent Decree on June 29, 1979, in which the defendants agreed to remit $215,000 to the DOE in settlement of all claims raised in the lawsuit. The OE has been unable to identify any persons or firms that purchased product from PVM during the audit period.

(*3*) In its audit of Loveladdy the OE found possible regulatory violations with respect to the firm's sales of No. 2 fuel oil and motor gasoline in the State of Texas during the period November 1, 1973, through April 30, 1974. The OE has identified thirty-eight firms and individuals who were first purchasers of fuel oil and gasoline from Loveladdy during the period concerned. The DOE and Loveladdy entered into a consent order under which Loveladdy agreed to remit $25,000 to the DOE in settlement of all claims and disputes between the parties arising from the audit. The terms of the final consent order were published in the **Federal Register** on August 3, 1979. *See* 44 FR 45663 (1979). Interested parties were given an opportunity to comment on the terms of the consent order and to submit written notice of potential claims against the refund amount. The DOE received no claims in response to that notice.

(*4*) The OE's audit of Armstrong also revealed possible pricing violations with respect to Armstrong's sales of No. 2 fuel oil in the State of Texas during the periods June 13, 1973, through August 19, 1973, and November 1, 1973, through May 31, 1975. Fifty-one first purchasers of No. 2 fuel oil from Armstrong during these periods have been identified. In order to settle all claims and disputes between the parties regarding the sale of No. 2 fuel oil, Armstrong and the DOE entered into a consent order on July 13, 1979, in which Armstrong agreed to pay $35,700 to the DOE. Notice of the consent order was published in the **Federal Register** on August 3, 1979. *See* 44 FR 45661 (1979). Interested parties were invited to comment on the terms of the consent order and to submit notice of claims against the settlement fund. No claim was received in response to that notice.

(*5*) An audit of Ethyl revealed possible pricing violations with respect to the firm's sale of No. 2 fuel oil in the State of Texas during the period January 17 through May 13, 1974. Stinnes Oil & Chemical Company purchased all of the No. 2 fuel oil whose sales were the subject of the audit. Stinnes in turn sold this product to Gulf States Utilities. In order to settle all claims and disputes between Ethyl and the DOE regarding Ethyl's sales of No. 2 fuel oil, Ethyl and the DOE entered into a consent order on July 30, 1979, in which Ethyl agreed to remit $14,535 to the DOE. Notice of the consent order was published in the **Federal Register** on August 13, 1979. *See* 44 FR 47394 (1979). Interested parties were invited to submit written notice to the DOE of potential claims against the settlement amount. No claim was received by the DOE in response to that notice.

(*6*) Panhandle is both a "refiner" and a "reseller" of natural gas liquids and refined

petroleum products as those terms were defined in 10 CFR 212.31. However, since this proceeding involves alleged overcharges on the part of Panhandle's wholly-owned subsidiary, Century Refining, which is a reseller of motor gasoline, Panhandle will be treated as a reseller under the DOE pricing regulations for purposes of this proceeding. *See* 10 CFR 212.91.

(7) We have already discussed many of the comments regarding second-stage distribution procedures in *Vickers*, 6 DOE ¶ 82,597 (1981).

(8) We received comments from the States of Michigan, Idaho, and Oregon. The States of Oregon and Michigan contend essentially that the two-stage refund process should be abandoned and that a one-stage mechanism administered by the state governments should be substituted. In support of this proposal, the states contend that: (i) individuals filing application for refund under the OHA plan would have great difficulty establishing injury caused by the alleged regulatory violations and (ii) the proposed first stage would be unlikely to further the objectives of Subpart V proceedings. The State of Idaho, on the other hand, generally supports a two-stage distribution plan but proposes that states should distribute all funds remaining at the conclusion of the first stage.

(9) The cases presently before us involve circumstances that are materially different from those present in *Alkek*. In *Alkek* most of the settlement funds were obtained from producers or resellers of crude oil whose alleged regulatory violations fell into three major categories. The first category concerned producers' sales of "old" price-controlled crude as "new" or "stripper well" oil subject to less stringent controls. The second type of violations involved producers who allegedly miscalculated the prices of "old" oil which they sold. The third type involved resellers or brokers of crude oil who miscertified "old" crude oil. We observed that due to the nature of these violations and the operation of the Crude Oil Entitlements Program, 10 CFR 211.67, it was likely that few firms would be able to demonstrate during the first stage that they had been injured. Consequently, we predicted that there would be a large fund remaining at the conclusion of the first stage of the refund process.

In addition, it may be easier to ascertain the locale of injured parties in this case than it was in *Alkek*, where we determined that it was unlikely that the effects of crude oil violations could be localized due to the operation of the Entitlements Program. In particular, we noted that the operation of the Entitlements Program would have spread the effects of the violations among all refiners even if they had not purchased crude oil from any of the crude oil producers involved. Consequently, we proposed to disburse the remainder of the *Alkek* funds through a nation-wide mechanism.

(10) Those resellers who did not elect to maintain bank calculations for the period May 1, 1980 through January 27, 1981, do not, of course, have to supply bank calculations for that period. *See* 45 FR 27546 (1980).

[FR Doc. 82-14098 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2428/T356; PH FRL 2129-2]

Chlorothalonil; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodity citrus. This temporary tolerance was requested by Diamond Shamrock Corporation.

DATE: This temporary tolerance expires December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM(21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: Diamond Shamrock Corporation, Agricultural Chemicals Division, 1100 Superior Avenue, Cleveland, OH 44114, has requested, in pesticide petition PP 1G2428, the establishment of a temporary tolerance for the combined residues of the fungicide chlorothalonil (2,4,5,6,-tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in or on the raw agricultural commodity citrus at 0.1 part per million (ppm) as a result of pre-harvest applications. A food additive regulation permitting the residues of chlorothalonil and its metabolite in or on the raw agricultural commodity citrus oil at 10 parts per million (ppm) appears elsewhere in this issue of the Federal Register.

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 677–EUP–20 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Diamond Shamrock Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13980 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-274; PH FRL 2129-4]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions proposing establishment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities:

ADDRESS: Written comments to: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF–274]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, 703–557–1900.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received pesticide petitions proposing the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 1H5314. CIBA-GEIGY Corp., Agricultural Div., PO Box 11422, Greensboro, NC 27409. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, each expressed as metalaxyl, in connection with an experimental program involving the application of the fungicide to growing tomatoes with a tolerance limitation of 3.0 parts per million (ppm) in or on processed tomato products.

FAP 1H5314. CIBA-GEIGY Corp. Proposes amending 21 CFR Part 561 by establishing a regulation permitting the combined residues of metalazxl in connection with an experimental program involving the application of the fungicide to the growing corps with tolerance limitations of 5 ppm in or on wet tomato pomace; 20 ppm in or on dry tomato pomace; 1 ppm in or on soybean hulls, soybean meal, and soybean soapstock.

FAP 2H5343. Mobay Chemical Corp., PO Box 4913, Hawthorne Road, Kansas City, MO 64120. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazxol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the commodity milled wheat fractions, except flour at 4.0 ppm.

PP 2F2685. Mobay Chemical Corp. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the above fungicide (FAP 2H5343) in or on the commodities barley and wheat grain at 1.0 ppm; barley and wheat straw at 5.0 ppm; barley and wheat grain forage at 15.0 ppm; fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.5 ppm; fat, meat, and meat byproducts of poultry at 0.01 ppm; milk at 0.02 ppm; and eggs at 0.002 ppm. The proposed analytical method for determining residues is gas chromatography with scintillation spectrophotometry.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136); Sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–13822 Filed 5–25–82; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59068; TSN FRL No. 2130–8]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: June 10, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–59068]" and the specific TME number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notices contain information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the public reading room E–107.

TME 82–17

Close of Review Period. June 28, 1982.
Manufacturer. Confidential.
Chemical. (G) Unsaturated alkyl amino alkyl dioxolane.
USE/Production. (G) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >500 mg/kg and <1,000 mg/kg. Acute dermal: Neat[3]–743 mg/kg. Toulene-982 mg/kg.
Exposure. During sampling.
Environmental Release/Disposal. Disposal by EPA approved incinerator.

TME 82–18

Close of Review Period. June 26, 1982.
Manufacturer. Confidential.
Chemical. (G) Dihaloethylacetate.
USE/Production. Confidential. Prod. range: Confidential.
Toxicity Data. Acute oral: 470 mg/kg. Acute dermal: 1,558 mg/kg. Acute inhalation 16 parts per million (ppm).
Exposure. During sampling.
Environmental Release/Disposal. Disposal by EPA approved incinerator.

Dated: May 17, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82–13825 Filed 5–25–82; 8:45 am]

BILLING CODE 6560–50–M

[PP 8G2079/T373; PN FRL 2129–7]

EM Industries, Inc.; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for the combined residues of the growth regulator methyl 2-chloro-9-hydroxyfluorene-9-

carboxylate, methly 9-hydroxyflourene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers.

DATE: This temporary tolerance expires April 14, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of February 25, 1981 (46 FR 14047), announcing the renewal of a temporary tolerance for the combined residues of the growth regulator methly 2-chloro-9-hydroxyfluorene-9-caroxylate, methyl 9-hydroxyfluorene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers at 0.1 part per million (ppm). This temporary tolerance was issued in response to pesticide petition (PP 8G2079), submitted by EM Industries, Inc., Plant Protection Division, 5 Skyline Drive, Hawthorne, NY 10532

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit (21137–EUP–3), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. EM Industries, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 14, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–13024 Filed 5–25–82; 8:45 am]

BILLING CODE 6560–50–M

[PP 2G2659/T374E; PH FRL 2129–5]

Pendimethalin; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide pendimethalin and its metabolite in or on the raw agricultural commodities wheat grain and wheat straw. These temporary tolerances were requested by American Cyanamid Company.

DATE: These temporary tolerances expire April 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Division, P.O. Box 400, Princeton, NJ 08540, has requested, in pesticide petition PP 2G2659, the establishment of temporary tolerances for the combined residues of the herbicide pendimethalin [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[(1-ethylpropyl)amino]-2-ethyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodities wheat grain and wheat straw at 0.1 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 241–EUP–101 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 15, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–

534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: May 14, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-13823 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-273; PH-FRL 2130-6]

Oregon Department of Agriculture; Pesticide Petition

AGENCY: Environmental Protection Agency. (EPA).

ACTION: Notice.

SUMMARY: The Oregon Department of Agriculture has submitted a pesticide petition to EPA proposing to establish a tolerance for the combined residues of the insecticide carbaryl in or on the commodity oysters.

ADDRESS: Written comments to: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 40460.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF–273]" and the petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, 703–557–2386.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received a pesticide petition (PP 1F2554) from the Oregon Department of Agriculture, Agriculture Building, 635 Capitol St. N.E., Salem, OR 97310, proposing the establishment of a tolerance for the combined residues of the insecticide carbaryl (1-naphthyl-*N*-methylcarbamate) and its hydrolytic product 1-naphthol, in or on the commodity oysters at 0.25 part per million in accordance with the Federal Food, Drug, and Cosmetic Act. Proposed analytical method for determining residues is gas chromatography using an electron capture detector.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136))

Dated: May 12, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-14091 Filed 5-25-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Bank Holding Company; Notice of Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 18, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Ramapo Financial Corporation*, Wayne, New Jersey (extensions of credit and data processing activities; New York and New Jersey): To engage, through its subsidiary, RFC Services Corporation, in servicing loans and other extensions of credit for any person or company and in providing bookkeeping or data processing services for the internal operations of Ramapo Financial Corporation and its subsidiaries and storing and processing other banking, financial, or related economic data for other non-affiliated financial institutions. These activities would be conducted from an office of the subsidiary in Wayne, New Jersey, serving the New York City metropolitan area, primarily northern New Jersey.

Board of Governors of the Federal Reserve System, May 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-14290 Filed 5-25-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator

General Services Administration Advisory Board; Meeting

Notice is hereby given that the Facilities and Buildings Management subcommittee of the GSA Advisory Board will meet on June 10, 1982 from 10:00 a.m. to 4:30 p.m., in Room 5141–A, 18th and F Streets, NW, Washington, D.C. 20405. This session will be open to the public and will involve discussions of current management issues relating to the Public Buildings Service.

For further information, contact Roger C. Dierman, Deputy Associate Administrator (202) 523–1141.

Charles S. Davis, III,

Associate Administrator.

[FR Doc. 82-14314 Filed 5-25-82; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources Administration

National Council on Health Planning and Development; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1982:

Name: National Council on Health Planning and Development
Date and Time: July 8–9, 1982: 8:45 a.m.
Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

Open for entire meeting.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93–641, (2) the implementation and administration of Titles XV and XVI of Pub. L. 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: "Capital, Financial, Organizational Issues Facing Health Care Organizations in the 1980's;" status reports by Health Resources Administration officials; report of Subcommittee on Implementation and Administration; and public comment period.

Name: Implementation and Administration Subcommittee of the National Council on Health Planning and Development

Date and Time: July 8, 1982: 6:00 p.m.

Place: Room 525A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

Open for entire meeting.

Purpose: The objective of the Implementation and Administration Subcommittee is to study and make recommendations in the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HHS's implementation and administration on the effectiveness of Health Systems Agencies (HSA) and State Health Planning and Development Agencies (SHPDA); (2) the effectiveness of the interrelationships between health planning agencies and HHS, Central and Regional Offices; (3) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; (5) the review of the Council's responsibilities under section 1122 of the Social Security Act; and (6) the review of the Council's responsibilities related to proposed terminations and/or non-renewals of HSAs and SHPDAs under sections 1515(c) and 1521(b) of the PHS Act.

Agenda: Review of a section 1122(d)(2) case—Valley Care Center.

Anyone requiring information regarding the subject Council should write to or contact Mr. Paul Schwab, Executive Secretary, National Council on Health Planning and Development, Health Resources Administration, Room 10–27, Center Building, 3700 East-West Highway, Hyattsville, Maryland, 20782. Telephone (301) 436–7170.

Agenda items are subject to change as priorities dictate.

Dated: May 18, 1982.

Jackie E. Nylen,

Advisory Committee Management Officer, Health Resources Administration.

[FR Doc. 82-14262 Filed 5-25-82; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975) as amended most recently in pertinent part at 46 FR 26873, May 15, 1981), is amended to reflect the following changes in the National Cancer Institute (NCI): (1) Establish the Radiation Research Program (RRP) in the Division of Cancer Treatment (DCT), and (2) Revise the functional statement of the Division of Cancer Treatment to reflect this change.

These changes will consolidate all radiation research activities into a cohesive organization with unified management as well as provide a focal point for future initiatives in radiation research.

Section HN–B, Organization and Functions is amended as follows:

(A) Under the heading *National Cancer Institute (HNC),* make the following changes:

(1) Delete the statement for the *Division of Cancer Treatment (HNC8)* in its entirety and substitute the following:

Division of Cancer Treatment (HNC8). (1) Plans, directs and coordinates an integrated program of intramural, extramural and clinical cancer treatment research as well as research conducted in cooperation with other Federal agencies with the objective of curing or controlling cancer in man by utilizing treatment modalities singly or in combination; (2) administers a total drug development program encompassing all phases from drug acquisition up to and including clinical trials; (3) serves as the national focal point for information and data on experimental and clinical studies related to cancer treatment and for the distribution of such information to appropriate scientists and physicians.

(2) After the statement for the *Biological Response Modifiers Program (HNC68),* insert the following statement for the *Radiation Research Program (HNC69)*:

Radiation Research Program (HNC69). (1) Plans, develops, administers, and evaluates an extramural radiation research program; (2) establishes program priorities, allocates resources, maintains project integration, evaluates program effectiveness and represents the program area in management and scientific decision-making meetings in the National Cancer Institute; (3) coordinates the research program activities with related programs elsewhere in the NCI and NIH with other Federal agencies and with national and international research organizations; (4) provides scientific support upon request to the Director, DCT, to the Director of NCI and other Institutes, to the Director, NIH, and to the DCT Board of Scientific Counselors and the National Cancer Advisory Board on matters pertaining to radiation research; and (5) provides a focal point within NIH for extramural investigators nationally and internationally on radiation research.

Dated: May 17, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-14350 Filed 5-25-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–82–865]

Property Disposition Committees; Redelegation of Authority

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of correction of redelegation of authority.

SUMMARY: On May 5, 1982 a Notice of Redelegation of Authority was published at 47 FR 19471 revising the procedures governing Property Disposition Committees and to reserve to the Assitant Secretary for Housing-Federal Housing Commissioner or his/

her designee the authority to concur with, reject, modify or suspend dispositions authorized by a Committee. The Summary of the Notice states that the redelegation of authority is issued, among other things, to abolish the Headquarters Committee. That statement is erroneous. The Department intends to abolish the Headquarters Property Disposition Committee; however, this will not be accomplished until 24 CFR Part 290 is appropriately amended. Therefore, the reference in the Summary to the abolition of the Headquarters Committee is deleted. The effective date of the Notice is shown as March 17, 1982. This is also incorrect. The effective date of the redelegation of authority is changed to May 5, 1982. In addition, Section E, by which the redelegation of authority published on May 5, 1982 purported to revoke prior redelegations is deleted, since it would leave unclear the status of the Headquarters Committee which will remain technically in existence until abolished by impending amendment of Part 290.

FOR FURTHER INFORMATION CONTACT: Marvin T. Hilman, Director, Property Disposition Division, Office of Multifamily Financing and Preservation, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–7220. This not a toll-free number.

(Secretary's delegation of authority to redelegate published at 36 FR 5005, March 16, 1971)

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: May 20, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-14258 Filed 5-25-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant:

a. Name: VTN Oregon, Inc.

b. Address: 25115 SW Parkway Wilsonville, OR 97070

2. *Type of permit:* Scientific Research

3. *Name and number of animals:* Northern sea otter (*Enhydra lutris*)–60

4. *Type of Activity:* Capture, mark and release

5. *Location of Activity:* Bristol Bay, Aleutian Islands, Alaska from Cape Mordvinof to Cape Leontovich

6. *Period of Activity:* One year

The purpose of this application is to capture by tangle nets and underwater capture devices, mark 50 animals with colored cattle tags and 10 animals with radio transmitters, and collect fecal samples to determine foraging behavior and diet. Animals are to be released within 4 hours of capture.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2–9155. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203, on or before June 25, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this notice are summaries of those of the applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 605, 1000 North Glebe Road Arlington, Virginia.

Dated: May 21, 1982.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-14349 Filed 5-25-82; 8:45am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for Permit

Notice is hereby given an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Parts 18 and 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish ans wildlife permits (50 CFR Parts 17 and 217–222).

1. *Applicant:*

a. Name: Envirosphere Company (P305).

b. Address: OMNI Building, 400 112th Avenue, N.E., Bellevue, Washington 98004.

2. *Type of Permit:* Scientific research/ Scientific Purposes.

3. *Name and Number of Animals:*

An unspecified number of unidentified marine mammals which may include the following species:

Bearded Seal—*Erignathus barbatus*
Blue Whale—*Balaenoptera musculus*
Bowhead Whale—*Balaena mysticetus*
Dall's Porpoise—*Phocoenoides dallii*
Fin Whale—*Balaenoptera physalus*
Gray Whale—*Eschrichtius robustus*
Harbor Seal—*Phoca vitulina*
Humpback Whale—*Megaptera novaeangliae*
Killer Whale—Orcinus orca
Spotted Seal—*Phoca largha*
Minke Whale—*Balaenoptera acutorostrata*
Northern fur Seal—*Callorhinus ursinus*
Northern Sea Lion—*Eumetopias jubatus*
Ribbon Seal—*Phoca fasciata*
Ringed Seal—*Phoca hispida*
Sei Whale—*Balaenoptera borealis*
Sperm Whale—*Physeter catodon*
Beluga Whale—*Delphinapterus leucas*
Walrus—*Odobenus rosmarus*

Because of the uncertainty in the number or species of animals that may be encountered, it is not possible to identify the maxumum number and frequency of animals that may be harassed.

4. *Type of Take:* The Applicant requests a permit to cover unintentional harassment incidental to aerial and shipboard surveys during research to determine marine mammal usage of the study area. Harassment is not a predetermined component of this study; however, verification of species identification, group size, or behavioral acts observed during the survey may unintentionally result in harassment.

5. *Location of Activity:* Navarin Basin, Bering Sea.

6. *Period of Activity:* 24 months.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on the portion of this application dealing with cetaceans and pinnipeds other than walrus should be

submitted to the Assistant Adminsitrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 25, 1882. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the assistant administator for Fisheries. Comments, views or requests for a public hearing on that portion of the application dealing with walrus should be submitted to the Director, Fish and Wildife Service,U.S. Department of the Interior, Washington, D.C. 20240.

All statements and opinions contained in the application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service or the Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehave Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and

Director, Fish and Wildlife Service, U.S. Department of the Interior, 1000 Glebe Road, North Arlington, Virginia.

Dated: May 20, 1882.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-14264 Filed 5-25-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Henry Mountain Resource Area, Utah; Designation of Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of certain public lands in the Henry Mountain Resource Area, Richfield District, Utah, as Areas of Critical Environmental Concern.

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of 1976 (Sec. 202(c)(3)) and 43 CFR 1601 the following areas are designated as areas of critical environmental concern:

North Caineville Mesa

All Federal lands above the Mesa Rim located in:

T. 25 S., R. 8 E. SLBM,
Secs. 12, 13, and 24.
T. 28 S., R 9 E. SLBM,
Secs. 4, 5, 7, 8, 9, 16, and 19.

Approximate acreage 2,200.

South Cainville Mesa

All Federal lands above the Mesa Rim located in:

T. 28 S., R. 9 E. SLBM,
Sec. 33.
T. 29 S., R. 8 E. SLBM,
Secs. 1, 12, 13, 14, and 24.
T. 29 S., R 9 E. SLBM,
Secs. 5, 6, 7, 8, 17, 18, and 19.

Approximate acreage 4,200.

Beaver Wash Canyon

All Federal lands located below the Canyon Rim located in:

T. 29 S., R. 12 E. SLBM,
Secs. 13, 24, 25, 26, 34, and 35.
T. 29 S., R. 13 E. SLBM,
Secs. 7, 18, and 19.

Approximate acreage 4,800.

The three designated areas total approximately 11,200 acres in Wayne and Garfield Counties, Utah. The identification and designation of the areas listed above were done in conjunction with the preparation of a management framework plan for the Henry Mountain Planning Area. Following this designation, the Bureau of Land Management will prepare special management plans which will contain protective stipulations needed to safeguard the special resource values identified for each area. The multiple use management concept will still be employed to identify allowable compatible resource uses within the defined ACEC boundaries. Revision of the ACEC designation will require a plan amendment, including environmental analysis and public comment, through the planning process.

A copy of the Henry Mountain MFP is available at the Richfield District Office 150 East 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: Donald L. Pendleton at the above address or telephone (801)896-8221.

Effective date: June 1, 1982.

Dated: May 18, 1982.

Roland G. Robison,

State Director.

[FR Doc. 82-14003 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-09516]

Idaho; Termination of Proposed Withdrawal and Reservation of Lands

May 17, 1982.

Notice of an application, serial number I-09516, for withdrawal and reservation of lands was published as Federal Register Document No. 58-6671 on page 6379 of the issue for August 20, 1958. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 7:45 a.m., on June 21, 1981, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

Kaniksu National Forest

T. 60 N., R. 1 E.,
Sec. 19, lots 1 and 2.

The area described aggregates 79.53 acres in Bonner County.

Eugene E. Babin,

Acting Chief, Lands Section.

[FR Doc. 82-14180 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Interim final findings on extent of Mower Lumber Company's valid existing rights to conduct underground coal mining operations in the Upper Shavers Fork Subunit of the Monongahela National Forest in West Virginia.

SUMMARY: The Director, Office of Surface Mining Reclamation and Enforcement (OSM) has found that the Mower Lumber Company ("Mower") possesses valid existing rights (VER), and to that extent, its proposed underground coal mining operations in the Monongahela National Forest are not prohibited or limited by section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)). 45 FR 52467 (August 7, 1980) and 45 FR 61798 (September 17, 1980). The notice of that finding did not include a determination of the geographical extent of Mower's VER. Today's notice defines the geographical extent of Mower's VER.

DATES: Effective Date: May 20, 1982. Written comments: Accepted until 5:00 p.m. E.D.T. on June 25, 1982.

ADDRESSES: Written comments must be mailed to: Administrative Record R&I-34, Office of Surface Mining, Room 5315-L, South Interior Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Written comments may be hand carried to: Office of Surface Mining, Room 239, South Interior Building, 1951 Constitution Avenue NW., Washington, D.C. 20240

or

Office of Surface Mining, Room 5315, 1100 L Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: William Larkin, Office of the Solicitor, Department of the Interior, 18th and C Street NW., Washington, D.C. 20240, Phone: (202) 343-4591.

SUPPLEMENTARY INFORMATION

I. Procedural Matters.
II. Background.
III. Discussion of Decision.

I. Procedural Matters

A. Public Meetings

Representatives of OSM will be available to meet during the comment period at the request of members of the public to receive their recommendations and comments concerning the Director's finding. In order to schedule or attend such meetings, contact the individual listed under "FOR FURTHER INFORMATION CONTACT." OSM representatives will be available for these meetings between 9 a.m. and 4 p.m. local time, Monday through Friday, excluding holidays.

B. Public Comments

Written and oral comments should be as specific as possible. Comments not pertaining to those issues proposed here cannot be considered under this rulemaking. OSM appreciates any and all comments, but those most useful and likely to influence decisions on these findings will be those which include citation to legislative history, case law, technical literature or other relevant reasons for any given recommendation.

All written comments must be received by OSM by 5:00 p.m. e.d.t. on the date the comment period closes. OSM cannot ensure that written comments received after that hour, or delivered during the comment period to locations other than those specified above, will be considered and included in the Administrative Record. Notices of meetings, summaries of all meetings and telephone conversations, and all public comments received will be made available for public review in the Office of Surface Mining at the address noted above. Following the close of the public comment period, OSM will publish any appropriate changes to the decision announced here. If there is no need for further action by OSM, no further notice will be published, and the Director's decision as announced today will become final.

II. Background

On August 7, 1980, OSM published at 45 FR 52467 the preliminary finding of the Director that Mower has VER, as that term is used in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)), at five mines located in the Monongahela National Forest in Randolph County, West Virginia. In the explanation of that preliminary finding, OSM solicited public comments on the substance of the finding and specifically solicited information on methods of determining the geographical extent of the VER.

Comments on this proposal were received from Mower and the West Virginia Highlands Conservancy. The information submitted did not provide a basis for any substantive change in the Director's proposed finding.

Therefore, the Director on September 17, 1980 (45 FR 61798), published his decision that Mower possesses valid existing rights at five mines known as Linan Nos. 1, 2, and 3 and Mower Nos. 1 and 2. However, because the review of evidence which would lead to a determination of the geographical extent of VER had not yet been completed, the decision reserved the right to define these parameters in a supplemental finding. The September 17, 1980 decision allowed Mower, upon compliance with all permitting requirements of appropriate State, Federal, and local authorities, to commence production at the five mines involved without a compatability determination, as may otherwise have been required under section 522(e)(2) of the Act for mining in national forests. The decision published today announces the Director's determination of the geographical extent of Mower's VER.

III. Discussion of Decision.

The following letter reflects the Director's decision in this matter and has been forwarded to the addressee.

Richard A. Flye, Esq.,
McKenna, Conner & Cuneo, 1575 I Street, NW., Washington, D.C. 20005

Dear Mr. Flye: I have reached a decision on the geographical extent of the valid existing rights (VER) of your client, the Mower Lumber Company, under section 522(e) of the Surface Mining Control and Reclamation Act of 1977, with respect to Mower's existing and planned underground mining activities in the Upper Shavers Fork Subunit of the Monongahela National Forest, in Randolph County, West Virginia. Our letter to you on this subject published in the Federal Register on September 17, 1980 (45 FR 61798), found that Mower had valid existing rights at five separate underground sites, but reserved until later any determination of the geographic extent of those rights. The five sites are known as: Linan Number 1 (also known as Enviro Number 3), Linan Number 2 (Enviro Number 2), Linan Number 3, (Enviro Number 6), Mower Number 1, and Mower Number 2 (Enviro Number 2).

My finding that Mower had VER at these five sites included a determination that Mower had obtained or had made a good faith effort to obtain all required permits prior to August 3, 1977. "Required permits" included those issued by the West Virginia Department of Mines, the West Virginia Department of Natural Resources (Water Division), and the Forest Service, U.S. Department of Agriculture. Although Mower's intended mining activities in the subject area may extend over a period of 60 years, OSM believes that in the early 1970's neither West Virginia nor the Forest Service required applicants to specify the ultimate geographical extent of their proposed mining operations. Since the company was never required to precisely define the geographical extent of its ultimate mining operations, or to precisely establish the boundaries of the coal seams it intended to mine, I believe it would be unreasonable to now penalize Mower for these omissions.

Of course, my finding that Mower had VER in no way affects Mower's obligation to comply with the performance standards and other requirements of the Act and of all applicable regulations thereunder.

Accordingly, I conclude that Mower Lumber Company has valid existing rights to the coal seam or seams it proposed to mine from the five portals identified above. While this decisions does not restrict the number of location of portals from which Mower may mine these seams, the opening of any portal locations not identified in permit applications submitted prior to August 3, 1977, or currently in operation must be approved through new or amended permits by the Regulatory Authority. Further, I wish to emphasize that Mower, rather than the Regulatory Authority, must demonstrate that any new portal is, in fact, intended for mining the appropriate coal seam.

This decision does not constitute agreement with, or a favorable decision on all of the statements and arguments in Mower's request, nor does it affect Mower's obligation to comply with the permit and performance standards of the ???? and all regulations thereunder. The decision means only that the Mower need not seek a determination of compatibility pursuant to section 522(e)(2) of the Surface Mining Act and 30 CFR 701.12(c) prior to commencing operations on the effected coal seam(s) within the boundaries of the Upper Shavers Fork Subunit of the Monongahela National Forest.

If public comments concerning this decision cause me to reconsider the contents of this letter, I will send an additional letter to you and publish a further notice in the Federal Register.

Dated: May 20, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-14067 Filed 5-25-82; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier; Agricultural Cooperative Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: May 21, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Ag. Carriers, Inc.
(2) P.O. Box 2460, Leesburg, FL 32748
(3) 5501 South Highway 441, Leesburg, FL 32748
(4) Michael Pregmon, Jr., P.O. Box 2460, Leesburg, FL 32748

(1) Gold Kist Inc.
(2) P.O. Box 2210, Atlanta, GA 30301
(3) Highway 71 South at 62, Fayetteville, AR 727.1
(4) William Conner, P.O. Box 1847, Fayetteville, AR 72701

(1) Rockingham Poultry Marketing Cooperative, Inc.
(2) Broadway, VA 22815
(3) Broadway, VA 22815
(4) June M. Fahrney, P.O. Box 117, Timberville, VA 22853

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14046 Filed 5-25-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79793. By decision of May 17, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to New Mexico Supply Truck Division, Inc., of Albuquerque, NM, of Certificate No. MC-146562 (Sub-No. 2) issued January 23, 1981, to Victor L. Mathis, d.b.a. Lobo Leasing Company, of Albuquerque, NM., authorizing: *petroleum products* and *drywall products*, in packages or containers, between points in NM, on the one hand, and, on the other, points in CA. Representative: James C. Ash, 2524 Vermont NE, Albuquerque, NM, 87110, Phone (505) 296-7511. TA lease is not sought. Transferee is not a carrier.

MC-FC-79804. By decision of May 17, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to CLARK'S BUS SERVICE, INC., of Red Lodge, MT, of Certificate No. MC-129131 (Sub-No. 1), issued to AMOS C. CLARK, also of Red Lodge, MT, which authorizes the transportation of *passengers and their baggage*, over regular routes, between Red Lodge, MT, and Twin Lakes and Gardner Headwalls (Park County), WY, over U.S. Hwy 212, serving no intermediate points. Representative: John W. Clark, P.O. Box P, Red Lodge, MT 59068.

Note.—Transferee is not a carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14243 Filed 5-25-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 258]

Motor Carriers; Permanent Authority Decisions; Removals; Decision-Notice

Decided: May 19, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled

motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,
Secretary.

MC 45539 (Sub-2)X, filed May 6, 1982. Applicant: INTERNATIONAL FORWARDING SYSTEMS, INC., d.b.a. ATLAS MOVING VANS, 180 Atlantic Avenue, Garden City Park, NY 11040. Representative: Gary Hall (same address as applicant). Lead certificate, broaden to "household goods and furniture and fixtures," from household goods.

MC 60086 (Sub-39)X, filed May 10, 1982. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul Street, Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Subs 19 and 21F, broaden: to radial authority (Sub 19); and to "such commodities as are dealt in by manufacturers and distributors of automotive parts and equipment" from shock absorbers (Sub 21).

MC 105774 (Sub-17)X, filed May 10, 1982. Applicant: JOHNSON TRUCK LINE, INC., Jct US Hwy 281 & US Hwy 24, Box 403, Osborne, KS 67473. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601. Sub 10: (1) broaden iron and steel articles to "metal products" (part 1), bentonite clay and lignite coal (except in bulk) to "ores and minerals, clay, concrete, glass or stone products, and coal and coal products" (part 2), lignite coal (except in bulk) to "coal and coal products" (part 3), and wrought iron pipe to "metal products" (part 4); (2) remove the facilities limitations; (3) change one-way to radial authority; and (4) broaden Sterling and Rock Falls, IL, to Whiteside County, IL (part 1), and Blue Island, Evanston and Chicago, IL to Chicago, IL (part 4).

MC 117592 (Sub-4)X, filed May 12, 1982. Applicant: GERALD L. KRAMER, Route #4, Quakertown, PA 18951. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Subs 1, 2, and 3: (1) broaden cinders to "clay, concrete, glass or stone products, waste or scrap materials not identified by industry producing, and pulp, paper and related products", Sub 1, and cast stone products to "clay, concrete, glass or stone products," Sub 3; (2) remove facilities limitations, Sub 3; (3) change one-way to radial authority, Subs 1 and 3; and (4) broaden cities to county-wide authority: Allentown, PA (Lehigh and Northampton Counties), Riegelsville, PA (Bucks County), and points in NJ within 25 miles of Riegelsville, PA (Warren, Hunterdon, Somerset, Morris and Mercer Counties), Sub 2; and Dallastown (York County), PA (York County) and Hilltop Township (Bucks County), PA (Bucks County), Sub 3.

MC 136674 (Sub-1)X, filed May 10, 1982. Applicant: BAY AREA FORWARDERS, INC., 865 Isabella St., Oakland, CA 94607. Representative: Thomas M. Loughran, 100 Bush St., 21st Fl. San Francisco, CA 94104. Lead certificate: Remove restriction which limits transportation to pickup and delivery service incidental to packing or unpacking of shipments having a prior or subsequent movement in containers beyond the points authorized.

MC 140563 (Sub-56)X, filed May 7, 1982. Applicant: W.T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Subs 1, 2, 7, 8, 10F, 12F, 15F, 19F, 20F, 21F, 24F, 28F, 29F, 35F, 36F, 37F, 40F, 44F, 46F, 50F and 53F. Broaden: Subs 1 and 2, advertising matter and newspapers supplements, when moving in mixed loads/same vehicle with advertising matter, to "printed matter"; Subs 7, 12 and 40, foodstuffs, in containers equipped with mechanical refrigeration; part (1), pretzels and malt beverages and part (2), materials, equipment and supplies used in the manufacture/distribution of those commodities, to "food and related products"; Subs 8, 15, 19, 29, 36 and 37, part (1), newsprint paper, groundwood paper, woodpulp, paper, paper products and pulpboard boxes (except corrugated), and part (2), waste newspaper, core and materials, equipment and supplies used in the manufacture/distribution of commodities in part (1), except in bulk, and Sub 46, paper and paper products, to "pulp, paper and related products"; Sub 10, part (1), molded expanded polystyrene and part (2), materials/equipment used in manufacture/distribution of molded expanded polystyrene, except in bulk, to "rubber and plastic products"; Subs 20, 21, 24, 35 and 44, part (1), insulating products and materials, fibrous glass products and materials, mineral wool, mineral wool products and materials, glass fibre rovings, yarn and strands, glass fibre mats and mattings, fibreglass mineral wool insulation, flexible air ducts, except in bulk, and part (2), materials, equipment, supplies used in the manufacture/distribution of commodities in part (1), except in bulk, to "clay, concrete, glass or stone products, and pulp, paper and related products"; Sub 28F, copper tubing, to "metal products"; Sub 53F, part (1), cleaning and polishing compounds, textile softeners, lubricants, deodorants, disinfectants, hypochlorite solutions, paints and plastic bags, and filters, except in bulk, and part (2), materials, equipment, supplies used in the manufacture/distribution of commodities in part (1), except in bulk, to "chemicals and related products, petroleum, natural gas and their products, rubber and plastic products, and filters (except in bulk)"; to radial authority in all but Subs 20, 21, 24 and 44; Sylacauga to Talladega County, AL (Sub 1); Morrow Facilities to Clayton County, GA, (Sub 2); Port of New Orleans to Orleans Parish, LA (Sub 7); Calhoun facilities to McMinn County, TN (Subs 8 and 15); Decatur facilities to DeKalb County, GA (Sub 10); Lancaster to Lancaster County, PA (Sub 12); Williamstown Junction to Gloucester County, NJ (Sub 20); Mountaintop facilities to Luzerne County, PA (Sub 24); Albany facilities to Dougherty County, GA (Subs 29 and 40); Memphis facilities to Shelby County, TN (Sub 35); facilities-Chattanooga to Hamilton County, TN and Cleveland to Bradley County, TN (Sub 36); Monroe and West Monroe facilities to Ouachita Parish, LA (Sub 37); facilities-Athens to Clarke County, GA; Atlanta to Fulton County, GA; Chamblee to DeKalb County, GA (Sub 44); St. Marys to Camden County, GA (Sub 46); facilities-Conyers, to Rockdale County, GA; Cochran to Bleckley County, GA; Crawfordsville to Montgomery County, IN (Sub 50); and Joliet facilities to Will County, IL (Sub 53); remove restrictions: against transportation of traffic originating at/

destined to facilities/points (Subs 7, 8, 20 and 21); against transportation of traffic moving for account of named shippers and to transportation of shipments having subsequent movement by water (Sub 7).

MC 148181 (Sub-3)X, filed May 13, 1982. Applicant: SALEM TRUCKING CO., R.D. No. 1, Franklin, ME 14634. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Subs 1F and 2F: (1) broaden the commodity description in 1F to "lumber and wood products" from lumber and lumber products, and in 2F to "metal products" from pipe, pipe fittings, conduit couplings (except commodities in bulk); and (2) broaden the territorial descriptions to between points in the U.S. under continuing contract(s), with a named shipper.

MC 142864 (Sub-32)X, filed May 10, 1982. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646, Representative: Philip B. Cochran, 50 West Broad St., Columbus, OH 43215. Sub-No. P30X permit: broaden from animal feed, materials and supplies, except commodities in bulk, to "food and related products, except commodities in bulk", part (5).

[FR Doc. 82-14240 Filed 5-25-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applicants may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP4-178

Decided: May 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 134426 (Sub-9), file May 10, 1982. Applicant: McCORT DRIVE-A-WAY, INC., P.O. Box 5057, Jacksonville, FL 32207. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632-2300. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161897, filed May 10, 1982. Applicant: GORDON WETTER, P.O. Box 230, Delano, MN 55328. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161937, filed May 10, 1982. Applicant: JOHN POTTS d.b.a. DENMARK EXPRESS, Route 6, Townhall Rd. Green Bay, WI 54301. Representative: Nancy J. Johnson, 103 East Washington, St., Box 218, Crandon, WI 54520, (715) 478-3341. Transporting (1) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, and (2) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Volume NO. OP4-181

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 157687 (Sub-1), filed May 12, 1982. Applicant: COUNTRY WIDE TRUCKING, INC., 18520 Kishwaukee Valley Rd., Woodstock, IL 60098. Representative: G. J. Balek (same address as applicant), (815) 568-8344. Transporting, for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 161927, filed May 11, 1982. Applicant: A & S DELIVERY SERVICE, INC., 30 Main St., Ashland, MA 01721. Representative: George C. O'Brien, 342 Wild Harbor Rd., N. Falmouth, MA 02556, (617) 563-9345. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in MA, ME, NH, VT, RI, CT, NY and NJ.

MC 161977, filed May 13, 1982. Applicant: W. G. FRAZIER & SON, INC.,

1500 S. Zarzamora—Room 110, San Antonio, TX 78207. Representative: W. G. Frazier, Jr., (same address as applicant), (512) 226–1411. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161987, filed May 13, 1982. Applicant: GALE ENTERPRISES, P.O. Box 62, Greencastle, PA 17225. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4–183

Decided: May 16, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 161396, filed May 10, 1982. Applicant: L & N TRANSPORT, INC., 6540 Franklin, St., Lincoln, NE 68506. Representative: Betty J. Lautenschlager ((same address as applicant), (402) 483–6318. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs) *agricultural limestone and fertilizers, and other soil conditioners*, between points in the U.S. (except AK and HI).

Volume No. OP4–185

Decided: May 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 161676, filed April 26, 1982. Applicant: ROBERT AND SYLVIA BYRNES SR., d.b.a. R & S TRUCKING, 3914 Meridian Rd. SE., Olmpia, WA 98503. Representative: Robert H. Byrnes Sr. (same address as applicant), (206) 491–4592. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161966, filed May 14, 1982. Applicant: JERRY J. WOOD, 804 Gail, P.O. Box 1894, Springdale, AR 72764. Representative: Jerry J. Wood (same as address as applicant), (501) 756–1343. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5–113

Decided: May 17, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 161866, filed May 7, 1982. Applicant: KENNETH L. MURPHY/VIVIAN M. TADINA, d.b.a. K AND V TRUCKING, 980 Fern Ridge Rd., P.O. Box 58, Stayton, OR 97383. Representative: Vivian M. Tadina (same address as applicant), (503) 769–6221. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

MC 161869, filed May 7, 1982. Applicant: NIPPON EXPRESS U.S.A., INC., 645 Fifth Ave., New York, NY 10022. Representative: Harry A. Gavalas, 127 John St., New York, NY 10038, 212–344–2083. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161918, filed May 10, 1982. Applicant: ANNA MOUDREE, JESSIE CLARK AND JUNE BECKER, d.b.a. TOTAL TRUCKING SERVICES, E. 6420 Mallon, Spokane, WA 99206. Representative: William E. Seliski, 2 Commerce St., P.O. Box 8255, Missoula, MT 59807, (406) 543–8389. To operate as a broker of *general commodities* (except household goods) between points in the U.S. (except AK and HI).

Volume OP5–115

Decided: May 18, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 96339 (Sub-0), filed May 11, 1982. Applicant: ARROW MOVING AND STORAGE COMPANY, INC., 1702 Pacific Avenue, Cheyenne, WY 82007. Representative: James E. Ottoes, 314 Lake Place, Cheyenne, WY 82007, (307) 635–5233. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in CO, ID, MT, NE, ND, SD, UT, and WY.

MC 152228 (Sub-1), filed April 26, 1982. Applicant: JOHN H. CLEGG, d.b.a. CLEGG MOBILE HOME SERVICE, 4301 Houston Hwy, P.O. Box 4470, Victoria, TX 77903. Representative: John Clegg (same address as above), (512) 578–0291. Transporting *mobile homes* between points in Victoria, Refugio, Goliad, De Witt, Lavaca, Jackson, and Calhoun Counties, TX, on the one hand, and, on the other, points in the U.S. (except HI).

Volume OP5–117

Decided: May 19, 1982.

By the Commission, Review Board No. 2, Members Krock, Joyce, and Dowell.

MC 161988, filed May 13, 1982. Applicant: TONY HICKS TRUCKING, P.O. Box 122, Ovando, MT 59854. Representative: Tony Hicks (same address as applicant), (406) 793–5665. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in ID, MT, ND, SD, WA, MN, and WY.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14697 Filed 5-25-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier, Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC

Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–173

The following applications were filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620; Philadelphia, PA 19106.

WC 1344 (Sub-II–3TA), filed April 13, 1982. Applicant: LOCKWOOD BROTHERS, INC., P.O. Box 564, Hampton, VA 23669. Representative: Keith G. O'Brien, 1729 H St., NW., Washington, DC 20006. Water, contract: *Articles exceeding 19 feet in height, or 12 feet in width, or 90 feet in length, or 100 net tons in weight, component parts thereof, and and related equipment, between the port of Hampton Roads, VA, and ports and points on the James River, on the one hand, and, on the other, ports and points on the Atlantic Coast and tributary waterways from ME to FL, including the Hudson River and the NY State canal system,* under continuing contract(s) with the Power Authority of the State of NY, for 180 days. Supporting shipper(s): Power Authority of the State of NY, P.O. Box 215, Buchanan, NY 10511.

WC 1344 (Sub-II–4TA), filed April 30, 1982. Applicant: LOCKWOOD BROTHERS, INC., P.O. Box 564, Hampton, VA 23669. Representative: Keith G. O'Brien, 1729 H St., NW., Washington, DC 20006. Water, contract: *Articles exceeding 19 feet in height, or 12 feet in width, or 90 feet in length, or 100 net tons in weight, component parts thereof, and related equipment,* between Indian Point, NY and Charleston, SC, under continuing contract(s) with the Power Authority of the State of NY, for 180 days. Supporting shipper(s): Power Authority of the State of NY, P.O.B. 215, Buchanan, NY 10511.

MC 142723 (Sub-II–6TA), file May 10, 1982. Applicant: BRISTOL CONSOLIDATORS, INC., 108 Riding Trail Lane, Pittsburgh, PA 15215. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract; irregular: Such commodities as are dealt in or used by retail and wholesale grocery and food business houses* between Rostraver Township, Westmoreland County, PA and Summit Township, Butler County, PA on the one hand, and on the other, points in the US, under a continuing contract(s) with Fox Grocery Co., Monroeville, PA for 270 days. Supporting shipper: Fox Grocery Co., 4099 William Penn Hwy., Suite 600, Jonnet Bldg., Monroeville, PA 15146.

MC 142873 (Sub-2–2TA), file May 11, 1982. Applicant: D & W TRUCK LINES, INC., 200 First St. (Box 427), Parsons, WV 26287. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue, NW., Suite 500, Washington, DC. *Contract,* irregular *Footwear and materials, equipment and supplies* used in the manufacture and distribution of footwear, between points in the U.S., under continuing contract(s) with Carter Footwear, Inc. and Parsons Footwear, Inc., of Wilkes Barre, PA. Supporting shipper: Carter Footwear, Inc. and Parsons Footwear, Inc., 1167 N. Washington St., Wilkes Barre, Pa 18705.

MC 161921 (Sub-II–1TA), file May 10, 1982. Applicant: CHARLES R. ECKSTINE, Box 246, Greencastle, PA 17225. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740. *Mobile and Modular Homes and Offices,* between pts. in Franklin and Lancaster Counties, PA; Washington County, MD; Berkeley and Morgan Counties, WV; and Frederick County, VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cheasapeake Mobile Homes, 2624 Valley Ave., Winchester, VA 22601. J. Homes, Inc., 816 Lincoln Way, West, Chambersburg, PA 17201.

MC 161433 (Sub-II–2TA), filed May 12, 1982. Applicant: GREAT AMERICAN TRANSPORT, INC., 5008 Byrd Industrial Dr., Richmond, VA 23231. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. Contract, irregular: *meats, meat products and meat byproducts,* between points in CO, IA, KS and NE, on the one hand, and on the other, points in MD, NC, VA and DC, under continuing contract(s) with Associated Meats, Inc., of Silver Spring, MD. An underlying ETA seeks 120 days authority. Supporting shipper: Associated Meats, Inc., 11215 Oakleaf Drive, Silver Springs, MD 20901.

MC 161926 (Sub-II–1TA), filed May 10, 1982. Applicant: ROBERT HARTZLER, 229 Miller St., West Liberty, OH 43357. Representative: Steven R. Fansler, 127 N. Detroit St., West Liberty, OH 43357. *Contract; irregular: Sand, in bulk, in tank vehicles,* from pts. in IL to pts. in West Central OH, for 270 days, under continuing contract(s) with Hobart Corp., West Liberty, OH. An underlying ETA seeks 120 days authority. Supporting shipper: Hobart Corp., 600 N. Detroit St., West Liberty, OH 43357.

MC 161938 (Sub-II–1TA), filed May 11, 1982. Applicant: BONNIE A MEHRING, 414 Poole Rd., Apt. T–1, Westminster, MD 21157. Representatives: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740. *Lightweight Aggregate* between Woodsboro, MD and New Oxford, PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Alwine Brick and Block Div., Glen Gerry Corp., P.O. Box 1542, 6th and Court St., Reading, PA 19603.

MC 161749 (Sub-II–1TA), filed May 10, 1982. Applicant: P & F TRUCKING, INC., P.O. Box 897, 1125 National Rd., Hebron, OH 43025. Representative: Charles H. McCreary, 100 East Broad St., Columbus, OH 43215. *Contract; irregular: Solvents and hazardous waste materials,* between Licking County, OH on the one hand, and on the other, pts., in MI, PA, WV, IN, TN, KY, MD, TX and MO for 270 days, under continuing contract(s) with Safety-Kleen Corp., Hebron, OH. Supporting shipper: Safety-Kleen Corp., Newark Industrial Park, State Route 79, Hebron, OH 43025.

MC 161922 (Sub-II–1TA), filed May 10, 1982. Applicant: REXLOR TRANSPORT, P.O. Box 13, Upper Sandusky, OH 43351. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415. *Contract; irregular:* (1) *steel products* from the facilities of Interior Steel, at or near Cleveland, OH, to the facilities of Steel Products, Inc., at or near Rockville, MD; (2) *raw fiberglass* between the facilities of Owens-Corning, Inc., at or near Jackson, TN, on the one hand, and, on the other, the facilities of the Budd Company, at or near Van Wert, OH; (3) *fiberglass automotive and truck parts* between the facilities of the Budd Company, at or near Carey, OH, on the one hand, and, on the other, the facilities of General Motors Corp., at or near Bowling Green, KY, and the facilities of Ford Motor Company, at or near Louisville, KY; and (4) *business machine cases* between the facilities of the Budd Company, at or near Carey, OH, on the one hand, and, on the other, the facilities of International Business Machines, Inc., at or near Lexington, KY; under account in (1) with Steel Products, Inc. of Rockville, MD, and in (2), (3) and (4) the Budd Co., of Madison Heights, MI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Steel Products, Inc., P.O. Box 1663, Rockville, MD and The Budd Co., 32055 Edward Ave., Madison Heights, MI 48701.

MC 152672 (Sub-II–11TA), filed May 13, 1982. Applicant: A. ROGER LEASING, LTD., P.O. Box 836, Coraopolis, PA 15108. Representative: Barry Weintraub. Suite 510, 8133 Leesburg Pike, Vienna, VA 22180. *Contract: Irregular: such commodities as are used in or dealt by supermarket chain stores* between Pittsburgh, PA and Youngstown, OH on the one hand, and,

on the other points in the U.S. (except AK & HI) under continuing contract with Giant Eagle Markets, Inc. and Tamarkin Company, Pittsburgh, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Giant Eagle Markets, Inc. and Tamarkin Co., 101 Kappa Dr., Ridc Park, Pittsburgh, PA 15238.

MC 161923 (Sub-II–1TA), filed May 10, 1982. Aplicant: DOYLE H. SHADDUCK, R.D. No. 1, Cogan Station, PA 17728. Representative: James D. Casale, 329 Market St., P.O. Box 1956, Williamsport, PA 17703. *Contract; irregular: Lumber* between the facilities of American Hardwood Industries, at Union City, PA, and Erie, PA, on the one hand and on the other, pts. in NY, OH, NJ, MD, DE, VT, and CT, for 270 days, under continuing contract(s) with American Hardwood Industries, Inc., a Division of Hammermill Paper Co., Erie, PA. Supporting shipper(s): American Hardwood Industries, Inc., a Division of Hammermill Paper Co., 1540 East Lake Rd., P.O. Box 1440, Erie, PA 16533.

MC 158613 (Sub-II–9TA), filed May 13, 1982. Applicant: TRICOR BUSINESS GROUP, INC., 1242 Tatamy Rd., Easton, PA 18042. Representative: Roger D. Hershman, 22 Olde Mill Run, Medford, NJ 08055. *Such commodities as are dealt in or used by manufacturers or distributors of machinery,* between pts. in PA; Syracuse and Buffalo, NY; Hudson, OH; Cedar Rapids, IA; Nitro, WV; Tulsa and Oklahoma City, OK; Columbia, SC; and Raleigh and Charlotte, NC, on the one hand, and, on the other, pts. in the U.S., for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: TRU-MATIC, Inc., Paradise Road, R.D. 2, Box 214, E. Stroudsburg, PA 18301; L. B. Smith, Inc., 2001 State Road; Camp Hill, PA 17011; Nazareth Machine Works; Rte. 191 North, East Bangor, PA; Arts Toy Co., Inc., 800 Main Street, Pen Argyl, PA.

MC 51518 (Sub 2–1TA), filed May 10, 1982. Applicant: VESELY BROS. Moving & STORAGE, INC., P.O. Box 455, Fayette City, PA 15438. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract; irregular: General commodities* between Fayette and Allegheny Countries, PA, on the one hand, and, on the other, points in PA, OH, MD and WV, under continuing contract(s) with Eastman Kodak Company of Rochester, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Eastman Kodak Co., 2400 Mt. Read Blvd., Rochester, NY 14650.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14248 Filed 5-25-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice; Corrections

The following volumes were incorrectly published on May 7, 1982 under the non-fitness guidelines, and are being republished this issue to reflect that the following applications fall under the fitness standards.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an applicant must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that application is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–79

Decided: April 30, 1982.

MC 38400 (Sub-9), filed April 23, 1982. Applicant: HITCHCOCK BROS., INC., Box 212, Canaan, CT 06018. Representative: C. Frank Hitchcock (same address as applicant).

MC 87231 (Sub-30), filed April 20, 1982. Applicant: BAY & BAY TRANSFER CO., INC., 7200 West 128th St., Savage, MN 55378. Representative: Pamela N. Merkle, 300 Roanoke Bldg., Minneapolis, MN 55402.

MC 99961 (Sub-5), filed April 20, 1982. Applicant: BIG CHIEF TRUCK LINES, INC., Rt. 1 Box 321–B, Lafayette, LA 70505. Representative: Ronald Marchand (same address as applicant).

MC 107010 (Sub-71), filed April 23, 1982. Applicant: BULK CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

MC 106380 (Sub-112), filed April 23, 1982. Applicant: JOHNSTON'S FUEL LINERS, INC., 808 Birch St., Newcastle, WY 82701. Representative: Manuel Andrade, Jr., 770 Grant St., Suite 228, Denver, CO 80203.

MC 111941 (Sub-45), filed April 23, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204–3491.

MC 111941 (Sub-46), filed April 27, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., P.O. Box 233, Laketon, IN 46943. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204–3491.

MC 115880 (Sub-6), filed April 27, 1982. Applicant: BROOKFIELD BUS SERVICE, INC., 3 Railroad Place, Maspeth, NY 11378. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173.

MC 116710 (Sub-44), filed April 12, 1982. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., P.O. Box 6176, Bossier City, LA 71111. Representative: Claire M. Goldsworthy, 535 North 6th St., Baton Rouge, LA 70802.

MC 134070 (Sub-36), filed April 23, 1982. Applicant: UNZICKER TRUCKING, INC., P.O. Box 35, Highway 24 East, El Paso, IL 61738. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501.

MC 138861 (Sub-44), filed April 16, 1982. Applicant: C–LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M Street, NW., Suite 501, Washington, DC 20036.

MC 142601 (Sub-9), filed April 28, 1982. Applicant: CECO TRANSPORT, INC., 1400 Kensington Rd., Oak Brook, IL 60521. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601.

MC 148490 (Sub-18), filed April 21, 1982. Applicant: C. & N. EVANS TRUCKING COMPANY, INC., Route 2, Box 39 E, Stoneville, NC 27048–9630. Representative: Harry G. Grubbs (same address as applicant).

MC 148731 (Sub-7), filed April 26, 1982. Applicant: MINKEVITCH TRUCKING & HAULING, 6290 S. Holladay Blvd., Salt Lake City, UT 84121. Representative: Fred J. Minkevitch, Jr., (same address as applicant).

MC 150301 (Sub-20), filed April 20, 1982. Applicant: EQUITY TRANSPORTATION, COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503.

MC 151721 (Sub-5), filed April 23, 1982. Applicant: LAUFENBERG FEED & AGRIC–SERVICE, INC., Route 1, Box 90–A, Highland, WI 53543. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703.

MC 156690, filed April 26, 1982. Applicant: PIEDMONT, INC., 2708 Bartol Ave., Baltimore, MD 21209. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740.

MC 157230, filed April 23, 1982. Applicant: NERCON TRANSPORT, INC., 3972 Fond du Lac Road, Oshkosh, WI 54901. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Nenah, WI 54956.

MC 157280 (Sub-1), filed April 20, 1982. Applicant: DATIM, INC., 925 East Broadway, Madison, WI 53716. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719.

MC 158621 (Sub-1), filed April 12, 1982. Applicant: BACHMAN TRANSPORT CORPORATION, 50 N. 4th St., P.O. Box 898, Reading, PA 19603. Representative: James F. Rehr (same address as applicant).

MC 159220 (Sub-2), filed April 26, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara St., Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th Street NW., Suite 800, Washington, D.C. 20036.

MC 160290, filed April 26, 1982. Applicant: GERARD C. PETERS AND JOHN G. PETERS, d.b.a. PETERS BROS. TRUCKING, 4940 North Oakley Avenue, Chicago, IL 60625. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603.

MC 161641, filed April 23, 1982. Applicant: R AND P TRUCKING, INC., P.O. Box 1678, Covington, GA 30209. Representative: Virgil H. Smith, 74 Highway N. Box 245, Tyrone, GA 30290.

MC 161670, filed April 26, 1982. Applicant: DORIS J. REAK, d.b.a. BLUE GOOSE CHARTER LEASING, 1004 E. Orangefair Lane, Anaheim, CA 92801. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702.

MC 161680, filed April 26, 1982. Applicant: J. L. SHACKELFORD, 852 Holcombe Avenue, Mobile, AL 36606. Representative: J. L. Shackelford (same address as applicant).

MC 161690, filed April 26, 1982. Applicant: TIMBER PRODUCTS SALES CO., OREGON, LTD., P.O. Box 269, Springfield, OR 97501. Representative: Kerry D. Montgomery, 400 Pacific Bldg., 520 S. W. Yamhill St., Portland, OR 97204.

[FR Doc. 82-14344 Filed 5-25-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the

compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP2-99

Decided: May 7, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 1423 (Sub-2), filed April 21, 1982. Applicant: MELNI BUS SERVICE, INC., 29 River Road, Chatham, NJ 07928. Representative: Jeremy Kahn Suite 733 Investment Bldg., 1511 K Street, NW., Washington, D.C. (202) 783-3525. Transporting *passengers and their baggage*, in round trip and charter operations, beginning and ending at points in Morrris, Essex, Union, Middlesex, and Somerset Counties, NJ and extending to points in the U.S., (except AK, CT, HI, MD, MA, NY, DC, and those points in PA on and east of the Susquehanna River).

MC 120092 (Sub-8), filed April 26, 1982. Applicant: JENNEY FREIGHT LINE, INC., 1224 N. Main Ave., Tucson, AZ 85705. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008, (602) 275-3124. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), serving points in Maricopa, Pima, Cochise, Graham, Gila and Pinal Counties, AZ, and Grant County, NM, as off-route points in connection with carrier's otherwise authorized regular route operations.

MC 141792 (Sub-2), filed April 26, 1982. Applicant: N & N TRUCKING, INC., P.O. Box 80, Belk, AL 35545. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, (601) 948-8820. Transporting (1) *lumber* and *wood products*, and (2) *building materials* between points in the U.S. (except AK and HI), under a continuing contract(s) with Georgia-Pacific Corporation, of Crossett, AR.

MC 142452 (Sub-8), filed April 28, 1982. Applicant: RIMAR TRANSPORT, INC., 827 Ridgewood Avenue, North Brunswick, NJ 08902. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue, NW, Suite 500, Washington, DC 20006, (202) 828-5015. Transporting (1) *metal products* (2) *machinery* and (3) *those commodities* which because of their size or weight require the use of special handling or equipment, between those points in the U.S., in the east of MN, IA, MO, OK, and TX.

MC 142512 (Sub-1), filed April 1, 1982. Applicant: OCEAN BREEZE TRANSIT CO., 1812 Marmora Ave., Atlantic City, NJ 08401. Representative: Brian S. Stern, 5411-D Backlick Rd., Springfield, VA 22151, (703) 941-6200. Transporting *passengers and their baggage*, in the same vehicle with passengers (1) in special and charter operations, beginning and ending at points in Ocean, Burlington, Gloucester, and Salem Counties, NJ, and extending to these points in the U.S., in and east of MN, IA, MO, AR, and LA, and (2) in special operations, beginning and ending at points in Atlantic, Cape May, and Cumberland Counties, NJ, and extending to those points in the U.S., in and east of MN, IA, MO, AR, and LA.

MC 145603 (Sub-6), filed April 20, 1982. Applicant: B & H TRUCKING CO., INC., 570 W. 17th Street, Indianapolis, IN 46204. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6855. Transporting *food and related products* between points in Harrison County, MS, Galveston, County, TX, Charleston County, SC, and Hillsborough County, FL, on the one hand, and, on the other, points in IN.

MC 147712 (Sub-42), filed April 20, 1982. Applicant: MID-WESTERN TRANSPORT, INC., 14625 Carmenita Road, Norwalk, CA 90650. Representative: Joseph Fazio, (same as applicant), (213) 921-7474. Transporting *general commodities*, (except classes A and B explosives, household goods and commodities in bulk), and between points in the U.S., under continuing contract(s) with Seymour Housewares Co., Division of Lear Siegler, Inc., of Seymour, IN.

MC 151612 (Sub-1), filed April 20, 1982. Applicant: U.S. SALT-JOHNSON ENTERPRISES, INC., 1020 Black Dog Road, Burnsville, MN 55337. Representative: Samual Rubenstein, Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting: (1) *chemicals and related products* between points in the U.S. (except AK and HI) under continuing contract(s) with American Salt Company of Kansas City, MO, and Independent Salt Company, of Kanopolis, KS, and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. except AK and HI), under continuing contract(s) with Domtar Industries, Inc., Sifto Salt Division of Schiller Park, IL.

MC 160952 (Correction), filed March 10, 1982, published in the **Federal Register**, issue of April 14, 1982, and republished, as corrected, this issue. Applicant: CARNIVAL BUS CO., INC., 6812 Fifth Ave., Brooklyn, NY 11220. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting: *passengers and their baggage, in the same vehicle with passengers*, beginning and ending at New York, NY, and its commercial zone, and extending to points in the U.S. (except AK and HI).

Note.—The purpose of this republication is to correct the territorial description.

Volume No. OP2-100

Decided: May 10, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 40073 (Sub-2), filed April 13, 1982. Applicant: C & D TRANSPORTATION COMPANY, INC., 200 Whitehall St., Providence, RI 02909. Representative: Thomas A. Tarro III, 376 Broadway, Providence, RI 02909, 401-272-0487. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in RI, CT, and MA.

MC 117872 (Sub-14), filed April 30, 1982. Applicant: A. JOSEPH AND COMPANY, P.O. Box 4796, Jackson, MS 39216. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948-5711. Transporting: *malt beverages*, and *such commodities* as are used in and dealt in by breweries, between points in Jefferson County, CO, on the one hand, and, on the other, points in AR, LA, TN and TX.

MC 149323 (Sub-1), filed February 11, 1982, published in the **Federal Register** issue of April 5, 1982, and republished, as corrected, this issue. Applicant: BINGHAM TRANSPORTATION, INC., 2005 E. Ave., Baxter Springs, KS 66713. Representative: Clyde N. Christey, Ks. Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KA 66612, 913-233-9629. Transporting: *such commodities* as are transported in dump vehicles (1) between points in KS, OK, CO, TX, MO, IA, NE, AR, LA, and IL, and (2) between points in KS, OK, CO, TX, MO, IA, NE, AR, LA, and IL, on the one hand, and, on

the other, points in the U.S. (except MT, ID, AZ, VA, AK, HI, WA, and OR). The purpose of this republication is to correct the commodity description.

MC 156342, filed Aprill 30, 1982. Applicant: REX LONG, d.b.a. R. L. TRUCKING, Rt, 10, Box 458, Moore, OK 73165. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting *metal products and machinery*, between points in OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161473, filed April 20, 1982. Applicant: KINGSGATE TRAVEL, 5600 Andover Dr., Dayton, OH 45449. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8565. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in OH on and south of U.S. Hwy 224 and on and west of U.S. Hwy 23, and extending to points in the U.S. (except AK and HI).

MC 161582, filed April 20, 1982. Applicant: JOHNSON BUS SERVICE, 4500 S St., Beaver Heights, MD 20743. Representative: Clifford Johnson (same address as applicant), 301–773–5534. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between Washington, DC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume, No. OP2–102

Decided: May 14, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 32122 (Sub-8), filed April 29, 1982. Applicant: PAZEN TRANSFER LINES, INC., P.O. Box 243, Waukau, WI 54980. Representative: Edward J. Gerrity, P.O. Box 914, Appleton, WI 54912, 414–734–5608. Transporting (1) *pulp, paper and related products*, between points in Outagamie County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *lumber and wood products*, between points in Winnebago County, WI, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN and TX, and (3) *furniture and fixtures*, between points in AL, AR, GA, IL, IN, IA, KS, MN, MO, MS, NC, OH, SC, TN and TX, on the one hand, and, on the other, points in Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond Du Lac, Forest, Green Lake, Jefferson, Juneau, Kenosha, Kewaunee, Langlade, Lincoln, Manitowoc, Marinette, Marathon, Marquette, Menominee, Milwaukee, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Walworth, Waukesha, Waupaca, Washington, Winnebago and Wood Counties, WI.

MC 75892 (Sub-2), filed May 3, 1982. Applicant: HALBERT BROTHERS, INC., 2116 Sacramento St., Los Angeles, CA 90021. Representative: Fred H. Mackensen, 2029 Century Park East, Suite 4150, Los Angeles, CA 90067, 213–879–5955. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 102162 (Sub-6), filed May 4, 1982. Applicant: RED ARROW HEAVY HAULING, INC., 3901 Seguin Rd., Box 1897, San Antonio, TX 78297. Representative: Arnold L. Burke, 180 North LaSalle St., Suite 3520, Chicago, IL 60601, 312–332–5106. Transporting (1) *earth drilling equipment*, (2) *machinery*, (3) *Mercer commodities*, (4) *metal and metal products*, (5) *pipe*, (6) *transportation*, and (7) *those commodities which because of their size or weight require the use of special handling or equipment*, between points in TX. Condition: Issuance of this Certificate is subject to prior or coincidental cancellation of applicant's written request of Certificates of Registration No. MC–102162 (Sub-3), issued January 23, 1966, Sub-5, issued June 27, 1975, and Sub-6, issued October 6, 1976.)

MC 120283 (Sub-9), filed April 28, 1982. Applicant: SUN MOTOR LINES, INC., P.O. Box 32546, Oklahoma City, OK 73123. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, 214–255–6279. Transporting *general commodities* (except Classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with (a) U.S. Brass Corporation, of Plano, TX, (b) Capital Waire and Cable Corporation, of Plano, TX, (c) Chattanooga Glass, of Chattanooga, TN, (d) Joseph Schlitz Brewing Company, of Milwaukee, WI and (e) Overhead Door Corporation, of Dallas, TX and its divisions and subsidiaries.

MC 141753 (Sub-1), filed April 19, 1982. Applicant: G. P. SULLIVAN COMPANY, 1800 South Laramie Ave., Cicero, IL 60650. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, 517–482–2400. Transporting *such commodities* as are dealt in or used by retail department stores, mail order business houses, and wholesale merchandisers of home furnishings, between points in IL, IN, and WI.

MC 145622 (Sub-5), filed April 26, 1982. Applicant: S & H TRANSPORTATION, INC., P.O. Box 137, Wright City, MO 63390. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105, 816–221–1404. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contracts with Aldi, Inc., of Batavia, IL.

MC 150852 (Sub-4), filed April 15, 1982. Applicant: SKYLINE TRANSPORT, INC., 1469 W 6720SS, West Jordan, UT 84084. Representative: R. G. Simonian (same address as applicant), (801) 266–8800. Transporting (1) *chemical, hazardous, toxic and low-level radioactive wastes*, and (2) *chemicals and related products*, (a) between points in Salt Lake County, UT, on the one hand, and, on the other, points in Los Angeles, Orange, San Bernadino and King Counties, CA, (b) between points in Los Angeles, Orange, San Bernado, Alameda and Contra Costa Counties, CA, on the one hand, and, on the other, points in Salt Lake and Davis Counties, UT, and (c) between points in Fairfield County, CT, on the one hand, and, on the other, points in Salt Lake and Davis Counties, UT.

MC 153723 (Sub-10), filed April 28, 1982. Applicant: A & M ENTERPRISES, INC., P.O. Box 884, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, 501–521–8121. Transporting *wire, plastic and metal products*, between points in Benton and Washington Counties, AR, and Noble County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and *tape and wire recorders*, between Portsmouth, VA, and points in Pulaski County, AR, Caddo Parish, LA, Jefferson County, KY, Howard County, MD, Tulsa and Oklahoma Counties, OK, Bexar, Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153773 (Sub-1), filed April 28, 1982. Applicant: NDC TRUCKING COMPANY, 820 McKesson Dr., Longview, TX 75601. Representative: Wiliam Sheridan, P.O. Drawer 5049, Irving, TX 75062, 214–255–6279. Transporting *foodstuffs and related products*, between points in Gregg County, TX, and Shelby County, TN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, WY, CO and NM.

MC 101253, filed March 29, 1982. Applicant: W.D.C., INC., 3500 Fisher Rd. Columbus, OH 43228. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, 614–464–4103. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between Columbus, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 101713, filed April 28, 1982. Applicant: CREATIVE TOURS, INC., 5407 Excelsior Blvd., St. Louis Park, MN 55416. Representative: Stanley C. Olsen, Jr., 5200 Wilson Rd, Suite 307, Edina, MN 55424, 612–927–8855. As a broker, at Minneapolis, MN, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in round-trip charter and special operations, beginning and ending at points in MN and extending to points in the U.S.

Volume No. OP2–105

Decided: May 18, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 135612 (Sub-6), filed May 6, 1982. Applicant: PROFESSIONAL DRIVER SERVICES, INC., 1631 Lebanon Rd., Nashville, TN 37210. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, 502–589–5400. Transporting *transportation equipment*, between points in the U.S. (except AK and HI).

MC 136762 (Sub-56), filed April 22, 1982. Applicant: MUNCIPAL TANK LINES LIMITED, P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59401, 406–452–0415. Transporting *nonmetallic minerals*, between ports of entry on the International Boundary line between the U.S. and Canada, on the one hand, and, on the other, points in NY and VT.

MC 144843 (Sub-7), filed April 30, 1982. Applicant: GRACE DISTRIBUTION SERVICES, INC., P.O. Box 306, Ducen, SC 29334. Representative: Paul M. Daniell, 235 Peachtree Street NE., 1200 Atlanta Gas Light Tower Atlanta, GA 30303, 404–522–8322. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with United Forwarding, Inc., of Omaha, NE.

MC 145042 (Sub-17), filed April 27, 1982. Applicant: ZEELAND FARM SERVICES, INC., 1468 84th Ave., Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933, 517–482–2400. Transporting *fertilizer and fertilizer materials*, between points in MI, WI, IL, IN, and OH.

MC 145723 (Sub-2), filed April 29, 1982. Applicant: H & M. TRUCKING CO., Box 178, Clinton, IL 61727. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, 217–544–5468. Transporting *chemicals, paper products, and printed matter*, between points in the U.S. (except AK and HI), under continuing contract(s) with Wallace Computer Services, Inc., of Clinton, IL.

MC 145773 (Sub-19), filed May 6, 1982. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Rd., Sidney, OH 45365. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *food and related products*, between points in WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146872 (Sub-4), filed April 26, 1982. Applicant: CHARLES SEATON, d.b.a. SEATON TRUCKING COMPANY, 1560 North Sandburg Village, Chicago, IL 60610. Representative: Joel H. Steiner, 29 South LaSalle, Suite 905, Chicago, IL 60603, 312–236–0375. Transporting *scrap materials and paper board*, between points in AR, IL, IN, IA, KY, MI, MO, OH, TN, and WI.

MC 147233 (Sub-4), filed May 3, 1982. Applicant: JOHN H. BRYANT, d.b.a. J. B. TRANSPORTATION, 714 Pine Ct. Martinez, CA 94553. Representative: Richard E. Macey, 2111 W. March Ln., A–3, Stockton, CA 95207, 209–951–8227. Transporting *petroleum products and hot wax*, between points in Contra Costa, Marin, and Los Angeles Counties, CA, on the one hand, and, on the other, Phoenix, AZ, under continuing contract(s) with Nelson Candles, Inc., of Phoenix, AZ.

MC 149682 (Sub-3), filed May 6, 1982. Applicant: UNIVERSITY CORP., P.O. Box 2339, Columbus, OH 43216. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, 614–228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152383 (Sub-5), filed April 20, 1982. Applicant: C.C.M. ENTERPRISES, INC., Suite 40, 27 Produce Dr., Cincinnati, OH 45202. Representative: John R. Mateyka (same address as applicant) 513–621–7866. Transporting *such commodities as are dealt in or used by manufacturers and distributors* of insulation, between points in IN and OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 152593 (Sub-2), filed May 6, 1982. Applicant: MARTY'S AUTO SERVICE, INC., 314 S.E. 10th St., Dania, FL 33004. Representative: Richard B. Austin, 320 Rochester Bldg., 6300 N.W. 53rd St., Miami, FL 33166, (305) 592–0030. Transporting *used motor vehicles*, between points in FL, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, MD, MA, NJ, NY, NC, PA, RI, SC, VA and DC.

MC 153003 (Sub-3), filed May 7, 1982. Applicant: OKLAHOMA INTERSTATE LINES, INC., 1508 North 32nd St., P.O. Box 1372, Muskogee, OK 74401. Representative: Thomas A. Stroud, 109 Madison Ave., Memphis, TN 38103, (901) 676–5600. Transporting *building materials, metal products, commodities which because of their size or weight require the use of special handling or equipment, and self propelled vehicles weighing more than 15,000 pounds*, between points in AL, AR, CA, CO, GA, IA, IN, IL, KS, KY, LA, MS, MI, MN, MO, NE, NM, NV, OH, OK, PA, TN, TX, UT, and WY.

MC 153092 (Sub-1), filed May 3, 1982. Applicant: RICHARD F. DeMORANVILLE, d.b.a. DeMo TRUCKING, Bedford St., Lakeville, MA 02346. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, 617–742–3530. Transporting *lumber and wood products*, between points in MA, RI, and CT, on the one hand, and, on the other, points in NY, NJ, PA, MD, DE, NC, VA, and WV.

MC 153273 (Sub-6), filed May 4, 1982. Applicant: SCHREIBER TRANSIT, INC., 425 Pine St., Green Bay, WI 54305. Representative: John H. Sage (same address as applicant), (414–437–7601. Transporting *food and related products*, between points in AZ, CA, and UT, under continuing contract(s) with Safeway Stores, Incorporated, of Oakland, CA.

MC 155123 (Sub-1), filed May 6, 1982. Applicant: HIGHTOWER TRUCKS, INC., Highway 61 West, Fort Madison, IA 52627. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2328. Transporting *agricultural insecticides, fertilizer, weed killing compounds, and hand spreaders*, between points in Lee County, IA, on the one hand, and, on the other, points in IL, MN, MO, and WI.

MC 155683 (Sub-1), filed April 28, 1982. Applicant: S & S ENTERPRISES, P.O. Box 94, Audubon, NJ 08106. Representative: Edward Rodig, 570 W.

Grainsbury Ave., Audubon, NJ 08106, 609–547–1609. Transporting *mobile homes,* between points in NJ, DE, MD, PA, VA, OH, NC, SC, GA, KS, TN, FL, and KY.

MC 155733 (Sub-1), filed April 22, 1982. Applicant: TRAIL BLASERS, INC., 7990 Overland Rd., Boise, ID 83709. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, 208–343–3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with (a) A.S.C. Constructors, Inc., and (b) Southwest Hide Co., both of Boise, ID.

MC 158793, filed May 4, 1982. Applicant: DR. CULLY'S CARTAGE CO., INC., 332–Clubhouse Lane, Hunt Valley, MD 21031. Representative: Glenn M. Heagerty (same address as applicant), 301–666–0140. Transporting *general commodities* (except classes A and B explosives, households goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) McCormick & Co., Inc., (2) Dr. Cully's Depot, Inc., both of Hunt Valley, MD, (3) Random House, Inc., of Westminister, MD, and (4) Noxell Corporation, of Baltimore, MD.

MC 160083, filed May 6, 1982. Applicant: WAC TRANSPORTATION, INC., 6900 Nelson Rd., P.O. Box 1902, Fort Wayne, IN 46801. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in Allen County, IN, on the one hand, and on the other, points in IL, IN, KY, MI, and OH.

MC 161833, filed May 4, 1982. Applicant: MARSON TRUCKING CO., 317A Leroy Ave., Molalla, OR 97038. Representative: Jeff Marson (same address as applicant), 503–829–2700. Transporting *forest products and coal and coal products,* between points in OR, on the one hand, and, on the other, points in WA and CA.

Volume No. OP3–078

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

FF–595, filed May 10, 1982. Applicant: TRIPAR TRANSPORTATION, INC., 1608 The Queensway, Toronto, Ontario, Canada M8Z IV6. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167, (313) 349–3980. As a *freight forwarder* transporting *general commodities* (except classes A and B explosives), between points in CT, MA, NJ, NY, and RI, on the one hand, and, on the other, points in NY.

MC 17095 (Sub-3), filed May 12, 1982. Applicant: DARNALL TRUCK SERVICE, INC., P.O. Drawer 1346, Great Bend, KS 67530. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, (913) 234–0565. Transporting *Mercer commodities,* between points in AZ, CO, KS, NE, NM, OK, TX, and WY.

MC 52525 (Sub-13), filed May 10, 1982. Applicant: IOWA VAN & STORAGE CO., 541 S. Iowa Ave., Ottumwa, IA 52501. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting *general commodities* (except household goods and classes A and B explosives), between points in Appanoose County, IA, on the one hand, and, on the other, points in Polk and Wapello Counties, IA.

MC 52914 (Sub-7), filed May 6, 1982. Applicant: F T L, INC., P.O. Box 10799, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OR and WA.

MC 102764 (Sub-12), filed May 11, 1982. Applicant: ABC, INC., 24 Plymouth Rd., North Providence, RI 02940. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781–8205. Over regular routes, transporting *passengers and their baggage* and *express and newspapers* in the same vehicle with passengers, between Providence, RI and Boston, MA, serving all intermediate points: from Providence over Interstate Hwy 95 to junction MA Hwy 128, then over MA Hwy 128 to junction of the Southeast Expressway, then over the Southeast Expressway to Boston, MA, and return over the same route.

MC 123535 (Sub-41), filed May 5, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Road, St. Louis, MO 63141. Representative: Donald S. Helm (same address as applicant) (314) 569–1161. Transporting *non ferrous metals* and *scrap non ferrous metals* between points in the U.S., under continuing contract(s) with Monarch Metals, Inc., of Toledo, OH.

MC 125535 (Sub-42), filed May 10, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Road, St. Louis, MO 63141. Representative: Donald S. Helm (same address as applicant), (314) 569–1169. Transporting *ferrous and non ferrous metals,* between points in the U.S. (except AK and HI), under continuing contract(s) with Metals, Inc., of Haleyville, AL.

MC 126844 (Sub-100), filed May 6, 1982. Applicant: R.D.S. TRUCKING CO., INC., 1713 N. Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154.Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, of Chicago, IL.

MC 128075 (Sub-45), filed May 12, 1982. Applicant: JOHNSRUD TRANSPORT, INC., 5301 Northeast 17th St., Des Moines, IA 50313. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Interbake Foods, Inc., of Richmond, VA.

MC 133035 (Sub-29), filed May 6, 1982. Applicant: DILTS TRUCKING, INC., Route 1, P.O. Box 156, Crescent, IA 51526. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392–1200. Transporting *fertilizers,* between points in Jackson County, MO, on the one hand, and, on the other, points in KS, NE, and IA.

MC 133545 (Sub-9), filed May 11, 1982. Applicant: LEMONS HOUSE MOVING, INC., 1250 Houston Rd., Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *buildings* and *building materials,* (1) between points in MT, on the one hand, and, on the other, points in ND; and (2) between points in UT, on the one hand, and, on the other, points in AZ, CA, ID, and NM.

MC 134064 (Sub-55), filed May 10, 1982. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30505. Representative: Charles M. Williams (same address as applicant), (303) 839–5856. Transporting (1) *salt and salt products,* (2) *food and related products,* and (3) *such commodities* as are dealt in or used by grocery and food business houses, food service companies, restaurants, and restaurant suppliers, (except commodities in bulk), between points in the U.S. (except AK and HI).

MC 134534 (Sub-13), filed May 10, 1982. Applicant: BASTERRECHEA DISTRIBUTING, INC., P.O. Box 485, Gooding, ID 83330. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701, (208) 336–5955. Transporting (1) *such commodities* as are dealt in by

grocery and food business houses, between points in ID and those in Salt Lake County, UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, OR and WA; and (2) *food and related products*, between points in Lake County, OR, on the one hand, and, on the other, points in CA, NV, UT and WA.

MC 140484 (Sub-108), filed May 10, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant), (813) 334-4517. Transporting *food and related products*, between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147004 (Sub-13), filed May 11, 1982. Applicant: ACME TRUCKING, INC., 108 E. Main St., Newark, OH 43055. Representative: Frank L. Calvary, 3066 No. Star Rd., Columbus, OH 43221, (614) 459-4248. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 143595 (Sub-6), filed May 13, 1982. Applicant: HIGHWAY TRANSPORTATION COMPANY, Route 2, Freedom Park, Hermon, ME 04401. Representative: Durward L. Humphrey (same address as applicant), (207) 848-3314. Transporting *lumber and wood related by products*, between points in ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, PA, OH, WV, VA, SC, NC, FL, GA, AL, KY, IN, MI, WI, IL, TN, MS, TX, LA, AR, MO, IA, MN and DC.

MC 146514 (Sub-2), filed May 10, 1982. Applicant: J & M ENTERPRISES, LTD, 5300 Hubbell, P.O. Box 3145, Des Moines, IA 50316. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2320. Transporting *meats, meat products, and meat byproducts*, and *articles distributed by meats packinghouses* (except commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Armour Food Company, of Phoenix, AZ.

MC 140145 (Sub-7), filed May 10, 1982. Applicant: TOWER TRANSPORT, INC., 2933 So. Cicero Ave., Cicero, IL 60650. Representative: Edward G. Bazelon, 39 So. LaSalle St., Chicago, IL 60603, (312) 236-0375. Transporting *food and related products*, (a) between those points in the east of ND, SD, NE, CO, OK and TX, and (b) between points in CA, on the one hand, and, on the other, those points in the east of ND, SD, NE, CO, OK and TX.

MC 146985 (Sub-19), filed May 10, 1982. Applicant: MIDWEST EASTERN TRANSPORT, INC., 731 S. Main St., P.O. Box 1014, Elkhart, IN 46515. Representative: Phillip A. Renz, Suite 200, Metro Bldg. Fort Wayne, IN 46802, (219) 288-3688. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Heublein, Inc., of Hartford, CT.

MC 147044 (Sub-13), filed May 14, 1982. Applicant: J.M.C. TRANSPORT, INC., 1719 Potters Lane, Jeffersonville, TI 47130. Representative: Gerald K. Gimmel, 444 N. Frederick Ave., Suite 200, Gaithersburg, MD 20877, (301) 840-8565. Transporting *alcoholic beverages*, between points in IL, on the one hand, and, on the other, points in TX, LA, AR, and AZ.

MC 147044 (Sub-14), filed May 14, 1982. Applicant: J. M. C. TRANSPORT, INC., 1719 Potters Lane, Jefferson, IN 47130. Representative: Gerald K. Gimmel, 444 N. Frederick Ave., Suite 200, Gaithersburg, MD 20877, (301) 840-8565. Transporting *wine and brandies*, between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148445 (Sub-13), filed May 7, 1982. Applicant: WILD TRUCKING COMPANY, a corporation, 4527 N. 16th St., Phoenix, AZ 85064. Representative: Phil A. Hammond, 3003 N. Central, Suite 2201, Phoenix, AZ 85012, (602) 266-2224. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 148665 (Sub-4), filed May 10, 1982. Applicant: CLARK BROS. TRANSPORTATION, INC., 1908 North 30th Street, Birmingham, AL 35234. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 150255 (Sub-5), filed May 10, 1982. Applicant: LEPRINO TRANSPORTATION COMPANY, 3740 Shoshone St., Denver, CO 80211. Representative: John T. Wirth, Suite 2800, Petro-Lewis Tower, 717 17th St., Denver, CO 80202, (303) 892-6700. Transporting *computers, computer parts, accessories and supplies*, between points in the U.S. (except AK and HI), under continuing contract(s) with Storage Technology Corporation of Louisville, CO.

MC 150255 (Sub-6), filed May 12, 1982. Applicant: LEPRINO TRANSPORTATION COMPANY, 3740 Shoshone St., Denver, CO 80211. Representative: John T. Wirth, Suite 2800, Petro-Lewis Tower, 717 17th St., Denver, CO 80202, (303) 892-6700. Transporting *malt beverages*, between points in the U.S. (except AK and HI), under continuing contract(s) with Murray Bros. Distributing Company, of Denver, CO.

MC 152244 (Sub-5), filed May 3, 1982. Applicant: TOTE, INC., Box 536, Salem, SD 57058. Representative: Clifford Tjaden (Same address as applicant), (605) 425-2107. Transporting *general commodities* (except classes A and B explosives, and household goods between points in SD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152834 (Sub-3), filed May 10, 1982. Applicant: ATLANTIC VAN LINES, INC., 1205 S. Carey St., Baltimore, MD 21230. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740; (301) 797-6060. Transporting *office, business and electronic data processing machinery and equipment*, between Baltimore, MD, on the one hand, and, on the other, points in MD, WV, VA, DE, PA and DC.

MC 152775 (Sub-7), filed May 13, 1982. Applicant: RAM ROD TRUCKING, INC., P.O. Box 1127, Marrero, LA 70073. Representative: Donald B. Morrison, P.O. Box 22828; Jackson, MS 39205; (601) 948-8820. Transporting *building materials*, between points in the U.S., under continuing contract(s) with Associated Dealers Supply of Metairie, LA.

MC 154054 (Sub-1), filed April 5, 1982. Applicant: WOOD BROS. TRANSFER, INC., 2410 Commerce, Houston, TX 77014. Representative: Damon R. Capps, 1300 Main St., Suite 1230, Houston, TX 77002, (713) 658-8101. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OK, NM, TX, LA, and AR.

MC 157514, filed February 18, 1982, and previously noticed in the Federal Register issue of March 2, 1982. Applicant: WILLIAM A. SMITH, 306 E. Maumee, Adrian, MI 49221. Representative: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482-2400. Transporting *food and related products*, (1) between points in Hillsdale County, MI, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, ME, MD, MA, MI, MO, NH, NJ, NY, OH, PA, RI, VT, VA and WV and (2) between points in Suffolk County, MA, on the one hand, and, on

the other, points in IL, IN, MI, OH and WI.

Note.—The purpose of this republication is to correctly reflect the territorial descriptions.

MC 160864, filed May 10, 1982. Applicant: REDWAY CONTRACT CARRIER CORPORATION, 500 Industrial Lane, Prairie View, IL 60069. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620; Chicago, IL 60603; (312) 332–0905. Transporting *food products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Ocean Spray Cranberries, Inc., of Kenosha, WI.

MC 160785 (Sub-2), filed May 11, 1982. Applicant: CASTAR TRUCKING, 7840 "F" St., Omaha, NE 68127. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of machinery and communication equipment, between Omaha, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160955, (Sub-1), filed May 10, 1982. Applicant: PET POULTRY PRODUCTS, INC., Market St., P.O. Box 128, Bridgeville, DE 19933. Representative: Ellwood L. Hunsberger, P.O. Box 232, Bridgeville, DE 19933, (302) 349–5345. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Delagra Corp. of Bridgeville, DE.

MC 160975, filed May 13, 1982. Applicant: KUHLMAN BROS., INC., W. 245 Park Lane, Post Falls, ID 83854. Representative: Ronald J. Kuhlman, E. 3520 16th, Post Falls, ID 83854, (208) 773–9853. Transporting *treated and untreated poles and piling,* between ports of entry on the International Boundary line between the U.S. and Canada in WA, ID, MT, and ND, on the one hand, and, on the other, points in WA, ID, MT, ND, SD, NE, WY, CO, UT, AZ, NV, NM, OR, and CA, under continuing contract(s) with B. J. Carney & Co., Ltd. of Spokane, WA.

MC 161935, filed May 10, 1982. Applicant: KNAPP OIL CO. TRANSPORTS, INC., Drawer 2, Xenia, IL 62899. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *petroleum products,* between points in Posey County, IN and Cape Girardeau County, MO, on the one hand, and, on the other, points in that part of IL on and south of U.S. Hwy 50.

MC 161944, filed April 29, 1982. Applicant: ELIZABETH A. HUMPHREY, d.b.a. NOVEMBER TRANS., Rt. 2 Box 140 AA Canaan Rd., Hampden, ME 04444. Representative: (same as above), (207) 862–4893. Transporting (1) *foodstuffs and by-products,* between points in the U.S., under continuing contract(s) with Potato Service, of Presque Isle, ME; and (2) *pulp, paper, and by-products,* between points in the U.S., under continuing contract(s) with Lincoln Pulp & Paper, of Lincoln, ME.

MC 161945, filed May 10, 1982. Applicant: TRANS-MIDWEST, INC., 1750 So. Greeley, Stillwater, MN 55082. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *petroleum, natural gas and their products,* between points in the U.S., (except AK and HI), under continuing contract(s) with Croix Oil Co. of Stillwater, MN.

MC 161965, filed May 12, 1982. Applicant: BULK PETROLEUM HAULERS INC., 246 S. Grand St., Hammonton, NJ 08037. Representative: John F. Brancato, Sr., 707 Moss Mill Rd., Hammonton, NJ 08037, (609) 561–6646. Transporting *petroleum products,* between Hammonton, NJ, and points in PA and DE.

MC 161994, filed May 13, 1982. Applicant: BANJO & BUS, INC., 9100 Harold Dr., St. Louis, MO 63134. Representative: Richard Haberstroh (same address as applicant), (314) 423–8342. As a *broker,* at St. Louis, MO, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, beginning and ending at St. Louis, MO, and extending to points in Carroll County, AR.

MC 146965 (Sub-4), filed April 13, 1982, previously noticed in the **Federal Register** on April 27, 1982. Applicant: REDDING LUMBER TRANSPORT, INC., P.O. Box 3306, Redding, CA 96049. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055; (206) 235–1111. Transporting (1) *forest products,* (2) *lumber and wood products,* (3) *building materials,* (4) *roofing,* (5) *awning* and *coils,* (6) *hot wagons,* and (7) *roofing machinery,* between points in AR, AZ, CA, CO, ID, KS, LA, MT, NC, ND, NM, NV, OK, OR, SD, UT, WA, WI, TX, and WY.

Note.—This republication shows TX, in the territorial description.

Volume No. OP4–177

Decided: May 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

FF–596, filed May 10, 1982. Applicant: DIRECT CONTAINER LINE, INC., 16225 Sth. Broadway, Gardena, CA 90248. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603, (312) 236–0548. As a freight forwarder, in connection with the transportation of *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., on the one hand, and, on the other, ports of entry on the International Boundary lines between the U.S. and Canada, and between the U.S. and the Republic of Mexico.

MC 96877 (Sub-10), filed May 6, 1982. Applicant: YUMA COUNTY TRANSPORTATION CO., P.O. Box 488, Grand Island, NE 68801. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682–8154. Transporting *general commodities* (except classes A and B explosives and household goods), between points in CO, IA, KS and NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 108587 (Sub-35), filed April 28, 1982, previously noticed in the **Federal Register** issue of May 11, 1982, and republished this issue.* Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Ave., Colchester, CT. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St. NW., Washington, DC 20005, (202) 783–3525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Boston and Springfield, MA, on the one hand, and, on the other, points in Cumberland Androscoggin; Oxford, Kennebec, Sagadahoc, Lincoln, Knox, Franklin, Waldo, and York Counties, ME, and points in VT. Note: Applicant intends to tack this authority with its existing authority at Boston and Springfield, MA.

MC 121597 (Sub-7), filed May 10, 1982. Applicant: CHICKASAW MOTOR LINE, INC., 531 Woodycrest Ave., P.O. Box 100904, Nashville, TN 37210. Representative: James Clarence Evans, 1800 Third National Bank Bldg., Nashville, TN 37219, (615) 244–1440. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Hardeman County, TN, and points in the U.S. (except AK and HI). NOTE: Applicant states it intends to tack this authority with its existing authority. Applicant also seeks to cancel its Certificates of Registration in MC–121597 and MC–121597 Sub 4, to a Certificate of Public Convenience and Necessity.

MC 123476 (Sub-79), filed May 10, 1982. Applicant: CURTIS TRANSPORT, INC., #23 Grandview Ind. Ct., Arnold,

*The purpose of this republication is to include the Note concerning applicant's intent to tack.

MO 63010. Representative: David G. Dimit (same address as applicant), (314) 464–1300. Transporting *paper and paper products*, between St. Louis, MO, and points in Franklin County, MO, on the one hand, and, on the other, points in AR, MO, IA, MN, WI, IL, IN, MI, KY, TN, VA, WV, OH, PA, MD, NY, NJ, NC, and DE.

MC 128837 (Sub-50), filed May 10, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael, W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Heinz USA, Division of H. J. Heinz Company, of Pittsburgh, PA.

MC 143776 (Sub-51), filed May 11, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., S.E., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant), (800) 253–9527. Transporting *electrical equipment and supplies*, between the facilities of GTE Sylvania Wiring Devices, Incorporated, at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148356 (Sub-3), filed May 10, 1982. Applicant: STAR MOTOR FREIGHT LINES, INC., 3110 N. Stone, Colorado Springs, CO 80907. Representative: Jack B. Wolfe, 601 E. 18th Ave. #107, Denver, CO 80203, (303) 861–8046. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between Pueblo, CO and Raton, NM, serving all intermediate points, over Interstate Hwy 25 or combined U.S. Hwys 85 and 87, (2) between Pueblo and Trinidad, CO, serving all intermediate points, and serving points in Fremont, Huerfano, Costilla, and Las Animas Counties, CO as off-route points: from Pueblo over Interstate Hwy 25 or combined U.S. Hwys 85 and 87 to Walsenburg, CO, then over U.S. Hwy 160 to junction CO Hwy 12, then over CO Hwy 12 to Trinidad, and (3) serving all points in NM as off-route points in connection with carrier's otherwise authorized regular route operations.

Note.—Applicant intends to tack this authority with its existing operating rights.

MC 151407 (Sub-5), filed May 10, 1982. Applicant: T & T TRUCKING, INC., 274 N.W. 37th St., Miami, FL 33127. Representative: D. Paul Stafford, Suite 1125 Frito Lay Tower, P.O. Box 45538, Dallas, TX 75245, (214) (358–3341. Transporting *chemicals and related products*, between points in Dade County, FL, on the one hand, and, on the other, points in CA, OR and WA.

MC 154317 (Sub-1), filed May 10, 1982. Applicant: G AND J CARTAGE COMPANY, 20532 Pennsylvania Rd., Taylor, MI 48180. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, (313) 349–3980. Transporting *molds, conveyors, controls for conveyors, and iron and steel articles*, between points in MI, OH, IN, IL, PA, WV, MD, TN, KY, IA, and MO.

MC 154647 (Sub-1), filed May 11, 1982. Applicant: THE LENDEL VINES CO., INC., 103 Henson Dr., Paris, AR 72855. Representative: Thomas V. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501) 375–9151. Transporting *foodstuffs and related products*, between points in TX, on the one hand, and, on the other, points in AR, MO, LA, OK, and KS.

MC 161637, filed May 6, 1982. Applicant: ROBERT SAMAC, d.b.a. S.S.T., 905 S. 209th, Seattle, WA 98148. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting (1) *salt*, between points in UT, on the one hand, and, on the other, points in WA, (2) *building materials*, between points in OR, WA, NV, AZ, NM, UT, CO, OK, NE, SD, TX, ND, KS, and WY, and (3) *iron and steel articles*, between points in WA, OR, ID, UT, CA, WY, and NV.

MC 161877, filed May 7, 1982. Applicant: BEN MGRDICHIAN, d.b.a. BEN MGRDICHIAN TRUCKING, 15527 Wilmaglen Dr., Whittier, CA 90604. Representative: Ben Mgrdichian (same address as applicant), (213) 947–7177. Transporting *motor vehicle and boat parts and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with Unique Truck Accessories, of City of Industry, CA.

MC 161947, filed May 10, 1982. Applicant: BOBBY ANTHONY JOHNSON, 2747 Rialto Ave., Rialto, CA 92376. Representative: Bobby Anthony Johnson (same address as applicant), (714) 874–6939. Transporting *automobile parts*, between points in the U.S., under continuing contract(s) with Motor Rim & Wheel Service, Inc., of Montebello, CA.

Volume No. OP4–179

Decided: May 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 138687 (Sub-8), filed May 12, 1982. Applicant: BYNUM TRANSPORT, INC., 4609 Hwy 92, East, Lakeland, FL 33801. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32301, (904) 576–1221. Transporting *building and construction materials*, between points in FL, GA, and AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141317 (Sub-7), filed May 10, 1982. Applicant: HAAG TRANSPORT, INC., P.O. Box 125, Shelburn, IN 47879. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *drugs, chemicals, and pharmaceuticals*, between points in Vigo County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Pfizer, Inc., of Terre Haute, IN.

MC 143037 (Sub-2), filed May 11, 1982. Applicant: T & T REFRIGERATED TRANSPORT, INC., 2290 W. Adams, Fresno, CA 93706. Representative: Edward L. Fanucchi, 2409 Merced, No. 3, Fresno, CA 93721. (209) 268–8771. Transporting *such commodities* as are dealt in or used by grocery stores, between points in CA, OR, WA, ID, NV, AZ, and NM.

MC 158737, filed May 11, 1982. Applicant: DENNIS R. MCLEAN, d.b.a. M & N TRUCKING, 2522 Lillian Ave., Duluth, MN 55811. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 S 8th St., Minneapolis, MN 55402. (612) 333–1341. Transporting *food and related products*, between points in MN, on the one hand, and, on the other, points in MN, WI and the upper peninsula of MI.

MC 159707, filed May 12, 1982. Applicant: SCARAB TRANSPORTATION, INC., 10 East Oregon Ave., Philadelphia, PA 19148. Representative: Richard Rueda, 135 N. Fourth St., Philadelphia, PA 19106, (215) 627–1923. Transporting *such commodities* as are dealt in or used by department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with The Limited Stores, Inc., of Columbus, OH.

MC 161667, filed May 10, 1982. Applicant: GARY LINE SIGHTSEEING TOURS, INC., 628 Valley Hill Rd., Riverdale, GA 30274. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 627–0555. Transporting *passengers and their baggage*, in special and charter operations, beginning and ending at points in Rabon County, GA, Macon, Jackson and Transylvania Counties, NC, and extending to points in the U.S. in and east of MN, IA, MO, AR, and LA.

Volume No. OP4–180

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

FF–597, filed May 13, 1982. Applicant: CADDO INTERNATIONAL, P.O. Box

3463, Seal Beach, CA 90704. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006, (202) 833–8884. As a freight forwarder, in connection with the transportation of *used household goods, unaccompanied baggage,* and *used automobiles,* between points in the U.S.

MC 3677 (Sub-52), filed May 10, 1982. Applicant: WMA INTERSTATE MOTOR LINES, INC., 2019 West Virginia Ave., NE, Washington, DC 20002. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783–7900. Transporting *passengers and their baggage,* in charter operations, between points in the U.S. (except AK and HI), under continuing contract(s) with United States Travel Agency, Inc., doing business as East Coast Parlor Car Tours, of Washington, DC.

MC 113047 (Sub-13), filed May 10, 1982. Applicant: BUANNO TRANSPORTATION CO., INC., R. D. #1, Fort Johnson, NY 12070. Representative: Herbert M. Carter, 305 Montgomery St., Syracuse, NY 13202, (315) 472–8845. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Life Savers, Inc., and Beech Nut Nutrition Corp., both of Canajoharie, NY.

MC 116227 (Sub-29), filed May 13, 1982. Applicant: POLMAN TRANSFER, INC., Rt. 3 Box 470, Wadena, MN 56482. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *such commodities* as are dealt in or used by farmers cooperative associations, between those points in the U.S. in and west of WI, IL, MO, AR, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144867 (Sub-12), filed May 10, 1982. Applicant: R & J TRANSPORT, INC., 608 N. 41st St., Manitowoc, WI 54220. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *machinery,* between points in Door and Kewaunee Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146447 (Sub-29), filed May 13, 1982. Applicant: TANBAC, INC., 2941 S. W. 1st Terrace, Ft. Lauderdale, FL 33315. Representative: Richard A. Austin, 320 Rochester Bldg., 8390 N.W. 53rd. St., Miami, FL 33166, (305) 592–0036. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Mobil Chemical Co., of Macedon, NY.

MC 147067 (Sub-4), filed May 13, 1982. Applicant: MACMILLAN OIL COMPANY, INC., 4306 Second Ave., Des Moines, IA 50308. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting (1) *alcohol,* between points in Linn and Pottawattamie Counties, IA, on the one hand, and, on the other, points in Cook County, IL, Marion County, IN, and points in MO and NE, and (2) *fertilizer,* between points in Scott County, IA, on the one hand, and, on the other, points in IL.

MC 150838 (Sub-1), filed May 10, 1982. Applicant: JOHN A FOWLER, d.b.a. JOHN FOWLER TRUCKING, Route 4, #12 Robin Dale Lane, Burleson, TX 76128. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor Fort Worth, TX 76104, (817) 332–4415. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nutritional Foods, Inc., d.b.a. Landstrom Distributors, of S. San Francisco, CA.

MC 158407 (Sub-2), filed May 13, 1982. Applicant: COURTESY TRANSPORTATION, INC., Rt. 16, P.O. Box 281, Mendon, MA 01756. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580, 1–716–265–9510. Transporting (1) *roofing and building materials,* (2) *paper and paper products,* (3) *flashing, water and vapor barriers,* and (4) *insulating materials and aluminum foil,* between points in the U.S., under continuing contract(s) with Glas Kraft, Inc., of Slatersville, RI.

Volume No. OP4–182

Decided: May 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 133966 (Sub-61), filed May 10, 1982. Applicant: NORTH EAST EXPRESS, INC., P.O. Box 127, Mountaintop, PA 18707. Representative: Joseph A. Keating, Jr., 121 S. Main St. Taylor, PA 18507, (717) 314–8030. Transporting *metal and plastic products,* between points in Lycoming County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138146 (Sub-3), filed May 12, 1982. Applicant: OLYMPIA TRAILS BUS COMPANY, INC., Rear 30–116 Port St., Newark, NJ 07105. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, NW., Washington, DC 20005, (202) 347–9332. Transporting *passengers and their baggage,* in the same vehicle, in charter and special operations, beginning and ending at points in Bergen, Hudson, Middlesex, and Passaic Counties, NJ, and extending to points in the U.S. (except AK and HI).

MC 161916, filed May 10, 1982. Applicant: SANDIA TRUCKING, INC., 4432 San Isidro NW., Albuquerque, NM 87107. Representative: James C. Ash, 2524 Vermont, NE, Albuquerque, NM 87110, (505) 298–7511. Transporting *meat byproducts,* between points in Los Angeles County, CA and points in Potter County, TX.

MC 161946, filed May 10, 1982. Applicant: FARMERS UNION CO-OP TRANSPORT, d.b.a. CO-OP TRANSPORT, Stetsonville, WI 54480. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *commodities in bulk,* between points in WI, on the one hand, and on the other, points in MN, IA, IL, IN, MI, and SD.

Volume No. OP4–184

Decided: May 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 37696, (Sub-39) filed May 12, 1982. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Leonard S. Cassell (same address as applicant), (704) 684–5321. Transporting *general commodites* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI).

MC 126206 (Sub-3), filed May 14, 1982. Applicant: NEWCOMB, INC., 2400 N. Monroe, Albany, GA 31702. Representative: Robert D. Newcomb (same address as applicant), (192) 883–4111. Transporting *household goods,* between points in Dougherty, Crawford, Taylor, Marion, Schley, Webster, Stewart, Chattahoochee, Quitman, Baker, Macon, Peach, Houston, Twiggs, Talbot, Bleckley, Pulaski, Dodge, Wilcox, Telfair, Irwin, Coffee, Berrien, Atkinson, Lanier, Lowndes, Brooks, Thomas, Sumter, Dooly, Crisp, Randolph, Terrell, Lee, Worth, Turner, Ben Hill, Clay, Calhoun, Tift, Early, Mitchell, Colquitt, Cook, Miller, Seminole, Decatur, and Grady Counties, GA, on the one hand, and, on the other, points in AL, FL, NC, SC, TN, MS, LA, IL, OH, IN, WV, VA, KY, AR, MO, and DC.

MC 147096 (Sub-10), filed May 10, 1982. Applicant: RABBIT EXPRESS, DIVISION OF MADISON BROTHERS DELIVERY SERVICE, INC., 4625 Highway 80 East Mesquite, TX 75150. Representative: Floyd Madison (same address as applicant), (817) 277–5892.

Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OK, LA, TX, AR, MS, TN, OH, GA, AL, MI and MO, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 149576 (Sub-15), filed May 13, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant), (201) 985–2182. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Okonite Co., of Ramsey, NJ.

MC 149576 (Sub-16), filed May 14, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: Ronald McGraw (same address as applicant), (201) 985–2182. Transporting *machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with The Wing Co., of Cranford, NJ.

MC 151546 (Sub-1), filed May 14, 1982. Applicant: CASCADE TRANSPORT, INC., P.O. Box 1128, Bend, OR 97701. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226–6491. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR, on the one hand, and, on the other, points in CA, ID, NV, OR, and WA.

MC 151946 (Sub-4), filed May 13, 1982. Applicant: BIG LAKE TRANSPORT, INC., P.O Box 98, Charleston, MO 62834. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652–2789. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Fairchild Camera and Instrument Corp., of Mountain View, CA.

MC 157906, filed May 14, 1982. Applicant: LARRY J. TEUBERT, d.b.a. L.J.T. TRUCKING, 355 Cronk Rd., Allen, MI 49227. Representative: Donald L. Lambright, 10 South Broad St., Hillsdale, MI 49242, (517) 437–2200. Transporting *grain products*, between those points in MI on and south of U.S. Hwy 96, on the one hand, and, on the other, those points in OH on and north of Interstate Hwy 70.

MC 158066 (Sub-2), filed May 13, 1982. Applicant: 5 "J" EXPRESS, INC., 9144 E. 400 N. Van Buren, IN 46991. Representative: Gerald J. Baumann (same address as applicant), (317) 934–2366. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Grant County, IN, Kent and Menominee Counties, MI, and Cook County, IL, on the one hand, and, on the other, points in U.S. (exept AK and HI).

MC 159646, filed May 14, 1982. Applicant: ENERGY TRUCKING, INC., 4100 South 500 West, Salt Lake City, UT 84111. Representative: John T. Caine, 2568 Washington Blvd., Odgen, UT 84401, (801) 393–5367. Transporting *uranium bearing ores*, between points in Mohave County, AZ, on the one hand, and, on the other, points in San Juan County, UT, under continuing contract(s) with Energy Fuels Nuclear, Inc., of Denver CO.

MC 160736, filed May 13, 1982. Applicant: DAVID R. BELL TRUCKING, 7718 Kendall Rd., Pavilion, NY 14525. Representative: David R. Bell (same address as applicant), (716) 237–5078. Transporting *agricultural fertilizer and soil conditioners*, (a) between the ports of entry on the International Boundary line between the U.S. and Canada on the Niagara River in NY, on the one hand, and, on the other, points in Monroe, Livingston, and Wyoming Counties, NY, and (b) between Toledo, OH, Baltimore, MD, Wilmington, DE, and points in Shenandoah County, VA, on the one hand, and, on the other, points in Monroe, Livingston, and Wyoming Counties, NY.

MC 161986, filed May 13, 1982. Applicant: ALPHA CARTAGE CO., INC., 555 S. Woodward Ave., Fifth Floor North, Birmingham, MI 48011. Representative: Patrick A. Moran (same address as applicant), (313) 642–2000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

Volume No. OP5–106

Decided: May 12, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 36788 (Sub-2), filed May 4, 1982. Applicant: DILLON'S BUS SERVICE, INC., 8383 Elvaton Rd., Millersville, MD 21108. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8565. Transporting *passengers and their baggage* in the same vehicle with passengers, in special or charter operations, beginning and ending at points in Prince Georges, Baltimore, Howard, Queen Anne and Montgomery Counties, MD and extending to points in the U.S. (except AK and HI).

MC 58189 (Sub-4), filed May 6, 1982. Applicant: ASTRO EXPRESS, INC., 41 Turnpike Rd., Fayville, MA 01745. Representative: Wesley S. Chused, 15 Court Sq., Boston, MA 02108 617–742–3530. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MA, on the one hand, and, on the other, points in CA, CT, DE, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, UT, VT, VA, WV, and DC.

MC 136348 (Sub-7), filed May 3, 1982. Applicant: ANTHONY G. FRANCIS and JOSEPH G. FRANCIS, d.b.a. FRANCIS WHOLESALE CO., 3048 White Horse Rd., Greenville, SC 29611. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, 313–349–3980. Transporting *such commodities* as are dealt in by wholesale and retail grocery stores and supermarkets, between points in MD, VA, NC, SC, GA, and FL on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139638 (Sub-12), filed May 6, 1982. Applicant: N. L. MONTGOMERY, INC., P.O. Box 628, Rocky Mount, VA 24151. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, 615–790–2510. Transporting *metal products*, between points in NC on the one hand, and, on the other, points in MD, OH, PA, VA, SC, GA, and WV.

MC 143638 (Sub-8), filed May 3, 1982. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74036. Representative: Michael H. Lennox, 3925 N.W. 10th St., Box 75613, Oklahoma City, OK 73147, 405–943–2477. Transporting *pig iron*, between points in TX, LA, AR, MO, KS, and OK.

MC 144209 (Sub-15), filed May 3, 1982. Applicant: ERWIN TRUCKING, INC., 4515 North 24th St., Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, 402–392–1220. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paint and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with Sherwin Williams Company of Cleveland, OH.

MC 146066 (Sub-13), filed April 26, 1982. Applicant: CONSOLIDATED CARRIERS INTERNATIONAL TRANSPORT CORPORATION, P.O. Box 5005, Florence, SC 29502. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., NW.,

Washington, DC 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Bristol County, MA, Florence County, SC, and points in FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149308 (Sub-23), filed April 30, 1982. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47172. Representative: Donald W. Smith P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6855. Transporting *chemicals and related products* between Kansas City, MO, Baltimore, MD, Los Angeles, CA, Atlanta, GA, and Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151508 (Sub-3), filed April 29, 1982. Applicant: BARY, INC., 6001 Crittenden Dr., P.O. Box 35354, Louisville, KY 40232. Representative: Jack Bary, 1303 Blackwood Ct., Jeffersonville, IN 47130, (812) 283–7604. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Floyd and Clarke Counties, IN, and Jefferson County, KY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 161598, filed April 20, 1982. Applicant: EAST SIDE DISTRIBUTORS, INC., 2950 Highway 98, North, Lakeland, FL 33805. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *food and related products* between points in Pinellas County, FL, on the one hand, and, on the other, those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River and extending along of the Mississippi River to its junction along the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada.

MC 161789, filed May 3, 1982. Applicant: THE BOSSHART COMPANY, 217 North First Ave. West, Truman, MN 56088. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, 701–237–4223. Transporting *clay, concrete, glass or stone products*, between points in Blue Earth, Brown, Faribault, Jackson, Le Sueur, Lincoln, Lyon, Martin, Murray, Nobles, Redwood, and Watonwan Counties, MN, on the one hand, and, on the other, points in IA, ND, SD, and WI.

MC 161808, filed May 3, 1982. Applicant: DEL GOEBEL d.b.a. DEL GOEBEL TRANSPORT COMPANY, P.O. Box 476, Mankato, MN 56001. Representative: Katherine E. Sasseville, Suite 400, 808 Third Ave. So., Fargo, ND 58103, 701–280–2000. Transporting: *food and related products*, between points in the U.S. under continuing contract(s) with Honeymead Products Company of Mankato, MN.

MC 161828, filed May 5, 1982. Applicant: KC EXPRESS, P.O. Box 258, Versailles, OH 45380. Representative: Krista D. Subler (same address as applicant), 513–526–3309. Transporting: (1) *such commodities* as are used or dealt in by manufacturers and distributors of food and related products, between points in the U.S. (except AK and HI), and (2) *transportation equipment*, between points in FL and KY on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP5–110

Decided: May 14, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 40518 (Sub-16), filed May 6, 1982. Applicant: BOSTON-BUFFALO EXPRESS, INC., 7200 Fly Rd., P.O. Box 207, East Syracuse, NY 13057. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, (312) 472–3845. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, MA, ME, NH, NY, RI, and VT.

MC 144959 (Sub-6), filed April 19, 1982. Applicant: SCOTT PALLETS, INC., P.O. Box 341, Amelia, VA 23002. Representative: Jo Anne Scott (same address as applicant), 804–561–2514. Transporting (1) *rubber products*, under continuing contract(s) with Dick's Place, Inc. of Amelia, VA, and (2) *steel products*, under continuing contract(s) with Brenco, Inc. of Petersburg, VA, and The Hon Company of Chester, VA, between points in the U.S.

MC 149199 (Sub-14), filed May 6, 1982. Applicant: FRONTIER EXPRESS, INCORPORATED, d.b.a. D & M TRANSPORTATION, 905 S.W. Second, Oklahoma City, OK 73109. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036, (405) 262–1322. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152509 (Sub-22), filed May 4, 1982. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., P.O. Box 5858, Cleveland, OH 44101. Representative: Robert R. Harris, 1730 M St., NW, Suite 501, Washington, DC 20036, (202) 296–2900. Transporting: *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 156738, filed May 4, 1982. Applicant: PEM–KAY FURNITURE CO., INC., P.O. Box 595, Conover, NC 28613. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with G.F.C. Foam Corp., d.b.a General Foam Corp., of Paramus, NJ.

MC 160199, filed April 27, 1982. Applicant: COOKE TRUCKING COMPANY, INC., Rt. 1, Box 72, Mt. Airy, NC 27030, Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615) 790–2510. Transporting *metal products* between Fredericksburg, VA, on the one hand, and, on the other, points in OH, GA, MA, PA, CT, MI, NC, KY, FL, IN, IL, CA, SC, TN, NY, NJ, AL, MS, LA, and TX.

MC 161199, filed April 27, 1982. Applicant: WESTERN FREIGHT LINES, INC., 300 Elliott Ave. W. #220, Seattle, WA 98109. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006, (206) 644–2100. Transporting *bananas*, between points in CA, on the one hand, and, on the other, points in AR, AZ, CA, CO, ID, IA, IL, KS, LA, MO, MN, MT, NE, NM, NV, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 161848, filed May 6, 1982. Applicant: A.B. & W. TRUCKING CORPORATION, 7601 Poplar Hill Lane, Clinton, MD 20735. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8565. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, AZ, CA, CO, CT, DE, FL, GA, IL, KY, MA, ME, MD, MN, MO, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, VT, WV, and DC.

MC 161858, filed May 6, 1982. Applicant: HICKS MOVING & STORAGE, INC., 2282 South Tamiami Trail, Venice, FL 33595. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006, (202) 331–3700. Transporting household goods, between points in FL, on the one hand, and, on the other, points in AL, GA, MS, NC, SC, and TN.

Volume No. OP5-112

Decided: May 17, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 41098 (Sub-78), filed May 10, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006, (202) 833-8884. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Imagic, Inc., of Saratoga, CA.

MC 43038 (Sub-500), filed May 7, 1982. Applicant: COMMERCIAL CARRIERS, INC., 20300 Civil Center Dr., Fourth Floor, Box CS 5027, Southfield, MI 48037. Representatives: Paul H. Jones, 29725 Shacket Ave., Madison Hights, MI 48071, 313-352-9200 Transporting *transportation equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Volkswagen of America, Inc. of Englewood Cliffs, NJ.

MC 108359 (Sub-9), filed April 29, 1982. Applicant: EMPIRE TRAILWAYS, INC., 67 Chestnut St., Rochester, NY 14604, Representataive: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751-2441 Transporting *passengers and their baggage*, in special and charger operations, beginning and ending at points in NY in and west of Oswego, Onondaga, Cortland, and Broome Counties, and extending to points in the U.S. (including AK, but excluding HI).

MC 128678 (Sub-2), filed May 6, 1982. Applicant: PDQ VAN & STORAGE, INC., P.O. Box 227, Marysville, CA 95901. Representative: Robert G. Harrison, 4299 James Dr. Carson City, NV 89791, 702-882-5849. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Western Electric Company, Inc., of Greensboro, NC.

MC 127799 (Sub-12), filed May 10, 1982. Applicant: LUPPES TRANSPORT COMPANY, INC., Box 101, Webster City, IA 50595. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282-3525. Transporting *petroleum products* between St. Paul, MN on the one hand, and, on the other, points in IA.

MC 135069 (Sub-6) filed May 10, 1982. Applicant: ROCKAWAY TRUCKING, INC., Rt. 46, Rockaway, NJ 07866. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797-6060. Transporting (1) *clay, concrete, glass or stone products*, (2) *metal products*, (3) *tableware*, (4) *candles*, and (5) *plastic products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Dansk International Designs, Ltd., of Mt. Kisco, NY.

MC 139379 (Sub-13), filed May 6, 1982. Applicant: LES MATHRE TRUCKING, INC., 417 8th St., Story City, IA 50248. Representative: Larray D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2329. Transporting *food and related products* between points in IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147648 (Sub-3), filed May 5, 1982. Applicant: ROBERT L. PERKINS, d.b.a. PERKINS TRANSPORT SERVICE, 4913 Maple St., Omaha, NE 68104. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, 402-558-1743. Transporting *recreational, travel, converter vans, mini-vans, and motor homes*, between points in the U.S. under continuing contract(s) with Winnebago Industries, Inc., of Forest City, LA.

MC 151209 (Sub-2), filed April 19, 1982. Applicant: GULF WESTERN EXPRESS, INC., P.O. Box 2653, Natchitoches, LA 71457. Representative: John G. Williams, 329 Cane River Mall, Natchitoches, LA 71457; (318) 352-6736. Transporting *paper bags, paper and plastic bags, wrapping paper, pulp board, and related products*, between points in LA, TX, MS, and AR, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Westvaco-Bag Division of New Orleans, LA.

MC 156728, filed May 10, 1982. Applicant: JOHN J. HERBST, d.b.a. J & R TRANSPORT, Box 195, 125 North 3rd St., Dickeyville, WI 53808. Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001, 319-557-1320. Transporting *fertilizer* between points in Jo Davies and La Salle Counties, IL, Cedar, Clinton and Dubuque Counties, IA, on the one hand, and, on the other, points in WI.

MC 158288 (Sub-3), filed May 11, 1982. Applicant: MONTANA CONSULTANTS, INC., d.b.a. TOMAHAWK TRANSPORTATION, 5400 Laurel Rd., Billings, MT 59101. Representative: David A. Sutherland, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036; (202) 452-8600. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Champion International Corporation of Stamford, CT.

MC 160279 (Sub-1), filed May 7, 1982. Applicant: MBPXL TRANSPORTATION, INC., P.O. Box 2519, Wichita, KS 67201. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761. Transporting (1) *food and related products* under continuing contract(s) with Thies Companies, Inc., of Great Bend, KS, and (2) *chemicals and related products* under continuing contract(s) with Adhesives Consultants Midwest Corporation of Franklin Park, IL, between points in the U.S. (except AK and HI).

MC 161508, filed May 11, 1982. Applicant: BOB ANDERSON TOURS, INC., 512 Washington, Ave., Woodbine, NJ 08270. Representative: Jeremy Kahn, 1511 K St., NW., Suite 733 Investment Bldg., Washington, DC 20005, (202) 783-3525. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Delaware County, PA, and Atlantic and Cape May Counties, NJ, and extending to points in the U.S. including AK but excluding HI.

MC 161709, filed April 28, 1982. Applicant: HARLEY GOLDSMITH, 3-1495 Ottokee St., Wauseon, OH 43567. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215, 614-228-1541. Transporting (1) *clay, concrete, glass or stone products*, (2) *Metal products*, and (3) *machinery*, between points in MI, on the one hand, and, on the other, points in Defiance, Fulton, Henry, Lucas, Paulding, Putnam, Williams and Wood Counties, OH.

MC 161898, filed May 10, 1982. Applicant: PROGRESSIVE TRAVEL, INC., 420 Chestnut St., Union, NJ 07038. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St. NW., Washington, DC 20005, 202-783-3525. As a *broker* at Union, NJ, in arranging for the transportation of *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, between points in the U.S. (including AK but excluding HI).

MC 161918, filed May 10, 1982. Applicant: SOUTHWEST BEDDING COMPANY, INC., 2908 N. Sixth St., Fort Smith, AR 72904. Representative: George Spencer, 7 N. Block, Fayetteville, AR 72901, (501) 442-0585. Transporting *steel sofa mechanisms and furniture* between points in the U.S. (except AK and HI), under continuing contract(s) with Ethan Allen, Inc., of Danbury, CT.

MC 161949, filed May 10, 1982. Applicant: M & J BUS LINES, INC., 130 Ingham Hill Rd., P.O. Box 707, Old Saybrook, CT 06475. Representative: Palmer S. McGee, Jr., One Constitution

Plaza, Hartford, CT 06103, 203–278–1330. Transporting *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in New Haven, New London, and Middlesex Counties, CT, and extending to points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-14177 Filed 5-25-82; 8:45 am]
BILLING CODE 7035-01-M

[I.C.C. Order No. 81-A Service Date May 24, 1982.]

Rail Carriers; Rerouting Traffic Under Service Order No. 1344

To All Railroads

Upon further consideration of Second Revised I.C.C. Order No. 81 and good cause appearing therefor:

It is ordered: I.C.C. Order No. 81 is vacated.

This order shall become effective at 4:00 p.m., May 14, 1982, and shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. A copy shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 14, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-14241 Filed 5-25-82; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

Agency Forms Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTIONS: The proposed information collections are for use by the Commission in connection with Investigation No. 332–142, The Impact of Foreign Trade-Related Performance Requirements on U.S. Industry and Foreign Investments Abroad.

SUMMARY OF PROPOSAL: The following summarizes the information collection proposal submitted to OMB for Inv. No. 332–142:

(1) Number of forms submitted: Three.

(2) Title of forms: Questionnaire for U.S. Producers of Chemicals and Allied Products; Questionnaire for U.S. Producers of Office, Computing, and Accounting Machines; Questionnaire for U.S. Producers of Motor Vehicles and Equipment.

(3) Type of request: New.

(4) Frequency of use: Nonrecurring.

(5) Description of respondents: Businesses (U.S. producers of chemicals and allied products, office, computing, and accounting machines, or motor vehicles and equipment).

(6) Estimated number of respondents: 270.

(7) Estimated total number of hours to complete the forms: 4,050.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

(9) Section 3504(h) of Pub. L. 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles Ervin, the USITC agency clearance officer (tel. no. 202–523–4463). Comments and questions about the proposals should be directed to David Reed, the designated reviewer for OMB (tel. no. 202–395–7231). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise David Reed of your intent as soon as possible. Copies of any comments should be provided to Charles Erwin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

Issued: May 21, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14353 Filed 5-25-82; 8:45 am]
BILLING CODE 7020-02-M

Agency Forms Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: Pursuant to the Tariff Act of 1930, the Trade Act of 1974 and the Agricultural Adjustment Act of 1933, the Commission determines the impact of international trade on domestic industries and commodities. Data from questionnaires sent to U.S. businesses provide part of the statistical base for the Commission's determinations. Investigations can result in the imposition of import duties, quotas or other forms of relief to domestic industries.

SUMMARY OF PROPOSAL: The following summarizes the information collection proposal submitted to OMB:

(1) Number of forms submitted: Three.

(2) Title of forms: Sample Producers', Sample Importers', and Sample Purchasers' Questionnaires.

(3) Type of request: Adjustment (Change in use)—adjustment to information collection proposal approved by OMB on June 30, 1981 (OMB No. 3117–0016).

(4) Frequency of use: Recurring.

(5) Description of respondents: U.S. businesses and farms.

(6) Estimated number of respondents: 5,700 (total, revised from 3,400).

(7) Estimated total number of hours to complete the forms: 94,000 (total, revised from 51,000).

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

(9) Section 3504(h) of Pub. L. 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles Ervin, the U.S.I.T.C. agency clearance officer (tel. no. 202–523–4463). Comments and questions about the proposal should be directed to David Reed, the designated reviewer for OMB (tel. no. 202–395–7231). If you anticipate commenting on the proposal but find that time to prepare comments will prevent you from submitting them promptly you should advise David Reed of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, N.W. Washington, D.C. 20436).

Issued: May 20, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14334 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-105]

Certain Coin-Operated Audiovisual Games, and Components Thereof (Viz, Rally-X and PAC-MAN); Termination of a Respondent Based on a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of the investigation with respect to respondent Fernandez Fun Factory, Inc., based on a settlement agreement.

SUPPLEMENTARY INFORMATION: Complainant Midway Manufacturing Co., respondent Fernandez Fun Factory, Inc., and the Commission investigative attorney moved on January 12, 1982, to terminate the investigation on the basis of a settlement agreement.

On March 24, 1982, the Commission published a notice in the **Federal Register** requesting comment from the public and from interested Federal agencies regarding whether the investigation should be terminated on the basis of the settlement agreement (47 FR 12701). No comments were received.

On May 17, 1982, the Commission terminated this investigation as to Fernandez Fun Factory on the basis of the settlement agreement. The Commission concluded that such termination would not adversely affect the public interest.

Notice of this investigation was published in the **Federal Register** of July 1, 1981 (46 FR 34436).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0074

By order of the Commission.

Issued: May 18, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14339 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-122; Order No. 1]

Certain Miniature, Battery-Operated, All-Terrain, Wheeled Vehicles

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Donald K. Duvall as Presiding Officer in this investigation with the understanding that a Recommended Determination as to temporary relief will be rendered forty-five days from the date of publication of the notice of investigation in the **Federal Register**, if consistent with due process.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: May 18, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-14361 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-97]

Certain Steel Rod Treating Apparatus and Components Thereof; Denial of Petition for Reconsideration

AGENCY: International Trade Commission.

ACTION: Denial of petition for reconsideration.

SUPPLEMENTARY INFORMATION: Notice of the institution of this investigation was published in the **Federal Register** of January 28, 1981 (46 FR 9263).

The investigation concerned the alleged infringement of U.S. Letters Patent 3,390,871.

On December 10, 1981, the Commission, having determined that there was a violation of section 337 of the Tariff Act of 1930 in the sale for importation of the subject steel rod treating apparatus, issued an exclusion order pursuant to section 337(d). On December 30, 1981, the U.S. District Court for the District of South Carolina found the '871 patent invalid and unenforceable. The Commission thereupon revoked its determinations as to remedy, the public interest, and bonding, and issued an order permitting entry under bond pursuant to section 337(e), the order to remain in effect pending the exhaustion of appeal rights from the South Carolina action.

Respondents have moved for reconsideration of the Commission's determination as to violation of section 337 in light of the conflicting findings of the district court as set forth in the court's opinion of February 2, 1982. After review of the record in the Commission's investigation and the district court's opinion, the Commission has denied the petition for reconsideration.

Copies of the Commission' Action and Order and Memorandum Opinion, and all other public documents contained in the record of the investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Room 161, Washington, D.C. 20436, telephone (202) 523-0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523-0375.

By order of the Commission.

Issued: May 17, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14364 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[332-140]

Competitive Status of Major Supply Regions for Fall-Harvested Fresh White or Irish Potatoes in Selected Markets

AGENCY: International Trade Commission.

ACTION: Upon consideration of a request from the National Potato Council, the Commission has scheduled an additional public hearing for investigation No. 332-140 to be held beginning at 10:00 a.m., on June 24, 1982, to be continued on June 25, 1982, if required, in the Gold Room, Room 420, State Capitol Building, Boise, Idaho 83720. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, June 18, 1982. A hearing in Bangor, Maine on June 30, 1982, will be held as originally scheduled.

Notice of the investigation and information on the Bangor, Maine hearing were published in the **Federal Register** of April 7, 1982 (47 FR 14978).

By order of the Commission.
Issued: May 18, 1982.
Kenneth R. Mason,
Secretary.
[FR Doc. 82-14306 Filed 5-25-82; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-90 (Preliminary)]

Chlorine From Canada

Determination

On the basis of the record [1] developed in investigation No. 731-TA-90 (Preliminary), the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of Chlorine, as provided for in item 415.20 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 5, 1982, a petition was filed by counsel on behalf of Diamond Shamrock Corp., Olin Corp., and Pennwalt Corp. with the U.S. International Trade Commission and with the Department of Commerce alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Canada of chlorine which is allegedly being sold at LTFV. Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on April 14, 1982 (47 FR 16128). The conference was held in Washington, D.C. on April 29, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, Feb. 10, 1982).

[2] Commissioner Frank dissenting.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioners Paula Stern, Alfred E. Eckes, and Veronica A. Haggart

On the basis of the record established in this investigation, we determine that there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Canada of chlorine allegedly sold at less than fair value.[3] The reasons for our determination are set forth below.

Domestic Industry

Section 771(4) of the Tariff Act of 1930 defines the term "industry" as,

> the domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is defined in section 771(10) of the Act as,

> a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

The chlorine that is imported into the United States from Canada is almost exclusively liquid chlorine. Chlorine is an inorganic chemical and one of the largest volume chemicals produced in the United States. Chlorine is produced as gas, and it remains in that state at normal temperatures and pressures. Under low temperatures and/or elevated pressures, chlorine reaches a liquid state. Most chlorine is liquified before shipment because the volume can be reduced in the liquification process. However, there are no chemically discernible differences between the liquid and gaseous chlorine and both forms can be used interchangeably.

We find the like product to be chlorine whether in its liquid or gaseous state. therefore, the domestic industry against which injury should be assessed consists of the domestic producers of chlorine.

An argument has been made by the respondents during the course of this investigation that injury should be assessed with regard to the profitability of the chlor-alkali industry and not solely with regard to the chlorine industry. The chlor-alkali industry represents the production of both chlorine and caustic soda. Chlorine is produced by an electrolytic charging process which also produces caustic soda and hydrogen [4] as co-products. The respondents argued that, since the producers of chlorine produce both chlorine and caustic soda "by definition, and not by choice or by coincidence, the economic reality is that they constitute a single chlor-alkali industry."[5]

The respondents also claim that, because there is no separate production process and because there are no separate industry-wide profit figures available, the Commission must analyze injury to the domestic industry in terms of information on the production of chlorine and caustic soda. The respondents cite 19 U.S.C. 1677(4)(D) (section 771(4)(D) of the Tariff Act of 1930) in support of their position. Section 771(4)(D) states:

> (D) Product Lines—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

We have not found the respondents' arguments persuasive because there are data published on an industry-wide basis concerning the chlorine industry alone. Furthermore, the staff has been able to gather from the domestic producers information on the chlorine production process and producers' profits with regard to chlorine.[6] Although chlorine and caustic soda are coproducts, there is a point in the production process where the chlorine gas is removed from the reaction stream. From this point on, chlorine and caustic soda are completely segregated and assume separate identities. Although we received limited profit-and-loss data from the domestic industry, for the most part this was not related to their inability to allocate data to their chlorine operations, but rather a failure to come forward with the information.

[3] Material retardation of the establishment of an industy was not raised as an issue in this investigation.

[4] The amount of hydrogen produced in the electrolytic charging process is minimal in comparison to chlorine and caustic soda.

[5] Post Conference Brief of C-I-L, Inc. and C-I-L Chemicals, Inc. in Opposition to the Petition, p. 4.

[6] *See* Sodium Hydroxide, in Solution (Liquid Caustic Soda), from the Federal Republic of Germany, France, Italy, an the United Kingdom, inv. No. 731-TA-8 through 11 (Preliminary), U.S.I.T.C. Pub. No. 1040 (1980). In that investigation, the Commission relied on information gathered with regard to the production of caustic soda only. *See* also views of Vice Chairman Bill Alberger in that investigation.

Although we find the domestic industry to consist of all producers of chlorine in the United States, we have considered the impact of the LTFV imports on both the overall market and the domestic commercial chlorine market in reaching our determination in this investigation.

Within the overall chlorine market in the United States there are two submarkets: the commercial market and the captive market. The captive market accounts for approximately 60 percent of the chlorine produced. This chlorine is consumed internally for the production of other products. Approximately 40 percent of the chlorine produced domestically is sold in the open commercial market.[7]

All of the alleged LTFV imports are produced by C–I–L Chemicals, Inc. C–I–L's exports to the United States are sold almost exclusively in the open commercial market. Almost all of the other Canadian imports are sold to the captive domestic market. These involve transfers between divisions or subsidiaries or between a subsidiary and its parent. Thus, it is in the domestic commercial market where the allegedly LTFV imports compete.

No Reasonable Indication of Material Injury by Reason of LTFV Imports

Under section 733(a) of the Tariff Act of 1930,[8] the Commission is required to determine whether there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the merchandise which is the subject of the investigation by the administering authority. The record demonstrates that, while there are indications that the domestic industry has been experiencing difficulties, imports of chlorine from Canada which are allegedly sold in the United States at less than fair value are not a cause of material injury.

In making its determination of whether there is a reasonable indication of material injury, the Commission must consider, among other factors, the volume of imports, the effect of imports on prices in the United States for the like product, and the impact of imports of such merchandise on domestic producers of the like product.[9]

U.S. production declined by 12 percent from 1979 until 1981, and then declined by another 14 percent in January–March 1982, relative to production for the corresponding period of 1981.[10] In contrast, available information indicates that production capacity increased by 3 percent from 1979–1981. Production capacity again increased by 3 percent in January–March 1982 relative to January–March 1981.[11] As a logical result of increased capacity coupled with decreasing production, capacity utilization declined from approximately 86 percent in 1979 to approximately 64 percent in January–March 1982.[12]

The most current data available on the quantity of U.S. producers' shipments are published by the Chlorine Institute.[13] These data reflect liquid chlorine shipments.[14] Shipments of liquid chlorine accounted for an average of 49 percent of U.S. production during the period under consideration and declined throughout the period, though not quite as sharply as U.S. production. The quantity of liquid chlorine shipped declined from 5.8 million short tons in 1979 to 5.4 million short tons in 1981, or by 7 percent. The quantity of liquid chlorine shipped declined again, by 14 percent, in January–March 1982 from that for the corresponding period of 1981. Information supplied by domestic producers in response to the Commission's questionnaires demonstrates similar trends.

On an aggregated basis, the weighted average unit value of the commercial shipments of those producers responding to the Commission's questionnaire declined from $100 per short ton in 1980 to $80 per short ton in January–March 1982, or by 20 percent.

Although no significant inventories of chlorine are maintained because there are tremendous costs and hazards related to the storage of the product, U.S. producers' inventories have increased, both quantitatively and relative to producers' shipments during the period under consideration.[15] In addition, apparent U.S. consumption of chlorine declined throughout the period under consideration. Data available to the Commission on U.S. employment and wages showed generally declining trends during the same period.

Six producers, accounting for an average of 19 percent of U.S. producers' shipments of liquid chlorine in 1981, provided profit-and-loss data on their chlorine operations to the Commission.[16] This information indicates that in the aggregate, the six firms providing the information were profitable in 1979, but unprofitable in 1980 and 1981. Together, the six firms earned an operating profit of $1.1 million in 1979, which represented 1.0 percent of net sales that year. These firms sustained losses of $4.1 million (3.6 percent of net sales) and $6.6 million (6.3 percent of net sales), respectively in 1980 and 1981. The three firms which supplied interim data for January–March 1982 reported an aggregate loss of $4.2 million (40.6 percent of net sales) compared to a loss of $2.0 million (14.9 percent of net sales) for the corresponding period of 1981.

The ratio of cost of goods sold to net sales rose from 91.1 percent in 1979 to 96.1 percent in 1981. This indicates that manufacturing costs rose at a faster rate than the selling price of chlorine during 1979–81.[17]

Causation

Section 733(a) of the Tariff Act of 1930 requires the Commission to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury—

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. (Emphasis added).

We are unable to find a reasonable indication of injury under the statute because any injury experienced by the domestic industry is not caused by the allegedly less-than-fair value imports from Canada.

In determining whether material injury to an industry is "by reason of" alleged LTFV imports, the legislative history of Title VII of the Tariff Act of 1930 states that:

the Commission must satisfy itself that in light of all the information presented, there is a sufficient causal link between the less-than-fair value imports and the requisite injury. The determination of the ITC with respect to causation is, under current law, and will be, under section 735, complex and difficult, and is a matter for the judgment of the ITC.[18]

The record indicates that, although imports of chlorine from Canada steadily increased from 1979 through January-March 1982, the market

[7] Statement of Petitioners on Reasonable Indication of *Material Injury or Threat Thereof*, p. 3.
[8] 19 U.S.C. 1673b(a).
[9] Tariff Act of 1930, section 771(7), 19 U.S.C. 1677(7) (B) and (C).
[10] Report to the Commission, p. A–11.
[11] Ibid., p. A–13.
[12] Ibid., p. A–14.
[13] The Chlorine Institute is a trade association to which a majority of the domestic chlorine producers belong. In 1979, all but five of the thirty-six U.S. producers were members.
[14] These data exclude shipments of gaseous chlorine via pipelines. Shipments of gaseous chlorine have been estimated to account for approximately 5 percent of U.S. production of chlorine (see Report to the Commission, p. A–14). However, these data do include intercompany transfers involving the shipment of liquid chlorine.
[15] Report to the Commission, pp. A–18–19.
[16] Although the data are limited, this information is the best information available to the Commission.
[17] Report to the Commission, p. A–34.
[18] S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

penetration was minimal. The ratio of all imports of chlorine from Canada to apparent U.S. consumption increased from 1.1 percent in 1979 to 1.7 percent in 1981 and increased again in January-March 1982 relative to the ratio for the corresponding period in 1981. The ratio of imports from Canadian producers, which are unrelated to U.S. producers, to apparent U.S. open-market consumption similarly increased from 1979 to January-March 1982. Under the circumstances of this investigation, these ratios never reached a level capable of causing an adverse impact on the domestic producers.[19] [20]

The information on the record with regard to prices indicates that, on a weighted average basis, there is no underselling by the Canadians nor was there ever an established pattern of underselling. The weighted average price for domestically produced chlorine declined irregularly from $96 per short ton, f.o.b. plant in January-March 1980 to $75 per short ton, f.o.b. plant in January-March 1982. At the same time, the prices of Canadian imports were higher and showed an irregular increase.[21] By early 1981, the delivered prices of imported chlorine were substantially higher than the f.o.b. prices of the domestic buyers.[22] Thus, the allegations that the Canadian imports have suppressed and depressed the U.S. prices have not been substantiated.

We have considered the allegations of lost sales offered by the petitioner. We do not find them sufficient to establish an causal link between Canadian imports and the domestic industry's difficulties because the lost sales were isolated incidents, primarily limited to the municipal market which accounts for only 6 percent of the total U.S. chlorine market.[23] Further, the last verified lost sale occurred in June 1981.

Factors accounting for the decline in the domestic industry are the recession and the resulting decline in the demand for chlorine in the housing and automobile industries and the impact that the relatively strong demand for caustic soda has had on the supply of chlorine. Because of the coproduct relationship between chlorine and caustic soda, their supply and demand are permanently interwined. At present, the demand for caustic soda is relatively strong as compared to the demand for chlorine. In meeting the demands for caustic soda, chlor-alkali producers necessarily create an oversupply of chlorine which results in a drop in chlorine prices. Two factors cause a rapid decrease in chlorine prices under these circumstances. First, no significant inventories of chlorine can be maintained because of the tremendous costs and hazards involved in strong the product. Second, the high cost of disposing of chlorine either by removing it to special dump sites for hazardous and toxic materials or by recombining it with caustic soda to form salt makes it prohibitive to throw chlorine away it one cannot sell or keep it.

Given the failure of the petitioners in this case to demonstrate a causal link between the alleged LTFV imports and any injury the industry may be suffering, we conclude that other causes are responsible for the present condition of the domestic industry.[24] Additionally, information gathered by the Commission demonstrates that any injury was not due to the subject imports.

No Reasonble Indication of a Threat of Material Injury by Reason of LTFV Imports

Direction for determining whether there is a threat of material injury in antidumping investigations can be found in the legislative history of the Trade Act of 1974 and the Trade Agreements Act of 1979. This was recently elaborated upon in a Court of International Trade opinion in *Alberta Gas Chemicals, Inc. v. United States.*[25]

In *Alberta Gas,* the Court reviewed a determination made in a final investigaton, not a preliminary investigation. Undoubtedly, the Court's decision in that case offers instruction to the Commission in evaluating what factors are appropriate for reaching a determination based on threat of material injury in both preliminary and final investigations. The instant case, being a preliminary determination, involves the determination of whether there is a *reasonable indication* of a threat of material injury by reason of LTFV imports of chlorine from Canada. For the reasons set forth below, we find that the facts do not reasonably indicate that an industry in the United States is threatened with material injury by reason of alleged LRFV imports of chlorine from Canada.

Production of chlorine in Canada increased significantly from 1979 to 1980, but has declined since then. Canadian production increased from 1.1 million short tons in 1979 to 1.4 million short tons in 1980, or by 6 percent, but then declined slightly, by less than 1 percent in 1981. Canadian production then declined by 7 percent in January-February 1982 relative to that reported for the corresponding period of 1981.[26]

The capacity to produce chlorine in Canada increased significantly (by 36 percent) from 1979 to 1981. As far as it is known, capacity in Canada has remained unchanged since 1981. In 1981 total Canadian capacity for the production of chlorine was only 12 percent of U.S. capacity. The utilization of Canadian producers' capacity declined from 92 percent in 1979 to 78 percent in January-February 1982.[27]

The United States is the predominant market for Canadian exports. However, as a share of total production of chlorine in Canada, exports to the United States declined from 16 percent in 1979 to 13 percent in January-February 1982. U.S. importers reported that minimal inventories of chlorine were held as of March 31, 1982.

The factors that would lead us to a determination of a reasonable indication

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[19] We are unable to cite the specific ratios as that information is confidential.

[20] Comm. Eckes' determination in this investigation that there is no causal connection between alleged LTFV imports and the condition of the domestic industry is based on his assessment of import penetration in conjunction with the absence of any underselling, pattern of underselling, or any significant lost sales as discussed in this opinion.

[21] We are unable to disclose the weighted average prices for the Candian imports inasmuch as that information is confidential.

[22] The majority of domestic producers provided the Commission only with prices, f.o.b. their plants, although delivered prices were also requested. The Canadian delivered prices, and the U.S. f.o.b. prices are comparable, however, because the U.S. prices reflect sales involving purchasers who are close to the producer (transcript of the conference, pp. 53-90).

[23] Report to the Commission, p. A–6.

[24] Senate Report, supra, note 3 at 75.

[25] 515 F. Supp 8/0 (CIT 1981). Chairman Alberger, Vice Chairman Calhoun, and Commissioner Stern note that in *Alberta Gas* the Court cited a section of the Senate Finance report on the Trade Act of 1974. (S. Rep. No. 1298, 93rd Cong., 2d Sess. 180 (1974)). The opinion states that the Congressional standard for determining likelihood of injury was articulated in this report. The report explained that future injury must be: based upon evidence showing that the *likelihood is real and imminent* and not on mere supposition, speculation or conjecture. [Emphasis added.] In 1979, the Congress again made its intent clear by replacing the "likelihood of injury" language with language directing the Commission to determine whether there exists a "threat of material injury." (19 U.S.C. 1673 (1980)). In that regard, Congress indicated that there must be "information showing that the threat is real and injury is imminent, not a mere supposition or conjecture." (S. Rep. No. 249, 96th Cong., 1st Sess. 88, 899 (1979); H.R. Rep. No. 317, 96th Cong., 1st sess 47 (1979)). The Court interpreted the legislative history to mean that a determination of a threat of material injury should not be based on future events that are uncertain or depend on several contingencies. A determination of a threat of material injury should not depend on a "mere *possibility* that injury might occur at some remote future time."

In applying this standard to the present investigation, it should be clear that the standard for threat of material injury is no different from that articulated by the Court in *Alberta Gas.* We are, however, concerned with met, not with a final showing of threat.

[26] Report to the Commission, p. 27.

[27] I bid.

of threat of material injury are not present in this case.

Views of Commissioner Eugene J. Frank

Affirmative—Material Injury

On the basis of the record investigation No. 731–TA–90 (Preliminary), I determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of chlorine from Canada which are allegedly sold at less than fair value.

Overview

First, I would like to note that the statute and legislative history in title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations to exercise only a low-threshold test based upon the best information available to it at the time of such determination that the facts reasonable indicate that an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[28]

The 45-day preliminary injury determination compressed time period was, in my view, intended by Congress to screen out those petitions where it was readily apparent, albeit based on a necessarily incomplete record, that there was no indication of possibly establishing injury even with adequate time, a thorough and fully developed investigation and record, and comprehensive hearing before the Commission. As Chairman Alberger stated in testimony on November 12, 1981, before the House Ways and Means Trade Subcommittee:

> The "reasonable indication of material injury" standard is low enough that it does not force domestic industries to present more than a *prima facie* case before there is a full adjudication.

Such a standard applies equally to antidumping and countervailing duty investigations inasmuch as the statutory language is the same and given the intent of Congress for the ITC to follow the same general practices in both the antidumping and subsidy cases.

Of course, it is important to keep in mind that the Tariff Act of 1930 and its legislative history are quire clear that the "material injury" to be ascertained in these investigations is defined to mean harm which is "not inconsequential, immaterial, or unimportant".[29] Section 771(7)(B) of the Act provides factors the Commission shall consider, among other factors:

> (i) the volume of imports of the merchandise which is the subject of the investigation,
> (ii) the effect of imports of that merchandise on prices in the United States for like products, and
> (iii) the impact of imports of such merchandise on domestic producers of like products.[30]

Within the context of evaluating the volume of imports of the merchandise which is subject to the investigation and its effect on prices, in assessing impact in the affected industry, the language of the statute makes it clear that economic factors cited therein are not all-inclusive to wit: "* * * the Commission should evaluate all relevant economic factors which have a bearing on the state of the industry, including but not limited to—* * *"[31] Legislative history on this point is also quite clear:

> In determing whether an industry is materially injured, as that phrase is used in the bill, the ITC will consider, to the extent permitted by information submitted to it in a timely manner, the factors set forth in section 771(7)(C) and (D) together with any other factors it deems relevant.[32]

There is also recognition in the Statute and legislative history that discretion necessarily must be given to the Commission to determine the significance to be assigned to a particular factor within the framework of other facts of each specific case.

> Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide.[33]
>
> It is expected that in its investigation the Commission will continue to focus on the conditions of trade, competition, and development regarding the industry concerned.[34]

A word on the issue of causation is pertinent, because I feel there is some misunderstanding about just what is required by law in this crucial area in these preliminary investigations. The causation element is that material injury must be "by reason of" the subsidized or less-than-fair-value imports: the linkage language "by reason of" directing an examination of the effects of such imports on the domestic industry. Legislative history makes it clear that Congress did not intend for the Commission, in examining whether a causal link exists, to weigh the injury which might be incurred from such imports against other factors which may be contributing to the overall injury to an industry, although the Commission should take into account evidence alleging that such harm which was attributed to such imports was attributable to other factors. Moreover, the petitioner is not required to "bear the burden of proving the negative" that material injury is in fact *not caused* by such other factors. Further, the Commission is not required to make any precise mathematical calculations with respect to the harm associated by other factors.[35] Finally, to quote directly from the House Report:

> In short, the Committee does not view overall injury caused by unfair competition, such as dumping, to require as strong a causation link to unfairly competitive imports as would be required for determining the existence of injury under fair trade conditions.[36]

I would like to emphasize an important point, namely, that the Commission's charge in these *preliminary investigations* in evaluating the impact of alleged unfair imports, within the framework of the aforementioned discretion accorded it in analyzing relevant factors and establishing a causation link, must be undertaken within the less rigorous standard that the facts on the record and information available to it *reasonably indicate* that the affected domestic industry could *possibly be suffering material injury, threat thereof, or material retardation.*[37]

This less rigorous standard which which was, as I have said earlier, intended by Congress in my view to be applied in a 45-day compressed time frame to screen petitions devoid of any merit where there was no indication of possibly establishing injury even with adequate time, must be applied with caution and equity, not in an arbitrary or capricious fashion, with the reasons set forth adequately documented.

Reasons for Affirmative Determination of Material Injury

The basic reasons for my determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of chlorine from Canada which are allegedly sold at less than fair value are the following:

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[28] H.R. Report No. 96–317, 96th Cong., 1st Sess., p. 52 (1979).

[29] Report on H.R. 4537 of the Senate Committee on Finance, p. 88.

[30] 19 U.S.C. 1677(7)(B).

[31] 19 U.S.C. 1677(7)(C).

[32] Report on H.R. 4537 of the Senate Committee on Finance, p. 88.

[33] Id., and 19 U.S.C. 1677(7)(E).

[34] Senate report, p. 88.

[35] Report of the House Ways and Means Committee on H.R. 4537, p. 47.

[36] Id.

[37] Having found a reasonable indication of material injury by reason of these imports in this investigation, I did not reach the issue of threat.

1. The major Canadian exporter of noncaptive chlorine to the United States made bids and received orders in the United States (directly and through its U.S. subsidiary) at prices which I conclude could have been at less than fair value. The Secretary of Commerce should make this final determination, if the investigation should continue and resolve these allegations. Some winning bids by this Canadian chlorine exporter were made in the municipal sector of the market in such cities as Atlanta. The "net back" value of some orders (after deducting freight cost) as bid and won by the major Canadian noncaptive chlorine exporter do not appear to cover adequately production costs. Quotation to a large Canadian municipality appears to show a much higher price quotation for chlorine in the Canadian city despite the lower freight costs and despite practices of absorbing freight cost in part. Even with some absorption of freight costs to meet U.S. competitors that have chlorine plants closer to the municipalities, it appears that aggressive price competition caused sales at less than fair value into the highly visable U.S. municipal market.

I concluded that this caused a price rippling effect on chlorine prices in some of the other United States markets because industrial and other customers were freqnently aware of chlorine prices bid in the municipal markets, and utilized their knowledge of such prices to seek significant reductions in prices quoted to their industrial corporation if these prices were higher. This awareness is supported by testimony and submissions provided in this investigation, some of which are confidential. In a period of soft demand and recession, especially with major final product user industries such as the automotive and construction industries really depressed (these industries use products that are produced from chlorine), there is probably a very inelastic demand for chlorine. Hence, when prices decline, an increase in demand for chlorine is not sharply reflected in volume increases. During 1980, the major Canadian exporter of noncaptive chlorine aggressively penetrated into the United States market based frequently on being a low-bidder in the municipal market. The quantity of noncaptive chlorine being sold into the municipal market was visible and significant enough to exert pressures on U.S. producers to hold or reduce their prices. Instances exist where "meet-or-release" clauses, despite the fact that these generally refer to meeting other U.S. chlorine producers' bid or offering prices, played a factor in forcing involved U.S. chlorine producers to meet the Canadian noncaptive chlorine producers' prices or have all or portions of a contract's volume reduced. Hence, I conclude there has been price suppression or depression because of increased aggresive activity from a Canadian supplier of noncaptive chlorine to the United States market. It is not adequate to show some Canadian noncaptive chlorine producer's price increases to customerrs in the pulp and paper industry and overlook the price trends utilized with municipal market in some instances. It is not necessary to say there were only a few instances of alleged less-than-fair value (LTFV) sales. If any sales took place at alleged LTFV, then this would be reason to have an affirmative finding that there is reasonable indication that an industry in the United States is materially injured by reason of exports of chlorine from Canada.

Staff interviews with customers relative to lost sales did indicate that price frequently was an important or the most important factor in the awarding of a contract. Canadian delivery schedules or availabilities, Canadian expertise in pulp and paper chlorine applications and technology, and quality chlorine railroad tank cars usage by the Canadians are only some of reasons some U.S. chlorine customers chose the major Canadian noncaptive chlorine producer to supply their company or municipality. There were some instances where the Canadian noncaptive chlorine producer's price was higher, but there was adequate evidence of alleged LTFV pricing to vote affirmatively and thus seek a final investigation determination.

It is not my place in any preliminary investigation to be involved in judging any subsidies whether from different governmental levels, or in electrical or other raw material costing practices, or in capital and interest rate areas. These determinations are made relative to the existence and rate of foreign government subsidies by the U.S. Department of Commerce.

In this preliminary investigation, it is vitally important to realize that we are considering questions relative to only chlorine. The fact that the Canadian share of the United States market is small does not make the impact of aggressive and alleged LTFV pricing in a relative inelastic demand situation any less damaging. The small addition of new supply can cause a decline in prices because of aggressive pricing in a selected visable market—the municipal market.

2. High demands in Canada and the United States for caustic (soda)—a coproduct of the chlorine production process-precipitated an over-production of chlorine relative to demand. Caustic (soda) end-use markets are frequently different from those for chlorine. Increased production of caustic causes extra production of chlorine which may not be demanded by end-user industries. Because chlorine is corrosive and potentially hazardous if combined with certain other elements, very little storage capability or inventory is maintained. Hence, there is an incentive for companies to ship chlorine at what is alleged to be below the cost of production. The cost of physical dumping or handling disposal may not be covered. If a product is in surplus and there are environmental and other disposal costs or problems, this must be considered as costs and must not lead to abnormal pricing tactics that almost give away the chlorine and thereby depress prices.

To cross the United States-Canadian border with this "temporary" surplus of chlorine is in essence dumping a Canadian disposal problem of their surplus into the United States. The fact that a major Canadian exporter of noncaptive chlorine expanded plant capacity beyond the immediate and short-term internal Canadian market needs is not the fault of the United States suppliers of chlorine. The fact that technology changes may threaten some of the demand for chlorine in Canada in the future and especially in the pulp and paper industry is not the fault of the United States chlorine suppliers. The fact that the United States is the only significant export market for Canadian noncaptive "surplus" chlorine which is produced when there is significant demand for caustic (soda) is not the fault of United States chlorine producers. Many United States producers also have chlorine production facilities in Canada. The fact that not all the U.S. chlorine producers joined in the petition or this action is not significant. The fact that there are three major petitioners is sufficient to indicate alleged material injury, in this preliminary case, to major chlorine suppliers. There are a variety of different buyers and it is important to measure like methods of shipments for chlorine, which is a fungible product, without significant differences. I find that price comparisions with pipeline delivery of chlorine, when the Canadian noncaptive major chlorine suppliers utilized rail tank cars, is inappropriate. Delivery costs and long-term pipe-line commitments do matter.

The United States should hence not allot faulty potential foreign demand analyses to cause a disposal problem in United Stated markets through aggressive and alleged LTFV pricing. I am not making any comments on Canadian caustic (soda) being supplied to the United States market or on whether there is any evidence that this is related to the past Canadian plant expansion by the major Canadian noncaptive chlorine exporter.

3. It is important to note that with minor exceptions, United States chlorine producers' shipments of chlorine have declined generally in the 1979 through March 1982 period and U.S. chlorine production has declined while production capacity rose during the same above period. Capacity utilization in the U.S. has declined significantly during this same above period. The average unit value of chlorine has declined since 1980. The small inventory level of U.S. chlorine producers, as a percent of shipments, has risen to high levels by traditional standards. The share of total U.S. apparent consumption of the significant Canadian exporter of noncaptive chlorine has risen and exports to the United States expanded generally in the January 1979-March 1982 period. U.S. firms supplying information on income and profit or loss accounted for 19 percent of total shipments of liquid chlorine in 1981 and these firms' aggregate operations on chlorine were unprofitable in 1980 and 1981. The Canadian major noncaptive chlorine exporter intensified its marketing effort into the United States municipal market in particular in 1980 and probably had a significant impact on United States chlorine producers' profits, operating rates (capacity utilization), and pricing strategies. I find there is evidence that the volume of chlorine imports rose, the effects of these imports of Canadian chlorine on U.S. chlorine, which is a like product, was significant, and that there was a significant impact on domestic producers of like chlorine products.

Additional details on the basis of more complete returns of the questionnaires, investigative efforts and company contacts or confirmations should occur if the investigation were to continue. The Commission should not lightly dismiss this investigation and leave these budding questions still-born. Major financial or other strength of a major foreign affiliated company backs the smaller Canadian company which is a major exporter of noncaptive chlorine. There needs to be more than the looking at the last year's U.S. prices relative to the Canadian supplier's United States bids. There needs to be recognition by the Commission that 1980 pricing levels of the Canadian companies in large measure started the recent price and hence profit pressures on U.S. companies which, because of the nature of the industry and sales contracts, responded to the Canadian price aggressiveness as was referred to by United States purchasers. The United States chlorine producers were unable to obtain chlorine price increases on three separate occasions. Employment was down in 8 U.S. establishments producing chlorine for which responses were received by the Commission in this measurement area.

In my opinion, there is a reasonable indication of material injury to the United States chlorine industry as evidenced by the aggressive pricing by the major Canadian noncaptive chlorine exporter. If there has been or still is over-production of chlorine in Canada to satisfy caustic demands, then adjustment of this should not be in the form of alleged LTFV imports which probably also "dump" the what-would-have-been Canadian disposal problem into the American market place rather than building hazardous inventories in Canada or recombining caustic and chlorine to store in Canada more safely but at a significant Canadian loss.

Conclusion

By not finding material injury in this investigation, I believe the Commission has by-passed the low threshold of injury and refrained from learning more about aggressive pricing impacts and alleged abuses of United States trade laws. In the long-run, the United States consumers and national security may suffer if investigations are unable to at least gather additional facts or enough information so as to be truly representative. It is improper, in my opinion, to say that the response to a questionnaire is too low or too late or represents too little of an industry and then to apply what I consider to be too high a threshold. If there are unanswered questions, these should be answered. Non-frivolous investigations where *significant* factors point to alleged *significant* LTFV sales should be allowed to proceed to final investigations. I am of the opinion that the facts of this investigation as cited above cry out for a final investigation to be conducted and for a final Commission determination. I believe the United States has nothing to fear if the Commission learns more truths and facts about a basic United States industry and its trade patterns with any country. It is justified.

By order of the Commission.

Issued: May 20, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14308 Filed 5-25-82; 8:45 am]

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[Investigation No. 731-TA-49 (Final)]

Fireplace Mesh Panels From Taiwan-Determination

Based on the record [1] developed in investigation No. 731-TA-49 (Final), the Commission unanimously determines that an industry in the United States is materially injured by reason of imports from Taiwan of fireplace mesh panels,[2] which the Department of Commerce has determined are being, or are likely to be, sold in the United States at less than fair value (LTFV).[3]

Background

On January 22, 1982, the Department of Commerce made a preliminary determination that there is reason to believe or suspect that fireplace mesh panels from Taiwan are being sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, on January 27, 1982, the Commission instituted a final antidumping investigation under section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of the imports of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. and by publishing the notice in the **Federal Register** on February 3, 1982, (47 FR 5055). The hearing was held in

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[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, February 10, 1982).

[2] For the purposes of this investigation, fireplace mesh panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening by U.S. manufacturers of fireplace accessories and zero-clearance fireplaces. Fireplace mesh panels are provided for either in item 642.87 or item 654.00 of the Tariff Schedules of the United States depending on their stage of processing.

[3] The retardation of the establishment of an industry in the United States was not an issue in this investigation.

Washington, D.C. on April 13, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

On the basis of the record in investigation No. 731–TA–49 (Final), we unanimously determine that an industry in the United States is materially injured by reason of imports of fireplace mesh panels from Taiwan which are sold in the United States at less than fair value. Our determination in the present case is based on the considerations set forth below.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [4] A "like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." [5]

The products imported at less-than-fair value (LTFV) are pre-cut panels of fireplace mesh. These imported panels generally have rings attached for mounting, are finished with black oxide, and are contructed of 19-to-21 gage wire. Imported fireplace mesh panels are incorporated into fireplace screens or zero-clearance fireplaces by manufacturers of those items after importation into the United States.

The domestic fireplace mesh panels typically have rings attached for mounting, are constructed from wire which ranges from 19-to-21 gage, and are finished with black enamel.[6] Like the imported panels, they are used by manufacturers of fireplace screens and zero clearance fireplaces.

The size of fireplace mesh panels demanded by fireplace screen and zero-clearance fireplace manufacturers varies according to the design of the product in which they are to be used. Attaching mounting rings is also a relatively minor modification to the basic mesh panel. Most panels are sold with the rings attached, although customers may desire panels without rings for particular uses.

As a general rule, the type of finish used in fireplace mesh panels may be either black oxide or black enamel. The majority of imports have a black oxide finish while the majority of domestic products have a black enamel finish.[7] In either case, the finish is used to prevent corrosion of the metal. The gage of wire used by a manufacturer varies somewhat, although in a fairly narrow range.[8] The wire used must be flexible yet sturdy enough to retain its shape and not deteriorate when exposed to the heat.

These variations in fireplace mesh panels are minor.[9] Thus, we find that the domestic products that are like the imported fireplace mesh panels are fireplace mesh panels of any size, with or without rings, with black oxide or black enamel finish, and of any gage wire which may vary from 19-to-21 gage.[10] Based on the above, we have determined that the industry in this investigation is composed of domestic producers of fireplace mesh panels.

Material Injury by Reason of LTFV Imports

Section 771(7)(B) of the Act directs that the Commission in making its material injury determination shall consider, among other factors, the impact of the imports on the domestic industry, the volume of these imports, and their impact on domestic prices.

During the period covered by this investigation, the fireplace mesh panels industry has experienced a decline in key indicators. Between 1978 and 1981, domestic production declined 72 percent from 10.6 to 2.9 million square feet and capacity utilization dropped from 87 percent to 27 percent.[11] Commercial shipments fell 78 percent during the same period from 4.6 to 1.0 million square feet.[12] Four producers ceased manufacturing fireplace mesh panels and industry employment declined from 91 workers in 1978 to only 16 workers in 1981. Hours worked dropped concomitantly.[13] Inventories of domestic producers, which are not common in this industry, were larger than usual in 1981.[14]

Profit and loss data, though available for only four firms representing 24 percent of production, further confirm the problems confronting U.S. producers of fireplace mesh panels.[15] The profit and loss experience of the U.S. producers on their operations declined sharply each year during the period under investigation. Net sales declined 83 percent from $2.7 million in 1978 to $450,000 in 1981. Net operating profits followed the same trend with U.S. producers showing a profit of $522,000 in 1978 and a loss of $50,000 in 1981.

The demand for fireplace mesh panels declined between 1978 and 1981. The eroding position of the U.S. fireplace mesh panel industry coincides with a dramatic downturn in consumption related to the drop in housing starts and saturation of the glass-door fireplace screen market. The volume of imports also decreased but market penetration by these imports increased substantially. The ratio of imports to apparent consumption [16] has increased since 1979 to a level of 43.2 percent in 1981. The ratio of imports to open-market consumption increased even more during the same period to 68 percent of the market.[17]

The margin of underselling was significant throughout the period covered by this investigation. In 1978, LTFV imports undersold U.S. products by a weighted average margin of 45 percent. In 1981, the weighted average margin of underselling was 29 percent.[18]

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[4] 19 U.S.C. 1677(4)(A).

[5] 19 U.S.C. 1677(10).

[6] Report, p. A–3.

[7] Report, p. A–2 and A–3.

[8] For example, the diameter differential between 19- and 21-gage wire is roughly .009 inch. Report, p. A–21.

[9] Senate Comm. on Finance, Trade Agreement Act of 1979, S. Rept. No. 96–249, 96th Cong., 1st Sess. 90–91 (19/9).

[10] Report, p. A–3.

[11] Report, p. A–9 and A–10.

[12] Report, p. A–10 to A–12.

[13] Data on employment and hours worked do not include information on any of the four manufacturers which ceased production of this product. Report, p. A–17.

[14] Report, p. A–14.

[15] Report, p. A–10.

[16] The report presents data on apparent U.S. consumption of fireplace mesh panels and on apparent U.S. open-market consumption. Apparent U.S. consumption includes U.S. producers' captive consumption of fireplace mesh panels, whereas apparent open-market consumption reflects only open-market transactions. In this case imports have displaced some captive production, thus competing in the captive market as well as in the open market. Thus, the Commission has focsed on the data on apparent U.S. consumption as they reflect the full impact of the imported product.

[17] Report, p. A–21.

[18] Chairman Alberger and Commissioner Stern note that the relatively high margins of underselling and low weighted average LTFV margins determined by the Department of Commerce raise the question whether the injury caused by the subject imports is by reason of the LTFV margins or whether it is attributable to other competitive factors not actionable under the antidumping laws. See e.g. Views of Commissioners Bill Alberger and Daniel Minchew in *Welded Stainless Steel Pipe and Tube from Japan*, Inv. No. AA1921–160, USITC Pub. 899 (July 1978) and Additional Views of Commissioner Paula Stern in *Carbon Steel Wire Rod from Brazil, Belgium, France and Venezuela*, Inv. No. 731–TA–88 (Preliminary), USITC Pub. No. 1230 (March 1982). In the present case, however, we are unable to conclude with any reasonable degree of precision that the dumping margins do not contribute materially to the underselling margins and the consequent injury to the industry. The domestic and imported fireplace mesh panels are not strictly fungible, and any price comparisons between the two are subject to several important qualifications, such as gage, size, finish, and other perceived differences in quality and service. (See Report p. A–21 and 22.) These qualifications to our pricing data convince us that we should not in this

Competition in this industry is often based upon a combination of factors including price, availability and quality.[19] Further, margins of underselling are based on data for comparable, but not always identical, merchandise. As we had already observed, fireplace mesh panels possess a considerable number of variable product characteristics, such as: the gage of wire used, spiral diameter and pitch, type of finish, panel size, pleating, and the attachment of pull tassels or rings for mounting the panel. This diversity of characteristics has made price comparisons of panels difficult. For example, the Commission staff estimates that the cost of the metal content of the mesh could vary by $4.00 per 100 square feet, based on using wire ranging from 19-to-21 gage, and enamel panel finish commands a premium of roughly $5 per 100 square feet over black oxide.[20] However, regardless of these variable product characteristics, the data provide a clear indication that significant underselling is taking place.

Lost sales information further demonstrates the results of price undercutting. For instance, a U.S. manufacturer of fireplace screens which accounts for a significant share of apparent open-market consumption of fireplace mesh panels switched entirely from the domestic product in 1978 to the LTFV imports in 1981. Another important consumer of fireplace mesh panels also shifted almost entirely to the LTFV imports during this period.[21]

Already suffering from a serious decline in the market, the problems of the domestic firepace mesh panels industry have been compounded by competition from LTFV imports from Taiwan. The information before the Commission on import penetration, underselling afid lost sales indicates that there is material injury in the United States industry by reason of the LTFV imports.

By order the Commission.

Issued: May 21, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14360 Filed 5-25-82; 8:45 am]

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case rely too heavily on a comparison of our calculated margins of underselling with the LTFV margins determined by Commerce.

[19] Commissioner Stern notes that the petitioner stated that the domestic industry can compete with underselling of 10–15 percent by the imports. Hearing transcript (Final) at p. 94.

[20] Report, p. A–22.

[21] Report, p. A–26.

[332-142]

Impact of Foreign Trade-Related Performance Requirements on U.S. Industry and Foreign Investment Abroad

AGENCY: International Trade Commission.

ACTION: In accordance with he provisions of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation No. 332–142 for the purpose of obtaining information in order that it might advise the U.S. Trade Representative (USTR) as to the impact of foreign trade-related performance requirements on U.S. trade, production, employment, and foreign investment. The investigation will cover three sectors: (1) motor vehicles and equipment, (2) chemicals, including pharmaceuticals, and (3) office and computing machines. In addition, an inventory of U.S. trade-related performance requirements, if any, will be prepared in response to the USTR request.

EFFECTIVE DATE: May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Estes, General Manufactures Division, Office of Industries (202–724–0977).

SUPPLEMENTARY INFORMATION: On April 21, 1982, the USTR requested that the U.S. International Trade Commission provide advice, pursuant to section 332(g) of the Tariff Act of 1930, on the impact of foreign trade-related performance requirements on U.S. trade, production, employment, and foreign investment. The USTR request suggested that the investigation be done on a sectoral basis covering sectors such as motor-vehicles, chemicals, pharmaceuticals, and high technology goods. The USTR indicated particular concern over the relatively higher incidence of performance requirements in advanced developing countries. An inventory of any existing U.S. trade-related performance requirements on inward foreign investment was also requested.

For the purposes of this investigation, "trade-related performance requirements" are requirements placed upon a foreign affiliate as a condition for operating in the host country such as (1) requirements for the export of a minimum level of the finished manufactured product, (2) the required use of a minimum level of domestic components in an item to be manufactured (a so-called "local content" rule), or similarly (3) a specific restriction on the level of imports permitted.

Public hearing.—A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.d.t., on August 10, 1982, to be continued on August 11, 1982 if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, August 4, 1982.

Written submissions.—In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than August 20, 1982. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: May 20, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc 82-14357 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104–TAA–7]

Molasses From France

Determination

Based on the record[1] developed in investigation No. 104–TAA–8, the Commission unanimously determines pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by

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[1] The "record" is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

reason of imports of molasses from France covered by countervailing duty order T.D. 71–188, if the order were to be revoked.

Background

On March 28, 1980, the U.S. International Trade Commission received a request from the Delegation of the Commission of the European Communities for an investigation under section 104(b) of the Trade Agreements Act of 1979.

On October 28, 1981, the Department of Commerce published a notice in the **Federal Register** (46 FR 53200) of the final results of its first annual review of the net amount of the subsidy applicable to molasses from France. Subsequent to that determination by Commerce, the U.S. International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, on January 26, 1982, instituted investigation No. 104–TAA–8 on Molasses from France, which currently enters under item 155.40 of the Tariff Schedules of the United States, to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of molasses covered by the countervailing duty order if the order were to be revoked.

Notice of the institution of the Commission's investigation and of a public hearing was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. 20436, and by publishing the notice in the **Federal Register** of February 3, 1982 (47 FR 5057). The hearing was held on April 5, 1982, in Washington, D.C. No testimony was offered by interested parties. No formal submissions were received from domestic producers. The Commission vote on this case was held in public session on May 6, 1982.

Views of the Commission

Imports of molasses from France have been subject to a countervailing duty order since June 19, 1971.[2] Based on the record developed in this investigation, we conclude that the revocation of this countervailing duty order would not result in material injury, threat of material injury, or the material retardation of the establishment of an industry in the United States.

[2] T.D. 71–118, 36 FR 8366.

The Domestic Industry[3][4]

Our initial consideration is the definition of the relevant domestic industry against which the impact of the subject imports must be assessed. Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "the domestic producers as a whole or a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." The term "like product" is, in turn, defined in section 771(10) as meaning "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title."

The scope of the outstanding countervailing duty order under consideration in this investigation covers "molasses from France." Historically, most imported molasses from France has been of the type derived from processing sugar beets into sugar and has been used for the production of citric acid. Sugar-beet molasses consists of about 48 percent sugar and 52 percent impurities. Molasses derived from sugar-cane generally has a similar sugar content, but its impurities are different and it is not used in citric acid production. We therefore have defined the appropriate "like product" as sugar-beet molasses. The relevant domestic industry under section 771(4)(A) consists of the 10 firms processing sugar from sugar beets at 42 plants in the United States located in Montana, Wyoming, Kansas, Colorado, Nebraska, Ohio, California, Minnesota, North Dakota, Idaho, Arizona, Oregon, Michigan, and Texas.

Condition of the Industry

Since sugar-beet molasses is a byproduct of sugar production, there are no separate profit and loss or employment data available for the industry. Other factors indicate, however, that the industry performance has been favorable in recent years. Domestic sugar-beet molasses production increased irregularly from 946,174 short tons in 1978 to 996,302 short tons in 1981. Utilization of capacity was 88.9 percent in 1981, up 7.6 percentage points from 1978 levels. Shipments in 1981 were below the peak level reached in 1979, but were still above 1978 and 1980 levels.[5]

Likely Effect of Removal of the Countervailing Duty Order

The Department of Commerce has determined that for the period from January 1, 1980 through December 31, 1980, there was no net French subsidy on sugar-beet molasses.[6] Therefore, the deposit of estimated countervailing duties on French imports has been waived until the next administrative review in June 1982.

Monitor Sugar Company and Northern Ohio Sugar Company, two of the original petitioners, have requested that the Commission terminate its investigation on imports of French molasses.[7] No other domestic producer made any formal submission either to the Commission or to the Department of Commerce during the recent review of the outstanding order. Nor did the Commission receive any submission from the Department of Agriculture. This lack of participation by the domestic

[3] In Investigation No. 104–TAA–7 involving sugar the Commission considered the domestic industry to include growers as well as processors. We did not include growers in this case because molasses is derived as a by-product of making sugar and is not the product for which the grower raises sugar cane or sugar beets. Vice Chairman Calhoun is of the view that an important additional factor is that molasses product is, for the greatest part, derivative of the primary activity, sugar production. As well, molasses demand is largely independent of sugar demand. Thus the impact of imports on molasses is not likely to affect sugar production.

[4] It is the view of Vice Chairman Calhoun that, since this case arises under section 104 of the Trade Agreements Act of 1979, the task before the Commission is to determine whether a domestic industry would be materially injured or threatened with material injury "by reason of imports of the merchandise subject to a countervailing duty order if the order were to be revoked." Similarly, under Title VII of the Tariff Act of 1930, the Commission determines whether a domestic industry is materially injured or threatened with material injury by reason of the imported merchandise under investigation. Since no standards or guidance is given for section 104 determinations, he has in prior cases used the standards and analytical methodology employed in our Title VII cases for guidance in determining what would happen if duties were to be revoked. In this case, the standards and methodology of Title VII are particularly useful as there have been no duties imposed in the past year, making data from that period especially helpful in predicting what would occur without the duty. Thus, when Title VII language and theories arise in this opinion it is, for his purposes, based on the above rationale.

[5] Report p.A–10.

[6] Section 751(a)(1) of the Tariff Act of 1930 provides that Commerce shall conduct annual reviews of the amount of outstanding countervailing duty orders. For the period of Commerce's review, the EC did not make any restitution payment on exports of molasses from France to any country including the United States. The program of restitution payments, which has been determined to be countervailable, remains in effect. The resulting waiver of deposit will remain in effect only until the next administrative review, scheduled for June 1982. Section 104 of the 1979 Act requires the Commission to determine whether there is any material injury or threat or material injury "by reason of imports of the merchandise subject to the Order." It is therefore appropriate for the Commission to continue a section 104 investigation so long as the order remains outstanding and the subsidy can be resumed.

[7] Report, Appendix C.

producers of molasses suggests that they do not anticipate material injury or the threat of material injury as a result of revocation of the order under review. Our findings support this view.

Imports of sugar-beet molasses from France in terms of quantity, value, and share of apparent domestic consumption substantially declined from 1978 to 1981.[6] Pfizer, Inc., the only U.S. importer of sugar-beet molasses, uses the product in the manufacture of citric acid. From 1978 to 1980, Pfizer purchased both domestic and imported sugar-beet molasses. No domestic molasses was purchased by Pfizer in 1981. Because it could offer molasses to meet Pfizer's requirements at lower prices, the Netherlands rather than France was the beneficiary of Pfizer's shift to total reliance upon imports. The price of molasses from the Netherlands was significantly below that for the same product Pfizer purchased from France.[6] Moreover, Pfizer claims that it has become increasingly difficult to acquire French-produced molasses meeting minimum sugar-content requirements. Consequently, as a share of Pfizer's consumption, imports from France declined markedly while imports from the Netherlands increased dramatically between 1980 and 1981.

Considering these developments, there is no reason to anticipate significant changes in the volume of French imports as a result of revocation. Revocation of the countervailing duty order will not adversely affect the performance of the domestic industry in the foreseeable future. Thus, we have concluded that the domestic industry would not be materially injured or threatened with material injury if the countervailing duty order were to be revoked.

By order of the Commission.

Issued: May 14, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14362 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-7]

Sugar From the European Communities

Determination

Based on the record [1] developed in investigation No. 104-TAA-7, the Commission determines pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would be threatened with material injury by reason of imports of sugar from the European Communities covered by countervailing duty order T.D. 78-253, if the order were to be revoked.[2]

Background

On March 28, 1980, the U.S. International Trade Commission received a request from the Delegation of the Commission of the European Communities for an investigation under section 104(b) of the Trade Agreements Act of 1979.

On September 23, 1982, the Department of Commerce published a notice in the **Federal Register** of the final results of its first annual review of the net amount of the subsidy applicable to sugar from the European Communities. Subsequent to that determination by Commerce, the U.S. International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, on January 27, 1982, instituted investigation No. 104-TAA-7 on Sugar from the European Communities, which currently enters under item 155.20 and item 155.30 of the Tariff Schedules of the United States, to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of sugar covered by the countervailing duty order if the order were to be revoked.

Notice of the institution of the Commission's investigation and of a public hearing was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. 20436, and by publishing the notice in the **Federal Register** of February 3, 1982 (40 FR 5058). The hearing was held on April 5, 1982, in Washington, D.C., and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission vote on this case was held in public session on May 6, 1982.

Views of Commissioners Eckes, Frank, and Haggart

Imports of sugar from the European Community (EC) have been subject to a countervailing duty order [3] since July 31, 1978.[4] Based on the record developed in this investigation, we conclude that the revocation of this countervailing duty order would result in the threat of material injury to the sugar industry in the United States.

In making this determination, we focused particularly on the EC sugar policy, the large surplus of EC sugar available for export, and the volatility of the domestic and international sugar markets.

The Domestic Industry

Our initial consideration is the definition of the relevant domestic industry against which the impact of the subject imports must be assessed. Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as: "The domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." The term "like product" is, in turn, defined in section 771(10) as meaning: "A product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title."

The scope of the outstanding countervailing duty order under consideration covers generally "sugar from the EC." Sugar is derived from the juice of sugar cane or sugar beets. The refined sugar product derived from sugar beets is not distinguishable from that of sugar cane inasmuch as both are virtually chemically pure sugar.[5] We conclude that the like product for purposes of this investigation consists of both beet and cane sugar.

Because of the close relationship among growers, processors, and refiners in the production of sugar, they all may be affected by the removal of the countervailing duty order. Therefore, we have determined that the "industry" for purposes of section 771(4)(A) should

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[6] Report p. A-9.

[6] Comparative pricing data between representative French and U.S. producers for 1981 are not available.

[1] The "record" is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Commissioners Eckes, Frank, and Haggart determine that an industry in the United States would be threatened with material injury by reason of imports of sugar from the European Communities covered by countervailing duty order T.D. 78-253, if the order were to be revoked. Chairman Alberger, Vice Chairman Calhoun, and Commissioner Stern find that an industry in the Unite States would not be materially injured, or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of sugar from the European Communities covered by countervailing duty order 78-253, if the order were to be revoked. Section 771(11) of the Tariff Act of 1930, as amended, provides, in part, that if the Commissioners voting on section 104 investigations "are evenly divided as to whether the determination of the Commission shall be affirmative or negative, the Commission shall be deemed to have made an affirmative determination."

[3] T.D. 78-253.

[4] 43 FR 33237.

[5] Report A-3.

include growers, processors, and refiners.[6]

Present Condition of the U.S. Industry

The condition of the U.S. industry has shown some improvement since the imposition of countervailing duties on EC sugar imports. U.S. sugar production, which fell in 1977 and 1978, has risen irregularly since 1979. Capacity utilization for both sugar cane refiners and sugar beet processors increased from 1979 to 1981. [7] During 1977 and 1978, U.S. producers held record inventories, but inventories then declined through 1981.

Since 1977, the U.S. government has attempted to stabilize sugar prices through a series of price support loan programs protected by: (1) duties and quotas, which the President is authorized to proclaim under Headnote 2 of subpart A, part 10 of schedule 1, of the TSUS; and (2) fees, which the President is authorized to impose under section 22 of the Agricultural Adjustment Act of 1933 (as amended). Title IX of the Agriculture and Food Act of 1981 established the most recent price support loan program for sugar.[8]

Recent Developments in International Sugar Trade

EC policy and the sugar surplus—The current world market for sugar is characterized by surpluses and depressed prices. World prices have declined since October 1980.[9] A major contribution to the world surplus is sugar from the European Community.[10]

The EC's Common Agricultural Policy (CAP) with respect to sugar is one which, through guaranteed prices, encourages production, thereby creating large sugar surpluses. These surpluses are exported with the benefit of subsidies.[11] The EC production control system for sugar designates three categories of internal sugar production: "A" quota, "B" quota, and "C" sugar. The "A" or basic quota for each country is supposedly set to meet internal EC consumption; but since "A" quotas are set by political negotiations, they usually have been fixed at levels greater than consumption. "A" and "B" quotas together constitute approximately 128.5 percent of annual EC sugar consumption.[12] To the extent that subsidized "A" and "B" sugar encourages cultivation of "C" sugar, it, too, is subsidized. While "A" and "B" sugar may either be sold domestically or exported, "C" sugar must be exported by the close of the calendar year or the producers run the risk of losing a portion of their subsidies.[13]

For the crop year 1981/82, the intervention price for "A" and "B" sugar was increased by 8.5 percent and for the 1982/83 crop, preliminary discussions indicated an additional 9 percent increase. The result of this policy has been a "mountain of sugar" which the EC has had to dispose of in recent years. This has led to the development of what has been referred to as the EC's common export policy for sugar. The excess of EC sugar production over EC sugar consumption was more than 3 million metric tons in each year since 1976/77 and nearly 5 million metric tons for 1981/82. These excesses coincide with a large world surplus of sugar which made disposal of the "sugar mountain" especially difficult.

Remedial Measures—To help stabilize international trade in sugar, avoid excessive price fluctuations, and guarantee adequate sugar supplies, the world's major exporters and importers of sugar negotiated the International Sugar Agreement (ISA) in 1977. The United States is a member of the ISA; but Congress must pass enabling legislation if United States membership is to continue beyond 1982. The EC is not a member and therefore is subject to a quota on exports to the United States applicable to nonmembers.

Under the current terms of the ISA, the United States is permitted to import 5,109 metric tons of sugar from nomember countries, which includes the EC. The council of the International Sugar Organization established by the Agreement is charged with monitoring imports and exports from member and nonmember countries and periodically adjusts quotas according to changes in world supplies and prices. The Council's quota restrictions for the United States in recent periods are shown in Appendix D of the Report.

In addition to this international effort, the United States also has imposed antidumping duties on imports of sugar from three EC member states. On May 16, 1979, the U.S. International Trade Commission reported to the Secretary of the Treasury its unanimous determination that an industry in the United States was being injured by reason of the importation of sugar from Belgium, France, and West Germany, which the Department of the Treasury had determined was being, or was likely to be, sold at less than fair value (LTFV). As a result of the Commission's determination, Treasury imposed dumping duties on any LTFV sugar imports from the countries in question, entered on or after February 12, 1979.

Finally, in response to plummeting sugar prices which threatened the U.S. sugar price support program, the President recently imposed a sugar import quota of 220,000 short tons for the period between May 11, 1982, and June 30, 1982.[14] France, together with 22 other countries and areas, was allocated a portion of this quota equal to 5.9 percent. The other EC countries received no quota. The total quota may be modifided at any time.

Likely Effect of Removal of the Countervailing Duty Order

In a section 104 review investigation, the Commission is to assess the impact that revoking an existing countervailing duty order will have on the appropriate domestic industry. In explaining the reasons for including section 104, the Committee on Finance report notes:

> Under section 701 of the Tariff Act of 1930 * * * countervailing duties will be imposed on imports from certain countries only when the ITC determines that the material injury criterion of section 701 has been satisfied. Countervailing duty orders in effect on the effective date of new section 701 of the Tariff Act with respect to products from a country to which the material injury test of new section 701 will be applied were issued without the necessity of demonstrating injury. Section 104 of the bill provides for a review of these orders for the purpose of making an injury determination * * *.[15]

Therefore, Congress intended the ITC to evaluate the effect of subsidized imports and to make a material injury determination of the future impact of these imports if the order were revoked. Having done so, we conclude that if the order were revoked, subsidized EC imports would present a "real and

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[6] Commissioners Eckes and Frank refer to the discussion of the appropriate industry in the Majority Opinion in *Lamb Meat from New Zealand*, Inv. No. 701-TA-80, p. 6-10.

[7] Report A-25.

[8] Report A-5.

[9] Report A-36.

[10] Report A-17.

[11] The EC's subsidies on sugar exports are currently being challenged under the Subsidies Code as a result of a petition filed pursuant to section 301 of the Trade Act of 1974, as amended. In addition, Australia and Brazil, along with ten other countries, have filed a complaint under Article XXIII of the General Agreement on Tariffs and Trade (GATT) because of the EC's failures to respond to a previous panel determination that the EC's subsidies violate GATT Article XVI(1).

[12] Report A-2.

[13] A detailed discussion of the EC's CAP with respect to sugar is found in the Report, pp. A-2-3, A-14-18, and A-34-36.

[14] The President took this action pursuant to Headnote 2 of the Subpart A of Part 10 of schedule 1 of the Tariff Schedules of the United States. Pursuant to Section 22 of the Agricultural Adjustment Act of 1933, the President simultaneously modified the fee system implemented by Proclamation 4887 of Dec. 23, 1981, so as to make it compatible with the quotas.

[15] S. Rept. No. 96-249, p. 196.

imminent" threat of material injury to the domestic industry.

As discussed above, both the condition of the domestic industry and the world sugar market reflect the unpredictable and volatile nature of trade in sugar and the effects of various remedial measures. In contrast, the program of subsidization by the EC, encouraging a sugar surplus for exportation, is ongoing and certain. There is nothing in the record of this investigation which suggests that the EC will deviate from this policy in the future.[16]

Without the protection of the countervailing duty order, the domestic industry would be threatened with material injury in light of EC subsidization and aggressive sugar production. Presently, the EC will have over 5 million short tons of sugar available for export from the 1981–82 crop.[17] This amount alone almost equals total U.S. imports for 1981. After the Soviet Union, the United States is the largest importer of sugar in the world [18] and most assuredly would be a market targeted by the EC for sale of its surplus in the absence of a countervailing duty order.

Importantly, the legislative history regarding the definition of the term "material injury" indicates that Congress anticipated special problems in determining whether an industry producing an agricultural commodity is materially injured.[19] Section 771(7)(D) indicates that the Commission shall consider in the case of agricultural products "any increased burden on government income or price support programs." The demonstrated instability and volatility which characterizes the domestic sugar commodity market point to the certain adverse impact of even small amounts of subsidized imported sugar on the U.S. price support program for sugar as well as on domestic producers.[20]

Although there are other factors which would affect future levels of subsidized sugar imports from the EC, reliance on these factors to restrain such imports cannot be justified in this case. One of these factors is the outstanding antidumping order; but, the existence of this order does not provide sufficient assurance regarding future levels of imports. Most importantly, the antidumping order fails to cover seven of the ten EC member states. Those countries not covered by the antidumping order historically have demonstrated the capacity to produce significant amounts of sugar for export.[21]

The countervailing duty order and the antidumping order address separate and distinct unfair trade practices. It is apparent from the statutory provisions concerning each practice that Congress intended separate consideration. The fact that the statutory scheme provides for an offset for countervailing duties in assessing antidumping duties further indicates that Congress envisioned situations where both types of duties would be required.[22]

The statement from the EC reproduced in Appendix C of the report (referenced above) points to a second factor affecting future levels of subsidized imports from the EC—the ISA nonmember quota. Reliance on this quota as determinative of future import levels is unsound, however. The quota is subject to modification at any time, and has been altered significantly in the past in response to changes in the world sugar market. Indeed, as recently as March 1980, quotas for nonmembers, including the EC, were suspended completely. Subsequently, the quota was reinstated and adjusted.[23] Further, even though legislation has been introduced to extend U.S. membership in the ISA, future membership beyond 1982 remains uncertain. If the United States were not a member, EC sugar imports would no longer be subject to the nonmember quota.

A final factor is the recent quota system imposed by the President. Quotas under the ISA and the Headnote authority are formulated in response to policy and economic considerations which are subject to the dynamics of the world sugar market. The intent of the Subsidies Code and the enabling legislation was to ensure that domestic producers would have an objective assessment of the impact of unfair imports, free from the considerations which underlie such agreements as the ISA or Presidential actions under the Headnote authority. This process is intended to afford all parties with predictability in that assessment. Reliance on quotas of uncertain amount and duration to counter the threat of injury from subsidized sugar imports is misplaced. To do so is to afford the domestic industry and exporting countries alike with an unpredictable decision-making process which is less than Congress clearly intended. Further, to do so subjects future trade relationships in this commodity to precisely the uncertainty and policy considerations which our trade laws are intended to eliminate. Therefore, the uncertainty of these quotas and the limited scope of the antidumping order preclude us from relying on them in assessing the impact revocation of the countervailing duty order would have on the domestic industry.

Conclusion

Our determination is based primarily on our assessment that the EC will continue to subsidize exports and that the resulting enormous surplus would have serious effects in already unsettled U.S. and international sugar markets. We find that a revocation of the countervailing duty order will threaten material injury to the U.S. sugar industry.

Views of Chairman Alberger, Vice Chairman Calhoun, and Commissioner Stern

Imports of sugar from the European Community (EC) have been subject to a countervailing duty order since July 31, 1978.[24] That order is before us for review pursuant to section 104(b) of the Trade Agreements Act of 1979. Based on the record developed in this investigation, we conclude that the revocation of this countervailing duty (CVD) order would not result in material injury or the threat of material injury to, or in the material retardation of , an industry in the United States.

In arriving at this decision, we have considered such market factors as the existence of antidumping duties on imports from France, Belgium, and West Germany, the existence of import fees and duties pursuant to Presidential Proclamation 4940, the existence of sugar quotas imposed pursuant to the International Sugar Agreement (ISA) and pursuant to Presidential Proclamation 4941, as well as the usual factors bearing on the performance of the domestic industry. The combined effect of the antidumping duties, import,

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[16] The EC requested this review investigation, but did not participate in the hearing. Recent changes in the Community's sugar program were outlined in a letter to the Commission. (See Appendix C to the Report.) The Department of Commerce is charged with the responsibility of determining the impact of these changes on its determination of subsidy practices by the EC.

[17] According to the submission made by the Department of Agriculture, the EC's share of the free world market has increased from 3.4 percent in 1975 to over 16 percent in 1981.

[18] Report A–21.

[19] S. Rept. No. 96–249, p. 88.

[20] Report p. A–33.

[21] Report p. A–23 & 24; tables 7–10.

[22] Tariff Act of 1930, as amended, section 772(d)(1)(D).

[23] *See* "Outline of Quotas, Duties, and Fees on Sugar," in Appendix D of the Report. Since Jan. 1, 1980, the quota for nonmembers has been 93,816 short tons, suspended for over a year, reinstated at 74,384 short tons, adjusted to 5,987 metric tons, and further adjusted to the current level of 5,109 metric tons.

[24] T.D. 78–253, 43 FR 33237.

duties and fees, and quotas insures that the U.S. industry will not be adversely affected by low-priced EC sugar if the CVD order is revoked.

The Domestic Industry [26]

Our initial consideration is the definition of the relevant domestic industry against which the impact of the subject imports must be assessed. Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as—

> The domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is, in turn, defined in section 771(10) as meaning—

> A product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

The scope of the outstanding CVD order under consideration covers generally all sugar from the EC whether derived from sugar beet or sugar cane. The refined sugar product derived from sugar beets in not distinguishable from that of sugar cane and they are interchangeable in the market place.[28] We conclude therefore that the domestic product which is like the imported sugar is sugar derived from either beets or cane.

There is a significant level of integration in domestic sugar production. With beet sugar, most growers sell to processors who convert the beets to refined sugar. In the case of cane sugar, many growers (especially in Hawaii) also process the sugar cane into raw sugar before it is sold to refinery companies who produce the end product, refined sugar. Other sugar cane growers sell to companies who process the cane into raw sugar and who in turn sell it to refiners. Thus the structure of the system for producing sugar is highly interdependent. Naturally, then, any impact of imports on the processors and refiners would be directly felt by the growers, a situation which is not unusual in the agricultural sector. Because of this degree of interdependence and integration among growers, processors and refiners, we have determined that the producers of the like product are the growers of sugar cane and sugar beets and those who process and refine them. Consequently the "industry" for purposes of section 771(4)(A) should include growers and processors and refiners.[27]

Present Condition of the U.S. Industry

The U.S. industry has been healthy during the most recent period. Today antidumping duties and quotas and import duties and fees, as well as countervailing duties, apply to imports of sugar from the European Community (EC).

U.S. sugar production, which fell in crop year 1979/80 to 5.77 million short tons, has increased each year since, reaching 6.51 million short tons in 1981/82.[28] Capacity utilization for both cane sugar refiners and beet sugar processors increased from 1979 to 1981.[29] Record levels of inventories were held by U.S. producers through early 1979, but have been declining ever since. From 1978 to 1981, the U.S. sugar processing industry became increasingly profitable. In particular, for the beet sugar processing industry, the net operating margin increased from a negative 2.0 percent in 1978, to 14.4 percent in 1981. Similarly, the net operating margin of cane sugar refiners increased from 3.1 percent in 1978 to 5.3 percent in 1981. For those processors that are cooperatives similar trends are evident for their operations.[30] In sum, since 1978 the performance of both U.S. sugar-beet processors and sugar cane refiners has been improving.

Likely Effect of Removal of the Countervailing Duty Order

In a section 104 review investigation, the task before the Commission is to assess the impact the revocation of an existing countervailing duty order will have on the domestic industry.

U.S. imports of sugar from the EC increased steadily from 42 short tons, raw value, in 1974 to 83,426 short tons, raw value, in 1978. Following the imposition of anti-dumping duties on sugar from France, Belgium and the Federal Republic of Germany, countervailing duties on EC sugar and the imposition of quotas on EC sugar pursuant to the International Sugar Agreement (ISA) imports from the EC fell sharply in 1979 to 2.1 short tons, rose to 71 short tons in 1980 and fell again to 46 short tons in 1981. Since 1974 such imports have never accounted for more than 1 percent of domestic consumption.

U.S. sugar producers have acknowledged that imports from the EC are a minor direct factor in the U.S. market. However, these producers maintain that in assessing material injury it is appropriate for the Commission to examine the impact of EC sugar exports to the world market on the world price which is in turn reflected in the U.S. price.[31] Even accepting, arguendo, that EC world exports impact adversely on U.S. market prices, we do not think this argument is relevant to the case before the Commission. In a section 104 review, the Commission's task is to determine the impact of imports on U.S. producers if the countervailing duty order is revoked. Thus, the effect on U.S. producers of EC exports to the world market rather than to just the U.S. market is irrelevant to our determination under section 104. Moreover if the impact of EC sugar is through its worldwide marketing we fail to understand how a countervailing duty order affecting exports to the United States would have remedial effect. Revocation of the order would not affect EC exports to the world market nor their impact on world prices. There is a mechanism in place—the import fee system—which is specifically designed to insulate the U.S. market from the impact of low world prices. Thus, to the extent the direct impact of EC subsidized exports is on world prices and only indirectly on U.S. prices, we do not think an affirmative determination in this case could be defended within the criteria of the statute.

Further, the decline in imports from the EC over the past 3 years coincides with two events: (1) The imposition of the antidumping duties on exports of sugar from France, Belgium and the Federal Republic of Germany on February 12, 1979; (2) the U.S. adoption of the ISA quota regime on January 1, 1978, which severely limits possible imports of EC sugar. Under the ISA quota regime total nonmember exports to the U.S.—including those from the EC—cannot currently exceed 5,109 metric tons a year. Compared to total imports of 5,013,704 short tons raw value

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[26] It is the view of Vice Chairman Calhoun that, since this case arises under section 104 of the Trade Agreements Act of 1979, the task before the Commission is to determine whether a domestic industry would be materially injured or threatened with material injury "by reason of imports of the merchandise subject to a countervailing duty order if the order were to be revoked." Similarly, under Title VII of the Tariff Act of 1930, the Commission determines whether a domestic industry is materially injured or threatened with material injury by reason of the imported merchandise under investigation. Since no standards or guidance is given for section 104 determinations, he has in prior cases used the standards and analytical methodology employed in our Title VII cases for guidance in determining what would happen if duties were to be revoked. In this case, the standards and methodology of Title VII are particularly useful as there have been no duties imposed in the past year, making data from that period especially helpful in predicting what would occur without the duty. Thus, when Title VII language and theories arise in this opinion it is, for his purposes, based on the above rationale.

[28] Report A–8.

[27] Report A–8–11.

[28] Report A–28.

[29] Report A–25.

[30] Report A–30–A–33.

[31] Hearing transcript p. 8.

in 1981, this is a minimal amount which, even if sold at well below the prevailing market price, would not materially affect the U.S. industry.[33]

Today the U.S. sugar industry is further protected by quotas imposed by Presidential Proclamation 4941. As of May 11, 1982, only France of the the FC member states may export sugar to the United States, and its quota allocation is very small; it must share 5.9 percent of the total global quota with 22 other countries. From May 11, 1982, to June 30, 1982, the total quota is a mere 220,000 short tons, raw value, compared to an annual U.S. consumption of approximately 10 million short tons.

The combined effect of quotas and the antidumping duties afford adequate protection to the domestic industry. Virtually all imports of sugar from the EC orginate in the three countries to which the antidumping duties apply. As to these exports, the countervailing duty order provides no additional protection. The effect of Section 772(d)(1)(D) of the Tariff Act of 1930, as amended, is that the net duty collected is equal to the larger of the antidumping or countervailing duty. In this case the antidumping duty is the larger of the two. Moreover, given the EC's domestic price support program, it is unlikely that they would manipulate their domestic price in order to avoid antidumping duties.[34] Thus, the antidumping duties ensure that revocation of the countervailing duty order will not result in a substantial decrease in the price of sugar from the EC.

It is true that quotas under both the ISA and the Presidential Proclamation are subject to modification. However, it is specifically provided that quotas proclaimed pursuant to the Presidential Proclamation will be in accordance with the ISA. Modification of the ISA quotas are a function of the prevailing world price, quotas falling only as the price rises, thereby ensuring continued protection of the domestic industry. As to the possibility that the EC may join the ISA and thereby no longer be subject to the non-member quota, we note the letter from the EC to the Commission dated April 22, 1982, stating that "* * * the EC will not be able to join the present ISA as extended for two years (till end of 1984)." On the question of whether the United States will cease to be an ISA member and the quota thereby removed, we note that United States enabling legislation does not expire until 1983, and that there is no indication that the legislation will not be renewed. Similarly, there is no reason to believe that any future modification of the antidumping duty will permit prices or quantities of FC imports which would adversely affect the U.S. industry. In any case, the role of the Commission in a section 104 investigation is to forecast the effect of revocation of the countervailing duty order on the domestic industry. In so doing, we must consider factors which affect the condition of the industry as they exist at the time of the determination. Mere conjecture as to future events is not appropriate even for a threat of material injury argument. It is not our role to engage in pure speculation as to what future market conditions might be. The Senate Committee on Finance in its report on the Trade Agreements Act of 1979 affirms that even a threat of material injury must not be based on mere supposition or conjecture.[34]

Having considered the current healthy state of the U.S. sugar industry and the existence of other forms of protection against EC sugar imports, we determine that revocation of the countervailing duty order will not result in material injury or threat of material injury to the U.S. sugar industry.

By order of the Commission.

Issued: May 14, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-14383 Filed 5-25-82; 8:45 am]

BILLING CODE 7020-02-M

[33] In a previous ITC report on sugar, Investigation 22-41, April 1978, the price elasticity of demand was found to be inelastic. Nevertheless, a small increase in the quantity of sugar available to the market, such as 5,000 tons, would be unlikely to have a significant effect on a daily price quote, and would have negligible lasting effect on the price over any period of time. Staff briefing of Commission at meeting, May 6, 1982.

[34] Staff briefing of Commission at meeting, May 6, 1982.

[34] "In determining whether an industry in the United States is threatened with material injury, the ITC will consider the likelihood of actual material injury occurring. It will consider any economic factors it deems relevant, and consider the existing and potential situation with respect to such factors. An ITC affirmative determination with respect to threat of material injury must be based upon information showing that the threat is real and injury is imminent, not a mere supposition or conjecture. The 'threat of material injury' standard is intended to permit import relief under the countervailing duty and antidumping laws before actual injury occurs and should be administered in a manner so as to prevent actual injury from occurring. Relief should not be delayed if sufficient evidence exists for concluding that the threat of injury is real and injury is imminent." S. Rept. No. 96-249 at 88-89.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. LPR 80-6]

Report of the Register of Copyrights on the Effects of 17 U.S.C. 108 on the Rights of Creators and the Needs of Users of Works Reproduced by Certain Libraries and Archives; Final Comment Period

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of final comment period.

SUMMARY: The Copyright Office of the Library of Congress is preparing a report for Congress in accordance with 17 U.S.C. 108(i). The subject of the report to the extent to which 17 U.S.C. 108 has achieved the intended balance between the rights of creators and the needs of users of copyrighted works which are reproduced by certain libraries and archives. Five regional public hearings have been held to elicit views, comments, and information from all interested persons, including authors, copyright proprietors, libraries, and users of all types of libraries. This notice announces that the Copyright Office desires to receive the written comments of organizations and individuals whose informed opinions may contribute to the preparation of that report.

The Office also announces the availability of, and invites written comment on, the report of library photocopying prepared by King Research, Inc. under contract to the Library of Congress.

DATE: To become part of the record, and to be fully evaluated in preparing the report, all comments must be received by the Copyright Office on or before July 15, 1982.

ADDRESSES: Written comments should be submitted as follows:

If sent by mail: Office of the General Counsel, Department D.S., Library of Congress, Washington, D.C. 20540.

If hand-delivered: Office of the General Counsel, Madison Building, Room 407, First and Independence Avenue SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Department D.S., Library of Congress, Washington, D.C. 20540, Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Background and Purpose of the Copyright Office Report

A thorough background statement concerning the Copyright Office report,

section 108 of the Copyright Act appears in all prior notices requesting comments, most recently at pages 79202 through 79204 of the **Federal Register** for Friday, November 28, 1980 (Vol. 45, No. 231) and is herein incorporated by reference.

2. Specific Questions

The Copyright Office is interested in receiving comments and testimony about any issues relevant to section 108 which concern authors, copyright owners, librarians, and their patrons. Of particular interest are answers to the following questions:

1. To what extent has section 108 changed library procedures? Has there been any significant effect on users' and librarians' access to information?

2. To what extent has section 108 affected established patterns in the publishing industry and the relationship between authors, libraries, and library users?

3. Depending upon the type of library involved, describe the effect, if any, of section 108 upon the type and amount of copying performed by the library on its own behalf or on behalf of users. To what extent have publishers and authors experienced a change in the number of requests from libraries to reproduce works since the present law went into effect?

4. In what manner has the establishment of the Copyright Clearance Center affected your experience under section 108? Would the creation of a National Periodical Center affect your operations? (The intent of these questions is to elicit responses from publishers and authors on the one hand and libraries and library users on the other.)

5. Describe the impact, if any, that section 108 has had upon the replication of nonprint materials, including the ability of libraries to reproduce phonorecords and audiovisual works dealing with news. In response to this question describe any problems which have been encountered as the result of the narrower exemptions for nonprint materials under section 108.

6. How have the CONTU guidelines worked in practice? How should periodicals more than five years old be treated?

7. What is your opinion of the relationship between section 107 ("fair use") and section 108 ("reproduction by libraries and archives")?

8. How should foreign copyrighted works and requests from foreign libraries be treated under section 108 and, in practice, how are they treated now?

9. If problems do exist, can they be resolved without resort to legislative amendment? If so, what are the problems, and how could they best be resolved? If not, what changes should be made in the law?

3. King Report

The Library of Congress awarded a contract to King Research, Inc., to perform several statistical surveys concerning library photocopying, to assist the Copyright Office in preparing the report to Congress mandated by, 17 U.S.C. 108(i). Results of three surveys of libraries, two of library patrons, and one of publishers are contained in a report by King Research which will be available in late May or early June, 1982 for purposes of written public comment to the Copyright Office. Copies may be ordered in advance directly from King Research by sending a check or money order (payable to King Research, Inc.) in the amount $25.00 ($30.00 for delivery outside the United States) to King Research, Inc., P.O. Box 70, Rockville, MD 20850. Only prepaid orders can be accepted. Domestic deliveries will be by first class mail; deliveries outside the United States will be by airmail.

In addition, a limited number of copies will be available at the Copyright Office for reading or lending in the Washington, D.C. area. Subject to availability, a copy can be borrowed for partial or complete reproduction outside the Copyright Office; the borrowed copy must be returned within 24 hours to the Copyright Office. These copies will be in the Information Office, Room, 401, Madison Building, 1st and Independence Avenues, SE., Washington, D.C., and will be available weekdays (except holidays) between 8:30 a.m. and 5:00 p.m.

(17 U.S.C. 108)

Dated: May 18, 1982.

Michael R. Pew,

Associate Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82-14280 Filed 5-25-82; 8:45 am]

BILLING CODE 1410-03-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Midland Plant Units 1 and 2; Meeting

The ACRS Subcommittee on Midland Plant Units 1 and 2 will hold a meeting on June 2, 1982, Room 1046, 1717 H Street, NW., Washington, DC. The Subcommittee will continue to review the application by Consumers Power Company for a license to operate Midland Plant Units 1 and 2.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 2, 1982—4:00 p.m. until the conclusion of business, discussion of topic noted above.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Consumers Power Company, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. David Fischer (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: May 21, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-14332 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 19th day of May at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards Office of International Programs.

FEDERAL REGISTER (EXPORT)

Name of applicant, date of application, date received, application No.	Material type	Material in Kilograms		End-use	Country of destination
		Total element	Total isotope		
General Electric, Apr. 30, 1982, May 4, 1982, XSNM01958	3.65 percent enriched uranium	80,329	1,358	Reload fuel for Tokai-2	Japan.
General Electric, Apr. 30, 1982, May 4, 1982, XSNM01957	3.85 percent enriched uranium	10,296	280	Reload fuel for Tsuruga	Japan.

[FR Doc. 82-14328 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Arkansas Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 65 to Facility Operating License No. DPR-51, issued to Arkansas Power and Light Company (the licensee), which revised the Technical Specifications (TSs) for operation of Arkansas Nuclear One, Unit No. 1 (the facility), located in Pope County, Arkansas. The amendment is effective as of the date of issuance.

The amendment revised the Appendix B TSs to delete certain nonradiological water quality surveillance requirements of sections 2.1 and 4.1.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment is a ministerial action required as a matter of law and that therefore no environmental impact statement or negative declaration and environmental impact appraisal need be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's applications for amendment dated August 17 and September 24, 1981, (2) Amendment No. 65 to License No. DPR-51, and (3) the Commission's letter to the licensee dated May 18, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Arkansas Tech University, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of May 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-14327 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1100]

Negative Declaration Regarding Renewal of License No. SNM-1067, Combustion Engineering, Inc., Nuclear Fuel Fabrication Plant, Windsor, Connecticut

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License SNM-1067 for the continued operation of the Nuclear Fuel Fabrication Plant at Windsor, Connecticut.

The Commission's Division of Fuel Cycle and Material Safety has prepared an environmental impact appraisal for the proposed renewal of license SNM-1067. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an environmental impact statement and, accordingly, it has been determined that a Negative Declaration is appropriate. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 19th day of May, 1982.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 82-14329 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-373 and 50-374]

Commonwealth Edison Co.; (La Salle County Nuclear Generating Station, Units 1 & 2) Request for Action

Notice is hereby given that by its Request to Institute a Show Cause Proceeding dated April 28, 1982 (Petition), Bridget Little Rorem and the Illinois Friends of the Earth requested that certain actions be taken by the Nuclear Regulatory Commission with respect to the La Salle County Station, Units 1 and 2 of the Commonwealth Edison Company in light of certain alleged safety issues. The Petition and accompanying affidavits allege that certain improper construction practices have resulted in structural problems at the facility which could cause serious health and safety problems. The relief requested included institution of a show cause proceedig pursuant to 10 CFR 2.202 and an immediate halt to the further loading of nuclear fuel at La Salle Unit 1. This request is being treated as a petition pursuant to 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the Petition within a reasonable time.

Copies of the Petition are available for inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555, and in the local public document room for the La Salle County Station, units 1 and 2, located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Bethesda, Maryland this 19th day of May 1982.

For The Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-14328 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

Subcommittees on Electrical Systems and Qualification Programs for Safety-Related Equipment, Advisory Committee on Reactor Safeguards; Cancellation

The ACRS Combined Subcommittees on Electrical Systems and Qualification Programs for Safety-Related Equipment scheduled for May 27, 1982 in Room 1046, 1717 H Street, NW, Washington, DC has been cancelled. This meeting has been tentatively scheduled for June 22, 1982.

Dated: May 21, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-14334 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the NA-2 Technical Specifications by upgrading and adding twenty (20) containment isolation valves of Table 3.6.1 to meet the requirements of NUREG-0737, Action Item II.B.2, Post-Accident Shielding; and Action Item II.B.3, Post Accident Sampling.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 23, 1982; (2) Amendment No. 25 to Facility Operating License No. NPF-7; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland the 17th day of May, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-14330 Filed 5-25-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 807]

International Bridge Permit Application for Private Road Bridge in the Vicinity of St. Croix, New Brunswick and Vanceboro, Maine

Notice is hereby given that the Department of State has received an application for a permit authorizing the Georgia-Pacific Corporation to construct a private road bridge across the St. Croix River approximately one and one-half miles south of St. Croix, New Brunswick and Vanceboro, Maine. The bridge and the private haul road with which it is to be connected are being built in response to requests by local communities that steps be taken to minimize use of public roads by trucks carrying forest products between company facilities in Woodland, Maine and McAdam, New Brunswick. The private road will also reduce energy consumption by allowing heavy and oversized loads to be transported. The road system will be built on land owned by the St. Croix Pulpwood Company, which is a wholly owned subsidiary of the Georgia-Pacific Corporation, and will be restricted to use by vehicles transporting forest products.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated April 16, 1968 (the Order), and the International Bridge Act of 1972 (33 U.S.C. sec. 535), approved September 26, 1972. As required by the Order, the Department is circulating this application to concerned agencies for comment.

In cooperation with the Department of State and the U.S. Army, Corps of Engineers, the U.S. Coast Guard (First Coast Guard District) has prepared an Environmental Assessment (EA) for the proposed project. The Department of State concurs with the findings of the

EA that the proposed project will have no significant environmental impact.

Interested persons may submit their views regarding this application in writing by May 24, 1982 to Mr. Geoffrey M. Levitt, Attorney Adviser, Office of the Assistant Legal Adviser for European Affairs, Room 5417A, Department of State, 2201 C Street, NW., Washington, D.C. 20520.

The application and related documents which are made part of the record to be considered by the Department of State in connection with this application are available for inspection and copying in the Office of the Assistant Legal Adviser for European Affairs during normal business hours. Any questions relating to this notice may be addressed to Mr. Levitt at the above address (Phone 202–632–1218).

Dated: May 6, 1982.

Ted A. Borek,

Assistant Legal Adviser for European Affairs.

[FR Doc. 82-14340 Filed 5-25-82; 8:45 am]

BILLING CODE 4710-08-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee (the Advisory Committee) to be held Wednesday, June 2, 1982, from 2:30 p.m. to 5:00 p.m. at the Office of the United States Trade Representative, will involve a review and discussion of current issues involving the investment and trade policies of the United States. The review and discussion will deal with information submitted in confidence by the private sector members of the Committee under Section 135(g) (1) (A) of the Trade Act of 1974, as amended, (the Act), information submitted by government officials under Section 135(g)(2) of the Act the disclosure of which could be reasonably expected to prejudice United States negotiating objectives, information the disclosure of which would be likely to significantly frustrate implementation of proposed government action, and information properly classified pursuant to Executive Order 12065 and specifically required by such Order to be kept secret in the interests of national security (i.e., the conduct of foreign relations) of the United States. All members of the Advisory Committee have all necessary security clearances. Consistent with previous determinations concerning other advisory committees, established under Section 135(c) of the Act, I hereby determine that the meeting of the Advisory Committee will be concerned with matters listed above and with matters listed in Section 552b(c) of Title 5 of the United States Code. Therefore, the meeting of the Investment Policy Advisory Committee will be closed to the public.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 82-14315 Filed 5-25-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Correction of a Customs Finding Relating to the Tariff Classification of Certain Imported Printing Mechanisms

AGENCY: Customs Service, Treasury.

ACTION: Proposed notice of correction.

SUMMARY: This document gives notice that the Customs Service believes that a previous Customs finding of an established and uniform practice of classifying certain printing mechanisms under the provision for office machines, not specially provided for, in item 676.30, Tariff Schedules of the United States (TSUS), was made in error, and that a practice did not, in fact, exist at that time of the finding. Accordingly, it is Customs opinion that the subject printing mechanisms are properly classifiable under the provision for other parts of office machines, not specially provided for, in item 676.52, TSUS, at the higher rate. However, before making the change in classification, public comments are being invited.

DATE: Comments (preferably in triplicate) must be received on or before: July 26, 1982.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: James Hill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8161).

SUPPLEMENTARY INFORMATION:

Background

In a ruling letter addressed to counsel for the importer of certain printing mechanisms, dated April 26, 1976, (File No. 040922), Customs expressed the opinion that mechanisms to be placed in the same housings with cash registers, calculators, or other data source collectors such as printers, were classifiable under the provision for other parts of office machines, not specially provided for, in item 676.52, Tariff Schedules of the United Stastes (TSUS) (19 U.S.C. 1202). Subsequently, counsel for the importer submitted summaries of his client's importing experience purporting to show that there was an established and uniform Customs practice of classifying certain models of the printing mechanisms under the provision for office machines, not specially provided for, in item 676.30, TSUS. The column 1 rate of duty for merchandise entered under item 676.30, TSUS, has been, and presently is, less than the column 1 rate of duty for merchandise entered under item 676.52, TSUS. Customs reviewed the information submitted on behalf of the importer and issued a finding on August 18, 1976, (File No. 040922) that there was an established and uniform tariff classification practice with respect to 12 specific models of the printing mechanisms, and therefore, authorized pending entries of these articles to be liquidated at the lower rate of duty under item 676.30, TSUS.

A later review of this matter showed that the import record concerning these articles was not complete, that some of these and other similar printing mechanisms had been entered at the higher rate of duty under item 676.52, TSUS, at several ports of entry, and that the liquidation of entries for this merchandise had been suspended at the time of customs August 18, 1976, finding, pending clarification of the appropriate tariff classification of the printing mechanisms.

Inasmuch as a finding by Customs that an established and uniform tariff classification practice exists implies that Customs has consistently and uniformly classified the merchandise in question, Customs believes that the August 18, 1976, finding clearly was made in error based on insufficient factual information regarding importations of the mechanisms.

Proposed Correction

In view of the above, Customs believes that the established and uniform practice held to exist for the 12 models of printing mechanisms, which

were the subject of Customs Headquarters letter of August 18, 1976, described above, was made in error, and that an established and uniform practice classifying the 12 models under item 676.30, TSUS never existed. Accordingly, it is Customs opinion that the printing mechanisms described above are properly classifiable under item 676.52, TSUS, at the applicable rate of duty.

Authority

Customs is giving this notice and opportunity for comment on the proposed correction in accordance with section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d), and § 177.10(c), Customs Regulations (19 CFR 177.10(c)).

COMMENTS

Before taking any further action on this matter, consideration will be given to any witten comments, preferably in triplicate, timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00a.m. to 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Robert Joseph Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: May 21, 1982.

William von Raab,

Commissioner of Customs.

[FR Doc. 82-14346 Filed 5-25-82; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Supp. to Dept. Circ., Public Debt Series No. 13-82]

Series S-1984; Interest Rate

May 20, 1982.

The Secretary announced on May 19, 1982, that the interest rate on the notes designated Series S-1984, described in Department Circular—Public Debt Series—No. 13-82 dated May 13, 1982, will be 13¾ percent. Interest on the notes will be payable at the rate of 13¾ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-14310 Filed 5-25-82; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Wisconsin Veterans Home, King, Wis.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a nursing care facility at the Wisconsin Veterans Home in King, Wisconsin. The estimated project cost is approximately $8.5 million. This is a magnitude estimate and is subject to revisions.

This project involves the construction of a new facility that will accommodate a 116-bed nursing home care unit and a medical clinic to service residents at the King, Wisconsin Veterans Home. Included is the construction of three tunnels to connect existing buildings with the nursing home unit and medical clinic. Building No. 501, which currently houses 71 nursing care beds, will be vacated after construction of the new nursing care unit. The beds within Building No. 501 will be transferred to the new structure.

Project impacts will involve construction activities affecting the immediate veteran home environment; however, a beneficial impact will be achieved through the addition of 45 new beds which will provide more employment and income to the local area surrounding the home.

Construction related traffic may cause disruption of on-site traffic flow. In addition, construction noise associated with the development of the new nursing home facility is likely to cause annoyance to occupants of adjacent residences. Complaints about noise usually give rise to a controversial situation. The impact of dust and fumes that will exist during construction will be of short effect lasting only during that phase of project development. In relation to both construction and operation, the new facility will be built in accordance with applicable Federal, State and local air quality standards.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40, CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs, Room A-14, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 389-2526. Questions or requests for single copies of the Environmental Assessment may also be directed to the above address.

Dated: May 18, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-14364 Filed 5-25-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 102
Wednesday, May 26, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19507, May 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., May 17, 1982.

CHANGE IN THE MEETING: The following items has been added to the closed meeting of May 17, 1982:

Item No., Docket No., and Company

2—*Pennzoil Company v. Public Service Commission of West Virginia,* United States Supreme Court No. 81–1672
3—IN80–1, Ship Shoal Pipeline System

Kenneth F. Plumb,
Secretary.

[S–789–82 Filed 5–24–82; 10:41 am]
BILLING CODE 6717–02–M

2

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 22449, May 24, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Thursday, May 27, 1982 has been cancelled.

[No. 38, May 24, 1982]

[S–790–82 Filed 5–24–82; 11:49 am]
BILLING CODE 6720–01–M

3

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 A.M., TUESDAY, JUNE 1, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 24, 1982.

James McAfee,
Associate Secretary of the Board.

[S–792–82 Filed 5–24–82; 3:22 pm]
BILLING CODE 6210–01–M

4

LEGAL SERVICES CORPORATION

TIME AND DATE: 9 a.m.–5 p.m., Thursday, June 3, 1982.

PLACE: Legal Services Corporation, 733 15th Street, N.W., Eighth Floor Conference Room 2, Washington, D.C.

STATUS OF MEETING: Open (Portion of the meeting will be closed to discuss a personnel matter under 45 CFR Section 1622.5(a) and 1622.5(e)).

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of May 6, 1982.
3. Second Quarter Budget Review.
4. Consideration of Issues Relating to FY 1983 Consolidated Operating Budget and FY 1984 Budget Request.
5. Discussion of Corporation's Financial Management with Corporation's Auditors.
6. Other Business.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272–4040.

Dated: May 24, 1982.

Gerald M. Caplan,
Acting President.

[S–791–82 Filed 5–24–82; 12:06 pm]
BILLING CODE 6820–35–M

5

POSTAL RATE COMMISSION

TIME AND DATE: 10 a.m., Tuesday, May 25, 1982.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket MC78–3 (E-COM) (Electronic mail case) (Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–5614.

[S–788–82 Filed 5–21–82; 4:29 pm]
BILLING CODE 7715–01–M

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federal register

Wednesday
May 26, 1982

Part II

Department of the Interior

Bureau of Land Management

Management Areas; Regulations to Implement the National Trails System Act of 1968

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8350

[Circular No. 2504]

Management Areas; Regulations to Implement the National Trails System Act of 1968

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will implement the National Trails System Act of 1968, as amended, which prohibits the use of motorized vehicles on all national scenic trails except on certain roads designated as trails, and except to meet emergencies or to enable adjacent landowners and users to gain access to their land, interests and timber rights. In addition, this final rulemaking will enhance the opportunity for recreational experiences of users on the completed national scenic trail segments and limit conflict among users of these trails, and will establish criminal penalties for violation of the regulations.

EFFECTIVE DATE: June 25, 1982.

ADDRESS: Any suggestions or questions should be sent to: Director (340), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Delmar Price, (202) 343–9353.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the **Federal Register** on October 19, 1981 (46 FR 51258). Comments were invited for 60 days ending on December 18, 1981; the comment period was extended to January 18, 1982. Comments were received from 29 different sources: 8 from business interests, 6 from State governments, 9 from recreation and other associations, and 6 from individuals. Eleven of these sources, including 4 off-road vehicle interests, offered unqualified support of the proposed rulemaking. Opposition was expressed in 5 comments including 1 from an off-road vehicle interest and 4 from individuals who opposed allowing motorized vehicles on national scenic trails. One business source submitted a written "no comment". The remaining 12 comments offered specific criticisms, suggestions for amendment and amendatory language. These specific comments will be dealt with in the section-by-section discussion of the proposed regulations.

There were no comments on proposed new § 8351.1–1(a)(1), and the proposed section has been adopted in the final rulemaking.

Of those who made specific comments, 6 addressed proposed new § 8351.1–1(a)(2). Several pointed out that the words "directly across" in the proposed regulations are not in the statutory authority, and argued that the provision was too narrow an interpretation of "reasonable access," the term used in the statute, and might cause adverse economic or environmental impacts. The substance of those comments has been adopted. The words "directly across" have been removed from the rulemaking.

Several comments argued that in section 7 of the National Scenic Trails Act, as amended (16 U.S.C. 1246), Congress opened trails to motor vehicles of adjacent landowners to enable them to have "reasonable access" to their land or timber rights, rather than access if they have "reasonable need" for it. The word "reasonable" has been deleted as a requirement for the need for access. Further, several comments argued that the right of reasonable access should be extended to those with grazing allotments, mining claims and mineral leases on public lands adjacent to national scenic trails, although the National Scenic Trails Act refers only to the lands or timber rights of "adjacent landowners or land users." The proposed rulemaking has been amended to allow reasonable access to persons who have interests in land. The Bureau of Land Management has traditionally, and statutorily since passage of the Federal Land Policy and Management Act of 1976, recognized that lands include interests in lands.

One comment suggested that the word "adjacent" be replaced by the phrase "in proximity of." This suggestion has not been adopted because it is clearly beyond the scope of the statute.

A comment suggested adding another exception to the general prohibition against motor vehicles to allow motorized uses that do not substantially interfere with the nature and purposes of the trail, on the basis that the National Scenic Trails Act at 16 U.S.C. 1246(e) supports this position. The cited provision permits campgrounds, shelters, and related-public-use facilities, and other "uses along the trail, which will not substantially interfere with the nature and purposes of the trail." The Act then specifically prohibits motorized vehicle use, with certain named exceptions. The suggested language is not authorized by the Act and has not been added.

One comment suggested that national scenic trails be open to motorized vehicles for access purposes only when the trails have historically been used for such purposes. This recommendation has not been adopted in the final rulemaking because it would conflict with the requirements of the statute.

Five comments offered specific criticisms of or suggestions for § 8351.1–1(a)(3) of the proposed rulemaking. One comment pointed out that section 5(a)(5) of the National Scenic Trails Act, which designated the Continental Divide National Scenic Trail, only permitted the use of motorized vehicles on roads that are designated segments of the trail, and suggested that the proposed rulemaking be revised to conform to that provision. As a result of this comment, this section of the final rulemaking has been changed to conform to the law. Another comment suggested that future national scenic trails as designated by Congress may include segments of existing roads, and that the regulations should retain the flexibility to manage such road segments in the same way as roads that are part of the Continental Divide National Scenic Trail. This recommendation has been adopted in the final rulemaking. Because this rulemaking will only affect the management of scenic trails on public lands administered by the Bureau of Land Management, it will have no effect or road segments that may be included on portions of scenic trails managed by other agencies, such as the U.S. Forest Service, and will have no effect on national recreational or historic trails.

Several comments urged that the Bureau of Land Management adopt less stringent regulations and avoid total closure of all national scenic trails to motorized vehicle use, particularly snowmobiles. This suggestion has not been incorporated in the final rulemaking. However, because much of the route of the Continental Divide National Scenic Trail on public lands, at least in Wyoming, is across relatively open terrain, the portions of the trail not on a road will be covered by snow during the winter and probably be subject to incidental use by snowmobiles crossing open country. Actual motorized use of the trail as a snowmobile route will be prohibited.

There were no comments on the proposed new § 8351.1–1(b), and the proposed section has been adopted in the final rulemaking.

Editorial and grammatical changes, as needed, have been made.

The principal author of this final rulemaking is Larry R. Young, Branch of Recreation and Cultural Resources, assisted by the staff of the Office of Legislation and Regulatory

Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

As a result of the environmental assessment approved July 22, 1981, it has been determined that this rulemaking is not a major Federal action having a significant effect on the quality of the human environment and that no detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

List of Subjects in 43 CFR Part 8350

National trails system penalties, Public land.

Under the authority of section 7(i) of the National Scenic Trails Act (16 U.S.C. 1241 et seq.), subpart 8351, part 8350 of Subchapter H, Chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: May 6, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 8350—MANAGEMENT AREAS

1. Subpart 8351 is amended by revising the title of § 8351.1 and by adding a new § 8351.1–1 to read as follows:

Subpart 8351—Designated National Area

* * * * *

§ 8351.1 National trails systems.

§ 8351.1–1 National scenic trails.

(a) *Motorized vehicle use.* No one shall operate a motorized vehicle along a national scenic trail except:

(1) When motorized vehicular use is necessary to meet emergencies involving health, safety, fire suppression, or law enforcement; or

(2) Where the authorized officer determines that adjacent landowners and land users have a need for reasonable access to their lands, interests in lands, or timber rights; or

(3) On roads that are designated segments of the National Scenic Trail System and are posted as open to motorized vehicles.

(b) *Penalties.* In accordance with section 7(i) of the National Trails System Act of 1968, as amended (16 U.S.C. 1246), anyone convicted of violating this regulation is subject to a fine not to exceed $500 and/or imprisonment not to exceed six months.

[FR Doc. 82-14291 Filed 5-25-82; 8:45 am]
BILLING CODE 4310-84-M

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federal register

Wednesday
May 26, 1982

Part III

Department of Energy

Energy Information Administration

Changes to Department of Energy Reporting and Recordkeeping Requirements

DEPARTMENT OF ENERGY

Energy Information Administration

Changes to DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of Department of Energy reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current energy information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

The listing that follows this notice indicates changes made during the quarter from January 1, 1982, to March 31, 1982, to the inventory of current DOE information collections published in the **Federal Register** (47 FR 12920 March 25, 1982). The listing includes corrections to the published inventory, new information collections approved by the Office of Management and Budget (OMB), collections reinstated, extended, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement reinstated, requirement extended, and requirement discontinued, the current DOE control or form number, the title, and the OMB control number and approval expiration date are listed by DOE sponsoring office. If applicable, the appropriate Code of Federal Regulations citation is also listed.

FOR FURTHER INFORMATION CONTACT: Carolyn Sinclair, Energy Information Administration, Mail Stop 7413, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, (202) 633–9580.

Issued in Washington, D.C., May 20, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

CORRECTIONS TO LISTINGS IN MAR. 25, 1982, FEDERAL REGISTER NOTICE

DOE number as previously listed	Correction	New listing
CE–189C	Title should have been	Energy efficiency improvement and recovered materials utilization program—Corporate reporting form.
CE–189E	DOE number should have been	CE–189P.
	Title should have been	Energy efficiency improvement and recovered materials utilization program—Plant reporting form.
CE–189S	Title should have been	Energy efficiency improvement and recovered materials utilization program—Sponsor reporting form.
EIA–196E	DOE number should have been	EIA–196S.
EIA–701	OMB number should have been	19040025.
NE–491A and NE–491B	DOE numbers should have been	EIA–491A and EIA–491B.
FERC–80	OMB number should have been	19020106.

DOE No.	Title	OMB No.	Expiration date	CFR citation
New DOE Information Collections Approved by OMB				
ENERGY INFORMATION ADMINISTRATION				
EIA–717	Annual Survey of Uranium Exploration and Surface Drilling Costs and Anticipated Expenditures	19[illegible]0131	04/30/84	NA.
EIA–764A	Petroleum Product Sales Indentification Survey	19[illegible]0133	12/31/82	NA.
EIA–764B	Petroleum Product Sales Indentification Survey (EIA–172 Respondents)	19050130	12/31/82	NA.
ENVIRONMENTAL PROTECTION, SAFETY AND EMERGENCY PREPAREDNESS				
EP–739	Weekly Crude Watch Report	19060132	02/28/85	NA.
ENERGY RESEARCH				
ER–487A	Health Effects of Low-Dose Radiation Exposure Among Nuclear Shipyard Workers—Short Form	19010250	09/30/84	NA.
ER–487B	Health Effects of Low-Dose Radiation Exposure Among Nuclear Shipyard Workers—Radiation Long Form	19010250	09/30/84	NA.
ER–487C	Health Effects of Low-Dose Radiation Exposure Among Nuclear Shipyard Workers—Asbestos Long Form	19010250	09/30/84	NA.
ECONOMIC REGULATORY ADMINISTRATION				
ERA–328R	Prohibition Orders Under FUA/OBRA	19030077	01/31/85	NA.
ERA–626R	Natural Gas Volumes Used to Displace Natural Gas	19030078	06/30/83	10 CFR 595.
FEDERAL ENERGY REGULATORY COMMISSION				
FERC–556	Report of Utility's 20 Largest Purchasers	19020114	12/31/84	18 CFR 46.3.
FERC–568	Well Category Determinations	19020112	12/31/83	18 CFR 274.
FERC–669	Refund Obligations	19020111	12/31/84	18 CFR 273.
FERC–571	Incremental Pricing Report	19020110	12/31/84	18 CFR 282.
FERC–574	Gas Pipeline Certificate: Hinshaw Exemption	19020116	02/29/84	18 CFR 152, 284.222.
FERC–575	Louisiana First Use Tax	19020115	12/31/82	18 CFR 154.36 (f-)(3), (f-)(9).
MANAGEMENT AND ADMINISTRATION				
MA–647R	Nondiscrimination in Federally Assisted Programs	19010247	01/31/85	10 CFR 1040.4, .102.
POWER MARKETING ADMINISTRATION				
WAPA–743R	Application for Allocation of Power	19040037	11/30/84	46 FR 25,539.

DOE Information Collections Reinstated

CONSERVATION AND RENEWABLE ENERGY

DOE No.	Title	OMB No.	Expiration date	CFR citation
CE-80	Evaluation Activity Report	19040039	01/31/85	NA.

DOE Information Collections Extended

DEFENSE PROGRAMS

DP-354	Data Report on Spouse	19010002	03/31/85	NA.

ENERGY INFORMATION ADMINISTRATION

EIA-64	Natural Gas Liquids Operations Report	19050109	03/31/83	NA.

ENVIRONMENTAL PROTECTION, SAFETY, AND EMERGENCY PREPAREDNESS

ERA-51	Transfer Pricing Report	19030002	05/30/82	NA.

FEDERAL ENERGY REGULATORY COMMISSION

FERC-500	Major Hydroelectric License—Application	19020058	12/31/84	18 CFR 4, Subpart F.
FERC-505	Minor Hydroelectric License—Application	19020115	10/31/84	18 CFR 4, Subpart G.
FERC-510	Electric License—Surrender of License	19020006	07/31/82	18 CFR 6.
FERC-511	Electric License—Transfer	19020069	07/31/82	18 CFR 9.
FERC-530	Gas Producer Certificate: Abandonment/Termination	19020051	11/30/84	18 CFR 157.30.
FERC-537	Gas Pipeline Certificate	19020080	06/30/82	18 CFR 2.69, .78, 157.22, .100, 157.5—.18, 284.107, 284.127.
FERC-540	Gas Pipeline Certificate: Transportation Agreement	19020085	06/30/82	18 CFR 2.79.
FERC-541	Gas Pipeline Certificate: Curtailment Plan	19020086	06/30/82	18 CFR 281, 2.78.
FERC-73	Service Life Data	19020019	06/30/82	49 CFR.
FPC-12	Power System Statement	19020035	06/30/82	18 CFR 141.51.

DOE Information Collections Discontinued or Allowed To Expire

ENERGY INFORMATION ADMINISTRATION

EIA-SG-1	Survey of Gasonage Sales of Gasoline	19050005	03/31/82	NA.
EIA-SG-2	Survey of Gasonage Sales of Gasoline	19050006	03/31/82	NA.
EIA-SG-4	Survey of Gasonage Sales of Gasoline	19050008	03/31/82	NA.
EIA-SG-176	Supply and Disposition of Natural Gas—Distributors	19050017	03/31/82	NA.
EIA-456	Crude Oil Ownership Report	19050090	03/31/82	NA.
EIA-63	Solar Collector Manufacturing Survey	19050074	03/31/82	NA.
EIA-701	Questionnaire for Solar Installers Dealers Survey	19040023	03/31/82	NA.
EIA-758	Natural Gas Producer/Pipeline Contracts Survey	19050127	03/31/82	NA.
EIA-81	Gaseous Fuels Emergency Telephone Survey	19050059	03/31/82	10 CFR 211.1200.

ECONOMIC REGULATORY ADMINISTRATION

ERA-760R	Certification of Coverage Under FUA/OBRA	19030071	02/28/82	46 FR 48118.

FOSSIL ENERGY

FE-735A	DOE/RCRA Utility Impact Study Verification Document	19010241	01/31/82	NA.

FEDERAL ENERGY REGULATORY COMMISSION

FERC-501	Major Hydroelectric License—New Capacity (Formal)	19020049	03/31/82	[2].
FERC-503	Major Hydroelectric License—Relicense (Formal)	19020053	01/31/82	[2].
FERC-504	Major Hydroelectric License—Relicense (Non-formal)	19020054	01/31/82	[2].
FERC-506	Minor Hydroelectric License—Relicense	19020059	01/31/82	[3].
FERC-507	Minor Hydroelectric License—Constructed	19020063	01/31/82	[3].
FERC-508	Minor Hydroelectric License—Amendment to License	19020064	01/31/82	[3].
FERC-509	Minor Hydroelectric License—Amendment (New Capacity)	19020067	01/31/82	[3].
FERC-513	Hydroelectric License—Transmission Line Application	19020074	01/31/82	[3].
FERC-533	Gas Producer Rate: Special Relief Petition [1]	19020096	02/28/82	18 CFR 2.75, .76, .77.

[1] Submitted to OMB for reinstatement 4-20-82.
[2] Collected under FERC-500. See listing above (DOE Information Collections Extended).
[3] Collected under FERC 505. See listing above (DOE Information Collections Extended).

CHANGES IN CONTINUING DOE INFORMATION COLLECTIONS

DOE number as previously listed	Change
DP-354	Form revised.
EP-119M	New DOE number: EIA-119M.
ERA-186	Form revised.
ERA-182	Form revised.
FERC-500	Consolidates requirements previously listed under FERC-500, FERC-501, FERC-502, FERC-503, FERC-504.
FERC-505	Consolidates requirements previously listed under FERC-506, FERC-507, FERC-508, FERC-509, FERC-513.
ICC-ACV-159	New DOE number: FERC-73.

[FR Doc. 82-14191 Filed 5-25-82; 8:45 am]

BILLING CODE 6450-01-M

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federal register

Wednesday
May 26, 1982

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee, Meeting; Recombinant DNA Research: Proposed Actions Under Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, on June 28, 1982, from 9:00 a.m. to adjournment at approximately 6:00 p.m. This meeting will be open to the public to discuss:

Proposed major revision of the Guidelines
Amendment of Guidelines
Proposed exemptions to Guidelines
Other matters requiring necessary action by the Committee

Attendance by the public will be limited to space available.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

In addition, notice is hereby given of a meeting of the Large-Scale Review Working Group sponsored by the Recombinant DNA Advisory Committee at the National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland 20205, on June 29, 1982, from 9:00 a.m. to 12:00 noon. The meeting will be open to the public. Attendance will be limited to space available.

Further information may be obtained from Dr. Elizabeth Milewski, Executive Secretary, Large-Scale Review Working Group, NIAID, Building 31, Room 4A52, Bethesda, Maryland, telephone (301) 496–6051.

Dated: May 19, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

Note.—OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8–(b)–(4) and (5) of that Circular.

[FR Doc. 82–14374 Filed 5–25–82; 8:45 am]
BILLING CODE 4140–01–M

Recombinant DNA Research: Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of proposed revisions of NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth proposed revisions of the NIH Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 28–29, 1982, the Director of the National Institute of Allergy and Infectious Diseases will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by June 25, 1982.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 4A52, National Institutes of Health, Bethesda, Maryland, 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following proposed revisions of the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposed Revision of Appendix A. Sublist F

Dr. Gary M. Dunny of the New York State College of Veterinary Medicine requests that *Streptococcus agalactiae* be added to Appendix A, Sublist F, on the basis that it exchanges genetic information with other *Streptococcus* species in Sublist F.

II. Proposed Prohibition

Dr. Richard Novick of the Public Health Research Institute of City of New York and Dr. Richard Goldstein of Harvard Medical School have proposed that a prohibition against the construction of biological weapons by molecular cloning be added to the Guidelines. The rationale for this proposal is outlined in a letter to ORDA.

III. Proposal for Revision of the Guidelines

A. Introduction

The Recombinant DNA Advisory Committee (RAC) at its February 8–9, 1982 meeting, recommended that the National Institutes of Health (NIH) accept a proposed modification (46 FR 59734) of the NIH Guidelines for Research Involving Recombinant DNA Molecules. In supporting this modification, the RAC recommended that a working group be formed to simplify further and modify the document. On April 21, 1982, the NIH promulgated the revised Guidelines (47 FR 17186).

An *ad hoc* Working Group on Revision of the Guidelines was formed and convened for a meeting on April 19, 1982. The committee addressed several issues at this meeting. The first topic was an attempt to improve the "presentation" of the Guidelines. It was felt that most of Section II, which describes physical and biological containment standards, as well as shipping, should be moved to three separate new Appendices (G, H, and I). In addition, the section describing shipment (currently II–C) should be expanded to include further information on packaging and labeling. It was noted that the current Guidelines provide little concrete guidance for shipping materials; rather, they refer the reader to other sources.

Language describing "General Applicability" and "General Definitions" should be removed from Section IV and placed in Section I.

The working group discussed the question of whether the language of Section III–A–1 and Appendix F which refers to "toxins" also applies to other pharmacologically active molecules. A

correspondent questioned whether "pharmacologically active molecules" such as certain hormones should be treated as toxins. Pointing to Section I–B, second paragraph, which cites: "a toxin or a pharmacologically active agent," the working group agreed that the intent of the Guidelines is to cover these types of molecules and recommended that the language dealing with toxins in the Guidelines be amended to reflect that intent.

The working group discussed the issue of which document should be utilized to determine the pathogenic classification of an organism. The original 1976 Guidelines used the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Depatment of Health, Education and Welfare, Public Health Service, Center for Disease Control, as the reference source for classification of microorganisms for the purposes of the Guidelines. All subsequent revisions of the Guidelines have also used this document. At the present time, the Centers for Disease Control (CDC) and the NIH are engaged in an effort to revise the *Classification of Etiologic Agents on the Basis of Hazard*. The working group felt, however, that this revised version might not serve the purposes of the Guidelines as well as the original 1974 version. Nonetheless, the working group noted that additional pathogens should be added to the classification in the Guidelines and that the classification should be updated regularly. It was also noted that some organisms might better be treated in a manner specific for the purposes of the Guidelines. The working group recommended, therefore, that the RAC and NIH adopt for the Guidelines a revised version of the 1974 CDC classification, and that the RAC should assume responsibility for regularly updating the listing. The working group recommended that (a) the following bacteria be added to the list of Class 2 bacterial agents:

Aeromonas Hydrophila
Campylobacter fetus
Campylobacter jejuni
Edwardsiella tarda
Yersinia enterocolitica

and the listing for *Escherichia coli* be changed to refer to "all enteropathogenic, enterotoxigenic, enteroinvasive, and strains bearing K1 antigen;" (b) Vesicular stomatitis virus be listed as a Class 2 viral agent rather than a Class 3 viral agent; (c) Rabies street virus be classified as a Class 3 viral agent for all procedures; (d) Alastrim, Smallpox, and Whitepox should be listed as Class 5 viral agents rather than as Class 3 and Class 4 agents as the study of these viruses is restricted to a single national facility (WHO Collaborating Center for Smallpox Research, Centers for Disease Control) and the language dealing with Poxviruses modified accordingly; (e) Viruses classified as low risk oncogenic viruses by the National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses (October 1974, U.S. Department of Health, Education, and Welfare Publication Number (NIH) 75–790) should be classified as Class 2 agents for the purposes of the Guidelines; and (f) Moderate-risk oncogenic viruses should be classified as Class 3 agents for the purposes of the Guidelines. Furthermore, footnotes, references, and the title of Appendix B should be modified to reflect the status of a revised Appendix B.

The working group dealt with the issue of the composition of the Institutional Biosafety Committees (IBCs). A discussion arose as to the necessity of stating in current Section IV–D–2–a that not less than 20% of the membership of the IBC shall not be affliated with the institution. It was felt that the 20% specification limits the flexibility of the university in appointing members to the IBC. The example was offered of an IBC fulfilling the 20% specification, but wishing to add an additional specialist affiliated with the university. However, non-affiliated representation would fall below 20% when this specialist is appointed and the university would have to appoint another non-affiliated member. The specification that at least two members shall not be affiliated with the institution should remain in the Guidelines to ensure community representation. It was felt that in a twenty member committee, two public members would provide adequate representation for the community. Members of the working group could not envisage IBCs larger than 20 members functioning smoothly. In addition, it was noted that ORDA reviews IBC membership for compliance and would be alert to cases in which an institution might attempt to dilute community representation by, for example, appointing a 50 member committee.

The working group also considered the language of current Section IV–D–2–b. A discussion ensued regarding representation on the IBC from the laboratory technical staff. If the term "nondoctoral" was deleted, postdoctoral associates might also be appointed to the IBC. Other members of the working group pointed out that technicians are, indeed, those most likely to be performing recombinant DNA experiments and those having the least "competitive" pressures exerted on them. Although technicians do experience certain types of pressures, many on the working group felt they would be among the best "watchpersons."

The working group also recommended a number of additional changes in the Guidelines. The recommendations of the working group, with minor modifications introduced by NIH staff, are summarized in part B of this announcement. The proposed revised Guidelines (incorporating the changes described in part B of this announcement) are given in their entirety in part C. Several additional proposed changes are given in part D.

B. Summary of Proposed Changes

Specifically, the proposed modifications would accomplish both a reorganization of the Guidelines, and a revision of the specific language of certain sections. The proposed reorganization of the Guidelines would require renumbering of several sections and minor editorial changes throughout the document to reflect this renumbering. These minor changes will not be enumerated below, but interested individuals may refer to the proposed revised Guidelines, which are reprinted *in toto* in part C. The major proposed revisions are enumerated below. Readers should note that sections which are proposed for revision are identified by their current Section numbering. The proposed modified language, however, is identified by new Section numbering when renumbering would occur in that section.

1. *Section I. Scope of the Guidelines.*

a. The text from Section IV–B, *General Applicability*, would be moved to Section I–C, *General Applicability*, and be renumbered.

b. The text from Sections IV–C, *General Definitions*, would be moved to Section I–D, *General Definitions*, with the exception of Section IV–C–1, IV–C–2, and IV–C–8 which would be deleted.

Section IV–C–1 currently reads as follows:

"IV–C–1. 'DNA' means deoxyribonucleic acid."

Section IV–C–2 currently reads as follows:

"IV–C–2. 'Recombinant DNA' or 'recombinant DNA molecules' means either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules which result from the

replication of malecules described in (i) above."

Section IV–C–8 currently reads as follows:

" 'Federal Interagency Advisory Committee on Recombinant DNA Research' means the committee established in October 1976 to advise the Secretary, HHS, the Assistant Secretary for Health, and the Directory, NIH, on the coordination of those aspects of all Federal programs and activities which related to recombinant DNA research."

Section IV–C–9, the definition of *Laboratory Safety Monograph* would be moved to Appendix G, *Physical Containment.*

The text of current Section IV–C would be renumbered to reflect its new position in I–D and the deletion of current sections IV–C–1, IV–C–2, and IV–C–8.

2. *Section II. Containment.* a. New language is added to the first paragraph of Section II, *Containment,* as follows:

"Four levels of physical containment, which are designated as P1, P2, P3, and P4 are described in Appendix G. P4 provides the most stringent containment conditions, P1 the least stringent."

b. New language is added to the second paragraph of Section II, *Containment,* as follows:

"Further details on biological containment may be found in Appendix I."

c. Section II–A, *Standard Practices and Training,* would be moved to a new Appendix G and renumbered.

d. Section II–B, *Physical Containment Levels,* would be moved to Appendix G and renumbered.

e. The title of Tables I and II in Section II–B, "Combinations of Containment Safeguards," would be changed to "Possible Combinations of Containment Safeguards." The tables would be moved to Appendix G.

f. Section II–C, *Shipment,* would be moved to a new Appendix H and renumbered. Additional information on shipping procedures would be included.

g. Section II–D, *Biological Containment,* would be moved to a new Appendix I and renumbered.

h. The language of item (vi) in the first paragraph of Section II–D–2–b–(2), *HV2 Systems,* which would become Appendix I–II–B–2, would be modified to read:

"(vi) In some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals and human subjects. Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments."

i. Section II–D–3, *Distribution of Certified Host-Vectors,* would be deleted.

3. *Section III. Containment Guidelines for Covered Experiments.*

a. Section III–A would be modified to read as follows:

"III–A. *Experiments that Require RAC Review and NIH and IBC Approval Before Initiation.* Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the proposal in the **Federal Register** for thirty days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by RAC and set by NIH at the time of approval. Such experiments also require the approval of the IBC before initiation. Specific experiments already approved in this section and the appropriate containment conditions are listed in Appendices D and F. If an experiment is similar to those listed in Appendices D and F, ORDA may determine appropriate containment conditions according to case precedents under Section IV–C–1–b–(3)–(g)."

b. Section III–A–1 would be modified to read as follows:

"III–A–1. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxic molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weith (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neuro-toxin). Specific approval has been given for the cloning in *E. coli* K–12 of DNAs containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Containment levels for these experiments are specified in Appendix F."

c. The title of Section III–B–1 would be modified to read as follows:

"III–B–1. *Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) as Host-Vector Systems.*"

d. Mention of CDC in Sections III–B–1–a, III–B–1–b, and III–B–1–c would be deleted.

e. Section III–B–1–c would be amended to read as follows:

"III–B–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at P4 containment."

f. A new Section III–B–1–d would be added as follows:

"III–B–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents will be set on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 agents [18,20]"

g. The title of Section III–B–2 would be modified to read as follows:

"III–B–2. Experiments in Which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems."

h. Sections III–B–2–a and III–B–2–b would be combined into a single Section III–B–2–a as follows:

"III–B–2–a. Recombinant DNA experiments in which DNA from Class 2 or Class 3 agents [1] is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under P2 containment, Recombinant DNA experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes can be performed at P2 containment after demonstration that only a totally and irreversibly defective fraction of the agant's viral genome is present in a given recombinant. In the absence of such a demonstration, P4 containment should be used.

"Specific lowering of containment to P1 for particular experiments can be approved by the IBC. Many experiments in this category will be exempt from the Guidelines. (See Section III–D–4 and III–D–5.) Experiments involving the formation of recombinant DNAs for certain genes coding for molecules toxic for vertebrates require RAC review and NIH approval (see Section III–A–1), or must be carried out under NIH specified conditions as described in Appendix F."

i. A new Section III–B–2–b dealing with Class 5 agents would be added as follows:

"III–B–2–b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes will be determined by ORDA following a case-by-case review. A USDA permit is required for work with Class 5 agents [18,20]."

j. A new paragraph would be added immediately after the heading of Section III–B–3 as follows:

"**Caution.**—Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral

vectors under conditions which permit a productive infection.

"In such cases, serious consideration should be given to raising the physical containment by at least one level."

k. Mention of the CDC would be deleted in Sections III–B–3–a, III–B–3–b, and III–B–3–c.

l. Section III–B–3–c would be modified to delete any mention of Class 5 agents as follows:

"III–B–3–c. Experiments involving the use of infectious Class 4 viruses [1], or defective Class 4 viruses in the presence of helper virus, may be carried out under P4 containment."

m. A new Section III–B–3–d would be added as follows:

"III–B–3–d. Experiments involving the use of infectious Class 5 [1] viruses, or defective Class 5 viruses in the presence of helper virus will be determined on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 pathogens [18,20]."

n. Section III–B–4–a would be modified to read as follows:

"III–B–4–a. DNA from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study [2]. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection."

4. *Section IV. Roles and Responsibilities.*

a. In the second paragraph of Section IV–A, *Policy,* the responsibility of the Institution would be emphasized by italicizing pertinent language, i.e.:

"The Guidelines are intended to help the Institution, the Institutional Biosafety Committee (IBC), the Biological Safety Officer, and the Principal Investigator determine the safeguards that should be inplemented. These Guidelines will never be complete or final, since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, *it is the responsibility of the Institution and those associated with it to adhere to the purpose of the Guidelines as well as to specifics."*

b. Section IV–D, *Responsibilities of the Institution,* would be renumbered to become Section IV–B.

c. The language of Section IV–D–2, *Membership and Procedures of the IBC,* would be renumbered and modified to read as follows:

"IV–B–2. *Membership and Procedures of the IBC.* The institution shall establish an Institutional Biosafety Committee (IBC) whose responsibilities need not be restricted to recombinant DNA. The committee shall meet the following requirements * * *"

d. The requirement specifying that 20% of the IBC membership be non-affiliated with the Institution would be eliminated. Section IV–D–2–a would be renumbered and modified to read as follows:

"IV–B–2–a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At least two members shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The Biological Safety Officer (BSO), mandatory when research is being conducted at the P3 and P4 levels, shall be a member (See Section IV–B–4.)"

e. The language of Section IV–D–2–b on professional competence and the specification on laboratory staff would be renumbered and modified to read as follows:

"IV–B–2–b. In order to ensure the competence necessary to review recombinant DNA activities, it is recommended that (i) the IBC include persons with expertise in recombinant DNA technology, biological safety, and physical containment; (ii) the IBC include, or have available as consultants, persons knowledgeable in institutional commitments ans policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be from the laboratory technical staff."

f. Section IV–D–2–e would be renumbered and modified to read as follows:

"IV–B–2–e. The Institution, who is ultimately responsible for the effectiveness of the IBC, may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV–B–3–e.)"

g. Section IV–D–2–f would be deleted. Section IV–D–2–f currently reads as follows:

"IV–D–2–f. Central to implementation of the Guidelines is the review of experiments by the IBC."

h. Section IV–D–2–h would be renumbered and modified to read as follows:

"IV–B–2–g. Upon request, the Institution shall make available to the public all minutes of IBC meetings and any documents submitted to or received from funding agencies which the latter are required to make available to the public. If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and IBC's response."

i. Two new specifications would be added to Section IV–D–3 (renumbered IV–B–3), *Functions of the IBC,* as follows:

"IV–B–3–c. Lowering containment levels for certain experiments as specified in Sections III–B–2. IV–B–3–d. Setting containment levels as specified in III–B–4–b and III–B–5."

The Section would be renumbered to reflect these additions.

j. A new Section under IV–D–5–a (renumbered IV–B–5–a) would be added to reflect the PI's responsibility unddner Section III–C as follows:

"IV–B–5–a–(2). Determine whether experiments are covered by Section III–C and follow the appropriate procedures;"

The other Sections within IV–D–5 (renumbered IV–B–5) would be renumbered to reflect this addition.

k. Section IV–D–5–e–(5), *Publications,* would be deleted. Section IV–D–5–e–(5) currently reads as follows:

"IV–D–5–e–(5). *Publications.* PIs are urged to include, in all publications reporting on recombinant DNA research, a description of the physical and biological containment procedures employed."

l. Section IV–E, *Responsibilities of NIH,* would be renumbered to become Section IV–C.

m. The first sentence of the second paragraph of Section IV–E–1 (renumbered IV–C–1), *Director,* would be modified to read as follows:

"The Director has responsibilities under the Guidelines that involve the NIH Office of Recombinant DNA Activities (ORDA) and the Recombinant DNA Advisory Committee (RAC). ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public

comment, with published response, before final action."

n. Section IV–E–1–b (renumbered IV–C–1–b), *Specific Responsibilities of the Director, NIH,* would read as follows:

"IV–C–1–b. *Specific Responsibilities of the Director, NIH.* In carrying out responsibilities set forth in this Section, the Director or a designee shall weigh each proposed action, through appropriate analysis and consultation, to determine that it complies with the Guidelines and presents no significant risk to health or the environment."

o. Section IV–E–1–b–(1) (renumbered IV–C–1–b–(1)) would be modified to read as follows:

"IV–C–1–b–(1). *Major Actions.* To execute major actions the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the **Federal Register** at least 30 days before the meeting, and the Director will also publish the proposed actions in the **Federal Register** for comment at least 30 days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the **Federal Register** for 30 days of comment before final action is taken. The Director's final decision, along with response to comments will be published in the **Federal Register** and the *Recombinant DNA Technical Bulletin.* The RAC and IBC chairpersons will be notified of this decision:"

p. The order of the subsections under Section IV–E–1–b–(1) (renumbered IV–C–1–b–(1)) would be modified.

q. Section IV–E–1–b–(2) (renumbered IV–C–1–b–(2)) would be modified to read:

"IV–C–1–b–(2). *Lesser Actions.* To execute lesser actions, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and the IBC chairpersons and published in the *Recombinant DNA Technical Bulletin."*

r. Section IV–E–1–b–(2)–(d) (renumbered IV–C–1–b–(2)–(d)) would be modified to read as follows:

"IV–C–1–b–(2)–(d). Revising the 'Classification of Etiologic Agents' for the purposes of these Guidelines [1]."

s. Section IV–E–1–b–(3) (renumbered IV–C–1–b–(3)), would read as follows:

"IV–C–1–b–(3). *Other Actions.* The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin."*

t. A new Section IV–C–1–b–(3)–(b) would be added as follows:

"IV–C–1–b–(3)–(b). Setting containment under Section III–B–1–d and Section III–B–3–d."

The order of subsections of Section IV–E–1–b–(3) (renumbered IV–C–1–b–(3)) would be modified and the subsections renumbered.

u. Section IV–E–4–b would be deleted. Section IV–E–4–b reads as follows:

"IV–E–4–b. Announcing and distributing certified HV2 host-vector systems (see Section II–D–3)."

v. Section IV–F, *Compliance,* would be renumbered to become Section IV–D.

w. A note would be added to Section IV–F–4 which would be renumbered as Section IV–D–4 as follows:

Note.—Other Federal agencies which have adopted the NIH Guidelines may have the authority to terminate funding to their grantees should these grantees not comply with the NIH Guidelines."

5. *Section V. Footnotes and References.*

a. The title of the Section would be amended to read:

"V. Footnotes and References of Sections I–IV"

b. The footnotes and references would be rearranged and renumbered. Footnotes and references applying to Appendices would be moved to relevant Appendices.

c. Reference (1) would be modified to read:

"1. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard,* 4th Edition, July 1974, U.S. Department of Health, Education and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

"The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the puposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B of these Guidelines."

6. *Section VI. Voluntary Compliance.*

a. The second paragraph of Section VI–C, *Certification of Host-Vector Systems,* would be deleted. That paragraph reads as follows:

"Institutions not otherwise covered by the Guidelines will not be subject to Section II–D–3 by complying with these procedures."

7. *Appendix B. Classification of Microorganisms on the Basis of Hazard.*

a. The title of the first heading, I, In Appendix B would be changed to read:

"*Appendix B–I. Classification of Etiologic Agents.* [The original reference for this classification was the publication *'Classification of Etiological Agents on the Basis of Hazard,'* 4th edition, July 1974, U.S. Department of Health, Education and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by NIH.]"

b. The following organisms would be added to the list of Class 2 bacterial agents:

"*Aeromonas hydrophila*
Campylobacter fetus
Campylobacter jejuni
Edwardsiella tarda
Yersinia enterocolita"

c. The language describing Class 2 *E. coli* would be modified to read:

"*Escherichia coli*—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen."

d. Vesicular Stomatitis Virus would be added to Class 2 viral agents and deleted from Class 3 viral agents.

e. The following modifications concerning *Poxvirus* and *Rabies Virus* would be made in Class 2 viral agents:

"*Poxviruses*—all types except *Alastrim, Smallpox,* and *Whitepox,* which are Class 5 and *Monkey Pox,* which depending on experiments, is in Class 3 or Class 4.

"*Rabies virus*—all strains except *Rabies street* virus, which should be classified in Class 3."

f. *Alastrim, Smallpox,* and *Whitepox* would be reclassified from Class 3 and Class 4 agents to Class 5 agents.

g. The language including *Rabies street* virus as a Class 3 agent would read:

"*Rabies street virus"*

h. The language in Class 4 viral agents on *Monkey pox* would read:

"*Monkey pox,* when used for transmission or animal inoculation experiments [4]."

i. Descriptive language would be added to the *Classification of Oncogenic Viruses on the Basis of Potential Hazard [5]* as follows:

"Appendix B–II–A. *Low-Risk Oncogenic Viruses.* These viruses should be treated as Class 2 agents.

"Appendix B–II–B. *Moderate-Risk Oncogenic Viruses.* These viruses should be treated as Class 3 agents."

j. Class 5 Agents (Appendix B–III) would be separated into the following categories:

"Appendix B–III–A. *Animal Disease Organisms Which Are Forbidden Entry Into the United States by Law."*

"Appendix B–III–B. *Animal Disease Organisms and Vectors Which Are*

Forbidden Entry Into the United States by USDA Policy."

"Appendix B–III–C. *Organisms Which May Not Be Studied in the United States Except at Specified Facilities."*

8. *Appendix C. Exemptions Under III–D–5.*

a. The language dealing with the introduction of genes coding for the biosynthesis of toxins in this Appendix would be modified to read:

"Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates."

b. The abbreviation "CDC" would be deleted from this Appendix.

9. *Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Toxins for Vertebrates.*

a. The title of Appendix F would be changed to read as follows:

"CONTAINTMENT CONDITIONS FOR CLONING GENES CODING FOR THE BIOSYNTHESIS OF MOLECULES TOXIC FOR VERTEBRATES."

b. Section Appendix F–I, *General Information,* would read as follows:

Appendix F–I. *General Information.* Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin) is prohibited. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight. Experiments involving genes coding for toxic molecules with an LD_{50} of 100 micrograms or less per kilogram body weight shall be registered with ORDA prior to initiating the experiments. A list of toxic molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxic molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA, which will consult with an *ad hoc* working group on toxic molecules prior to inclusion of the molecule on the list. (See Section IV–C–1–b–(2)–(e).)"

c. The title of Section Appendix F–II would read:

"Appendix F–II. *Containment Conditions for Cloning Toxic Molecule Genes in E. coli K–12."*

d. In Section Appendix F–II, the work "toxins" would be replaced by the words "molecules toxic."

e. The title of Section Appendix F–III would read:

"Containment Conditions for Cloning of Toxic Molecule Genes in Organisms Other Than E. coli K–12."

f. Appendix F–III, *Containment Conditions for Cloning of Toxic Genes in Organisms Other Than E. coli K–12* would read:

"Requests involving the cloning of genes coding for molecules toxic for vertebrates in host-vector systems other than *E. coli* K–12 will be evaluated by ORDA, which will consult with the *ad hoc* working group on toxic molecules. (See Section IV–C–1–b–(3)–(f).)"

10. *Appendix G. Physical Containment.*

a. A third paragraph would be added to new Section Appendix G–I as follows:

"The *'Laboratory Safety Monograph,'* available from ORDA, describes practices, equipment, and facilities in detail."

11. *Table of Contents.*

The table of contents would be rearranged to reflect the reorganization of the document and be expanded to better identify the position of various sections in the document.

12. *Appendices.*

All Appendices would be renumbered to reflect their status as Appendices.

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I. Scope of the Guidelines

I–A. *Purpose.* The purpose of these Guidelines is to specify practices for constructing and handling (i) recombinant DNA molecules and (ii) organisms and viruses containing recombinant DNA molecules.

I–B. *Definition of Recombinant DNA Molecules.* In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

Synthetic DNA segments likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) shall be considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product, it is exempt from the Guidelines.

I–C. *General Applicability.* The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an Institution that receives any support for recombinant DNA research from NIH. This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an Institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

I–D. *General Definitions.* The following terms, which are used throughout the Guidelines, are defined as follows:

IV–D–1. "Institution" means any public or private entity (including Federal, State, and local government agencies).

I–D–2. "Institutional Biosafety Committee" or "IBC" means a committee that (i) meets the requirements for membership specified in Section IV–B–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Sections IV–B–2 and IV–B–3.

I–D–3. "NIH Office of Recombinant DNA Activities" or "ORDA" means the office within NIH with responsibility for (i) reviewing and coordinating all activities of NIH related to the Guidelines, and (ii) performing other duties as defined in Section IV–C–3.

I–D–4. "Recombinant DNA Advisory Committee" or "RAC" means the public advisory committee that advises the Secretary, the Assistant Secretary for Health, and the Director of the National Institutes of Health concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV–C–2.

I–D–5. "Director, NIH" or "Director" means the Director of the National Institutes of Health or any other officer or employee of NIH to whom authority has been delegated.

II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information, therefore, already exists for the design of physical containment facilities and the selection of laboratory procedures applicable to organisms carrying recombinant DNAs [3–16]. The existing programs rely upon mechanisms that, for convenience, can be divided into two categories: (i) A set of standard practices that are generally used in microbiological laboratories, and (ii) special procedures, equipment, and laboratory installations that provide physical barriers which are applied in varying degrees according to the estimated biohazard. Four levels of physical containment, which are designated as P1, P2, P3, and P4 are described in Appendix G. P4 provides the most stringent containment conditions, P1 the least stringent.

Experiments on recombinant DNAs, by their vary nature, lend themselves to a third containment mechanism—namely, the application of highly specific biological barriers. In fact, natural barriers do exist which limit either (i) the infectivity of a *vector*, or *vehicle*, (plasmid or virus) for specific hosts or (ii) its dissemination and survival in the environment. The vectors

that provide the means for replication of the recombinant DNAs and/or the host cells in which they replicate can be genetically designed to decrease by many orders of magnitude the probability of dissemination of recombinant DNAs outside the laboratory. Further details on biological containment may be found in Appendix I.

As these three means of containment are complementary, different levels of containment appropriate for experiments with different recombinants can be established by applying various combinations of the physical and biological barriers along with a constant use of the standard practices. We consider these categories of containment separately in order that such combinations can be conveniently expressed in the Guidelines.

In constructing these Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. We recognize that these definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be carried out under different conditions than indicated here without affecting risk. Indeed, we urge that individual investigators devise simple and more effective containment procedures and that investigators and institutional biosafety committees recommend changes in the Guidelines to permit their use.

III. Containment Guidelines for Covered Experiments

Part III discusses experiments involving recombinant DNA. These experiments have been divided into four classes:

III–A. Experiments which require specific RAC review and NIH and IBC approval before initiation of the experiment;

III–B. Experiments which require IBC approval before initiation of the experiment;

III–C. Experiments which require IBC notification at the time of initiation of the experiment;

III–D. Experiments which are exempt from the procedures of the Guidelines.

If an experiment falls into both Class III–A and one of the other classes, the rules pertaining to Class III–A must be followed. If an experiment falls into class III–D and into either class III–B or III–C as well, it can be considered exempt from the requirements of the Guidelines.

Changes in containment levels from those specified here may not be instituted without the express approval of the Director, NIH. (See Sections IV–C–1–b–(1), IV–C–1–b–(2), and subsections.)

III–A. *Experiments that Require RAC Review and NIH and IBC Approval Before Initiation.* Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the proposal in the Federal Register for thirty days of comment, review by the RAC, and specific approval by NIH. The containment conditions for such experiments will be recommended by RAC and set by NIH at the time of approval. Such experiments also require the approval of the IBC before initiation. Specific experiments already approved in this section and the appropriate containment conditions are listed in Appendices D and F. If an experiment is similar to those listed in Appendices D and F, ORDA may determine appropriate containment conditions according to case precedents under Section IV–C–1–b–(3)–(g).

III–A–1. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxic molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella Dysenteriae* neurotoxin). Specific approval has been given for the cloning in *E. coli* K–12 of DNAs containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Containment levels for these experiments are specified in Appdenix F.

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA.

III–A–3. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally [2], if such acquisition could compromise the use of the drug to control disease agents in human or veterinary medicine or agriculture.

III–B. *Experiments that Require IBC Approval Before Initiation.* Investigators performing experiments in this category must submit to their Institutional Biosafety Committee (IBC), prior to initiation of the experiments, a registration document that contains a description of: (a) The source(s) of DNA, (b) the nature of the inserted DNA sequences, (c) the hosts and vectors to be used, (d) whether a deliberate attempt will be made to obtain expression of a foreign gene, and, if so, what protein will be produced, and (e) the containment conditions specified in these Guidelines. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals prior to initiation of the experiments. Requests for lowering of containment for experiments in this category will be considered by NIH. (See Section IV–C–1–b–(3).)

III–B–1. *Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) as Host-Vector Systems.*

III–B–1–a. Experiments involving the introduction of recombinant DNA into Class 2 agents can be carried out at P2 containment.

III–B–1–b. Experiments involving the introduction of recombinant DNA into Class 3 agents can be carried out at P3 containment.

III–B–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at P4 containment.

III–B–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents will be set on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 agents [18, 20].

III–B–2. *Experiments in Which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) is Cloned in Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems.*

III–B–2–a. Recombinant DNA experiments in which DNA from Class 2 or Class 3 agents [1] is tranferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under P2 containment. Recombinant DNA experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes can be performed at P2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's viral genome is present in a given recombinant. In the absence of such a demonstration, P4 containment should be used. Specific lowering of containment to P1 for particular experiments can be approved by the IBC. Many experiments in this category will be exempt from the Guidelines. (See Sections III–D–4 and III–D–5.) Experiments involving the formation of recombinant DNAs for certain genes coding for molecules toxic for vertebrates requires RAC review and NIH approval (see Section III–a–1), or

must be carried out under NIH specified conditions as described in Appendix F.

III–B–2–b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes will be determined by ORDA following a case-by-case review. A USDA permit is required for work with Class 5 agents [18, 20].

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family [17] being considered indentical [19]) may be considered defective and can be used, in the absence of helper, under the conditions specified in Section III–C.

III–B–3–a. Experiments involving the use of infectious Class 2 animal viruses [1], or defective Class 2 animal viruses in the presence of helper virus, can be performed at P2 containment.

III–B–3–b. Experiments involving the use of infectious Class 3 animal viruses [1], or defective Class 3 animal viruses in the presence of helper virus, can be carried out at P3 containment.

III–B–3–c. Experiments involving the use of infectious Class 4 viruses [1], or defective Class 4 viruses in the presence of helper virus, may be carried out under P4 containment.

III–B–3–d. Experiments involving the use of infectious Class 5 [1] viruses, or defective Class 5 viruses in the presenct of helper virus will be determined on a case-by-case basis following ORDA review. A USDA permit is required for work with Class 5 pathogens [18,20].

III–B–3–e. Experiments involving the use of infectious animal or plant viruses, or defective animal or plant viruses in the presence of helper virus, not covered by Sections III–B–3–a, III–B–3–b, III–B–3–c, or III–B–3–d may be carried out under P1 containment.

III–B–4. *Recombinant DNA Experiments Involving Whole Animals or Plants.*

III–B–4–a. DNA from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study [2]. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection.

III–B–4–b. For all experiments involving whole animals and plants and not covered by III–B–4–a, the appropriate containment will be determined by the IBC.

–B–5. *Experiments Involving More than 10 Liters of Culture.* The appropriate containment will be decided by the IBC. Where appropriate, the large-scale containment recommendations of the NIH should be used (45 FR 24968).

III–C. *Experiments that Require IBC Notice Simultaneously with Initiation of Experiments.* Experiments not included in Sections III—A, III–B, III–D, and subsections of these Sections are to be considered in Section III–C. All such experiments can be carried out at P1 containment. For experiments in this category, a registration document as described in Section III–B must be dated and signed by the investigator and filed with the local IBC. The IBC shall review all such proposals, but IBC review prior to initiation of the experiment is not required.

For example, experiments in which all components derive from non-pathogenic prokaryotes and non-pathogenic lower eukaryotes fall under Section III–C and can be carried out at P1 containment.

Caution: Experiments Involving Formation or Recombinant DNA Molecules Containing no more Than Two-Thirds of the Genome of any Eukaryotic Virus. Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family [17] being considered identical [19]) may be propagated and maintained in cells in tissue culture using P1 containment. For such experiments, it must be shown that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III–B–3 should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment must be less than two-thirds of a genome.

III–D. *Exempt Experiments.* The following recombinant DNA molecules are exempt from these Guidelines and no registration with the IBC is necessary.

III–D–1. Those that are not in organisms or viruses.

III–D–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

III–D–3. Those that consist entirely of DNA from a prokaryotic host, including its indigenous plasmids or viruses, when propagated only in that host (or a closely related strain of the same species) or when transferred to another host by well established physiological means; also those that consist entirely of DNA from an eularyotic host, including its chloroplasts, mitochondria, or plasmids (but excluding viruses), when propagated only in that host (or a closely related strain of same species).

III–D–4. Certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

III–D–5. Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

IV. Roles and Responsibilities

IV–A. *Policy.* Safety in activities involving recombinant DNA depends on the individual conducting them. The Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment.

The Guidelines are intended to help the Institution, the Institutional Biosafety Committee (IBC), the Biological Safety Officer, and the Principal Investigator determine the safeguards that should be implemented. These Guidelines will never be complete

or final, since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, *it is the responsibility of the Institution and those associated with it to adhere to the purpose of the Guidelines as well as to their specifics.*

Each Institution (and the IBC acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level.

The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.

IV–B. *Responsibilities of the Institution.*

IV–B–1. *General Information.* Each Institution conducting or sponsoring recombinant DNA research covered by these Guidelines is responsible for ensuring that the research is carried out in full conformity with the provisions of the Guidelines. In order to fulfill this responsibility, the Institution shall:

IV–B–1–a. Establish and implement policies that provide for the safe conduct of recombinant DHA research and that ensure compliance with the Guidelines. The Institution, as part of its general responsibilities for implementing the Guidelines, may establish additional procedures, as deemed necessary, to govern the Institution and its components in the discharge of its responsibilities under the Guidelines. This may include (i) statements formulated by the Institution for general implementation of the Guidelines and (ii) whatever additional precautionary steps the Institution may deem appropriate.

IV–B–1–b. Establish an Institutional Biosafety Committee (IBC) that meets the requirements set forth in Section IV–B–2 and carries out the functions detailed in Section IV–B–3.

IV–B–1–c. If the Institution is engaged in recombinant DNA research at the P3 or P4 containment level, appoint a Biological Safety Officer (BSO), who shall be a member of the IBC and carry out the duties specified in Section IV–B–4.

IV–B–1–d. Require that investigators responsible for research covered by these Guidelines comply with the provisions of Section IV–B–5, and assist investigators to do so.

IV–B–1–e. Ensure appropriate training for the IBC chairperson and members, the BSO, Principal Investigators (PIs), and laboratory staff regarding the Guidelines, their implementation, and laboratory safety. Responsibility for training IBC Members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training, but may delegate this responsibility to the IBC.

IV–B–1–f. Determine the necessity, in connection with each project, for health surveillance of recombinant DNA research personnel, and conduct, if found appropriate, a health surveillance program for the project. [The Laboratory Safety Monograph (LSM) discusses various possible components of such a program—for example, records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience. Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples given in the LSM include gastrointestinal disorders and treatment with steriods, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness. Copies of the LSM are available from ORDA.]

IV–B–1–g. Report within 30 days to ORDA any significant problems with and violations of the Guidelines and significant research-related accidents and illnesses, unless the institution determines that the PI or IBC has done so.

IV–B–2. *Membership and Procedures of the IBC.* The Institution shall establish an Institutional Biosafety Committee (IBC) whose responsibilities need not be restricted to recombinant DNA. The committee shall meet the following requirements:

IV–B–2–a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At least two members shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The Biological Safety Officer (BSO), mandatory when research is being conducted at the P3 and P4 levels, shall be a member. (See Section IV–B–4.)

IV–B–2–b. In order to ensure the competence necessary to review recombinant DNA activities, it is recommended that (i) the IBC include persons with expertise in recombinant DNA technology, biological safety, and physical containment; (ii) the IBC include, or have available as consultants, persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be from the laboratory technical staff.

IV–B–2–c. The Institution shall identify the committee members by name in a report to the NIH Office of Recombinant DNA Activities (ORDA) and shall include relevant background information on each member in such form and at such times as ORDA may require.

IV–B–2–d. No member of an IBC may be involved (except to provide information requested by the IBC) in the review or approval of a project in which he or she has been, or expects to be, engaged or has a direct financial interest.

IV–B–2–e. The Institution, which is ultimately responsible for the effectiveness of the IBC, may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV–B–3–a.)

IV–B–2–f. Institutions are encouraged to open IBC meetings to the public whenever possible, consistent with protection of privacy and proprietary interests.

IV–B–2–g. Upon request, the Institution shall make available to the public all minutes of IBC meetings and any documents submitted to or received from funding agencies which the latter are required to make available to the public. If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and the IBC's response.

IV–B–3. *Functions of the IBC.* On behalf of the Institution, the IBC is responsible for:

IV–B–3–a. Reviewing for compliance with the NIH Guidelines recombinant DNA research as specified in Part III conducted at or sponsored by the Institution, and approving those research projects that it finds are in conformity with the Guidelines. This review shall include:

IV–B–3–a–(1). An independent assessment of the containment levels required by these Guidelines for the proposed research, and

IV–B–3–a–(2). An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel.

IV–B–3–b. Notifying the Principal Investigator (PI) of the results of their review.

IV–B–3–c. Lowering containment levels for certain experiments as specified in Section III–B–2.

IV–B–3–d. Setting containment levels as specified in Section III–B–4–b and III–B–5.

IV–B–3–e. Reviewing periodically recombinant DNA research being conducted at the Institution, to ensure that the requirements of the Guidelines are being fulfilled.

IV–B–3–f. Adopting emergency plans covering accidental spills and personnel contamination resulting from such research.

Note.—Basic elements in developing specific procedures for dealing with major spills of potentially hazardous materials in the laboratory are detailed in the Laboratory Safety Monograph (LSM). Included are information and references on decontamination and emergency plans. NIH and the Centers for Disease Control are available to provide consultation, and direct assistance if necessary, as posted in the LSM. The Guidelines shall cooperate with the State and local public health departments, reporting any significant research-related illness or accident that appears to be a hazard to the public health.

IV–B–3–g. Reporting within 30 days to the appropriate institutional official and to the NIH Office of Recombinant DNA Activities (ORDA) any significant problems with or violations of the Guidelines, and any significant research-related accidents or illnesses, unless the IBC determines that the PI has done so.

IV–B–3–h. The IBC may not authorize initiation of experiments not explicitly covered by the Guidelines until NIH (with the advice of the RAC when required) establishes the containment requirement.

IV–B–3–i. Performing such other functions as may be delegated to the IBC under Section IV–B–1.

IV–B–4. *Biological Safety Officer.* The Institution shall appoint a BSO if it engages in recombinant DNA research at the P3 or P4 containment level. The officer shall be a member of the Institutional Biosafety Committee (IBC), and his or her duties shall include (but need not be limited to):

IV–B–4–a. Ensuring through periodic inspections that laboratory standards are rigorously followed;

IV–B–4–b. Reporting to the IBC and the Institution all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses of which the BSO becomes aware, unless the BSO determines that the Principal Investigator (PI) has done so;

IV–B–4–c. Developing emergency plans for dealing with accidental spills and personnel contamination, and investigating recombinant DNA research laboratory accidents;

IV–B–4–d. Providing advice on laboratory security;

IV–B–4–e. Providing technical advice to the PI and the IBC on research safety procedures.

NOTE: See Laboratory Safety Monograph for additional information on the duties of the BSO.

IV–B–5. *Principal Investigator.* On behalf of the Institution, the PI is responsible for complying fully with the Guidelines in conducting any recombinant DNA research.

IV–B–5–a. *PI—General.* As part of this general responsibility, the PI shall:

IV–B–5–a–(1). Initiate or modify no recombinant DNA research requiring approval by the IBC prior to initiation (see Sections III–A and III–B) until that research, or the proposed modification thereof, has been approved by the IBC and has met all other requirements of the Guidelines;

IV–B–5–a–(2). Determine whether experiments are covered by Section III–C and follow the appropriate procedures;

IV–B–5–a–(3). Report within 30 days to the IBC and NIH (ORDA) all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses;

IV–B–5–a–(4). Report to the IBC and to NIH (ORDA) new information bearing on the Guidelines;

IV–B–5–a–(5). Be adequately trained in good microbiological techniques;

IV–B–5–a–(6). Adhere to IBC–approved emergency plans for dealing with accidental spills and personnel contamination; and

IV–B–5–a–(7). Comply with shipping requirements for recombinant DNA molecules. (See Appendix H for shipping requirements and the Laboratory Safety Monograph for technical recommendations.)

IV–B–5–b. *Submissions by the PI to NIH.* The PI shall:

IV–B–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

IV–B–5–b–(2). Petition NIH, with notice to the IBC, for exemptions to these Guidelines;

IV–B–5–b–(3). Petition NIH, with concurrence of the IBC, for approval to conduct experiments specified in Section III–A of the Guidelines;

IV–B–5–b–(4). Petition NIH for determination of containment for experiments requiring case-by-case review;

IV–B–5–b–(5). Petition NIH for determination of containment for experiments not covered by the Guidelines.

IV–B–5–c. *Submissions by the PI to the IBC.* The PI shall:

IV–B–5–c–(1). Make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines;

IV–B–5–c–(2). Select appropriate microbiological practices and laboratory techniques to be used in the research;

IV–B–5–c–(3). Submit the initial research protocol if covered under Guidelines Section III–A, III–B, or III–C, (and also subsequent changes—e.g., changes in the source of DNA or host-vector system) to the IBC for review and approval or disapproval; and

IV–B–5–c–(4). Remain in communication with the IBC throughout the conduct of the project.

IV–B–5–d. *PI Responsibilities Prior to Initiating Research.* The PI is responsible for:

IV–B–5–d–(1). Making available to the laboratory staff copies of the protocols that describe the potential biohazards and the precautions to be taken;

IV–B–5–d–(2). Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents; and

IV–B–5–d–(3). Informing the staff of the reasons and provisions for any precautionary medical practices advised or requested, such as vaccinations or serum collection.

IV–B–5–e. *PI Responsibilities During the Conduct of the Research.* The PI is responsible for:

IV–B–5–e–(1). Supervising the safety performance of the staff to ensure that the required safety practices and techniques are employed;

IV–B–5–e–(2). Investigating and reporting in writing to ORDA, the Biological Safety Officer (where

applicable), and the IBC any significant problems pertaining to the operation and implementation of containment practices and procedures;

IV–B–5–e–(3). Correcting work errors and conditions that may result in the release of recombinant DNA materials;

IV–B–5–e–(4). Ensuring the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity, and genotypic and phenotypic characteristics).

IV–C. *Responsibilities of NIH.*

IV–C–1. *Director.* The Director, NIH, is responsible for (i) establishing the NIH Guidelines for Research Involving Recombination DNA Molecules, (ii) overseeing their implementation, and (iii) their final interpretation.

The Director has responsibilities under the Guidelines that involve the NIH Office of Recombinant DNA Activities (ORDA) and the Recombinant DNA Advisory Committee (RAC). ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public comment, with published response, before final action.

IV–C–1–a. *General Responsibilities of the Director, NIH.* The responsibilities of the Director shall include the following:

IV–C–1–a–(1). Promulgating requirements as necessary to implement the Guidelines;

IV–C–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–C–2. The RAC's membership is specified in its charter and in Section IV–C–2;

IV–C–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–C–3; and

IV–C–1–a–(4). Maintaining the Federal Interagency Advisory Committee on Recombinant DNA Research established by the Secretary, HEW (now HHS), for advice on the coordination of all Federal programs and activities relating to recombination DNA, including activities of the RAC.

IV–C–1–b. *Specific Responsibilities of the Director, NIH.* In carrying out the responsibilities set forth in this Section, the Director or a designee shall weigh each proposed action, through appropriate analysis and consulation, to determine that it complies with the Guidelines and presents no significant risk to health or the environment.

IV–C–1–b–(1). *Major Actions.* To execute major actions the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the **Federal Register** at least 30 days before the meeting, and the Director will also publish the proposed actions in the **Federal Register** for comment at least 30 days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the **Federal Register** for 30 days of comment before final action is taken. The Director's final decision, along with response to the comments, will be published in the **Federal Register** and the *Recombinant DNA Technical Bulletin.* The RAC and IBC chairpersons will be notified of this decision.

IV–C–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the Guidelines when a major action is involved;

IV–C–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved;

IV–C–1–b–(1)–(c). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from the Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes, or otherwise do not present a significant risk to health or the environment;

IV–C–1–b–(1)–(d). Permitting experiments specified by Section III–A of the Guidelines;

IV–C–1–b–(1)–(e). Certifying new host-vector systems, with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I–II–a. Minor modifications constitute, for example, those of minimal or no consequence to the properties relevant to containment); and

IV–C–4–4. *Other NIH Components.* Other NIH components shall be responsible for certifying P4 facilities, inspecting them periodically, and inspecting other recombination DNA facilities as deemed necessary.

IV–C–1–b–(1)–(f). Adopting other changes in the Guidelines.

IV–C–1–b–(2). *Lesser Actions.* To execute lesser actions, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin:*

IV–C–1–b–(2)–(a). Interpreting and determining containment levels, upon request by ORDA;

IV–C–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

IV–C–1–b–(2)–(c). Assigning containment levels for experiments not explicitly considered in the Guidelines;

IV–C–1–b–(2)–(d). Revising the "Classification of Etiologic Agents" for the purpose of these Guidelines [1].

IV–C–1–b–(3). *Other Actions.* The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin:*

IV–C–1–b–(3)–(a). Interpreting the Guidelines for experiments to which the Guidelines specifically assign containment levels;

IV–C–1–b–(3)–(b). Setting containment under Section III–B–1–d and Sectin III–B–3–d;

IV–C–1–b–(3)–(c). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Appendix I–II);

IV–C–1–b–(3)–(d). Decertifying already certified host-vector systems;

IV–C–1–b–(3–(e). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F);

IV–C–1–b–(3)–(f). Approving the cloning of toxin genes in host-vector systems other than *E. coli* K–12 (See Appendix F); and

IV–C–1–b–(3)–(g). Determining appropriate containment conditions for

experiments according to case precedents developed under Section IV–C–1–b–(2)–(c).

IV–C–1–b–(4). The Director shall conduct, support, and assist training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers, Principal Investigators, and laboratory staff.

IV–C–2. *Recombinant DNA Advisory Committee.* The NIH Recombinant DNA Advisory Committee (RAC) is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the Secretary, HHS, the Assistant Secretary for Health, and the Director, NIH.

The members of the committee shall be chosen to provide, collectively, expertise in scientific fields relevant to recoombinant DNA technology and biological safety—e.g., microbiology, molecular biology, virology, genetics, epidemiology, infectious diseases, the biology of enteric organisms, botany, plant pathology, ecology, and tissue culture. At least 20 percent of the members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as nonvoting members. Nominations for the RAS may be submitted to the NIH Office of Recombinant DNA Activities, Bethesda, Md. 20205.

All meetings of the RAC will be announced in the **Federal Register**, including tentative agenda items, 30 days in advance of the meeting, with final agendas (if modified) available at least 72 hours before the meeting. No item defined as a major action under Section IV–C–1–b–(1) may be added to an agenda after it appears in the **Federal Register**.

The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV–C–1–b–(1) and IV–C–1–b–(2).

IV–C–3. *The Office of Recombinant DNA Activities.* ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH, including Institutions, Biological Safety Committees, Principal Investigators, Federal agencies, State and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the Director, NIH, including those authorities described in Section IV–C–1–b–(3). In addition, ORDA shall be responsible for the following:

IV–C–3–a. Reviewing and approving Institutional Biosafety Committee (IBC) membership;

IV–C–3–b. Publishing in the **Federal Register:**

IV–C–3–b–(1). Announcements of Recombinant DNA Advisory Committee (RAC) meetings and agendas at least 30 days in advance;

NOTE: If the agenda for an RAC meeting is modified, ORDA shall make the revised agenda available to anyone, upon request, at least 72 hours in advance of the meeting.

IV–C–3–b–(2). Proposed major actions of the type falling under Section IV–C–1–b–(1) at least 30 days prior to the RAC meeting at which they will be considered; and

IV–C–3–b–(3). The NIH Director's final decision on recommendations made by the RAC.

IV–C–3–c. Publishing the *Recombinant DNA Technical Bulletin*; and

IV–C–3–d. Serving as executive secretary of the RAC.

IV–C–4. *Other NIH Components.* Other NIH components shall be responsible for certifying P4 facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

IV–D. *Compliance.* As a condition for NIH funding of recombinant DNA research, Institutions must ensure that such research conducted at or sponsored by the Institution, irrespective of the source of funding, shall comply with these Guidelines. the policies on noncompliance are as follows:

IV–D–1. All NIH–funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–D–2. All non–NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an Institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–D–3. Information concerning noncompliance with the Guidelines may be brought forward by any person. It should be delivered to both NIH (ORDA) and the relevant Institution. The Institution, generally through the IBC, shall take appropriate action. The Insitution shall forward a complete report of the incident to ORDA, recommending any further action indicated.

IV–D–4. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the Guidelines, applicable DHHS and Public Health Service Procedures shall govern.

Note.—Other Federal agencies which have adopted the NIH Guidelines may have the authority to terminate funding to their grantees should these grantees not comply with the NIH Guidelines.

IV–D–5. *Voluntary Compliance.* Any individual, corporation, or institution that is not otherwise covered by the Guidelines is encouraged to conduct recombinant DNA research activities in accordance with the Guidelines, through the procedures set forth in Part VI.

V. Footnotes and References of Sections I–IV

1. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B to these Guidelines.

2. In Part III of the Guidelines, there are a number of places where judgments are to be made. In all these cases the principal investigator is to make the judgment on these matters as part of his responsibility to "make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines" (Section IV–B–5–c–(1)). In the cases falling under Sections III–A, –B or –C, this judgment is to be reviewed and approved by the Institutional Biosafety Committee as part of its responsibility to make "an independent assessment of the containment levels required by these Guidelines for the proposed research" (Section IV–B–3–a–(1)). If the IBC wishes, any specific cases may be referred to the NIH Office of Recombinant DNA Activities as part of ORDA's functions to "provide advice to all within and outside NIH" (Section IV–C–3), and ORDA may request advice from the Recombinant DNA Advisory Committee as part of the RAC's responsibility for "interpreting and determining containment levels upon request by ORDA" (Section IV–C–1–b–(2)–(a)).

3. *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health, Education, and Welfare Publication No. CDC 75–8118.

4. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education, and Welfare. Public Health Service. Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

5. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Dpeartment of Health, Education, and Welfare Publication No. (NIH) 75–790.

6. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

7. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

8. *Handbook of Laboratory Safety* (9171). Second Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

9. Bodily, J. L. (1970). *General Administration of the Laboratory,* H. L. Bodily, R. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

10. Darlow, H. M. (1969). *Safety in the Microbiological Laboratory.* In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc. New York, pp. 169–204.

11. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

12. Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures.* In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

13. *Design Criteria for Viral Oncology Research Facilities* (1975). U.S. Department of Health, Education and Welfare, Public Health Service, National Institutes of Health, DHEW Publication No. (NIH) 75–891.

14. Kuehne, R. W. (1973). *Biological Containment Facility for Studying Infectious Disease.* Appl. Microbiol. 26–239–243.

15. Runkle, R. S., and G. B. Phillips (1969). *Microbial Containment Control Facilities.* Van Nostrand Reinhold, New York.

16. Chatigny, M. A., and D. I. Clinger (1969). *Contamination Control in Aerobiology.* In R. L. Dimmick and A. B. Akers (eds.). An Introduction to Experimental Aerobiology. John Wiley & Sons, New York, pp. 194–263.

17. As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R. E. F. Matthews, Ed. Intervirology 12 (129–296) 1979.

18. A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection Service, USDA, Federal Building, Hayttsville, MD 20782.

19. i.e., the total of all genomes within a Family shall not exceed two-thirds of the genome.

20. All activities, including storage of variola and whitepox are restricted to the single national facility (World Health Organization (WHO) Collaborating Center for Smallpox Research, Centers for Disease Control, in Atlanta).

VI. Voluntary Compliance

VI–A. *Basic Policy.* Individuals, corporations, and institutions not otherwise covered by the Guidelines are encouraged to do so by following the standards and procedures set forth in Parts I–IV of the Guidelines. In order to simplify discussion, references hereafter to "institutions" are intended to encompass corporations, and individuals who have no organizational affiliation. For purposes of complying with the Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the Guidelines.

Since commercial organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures in Parts I–IV are provided below, in order to address these concerns.

VI–B. *IBC Approval.* The NIH Office of Recombinant DNA Activities (ORDA) will review the membership of an institution's Institutional Biosafety Committee (IBC) and, where it finds the IBC meets the requirements set forth in Section IV–B–2, will give its approval to the IBC membership.

It should be emphasized that employment of an IBC member solely for purposes of membership on the IBC does not itself make the member an institutionally affiliated member for purposes of Section IV–B–2–a.

Except for the unaffiliated members, a member of an IBC for an institution not otherwise covered by the Guidelines may participate in the review and approval of a project in which the member has a direct financial interest, so long as the member has not been and does not expect to be engaged in the project. Section IV–B–2–d is modified to that extent for purposes of these institutions.

VI–C. *Certification of Host-Vector Systems.* A host-vector system may be proposed for certification by the Director, NIH, in accordance with the procedures set forth in Appendix I–II–A.

In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–D. *Requests for Exemptions and Approvals.* Requests for exemptions or other approvals required by the Guidelines should be requested by following the procedures set forth in the appropriate sections in Parts I–IV of the Guidelines.

In order to ensure protection for proprietary data, any public notice regarding a request for an exemption or other approval which is designated by the institution as proprietary under Section VI–E–1 will be issued only after consultation with the institution as to the content of the notice.

VI–E. *Protection of Proprietary Data.* In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "trade secrets and commercial and financial information obtained from a person and privileged or confidential." 18 U.S.C. 1905, in turn makes it a crime for an officer or employee of the United States or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, [or processes * * * of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the Recombinant DNA Advisory Committee are "special Government employees."

VI–E–1. In submitting information to NIH for purposes of complying voluntarily with the Guidelines, and institution may designate those items of information which the institution believes constitute trade secrets or privileged or confidential commercial or financial information.

VI–E–2. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released.

VI–E–3. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised, except to the extent that earlier release, in the judgment of the Director, NIH, is necessary to protect against an

imminent hazard to the public or the environment.

VI–E–4. *Presubmission Review.*

VI–E–4–a. Any institution not otherwise covered by the Guidelines, which is considering submission of data information voluntarily to NIH, may request presubmission review of the records involved to determine whether, if the records are submitted, NIH will or will not make part or all of the records available upon request under the Freedom of Information Act.

VI–E–4–b. A request for presubmission review should be submitted to ORDA, along with the records involved. These records must be clearly marked as being the property of the institution, on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. ORDA will then seek a determination from the HHS Freedom of Information Officer, the responsible official under HHS regulations (45 C.F.R. Part 5), as to whether the records involved (or some portion) are or are not available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from ORDA files, will be considered records of the institution and not ORDA, and will not be received as part of ORDA files. No copies will be made of the records.

VI–E–4–c. ORDA will inform the institution of the HHS Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of ORDA files. If the institution instructs ORDA to return the records, no copies or summaries of the records will be made or retained by HHS, NIH, or ORDA.

VI–E–4–d. The HHS Freedom of Information Officer's determination will represent that official's judgment, as of the time of the determination, as to whether the records involved (or some portion) would be exempt,

Appendix A.—Exemptions Under III–D–4

Section III–D–4 states that exempt from these Guidelines are "certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as a publication of these Revised Guidelines. The list is in Appendix A."

Under Section III–D–4 of these Guidelines are recombinant DNA molecules that are (1) composed entirely of DNA segments from one or more of the organisms within a sublist and (2) to be propagated in any of the organisms within a sublist. (Classification of *Bergey's Manual of Determinative Bacteriology*, eighth edition. R. E. Buchanan and N. E. Gibbons, editors. Williams and Wilkins Company: Baltimore, 1974.)

Sublist A

1. Genus *Escherichia*
2. Genus *Shigella*
3. Genus *Salmonella* (including *Arizona*)
4. Genus *Enterobacter*
5. Genus *Citrobacter* (including *Levinea*)
6. Genus *Klebsiella*
7. Genus *Erwinia*
8. *Pseudomonas aeruginosa, Pseudomonas putida* and *Pseudomonas fluorescens*
9. *Serratia marcescens*
10. *Yersinia enterocolitica*

Sublist B

1. *Bacillus subtilis*
2. *Bacillus licheniformis*
3. *Bacillus pumilus*
4. *Bacillus globigii*
5. *Bacillus niger*
6. *Bacillus nato*
7. *Bacillus amyloliquefaciens*
8. *Bacillus aterrimus*

Sublist C

1. *Streptomyces aureofaciens*
2. *Streptomyces rimosus*
3. *Streptomyces coelicolor*

Sublist D

1. *Streptomyces griseus*
2. *Streptomyces cyaneus*
3. *Streptomyces venezuelae*

Sublist E

One way transfer of *Streptococcus mutans* or *Streptococcus lactis* DNA into *Streptococcus sanguis*

Sublist F

1. *Streptococcus sanguis*
2. *Streptococcus pneumoniae*
3. *Streptococcus faecalis*
4. *Streptococcus pyogenes*

Appendix B.—Classification of Microorganisms on the Basis of Hazard

Appendix B–I. *Classification of Etiologic Agents.* [The original reference for this classification was the publication *"Classification of Etiological Agents on the Basis of Hazard,"* 4th edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the pusposes of these Guidelines, this list has been revised by the NIH.]

Appendix B–I–A. *Class 1 Agents.* All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes.

Appendix B–I–B. *Class 2 Agents*

Appendix B–I–B–1. *Bacterial Agents*

Actinobacillus—all species except *A. mallei*, which is in Class 3
Aeromonas hydrophila
Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella—all species
Borrelia recurrentis, B. vincenti
Campylobacter fetus
Campylobacter jejuni,
Clostridium botulinum,
Cl. chauvoei, Cl. haemolyticum,
Cl. histolyticum, cl. novyi,
Cl. septicum, Cl. tetani
Corynebacterium diphtheriae
C. equi, C. haemolyticum,
C. pseudotuberculosis,
C. pyogenes, C. renale
Diplococcus (Streptococcus) pneumoniae
Edwardsiella tarda
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains bearing K1 antigen
Haemophilus ducreyi, H. influenzae
herellae vaginicola
Klebsiella—all species and all serotypes
Leptospira interrogans—all serotypes
Listeria—all species
Mima polymorpha
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycoplasma—all species except *Mycoplasma mycoides* and *Mycoplasma agalactiae*, which are in Class 5
Neisseria gonorrhoeae, N. meningitidis
Pasterurella—all species except those listed in Class 3
Salmonella—all species and al serotypes
Shigella—all species and all serotypes
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Stretococcus pyogenes
Treponema carateum, T. pallidum, and *T. pertenue*
Vibrio fetus, V. comma, including biotype *El Tor* and *V. parahemolyticus*
Yersinia enterocolitica

Appendix B–I–B–2. *Fungal Agents*

Actinomycetes (including *Nocardia* species and *Actinomyces* species and *Arachnia propionica)* [2]
Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides braziliensis

Appendix B–I–B–3. *Parasitic Agents*

Endamoeba histolytica
Leishmania sp.
Naegleria gruberi
Toxoplasma gondii
Toxocara canis
Trichinella spiralis
Trypanosoma cruzi

Appendix B–I–B–4. *Viral, Rickettsial, and Chlamydial Agents*

Adenoviruses—human—all types
Cache Valley virus
Coxsackie A and *B viruses*
Cytomegaloviruses
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Flanders virus
Hart Park virus
Hepatitis—associated antigen material
Herpes viruses—except *Herpesvirus simiae (Monkey B virus)* which is in Class 4
Corona viruses

Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1
Polioviruses—all types, wild and attenuated
Poxviruses—all types except *Alastrim, Smallpox,* and *Whitepox,* which are Class 5 and *Monkey pox,* which depending on experiments, is in Class 3 or Class 4
Rabies virus—all strains except *Rabies street* virus, which should be classified in Class 3
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except *Herpesvirus simiae (Monkey B virus)* and *Marburg virus,* which are in Class 4
Sindbis virus
Tensew virus
Turlock virus
Vaccinia virus
Variocella virus
Vesicular stomatitis virus [3]
Vole rickettsia
Yellow fever virus, 17D vaccine strain

Appendix B–I–C. *Class 3 Agents*
Appendix B–I–C–1. *Bacterial Agents*
Actinobacillus mallei [3]
Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium avium, M. bovis, M. tuberculosis
Pasteurella multocida type *B* ("buffalo" and other foreign virulent strains [3]
Pseudomonas pseudomallei [3]
Yersinia pestis

Appendix B–I–C–2. *Fungal Agents*
Coccidioides immitis
Histoplasma capsulatum
Histoplasma capsulatum var. *duboisii*

Appendix B–I–C–3. *Parasitic Agents*
Schistosoma mansoni

Appendix B–I–C–4. *Viral, Rickettsial, and Chlamydial Agents*
Monkey pox, when use *in vitro* [4]
Arboviruses—all strains except those in Class 2 and 4 *(Arboviruses* indigenous to the United States are in Class 3, except those listed in Class 2. *West Nile* and *Semliki Forest* viruses may be classified up or down, depending on the conditions of use and geographical location of the laboratory.)
Dengue virus, when used for transmission or animal inoculation experiments
Lymphocytic choriomeningitis virus (LCM)
Psittacosis-Ornithosis-Trachoma group of agents
Rabies street virus
Rickettsia—all species except *Vole rickettsia* when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used *in vitro*

Appendix B–I–D *Class 4 Agents*
Appendix B–I–D–1. *Bacterial Agents.* None
Appendix B–I–D–2. *Fungal Agents.* None
Appendix B–I–D–3. *Parasitic Agents.* None

Appendix B–I–D–4. *Viral, Rickettsial, and Chlamydial Agents*
Monkey pox, when used for transmission or animal inoculation experiments [4]
Hemorrhagic fever agents, including *Crimean hemorrhagic fever, (Congo), Junin,* and *Machupo* viruses, and others as yet undefined
Herpesvirus simiae (Monkey B virus)
Lassa virus
Marburg virus
Tick-borne encephalitis virus complex, including *Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever,* and *Central European encephalitis viruses*
Venezuelan equine encephalitis virus, epidemic strains, when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used for transmission or animal inoculation experiments

Appendix B–II. *Classification of Oncogenic Viruses on the Basis of Potential Hazard [5]*

Appendix B–II–A. *Low-Risk Oncogenic Viruses.* These viruses should be treated as Class 2 agents
Rous Sarcoma
SV–40
CELO
Ad7–SV40
Polyoma
Bovine papilloma
Rat mammary tmor
Avian Leukosis
Murine Leukemia
Murine Sarcoma
Mouse mammary tumor
Rat Leukemia
Hamster Leukemia
Bovine Leukemia
Dog Sarcoma
Mason-Pfizer Monkey Virus
Marek's
Guinea Pig Herpes
Lucke (Frog)
Adenovirus
Shope Fibroma
Shope Papilloma

Appendix B–II–B. *Moderate-Risk Oncogenic Viruses.* These viruses should be treated as Class 3 agents
Ad2–SV40
FeLV
HV Saimiri
EHV
SSV–1
GaLV
HV ateles
Yaba
FeSV

Appendix B–III. *Class 5 Agents*

Appendix B–III–A. *Animal Disease Organisms Which Are Forbidden Entry into the United States by Law*
Foot and mouth disease virus

Appendix B–III–B. *Animal Disease Organisms and Vectors Which Are Forbidden Entry into the United States by USDA Policy*
African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna disease virus
Bovine infectious petechial fever
Camel pox virus
Ephemeral fever virus
Fowl plague virus
Goat pow virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Nairobi sheep disease virus
Newcastle disease virus (Asiatic strains)
Mycoplasma mycoides (contagious bovine pleuropneumonia)
Mycoplasma agalactiae (contagious agalactia of sheep)
Rickettsia ruminatium (heart water)
Rift valley fever virus
Rhinderpest virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Trypanosoma vivax (Nagana)
Trypanosoma evansi
Theileria parva (East Coast fever)
Theileria annulata
Theileria lawrencei
Theileria bovis
Theileria hirci
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema

Appendix B–III–C. *Organisms Which May Not Be Studied in the United States Except At Specified Facilities*
Small pox [4]
Alastrim [4]
White pox [4]

Appendix B–IV. *Footnotes and References of Appendix B*

1. The original reference for this classification was the publication *Classification of Etiologic Agents on the Basis of Hazard,* 4th edition, July 1974, U.S. Departmet of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these Guidelines, this list has been revised by the NIH.

2. Since the publication of the classification in 1974 [1], the *Actinomycetes* have been reclassified as bacterial rather than fungal agents.

3. A USDA permit, required for import and interstate transport of pathogens, may be obtained from the Animal and Plant Health Inspection Service, USDA, Federal Building, Hyattsville, MD 20782.

4. All activities, including storage of variola and whitepox are restricted to the single national facility [World Health Organization (WHO) Collaborating Center for Smallpox Research, Center for Disease Control, in Atlanta].

5. *National Cancer Institute Safety Standards for Research Ivolving Oncogenic Viruses* (October 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790.

6. U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Appendix C.—Exemptions Under III–D–5

Section III–D–5 states that exempt from these Guidelines are "Other classes of

recombinant DNA molecules, if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the envrionment. (See Section IV–C–1–b–(1)–(c).) Certain classes are exempt as of publication of these Resived Guidelines."

The following classes of experiments are exempt under Section III–D–5 of the Guidelines:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Recombinant DNA molecules derived entirely from non-viral components (that is, no component is derived from a eukaryotic virus), that are propagated and maintained in cells in tissue culture are exempt from these Guidelines with the exceptions listed below.

Exceptions. Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–II. *Experiments Involving E. coli K–12 Host-Vector Systems.* Experiments which use *E. coli* K–12 host-vector systems, with the exception of those experiments listed below, are exempt from these Guidelines provided that (a) the *E. coli* host shall not contain conjugation proficient plasmids or generalized transducing phages, and (b) lambda or lambdoid or Ff bacteriophages or nonconjugaive plasmids [2] shall be used as vectors. However, experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information [3] with *E. coli* may be performed with any *E. coli* K–12 vector (e.g., conjugative plasmid). When a nonconjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids ether autonomous or integrated, or generalized transducing phages.

For these exempt experiments, P1 physical containment conditions are recommended.

Exceptions. Experiments described in Section III–A which require a specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from class 3, 4, or 5 organisms [1] or from cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–III. *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems.* Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines provided that laboratory strains are used.

For these exempt experiments, P1 physical containment conditions are recommended.

Exemptions. Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving Class 3, 4 or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–IV. *Experiments Involving Bacillus subtilis Host-Vector Systems.* Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA, with the exception of those experiments listed below. Indigenous *Bacillus* plasmids and phages, whose host-range does not include *Bacillus cereus* or *Bacillus anthracis*, may be used as vectors.

For these exempt experiments P1 physical containment conditions are recommended.

Exceptions. Experiments described in Section III–A which require specific RAC review and approval before initiation of the experiment.

Experiments involving Class 3, 4, or 5 organisms [1] or cells known to be infected with these agents may be conducted under containment conditions specified by Section III–B–2 with prior IBC review and approval.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval. (See Section III–B–5.)

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. (See Appendix F.)

Appendix C–V. *Footnotes and References of Appendix C*

1. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the calssification in the publication *Classification of Etiologic Agents on the Basis of Hazard*, 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may revise the classification for the purposes of these Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B to these Guidelines.

2.subset of non-conjugative plasmid vectors are also poorly mobilizable (e.g., pBR322, pBR313). Where practical, these vectors should be employed.

3. Defined as observable under optimal laboratory conditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less stringent than that applied to exempt organisms unser Section III–D–4.

Apendix D—Actions Taken Under the guidelines

As noted in the subsections of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC.

Some of the actions taken to date include the following:

Appendix D–I. Permission is granted to clone Foot-and-Mouth disease virus in the EK1 host-vector system consisting of *E. coli* K–12 and the vector pBR322, all work to be done at the Plum Island Animal disease Center.

Appendix D–II. Certain specified clones derived from segments of the Foot-and-Mouth disease Virus may be transferred from Plum Island Animal disease Center to the facilities of Genentech, Inc., of South San Francisco, California. Further development of the clones at Genetech has been approved under P1 + EK1 conditions.

Appendix D–III. The Rd strain of *hemophilus influenzae* can be used as a host for the propagtin of the cloned Tn 10 tet R gene derived from *E. coli* K–12 employing the non-conjugative *Haemophilus* plasmid, pRSF0885, under P1 conditions.

Appendix D–IV. Permission is granted to clone certain subgenomic segments of Foot-and-Mouth Disease Virus in HV1 *Bacillus subtilis* and *Saccharomyces cerevisiae* host-vector systems under P1 conditions at Genetech, Inc., South San Francisco, California.

Appendix D–V. Permission is granted to Dr. Ronald Davis of Stanford University to field test corn plants modified by recombinant DNA techniques under specified containment conditions.

Appendix D–VI. Permission is granted to clone in *E. coli* K–12, under P1 physical containment conditions, subgenomic segments of Rift Valley Fever Virus subject to conditions which have been set forth by the RAC.

Appendix D–VII. Attenuated laboratory strains of *Salmonella typhimurium* may be used under P1 physical containment conditions to screen for the *Saccharomyces cerevisiae* pseudouridine synthetase gene. The plasmid YEp13 will be employed as the vector.

Appendix D–VIII. Permission is granted to transfer certain clones of subgenomic segments of Foot-and-Mouth Disease Virus from Plum Island Animal Disease Center to the laboratories of Molecular Genetics, Inc., Minnetonka, Minnesota, and to work with these clones under P1 containment conditions. Approval is contingent upon review of data on infectivity testing of the clones by a working group of the RAC.

Appendix E—Certified Host-Vector Systems

While many experiments using *E. coli* K-12, *Saccharomyces cerevisiae* and *Bacillus subtilis* are currently exempt from the Guidelines under Exemption III-D-5, some derivatives of these host-vector systems were previously classified as HV1 or HV2. A listing of those systems follows.

HV1. The following plasmids are accepted as the vector components of certified *B.*

subtilis HV1 systems: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124. *B. subtilis* strains RUB 331 and BGSC 1S53 have been certified as the host component of HV1 systems based on these plasmids.

HV2. The asporogenic mutant derivative of *Bacillus subtilis*, ASB 298 with the following plasmids as the vector component: pUB110, pC194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124.

HV2—The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste-VC9 mutation, SHY1, SHY2 SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7,YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, and YIp33.

EK2 Plasmid Systems. The *E. coli* K-12 strain chi-1776. The following plasmids are certified for use: pSC101, pMB9, pBR313, pBR322, pDH24, pBR327, pGL101, pHB1. The following *E. coli/S. cerevisiae* hybrid plasmids are certified as EK2 vectors when use in *E. coli* chi-1776 or in the sterile yeast strains, SHY1, SHY2, SHY3, and SHY4: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31 YIp32, YIp33.

EK2 Bacteriophage Systems. The following are certified EK2 systems based on bacteriophage lambda:

Vector	Host
λgtWES. B'	DP50supF
λgtWES. B*	DP50supF
λgtZJwir. B*	*E. coli* K-12
λgtALO. B	DP50supF
Charon 3A	DP50 or DP50supF
Charon 4A	DP50 or DP50supF
Charon 16A	DP50 or DP50supF
Charon 21A	DP50supF
Charon 23A	DP50 or DP50supF
Charon 24A	DP50 or DP50supF.

E. coli K-12 strains chi-2447 and chi-2281 are certified for use with lambda vectors that are certified for use with strain DP50 or DP50supF provided that the su– strain not be used as a propagation host.

E. coli K-12 strains chi-1984, chi-2705, chi-2001, and chi-2363 are certified for use with lambda vectors that are certified for use with strain DP50 or SP50supF provided that the su– strains not be used as propagation hosts.

Additional certified host-vector systems

HV1—The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion:

Inl (inositolless) strains 37102, 37401, 46310, 64001, and 89601.

Csp-1 strain UCLA 37 and csp-2 strains FS 590, UCLA101 (these are conidial separation mutants).

Eas strain UCLA191 (an "easily wettable" mutant).

HV1—The following *Streptomyces* species: *Streptomyces coelicolor, S. lividans, S. parvulus,* and *S. griseus.* The following are accepted as vector components of certified *Streptomyces* HV1 systems: *Streptomyces* plasmids SCP2, SLP1.2, pIJ101, actinophage phi C31, and their derivatives.

Hv1—*Pseudomonas putida* strain KT2440 with plasmid vectors pKT262, pKT263, and PKT264.

APPENDIX F—CONTAINMENT CONDITIONS FOR CLONING OF GENES CODING FOR THE BIOSYNTHESIS OF MOLECULES TOXIC FOR VERTEBRATES

Appendix F–I. *General Information.* Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin) is prohibited. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} of 100 micrograms or more per kilogram of body weight. Experiments involving genes coding for toxic molecules with an LD_{50} of 100 micrograms or less per kilogram body weight shall be registered with ORDA prior to initiating the experiments. A list of toxic molecules classified as to LD_{50} is available from ORDA. Testing procedures for determining toxicity of toxic molecules not on the list are available from ORDA. The results of such tests shall be forwarded to ORDA, which will consult with an *ad hoc* working group on toxic molecules prior to inclusion of the molecule on the list. (See Section IV–C–1–b–(2)–(e).)

Appendix F–II. *Containment Conditions for Cloning of Toxic Molecule Genes in E. coli K–12.*

Appendix F–II–A. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} in the range of 100 nanograms to 1000 nanograms per kilogram body weight (e.g., abrin, *Clostridium perfringens* epsilon toxin) may proceed under P2+EK2 or P3+EK1 containment conditions.

Appendix F–II–B. Coloning of genes for the biosynthesis of molecules toxic for vertebrates with an LD_{50} in the range of 1 microgram to 100 micrograms per kilogram body weight may proceed under p1+EK1 containment conditions (e.g., *Staphylococcus aureus* alpha toxin, *Staphylococcus aureus* beta toxin, ricin, *Pseudomonas aeruginosa* exotoxin A, *Bordatella pertussis* toxin, the lethal factor of *Bacillus anthracis*, the *Pasteurella pestis* murine toxins, the oxgen-labile hemolysins such as streptolysin O, and certain neurotoxins present in snake venoms and other venoms).

Appendix F–II–C. Some enterotoxins are substantially more toxic when administered enterally than parenterally. The following enterotoxins shall be subject to P1+EK1 containment conditions: cholera toxin, the heat liable toxins of *E. coli, Klebsiella,* and other related proteins that may be identified by neutralization with an antiserum monospecific for cholera toxin, and the heat stable toxins of *E. coli* and of *Yersinia enterocolitica.*

Appendix F–III. *Containment Conditions for Cloning of Toxic Molecule Genes in Organisms Other than E. coli K–12.* Requests involving the cloning of genes coding for molecules toxic for vertebrates in host-vector systems other than *E. coli* K–12 will be evaluated by ORDA, which will consult with the *ad hoc* working group on toxic molecules. (See Section IV–C–1–b–(3)–(f).)

Appendix F–IV. *Specific Approvals.*

Appendix F–IV–A. Permission is granted to clone the Exotoxin A gene of *Pseudomonas aeruginosa* under P1 conditions in *Pseudomonas aeruginosa.*

Appendix F–IV–B. The pyrogenic endotoxin type A (Tox A) gene of *Staphylococcus aureus* may be cloned in an HV2 *Bacillus subtilis* host-vector system under P3 containment conditions.

Appendix F–IV–C. Permission is granted to clone in *E. coli* K–12, in high containment Building 550 at the Frederick Cancer Research Facility, restriction fragments of *Corynephage Beta* carrying the structural gene for diphtheria toxin. Laboratory practices and containment equipment are to be specified by the IBC.

Appendix F–IV–D. The genes coding for the *Staphylococcus aureus* determinants, A, B, and F, which may be implicated in toxic shock syndrome, may be cloned in *E. coli* K–12 under P2+EK1 conditions. The *Staphylococcus aureus* strain used as the donor is to be alpha toxin minus. It is suggested that, if possible, the donor *Staphylococcus aureus* strain should lack other toxins with LD_{50}s in the range of one microgram per kilogram body weight, such as the exfoliative toxin.

Appendix F–IV–E. Fragments F–1 and F–2 of the diphtheria toxin gene (tox) may be cloned in *E. coli* K–12 under P1+EK1 containment conditions. Fragment F–1 and fragment F–2 both contain (i) some or all of the transcriptional control elements of *tox,* (ii) the signal peptide, and (iii) fragment A (the center responsible for ADP-ribosylation of elongation factor 2).

Appendix F–IV–F. The gene(s) coding for a toxin (designated LT-like) isolated from *E. coli* which is similar to the *E. coli* heat labile enterotoxin (LT) with respect to its activities and mode of action, but is not neutralized by antibodies against cholera enterotoxin or against LT from human or porcine *E. coli* strains and sequences homologous to the *E. coli* LT-like toxin gene may be cloned under P1+Ek1 conditions.

APPENDIX G—Physical Containment

Appendix G–I. *Standard Practices and Training.* The first principle of containment is a strict adherence to good microbiological practices [1–10]. Consequently, all personnel directly or indirectly involved in experiments on recombinant DNAs must receive adequate instruction. (See Sections IV–B–1–e and IV–B–5–d.) This shall, as a minimum, include instructions in aseptic techniques and in the biology of the organisms used in the experiments, so that the potential biohazards can be understood and appreciated.

Any research group working with agents with a known or potential biohazard shall have an emergency plan which describes the procedures to be followed if an accident contaminates personnel or the environment. The principal investigator must ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan. (See Sections IV–B–3–d and IV–B–5–e.) If a research group is working with a known pathogen where there is an effective vaccine it should be made available

to all workers. Where serological monitoring is clearly appropriate it shall be provided. (See Section IV–B–1–f.)

The "Laboratory Safety Monograph", available from ORDA, describes practices, equipment, and facilities in detail.

Appendix G–II. *Physical Containment Levels.* The objective of physical containment is to confine organisms containing recombinant DNA molecules, and thus to reduce the potential for exposure of the laboratory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment equipment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazards are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as P1, P2, P3, and P4, are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms. For example, the "Classification of Etiologic Agents on the Basis of Hazard," [2] prepared by the Centers for Disease Control, describes four general levels which roughly correspond to our descriptions for P1, P2, P3, and P4; and the National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our P2, P3, and P4 levels. [3]

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide P3 and P4 levels of physical containment. The selection of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will also be given by the Director, NIH, with the advice of the Recombinant DNA Advisory Committee to other combinations which achieve an equivalent level of containment. (See Section IV–C–1–b–(2)–(b).)

Appendix G–II–A. *P1 Level.*

Appendix G–II–A–1. *Laboratory Practices.*

Appendix G–II–A–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–A–1–b. Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–A–1–c. All biological wastes shall be decontaminated before disposal. Other contaminated materials, such as glassware, animal cages, and laboratory equipment, shall be decontaminated before washing, reuse, or disposal.

Appendix G–II–A–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–A–1–e. Eating, drinking, smoking, and storage of foods are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–A–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–A–1–g. Care shall be taken in the conduct of all procedures to minimize the creation of aerosols.

Appendix G–II–A–1–h. Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leakproof container, which is closed before removal from the laboratory.

Appendix G–II–A–1–i. An insect and rodent control program shall be instituted.

Appendix G–II–A–1–j. The use of laboratory gowns, coats, or uniforms is discretionary with the laboratory supervisor.

Appendix G–II–A–1–k. Use of hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–A–1–l. The laboratory shall be kept neat and clean.

Appendix G–II–A–2. *Containment Equipment.* Special containment equipment is not required at the P1 level.

Appendix G–II–A–3. *Special Laboratory Design.* Special laboratory design is not required at the P1 level.

Appendix G–II–B. *P2 Level.*

Appendix G–II–B–1. *Laboratory Practices.*

Appendix G–II–B–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–B–1–b. Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–B–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a means demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–B–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–B–1–e. Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–B–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–B–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–B–1–h. Contaminated materials that are to be steam sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

Appendix G–II–B–1–i. Only persons who have been advised of the nature of the research being conducted shall enter the laboratory.

Appendix G–II–B–1–j. The universal biohazard sign shall be posted on all laboratory access doors when experiments requiring P2 containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

Appendix G–II–B–1–k. An insect and rodent control program shall be instituted.

Appendix G–II–B–1–l. The use of laboratory gowns, coats, or uniforms is required. Laboratory clothing shall not be worn to the lunch room or outside of the building in which the laboratory is located.

Appendix G–II–B–1–m. Animals not related to the experiment shall not be permitted in the laboratory.

Appendix G–II–B–1–n. Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–B–1–o. The laboratory shall be kept neat and clean.

Appendix G–II–B–1–p. Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

Appendix G–II–B–2. *Containment Equipment.* Biological safety cabinets [12] shall be used to contain aerosol-producing equipment, such as blenders, lyophilizers, sonicators, and centrifuges, when used to process organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol. For example, a centrifuge may be operated in the open if a sealed head or safety centrifuge cups are used.

Appendix G–II–B–3. *Special Laboratory Design.* An autoclave for sterilization of wastes and contaminated materials shall be available in the same building in which organisms containing recombinant DNA molecules are used.

Appendix G–II–C. *P3 Level.*

Appendix G–II–C–1. *Laboratory Practices.*

Appendix G–II–C–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–C–1–b. Work surfaces shall be decontaminated following the completion of the experimental activity, and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–C–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials, such as glassware, animal cages, laboratory equipment, and radioactive wastes, shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–C–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is probibited.

Appendix G–II–C–1–e. Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

Appendix G–II–C–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–C–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–C–1–h. Contaminated materials that are to be steamsterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in durable leak-proof container, which is closed before removal from the laboratory.

Appendix G–II–C–1–i. Entry into the laboratory shall be through a controlled access area. Only persons who have been advised of the nature of the research being conducted shall enter the controlled access area. Only persons required on the basis of program or support needs shall be authorized to enter the laboratory. Such persons shall be advised of the nature of the research being conducted before entry, and shall comply with all required entry and exit procedures.

Appendix G–II–C–1–j. Persons under 16 of age shall not enter the laboratory.

Appendix G–II–C–1–k. The universal biohazard sign shall be posted on the controlled access area door and on all laboratory doors when experiments requiring P3-level containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

Appendix G–II–C–1–l. An insect and rodent control program shall be instituted.

Appendix G–II–C–1–m. Laboratory clothing that protects street clothing (e.g., long-sleeve solid-front or wrap-around gowns, no-button or slipover jackets) shall be worn in the laboratory. Front-button laboratory coats are unsuitable. Laboratory clothing shall not be worn outside the laboratory and shall be decontaminated before it is sent to the laundry.

Appendix G–II–C–1–n. Raincoats, overcoats, topcoats, coats, hats, caps, and such street outer-wear shall not be kept in the laboratory.

Appendix G–II–C–1–o. Gloves shall be worn when handling materials requiring P3 containment. They shall be removed aseptically immediately after the handling procedure and decontaminated.

Appendix G–II–C–1–p. Animals and plants not related to the experiment shall not be permitted in the laboratory.

Appendix G–II–C–1–q. Vaccum outlets shall be protected by filter and liquid disinfectant traps.

Appendix G–II–C–1–r. Use of hypodermic needle and syringe shall be avoided when alternative methods are available.

Appendix G–II–C–1–s. The laboratory shall be kept neat and clean.

Appendix G–II–C–1–t. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring P3-level physical containment, they shall be conducted in accordance with all P3-level laboratory practices.

Appendix G–II–C–2. *Containment Equipment.*

Appendix G–II–C–2–a. Biological safety cabinets [12] shall be used for all equipment and manipulations that produce aerosols—e.g., pipetting, dilutions, transfer operations, plating, flaming, grinding, blending, drying, sonicating, shaking, centrifuging—where these procedures involve organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosal.

Appendix G–II–C–2–b. Laboratory animals held in a P3 area shall be housed in partial-containment caging systems, such as Horsfall units [11], open cages placed in ventilated enclosures, solid-wall and -bottom cages covered by filter bonnets, or solid-wall and bottom cages placed on holding racks equipped with ultraviolet radiation lamps and reflectors.

Note.—Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

Appendix G–II–C–2–c. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the P3 laboratory using containment equipment specified for the P2 level or physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified can be conducted in the P3 laboratory using containment equipment specified for the P4 level of physical containment. Alternative combinations of containment safeguards are shown in Table I.

TABLE I—POSSIBLE COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological [1] containment	Laboratory design specified for	Laboratory practices specified for	Containment equipment specified for	Biological containment
P3	HV2	P3	P3	P3	HV2.
P3	HV2	P3	P3	P4	HV1.
P3	HV1	P3	P3	P3	HV1.
P3	HV1	P3	P3	P2	HV2.

[1] See Appendix I for description of biological containment.

Appendix G–II–C–3. *Special Laboratory Design.*

Appendix G–II–C–3–a. The laboratory shall be separated by a controlled access area from areas that are open to unrestricted traffic flow. A controlled access area is an anteroom, a change room, an air lock or any other double-door arrangement that separates the laboratory from areas open to unrestricted traffic flow.

Appendix G–II–C–3–b. The surfaces of walls, floors, and ceilings shall be readily cleanable. Penetrations through these surfaces shall be sealed or capable of being sealed to facilitate space decontamination.

Appendix G–II–C–3–c. A foot-, elbow-, or automatically-operated hand-washing facility shall be provided near each primary laboratory exit area.

Appendix G–II–C–3–d. Windows in the laboratory shall be sealed.

Appendix G–II–C–3–e. An autoclave for sterilization of wastes and contaminated materials shall be available in the same building (and preferably within the controlled laboratory area) in which organisms containing recombinant DNA molecules are used.

Appendix G–II–C–3–f. The laboratory shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential (i.e., from the controlled access area to the laboratory area). If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the laboratory area shall not be recirculated to other areas of the building unless the exhaust air is filtered by HEPA filters or equivalent. The exhaust air from the laboratory area can be discharged to the outdoors without filtration or ther means for effectively reducing an accidental aerosol burden provided that it can be dispersed clear of occupied buildings and air intakes.

Appendix G–II–C–3–g. The treated exhaust-air from Class I and Class II biological safety cabinets [12] may be discharged either to the laboratory or to the outdoors. The treated exhaust-air from a Class III cabinet shall be discharged directly to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through a building exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinet and the building ventilation system.

Appendix G–II–D. *P4 Level.*

Appendix G–II–D–1. *Laboratory Practices.*

Appendix G–II–D–1–a. Laboratory doors shall be kept closed while experiments are in progress.

Appendix G–II–D–1–b. Work surfaces shall be decontaminated following the completion of the experimental activity and immediately following spills of organisms containing recombinant DNA molecules.

Appendix G–II–D–1–c. All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

Appendix G–II–D–1–d. Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

Appendix G–II–D–1–e. Eating, drinking, smoking, and storage of food are not permitted in the P4 facility.

Appendix G–II–D–1–f. Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

Appendix G–II–D–1–g. Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation lop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

Appendix G–II–D–1–h. Biological materials to be removed from the P4 facility in a viable or intact state shall be transferred to a nonbreakable sealed container, which is then removed from the P4 facility through a pass-through disinfectant dunk tank or fumigation chamber.

Appendix G–II–D–1–i. No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the P4 facility unless they have been steam-sterilized (autoclaved) or decontaminated by a means demonstrated to be effective as they pass out of the P4 facility. All wastes and other materials as well as equipment not damaged by high temperature or steam shall be steam sterilized in the double-door autoclave of the P4 facility. Other materials which may be damaged by temperature or steam shall be removed from the P4 facility through a pass-through fumigation chamber.

Appendix G–II–D–1–j. Materials within the Class III cabinets shall be removed from the cabinet system only after being steam-sterilized in an attached double-door autoclave or after being contained in a nonbreakable sealed container, which is then passed through a disinfectant dunk tank or a fumigation chamber.

Appendix G–II–D–1–k. Only persons whose entry into the P4 facility is required to meet program or support needs shall be authorized to enter. Before entering, such persons shall be advised of the nature of the research being conducted and shall be instructed as to the appropriate safeguards to ensure their safety. They shall comply with instructions and all other required procedures.

Appendix G–II–D–1–l. Persons under 18 years of age shall not enter the P4 facility.

Appendix G–II–D–1–m. Personnel shall enter into and exit fron the P4 facility only through the clothing change and shower rooms. Personnel shall shower at each egress from the P4 facility. Air locks shall not be used for personnel entry or exit except for emergencies.

Appendix G–II–D–1–n. Street clothing shall be removed in the outer side of the clothing-change area and kept there. Complete laboratory clothing, including undergarments, head cover, shoes, and either pants and shirts or jumpsuits, shall be used by all persons who enter the P4 facility. Upon exit, personnel shall store this clothing in lockers provided for this purpose or discard it into collection hampers before entering the shower area.

Appendix G–II–D–1–o. The universal biohazard sign is required on the P4 facility access doors and on all interior doors to individual laboratory rooms where experiments are conducted. The sign shall also be posted on freezers, refrigerators, or other units used to store organisms containing recombinant DNA molecules.

Appendix G–II–D–1–p. An insect and rodent control program shall be instituted.

Appendix G–II–D–1–q. Animals and plants not related to the experiment shall not be permitted in the laboratory in which the experiment is being conducted.

Appendix G–II–D–1–r. Vacuum outlets shall be protected by filter and liquid disinfectant traps.

Appendix G–II–D–1–s. Use of the hypodermic needle and syringe shall be avoided when alternate methods are available.

Appendix G–II–D–1–t. The laboratory shall be kept neat and clean.

Appendix G–II–D–1–u. If experiments involving other organisms which require lower levels of containment are to be conducted in the P4 facility concurrently with experiments requiring P4-level containment, they shall be conducted in accordance with all P4-level laboratory practices specified in this section.

Appendix G–II–D–2. *Containment Equipment.*

Appendix G–II–D–2–a. Experimental procedures involving organisms that require P4-level physical containment shall be conducted either in (i) a Class III cabinet system or in (ii) Class I or Class II cabinets that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure isolation suits.

Appendix G–II–B–4–b. Laboratory animals involved in experiments requiring P4-level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems (such as Horsfall units [11], open cages placed in ventilated enclosures, or solid-wall and-bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors) that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure suits.

Appendix G–II–D–2–c. *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified can be conducted in the P4 facility using containment equipment requirements specified for the P3 level of physical containment. Alternative combinations of containment safeguards are shown in Table II.

TABLE II.—POSSIBLE COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological [1] containment	Laboratory design specified for—	Laboratory practices specified for—	Containment equipment specified for—	Biological containment
P4	HV1	P4	P4	P4	HV1.
P4	HV1	P4	P4 [2]	P3	HV2.

[1] See Appendix I for description of biological containment.
[2] In this case gloves shall be worn, in addition to the clothing requirements specified in Appendix G–II–D–1–n.

Appendix G–II–D–3. *Special Laboratory Design.*

Appendix G–II–D–3–a. The laboratory shall be located in a restricted-access facility which is either a separate building or a clearly demarcated and isolated zone within a building. Clothing-change areas and shower rooms shall be provided for personnel entry and egress. These rooms shall be arranged so that personnel leave through the shower area to the change room. A double-door ventilated vestibule or ultraviolet air lock shall be provided for passage of materials, supplies, and equipment which are not brought into the P4 facility through the change room area.

Appendix G–II–D–3–b. Walls, floors, and ceilings of the P4 facility are constructed to form an internal shell which readily allows vapor-phase decontamination and is animal- and insect-proof. All penetrations through these structures and surfaces are sealed. (The integrity of the walls, floors, ceilings, and penetration seals should ensure adequate containment of a vapor-phase decontaminant under static pressure conditions. This requirement does not imply that these surfaces must be airtight.)

Appendix G–II–D–3–c. A foot-, elbow-, or automatically-operated handwashing facility shall be provided near the door within each laboratory in which experiments involving recombinant DNA are conducted in openface biological safety cabinets.

Appendix G–II–D–3–d. Central vacuum systems are permitted. The system, if provided, shall not serve areas outside the P4 facility. The vacuum system shall include in-line HEPA filters near each use point or

service cock. The filters shall be installed so as to permit in-place decontamination and replacement. Water supply, liquid and gaseous services provided to the P4 facility shall be protected by devices that prevent backflow.

Appendix G–II–D–3–e. Drinking water fountains shall not be installed in laboratory or animal rooms of the P4 facility. Foot-operated water fountains are permitted in the corridors of the P4 facility. The water service provided to such fountains shall be protected from the water services to the laboratory areas of the P4 facility.

Appendix G–II–D–3–f. Laboratory doors shall be self-closing.

Appendix G–II–D–3–g. A double-door autoclave shall be provided for sterilization of material passing out of the P4 facility. The autoclave doors shall be interlocked so that both doors will not be open at the same time.

Appendix G–II–D–3–h. A pass-through dunk tank or fumigation chamber shall be provided for removal from the P4 facility of material and equipment that cannot be heat-sterilized.

Appendix G–II–D–3–i. All liquid effluents from the P4 facility shall be collected and decontaminated before disposal. Liquid effluents from biological safety cabinets and laboratory sinks shall be sterilized by heat. Liquid effluents from the shower and hand washing facilities may be activated by chemical treatment. HEPA filters shall be installed in all vents from effluent drains.

Appendix G–II–D–3–j. An individual supply and exhaust-air ventilation system shall be provided. The system shall maintain pressure differentials and directional air flow as required to ensure inflow from areas outside the facility toward areas of highest potential risk within the facility. The system shall be designed to prevent the reversal of air flow. The system shall sound an alarm in the event of system malfunction.

Appendix G–II–D–3–k. Air within individual laboratories of the P4 facility may be recirculated if HEPA filtered.

Appendix G–II–D–3–l. The exhaust air from the P4 facility shall be HEPA filtered and discharged to the outdoors so that it is dispersed clear of occupied buildings and air intakes. The filter chambers shall be designed to allow *in situ* decontamination before removal and to facilitate certification testing after replacement.

Appendix G–II–D–3–m. The treated exhaust-air from Class I and Class II biological safety cabinets [12] may be discharged directly to the laboratory room environment or to the outdoors. The treated exhaust-air from Class III cabinets shall be discharged to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through the P4 facility exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinets or the facility exhaust air system.

Appendix G–II–D–3–n. As noted in Appendix G–II–D–2–a, the P4 facility may contain specially designed areas in which all personnel are required to wear one-piece positive-pressure isolation suits. Such areas shall be airtight. The exhaust-air from the suit area shall be filtered by two sets of HEPA filters installed in series, and a duplicate filtration unit and exhaust fan shall be provided. The air pressure within the suit area shall be less than that on any adjacent area. An emergency lighting system, communication systems, and power source shall be provided. A double-door autoclave shall be provided for sterilization of all waste materials to be removed from the suit area.

Personnel who enter this area shall wear a one-piece positive-pressure suit that is ventilated by a life-support system. The life-support system shall be provided with alarms and emergency backup air. Entry to this area is through an airlock fitted with airtight doors. A chemical shower area shall be provided to decontaminate the surfaces of the suit before removal.

Appendix G–III. *Footnotes and References of Appendix G.*

1. *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health Education and Welfare Publication No. CDC 75–8118.

2. Classification of Etiologic Agents on the Basis of Hazard. (4th Edition, July 1974). U.S. Department of Health, Education and Welfare. Public Health Service. Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

3. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education and Welfare Publication No. (NIH) 75–790.

4. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

5. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

6. *Handbook of Laboratory Safety* (1971). Second Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

7. Bodily, J. L. (1970). *General Administration of the Laboratory*, H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic and Parasitic Infections. American Public Health Association, New York, pp. 11–28.

8. Darlow, H. M. (1969). *Safety in the Microbiological Laboratory*. In J. R. Norris and D. W. Robbins (ed.), Methods in Microbiology. Academic Press, Inc. New York. pp. 169–204.

9. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

10. Chatigny, M. A. (1961). *Protection Against Infection in the Microbiological Laboratory: Devices and Procedures*. In W. W. Umbreit (ed.). Advances in Applied Microbiology. Academic Press, New York, N.Y. 3:131–192.

11. Horsfall, F. L., Jr., and J. H. Baner (1940). *Individual Isolation of Infected Animals in a Single Room*. J. Bact. 40, 589–590.

12. Biological safety cabinets referred to in this section are classified as *Class I, Class II,* or *Class III* cabinets. A *Class I* is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high-efficiency particulate air (HEPA) filter. This cabinet is used in three operational modes: (1) with a full-width open front, (2) with an installed front closure panel (having four 8-inch diameter openings) without gloves, and (3) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater.

A *Class II* cabinet is a ventilated cabinet for personnel and product protection having an open front with inward air flow for personnel protection, and HEPA filtered mass recirculated air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and performance specifications for *Class II* cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A *Class III* cabinet is a closed-front ventilated cabinet of gas-tight construction which provides the highest level of personnel protection of all biohazard safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water guage. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filters. Exhaust air is filtered through two HEAP filters or one HEPA filter and incinerator before being discharged to the outside environment.

Appendix H—Shipment

Recombinant DNA molecules contained in an organixm or virus shall be shipped only as an etiologic agent under requirements of the U.S. Public Health Service, and the U.S. Department of Transportation (Section 72.3, Part 72, Title 42, and Sections 173.386–.388, Part 173, Title 49, U.S. Code of the Federal Regulations (CFR)) as specified below:

Appendix H–I. Recombinant DNA molecules contained in an organism or virus requiring P1, P2, or P3 physical containment, when offered for transportation or transported, are subject to all requirements of Section 782.3(a)–(e), Part 72, Title 42 CFR, and Sections 173.386–.388, Part 173, Title 49 CFR.

Appendix H–II. Recombinant DNA molecules contained in an organism or virus requiring P4, physical containment, when offered for transportation or transported, are subject to all requirements listed above under Appendix H–I and are also subject to Section 72.3(f), Part 72, Title 42 CFR.

Appendix H–III. Additional information on packaging and shipment is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research," available from ORDA.

[Note.—Instructions for the packaging and labeling of etiologic agents will be printed in the revised Guidelines should that proposal be accepted by the RAC.]

Appendix I—Biological Containment

Appendix I–I. *Levels of Biological Containment.* In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment must be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory and (ii) transmission of the vector from the propagation host to other nonlaboratory hosts.

The following levels of biological containment (HV, or *H*ost-*V*ector, system) for prokaryotes will be establish; specific criteria will depend on the organisms to be used.

Appendix I–I–A. *HV1.* A host-vector system which provides a moderate level of containment. *Specific systems:*

Appendix I–I–A–1. *EK1.* The host is always *E. coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, Col1E1, or derivatives thereof [1–7]) and variants of bacteriophage, such as lambda [8–15]. The *E. coli* K–12 host shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages.

Appendix I–I–A–2. *Other HV1.* Hosts and vectors shall be, at a minimum, comparable in containment to *E. coli* K–12 with a non conjugative plasmid or bacteriophage vector. The data to be considered and a mechanism for approval of such HV1 systems are described below (Appendix I–II).

Appendix I–I–B. *HV2.* These are host-vector systems shown to provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Escape of the recombinant DNA either via survial of the organisms or via transmission of recombinant DNA to other organisms should be less than $1/10^8$ under specified conditions. *Specific systems:*

Appendix I–I–B–1. For EK2 host-vector systems in which the vector is a plasmid, no more than one in 10^8 host cells should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequences of transmission of the cloned DNA fragment.

Appendix I–I–B–2. For EK2 host-vector systems in which the vector is a phage, no more than one in 10^8 phage particles should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment either (i) as a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation or (ii) by surviving in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

Appendix I–II. *Certification of Host-Vector Systems.*

Appendix I–II–A. *Responsibility.* HV1 systems other than *E. coli* K–12, and HV2 host-vector systems, may not be designated as such until they have been certified by the Director, NIH. Application for certification of a host-vector system is made by written application to the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

Host-vector systems that are proposed for certification will be reviewed by the National Institutes of Health (NIH) Recombinant DNA Advisory Committee (RAC). (See Section IV–C–1–b–(1)–(e).) This will first involve review of the data on construction, properties, and testing of the proposed host-vector system by a Working Group composed of one or more members of the RAC and other persons chosen because of their expertise in evaluating such data. The Committee will then evaluate the report of the Working Group and any other available information at a regular meeting. The Director, NIH, is responsible for certification after receiving the advice of the RAC. Minor modifications of existing certified host-vector systems, where the modifications are of minimal or no consequence to the properties relevant to containment may be certified by the Director, NIH, without review by the RAC. (See Section IV–C–1–b–(3)–(c).)

When new host-vector systems are certified, notice of the certification will be sent by the Office of Recombinant DNA Activities (ORDA) to the applicant and to all Institutional Biosafety Committees (IBCs) and will be published in the *Recombinant DNA Technical Bulletin.* Copies of a list of all currently certified host-vector systems may be obtained from ORDA at any time.

The Director, NIH, may at any time rescind the certification of any host-vector system. (See Section IV–C–1–b–(3)–(d).) If certification of a host-vector system is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system, or use the clones at a higher physical containment level unless NIH determines that the already constructed clones incorporate adequate biological containment.

Certification of a given system does not extend to modifications of either the host or vector component of that system. Such modified systems must be independently certified by the Director, NIH. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications of a certified system require the submission of complete testing data.

Appendix I–II–B. *Data To Be Submitted for Certification.*

Appendix I–II–B–1. *HV1 Systems Other than E. coli K–12.* The following types of data shall be submitted, modified as appropriate for the particular system under consideration. (i) A description of the organism and vector: the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction and survival and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchange genetic information and what sort of information is exchanged; and any relevant information on its pathogenicity or toxicity. (ii) A description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information. (iii) A general description of the range of experiments contemplated, with emphasis on the need for developing such an HV1 system.

Appendix I–II–B–2. *HV2 Systems.* Investigators planning to request HV2 certification for host-vector systems can obtain instructions from ORDA concerning data to be submitted [14–15]. In general, the following types of data are required: (i) Description of construction steps, with indication of source, properties, and manner of introduction of genetic traits. (ii) Quantitative data on the stability of genetic traits that contribute to the containment of the system. (iii) Data on the survival of the host-vector system under nonpermissive laboratory conditions designed to represent the relevant natural environment. (iv) Data on transmissibility of the vector and/or a cloned DNA fragment under both permissive and nonpermissive conditions. (v) Data on all other properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation. (vi) In some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals and human subjects. Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments.

Data must be submitted in writing to ORDA. Ten to twelve weeks are normally required for review and circulation of the data prior to the meeting at which such data can be considered by the RAC. Investigators are encouraged to publish their data on the construction, properties, and testing of proposed HV2 systems prior to consideration of the system by the RAC and its subcommittee. More specific instructions concerning the type of data to be submitted to NIH for proposed EK2 systems involving either plasmids or bacteriophage in *E. coli* K–12 are available from ORDA.

Appendix I–III. *Footnotes and References of Appendix I.*

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D. *Additional Proposals.*

1. Upon reviewing the proposed revised Guidelines, several members of the Working Group for Revision of the Guidelines requested that the language of the current Guidelines in Section III–C be evaluated by the RAC.

That language of the current Guidelines is as follows:

"III–C. *Experiments That Require IBC Notice Simultaneously With Initiation of Experiments.* Experiments not included in Sections III–A, III–B, III–D, and subsections of these Sections are to be considered in Section III–C. All such experiments can be carried out at P1 containment. For experiments in this category, a registration document as described in Section III–B must be dated and signed by the investigator and filed with the local IBC. The IBC shall review all such proposals, but the IBC review prior to initiation of the experiment is not required."

It was noted that non-exempt experiments which might merit more stringent review by RAC or by the IBC prior to initiation of the experiment might not be adequately described in Sections III–A and III–B and thus would automatically fall into Section III–C. The working group members requested that the language of that Section be evaluated at the next RAC meeting in the hope that language to alert researchers and IBCs of this possibility might be developed.

One possible suggested clarification would be to modify the sixth paragraph of Part III, *Containment Guidelines for Covered Experiments.* That paragraph currently reads: "IF AN EXPERIMENT FALLS INTO BOTH CLASS III–A AND ONE OF THE OTHER CLASSES, THE RULES PERTAINING TO CLASS III–A MUST BE FOLLOWED. If an experiment fails into Class III–D and either III–B or III–C as well, it can be considered exempt from the requirements of the Guidelines."

The proposed modification would read: "IF AN EXPERIMENT FALLS INTO BOTH CLASS III–A AND ONE OF THE OTHER CLASSES, THE RULES PERTAINING TO CLASS III–A MUST BE FOLLOWED. If an experiment fails into Class III–D and either III–B or III–C as well, it can be considered exempt from the requirements of the Guidelines. Should doubt arise as to which section covers a proposed protocol, ORDA should be contacted."

2. At the April meeting, the working group recommended deletion of several sections of the Guidelines which were not incorporated into the proposed revised Guidelines as published in Part C of this **Federal Register** document. NIH staff felt that retention of these sections would permit greater flexibility in interpreting and administering the Guidelines. Those sections which the working group suggested should be deleted but which NIH staff have not removed from the proposed revised Guidelines published in part C are:

a. Section IV–C–7 of Section IV–C, *General Definitions,* which reads: "IV–C–7. 'Director, NIH' or 'Director' means the Director of the National Institutes of Health and any other officer or employee of NIH to whom authority has been delegated."

Section IV–C–7 has been renumbered I–D–5 in the proposed revised Guidelines (Part C of this document).

b. Section IV–D–5–b and its subsections of Section IV–D–5, *Principal Investigator,* which reads:

"IV–D–5–b. *Submissions by the PI to NIH.* The PI shall:

"IV–D–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

"IV–D–5–b–(2). Petition NIH, with notice to the IBC, for exemptions to these Guidelines;

"IV–D–5–b–(3). Petition NIH, with concurrence of the IBC, for approval to conduct experiments specified in Section III–A of the Guidelines;

"IV–D–5–b–(4). Petition NIH for determination of containment for experiments requiring case-by-case review;

"IV–D–5–b–(5). Petition NIH for determination of containment for experiments not covered by the Guidelines."

Section IV–D–5–b has been renumbered IV–B–5–c in the proposed revised Guidelines (part C of this document).

c. Section IV–E–1–b–(1)–(a) and Section IV–E–1–b–(1)–(b) of Section IV–E–1–b, *Specific Responsibilities of the Director, NIH,* which reads:

"IV–E–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the Guidelines when a major action is involved;

"IV–E–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved";

Sections IV–E–1–b–(1)–(a) and IV–E–1–b–(1)–(b) have been renumbered Section IV–C–1–b–(1)–(a) and IV–C–1–b–(1)–(b) respectively in the proposed revised Guidelines (part C of this document).

d. Section IV–E–1–b–(2) and its subsection which read:

"IV–E–1–b–(2). *The Director is also responsible for the following lesser actions,* (For these, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*):

"IV–E–1–b–(2)–(a). Interpreting and determining containment levels upon request by ORDA;

"IV–E–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

"IV–E–1–b–(2)–(c). Assigning containment levels for experiments not explicity considered in the Guidelines;

"IV–E–1–b–(2)–(d). Designating certain class 2 agents as class 1 for the purpose of these Guidelines (see Footnote 1 and Appendix B);"

Section IV–E–1–b–(2) has been renumbered as Section IV–C–1–b–(2) in the proposed revised Guidelines (part C of this document). In the proposed revised Guidelines, this section has been retained, but some of the text has been modified, consistent with changes made in other parts of the Guidelines.

Dated: May 19, 1982.

Richard M. Krause,

Director, National Institute of Allergy and Infectious Diseases.

Note.—OMBS's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8–(b)–(4) and (5) of that Circular.

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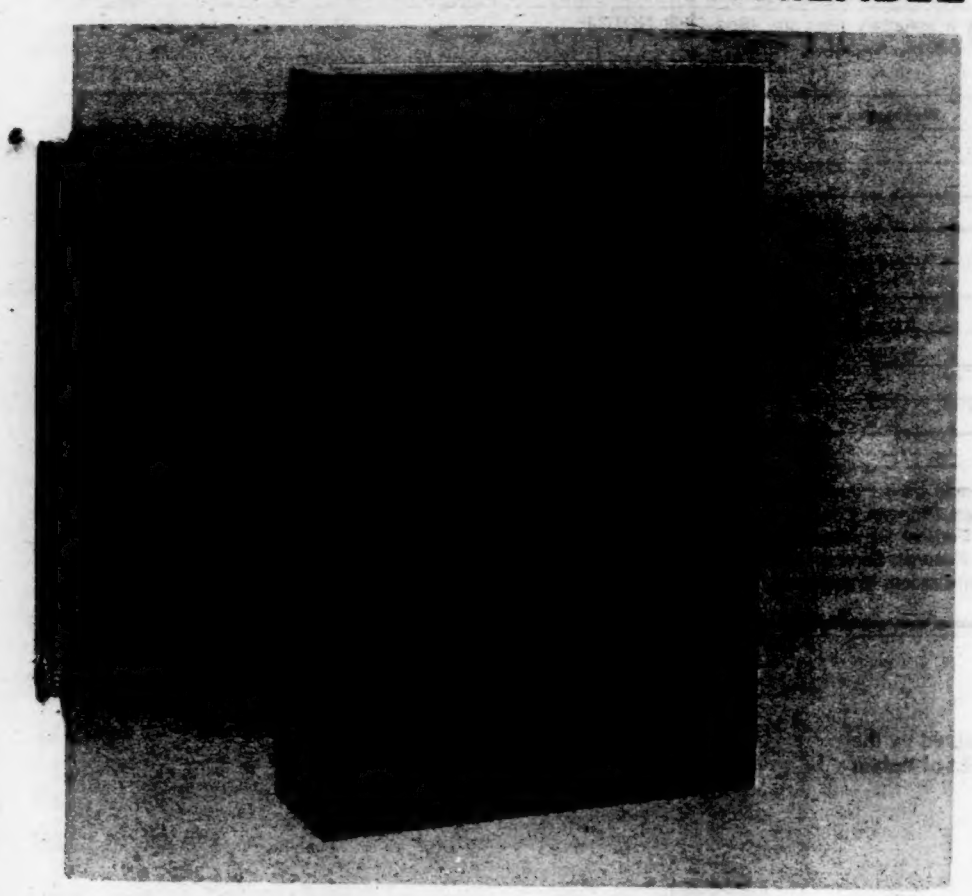

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